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United States
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Congressional Record

PROCEEDINGS AND DEBATES OF THE 98th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Wednesday, June 20, 1984*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Help us, O Gracious God, to see the fullness of Your creation and the majesty of Your gift of life. We are often so busy doing the day's work that we miss life's calling, we deal with the urgent, but miss the essential, and with so much energy used to satisfy the business of things we stand the chance to lose the purpose of all life. O God, show us Your way so that in our use of time, we may gain eternity. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Saunders, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5174. An act to provide for the appointment of United States bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5174) entitled "An act to provide for the appointment of United States bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. THURMOND, Mr. DOLE, Mr. SIMPSON, Mr. EAST, Mr. HATCH, Mr. GRASSLEY, Mr. BIDEN, Mr. HEFLIN, Mr. DECONCINI, and Mr. METZENBAUM to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2776. An act to continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes.

CALENDAR WEDNESDAY

The SPEAKER. This is the day of Calendar Wednesday. The Clerk will call the committees.

The Clerk called the committees.

THREE NEW DEFERRALS OF BUDGET AUTHORITY AND FIVE REVISED DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 98-234)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed:

(For message, see proceedings of the Senate of today, Wednesday, June 20, 1984.)

12TH ANNUAL REPORT ON FEDERAL ADVISORY COMMITTEES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Government Operations.

(For message, see proceedings of the Senate of today, Wednesday, June 20, 1984.)

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair had not intended to take 1 minute, but as we are awaiting a chairman to arrive on the floor the Chair will take 1 minute at this time.

DUSTY MAC—A SYMBOL OF GROWTH AND PROGRESS

(Mr. REID asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REID. Mr. Speaker, his name is "Dusty Mac" and he's become a familiar character to millions of people who include Las Vegas in their travel plans. Not a new hamburger at a roadside restaurant, Dusty Mac is the cartoon symbol of growth and progress at Las Vegas McCarran International Airport.

Though most visitors think of Las Vegas in terms of its diversified activities few people realize the impact of our airport on getting them into and out of the city.

In 1983, for example, more than 10 million people utilized these facilities. On a daily basis more than 28,000 passengers arrived and departed on approximately 340 scheduled flights. These airline travelers represented 42 percent of all visitors to Las Vegas.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Notably, these figures serve as a meaningful reference point for the present and the future.

Now ranked the 80th largest city in the country, Las Vegas has a volume of air traffic equal to that of Houston, the Nation's fourth largest city. This air travel is expected to double by the year 2000.

That's why McCarran is undergoing a major expansion and remodeling project—an important part of its continuing effort to provide modern and convenient facilities for our visitors by air.

□ 1010

SUMMER YOUTH JOBS CONTINUED TO BE HELD HOSTAGE

(Mr. GRAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GRAY. Mr. Speaker, I am indeed dismayed this morning, for the President has done it again. The President still refuses to allow the passage of an urgent supplemental unless it includes the $21 million for his covert war in Nicaragua.

On the one hand, the President extols the virtues of family life and traditional values. Yet, at the same time, he combines the money for the covert war in Nicaragua with the money for 100,000 summer jobs, for the women's, infants' and children's feeding programs, which means that we are holding hostage jobs for summer youth for this year.

In my State alone, it means 5,654 jobs. In my city of Philadelphia, 1,323 jobs for disadvantaged summer youth will be held up by this cynical tactic of attaching the $21 million for the covert war in Nicaragua.

Mr. President, instead of talking about family values, instead of talking about putting people to work, let us separate these two issues and allow both Houses to act on the covert aid separately and not allow our youth to suffer.

GRAND GULF NUCLEAR POWERPLANT

(Mr. HUCKABY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUCKABY. Mr. Speaker, as a member of the House Interior Committee for the last 8 years, I want to apologize to the people of the State of Mississippi, I want to apologize to the people of the following institutions of higher learning:

Tulane University, U.S. Naval Academy, University of South Florida, Georgia Southern College, Mississippi State University, Texas A&M, University of Wisconsin, University of Mississippi, University of North Carolina, Vanderbilt University, Georgia Institute of Technology, University of Houston, Massachusetts Institute of Technology, Stanford University, University of Tennessee, University of Arkansas, and Purdue University.

The members of the management team at Mississippi Power & Light hold degrees from these universities. I apologize for the statement made in the Wall Street Journal last Friday by a member of the Interior staff. I quote: "The people are out in Mississippi trying to operate a nuclear plant: they're not qualified to operate a car."

I and a majority of my colleagues on the committee are sending a letter to Chairman UDALL demanding that actions be taken so that these bigoted statements will never appear again.

I have had and continue to have full confidence in the State of Mississippi and Mississippi Power & Light.

THE REAGAN ADMINISTRATION'S HOUSING POLICIES

(Mr. TORRES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TORRES. Mr. Speaker, the poor, elderly, disabled, and middle income continue to suffer because of the Reagan administration's housing policies.

During hearings held in my district in California's San Gabriel Valley, by Mr. GONZALEZ, the chairman of the Subcommittee on Housing, I learned, along with two other colleagues from the Subcommittee on Housing, that it doesn't matter if the moderate-income person wants to purchase a first home.

Rising interest rates and the short supply of housing make it impossible.

It doesn't matter if the low income want adequate rental housing.

Low vacancy rates and high monthly rents make it impossible.

And it doesn't matter if the poor want federally assisted housing.

The need exceeds the supply and new projects are discouraged.

This administration has robbed Federal housing programs of their spirit, fairness, and goals.

Mr. Speaker, the Subcommittee on Housing listened to mayors, realtors, developers, tenants, and the disabled.

Housing problems are real and hurt all sectors of the economy.

It is time for the Reagan administration to listen.

OFFICER JUAN ANDINO—HIS DEATH SHOULD BE MEMORIALIZED

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, I am deeply saddened to report another senseless tragedy involving one of our Nation's law enforcement officers. Last Friday, 11-year New York City police veteran Juan Andino, age 39, was shot and killed during the arrest of a shoplifting suspect. As a police veteran and a Representative of the Bronx, where this savagery was committed, I join countless others in mourning the death of such a courageous and revered police officer, who exemplified his proud Hispanic heritage.

Officer Andino's death marked the third time this year that a New York City police officer has been killed in the line of duty. Last year 147 police officers were killed in the line of duty nationwide.

Mr. Speaker, these deaths are grim reminders that the war on crime is raging on. Unlike other wars, though, there is no national memorial honoring the heroes who die in the fight against crime. That is why I have authored legislation (H.J. Res. 482) to establish a National Law Enforcement Heroes Memorial to be paid for by private contributions. A similar Senate measure has already received favorable committee action, and more than 120 House Members have joined me as cosponsors of this worthy cause. I urge my other colleagues to add their names to this long overdue tribute to our Nation's finest. Police heroes like Officer Juan Andino deserve the special recognition a national memorial would provide.

SPECIAL ORDER TO CONSIDER BALANCED BUDGET AMENDMENT

(Mr. CRAIG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CRAIG. Mr. Speaker, in a special order this evening 31 of my colleagues will be joining with me to bring the total to 32. They will read into the RECORD the resolutions that State legislatures have passed across this Nation since 1976 asking this Congress to author and issue forth for State ratification a constitutional amendment to balance the Federal budget and limit taxes.

We will place those resolutions into the RECORD tonight, Mr. Speaker, for a very clear and simple reason. Come November, when California and Montana vote asking for their State legislatures to author and send to this Congress resolutions, you, Mr. Speaker, and this House, must come to the conclusion that 83 percent of the American public must at least be given the opportunity, through their State legislative process, to ratify or deny a constitutional amendment to the Federal Constitution on a balanced budget tax limitation.

THE CONGRESSIONAL BASEBALL GAME

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I want to appeal to your sense of fairness as the leader of your party.

Today, that group of garrulous gropers—that gaggle of giggling goof-offs that call themselves the "Democratic Baseball Team" have gone beyond the bounds of good sportsmanship with their ridiculous accusations.

First of all, Mr. Speaker, your team wants to change the rules. After years of free substitution on the base paths they want to thwart my base-running wiz, "jet-feet" JOHN KASICH from stealing them blind. Changing the rules now is more like what is happening at your convention than at a baseball game.

Second, your liniment-soaked bunch of bobblers—led by your third baseman, affectionately known as "boot-it" Russo, are claiming that we Republicans altered last year's official play book. They say that faulty record-keeping does not really reflect what was done on the field. They are calling this a "faltergate" scandal. This is a low blow and you should chastize them for such a libelous impropriety.

Worst of all, Mr. Speaker, your team is impugning our honor by claiming that I had public television pan the empty Democrat dugout without notifying your team. That is untrue. Your dugout was not empty. Your team is just mad because one of the gentlemen from Florida was caught sucking his thumb while the gentleman from Oklahoma was cuddling his teddy bear.

If the truth be known, it is we Republicans that should complain. Last year the Democrats went to bat before any of my players even got to the game. Fortunately for us, in true Democrat fashion, even with an empty field, they only scored seven runs before making three outs. We finally got there in time to catch up.

Mr. Speaker, we ask you to intervene to end all this name calling and accusation so that we can resolve the game once and for all tonight at Four-Mile Run Park in Alexandria at 7 p.m. Hope to see the Members and staff come out and cheer us on as we play to help the kids at Children's Hospital.

□ 1020

WHAT A DIFFERENCE A YEAR MAKES

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker and Members of the House, what a difference a year makes. Last year there was a veritable parade of legislators who took the podium in the well to denounce Reaganomics and the White House for the state of the economy. They deplored the rate of unemployment. They deplored the number of people out of work and seeking jobs.

What a difference a year makes. Where are they today when the President and Reaganomics should be given credit for a rising gross national product, a rise in the net income of the working American, a lowering of unemployment to rates well acceptable in today's economy, the greatest number of people working today than ever in the history of the United States, a rate of inflation kept intact despite this rise in the prosperity of the Nation?

What a difference a year makes. Now is the time for those people to come back to the well and say, "Perhaps I was wrong, perhaps Reaganomics and the President's economic policies are indeed working."

We have work to do on the deficits, we have work to do to maintain this economy, to be sure. But, to be fair, the President should be given credit for the state of the economy on the rise.

WHO HAS FIRST PRIORITY FOR JOBS—AMERICANS OR ILLEGAL ALIENS?

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, the unemployment rate in this country has dropped from over 10 to 7.5 percent. This is still not as good as we can do.

Part of the unemployment problem is that not everyone employed in this Nation is an American. There is an estimated 5 to 20 million illegal aliens in this country.

Illegal aliens take jobs from Americans. The question is who will be employed, who has first priority for jobs: Americans or illegal aliens.

It's fair, necessary, and vital to economic health that Americans have job opportunties, not those whose first act in the Nation is to violate our laws. Amnesty for persons who violate immigration law says: you've not followed the law and we're rewarding you with citizenship. We need immigration reform so that immigration law won't continue to be a welfare program for foreigners.

There are 9 million Americans looking for work. There are 5 to 20 million illegal aliens. These numbers suggest a solution to the unemployment problem.

REREFERRAL OF H.R. 5853, AMENDING THE ACT PROVIDING FOR INCORPORATION OF CERTAIN PERSONS AS GROUP HOSPITALIZATION, INC.

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the bill (H.R. 5853) to amend the act providing for the incorporation of certain persons as Group Hospitalization, Inc., and that the bill be rereferred to the Committee on the District of Columbia.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. FISH. Reserving the right to object, Mr. Speaker, could the gentleman inform the House what bill this is?

Mr. MAZZOLI. If the gentleman will yield to me under his reservation of objection, the gentleman from Kentucky can state that this bill, H.R. 5853, amends a 1939 act, reported by the Committee on the District of Columbia, providing for the incorporation as a D.C. corporation of Group Hospitalization, Inc. The bill was erroneously referred to the Committee on the Judiciary, and this request propounded by the gentleman from Kentucky corrects the erroneous reference.

Mr. FISH. Can the gentleman tell me, since the minority is in the dark on this legislation, has this action been approved by the minority?

Mr. MAZZOLI. I understand the gentleman from California [Mr. LUNGREN] was consulted earlier this morning.

Mr. FISH. That was with respect to bankruptcy, not with respect to this bill.

The SPEAKER. This is a rereferral from the Committee on the Judiciary to the Committee on the District of Columbia.

Mr. FISH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 5174, BANKRUPTCY AMENDMENTS OF 1984

Mr. MAZZOLI. Mr. Speaker, by direction of the Committee on the Judiciary, pursuant to rule XX, I move that the House disagree with the Senate amendment to the bill (H.R. 5174) to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes, and agree to the conference requested by the Senate.

The **SPEAKER**. The question is on the motion offered by the gentleman from Kentucky [Mr. Mazzoli].

The motion was agreed to.

The **SPEAKER**. The Chair appoints the following conferees: Messrs. Rodino, Kastenmeier, Edwards of California, Seiberling, Hughes, Synar, Glickman, Morrison of Connecticut, Fish, Moorhead, Kindness, and Sawyer.

CONTINUATION OF TRANSITION PROVISIONS OF BANKRUPTCY ACT

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2776) to continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The **SPEAKER**. Is there objection to the request of the gentleman from Kentucky?

Mr. FISH. Mr. Speaker, reserving the right to object, this is the fourth extension of the transitional period, but it is the very first to be enacted in an atmosphere of positive hope for resolution of our bankruptcy problems in the immediate future. That is why the extension is for a mere 7 days. Many of our colleagues in the past have said, "No more extensions," when we passed the lengthy ones on May 24, April 26, and March 30. I hope that they will consider giving the Congress the benefit of the doubt this one more time. The stakes are very high as we go into conference on H.R. 5174, the omnibus bankruptcy bill on which the other body has now acted. If we fail to achieve agreement by June 27, I anticipate that the transition period will be extended well into next year, and all of those who have advanced their bankruptcy interests thus far will have to commence all over again in the 99th Congress, a prospect I am sure few of us relish.

I wonder if the chairman of the subcommittee could, on behalf of Chairman Rodino, give us some assurances that we will be acting with diligence and dispatch to achieve this 7-day deadline in the conference.

Mr. MAZZOLI. If the gentleman will yield under his reservation of objection, on behalf of the distinguished chairman of our full committee, I can assure the gentleman that this 7 days which our bill provides will give the conferees an opportunity to, in a positive atmosphere, as the gentleman has correctly characterized it, seek a final agreement and some final solution to this nettlesome problem which has dragged on for the better part of, I guess, 2 years. So I can certainly assure the gentleman, who will be a conferee and involved in it actively, that the gentleman from New Jersey, our chairman [Mr. Rodino], wants this to be the very last extension and that these conferees will be able to work out a compromise, and then we will have a chance to vote on it.

Mr. FISH. The chairman is giving me assurance, on behalf of the chairman of the full committee, that he expects this conference and he will do his best to see that this conference within this limited time does resolve this issue and it is not extended into next year?

Mr. MAZZOLI. Simply stated, the gentleman from Kentucky will respond yes.

Mr. FISH. I thank the gentleman, and I withdraw my reservation of objection, Mr. Speaker.

The **SPEAKER**. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2776

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 402 of the Act entitled "An Act to establish a uniform law on the subject of Bankruptcies" (Public Law 95-598) is amended in subsections (b) and (e) by striking out "June 21, 1984" each place it appears and inserting in lieu thereof "June 28, 1984".

(b) Section 404 of such Act is amended in subsections (a) and (b) by striking out "June 20, 1984" each place it appears and inserting in lieu thereof "June 27, 1984".

(c) Section 406 of such Act is amended by striking out "June 20, 1984" each place it appears and inserting in lieu thereof "June 27, 1984".

(d) Section 409 of such Act is amended by—

(1) striking out "June 21, 1984" each place it appears and inserting in lieu thereof "June 28, 1984"; and

(2) striking out "June 20, 1984" each place it appears and inserting in lieu thereof "June 27, 1984".

Sec. 2. The term of office of any bankruptcy judge who was serving on June 20, 1984, and of any bankruptcy judge who is serving on the date of the enactment of this Act is extended to and shall expire on June 27, 1984.

Sec. 3. (a) Section 8339 (n) of title 5, United States Code, is amended by striking out "June 21, 1984" and inserting in lieu thereof "June 28, 1984".

(b) Section 8331 (22) of title 5, United States Code, is amended by striking out "June 20, 1984" and inserting in lieu thereof "June 27, 1984".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

IMMIGRATION REFORM AND CONTROL ACT OF 1963

The **SPEAKER**. Pursuant to House Resolution 519 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1510.

☐ 1030

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1510) to revise and reform the Immigration and Nationality Act, and for other purposes, with Mr. Natcher in the chair.

The Clerk read the title of the bill.

The **CHAIRMAN**. When the Committee of the Whole rose on Tuesday, June 19, the amendment in the nature of a substitute recommended by the Committee on the Judiciary was considered as an original bill for the purpose of amendment which is only subject to amendment by the amendments made in order pursuant to House Resolution 519.

AMENDMENT NO. 58 OFFERED BY MR. MINETA

The **CHAIRMAN**. Amendment No. 58 is in order at this time.

Does the gentleman from California [Mr. Mineta] desire to offer Amendment No. 58?

Mr. MINETA. Yes, I do, Mr. Chairman.

The **CHAIRMAN**. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 58 offered by Mr. Mineta: Page 97, strike out line 21 and all that follows through page 98, line 18, and insert in lieu thereof the following:

"(d)(1) There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) An alien whose application for adjustment of status under this section is denied is entitled to a de novo hearing with respect to such application if a notice of request for such hearing is made within a reasonable time (of not less than thirty days, as established by the Attorney General) of the date of the notice of the denial. Only one such de novo hearing may be requested with respect to any alien. The hearing shall be conducted before an administrative law judge in accordance with the requirements of section 554 of title 5, United States Code, and rules of the United States Immigration Board established under section 107.

"(3)(A) If such a hearing is timely requested, any further administrative or judicial review (whether in a deportation proceeding or otherwise) of the determination on the application for adjustment shall be based solely upon the administrative record upon which the order is based and the administrative law judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(B) If an alien does not make a timely request for a de novo hearing under paragraph (2), any administrative or judicial review shall be based solely on the administrative record upon which the determination on the application was made.

"(4) An applicant may elect to have administrative appellate review by the United States Immigration Board of a determination respecting an application for adjustment under this section only once, either in a review of a determination after a de novo hearing under paragraph (2) or in a review of a deportation order respecting the applicant.

"(5) There shall be no judicial review of a denial of an alien's application for adjustment except in the judicial review under section 106 of an order of deportation with respect to the alien.".

Mr. MINETA. Mr. Chairman, this amendment expands the review process for the adverse determination of applications for legalization.

Many Members may think that getting amnesty will be easy, that it can be done merely by meeting residency requirements. This is far from the truth. The legalization appeals process is complicated, and it may confuse those seeking legal status. Many times, due to the fact that immigrants are not familier with the way our government systems work, or because they speak a different language, they do not understand what is being asked of them and do not follow instructions properly. Often what can happen is that these individuals fill out applications inaccurately and incompletely. I am concerned about these people and about how our Government treats them. If we are truly serious about establishing a fair legalization appeals process, then we must make a good-faith effort to adequately assist those applying. At the same time, we do not want to unduly burden the Government or the applicants with an excessively complex process.

The purpose of this amendment is to ensure that fair administrative reviews are conducted by INS and to provide for the complete consideration of all possible evidence to determine legalization.

First, this amendment will permit applicants who are denied legalization by INS to appeal their case to an administrative law judge who can provide a semi-independent review. Applicants are thereby assured that their appeal will receive a thorough and objective review.

Second, an important part of this amendment is that it provides an opportunity to keep the record of evidence open throughout the appeals review. It permits the administrative law judge to take into account all relevant data which may present "substantial evidence" in the legalization case. New facts that may be critical in determining whether a person is eligible for legalization can then be presented appropriately.

Under H.R. 1510, no allowances are made to consider information other than that which appears in the initial application. The only time a person can try to set the record straight is after the appeal has been taken outside of INS to the Federal judicial system for review. An individual must then prove, again based solely on the existing record, that "gross abuse of discretion" was made by INS authorities.

This "gross abuse" provision, prompts particularly great fear about the injustice that may occur when an individual has been misinterpreted or misunderstood. We should not place the burden of proof entirely on the individual seeking legalization, and we should not forget that our intention here is to legislate a review process that establishes a clear, fair opportunity for individuals to present their best case. We do not want to overburden the system by creating overly formal procedures, but neither do we want to be unjust.

Third, this amendment allows applicants to appeal to the U.S. Immigration Board before pursuing a judicial review. The reason for including this additional level of review is to make sure all administrative recourses are exhausted before appeals can be taken to a Federal court. At the same time, the USIB will be able to review each case individually and thereby serve as a safeguard to assure fair reviews are made.

Mr. Chairman, this amendment is a necessary compromise. We must make sure that the review process is thorough, just, and effective. Most importantly, we must guarantee due process to each individual seeking legal status. We want to establish in this country a fair legalization appeals process that encourages, not discourages, undocumented immigrants to pursue legalization. If the process is considered unjust and extremely cumbersome, they are likely to disregard it altogether and continue to remain in this country illegally.

The CHAIRMAN. The time of the gentleman from California [Mr. MINETA] has expired.

(By unanimous consent, Mr. MINETA was allowed to proceed for 1 additional minute.)

Mr. MINETA. And ultimately, we will be faced with a system that encourages violation of the law and increases the number of undocumented persons residing here. Is this not exactly what we are trying to avoid?

The American Bar Association has endorsed this amendment, because of their concern for a fair and equitable appeals process. I welcome their support.

I am told the ABA shares my belief that any appeal must be outside the line authority of the Immigration and Naturalization Service; and that applicants have the opportunity to expand upon and correct information in their initial application.

I welcome the ABA's support, and urge my colleagues to vote for a fair and constructive legalization appeals process by supporting this amendment.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman from California [Mr MINETA] has expired.

(On request of Mr. DAUB and by unanimous consent, Mr. MINETA was allowed to proceed for 1 additional minute.)

Mr. DAUB. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to the gentleman.

Mr. DAUB. I thank the gentleman for yielding.

Mr. Chairman, I want to indicate my very strong support for the constructive and careful attention that the gentleman has paid to the problem that I think, in conference, will provide the basis for a very workable solution to the problem that has been very incisively described by the gentleman and his amendment will go a long way toward solving the problem.

I want to join with him in support of the amendment and thank him for his work.

Mr. MINETA. I appreciate the comments of my friend from Nebraska.

Mrs. BURTON of California. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to the gentlewoman.

Mrs. BURTON of California. I am very pleased that the gentleman offered this amendment. I was concerned about the review, and I support it and hope all of the Members will support it.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to the gentleman.

Mr. EDWARDS of California. I thank the gentleman for yielding.

Mr. Chairman, I want to associate myself with the remarks of the gentleman and with this splendid amendment. It is a real contribution and I hope that it is adopted unanimously.

Mr. MINETA. I appreciate the comments of the gentleman.

The CHAIRMAN. The time of the gentleman from California [Mr. MINETA] has again expired.

(On request of Mr. MCCOLLUM and by unanimous consent, Mr. MINETA was allowed to proceed for 1 additional minute.)

Mr. McCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to the gentleman.

Mr. McCOLLUM. While the gentleman has proposed a framework that I think is undoubtedly a good one as far as the technicalities are concerned, and this Member is not going to call for a recorded voted, I do feel constrained to comment that during the course of deliberations in the markup and subcommittee and so forth, this type of effort was beaten back and this Member opposed it, and has to continue to personally oppose it because it does add a considerable cost factor and time delay that I do not think is necessary for fairness or justice, that the Member is seeking.

The framework we have in the bill now is a very fine one for the legalization process. While I am opposed to legalization, if we are going to have it, I want to be fair, just like the gentleman does. My opposition is only a matter of degree, and as I say, I will not oppose it here on the floor today by calling for a recorded vote.

Mr. MINETA. I appreciate the comments of my colleague from Florida.

The CHAIRMAN. The time of the gentleman from California (Mr. Mineta) has again expired.

(On request of Mr. Mazzoli and by unanimous consent, Mr. Mineta was allowed to proceed for 30 additional seconds.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I will be pleased to yield to the very distinguished and fine friend from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. I thank my friend from California, Mr. Mineta, for yielding to the gentleman.

Let me also salute the gentleman, as my colleagues have done earlier, on the constructive addition to the bill. I want to commend the gentleman for having brought this matter forward. It does improve the bill, and we think it adds fairness to the whole question of legalization.

I hope, as I believe the gentleman will too, that when we reach the end of this long debate this afternoon, and are faced with final passage of the bill, I hope that all the amendments which have been offered by gentlemen like the gentleman from California [Mr. Mineta] and others, which have improved this bill markedly, would be considered by those when it comes to the point of sending it on or keeping it here.

I thank the gentleman for his contribution.

Mr. MINETA. I trust my colleague very highly, and I know that he will do well by us in conference.

□ 1040

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, on this side of the aisle we have no objection to this amendment at this time. There is some argument, I think, that perhaps the de novo hearing is not necessary since we have both an administrative review and an appellate review of the record. But I understand what the gentleman is doing and it is something we are going to have to look at in conference.

So at this point, we do not object to the amendment.

The CHAIRMAN. The question is on amendment No. 58 offered by the gentleman from California [Mr. Mineta].

The amendment was agreed to.

AMENDMENT NO. 59 OFFERED BY MR. SCHEUER

The CHAIRMAN. Amendment No. 59 is in order at this time.

Does the gentleman from New York [Mr. Scheuer] desire to offer amendment No. 59?

Mr. SCHEUER. Yes, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 59 offered by Mr. Scheuer:

Page 90, beginning on line 18, strike out "a date" and all that follows through "Attorney General" on line 20 and insert in lieu thereof "the effective date of the legalization program (as described in subsection (e)(3)(D))".

Page 94, beginning on line 11, strike out "the date of the enactment of this section" and insert in lieu thereof "the effective date of the legalization program (as described in subsection (e)(3)(D))".

Page 95 beginning on line 9, strike out "before the beginning of the one-year application period described in subsection (a)(1)" and insert in lieu thereof "after the date the Commission submits a report under subsection (e)(3)(A) and before the effective date of the legalization program".

Page 95, line 14, strike out "such period" and insert in lieu thereof "the application period described in subsection (a)(1)".

Page 98, line 18, strike out all that follows the first period.

Page 98, after line 18, insert the following new subsection:

"(e)(1) There is established a Select Commission on Immigration Enforcement and legalization (hereinafter in this subsection referred to as the 'Commission') which shall be composed of—

"(A) eight members appointed by the President from a list (of at least 24 individuals, none of whom are officials or employees in the legislative branch of the Federal Government) submitted by the Speaker of the House of Representatives, and

"(B) eight members appointed by the President from a list (of at least 24 individuals, none of whom are officials or employees in the legislative branch of the Federal Government) submitted by the President pro tempore of the Senate.

"(2)(A) A majority of the Commission shall constitute a quorum for the transaction of its business, but the Commission may provide for the taking of testimony and the reception of evidence at meetings at which there are present not less than four members of the Commission.

"(B) Each member of the Commission who is not otherwise in the service of the Government of the United States shall be compensated at a rate not to exceed the daily equivalent of the rate then payable for grade GS-18 in the General Schedule under section 5332 of title 5, United States Code, for each day spent in the work of the Commission, be paid actual travel expenses, and per diem in lieu of subsistence expenses, when away from his usual place of residence, in accordance with chapter 57 of title 5, United States Code. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other services, but while engaged in the work of the Commission shall be paid actual travel expenses, when away from his usual place of residence, in accordance with chapter 57 of title 5, United States Code.

"(3)(A)(i) The Commission shall study and report to the Congress not later than nine months after the date of the enactment of this section on the effectiveness of the actions of the Attorney General to interdict the illegal entry of aliens into the United States and to eliminate substantially aliens' violations of their conditions of entry.

"(ii) Such study shall include a review of the Attorney General's efforts regarding—

"(I) preventing the misuse of visas, permits, social security cards, and other documents described in section 1546 of title 18, United States Code in obtaining entry into the United States;

"(II) preventing smuggling of undocumented aliens into the United States and other violations of section 274 of this Act;

"(III) the actual numbers of Service officers and their placement and distribution on the borders of the United States;

"(IV) eliminating nonimmigrants' violations of their conditions of entry;

"(V) seizure and forfeiture of vehicles used in the smuggling of unauthorized aliens into the United States; and

"(VI) the capacity and utilization of detention centers for aliens who are apprehended and who are in deportation or exclusion proceedings.

"(B)(i) Based on its findings, the Commission shall develop recommendations for actions and improvements for more effective implementation of this Act in order to secure the borders of the United States and to eliminate substantially aliens' violations of their conditions of entry. The Commission shall submit its inital findings and recommendations to the Congress.

"(ii) The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting such findings and recommendations within 60 days after the date of receipt of the findings and recommendations.

"(iii) The Chairmen of the Committees of the Judiciary of the House of Representatives and of the Senate shall cause the initial findings and recommendations of the Commission and the results of the hearings under clause (ii) to be printed in the Congressional Record as soon as possible after the conclusion of the hearings.

"(C) After submitting its initial findings and recommendations, the Commission shall continue to monitor the implementation of the provisions of this act and shall report to Congress when effective programs have been established to interdict the illegal entry of aliens into the United States and to eliminate substantially aliens' violations of their conditions of entry and the borders of the United States are reasonably secure.

"(D) For purposes of this section, the effective date of the legalization program is the first date of the fourth month beginning after the date the Commission reports to Congress under subparagraph (C) that effective programs have been established to interdict the illegal entry of aliens into the United States and to eliminate substantially aliens' violations of their conditions of entry and that the borders of the United States are reasonably secure.

"(4)(A) The Commission is authorized to appoint and fix the compensation of such personnel as may be necessary to enable it to carry out its functions without regard to the civil service laws, rules, and regulations. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

"(B) Staff members of the Committee on the Judiciary of the Senate or of the Committee on the Judiciary of the House of Representatives may be detailed to serve on the staff of the Commission by the chairman of the respective committee. Staff members so detailed shall serve on the staff of the Commission without additional compensation except that they may receive such reimbursement of expenses incurred by them as the Commission may authorize.

"(5) The Commission may call upon the head of any Federal department or agency to furnish information and assistance which the Commission deems necessary for the performance of its functions, and the heads of such departments and agencies shall furnish such assistance and information, unless prohibited under law, without reimbursement.

"(6) The Commission is authorized to make grants and enter into contracts for the conduct of research and studies which will assist it in performing its duties under this section.

"(7) The Commission shall cease to exist upon the effective date of the legalization program, except that the Commission may continue to function for up to 60 days thereafter for the purpose of winding up its affairs.

"(8) The Commission is authorized to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the rate then payable for grade GS-18 in the General Schedule under section 5332 of such title.

"(9)(A) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

"(B) Notwithstanding any other provision of this subsection, no payment, or authorization to make payments or to enter into contracts under this subsection, shall be effective except to such extent, or in such amounts, as are provided in advance in appropriations Acts.".

Page 98, beginning on line 23, strike out "the date of the enactment of this Act" and insert in lieu thereof "the effective date of the legalization program under section 245A of the Immigration and Nationality Act".

Page 99, beginning on line 1, strike out "section 245A of the Immigration and Nationality Act" and insert in lieu thereof "such section".

Mr. SCHEUER. Mr. Chairman, I am going to ask unanimous consent not to submit the amendment; rather, I am going to have a colloquy with the chairman of the committee on the legislative intent. I think in this manner we can save some time and clarify the intent of the Congress. So I would like simply to engage in a colloquy as to what the intent of the reporting requirements are which the gentleman has structured into this bill.

There are three questions, Mr. Chairman.

No. 1, you have required a report to Congress on admissions and numerical limitations. Among the items the report will assess is the impact of immigration on the U.S. population growth rate.

I would like to make sure that my understanding is correct that population growth rate includes, but is not limited to, specific demographic changes. In particular, may I ask the distinguished chairman, will this include such factors as:

Where population growth is taking place or where shifts are occurring, that is—in rural or in urban areas; and will it also include information regarding educational levels, occupations, countries of origin, age structure, and fertility of legal and illegal immigrants in the U.S. population?

Mr. RODINO. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. Of course I yield to the gentleman from New Jersey.

Mr. RODINO. I thank the gentleman for yielding.

Mr. Chairman, first of all I want to state that I know of the gentleman's deep concern because he has been following this problem for a period of time.

Anticipating that there would be a need for the Immigration Service to have all the information that is possible in order to assist us in establishing a good immigration policy, the Judiciary Committee in the Justice Department authorization bill (H.R 5468), mandated certain action. I would like first to read very carefully from the committee report on the bill regarding the question of statistics.

> The committee amendment for the first time provides statutory language requiring the collection, preparation and distribution of information and data on the number and characteristics of immigrant and non-immigrant aliens entering and departing the United States.
>
> The committee is deeply concerned about the unavailability of accurate and current statistical information on immigration matters. The committee notes in this regard that INS has not devoted sufficient resources and attention to this problem and, to a great extent, has ignored the statistical needs of Congress, as well as the research needs of demographers.

That tells the gentleman where the committee stands and the committee certainly is going to inquire into this area and the information the gentleman now is seeking is important, essential information.

Mr. SCHEUER. So the gentleman considered the specific kind of demographic information that I have outlined as included.

Mr. RODINO. That is correct.

Mr. SCHEUER. I thank the gentleman.

No. 2, the report contained in title II is to include a reasonable estimate of the number of aliens who entered the country without visas or became deportable.

In order to determine these numbers, I would like to ask whether this report is intended to include estimates of the number of aliens who enter the United States by using fraudulent documents?

Mr. RODINO. Again, I answer the gentleman yes, that is what the committee intends, the necessary information. I am glad that the gentleman specifically addresses this.

Mr. SCHEUER. I thank the chairman.

No. 3, will the report inform us as to how many nonimmigrants have fallen into undocumented status by violating their conditions of entry?

Mr. RODINO. Yes. This is, of course, again is essential information, namely those who came in and fell out of status.

Mr. SCHEUER. I thank the chairman. I believe that all of these factors which we have discussed are critical to fulfilling the essential reporting requirements that the chairman has included in this legislation.

The CHAIRMAN. The time of the gentleman from New York [Mr. SCHEUER] has expired.

(By unanimous consent, Mr. SCHEUER was allowed to proceed for 30 additional seconds.)

Mr. SCHEUER. Expanding the information we have on the number of illegal aliens in this country and the impact of immigration on demographic change in the U.S. population will enable us to make a more effective continuing review of our immigration policy.

I thank the chairman kindly for his time and attention.

Mr. RODINO. I thank the gentleman for his interest.

The CHAIRMAN. The gentleman from New York [Mr. SCHEUER] asks unanimous consent to withdraw his amendment.

Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT NO. 60 REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE AND OFFERED BY MR. WAXMAN

The CHAIRMAN. Amendment No. 60 reported by the Committee on Energy and Commerce is in order at this time.

Does the chairman of the Committee on Energy and Commerce desire to offer amendment No. 60?

Mr. WAXMAN. Mr. Chairman, I wish to offer that amendment on behalf of the Committee on Energy and Commerce.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 60 reported by the Committee on Energy and Commerce and offered by Mr. WAXMAN: Page 99, line 3, insert "and on public health and medical needs of individuals" after "governments".

Mr. WAXMAN. Mr. Chairman, this amendment is quite straightforward.

Under the judiciary bill, the President is required to report to Congress on the impact of the legalization program within 18 months after enactment.

This amendment specifies that this report must include a description of the impact of the program on the public health and medical needs of individuals in different regions of the country.

During the committee's consideration of this legislation, it became apparent that there is very little reliable information on the health status or needs of the undocumented alien population in the country. This made it very difficult to evaluate the different policy recommendations the committee received regarding health coverage for legalized aliens.

The purpose of this amendment is to assure that, as many of these aliens adjust their status under this bill, the Department of Health and Human Services, in cooperation with the States and localities, make a concerted effort to learn as much as possible about the public health and medical care needs of this newly legalized population. We are particularly interested in the public health and medical care services that the different States and counties deliver to this population, the extent to which they meet the needs, and the costs of those services to all levels of government.

This amendment has no cost and, to the best of my knowledge, no opposition. I urge its adoption.

Mr. MAZZOLI. Mr. Chairman, will my friend, the gentleman from California, yield to the gentleman from Kentucky?

Mr. WAXMAN. I would be pleased to yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding to the gentleman from Kentucky.

Mr. Chairman, on behalf of the majority, I think this amendment is agreeable and actually desirable. I think it adds to the knowledge that we will have on this whole problem, and I salute the gentleman for having offered it. We will accept it.

Mr. FISH. Mr. Chairman, will the gentleman yield to me?

Mr. WAXMAN. I would be pleased to yield to my colleague, the gentleman from New York.

□ 1050

Mr. FISH. Mr. Chairman, I thank the gentleman for yielding.

I am advised that the minority on the Committee on Energy and Commerce has no objection to the gentleman's amendment. The committee amendment simply requires that the mandated Presidential report to Congress on the legalization program include a report on the impact of the program on the public health and medical needs of the individuals covered. On behalf of the minority on the Committee on the Judiciary, I am pleased to accept the amendment.

Mr. SCHEUER. Mr. Chairman, will my colleague, the gentleman from California, yield?

Mr. WAXMAN. I am pleased to yield to the gentleman from New York, the chairman of the subcommittee.

Mr. SCHEUER. Mr. Chairman, I rise in strong support of the gentleman's amendment.

Mr. Chairman, I would like to commend Mr. WAXMAN for his fine work and leadership in formulating the Energy and Commerce Committee amendments to this bill.

These amendments address the public health and individual medical concerns related to the legalization program provided in this legislation.

The merits of amnesty—whether or not we should have this amnesty—is not the issue here.

The issue is that if we are going to have the legalization program provided for in this bill, then we must consider its implications for health care in this country.

This amendment simply requires the President to report to Congress on the impact of the legalization program on State and local governments and on public health and medical needs of individuals in different regions of the United States.

The addition of millions of new legal residents to our population will, undoubtly, have a tremendous impact on how we provide health services.

Although most of these people have been here for many years, because they are here illegally, we have little or no information on their state of health.

These factors affect both the individual aliens and our own citizens.

We must bear in mind that most of these people have come from developing countries where health services are not available in any comprehensive way and what is available comes nowhere near the quality of health care we provide in the United States.

Therefore, it is vital that they have access to health services and that we learn what their medical needs are and how their health problems affect our citizens.

At the same time that we make certain that newly legalized aliens receive necessary health care, we must make sure that the provision of these services does not place an undue burden on our States.

A recent California Court of Appeal decision ruled that undocumented aliens who are not in a formal deportation proceeding are entitled to receive Medi-Cal benefits.

The California Department of Health Services estimates that this decision would cost them an additional $98 million a year.

If these people are legalized, and if more come forward than the number California has estimated to be residing there illegally now, can you imagine what the cost of providing these services would be for California and all of our States?

The amnesty contained in this bill creates an additional pull factor that will only encourage an explosion of additional illegal immigration to the United States.

Anyone who is at all familiar with immigration, both legal and illegal, will tell you that for a modest amount of a few hundred dollars, an immigrant can obtain forged documents showing he came over on the *Mayflower*, and can certainly meet the January 1, 1982, qualifying date or any other.

There is a large number of counterfeiters who are already prepared to provide all the documents an illegal immigrant needs to establish his eligibility for legalization, such as: Rent receipts, driver's license, birth certificate, and Social Security card.

And the counterfeiters will get that fee.

They are getting it now.

The old adage that "you can't put a price on freedom" may be true, but not at our borders.

We ourselves, by passage of amnesty—along with open borders, totally out of control—will create a tidal wave of new illegal immigrants that will make our current immigration problems seem modest by comparison.

This new inundation of illegal immigrants that will be triggered by amnesty plus open borders, plus ready availability of forged documents will have an exponential impact on the cost of immigration to our States and localities.

They will be faced with a new burden of exorbitant costs and equally great demands for additional health care services.

We have an obligation to see that the financial needs of our States and localities, as well as the public health, are addressed in this legislation.

The Energy and Commerce Committee amendment will provide us with essential information.

It is an integral component of this bill.

I urge my colleagues to support this amendment.

The CHAIRMAN. The question is on amendment No. 60 reported by the Committee on Energy and Commerce and offered by the gentleman from California [Mr. WAXMAN].

The amendment was agreed to.

AMENDMENT NO. 61 OFFERED BY MR. M'COLLUM

The CHAIRMAN. Amendment No. 61 is in order at this time.

Does the gentleman from Florida [Mr. MCCOLLUM] desire to offer amendment No. 61?

Mr. McCOLLUM. Yes, I do, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 61 offered by Mr. MCCOLLUM: Page 90, line 3, strike out "LEGALIZATION" and insert in lieu thereof "REGISTRY".

Page 90, strike out line 4 and all that follows through page 99, line 10.

Page 99, line 12, strike out "302" and insert in lieu thereof "301".

Page 99, strike out line 22 and all that follows through page 102, line 5.

Conform the table of contents accordingly.

The CHAIRMAN. The gentleman from Florida [Mr. MCCOLLUM] is recognized for 5 minutes in support of his amendment.

Mr. McCOLLUM. Mr. Chairman, this amendment is my amendment to strike the legalization program from this bill in its entirety.

By striking legalization, this bill will become a fairer bill. By striking legalization, we will retain the balance in our legal immigration laws that have historically guided this Nation, and that the American public has a right to expect of us and to demand of us.

We have for years been a beacon of hope to the rest of the world. Our Statue of Liberty has held out its torch, its hope, and its light to thousands and millions of people around the world who want to have the same kind of liberty and opportunity and freedom that we in this great Nation of ours possess and do continue to possess. We need to continue to allow not only that beacon to shine forth to encourage other nations to have democracies and freedom and better economic conditions, but we need always to keep that door open at the front end to allow, through an orderly legal process, a certain number, a reasonable number, of legal immigrants to come into this country every year, as they have been the seed and the foundation of our Nation in its past, as it will be them and their children and generations to come who will be the seed and the foundations of freedom and democracy of our Nation in the future.

But in order to do this, we have to have a responsible control over our borders. We have to regain the control that has been lost in the last few years. We have to have the employer sanctions that are in this bill. We have to have the speedup of the adjudication process so we do not have a longtime delay in the process of our court determinations and our system determinations regarding those who come here illegally but might be claiming the right to stay under asylum or otherwise. And we have to keep the confidence of the American people in the laws that we have.

By putting legalization in this bill, we have in large measure lost the confidence of the American people in what we are trying to do. While on the one hand they very strongly support the employer sanctions and the efforts to toughen the immigration laws to regain control and to have fair immigration legally into this country, they oppose the idea and the unfairness that is inherent in legalization.

Now, how is legalization in this bill, or amnesty, as it is called, unfair? Well, it is unfair clearly, very unfair, to the millions who have stood in line for years for the opportunity to come to the United States legally, and they are still standing in line all over the world for that opportunity. They are standing in line even from the countries most highly impacted by legalization. And it is a great slap in their face and a cruel hoax that we perpetrate in this bill by giving legalization to those millions who are here already illegally, who have gone against the laws of this Nation, who have not been willing to stand in line, and who are going to be given the opportunity to get American citizenship that is so cherished by those who yearn for it and who would like to come here and should be given the chance to come here legally under our laws.

It is indeed a cruel hoax to those in France, and Italy, and Poland, and Mexico and everywhere else who are standing in line today.

Second, it is very unfair to the American public. It is very unfair to the American public to have legalization for a number of reasons. It is unfair to the American public to have us pass a provision that rewards lawbreakers, that tends to breed disrespect for the laws of our Nation. And there certainly is that in this bill today with legalization.

It is also very unfair to the American public to propose on the one hand employer sanctions to toughen the laws, to discourage the magnet that draws people over here for economic reasons and try to seal off our borders and make legal immigration work, and it is very unfair to take the other hand in this same bill and nullify a great deal of that by putting the magnet of legalization in here that will tend to draw thousands and probably millions more across our borders in the hopes that they can somehow fake their way to amnesty to become citizens, or perhaps in the false belief that we will grant amnesty again, as many other countries have done.

And it is very unfair to the American public to place on them the attendant costs of this legalization program. Not only will it cost millions of dollars to implement the legalization program, but even a conservative estimate by the OMB, our own Federal bureau that is charged with the responsibility to analyze these things, says it will cost in public assistance and education taxpayer dollars on the backs of the American people an additional $9 billion or $10 billion—not millions but billions of dollars—over the next few years, and I would dare say that by the time we add in the multiplier effect that has been discussed before on this subject, and many more come across our borders, it will be much greater than that.

Is it any wonder that the American people overwhelmingly oppose legalization? Is it any wonder that such organizations that represent the very pulse of American opinion, the very fabric of our society's history in this area, oppose legalization?

The CHAIRMAN. The time of the gentleman from Florida [Mr. MCCOLLUM] has expired.

(By unanimous consent, Mr. MCCOLLUM was allowed to proceed for 5 additional minutes.)

Mr. McCOLLUM. Mr. Chairman, is it any wonder that such organizations as the American Legion and the VFW have raised strong, strong objections to legalization while they do support the employer sanctions and other provisions in this bill? Is it any wonder, based on the unfairness inherent in the legalization program, that there are polls that show as recently as the Newsweek poll out this week, the overwhelming majority of the American people oppose amnesty and oppose the provisions in this bill which give it? No, it is not any wonder.

The wonder is that we have had such a distortion of the debate over a period of several years now, of the issue of legalization as a portion of any bill that deals with toughening our immigration laws. That is what is a wonder. That is what is amazing.

What happens now? Let us address a problem now that is raised, or a false problem in my judgment. There are always arguments being made. What happens to those who would, stay here, who would not be legalized—or maybe they would not stay here—the illegals, if you will, who, if we strike legalization under this bill, would remain illegals? Are they going to be massively rounded up and deported? Of course, they are not going to be. The Immigration and Naturalization Service does not have the resources, it does not have the capability, this Congress does not have the will, and the

American people do not want to have it happen. It is not going to happen.

There are going to be a substantial number who remain in this country in illegal status. There always have been people in this country in illegal status, and there always will be, working and toiling in some fashion. There will continue to be some apprehensions by the Border Patrol and by the legal services of INS, but that will diminish as the years go by with the good framework in this bill.

We have, for example, right now a young family in my city of Orlando that is of English descent, and they are being sent back by the INS to England because they came and overstayed their stay here and tried to come in illegally to our country. Every one of us in our congressional districts have had in the past and will have in the future those situations that are heart rending, where people come in hopes they can stay but did not come legally, and they are going to be removed. The difference is massive numbers in this case.

But I do not see massive numbers are going to stay here, and I think the argument that they are is ridiculous. Once employer sanctions are in place, once it is illegal to knowingly hire an illegal, over a period of time gradually, as people lose jobs or they cannot get new jobs, as will occur with this bill in place without legalization and with employer sanctions, there will be a gradual movement back across the borders by the great majority of those who are here illegally, because they came here to get jobs and there will not be jobs.

Now, some will stay, no doubt, but not nearly that number as some would argue. There are mostly people here today for economic reasons, sending money back across the border. They are here as transients anyway. They go back every year, and they would be back readily. In fact, they would probably come back to the United States under the temporary worker program in this bill or the H-2 program in the other body's bill. It is not a logical argument to argue that there is a real problem with respect to the illegals who would remain if it is stricken from this bill.

And what about the fact that there is a registry date in this bill which would capture those who have stayed here longer or were continuously here on or before January 1, 1973? The Attorney General in that case could give them some legal status, as he has traditionally had the powers to do for every registry date in the history of immigration since the beginning of this century to grant them, on a case-by-case basis, a shot at staying here.

And for the true hardship cases, we have provisions in the immigration laws, and where they do not apply, we have bills that will come, that still do come, and that will come in the future before the Immigration Subcommittee, special bills by Members of this body to alleviate those problems.

□ 1100

So I say to my colleagues that it is nonsense to say to us that there is going to be a tremendous problem if we do not in fact allow for these illegals to stay here.

Now, if I might move on to one other point that has been raised, there are those who say that the legalization amendment I am proposing today to strike legalization would kill this bill. I will tell you what is a killer in this bill. It is the legalization provisions that are here already. There are many, many Members who have spoken to me, a great large number who under no circumstances are going to vote for this bill if legalization stays in it, but who will vote for it if it comes out. That is in fact the will of the American people, as I have described before, in poll after poll and in case after case and that is a very logical position for many to take.

Now, I happen to personally think that employer sanctions and adjudication speedup are so important that I personally do not want to see that happen. I would vote for this bill no matter what, and I would hope that people on the other side if legalization is stricken, who feel strongly about it as I feel strongly about it the other way, would also vote for it; but the facts of life are that I think there are more people in this body, more Members who are going to vote against this bill if legalization stays in than the other way around.

The CHAIRMAN. The time of the gentleman from Florida has expired.

(By unanimous consent, Mr. McCollum was allowed to proceed for 2 additional minutes.)

Mr. McCOLLUM. Now, the fact of the matter is that we have got real problems with balance in this bill, not because of what has been argued in the past on this floor, not because of the question of balancing off employer sanctions. That is a false argument. Employer sanctions in no way from the very beginning of this bill, regardless of anything else that has been said here, discriminate against Hispanics. There is nothing required of us in order to have balance in this bill to appease the Hispanic community in this country, that we put legalization in here and grandfather in millions illegally and do all the things that are unfair to everybody else. There is nothing requiring that in order to have fairness and balance in this bill. It is a very false argument that has been raised and harbored for a number of months and years and, indeed, on the floor of the House for the last few hours of debate.

We have a fair bill that is fair to everybody with employer sanctions, regaining of control of our borders and adjudication speedup. We certainly do not need legalization.

What we need is a balanced control of our borders, a balance of legalization laws to allow us to take folks in in a responsible fashion under the guidance of that beacon of hope and light that has always been out there at the end of the torch of the Statue of Liberty. That is agian what the American people overwhelmingly want and that is what this bill will give them if we strike legalization and bring common sense to bear on the bill and allow the important aspects of this bill to the American public and to the world to go forward.

In the name of fairness and the name of doing justice to the American public and to the millions who stand in line waiting to come here legally and the generations to come in the future, I implore you to vote for the McCollum amendment to strike legalization and then to vote for the final passage of this bill.

Mr. RICHARDSON. Mr. Chairman, will my colleague yield?

Mr. McCOLLUM. Yes, I would be glad to yield.

Mr. RICHARDSON. Mr. Chairman, I am a little awe struck by the fact that the gentleman says that in the name of fairness and justice that we proceed with passage of his amendment.

I would like to just, if my colleague bears my indulgence, discuss some of the statistics that he raised both in the Newsweek poll and others.

I notice that the gentleman did not talk about the contributions that immigrants make to the economy, the issue of how much they contribute.

The CHAIRMAN. The time of the gentleman from Florida has expired.

(At the request of Mr. Richardson, and by unanimous consent, Mr. McCollum was allowed to proceed for 5 additional minutes.)

Mr. RICHARDSON. Mr. Chairman, if the gentleman will yield further, there are a number of other statistics that the gentleman said were relevant in connection with how they are a drain on the U.S. economy. I would like to read some of those statistics.

First of all, the gentleman quoted Newsweek. I have the Newsweek poll right in front of me. I think the gentleman is correct. There is support for his provision if you talk about it being a blanket elimination of the amnesty provision. The way the poll is written, those that would like to see the amnesty provision eliminated, 55 percent to 34 percent. I do not consider that an overwhelming majority. That is without the benefit of the Wright amendment.

I would also like to cite to the gentleman two other questions that were asked in the poll that kind of run contradictory to what the gentleman said. In the same poll, Americans were asked, "Do you agree or disagree with the following statement: Many immigrants work hard, often taking jobs that Americans do not want." Eighty percent agree, seventeen percent disagree.

Also, "Immigrants help improve culture with their different cultures and talents." Sixty-one percent agree, twenty-five percent disagree.

In addition to that, I take it that the gentleman considers the Heritage Foundation a reliable source on this issue. Could the gentleman respond to that?

Mr. McCOLLUM. Well, the Heritage Foundation is like a lot of other sources. It has reliability for the most part. I do not know which figures the gentleman is going to throw at me, but I agree they are generally reliable.

Mr. RICHARDSON. I am going to throw at the gentleman a Heritage Foundation study that talks about a lot of the issues the gentleman raised. This is a survey done of 156,000 immigrant households.

The gentleman mentioned the drain on the economy, on welfare and supplemental security, unemployment compensation, food stamps. Let me just say that for the average native-born U.S. family, it received $498 from these programs on a yearly basis.

The average for immigrant families that arrived between 1950 and 1974 is $548. There is not that much difference.

Let me talk about retirement programs. Native U.S. families receive on the average $735 for Social Security, $167 for Medicare, $20 for Medicaid, for a total of $922.

Immigrant families receive a total of $92 during the first 5 years in the United States, $227 the second 5 years, $435 the third 5 years; the total is very similar, $859 if you add all of them.

In addition to that, let me just cite some other figures that are used in the Heritage Foundation study. These are immigrants and the percentage they get in terms of some of the welfare programs that the gentleman mentioned. On the average, the immigrant family receives free medical care, only 5 percent; unemployment insurance, 4 percent; food stamps, 1 percent; welfare payments, 1 percent; child schooling, 4 percent.

Hardly any illegals receive Social Security, but 77 percent of illegals paid Social Security and 73 percent had Federal income tax withheld.

The gentleman also mentioned some of the opposition from the veterans groups, and I agree there is fear, there is concern.

Did the gentleman know that there are many immigrant sons and daughters that enter the U.S. forces?

Mr. McCOLLUM. Well, if I might reclaim my time, the gentleman misstates the idea here. This gentleman has no problem with immigrants. That is the foundation of our Nation. That is where almost all our ancestors came from. I have no problem with immigrants. Most of them contribute a great deal to society. The recent refugees from Southeast Asia have made us all proud, the Cuban-Americans that have come in, many of the Mexican-Americans. I do not have a problem with immigration or immigrants, but I do have a problem with the illegal immigration we have been condoning and the legalization of those illegals and the sizable numbers that we are going to take in at one time, rewarding lawbreakers in one fell swoop.

There is no hiding the fact that because of these extreme numbers at one time from one particular region of the world, we are going to have at least a $9 billion to $10 billion extra cost of public assistance and education now.

There is no question that we have a lot of good immigrants. I want to keep the door open. I just want to do it legally.

As to the Wright amendment, the Wright amendment did very little or nothing with regard to legalization, except to put in a requirement that we have to have them learn a little English, and I agreed with that, and I voted for it, but it did not change the date from January 1982.

Mr. RICHARDSON. But it added another tier, it added two tiers.

Mr. McCOLLUM. It added one extra year of trouble that they have to go through, but all who were here before January 1982 are eligible, so anybody hiding behind the Wright amendment is wrong.

The CHAIRMAN. The time of the gentleman from Florida has again expired.

(At the request of Mr. RICHARDSON, and by unanimous consent, Mr. McCOLLUM was allowed to proceed for 5 additional minutes.)

Mr. RICHARDSON. Mr. Chairman, if my colleague, the gentleman from Florida, will yield further, he also stated, he said that mass deportation is not going to exist. I presume the gentleman also feels that many of these immigrants are not going to leave voluntarily, so I guess the gentleman is saying that the status quo is the best alternative.

Mr. McCOLLUM. Mr. Chairman, if I may reclaim my time, I do not agree with that. The majority of the people who are here illegally today from across the borders that compose the millions—we do not know how many, 3 to 12 million, roughly—the majority of those when employer sanctions are in place, this Member is firmly convinced are going to voluntarily and from their own free will cross back across the borders. Many of them are going to enter the workplace of the United States again through H-2 programs or through a temporary worker program, but they are going to cross back. I do not accept the gentleman's premise that most are going to stay here. Most of them are going to go back. Some are going to stay and some are always going to be here, even with legalization that is in this bill.

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield further?

Mr. McCOLLUM. I will continue to yield.

Mr. RICHARDSON. With all due respect to my colleague, I find it incredible that the gentleman says between 3 and 12 million. What the gentleman is saying, let me get this again, we know that there is no empirical adequate data of how many we have. It is anywhere from 2 to 12 million. There is a 1980 census report that says it is 2 million. That is the offical version.

Mr. McCOLLUM. But nobody knows from the census. They did not take that very well.

Mr. RICHARDSON. The gentleman is saying between 2 to 12 million people, that once this bill passes we are going to have a mass exodus of undocumented workers back to their home countries. I want to get for the record, is that what the gentleman is saying?

Mr. McCOLLUM. Well, I want to reclaim my time to spell this out. First of all, it will not happen quickly. There will not be an immediate mass exit. What is going to happen is this. Many of them are going to keep their jobs because it is not illegal for them to be employed if they keep the same jobs they have got now.

□ 1110

Those that do keep those jobs over a period of time, either under the 7-year provision that allows the waiver, triggers the waiver of deportation or under an update of the registry date, if they have not been here long enough now to be captured by January 1973 we will undoubtedly update it again and we should update it again, eventually they are going to be captured and they are going to become American citizens, but there will be a substantial number who will by attrition go back across the border, not all at one time but gradually over a period of time, once employer sanctions are in place because they will not be able to either get another job or a new job.

It is a very fair thing to have happen and it is something that happens even today as many do go back and some of them, as I said earlier, are going to take jobs with employer work programs or with H-2 programs under this very bill, and come back into the United States at no loss to their families at all.

So I see no problem with my proposition at all.

Mr. GARCIA. Mr. Chairman, will the gentleman from Florida yield?

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. GARCIA. I appreciate my colleague yielding.

Mr. Chairman, I think we are both sophisticated and smart enough to know that if the gentleman's amendment passes there is no immigration reform.

Mr. McCOLLUM. I disagree with that completely.

Mr. GARCIA. OK. That is a fair assumption on your part. But I will tell the gentleman right here and now that all the editorial support and all the people who have, in terms of the strength of this Nation, who have supported immigration reform, was based on a tradeoff.

Mr. McCOLLUM. Let me reclaim my time just to make one point. The vast majority of the American public does not see it that way. There has been this building block of somehow we have to have legalization that has gotten out from some of the leadership that started this bill and it managed to get into the press ideation and perpetuated there, but it is a false argument that the public supports it.

I will be glad to yield further to the gentleman from New York.

Mr. GARCIA. I thank the gentleman.

Just let me backtrack, if I may. I think there is no question, we had the conversation yesterday with our colleague from Florida, there is no question that people are here illegally. That is a given. I think that is an assumption we all have to make on this floor, that what we are trying to do with this bill is button up all the loopholes and what we are trying to do is give these people who are here dignity and give them a chance to stay.

Then what we are going to try to do is to make it virtually impossible for anybody else to come into the country. Is that a fair assumption?

Mr. McCOLLUM. That is what the gentleman is attempting to do with the legalization program. I think the portion of this that is legalization is wrong but that is what the gentleman is attempting to do with it.

Mr. GARCIA. OK. Now just let me say this; I do not know if it is a good analogy but just let me say: If people, if it is a question of breaking the law, then if you look at the civil rights struggle that we had, and Rosa Parks who rode in front of the bus in Birmingham, that was breaking the law. But that started a chain, a chain reaction which has brought us many gains in civil rights.

What we are hoping to do here is that same chain, to give people dignity, to give them an opportunity to come out of the shadows, to let them walk the streets without looking behind their shoulders constantly.

If we go back to the history and the foundation of this country, there is no question, I am sure many of the British would say that we were constantly breaking the law as it related to the struggles of George Washington and others.

The CHAIRMAN. The time of the gentleman from Florida has expired.

(On request of Mr. GARCIA and by unanimous consent Mr. McCOLLUM was allowed to proceed for 3 additional minutes.)

Mr. GARCIA. Mr. Chairman, will the gentleman yield further?

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. GARCIA. I guess what I am trying to say, Mr. Chairman, to my colleague from Florida, is, yes, we have a problem, yes it is a serious problem, yes, what we are trying to do after 4 years is to button it up. I am opposed to the legislation because I think the sanctions are too severe. But I will tell my colleague if there is anything that is humane in this bill as far as I am concerned it is the amnesty portion. And by the gentleman's amendment, just stripping it away, and taking it away, I just think that the gentleman would gut the bill and that there would be no dignity for anybody.

Mr. McCOLLUM. If I may reclaim my time, I respect the gentleman's views. He and I have talked many times about this bill. But I do disagree and I disagree strongly because I believe this bill is fair and humane without legalization. I do not believe it mistreats any illegal. There are lots of people in this country today who will not be covered by legalization in some form either because they will not come forward or because they come in too late or whatever. We are going to be walking down this same path a few years from now, if legalization stays in this bill. And I think this is very inhumane to encourage people to come across the borders in the false hopes that they can gain some kind of admission. And then have the problem multiply down the road a few years from now and have the same question come back up again for amnesty. And I think it is inhumane, a cruel hoax and unfair to the millions of people for legalization to go through who are standing in line legally and have already done that.

They are liable to, in many of the close countries near our borders, try to come across to take advantage of it, but many of them who are across the seas cannot come over here illegally, they cannot come in this way, they cannot get grandfathered in and they have relatives in this country and it is very unfair and inhumane to them.

So I think the gentleman and I have a basic disagreement over what is fair about this whole program. It is not a question of we disagree on wanting to be fair; we all want to be fair. But I think the bill with legalization in it is the unfairest of all to anybody and it cannot stand and be sold to the American public as a fair bill with legalization in it. We need very badly to have that gross, across the board public support of a legal immigration system, and we will not have that if we go through with this bill leaving legalization in it.

Mr. SHAW. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I will yield to my colleague from Florida.

(On request of Mr. SHAW and by unanimous consent, Mr. McCOLLUM was allowed to proceed for 5 additional minutes.)

Mr. SHAW. I thank the gentleman from Florida. I would like to compliment the gentleman from Florida on his amendment which is before us. I think we are getting away from the point. I think the real problem with legalization boils down to the practical operation of government, what are we going to do with the people who are here? I think to try to make a parallel between the civil rights movement in this country and the rights of those who are here illegally under the law of this country, is a mistake.

I do not think that there is the question of examining the rights of those people who are here illegally because they have no right to be here. I think the question of how we are going to handle the situation under this new law is a real consideration.

I think that the gentleman in the well [Mr. McCOLLUM] has a viewpoint with a great deal of merit and one that is undoubtedly supported by the majority of the American people. I think regardless of how we go on this particular measure, and I agree with the gentleman that the bill is a good bill with or without amnesty provision, but what we must keep in mind is what is in the best interests of the American people. We are here to represent the American citizens. I think that is our responsibility. That is a responsibility that we must fulfill in voting on the McCollum amendment.

Mr. McCOLLUM. If I could reclaim my time and then I will yield in just a moment, I just want to comment. The gentleman from Florida [Mr. SHAW] makes a good point. The American people are who we are here to serve. I call upon my colleagues as they listen to this debate today, and as they reflect on the things that have been said over a period of time, I call on them to think about the whole, the majority and what is fair for everybody, not just what might be a little bit fairer for the moment for one group or another group. We have got to think about the whole fabric; the future of this Nation is what is at stake here and it is important that we do pass a strong, tough, new immigration bill, but it is also important that we take out provisions that breed discontent and unfairness and problems, despite the rhetoric that might go contrary to that argument. It just does not hold water.

Mr. MAZZOLI. Mr. Chairman, will the gentleman from Florida yield?

Mr. McCOLLUM. I will be glad to yield to the distinguished chairman who has done a very outstanding job on this bill and I once again wish to commend the gentleman from Kentucky [Mr. MAZZOLI] for his work in bringing us to this point.

Mr. MAZZOLI. May I say to my friend from Florida that of course we would not be here today were it not for the strong support and help and every other kind of assistance from the gentleman from Florida [Mr. McCOLLUM]. He has been a very big help to the gentleman from Kentucky and certainly this gentleman commends the State of Florida for having sent him here.

May I just respectfully suggest to my friend, of course, whose amendment I opposed each time it has been brought up over these last two Congresses and we have had debate on this at four different times in our committee and subcommittee. With respect to the gentleman, the amendment has not carried in those four earlier debates and with further respect to my friend I hope it does not carry today.

Let me say to my friend from Florida [Mr. SHAW] who brought up an interesting point about the education and that the people of America should be heard and should be served, and I fully agree with that.

I think it would be very interesting if it were possible to take a poll today, right today, of those many, many people who have been watching and listening to this via C-SPAN, those who have been reading the print journalists' reports of these proceedings; I may be wrong, but I have the distinct impression that there would be found a kind of an evolutionary movement toward the acceptance of what I consider to be unavoidable reality and that is that you cannot have a balanced immigration program without some form of legalization.

Now, we can argue about the date, it could be 1982 or 1782, but the fact is, which is unavoidable, which has crystal clarity, is that you cannot fail to have something like legalization in a balanced immigration program. And I would suspect and I think the gentleman might help me a moment, by saying that many of us came to this task 4 years ago saying we could not be for legalization, it is impossible, it is against our basic tenet, it is against our belief of government. But little by little, as we grappled with the subject, both the moral side—and there is a moral dimension—but the practical, pragmatic reality of where you are with these many people here working, actually being productive, we all came to that one moment in time, that one moment at which we had to accept reality and that is that you must have some legalization program.

□ 1120

So I would say that we may well be serving the American people, interestingly enough, by voting down the gentleman's amendment because these American people who have now had this benefit of seven very excellent days of debate, some of the best debate this House has ever given in its history, have now perhaps grasped what the gentleman and I and others and that is that an immigration program, if it is to be workable and fair and decent and effective, will have to be one which has several parts. The gentleman from Kentucky feels that one part of which is legalization.

The CHAIRMAN. The time of the gentleman from Florida [Mr. McCOLLUM] has again expired.

(At the request of Mr. MAZZOLI and by unanimous consent, Mr. McCOLLUM was allowed to proceed for 5 additional minutes.)

Mr. McCOLLUM. Reclaiming my time just for a moment, the gentleman from Kentucky and this gentleman have had a lot of discussions over this and I respect him immensely. We just simply differ on our conclusions as to what is necessary for a balanced and fair immigration reform bill.

I do not think personally, as I have said earlier, that we have to have legalization in this bill. I did not come to that conclusion, as the gentleman from Kentucky did, during the same 4 years we served together on this. I think that those who listen to this debate, I hope this morning many have, will understand where this gentleman is coming from, the rationale that I think motivates most of the American people to believe that while we do need to strengthen our borders and we do need to be fair to everybody, that the unfairest and most imbalanced proposition of all, strangely as it may sound to those who have argued the other way and I know sincerely argued that way, comes not from striking legalization from the bill, but from keeping it. That is the unfairest thing is having legalization in the bill. I think that is a very important point to make and I have made it a couple of times today. It is just unfair to millions who stood in line to come here legally and it is unfair to the American public.

Mr. MAZZOLI. I appreciate the gentleman. He has obviously reached his position carefully and I commend him.

Mr. KINDNESS. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from Ohio.

Mr. KINDNESS. I thank the gentleman for yielding.

The gentleman in the well has pointed out so ably and carefully in his presentation earlier that the legislation before us does indeed have and the law has had for many years a form of legalization in it. The registry date provision is the basis for the whole concept of the legalization program that is contained in the bill now. It has developed out of that historical precedent. Only we have expanded it in great degree in the bill that is before us. We have expanded it, I believe, too far. I support the amendment of the gentleman from Florida, who is in the well, because we have simply gotten the concept of this regularization out of focus. We have been arguing here about the numbers of undocumented aliens for days and nobody knows how many there are. But yet we seem to argue there are too many to be dealt with under the procedure that has existed in the law for some time. And the registry date provision updates the date for entry to 1973. No one has even offered a proposal earlier during the legislative process to further update that registry date, relying instead upon a greatly expanded version of the same concept.

But let us not say there is no such thing a legalization in the bill without this particular provision because it is there in the law. It is being updated by this bill. If anyone really wanted to have a regular orderly process of legalization continue in the years ahead and not rush it through in the short space of time, they would have proposed updating that registry date provision further I would think.

Mr. McCOLLUM. If I might reclaim my time, the gentleman makes an excellent point. The registry date is in the bill. It is a form of legalization. But it is not the amnesty that most of the public has come to associate with this bill and the reason they have or for all of the unfair reasons I described earlier about the magnet effect, the cost, the rewards, the slap in the face to those who stood in line and so on, it is the traditional method of legally allowing those people who have somehow escaped our laws to stay here after they become truly entrenched.

I hope that the registry date is modified and changed so that we can have it periodically and regularly updated. It should be. But there ought to be a 10- or 12-year lapse of time, not a January 1982 amnesty that swoops down and taxes in 3 to 12 million at one fell swoop. That is what is unbalanced about the bill.

I am glad to yield to the distinguished chairman of this committee, who has not only labored on this bill, but many others since 1971. I highly respect the gentleman from New Jersey [Mr. Rodino].

Mr. RODINO. I thank the gentleman.

I respect the gentleman's reviews.

I merely would like to remind the gentleman, though, that the Attorney General, who have been talked about since he has immediate jurisdiction over this whole question, that is through the Immigration Service, and would be in a position to suspend deportation, to take care of all of the matters that would adjust status in various cases, after a complete and exhaustive study, came to this conclusion, that a fair legalization program is the only humane and practical response to the existence of millions of illegal aliens in this country.

Does the gentleman disagree with what the Attorney General, who has responsibility in this area and who points out to the Congress, even though in some areas we disagree, but nonetheless in this area he has stated all along that this is the fair and humane response to the question of illegal aliens.

Mr. CHAIRMAN. The time of the gentleman from Florida [Mr. McCollum] has again expired.

(By unanimous consent, Mr. McCollum was allowed to proceed for 3 additional minutes.)

Mr. McCOLLUM. Yes; I do disagree, and I have disagreed for some time with the Attorney General on this point.

What happened, in my view, and the gentleman has had a long history of experience with this and I respect that a great deal, it seems to me that in the early seventies when the gentleman first started working on this, that is beefing up our immigration laws and trying to get control of our borders, employer sanctions was the thrust. And somewhere around 1975 legalization became a part of that package.

Since that time, it has become an accepted part of the formula, so to speak, and it was there when the Attorney General came in. It was there when the press looked at it. It was there when the gentleman from Kentucky became chairman of the subcommittee. It has just not been questioned in a manner which is conducive to a rational and humane and fair outlook, I do not believe in my view, until we have reached this floor. It has just sort of been taken along the way as the opinion that is in vogue that is the correct one. And it is not correct. I challenge that thesis and I do it with having spent a lot of time. I know the gentleman spent a long number of years, but this gentleman has spent a lot of hours over the last 4 years working with this. There is no legislation since he has been in Congress that he has spent more time with. I believe that my view on this in this case is correct. I know the gentleman disagrees. I respect that disagreement.

I just hope that in the end, after all the debate is done, that again the Members will look at this whole matter from the standpoint of what is fair. I think when they do they will conclude, as I have, that what is fair is to strike legalization from this bill, is to let the American public have the kind of laws and the kinds of things they should have and not give the unfair rewards to lawbreakers, not a slap in the face to millions who have been standing in line for all these years waiting their turn to come here legally and not give the attendant cost and not put the magnet in this bill that legalization does that will draw millions more across the border.

I hope that they will then strike legalization from this bill which is what most of the American public wants.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman and I commend him for an excellent presentation of his point of view.

May I again solicit of the gentleman, he has been totally cooperative, and early in his debate today the gentleman suggested that even if the McCollum amendment is not voted up, in effect, even if legalization remains, the gentleman does intend to vote for the final passage.

Mr. McCOLLUM. I personally will, but unfortunately there are a lot of other Members in this body who are going to vote against this bill if legalization stays. I hope they change their minds, but, on the other hand, I hope those who say if my amendment succeeds, including the gentleman there in the well right now, I hope that they, too, and I hope he will agree to support this bill even if my amendment succeeds. That is the important part.

Mr. MAZZOLI. The gentleman is all too modest. He is part of young leadership in the Republican Party and I think young leadership in the Nation.

□ 1130

I think if the gentleman has reached this point in his evolutionary development of this bill and in his study of the bill that he suggests that a bill, even with legalization, is worth supporting because of the other component parts, then I think that shows leadership on his part, it shows character, it shows fortitude and courage, and I think it is going to affect some others.

Mr. McCOLLUM. And even without legalization, it is worth supporting, but let us strike it.

Mr. FISH. Mr. Chairman, I rise in opposition to the amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FISH. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, just to advise the gentleman, the gentleman from Wisconsin [Mr. Obey] has a unanimous-consent request to proceed out of order for 1 minute. I would restore the time to the gentleman if he would yield to the gentleman from Wisconsin for that purpose.

The CHAIRMAN. Does the gentleman from New York [Mr. Fish] yield for that purpose?

Mr. FISH. I yield to the gentleman from Wisconsin for that purpose.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin [Mr. Obey] to speak out of order?

There was no objection.

SHERIFF LOUIE GIANOLI OF MARATHON COUNTY, WI, TO BE SWORN IN AS PRESIDENT OF NATIONAL SHERIFFS ASSOCIATION

Mr. OBEY. I thank both gentlemen. I apologize for interrupting the procedures of the House, but I was not able to do this earlier. I simply wanted to take 1 minute to pay tribute to a former opponent of mine, Sheriff Louie Gianoli, from my home county, Marathon County, in Wisconsin, who in about an hour is going to be sworn in as the national president of the National Sheriffs Association. Louie Gianoli has served Marathon County as sheriff for over 20 years. He interrupted that career to run against me in 1964 when I was in the Wisconsin Legislature and resumed his sheriff's position in 1966 and has held that position ever since.

I simply wanted to take the time of the House to note that he will be assuming those duties in about an hour and to wish him well and to say that I am very pleased that Louie is still busy sheriffing rather than running against me for either the legislature or Congress.

I thank the gentleman for his time.

(On request of Mr. Mazzoli and by unanimous consent, Mr. Fish was allowed to proceed for 3 additional minutes.)

Mr. FISH. Mr. Chairman, the author of the pending amendment, recently standing where I am, claimed that legalization would be a magnet for further surreptitious entry into the United States. I challenge this statement.

First, we are not here adopting legalization in a vacuum, but rather it is part of a bill that forecloses future employment opportunities. Legalization is needed for those who have equities in the United States to enable them to work.

Second, there is a cutoff date in this legislation. In the Senate it is 1980; in the House it is 1982. In conference a final date will be determined. As people come forward for legalization, trained immigration adjudicators and inspectors will determine the eligibility for legalization. I want to emphasize to my colleagues that this is a one-time legalization.

The claim was made that we could handle this through the private bill process. Well, I can assure you, after 11 years on the Immigration Subcommittee, that if I stayed on it I would be the only Member of Congress who did. We would be inundated with hundreds of thousands of private bills on behalf of illegal aliens in the United States who had been here for several years, had American-born children or other equities and were resisting firmly any effort to be deported.

Finally, there really is no humane alternative to legalization. There is no intention to have a roundup. The Immigration Service and the Department of Justice neither have the resources nor the disposition to go into a nationwide search.

On the positive side, legalization helps enforcement. Legalizing some will allow us to concentrate our attention on people with less attachments to the United States and on preventing future illegal entries and visa abuses by limiting access to the work force.

Long-term illegal aliens undoubtedly will fight removal. Having to deal with these people through deportation hearings, possible detention, and judicial review would do nothing but take time and money that could be better directed at other enforcement targets.

Finally, Mr. Chairman, a word about the relationship of legalization to employment. Legalization will have a positive effect on the U.S. labor market. Legalizing workers will permit them to demand equal treatment under the laws governing minimum wages, overtime compensation, and working conditions. Right now the same undocumented aliens contribute to the depression of wages and working conditions, since they fear discovery and eventual deportation.

Mr. Chairman, legalization—approved by the Select Commission on Immigration and Refugee Policy by a vote of 16 to nothing and recommended by our colleagues, Republicans and Democrats—is the only humane response to a problem created by failure of U.S. policy in the past. I urge a no vote on the pending amendment.

Mr. DELLUMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we are now in the final phases of debating this particular piece of legislation, so I would not only like to speak to the issue of legalization, but I would also take few moments to make a few comments with respect to the overall piece of legislation. With all due respect to the people who have labored diligently on this legislation, I have stood in diametric opposition to it as it came to the floor of Congress. It was a bad bill to begin with. And it has now become worse.

In explaining that latter comment, I would invoke the comments of my distinguished colleague from California [Mr. ROYBAL], who spoke with respect to the overall legislation before us on last evening, pointing out that it was a bad bill to begin with, but with the defeat of the Hawkins amendment, effective and enforceable sanctions are precluded; with a rejection of the Miller amendment, the H-2 Program will not protect the labor standards of agricultural workers; and with the inclusion of the Panetta amendment, the agricultural industry has been given a free hand to continue to employ and exploit undocumented workers and to their detriment and to the detriment of U.S. domestic workers.

Mr. Chairman, the one major feature in this legislation that is positive is the legalization provision, and it ought to remain in the legislation as presented to the floor of this Congress, and I therefore stand in diametric opposition to the amendment before the body at this moment.

I would like to make a few comments with respect to legalization at this time.

□ 1140

Mr. Chairman, I would like to suggest that the legalization of the exploited subclass of undocumented workers is terribly important not only to those who would be allowed permanent residence, but for the Nation as a whole.

We cannot, practically or morally, embark upon a massive and expensive effort to deport millions of people.

We cannot continue to have an underground society whose people are forced to live in the shadow of the law.

And we cannot afford to have our society continually polarized into ethnic groups who are continually harassed by ethnic groups who, on the one hand, resent them, and on the other hand exploit their underclass status.

Although many Americans are only now becoming aware of the Mexican presence in the United States due to the current controversy over undocumented immigrant workers, Mexicans are no strangers to the history of this country. However, the historical arguments utilized in this debate would lead one to believe that Mexicans, as the largest Hispanic group in the United States, represent very recent arrivals. Yet, Mexicans are indigenous to the Southwestern region. They predate other ethnic groups to the United States and specifically to the Southwest. Only the Native Americans have more legitimate claims to an indigenous presence.

The CHAIRMAN. The time of the gentleman from California [Mr. DELLUMS] has expired.

(By unanimous consent, Mr. DELLUMS was allowed to proceed for 5 additional minutes.)

Mr. DELLUMS. Mr. Chairman, the Mexican roots in the Southwest commence in the early Spanish explorations and settlements in what came to be referred to as the upper regions of New Spain encompassing New Mexico, Texas, and California. Here, the Spaniards through conquest and colonization produce a people mixed in race and culture and who evolved with their own particular history.

These people have throughout the years contributed to the wealth of ethnic culture in the United States in general and the Southwest in particular. Despite their economic and cultural contributions, Mexican immigrants faced severe dislocation during the Great Depression. No longer needing their labor and callous to their needs, Southwestern employers dispensed with much Mexican labor and supported the mass deportations of Mexicans from the United States. Almost half a million Mexicans were either deported or repatriated to Mexico during the 1930's. As in earlier recessions, a pattern emerged that argued for cheap Mexican labor during periods of economic growth and its deportation during periods of depression. Mexican-American children of immigrant parents, for example, were illegally deported during the 1930's.

Mr. Chairman, members of the committee, I would like to suggest that the following five points be given careful consideration in the debate on this immigration bill in general and in the discussion of legalization in particular:

First, no discussion of immigration, especially from Mexico, should avoid the particular history of the Southwest or a region once a part of Mexico. This fact is inherent in a long tradition of migration patterns from Mexico to the Southwest and has produced a unique and special relationship between Mexico and the United States. Mexican immigration to the Southwest as well as elsewhere to the United States has deep roots and no piece of legislation will automatically curtail it.

Second, no discussion of the immigration issue should avoid the historical economic relations between the United States and Mexico and the fact that there has been an uneven and unequal economic development between the two nations. The United States, both by its need for cheap labor in

Southwestern industries and by its investment and trade relationships with Mexico has helped produce a massive dislocation of rural Mexicans and their migration to the United States. Immigration from Mexico has never been just Mexico's problem, the United States must assume strong responsibility for having created this migration. Immigration restrictions being discussed today are only dealing with the symptoms of a more fundamental issue rooted in the economic relationship between the United States and Mexico.

Third, it is imperative to always keep in mind in the current debate that Mexican immigrant workers have been historically major contributors to the wealth of the United States rather than liabilities. Mexican immigrant workers have been and continue to be central to the prosperity of the Southwest. This contribution must be acknowledged and the United States must assume a moral responsibility for those who have offered so much to this country.

Fourth, since the current discussion involves the possibility of an accelerated contract-labor system between the United States and Mexico, it should be noted that past contract-labor agreements, especially the bracero program, not only led to widespread abuses and exploitation of Mexican contract laborers, but also intensified rather than reduced the flow of undocumented workers. Hence, a discussion of combining immigration restrictions with a labor-contract system is not only contradictory, but more than likely self-defeating.

Fifth, contrary to some impressions, Hispanics in the United States have not been late to the concern over immigration. Neither for ethnic nor emotional reasons have most Mexican-Americans, for example, ever favored an open border. For years, Mexican-Americans, through organizations such as LULAC, have favored immigration controls that are protected, equitable, and that do not violate the human and civil rights of both Mexican nationals and Mexican-Americans. Immigration from countries such as Mexico is not just an economic issue; it is also a human issue and must be dealt with in a humane and moral fashion.

Legalization presents a solution to many of the problems faced by these people of the Southwest as well as Hispanics in general. The arguments in favor of a generous legalization program, without the encumbrances contained in the proposed amendments, are numberous indeed and include the following:

The legitimate claim to an indigenous presence.

Curtailment of human rights violations.

Providing protection of the law for those who continually contribute to the wealth and longevity of this Nation.

Mr. Chairman, I stand in opposition to this legislation. I think it is a bad bill. The amendments that we precluded earlier did not enhance the bill; the Panetta amendment, I think, makes the bill even worse. But the one major feature of this legislation that is indeed positive, is the legalization provision.

I think that we should strike down the amendment before the body; it is absurd to assume that we on practical and moral ground can deport literally hundreds and thousands and thousands of human beings, and for all these reasons I ask the body to reject the amendment.

The CHAIRMAN. The time of the gentleman from California [Mr. Dellums] has again expired.

(On request of Mr. Mazzoli and by unanimous consent, Mr. Dellums was allowed to proceed for 30 additional seconds.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman.

Mr. MAZZOLI. I thank the gentleman for yielding to me.

Mr. Chairman, let me salute my friend and colleague. Of course we came to Congress 14 years ago and the gentleman is my chairman on the District of Columbia Committee.

Let me thank the gentleman for his important statement. I, of course, would wish that the gentleman could be for our bill. I think we have tried mightily to yield a good bill but the gentleman has put his finger on it. Obviously, the amendment which is pending is the kind which would seriously unbalance the bill. I am pleased and proud that the gentleman has seized on that reality, and I appreciate his statement today.

Mr. DELLUMS. I thank the gentleman and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wholeheartedly support legalization and I commend the work done by the gentleman from Kentucky, Mr. Mazzoli, the members of the Judiciary's Subcommittee on Immigration, and the distinguished chairman of the Judiciary Committee, Mr. Rodino, on this important provision of H.R. 1510.

It is clear to me that we really have only three choices: we can engage in mass deportation of millions of people; we can allow them to stay here and condone their continued exploitation; or we can recognize the reality of the situation and bring them under the protection of our laws.

The undocumented are here. They came illegally. There is no attempt to deny that. This outrages the American sense of justice. But the majority of the undocumented came out of desperation, out of hunger, out of fear. And I appeal to that same sense of American justice to understand the harsh realities that drove the undocumented to break our laws. Here, undocumented workers are able to live; and, they are able to live better lives than many would have dreamed possible in their native countries. But, it is also true that they are our unfortunate underclass in America, at the mercy and the whims of those who would exploit them. I have not heard anyone say that Americans have the heart for mass deportation and I don't believe that we do. The American people also do not desire the exploitation of undocumented. To grant legalization to them is the American thing for us to do here today.

I appeal to each of my colleagues to reject this effort to eliminate the legalization provisions of H.R. 1510. I urge you to defeat this amendment.

Mr. Chairman, I yield to the gentleman from New York [Mr. Molinari].

Mr. MOLINARI. I thank the gentleman for yielding. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Florida [Mr. McCollum].

There is no doubt that those who support the McCollum amendment have raised some serious concerns, and I can understand those who sincerely believe that the legalization provisions in this legislation should be stricken completely. The argument has been raised time and again that to grant amnesty would be to reward those who have illegally entered this country. They argue further that this would not be fair to the thousands who have been waiting patiently—many for a substantial number of years in various countries—for the day when they could legally enter our country and eventually reach their goal of becoming a U.S. citizen.

If the legislation that we are discussing contained only the legalization provision, I think I would readily support Mr. McCollum and his position. However, we cannot allow that provision to be considered solely by itself. The legalization provision is one of the key points in the compromise bill that took many years to draft.

It has been many decades since we have had immigration reform. The sponsor and many others have repeatedly indicated that this is not a perfect bill, but one shaped over the years as a compromise measure intended to satisfy the majority of the Members so that finally we could add some rationality and sense to our immigration system.

The bill is a balanced piece of legislation which offers legalization on the one hand but also, on the other hand, stricter enforcement provisions to more effectively deal with the enormous problem that now faces the Immigration and Naturalization Service. Through the use of the employer sanctions, a new, important element has been added. No longer will those who have sought to hire the undocumented aliens and exploit them for their own economic benefit be allowed to do so. This type of employer will face increasing penalties and reach the point where the size of the penalties themselves would force the employer to discontinue the practice.

We should remember that this legislation is not one that is inviting millions of people from other countries to come to the United States. We are dealing with people who are already in this country, many of whom have been here for a very substantial period of time. We should be realistic: these individuals are here and most likely they are here to stay.

Were this amendment to pass, I seriously doubt that many of the undocumented aliens would be leaving the country. That is important to consider. Some Members have raised a legitimate question, and that is: How many people can this country absorb without causing severe disruptions in the labor market and to the economy of our country? Again, I repeat that we are dealing, however, with people who are already in this country, many of whom are gainfully employed and paying certain taxes. Those who would qualify under the legalization provisions would be paying more taxes. In so doing, they will be contributing to the coffers of the Government, as they should.

The word "illegal" has been used repeatedly and it is a word that has a very serious connotation. I think that granting this legalization is not a condoning of the illegal entry, but is, rather, a recognition of a problem that exists and is now an important element of our immigration reform effort. Without the legalization provision, how much real reform will the INS be able to implement?

A number of Members have alluded to the fact that we might be setting a precedent and inviting more undocumented aliens to enter the country in the future with the hopes that there would be another legalization granted at some future date. I strongly doubt that Congress would pass another legalization provision in the foreseeable future. It should be clearly understood and a message sent forth that this is a one-shot deal. Again, I emphasize that it is part of a comprehensive package, endorsed by the Attorney General and the Immigration and Naturalization Service. Legalization is not a mechanism to be used by itself, because in and of itself it will not solve our problems. Yet, in this entire immigration reform package, legalization allows us to achieve some real progress and is, in fact, necessary for us to do so.

I would remind my colleagues that in our discussion of the broader issue of legalization, we might have forgotten some of the specific provisions in this legislation. Only those people who have remained continuously in the United States since before 1982 would be qualified to apply for legalization. Furthermore, all who apply must individually meet INS qualifications in order to be granted temporary-resident status. Somebody who would not, or could not, meet those qualifications does not deserve to obtain a lawful status. Those who do meet these qualifications and willingly come forward, should be welcomed by us as the kind of potential fellow citizens who have, and will continue to, contribute to our country's strength.

As the son of an immigrant who came to this country as a young boy shortly before the turn of the century and eventually held elective office in the New York State Legislature, I am proud to offer my support for the Mazzoli bill and I hope that my colleagues will join me in defeating this amendment which, in my judgment, would effectively destroy the entire fabric of the proposed legislation.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, let me just salute my friend from New York. I think that is one of the most eloquent and moving statements that the gentleman from Kentucky has heard in this 7 days of high-level debate.

I want to salute the gentleman. I think he obviously has studied the issues carefully. He recognizes that, as the gentleman from Kentucky has tried to establish, that this is a balanced bill. One component part is needed to give balance to the other component parts.

The gentleman has made many contributions to this body already in his short time here, and we thank him. This is perhaps one of his most important contributions.

The CHAIRMAN. The time of the gentleman from California [Mr. EDWARDS] has again expired.

(On request of Mr. MAZZOLI and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 5 additional minutes.)

Mr. EDWARDS of California. I thank the gentleman from Kentucky for his many courtesies, and I join the chairman in his salute to the gentleman from New York, who made a very eloquent statement.

Mr. Chairman, I have a couple of points to make. One is that there have been cost estimates discussed here on the floor here today, and I think we ought to make it very clear that there are no accurate cost estimates of the legalization program. The cost estimates run anywhere from less than $4 billion for a 4-year period to OMB's $13.3 billion for a 4-year period, but there are some politics probably in that second guess, so I would not take it too seriously.

Also, remember that these people who will be legalized, and I certainly hope they will be, are generally younger people who are working, who have a good history of working, and generally would not be a burden on the taxpayer.

Second, it has been mentioned that there are many people in the United States who are against legalization. Of course there are. But I do not think there is anybody here who would vote by a Gallup Poll. We are supposed to do what is decent and best in our judgment, the right thing to do; not necessarily what a certain group of people wants us to do.

It is clear to me on this legalization we have just three choices. We can engage in mass deportation of millions of people, or we can allow them to stay here and condone their continued exploitation, and let me tell my colleagues they are exploited, or we can recognize the reality of the situation and bring them into the protection of our laws.

They are here. The undocumented workers are here. They came illegally. There is no attempt to deny that. This outrages some Americans' sense of justice, all of us, but the majority of the undocumented came out of desperation, out of hunger, out of fear, and I appeal to the same sense of American justice to understand the harsh realities that drove the undocumented to break our laws.

Here undocumented workers are able to live, and they are able to live better lives than many would have dreamed possible in their native countries. But it is also true that they are an unfortunate underclass in America, at the mercy and whims of those who would exploit them.

I have not heard anybody say that Americans have the heart for mass deportation, and I do not believe that we do. The American people do not desire the exploitation of undocumented. To grant legalization to them is the American thing to do, and I appeal to all of my colleagues to reject this idea and to vote against the amendment offered by my friend, the gentleman from Florida.

Mr. McCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. Yes, of course, I yield to the gentleman from Florida.

Mr. McCOLLUM. I thank the gentleman for yielding.

Mr. Chairman, I certainly have the greatest respect for my colleague on the Committee on the Judiciary and understand the views that he has expressed, as well as the gentleman from New York, who came to this Congress with me, and I understand the arguments made, but there are a couple of points that I think are real problems in this area in the arguments of those who are opposed to my amendment to strike legalization.

One of them is the idea that there is going to be mass deportation. I think the gentleman in the well has made a good point. He has, I think, pretty well acknowledged what I think is true: There is not going to be any mass deportation, whatever we do with my amendment. We just do not support that. I do not favor it. There is not the capability for it, and so on.

So the issue of what we do with those who stay or do not do with those who stay really falls in the category of whether or not we want to grant the amnesty to them or whether we want them to work within the system for a while, or go into the temporary worker program, or the H-2 Program, or let some of them drift back over the border again.

I think that is really the crux of the debate with respect to the bottom line.

Mr. EDWARDS of California. Let me comment on that particular point, because I respectfully disagree with the gentleman.

The employer-sanction provision in the bill will make it very probable and almost ensure that every time one of them applies for a new job without legalization, we are going to have a deportation or else they are not going to be able to apply for a job. They might own their own home in the name of their children. There might be any kind of a situation.

But I do not see how we can have a bill unless we have both if we are going to have the employer sanction.

Mr. McCOLLUM. If the gentlemen will yield further, the point is, while I understand where the gentleman is coming from on that, I think we will have a certain number who will, of course, lose their jobs, and go back, and so on.

But there is one other point that I would like to make a comment on and that deals with the cost. Yes, I agree with the gentleman; there are no accurate estimates as to how much the cost will be. I personally think the cost of $9 or $10 billion is very low, but nobody knows, and that is the problem. There is no accurate idea. This entire process of legalization could cost the American public not only pocketbook dollars, enormous sums, but just as enormous sums in the multiplier effect and in other ways from doing this so-called one-shot amnesty.

I also disagree with the gentleman from New York, who made the comment that this would be a one-shot amnesty and we could get that message back. Unfortunately, we cannot get that message back. They are going to take it across the border to mean that we are going to do it again no matter what we say. I think there are lots more costs involved than just $9 or $10 billion.

Mr. ROYBAL. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from California.

Mr. ROYBAL. I thank the gentleman for yielding.

Mr. Chairman, may I say to the gentleman that I agree with him with regard to the cost that is involved. No one really knows. It could be $4 billion, but the estimate reaches a figure of $13 billion, which in my opinion is more or less what the cost will be to finance the program.

Mr. EDWARDS of California. Over 4 years.

Mr. ROYBAL. Yes; I would agree with that. But I think that one thing that has to be pointed out is that legalization does not just affect Hispanics. Legalization is for all those individuals who are in the United States without documents, and they come from Germany, they come from Italy, they come from Ireland, from Greece, from all over Western Europe. They, too, will be legalized.

The problem has been that the Department of Immigration has only focused on Hispanics.

The CHAIRMAN. The time of the gentleman from California [Mr. EDWARDS] has again expired.

(By unanimous consent, Mr. EDWARDS of California was allowed to proceed for 2 additional minutes.)

Mr. ROYBAL. The Department of Immigration has only focused on Hispanics in the Southwest. They have not gone to Boston, for an example, or to the New England States, or elsewhere where Europeans may live. But the Director of the Department of Immigration stated the other day that in his opinion, and he has no hard facts, but in his opinion, he said, there are an equal amount of people without documents from the Western Hemisphere as there are from Western Europe.

That means, then, if it is an equal amount, that legalization then will affect people who come from all over the world, not just Hispanics.

Mr. RODINO. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think we have reached that crucial point in this debate. We have got to determine whether or not we are going to have a fair and balanced Immigration Reform and Control Act.

□ 1200

I would like to point out a little history. Legalization is not a concept of those of us who would just willy-nilly open the floodgates to people who have violated the law.

Let me go back a little bit. A number of years ago, when I first conceived the idea of employer sanctions, I did so with one purpose and one thought in mind, and that was because I saw undocumented workers being brought into the country, being used by employers who had contracted for them and being misused and exploited by them. We found that their numbers grew and grew because, while the Immigration Service did attempt to prevent their entry or ferret them out after entry, nonetheless they were never able to do so effectively. These individuals were coming across the border seeking a job opportunity because they wanted to live a decent life.

As a result, I conceived the idea of providing for employer sanctions to serve as a disincentive to that poor unfortunate who thought that he could come here and find a job opportunity.

We sought to have employer sanctions so that these poor unfortunates would not feel that it was going to be easy to be able to come here and find instead an existence in a shadow society where they would be exploited. But we never did adopt employer sanctions. We never took the adequate measures that needed to be taken. We knew that there was no way that we could put a wall across that border and keep those poor unfortunates out of this country.

We have seen the result of our failure to act then. I believe had we acted then with employer sanctions, as we have acted now, that disincentive would have been such that the illegal alien population would not have grown as it has grown now. I do not mean to say that I had a crystal ball, but I forecast back in 1971 and 1972 that the numbers would grow and grow unless we took action.

As one who has always sought to be humane to all people, I recognized that while employer sanctions might have been offensive to some people, they would have the effect of saying to the poor unfortunate, "Look, don't think you are going to be able to come here without being found out," and to the employer that, "You will not be able to induce these people to come here illegally."

We failed to act then, and our failure to act has resulted in a continued growth of the undocumented population.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. Rodino] has expired.

(By unanimous consent, Mr. Rodino was allowed to proceed for 5 additional minutes.)

Mr. RODINO. Mr. Chairman, our failure to act then in a manner that would respond to the problem that we were confronted with then has permitted this population to grow. That is why the number that was estimated back in 1970 to be about 1 million has probably grown to 5 or 6 million.

As a result, these people are here now living in that shadow society, a subculture. Notwithstanding the fact that they live in fear of apprehension, that they may be deported, that they may be uprooted, nonetheless all of the data and the research show that they are law-abiding citizens who pay their taxes, pay into Social Security, which they will never be able to recover, and do all those things which we would expect law-abiding citizens to do.

Those people are living in constant fear, and their children also live in fear. I found cases where their children are afraid to go to school because they know their parents are undocumented aliens.

This is the reason why, Mr. Chairman, I say to the members of this committee that legalization is an essential adjunct to employer sanctions. If we legalize, we will be doing that humane and decent thing that this country is known for.

Let us ask ourselves this question: Are we going to allow these people to remain here in a "sub rosa" society knowing that the conditions are such as I have recounted. Anyone who has studied the question and knows the facts, knows that they are subjected to exploitation, will support legalization as the only humane and practical solution to a most difficult problem. Knowing all of this, are we going to sit idly by and say to each one that they must come forward and apply for suspension of deportation which is a limited form of relief already in the immigration law?

□ 1210

Or will we do what America has been proud to do whenever there has been an intolerable condition that existed that cried out for action?

Will we extend a hand to them in all decency and humanity and say, "You may remain here?"

I say, Mr. Chairman, that unless we have legalization with employer sanctions, we will have no Immigration Reform and Control Act. Without legalization this gentleman could not support it.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(At the request of Mr. McCollum, and by unanimous consent, Mr. Rodino was allowed to proceed for 2 additional minutes.)

Mr. McCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman.

Mr. McCOLLUM. Mr. Chairman, the gentleman knows from my previous comments on many other occasions how much I respect his leadership on the Judiciary Committee and how much I respect the emotion and the feeling and the time that the gentleman has put into this issue. I really regret I have to disagree with him on the issue that we are here on, but that is what makes the committee and that is what makes Congress.

It occurs to this Member in listening to the chairman's discussion of the history of the bill that back in the early days in the seventies when employer sanctions were passed by the House, but not approved by the Senate, and as the chairman so rightly pointed out, if we had adopted those then, we would not have all these illegals here today, the legalization idea was not in the bill at that point in time.

Mr. RODINO. It was not, because at that time I felt that employer sanctions would have taken care of the problem that existed then. The numbers were small. There were not the numbers that there are now.

Mr. McCOLLUM. Well, what bothers this Member, Mr. Chairman, if the gentleman will continue to yield, is the fact that it seems as though the chairman considered it then less humane to have legalization then than now, that because we have more numbers, the chairman looks at this as a humane thing, that it is more humane now, when back then, the same thing would have happened. There would have been substantial numbers, though not as large as now, who, under employer sanctions alone being adopted with no legalization, would have gone back across the borders voluntarily and some would have stayed here and been captured. It seems to me to this Member that it is just a matter of numbers, that back then, the gentleman was really of the same opinion this gentleman is and now he has changed strictly because of larger numbers. It does not seem to this gentleman that it is any more or less humane, regardless of the numbers.

Mr. RODINO. Will the gentleman please listen to what I said?

Mr. McCOLLUM. Be glad to.

Mr. RODINO. I said that employer sanctions, if applied then, would have been a major disincentive. Because we did not adopt employer sanctions, we then allowed, as I see it, a vast number of additional people to continue to come into the country.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(At the request of Mr. McCollum, and by unanimous consent, Mr. Rodino was allowed to proceed for 1 additional minute.)

Mr. RODINO. I am saying, Mr. Chairman, that we failed to do the one thing that was necessary to provide the disincentive to those people who continued to stream in after that.

Mr. McCOLLUM. Mr. Chairman, if the gentleman will yield one more time, I agree. That was the fact of the case then. I wish we had done what the gentleman had wanted then. We did not, but I see no difference now than then on the legalization question.

We still today, as we would have then with employer sanctions alone, have people going back. We will still have a few people in limbo and we have a lot of the system that exists.

So I think there is a perfect argument from the gentleman's history for striking legalization, but I do understand where the gentleman is coming from. I have understood his point. I just respectfully disagree with the bottom line.

I appreciate very much the gentleman yielding to me.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(At the request of Mr. Daub, and by unanimous consent, Mr. Rodino was allowed to proceed for 2 additional minutes.)

Mr. DAUB. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman.

Mr. DAUB. Mr. Chairman, will the distinguished chairman comment on this gentleman's feeling, that without limitation on the out numbers, if blanket or general legalization occurs, amnesty or whatever one wishes to describe it, and we do not have—and the gentleman knows my concern about this—and we do not have the numbers of limitation in total preferences or total relative status numbers limited in this bill or in the conference, does not the gentleman's argument then make even more sense, that because we should have acted and we did not, now trying to close the barn door after everybody is out means that in fact maybe we ought to retrench and say that we are not going to encourage additional numbers in the outyears and we are not going to allow general amnesty?

Mr. RODINO. I would respond to the gentleman this way. I hope it has been made clear that I believe that our failure to act at that time allowed these people to come in. We failed to act. These people are here. As difficult as it may be to comprehend, because we failed to take effective measures then we must deal with these people now. As I have assured the gentleman, I think that once sanctions and legalization are in place, then a review of legal immigration is necessary and essential.

Mr. DAUB. Well, if the gentleman will yield one more time, I would appreciate it if the gentleman would tell the Members of this body if he could find himself in agreement with some mechanism that will limit those out numbers.

Mr. RODINO. I stated to the gentleman I think in previous colloquies that we are going to be looking for that mechanism.

Mr. LUNGREN. Mr. Chairman, I ask unanimous consent that debate on this amendment cease at 2:20.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. McCOLLUM. Reserving the right to object, Mr. Chairman, is it my understanding the situation the gentleman is describing would allow any Member here to come in and we would just proceed under the 5-minute rule, so we are not foreclosing Members who would come over here or otherwise?

Mr. LUNGREN. It is my understanding from conversation with the Chair that this means we would proceed under the 5-minute rule. We would just have a time limit. It would not be limited to the Members who are now standing.

Mr. McCOLLUM. And it would end at 2:15 under the gentleman's proposal?

Mr. LUNGREN. 2:20.

Mr. McCOLLUM. 2:20 under the gentleman's proposal?

Mr. LUNGREN. That is correct.

Mr. McCOLLUM. Mr. Chairman, I would not object under those circumstances and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California [Mr. LUNGREN]?

Mr. DAUB. Reserving the right to object, Mr. Chairman, if I might just enter into a brief colloquy with the proposer of the limitation, I believe that if Members are by this particular colloquy put on notice that we do want to proceed in an orderly way, because many of these subjects have been discussed before, that some limitation in time may be in order.

May I ask the gentleman to withdraw his request at this point in time, for the judgment of whether or not time limitations occur I think ought to be struck in about an hour. There are many of us who are not members of the committee who feel with the numbers of the committee still standing, that a limitation of 2:15 or 2:30 might force allocation of time at a point closer to that deadline.

I might engage in the willingness to not object at a point in just a few more minutes; but otherwise, I am going to object if that is not the case.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield to me under his reservation?

Mr. DAUB. I would be happy to yield to the gentleman under my reservation.

Mr. MAZZOLI. Mr. Chairman, I think the gentleman for his observation.

The gentleman from Kentucky has not taken time to this point because I wanted all the Members to have time. The gentleman from California has not taken time to this point.

I must say that we are in need of moving the bill ahead. I think people recognize that. We had every possible deference from the leadership on consuming even this part of the day, which had not been anticipated.

There is, of course, a commitment tonight that many of the Members are involved with which is not negotiable, as they say. It is a nonnegotiable demand.

We are at 12:20. It does seem to me that we would be very near having to move something if we cannot get general agreement.

I would ask my friend, the gentleman from Nebraska, if he understands that the idea is to have free and open debate, but at the same time there has got to be some framework around it.

Mr. DAUB. Continuing under my reservation, Mr. Chairman, I appreciate the distinguished subcommittee chairman's point.

This is the central question, the most important question in this whole bill and I believe that at this point in time we are making progress and would ask those in responsible leadership on the floor management of this bill to entertain the thought that another hour or so will give us a good idea about whether we should proceed much longer without a limitation of time.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield under his reservation?

Mr. DAUB. I will yield.

Mr. LUNGREN. My point is that we have debated much of this on my amendment and on the amendment of the gentleman from Florida yesterday. We had 4 or 5 hours on this question yesterday.

I waited until we were an hour and a half through. We had an understanding with our colleagues that we would perhaps spend 2 hours on this. I would guarantee that we would spend 3½ total hours on it.

I will renew my request. If there is objection, I hope they will object, because I will then move it, but I will move it at 2:30 because I know we need time to get over this vote.

□ 1220

Mr. DAUB. Let me continue under my reservation before the gentleman may have an opportunity to do so, saying that many noncommittee members, although I certainly am not one to stand on this argument, since I was able to get my time, have waited and not participated in this general debate so that this amendment could be brought to the floor.

Mr. LUNGREN. Mr. Chairman, I would renew my request that debate on this amendment, by unanimous consent, be limited to 2:20 p.m.

Mr. HUCKABY. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. LUNGREN. Mr. Chairman, I move that debate on this amendment be limited to 2:30 p.m.

The CHAIRMAN. The question is on the motion offered by the gentleman from California [Mr. LUNGREN].

The question was taken, and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LUNGREN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 245, noes 169, not voting 19, as follows:

[Roll No. 248]

AYES—245

Albosta
Alexander
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
AuCoin
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boland
Boner
Bonior
Borski
Bosco
Boucher
Breaux
Britt
Brooks
Broyhill
Bryant
Byron
Carper
Chappell
Chappie
Cheney
Clarke
Clinger
Coats
Coelho
Collins
Conable
Conte
Cooper
Corcoran
Coyne
Crockett
D'Amours
Daniel
Dannemeyer
Darden
Daschle
Davis
Derrick
Dickinson
Dicks
Donnelly
Dorgan
Dowdy
Downey
Duncan
Durbin
Dwyer
Dyson
Eckart
Edgar
Edwards (AL)
Erdreich
Erlenborn
Fascell
Ferraro
Fish
Florio
Foglietta
Folev
Fra[illegible]
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gingrich
Glickman
Gore
Gradison
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hamilton
Hansen (UT)
Harkin
Hartnett
Hatcher
Hefner
Heftel
Hightower
Hiler
Hillis
Holt
Horton
Howard
Hoyer
Hughes
Hutto
Hyde
Ireland
Jeffords
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kastenmeier
Kennelly
Kolter
Kostmayer
LaFalce
Lantos
Latta
Lehman (FL)
Lent
Lipinski
Livingston
Long (LA)
Long (MD)
Lott
Lowery (CA)
Luken
Lundine
Lungren
Mack
Madigan
Markey
Marriott
Martin (NC)
Mavroules
Mazzoli

McCandless
McCloskey
McCurdy
McDade
McHugh
McKinney
Michel
Minish
Mitchell
Moakley
Mollohan
Montgomery
Moody
Mrazek
Murphy
Murtha
Myers
Natcher
Nelson
Nielson
Nowak
Obey
Olin
Oxley
Packard
Parris
Patterson
Pease
Penny
Pepper
Perkins
Pickle
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ray
Reid
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Rowland
Rudd
Russo
Sabo
Scheuer
Schulze
Schumer
Seiberling
Sharp
Shaw
Shuster
Sikorski
Simon
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snyder
Solarz
Spratt
St Germain
Staggers
Stangeland
Stratton
Studds
Sundquist
Swift
Synar
Tallon
Taylor
Thomas (GA)
Torricelli
Traxler
Udall
Valentine
Watkins
Waxman
Weaver
Weber
Whitehurst
Whitley
Whittaker
Whitten
Williams (OH)
Wilson
Winn
Wolpe
Wortley
Wright
Wyden
Wylie
Yatron
Young (MO)

NOES—169

Ackerman
Addabbo
Akaka
Anderson
Archer
Badham
Barnard
Bartlett
Bethune
Boggs
Bonker
Boxer
Broomfield
Brown (CO)
Burton (CA)
Burton (IN)
Campbell
Carney
Carr
Chandler
Clay
Coleman (MO)
Coleman (TX)
Conyers
Coughlin
Courter
Craig
Crane, Daniel
Crane, Philip
Daub
de la Garza
Dellums
DeWine
Dixon
Dreier
Dymally
Early
Edwards (CA)
Edwards (OK)
Emerson
English
Evans (IA)
Evans (IL)
Fazio
Feighan
Fiedler
Fields
Ford (TN)
Fowler
Franklin
Frenzel
Gejdenson
Gekas
Gilman
Gonzalez
Gramm
Gray
Hall (IN)
Hall, Ralph
Hall, Sam
Hammerschmidt
Hance
Hawkins
Hayes
Hertel
Hopkins
Hubbard
Huckaby
Hunter
Jacobs
Johnson
Kasich
Kazen
Kemp
Kildee
Kindness
Kleczka
Kogovsek
Kramer
Lagomarsino
Leach
Leath
Lehman (CA)
Leland
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lloyd
Loeffler
Lowry (WA)
Lujan
MacKay
Marlenee
Martin (IL)
Martin (NY)
Martinez
McCain
McCollum
McEwen
McGrath
McKernan
McNulty
Mica
Miller (OH)
Mineta
Molinari
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Nichols
Oakar
Oberstar
Ortiz
Ottinger
Owens
Panetta
Pashayan
Patman
Paul
Petri
Porter
Ratchford
Regula
Richardson
Ridge
Rinaldo
Ritter
Roemer
Roybal
Savage
Sawyer
Schaefer
Schneider
Schroeder
Shelby
Shumway
Siljander
Skeen
Smith, Denny
Smith, Robert
Snowe
Solomon
Spence
Stark
Stenholm
Stokes
Stump
Tauke
Tauzin
Thomas (CA)
Torres
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Weiss
Wheat
Wirth
Wise
Wolf
Yates
Young (AK)
Zschau

NOT VOTING—19

Boehlert
Brown (CA)
Dingell
Flippo
Ford (MI)
Goodling
Hansen (ID)
Harrison
Matsui
Mikulski
Miller (CA)
Neal
O'Brien
Roukema
Sensenbrenner
Shannon
Towns
Williams (MT)
Young (FL)

□ 1240

Mrs. MARTIN of Illinois, Mr. DYMALLY, and Mr. HAYES changed their votes from "aye" to "no."

So the motion was agreed to.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would like to make an announcement. The time will be divided between the gentleman from Kentucky [Mr. MAZZOLI] and the gentleman from Florida [Mr. MCCOLLUM], who will yield the time. The time will be equally divided.

The Chair recognizes the gentleman from Kentucky [Mr. MAZZOLI].

PARLIAMENTARY INQUIRY

Mr. MAZZOLI. Mr. Chairman, may the gentleman from Kentucky propound a parliamentary inquiry, and that is: Does the gentleman from Kentucky control 1 hour of time, Mr. Chairman?

The CHAIRMAN. The gentleman from Kentucky [Mr. MAZZOLI] controls 55 minutes.

Mr. MAZZOLI. I thank the Chair.

Mr. Chairman, I yield 5 minutes to my friend, the gentleman from Michigan [Mr. SAWYER].

Mr. SAWYER. I thank the gentleman for yielding.

Mr. Chairman, this has been the one aspect of this bill with which I have had the most trouble, the legalization provision. And it is just as difficult for me to disagree, really, with the gentleman from Florida, who offers the amendment, as it is for me to agree with him. I have had great difficulty with the legalization proposed and I am sure I have vacillated during the committee debates one way and the other on it.

The great faults with the legalization, as I see it, are those enumerated by the gentleman from Florida, namely, it is very unfair to those who have waited in line for visas in other countries, who have relatives here and who have abided by our laws, whereas this legalization provision, in effect, favors those who took the law in their own hands and violated it.

Second, we have no idea with how many people we are dealing. And if something like 8 or 10 million people come forward, I do not know how in the name of Heaven anyone is going to possibly handle those numbers and process them and determine whether or not they have been here from January 1, 1982.

And, third, legalization rewards those who have violated our law.

Now, on the other hand, if you do not go through the legalization process and impose employer sanctions, you are going to have worse than the present underclass left. You are going to have an underclass that cannot change jobs. The employers will, in effect, own them because they will not have the option of moving to another job if they do not like the one that they have, because of employer sanctions. Although the sanctions are not as good as I would like to have seen them, they will have some effect and prohibit getting a new job if you leave the one you have so you in effect would create worse than an underclass, a class in bondage.

So, taking the whole thing on balance, I have come down to the difficult choice that I am going to oppose the McCollum amendment, although I thought he did an extremely articulate and effective job in presenting it and hit all of the sensitive nerves I have on the same subject. But I just feel that the overwhelming need here is to get rid of this underclass of people that we have who are illegal. If we do not, with the employer sanctions, we make it worse than an underclass, they are bound by bondage to the jobs they have and cannot change because they cannot get another job.

Having said that, I think there are two things about this bill that I do not like, although I intend to vote for the bill. First, I think the employer sanctions are far too weak. I see no excuse for a 6-month educational period. We do not do that on any new criminal law we adopt, and this is certainly quasi-criminal. Why they have to have a 6-month educational period when we do not give them that under any other law I do not know. And then why do we give them a free bite; namely, that they can get caught knowingly hiring one illegal alien with no penalty but a warning? I would feel much more comfortable about this bill if that was tightened up and we did not give a free bite and did not have the delay. Second, I would feel more comfortable if we made the legalization date the same date the bill became effective so that we did not leave a class of 2½ years' worth of illegal immigrants. These illegal aliens left will be bound to the jobs they have with no ability whatever to leave them no matter what the conditions or no matter what the abuses because they cannot get another job.

So with those reservations; namely, the legalization date being too far back, as opposed to being too far forward, and the employer sanctions being too lax, I feel I can support the bill, and with reluctance and with sensitivity I oppose the amendment.

Mr. McCOLLUM. Mr. Chairman, I want to say, taking for myself 1 minute, if I might, that I certainly believe that the gentleman from Michigan, for whom I have the greatest respect, has expressed his great concerns today. He only omitted one option that those people have. He should have mentioned what I think is a very real option with respect to those who are in fact going to be affected by employer sanctions. When they will no longer be able to get a job they can all go back home again where they came from. I think that is an exceedingly important point. It is allowed, it is permitted, and it is in fact what probably will and should happen.

Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. Hance].

Mr. HANCE. Mr. Chairman and Members of the body, I think that this amendment is an excellent amendment, and I think that there is no doubt this is going to be the key vote on this bill. I certainly have compassion for undocumented workers, and I feel sorry for them. This has been a generous society, but we have to consider more than just the undocumented workers. We have to consider the person who is a citizen of this country who is losing his job. This is a jobs bill, and anyone who tries to avoid that fact, when you go home your people are going to point out to you that it is a jobs bill.

Now, we have had a lot of experts testify about this bill for the last 4 years. I would like to ask you to do this: You go home, go to the coffee shop in some town, and ask them: "Ladies and gentlemen, how many of you think we should grant amnesty to illegal aliens?" Now, I do not think you are going to get overwhelming support for amnesty at that point in time.

Now, on the other hand, you say, "What about the undocumented workers who were here? What happens to them?"

Even if this amendment passes, there are still remedies for the undocumented worker. The registry program will be updated to 1973 from 1948. They are not put in a situation where they have no remedy whatsoever. The registry program is updated and it is looked at on a case by case basis.

□ 1250

I think the key in this is we talk about doing what is humane. We have to look at the people that we represent first, and those are the constituents that we represent and the citizens of this country. You can talk about undocumented workers, you can talk about amnesty; it really does not matter what you call it. You can call it legalization, you can call it amnesty, you can call it a pardon, you can call it clemency; anything you want to. But it still is not accepted by the public. The public is opposed to amnesty for illegal aliens.

Now the public will get mad about this after it goes into effect. I do not want anyone to leave today thinking that this is going to be an easy issue, because if you have an opponent with an IQ above 40, I guarantee you are going to hear about this issue again. There is just no doubt about it. I think that anyone that believes that this is all going to be cured today, they just have to wait until the bill goes totally into effect.

I would urge each of you to vote for the gentleman from Florida's amendment, vote for the McCollum amendment. I think this is the key vote on this bill and I think the entire country is going to be watching. They may not be watching today; but they will be watching over the next year, and this is a jobs issue. It is a jobs bill. I am for protecting jobs for American citizens first.

Mr. Chairman, I yield back the balance of my time to the gentleman from Florida.

The CHAIRMAN. The gentleman has consumed 3 minutes.

Mr. MAZZOLI. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Kansas [Mr. Glickman].

Mr. GLICKMAN. Mr. Chairman, I would first make a comment that after 6 months of wrangling in his Chamber about where the cameras are panning and who is calling who names, it is wonderful to be able to come down the floor of this House and debate constructively an issue that is important for all of us, and that is due in large part to Dan Lungren and Ron Mazzoli, as well as the chairman, Mr. Natcher, from Kentucky. I think that this will help to rehabilitate the House after 4 or 5 months of, I think, nonsense that has been going out on the airwaves to America.

You have all heard the song "Love and Marriage." At the end of the song it says you "can't have one without the other." Now, I am not telling you that employer sanctions and legalization are like love and marriage. But it is true that you cannot have one without the other. Employer sanctions and legalization are the two pedestals under which this bill is based. If you want to see this bill defeated, vote for the McCollum amendment.

Mr. Hance asked how many people in the coffee shop you ask would want amnesty or legalization. Very few. That is probably true. But if you ask the question of people in the coffee shop "How many of you want to see a fair and responsible immigration bill in which we try to prevent millions of illegal aliens from coming into this country every year?" A substantial majority, if not all of them, would also say "yes." I say to those of you in this Chamber and those of you who are watching, that if you want to see us pass an immigration bill in America, you will not vote for the McCollum amendment. In my judgment, a vote for the McCollum amendment is a vote to kill immigration reform.

One final thing is that a case-by-case legalizaton envisioned under this bill is important socially and culturally. We have created in this country a permanent subculture with no legitimacy whatsoever. Mr. Sawyer referred to people in bondage; I do not think it is that bad. But we have a growing number of people, millions of people who are alienated people who are not part of any culture. Twenty or thirty years from now, if nothing is done, we could see 30 or 40 million people in this country that are not citizens of this country who are here under no particular identity. That spells very serious political problems for the United States. I am not saying we face a revolution like they do in Central America, but it is something that we should consider at the same time we deal with the legalization question.

I would urge my colleagues: If you want to pass an immigration bill, vote against the McCollum amendment.

Mr. McCOLLUM. Mr. Chairman, I yield 5 minutes to the gentleman from Nebraska [Mr. Daub].

Mr. DAUB. I thank the gentleman for yielding me this time.

Mr. Chairman, I want to, of course, compliment the work that you have done; I want to compliment the work that has been done by the ranking members in both of our parties, that have handled this bill. I particularly want to pay my respects to the gentleman from Florida [Mr. McCollum] for it is his amendment, and his alone, which stands before us as the central issue in what I said when I took this well early in the debate would be one of the rare, philosophical and historic debates that this Congress will have had in all of its history. For the gentleman's courage, for his wisdom and insight, I salute him and all of his colleagues must do likewise in my opinion.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Florida [Mr. McCollum]. It should be pointed out that this amendment does offer us an alternative, contrary to what some may say about it jeopardizing the bill's chances. While some Members may oppose the bill without its present legalization provisions, a number of Members, including the gentleman in the well may feel compelled to oppose the bill if the legalization provisions remain unchanged.

I am unswayed by the argument that employer sanctions, in and of themselves, are unacceptable. Although this body may have previously debated employer sanctions, the current mood of the American public calls for immigration control, not amnesty. Employer sanctions remove the incentive for undocumented aliens to come to this country, if enforced.

I am also not convinced that all who are presently here illegally will stay once the incentive of a job is removed. Therefore, we have no way of judging the extent to which amnesty will be needed after the implementation and enforcement of employer sanctions occurs. While legalization may be humanitarian to those who would qualify for it, it is a means and not an end to our undocumented alien problem, and does not solve the fundamental problem. That fundamental problem is the enforcement of our country's laws which we seem today in this debate to be neglecting.

On the other hand, through the bill's legalization provisions, we are changing the law simply because we cannot enforce it. On the other hand, we are saying that employer sanctions cannot be effectively enforced. If this body cannot have the integrity to respect and defend the laws we pass, what is our purpose? The McCollum amendment provides a solution to those undocumented aliens who have begun to work and begun to contribute and are encultured members of our society, but unlike the legalization program, it does not give a slap in the face to those who respect our laws and have waited outside our borders for that opportunity to come here legally.

It is the humane and wise decision that you will make if you support the McCollum amendment. As I have said in this debate, the outnumbers, because the committee's majority has refused to limit those numbers, are staggering and their economic consequences suffocating to what this goose we have that lays the golden egg must offer to those poor, those tired, those huddled masses yearning to be free.

I thank the gentleman again for his courage and insight and for giving me a portion of his time to contribute to such a momentous occurrence which will be shortly upon us and that is a vote on the central issue that is contained in this great debate.

Mr. McCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. DAUB. I yield to the gentleman.

Mr. McCOLLUM. I want to compliment the gentleman for all of the fine things that he has been able to present during this debate, not only during the debate on this amendment, but throughout the debate from time to time. I think he has done a fine job of letting his colleagues know some of the wisdom of his experience as an immigration attorney before he came here, and a lot of the time that he has spent working and analyzing this legislation, particularly the area of legal immigration. The impact of the problems of this bill on that, and I think the gentleman has made a major contribution. I would compliment him on it.

I would like to point out again his point he made the other day: There could be 70 million more people come in after granting legalization if we do not do something about this. The attendant multiplier effect is far greater if we have legalization than has been imagined up to now. The laws in their current state just are not designed to deal with that. So it is a very forceful argument, why under the circumstances with the registry date as a safety valve, as the gentleman points out, we ought to strike legalization and allow the rest of the bill to go forward.

□ 1300

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. DAUB. I would be happy to yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, I want to salute the gentleman, as my friend from Florida has, for making a major contribution to this debate. Despite the fact that the gentleman does not serve on the subcommittee or the full committee, the gentleman has a virtually encyclopedic knowledge of the subject and has been able to shed light and insight on this subject throughout these 7 days.

The CHAIRMAN. The time of the gentleman from Nebraska [Mr. DAUB] has expired.

Mr. MAZZOLI. Mr. Chairman, at this time I yield 3 minutes to the distinguished gentleman from New York [Mr. WEISS].

Mr. WEISS. I want to, at the outset, thank my friend, the gentleman from Kentucky, the distinguished chairman of the subcommittee, for yielding this time to me and for his unfailing courtesy throughout this entire debate.

I want to compliment you, Mr. Chairman, for the manner in which you have conducted not only the debate on this particular measure, but for your general conduct, which I think enhances all of us who are Members of the House of Representatives.

Mr. Chairman, of course, I rise in opposition to the amendment offered by the gentleman from Florida [Mr. MCCOLLUM]. I think its adoption really would send the worst possible signals about what we are as a society. So I would hope that the amendment would not be adopted.

At the same time, I want to commend the gentleman from Florida because he has had the forthrightness to offer the amendment in its baldest and barest form. He has not attempted to disguise the amendment so that it would be a wolf traveling in sheep's clothing, as have some of the other amendments which were offered which were not adopted, and one which was offered which was adopted which will have, in essence, very much the same effect as the amendment that is currently pending before us.

If, in fact, the intention of this bill is to bring millions of people without proper documentation who arrive in this country illegally, or who remained here illegally, out of the shadows, then it seems to me that the provisions already adopted will make sure that they will not risk climbing out of those shadows. In their judgment the consequences may well be to cause their deportation.

We have, over the course of our history, done some things regarding immigration policy which in retrospect certainly cannot make us proud. We have often forgotten that the reason that people came to this country was not because they were making a choice between good and better, almost invariably, they have come, whether legally or illegally because conditions in their native land had become impossible, either because of hunger, or discrimination, or oppression, or war.

That is the situation that prevails today and we can pass all the restrictive provisions that we want; the fact is that people will continue to risk their lives because the chances for survival are better if they come than if they stay where they are.

It seems to me that if we really want to do something positive, to reduce massive immigration we ought to start taking those steps which make people's lives better in their native lands; that we give them the opportunity to live in peace, provide for their families, and to educate their children. That is the way to provide the conditions for a decent immigration policy.

Mr. McCOLLUM. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana [Mr. HUCKABY].

Mr. HUCKABY. I thank the gentleman from Florida for yielding me this time.

Mr. Chairman, before I begin I would like to commend the gentleman from Kentucky for his devotion not only in the last 7 days or in the last months, but literally the last years of his life that he has devoted to this extremely important piece of legislation.

I feel this vote, amnesty, as the gentleman from Texas [Mr. HANCE] said earlier in the well is the key to the bill. This is the vote that the people on Main Street of America are going to remember, not on all the votes we have had in the last 7 days.

I regret that the managers of the bill limited the debate on this key issue. We should have been limiting debate the last 7 days.

The famous novelist James Michener, as reported in the press, stated earlier this year when people were looking back on 1983 as to what they considered as the most significant events, said probably the most significant event that occurred in 1983 was the tragic death in the deserts of Texas of illegal aliens who were trying to enter this country illegally. They were from Central America. They were leapfrogging over Mexico into the United States, into the land of plenty.

To Michener, this represented the potential of a massive migration, possibly of millions of people coming into this country illegally in the future.

Today, there are estimates, as we have heard, some 2 million to 12 million illegal aliens are in this country. If we grant them amnesty, in time they will be eligible to become citizens of the United States. Then they will be able to bring in their mothers and their fathers, their children, their brothers, and their sisters. No one knows what the count ultimately would be of additional people coming into this country. And then these people will all be eligible for all of America's welfare programs also.

The cost is in untold billions of dollars, as speakers have said today, no one knows what the cost will be. This House of Representatives earlier this year advocated a pay-as-you-go budget. It is a shame we are not taxing the American taxpayers, saying "We do not know how many more billions of dollars you are going to pay out of your pocketbook, but we are going to tax you now." We do not have that provision. If we did, this amendment would pass. We are just saying we are going to increase the size of the deficit. The American taxpayer, the person on Main Street, U.S.A., would be, I think, overwhelmingly opposed, as the polls say, to this type action.

Mr. Chairman, the issue before us today is not only one of jobs, but one of American taxpayers' pocketbooks. We cannot afford to be the land of plenty for the entire world. It is unfortunate, but it is true.

This bill before us today now contains a workable guest worker program. It now contains employer sanctions. I think, as several speakers before me have said, that if we would then remove this amnesty provision we would have a sound bill, we would have a viable bill. I suggest to the Members of the House, now is not the time to give up. Now is not the time to throw up our hands and say, "You have overwhelmed us. You came in illegally but you have overwhelmed us so we will change our laws to accommodate you," because this, more than any other action, regardless of what we say, will provide the incentive for millions and millions of more illegal aliens to come into this country because they will think, and rightfully so, "Well, if they have done it once, in a few years they will do it again. Let us go ahead. We will get amnesty in the future."

Mr. Chairman, I would urge my colleagues to think about this vote. It is the major vote, and I commend the gentleman from Florida.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. HUCKABY] has expired.

Mr. McCOLLUM. Mr. Chairman, I yield 1 additional minute to the gentleman from Louisiana.

Mr. HUCKABY. I thank the gentleman for yielding this additional time to me.

Mr. Chairman, in closing just let me say that this is the guts of the bill, this is the heart of the bill. We do not know the cost. We do not know the numbers. We do not know the impact. The bill will work. It will work much better than what we have today without amnesty in it.

As for the people in the United States, then, I believe the numbers would flip-flop and the polls would show that the majority of the people would clearly support the actions that this House has taken; whereas, the polls today show that a clear majority, an overwhelming majority of the people, oppose amnesty as provided in this bill.

I would like to commend the gentleman from Florida just as the gentleman from New York recently did, for coming forth with a forthright amendment so that all the Members of the House of Representatives can stand up and be counted on this, probably the most historic vote of the 98th Congress.

□ 1310

The CHAIRMAN. The Chair now recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Chairman, I now yield 3 minutes to the distinguished gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Chairman, I agree with almost everything that my colleague, the gentleman from Louisiana [Mr. HUCKABY] has said, and I agree with almost everything that my colleague, the gentleman from Florida [Mr. McCOLLUM], has said. They are right, that amnesty is going to create a logistics problem and a financial problem beyond the possibility of our comprehending till now.

Not just because of the 2 million to 12 million illegals who are here now but mostly because of the magnet that that is going to turn on and the absolute tidal wave of illegal immigration subsequent to the passage of amnesty that that will create from others in Latin America who want to participate in the amnesty program. And that flows from two conditions, first, the fact that our borders are open and out of control, and, second, because once they walk across the border they can easily find the forged documents that will enable them to prove that they were here before January 1, 1982, or any of the other dates, or indeed they can prove that they came over on the *Mayflower*, if that is their preference.

We are going to have a problem that will increase above and beyond the 2 million to 12 million illegals here of exponential proportions. So I suggest that that is what we should be thinking about.

Now, having said that I sympathize with and I respect the statements of the gentleman from Florida and the gentleman from Louisiana, I have to come down on the other side of the line. I am for amnesty as a matter of conscience, as a matter of a moral imperative for America, and as a matter of finding distasteful, unacceptable, and obnoxious the continuation of this depressed, hidden lower class in America, so easily exploitable, so easily taken advantage of, with none of the resources of appealing to justice and law enforcement in our country.

Yes, I think if we took a national poll today, the American people would vote overwhelmingly against amnesty. But we are not poll takers. We are not paid to be poll takers or pulse takers. We are here to be legislators, and I remember the advice of Edmund Burke, that great English parliamentarian, to his constituents:

> Yes, I am here to represent you. Yes, I respect your opinion, but from time to time there will be a matter of conscience in which I will disagree with you, and I hope that you will respect my right to offer you my judgment, my independent judgment, even when we disagree.

So it is on this basis that reluctantly I oppose amnesty.

The CHAIRMAN. The time of the gentleman from New York [Mr. SCHEUER] has expired.

Mr. SCHEUER. Mr. Chairman, I would ask for an additional 2 minutes.

The CHAIRMAN. The Chair will state that the time is controlled by the two gentlemen.

Mr. SCHEUER. Mr. Chairman, I ask that the gentleman from Kentucky grant me an additional 2 minutes.

Mr. MAZZOLI. Mr. Chairman, the gentleman from Kentucky is extremely sorry, but the time is already allotted. I apologize to the gentleman, and I appreciate his remarks.

The CHAIRMAN. The Chair recognizes the gentleman from Florida [Mr. McCOLLUM].

Mr. McCOLLUM. Mr. Chairman, I yield 5 minutes to the gentleman from Arizona [Mr. RUDD].

Mr. RUDD. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I would like to again commend all of the Members who have been managing this bill, the distinguished gentleman from Kentucky [Mr. MAZZOLI] and the distinguished gentleman from California [Mr. Lungren], and I commend the Members who have contributed so much to opening up this bill for the enlightenment of us all in an effort to try to solve the problem of the immigration of illegal aliens into this country.

I support the McCollum amendment, and instead of talking about illegal aliens, I would like to talk for a moment about legal entries of immigrants into the United States. I would like to share a story with the Members concerning Mrs. Alice Shipley of Phoenix, AZ, who immigrated to this great Nation of ours in 1919.

At 14 years of age, Alice arrived at Ellis Island in New York, having fled from Bolshevik persecution in Russia. She came to the United States "because the country opened its doors" to her and because "it made freedom, wealth and opportunity available." She recalls that her family patiently awaited entry into the country on a ship off Ellis Island outside the harbor of New York while they were properly and legally processed through the immigration lines.

Seven years later she became a citizen. She had to struggle to learn the English language, but she did. She remembers taking a stiff test concerning the Constitution and the Bill of Rights and how our Government functions.

Certainly at the time things were not easy for her or her family, but she had determination and she wanted to learn about our Government. She wanted to learn our language so she could get along well here, and, more importantly, she wanted citizenship here in our country. And she got it, and she wanted to get it through legal channels. It made better citizens of her and her family by doing it in that way.

It is precisely for this reason that the proposed granting of amnesty to those who have entered the country illegally is such a travesty.

I voted for the Lungren amendment, and I voted for the Wright amendment because it was better than what we have in the bill. We are saying in effect, though, that it is all right to break our laws. What could be worse, though, is to welcome prospective citizens into our country without their understanding what our country is all about.

There is not only the obvious unfairness to those like Alice Shipley who had struggled to establish themselves here as good citizens by working within the law and working hard, but also to those who are still patiently seeking to immigrate legally and through proper channels into our country. Some have waited more than a decade for this.

Then there is the immense cost of amnesty, which has been mentioned frequently. While H.R. 1510 excludes the applicants in this bill from receiving Federal benefits for a period of 5 years, the outyear costs promise to be tremendous. Should we really consider rewarding the lawbreakers at the expense of the taxpayers? The resounding response from my constituency at least is no.

There is, however, a workable alternative to amnesty, and that has to do with the registration date. The registry date provision that exists in the current law provides that individuals who can prove continuous residence in this country since 1948 and who have a good moral character can be eligible for permanent resident status, which is the initial step that they can take legally toward citizenship. This is a tried and proven procedure.

Under the bill the registry date would be updated from 1948 to 1973. That is under the amendment provided by my friend, the gentleman from Florida. It will insure that only those who have been in the United States for a significant period of time, have established equities and proven themselves before their communities, may be eligible for this exemption.

The McCollum amendment would strike amnesty in favor of the proven registration date provision. By adopting this amendment, we will send a signal that citizenship carries with it not only benefits but also serious responsibilities to the community.

Mr. Chairman, I urge my colleagues to support this good amendment, and I yield back the balance of my time.

The CHAIRMAN. The Chair now recognizes the gentleman from Kentucky [Mr. Mazzoli]

Mr. MAZZOLI. Mr. Chairman, at this point, I yield 3 minutes to the distinguished gentleman from Michigan [Mr. Conyers].

Mr. Chairman, before the gentleman proceeds, might I inquire of the Chair as to the amount of time the gentleman has left?

The CHAIRMAN. The gentleman from Kentucky [Mr. Mazzoli] has approximately 36 minutes remaining, and the gentleman from Florida [Mr. McCollum] has 30 minutes remaining.

Mr. MAZZOLI. Is the gentleman's time taken from the 36 minutes?

The CHAIRMAN. That is correct.

Mr. CONYERS. Mr. Chairman, I want to thank my colleague, the gentleman from Kentucky [Mr. Mazzoli], for affording me this time and for helping to bring this debate to this point in our disposition of this incredibly important matter before us.

I do not know if the proponents of this amendment secretly desire to kill the Simpson/Mazzoli bill because if they do, in a way it comports with my views and my opposition to that flawed piece of legislation. It is almost like a suicial death wish.

Here we have done everything that has been opposed by our Hispanic and Mexican-American Members in Congress. The bill has been riddled with add-ons. The guest worker provision has been expanded and yet at the same time we are now confronted with eliminating the one humane and reasonable provision of this legislation which provides for the disposition of millions of people who have resided in this country since January 1, 1982.

□ 1320

There is a temptation that I resist to join with those that support this amendment. Maybe by approving the McCollum amendment we might defeat H.R. 1510. The only thing that restrains me is the fact that it would not be the right thing to do for so many people who have waited to hear us speak to the question of legalization, a legalization program about which I am very worried that it will never work correctly. With 33 exemptions, it is very difficult for me to honestly tell anybody in this country that all but a quarter of those eligible for legalization will ever attain it under these provisions; so I must restrain myself from voting for this amendment and yet hope that McCollum wins, because maybe it would be the death knell of this entire legislation.

Mr. Chairman, if we ever thought of trying to do something to deal with this imigration problem without legalizing these millions of undocumented people, what would we have? We would have two situations, mass deportations or the status quo.

Now, I am sure the maker of this amendment was not thinking carefully when he said our illegal aliens can go back to where they came from. That is a very, very regrettable expression and I hope the amendment is turned down.

Mr. McCOLLUM. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. Kindness].

Mr. KINDNESS. Mr. Chairman, there are a couple points I think we need to get into focus and I would just like to sort of summarize.

It has been alleged here that the legalization program is an answer to part of the problem of our illegal alien population, but at the same time even its proponents have said and realized that the program, as proposed to be carried out in a short period of time, is completely uncontrollable and unworkable. It cannot be done on an orderly basis.

No. 2, we have heard it said again and again that we have lost control of our borders. We never had it. We never had control of our borders. The matter of control has only become important in recent years in view of a large and increasing influx of people.

We have had a system of laws in our country that have been reliant largely upon voluntary compliance, with a small percentage of enforcement. The immigration law is a part of that tradition.

The registry date provision that is in the law and it is being updated in this bill if it is retained or the bill is passed in that final form, that is a way for law-abiding people to apply for regularization of their status; but it has been argued that the problem cannot be handled through the existing registry date provision. It would be administratively difficult or impossible.

Well, no, if that is impossible, then we know that the legalization program is completely impossible as contained in the bill.

There is a similar degree of fictionality, I think, about the allegation that there would be mass deportations if this amendment is adopted. It is not going to happen. There are various ways, as has been pointed out, in which those people who are affected by an undocumented status are going to deal with their situation.

It has been argued that legalization and employer sanctions go together. Watch that argument, folks. OK, what if, in a few years, we have another large group of new undocumented aliens identified? Then do we say, well, we have got to have a new amnesty, or do we repeal the employer sanctions or do we just reject the concept that we are employing today in saying that legalization and employer sanctions go together? They do not necessarily go together. They are two independent concepts which have been argued together, but they will not work in the future together unless we are committing ourselves now to an endless chain of new amnesties.

No question about it; you have got to destroy or abandon that theory at some time.

Mr. MAZZOLI. Mr. Chairman, I yield 3 minutes to the gentleman from Arizona [Mr. McNULTY].

Mr. McNULTY. Mr. Chairman, besides the curious coalition that this bill and its various amendments produce from time to time, it has produced some fairly curious varieties of old American cracker-barrel philosophies that don't have much intellectual merit, like the plotting peasant. We had that one. Then we had the pay-your-dues syndrome mentioned. Yesterday afternoon, we had the "don't speak any language other than English on the playground or we will expel you from school" slogan, and today we are working on the "don't reward lawbreakers" with a boon.

On that, I hold with Yogi Berra that if John Calvin were alive today, he would be spinning in his grave.

I suggest we move beyond those kinds of considerations, accept law for what it is, a minimum, tolerable code of social conduct, designed to address real people with real problems and real possibilities.

In that spirit, I would say that it is not in the interests of any one of us here to have a tribe of 2 or 3 or 4 million people continuing to live in a state of legal uncertainty, and that uncertainty has been aggravated by this very debate.

This Nation does not need to construct the Indian equivalent of the Untouchables.

As a matter of fairness and justice, this amendment should be defeated.

Mr. McCOLLUM. Mr. Chairman, at this time the gentleman from Florida will take 1 minute and yield it to himself.

Mr. Chairman, there has been a great deal of debate going on today about fairness and what we should do about all those illegals who have been here for so long. The fact is that if legalization is stricken we will have a regular, orderly departure from this country over a period of time by those who have been here illegally. It seems to me that is the most humane thing we can do. If we strike legalization, we have employer sanctions left. We will have a bill that is workable and those who are having to leave the country can get into a temporary worker program and come back to work here legally. It just does not seem to me to be a logical argument. That it is somehow unfair to let this happen.

Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Chairman, I thank my colleague.

Before I have my say, I would like to commend my colleagues from Florida, in particular my colleague, the gentleman from Florida [Mr. McCOLLUM], the gentleman from California [Mr. ROYBAL], and the individuals who have carried out this debate in a fashion that I think is appropriate to this House. It is emotional. It is personal. It bothers each of us in a special way and I think we have done the best that we could, each for our own thoughts. I commend each of you.

I continue to oppose the amnesty provision of this bill and say this to my colleagues My grandparents on both sides of my family came to this country as immigrants but they came legally. Also I know there are many who have come illegally since that time, who have allowed their children and their children's children to take a leadership role in this country, but I would say that there must be a point in this Nation where we say the rule of law is what we, the Congress and this body, must try to abide by. So much has been said during this debate about the message to those illegals who have come to this country and the problems that it will create.

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We should ask what about those who are trying to come here legally. In my own State of Florida tens of thousands of applications are on hold and never processed, from individuals who try to use the legal process but the process is clogged, jammed, stopped because the illegal flow is so monumental that we cannot do anything about it.

So I would say this, I think we need to be humane with those who are here illegally, I think we need to be compassionate; we need to be realistic. But we are a nation of laws. As I say earlier in the debate this week, many of the very people that we are talking about come here because of our laws and our Constitution and our rules of law and our attempts consistently not to allow illegal processes, inappropriate processes to take over our Nation.

So I say yes, we have to be realistic, we have to be compassionate, but I would say to my colleagues that it does not need to be done in this way and I have contended from the very beginning, to be done in this particular piece of legislation.

I would contend that the first duty that we have to those who are here and those individuals who came here legally, and to those American citizens, is to try to put in place as much as possible a controlled system for our borders, and I recognize that we will never completely control those borders, but at least a better job, to beef up the Border Patrol, to add funds for enforcement—and we have done that—to have some type of enforcement provision with regard to employer sanctions but not to send the wrong signal to the rest of the world that we are going to do all of this, to be a nation of laws but "If you have broken the laws and you are here, you are in effect home free."

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MICA. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, the gentleman of course, as we know, is a very important and influential Member of Congress and has acted on behalf of his constituents and in some cases has filed bills which seek private relief for those who are here in this country illegally. So the gentleman himself recognizes there are certain situations and certain conditions which, like the Bard says, "The quality of justice is not strained, it falleth like the gentle rain." There are times when we have to look at situations in justice, which sometimes means exoneration, sometimes justice means extra discretion, sometimes it means giving the benefit of a doubt.

So as the gentleman does in filing private bills which come to this gentleman's committee, the gentleman from Kentucky simply says that we are doing the same thing in a more institutional way for a group of deserving people.

Mr. MICA. I think the gentleman makes an excellent point, Mr. Chairman. I think it points out essentially what I have been saying. This gentleman and every other Member of Congress who has ever filed a private bill has taken the legal approach to seek a remedy where there is an injustice. And I do agree we have to do something, we have to deal with those who are here.

My concern is this, that we have talked so much about the message to the illegal, what about the message to the legals? In a bill where the major intent is to give some indication to those who are not here that we really do mean to be a nation of laws, we really do mean to get some control, this does, the opposite, it creates confusion.

The CHAIRMAN. The time of the gentleman from Florida [Mr. MICA] has expired.

Mr. McCOLLUM. Mr. Chairman, I yield an additional 30 seconds to the gentleman from Florida.

Mr. MICA. So I would close by saying that I oppose the amnesty provision. I am willing to discuss this issue as we proceed in other legislation before the Congress, but I hope at this time we can send a clear signal to those in this Nation and those outside this Nation that we simply want to get control of our borders in the best way we can. It is not a total 100 percent solution but it is a step without the amnesty provision in the right direction.

Mr. MAZZOLI. Mr. Chairman, I yield 3 minutes to my friend, the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, restricted legalization, two-tier legalization, makes sense under the Wright amendment because it provides for controls.

Mr. Chairman, first, the continued presence of a large number of undocumenteds is harmful both to U.S. society and to the undocumenteds themselves. Their exploitable posture results in various kinds of illegality, affects wage standards, impacts upon ethnic relations, and more.

Second, the legalization of a significant portion of the undocumented population would enable us to manage better our immigration problems. The INS is currently devoting a substantial measure of its strained resources to the never-ending and costly task of deporting people already integrated into American society. Legalization would allow those meager resources to be diverted and concentrated on programs that will be maximally effective in enforcing the law and in offering needed services.

Third, legalization would permit employers dependent upon this pool of labor to use that labor, but now on a lawful basis.

Finally, only through legalization will we be able to obtain the comprehensive knowledge of the current undocumented problem essential to population planning and dealing effectively with future flows, from whatever source.

Mr. Chairman, I am including additional material on this issue for the benefit of my colleagues.

LEGALIZATION PROGRAMS IN OTHER COUNTRIES

Census Bureau estimates show that there are currently between 2 to 4 million undocumented people living in the United States. One recommended solution to this serious national problem is a large scale legalization program, perhaps similar to legalization programs implemented by other countries. A major concern regarding large-scale legalization however, is that it may lead to an unmanageable number of requests for U.S. citizenship. In analyzing legalization programs in seven countries it has been found that these programs do not result in voluminous requests for citizenship, but rather that the response rate in unexpectedly low. Some nations, such as Canada and Australia implemented programs with very liberal applicant criteria. Others, including France and the United Kingdom, enforced strict program guidelines. Regardless of the type of program implemented, the response rate was always low, usually well under 50 percent. The specific results obtained illustrate the limited impact of large-scale legalization programs:

CANADA (1973)

Canada's program had very liberal applicant criteria. "Only applicants with significant criminal records were denied immigrant status. In addition, the applicants were to be screened by immigration officers who were instructed to be generous in their decisions and to grant amnesty whenever it appeared to be appropriate." (p. 6)

Despite the liberal program employed, the number of persons legalized in relation to the number of persons estimated in the undocumented population was much smaller than the Canadian officials expected. Government estimates on the undocumented population stood at around 500,000 to 1,000,000 people but only 52,000 people benefitted from the legalization program.

AUSTRALIA (1980)

Similar to Canada, Australia also adopted a liberal legalization program. "Those persons eligible for the program were required to meet health and character criteria and to have a "genuine intention to reside permanently in Australia." Moreover, the members of the applicants families in Australia and overseas were eligible for permanent resident status. . ." (p. 4)

The Australian government has estimated that there were at least 40,000 undocumented immigrants in Australia, but during the application period only 14,000 applications were received.

FRANCE (1982)

France adopted a strict legalization program during 1981-1982, which included specific employment and residency criteria. In addition, "the clandestine immigrant applied for change of immigration status directly to government officials . . . and if the case was denied, the applicant was told the reasons and received a residence permit for one month. After the month lapsed, the individual was required to leave the country." (p. 10)

Under the 1981-1982 amnesty, French officials expected approximately 300,000 workers to apply however, only 100,000 undocumented people were legalized.

UNITED KINGDOM (1978)

The legalization program adopted by the United Kingdom included complex eligibility requirements and a high rejection rate. About one-third of those applying under the amnesty program were ineligible, with 2,346 applying and 1,679 accepted. The low rate of applicants was probably due to the stringent criteria and to the fact that the immigrants could continue their clandestine residence undetected by the authorities.

VENEZUELA (1980)

In 1980, it was estimated that about 2.5 million undocumented immigrants resided in Venezuela. The government implemented a registration program leading to legalization if the immigrant met the following two requirements.

(1) A valid identification document issued by the immigrant's government.

(2) Evidence of gainful employment.

Those who did not register were deported by the National Guard or other security forces. According to the available sources, 345,000 immigrants registered on time. Considering that there were 2.5 million illegal aliens, the program was not a success.

VIRGIN ISLANDS (1975)

The most successful legalization program, as determined by response rate, was the program implemented by the Virgin Islands. Approximately 50 percent of the estimated alien population was legalized under this program. However, the majority of the applicants, nearly 59 percent, were simply adjusting their visa status and were not in fact undocumented people.

The legalization programs of most countries had low turnouts. Whether the country had strict or liberal applicant criteria, the number of people who had benefitted was always less than expected. Based on the experiences in foreign countries, large scale legalization does not lead to massive increases in requests for citizenship. The popular US myth that a legalization program will cause an unmanageable upsurge of migration cannot be substantiated. Moreover, the proposed legalization program currently before the US Congress is a restricted program which limits the number of eligible applicants. The implementation of this strict program will at least partially help alleviate the problem of undocumented people. Rather than view large-scale legalization as a detrimental proposal, we need to examine it as a feasible solution to a pressing social problem.

[From the Heritage Foundation, Feb. 1, 1984]

NINE MYTHS ABOUT IMMIGRATION

(By Julian L. Simon)

INTRODUCTION

Immigration is one of the most complicated topics of our times. Society and Congress are struggling with the problem in the form of the Simpson-Mazzoli bill, which is now before the Senate and House (S. 529 and H.R. 1510). The issue of immigration seems to pit two fundamental values—lending a helping hand to strangers and ensuring the economic self-interest of family and community—against one another. Also involved are values that may not appeal to all but which are in no way irrational, such as maintaining some degree of cultural or racial homogeneity in the country (Margaret Thatcher has spoken for that in the case of Great Britain) and keeping a particular political balance.

Wherever it may lead, a debate on U.S. immigration policy ought to be based on facts. Regrettably, a number of myths about immigration work against a reasoned debate. The sum of these myths is that immigrants lower the standard of living of U.S. natives. This simply is not supported by the evidence. In the interests of an informed debate on immigration, these myths must be examined.

MYTH 1: IMMIGRANTS ARE WELFARE ABUSERS

It is frequently alleged that immigrants no sooner arrive in the U.S. than they become public charges, draining welfare money from the U.S. taxpayers and paying no taxes. Solid evidence gives the lie to this charge.[1]

In 1976 the Census Bureau interviewed 156,000 households (including about 15,000 immigrant families) to learn about 1975 family income and welfare services patterns. From this sample was constructed a picture of lifetime economic behavior by assuming that the information on immigrants who had been here, say, two years, or ten years, as of 1975 described the representative immigrant family after two years, or after ten years, and so on

The services that most often catch the public eye are welfare and supplemental security, unemployment compensation, aid to dependent children, and food stamps. The average native-born U.S. family received $498 from these programs in 1975 (calculations include families getting no assistance). The average for immigrant families that arrived between 1950 and 1974 was $548. Not much difference. For immigrant and native families of similar education and age, there is no difference.

Of course there may be some systematic abuses of the welfare system by immigrants. But the U.S. legislative system surely can devise adequate remedies. Senator Charles Percy (R-Ill.), for example, sponsored a bill strengthening the requirement that sponsors of immigrants stand behind them financially to prevent their entering in order to go onto welfare. Nor would it be un-American to require immigrants to provide the American public some service in return for the benefits they receive. In the past, serving in the Army was such an example; it also had the side effect of quickly Americanizing the immigrants who served.

Providing school for immigrant children during an immigrant family's first five years in the U.S. costs slightly less than $859 for the average native family, because immigrants tend to come before they have children or while the children are still young. After that, school expenditures for immigrant families are higher than for native families, rising from $1,068 to $1,237 during the next 15 years. (The difference is not that immigrants have many children, but that the average native family is older with fewer children still in school.)

When public retirement programs are included—such as Social Security, Medicare, and Medicaid—immigrant families on average are seen to receive much less in welfare payments and services than do average native families. Immigrants in fact lessen the Social Security burden upon native workers by contributing to the fund while not drawing from it. And if there is any single factor that cramps government economic policies right now, it is payments through Social Security, other pension plans, and other assistance to the elderly.

Immigrants typically arrive young and strong. Native U.S. families received in 1975 on average $735 for Social Security, $167 for Medicare and $20 for Medicaid, a total of $922. Immigrant families received a total of $92 during the first five years in the U.S., $227 in the second five years, $435 in the third five years, and $520 the fourth and fifth five-year periods. The difference in favor of natives is large. Immigrants thereby benefit natives.

But what about Social Security when immigrants reach retirement age? The answer depends not on entitlements or legal obligations, but on the flow of real resources from workers to retirees. In this way, the children of retired immigrants support their parents with their taxes, as in the case of natives. Hence the immigrant retirees do not increase the burden on natives.

In summing the figures for all the transfers and services, the average immigrant family is found to receive $1,404 in welfare services in years 1 to 5, $1,941 in years 6 to 10, $2,247 in years 11 to 15, and $2,279 in years 16 to 25. Native families overall average the same, $2,279, considerably more than the immigrants receive during their early years in the U.S. Figures for these early years are more relevant because in making rational policy decisions the distant future is weighted less heavily than the near future.

MYTH 2: ILLEGALS MAKE ESPECIALLY HEAVY USE OF WELFARE SERVICES

Contrary to common belief, illegal immigrants from Mexico and elsewhere receive little in welfare services because of their illegal status. Labor researchers David North and Marion Houston of the New Trans Century Foundation found the following proportions of illegals using services: Free medical, 5 percent; unemployment insurance, 4 percent; food stamps, 1 percent; welfare payments, 1 percent; child schooling, 4 percent.[2] Practically no illegals receive the costliest service of all—Social Security. But 77 percent of illegal workers paid Social Security taxes, and 73 percent had federal income tax withheld. Several other studies using a variety of research methods reveal similar results. The low use of social services is largely because the illegals are afraid of being apprehended. And among the illegal Mexicans, more than 80 percent are male, half are single (most of the married men leave their wives and children in Mexico), and most are youthful (less than 10 percent of the workers are over 35) and need few services.

MYTH 3: IMMIGRANTS PAY LESS THAN THEIR SHARE OF TAXES

If immigrants paid relatively little in taxes, it could be argued that they still burden natives, even with fewer welfare services for immigrants than for natives. While there is no direct information on taxes paid, data on family earnings allow a reliable estimate.

Within three to five years after entry, immigrant family earnings reach and pass those of the average native family, because of the variance in age composition of native and immigrant families. The average native family paid $3,008 in taxes in 1975. In comparison, immigrant families here 10 years paid $3,359, those here 11 to 15 years paid $3,564, and those here 16 to 25 years paid $3,592. Such substantial differences benefit natives.

Assuming 20 percent of taxes finance activities that are little affected by population size (for example, maintaining the armed forces and the Statue of Liberty), the data on services used and taxes paid, taken together, show substantial differences that benefit natives: an average of $1,354 yearly for years 1 to 5, and $1,329, $1,535 and $1,353 for years 6 to 10, 11 to 15, and 16 to 25 respectively. These are the amounts by which each additional immigrant family enriches U.S. public coffers. Evaluating the future stream of differences as one would a dam or harbor, the present value of an immigrant family discounted at 3 percent (inflation adjusted) was $20,600 in 1975 dollars, almost two years average earnings for a native family: at 6 percent the present value is $15,800, and $12,400 at 9 percent.

MYTH 4: IMMIGRANTS CAUSE NATIVES TO LOSE JOBS

The most politically powerful argument against admitting immigrants has been that they take jobs held by natives and thereby increase native unemployment. The logic is simple: If the number of jobs is fixed, and immigrants occupy some jobs, then there are fewer jobs available for natives.

In the immediate present, the demand for any particular sort of worker is indeed inflexible. And, therefore, additional immigrants in a given occupation, in theory, must have some negative impact on wages and/or employment among people in that occupation. For example, the large recent influx of foreign physicians means additional competition for U.S. physicians. There is good reason to believe that U.S. physicians will earn less because of immigrant physicians. Such negative effects upon particular occupations could be avoided only if immigrants were to come into all occupations in proportion to the size of those occupations. Workers whose occupations immigrants enter disproportionately can therefore be expected to complain.

Theory says that there must be some unemployment in some sectors. But theory does not say whether the effect will be huge or trivial. The effect is difficult to measure, because natives move away from areas with high unemployment to areas where it is lower, and immigrants move there, too, thereby obscuring the impact of immigration. Nevertheless, if immigrants were to cause large amounts of unemployment in particular industries, the phenomenon would surely be noticeable.

Even in the few sectors, such as the restaurant and hotel industries, where immigrants concentrate, there tends not to be a deleterious effect on natives because natives do not want these jobs. Evidence comes from experiments conducted by the Immigration and Naturalization Service together with San Diego County. In one case, 2,154 illegal aliens were removed from jobs, and the California State Human Resources Agency tried without success to fill the jobs with U.S. citizens. The County of San Diego Human Resources Agency reported:

"Some of the reasons for the failure were: (1) most employers paid less than the minimum wage rate, (2) the job categories were not appealing to the local resident (a matter of prestige), and (3) applicants were discouraged by not only the low wages but also the difficulty of some jobs, and the long hours demanded by the employers."[3]

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[1] Footnotes at end of article.

Research also does not show across-the-board unemployment caused by immigrants, either in the U.S. as a whole or in particular areas of relatively high immigration. Heretofore such studies have been rather casual. Therefore, research assistant Stephen Moore and the author recently mounted a systematic attempt to detect whether such immigrant-caused unemployment exists in significant amount. Still no such effect is observable. It seems fair to conclude therefore that, while in theory immigration ought to produce some unemployment in the short run, the amount is in fact negligible. And in the long run, when there is not even a theoretical reason to believe that immigration causes unemployment, there is no reason at all to think that it does.

One reason that unemployment is not caused is that potential immigrants have considerable awareness of labor-market conditions in the U.S. and tend not to come if there is little demand for their skills. Also, immigrants tend to be varied in their skills and therefore do not have a disproportionate impact on a few industries. At the same time—this point is crucial, but too little understood—immigrants increase demand for labor across the range of occupations, because immigrants consume goods as well as produce them.

Another reason, then, for the absence of unemployment caused by immigrants is that they not only take jobs, they make jobs. Immigrants not only create new jobs indirectly with their spending, they create new jobs directly with new businesses, which they are more likely than natives to start. A Canadian government survey, which should be similar to U.S. experience, finds that almost five percent of the 2,037 immigrants surveyed had started their own businesses within the first three years in Canada. Not only did they employ themselves, they employed others, "creating" a total of 606 jobs. Expressed as a proportion of the 2,037 total immigrants, roughly 30 percent as many jobs were created from scratch as total jobs were held by immigrants. Furthermore, these numbers rose rapidly after the three-year study period; after one year there were 71 self-employed immigrants creating 264 jobs, compared with the 91 and 606 respectively after three years.

The businesses immigrants start are small at first, but small businesses are the most important source of new jobs, according to a recent MIT study.

Historically, migrants have tended to enter in good times and leave during bad, thus buffering unemployment for citizens, another positive effect of immigrants upon the labor market. Furthermore, a much lower proportion of immigrants work for government than do natives (perhaps 8 percent compared to 16 percent). This indicates a relatively low burden on the government to help supply jobs even after they have been in the U.S. many years. This should have a beneficial effect upon overall native chances for employment. It also benefits natives because a disproportionately small number of immigrants are making use of public productive capital.

MYTH 5: IMMIGRANTS PUSH WAGES WAY DOWN

The impact of immigration is likely to be greater on wages than on unemployment rates, because potential immigrants with skills that are in low demand choose not to migrate, and those with saleable skills gravitate to industries where there are jobs. This will have some downward pressure on wages. For example, immigrant physicians are more likely to reduce a native physician's yearly income than to throw him or her out of work.

Economists Barton Smith and Robert Newman of the University of Houston found that adjusted wages are just 8 percent lower in the Texas border cities,[4] where the proportion of Mexicans is relatively high, compared to Texas cities away from the border where the proportion of Mexicans is much lower, a considerably smaller difference than they had expected to find. Much of the apparent difference is accounted for by a lower cost of living in the border cities.

MYTH 6: IMMIGRANTS ARE "HUDDLED MASSES"—UNEDUCATED, UNSKILLED, AND "TIRED"

The belief that immigrants arrive now, as they did in the past, with little or no education, few marketable skills, and in a generally tired and depressed condition is one of the most powerful, least accurate, and most persevering myths about immigration. This description is found in many books and articles including Oscar Handlin's famous, *The Uprooted.*[5]

The central fact about immigrants now, as throughout U.S. history and in almost all places at almost all times, is that immigrants are just entering into the prime of work life. This is the very best time to make a maximum contribution in all ways to the country receiving them. In contrast, the U.S. resident population is rapidly aging. But the immigrants are concentrated in their twenties and thirties, when they are flexible about job and geographical location, and therefore contribute importantly to the constant adjustment of the economy to changing conditions. They are of the age of greatest physical and mental vigor. And in this age bracket they contribute heavily to old-age support while requiring relatively little welfare service from the public coffers. See Table 1 for the age distributions of the U.S. public at large of and recent immigrants.

TABLE 1.—DISTRIBUTIONS BY AGE OF LEGAL IMMIGRANTS AND U.S. POPULATION

Age	U.S. population, 1970 [1]	Legal immigrants to United States, 1967-73 [2]
0 to 19	38.8	34.5
20 to 39	25.7	46.4
40 to 59	22.2	13.9
60 plus	14.2	4.3

[1] Department of Commerce, "Social Indicators" (Washington, D.C.: U.S. Government Printing Office, 1976), p. 32.

[2] Charles B. Keely and Ellen P. Kraly, "Recent Net Alien Immigration to the U.S.: Its Impact on Population Growth and Native Fertility," talk to the Population Association of America, 1978.

Even more surprising is that immigrants on average have as much education as do natives. Contemporary cohorts of immigrants include somewhat larger proportions of persons of low skill and low education than does the native labor force, but they contain a much larger proportion of those of high skill and high education—physicians, engineers, scientific researchers, and the like—then does the native population. And recent research by economist P.J. Hill of Montana State University and others shows that even before the turn of the century, cohorts of immigrants compared favorably with the native populations with respect to education and skill.[6] This makes sense. A person with little education and skill is not necessarily stupid, and understands that life without saleable human capital is particularly tough in a new and strange environment, and therefore that it is wiser to stay at home. On the other hand, it is sensible for a person with a good amount of saleable human capital to take the chance and immigrate, because such a person has a good chance to improve his or her lot by moving to a new and richer country.

Along with youth and skill, immigrants tend to bring an unusually high degree of self-reliance, initiative, and innovative flair. Again, it makes sense that it is such people, rather then the dull and frightened, who have the courage and the belief in themselves necessary to the commitment to the awesome change that international migration represents.

MYTH 7: IMMIGRANTS INCREASE PRESSURE UPON RESOURCES AND ENVIRONMENT

Still another unfounded charge is that immigrants create a squeeze in natural resources for natives. For example, Zero Population Growth's honorary president, Paul R. Ehrlich, talks about the effect of additional people on the "perilously shrinking water supply in this country. And our food supply. Think of the competition they'll cause for housing and jobs." The basis is the assertion that "The United States in less than 50 years will be more crowded, more polluted, more ecologically unstable, more prone to political unrest, more burdened with social stress, and far, far more precarious than we can possibly imagine." [7]

These predictions are without foundation. The water and food supplies consumed in the U.S. have been improving in past decades by every reasonable measure of quantity and purity, though this appears to be little known. The air, moreover, is becoming less polluted, according to the official Pollutant Standards Index prepared by the U.S. Environmental Protection Agency.[8] And over the long run, natural resources are becoming less scarce rather than more scarce, as indicated by the fundamental economic measure of cost.

But not all such propositions about the effects of immigrants upon resources can be rebutted so easily. For example, consider this statement in a 1981-1982 article called "Immigration and the American Conscience" by The Environmental Fund: "Had the United States stabilized its population in 1970, we could have the same level of energy consumption and standard of living as we do today without any Iranian oil or a single nuclear power plant." The statement probably is true. But even more probably, and much more important, the statement also is terribly misleading.

One important flaw in the statement is that the eleven years it encompasses is much too short a time for the most important effects of population change to have their effects. Babies take a quarter century to mature into producers of goods and ideas; even immigrants may require several years to reach their full productivity.

It takes even longer for a crucial historical cycle to take place: (a) an immigrant swelled population leads to greater use of natural resources; (b) prices of raw materials then rise; (c) the price rise and the resultant fear about scarcity impel individuals to seek new sources of raw materials, new production technologies, and new substitutes for the resource, and (d) eventually the price of the service provided by the resource in question—for example, the price of energy whether produced from wood, coal, oil, or nuclear power—falls lower than it was before the temporary scarcity began. This process takes time and is quite indirect. Yet it has been the mainspring of economic advance for 5,000 years. It is, however, obscured by the above quotation, which makes it seem as if the main effect of the additional people is bad. In fact, after a relatively short time, the main effect is that people are better off than if the whole cycle beginnning with more people had not taken place.

A stationary population in the long run would have a lower economic level than a growing population. Imagine the results 100 or 500 years later, or today, of stabilizing world population in 1000 B.C., 1 A.D., 1000 A.D., 1750 A.D., or 1900 A.D. A key characteristic of a high level of economic civilization is that it contains the capacity to resolve newly arising problems more quickly than did lower economic civilizations. For example, the incidence of famine has declined sharply in the past century because of modern roads and other transportation systems. Food scarcity as a result of rapid population growth took much longer to remedy in 1300 A.D. or 1600 A.D. than now, because of today's systematic ways of finding and applying new knowledge that will meliorate the scarcity.

Much of The Ultimate Resource shows that natural resources (including energy) are, with passing decades, less rather than more of a constraint to U.S. and world growth. To cite such "limits" in discussions of national policy is unsound geology and biology, incorrect history, and terrible economics. The progressive improvement that has occurred in the world's resource availability would not have taken place if population density had remained at the lower levels of earlier centuries and millennia.

MYTH 8: IMMIGRANTS CAUSE DIMINISHING RETURNS

The heart of the Malthusian objection to immigration is "capital dilution." This means that because of the theory of "diminishing returns" output per worker will fall. This argument is so marvelously simple, direct, and common-sensical that it has great seductive power, especially to academics. The Malthusian notion therefore is grist for any family newspaper. The arguments that demonstrate the inapplicability of Malthusian capital dilution in the context of immigration are relatively complex and indirect. As a consequence, editors who fear that such arguments will tax the attention and thought of their readers and listeners protect their audiences from such a terrible fate. And the field is therefore left to simple—though incorrect—Malthusianism.

Nowadays the most important capital is human capital—education and the skills that adults own and carry with them—rather than the "capitalist" supplying all the capital. Still, there is some harm to natives caused by the presence of more workers but the same capital.

If the private sector of the economy were like the government sector—where workers' pay is assumed equal to the full value of what they produce, with nothing left for the owner of the capital—then capital dilution would indeed lower average native income. But in the private sector, additional workers imply higher earnings for owners about equal to the loss of earnings by other workers. This trade-off leaves overall native per capita income roughly unchanged.

Yet "workers" suffer as "capitalists" gain. That is, to the extent that the classes are separate, there is a transfer from workers' pockets to owners' pockets. But in fact much of America's private captial is owned directly by "workers" through pension funds and by way of the taxes paid on interest and dividends. Hence the loss to the "worker" class is unclear.

As to special groups of workers, especially low-income earners, the negative effect is probably less than commonly thought and may be nonexistent. Because legal immigrants arrive with considerable education and skills and enter a wide variety of occupations, they hurt no occupation or income level much, even in the short run. (And to repeat, in the long run, occupations on average benefit from additional jobs created by the purchases made by immigrants to about the same extent that immigrants take existing jobs within the occupations. In short, immigrants make jobs as well as take jobs.)

Regarding the public capital used by immigrants, there should be concern about the additional capital outlays needed to equip immigrants—the extra schoolrooms, hospital beds, firehouses, and the like. Not relevant is the use of public goods not affecting natives' use or pocketbooks—looking at the Washington Monument or riding on a lightly used interstate highway. And to a considerable extent, the U.S. is on a pay-as-you-go basis with respect to capital expenditures: The debt service on past public borrowings covers much of the outlay on new capital. Therefore, through their taxes, immigrants pay "rent" on public facilities. This is an important additional reason why Malthusian capital dilution is not a crucial problem.

MYTH 9: THE U.S. IS FLOODED BY MEXICAN ILLEGALS

The number of aliens illegally residing and working in the United States is an issue that enters into the discussion of immigration in many ways. It is the main focus of the writings of those who oppose immigration, and it is used to generate strong feelings on the grounds that it causes a breakdown in the law and order of the country and corrupts attitudes toward the law. The issue also is used to suggest that the United States is rendered vulnerable to invasion or other unnamed dangers because it has "lost control of its borders." The Federation for American Immigration Reform (FAIR) and The Environmental Fund (TEF), the two organizations most active in fighting against immigration, dwell upon the word "control." This plays upon a fear of chaos and social breakdown. And the supposed large-scale loss of jobs by natives due to illegals is a major objection to immigration generally, including that by labor unions.

Are such arguments justified by the data? Clearly not. The evidence for the largest and most frightening estimates of illegals is flimsy or nonexistent. In general there is a strong negative relationship between the quality of the research and the size of the estimate.

The Immigration and Naturalization Service frightened many with its 1970's estimates that there were 4 to 12 million illegals in the U.S. But a study by the Bureau of the Census staff at the request of the Select Commission on Immigration and Refugee Policy[9] noted that this estimate was based on nothing more than an impression derived from the data on the number of apprehensions of illegals either crossing the border or on the job. The INS gave no evidence in support of its estimate. And apprehension records are obviously a fallacious basis for any such estimate. For example, the same person might be apprehended several times during a single week.

Later the INS shifted its estimate to 8.2 million persons, as of mid-1975, deriving the figure from a Lesko Associates study it commissioned.[10] The basis for the estimate was the "Delphi technique." This technique may be appropriate for such tasks as forecasting technological developments. But it is an absolutely unreliable and inappropriate estimation method for a subject such as the number of illegals in the U.S. Even Lesko called the estimate "not analytically defensible."[11] Yet for a long time these figures were the basis for much of the political debate on the subject.

The INS then offered an estimate of 6 million illegals as of 1976. This was derived by asking INS District Directors to estimate the number of illegals residing in their districts. According to the Bureau of the Census description:

"The district officers were asked to provide, in addition to estimates of illegals for their districts, a description of the methodology used to generate the estimates. None gave specific procedures. Rather, all but one referred to the 'experience' of officials as the basis for the estimate; the other claimed no 'scientific' basis at all for his estimate. Thus, the overall estimate may be characterized as 'synthetic speculation.'"[12]

Ingenious statisticians have recently tackled the problem in a variety of interesting ways, including analysis of alien deaths in the United States,[13] changes in Mexico's population,[14] * * *.

FOOTNOTES

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[1] Julian Simon, "Immigrants, Taxes, and Welfare in the U.S.," forthcoming in *Population and Development Review*. The following information is an analysis in this article of the Census Bureau survey described in Myth No. 1.

[2] David S. North and Marian F. Houston, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study* (Washington: Linton and Company, March 1976).

[3] M. Vic. Villalpondo, *et al.*, "A Study of the Socio-Economic Impact of Illegal Aliens, County of San Diego" (San Diego: Human Resources Agency, January 1977).

[4] Barton Smith and Robert Newman, "Depressed Wages Along the U.S.-Mexican Border: An Empirical Analysis," *Economic Inquiry*, January 1977, pp. 56-66.

[5] Oscar Handlin, *The Uprooted* (New York: Grosset and Dunlap, 1951).

[6] Peter J. Hill, "Relative Skill and Income Levels of Native and Foreign-Born Workers in the United States," *Explorations in Economic History*, 12, 1975, pp. 47-60.

[7] Paul R. Ehrlich in a fund-raising letter for Zero Population Growth, no date.

[8] For a discussion of these EPA findings, see Julian Simon, *The Ultimate Resource* (Princeton, N.J.: Princeton University Press, 1981).

[9] Jacob S. Siegal, Jeffrey S. Passel, and J. Gregory Robinson, "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," in *U.S. Immigration Policy and the National Interest*, Appendix E to the Staff Report of the Select Commission on Immigration and Refugee Policy Papers on Illegal Migration to the United States, April 1981.

[10] Lesko Associates, 1975. *Final Report: Basic Data and Guidance Required to Implement a Major Illegal Alien Study During Fiscal Year 1976*, prepared for Office of Planning and Evaluation, U.S. Immigration and Naturalization Service, Washington, D.C., October 1975.

[11] *Ibid.*

[12] Siegal, *et al.*, *op. cit.*, p. 17.

[13] J. Gregory Robinson, "Estimating the Approximate Size of the Illegal Alien Population in the United States by the Comparative Trend Analysis of Age-Specific Death Rates," unpublished paper presented at the annual meeting of the Population Association of America, Philadelphia, Pennsylvania, April 26-28, 1979.

[14] Howard Goldberg, "Estimates of Emigration from Mexico and Illegal Entry Into the United States, 1960-1970, by the Residual Method," unpublished graduate research paper, Center for Popula-

tion Research, Georgetown University, Washington, D.C. 1974.

CONGRESSIONAL HISPANIC CAUCUS,
Washington, DC, June 5, 1984.

MEMORANDUM

Re Immigration analysis—immigrants are a drain on the economy.
To: Members of the CHC.
From: CHC staff.

The following is excerpted from an article by James Fallows that appeared in the November 1983 issue of Atlantic Monthly entitled, "Immigration, How It's Affecting Us."

During the 1970s, when Southern California received more immigrants than any other part of the country, it also created jobs faster than any other, and its per capita income increased by 25 percent, also higher than the norm. Immigration was far from the only factor in these increases, the study reported; but, it said, the findings suggest, "at least at the aggregate level, that large-scale immigration did not depress, and per capita income in the state"-that is, it did not divide the pie. On balance, the study said, the economic benefits to the region-results of the new human energy, the entrepreneurship, the adaptability-outweighed the costs, which primarily came from the immigrants' use of public services, such as hospitals and schools.

Although immigration is a divisive issue in Miami, almost no one disputes the economic bonus the Cuban community now represents. The first to flee Castro were mainly professionals and businessmen, who soon repeated their success here. The second and third waves were less select, more like America's other immigrants; the first-wave Cuban grumbled that those who had lived under communism had lost their drive. Still, they were absorbed into Little Havana, where they opened shops and restaurants and kept the town alive.

ENVIRONMENTAL POLICY INSTITUTE,
Washington, DC, June 20, 1984.

Re Simpson-Mazzoli bill.

DEAR HOUSE MEMBER: I am writing to urge you to vote NO on final passage of the Simpson-Mazzoli immigration bill because it does not reflect sound environmental or population policy as amended. Population stabilization is a critical environmental goal, both domestically and globally. In the United States, an effective and fair immigration policy is an essential ingredient. But the version of the Simpson-Mazzoli bill the House is now debating has lost even the potential to bring about such a goal, and in fact works against it. We feel that Members who favored the bill because they believed it to be correct environmentally should now oppose it.

With the adoption last week of the Panetta "guest worker" amendment, the legislation lost all credibility from the environmental perspective. At the very heart of the push for this legislation was the desire to establish limits. This amendment actually removes them, turning what was designed to be an immigration control measure into little more than an agri-business bail-out bill. There is no cap on overall legal immigration, and we do not believe the enforcement provisions will work effectively to deter illegal immigration. But we do believe the measure poses serious threats to civil liberties and human rights, about which we are deeply concerned. There is no trade-off for other environmental or human values here. Certain ethnic groups would bear a burden of discrimination without any countervailing benefits. The trade-off for sanctions and the guest worker provision was supposed to have been the legalization program in the Committee-passed bill. But that provision is highly controversial, and amendments which weaken it significantly have already been adopted.

In short, there is no longer any environmentally or ethically sound reason to vote yes on final passage of this bill—even if SOME version of legalization is adopted, and whatever the Conference MAY do notwithstanding. I hope you will join us in opposing it and vote NO.

Thank you.

Sincerely,

LOUISE C. DUNLAP,
President.

[From the Wall Street Journal, Feb. 26, 1981]

ADDING UP THE COSTS OF OUR NEW IMMIGRANT

(By Julian L. Simon)

Shocking recent news stories and photographs of newly arrived refugee Cubans, Haitians and Vietnamese have worried many Americans about the effect on our economy. Evidence about the effect of immigrants on the standard of living of native Americans, therefore, is crucial—and surprising in what it reveals.

In 1976 the Census Bureau surveyed 156,000 households (including about 15,000 mostly legal immigrant families) to learn about 1975 family income and welfare services. From this sample I constructed a picture of lifetime economic behavior by assuming that the information on immigrants who had been here, say, two years as of 1975 describes the representative immigrant family after two years, those here 10 years in 1975 stand for the tenth year in the U.S. of a representative family, and so on.

The services that most often catch the public eye are welfare and supplemental security, unemployment compensation, aid to dependent children and food stamps. The average native-born U.S. family received $498 from these programs in 1975 (calculations include families getting no assistance). The average for immigrant families that arrived between 1950 and 1974 was $548. Not much difference.

Retirement programs bulk larger. Native U.S. families received on average $735 for Social Security, $167 for Medicare and $20 for Medicaid, a total of $922. Immigrant families received a total of $92 during the first five years, in the U.S., $227 the second five years, $435 the third five years and $520 the fourth and fifth five-year periods. The difference in favor of natives is large. The reason immigrants get less Social Security and Medicare is simply because of their age. Coming to the U.S., they tend to be young and strong, as always with immigrants.

COST OF SCHOOLING

Providing school for immigrant children during a family's first five years costs slightly less than the $859 for the average native family, because immigrants come before family completion. After that, expenditures on immigrants are higher, rising from $1,068 to $1,237 during the next 15 years. (The difference is not because immigrants have many children, but because the average native family is older, with many children no longer in school.)

By summing the figures we find that the average immigrant family receives $1,404 in welfare services in years 1-5, $1,941 in years 6-10, $2,247 in years 1-15, and $2,279 in years 16-25. Natives average $2,279, considerably more than the immigrants get during their early years in the U.S. These early years are more relevant because rational policy decisions weigh the distant future less heavily than the near future.

But what about Social Security when immigrants age? The answer depends not on entitlements or legal obligations, but on the flow of real resources from workers to retirees. The children of retired immigrants support them with their taxes, just as with natives.

If immigrants paid relatively little in taxes they might still burden natives, even with less welfare services for immigrants than for natives. We lack direct information on taxes paid, but from data on family earnings we can estimate tolerably.

Within three to five years after entry, immigrant family earnings reach and pass those of the average native family, due to the age compositions of native and immigrant families. The average native family paid $3,008 in taxes in 1975. In comparison, immigrant families here 10 years paid $3,359, those here 11 to 15 years paid $3,564, and those here 16 to 25 years paid $3,592, substantial differences benefiting natives.

Assuming 20 percent of taxes finance activities that are little affected by population size (for example, maintaining the armed forces and Statue of Liberty), consolidating the data on services used and taxes paid shows substantial differences in favor of natives: an average of $1,345 yearly for the years 1-5, and $1,329, $1,535 and $1,353 for years 6-10, 11-15 and 16-25 respectively. These are the amounts that each year natives are enriched through the public coffers for each additional immigrant family. Evaluating the future stream of differences as one would a dam or harbor, the present value of an immigrant family discounted at 3 percent (inflation adjusted) was $20,600 in 1975 dollars, almost two years' average earnings for a native family at 6 percent the present value is $15,800, and $12,400 at 9 percent.

Immigrants affect the standard of living of natives through other channels too, and not all immigrant groups are alike. For example, the federal government pays $1,000 per person to resettlement organizations to cover overhead and start-up money for Vietnamese, Russian and other refugees. This plus such costs as special refugee schooling should be deducted from the above present-value calculation for the average immigrant family. But it isn't likely that these deductions would make the calculation negative.

For illegals such as the Mexicans who cross into the U.S., the adjustment goes the other way, because illegals get little in welfare services due to their status. Department of Labor researchers David North and Marion Houstoun found the following proportions of illegals using services: Free medical, 5 percent; unemployment insurance, 4 percent; food stamps, 1 percent; welfare payments, 1 percent; child schooling, 4 percent. Practically no illegals receive Social Security, the costliest service of all, but 77 percent of illegal workers paid Social Security taxes and 73 percent had federal income tax withheld.

Immigrants can harm natives through capital dilution, that is, Malthusian diminishing returns caused by the presence of more workers but the same capital. If the private sector were like the government sector—where workers' pay is assumed equal to the full value of what they produce, with nothing left for the owner of the capital—

then capital dilution would indeed lower average native income. But in the private sector additional workers imply higher earnings by owners about equal to the loss of earnings by other workers, a tradeoff leaving native per-capita income unchanged.

Yet "workers" suffer as "capitalists" gain. That is, to the extent that the classes are separate, there is a transfer from workers' pockets to owners' pockets. But in fact much of our private capital is owned indirectly by "workers" through pension funds, and by way of the taxes paid on interest and dividends. Hence the loss to the "worker" class is unclear.

As to special groups of workers, especially low-income earners, the negative effect is probably less than commonly thought and may be non-existent. Nowadays legal immigrants arrive with considerable education and skills, and they enter a wide variety of occupations, hurting no occupation or income level much, even in the short run. (In the longer run, occupations on average benefit from additional jobs created by the purchases made by immigrants to about the same extent that immigrants take existing jobs within the occupations. In short, immigrants make jobs as well as take jobs.)

Mr. McCOLLUM. Mr. Chairman, this gentleman would inquire as to the remaining time.

The CHAIRMAN. The gentleman from Florida [Mr. McCollum] has 20½ minutes remaining and the gentleman from Kentucky [Mr. Mazzoli] has 28 minutes remaining.

Mr. McCOLLUM. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Sam B. Hall, Jr.].

Mr. SAM B. HALL, JR. I thank the chairman.

Mr. Chairman, I rise in support of the amendment of the gentleman from Florida [Mr. McCollum].

I imagine people are getting tired of this bill; I know I am. Everybody has talked on it too long. We have been talking about it for years. We started off trying to curtail people coming into this country illegally. That is the idea behind the bill primarily.

That was going to be accomplished through employer sanctions. Well, that part of it is behind us.

The purpose there is to stop the magnet, the draw of people coming here to take jobs.

Then in the middle of the bill we had a guest worker program that allowed people—and I voted for it, because I thought it had to be done—to allow people to come in under certain circumstances to work, where certain employers could not find people to work for them.

Now we come to the last issue, more or less, in this bill, and that is to allow people, and I do not think we can emphasize this too much, to allow people who are here illegally to be granted amnesty.

☐ 1340

Now, let us stop and think about that just a moment. I am on this subcommittee that has been working with this bill and I cannot say enough for my friend, Ron Mazzoli, who is the author of this bill, from Kentucky. He is an outstanding legislator. He has worked diligently and he and I just happen to have a little different opinion on this particular issue. But I cannot say enough for him. He knows I feel that way about him.

But here we are, along with other Members who are taking an active interest here today, and we are passing on the applications of people who are trying to come into this country legally every time our committee meets. Here are people who have been trying for years to come over here and come here rightfully the way people came here from Ellis Island. I do not think anybody came here illegally at that time. And I have heard that used some during this debate. They went through a process, a legal process, before they became citizens of this great Nation of ours. I think that is right.

If we say to so many million people, and no one knows exactly how many, the mere fact that you are here and the mere fact that we do not know what to do with you but to state that we are going to run you ahead of all the people who are trying to come here legally and rightfully, in my way of thinking is a bad postion to get ourselves into.

Now what do we think we are going to accomplish by this? I think all of the evidence shows that since this bill has gotten to the point that it is that there has been a larger crossing of people from Mexico than there ever has been in history. They know more about what is in this bill than many of us do. I do not blame a single one of those good people for trying to come into this country. If I lived in Mexico I would want to come over here too. But that does not get us away from the proposition that they are here on an illegal basis.

Now if we grant the relief that this bill calls for, does anyone within the sound of my voice think that we are not going to be doing the same thing over again within a period of less than 5 years? We know, if we are truthful with ourselves, that we are going to be going through this same charade within a period of 5 years.

Now the Attorney General of the United States has the power and all he has to do is utilize it and use it to start granting some relief to people who have been here not less than 7 years, if they meet certain qualifications. What is wrong with that? Why should a person not, who is coming here, be required to meet some kind of requirement. That is what the Attorney General is here for. He has the right, he has the duty, he has the responsibility to do it.

Now you might say well, he cannot do it overnight. No he cannot do it overnight. These 10 million people did not come here overnight either.

I think that we are down to the point in this bill and I hear Members say, if you vote this out, I am going to vote against the bill. I think that is a bad position to take.

I urge the approval of this amendment.

Mr. MAZZOLI. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. Roybal].

Mr. ROYBAL. Mr. Chairman, I rise in oppostion to the amendment. I fully agree that the legalization is the other lobe of the heart of Simpson-Mazzoli. In spite of the fact that this bill in its present form is contradictory and is still far from immigration reform, I believe that legalization is the only positive measure in the bill. Without it, the only things left are legalized exploitation and the protection of special interests under the H-2 Program.

Legalization will make Simpson-Mazzoli more respectable as it will legalize thousands of undocumented. That is, of course, if they happen to qualify under the restrictions that have already been imposed by this House. The people who will be legalized are people who have come from all over the world, from Europe, from Asia, from Canada, from Latin America, almost on an equal basis. But if they qualify they will be legalized.

I urge my colleagues to vote against this amendment that is now before the House.

Mr. MAZZOLI. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. Torres].

Mr. TORRES. Mr. Chairman, I rise to oppose the gentleman from Florida and his amendment to strike amnesty from this bill.

Moreover, I rise to refute his arguments that we as a nation would not deport the millions who would stay here. History is replete with the incidence of mass deportations when and where the INS or when the mood of this Nation so dictates.

I commend the gentleman from California [Mr. Dellums], my colleague, for providing a historical perspective of the Southwest in describing the settlement by peoples indigenous to the land, Indians, and Spaniards. The subsequent colonization by Mexico. I am a byproduct of that cultural heritage and perhaps that is one of the reasons we often stand up to decry what we see as an injustice, but by the same token I am an American. We crossed no ocean to get here, only a river. My father and his father crossed that river. They came to work because there was a demand for their labor.

My father came back and forth as a laborer working the arduous and dangerous work of the copper mines in Arizona. He and others enriched the coffers of Anaconda Copper and the Arizona Mining Co. His labor added to the productivity of this Nation. He paid taxes and raised a family. Until, until, a depression hit this Nation.

Then as today the hue and cry was that the foreigners are taking American jobs. So they rounded them up like they do today and they deported him back across that invisible border. I cite the words of Woody Guthrie, which is appropriate at this time in history:

My father's own father he waded that river;
They took all the money he made in his life;
My brothers and sisters come working the fruit trees
And they rode the truck till they took down and died.
Some of us are illegal and some are not wanted,
Our work contract's out and we have to move on;
Six hundred miles to that Mexico border,
They chase us like outlaws, like rustlers, like thieves.
We died in your hills, we died in your deserts,
We died in your valleys and died in your plains;
We died neath your trees and we died in your bushes,
Both sides of this river we died just the same.

REFRAIN

Goodbye to my Juan, Goodbye Rosalita;
Adios muy amigo, Jesus and Marie,
You won't have a [illegible] when you ride the big airplane
All they will call you will be deportees.

My mother left with my brother and I, my grandmother, wandered throughout the Arizona countryside, Bisbee, Globe, Miami, Inspiration, looking for work.

Finally, thank God for the WPA, we moved to California.

The great Second World War was upon us and my father did come back as a field hand, not as a lawbreaker, because his labor was in demand. He joined the U.S. Army and he served with valor and distinction and because of that he was given amnesty.

What is amnesty? Simply, where a government pardons a person or a group of people for something they are not responsible for.

Had there been amnesty in 1933 think of the anguish and the hurt that we could have prevented. Think of the breakup of families that was not necessary. I am a son of a deportee and I empathize with those who are here, who have been here and been productive and paid taxes and raised families and given sons and daughters in the cause of protecting this Nation. They need legalization now which is, just and fair.

I dreamed some day that I might stand in the well of this great House and appeal to my colleagues to reject this kind of amendment, as I do so now.

Mr. McCOLLUM. Mr. Chairman, I yield 1 minute to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Florida to strike amnesty from this immigration-reform legislation.

Although I recognize the delicate political balance which has so characterized the development of this badly needed reform effort, I cannot support a provision which, on the one hand, grants citizenship to those who have willfully broken the law, and, on the other hand, slaps the faces of those who have waited patiently, and oftentimes under extremely difficult circumstances, to gain legal entry into this great Nation.

In addition, I am deeply concerned that amnesty will send a clear message to millions of immigrants that the United States is not serious about enforcing its immigration policies, thereby encouraging others to enter illegally. Furthermore, there is the potential for an enormous and undeterminable amount of taxpayer expense which may be borne at every level of government as a result of legalization.

It is my understanding from one estimate made by the National Association of Counties that the first-year cost of an amnesty to State and local governments alone would be $547 million. Last year, using the qualifying date of January 1, 1980, the Congressional Budget Office estimated the first years of an amnesty would cost the Federal Government $5.6 billion.

Although this amendment would delete amnesty from the bill, a vote in support of the amendment is still a vote in support of legalization. This is because section 302 of the bill extending case-by-case eligibility—registry—for permanent-resident status to any illegal able to prove residence in this country prior to 1973 would be left undisturbed.

I feel registry should be recognized as the better alternative to amnesty. Registry would legalize only people who have not committed a serious violation of U.S. laws and who have long-established ties to this country. Procedures and regulations governing the registry process are already in place. Registry is the traditional, generous, and proven method the United States has in dealing with the legalization problem. It should be the method adopted today.

□ 1350

Mr. MAZZOLI. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Chairman, I guess this is the last major hurdle before we get on to the business of voting for final passage of the Immigration Reform Act.

I would just like to take a second and say to my colleague from Kentucky and my colleague from California, that I guess the greatest part of this Congress is that, while we have moments of disagreement, the most important part is that our voices are heard, whether we are for or against. And so in that light, I would say to my colleagues, Mr. LUNGREN and Mr. MAZZOLI, that it has been a long 7 days, but we will be voting on final passage very shortly.

I think I could not have summed it up better than did my colleague from California, a Member of the U.S. Congress, who stood in this well and spoke dramatically about his family and his life. He was able to point out to so many of my colleageus the hurt and pain that many of them have never experienced.

My parents were born U.S. citizens, as was I; yet, I understand what it is to not be able to go from one street to another because I am a Puerto Rican. I understand what it is to be asked to leave a playing field because I am an Hispanic; many of my colleagues have never felt that, and thank God that you haven't. But for those of us who have understood it and have felt it, I believe it gives us even more strength and understanding to talk about discrimination and the pain it causes. The spirit is hurt profoundly. What we are trying to do is to take the 1, or 2, or 3 million, or whatever the amount, of undocumented persons and allow them to walk in the sunlight, to give them a chance to come forward, to say to each and every one of them, "Yes, you now have an opportunity, like our parents, like our grandparents." There will be many who will come forward and take advantage of the opportunity. But do you know something? Home always calls. Many of these people will eventually go back to settle, to retire in their own countries—they're no different than many of us.

So I say to all my colleagues, vote against the McCollum amendment, give people the right to a little dignity, give them the right to come out of the shadows, give them the opportunity to enjoy what we have enjoyed all our lives.

The McCollum amendment is a step back. The McCollum amendment represents all that we have been fighting against for many years.

So on bahalf of those many people who do not have a voice, who do not have a Representative here, I ask you to vote for them and to vote against the McCollum amendment.

Mr. KEMP. Mr. Chairman, will the gentleman yield?

Mr. GARCIA. I yield to the gentleman from New York.

Mr. KEMP. I have been watching the gentleman from New York, my colleague and friend Mr. GARCIA, today and over the past few days, and I just want to say that I think that this is his finest hour. He has handled himself throughout this debate with great dignity and compassion and as he has spoken from his perspective, he has helped give us a view of this country that makes me proud.

This bill has been debated long and hard, and we have people on both sides of the many issues and numerous amendments. But the gentleman from New York reminds us that we really are one country, one family, that we do have a stake in each other's welfare, and certainly the gentleman has raised the consciousness of this body as probably few have done to the recongnition that the people who have come to this country, including those from Europe, and Asia, and Africa, or Latin America and the Caribbean are as good Americans as there are, and that they have contributed greatly to the wealth and potential of this Nation and I just want to say to him how much I appreciate his efforts and his consideration and his eloquence on what it means to be an American. We must be sensitive to the issues he has raised and to share his concerns and plan to vote against the bill

There are some components of this legislation that I support. I support the legalization of those undocumented workers who have been in this country since 1982 and who are making an attempt to lead their lives as Americans, making significant contributions to our Nation and enriching our national culture and heritage in so many ways. I particularly support the inclusion of Cuban and Haitian refugees in this provision; refugees who fled to our shores seeking shelter from repression and misery and who now, under the legalization measures adopted in this bill, will become permanent resident aliens in the United states.

But the notion of sanctioning employers who have hired aliens is one that I find very troubling, not only because of its imposition of wide-ranging enforcement responsibilities on every employer in this country—the overwhelming majority of whom are not breaking any law, but more importantly because it assumes the mentality that one person's prosperity, in this case the illegal immigrant's, is only won at the expense of another.

This myth is a dangerous one, not only as it relates to the issue of immigration reform, but in its effect on the wider questions of global poverty and prosperity.

Immigrants don't take jobs and wealth away from Americans. Immigrants create jobs and wealth, as consumers of American goods and services and entrepreneurs beginning small businesses, which are the major source of new jobs for all Americans. Immigration is not a zero-sum proposition. Studies show that immigrants to this country, whether they are legal or illegal, are educated and self-reliant people who are far from a drain on our economy or our social services. The illegal immigrant rarely takes advantage of any social service because of the fear of detection, although they pay Federal income taxes and Social Security taxes. Legal immigrant families, far from being welfare burdens, out earn native families within 5 years.

The notion that illegal aliens are a drain on the American economy ignores the very reason why they are immigrants. These people have fled their homes, leaving behind their own cherished families and communities, because the policies of the nations of their birth have not been directed toward growth, job creation and prosperity. People do not flee prosperity and freedom, they flee poverty, oppression and tyranny.

The single greatest effort which the United States can make to curb illegal immigration is to export the American idea of individual initiative and economic prosperity. If the economy of Mexico had been growing over the past 2 years at the same rate as our own there would be little movement across the border. If instead of following the austerity programs of the IMF to actually shrink the Mexican economy by 3.5 percent the Government had encouraged investment and the free flow of capital, Mexico would be retaining its own people as well as absorbing some of those from elsewhere in Central America. The same argument holds throughout this hemisphere and throughout the world.

Many people in this body and around the country feel an overwhelming need to do something about immigration. I agree in part that our current immigration law needs reform. It is complicated, and has not been amended since the major problems began. It was designed for simpler days with the compassion and freedom in mind that underlies American values. But, the changes which should be made should expand these values not become a basis for repression of those who cherish freedom and a brighter future for their children. With hundreds of thousands of people fleeing their homelands each year, running from oppressive governments and searching for human rights, I think that to find these people on our doorstep is the greatest of compliments, not a burden to rid ourselves of, and we should be proud of our country as our friend from New York has reminded us.

Mr. GARCIA. I thank the gentleman for his comments.

Mr. McCOLLUM. Mr. Chairman, I yield 3 minutes to the gentleman from New Mexico [Mr. LUJAN].

Mr. LUJAN. Mr. Chairman, I rise in support of the McCollum amendment. The amnesty provisions of this bill are really unfair to those law-abiding people who have waited patiently for legal entrance into the United States. Many thousands of people have waited their turn in line to enter this country and because they are law abiding, we say to them—wait longer. On the other hand, if someone came illegally, we say well done, we will reward you and make you legal.

Mr. Chairman, by striking the amnesty provisions, we would be left with an updated registry date, which would allow the Attorney General to grant permanent residency on a case-by-case basis to illegal immigrants who have been in this country prior to January 1, 1973, who are of good moral character, and who have not committed any serious violations of U.S. law. The registry process is already in place. We would not have to implement a new process which everyone admits will bog down.

Mr. Chairman, the Simpson-Mazzoli bill as a whole is headed in the wrong direction. With deference to those who have worked for a long time to craft a bill they believe is fair and equitable, in my opinion, it is not. The following letter that I received from one of my constituents, illustrates, in part, why. My constituent, Yolanda Apodaca from Albuquerque, wrote:

> On September 4, 1983, our family was traveling by car to Silver City, New Mexico. We were stopped at a road block on Interstate 10 and we were asked to declare our citizenship. Not having done anything wrong, we were momentarily stunned.
>
> When we regained our senses, the border patrol officer still stood there waiting for our responses. My husband answered tersely, "American citizen." The officer then stared at me and waited for my response and he proceeded to do the same with my husband's parents. We drove away in silence, angry, indignant, and humiliated.

I hope my fellow Members can appreciate her feeling. She told me: "We did nothing. We were treated this way because of our appearance."

It is toward this type of situation that I believe this bill is directing us. And I don't think it's difficult to imagine what a tragic effect this bill has the potential of creating and imposing on many citizens of the United States.

□ 1400

Mr. MAZZOLI. Mr. Chairman, with great pleasure, I would delight in yielding 5 minutes to my friend and colleague, the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Chairman, as everyone knows, as we are debating this bill, we have an ongoing renovation of the Statue of Liberty. It sits on the east coast calling to those huddled masses from other shores to come here to try to find if they can make it in this world. Even though the real action on immigration has changed from the east coast to the Southwest border from some years, the fact of the matter is, I do think that we still agree with the words that are on the Statue of Liberty: "Give me your tired, your poor, your huddled masses yearning to breathe free."

The fact here is as we reconstruct or reinforce the State of Liberty in New York, we are about the business of reconstructing or reinforcing our legal immigration system here. Many of us came to this task with preconceived notions that any thought of some sort of legalization program could not be accepted because in some way we would reward those who had violated the law. I certainly was one of those.

Looking at this for 6 years, I have come to another conclusion, and that is that legalization is absolutely necessary for the large majority of those people who are here illegally, from a couple of standpoints. One is just practical, and that is this Congress will not permit that which would be required in order to round up all these people and send them home.

Sure we say that some would go back home over the years, and of course some would voluntarily, but we would still have the large underclass in the United States living in the shadows of our society and outside the scope of our laws. That is something that we cannot deny and that we must address.

From a moral standpoint, it seems to me, we have to recognize that we have not enforced the law. This Congress has not enforced the law. Prior administrations have not enforced the law; not because they intended not to enforce the law, but because they never did that which was necessary. We in effect said, do not dare cross this border, it is in violation of the law, and then we winked at these hundreds of thousands if not millions of people who came here. In fact, in some ways, it satisfied our labor needs. As a result, we have allowed to grow up here, a large underclass of people who in many ways act as citizens but do not have the protection of the law.

The American people recognize that. The Field Foundation poll taken in California in the summer of 1982 showed that the vast majority of the people polled want us to enforce our laws and deport those who are here illegally. But then they immediately say when asked the question: "If these people have been here 5 years or more should we legalize them?" an even greater percentage in all categories, say yes.

Some call that schizophrenia; I would say it is just a rational, commonsense approach that the American people find to be appropriate under the circumstances. In most cases, Members here come before our subcommittee and ask for our indulgence to support a private bill. We had over 180 Members in the last Congress who had private bills. We had far more than that in the previous years, because they did not realize how tough our subcommittee was going to be.

I tell my colleagues: Every single private bill you have introduced is a limited amnesty, is a limited legalization for one individual. What we are saying is is that the problem is so vast we must deal with it in a single decision.

Most of the American people know illegal aliens as someone who may work for them; may work in their home, may work in their business. More likely they go to church with them. They live down the street from them. Their child knows them in some sort of other setting, and they know that most of them are good, decent people who have come here to work and who have assisted in our society.

So I would say and I would especially plead with Members on the Republican side of the aisle: Look past the initial reaction you have against this type of legalization because you fear it is blanket amnesty. I do not think we have blanket amnesty in this bill. I would have preferred my version, but I think what we have in the bill is preferable to the amendment of the gentleman from Florida.

Let me just end by citing an editorial that appeared on June 9 of this year in the San Diego Tribune. That is a newspaper which is known for its conservative stance, and it talks to those people right on the most heavily traveled border in the world. This is what they said:

> Employer sanctions and amnesty are the two key provisions of the Simpson-Mazzoli bill. Without them, you do not have immigration reform, you have a travesty. Amnesty without sanctions would flash a green light to exploiters to keep hiring and illegal aliens to keep coming. Sanctions without amnesty would flash a red light of vindictiveness, leaving millions of people in a netherland of illegality.

I do not suggest that the gentleman from Florida intends that. I have worked very closely with him on all sorts of issues in the area of refugees and immigration. But I do believe we will make a major mistake if we eliminate legalization from this bill.

Mr. MAZZOLI. Mr. Chairman, I had just yielded to the gentleman from California. May I inquire of the Chair how much time I have remaining?

The CHAIRMAN. The gentleman from Kentucky [Mr. MAZZOLI] has 13 minutes remaining, and the gentleman from Florida [Mr. McCOLLUM] has 11½ minutes remaining.

Mr. MAZZOLI. Mr. Chairman, the gentleman from Kentucky is down to two speakers, the majority leader and himself.

Mr. McCOLLUM. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. SHAW].

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman.

Mr. ROTH. I thank the gentleman for yielding. With every law this House passes it also endorses some policy. That is why this amendment is so necessary.

To endorse blanket legalization—amnesty—for millions of illegal aliens in this country would be unfair to the American citizen and to those people who have waited patiently—endlessly—to legally immigrate to the United States.

I do not want our future legislative efforts to be jeopardized by granting blanket provisions that in the long run will weaken respect for and obedience to the laws of this country. The fact is that there are workable alternatives to blanket legalization which this body can adopt which will not weaken respect for our laws.

I share the concern that legalization will act as a sign to attract many, many more illegal aliens to our land. How unfortunate it would be if a well intentioned amnesty provision encouraged aliens with the idea that they could fool the authorities about the length of their stay. As the bill now stands there is no realistic way to confirm the exact length of stay. The purpose of this bill is to gain control over a problem that has grown at a tragic, exponential rate. We should adopt measures that will once and for all put our legalization process on the proper path.

I also support this amendment for the simple reason that it would be unfair to those who have legally abided by the law. There are many who have been waiting years to come to this country. They have conscientiously respected our laws, many times undergoing great hardship.

Fortunately we already have a mechanism in place to provide a more realistic and affordable solution to the problem of those aliens who are already here and are recognized as productive and desirable additions to our population. These individuals are well on their way to becoming citizens of our Nation. The McCollum amendment will permit us to utilize that mechanism.

I am concerned about the indeterminable amount of taxpayer expense which may be borne at every level of government as a result of legalization. I have not seen many figures that realistically evaluate the impact of legalization on our taxpayers. Is it wise to entertain such an idea when we have not fully determined its impact? I think not.

I support this amendment which provides a middle ground between a blanket approach and the opposite, an equally undesirable alternative.

Mr. SHAW. Mr. Chairman, I rise in strong support of the McCollum amendment. I do so, however, with mixed emotions on the outcome of this vote. I have listened carefully to the debate; I have listened to the gentleman from New York, the gentleman from California, the gentleman from New Mexico, and the last gentleman from California who spoke of his personal remembrances as part of a family that would have qualified under this particular amendment had they been in illegal status today.

The argument has been made that these are good people; they are hardworking people; they are deserving people, and that argument is correct. However, there is a world full of people that would fall into that definition. I saw them in refugee camps in the jungles up close to the Cambodian border. I have seen them in my own home district in south Florida. You can find them all over this country. You can find them all over this globe.

We are the richest, most prosperous country that has ever occupied the face of the Earth. Most of the world would like to live here. Most of the world would like to share in what we have. If we were to open our borders, that quality of life would be gone forever. And the quality of life that we know today would be gone for our children, our grandchildren, and all generations to come.

There is a flood coming. There are problems in our hemisphere, and that flood is going to be of refugees who are flocking to the United States. I think it is imperative for the future of the United States that we make the strongest pronouncement that we can in this immigration bill; that we make the pronouncement that we have an immigration policy in this country; that it is one that is being strengthened; one that is going to be enforced; and one for which there are going to be no exceptions.

This is the way that we must go. It has nothing to do with the deserving status of those that I am talking about because they are indeed deserving. It is about the future of this country. It is about our children, our grandchildren, and their grandchildren.

□ 1410

Mr. McCOLLUM. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. Gekas].

Mr. GEKAS. I thank the gentleman for yielding this time to me.

Mr. Chairman, I support the amendment offered by the gentleman from Florida [Mr. McCollum] out of a respect for the proposition that has been advanced several times in the debate thus far, and that is that not to adopt the McCollum amendment would mean that thousands of people who are waiting patiently in nations around the globe to be processed for the ordinary and regular immigration policy standards that are now in effect will be jeopardized, I daresay set back for a generation, before they would be eligible for emigration to the United States from their respective countries.

I, myself, as many of my colleagues who are Members of Congress, am a product of a sane and reasonable immigration policy. My parents came to this country because the United States had at that time, and still does, a reasonable, justly fashioned immigration policy. They waited their turn. They came to this Nation because they sought freedom. They sought freedom of opportunity, and they sought a better life for themselves and for whatever their progeny might have ambitions to gain.

If, today, we do not adopt the McCollum amendment there will be future generations of naturalized American citizens who will be robbed of the opportunity to contribute to this country and to carve out that future for themselves that the Statue of Liberty beckons and guarantees. That is justification alone for considering a vote in favor of the amendment on the floor at this time, but there is a further bit of support that comes directly from the populace, directly from the American citizenry.

Mr. Chairman, I endorse the amendment offered by the gentleman from Florida [Mr. McCollum].

Mr. McCOLLUM. Mr. Chairman, may I again inquire of the Chair, as we count down, what time is remaining?

The CHAIRMAN. The gentleman from Florida [Mr. McCollum] has 6½ minutes remaining and the gentleman from Kentucky [Mr. Mazzoli] has 13 minutes remaining.

Mr. McCOLLUM. We are each down to our final two. At this time, Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. Hance].

Mr. HANCE. Mr. Chairman, I was very impressed with the statement of the gentleman from New York [Mr. Garcia] as well as the statement of the gentleman from California [Mr. Torres]. I think they pointed out some real questions and real concerns about some of the individuals who are here illegally.

I also say that if this amendment is adopted, there are still other ways that people who are undocumented workers can address the issue of documentation, legalization, amnesty, or whatever one wants to call it.

I still say that this amendment and this bill comes back to being a jobs issue. I think amnesty will truly hurt the most vulnerable in our society. The people that it is going to affect the most are going to be those people who are unskilled laborers, the people who do not have a profession, the people who are blue-collar workers.

If we grant amnesty, we are going to see that jobs of skilled workers are taken away. I noticed in the Washington Post, that there were three people who were illegal aliens who were apprehended less than 10 blocks away from the Capitol, and they were working on some type of paving project and making $8.40 an hour. There are a lot of citizens of the District of Columbia who would love to make $8.40 an hour.

No matter how you look at it, no matter what study you look at, there are jobs that are being taken away from American citizens. The thing that I mentioned yesterday is, the most thought-provoking statement that was said to me about this bill during the last 6 months. An individual came up and he told me, "You know, if undocumented workers were taking jobs away from lawyers, and doctors, and bankers, and Congressmen, Congress would have done something about it a long time ago," and I think the gentleman was right.

It is the truly most vulnerable who will be hurt if this amendment does not pass.

An individual in Texas summed up this legislation when he said, "You do not invite someone to dinner when you cannot feed your own family." Let's take care of American citizens first a vote for the McCollum amendment, will do just that.

Mr. MAZZOLI. Mr. Chairman, it is the privilege and pleasure of the gentleman from Kentucky to yield 5 minutes to the distinguished majority leader of the House, the gentleman from Texas [Mr. Wright].

Mr. WRIGHT. Mr. Chairman, we need to focus very clearly on the choice that is before us. This is not a choice between blanket amnesty and law enforcement, as some would have us believe. This is not a choice between blanket amnesty and anything; it is a choice between a conditional, reasonable, responsible, case-by-case legalization program on the one hand, and the status quo on the other.

My distinguished friend from Texas [Mr. Hance] suggests that it is a jobs issue. He suggests that unless we pass this amendment, which would wipe out all opportunity for anybody to be legalized, we will be inflicting some injury upon American workers. I suggest that just the reverse is the case. If we perpetuate this subclass of people in a shadowy, inferior status where they are subject to exploitation, vulnerable to blackmail, then we do undercut wages, and depress working conditions.

If we maintain this present status quo, we are inflicting graver harm upon American workers than if we provide some reasonable, legal, responsible means of making everybody abide by the wage and hour laws.

We need to look at the question of what kind of a country we want to be. There are two basic kinds of societies. One is the society that builds walls; the other is a society that builds bridges. Throughout our life as a nation we have been a bridgebuilding society. The bridgebuilders are those who are inspired and motivated by hope. The wall builders are those who are motivated by fear.

In the third century before Christ, the Chin dynasty in China built the world's longest continuous wall. That was because they feared foreign influence. They languished behind that wall for 1,800 years and fell far behind the rest of the world because they had hermetically sealed off the new inventions, the new ideas, the new discoveries that were emerging and thriving throughout the rest of the world.

We have not been that kind of society, thank God. We could not enforce present law, given the set of conditions that exist south of our border. Anybody who ever has witnessed the Mexican-United States border as it wends its tortuous way along the Rio Grande River through the Big Bend district of Texas, or looked across that invisible border which bisects mountains and deserts of New Mexico and Arizona, would realize that it is utterly impossible ever to hire enough people to guard the border. There is no physical way to keep people out, unless we wanted to build a wall, like the Berlin Wall, and become that kind of an insular, insulated, fearful society. That is not characteristic of our country. We are not going to be that way.

So the question is: Do we allow this present festering situation to continue, or do we give some hand and say, "Look, you people have come here out of desperation. Your only plea is that you be given an opportunity to work, to earn a living, to support your families. We are going to be, as we have ever been, that country which provides a refuge and a sanctuary for those who need it. You are here now. We give you our hand, and with it an opportunity to improve yourself and lift yourself and be a part of our society."

We either do that or we perpetuate the present situation, which truly is depressing wages. The present situation truly is offering unfair economic competition against the lowest levels on our economic spectrum of American citizens.

□ 1420

So that is our choice, and I think our choice should be, as it always has been except in rare instances, that of the bridge-builder, not the wall-builder. We built a wall at one time to our eternal shame. In the 1930's, those fleeing the pogroms of Nazi Germany came to many countries seeking admission—boatloads of citizens, people, refugees fleeing the awfulest persecution in the world. We, along with other countries, closed our ports and gates to them. Rejected by all nations, they returned to Nazi Germany, and many of them died in the Holocaust at places like Buchenwald.

This is not what anybody is suggesting today, but it is a chapter in our history of which we are not proud. We are proudest of those chapters which were best described by Emma Lazarus on the Statue of Liberty, and it seems to me that describes the kind of country we want to be today.

THe CHAIRMAN. The time of the gentleman from Texas [Mr. WRIGHT] has expired.

The Chair now recognizes the gentleman from Florida [Mr. McCOLLUM].

Mr. McCOLLUM. Mr. Chairman, I yield myself such time as I have remaining and may consume.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I am glad to yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding, and I rise to compliment my colleague, the gentleman from Florida [Mr. McCOLLUM], for the outstanding leadership he has shown throughout this entire matter relative to immigration reform. I also rise in strong support of the gentleman's amendment which is presently pending before the committee and which would delete the provision in the bill granting amnesty to all aliens who entered the country illegally before 1982.

Granting amnesty to these aliens would not only reward those who entered our country illegally, but would penalize those who desire to become U.S. citizens and who have followed the proper procedures but have been denied citizenship for one reason or another. Amnesty for millions of illegal aliens would make a mockery of our immigration laws and would be a severe injustice to those seeking citizenship legally.

I introduced legislation last year expressing my opposition to any proposal seeking to provide amnesty to an unknown number of aliens. Estimates vary widely for the number of immigrants who would become citizens of our country under the amnesty provision being considered. There are currently anywhere from 2 to 6 million illegal aliens now in the United States.

Granting them citizenship through amnesty will be an open invitation to future illegal aliens to come to America where it would appear that immigration laws are made to be broken. They will come to our Nation hoping that even if they do not qualify for citizenship, they someday will be granted amnesty. Instead of improving the situation, granting amnesty will only exacerbate the problems facing our immigration and border patrol officials.

Although I oppose this particular provision, I strongly believe in the need for comprehensive immigration reform legislation. Our current maze of immigration rules and regulations is the result of a piecemeal legislative approach to the many immigration problems that have occurred since the Immigration and Nationality Act was enacted in 1952.

Our Nation is a land of immigrants who sought refuge here over the years because the United States offers freedoms and opportunities that are not available in other parts of the world. Americans should be proud to know that millions of people from other countries hope to someday become citizens of the United States so they can fulfill their dreams. The pressure that has resulted from this great demand for citizenship is the cause for many of our current immigration problems.

I support provisions in the Immigration Reform and Control Act of 1983 which will help improve our immigration procedures while at the same time continuing to ensure that those who come to our country do so legally. Establishing sanctions against employers of illegal aliens is one means.

Another method is through the establishment of a U.S. Immigration Court that would expedite and improve exclusion and deportation procedures for undesirable aliens living in the United States. I have cosponsored legislation in the past to establish such a court and am pleased that it has been included in this immigration reform legislation.

Mr. Chairman, as a Representative from Florida I can attest to the great demands that have been placed on our State, county, and local governments by the flood of illegal immigrants. Our State's schools, hospitals, and correctional facilities are all feeling the burden of the recent influx of Cubans and Haitians. There is no denying that these people have good reason to seek citizenship in the United States but it must be done legally and the legislation before us today is urgently needed to more efficiently process those seeking to become citizens legally but it must not reward those who seek to do so illegally.

● Mr. SHELBY. Mr. Chairman, efforts should be focused toward fashioning a humane and compassionate response to the problem of immigration, but not at the expense of our own citizenry.

Our primary commitment should be to our own poor unemployed and underemployed who are jobless and desperate in many cases, through no fault of their own.

Legalization is unfair to the thousands of potential immigrants waiting years to enter this country legally. We are rewarding those who blatantly flaunt our immigration laws and punishing those who would follow them.

The argument which propounds legalization as the only means to eliminate a frightened subclass in our society is unfounded.

Legalization under this bill creates a situation whereby those who cannot prove residency prior to 1982 will remain illegal. This in essence is a subclass within a subclass.

The potential for major disruption of our population is serious. The range of the number who would come forward for legalization is between 2 and 12 million—if 6 million legalized aliens each eventually brings in 2 immediate family members, there would be a rapid increase of an additional 12 million new immigrants in a few years. Petition for relatives to join citizens of the United States is commonplace—it is a nearly invisible element of immigration policy because their relatives are not counted against a country's quotas of permanent visas.

The promise of citizenship through amnesty encourages more illegals to enter the United States either in the belief that they can fool the authorities about the length of their stay or in anticipation that there will be future grants of amnesty if we've done it once before.

Amnesty creates a potential for continued—decades—enormous and undeterminable expense at every level of government.

Primary sources of illegal aliens are countries in which fertility rates now rank among the highest in the world. In Mexico alone, there are more women of childbearing age than ever before.

I want to share the following editorial that appeared in the Wall Street Journal on Tuesday, June 19, with my colleagues in the House.

[From the Wall Street Journal, June 19, 1984]

Courage No, Hypocrisy Si

The Simpson-Mazzoli immigration bill rolls on through Washington's election-summer dank. In a sure danger sign, congressmen have pretty much decided they must "do something" Ronald Reagan agrees, saying a country must "control its borders." Liberals say the bill will end the "exploitation" of aliens. Anyone with a whit of commonsense knows that it will do neither of these things.

Well, Simpson-Mazzoli will do *some* things. Its amnesty provisions will prove the wisdom of immigrants who managed to get here early, and encourage future immigrants to come in hopes of an amnesty repeat. It will widen the federal deficit by a few billion dollars to pay for welfare benefits for aliens now ineligible for federal programs, in the process probably slowing down their rise up the income and social scale. It will increase the burden on our Hispanic citizens by encouraging employers to shy away. It will probably throw away the Reagan administration's opportunity to court Hispanic voters; Walter Mondale, Gary Hart and Jesse Jackson all oppose the bill. And since there is no way the immigration service can police every job in the nation, it will conjure up selective law enforcement that will cause employers no end of mischief.

As a test of this latter point, note well that among the things Simpson-Mazzoli will not do is apply to Congress when Congress acts as an employer. Congress has thoughtfully exempted itself from such legislation in Title VII of the civil-rights laws—a position confirmed by parliamentarian maneuvering during the Simpson-Mazzoli debate.

Which got us poking into the immigration mores of Washington. We got to wondering whether anyone in Congress or the Justice Department or the State Department might have an illegal alien as a maid or cleaning lady. Our research discloses we may have underestimated these worthies. Consider Washingtonian magazine's description of the city's domestic-servant market: "The more beneficent employers assist their employees with the laborious process of applying for legal status; others simply exploit them until they are caught."

Better yet if you can exploit them with the law's help. "If you're going to get involved with the documentation of a foreign worker, make sure you can hold on to that person for a while," Washingtonian warned in its February issue. Or get your servant a green card but mislead him about what that means. "Many aliens are so grateful that they will work many years for a family without demanding the minimum wage," says one expert. Naturally, with its understanding of how to use the law, Washington is the capital city for this market: Washington-area agencies providing domestic help, the magazine reports, are sought out by "families in Iowa, Illinois, and England." "I don't know how to answer that," he said. His check revealed that criminal penalties for private employers (in the Senate bill) would not apply to sitting congressmen. Similarly, he reports, the paper-work provisions that will be heaped on employers "would not apply" to those with fewer than four servants. So it's OK to "exploit" two or three domestics.

What about actual congressional staffs? We called Sen. Simpson, Reps. Romano Mazzoli and Dan Lungren to see if they employ any illegal aliens now, and to ask how passage of the bill might change their own hiring procedures. None knew. Do you have any illegal aliens on your staff? We asked a Mazzoli aide. "No." How do you know? "I don't think they'd be on his staff if they were illegal." Are there any checking procedures? "Not that I know of." Well then how do you know? "I guess I don't know." Sen. Simpson's aide mused over covering Congress itself: "Those are very good questions. In four or five years of hammering on this thing, no one has ever asked."

It seems elementary fairness that if Congress is going to run around making mischief for the rest of the nation it shouldn't exempt itself. Better, it should recognize that if it must exempt itself, something is wrong. Anyone who glances at what immigrants go through to get themselves "exploited" here ought to recognize that Simpson-Mazzoli is not going to change anything much, and that Congress ought not to make a difficult problem worse.●

● **Mr. FAUNTROY.** Mr. Chairman, I rise in strong opposition to the amendment offered by my colleague, Congressman Bill McCollum, that would strike all legalization and legalization assistance. This amendment offered by my colleague is uncharacteristically mean spirited and would leave us with a vast underground population, easily exploited. This amendment makes no sense, particularly in a district such as I represent, which has a large population of undocumented workers. The civil health of such districts requires a fair, workable legalization program that offers the future possibility of efficient and targeted enforcement on new flows of undocumented workers. The nonalternative offered in this amendment would leave only two options: First, we could continue with a large underground population outside of our laws, or second, we would be faced with the nightmare possibility of police state sweeps in our communities in order to deport the undocumented workers amongst us. This is clearly intolerable and I know that my district and that of many others in this body would not tolerate such a situation. I would hope that my colleague from Florida would withdraw this amendment.●

● **Mrs. LLOYD.** Mr. Chairman, I strongly support the McCollum amendment. I believe we must strike from the bill legalization for the millions of illegal aliens presently within this country. While I fully appreciate the difficulties involved in deporting illegals, amnesty is not the answer and I cannot support language in the bill which, in effect, rewards those who have managed to evade the law for 2 years. The bill is unfair both to immigrants and to taxpayers. Many immigrant applicants have been waiting years for citizenship. They have complied with the law and yet, under this bill, we would punish those who have followed the requirements and given resident status to those who did not. Furthermore, I have not been convinced that amnesty will not result in even greater numbers being drawn to our borders. It seems logical to conclude that thousands have been, and will be, encouraged by our consideration of amnesty with the hope that they might be able to demonstrate the required length of stay. I fear that we will be sending a signal to the millions who desire to enter this country that, when the problem becomes difficult in the future, we will simply approve legalization once again. Aliens will continue to cross our borders hoping, with our encouragement through this bill, that they will one day be granted amnesty. But it will be citizens and taxpayers who will bear the ultimate burden. The costs will have to be absorbed by government at all levels at a time when most jurisdictions are already cutting back programs and the Federal Government is facing an enormous deficit. Clearly, the work force will be affected. With job opportunities already limited for many Americans, a labor pool of aliens will be a source of competition for our citizens, a competition they cannot hope to win in many circumstances. We must demonstrate that we are determined to enforce our immigration laws or we cannot hope to discourage illegal aliens. And we must discourage them from coming to our borders in the first place if we are to come to terms with this problem. Granting amnesty to millions who can document that they have been in this country continuously since January 1, 1982, is not the way to do it.●

Mr. McCOLLUM. Mr. Chairman, reclaiming my time, I think that we have been through a long and somewhat tortuous ordeal, debating the whole bill and certainly today debating this most important question of whether we strike legalization from the bill or we leave it in. It has been all along for 4 years my contention, and it remains so at this moment, that this bill as it stands now without striking legalization is an unfair bill. It is a bill that is unfair to the millions and millions who have been standing in line for years to come into this country legally. It is unfair to the members of the American public who in this particular case are going to find themselves, if we grant legalization and we do not strike it from this bill, rewarding lawbreakers and making a mockery of our laws for legally proceeding under the legal immigration laws of our country.

Unfairly, if we leave legalization in here, we are putting a magnet back in this bill that in large measure nullifies the employer sanctions which were designed to cut the magnet of jobs that draws people across the border, because legalization, on the other hand, if we would leave it in the bill, would in fact draw considerable numbers across the border in hopes that they might come in under this amnesty or that they might be given amnesty at some future date.

The attendant hidden costs that are here in this bill are unfair to the American people. We know at least that the costs will be $9 to $10 billion by conservative estimates. That is "b" for a billion, not "m" for a million.

We have all the unfairnesses in this bill with legalization. Legalization is not needed to balance out employer sanctions because they in and of themselves are fair. To have balance in this bill is to strike legalization, and then we have a bill that has employer sanctions, a speedup process of adjudications, a regaining of control of our borders, and some commonsense in our immigration laws.

Now, there are those who say that we have to have legalization. I have heard it so many times today, that we have to have it, because if we do not have it, there are going to be all these people standing around who are going to be somehow in a bad position. Well, that is simply not so. We are not going to round them up. We are not going to have any mass deportations. I think that argument has been clearly knocked in the head during this debate. That is simply not going to be the case.

There are going to be thousands and millions who will probably, after employer sanctions are in place, over a very gradual period of time go back across the borders voluntarily. There will be some who stay, as there always have been some who stayed.

For my colleagues who are concerned about the treatment of Hispanics if we strike legalization, I would remind them that Mexico is liberally treated under this bill, as it has been for years under our immigration laws. We know that, and for the last year we have the figures. In 1981, there were about 489,000 immigrants who came into this country legally, not counting refugees. That is legal immigrants, 489,000. Of the 489,000, 101,000 were Mexican. In this bill we give an additional 20,000 to Mexico in the ceiling numbers in the preference system. So we will be adding to the opportunities for Hispanics to come to this country legally. We have the temporary worker program or the H-2 Program, depending on what is finally adopted, for those who leave and who may want to come back here and work.

The commonsense approach that the public supports is to strike legalization. The VFW, the American Legion, and the public opinion polls show that the American people understand this issue. They understand that amnesty is wrong, that it is not necessary to a good immigration bill, and that the way we are going to have a good immigration bill is by having a bill that has the twin pillars of employer sanctions and adjudications speedup and not having legalization, which is wrong and unfair and improper.

Mr. Chairman, I urge my colleagues, I implore my colleagues to think as they vote on this bill about the consequences, the long-term ill consequences that will occur if in fact we do not strike legalization from this bill. It is not necessary. It is contrary to the concerns that have been expressed. It is unnecessary whatsoever to fairness. In fact, it is just the reverse. Legalization is unfair.

Mr. Chairman, I urge the Members to vote "yes" on the McCollum amendment.

The CHAIRMAN. The Chair now recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to my friend, the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment offered by Representative MCCOLLUM. One of the most important elements of this immigration bill is the legalization program. The Census Bureau estimates that there are between 3.5 and 6 million unauthorized aliens currently residing in the United States—that means 3.5 to 6 million people that are invisible residents subject to exploitation for fear of detection or deportation should they report violations in labor, or housing laws, or even report crimes.

What we are engaged in here is a massive rewrite of our immigration laws. We need to wipe the slate clean for our sake and those living in fear of deportation. I urge my colleagues to vote against this amendment.

Mr. MAZZOLI. Mr. Chairman, I thank my friend, the gentleman from Arizona, for his support.

Let me first again say to my friends in the House what a wonderful debate this has been. I think we have fully acquitted the tradition of the House. I think we have fully delivered to the American people an elegant debate, an eloquent debate on a very sensitive issue. I salute the Members, and I thank them all.

Mr. Chairman, make no mistake about it, I have the highest and fondest respect for my friend, the gentleman from Florida, a very distinguished member of our subcommittee, but if the gentleman's amendment were to pass, it would jeopardize the future of our bill.

We have spent 7 days of the hardest work we have done perhaps in years, and I would hope that we would not jeopardize the future activity of the bill by adopting the gentleman's amendment.

Simply stated, the President of the United States in a press conference last Thursday night indicated that he felt legalization was a component part of immigration reform. The Attorney General has suggested the very same thing. Legalization is an important component part of any practical immigration reform program. If this amendment to strike legalization were to pass, it would seriously unbalance the bill. It would render it devoid of the balance and of the sensitivity and symmetry we think it must have to be good, genuine law.

We have studied this issue in the last two Congresses, and again I respectfully suggest that at every stage of the way my friend has offered the amendment. It has been offered four times, twice in subcommittee and twice in full committee, and it was offered in two Congresses, the 97th and 98th. And each and every time, with all respect to my friend, those amendments were voted down. They were voted down because the committee essentially felt that a balanced approach included legalization.

I would implore my friends in the House to defeat the gentleman's amendment and vote for the proposition of legalization as a component part of the bill. It is practical. We cannot root the people out, and we should not. It is proper because it fits into the scope of immigration law. It is moral, and believe me, there is a moral dimension to this problem. This is a very important moral area.

I think it ought to be noted, first and foremost, that this is not a blanket amnesty. This is a legalization on a case-by-case approach. Each and every person coming forward would be examined. He or she would be asked questions, would be forced to show that they had been here by a certain date, and that they are of good character. So we are not waiving a wand and accepting people who are not decent citizens.

Mr. **RODINO**. Mr. Chairman, will the gentleman yield?

Mr. **MAZZOLI**. I yield to my friend, the chairman of the committee.

Mr. **RODINO**. Mr. Chairman, I thank the gentleman for yielding.

I want to say that I, too, join with the gentleman in applauding the Members for the fine debate that we have had.

I think that we should remember that on a number of occasions already, if we can interpret the votes of the House, the House has sustained legalization. The other body sustained legalization, and on the last vote, on the Wright amendment, the House voted 247 to 170 for legalization up to 1982.

Mr. **MAZZOLI**. Exactly. I thank my friend, the distinguished chairman of the committee and the ranking member in this country on the subject of immigration. We have indeed.

On several occasions, by resounding votes in this House in these past 7 days, we have voted not to do nothing; we have voted to do something, and we have voted in that context to include legalization as an important component part.

I think it ought to be remembered that Father Theodore Hesburgh, who chaired the Select Commission, has a wonderful way about him, as an intellectual, of going to the heart of a problem and stating it with a kind of clarity that is compelling. Father Hesburgh said that unless we close the back door through which illegal aliens enter, we will never be able to keep the front door open, the front door through which legal immigrants and refugees enter.

□ 1430

So I suggest to my friends as we worry about those who are waiting in line and who have the concerns, and I have them, that perhaps in the future legal immigration laws will have to be changed, but may I please suggest that if we do not have a bill that does something about illegal entry, that we may well lose legal entry and refugee entry and that would be a sad loss, a terrible loss to this country.

Earlier, Edmond Burke, the great British Parliamentarian, was mentioned, and let me again say to those who read the polls that this is one time where as Edmond Burke recommended:

> You owe your constituency not just your hard work, you owe your constituency the exercise of your judgment. You owe your constituency the courage to take a stand on a very tough issue. Sometimes the courage to lead, sometimes the courage to in fact show that kind of determination under fire which we call politics, as grace under fire.

This is the time to make such a vote.

Let me conclude my remarks by reading what I think is a remarkable letter from a person, sent to another Member, not myself:

> I am an illegal alien and am living under great pressure of blackmail threats from members of my own community. I am forced to live an anonymous, underground life in constant fear, shaking and trembling many times, with sleepless nights and always afraid of an INS man knocking at my door. I hope therefore you would kindly forgive me for writing this letter anonymously.
>
> Sir, to err is human, but to forgive is divine. I have erred, and I plead guilty. The supreme teaching of the Old Testament is, "As He is merciful, you be merciful".
>
> Sir, with tears in my eyes I kneel to you and beg for your mercy. Sir, God will definitely bless you for proposing the generosity of amnesty for illegal aliens.
>
> Great people become even greater because they always care about smaller people's problems. Illegal aliens are small people, and I beg you to show maximum possible compassion towards them.
>
> Sir, I am enclosing a copy of a recent Newsweek article on some popular myths about illegal aliens. I am not trying to defend myself. As an illegal alien I am by definition guilty. I want no money, no benefits, nothing. All I want is legalized status of a human being. Sir, I am begging for my freedom. You and your great Congress have the power to give that to me. I pray you will. God bless you. God bless America.

Mr. Chairman, let us vote for this man. Vote down the gentleman's amendment.

The **CHAIRMAN**. All time has expired.

The question is on amendment No. 61 offered by the gentleman from Florida [Mr. McCollum].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. **McCOLLUM**. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 195, noes 233, not voting 5, as follows:

[Roll No. 249]

AYES—195

Albosta
Andrews (NC)
Andrews (TX)
Applegate
Archer
AuCoin
Barnard
Bartlett
Bateman
Bennett
Bereuter
Bethune
Bevill
Bilirakis
Bliley
Boner
Bosco
Breaux
Brooks
Broomfield
Brown (CO)
Broyhill
Bryant
Burton (IN)
Byron
Campbell
Carney
Carr
Chappell
Chappie
Coleman (MO)
Coleman (TX)
Courter
Craig
Crane, Daniel
Crane, Philip
D'Amours
Daniel
Dannemeyer
Darden
Daschle
Daub
Dickinson
Dowdy
Dreier
Duncan
Dyson
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Fiedler
Fields
Flippo
Franklin
Frenzel
Fuqua
Gaydos
Gekas
Goodling
Gradison
Gramm
Gregg
Hall, Sam
Hammerschmidt
Hance
Hansen (UT)
Hartnett
Hatcher
Hefner
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Hubbard
Huckaby
Hunter
Hutto
Hyde
Jenkins
Jones (NC)
Jones (TN)
Kaptur
Kasich
Kindness
Kramer
Latta
Leath
Lent
Levitas
Lewis (FL)
Livingston
Lloyd
Loeffler
Lott
Lujan
Luken
Mack
MacKay
Madigan
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
McCollum
McCurdy
McDade
McEwen
McGrath
Mica
Miller (OH)
Mollohan
Montgomery
Moore
Moorhead
Murphy
Myers
Neal
Nelson
Nichols
Olin
Packard
Parris
Patman
Paul
Petri
Porter
Pursell
Ratchford
Ray
Regula
Reid
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roemer
Rogers
Rose
Roth
Roukema
Rowland
Rudd
Russo
Schaefer
Schulze
Shaw
Shelby
Shumway
Shuster
Siljander
Skeen
Skelton
Smith (NE)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solomon
Spence
Staggers
Stangeland
Stenholm
Stratton
Stump
Sundquist
Tallon
Tauzin
Taylor
Thomas (GA)
Torricelli
Valentine
Vander Jagt
Volkmer
Vucanovich
Walker
Watkins
Whitehurst
Whitley
Whittaker
Whitten
Williams (OH)
Wilson
Wise
Wolf
Wyden
Wylie
Yatron
Young (AK)
Young (FL)

NOES—233

Ackerman
Addabbo
Akaka
Alexander
Anderson
Annunzio
Anthony
Aspin
Badham
Barnes
Bates
Bedell
Beilenson
Berman
Biaggi
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Boucher
Boxer
Britt
Brown (CA)
Burton (CA)
Carper
Chandler
Cheney
Clarke
Clay
Clinger
Coats
Coelho
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Coyne
Crockett
Davis
de la Garza
Dellums
Derrick
DeWine
Dicks
Dingell
Dixon
Donnelly
Dorgan
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Erlenborn
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fish
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frost
Garcia
Gejdenson
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Gore
Gray
Green
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hamilton
Harkin
Harrison
Hawkins
Hayes
Heftel
Howard
Hoyer
Hughes
Ireland
Jacobs
Jeffords
Johnson
Jones (OK)
Kastenmeier
Kazen
Kemp
Kennelly

Kildee
Kleczka
Kogovsek
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Leach
Lehman (CA)
Lehman (FL)
Leland
Levin
Levine
Lewis (CA)
Lipinski
Long (LA)
Long (MD)
Lowery (CA)
Lowry (WA)
Lundine
Lungren
Markey
Marriott
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McHugh
McKernan
McKinney
McNulty
Michel
Miller (CA)
Mineta
Minish
Mitchell
Moakley
Molinari
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murtha
Natcher
Nelson
Nowak
O'Brien
Oakar
Oberstar
Obey
Ortiz
Ottinger
Owens
Oxley
Panetta
Pashayan
Patterson
Pease
Penny
Pepper
Perkins
Pickle
Price
Pritchard
Quillen
Rahall
Rangel
Richardson
Rodino
Roe
Rostenkowski
Roybal
Sabo
Savage
Sawyer
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sharp
Sikorski
Simon
Sisisky
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spratt
St Germain
Stark
Stokes
Studds
Swift
Synar
Tauke
Thomas (CA)
Torres
Towns
Traxler
Udall
Vandergriff
Vento
Walgren
Waxman
Weaver
Weber
Weiss
Wheat
Winn
Wirth
Wolpe
Wortley
Wright
Yates
Young (MO)
Zachau

NOT VOTING—5

Hansen (ID)
Mikulski
Sensenbrenner
Shannon
Williams (MT)

☐ 1440

Mr. RALPH M. HALL and Mr. ROSTENKOWSKI changed their votes from "aye" to "no."

Mr. McDADE and Mr. CRAIG changed their votes from "no" to "aye."

Mr. CHANDLER changed his vote from "present" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

☐ 1450

AMENDMENT NO. 62 OFFERED BY MR. RODINO

The CHAIRMAN. Amendment No. 62 is in order at this time.

Does the gentleman from New Jersey [Mr. RODINO] desire to offer amendment No. 62?

Mr. RODINO. I do, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 62 offered by Mr. RODINO: Page 99, strike out lines 5 through 10 and insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

CUBAN-HAITIAN ADJUSTMENT

SEC. 302. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) An alien who, as the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

(d) Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act and the Attorney General shall not be required to charge the alien any fee.

(f) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

Mr. RODINO. Mr. Chairman, the amendment I am offering is in every material respect identical to a bill I introduced—H.R. 4853—to allow the adjustment of status of Cuban and Haitian entrants who have lived in this country in a legal limbo for several years.

Four years ago the so-called Mariel boatlift was in full swing. They came by the thousands during that period, not only from Cuba but also from Haiti. You will recall that they were welcomed with "open hearts and open arms."

In all, about 150,000 Cuban and Haitian entrants arrived and were paroled into the United States. Some of these have been able to adjust their status to permanent resident alien under existing provisions of our immigration law, but most have not been so fortunate. Instead, they have been waiting for congressional action to resolve their uncertain status. During hearings held by the Immigration Subcommittee last month, all witnesses, including the administration, supported my legislation. In addition, every major civil rights trade union, religious and voluntary service organization wholeheartedly endorses my amendment.

Let me point out that these individuals are not now, and have never been, considered to be undocumented aliens. Yet, they remain in a legal limbo.

For their sake, and for our Nation's sake, we must settle this matter and we must settle it now. That is what my amendment would do. It would give approximately 120,000 Cuban and Haitian entrants the opportunity to become permanent residents and eventually U.S. citizens.

In addition, my amendment would specifically include the approximately 15,000 Haitians who were, in many cases, subjected to intolerably long periods of detention by the Immigration Service as they awaited determinations of their status.

There can be little doubt that this group of Haitians has suffered more than any group in recent history in their attempts to come to and remain in the United States. In fact, on three separate occasions, Federal courts have held that the treatment of these individuals by the Immigration Service has been unlawful.

Mr. Chairman, my amendment is not without precedent. In 1958, for example, Congress passed special legislation to allow the adjustment of Hungarian refugees who had been paroled into the United States. Similarly, in 1960, 1966, and again in 1975 special legislation was passed to allow the adjustment of Eastern European refugees, Cuban parolees, and Indochinese parolees, respectively. It is clear then, when compelling humanitarian need has been demonstrated, Congress has been willing to act.

I think it is also important to point out that even the amendment previously offered by Mr. SHAW to cut back on the committee's legalization formula, recognized the special dilemma of the Cuban/Haitian entrants by including provisions almost identical to the amendment I am now offering.

Although the Wright amendment, which we adopted yesterday, addresses the problem, it does not fully cure it.

First, the Wright amendment would not cover the approximately 15,000 Haitians who are technically not entrants. That is because those Haitians have never, in a legal sense, entered the United States.

Second, the Wright amendment would grant the individuals covered by my amendment temporary, not permanent, resident status. That is unfortunate and, I think, not really fair. Most of the people covered by my amendment were specifically invited here and they did not try to evade the INS. And as for the 15,000 Haitians, there can be little doubt that this small group has undergone extreme hardship here in the United States.

In conclusion, Mr. Chairman, we are dealing here today with an intolerable situation that cries out for immediate action. In my mind there is no doubt as to what we must do.

By adopting my amendment, we will allow those of Cubans and Haitians who are here and already contributing to our society to live free and secure in the knowledge that they are welcome and will not be forced to return to their home countries.

This amendment will allow them to get on with their lives. And we will put behind us once and for all this unfortunate episode in our immigration history.

I urge my colleagues to support this extremely important amendment.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from New York.

Mr. CONABLE. Mr. Chairman, I thank the gentleman for yielding.

My understanding is that for the most part these are people who came in after the surge which involved a group which was totally accepted for residence. These people, however, missed the deadline. They have been in limbo ever since. And in view of the other things that are in this bill, it seems to me the gentleman's amendment is entirely appropriate.

I would urge my colleagues to support it.

Mr. Chairman, I rise in support of Mr. Rodino's amendment to provide permanent resident status to certain Cuban and Haitian boat people. This amendment would right the injustices in our treatment of Cuban and Haitian refugee boat people who sought safety on our shores before 1982. The unique plight and legal limbo of this restricted number of refugees should be resolved through a grant of permanent resident status as the amendment proposes.

The great majority of the class of Cubans and Haitians who would benefit from the Rodino amendment long ago have been granted a temporary "entrant" status and a promise of legal residence. There is particular concern for the plight of the Haitian refugees, many of whom were jailed for up to 18 months under a detention program that has been found to have been illegal and discriminatory by two courts. This group still faces the prospect of forcible deportation to Haiti from which they fled over 3 years ago. A number of them have been aided by charitable groups in my area.

This amendment contains a comprehensive class definition which is necessary to fully correct this discriminatory treatment. It is a definition that is not restricted to the narrow formality of the "entrant" definition. It is essential to grant permanent residency to both entrants and nonimmigrants from Cuba or Haiti who arrived here before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before that date.

Mr. Chairman, it is essential that the legalization title of the Immigration Reform and Control Act contain particular language to provide for the need of these two refugee groups. The general and comprehensive legalization program already in the bill is subject to revision and its coverage to restriction. The compelling equities of the Cuban and Haitian boat people should not be lost amid the very important debate over general legalization eligibility. Therefore, again I express my support for Chairman Rodino's amendment, which will assure these refugees a future in our country, and I urge my colleagues to join in voting for its immediate adoption.

Mr. ROYBAL. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from California.

Mr. ROYBAL. I thank the gentleman for yielding.

Mr. Chairman, I would like to compliment the gentleman from New Jersey for this amendment. One of the criticisms that I had about the Simpson-Mazzoli bill was that the Cuban Adjustment Act had been completely eliminated, had been taken out of the bill itself.

Now this amendment puts back not only the Cuban Adjustment Act, but it also includes and makes possible the adjustment of the status of more than 15,000 Haitians. I think that this is proper. I compliment the gentleman for his amendment.

Mr. RODINO. I thank the gentleman.

Mr. PEPPER. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Florida.

Mr. PEPPER. I wish to thank the distinguished gentleman for yielding to me.

I wish warmly to commend him for the authorship of this amendment. It is very just and fair, in my opinion, makes provision for the adjustment of the status of the Haitians and the Cubans who have come into our country prior to 1982.

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The CHAIRMAN. The time of the gentleman from New Jersey [Mr. Rodino] has expired.

(By unanimous consent, Mr. Rodino was allowed to proceed for 1 additional minute.)

Mr. PEPPER. I want to thank the distinguished chairman also for including my amendment No. 63 along with his. If the gentleman's amendment is adopted, then I shall withdraw my amendment.

This is a humane thing the gentleman has done, and I commend him.

Mr. RODINO. I thank the gentleman.

Mr. Chairman, I want to state that the gentleman also had an amendment prepared which would have provided for this very same matter.

Mr. Chairman, I yield to the gentleman from Florida [Mr. Fascell].

Mr. FASCELL. Mr. Chairman, I rise in support of this important clarifying amendment offered by the distinguished chairman of the Judiciary Committee. It would provide permanent resident status to certain Cuban and Haitian entrants, thereby correcting the unique plight and legal limbo of this restricted number of refugees.

We must remember that the great majority of individuals who would benefit from this amendment are not illegal aliens. As a result of the Mariel boatlift in early 1980, and the exodus of many Haitians from their island homeland, the Carter administration granted these Cuban and Haitian "boat people" temporary legal status—that of "Cuban-Haitian Entrant"—and a promise of legal residence. They have waited patiently in "immigration limbo" for the Federal Government to make good on its promise. That has not occurred. This amendment fulfills that promise.

I also join in Chairman Rodino's continuing concern for the particular plight of those Haitian refugees, approximately 10,000 of whom were detained, not granted entrant status, and approximately 2,000 of whom spent as long as 18 months in detention. This detention program was ultimately found to have been illegal and discriminatory by two courts. This group of nonentrants, many of whom have applied for asylum, still faces the prospect of forcible deportation to Haiti, the country from which they fled over 3 years ago.

The number of persons who would benefit from this amendment is well-defined and limited. The total includes 125,000 Cubans and approximately 30,000 Haitians. It is essential that the legalization title of this bill contain the particular language of this amendment to provide for the needs of these two groups so that their discriminatory treatment can come to an end. The general and comprehensive legalization program already in the bill, which provides for permanent resident status for illegal aliens who have proof of residence in the United States prior to January 1, 1982, does not apply to the "Cuban-Haitian Entrant" group nor to the non-"Entrant" Haitians, because they are not considered illegal aliens.

Again, I express my support for Chairman RODINO's amendment which will free these "Cuban-Haitian Entrants" and Haitian asylum applicants from uncertainty and fulfull the promise of a future in our country. Justice should be a part of true immigration reform. I urge our colleagues to vote for this amendment so that justice will prevail.

Mr. FISH. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding.

Mr. Chairman, I personally believe that we should permit adjustment of status to that of permanent resident for Cubans and Haitians who arrived in the United States prior to January 1, 1982, and meet certain other conditions.

The Carter administration linked the futures of these two groups when it provided the Cuban Haitian entrant designation. An effort to address the plight of one group without also providing relief to the other would be perceived by many people as discriminatory. I favor the January 1, 1982, cutoff date because it embraces both the migration from Mariel, Cuba, and the Haitian boat arrivals prior to the implementation of the interdiction agreement with the Government of Haiti.

On behalf of the minority on our side, I accept the gentleman's amendment.

Mr. SMITH of Florida. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Florida.

Mr. SMITH of Florida. I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman for his excellent statement and for what he is attempting to do here to preserve what was a promise made by the Government of the United States to these peoples and to those governments. I support it wholeheartedly.

Mr. Chairman, being from Florida, I am particularly aware of the uniquely difficult problem that faces the Cuban and Haitian entrants in their present nonclass status. We must remember that these entrants are not illegal aliens. They do have status under the law, but that status does not permit them to participate fully in our society. Justice and fairness requires upgrading the status of these entrants, and the need for this action has been accepted for the most part by the people of south Florida. That is why this amendment must be part of an immigration reform bill.

The Cuban entrants already have the Cuban Adjustment Act of 1965 which could be used to upgrade their status. But the Haitian entrants have no specific statute that they can use for their benefit. This amendment would provide the vehicle they need to remove themselves from the immigration limbo status known as entrant.

It is altogether proper that we take this action. These people were permitted into the United States by the grace of the Federal Government. They should have been given a proper immigration status 4 years ago. Since that did not occur then, now is the time to rectify the situation.

Mr. Chairman, aside from those few people who were sent here when Castro emptied his jails in 1980, the people of the Mariel boatlife have had very little negative impact on the community. With regard to the Haitian entrants, they are extremely industrious and hard-working people. Both groups want a chance to make a living, to have a decent home, to raise a family in peace. In their past homelands, these were not possible. Without this provision, these entrants still will be unable to make for themselves the new lives that were promised when they became entrants.

I urge my colleagues to support this amendment.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to my friend, the gentleman from Michigan [Mr. CROCKETT], a member of our subcommittee.

Mr. CROCKETT. Mr. Chairman, I am grateful to the chairman of the subcommittee for yielding.

I want to express approval of the amendment offered by the chairman of the Judiciary Committee and urge all of my colleagues to support it.

Mr. MAZZOLI. I thank the gentleman.

I yield to my good friend and congressional classmate, the gentleman from the District of Columbia [Mr. FAUNTROY].

Mr. FAUNTROY. Mr. Chairman, I rise in support of the amendment offered by my distinguished colleague, PETER W. RODINO, JR., the chairman of the Committee on the Judiciary. This amendment incorporates H.R. 4853, the Rodino Cuban-Haitian Adjustment Act.

I want to express my appreciation to Chairman RODINO for offering this amendment to H.R. 1510, which would provide for the adjustment to status of Cuban and Haitian refugees. The offering of this amendment is testimony not only to the expertise of Chairman RODINO in the area of immigration and refugee policy, but is reflective of the fairness and compassion with which he has approached the difficult issues that abound in immigration and refugee matters.

The treatment and absence of legal status of the Haitian refugees has long been a concern of the Congressional Black Caucus generally, and our task force on Haitian refugees in particular. This is evidenced in the support of this legislation by the Congressional Black Caucus.

Former Congresswoman Shirley Chisholm of New York and I have been concerned about the lack of due process and equal protection under the law for Haitian refugees for many years. This concern ultimately resulted in the formation of the Congressional Black Caucus task force on Haitian refugees. We have been alarmed and appalled by the inhumane treatment and detention of this class of refugees. While I do not wish to judge the intent of the Immigration and Naturalization Service and the Department of State in their treatment of the Haitian refugees, the result has been a determined effort to exclude the first significant class of black refugees to come to our shores. The result has been racist in effect, regardless of intent.

This amendment seeks a constructive solution to a harmful and disturbing episode in the history of immigration to the United States. It would also and most importantly provide relief to a limited class of Haitian refugees who have developed equity in our country and have proved themselves to the communities in which they reside, to be hard working and law abiding.

The purpose and substance of the amendment offered by Chairman RODINO are not unique in our Nation's history. We have in the past compassionately and wisely responded to Hungarian refugees, other Eastern European refugees, the initial wave of Cuban refugees, and to Indochinese refugees through special legislation. There is a clear humanitarian need for this amendment as well as a compelling national interest in the passage of this legislation. Let us correct the record and put our Nation squarely in support of the principles of equal justice as reflected in the passage of the Refugee Act of 1980. Again, I congratulate Chairman RODINO and all of my colleagues who are supporting this amendment.

Mr. Chairman, I would like to submit for the record material on conditions in Haiti which have caused the Haitian refugees to seek freedom on our shores.

I urge my colleagues to support the Rodino amendment.

As the Chairman knows, for the past 2 years I have been seeking a relationship with people at all levels of Haitian society to see if there is some way that we can improve the human rights situation and the political economy of Haiti so that refugees would no longer feel impelled to risk their lives on the high seas to escape to our shores. This discussion has involved the Haitian Government, private voluntary organizations working for development in Haiti, the business sector, the Haitian League for Human Rights, our Embassy, and many others. The road has been rocky and often characterized by one or two steps forward and one, two, or three steps backward.

Most recently, the Committee on Foreign Affairs in section 803 of the International Security and Development Act of 1984 addressed the human rights situation in Haiti which should be considered in evaluating the need for H.R. 4853. I quote now from section 803:

> While the Committee is encouraged by the Haitian Government's cooperation in curbing illegal emigration and in implementing fiscal reforms and U.S. development assistance programs, *the human rights situation in Haiti, which had shown potential for improvement, has in fact deteriorated.* As the Department of State's most recent annual human rights report to the Congress states, "Haiti's political history has been one of authoritarian rule characterized by periods of political instability and human rights abuses . . . Freedom of speech, press, and association is restricted by the Government, and due process guarantees relating to judicial procedure are frequently disregarded." For example, in May 1983, the Government arrested without charge, several political opponents during the municipal elections process and held them in jail until the elections were over. The leader of the Haitian Christian Democratic Party, Sylvio Claude, continues to suffer house arrest and other abuses of his rights under Haitian law. Prior to Haitian legislative elections on February 12, 1984, the Government prevented the participation of known opposition parties and individuals by intimidation, harrassment, and by refusing the reentry into Haiti of Eugene Gregoire, leader of the Social Christian Party. Also, during the legislative election supporters of candidates not sanctioned by the Government were physically beaten by security forces and the military in the towns of Cavaillon, Gros Morne, and Petit Goave.
>
> The Committee is seriously concerned over such unwarranted intimidation of the nascent political opposition in Haiti and other continuing human rights violations attributable to the Government. For that reason, the Committee has eliminated any new authorization for military assistance and sales to the Government of Haiti for fiscal years 1984 and 1985 in order to apprise the Government of the implications of the lack of progress in the promotion and protection of human rights.

More recent events reflect some indication of a change in a more positive direction, one that I hope would enhance the effort to improve the human rights environment in Haiti. However, that remains to be seen, and I could not in good conscience rest assured that any and all Haitians that might be returned to Haiti would not suffer programmed or arbitrary abuse.

There has been much discussion that the Haitian refugees are simply economic refugees and therefore not entitled to refuge in our country. This simplistic and distorted assertion emanates from a theoretical assumption that economics and politics are separable. This was not asserted nor could it be in the case of the Indochinese refuges. In Haiti, this is especially true where wealth can only be accumulated through a "franchise" from the Government of Haiti. Nevertheless, I think it important to put on the record the situtation of the economy in Haiti and the impact the economy has on the people of that country.

By the end of 1983, Haiti's real per capita income will have dropped 8.5 percent below its corresponding 1980 level:

The 8,000 families comprising 1 percent of the population take 44 percent of the national income and pay only 3.5 percent of their income in direct taxes.

In Haiti, there is roughly 1 doctor for every 11,000 people.

More than one-third of Haiti's children die before the age of 5.

The vast majority of the population exist in absolute poverty—on an income of less than $140 per year.

The population of metropolitan Port-au-Prince has doubled to over 1 million in the last 10 years due primarily to the migration of peasants from the rural areas.

As many as 60,000 people crowd in each square kilometer of urban slums such as Cite Simone.

Only 20 percent of Haiti's population can read and write.

There are nearly 700 people per every square kilometer of arable land in Haiti as compared to 318 in India and 53 in the United States.

Forty-one percent of Haiti's population is under the age of 15.

Once nearly 70 percent of Haiti's land was covered with trees. Now less than 10 percent of the country is forested.

FISCAL PERFORMANCE

While the Government of Haiti has fully complied with its 1983 fiscal reforms in macroeconomic terms, for example Government revenues rose at an annual rate of over 10 percent, there are some real questions as to who is paying for this compliance and who is not. For example, the new general sales tax, while successful in raising about 1 percent of the gross domestic product for the fiscal year, imposed a severe hardship on the poor, because this tax was levied on basic products which the peasantry produces and consumes, such as flour, sugar, and vegetable oil. The fiscal system still continues to operate so that the 80-percent rural population pays for about 85 percent of internally generated revenues while receiving less than 20 percent of total Government expenditures in return. On a positive level, the fiscal program raised Government revenues as a percentage of gross domestic product and seems to have given greater confidence to the private sector. Real private investment grew in 1983, capital flight was greatly reduced, and foreign arrears virtually eliminated.

AGRICULTURE

While there was a bumper coffee crop in 1983, this does not appear to have led to a corresponding sectorwide expansion of agriculture generally because of a severe drought. Additionally, while the volume of coffee exports increased by 65 percent, this gain was minimized by the low prices on the world market. The coffee crop is projected to be some 25 percent lower in volume than last year, but the unit price is expected to be 5 percent higher. The system of coffee production and marketing is still dominated by middle men who live in small towns in the countryside. These middle men, who are also merchants from whom the peasants borrow money or food, are one of the key constituencies of the Duvalier regime and are directly linked to the upper administration of the Duvalier regime. One Haitian scholar has estimated that up to 40 percent of the personnel in the upper levels of the Government come from families engaged in agricultural speculation. However, the largest profits are made by the exporters at the end of the chain. This exporter segment of the coffee industry is controlled by 27 export houses. These exporters are in a position to set a price to pay to the middle men. The peasant producer is relatively powerless, has no control over prices, and alone pays the tax levied by the Government on coffee exports. The result is that the coffee producer pays the highest taxes in Haiti. This tax is equal to an income tax of 35 to 40 percent.

Small, peasant, agricultural producers continue to suffer from a lack of access to credit. It is estimated that the cost of credit in Port-au-Prince is at 18 percent per year for those in the dominant business sector. In the peasant agricultural sector, the rate is estimated at 18 percent per month or over 216 percent when compounded.

Due to low agricultural productivity, Haiti's domestic market is limited in the extreme by low purchasing power and market size. The real market for most products is less than 50,000 persons. The result is monopoly or oligopoly in the domestic market and export industries based on cheap labor for the international market.

INDUSTRY

The assembly industries appear to have expanded somewhat as "economic expansion" increase in the United States. According to the international financial community, Haiti's export of light manufactures are projected to increase by 20 percent on the assumption that the recovery of economic activity in the United States continues. These firms enjoy the advantage of U.S. Customs Code sections 806 and 807: "which permit goods assembled from U.S. made components to reenter the United States with duty paid only on the value added abroad." These companies, which can be established with minimal capital investment are able to profit from labor priced at $2.64 per day. The industry employs anywhere from 45,000 to 60,000 workers, and it is generally understood that the Government will repress strikes and break up independent trade unions. The principal contribution of these plants is the $30 to $40 million in wages which "support" between 260,000 and 325,000 people, approximately one-third of the population of Port-au-Prince.

TOURISM

Tourism was extremely depressed in 1983. Visitors, primarily from Canada and the United States, are numbered at 300,000 per year, but 60 percent of these arrive on cruise ships and spend only a few hours in Port-au-Prince or Cape Haitian. Tourist expenditures in Haiti are thus very low compared to the number of visitors. The 300,000 figure is also only one-third of the number of tourists that visit Jamaica or the Dominican Republic. Given the image of Haiti, caused by human rights abuses, the unfair labeling of Haitians as carriers of AIDS, and the lack of Government activity in promoting tourism, the outlook is not encouraging.

DEVELOPMENT ACTIVITIES

Perhaps, the most inhibiting factor in undertaking serious, coherent, and coordinated development activities is the continuing lack of a partner in the Government of Haiti. According to Mats Lundahl, an economist, who has written extensively on Haiti:

> The future appears bleak for the Haitian peasant. . . . The Government's lack of commitment to agricultural development forces the peasants to rely on their own efforts. It is here that the major obstacle to economic development would seem to be.

Mr. MAZZOLI. Mr. Chairman, may I just say, in a few seconds, this is a very worthy addition to the bill. The gentleman from New Jersey is, of course, the person who has kept this whole thing together, and I do hope we can vote up the gentleman's amendment.

Mr. GONZALEZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this amendment, of course, is long overdue. There is no question about it. But it is revelatory of a double standard, a discriminatory heritage that has been reflected in every single immigration law and amendments thereto enacted with respect to those who happen to come over across the Mexico border.

I have heard all of the picayunish picking on whether or not certain methods will be erected legislatively to provide for legalization, which this amendment does for a certain category. But when it comes to the case of those who have come across the Mexico border, it seems that there is no sympathetic interest whatsoever. In fact, there is antipathy, even hatred. There never has been any recognition which in turn has been accorded without a murmur, first, in the case of the Cubans, who came here just as illegally as anyone crossing the Mexican border, but they happen to be affluent, upper class, white-skinned Cubans, and they tended to be Republican. So in the course of 10 years—10 years—$2 billion was given in direct relief. Direct relief. You talk about relief and welfare, this was direct monetary relief from the Treasury to individuals and families in this group, even though they were not any more legally here than any undocumented visitor to this country or migrant to this country.

Why this double standard? This is the reason that I have been so critical not only of the past hearings and the efforts made to amend the law. This is why single-handedly I rose on this floor in 1965 in the middle of the debate and consideration of the big so-called codification of the Immigration and Nationality Act of 1965, the big centerpiece of President Johnson, who so proudly took it to the foot of the Statue of Liberty to sign it.

I sent him a telegram asking him to veto it because on this floor, without ever having had any real hearings in the committee, an amendment was offered by then Representative MacGregor that for the first time placed quotas on the Western Hemisphere. And in answer to the questions I raised—because I was the only one voicing objections to that—MacGregor admitted that Mexico was being placed on the same footing as Iceland.

Well, with that kind of rationale, that kind of state of mind, who can reason?

And so the inevitable is happening. Whatever is passed here today, whether you pass the Simpson-Mazzoli intact, whether you pass the Roybal intact, whether you pass all of the amendments and appurtenances thereto intact, it will not stand by 10 people the problem you say this bill is affecting. And the most serious aspect is that it happens to be affecting the 2,000-mile border with Mexico.

And yet there is no question about doing justice. Sure, I am for this amendment. But what has happened to these other people who have been hounded to death, as in Kerr County, posses going out hunting them, shooting them down like dogs, forgotten by two Governments, because in the case of the Mexican national in the last 10 years I have not seen the Mexican Consulate intervene in any of these despicable cases because the American Government has overwhelming preponderant influence on the Mexican Government and there is not a thing they can do to protest or are doing. We have abandoned them on our side. We daily violate constitutional rights which are guaranteed even to the illegal, contrary to commonly held opinion among some Americans.

So all I am saying is, let us keep in mind that justice yet has to be done with respect to that bronze skin, the one who came over, built the highways, plucked the cotton balls, erected the skyscrapers of Dallas, and Houston, and San Antonio and is so forgotten. In time of war, illegal or not, he fought bravely and died valiantly in great numbers for our country.

The CHAIRMAN. The question is on amendment No. 62 offered by the gentleman from New Jersey [Mr. Rodino].

The amendment was agreed to.

The CHAIRMAN. Amendment No. 63 is now in order.

Does the gentleman from Florida [Mr. Pepper] desire to offer amendment No. 63?

Mr. PEPPER. Mr. Chairman, in view of the fact that my amendment was encompassed in the Rodino amendment, I will not offer my amendment.

AMENDMENT NO. 64 REPORTED BY THE COMMITTEE ON EDUCATION AND LABOR AND OFFERED BY MR. GOODLING

The CHAIRMAN. Amendment No. 64 reported by the Committee on Education and Labor is now in order.

Does the gentleman from Pennsylvania [Mr. Goodling] desire to offer amendment No. 64?

Mr. GOODLING. Yes, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 64 reported by the Committee on Education and Labor and offered by Mr. Goodling: Page 101, strike out line 19 and all that follows through page 102, line 5, and insert in lieu thereof the following:

(2) The definitions and provisions of titles I through IV of Refugee Education Assistance Act of 1980 shall apply to payments under this subsection in the same manner as they apply to grants and payments under those titles, except that, in applying this paragraph, any reference in such titles to an "eligible participant" shall be deemed to be a reference to an "eligible legalized alien".

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Mr. GOODLING. Mr. Chairman, with this amendment we seek to conform education aid under this act to education assistance under the Refugee Education Assistance Act.

> (2) The definitions and provisions of titles I through IV of Refugee Education Assistance Act of 1980 shall apply to payments under this subsection in the same manner as they apply to grants and payments under those titles, except that, in applying this paragraph, any reference in such titles to an "eligible participant" shall be deemed to be a reference to an "eligible legalized alien". (p. 161)

This amendment amends section 303(c) of H.R. 1510 to provide assistance that conforms to educational assistance provided to school districts impacted by refugee children under the Refugee Education Assistance Act.

This amendment recognizes a limited Federal responsibility by placing a realistic authorization cap on the amount of education assistance per child that the Federal Government will provide. The commonsense approach was adopted by the House in the Refugee Education Assistance Act and is an improvement over the Judiciary Committee's open ended authorization contained in their version of H.R. 1510. That is probably why my amendment received unanimous bipartisan support in the Education and Labor Committee. Our committee has the experience and knowledge with education programs of this type and it is my hope that the Judiciary Committee and the distinguished sponsors of H.R. 1510 will defer to Chairman Perkins, me and the members of the Education and Labor Committee and line up in support of my amendment.

Briefly, this amendment provides the following:

Grants to State education agencies for schools providing basic education to eligible children. The schools could receive $400 per child if the program were fully funded, based on a formula reflecting the relative cost by grade level of educating these children.

Additional grants to State agencies for school districts with substantial increases in the number of eligible children. This aid would be for supplemental educational services for school districts in which these children comprise 500 students or 5 percent of school population. Amounts range from $300 to $700 per child, depending on when the child was enrolled.

Aid to States for adult education programs ($300 per enrolled adult) for eligible adults 16 or older.

SUMMARY

This approach provides a decreasing amount of assistance for a transitional period—limited to 3 years—based on need that is, funds are targeted to students with most severe needs. In addition it places a cap on the maximum amount authorized compared to H.R. 1510 which has no cap. My amendment structures education assistance under this bill to conform with existing education assistance programs for refugees.

This amendment does not create an entitlement nor does it require 100 percent reimbursement of the educational costs. Rather, it is an attempt to provide Congress, through the appropriation process, the opportunity to help alleviate the costs to local educational agencies that would result from Federal decisions on immigration policy. The maximum authorized amount per child represents less than 50 percent of the child's annual cost of attendance and places a definite authorization cap onto the legislation.

I urge the adoption of this amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has made a very constructive offering on behalf of the Committee on Education and Labor chaired by the distinguished dean from Kentucky [Mr. Perkins]. On this side of the aisle we are prepared to accept the gentleman's amendment.

Mr. WRIGHT. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Texas.

Mr. WRIGHT. I simply want to commend the distinguished gentleman for this amendment. I think it is a useful addition to the bill. It rounds out the promise with the fulfillment, and I want to compliment the gentleman on his amendment.

Mr. GOODLING. I thank the majority leader.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the amendment offered by my colleague on the Education and Labor Committee, Mr. Goodling, that would assure equitable treatment for schools that will have to educate large numbers of refugee children and adults if this legislation is adopted. Further, this amendment is identical to amendments adopted by our committee last year when we considered this legislation which conform the provision in this bill to the 1980 Refugee Education Assistance Act.

Specifically, this amendment would place a cap on the amount of aid per child that would be provided to local schools. The basic grant would be set at $400 per child and additional grants would be provided to schools with substantial numbers of eligible children, such as New York City. Supplemental aid under this provision would be allocated to those districts which have refugee children that comprise 500 students or 5 percent of the school population. Amounts range from an added $300 to $700 per child, depending upon area of enrollment. This amendment also provides aid to States for adult education programs of $300 per enrolled adult age 16 years and older.

Aid under this bill would be decreased over a 3-year period and is targeted to those areas in greatest need. While funds under this bill do not reflect the full costs of education—it does provide some much-needed relief to local school districts which have been heavily impacted by refugees. I maintain that when the Federal Government mandates educational programs—it has a responsibility to provide funding for these programs so that school districts, such as New York, where there are large numbers of refugees and higher than average costs of attendance.

In this school year, New York City has received a mere $736,210 to provide educational services to 44,043 refugee children under the Refugee Education Assistance Act. Under this amendment offered by Mr. Goodling, New York City would receive between $700 and $1,100 per child. If this bill is adopted in its present form, New York City estimates that 750,000 illegal aliens could come forward to become legalized—which means they would need educational services provided for under this amendment. At the very least—this translates into $4.4 million in Federal aid next year—which could grow higher based on how many children, in fact, do step forward to become legalized and seek services.

I believe this amendment merits our strong support for it brings equity to localities which have been absorbing large numbers of new students that have special educational needs. Addressing these needs costs money—and this bill provides some modest relief in that regard. I commend our colleague Mr. Goodling and our Chairman Carl Perkins for their leadership in this area. I intend to support this amendment and urge my colleagues to do likewise.

Mr. KAZEN. Mr. Chairman, will the distinguished gentleman yield?

Mr. GOODLING. I yield to the gentleman from Texas.

Mr. KAZEN. Let me ask the gentleman: Does this have any bearing on a bill that we passed recently which gave help to local school districts that educate children of illegal aliens?

Mr. GOODLING. No; this is primarily dealing with those people who will receive amnesty and will be there to be educated. Now, I am sure that it would include some of the people you are talking about, certainly will be those who will receive amnesty, I would think.

There would be no double-dipping but it will provide that education assistance for those people who will now receive amnesty and be educated in our system.

Mr. KAZEN. In other words, if under the present law, and if this administration finally lets go of that money that we appropriated, school districts, because of a Supreme Court decision, are having to educate children of illegal aliens? Therefore, it has become a Federal project and an obligation of the Federal Government to help local school districts who are impacted by that type of student.

Mr. GOODLING. That is right.

Mr. KAZEN. Now, that is already in place. As I understand what the gentleman is doing with his amendment is saying in effect, if those children who up to now have been children of illegal aliens will now become children of aliens that are here legally and become residents, legal residents, then that program might cease but yours will replace it; is that correct?

Mr. GOODLING. That is correct.

Mr. KAZEN. And it will hold harmless the local school district because of the impact of these particular students? Am I correct?

Mr. GOODLING. That is correct.

Mr. KAZEN. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman form Pennsylvania [Mr. Goodling].

The amendment was agreed to.

AMENDMENT NO. 65 OFFERED BY MR. SCHUMER

The CHAIRMAN. Amendment No. 65 is in order at this time.

Does the gentleman from New York [Mr. Schumer] desire to offer amendment No. 65?

Mr. SCHUMER. Yes, I do, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 65 offered by Mr. Schumer: Page 99, line 24, strike out "and (c)" and insert in lieu thereof ", (c), and (d)".

Page 102, after line 5, insert the following new subsection:

(d) Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State and a local jurisdiction in a State for the 100 per centum of the costs incurred by such State or jurisdiction for the detention or imprisonment of any alien charged with or convicted of a crime, other than an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

Mr. SCHUMER. Mr. Chairman, today I am introducing an amendment to H.R. 1510. The amendment, very simply, would reimburse States and their local jurisdictions for the costs incurred for the detention and imprisonment of any alien who does not have permanent legal status and has been charged with or convicted of a crime.

The amendment will correct an inequity resulting from Federal Government immigration polices. No matter how you feel about the immigration bill, I think we can all agree that it is grossly unfair to burden the States and cities with the costs of illegal immigration. Because of the failures of Federal policies, States are often required and in fact are encouraged by the Federal Government to indeed incarcerate individuals who have committed crimes.

In fact, a letter that I have from Alan Nelson, the Commissioner of INS to Thomas Coughlin, the New York State Commissioner of Correctional Services, explains this policy this way, Commissioner Nelson says:

> It is the policy of the INS, when we are contacted by state or local officials concerning aliens who have violated state or local laws in the commission of crimes to encourage state authorities to prosecute the alien. After the suspect has been convicted, served his sentence, or the sentence has been suspended, INS will take the alien into custody and institute deportation proceedings.

Well, I think it is terribly unfair that the States should be required to assume the costs in prison or jail for those aliens when they have no input into formulating these policies. If the Federal Government has good reason for delaying deportation, fine, but they should pay the costs.

Now, it is estimated that there are approximately 2,000 nonpermanent resident aliens in State prisons nationwide. While there are no hard figures for the numbers in city and county facilities due to the difficulty in eliciting what often must be self-reported data, many report experiencing similar burdens in overcrowding and high costs.

For instance, Dade County, FL, reports 400 aliens in their facilities; Harris County, TX, that is the county in which Houston is, reports 200, New York City estimates 100; Los Angeles County notified the INS of 1,800 undocumented aliens in its county jails between July 18, 1983 and January 1, 1984, whose sentences had expired.

What this amendment does is it says very simply, that the Federal Government should reimburse the States and the counties for those costs. There are five categories of immigrants in this bill, and all five are covered by the bill. Now, that is the full extent of the bill, and before yielding my time, I would like to yield to the gentleman from New York. The impetus for this legislation came not only from myself but from Congressman Mario Biaggi of New York, who gracefully allowed me, as a member of the committee, to go first, and I would like to recognize him.

I would like to, in fact, use a word that has been used quite frequently, salute him for all the good work that he has done on this amendment.

Mr. BIAGGI. I thank the gentleman for yielding and also for his gracious attitude. It has also been a pleasure working together and to come to this point.

Mr. Chairman, as a coauthor of the pending amendment, I rise to urge the House approve it. In the spirit of fairness and the atmosphere of balance which pervades the consideration of this landmark bill, I contend that the Schumer-Biaggi amendment is consistent and compliments this bill.

The amendment would reimburse States for 100 percent of the costs incurred for the detention or imprisonment of any alien who does not have permanent legal residence and who has been charged with or convicted of a felony crime.

In terms of the numbers involved, it is approaching a national problem, and in some States it is already a major problem. According to the New York State Department of Correctional Services, there are an estimated 4,000 illegal aliens incarcerated in State and local prisons, with more than half coming from New York, Florida, and Texas. The following other States would also be eligible for reimbursement from this amendment: New Jersey, Pennsylvania, New Mexico, Arizona, Michigan, Louisiana, and Ohio. We estimate the total cost of this amendment at $26 million based on the average annual cost of $13,000 for the incarceration of an individual in the United States.

We are, in most cases, referring to a limited segment of individuals—those who achieved the status of illegality and compounded it by committing a felony crime in the United States. Going ever further in the narrowing process, we seem to find that most of these offenders come from the ranks of the so-called Cuban boat flotilla people who entered our shores beginning in 1980. The total number of Cubans accepted in the United States in 1980 totaled 125,000. Estimates of the number of those who were released from prison range from 10,000 from the Department of Justice, to 30,000 from a reliable Cuban source.

☐ 1520

The CHAIRMAN. The time of the gentleman from New York [Mr. Schumer] has expired.

(On request of Mr. Biaggi and by unanimous consent, Mr. Schumer was allowed to proceed for 5 additional minutes.)

Mr. BIAGGI. Mr. Chairman, whatever the number, these are the people who have found themselves transported to another locality, but resuming their criminal behavior.

How is it that they ended up in State prisons? According to the sponsor of the Senate amendment, my colleague from New York, Mr. D'AMATO, the problem stemmed from several sources. The first had to do with the inability of the Immigration Service, and later the Federal Bureau of Prisons, to accept these prisoners. The New York State Department of Corrections, when confronted with a dramatic increase in their illegal alien prison population, sought help. The law did not offer much specific relief. In order for an alien, legal or illegal, to be deported, he would have to be convicted of a specific type of crime; one of moral turpitude. Since a number of these aliens did not commit these types of crimes, they could not be deported.

The problem intensified when another section of law, 8 U.S.C. section 1252(h) was invoked, which stated that an alien sentenced for imprisonment is not to be deported until he has been released from prison because he has either served his sentence or been paroled. If a State, in order to save money, chose to parole the individual, then the INS faced the problem of having their facilities for detaining deportable aliens overcrowded. The Bureau of Prisons indicated they had an overcrowding problem, so they were no help.

Therefore, States exercised their responsibilities to protect the public safety of its citizens, and began to incarcerate these individuals.

Against this backdrop of Federal abdication of responsibility, States went to fill the void. While the overall number may seem small, and perhaps not even indicative of a national problem, let us evaluate the situation on a State-by-State basis. The single greatest negative impact these incarcerated illegals pose is their addition to an already overcrowded State prison system. Consider my home State of New York which is reliably estimated to have some 966 illegal aliens incarcerated in its system. These individuals occupy 966 spaces in a State prison system that already holds 3,000 more inmates than its capacity safely permits. Yet this is not peculiar to New York. It affects every other State where there are illegals jailed. It is an unfair burden to impose on a State without at least providing some degree of reimbursement.

On the issue of costs, again referring to New York, we estimate the costs associated with these incarcerations to be $12 million a year. We would hope with this amendment to accommodate a full reimbursement of these costs to New York and all of the other affected States.

Let me again put this matter in some perspective. We seek to extend the so-called fairness doctrine as it applies to the whole of H.R. 1510. As the Members know, this bill is constructed with a balance somewhat precarious, but a balance nonetheless. I consider the issue of adequate reimbursement to States and localities to be an integral part of this balance. H.R. 1510, as reported, addresses this issue to a limited extent. The Schumer-Biaggi amendment adds another important component to this formula; one which in some respects, is more worthy than other areas that are proposed for reimbursement.

I, like many of my colleagues, have been forced to vote for some very difficult propositions in recent days. In some eyes, this may be another. However, consider if you will, the plight of those 10 States which have been forced to shoulder the burden of incarcerating illegal aliens convicted of felonies. Consider how these 10 States have had the plague of released prisoners from Cuba entering their streets and establishing a new class of criminals. In New York City alone, where I represent, within a 15-month period after their arrival, 56 murders were committed by Marielito Cubans, all of whom were in prison before they came.

I again appeal to your sense of fairness when I ask for your support of this amendment. It is important to some of the largest States of this Union, who have shouldered an unfair burden for too long.

Mr. SCHUMER. Mr. Chairman, I appreciate the gentleman's remarks.

I would just like to make two final points before concluding. First, the Senate has adopted a similar provision to its immigration bill last year. The amendment was sponsored by Senator D'AMATO, who has worked very hard on this legislation.

The supporters of this amendment include the National Governors' Association, the National Association of Counties, the U.S. Conference of Mayors, the National League of Cities, and the American Correctional Association. The administration has expressed no opposition.

With that, I know that we have had some lengthy conversations between the good gentleman from Kentucky who has done such an outstanding job on this legislation throughout these past weeks, and indeed it was a fine debate that we have had, and the gentleman from New York [Mr. FISH] and I think he has some suggestions to make which then we could accept in terms of speeding the proceedings in the House.

Mr. FISH. Mr. Chairman, will the gentleman yield?

Mr. SCHUMER. I yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding.

Mr. Chairman, this amendment provides 100 percent reimbursement to States and local jurisdictions for their costs associated with the detention or imprisonment of aliens either charged with or convicted by States of crimes, including petty crimes.

I understand the gentleman's rationale for this is that where an undocumented alien here because of a failure of U.S. policy has been arrested and convicted of a felony and incarcerated, that that cost should not be borne by a State or local jurisdiction, but that there should be Federal reimbursement because it is, in a sense, our fault that the individual is here.

What concerns me is that rationale should not be extended beyond the undocumented. Amendment 65 as drafted applies to all aliens with the following single exception: aliens lawfully admitted for permanent residence.

The following classes of aliens appear to be covered by the reimbursement provisions of the amendment:

(1) Aliens during the time period of lawful temporary residence under the legalization provisions;

(2) All classifications of nonimmigrants including: "B" visitors for business or pleasure; "C" aliens in transit; "D" alien crewmen; "E" aliens entering pursuant to a treaty of commerce and navigation and certain relatives of such aliens; "F" and "M" students and certain relatives; "H" aliens of distinguished merit coming temporarily to perform services, temporary workers, and persons coming temporarily as trainees, plus certain relatives; "I" foreign media personnel and certain relatives; "J" exchange visitors and certain relatives; "K" the financees or finances of citizens and minor children of financees or finances; "L" intracompany transferees and certain relatives;

(3) Refugees and asylees before obtaining permanent residence;

(4) Persons paroled into the United States;

(5) Persons granted extended voluntary departure status or indefinite stays of deportation;

(6) Illegal aliens.

Amendment No. 65, in contrast to State legalization assistance provisions of H.R. 1510, does not attempt to reimburse States for costs associated with the implementation of the Immigration Reform and Control Act of 1983—but rather transfers to the Federal Government a responsibility presently borne by the States. Employer sanctions, if successful, will discourage the illegal entry of aliens—and thus reduce rather than increase detention costs for future illegal aliens who may violate—or be charged with violating—State laws.

What I am suggesting to the gentleman is that Federal assumption of the costs incurred by States for the detention of all aliens—except permanent resident aliens—convicted or merely charged with crimes, not just felonies, is really overly broad. I do, however, see a responsibility for that one category of the undocumented. The subject of undocumented aliens, after all, is what this bill addresses. We appropriately can address the costs incurred if an undocumented individual is convicted of a crime in a non-Federal jurisdiction.

I would like to say to the gentleman that I will do my best in the conference to see that the provision in the Senate bill is narrowed to this one category which fits the rationale the gentleman has stated that this is a Federal responsibility. It just does not apply to refugees and nonimmigrants because those people come here lawfully and it is all agreed to under our ceilings and under our laws.

The CHAIRMAN. The time of the gentleman from New York [Mr. Schumer] has again expired.

(On request of Mr. Fish and by unanimous consent, Mr. Schumer was allowed to proceed for 2 additional minutes.)

Mr. SCHUMER. I thank the gentleman from New York. We had talked about the various changes that he had mentioned, the gentleman from New York and the gentleman from Kentucky, and we have come up with language that we think meets all of our agreements, and I would just like to read it for the record. Because of the rule, we cannot amend this amendment on the floor, but given that the complete language is in the Senate bill, given that the gentleman from New York and the gentleman from Kentucky have given their assurance that they will fight for this in conference and that the Senator from Wyoming has also seen the language of this amendment and reports it to be favorable, I would withdraw the amendment after getting the concurrence of the gentlemen from New York and Kentucky that this is the language that we will work for in the Senate conference.

I would just like to read the Senate language, the language here. It would be the same section, section (d):

> Subject to the amounts provided in advance in appropriation acts, the Attorney General shall reimburse a State and a local jurisdiction in a State for 100 per centum of the costs incurred by such State or jurisdiction for the detention or imprisonment of any illegal alien convicted of a felony.

Does that language meet with the gentleman's approval?

Mr. FISH. That narrowed language does meet my objection and I will do my best to see that survives the conference.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. SCHUMER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, while I have not been privy to the entire conversation, the gentleman from Kentucky and the gentleman from New York have talked repeatedly over the last several days and I am satisfied with the explanation on this side. That sounds like a good handling.

The CHAIRMAN. Does the gentleman from New York [Mr. Schumer] ask unanimous consent to withdraw his amendment?

Mr. SCHUMER. The gentleman from New York asks such unanimous consent, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. OTTINGER. Mr. Chairman, I ask unanimous consent to speak out of order for 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. OTTINGER. Mr. Chairman, I take this time to advise the Committee, since there will not be time for debate once we go back in the House, that when the Committee rises and we do go back in the House, I am going to ask for a separate vote on the amendment offered by the gentleman from Florida [Mr. McCollum], that was passed earlier.

I think that amendment is particularly disadvantageous to the country, and unfortunate. It removed all class actions on behalf of those people whom the Immigration Service seeks to deport, and that is the only effective means by which refugees from repression overseas have to address their grievances effectively.

Refugees who seek asylum are represented by volunteer groups with very limited resources, and if they have to bring each one of these cases individually, it would be an impossible task. Furthermore, to have each asylum case brought individually would be a tremendous burden on our courts and a wasteful expenditure of public funds.

Second, the McCollum amendment gave arbitrary powers to the Immigration and Naturalization Service border guards to make determinations with respect to the legitimacy of refugees' requests for consideration under our laws with respect to being granted asylum. Those border guards are in no way equipped to be able to do that. The existing law provides that determination be made by an administrative judge.

Third, the McCollum amendment vastly restricted judicial review of asylum cases that are brought before the courts.

The chairman of the subcommittee, the chairman of the full committee, the ranking minority member, all opposed the McCollum amendment when it was offered. I think there was a good deal of confusion in the committee because the committee had just voted to support an amendment that I had offered that would have prevented the constriction of class actions to merely constitutional cases. So the committee had expressed itself as being in favor of class actions and then this broader amendment by the gentleman from Florida [Mr. McCollum] was offered and was passed, I think without full examination by the committee.

I strongly urge that the committee defeat the McCollum amendment. It only prevailed by 16 votes, and upon reconsideration and full explanation of this amendment, I hope that it will be defeated when it is brought up in the full House of Representatives.

□ 1530

(By unanimous consent, Mr. McCollum was allowed to speak out of order.)

Mr. McCOLLUM. Mr. Chairman, I have requested unanimous consent to speak out of order to respond to the gentleman.

Mr. Chairman, a few days ago, we debated what the gentleman has just brought up on the floor of this House and we had a vigorous debate and we had a vote on it in which the majority of this body voted to support the McCollum amendment, which would toughen and make workable the summary exclusion provisions that are in this bill.

I would like to briefly take the time of the body, since it appears it is going to be brought up for a revote, that is what the gentleman said, when the House rises and goes into the full House, or the committee rises, I should say, I would like to bring the Members up to date and remind them of what that vote was about and perhaps remind some of them why they voted for the McCollum amendment.

We have two different possible avenues that are taken when the Government questions the right of an alien to remain in this country and attempts to have him removed. One of them is called exclusion and the other is called deportation.

With respect to summary exclusion, the McCollum amendment does not touch on deportation. Deportation as such or the deportation process deals with somebody who has managed to get his foot on the shore, walk up the beach and then later be apprehended. It may be 1 day later, it may 1 week later, or it may be several years later. There is a long standing process under the laws that now exist on the books for deportation. We also have a procedure called exclusion which is designed to handle those cases where people are apprehended, as they cross our border or attempt to cross our border by the immigration officers and the border patrol.

Those folks are people who have never been in this country, but they have attempted to come here. They are very much apparent in my State of Florida and were those in many cases who came in during the Cuban Mariel boatlift a few years ago that many of you may remember. They crossed the borders. They were apprehended as they began crossing. They had not really gotten on our shores.

Under those conditions, the Government uses a process called exclusion. There are certain things that are handled a little differently for exclusion than they are for deportation, and they should be; but under the current laws that exist, only those who are stowaways on boats and those who are stowaways on planes and alien crewmen who jump ships can be handled in what is known as a summary fashion.

The McCollum amendment, as passed, advocates and allows for the processes to work that were intended in this bill and were crafted originally in the original Simpson-Mazzoli bill on summary exclusion to allow the Immigration Service when somebody comes in, like getting off a boat at the shoreline setting foot on our shores, to allow the Immigration Service to apprehend them while they are still on the beach and have an Immigration officer query them about: First, do they have any documents that would give them color to be here rightfully; second, do they have a claim for political asylum, and if they do have the documents or they do have a claim for political asylum; or third, if they have any other basis for being here that they claim, then they are brought into the process. If they have any documents or any claim for asylum, they are brought into the process and they are given a right to hearings before an administrative law judge. But under the bill, before the McCollum amendment was adopted, there were rights given to an alien to have an administrative law judge hearing even if the alien had no documents and no claim for asylum. There was an extra step, a procedure given where these people would have to be warned or given their rights to counsel and be told that there could be a redetermination by an administrative law judge if they did not agree with this decision, even though they had been checked already by the Immigration Service, even though they have not set foot on our shores, but are just beginning the process of trying to cross our border, and even though they had no documents, no claim to asylum, and no other basis for coming into the United States.

What my amendment did and what I urge the Members to protect, what my amendment did was to say that that second step does not have to be taken, that somebody who has not crossed our borders yet, is just in the process of being apprehended, should be treated as he would be treated if he came to a consul's office across the seas somewhere or if he were a stowaway or if he were an alien jumping ship and summarily excluded.

In other words, to insure that we have the capacity to handle and deal with future Mariel boatlifts, we need to have effective and workable summary exclusion. It does not deny anybody any rights. It simply makes for uniformity out of a condition that has existed for many years and many of us thought existed all along, but apparently has not.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I will be glad to yield to the gentleman from California.

Mr. LUNGREN. Mr. Chairman, I just want to make it very clear that what we will be revoting on, will be a vote that we already had several days ago that was passed. The gentleman's amendment was passed by a recorded vote and that will be the subject of the vote, as the gentleman has explained it, not the McCollum amendment that had to do with legalization. This has nothing to do with that section of the bill.

Mr. McCOLLUM. That is right.

Mr. LUNGREN. It is something that we fully debated several days ago and decided by a recorded vote and has nothing to do with anything that we have really discussed today, except for the discussion in the last 10 minutes.

I hope that is clear to everybody when we go back into the full House.

Mr. McCOLLUM. Mr. Chairman, I thank the gentleman and reclaiming my time for 1 minute, the amendment had two other features in it. One of those features dealt with class actions. It struck the right for folks to bring class actions in exclusion, deportation, and asylum matters under our immigration laws. The gentleman is raising this again and I debated it at some length at the time.

The CHAIRMAN. The time of the gentleman from Florida has expired.

(At the request of Mr. Ottinger, and by unanimous consent, Mr. McCollum was allowed to proceed for 2 additional minutes.)

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. In a moment, if I might finish this.

There is a procedure for habeas corpus and multiple party actions for habeas corpus in the bill, and class action suits under these conditions and circumstances are simply not necessary. They are redundant and they add a delay in the process of asylum claims that have clogged up our courts and immigration hearings process in Florida and across the country. Now we have over 170,000 of them pending. We only had 3,800 of that type of claim back in 1978, just a few years ago; so we really need a streamline of the process that the adjudication section does and to further streamline was the purpose of that portion of my amendment.

The last thing that the amendment did was remove the automatic stay of kicking somebody out of the country that attaches when appealing an exclusion order, again protecting that automatic stay for deportation.

What this does is avoid some of many frivolous procedures that can be brought up to delay the process by those who want to simply stop the processes and clog up our system and use this for the purpose of delay.

It still allows them to seek and get a stay if the judge, in his discretion, wants to give it.

So all I have done is try to streamline in this amendment the whole process to insure that we do not have another Mariel boatlift type of situation and be able to handle it if it ever were to arise again in the future, and to have a summary exclusion that is really workable and an asylum exclusion and deportation system that is workable.

The CHAIRMAN. The time of the gentleman from Florida has expired.

Mr. OTTINGER. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for 1 additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. MAZZOLI. Reserving the right to object, Mr. Chairman, this is the last time the gentleman from Kentucky will permit any extensions. The gentleman from Kentucky, hereafter, will object to unanimous-consent requests for time.

We must move the bill along. I will not, however, object to this.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New York [Mr. Ottinger] that the gentleman from Florida may proceed for 1 additional minute?

There was no objection.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Chairman, there is one thing that I think is very important to clarify and that is the impression the gentleman left was that all three of these provisions only applied with respect to exclusions.

The border guards are given what I consider to be an arbitrary right of exclusion, but the amendment's prohibition of class-action suits does apply to deportation actions. The elimination of the authorization for class actions that the gentleman has provided does apply both to exclusions and to deportation actions, and in the latter instance, particularly, it will do incalculable harm to the refugees whose lives may be at stake in deportation proceedings.

Mr. McCOLLUM. It applies, if I may reclaim my time, to the asylum procedures which could conceivably be under either exclusion or deportation because they are claiming to be refugees or maybe just aliens who have been apprehended either inside our borders or trying to cross the borders. It also applies to any and all other exclusion and deportation matters. Class actions would be totally barred in all these immigration matters.

However, the amendment primarily deals with summary exclusion and that is critical. It also deals with the area that the gentleman is talking about, which is the asylum exclusion and deportation speedup.

If we are going to streamline this bill and allow summary exclusion to work, if we are going to allow asylum procedures to work and not have the delays and the frivolous procedures that we have had in the past, I urge my colleagues to revote for the McCollum amendment, as they did a few days ago when it comes up again, when the committee rises.

I hope they have listened to this summary debate and will check the Record to see how they voted before, because they will see that a sizable majority voted with me to sustain this improvement in the adjudication and summary exclusion area to make it streamlined and workable.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Iowa [Mr. Smith] is recognized for 5 minutes.

There was no objection.

Mr. SMITH of Iowa. Mr. Chairman, before we move on to amendment No. 66, I want to give a little word of caution about amendment No. 65 which was withdrawn.

Now, the language they agreed to consider in conference is vastly better than the wording originally presented; however, it still includes felonies committed under State law. We are talking about a State determining what is a felony and then if they are convicted under the State law, the Federal Government is going to pay for their incarceration and the State determines how long they will remain incarcerated at 100 percent Federal cost.

Right now there are 5,000 such felons in prison. That would cost $65 million per year.

Now, I could not help but notice that some of those who supported the proposal so strongly are the same ones who voted a few days ago for a 4-percent cut for law enforcement for the country over, including programs where the Federal Government helps or reimburses State and local governments.

Now, it is inconsistent to add $65 million to this authorization bill and then cut them $65 million in the funding bill.

□ 1540

A lot of those programs that were cut by 4 percent were programs that provide money to State and local communities. So I want to add a word of caution that supporting such a provision does not mean someone has found a new store where candy is free.

Mr. O'BRIEN. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Illinois.

Mr. O'BRIEN. I thank the gentleman for yielding.

Mr. Chairman, as the House knows, the gentleman from Iowa [Mr. Smith] is chairman of our Subcommittee on Appropriations that deals with the immigration and naturalization appropriation and I, as ranking member, believe every word he said is correct. And I speak in support of his remarks.

Mr. SMITH of Iowa. I thank the gentleman.

Mr. Chairman, so what such a provision would do is to add, if it is funded, $65 million to the Federal law enforcement appropriations. Now, those who support this authorization should be prepared to support it when the appropriations bill comes up and do not vote for another one of those amendments to cut the grants to States for law enforcement under programs already in being.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, I could not agree more with what the gentleman has said. The gentleman from Iowa [Mr. Smith], has just been an outstanding leader for the proposition that the Immigration and Naturalization Service needs adequate money. He has labored, and my friend from Illinois [Mr. O'Brien] the ranking minority member, the same way, labored mightily to bring forth a bill which had $20 million for the recommendations of this subcommittee by way of authorization only to see the ignominy of a 4-percent across-the-board cut which not only does not have the $20 million now but now we are even below the original recommendation.

So I agree 100 percent, if we are going to do something we have to pay the bill.

Mr. SMITH of Iowa. I thank the gentleman from Kentucky.

The CHAIRMAN. Amendment No. 66 is in order at this time.

Does the gentleman from California [Mr. Lungren] desire to offer amendment No. 66?

Mr. LUNGREN. No. Mr. Chairman, I do not.

Mr. EDWARDS of California. Mr. Chairman, the gentleman from California [Mr. Lungren] has withdrawn amendment No. 66. If he had offered it, I would have opposed it. It would have substituted block grants for Federal reimbursement for the costs of legalization.

Immigration decisions are made at the Federal level. The financial ramifications of those decisions cannot in good conscience be passed to State and local governments who are suffering their own budgetary difficulties in this troubled economy. Because cost projections for legalization are based on conflicting data and varying assumptions, none of which have been validated, there simply is no way of predicting what costs will incur from the legalization program. I am the author of the current reimbursement provision in the bill which was designed to hold the State and local governments harmless for a limited period of time—fiscal year 1984 and the following 3 years—if costs should incur.

By maintaining the current language, we can demonstrate the good-faith concern of the Congress for the fiscal integrity of the States, counties, and municipalities. If there are no significant costs for programs of public assistance as a result of legalization, there will be no substantial financial burden under the current language for the Federal Government.

If significant costs do result, the current language in the bill guards against a unilateral imposition on our partners in federalism of financial burdens which they have no way to predict and over which they have no control.

It must be emphasized that no one knows what the costs of legalization will be, either for the Federal Government or for State and local governments. I have attempted to have some good-faith estimates developed by various groups, and I can personally vouch that it is like asking for the proverbial number of angels capable of dancing on the head of a pin.

The Department of Health and Human Services and the Office of Management and Budget both did cost estimates. The high estimate was 800 percent higher than the low estimate—quite an extraordinary range!

The point that needs to be made here is not how high a cost figure can be developed in order to scare the daylights out of everyone. The point is just this: There is great disagreement on the basic assumptions that were used to develop the various figures. No one knows how low or how high the cost will be. Under the Lungren amendment, the risk is removed from the Federal Government, where it belongs, and is placed on State and local governments, where it does not belong.

The legalization program as reported by the Judiciary Committee would make newly legalized aliens ineligible for most Federal programs. But, they will remain eligible for cash assistance, medical assistance, and other services offered by States and localities to residents living in their domain. Many States have equal protection clauses in their States constitutions that prevent the State from treating different residents differently. And, we all remember that, when the State of Texas recently argued that the State should not have to pay for the cost of educating the children of undocumented aliens, the Supreme Court rejected their arguments.

The block grant amendment gives the appearance of assistance, but what it really does is protect the Federal budget at the expense of the State and local governments. The current language in the bill appropriately accepts our Federal responsibility, with a fiscal honesty that assures our partners in federalism we will not unilaterally impose costs on them over which they have no say.

Mr. Speaker, I wholeheartedly believe that legalization is a worthy goal and I am hopeful that the costs of legalization will be minimal. Whatever those cost turn out to be, however, they should be borne by the Federal Government. I remind my colleagues that a vote for the block grant amendment is a vote to shift those costs to the State and local governments.

The block grant proposal is opposed by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, the U.S. Conference of Mayors, and the National Association of Counties, among others. As the author of the reimbursement provision currently in the bill, which was adopted by a majority of the Judiciary Committee members, I urge my colleagues to stand with me and to vote against this block grant amendment.

The CHAIRMAN. Amendment No. 67 reported by the Committee on Education and Labor is in order at this time.

Mr. WAXMAN. Mr. Chairman, I ask unanimous consent to strike the last word so I may engage in a colloquy with the chairman of the subcommittee, the gentleman from Kentucky.

The CHAIRMAN. Without objection, the gentleman from California [Mr. Waxman] is recognized for 5 minutes.

There was no objection.

Mr. WAXMAN. Mr. Chairman, I would like to ask the chairman of the subcommittee a few questions if I may.

The committee bill provides for reimbursement of State and local governments for programs of public assistance that "provide medical or other assistance" to meet "the health needs of individuals or required in the interest of public health."

Is it your understanding that this provision includes such general public health services as immunizations or the testing and control of tuberculosis and venereal disease or community and migrant health services?

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Yes, it would, in the opinion of the gentleman from Kentucky.

Mr. WAXMAN. Mr. Chairman, if the gentleman [Mr. Mazzoli] is a member of the conference committee—as I certainly expect he would be—would it be his intention to clarify the reach of the public health authority in the bill, either through statute or report language.

Mr. MAZZOLI. If the gentleman would yield further, the gentleman from Kentucky, if he is named a conferree in connection with my friend from California [Mr. Lungren] certainly it would be my intention and I expect it to be the will of the group to try to clarify this intention, yes.

Mr. WAXMAN. I thank the gentleman very much for answering those questions.

Mr. Chairman, I yield back the balance of my time.

AMENDMENT NO. 67 REPORTED BY THE COMMITTEE ON EDUCATION AND LABOR AND OFFERED BY MR. GOODLING

The CHAIRMAN. Amendment No. 67 reported by the Committee on Education and Labor is in order at this time.

Does the gentleman from Pennsylvania [Mr. Goodling] desire to offer the amendment?

Mr. GOODLING. I do, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment No. 67 offered by Mr. Goodling: Page 102, after line 5, insert the following new section (and insert a corresponding item in the table of contents):

AMENDMENTS TO THE REFUGEE EDUCATION ASSISTANCE ACT

Sec. 304. The Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) is amended—

(1) by striking out "each of the fiscal years 1981, 1982, 1983," in section 102(a) and inserting in lieu thereof "fiscal year 1981 and for each subsequent fiscal year";

(2) in the first sentence of section 201(c) by inserting "from State or local educational agencies" after "not available" and by inserting "from the most recent data available from the Immigration and Naturalization Service" after "of estimates";

(3) in the first sentence of section 301(c) by inserting "from State or local educational agencies" after "not available" and by inserting "from the most recent data available from the Immigration and Naturalization Service" after "of estimates"; and

(4) by adding at the end of section 402(a) the following new sentence:

"Funds available under this title shall, to the maximum extent feasible, be used for programs of instruction of such adult refugees in order that they may gain an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language, and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.".

Mr. GOODLING. Mr. Chairman, this amendment has three purposes:

Clarifies an ambiguity in the Refugee Education Assistance Act to ensure its permanent authorization.

Provides flexibility for a local school district to use Immigration Naturalization Service data in determining the number of eligible children under this act.

Provides for emphasis on English language proficency and knowledge of the history, principles, and form of Government of the United States in any adult education program under both this act and the Refugee Education Assistance Act.

The Education and Labor Committee unanimously adopted this amendment which provides for necessary technical changes in the Refugee Education Assistance Act to ensure that conformity of intent applies to both REAA and H.R. 1510. First, since REAA created a permanent authorization for refugee education assistance, this amendment corrects an ambiguity in that act to ensure that the authorization of appropriations in section 102 of that act conforms with sections 201, 301, and 401 of REAA. The second part of my amendment provides school districts with the flexibility to use Immigration and Naturalization Service data to determine the numbers of eligible children when local school districts have not compiled their own independent count. In the case of large urban school districts like New York City, independent data collection activity could be prohibitively expensive.

In addition the amendment provides that funds for adult education programs under this act, to the maximum extent feasible, shall be used for programs of instruction for eligible recipients in order that they may gain an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language, and a knowledge and understanding of the fundamentals of history, and of the principles and form of government, of the United States.

In our committee report we made it clear that we do not intend by this provision that the U.S. Department of Education has any authority to develop rules, regulations, or guidelines regarding curriculum, methodology of instruction, or course content which are clearly under the jurisdiction of State and local recipients. The committee merely intends that State and local recipients of these funds must certify that, to the maximum extent feasible, the Federal moneys are being utilized for the purposes noted in the amendment. The committee does not envision that this amendment will result in separate audit trails or the establishment of entirely separate adult education programs. The committee merely wishes to reinforce the point that it is the responsibility of

State and local officials to utilize the Federal dollars for adult education under this act for the intended purposes.

I urge the adoption of this amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the chairman of the subcommittee.

Mr. MAZZOLI. I thank my friend from Pennsylvania for yielding.

The gentleman from Kentucky has examined the gentleman's [Mr. Goodling] amendment and we find it constructive and we are prepared to accept it.

Mr. GOODLING. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment No. 67 reported by the Committee on Education and Labor and offered by the gentleman from Pennsylvania [Mr. Goodling].

The amendment was agreed to.

Mr. MOAKLEY. Mr. Chairman, I ask unanimous consent to address the House for 1 minute.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MOAKLEY. Mr. Chairman, realizing the stage of consideration that the committee has reached, I will use only a small portion of my time. However, I rise in support of title 4, stating the sense of Congress that we should offer extended voluntary departure to El Salvador refugees in the United States.

I commend the gentleman from Kentucky for his cooperation and leadership on this matter. But, I did wish to pose a question to the distinguished manager of the bill. This morning my subcommittee held hearings on a related measure, H.R. 4447, and heard testimony on behalf of the administration.

The State Department witness, Assistant Secretary Abrams stated, in substance, that this administration's posture was to ignore sense of Congress findings if they happen to be inconsistent with the administration's policy preferences.

In view of this advance notice that our exercise in passing this title will be ignored, what subsequent action does the committee expect with regard to El Salvador refugees?

Mr. MAZZOLI. Mr. Chairman, will the gentleman from Massachusetts yield?

Mr. MOAKLEY. I yield to the manager of the bill, the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman from Massachusetts.

Mr. Chairman, while I was unaware of that statement, certainly there is perhaps constitutional separations of powers here but it is certainly the effort of the gentleman from Kentucky, who is the chairman of the subcommittee hearing the gentleman's [Mr. Moakley] bill to move that bill along. If it seems like, unfortunately, this sense of Congress might be ignored, the intention would be to move the bill.

Mr. MOAKLEY. Mr. Chairman, I thank the gentleman from Kentucky.

Mr. Chairman, I yield back the balance of my time.

AMENDMENT NO. 68 OFFERED BY MR. ROYBAL

The CHAIRMAN. Amendment No. 68 is in order at this time.

Does the gentleman from California [Mr. Roybal] desire to offer amendment No. 68?

Mr. ROYBAL. I do, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 68 offered by Mr. Roybal: At the end of the bill, add the following new title (and conform the table of contents accordingly):

TITLE V—NATIONAL COMMISSION ON IMMIGRATION

NATIONAL COMMISSION ON IMMIGRATION

Sec. 501. (a) There is established a National Commission on Immigration (hereinafter in this section referred to as the "Commission") to conduct studies and analyses and to report to Congress concerning—

(1)(A) the push and pull factors affecting unauthorized immigration to the United States,

(B) the development, in partnership with Latin American countries, of reciprocal trade and economic development programs of mutual benefit,

(2) the incentives for employers in the United States to employ aliens who are not authorized to be so employed,

(3) the reliance of the agricultural industry on the employment, on a temporary basis, of aliens not authorized to be employed in the United States, and

(4) the existence and extent of backlogs for the issuance of immigrant visas to aliens who have approved petitions for immigrant preference status.

(b)(1) With respect to the topics described in subsection (a), the Commission shall—

(A) review and analyze the economic and social conditions, patterns, and trends in the United States and in foreign countries which affect unauthorized immigration into the United States, the short-term and long-term problems in the United States and elsewhere associated with such unauthorized immigration, and potential solutions to such problems;

(B) take into account, in such reviews and analyses—

(i) prevailing and projected demographic, technological, and economic trends affecting immigration into the United States;

(ii) the impact of immigration laws, and their enforcement, on unauthorized immigration and on social and economic conditions in foreign countries;

(iii) how unemployment in particular areas and occupations in the United States is affected by unauthorized immigration; and

(iv) the laws, policies (including trade policies), and procedures governing economic and diplomatic relations between the United States and foreign countries; and

(C) make recommendations respecting additional statutory and other changes that should be made to best deal with unauthorized immigration into the United States.

(2) With respect to the topic described in subsection (a)(1)(B), the Commission shall review and study the short- and long-term measures promoting reciprocal trade and economic development programs of mutual benefit to the United States and Latin American countries. The Commission's reviews and analyses under this paragraph shall focus on, and be conducted in close consultation with the governments of, those foreign countries from which nationals are most likely to immigrate without prior authorization to the United States. The Commission shall present its recommendations to the Congress with respect to this topic not later than 18 months after the date of the enactment of this Act.

(c)(1) The Commission shall be composed of fifteen members as follows:

(A) Five members appointed by the President, not more than three of whom are members of the same political party and not more than three of whom are officers or employees of the Federal Government.

(B) Five members appointed by the Speaker of the House of Representatives, not more than three of whom are members of the same political party and not more than two of whom are members of Congress.

(C) Five members appointed by the President pro tempore of the Senate, not more than three of whom are members of the same political party and not more than two of whom are members of Congress.

In making such appointments, due consideration shall be given to securing representatives on the Commission from a variety of constituencies, including State and local government officials and individuals and representatives of organizations with experience or expertise in immigration matters. Appointments to the Commission shall be made within ninety days after the date of the enactment of this section. Members shall be appointed in a manner that provides for balanced representation of all interests.

(2) The chairman and the vice chairman of the Commission shall be elected from among the members. The term of office of the chairman and vice chairman shall be for the life of the Commission.

(3) The chairman may invite for the purpose of participating in any meeting or hearing held by the Commission, and for the purpose of contributing to the studies to be conducted and the recommendations to be developed by the Commission, such representatives of the governments of countries as the Commission deems desirable.

(d)(1) Members shall be appointed for the life of the Commission.

(2) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(4) The Commission shall meet at the call of the chairman of a majority of its members.

(e)(1) Each member fo the Commission who is not an officer or employee of the Federal Government shall, subject to such amounts as are provided in advance in appropriations Acts, receive $150 for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission.

(2) Members of the Commission who are officers of employees of the Federal Government shall receive no additional pay on account of their service on the Commission.

(3) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(f)(1) The Commission shall have a director who shall be appointed by and whose rate of pay shall be fixed by the chairman.

(2) The chairman may appoint and fix the rate of pay of such additional personnel as the chairman deems desirable.

(3) The director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(g)(1) The Commission may for the purpose of carrying out its duties hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems advisable. To the extent feasible, the Commission shall hold at least some hearings in the border regions of the United States.

(2) The Commission shall, to the maximum extent feasible, conduct its activities through the establishment of three expert panels, each of the panels to provide detailed information and recommendations to the Commission respecting one of the topics described in subsection (a).

(3) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants at a rate to be fixed by the Commission, but not in excess of $150 per diem (including traveltime). While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses including per diem in lieu of subsistence.

(4) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties. Upon request of the chairman, the head of such agency or department of the United States shall furnish all information requested by the Commission which is necessary to enable it to carry out its duties.

(5) The Commission may accept, use, and dispose of gifts or donations of services or property.

(6) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(7) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h)(1) The Commission shall transmit a report to the Congress not later than three years after the date of the enactment of this Act. Such report shall include a summary of the reviews and analyses conducted by or on behalf of the Commission and such recommendations as the Commission deems appropriate.

(2) The Commission shall cease to exist on the thirtieth day beginning after the date of the transmission of the report under paragraph (1).

(i) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

Mr. ROYBAL. Mr. Chairman, this is perhaps the most important amendment that will be presented today. It is important because it deals with the cause, not the cost, but the reason that immigrants come to the United States from Latin America and from other countries of the world. The Simpson-Mazzoli bill has not addressed itself to the cause or to the reason.

The reason that they come here to the United States is because they are starving in their own country. The poverty that exists in their own country is such that they run away from their country, seeking a means of raising whatever is necessary to keep life and limb together in their country of origin. They run away from their own oppressive government which we support, and they come here to feed and support their families, they want to live in peace, and not in poverty, and that is the reason why they come here. They also have the opportunity to get employment here in the United States and those that employ them do so because they work for less and then they also work longer hours under adverse conditions.

We are not going to be discussing that particular point now because the committee has already passed their so-called sanctions that are supposed to take care of that situation. But what the committee does not have is the mechanism that will make it possible for those of us in this Congress and in the United States of America to study the situation, the problems that they have, and to make recommendations with regard to, immigration in this hemisphere and, secondly, make recommendations regarding the means and ways of preventing the poverty and illiteracy that exists in those countries that are sending people to the United States.

□ 1550

That can be done with this amendment. It is my proposal that the amendment would authorize the establishment of a 3-year national Commission on Immigration that would be comprised of 15 members for the purpose of recommending statutory and other changes to best deal with the unauthorized immigration to the United States occurring after the enactment of this bill.

But it also does something else that is most important. This Commission will become an integral part of a group that will study and make recommendations of short- and long-term measures, promoting reciprocal trade and economic development programs of mutual benefit to the United States and to Latin American countries.

This recommendation is being made because we already have experience in that field. The Members probably remember that when we destroyed Europe during World War II we rebuilt Europe and today we are dealing with them on an equal economic basis.

My colleagues also probably remember that we bombed Japan twice during World War II and now they are bombing us with Toyotas, and with Datsuns, and with computers. And that instead of sending Japan the implements of war what we are doing is trading with them and sending them those things that they need to build up their economy.

I think that this is an amendment that should be adopted by this House for it is most necessary that we start looking into these causes that bring the poor to our shores. It is most necessary that we do everything that is humanely possible to end the poverty and illiteracy that brings these people to the United States.

I know of no one of Japanese background, other than students and visitors, who are here in the United States illegally because they have employment in their own country. They do not come here seeking employment, as they do from Latin America.

Well, the same result can be had if this Commission is set up and that within 3 years a positive recommendation be made so that the United States of America can help these underdeveloped nations to end the poverty and illiteracy that they now suffer with positive action that can take place to help them help themselves. If we are really interested in immigration reform and interested in solving the problems of the future, we should do this now.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me—since I seem to have coined the word "salute," I understand that I am now the gentleman from "Salute," or something, instead of from Kentucky—salute the gentleman from California [Mr. ROYBAL] on, I think, a good offering here. Because one of the problems we had was we do need to look down the road to see what is in the offing in the event that our bill passes in a few minutes, what happens when people are legalized, what happens period in the question of immigration and refugee policy.

So I commend the gentleman for the amendment. It is a good offering. It is acceptable.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding.

Mr. Chairman, I would say that we would accept it. I am not quite sure it is necessary at this point. It may be a repetition of the select commission that we had that actually came up with something good. But it is certainly something that we could take a look at. There is no reason to object to it at this time.

The CHAIRMAN. The question is on amendment No. 68 offered by the gentleman from California [Mr. Roybal].

The amendment was agreed to.

AMENDMENT NO. 69 OFFERED BY MR. PATTERSON

The CHAIRMAN. Amendment No. 69 is in order at this time.

Does the gentleman from California [Mr. Patterson] desire to offer amendment No. 69?

Mr. PATTERSON. I do, Mr. Chairman.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 69 offered by Mr. Patterson: At the end of the bill, add the following new title (and add corresponding items to the table of contents):

TITLE V—CONSULTATION IN IMPLEMENTATION OF ACT

COOPERATION WITH STATE AND LOCAL TASK FORCES

Sec. 501. In order to provide for a highly coordinated and cooperative effort in the implementation of this Act and to insure that such implementation is fair and effective, the Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall regularly consult and maintain close contact with regional and local advisory task forces established by State and local governments composed of interested private and public sector organizations. These task forces may—

(1) review and comment on regulations and procedures proposed to carry out this Act;

(2) monitor and evaluate the implementation of this Act; and

(3) recommend such actions as may be necessary to improve implementation of this Act in their respective areas.

The Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall consider the recommendations of these task forces in the implementation of this Act.

Mr. PATTERSON. Mr. Chairman, I rise to offer amendment No. 69 to the Immigration Reform and Control Act. The purpose of this amendment is to facilitate the implementation of programs authorized under H.R. 1510.

Throughout the long and informative debate of this legislation, a myriad of fears have been expressed about the impact this bill will have on the Nation and local communities. Many are concerned not only about the ability of the Immigration Service to carry out the mandates of this legislation, but its ability to do so fairly and effectively.

With good reason, many fear that employment practices may be reshaped under legislation which requires employers to verify the identification of workers eligible for hire. In general, it is believed that this legislation may alter the attitudes of the American public with respect to its own plurality. Legal residents of Hispanic or Asian descent have well-founded fears that this bill may set them apart in employment and in the minds of other Americans.

This amendment acknowledges the regional impact of Federal immigration law by establishing a communication mechanism for feedback and resolution when problems arise during the implementation of H.R. 1510. This is achieved by permitting local and State governments to join with representatives of community organizations, voluntary agencies, health administrators, agricultural workers, organized labor, ethnic groups, and other interested parties to form local-based task forces. The function of these task forces is to advise and improve the implementation procedures of this act.

This communication mechanism has the explicit support of the National League of Cities, the League of California Cities, Los Angeles County and Orange County.[1] In his June 1983 report assessing the impact of Simpson-Mazzoli for Orange County, CA, David North comments on the concept by saying "It sounds like an excellent idea."[2] In March 1983, California Senator David Roberti testified before the House Immigration Subcommittee on behalf of the National Council of State Legislators.[3] He urged that INS work closely with State and local officials in the development of implementation procedures, especially concerning legalization. This is a concept realized by nonprofit organizations such as the National Immigration, Refugee, and Citizenship Forum. It is not a novel idea. It is practical and necessary.

The goal of Immigration Reform and Control Act is to set up an enforcement system that is both effective and nondiscriminatory. This can be accomplished only if there is good communication between responsible Federal officials and the many affected public and private sector groups.

Unfortunately, good communication does not simply happen. A recent point of reference is in the refugee resettlement program. While the Immigration Service worked hard to respond to an international crisis; in areas like Orange County, CA, there was little coordination with local authorities responsible for the major thrust of refugee resettlement. The Immigration Service suffered from poor planning, insufficient resources, and misdirected management. Where local problems surfaced, a lack of rapid response by Immigration field offices planted community hostilities prevalent even today. Most important, and in retrospect, it can be told that a major problem in these resettlement efforts was lack of coordination and communication especially between Federal, State, and local agencies and private organizations involved in the effort.

My office files hold many examples of local citizens and city officials asking for assistance in the course of the refugee resettlement program. A simple example is the July 1981 letter from a city official registering complaints about civil disturbances resulting from immigration applicants who "camped" in lines several blocks long outside of the local INS satellite office. While hundreds of people waited around the clock for applications to be processed, INS completed 20 per day. When I inquired with INS officials here in Washington to see if more personnel might be detailed to assist with the unusual demand for services, it took 4½ months until this simple problem was solved.[4] This is not the type of rapid action and feedback which I am advocating we need, should the Immigration Reform and Control Act be adopted.

Under the strict timeframes outlined by H.R. 1510, the INS will not be able to implement authorized programs as directed by Congress, unless it can provide rapid resolutions and policy direction at each point during implementation. If communities frustrated by INS district office inaction are required to seek relief through their elected representatives and then wait 4, 5, 6 months or more for feedback—these programs are destined to failure, and the predictions of those who oppose this bill, for whatever reasons, will prove correct.

The communication mechanism I envision would not require a local participation; however, it would require a Federal response to local requests for consultation, cooperation, and recourse in the implementation of programs affecting communities. Local advisory task forces would be voluntary and self-financed. In the long run, they would reduce costs by helping to identify and resolve problems early on, and by generating suggestions for improved implementation based on local conditions.

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[1] National League of Cities, Resolution Adopted on Dec. 1, 1982; League of California Cities, General Assembly, Resolution Adopted at Annual Conference on October 20, 1982; Orange County Board of Supervisors, Resolution Adopted on November 3, 1982; and Los Angeles County Board of Supervisors, Motion of Support Adopted on Mar. 22, 1983. Follow-up Letter to Congress by Supervisor Deane Dana on Mar. 30, 1983.

[2] Orange County estimate as provided by David S. North, TransCentury Foundation, "A Revised Update Assessment of the Impact of Simpson-Mazzoli on Orange County, California," pp. 13-14, June 17, 1983.

[3] Hearings of the House Subcommittee on Immigration, Refugees and International Law. California State Senator David Roberti on behalf of the National Conference of State Legislatures, Mar. 16, 1983.

[4] Letter to Acting INS Commissioner Doris Meissner, Aug. 6, 1981, recounting local difficulties with INS processing of immigration applications. Letter from Office of the Commissioner, Dec. 8, 1981, resolution of processing backlog and associated community disturbances.

Not every community will have the resources nor will they find it necessary to establish and participate in such an advisory task force. One of the most distinct features of this act, and immigration law in general, is that it affects communities throughout our Nation unevenly.

In some localities, only a handful of legalization applications will be filed in the entire 12 months of the program. INS employer checks will be uncommon, and sanctions enforcement will not be necessary. Imported foreign workers will work in areas remote from these communities.

In the congressional district I represent, tens of thousands will apply for legalization, each with applications requiring individual review and processing. At the same time, targeted interior enforcement raids will no doubt disrupt workplaces, and scores of employers hiring undocumented workers will be penalized. Simultaneously, thousands of guest workers will settle temporarily in our neighborhoods while they work in nearby fields or are hustled on to meet the demands of growers elsewhere.

In the 38th Congressional District of California, the Immigration Reform and Control Act promises to have a startling impact. The simultaneous introduction of programs of this magnitude, each with inherently conflicting objectives, will result in confusion and hostility not yet imagined by this House. Without some form of coordination between local organizations and the guarantee of responsiveness from the Federal implementing agency, an unwieldy administrative and operational nightmare will result.

Today, the INS has fostered great distrust and a poor public image in Orange County. This results from past enforcement tactics—raids on businesses and in neighborhoods, mistaken deportations, and an overzealous attack on Hispanics. I realize that in its plans for legalization, INS has organized a Community Relations Service to help educate and calm the fears of local communities. But, INS must engage in a massive in-house reeducation program, if it is to fairly implement this act.

Inherent in the bill are examples of policy guidance and decisions which will be required during implementation. At the end of this long and intense debate, I would like to summarise some of the anticipated problems and policy conflicts which remain clear:

ANTICIPATED PROBLEMS AND POLICY CONFLICTS

Legalisation.—Instituting full-scale legalisation program over the short-term (12 mos.) versus apprehending those who have been resided in the U.S. (eligible or ineligible) and subject to deportation.

Employer sanctions.—Enforcing as complete an employer sanctions program as possible (requiring massive education/re-orientation effort at INS) versus continuing business as usual with no redefinition of operating procedures by INS (i.e., raids, corralling of workers, etc.).

Enforcement.—Re-education of INS personnel to comply with reform (counselors versus patrol) versus inability to re-direct resources to new non-aggressive enforcement methods.

Emphasis on interior enforcement tactics (disruption of businesses versus concentration at the border.

Temporary worker program.—Employment dependence needs in the short-term (Agriculture) versus need to reduce dependence on temporary workers in the long run (Labor).

Arduous agricultural work—no domestic interest versus domestic unemployment (U.S. Black Youth unemployment is 59 percent).

Importing 1 million foreign workers annually versus displacement of U.S. agricultural workers.

Cost.—Reimbursement to local governments for costs incurred during implementation versus level of federal commitment and budget authority to implement fair and effective immigration policy.

Identification system.—Open disclosure of identity to meet employment or legalization requirements versus lack of confidentiality, fear that if records are inadequate, immediate deportation or employment discrimination will result.

I.D. verification for employment versus threats to basic civil liberties as "national I.D." gains broader use.

These issues greatly concern me and leave me to question where the balance in our immigration policy will lie. The authority for implementation rests predominately with one Federal agency. In this process, explicit priorities must be stated to ensure that from Washington to each district office coherent directives are put in place. Where there is confict, local communities must be able to ask for clarification and receive rapid administrative remedy from the Commissioner in Washington. I believe the task of immigration control demands that communities most affected have recourse.

In closing, I would like to point out that the magnitude of this legislation has never been tried before. Of all 19 countries documented in the 1982 GAO report, only France attempted to institute employer sanctions and a "regularization" or legalization program at the same time. In this case, it must be noted that the sizable undocumented population of France resulted from years of dependence on foreign laborers to meet domestic shortages after the World Wars. To legalize these undocumented residents, France has had five legalization programs since 1970—each with marginal rates of success. Employer sanctions have also been ineffective due to lack of enforcement.[5]

The participation of State and local advisory groups will greatly enhance the implementation of this legislation. A historical reference which supports the concept of local involvement in immigration and refugee program implementation can be cited with the Displaced Persons Act of 1948. In the resettlement of hundreds of thousands of displaced persons after World War II, the U.S. relied on State and local commissions and committees to make the DP program a success.[6]

With this bill, the United States takes a giant step to achieve immigration control. Although I hesitate in belief that smaller, staged steps might not have been better contemplated, I am certain that immigration control will not come about without community coordination and cooperation. I urge my colleagues to support this amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. PATTERSON. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, I think this is a constructive amendment. We have checked it on our side and we believe that it makes an addition to the bill and we are prepared to accept it.

Mr. PATTERSON. I thank the gentleman.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. PATTERSON. I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding.

Mr. Chairman, in view of the fact that this is the last amendment and this will end debate on this, we happily accept the gentleman's amendment.

Mr. PATTERSON. I thank the gentleman.

Mr. BERMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, my purpose is not to speak on the issue of the amendment before us, but as we wind down the debate on this issue and we come to a final vote after 7 arduous days, I simply wanted to call the body's attention one more time to one particular aspect of the legislation before us.

I say that in the context of having a tremendous amount of respect and admiration for the work of the sponsors of this bill in doing something that they believe will truly be a positive and balanced contribution in the area of immigration reform. I surely hope that their hopes prevail over some of our fears about the final outcome of this.

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[5] General Accounting Office Report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," Aug. 31, 1982.

[6] The DP Story: The Final Report of the United States Displaced Persons Commission, "A New Look At Immigration," pp 345+, 1952.

There is one particular issue that was placed into this legislation by amendment, the Panetta-Morrison amendment, recommended by the Committee on Agriculture. I want to implore the managers of the bill, the people on the conference committee, to understand the full implications of what that particular amendment does. If it sticks in the legislation we will have participated in a process that, inadvertently perhaps, although I am not sure it was that far removed from some of the forces that were pushing the legislation, will set back an effort which began 25 years ago to bring farmworkers into the mainstream of the American work force.

If the body recalls the history of the movement to unionize farmworkers, it was not until the termination of bracero programs that that movement first became effective.

For years, in the thirties and forties, after World War II, and in the fifties, there were futile attempts to organize, to achieve a better wage, better living conditions for agricultural workers.

□ 1600

They have been excluded for so long from so many of our major pieces of social legislation. It was not until 1964 and the termination of the bracero program that that movement finally got its start, and there have been many, many gains. Anyone who looks at the history of wages and working conditions in agriculture sees what that movement toward unionization and the work of Cesar Chavez and the United Farm Workers Union has done for not only their own members but for all agricultural workers in many areas of this county, and most particularly California. And the fear that many of us have is that this amendment, which will constitute a tenfold or twentyfold expansion in a foreign-guest-worker program in the context, ironically, of a piece of legislation which has as one of its major purposes preventing job displacement of American workers, that this program will put a tremendous barrier in front of this effort, will set it back again 20 years, which will, when combined with other efforts, as we are now seeing in California through appointments and legislative efforts to halt that movement, that budding movement, will perhaps be a tremendous setback to that cause.

I implore the managers of the bill on both sides to look very carefully at this. It does not belong in this bill. In the context of the valiant effort to save the legalization program that you have successfully waged today and yesterday, the work force for agriculture is in the United States and can be utilized and should have the rights and benefits of all other workers in this country.

Mr. SAWYER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to make an observation. After sitting here for 7 days off and on, I think it is worth the House kind of taking note that we have spent all this time in an effort to stop or at least reduce the amount of people trying to come into this country, whereas the Soviets spend all their time trying to keep people from fleeing their country. I think it is an interesting comparison.

Mr. PICKLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, before the House takes its final vote on this far-reaching immigration reform legislation, I would like to make some general remarks about my support for this bill.

The problem of illegal immigration has been recognized for decades. Potential solutions have been studied, debated, and argued for years as the problem has grown worse with no action. I realize that the bill before us is not perfect. But it is the product of more than 10 years of work on this issue and as far as I can tell no one has come forward with a better answer. In my judgment, this bill is a carefully crafted and delicately balanced approach.

There are those who say that we should do nothing at this time but we have delayed for years with no better solution being advanced. There are those who say that employer sanctions are unfair and unenforceable but, it may be the only effective disincentive to illegal immigration, and the House has gone to great lengths to safeguard individual rights. And there are those who say that legalization is wrong, but we must take action to address the inequities and exploitation that some 10 millions of decent, hard-working aliens have suffered because they live outside of the law. It is not right in the fear that some discrimination might possibly happen, to keep 10 million aliens hiding in fear and frustration. They have no voice—except the Congress.

I believe that if many of our citizens who have opposed this bill would read the committee report and the House debate, they would realize that this is not an evil bill. It is not racist. It is not a subversion of civil liberties. It is a fair and reasonable attempt to bring some sense and order to the chaotic immigration situation.

In 1972, I voted for imposing sanctions but that bill never became law. Now, 12 years later, the problem has only grown worse and no new remedies have been advanced. The Austin American Statesman, in a recent editorial, stated: "It is past time to deal with the problem, and it won't get better by waiting."

While I do not agree with all of the provisions in the bill or all of amendments that have been adopted, I believe that this is the only practical solution we have.

Immigration reform is a particularly sensitive issue in my district in central Texas and I have heard from many constituents who oppose some aspect or another of this bill. But no one has been able to convince me that there is a better solution or that by waiting another year or another decade that the situation will improve or that the solutions will be easier.

This is a difficult vote for all of us and each of us may have some doubts about this bill. But the only thing that is certain is that this problem will not go away and if we refuse to deal with it now it will only get worse.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I salute the gentleman. His whole career has been notable for courage and for being a stalwart person in search of the best solution to a problem. He did so last year in the Social Security bill. Let me salute the gentleman for making a statement which I hope that those of us who have heard it and those who have observed these proceedings will consider very carefully. The gentleman has made a very important statement, a constructive statement to the passage of the bill.

Mr. PICKLE. I thank the gentleman.

Mr. GARCIA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, before I begin to comment on the bill itself, I would like to speak to the many peopple who may be watching us today throughout this country. First, I want to tell those who will be affected by the legalization program to sit tight until they actually see the results of the House and the Senate conference. The bill is not law until the President signs it. The final form of the legalization program has not yet been worked out. Please wait for it because otherwise you will find yourselves going to an office before they have the rules and regulations established.

It has been a long 7 days. But I would like to pay homage to a person who has worked very hard and has been here every day toiling, toiling not in favor of the legislation but against the legislation. He is one of the senior members of the Congressional Hispanic Caucus; he is also the founder of the Congressional Hispanic Caucus. He is a good, decent, hard-working man. I would like everybody to know that those of us, and especially the millions of people without a voice, are indeed in debt to the gentleman from California, my colleague, ED ROYBAL, for all the work he has done on this bill.

I have said, from the very beginning, that those of us who have been opposed to H.R. 1510, the Simpson-Mazzoli bill, have, from the very beginning, been strong supporters of the amnesty provisions of this legislation. However, even with the employer sanctions in place, this bill is still not acceptable. I believe that those of us who have been opposed to the legislation from the beginning will vote against the bill. But I would like to say to the many people who are watching and who are also against the Simpson-Mazzoli bill, that in a democracy sometimes you win and sometimes you lose. This bill has been debated fully, it has been debated fairly. It has been a bill that has been very controversial. My Republican friend, my colleague from California, my Democratic friend from Kentucky, the chairman from New Jersey, we have had from time to time some raising of voices, but it has always been done as only this institution can function—in open and honest debate.

So for those reasons I congratulate my colleagues. I still disagree with the legislation. We are going to vote against the legislation, but I just want to make it very, very clear that thank God for the U.S. Congress.

We have just completed consideration of one of the most important pieces of legislation facing the 98th Congress. I am, however, deeply disappointed by the outcome of this debate. It represents a setback for America's minorities, and an unnecessary burden for our Nation's business community. This legislation is both unfair and unrealistic.

It is unfair because it forces business to take on the issue of immigration control, and it makes America's minorities bear the brunt of the enforcement of this law. It is unrealistic because it will not enable us to effectively control our borders.

Discrimination has not been eliminated from our society. I realize that we cannot legislate attitudes, but we should not institutionalize potential civil rights abuses. That's what we are doing with employer sanctions. In addition, minority unemployment rate is always significantly higher than that of the majority community. Minorities don't need another obstacle in the way—sanctions—from seeking employment.

There is something terribly hypocritical about this legislation. On the one hand, there are complaints about how America has lost control of its borders, about how millions of undocumented persons are taking American jobs. On the other hand, the Panetta amendment would reinstitute the bracero program. Organized labor has withdrawn its support for the bill in large part because of this amendment.

What the Panetta amendment does is allow growers an unlimited supply of indentured laborers, while businessmen must toe the line when they hire. They are to be the guardians of our borders. Further, how can this be a jobs bill if we permit up to 500,000 guest workers in each year?

That's an interesting term, guest worker. It implies a certain gentleness. It's as if we are inviting these laborers up for tea and a little light work. They are our guests. Yet, this kind of contradiction riddles the bill. Subtle discrepancies have been ignored or written off H.R. 1510's supporters. No matter, that we are protecting the special interest of growers while we penalize other businesses. No matter, that the civil rights of minorities are in danger of being violated. No matter that a GAO study has serious questions about the effectiveness of sanctions. This is, after all, a compromise.

This so-called compromise will be an expensive one, not only for Hispanics, blacks, and Asian Americans, but for all of us. The only control established with this legislation is on paper, but the problems it creates will be quite real.

Even the legalization program has been severely altered. All the qualifications in the program will render it ineffective. It will not draw out the many undocumented persons living in America's shadows. It will not solve their problems—or ours. This was the one provision in the bill that held up some hope for many of us who have fought against the bill's injustices. That hope has now been diminished.

Granted, we've all worked hard on this legislation. We have fought each other; we have expended a lot of emotion and effort to get across our points of view. As an institution we can be proud that the process works. Unfortunately, we cannot be proud of this legislation. H.R. 1510 will not give us control of our borders, but it will make life more difficult for minorities and businessmen.

I want to take a moment to speak to my Democratic colleagues. I am clearly against this bill. I strongly urge each of you to vote against it for the reasons I have mentioned today, last week, and for the past several years. But it would be unfair to threaten you with the splintering of our party if you choose to vote in favor of H.R. 1510. I ask that you vote against it not out of fear of party disunity, but because it is a bad bill.

I believe in the integrity of this institution and in the basic values of my party. This does not mean that I will rest before all avenues to defeat this bill are exhausted, but neither will I sit back and see my party split apart at a time when it is so very necessary that we remain united. Because then, to paraphrase Shakespeare, the fault would be not only with this legislation but with ourselves.

I urge my colleagues to defeat this bill.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. GARCIA. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I want to salute the gentleman. He has made a tremendous contribution to the entire 7-day debate. He has stationed himself in the House here for those 7 days. The bill is perhaps not yet supportable to him, as the gentleman has already suggested, but it is a better bill because of his work, and I thank him for that.

Mr. GARCIA. I thank the gentleman.

Mr. BENNETT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think probably nobody has been here more of the time than I have, except Members of the committee; and I have really been inspired by what I have seen occur here. Of course in the chair we have the best presiding officer that Congress has ever had in history, I think, and I think we ought to give the gentleman from Kentucky [Mr. NATCHER] a hand.

□ 1610

Then I think, as I look at my 36 years in Congress, which have always been a great joy to me, and I hope there are another 36 ahead of me, I just do not really believe I have ever seen a man come to the leadership of a bill before this Congress who has done a better job than the other great gentleman from Kentucky here, the gentleman from Louisville.

You know, as we go along through our operations here, a lot of us do not really surface or just very seldom do surface. Then when we see a man who has been a fairly quiet man in Congress come to the well as a real leader, we realize that the whole Congress, all 435 Members of Congress, most of them at least, maybe all of them, have a potential for greatness.

So there is a feeling of great joy in my heart that I belong to this institution, and a great joy that the opportunity came for greatness to the man from Kentucky, from Louisville, because I do not think I have ever seen anybody do a better job of handling a bill on the floor of this House. He has performed with greatness.

I hope the Members will give him a standing ovation at this point.

Mr. MAZZOLI. Mr. Chairman, I thank my dear friend, the gentleman from Florida, [Mr. BENNETT] a man whose every breath is devoted to this institution. I thank him very much and I appreciate his observation, Mr. Chairman.

Mr. Chairman, I ask unanimous consent that debate on this amendment cease in 10 minutes; 5 minutes for the gentleman and 5 minutes for the gentleman from Kentucky.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. ROYBAL. Mr. Chairman, reserving the right to object, I would like to at least have 3 of those 10 minutes.

Mr. MAZZOLI. Mr. Chairman, let me rephrase my request: 15 minutes; 5 minutes and 5 minutes and 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. ROYBAL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The Chair recognizes the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, I too urge defeat of this bill but I do so with mixed emotions, because I do not have anything better to offer.

The Speaker of the House had asked me to try to negotiate a compromise that would be acceptable; it did not work. So, I say to my colleagues that recognizing the sentiment in this body, there is immense support for immigration reform. There is support for something to be done.

I think what we have done today has many negative features; some positive. Most negative are the employer sanctions, which I believe will discriminate against many foreign-looking people; against Hispanics, against many others. Also regrettable is the provision that would bring back the telephone check, the 800 survey of Social Security. Also regrettable is the Panetta amendment which will bring forth thousands of foreign guest workers in a position to be exploited. It is an amendment that would be unworkable; it is an amendment that will displace many American workers.

On the positive side, the family reunification part. The Cuban-Haitian amendment. The provision on amnesty. I think we need immigration reform in this country, and I hope in looking at the fairness of those that have been crafting this bill, and by that I mean the gentleman from Kentucky, the gentleman from New Jersey, the gentleman from California, I think on many of these issues they have been wrong, but I think they will be fair. If there is injustice, if there is discrimination, I think they have just as much a responsibility to correct it, should this bill pass, as they have in crafting this bill.

I, too, would like to pay tribute to the leader of the Hispanics caucus, ROBERT GARCIA, who has eloquently and emotionally stood up for the thousands that cannot speak in this body today. I also would like to pay tribute to the founder of the caucus, a man who has led our group through many, many years and who has stood back in the face of criticism, in the fact of some derision, in the face of editorial attack, but has stood behind deeply felt principles. A man who has stood behind his people, and his people and this whole country owe him a debt of gratitude, Mr. ROYBAL.

Once again, I ask this body to look at the effect of what this legislation will do. I think this legislation in the long run will not be good for this country. But once again I say, if there is an alternative, if there was something better to have been done, and possibly if we had adopted the Hawkins amendment which would have ensured full discrimination protection on the issue of employer sanctions, then possibly, it might have been a bill that could have been sustainable, although I have my doubts.

Americans do not want a national ID system. They do not want discrimination. They are compassionate, and I think the provision relating to amnesty takes care of this, but once again, I urge defeat of this bill because I do not think it will work, and the potential for discrimination is there.

I think in this whole country there is a fear of people that look foreign, of perhaps the Hispanic caucus, but I think maybe if we lost this one, those of us in the caucus, we are going to be back. We are going to be back in growing numbers. We want to be full-fledged members of this country. We are Hispanics, but Americans first. We feel patriotic; we feel like we want to contribute. We feel that we pay our taxes and enlist in the Armed Forces. We want immigration reform but not on these terms that I think will be regrettable.

Once again, I want to pay tribute to the author of this bill who has shown sensitivity, who has shown commitment, and who, I hope in the future, if there is discrimination, if there is injustice, if there is wrong, will right some of these wrongs that I believe this bill will bring.

I hope that in the future the entire Congress and the Committee on Foreign Affairs look at what I perceive to be the root of this problem, and that is the relationship with Mexico: The fact that the United States and Mexico have not achieved anything concrete in this area. The fact that we refuse to deal with this issue on the bilateral agenda. That we refuse to even discuss it because it is so sensitive to the Mexicans.

The Mexicans do not want to discuss it, and we do not want to press it. We should be talking to them about free border zones, about job markets.

I urge defeat of this bill.

After a week and a half of debate on 69 amendments, we have reached the final vote on one of the most comprehensive, far-reaching measures ever to come before the Congress.

Almost every amendment that would have made this bill, if not acceptable, at least a little more tolerable, was defeated. Rejected was an amendment offered by the gentleman from California [Mr. HAWKINS] that would have set up a system to provide some recourse to those who face employment discrimination as a result of the employer sanctions provision of this bill. This provision is the most onerous provision of a most onerous piece of legislation—and it will cause, without doubt, suffering and hardship among millions of Americans. Adopted was an amendment that a foreign guest worker provision that is exploitative, unworkable, and will displace American workers.

Mr. Chairman, if H.R. 1510 passes this House, it will indeed be a sad day for Hispanics and other foreign-looking Americans.

Of course, we must stem the flow of illegal aliens into this country. But H.R. 1510 is not the answer to this problem. In fact, H.R. 1510 will cause far more serious problems than it will solve. Employer sanctions simply will not work any better in the United States than they have worked in West Germany or Canada. However, employer sanctions will have a chilling effect on the ability of Hispanic Americans to gain employment. If this legislation passes, INS resources will remain sorely limited. The INS will not be able to visit each and every business in the United States to determine if employers have examined and retained the proper documents. The INS will be forced to target their scarce resources on businesses that employ a large number of Hispanic or other "foreign-looking" Americans. Will it be prudent for a businessman to employ a large Hispanic work force and risk INS harassment and investigation? Of course not, this will simply be too costly for an employer to risk. The sensible businessman will have no choice but to limit the number of Hispanics he hires. H.R. 1510 not only will make every employer an INS officer, it will force employers to discriminate against a very large and important segment of our society which doesn't happen to be fair haired or fair skinned.

Mr. Chairman, proponents of this bill say it is necessary to protect American jobs. Well, I strongly share their concern. But my concern is for American workers named Sanchez and Gomez as well as American workers named Smith and Jones.

I am Hispanic. Many Hispanics have felt the sting of racism, prejudice, and discrimination. Let us not enact a law that will result in many others feeling that sting as well.

Hispanics have greatly contributed to the economic and cultural growth of this great Nation. But in attempting to close our borders, we are also closing the door of opportunity for Hispanics in America.

Mr. Chairman, it is ironic that earlier this month the Statue of Liberty was covered to be kept hidden for repairs over the next few years. I find that symbolic because this legislation casts a shadow over the principles of freedom, opportunity, and justice for which that statue stands. But I am certain the debate over our immigration policy is not over. It will also need repair if this bill passes. My only hope is that those repairs are completed before the Statue of Liberty is unveiled. For it would indeed be a painful event if, upon the unveiling of the refurbished statue, we found the principles for which it stands are tarnished beyond repair.

I urge my colleagues to vote against H.R. 1510.

Mr. **MAZZOLI**. Mr. Chairman, before the gentleman begins, the gentleman from Kentucky inadvertently in his unanimous-consent request forgot the gentleman from California [Mr. Lungren] so I would ask unanimous consent that the gentleman be given equal time, 5 minutes.

The **CHAIRMAN**. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The **CHAIRMAN**. The Chair recognizes the gentleman from California [Mr. Roybal].

Mr. **ROYBAL**. Mr. Chairman, it is my intention at this moment to compliment both the gentleman from New Jersey, the gentleman from Kentucky, the gentleman from California, and those individuals who took part in this debate. I think they have done an excellent job.

Unfortunately, their job was not good enough insofar as many citizens of the United States are concerned. I say that because I firmly believe that the legislation, if it is passed or when it is passed, will actually go to conference in a worse state than it was in its original form. The bill is not immigration reform, but a bill that is designed to provide a steady flow of cheap labor to the growers of this Nation, and consequently destroy the United Farmworkers Union.

It violates the civil rights of Hispanic, Asian, and other groups, with its sanctions provisions, as well as the telephone verification system would only result in racial discrimination.

Now I can go on and on and continue in my criticism of this bill, but I realize that it is going to be passed. I also realize that it is going to go to a conference and that perhaps out of that conference something good will result.

The truth of the matter is that Simpson-Mazzoli is already taking effect in the various communities throughout the country. In California, for example, some employers have begun laying off illegal workers and others because they have already started to demand documentation. The dismissal prompted a protest by more than 200 persons last Thursday. Several of the employees have seniority of 10 years or more. Some were near retirement, and one was a mother who was pregnant with her third child.

□ 1620

The workers were fired after either refusing or not being able to comply with documentation that they were here in the United States before 1980. This is very difficult. There are some of us who cannot prove that ourselves because in many instances we are careless and lose our rent receipts, lose perhaps those bills that were paid for utilities, and so forth, and be unable to prove immediately the fact that we were here before any particular time.

I just bring this to the attention of the House because this effect that is taking place with employers in California is also taking some effect among the rank and file in that State. There are people now who are saying, "What shall I do in order to comply?"

What I say to them is do nothing at this point. The best thing to do is to wait until such time as the President not only signs the bill, but wait until that time as the mechanism for legalization is put in place. At that particular time, then take the first step and go to your local organizations which will screen these individuals, for if they go to the Department of Immigration, they will be losing their cause. The Department of Immigration will know where they are and where they have been, and if they happen not to qualify under these very stringent rules that we have, then these individuals will find themselves in a position that perhaps they would even be deportable.

So what I say is let us wait. Let us find out what that mechanism is, and then urge the people who may come under that provision to go out and talk to their churches, to their various community organizations, and let them advise them as to what they should be doing. Let us not get in an atmosphere of panic at this moment, but wait and do the right thing when the time comes.

I urge these individuals to contact a Congressman's office. I believe that a Congressman can direct the people in their particular district who would come under this provision. I think they will tell them, "Go to your organizations and seek advice from those people who can protect you."

I am not trying to say that the Department of Immigration is a group that is going to violate any prerogatives, but I am saying that the Department of Immigration, as it has in the past, will surely keep a record and will surely try to do the so-called job of exporting, sending back to those countries, these individuals who may not qualify.

The **CHAIRMAN**. The Chair now recognizes the gentleman from California [Mr. Lungren] for 5 minutes.

Mr. **LUNGREN**. Mr. Chairman, at this time I would say that this side is going to accept the Patterson amendment, which I assume we are still on. I hope there will be no recorded vote on that one, and then we will get to final passage on this very tough subject.

An interesting thing has occurred to me over the last several days, and that is that members of the press have noted how nonpartisan this debate has been and wondered why it has been that way. I observed to them that this House, this institution, has an ability, I think, to do better than many of the Members sometimes think we have and some of the public sometimes thinks we have, and that is, when we have a fair rule, and this rule was eminently fair, when there apparently was little or no partisan advantage sought nor obtained through the rule, there is no partisanship on this floor.

That ought not to surprise Members because I think truly, if given an opportunity, Members here will put partisanship aside, will be involved in sometimes strange alliances that shift from time to time as we deal with a very difficult issue and, in fact, finally decide that they are going to deal with an issue that is very difficult.

Another member of the press last week told me that he was going to watch this debate with some interest because he thought if we failed to come to a resolution of the problem, that is, if we failed to adopt some bill in some form, we would have proven perhaps that democracy in a modern society was incapable of dealing with complex questions because of the very nature of the special interests that are involved in such a society. Hopefully, we will have proven that possibility wrong and we will have shown the American people that, if given an opportunity, the House of Representatives will do the duty that the American people expect of it.

I happen to think that this debate, even though it has been emotion at times, even though at times perhaps there were strained relations on the floor, was a healthy debate, was a debate that was good for America, and that on whatever side, and there are more than two sides of this issues, as most anybody who has looked at it knows, no matter what side of the issue you may find yourself, you can be proud of the debate that took place in this House and the way in which each and every Member handled himself or herself.

I happen to think we have resolved the question generally speaking in the only way that it could be resolved. I understand others do not feel that way, but the fact of the matter is, we had a rule which allowed us all to take our best shot at it, and that is all that we should ask. Society is made up of many different people, many different constituencies, many different interests, special though they may be, and what we had here was an opportunity for Members from different parts of the country, from different constituencies, from different philosophical backgrounds, the opportunity to fully and vigorously debate a tough issues and, frankly, I think we ought to be satisfied with what came out of it.

That does not mean that I will accept everything or fight for everything in conference that may have been resolved thus far because we know we have another fight in conference, but I happen to think this was a healthy debate and it certainly is something that ought to inure to the benefit of this body as an institution, and I think it is something that the American people should be proud of.

Mr. Chairman, if I might perhaps use a worn-out word that we have heard on this floor, I would also like to salute the gentleman in the chair personally. He has, by his steady but very strong hand, insured that we moved ourselves along and that we finally resolved the various issues that we had to resolve. I am not sure that we would be here at this point without his assistance, and I want to personally thank him.

Mr. MICHEL. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to my distinguished leader, the gentleman from Illinois.

Mr. MICHEL. I thank the gentleman for yielding.

Mr. Chairman, let me simply commend the gentleman for his statement. He said it much better than I could myself, and I had intended to make some comment relative to the fact that there was the kind of rule for consideration of this measure that permitted Members on all sides of this issue, and the number of amendments that were offered, to speak their minds. It does say some good things for this House of Representatives when it is given an opportunity to speak as forcefully and as openly as we have.

Partisanship has been laid asunder. There has been a mixed bag of votes here on no matter what the amendment might have been.

I want to take this time particularly to compliment all the members of the Committee on the Judiciary particularly who, on both sides of the aisle, have acquitted themselves in such fine fashion, naturally the gentleman from California who managed on our side, the gentleman from Kentucky [Mr. Mazzoli], and those more senior members on the Committee on the Judiciary who helped give them that kind of advice, and yes, to my good friend, Ed Roybal, and those of the Hispanic community who fought for their point of view. I would also like to single out one of our Members on the Judiciary Committee, Bill McCollum, for the fine work he has done on this bill. Bill McCollum has earned all of our respect for the hard work and gentlemanly manner he has demonstrated during the course of this legislation.

This has been a very, very healthy debate for the American people to more clearly understand the problems we are attempting to address by this bill. I am reminded of a story that my friend, the Senator from Wyoming, has related. His father happened to serve in the other body before him, and was not aware of the arguments and was tending to criticize his son for the position that he had taken in the other body. After he had heard the several days of debate, he called his son, who had now succeeded him in the Senate, and said, "Son, this has been a very healthy debate. Even I have learned from what has taken place."

So it has been a good day, a good several weeks, for the House of Representatives, and I compliment all those Members who participated.

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Mr. LUNGREN. Mr. Chairman, I thank my leader.

I would make one comment about the gentleman from Kentucky. About 4 years ago, when he was making a very difficult decision as to what chairmanship he might take, this being one of them, he came and talked to me, and at that time I said, "There are a lot of problems dealing with this issue, but I doubt you will find a single issue that will present itself in the near future upon which you can have such a direct impact and be involved in landmark legislation."

I think in the ensuing 4 years he sometimes doubted the wisdom of my counsel and perhaps has uttered some words I would not like to hear, but I think we are here at this point which suggests we do in fact have the gentleman's imprint on some landmark legislation about which this country and this Congress should be proud.

Mr. MAZZOLI. Mr. Chairman, may I thank the gentleman for that statement.

The CHAIRMAN. The time of the gentleman from California [Mr. Lungren] has expired.

The Chair now recognizes the gentleman from Kentucky [Mr. Mazzoli] for 5 minutes.

Mr. RODINO. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to my friend, the distinguished chairman of the committee.

Mr. RODINO. Mr. Chairman, I know that the gentleman has little time, and I thank him for yielding, and if it is appropriate, I would like to commend first the members of the Committee on the Judiciary for the deliberate manner in which they have proceeded with the consideration of this bill over a period of years. I especially want to commend the gentleman in the well, the chairman of the subcommittee, who took on this very arduous task. I commend also the gentleman from California [Mr. Lungren], the ranking minority member of the subcommittee, along with the ranking minority member of the Committee on the Judiciary, the gentleman from New York [Mr. Fish].

I think that the debate, while it has been debate that has been enlightened, has never been disagreeable. I think it reflects credit on this body. Notwithstanding the passion and the emotion of the gentleman from California [Mr. Roybal], the gentleman from New York [Mr. Garcia], and the gentleman from New Mexico [Mr. Richardson], who have indeed shown and demonstrated their concern and their interest, nonetheless again the debate has been debate that is worthy of the highest traditions of this House.

I again want to salute each and every Member who participated, especially the members of the Committee on the Judiciary, who reflect great credit on that great committee.

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman very much. It is a wonderful committee, it is an excellent committee, and I am appreciative of the chance to have played a role in its history.

I do not see our distinguished Speaker on the floor, although he was here a moment ago. I just wanted to pay tribute to him publicly for being a man of his word. When he did decide to move the bill to the floor, he said, "We will give you every opportunity," and that is exactly what the gentleman from Massachusetts [Mr. O'Neill] did, and I thank him for that.

Certainly we have had encomiums to the gentleman from Kentucky, the distinguished chairman who has handled the bill wonderfully, to the chairman of the committee, the gentleman from New Jersey [Mr. Rodino], and all the other gentlemen here, the gentleman from New Mexico [Mr. Richardson], my friend, the gentleman from New York [Mr. Garcia], the gentleman from California [Mr. Roybal], and all my other friends. It has just been a remarkable work.

I have very little to say in closing. Essentially, I just urge all the Members to please vote for the bill. We think we have reported a good bill after 7 days of perhaps the most eloquent, effective, and nonrancorous debate we have perhaps ever had in the House on an emotional subject, and I would hope we would not come up to this moment in history without seizing it. And we have. We have presented the Nation via television and through the print journalists and other types of media with an opportunity to see this House perform at its highest level. We have given the Nation a chance to see the House perform at a point of importance in history and not fail to grab the nettlesome subject of immigration reform and at the same time yield a bill which is fair and humane and decent.

Mr. Chairman, I can only say that it has been a great honor.

The CHAIRMAN. The question is on amendment No. 69 offered by the gentleman from California [Mr. PATTERSON].

The amendment was agreed to.

Mr. SCHEUER. Mr. Chairman, I rise in support of this legislation. Despite what I consider to be serious deficiencies, this legislation in its present form represents a quantum jump forward in restructuring our national immigration policies.

In the debate we have conducted on this floor, we have begun to explore the present and future effects of illegal immigration on our Nation. I salute the gentleman from Kentucky [Mr. MAZZOLI] for his patience and persistence in bringing this matter to the floor. I salute the gentleman from New Jersey [Mr. RODINO] without whose firm leadership this legislation would have collapsed under the weight of contending forces. We owe them, and all the Members of this House who have poured their energies and emotions into immigration reform, a debt of gratitude.

We are, as President Grover Cleveland said over a century ago, faced with a condition and not a theory. The condition is that our borders are out of control and the factors causing explosive immigration in our own hemisphere are fact, not theory.

This bill is not perfect. But it is necessary. Those of us steeped in years of examining immigration and population growth trends would say it is critical. In a sense, the fact that we have devoted so much time to examining so carefully every facet of this problem is a major victory in itself.

I will support this bill, but with serious reservations.

My chief objection is that we have failed to consider the demographic realities facing us today. If we face up to the facts, we will see that it is imperative that we secure our borders before we grant amnesty or implement a legalization program.

Let's look first at legal immigration to the United States. The United States takes two-thirds of all legal immigrants who cross transnational borders. We represent 5 percent of the world's population. We have 6.3 percent of the world's land mass. But we accept 70 percent of the world's legal immigrants and refugees." We are, Mr. Chairman like other nations, a nation of immigrants, but we simply cannot and should not be a land of unlimited immigration. In sheer numbers, the United States adds more people to its population than all other industrialized nations taken together.

Between 1974 and 1978, the United States admitted over 3 million legal immigrants for permanent residence. Let us take a comparative look at the numbers admitted by other countries, particularly those with wide open spaces and enormous resources.

Canada and Australia—which also accept large numbers of legal immigrants for permanent residence—still take far fewer than we do. Consider that Canada is second only to the U.S.S.R. in terms of area, having 6.6 percent of the world's land mass. Yet our northern neighbor represents only 0.57 percent of the world's population. Likewise, Australia, which ranks sixth in terms of area with 5.1 percent, represents only 0.35 percent of the world's population.

If we look then at legal immigration to these countries, with almost as much or more of the world's land mass than the United States and far less in population, we see that they accept far fewer immigrants. Between 1974 and 1978, Canada accepted about three-fourths of a million legal immigrants for permanent residence and Australia took in about one-half a million. Remember that this compares to over 3 million that the United States accepted during the same period.

The United States admits roughly 500,000 legal immigrants a year, although at times this number has risen greatly, such as in 1980 when we accepted 800,000 legal immigrants. The countries I have just discussed take in only a fraction of the people we do. They have set coherent immigration policies to deal with both legal and illegal immigration. We have the right—and an obligation to our people—to do the same.

Just as important as the numbers of immigrants we admit, is where they come from. The United States admits almost three times as many legal immigrants every year from Latin America as we do from all of Europe.

The United States admits almost as many legal immigrants from Mexico alone, and more legal immigrants from the Caribbean alone, than we do from all of Europe. And that is just legal immigration. Our illegal immigration is three times the legal limit.

Undoubtedly, we need some serious reform of our legal immigration policy. But the real problem, and the one which must be addressed immediately, is illegal immigration. It is not the annual 500,000 legal immigrants the American people are protesting; it's the 1.5 million or more illegal immigrants who are entering this country every year. Even as we speak, illegal border crossings are occurring at a record pace. In fiscal year 1983, the Immigration and Naturalization Service made a record 1.2 million apprehensions—1 million at our southern border.

Migration is what the Population Division at the United Nations has termed "the least known component of population growth" since much migration is illegal. Massive movements of migrants continue among the countries of the Americas. The more prosperous countries of the region receive workers from less prosperous countries, especially in recent years as transportation has become easier and communications have improved. Although movement is evident everywhere in the region, the largest movement in the Americas is directed toward Canada and the United States. As recorded in the U.S. census, the number of Latin Americans in our country increased five times in the last 20 years. The countries of origin in Latin America are continuing to show such rapid population growth that movements of Latin Americans northward cannot be expected to decrease, indeed the northward migration will increase exponentially.

No one knows exactly how many illegal aliens are living in the United States now, but estimates range from 3 to 12 million. Nor do we know exactly how many more come in every year. However, our highest intelligence sources tell us that figure is 1.5 million or more.

We must take a good hard look at illegal immigration and why it won't stop. There is, and will continue to be, great pressure to migrate in the coming years. We cannot ignore the hard plain demographic facts of life.

The total world population today is 4.75 billion. The United Nations projects that figure to rise to 6.1 billion in the year 2000. By 2020 it will climb to 7.8 billion and will reach 8.2 billion in the year 2025. Ninety percent of this growth is taking place in developing countries, including the major sending countries of illegal immigrants to the United States.

If we look at Mexico, for example, we see that this country, with a population of 78.3 million in 1984, will jump to 115 million people in the year 2000 and will hit 174 million by 2025. Looking from Mexico to all of Latin America, a region which presently has 400 million people, we find that its population will increase to over 565 million by the year 2000. By 2025, that figure is projected to grow to 865 million.

Increasing populations mean more pressure on these developing countries to provide social services, health care, housing, food, education, and above all, jobs. It is this last factor—employment, or the lack of it—that impels us to look beyond sheer population growth and focus as well on where that growth is taking place.

The reasons for immigration are as varied as the immigrants. Generally we tend to focus on the pull factors inside our own country—freedom, equality of opportunity, democracy, employment opportunities, higher standards of living—that make America attractive to her neighbors. Of equal importance are the push factors—the reasons that impel immigrants to leave their own countries. The primary push factor—unemployment—is illustrated in the statistics on the labor force in these nations.

The numbers of people in Latin America's labor force in the next year, 5 years from now, or even at the turn of the century, are not a matter for speculation. Population control, or lack of it, is irrelevant to the question of how many jobs will be needed by the beginning of the next century: The potential workers are already born; we know the numbers.

Between 1950 and 1975, Latin America's labor force grew from 55 million to 99 million. By the year 2000, it will reach 197 million. When 2025 arrives, there will be 300 million people in the labor force in Latin America. This growth in the numbers of people who need work far exceed the capacity of these developing countries to create jobs.

Right now, Mexico must create a million new jobs annually merely to maintain its current high levels of unemployment. All of Latin America, between now and the end of this century, must create 4 million new jobs every year—just to keep even with the present high levels of unemployment and underemployment.

To put these factors in perspective, consider that during the prosperous 1970's, the United States, with a GNP five times that of all Latin America, created only 2 million jobs annually. These demographic realities create a powerful push factor for these people to migrate. Without a doubt, as unemployment and population pressures in Latin America continue to mount, ever-growing numbers of immigrants will attempt to cross U.S. borders.

Although we focus primarily on what this phenomenon means to the United States—and that is where our primary focus should be—we should consider first the detrimental effects of outmigration on the sending countries. To us, large-scale illegal entry is immigration with much talent and will to work and to succeed at its core. But for the sending nations, it is a brain drain and a threat to the stability and social fabric of communities and families. This is not fanciful supposition, but a historical occurrence that has been repeated many times in many countries throughout the long history of massive outmigration. The brain drain is not merely the nuclear physicists and physicians who, following years of education, contribute the fruits of that education to a more developed nation instead of their own. The loss of highly educated and technically skilled persons urgently needed in developing nations reaches down to auto mechanics, nurses, health paraprofessionals and midlevel managers.

Are sending countries sufficiently aware of this and other equally detrimental effects of unrestrained outmigration? Or do they view emigration solely as a social safety valve, removing excess population and providing relief from overcrowding and unemployment? Are they so eager for the hard currency remittances so many immigrants send home that they are willing to ignore the long-term debilitating effects on their own countries? This is something which the developing countries and the United States should consider seriously.

Closer to home, however, is the issue of what virtually unhampered, unrestrained immigration means to our country. Immigration—and particularly illegal immigration—comprises a great preponderance of U.S. population growth. This is illustrated clearly in the data. Our population presently stands at 234 million. U.S. population growth from natural increase—that is, with no net immigration—is projected to reach 259 million in the year 2000 and 276 million in 2025. In 2050, it would drop to 265 million. Therefore, with no net immigration at all, our population would peak in 2025 and then begin to decline.

Suppose we allow our level of legal immigration to grow to 500,000 a year, and it is close to that now. We must account also for the 1.5 million illegal immigrants entering this country every year. When we do, the picture changes dramatically. In the year 2000, our population will be 299 million. That number increases to 386 million in 2025 and jumps to 451 million in 2050. But it does not stop at that point. Our population would reach one-half billion in just 65 years or so, in our grandchildren's lifetime—and would continue to grow. The frightening part is that this scenario is the most realistic projection we are facing now.

Unless we get control of our borders now, our population will almost double in the next 65 years. The plain fact is, we do not have an infinite capacity to absorb these people.

The amnesty contained in this bill creates a powerful additional pull factor that will only encourage greater illegal immigration to the United States. Anyone who is at all familiar with immigration, both legal and illegal, will tell you that for a modest amount of a few hundred dollars an immigrant can obtain forged documents showing he came over on the Mayflower. There is a large number of counterfeiters who are already prepared to provide all the documents an illegal immigrant needs to establish his eligibility for legalization, such as: Rent receipts, driver's license, birth certificate, and Social Security card. And the counterfeiters will get that fee. They are getting it now. The old adage that "you can't put a price on freedom" may be true, but not at our borders.

We ourselves will create a tidal wave of new illegal immigrants that will make our current immigration problems seem modest by comparison. Imagine our grandchildren living in a nation of one-half billion people. How could we possibly preserve our environment, natural resources, farmland and economic well being under such circumstances? Such a phenomenon will have a disastrous effect on the cohesiveness of our society, and on our national security.

Securing our borders must become, once this bill is passed, an urgent priority challenge which our Congress must face up to, in order to underscore the simple fact that we cannot accept absolutely every one of the hundreds of millions of poor people from around the globe who desperately want to come here.

We can, and should, do our part in other ways—in our trade and foreign assistance policies—to aid the sending countries. We must enact trade policies which focus on investment in labor-intensive capital saving projects in developing countries as a means of promoting employment there. We must aid sensible, well concieved economic development and improve family planning, maternal and child health, and nutrition programs in these nations. We must establish agricultural policies that will aid the rural areas which have witnessed great migration to the cities because economic conditions are so depressed.

We must work with the World Bank and other major lending institutions, the United Nations organizations, and our fellow parliamentarians around the globe to formulate coherent, comprehensive policies which will reduce the push factors responsible for massive illegal immigration to the United States.

But in the context of this particular piece of legislation, we have an obligation to face the demographic realities. This bill tries to balance conflicts between business owners, with an interest in cheap labor, and organized labor, trying to preserve jobs for Americans in a troubled economy. The bill tries to balance political factions . . . with Hispanic groups concerned that the bill will cause discrimination against every Hispanic-American and elected officials from our border states facing impossible strains on the social welfare, education and housing funds that will be absorbed by a wave of new immigrants. The only area in which balancing has not been achieved is the reality of the demographics.

Bear in mind that this suggestion follows the recommendation of the Select Commission on Immigration and Refugee Policy, chaired by Father Theodore Hessburgh. The Commission voted unanimously that legalization should begin when and only when appropriate enforcement mechanisms and border controls have been instituted. I quote from the Commission's report, "U.S. Immigration Policy and the National Interest":

> The Commission believes that a legalization program is a necessary part of enforcement, but it does not believe that the United States should begin the process of legalization until new enforcement measures have been instituted to make it clear that the United States is determined to curtail new flows of undocumented/illegal aliens. Without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to any program that could precipitate such movement.

So the Commission says we should control our borders. But do we have the ability or the means to do it? In addressing this question I would like to share with my colleagues an exchange between Lionel Castillo, the former head of INS, and this Member in his then capacity as the chairman of the House Select Committee on Population; the hearing was held on April 6, 1978:

> Mr. SCHEUER. Can we regulate illegal entry into this country by means that are reasonably appropriate and acceptable to us? I don't think the American public would like to see a 20-foot high Berlin wall erected on that 1,950 mile border with submachineguns and police guards and sirens and watch towers. Can we do it with means and technology that are not obnoxious to us?
>
> Mr. CASTILLO. I believe so. I don't believe that it would be that technologically difficult or technically difficult to severely or dramatically curtail the number of persons entering the United States without documents.
>
> Mr. SCHEUER. You believe that can be done?
>
> Mr. CASTILLO. I'm convinced it can be done. I was not of this opinion before I got this job, but having looked at it a little bit more, we know, for example, that more than 50 percent of the entries that are made into the United States without documents are made at or near three locations: San Diego, California, El Paso, Texas, and Yuma, Arizona.
>
> If we simply increased our resources at those three locations we'd have an enormous impact just in three places, a total of less than 40, 50 miles, and if we did that there would be, of course, some spillage over to other parts of the country. Except that it's much harder for people to make the decision to cross along the inhospitable parts of the border. To go from one urban area in San Diego involves a short jog or sprint or move. But to cross a 100-mile desert takes a lot more, plus it's easier for us to see them by flying over. Enforcement's a lot easier.

The Select Commission on Immigration and Refugee Policy says we should control our borders—a respected Hispanic-American leader who headed the Immigration and Naturalization Service says we can control our borders—and commonsense cries out that we must control those borders.

We are not solving our immigration problems with this bill today; we are only adding a longer fuse to a time bomb that will explode in our children's hands and our grandchildren's hands if we dont bring some rationality to our borders. We cannot reform our immigration laws as long as we have no control over our borders. And the simple truth is that we do not control those borders. They are a national disgrace and shame. No other nation on Earth regards its own borders with indifference which borders on contempt.

Employer sanctions and amnesty belong together, but what will make amnesty acceptable and affordable, and keep it within parameters which our legal system and our society at large can manage and cope with, are firm, secure borders which are capable of resisting the human tide of billions who would cross our borders, if only they could. That is the challenge for the 99th and succeeding Congresses.

Mr. SLATTERY. Mr. Chairman, I rise in somewhat reluctant support of H.R. 1510, the Immigration Reform and Control Act.

When it was brought to the floor a week and a half ago, this bill was in my judgment, seriously flawed. The bill contained unacceptable employer sanction provisions and a mandate for the development of a national identity card system which I strongly opposed. In addition, the bill contained no provisions designed to protect the rights of Americans or resident aliens who could be discriminated against by employers, as the result of the threat of employer sanctions.

In a long and arduous debate, over the past several days, the House has made significant changes in this immigration legislation. While the bill we have before us now is by no means perfect, it is much improved over the bill reported by the Judiciary Committee and I have decided that, on balance, this legislation should be supported.

Many of the concerns I have had with this legislation have been addressed through the amendment process. We have made the sanctions provisions more workable by exempting employers who hire three or fewer employees, thus making it possible for the Immigration and Naturalization Service to concentrate on larger employers.

We have adopted an amendment authored by my distinguished colleague, Mr. FRANK, which prohibits employment discrimination on the basis of national origin. The amendment also creates an administrative adjudication process similar to that used by the National Labor Relations Board for the enforcement of the amendment's antidiscrimination provisions. While the legal mills grind slowly, and I realize that these provisions will not change the hearts and minds of some employers who would seize any pretext in order to discriminate against certain groups, this amendment remains a significant step forward.

We have deleted the requirement that the President study and report to Congress on changes in identification requirements necessary to establish a secure system to determine eligibility for employment. The implications for a national identification card which this study carried were of great concern to me and to many of my constituents. I share their relief that these provisions were stricken. We have added an amendment that mandates the establishment of a system whereby employers can check Social Security numbers by telephone to determine if the individual is a U.S. citizen or a legal or illegal alien. I think this program will do much to reduce the intrusiveness that would have surrounded a paper employee verification program. In addition, a telephone verification system will provide a workable, easy method of employee verification, so that employers will not be able to use fear of counterfeit documents as an excuse for discriminating against Hispanic American workers.

I want to make it clear, however, that I retain serious doubts about the workability of the employer sanctions program. A study prepared by the General Accounting Office indicated that the 20 countries that have tried employer sanctions to control undocumented immigration found them to be ineffective. Eleven States in the United States have enacted some form of employer sanctions, including California, Florida, and my home State of Kansas. Those sanctions have proven to be ineffective in every State where they were put on the books. If Federal sanctions work, it clearly will contradict all of the past experience we have with this approach. That is why I supported Representative SCHROEDER's amendment to sunset the employer sanctions statute after 3 years, and that is why I supported Representative ROYBAL's proposals to more carefully enforce existing wage and hour and occupational health and safety statutes instead of instituting employer sanctions. Enhanced enforcement of worker protection statutes already on the books would have gone a long way toward making the jobs that are being filled by undocumented aliens more attractive to domestic workers, thus reducing the displacement of Americans in the job market and removing the magnet that draws foreign workers across the border to fill jobs that Americans won't take.

We have amended this legislation to authorize increased funding for Immigration and Naturalization Service border patrols, visa and naturalization services, and personnel training programs. I strongly support this increased funding. Immigration control is an area that has been slighted for too long in the budget. If we want to regain control of our borders, we simply will have to spend more money for enforcement.

The legislation also contains language prohibiting the INS from searching farmers' fields without first obtaining a search warrant. I opposed removal of this language because I strongly believe that farmers are entitled to the same protection from unreasonable searches as are occupants of houses and buildings.

H.R. 1510 now contains language authored by Representative PANETTA which will lead to the creation of a new guest worker program which will provide labor for the growers of perishable commodities. After long and careful consideration, I cast my vote in favor of the Panetta amendment. It is simply a fact of life that domestic workers will not take these jobs if they have a more attractive alternative. Undocumented workers who legalize their status under the amnesty provisions of this bill will move up the economic ladder as soon as possible, once they have stepped away from the legal shadows of undocumented status. We will need the guest worker program to fill the void the newly documented workers will leave in the bottom rungs of the agricultural labor force. I wish there were domestic workers willing and available to fill these jobs, but the simple truth is that Americans will not take these low paying, unpleasant positions, and perishable agriculture in this country needs a dependable source of workers. Under the Panetta amendment, if domestic workers are available, guest workers could not be admitted. Realism dictates that we should bring these alien field workers under some kind of Government control so that we can assure that their health, safety, and economic well-being are considered.

I also support the amnesty provisions the legislation now contains. The presence of a large class of undocumented aliens threatens the entire social order. It has a significant negative effect on wages, working conditions, and consumer prices. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding; to report an illness which might constitute a public health hazard; or to disclose violations of U.S. labor laws. Mass deportation would most likely lead to massive violations of the civil rights of Hispanic Americans, and it would be prohibitively costly and beyond the limited resources of the INS. In addition, families would be routinely divided, since many undocumented persons have close U.S. citizen relatives, including children born in this country.

The legalization of a significant portion of the undocumented population would enable us to better manage our immigration problems. The INS is currently devoting a substantial portion of its limited resources to its continuing attempt to deport people who are joining the mainstream of American society. Legalization will allow us to allocate those resources to border enforcement, in order to prevent new undocumented entrants, and to regular immigration services, such as the processing of visa and naturalization petitions.

I supported the changes in the amnesty program that were offered by the distinguished majority leader, Mr. WRIGHT, because I felt that they provided reasonable standards for screening these undocumented aliens and for providing that they begin the process of assimilating fully into American society. While I believe that a successful legalization must include as many undocumented aliens as possible, it is not unreasonable to require that they begin to learn the English language and acquire some appreciation of American history before they are granted permanent resident status.

In conclusion, I want to reaffirm my commitment to the view that we must change the current immigration laws. We have lost control of our borders, and the undocumented aliens filling the lower rungs of our economic ladder have been subjected to widespread abuse and exploitation due to their vulnerable legal status. This situation cannot continue. H.R. 1510 is far from being a perfect piece of legislation, but I believe it is a place to begin dealing with the most difficult human rights issue facing our country. I am committed to carefully monitoring the implementation of this legislation, should it become law, and I have no doubt that further modification will be required.

● Mr. BONKER. Mr. Chairman, as one who has been concerned about the tide of illegal immigration in recent years, I rise in support of H.R. 1510, the Immigration Reform and Control Act. The bill, as amended, incorporates two related provisions which are essential to control the massive influx of illegal immigrants into this country—employer sanctions combined with a simple and nonintrusive means of verifying employment eligibility. The provisions will greatly reduce the incentives which now draw millions of illegal immigrants across our borders. I believe these provisions constitute the heart of effective immigration reform.

In 1977, I first introduced legislation which included these two elements. My bill provided graduated employer sanctions and the establishment of a counterfeit-proof Social Security card as the employment identifier.

The bill was based on the notion that the millions of illegal aliens who have poured across our borders in the last few years are drawn here by the prospect of jobs that pay far better than anything they could find in their home countries. Without the lure of employment in the United States, these people would probably never leave their homelands.

Jobs are now readily available to the undocumented worker. Some employers are eager to make use of the large, cheap, willing pool of illegal labor, and they face no penalty for doing so. The United States is virtually alone among developed nations in not penalizing employers who knowingly hire illegals. Clearly, employer sanctions are needed.

But sanctions against those who hire illegal aliens, without a simple and reliable system of identification, unfairly burdens the employer. Most businesses have neither the resources nor the inclination to verify the identity of a worker who may possess a counterfeited, temporary work permit or some other bogus form of identification. Worse, the employer may be placed in the position of discriminating against anyone who appears to be foreign when in doubt about the status of a prospective employee. Without a workable means of verifying employability, Hispanic groups are justifiably concerned about discrimination.

Thus, Government certification of employment eligibility is a necessary companion of any effective employer-sanction provision. The question, then, is what is the best way for the Government to certify employment eligibility?

The Social Security Act has always required that all gainfully employed persons have a Social Security number and that this number be given to the employer. Thus, the basic system for controlling employment eligibility through a single document is already in place.

My bill would have required the Federal Government to issue conterfeitproof Social Security cards. Anyone applying for a Social Security card must now present proof of U.S. citizenship, or of legal entry confirmed by the Immigration and Naturalization Service, to the local Social Security office. An employer would be required to check a job applicant's Social Security card before hiring.

The House wisely agreed to an amendment offered by the gentleman from Texas [Sam B. Hall, Jr.] to provide a similarly simple and effective means of verifying employment eligibility based on the Social Security system. This provision requires the employer to call in the Social Security number of the job applicant to a toll-free Government agency telephone number. A computer would then examine the number and verify it against Social Security records. If the number is valid, the agency informs the employer. A transaction code is used to make a record of the verification transaction much the same as credit-card purchases are verified. The entire transaction is completed in a matter of seconds and does not add to the employer's paperwork burden.

Under both the House-adopted telephone verification system and my Social Security card proposal, the Government would be responsible for certifying employability. This takes the burden off the employer. Most important, this approach eliminates any basis for discrimination against Hispanics or others who may appear to be of foreign extraction.

The combination of employer sanctions and telephone verification will go a long way toward reducing the incentives for illegal immigration, and I strongly support the inclusion of these provisions in the immigration reform package.

Mr. Chairman, the Immigration Reform and Control Act is one of the most controversial pieces of legislation considered by this Congress. It is a comprehensive bill which touches on a number of sensitive issues. Indeed, every major provision of the bill is the subject of intense controversy. There is probably not a Member of Congress who would not like to see the bill changed in some respect.

But we should not let this controversy keep us from taking the difficult steps necessary to bring some sense and order to an immigration system that is out of control. Consensus on this issue is simply not possible. I strongly supported some key amendments to the bill which failed, and I opposed some amendments which were adopted. Still, I believe H.R. 1510, as amended, represents a fair balance of interests.

The longer we wait to deal with the immigration dilemma, the worse the problem will become—and the more difficult it will be to enact reasonable reforms. I urge my colleagues to take advantage of this opportunity to support this equitable and urgently needed legislation.●

● Mr. FUQUA. Mr. Chairman, I intend to cast my vote in favor of H.R. 1510 because I believe we must have immigration reform and, clearly, this is the only vehicle we have. The present situation is intolerable and we must improve it. H.R. 1510 makes a number of needed improvements and we cannot miss this opportunity for reform.

I support the employer sanctions because I believe we must provide penalties for employers who willfully and repeatedly hire illegal aliens with the clear knowledge that they are violating the law.

I do not support the amnesty provisions and voted for the amendment by the gentleman from Florida [Mr. McCollum] to delete that language. We lost and I respect the judgment of the House. While I believe amnesty is wrong and not in the best long-term interests of the United States, I still vote for the bill because, overall, I believe the Judiciary Committee has done a good job of bringing to the floor a bill with many changes I support.

H.R. 1510 is not a bill that the Members of this Chamber embrace wholeheartedly, but it is a bill we can live with and I believe it deserves our support at this time.●

● Mr. FRENZEL. Mr. Chairman, I have never liked the immigration bill. I would like to have the luxury of voting against it.

Its central feature, amnesty, is not a solution. It's a copout. To say that we are solving the problem of illegal immigration by declaring illegals legal is the exact equivalent of curing poverty by declaring poor people rich.

Amnesty is also immoral from the standpoint that hundreds of thousands of foreign nationals are patiently and legally waiting years for the privilege of U.S. citizenship. They obey our law and get nothing. Illegals break our law and we give them the priceless treasure of U.S. citizenship. There is simply no way to justify rewarding law breakers and penalizing law abiders.

Employer sanctions will help. The only way to keep illegals out is to remove incentives for good employment here. Sanctions will make good employment opportunities less available.

On its apparent merits, the bill does not deserve an affirmative vote. But intangibles cannot be ignored. There is no other option. People, like Chairman Mazzoli, in whom I have great faith, tell us this is the only possible way to make any progress against the problem of illegal immigration. It is possible that the bill may be improved in conference committee by setting the amnesty date back in time.

I would prefer to vote against the bill, but feel compelled to keep it alive. If it is defeated, there is nothing. I would rather move a leaky vessel forward than give up completely.

My reluctant vote for this bill is an act of hope for improvement, an act of faith in Chairman Mazzoli and his counterpart in the other body, the Senator from Wyoming [Mr. Simpson] and an act of charity in general.●

● Mr. SHUMWAY. Mr. Chairman, after 7 full days of debate, the House has concluded its consideration of the Immigration Reform and Control Act (H.R. 1510) and is now prepared to vote on final passage. It has been a historic debate, in my view, characterized by a notable lack of rancor and animosity as this body has grappled with the very difficult and emotional issue of immigration in America. I would like to commend my colleagues for the orderly and dignified manner in which this debate has been conducted; specifically, I must salute my distinguished colleague, Congressman Ron Mazzoli, for his leadership on this issue and for the excellent job he has done of managing the bill on the floor of the House.

During the course of the House debate on the Simpson-Mazzoli bill, this body has considered over 60 amendments. Through the amendment process, a number of important changes were made in the bill which I strongly support. In my view, the House recognized the shortcomings of H.R. 1510's responsiveness to the needs of agriculture, paticularly as it relates to the harvest of perishable crops, and voted in support of the Panetta-Morrison amendment. This amendment, which creates a temporary agricultural worker program limited to perishable commodities, recognizes the economic realities of the agricultural sector of our economy which has come to rely upon highly mobile foreign workers to harvest crops due to the unavailability of domestic workers. This amendment will ensure producers of perishable commodities with an adequate and dependable work force, preventing any labor gaps which may result from the legalization and employer sanctions provisions of H.R. 1510.

Moreover, the House rejected an amendment to delete the provision of H.R. 1510 requiring a search warrant before Immigration and Naturalization Service [INS] officials may enter agricultural fields. The majority of the House recognized that if agriculture is to comply with the employer sanctions and verification procedures demanded of other industries under H.R. 1510, it is only fair that farmers and farmworkers be granted the same standard of protection from unreasonable search and seizure that other businesses enjoy.

However, while I believe these provisions significantly improve the legislation's responsiveness to the special needs of agriculture, I am afraid the overall shortcomings of the bill outweigh these improvements. I continue to believe that the very generous mass legalization provision of H.R. 1510, which makes illegal aliens who have resided in the United States since January 1, 1982, eligible for temporary resident status, is the greatest weakness of the bill. Rather than assisting our Nation in gaining control of our borders, the amnesty provision in the bill before us will have the unintended effect of encouraging even more undocumented workers to come to the United States. Aliens will undoubtedly continue to illegally enter the United States in the hope that an amnesty will occur again in the future and that they can fraudulently qualify for the amnesty.

As I stated in my opening remarks concerning H.R. 1510, it hardly strikes me as prudent policy to proceed with an amnesty program until it has been adequately demonstrated that our borders can be reasonably secured. To go forward with the legalization provisions of the legislation before us would send a signal to the rest of the world that the United States lacks the will and resources to secure its borders and enforce its immigration policies.

Mr. Chairman, I therefore regret that I am unable to support H.R. 1510 as amended by the House. While important modifications were adopted in regard to the needs of agriculture, which I hope will be retained in any House-Senate conference, I do not believe that H.R. 1510, due to its amnesty provisions and lack of commitment to border enforcement, represents the solution to our Nation's very difficult immigration problem.●

● Mr. WON PAT. Mr. Chairman, I am pleased to join my friend and colleague, ROMANO MAZZOLI, chairman of the Subcommittee on Immigration, in support of H.R. 1510, legislation which is known as the Immigration Reform and Control Act. That this measure bears the name of our colleague is certainly a tribute to the countless hours of hard work he and his excellent staff have put into this effort to establish a coherent immigration policy.

While there is controversy over any effort to amend the Nation's immigration laws—and rightly so—I do urge that the measure before us be approved. I believe it represents a workable consensus in this Congress and will serve as a excellent role model for making our immigration laws fair and equitable.

Let me say that immigration problems are no stranger to my own district. Guam has long had considerable problems dealing with alien influxes and only recently I heard many complaints about how some of these people were treated by U.S. Immigration officials. Congressman MAZZOLI's bill sets up a framework of laws which will govern the manner in which we deal with alien immigration—both those in the past and in the future.

This measure will also establish a unique new Federal policy designed to stimulate foreign tourism into this country. The bill authorizes both the Departments of Justice and State to jointly establish a 3-year pilot program for up to eight countries for the admission of foreign tourists without the need to first obtain a visitor's visa.

I have long urged the adoption by Congress of a program such as this and am pleased to see that Congressman MAZZOLI and his colleagues have given it their endorsement. In my own congressional district, there are about 300,000 tourists annually entering Guam. The money they spend is vital to the local economy and is a stimulous to the local job market. I must also add that the money these tourists bring to Guam to spend is also a help in reversing the troubling deficit of credit we have with Asian nations such as Japan which is Guam's biggest tourist market.

There is simply no need to make potential tourist to first obtain visas if they are only going to stay in areas such as Guam for short periods of time. Past surveys have indicated tourists welcome any action which will make their international travel easier and less time consuming. Presently, Japanese tourists to Guam must spend considerable effort to obtain a U.S. visa before coming to the island. Congressman MAZZOLI's bill would remove this barrier and hopefully, in the process, encourage foreign tourism to Guam and other U.S. areas. This proposal is similar to one I have introduced in various Congresses. The time has come for this proposal to be adopted. I urge that it be approved. Thank you.●

● Mr. DIXON. Mr. Chairman, as I stand before this body in the waning moments of the debate over the future of our Nation's immigration policy, it seems that in our consideration of this legislation we have experienced both the best of times and the worst of times. On the one hand, this past week I often have been proud to be a member of this legislature, for the intellectual and emotional intensity of the debate is in the best tradition of the Congress. On the other hand, despite the best intentions of my colleagues, the Simpson-Mazzoli bill in its present form does not offer America an acceptable policy of immigration reform.

Mr. Chairman, the Simpson-Mazzoli bill has been debated in an atmosphere of heated controversy. While the Members of the House can expect to disagree on the substance of many legislative proposals—we cannot hope to resolve the puzzle of effective immigration reform without including certain vital components. Adoption of the amendments that combat discrimination in the workplace and grant legal status to Cuban and Haitian immigrants are constructive and I commend my colleages on this action.

The adoption of the nonimmigrant seasonal agricultural, so-called guest worker program, and the temporary residence status amendments, however, render this legislative package fatally flawed. Sadly, I conclude that on balance I cannot support this bill, and I advocate the rejection of H.R. 1510.

Inclusion of the guest worker program is indefensible. This program would provide insufficient protections and would have an adverse impact on domestic and foreign workers. Past experience with guest worker programs provide irrefutable evidence of aggravating, rather than ameliorating the illegal immigration problem—in short, once in place the seasonal workers do not go home.

There is no ceiling on the number of aliens allowed. As the number of seasonal workers inevitably rises, they clearly will become a source of competition for Americans in the workforce.

Finally, there is no enforcement mechanism for the employer sanctions in the program. Surely, no one will suggest that this program is the best tool we can devise for combating illegal immigration.

Legalization benefits all Americans. Undocumented aliens live in constant fear of detection and deportation, and as a result usually fail to report crimes, illness, or violations of labor or housing laws. Bringing undocumented persons out of hiding confers obvious benefits on all of society.

However, there are three principal elements of a successful legalization program: First, inclusiveness. The program must be as broad as possible because anything less will leave a large number of aliens in an undocumented status. That result clearly defeats the entire purpose of the bill.

To achieve our objective, the cutoff date must be as close as possible to the date of enactment of this act. I have supported the Select Commission on Immigration and Refugee Policy's recommendation that the continuous residency requirement be no longer than 2 years prior to the date of enactment. The Select Commission estimated that a cutoff date of January 1, 1982, would cover as much as 80 percent of our undocumented aliens.

The second element is simplicity. The eligibility requirements must be simple and unambiguous. Should aliens not be readily able to determine their eligibility because the requirements are too complex, they simply will not come forward to apply for legal status. Again, the effectiveness of the legalization program would be irreparably compromised.

Finally, no legalization program will work without the third component, enforcement immunity. The procedures used to determine whether an alien qualifies for legalization must guarantee immunity from enforcement action. If aliens are not certain that they are protected from enforcement actions, we cannot hope to have them apply for legal status.

The temporary residency requirement defeats the intent of the legalization section. Legalization should be implemented by means of a single tiered status program. It is only fair that any legalization program grant permanent resident status to undocumented aliens. A so-called two-tiered system grants temporary status to some aliens for a certain time, then allows those immigrants to subsequently apply for permanent status.

Granting temporary status for some aliens produces two unnecessary problems: First, a two-tiered program is much more difficult to administer, since it requires two application procedures and the accompanying recordkeeping burden. This discourages aliens from applying, and raises significantly the costs involved.

Second, persons granted temporary status risk deportation. Once aliens establish a presence with the INS, they will be subject to deportation should they later fail to qualify for permanent resident status. This is a mortal blow to the scheme, for it goes directly to the ultimate fear of the illegal alien.

Mr. Chairman, to pass amendments that weaken the workers protections or obstruct a workable legalization program renders useless the entire immigration reform package that this body has labored so diligently to construct. Our duty is not simply to pass an immigration bill, but rather to fashion the best, most effective immigration bill that we can.

This bill does not carry that burden. I must vote to defeat it. Thank you.●

● Mr. WALGREN. Mr. Chairman, at this time I would like to state for the record my position on H.R. 1510, the Immigration Reform and Control Act.

The United States faces a deep dilemma, that of balancing our roles as a refuge from oppression and an island of hope on the one hand, and our role of insuring every citizen the opportunity to prosper on the other. Were our resources and opportunities unlimited, we would have no dilemma. Since this is not the case, the Congress must control increases in illegal immigration that rob our citizens of opportunities—particularly the jobs—that they deserve.

After listening to all sides of this issue, I can come to no other conclusion than that H.R. 1510 deserves to be supported. Controlled immigration itself is a positive thing for it enriches both the newcomer and his adopted homeland. We should not forget that much of our scientific and technological leadership, including the developments in nuclear physics and the atom bomb in World War II, has been based on the contribution of immigrants. But when immigration goes unchecked and large, unrecordable numbers enter the United States illegally, the benefits quickly turn to liabilities and enrichment becomes detriment.

We need a concentrated effort to prevent future disruption of our society by uncontrolled immigration. The provision of this bill making it illegal for domestic employers to knowingly hire illegal immigrants is the necessary cornerstone of any solution to the problem that so many from around the world want to come to the United States.

Since most illegal immigrants come looking for work, employers are in the best position to serve as guardians of immigration laws by refusing to hire illegal aliens. In my view, it is their responsibility to do so; it is only fair that penalties be levied when employers disregard their legal duty.

The measures required to implement employer sanctions are simple and, in and of themselves, should not promote discrimination. But we must recognize that many particularly sensitive to civil liberties fear the employer sanctions will be used to discriminate against individual job applicants of minority descent even though they are legal residents.

In my view, there is no way around this concern. We simply must choose between putting systemwide barriers to the present incentive illegal immigrants have to come to the United States for work, or not. Federal law prohibiting discrimination in employment on the basis of national origin should help work against this problem. But forced to choose, we should side with employer sanctions in view of the seriousness of large scale illegal immigration.

Most important, the bill does not seek retribution for past cases of illegal entry. In an attempt to minimize disruption, amnesty, and a temporary residency status will be afforded those who entered the United States prior to January 1982 in recognition that those who now have a life here should not be uprooted and returned to lands of often desperate circumstances.

Finding an approach to illegal immigration that a majority of the Congress can agree on is difficult. All sides of the issue cannot be satisfied. But, in my best judgment, this bill represents the best possible compromise. I support H.R. 1510 because it is a viable answer to a most perplexing problem, based on our basic values of compassion and realism.●

● Mr. WEISS. Mr. Speaker, I voted against considering H.R. 1510, the Immigration Reform and Control Act, both for substantive and procedural reasons. This legislation, also known as the Simpson-Mazzoli bill, contains provisions which will significantly endanger the rights of current American citizens, the rights of those who are seeking refuge in our country from oppression abroad, and the rights of undocumented workers currently residing in our country. And it was brought up in such a way as to to deny a well-constructed and reasonable alternative; the right to a fair hearing.

After more than a week of debate and amendments, these circumstances are unchanged. Given the sweeping nature of the legislation before us and the threat it poses to the rights of American citizens, refugees, and aliens, the House of Representatives should defeat this bill. It should then give serious consideration to alternative approaches to the problem of illegal immigration which will remove the incentive for this activity while preserving basic human rights.

The controversy surrounding immigration reform stems not from a disagreement on whether it is necessary, but from a disagreement on how best to accomplish it. Proponents of the Simpson-Mazzoli bill have portrayed this legislation as a workable compromise that will satisfy all constituencies affected by immigration reform. However, it has failed to do so. Substantial questions remain as to the wisdom and effectiveness of key proposals contained in this legislation. And a prominent alternative, H.R. 4909, introduced by Representative ROYBAL, has been given only the most cursory examination; it has not even been given the benefit of a hearing.

The provisions of H.R. 1510 relating to refugees are entirely inadequate. Our Nation has made a historic commitment to shelter people fleeing from oppression and our current laws reflect this commitment by providing important protections to refugees who are fleeing persecution in their homeland. However, the bill before us today envisions a reduction in these protections and a weakening of our longtime commitment to the victims of political, economic, and religious oppression. As reported, H.R. 1510 reduced the protections available to refugees. However, an extremely misguided amendment adopted by the House makes a bad situation even worse.

The amendment would allow border patrol officers to exclude aliens seeking to enter this country if they arrive here without proper documentation. The aliens would not have to be informed of their right to counsel or to have an administrative law judge redetermine their condition. They could be returned immediately to a country in which they face torture or death. The amendment would also significantly diminish access to the courts by refugees under certain circumstances and would eliminate class actions as a remedy to the unjust application of our immigration laws. The courts have played an extremely important role in recent years in protecting the rights of asylum seekers, and it is essential that access to the courts remain unencumbered. Finally, the bill places strict time limitations on refugees seeking asylum in our country. Given the extremely vulnerable situation of asylum seekers, who are unfamiliar with our language or our legal system, it is essential that we provide these individuals with enough time to secure legal assistance and present their claims.

This bill calls for a serious weakening of our Nation's longstanding commitment to refugees from around the world. Serious abuses of human rights might occur if persons are returned to a country in which they face persecution or death. By passing this bill, we would be telling "the tired, the poor, and the huddled masses yearning to breathe free" to keep out.

The House has wisely deleted the provisions of the bill which would have authorized a Presidential study and report on the need for a national identification system for determining whether an individual is eligible to work. Such a requirement would have had serious implications for our civil liberties. A national identification card could significantly broaden the Government's police power to stop, question, and search individuals, and it could lead to the development of a national databank of personal information.

However, the House did adopt an amendment that calls for a national telephone verification system for employment eligibility. Such a system would be exceedingly expensive, difficult to operate, and likely to result in substantial abuses. Some have estimated that such a system would result in 7,500 calls per hour. And those who are familiar with the filing systems of Government agencies and the possibilities for computer crime will realize that abuse of this system could be widespread. A telephone verification system would protect the employers from sanctions at the expense of those who are seeking jobs.

The Simpon-Mazzoli bill also offers the opportunity for undocumented workers currently residing in the United States to become legalized citizens of our country. Legalization is a humane and realistic way of dealing with a population that has been living in the United States and contributing its labor, taxes, and cultural diversity to our Nation. All evidence suggests that undocumented aliens have had a positive impact on our economy and have not made extensive use of social services. Legalization would bring this population out of the shadows and into the mainstream of American life.

As originally worded, H.R. 1510 provided for a one-step legalization process for aliens who arrived in the United States before January 1, 1982. However, the House has thwarted the laudable intent of the original bill through an amendment which creates a two-tiered legalization process and requires aliens to meet additional standards before applying to become permanent residents of our Nation. These standards include a requirement that aliens demonstrate that they are participating in a course of study to learn the English language and American history and government. In addition, the amendment would preclude aliens convicted of any felony or of three misdemeanors from becoming legalized citizens, even if the crime was not one of moral turpitude. This amendment destroys the intent of the legalization process and imposes an undue burden on a population which deserves to be fully integrated into our society.

The temporary worker provisions in the Simpson-Mazzoli bill also warrant our concern. While the intent of the bill is ostensibly to limit the number of people who enter the country, these provisions would allow the entrance of between 300,000 and 500,000 foreign workers annually. The European experience with temporary worker programs suggests that they aggravate, rather than alleviate, undocumented immigration. Moreover, these programs are likely to become sustained and steady sources of cheap, controllable labor. The result will be another sad chapter in the history of our Nation's exploitation of foreign workers.

Finally the Simpson-Mazzoli bill will institute sanctions against employers who hire undocumented workers. A cloud of skepticism hangs over these provisions, which have proven ineffective in jurisdictions within the United States and 20 foreign countries which have instituted similar sanctions. Further, while a great deal of undocumented immigration is sparked by employment opportunities available in the United States, there are other reasons for undocumented immigration that will not be affected by employer sanctions. Many people are moved to cross the border in order to reunify their families or to escape social, economic, and political upheaval. Employer sanctions do not in any way address these important incentives for undocumented immigration.

However, the most important problem with employer sanctions is their potential role in encouraging discrimination against Hispanic Americans and other immigrant groups. These groups have expressed the view that employers, fearing significant fines or jail terms, will fail to hire anyone who sounds or looks "foreign."

There are many who have doubted this assessment. But the fact is that harassment of Hispanic Americans is already a daily reality in many parts of the country. In recent INS factory raids, Hispanic workers were separated from other workers and asked to produce documentation of legal resident status. The result was a series of unwarranted apprehensions and detentions of legal U.S. residents and citizens. There can be little doubt that the institution of employer sanctions would only legitimize and accelerate these kinds of abuses. Moreover, the antidiscrimination measures contained in H.R. 1510 are not sufficient to adequately protect the rights of American workers. All of us who value our civil liberties must feel threatened by the prospect of discrimination under this bill, and we must join together to defeat it.

There is a consistent disregard for human rights throughout the legislation before us. The threat to the rights of individuals and groups is substantial and unavoidable. We need legislation that stops undocumented immigrants from coming into our country. But we also need legislation that preserves the values of justice and fairness for American citizens of all races, for refugees fleeing oppression, and for the shadowy population of undocumented immigrants which has silently contributed to our Nation for many years. The present bill does not preserve those values. I therefore urge my colleagues to join me in rejecting H.R. 1510 and in pressing for full consideration of humane alternatives to this dangerous and misguided bill.●

The CHAIRMAN. The question now is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1510) to revise and reform the Immigration and Nationality Act, and for other purposes, pursuant to House Resolution 519, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. FRANK. Mr. Speaker, I demand a separate vote on amendment No. 22 adopted by the Committee of the Whole.

The SPEAKER. Is a separate vote demanded on any other amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole?

The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 24, line 15, strike out "(B)(i)" and insert in lieu thereof "(B)".

Page 24, lines 17, 19, and 21, strike out "(I)", "(II)", and "(III)" and insert in lieu thereof "(i)", "(ii)", and "(iii)", respectively.

Page 24, line 23, strike out "subject to clause (ii),".

Page 25, strike out lines 1 through 11.

Page 28, beginning on line 6, strike out "a redetermination excluding an alien under section 235(b)(1)(B)(ii) or".

Page 31, strike out lines 13 through 15.

Page 33, line 9, insert "(A)" after "(5)".

Page 33, after line 10, insert the following new subparagraph:

(B) by striking out "The service of the petition" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the service of the petition";

Page 34, line 20, strike out "(b)(1)(A)" and insert in lieu thereof "(b)(1)".

Page 35, strike out lines 1 through 21.

Page 36, line 7, insert "or" after the comma.

Page 36, beginning on line 9, strike out ", or a redetermination to exclude an alien from entering the United States under section 235(b)(1)(B)(ii)".

Mr. **FRANK** [during the reading]. Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The **SPEAKER**. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The **SPEAKER**. The question is on the amendment.

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. **McCOLLUM**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER**. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 219, nays 208, not voting 6, as follows:

[Roll No. 250]

YEAS—219

Andrews (NC)
Anthony
Applegate
Archer
Badham
Barnard
Bartlett
Bateman
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boner
Breaux
Brooks
Broomfield
Brown (CO)
Broyhill
Burton (IN)
Byron
Campbell
Carney
Chandler
Chappell
Chappie
Cheney
Coats
Coleman (MO)
Conable
Cooper
Corcoran
Coughlin
Courter
Craig
Crane, Daniel
Crane, Philip
Daniel
Dannemeyer
Darden
Daub
Davis
Derrick
DeWine
Dickinson
Dowdy
Dreier
Duncan
Dyson
Edwards (AL)
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Fiedler
Fields
Flippo
Franklin
Frenzel
Fuqua
Gekas
Gibbons
Gingrich
Goodling
Gore
Gradison
Gramm
Gregg
Gunderson
Hall, Ralph
Hall, Sam
Hammerschmidt
Hance
Hansen (UT)
Hartnett
Hatcher
Hefner
Heftel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Hubbard
Huckaby
Hunter
Hutto
Hyde
Ireland
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kasich
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leath
Lent
Lewis (CA)
Lewis (FL)
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
MacKay
Madigan
Marlenee
Marriott
Martin (IL)
Martin (NC)
Martin (NY)
McCain
McCandless
McCollum
McCurdy
McDade
McEwen
McGrath
McKernan
Mica
Michel
Miller (OH)
Molinari
Montgomery
Moore
Moorhead
Myers
Neal
Nelson
Nichols
Nielson
O'Brien
Olin
Oxley
Packard
Parris
Pashayan
Patman
Petri
Pickle
Pritchard
Pursell
Quillen
Regula
Ridge
Ritter
Roberts
Robinson
Roemer
Rogers
Rose
Roth
Roukema
Rowland
Rudd
Sawyer
Schaefer
Schulze
Shaw
Shelby
Shumway
Shuster
Siljander
Sisisky
Skeen
Skelton
Smith (IA)
Smith (NE)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solomon
Spence
Stangeland
Stenholm
Stratton
Stump
Sundquist
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torricelli
Valentine
Vander Jagt
Volkmer
Vucanovich
Walker
Watkins
Weber
Whitehurst
Whitley
Whittaker
Whitten
Williams (OH)
Wilson
Winn
Wolf
Wortley
Wylie
Young (AK)
Young (FL)
Zschau

NAYS—208

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (TX)
Annunzio
Aspin
AuCoin
Barnes
Bates
Bedell
Beilenson
Berman
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Britt
Brown (CA)
Bryant
Burton (CA)
Carper
Carr
Clarke
Clay
Clinger
Coelho
Coleman (TX)
Collins
Conte
Conyers
Coyne
Crockett
D'Amours
Daschle
de la Garza
Dellums
Dicks
Dingell
Dixon
Donnelly
Dorgan
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edgar
Edwards (CA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fish
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frost
Garcia
Gaydos
Gejdenson
Gephardt
Gilman
Glickman
Gonzalez
Gray
Green
Guarini
Hall (IN)
Hall (OH)
Hamilton
Harkin
Harrison
Hawkins
Hayes
Hertel
Howard
Hoyer
Hughes
Jacobs
Jeffords
Johnson
Kaptur
Kastenmeier
Kazen
Kennelly
Kildee
Kleczka
Kogovsek
Kolter
Kostmayer
LaFalce
Lantos
Leach
Lehman (CA)
Lehman (FL)
Levin
Levine
Levitas
Lipinski
Long (LA)
Long (MD)
Lowry (WA)
Luken
Lundine
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McHugh
McKinney
McNulty
Miller (CA)
Mineta
Minish
Mitchell
Moakley
Mollohan
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Nowak
Oakar
Oberstar
Obey
Ortiz
Ottinger
Owens
Panetta
Patterson
Paul
Pease
Penny
Pepper
Perkins
Porter
Price
Rahall
Rangel
Ratchford
Ray
Reid
Richardson
Rinaldo
Rodino
Roe
Rostenkowski
Roybal
Russo
Sabo
Savage
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sharp
Sikorski
Simon
Slattery
Smith (FL)
Smith (NJ)
Solarz
Spratt
St Germain
Staggers
Stark
Stokes
Studds
Swift
Synar
Torres
Towns
Traxler
Udall
Vandergriff
Vento
Walgren
Waxman
Weaver
Weiss
Wheat
Wirth
Wise
Wolpe
Wright
Wyden
Yates
Yatron
Young (MO)

NOT VOTING—6

Hansen (ID)
Leland
Mikulski
Sensenbrenner
Shannon
Williams (MT)

☐ 1650

Mr. **GEJDENSON** and Mr. **MURPHY** changed their votes from "yea" to "nay."

Mr. **WEBER** changed his vote from "nay" to "yea."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The **SPEAKER**. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The **SPEAKER**. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. HORTON

Mr. **HORTON**. Mr. Speaker, I offer a motion to recommit.

The **SPEAKER**. Is the gentleman opposed to the bill?

Mr. **HORTON**. I am, Mr. Speaker.

The **SPEAKER**. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. HORTON moves to recommit the bill, H.R. 1510, to the Committee on the Judiciary.

The **SPEAKER**. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The **SPEAKER**. The question is on the motion to recommit.

The motion to recommit was rejected.

The **SPEAKER**. The question is on the passage of the bill.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. **GARCIA**. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 216, nays 211, not voting 6, as follows:

[Roll No. 251]

YEAS—216

Alexander
Andrews (NC)
Annunzio
Anthony
Aspin
Badham
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Boehlert
Boggs
Boland
Boner
Bonior
Bonker
Boucher
Breaux
Britt
Broyhill
Burton (IN)
Byron
Campbell
Carper
Chandler
Chappell
Cheney
Clarke
Clinger
Coats
Conable
Conte
Cooper
Corcoran
Coughlin
Coyne
D'Amours
Dannemeyer
Daschle
Davis
Derrick
DeWine
Dicks
Dingell
Donnelly
Dorgan
Dowdy
Downey
Durbin
Dwyer
Early
Eckart
Edwards (AL)
Erlenborn
Evans (IA)
Fascell
Feighan
Fish
Foley
Ford (TN)
Fowler
Frank
Franklin
Frenzel
Fuqua
Gekas
Gibbons
Gilman
Gingrich
Glickman
Gore
Gradison
Green
Gregg
Gunderson
Hamilton
Hammerschmidt
Hansen (UT)
Harkin
Harrison
Hefner
Heftel
Hiler
Holt
Howard
Hoyer
Hutto
Hyde
Ireland
Jeffords
Johnson
Jones (OK)
Jones (TN)
Kasich
Kastenmeier
Kleczka
Kostmayer
LaFalce
Leach
Lehman (FL)
Levin
Levitas
Lewis (FL)
Lipinski
Livingston
Lloyd
Long (LA)
Long (MD)
Lott
Lowery (CA)
Luken
Lundine
Lungren
MacKay
Madigan
Martin (NC)
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McHugh
McKernan
McKinney
Mica
Michel
Miller (OH)
Moakley
Molinari
Montgomery
Moody
Moorhead
Morrison (WA)
Mrazek
Murtha
Myers
Natcher
Neal
Nelson
Nielson
Nowak
O'Brien
Obey
Ottinger
Oxley
Packard
Panetta
Pease
Penny
Pepper
Petri
Pickle
Price
Pritchard
Quillen
Rahall
Ridge
Ritter
Rodino
Roe
Rose
Rostenkowski
Russo
Sabo
Sawyer
Schaefer
Scheuer
Schneider
Schulze
Schumer
Seiberling
Sharp
Shaw
Sisisky
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Snowe
Solarz
Spratt
St Germain
Stangeland
Stark
Studds
Synar
Tallon
Tauke
Taylor
Thomas (CA)
Torricelli
Traxler
Valentine
Vucanovich
Walgren
Walker
Weaver
Weber
Whitehurst
Whitley
Whittaker
Wilson
Winn
Wolf
Wortley
Wright
Wylie
Young (FL)

NAYS—211

Ackerman
Addabbo
Akaka
Albosta
Anderson
Andrews (TX)
Applegate
Archer
AuCoin
Barnard
Bartlett
Berman
Bethune
Bevill
Biaggi
Bilirakis
Bliley
Borski
Bosco
Boxer
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bryant
Burton (CA)
Carney
Carr
Chappie
Clay
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conyers
Courter
Craig
Crane, Daniel
Crane, Philip
Crockett
Daniel
Darden
Daub
de la Garza
Dellums
Dickinson
Dixon
Dreier
Duncan
Dymally
Dyson
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IL)
Fazio
Ferraro
Fiedler
Fields
Flippo
Florio
Foglietta
Ford (MI)
Frost
Garcia
Gaydos
Gejdenson
Gephardt
Gonzalez
Goodling
Gramm
Gray
Guarini
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hance
Hartnett
Hatcher
Hawkins
Hayes
Hertel
Hightower
Hillis
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hunter
Jacobs
Jenkins
Jones (NC)
Kaptur
Kazen
Kemp
Kennelly
Kildee
Kindness
Kogovsek
Kolter
Kramer
Lagomarsino
Lantos
Latta
Leath
Lehman (CA)
Lent
Levine
Lewis (CA)
Loeffler
Lowry (WA)
Lujan
Mack
Markey
Marlenee
Marriott
Martin (IL)
Martin (NY)
Martinez
Matsui
McCain
McGrath
McNulty
Miller (CA)
Mineta
Minish
Mitchell
Mollohan
Moore
Morrison (CT)
Murphy
Nichols
Oakar
Oberstar
Olin
Ortiz
Owens
Parris
Pashayan
Patman
Patterson
Paul
Perkins
Porter
Pursell
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Rinaldo
Roberts
Robinson
Roemer
Rogers
Roth
Roukema
Rowland
Roybal
Rudd
Savage
Schroeder
Shelby
Shumway
Shuster
Sikorski
Siljander
Simon
Skeen
Skelton
Smith, Robert
Snyder
Solomon
Spence
Staggers
Stenholm
Stokes
Stratton
Stump
Sundquist
Swift
Tauzin
Thomas (GA)
Torres
Towns
Udall
Vander Jagt
Vandergriff
Vento
Volkmer
Watkins
Waxman
Weiss
Wheat
Whitten
Williams (OH)
Wirth
Wise
Wolpe
Wyden
Yates
Yatron
Young (AK)
Young (MO)
Zschau

NOT VOTING—6

Hansen (ID)
Leland
Mikulski
Sensenbrenner
Shannon
Williams (MT)

□ 1710

Mr. PERKINS changed his vote from "yea" to "nay."

Messrs. BURTON of Indiana, PETRI, OTTINGER, and HOWARD changed their votes from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. RODINO. Mr. Speaker, I move to take from the Speaker's table the Senate bill (S. 529) to revise and reform the Immigration and Nationality Act, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey [Mr. RODINO].

The motion was agreed to.

The Clerk read the Senate bill, as follows:

S. 529

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Immigration Reform and Control Act of 1983".

(b) Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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Sec. 113. Unlawful entry into the United States.
Sec. 114. Border patrol.
Sec. 115. Execution of warrant.

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Sec. 122. United States Immigration Board and establishment of immigration judge system.
Sec. 123. Judicial review.
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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section—

"(A) to hire, or for consideration to recruit or refer, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or

"(B) to hire for employment in the United States an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity which employs three or fewer employees.

"(2) It is unlawful for a person or other entity who, after hiring an alien for employment subsequent to the date of the enactment of this Act and in accordance with paragraph (1), continues to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

"(b) Except as provided in subsection (c), the requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

"(1) the person or entity must attest, under penalty of perjury and on a form established by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in accordance with subsection (a)(1)(A) by examining the individual's—

"(A) United States passport, or

"(B)(i) social security account number card (issued by the Social Security Administration under section 205(c)(2)(B) of the Social Security Act and in such secure form, if any, as the Administrator of Social Security has made available) or certificate of birth in the United States or United States consular report of birth or, in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, a passport of a foreign country or where no such documentation is available, any other identification acceptable to the Attorney General, and

"(ii)(I) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

"(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds sufficient for purposes of this section, or

"(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification;

"(2) the individual must attest, under penalty of perjury and on the form established by the Attorney General for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

"(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending on the later of five years after such date or, in the case of the hiring of the individual, one year after the date the individual's employment is terminated.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(c)(1) Except as provided in paragraph (3), within three years after the date of the enactment of this section, the President shall implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States, which system shall conform to the requirements of paragraph (2).

"(2) Such system shall be designed in a manner so that—

"(A) the system will reliably determine that a person with the identity claimed by an employee or prospective employee is eligible to work, and that the employee or prospective employee is not claiming the identity of another individual;

"(B) if the system requires an examination by an employer of any document, such document must be in a form which is resistant to counterfeiting and tampering;

"(C) personal information utilized by the system is available to Government agencies, employers, and other persons only to the extent necessary for the purpose of verifying that the individual is not an unauthorized alien;

"(D) the system will protect the privacy and security of personal information and identifiers utilized in the system including recommendations to the Congress for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system;

"(E) a verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld for any reason other than that the employee or prospective employee is an unauthorized alien;

"(F) the system shall not be used for law enforcement purposes (other than for enforcement of this section or section 1546 of title 18, United States Code);

"(G) if the system requires individuals to present a card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this section (or enforcement of section 1546 of title 18, United States Code) nor to be carried on one's person; and

"(H) the President shall examine existing Federal and State identification systems, or the systems referred to in subsection (b) of this section, to determine suitability for use with the permanent system authorized to be developed by this section.

"(3)(A) Before the President implements any change in or addition to the requirements of subsection (b) which would require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, he shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth his proposal to implement such a change or addition. No such change or addition may be implemented if, within thirty calendar days after receiving such report, the Congress adopts a concurrent resolution stating in substance that it objects to the implementation of such change or addition.

"(4)(A) Any such concurrent resolution shall be considered in the Senate in accordance with paragraph (5).

"(B) For the purpose of expediting the consideration and adoption of concurrent resolutions under paragraph (3), a motion to proceed to the consideration of any such concurrent resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5)(A) For purposes of paragraph (3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(B) Subparagraphs (C) and (D) of this subsection are enacted—

"(i) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of concurrent resolutions referred to in paragraph (3), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(ii) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner and to the case of any other rule of the Senate.

"(C)(i) If the committee of the Senate to which has been referred a resolution relating to a certification has not reported such resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under subparagraph (A), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same certification which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a resolution with respect to the same certification.

"(ii) A motion to discharge under clause (i) may be made only by a Senator favoring the resolution, is privileged, and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(D)(i) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(iv) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

"(d)(1)(A) In the case of a person or entity which violates paragraph (1)(A) or (2) of subsection (a) and which—

"(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $1,000 for each unauthorized alien with respect to which the violation occurred, or

"(ii) has previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $2,000 for each unauthorized alien with respect to which the violation occurred.

In counting the number of previous determinations of violations for purposes of determining whether clause (i) or (ii) applies, determinations of more than one violation in the course of a single proceeding or adjudication shall be considered as a single determination. In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for its own hiring, recruiting, or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting, or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

"(B) In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.

"(2) Whenever the Attorney General (i) has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of subsection (a); or (ii) within an eighteen-month period issues to a person or entity a second notice of a violation of subsection (a) and the two notices charge violations involving a total of five or more individuals, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a temporary or permanent injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary. In the case of a person or entity composed of distinct physically separate subdivisions each of which provides separately for its own hiring, recruiting or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

"(3) A person or entity which violates subsection (a)(1)(B) shall be subject to a civil penalty of $500 for each individual with respect to which such violation occurred.

"(4)(A) Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General.

"(B) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in any appropriate district court of the United States. In any such suit or in any other suit seeking to review the Attorney General's determination, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the Attorney General's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(e) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(f) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or refer or recruit for employment, unauthorized aliens.

"(g) The President shall monitor the implementation of this section (including the effectiveness of the verification system described in subsection (b) and the status of the development and implementation of the secure verification system described in subsection (c)) and the impact of this section on employment in the United States of aliens and of citizens and nationals of the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status.".

(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(B)(i) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the six-month period beginning on the first day of the first month beginning after the date of the enactment of this Act, the Attorney General shall notify such person or entity of such belief and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(ii) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the subsequent six-month period, the Attorney General shall, in the first instance of such a violation (or violations) occurring during such period, provide a warning to the person or entity that such a violation or violations may have occurred and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(C) During the year beginning on the date of the enactment of this Act, the Attorney General, in cooperation with the Secretaries of Commerce, Labor, and Agriculture and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act.

(b) The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens.".

(c)(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

(d) Nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 2000e-5 of title 42, the United States Code, or any other authority provided therein.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

SEC. 102. (a) Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 1546. Fraud and misuse of visas, permits, and other documents";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(4) by striking out "$2,000" and inserting in lieu thereof "$5,000",

(5) by inserting "(a)" before "Whoever" the first place it appears, and

(6) by adding at the end the following new subsection:

"(b) Whoever without authority of the issuing agency and with unlawful intent—

"(1) photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of—

"(A) any document presented to satisfy a requirement of the Immigration and Nationality Act or regulations issued thereunder, or

"(B) any document presented to obtain a required document described in subparagraph (A), including any document presented to establish eligibility for adjustment of status under subsection (a) or (b) of section 245A of the Immigration and Nationality Act;

"(2) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, an engraving, photograph, print, or impression in the likeness of a document described in subparagraph (A) or (B) of paragraph (1);

"(3) alters any document described in subparagraph (A) or (B) of paragraph (1) relating to another person; or

"(4) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, any document described in subparagraph (A) or (B) of paragraph (1) relating to another person, whether or not altered,

shall be fined not to exceed $5,000 or imprisoned not more than five years, or both.".

(b) The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents.".

PART B—ENFORCEMENT

IMMIGRATION AND NATURALIZATION SERVICE ENFORCEMENT ACTIVITIES

SEC. 111. (a) It is the sense of the Congress that an essential element of the program of immigration control and reform established by this Act is an increase in border patrol and other enforcement activities of the Immigration and Naturalization Service in order to prevent and deter the illegal entry of aliens into the United States.

(b) In order to do this in the most effective and efficient manner, it is the intent of the Congress to provide, through the annual authorization of appropriations process for the Department of Justice, for a controlled and closely monitored increase in the level of the border patrol and of other appropriate enforcement activities of the Immigration and Naturalization Service to achieve an effective level of control of illegal immigration.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SEC. 112. Section 274 (8 U.S.C. 1324) is amended to read as follows:

"SEC. 274. (a) Any person who, knowingly or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this subsection, regardless of the number of aliens involved, be guilty of a misdemeanor and upon conviction shall be punished by a mandatory fine of $2,500, the imposition of which shall not be suspended by the court, and, in the court's discretion, may be punished by an additional fine of not more than $2,500 for each such alien in respect to whom any violation of this paragraph occurs or by imprisonment for a term not exceeding one year, or both.

"(b) Whoever, under subsection (a), commits—

"(1) a second offense,

"(2) an offense done for the purpose of commercial advantage or private financial gain,

"(3) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration official, or

"(4) an offense during which the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act or conduct intended to mislead any officer, agent, or employee of the United States,

shall be guilty of a felony and upon conviction shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs.

"(c) Any person who—

"(1) knowingly or having reason to know that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien,

"(2) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law, or

"(3) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection such alien in any place, including any building or any means of transportation,

shall be guilty of a felony and upon conviction thereof, shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs. For the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

"(d)(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been, is being, or is intended to be used in the commission of a violation of subsection (a), (b), or (c) shall be seized and subject to forfeiture, except that—

"(A) no conveyance used by any person as a common carrier shall be forfeited under the provisions of this section if the offense occurs when the conveyance is being used in the business as a common carrier unless the owner, operator, or other person in charge of the conveyance at the time of the offense was a consenting party or privy to the illegal act; and

"(B) no conveyance shall be forfeited under the provisions of this section if the offense occurred while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

"(2) Any conveyance subject to seizure under this section may be seized without a warrant if there is probable cause to believe the conveyance has been, is being, or is intended to be used in a violation of subsection (a), (b), or (c) and circumstances exist where a warrant is not constitutionally required.

"(3) All provisions of the customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property,

"(B) the disposition of such property or the proceeds from the sale thereof,

"(C) the remission or mitigation of such forfeiture, and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures,

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as applicable and not inconsistent with the provisions of this section, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizure and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

"(4) Whenever a conveyance is forfeited under this section the Attorney General may—

"(A) retain the conveyance for official use;

"(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

"(C) require that the General Services Administration, or the Federal Maritime Commission if appropriate under section 484(i) of title 40, United States Code, take custody of the conveyance and remove it for disposition in accordance with law; or

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

"(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action, to be judged of by the court. In determining whether probable cause exists, any of the following items of evidence shall be prima facie evidence of the presumption that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

"(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law;

"(B) Official records of the Service or of the Department of State showing that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law; and

"(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that such alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law.

"(6) Any officer or employee of the Service designated by the Attorney General, either individually or as a member of a class, and all other Federal officers whose duty it is to enforce criminal laws and those State officers whose duty it is to enforce criminal laws and who have been specifically designated by the Attorney General shall have authority to make any arrest for a violation of any provision of this section.".

UNLAWFUL ENTRY INTO THE UNITED STATES

SEC. 113. Section 275 (8 U.S.C. 1325) is amended by inserting "or attempts to enter" after "enters".

BORDER PATROL

SEC. 114. There are authorized to be appropriated to an immigration emergency revolving fund, to be established in the Treasury, $35,000,000, to be used to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such funds with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

EXECUTION OF WARRANT

SEC. 115. Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section, other than paragraph (3) subsection (a), an officer or employee of the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warranty.".

PART C—ADJUDICATION PROCEDURES AND ASYLUM

INSPECTION AND EXCLUSION

SEC. 121. (a) Section 235(a) (8 U.S.C. 1225(a)) is amended by striking out "arriving at ports" in the second sentence and inserting in lieu thereof "entering at ports or at the land borders".

(b) Section 235(b) (8 U.S.C. 1225(b)) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following:

"(b)(1) If an examining immigration officer at the port of arrival determines that an alien does not have the documentation required to obtain entry into the United States, does not have any reasonable basis for legal entry into the United States, and has not applied for asylum under section 208, such alien shall not be admissible and shall be excluded from entry into the United States without further inquiry or hearing.

"(2) If an examining immigration officer at a port of entry or land border of the United States determines that an alien (other than an alien crewman and except as otherwise provided in subsection (c) of this section and in section 273(d)) is otherwise not clearly and beyond a doubt entitled to land, such alien shall be detained for a hearing on exclusion of the alien to be held before an immigration judge.".

(2) by designating the sentence beginning "The decision" as paragraph (3), and

(3) by adding at the end the following new paragraphs:

"(4) The Attorney General shall establish procedures, after consultation with the Judiciary Committees of the Congress, which assure that aliens are not excluded under paragraph (1) without an inquiry into their reasons for unlawfully seeking entry into the United States.

"(5) In the case of an alien who would be excluded from entry under paragraph (1) but for an application for asylum under section 208, the exclusion hearing with respect to such entry shall be limited to the issues raised by the asylum application.".

(c) Section 236(a) (8 U.S.C. 1226(a)), as amended by section 126 of this Act, is further amended by inserting after the second sentence the following new sentence: "To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses.".

(d) Section 237 (8 U.S.C. 1227) is amended—

(1) by striking out "arrived in" in the first sentence of subsection (a)(1) and inserting in lieu thereof "entered";

(2) by striking out "arrived" in the second sentence of subsection (a)(1) and inserting in lieu thereof "entered the United States";

(3) by striking out "airport of arrival" in the first sentence of subsection (b) and inserting in lieu thereof "port of entry";

(4) by striking out "port of arrival" in the second sentence of subsection (b) and inserting in lieu thereof "port of entry";

(5) by striking out "arrived in" in the first sentence of subsection (c) and inserting in lieu thereof "entered"; and

(6) by striking out "arrived in" in subsection (e) and inserting in lieu thereof "entered".

UNITED STATES IMMIGRATION BOARD AND ESTABLISHMENT OF IMMIGRATION JUDGE SYSTEM

SEC. 122. (a) Title I is amended by adding at the end the following new section:

"UNITED STATES IMMIGRATION BOARD; USE OF IMMIGRATION JUDGES

"SEC. 107. (a)(1) There is established in the Department of Justice a United States Immigration Board (hereafter in this section referred to as the 'Board') composed of a Chairman and eight other members appointed by the Attorney General.

"(2) The term of office of the Chairman and all other members of the Board shall be six years, except that—

"(A) of the members first appointed under this subsection, three shall be appointed for a term of two years, three shall be appointed for a term of four years, and three shall be appointed for a term of six years,

"(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

"(C) a member may serve after the expiration of his term until his successor has taken office.

"(3) The Attorney General may remove a member of the Board only for neglect of duty or malfeasance in office.

"(4) Members of the Board (other than the Chairman) are entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled to receive compensation at the rate now or hereafter provided for grade GS-18 of the General Schedule, under section 5332 of title 5, United States Code.

"(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board and shall promulgate rules of practice and procedure for the Board and immigration judges.

"(b)(1) The Board shall hear and determine appeals from—

"(A) final decisions of immigration judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;

"(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

"(C) decisions involving the imposition of administrative fines and penalties, including mitigation thereof;

"(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (1) or (2) of section 203(b) or petitions on behalf of a child described in section 101(b)(1)(F), and (ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

"(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

"(F) such other decisions or determinations arising under this Act as the Attorney General may by regulation prescribe.

"(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

"(3) The Board shall act in panels of three or more members or en banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

"(4) The Board shall review the decision of an immigration judge based solely upon the administrative record upon which the decision is based, and the findings of fact in the judge's order, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(5) A final decision of the Board shall be binding on all immigration judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States.".

"(c)(1) The Attorney General shall, in accordance with procedures and regulations governing appointment and, except as provided in this paragraph, compensation in the competitive service—

"(A) appoint immigration judges;

"(B) set the rate of compensation for such judges at a rate not to exceed the rate now or hereafter prescribed for grade GS-16 of the General Schedule, under section 5332 of title 5, United States Code; and

"(C) designate one such judge to serve as chief immigration judge, who shall be entitled to compensation at the rate now or hereafter prescribed for grade GS-17 of such General Schedule.

"(2) In accordance with the rules established by the Board, the chief immigration judge—

"(A) shall have responsibility for the administrative activities affecting immigration judges, and

"(B) may designate any immigration judge in active service to hear and decide any cases described in paragraph (3).

"(3) Immigration judges shall hear and decide—

"(A) exclusion cases under sections 236 and 360(c),

"(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

"(C) rescission of adjustment of status cases under section 246,

"(D) with respect to judges designated to hear such cases, applications for asylum under section 208, and

"(E) such other cases as the Attorney General may provide by regulation.

An immigration judge may not hear or decide the case of an alien excluded from entry under section 235(b)(1).

"(4) In considering and deciding cases coming before them, immigration judges may administer oaths and receive evidence, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.".

(2) The table of contents is amended by inserting immediately after the item relating to section 106 the following new item:

"Sec. 107. United States Immigration Board; use of immigration judges.".

(3) Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'immigration judge' means such a judge appointed under section 107.".

(4) Section 101(b) (8 U.S.C. 1101(b)) is amended by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) The first sentence of section 236(b) (8 U.S.C. 1226(b)) is amended by striking out "From a decision" and all that follows through "Attorney General" and inserting in lieu thereof the following: "Within fifteen days after the date of a decision of an immigration judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file an appeal of the decision with the United States Immigration Board in accordance with rules established by the Chairman of the Board".

(c) Section 242(b)(4) (8 U.S.C. 1252(b)(4)) is amended by striking out "reasonable, substantial, and probative" and inserting in lieu thereof "substantial".

(d) Section 242 (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(l) Except as otherwise provided in section 291, in any deportation proceeding under this Act the burden of proof shall be upon the Attorney General to establish deportability by a preponderance of the evidence.".

JUDICIAL REVIEW

Sec. 123. (a) Subsection (a) of section 106 (8 U.S.C. 1105a) is amended—

(1)(A) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(B) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than 45 days from the date of the final order";

(C) inserting ", in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(D) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)"; and

(E) by striking out "The Service" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the Service"; and

(F) by inserting "exclusion or" before "deportation" in paragraph (4);

(2) by striking out "Attorney General's findings of fact" in paragraphs (4) and (6) and inserting in lieu thereof "findings of fact in the order",

(3) by striking out "(4) except as provided in" in paragraph (4) and inserting in lieu thereof "(4)(A) except as provided in subparagraph (B) and in",

(4) by striking out "reasonable, substantial, and probative" in paragraph (4) and inserting in lieu thereof "substantial",

(5) by adding at the end of paragraph (4) the following new subparagraph:

"(B) to the extent that an order relates to a determination on an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the immigration judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious;",

(6) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order;" and inserting in lieu thereof "an exclusion or deportation order; and",

(7) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof a period, and

(8) by striking out paragraph (9).

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Nothing in this section shall be construed as limiting the right of habeas corpus under the Constitution of the United States.

"(2) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of immigration judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or the exclusion of an alien from the United States under section 235(b)(1).".

(c) Subsection (c) of such section is amended by striking out "deportation or of exclusion" and inserting in lieu thereof "an immigration judge".

(d) The section heading for section 106 is amended to read as follows:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION, EXCLUSION, AND ASYLUM"

(e) In the case of a final order of deportation entered before the date of the enactment of this Act, a petition for review with respect to that order may in no case be filed under section 106(a)(1) of the Immigration and Nationality Act later than the earlier of (1) forty-five days after the date of the enactment of this Act, or (2) of the date (if any) such petition was required to be filed under the law in existence before the date of the enactment of this Act.

(f) Section 279 (8 U.S.C. 1329) is amended—

(1) by striking out "The district courts" and inserting in lieu thereof "(a) Except as

otherwise provided under section 106, the district courts"; and

(2) by adding at the end thereof the following new subsection:

"(b) An action for judicial review of any administrative action arising under this Act, or regulations issued pursuant to this Act, other than a final order of exclusion or deportation as provided in section 106(a) of this Act, may not be filed later than thirty days after the date of the final administrative action or from the effective date of this section, whichever is later.".

ASYLUM

Sec. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended to read as follows:

"(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

"(B)(i) An alien against whom exclusion or deportation proceedings have been instituted may not file a notice of intention to apply for asylum more than fourteen days, nor perfect such application for asylum more than thirty-five days, after the date of the service of the notice instituting such proceedings unless the alien can make a clear showing, to the satisfaction of the immigration judge conducting the proceeding, that changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence), between the date of notice instituting the proceeding and the date of application for asylum, have resulted in a change in the alien's eligibility for asylum.

"(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances in the country of the alien's nationality (or, in the case of the alien having no nationality, the country of the alien's last habitual residence), between the date of the previous denial of asylum and the date of the subsequent application for asylum, have resulted in a change in the alien's eligibility for asylum.

"(2) Applications for asylum shall be considered before immigration judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. The Attorney General shall provide special training in international relations and international law for individuals who served as special inquiry officers before the date of enactment of the Immigration Reform and Control Act of 1983 in order to qualify such individuals to hear applications under this section.

"(3)(A)(i) Upon the filing of an application for asylum, the immigration judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

"(ii) The hearing on the asylum application shall commence on the earliest practicable date after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if a hearing on the application is not held on a timely basis under clause (ii) or a decision on the application rendered on a timely basis under subparagraph (B), and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community, that the alien meets a condition described in one of the subparagraphs of section 243(h)(2), or that the alien is subject to temporary exclusion under section 235(c).

"(B) A hearing on the asylum application shall be closed to the public, unless the applicant requests that it be open to the public. To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses. A complete verbatim record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The determination of the immigration judge shall be based only on the evidence produced at the hearing. The immigration judge shall render a determination on the application not later than ninety days after the date of completion of the hearing.

"(C)(i) The Secretary of State shall on a continuing basis make available information on human rights in all countries to the Attorney General and to immigration judges who hear applications under this section. The immigration judges shall use such information, if available without delay to the proceedings, as general guidelines in making the asylum determination.

"(ii) The Attorney General shall provide notice to the Secretary of State whenever an application for asylum is filed under this section. The Secretary of State may submit comments to the immigration judge on such application, but the immigration judge shall not delay the proceeding in order to receive such comments.

"(D) Upon the filing of a notice of appeal the decision of an immigration judge to the United States Immigration Board under section 107(b), the Attorney General and the Board shall provide that a transcript of the hearing is made available as soon as practicable.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

"(4) The Attorney General may, in his discretion, grant an alien asylum only if the immigration judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42)(A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

"(5) The burden of proof shall be upon the alien applying for asylum to establish the alien's eligibility for asylum.

"(6) After making a determination on an application for asylum under this section, an immigration judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence) have resulted in a change in the alien's eligibility for asylum.".

(2) Subsection (b) of such section is amended by inserting "(1)" after "determines that the alien" and by inserting before the period at the end the following: ", or (2) meets a condition described in one of the subparagraphs of section 243(h)(2)".

(3) Such section is further amended by adding at the end the following new subsection:

"(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.".

(b) Section 243(h) (8 U.S.C. 1253(h)) is amended by adding at the end the following new paragraph:

"(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section.".

(c) Section 222(f) (8 U.S.C. 1202(f)) is redesignated as "Sec. 222. (f)(1)."

(d) Section 222(f) (8 U.S.C. 1202(f)) is amended by adding new subsections (f) (2) and (3) to read as follows:

"(2) The records or any document of the Department of Justice, the Department of State, or any other Government agency, or foreign government, pertaining to the issuance or denial of any application for asylum, refugee status, withholding of deportation under sections 207, 208, and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interests of the ends of justice in a case pending before the court.

"(3) The provisions of paragraph (2) of this section shall not be applicable to the person who is the subject of such application for asylum, refugee status, withholding of deportation, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group: *Provided, however*, That this subsection shall not limit the authority of any agency to withhold information pursuant to the Freedom of Information Act.".

EFFECTIVE DATES AND TRANSITION

Sec. 125. (a)(1) Except as otherwise provided in this section, the amendments made by this part take effect on the date of the enactment of this Act.

(2)(A) Except as provided in subparagraph (B), the amendments made by this part (other than those made by sections 121(a), 123(a)(2), 123(a)(5), 123(a)(9), and 124(b)) shall not apply to—

(i) any exclusion or deportation proceeding (or administrative or judicial review thereof) which was initiated before the hearing transition date (designated under subsection (c)(1)(A)), or

(ii) to any application for asylum filed before the asylum transition date (designated under subsection (c)(1)(B)).

In the case of such proceedings and such applications initiated before such dates which continue after such dates, the United States Immigration Board shall provide that immigration judges may assume and perform such functions of special inquiry officers as may be appropriate and consistent with their duties as immigration judges.

(B) Paragraphs (1)(B), (3), (4), and (6) of section 208(a) and section 208(b) of the Immigration and Nationality Act (as amended by section 124(a) of this part) shall apply to applications for asylum made after the date of the enactment of this Act, except that—

(i) in the case of an alien against whom exclusion or deportation proceedings have been instituted as of the date of the enactment of this Act, the restriction of paragraph (1)(B)(i) of section 208(a) of the Immigration and Nationality Act (as so amended) shall apply to asylum applications made more than fourteen days after the date of the enactment of this Act (rather than the date of the service of the notice of such exclusion or deportation proceeding), and

(ii) references in the last sentence of paragraph (3) and in paragraph (6) of such section to an immigration judge shall be deemed (before the asylum transition date) to be a reference to a special inquiry officer conducting the asylum hearing.

(3) The amendments made by section 121(b) shall apply to deportation proceedings pending on or commenced after the date of the enactment of this Act.

(b)(1) The Attorney General shall appoint the Chairman and other members of the United States Immigration Board (hereafter in this section referred to as the "Board") not later than forty-five days after the date of the enactment of this Act.

(2) The Chairman, in consultation with the Attorney General, shall designate a date, not later than forty-five days after the Chairman and a majority of the members of the Board are appointed, on which the Board shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3)(A) The Chairman shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Board (when not acting as the Board of Immigration Appeals under paragraph (2)) and immigration judges under the Immigration and Nationality Act, after the hearing transition date or asylum transition date, designated under subsection (c)(1), as the case may be.

(B) Not later than sixty days after the date such interim final rules are established, the Attorney General shall appoint at least ten immigration judges who are qualified to be designated to hear asylum cases under section 208 of the Immigration and Nationality Act. The Board shall provide for such special training of these immigration judges as it deems appropriate.

(c)(1) In order to provide for the orderly transfer of proceedings from the existing special inquiry system to the immigration judge system, the Board, in consultation with the Attorney General, shall designate—

(A) a "hearing transition date", to be not later than forty-five days after the date interim final rules of practice and procedure are established under subsection (b)(3)(A), and

(B) an "asylum transition date", after the establishment of interim final rules of practice and procedure respecting applications for asylum and after the appointment and designation of immigration judges under subsection (b)(3)(B).

(2) During the period before the hearing transition date or the asylum transition date (in the case of asylum hearings), any proceeding or hearing under the Immigration and Nationality Act which may be conducted by a special inquiry officer may be conducted by an individual appointed and qualified as an immigration judge in accordance with all the rules and procedures otherwise applicable to a special inquiry officer's conduct of such proceeding or hearing.

(d) Individuals acting as special inquiry officers on the date of the enactment of this Act and on the hearing transition date may (without regard to other provisions of law) assume the duties of an acting immigration judge after such transition date during the period ending two years after the date of the enactment of this Act. If such individuals remain in such capacity through the end of such period and have not been appointed to the United States Immigration Board or as immigration judges, then they shall be deemed, for purposes of continuing employment in the Department of Justice, to have been employed by the Department as special inquiry officers during such period.

(e)(1) The enactment of this part shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before special inquiry officers on the day before this Act takes effect.

(2) Under rules established by the Chairman of the United States Immigration Board, with respect to exclusion and deportation cases pending as of the hearing transition date and applications for asylum pending as of the asylum transition date, the United States Immigration Board shall be deemed to be a continuation of the Board of Immigration Appeals and immigration judges shall be deemed to be a continuation of special inquiry officers for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) The Attorney General shall provide that in the case of members of the Board of Immigration Appeals who—

(1) have served for a period of at least three years,

(2) are not appointed as members of the United States Immigration Board or as immigration judges, and

(3) continue to be employed by the Attorney General after the date the functions of the Board of Immigration Appeals are assumed by the United States Immigration Board,

there shall be no reduction in grade or compensation for one year after the date of termination of the individual's membership on the Board of Immigration Appeals.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 126. (a) The first sentence of section 234 (8 U.S.C. 1124) is amended by striking out "special inquiry officers" and inserting in lieu thereof "immigration judges".

(b)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is amended—

(A) by striking out "special inquiry officers" in the first sentence and inserting in lieu thereof "immigration judges",

(B) by striking out ", including special inquiry officers," in the fourth sentence and inserting in lieu thereof "and any immigration judge",

(C) by striking out ", including special inquiry officers," in the sixth sentence,

(D) by striking out "and special inquiry officers" in the sixth sentence and inserting in lieu thereof "and immigration judges", and

(E) by striking out "special inquiry officer" each place it appears in the seventh sentence and inserting in lieu thereof "immigration judge".

(2) Subsection (b) of such section is amended by striking out "a special inquiry officer for further inquiry" in the second sentence and inserting in lieu thereof "an immigration judge for an exclusion hearing".

(3) Subsection (c) of such section is amended—

(A) by striking out "or to the special inquiry officer during the examination before either of such officers" in the first sentence and inserting in lieu thereof "during the examination or an immigration judge during an exclusion hearing",

(B) by striking out "no further inquiry by a special inquiry officer" in the first sentence and inserting in lieu thereof "no further examination or exclusion hearing",

(C) by striking out "inquiry or further inquiry" in the first sentence and inserting in lieu thereof "examination or hearing",

(D) by striking out "any inquiry or further inquiry by a special inquiry officer" in the second sentence and inserting in lieu thereof "any examination or hearing", and

(E) by striking out "an inquiry before a special inquiry officer" in the third sentence and inserting in lieu thereof "an exclusion hearing before an immigration judge".

(c)(1) Sections 106(a)(2), 236, and 242(b) (8 U.S.C. 1105a(a)(2), 1126, 1252(b)) are each amended by striking out "A" and "a" each place either appears before "special inquiry officer" and inserting in lieu thereof "An" and "an", respectively.

(d)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2), 1226) are each amended by striking out "special inquiry officer" and inserting in lieu thereof "immigration judge" each place it appears.

(2) Subsection (a) of section 236 (8 U.S.C. 1226) is amended—

(A) by amending the first sentence to read as follows: "An immigration judge shall conduct proceedings under this section.",

(B) by striking out "for further inquiry" in the second sentence and inserting in lieu thereof "for an exclusion hearing",

(C) by striking out "at the inquiry" in the third sentence and inserting in lieu thereof "at the hearing",

(D) by striking out the fourth sentence,

(E) by striking out "regulations as the Attorney General shall prescribe" in the fifth sentence and inserting in lieu thereof "rules as the Chairman of the United States Immigration Board shall establish",

(F) by striking out "inquiry" in the sixth sentence and inserting in lieu thereof "hearing", and

(G) by striking out "inquiry" in the seventh sentence and inserting in lieu thereof "hearing".

(3) Subsection (b) of such section is amended by striking out "Attorney General" in the first and fourth sentences and inserting in lieu thereof "United States Immigration Board" and by striking out the third sentence.

(4) Subsection (c) of such section is amended by striking out "to the Attorney General".

(e) Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) by striking out "special inquiry officer" each place it appears in the first, second, third, and seventh sentences and inserting in lieu thereof "immigration judge",

(2) by striking out "shall administer oaths" and all that follows through "Attorney General," in the first sentence.

(3) by striking out "Attorney General shall prescribe" in the second sentence and inserting in lieu thereof "Chairman of the United States Immigration Board shall establish".

(4) by striking out "In any case" and all that follows through "an additional immigration officer" in the fourth sentence and inserting in lieu thereof "An immigration officer" and by striking out "in such case such additional immigration officer" in that sentence.

(5) by striking out the fifth and sixth sentences,

(6) by striking out "such regulations" and all that follows through "shall prescribe" in the seventh sentence and inserting in lieu thereof "rules as are established by the Chairman of the United States Immigration Board".

(7) by striking out "Such regulations" in the eighth sentence and inserting in lieu thereof "Such rules", and

(8) by striking out "Attorney General shall be final" in the tenth sentence and inserting in lieu thereof "immigration judge shall be final unless reversed on appeal".

(f) The last sentence of section 273(d) (8 U.S.C. 1323(d)) is amended by striking out "special inquiry officers" and inserting in lieu thereof "immigration judges".

(g) Section 292 (8 U.S.C. 1362) is amended to read as follows:

"Sec. 292. In any proceeding or hearing before an immigration judge and in any appeal before the United States Immigration Board from any such proceeding, the person concerned shall have the privilege of being represented (at no expense to the Government and at no unreasonable delay) by such counsel, authorized to practice in such proceedings, as he shall choose.".

(h) Section 360(c) (8 U.S.C. 1503(c)) is amended—

(1) by inserting "(and appeals thereof)" in the first sentence after the word "proceedings", and

(2) by striking out the second sentence.

(i) Any reference in section 203(h) of the Immigration and Nationality Act, as in effect before March 17, 1980, to a special inquiry officer shall be deemed to be a reference also to an immigration judge under section 101(a)(43) of such Act.

PART D—ADJUSTMENT OF STATUS

LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO IMMIGRANT STATUS BY VISA ABUSERS

Sec. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by striking out "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" and inserting in lieu thereof "has failed to maintain continuously a legal status since entry into the United States".

(b) The amendment made by subsection (a) shall apply to applications for adjustment of status filed before, on, or after the date of the enactment of this Act.

PART E—DEPORTATION PROCEEDINGS

BURDEN OF PROOF

Sec. 141. Section 291 (8 U.S.C. 1361) is amended in the third sentence by inserting "to identify himself correctly by name and nationality and" after "such person".

TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

NUMERICAL LIMITATIONS

Sec. 201. (a) Subsection (a) of section 201 (8 U.S.C. 1151) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immigrants born to permanent resident aliens during a temporary visit abroad, immediate relatives specified in subsection (b) of this section, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens who are admitted or granted asylum under section 207 or 208, aliens provided records of permanent residence under section 214(d), and aliens whose status is adjusted to permanent resident status under section 245A, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

"(1) family reunification immigrants described in section 203(a) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a), in a number not to exceed in any fiscal year the number equal to (A) three hundred and fifty thousand, minus (B) the sum of (i) the number of immediate relatives specified in subsection (b) of this section who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, (ii) the number of immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, (iii) the number of immigrants born to permanent resident aliens during a temporary visit abroad, and (iv) the number of aliens who in the previous fiscal year were provided records of permanent residence under section 214(d), plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (2) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year, and

"(2) independent immigrants described in section 203(b) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), in a number not to exceed in any fiscal year the number equal to (A) seventy-five thousand, minus (B) the number of special immigrants (other than those described in section 101(a)(27)(A)) who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (1) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year.".

(b) Section 202(a) (8 U.S.C. 1152(a)) is amended—

(1) by striking out "(a) No person" and inserting in lieu thereof "(a)(1) Except as specifically provided in paragraph (2) of this subsection and in section 101(a)(27), 201(b), 203, and 214(d), no person",

(2) by striking out ", except as specifically" and all that follows up to the period at the end, and

(3) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the total number of natives of any single foreign state who are issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted for permanent residence under subsections (a) and (b) of section 203 or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under subsection (a) or (b) of section 203 shall not exceed in any fiscal year—

"(i) twenty thousand, in the case of any foreign state other than a foreign state contiguous to the United States, or

"(ii) forty thousand (or the number determined under subparagraph (C)), in the case of any foreign state contiguous to the United States.

"(B) If in a fiscal year the total number of immediate relatives specified in section 201(b), immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens provided records of permanent residence under section 214(d), and special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence who are natives of a particular foreign state exceeded twenty thousand, then the numerical limitation applicable to that state in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess.

"(C) If in any fiscal year the number of aliens chargeable to a contiguous foreign state who are issued immigrant visas or otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence is less than forty thousand, then in the following fiscal year the number to be used in clause (ii) of subparagraph (A) for the other contiguous foreign state shall be forty thousand plus the amount of the difference.".

PREFERENCE AND NONPREFERENCE ALLOCATION SYSTEMS

Sec. 202. (a)(1) Section 203 (8 U.S.C. 1153) is amended—

(A) by redesignating subsections (b) through (e) as subsections (e) through (h), respectively, and

(B) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) PREFERENCE ALLOCATION FOR FAMILY REUNIFICATION IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(1) for family reunification immigrants shall be allotted visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or who (A) as of May 27, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in this paragraph as in effect on such date, and (B) continue to qualify under the terms of the Act as in effect on such date shall be allocated visas in a number not to exceed 65 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (1).

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) UNMARRIED BROTHERS AND SISTERS OF CITIZENS AND PREVIOUS FIFTH PREFERENCE.—

"(A) qualified immigrants who are the unmarried brothers or sisters of citizens of the United States, if such citizens are at least twenty-one years of age, and

"(B) qualified immigrants who (i) as of the date of enactment of the Immigration Reform and Control Act of 1983 had received approval of a petition made on their behalf for preference status by reason of the relationship described in paragraph (5) of section 203(a) of this Act as in effect on the day before such date, and (ii) continue to qualify under the terms of this Act as in effect on the day before such date,

shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) through (3).".

"(b) PREFERENCE AND NONPREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(2) for independent immigrants shall be allocated visas as follows:

"(1) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING DOCTORAL DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Qualified immigrants who are members of the professions holding doctoral degrees (or the equivalent degree) or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States, shall be allocated visas. The Attorney General may, when he deems it to be in the national interest, waive the requirement of the preceding sentence that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States. In determining under this paragraph whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

"(2) SKILLED WORKERS.—Qualified immigrants who are capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States, shall be allocated any visas not required for the classes specified in paragraph (1).

"(3) NONPREFERENCE ALIENS.—Visas authorized in any fiscal year under section 201(a)(2), less those required for issuance to the classes specified in paragraphs (1) and (2), shall be made available to other qualified immigrants in the chronological order in which they qualify. No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States, and (B) the child has been irrevocably released for immigration and adoption. No natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

An immigrant visa shall not be issued to an immigrant under paragraph (1), (2), or (3) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). The provisions of sections 212(d)(11) shall apply with respect to any alien petitioning to be classified as a preference immigrant under paragraph (1).

"(c) GUIDE FOR ALLOCATION BETWEEN PREFERENCE SYSTEMS.—Where it is determined that the maximum number of visas will be made available under section 202(a)(2) to natives of any single foreign state (defined in section 202(b)) or any dependent area (defined in section 202(c)) in any fiscal year, in determining whether to provide for visas to such natives under the preference system described in subsection (a) or that described in subsection (b), visa numbers with respect to natives of that state shall be allocated (to the extent practicable and otherwise consistent with this section) in a manner so that the ratio of—

"(1) the sum of (A) the number of family reunification immigrants described in subsection (a), and (B) the number of immediate relatives specified in section 201(b), immigrants born to permanent residents during a temporary visit abroad, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative or under section 203(a), and aliens provided records of permanent residence under section 214(d), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, to

"(2) the sum of (A) the number of independent immigrants described in subsection (b), and (B) the number of special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year,

is equal to 4.65 to 1.

"(d)(1) A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

"(2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.".

(2) Subsection (e) of such section, as so redesignated, is amended—

(A) by inserting "or under subsection (b)" after "subsection (a)" the first place it appears, and

(B) by striking out "subsection (a)" the second place it appears and inserting in lieu thereof "the respective subsection".

(b) Section 202 (8 U.S.C. 1152) is amended by striking out subsection (e), section 204 (8 U.S.C. 1154) is amended by striking out subsection (f), and section 245(b) (8 U.S.C. 1255(b)) is amended by striking out "202(e) or".

(c)(1)(A) Subsection (f) of section 203 (8 U.S.C. 1153), as redesignated by subsection (a)(1), is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or pursuant to paragraphs (1) through (3) of subsection (b)".

(B) Subsection (g) of such section, as so redesignated, is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or paragraphs (1) through (3) of subsection (b)" each place it appears.

(2)(A) Subsection (a) of section 204 (8 U.S.C. 1154) is amended—

(i) by striking out "paragraph (1), (4), or (5) of section 203(a)" and inserting in lieu thereof "paragraph (1), (3), or (4) of section 203(a)",

(ii) by striking out "section 203(a)(3)" and inserting in lieu thereof "paragraph (1), of section 203(b)", and

(iii) by striking out "203(a)(6)" and inserting in lieu thereof "203(b)(2)or 203(b)(3)".

(B) Subsection (b) of such section is amended by striking out "section 203(a) (3) or (6)" and inserting in lieu thereof "paragraph (1), (2), or (3) of section 203(b)".

(d) Section 241(a)(9) (8 U.S.C. 1251(a)(9)) is amended—

(1) by inserting "(A)" after "(9)", and

(2) by striking out the semicolon at the end thereof and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new subparagraph:

"(B) was admitted as an independent immigrant by the end of the one-year period following the date of entry failed to invest substantial capital in an enterprise in the United States as required in such paragraph or, having made such investment, has failed without good cause to maintain such an investment for a period of at least one year after the date of such entry or after the date such substantial investment was made, whichever date was later;".

LABOR CERTIFICATION

SEC. 203. (a) Paragraph (14) of section 212(a) (8 U.S.C. 1182(a)) is amended by striking out "(A)" and all that follows through the end and inserting in lieu thereof the following: "(A) there are not sufficient qualified workers (or equally qualified workers in the case of aliens (i) who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the occupations in which the aliens will be employed; (B) sufficient workers in the United States could not within a reasonable period of time be trained for such occupations by (or through funds provided by) potential employers; and (C) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to preference immigrants described in section 203(b) (1) and (2) and to nonpreference immigrants described in section 203(b)(3). Decisions of the Secretary of Labor made pursuant to this paragraph, including the issuance and content of regulations and the use of labor market information under this paragraph, shall be reviewable by an appropriate district court of the United States, but the court shall not set aside such a decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner;".

(b) Section 212(d) (8 U.S.C. 1181(d)) is amended by adding at the end the following new paragraph:

"(11) The requirement in paragraph (14) of subsection (a) relating to an offer of employment from an employer in the United States may be waived with respect to any alien seeking to enter the United States as an immigrant under section 203(b)(1), if the Attorney General deems it to be in the national interest.".

G-4 SPECIAL IMMIGRANTS

Sec. 204. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and twenty-one years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph (i) on or before December 31, 1992 and (ii) no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new paragraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I) (ii), (iii), or (iv).".

EFFECTIVE DATES AND TRANSITION

Sec. 205. (a) The amendments made by sections 201, 202, and 203 shall apply to the admission of aliens to the United States on and after October 1, 1984. The amendments made by section 204 shall take effect on the date of the enactment of this Act.

(b)(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1984, such petition shall be deemed, as of such date, to be a petition for the new corresponding preference or nonpreference status (as defined in paragraph (2)), and the priority date for such petition shall remain in effect.

(2) For purposes of paragraph (1), the term "new corresponding preference or nonpreference status" means, in the case of a petition for a—

(A) preference status described in section 203(a)(1) of the Immigration and Nationality Act (as in effect on September 30, 1984), the preference status described in such section as in effect after such date;

(B) preference status described in section 203(a)(2) of such Act (as in effect on September 30, 1984), the preference status described in such section as in effect after such date;

(C) preference status described in section 203(a)(3) of such Act (as in effect on September 30, 1984), the preference status described in both paragraphs (1) and (2) of section 203(b) of such Act as in effect after such date;

(D) preference status described in section 203(a)(4) of such Act (as in effect on September 30, 1984), the preference status described in section 203(a)(3) of such Act as in effect after such date;

(E) preference status described in section 203(a)(5) of such Act (as in effect on September 30, 1984), the preference status described in section 203(a)([illegible]) of such Act as in effect after such date;

(F) preference status described in section 203(a)(6) of such Act (as in effect on September 30, 1984), the preference status described in section 203(b)(2), in the case of skilled labor, or the nonpreference status described in section 203(b)(3), in the case of unskilled labor, of such Act as in effect after such date; and

(G) nonpreference status described in section 203(a)(7) of such Act (as in effect on September 30, 1984), the preference statuses described in paragraph (3) of section 203(b) of such Act (as in effect after such date) in the case of investors or the nonpreference described in section 203(b)(3) of such Act (as in effect after such date) in the case of noninvestors.

(c) When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1984, makes application for admission, his admissibility under paragraphs (20) and (21) of section 212(a) shall be determined under the provisions of law in effect on the date of the issuance of such visa.

Part B—Nonimmigrants

H-2 WORKERS

Sec. 211. (a) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations, of a temporary or seasonal nature, or (b) to perform other temporary services or labor".

(b) Section 214 (8 U.S.C. 1184) is amended—

(1) by adding at the end of subsection (a) the following new sentences: "An alien may not be admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(a) for an aggregate period of more than eight months in any calendar year, except in the case of agricultural labor or services which the Secretary of Labor, before the date of the enactment of the Immigration Reform and Control Act of 1983, has recognized require a longer period, which may exceed one year. An alien who was admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii) during the preceding five-year period may not be admitted under that provision if the alien violated the terms of any such previous admission. The Attorney General shall provide for such procedures for the entry and exit of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section.",

(2) by inserting "(1)" after "(c)" in subsection (c),

(3) by adding at the end of subsection (c) the following new paragraphs:

"(2)(A) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor or services involved in the petition, and

"(ii) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(B) The Secretary of Labor may not issue a certification under subparagraph (A) if—

"(i) there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification; or

"(ii) the employer, during the previous two years, employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer during that period substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers or has not paid a penalty (or penalties) for such violations which may be assessed by the Secretary of Labor, except that no employer may be denied certification for more than one year for any such violation.

"(3)(A) In the case of an application for a labor certification under section 101(a)(15)(H)(ii)(a)—

"(i) the Secretary of Labor may not require that such an application for labor certification be filed more than eighty days before the first date the employer requires the labor or services of the alien;

"(ii) such application shall be considered to have met the requirements of paragraph (2) unless the Secretary of Labor, within seven days of the filing of such application, notifies the employer filing such application whether such application meets such requirements and, if not, states the reasons therefor and provides an opportunity for the prompt resubmission of a modified application;

"(iii) the Secretary of Labor shall make, not less than twenty days before the date such labor or services are first required to be performed, the certification described in paragraphs (2)(A) (i) and (ii) if an employer has complied with the criteria for certification, including the recruitment of eligible individuals as prescribed by the Secretary, and the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have agreed to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary and who are otherwise available, except that the terms of such labor certification shall remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply to the employer or are referred to the employer; and

"(iv) the petition, or the application for a certification, may be filed by an association representing agricultural producers who use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application unless the association is the sole employer of all alien agricultural labor or services, in which case only the association shall be liable for representations made in such petition or application.

"(B) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2) in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a), or at the applicant's request, a de novo administrative hearing.

"(C) The Secretary of Labor shall expeditiously make a new determination on the request for certification in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not qualified, the burden of proof is on the employer to establish that the individuals referred are not qualified because of employment-related reasons.

"(D) For purposes of this paragraph, the term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

"(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection, the impact of aliens admitted pursuant to such certifications on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

"(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, $10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection.", and

(4) by adding at the end the following new subsection:

"(e) The provisions of subsections (a) and (c) of this section preempt any State or local law regulating admissibility of nonimmigrant workers.".

(c) The amendments made by this section apply to petitions and applications filed under section 214(c) of the Immigration and Nationality Act on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(d) The Attorney General in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing the amendments made by this section shall be issued, on an interim or other basis, not later than the first day of the sixth month beginning after the date of the enactment of this Act.

STUDENTS

SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by inserting "(1)" after "No person",

(2) by inserting after "training," the following: "or (2) admitted under section 101(a)(15) (F) or (M) or acquiring such status after admission,", and

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (1)(iii) or clause (2)", and

(4) by striking out the period and inserting in lieu thereof the following: ": *And provided further*, That the Attorney General may, if he determines it to be in the public interest, waive such two-year foreign residence requirement—

"(A) in the case of an alien admitted on or before September 30, 1989, under section 101(a)(15)(F), (i) who is applying for a visa as an immigrant described in section 202(b)(1) and who has obtained his degree from a college or university in the United States, and who has been offered a position as a faculty member or academic researcher in the field in which he obtained his degree by a United States college or university, or (ii) who has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States, who is applying for a visa as an immigrant described in section 202(b) (1) or (2), and who has been offered a research, business, or technical position by a United States employer in the field in which he obtained such degree, or (iii) who has obtained an advanced degree in business or economics from a college or university in the United States, who has exceptional ability in business or economics, who is applying for a visa as an immigrant described in section 202(b) (1) or (2), and who has been offered a research, business or technical position by a United States employer which is in the field in which he obtained such degree and which requires such exceptional ability, or

"(B) in the case of an alien admitted under section 101(a)(15)(F) who has obtained a degree in a natural science, computer science, or in a field of engineering or business, who is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii), and who will receive no more than four years of training by a United States firm, corporation, or other legal entity, which training will enable such alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof.

Thirty days after the end of each fiscal year, the Attorney General shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the number of aliens who applied for, and the number of aliens who were granted, waivers of the two-year foreign residence requirement pursuant to subclause (A) of the preceding proviso during the preceding fiscal year. The Attorney General and the Secretary of State jointly shall conduct a study on the impact of the waivers made pursuant to subclause (A) of the preceding proviso on the professional or technical labor requirements of foreign countries and jointly shall prepare and transmit not later than the close of the fiscal year 1986 to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the findings of such study.".

(b) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: ", or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e) who entered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under section 212(l).".

(c)(1) The amendments made by subsection (a) apply to aliens admitted to the United States after the date of the enactment of this Act.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States, except that such amendments shall not apply to aliens who as of the date of the enactment of this Act meet the qualifications for a waiver of the two-year foreign residence requirement under paragraph (A) of section 212(e) of the Immigration and Nationality Act (as amended by section (a) of this section).

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsection:

"(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round-trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, health, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.".

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 212(l) may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days from the date of admission.".

(c) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l).".

AGRICULTURAL LABOR TRANSITION PROGRAM

SEC. 214. (a) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall promulgate rules and regulations for the implementation of an agricultural labor transition program. The program shall be effective on the first day of the sixth month beginning after the date of enactment of this Act and shall last three years from the effective date.

(b) During the first year of the transition program, an agricultural employer, except as provided in (c), (d), and (e) below, may, as provided by regulation, employ up to 100 per centum of his seasonal agricultural worker need with transitional workers. During the second and third years of the program, the employer may employ up to 67 per centum and 33 per centum respectively, of his seasonal agricultural worker needs with transitional workers.

(c) Nothing in this section shall permit transitional workers to replace available United States workers or legal foreign workers admitted under the Immigration and Nationality Act.

(d) All workers employed under the provisions of this section shall be fully protected by all Federal and State laws and regulations governing the employment of United States migrant and seasonal agricultural workers.

(e)(1) An undocumented alien in the United States shall be eligible to be a transitional worker under the provisions of this section if the person is employed or has been employed as a seasonal agricultural worker in the United States for at least ninety days during a period of time after January 1, 1980.

(2) An undocumented worker shall not be eligible to be a transitional worker and may not be registered under this section if the person is deportable for any reason other than those described in section 241(a) (2) and (9), or on the basis, under section 241(a)(1), of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a). Only persons employed as transitional workers and registered as such by the Attorney General during the first year of the program shall be eligible during the second and third years.

(f) To employ transitional workers under the provisions of this section, an agricultural employer must—

(1) notify the Attorney General of said, employer's intention to participate in the transition program within twelve months from the effective date of this Act section, and

(2) provide to the satisfaction of the Attorney General a numerical count of the numbers of seasonal agricultural workers employed during the immediately preceding twelve month period by said employer.

(g) After an employer begins participation in the agricultural labor transition program the employer shall provide, upon request, to the Attorney General a numerical count of the number of transitional workers employed and the total number of seasonal agricultural workers employed by said employer.

(h) Any eligible employer under the transition program who employs nonimmigrant alien agricultural workers under the provisions of section 101(a)(15)(H)(ii)(a) shall provide wages and working conditions as required by section 214(c)(2)(A)(ii) to all similarly employed workers of that employer.

(i) Agreement by an alien to be a transitional worker would not preclude that alien from eligibility under the legalization provisions of title III.

(j) The Attorney General may require by regulation, as a condition of participation by an employer in the transition program, the payment of a fee to recover the reasonable costs of processing registrations under the transition program.

TITLE III—LEGALIZATION

LEGALIZATION

Sec. 301. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1980, TO THAT OF PERSON ADMITTED FOR TEMPORARY OR PERMANENT RESIDENCE

"Sec. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—

"(1) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1977, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1977, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1977, and the alien has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, and

"(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

"(3) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

"(4) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States, and

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(A) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order;

"(B)(i)(I) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1980, and has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; or

"(II) the alien entered the United States as a nonimmigrant before January 1, 1980, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1980, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1980, and the alien has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; and

"(III) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; or

"(ii) the alien is—

"(I) a national of Cuba who arrived in the United States and presented himself for inspection after April 20, 1980, and before January 1, 1981, and who is still physically present in the United States;

"(II) a national of Haiti who on December 31, 1980, was the subject of exclusion or deportation proceedings under section 236 or section 242 of the Immigration and Nationality Act, including a national of Haiti who on that date was under an order of exclusion and deportation or under an order of deportation which had not yet been executed;

"(III) a national of Haiti who was paroled into the United States under section 212(d)(5) of such Act or was granted voluntary departure before December 31, 1980, and was physically present in the United States on that date; or

"(IV) a national of Cuba or Haiti who on December 31, 1980, had an application for asylum pending with the Immigration and Naturalization Service;

"(C) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

"(D) the alien—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States, and

"(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(2) During the period an alien is in the lawful temporary resident status granted under paragraph (1)—

"(A) the Attorney General shall permit the alien to return to the United States after such brief and casual trips abroad, in accordance with subsection (d)(3), as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (3), and

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment during the six-month period beginning with the first day of the thirty-seventh month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

"(D) can demonstrate that he either (i) meets the requirement of paragraph (1) of section 312 (relating to minimal understanding of ordinary English), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English.

"(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

"(A) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

"(B) at the end of the forty-second month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.

"(c)(1) The Attorney General shall provide that applications for adjustment of status under subsection (a) and subsection (b)(1) may be filed with the Attorney General or with any qualified organization or State or local government which the Attorney General may designate if such organization or government agrees to transmit any such application to him. No qualified organization or such government may make a determination required by this section to be made by the Attorney General.

"(2) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i), (b)(3)(C)(i), and (b)(4)(A)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9), (10), (23) (except for so much of such paragraph as relates to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(3) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified organizations and governments designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

"(4) Notwithstanding the Federal Property and Administrative Services Act of 1949 (63 U.S.C. 377), as amended, the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of the Act, such amounts as may be necessary for the leasing or acquisition of real property in the fulfillment of this section. This authority shall end two years from enactment.

"(5) The Attorney General shall prescribe a fee of $100 or more to be paid by each alien who files an application for adjustment of status under subsection (a) or subsection (b)(1). The Attorney General shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

"(d)(1) For purposes of subsection (a), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1977, and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for an aggregate period of time in excess of 180 days; and

"(C) meets the requirements of paragraph (4).

"(2) For purposes of subsection (b)(1), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1980 (or in the case of an alien described by subparagraph (B)(ii) of such subsection, January 1, 1981), and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for an aggregate period of time—

"(i) in the case of an alien described by subsection (b)(1)(B)(i), in excess of 90 days; or

"(ii) in the case of an alien described by subsection (b)(1)(B)(ii), in excess of 60 days; and

"(C) meets the requirements of paragraph (4).

"(3) For purposes of subsection (b)(3), an alien shall be considered to have resided continuously in the United States, if, during the period between the date of adjustment to temporary resident status and the date of filing an application under paragraph (3) of such subsection, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for any aggregate period of time in excess of 90 days; and

"(C) meets the requirements of paragraph (4).

"(4)(A) For purposes of subsection (a), (b)(1), or (b)(3), an alien shall not be considered to have resided continuously in the United States, if, during the period of time referred to in paragraph (1), (2), or (3) of this subsection, whichever is applicable, such alien was outside the United States as a result of a departure under an order of deportation.

"(B) Any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this subsection.

"(5)(A) Each individual who applies for adjustment of status under subsection (a), (b)(1), or (b)(3) shall submit with his application such documents as are necessary to establish that such alien has employment in the United States, together with independent corroboration of the information contained in such documents, except that if the Attorney General determines that such proof of employment is inapplicable, the Attorney General may accept other documents which support the individual's application for adjustment of status, together with independent corroboration of the information contained in such documents.

"(B) Any document of Federal, State, or local government submitted pursuant to subparagraph (A) shall be in the form of a certified copy. A duly attested declaration under penalty of perjury by such individual's employer, who is a United States citizen, of continuous residency by an individual applying for adjustment of status under this section shall constitute only a rebuttable presumption of physical presence for purposes of this section.

"(e)(1) During the period an alien is in lawful temporary resident status granted under subsection (b)(1) and during the three-year period beginning on the date an alien is granted lawful permanent resident status under subsection (a) or (b)(3), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

"(2)(A) Paragraph (1) shall not apply to an alien described in subsection (b)(1)(B)(ii) (relating to certain Cuban and Haitian entrants).

"(B) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(f) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and the Senate and with qualified organizations and governments designated pursuant to subsection (c)(1), shall prescribe regulations as may be necessary to carry out the provisions of this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(g)(1) No decision or determination made by the Attorney General under this section may be reviewed by any court of the United States or of any State.

"(2) No alien denied adjustment of status under this section may raise a claim to such adjustment in any proceeding of the United States or any State involving the status of such alien, including any proceeding of deportation or exclusion under this Act.

"(3) No denial of adjustment of status under subsection (a) or subsection (b) based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

"(h) Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed fifteen months to perform duties in connection with the adjustment of status of aliens under this section.

"(i) The Attorney General in his sole discretion may waive the requirements of subsection (d)(1)(A) or (d)(2)(A) in cases which would result in exceptional and extreme hardship to the alien or to his spouse, parent, or child. The decision to grant or deny such a waiver shall not be reviewable in any court or administrative proceeding in the United States.".

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1980, to that of person admitted for temporary or permanent residence.".

(c)(1) Public Law 89-732 (approved November 2, 1966) is repealed.

(2) The repeal made by paragraph (1) shall not apply to a native or citizen of Cuba who has been inspected and admitted or paroled into the United States before April 21, 1980.

STATE LEGALIZATION IMPACT-ASSISTANCE BLOCK GRANTS

SEC. 302. (a) There are authorized to be appropriated for grants (and related Federal administrative costs) to carry out this section such sums as may be necessary for fiscal year 1984 and for each of the five succeeding fiscal years.

(b)(1) From the sums appropriated under subsection (a) for a fiscal year (less the amount reserved for Federal administrative costs), the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall allot to each State (as defined in subsection (i)(1)) meeting the requirements of subsection (d) an amount determined in accordance with a formula, established by the Secretary, which takes into account—

(A)(i) the number of eligible legalized aliens (as defined in subsection (i)(2)) residing in the State in that fiscal year,

(ii) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year, and

(iii) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens under programs of public assistance (as defined in subsection (i)(3)), and

(B) such other factors as the Secretary deems appropriate to provide for an equitable distribution of such sums.

(2) In determining the number of eligible legalized aliens for purposes of subclauses (i) and (ii) of paragraph (1)(A), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

(3) For each fiscal year the Secretary shall make payments, as provided by section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), to each State from its allotment under paragraph (1). Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

(c) A State may use amounts paid to it under subsection (b)(2) for the purpose of providing assistance with respect to eligible legalized aliens under programs of public assistance, but only to the extent such assistance is otherwise available under such programs to citizens residing in the State.

(d) In order to receive an allotment for a fiscal year under subsection (b), a State must prepare and transmit to the Secretary—

(1) a report describing the intended use of payments the State is to receive under this section for the fiscal year, including (A) a description of those programs of public assistance and localities of the State identified by the State as needing assistance from grants under this section, and (B) criteria for and administrative methods of disbursing funds received under this section, and

(2) a statement of assurances that certifies that (A) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (c), (B) the State will provide a fair method (as determined by the State) for allocating funds allotted to the State under this section among the programs and localities identified under paragraph (1)(A), and (C) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements incorporated by subsections (e) through (f).

The State shall promptly revise the report referred to in paragraph (1) to reflect substantial changes in its intended use of the funds allotted the State under this section. Such report (for fiscal years after fiscal year 1984), and any revisions proposed thereto, shall be made public within the State in such manner as to facilitate review of and comments from interested persons and local governments on the intended use and distribution of funds for the fiscal year.

(e)(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order properly to evaluate and to compare the performance of different States assisted under this section and to assure the proper expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary (i) to secure an accurate description of those activities, (ii) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes of this section, and (iii) to determine the extent to which funds were expended consistent with the State's description and statement transmitted under subsection (d). Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(B) The Secretary shall annually report to the Congress on activities funded under subsection (b) and shall provide for transmittal of a copy of such report to each State.

(2)(A) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this section. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this section in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(B) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this section and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this section or may otherwise recover such amounts.

(C) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(3) The State shall make copies of the reports and audits required by this subsection available for public inspection within the State.

(4)(A) For the purpose of evaluating and reviewing the block grant established under this section, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(B) In conjunction with an evaluation or review under subparagraph (A), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with subparagraph (A).

(f) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this section, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(g)(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

(2) Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under subsection (b), has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable, or

(C) take such other action as may be provided by law.

(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(h) In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

(i) For purposes of this section:

(1) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(2) The term "eligible legalized alien" means—

(A) an alien who has been granted permanent resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the three-year period beginning on the date the alien was granted such status; and

(B) an alien who has been granted temporary resident status under section 245A(b)(1) of such Act, but only until—

(i) such temporary resident status is terminated or

(ii) if the alien has been subsequently granted permanent resident status under section 245A(b)(2) of such Act, until the end of the three-year period beginning on the date such permanent resident status was granted,

whichever is later.

(3) The term "program of public assistance" means State or local programs which provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals or required in the interest of public health.

TITLE IV—GENERAL PROVISIONS

REPORTS TO CONGRESS

SEC. 401. The President shall submit the following reports to the Committees on the Judiciary of the Senate and of the House of Representatives:

(a) Reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens), which shall include—

(1) an analysis of the adequacy of the verification procedure set forth in subsection (b) of that section;

(2) the status of the development and implementation of a more secure verification system as provided in subsection (c) of that section; and

(3) the impact of that section on—

(A) the employment, wages, and working conditions of United States workers,

(B) the number of aliens entering the United States illegally,

(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors,

(D) discrimination against citizen and permanent resident alien members of minority groups, and

(E) the paperwork and recordkeeping burden on United States employers.

Reports concerning the matters described in paragraphs (1), (2), and subparagraphs (A), (B), and (C) of paragraph (3) shall be submitted every six months beginning six months after the date of the enactment of this Act. Reports concerning the matters described in subparagraphs (D) and (E) of paragraph (3) shall be submitted three times: the first not later than eighteen months after the date of enactment of this Act, the second not later than thirty-six months after the date of enactment of this Act, and the third not later than fifty-four months after the date of enactment of this Act.

(b) A comprehensive report on the general legal admissions under the Immigration and Nationality Act, which shall include—

(1) the number and classifications of aliens admitted as immediate relatives under family reunification preferences, independent or occupational preferences and other permanent residents, refugees, asylees, parolees, and a reasonable estimate of the number of aliens who entered the United States without visas or who became deportable under section 241; and

(2) the impact, including reasonable projections and future estimates, of the admission or parole of such aliens on the foreign policy, economy environmental quality, resources and population growth rate of the United States and the employment of citizens and aliens in the United States. The report called for under this paragraph shall relate to total immigration during the five years prior to the report and reasonable estimates substantiated by the best available evidence, for five years into the future.

This report shall be submitted not later than three years after the date of the enactment of this Act, and every three years thereafter.

(c) A report on the implementation of the agricultural labor transition program and the temporary worker program (popularly known as the "H-2" program), which shall include—

(1) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers,

(2) the development of regulations with respect to the program,

(3) recommendations for modifications of the program, including—

(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested, and

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers.

The report on the temporary worker program shall be submitted not later than two years after the date of the enactment of this Act and the report on the agricultural labor transition program each year for three years beginning a year after the date of the enactment of the Act.

(d) A report on the pilot program established under section 212(l) of the Immigration and Nationality Act, added by section 213(a) of this Act (popularly known as the "visa waiver program"), which shall include—

(1) an evaluation of the program, including its impact on the control of alien visitors to the United States, consular operations in the countries designated under section 212(l)(3)(A) of the Immigration and Nationality Act, and the impact of the program on the United States tourism industry, and

(2) recommendations on the extension of the program and the expansion of the number of countries which may be designated under such section.

The report shall be submitted not later than two years after the commencement of the program.

(e) A report on the population whose status is legalized under the legalization program established under section 301 of this Act, compiled and validated in accordance with sound statistical practice, which shall include—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics,

(3) their patterns of employment,

(4) their participation in social service programs, and

(5) a general profile and characteristics of the population legalized under the program.

The initial report shall be submitted not later than two years after the date of the enactment of the Act and three additional reports be submitted every two years thereafter.

(f) Three years after the date of enactment of this Act, the Secretary of Labor, after consulting with the Attorney General, and with representatives of domestic employers and representative domestic employees, and domestic institutions of higher learning, shall submit to the Congress and the President a report, to be accompanied by his recommendations for changes in current law and regulations, concerning the Nation's need for qualified immigrants identified in paragraphs (1) and (2) of subsection (b) of this section who have acquired professional or technical skills that may be in critical demand in the United States. Another such report shall be submitted five years after the date of enactment of this Act.

ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES

SEC. 402. It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly; and

(2) in the enforcement of such laws, the Attorney General should take due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.

REIMBURSE STATES FOR INCARCERATING ILLEGAL ALIENS

SEC. 403. (a) The Attorney General shall reimburse a State for the costs incurred by such State for the imprisonment of any alien who is convicted of a felony by such State.

(b) An alien referred to in subsection (a) is any alien, as defined in section 101(a)(3) of the Immigration and Nationality Act, other than—

(1) an alien who was issued an immigrant visa or who otherwise acquired the status of an alien lawfully admitted for permanent residence, and who was subject to the numerical limitations contained in section 207(a) of the Immigration and Nationality Act (other than an alien accorded the status of a temporary or permanent resident under section 245A of such Act);

(2) an alien who is an immediate relative within the meaning of section 201(b) of such Act; and

(3) an alien who is a nonimigrant within the meaning of subparagraphs (A) or (G) of section 101(a)(15).

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

(d) This amendment shall become effective on October 1, 1983.

REPORT BY THE COMPTROLLER GENERAL

SEC. 404. Beginning one year after the date of enactment of this section, and at intervals of one year thereafter for a period of five years after such date, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate a report describing the results of a comprehensive review of the implementation and enforcement of the provisions contained in the amendment made by section 101(a) of this Act during the preceding twelve-month period, for the purpose of determining if—

(1) such provisions have been carried out satisfactorily;

(2) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(3) an unnecessary regulatory burden has been created for employers hiring such workers.

Such committees shall hold public hearings on the contents of each such report and shall submit their findings and recommendations for remedial action, if necessary, to their respective Houses of Congress not later than 30 days after the date of receipt of any such report.

AUTHORIZATION OF APPROPRIATIONS

SEC. 405. (a) Section 404 (8 U.S.C. 1101, note) is amended to read as follows:

"SEC. 404. There are authorized to be appropriated for the fiscal year 1984, $200,000,000 to carry out the provisions of this Act other than section 214(c)(5) of chapter 2 of title IV.".

(b) There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department and to the Equal Employment Opportunity Commission for its enforcement activities in connection with the enforcement of section 274A of the Immigration and Nationality Act.

OFFICIAL LANGUAGE

SEC. 406. It is the sense of the Congress that—

(1) the English language is the official language of the United States, and

(2) no language other than the English language is recognized as the official language of the United States.

WEST VIRGINIA FRUITGROWERS

SEC. 407. It is the sense of the Senate that, inasmuch as the Department of Labor promulgated a final rule on January 4, 1983, at 20 CFR Part 655, described as Labor Certification Process for the Temporary Employment of Aliens in the United States in Agriculture; Adverse Effect Wage Rate; and this rule increased the Adverse Effect Wage Rate for West Virginia by 17.2 percent; and

Inasmuch as the 17.2 per centum increase in the Adverse Effect Wage Rate for West Virginia is nearly seven times greater than the increase made for other states affected by the rulemaking; and

Inasmuch as the increase in the Adverse Effect Wage Rate will cause a substantial portion of the West Virginia apple crop to be uncompetitive in the marketplace, and the resulting economic damage to a significant number of apple growers in West Virginia is likely to be severe; and

Inasmuch as the Department of Labor should consider the formal objections of the State of West Virginia, the State of Maryland, and the United States Department of Agriculture to its rulemaking;

The Senate declares that the Department of Labor should reexamine its January 4, 1983, rulemaking at 20 CFR Part 655, affecting the Adverse Effect Wage Rate applied to West Virginia fruitgrowers, with the purpose of seeking a fair and reasonable adjustment to that rate.

MOTION OFFERED BY MR. RODINO

Mr. RODINO. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. RODINO moves to strike out all after the enacting clause of the Senate bill, S. 529, and to insert in lieu thereof the provisions of the bill, H.R. 1510, as passed, as follows:

SHORT TITLE; REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Immigration Reform and Control Act of 1983".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

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TITLE V—NATIONAL COMMISSION ON IMMIGRATION

Sec. 501. National Commission on Immigration.

TITLE VI—CONSULTATION IN IMPLEMENTATION OF ACT

Sec. 601. Cooperation with State and local taskforces.

TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee or other consideration, for employment in the United States—

"(A) an alien knowing the alien is an unauthorized alien (as paragraph (4)) with respect to such employment, or

"(B) an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity that employs three or fewer employees.

"(2) It is unlawful for a person or other entity, after hiring an alien for employment subsequent to the date of the enactment of this section and in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States and has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

"(5) For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

"(6) Paragraph (1) and (2) shall not apply to a person or entity (other than a farm labor contractor, as defined in section 3(7) of the Migrant and Seasonal Agricultural Worker Protection Act) which employs three or fewer employees.

"(7)(A) A person or entity that establishes that it has complied with the requirements of subsection (b) (including meeting the requirement of subparagraph (B) of this paragraph) with respect to the hiring, recruiting, or referral for employment of an individual has established a complete defense as to a violation by that person or entity of paragraph (1)(A) with respect to the hiring, recruiting, or referral of that individual.

"(B) The Attorney General, in cooperation with the Secretaries of Labor and Health and Human Services, shall establish a method to validate the social security account numbers of individuals applying to be hired, recruited, or referred for employment in the United States. The Attorney General shall provide for publication in the Federal Register of notice of the establishment of the validation method, and procedures for its use, not earlier than six months, and not later than two years, after the date of enactment of this section. Beginning on an effective date, not earlier than 90 days after the date final regulations are published under the previous sentence, set forth by the Attorney General, in order to comply with the requirement of subsection (b) in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the person or other entity must, pursuant to the verification method—

"(i) submit the social security account number of the individual, and

"(ii) be provided and record on the form designated or established for purposes of subsection (b)(1) a validation code indicating that the number submitted is valid.

"(b) The requirements and procedures referred to in paragraphs (1)(B), (3), and (5) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

"(1) the person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is eligible to be employed (or recruited or referred for employment) in the United States by examining the individual's—

"(A) United States passport, or

"(B)(i) social security account number card or certificate of birth in the United States or establishing United States nationality at birth, and

"(ii)(I) alien documentation, identification, and telecommunication card, or similar alien registration card issued by the Attorney General to aliens and designated for use for this purpose,

"(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section, or

"(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification, and by validating (to the extent and in the manner required under subsection (a)(6)(B)) the social security account number presented by the individual;

"(2) the individual must attest, on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

"(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

"(A) in the case of the recruiting or referral (without hiring) of an individual, three years after the date of such recruiting or referral, and

"(B) in the case of the hiring of an individual—

"(i) three years after the date of such hiring, or

"(ii) one year after the date the individual's employment is terminated, whichever is later.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection. A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity. A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this section or section 1546 of title 18, United States Code.

"(c) Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment or administration of a national identification card or system.

"(d)(1) It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(e)(1)(A) In the case of a person or entity which has not previously been cited under this subparagraph, if the Attorney General, based on evidence or information he deems persuasive, reasonably concludes that the person or entity has violated paragraph (1)(A) or (2) of subsection (a) with respect to the hiring, or recruiting or referring for a fee or other consideration, for employment of an alien, the Attorney General may serve a citation on the person or entity containing a notification that the alien's employment is not authorized and a warning of the penalties and injunctive remedy set forth in this subsection.

"(B) In the case of a person or entity which has previously been cited under subparagraph (A), which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)(i)) to have violated paragraph (1)(A) or (2) of subsection (a), and which—

"(i) has not previously been subject to a civil penalty under this subparagraph, the person or entity shall be subject to a civil penalty of $1,000 for each unauthorized alien with respect to which the violation occurred, or

"(ii) has previously been subject to a civil penalty under this subparagraph in one or more instances, the person or entity shall be subject to a civil penalty of $2,000 for each unauthorized alien with respect to which the violation occurred.

"(2) Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the United States district court for the district in which the person or entity resides or in which the violation occurred requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

"(3)(A) In the case of a person or entity which has not previously been cited under this subparagraph, if the Attorney General, based on evidence or information he deems persuasive, reasonably concludes that the person or entity had violated subsection (a)(1)(B) with respect to the hiring, or recruiting or referring for a fee or other consideration, for employment of an individual, the Attorney General may serve a citation on the person or entity containing a notification of the requirements of subsection (a)(1)(B) and a warning of the penalty set forth in subparagraph (B).

"(B) A person or entity which has previously been cited under subparagraph (A) and which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)(i)) to have violated subsection (a)(1)(B) shall be subject to a civil penalty of $500 for each individual with respect to which such violation occurred.

"(4)(A)(i) Before issuing a citation on, or imposing a civil penalty against, a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and upon request made within a reasonable time (of not less than thirty days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

"(ii) Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code and rules of the United States Immigration Board established under section 107. The hearing shall be held within two hundred miles of the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the assessment shall constitute a final and unappealable order.

"(iii) A person or entity (including the Attorney General) adversely affected by a final order respecting an assessment may, within sixty days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(B)(i) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in the United States district court for the district in which the person or entity resides or in which the violation (with respect to which the penalty was assessed) occurred.

"(ii) In any suit described in clause (i) based on an assessment—

"(I) made after a hearing before an administrative law judge, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the administrative law judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, or

"(II) for which a timely request for a hearing was not made, the validity and appropriateness of the final order imposing the assessment shall not be subject to review.

"(5)(A) In determining the level of sanction that is applicable under paragraph (1) for violations of paragraph (1)(A) or (2) of subsection (a), determinations of more than one violation in the course of a single proceeding or adjudication shall be counted as a single determination.

"(B) In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referral for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(f) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(g) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee or other consideration for employment, unauthorized aliens.

"(h)(1) The President shall monitor, and shall consult with the Congress every six months concerning, the implementation of this section (including the effectiveness of the verification and recordkeeping system described in subsection (b) and the status of the changes and additions described in subsection (c)) and the impact of this section on the economy of the United States and on employment (including discrimination in employment) of citizens and aliens in the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status.

"(2)(A) The Civil Rights Commission shall monitor the implementation and enforcement of the provisions of this section and shall investigate allegations that the enforcement or implementation of this section has been conducted in the manner that results in unlawful discrimination by race or nationality against citizens of the United States or aliens who are not unauthorized aliens (as defined in subsection (a)(4)).

"(B) The Civil Rights Commission, not later than eighteen months after the month in which this section is enacted, shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing the implementation and enforcement of the provisions of this section during the preceding period, for the purpose of determining if a pattern of such unlawful discrimination has resulted. Two more such reports shall be prepared and transmitted thirty-six and fifty-four months after the month in which this section is enacted.

"(h)(1)(A) It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee or other consideration, of the individual for employment because of such individual's national origin or alienage.

"(B) Subparagraph (A) shall not apply to—

"(i) a person or other entity that employs three or fewer employees,

"(ii) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

"(iii) discrimination because of alienage which is otherwise required in order to comply with law.

"(2) Any person (or person, including a class representing such persons) alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Soviet alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel of the United States Immigration Board (hereinafter in this subsection referred to as the 'Special Counsel' and the 'Board', respectively). Charges shall be in writing under oath or affirmation and shall contain such information as the Board requires. The Special Counsel shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within ten days.

"(c)(A) The Special Counsel shall investigate each charge received and, within 30 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before the Board. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to subparagraph (C), file a complaint before the Board.

"(B) If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice, has not filed a complaint before the Board with respect to such charge within such 30-day period, the person making the charge may (subject to subparagraph (C)) file a complaint directly before the Board.

"(C) No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such charge is made. This clause shall not prevent the subsequent amending of a charge or complaint under paragraph (4)(A).

"(4)(A) Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, the Board, through an administrative law judge designated by the Board for such purposes, shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

"(B) Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Board as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

"(C) Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before the Board respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the administrative law judge conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(5)(A) The testimony taken by the administrative law judge shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may provide for the taking of further testimony or hear argument.

"(B) The administrative law judge shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within 20 days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

"(6) In conducting investigations and hearings under this subsection and in accordance with rules of the Board, the Special Counsel and administrative law judges—

"(A) shall have reasonable access to examine evidence of any person or entity being investigated, and

"(B) by subpena may compel the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpena lawfully issued under this paragraph and upon application of the Board, an appropriate district court of the United States may issue an order requiring compliance with such subpena and any failure to obey such order may be punished by such court as a contempt thereof.

"(i)(1) If, upon the preponderance of the testimony taken, the Board shall be of the opinion that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice. Such an order also may require the person or entity—

"(A) to comply with the requirements of subsection (b) with respect to individuals hired (or recruited or referred for employment for a fee or other consideration) during a period of up to three years;

"(B) to retain for the period referred to in subparagraph (A) and only for purposes consistent with the last sentence of subsection (b) the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee or other consideration, for employment in the United States;

"(C) to hire individuals directly and adversely affected, with or without back pay;

"(D) if the Board finds that the practice was intentional, to take such other action as the Board deems appropriate; and

"(E)(i) except as provided in clauses (ii) and (iii), to pay a civil penalty of not more than $2,000 for each individual discriminated against,

"(ii) except as provided in clause (iii), in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $3,000 for each individual discriminated against, or

"(iii) in the case of a person or entity who has engaged or is engaging in a pattern or practice of such discrimination or of such violation, to pay a civil penalty of not more than $4,000 for each individual discriminated against.

"(2)(A) In providing a remedy under paragraph (1)(C), back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Board. Interim earnings or amounts earnable with reasonable diligence by the individual or individual aggrieved against shall operate to reduce the back pay otherwise allowable under such paragraph. No order of the Board shall require the hiring of an individual as an employee or the payment to him of any back pay, if the individual was refused employment for any reason other than discrimination on amount of national origin or alienage.

"(B) In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person or entity named in the complaint has engaged or is engaging in any such unfair immigration-related employment practice, then the Board shall state its findings of fact and shall issue an order dismissing the complaint.

"(4) In any complaint respecting an unfair immigration-related employment practice, the Board, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

"(5)(A) The provisions of subsections (d), (e), (f), (g), (i), and (j) of section 10 of the National Labor Relations Act (29 U.S.C. 160) shall apply to court petitions and review of orders under this section in the same manner as they apply to court petitions and orders under that section, except that the authority of the General Counsel or the National Labor Relations Board under those subsections shall be exercised for purposes of this paragraph through the Special Counsel to the Board.

"(B) In any proceeding referred to in subparagraph (A), the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.

(2)(A) No citation, civil or criminal penalty, or injunction may be issued under section 274A of the Immigration and Nationality Act for the hiring, or recruiting or referring for a fee or other consideration, for employment of individuals occurring before the first day of the seventh month beginning after the date of the enactment of this Act.

(B) During the one year period beginning on the date of the enactment of this Act, the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act.

(C) The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement section 274A of the Immigration and Nationality Act.

(3) The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens.".

(b)(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii) and 214(c)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a), 101(a)(15)(O), 214(c), and 214(e)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1856(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

Sec. 102. (a) Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 1546. **Fraud and misuse of visas, permits, and other documents**";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(4) by striking out "$2,000" and inserting in lieu thereof "$5,000",

(5) by inserting "(a)" before "Whoever" the first place it appears, and

(6) by adding at the end the following new subsections:

"(b) Whoever knowingly uses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document or a false attestation for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

"(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).".

(b) The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents.".

PART B—IMPROVEMENT OF ENFORCEMENT AND SERVICES

SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE

SEC. 111. (a) Two essential elements of the program of immigration control and reform established by this Act are—

(1) an increase in the border patrol and other enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States, and

(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.

(b) Section 404 (8 U.S.C 1101 note) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 404. (a)(1) In addition to any other amounts appropriated to the Department of Justice for the Immigration and Naturalization Service for fiscal year 1984, there are authorized to be appropriated $80,000,000 for such fiscal year for improved service and enforcement activities. Amounts appropriated under this paragraph shall be available for expenditure during fiscal year 1985.

"(2) The Attorney General shall develop and transmit to Congress, not later than two months after the date of the enactment of the Immigration Improvements Act of 1984, a plan setting forth the levels of personnel and funding within the Service for fiscal year 1984 necessary to provide—

"(A) for adequate and sufficient border patrol activities, including personnel, equipment, training, and support services,

"(B) for the provision of immigration and naturalization services, including process of applications for legal entry, on a prompt and efficient basis, and

"(C) for an enhanced community outreach program described in section 103(e).

The plan shall incorporate the in-service training program described in section 103(d).

"(b) In addition to the funds authorized to be appropriated under subsection (a), there are authorized to be appropriated for each of fiscal years 1984, 1985, and 1986, not less than $6,000,000, for the activities of the task force described in section 274A(g)(3).

"(c)(1) There are authorized to be appropriated to the Department of Justice for the Immigration and Naturalization Service—

"(A) for fiscal year 1985, $700,000,000, and

"(B) for fiscal year 1986, $715,000,000.

"(2) For each of fiscal years 1985 and 1986, the Attorney General shall develop and transmit to Congress on a timely basis a revision of the plan established under subsection (a)(2) or under this paragraph setting forth the levels of personnel and funding within the Service for that fiscal year necessary to provide for the items described in subsection (a)(2) for that fiscal year and to incorporate the in-service training program described in section 103(d).

"(d) In the case of any additional amounts appropriated pursuant to subsections (a) and (c) in addition to the amounts that otherwise would have been appropriated in the absence of this section—

"(1) a significant proportion of such increase shall be used to improve the delivery of immigration and naturalization services, including timely processing of petitions and applications, and

"(2) any increased amounts used for immigration enforcement activities shall be used predominantly for increasing border area patrol and support staff.".

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SEC. 112. Section 274 (8 U.S.C. 1324) is amended—

(1) by inserting "or subsection (c)" in subsection (b)(1) after "subsection (a)",

(2) by redesignating subsection (c) as subsection (d), and

(3) by inserting after subsection (b) the following new subsection:

"(c) Any person who, for the purpose of commercial advantage or private profit, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States such alien by himself or through another in any manner whatsoever, regardless of whether or not fraudulent, evasive, or surreptitious means are used and regardless of any official action which may later be taken with respect to such alien, shall, for each transaction constituting a violation of this subsection (regardless of the number of aliens involved) be fined not more than $10,000 or imprisoned not more then five years, or both.".

FEES

SEC. 113. (a) Section 281 (8 U.S.C. 1351) is amended—

(1) by amending the heading to read as follows:

"NONIMMIGRANT VISA FEES AND ALIEN USER FEES"

(2) by inserting "(a)" after "SEC. 281."; and

(3) by adding at the end the following new subsection:

"(b) The Attorney General, in consultation with the Secretary of State, may impose fees on aliens with respect to their use of border facilities or services of the Services in such amounts as may reasonably reflect the portion of costs of maintenance and operation of such facilities and provision of such services attributable to aliens' use of such facilities and services.".

(b) The item in the table of contents relating to section 281 is amended to read as follows:

"Sec. 281. Nonimmigrant visa fees and alien user fees.".

RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR OPERATIONS

SEC. 114. Section 287 (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of this section other than paragraph (3) of subsection (a), an officer or employee of the Service shall not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States or for activities related to that purpose.".

TREATMENT OF IMMIGRATION EMERGENCIES

SEC. 115. (a) Section 103 (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(c)(1) The Attorney General shall develop, and may from time to time modify, a contigency plan to provide for the allocation and management of personnel and resources of the Service and other Federal agencies in the event of an immigration emergency. Such plan shall provide for a prompt, efficient, and coordinated response at the Federal, State, and local levels, for the prompt delivery of assistance and necessary resettlement services, and for prompt assistance to States and localities adversely impacted in responding to any such emergency. In developing such as plan, the Attorney General shall consult with immigration experts and State and local governments.

"(2) The Attorney General shall submit the contingency plan to the Committees on the Judiciary of the House of Representatives and of the Senate within four months after the date of the enactment of this subsection.

"(3) If the President determines that an immigration emergency exists and has certified such fact to the Congress, the Attorney General may request necessary and urgent appropriations in a manner consistent with the contingency plan.".

(b) Section 404 (8 U.S.C. 1101 note), as amended by section 111, is further amended by adding at the end the following new subsection:

"(e) There are authorized to be appropriated such sums as may be necessary to carry out section 103(c), which amounts shall be available without fiscal year limitation.".

PROGRAM OF IN-SERVICE TRAINING

SEC. 116. Section 103 (8 U.S.C. 1103), as amended by section 115, is further amended by adding at the end the following new subsection:

"(d)(1) The Attorney General shall provide for such programs of in-service training for full-time and part-time personnel of the service in contact with the public as will familiarize the personnel with the rights and varied cultural back-grounds of aliens and citizens in order to ensure and safeguard the constitutional and civil rights, personal safety, and human dignity of all individuals, aliens as well as citizens, within the jurisdiction of the United States with whom they have contact in their work.

"(2) The Attorney General shall provide that the annual report of the service includes a description of steps taken to carry out paragraph (1).".

ENHANCEMENT OF COMMUNITY OUTREACH WITHIN THE IMMIGRATION AND NATURALIZATION SERVICE

SEC. 117. Section 103 (8 U.S.C. 1103), as amended by sections 115 and 116, is further amended by adding at the end the following new subsection:

"(e)(1) The Attorney General shall enhance the responsibilities of the community outreach program within the service so that such program, acting in cooperation with the community relations service of the Department of Justice, has personnel located at the district level—

"(A) to assist in the provision of services, particularly naturalization services,

"(B) to provide outreach to deal generally with community problems with the Service arising at the district level, and

"(C) to receive and investigate complaints of abuse of authority by personnel of the Service and to transmit findings thereon to appropriate authorities for disposition or resolution.

In providing for the functions described in subparagraph (A), the Attorney General may secure the assistance and services of voluntary and community agencies.

"(2) The Attorney General shall provide that the annual report of the Service includes details concerning the progress of the Service's community outreach program in carrying out the responsibilities described in paragraph (1).".

REPORT ON ESTABLISHMENT OF ANTISMUGGLING PROGRAM

SEC. 118. The Attorney General, jointly with the Secretary of State, shall initiate discussions with Mexico and Canada to establish formal bilateral programs with those countries to prevent and to prosecute the smuggling of undocumented aliens into the United States and shall report back to the Congress, not later than one year after the date of the enactment of this Act, concerning the progress made in establishing such programs. In any such program, major emphasis should be placed on deterring and prosecuting persons involved in the organized and continuing smuggling for profit.

LIABILITY OF OWNERS AND OPERATORS OF INTERNATIONAL BRIDGES AND TOLL ROADS TO PREVENT THE UNAUTHORIZED LANDING OF ALIENS

SEC. 119. Section 271 (8 U.S.C. 1321) is amended by inserting at the end the following new subsection:

"(c)(1) No person described in subsection (a) who establishes to the satisfaction of the Attorney General that such person has acted diligently and reasonably to fulfill the duty imposed by such subsection shall be liable for the penalty described in such subsection, notwithstanding the failure of such person to prevent the unauthorized landing of any alien.

"(2)(A) At the request of any owner or operator of any international bridge or toll road described in subsection (a), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such owner or operator for the purpose of complying with subsection (a). The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

"(B) Proof that any owner or operator has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which such approval is effective) shall be prima facie evidence that such owner or operator acted diligently and reasonably to fulfill the duty imposed by subsection (a) (within the meaning of paragraph (1)).".

ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES

SEC. 120. It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly; and

(2) in enforcement of such laws, the Attorney General shall take due and deliberate actions necessary to safeguard the consitutional rights, personal safety, and human dignity of United States citizens and aliens.1

PART C—ADJUDICATION PROCEDURES AND ASYLUM

INSPECTION AND EXCLUSION

SEC. 121. Subsection (b) of section 235 (8 U.S.C. 1225) is amended to read as follows:

"(b)(1)(A) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(B) If the examining immigration officer determines that the alien seeking entry—

"(i) does not present the documentation required (if any) to obtain entry to the United States,

"(ii) does not have any reasonable basis for legal entry into the United States, and

"(iii) does not indicate an intention to apply for asylum under section 208,

the alien shall be excluded from entry into the United States without a hearing.

"(C) If the examining immigration officer determines that an alien seeking entry, other than an alien crewman and except as otherwise provided in subparagraph (B), subsection (c), or section 273(d), is otherwise not clearly and beyond a doubt entitled to land, the alien shall be detained for a hearing before an administrative law judge on exclusion of the alien.

"(2) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before an administrative law judge for a hearing on exclusion of the alien.

"(3) The Attorney General shall establish, after consultation with the Judiciary Committees of the Congress, procedures which assure that aliens are not excluded under paragraph (1)(B) without an inquiry into their reasons for seeking entry into the United States.

"(4) In the case of an alien who would be excluded from entry under paragraph (1)(B) but for indicating an intention to apply for asylum, the exclusion hearing with respect to such entry shall be limited to the issues raised in connection with the alien's application for asylum.".

UNITED STATES IMMIGRATION BOARD AND ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE SYSTEM

SEC. 122. (a) Title I is amended by adding at the end the following new section:

"UNITED STATES IMMIGRATION BOARD; USE OF ADMINISTRATIVE LAW JUDGES

"SEC. 107. (a)(1) There is established, as an independent agency in the Department of Justice, a United States Immigration Board (hereinafter in this section referred to as the 'Board') composed of a Chairman and six other members appointed by the President by and with the advice and consent of the Senate.

"(2) The term of office of the Chairman and all other members of the Board shall be six years except that—

"(A) of the members first appointed under this subsection, two shall be appointed for a term of two years, two shall be appointed for a term of four years, and three shall be appointed for a term of six years,

"(B) a member appointed to fill a vacancy occuring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

"(C) a member may serve after the expiration of his term until reappointed or his successor has taken office

"(3) A member of the Board may be removed by the President only for neglect of duty or malfeasance in office.

"(4) Members of the Board (other than the Chairman) are entitled, subject to the amounts provided in advance in appropriation Acts, to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled, subject to the amounts provided in advance in appropriation Acts, to receive compensation at the rate now or hereafter provided for grade GS-18 of such General Schedule.

"(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board. The Board shall establish rules of practice and procedure for itself and for the administrative law judges.

"(b)(1) The Board shall hear and determine appeals from—

"(A) final decisions of administrative law judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed,

"(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

"(C) decisions involving the imposition of administrative fines and penalties under title II of this Act, including mitigation thereof;

"(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (3) or (6) of section 203(a) or petitions on behalf of a child described in section 101(b)(1)(F), and

"(ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205,

"(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c), and

"(F) such other administrative decisions and determinations under this Act as the Attorney General may provide by regulation.

The Board shall also exercise functions described in subsections (h) and (i) of section 274A.

"(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

"(3) The Board shall act in panels of three or more members or in banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

"(4)(A) Appeals to the Board from final orders of deportation or exclusion (including an order respecting asylum contained in such an order) shall be filed not later than twenty days after the date of the final order.

"(B) The Board shall review the decision of an administrative law judge based solely upon the administrative record upon which the decision is made and the findings of fact in the judge's order, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive.

"(5) A final decision of the Board shall be binding on all administrative law judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States.

"(6) In a case in which the Board is considering an appeal of a decision of an administrative law judge respecting an application for asylum, the Board shall render its decision on the appeal not later than sixty days after the date the appeal is filed.

"(c)(1) The Chairman, in accordance with sections 3105 and 5108 and other provisions of title 5, United States Code, relating to administrative law judges in the competitive service, shall—

"(A) appoint administrative law judges, and

"(B) designate one such judge to serve as chief administrative law judge.

"(2) In accordance with rules established by the Board, the chief administrative law judge—

"(A) shall have responsibility for the administrative activities affecting administrative law judges, and

"(B) may designate any administrative law judge in active service to hear and decide any cases described in paragraph (3).

"(3) Administrative law judges shall hear and decide—

"(A) exclusion cases under sections 236 and 360(c),

"(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

"(C) rescission of adjustment of status cases under section 246,

"(D) with respect to judges designated to hear such cases, applications for asylum under section 208,

"(E) the assessment of civil penalties under section 274A(d) and, with respect to judges designated to hear such cases, complaints under section 274A(h), and

"(F) such other cases arising under this Act as the Attorney General may provide by regulation.

"(4) In considering and deciding cases coming before them, administrative law judges may administer oaths, shall record and receive evidence and render findings of fact and conclusions of law, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.

"(d)(1) The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel to the Board, to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) The Special Counsel shall be responsible, on behalf of the Board, for investigation of charges and issuance of complaints under subsections (h) and (i) of section 274A and in respect of the prosecution of all such complaints before the Board and the exercise of certain functions referred to in section 274A(i)(5)(A), and shall have such other duties respecting such section as the Board may prescribe.

"(3) The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General schedule, under section 5332 of title 5, United States Code.

"(4) The Special Counsel, in accordance with rules established by the Board, shall establish such regional offices as may be necessary to carry out his duties.".

(b) The table of contents is amended by inserting immediately after the item relating to section 106 the following new item:

"Sec. 107. United States Immigration Board; use of administrative law judges.".

JUDICAL REVIEW

SEC. 123. (a) Subsection (a) of 106 (8 U.S.C. 1105a) is amended—

(1) by striking out "AND EXCLUSION" in the heading and inserting in lieu thereof ", EXCLUSION, AND ASYLUM";

(2) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(3) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than sixty days from the date of the final order";

(4) inserting ", in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(5)(A) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)";

(B) by striking out "The service of the petition" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the service of the petition";

(6) by inserting "exclusion or" before "deportation" in paragraphs (3) and (4);

(7) by striking out "Attorney General's findings of fact" in paragraphs (4) and (6) and inserting in lieu thereof "findings of fact in the order";

(8) by striking out "(4) except as provided in" in paragraph (4) and inserting in lieu thereof "(4)(A) except as provided in subparagraph (B) and in";

(9) by adding at the end of paragraph (4) the following new subparagraph:

"(B) to the extent that an order relates to a determination of an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the administrative law judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious;";

(10) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order;" and inserting in lieu thereof "an exclusion or deportation order; and";

(11) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof a period; and

(12) by striking out paragraph (9).

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Nothing in the provisions of this section shall be construed as limiting the right of habeas corpus under chapter 153 of title 28, United States Code. Petitions for habeas corpus based upon custody effected pursuant to this Act may be may be brought individually or on a multiple party basis as the interests of the judicial efficiency and justice may require.

"(2) No court shall have jurisdiction to entertain a petition relating to a determination concerning asylum under section 208 except in a petition for review under subsection (a).

"(3) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of administrative law judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, or the Attorney General's denial of a stay of execution of an exclusion or deportation order.

(c) Subsection (c) of such section is amended by striking out "deportation or of exclusion" and inserting in lieu thereof "an administrative law judge".

(d) Section 279 (8 U.S.C. 1329) is amended by striking out "The district courts" in the first sentence and inserting in lieu thereof "Except as otherwise provided under section 106, the district courts".

(e) The item in the table of contents relating to section 106 is amended to read as follows:

"Sec. 106. Judicial review of orders of deportation, exclusion, and asylum.".

(f) In the case of a final order of deportation or exclusion entered before the date of the enactment of this Act, a petition for review with respect to that order may in no case be filed under section 106(a)(1) of the Immigration and Nationality Act later than the earlier of (1) sixty days after the date of the enactment of this Act, or (2) the date (if any) such petition was required to be filed under the law in existence before the date of the enactment of this Act.

ASYLUM

SEC. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended to read as follows:

"(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

"(B)(i) In the case of an alien against whom exclusion or deportation proceedings have been instituted, the alien's application for asylum may not be considered unless—

"(I) not later than fourteen days after the date of the service of the notice instituting such proceedings, the alien has filed notice of intention to file an application for asylum and, not later than thirty days after the date of filing such notice of intention, the alien has actually filed the application for asylum.

"(II) the alien can make a clear showing, to the satisfaction of the administrative law judge conducting the proceeding, that changed circumstances after the date of the notice instituting the proceeding have resulted in a change in the basis for the alien's claim for asylum, or

"(III) the administrative law judge determines, solely in his discretion, that the interests of justice require the consideration of the application.

"(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances after the date of the denial of the previous application have resulted in a change in the basis for the alien's claim for asylum.

"(2) Applications for asylum shall be considered before administrative law judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. An individual who has served as a special inquiry officer under this title before the date of the enactment of the Immigration Reform and Control Act of 1983 may not be designated to hear applications under this section, unless the individual has received such special training after the date of the enactment of such Act.

"(3)(A)(i) Upon the filing of an application for asylum, an administrative law judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

"(ii) Unless the applicant consents in writing to the contrary, the hearing on the asylum application shall commence not later than forty-five days after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if (I) a hearing on the application is not held on a timely basis under clause (ii), (II) a decision on the application is not rendered on a timely basis under subparagraph (D), (III) in the case an appeal to the United States Immigration Board from a denial of an application for asylum has been taken under section 107(b), a decision of the Board is not rendered on the appeal within 60 days of the date the notice of appeal is filed with the Board, or (IV) in the case judicial review of a denial of an application for asylum has been taken under section 106(a), a decision of the reviewing court on the petition for review is not rendered within 30 days of the date the petition is filed with the court, and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien on parole subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community. Nothing in this section shall be construed as allowing for the detention of an alien without a showing that the alien has violated a reasonable condition of the release or that the continued release of the alien would pose a danger to any other person or to the community.

"(B)(i) A hearing on the asylum application shall be open to the public, unless the applicant requests that it be closed to the public.

"(ii) At the time of filing of notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented by counsel (in accordance with section 292) and of the availability of legal services.

"(iii) The applicant is entitled to have the asylum hearing closed to the public, to present evidence and witnesses in his own half, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government.

"(C) A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General, and the United States Immigration Board, shall provide that a transcript of a hearing held under this section is made available not later than ten days after the date of completion of the hearing.

"(D) The administrative law judge shall render a determination on the application not later than thirty days after the date of completion of hearing. The determination of the administrative law judge shall be based only on the evidence produced at the hearing.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

"(4) An alien may be granted asylum only if the administrative law judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42) (A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

"(5) The burden of proof shall be upon the alien applying for asylum to establish that the alien is a refugee within the meaning of section 101(a)(42(A).

"(6) After making a determination on an application for asylum under this section, an administrative law judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances have resulted in a change in the basis for the alien's claim for asylum.".

(2) Subsection (b) of such section is amended by inserting "(1)" after "determines that the alien" and by inserting before the period at the end the following: ", or (2) meets a condition described in one of the subparagraphs of section 243(h)(2)".

(3) Such section is further amended by adding at the end the following new subsections:

"(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.

"(e) The Attorney General shall report to the Congress annually on the number of applications for asylum (by country of nationality of applicant) (1) submitted during the year, (2) approved during the year, (3) denied during the year, and (4) pending at the end of the year, and shall also include in such report such other general information relating to such applications as may be appropriate.".

(b) Section 243(h) (8 U.S.C. 1253(h) is amended by adding at the end the following new paragraph:

"(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section.".

(c) Section 222(f) (8 U.S.C. 1202(f)) is amended—

(1) by inserting "(whether as an immigrant, non-immigrant, refugee, or otherwise)" after "enter the United States",

(2) by inserting "(1)" after "(f)" and

(3) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the records or any document of the Department of Justice, the Department of State, or any other Government agency, or foreign government, pertaining to the approval or denial of any application for asylum or withholding of deportation under sections 207 and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records or document may be made available to a court which certifies that the information contained in such records or document is needed by the court in the interests of the ends of justice in a case pending before the court.

"(B) In the case of an applicant for asylum or withholding of deportation who seeks records or documents relevant to that particular application, subparagraph (A) shall not be construed as limiting that applicant's access to such records or documents except insofar as such records or documents otherwise are exempt from disclosure under section 552(b) of title 5, United States Code.".

EFFECTIVE DATES AND TRANSITION

SEC. 125. (a)(1) Except as provided in subparagraph (B), the amendments made by this part (other than those made by sections 121, 123(a)(2), 123(a)(3), 123(a)(6), 123(a)(10), 123(a)(12), 123(b), 123(d), and 124(b)) shall not apply to—

(i) any exclusion or deportation proceeding (or administrative or judicial review thereof) which was initiated before the hearing transition date (designated under subsection (c)(1)(A)), or

(ii) to any application for asylum filed before the asylum transition date under subsection (c)(1)(B)).

In the case of such proceedings and such applications initiated before such dates which continue after such dates, the United States Immigration Board shall provide that administrative law judges may assume and perform such functions of special inquiry officers as may be appropriate and consistent with their duties as administrative law judges.

(B) Paragraphs (1)(B), (3)(B)(ii), (3)(B)(iii), (4), and (6) of section 208(a) and section 208(b) of the Immigration and Nationality Act (as amended by section 124(a) of this part) shall apply to applications for asylum made after the date of the enactment of this Act, except that—

(i) in the case of an alien against whom exclusion or deportation proceedings have been instituted as of the date of the enactment of this Act, the restriction of paragraph (1)(B)(i) of section 208(a) of the Immigration and Nationality Act (as so amended) shall apply to asylum applications made more than 14 days after the date of the enactment of this Act (rather than the date of the service of the notice of such exclusion or deportation proceeding), and

(ii) references in any such paragraph to an administrative law judge shall be deemed (before the asylum transition date) to be a reference to the immigration officer conducting the asylum hearing.

(b)(1) The President shall nominate the Chairman and other members of the United States Immigration Board (hereinafter in this section referred to as the "Board") not later than forty-five days after the date of the enactment of this Act.

(2) The Chairman, in consultation with the Attorney General, shall designate a date, not later than forty-five days after the Chairman and a majority of the members of the Board are appointed, on which the Board shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3)(A) The Board shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Board (when not acting as the Board of Immigration Appeals under paragraph (2)) and administration law judges under the Immigration and Nationality Act, after the hearing transition date or asylum transition date, designated under subsection (c)(1), as the case may be.

(B) Not later than sixty days after the date such interim final rules are established, the Chairman shall appoint at least ten administrative law judges who are qualified to be designated to hear asylum cases under section 208 of the Immigration and Nationality Act. The Board shall provide for such special training of these administrative law judges as it deems appropriate.

(c)(1) In order to provide for the orderly transfer of proceedings from the existing special inquiry system to the administrative law judge system, the Board in consultation with the Attorney General, shall designate—

(A) a "hearing transition date", to be not later than forty-five days after the date interim final rules of practice and procedure are established under subsection (b)(3)(A,) and

(B) an "asylum transition date", after the establishment of interim final rules of practice and procedure respecting applications for asylum and after the appointment and designation of administrative law judges, in accordance with section 3105 of title 5, United States Code, under subsection (b)(3)(B)

(2) During the period before the hearing transition date or the asylum transition date (in the case of asylum hearings), any proceeding or hearing under the Immigration and Nationality Act which may be conducted by a special inquiry officer may be conducted by an individual appointed and qualified as an administrative law judge in accordance with all the rules and procedures otherwise applicable to a special inquiry officer's conduct of such proceeding or hearing.

(d) Individuals acting as special inquiry officers on the date of the enactment of this Act and on the hearing transition date may (without regard to other provisions of law) continue to conduct proceedings or hearings under the Immigration and Nationality Act after such transition date during the period ending two years after the date of the enactment of this Act.

(e)(1) The enactment of this part shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before special inquiry officers on the day before the date this Act takes effect.

(2) Under rules established by the United States Immigration Board, with respect to exclusion and deportation cases pending as of the hearing transition date and applications for asylum pending as of the asylum transition date, the United States Immigration Board shall be deemed to be a continuation of the Board of Immigration Appeals and administrative law judges shall be deemed to be continuation of special inquiry officers for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) In the appointment of persons to the position of administrative law judge under section 107(c) of the Immigration and Nationality Act (added by this part) before the end of the two-year period beginning on the hearing transition date—

(1)(A) applications shall be accepted at any time before the hearing transition date from individuals acting as special inquiry officers on the date of the enactment of this Act, and (B) such individuals who apply before such date shall be considered to meet the minimum requirements for entrance to the examination for such position (and shall be awarded, in the application process, at least the minimum number of points for persons who otherwise meet such minimum requirements) and shall be given the examination for that position not later than the quarter following the application; and

(2)(A) each individual who is serving as a special inquiry officer on the date of the enactment of this Act and whose name is included on the certificate of eligibles furnished to the Chairman of the United States Immigration Board by the Director of the Office of Personnel Management for that position shall be treated, for purposes of section 3318(b) of title 5, United States Code, as a preference eligible (within the meaning of section 2108(3)(A) of that title) and (B) the Chairman shall take into account (in selecting among persons whose names are on the certificate) the demonstrated abilities and expertise in immigration law of such individuals.

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 126. (a)(1) Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'administrative law judge' means such a judge appointed under section 107.".

(2) Section 101(b) (8 U.S.C. 1101(b)) is amended by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) The first sentence of section 234 (8 U.S.C. 1124) is amended by striking out "special inquiry officers" and inserting in lieu thereof "administrative law judges".

(c)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is amended—

(A) by striking out "special inquiry officers" in the first sentence and inserting in lieu thereof "administrative law judges",

(B) by striking out ", including special inquiry officers," in the fourth sentence and inserting in lieu thereof "and any administrative law judge",

(C) by striking out ", including special inquiry officers," in the sixth sentence,

(D) by striking out "and special inquiry officers" in the sixth sentence and inserting in lieu thereof "and administrative law judges", and

(E) by striking out "special inquiry officer" each place it appears in the seventh sentence and inserting in lieu thereof "administrative law judge".

(2) Subsection (c) of such section is amended—

(A) by striking out "the special inquiry officer during the examination before either of such officers" in the first sentence and inserting in lieu thereof "during the examination or an administrative law judge during an exclusion hearing",

(B) by striking out "no further inquiry by a special inquiry officer" in the first sentence and inserting in lieu thereof "no further examination or exclusion hearing",

(C) by striking out "inquiry or further inquiry" in the first sentence and inserting in lieu thereof "examination or hearing",

(D) by striking out "any inquiry or further inquiry by a special inquiry officer" in the second sentence and inserting in lieu thereof "any examination or hearing", and

(E) by striking out "an inquiry before a special inquiry officer" in the third sentence and inserting in lieu thereof "an exclusion hearing before an administrative law judge".

(d) Sections 106(a)(2), 236, and 242(b)(8 U.S.C. 1105a(a)(2), 1126, 1252(b)) are each amended by striking out "A" and "a" each place either appears before "special inquiry officer" and inserting in lieu thereof "An" and "an", respectively.

(e)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2), 1226) are each amended by striking out "special inquiry officer" and inserting in lieu thereof "administrative law judge" each place it appears.

(2) Subsection (a) of section 236 (8 U.S.C. 1226) is amended—

(A) by amending the first sentence to read as follows: "An administrative law judge shall conduct proceedings under this section.",

(B) by striking out "for further inquiry" in the second sentence and inserting in lieu thereof "for an exclusion hearing",

(C) by striking out "at the inquiry" in the third sentence and inserting in lieu thereof "at the hearing",

(D) by striking out the fourth sentence,

(E) by striking out "regulations as the Attorney General shall prescribe" in the fifth sentence and inserting in lieu thereof "rules as the United States Immigration Board shall establish", and

(F) by striking out "inquiry" in the seventh sentence and inserting in lieu thereof "hearing".

(3) Subsection (b) of such section is amended—

(A) by striking out "From a decision" and all that follows through "Attorney General" in the first sentence and inserting in lieu thereof the following: "From a decision of an administrative law judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file a timely appeal of the decision with the United States Immigration Board in accordance with rules established by the Board",

(B) by striking out "Attorney General" in the fourth sentence and inserting in lieu thereof "United States Immigration Board", and

(C) by striking out the third sentence.

(4) Subsection (c) of such section is amended by striking out "to the Attorney General".

(f) Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) by striking out "special inquiry officer" each place it appears in the first, second, third, and seventh sentences and inserting in lieu thereof "administrative law judge",

(2) by striking out "shall administer oaths" and all that follows through "Attorney General," in the first sentence,

(3) by striking out "Attorney General shall prescribe" in the second sentence and inserting in lieu thereof "United States Immigration Board shall establish",

(4) by striking out "In any case" and all that follows through "an additional immigration officer" in the fourth sentence and inserting in lieu thereof "An immigration officer" and by striking out "in such case such additional immigration officer" in that sentence,

(5) by striking out the fifth and sixth sentences,

(6) by striking out "such regulations" and all that follows through "shall prescribe" in the seventh sentence and inserting in lieu thereof "rules as are established by the United States Immigration Board",

(7) by striking out "Such regulations" in the eighth sentence and inserting in lieu thereof "Such rules", and

(8) by striking out "Attorney General shall be final" in the tenth sentence and inserting in lieu thereof "administrative law judge shall be final unless reversed on appeal".

(g) The last sentence of section 273(d) (8 U.S.C. 1323(d)) is amended by striking out "special inquiry officers" and inserting in lieu thereof "administrative law judges".

(h) Section 292 (8 U.S.C. 1362) is amended—

(1) by striking out "In" and all that follows through "proceedings," and inserting in lieu thereof "In any proceeding or hearing before an administrative law judge and in any appeal before the United States Immigration Board from any such proceeding", and

(2) by inserting "and at no unreasonable delay" after "Government".

(i) Section 360(c) (8 U.S.C. 1503(c)) is amended—

(1) by inserting "(and appeals thereof)" in the first sentence after "proceedings", and

(2) by striking out the second sentence.

(j) Any reference in section 203(h) of the Immigration and Nationality Act, as in effect before March 17, 1980, to a special inquiry officer shall be deemed to be a reference also to an administrative law judge under section 101(a)(43) of such Act.

Part D—Adjustment of Status

LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO IMMIGRANT STATUS BY OUT-OF-STATUS ALIENS

Sec. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by inserting after "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" the following: "or who is not in legal immigration status on the date of filing the application for adjustment of status".

(b) The amendment made by subsection (a) shall apply to applications for adjustment of status pending on the date of the enactment of this Act.

(c) For amendment prohibiting certain nonimmigrant students and visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

Part E—Presidential Study of a Collaborative Peofle-to-People Program Between the United States and Mexico

STUDY

Sec. 141. (a) The Congress finds that—

(1) increases in illegal immigration from Mexico to the United States and social unrest in Central America have made it imperative that the people of the United States encourage efforts to strengthen economic and social relations with people of Mexico and to promote economic revitalization and economic expansion opportunities in Mexico;

(2) not addressing issues relating to illegal immigration from Mexico (such as the 220 percent increase from 1970 to 1982 in the number of illegal Mexican aliens apprehended in the United States) and the social instability in Central America to the south of Mexico (especially Communist influence in that area) may ultimately jeopardize the economic well-being and national security of both the United States and Mexico;

(3) financial stability, economic growth, and prosperity in Mexico would substantially help to address this problem; and

(4) the United States economy and the Mexican economy are inextricably linked to the extent that (A) Mexico is the third largest trading partner of the United States, (B) the United States is the predominant source of Mexico's exports, (C) Mexico is becoming an increasingly important consumer of the United States manufactured goods, machinery, and service, (D) Mexico is the fourth largest sources of foreign oil for the United States and is of critical strategic importance as a stable supply of oil, (E) two-thirds of the foreign investment in Mexico are held by United States investors, and (F) United States banks have loaned Mexico an amount equivalent to 30 percent of Mexico's foreign debt.

(b) The President shall study the advisability and practicality of proposing to Mexico the establishment of a collaborative people-to-people program between Mexico and the United States. The President shall explore a program that would—

(1) be a bold new initiative to serve as the ultimate coordinating body of collaborative programs of mutual interest to Mexico and the United States and to create a climate of growth and economic prosperity in Mexico;

(2) contribute to economic development in Mexico, reinforcing measures in the fields of trade, investment, and financial assistance, in order to address current and anticipated needs and developments and to foster self-reliance;

(3) serve as a source of financial and technical assistance to carry out these goals drawing on, encouraging, and coordinating participation of existing United States programs and activities, international assistance programs of United States colleges and universities, programs of the Mexican Government, and any new programs or activities which would be established as part of the people-to-people program;

(4) target assistance based on findings of need in areas such as agricultural productivity, industrial research, building construction, transportation systems, research and development, and energy alternatives, and take into consideration the findings of the United States-Mexico Science and Technology Mixed Commission;

(5) draw extensively on and foster the development of local Mexican business, civic organizations, and labor organizations, and rely on private sector local and foreign initiatives; and

(6) rely on volunteers in a composition which would provide a mixture of workers, advisers, and consultants with skills not sufficiently available in Mexico.

(c) In studying such a people-to-people program, the President shall consider how the program should be administered.

(d) Such study shall consider the possibility of the Governments of the United States and Mexico establishing a Mixed Commission for the formulation, orientation, and review of the program. The Commission would meet whenever necessary, alternately in Mexico and the United States. The Commission would meet at the request of either Government and be made up of Mexicans and Americans appointed, through diplomatic channels, whenever a meeting is held. The Mixed Commission would examine matters relating to the execution of the program, determine the plan of activities to be undertaken, examine periodically the program as a whole, and make recommendations to the two Governments. It could also suggest that special meetings be held on a specific project or subject.

(e) The President shall transmit to the Congress the results of the study under this section no later than one year after the date of the enactment of this Act.

TITLE II—REFORM OF LEGAL IMMIGRATION

Part A—Immigrants

PROVIDING ADDITIONAL IMMIGRANT VISA NUMBERS FOR NATIVES OF CONTIGUOUS COUNTRIES

Sec. 201. (a) Section 201 (8 U.S.C. 1151) is amended—

(1) by inserting "certain aliens provided immigrant visa numbers under subsection (c)," in subsection (a) after "subsection (b) of this section,", and

(2) by adding at the end the following new subsection:

"(c)(1) In addition to the number of immigrant visas made available under subsection (a), there shall be made available to natives of each of the foreign states contiguous to the United States for each fiscal year a number of immigrant visas not to exceed the number specified under paragraph (2), not more than 26 percent of which may be made available in any of the first three quarters of such fiscal year.

"(2)(A) Except as provided in subparagraph (B), the number of additional visas made available to natives of either of the foreign contiguous states for a fiscal year is equal to 20,000.

"(B) If for a fiscal year one of the foreign contiguous states does not use the full number of additional immigrant visa numbers made available under this subsection, then the number of additional visas made available to natives of the other foreign contiguous state for the following fiscal year shall be increased by the number not used by the other foreign contiguous state for the previous fiscal year.".

(b) Section 202 (8 U.S.C. 1152) is amended—

(1) by inserting "and (c)" in subsection (a) after "section 201(b)",

(2) by striking out "under section 202" in the matter in subsection (e) before paragraph (1) and inserting in lieu thereof "under subsection (a)", and

(3) by adding at the end of subsection (e) the following: "This subsection shall not apply to visas made available under section 201(c) and allotted under section 203(f).".

(c) Section 203 (8 U.S.C. 1153) is amended by adding at the end the following new subsection:

"(f)(1) Aliens who are subject to the numerical limitations specified in section 201(c) shall be alloted visas in the same manner, subject to the same conditions, and in the same order as aliens are subject to the numerical limitations specified in section 201(a) are allotted visas under subsection (a), except that the percentage limitations specified in paragraphs (1) through (6) thereof shall not apply.

"(2) Requirements respecting acquisition of preference status by reason of a relationship or occupational qualification described in a paragraph of subsection (a) shall apply, in the same manner, for the acquisition of preference status under paragraph (1) of this subsection.".

(d) The amendments made by this section shall apply to fiscal years beginning with fiscal year 1984.

CHANGE IN COLONIAL QUOTA

Sec. 202. (a)(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "three thousand".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "3,000".

(b) The amendments made by subsection (a) shall apply to fiscal years beginning with fiscal year 1984.

REPORT ON ADMISSIONS AND NUMERICAL LIMITATIONS

Sec. 203. (a) Chapter 1 of title I is amended by adding at the end the following new section:

"PRESIDENTIAL REPORT ON IMMIGRATION ADMISSIONS AND IMPACTS

"Sec. 210. (a) The President shall transmit to the Congress, not later than January 1, 1987, and not later than January 1 of every third year thereafter, a comprehensive report on the impact on the economy, labor market, housing market, educational system, social services, foreign policy, environmental quality, resources, and population growth rate of the United States of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the preceding three-year period and on the projected impact (based on reasonable estimates substantiated by the best available evidence) on such factors of admissions and other entries during the succeeding five-year period.

"(b)(1) The President shall include in such report the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum during the relevant as well as a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241.

"(2) The President also shall include in such report any appropriate recommendations on changes in numerical limitations or other policies under this title bearing on the admission and entry of such aliens to the United States.

"(c) Not later than ninety days after the date of receipt of such a report, the Committees on the Judiciary of the House of Representatives and of the Senate shall hold public hearings to review the findings and recommendations contained in such report.".

(b) The table of contents is amended by inserting after the item relating to section 209 the following new item:

"Sec. 210. Presidential report on immigration admissions and impacts.".

G-4 SPECIAL IMMIGRANTS

Sec. 204. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(I) an immigrant who entered the United States with the status of a nonimmigrant under paragraph (15)(G)(iv) and who—

"(i) is the unmarried son or daughter of an officer or employee of an international organization described in paragraph (15)(G)(iv), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and eighteen years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later; or

"(ii) is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later.".

(b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(N)(i) the parent of an alien accorded the status of a special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I)(ii).".

MISCELLANEOUS PROVISIONS

Sec. 205. (a) Section 101(b)(1)(D) (6 U.S.C. 1101(b)(1)(D)) is amended by inserting "or natural father" after "natural mother".

(b) Section 19(2) of Public Law 97-116 is amended by inserting "(A)" after "because" and by adding before the semicolon at the end the following: ", or (B) the alien was entering the United States for the purpose of retirement, would not seek gainful employment in the United States, had purchased property in the United States before such date, and had demonstrated the ability for self-support while in retirement".

(c) In the case of an alien—

(1) who was in the United States on October 1, 1982,

(2) who, as of such date—

(A) had a petition approved for classification under section 203(a) (3) or (6) of the Immigration and Nationality Act, and

(B) had been issued a labor certification under section 212(a)(14) of such Act with respect to employment for an employer,

(3) who intends to remain in the United States for the purpose of performing such employment, and

(4) with respect to whom the Attorney General estimates that an immigrant visa will become available before October 1, 1984,

the Attorney General may provide that, notwithstanding any provision of section 214 of the Immigration and Nationality Act, the alien may be classified as a nonimmigrant under section 101(a)(15)(H)(ii) of such Act with respect to such employment until October 1, 1984, or, if earlier, one month after the date the alien's immigrant visa becomes available. For purposes of applying section 245 of such Act to an alien classified as a nonimmigrant under this subsection, the alien shall be considered to have been inspected and admitted into the United States and subsection (c)(2) of that section shall not apply.

(d) Section 204(g)(3)(A) (8 U.S.C. 1154(g)(3)(A)) is amended by striking out "(C)(i) of paragraph 2" and inserting in lieu thereof "(C)(ii) of paragraph (2)".

(e) Section 212(a)(14)(A) (8 U.S.C. 1182(a)(14)(A)) is amended—

(1) by inserting "(i)" before "who are members",

(2) by striking out "or who have" and inserting in lieu thereof ", (ii) who have", and

(3) by inserting after "sciences or the arts" the following: ", or (iii) who have doctoral degrees and are seeking to enter the United States to be employed as researchers at colleges, universities, or other nonprofit educational or research institutions".

(f) Section 244(b) (8 U.S.C. 1254(b)) is amended by inserting "(1)" after "(b)" and by adding at the end the following new paragraph:

"(2) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States did not meaningfully interrupt the continuous physical presence.".

PART B—NONIMMIGRANTS

H-2 WORKERS AND TRANSITIONAL NONIMMIGRANT AGRICULTURAL WORKER PROGRAM

Sec. 211. (a)(1) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, of a temporary or seasonal nature, or (b) to perform other temporary services or labor".

(2) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by section 204(b) of this Act, is further amended by striking out "or" at the end of subparagraph (M), by striking out the period at the end of subparagraph (N) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(O) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform temporary services or labor in seasonal agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act) under the transitional agricultural labor program provided for under section 214(e).".

(b) Section 214 (8 U.S.C. 1184) is amended—

(1) by adding at the end of subsection (a) the following new sentences:

"An alien may not be admitted to the United States as a nonimmigrant—

"(1) under section 101(a)(15)(H)(ii)(a) for an aggregate period longer than the period (or periods) determined by regulations of the Attorney General, or

"(2) under section 101(a)(15)(H)(ii) if the alien was admitted to the United States as such a nonimmigrant within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.".

(2) by inserting "(1)" after "(c)" in subsection (c),

(3) by adding at the end of subsection (c)(1), as so redesignated, the following:

"For purposes of this paragraph the term 'appropriate agencies of Government' means the Department of Labor and includes, with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the Department of Agriculture.

"(2)(A)(i) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(I) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition, and

"(II) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(ii) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii)(b) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(I) there are not sufficient qualified workers available in the United States to perform the labor or services involved in the petition, and

"(II) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(iii) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(B) The Secretary of Labor may not issue a certification under subparagraph (A)—

"(i) if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification,

"(ii) with respect to an employer if the employer during the previous two-year period employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers, or

"(iii) for an employer unless the Secretary has been provided satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employments.

No employer may be denied certification under clause (ii) for more than three years for any violation described in such clause.

"(3)(A) In the case of an application for a labor certification for a nonimmigrant described in section 101(a)(15)(H)(ii)(a)—

"(i) the Secretary of Labor may not require that the application be filed more than 50 days before the first date the employer requires the labor or services of the alien;

"(ii) the employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in paragraph (2)(A)(i)(I) for approval and if it does not, such notice shall include the reasons therefor and permit the employer an opportunity to resubmit promptly a modified application for approval;

"(iii) the Secretary of Labor shall make, not later than twenty days before the date such labor of services are first required to be performed, the certification described in paragraph (2)(A)(i) if the employer has complied with the criteria for certification, including criteria for the recruitment of eligible individuals as prescribed by the Secretary, and if the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary, except that the terms of such a labor certification remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply or are referred to the employer; and

"(iv) in the employer's complying with terms and conditions of employment respecting the furnishing of housing, the employer shall be permitted, at the employer's option and in lieu of arranging for suitable housing accommodations, to substitute payment of a reasonable housing allowance, but only if housing is otherwise available in the proximate area of employment.

"(B) A petition to import an alien as an nonimmigrant described in section 101(a)(15)(H)(ii)(a), and an application for a labor certification with respect to such an alien, may be filed by an association representing agricultural producers which use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application.

"(C)(i) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2)(A)(i) or, at the applicant's request, for a de novo administrative hearing respecting the denial.

"(ii) The Secretary of Labor shall expeditiously, but in no case later than seventy-two hours after the time a new determination is requested, make a new determination on the request for certification in the case of importing a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not able, willing or qualified, the burden of proof is on the employer to establish that the individuals referred are not able, willing, or qualified because of employment-related reasons as shown by their job performance.

"(D) For purposes of this paragraph, the term 'eligible individual' means with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

"(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection and on the work permits issued under subsection (e), the impact of aliens admitted pursuant to such certifications or permits on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

"(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, $10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in sections 101(a)(15)(H)(ii) and 101(a)(15)(O), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection or subsection (e).

"(6) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this subsection and under section 212(a)(14).

"(7) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities as set forth under the provisions of this Act.".

(4) by adding at the end thereof the following new subsection:

"(e)(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall by regulation establish a three-year transitional agriculture labor program (hereinafter in this subsection referred to as 'the transitional program') to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of eligible individuals (described in subsection (c)(3)(D)).

"(2)(A) No person is eligible to employ a nonimmigrant described in section 101(a)(15)(O) unless the person (or a person or association representing the person) applies for registration with the Attorney General during the first year of the transitional program (as designated by the Attorney General). In such application, the person shall provide such information relating to the person's requirements for seasonal agricultural labor in months or other periods in previous and future years as the Attorney General may specify.

"(B) In approving applications for registration under this paragraph and taking into consideration the needs specified in the applications, the historical employment needs of agricultural employers for seasonal agricultural labor, and the availability of domestic agricultural labor, the Attorney General shall specify, with respect to each registration, the maximum number of nonimmigrants described in section 101(a)(15)(O) the person can employ during the various months in the first year of the transitional program, which number shall approximate the employer's maximum reasonable requirement for nondomestic seasonal agricultural workers. The approval of an employer's application for registration under this paragraph and the issuance of work permits thereunder is conditioned upon the employer's compliance with the terms and conditions of this subsection and regulations issued thereunder.

"(C) If the Attorney General approves the employment of a number of such nonimmigrants for a month or other period in the first year of the transitional program, the Attorney General shall issue to the employer a nonimmigrant labor form (hereinafter in this subsection referred to as a 'work permit') for each such nonimmigrant for the month or other period specified. The Attorney General may require by regulation, as a condition of issuing work permits, the payment of a fee to recover the reasonable cost of processing registration applications and issuance of work permits under this subsection.

"(D) For months or other periods in the second or third years of the transitional program, the Attorney General shall provide for the issuance (to each registered employer who has complied with the terms of the program and of the program described in subsection (c) in previous years of the program) of a number of work permits equal to 67 or 33 per centum, respectively, of the number of such permits issued with respect to that month or period for that employer in the first year of the transitional program.

"(E) No work permit shall be issued under this subsection with respect to the employment of any alien for any period after the third year of the transitional program.

"(3) An agricultural employer desiring to employ in seasonal agricultural labor for a month or other period an alien who is not otherwise an eligible individual (as described in subsection (c)(3)(D), but for this subsection) must—

"(A)(i) complete and endorse a copy of a work permit for that month or other period directly to the alien, who shall retain a copy of the work permit for inspection, (ii) transmit a copy of such endorsed permit to the Attorney General, and (iii) retain a copy for the employer's records; or

"(B) provide for transmittal of the work permit to an appropriate consular officer to provide for the issuance of a visa to a qualified alien as a nonimmigrant described in section 101(a)(15)(O) to perform seasonal agricultural employment for that employer for the period specified.

Upon the receipt of an endorsed copy of a work permit of an alien under subparagraph (A), the Attorney General shall provide for the recordation of the alien as a nonimmigrant described in section 101(a)(15)(O), except that such recordation shall not prevent the deportation of the alien after the expiration of the work permit or on any ground (other than on the ground described in section 241(a)(2) or on the basis, under section 241(a)(1), of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a)).

"(4)(A) An agricultural employer employing an alien with a work permit must provide for the same wages and working conditions as those which would be required with respect to the employment of nonimmigrants described in section 101(a)(15)(H)(ii)(a), and, in the case of such an alien described in paragraph (3)(B), must meet such other transportation and similar conditions as are required with respect to the importation of nonimmigrants described in section 101(a)(15)(H)(ii)(a).

"(B) In accordance with regulations of the Attorney General, a work permit issued under this section shall be considered an alien registration card for purposes of section 274A(b)(1)(B)(ii)(I) and an alien employed by an employer and in possession of a properly endorsed work permit for a period of time shall be considered (for purposes of section 274A(a)(4)) to be authorized by the Attorney General to be so employed during that period of time. For purposes of section 3121(a)(1) of the Internal Revenue Code of 1954 and section 219(a) of the Social Security Act, a nonimmigrant described in section 101(a)(15)(O) performing seasonal agricultural services for a registered employer with a properly endorsed work permit shall be considered to be lawfully admitted to the United States on a temporary basis to perform agricultural labor.

"(5)(A) The Attorney General may provide for such suspensions and conditions on participation in the transitional program as are consistent with suspensions and conditions of participation of agricultural employers under the program described in subsection (c).

"(B) The Attorney General shall suspend the registration of an agricultural employer under the transitional program, and may prohibit the employer from participating in the program under subsection (c), for a period of up to three years if the Attorney General determines, after opportunity for a hearing, that the employer, during the previous two-year period (after the effective date of the transitional program)—

"(i) has knowingly discriminated in terms or conditions of employment against eligible individuals without work permits,

"(ii) has knowingly hired aliens not permitted under law to be so employed,

"(iii) has employed an alien classified or recorded as a nonimmigrant described in section 101(a)(15)(O) for services other than seasonal agricultural employment or for a period for which a work permit has not been issued and is not in effect,

"(iv) has become ineligible for a certification under subsection (c)(2)(B)(ii), or

"(v) otherwise has at any time during the period substantially violated a material term or condition of the registration with respect to the employment of domestic or nonimmigrant workers.

"(6) Aliens employed pursuant to work permits issued under this subsection are fully protected by all applicable Federal and State laws and regulations governing the employment of migrant and seasonal agricultural workers.

"(7) The provisions of subsections (a) and (c) of this section preempt any State or local law regulating admissibility of nonimmigrant workers.".

(c) The amendments made by this section apply to petitions and applications filed under section 214(c) of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

(d) The Attorney General, in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing the amendments made by this section shall first be issued, on an interim or other basis, not later than the effective date.

(e) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall report to the Congress no later than eighteen months after the effective date on recommendations for improvements in the temporary alien worker program amended by this section, including recommendations--

(1) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(2) removing any current economic disincentives to hiring United States citizens or permanent resident aliens where temporary foreign workers have been requested, and

(3) improving the cooperation among Government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers.

(f) It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 214(c) of the Immigration and Nationality Act and of the transitional seasonal agricultural worker program under section 214(e) of such Act.

(g) For amendments prohibiting nonimmigrants under the seasonal agricultural worker program from adjusting their status to immigrant or other nonimmigrant status, see sections 212(b) and 213(d) of this Act.

STUDENTS

SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by striking out "(e) No person" and inserting in lieu thereof "(e)(1) No person (A)",

(2) by inserting after "training," the following: "or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission,",

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (A)(iii) or clause (B) of the first sentence",

(4) by striking out ": *Provided*, That upon" and inserting in lieu thereof ". Upon",

(5) by striking out ": *And provided further*, That except" and inserting in lieu thereof ". Except", and

(6) by adding at the end the following:

"The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of the first sentence who is an immediate relative (as specified in section 201(b)).

"(2) The Attorney General, in the case of an alien described in clause (B) of the first sentence of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waive the two-year foreign residence requirement of paragraph (1) if the Attorney General determines that the waiver is in the public interest and that—

"(A) the alien—

"(i)(I) has obtained an advanced degree from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

"(II) has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research or technical position by an employer in the field in which he obtained the degree, or

"(III) has obtained an advanced degree in business or economics from a college or university in the United States, has exceptional ability in business or economics, and has been offered employment which requires such exceptional ability;

"(ii) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a),

"(iii) has received a certification under section 212(a)(14) with respect to position referred to in clause (i), and

"(iv) has applied for a waiver under this paragraph before September 30, 1989; or

"(B) the alien—

"(i) has obtained a degree in a natural science, mathematics, computer science, or in a field of engineering or business,

"(ii) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii),

"(iii) will receive no more than three years of training by a firm, corporation, or other legal entity in the United States, which training will enable the alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof, and

"(iv) furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (I) is in good standing in the training program in which the alien is participating, and (II) will return to the country of his nationality or last residence upon completion of the training program.".

(b) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: ", or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver under section 212(e)(2)(A)) who entered the United States classified as a nonimmigrant under subparagraph (F), (M), or (O) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212".

(c) Section 244(b) (8 U.S.C. 1254(b)) is amended—

(1) by striking out "(b)" and inserting in lieu thereof "(b)(1)", and

(2) by adding at the end the following:

"(2) In determining the period of continuous physical presence in the United States under subsection (a), there shall not be include any period in which the alien was in the United States as—

"(A) a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15), or

"(B) a nonimmigrant described in section 101(a)(15)(H)(iii), pursuant to a waiver under section 212(e)(2)(B).".

(d)(1) The amendments made by subsection (a) apply to aliens admitted to the United States as a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act after the date of the enactment of this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsections:

"(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends or agrees to extend reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival and departure into the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during previous fiscal year and who violated the terms of such admission,

was less than 2 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for national of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.

"(6) The Attorney General and the Secretary of State shall jointly monitor the program and shall report to the Congress not later than two years after the beginning of the pilot program, and shall include in such report recommendations respecting extension of the pilot program period and of the number of countries that may be designated under paragraph (3)(A).

"(m) The requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determine that—

"(1) the territory of Guam has developed an adequate arrival and departure control system, and

"(2) such a waiver does not present a threat to the welfare, safety, or security of the United States.".

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to subsection (l) or (m) of section 212 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days or fifteen days, respectively, from the date of admission.".

(c) For amendment prohibiting nonimmigrant visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

(d) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien classified as a nonimmigrant under section 101(a)(15)(O) or admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212.".

NONIMMIGRANT SEASONAL AGRICULTURAL PROGRAM

SEC. 214. (a) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sections 204(b) and 211(a)(2) of this Act, is further amended by striking out "or" at the end of subparagraph (N), by striking out the period at the end of subparagraph (O) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(P) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States for a period of not longer than 11 consecutive months to perform services or labor in seasonal agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act) in the production of perishable commodities (as defined in regulations of the Secretary of Agriculture).".

(b) Section 214 (8 U.S.C. 1184), as amended by section 211(b) of this Act, is further amended—

(1) in subsection (a)—

(A) by striking out "or" at the end of paragraph (1),

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", or", and

(C) by inserting after paragraph (2) the following new paragraph:

"(3) under section 101(a)(15)(P) during the five-year period beginning on the most recent date (if any) on which the alien violated (as determined by the Attorney General) a term or condition of a previous admission as such a nonimmigrant or who enters the United States unlawfully after the date the program under subsection (f) first takes effect."; and

(2) by adding at the end the following new subsection:

"(f)(1)(A) The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program (hereinafter in this subsection referred to as 'the program') for the admission into the United States of nonimmigrants described in section 101(a)(15)(P). The program shall include the imposition of monthly and annual numerical limitations, established under paragraph (2)(B), on the issuance of nonimmigrant visas for such nonimmigrants by agricultural employment region. These visas shall be made available subject to such limitations to aliens described in section 101(a)(15)(P) in accordance with the preference system established under paragraph (2)(C).

"(B) Except as provided pursuant to paragraph (3)—

"(i) aliens shall not be required to obtain any petition from any prospective employer within the United States in order to obtain a nonimmigrant visa under the program, and

"(ii) such a nonimmigrant visa shall not limit the geographical area (other than by regions established under subparagraph (C)) within which an alien may be employed or limit the type of agricultural employment, within the production of perishable commodities, the alien may perform.

"(C) For purposes of administering the program, the Attorney General shall designate not more than ten agricultural employment regions within the United States.

"(2)(A) Each person who employs individuals to perform agricultural employment (including an association of such persons and a person who contracts for the performance of such employment) in the production of perishable commodities may submit to the Attorney General, at such time and in such manner as the Attorney General specifies, an application specifying, for each month concerned and for the agricultural employment region in which the person is located, (i) the total number and qualifications of agricultural workers required in the production of perishable commodities in each month and (ii) the type of agricultural work required to be performed by these workers. The person may also include a statement indicating a preference as to country of nationality of aliens (or names of particular aliens) desired to perform labor in any such month.

"(B)(i) Based upon such petitions, taking into consideration the historical employment needs of agricultural employers and the availability of domestic agricultural labor, and after consultation with the Secretary of Agriculture and the Secretary of Labor, the Attorney General shall establish a numerical limitation, by month and by agricultural employment region, on the issuance of nonimmigrant visas to aliens described in section 101(a)(15)(P).

"(ii) If an agricultural employer (or association or representative thereof) establishes that extraordinary and unusual circumstances have resulted in a significant change in the employer's need for seasonal agricultural workers specified in the application or in the availability of demestic workers who are able, willing, and qualified to perform seasonal agricultural employment, the employer may apply to the Attorney General (in such form and manner as the Attorney General shall provide) for an increase in the numerical limitations otherwise established under clause (i) to accommodate such emergency need. The Attorney General shall make a determination on such an application within 72 hours of the date the application is completed. To the extent the application is approved, the Attorney General shall provide for an appropriate increase in the appropriate numerical limitation.

"(C) Nonimmigrant aliens who are subject to the numerical limitation specified in this paragraph shall be allotted nonimmigrant visas as follows:

"(i) Visas shall first be made available to qualified nonimmigrants specifically identified in petitions submitted under paragraph (2)(A).

"(ii) Visas shall next be made available to qualified nonimmigrants who have previously been employed in seasonal agricultural employment in the United States, providing priority in consideration among such aliens in the order of the length of time in which they were so employed.

(iii) The remaining visas shall be made available to other qualified nonimmigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State.

A spouse or child of such a nonimmigrant is not entitled to a visa or such status by virtue of such relationship, whether or not accompanying or following to join the nonimmigrant, but may be provided the same status as such a nonimmigrant if the spouse or child also in a qualified nonimmigrant to perform seasonal agricultural employment in production of a perishable commodity.

"(3)(A)(i) The Attorney General shall approve an application submitted under paragraph (2)(A) authorizing a person to employ a nonimmigrant drescribed in section 101(a)(15)(P) if—

"(I) the person is a producer, and the nonimmigrant is to be employed in the production, of perishable commodities (as defined by the Secretary of Agriculture under such section),

"(II) the application complies with the provisions of paragraph (2)(A) and sets forth the need for such nonimmigrants,

"(III) the person has not employed or petitioned for a nonimmigrant described in section 101(a)(15(H)(ii)(a) in the production of perishable commodities at the time when an application on behalf of the person is pending or approved under this subsection, or during any previous period during which the employer had an application approved under this subsection, and

"(IV) the person is not disqualified under subparagraph (C).

"(ii) Except as provided under subparagraph (C), a person who is determined not to be eligible under clause (i) (other than because of subclause (IV) thereof) is entitled to an expedited review of the determination by the Attorney General.

"(B) Any person whose application to employ a nonimmigrant described in section 101(a)(15)(P) has been approved shall—

"(i) make a good faith effort to recruit in the area of intended employment willing and qualified domestic agricultural workers to perform agricultural employment in the production of perishable commodities until the date any nonimmigrants under section 101(a)(15)(P) admitted to the United States to perform such employment report to work,

"(ii) provide for such wages and working conditions (including conditions respecting the furnishing of housing) as do not adversely affect the wages and working conditions of workers in the United States similarly employed,

"(iii) provide (if the employment is not covered by State workers' compensation law), at no cost to the worker, insurance covering injury and disease arising out of and in the course of the workers employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment,

"(iv) not employ a nonimmigrant described in section 101(a)(15)(P) if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such employment,

"(v) not employ a nonimmigrant described in section 101(a)(15)(P) for services other than seasonal agricultural services in the production of perishable commodities, and

"(vi) be permitted, in complying under clause (ii) with applicable conditions of employment respecting the furnishing of housing for such nonimmigrants and at the person's option, in lieu of arranging for suitable housing accommodations, to substitute payment of a reasonable housing allowance to the provider of such housing, but only if such housing is in the proximate area of employment.

"(C) If the Attorney General determines, after opportunity for a hearing, that an employer has participated under the program and has violated a provision of subparagraph (B) or any other provision of this Act, the employer shall be disqualified from future eligibility under the program for a period of not longer than three years.

"(D)(i) It is unlawful for a person or other entity to hire, or recruit or refer, for employment in the United States a nonimmigrant alien described in section 101(a)(15)(P) unless the person or entity has an application approved under paragraph (3) with respect to the hiring of the alien.

"(ii) A person or entity that violates clause (i) shall be subject—

"(I) in the case of a person or entity which has not previously been determined (after opportunity for judicial review) to have violated such clause, to a civil penalty of up to $1,000 for each alien so hired,

"(II) in the case of a person or entity which has previously been determined (after opportunity for judicial review) to have violated such clause in only one occasion, to a civil penalty of up to $2 000 for each alien so hired, or

"(III) in the case of a person or entity which has previously been determined (after opportunity for judicial review) to have violated such clause in more than one occasion, to a civil penalty of up to $3,000 for each alien so hired.

"(4) An alien admitted as a nonimmigrant under the program is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government.

"(5)(A) Funds appropriated under subsection (c)(5) shall be available for the purposes (i) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(P), and (ii) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

"(B) The Secretary of State is authorized to take such steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply for nonimmigrant status under the program.

"(6) The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall report to Congress semiannually regarding the program. Each such report shall include a statement of the number of nonimmigrant visas issued under the program, an evaluation of the effectiveness of the program, a description of any problems related to the enforcement of the program, and any recommendations for legislation relating to the program.

"(7) The provisions of this subsection preempt any State or local law on the same subject.

"(8)(A) The Attorney General shall establish by regulation a trust fund the purpose of which is to provide funds for the administration and enforcement of the program and to provide a monetary incentive for nonimmigrants participating in the program to return to their country of origin upon expiration of their visas under the program. The Attorney General shall promulgate such other regulations as may be necessary to carry out this paragraph.

"(B) In the case of employment of a nonimmigrant described in section 101(a)(15)(P)—

"(i) the employer shall provide for payment into the trust fund established under this section of (I) an amount equivalent to the amount of excise taxes which the employer would pay under the Federal Insurance Contributions Act with respect to such employment if it were considered employment for the purpose of such Act, and (II) an amount equivalent to (and in lieu of) the amount of excise taxes which the employer would otherwise pay under the Federal Unemployment Tax Act with respect to such employment, and

"(ii) there shall be deducted from the wages of the nonimmigrant and paid into such trust fund an amount equivalent to the amount of excise taxes that the employee would pay under the Federal Insurance Contributions Act with respect to such employment if it were considered employment for the purposes of such Act.

"(C)(i) Amounts described in subparagraph (B)(i) paid into the trust fund shall be used for the purpose of administering and enforcing the program.

"(ii) Amounts described in subparagraph (B)(ii) paid into the trust fund with respect to a nonimmigrant shall, upon application by the nonimmigrant at the United States consulate nearest the nonimmigrant residence in the country of origin, be paid to the nonimmigrant if the nonimmigrant demonstrates his or her compliance with the terms and conditions of the program.".

"(c) The Attorney General, in consultation with the Secretary of Agriculture, the Secretary of State, and the Secretary of Labor, shall promulgate all regulations implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing such amendments shall first be issued, on an interim or other basis, not later than the first day of the seventh month beginning after the date of the enactment of this Act.

(d) It is the sense of Congress that the President should negotiate with representatives of the governments of labor source countries to establish bilateral advisory commissions in order to consult with and advise the Attorney General regarding—

(1) the regulations to be promulgated,

(2) the monthly and annual numerical limitations to be established,

(3) the entry, and preference, and visa issuance systems to be established, and

(4) problems arising under the program established,

under section 214(f) of the Immigration and Nationality Act.

(e)(1) The first sentence of section 204(a) (8 U.S.C. 1154(a)) is amended by inserting before the period the following: ", except that no petition for a preference immigrant under section 203(a)(3) or 203(a)(6) may be filed respecting an alien who is a nonimmigrant described in section 101(a)(15)(P)".

(2) Section 212(a) (8 U.S.C. 1182(a)) is amended by striking out the period at the end of paragraph (33) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(34) Aliens admitted as nonimmigrants under section 101(a)(15)(P) who fail to be continuously employed or actively seeking employment in agricultural labor or services in the production of perishable commodities (as defined for purposes of section 101(a)(15)(P)) in accordance with the usual and customary employment patterns and practices.".

(3) Section 244(b)(2)(A) (8 U.S.C. 1254(b)(2)(A)), as added by section 212(c)(2) of this Act, is amended by striking our "or (M)" and inserting in lieu thereof ", (M), or (P)".

(4) Section 245(c)(4) (8 U.S.C. 1255(c)(4)), as inserted by section 212(b) of this Act, is amended by striking out "or (O)" and inserting in lieu thereof ", (O), or (P)".

(5) Section 248(4) (8 U.S.C. 1258(4)), as added by section 213(d) of this Act, is amended by inserting "or (P)" after "101(a)(15)(O)".

TITLE III—LEGALIZATION

LEGALIZATION

SEC. 301. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

"SEC. 245A. (a) The Attorney General may, in his discretion and under such regulation as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(1) the alien has entered the United States, is physically present in the United States, and applies for such adjustment during the eighteen-month period beginning on a date (not later than 180 days after the date of the enactment of this section) designated by the Attorney General,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1982, and has resided continuously in the United States in an unlawful status since January 1, 1982, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1982, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1982, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1982, and the alien has resided continuously in the United States in an unlawful status since January 1, 1982: and

"(C) in the case of an alien who at any time was in a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject ot the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a wavier thereof; and

"(3) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in paragraph (1)) is the subject of an order to show cause issued under section 242, must make application under such paragraph not later than the end of the thirty-day period beginning either on the first day of such one-year period or on the date of the issuance of such order, whichever day is later.

"(b)(1) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment during the one-year period beginning with the thirteenth month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), and

"(ii) has not been convicted of any felony or of three or more misdemeanors committed in the United States;

"(D) can demonstrate that he either (i) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or (ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and such a knowledge and understanding of the history and govenment of the United States; and

"(E) can demonstrate, in the case of an alien who is accompanied by a dependent child who is subject to a State law requiring compulsory school attendance, that the child is enrolled (or arranging for enrollment) in an elementary or secondary school or other course of instruction which complies with such law.

An alien shall not be considered to have lost the continuous residence referred to in subparagraph (B) by reason of an absence from the United States permitted under paragraph (3)(A). The Attorney General may, in his discretion, waive all or part of the requirements of subparagraph (D) in the case of an alien who is 65 years of age or older.

"(2) The Attorney General shall provide for the rescission of temporary resident status granted an alien under subsection (a)—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status,

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

"(C) at the end of the twenty-fifth month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

"(3) In the case of an alien during the period he is granted lawful temporary resident status under subsection (a)—

"(A) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need,

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit, and

"(C) the alien shall not be deported or otherwise removed from the United States by the Attorney General or other law enforcement agent of the United States except pursuant to a lawful deportation proceeding or other due process of law.

"(c)(1)(A) The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be made to and received, on behalf of the Attorney General, by qualified voluntary agencies and other qualified State, local, and community organizations, which have been designated for such purpose by the Attorney General and by other persons, so designated, who the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

"(B) Files and records of designated agencies, organizations, and persons under this paragraph are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(C) In the case of an alien who submits an application under subsection (a) or under subsection (b)(1) to the Attorney General (or to an agency, organization, or person designated under subparagraph (A) and who approves the forwarding of the application to the Attorney General), the alien is subject to a criminal penalty under section 1001 of title 18, United States Code, for knowingly and willfully making false, fictitious, or fraudulent statements in the process of submitting the application. An agency, organization, or person designated under subparagraph (A) which receives such a statement and which, without knowledge that it is false, fictitious, or fradulent and with the consent of the alien involved, forwards the statement to the Attorney General is not subject to such a penalty.

"(2) The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(3)(A) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i) and (b)(2)(B)(i) and the Attorney General, in making such determination, may waive any other provision of such section other than paragraph (9), (10), (15) (except as it applies to the adjustment to lawful temporary resident status under subsection (a)), (23) (except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana), (27), (28), (29), or (33) with respect to the alien involved for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. For purposes of this section, an alien shall not be excludable under section 212(a)(15) if the alien demonstrates a history of employment envidencing self-support without reliance on public cash assistance.

"(B) In determining whether or not an alien is admissible to the United States for purposes of this section, the alien shall be required, at the alien's expense, to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.

"(4) Beginning not later than the date designated by the Attorney General under subsection (a)(1) the Attorney General in cooperation with agencies, organizations, and persons designated under paragraph (1), shall broadly disseminate, in English and other appropriate languages" after "broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits. Such information shall include (A) information respecting the requirements that aliens with lawful temporary resident status would have to meet to have their status adjusted to permanent resident status under subsection (b)(1) and the facilities available to provide education and employment training and opportunities in order to meet such requirements, (B) information on the conditions under which temporary lawful residence status can be rescinded under subsection (b)(2), (C) information on conditions for employment and foreign travel of aliens with lawful temporary residence status under subsection (b)(3), and (D) information respecting compulsory school enrollment requirements for minors in the various States and localities and the identification of the appropriate schools in which children should be enrolled.

"(5)(A) Notwithstanding any other provision of law, the Attorney General (and, to the extent applicable, the Secretary of Health and Human Services) shall first issue, on an interim or other basis and before the beginning of the one-year period described in subsection (a)(1), such regulations as are necessary to implement this section on a timely basis.

"(B) The Attorney General, after consultation with the Committee on the Judiciary of the House of Representatives and the Senate and with agencies, organizations, and persons designated pursuant to paragraph (1)(A), shall prescribe regulations establish a definition of the term 'resided continuously', as used in this section, and for establishing the requirements necessary to prove eligibility for immigration benefits under this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(6)(A) The Attorney General shall provide that in the case of an alien who is apprehended before the end of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until such period), until the alien has had a reasonable opportunity to complete the filing of an application for adjustment during the period, the alien—

"(i) may not be deported or excluded, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(B) The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during such application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(i) may not be deported or excluded, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(C) The Attorney General shall provide that in the case of an alien who is apprehended before the end of such application period, the alien shall be advised that—

"(i) the alien may be eligible to have his status adjusted under this section,

"(ii) an alien who can establish a nonfrivolous case of eligibility for such adjustment under this section shall not be deported or excluded until a final determination on the application has been made in accordance with this section, and

"(iii) the alien may contact such voluntary agencies, or other qualified State, local, and community organizations, as are designated by the Attorney General, for assistance in determining whether or not the alien has a nonfrivolous case for adjustment of status under this section.

The Attorney General shall make available a list of voluntary agencies or other qualified organizations to such aliens.

"(7) The provisions of this section shall not apply to an alien described in section 2(b) of Public Law 97-271.

"(d)(1) During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) and during the five-year period beginning on the date an alien is provided a record of lawful admission for permanent residence under section 249 based on an entry into the United States on or after June 30, 1948, and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Programs authorized under the National School Lunch Act, the child Nutrition Act of 1966, the Vocational Education Act of 1963, chapter 1 of the Education Consolidation and Improvement Act of 1981, the Headstate-Follow Through Act, the Job Training Partnership Act, and subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965 shall not be construed to be programs of financial assistance referred to in subparagraph (A)(i). Programs authorized under the Public Health Service Act and title V of the Social Security Act shall not be construed to be programs of financial assistance referred to in subparagraph (A)(i).

"(2) Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983);

"(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

"(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(2)(B) of such Act (relating to services for pregnant women).

The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superceded to the extent required to restrict the medical assistance in the manner described in subparagraph (C) and paragraph (1)(A)(ii). The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out subparagraphs (B) and (C).

"(3) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-422), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(e)(1) There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) An alien whose application for adjustment of status under this section is denied is entitled to a de novo hearing with respect to such application if a notice of request for such hearing is made within a reasonable time (of not less than thirty days, as established by the Attorney General) of the date of the notice of the denial. Only one such de novo hearing may be requested with respect to any alien. The hearing shall be conducted before an administrative law judge in accordance with the requirements of section 554 of title 5, United States Code, and rules of the United States Immigration Board established under section 107.

"(3)(A) If such a hearing is timely requested, any further administrative or judicial review (whether in a deportation proceeding or otherwise) of the determination on the application for adjustment shall be based solely upon the administrative record upon which the order is based and the administrative law judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(B) If an alien does not make a timely request for a de novo hearing under paragraph (2), any administrative or judicial review shall be based solely on the administrative record upon which the determination on the application was made.

"(4) An applicant may elect to have administrative appellate review by the United States Immigration Board of a determination respecting an application for adjustment under this section only once, either in a review of a determination after a de novo hearing under paragraph (2) or in a review of a deportation order respecting the applicant.

"(5) There shall be no judicial review of a denial of an alien's application for adjustment except in the judicial review under section 106 of an order of deportation with respect to the alien.".

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence.".

(c) The President shall transmit to Congress, not later than 27 months after the date of the enactment of this Act, a report on the impact of the enactment of the legalization program described in section 245A of the Immigration and Nationality Act, including such impact on State and local governments and on public health and medical needs of individuals in the different regions of the United States.

CUBAN-HAITIAN ADJUSTMENT

Sec. 302. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

(d) Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act and the Attorney General shall not be required to charge the alien any fee.

(f) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

UPDATING REGISTRY DATE TO JANUARY 1, 1973

Sec. 303. (a) Section 249 (8 U.S.C. 1259) is amended—

(1) by striking out "June 30, 1948" in the heading and inserting in lieu thereof "Janaury 1, 1973", and

(2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1973".

(b) The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948", and inserting in lieu thereof "January 1, 1973".

STATE LEGALIZATION ASSISTANCE

Sec. 304. (a) There are authorized to be appropriated to carry out subsections (b) and (c) of this section such sums as may be necessary for fiscal year 1984 and for each of the three succeeding fiscal years.

(b)(1) Subject to the amounts provided in advance in appropriation Acts, the Secretary of Health and Human Services shall provide reimbursement to each State (as defined in paragraph (2)(A)) for 100 per centum of the costs of programs of public assistance (as defined in paragraph (2)(B)) provided to any eligible legalized alien (as defined in paragraph (2)(C)).

(2) For purposes of this subsection:

(A) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(B) The term "programs of public assistance" means programs existing in a State or local jurisdiction which—

(i) provide for cash, medical, or other assistance designed to meet the basic subsistence or health needs of individuals or required in the interest of public health,

(ii) are generally available to needy individuals residing in the State or locality, and

(iii) receive funding from units of State or local government.

(C) The term "eligible legalized alien" means—

(i) an alien who was granted lawful temporary resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the five-year period beginning on the date the alien was granted such status; and

(ii) an alien who has been provided a record of lawful admission for permanent residence under section 249 of such Act based on an entry into the United States on or after June 30, 1948, but only until the end of the five-year period beginning on the date the alien was provided such record.

(c)(1) Subject to the amounts provided in advance in appropriation Acts and in accordance with this section, the Secretary of Education shall make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens (as defined in subsection (b)(2)(C)).

(2) The definitions and provisions of titles I through IV of Refugee Education Assistance Act of 1980 shall apply to payments under this subsection in the same manner as they apply to grants and payments under those titles, except that, in applying this paragraph, any reference in such titles to an "eligible participant" shall be deemed to be a reference to an "eligible legalized alien".

AMENDMENTS TO THE REFUGEE EDUCATION ASSISTANCE ACT

Sec. 305. The Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) is amended—

(1) by striking out "each of the fiscal years 1981, 1982, 1983," in section 102(a) and inserting in lieu thereof "fiscal year 1981 and for each subsequent fiscal year";

(2) in the first sentence of section 201(c) by inserting "from State or local educational agencies" after "not available" and by inserting "from the most recent data available from the Immigration and Naturalization Service" after "of estimates";

(3) in the first sentence of section 301(c) by inserting "from State or local educational agencies" after "not available" and by inserting "from the most recent data available from the Immigration and Naturalization Service" after "of estimates"; and

(4) by adding at the end of section 402(a) the following new sentence: "Funds available under this title shall, to the maximum extent feasible, be used for programs of instruction of such adult refugees in order that they may gain an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language, and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.".

TITLE IV—EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

Sec. 401. It is the sense of Congress that in the case of nationals of El Salvador who otherwise qualify for voluntary departure (in lieu of deportation) under the Immigration and Nationality Act, the Attorney General shall extend the date such aliens are required to depart voluntarily until such date as the Secretary of State determines that the situation in El Salvador has changed sufficiently to permit their safely returning to El Salvador.

TITLE V—NATIONAL COMMISSION ON IMMIGRATION

NATIONAL COMMISSION ON IMMIGRATION

Sec. 501. (a) There is established a National Commission on Immigration (hereinafter in this section referred to as the "Commission") to conduct studies and analyses and to report to Congress concerning—

(1)(A) the push and pull factors affecting unauthorized immigration to the United States,

(B) the development, in partnership with Latin American countries, of reciprocal trade and economic development programs of mutual benefit,

(2) the incentives for employers in the United States to employ aliens who are not authorized to be so employed,

(3) the reliance of the agricultural industry on the employment, on a temporary basis, of aliens not authorized to be employed in the United States, and

(4) the existence and extent of backlogs for the issuance of immigrant visas to aliens

who have approved petitions for immigrant preference status.

(b)(1) With respect to the topics described in subsection (a), the Commission shall—

(A) review and analyze the economic and social conditions, patterns, and trends in the United States and in foreign countries which affect unauthorized immigration into the United States, the short-term and long-term problems in the United States and elsewhere associated with such unauthorized immigration, and potential solutions to such problems;

(B) take into account, in such reviews and analyses—

(i) prevailing and projected demographic, technological, and economic trends affecting immigration into the United States;

(ii) the impact of immigration laws, and their enforcement, on unauthorized immigration and on social and economic conditions in foreign countries;

(iii) how unemployment in particular areas and occupations in the Untied States is affected by unauthorized immigration; and

(iv) the laws, policies (including trade policies), and procedures governing economic and diplomatic relations between the United States and foreign countries; and

(C) make recommendations respecting additional statutory and other changes that should be made to best deal with unauthorized immigration into the United States.

(2) With respect to the topic described in subsection (a)(1)(B), the Commission shall review and study the short- and long-term measures promoting reciprocal trade and economic development programs of mutual benefit to the United States and Latin American countries. The Commission's reviews and analyses under this paragraph shall focus on, and be conducted in close consultation with the governments of, those foreign countries from which nationals are most likely to immigrate without prior authorization to the United States. The Commission shall present its recommendations to the Congress with respect to this topic not later than 18 months after the date of the enactment of this Act.

(c)(1) The Commission shall be composed of fifteen members as follows:

(A) Five members appointed by the President, not more than three of whom are members of the same political party and not more than three of whom are officers or employees of the Federal Government.

(B) Five members appointed by the Speaker of the House of Representatives, not more than three of whom are members of the same political party and not more than two of whom are members of Congress.

(C) Five members appointed by the President pro tempore of the Senate, not more than three of whom are members of the same political party and not more than two of whom are members of Congress.

In making such appointments, due consideration shall be given to securing representatives on the Commission from a variety of constituencies, including State and local government officials and individuals and representatives of organizations with experience or expertise in immigration matters. Appointments to the Commission shall be made within ninety days after the date of the enactment of this section. Members shall be appointed in a manner that provides for balanced representation of all interests.

(2) The chairman and the vice chairman of the Commission shall be elected from among the members. The term of office of the chairman and vice chairman shall be for the life of the Commission.

(3) The chairman may invite for the purpose of participating in any meeting or hearing held by the Commission, and for the purpose of contributing to the studies to be conducted and the recommendations to be developed by the Commission, such representatives of the governments of countries as the Commission deems desirable.

(d)(1) Members shall be appointed for the life of the Commission.

(2) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(4) The Commission shall meet at the call of the chairman or a majority of its members.

(e)(1) Each member of the Commission who is not an officer or employee of the Federal Government shall, subject to such amounts as are provided in advance in appropriations Acts, receive $150 for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission.

(2) Members of the Commission who are officers or employees of the Federal Government shall receive no additional pay on account of their service on the Commission.

(3) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(f)(1) The Commission shall have a director who shall be appointed by and whose rate of pay shall be fixed by the chairman.

(2) The chairman may appoint and fix the rate of pay of such additional personnel as the chairman deems desirable.

(3) The director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(g)(1) The Commission may for the purpose of carrying out its duties hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems advisable. To the extent feasible, the Commission shall hold at least some hearings in the border regions of the United States.

(2) The Commission shall, to the maximum extent feasible, conduct its activities through the establishment of three expert panels, each of the panels to provide detailed information and recommendations to the Commission respecting one of the topics described in subsection (a).

(3) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants at a rate to be fixed by the Commission, but not in excess of $150 per diem (including traveltime). While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses including per diem in lieu of subsistence.

(4) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties. Upon request of the chairman, the head of such agency or department of the United States shall furnish all information requested by the Commission which is necessary to enable it to carry out its duties.

(5) The Commission may accept, use, and dispose of gifts or donations of services or property.

(6) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(7) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h)(1) The Commission shall transmit a report to the Congress not later than three years after the date of the enactment of this Act. Such report shall include a summary of the reviews and analyses conducted by or on behalf of the Commission and such recommendations as the Commission deems appropriate.

(2) The Commission shall cease to exist on the thirtieth day beginning after the date of the transmission of the report under paragraph (1).

(i) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE VI—CONSULTATION IN IMPLEMENTATION OF ACT

COOPERATION WITH STATE AND LOCAL TASK FORCES

SEC. 601. In order to provide for a highly coordinated and cooperative effort in the implementation of this Act and to insure that such implementation is fair and effective, the Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall regularly consult and maintain close contact with regional and local advisory task forces established by State and local governments composed of interested private public sector organizations. These task forces may—

(1) review and comment on regulations and procedures proposed to carry out this Act;

(2) monitor and evaluate the implementation of this Act; and

(3) recommend such actions as may be necessary to improve implementation of this Act in their respective areas.

The Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall consider the recommendations of these task forces in the implementation.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey [Mr. RODINO].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 1510) was laid on the table.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF HOUSE AMENDMENT TO S. 529

Mr. RODINO. Mr. Speaker, I ask unanimous consent that the Clerk, in engrossing the House amendment to

S. 529, make such corrections in section and title numbers and references, indentation and punctuation, as may be necessary to reflect the actions of the House.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. RODINO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that the Subcommittee on Public Buildings and Grounds of the Committee on Public Works and Transportation may have permission to sit while the House is under the 5-minute rule on Thursday, June 21, 1984.

The minority is in agreement with this request.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS OF THE COMMITTEE ON THE JUDICIARY TO MEET TOMORROW DURING 5-MINUTE RULE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent that the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary be permitted to meet tomorrow, June 21, 1984, during proceedings in the House under the 5-minute rule.

We have cleared this with the minority.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

REPORT ON H.R. 5898, MILITARY CONSTRUCTION APPROPRIATIONS BILL, 1985

Mr. HEFNER, from the Committee on Appropriations, submitted a privileged report (Rept. No. 98-850) on the bill (H.R. 5898) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

Mr. REGULA reserved all points of order on the bill.

REPORT ON H.R. 5899, DISTRICT OF COLUMBIA APPROPRIATION BILL, 1985

Mr. DIXON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 98-851) on the bill (H.R. 5899) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

Mr. REGULA reserved all points of order on the bill.

THR ORGAN TRANSPLANT ACT OF 1984

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 507 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 507

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of clause 2(l)(5)(B) of rule XI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, the bill shall be considered for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After the passage of H.R. 5580, the House shall proceed, section 401(b)(1) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, to the consideration of the bill S. 2048, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and to insert in lieu thereof the provisions contained in H.R. 5580 as passed by the House.

□ 1720

The SPEAKER. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTA], for purposes of debate only, pending which I yield myself such time as I may consume.

ORGAN TRANSPLANT ACT

Mr. Speaker, House Resolution 507 provides for the consideration of H.R. 5580, the Organ Transplant Act of 1984. The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. It is an open rule. The rule waives clause 2(1)(5)(B) of rule XI which requires the cover of the committee report to bear a recital that minority views are included in the report.

The rule further provides that the bill be read by titles instead of by sections with each title considered as having been read, and provides one motion to recommit.

After passage of H.R. 5580 the rule makes in order consideration of the Senate comparison bill, S. 2048. The rule waives section 401(B)(1) of the Congressional Budget Act against S. 2048. That section of the Budget Act prohibits consideration of legislation providing new entitlement authority which would become effective before October 1 of the calendar year in which the bill is reported. This waiver is necessary because the Senate bill provides daily rate of pay for the members of the organ transplant task force and provides an entitlement for the compensation of the executive director at level V of the Federal pay scale. Since these provisions would immediately be effective upon enactment of the bill and possibly prior to the beginning of fiscal year 1985, the waiver was granted.

Mr. Speaker, H.R. 5580 is designed to strengthen the ability of the Nation's health care system to provide organ transplants to thousands of patients across the country. The bill provides the framework for a nationwide organ transplantation network. Funds are authorized to assist communities in developing and strengthening local organ procurement agencies. These local agencies will be linked together by a 24-hour computer matching system and National Patients Registry. H.R. 5580 would authorize appropriations of $10 million in fiscal year 1985 and $20 million in fiscal year 1986 to implement these programs.

Mr. Speaker, one of the issues of concern in the 98th Congress is the need for a more efficient and comprehensive nationwide network to match organ donors with the many individuals in the country who are in desperate need of a transplant. The transplantation of human organs has revolutionized the practice of medicine and prolonged human existence; for previously fatal or debilitating disease there is now hope for recovery.

Mr. Speaker, you may recall that during the fall of 1982, the plight of a 3-year-old, Jamie Fisk of Bridgewater, MA, became known throughout the Nation when her parents went before the American Pediatrics Association Conference to appeal for assistance in locating a critically needed liver donor for Jamie. With the help of the medical community, a compatible donor organ was found and successfully transplanted, today Jamie is a healthy and happy little girl. Without this transplant Jamie would not be alive today.

Mr. Speaker, Jamie Fisk is the best example of the hope that exists through this extraordinary surgical procedure and also of the immense need for a nationwide network to match organ donors with those individuals who are in desperate need of transplants.

This is a worthwhile program which I enthusiastically support. I urge my colleagues to adopt House Resolution 507 so that the House will have an opportunity to consider this very important legislation.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in the Rules Committee there was no objection to the provisions of the rule, which have been fully explained. However, there was difference of opinion over the provisions in the bill.

This bill is supposed to increase the number of organs donated by providing grants to local organ procurement organizations. It specifically authorizes appropriations of $4 million in 1985, $8 million in 1986, $12 million in 1987, and $16 million in 1988 for grants to organ procurement organizations for planning, establishment, and initial operation.

The bill also permits funding of up to $2 million each fiscal year for a U.S. Transplantation Network.

In addition appropriations of $10 million in 1985 and $20 million in 1986 are authorized to allow the Secretary of Health and Human Services to provide, free of charge, immunosuppressive drugs to transplant centers. According to the Congressional Budget Office this level of funding is relatively small compared to the amount that would be necessary to supply immunosuppressive drugs to all transplant patients.

The bill establishes an identifiable administrative unit in the Public Health Service to coordinate Federal organ transplant policies and programs. The bill mandates an annual report on the scientific status of transplant procedures and provides for a task force to study the medical and ethical issues raised by organ transplantation.

The bill specifically prohibits the buying and selling of human organs.

Mr. Speaker, at the time of the Rules Committee meeting, the Office of Management and Budget provided a statement of administration policy opposing enactment of this bill in its present form.

The administration would support amendments to: First, eliminate the requirement for the Secretary of Health and Human Services to make immunosuppressive drugs available at no cost to certain transplant centers for distribution; and, second, to eliminate the establishment and operation of the U.S. Government Transplantation Network to procure and distribute organs. The administration would support the establishment of a task force to develop a plan for a national organ procurement and distribution network which would emphasize private sector involvement.

Mr. Speaker, under the open amending procedure in this rule, the House will be able to make necessary improvements in the bill. I support the adoption of the rule so that the House may proceed to consider the organ transplant legislation.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. Pursuant to House Resolution 507 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5580.

□ 1729

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, with Mrs. BOGGS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. WAXMAN] will be recognized for 30 minutes and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

□ 1730

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, this legislation is the product of extensive work by members of the Committees on Energy and Commerce and Science and Technology, and leaders in the field of organ transplantation. There is wide agreement among scientists, surgeons, and patients that the Nation's system for procuring human organs could be made more effective.

The National Organ Transplant Act is the product of nine hearings involving the Subcommittee on Health and the Environment of the Energy and Commerce Committee and the Subcommittee on Investigations and Oversight of the Science and Technology Committee.

We have heard the views of scientists, surgeons, and patients. All were concerned about the need to make the procurement of human organs for transplantation more effective.

These public hearings demonstrated that our system for obtaining organs for transplantation is inefficient. Studies indicate that there are approximately 20,000 potential organ donors each year, but fewer than 15 percent become organ donors. Of these donations the overwhelming majority are for kidneys. The percentages for liver and heart donations are significantly lower.

Organ transplantation is a scientific miracle, but it has placed special demands upon our health care delivery system. As this medical technology becomes more sophisticated the gaps between available donors and transplant patients will widen. Chaos and public bitterness will inevitably result.

Today there are literally thousands of patients on waiting lists. Next year there will be thousands more. These patients need a health care delivery system in which organ transplantation is performed on a systematic, equitable and, most importantly, routine basis.

In the absence of better planning and coordination of transplant services, these operations may become a medical option available only to the rich or those fortunate enough to attract the attention of the President of the United States or the news media.

H.R. 5580 contains five major provisions:

First, an authorization of $40 million, over 4 fiscal years, for grants to strengthen and expand local organ procurement organizations;

Second, development of a national computer system to speed the matching of donor organs with waiting recipients;

Third, an authorization of $30 million over 2 fiscal years to assist transplant patients in paying for the high costs of immunosuppressive drugs;

Fourth, preparation of an annual report on the scientific status of transplant procedures and development of a scientific registry of transplant patients; and

Fifth, prohibition on the buying and selling of human organs.

I am pleased to say this legislation has virtually unanimous support within the health, medical, and scientific communities. It has been endorsed by virtually every medical and scientific body involved in transplantation. These organizations include:

American Society of Transplant Surgeons; Association of Independent Organ Procurement Agencies; North American Transplant Coordinators Organization; South-Eastern Organ Procurement Foundation; American Heart Association; and American Nurses Association.

Madam Chairman, organ transplantation is a scientific miracle. It has made it possible for life to be passed along in the event of tragedy.

H.R. 5580 will increase the supply of organs available for transplantation and will enhance our research into improving the efficacy of transplant procedures. We have all heard pleas for help. We have heard direct pleas from our constituents. We have heard silent pleas in the faces of small children the media have brought into our homes. There is a genuine sense of urgency to the legislation.

Madam Chairman, several Members deserve special recognition for their strong support and contribution to this legislation.

Particularly, I want to single out ALBERT GORE, chairman of the Subcommittee on Investigations and Oversight of the House Science and Technology Committee, who conducted an exhaustive series of hearings identifying gaps in our organ procurement system and highlighting the need for Federal legislation, and indeed the legislation that is before us in the Gore bill.

EDWARD MADIGAN, the ranking minority member of the Subcommittee on Health and the Environment, is an original cosponsor of this legislation and has demonstrated a strong commitment to strengthening our procurement system by stimulating private sector activities in this area.

DOUG WALGREN, a senior member of the Subcommittee on Health and the Environment, deserves special recognition for his sponsorship of an amendment to authorize appropriations to assist transplant patients in paying for the costs of immunosuppressive drugs. This provision will dramatically increase the effectiveness of organ transplants.

I urge each Member's support for this important legislation.

The CHAIRMAN. The gentleman from California [Mr. WAXMAN] has consumed 4 minutes.

Mr. MADIGAN. Madam Chairman, I yield such time as he may consume to the gentleman from New Mexico [Mr. SKEEN] an original cosponsor of the bill.

Mr. SKEEN. Madam Chairman, as an original cosponsor of this bill, I have a very personal and long-time interest in this kind of legislation, and I want to commend the gentleman from Tennessee [Mr. GORE] who took the initiative for the hearings and under whose direction the bill was prepared. I think it does exactly, as was mentioned earlier by the gentleman from California [Mr. WAXMAN] it fills a gap in the social and human services concerning the issue of organ transplants in the United States today.

I particularly want to talk about one area of particular concern because I think it has been the point of argument concerning this particular issue throughout some of the committees, and that is the efficacy of immunosuppressants, whether they are economically feasible methods of treatment today with new technology and new drugs.

I want to say that in my view they are certainly proving to be cost effective. It certainly makes more sense to me to see people under public programs, particularly those in the Federal sector, that lend themselves to the money and the finance of organ transplants and the medical technology necessary to improve the efficiency and the success of these particular types of therapies. It makes far more sense to me that new kinds of immunosuppressants be OK'd under these programs financed by the medicare and medicaid programs rather than trying to finance an illness to its termination.

I think that during the discourse, if there is an expanded discussion on this bill, I think we can very well establish this particular point.

I want to thank those who have been involved in the subcommittee's work for the opportunity to work with them on an issue that I think has come into its own time, and I appreciate very much the gentleman from Illinois [Mr. MADIGAN] giving me this time.

The CHAIRMAN. The gentleman from Illinois [Mr. MADIGAN] has consumed 3 minutes

Mr. WAXMAN. Madam Chairman, it is my pleasure to yield such time as he may consume to the author of this legislation, the gentleman who has seen this issue through from its inception, when he first held hearings many months ago, to the point now where I hope the House of Representatives is ready to pass this legislation, the gentleman from Tennessee [Mr. GORE].

Mr. GORE. Madam Chairman, I want to thank the distinguished chairman of the subcommittee, whose friendship and support on this legislation and on so many other matters has meant a great deal to me personally, and I would argue with anybody, a great deal to the people of this country because he is an outstanding leader in the field of health. It is a joy to work with him.

I want to thank also the gentleman from Illinois [Mr. MADIGAN] the ranking member of the Health Subcommittee, who is also an outstanding leader in the field of health.

The team here, which is sometimes in sharp disagreement with each other, but other times agreeing when the best interests of the country are involved, is really a remarkable one that has resulted in tremendous legislation and tremendous compromises.

I want to thank my ranking minority member, the gentleman from New Mexico [Mr. SKEEN] on the Science Investigations Subcommittee, who was side by side with me through all of the hearings that opened this issue up. He has really done an outstanding job in crafting the compromise legislation that has such strong bipartisan support which we bring to the floor today and tomorrow.

Madam Chairman, Thomas Jefferson once wrote, "Laws and institutions must move forward hand in hand with the progress of the human mind." In this instance, the progress of the human mind has brought us nearly miraculous results with the procedure of organ transplantation, and yet our laws and institutions have lagged far behind.

Madam Chairman, during the past 5 years, we have witnessed remarkable scientific advances that have significantly improved the effectiveness of surgery to transplant human organs. These advances have put a tremendous strain on our limited ability to find the necessary organs.

Sixteen months ago, I began to seriously look at this issue after I was approached by a family from Tennessee who sought my help in their search for an organ donor. This led to a series of 5 days of investigative hearings by my Science and Technology Investigations Subcommittee. The hearings included testimony by the experts in all facets of organ transportation and procurement.

With the hard work of the Health Subcommittee chairman, Mr. WAXMAN, and the ranking member, Mr. MADIGAN, and the ranking member of my subcommittee, Mr. SKEEN, and after countless hours of meetings with the scientific and medical experts in the field, we were able to take all this information and use it to draft H.R. 5580, the National Organ Transplant Act. It is a bill that will strengthen the ability of our Nation's health care system to provide organ transplants.

I might say that there are many other Members of this body who have contributed significantly to this bill, some of whom will be speaking during this debate.

Madam Chairman, the need for this bill is great. Although more than a year has passed since as a nation we became aware of the pleas for help, many thousands of Americans of all ages are still on the waiting lists for transplants. The problems have not been solved. There was additional evidence of this need provided by the President when he used a nationally broadcast radio address to make an appeal on behalf of a child from Texas in need of a donor. We were all grateful for the President's help, but unfortunately that child died still waiting for a donor. Each week lives continue to be lost unnecessarily and suffering continues that can be prevented. The time has come to help these people.

H.R. 5580 provides the answers families have been patiently waiting for. It has the overwhelming support of virtually every professional group involved in transplantation. It echoes the conclusions and recommendations of numerous Government studies of the problem.

I would like to take just a moment to share with you the reasons why this legislation is so crucial if we are to overcome the barriers that have prevented the existing organ retrieval system from being able to meet this Nation's growing need for transplantable organs.

We have entered a new era in health care as a result of the miraculous improvement in organ transplantation. The medical community's surgical and medical prowess has given many individuals, who only recently would have faced certain death, the promise of renewed hope and a real chance of returning to a normal life. In addition, not only are lives saved, but organ transplants often actually save money. In a cost study done by the Health Care Financing Administration [HCFA], of the various therapies provided by the End Stage Renal Disease [ESRD] program, patients receiving kidney transplants saved the program millions of dollars. For every increase of 1,000 patients transplanted each year, by 5 years, not only would $12 million be saved, but 800 lives as well. Other studies have shown that kidney transplants, because of the vast improvement they make in the quality of life for kidney patients, are clearly the treatment of choice.

With these facts in mind, it has been a deep disappointment to me that our Nation is not better prepared to accept this new technology.

The shortage of transplantable organs is not the result of a shortage of potential donors. During hearings I held last year, estimates put the number of suitable donors of cadaveric organs at about 20,000 per year. Unfortunately, last year in almost 90 percent of these cases the tragedy of these brain deaths was compounded by the lack of organ donation. The gift capable of saving the life or relieving the suffering of one of the thousands of Americans awaiting a transplant was never made available. Equally disturbing was the fact that in only 1 of 8 referrals to the University of Pittsburgh were they able to retrieve the available organ, because they were either too busy or too exhausted.

Americans are willing to donate the needed organs. In testimony presented before my subcommittee by Dr. David Ogden, president of the National Kidney Foundation, Dr. Ogden shared with us the results of a survey conducted for his organization entitled "Attitudes and Opinions of the American Public Toward Kidney Donation." Among a nationally representative sample of persons age 18 and over, 93 percent were aware of the need for donor organs and of how the present organ donation system works. Of these individuals 75 percent stated they would be willing to donate the organ of a loved one who died. More importantly, we learned that when families of potential donors are approached a very high percentage do in fact give permission to proceed with the donation. Thus it is not a lack of a willingness to donate that keep us from meeting the need for transplantable organs. The problem lies in the organ procurement system, and that is what the legislation will correct.

Madam Chairman, some will say we need to study the issue more before taking action or the present "private sector" efforts are enough. But this just is not the truth.

The "National Organ Transplant Act" does not propose supplanting or replacing the existing system with a federally run system. The proposal is designed to strengthen, expand, and better coordinate the existing federally funded system. We need to recognize that we are already spending a great deal of money for a system to retrieve organs. We should make that system work.

In closing, Madam Chairman, these patients need our immediate help. A week hasn't gone by since I became interested in this issue where my office has not received a desperate call for help. And today as we meet there are many waiting in hospitals whose lives literally depend on the action we take this afternoon.

Let us not waste any more time. I urge my colleagues to join me in the immediate passage of this important life saving legislation.

□ 1740

Mr. MADIGAN. Madam Chairman, I yield such time as he may consume to the gentleman from Louisiana [Mr. MOORE].

Mr. MOORE. Madam Chairman, today the Members are being asked to consider legislation to expand the role of the Federal Government in the area of organ procurement and transplantation. No one questions the need or desire to facilitate organ transplants. We should, however, question certain provisions in the bill and not rush to judgment just because this is a very popular issue. There are points which should be made now and should be considered in conference, possibly moving toward the Senate version of this bill, as I am very certain this bill will pass overwhelmingly on the House floor.

During consideration of a previous organ transplant bill by the same authors before the Committee on Ways and Means, several questions were raised about the implications of such legislation on the future of organ transplants and the Government's role therein. Most of these concerns still exist, including the questions as to the proper role the Government should take in this area.

H.R. 5580 assumes that we know the answers to outstanding transplant questions. Only 1 month ago the Senate passed a transplant bill calling for an extensive study of more than 10 transplant issues. Only 1 month ago the authors of this bill were asking Members to support another version of a transplant bill which called for a task force to consider the medical, legal, ethical, economic and social issues presented by human organ transplantation and procurement.

To my knowledge, Congress has not found the answers to these questions during the last month, so I am puzzled as to why the authors no longer see the need for consideration of these issues. It appears as though we are issuing the verdict without all the evidence being in.

Before we move toward greater Government involvement, we need to consider questions like how we will address the need for multiple transplants; at what point have we done all that can be done; at what point is the expenditure of Federal funds no longer cost-effective; and are the grant programs authorized by H.R. 5580 an appropriate allocation of scarce health care resources when many transplant surgeries remain on the experimental list?

While we are being asked to expand the role of the Federal Government in this area, we are being asked to do so with no mechanism for coordination with our currently existing structure under the end stage renal disease program.

There are currently more than 120 organ procurement agencies under the end stage renal disease program that are receiving more than $30 million in Federal funds for the harvesting and procurement of organs. H.R. 5580 asks us to establish a new unit in the Public Health Service to administer another $40 million program, with little evidence that the current program is underfunded or not operating properly. Not only does this legislation encourage duplicative efforts between the private sector and the Government, but between individual programs in the Government.

What effect will the organ procurement organizations have on current private sector initiatives? Representatives of the eye banks and the American Medical Association are concerned, and I think legitimately so, that this bill will replace many of the private sector initiatives now underway by forcing a consolidation of programs. These groups contend that people are motivated by specific causes and the forced consolidation through the organ procurement organizations will stifle the activity of individual causes.

Will this be just one more instance of Federal intrusion in an area where the private sector is aggressively expanding?

Additionally, we must answer the practical question as to whether or not this program will increase the visibility and demand for organs without adequately increasing the supply of available organs. The Public Health Service testified in the Committee on Ways and Means that the real problem today is an attitudinal problem where the general public is unwilling to voluntarily take steps to donate their organs while still in good health. If this is the case, it is not clear what incentive this bill will provide to increase the number of donors.

While I fully share the concern of the authors of this bill, I think it could become one of the most costly pieces of health legislation we will consider this year. This bill represents a departure in Federal health care policy by providing funding for outpatient drugs. While there is no question that this version of the bill is better public policy than the earlier version, many of the considerations are still valid.

□ 1750

Setting such a precedent could encourage expansion of Federal drug programs. It may raise questions of the equity of providing Federal support for immunosuppressive drugs and not other life-sustaining drugs for people who suffer from diabetes, heart disease, and high blood pressure. According to the American Association of Retired People, drugs for these three illnesses are their priority for expanded medicare benefits. Questions of equity on other drugs for medicaid recipients will also be raised in State legislatures in response to this legislation providing such coverage.

The bill authorizes a $30 million grant program for immunosuppressive drugs to transplant patients free of charge. One of those drugs costs $8,000 per patient per year, and there is only one supplier of that particular drug. Although it is only a 2-year authorization, I fear that we could come under increasing pressure to extend the program because these drugs require lifelong use. Furthermore, it is yet unclear as to the relative advantage for using cyclosporine over other immunosuppressive drugs.

A recent FDA study failed to show any statistically significant differences in the rate of success for kidney transplant patients using cyclosporine over a less expensive immunosuppressive drug.

If it is necessary to reimburse for cyclosporine, the legislation we enact should ensure that cyclosporine is used only on those cases where the success rate is statistically significant, and where the transplant surgeries have been removed from the experimental status.

No one disagrees that people in need of transplants should be denied them because they cannot pay for them; but that is not the issue here. The issue here is a matter of available organs for transplantation. It appears that H.R. 5580 addresses the problem by throwing money in the general direction of the problem, but does little to change the attitudes of the American people who must first voluntarily donate their organs. In fact, many believe that Federal intervention through the organ procurement organization's grant program will have the reverse effect and will discourage the private sector involvement which brought us from the first successful kidney transplant in 1954 to heart and lung transplants in 1981.

In light of the many unanswered questions, I urge the conferees who will eventually be appointed on these two bills to think very carefully about these questions before passing on the final version they will bring back to the House floor. While we all feel the need to come to the aid of our constituents and friends in need of transplant surgery, we would be well advised to consider the implications this bill may have on future availability of organs and transplant surgery.

During the conference, I urge the conferees on this bill to consider expanding the House provisions on a task force to study the medical, legal, ethical, economic, and social issues presented by human organ procurement and Federal funding of immunosuppressive drugs. I also encourage them to hold off on extensive funding until after some of these questions can be answered by a competent and thoughtful task force. A great deal is at stake in this legislation. Most important is the future of available organs. Attempting to legislate a solution without the answers to many questions may prove to be detrimental to those we are trying to help.

Mr. GORE. Madam Chairman, will the gentleman yield?

Mr. MOORE. I certainly yield to the gentleman.

Mr. GORE. I respect my colleague's thoughtfulness. I disagree with him very strongly, as he knows, but I wanted to just address two questions among the many that the gentleman has raised.

First of all, the gentleman mentioned a number of areas where he thought more study was needed and one of them was multiple organ procurement.

I just wanted to share with my colleague the results of a task force, a workshop by the NIH that was conducted in January of this year which produced a very lengthy report essentially answering the questions in that area. It is only one example of how well and how thorough this entire subject has been studied, going back almost 4 years now. There have been so many task forces and workshops and in-depth studies, the answers are in.

The professional groups know what needs to be done and the time for study has passed.

The second point I wanted to comment on was the question the gentleman raised, what encouragement does this give to actually increasing the number of organ donations. We know from pilot programs that educational efforts within hospitals and within medical communities can double and triple the rate of organ donations, just by having a more sensitive approach and a more determined approach to talk with the bereaved families, which has to be one of the most difficult things that any human being has ever done, but it can be done and because of the opportunities to save lives, it must be done.

This legislation, in return for the grants to the organ procurement systems, will require them to set up these comprehensive programs in all hospitals and medical communities to get these educational programs going and also it will require them to engage in the multiorgan procurement efforts that we know can also increase the rate of donations.

I thank my colleague for yielding.

Mr. MADIGAN. Madam Chairman, will the gentleman yield to me, please?

Mr. MOORE. I yield to the gentleman from Illinois.

Mr. MADIGAN. I apologize for interrupting the colloquy between the two gentlemen, but I have limited time and I have five more speakers on this side, so I did want to call that to the attention of the gentleman.

Mr. MOORE. I appreciate that and I shall yield no further and shall try to answer the questions of the gentleman from Tennessee very briefly.

The gentleman's original bill called for a study. It is not in this bill. I am asking for the same task force to study it again. I think that there are things that are yet unanswered.

Second, in answer to the gentleman's comment about the fact that we need more procurement and the gentleman thinks this bill will do that, let me assure the gentleman that the real problem is organ procurement. We all agree on that. Anything we can all agree on to help increase organ procurement is salvation of the problem.

I happen to think from the word we are getting from the American Medical Association that they can do this with the patient-physician relationship. They are doing it now. They do not need Government involvement. They do not even want Government involvement.

I submit to the gentleman that I do not believe he has evidence to show that the Government spending money in this area is going to increase that.

Mr. GORE. Madam Chairman, I will pursue this on someone else's time.

Mr. WAXMAN. Madam Chairman, I yield such time as he may consume to the gentleman from Iowa [Mr. BEDELL]

Mr. BEDELL. Madam Chairman, I am pleased to have this opportunity to address the urgent need for a national strategy to facilitate organ transplants.

Along with the development of organ transplants, and the consequent saving of lives, several crucial questions have been raised. Who shall live? Who shall pay? How are organs obtained? Must those persons in need of an organ transplant be skilled in media manipulation before their needs are recognized?

Without a national policy to ensure some uniformity of response to these questions, there is little hope that we can answer them in a reasonable and just fashion.

Presently, there are not enough transplantable organs to supply those who need them. Many organs that could be used, are not. Absence of a national network to connect donors and recipients may be one reason why.

An estimated 20,000 people a year die from head injuries, brain tumors, and other conditions that make them candidates for organ donation. Organs, however, are actually being obtained from only one-tenth of the potential doners. Despite the commendable efforts of 120 organ procurement agencies from coast to coast, organ shortages continue—as the lives at the mercy of these shortages cannot. Better coordination of the existing organ procurement organizations through a national network would facilitate the acquisition of a greater number of suitable organs.

The gap between the number of available organs and the number of potential recipients makes it a particular tragedy if any organs are wasted. Maximizing the efficiency of the procurement and distribution of transplantable organs can indeed be measured in lives. This is an effort both necessary and urgent.

In my own district we have felt the frustration and pain of the parents of small children who require organ transplants, but who cannot outlive the procurement process. We must act to prevent the continuing occurrence of such tragedies.

It is for these reasons, Madam Speaker, that I voice my support of H.R. 5580, the National Organ Transplant Act, a bill to establish a national policy with regard to organ transplants. It offers a remedy to the problem of a patchworked, disjointed system. It offers a systematic, equitable process of ensuring that those who need organ transplants will get them. And, most importantly, it offers hope.

Mr. WAXMAN. Madam Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALGREN].

Mr. WALGREN. Madam Chairman, in a society where equality of opportunity is a fundamental tenet of the law of the land, the bill we consider today, the National Organ Transplant Act, will be a major advance toward making lifesaving medical treatment available to all, despite their economic status or geographic location.

Science, in the last few years, has rapidly improved the effectiveness of organ transplantation, but our ability to match organ donors with people who need organs has not kept pace, for several reasons. Many individuals are not really aware of the possibility of donating organs. And sadly, our current information network, for linking donors with recipients is not comprehensive or well coordinated. In short, we do not have an effective nationwide system and seriously ill people can really be left out in the cold when they need help.

The bill before us today will help eliminate some of these obstacles. It would improve the national network by providing grants to support local organ procurement organizations and by creating a national organ computer matching system. The bill also includes funds to help people pay for immunosuppressive drugs, drugs that enhance transplants by combating organ rejection.

The National Organ Transplant Act attempts to define a national strategy and create a national structure so that all people can take advantage of this miracle of modern medicine. It does so by building on existing organizations and by retaining the involvement of the medical professionals and the many private, voluntary groups that have brought us this far. By providing start up grants to local organizations, we hope we can increase the number of donated organs; and by creating a new computer matching system, we hope we can get organs to people who need them.

I particularly want to call attention to the provision in the bill to provide modest assistance to pay for the cost of immunosuppressive drugs. Immunosuppressive drugs decrease organ rejection after a transplant operation and thus are essential to the success of transplants. Last November, the Food and Drug Administration approved a new breakthrough drug called cyclosporine which dramatically improves transplant success and thus patient survival, reduces hospitalization, and cuts postoperative medical costs. Unfortunately, these drugs can cost $5,000 the first year and $3,000 every year thereafter, making them virtually unavailable to a number of individuals whose lives depend on them. Not to have the drug makes transplants in essence ineffective. It is poor public policy to help people get transplants without helping make transplants work. It is shortsighted to help match donors with recipients and then leave a person stranded because of the lack of resources. The only recourse if the transplant does not work is another protracted and expensive operation, or in case the kidneys, dialysis—or death.

We should not have in this country a health care system that rations medical treatment or leaves the access to lifesaving techniques to chance. We should not have a system that, intentionally or by circumstance, makes medical procedures available only to the few. We should not have a health care system that requires people to plead to the White House or seek special attention from the news media to save the lives of children and their loved ones. Saving lives should not depend on luck, connections, or scrambling around for help. We must have a system that is available to all, a system that is fair to all and a system that does not let economic and geographic barriers get in the way of sustaining life. If we don't, we will have nothing but chaos and bitterness as families see hopes fade away.

I believe there is a critical role for the Federal Government to play in supporting a fair, nationwide system for helping people who need organ transplants get them and urge my colleagues to support this legislation.

□ 1800

Mr. GORE. Madam Chairman, will the gentleman from Pennsylvania [Mr. WALGREN] yield?

Mr. WALGREN. I yield to the gentleman from Tennessee.

Mr. GORE. Madam Chairman, I want to say for the record that without the gentleman from Pennsylvania's support the Cyclosporine A, which is a major piece of this legislation, would not be in the bill and patients all across this country, if this legislation passes, will owe my colleague a great debt of gratitude.

Mr. WALGREN. I thank the gentleman.

Madam Chairman, I yield back.

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. MADIGAN. Madam Chairman, may I inquire as to the amount of time I have remaining?

The CHAIRMAN. The gentleman from Illinois [Mr. MADIGAN] has 17 minutes remaining.

Mr. MADIGAN. I thank the Chair.

Madam Chairman, I yield 3 minutes to the gentleman from New York [Mr. MOLINARI].

Mr. COURTER. Madam Chairman, will the gentleman yield?

Mr. MOLINARI. I yield to the gentleman from New Jersey.

Mr. COURTER. I thank the gentleman.

Madam Chairman, I rise in strong support of the legislation. I congratulate the sponsors who brought this legislation to the floor. I have had a personal interest in this matter ever since Everett Koop and Dr. Starzl, who is a very famous physician involved in liver transplantation came to my office about 1½ years ago. I have an interest because two children in my district received successful liver transplants in my district in the past 3 years and I have a special interest because cyclosporine A which was mentioned here today was invented and produced in my old congressional district in the great State of New Jersey.

I think what we are doing here cries out for support.

Madam Chairman, I urge my colleagues to support this bill.

Madam Chairman, I rise to express my support for the National Organ Transplant Act, and to thank Mr. GORE and the members of the Energy and Commerce Committee for their efforts on behalf of this important measure.

It has been several years now since Surgeon General Everett Koop, liver transplant specialist Dr. Tom Starzl and I got together to discuss the widespread use of organ transplantation and the mind-boggling implications of the immunity-suppressing drug, cyclosporine A. Since that time, there has been a surge in public awareness of the great benefits of this surgical technique. The publicity has helped save the lives of a number of young transplant patients, including two children in my district who would have died if they had not received compatible livers.

But, while science has rapidly improved the effectiveness of organ transplants, the Nation's system for retrieving organs has failed to keep pace. Advances in medical science have expanded transplant needs to include a number of organs. Yet a national procurement system exists only for kidneys.

The public appeals by parents of children like Jamie Fiske will not always be effective in providing an emergency supply of donor organs. I believe a Federal response is necessary to improve information about and access to all available organs. The organ procurement and distribution portions of H.R. 5580 should go a long way in providing the up-to-the-minute information and placement assistance which is essential to saving a human life when a vital organ fails.

I also support the provisions of the bill which provide that immunosuppressive drugs be made available, without cost, to qualifying transplant centers for use on an outpatient basis by those who have received organ transplants. Immunosuppressive drugs are essential to the success of an organ transplant, and are largely responsible for the improved survival rate of transplants. Because recipients must take these drugs for life in order to prevent rejection of a foreign organ, the costs of immunosuppressants can make it impossible for certain recipients to maintain the dosage regime.

By providing these drugs to those transplant recipients who cannot afford them, the Government will save millions of dollars currently spent under the End Stage Renal Disease Program of Medicare for costly kidney dialysis and rejection treatment. More importantly, this provision will make transplantation a real possibility for those whose kidney, liver, or heart is failing.

I feel the National Organ Transplant Act represents the appropriate degree of Federal involvement in an area of medicine which promises to save countless lives. I urge my colleagues to give their enthusiastic support to this long-overdue legislation.

Mr. MOLINARI. Madam Chairman, we are really entering a very exciting phase in this country with respect to the transplantation of organs with the immunosuppressant such as cyclosporine A which we have heard so much about.

The world of medicine is changing rapidly before our eyes. I suspect that most of us who are speaking in favor of this bill are those who have had some personal experiences.

My good friend from New Mexico [Mr. SKEEN] lost a sister some years back when today her life could be saved.

Government has lagged behind medical science and I would like to just quickly retrace some of my own experiences with reference to liver transplants.

We had a young lady in my district who was dying from a liver disease. I appealed for donations to try to raise enough money, but time was running out. I went after the State of New York and appealed to the commissioner of health to try to fund the transplantation procedure through Medicaid.

My original offer was rejected on the basis that the procedure was experimental and that the success rate was too low.

I then appealed to Dr. Starzl at the University of Pittsburgh for information to help me and I found that the State of New York, usually one of the pioneers in medical science, was wrong. I asked the health commissioner to contact Dr. Starzl and they did. Much to my pleasant surprise they changed their position and today in New York State, the State of New York funds the liver transplants through medicaid.

Now, we talked for a moment, the gentleman from Tennessee [Mr. GORE] talked about the President and the appeal that he made unsuccessfully.

I know the President was very sad. I was in the White House talking to him about that. We spoke about that. Mr. GORE and he went back on the radio a couple of weeks later and made an appeal for donors throughout the country.

We should know, this body, that almost 5,000 people responded to that request.

The CHAIRMAN. The time of the gentleman from New York [Mr. MOLINARI] has expired.

Mr. MADIGAN. Madam Chairman, I yield 1 additional minute to the gentleman.

Mr. MOLINARI. I thank the gentleman.

Let me just say that this is very important. We in government have to take the lead in trying to spread the gospel throughout the country that there are lives out there today being lost which can be saved. Yes; there is a problem of donors and there is a problem of getting the money to cover the transplantation procedures. One thing we are overlooking, though, when you analyze the cost of what it costs for a patient who dies from one of these diseases and subtract that from the cost of the procedure and the postoperative care. Just one last bit of statistics: in the case of renal dialysis, it costs $26,000 a year for that treatment. If you were to have a transplant it would cost $46,000 in the first year but only $7,000 for the immunosuppressors in succeeding years. I think that is a good example of the fact that we can save money and lives at the same time.

Madam Chairman, I thank the gentleman [Mr. MADIGAN].

Madam Chairman, I support this legislation very strongly.

Mr. WAXMAN. Madam Chairman, I yield 4 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Madam Chairman, I rise in support of H.R. 5580. This bill provides a desperately needed improvement of regional organ procurement agencies and creates a national computerized network to match organs to donors. I commend all of the committee members for reporting out this bill and I would add a special word of appreciation to my colleagues, Mr. WAXMAN and Mr. GORE, for their leadership.

Madam Chairman, I believe my record clearly shows that I am not one to quickly invite the Federal Government into areas previously handled exclusively by the private sector. But I have heard the arguments that the Federal Government need not really become involved in the organ transplant system—that the current channels of communication and procurement agencies are completely capable of handling all needs that arise. And every time someone tells me that, I wish I could take them to Clyde, TX, where they could meet face to face with the parents and grandparents of Ashley Bailey.

In some respects, Ashley's case was similar to that of other babies suffering from biliary artesia who must have liver transplants if they are to live. But in other respects, Ashley's case was truly exceptional. It started with a remarkable community and statewide effort to raise more than $100,000 to pay for the transplant. Next came passage of a unique piece of legislation in the Texas Legislature which granted a special entitlement to medicaid funds. Meanwhile, my own staff was involved daily in contacting the key figures of the organ transplant procurement system, arranging for telegrams to be sent to every hospital in the country, pressing the news media to publicize Ashley's case, urging national leaders of civic and service organizations to develop educational campaigns about the need for organ donors, and taking every possible opportunity to talk about Ashley. Finally, the climax of all of our efforts came when President Reagan asked for a donor for Ashley during his national Saturday radio broadcast. An exceptional effort was made on the part of so many, and still, all of this combined was not enough for Ashley.

For nearly 15 long months Ashley fought bravely to hold on to life, depending on the present organ procurement system to locate a liver for her. And many people within that system fought hard along with her to locate that lifesaving organ. But in the race with time, the organ donor system and Ashley lost. On November 11 of last year, Ashley died.

None of us understand the logic of fate, and maybe it was just meant to be that little Ashley would accomplish more through her death than she could have through continued life. But every time I think of Ashley Bailey, I can't help but think that our system somehow failed her. There must be a way of improving communication between independent organ procurement agencies around the country. There must be a better way of educating the public to realize that when tragedy strikes their family, they can find some meaning in death by giving life to others. There must be a way to train physicians, and nurses, and ministers, and emergency personnel to deal more constructively with families in the middle of tragedy. There must be a way to spare parents of children needing transplants the desperation of seeking publicity techniques as the best or only way to give their children life. There must be a better way, a less haphazard way, of deciding who may live and who must die. For the sake of giving meaning to Ashley's life, and for the sake of all of the children and adults still hanging on to life, there must be a way.

H.R. 5580 does much to find that way. Through seed money to regional organ procurement organizations and the establishment of a coordinating U.S. transplantation network within HHS, this bill provides incentives for private and local organizations to become more effectively involved in the transplant system. Precautions against excessive dependency on the Government are incorporated through a 3-year limitation on grant money and a requirement that the recipient organizations demonstrate a capability of operating independently on a fiscally sound basis.

Furthermore, this legislation provides some necessary guidance to the way the organ procurement system will develop in upcoming years. In an area with such complex medical, legal, ethical, economic, and social aspects, there are certain considerations which, to a minimal but necessary degree, should be policed by the Federal Government for the public good. Experience has taught us over and over again that the most appropriate role for the Government, however, is as a referee, not a quarterback. I am very pleased that H.R. 5580 acknowledges this role by requiring eligible organizations to have a system for allocating donated organs among transplant centers, but does not dictate any particular criteria that must be used. It is appropriate for the Federal Government to outline what must be accomplished without specifying exactly how it must be done. The establishment of the Task Force on Organ Transplantation and the prohibition against selling human organs will provide further referee-type safeguards.

I believe that H.R. 5580 shows admirable constraint in its scope. The need for coordination and funding in the organ transplant system could have been addressed in ways which would have led to massive Federal intervention, but fortunately, this has not been the case. I want to commend the advocates of this bill for not creating new, open-ended entitlements and a new bureaucratic maze which could have meant far greater Federal funding and intervention.

We are all amazed by, and grateful for, the lifesaving techniques that modern medical advancements have brought us, but we also are faced with new dilemmas that demand concerned, creative, constructive responses. I believe that H.R. 5580 is one such response. For the sake of the memory of Ashley Bailey and the lives of so many others, I urge all of my colleagues to vote in favor of this bill.

□ 1810

Mr. MADIGAN. Madam Chairman, I yield 3 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Madam Chairman, thanks to rapid advances in medical science over the past decade, more and more lives are being saved by means of organ transplantation. People who once would have died of kidney disease, heart disease and even liver disease, are being given a new lease on life for 5, 10, 15, or even more years. Furthermore, those who have been suffering from less serious, but nonetheless severe, forms of those diseases are beginning to look to the possibility of transplants in the hope that the quality of their lives can be dramatically improved.

While it is wonderful that so many people are being helped in this fashion, there are however some problems, the most obvious being that the demand for organs exceeds the supply available. Only 20,000 potential donors—people who are brain dead but whose heart, kidneys, liver and so forth, are otherwise undamaged—are to be found each year on average and, of those, only 2,200 or so actually become donors. On top of that, the cost of these transplants is often extremely high and, except for corneas and kidneys, they are generally considered experimental and therefore not covered by medical insurance or medicare. Medicaid sometimes picks up the tab, but more and more frequently we are seeing instances of parents with sick little children having to launch a public relations campaign first to find a suitable donor and then to raise the money to cover the cost of the operation and followup care.

The legislation we have before us—H.R. 5580—is a well-intentioned attempt to deal with some, if not all, of these problems. However, it is not a panacea. For one thing, there is nothing that can be done legislatively that will increase the number of potential heart and liver donors; all that can be done is to increase the percentage of potential donors that become actual donors and no matter how much we increase that percentage by, we must recognize that it may not be enough to eliminate the organ shortage altogether. Also, in some respects, this legislation appears to create as many problems as it attempts to resolve. However, that is something that we can do something about, right here and now. Which brings me to the amendment in the nature of a substitute which I am offering today.

As reported, H.R. 5580 authorizes $40 million for organ procurement organizations, provides another $30 million for a new immunosuppressive drug program and establishes a new administrative entity in the Public Health Service to facilitate development of a better coordinated organ transplant system nationwide. It also calls for a task force of organ procurement and transplantation, a transplantation network, a scientific registry and a prohibition on the purchase of organs but it is the first three provisions that are of the greatest concern. First of all, a national kidney procurement system already exists, as do two computer matching systems—a federally supported system for kidneys and a non-Federal system for matching other organs—so the groundwork at least has already been laid. Second, medicaid programs in 35 of the 50 States already cover immunosuppressive drugs for needy patients. And, finally, what is most likely to result from the creation of a new bureaucratic administrative unit at the Public Health Service is not an increase in the number of organs being donated but an increase in the amount of redtape involved with each donation. Such is the nature of government, especially the Federal Government, which is why it seems to me we would be better off building upon the largely private organ transplant system that is currently developing rather than relying on more Government bureaucracy to get the job done.

My amendment in the nature of a substitute would not only put more reliance on the private sector and less on the bureaucrats, but it would avoid the problems that could result from a new immunosuppressive drug program run by the OPO's, plus it would save some money. Instead of providing the OPO's $40 million over the next 3 years, it would give them $15 million in seed money. Instead of telling the OPO's to provide needy people with cyclosporine and other immunosuppressive drugs and giving them $30 million for that purpose, it calls for a study designed to determine the best method of reimbursement for immunosuppressive drugs. And instead of building a new bureaucracy over at the Public Health Service, it relies more on existing networks to coordinate and expand its activities. Retained is the task force on organ procurement and transplantation, the concept of an organ transplantation registry and the prohibition on the purchase of organs, creating a package that not only will help provide the information that is necessary to increasing the number of organs actually donated but will do so in a way that is not self-defeating.

To put that last statement in perspective, let us look for a moment at this immunosuppressive drug business. Without these drugs, transplant patients would soon reject their new organs and all would be in vain, so there is no question about their needing those drugs. What is in question is who should pay for those drugs. Currently, medicaid covers certain immunosuppressive drugs in 35 of the 50 States; whether those 35 States would continue to do so if the Federal Government were to initiate a separate program through the OPO's is an entirely different matter. They might well take the position that, if the Federal Government is going to fund the provision of immunosuppressive drugs, what should they. Also, it should be noted that Medicare's end stage renal dialysis program already covers immunosuppressive drugs for kidney transplant patients for up to 3 years so long as they are supplied by a physician. Which brings up the third point, and that is if the Federal Government begins providing self-administered immunosuppressive drugs, what is it going to tell other chronic disease sufferers who use self-administered drugs, such as diabetics who take insulin, when they ask why their drugs aren't being provided for free. Given Medicare's current fiscal dilemma, this last point is of no small concern. We are having trouble enough providing existing Medicare benefits much less providing a lot of additional benefits, which is what I meant about not passing legislation that is self-defeating.

Madam Chairman, no one is suggesting that improvements cannot be made in the area of organ transplants. Just as medical science can improve the survival rate with new techniques, so too can our health care delivery system increase the percentage of potential donors whose organs become available for transplant and improve the delivery of those organs to those who need them. But accomplishing that objective does not necessarily mean that we need a big new Federal bureaucracy or a precedent-setting new drug program. There is no reason why we can't build on the program we have now, making improvements within the existing framework and using the resources of the Federal Government in a judicious and nonintrusive manner. The amendment in the nature of a substitute will get us started along that path and I urge my colleagues to give it their support.

Mr. WAXMAN. Madam Chairman, I yield 3 minutes to the gentlewoman from Maryland [Mrs. BYRON].

Mrs. BYRON. Madam Chairman, I rise today in support of H.R. 5580, the national organ transplant bill. I believe that this legislation, if enacted, will effectively expand and strengthen organ procurement efforts across the Nation. We have accepted the eye bank program as one of our earlier successes in this field. Now we must move to make the public as aware of the organ donor program.

All of us have been touched by the plight of patients and their families who are desperately in search of available organs while time continues to run out. You may have heard about 2-year-old Kendra Hawthorne from Germantown, MD, who successfully underwent a liver transplant just last month. As fate would have it, there is yet another child from Germantown, 5-month-old Jeffrey Poole, presently in critical condition at Children's Hospital awaiting a liver. If a liver is found for Jeffrey, he will be the youngest person ever to undergo a transplant operation. However, it is not only children who are desperately in need of organ transplants. Peter Knold of Cascade, MD, is also in serious need of a liver transplant operation. He is 36 years old.

It is my hope that this legislation will enhance the chances of these brave people, and all those desperately awaiting organs—by increasing national awareness of the ongoing need for organ donations. In this quest for these much-needed organs, I know that we are asking a supreme sacrifice from our citizens. We are asking heartbroken parents of a young child to forget their grief long enough to save another's life. We are asking mourning families to allow needed organs of a loved one to be donated. But what we are asking is the ultimate in human accomplishment—giving the gift of life to the living.

Once again, I want to express my support for the successful passage of this important and worthwhile legislation.

Mr. MADIGAN. Madam Chairman, I yield 3 minutes to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

Mrs. SCHNEIDER. Madam Chairman, I rise today in support of H.R. 5880, the National Organ Transplant Act.

My involvement with this bill is a direct result of the experience of one of my constituents, the late Justine Pinhiero, of Pawtucket, RI. When the family and friends of 4-year-old Justine first learned that she suffered from bilary atresia, a debilitating disease of the liver, they immediately began a long and often frustrating search for an organ donor. The Pinhieros soon learned that there currently exists no organized system for matching liver donors with needy individuals. Instead, sick individuals and their families are required to engage in a macabre ritual of television ads, pleas to public figures, and assorted other public relations ploys.

Justine Pinhiero was lucky. She received not one but two livers for transplant. Others are not so lucky. Experts testifying in front of the Investigations and Oversight Subcommittee of the Science and Technology Committee estimated that as many as 25,000 Americans today are in need of a life saving organ transplant. Tragically, one-half of these individuals will die before they reach the operating table.

The bill we consider today replaces the current, haphazard organ procurement system with a coordinated system of local organ procurement organizations. These local organizations will be responsible for acquiring and distributing available organs in a fair and equitable manner to needy individuals. I applaud the committee for its foresight in providing localities with flexibility in setting up and constructing these organizations. My hope is that this coordinated system of local organizations will obviate the need for donors to appeal to politicians and the mass media.

The bill also shows recognition of the tremendous cost and importance of immunosuppressive drugs, particularly cyclosporine, the development of which has improved dramatically the success rate for organ transplant operations. By directing the Secretary of Health, Education and Welfare to purchase and distribute cyclosporine and other immunosuppressives to qualified local organizations, this bill will alleviate the financial burden of organ transplants, and dramatically improve the success rate of those transplants that are performed.

Finally, this bill wisely outlaws the sale of organs for transplant. This proposal was considered by the Subcommittee on Investigation and Oversight, but was rejected because it is ethically denigrating to both the human body and our civilized minds. I should mention, however, that the suggestion of selling organs has arisen only in reaction to the laissez-faire mess which currently passes as an organ procurement system. It is up to Congress to design an orderly procurement system—which we are doing today—and to impress upon our constituents the importance of voluntarily donating their organs. If we fail in these tasks, it will only provide more evidence to those who argue that allowing organs to be bought and sold is the best way to close the organ gap.

Madam Chairman, the development of an effective, efficient organ procurement system is only the first of several steps Congress must take to come to grips with developments in medical technology which have transformed the world around us. Again and again, we will be asked to determine the proper distribution and cost of limited and expensive medical technologies. The entire area of genetic engineering will bring to the fore ethical considerations with which this body has precious little previous experience. I mention this today only to remind my colleagues of the responsibility we have to make sure that future public policy choices enhance and support the advances in medical science which are occurring daily.

□ 1820

Mr. WAXMAN. Madam Chairman, I yield 1 minute to the gentleman from Puerto Rico [Mr. CORRADA].

Mr. CORRADA. Madam Chairman, I rise in support of H.R. 5580 to amend the Public Health Service Act to allow for financial assistance to organ procurement organizations involved in efforts to identify potential organ donors with local hospitals and organ transplant centers and for other purposes.

In this age where medicine is making such great advances and where technology is allowing more complicated and delicate surgery in the field of organ transplants we must act to ensure that information and communication is provided promptly to facilitate finding donors for persons in need of organ transplants.

By approving this bill we will help open vital lines of communication and information through the creation of a U.S. transplantation network. This network will facilitate the matching of organ donors and organ recipients. This is crucial since time is the deciding factor in many of these cases and information is essential to promptly identify potential donors and match them with potential recipients.

The basic aspects of the bill, consisting of grants to local entities to establish and expand qualified organ procurement organizations, the creation of the national transplantation network, the national registry, and the funds to help patients pay for immunosuppressive drugs all intertwine into a coherent whole which promises the highest degree of efficiency at all levels.

At present there are 15 to 30 transplants performed a year in Puerto Rico. Since 1977 up to the present 125 transplants have been performed. The rate of survival in kidney transplants is 70 to 74 percent. End-organ transplants have a rate of 85 to 90 percent survival. There are 300 new terminal kidney disease cases reported each year. When these statistics are compared it is clear there are not enough transplants being performed. H.R. 5580 will assist in solving this problem. The funds which this legislation puts to use in the system will emphasize and make available treatment for kidney disease and probably for other end-organ diseases as well.

I urge my colleagues to vote for this very needed legislation.

Mr. WAXMAN. Madam Chairman, I yield 3 minutes to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. I thank the gentleman for yielding time to me.

Madam Chairman, as an original cosponsor of H.R. 5580, I rise in support of this important measure.

I commend the gentleman from Tennessee [Mr. GORE] for his leadership on this issue, and also the gentleman from New Mexico [Mr. SKEEN], the gentleman from California [Mr. WAXMAN], and the gentleman from Illinois [Mr. MADIGAN] for their support of this legislation.

Among its provisions this bill provides that immunosuppressive drugs be paid for by the Public Health Service Grant Program through the transplant centers this bill establishes.

We often hear the word "crisis" thrown about in this Chamber. It is a word which is used all too often to describe problems of all types.

Today we are discussing a problem which is truly critical. It is a problem which cannot wait for more talk and more study. It is the crisis faced by transplant patients who need immunosuppressive drugs.

Figures alone would not give you an idea of the immensity of this crisis. Mere figures would not tell the story of the needs of transplant patients in terms in which all of us can understand.

Let me tell the story of one of my constituents in Columbia, MO. This man, who is blind, had total renal failure due to sugar diabetes and in 1983 had a successful kidney transplant. he was put on cyclosporine, an immunosuppressive drug.

Without cyclosporine his body is likely to reject the new kidney. He wrote me to say "If I were to lose my new kidney it would mean going on kidney dialysis. Kidney dialysis would cost the Government at least $30,000 each year."

He was informed by the drug manufacturer that after he ran out of his free 6-month supply, he would be totally responsible for paying for the drug. Unfortunately cyclosporine would cost him approximately $7,600 a year. This cost is prohibitive for him as he currently lives on Social Security disability. When he was put on the drug he was never told what it would cost or that it would cost anything.

With some help from friends and the National Federation for the Blind he has been able to purchase a 3-month supply of cyclosporine. After mid-September his supply will be exhausted. This is the crisis facing him.

Those of us who have never been in this position have no idea what it is like to face a life-threatening condition without the financial resources to pay for the necessary drugs.

Cyclosporine is expensive. Transplant patients must take it for life once they begin using it. If they discontinue use, they face losing their lives.

This bill we consider today would provide the framework for solving this problem by providing grants to help patients cope with the high cost of immunosuppressive drugs.

A few of my colleagues have expressed concern about the cost of this bill. I say to them: How much is a life worth?

But let's address the cost issue. This very modest proposal is limited to a 2-year authorization of $30 million. This bill is intended to fill the gaps in need not met by other coverage including medicaid. In my home State of Missouri medicaid does not cover the cost of immunosuppressive drugs. Efforts are being made to change this, but the change will not occur quickly enough to help my constituent and others like him in Missouri.

I recall that President Reagan once said that industry and nonprofit agencies would step in to fill the void left by cutbacks in Government services. Let me tell you that my constituent contacted 150 nonprofit agencies seeking financial help to pay for the cost of cyclosporine. These agencies were sympathetic, of course. But, of these 150 agencies, not a single one was able to provide any monetary assistance.

So I urge my colleagues to support H.R. 5580 and to oppose efforts to delete the provisions on immunosuppressive drugs.

Mr. MADIGAN. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I am pleased to join my colleagues in supporting H.R. 5580, the National Organ Transplant Act. I believe this legislation takes the necessary first steps to better coordinate and improve our Nation's organ procurement activities and organ transplantation.

The Subcommittee on Health and the Environment held extensive hearings on this issue and received testimony from experts in the field of transplant surgery and organ procurement. These witnesses brought to the subcommittee's attention the vastly improved effectiveness of transplant surgery over the past 5 years. This is largely due to the development of the immunosuppressive drug cyclosporine, which has shown 1-year organ survival rates of as high as 90 percent for human kidneys.

Yet as technology has rapidly improved the effectiveness of transplantation, organ procurement and distribution activities have been limited. Of the over 20,000 brain deaths in the Nation each year, less than 15 percent of these patients' organs are actually donated. Because of a lack of knowledge on the part of the general public, difficulties in coordinating organ procurements, and problems with financing operations and drug therapy, an often inefficient transplant network results.

H.R. 5580 addresses the need for a framework to coordinate organ procurement activities and offers assistance to those organizations which serve those in need of transplants by providing grants to strengthen and expand local procurement organizations across the country.

The legislation will also help to support a national organ computer system, which will maintain a national registry of individuals who need organs and will operate a 24-hour telephone system to help match donated organs with potential recipients.

H.R. 5580 provides a grant program for immunosuppressive drugs for 2 years. Although these drugs are costly, they are essential to the success of organ transplants in reducing, and often eliminating, the need for repeat hospitalizations and graft rejection.

Also, the National Organ Transplant Act outlaws the buying of human organs.

I want to reiterate my support for H.R. 5580. I believe the National Organ Transplant Act will strengthen the relationship between the Federal Government and private sector health organizations, and will leave the operation of the organ transplant system in the hands of the procurement and transplant centers which already exist.

Madam Chairman, the gentleman from Tennessee [Mr. GORE] and the gentleman from New Mexico [Mr. SKEEN], from the Science and Technology Committee, deserve much of the attention for our being here this evening. The gentleman from California [Mr. WAXMAN], the chairman of the Subcommittee on Health and Environment within the Energy and Commerce Committee has demonstrated not only remarkable concern for the people who will be affected by this, but a remarkable understanding of the legislative process. Through his ability to finesse many obstacles, we are able to be here tonight with this carefully constructed bipartisan piece of legislation. I want to pay my respects to the gentleman from California not only for the sincere approach that he has taken in providing the future beneficiaries of this legislation with the most precious gift of continuing life, but I also want to congratulate him on his tremendous legislative skills.

Mr. WAXMAN. Madam Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding to me so that I might point out to my colleagues and all those who are viewing this debate the enormous contribution my good friend, the gentleman from Illinois, has made for this legislation and for so many other items that are on our subcommittee agenda. In the national interest, the gentleman has searched for accommodations and ways where seemingly irreconcilable differences can be reconciled. I know that in terms of my working with him I have been convinced by him so often to make concessions from what I thought was the appropriate and final point to an even more appropriate and final point, all in the public interest. I appreciate his work on this bill, I appreciate his work on so many others, and I appreciate his friendship as well.

I thank the gentleman for yielding to me.

Mr. MADIGAN. I appreciate my friend's kind remarks.

Madam Chairman, I urge support for the bill, and I yield back the balance of my time.

Mr. WAXMAN. Madam Chairman, I yield my remaining time to the gentleman from Ohio [Mr. LUKEN].

The CHAIRMAN. The gentleman from Ohio [Mr. LUKEN] is recognized for 2 minutes.

Mr. LUKEN. Madam Chairman, I am proud to join my colleagues, Mr. GORE, Mr. WAXMAN, and Mr. SKEEN, in cosponsoring the National Organ Transplant Act, a vitally needed piece of legislation that will develop a national policy on organ transplants.

It is indeed unfortunate that it takes a tragedy such as the death of a young husband, father, child or loved one to bring home to us the gaps and shortcomings of our national health policies. However, once aware of the need for action, we are conscience-bound to pursue it. I personally became involved in this matter when one of my constituents, Joseph Montgomery of Westwood in Cincinnati, found himself helpless when his health insurance would not cover the expense of a needed heart transplant, nor could he raise the required $60,000 deposit to be placed on the organ waiting list of a Pittsburgh hospital. I am sorry to report that time ran out for Joseph Montgomery; due to his financial restrictions, he could not obtain a heart transplant and he died. His tragedy is heightened by the realization that we had the technology for a successful heart transplant that might have saved his life.

Congress must decide national policy that heart and liver transplants have advanced beyond the experimental stage, so that there should not be the slightest hesitation for all public and private carriers to cover payment for these lifesaving procedures. This bill is an excellent beginning.

We live in an organized society; therefore we create institutions and establish policies to deal with human problems, such as the need for an organ transplant, on a level that individuals cannot possibly manage individually. The National Organ Transplant Act also establishes a National Center for Organ Transplantation within the Department of Health and Human Services. The bill authorizes a program of grants for the development and expansion of local organ procurement organizations throughout the Nation, and creates a U.S. transplantation network to match donated organs with potential recipients.

These are steps we can take immediately in the development of a comprehensive policy on transplants. We have the capacity, but do we have the will? I think when we look at the tragic death of Joseph Montgomery and millions of other Americans who will be facing a similar fate, we can understand the urgency and necessity of developing a national organ transplantation policy today. I urge my colleagues to support this bill.

● Mr. BROOMFIELD. Madam Chairman, we have all seen TV news stories regarding a race with death to find a vitally needed organ to transplant into a young child's body.

I am sure we all recall the time when a father made a plea before a conference of surgeons to help him locate an organ that would help extend the life of his child, or when the President focused the attention of a nation in searching for an organ to save the life of another child.

Most of these efforts that have caught the Nation's attention have ended happily with the child beating death in that desperate race.

However, we must wonder how many more people did not catch the media's attention and did not win the race. We must wonder how many lifesaving organs were discarded because a recipient was not located in time.

These cases point to the fact that the science and the medical skills associated with organ transplants have far outpaced this Nation's methods of making sure that organs available for donation are matched with the many people who require new organs.

It also points to a failure in our system that says if you want to improve your chances of getting a needed organ, you have to catch the attention of the media or some important person to champion your cause.

Madam Chairman, it is because of these failures in our current system that I rise in support of passage of the National Organ Transplant Act which seeks to improve coordination in organ transplants and provide better education about the procedures involved.

It is essential that a nationwide network using the latest methods of information processing be established to help place donated organs with individuals whose lives will be saved by these organs.

With such a working system, no longer will people have to depend upon catching the attention of the Nation's media. No longer will they wonder whether somewhere an organ is available and not being used because of the lack of information.

Equally important as the establishment of such a nationwide network is the necessity to familarize our fellow Americans about the need for organ donations and to encourage individuals to actively consider this route in saving a life.

Madam Chairman, one greets the news of an organ transplant with mixed emotions. One is certainly overjoyed when a life is saved, just as one is saddened to know that a death occurred for the transplant to have taken place.

Yet the saving of another's life through an organ transplant helps, in part, to provide meaning in the death. This bill will help assure that donated organs will not be wasted and will be available to help save lives. Therefore, I urge my colleagues to join me in supporting this bill.●

□ 1830

The CHAIRMAN. All time has expired.

Pursuant to the rule, the bill will be considered under the 5-minute rule by titles, and each title shall be considered as having been read.

Mr. WAXMAN. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. GORE] having assumed the chair, Mrs. BOGGS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, had come to no resolution thereon.

ORDER OF BUSINESS

Mr. CRAIG. Mr. Speaker, I ask unanimous consent to proceed in advance of the gentleman from Michigan [Mr. SILJANDER] in special orders.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Idaho?

There was no objection.

CONSTITUTIONAL AMENDMENT TO BALANCE THE FEDERAL BUDGET AND LIMIT TAXATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Idaho [Mr. CRAIG] is recognized for 60 minutes.

GENERAL LEAVE

Mr. CRAIG. Mr. Speaker, before I begin, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include therein extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Idaho?

There was no objection.

Mr. CRAIG. Mr. Speaker, I have taken this special order this afternoon to once again address the most important question that I believe is being discussed by the American public at this time, and that a good many of my colleagues here in this Chamber wish were being considered by this body, and of course, that is the constitutional amendment to balance the Federal budget and limit taxation.

Since 1976, a good many States of our Union, have been using article V of the Constitution of this country to petition the Congress, as they are permitted through the Constitution, to issue forth an amendment for their consideration and ratification on the question of a balanced budget or to convene a Constitutional Convention for the purpose of considering the issue of a constitutional amendment for the balanced budget.

Mr. Speaker, in this special order, I have asked a good number of my colleagues who represent States who have taken that action through their legislature to participate with me this evening in presenting that resolution and reading it into the RECORD the action that that State legislative body has taken.

At this time, in starting this process, a good many of my colleagues have agreed to participate. The first one I would like to recognize, who is not here this evening, is my colleague from Alabama [Mr. BILL DICKINSON], and in the situation where he is not here, I will read the resolve clause of that State's petition into the RECORD.

On August 18, 1976, the State Legislature of Alabama petitioned the U.S. Congress, and I read:

> Be it further resolved, That, alternatively the Alabama Legislature makes application and requests that the Congress of the United States call a constitutional convention, pursuant to Article V of the Constitution of the United States, for the specific and exclusive purpose of proposing an

amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Mr. Speaker, I request that the full contents of this resolution be entered in its entirety into the RECORD.

HOUSE JOINT RESOLUTION 227

Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is vital to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, there is provision in Article V of the Constitution of the United States for amending the Constitution by the Congress, on the application of the legislatures of two-thirds (⅔) of the several states, calling a convention for proposing amendments which shall be valid to all intents and purposes when ratified by the legislatures of three-fourths (¾) of the several states, or by conventions in three-fourths (¾) thereof, as the one or the other mode of ratification may be proposed by the Congress; now therefore,

Be it resolved by the Legislature of Alabama, both houses thereof concurring, That the Legislature of Alabama hereby petitions the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the Alabama Legislature requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Be it further resolved, That, alternatively the Alabama Legislature makes application and requests that the Congress of the United States call a constitutional convention, pursuant to Article V of the Constitution of the United States, for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Further resolved, That the legislatures of each of the several states comprising the United States are urged to apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or requiring the Congress to call a constitutional convention for proposing such amendment to the Federal Constitution.

Further resolved, That the Clerk of the House is directed to send copies of this Joint Resolution to the Secretary of State and presiding officers of both Houses of the Legislatures of each of the other States in the Union, the Clerk of the United States House of Representatives, Washington, D.C., and the Secretary of the United States Senate, Washington, D.C., and to each member of the Alabama Congressional Delegation.

□ 1840

Mr. CRAIG. Madam Speaker, I now yield to my colleague, the gentleman from Alaska [Mr. YOUNG] to enter into the RECORD his State legislative resolution.

Mr. YOUNG of Alaska. Madam Speaker, in 1982 the State Legislature of Alaska petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Further resolved, That alternatively this body makes application and requests that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

Mr. Speaker, I include the full contents of this resolution, in its entirety, in the RECORD.

STATE OF ALASKA—LEGISLATIVE RESOLVE No. 1

Be it resolved by the Legislature of the State of Alaska:

Whereas annually the United States moves more deeply into debt as its expenditures exceed its available revenues and the public debt now exceeds hundreds of billions of dollars; and

Whereas annually the federal budget demonstrates the unwillingness or inability of the federal government to spend in conformity with available revenues; and

Whereas proper planning, fiscal prudence, and plain good sense require that the federal budget be in balance absent national emergency; and

Whereas a continuously unbalanced federal budget except in a national emergency causes continuous and damaging inflation and consequently a severe threat to the political and economic stability of the United States; and

Whereas, under article V of the Constitution of the United States, amendments to the Constitution may be proposed by Congress or, on the application of the legislatures of two-thirds of the states, Congress shall call a constitutional convention for the purpose of proposing amendments:

Be it resolved by the Alaska State Legislature that the Congress of the United States is requested to propose and submit to the states an amendment to the Constitution of the United States which would require that within four years after its ratification by the various states, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

Further resolved, That alternatively, this body makes application and requests that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

Further resolved, That if Congress proposes such an amendment to the Constitution this application shall no longer be of any force or effect; and be it

Further resolved, That this application and request shall no longer be of any force or effect if the convention is not limited to the exclusive purpose specified by this resolution.

Copies of this resolution shall be sent to the Secretary of the United States Senate; the Clerk of the United States House of Representatives; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Mr. CRAIG. I thank my colleague, the gentleman from Alaska.

Madam Speaker, I would now yield to my colleague, the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. I thank my colleague for yielding.

Madam Speaker, on April 10, 1979, the State Legislature of Arizona petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

That, alternatively the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency, that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

Madam Speaker, I include the full contents of this resolution, in its entirety, in the RECORD:

SENATE JOINT RESOLUTION 1002

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat facing our nation; and

Whereas, constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments. Therefore, be it

Resolved by the Legislature of the State of Arizona:

1. That the Congress of the United States institute procedures to add a new article to the Constitution of the United States and that the Congress of the United States prepare and submit to the several states an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

2. That, alternatively, the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

3. That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this joint Resolution then this petition for a constitutional convention shall no longer be of any force or effect.

4. That the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the federal Constitution or requiring the Congress to call a constitutional convention for proposing such an amendment to the federal Constitution.

5. That the Secretary of State of the State of Arizona transmit copies of this Resolution to the President of the United States Senate, the Speaker of the House of Representatives of the United States, to each Member of the Arizona Congressional Delegation and to the Secretary of State and the presiding officers of both houses of the legislature of each of the other states in the Union.

Mr. CRAIG. Mr. Speaker, I would now yield to my colleague, the gentleman from Kansas [Mr. Whittaker].

Mr. WHITTAKER. I thank my colleague for yielding.

Mr. Speaker, on April 26, 1978, the State Legislature of Kansas petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved: That, alternatively, the Legislature of the State of Kansas hereby makes application to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by the Congress for a fiscal year shall not exceed the total of all estimated Federal revenues for such fiscal year. If the Congress shall propose such an amendment to the Constitution, this application shall no longer be of any force or effect . . .

Mr. Speaker, I include the full contents of this resolution, in its entirety, in the Record:

Senate Concurrent Resolution No. 1661

Whereas, Annually the United States moves more deeply in debt as its expenditures exceed its available revenues and the public debt now exceeds hundreds of billions of dollars; and

Whereas, Annually the federal budget demonstrates the unwillingness or inability of the federal government to spend in conformity with available revenues; and

Whereas, Proper planning, fiscal prudence and plain good sense require that the federal budget be in balance absent national emergency; and

Whereas, A continuously unbalanced federal budget except in a national emergency causes continuous and damaging inflation and consequently a severe threat to the political and economic stability of the United States; and

Whereas, Under Article V of the Constitution of the United States, amendments to the Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary or, on the application of the legislatures of two-thirds of the states, the Congress shall call a constitutional convention for the purpose of proposing amendments: Now, therefore,

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein: That the Congress of the United States is hereby requested to propose and submit to the states an amendment to the Constitution of the United States which would require that within five years after its ratification by the various states, in the absence of a national emergency, the total of all appropriations made by the Congress for a fiscal year shall not exceed the total of all estimated federal revenues for such fiscal year; and

Be it further resolved: That, alternatively, the Legislature of the State of Kansas hereby makes application to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by the Congress for a fiscal year shall not exceed the total of all estimated federal revenues for such fiscal year. If the Congress shall propose such an amendment to the Constitution, this application shall no longer be of any force or effect; and

Be it further resolved: That the legislatures of each of the other states in the Union is hereby urged to request and apply to the Congress to propose, or to call a convention for the sole and exclusive purpose of proposing, such an amendment to the Constitution; and

Be it further resolved: That the Secretary of State be directed to transmit copies of this resolution to the Clerk of the United States House of Representatives, the Secretary of the United States Senate, each member of the Kansas delegation in the United States Congress and the secretary of state and presiding officers of each house of the legislature of each state.

Mr. CRAIG. I thank my colleague, the gentleman from Kansas.

Mr. Speaker, I now yield to my colleague, the gentleman from New Hampshire [Mr. Gregg].

Mr. GREGG. I thank the gentleman from Idaho for yielding.

Mr. Speaker, in May 1979 the State Legislature of New Hampshire petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Resolved, that, alternatively, this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto;

Mr. Speaker, I include the full contents of this resolution, in its entirety, in the Record:

Concurrent Resolution

Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual Federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all Federal spending and be in balance; and

Whereas, the State of New Hampshire has long been known for its sensible, prudent approach to governmental spending; and

Whereas, the New Hampshire example of fiscal responsibility is a model for all to follow; and

Whereas, we believe that fiscal irresponsibility at the Federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments which shall be valid to all intents and purposes when ratified by three-fourths of the several states. We believe such action vital; now, therefore, be it

Resolved by the legislature of the state of New Hampshire, that this body proposes to the Congress of the United States that procedures be instituted in the Congress to propose and submit to the several states an amendment to the Constitution of the United States requiring that the federal budget be balanced in the absence of a national emergency; and be it further

Resolved, that, alternatively, this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto; and be it further

Resolved, that this application by this body constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar application pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this House Concurrent, then this petition for a Constitutional Convention shall no longer be of any force or effect; and be it further

Resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and be if further

Resolved, that this Body also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and be it further

Resolved, that copies of this resolution be sent to the Secretary of State and presiding officers of both houses of the legislatures of each of the several states in the Union, the Speaker and the Clerk of the United States House of Representatives, the President and Secretary of the United States Senate, and to each member of the New Hampshire named Congressional delegation.

Mr. CRAIG. I would like to thank my colleague, the gentleman from New Hampshire.

Mr. Speaker, I now yield to my colleague, the gentleman from Oregon [Mr. DENNY SMITH].

Mr. DENNY SMITH. I thank my colleague for yielding.

Mr. Speaker, on July 11, 1977, the State Legislature of the State of Oregon petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

(1) That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Mr. Speaker, I include the full contents of this resolution, in its entirity, in the RECORD:

SENATE JOINT MEMORIAL 2

To the Honorable Members of the Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the Fifty-ninth Legislative Assembly of the State of Oregon, in legislative session assembled, most respectfully represent as follows:

Whereas the level of federal expenditures demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal Government to curtail spending to conform to available revenues; and

Whereas inflation is being fought almost exclusively by monetary policy while fiscal policy could and should be employed; and

Whereas the State of Oregon by its Constitution and its laws in adopting a budget must show a balanced relation between the total proposed spending and the total anticipated revenues or provide for paying the deficiency; and

Whereas it is just and proper that the United States of America in its obligation to provide leadership for all of the states of the union should pursue the same policy; and

Whereas a balanced budget would lessen the economic burdens on its citizens; and

Whereas a balanced budget would lessen the need for increased state and local taxes; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

(2) That this application by this body constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Memorial before January 1, 1979, this petition for a constitutional convention shall no longer be of any force or effect.

(3) That this body propose that the legislative body of each of the several states comprising the United States apply to the Congress of the United States requiring the Congress to call a constitutional convention for proposing an appropriate amendment to the Federal Constitution or requesting the enactment of such an amendment to be submitted to the states for ratification.

(4) That a copy of this memorial shall be transmitted to the President of the United States; to each member of the Oregon Congressional Delegation; to the presiding officers of the Senate and House of Representatives of the United States of America; to each Governor of each state in the United States of America; and to the presiding officer of each legislative body in the United States of America.

Mr. CRAIG. Mr. Speaker, I would now like to yield to my colleague, the gentleman from Colorado [Mr. KRAMER].

Mr. KRAMER. I thank the gentleman for calling this special order for this very important recitation.

Mr. Speaker, on March 31, 1978, the State Legislature of Colorado petitioned this body to enact and send to the State for ratification an amendment to the Constitution of the United States required a balanced Federal budget and, that should Congress fail to act in that manner:

That the Congress of the United States is hereby memorialized to call a constitutional convention pursuant to article V of the constitution of the United States for the specific and exclusive purpose of proposing an amendment to the federal constitution prohibiting deficit spending except under conditions specified in such amendment.

Mr. Speaker, I include the full contents of this resolution, in it entirety, in the RECORD:

SENATE JOINT MEMORIAL NO. 1

Whereas, With each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, The annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, Convinced that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is vital to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under article V of the constitution of the United States, amendments to the federal constitution may be proposed by the congress whenever two-thirds of both houses deem it necessary or on the application of the legislatures of two-thirds of the several states that the congress shall call a constitutional convention for the purpose of proposing amendments which shall be valid to all intents and purposes when ratified by the legislatures of three-fourths of the several states; now, therefore,

Be It Resolved by the Senate of the Fifty-first General Assembly of the State of Colorado, the House of Representatives concurring herein:

That the Congress of the United States is hereby memorialized to call a constitutional convention pursuant to article V of the constitution of the United States for the specific and exclusive purpose of proposing an amendment to the federal constitution prohibiting deficit spending except under conditions specified in such amendment.

Be It Further Resolved, That this application and request be deemed null and void, rescinded, and of no effect at the event that such convention not be limited to such specific and exclusive purpose.

Be It Further Resolved, That copies of this memorial be sent to the secretary of state and presiding officers of both houses of the legislatures of each of the several states in the union, the clerk of the United States House of Representatives, the secretary of the United States Senate, and to each member of the Colorado congressional delegation.

Mr. KRAMER. Mr. Speaker, again I thank the gentleman for his efforts in behalf of this Constitutional Convention and believe that we are engaged in a historic process that will serve the American people very well in days to come.

Mr. CRAIG. I would like to thank my colleague from Colorado.

Mr. Speaker, I now yield to my colleague, the gentleman from California [Mr. LAGOMARSINO] who will read the North Dakota resolution.

Mr. LAGOMARSINO. Mr. Speaker, on March 11, 1975, the State Legislature of North Dakota petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

That we respectfully propose an amendment to the Constitution of the United States and call upon the people of the several states for a convention for such purposes as provided by Article V of the Constitution, the proposed Article providing as follows:

Mr. Speaker, I include the full contents of this resolution in its entirely, in the RECORD:

SENATE CONCURRENT RESOLUTION No. 4018

Be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

That we respectfully propose an amendment to the Constitution of the United States and call upon the people of the several states for a convention for such purpose as provided by Article V of the Constitution, the proposed Article providing as follows:

ARTICLE —

SECTION 1. The president shall submit, at the beginning of each new Congress, an annual budget for the ensuing fiscal year setting forth in detail the total proposed expenditures and the total estimated revenue of the Federal Government from sources other than borrowing. The president may set new revenue estimates from time to time. Expenditures for each two-year period shall not exceed the estimated revenue except in time of war or a national emergency declared by the Congress. The provisions of this Article shall not apply to the refinancing of the national debt; and

Be it further resolved, that copies of this resolution be forwarded by the Secretary of State to the legislatures of the several states.

Mr. CRAIG. I would like to thank my colleague, the gentleman from California.

Mr. Speaker, I now yield to my colleague, the gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. I thank my colleague from Idaho.

Mr. Speaker, on June 4, 1979, the General Assembly of the State of Iowa petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

SEC. 2. Alternatively, effective July 1, 1980, if the Congress of the United States has not proposed and submitted to the several states an amendment as provided in section one (1) of this resolution, the Iowa general assembly respectfully makes application to and petitions the congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Mr. Speaker, I include the full contents of this resolution in its entirety, in the RECORD:

SENATE JOINT RESOLUTION 1

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is one of the greatest threats which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article five (V) of the Constitution of the United States, amendments to the federal Constitution may be proposed by the congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the congress shall call a constitutional convention for the purpose of proposing amendments which shall be valid to all intents and purposes when ratified by three-fourths of the several states, and we believe such action is vital; Now therefore, *be it resolved by the General Assembly of the State of Iowa:*

SECTION 1. The Iowa general assembly proposes to the congress of the United States that procedures be instituted in the congress to propose and submit to the several states before July 1, 1980, an amendment to the Constitution of the United States requiring that the federal budget be balanced in the absence of a national emergency.

SEC. 2. Alternatively, effective July 1, 1980, if the Congress of the United States has not proposed and submitted to the several states an amendment as provided in section one (1) of this resolution, the Iowa general assembly respectfully makes application to and petitions the congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

SEC. 3. Effective July 1, 1980, this application by the Iowa general assembly constitutes a continuing application in accordance with Article five (V) of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made similar applications pursuant to Article five (V), but if the congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution, or if before July 1, 1980, the general assembly repeals this application to call a constitutional convention, then this application and petition for a constitutional convention shall no longer be of any force or effect.

SEC. 4. This application and petition shall be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

SEC. 5. The Iowa general assembly also proposes that the legislatures of each of the several states comprising the United States apply to the congress requesting the enactment of an appropriate amendment to the federal Constitution, or requiring the congress to call a constitutional convention for proposing such an amendment to the federal Constitution if the Congress of the United States has not proposed and submitted to the several states an amendment as provided in section one (1) of this resolution before July 1, 1980.

SEC. 6. The secretary of state of Iowa is directed to send copies of this resolution to the secretary of state and presiding officers of both houses of the legislatures of each of the several states in the union, the speaker and the clerk of the United States house of representatives, the president and the secretary of the United States senate, and each member of the Iowa congressional delegation.

Mr. CRAIG. I thank the gentleman from Iowa.

Mr. Speaker, I now yield to my colleague, the gentleman from New Mexico [Mr. LUJAN].

Mr. LUJAN. I thank the gentleman for yielding.

Mr. Speaker, In 1976 the State legislature of my home State of New Mexico petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved that, alternatively this body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that Fiscal year.

Mr. Speaker, I include the full contents of this resolution, in its entirety, in the RECORD:

SENATE JOINT RESOLUTION 1

Be it resolved by the legislature of the State of New Mexico:

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under article 5 of the constitution of the United States, amendments to the federal constitution may be proposed by the congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states, the congress shall call a constitutional convention for the purpose of proposing amendments; we believe such action vital;

Now, therefore, be it resolved by the legislature of the State of New Mexico that this body proposes to the congress of the United States that procedures be instituted in the congress to add a new article to the constitution of the United States, and that the legislature of the state of New Mexico requests the congress to prepare and submit to the several states an amendment to the constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved that, alternatively, this body makes application and requests that the congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved that this body also proposes that the legislatures of each of the several states compromising the United States apply to the congress requesting the enactment of an appropriate amendment to the federal constitution; or requiring the congress to call a constitutional convention for proposing such an amendment to the federal constitution; and

Be it further resolved that copies of this resolutions be sent by the secretary of state to the members of New Mexico's delegation to the congress of the United States; and

Be it further resolved that the secretary of state of this state is directed to send copies of this joint resolution to the secretary of state and presiding officers of both houses of the legislature of each of the other states in the union, the clerk of the United States House of Representatives, Washington, D.C. and the secretary of the United States Senate, Washington, D.C.

□ 1850

Mr. CRAIG. Mr. Speaker, I now yield to my colleague, the gentlewoman from Nevada.

Mrs. VUCANOVICH. Mr. Speaker, in April 1979 the State Legislature of Nevada petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Resolved by the Senate and Assembly of the State of Nevada, jointly, That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must not exceed the total of the estimated federal revenue for that year; and be it further

Mr. Speaker, I include the full contents of this resolution for printing in the RECORD, as follows:

SENATE JOINT RESOLUTION NO. 8

Whereas, Proper economic planning, fiscal prudence and common sense require that the federal budget include all federal spending and be in balance; and

Whereas, The annual federal budgets continually reflect the unwillingness or inability of the legislative and executive branches of the Federal Government to balance the budget; and

Whereas, The national debt now amounts to hundreds of billions of dollars and is increasing enormously each year as federal expenditures exceed federal revenues; and

Whereas, The inflation and other results of the fiscal irresponsibility of the Federal Government demonstrate the need for a constitutional restraint upon excessive spending; and

Whereas, Article V of the Constitution of the United States provides that on the application of the legislatures of two-thirds of the states, Congress shall call a convention for proposing amendments to the Constitution; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must not exceed the total of the estimated federal revenue for that year; and be it further

Resolved, That this legislature conditions this request upon the Congress of the United States' establishing appropriate restrictions limiting the subject matter of a convention called pursuant to this resolution to the subject matter of this resolution, and if the Congress fails to establish such restrictions, this resolution has no effect and must be considered a nullity; and be it further

Resolved, That a copy of this resolution be immediately transmitted by the legislative counsel to the Vice President of the United States as President of the Senate and the Speaker of the House of Representatives of the United States, to each member of the Nevada congressional delegation and to the presiding officer of each house of the legislatures of the several states; and be it further

Resolved, That this resolution shall become effective upon passage and approval.

Mr. CRAIG. Mr. Speaker, I thank my colleague, the gentlewoman from Nevada.

I now yield to my colleague, the gentleman from Wisconsin [Mr. ROTH], to present the Louisiana petition.

Mr. ROTH. Mr. Speaker, I thank the gentleman for yielding, and I want to commend him for taking this special order. If anyone is hitting a home run in this country tonight, I think it is the gentleman in the well in asking for this special order.

I saw recently where the U.S. News & World Report has made a survey and found that 78 percent of the American people have said that high-interest rates are the No. 1 issue as far as they are concerned, and related to that are the high deficits.

So I commend the people of Louisiana, and especially the gentleman in the chair this evening because he comes from that great State of Louisiana.

I would like to just read a few lines from this concurrent resolution from the State of Louisiana. It says this:

To memorialize and apply to the Congress of the United States, petitioning that a convention be called pursuant to Article V of the United States Constitution, to consider amending the same to prohibit the incurrence of national debt except in a state of emergency as declared by a three-fourths vote of the members of both houses of Congress; providing that the purview of such convention be strictly limited to the consideration of this amendment.

Whereas, the United States Government has, over the past three decades, embarked on a course of continuous and ever increasing deficit spending; and

Whereas, the public debt engendered thereby now far exceeds 300 billion dollars, and current budget proposals include provision for a further deficit of 43 billion dollars; and

Whereas, such national debt is, in and of itself, a major contributor to the very inflation to which the United States is committed to eradicating; and

Whereas, this massive national debt is inimical to the public welfare, limiting the amount of credit available to private citizens, thus curtailing opportunities for needed economic growth; and

Whereas, continued fiscal irresponsibility can only result in an eventual financial debacle of the sort recently experienced in some areas of our country.

Therefore, be it resolved by the Senate of the Legislature of the State of Louisiana, the House of Representatives thereof concurring, that pursuant to Article V of the Constitution of the United States, the Legislature of the State of Louisiana does hereby apply to the Congress of the United States for a convention to consider the following amendment to the United States Constitution:

Mr. Speaker, I want to commend the people of the State of Louisiana for electing people to their State legislature who had the insight and the foresight to pass a resolution like this, because if there is any one issue we in this Congress and we as the American people must address, it is the issue we are discussing right here, because we want to have a strong economy and we want to have a strong financial climate. This is an issue we must come to grips with. Everybody talks about a balanced budget, but nobody does anything about it. It is high time we do something about it because time is quickly running out.

Mr. Speaker, I include the full contents of this resolution for printing in the RECORD, as follows:

SENATE CONCURRENT RESOLUTION No. 73

Whereas, the United States Government has, over the past three decades, embarked on a course of continuous and ever increasing deficit spending; and

Whereas, the public debt engendered thereby now far exceeds 300 billion dollars, and current budget proposals include provision for a further deficit of 43 billion dollars; and

Whereas, such national debt is, in and of itself, a major contributor to the very inflation to which the United States is committed to eradicating; and

Whereas, this massive national debt is inimical to the public welfare, limiting the amount of credit available to private citizens, thus curtailing opportunities for needed economic growth; and

Whereas, continued fiscal irresponsibility can only result in an eventual financial debacle of the sort recently experienced by New York City; and

Whereas, payment of the massive interest required to service national debt imposes an undue hardship on the citizenry, particularly those on fixed incomes; and

Whereas, the ability of the Federal Government to avoid the difficult budgetary choices posed by zero debt financing has resulted in a lack of objective budgetary analysis, and thus the funding of unnecessary or inefficient programs.

Therefore, be it resolved by the Senate of the Legislature of the state of Louisiana, the House of Representatives thereof concurring, that pursuant to Article V of the Constitution of the United States, the Legislature of the state of Louisiana does hereby apply to the Congress of the United States for a convention to consider the following amendment to the United States Constitution:

Section 1. Except as provided in Section 3, the Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year.

Section 2. There shall be no increase in the national debt, and the existing debt, as it exists on the date on which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification. The rate of repayment shall be such that not less than one-tenth of the debt shall be repaid during each ten-year period.

Section 3. In times of national emergency, declared by the concurrent resolution of three-fourths of the membership of both Houses of Congress, the application of Section 1 may be suspended, provided that such suspension shall not be effective past the two-year term of the Congress which passes such resolution. If such a national emergency continues to exist, a suspension of Section 1 may be reenacted pursuant to the provisions of this Section. National debt incurred pursuant to this Section shall be repaid under the provisions of Section 2; provided, however, that the repayment period shall commence upon the expiration of the suspension under which it was incurred.

Section 4. This article shall apply to fiscal years that begin six months after the date on which this article is ratified.

Section 5. Congress shall provide by law for strict compliance with this amendment.

Be it further resolved that the purview of any convention called by the Congress pursuant to this resolution be strictly limited to the consideration of an amendment of the nature as herein proposed.

Be it further resolved that this application by the Legislature of the state of Louisiana constitutes a continuing application pursuant to Article V of the United States Constitution, until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened.

Be it further resolved that a duly attested copy of this resolution be immediately transmitted to the President of the United States, to the Secretary of the United States Senate, to the Clerk of the United States House of Representatives, to each member of the Louisiana delegation to the United States Congress, and to the presiding officer of each house of each state Legislature in the United States.

Mr. Speaker, I thank the gentleman for yielding.

Mr. CRAIG. Mr. Speaker, I thank the gentleman very much. I appreciate his entering the State of Louisiana petition into the RECORD.

Mr. Speaker, I now yield to my colleague, the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I thank the distinguished gentleman from Idaho for the effort that is being made here tonight, and indeed, as my colleague, the gentleman from Wisconsin, said, although he may not be able to hit a home run, I would say that even though he is in the well, I view his stature as that of a pitcher on the mound. I would like to join in that kind of an accolade, indicating that tonight of all nights indeed this ought to be one for the home team, that team that is interested in the fiscal responsibility of our country.

This special order points out the way we can most effectively achieve that goal.

I have the privilege, Mr. Speaker, of reporting the contents of the Nebraska resolution.

On February 23, 1976, the State legislature of my home State, Nebraska, petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

2. That, alternatively, this Legislature makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year.

When you look at the second quarter growth figures of between 5 and 6 percent, when you look at the just-announced inflation figure of under 3 percent for the second quarter, then I think that all of those States, the 32 States that have acted, recognize that the potential for sustaining this great economic expansion that is underway lies much more clearly in this body's shouldering its responsibility. In the absence of that, we hope this will lead to two more States sending that same signal to Congress that it must act.

Mr. Speaker, in conclusion, as I commend the gentleman again and commend all my colleagues who participated in this special order, I include the full contents of the State of Nebraska resolution in the RECORD, as follows:

LEGISLATIVE RESOLUTION 106

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenue, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenue; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy is the greatest threat which faces our nation, we firmly believe that constitutional restraints is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under article V of the Constitution of the United States, amendments to the federal Comstitution may be proposed by the Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states, the Congress shall call a constitutional convention for the purpose of proposing amendments. We believe such action is vital.

Now, therefore, be it resolved by the members of the eighty-fourth Legislature of Nebraska, second session:

1. That this body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the State of Nebraska requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that

the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year.

2. That, alternatively, this Legislature makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year.

3. That this Legislature also proposes that the Legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the federal Constitution: or requiring the Congress to call a constitutional convention for proposing such an amendment to the federal Constitution.

4. That the Clerk of the Legislature transmit a copy of this resolution to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, each member of the Nebraska Congressional delegation, the Secretaries of State and the Legislatures of each of the several states, and the Secretary of State for the State of Nebraska.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the resolution pass?' "

Mr. Speaker, I thank the gentleman for yielding for this limited amount of time.

Mr. CRAIG. Mr. Speaker, I thank my colleague, the gentleman from Nebraska.

Mr. Speaker, I now yield to my colleague, the gentleman from Oklahoma [Mr. EDWARDS].

Mr. EDWARDS of Oklahoma. Mr. Speaker, I thank the gentleman for yielding, and I commend him for what he is doing tonight.

On April 15, 1976, the State legislature of my home State of Oklahoma passed a joint resolution in which the legislature said:

> Whereas, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance,

The State legislature petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget, and, that should Congress fail to act in that manner,

> that alternatively, this Body requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Mr. Speaker, I agree with the people in the Oklahoma Legislature who passed this resolution when they stated that there is no issue more important facing the United States than the passage of a balanced Federal budget.

Mr. Speaker, I, therefore, include the full contents of the Oklahoma resolution for printing in the RECORD, as follows:

HOUSE JOINT RESOLUTION No. 1049

Whereas, with each passing year this nation becomes more deep in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars.

Whereas, the annual federal budget continually demonstrates unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues.

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit.

Whereas, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance.

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility.

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states that the Congress shall call a constitutional convention for the purpose of proposing amendments. We believe such action vital.

Now, therefore, be it resolved by the House of Representatives and the Senate of the 2nd Session of the 35th Oklahoma Legislature:

Section 1. That this body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the Legislature of the State of Oklahoma makes application and requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations be made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Section 2. That alternatively, this Body requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Section 3. That this Body also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution.

Section 4. That copies of this Resolution shall be sent by the Secretary of State to our members of Congress.

Section 5. That the Secretary of State of this state is directed to send copies of this Joint Resolution to the Secretary of State and presiding officers of both Houses of the Legislature, the Congress and of each of the other States in the Union.

Mr. CRAIG. Mr. Speaker, I thank my colleague, the gentleman from Oklahoma [Mr. EDWARDS].

Mr. Speaker, I now yield to my colleague, the gentleman from Florida [Mr. MACK].

Mr. MACK. Mr. Speaker, I thank the gentleman for yielding.

Before I read the resolution, let me make reference to a couple of points that were made in the State Memorial No. 234 from the State of Florida which was enacted in July 1978. I think that some of the numbers that are in here are rather interesting.

□ 1900

It says, "Whereas, it is estimated, as of August 1975, that the Federal debt at the end of the 1975 fiscal year will be $558 billion," I think that number today is what—closer to a trillion four or a trillion five and that has only been in some 6 short years.

In addition, it says, "Whereas, the fiscal year deficit for 1976 will be the largest in our history, between $70 and $80 billion," and they go on to explain the potential impact in interest rates and the balance of the economy.

But at this point let me read that resolution:

> Mr. Speaker, on July 13, 1978, the state legislature of Florida petitioned this body to enact and send to the states for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner, quote . . . .
>
> That the legislature of the state of Florida does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced Federal budget and to make certain exceptions with respect thereto.

Mr. Speaker, I request that the full contents of this resolution be entered in its entirety into the RECORD, as follows:

SENATE MEMORIAL No. 234

Whereas, it is estimated, as of August, 1975, that the federal debt at the end of the 1975 fiscal year will be $558.637 billion, and

Whereas, the fiscal year deficit for 1976 will be the largest in our history, between $70 and $80 billion, and

Whereas, the growing debt is a major contributor to inflation, lagging economic investment, excessive interest rates, and the resulting unemployment, and

Whereas, the economic welfare of the United States and its citizens depends on a stable dollar and sound economy, and

Whereas, the National Conference of State Legislatures passed Resolution No. 11 at its Annual Business Meeting on October

10, 1975, urging the Congress to take prompt and affirmative action to limit federal spending, and

Whereas, there is provision in Article V of the Constitution of the United States for amending the Constitution by the Congress, on the application of the legislatures of two-thirds of the several states, calling a convention for proposing amendments which shall be valid to all intents and purposes when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Now, therefore,

Be it resolved by the Legislature of the State of Florida:

That the Legislature of the State of Florida does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Be it further resolved that a copy of this memorial be transmitted to the presiding officers of the Senate and the House of Representatives of Congress, the members of the Congressional delegation from the State of Florida and to the presiding officers of each house of the several state legislatures.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague, the gentleman from Florida, for his participation in this special order.

Mr. Speaker, I now yield to my colleague, the gentleman from Georgia.

Mr. GINGRICH. Mr. Speaker, let me first of all commend the tremendous efforts of the gentleman from Idaho which have I think begun to really help build a sense of momentum on behalf of an amendment to the Constitution to require a balanced Federal budget.

I am delighted to have a chance to participate tonight and to report, Mr. Speaker, that on February 13, 1976, the State Legislature of Georgia petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced Federal budget and to make certain exceptions with respect thereto.

Mr. Speaker, I request that the full contents of this resolution be entered in its entirety into the RECORD, as follows:

H.R. No. 469-1267

Be it resolved by the general assembly of Georgia:

That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Be it further resolved that this application by the General Assembly of the State of Georgia constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Resolution before January 1, 1977, this petition for a Constitutional Convention shall no longer be of any force or effect.

Be it further resolved that the Clerk of the House of Representatives is hereby authorized and instructed to transmit a duly attested copy of this Resolution to the Secretary of the Senate of the United States Congress, the Clerk of the House of Representatives of the United States Congress, to the Presiding Officer of each House of each State legislature in the United States, and to each member of the Georgia Congressional Delegation.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague, the gentleman from Georgia, for participating.

At this time, recognizing my colleague, the gentleman from Arkansas, Congressman JOHN PAUL HAMMERSCHMIDT, who could not be here tonight, I would like to read the following from the State of Arkansas:

STATEMENT OF CONGRESSMAN JOHN PAUL HAMMERSCHMIDT

Mr. Speaker, on February 1, 1979, the State legislature of Arkansas petitioned this body to enact and send to the states for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget, and that should Congress fail to act in that manner, I quote:

"Be it further resolved, that, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year."

Mr. Speaker, I request that the full contents of this resolution be entered in its entirety into the RECORD, as follows:

Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual Federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all Federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the Federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments. We believe such action vital;

Now therefore, be it resolved by the seventy-second General Assembly of the State of Arkansas:

That this Body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the General Assembly of the State of Arkansas requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and be it further resolved:

That, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and be it further resolved:

That this body also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution, or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and be it further resolved:

That copies of this Resolution be sent by the Secretary of State to the Arkansas Congressional Delegation; and be it further resolved:

That the Secretary of State of the State of Arkansas is directed to send copies of this Joint Resolution to the Secretary of State and presiding officers of both Houses of the Legislature of each of the other States in the Union, the Clerk of the United States House of Representatives, Washington, D.C., and the Secretary of the United States Senate, Washington, D.C.

Mr. Speaker, I now yield to my colleague, the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, on March 31, 1976, the State Legislature of Pennsylvania petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Resolved, That, alternatively, the General Assembly of the Commonwealth of Pennsylvania makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

Mr. Speaker, I include the full contents of this resolution in its entirety into the RECORD, as follows:

RESOLUTION NO. 236

Whereas, Requesting appropriate action by the Congress, either acting by consent of two-thirds of both Houses or, upon the application of the Legislatures of two-thirds of the several states, calling a Constitutional Convention to propose an amendment to the Federal Constitution to require, with certain exceptions, that the total of all Federal appropriations may not exceed the total of all estimated Federal revenues in any fiscal year.

Whereas, With each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, The annual Federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal Government to curtail spending to conform to available revenues; and

Whereas, Unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, Knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all Federal spending and be in balance; and

Whereas, Believing that fiscal irresponsibility at the Federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, Under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the Legislatures of two-thirds of the several states the Congress shall call a Constitutional Convention for the purpose or proposing amendments. We believe such action vital; therefore be it

Resolved, (the Senate concurring), That the General Assembly of the Commonwealth of Pennsylvania proposes to the Congress of the United States tat procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the General Assembly of the Commonwealth of Pennsylvania requests the Congress to prepare and submit to the several states an appendix to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and be it further:

Resolved, That, alternatively, the General Assembly of the Commonwealth of Pennsylvania makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all expended Federal revenue for that fiscal year; and be it further

Resolved, That the General Assembly of the Commonwealth of Pennsylvania also proposes that the Legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or requiring the Congress to call Constitutional Convention for proposing such an amendment to the Federal Constitution; and be it further

Resolved, That copies of this resolution be sent to the members of the Congress from Pennsylvania; and be it further

Resolved, That the Chief Clerk of the House of Representatives send copies of their joint resolution to the Secretary of State and presiding officers of both Houses of the legislature of each of the other states in the Union, the Clerk of the United States House of Representatives, Washington, D.C. and the Secretary of the United States Senate, Washington, D.C.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague, the gentleman from Pennsylvania.

I now yield to my colleague, the gentleman from Texas.

Mr. STENHOLM. Mr. Speaker, on June 16, 1977, the State Legislature of Texas petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Resolved, That, alternatively, this body request that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and, be it further

Mr. Speaker, I include the full contents of this resolution in its entirety into the RECORD, as follows:

H.C.R. No. 31

Resolved by the House of Representatives of the State of Texas, the Senate concurring, That the 65th Legislative propose to the Congress of the United States that procedures be instituted in the congress to add a new article to the Constitution of the United States, and that the State of Texas request the Congress to prepare and submit to the several states an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and, be it further

Resolved, That, alternatively, this body request that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and, be it further

Resolved, that this body also propose that the legislatures of each of the several states comprising the United States apply to the congress requesting the enactment of an appropriate amendment to the federal constitution; or requiring the congress to call a constitutional convention for proposing such an amendment to the federal constitution; and, be it further

Resolved, That official copies of this resolution be prepared and forwarded to the President of the Senate and the Speaker of the House of Representatives of the United States Congress and to all members of the Texas delegation to congress; and, be it further

Resolved, That official copies of this resolution also be printed and forwarded to the secretaries of state and to the presiding officers of the legislatures of the other states with the request that they join this state in making application to the United States Congress to call a convention for proposing the aforementioned amendment to the United States Constitution.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague, the gentleman from Texas.

I now yield to my colleague, the gentleman from Florida.

Mr. MACK. Mr. Speaker, I thank the gentleman for yielding.

I would like on behalf of Congresswoman MARJORIE HOLT to read into the RECORD the resolution from the State of Maryland:

STATEMENT OF CONGRESSWOMAN MARJORIE S. HOLT

Mr. Speaker, on April 3, 1975, the State legislature of Maryland petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

"Resolved, That this Body further and alternatively requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII; and be it further"

Mr. Speaker, I include the full contents of this resolution in its entirety into the RECORD, as follows:

RESOLUTION NO. 77

Whereas, With each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the public debt now exceeds hundreds of billions of dollars.

Attempts to limit spending, including impoundment of funds by the President of the United States, have resulted in strenuous objections that the responsibility for appropriations is the constitutional duty of the Congress.

The annual Federal budget repeatedly demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal government to curtail spending to conform to available revenues.

The unified budget of 304.4 billion dollars for the current fiscal year does not reflect actual spending because of the exclusions of special outlays which are not included in the budget nor subject to the legal public debt limit.

As reported by U.S. News and World Report on February 25, 1974, of these nonbudgetary outlays in the amount of 15.6 billion dollars, the sum of 12.9 billion dollars represents funding of essentially private agencies which provide special service to the federal government.

Knowledgeable planning and fiscal prudence require that the budget reflect all Federal spending and that the budget be in balance.

Believing that fiscal irresponsibility at the Federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal disciplines needed to reverse this trend.

Under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments; now, therefore, be it

Resolved by the General Assembly of Maryland, That this Body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article XXVII to the Constitution of the United States, and that the General Assembly of Maryland requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues, excluding any revenues derived from borrowing, for that fiscal year: and be it further

Resolved, That this Body further and alternatively requests that the Congress of the United States call a constitutional convention for the special and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII: and be it further

Resolved, That this Body also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requiring it to call a constitutional convention for proposing such an amendment to the Federal Constitution, to be a new Article XXVII: and be it further

Resolved, That the proposed new Article XXVII (or whatever numeral may then be appropriate) read substantially as follows:

PROPOSED ARTICLE XXVII

"The total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues for that fiscal year, excluding any revenues derived from borrowing; and this prohibition extends to all Federal appropriations and all estimated Federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this Article. If the President proclaims a national emergency, suspending the requirement that the total of all Federal appropriations not exceed the total estimated Federal revenues for a fiscal year, excluding any revenues derived from borrowing, and two-thirds of all Members elected to each House of the Congress so determine by Joint Resolution, the total of all Federal appropriations may exceed the total estimated Federal revenues for that fiscal year." And, be it further

Resolved, That copies of this Resolution under the Great Seal of the State of Maryland, be sent by the Secretary of State to: Honorable Gerald Ford, President of the United States, Washington, D.C.; Honorable Charles McC. Mathias, Old Senate Office Building, Washington, D.C.; Honorable J. Glenn Beall, Jr., Old Senate Office Building, Washington, D.C.; Honorable Carl Albert, Speaker of the House of Representatives, Washington, D.C.; Honorable Robert E. Bauman, Longworth Building, Washington, D.C.; Honorable Clarence D. Long, Rayburn Building, Washington D.C.; Honorable Paul S. Sarbanes, Cannon Office Building, Washington, D.C.; Honorable Marjorie S. Holt, Longworth Building, Washington, D.C.; Honorable Gladys Spellman, House Office Building, Washington, D.C.; Honorable Goodloe E. Byron, Longworth Building, Washington, D.C.; Honorable Parren J. Mitchell, Cannon Building, Washington, D.C.; and Honorable Gilbert Gude, Cannon House Office Building, Washington, D.C.; and be it further

Resolved, That under the Great Seal of the State of Maryland, the Secretary of State is directed to send copies of this Joint Resolution to the Secretary of State and to the presiding officers of both Houses of the Legislature of each of the other States in the Union, with the request that it be circulated among leaders in the Executive and Legislative branches of the several State governments; and with the further request that each of the other States in the Union join in requiring the Congress of the United States to call a constitutional convention for the purpose of initiating a proposal to amend the Constitution of the United States in substantially the form proposed in this Joint Resolution of the General Assembly of Maryland.

The SPEAKER pro tempore. The Chair will state that the gentleman would have to obtain the permission of the gentlewoman from Maryland [Mrs. Holt] in order to do that.

Mr. MACK. I believe that permission has been obtained in advance.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

Mr. CRAIG. Mr. Speaker, I now yield to my colleague, the gentleman from Wisconsin [Mr. Roth].

Mr. ROTH. Mr. Speaker, I thank the gentleman for yielding.

On behalf of our colleague, the gentleman from Indiana, Mr. Dan Burton, I would like to read into the Record the resolution from the State of Indiana. It is very short, but it makes the point. It says:

STATEMENT OF CONGRESSMAN DAN BURTON

Mr. Speaker, on April 4, 1979 the State legislature of Indiana petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

"Section 1. The General Assembly of the State of Indiana makes application to the Congress of the United States for a convention to be called under Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution to the effect that, in the absence of a national emergency, the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year."

Mr. Speaker, I include the full contents of this resolution in its entirety into the Record, as follows:

SENATE ENROLLED JOINT RESOLUTION No. 8

Be it resolved by the General Assembly of the State of Indiana:

Section 1. The General Assembly of the State of Indiana makes application to the Congress of the United States for a convention to be called under Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution to the effect that, in the absence of a national emergency, the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

Section 2. The Secretary of the Senate is instructed to transmit a certified copy of this joint resolution to the President of the Senate of the Congress of the United States, the Speaker of the House of Representatives of the Congress of the United States, the presiding officer of each chamber of each state legislature in the United States, and each member of the Indiana congressional delegation.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague for participating on behalf of Congressman Dan Burton from Indiana.

I now yield to my colleague, the gentleman from California [Mr. Dannemeyer] to read into the Record the resolution of South Dakota, on behalf of the gentleman from South Dakota, Mr. Tom Daschle.

Mr. DANNEMEYER. Mr. Speaker, I thank my colleague, the gentleman from Idaho [Mr. Craig] for yielding me this time.

Mr. Speaker, on January 31, 1979, the State Legislature of South Dakota petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved, that alternatively, this Legislature hereby makes application under said Article V of the Constitution of the United States and with the same force and effect as if this Resolution consisted of this portion alone and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Mr. Speaker, I include the full contents of this resolution in its entirety into the Record, as follows:

SENATE JOINT RESOLUTION 1

Whereas, with each passing year this nation becomes more deeply in debt as its annual expenditures frequently exceed annual available revenues, so that the public debt also steadily increases to a size of inordinate proportions; and

Whereas, unified budgets do not necessarily reflect actual spending because of the exclusion of special spending outlays which are not included in the budget nor are subject to the statutory legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, we believe that fiscal irresponsibility at the federal level, with the inflation which results primarily from this policy, is the greatest threat which faces our nation, and that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing such amendments:

Be it resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein:

That the Legislature does hereby make application to the Congress of the United States that procedures be instituted on the Congress to add a new article to the Constitution of the United States, and that the Legislature of the State of South Dakota hereby requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved, that alternatively, this Legislature hereby make application under said Article V of the Constitution of the United States and with the same force and effect as if this Resolution consisted of this portion alone and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and

Be it further resolved, that this application by this legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made applications for similar relief pursuant to Article V, but, if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Resolution then this petition for a Constitutional Convention shall no longer be of any force or effect; and

Be it further resolved, that this Legislature also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution, or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and

Be it further resolved, that copies of this Joint Resolution be sent by the Secretary of State to each member of the South Dakota Congressional Delegation; and

Be it further resolved, that the Secretary of State is directed to send copies of this Joint Resolution to the presiding officers of both Houses of the Legislature of each of the other states in the Union, the Clerk of the United States House of Representatives, Washington, D.C. and the Secretary of the United States Senate, Washington, D.C.

Requesting appropriate action by the Congress, either acting by consent of two-thirds of both houses thereof or, upon the application of the legislatures of two-thirds of the several states, calling a constitutional convention therefor to propose an amendment to the Constitution of the United States to require, with certain exceptions, that the total of all federal appropriations may not exceed the total of all estimated federal revenues in any fiscal year.

Mr. CRAIG. Mr. Speaker, I would like to yield further to my colleague, the gentleman from California [Mr. DANNEMEYER] to read into the RECORD the resolution of the State of Tennessee on behalf of the gentleman from Tennessee, Mr. JOHN DUNCAN.

Mr. DANNEMEYER. I would be happy to do that, and I thank the gentleman for yielding me the time.

Mr. Speaker, on March 30, 1977, the State Legislature of Tennessee petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved, That this application shall constitute a continuing application for such convention under Article V of the Constitution of the United States until the legislatures of two-thirds (⅔) of the several states shall have made like applications and such convention shall have been called and held in conformity therewith, unless the Congress itself proposes such amendment within the time and the manner herein provided.

Mr. Speaker, I include the full contents of this resolution in its entirety in the RECORD, as follows:

HOUSE JOINT RESOLUTION NO. 22

Whereas, each year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the legal public debt limit has exceeded 437 billion dollars; and

Whereas, attempts to limit spending, including impoundment of funds by the President of the United States, have resulted in strenuous objections that the responsibility for appropriations is the constitutional duty of the Congress; and

Whereas, nonetheless, the annual budget repeatedly demonstrates an unwillingness or inability to curtail spending to conform to available revenues; and

Whereas, the federal budget never reflects actual spending because of the exclusion of special outlays which are neither included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning requires that the budget reflect all federal spending and that the budget be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that a constitutional restraint is necessary to bring the fiscal disciplines needed to reverse this trend; now, therefore,

Be it resolved by the House of Representatives of the Ninetieth General Assembly of the State of Tennessee, the Senate concurring, That pursuant to Article V of the Constitution of the United States, application is hereby made to the United States Congress to call a convention for the United States Congress to call a convention for the purpose of considering and proposing an amendment to the Constitution of the United States to require that, in the absence of a national emergency, the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues for that fiscal year, such amendment to read substantially as follows:

The total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues for that fiscal year; and this prohibition extends to all federal appropriations and all estimated federal revenues without exception. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this article. If the President proclaims a national emergency, suspending the requirement that the total of all federal appropriations not exceed the total estimated federal revenues for a fiscal year, and two-thirds (⅔) of all members elected to each house of the Congress so determine by joint resolution, the total of all federal appropriations may exceed the total estimated federal revenues for that fiscal year.

Be it further resolved, That this application shall constitute a continuing application for such convention under Article V of the Constitution of the United States until the legislatures of two-thirds (⅔) of the several states shall have made like applications and such convention shall have been called and held in conformity therewith, unless the Congress itself proposes such amendment within the time and the manner herein provided.

Be it further resolved, That proposal of such amendment by the Congress and its submission for ratification to the legislatures of the several states substantially in the form of the article hereinabove specifically set forth, at any time prior to sixty (60) days after the legislatures of two-thirds (⅔) of the several states shall have made application for such convention, shall render such convention unnecessary and the same not be held. Otherwise, such convention shall be called and held in conformity with such applications.

Be it further resolved, That as this application under Article V of the Constitution of the United States is the exercise of a fundamental power of the sovereign states under the Constitution of the United States, it is requested that receipt of this application by the Senate and the House of Representatives of the Congress of the United States be officially noted and duly entered upon their respective records, and that the full context of this resolution be published in the official publication of both the Senate and the House of Representatives of the Congress.

Be it further resolved, That certified copies of this Resolution be transmitted forthwith to the Senate and the House of Representatives of the Congress of the United States, to each Senator and Representative in Congress from this state, and to each house of the legislature and to the Secretary of State of each of the several states.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague.

Mr. Speaker, at this time I would like to read into the Record the resolution of the State of Delaware, which petitioned this Congress on June 23, 1975, for a constitutional amendment to balance the Federal budget.

On June 23, 1975, the State Legislature of Delaware petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

"*Be it resolved by the House of Representatives of the 128th General Assembly, the Senate concurring therein*, that the General Assembly of the State of Delaware hereby, and pursuant to Article V of the Constitution of the United States, makes application to the Congress of the United States to call a convention for the proposing of the following amendment to the Constitution of the United States."

Mr. Speaker, I include the full contents of this resolution in its entirety into the Record as follows:

House Concurrent Resolution No. 36

Be it resolved by the House of Representatives of the 128th General Assembly, the Senate concurring therein, that the General Assembly of the State of Delaware hereby, and pursuant to Article V of the Constitution of the United States, makes application to the Congress of the United States to call a convention for the proposing of the following amendment to the Constitution of the United States:

"ARTICLE —. The costs of operating the Federal Government shall not exceed its income during any fiscal year, except in the event of declared war."

Be it further resolved that this application by the General Assembly of the State of Delaware constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V.

Be it yet further resolved, that since this method of proposing amendments to the Constitution has never been completed to the point of calling a convention and no interpretation of the power of the states in the exercise of this right has ever been made by any court or any qualified tribunal, if there be such, and since the exercise of the power is a matter of basic sovereign rights and the interpretation thereof is primarily in the sovereign government making such exercise and, since the power to use such right in full also carries the power to use such right in part, the General Assembly of the State of Delaware interprets Article V to mean that if two-thirds of the states make application for a convention to propose an identical amendment to the Constitution for ratification with a limitation that such amendment be the only matter before it, that such convention would have power only to propose the specified amendment and would be limited to such proposal and would not have power to vary the test thereof nor would it have power to propose other amendments on the same or different propositions.

Be it yet further resolved that a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, to each member of the Congress from this State and to each House of each State Legislature in the United States.

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Mr. CRAIG. I would now like to yield to my colleague from the State of Utah for the purpose of reading that State's legislative effort into the Record.

Mr. HANSEN of Utah. I thank the gentleman.

Mr. Speaker, In April 1979 the State legislature of Utah petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved that, alternatively, this legislature applies to the Congress of the United States to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal Constitution which would require, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed that total of all estimated federal revenues for that fiscal year.

Mr. Speaker, I include the full contents of this resolution be entered in its entirety into the Record, as follows:

Resolution

Be it resolved by the Legislature of the State of Utah:

Whereas, with each passing year, this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars;

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues;

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit.

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance;

Whereas, numerous states have constitutional requirements that appropriations not exceed anticipated revenues for the forthcoming year;

Whereas, believing that fiscal irresponsibility at the federal level, and the inflation which results therefrom, constitutes the greatest threat now facing our nation, this Legislature is of the firm conviction that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the federal constitution may be proposed by the Congress, whenever two-thirds of both houses deem it necessary and, on the application of the legislatures of two-thirds of the several states, the Congress shall call a constitutional convention for the sole purpose of proposing amendments, which action this Legislature deems vital: Now, therefore,

Be it resolved by the 43rd Legislature of the State of Utah, That the Congress of the United States is requested to institute procedures to add a new article to the Constitution of the United States and to prepare and submit to the several states an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Be it further resolved, That, alternatively, this Legislature applies to the Congress of the United States to call a constitutional convention for the specific and exclusive purpose of proposing and amendment to the federal constitution which would require, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed that total of all estimated federal revenues for that fiscal year.

Be it further resolved, That this Legislature calls upon the legislatures of each of the several states to request Congress to enact an appropriate amendment to the federal constitution or, in the alternative, to apply to the Congress to call a constitutional convention for the sole purpose of proposing such an amendment to the federal constitution.

Be it further resolved, That copies of this Resolution be forwarded to the President of the Senate and the Speaker of the House of Representatives of the United States and to all members of the Utah delegation in Congress.

Be it further resolved, That copies of this Resolution also be prepared and forwarded to the secretaries of state and to the presiding officers of the legislatures of the several states with the request that they join this State in making application to the Congress of the United States to pass such an amendment or, in the alternative, to call a convention for the sole purpose of proposing such an amendment.

Be it further resolved, That this application for a Convention Call for proposing amendments be limited to the subject matter of this Resolution and that the State of Utah be counted as a part of the necessary two-thirds states for such a call only if the convention is limited to the subject matter of this Resolution.

Mr. CRAIG. Mr. Speaker, I thank my colleague from Utah.

Mr. Speaker, I now yield to my colleague from Pennsylvania [Mr. Walker] for the purpose of reading into the Record at the request of Congressman Lott the Mississippi resolution.

Mr. WALKER. I thank the gentleman for yielding. I am very pleased to read into the Record the Mississippi resolution for the distinguished minority whip of the House, Mr. Lott.

Mr. Speaker, on February 25, 1975, the State Legislature of Mississippi petitioned this body to enact and send to the State for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Now Therefore, *Be it Resolved by the House of Representatives of the State of Mississippi, the Senate Concurring Therein,* That we do hereby, pursuant to Article V of the Constitution of the United States, make application to the Congress of the United States to call a convention of the several states for the proposing of the following amendment to the Constitution of the United States:

Mr. Speaker, I include the full contents of this resolution in its entirety into the Record, as follows:

RESOLUTION

Whereas, an ever-increasing public debt is inimical to the general welfare of the people of the United States; and

Whereas, the national debt is already dangerously high and any further increases will be harmful and costly to the people of the United States; and

Whereas, a continuous program of deficit financing by the Federal Government is one of the greatest factors supporting the inflationary conditions presently existing in this country and therefore has been the chief factor in reducing the value of the American currency; and

Whereas, payment of the increased interest required by the ever-increasing debt would impose an undue hardship on those with fixed incomes and those in lower income brackets; and

Whereas, it is not in the best interest of either this or future generations to continue such a practice of deficit spending particularly since this would possibly deplete our supply of national resources for future generations; and

Whereas, by constantly increasing deficit financing the Federal Government has been allowed to allocate considerable funds to wasteful and in many instances nonbeneficial public programs; and

Whereas, by limiting the Federal Government to spend only the revenues that are estimated will be collected in a given fiscal year, except for certain specified emergencies, this could possibly result in greater selectivity of Federal Government programs for the benefit of the public and which would depend upon the willingness of the public to pay additional taxes to finance such programs; and

Whereas, there is provision in Article V of the Constitution of the United States for amending the Constitution by the Congress, on the application of the legislatures of two-thirds (⅔) of the several states, calling a convention for proposing amendments which shall be valid to all intents and purposes when ratified by the legislatures of three-fourths (¾) of the several states, or by conventions in three-fourths (¾) thereof, as the one or the other mode of ratification may be proposed by the Congress:

Now Therefore, Be it Resolved by the House of Representatives of the State of Mississippi, the Senate Concurring Therein, That we do hereby, pursuant to Article V of the Constitution of the United States, make application to the Congress of the United States to call a convention of the several states for the proposing of the following amendment to the Constitution of the United States:

"ARTICLE —

SECTION 1. Except as provided in Section 3, the Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year.

SEC. 2. There shall be no increase in the national debt and such debt, as it exists on the date on which this article is ratified, shall be repaid during the one-hundred-year period beginning with the first fiscal year which begins after the date on which this article is ratified. The rate of repayment shall be such that one-tenth (⅒) of such debt shall be repaid during each ten-year interval of such one-hundred-year period.

SEC. 3. In time of war or national emergency, as declared by the Congress, the application of Section 1 or Section 2 of this article, or both such sections, may be suspended by a concurrent resolution which has passed the Senate and the House of Representatives by an affirmative vote of three-fourths (¾) of the authorized membership of each such house. Such suspension shall not be effective past the two-year term of the Congress which passes such resolution, and if war or an emergency continues to exist such suspension must be reenacted in the same manner as provided herein.

SEC. 4. This article shall apply only with respect to fiscal years which begin more than six (6) months after the date on which this article is ratified."

Be it Further Resolved, That this application by the Legislature of the State of Mississippi constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds (⅔) of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical with that contained in this resolution before January 1, 1976, this application for a convention of the several states shall no longer be of any force or effect.

Be it Further Resolved, That a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States; to each member of the Congress from this state; and to each house of each state legislature in the United States.

Mr. CRAIG. I thank my colleague.

Mr. Speaker, I further yield to my colleague from Pennsylvania [Mr. Walker] for the purpose of reading into the Record for Congressman Bill Emerson the State of Missouri's resolution.

Mr. WALKER. Mr. Speaker, I thank the gentleman again for yielding.

Mr. Speaker, in 1983 the State Legislature of Missouri petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved that if, by January 1, 1984, the Congress has not proposed and submitted to the several states such an amendment, this body respectfully makes application to the Congress of the United States for a convention to be called under Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto; and

Mr. Speaker, I include the full contents of this resolution in its entirety into the Record, as follows:

SENATE CONCURRENT RESOLUTION NO. 3

For the purpose of requesting appropriate action by the Congress, either acting by consent of two-thirds of both houses or, upon the application of the legislatures of two-thirds of the several states, to propose an amendment to the federal constitution to require, with certain exceptions, that the federal budget be balanced.

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds one trillion dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to limit the growth of federal spending and taxes and balance the budget; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget; and

Whereas, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance on a regular basis; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, the federal deficit in Fiscal Year 1982 was $110.7 billion, nearly double the deficit in Fiscal year 1981; and

Whereas, the Congressional Budget Office projects a deficit for Fiscal Years 1983 and 1984 of $155 billion and $200 billion, respectively; and

Whereas, the United States Senate approved a proposed balance budget amendment in response to the efforts of the thirty-one state legislatures which have requested a limited convention on this subject, and its conviction about the need for a constitutional restraint upon Congress' fiscal authority; and

Whereas, the Reagan Administration has indicated that the budget will not be balanced by 1984; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states, the Congress shall call a constitutional convention for the purpose of proposing amendments which shall be valid for all intents and purposes when ratified by three-fourths of the several states, and whereas, believing such action to be vital;

Now, therefore, be it resolved by the Senate of the Eighty-second General Assembly of the State of Missouri, the House of Representatives concurring therein, that the Missouri General Assembly proposes to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the Missouri General Assembly requests the Congress to prepare and submit to the several states before January 1, 1984, an amendment to the Constitution of the United States, requiring a balanced federal budget and to make certain exceptions with respect thereto; and

Be it further resolved that if, by January 1, 1984, the Congress has not proposed and submitted to the several states such an amendment, this body respectfully makes application to the Congress of the United States for a convention to be called under Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto; and

Be it further resolved that effective January 1, 1984, this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made similar applications pursuant to Article V, but if the Congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution, then this application and petition for a constitutional convention shall no longer be of any force or effect; and

Be it further resolved that this application shall be deemed nul and void, rescinded and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and

Be it further resolved that this body also proposes that the legislatures of each of the several states comprising the United States which have not yet made similar applications apply to the Congress requesting the enactment of an appropriate amendment to the federal constitution, and making application to the Congress to call a constitutional convention for the purpose of proposing such an amendment to the federal constitution; and

Be it further resolved that copies of this resolution be sent by the Secretary of the Senate and the Chief Clerk of the House of Representatives to each member of Congress representing Missouri; and

Be it further resolved that the Secretary of the Senate and the Chief Clerk of the House of Representatives of this state be directed to send copies of this resolution to the Secretary of State and presiding officers of both Houses of the Legislature of each of the other states in the Union, the Clerk of the United States House of Representatives, Washington, D.C. and the Secretary of the United States Senate, Washington, D.C.

Mr. CRAIG. I thank my colleague from Pennsylvania [Mr. Walker].

Mr. Speaker, I would now like to yield to my colleagues from Florida [Mr. Mack] for the purpose of reading into the Record, with the permission of Congressman Tom Bliley the State of Virginia's resolution.

Mr. MACK. Mr. Speaker, on March 10, 1976, the General Assembly of the Commonwealth of Virginia petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Resolved further, that, alternatively, this body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year;

Mr. Speaker, I include the full contents of this resolution into the Record in its entirety, as follows:

Senate Joint Resolution No. 36

Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual Federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all Federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments; and

Whereas, we believe such action vital; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the General Assembly of Virginia proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that this Body hereby requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and, be it

Resolved further, That, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal apropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and, be it

Resolved further, That this Body also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and, be it

Resolved finally, That copies of this resolution be presented forthwith to the President of the Senate and the Speaker of the House of Representatives of the United States, to each of the Senators and Representatives from Virginia and to the legislatures of each of the several states, attesting the adoption of this resolution.

Mr. CRAIG. I thank my colleague.

Mr. Speaker, I would like to further yield to my colleague from Florida [Mr. Mack] to read, on behalf of Congressman Dick Cheney, the State of Wyoming's resolution into the Record.

Mr. MACK. Mr. Speaker, on March 17, 1977, the State Legislature of Wyoming petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Section 2. That the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII.

Mr. Speaker, I include the full contents of this resolution in its entirety into the Record, as follows:

Enrolled Joint Resolution No. 1

Whereas, with each passing year this title becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the public debt now amounts to hundreds of billions of dollars; and

Whereas, attempts to limit spending, including impoundment of funds by the President of the United States, have resulted in strenuous assertions that the responsibility for appropriations is the constitutional duty of the Congress; and

Whereas, the annual Federal budget repeatedly demonstrates the unwillingness or inability of both the legislative and executive branches of the Federal Government to curtail spending to conform to available revenues; and

Whereas, the unified budget does not reflect actual spending because of the exclusions of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, the U.S. News and World Report reported on February 25, 1974, that of these nonbudgetary outlays in the amount of $15,600,000,000.00, the sum of $12,900,000,000.00 represents funding of essentially private agencies which provide special services to the Federal Government; and

Whereas, knowledgeable planning and fiscal prudence require that the budget reflect all Federal spending and that the budget be in balance; and

Whereas, believing that fiscal irresponsibility at the Federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal disciplines needed to reverse this trend; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments;

Now, therefore be it resolved by the Legislature of the State of Wyoming, a majority of all members of the two houses, voting separately, concurring herein:

Section 1. That procedures be instituted in the Congress to add a new Article XXVII to the Constitution of the United States, and that Congress prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues, excluding any revenues derived from borrowing, for that fiscal year; or

Section 2. That the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII.

Section 3. That the legislatures of each of the several states comprising the United States apply to the Congress requiring it to call a constitutional convention for proposing such an amendment to the Federal Constitution, to be a new Article XXVII.

Section 4. That the proposed new Article XXVII (or whatever numeral may then be appropriate) read substantially as follows:

PROPOSED ARTICLE XXVII

"The total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues for that fiscal year, excluding any revenues derived from borrowing; and this prohibition extends to all Federal appropriations and all estimated Federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this Article. If the President proclaims a national emergency, suspending the requirement that the total of all Federal appropriations not exceed the total estimated Federal revenues for a fiscal year, excluding any revenues derived from borrowing, and two-thirds of all Members elected to each House of the Congress concur by Joint Resolution, the total of all Federal appropriations may exceed the total estimated Federal revenues for that fiscal year."

Section 5. That copies of this Resolution be transmitted to the President of the United States, the chairmen of the Judiciary Committees of both the Senate and House of Representatives, the chairman of the Joint Committee on Budget Control of the Congress and to each member of the Wyoming Congressional delegation.

Section 6. That copies of this Joint Resolution be transmitted to the Secretary of State and to the presiding officers of both Houses of the Legislature of each of the other States in the Union, with the request that it be circulated among leaders in the Executive and Legislative branches of the several State governments; and with the further request that each of the other States in the Union join in requiring the Congress of the United States to call a constitutional convention for the purpose of initiating a proposal to amend the Constitution of the United States in substantially the form proposed in this Joint Resolution.

Mr. CRAIG. I would like to thank my colleague from Florida [Mr. MACK].

Mr. Speaker, I would now like to yield to my colleague from Montana [Mr. MARLENEE] to read into the RECORD for Congressman JAMES BROYHILL of North Carolina the State of North Carolina Legislature resolution.

Mr. MARLENEE. Mr. Speaker, on January 29, 1979, the State Legislature of North Carolina petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Sec. 2. That, alternatively, this body respectfully petitions the Congress of the United States to call a convention for the exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget in the absence of a national emergency.

Mr. Speaker, I include the full contents of this resolution in it entirety into the RECORD, as follows:

SENATE JOINT RESOLUTION 1

Whereas, believing that inflation is the most serious problem facing the people of the United States, and the primary cause of inflation is unchecked federal spending; and

Whereas, the State of North Carolina is required by its Constitution to have a balanced budget, and has long operated on a sound fiscal basis which the federal government would be well-served to emulate; and

Whereas, under Article V of the Constitution of the United States, amendments to the federal Constitution may be proposed by the Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states, the Congress shall call a Constitutional Convention for the purpose of proposing amendments which shall be valid when ratified by the legislatures of three-fourths of the several states or by conventions in three-fourths thereof;

Whereas, by Resolution 97 of the General Assembly, ratified July 1, 1977, the Congress was requested to submit an amendment to the states to require a balanced federal budget, but [illegible] Congress has failed to act; Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. That the Congress of the United States is requested to propose and submit to the states an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the federal budget be balanced each fiscal year within four years after the amendment is ratified by the various states.

Sec. 2. That, alternatively, this body respectfully petitions the Congress of the United States to call a convention for the exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget in the absence of a national emergency.

Sec. 3. That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, or until this application is rescinded by the General Assembly of North Carolina; but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this joint resolution before January 1, 1980, this petition for a Constitutional Convention shall no longer be of any effect.

Sec. 4. That this application and request be deemed rescinded in the event that the convention is not limited to the subject matter of this application.

Sec. 5. That since this application under Article V of the Constitution of the United States is the exercise of a fundamental power of the sovereign states under the Constitution of the United States, it is requested that receipt of this application by the Senate and the House of Representatives of the United States Congress be officially noted and duly entered upon their respective records, and that the full context of this resolution be published in the official publication of both the Senate and the House of Representatives of the Congress.

Sec. 6. That copies of this resolution be sent to the Secretaries of State, presiding officers of all state legislatures in the Union, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and each member of the North Carolina Congressional delegation.

Sec. 7. This resolution is effective upon ratification.

In the General Assembly read three times and ratified, this the 29th day of January, 1979.

Mr. CRAIG. I would further like to yield to my colleague from Montana [Mr. MARLENEE] to read into the RECORD on behalf of Congressman TOMMY HARTNETT of the State of South Carolina the South Carolina Legislature's resolution.

Mr. MARLENEE. Mr. Speaker, in 1978 the State Legislature of South Carolina petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

That Congress is requested, pursuant to Article V of the United States Constitution, to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution.

Mr. Speaker, I include the full contents of this resolution in its entirety into the RECORD, as follows:

CONCURRENT RESOLUTION

Whereas, with each passing year this Nation becomes more deeply in debt as congressional expenditures grossly and repeatedly exceed available revenues so that the public debt now exceeds a half-trillion dollars; and

Whereas, attempts to limit spending by means of the new congressional budget committee procedures have proved fruitless; and

Whereas, the annual Federal budget repeatedly demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal government to curtail spending to conform to available revenues; and

Whereas, the proposed budget of five hundred billion dollars for fiscal year 1978-79 does not reflect total spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, believing that fiscal irresponsibility at the Federal level, with the resulting inflation and decline in the Nation's trading position is a growing and corrosive threat to our economy, to the well-being of our people, and to our representative democracy, that constitutional restraint is necessary to bring the fiscal discipline needed to reverse this trend. Now, therefore,

Be it resolved by the Senate, the House of Representative concurring:

That Congress is requested, pursuant to Article V of the United States Constitution, to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution.

Be it further resolved that the proposed new amendment read substantially as follows:

"PROPOSED ARTICLE XXVII

The total of all federal appropriations made by the Congress for any fiscal year shall not exceed the total of the estimated federal revenues for that fiscal year, excluding any revenues derived from borrowing, and this prohibition extends to all federal appropriations and all estimated federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this article.

The provisions of this article shall be suspended for one year upon the proclamation by the President of an unlimited national emergency. The suspension may be extended, but not for more than one year at any one time, if two-thirds of the membership of both Houses of Congress so determine by Joint Resolution."

Be it further resolved that copies of this resolution be forwarded to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of Congress from South Carolina.

Mr. CRAIG. Mr. Speaker, I would like to thank my colleague from the State of Montana.

Mr. Speaker, on January 20, 1979, while I was serving in the State Senate of the State of Idaho I had the privilege of carrying in that body the resolution I am about to read.

Mr. Speaker, on February 20, 1979, the State Legislature of Idaho petitioned this body to enact and send to the States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and, that should Congress fail to act in that manner:

Be it further resolved, that, alternatively, the Legislature makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Mr. Speaker, I included the full contents of this resolution in it entirety into the RECORD, as follows:

HOUSE CONCURRENT RESOLUTION NO. 7

Be it Resolved by the Legislature of the State of Idaho:

Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the Legislatures of two-thirds of the several states the Congress shall call a Constitutional Convention for the purpose of proposing amendments. We believe such action vital.

Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the House of Representatives and the Senate concurring, that the Legislature proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the legislature requests the Congress to prepare and submit to the several states an amendment to the constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved, that, alternatively, the Legislature makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved, that this application by this Legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the Legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution then this petition for a Constitutional Convention shall no longer be of any force or effect; and

Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and

Be it further resolved, that this Legislature also proposes that the Legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution; or require the Congress to call a Constitutional Convention for proposing such an amendment to the Federal Constitution; and

Be it further resolved, that the Clerk of the House of Representatives be and he is hereby directed to forward copies of this resolution to the Secretary of State and presiding officers of both Houses of the Legislatures of each of the other States in the Union, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Congress of the United States representing the State of Idaho.

Mr. CRAIG. I thank the Speaker.

Mr. Speaker, and Members of this body, you have just heard resolutions from 32 States of this Nation which have over a period of a decade requested of this body that we produce a constitutional amendment for the purpose of balancing the Federal budget and issue it forth for their debate and their ratification.

Mr. Speaker, pursuant to article V of the U.S. Constitution it says that two-thirds of the several States petitioning the Congress of the United States, that the Congress shall call a convention for the purpose of an amendment.

Two-thirds of our current 50 States represents 34 of our sovereign States.

Mr. Speaker, you have just heard from 32 of those States.

I would now like to recognize two gentlemen who have been active in their States, the State of California and the State of Montana, in a very unique process, Mr. Speaker, that could well bring to this body, by election day of 1984, the 33d and 34th State, therefore requiring this Congress, pursuant to article V of the Constitution, to move in a direction that they have been requested by the States in compliance with the Constitution itself.

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I would now like to yield to my colleague, BILL DANNEMEYER, from the State of California, to discuss what is going on in that State and what may well make that State, depending on how election returns come in in November of this year on election day, either the 33d or the 34th State petitioning.

Mr. DANNEMEYER. I thank my colleague from Idaho for yielding me this time.

The history of this movement in the State of California, the largest State in terms of population in the Union, in an interesting one to say the least. There was a resolution on this subject introduced in 1979 in the State Legislature in California. Unfortunately, it was killed in the State Senate by Leo McCarthy, who now serves our State legislature in the capacity of Lieutenant Governor.

Another resolution was introduced in that year 1979 by a State assemblyman from Van Nuys by the name of Tom Bane and it was adopted by the legislature, but it did not call for a constitutional amendment or a convention, just called on the Federal Government to propose a balanced budget amendment to the States. Leaving out that call for the convention, unfortunately, left California in the position that it could not qualify as one of the 34 States.

Then in 1981, Dan Boatwright, who had introduced the first resolution in 1979 introduced another one, Senate Joint Resolution 1, and it met with a similar success as the one in 1979, namely, it was defeated.

As a result of the failure of our State legislature to adopt this resolution calling for a convention on this subject, Senator PETE WILSON and myself organized a campaign last year designated Californians for a Balanced Budget. We have been successful in circulating petitions in our State and we have qualified an initiative for the ballot in November of this year. We filed 605,609 signatures on February 21 of this year. On March 21, the secretary of state indicated that we have the correct number, specifically 445,449 were verified and that is 52,000 over the 393,835 required. This means that this issue has qualified for the ballot in November 1984 and if the polls are any indication of what the people of my State of California will do on this issue, it is clear that the measure will be adopted overwhelmingly and California will be the 33d State in the Union on the subject.

I thank my colleague for yielding me this time.

Mr. CRAIG. I would certainly like to thank my colleague from California and to commend him. He and his colleague in the other body, Senator PETE WILSON, for the tremendous effort that they have been engaged in in the State of California and he has just recited for you the phenomenal effort in collecting over 600,000 signatures to qualify this most important initiative on the ballot for November.

I would have to concur that if the polls are anywhere near accurate and recent polling now shows that nearly 83 percent of the American public believe that a constitutional amendment for the purpose of balancing the Federal budget is an absolute necessity to bring fiscal stability, not only to this body, but to the country, itself.

Once again I congratulate my colleague for that tremendous effort.

I would now like to yield to my colleague from the State of Montana, who has been involved in a similar effort and just now in the last few days has that effort neared completion and I would like to congratulate my colleague from the State of Montana for what now appears to be a most successful effort and a job well done. And we look forward to hearing from him.

Mr. MARLENEE. Mr. Speaker, let me congratulate my colleagues, from California, BILL DANNEMEYER and my colleague from Idaho, LARRY CRAIG for unfailing personal support of this effort. Their personal sacrifice of time and money has been great. I know they have personally visited the State of Montana with me and helped get our effort there underway. It is progressing very well.

Thirty-two of the thirty-four States have entered here their petitions. There is no question in may mind, none whatsoever, that we will reach the goal of 34 States. It is time for responsibility. It is time now for this Congress to act on a balanced budget amendment and to put it out of this body.

I would like to report to my colleagues that Montana, it is reported to me, has reached the required number of signatures and that this has happened very recently and that this issue will more than likely be on the ballot this fall.

Given that opportunity I can say with a great degree of confidence that the people of Montana will overwhelmingly, support the balanced budget amendment initiative that we are going to have on the ballot.

I would like to say that we have it at this time, but, Mr. Speaker, the people of Montana, I will have to say, are considering requiring the Montana State Legislature to petition this body to enact and send to the United States for ratification an amendment to the Constitution of the United States requiring a balanced Federal budget and that should Congress fail to act:

Now, therefore, be it resolved by the Senate and House of Representatives of the State of Montana:

That the Legislature of the State of Montana propose and application is hereby made to the Congress of the United States, pursuant to Article V of the Constitution of the United States, to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require, with certain exceptions, that the federal budget be balanced.

Be it further resolved, that this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the several states have made similar application pursuant to Article V.

Mr. Speaker, I include the full contents of this resolution to be entered in its entirety into the RECORD, as follows:

Be It Enacted By the People of the State of Montana:

Section 1. Article V of the Constitution of the State of Montana is amended to read:

Section 5. Compensation. *(1).* Each member of the legislature shall receive compensation for his services and allowances provided by law, *except as provided in subsection (2).* No legislature may fix its own compensation.

(2). No compensation or allowance shall be paid a member during an extended session pursuant to Section 6 (2) of this article."

Section 6. Sessions. *(1)* The legislature shall meet each odd numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor at the written request of the majority of the members.

(2). If the resolution required in Section 15 of this Article is not enacted within 90 legislative days each house of the legislature shall be required to continue sitting at Helena for the exclusive and limited purpose of considering and deliberating on that resolution until such resolution is adopted. No recess or adjournment in excess of 3 calendar days shall be permitted until a resolution is adopted and transmitted as provided in Section 15."

New Section. Section 15. Application to Article V of the constitution of the United States for an application to Congress for a balanced federal budget amendment. (1) The people of the State of Montana herewith adopt and direct the next regular legislative session to adopt the following resolution and submit the same to the Congress of the United States under the provisions of Article V of the Constitution of the United States:

Whereas, with each passing year this nation becomes more deeply in debt as the expenditures grossly and repeatedly exceed available revenue, so that the public debt now exceeds one trillion four hundred billion dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness and inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenue; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget; and

Whereas, knowledgeable planning and fiscal prudence require that the budget reflect all spending and be in balance on a regular basis; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation and high interest rates which result, is one of the greatest threats facing our nation; and

Whereas, we firmly believe that a constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, upon application of the legislatures of two-thirds of the several states, the Congress shall call a convention for the purpose of proposing amendments to the federal Constitution, which action we believe is vital.

Now, therefore, be it resolved by the Senate and House of Representatives of the State of Montana:

That the Legislature of the State of Montana propose and application is hereby made to the Congress of the United States, pursuant to Article V of the Constitution of the United States, to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require with certain exceptions, that the federal budget be balanced.

Be it further resolved, that this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the several states have made similar application pursuant to Article V.

Be it further resolved, that if the Congress of the United States proposes an amendment to the Constitution of the United States identical in subject matter to that contained herein and submit the same to the states for ratification, this application shall no longer be of any force and effect.

Be it further resolved, that this application shall be considered void, rescinded and of no effect if such convention not be limited to such specific and exclusive purposes.

Be it further resolved, that the Secretary of the Senate, Clerk of the House and Secretary of State be directed to transmit copies of this application to the Secretary of the United States Senate and Clerk of the United States House of Representatives of the Congress of the United States, to the members of the United States Senate and House of Representatives from this state and to the presiding officers of each of the legislatures in the several states requesting the legislatures of those states to adopt resolutions calling for a constitutional convention on an issue of balancing the federal budget.

(2). The secretary of state is directed to transmit copies of this constitutional amendment adopted by the people of Montana to the secretary of the United States Senate and the clerk of the United States House of Representatives of the Congress of the United States, to the members of the United States Senate and House of Representatives from this state, and to the presiding officers of each of the legislatures in the several states requesting the legislatures of those states to adopt resolutions calling for a constitutional convention or an issue to balancing the federal budget. The secretary of state shall transmit such copies of this amendment upon the expiration of the first 90 legislative days of deliberation by the 49th legislature of this state.

Section 2. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. If the mandatory provisions of this act are held to be impermissible, this amendment is to be considered nonbinding by the legislature.

Section 3. Termination Date. This amendment terminates upon a call by Congress for a limited constitutional convention for the sole purpose of proposing an amendment to the Constitution of the United States or for the ratification of an amendment to require, with certain exceptions, that the federal budget be balanced.

Section 4. Effective Date. This amendment is effective on passage and approval by the people of the State of Montana.

Mr. CRAIG. I would like to thank my colleague from Montana not only for his participation this evening, but for the tremendous leadership role he has played in this most successful effort in his State. We are now of the strength of signatures necessary to qualify that resolution that he has just mentioned on the ballot through the initiative drive and that is the uniqueness and the force of this issue, not only in Montana and California, but across the Nation.

Now there is another approach that is being currently taken at this time in some other States. I would like to yield to my colleague, MARK SILJANDER, from the State of Michigan to discuss what is currently going on in that State, which might well make Michigan the 33d or the 34th State to petition this Congress.

Mr. SILJANDER. I thank the gentleman for yielding.

I just want to say in 1 second that I deeply commend him. It is not just rhetorically. I really do. And his hard work in organizing this special order and presenting the awesome effort that is now underway nationwide to present a reality of a balanced budget to this country.

Michigan, we hope to be the 33d or 34th State. Michigan tends to be a State which is a little more less fiscally responsive than many States, as I served three terms in the State legislature there. But we do have a balanced budget amendment in the State of Michigan.

The State Senate miraculously passed through the Senate in the Senate committee on taxation a resolution calling for a balanced budget amendment in Washington, DC.

No one dreamed this could ever happen in a decade in Michigan, but it has. Now the resolution is on the house side. The resolution would never be thought of as being reported out of committee.

□ 1930

Now, we seem to have the votes on the House side in the State legislature in Lansing, MI, to report the bill to the full floor of the State legislature.

So my dear friend who is organizing this special order, I would like to share with him that Michigan has come a long way, an incredibly long way, from what all of the critics and observers could ever dream could have happened.

I would also like to thank State Senator Edward Fredericks of Holland, MI, for his efforts and his sponsorship of the Senate bill which has gone so far in the State to help promote the national effort for a balanced budget amendment.

I thank the gentleman for yielding.

Mr. CRAIG. I thank the gentleman from Michigan for the role he has played. I had the privilege of being in Lansing to testify before that Senate committee and was extremely pleased not only at the reception and the eagerness on the part of the Senate in Michigan to move that legislation, the resolution, as they have, and I think what my colleague has just reported about the possibility of that moving out now from the House committee into the full body of the House for a vote is a very real possibility in the near future.

Mr. Speaker, what we have just presented are not only 32 States that have currently petitioned Congress, and I believe, as my colleagues do, that those petitions are active and deserve recognition, and that is why we put them into the CONGRESSIONAL RECORD this evening.

You have also heard from our colleague from Michigan where an active legislative drive is currently underway, our colleague from California, who does stand assured that it will pass that State in the initiative effort this fall, in November, at the election, my colleague from Montana, who has been involved in a similar effort, and he too believes very strongly with every reason that that same type of initiative drive and that issue will pass on the ballot in November in the State of Montana.

Now, with all of this happening, Mr. Speaker, we are so very, very close to article V of the Constitution, which says:

> Upon the application of the legislatures of two-thirds of the several States, the Congress shall call a convention proposing amendments which shall be valid to all intents and purposes and a part of this Constitution when ratified by the legislatures of three-fourths of the several States or by convention in three-fourths thereof.

PARLIAMENTARY INQUIRY

Mr. CRAIG. Mr. Speaker, as a matter of parliamentary inquiry, I would like to ask of the Speaker what this body will do at the time the 34th State petitions this Congress for the purpose of a constitutional amendment and/or a constitutional convention.

The SPEAKER pro tempore. In response to the gentleman's inquiry, the Chair will state that there is no rule of the House which governs the situation which the gentleman describes.

It would be a matter for the House and for the other body to determine and establish a procedure appropriate to these circumstances.

Mr. CRAIG. Would the Speaker further respond in saying at this time there is no procedure, there is no rule, by which this body would conduct itself with the application of the 34th State?

The SPEAKER pro tempore. There is no House rule.

Mr. CRAIG. I would like to thank the Speaker for that parliamentary response.

To my colleagues here in the House, I think what you have seen demonstrated this evening is not only are we so very close as a Congress to the point of having to deal with what I believe one of the most critical constitutional questions of the day, but that the State legislatures, in a responsible way, adhering to article V of the Constitution of this country may well by November of this year force upon this body a constitutional crisis unless this body responds in the responsible fashion under they are being requested by the 34 States, at which time will have made that application, to either do one of two things: to produce a constitutional amendment to send forth to the States for their ratification, or to develop a procedure and to allow to be convened a constitutional convention for the specific purpose of drafting an amendment, a constitutional amendment, requiring a balanced budget and limiting taxation to then be sent forth to our States of this Union for the purpose of their ratification.

Recent polling data now shows that over 83 percent of the American public are asking that this process go forth. I, and others, have stood in this well day after day, hour after hour, requesting that the possibility of a constitutional crisis can and should be avoided, that the chairman of the House Judiciary Committee could well convene that committee, begin hearings and issue forth an amendment, an amendment that already resides in that committee, for the purpose of this body's consideration. And if he were so inclined to do that, the possibility of a constitutional crisis could be averted.

Also, there is currently at the desk discharge petition No. 10. We are asking our colleagues here in the House to go forth and sign that, to move forward with 218 signatures to produce that amendment to the floor for the purpose of this body taking action on it.

Those are the options that are currently available, and the American public is speaking more loudly and clearly than they ever have that they want at least one of those options activated so they can begin to address their State legislatures for the purpose of ratifying what I believe to be the most important constitutional question to be addressed in many decades.

I would like to recognize my colleague from the State of Florida.

Mr. MACK. I thank the gentleman for yielding.

I just wanted to raise a point or two concerning the public discharge petition. Or did you mention that?

Mr. CRAIG. No.

Mr. MACK. At this point how many individuals have signed that, the public discharge? Do you have that available?

Mr. CRAIG. I believe 62 have signed the public discharge petition.

Mr. MACK. And is there an effort at this point being made to try to get others to sign that? And how do they go about doing it, I guess is the question.

Mr. CRAIG. The question has been asked as to a public discharge petition. Of course, we know that the discharge petition procedure here in the House is one of confidentiality. Members can sign and support the discharge petition in the purpose of addressing a specific piece of legislation.

In the effort with a constitutional amendment, because we believe it to be so critical, we are asking those who sign the discharge petition to sign a public honor roll or a public discharge petition to announce to their congressional districts and their constituencies that they stand strong and firmly in the support of the constitutional amendment.

Mr. MACK. I thank the gentleman.

Mr. CRAIG. I would like to thank my colleague from Florida, I would like to thank my colleague from Montana and my colleague from California, and all of those who joined with me in what I believe to be a most important special order, to once again tell this body the critical importance of moving ahead with speed on what I have said earlier and I will say again, as I so firmly believe, to be one of the most important issues of this time, and that is to produce a constitutional amendment to our Constitution requiring a federally balanced budget in concert with limiting taxation.

I yield back the balance of my time.

THE TAX SYSTEM AND FISCAL RESPONSIBILITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SILJANDER] is recognized for 60 minutes.

Mr. SILJANDER. Mr. Speaker, as we are proceeding with a special order dealing with fiscal responsibility, I think it all appropriate in my special order tonight that we talk about the tax system in America and the fiscal responsibility that even extends beyond the balanced budget, which I so strongly endorse and think is crucial to the fiscal hopes and rationality of the future of our country.

Congress, in my opinion, is addicted to two things. We as a body are addicted to confusion and addicted to spending. Our answer has always been, each and every time there seems to be a fiscal problem, specifically with deficit spending, the answer has always been: Raise more taxes, squeeze the American taxpayer further and further. That has always been the response.

I liken us to an addiction to spending simply because each and every time we feel we need to get higher on spending, our answer is: Shoot another fix in our vein of more taxes.

So, obviously and clearly, in order to bring an addict off of whatever he or she is addicted to, giving more or the same amount of drugs is not the answer. One must be weaned off of that. And that is why the strong endorsement from this Member of a balanced budget amendment. And on top of that, a strong endorsement of tax limitation.

In 1982, we were facing a mammoth, over $150 billion deficit in 1983. So Congress scurried around to identify a solution for it, and we came up with the typical solution—a $100 billion tax increase. That was the solution. Then in 1983, we scurried around after experiencing that huge deficit, even though we successfully passed and the President signed into law, the greatest tax increase in history, single tax increase in history, that in 1983, we found ourselves in a similar predicament. We rose gas taxes and also raised the taxes on Social Security. Predicting in 1984, that even with these tax increases, still it will be another devastating year for the deficit.

□ 1940

In 1984, what did we do? In 1984 we come up with the Tax Reform Act of 1984. I hope the cameras, so all the Members can see this clearly, those who are watching in their offices can see this clearly. This is a book that passed Congress, 1,023 pages of tax increases. However, in addition to all these pages of tax increases, there are 810 pages of explanations of the other 1,023 pages.

Incredible as it seems, the Congress requires 810 pages to explain 1,023.

I yield to the gentleman from California.

Mr. DANNEMEYER. This Member from California had noticed a special order for this evening, and some Members in the House may have been present in anticipation of that. However, I have another engagement that takes me away from the body this evening.

I thank my colleague for yielding.

Mr. SILJANDER. It is quite a pleasure to yield to the gentleman from California, who, incidentally, is one of the leaders in this Congress for fiscal and monetary responsibility.

Mr. Speaker, back to plank in hand, literally, this document reflects again the same old addiction. This fix, as I said, is 1,023 pages of new taxes, loophole pluggings, and all types of other adjectives to describe all these pages. The point is clear: I said Congress was addicted to two things, confusing and taxation and spending. While this is indicative of both. I stood in the well during the debate on the floor; the full House was in session, and I shook this book and I said if anyone here has read the 1,023 pages, I would vote for it. No one said a word.

Then I flexed even further and said if anyone has read 810 pages of the explanations of the 1,023, I would still vote for it. Not one offer on the floor came up to say I read the entire explanation of the entire document. The point is simple: The more Congress perpetuates confusion with adding thousands and thousands of pages to IRS regulations and the Tax Code, the more scapegoats we find.

We can always pass the buck to the fact that well, you know, there are so many loopholes, and it is such a confusing system that you cannot really blame Congress because the IRS or the appropriate bureaucracy needs to promulgate rules on top of all this 1,023 pages once the document is passed.

Just for the information of the House, this document passed the House. A similar document passed the Senate of a thousand or so pages, and at this very hour there could be conferees meeting talking about the differences in the House and Senate version. In any event, we can rest assured, the American people can rest assured that once again, the same old response will be, shoot more tax increases up the veins of the U.S. Congress at the cost and expense of the taxpayers.

We have heard 40 years of this type of demagoguery. My submission to the American people is it is time that that stop. It is time that the liberal welfare state that has perpetuated itself begin to change to a new dynamic. I mentioned rules and regulations. The IRS Revenue Code, just for individual income taxes, mounts over 10,000 pages of rules and regulations. This is also indicative of the addictions I talked to you about earlier. My solution is a simple one.

My solution to all the tax increases, adding thousands of pages to the already overburdensome, confusing, elitist IRS Code system, is not a complicated solution. It is a simple solution to a complicated mess. That solution is a simple, fair, flat rate income tax. Heaven forbid that this Congress could even come up with something simple and something fair that does not add to the overwhelming confusion that we already experience in this body.

If we pass a simple, fair, flat rate income tax bill with limited deductions, Congress would no longer have excuses and no longer could point to confusion as to the scapegoat of why we have high deficits, and why people are crying about the $60 billion the American citizens spend each to have someone else fill out their individual income tax returns.

My solution is called the 10 percent solution. I am advocating a flat rate income tax of 10 percent for all taxpayers in America; 20 years ago, Milton Friedman, a renowned economist, suggested that a flat rate income tax was the best solution to the complicated situation even 20 years ago, which has complicated itself in the meantime. In 1976, Secretary of Treasury Bill Simon began a blueprint for a simple, fair tax rate.

I have introduced H.R. 5432. It is a simple, flat rate countdown to fair tax resolution. Anyone could remember the number: 5432; it is a countdown. I think it is imperative that all America take note of the present dilemma that we are in our tax system. I would like to read a quote by Bill Simon, former Secretary of Treasury regarding a flat rate income tax system. He said, and I am quoting former Treasury Secretary Bill Simon:

> A flat rate income tax will offer the taxpayers relief from the arbitrary, unfair, inefficient, graduated income tax. A low rate, such as 10 percent, would put needed pressure on Congress to curb its continued increase in spending and assist the Federal government in achieving a balanced budget.

Treasury Secretary Bill Simon was correct. He observed the need for a new system, a new tax system. Fortune magazine, dated June 11, 1984, recently has done a comparison of three proposed, or so-called flat rate tax bills. One, which I am a cosponsor of, is Congressman JACK KEMP's flat rate tax bill, which is similar to mine, we have our differences, but we both believe they are a step in the right direction. They have analyzed his as well as mine. The third one Fortune magazine evaluated was the Bradley-Gephardt which is in my opinion the Democrat liberal answer, a wolf in sheep's clothing, if you will, to a flat rate income tax.

A flat rate means one rate; Bradley-Gephardt has 3 rates up to 34 percent. What does Fortune magazine say about 5432? Quoting:

> A Siljander-style tax wins prizes for simplicity, and by eliminating artificial distinctions between types of income and investments, it discourages shelters and other uneconomic activities. It catches additional high-income taxpayers.

The point of Fortune magazine regarding my bill is very clear, it broadens the base finally, in a tax system which has been tilted toward the elite. The elite who can find the experienced tax lawyers and who can afford these tax lawyers to wade their way through the 10,000 pages of rules and IRS regulations to avoid paying any taxes at all.

□ 1950

Most of us are middle-income Americans. Most of us have to pay an H&R Block agent or a personal accountant, or we toil hour by hour filling out our own income tax forms which I think any of us, whether we have 1, 2, 3, or 4 degrees, find very, very confusing and complicated.

I am offering a simple solution. If you made $1 million a year or $15,000 a year, it requires the same 5 or 10 minutes to fill out your form, the same 5 or 10 minutes no matter what the income.

Finally, all income taxpayers, at all levels, will pay an equal amount of taxes to Uncle Sam. I am not advocating an increase in taxes, my colleagues; I am advocating an actual net reduction in taxes.

Here is the 10 percent. What does it do? What kind of deductions will it take, and how will it affect me? My friends in the Congress always ask, "Well, I know what I make in income and, SILJANDER, I would like to know how your H.R. 5432 affects me."

Whatever you make in gross taxes, tips, and wages, deduct $2,000 per person in your family. An average family of 5 would have a $10,000 exemption from all taxes. You also can deduct just four other things: Property taxes, interest paid—those two elements for a homeowner—charity and IRA-Keogh future savings accounts for retirement. That is it. Exemption for the poor, exemption for the charitable organizations, exemptions for assisting the middle-income American who is proud to own a home, and certainly exemptions for retirement accounts for our future. That is it, from beginning to end. There is nothing more, nothing less, with H.R. 5432.

It brings in simplicity. Obviously, as with any new, dynamic change, there will be questions as to fairness, as to revenue implications, and tonight what I would like to do is just share a response to those two central questions. The first one I mentioned dealt with fairness to the poor. How many times have we heard a flat rate income tax will not be fair to the poor.

Assuming there are no deductions and it were a pure, unadulterated flat rate indeed, it likely would be less fair than the present system to the poor. However, what we have incorporated in our flat tax H.R. 5432, the 10-percent flat tax, is a $2,000 exemption per person in the family indexed to inflation. So as I indicated before, a family of five, a husband, wife, and three children, which is not atypical for the United States of America, could deduct $10,000 off their taxes, untaxed, no tax for the first $10,000.

This system, ladies and gentlemen, is better than the present system for the poor. It is not worse, it is not equal to;

this is fairer than the present complicated, confusing system for the poor.

I would like to read for the record, in further emphasizing the aspect of the poor, a letter sent by someone who is in the Legal Services Corporation, which essentially is a Government-sponsored legal service to assist those who are underprivileged or poor. The Conservative Caucus is doing a national mailing. By November 1984, this election year, there will have been 20 million letters sent out all over the country by direct mail by this one organization supporting H.R. 5432, or the simple 10-percent flat tax concept.

This letter comes from a response by a woman who is a member of the Legal Services Corporation and who has compassion for the poor, who works to support the poor, and works to help those who have little. This is a letter to the Conservative Caucus, to the chairman, Mr. Howard Phillips, Falls Church, VA. I will not read her name, but I want to read this short letter because it makes so clear the argument that, "Oh, any flat rate tax against the poor makes it clear that argument is not valid for H.R. 5432."

"Dear Mr. Phillips," she said, "I never thought I would agree with you on anything as I have been a Legal Services attorney since 1969, but I agree with you on the flat rate tax, and to show you I mean business, I am [gasp!] sending you a check made out to the Conservative Caucus. A 10-percent flat tax would be one of the best things that ever happened to poor people. Very truly yours," signed by the Legal Services Corporation lawyer, a woman.

I hope this clears up any misunderstandings by any of my colleagues about whether or not the Siljander flat rate 10-percent tax, H.R. 5432, in any way would affect the poor in this country.

The overriding second question that is asked at any given meeting I have ever presented a flat rate tax rate tax concept to, "Now, wait a minute. How in the world, if you exempt deductions is one thing, but how could a 10-percent flat rate income tax conceivably bring in enough revenues to keep a fiscal, logical order in this country and for this Government? Could it bring in essentially the same amount of revenue?"

Most people would think not. However, it is a time in this Nation for a dramatic change in thought and in policy. I talked about Government being addicted to spending. I am not attempting to reduce Government spending by the 10-percent flat rate tax bill necessarily; I am attempting to change the thought and policy of this Congress in terms of tax increases, loophole expansions, and never-ending additions to the confusion and complications of the present system.

The Republican Study Committee says that $35,000 incomes and under represent 90.2 percent of all the gross taxable income; 75 percent of all the gross taxable income comes from those under $20,000. So obviously, based on these statistics, who is bearing the brunt of the present system? It is the middle-income taxpayer who pays the vast majority of his or her hard-earned money into Uncle Sam each and every year.

I would wager that anyone who made under $40,000, if they will look on their receipt from their last check, paycheck, those who are working, would take note that there is likely deducted off the FICA aspect of the check at least 20 percent, maybe 25, and some up to 35 and 40 percent is being deducted off their check each and every week, or month, or whenever they are paid, because those under $40,000, as I said, are the ones who receive the brunt of the present tax system.

So what would this bill do? A 10-percent flat rate income tax would be at least a 50-percent tax cut for those in the middle-income tax brackets. So as I said, it does not hurt the poor; it helps them more than the present system. How does it affect middle-income Americans? It benefits substantially middle-income Americans. What this bill amounts to, then, is a tax cut. It is not a tax increase or a tax shift, pulling $1 out of one pocket and putting $1 into the next, as we often do in this Congress; but rather, H.R. 5432 is a tax cut for the middle-income American.

I am going to tie this in to how it results in revenue losses in one or two moments.

Point No. 2: It is a jobs bill. The 10-percent flat rate income tax will stimulate the economy. This is a specific endeavor to create more jobs, because Chamber of Commerce studies have shown very clearly that as net take-home pay increases for the average blue-collar and middle-income white-collar worker, his or her productivity also increases.

□ 2000

If productivity increases, the employer is encouraged to produce more product and if you believe in supply side economics as stimulatory to the economy, as a result there is more GNP, as a result there are more jobs, and not only do we receive more jobs, but naturally the Government benefits as well.

Laffer, who has done much work on the 1981 Reagan-Kemp-Roth tax cut plan has also assessed a 10-percent flat rate income tax. I would like to read something from A.B. Laffer Associates, who have been very involved in assessing through a dynamic model analysis of economic response to various tax cuts what the revenue implications could be in House Resolution 5432. A.B. Laffer Associates have calculated the likely economic effects of a flat rate base tax on a Cobb-Douglas economic model. All these words may sound fancy, but it comes down to this point. Implementation of a flat tax, according to Laffer, would augment growth for several reasons. First, the dramatic reduction in marginal tax rates would increase incentives to work and invest.

Two, the changes in marginal tax rates are important because they change the incentives to demand and supply work effort and capital.

For example, firms that base their decision to employ workers in part on a total cost to the firm, holding all else equal, the greater the cost to the firm of employing each additional worker, the fewer workers the firm will employ.

Conversely, the lower the marginal cost per worker, the more workers the firm hires. For the firm, the decision to employ is based on gross wages paid, a constant which encompasses all costs borne by the firm.

So Laffer says that a 10-percent flat income tax would in fact be economically stimulative to our economy.

Another point on how it would affect revenue. This bill, H.R. 5432, is a deficit reduction package, quite frankly. We have seen that with each 1-percent reduction in unemployment or 1-percent increase in employment, the Government saves $20 billion in outlays and an additional $10 billion in revenues. This means that the Government nets an extra $30 billion when Americans go back to work. As Laffer, as former Secretary of the Treasury Bill Simon has indicated very clearly, and the Heritage Foundation recent studies indicates, this bill would be economically stimulative enough to increase GNP by about 8 percent at the lowest depth, or at the very least, which would result in substantial increases in employment which results in substantial revenues to the Government, again the $30 billion figure saved revenue, either coming out or more coming in for each 1 percent put back to work.

Regarding the bureaucracy, not too many moments ago I mentioned how confusing and chaotic and almost to the point of being ridiculous some of the bills that we pass here in Congress are, as this Tax Reform Act of 1984, the $50 billion tax increase with 1,023 pages. The bureaucracy has to implement all those 1,023 pages of tax codes and changes and alterations and additions.

The bureaucracy has not fully implemented a tax increase fully since 1954, but they are trying and we are hiring more and more bureaucrats all the time to attempt to address all this.

The IRS has presently employed about 82,000 employees, so what would a simple flat rate tax bill do? It would eliminate much of the unnecessary bureaucratic rules, regulations, confusions, and complications, and as a result could save the Government billions of dollars a year, with less bureaucracy, less involvement, less regulations, less controls, and certainly, best of all, less harassment to the American people.

Another point, Americans who file individual income tax returns, these are not corporations now, spend $60 billion a year paying someone else to fill out their income tax returns. Incredible as it seems, $60 billion they are throwing down the drain to let someone else do something that under House Resolution 5432 could be done in 10 or 15 minutes by ourselves, no matter at what income level.

What if that $60 billion were redirected at the automotive industry? I can tell you, Michigan would certainly be very joyful, for the State that I represent.

What if it were centered on housing? Think of a more productive element in our economy for that $60 billion and what it could produce for our Nation.

Another point dealing with generated revenues from a flat rate income tax, this is a new element, something new, something different from the other flat rate income tax provisions. It is called amnesty. It is called taxing in the underground economy, which the IRS themselves estimate at almost $100 billion lost revenue to us, the U.S. Government, a year because of those legal underground economies. I am not referring to prostitution or drugs, quite obviously, but the legal underground economy, those who paint someone's house and not report it on their income tax.

Much of that type of underground economy is not reported, because who wants to face the complications, the confusions of the tax system, which frighten many people away from even filing. Who wants to face 20-, 30-, 40-percent income tax brackets?

Massachusetts decided to try an amnesty program, the State of Massachusetts. They offered an amnesty program. Their economists estimated a windfall of almost $7 million in 3 months; 3 months into the system and Massachusetts has already netted almost 10 times that amount, nearly $70 million.

Incredible as it seems, Massachusetts never changed their tax system. They never changed the rate. They just offered those that were hiding and not paying their fair share, without fear of penalty, without fear of jail sentence, to come out, come out and repent, in essence, pay up what you owe and be a contributing citizen from this point on.

We need to tap into that $100 billion lost revenue a year nationally to the federal system.

Think of what a 10-percent flat rate income tax, simplifying the system, what kind of incentive that would be to bring so many of those in the underground economy back out again.

We are estimating that we could at a low ebb of $100 billion total lost revenues, based on Massachusetts' experience, we feel a $34 billion level of new revenue is not unjustified.

Now, to even give Congress a better opportunity, to give Congress a better opportunity to implement our bill. If this bill were signed into law tonight it would not take effect for 3 years. It gives Congress time to readjust to all these bureaucratic rules and regulations, to adjust new thinking and new policies, to be weaned off the addiction of expansion, of a confusion through more rules and more regulations and more loopholes. It gives Congress a 3-year weaning down period; but the amnesty provisions would be implemented immediately and that $34 billion plus revenues, new revenues that we collect by bringing those out from the underground economy, for those 3 years before the bill takes effect will be placed in a separate trust fund, so when the 10-percent flat tax rate takes effect, that money could be used to offset any lost revenues.

It is simple, basic, elementary economics. It is time Congress changed and I am trying to do all I can to make this transition easy, smooth, and convenient.

I would like to quote Will Rogers, who said, "The income tax has made more liars out of American people than golf has."

He said, "Even when you make a tax form out on the level, you do not know when you are through if you are a crook or a martyr."

These quotes by Will Rogers back many decades ago are just more reason, even with American humor, why the tax system needs to be changed.

Michael Evans has done a research. He is an economist. He has been around for many, many years. He has done much research regarding the implications of changing the tax system. In the Gentleman's Quarterly magazine, Michael Evans said:

> The amount collected by the Federal Government represents less than 40 percent of the total amount of taxes that would be collected if there were no deductions, no loopholes, or no tax cheating.

☐ 2010

Incredible as that seems, we have broken this down to dollar amounts at 1984 levels. Deductions, exemptions, and loopholes that are identifiable lose $260 billion a year and we only collect $292 billion a year total in all individual income taxes.

So nearly 85 percent of the total amount presently collected in individual income taxes by the Government, almost an equal amount is lost by deductions, exemptions, loopholes that we can identify. Uncollected taxes, another $200 billion a year. Untaxed taxes, $35 billion a year.

Now, to bring all this over here one point here, points over there, so many points to the average Member, I can understand that this may seem somewhat involved but to combine it all to make it very simple: the stimulative effect on the economy, add that to the reduced Federal bureaucracy, the $60 billion that we pay others to fill out our taxes per year, have that reinvested somewhere else; the 3-year amnesty provision before the bill takes effect, the other revenue implications as Michael Evans outlined moments ago, gives us about the same amount of revenues as we are collecting today and maybe more.

According to the Republican Study Committee, according to the Heritage Foundation and according to former Treasury Secretary Bill Simon, all three very credible economists, agencies, or individuals, with credible economists, they indicate that a 10-percent flat rate tax bill such as the Siljander H.R. 5432 will bring in as many revenues and maybe more.

Some of us are concerned now that my bill introduced in the 98th Congress does not have a provision as to what to do with excess revenues if that were to occur. There has been so much talk that Siljander's bill of 10-percent tax could never produce equivalent revenues. No one ever gave a thought that actually studies are made that it could possibly produce more revenues that the present system.

So the bill, if and when it is brought up in the Committee on Ways and Means I will certainly ask for an amendment to make sure that the excess revenues would go directly for paying off the national debt if in fact there were excess revenues.

Let me read a quick quote from the Republican Study Committee which recently assessed our bill:

The Siljander 10-percent flat tax proposal, the Joint Committee on Taxation did not review the proposal because I was not a member of the committee but they said that the economic impact is very important in any event. They said the study shows that $82 billion shortfall in personal tax revenues, at least at the level of 1983, are $228 billion before other economic consequences are included such as more compliance, general amnesty provisions, higher growth resulting in lower Federal outlays, once all these economic benefits are included the amount of revenues raised would match the level of personal income tax revenues collected in 1983.

So that means the bottom line is that the Republican Study Committee feels that House Resolution 5432 would at least produce equivalent amount of revenues.

Now, some people are nervous about that. Some people feel that we need to reduce the amount of revenues and the flat rate income tax ought to be the vehicle to reduce revenues. Much of this, granted, is based on economic modeling, assessments, how much the underground economy would come up with assuming we had an amnesty provision; but, ladies and gentlemen, the point that is constantly brought up is what would the impact in revenues to this Government or this Congress be, is very clear, it is very clear. At worst, at the lowest ebb of every economic analysis, it would bring in at least the equivalent, to a very minor loss, in revenues. But, of course, what do they say, the doomsayers and the critics?

"Do you know what is going to happen, Siljander?" My colleagues tell me that as soon as we pass a 10-percent flat tax rate the Congress will start pushing up that 10-percent rate as soon as they need another fix in spending. We will raise it up to 11, and 12, and to 13.

One of the reasons why I have given Congress 3 years, once this bill is signed into law, is because I believe feverently that in the 3-year period, besides giving Congress time to adjust, there will be a balanced budget tax limitation limit passed by the people of this country.

Just before me, for 1 hour there was an excellent presentation by several dozen Members of this body talking about what is happening in each of their States dealing with forcing the Congress into supporting and promoting a balanced budget amendment. If 34 States vote for the balanced budget amendment and tax limitation, the Congress is forced to act; 32 States have now called for it; 2 more to go. We have at least a dozen more States that are very, very optimistic that they will pass. Remember, all we need is two more of those dozen States to pass a resolution calling for a balanced budget.

So in my opinion by the time the 10-percent flat tax is brought out of committee, voted on the floor of the House, and the Senate, and the President signs it into law and the 3 years that it takes before it takes effect, this Congress, this Government, thank God, will be under a balanced budget tax limitation amendment.

The reason I chose the 10-percent figure rather than the 11 or 12 is that 4,000-year-old principle called the tithe. I want to get religious about this.

There is historical precedent. The Hebrew precedent for a tithe, which means a tenth. We should give a tenth. Some people believe we should give a tenth to God. That's fine, and I do. But why should I give more than a tenth to Caesar or the Government? But it is very difficult to break a 4,000-year tradition and for this Congress to raise a very simple figure from 10 to 11, but if it were 11 it would be very easy to raise to 12; any other figure but 10 would cause problems without the balanced budget tax limitation amendment. Beside the fact that it is a 4,000-year-old principle.

I would like to quote Bill Simon one more time before completing. He says the adoption of a flat rate income tax would result in the elimination of most of the thousands of IRS income tax regulations and the reduction of IRS budget and staff.

Raising the percentage of low flat rate income tax would be difficult politically, says former Treasury Secretary Bill Simon, as it would affect all taxpayers and would be met with nationwide opposition.

Do you understand the point he is making? Finally we have a tax system where everyone pays; not an exhorbitant amount up to 50 percent as the present system, but finally we have a system where whether one makes $1 million or $10,000, excluding the exemption for the poor, the property owner, charity, savings accounts for the future, excluding those five items, that $10,000 or $15,000 wage earner will only pay a 10-percent tithe of his income as well. Everyone pays equally.

Now, if this rate ever changed or could change, even with two-thirds vote as the present constitutional amendment and tax limitation would require, even with that it would be very difficult because now every tax bracket would complain. The wealthy would complain, the middle-income American would complain. The middle-income American always gets hit in any tax change.

Besides that 3-year period, the Congress could be courageous for once. The Congress could strip off by cowardice, as I call it, the inability, it seems, the tongue tying on the floor, to stand up in these wells and tell the American people and our fellow colleagues what really needs to be done to address the fiscal problems.

□ 2020

Sure I am for a balanced budget and tax limitation, but I do not know if my colleagues realize and the American people know that if we were to freeze spending, including military spending, across the board, freeze spending for 3 years, based on the 1984 level, 3 years later we would have a balanced budget. There is the 3-year period.

That is not so complicated or confusing. Why does Congress need to perpetuate confusion by suggesting all solutions to complicated problems need to be equally as complicated?

A flat tax for the system as confusing is simple. Ten percent flat rate tax. The balanced budget dilemma, I am for the balanced budget. We could do it on our own by freezing spending. We do not need to worry about cutting here and raising there. A simple 3-year budget freeze and to put the icing on the cake, we could tell senior citizens and the entitlement program recipients that if inflation would increase above 3 percent we would be more than happy to pay a cost of living anything above that 3 percent to them and still we could balance the budget for the 3-year budget freeze.

Incredible as it seems, it is not that difficult.

And what about Peter Grace who spent countless hours, $24 million I think it was of private moneys, to study ways the Government could become more efficient and better managed. He came out with dozens, hundreds of suggestions, not how to cut Government out, but how to make us better managed. How to make Government run like a normal business, a normal family ought to run.

Peter Grace made some suggestions with a balanced budget amendment, tax limitation, with the option of freezing spending for 1, 2, or 3 years and with implementing some of Peter Grace's suggestions, any one or combination of two or all three would put this country in a better fiscal basis.

But the American people are going to be the ones to really determine whether or not this 10-percent flat rate income tax will ever pass.

One of my colleagues asked me the other day, he said, "Mark, do you really think that this body would ever pass a flat rate income tax? Especially 10 percent?"

I do not think they would. That same colleague told me after the Congress passed withholding on dividends and interest. I voted against that. The same colleague told me and I said, "This will be repealed in the year." He just laughed and said, "Oh, no. This won't be repealed in the year. Congress never repeals anything within a year especially that we have passed. This is a new tax increase that is going to stick."

Millions of letters, literally, millions of letters later, entering the offices of House and Senate Members, influencing a change of thought in policy. It required those millions of letters, but it worked. He was wrong then and I hope he is wrong again that when the American people begin to demand a change of thought and policy it happens. Contrary to all the criticism I have made of this body over the last 45 minutes, we are still a democracy. We still answer to the American people. We still answer to our electorate back in our district.

We are elected to come to Congress to change policy, to change the direction of the country and manage this Government as best we can. And the American people say we are mismanaging their funds. The American people have a right to speak up. They have a right to criticize. And we had better listen.

We did on the withholdings on dividends and interest and lo and behold, Congress repealed it, less than a year after it passed.

So can a 10-percent flat rate income tax pass? Maybe not in the 98th Congress, as we have maybe 1 more week before the summer break and very little time until the new Congress of the 99th Congress, in January 1985, but I am optimistic in the next several years, with the support of millions of Americans saying it is time we simplified the system, make it fair, and support 5432 or the concept thereof, a flat tax, a 10-percent flat tax, with the amnesty provisions, and modified reductions for the poor, for the home owner and for the future retirement of those in this country, I truly believe that it will be a reality.

I also believe that the American people are going to stand up and take note and demand that this Congress in this instance as we did with withholding on dividends and interest change policy.

Yes, we are addicted to spending and to confusion. More and more, my colleagues, I believe the American people sense that we are addicted to spending and confusion. And the American people are going to demand that we change and any addict will never change on his or her own. Have you ever seen an addict decide, "Well, I am just going to stop shooting it up my veins. I won't do it any more." Very rarely Congress will ever change on its own. It will take a revolution, I do not mean with guns, I do not mean with picketing, it will take a letter-writing revolution, my colleagues, to change the course of this body. It will change those that go to the polls. It will change those who attend meetings and write letters. It will take a change of American thought to really change the thought here in Congress. And the American people will be the ones really to decide whether they have had it with the system, whether they have had it with overtaxation and overspending.

I have asked the question of my constituents, "Do you feel you are overtaxed?" I have never had anyone say that they felt they were undertaxed.

I have said, "Do you feel Congress spends too much money?"

The answer is always "yes" to that question.

And if the American people really believe that and the polls indicate so, the polls indicate 83 percent of Democrats, Republicans, ticket splitters, support a balanced budget amendment. What is holding this body up?

The States are forcing Congress to act. Again the Congress will not act on its own until it looks like we have no alternative but to do so. When the 33d State passes that resolution and the 34th State passes it, you are going to see this Congress, my colleagues, like a beehive. Everyone rushing to be the first one to say that, "Oh, we support the balanced budget amendment." Everyone is going to be running to the well to speak on how we need balanced budgets and fiscal responsibility because they know it is inevitable. All the opportunists will be here. They will be lined up.

We, many of us who have been in the well, hour and hour and hour, speaking on the need for fiscal restraint, change of system and a new great awakening in America, I am encouraged, I am not discouraged. I am encouraged because I believe that generally out in the public the great awakening will not only include the support of 83 percent for a balanced budget amendment, but also will be a resurgence of support for a simple and fair and reasonable 10 percent flat rate income tax.

I truly believe that the American people will change, change Congress, because they are changing their attitudes toward Congress. People are becoming more involved. We should take note of that, everyone of us here.

Before I end my special order on taxes, I would like to shift gears to explain something, a phenomenon, a new phenomenon here in Congress. Many might be wondering where is everybody. Here is this Congressman down here talking about flat rate income taxes and fiscal restraints and there are hardly any Members in the Chamber.

□ 2030

Every once in a while the C-SPAN cameras, which have a wide angle lens, show me speaking in an empty Chamber. So who is he speaking to anyway? Well, many Members of Congress at this hour are in their offices. They are working. We are not in regular voting session. It is 8:30 at night, and most Members are doing other things elsewhere, which they ought to do. They are not here right now because we are not, as I said, in regular voting session. The reason I am here talking about a 10-percent flat rate income tax, the reason why about a dozen others preceding me were referring to a balanced budget amendment is because we as Republicans do not have the opportunity to talk about these issues any other time. The Democrat leadership controls all the committees, all the subcommittees, all the select committees, and they control all the actions from the floor. Tip O'Neill, the Speaker of the House, determines what bills will or will not come up, essentially.

So if I am not allowed, because of the Democrat liberal leadership, to bring up my flat-rate-tax bill in committee or subcommittee or select committee or on the floor, what other opportunity do I have to share with Congress and many Members who are watching C-SPAN? And almost 17 million households are hooked up to C-SPAN. Now, I am not talking to 17 million people who are hooked up to C-SPAN, because the rules do not allow me to talk to them. I am talking to my fellow colleagues who are watching on their C-SPAN. I am allowed to talk to them, but not to the other almost 17 million people who could be watching at this very hour. So who am I talking to? Who am I referring to, since this august body is now empty? I am talking to my colleagues who are listening and indirectly to those 17 million households who potentially could receive this broadcast. This is my forum. This is the forum for the other 12 Congressmen who were on this floor demanding a balanced budget amendment. And every night for the last several months one of us has been on this floor talking about the American agenda. We are talking about the American agenda, an agenda that has not been addressed in the committee structure, the American agenda has not really been addressed on the floor, and we are simply asking for honest debates on these crucial issues.

If people oppose the 10-percent flat rate tax, then let them come to the floor, debate the issue honestly, and fairly, and vote against it. But we have never been afforded the opportunity for an honest and fair debate on the issue of the 10-percent flat tax. We have not been given an opportunity to debate in the last several months a constitutional amendment to balance the budget. We have not been given the opportunity to debate voluntary school prayer. We have not been given the opportunity to debate new monetary policies that regulate the Federal Reserve, the money supply, the discount rates to banks.

If you have ever owned a home, or owned a car, or bought anything on credit, or if you are a small business person, interest rates are important to you, but have we ever had a forum for debate? No, we have not. Not here on this floor, not in the subcommittee, not in the full committee or in the select committee.

What about the crime package? How many people have been screaming and yelling and complaining—and justifiably so—about crime in America? How some pervert will rape and murder a young child and molest her, they are found innocent in court because obvious utensils used in the crime, like a knife, blood samples, hair samples, would be thrown out of court as evidence because of some minor, obscure technicality in the search warrant or in the procedure by which the police acquired the evidence, so they are left back out on the street again. How many times have convicted criminals been sent back to the streets because the police officer, in the midst of all the flurry of handcuffing a suspect, a suspect who could be screaming, yelling, ranting, and raving, and all of the confusion, the policeman forgets to recite one of the rights, and they are let out on the streets. The intention was good, but the legalistic point of law was missed. The judge has no alternative.

What about those drug pushers and addicts and those involved in illicit activities who are arrested, they put up bond, they are back on the street, they put up bond, are arrested again, back and forth, the merry-go-round goes around and around. All these types of issues that you have heard about, you have read about, you have seen movies about, all these issues are being addressed in a comprehensive crime package. Where is it? It is in committee. Are they holding hearings on it? They are not holding hearings on it.

Now, understand this. The same committee that refuses to hold hearings on issues that I have just mentioned to you, the exclusionary rule, bail bond reform, and so many others, the same committee feels it more important to hold hearings on drugging horses. Somehow drugging horses seems to be more important to the American people than molesting children and crime in this country. I think priorities are off.

It is pretty clear the present system is not functioning to any reasonable capacity. This is why this Chamber is empty. This is why I have taken the floor to talk today mainly about fiscal policy and tax policy. This is why my colleagues, as I have said several times before we took the floor to talk about a balanced budget amendment. We do not have another forum. This is it.

So the Speaker of the House decided that since the Republicans are giving special orders every single night, what we will do, breaking all historical precedent and rules, we will have the cameras in the House Chambers issue a wide angle lens to show the Chamber is empty, we will embarrass the Republicans. Oh, they will do it when the Democrats get up to speak, but as you can see, they are very few and far between in special orders. The Democrats have their forum, as I said, in all of the committees and on the floor. I mean they control everything. So as a result, we have to be submitted to wide angle lenses, to presumed embarrassment. But I am not embarrassed at all. I am not embarrassed at all because there are people, my colleagues, listening in their offices. I am not supposed to mention the 17-million people who are potentially viewing C-SPAN on cable hooked up to their homes. But the point is, this is it, this is our forum, and this is why we take our own time late at night, when most Members are shaking hands, kissing babies or doing work in their offices, what they should be doing, because regular business is over. I am taking this time on my schedule because I want the American people and my colleagues to know about the American agenda. I have talked tonight for 50 minutes about one of those particular items. My colleagues before me talked about another item on the American agenda. That is the agenda of the American people. The polls show clearly that they are demanding these issues be brought up, debated and passed, but there is no action.

So who is going to determine the future of this country? Who is going to determine the future of the floor action and the fairness rules in this body and whether or not we are going to have a balanced budget amendment, a 3-year budget freeze or a flat rate income tax? Who will be the determining factor? It will not be us in here. Only indirectly. It will not be the ladies and gentleman that run this Congress. It will be, in my opinion, my colleagues, the American people who will make their minds up. Although they are not here to listen, they are hearing me through one vehicle or another.

The American people will rise up in a productive way and demand change of policy in this country.

TRUTH IN LENDING—IT'S NO MYSTERY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, I can recall when the terms contained in a consumer credit agreement were similar to the clues found in an Agatha Christie novel. Prior to 1968, consumers shopping for credit were presented with loan agreements so confusing that even Miss Marple would have difficulty interpreting the loan's requirements. Since the implementation of the Truth in Lending Act, consumers are no longer faced with the dilemma of having to agree to a credit document which contains terms and phrases they are unable to understand. Truth in lending provides consumers with a clear-cut, detailed statement of rights and liabilities in consumer lending transactions.

The Truth in Lending Act requires lenders to disclose the true cost of credit. Under the act, the bank must disclose the annual percentage rate of the loan and all finance charges associated with obtaining credit. Any start-up costs, discount rates, or penalty provisions are mandated by law to be clearly stated, and entered into the calculations determining the cost of the loan.

Providing this information serves a dual purpose. By detailing the exact requirements of a credit transaction, the chance of a misunderstanding between lender and borrower is significantly reduced. The consumer has the opportunity to under stand the interest rate of the loan and the amount for which he or she will be responsible. A bank or lending institution cannot advertise available credit at a certain percentage, and then, once the customer is in the door, hit him with add-on fees, discount rates, and varied length of contract terms. Creditors, on the other hand, also benefit from the increased communication. Because the credit documents are clear, the possibility of a dispute arising during the course of the loan is less likely, and the administration of credit becomes a simpler process.

Truth in lending is one example where government regulation has actually served to encourage competition. As a result of this important disclosure law, a consumer seeking credit may compare the benefits of one loan to another directly. Easy access to credit cost information has made shopping for a credit agreement a less complex process. The effect has been to make lenders increasingly competitive in relation to each other, as consumers need not keep a calculator in hand to determine the actual requirements of each credit agreement. Competition among lenders is conducted on a wide-open basis, for every creditor may easily determine the rates being charged by other institutions, and is forced to adjust to the market.

The Truth in Lending Act has provided other benefits as well. The atmosphere of full disclosure promoted by the Truth in Lending Act has severely reduced the potential for fraudulent activity in the implementation of the agreement. Because of the act, consumers are informed of the annual percentage rate and full finance charges that will accrue before the agreement is signed.

Additionally, consumers are less vulnerable to high pressured credit sales techniques. If a consumer is pressured into a bad deal which would result in the consumers home being used for security, the act provides the consumer with a 3-day cooling off period in which to rescind the credit transaction. Finally, if a consumer elects to obtain credit from a lender, the Truth in Lending Act provides for disclosure during the course of the transaction.

The Truth in Lending Act has been successful from the day it was enacted. Consumers are protected from shady practices and preplexing loan agreements. The regulations foster greater understanding between the parties, and as a result, consumers are more knowledgeable about credit agreements than ever before. There is no need to invite a detective along on a loan shopping expedition. The cloak of mystery that once shrouded credit terms has been effectively removed.●

RECONCILIATION UPDATE

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

● Mr. PANETTA. Mr. Speaker, I am pleased to report that we are making good progress in the reconciliation conference, which is in its third week. As I previously reported, subconference 7 has finished its work, and we expect the remaining 11 subconferences to reach agreement in the next few days.

Members should be aware that Chairman ROSTENKOWSKI received unanimous consent this past Monday to file the reconciliation conference report this Friday and to bring the measure up next Wednesday, June 27, on the House floor for a vote.

Today subconferences 1, 3, and 4, involving the Ways and Means, Energy and Commerce, and Senate Finance Committees are scheduled to meet on tax and spending issues, and subconference 8, involving the House and Senate Banking Committees is meeting at noon to finish action on the Federal Credit Union insurance premium issue.

Highlights of action taken so far include:

The House Ways and Means and Senate Finance Committees have reached agreement on approximately $45 billion worth of tax increases for fiscal year 1985-87.

The same two committees met last week and agreed to 3-year spending reductions of $2.6 billion—including Medicare cuts and Grace Commission savings.

Subconference 7, involving House Government Operations and Armed Services, and the Senate Governmental Affairs agreed last week to compromise language on the Federal procurement process.

Below is a list of the subconferences involved in the reconciliation conference:

	House committees	Senate committees	Issues	Status*
Subconference:				
1	Ways and Means	Finance, Budget	Taxes	Meeting.
2	Energy and Commerce, Budget	do	Medicaid/CHAP	Do.
3	Ways and Means, Budget	do	Medicare Pt. A SSI, AFDC, Grace Commission issues	Do.
4	Ways and Means, Energy and Commerce Budget	do	Medicare Pt. B	Do.
5	Appropriations, Rules, Budget	Appropriations, Governmental Affairs, Budget	Appropriations cap	Discussion underway.
6	Post Office and Civil Service, Armed Services, Judiciary, Budget.	Governmental Affairs, Budget	Federal retirement	Do.
7	Armed Services, Government Operations, Budget	Armed Services, Governmental Affairs, Budget	Procurement/competitive contracting	Completed action.
8	Banking, Budget	Banking, Budget	Federal Credit Union insurance premiums	Informal agreement reached.
9	Small Business, Budget	Budget	Small business disaster loans	Do.
10	Veterans' Affairs, Budget	Veterans' Affairs, Budget	Veterans issues	Do.
11	Government Operations, Budget	Governmental Affairs, Budget	Miscellaneous	Discussions underway.
12	Budget	Budget	do	Do.

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CLARIFICATION OF VOTE ON H.R. 5600, PREVENTIVE HEALTH SERVICES ACT

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Oklahoma [Mr. JONES] is recognized for 5 minutes.

● Mr. JONES of Oklahoma. Mr. Speaker, on Monday, June 11, I voted against a motion to suspend the rules of the House and pass H.R. 5600, the Preventive Health Services Act. I am taking this opportunity to clarify that vote for the record.

As you know, the House Democratic Caucus rules deem it inappropriate to consider legislation authorizing more than $100 million under suspension of House rules. H.R. 5600 authorizes $291 million in fiscal year 1985 alone and approximately $900 million over a 3-year period.

I would underscore that my vote against H.R. 5600 in no way indicates my opposition to the programs being reauthorized in the Preventive Health Services Act. In fact, the programs in this bill have a beneficial impact on the health of our Nation's people. In Oklahoma, title X funds of $1.97 million in fiscal year 1983 were pooled with $1.6 million in State funds and $500,000 from the maternal and child health block grant to serve more than 61,000 people. These funds enable 75 provider agencies to offer services in 72 of Oklahoma's 77 counties.

H.R. 5600 passed the House by a 3-to-1 margin with broad bipartisan support. But for the procedural considerations, I would have supported the legislation.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LELAND (at the request of Mr. WRIGHT), for today, on account of official business.

Ms. MIKULSKI (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DANNEMEYER) to revise and extend their remarks and include extraneous material:)

Mr. WEAVER, for 60 minutes, on June 25.

Mr. DANNEMEYER, for 60 minutes, on June 21.

(The following Members (at the request of Mr. CRAIG) to revise and extend their remarks and include extraneous material:)

Mr. WALKER, for 60 minutes, today.

Mr. WEBER, for 60 minutes, on June 21.

Mr. WALKER, for 60 minutes, on June 21.

Mr. GINGRICH, for 60 minutes, today.

Mr. MACK, for 60 minutes, on June 20.

Mr. GINGRICH, for 60 minutes, on June 21.

(The following Members (at the request of Mrs. BOGGS) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. PANETTA, for 5 minutes, today.

Mr. JONES of Oklahoma, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, today.

Mr. Dymally, for 30 minutes, on June 21.

Mr. Gaydos, for 60 minutes, on June 25.

Mr. Gaydos, for 60 minutes, on June 27.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Edwards of California, to revise and extend after the remarks of Mr. Lungren of California on amendment No. 66.

Mr. Slattery, immediately preceding the vote on final passage of H.R. 1510 today.

Mr. Scheuer, immediately preceding the vote on final passage of H.R. 1510 today.

(The following Members (at the request of Mr. Craig) and to include extraneous matter:)

Mr. Young of Alaska.

Mr. Mack.

Mr. Philip M. Crane in three instances.

Mr. Porter.

Mr. Wolf.

Mr. O'Brien.

Mr. Shumway.

Mr. Roth.

(The following Members (at the request of Mrs. Boggs) and to include extraneous matter:)

Mr. Moody.

Mr. Ortiz.

Mr. Sikorski.

Mr. Ottinger.

Mr. Sunia.

Mr. Breaux.

Ms. Mikulski.

Mr. Morrison of Connecticut.

Mr. Jones of Tennessee.

Mr. Roybal in two instances.

Mr. Ackerman in two instances.

Mr. Jones of Oklahoma.

Mr. Kolter.

Mr. Ireland.

Mr. Rangel.

Mr. Minish in two instances.

Mr. Staggers.

Mr. Dellums.

Mr. Barnes.

Mr. Berman.

Mr. Leland.

Mr. Hamilton.

Mr. Feighan.

Ms. Oakar.

Ms. Kaptur.

Mr. Torricelli.

Mr. Lipinski.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 837. An act to designate certain National Forest System lands in the State of Washington for inclusion in the National Wilderness Preservation System, and for other purposes;

S. 1135. An act to consent to the Goose Lake Basin Compact between the States of California and Oregon; and

S. 2776. An act to continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. HAWKINS, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H.R. 4201. An act to provide for the rescheduling of methaqualone into schedule I of the Controlled Substances Act, and for other purposes;

H.R. 3131. An act for the relief of Marina Kunyavsky;

H.R. 3221. An act for the relief of Harvey E. Ward; and

H.R. 1149. An act to designate certain National Forest System and other lands in the State of Oregon for inclusion in the National Wilderness Preservation System, and for other purposes.

ADJOURNMENT

Mr. SILJANDER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 37 minutes p.m.), the House adjourned until tomorrow, Thursday, June 21, 1984, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3599. A letter from the Chairman, Professional Audit Review Team, transmitting a copy of a report entitled "Performance Evaluation of the Energy Information Administration" (PART-84-1, June 15, 1984), pursuant to 15 U.S.C. 790d(a) (FEAA, section 55(a) (90 Stat. 1137)); to the Committee on Energy and Commerce.

3600. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting notification of a proposed license for the export of defense articles sold commercially under a contract to Israel, pursuant to AECA, section 36(c) (90 Stat. 743; 94 Stat. 3136; 95 Stat. 1520); to the Committee on Foreign Affairs.

3601. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a copy of the original report of political contributions for Leonardo Neher, Ambassador-designate to the Republic of Upper Volta, pursuant to Public Law 96-465, section 304(b)(2); to the Committee on Foreign Affairs.

3602. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a copy of the original report of political contributions for Paul F. Gardner, Ambassador-designate to Papua New Guinea and to Solomon Islands, pursuant to Public Law 96-465, section 304(b)(2); to the Committee on Foreign Affairs.

3603. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a copy of the original report of political contributions for Diana Lady Dougan, Coordinator for Communications and Information Policy, with the rank of Ambassador, pursuant to Public Law 96-465, section 304(b)(2); to the Committee on Foreign Affairs.

3604. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a copy of the original report of political contributions for Alberto M. Piedra, Ambassador-designate to the Republic of Guatemala, pursuant to Public Law 96-465, section 304(b)(2); to the Committee on Foreign Affairs.

3605. A letter from the Secretary of Health and Human Services, tranmitting a report on fiscal year 1981 medicare activities, the End Stage Renal Disease Program and the MediGap Health Insurance Program, pursuant to SSA, sections 1875(b), 1881(g), and 1882(f)(2); jointly, to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HEFNER: Committee on Appropriations. H.R. 5898. A bill making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes. (Rept. No. 98-850). Referred to the Committee of the Whole House on the State of the Union.

Mr. DIXON: Committee on Appropriations. H.R. 5899. A bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes. (Rept. No. 98-851). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 or rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HEFNER:

H.R. 5898. A bill making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes.

By Mr. DIXON:

H.R. 5899. A bill making appropriations for the Government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes.

By Mr. BREAUX (for himself, Mr. Hughes, and Mr. Lagomarsino):

H.R. 5900. A bill to provide for the designation of private property suitable for wetland protection and enhancement, to amend the Internal Revenue Code of 1954 to promote transfers of real property interests for natural area preservation purposes, and for other purposes; jointly, to the Committees on Merchant Marines and Fisheries, and Ways and Means.

By Mr. PHILIP M. CRANE:

H.R. 5901. A bill to repeal the provisions of law under which the denial of nondiscriminatory treatment (most-favored-nation treatment) to nonmarket economy countries under title IV of the Trade Act of 1974 may be waived; to the Committee on Ways and Means.

By Mr. NEAL:

H.R. 5902. A bill to amend the War Powers Resolution to make rules governing certain uses of the Armed Forces of the United States in the absence of a declaration of war by the Congress; jointly, to the Committees on Foreign Affairs and Rules.

By Mr. OBERSTAR (for himself, Mr. Mavroules, Mr. Won Pat, Mr. Levine of California, Mr. Stokes, Mr. Mitchell, Mr. Shannon, Mr. Jeffords, Mr. Sikorski, Ms. Kaptur, Mr. Coughlin, Mr. Fauntroy, Mr. Aspin, Mr. Bates, Mr. Spratt, Mr. Carper, Mr. Lowry of Washington, Mr. Kildee, Mr. Green, Mr. Barnes, Mr. Edwards of California, Mr. Morrison of Connecticut, Mr. Ackerman, Mr. Frank, Mr. Hamilton, Mr. Mineta, Mr. Boner of Tennessee, Mr. Weaver, Mr. Durbin, Mr. Fascell, Mr. Daschle, and Mr. Boehlert):

H.R. 5903. A bill to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. ROYBAL (for himself, Ms. Oakar, Mr. Synar, Mr. Vento, Mr. Frank, Mr. Wise, Mr. Dyson, Mr. Long of Maryland, and Mr. Seiberling):

H.R. 5904. A bill to reorganize the Department of Health and Human Services by establishing an independent agency, governed by a bipartisan board, to administer the Old-Age, Survivors, and Disability Insurance Program under titles II and XVI of the Social Security Act, to provide appropriate delegations of authority to such agency from the General Services Administration and the Office of Personnel Management, and for other purposes; to the Committee on Ways and Means.

By Mr. YOUNG of Alaska:

H.R. 5905. A bill to amend title 46, United State Code, clarifying the Federal pilot requirements; to the Committee on Merchant Marines and Fisheries.

By Mr. MORRISON of Connecticut (for himself, Mr. Gejdenson, Mrs. Kennelly, Mr. Ratchford, Mr. McKinney, and Mrs. Johnson):

H.J. Res. 598. Joint resolution proclaiming Douglas Clyde Macintosh to be an honorary citizen of the United States; to the Committee on the Judiciary.

By Mr. PORTER:

H.J. Res. 599. Joint resolution to designate August 1, 1984, as "Helsinki Human Rights Day"; jointly, to the Committees on Foreign Affairs, and Post Office and Civil Service.

By Mr. DURBIN (for himself and Mr. Hopkins):

H. Con. Res. 323. Concurrent resolution expressing the sense of the Congress that the late Sgt. Billy Finley of Decatur, IL, should be honored for his heroic behavior during World War II and for creating good will between U.S. soldiers and the citizens of France; to the Committee on Post Office and Civil Service.

By Mr. MOODY:

H. Con. Res. 324. Concurrent resolution urging the President to restore United States funding for private and voluntary organizations carrying our development assistance programs in Nicaragua; to the Committee on Foreign Affairs.

By Mr. VANDERGRIFF:

H. Res. 530. Resolution urging continuation of tax deductibility of residential mortgage interest payments; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 965: Mr. Simon.

H.R. 1918: Mr. Coats.

H.R. 2852: Mr. Hartnett

H.R. 3487: Mr. Andrews of North Carolina.

H.R. 3498: Mr. Akaka.

H.R. 3873: Mr. Bates.

H.R. 4447: Mr. Hayes.

H.R. 4760: Mr. Long of Louisiana.

H.R. 4773: Mr. Gore and Mr. Bilirakis.

H.R. 4832: Mr. Fazio.

H.R. 4837: Mr. Emerson and Mr. Siljander.

H.R. 5078: Mr. Derrick.

H.R. 5243: Mr. Patterson.

H.R. 5377: Mr. Smith of New Jersey, Mr. Levine of California, Mr. Cheney, Mr. Yatron, Mr. Addabbo, Mr. Solarz, Mr. Stenholm, Mr. Bates, and Mr. Carney.

H.R. 5529: Mr. Coelho amd Mr. Edwards of Oklahoma.

H.R. 5581: Mr. Hughes, Mr. Lehman of Florida, and Mr. Weiss.

H.R. 5615: Mr. Edwards of Oklahoma and Mr. Evans of Illionois.

H.R. 5725: Mrs. Burton of California, Mr. Clay, Mr. Dorgan, Mr. Edwards of California, Mr. Torricelli, Mr. Lantos, Mr. Long of Maryland, Mr. Parris, Mr. Patterson, Mr. Price, Mr. Wilson, and Ms. Kaptur.

H.R. 5745: Mr. Shannon.

H.R. 5762: Mr. Durbin.

H.R. 5835: Mr. Coughlin, Mr. LaFalce, Mr. Levine of California, Mr. Foglietta, Mr. Fazio, Mr. Feighan, Mr. Levin of Michigan, Mr. McHugh, Mr. Lantos, Mr. Duncan, Mr. Carper, Mr. Lowry of Washington, Mr. Coyne, Mr. McKinney, Mr. Torricelli, Mr. Stark, Mr. Gradison, Mr. McKernan, Mr. Kemp, and Mr. Fascell.

H.R. 5837: Mr. Bereuter.

H.J. Res. 342: Mr. Albosta, Mr. Alexander, Mr. Aspin, Mr. Barnard, Mr. Bedell, Mr. Bennett, Mr. Breaux, Mr. Brooks, Mrs. Burton of California, Mr. Coleman of Texas, Mr. D'Amours, Mr. Dorgan, Mr. Edwards of California, Mr. Reid, Mr. Ford of Michigan, Mr. Garcia, Mr. Hance, Mr. Hoyer, Mrs. Kennelly, Mr. Lehman of California, Mr. Leland, Mr. Mica, Mr. Miller of California, Mr. Mollohan, Mr. Moody, Mr. Ottinger, Mr. Roybal, Mr. Stratton, Mr. Synar, Mr. Torres, Mr. Torricelli, Mr. Udall, Mr. Wise, and Mr. Wolpe.

H.J. Res. 482: Mr. Coyne, Mr. Chappie, Mr. Conte, Mr. Weiss, Mr. Cooper, and Mr. Berman.

H.J. Res. 485: Mr. Weaver, Mr. Wolf, Mr. Brooks, Mr. Boucher, Mr. Gray, Mr. Young of Missouri, Mr. Anthony, Mr. Young of Alaska, Mr. Vander Jagt, Mr. Torricelli, Mr. O'Brien, Mr. Ortiz, Mr. McHugh, Mr. Markey, Mr. Tauke, Mr. Moorhead, Mr. Smith of New Jersey, Mr. Gregg, Mr. Pursell, Mr. Carney, Ms. Fiedler, Mr. Nielson of Utah, Mr. Courter, Mr. Rinaldo, Mr. Yates, Mr. Bosco, Mr. Jones of North Carolina, Mr. Matsui, Mr. Ottinger, and Mr. Staggers.

H.J. Res. 497: Mr. Dellums, Mr. Foglietta, Mr. Hertel of Michigan, Mr. Courter, Mr. Hartnett, Mr. Hopkins, Mr. Owens, Mr. Breaux, and Mr. Moakley.

H.J. Res. 514: Mrs. Johnson and Mr. St Germain.

H.J. Res. 527: Mr. Goodling.

H.J. Res. 528: Mr. Luken, Ms. Mikulski, Mr. Harrison, Mr. Bartlett, and Mr. Gore.

H.J. Res. 542: Mr. Anderson, Mr. Biaggi, Mr. Addabbo, Mr. Corrada, Mr. Chappell, Mr. Dymally, Mr. Brooks, Mr. Berman, Mr. Jacobs, Mr. Hughes, Mr. Dwyer of New Jersey, Mrs. Lloyd, Mr. Weiss, Mr. Garcia, Mr. Neal, and Mr. Reid.

H.J. Res. 555: Mr. Dickinson, Mr. Wyden, Mr. Dixon, Mr. Evans of Illinois, Mr. Guarini, Mr. Rodino, and Mr. Young of Florida.

H.J. Res. 577: Mr. Boehlert, Mr. Bonior of Michigan, Mr. Darden, Mr. Gejdenson, Mr. Gingrich, Mr. Hall of Ohio, Mr. Hutto, Mr. Kindness, Mr. Latta, Mr. Lundine, Mr. Miller of California, Mr. Patterson, Mr. Roberts, Mr. Rudd, Mr. St Germain, Mr. Savage, Mr. Shannon, Mr. Shumway, Mr. Stokes, Mr. Tallon, Mr. Tauzin, and Mr. Weiss.

H.J. Res. 589: Mr. Vandergriff, Mr. Roe, Mr. Florio, Mr. Volkmer, Mr. Akaka, Mr. Carr, Mr. Skelton, Mr. Dwyer of New Jersey, Mr. Leland, Mr. Kolter, Mr. McGrath, Mr. Frost, Mr. Smith of Florida, Mr. Dixon, Mr. Hughes, Mr. Fazio, Mr. Rahall, Mr. Levin of Michigan, Ms. Mikulski, Mr. Weiss, and Mr. Bonior of Michigan.

H. Con. Res. 107: Mr. Kogovsek.

H. Con. Res. 302: Mr. Eckart, Mr. Walgren, Mr. Clarke, Mr. Levin of Michigan, Mrs. Boxer, Ms. Mikulski, Mr. Siljander, and Mr. Solomon.

H. Con. Res. 312: Mr. Edwards of Oklahoma.

H. Res. 518: Mr. Dreier of California, Mr. Young of Florida, and Mr. Leach of Iowa.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 5151

By Mr. COLEMAN of Missouri:

—Strike section 107(a), page 10, and insert in lieu thereof the following:

Sec. 107. (a) The first sentence of section 5(g) of the Food Stamp Act of 1977 (7 U.S.C. 2014(g) is amended by—

(1) striking out "$1,500" and "$3,000" and inserting in lieu thereof "$2,250" and "$3,500", respectively; and

(2) inserting in the second sentence, "and any other property, real or personal, to the extent that it is directly related to the maintenance or use of such vehicle" after the words "physically disabled household member".

By Mr. EMERSON:

—Strike section 106, pages 8 through 10, and renumber the subsequent sections accordingly.

H.R. 5798

By Mr. ALBOSTA:

—Page 30, line 23, strike out "$110,953,000" and insert in lieu thereof "$111,833,000".

Page 31, at the end of line 9, add the following new sentence: "Of the aggregate amount appropriated to the Office of Personnel Management, $2,000,000 shall be available to the Office of Government Ethics.".

H.R. 5813

By Mrs. VUCANOVICH:

—Page 8, line 21 strike out "$2,622,600,000" and insert in lieu thereof "$2,602,600,000".

Page 9, line 19, strike out "$1,500,000,000" and insert in lieu thereof "$1,460,000,000".

SENATE—*Wednesday, June 20, 1984*

(*Legislative day of Monday, June 11, 1984*)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Preserve me, O God for in Thee do I put my trust.—Psalm 16:1.

Gracious God, these words of the psalmist seemed so relevant to me today as I sat in the Capitol Prayer Room looking at the stained glass window where they are engraved around the figure of Gen. George Washington kneeling at Valley Forge. Help them to be real in this Chamber today.

Father in Heaven, we accept with gratitude our diversity and the freedom to express it as the very essence of our political system. The strength of our unity is our diversity. We accept with gratitude the struggle endemic in the many differences and their expression in such a system as competition and compromise resolve into cooperation. Grant special grace to the Senators, strong as are their convictions, weary as they are in body and mind, to bring to conclusion the present struggle. May the breath of Thy Spirit renew and refresh physically, emotionally and mentally all who labor here. In the name of Him who said, "Come unto me all ye who labor and are heavy laden and I will give you rest." (Matthew 11:28) Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

SENATE SCHEDULE

Mr. BAKER. Mr. President, we have now had a series of long nights in an effort to finish the Department of Defense authorization bill. I know, judging by my own feelings, that Members are tired, and they will not welcome what I am about to say next.

But I think the day has arrived when we have to finish this bill. Both the distinguished chairman of the committee and the ranking member indicate that it is essential we get on with final passage so that we may go to conference with the House of Representatives, and complete action on the authorization bill in advance of the appropriations process.

I agree with that. And I regret to say then that in order to comply with their wishes, they feel that they must finish tonight. That may mean a very late night, Mr. President. And the fatigue that will accumulate on top of the fatigue which already exists will be substantial. And I apologize to all Members and their families for that. But occasionally the Senate gets in these spots where you have to do what you have to do. I am afraid this is one of them. So even though we are tired and fatigued from a string of late nights running past midnight in most cases, and busy days filled with controversy, I am afraid that it is necessary to announce once more that we will be in very late tonight, and I would expect later than we have been here before.

I will continue to consult with the managers and minority leader. We will explore the possibilities of time limitations as we go along. But so far it has appeared that we get along better if we just proceed an amendment at a time. The difficulty in trying to fit the known amendments into the time remaining and obtain a time for final passage has been insurmountable so far. But I will continue to explore that with the minority leader, and make any further announcements that seem warranted and justified later in the day.

Mr. President, the Senate will be in tomorrow and Friday. Assuming that we finish DOD authorization tonight, it would be my hope that we could do one or perhaps two of the appropriations bills, as well as the math-science bill. I had the opportunity to talk to major combatants on the math-science bill, particularly the equal access amendment to that bill on yesterday. And I am encouraged to think we might work something out that would let us finish our work on math-science in a fairly brief period of time.

Mr. President, this week we must do the Department of Defense authorization bill. I hope we can do the math-science bill. I expect us to do at least one, and perhaps two, of the appropriations bills. The ones I see most likely are energy water and HUD.

Next week, Mr. President, also will be a busy week. I have been informed that the House will initiate an adjournment resolution that will provide for an adjournment for the Fourth of July recess beginning on the close of business the 28th. I may not be right about that. But that is my information at this moment. That is Thursday instead of Friday. That will make our situation even more difficult, because next week other things that we must do are the Public Law 480 conference, which I anticipate we will try to do on Monday.

We have as well to do the legislative appropriations bill, the debt limit perhaps, and maybe most important of all the deficit reduction conference report. I talked this morning with some of the conferees, notably the chairman of the Finance Committee, Senator DOLE, and I am encouraged to think that the conferees might finish their work this week. If that is the case, then I would expect us to take up that conference report as soon as practicable next week. I might say, by the way, that I am advised that from a parliamentary standpoint since the House declined our first request for a conference that perhaps the Senate can act, first assuming we can find the papers. If that is the case, then we will have some unusual but welcome opportunity to schedule action on the conference report as our requirements may suggest.

Mr. President, in addition to the Public Law 480 conference, the deficit reduction conference report, and the debt limit, I also would hope that we can do the drunk driving bill. I have not yet had an opportunity to give the minority leader a copy of my handwritten notes this morning, but I will do that. We will confer on how we may fit all of this into the remaining time. It will not be easy. But I think that is what we must do, Mr. President, in order to finish. The Senate certainly will have to be in tomorrow, and probably will have to be in on Friday in order to make all of this fit.

I apologize, Mr. President, for the lengthy and rambling report I have just given. But I suppose it is the best I can do given the circumstances and the level of fatigue which exists in my mind, and I will bet in most other Senators' as well.

Mr. President, there is a special order this morning in favor of Senator PROXMIRE to be followed by a time for the transaction of routine morning business to be followed by a brief period for morning business. At 11:30 a.m. we will resume consideration of the pending business which is the Department of Defense authorization bill and the pending question will be the Nunn amendment, No. 3262.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Incidentally, I am told that is not the NATO Nunn amendment but is a test ban amendment.

Mr. President, if I have any time remaining, I yield it to the minority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER [Mr. KASTEN]. The distinguished minority leader is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, I thank the majority leader for his usual thoughtfulness and courtesy.

SUMMER YOUTH EMPLOYMENT

Mr. BYRD. Mr. President, I am very concerned, as I am sure others are here, that action be taken as quickly as possible on summer jobs for youth. Tomorrow is the first day of summer. I am pleased to hear the distinguished majority leader say that on Monday the Senate will take up the conference report. I would hope we could do that before Monday. But if we cannot, it is welcome news that the distinguished majority leader is going to call up that conference report on Monday.

I first feel that the administration ought to stop its insistence on keeping $21 million in secret foreign aid at the top of the list, and is resisting, according to news reports, any effort to separate the two—the secret foreign aid, and the domestic aid, WIC, child nutrition, and summer jobs for youth.

The distinguished majority leader has a difficult row to hoe, with the administration insisting that those two items have to be lumped together. I do not think they have to be lumped together. I think that the Senate ought to act quickly, and should have already acted, as a matter of fact, to cut those two apart. The conference report could be called up, one way or another, and we could have a vote on the amendments in disagreement, one of which is the $21 million in covert aid to Nicaraguan rebels.

I do not say this by way of attempting to be instructive to the distinguished majority leader. He has to work as he thinks best, and, as I say, he labors under the burden of having the administration insisting, insisting, insisting on these two items being kept together. I am sorry the administration feels that way about it.

I think it should give top consideration to this important domestic aid, if I may use that term in speaking of those three items—WIC, child nutrition, and summer jobs for youth—and stop insisting on holding American aid hostage to this secret foreign aid.

The President is lucky, really lucky, lucky any way you look at it, and indeed, he should be thankful every day that he has HOWARD BAKER as majority leader because many of the victories that the administration has claimed on Capitol Hill would not have come about without the skillful handling of Senator BAKER, the majority leader of the Senate.

Perhaps the majority leader would wish to make some comment, or maybe not. If he does, I will yield back some time to him.

If he does not, at this point, I will ask the majority leader if he will ask unanimous consent that I may have an additional 10 minutes, because today is the 121st birthday of West Virginia.

By the way, yesterday was the birthday of the able Senator from North Dakota [Mr. BURDICK].

Today is the 121st birthday of West Virginia. My colleague and I want to talk a little about that birthday. If the majority leader would allow us to have an additional 10 minutes following Senator PROXMIRE, we would appreciate it.

Mr. BAKER. Mr. President, if the Senator will yield, I ask unanimous consent that the distinguished Senator from West Virginia may have up to the hour of 11:29 in which to make appropriate remarks as he may wish on the birthday of the State of West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank the minority leader for giving me this opportunity. I have nothing further to say, except that we are going to take up the Public Law 480 conference report, and I expect that the Senate will work its will.

Mr. DIXON. Would the minority leader permit me to interrupt this discussion only momentarily with the greatest reluctance because of the importance involved before my warm friend, the majority leader, leaves the floor?

Mr. BYRD. How much time does the Senator wish?

Mr. DIXON. Only a moment or two, if the minority leader will indulge me.

Mr. BYRD. I yield 3 minutes to the distinguished Senator.

Mr. DIXON. I thank the minority leader. He is a great leader, and I appreciate his consideration.

May I say to the majority leader I know how much he looks forward to engaging in a discussion with his friend from Illinois.

I want to say how regretfully I have imposed upon his time. I have been bothering him every day about this matter. It was kind of him to mention Public Law 480 money. Of course, that is House Joint Resolution 492, the urgent supplemental, that has been on the calendar for a long time. It contains the $100 million for the Summer Youth Employment Program, the WIC Program, the Child Nutrition Program, and many other things. I appreciate his suggestion that we can get to it on Monday.

May I make this observation before I ask a question: Last Friday, I observed while riding over here on the subway for the first rollcall that there would only be about 85 here, and that is the number that was here. Monday and Friday are notoriously bad for attendance. Last night we had 99 Senators here for a question.

I wonder if the majority leader might not think this is important enough to take it out of order, out from under the DOD authorization bill. It is truly what the name implies, an urgent supplemental. Young people are out of school and out of work in the big cities of America. The nutrition and WIC programs are running out of money the first week of July. I consider this of the greatest importance.

I would greatly appreciate it if he would reconsider his determination to call this up on Monday when I predict 15 of our colleagues will not be here to resolve what I consider to be perhaps one of the major issues that we are going to vote upon this year.

Mr. BAKER. Mr. President, I thank the Senator. I will give a very brief reply by saying:

One. I am for summer jobs, as the Senator knows. That is my principal reason for insisting that we take up this matter, in addition to the other matters involved.

Two. Not only has the junior Senator from Illinois been persistent in trying to get a commitment in scheduling this thing, but so has the senior Senator. I do not remember any recent time when two Senators have been more insistent on a subject than the Senators from Illinois have been on summer jobs. I want the people of Illinois to know that they are principally responsible for me rearranging the schedule in order to accommodate this matter.

Three. Mr. President, the toughest part of this job is making it work. That is, trying to put a calendar together that will work. This is the best I can do. I must say in all respect that there is no way that we can schedule this before Monday. I had to really stretch in order to get the thing dropped in ahead of regular appropriations bills and other matters. So I hope the Senator will understand that I am trying to be generous and I am trying to be forthcoming and I am trying to respond to his persistent request, properly so. I hope that the scheduling of this important matter will encourage Senators to be here on Monday, and I think it will. In any event, I will say to the Senator what I said earlier to the press in our informal press conference, one way or another we are going to get this thing passed and I believe it will be on Monday.

The **PRESIDING OFFICER.** The time yielded to the Senator from Illinois has expired.

HAPPY BIRTHDAY, WEST VIRGINIA

Mr. BYRD. Mr. President, on this day in 1792, Congress adopted the Great Seal of the United States, on whose face appears the motto "E Pluribus Unum."

On this day in 1837, Victoria became the Queen of England, reigning for 64 years, until her death in 1901.

And on this day in 1863, with the support of President Abraham Lincoln, West Virginia became the 35th State of the Union.

Today, then, is West Virginia's 121st birthday.

Some historians claim that the War Between the States produced only two indisputable and permanent results: the end of slavery in the United States and the formation of West Virginia. Along those lines, many historians portray West Virginia's birth almost wholely as a response to the slavery and secession questions that tore the Union asunder in 1861. That, however, is a misreading of West Virginia and Virginia history, alike.

Though overlooked by many, West Virginia history did not begin in 1861 with the firing on Fort Sumter in South Carolina. From the early 1700's on, a distinctive society and culture evolved in the mountains of western Virginia, and in that evolution the roots of contemporary West Virginia can be found. In the pre-French-and-Indian War years, inquisitive explorers ventured across the Blue Ridge and Allegheny Mountains into present-day West Virginia. In 1731, Morgan Morgan settled in today's Berkeley County. In 1749, Jacob Marlin and Stephen Sewell established homes in the Greenbrier River Valley. And prior to and after the American Revolution, George Washington took significant interest in landholdings that he had selected and surveyed in the Kanawha Valley near the site of Charleston.

Through his earlier experiences before and during the French and Indian War, Washington had gained a deep respect for the character and abilities of western Virginians. In fact, when America's prospects looked bleakest during the Revolutionary War, Washington declared that, if all else failed, he was prepared to "repair with a single standard to West Augusta—as western Virginia was denominated—and there to rally a band of patriots who would meet the enemy at the Blue Ridge, and there establish the boundary of a free empire in the West." And in a conversation reported by his secretary, Colonel Reed, Washington said, in case the Continental Army was defeated by the British:

> We must retire to Augusta County, Virginia. Numbers will be obliged to repair to us for safety; and we must try what we can do in carrying on a predatory war; and if overpowered we must cross the Allegheny Mountains.

From the earliest frontier days, western Virginians were noted by their fellow countrymen for their independence, resourcefulness, and patriotism. And as late as the Virginia Constitutional Convention of 1850-51, George W. Summers, a native of Fairfax County representing Kanawha County and one of Virginia's leading Whig statesmen, underlined characteristics distinguishing western Virginians from their Tidewater brethren, saying in a speech to the convention:

> Mr. Chairman, the gentleman from Fauquier, (Mr. Scott), said that there was "a proclivity to disunion sentiment in eastern Virginia." In speaking of the people of western Virginia, he said he looked upon our growth "with the pride of a Virginian and the sympathy of a brother," and that he looked to our people for important aid in the preservation of the Union of these States. In this expression he has done justice to the western people. They do love this Union, not with fitful, temporary attachment, but with a devotion as firm and unshaken as the mountains among which they dwell, and as constant as the flow of the streams which issue from their base. It was to the people of "West Augusta" that the thoughts of Washington's great soul were directed, when, in the darkest hour of the revolution, and when all was disaster and dismay around him, despair filled every heart but his own, he declared that though stripped of all means of attack or defence, if he was given the ability to erect a standard, however tattered and torn, upon the hills of "West Augusta," he could yet call around him the men, who would lift up and restore the bleeding fortunes of his country. Sir, our people are the children of that old "West Augusta." [Applause.] The descendants of those to whom Washington looked for succor and support, are as determined to preserve the independence and Union of these States, as their fathers were to achieve these blessings.

That, then, was the primary motive giving birth to West Virginia—not enmity for the old Dominion, but love for the Old Union. That passion for our country marked West Virginians from the beginning of our Republic, and to this day, I am privileged to represent some of America's most patriotic men and women, people who have not forgotten to put the interests of the whole United States above their own comforts and ease, and who are not ashamed to express in their words and deeds the love that they feel for our country and its sacred traditions. Since 1863, in war after war, thousands of West Virginians have rallied to America's defense, giving their lives in numbers proportionally greater than many more populous States, not because they were forced to, but because West Virginians believe inherently in the principles of faith and liberty on which our Nation was founded.

That patriotism would make any Senator proud to represent West Virginia, I believe. But patriotism is but one West Virginia trait of which I am proud.

Over the past many months, West Virginia has suffered the highest unemployment rate in the country. West Virginians are by nature hard-working people whose main identification in life is their jobs. Unemployment hurts a man or woman's pride more deeply, perhaps, than most things that can befall him or her. At the highest, West Virginia's unemployment rate soared to 21.6 percent, and today has dropped to no less than 14.9 percent.

According to popular wisdom, that kind of deprivation and suffering should cause social conflict and widespread disregard for morality and common decency. But the West Virginia character is so strong and West Virginia values to deeply ingrained that those sociological platitudes seem to have no application to West Virginians. Last year, as in years past, West Virginia again had the lowest crime rate in the Nation. And during the years of highest unemployment in the State, violent and nonviolent crimes alike dropped in West Virginia.

That says something about the character and humanity of the people of my State. West Virginians have never lost the basic decency that has marked them throughout their history. West Virginians believe in certain values and standards that never change, no matter what the circumstances in which they find themselves. To live among the people of my State is oftentimes to have one's faith in humanity restored and reinvigorated.

West Virginia's story would be taken as a vindication by one great American above others—a man who had much in common with that basic West Virginia character. His statue today stands proudly on the grounds of the West Virginia State Capitol Building in Charleston—Abraham Lincoln. Without his faith in the people beyond the mountains west of Washington, West Virginia might never have come into existence. I believe if President Lincoln could see West Virginia today, he would join thousands of modern West Virginians in looking to an even brighter future for their State in the next 121 years as West Virginia continues to make her unique contributions to our country.

Mr. President, how much time have I remaining?

The **PRESIDING OFFICER.** The minority leader has 11 minutes.

Mr. BYRD. I yield 5 minutes of my time to my distinguished senior colleague.

HAPPY BIRTHDAY, WEST VIRGINIA

Mr. RANDOLPH. Mr. President, the minority leader, my esteemed colleague from West Virginia [Mr. BYRD], is always very understanding of my request either to join with him or, in my own right, to speak of matters that are reflective of the State that we have the responsibility to represent—the State of West Virginia—in the U.S. Senate.

This day is the birthday of the State of West Virginia, the 121st birthday. On June 20, 1863, West Virginia had the unique distinction of being the only State in our Republic to be proclaimed into statehood by the action of the President of the United States. Abraham Lincoln signed the proclamation which brought West Virginia its statehood.

It is also appropriate to indicate, as we discuss the statehood of West Virginia, by the action of the Great Emancipator, to mention that the mother of Abraham Lincoln was born in the hills of West Virginia in the tiny hamlet of Antioch, between Keyser and Romney.

West Virginians are a sturdy people, living and working in one of the most beautiful and productive regions of our country. I thank my good friend for permitting me to join with him in remembrance of West Virginia, its past, its challenging present, and its bright future.

Mr. BYRD. Mr. President, I thank my senior colleague.

BELATED BIRTHDAY GREETINGS TO SENATORS HEFLIN AND BURDICK

Mr. BYRD. Incidentally, Mr. President, I should mention that our good friend, HOWELL HEFLIN, also had his birthday yesterday, as did our colleague, QUENTIN BURDICK, also.

Mr. RANDOLPH. Will the leader yield?

Mr. BYRD. Yes, Mr. President.

Mr. RANDOLPH. When the Senator mentioned that yesterday was the birthday of QUENTIN BURDICK, I recall that I had the privilege to serve with his fine father. His father was a Member of the House of Representatives. He was an all-American football player.

QUENTIN, his son, was a truly great football player. Both of them starred for the University of Minnesota. It is very appropriate that the minority leader mention QUENTIN BURDICK, a very fine Member of this body.

Mr. BYRD. Mr. President, I shall yield to Senator PROXMIRE, but I join Senator RANDOLPH in what he said about QUENTIN BURDICK and his father. I, too, served with QUENTIN BURDICK's father in the House of Representatives. I remember him as a big man—a big man in many ways: affable, congenial, humorous, and effective. In many ways, I see in QUENTIN BURDICK his father, Usher Burdick. I see in QUENTIN some of the same characteristics.

The characteristics I am thinking of now are that he is firm, he is strong, and if he takes a position, it is a well-thought-out one. He is as firm and unshakable in his convictions as was his father.

I thank my colleague for reminding us that QUENTIN BURDICK's father was a strong and courageous and effective Member of the House of Representatives.

Mr. RANDOLPH. Will my leader yield further?

Mr. BYRD. Yes, Mr. President.

Mr. RANDOLPH. I remember his telling someone, "Don't call me Congressman Burdick. My name is Usher." And it was spelled U-s-h-e-r.

The leader has also properly mentioned HOWELL HEFLIN today. HOWELL's uncle, Tom Heflin, served as a Senator from Alabama. He presented the legislation which created Mother's Day, which was the initiative of Anna Jarvis, a West Virginia woman.

I thank the leader very much.

Mr. BYRD. Mr. President, I thank my colleague.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, will the minority leader yield to me?

Mr. BYRD. Yes, Mr. President.

Mr. BAKER. It has been called to my attention that through the parliamentary gymnastics we engaged in, I cut the Senator from Wisconsin out of his time for his special order.

Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended until 11:45, under the same terms and conditions.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

Mr. President, I apologize to my colleague [Mr. PROXMIRE] for holding forth so long. If I have any time remaining, I yield it to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, there is no apology necessary. The Senator from West Virginia is always gracious and helpful.

350TH ANNIVERSARY OF THE FIRST EXPLORATION OF GREEN BAY, WI

Mr. PROXMIRE. Mr. President, this is a day for birthdays—West Virginia on the one hand and Green Bay, WI, on the other;

450 years ago this year, Jacques Cartier, the famous explorer and navigator, discovered Canada; 1984 also marks the 350th anniversary of Jean Nicolet's exploration of what is now Green Bay, WI, and the Fox River Valley of Wisconsin. Jean Nicolet was the first European to see and explore this region of the New World. Jean Nicolet, the great French explorer, even preceded Vince Lombardi, the great American of Italian extraction and promoter of football excellence, who put Green Bay on the map—really put it on the map.

To commemorate this 350th anniversary, there will be a "Heritage Festival" held in Green Bay, WI, from June 29 to July 8, 1984. As part of this celebration, the Alliance Franco-Americaine du Midwest has issued a proclamation in salute to Jean Nicolet.

Mr. President, I ask unanimous consent that the proclamation of the Alliance Franco-Americaine du Midwest be printed in the RECORD.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

PROCLAMATION

Whereas, the summer of 1984 will mark the 350th anniversary of the landing of Jean Nicolet, the first Frenchman to see Northeastern Wisconsin and the Western Great Lakes Country, at what is now Green Bay, Wisconsin and

Whereas, for the citizens of Northeastern Wisconsin the commemoration of Nicolet's landing will afford an opportunity to reflect upon the 350 years of proud historical and continuing French ethnic heritage and

Whereas such an opportunity has not been afforded since the 1934 Tercentennial Celebration and

Whereas the 350,000 citizens of Wisconsin of French/French-Canadian ancestry wish to show their esteem and acknowledgement of this great historical event.

Now, therefore, the Alliance Franco-Americaine du Midwest wishes to salute Jean Nicolet, Explorer/Navigator, and extend a warm and heartfelt greeting to other citizens of these United States, and visitors to our country, to participate in this 1984 "Heritage Festival" ("A Celebration of Discovery") to be held in Green Bay, Wisconsin from June 29 thru July 8, 1984.

NUCLEAR STAR WARS—THE BIGGEST GOLDEN FLEECE OF THEM ALL

Mr. PROXMIRE. Mr. President, in the May 7 issue of Time magazine, that respected publication carries an editorial headed: "The Case Against Star Wars Weapons." This is an excellent protest against an administration initiative that could make nuclear war significantly more likely. I commend this editorial to every Member of the Congress. Here is the way it starts:

> The esoteric yet immensely important national debate over how to avoid nuclear war has suddenly been focused like a laser beam on one issue: Should the United States develop and deploy a space-based system for defending itself against Soviet missiles so as to deter Moscow from ever contemplating an attack?

And here is how the editorial ends:

> Meanwhile, offensive weapons are proliferating on both sides, and the prospect for limits any time soon, to say nothing of reductions, is bleak. That makes today the worst possible time for the superpowers to carry their competition into space—or even to threaten to do so.

As Time persuasively argues, the first reason this Congress should not accept the President's recommendation and appropriate $2 billion for 1985 and commit ourselves to $25 billion over the next 5 years is because it will not work. Any arguments that it will work?

Listen: The Congressional Office of Technology Assessment issued a report saying "that a comprehensive antiballistic missile system should not serve as the basis of public expectation or national policy."

In the administration itself, Richard DeLauer, Under Secretary of Defense for Research and Engineering, said the proposed system could be overcome by Soviet offensive weapons unless it was coupled with substantial controls on offensive arms. As De Lauer put it: "With unconstrained proliferation" of Soviet warheads, "no defensive system will work."

Now, obviously, Mr. President, if we can win an arms control agreement on which we can rely that will limit and reduce nuclear weapons on both sides, we will not need to spend billions of dollars on this dreamy star wars defense.

But as Time magazine argues, offensive arms control is dead in the water. Frankly, it is hard for this Senator to construct a scenario more likely to keep it dead than for the Congress to comply with the Presidential request to fund the President's Star Wars Program.

Why would funding the Star Wars defensive ABM program gut any real prospect of limiting offensive nuclear arms? Just put yourself in the position of the Russians. Our top expert, Secretary DeLauer, has admitted that any proposed defensive system could be overcome by Soviet offensive weapons. He has said that the only way we can expect to frustrate a Soviet missile attack is for the Soviets to agree to limit their offensive nuclear force in an arms control agreement with us.

Would they do this? Are they crazy? Why in the world would the Soviet Union agree to limit their nuclear arsenals in a mutual agreement with the United States when our top expert announces that such an accommodation with the Soviet Union is the only way we can stop their missiles and destroy their deterrent capability. It is what has made them a superpower. Are they going to enter into an arms control agreement that will kill their deterrence? Of course not.

What a ridiculous dilemma this whole Star Wars gambit has driven this country into. The Soviet Union has vigorously protested the U.S. intention of building an elaborate antiballistic missile system. They see it as a very serious threat to their painfully constructed nuclear deterrent. Now we are told by the administration's top expert in the field that for the program to work, we need to secure an arms control agreement with the Soviet Union to limit and reduce offensive nuclear weapons. So we cannot make this fabulously expensive defensive system operate effectively unless the Soviets agree—that is right, the Soviets agree—to limit their offensive missiles so we can gain this super advantage over them.

Mr. President, in my 27 years in this body I have seen some ridiculous proposals for spending the public's money. Indeed, I have given well over 100 Golden Fleeces to various agencies for throwing the public's money away over the past 9 years, but this baby takes the cake. We are asked to spend $2 billion in 1985 and $25 billion over the next 5 years just for the research on this program. The program itself will obviously cost hundreds of billions of dollars. Mr. President, there is no way it can work unless the Soviet Union decides to accommodate us by agreeing to limit their offensive missiles so that we can destroy whatever deterrent power their nuclear arsenal now possesses. Does anyone believe the Soviet Union will make President Reagan's Star Wars a big success by agreeing that it will not build the offensive missiles to overcome it?

Mr. President, as a program for defending this country, the Reagan proposal is so ridiculously bad that I cannot believe the President seriously expected to win with it. This program, if carried out, will not defend this country. But it will accomplish something else. It will kill nuclear arms control. It drives a spike right through the heart of any basis for United States-Soviet agreement on limiting offensive missiles. It leaves nuclear arms control dead. Far more is riding on whether or not the Congress agrees to fund this antiballistic missile system than a disagreement on nuclear weapons policy. If the Congress goes ahead, nuclear arms control will be dead for a very long time. There would be no way the Russians could agree to it—not ever. Mr. President, I ask unanimous consent that the editorial to which I referred from the May 7, 1984, issue of Time magazine be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Time, May 7, 1984]

THE CASE AGAINST STAR WARS WEAPONS

(By Strobe Talbott)

The esoteric yet immensely important national debate over how to avoid nuclear war has suddenly been focused like a laser beam on one issue: Should the U.S. develop and deploy a space-based system for defending itself against Soviet missiles so as to deter Moscow from ever contemplating such an attack?

Slightly more than a year ago, President Reagan surprised the nation, and many experts in his own Government as well, by calling for an all-out program, along the lines of the Manhattan Project, which developed the atom bomb, to build a defense system in space. He envisioned a network of orbiting sensors that would detect a Soviet attack as soon as it was launched, then trigger giant remote-control ray guns that would destroy attacking rockets or their warheads before they could do any damage.

The idea had been planted in Reagan's mind by his friend and frequent adviser Edward Teller, the Hungarian-born superhawk, often described as the father of the hydrogen bomb, whose bold and controversial ideas have occasionally led some of his fellow physicists to moan, "E.T., go home." Teller's brainstorm became Reagan's dream, and the dream became national policy. In a speech in March 1983, the President asked, "What if free people could live secure in the knowledge that . . . we could intercept and destroy strategic ballistic missiles before they reached our own soil or that of our allies?" In December, with no fanfare, Reagan approved $26 billion over the next five years for research into a Strategic Defense Initiative.

Last week the program came under close scrutiny by two high-level groups on Capitol Hill, and it was found wanting. The Congressional Office of Technology Assessment released an extremely negative report warning that a comprehensive antiballistic-missile system was so unpromising "that it should not serve as the basis of public expectation or national policy." At the same time, the Senate Foreign Relations Committee subjected five Administration witnesses, including the President's science adviser, George Keyworth, and the newly designated director of the program, Lieut. General James Abrahamson, to withering skepticism. Among the doubters were moderates like John Glenn as well as liberals like Massachusetts Democrat Paul Tsongas.

Lest there be any doubt that the issue will figure in the presidential campaign, Democratic Front Runner Walter Mondale last week denounced the plan as "dangerously destabilizing" and called for a freeze on military uses of space. The Democrats believe that the President's embrace of antimissile weapons will fan fears that he is a trigger-happy unclear cowboy.

That charge is not only unfair—it misses the point that there are substantially more legitimate doubts about the wisdom of this policy in particular and about the President's approach to complicated national security issues in general. Reagan has often been drawn instinctively to simplistic, gimmicky solutions to problems that entail layers upon layers of historical background and technical complexity. Reagan's early fascination with supply-side economics in its least sophisticated form and his advocacy of a two-China policy are but two examples. He abandoned both during the crash course in realism that comes with being President. But he has clung more stubbornly to the idea of space-based defenses. He has done so for reasons that are as straightforward and sincere as they are wrongheaded.

In his March 1983 speech unveiling the scheme, he said he hoped the U.S. could erect an umbrella of impenetrable antimissile defenses over itself and its allies. By thus rendering an attacker's weapons impotent, the U.S. would not have to count on ballistic missiles and bombers to deter Soviet aggression or to retaliate against an attack. No longer would "crisis stability" between the superpowers have to be enshrined in a suicide pact.

In Reagan's view, the scenario for World War III would become more like an arcade video game and less like a prime-time apocalypse. Instead of mushroom clouds springing up from charred landscapes and families being vaporized in their backyards or dying slow deaths from radiation sickness, the imagery would feature unmanned enemy projectiles being zapped and disintegrating high above the earth; the planet and its population would remain out of harm's way.

What is more, the U.S. would be able to protect itself without the threat of committing mass murder. Like Darth Vader spinning helplessly but harmlessly away from the doomed Death Star in his crippled TIE Fighter, the Soviets would be mightily frustrated in their losing battle with American ingenuity, but they would not be incinerated.

Best of all, the Soviets would probably not do anything as foolish as start a fight. If they were to do so, however, they would probably not come back to fight another day: realizing the futility of their earth-based spears against the new, space-based American shield, the Soviets might set down, or at least phase out, their missiles and other weapons of aggression. Following the American example, they too would shift to defense rather than retaliation. The world would be a safer place. Reagan has even suggested that the U.S. might some day share its defensive technology with the Soviet Union.

Critics quickly dubbed the Strategic Defensive Initiative "Star Wars." That sobriquet suggested a fantasy—not just a dream, but a pipedream, and a potentially perilous one at that.

The case against Star Wars rests on a cluster of mutually reinforcing arguments. Strictly on technical grounds, experts all across the ideological spectrum doubt that space-based ray guns would work well enough to vindicate Reagan's vision. To provide the sort of blanket protection the President and Teller originally had in mind, the system would have to offer a 100% guarantee (an untested guarantee at that) of intercepting and disarming an entire huge barrage of Soviet warheads. If even a tiny percentage of the warheads "leaked" through, the devastation in the U.S. would be horrendous, and the American leadership would very likely feel compelled to order a retaliatory strike with whatever remained of its offensive arsenal.

After a year of study and refinement in the Executive Branch, the Strategic Defense Initiative now implicitly accepts the impracticality of a leakproof umbrella. Instead it adopts the somewhat more modest "interim" goal of "enhancing," rather than replacing, deterrence based on offensive weapons. The idea is that Soviet plans for an attack would be further complicated by even an imperfect American defense.

The President's program remains, however, a radical, unilateral American departure from the rules that have governed the strategic competition between the superpowers for two decades. As seen from Moscow, it is bound to look like an attempt to create an invulnerable sanctuary from which the U.S. can attack the Soviet Union with impunity. American leaders insist, of course, that they would never consider such a thing, but the Soviets will not believe such protestations. Instead, they will see the U.S. indulging in a deadly combination of ambitions—better offense, better defense—that the Soviets are sure to try to match.

It has long been part of the dogma of the nuclear age that the best defense is a good offense. That is what deterrence is all about: the other side is less likely to attack if its leaders know they will prompt a vastly destructive counterattack. A corollary to the dogma of "offense-dominated" deterrence is that there is nothing more provocative and destabilizing than a strategic defense. The more one superpower tries to protect itself against attack, the more the other side will try to improve its offensive weapons to be sure it can overwhelm and thwart those defenses. Thus a defensive arms race will exacerbate and accelerate the offensive one, with the advantage always remaining with the offense.

The classic example of how this dynamic has worked in practice can be seen in an insidious interaction between two high-tech systems: today's ultimate offensive weapons, multiple independently targetable re-entry vehicles or MIRVs, and yesterday's misconceived defensive weapons antiballistic missiles, or ABMs.

The Soviets erected a primitive ABM defense around Moscow in the '60s. Like Ronald Reagan today, the Kremlin leaders of 20 years ago believed it was a matter of common sense and irreproachable civic responsibility to do whatever they could to protect their country from nuclear attack. "A defensive system that prevents attack is not a cause of the arms race," said the late Soviet Premier Alexei Kosygin in 1967. It took former Defense Secretary Robert McNamara and other officials of the Johnson Administration hours of arduous discussion to persaude Kosygin and his comrades that they were wrong, and that an ABM race would only intensify efforts to create even more destructive weapons. The U.S., in any case, had an ABM system of its own. It also had an incipient MIRV program that would allow it to penetrate, or beat, any Soviet ABM network simply by hurling more warheads (and decoys) at the U.S.S.R. than the Soviets had interceptors.

Shortly after coming into office, Richard Nixon said, "Although every instinct motivates me to provide the American people with complete protection against a major nuclear attack, it is not now within our power to do so . . . And it might look to an opponent like the prelude to an offensive strategy threatening the Soviet deterrent." Nixon was aware of the paradox that Reagan has overlooked: one side's quest for safety can heighten the other side's insecurity. By 1972 the Soviets had accepted the logic of the American position and agreed, in the Strategic Arms Limitation Talks (SALT), to severe restrictions on ABMs. But if one lane of the arms race was thus closed down, another stayed wide open when the U.S. passed up a chance to negotiate limits or a ban on MIRVs. Why? Primarily because MIRVs, with their microcomputers and other prodigies of Yankee electronic wizardry, were then seen to be an area of permanent American technological superiority, an ace not to be discarded in the nuclear poker game.

Within a few years, however, the Soviets not only had mastered MIRVing but in some areas were outdoing the U.S. at it. With their Hydraheaded monster rockets, they were able to pull sharply ahead of the U.S. in the land-based MIRV race. It is partly to compensate for that imbalance that Reagan finds Star Wars appealing. But the risks are daunting. One is that the ABM race that was called off a dozen years ago might resume with a vengeance, only this time utilizing space-based death rays and satellite killers in addition to ground-launched antimissile interceptors. The Soviets are poised on the starting blocks for such a race themselves. They have been experimenting vigorously with directed high-energy weapons.

Even if the U.S. were able to perfect and monopolize space-based defensive weapons capable of neutralizing the entire Soviet arsenal, these American wonder weapons might still eventually prove to be sitting ducks for pre-emptive attack by Soviet antisatellite (ASAT) devices. So far the Soviets have been experimenting only with rather cumbersome ground-launched satellite killers that can strike at relatively low altitudes; the U.S., meanwhile, has a more sophisticated, versatile and effective aircraft-launched weapon in the works. But it would be unrealistic to assume that an American lead in ASAT would prove any more permanent than the one the U.S. enjoyed in MIRVs twelve years ago.

The Kremlin has professed a willingness to stop the ASAT race before it begins. Thirteen months ago, the late Yuri Andropov called for an international ban on space weapons, and last August he declared a unilateral moratorium on Soviet launches of antisatellite weapons. While there is good reason to be wary of Soviets bearing disarmament initiatives, there is no reason for refusing to probe them further. Yet the Reagan Administration dismissed Soviet ASAT feelers out of hand. It did so partly because of its shortsighted and amnesiac confidence in the superiority of American high tech, and partly because of its deep-seated distaste for arms control of any kind.

No program of strategic defense should be launched unless a comprehensive arms-control program that places sharp limits on offensive weapons is established first. That way, strategic defense might conceivably serve as a useful back-up to traditional deterrence, an extra insurance against war breaking out by accident (a space-based American death ray might knock out an errant Soviet missile, for instance, without necessarily touching off a full-scale Soviet attack) or against war being started by a reckless newcomer to the nuclear-weapons club.

But the current situation could not be less propitious, or the dilemma more obvious. It was articulated clearly by a top Administration military scientist, Richard DeLauer, Under Secretary of Defense for Research and Engineering, about six weeks after Reagan's original Star Wars speech. The proposed defensive system, said DeLauer, could be overcome by Soviet offensive weapons unless it was coupled with substantial controls on offensive arms. "With unconstrained proliferation" of Soviet warheads, he added, "no defensive system will work."

Yet offensive arms control is dead in the water. The Administration's proposals in the Strategic Arms Reduction Talks in 1982-83 were transparently nonnegotiable because they required drastic, one-sided cuts in Soviet forces. To make matters worse, the Soviets walked out of those talks last year. As of now, the Administration has no unified plan for resuming negotiations, much less achieving an agreement. Star Wars itself jeopardizes what little is left of arms control. Despite Administration disclaimers to the contrary, an all-out Strategic Defense Initiative would surely bring the U.S. into violation of the nuclear-arms-control agreements still formally in force with the U.S.S.R., including the ABM treaty concluded as part of SALT I.

Meanwhile offensive weapons are proliferating on both sides, and the prospect for limits any time soon, to say nothing of reductions, is bleak. That makes today the worst possible time for the superpowers to carry their competition into space—or even to threaten to do so.

HELP THE SAKHAROVS

Mr. PROXMIRE. Mr. President tonight, Home Box Office will air "Sakharov," a movie dramatizing the life of Soviet dissident Andrei Sakharov and his wife, Yelena Bonner. The recent hunger strike by Dr. Sakharov has prompted various actions on their behalf. Originally, HBO planned to broadcast this 2-hour docudrama in September, but moved it up in order to bring the Sakharovs' plight to national attention.

"Sakharov" tells the story of the Nobel Peace Prize laureate who is credited with developing the hydrogen bomb for the Soviet Union and who later protested the repression of his country's Government.

In his early years, Dr. Sakharov was honored by Soviet society and enjoyed the privileges that accompanied such stature. And even until 1980, Sakharov was given extraordinary freedom to attack openly the Soviet Government. He would arrive in Moscow in a chauffeured car provided by the Academy of Sciences to hold a press conference critizing his country's human rights violations.

Such press conferences were unprecedented in Soviet history.

Gradually, however, the Soviet authorities became frustrated and began to take action. But how were the authorities to contend with a man who had been a three-time winner of the Soviets most distinguished honor, the hero of the Soviet Union?

In 1980, Dr. Sakharov's contacts in Moscow with Western correspondents were cut off. Currently, the Sakharovs are detained within the closed city of Gorky in internal exile. Since May 2, Dr. Sakharov has been on a hunger strike to obtain medical help overseas for his ailing wife.

Recently the Kremlin claimed that the brave couple is just fine, but no one knows for sure. Unconfirmed reports have circulated that Sakharov has died. And no one knows the condition of his wife.

The timing of tonight's movie is important. This film hopefully will generate and focus protests and appeals—perhaps in time to help the Sakharovs. HBO is to be commended for rearranging its schedule to inform millions of Americans of human rights violations in the Soviet Union.

Perhaps, tonight's show will be convincing and impassioned enough to bring further pressure to bear on the Soviet Union to treat the Sakharovs more decently.

Perhaps, tonight's show will convince my colleagues in the Senate that conditions such as these, while not acts of genocide in themselves, can nevertheless pave the way to genocide.

Perhaps, tonight's show will enlighten my colleagues as to the importance of the Genocide Treaty.

Mr. President, the Senate should act as courageously as the Sakharovs have and ratify the Genocide Convention.

Mr. President, I yield the remainder of my time to the Senator from Illinois if he wants to use it.

Mr. DIXON. I thank my dear friend from Wisconsin very much for that courtesy. I should like to use his time, so much as remains, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSE JOINT RESOLUTION 492 HELD HOSTAGE

Mr. DIXON. Mr. President, my friend, the minority leader, has been kind enough this morning to once again direct the attention of this body to the problem we have with respect to House Joint Resolution 492, the conference report on the urgent supplemental appropriations bill that has been on the calendar for some time. I very much appreciate his doing that. He has been a great and conscientious leader in connection with this issue and I am indebted to him.

I appreciate everything that the majority leader has done on this issue, Mr. President. He has been a great friend in his attempts to bring this matter to the attention of the President, the urgent nature of it, and the importance of the matters pending on that urgent supplemental conference report.

Mr. President, I ask unanimous consent to place in today's CONGRESSIONAL RECORD, the editorial entitled "Budget Hostages" from the Washington Post on June 20.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

BUDGET HOSTAGES

Every year, along about summer, Congress seizes a group of innocent bystanders and holds them hostage to some controversial measure. This year's hostages include hundreds of thousands of pregnant women, newborn infants and unemployed youths. The money needed to help them is tied up in an "urgent supplemental appropriation" stalled in the Senate over the issue of aid to Nicaraguan contras.

Senate leaders, under strong pressure from the White House, have been reluctant to go along with House demands that the Contras aid be cut from the money measure. If the stalemate isn't resolved before Congress recesses at the end of next week, several unfortunate things will occur. Mayors and governors will have to drop about 100,000 low-income youths from the summer jobs programs that are just about to get started. Clinics providing special supplemental food to about 3 million high-risk pregnant women and newborns will have to shut down early next month. And many needy children in other special nutrition programs will be cut off from aid.

Each fall, in recent years, Congress has set itself up for this summertime blackmail when it votes appropriations for the following year. The play goes as follows. The administration requests a budget calling for sharp cuts in popular programs such as summer jobs for youth and nutrition programs for children. (This may be done outright or by deliberately underestimating the likely costs of the programs.) Nobody in charge in either party thinks the called-for cuts are politically feasible or desirable. But nobody has any good ideas about alternative cuts. And nobody, most assuredly, wants to admit that federal spending—and hence federal deficits—are even higher than the officially recognized totals. So the appropriations committees simply write in the lower numbers the president says he wants and tell him to come back in the spring for more when the money runs out.

This is, of course, a very bad way to run a government. It means that many innocent—and needy—bystanders are put at considerable risk. And it also means that neither Congress nor the administration has to face up to the real cost of the programs that they know they want to fund. Senate Majority Leader Howard Baker has indicated that, one way or another, he plans to release this summer's hostages. He needs also—along with House leaders—to make sure that this year's appropriations don't set the stage for a replay of the hostage game next year.

Mr. DIXON. Mr. President, the Washington Post suggests in this editorial the mistaken position of the administration in attempting to hold all of the provisions of the conference report on House Joint Resolution 492 hostage to the $21 million in covert assistance to Nicaragua. I say to my friends in the Senate that I voted for the $21 million in covert assistance for Nicaragua and the night before last, I opposed an attempt by my friend, the senior Senator from Hawaii, to reduce those funds to $6 million and to cut off the funds for covert assistance to Nicaragua while compensating relatives of the Contras there.

However, I think it should be noted here that there are major matters of concern in House Joint Resolution 492, and I hope my friends who may be listening on the squawkbox, wherever they may be throughout the building in which Senators hold forth in their offices, would know this.

Let us talk about some of those items—not just the summer youth employment program. I am very much concerned about that. There is $100 million in here for summer youth employment, for young people in America, which I introduced and was passed on April 5.

Incidentally, school is out all over America in most places, and these unemployed youth in the major cities in America are standing around on street corners waiting to go to work, while the administration continues to suggest that that program should be held hostage to the assistance for the Contras. But let us talk about some other things.

There is $60 million in here for Public Law 480 money available until March 31, 1985, to meet emergency food needs in 18 African countries due to severe drought. While this still is being held hostage, folks in Africa, where they have had severe droughts, are hungry. That is in this bill, Mr. President.

There is $545 million in this bill for child nutrition programs, programs to take care of the food needs of little children in this country—$545 million for the nutritional needs of little children in this country is being held hostage. That money is going to run out. I want my friends on both sides of the aisle to know that that money is going to run out the first week in July, and we are here on June 20 playing chicken with this legislation.

There is $300 million for WIC, for feeding programs and nutritional programs for women, infants, and children, which will run out the first week in July. I want my friends on both sides of the aisle to know that.

There is money in here for a variety of other things. Let me tell my friends who represent States with a great many rural and agricultural interests—as does this Senator—that there is $1.610 billion for rural housing insurance for low-income borrowers, and $690 million for very low-income borrowers.

Do you care about drug traffic in America? In this bill is $25 million to purchase up to eight interceptor aircraft and other drug interdiction equipment to keep filthy narcotics from coming into this country to rob the minds of our youth.

All of that is being held hostage, Mr. President, in this legislation.

So I just want the President and my colleagues in the Senate to know that when this matter, House Joint Resolution 492, comes up next Monday, this Senator will move that we recede from our item in disagreement with the House, the $21 million in covert assistance for the Contras in Nicaragua. I want to make that clear to my colleagues, because it is the only way we will obtain this legislation in time for the summer youth employment programs in America, the nutritional programs for the feeding of our infants and mothers in this country, to answer the needs of hungry folks in Africa who are suffering through the worst drought in many decades in that impoverished area.

I am sorry we are going to do this on a Monday. I hope that my friends and colleagues will hear the sound of my voice and will come here next Monday, a day when our attendance is notoriously rather small from time to time, because I think this is a fundamentally important issue.

I hope that every Member of the Senate will rise above party and think of this great country of ours and cast his or her vote with the sense of responsibility and integrity of purpose that every Senator always should employ.

I say to my friends in the Senate that we should send this conference report back to the House, concurring in all the 22 items in agreement, or in technical disagreement, and dropping the one item of disagreement, the $21 million in covert assistance to Nicaragua.

I have talked to many Members of the House, and there are none who believe there is any possibility that these funds can survive and that this legislation can survive if the 22 items of importance to the country are held hostage to that covert assistance question.

Mr. President, I think the minority leader for the interest he has shown in this matter. I thank the majority leader. He is a fine man, a considerate and fair man, who has bent over backward to accommodate this Senator. But the administration is in error in persisting in trying to hold this hostage to that one question, which we have thoroughly debated here.

I put the Senate on notice that next Monday, we will urgently request our colleagues to do the right thing, the responsible thing, to pass this measure without the item of disagreement that cannot possibly survive in the hands of the House.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business until 11:45 a.m., with statements therein limited to 2 minutes each.

SOVIET STRATEGIC ARMS LIMITATION TREATY VIOLATIONS

Mr. SYMMS. Mr. President, today we live in a very dangerous world. The Soviet Union is violating every major arms control agreement in force today.

These Soviet arms control violations have paid very handsome dividends for the Soviets. They have allowed the Soviets to gain overall strategic superiority in both offensive and defensive capabilities. In fact, according to Defense Secretary Weinberger, the Soviets "have stepped up their own strategic modernization program."

Using only the Strategic Arms Limitation Treaty [SALT] counting rules, the Soviets now have an overwhelming 6-to-1 strategic offensive superiority over the United States, a true first-strike potential so long feared by our strategists. The Soviets are 10 years ahead of the United States in strategic offensive capabilities. This Soviet first-strike potential grows evermore ominous each year, and its utility for political blackmail and intimidation is even more apparent. The Soviet advantages derived from their SALT cheating are even greater. The Soviet first-strike capability throws an ever darkening shadow over all the world's politics, and is a direct result of the Soviet violations of the Strategic Arms Limitation Treaty [SALT].

And now we have recent revelations from defense officials that the Soviet Union is also 10 years ahead of the United States in defensive antiballistic missile capability, and may in just a year's time be able to defend over one-third—a significant proportion—of both its population and offensive forces from the U.S. retaliatory deterrent. The Soviets may also at any time launch the first laser antiballistic missile battle station into space, where they already have had an operational antisatellite capability for over a decade.

These Soviet offensive and defensive advantages threaten the credibility of the U.S. retaliatory deterrent, which has preserved the world's peace for 38 years. If the Soviets can threaten a devastating first strike, and then also threaten to defend against a significant part of the U.S. retaliatory response, deterrence is gravely weakened. Peace could be in jeopardy, and the United States is not only vulnerable to Soviet first strike, but more importantly, because of this vulnerability we are increasingly subject to Soviet attempts at intimidation through nuclear blackmail.

President Reagan stated in a press conference on March 31, 1982:

> The Soviet Union does have a definite margin of superiority—enough so that there is risk, and that is what I have called a window of vulnerability.

President Reagan also stated on March 23, 1983:

> The Soviets . . . have enough accurate and powerful nuclear weapons to destroy virtually all of our missiles on the ground.

President Reagan then added that the Soviets have a "* * * present margin of superiority."

The Soviet Defense Minister, the late Marshal Grechko, stated openly as long ago as March 1975:

> The correlation of forces [i.e., the strategic nuclear balance] has changed in favor of socialism and to the detriment of imperialism.

A Soviet military journal, "Red Star" stated threateningly in January 1980.

> With respect to the military balance, the correlation of forces has shifted, once and for all and irrevocably.

As the Joint Chiefs of Staff conceded ominously in their military posture statement to Congress for fiscal year 1985:

> The Soviets have now developed strategic offensive and defensive capabilities that *erode the credibility* of the U.S. deterrent and *increase the risk* that Soviet leaders would consider launching a surprise nuclear attack. (Italic added.)

The JCS concedes that "the Soviets hold a distinct advantage in terms of total numbers of strategic offensive forces," and that "Soviet strategic forces are more effective than those of the United States." The JCS have also conceded that the Soviets have a "survivable superior offensive capability."

The U.S. Air Force has stated officially to Congress that there is "a destabilizing imbalance between U.S. and Soviet strategic forces."

Defense Secretary Weinberger stated to the Senate on May 24, 1984:

> The Soviet military buildup, both quantitative and qualitative, has produced a major shift in the nuclear and conventional balance.

Secretary of State Shultz stated on May 14, 1984: "Arms control will simply not survive in conditions of inequality."

America's strategic decline has not even bottomed out yet. Our military leaders have been telling us for several years that even after all our currently planned strategic offensive modernization programs are deployed by 1990, we will still not be able to regain strategic offensive parity with the Soviets, and this assumes that Congress will fund them. Thus we are over 10 years behind the Soviets in strategic offensive capability. If we are also 10 years behind in ABM's and space lasers and antisatellites as well, then it is an urgent national security priority to bolster deterrence and to quickly acquire defenses.

The role of the false doctrine of arms control in speeding and assuring the U.S. strategic decline needs at long last to be carefully examined. The historical evidence indicates that arms control has been used as an instrument in the Soviet game plan for strategic supremacy. As President Reagan has pointed out, our strategic nuclear megatonnage is now only one-quarter of what it was in 1965, and the number of U.S. nuclear warheads has declined by one-third of what it was in 1965. Arms control has unilaterally restrained U.S. strategic programs, while allowing all Soviet strategic programs to progress unhindered. In a real sense, arms control has been an enormous Soviet strategic deception, and a very successful deception indeed. In contrast, the Joint Chiefs of Staff have stated that "The Soviets have increased their strategic warheads more than threefold since 1973."

Actually, Soviet warheads have increased over fourfold since 1973. The April 1984 edition of the DOD's Soviet Military Power also states that "with the [Soviet] deployment of new nuclear weapons systems their stockpile megatonnage has again started to rise."

Mr. President, the relentless momentum of the Soviet strategic nuclear weapons buildup, which started before 1962, is destined to continue into the 1990's and beyond. This Soviet strategic buildup, unprecedented in history, has not been constrained by existing strategic arms limitation treaties. The Defense Department has testified to Congress recently that "this Soviet buildup of strategic nuclear forces shows no sign of slowing." The Defense Department added that "we see no letup in the rate of deployment of Soviet [strategic] systems over the next 10 years."

As Dr. Eugene Rostow, former Reagan administration Arms Control Director, has written about the first SALT agreements of 1972 and the decade of the 1970's culminating in SALT II in 1979:

> The SALT I Agreements and the process of negotiating SALT II did not prevent the worst decade of the Cold War or the extraordinary build-up of the Soviet nuclear arsenal.

And Dr. Richard DeLauer, Under Secretary of Defense for Research and Development in the Reagan Defense Department, has testified to Congress:

> The Soviets in fact never slowed or even perturbed their strategic development and deployment programs in spite of détente, active arms control negotiations, or the SALT Agreements.

Mr. President, Assistant Secretary of Defense Perle recently testified to Congress that there has been almost a 75-percent increase in Soviet nuclear warheads aimed at the United States since the SALT II Treaty was signed in 1979. Perle added that the Soviets have deployed 3,850 ballistic missile warheads since 1979, and this does not even count refines. This means that the Soviets have almost doubled their nuclear warheads aimed at us since former President Carter's SALT II Treaty was signed.

Using only SALT counting rules, the Soviets now have over 895 more strategic nuclear delivery vehicles than the United States and over 1,000 more warheads than the United States. And this does not even count the effects of their SALT violations. The strategic impact of their SALT violations gives the Soviets a force an order of magnitude larger. The Soviets also have over 30 strategic offensive programs under development for future deployment. Thus SALT II did not stabilize the strategic balance. It did just the opposite.

But in stark contrast, since 1980, the Reagan administration has gone in just the opposite direction from the Soviets. The Reagan administration has unilaterally deactivated over 292 strategic delivery vehicles carrying over 500 warheads counted in the SALT II Treaty. The United States has thus deactivated gratuitously over 33 percent of existing American strategic megatonnage.

Indeed, the Reagan administration plans to continue these unilateral deactivations in unilateral U.S. compliance with the unratified SALT II Treaty by dismantling two Poseidon submarines carrying 32 SLBM's and 320 warheads, and 90 B-52G's carrying over 1,000 air-launched cruise missiles. The Reagan administration has also significantly reduced the MX ICBM program and the B-1B bomber program, by one-half and two-thirds, respectively, below previously planned deployment levels. And the Reagan administration plans to completely cancel the only two U.S. strategic offensive systems now being produced for operational deployment the ALCM-B and the Trident I SLBM. This Reagan strategic cutback is part of a larger trend in declining U.S. strategic capability. As I have noted, since 1965, the number of U.S. strategic nuclear warheads has declined by one-third, and their megatonnage by three-quarters. Thus the United States has been exercising unilateral restraint for almost 20 years.

A top Reagan defense official recently stated to the Senate that:

> The President's Strategic Modernization Program *won't* match the Soviet buildup that first became visible twelve years ago after we signed the SALT I argeements. (Emphasis added.)

This statement seems to mean that even President Reagan has conceded strategic superiority to the Soviets after 1990.

The Secretary of Defense stated to Senators on April 5, 1984, that he is "deeply concerned" about the military implications of the Soviet SALT violations. He added that "Far more serious are the implications for the overall defense posture of the United States relative to that of the Soviet Union." Caspar Weinberger was thus likewise implying that Soviet SALT violations are another sign that the United States has conceded strategic superiority to the Soviets. This conclusion is strengthened by Weinberger's added judgment that:

> . . . Some possible outcomes of an effective [Soviet] ABM system or a new mobile ICBM could provide the Soviets with a *decisive* edge in strategic offensive and defensive capabilities . . ." (Emphasis added.)

This statement suggests also that the developing Soviet strategic superiority will soon be "decisive," because the Soviets are indeed developing an effective ABM and a new mobile ICBM both of which will be operational before the late 1980's.

As a top Nixon administration arms control official wrote as long ago as 1971:

> If, *after* a reasonable period, SALT negotiations prove *unproductive*, or if the U.S.S.R. *resumes* land-based ICBM deployments or moves to *modernize* or *expand* its Moscow ABM system, the United States would take whatever steps are necessary to maintain its strategic deterrent, including possible deployment of a more advanced Hard Site Defense—(HSD defense of land-based ICBMs. (Emphasis added.)

Unfortunately, all these conditions set in 1971 are now being met. Strategic arms treaties and negotiations are broken, the Soviets are deploying land mobile ICBM's, expanding and modernizing their ABM, and yet the United States is doing very little to maintain its strategic deterrent.

As Defense Secretary Weinberger has stated to Congress:

> Unilateral Soviet deployment of an advanced system capable of countering Western ballistic missiles—added to the Soviets' already impressive air and other defense capabilities—would have major, adverse consequences for deterrent stability and for the security of the United States and its allies.

Juxtaposed against this ominous statement are the following judgments for the April 1984 edition of the DOD's Soviet Military Power:

> The U.S.S.R. has an improving potential for large-scale deployment of modernized ABM defenses *well beyond* the 100 launcher ABM treaty limits. The Soviets have developed a rapidly deployable ABM system [i.e., the ABM-3] for which sites could be built in *months* instead of years . . . The new, large, phased-array radars under construction in the U.S.S.R. along with the Hen House, Dog House, Cat House, and possibly the Pushkino radars appear to be designed to provide support for such a *widespread* ABM defense system.
>
> . . . The *complete network* [i.e., over 25] of these radars, which could provide target tracking data for ABM deployments beyond Moscow, probably will be operational by the *late 1980s* . . .
>
> . . . Both the SA-10 and SA-X-12 may have the potential to intercept some types of U.S. strategic ballistic missiles as well. [i.e., The mobile version of the SAM-10 will be operational by 1985. The mobile SAM-12 will probably also be operational by 1985.] These systems could, if properly supported, add significant point-target coverage to a widespread ABM deployment . . .
>
> . . . *The Soviets seem to have placed themselves in a position to field relatively quickly a nationwide ABM system*, should they decide to do so. (Emphasis added.)

Thus it is fair to conclude, from official testimony, that the Soviets have already seriously eroded the U.S. deterrent capability with their ever-growing ABM capability.

As Drs. Colin Gray and Keith Payne stated in the spring 1984 issue of Foreign Affairs:

> A unilateral Soviet BMD System of even limited effectiveness could be highly destabilizing in the context of existing Soviet offensive first-strike capabilities and extensive air defense and civil defense preparations: The U.S. deterrent threat could be severely degraded by the combination of the Soviet first-strike potential to destroy American strategic nuclear forces and a Soviet defense against surviving American forces.

This is the situation today.

Soviet strategic defensive activities were roughly 5 times U.S. outlays in 1970 and increased to 25 times U.S. outlays in 1979.

In effect the ABM treaty provided Soviet SS-18's and SS-19's unimpeded access to U.S. ICBM silos.

As Senator Tower, chairman of the Senate Republican Policy Committee and the Senate Committee on Armed Services stated on April 3, 1984:

> The military *imbalance* between the U.S. and the Soviet Union still exists as a threat to our national security. Although significant progress has been made in the last three years to *regain* military *parity* with the Soviet Union, congressionally mandated *reductions* in the President's defense plan have seriously impaired efforts to achieve this goal. In fact, the current *imbalance* will continue to *widen*, though at a lesser rate. (Emphasis added.)

As the Scowcroft Commission report to President Reagan on strategic forces stated in April 1983: "* * * effective deterrence is in no small measure a question of the Soviets' perception of our national will and cohesion."

President Reagan himself has on two occasions in 1982 and 1983 publicly and explicitly accused the Soviet Union of violating the 1962 Kennedy-Khrushchev agreement which ended the Cuban missile crisis, the most dangerous nuclear crisis in world history.

This agreement was supposed to "halt further introduction of such weapons systems—that is, Soviet offensive missiles and other offensive weapons, which Khrushchev even defined as including Soviet troops—into Cuba "as firm undertakings" on the part of both the United States and the Soviet governments.

President Reagan stated at a press conference in May, 1982:

> You know, there's been other things we think are violations also of the 1962 agreement.

There is conclusive physical evidence of Soviet military activity in Cuba in violation of the Kennedy-Khrushchev agreement.

THE SOVIET SALT VIOLATIONS AND CUBA

Mr. President, I would like to discuss today the full spectrum of Soviet violations of arms control agreements. As my colleagues know, I have been concerned about Soviet arms control violations and their implications for American national security since 1982. Our distinguished colleague, Senator Jim McClure, made his first speech on this problem back in 1975. Senator McClure successfully sponsored an amendment in 1977 designed to prevent extended U.S. compliance with the expired SALT I interim agreement from hindering our strategic options, and both Senator McClure and I have been leading opponents of the unequal and destabilizing SALT II Treaty.

Mr. President, while Soviet SALT violations are dangerous, this danger is overshadowed by another even more ominous development. The Soviets are deploying nuclear weapons delivery capable offensive systems to Cuba, such as TU-95 Bear bombers Mig-27 Flogger fighter-bombers, and strategic submarines like the Victor III class reported to be equipped with long-range cruise missiles. The Soviets also have nuclear warhead storage facilities in Cuba, and the United States is reportedly unable to rule out the presence of Soviet nuclear weapons themselves in Cuba.

On September 14, 1983, President Reagan repeated his accusation. He stated:

> As far as I'm concerned, that agreement has been abrogated many times by the Soviet Union and Cuba in the bringing of what can only be considered offensive weapons, not defensive, there.

The President's two statements have been backed up by stronger statements by the CIA Director, the Chairman of the Joint Chiefs of Staff, and by an Under Secretary of Defense.

As I said, Mr. President, the Kennedy-Khrushchev agreement was the agreement that ended the Cuban missile crisis, and it can be regarded as an arms control agreement because it ostensibly forbade Soviet offensive missiles and bombers in Cuba and it entailed United Nations onsite inspection against Soviet reintroduction of such weapons. But of course the Castro regime refused to agree to U.N. onsite inspection, and since 1969 many Soviet offensive nuclear delivery capable weapons have been gradually returned to Cuba. Thus the Soviet threat from Cuba is today greater than it was in 1962, as can be inferred from the Soviet activities and President Reagan's statements. This fact suggests that we many soon find ourselves back in a Cuban missile crisis situation, but now we are much weaker than the Soviet Union and the danger may be even greater for U.S. national security interests.

The State Department has stated recently to the Senate that:

> The basing of any nuclear-armed submarine in Cuba would *Contravene* the U.S.-U.S.S.R. understanding on Cuba. The Soviets are aware of this. "(Emphasis added.)

Thus the State Department must surely consider the acknowledged Soviet basing of Golf and Echo class nuclear armed missile submarines in Cuba in 1970, 1972, 1973, and 1974 to be Soviet violations of the 1962 Kennedy-Khrushchev agreement. The State Department has therefore confirmed Soviet violation of the Kennedy-Khrushchev agreement.

The State Department has also stated recently to the Senate that:

> The Department of State does agree with the President and the other officials . . . that the Soviet Union has on occasion violated the spirit of the Kennedy-Khrushchev understanding.

The State Department has also recently conceded that:

> All Soviet tactical aircraft in Eastern Europe, including Floggers are rated as potential nuclear delivery systems.

Some top Reagan administration officials are predicting that the Soviet Union will play high risk politics in the year of 1984 prior to the November Presidential election. This prediction, too, suggests another Caribbean crisis, but this time perhaps with the roles reversed. I will return to this problem later, but it is against this ominous background of a nascent Soviet strategic threat from Cuba that we now have confirmation of a whole series of Soviet arms control violations.

Mr. President, after many months of careful study, President Reagan finally reported to Congress on January 23, 1984, that the Soviet Union had violated six arms control treaties in nine different cases.

Mr. President, I ask unanimous consent that the President's letter and report be printed in the RECORD at the end of my speech.

There being no objection, the letter and report were ordered to be printed in the RECORD.

President Reagan stated that five of these nine Soviet arms control treaty violations, including two related to the SALT II Treaty, were clear-cut, unqualified, and unequivocal violations.

The President's "Report To the Congress on Soviet Noncompliance With Arms Control Agreements" stated succinctly:

> The U.S. Government has determined that the Soviet Union is violating--
>
> 1. The Geneva Protocol on Chemical Weapons;
> 2. The Biological Weapons Convention;
> 3. The Helsinki Final Act, and two provisions of SALT II;
> 4. Telemetry encryption; and
> 5. A rule concerning ICBM modernization.
>
> In addition, we have determined that the Soviet Union has—
>
> 6. Almost certainly violated the [SALT I] ABM Treaty;
> 7. Probably violated the SALT II limit on new types;
> 8. Probably violated the SS-16 deployment prohibition of SALT II; and
> 9. Is likely to have violated the nuclear testing yield limit of the Threshold Test Ban Treaty.

To repeat, there have been nine Soviet arms control violations of six treaties confirmed by the President, five of which were conclusive and two of these conclusive violations related to SALT II. A total of four of the nine violations reported related to SALT II.

The Defense Department has recently stated authoritatively that the Soviets currently have two new types of land-based ICBM's under advanced stages of development, thereby making this another unqualified violation of SALT II, for a total of three unqualified Soviet SALT II violations.

As Under Secretary of Defense Fred Ikle has stated: "It's not alleged cheating, it's cheating—period." And as Governor Reagan stated in 1978, "We know that they—the Soviets—violated the entire spirit and terms of SALT I."

Mr. President, President Reagan's report is historic and unprecedented. It is the first time in history that a U.S. President has ever accused the Soviet Union of a violation of a Strategic Arms Limitation Treaty. It indicates that the Soviets are violating every major arms control treaty in force today. It is an irrevocable report.

Unfortunately, however, it covers only the tip of the iceberg of Soviet arms control and treaty violations. As Assistant Secretary of Defense Richard Perle testified to the Senate on March 14, 1984, the violations in the President's report were illustrative only and he mentioned 20 to 25 additional existing violations.

OTHER SOVIET VIOLATIONS OF INTERNATIONAL SECURITY TREATIES

What is the full scope of Soviet arms control and other treaty violations? It is well known that there are over 40 more Soviet SALT and other arms control treaty violations alone which have not yet been reported on to Congress by the President, but which can be confirmed by other authorities. I will describe each of these later.

In addition, other Reagan administration spokesmen have publicly and authoritatively accused the Soviet Union of violating:

The Yalta Agreement and the Potsdam Agreement of 1945 by suppressing freedom in Eastern Europe;

The United Nations Charter by threatening to reinvade Poland in 1981;

Various international agreements governing civil aviation by the brutal Soviet shooting down of Korean Airlines flight 007 and the murder of 269 innocent civilians; and

The 1972 Incidents at Sea Agreement during the U.S. attempts to recover the KAL-007 black box.

Indeed, there is strong evidence that the Soviets shot down KAL-007 in order to cover up their planned flight-testing that very night of September 1, 1983, one or more of their new type ICBM's which violate SALT II. And since the KAL-007 shoot-down, the Soviets have reportedly been jamming U.S. national technical means of SALT verification, an altogether new and unprecedented SALT violation. This jamming could bring arms control negotiations to a complete halt, because it is an act of extreme hostility.

Our West German allies have accused the Soviets of violating the United Nations Charter and the 1973 Agreement on the Prevention of War by their brutal invasion of Afghanistan in late 1979. And I believe that the Soviets have violated the 1967 Tlateloco Treaty for the Prohibition of Nuclear Weapons in Latin America, by their deployment of nuclear delivery capability to Cuba.

The Soviet Union has a long history of treaty violations. A study done in 1955 by the Senate Judiciary Committee established the fact that the Soviets had violated over 50 treaties since 1917. I put this study into the RECORD on February 1, 1984. The study even found that the Soviets were violating the very agreement which established United States-Soviet diplomatic relations, the 1933 Litvinov agreement, by continuing to support revolutionary activities inside the United States despite their 1933 pledge to cease this support.

In the latest edition of the Soviet Military Encyclopedia—for 1983, the Soviet military openly states:

> Achievements in biology and related sciences (biochemistry, biophysics, molecular biology, genetics, microbiology, and experimental aerobiology) have led to an increase in the effectiveness of biological agents as a means of conducting warfare. Improved methods of obtaining and using them have resulted in a qualitative re-examination of the very concept of biological weapons.

This is an explicit Soviet military recognition of their interest in and knowledge of biological warfare, which is outlawed by the 1972 Biological Warfare Convention.

Official State and Defense Department documents from 1959 and 1962 in turn confirmed the Senate report that the Soviets had violated over 50 treaties since 1917. Most of these Soviet violations were of nonaggression, peace, or friendship treaties. In fact, the only international security agreement that the U.S.S.R. scrupulously abided by was the August 1939 Hitler-Stalin Pact, which allowed the Soviets to conquer Poland, and which led to the outbreak of World War II.

According to official U.S. Government sources, the Soviets have thus violated arms control treaties in over 40 cases, and violated over 50 other international security treaties. In addition there have been over 120 cases of Soviet diplomatic forgeries and deceptions.

With Soviet aid and encouragement, North Vietnam broke the Paris accords on peace in Southeast Asia throughout the 1973-75 period.

The conclusion emerges, Mr. President, from official U.S. Government documentation, that the Soviets have violated, evaded, or circumvented almost every international security treaty they have signed since 1917. The only security treaty they kept led to World War II. This is a sobering conclusion.

There is also strong evidence that the Soviet Politburo even planned and executed the plot to assassinate Pope John Paul II in June 1981. This plot violated all standards of morality and decency, and was a threat to all mankind. Not even the diabolical mass murderer Adolf Hitler is known to have attacked the person of the Pope.

The evidence of history shows that the Soviet Union is truly an outlaw nation.

The confirmed Soviet violations of the chemical and biological warfare treaties are more than just simple arms control treaty violations. They are genocidal atrocities. Over 10,000 innocent men, women, and children in Southeast and Southwest Asia have died horrible and cruel deaths. All for the sake of Soviet aggression, in violation of other solemn international agreements.

PEACE THROUGH SPACE DEFENSE

Nevertheless, Mr. President, the United States should continue always to seek peaceful relations with the Soviet Union. Surely we must always seek to resolve our differences with the Soviets through peaceful diplomacy and negotiations. We must also always be willing to continue to negotiate arms control agreements with the Soviets, despite the sordid history of their past treaty violations. We must convince the Soviets, however, that arms control negotiations now must first be focused upon ending their violations of existing treaties, before there can be further progress toward any new agreements. This is simple commonsense, and it should be easy for the Soviets and the whole world to understand. Soviet deception, treachery, and violations should result in some penalties for the Soviets, because these actions have jeopardized American security and threatened world peace.

Mr. President, if arms control treaties have been ineffective in reducing the risk of nuclear war, and if Soviet SALT violations are increasing the risk of nuclear war, what other alternatives to preserve peace are available to us? After we detect Soviet arms control treaty violations, what should we do?

I believe that a space based, layered antiballistic missile defense is the best way to reduce the risk of nuclear war. The United States can unilaterally deploy strategic defenses in space, and these U.S. ABM defenses in space are not necessarily a threat to the Soviet Union. Strategic defenses are nonthreatening, nonprovocative, and could even use nonnuclear technology. This response to Soviet arms control cheating could be made independently of arms control. An American space based antiballistic missile defense could make the Soviet strategic offensive capability, so laboriously built up over the years, totally obsolete. I will have more to say about strategic defenses later this year.

SOVIET SALT VIOLATIONS PLANNED 12 YEARS AGO

Mr. President, in light of the confirmed Soviet violations, it is fair to conclude that arms control has been a traditional Soviet tactic used to disarm opponents by misleading them regarding Soviet intentions. This has been especially noticeable, to those who are to see, in the modern age where the technological lead times can be traced backward to show that Soviet agreement to arms control treaties were only deliberate acts of deception, undertaken with plans to violate or abrogate the treaties even before the treaties were made final.

There are many clear examples strongly supporting this conclusion. These include the 1958 nuclear test moratorium, the 1972 SALT I interim agreement and ABM Treaty, the 1972 Biological Weapons Convention, and the 1979 SALT II Treaty.

The Soviet violations or abrogations that were planned at the very time the treaties were signed include:

The massive breakout of the 1958 nuclear test moratorium in August 1961 with the largest, most extensive nuclear test series ever conducted;

The deployment of the SS-19 ICBM in violation of the 1972 SALT I interim agreement;

The testing in an ABM mode of the SAM-5, SAM-10, and SAM-12 systems in violation of the 1972 SALT I ABM Treaty;

The deployment of a comprehensive and coordinated pattern of ABM battle management radars;

The continued development, manufacture, and stockpiling of both toxic and biological weapons;

The encryption of all essential missile test data;

And the testing and deployment of two disallowed ICBM's.

In all of these cases, the violations or abrogations were planned by the Soviets at the time they signed the treaty. The treaties can thus only be regarded as deceptions designed and used by the Soviets to gain unilateral advantage.

The Soviets signed the SALT I Interim Agreement on Strategic Offensive Weapons and the SALT I Anti-Ballistic Missile Treaty on May 26, 1972. These two agreements are linked together in their preambles and in their internal provisions.

Only now, 14 years later, can we finally begin to understand what the Soviet leaders intended in agreeing to sign the SALT I agreements. There are two types of evidence of Soviet intentions in signing the SALT I agreements. We can first trace their actual behavior as observed in their offensive and defensive strategic programs. From the patterns of their behavior, we can infer the intentions of the Soviet leadership in signing the SALT I Agreements. Second, we have very unusual and dramatic direct evidence of the Soviet leadership's intentions in signing SALT I.

In early 1973, the Soviets began flight testing their new ICBM, the SS-19. It took the United States until early 1975 to determine with confidence that the SS-19 was regarded by the Soviets to be a heavy ICBM, and that the Soviets intended their heavy SS-19 to replace 360 light SS-11 ICBM's. This was contrary to article II of the SALT I Interim Agreement, which prohibited heavy ICBM's from replacing light ICBM's. Thus we can infer from the history of the Soviet heavy SS-19 program that the Soviet leaders intended to violate the SALT I Interim Agreement from the very date of its signing in 1972.

Also in early 1973, the Soviets began constructing the first of what became a total of six large antiballistic missile battle management radars. These six large radars, each the size of two Egyptian pyramids, form an integral, coherent pattern. Five of the six are on the periphery of the U.S.S.R. and point outward. But the sixth radar, discovered well along in construction only last July, is in the middle of Siberia and points inward toward the Pacific coasts of Russia. These six large radars are part of one integral pattern, because their radar coverage cones converge and close all but one gap in coverage—this one gap is from the Mediterranean Sea. Thus when looking at these six large radars, first started in 1973, and now almost completed, we can discern a pattern. No single radar itself makes sense without the others; they are integrally linked, because the radar cones of their coverage overlap.

But the SALT I ABM Treaty specifies in article I, the most important provision, that the Soviets cannot have a nationwide ABM defense, or even the base for a nationwide defense. These six radars clearly provide a base for a nationwide ABM defense, when linked up with AMB-3, SAM-5, SAM-10, and SAM-12 mobile missiles and radars now in mass production and deployment. Moreover, the last of the six radars, the newly discovered Abalakovo or Krasnoyarsk radar, violates article VI of the ABM Treaty, which specifies that all early warning radars must be on the periphery of the U.S.S.R. and pointed outward. This radar is in the interior and pointed inward.

Indeed, a third violation of the SALT I ABM Treaty is entailed by the location of the Krasnoyarsk radar. This is of article III, and the protocol to the ABM Treaty, which allow only one Soviet ABM site, to defend either the capital or ICBM's. The Krasonyarsk ABM radar is very near about 200 Soviet ICBM silos, and is ideally suited by its location to control interceptor ABM missiles to defend these ICBM's. Hence this radar is at least a triple violation of the SALT I ABM Treaty. Its orientation, siting, and capabilities each violate the treaty, and the complete pattern of radars suggests that this was planned in 1972, when the treaty was signed.

In addition to the SS-19 and the ABM radar programs, which provide strong inferential evidence of the intentions of Soviet leaders, there is also evidence from now public sensitive intelligence sources. This evidence was first discussed in public in 1976, and Senator McClure mentioned it before himself in his speech on the MX last May 25. I will discuss this evidence in more detail later. But let me summarize this evidence now by simply saying that it clearly shows that the Soviet leaders themselves explicitly planned to violate the fundamental provisions, article II, of the SALT I Interim Agreement by illegally deploying their heavy SS-19 ICBM to replace their light SS-11. In fact, the Soviet leader Brezhnev himself made the decision to violate the SALT I Interim Agreement by deploying the heavy SS-19 just before he actually signed the Interim Agreement and the ABM Treaty on May 26, 1972.

The top level Soviet political decision to violate the ABM Treaty also dates from May 1972, because as I have mentioned, construction on the first of what became a pattern of six or more huge ABM battle management radars was started in 1973. The decision to build the entire network logically also predated the May 1972 Soviet decision to sign the SALT I ABM Treaty.

In addition to the now public sensitive intelligence evidence and the SS-19 and ABM radar deployments supporting this conclusion, the Soviets themselves seemed to confirm this judgment when they openly stated in 1980 that détente began to erode after 1973. The Soviets in fact were telling us that, from the start, to them détente only meant increased competition.

The Defense Department Report to Congress for fiscal year 1985 confirms the above evidence and my conclusion by stating:

> Several of these violations must have been planned by Soviet authorities many years ago, in some cases perhaps at the very time the Soviet Union entered into the agreements.

And a top Defense official, Ricard Perle, recently testified to Congress that:

> The Soviets have not hesitated to mislead us, deliberately and all too successfully.

Assistant Secretary of Defense Richard Perle testified to the Senate on March 28, 1984 that the Soviet Union deliberately signed the SALT I agreement fully intending to later violate SALT I with weapons giving them a sixfold increase in nuclear warheads aimed at the United States. Perle added that there is a great deal of evidence of the Russians' intent, some of which was obtained through secret intelligence sources.

Perle accused the Soviets of placing loopholes in the SALT I agreements, which they later exploited with weapons that were unknown to the United States at the time of the negotiations. The single most important violation was the development of the giant SS-19 ICBM, which Perle called a very much larger missile than U.S. negotiators believed would be allowed under SALT I. Perle added the we believe they refrained from testing it in the closing months of the negotiations so that we would be unaware of it when we signed the treaty. Immediately after the treaty was signed, we saw the first test of the SS-19.

Perle added that "the Soviets knew there was the loophole in the treaty. We know they knew it. The SS-19 program resulted in an increase by six times in the number of ballistic warheads aimed at the United States."

This Soviet intention to violate SALT I from the outset in 1972 is also confirmed by the following interchange between Senator Jim McClure and the former Chief of Naval Operations at the time of SALT I, Adm. Elmo Zumwalt:

Transcript of Question and Answer Session Between Senator McClure and Admiral Elmo Zumwalt Before the Defense Appropriations Subcommittee, March 28, 1984

McClure. In 1972, you testified on SALT I that if the Soviets deployed a heavy ICBM to replace light ICBMs, this would violate SALT I. Do you believe the Soviets' heavy SS-19 ICBM deployment violated SALT I?

Zumwalt. I believe that it does. Directly violates SALT I as SALT I was reported and explained to the Congress of the United States during its ratification process, and I believe there was information available to the government at the time, but unknown to the Joint Chiefs of Staff that confirmed that a violation was going to be made.

McClure. That's an interesting comment. I don't want to get diverted too far, but I want to underscore your statement that our government had information that the Joint Chiefs of Staff did not have. Did I understand you correctly?

Zumwalt. That is correct, Mr. Chairman.

McClure. That, to me, is a separate issue, but not entirely separate, and a very serious charge. Because if our Joint Chiefs can't have all the information we have, how in the world can they make their judgment?

Zumwalt. This is a matter that, at some point, we will have to go into in classified session.

The seriousness of the Perle statement and Senator McClure's dialog with Admiral Zumwalt is further illustrated. As the late distinguished Senator Jackson stated on June 28, 1976, in the Senate Committee on Armed Services: "My interpretation [in 1972] as to what the Soviets could do with the SS-11 has turned out to be absolutely true. [Jackson predicted in 1972 that the Soviets would replace the light SS-11 with a heavy ICBM as large as the SS-19.] And what the understanding was on the part of the President's representatives was contrary to that. And as you know, Secretary Laird has said that it is a complete violation of the understanding that they [the Nixon administration] had * * * We [the Senate] were lied to in SALT I * * * We were lied to by the Secretary, the now Secretary of State Kissinger * * * It turned out that the things we predicted were right * * * Secretary of Defense Melvin Laird has since corroborated it, that they [the Nixon administration] were misled [by the Soviets]."

Thus we can confirm that there is conclusive evidence that the Soviets signed SALT I in 1972 fully intending to violate the agreements. Admiral Zumwalt revealed for the first time that this evidence had been withheld from the Joint Chiefs of Staff in the summer of 1972 until after the JCS had testified in favor of SALT I. In fact, a CIA Inspector General's report of October 1978 confirms this conclusion regarding Kissinger's withholding from the JCS. Finally, the late Senator Jackson has also confirmed that the Senate was "lied to" on SALT I. It is, therefore, reasonable to conclude that the SALT I ABM Treaty and the SALT I interim offensive agreement were ratified and approved under false pretenses. Had the JCS and the Senate been made aware of this key evidence on the Soviet intent to violate SALT I in 1972, SALT I might never have received congressional approval.

But there is more. The Soviets also signed the Biological Warfare Convention in 1972, and there was immediate evidence that their existing biological warfare plants continued to expand, instead of being dismantled, as required by the BW Convention. In fact, some new biological warfare facilities were even constructed after 1972 and after 1975, when the convention was ratified by the United States and the Soviet Union.

Thus there is a pattern of Soviet behavior spanning the two SALT I agreements and the Biological Warfare Convention, all signed in 1972. The evidence indicates clearly and conclusively that in 1972 the Soviet leaders signed these three solemn international arms control treaties fully intending to violate the principal constraints of the treaties from the very outset.

The Soviets likewise knew in 1974 when they signed the Threshold Test Ban Treaty that they were planning to deploy new warheads with yields much larger than 150 kilotons on their new fourth and fifth generation ICBM's. Thus they knew they would have to violate the threshold test ban yield of 150 kilotons. The reason is that also in 1974 the Soviets began developing their new SS-X-24 and SS-X-25 new type ICBM's, both of which eventually would also violate the SALT II Treaty then being negotiated. These new ICBM's are estimated to carry warheads with yields much larger than 150 kilotons.

And as Under Secretary of Defense Richard DeLauer testified to the Senate on March 13, 1984:

> Major programs recently deployed or now late in development were generally initiated at the *highest levels of Soviet leadership* about *ten years* ago. (Emphasis added.)

This statement confirms that the illegal Soviet SS-X-25 and the illegally encrypted SS-X-24 programs began in 1974 at the direction of Brezhnev and Ustinov and Marshal Ogarkov.

According to the April 1984 third edition of the Defense Department book "Soviet Military Power:"

> The USSR has stretched the limits and spirit of both the SALT I and SALT II agreements in expanding and modernizing its strategic arsenal.

This confirms the facts that the Soviets have gained significant unilateral advantages from SALT.

Mr. President, it therefore should come as no surprise to us that the Soviets likewise signed the Threshold Test Ban Treaty in 1974, the Helsinki Final Act in 1975, and the SALT II Treaty in 1979, fully intending from the start to violate these solemn arms control treaties, just as they in fact did in the case of the 1972 SALT I interim agreement and ABM Treaty, and the Biological Warfare Convention.

But Sidney Graybeal, former U.S. Commissioner on the SALT Standing Consultative Commission from 1972 to 1978 testified to the Senate in 1979 that:

> I do not believe that the Soviets would enter into any agreement which required them to cheat in order to attain their military objectives, or on which they planned to cheat.

The evidence indicated that Mr. Graybeal is flatly wrong, and he should have known he was wrong when he testified.

SOVIET ADVANTAGES FROM SALT VIOLATIONS

What have the Soviets gained from almost a decade and a half of SALT violations intended from as early as 1972? The Soviets have achieved an overwhelming shift in both the strategic and in the overall military balance since SALT began 15 years ago in 1969. The United States and the West are far more insecure today than when strategic arms limitation talks began in 1969.

Mr. President, I ask unanimous consent that the following two articles be printed at this point in the RECORD. The first article is from the Boston Globe of February 11, 1977, by William Beecher, and is entitled "Brezhnev Termed Détente a Ruse, 1973 Report Said." The second article is from the New York Times of September 17, 1973, by John Finney. These two articles demonstrate the evidence that the Soviets consider détente and SALT to be a huge deception effort aimed at achieving decisive superiority over the West.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Boston Globe, Feb. 11, 1977]

BREZHNEV TERMED DÉTENTE A RUSE, 1973 REPORT SAID

(By William Beecher)

WASHINGTON.—A suppressed report from British intelligence in early 1973 quoted Soviet leader Leonid Brezhnev was privately declaring that detente was a ruse designed to lead to a decisive shift in the balance of power.

The report was denigrated and dismissed by Henry Kissinger, according to well-placed sources. But the first reference to it was included in the latest National Intelligence Estimate in 1976, sources said.

The sources who have seen the report say it was represented by the British as dynamite, comparable in importance with the texts of the 1956 speech by Nikita Khrushchev detailing the sins of Stalin.

It quoted Brezhnev as telling a secret meeting of East European Communist party leaders in Prague that detente was a strategem to allow the Soviets to build up their military and economic power so that by 1985 "a decisive shift in the corollation of forces" would enable the Russians to "exert our will wherever we need to."

The report came during the height of euphoria in the United States about the promise of detente, a policy of which Kissinger was the principal architect and exponent.

"The report was as welcome as a dose of chicken pox as far as Henry was concerned," one source recalls. "I suspect that had it been more congenial to what he was trying to accomplish it would have gotten wider attention and credence."

The British said they obtained the account from a man who attended the lengthy Prague meeting called by Brezhnev to assuage fears that he was ready to sacrifice East European interests at the altar of detente.

British intelligence was so sensitive about the source that one copy was hand carried to Washington for the director of Central Intelligence. He in turn sent copies to only six officials: the President, his national security advisory, the secretaries of State and Defense and the intelligence chiefs of the State Department and the Pentagon.

The document classified top secret, carried the unusual admonition not to duplicate it or discuss it with any but the addressees.

That admonition not withstanding, sources say, the matter was discussed among a tight circle of high officials. Kissinger and others reportedly suggested that since the account came from an untried source and couldn't be corroborated, it should be regarded as untrustworthy and dismissed.

Others said that even if it * * * genuine, the report represented the kind of thing Brezhnev might be expected to say to calm nervous Communist bloc leaders without reflecting his true thinking or plans.

An attempt to reach Kissinger for comment this week before he left on a Mexican holiday was unsuccessful.

The British report was based on the recollections of * * * the Prague meeting. There is no way of knowing whether specific quotes attributed to Brezhnev were entirely accurate.

According to three senior * * * will have consolidated our position. We will have improved our economy. And a decisive shift in the corrolation of forces will be such that come 1985, we will be able to exert our will wherever we need to."

Even in retrospect, senior analysts say they cannot be sure how faithful was the account of the Brezhnev speech. But they say the words are consistent with subsequent public statements by Brezhnev and with certain Soviet actions.

So in the National Intelligence Estimate for 1976, drawn up late last year after a major debate between CIA analysts and a team of outside specialists headed by Harvard Professor Richard Pipes, for the first time reference was made to the Prague meeting and the reported Brezhnev statements there, well placed sources say * * * was the gist of the report.

Brezhnev said he was aware of the concern of the East European leaders that detente initiatives seemed to be moving so fast that their interests might be sacrificed.

But he insisted that his pursuit of detente was designed to serve their common interests not to compromise them. "We are achieving with detente what our predecessors have been unable to achieve using the mailed fist," he reportedly said.

He then went through an appraisal of trends in various Western countries, reportedly saying that Finland was in the Soviet pocket. Norway was still troublesome, but trends were moving in the right direction. Denmark, he said, was no longer a viable element of western strength.

In the United Kingdom, Brezhnev continued, the USSR's fondest expectations were being exceeded because of the efforts of its fellow socialist brethern. French foreign policy, he said, was Marxist. Trends in Italy, he remarked, were favorable.

But he reportedly said it was in West Germany that "our greatest achievements are being realised." He said "our great and true friend, fellow socialist, Willy Brandt, has brought about a miracle" by making it possible premanently to consolidate contested borders and by pushing through his Ostpolitik.

"We have been able to accomplish more in a short time with detente than was done for years pursuing confrontation policy with NATO," he said.

He noted that while negotiations proceeded on SALT and on Mutual Balance Force Reductions the United States was unlikely to build up militarily in reaction to the Soviet buildup, he reportedly concluded.

"Trust us, comrades, for by 1985 a [illegible] consequence of what we are now achieving with detente, we will have achieved most of our (?) objectives in Western Europe. We * * *

[From the New York Times, Sept. 17, 1973]

(By John W. Finney)

WASHINGTON, September 16.—According to intelligence reports recently received here, Leonid I. Brezhnev, the Soviet Communist party leader, has emphasized to Eastern European leaders that the movement toward improving relations with the West is a tactical policy change to permit the Soviet bloc to establish its superiority in the next 12 to 15 years.

Although there is some question about the authenticity of the reports, they are contributing to a debate within the Administration over whether the current Soviet course really represents a basic change in intention or is merely a temporary shift.

As summarized by Defense and State Department officials who have studied the intelligence reports, the Brezhnev explanation went like this:

To the Soviet Union, the policy of accommodation does represent a tactical policy shift. Over the next 15 years or so, the Soviet Union intends to pursue accords with the West and at the same time build up its own economic and military strength.

At the end of this period, in about the middle nineteen-eighties, the strength of the Soviet bloc will have increased to the point at which the Soviet Union, instead of relying on accords, could establish an independent, superior position in its dealings with the West.

HOW UNITED STATES GOT REPORTS

The intelligence reports are for the most part third- or fourth-hand accounts of Brezhnev statements that have filtered through Eastern European sources to Western intelligence agencies and finally to the United States intelligence community.

The authenticity of one report of a Brezhnev conversation with an Eastern European leader last spring, before the Soviet leader met in June with President Nixon, was said to have been vouched for by British Intelligence, which received the report and turned it over to the United States. American officials said that similar intelligence reports have been received concerning other such Brezhnev statements, both in Moscow and in Eastern European capitals.

SUSPICIONS AMONG MILITARY

The attitude among specialists on the Soviet Union is to accept the intelligence reports as probably accurate. Differences have developed within the Administration over how to interpret the statements.

Some high-ranking military officials regard the intelligence reports as confirmation of their suspicions that the Russians are intent upon using accommodation as a way of disarming the West and establishing a military superiority that will permit a more aggressive Soviet foreign policy.

Most civilian analysts of the Soviet Union place less ominous intrepretation on the intelligence reports. They tend to consider the reported Brezhnev statements an internal tactic designed to mollify the hardline opposition within the Communists camp as the Soviet leader pursues a policy of detente with the West.

The reports have had considerable impact on the Pentagon. When they are asked to document their contention that the Soviet Union was intent on establishing military superiority over the United States, high-ranking officers immediately cite the intelligence reports on what is coming to be known within the Pentagon as "the new Brezhnev doctrine."

TURNING SCREWS ON UNITED STATES

From the first concrete steps toward East-West accommodation, military officials have tended to suspect Soviet intentions, as reflected in the reservations of the Joint Chiefs of Staff about last year's agreement limiting offensive strategic arms. A common military judgment is that the Soviet Union may be using accommodation in part to lower the guard of the West while it pursues a build-up in the 1980-85 period to achieve military superiority.

This judgment tends to be supported by the intelligence reports on the Brezhnev statements about pursuing accords for 12 to 15 years. To United States military officials, the implication is that by the end of that period the Soviet Union believes it will be in an economic and military position at which it can begin, as one high officer put it, "to start turning the screws on the United States."

Perhaps not completely by coincidence, the reports began to appear at a time when the defense budget faced a serious challenge on the Senate floor. The Senate begins debate this week on the annual military procurement bill, with moves planned to cut away at various weapons and manpower programs.

In the face of a growing view in the Senate that accommodation should permit a re-examination of defense policies, the Defense Department has been going to considerable lengths to emphasize that detente does not permit cuts in the defense budget. In assailing moves to reduce defense spending, for example, Defense Secretary James R. Schlesinger emphasized recently that despite the hopeful atmosphere, Soviet bloc military strength was still growing. He characterized the Soviet Union as having "a mailed fist encased in the velvet glove of detente."

CIVILIAN-MILITARY DEBATE

It appears that the intelligence reports have contributed to the differences between military circles in the Pentagon and civilian circles in the State Department in assessing Soviet intentions.

Civilian analysts of the Soviet Union read the Brezhnev statements as emphasizing accommodation as a way of achieving an economic, rather than military, build-up of the Soviet bloc—not some long-range master plan for military superiority over the United States.

It was also the prevailing belief in civilian circles that the Brezhnev statements were motivated by internal political considerations within the Communist bloc.

Within the Communist party in the Soviet Union, as well as in some of the Eastern European countries, according to Soviet specialists, there appear to be some lingering reservations about the desirability of a cooperative policy with the West. The Brezhnev statements, therefore, were interpreted as an attempt to provide a rationale and justification that would permit all factions, including the ideological hardliners to join behind a policy of cooperation with the West for 12 to 15 years.

As one Government specialist on Soviet affairs put it: "The self-proclaimed tactical shift is probably a tactic in itself."

Mr. SYMMS. There is a relationship between the intentions of Soviet leaders and the capabilities they develop and control. They have developed a tremendous strategic superiority, both offensive and defensive. We can infer from these deliberately developed capabilities that the intentions of Soviet leaders are to use these capabilities for intimidation and blackmail.

BREZHNEV INTENDED SOVIET WORLD DOMINATION BY 1985

New credence should therefore be given to the 1973 intelligence report of a secret speech by the late Soviet leader Brezhnev to Warsaw Pact Communist Party leaders. Brezhnev stated explicitly that détente with the West was a gigantic deception and ruse designed deliberately to enable the Soviet Union to gain military supremacy. Brezhnev predicted that détente would lull the West into complacency while allowing the Soviets to achieve worldwide, global dominance by 1985. The Soviets may not be ahead of this schedule, given their flagrant SALT breakout in 1983, resulting from their SALT violations decisions made in 1972.

MARSHAL OGARKOV, SALT, AND STRATEGIC DECEPTION

Soviet Marshal Nicolai Ogarkov, now chief of the Soviet General Staff, was the top Soviet military delegate to the SALT I negotiations from 1969 to 1971. Ogarkov has remained closely involved in devising the Soviet SALT negotiating strategy and positions since 1971, because we know that the Soviet military establishment plays the most influential role in both defense planning and SALT negotiating. The Soviet military formulates its 5-year defense plans, and then devises its SALT negotiating strategy and positions in order to protect these plans from being constrained by SALT.

Mr. President, what is not widely understood in the United States is the now well documented fact that Marshal Ogarkov was simultaneously the creator and first Director of the General Staff's Directorate of Stategic Deception. The purpose of this Directorate of Deception is to coordinate Soviet strategic camouflage, concealment, and deception with the Soviet SALT negotiating and compliance policy. If détente and SALT have been a gigantic but highly successful ruse for the Soviets, then Ogarkov and his Deception Directorate are largely responsible. But the top Soviet political leadership, including the late Soviet Presidents Brezhnev and Andropov, were just as deeply involved in the decisions on Soviet SALT negotiating deception and violations. Indeed, I have already mentioned the conclusive documentation of the Soviet leadership's deceptive intentions in SALT dating from as early as 1972.

SOVIET SALT BREAKOUT

In fact, the Soviets use arms control negotiations to gain unilateral advantage. After negotiating SALT agreements with loopholes that leave all of their strategic programs unconstrained, the Soviets then go further to violate and circumvent the SALT agreements.

The Soviets are are now flight-testing a new small mobile ICBM, the SS-X-25, which will probably carry several MIRV warheads each with yields well above 150 kilotons.

The Soviets are also constructing new ABM battle management radars and mass producing new mobile surface-to-air interceptor missiles and radars with ABM capabilities and new mobile ABM interceptor missiles and radars.

Thus America may now be witnessing the Soviet SALT breakout deployment of an illegal new mobile ICBM, carrying illegal new MIRV'd warheads, and defended by an illegal ABM system using illegal large battle-management radars and illegal mobile ABM and ABM capable SAM interceptor missiles and radars.

Again, all of this was decided upon in 1972 and 1974, 12 to 14 years ago.

In fact, the Soviets may soon have not only an illegal nationwide ABM system which could protect key industrial areas, but this same illegal ABM system could also protect a significant percentage of the Soviet ICBM force. The Moscow ABM complex is being modernized and expanded with new radars and new interceptor missiles, including interceptors which can be rapidly reloaded and refired. The Moscow ABM system can already defend several hundred MIRV'd ICBM silos deployed near Moscow. The new Siberian ABM radar at Krasnoyarsk, moreover, is ideally located and oriented to help defend hundreds of nearby MIRV'd ICBM silos and mobile ICBM and IRBM deployment areas.

Hence it is reasonable to conclude that the Soviets are now deploying ABM systems which could defend up to about 30 percent or even more of the Soviet ICBM warheads. This would give the Soviets not only a first strike capability, but also an invulnerable first strike capability, and an invulnerable second strike capability. These Soviet capabilities already greatly erode the U.S. deterrent retaliatory capability.

Moreover, there is evidence that the Soviets have deployed 12 to 14 warheads on each of their giant SS-18 super-heavy ICBM's. SALT II allows them only 10 warheads on each SS-18. The Soviets have over 308 SS-18's. Such a SALT II violation could thus allow the Soviets to increase the number of their ICBM warheads by from 616 to 1,304 warheads. This probable Soviet SALT II violation has not yet been confirmed by the President, but I am confident that it is a Soviet violation.

SOVIET SALT DUPLICITY

Mr. President, as I have pointed out, the Soviet record of SALT violations and diplomatic duplicity is a long one. As former President Jimmy Carter stated on December 31, 1979, Soviet President Brezhnev's response to Carter's note requesting an explanation of the reasons for the Soviet invasion of Afghanistan "was obviously false . . . The tone of his [i.e., Brezhnev's] message to me . . . was completely inadequate and completely misleading. He is not telling the facts accurately . . . My opinion of the Russians has changed more drastically in the last week than even the previous two and a half years before that . . . This action of the Soviets has made a more dramatic change in my opinion of what the Soviet's ultimate goals are than anything they've done in the previous time I've been in office."

As our distinguished colleague, Senator JOHN WARNER, stated in a Senate floor speech on January 2, 1980:

> In view of the President's [i.e. Carter's] statement that Brezhnev lied to him about Afghanistan, it might well be that Brezhnev lied during the SALT II negotiations.

And as President Reagan stated on January 29, 1981, "* * * they [the Soviets] reserve unto themselves the right to commit any crime, to lie, to cheat * * *"

Mr. President, I have already mentioned the sensitive intelligence evidence that Brezhnev lied to the United States in the SALT I negotiations over the Soviet heavy SS-19 ICBM. Brezhnev also lied to the United States again in SALT II over the capabilities and production rate of the Backfire bomber, according to Under Secretary of Defense Fred Ikle and many other experts.

As Assistant Secretary of Defense Richard Perle testified to Congress on February 22, 1984:

> The Soviets have not hesitated to mislead us, deliberately and all too successfully.

In fact, there have been over 14 cases of Soviet negotiating deception in SALT I and SALT II which can be fully documented with unclassified evidence.

Mr. President, despite protestations of seeking only equal security and no unilateral advantages, there is a predominant objective in the Soviet approach to arms control. The evidence shows that the Soviets have used arms control negotiations and agreements in order to gain unilateral advantages and to achieve overall strategic superiority over the United States. This has clearly been the Soviet goal and achievement in the SALT I interim agreement and ABM Treaty, the Biological Warfare Convention, the Threshold Test Ban Treaty, the Helsinki Final Act, and in the SALT II Treaty. But the Soviet circumventions and violations of these arms control treaties have destroyed all of the basic objectives that the United States had in entering into these treaties.

The official Soviet propaganda publication entitled "Whence the Threat to Peace" published in 1982 denies the existence of any Soviet arms control treaty violations. It states:

> The Soviet Union's attitude to its international commitments is clearly formulated in the Constitution of the USSR. The Soviet Union has *never* violated the standards of international law or any treaties or agreements. It has always been a reliable partner in international affairs. "If we put our signature under a treaty," Leonid Brezhnev pointed out, "We mean that we are fully resolved to adhere to its letter *and* spirit strictly and entirely." (Emphasis added.)

THE SEVEN MOST SIGNIFICANT SOVIET VIOLATIONS

The problem of Soviet noncompliance with arms control treaties has to be dealt with as a matter of the highest national priority. I would like, Mr. President, to remind the Senate that on April 14, 1983, Senator JIM MCCLURE pointed out on the Senate floor the seven most military significant Soviet arms control violations. I would like to recall again for my colleagues those seven most dangerous Soviet arms control violations as pointed out by JIM MCCLURE:

First, Soviet deployment of heavy ICBM's replacing light ICBM's enabling them to quintuple their counterforce capability.

Second, Soviet ICBM rapid reload/refire, stockpiling of extra missiles, covert soft launch and mobile ICBM capability, circumventing all SALT launcher ceilings, and also adding a strategic reserve with strong counterforce capabilities.

Third, Soviet flight-testing of two new type ICBM's, in violation of SALT II, which adds to an already overwhelming counterforce capability.

Fourth, Soviet violation of the Threshold Test Ban Treaty in militarily significant ways, which also adds to their counterforce capability.

Fifth, Soviet development of a nationwide ABM defense, through their construction of ABM battle-management radars, three types of SAM's for ABM mode use, and a mobile and rapidly deployable new ABM in mass production. All of these capabilities give the Soviets a real ABM breakout capability.

Sixth, Soviet violation of the Biological Warfare and Chemical Weapons Conventions.

Seventh, Soviet deployment of offensive weapons to Cuba, in violation of the Kennedy-Khrushchev Agreement of 1962.

Of these seven most militarily significant Soviet SALT violations that Senator JIM MCCLURE already long ago pointed out to the Senate, four have been confirmed by President Reagan in his report of January 23, 1984.

President Reagan confirmed that the Soviets are:

One, illegally testing two new type ICBM's, in violation of SALT II, which adds even more to an already overwhelming Soviet counterforce capability;

Two, Soviet violation of the Threshold Test Ban Treaty, which also adds to their already overwhelming counterforce capability;

Three, Soviet development of an illegal nationwide ABM defense, as exemplified by their illegal Krasnoyarsk radar and their tests of SAM missiles and radars in an ABM mode. Moreover, Dr. Henry Kissinger, chief negotiator of SALT I, conceded in September 1982 that the Soviet tests of SAM's in an ABM mode violated SALT I. The President's violations report added that: Soviet violation of the ABM Treaty could be very significant.

Four, Soviet violations of the biological and chemical warfare treaties.

Thus four of Senator McClure's original seven most militarily significant Soviet SALT violations have been confirmed by President Reagan.

Of these seven most militarily significant Soviet SALT violations that Senator McClure pointed out, three are not included in President Reagan's report to Congess. These are:

One, Soviet deployment of heavy SS-19 ICBM's to replace light SS-11 ICBM's, in violation of article II of the SALT I Interim Agreement;

Two, Soviet rapid reload and refire ICBM capability and illegal stockpiling of extra ICBM's, in violation and circumvention of SALT II's provisions and all five SALT II launcher ceilings;

Three, Soviet deployment of offensive weapons, including nuclear weapons delivery vehicles and storage facilities, to Cuba, in violation of the 1962 Kennedy-Khrushchev agreement which ended the Cuban missile crisis.

On each of these three militarily significant Soviet violations, however, there is strong confirmation of Senator McClure's original charge.

In 1974, former Defense Secretary Laird charged that Soviet SS-19 deployment was a clear-cut Soviet violation of the SALT I interim agreement. Many other top defense leaders and experts agree with Laird. In 1979, former Secretary of State Kissinger conceded that illegal Soviet SS-19 deployment was sharp practice, and that Soviet resistance to a heavy ICBM definition in SALT II constituted a significant failure in the SALT II Treaty's negotiation and drafting. Finally, even the Senate Intelligence Committee under former Senator Birch Bayh stated in its October 1979 report on the verifiability of SALT II that Soviet SS-19 deployment at least circumvented the SALT I interim agreement. Thus, there is strong support for my charge.

The Defense Department has expressed public concern that Soviet stockpiled missiles have at least circumvented the four SALT II ceilings on launchers, 2,250, 1,320, 1,200, and 820.

In September 1983, and in May 1982, President Reagan himself explicitly and publicly accused the Soviets of abrogating or violating the 1962 Kennedy-Khrushchev agreement by their military activities in Cuba. These charges have been backed up by three top officials.

The Kissinger Commission report released in January 1984 emphasizes that there is an acute and urgent crisis in Central America. The main security problem in the region is the Soviet military base in Cuba and Soviet-Cuban support for the Sandinista efforts to attack the peaceful states in the region. The Soviet military base in Cuba and Soviet support for revolution in the Western Hemisphere violate the accords which ended the Cuban missile crisis in 1962.

The Kissinger Commission report on pages 107 and 108 makes a very significant reference to the Kennedy-Khrushchev agreement, which ended the Cuban missile crisis in 1962 by requiring the Soviets to remove their offensive weapons from Cuba. The report reaffirms President Kennedy's important warning to the Soviets and the Cubans on November 20, 1962:

> If all [Soviet] offensive weapons systems are removed from Cuba and kept out of the hemisphere in the future, and if Cuba is not used for the export of aggressive Communist purposes, there will be peace in the Caribbean.

But the Soviets have reportedly brought bombers, fighter-bombers, and strategic submarines and support bases back into Cuba. These forces have more nuclear delivery capability than the Soviet missiles and bombers discovered in October 1962. The Soviets reportedly also have a combat brigade, nuclear warhead storage facilities, and even biological warfare facilities in Cuba.

The Kissinger Commission report points out the consequences for Inter-American security of the failure of the Kennedy-Khrushchev agreement to prevent Soviet-Cuban offensive bases and aggression in the region:

> [Kennedy's warning] was more than an expectation. It was a declared policy objective of the United States. Obviously, it has not been achieved. The problem has been that it [i.e., the Kennedy-Khrushchev agreement] was eroded incrementally . . . the total effect of such small changes, however, has been—over five Administrations of both parties—an enormously increased military power and capacity for aggression concentrated on the island of Cuba, and the projection of that threat into Central America . . .

Senator McClure, Senator Helms, and I have been the leaders in the Senate pointing out the dangers of the Soviet-Cuban military bases and aggression in violation of the Kennedy-Khrushchev agreement, both to American security and to the security of the Western Hemisphere. I believe that President Reagan should enforce Soviet compliance with the Kennedy-Khrushchev agreement by requiring the Soviets to remove their nuclear delivery-capable bombers and submarines and other offensive military forces from Cuba, and to stop using Cuba as a military base for the export of revolution in Central America.

Thus all seven of Jim McClure's original accusations of Soviet SALT violations have either been confirmed by President Reagan, or have strong official support. I believe that Senator Jim McClure is, therefore, a very credible spokesman on Soviet SALT violations.

Mr. President, even the Arms Control Association has conceded that: "Violations of arms control agreements cannot be overlooked or excused." Thus even the most extreme arms control advocates realize the significance of the Soviet SALT violations. If détente and arms control have failed to restrain the Soviet strategic buildup in the 1970's and 1980's, are appeasement or war our only alternatives? We have to recognize the failure of détente before we can begin to shape a new policy for peaceful relations with the Soviets.

APPEASEMENT IN THE 1920'S AND 1930'S COMPARED TO THE 1970'S

Mr. President, there are compelling reasons to compare the period of the 1970's and 1980's, the period of détente and its aftermath, to the interwar period of the 1920's and 1930's. Many astute observers have noticed striking but alarming parallels between these two periods of modern history.

The disarmament provisions of the 1921 Treaty of Versailles were unpopular with the German people, because they were generally considered to be unfair by the German people. Thus there was popular German support for evasion measures, which the German Army, the Reichswehr, devised. The democratic German Weimar and the British and French Governments knew about some of these German Army evasions, circumventions, and even outright violations of the Versailles Treaty, but the civilian leaders looked the other way. Many leaders of the Weimar Republic shared the perception that the disarmament provisions of the Versailles Treaty were unfair to Germany. These German leaders saw these disarmament provisions as designed to keep Germany in a permanently inferior position to the allies, rather than permitting the Germans to function as an equal with the other powers of Europe, a position to which most Germans felt entitled by reason of Germany's economic, educational, scientific, and technological prowess. In the view of those German military and political leaders who violated the disarmament provisions of Versailles, or who covered up such violations, the fact that neither the British nor the French tried to enforce German disarmanent justified Germany in its resistance to the disarmament provisions.

The result of this situation was that Germany was able to take actions which clearly violated the disarmament provisions of Versailles, and the allies did not even attempt enforcement. The Allies did little or nothing about the German violations. In most cases, the German Government blandly denied that disarmament violations were taking place, and the denials were accepted, especially by the British, at face value as true. The Allied Control Commission met evasions and passive resistance in many of its attempts to inspect illegal German munitions factories, and was continually thwarted in its attempts to monitor the German Army.

Mr. President, eventually the Allied political leaders, and even the Allied military establishments, increasingly accepted German protestations either that specific violations had not taken place, or that they were being corrected.

The Weimar policy of evading, circumventing, and violating their obligations under the Versailles Treaty enabled the Germans to lay the groundwork for the expansion of their army, to keep their munitions industry in being, to create and expand their air force and navy, and to establish the foundation for the expansion of their munitions industry supporting their illegal army, air force, and navy.

These objectives were accomplished in the early 1920's, ironically, with the active help and complicity of the Soviet Union.

The Inter-Allied Control Commission that supervised the disarmament provisions of the Versailles Treaty withdrew from Germany in January 1927, and issued a final report stating:

> Germany has never disarmed, has never had the intention of disarming, and for seven years has done everything in her power to deceive and "counter-control" the Commission appointed to control her disarmament.

Does this remind us of Soviet behavior in the 1970's and 1980's? As Assistant Secretary of Defense Richard Perle testified to the House Armed Services Committee on February 22, 1984:

> We must, if we are not to face an expanding pattern of Soviet violations, see that such violations carry costs at least equal to the gains they derive from them.

In 1934, Sir Winston Churchill also challenged the British Government over whether or not the Germans were complying with the arms control provisions of the Versailles Treaty. In the House of Commons, Churchill stated that:

> The worst crime is not to tell the truth to the public, and I think we must ask the Government to assure us that Germany has observed and is observing her treaty obligations in respect to military aviation.

Unfortunately, the British Covernment lied to the British people, and did assure the British people, contrary to the facts of German rearmament, that Hitler was not violating the Versailles Treaty. Thus, Britain slept until it was too late to avoid World War II.

In the summer of 1935, high-ranking naval officers of Hitler's Germany approached officials of the British Government with a one-time offer. The Nazis promised to limit their surface naval fleet to one-third the size of the British fleet, if only Germany could have 100 percent of Britain's submarine tonnage. Ignoring the fact that the Nazis were already in violation of the 1921 Versailles Treaty ending World War I by having any navy at all, the British eagerly grasped the Nazi straw. The Germans began producing U-boats, and the grim story of Nazi aggression unchecked by democratic military power led to World War II.

Barton Whaley summarized the effects of Axis arms control breaches and the failure of allied enforcement measures before World War II:

> The national leaders were easy prey for deception. By failing to demand rigorous verification of alleged infractions they showed apathy. By failing to apply sanctions when Intelligence did occasionally bring undeniable proof of infractions to their attention, they showed themselves impotent as well. And the opponents' perception of this impotence was a spur of even more audacious infractions.

Thus, U.S. failure to enforce Soviet arms control compliance or U.S. failure to take countermeasures can again lead to world war.

Arms control violations in the 1930's actually contributed to the outbreak of World War II. In the 1930's, clear evidence of Japanese and German violation of the naval treaties was not challenged by the West. Technical defects in the treaties, loopholes or ambiguous intelligence evidence were not responsible for the West's failure to challenge the violations. Bad policy and weak will were responsible.

Today, we face an increasingly clear pattern of Soviet violations of existing arms control treaties. American failure to challenge these Soviet violations will be more dangerous that any other course of action because an American failure of nerve will only encourage more aggressive Soviet violations.

Is this history of appeasement going to be repeated? Is another great Western democracy—this time America—turning its face away from serious treaty violations on the part of an aggressive totalitarian regime? Far graver potential consequences for the fate of the world are now at stake.

Mr. President, I am confident that we can avoid repeating the mistakes of the past. The best way to keep the peace is through continued deterrence and through enforcement of Soviet compliance with existing arms control treaties.

AFTER DETECTION, WHAT?

On July 18, 1979, even the Carter administration's Defense Secretary Harold Brown testified on the consequences of possible Soviet violations of the SALT II Treaty to the Senate Foreign Relations Committee:

> In considering Soviet compliance with the provisions of SALT II * * * there is a difference between detection of a violation and enforcement, bringing a detected violation to an end. The SALT II Treaty will not be enforced in the courts * * * The issue is not whether we could prove a case to a jury. We do not need proof beyond a reasonable doubt, nor even evidence we can discuss in detail, to challenge Soviet action. In international agreements, the ultimate enforcement mechanism is our own actions. * * * We could insist on taking certain actions ourselves outside the Treaty to compensate militarily and politically for the violation. Our ultimate remedy would be termination of [the] SALT II Agreement * * * If a problem were not resolved or if we detected a violation which threatened our security, I would not hesitate to recommend to the President * * * the ultimate step of Treaty abrogation.

Former Secretary of State Henry Kissinger long ago stated what the United States should do in the case of Soviet SALT violations. Dr. Kissinger warned Senators and Congressman on June 15, 1972:

> The possibility exists that the Soviets will treat the Moscow Agreements [SALT I] as they have sometimes treated earlier ones, as just another tactical opportunity in the protracted conflict. If this happens, the United States will have to respond. If this agreement were being circumvented, obviously we would have to take compensatory steps in the strategic field.

During the decade since SALT I, the Soviets have in fact circumvented and violated all the most important provisions of SALT I and SALT II, just as they violated most treaties since 1917. I wonder whether the United States may now need to fulfill Dr. Kissinger's pledge to take countermeasures.

Addressing Congress after signing the SALT II Treaty in June 1979, former President Carter stated:

> Were the Soviet Union to take the enormous risk of trying to violate the treaty in any way that might affect the strategic balance, there is no doubt that we would discover it in time to respond fully and effectively.

Thus even former President Carter promised to take responsive countermeasures to offset Soviet SALT II violations.

What is remarkable about President Reagan's report on Soviet SALT violations is the fact that the Reagan administration plans to continue complying with all the six arms control treaties which the Soviets are violating, including two unratified treaties.

Even more remarkable is the fact that the Reagan administration plans to make absolutely no changes in its military budget or defense programs to offset the military implications of the Soviet cheating. An objective observer must conclude either that the Soviet arms control cheating has no military significance at all, or alternatively, that U.S. strategic programs are so robust already that they inherently compensate for any Soviet cheating.

MILITARY IMPLICATIONS OF SOVIET SALT VIOLATIONS

I would like to discuss each of these alternatives in sequence. First, I believe that the Soviet cheating does have profound military significance. In fact, Soviet arms control cheating has decisive military significance. In particular, the illegal Soviet biological and chemical offensive warfare capabilities have the effect of severely lowering the nuclear threshold, making attempted U.S. nuclear deterrence of the Soviet BW/CW capability more likely to result in nuclear war. Moreover, the President's report states for the first time in public that the Soviets have maintained "an offensive biological warfare program and capabilities." This is extremely dangerous to world peace, because these weapons are nonnuclear weapons of mass destruction.

The illegal Soviet SS-X-25 and the illegal SS-16 are both mobile ICBM's, and up to 400 of these mobile missiles may be deployed. They are very survivable and therefore of high military significance. This many of these two ICBM's could carry over 800 warheads. The illegally encrypted SS-X-24 will carry over 1,000 additional counterforce warheads if only 100 are deployed, or 2,000 warheads if 200 are deployed. If the SS-X-24 can carry 14 warheads each, like the SS-18, then 200 could carry 2,800 warheads. The encryption of the SS-X-24 suggests this kind of throw-weight and payload.

The illegal Soviet ABM radars will, along with mobile interceptors, significantly contribute to an illegal Soviet nationwide ABM defense, making it extremely significant militarily. Indeed, over 30 percent of Soviet ICBM warheads can be defended.

Finally, the Soviet violations of the Threshold Test Ban Treaty probably allowed the Soviets to develop more powerful warheads for their new even more highly accurate ICBM's, also making this very significant militarily.

Thus it is reasonable to conclude that at least five of the nine Soviet arms control violations reported by the President are militarily significant.

Second, are U.S. military programs already robust enough to compensate for the military implications of the Soviet violations?

The defense and military posture statements for fiscal years 1981 through 1985 indicate that the U.S. strategic decline will not even begin to be arrested until after 1990, and if Soviet strategic advantages continue to accelerate, the United States may never return to strategic parity with the Soviets. It is thus reasonable to conclude that U.S. military programs are not now robust enough to offset the Soviet strategic advantages gained from their arms control cheating.

More significantly, President Reagan has already conceded the first point, that there are military implications of the Soviet violations, in his report on Soviet arms control cheating. President Reagan stated: "Soviet violations of arms control agreements could create new security risks."

Even more ominously, President Reagan stated:

> Such violations deprive us of the security benefits of arms control directly because of the military consequences of known violations and indirectly by inducing suspicion about the existence of undetected violations that might have additional military consequences.

These statements concede that U.S. national security has in fact been harmed by the Soviet cheating. Thus, the only question is how to measure these military implications of the Soviet SALT violations.

And as President Reagan stated on January 16, 1984:

> We must take the Soviet compliance record into account, both in the development of our defense program and in our approach to arms control.

This statement means implicitly that the Soviet SALT violations have military implications that may not have been factored into our defense programs.

At the very least, the full funding of President Reagan's strategic weapons program is essential in view of their confirmed violations. The President's strategic weapons program itself is quite modest, even in comparison to the strategic program planned by former President Carter.

ARE WE IN A NUCLEAR FREEZE ALREADY?

For example, the Department of Defense budget request for last year, fiscal year 1984, called for production of zero air-launched cruise missiles B, ALCM-B. The fiscal year 1984 defense request also planned to zero production of the Trident I submarine-launched ballistic missile, SLBM, in fiscal year 1985. Last year, however, Congress increased ALCM-B production for fiscal year 1984 from zero to 240.

The fiscal year 1985 Defense budget request again entirely cancels the production of ALCM-B and reaffirms the planned zeroing of Trident I SLBM production this year. These are the only two strategic offensive weapons systems which are currently produced for operational deployment by the United States.

I know that ALCM-B production has been curtailed because of plans for an advanced cruise missile, and Trident I production has similarly been curtailed because of plans for Trident II production. But Trident II is still only in the design phase and cannot become operational until 1989 at the earliest. And the ACM will also take several years to become operational.

There will thus be a gap of at least several years between the 1985 production stoppage of both of these two missiles before their successor missiles can finish R&D testing and achieve initial operational capability and begin production.

Thus the perception could be created that the Reagan administration is observing a "nuclear weapons freeze" by canceling production of the only two strategic offensive systems now being produced and deployed. But the Senate soundly defeated the Kennedy-Hatfield nuclear weapons freeze resolution last October, by a vote of 58 to 40.

Perhaps the United States should continue ALCM-B and Trident I SLBM production until production can begin on the ACM and Trident II. More than just 12 of the 31 Poseidon SLBM submarines could be equipped with the Trident I SLBM, thereby increasing their survivability during the dangerous window of vulnerability. Up to 20 ALCM-B's could be deployed on each of the 120 B-52 bombers equipped with cruise missiles allowed by SALT II. It may be unwise to have a production gap for both of our only currently deployed new systems in these precarious times of apparent Soviet breakout from SALT I and II.

I know that tight budgetary constraints are the main reason for the apparently premature production stoppages, but this constraint may demonstrate either that our defense program priorities could be wrong or that we may need somewhat more defense funding in selected areas.

Continued U.S. unilateral compliance with the unratified SALT II Treaty may also be a factor in the case of ALCM-B production, because the United States is allowed no more than 120 ALCM-equipped bombers, and we reportedly now have planned 90 B-52's, each equipped with only 12 ALCM-B's.

I would now like to describe the Reagan strategic builddown in some detail. Despite the popular myths, the Reagan administration is unilaterally freezing and building down.

The July 1980 Republican platform stated:

> Despite *clear danger signals* indicating that Soviet nuclear power would overtake that of the United States by the *early 1980's*, threatening the *survival of the United States* and making possible, for the first time in postwar history, political coercion and defeat, the [Carter] administration

> *reduced* the size and capabilities of our nuclear forces. (Emphasis added.)

The platform went on to say:

> * * * *Unilateral restraint by the United States* has *failed* to bring reductions by the Soviet Union * * * [the Carter administration] has * * * practiced unilateral disarmament and removed any incentives for the Soviets to negotiate for what they could obviously achieve by waiting. (Emphasis added.)

Moreover, in March 1981, President Reagan stated that the Soviets have:

> Sat on the other side of the table so far, knowing that we have unilaterally disarmed to a great extent * * * maybe if we do a little building—it'll be a two-way street.

But the following tables illustrate the fact that, despite the above 1980 platform commitments and early Reagan statement, the United States has continued under President Reagan to reduce our strategic forces unilaterally, and thus has continued to practice unilateral restraint and unilateral disarmament. Prior to even beginning strategic arms reduction talks—START—the Reagan administration has made or planned the following unilateral reductions:

PRESIDENT REAGAN'S STRATEGIC FORCE CUT BACKS

[Deactivated, canceled, or planned for deactivation, strategic nuclear delivery vehicles]

	Vehicles	Warheads
100 Minuteman III ICBM's (replacements)		200
Titan II ICBM's	54	54
Polaris SLBM's [1]	160	160
B-52-D bombers	80	320
2 Trident subs	48	364
B-1 bombers [2]	150	3,300
2 Poseidon subs	32	320
90 B-52-G ALCM carriers	90	1,080
MX ICBM's [3]	100	1,000
Total	724	6,828

[1] Polaris deactivation began under Carter, but was completed under Reagan.

[2] The United States currently plans only 100 B-1-B bombers, as compared to 250 planned by Ford.

[3] The United States currently plans only 100 unsurvivable MX's, as compared to 200 survivable MX's planned by Carter.

SUMMARY OF CONTINUED U.S. STRATEGIC CUTBACKS UNDER DEFENSE SECRETARY WEINBERGER, 1981-85

ICBM'S

No deployment of 100 stockpiled Minuteman IIIs despite its authorization by Congress in FY 1981 and 1982, and appropriation in FY 1982.

No upgrade of Minuteman power and airborne launch control.

Reduction in MX from 200 to only 100 deployed missiles, in nonsurvivable basing mode, with no ABM defense. (Only 40 MXs were planned at one point.)

Premature and abrupt deactivation of 52 Titan IIs, carrying a high percentage—33 percent—of our ICBM megatonnage.

SLBM'S

Continued Polaris submarine deactivation—loss of 160 high megatonnage SLBMs—26 percent of our SLBM megatonnage.

Cutback of two Trident submarines.

Reduction of Trident construction rate from 1⅓ to 1 per year.

Delay to 1992 completion of Kings Bay Trident sub base.

One-year delay in ELF deployment decision, with Initial Operational Capability further delayed to 1986.

Delay and cutback in SLCM deployment on submarines.

Planned deactivation of two Poseidon subs carrying 32 SLBMs.

BOMBERS AND ALCM'S

Premature and abrupt deactivation of 80 B-52Ds, carrying heavy megatonnage—19 percent of our bomber megatonnage.

Reduction of ALCM yearly production rate first from 480 to 440, then to 360, then to 240, then to zero, delay of B-52 ALCM initial operational capability one year to December 1982.

Cancellation of KC-10 tanker aircraft procurement.

Planned B-1 force cut from 250 under Ford to only 100.

Failure to deploy sufficient ALCMs on B-1, reduction to SALT II limit of only 20 ALCMs per B-1, or by 200 ALCMs.

No inland basing and increased alert rate for B-52 force.

Reduction of B-52 alert rate from 33% to 26%, concurrent with acceptance of additional conventional, sea control and projection missions for some B-52s.

Planned deactivation of 90 B-52 Gs carrying over 1,000 ALCMs.

DEFENSE

Reduction of proposed funding for space laser research development.

Reduction of Patriot Air Defense missile system.

No acceleration of ABM R&D.

The net effect of this is that the Reagan strategic program will have fewer weapons than the Carter strategic program throughout the 1980's and into the early 1990's. The effectiveness of the bomber improvements will be reduced by the fact that they will mainly carry gravity bombs, rather than advanced penetration weapons and cruise missiles.

Moreover, the rump Reagan MX program has yet to be given a survivable basing mode—and it is very unlikely that the Reagan administration will ever come up with a really viable alternative to the multiple protective structure basing mode.

Under Secretary of Defense Richard DeLauer testified to the Senate Defense Appropriations Subcommittee on March 13, 1984, that:

> The foundation of our strategy and program is built on the adequacy of our strategic nuclear forces to deter aggression or coercion, thus denying the Soviets the opportunity to checkmate us through nuclear dominance. The opportunities for modern conventional defense depend upon this foundation having been established.

DeLauer added that "the President's No. 1 priority is strategic modernization." This testimony seems refuted by the strategic cutbacks noted above.

Thus we must conclude that the Soviet cheating does have military significance, and that the Soviets already have strategic superiority over the United States.

As President Reagan said on March 31, 1982: "The Soviet Union does have a definite margin of superiority—enough so there is risk, and there is what I have called a window of vulnerability." President Reagan again stated in his speech to the Nation on the MX ICBM on November 22, 1982, that the United States is inferior to the U.S.S.R. in strategic capability. On March 23, 1983, President Reagan further declared that the Soviets had a "present margin of superiority."

Defense Secretary Weinberger stated in the fiscal year 1984 defense posture statement that "the Soviets have acquired a margin of nuclear superiority in most improtant categories."

Using only SALT counting rules, which significantly understate Soviet capabilities by an order of magnitude, and do not account for the Soviet violations, Soviet strategic force numerical advantages are: 1.6 to 1 in SALT-accountable delivery vehicles; 4 to 1 in missile throw-weight; 1 to 0.9 in strategic warheads; 6 to 1 in prompt hard target kill potential; 4 to 1 in equivalent megatons; and 1300 to 24 in long-range theater nuclear missiles warheads.

These Soviet advantages will persist well beyond 1990, because even the first U.S. MX ICBM's and B-1B bombers will not become operational until late 1986 and 1987.

Soviet military leaders confirm that they believe that the "correlation of forces" shifted in their favor as early as 1971. In fact, the Soviet military journal, Red Star, stated in January 1980 that the "correlation of forces" had shifted "irrevocably" in Soviet favor.

SUMMARY OF MILITARY IMPLICATIONS OF SOVIET SALT VIOLATIONS

The following chart is a summary of President Reagan's report to Congress on Soviet SALT violations, together with a summary of the status of most of the other Soviet arms control compliance issues which Senator McCLURE, Senator SYMMS, and I have cataloged for the Senate. As is easily apparent from the chart, there are over 40 Soviet SALT and other arms control violations remaining for President Reagan to report on to the Congress, in order to comply fully with the McClure-Helms-Symms amendment to Public Law 98-202, which states:

> REPORT TO CONGRESS ON SOVIET COMPLIANCE WITH ARMS CONTROL AGREEMENTS
>
> SEC. 5. The President shall prepare and transmit to the Congress a report on the record of the compliance or noncompliance of the Soviet Union with existing arms control agreements to which the Soviet Union is a party.

The above McClure-Helms-Symms amendment passed the Senate on September 23, 1983, by a rollcall vote of 93 to 0. The legislative history of the amendment in the Senate is that Soviet compliance with the letter and spirit of all arms control agreements

should be reported and that this report should be unclassified and made on an urgent basis. As Assistant Defense Secretary Perle testified to the Senate on March 14, 1984, the President's violation report was illustrative only, and Perle mentioned 20 to 25 additional existing violations.

Mr. President, I ask unanimous consent that the chart and summary previously mentioned be printed in the RECORD at this point.

There being no objection, the chart and summary were ordered to be printed in the RECORD, as follows:

PRESIDENT REAGAN'S REPORT TO CONGRESS ON SOVIET SALT AND OTHER ARMS CONTROL TREATY VIOLATIONS

Soviet Arms Control Treaty violation	Conclusiveness of President's judgment	Quality of evidence	Senator McClure's unclassified prediction	Military significance in quantitative terms
Salt II: Encryption of missile telemetry	"Violation of legal obligation prior to 1981 and violation of their political commitment subsequent to 1981;" unqualified.	Conclusive, 100 percent encryption or denial, deliberately impedes verification	Confirms prediction	Unknown, could allow the SS-X-24 to have heavier throw-weight than the heavy SS-19, and carry up to 14 warheads, like the SS-18
SS-X-25 as second new type ICBM	"Probable violation of political commitment," using best estimates, SS-X-25 has about 200 percent more throw-weight than SS-13	Strong	Confirms prediction of about 200 percent increase of SS-X-25 throw-weight over SS-13	Allows MIRVing of SS-X-25
Reentry vehicle to throw-weight ratio	"Violation of political commitment," unqualified	Conclusive	Questioned this activity	Could allow 3 or more reentry vehicles, with a deployment of 200 SS-X-25 could result in 600 survivable warheads
SS-16 mobile ICBM deployment	"Probable violation of their legal obligation not to defeat the object and purpose of SALT II prior to 1981 . . . probable violation of a political commitment subsequent to 1981".	Strong, converging from multiple catagories	Confirms prediction of SS-16 deployment	Probably results in 200 survivable warheads
SALT I ABM: New large radar	"Almost certainly a violation of legal obligations"	Almost conclusive	Confirms prediction of multiple treaty provisions	Could help protect up to 20 percent of Soviet ICBM warheads, about 1,400
Threshold Test Ban Treaty	"Likely violations of legal obligations"	Differing interpretations and schools of analysis	Prediction of 95 percent confidence of violation can be confirmed	Could allow development of new warheads in 5 to 1 megaton range. Over 15 violations
Biological Warfare and Chemical Warfare Treaties	"Repeatedly violated their legal obligations," unqualified	Conclusive	Confirms prediction	BW/CW are weapons of mass destruction. Lowering of nuclear threshold. Soviet intercontinental delivery capability. Confirms offensive BW/CW program capabilities. Increases possibility of surprise attack
SALT II: SS-18 rapid reload and refire capability	Unconfirmed by President	Strong	Unconfirmed	308 extra missiles, over 3,000 additional warheads
AS-3 Kangaroo long-range ASM on 100 TU-95 Bears	Unconfirmed by President. Soviet military power, September, 1981 states on page that the AS-3 Kangaroo has a range of "650 kilometers." The AS-3 thus counts in SALT II	Conclusive and official	do	Marginal
Deployment of long-range ASM and cruise missiles on Backfire bomber	Unconfirmed by President	Strong	do	250 more strategic delivery vehicles and warheads
Production of 32 to 36 Backfire bombers per year	do	do	do	Soviet strategic delivery vehicle total increases 32 to 36 per year
Arctic deployment of Backfire bomber	do	do	do	Backfire has intercontinental range to attack entire United States
Increased and large scale strategic camouflage, concealment, and deception	do	do	do	Can not be determined. Affects U.S. targeting in undeterminable ways
Testing new heavy SLBM, SS-NX-24	do	do	do	Could allow hard target capable SLBM, or more than the allowed 14 warheads of SLBM
Soviet admission that they exceed 820, 1200, 1320 SALT II ceilings	do	do	do	Soviets have 465 more strategic delivery vehicle than allowed, carrying 2,000 more warheads than allowed
Soviet failure to reduce to 2,400 or to 2,250 strategic delivery vehicles	do	Conclusive	do	Allows the Soviets more than 550 delivery vehicle carrying more than 550 warheads
SALT I ABM Treaty Soviet SAM testing in ABM mode: SAM-5, SAM-10, SAM-12	Unconfirmed by President, confirmed by former Secretary of State Kissinger and former Defense Secretary Laird	Strong	do	Could allow Soviets to defend 100 percent of their ICBM warheads, plus key industrial areas
ABM: Camouflage and concealment	Unconfirmed by President	do	do	Marginal
Falsification of ABM deactivation	Confirmed under President Carter	Conclusive	Confirmed	None
Creation of new ABM test range without required prior notification	do	do	do	None
Development of a rapidly deployable, mobile ABM system	Unconfirmed by President	Strong	Unconfirmed	Could contribute to nationwide force and value
Testing of a rapid refire ABM capability	do	do	do	Do
Deployment of a nationwide ABM defense, using 6 ABM battle-management radars, SAM's-5, 10, 12, and mobile ABM-3	do	do	do	Could give Soviets a first strike capability and a capability to suppress U.S. retaliatory deterrent
Deployment of more than 100 ABM launchers around Moscow	do	do	do	Marginal, unless significant number of extra launchers
SALT I Interim Agreement:				
Deployment of 360 heavy SS-19 to replace light SS-11 ICBM	Unconfirmed by President. Confirmed as a clearcut "violation" by former Defense Secretary Laird, and as "sharp practice" by former Secretary of State Kissinger	Conclusive	do	Allowed Soviets to add 1,800 hard target, accurate, high yield counterforce warheads to their force
Failure to deactivate old ICBM's on time, and continuous falsification of official deactivation reports.	Unconfirmed by President	do	do	Allowed Soviets to calibrate accuracy and timeliness of U.S. National technical means of verification, gauge U.S. political will to enforce compliance
Bringing back ICBM equipment to deactivated ICBM complexes	do	Strong	do	Marginal
Keeping 18 SS-9 ICBM's at an ICBM test range illegally operational	Confirmed by President Carter	Conclusive	do	Gave Soviets 18 ICBM's with 18 extra
Soviet deployment of III X silos with a configuration too similar to a missile launch silo	Unconfirmed by President	do	do	None
Increased use of camouflage, concealment, deception. Camouflage of ICBM, SLBM activities, SLBM tunnels	do	do	do	Allows Soviets to frustrate U.S. targeting of mobile ICBM's, provides protection for many Soviet SLBM submarines not on patrol
Constructing over 68 strategic submarines, when only 62 are allowed	do	do	do	Allows Soviets 6 Y class submarines which could carry over 20 SS-N-21 cruise missiles each, a total of over 120 extra warheads
Violation of Brezhnev's pledge not to build mobile ICBM's	do	Strong	do	See President's report
Deploying SS-11 ICBM's at SS-4 MRBM sites for covert soft launch	do	do	do	Could allow over 1,000 old SS-11 ICBM's with 1,000 warheads to be covertly soft launched as a strategic reserve
Keeping about 1,300 to several thousand old ICBM's stockpiled for both covert soft launch and rapid reload of silos for refire	do	do	do	1,000 to 2,000 more old ICBM's and warheads as covert strategic reserve
Kennedy-Khrushchev Agreement Combat Brigade	President Reagan and CIA Director, JCS Chairman, and Under Secretary of Defense have confirmed Soviet violation	Conclusive	Confirmed	Soviet offensive ground forces capability in Cuba
Golf and Echo subs				12 SLBM's and SLCM's

PRESIDENT REAGAN'S REPORT TO CONGRESS ON SOVIET SALT AND OTHER ARMS CONTROL TREATY VIOLATIONS—Continued

Soviet Arms Control Treaty violation	Conclusiveness of President's judgment	Quality of evidence	Senator McClure's unclassified prediction	Military significance in quantitative terms
Mig-27 floggers				12 SLBM's and SLCM's.
TU-95's				12 Bears, already counted in strategic force.
BW/CW facility				Unknown.

OFFICIAL U.S. GOVERNMENT DATA FROM JCS POSTURE STATEMENT AND SOVIET MILITARY POWER

	Number	Warheads
United States [1]		
Strategic nuclear delivery vehicles:		
ICBM's	1,033	2,140
SLBM's	592	5,344
Intercontinental bombers	264	1,944
Total	1,889	9,421
Soviet Union		
Strategic nuclear delivery vehicles:		
ICBM's	1,398	6,300
SLBM's	981	2,528
Intercontinental bombers	405	1,620
Total	2,784	10,448

[1] Using SALT II counting rules. Soviets are thus 895 delivery vehicles and 1,027 warheads ahead of the United States. But U.S. forces should be discounted further because 480 Poseidon warheads are dedicated to NATO.

TOTAL SOVIET QUANTITATIVE ADVANTAGES PROBABLY GAINED FROM VIOLATING SALT I, II, AND OTHER ARMS CONTROL AGREEMENTS

	Delivery vehicles	Warheads
SS-X-24's	200	[1] 2,000
SS-X-25's	200	600
SS-16's	200	200
SS-18 reload	308	3,000
Backfires	250	250
MIRV'd launchers over 1,320	465	2,000
Delivery vehicles over 2,250	550	550
SS-19 vice SS-11	0	1,800
SS-9 at Tyuratam	18	18
SS-N-21's on Y class	120	120
SS-11's stockpiled	1,000	1,000
Older ICBM's stockpiled	1,000	1,000
SLBM's/SLCM's in Cuba	12	12
Mig-27 Floggers in Cuba	43	43
Total	9,366	12,593

[1] 2,000 plus.

SOVIET VIOLATION OF ALL SALT II CEILINGS

Mr. SYMMS. The following series of tables illustrate the Soviet strategic forces structure as it exceeds the SALT II Treaty ceilings. The first series of tables shows that the Soviets are well over all the five SALT II ceilings: 2,400, 2,250, 1,320, 1,200, 820. The second series of tables illustrates Soviet strategic missile and bomber construction rates since 1978. These total 7,017. There is no evidence that any of the older missiles and bombers which this total replaces have been dismantled. Hence the Soviet strategic force could be an order of magnitude larger than the first set of SALT II tables indicate. And as the preceding SALT violations chart indicates, the Soviets may already be an order of magnitude above the SALT II limits. There is some double counting in the charts, but it is fair to conclude that the Soviet strategic force is an order of magnitude larger than SALT II allows.

Soviet strategic force structure as it exceeds the SALT II Treaty ceilings

Strategic nuclear delivery vehicles under SALT II counting rules:	
ICBM silos	1,398
Bear, Bison bombers (counting tankers)	170
SLBM's	980
Vice 2,400 and 2,250 allowed by SALT II [1]	2,548
Backfire bombers, including Naval Backfires	235
Subtotal	2,783
Bear H with ALCM's	50
SS-16 mobile launchers at Plesetsk	200
SS-9 FOB's at Tyuratam	18
Stockpiled ICBM's for rapid refire and covert launch	1,000
Total SNDV's	4,051
MIRV'd ICBM's under SALT II counting rules:	
SS-18	308
SS-19	360
SS-17	150
Subtotal	818
SS-24 in converted SS-11 silos operational by 1985	100
Vice 820 allowed by SALT II [2]	918
MIRV'd SLBM's under SALT II counting rules:	
16 Delta III's with SS-N-18	264
3 Delta III's under construction	48
2 Typhoons with SS-N-20	40
2 Typhoons under construction	40
Total	392
Total MIRV'd ICBM and SLBM launchers under SALT II counting rules:	
MIRV'd ICBM	918
MIRV'd SLBM	392
Vice 1,200 allowed by SALT II [3]	1,310
Intercontinental bombers equipped with long-range ALCM's or ASM's and MIRV'd missile launchers under SALT II counting rules:	
Bear with "650 kilometer "AS-3	105
Backfire with long-range ALCM	235
New Bear H with long-range ALCM, the AS-X-15 having 3,000 kilometer range	50
Subtotal	390
Vice 1,320 allowed by SALT II	1,700

[1] The fiscal year 1985 JCS military posture statement gives the Soviets 2,754 delivery vehicles, counting Backfires.

[2] Does not count over 100 more SS-24's which might be deployed in a mobile mode. In fact, the April 1984 "Soviet Military Power" states: "Available evidence suggests mobile as well as silo deployment for both (SS-24 and SS-25) systems."

[3] Does not count up to 200 SS-25's as MIRV'd, and up to 200 SS-24's.

NOTE.—These totals include those launchers and bombers under construction, which SALT II art. XI specifies should count. Moreover, those delivery vehicles under construction will probably be operational before SALT II expires at the end of 1985.

These totals probably underestimate the real Soviet SALT II breakout, because they do not count reports that the SS-25 is MIRV'd, and they do not count reports of up to 300 probable rail-mobile SS-24's, road mobile SS-25's, and silo based SS-25's.

SOVIET STRATEGIC WEAPON PRODUCTION RATES

This table shows new Soviet strategic weapon production rates. It is derived from the Defense Department books "Soviet Military Power" for 1983 and 1984. It is especially worrisome because old Soviet weapons are not being retired as new ones are produced. They are being stockpiled as strategic reserves.

ICBM's:	
1978	225
1979	225
1980	250
1981	200
1982	175
1983	150
Total	1,225
SLBM's:	
1978	250
1979	200
1980	200
1981	175
1982	175
1983	200
Total	1,200
SLCM's:	
1978	600
1979	700
1980	750
1981	750
1982	800
1983	800
Total	4,400
Bombers (Backfire):	
1978	30
1979	30
1980	30
1981	30
1982	35
1983	35
Total	190

NOTE.—In the April 1984 edition of "Soviet Military Power," the bomber production numbers for 1982 and 1983 were each changed from 30 to "35." This is the first official confirmation of Soviet production of more than 30 Backfire bombers per year.

I am very concerned by the military implications of the President's report on Soviet SALT violations for U.S. national security. Neither SALT I nor SALT II seems to be constraining the Soviet threat. We seem to be witnessing an apparent Soviet breakout from both the offensive and defensive constraints of SALT I and II.

PARALYSIS IN THE FACE OF SOVIET SALT BREAKOUT

I have noted in the Washington Post of January 19, 1984, that:

> Senior Pentagon officials . . . say there is no need to alter U.S. military programs in the next few years as a result of the alleged Soviet cheating.

State Department public diplomacy policy guidance has also stated:

> We are taking account of Soviet violations in our defense modernization plans . . . the Strategic Defense Initiative should be evaluated on its own merits aside from Soviet violations of existing agreements.

I wonder what specific U.S. strategic modernization programs will offset the Soviet SALT violations. As President Reagan stated in his speech of January 16, 1984:

> We must take the Soviet compliance record into account, both in the development of our defense program and in our approach to arms control.

And as President Reagan stated in his report to Congress of Soviet SALT violations:

> Soviet violations of arms control agreements could create new security risks. Such violations deprive us of the security benefits of arms control directly because of the military consequences of known violations and indirectly by inducing suspicion about the existence of undetected violations that might have additional military consequences.

As Defense Secretary Weinberger stated on May 26, 1982, SALT II "did not reduce arms or even limit their effectiveness." Secretary Weinberger added that SALT II "would irreversibly seal the advantage the Soviets currently enjoy." Thus even if the Soviets were complying with the unequal SALT II Treaty, which the Senate Armed Services Committee stated was not in the national security interest of the United States, the United States would be at a grave disadvantage. Since 1979, the Soviets have increased the number of nuclear warheads targeted on the United States by about 75 percent. Now the Soviets seem to regard both SALT I and II to be dead, and the Soviet offensive and defensive threats seem to be unconstrained in this apparent breakout situation.

In determining whether or how to adapt our defense programs in response to apparent Soviet breakout from SALT I and II, we might recall what even the Carter administration conceded were the budgetary implications of a Soviet threat unconstrained by SALT I and II. In a speech of October 20, 1980, former Defense Secretary Harold Brown argued that:

> To match the bigger Soviet force without SALT could cost us, over the next decade, an additional 30 to 100 billion 1981 dollars.

Defense budget increases as large as the Carter administration considered in the absence of SALT I and II or in the event of Soviet SALT breakout are obviously difficult to envision, due to the huge deficits in the Federal budget, but they might be a guide to what we might wish we could do in this period of grave national security danger.

Mr. President, the process of the strategic arms limitation talks—SALT—have been an exceptionally complex process. The SALT treaties themselves clearly show how complex this process has been, because the treaties themselves are very complex. Nevertheless, there are some rather basic and easily understandable conclusions that I would like to draw from this sordid history of the SALT process. These conclusions are worthy of serious consideration by the Senate.

First, Mr. President, the Soviets have achieved major strategic advantages from their violations of SALT I and II:

They have deployed their illegal SS-19 heavy ICBM, helping to quintuple their counterforce capability;

They have achieved overwhelming superiority in the number and capabilities of ICBM's SLBM's, and bombers, including superiority in the number of warheads carried on them;

They have deployed up to 200 illegal SS-16 mobile ICBM's;

They have excluded over 250 Backfire intercontinental bombers from SALT II;

They have excluded 1,000 to 2,000 strategic reserve stockpiled ICBM's from SALT II;

And finally, the Soviets have achieved through SALT I and II overall quantitative and qualitative offensive and defensive superiority. Not such a bad achievement for a supposedly mutually beneficial process.

Mr. President, the Soviets are committed to their 5-year defense plans, and they use the SALT process to preserve their long-term commitments to their new programs. The evidence from their exploitation of the SALT process clearly shows that the Soviets do not change their force plans because of SALT. Quite the contrary, Mr. President. The Soviets make their secret 5-year defense plans first and then they defend these secret plans from SALT constraints. In contrast, Mr. President, the United States has no long-term defense plan, and the United States allows SALT to adversely affect its strategic programs. So far, the SALT process has codified Soviet future defense plans, while impeding and constraining U.S. defense plans.

Mr. President, the open U.S. society versus the closed Soviet society has resulted in a severe intelligence asymmetry in the SALT process. This has been a severe handicap to real arms control. The SALT negotiations have been conducted using mostly U.S. data. This process can be compared to playing poker with an opponent who knows your cards as well as his own, and who also cheats.

The Soviet General Staff Deception Directorate has played a key role in SALT negotiating deception, camouflage and concealment, and SALT violations.

Mr. President, the Soviets have a sustained SALT camouflage, concealment, and deception program centrally directed by the Politburo-level Defense Council, and coordinated by the Soviet General Staff as part of the Soviet SALT negotiating strategy also largely controlled by the General Staff. Operational strategic deception and concealment is directly linked to negotiating deception and outright SALT violations. The Soviet leadership intended from the outset to violate the SALT treaties in 1972. The closed nature of Soviet society greatly magnifies the effectiveness of this massive program and further exacerbates the intelligence asymmetry.

Mr. President, the SALT decade can be accurately described as a decade of dangerous U.S. strategic decline, and the SALT process has strongly contributed to that decline. The SALT process has made America more insecure rather than more secure. No positive U.S. military or security objectives that have been achieved by SALT I or II can easily be identified.

The Carter administration consistently claimed both that the United States would be able to detect any significant Soviet SALT cheating, and more importantly, that the United States would react to it. For example, in their SALT compliance and verification white paper of February 1978, the Carter administration stated:

> Although the possibility of some undetected cheating in certain areas exists, such cheating would not alter the strategic balance *in view of U.S. programs.* Any cheating on a scale large enough to alter the strategic balance would be discovered in time to make *an appropriate response.* (Emphasis added.)

Thus the Carter administration clearly pledged that it would respond to Soviet SALT violations. It believed in "the U.S. ability to respond in a timely manner to possible Soviet cheating." But while the Reagan administration has accused the Soviets of violations, it is not yet ready to propose any U.S. response to Soviet SALT violations. At least President Reagan seems to believe that some U.S. response is necessary.

ANALYSIS OF CARTER WHITE PAPER ON SOVIET COMPLIANCE OF FEBRUARY 1978

The Carter administration reported that seven Soviet SALT compliance questions were discussed with the U.S.S.R. Rather than to recapitulate all of the details of each of the seven cases, I will point out some omissions or misleading aspects of the Carter administration report.

1. LAUNCH CONTROL SILOS

First, on the question of whether Soviet launch control silos were illegal ICBM launchers or not, it is important to note that the Soviet silos in question were first detected in 1970. This matter was not resolved in the SALT Standing Consultative Commission—SCC—until 1976, so it took 6 years to resolve this significant question of arms control compliance. The real issue all along was not the immediate function of the silos in question, but the similarity of their design to Soviet silos actually housing and launching ICBM silos. The Soviets designed these silos to be too similar to ICBM launch silos, hence the U.S. concern was caused by what can be regarded as Soviet deception inherent in their silo designs. And it is important to keep in mind just how this problem was resolved. As in all the other cases in the SCC, the United States acquiesed in the Soviet position.

2. SOVIET DECEPTION

The Carter administration claimed on the second issue that "in early 1975, careful analysis of intelligence information on—the camouflage and concealment—activities of the U.S.S.R. led the United States to conclude that there *no longer appeared* to be an *expanding pattern* of concealment activities associated with strategic weapons programs." (Emphasis added.) This statement is both misleading and false. It is misleading because the U.S. analysis of the Soviet camouflage, concealment, and deception—CCD—program was not careful. I believe that the United States still has a very primitive understanding of the nature, scale, intentions, and scope of the Soviet CCD program. It was not, for example, until mid-1978 that U.S. intelligence first realized that Soviet Marshal Ogarkov was in charge of strategic deception while he was also the chief Soviet military SALT negotiator. Moreover, we will never know what the Soviets have successfully hidden under Marshal Ogarkov's direction. Even more significantly, the Soviet CCD program in fact did not stop expanding in 1975, as the Carter administration claimed. The Soviet CCD program reportedly continued to expand significantly after 1975. Indeed, intelligence experts today are conceding that the still expanding Soviet CCD program is massive and is deliberate, and that it impedes U.S. verification of SALT by national technical means. Thus U.S. intelligence has now finally concluded retrospectively that, after 1975, the Soviet CCD program was a violation of SALT I and SALT II, because it was deliberate and because it does impede U.S. verification.

3. THE SOVIET SS-19

On the third question of the Soviet SS-19 modern large ballistic missiles, the Carter administration analysis implicitly concedes that the SS-19 can be classed as a heavy ICBM because it is referred to as the modern large ballistic missile issue. There are several false or misleading aspects of the Carter white paper's discussion of the heavy SS-19 ICBM issue. First, there was no reference to Soviet negotiating deception on the SS-19 in May 1972.

Soviet negotiators, including Brezhnev himself, made many false statements to the United States from 1971 to May 1972 which had the effect of misleading the United States about the size of their then-secret new, large ICBM, the heavy SS-19. The Soviets themselves considered the SS-19 to be a heavy ICBM, which it was by U.S. standards. They argued falsely that an agreed definition of a heavy ICBM was unnecessary.

Their most significant deception was their many false statements during the negotiations that they did not intend to replace light ICBM's—the SS-11—with heavy ones, the precise opposite of their plans as confirmed by events, and contrary to article II of SALT I. Article II prohibits the replacement of light ICBM's with heavy ICBM's.

The Soviets tried in May 1972 to justify their refusal to agree to a definition of a heavy ICBM by arguing that such a definition was unnecessary because both sides already knew which ICBM's were heavy and light. The Soviets said repeatedly in May 1972 at the Moscow summit:

> There was no need for a definition of a heavy ICBM since *the Soviet approach fully precluded conversion of launchers for other types of ICBMs covered by the agreement into launchers for heavy ICBMs* [Article II]. It was the Soviet view that both sides had a clear understanding of what light and heavy ICBMs were and that there was no reason to believe that during the period of the Interim Agreement *this understanding would not continue to prevail.* (Emphasis added.)

This Soviet position was precisely the opposite of the true situation and a camouflage of their true intentions. They regarded the SS-19 as a heavy ICBM all along and as the prime candidate to replace the light SS-11. Hence the above Soviet statements were directly deceptive and misleading. They were a deliberate Soviet effort to circumvent or violate article II's prohibiton against replacing light ICBM's with heavy ICBM's and to deceive the United States about their intentions.

The Soviets also actually argued several times that the United States could trust them not to convert light ICBM's into heavy ICBM's. In order to deflect U.S. concerns, they also suggested that a missile like the SS-19 could be banned, even as they were planning to deploy it widely as the replacement for the SS-11. Finally, the Soviets also deceptively bargained to successfully persuade the United States to abandon attempts to gain an agreed definition of a heavy ICBM.

The SS-19 turned out to be 400 percent heavier in throwweight than the small SS-11, and its volume is about 60 percent greater. The SS-19 deployment helped to quintuple the Soviet counterforce threat to the United States by the expiration of SALT I in 1977. Even the Carter administration later conceded in 1979 that the heavy SS-19 was more deadly than the super heavy SS-18, because of the SS-19's greater accuracy and larger deployment.

Important intelligence evidence indicating Soviet deception on the SS-19 was reportedly acquired in May 1972. Congressman JACK KEMP has described this evidence in the CONGRESSIONAL RECORD, citing William Beecher, "United States May Reply to Soviet Rays," Boston Globe, October 10, 1976, page 7. The United States reportedly eavesdropped on Soviet communications in Moscow in May 1972, during SALT I negotiations. According to the CONGRESSIONAL RECORD and to Beecher:

> By way of example, one source noted that in May 1972, in the hours immediately preceding agreement on the SALT I pact in Moscow, a conversion was intercepted in which Soviet Party Chairman Leonid Brezhnev checked with a top weapons expert to get assurance that an about-to-be-concluded formula covering permissible *silo* expansion would allow the Soviets to deploy a *bigger* new missile then under development. That intercept provided the *first* solid information that the SS-19, as it is now known, was destined to replace some of the relatively small SS-11 missiles, which comprise the bulk of the Soviet ICBM force. The SS-19 has three to four times the throwweight of the old missile. (*Congressional Record* August 2, 1979, p 22493, emphasis added.)

This highly significant intercept reportedly occurred on May 26, 1972, just before SALT I was signed. It indicated that the SS-19 was a large, heavy ICBM and that Brezhnev intended the SS-19 to replace the light SS-11 on a large scale precisely in violation of article II. Yet Brezhnev had deceptively told U.S. negotiators that the U.S.S.R. did not intend to replace light ICBM's with heavy ICBM's. Thus this reported intercept conclusively confirms Brezhnev's negotiating deception on the SS-19. Brezhnev knew that the SS-19 would violate article II, but he also knew that the

United States did not then know about the SS-19.

And as William Safire wrote in the New York Times of August 6, 1981, "Deception Managers," page A-23:

> The first inkling of duplicity came to us in May, 1972, via "Gamma Guppy," our tuning in to limousine telephone conversations between Leonid Brezhnev, Andrei Gromyko, and Soviet missile designers at the Moscow summit conference. These transcripts quoted Mr. Brezhnev talking about a "main missile" that had never been mentioned in SALT negotiations, which turned out to be the SS-19. The surprised Henry Kissinger considered this "sharp practice."

A third reference to the Beecher intercept material occurred in a New York magazine review of April 5, 1982, of Henry Kissinger's memoirs, by none other than William Beecher himself. Beecher wrote:

> One of the principal objectives of SALT I was to preserve America's 1,000 Minuteman missiles by putting a cap on the number of super-large Soviet SS-9 missiles, which if equipped with multiple warheads could threaten all the American ICBMs in a first strike. In the negotiations, Kissinger allowed the Soviets to include a clause for "modernization" of all their ICBMs—heavy and light—which permitted the replacement shortly thereafter of light single warhead missiles by the hefty SS-17 and SS-19 multiple warhead missiles. That, quite predictably, has led to the current situation, in which all the Minutemen are vulnerable to surprise attack.
>
> Nor does Kissinger mention an intercepted conversation—before the deal had been completed—between Leonid Brezhnev and the commander of his Strategic Rocket Forces checking to see whether the modernization formula would be adequate for his needs. Some 751 pages later, in addressing the SALT II problem, Kissinger brings up the troubling new SS-17 and SS-19 multiple warhead missiles. "Emerging so soon after the signature of SALT I, they left little doubt that the Soviet perception of stability was not the same as that of our arms controllers." The principal American arms controller was, of course, Kissinger himself.

This passage confirms the other evidence that Kissinger was deceived by the Soviets on their plans to illegally replace the light SS-11 with the heavy SS-19 ICBM.

Fourth and finally, as Seymour Hersh has written in his book on Kissinger, "The Price of Power," on page 547,:

> On the day of the summit, the National Security Agency intercepted a radio-telephone conversation in Moscow between Brezhnev and a senior military official in which the party chief, talking from the back seat of his limousine, received assurances that the commitment to limit increases in silo dimension to 15 percent would not preclude employment of the new Soviet missile system.

Hersh fails to point out that while the SS-19's silo was legal, the missile itself was illegal.

What is not well known is that key parts of this reported intercept were reportedly embargoed and suppressed by Dr. Kissinger within the intelligence community, evidently in order to cover up the fact that Kissinger had been deceived by Brezhnev on the Soviet heavy SS-19 as the intended but illegal replacement for the light SS-11.

As the Senate Intelligence Committee reported in October, 1979:

> It is clear from the SALT I record that intelligence of possible Soviet violation of the Treaty [sic] was, in some cases, and for a time, withheld from Executive branch officials who had a need for such information.

Senator GORDON HUMPHREY and Congressman JACK KEMP have both suggested that it was the Beecher intercept above that was withheld and suppressed by Dr. Kissinger in order to ensure the Senate's advice and consent for the ratification of the SALT I ABM Treaty which was integrally linked to the SALT I Interim Agreement. Admiral Zumwalt has confirmed that this information was withheld from the JCS. The late Senator Jackson has confirmed that the Senate was lied to on SALT. If the Beecher intercept had been known to the Senate in the summer of 1972, the SALT I agreements might not have received the advice and consent and majority vote of the Senate, and the United States might have been spared the increased threat caused by the Soviet SALT I violations already planned in 1972.

The 1978 Carter White Paper states that:

> When deployment of the SS-19 missiles began, its size, though not a violation of the interim agreement provisions—that is article II, caused the United States to raise the issue with the Soviets in early 1975. Our purpose was to emphasize the importance the United States attached to the distinction made in the interim agreement between light and heavy ICBM's, as well as the continuing importance of that distinction in the context of the SALT II Agreement under negotiation at the time.

I believe that in light of the Soviet negotiating deception on the SS-19, the Carter administration's reaction was extremely weak and misleading.

The SS-19 must be considered either a circumvention or violation of article II. The United States showed that it was willing to tolerate this most significant SALT violation by unilaterally redefining in SALT II the definition of a heavy ICBM to exclude the SS-19. Yet the heavy SS-19 helped to increase the Soviet counterforce threat to the United States by a factor of 5 after 1972. This was a set-back to U.S. national security comparable to the loss of the Vietnam war, and to the Soviet offensive weapons deployment to Cuba in 1962 and after 1970.

By tolerating, condoning, and even apologizing for this Soviet SALT violation, the U.S. confirmed that it was willing to allow the Soviets to continue to upset the strategic balance to its advantage. All other Soviet SALT violations are dwarfed in significance by the SS-19 case. Yet the SALT process went on for 7 more years without challenge to its negative impact on U.S. security. Moreover, former Defense Secretary Laird stated plainly in 1974 that SS-19 deployment was a clear-cut violation of SALT I. In 1979, former Secretary of State Kissinger conceded finally that Soviet SS-19 deployment constituted sharp practice.

The Carter White Paper went on to say:

> Following some discussion in the SCC, further discussions of this question in that forum were deferred because it was under active consideration in the SALT II negotiations. Since that time, the U.S. and U.S.S.R. delegations have *agreed* in the draft text of the SALT II Agreement on a *clear demarcation*, in terms of missile launch weight and throwweight, between light and heavy ICBMs." (Emphasis added.)

This Carter administration statement is completely false, because there was a complete failure to bilaterally define heavy ICBM's in SALT II.

That the proponents of SALT II alleged that there is an agreed definition of a heavy ICBM is of equal if not greater significance than their acceptance of the Soviet Backfire position. There is a similar need for analysis of the definition of the heavy ICBM. One would think that the difficulties for the United States growing out of the imprecise terminology in SALT I would have demanded an exceedingly precise definition of the heavy ICBM in SALT II. It is interesting to note that Walter Slocombe declared that in negotiating SALT II, the United States had learned from our hard lessons of SALT I. He said that.

> The most important lesson was to be as specific and precise as possible in drafting treaty language constraining Soviet options.

Nevertheless, during the course of SALT II we have twice repeated the most important mistake of SALT I—failure to define a heavy ICBM.

At Vladivostok in November 1974, we preserved the key SALT I prohibition on heavy ICBM's, but again as in SALT I, we did so without an agreed definition of a heavy ICBM.

In recognition of our lack of success with our 1972 unilateral statement on a definition of a heavy ICBM—and most of our other 1972 unilateral statements—former SALT II chief negotiator Paul Warnke clearly ruled out U.S. unilateral statements in SALT II during his February 1977 Senate confirmation hearings:

> My conviction is that with regard to any agreement which is entered into at this time on control of offensive nuclear weapons, that we could not afford to have unilateral declarations. The trouble with the unilateral declaration is that you say, "I am now about to say something which you refuse to say." So that is almost a built-in formula for disagreement, and I don't think that in the kind of arms control agreement that we ought to use to replace the interim agreement, we ought to have that kind of a situation. (Emphasis added.)

There is nevertheless an important U.S. unilateral statement in the SALT II Treaty. Again, unbelievably, the unilateral statement involves the troublesome definition of a heavy ICBM. Paragraph 7 of article II partially defines heavy ICBM's as any missile larger in launch weight and throwweight than the SS-19, but, as we learned in SALT I, a clear, agreed distinction between light and heavy ICBM's must be established. A heavy ICBM definition is thus again the key definition of SALT II.

The SS-19 is to be the baseline between light and heavy ICBM's. In order to be effective, however, the definition must have clear, specific, agreed data on the SS-19's launch weight and throwweight. Here is the full negotiating record for these specific weights:

> On August 16, 1977, in a plenary statement, the United States informed the Soviet Union that . . . for planning purposes, with respect to ICBM's it might develop, test or deploy in the future, the United States considers the launch-weight limit on light ICBM's to be 90,000 kilograms and the throwweight limit to be 3,600 kilograms. These figures are based on our estimates for the SS-19. *The Soviet Union did not respond to this statement.* The United States will regard these figures as the limits for the one new type of light ICBM permitted to the United States under Paragraph 9 of Article IV. (Emphasis added.)

Thus, the United States unilaterally defined only U.S. heavy ICBM's in terms of the SS-19. But we evidently did not even try to get the Soviets to agree to such a definition for Soviet ICBM's. The above statement thus only implies unilaterally that any ICBM on the Soviet side with a launch weight greater than 90,000 kilograms—198,000 pounds—and a throwweight greater than 3,600 kilograms—7,937 pounds—will be regarded by the United States to be a heavy ICBM.

Not only did the Soviets not agree to these vital specific baseline data, they did not even respond to them. Despite this, the U.S. State Department in July 1979 still claimed:

> The U.S. and U.S.S.R. delegations agreed in the Salt II Treaty on a *clear demarcation* in terms of missile launch weight and throwweight, between light and heavy ICBM's.

This Carter administration claim was falacious and showed wishful thinking. The Carter administration advanced the strange idea that Soviet silence in the face of U.S. unilateral statements somehow confirmed their agreed status.

The State Department claim notwithstanding, there is in effect a U.S. unilateral statement defining a heavy ICBM, just as in May 1972, the U.S. defined a heavy ICBM unilaterally. The only difference is that in 1972 we explicitly called it a unilateral statement. Indeed, our present SALT II unilateral definition is even weaker than our more explicit and more positive 1972 heavy ICBM unilateral statement.

Thus, there is still no agreed definition of a heavy ICBM in SALT II, well recognized as the major and most dangerous flaw in both the SALT I Interim Agreement and also the November 1974 Vladivostok accord.

But, as Slocombe himself has stated:

> The Soviets should be presumed to be protecting something when they refuse to agree to a specific limitation.

In 1976, Slocombe also said:

> The lesson drawn from his episode (that is, the SS-19 problem) by U.S. officials is the need for *explicit and precise acknowledgement by the U.S.S.R.* on even the most technical details of these issues. (Emphasis added.)

Slocombe and other U.S. negotiators ignored their own advice in negotiating SALT II.

It is curious that the pro SALT II history of the negotiations, by SALT supporter Strobe Talbott, recognizes that the Soviets had exploited the failure of SALT I to define heavy missiles.

Talbott nevertheless goes on to describe the strange United States use of the new diplomatic device of Soviet noncontradiction in SALT II:

> This rather contorted procedure, involving a Soviet lacuna filled by American "unilateral interpretation" in turn confirmed by Soviet "noncontradiction," had for a long time been a curious but common feature of the negotiating ritual in SALT . . . the Russians would assent by their silence . . . it had become a mutually accepted practice in SALT that if one side confronted the other with an explicit, unilateral interpretation and the second side did not object, then the interpretation was considered agreed and became enshrined in the negotiating record . . . according to diplomatic practice, Gromyko's "noncontradiction" would be considered tantamount to assent, and it would become part of the negotiating record that would accompany and amplify the treaty. . . .

Thus the Carter administration claimed that a U.S. unilateral statement not contradicted by the Soviets is somehow agreed. This is precisely the status of the heavy ICBM definition in SALT II. The United States on August 16, 1977 unilaterally provided U.S. data on the launch weight and throwweight of the Soviet SS-19 ICBM. This was an attempt to define a heavy ICBM. The Soviets, however, did not agree. They did not even respond. The Carter administration evidently believed that this is another case in which Soviet noncontradiction constitutes agreement, because the Carter administration claimed that there is a clear, agreed definition of heavy ICBM's.

Talbott himself recognizes the danger inherent in such U.S. wishful thinking, however:

> One trouble with the diplomatic device of noncontradiction is that an understanding arrived at by the silence of one party is easily undone; all that party has to do is break silence.

Would a good lawyer negotiate key aspects of a commercial contract on this kind of assent by silence basis? Moreover, the Soviets have told us repeatedly that they would not be bound by U.S. unilateral statements, emphasizing the unreality and danger of U.S. trust in the strange diplomatic device of noncontradiction.

The significance of the continued failure to define a heavy ICBM is that it continues to allow dangerous Soviet deployment options. No launch weight or throwweight baselines for heavy ICBM's means that the Soviets can test and deploy new ICBM's somewhat heavier than the heavy SS-19. This may be the case with the fully encrypted SS-X-24, which is believed to have about the same throwweight as the MX and thus the SS-19. If the United States would complain or charge noncompliance, the Soviets can be expected to reply simply that they never agreed to the U.S. supplied baseline data on the SS-19, and that these data are in any case wrong. They could then supply their own correct data. Hence the road is open for continued Soviet deception and noncompliance.

Moreover, all constraints on testing and deploying new ICBM's, which are no more than 5 percent larger or smaller than existing Soviet ICBM's, also rely on U.S. baseline data on the launch weights and throwweights. The same is true of the data on Soviet silo dimensions which would comprise the baseline data from which to measure the inexplicable increase of up to 32 percent in silo volume allowed by article IV. But in all these cases, we have reportedly not revealed our data to the Soviets. They have thus not yet had the chance to avoid response, and it is equally unlikely that they would agree with our data.

In sum, there are significant U.S. unilateral statements and unilateral baselines in SALT II, despite Warnke's disclaimer and our own hard experience in SALT I. Dr. Kissinger conceded on August 12, 1979, in his first explicit criticism of SALT II, that the failure to achieve an agreed definition of the SS-19 was a weakness in the drafting of SALT II. Indeed, it could be a fatal weakness. How can article IV constrain new Soviet ICBM's without agreed baselines from which to measure 5 percent variances? Are we going to rely only on Soviet uncertainties about what U.S. baseline data are and on our increasingly weakening enforcement leverage?

The United States thus did not learn the main lesson of SALT I. The United States was deceived by the Soviets on the heavy SS-19 and the lack of a heavy ICBM definition. Not once, not twice, but three times—in 1972 in

SALT I, in SALT II at Vladivostok, and in 1979 at Vienna in the final SALT II Treaty.

We should not have to tolerate Soviet secrecy in SALT. The proposition that we can somehow outsmart the Soviets about the status and capabilities of their own secret programs, and then somehow induce them to agree to constrain themselves through SALT is preposterous. Moreover, as we have seen, the Soviets made many significant false and deceptive statements to the United States during SALT I and II, but because they have never been called to account for them, they have gotten away with them all.

4. SAM TESTS IN THE ABM MODE

The fourth issue discussed in the Carter White Paper is SAM-5 testing in an ABM mode. The Carter White Paper stated that:

> During 1973 and 1974, U.S. observation of Soviet tests of ballistic missiles led us to believe that a radar associated with the SA-5 surface-to-air missile system had been used to track strategic ballistic missiles during flight.

The Carter White Paper conceded that:

> The activity could have been part of an effort to upgrade the SA-5 system for an ABM role.

The Soviets responded, according to the Carter White Paper, by maintaining that no Soviet air defense radar had been tested in an ABM mode. The Carter White Paper concluded by saying—

> A short time later, we observed that the radar activity of concern during Soviet ballistic missile tests had ceased.

This is totally false and misleading.

The Soviets reportedly tested SA-5 air defense radars in an ABM mode between 50 and 60 times from 1973 through 1976. Then from 1978 through 1983 the Soviets reportedly tested SA-10 and SA-12 air defense radars and interceptor missiles in an ABM mode. A U.S. unilateral statement does define rather precisely what ABM mode testing entails. But as in the case of article II and the SS-19 discussed above, U.S. unilateral statements need not be considered. Both articles II and VI of the ABM Treaty include obligations concerning ABM components which include not testing them in an ABM mode.

In attempting to enforce Soviet compliance with articles II and VI, the United States could have relied solely on the agreed obligations pertaining to prohibition of ABM mode tests. This was not done. The Soviets have clearly violated both these articles, as well as the U.S. unilateral definition of ABM mode testing. Dr. Kissinger conceded on September 12, 1982, that he considered Soviet SAM tests in the ABM mode to be violations of the SALT I ABM Treaty.

5. SOVIET ABM FALSIFICATION

The fifth case discussed by the Carter White Paper is the Soviet falsification of their report on the dismantling of excess ABM test launchers.

The 1978 State Department White Paper on Soviet SALT compliance contained a notable revelation. In 1973, the Soviets falsified the number of ABM test range launchers they had deactivated, in order to come below the 15 allowed by article IV of the Treaty. The Soviets were informed by the United States that their deactivation report was false, but they have never been required by the United States to fully deactivate their excess ABM range launchers according to secret procedures for this very purpose agreed to in 1974. The Soviets thus stand in violation of article IV of the ABM Treaty.

6. ILLEGAL SOVIET ABM TEST RANGE

The sixth case discussed in the Carter White Paper was the Soviet ABM radar on the Kamchatka Peninsula. In October 1975, a new Soviet radar was completed at the Kamchatka impact area of the Soviet ICBM test range. The Carter White Paper declared that the

> location of this radar, which the U.S. identified as an ABM radar, on the Kamchatka Peninsula, could have constitued establishment of a new Soviet ABM test range.

The Soviets have thus created a completely new, additional ABM test range, in violation of Common Understanding B of the ABM Treaty. The Common Understanding specified the Soviet ABM test range existing in 1972 as Sary Shagan, and the Soviets stated:

> That there as a common understanding on what ABM test ranges were.

Nevertheless, without the prior notification required by the SALT I ABM Treaty, the Soviets deployed an ABM radar at the Kamchatka ICBM impact area in 1974. This ABM radar violated the common understanding and also article IV, which states that additional test ranges must be agreed to prior to their creation. The United States was not asked prior to the Soviet deployment of the ABM radar to Kamchatka, nor did the United States agree to it. What the United States did do was quietly reclassify the common understanding B into a U.S. unilateral statement, thereby accepting Soviet violation of article IV.

The Carter White Paper quite falsely stated that in 1972 in regard to common understanding B of the ABM Treaty:

> The Soviet side neither confirmed nor denied the accuracy or completeness of the U.S. listing.

This is completely false, because in 1972 the Soviets stated that there was a common understanding on what ABM test ranges were, and the United States had designated the Soviet ABM test range as only Sary Shagan.

7. SOVIET ICBM DISMANTLING FALSIFICATION

The seventh Soviet compliance case discussed in the Carter white paper was Soviet dismantling or destruction of replaced ICBM launchers. The Soviets were to have dismantled 51 replaced ICBM launchers by March 1976, under the SALT I interim agreement. When the U.S. side expressed concern to the Soviets on their failure to dismantle 51 ICBM launchers by March 1976, the Soviet pledged that all the dismantling actions would be completed by June 1, 1976, and they agreed to comply with the United States demand that no more submarines with replacement SLBM launchers would begin sea trials before such completion. The Carter white paper states that both conditions were met. This is totally false and misleading, which the White Paper implicitly reveals, when it goes on to state:

> Since that time . . . we have observed some minor procedural discrepancies at a number of those deactivated launch sites . . . As necessary we have pursued the question of complete and precise accomplishment of the detailed requirements of the agreement procedures.

These statements imply that problems with Soviet deactivation compliance remained.

There are many reliable reports that the Soviets failed to deactivate old SS-7 and SS-8 ICBM's on time between 1975 and 1980. There are also reports that they falsified a large number of their required reports on this deactivation. The Soviets thus clearly violated SALT's article II and the protocol, as well as the secret deactivation procedures agreed to in 1974. They also ignored the U.S. warning of 1973 on the need for accuracy in their reports to the Standing Consultative Commission. According to the State Department SALT compliance white paper of February 1978, the Soviets even admitted in March 1976 that they had failed to deactivate old ICBM's on time as required. This can be regarded as a violation admitted by the Soviet.

The Soviets also reportedly brought back ICBM equipment to at least one deactivated ICBM complex. This equipment was reportedly for the mobile SS-16 ICBM, or the mobile SS-20 IRBM, which use the same equipment. It thus violated U.S. unilateral statement B, which stated that mobile ICBM development was inconsistent with the objectives of SALT I.

In regard to Soviet compliance questions which have not even been discussed in the SALT Standing Consultative Commission, there are several further misstatements of fact in the Carter white paper. The paper stated flatly that:

> The U.S.S.R. does not have a mobile ABM system or components for such a system.

This is false. The radars for the ABM-3, the Flat Twin and Pawnshop radars, are mobile and require only concrete hard stands for their emplacement. This system is in mass production and deployment around Moscow.

The Carter White Paper also states that:

> Our close monitoring of activities in this field has not indicated that ABM tests or any tests against strategic ballistic missiles have been conducted with an air defense missile . . . we have not observed any such tests of the SA-5 air defense system missile.

This is completely false. Even Dr. Henry Kissinger conceded on September 12, 1982, that the Soviet tests of the SAM-5 radars and missiles was a violation of the SALT I ABM Treaty.

In regard to the important subject of Soviet mobile ICBM's, which had not even been discussed in the SCC before 1981, the Carter white paper stated:

> We do not believe the Soviets have deployed an ICBM in a mobile mode.

This is flatly contradicted by President Reagan's report on Soviet SALT violations of January 23, 1984, which states that Soviet:

> Activities at Plesetsk are a probable violation of their (the Soviet) legal obligation not to defeat the object and purpose of SALT II prior to 1981 during the period when the (SALT II) Treaty was pending ratification. . . .

The SS-16's test program ended in 1976, and it has probably been deployed at Plesetsk ever since. Thus the Soviet SS-16 deployment at Plesetsk was probably underway in 1978 at the time the Carter White Paper incorrectly exonerated the Soviets of any illegal mobile ICBM deployment.

In sum, the Carter administration acquiesced in all the Soviet SALT I violations. According to the Carter administration, by early 1975 the United States recognized that deployment of the SS-19 was inevitable, even though the Carter administration conceded that deployment of the SS-19 would result in greatly increased Soviet counterforce capability. The Carter administration quite contradictorily believed that neither the Soviet activities which the United States questioned in the SCC, nor the way in which these issues were resolved in the SCC, reduced the security of the United States.

This is simply an untenable claim. Ambassador Nitze, who is now Chief U.S. Negotiator for the intermediate range nuclear force negotiations recently canceled by the Soviets, was asked about the role of the SCC under the Carter administration and the Nixon-Ford administration. Senator Zorinsky asked Nitze during Senate Foreign Relations Committee SALT II hearings in 1979:

> Do you know of any violations that have come before the SALT I Standing Consultative Commission that were not resolved under SALT I?

Ambassador Nitze replied:

> No, but how were they resolved? They were resolved by accepting what had been done in violation.

Thus, Paul Nitze, one of our most knowledgable and experienced SALT negotiators, has testified that the Carter and Nixon-Ford administrations appeased Soviet SALT I violations, and covered up this appeasement.

There being no objection, the President's letter and report mentioned earlier were ordered to be printed in the RECORD, as follows:

THE PRESIDENT'S REPORT TO THE CONGRESS ON SOVIET NONCOMPLIANCE WITH ARMS CONTROL AGREEMENTS

The following is the text of a message to the Congress transmitting the President's Report on Soviet Noncompliance with Arms Control Agreements as required by the FY 1984 Arms Control and Disarmament Act:

To the Congress of the United States:

If the concept of arms control is to have meaning and credibility as a contribution to global or regional stability, it is essential that all parties to agreements comply with them. Because I seek genuine arms control, I am committed to ensuring that existing agreements are observed. In 1982 increasing concerns about Soviet noncompliance with arms control agreements led me to establish a senior group within the Administration to examine verification and compliance issues. For its part the Congress, in the FY 1984 Arms Control and Disarmament Act, asked me to report to it on compliance. I am herewith enclosing a Report to the Congress on Soviet Noncompliance with Arms Control Agreements.

After a careful review of many months, and numerous diplomatic exchanges with the Soviet Union, the Administration has determined that with regard to seven initial issues analyzed, violations and probable violations have occurred with respect to a number of Soviet legal obligations and political commitments in the arms control field.

The United States Government has determined that the Soviet Union is violating the Geneva Protocol on Chemical Weapons, the Biological Weapons Convention, the Helsinki Final Act, and two provisions of SALT II: telemetry encryption and a rule concerning ICBM modernization. In addition, we have determined that the Soviet Union has almost certainly violated the ABM Treaty, probably violated the SALT II limit on new types, probably violated the SS-16 deployment prohibition of SALT II, and is likely to have violated the nuclear testing yield limit of the Threshold Test Ban Treaty.

Soviet noncompliance is a serious matter. It calls into question important security benefits from arms control, and could create new security risks. It undermines the confidence essential to an effective arms control process in the future. It increases doubts about the reliability of the U.S.S.R. as a negotiating partner, and thus damages the chances for establishing a more constructive U.S.-Soviet relationship.

The United States will continue to press its compliance concerns with the Soviet Union through diplomatic channels, and insist upon explanations, clarifications, and corrective actions. At the same time, the United States is continuing to carry out its own obligations and commitments under relevant agreements. For the future, the United States is seeking to negotiate new arms control agreements that reduce the risk of war, enhance the security of the United States and its Allies, and contain effective verification and compliance provisions.

We should recognize, however, that ensuring compliance with arms control agreements remains a serious problem. Better verification and compliance provisions and better treaty drafting will help, and we are working toward this in ongoing negotiations. It is fundamentally important, however, that the Soviets take a constructive attitude toward compliance.

The Executive and Legislative branches of our government have long had a shared interest in supporting the arms control process.

Finding effective ways to ensure compliance is central to that process. I look forward to continued close cooperation with the Congress as we seek to move forward in negotiating genuine and enduring arms control agreements.

Sincerely,

/S/ RONALD REAGAN.

The Fact Sheet provided to the Congress with the classified report is quoted below:

FACTSHEET

(The President's Report to the Congress on Soviet Noncompliance with Arms Control Agreements)

Commitment to genuine arms control requires that all parties comply with agreements. Over the last several years the U.S.S.R. has taken a number of actions that have prompted renewed concern about an expanding pattern of Soviet violations or possible violations of arms control agreements. Because of the critical importance of compliance with arms control agreements, about one year ago the President established an interagency Arms Control Verification Committee, chaired by his Assistant for National Security Affairs, to address verification and compliance issues. In addition, many members of Congress expressed their serious concerns, and the Congress mandated in the FY 84 Arms Control and Disarmament Act Authorization that "The President shall prepare and transmit to the Congress a report of the compliance or noncompliance of the Soviet Union with existing arms control agreements to which the Soviet Union is a Party."

The President's Report to Congress covers seven different matters of serious concern regarding Soviet compliance: chemical, biological, and toxin weapons, the notification of military exercises, a large new Soviet radar being deployed in the Soviet interior, encryption of data needed to verify arms control provisions, the testing of a second new intercontinental ballistic missile (ICBM), the deployment status of an existing Soviet ICBM, and the yields of underground nuclear tests. Additional issues of concern are under active study.

Soviet violations of arms control agreements could create new security risks. Such violations deprive us of the security benefits of arms control directly because of the military consequences of known violations, and indirectly by inducing suspicion about the existence of undetected violations that might have additional military consequences.

We have discussed with the Soviets all of the activities covered in the report, but the Soviets have not been willing to meet our basic concerns which we raised in the Standing Consultative Commission in Geneva and in several diplomatic demarches. Nor have they met our requests to cease these activities. We will continue to pursue these issues.

THE FINDINGS

The Report examines the evidence concerning Soviet compliance with: the 1972 Biological Weapons Convention (BWC) and the 1925 Geneva Protocol and customary international law, the 1975 Helsinki Final Act, the 1972 ABM Treaty, the unratified SALT II Treaty, and the unratified Threshold Test Ban Treaty (TTBT) signed in 1974. Preparation of the Report entailed a comprehensive review of the legal obligations, political commitments under existing arms control agreements, and documented interpretations of specific obligations, analyses of all the evidence available on applicable Soviet actions, and a review of the diplomatic exchanges on compliance issues between the U.S. and the Soviet Union.

The findings for the seven issues covered in the Report, as reviewed in terms of the agreements involved, are as follows:

1. Chemical, biological, and toxin weapons

Treaty Status: The 1972 Biological and Toxin Weapons Convention (the BWC) and the 1925 Geneva Protocol are multilateral treaties to which both the U.S. and U.S.S.R. are parties. Soviet actions not in accord with these treaties and customary international law relating to the 1925 Geneva Protocol are violations of legal obligations.

Obligations: The BWC bans the development, production, stockpiling or possession, and transfer of: microbial or other biological agents or toxins except for a small quantity for prophylactic, protective or other peaceful purposes. It also bans weapons, equipment and means of delivery of agents or toxins. The 1925 Geneva Protocol and related rules of customary international law prohibit the first use in war of asphyxiating, poisonous or other gases and of all analogous liquids, materials or devices; and prohibits use of bacteriological methods of warfare.

Issues: The study addressed whether the Soviets are in violation of provisions that ban the development, production, transfer, possession and use of biological and toxin weapons.

Finding: The Soviets, by maintaining an offensive biological warfare program and capabilities and through their involvement in the production, transfer and use of toxins and other lethal chemical warfare agents that have been used in Laos, Kampuchea and Afghanistan, have repeatedly violated their legal obligations under the BWC and customary international law as codified in the 1925 Geneva Protocol.

2. Helsinki Final Act—Notification of military exercises

Legal Status: The Final Act of the Conference on Security and Cooperation in Europe was signed in Helsinki in 1975. This document represents a political commitment and was signed by the United States and the Soviet Union, along with many other states. Soviet actions not in accord with that document are violations of their political commitment.

Obligation: All signatory states of the Helsinki Final Act are committed to give prior notification of, and other details concerning, major military manuevers, defined as those involving more than 25,000 ground troops.

Issues: The study examined whether notification of the Soviet military exercise Zapad-81, which occurred on September 4-12, 1981, was inadequate and therefore a violation of their political commitment.

Finding: With respect to the Helsinki Final Act, the U.S.S.R. by its inadequate notification of the Zapad-81 military exercise, violated its political commitment under this Act to observe the Confidence-Building Measure requiring appropriate prior notification of certain military exercises.

3. ABM Treaty—Krasnoyarsk radar

Treaty Status: The 1972 ABM Treaty and its subsequent Protocol ban deployment of ABM systems except that each party can deploy one ABM system around the national capital or at a single ICBM deployment area. The ABM Treaty is in force and is of indefinite duration. Soviet actions not in accord with the ABM Treaty are therefore a violation of a legal obligation.

Obligation: In an effort to preclude a territorial ABM defense, the Treaty limited the deployment of ballistic missile early warning radars, including large phased-array radars used for that purpose, to locations along the national periphery of each party and required that they be oriented outward. The Treaty permits deployment (without regard to location or orientation) of large phased-array radars for purposes of tracking objects in outer space or for use as national technical means of verification of compliance with arms control agreements.

Issue: The study examined the evidence on whether the Soviet deployment of a large phased-array radar near Krasnoyarsk in central Siberia is in violation of the legal obligation to limit the location and orientation of such radars.

Finding: The new radar under contruction at Krasnoyarsk almost certainly constitutes a violation of legal obligations under the Anti-Ballistic Missile Treaty of 1972 in that in its associated siting, orientation, and capability, it is prohibited by this Treaty.

SALT II

Treaty Status: SALT II was signed in June 1979. It has not been ratified. In 1981 the United States made clear its intention not to ratify the Treaty. Prior to 1981 both nations were obligated under international law not to take actions which would "defeat the object and purpose" of the signed but unratified Treaty; such Soviet actions before 1981 are violations of legal obligations. Since 1981 the U.S. has observed a political commitment to refrain from actions that undercut SALT II as long as the Soviet Union does likewise. The Soviets have told us they would abide by these provisions also. Soviet actions contrary to SALT II after 1981 are therefore violations of their political commitment.

Three SALT II concerns are addressed: encryption, SS-X-25, and SS-16.

4. Encryption—Impeding verification

Obligation: The provisions of SALT II ban deliberate concealment measures that impede verification by national technical means. The agreement permits each party to use various methods of transmitting telemetric information during testing, including encryption, but bans deliberate denial of telemetry, such as through encryption, whenever such denial impedes verification.

Issue: The study examined the evidence whether the Soviets have engaged in encryption of missile test telemetry (radio signals) so as to impede verification.

Finding: Soviet encryption practices constitute a violation of a legal obligation prior to 1981 and a violation of their political commitment subsequent to 1981. The nature and extent of encryption of telemetry on new ballistic missiles is an example of deliberate impeding of verification of compliance in violation of this Soviet political commitment.

5. SS-X-25—Second new type, RV weight to throwweight ratio, encryption

Obligation: In an attempt to constrain the modernization and the proliferation of new, more capable types of ICBM's, the provisions of SALT II permit each side to "flight test and deploy" just one new type of "light" ICBM. A new type is defined as one that differs from an existing type by more than 5 percent in length, largest diameter, launch-weight and throw-weight or differs in number of stages or propellant type. In addition, it was agreed that no single reentry vehicle ICBM of an existing type with a post-boost vehicle would be flight-tested or deployed whose reentry vehicle weight is less than 50 percent of the throw-weight of that ICBM. This latter provision was intended to prohibit the possibility that single warhead ICBM's could quickly be converted to MIRVed systems.

Issue: The study examined the evidence: whether the Soviets have tested a second new type of ICBM (the SS-X-25) which is prohibited (the Soviets have declared the SS-X-24 to be their allowed one new type ICBM); whether the reentry vehicle (RV) on that missile, if it is not a new type, is in compliance with the provision that for existing types of single RV missiles, the weight of the RV be equal to at least 50 percent of total throw-weight; and whether encryption of its tests impedes verification.

Finding: While the evidence is somewhat ambiguous, the SS-X-25 is a probable violation of the Soviets' political commitment to observe the SALT II provision limiting each party to one new type of ICBM. Furthermore, even if we were to accept the Soviet argument that the SS-X-25 is not a prohibited type of ICBM, based on the one test for which data are available, it would be a violation of their political commitment to observe the SALT II provision which prohibits (for existing types of single reentry vehicle ICBMs) the testing of such an ICBM with a reentry vehicle whose weight is less than 50 percent of the throw-weight of that ICBM. Encryption on this missile is illustrative of the impeding of verification problem cited earlier.

6. SS-16 ICBM—Banned deployment

Obligation: The Soviet Union agreed in SALT II not to produce, test or deploy ICBM's of the SS-16 type and, in particular, not to produce the SS-16 third stage, the reentry vehicle of that missile.

Issue: The study examined the evidence whether the Soviets have deployed the SS-16 ICBM in spite of the ban on its deployment.

Finding: While the evidence is somewhat ambiguous and we cannot reach a definitive conclusion, the available evidence indicates that the activities at Plesetsk are a probable violation of their legal obligation not to defeat the object and purpose of SALT II prior to 1981 during the period when the Treaty was pending ratification, and a probable violation of a political commitment subsequent to 1981.

7. TTBT—150 kt test limit

Treaty Status: The Threshold Test Ban Treaty was signed in 1974. The Treaty has not been ratified but neither Party has indicated an intention not to ratify. Therefore, both Parties are subject to the obligation under international law to refrain from acts which would "defeat the object and purpose" of the TTBT. Soviet actions that would defeat the object and purpose of the TTBT are therefore violations of their obligation. The U.S. is seeking to negotiate improved verification measures for the Treaty. Both Parties have each separately stated they would observe the 150 kt threshold of the TTBT.

Obligation: The Treaty prohibits any underground nuclear weapon test having a yield exceeding 150 kilotons at any place under the jurisdiction or control of the Parties, beginning March 31, 1976. In view of the technical uncertainties associated with predicting the precise yield of nuclear weapons tests, the sides agreed that one or two slight unintended breaches per year would not be considered a violation.

Issue: The study examined whether the Soviets have conducted nuclear tests in excess of 150 kilotons.

Finding: While the available evidence is ambiguous, in view of ambiguities in the pattern of Soviet testing and in view of verification uncertainties, and we have been unable to reach a definitive conclusion, this evidence indicates that Soviet nuclear testing activities for a number of tests constitute a likely violation of legal obligations under the TTBT.

CONCLUSIONS

The President has said that the U.S. will continue to press compliance issues with the Soviets through confidential diplomatic channels, and to insist upon explanations, clarifications, and corrective actions. At the same time we are continuing to carry out our obligations and commitments under relevant agreements. We should recognize, however, that ensuring compliance with arms control agreements remains a serious problem. Improved verification and compliance provisions and better treaty drafting will help, and we are working toward this in ongoing negotiations. It is fundamentally important, however, that the Soviets take a constructive attitude toward compliance.

FUZZY ZOELLER WINS U.S. OPEN GOLF CHAMPIONSHIP

Mr. QUAYLE. Mr. President, I would like to direct your attention away, for a moment, from the serious issues under consideration to one of high achievement by a great athlete who was born and developed his talents in the State of Indiana.

Monday, Fuzzy Zoeller of New Albany, IN, won the U.S. Open Golf Championship against some of the world's best players. As any of you who watched the television coverage could see, he not only had the great skill and mental concentration that makes a champion but he also conducted himself in a sportsmanlike manner that represents the finest of traditions in all sports. Not only was he courteous to his fellow contestants, but he displayed good humor and friendly openness to the crowds, the media and the professional organizers who support the game.

Fuzzy began golfing when he was 5 years old. The son of Frank and Alma Zoeller, Fuzzy was raised in a golfing atmosphere. The family home was located on the edge of a public golf course, built for community recreation. All through his youth, Fuzzy, the larger Zoeller family, and friends would contest each other up and down the fairways that were open to all who chose to play. Under the tutelage of his father and others who lent their aid, Fuzzy had the internal dedication and perseverance to develop his obvious skills to the highest and most disciplined level. He would play after school—some would say that he went to school when he wasn't playing golf—and in the summers until the game became a second nature.

There are reports that the reason he survived the difficulties of the wayward tee shots during the tournament was the variation on the game he developed to aviod discouraging fellow golfers who did not hit the ball as far as he did. From the earliest days, Fuzzy was able to reach many greens with one wood and a short iron, while others would have to make two drives to go the same distance. In order to equalize the game, and instead of using handicaps, the future champion would hit two shots off the tee and then let his opponent select the best. Fuzzy would then have to play his lesser shot which frequently would be found under a tree, in the long grass or some equally inaccessible spot. These years of playing worst-lie balls stood him in good stead last Sunday when several of his drives strayed off the back nine when he was coming down the stretch.

Fuzzy has also had to endure back problems which are critical to a sport like golf. The initial injury came when he was playing varsity basketball for New Albany High School against local rival Providence High School. During a season game his feet were knocked out from under him on a layup shot and he fell to the floor wrenching his back. This twist has been a source of continuing torment over the years but he has managed to overcome it.

After finishing high school he attended Edison Community College in Fort Myers, FL, where he starred on the golf team. Shortly after graduation he headed west, quickly won the qualifying school championship at Palm Springs, CA, and decided to turn professional. Several years later he won a major event, the San Diego Open, which made him eligible for the Masters Tournament. He made history when he became the first man to win this contest on his initial try. Over the past few years he has graced the sport not only with his great skill, but a constant good humor and bonhomie. He has offered the world a compelling view of a true sportsman and shown that civility on and off the course does not need to distract from the concentration that makes a champion.

Now Fuzzy has added the U.S. Open Golf Championship to previous awards including the prestigious Masters' honor of wearing the green jacket. Last week's contest between the Australian, Greg Norman, and this Hoosier star brought new attention to the sport. People from all walks of life and age groups were caught up in the excitement of the tournament. Many saw the possibilities of playing a fascinating game and some will be forever dreaming of making a 68-foot putt themselves. That is the great joy of golf. It is an individual sport and can be played and shared by young and old, at many levels. No matter your degree of skill, it engages your attention and you always have the challenge of making the next round better than the last.

The recreational aspects of this sport are immense and as rural and urban areas develop more facilities—there are a growing number of public golf courses in the United States, not to mention those associated with existing communities—more young people, as well as Americans of all ages including the Nation's retirees, can become players of a relaxing yet invigorating sport.

I offer my congratulations to Fuzzy for his recent achievement, for his example of great sportsmanship and for his enthusiasm and support for a game that can be enjoyed by all.

STEPHEN J. BOLLINGER

Mr. PERCY. Mr. President, I was deeply disturbed yesterday morning to learn that Stephen J. Bollinger, Assistant Secretary for Community Planning and Development at HUD, died Monday of a heart attack in Savannah, GA. He was only 36 years old. Steve's tragic and unexpected death is a terrible loss for his wife, Lin; his three young daughters; and for all of us.

Steve was one of the finest public servants I have worked with—he was dedicated to public service in a very special and unique way. He had a gift for doing his best to satisfy the needs of individuals as well as those of the Nation. Steve was truly a pragmatist, finding ways to make housing programs work, instead of finding reasons why they would not work. He had a tremendous amount of energy. The personal enthusiasm he showed in his work was, and will continue to be, an inspiration to all of us.

I worked closely with Steve on many programs which affected my State and was impressed with his compassion for people and the humanistic spirit he brought to economic programs. He also had a great ability to take complex ideas and programs and make them understandable, and, most important, to make them work.

In my short experience with him, we were able to achieve UDAG grants sufficient to attract a billion dollars of private capital which put to work more than 25,000 people who would not have had jobs had it not been for his foresight, his wisdom, and his support of those programs.

As Secretary Pierce so aptly described in his eulogy for Steve, he was a young man who gained—and earned—the respect and admiration of everyone.

We will all miss Steve Bollinger.

CENTRAL AMERICAN DEVELOPMENT ORGANIZATION (CADO)

Mr. DeCONCINI. Mr. President, Central America has been and continues to be a trouble spot for the fulfillment of U.S. foreign policy goals for this administration. The region has captured U.S. attention as a result of political, social and economic problems indigenous to the area, which have severely been aggravated by external factors. The release of the report of National Bipartisan Commission on Central America in January of this year attempted to help direct U.S. foreign policy, not only to immediate needs of the region, but also to long-term needs, especially in El Salvador and Nicaragua. It has failed to take seriously a wider perspective of the crisis in Central America. We must not neglect long-term strategies for development in Central America, for these are imperative if stability, peace, and democracy are to be feasible realities of U.S. foreign policy. However, we must look very closely at the cost of these strategies and ensure that the money involved can be well spent.

The Central American Development Organization [CADO] is a proposal contained in the Kissinger Commission report for the attainment of long-term goals in Central America. It is a proposal which I believe should be taken seriously, because it deals directly with the core of regional problems of our Latin American neighbors. The goals of the organization are: First, to bring together the most knowledgeable development specialists from participating countries to shape and assess long-term efforts to overcome impediments for growth; second, to help the United States avoid costly mistakes of past administrations; and, finally, third, to create the capacity for Central American countries to absorb United States and international aid.

Mr. President, I call my colleagues attention to an article written by Irving G. Tragen, a retired U.S. diplomat who is now executive officer to the Executive Secretary for Economic and Social Affairs of the OAS. Mr. Tragen's concise analysis of the importance of a regional focus toward Central America and of the utility of CADO in achieving this focus should be considered by all of us before we act on any long-term proposals for Central America. We must continue to investigate means by which we can successfully achieve our foreign policy goals in Central America. It is crucial that we have a number of options to choose from if we are to follow the most feasible plan for promoting stability and peace in Central America.

I ask unanimous consent that the article to which I have referred be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

Central American Development Agency Merits Support

(By Irving G. Tragen)

(Editor's note.—In this first of two parts of an analysis of the Kissinger report, Irving Tragen emphasizes the importance of CADO, the Central American Development Organization.)

Since the National Bipartisan Commission on Central America, chaired by Dr. Henry A. Kissinger, published its report, reams of paper have been filled with critiques of its security, political, economic, human rights and social dimensions. Questions have been raised by advocates and critics about the capacity of Central American economies to absorb the billions of dollars in financial assistance prescribed.

Debates have been held on whether U.S. aid could have a positive impact on the well-being and standards of living of the common people of the Isthmus in the face of corruption in the public sector and institutional weaknesses. All of these are valid issues which need to be faced not merely today but tomorrow—unfortunately they were not addressed systematically over the past two decades as conditions in Central America deteriorated.

However, little attention has been given to one recommendation which truly merits consideration: namely the creation of a mechanism to focus on the problems of the area for the long-term, the Central American Development Organization (CADO). CADO is the first proposal by a senior U.S. policy group on Latin America in over a decade—since the Alliance for Progress—which looks at the problems of the area beyond their immediate manifestations.

LONG TIME BUILDING

The deterioration in Central America was a long time building. Those of us working in the Isthmus in the late 1960s and throughout the 1970s were reporting the multiplying signs of political, economic, social and human disruption in each and all of the countries of Central America. The signs were omni-present by the mid-1970s that Central America was a smoking volcano on the western edge of the Caribbean—the U.S.'s shared border with over 25 nations of the Western Hemisphere. Was anybody in Washington interested, or where the problems of the area so eclipsed by Watergate and Vietnam that no senior officials had time for them? Does it take the TV camera and the violence it covers to get the government and the people of the United States to rivet their concerns on their vital interests?

Only when the volcano exploded with the Sandinista uprooting of the Somoza Dynasty in 1978-1979 did high level attention turn grudgingly to the problems of the Isthmus. Then, it was too late to avoid the tragedy for millions of Central Americans caught in the maelstrom. And, it was too late for the U.S. to minimize the potential damage through carefully orchestrated political, financial and developmental measures which would have been more positive and far less costly than the options now facing us.

The experience of the past 20 years demonstrates the imperative of establishing a mechanism with access to senior U.S. policymakers that specializes and concentrates on the development of Central America on a sustained, long-term basis. The proposal by the Commission for CADO may well fill this need and CADO could be one of the most important long-term projections of the work of the Commission.

CADO warrants far more study than it has been given to date. CADO can well be the focal point for shaping U.S. policy in the region for the next several decades: for building bridges between the U.S. and our Latin American neighbors, for developing common lines for future action in conjunction with the international lending agencies, the OAS, the UN Economic Commission for Latin America, Central American institutions and other interested agencies, and for implementing a far-reaching development program which can effectively help Central Americans move positively toward a more democratic society.

The troubles in Central America did not boil up overnight. And, they will not go away overnight even with a multibillion dollar commitment of developmental support. The Commission Report provides a framework for understanding the problems besetting Central America. Its diagnosis is far more persuasive than many of its proposed solutions.

The problems of the area have been there for all of us to see since the end of World War I. The Banana Republics have been in the same throes of change as that which swept across Mexico in the 1910s. The traditional feudal-mercantile economic and social order has been progressively disintegrating under the pressure of rising expectations, the international economic system and the communications revolution.

Upheaval and repression, occasional successes and frequent setbacks characterize the last half-century of the Isthmus, a period in which the United States generally misread the process and all too often dug in with the status quo.

FORCED LEFT TURNS

This U.S. reaction frequently forced even democratic anti-Marxist reformers to turn to the extreme left for support, isolating the United States from the leadership of the *change process*. The irony for the United States was that many of the leaders of this *change process* were trained in American universities and were inspired by our own 1776 Revolution and our historical evolution. We, in the United States, thought that we understood this *change process*.

We though that there was time for an orderly evolution. However, bulging populations, political inadequacies and economic crises bred popular frustration. Frustration led to polarization and violence, the voices of moderation were the first to be eliminated. The political center was decimated in several of the countries.

However, Central America is not homogenous. Each of the five countries is unique, with its own local problems, its own power structures, even its own mix of values and ethical standards. There are great differences in the levels of education among the countries and within each one in urban and rural areas. The structures which bind societies together have different dimensions and characteristics. Nonetheless, there is a common aspiration by the rural and urban people in all five countries to improve their standard of living and to create more and better opportunity for their children.

To relate to and to realistically approach the reality of Central America and its people in the 1980s, there must be a more in-depth understanding of the forces at work, and a more realistic shaping of support in the United States for the change process, and a recognition that the change must come from within the Isthmus, not super-imposed by external forces, and a commitment of long-term support for democratic evolution.

It is this context that the proposal for creating CADO, as spelled out in pages 59 to 63 of the Report, are compelling.

CADO offers an opportunity to bring together the most knowledgeable development specialists from the participating countries, including the United States, in shaping and assessing longer-term efforts to overcome the impediments to growth in Central America. The U.S. experts assigned to CADO can provide elements of judgment for our Executive and Congress in their assessment of policy options. CADO can materially help the U.S. avoid the repetition of costly mistakes and reinventing the wheel every time that the change process underway in Central America inevitably erupts into a new crisis.

SENATOR THOMAS F. EAGLETON

Mr. DIXON. Mr. President, it is with sadness that I note the recent announcement of my respected colleague, Senator Thomas Eagleton, that he will retire from this body when his current term expires in 2 years.

After a distinguished public service career spanning three full decades, Tom Eagleton will in 1986 return to private life and to the family he loves so much.

His career, Mr. President, has been a steady stream of accomplishments, achieved through dedication and intelligence. After law school at Harvard, he served the people of Missouri first as circuit attorney, and then as attorney general, where he spearheaded successful battles against consumer fraud that saved the public millions of dollars.

Senator Eagleton then took his already impressive record before his constituents in a race for Lieutenant Governor, and he soundly triumphed by more than half a million votes. Turning his attention to educational issues as chairman of a high-level Governor's commission, he was instrumental in the creation of Missouri's statewide network of pioneering vocational-tech high schools.

Having already accomplished in 12 years what others toil decades to achieve, Tom Eagleton then decided to pursue his dream of serving in the U.S. Senate. With the support of his family, he headed to Washington at the age of 39.

Once again, as history will surely remember, he met the challenge flawlessly. Almost immediately, in fact, Thomas Eagleton made his mark as one of the Senate's rising young stars. Courageous, conscientious, and highly principled, he commenced a three-term career that has been—in a word—"remarkable."

One of many examples of his determined leadership that immediately comes to mind is his initiative to cut off funds for the Vietnam war, which eventually led to the withdrawal of American troops from Southeast Asia. But whether working for clean air and water, for older Americans and for schoolchildren, or for reform of the Federal bureaucracy and elimination of waste, Tom Eagleton has continually and consistently shown his dedication, his mettle, and his forthright honesty—traits that have served him and his Nation so well.

Mr. President, I wish the distinguished senior Senator from Missouri the very best in all his endeavors in the future, and, on behalf of all Illinoisans, thank him for his service to the Nation.

TRIBUTE TO WILLIAM S. WHITE

Mr. RIEGLE. Mr. President, a historic day is approaching with the opening of Auto World in Flint, MI. This project represents the dreams and desires of many people in this community, and it stands as a symbol of the community pride which is evident in Flint. It is with this in mind that I wish to acknowledge the achievements of William S. White, president and chief executive of the Mott Foundation. Organized in 1926 by Charles Stewart Mott, the Mott Foundation has touched thousands individually, and has created or helped to shape health, education, recreation, and economic and community development programs throughout Flint, the State of Michigan, and the Nation.

William White came to the foundation in the early seventies, recognizing the need to update the organization to better meet the changing demands of a changing society. As evidence of this philosophy, the Mott Foundation has been a major force in turning the ideas of yesterday into the reality of today. From the undertaking of Auto World to its completion, the Mott Foundation has been an integral supporter of this project, both spiritually and financially, under the direction and guidance of William White.

Today the Mott Foundation continues to grow and prosper in an ever-changing society, and much of this is to the credit of the fine counsel from Mr. White. As Charles Stewart Mott once said: "Let us be known by our deeds." It is with this thought in mind that I would like to commend the actions of Mr. White, and know that Auto World is truly a monument of this determination.

EXCELLENCE IN EDUCATION: CENTRAL FALLS LEADS THE WAY

Mr. CHAFEE. Mr. President, efforts are underway in local school districts across the country to improve the level of instruction and achievement in our Nation's public schools. Central Falls, RI, is in the forefront of this exciting endeavor.

Leadership from the Federal Government continues to play an important role in encouraging school improvement, and in the past year the States have made a number of positive initiatives. However, reform is most meaningful when it originates at the local level, in response to local problems and priorities. Local education leaders have begun to assess the needs of their schools and are taking action to address them.

In the city of Central Falls, RI, School Superintendent John DeGoes has taken the lead in efforts to enhance the educational environment. The school department has initiated more stringent homework requirements and was the first in Rhode Island to adopt a system for testing the competency of new teachers.

In order to expand academic opportunities, school leaders in Central Falls are formulating a plan to initiate half-day Saturday sessions. John De Goes has proposed optional Saturday classes in order to provide additional instructional time. This will provide enrichment for advanced students and valuable help for those who desire remedial work.

Under the leadership of John DeGoes, Central Falls has demonstrated a welcome willingness to experiment with innovative approaches for improving education. These efforts were recently recognized in an editorial in the Providence Journal. Mr. President, I ask unanimous consent that the editorial be printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

[From the Providence (RI) Journal, June 17, 1984]

Central Falls Shows the Way

When it comes to upgrading education, Central Falls is showing Rhode Island the way to go. The state's smallest city was the first to institute competency testing of new teachers. A stricter homework policy also has been established. Now, the School Department is embarking on a plan to offer Saturday classes to students who want extra help. Steps like these are bound to raise school standards.

The optional, half-day Saturday sessions constitute a unique approach. Supt. John DeGoes got the idea from national studies which noted the success of longer classroom

time in Europe and Japan. His interest sparked the Central Falls School Committee to vote $4,000 recently for a summerlong study of how to set up the program. Teachers will join in this review. Assuming all goes well, and additional funding can be obtained for the experiment, Central Falls pupils soon will have an extra educational opportunity. Advanced students and those struggling with schoolwork are considered the likeliest to take advantage of it.

"I think it's an exciting proposition," one School Committee member said. "You never know how far this type of program can go." It certainly can go a long way toward making needed improvements in the public school system. Central Falls is setting an admirable pace in this direction. Other Rhode Island communities would do well to do as much.

UPDATE ON PREPUBLICATION REVIEW

Mr. MATHIAS. Mr. President, the issue of prepublication review requirements for the speeches and writings of present and former Federal employees is once again in the news. On June 11, the General Accounting Office released the results of an investigation on this subject requested by the chairmen of two committees of the House of Representatives. The GAO's report makes it clear that the questions surrounding censorship of former Government officials have not been fully resolved, and that the Congress should take a more active role in balancing the free expression rights of individual employees against the requirements of national security.

Because there has been little activity in the Senate on the prepublication review question over the past several months, this may be an opportune time to bring my colleagues up to date on the status of this issue.

Senators will recall that, on October 20, 1983, the Senate, by a vote of 56 to 34, accepted an amendment to the State Department authorization bill on the topic of prepublication review. That amendment, which I proposed along with the senior Senator from Missouri [Mr. EAGLETON], and several of our colleagues, was accepted by the conference committee, and was incorporated in the bill signed by President Reagan on November 22. The amendment, which now appears as section 1010 of Public Law 98-164, reads as follows:

PREPUBLICATION REVIEW OF WRITINGS OF FORMER FEDERAL EMPLOYEES

SEC. 1010. The head of a department or agency of the Government may not, before April 15, 1984, enforce, issue, or implement any rule, regulation, directive, policy, decision, or order which (1) would require any officer or employee to submit, after termination of employment with the Government, his or her writings for prepublication review by an officer or employee of the Government, and (2) is different from the rules, regulations, directives, policies, decisions, or orders (relating to prepublication review of such writings) in effect on March 1, 1983.

The purpose of this amendment, as its proponents explained on the Senate floor, was to delay the implementation of a broad, new prepublication review agreement that had been promulgated pursuant to National Security Decision Directive 84. The intention was to restore the status quo that existed before NSDD-84 was issued in March 1983. That status quo included some use of prepublication review agreements, with lifetime coverage, even outside the intelligence agencies.

The Mathias-Eagleton amendment permitted the continued use of these agreements in some Federal agencies, specifically, in those agencies that were employing them prior to March 1, 1983. The amendment halted the use of the new prepublication review agreement promulgated pursuant to NSDD-84, and forbade the institution of the old agreement in those agencies that were not using it prior to March 1, 1983.

The moratorium imposed by section 1010 of Public Law 98-164 expired by its own terms on April 15, 1984. Before that date, however, the administration took unilateral steps to extend its effectiveness. First, on February 17, 1984, the White House issued a memorandum directing that implementation of two provisions of [NSDD-84] be held in abeyance. One of these provisions was paragraph 1(b) of NSDD-84, upon the authority of which the new prepublication review agreements had been issued.

Some uncertainty remained about the status of this provision of NSDD-84, even after issuance of the February 17 memorandum. Accordingly, on March 20, 1984, the President's National Security Adviser, Robert C. McFarlane, wrote to Representative PATRICIA SCHROEDER, whose subcommittee of the House Post Office and Civil Service Committee was then considering legislation on the subject of prepublication review requirements.

Mr. McFarlane assured Representative SCHROEDER that the administration wanted to work cooperatively with Congress to develop a mutually acceptable solution to the problem, and that the controversial provisions of NSDD-84, including the provision authorizing broader prepublication review agreements, would not be reinstated during the current session of Congress. Mr. McFarlane also agreed to notify the Congress at least 90 days in advance of any plan to revive these provisions.

At the time that these announcements were made, I applauded the administration for its cooperation in accommodating the concerns of Congress about this important issue. I want to take this opportunity to express again my appreciation for this sensible decision, and to say that I have every confidence that the administration will continue to treat this issue as an opportunity for constructive collaboration with the Congress.

Mr. President, because of the importance of the February 17 memorandum, and of the March 20 McFarlane letter, to an understanding of the current status of the prepublication review issue, I ask unanimous consent that the full text of each document be printed a this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEBRUARY 17, 1984.

MEMORANDUM FOR ALL HOLDERS

Subject: Implementation of National Security Decision Directive-84, Safeguarding National Security Information.

The President remains concerned that unauthorized disclosures of classified information on our diplomatic, military, and intelligence activities threaten our ability to carry out national security policy. He is committed to working with the Congress to resolve this longstanding threat to our national security.

In order to permit sufficient opportunity to resolve concerns raised in the Congress concerning certain provisions of NSDD-84, the President has directed that implementation of two provisions of that directive be held in abeyance.

Paragraph 1.b. The Director of Central Intelligence memorandum of January 10, 1984, subject: Nondisclosure Agreement for Sensitive Compartmented Information, which directs the continued use of nondisclosure agreements for sensitive compartmented information in effect on or before March 11, 1983, pertains. The moratorium on the use of the revised nondisclosure agreement (Form 4193 Rev.) for sensitive compartmented information which was developed in response to paragraph 1.b. is continued pending further notice.

Paragraph 5. Further efforts to develop implementing regulations in response to paragraph 5 regarding the use of polygraphs in investigations of unauthorized disclosures are suspended pending further notice.

All other provisions of NSDD-84 remain in effect and implementation should proceed expeditiously.

THE WHITE HOUSE,
Washington, DC, March 20, 1984.

Hon. PATRICIA SCHROEDER,
Chairwoman, Subcommittee on Civil Service, Committee on the Post Office and Civil Service, U.S. House of Representatives, Washington, DC.

DEAR MADAM CHAIRWOMAN: It has come to my attention that, in the course of your Subcommittee's consideration of H.R. 4681, questions have arisen as to the status of two provisions of National Security Decision Directive 84 (NSDD 84). I am writing to clarify the status of that directive.

The President issued NSDD-84 because of serious concern about the damage to intelligence sources caused by unauthorized disclosures of classified information. Both anonymous leaks to the press and unauthorized disclosures in the writings of former officials have caused losses of sensitive intelligence information. This has been a problem in past administrations as well, prompting the congressional intelligence committees to urge more vigorous action in investigating and prosecuting leak cases.

Following the adoption of NSDD-84 in March of last year, however, various Members of Congress expressed concern about two provisions of the directive: paragraph 1 (b), which authorized broader use of prepublication clearance agreements, and paragraph 5, relating to the use of the polygraph in leak investigations. Amendments to the State and Defense Authorization bills were adopted last year barring the Administration from implementing either of these two proposals until April 15 of this year.

Rather than resume the legislative debate on the merits of NSDD-84, we would prefer to work cooperatively with Congress to develop a mutually-acceptable solution to this problem. Therefore, at the direction of the President, I issued a memo to all agencies affected by NSDD-84, directing that "implementation of two provisions of that directive be held in abeyance." I understand that you and other Members of Congress have expressed concern that, unless legislation is passed to extend the legislative prohibitions that expire on April 15, paragraphs 1(b) and 5 of NSDD-84 might be reinstated. I can assure you that is not now, and never has been, our intention.

The President has authorized me to inform you that the Administration will not reinstate these two provisions of NSDD-84 for the duration of this session of Congress. It is our hope that, over the coming months, you and other Members of Congress will work with the Administration in the spirit of cooperation to devise a solution to the problem of unauthorized disclosures of classified information. Because H.R. 4681 does not present a solution to this problem, we are opposed to its enactment.

This is a serious problem that will not go away, and we therefore cannot completely foreclose future action along the lines of NSDD-84 if a legislative solution to unauthorized disclosures is not found. I would reiterate, however, that no such action will be taken for the duration of this session. Moreover, in order to facilitate congressional involvement in any future action to address this problem, the Administration will notify your Subcommittee of any such intended action at least 90 calendar days prior to its effective date.

I trust that this will resolve questions about the status of NSDD-84 and permit your Subcommittee to proceed to consider H.R. 4681 without the pressure of an April 15 deadline.

Sincerely,

ROBERT C. MCFARLANE.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, June 11, 1984.

Subject: Polygraph and Prepublication Review Policies of Federal Agencies (GAO/NSIAD-84-134).

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, House of Representatives.

DEAR MR. CHAIRMAN: The April 4, 1984, letter from you and the Chairman, Committee on Post Office and Civil Service, requested that we assist the committees in their ongoing efforts examining the effects of National Security Decision Directive—84 (NSDD-84). (See encl. V.)

On April 23, 1984, you and Chairman Ford sent a questionnaire to those agencies and offices that handle classified information. The major purpose of the questionnaire was to determine the effect of the two provisions of NSDD-84 that require (1) all individuals with sensitive compartmented information (SCI) access to sign a nondisclosure agreement containing a prepublication review requirement and (2) all agencies to revise existing policies and regulations as necessary so that employees could be required to submit to a polygraph examination during the course of an investigation of an unauthorized disclosure of classified information.

Most of the information you requested from the agencies is included in summary form in enclosure I. It includes actual figures as well as estimated figures where data were not readily available. As agreed with your office, we did not verify the information reported by the agencies, but we did request clarification in many cases.

Agencies were asked to respond to the questionnaire within 15 days. By June 5, however, (six weeks after your request) eight agencies and offices had not responded; therefore, data pertaining to them is not included in the information contained in this report. The eight are: the U.S. Arms Control and Disarmament Agency, Department of Energy, Environmental Protection Agency, Interstate Commerce Commission, Department of Justice, Office of Management and Budget, U.S. Trade Representative, and the Executive Office of the President. Forty-three agencies responded to the questionnaire, including a partial response of the Department of the Treasury. We counted the Department of Defense, including the military services, as one response. This report does not include data on the National Security Agency and Central Intelligence Agency because of the sensitivity of their operations.

The following sections summarize information relative to prepublication review requirements, unauthorized disclosures of classified information, and polygraph examinations.

PREPUBLICATION REVIEW REQUIREMENTS

Most agency employees who had access to sensitive compartmented information (SCI), already had signed nondisclosure agreements (Form 4193 or a form similar thereto) with the prepublication review requirement before the President suspended indefinitely that provision of NSDD 84 on February 15, 1984. Twenty-three agencies reported that, as of December 31, 1983, 119,000 of their employees had SCI access and almost all had signed the agreements which contain the lifetime prepublication review requirement. An unknown number of former employees also had signed the agreements. The Department of Defense estimated that, of 156,000 military and civilian employees who had signed agreements, about 45,000 were former employees and employees reassigned to duties not requiring SCI access.

It is also possible that employees working on other than SCI special access programs had signed agreements similar to those used for SCI access. According to Executive Order 12356, which took effect August 1, 1982, an agency head may create a special access program when (1) normal management and safeguarding procedures do not limit access sufficiently and (2) the number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection of the information. At the end of calendar year 1983, there were about 100 non-SCI special access programs, compared to about 30 in 1979. Agencies reported that 27,500 government employees and 21,600 contractor employees were involved in non-SCI special access programs. (See encl. II).

The Federal Emergency Management Agency told us that a prepublication review requirement is part of the agreement that individuals must sign for access to two of its special access programs. (At the present time, however, those subject to this provision may delete that section of the agreement pertinent to prepublication review). We do not know how many more special access programs may contain similar prepublication review requirements.

Twelve agencies indicated that, regardless of whether they have SCI access, employees must comply with prepublication review requirements. In most cases, however, agencies do not require employees to sign nondisclosure agreements as part of these prepublication review requirements. Further, the requirements imposed by these regulations do not apply to former employees. (See encl. III.)

UNAUTHORIZED DISCLOSURES OF CLASSIFIED INFORMATION

Four agencies (the Department of Commerce, Defense, and State, and the Nuclear Regulatory Commission) reported having 43 unauthorized disclosures of classified information during calendar year 1983. One was made through a published writing or speech (by a then-current employee of a contractor). None were made by former employees through published writings or speeches.

POLYGRAPH EXAMINATIONS

Nine agencies told us that their employees were given 11,178 polygraph examinations in calendar year 1983, and four of the nine employed a total of 131 polygraph operators (see encl. IV). Of these agencies, the Department of Defense employed 123 polygraph operators and gave 10,502 examinations. Practically all examinations given by the other agencies were given in connection with criminal or specific-incident investigations. The General Services Administration and Postal Service have regulations that limit the voluntary use of the polygraph to criminal investigations.

The number of pre-access screening examinations given by the Department of Defense in 1981, 1982, and 1983 were as follows:

	1981	1982	1983
Total number of polygraph examinations	7,556	8,657	10,502
Examinations for pre-access screening	45	1,176	3,105

The pre-access screening examinations given in 1983 include about 3,000 examinations that are part of an Air Force program testing the use of the polygraph.

When asked about plans to employ additional polygraph operators, Defense stated that it plans to hire 50 additional operators, and that these operators would permit an additional 10,000 screening type examinations annually.

Enclosure.

RESPONSES TO QUESTIONS OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS AND THE HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

(All 51 executive branch agencies that handle classified information were queried; however, 8 did not respond. The responses from the remaining 43 are included below)

Question 1: Approximately how many full- and part-time people were employed by the federal government as of December 31, 1983?

Response: In the 43 agencies that responded, there were 5,025,580 federal civilian and military personnel.

Question 2: Approximately how many federal employees and contractor employees had security clearances as of December 31, 1983?

Response: There were about 2.6 million federal and 1.3 million contractor employees, of the 43 responding agencies, with security clearances at the levels shown below.

Level of clearance	Federal employees	Contractor employees
Top secret	517,578	111,912
Secret	2,129,557	904,540
Confidential	33,286	304,852
Total	2,680,421	1,321,304

Of the total number of federal employees—5,025,580, about 10 percent had top secret clearances and 42 percent had secret clearances.

Question 3: How many federal and contractor employees had access to Sensitive Compartmented Information (SCI) as of December 31, 1983?

Response: There were a total of 118,899 federal employees and 11,041 contractor employees with SCI access.

Question 4: Do agencies consider SCI to be a special access program? Under what authority?

Response: Eighteen agencies considered SCI to be a special access program. They cited the following authorities:

Executive Order 12356;

The Director of Central Intelligence;

National Security Decision Directive 84;

Director of Central Intelligence Directive 1/14.

Question 5: How many agencies have special access programs as authorized under Executive Order 12356 or similar programs under some other authority?

Response: Six agencies had special access programs or participated in such programs of other agencies.

Question 6: How many agencies used the polygraph during calendar year 1983?

Response: Nine agencies used the polygraph or had their employees take polygraph examinations administered by other agencies in calendar year 1983.

Question 7: How many polygraph operators did agencies employ as of December 31, 1983, and how many operators did they have under contract?

Response: As of December 31, 1983, four agencies employed a total of 131 polygraph operators, and had 2 under contract.

Question 8: Do agencies expect to hire or contract for additional polygraph operators? How many and why?

Response: The Department of Defense expects to hire an additional 50 examiners in order to conduct 10,000 more screening polygraph examinations.

The Postal Service expects to hire 3 more polygraph operators. This is to improve turnaround time on examinations and reduce operator workload.

Question 9: How many polygraph machines did agencies own as of December 31, 1983? How many did they procure during calendar year 1983, and how many more do they expect to procure?

Response: Four agencies owned a total of 256 polygraph machines as of December 31, 1983. They procured 2 of these during calendar year 1983. They expect to procure 30 more polygraph machines in the future.

Question 10: Why were polygraph examinations of agency employees conducted? How many of these examinations were conducted of agency employees for calendar years 1979 through 1983? How many were conducted by the agency and how many were conducted by other agencies or by contractors?

Response: The following tabulation shows the number of polygraph examinations given to employees of the nine agencies for various reasons during calendar years 1979 through 1983:

ENCLOSURE I

	1979	1980	1981	1982	1983
Criminal or specific incident investigations					
Conducted by agency	6,697	7,256	6,909	7,802	7,652
Conducted by other agencies or contractors	4	8	16	22	14
Preemployment screening					
Conducted by agency	33	18	13	28	16
Conducted by other agencies or contractors	0	0	0	0	1
Preaccess screening					
Conducted by agency	65	13	85	1,176	3,105
Conducted by other agencies or contractors	1	0	0	0	1
Subsequent screening					
Conducted by agency	0	0	0	0	0
Conducted by other agencies or contractors	0	0	2	2	1
Other					
Conducted by agency	242	221	302	298	363
Conducted by other agencies or contractors	0	0	0	0	0
Total	7,021	7,606	7,247	9,333	11,178

Question 11: How many agencies require employees to submit to any prepublication review procedure (other than to review official statements on behalf of the agency)? How many employees do these procedures cover?

Response: Twelve agencies required their employees to submit to prepublication review. Prepublication review procedures cover 3,423,418 agency employees.

Question 12: For each calendar year since 1979, how many books, articles, speeches, and other materials were reviewed during the prepublication review process?

Response: The following tabulations show the types and quantities of information reviewed during calendar years 1979 through 1983. Separate tabulations are shown for the Department of Defense (DOD) and the other respondents because DOD combined books and articles and because the Department of the Army responded in number of pages reviewed for 1982 and 1983.

	1979	1980	1981	1982	1983
Department of Defense					
Books/articles	2,994	3,133	2,788	6,457	10,088
Speeches	1,320	1,360	871	2,237	2,020
Other	4,816	4,344	5,178	4,713	5,102
Number of pages—Army				57,918	77,404
Other 11 respondents					
Books	18	22	19	17	14
Articles	4,754	4,774	4,814	5,361	5,461
Speeches	11	50	43	157	165
Other	5,011	5,018	5,009	5,171	5,294

Question 13: What was the average number of working days that elapsed from the date of receipt of a request for prepublication review of a document to the date that the requestor was informed of the final results?

Response: The 12 agencies reported the following range of time (in days) for the prepublication review process:

Number of days: Books, 2 to 20; Articles, 1 to 11; Speeches, 2 to 10; others, 4 to 8.

Question 14: During calendar year 1983, approximately how many employees were assigned and how many working days were used for prepublication reviews?

Response: Responding agencies assigned a total of about 211 full-time employees and used 5,268 working days for prepublication reviews.

Question 15: How many unauthorized disclosures of classified information were there during calendar year 1983? How many of these were not reported to the Department of Justice?

Response: Four agencies reported 43 unauthorized disclosures of classified information. Of these, 34 were not reported to the Department of Justice.

Question 16: How many unauthorized disclosures of classified information were made through books, articles, or speeches, written by then-current employees or former employees during calendar year 1983?

Response: One of the 43 identified in question 15 was made through a speech or publication by a then-current employee of a contractor.

ENCLOSURE II.—EMPLOYEES WITH CLEARANCES, SCI ACCESS, AND NON-SCI ACCESS

	Total	Defense	State	Treasury	Energy	NASA	FEMA	Other agencies
Number of agency employees	5,025,580	3,317,906	28,016	124,287	74,482	22,000	2,357	1,461,357
Level of clearance								
Agency employees								
Top secret	517,578	482,363	13,938	6,871	595	521	1,726	11,564
Secret	2,129,557	2,061,643	733	7,993	1,658	15,705	572	41,252
Confidential	33,286	28,150	0	278	104	719	0	4,029
Contractor employees								
Top secret	111,912	111,000	0	183	0	0	400	329
Secret	904,540	900,000	0	0	3	0	250	4,287
Confidential	304,852	304,800	0	0	0	0	0	52
SCI access								
Agency employees	118,899	111,167	4,350	1,733	229	280	199	941
Contractor employees	11,041	10,808	200	2	0	29	1	1
Employees assigned to non-SCI special access programs								
Agency employees	27,530	26,559	0	0	0	0	904	67
Contractor employees	21,587	21,250	0	0	0	0	337	0

ENCLOSURE III.—AGENCIES INVOLVED IN PREPUBLICATION REVIEW

	Defense	State	NASA	TVA	USIA	AID	SEC	Federal Reserve	Overseas Private Investment Corporation
Number of employees covered by agency directive	All	All	All	All	All	All	All	All	All
Quantity of material reviewed in:									
1983:									
Books	[1]10,088	10	15	0	5	1	2	1	0
Articles		269	4,500	600	24	15	7	45	1
Speeches	2,020	14	0	780	33	30	8	0	0
Other	[2]5,102	0	5,000	0	0	60	36	0	0
Number of pages	77,404								
1982:									
Books	[1]6,457	1	15	0	1	0	0	0	0
Articles		202	4,500	600	15	35	10	0	1
Speeches	2,237	8	0	780	25	30	9	0	0
Other	4,713	0	5,000	0	0	101	27	0	0
Number of pages	[2]92,918								
Number of employees assigned to prepublication review	80	86	0	40	7	1	1	1	1
Number of working days used for prepublication review	4,459	205	100	55	8	5	10		1
Average number of working days used for each type of material:									
Books	17.8	20	10	0	10	2	20	10	0
Articles	10.7	10	10	3	2	3	10	3	1
Speeches	5.3	5	10	3	2	3	5	0	0
Other	5.2	0	10	0	0	4	8	0	0

[1] Defense's response combined books and articles.

[2] The Department of the Army responded in number of pages reviewed.

Note: 3 agencies—the Department of Education, Peace Corps, and the Federal Emergency Management Agency—reported having prepublication review requirements but did not report any activity.

ENCLOSURE IV.—POLYGRAPH USE BY NINE AGENCIES

	Total	Department of Defense	Department of Transportation	Tennessee Valley Authority	Department of Labor	Federal Reserve System	Department of State	Postal Service	Department of Commerce	General Services Administration
Agencies using polygraph:										
1983	9	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
1982	[1]8	Yes	Yes	Yes	No	No	No	Yes	No	Yes
Types of examinations:										
Criminal or specific incident:										
1983	7,691	7,028	6	14	7	2	5	623	2	4
1982	7,829	7,155	14	7	5	0	0	645	0	3
1981	6,325	6,196	6	3	2	0	5	711	1	1
Preaccess screening:										
1983	3,108	3,105	0	0	0	0	2	0	1	0
1982	1,176	1,176	0	0	0	0	0	0	0	0
1981	45	45	0	0	0	0	0	0	0	0
Agency polygraph operators:										
1983	131	123	0	0	2	0	0	6	0	0
1982	194	112	0	0	0	0	0	6	0	0
Agency polygraph machines:										
Owned as of Dec. 31, 1983	256	238	0	0	2	0	0	16	0	0
Purchased in 1983	7	7	0	0	0	0	0	0	0	0

[1] Includes the Departments of Justice and Treasury, as reported to us last year. Current information concerning polygraph use by these agencies was not received in time for inclusion in the chart.

Agency plans: (1) The Department of Defense anticipates hiring 50 additional polygraph operators to permit 10,000 screening type examinations. (2) The Postal Service expects to hire 3 additional operators. (3) The Federal Emergency Management Agency plans to institute polygraph examinations in the future, but the final decision is pending until legal issues involving the use of the polygraph are resolved. (4) The Tennessee Valley Authority does not anticipate using the polygraph in the future.

HOUSE OF REPRESENTATIVES, COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC, April 4, 1984.
Hon. CHARLES A. BOWSHER,
Comptroller General, General Accounting Office, Washington, DC.

DEAR GENERAL: In January, H.R. 4681, the Federal Polygraph Limitation and Anti-Censorship Act of 1984, was introduced and referred to the Post Office and Civil Service Committee where it is now under active consideration. This bill is a comprehensive response to the Administration's polygraph and censorship policies, both the National Security Directive 84, issued by the President, and those designed and implemented independently at the agency level.

Recently, the President announced his intention to suspend the polygraph and prepublication censorship portions of his National Security Directive through this session of Congress. The effects, however, of this suspension on the polygraph and censorship policies which were not contained in the President's Directive are not clear. In order that this legislation be properly evaluated, it is necessary that Congress be fully apprised of the effects, if any, the suspension of the President's National Security Directive 84 has on the current polygraph and prepublication censorship policies in effect at the agencies of the Federal Government and on any proposed changes in those policies contemplated at this time.

To this end we request that the General Accounting Office update its survey of the Federal agencies conducted in preparation for hearings held last October by the Government Operations Committee on these issues. Along with this update, it is requested that the GAO also make broader inquiry into the current use of polygraphs and prepublication censorship requirements by the agencies, any proposed changes in those policies and their likely effects, and the effect, if any, the President's suspension of his NSD 84 has on those current or proposed policies.

It is important that this investigation be given prompt attention. Congressional moratoriums on proposed changes to the Department of Defense's polygraph regulations and certain prepublication censorship requirements will expire on April 15. It is, therefore, hoped that you will find it possible to devote maximum staff resources in this effort. Thank you very much for your attention to this request. With every good wish, we are

Sincerely,

JACK BROOKS,
Chairman, Committee on Government Operations.
WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service.

Mr. MATHIAS. Mr. President, the findings that the GAO released on June 11 must be read in light of this history. According to the GAO, "Twenty-three agencies reported that, as of December 31, 1983, 119,000 of their employees had SCI access and almost all had signed the agreements which contain the lifetime pre-publication review requirement." The GAO letter is silent on precisely which prepublication review agreements have been signed. If, however, the agreements referred to are the narrower agreements, including standard form 4193, that were in use prior to the issuance of NSDD-84, and if the agencies involved were using these forms prior to March 1, 1983, then the imposition of lifetime prepublication review obligations, even on the large numbers of Federal employees cited by the GAO, would be consistent with the terms of the amendment that the Senate approved on October 20, 1983.

However, the GAO report should remind us that the issues have not been resolved. The question that engaged us, and that attracted national attention, last year, have not yet been fully answered. A disturbingly large number of Federal employees have been required to submit to a program of lifetime Government censorship.

It is true that the agreements to which the GAO letter appears to refer are more narrowly drawn than those proposed in the wake of NSDD-84. Under the earlier agreements, a former employee's obligation to submit his writings for prepublication review arises only if the text contains information falling with a specified class. Most—though by no means all—of this information may be classified. But the basic problem with prepublication review remains: It is a form of prior restraint of speech by the Government. Any proposal for a system of censorship, no matter how narrowly focused and no matter how well-intentioned, demands the most searching examination. Any form of prior restraint bears a presumption of invalidity, which only a strong showing of need can overcome.

When the Senate debated the Mathias-Eagleton amendment last October, several members of the Committee on Governmental Affairs, which had held a hearing on the question of prepublication review, told the Senate that the administration had not, in our view, carried its burden. The record then before us did not seem to justify the imposition of censorship upon former employees, years after they had left the Government. Indeed, we discovered that over the previous 5 years, there were only two reported incidents in which a former employee of the State, Defense, or Justice Departments had published classified information without getting official authorization to do so—and one of those incidents was unconfirmed. Since that time, we have learned that the implementation of NSDD-84 would not have prevented even the one confirmed incident, since the individual involved would not have been subject to prepublication review.

The findings of the GAO do not, in my opinion, aid the proponents of prepublication review to overcome the presumption against prior restraint. The GAO posed a series of questions to each of the 51 Federal agencies whose employees handle classified information. One of the queries asked how many unauthorized disclosures of classified information occurred during 1983. Another asked how many of these disclosures "were made through books, articles, or speeches written by then-current or former employees during calendar year 1983." Of the 43 agencies responding, 4 reported unauthorized disclosures. But only one of these occurred through a published writing or speech; and in that case, a current employee of a Government contractor was involved. Not a single agency reported a single unauthorized disclosure by a former agency or contract employee.

Mr. President, I believe that Senators may find it useful to consult the GAO findings as they consider the issue of prepublication review. Accordingly, I ask unanimous consent that the text of a letter dated June 11, 1984, from Frank C. Conahan, Director of the GAO's National Security and International Affairs Division, to the Honorable JACK BROOKS, chairman of the House Committee on Government Operations, along with the enclosures thereto, appear in the RECORD at the conclusion of my remarks.

In the last analysis, the GAO's findings answer some questions about the use of prepublication review requirements for former Federal employees. But these findings raise other questions as well. The GAO's report should help the Congress to work responsibly with the executive branch to fashion a policy that will address the real and compelling problem of unauthorized disclosures of classified information, without interfering with the rights of former Government employees to freedom of expression. But the report also underscores how much remains to be done in this regard.

The prospects for constructive cooperation on this issue are good. I believe that the administration has come a long way toward an appreciation of the concerns that motivated the public furor over NSDD-84, and the congressional action in response to it. A comparison of our current situation with some of the earlier chapters in the saga of prepublication review confirms this impression.

It was not so very long ago that neither the public nor the Congress had any clear idea that any employee of the Federal Government was required, as a condition of employment, to submit his or her writings to censorship, even long after leaving the public payroll. Today, we have a good deal of detailed information about who is subject to this sort of requirement, and about the particulars of these requirements.

When the administration began, in 1981, to implement a standard prepublication review agreement outside the intelligence community—form 4193—Congress was not adequately informed, and certainly not adequately consulted. Today, the administration has committed itself to a policy of consultation with the Congress on the issue of prepublication review.

Finally, Congress did not receive sufficient notice of the promulgation of NSDD-84, nor of the issuance of the revised and expanded prepublication review agreement form. Today, the administration has explicitly committed itself to giving Congress advance notification of any unilateral attempt to reinstitute the more sweeping censorship program contemplated by NSDD-84.

All these developments provide grounds for optimism that further discussion and negotiation will lead to a resolution of this complex problem that is fair to all the interested parties, and that strikes the right balance between the competing concerns of free expression and national security. The data compiled by the General Accounting Office simply underscores the importance of pursuing this process.

JOHN S. CHAFEE

Mr. BAKER. Mr. President, I know that Senators on both sides of the aisle join me in mourning the passing of John S. Chafee, the father of our friend and colleague from Rhode Island.

Throughout a very long and very active life, the senior Mr. Chafee made an extraordinary contribution to the progress of his State and the security of his country.

A successful business executive, a devoted trustee of Brown University, and a leader of the War Production Board during World War II, Mr. Chafee was the epitome of what an American citizen should be. He was a concerned, talented, friendly, vigorous man who was always searching the horizon for new challenges to engage his interst and his energy.

Those of us who know his son can see not only the physical but the spiritual resemblance to this remarkable man, and we can count ourselves fortunate that a great tradition of grace and courtesy and generosity and commitment to public service is being carried on and enhanced by the talented junior Senator from Rhode Island.

Our sympathy is with **John** and Jenny at this time of sadness, but we join them and the people of Rhode Island in celebrating the long and useful and beloved life of John S. Chafee.

I ask unanimous consent to have printed in the **Record** the story of Mr. Chafee in yesterday's Providence Bulletin.

There being no objection, the material was ordered to be printed in the **Record**, as follows:

JOHN S. CHAFEE, 87, BUSINESS, CIVIC LEADER, SENATOR'S FATHER

PROVIDENCE.—John Sharpe Chafee, the father of Sen. John H. Chafee, and a prominent Rhode Island industrialist and civic leader died this morning at Hallworth House after an illness. He was 87.

Mr. Chafee was a vice president and a director of the Brown and Sharpe Manufacturing Co. and an executive of other machinery and machine tool firms in New England for more than four decades. During World War II he headed the tools division of the War Production Board.

He was also active in community affairs, notably as a trustee and active alumnus of Brown University (Class of 1918) and as president of Butler Hospital in 1965 and 1966. Mr Chafee was also a trustee of the hospital for many years.

Mr. Chafee was the husband of the late Janet Hunter Chafee. He is survived by four children, Senator Chafee of Warwick; Mrs. Janet H. Cushman of Montreal; Mrs Alexandra Reynolds of Wakefield, and Mrs Susan F. Welch of Bethany, Conn.; a brother, Dr. Francis H. Chafee of Providence; a sister, Mrs Mary C. Card of Barrington; 15 grandchildren and two great grandchildren.

Mr. Chafee was associated with Brown & Sharpe from 1919 to 1942. After service on the War Production Board, he returned to private industry as executive vice president of the Saco-Lowell Shops, textile equipment manufacturers in Biddeford, Maine. He also held positions as general manager, vice president and a director of B-I-F Industries, West Warwick, president of Ansonia Wire and Cable Corp., Cumberland, and vice president of Metals & Controls Corp., Attleboro, Mass., which was subsequently acquired by Texas Instruments Inc.

He was a member of the American Society of Mechanical Engineers and served as president of the National Machine Tool Builders Association In 1942.

Mr. Chafee was born in Sorrento, Maine, the fourth child of Zachariah and Mary Dexter Sharpe Chafee. He was educated at Moses Brown School, St. John's School in Manlius, N.Y., and at Brown, which he left before graduation to serve as an ambulance driver for the French Army in World War I. After the United States declared war, Mr. Chafee returned to the United States and was commissioned in the Army.

Funeral services will be held at 12:30 p.m. Saturday at St. Martin's Church, Orchard Avenue, Providence.

CONCLUSION OF MORNING BUSINESS

The **PRESIDING OFFICER**. Morning business is closed.

OMNIBUS DEFENSE AUTHORIZATION, 1985

The **PRESIDING OFFICER**. The pending business will be stated.

The legislative clerk read as follows:

A bill (S. 2723) to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1985, to authorize certain construction at military installations for such fiscal year, to authorize appropriations for the Deaprtment of Energy for national security programs for such fiscal year, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3262

(Purpose: To express the sense of the Congress regarding the status of certain treaties to prevent nuclear testing)

Mr. **KENNEDY**. Mr. President, a parliamentary inquiry.

The **PRESIDING OFFICER**. The Senator will state it.

Mr. **KENNEDY**. What is the pending business before the Senate?

The **PRESIDING OFFICER**. The pending business is amendment No. 3262 offered by the Senator from Georgia [Mr. **Nunn**] for the Senator from Massachusetts [Mr. **Kennedy**] and the Senator from Maryland [Mr. **Mathias**].

Mr. **KENNEDY**. I thank the Chair.

Mr. President, Senator **Mathias** and I, along with over 40 cosponsors, are proud to introduce an amendment aimed at bringing an end to nuclear testing.

The amendment declares the sense of Congress that the President should request Senate consent to ratification of the 1974 Threshold Test Ban Treaty and its companion, the 1976 Peaceful Nuclear Explosions Treaty, and further, that the President should propose to the Soviet Union the immediate resumption of negotiations for a verifiable comprehensive test ban treaty. Having introduced several joint resoutions pressing for a comprehensive test ban over the past decade, I am glad that the full Senate will finally have an opportunity to vote on the issue.

We are especially pleased that so many Members of the Senate have decided to cosponsor this resolution and, in so doing, to work for an end to all nuclear testing as an essential step to reducing the risk of nuclear war.

A comprehensive test ban will advance the goal of strategic stability. It would impose qualitative constraints on weapons modernization, and it would stem the tide of nuclear proliferation. A complete ban on the testing of nuclear devices will halt Soviet advances in the development of warhead technology, thereby promoting U.S. security interests. It will enhance the credibility of U.S. efforts to prevent the proliferation of nuclear weapons.

A favorable Senate vote on this amendment will be particularly helpful to the currently dry negotiating climate. Our amendment's provision that the TTB and PNE treaties should be submitted for consent to ratification presents a timely opportunity for the President and the Senate to take a concrete step toward arms control that will not require the Soviets to return to the bargaining table. And the amendment's call upon the President to resume negotiations toward a Comprehensive Test Ban Treaty restates a bipartisan objective held by every President since Dwight Eisenhower.

Senator **Mathias** and I first introduced our resolution in July 1982, immediately after the Reagan administration announced that it had abandoned comprehensive test ban negotiations with Great Britain and the Soviet Union, and right after the administration stated that it preferred not to ratify the Threshold Test Ban and Peaceful Nuclear Explosions Treaties. This decision was a radical reversal in the bipartisan policy adopted by Presidents Eisenhower and Kennedy, and pursued by every administration since then, both Republican and Democratic. This bipartison commitment has endured since the 1950's, allowing the United States and the Soviet Union to work together—step by step—toward completion of a comprehensive test ban.

Near the end of his administration, President Eisenhower initiated negotiations to prohibit nuclear testing, and the United States entered into a mutual moratorium with the Soviet Union on all weapons testing for 3 years in order to promote that goal. After initiating a similar moratorium on atmospheric testing, President Kennedy concluded the first test ban agreement in 1963—the Limited Test Ban Treaty. That treaty prohibits nuclear testing in the atmosphere, outer space, and underwater, and commits all parties to pursue a comprehensive test ban treaty [CTBT]. In 1968, President Johnson negotiated the Nuclear Nonproliferation Treaty which reiterate the U.S. commitment to negotiate a CTBT. In 1974, President Nixon concluded the Threshold Test Ban Treaty, which outlaws nuclear weapons tests above 150 kilotons and once again confirmed our commitment to a CTBT. In 1976, President Ford acheived the Peaceful Nuclear Explosions Treaty, which established the same 150-kiloton threshold for so-called peaceful explosions. Although the Senate Foreign Relations Committee approved these two treaties by a 14-to-1 majority, neither treaty has been taken up by the full Senate for its consent to ratification.

In July 1982, the Reagan administration announced that it would not resume CTB negotiations with the Soviets, despite the stated willingness of the Soviets to engage in such negotiations in abandoning these negotiations, the Reagan administration is disregarding the benefits that a CTB would yield for U.S. national security and for world peace.

Not the least of these benefits would be to close off a destabilizing avenue in the arms race that now continues unabated—the development of new, ever more accurate, ever more devastating nuclear warheads. Without testing, neither country can fully explore new weapon designs. The effect will be to freeze at existing levels the nuclear warhead technologies deployed by both sides. Any new missiles or aircraft will have to carry warheads of already tested design.

It is important to recognize, in this connection, that a halt on nuclear warhead development will work to the advantage of the United States. Over the last 30 years we have conducted over twice the number of nuclear tests as has the Soviet Union. We have developed a diverse and sophisticated stockpile of nuclear devices. Our highly skilled and innovative nuclear scientists have continually expanded the frontiers of nuclear technology in such critical areas as miniaturization, safety and security, and command and control. In short, the United States is second to none in nuclear weapon design—and a Comprehensive Test Ban Treaty will freeze that superiority.

A CTB will also strengthen our hand in dealing with the greatest threat that America and the world will face for the remainder of this century and beyond—the spread of nuclear weapons to more and more countries.

Under the Nonproliferation Treaty, the nonnuclear weapons states agreed to forswear nuclear weapons, while the nuclear powers, for their part, agreed to pursue arms control measures, including a comprehensive test ban. If the Reagan administration is permitted to renege on that commitment, it will become much more difficult to maintain the NPT as an effective instrument of nonproliferation policy. Already several states have suggested the possibility of withdrawing from the treaty unless a CTB is concluded soon. As more nations threaten to go nuclear, it makes no sense for America to abdicate its responsibility and to further undermine its political leverage and moral authority to prevent proliferation.

The achievement of a CTBT, on the other hand, will give the Nonproliferation Treaty a new lease on life. It will increase the attractiveness of NPT to those who have not yet joined. And in general, by showing that the nuclear powers are prepared to accept restraints on their own activities, it will put us in a stronger, more credible position to call on nonnuclear countries to further constrain their nuclear weapons development.

Moreover, a CTBT could be a powerful force for nonproliferation in its own right. By adhering to such a treaty, and by committing themselves not to carry out any tests, the nonnuclear states could renounce. A critical step in the process of acquiring a proven nuclear capability. For states that refuse to join the NPT, a CTBT may be our best chance to persuade them to accept constraints on their ability to pursue the nuclear weapons option.

The situation in south Asia is a good example of how a CTB could advance these goals. While neither India nor Pakistan has adhered to the NPT, both have expressed support many times in the past for nondiscriminatory Comprehensive Test Ban Treaty. But without a U.S.-U.S.S.R. CTBT agreement, neither India nor Pakistan will have the opportunity to join such a treaty, and thereby contribute to both their own security and the security of the world.

When the Reagan administration decided not to resume the CTB negotiations it stated a desire to renegotiate the two standing treaties—the PNET and the TTBT—before pursuing a comprehensive ban. At the time, the Reagan administration claimed that a CTB was unverifiable and that the two standing treaties had inadequate provisions for verification.

The argument that verification provisions in the TTBT and PNET need to be strengthened before negotiating a CTBT is specious on two counts:

First, it might very well be easier to verify a total test ban than a limit on testing above 150 kilotons;

Second, the TTBT's and PNET's provisions for verification have not been fully implemented pending ratification of the treaties.

What are these important verification provisions? The TTBT provides for exchanges of geological data that will clarify ambiguities about the size and location of tests. And the PNET sets an important historical precedent when it comes to verification; it provides for on-site inspection whenever it is unclear whether a test is "peaceful." Until these provisions are implemented how can the administration assert that these treaties are unverifiable?

By refusing to press the TTB and PNE treaties for Senate consent, the Reagan administration is complicating and delaying the achievement of arms control. In the absence of ratification, the goal of verfication is being undermined, not strengthened. It is ironic that the Reagan administration refuses to have arms control without progress on verification—and then refuses to implement significant breakthroughs that improve verification, breakthroughs that were painstakingly negotiated by American diplomats over years and years of work.

The fact is, Mr. President, that the United States is complying with both of those treaties at the present time. And these treaties have provisions that would enhance the prospects for verification, both through the exchange of geological data and through on-site inspection.

So, the administration is complying with the treaties, but, by failing to have them ratified, it is not able to acquire additional information that would be helpful for verification. And yet one of the arguments that the administration uses is that these treaties cannot be verified adequately. This is a particular dilemma, Mr. President, that we hope to remedy with the passage of this amendment here today.

By urging that these treaties be approved by the Senate and supported by the President, we hope to increase the prospects for verification in very important ways—through the transfer of geological information and by on-site inspection.

That is a very important aspect of this amendment that ought to be noted by the Members of this body at a time of considerable tension between the United States and the Soviet Union.

On the overriding issue of whether a comprehensive test ban can be verified there is a consensus among experts that it can be. Indeed, during the Carter administration, a number of verification disputes with the Soviets—previously deemed unsurmountable—were resolved on our terms—on terms proposed by the United States. In 1979, a verifiable treaty really was at hand on the CTB.

There were in fact, real breakthroughs in these negotiations; the Soviets accepted in principle a U.S. proposal for on-site inspections to help resolve questions regarding compliance. This was truly an historic achievement. Failure to reach agreement on the issue of on-site inspections had been, in 1963, the main reason why it was not possible to conclude a comprehensive, as opposed to a partial, ban.

In another major breakthrough on verification, the Soviets accepted a U.S. proposal for deploying a network of sophisticated seismic monitoring stations on their territory. Such seismic facilities inside the Soviet Union, combined with our impressive existing national technical means of verification, would give us an effective basis for verifying Soviet compliance with a CTB. Soviet willingness to accept these stations on their territory represented a dramatic advance in their attitudes toward verification, with significant implications for future arms control measures.

More recently, there have been scientific breakthroughs at the U.S. Geological Survey that, if put into effect, could make verification of a comprehensive ban through seismological means much easier. New developments in seismological instrumentation make it easier to distinguish between a nuclear explosion and earthquakes even at a level below 1 kiloton.

I draw that information to the attention of the U.S. Senate as an additional reason why those of us who believe that a CTB would limit qualitative advances in arms modernization also believe that this kind of a breakthrough is significant.

But the Reagan administration has been totally indifferent to this progress toward verification. Rather than seizing opportunity for real progress, it reversed all the progress that we had made toward verification by insisting upon renegotiating the TTBT and PNET.

Given that the administration's policy on verification lacks a compelling logic, one can only conclude that it is avoiding testing negotiations in order to pursue an unbridled testing program. Indeed, according to a recent administration report:

> . . . While a CTB continues to be a long-term U.S. objective, continued nuclear testing is necessary for the continued development, modernization, and certification of warheads, the maintenance of stockpile reliability and evaluation of nuclear weapons effects.

Before the administration pursues such a program, it should contemplate the difference it might have made had we concluded CTBT two decades ago. It is unlikely, for example, that the high-yield MIRV'd warheads that pose such a serious threat to U.S. security today could have been developed if nuclear testing had stopped two decades ago. It is also less likely that India would have conducted its nuclear explosions in 1974, that Pakistan would now be striving for matching capabilities of its own, or that the overall proliferation risks would be nearly as serious as they are today. It is likely, in other words, that a CTBT two decades ago would have made today's world a safer place. It is also worth asking what a difference it might make two decades from now if we fail to seize the opportunity to achieve a CTB today.

What new breakthroughs in nuclear technologies would jeopardize our security? Which additional countries will conduct nuclear tests and join the nuclear club? How much more dangerous a world would we live in than we live in today?

Mr. President, this amendment is offered in a spirit of bipartisanship, the type of spirit that brought us arms-control progress in the past. On July 26, 1963, the day after the American test-ban negotiators finished their work in Moscow, President Kennedy recalled the Chinese proverb that "a journey of 1,000 miles begins with a single step." He called on the American people to take that first step by ratifying the Limited Test Ban Treaty, and they responded enthusiastically. In the past two decades we have witnessed slow but steady bipartisan progress in this journey of a thousand miles. The question before us is whether we in the U.S. Congress and this administration can now take another hopeful and needed step forward.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. Mr. President, I see the Senator from Maryland on the floor. I will give him an opportunity to speak on the amendment that he is sponsoring. Then I will make a brief response.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. I thank the Senator from Texas. Mr. President, I am happy to have him go forward, if he wishes to do so.

Mr. President, I feel it is more than an honor—it is a duty—to join the distinguished Senator from Massachusetts, Mr. KENNEDY and 39 colleagues, 39 Senators, in offering this amendment to the Defense Authorization Act. Our amendment calls upon the President to do two things, two things that I believe the President of the United States will not find it difficult to do. The first is to request the Senate to consent to the ratification of the 1974 Threshold Test Ban Treaty and the 1976 Peaceful Nuclear Explosions Treaty; the second, to resume negotiations with the Soviet Union toward conclusion of a verifiable Comprehensive Test Ban Treaty. I say that those two proposals will not be difficult things for the President of the United States to make, because, Mr. President, the United States is already committed to doing exactly these things.

At various times in the past we have attempted to harness the dizzying spiral of nuclear-weapons development. When the world was still shaken by the fears generated during the Cuban missile crisis, it welcomed the Limited Test Ban Treaty of 1963. And I think that these concerns are reflected today in the nuclear-freeze movement, in the strong pastoral letter of the Catholic bishops of the United States, and in the positions taken by other influential religious and political groups in the United States and in Europe. It seems clear that the time is right for a restoration of the national consensus for arms control which was such a strong force following the LTBT, but which became diluted in the latter part of the 1960's. There were also moments during the last decade when it appeared possible that Americans could develop a generally acceptable national security policy that combined the intelligent pursuit of arms-control objectives with prudent augmentation of the military force structure. SALT I, the Antiballistic Missile Treaty, the Threshold Test Ban, the Peaceful Nuclear Explosions Treaties, and even SALT II were all agreements containing the promise of still greater things to come. But these promises have not borne fruit. They remain unfulfilled. Instead, we have allowed this country's strategic policy direction to be altered approximately every 4 years. We are embarked on still another set of strategic arms-control initiatives, shelving, if not repudiating, the efforts of previous administrations—as indeed the Carter administration attempted to do in March 1977 when it shelved the substantial achievements of the Ford administration; namely, the Vladivostok agreements. We are moving forward with nuclear armed, sea-launched cruise missile deployments, with the militarization of outer space, and perhaps worst of all, we continue to allow two painstakingly negotiated documents, the Threshold Test Ban and the Peaceful Nuclear Explosions Treaties, the objects of this amendment, to languish unratified in the Senate. And this administration has announced that it does not intend to resume Comprehensive Test Ban Treaty negotiations.

If you add to that record the unratified SALT Treaty, and then consider what this unfinished agenda signals to the rest of the world, it seems to me that we are impairing our own credibility as a negotiating partner.

It was, of course, the Soviet invasion and occupation of Afghanistan that ended any hope that SALT II might be ratified. But that is not the case with the Threshold Test Ban and with the Peaceful Nuclear Explosion Treaties.

These have been awaiting strong Presidential endorsement to bring them to the floor of the Senate.

In the interim, the United States and the Soviet Union have issued unilateral statements expressing their intent to abide by the terms of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaties so long as the Soviet Union is willing to do the same.

The protocol to the Threshold Test Ban Treaty provides for the exchange of geological and geographical data which is, of course, essential for verifying the magnitude of a blast. The protocol also designates specific areas as weapons-test sites to assist in verification. An agreement to exchange this and other more detailed data would provide as yet unprecedented levels of cooperation between the United States and the Soviet Union.

Never before has there been an understanding whereby the two superpowers would exchange data relating to their respective nuclear weapons program.

In preparing the Threshold Test Ban Treaty, the United States and the Soviet Union determined that some agreement was needed to regulate underground nuclear tests for peaceful purposes, and the Peaceful Nuclear Explosions Treaty was signed by President Ford in 1976. In so doing, he had the advice of the Joint Chiefs of Staff and the whole panopoly of intelligence and military experts of the U.S. Government. It was concluded that this treaty was totally in accord with our military and security interests.

Articles 4 and 5 of the Peaceful Nuclear Explosions Treaty establish the exchange of information and access to sites of explosions. I think that is worth repeating. The Peaceful Nuclear Explosions Treaty provides for access to sites of explosions.

The protocol to the treaty sets forth provisions for both detailed information and the rights and functions of observers within the Soviet Union. This is particularly significant because, as every Senator knows, Soviet reluctance to accept intrusive forms of verification has been one of the main obstacles to negotiated progress in the nuclear age. This is a reluctance rooted deep in Russian history. Not since the time of Ivan the Terrible have strangers, foreigners, been allowed to roam within the bounds of the Russian state. Here we have the agreement of the Soviet Union to allow on-site inspection, to allow observers within the bounds of the Soviet Union. And we are not taking advantage of the opportunity that has been agreed.

The Peaceful Nuclear Explosions Treaty, combined with the Threshold Test Ban Treaty, establishes a comprehensive system of regulations that would govern the underground nuclear explosions in the United States and the Soviet Union in a manner that seems to me to be consistent with enhanced stability—enhanced stability for relationships between the Soviet Union and the United States and enhanced stability for the world at large.

But because since these treaties are not ratified, since the Senate has not yet given its consent to ratification, there has been no exchange of data. Nor have there been any meetings of a formal consultative group as provided for by the Peaceful Nuclear Explosions Treaty. As a result, the opportunity has been lost to gain the data and to gain the other information which would help resolve uncertainties as to the yields of Soviet weapons tests. Such uncertainties have fed concern that some Soviet tests have been above the 150-kiloton ceiling permitted by the TTBT.

The administration has had the Threshold Test Ban and the Peaceful Nuclear Explosion Treaties under what has been called active review for the past 3 years. I am not sure how we would define active. But in that 3-year period, a broad range of public officials and private witnesses have commented upon the merits of these unratified accords, and support for ratification has been offered by individuals representing a cross-section of political opinion, including some senior Members of the present administration.

At this confirmation hearing, the former Director of the Arms Control and Disarmament Agency, Eugene Rostow, offered his personal endorsement of ratification, and he promised to seek a rapid review of both treaties.

Nearly 1 year later, in May 1982, he stated that he had run into what he called a profound stonewall in his efforts to bring this issue to the President.

More recently, the Deputy Director of the Arms Control and Disarmament Agency, David Emery, similarly endorsed ratification of these two testing agreements.

Objections have been raised that possible future options of the United States might be limited by ratification of the Threshold Test Ban and the Peaceful Nuclear Explosions Treaties and by the conclusion of a Comprehensive Test Ban Treaty.

I might say that such objections have been long standing. They were raised during the Carter administration as the reason for not going forward with ratification, as they might in some way inhibit the negotiations that were then underway for SALT II and a CTBT.

I think we need to make what progress we can. President Nixon and President Ford have pointed out that progress could be made in the testing area.

It is the job of arms control to establish limits, and the limits that are established have to be mutual and verifiable. But the opportunities to establish mutual and verifiable limits are not unlimited.

The Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty both establish such limits, and the conclusion of a verifiable Comprehensive Test Ban Treaty, which Senator KENNEDY and I urge, would be the most significant and the sanest milestone in the brief history of the nuclear age.

So I urge all Senators to support this amendment. We seem to be locked in some kind of fatal cycle that demands of us an effort to break out.

It is said by some thoughtful, reasonable observers that Russian behavior at the moment is so intransigent that we should not reward it even by a gesture.

Well, I do not think that our amendment rewards intransigence. I think this is a case of avoiding self-inflicted wounds, self-inflicted injuries, by not acting when action is clearly demanded by circumstance.

The United States is deeply committed to the Threshold Test Ban and to the Peaceful Nuclear Explosions Treaties. They involve no new proposal that has not been thoroughly digested on all sides. It surely could not be called appeasement to complete the jobs that were begun by President Nixon and President Ford. And the ratification of these treaties will eliminate a longstanding Russian complaint that we are not reliable and trustworthy and, therefore, it is not worthwhile to spend time negotiating with us.

The fact is, Mr. President, that the people of the world—all of mankind—look to the United States for leadership in the field of arms control. We must not fail them. We must demonstrate our determination to reduce the risk of nuclear war, and there is no better way to do that than by ratification of the Threshold Test Ban and Peaceful Nuclear Explosions Treaties, and by resuming now the negotiations for a comprehensive test ban.

Mr. TOWER. Mr. President, I have listened with great interest to both the Senator from Massachusetts and the Senator from Maryland. I think one cannot help but be impressed by their sincerity in this matter, their desire to create a climate in which we can have a less dangerous and a more stable world. But I believe that what they suggest would be counterproductive to either negotiation of significant arms control agreements or arms reduction agreements and of peace and stability. The proponents have talked glowingly about SALT I and the ABM Treaty, suggesting that these treaties would bring us stability; but, in fact, since the conclusion and ratification of those treaties, the Soviets have in hand a bigger arsenal of destabilizing weapons than they did before that time.

The fact is they have a superior urgent hard target kill capability to the United States. We do not have a first-strike mentality or a first-strike doctrine, or a first-strike intent, or even, indeed, a first-strike capability. So perhaps we would not want the kind of arsenal the Soviets have gotten. But certainly, we must take into consideration that in significant magnitude, the Soviets have a superior urgent hard-target nuclear kill capability to the United States of America. In our own interests, we must continue to test not only for the sake of developing a more sophisticated deterrent of our own but for the sake also of understanding what the Russian capability might be.

Let me read an excerpt of a letter from the head of the Los Alamos Laboratory, Dr. Donald M. Kerr, the Director of Los Alamos. He said:

> A comprehensive test ban by itself is an unsatisfactory form of arms control. We are dedicated to reducing the risk of nuclear war, but a test ban is only one step in that direction, and it is not only useless, but actually may be dangerous if not accompanied by complementary arms control measures. And, further, a moratorium or test ban would gradually, unpredictably, and unequally reduce our ability to rely with confidence on our nuclear forces. Concerns for the effect on our deterrent of a ban were illustrated when the United States resumed testing in 1962 during the Kennedy administration. Not only had the Soviet Union greatly improved its own nuclear technology and gained unprecedented insight into nuclear effects, but some United States weapons had developed serious faults.

Now we are, in the face of enlightened opinion and fact, being asked here to take an enormous risk. I get a little frustrated sometimes when I see us moving in the direction of unilateral restraint and conciliation toward the Soviet Union at the same time we shall be considering an amendment to bully and beat up on our allies. I wonder how anybody can get what I call a clear signal from the United States in these circumstances.

Let me read a portion of the President's report to the Congress on Soviet noncompliance with arms control agreements dated January 23 of this year. It is in unclassified summary:

> #### 7. TTBT—150-KT TEST LIMIT
>
> Treaty Status: The Threshold Test Ban Treaty was signed in 1974. The Treaty has not been ratified but neither Party has indicated an intention not to ratify. Therefore, both parties are subject to the obligation under international law to refrain from acts which would "defeat the object and purpose" of the TTBT. Soviet actions that would defeat the object and purpose of the TTBT are therefore violations of their obligations. The United States is seeking to negotiate improved verification measures for the Treaty. Both parties have each separately stated they would observe the 150 kt threshold of the TTBT.
>
> Obligation: The Treaty prohibits any underground nuclear weapon test having a yield exceeding 150 kilotons at any place under the jurisdiction or control of the parties, beginning March 21, 1976. In view of the technical uncertainties associated with predicting the precise yield of nuclear weapons tests, the sides agreed that one or two slight unintended breaches per year would not be considered a violation.
>
> Issue: The study examined whether the Soviets have conducted nuclear tests in excess of 150 kilotons.
>
> Finding: While the available evidence is ambiguous, in view of ambiguities in the pattern of Soviet testing and in view of verification uncertainties, and we have been unable to reach a definitive conclusion, this evidence indicates that Soviet nuclear testing activities for a number of tests constitute a likely violation of legal obligations under the TTBT.
>
> #### CONCLUSIONS
>
> The President has said that the United States will continue to press compliance issues with the Soviets through confidential diplomatic channels, and to insist upon explanations, clarifications, and corrective actions. At the same time we are continuing to carry out our obligations and commitments under relevant agreements. We should recognize, however, that ensuring compliance with arms control agreements remains a serious problem. Improved verification and compliance provisions and better treaty drafting will help, and we are working toward this in ongoing negotiations. It is fundamentally important, however, that the Soviets take a constructive attitude toward compliance.

Mr. President, we have reason to believe that they could have detonations that had a yield in the range of 200 or 300 kilotons. Our methods of measurement are imprecise and we can only measure in terms of ranges. It occurs to me if we cannot adequately verify and attest whether or not the Soviets cheat, we would not be able to do it if we had a treaty in effect. The fact that we have a treaty does not provide automatic verification.

Mr. President, I wonder if ever we are going to be able to have adequate verification of anything that we cannot verify by national technical means. Have the Soviets shown any real disposition to permit intrusive and extensive on-site inspection? No, they have not.

We always seem to negotiate treaties and worry about the verification later; it is more convenient to do it that way. Oh, we will work out this verification thing.

Mr. President, regarding this threshold test ban, the United States is acting in compliance. The evidence does indicate likely Soviet violations of the 150-kiloton threshold. We are seeking verification improvements and we have, unsuccessfully by the way, tried three times to engage the Soviets in constructive discussions on this issue, and they have not been forthcoming.

Now, regarding another portion of the Senator's amendment, that regarding comprehensive test ban and trilateral negotiations between the United States, the Soviet Union, and the United Kingdom, they were conducted from October 1977 to November 1980. There was a failure to reach an agreement on verification issues, including onsite inspections and in-country seismic equipment.

Now, let me emphasize that a Comprehensive Test Ban Treaty remains a long-term U.S. objective in the context of broad, deep and verifiable arms reductions, improved verification, confidence building measures, and the maintenance of an effective deterrent. Nuclear testing is needed if we are to have high confidence in the reliability of our own nuclear stockpiles and for a robust nuclear technology base, which in the context of the comprehensive test ban would erode very, very seriously, very, very rapidly.

The United States agreed in 1983 to a formulation of a working group, and the Committee on Disarmament in Geneva discussed issues related to a Comprehensive Test Ban Treaty. We have taken positive steps. Certainly in the area of verification we have been far more forthcoming than have the Soviets. Before we start pressing for the submission of the Threshold Test Ban Treaty, pressing the administration to get on with the Comprehensive Test Ban Treaty, we should instead be pressing the Russians to get on with an agreement for adequate, high confidence verification on any kind of nuclear or arms control agreements to which the United States will be prepared to agree.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I rise to strongly support this amendment offered by the Senators from Massachusetts and Maryland and am very glad to be a cosponsor, as I was the original cosponsor of Senate Joint Resolution 29, upon which this legislation is based.

The Threshold Test Ban Treaty applies a ceiling of 150 kilotons on all nuclear explosions. The Peaceful Nuclear Explosions Treaty, which was conceived as a companion to the TTBT, serves to ensure that so-called peaceful nuclear explosions cannot be used as a means of circumventing the TTBT.

Unfortunately, the administration has been reluctant to proceed toward ratification of these two treaties pending Soviet agreement to expanded verification provisions. The Soviets have taken the position that the treaties are satisfactory as negotiated and should be ratified. Thus, the sides are at an impasse which has continued for more than 1 year.

Sometimes, in my view, our self-interest dictates that we act even if things cannot be 100 percent where we want them. That is the case now with these treaties, since it is clearly in our interest to take a chance for peace.

Mr. President, this is a situation calling for action by the Congress. We need to find a prudent and effective way to break the impasse. If the President were willing to seek ratification of the two treaties, there is nothing to prevent subsequent bilateral negotiations to make any appropriate and mutually acceptable changes in the verification provisions. The alternative is to continue living under the terms of the two treaties, as both sides have been doing since 1976, but without the benefit of the existing verification provisions, which would only come into force with ratification.

There are several very important reasons to move ahead toward ratification of these treaties:

First, ratification would serve to demonstrate, in this time of great contention between the United States and the Soviet Union, that the United States stands behind its obligations and is willing to ratify those treaties that it has negotiated.

Second, ratification would open the way to exchanges to information to help facilitate verification. With these exchanges, we would be in a much better position to ensure Soviet compliance.

Third, ratification would put in place the precedent-setting on-site inspection provisions of the PNET. No other agreement with the Soviet Union has such strong inspection provisions.

Fourth, ratification would save us from the threat that one side or the other would decide to stop complying with the TTBT and go ahead with high-yield testing. Unfortunately, the Soviet Union, for reasons of geography and proximity of population, is in a far better position to do such tests—thus giving them an asymetrical advantage. It would be very foolish for us to allow the resumption of one very important aspect of the arms race to the benefit of our adversary.

Finally, ratification would demonstrate to a doubting world that the United States has not forgotten its commitment to the nonnuclear world to work with the nuclear weapons states to bring an end to the nuclear arms race. We should not doubt that our cavalier approach to the nuclear testing issue has placed the world nonproliferation regime in continuing jeopardy.

Mr. President, it simply makes good sense to move ahead with these two treaties as a prelude to a comprehensive test ban.

Five American administrations have supported the attainment of a comprehensive test ban. The administration's decision not to pursue a CTB marks an unfortunate retreat from a commitment by the United States in the Limited Test Ban Treaty of 1963 and the Nonproliferation Treaty of 1968 to seek to achieve an end to nuclear weapons tests for all times.

A CTB would put meaningful controls on nuclear weapons development and would put punch into our efforts to curb nuclear proliferation. In the previous administration, solid progress was made toward agreement on a CTB with strong, effective verification provisions, such as monitoring stations in the Soviet Union and arrangements for on-site inspection. The Reagan administration is in a splendid position to resume that effort.

Mr. President, without spending Senate's time here assessing blame between the Soviet leadership and the administration, I think we can fairly conclude that the arms race continues to be fueled and that arms control has run out of steam. The result is an American public afraid that nuclear war has become more likely over the past several years. Millions of Americans are very frightened, as all of us have found in our talks with concerned constituents.

We will not solve our arms control problems with amendments to this defense authorization bill. We can, however, take a very important step that will send the right message to our constituents, our adversaries and others in the world who are watching closely our arms control efforts—or lack of them. Passage of this amendment would constitute a prudent and long overdue step to get arms control back on track.

Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, the Senate debates this amendment against the background of extraordinarily strained United States-Soviet relations in which there is no direct bilateral negotiations underway for the reduction of significant numbers of weapons. However, no one believes that there is much chance that START or INF will be resumed this year. In light of the enormous capabilities of mutual nuclear annihilation and recognizing the constantly expanding nuclear stockpiles on each side, I find this proposal discouraging in the extreme, as does the rest of the world.

At the outset, let me say that I agree with the position taken by the administration and strongly supported by our NATO allies. The United States should not offer the Soviet Union concessions as a reward for their actually picking up their blocks and walking out of the INF and START talks. We should not do this just to get them back to the START and INF negotiating table. At the same time, I am most gratified by the President's announced willingness to meet the Soviets halfway should they return to the START or INF talks.

Mr. President, such gestures of conciliation and flexibility would normally be sufficient to get a dialog on arms reductions reestablished. Unfortunately, these are not normal times, and the Soviets have remained adamantly opposed to any resumption of talks. I would hope that the President's new position on the question of a summit meeting will in due course lead to a United States-Soviet summit and that such a meeting could clear the way for renewed negotiations on START and INF. I have steadily and consistently called for a summit over the past several years. Last November 1983, I called for the President to establish a regular procedure whereby beginning no later than 1985 a regular annual summit meeting would be held between the President of the United States and the head of the Soviet Union.

While we await the outcome of ongoing efforts to set up such a meeting, we need not be standing still. On the contrary, I believe that there are three specific initiatives that the United States could take which could not only facilitate the prospects for a successful summit, but might themselves so improve the climate of United States-Soviet relations that a resumption of START and INF might be possible in the near term.

Mr. President, I believe that the three keys to an improved United States-Soviet dialog on arms control are, first, ratification of the two pending nuclear testing treaties—the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, or TTBT/PNE—second, renewed negotiations on a Comprehensive Test Ban Treaty, or CTB, and third, new negotiations on limiting weapons in outer space.

This amendment deals with two of these keys, and the Senate just last week overwhelmingly indicated its support for the third initiative when it passed the Warner-Tsongas amendment on antisatellite negotiations by a 61-to-28 vote. By passing this amendment by a similarly wide margin, the Senate can, in my opinion, lay the foundation for a major U.S. initiative in all three areas. The result, Mr. President, could well be the restoration of some progress in the United States-Soviet arms control process.

I will now address the question of ratifying the TTBT and PNE Treaties in more detail. Beginning with my visit to Moscow in November 1980, I have placed ratification of these two treaties very high on my arms control agenda. I recognize that these are modest treaties in scope, yet they have assumed a significant symbolism in our overall arms control relationship with the Soviet Union. They certainly dominated conversations at the time Ambassador Tom Watson, Mr. Robert Galvin, and I met for a period of 9 hours with the Soviet leadership. As the Soviet leadership made clear to me during my visit 3½ years ago, they fail to understand how we can allow three completed arms control treaties, TTBT, PNE, and SALT II Treaties, which were signed, respectively, by Presidents Nixon, Ford, and Carter, to languish without any action in this body.

It has now been 12 years since we have ratified and given our advice and consent, and the President has signed, any treaty involving arms control between ourselves and the Soviet Union. All this while, we have been observing the basic elements of all three treaties on an informal basis. That is no substitute for having binding treaties which bind into the future both nations on this issue, the most paramount issue facing mankind today.

The two nuclear testing treaties would establish valuable precedents for future arms control agreements. The PNE Treaty provides for onsite monitoring and inspection, and this is the first time we have ever provided for onsite monitoring and inspection. The TTBT would require an exchange of information and data that would facilitate verification. Experience gained in operating the TTBT and PNE verification regimes could prove invaluable in moving toward a CTB Treaty. In this respect, the two treaties could serve as an important midstation on the road toward a ban on all nuclear weapons tests.

As chairman of the Foreign Relations Committee, I have repeatedly pressed the administration to move more quickly in formulating a constructive position on the ratification of these treaties. In May 1982, then-ADCA Director Rostow testified before the committee that some administration officials were stonewalling this process. In February 1983, I threatened to defer committee action on the nomination of Kenneth Adelman to succeed Dr. Rostow unless this stonewalling ended. I was, therefore, gratified when Mr. Adelman was able to testify subsequently that the administration would, indeed, request ratification of the treaties provided the Soviets agreed to certain supplementary procedures for enhancing verification.

Mr. President, I profoundly regret that the Soviet Union has remained intransigent in its opposition to any discussions on supplementary verification procedures. The Soviets have simply remained dead set against any new talks until the United States follows through on its earlier commitment to ratify these treaties. For over 1 year now, the two sides have been stuck in a total impasse on this procedural point.

On May 8, I wrote Mr. Adelman to outline a new approach for getting around this impasse. In my letter, I proposed that the President ask the Senate to proceed with the ratification of the two treaties, and that it work hand-in-glove with the Foreign Relations Committee in drafting a supplementary protocol or understanding that would address our verification concerns. These ratified treaties, with the protocols or understandings attached, could then be sent to Moscow for implementation, putting the burden on the Soviets for entering the treaties into force. On May 29, I received a reply from Mr. Adelman, informing me that my proposal was under review. At a committee hearing on June 13, I put Deputy Secretary of State Dam on notice that unless the interagency review process reaches some decision very soon on how to end the impasse on TTBT and PNE, I will have no recourse but to take the matter up directly with the President.

Mr. President, I believe that Senate passage of this amendment will help move the administration's review process along. In the words of the amendment itself, it will indicate the strong view of this body that, at the earliest possible date, the President should request Senate consent to the ratification of these treaties. So far as I am concerned, I see no reason why the President could not ask this week that the Foreign Relations Committee proceed as soon as possible with ratification hearings on the treaties. Realistically, we would have to assume that the ratification process, including the drafting of appropriate protocols or understandings on verification, would carry over into the next session. Nonetheless, we could at least get started.

The second part of this amendment calls for a resumption of the United States-United Kingdom-Soviet negotiations toward a verifiable Comprehensive Test Ban Treaty, or CTB, at the earliest possible date. It is the declared position of the administration that it remains committed to the attainment of a CTB Treaty as a long-term goal of U.S. arms control policy. It has, however, preferred to probe Soviet receptivity to the necessary verification measures that would have to accompany a CTB in a different forum. Rather than resume the discontinued tripartite negotiations, the United States has been discussing CTB verification issues in the 40-nation U.N. Committee on Disarmament, or CD. Presumably, the administration would change the venue back to the tripartite negotiating table if sufficient progress were achieved in the CD.

The problem, Mr. President, is that it is simply very unlikely that such progress can be achieved in the CD. I have sat there in frustration in those meetings and recognized the great problem we have in seeing any real action come out of that forum. Ambassador Gerard Smith, our former chief SALT negotiator, addressed this point when he testified before the Foreign Relations Committee last week. As Ambassador Smith said, "with all due respect for that body, it is not the place where serious negotiations take place."

Mr. President, the United States is committed in the 1963 Limited Test Ban Treaty and the 1968 Non-Proliferation Treaty to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time. The past five administrations have strongly supported the attainment of CTB. It is time, past time, for the United States again to get serious about this goal. I urge the adoption of the amendment.

AMENDMENT NO. 3263

(Purpose: To provide for communications from the President on the issue of verification)

Mr. NUNN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN) proposes amendment numbered 3263.

Mr. NUNN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 17, insert the following: in section (b)(1) after the word "ratification": with a report containing any plans the President may have to negotiate supplemental verification procedures, or if the President believes it necessary, any understanding or reservation on the subject of verification which should be attached to the treaty.

Mr. NUNN. Mr. President, I shall read the amendment myself because I do think it speaks for itself.

I think the Senator from Massachusetts and the Senator from Maryland have basically a sound approach here. I think they have a good amendment. I am concerned about the problems that have been raised in the past on possible verification problems with peaceful nuclear explosions and the Threshold Test Ban Treaty. Therefore, this amendment attempts to address those problems without disrupting the basic thrust of the amendment.

What the amendment basically says is that when the President submits the treaties which have been signed but not ratified, he will also submit a report containing any plans he may have to negotiate supplemental verification procedures, or if the President believes it necessary to submit any understanding or reservation on the subject of verification which he believes should be attached to the treaty.

Mr. President, this will take care of the problems, as I see them. I do not know precisely what the verification problems are today. I have had briefing on this subject, and I know the Senators from Massachusetts and Maryland are up to date on it and they have assured the Senate that there are new verification methods brought about by technological advances which will enable us to do a better job of verifying than we could have done several years ago.

I do believe we should give the President the Senate's advice, that if he does think there are continuing verification problems then he should say so, and if he thinks it is essential we have some form of understanding or reservation attached to the treaty that will be a matter for the Senate to decide in the final analysis but also he should submit that understanding or reservation.

I am hopeful we have made enough progress, technologically speaking, so that will not be necessary. I am hopeful that reservations and understandings will not have to be attached to the treaty. That will be a matter for Senate deliberation. That will be a matter for Senate hearings and in the final analysis of this body.

There are provisions in the treaties, as I understand them, and the Senator from Massachusetts could correct me if I am in error, there are provisions in the treaties themselves which provide after the treaties are ratified for a continuing dialog on verification problems, and if we have made as much technological advance as some believe, it would be my hope that we would be able to ratify the treaties without understandings or reservations, that even have the negotiations occur under the provisions of the treaties for any supplemental verification procedures that may be necessary.

I know that will not be easy. I know that getting verification procedures worked out with the Soviets is probably the most difficult part of arms control and probably the most important part if we are going to be assured that the treaties will be agreed to.

So I do not diminish the importance of this. That is why I have said in this amendment that, if the President has reservations or understandings that he believes are necessary, then he should suggest those reservations or understandings to the Senate when he submits the treaties.

I think it is time that we address these treaties, that we come to grips with whether there are indeed verification problems that cannot be solved so that we turn our attention to this. It is very difficult to convince the world that we are serious about arms control when we have treaties that have been signed now by three Presidents, one by President Ford, and I believe that was the Peaceful Nuclear Explosion Treaty in 1976, one by President Nixon, the Threshold Test Ban Treaty in 1974, and one before SALT II by President Carter, and we are abiding by all of these. We are not breaching them. But we do not ratify them and the world looks on us as being rather spasmodic in this area when we have two Republican Presidents and one Democratic President, all elected by the American people, all negotiating, I am sure, in good faith, all having a number of defense experts and scientific experts by their side when they sign these treaties, and yet we do not ratify them nor even debate them seriously.

It is time for that debate to occur. It is time for the President to submit these treaties to the Senate. It is time for us to take the time necessary to determine whether indeed we can verify. It is time for us if we think that there are verification problems to attach whatever understandings or reservations are necessary so that we at least then will have gone through our duty in the ratification process, we will have ratified the treaties, if necessary with understandings or reservations, and then the ball will be back in the court of the President and the Soviet Union to negotiate further procedures as necessary.

So if the authors of this amendment could accept this amendment or if the Senate decides to accept the amendment, then I would join with the Senator from Massachusetts, the Senator from Maryland, and their numerous cosponsors in support of this amendment, and I would do so with enthusiasm. I think it would be a strong message to the White House. I think it would be a strong message to the world, and I think it would really be saying, in effect, the Senate is ready to do its duty in a thoughtful way with full information, with whatever the President may deem necessary in terms of additions and we will turn our attention to that subject.

So I do not know whether this will solve the problems of everyone with this amendment, but it does solve my problems, if my amendment is agreed to, and I hope it is.

SEVERAL SENATORS addressed the Chair.

The PRESIDING OFFICER (Mr. HUMPHREY). The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I am wondering whether it is possible for the proponents of the amendment, which is the current unfinished business, to modify their amendment.

Mr. NUNN. Mr. President, before the Senator asks for modification, I think the Senator should consider whether he might want, and it depends on when the final vote on this will occur, a rollcall on this amendment so that everyone who is going to vote on the final amendment as modified, if modified, would know that it has been modified.

I would think that from the point of view of getting additional votes that might help. I am not looking for an additional rollcall, but it might be appropriate to have a rollcall on this before the final rollcall, so maybe the Senator from Massachusetts could indicate to the managers of the bill at what point either he or the Senator from Maryland would be willing to deal with this subject on a final rollcall if the modification is accepted.

Mr. KENNEDY. Mr. President, I wish to respond to that inquiry. I am concerned at this time about the parliamentary situation, and that is why I inquired whether it was possible to modify the amendment. I believe that it is appropriate to take into consideration what are the legitimate concerns of the Senator from Georgia on the whole issue of verification.

I interpret the amendment of the Senator from Georgia as really making explicit what is already implicit in the consitutional procedures regarding treatymaking.

It seems to me, Mr. President, that this body would want to know the views of the President on the issue of verification of the two standing treaties.

As I said, I do think, for many in the Senate, this amendment expresses explicitly what I think many of us understand implicitly. So I would, at an appropriate time, be willing to accept the amendment and hope that those Members of the Senate who are concerned about verification would feel that we have made an important step forward on this issue.

I would also like to indicate to those that are supporting the amendment of the Senator from Maryland and myself that I think that any President who wanted to send reservations on any agreement to the Senate would be conforming to the Constitution and to the shared treatymaking responsibilities under the Constitution between the Senate of the United States and the Presidency. I think that this amendment makes this procedure more explicit with regard to these two treaties.

I would hope to be able to accept this modification unless the Senator from Georgia would like to proceed in some other way. I just do not want to get caught in a parliamentary situation where we are voting on the underlying amendment, which does not have the particular language of the Senator from Georgia, and I would like to make sure that if we are going to have an up-or-down vote or a tabling motion, it will include the language of the Senator from Georgia.

Mr. TOWER. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. TOWER. I am perfectly willing to have the Senate act first on the amendment of the Senator from Georgia before I might take any action to table. I have not made a determination in my own mind whether I will move to table or let us go to an up-or-down vote.

Let me put it this way: I will not attempt to table the amendment in the first degree before the Senator from Georgia's amendment is acted on.

Mr. NUNN. I think that is a very gracious gesture by the chairman. I would like to facilitate the full debate on this amendment to anyone else who wants to come over and debate. I do not want to cut anyone off. I do not want a rollcall vote on this amendment to interfere with the debate if that debate is going to continue at this point in time.

On the other hand, I would like to have a rollcall on that if the authors believe it would help in the final analysis and Senators would be conscious of what the amendment contains. If not, I would be perfectly willing to have it accepted and modified. I would, in the final analysis, like to expedite this debate any way I can.

Mr. TOWER. Let me say that I am perfectly willing to have the debate proceed on the amendment of the Senator from Georgia. The only circumstance which I would move to table the amendment in the first degree is if we got strung out for a long time on the debate and into a lot of irrelevancy, or something like that. Then I might be constrained to go ahead if we cannot get action on the amendment of the Senator from Georgia.

Mr. NUNN. Mr. President, maybe the authors could give us some indication about how much longer they would like to debate this. I would think maybe the chairman would be ready to bring all of this to a conclusion. I do not know about the authors or whether there would be any more speakers or not.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. KENNEDY. Mr. President, I think I had the floor and I yielded to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. I would be glad to yield. I want to thank the Senator from Texas for his statement. I am happy to yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I simply wanted to concur with what the Senator from Massachusetts has said. As one of the many sponsors of this amendment, of the underlying amendment, I welcome the contribution that has been made by the Senator from Georgia. I think it does express, in a more clear and specific manner, the intent that the authors of the amendment had in the first place. He has made a significant contribution toward the development of this whole concept. I not only have no objection to accepting the amendment, I would embrace it and thank him for it.

Mr. KENNEDY. Mr. President, I would be willing to accept the amendment at this time on a voice vote, if the Senator from Maryland and the Senator from Georgia agree.

Mr. NUNN. Will the Senator from Massachusetts indicate his general idea about when we will vote? Let us assume we voice voted this amendment. At what stage would the Senator be prepared to go to a vote on his amendment?

Mr. KENNEDY. Mr. President, I am prepared to go right away if it is agreeable to the managers of the bill.

Mr. NUNN. In that case, I will go any way the authors like to go. If they would like a rollcall on my amendment, I would accept one. If they prefer a voice vote, that is fine.

Mr. TOWER. Mr. President, I hope we could voice vote this. I do not know if there is any objection to that. We have had complaints about these 97-to-nothing votes.

Mr. NUNN. I may have one closer later in the afternoon. It might be gratifying to pass one before we get on that more contentious amendment. But I would defer to the chairman and the authors as to whether they want a voice vote on this amendment.

Mr. WILSON addressed the Chair.

Mr. KENNEDY. Mr. President, will the Senator from California permit us just to voice vote this particular amendment to the underlying amendment?

Mr. WILSON. I have no objection whatever to a voice vote. I do wish to be heard before the vote on the underlying amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Georgia [Mr. NUNN].

The amendment (No. 3263) was agreed to.

Mr. WILSON. Mr. President, I rise to oppose the Kennedy-Mathias amendment on two grounds. The first relates to the unfortunate necessity of keeping our technology in tune for as long as we are regrettably committed to dependency upon the deterrent of mutually assured destruction; or, to put it another way, the use of offensive weapons to threaten retaliation against a first strike by the Soviet Union.

The second ground upon which I object relates more broadly to arms control policy. But I will get to that.

Dealing with the first, let me share with the Members of this body excerpts from a letter that I received from the Associate Director of the National Security Programs at Los Alamos National Laboratory, C. Paul Robinson:

> Thank you for your inquiry concerning aspects of the comprehensive test ban treaty and the threshold test ban treaty issues that have been raised by the proposed Kennedy-Mathias amendment. Some aspects, such as the fragile nature of our experience base and our dependence on experienced people, Dr. Mark Albrecht of your staff saw and heard during his recent visit to the Nevada test site. Human judgment kept honed by the information that accompanies testing is critical for: maintenance of stockpiled weapons; design of new warheads optimized in weight, size and handling criteria to today's delivery system requirements; exploration of new weapon concepts that may open new strategic options or help us avoid technical surprise from developments of others. Given these technical considerations, I can say that a CTBT would have far reaching consequences.
>
> As long as our Nation is dependent on nuclear weapons as part of the strategic deterrent, a CTBT is not in our national security interest.
>
> One of our concerns in the Kennedy-Mathias amendment "Dear Colleague" letter was the suggestion that a limited duration treaty would provide insight into reliability concerns; these concerns could be evaluated before making the treaty permanent. Because of the critical role of human judgment in evaluating confidence and reliability and the fact that this judgment will be eroding as the treaty progresses, we in the technical weapons community are uncertain as to how we can respond to the issues raised by a limited duration trial. President Kennedy in his March 2, 1962, speech addressed many of these issues as he announced resumption of atmospheric testing by the United States after a testing moratorium with the Soviets. These issues remain today; particularly since present day verification of a CTBT will have many parallels to the uninspected moratorium of the 1958-61 timeframe.
>
> With reference to the TTBT, your inquiry stimulates two observations. First, I can assert that we have been complying with the Threshold Test Ban Treaty. We cannot assert that the Soviets have complied with the treaty. The inherent inaccuracy of present TTBT verification technology involves uncertainties of a factor of two. Second, the issue of ratification contains a policy element that I am not prepared to address. Our role at Los Alamos has been to provide methods of enhancing the monitoring capability of the 150 kt threshold. Although we have developed methods to improve verification accuracy, we understand the Soviets have declined to discuss this with us.

Mr. President, the reference made to President Kennedy's speech to the American people on March 2, 1962, at the time he announced regretfully the resumption of nuclear testing by the United States in response to the violation by the Soviet Union of the moratorium into which they entered with us I think is worthy of not brief attention, but careful study. I will excerpt it only briefly.

Reinforcing the concerns that have been expressed by Mr. Robinson in his letter to me, President Kennedy told the American people:

> The testing of new weapons and their effects is necessarily a part of that research and development process. Without tests—to experiment and verify—progress is limited. A nation which is refraining from tests obviously cannot match the gains of a nation conducting tests. And when all nuclear powers refrain from testing, the nuclear arms race is held in check.
>
> That is why this Nation has long urged an effective world-wide end to nuclear tests.

It is why, Mr. President, this Nation in good faith if somewhat naively entered in the moratorium with the Soviets in 1958 and what we found is that they were secretly plotting to violate that agreement at the very time they made it.

The President of the United States in 1962 with the deepest possible regret evident indicated that "Every alternative was examined. Every avenue of obtaining Soviet agreement was explored. We were determined not to rush into imitating their tests. And we were equally determined to do only what our own security required us to do."

Mr. President, it is with the deepest regret that all of us on this floor are compelled not to note, but to assert very clearly that what our security requires us to do is to continue until the Soviets are forthcoming in a way that they have not been, to continue to pursue the dual track of reliance upon a reliable nuclear capability at the very time that we offer incentive to the Soviets to come to agreement with us for arms reduction that will permit the sanity to prevail in their capital, as well as in ours, ultimately reduce the level of anxiety, and the level of expenditures required to sustain these arsenals.

But unfortunately, we know that the record is precisely the reverse. They have not been forthcoming. They have rejected the START initiative. They rejected the initiative of nuclear build-down proposed by my colleagues, Senator COHEN and Senator NUNN. They have rejected virtually every reasonable approach, every initiative taken to responsible, verifiable arms reduction with respect to these specific proposals for the threshold test ban and the comprehensive test ban. Once again they have refused to be engaged in serious, honest, good-faith discussions of verification that would permit us to go forward. And so now, we are again being asked to trust them.

Mr. President, I do not see how it is possible to trust people with that record or to put it in the words of the Wall Street Journal in an editorial of July 22, 1982:

> At some point we are going to have to stop kidding ourselves.
>
> The administration's critics are saying that its deferral of any comprehensive test ban talks mean it is not serious about arms control. But the opposite is true—a serious approach to arms control demands a refusal to negotiate new treaties while old ones are being broken. The question that needs to be asked it how, with the Soviets developing biological weapons and supplying "yellow rain" to their puppets, the administration can justify any arms negotiations at all.

The editorial cites the fact that we now have in hand spectacular Soviet violations of the biological weapons convention. It cites that the only reasonable conclusion has to be that the Soviets have systematically violated the threshold test ban as well.

Mr. President, we share a motivation to bring about arms reduction. We differ markedly, strongly, on how that is to be done. But I have to say that presently I think reliance unilaterally upon the good faith of the Soviets would be a tragic mistake—indeed, a dereliction. We are not relieved by the fact that we cannot trust the Soviets in dealing with them. We are in no way exempted from dealing with them. But we must do so soberly, responsibly and not worry about verification tomorrow. Scarlett O'Hara could worry about tomorrow. We have to worry about tomorrow today.

Let me say, Mr. President, that this good intention could have I think the most perilous consequences. We can no longer afford to be charitable. We can no longer afford to be naive. To make the progress that all Senators wish on arms reduction, we must pursue vigorously, and relentlessly the kind of arms negotiations with which this administration has made its record.

I ask the defeat of this good intention, and I relinquish the floor.

Thank you, Mr. President.

Mr. MATHIAS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EAST addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EAST. Mr. President, the Senate is anxious to get on with its business. I shall be very prompt and to the point. I would like to make a few observations to put this matter in perspective. I do wish to speak against the underlying amendment.

First, let me say my principal objection, as I have listened to the debate on this amendment, and as I have been here in the Senate in recent days on the Department of Defense authorization bill, is that there is constantly being raised pressure on the President of the United States to do something. There seems to be a total absence of understanding that it is the Soviets who are the recalcitrants. Let us keep that in mind. They have cheated on previous tests. They continue to take advantage of the treaties that already exist. They continue to move ahead technologically in these areas and conventional areas. They make advances on the ground in Central America, Africa, Asia, and the Middle East. Never do I ever hear anyone in here raising the issue of why not put pressue on the Soviets? It is always on the President of the United States.

I think there is a loss of focus. We cannot see the forest for the trees.

The United States has only 5 percent of the world's population. If we do not maintain our technological advantage and we continue to move down, down, down in a form of unilateral disarmament, ultimately we will lose. Our ace in the hole is our technological capability. The Soviets know it, and our enemies in the world know it. Our allies know it is the key that we have. But constantly there is the pressure in this assembly and in this Congress that the President is not doing enough, that we are not doing enough.

But I have yet to see an amendment, I have yet to see a serious debate, raising the question, why do the Soviets not do something?

I do not even know who you negotiate with over there from day to day, month to month. First it is Brezhnev, and then he is too old and gone. Then it is Andropov, and then he is too old and gone. Chernenko—we do not know what sort of health he is in.

Our President is in excellent health, and he has indicated a desire to go and to engage in good-faith negotiations on this and every other matter. What more can you ask for?

If I sound like I am a little weary in spirit and weary in flesh, I am. I think we have lost sight again of the forest for the trees.

Senator STENNIS told me the other day when he was elected in 1948, they were in session for 6 months and voted 72 times.

Last year, we were in session for almost 3 months longer and we voted 700 times.

I do not even know what this matter has to do with the Department of Defense authorization bill. It is a foreign policy matter. It ought to be taken up on a Foreign Relations Committee bill.

We are so bogged down and strangled in irrelevant amendments it is enough to make a grown man cry. And this is another classic example of it. It is irrelevant; it is impertinent; it is not germane. On top of it, I say get off of the President's back and get on the back of whoever is in charge now—apparently Chernenko. At least, the last I knew he was.

Senator GOLDWATER was correct last night, and I will end on this note. The President is the Commander in Chief. Under the separation of power, he has the primary responsibility for the security and the well-being of this country. As Thomas Jefferson put it, the Executive must deal with foreign policy altogether. Thomas Jefferson may have slightly overstated the case, but he was making the point the President must make the initiatives; we must give him the elbow room. What we do is give advice and consent under treatymaking and related areas.

But I find this counterproductive to the very thing the proponents seek—and that is legitimate, real, serious, responsible arms negotiations—this constant pressure on the President of the United States.

I think the underlying amendment is well intentioned but ill conceived, counterproductive to the well-being and the security and the freedom of this country and the West generally. I am going to vote against it, and I urge my colleagues to do likewise.

I thank the manager of the bill, the distinguished Senator from Texas, for allowing me three moments here to speak prior to his vote.

I yield the floor, Mr. President.

Mr. TOWER. Mr. President, we have had a very good debate, I think, on this amendment. Good points have been made on both sides. I appreciate the effort of the Senator from Georgia to improve what I consider to be a somewhat dangerous amendment, but I do not think it has improved it enough. Therefore, I feel constrained to oppose the amendment even as amended.

Although I do appreciate the efforts of the Senator from Georgia, I am not satisfied that we can, within the context of the present time and the state of the art, get the kind of verification required before a treaty is ratified.

I have already enumerated my reasons for opposing this amendment, but I think it was stated far more eloquently than any of us could by a very great man, who made a statement in March 1962, when he was explaining the requirement for the resumption of testing after Soviet testing resumed. I think the words that he spoke there are as pertinent today as they were then. He had a way of making statements that were timeless, and I would like to read the remarks of John F. Kennedy:

> We now know enough about broken negotiations, secret preparations, and the advantages gained from a long test series never to offer again an uninspected moratorium. Some may urge us to try it again, keeping our preparations to test in a constant state of readiness. But in actual practice, particularly in a society of free choice, we cannot keep top-flight scientists concentrating on the preparation of an experiment which may or may not take place on an uncertain date in the undefined future. Nor can large technical laboratories be kept fully alert on a stand-by basis waiting for some other nation to break an agreement. This is not merely difficult or inconvenient—we have explored this alternative thoroughly, and found it impossible of execution.

Mr. President, I move to table the amendment of the Senator from Massachusetts.

Mr. MATHIAS Will the Senator withhold for just a second?

Mr. TOWER. I will, Mr. President.

Mr. MATHIAS. Mr. President, the distinguished Senator from Texas is also a distinguished historian, so he is aware that he has posed an imponderable question. He notes that Russian arsenals have grown since the first arms control agreements were concluded. That raises the question of "what if"—what if no arms control agreement had existed? There is no answer to "what if" questions, but my guess is that there would be more missiles and less information about them.

The Senator from Texas says that he thinks the amendment presents "enormous risks." I agree that enormous risk is present, but in my judgment the risk lies in not adopting the amendment. To stand silent while we are locked in a fatal cycle of escalation and proliferation is the greatest danger. The amendment offers a prudent course to a safer world. It restores the United States to its proper place in the search for stability and peace.

The Senator from Texas has referred to the amendment as "unilateral," but in so doing he ignores the fact that it asks no more or no less of the United States than it does of the Soviet Union. It is based on a principle of neutrality. It will only become operative if both parties are in agreement and if it is in the mutual interest of both.

It is said in opposition to the amendment that it flies in the face of experience with Russian compliance. The record on that subject is too well known to report here. Let me only say that with reference to the Threshold Test Ban Treaty there are seismic anomolies that are known to exist. The Joint Chiefs knew about this factor when they endorsed the treaty. It is commonly called the factor of two and means that a 150-kt test could be recorded as anywhere between 75 kt and 300 kt. But this element was fully considered at the time the treaty was negotiated. It was not judged to be an insurmountable problem.

The distinguished chairman of the Armed Services Committee has called the evidence ambiguous, and to the extent that the factor of two raises questions, he is right. But the ambiguities are within the limits of tolerance as determined by our best experts on the subjects.

With reference to the resumption of negotiations for a Comprehensive Test Ban Treaty the chairman refers to risks. He does not mention benefits. In all the serious decisions of life the pros and the cons must be weighed and evaluated. In my opinion there are some risks in making any kind of agreement, but that in this case the benefits are more important. The arms control benefits would be significant, but there would be other advantages. It would have a political impact that would surely be positive. Even more important, it would respond to the need of humanity for some hope that the scourge of war may be banished from the Earth.

Mr. TOWER. Mr. President, I renew my motion to table the amendment of the Senator from Massachusetts.

Mr. KENNEDY. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Massachusetts. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Colorado [Mr. HART] is necessarily absent.

The PRESIDING OFFICER (Mr. ABDNOR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 34, nays 65, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS—34

Abdnor
Armstrong
Baker
Boschwitz
Cochran
Denton
Dole
Domenici
East
Garn
Goldwater
Grassley
Hatch
Hawkins
Hecht
Heflin
Helms
Jepsen
Laxalt
Long
Lugar
McClure
Murkowski
Nickles
Quayle
Roth
Stevens
Symms
Thurmond
Tower
Wallop
Warner
Wilson
Zorinsky

NAYS—65

Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Cranston
D'Amato
Danforth
DeConcini
Dixon
Dodd
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gorton
Hatfield
Heinz
Hollings
Huddleston
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Lautenberg
Leahy
Levin
Mathias
Matsunaga
Mattingly
Melcher
Metzenbaum
Mitchell
Moynihan
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Randolph
Riegle
Rudman
Sarbanes
Sasser
Simpson
Specter
Stafford
Stennis
Trible
Tsongas
Weicker

NOT VOTING—1

Hart

So the motion to lay on the table amendment No. 3262, as modified, was rejected.

Mr. TOWER. Mr. President, have the yeas and nays been ordered on the amendment of the Senator from Massachusetts?

The PRESIDING OFFICER. They have not.

Mr. TOWER. I suggest that we can dispose of the amendment of the Senator from Massachusetts by voice vote.

I yield the floor.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. Those who wish to converse will please retire to the cloakroom.

Mr. SYMMS. I thank the distinguished Presiding Officer for trying to achieve some order.

Mr. President, I should like to ask a question. I was prepared to ask the distinguished Senator from California this question as he was giving what I thought was some very cogent arguments prior to the vote. These two questions deal with the Threshold Test Ban Treaty and resumption of the negotiations for the test ban.

The question I wished to ask the Senator from California, and it may be that the disinguished chairman of the Armed Services Committee would wish to comment also, is this: Have the Soviets quite recently been venting nuclear radioactive debris from underground nuclear weapons tests outside their borders? I see this chart down here on the floor that says that.

Is that a fact? If so, I wish to know about that. And is this vote that we are about to take here voting for something that they are quite recently violating? That is really my question.

Mr. WILSON. I will have to say to my friend from Idaho that I really do not believe that an answer can be given to him in open session.

Mr. SYMMS. In other words, we are getting prepared to vote for something and the Senator cannot answer that question.

Mr. WILSON. That is my feeling; yes.

Mr. McCLURE. Mr. President, will the Senator from Idaho yield on this point?

Mr. SYMMS. I am happy to yield to my distinguished senior colleague.

Mr. McCLURE. I think the Senator from California is alluding to the fact that indeed this is classified information bearing upon this subject.

Mr. SYMMS. Mr. President, may we have order? I cannot hear back here.

The PRESIDING OFFICER. The Senator from Idaho is correct. The Senate is not in order. The Senator will suspend until we get order.

The Senator may proceed.

Mr. McCLURE. In addition to the classified information, there is a wealth of unclassified writing that very clearly identifies the venting that has crossed national borders in violation of existing treaties.

So I think the answer can be given that in addition to the classified information, there is unclassified information which very clearly identifies the answer to the question is in the affirmative. Yes; the Soviets have violated the 1963 Limited Test Ban Treaty by venting beyond their borders.

Mr. SYMMS. The other question I wish to bring up, and I thank the Senator from Idaho for that, is: Have the Soviets quite recently conducted underground nuclear weapons tests with an estimated yield above the 150-kiloton threshold in violation of the threshold test ban?

Mr. WILSON. Again, I have to say to my friend from Idaho, I think to answer him as directly and responsibly as he would wish, we would require a closed session, because the answer, I believe, is classified.

Mr. SYMMS. I thank the distinguished Senator from California very much. I think that the point I wish to make here to my colleagues is that the proponents of this amendment are asking us to vote on something that we require a closed session for if we can get at these answers. If the answers to the questions are in the affirmative, then what we are saying is that we want to move forward on some kind of Threshold Test Ban Treaty, as Senator East pointed out, I thought ably, when we know that the Soviets are in violation of the treaty.

I just cannot believe that any Member of this Senate can be comfortable with the Senate voting on this amendment without these questions about quite recent Soviet violations of the LTBT and the TTBT being answered.

So, in order to protect us from this, Mr. President, I wish to send a very simple substitute to the desk in lieu of the present language that is on the floor, for myself, Senator Wallop, Senator Denton, and Senator Helms.

AMENDMENT NO. 3264

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

> The Senator from Idaho (Mr. Symms), for himself, Mr. Wallop, Mr. Denton, and Mr. Helms, proposes an amendment numbered 3264.

Mr. SYMMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> Notwithstanding any other provision of law or of this Act, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating.

Mr. SYMMS. Mr. President, I shall read the language, it is very simple, so all Members will hear, and then I will be happy to yield to my colleague.

> Notwithstanding any other provision of law or of this Act, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating.

It is very simple and very easy to understand. I think its passage by the Senate would take away some of the concerns that I have with the discussion we are having here today.

I yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator for yielding.

I think the question that was asked the Senator from California with respect to the Soviet underground nuclear explosions above the threshold test ban level needs to have two additional explanations. I think the Senator is correct as far as his answer went. But there is an important chart at the rear of the room which is an unclassified chart.

The question is: What is recently, very recently? That chart goes up to the latter part of last year, if I recall correctly, and it shows violations or suspected violations of the yield limit for the underground tests through the end of 1983, and a consistent pattern is shown that leads right up to last fall and does not purport to go beyond that.

The question Senators need to ask is whether there have been quite recent Soviet TTBT violations?

The second comment that is necessary with respect to that chart or any other discussion of the violation of the limits of the threshold test ban is that it is based upon seismological evidence and seismologists are not in total unanimous agreement as to what their technical evidence means, but the consensus, and if we use in terms of how sure you are, not unanimous, but how sure you are, you can say with certainty above the 90 percentile range that those tests did occur at levels above that limit stated in the proposed treaty.

Mr. SYMMS. I thank the Senator very much for that comment. I hope my colleagues who are not here in the Chamber are aware of the significance of what Senator McClure has just said.

What we are saying is that there is a high probability that there are violations taking place here, and yet we are engaging ourselves in taking the time of the Senate to discuss this matter. I was disappointed the way the vote came out on SALT II yesterday. But I think it would be much better for the Senate to consider some of the most recent comments that the President has said, and I think the President, of whichever political party, does not make statements with respect to foreign policy, with respect to issues of this gravity, without a great deal of careful consideration and thought.

On January 23, 1984, I quote President Reagan. He said:

> The Soviet Union is likely to have violated the nuclear testing yield limit of the Threshold Test Ban Treaty.

There have been over 14 Soviet underground nuclear weapons tests since 1978 with a yield estimated, as Senator McClure just said, to be over the 150-kiloton threshold. There may have been several more recently, and some reportedly have had yields estimated as high as 300 and even up to 600 kilotons.

I invite my colleagues to look at this unclassified chart that is back here at the back of the Chamber.

I think it would make a lot more sense for us to have the Foreign Relations Committee and the Energy Committee have new hearings on this Threshold Test Ban Treaty, especially with respect to the verification aspects, before we cast a vote and have it spread around the wire services of the world and all the newspapers of the world that the U.S. Senate takes the position to do this, to do that, when it does in fact give the appearance that we are rewarding the Soviets for violations of the numerous bilateral treaties that we have been in full compliance with ourselves.

I urge my colleagues to adopt this substitute and then it will make it clear that the United States is going to be very careful in its consideration on that.

Mr. President, I ask for the yeas and nays.

I withhold that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I ask to modify my amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. SYMMS. I send the modification to the desk. I say to my colleagues that this modification simply, instead of making it a substitute for the Kennedy amendment, makes it added to the end of the amendment.

The PRESIDING OFFICER. The amendment is so modified.

The amendment No. 3264, as modified, reads as follows:

At the end of the amendment add the following:

"Notwithstanding any other provision of law or of this Act, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating."

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

Mr. NUNN. May I ask the Senator, before he gets the yeas and nays, does the Senator believe the yeas and nays are necessary? It seems to me, as long as it is not a substitute, it is an addition, perhaps the yeas and nays could be avoided.

Mr. SYMMS. If the Senator is willing to accept the amendment——

Mr. NUNN. I would suggest we could save 20 or 30 minutes. If it is not a substitute but it is simply adding, I think the authors would want to consider it.

Mr. SYMMS. It might save some time to have a vote on it and settle it.

Mr. NUNN. Well, a rollcall takes about 30 minutes. It will be 3 o'clock before we get on anything else if we have a rollcall.

Mr. President, I would like to suggest the absence of a quorum; the Senator has the floor, if he does not want me to, I will not suggest the absence of a quorum.

Mr. SYMMS. Why do we not let the Senator from Maryland speak? He wants to speak on the amendment. I yield the floor.

Mr. MATHIAS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. BUMPERS addressed the Chair.

Mr. MATHIAS. Mr. President, did the Senator from Arkansas wish to ask a question?

Mr. BUMPERS. I had a question for the Senator from Idaho on the amendment. I am going to have to leave and I would like to ask him a question.

Mr. MATHIAS. Mr. President, I yield, without losing my right to the floor, so that the Senator from Arkansas can pose his question.

The PRESIDING OFFICER. Without objection.

Mr. BUMPERS. Mr. President, if I could have the attention of the Senator from Idaho for just a moment. Under the Senator's amendment, which looks fairly straightforward, who would make the decision as to when the Soviets were in violation?

Mr. SYMMS. The President of the United States.

Mr. BUMPERS. Does that mean the President of the United States could unilaterally abrogate any treaty we have with the Soviet Union if he just declared they were in violation?

Mr. SYMMS. I would say that the language is very straightforward. I would not say he could abrogate it.

Mr. BUMPERS. That is the interpretation I put on it.

Mr. SYMMS. I would say the President of the United States could certainly bring this into the Senate for consultation. The fact is, that is one of my complaints about voting on this. I do not think Senators are aware of just how many violations the Soviets are doing today. We cannot talk about it in open session.

Mr. MATHIAS. Mr. President, the Senator from Arkansas has made the very point that I think is important to make; that in all these treaties we have a procedure by which violations can be addressed.

I think we are all in sympathy with the spirit in which the Senator from Idaho has offered this amendment. I do not think there is anybody in the Senate, and I think very few people in the country, if any, who would contemplate that we should be bound by treaties that have been violated by either party. That is unthinkable. We would all agree with that.

Mr. GOLDWATER. Will the Senator yield?

Mr. MATHIAS. I yield for a question.

Mr. GOLDWATER. The question just asked as to whether or not the President had a right to abrogate—I do not think he has the right. But President Carter did abrogate a mutual defense treaty. I think it is wrong, but the court ruled the other way.

Mr. MATHIAS. I thank the Senator from Arizona. Going back to the Antiballistic Treaty, concluded in 1972, there was a provision in article 13 of that treaty for the establishment of a formal consultative commission. And when the President of the United States is convinced that there is a violation, the proper and established procedure is for him to report that violation to the consultative commission. If the violation is, in fact, found to exist, and if it is not addressed and remedied, then the President can give 6 months' notice under that treaty that the United States will withdraw. That is built into the treaty.

So what the Senator from Idaho proposes is, in fact, already the law of the land, because it is embodied in a treaty which has been negotiated by the President of the United States and ratified by the Senate of the United States. The law of the land presently provides for the suspension of treaties when they have been violated. But there is a way to do that; a proper way to do that.

One cannot just walk out in the street and say we are calling off all bets, because, if one did, as the Senator from Arkansas has just suggested, we would have a chaotic situation in which no nation would want to negotiate any kind of an agreement with the United States because they would be on notice that when we want to, we will simply suspend the terms of the agreement.

Mr. McCLURE. Will the Senator yield on that point for a question?

Mr. MATHIAS. Yes; I yield for a question.

Mr. McCLURE. I thank the Senator for yielding. My understanding of the general law of the land is exactly as the Senator from Arizona stated it. Whether I like it or not or agree with it or not, that is the general law of the land. Certainly, you do not need a provision in this act to make it the law.

The other side of that, the flip side of that, if I understand it correctly, is that this provision could not override the provision of a treaty. If, as a matter of fact, the treaty has a provision that would be contrary to this statement as offered by my colleague from Idaho, the treaty provision would control and this would not control; am I not correct?

Mr. MATHIAS. The Senator is correct.

Mr. McCLURE. If the Senator will yield further, without my abusing him of having yielded to me, the statement that if there is a violation of the treaty, we, in effect, are not bound by the treaty flies in the face of the fact that we have verified violations of existing treaties and the treaties are still in force.

Mr. MATHIAS. Well, of course, I would have to take strong exception to that statement. The President of the United States has been very careful and very measured in the statements that he has made.

Mr. McCLURE. Is the Senator from Maryland saying to me that the statement of the President of the United States is not to the effect that there have been violations? If the Senator from Maryland is saying that, then he has not been listening very carefully to what the President of the United States said.

Mr. MATHIAS. The President has used a very important adjective. He said there has been "likely" violations.

Mr. McCLURE. In some respects.

Mr. MATHIAS. Of the Threshold Test Ban Treaty.

Mr. McCLURE. All right.

Mr. MATHIAS. Now, likely violations of the Threshold Test Ban Treaty raise a very serious technical question. And the Senator from Idaho, with his experience and expertise in matters of mining and geology, is a greater expert than I, because it involves a seismic anomaly that introduces the famous factor of two. In other words, a 150-kiloton explosion might be recorded as 75 kilotons or it might be recorded as 300 kilotons. It is my understanding the higher the yield, the greater the likelihood that the factor of two will operate; so that a 300-kiloton explosion could be recorded as 600.

Mr. McCLURE. Will the Senator yield?

Mr. MATHIAS. I yield for a question.

Mr. McCLURE. I thank the Senator for yielding.

The Senator is correct with respect to what the President has said about the Test Ban Treaty, the Threshold Test Ban Treaty, but my remark was not simply to that, nor was his, if I understood it correctly, with respect to whether or not a treaty is in force even after it has been violated because there is positive evidence of violation of treaties which are still in force and have not been abrogated. And the Senator, if I understood him correctly, made the statement that if they are violated, then of course we do not observe them.

Mr. MATHIAS. What I said was when they are violated there are procedures for terminating, suspending, and those procedures are the ones that I think need to be observed if the sanctity of the system of treaties not only in this area, but in commercial treaties, and every other treaty is to survive. We have to have certain rules of conduct, and we have to observe those rules of conduct.

Mr. McCLURE. The Senator does agree with the Senator from Idaho, I believe I understood him correctly, saying that your interpretation of the law is the same as mine; that, if there is a procedure set forth in the treaty, that procedure in the treaty would control even in the face of this provision offered by my colleague from Idaho.

Mr. MATHIAS. Yes.

Mr. McCLURE. Therefore, this provision offered by my colleague from Idaho could not be to make uncertain what the treaty is, or what we are bound to do under the treaty, because it could not by its own terms disturb the treaty provisions.

Mr. MATHIAS. Being a good lawyer, the Senator knows the Constitution provides that treaties once fully ratified do become the supreme law of the land.

Mr. McCLURE. That is correct.

Mr. MATHIAS. But that is not a good reason to adopt language on a bill which we know is either redundant, unnecessary or which may just be wrong. And, therefore, I would be constrained to oppose the adoption of this amendment. I think it raises uncertainties and doubts where uncertainties and doubts should not exist, and I hope that the Senate would defeat this amendment, and allow the original amendment to proceed to adoption promptly.

Mr. WARNER. Mr. President, if I might pose a question to my distinguished colleague, the proponent of this amendment. Would you define the last two words "is violated"? What standards do you use to determine whether or not there has been a violation?

Mr. SYMMS. I think the President would have to make that determination.

Mr. WARNER. What if the Standing Consultative Commission were to make the interpretation and the President were to disagree with that? Is he the final authority in terms of the legislative history of this proposed amendment?

Mr. SYMMS. I would say in my opinion, yes. You have to have the buck stop somewhere, as Harry Truman said, and in this case the Commander in Chief who has the constitutional responsibility for our security would ultimately have to make that decision.

I would say this to my good friend from Virginia. I do not think he can make that decision without sound and credible evidence because he would sooner or later be, I think, confronted with the Senate and the Congress for advice and consent. Our President would not be able to just haphazardly declare they were violated. He would have to have credible intelligence evidence of Soviet arms control treaty violations.

Mr. WARNER. I will not suggest it has been made absent good faith, or an analysis of the facts and then a determination reached, but I guess it is the insertion of the words "is violated" which to me is a vague standard. Is it in violation of what the President thinks, or a violation of the terms of the treaty, or a violation of a finding of the Standing Consultative Commission in certain areas? It seems to me that the provision would require some clarity.

Mr. SYMMS. Does the Senator have a suggestion as to what would make it more clear in accordance with the U.S. law?

Mr. NUNN. May I suggest, if the Senator from Virginia has the floor——

Mr. WARNER. I yield.

Mr. NUNN. I do not know how you solve the problem of the Senator from Virginia but I think the larger problem is the provision in the very beginning which says "notwithstanding any other provision of law or of this act." There are a whole series of laws and international interpretations about our treaty obligations as I understand them. There is even a provision of treaty that we have entered into as to the appropriate response to treaty violations. I think there is that kind of precedent in international law.

If I could get the attention of the Senator from Virginia just one moment on this, one thing that I think would solve a lot of problems with this amendment is—I just throw this out as a suggestion—if you strike the words "notwithstanding any other provision of law or of this act" which one could interpret as changing all the precedents under international law, our own obligations, and overruling; that with this precise statement, if you would substitute in lieu thereof the words "in accordance with law" then we would be keeping the same law and the same adherence to international law that we have now which includes for instance on a treaty violation that might be of very minor nature a proportionate response. The way this is written it could be interpreted as some minor violation, and would allow us to take action that breaches the treaty itself. I would suggest we at least consider that now. How you interpret the words "is violating," I think the Senator from Virginia makes a good point there. I do not know who makes that determination, but at least I think we ought to consider substituting the words "in accordance with law" for the words "notwithstanding any other provision of law or of this act."

Mr. WARNER. Will the Senator from Georgia be kind enough to repeat that, Mr. President?

Mr. NUNN. It does not solve the problem the Senator from Virginia raised. I would suggest that the authors of the amendment consider striking the words "notwithstanding any other provision of law or of this act" and in lieu thereof substitute the words "in accordance with law."

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. SYMMS. That would be acceptable to this Senator.

Mr. NUNN. I yield the floor.

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I think the suggestion the Senator from Georgia has made is a good suggestion because there are a lot of different provisions of international as well as domestic law. There are a lot of differing provisions in differing treaties. For instance, if I recall correctly—and I think I do—the Limited Test Ban Treaty does not, nor does the Threshold Test Ban Treaty, have a standing consultative commission as a mechanism for determination of whether or not there have been violations, or for consultation with the other party, but other treaties do have such provisions. I think the Senator from Georgia eliminates any possible ambiguity or any possible threat to the provisions even though an existing treaty in force would not be affected by this. But we have here some proposed treaties which have not yet been adhered to, and have not yet been ratified, but we yet do adhere to them. And we expect the other party to adhere to them, as both the administration in this country and the leadership in the other countries have indicated they will do. But I want to return to the point that I made earlier that was underscored by the comments of the Senator from Georgia; that is, that we do indeed have positive evidence of violations of existing treaties, both those that have been ratified and those that have not been ratified. Yet, we have not chosen in those instances to immediately and totally abrogate either our adherence to the spirit or the letter of those proposed documents or the treaties that are in force. I think the Senator from Georgia used the same terminology I have tried to use throughout this debate over the last several months; that is, that indeed you may want to have a measured response to a violation which you can measure, and that it does not have to be all or nothing. It can be a proportionate response that is necessary to respond to the requirements of national security without the abrogation of the treaty or totally repudiating the adherence to the provisions of a treaty even though not ratified.

Mr. MATHIAS. Mr. President, if the Senator would yield?

Mr. McCLURE. I would be happy to.

Mr. MATHIAS. I think what the Senator just said is reasonable, and there should be a measured response to a problem of this kind. In fact, in the case of the Peaceful Nuclear Explosions Treaty, there is a consultative body established for exactly that kind of contingency. Let me say to my friend from Idaho that this is, of course, one of those cases in which sauce for the goose is sauce for the gander. There was an instance several years ago, as Senators will remember, in which the United States for benign purposes put covers over our Minuteman missile silos.

The purpose was not some devious intent to conceal the location of the weapons. We made no bones about the fact they were there. But, as the Senator from Idaho suggested, it is cold in that part of the world. For what were known as environmental reasons, what most of us would call keeping out the rain, these shelters were erected. But it obviously did impede overhead cameras from taking pictures. The Soviet Union accused us of a violation. And, technically, they were right.

If the terms of the amendment of the Senator from Idaho were to go into effect, the Soviet Union would have had the right to terminate that treaty immediately.

I do not think any of us would want to see that. We acknowledged the fact we were in error and modified the shelters. We explained why we had done it. That let the episode pass without any adverse effect on the world.

Mr. McCLURE. The Senator is correct. Certainly, I think there has to be the opportunity for measured response, rather than total abrogation. We must keep that before us all the time.

I fully support the amendment of my colleague from Idaho for this reason: I do not want anyone reading this debate or seeing this action or reading the reports that will emanate as a result of Senate action on this proposed Kennedy amendment saying, in effect——

Mr. MATHIAS. It is not just the amendment of the Senator from Massachusetts. He deserves the lion's share of credit, but there are 39 other cosponsors.

Mr. McCLURE. I recognize there are other cosponsors.

The point I want to make is that some will read this action by the Senate in the face of Soviet treaty violation, proven or likely to whatever level of proof, as being a reading of the Senate will, saying, "We do not care whether they comply. We just want to have agreements. Paper shelters are far more important than national security and observance of treaties."

I think the amendment now being offered balances this amendment in such a way that people can read and know that the United States is aware of conduct by other parties, that we will reserve to ourselves the right to make a determination of whether or not that conduct is sufficiently threatening to us as to require our response, whether it be without abrogation of the treaty or in terms of a measured response to the violation.

Mr. MATHIAS. If the Senator will yield, the Senator from Georgia has addressed the very point the Senator from Idaho just made by the amendment which he offered, which was added to the underlying agreement.

Mr. WARNER. If the Senator will yield, I just checked with the Parliamentarian; it has not been adopted. I think for clarity of this debate, it should be adopted. Then we have a precise language to discuss.

Mr. McCLURE. Mr. President, if I can reclaim the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, there is not any question that while we are talking about the test ban treaty, that the TTBT has been violated. I should not say there is no doubt. There is doubt in the minds of some. Some will doubt any evidence, for whatever reason. But in the mind of this Senator, there is no doubt.

There have been over 14 Soviet underground nuclear weapons tests since 1978 with a yield estimated to be over the 150 kiloton threshold.

Yes, I would say to my colleague, indeed it requires interpretation of data. To those apologists who want to explain it away, they will find a reason to explain it away. They will say that there is uncertainty in the data or in the interpretation of the data, and, therefore, we should at least resolve the issue in favor of the Soviet Union.

I am not that much in favor of the Soviet Union, personally. If you want to look at how we go about determining whether or not there has been a weapons test in the Soviet Union that exceeds the limits of yield which are established in the TTBT, let us look at the methodology and what happened. There is uncertainty, and in order to avoid some of that uncertainty that was being focused on our allegations that there had been violations of the limits, we revised our methodology.

Immediately after we revised our methodology so that it would remove the ambiguity in favor of the Soviet Union, they immediately increased the size of their weapons tests.

The chart at the back of the room clearly plots that. Only a fool would be misled believing that there is not a pattern to Soviet conduct in reliance upon what we do.

The evidence of yields measured in precisely the same way before and after that change in methodology clearly reveals an immediate and dramatic change in their weapons test program.

You can say that there may be ambiguity about what the tests show, but there is no ambiguity on the fact that when we changed our methodology their conduct immediately changed and the size of the weapons tested went up dramatically immediately after that test methodology was changed.

The result is that they are still at or above the yield level as revealed by the new test methodology.

If that is evidence of good faith on their part, I will eat it. It is evidence of the fact that they want to get just as much out of their test program as our tolerance will allow. They want us to be constrained. They want to be just as unconstrained, not as the letter or the spirit of the treaty will say, but as our tolerance will permit. The Senator from Idaho, in his amendment, has said, in effect, that there are limits to our tolerance.

I think it is important for us to couple with the language of the amendment of the Senator from Massachusetts, together with his multitudinous cosponsors, including, I take it, the Senator from Maryland, we ought to couple with that a caveat.

Mr. MATHIAS. Will the Senator yield for a question?

Mr. McCLURE. Yes.

Mr. MATHIAS. Is the Senator aware of the language which has been adopted by the Senate, and is now part of the Kennedy-Mathias amendment, which provides for exactly what the Senator is talking about? That language says that when the President has some concern in the areas of which the Senator has mentioned, that he will make a report containing any plans that he may have to negotiate supplemental verification procedures, or, if the President believes it necessary, any understanding or reservation on the subject of verification he has should be attached to the treaty.

Mr. McCLURE. The Senator is aware of that language. While I will not try to get into the cosponsors, as to why they added that language, let me say in all candor it has some holes in it, because part of what the Senator is talking about is not only existing treaties that have been negotiated and signed, but not ratified; it also deals with the possibility of negotiating further agreements.

That language the Senator has referred to is at least ambiguous with respect to the class of negotiations or obligations to which that language will attach.

Mr. CRANSTON. Mr. President, would the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. CRANSTON. Mr. President, I am concerned about statements that have been made about the administration seemingly indicating that there have been clear violations. I would like to comment briefly on that.

In its January 1984 report on Soviet treaty compliance, the Reagan administration says:

> Soviet nuclear testing activities for a number of tests constitute a likely violation of legal obligations under the Threshold Test Ban Treaty.

Mr. McCLURE. Mr. President, obviously the Senator from California was not here when I made that statement or he would not make that comment now. The comment the Senator from Maryland had made was with respect to a number of treaties, not just the Threshold Test Ban Treaty. The reference to the likelihood of violation is accurate when it applies only to the Threshold Test Ban Treaty.

Mr. CRANSTON. Mr. President, I would like to comment further, if I may, on that, because that is particularly relevant to our discussion.

While I agree that the report on Soviet compliance raises some serious questions about Soviet violations, certainly that charge of clear violations is not one of them. The administration itself admits:

> . . . in view of ambiguities in the pattern of Soviet testing and in view of verification uncertainties . . . we have been unable to reach a definitive conclusion . . ." on whether the Soviets have violated the TTBT.

Contradictory Government testimony indicates how difficult it is to establish a violation of the TTBT.

The Lawrence Livermore National Laboratory also prepared a report on Soviet compliance with the TTBT. One of the authors of that report, Warren Heckrotte, concluded that:

> . . . the distribution of seismically measured yields of Soviet nuclear weapons tests is not inconsistent with Soviet observance of the 150 kiloton limit. However, the distribution is also not inconsistent with a distribution of actual yields in which there are some events above 150 kilotons. This reflects the statistical nature of the problem.

In recent testimony before Congress, Air Force Chief of Staff Charles Gabriel stated:

> Because our methods for determining the yields of Soviet underground nuclear tests are so uncertain, we cannot verify that they have conducted any underground tests above 150 kilotons since 1976.

Furthermore, other seismologists, using different methods, have come to different conclusions than the administration. Dr. Lynn Sykes, a highly respected seismologist who served on the TTBT negotiating team and serves as a consultant to DARPA, conducted his own study. He concluded that the allegations of Soviet cheating—

> are based on a systematic overestimation of the relation between seismic magnitude and explosive yield.

He has also concluded that—

> Over the past 5 years the size of the largest Soviet tests come very close to 150 kilotons, but none appear to have exceeded the limit.

A second technical paper on Soviet cheating was prepared in 1983 by Dr. Jack Evernden, formerly with DARPA and now with the U.S. Geological Survey. Evernden's report concluded that:

> Based on both seismic body and surface wave magnitude estimates, the U.S.S.R. appears to be complying with the 150 kiloton limit.

Finally, the failure to ratify the TTBT has directly contributed to our inability to determine whether the Soviets are complying with it. The treaty provides for data exchanges that are not taking place pending ratification. By establishing the correlation between stated yields of explosions and the actual seismic signals produced, this data exchange would significantly improve the ability of the United States to measure Soviet test explosions.

For all these reasons and many others, Mr. President, I think we should proceed to approve the Kennedy-Nunn amendment without further change in it.

Mr. McCLURE. Mr. President, I respect the opinion of the Senator from California, to which he is certainly entitled. I would also suspect that, while he has focused on the President's report with respect to TTBT, he also knows that the President's report found that there was evidence which, in the President's review and statement, is that the Soviet Union has violated the chemical, biological, and toxic weapons convention and the 1925 Geneva protocol, to which the United States and the U.S.S.R. are both parties, and that the Soviet Union violated the Helsinki Final Act; and that, I think, is without question. I think even the Senator from California might confess that that is true.

With respect to the ABM Treaty, the President found that the construction of that radar to which much reference has been made almost certainly constitutes a violation, and I quote the President's words.

Now, we might take the President's word and say that since he said "almost certainly," I suppose those apologists would turn around and say, well, that means that it is not certain, it is only almost certain.

With respect to SALT II, there is not any question that encryption interferes with natural means of verification. There is no question on that. That is a violation of the treaty.

So, let us not just focus on one area upon which reasonable minds may well differ, although I arrive at a different conclusion than the Senator from California does with respect to that, but let us take a look at the SSX-25 and the SS-16, violations of the proposed SALT II Treaty.

All I am suggesting in this debate with respect to my colleagues' proposed modification is that while we are saying to the Soviet Union that we are willing to negotiate further and we are willing to try to tighten up the proposals that are before us so that, indeed, we might be able to be certain of whether or not they are violating the Threshold Test Ban Treaty at the same time we are signaling our willingness to look at those issues, we ought also to say to them that we are aware of the fact that they are violating and we reserve to ourselves the right to respond according to the provisions of law to protect the security of the United States.

Surely, Mr. President, no one in this body really objects to that kind of statement, that the United States is going to look at the pattern or the reality or the suspicion of violations in ways that will lead either to the elimination of the violations or the elimination of the uncertainty, or the opportunity for the United States to respond in manners which are necessary to protect the security of the country. That is the way I read what my colleague from Idaho is suggesting and I think it would be almost unspeakable for the Senate of the United States to reject that kind of statement.

Mr. SYMMS. Mr. President, will the Senator yield?

Mr. McCLURE. Yes, I yield.

Mr. SYMMS. Mr. President, I would like to ask the Parliamentarian, has the amendment been modified at the desk? If not, I shall send my modification to the desk.

The PRESIDING OFFICER. The amendment has been modified just once.

Mr. SYMMS. So it says "in accordance with United States law, the United States"——

The PRESIDING OFFICER. It does not say that.

Mr. HELMS. Mr. President, will the Senator withhold that?

Mr. SYMMS. I shall withhold, and without losing my right to the floor, I yield to the Senator from North Carolina for a question.

Mr. HELMS. Mr. President, I advise the Senator I am not going to ask a question, I am going to make a statement. I suggest he ask unanimous consent that he not lose his right to the floor.

Mr. SYMMS. I ask unanimous consent that I not lose my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I think the legislative history ought to be made clear as to what the modification means that the Senator is holding in his hands. What does it mean to say "in accordance with United States law"?

Mr. SYMMS. Mr. President, what that means is that in U.S. law, and that is according to international treaty law, anytime there is a violation by another party of the treaty with the United States, in accordance with that law, we are not bound by that treaty.

Mr. HELMS. I understand that, I say to my friends, but what inhibitions would this place on the President or our Government, to say "in accordance with U.S. law"?

Bear in mind, Mr. President, we are talking about a test ban treaty that has not been ratified by the Soviet Union or the United States.

Mr. SYMMS. I am not a constitutional lawyer or any lawyer at all, Mr. President, but to my way of thinking, this means the President of the United States does have the responsibility to carry out U.S. policy for the security of this country and that, in this particular instance, he would have that responsibility. As Senator GOLDWATER pointed out to us earlier, with respect to the abrogation of the treaties, even though several of us here disagree with what happened, President Carter did abrogate the conventional defense pact with the Republic of China, and it held up in court. So I think it is clearly a Presidential responsibility.

Mr. HELMS. So the Senator contemplates, to read the precise language, that in accordance with U.S. law, the Commander in Chief would have the authority to act without——

Mr. SYMMS. I am sorry, Mr. President; I could not hear the Senator's question.

Mr. HELMS. I inquire of the Senator, reading from the proposed modification of the amendment, which I am delighted and honored to cosponsor, as modified, it would read:

> In accordance with U.S. law, the United States shall have no obligation to comply * * *

And so forth.

Mr. SYMMS. I am told by the lawyers on the Armed Services Committee staff, it should read, "In accordance with international law."

Mr. HELMS. That goes a long way toward answering my question. I hope the RECORD is clear that we are talking about a treaty that has been ratified by neither the United States nor the Soviet Union. I have no objection to the modification.

Mr. SYMMS. Mr. President, I send my modification to the desk, and I ask for the yeas and nays.

The PRESIDING OFFICER [Mr. COCHRAN]. The Senator has a right to modify his amendment. The amendment is so modified.

The amendment, as modified, is as follows:

> At the end of the amendment, add the following:
>
> "In accordance with international law, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating."

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I would like to have the modification read to the Senate because I have seen two versions of it. I want to know on what I am to vote.

The PRESIDING OFFICER. The clerk will read the modification.

The assistant legislative clerk read as follows:

> Strike the words, "notwithstanding any other provision of law or of this act" and insert in lieu thereof, "in accordance with international law."

Mr. WARNER. Mr. President, I thank the distinguished Senator from Idaho for the modification. It is clear now. It reads "international law" and not just in accordance with law.

My question to the Senator from Idaho is, now that we have recast this, what is it that the Senate is about to do other than reaffirm what is already customary international law as expressed in Article 60 of the Vienna Convention on the Law of Treaties?

Mr. SYMMS. Every time the Senate votes, there is a statement in the press, like in today's press, "The Senate voted yesterday to comply with the SALT II Treaty."

This is going to say that in view of all other considerations with respect to international law, if the Soviets are in fact violating treaties—on which there is substantial evidence—the United States will not be bound to uphold any treaty to which they are in bilateral agreement with the Soviet Union. We are making a statement that the Senate is not as naive as it might appear sometimes, according to the votes that are reported in the newspapers.

Mr. WARNER. Mr. President, in short, we are reaffirming existing law. Is that correct?

Mr. SYMMS. Yes.

Mr. WARNER. That is all I wish to know.

Mr. SYMMS. Mr. President, I ask unanimous consent that the following letters be printed in the Record as part of legislative history:

First, letter to the President from three Senators regarding three documents on Soviet arms control compliance, dated April 11, 1984.

Second, letter to the President from four Senators requesting a report on the CIA's apparent attempt to downplay evidence that the Soviet KGB played a role in the attempted assassination of the Pope.

Third, letter to the President on Soviet SALT violations, by Senator Helms, dated May 8, 1984.

Fourth, letter to the President on Soviet SALT violations, by Senator Helms, dated February 27, 1984.

Fifth, response to Senator Helms from the White House, dated April 23, 1984.

Sixth, two letters to the President from eight Senators on further Soviet SALT violations, dated January 27, 1984 and January 26, 1984.

Seventh, a Dear Colleague letter, from Senator Helms, and attachment on U.S. defense spending, dated May 1, 1984.

There being no objection, the material was ordered to be printed in the Record, as follows:

U. S. Senate,
Washington, DC, April 11, 1984.

Hon. Ronald Reagan,
The President, the White House, Washington, DC.

Dear Mr. President: We have been concerned for some time about arms control verification, Soviet violations of arms control treaties, and Soviet breakout from arms control restraints. We therefore request the following documents to be sent to S-407 in the Capitol, the Senate National Security Office:

1. The Soviet Strategic Planning Process and SALT (U) TS Codeword, by David S. Sullivan, Volume 1, March 1978 (13pp), Volume 2, June 1978 (157pp).

2. Prospects for SALT Verification and Breakout Warning (U) TS Codeword, by William R. Harris, RAND R-2093 ACDA, 30 Nov. 1977, Nov. 1977, (180pp.), ACDA Contract AC6AC406).

3. A Quarter Century of Soviet Compliance Practices Under Arms Control Commitments: 1958-1983 (U) GAC Report TS Codeword, November, 1983, (275pp).

We also request that briefings be prepared for us and our cleared staff on these three studies.

With warmest personal regards.

Sincerely,

Steven D. Symms.
Orrin G. Hatch.
James A. McClure.

U.S. Senate,
Washington, DC, April 11, 1984.

Hon. Ronald Reagan,
The President, the White House, Washington, DC.

Dear Mr. President: Some of us wrote to you on January 31, 1983 requesting a report on the CIA's behavior in uncovering or suppressing evidence of the KGB's role in the plot to assassinate Pope John Paul in June 1981. These requests for information on the KGB's role in the Papal assassination plot have been ignored by the CIA. Meanwhile, two authoritative books on the subject have been published, one by Claire Sterling entitled The Day of the Assassins, and another by Paul Henze entitled The Plot to Kill the Pope. We suspect that the CIA has tried to downplay the KGB's role in this plot, apparently for political reasons—a fear of criticizing the Soviet Union. Both of the above books have reached similar conclusions about the CIA's reluctance to report the KGB's role in the Papal assassination plot.

We respectively request that we be provided with an authoritative response to our original letters. Perhaps you could arrange a briefing for us and some of our cleared staff. This issue could become politically sensitive in the 1984 campaign. An amendment to the FY 1985 Intelligence Authorization Bill calling for a report on this matter may be helpful to the Administration.

With warmest personal regards.

Sincerely,

Steven D. Symms.
Orrin G. Hatch.
James A. McClure.
Alfonse M. D'Amato.

U.S. Senate,
Washington, DC, May 8, 1984.

The President,
The White House,
Washington, DC.

Dear Mr. President: I enclose a copy of a letter signed by Mr. Oglesby which, frankly, is totally unresponsive to my letter to you dated February 27, 1984 (also enclosed) concerning the military implications of Soviet arms control violations. Mr. Oglesby's response did not even address my five specific questions. I am confident you are not personally aware of Mr. Oglesby's statements.

Mr. Oglesby stated:

"We have carefully assessed the military impact of Soviet non-compliance. In particular, since the SS-X-25 and the Krasnoyarsk radars are not operational, there are *no* direct *short-term military risks* associated with these. In the near term, the US defense modernization program, including strategic, conventional, and chemical programs, once *fully funded*, would be *adequate* to cope with the direct military implications and the potential dangers to US security of these Soviet actions." (Emphasis added.)

This extraordinary language appears to concede strategic superiority to the Soviet Union, and is *identical* to language used by the State Department in a March 12, 1984 response to a Congressman, which was earlier made available.

It is worthwhile to recall the words of the 1980 Republican Platform with regard to achieving strategic superiority over the Soviet Union. The Republican Platform pledged that the US should "ultimately reach the position of *military superiority* over the Russians "that the American people demand." It added that Republicans "approve and endorse" the goal of achieving "overall military and technological *superiority* over the Soviet Union."

There is a gross inconsistency between ignoring the risk of Soviet SALT violations, and the 1980 Platform pledge of "superiority." I respectfully request that you consider this inconsistency.

Moreover, I would point out that the State Department assessment that "full funding" of your defense request would provide at best only "adequate" national security was made *before* the Administration agreed on March 15, 1984 to a $22 billion further cut in the defense budget.

I also call your attention to Defense Secretary Weinberger's letter to me of April 5, 1984, which stated in contrast to the State Department assessment:

"We, too, are deeply concerned about the potential military implications of Soviet SALT violations . . . Far more serious are the implications for the overall defense posture of the United States relative to that of the Soviet Union . . . some possible outcomes of an effective ABM system or a new mobile ICBM could provide the Soviets with a *decisive edge* in strategic offensive and defensive capabilities . . . " (Emphasis added.)

Mr. President, I must ask: Do you agree with Mr. Oglesby's capitulation to the State Department's assessment? Moreover, it would be helpful to know your reasoning as to why we should wait for the Soviet SS-25 and ABM radars to become operational before we respond to their threat.

With warmest personal regards.

Sincerely,

Jesse Helms.

U.S. Senate,
Washington, DC, February 27, 1984.

The President,
The White House,
Washington, DC.

Dear Mr. President: I deeply appreciate the work done by you and the Administration in preparing the recent report on Soviet non-compliance with arms control agreements, and I believe that information provided will be of great value to Congress in the coming months in assessing the growing national security problems facing our country.

Although the report was fairly narrow in its focus, in that it concentrated on seven specific examples of Soviet misconduct and deception, I believe that the noncompliance report was an excellent beginning in establishing a formal record of Soviet disregard for international obligations in arms control.

I also feel, however, that much more remains to be done and that time is of critical importance both in informing the public concerning Soviet behavior and in determining what steps our country must take to maintain national security in response to Soviet violations. Moreover, in the process of assessing the threat posed by Soviet violations and the required actions to counter that threat, Congressional understanding of the full scope of Soviet violations is fundamentally necessary.

Specifically, I have noted media reports that you have recently received a National Security Council assessment of Soviet development (in direct violation of the Biological Warfare Convention) of an entirely new form of offensive biological warfare in which genetic engineering has been employed to develop super-virulent forms of viruses and other lethal agents. If these media accounts are correct, I respectfully request that the report you received be appropriately transmitted to Congress since its contents would have direct impact on Congressional action concerning a variety of national defense programs now under review.

I understand further that the General Assembly Committee of the Arms Control and Disarmament Agency has also recently prepared for you a much more comprehensive report on Soviet arms control violations than the report previously submitted to Congress. Again, I strongly believe that, to the maximum extent possible, Congress should be apprised of all Soviet arms control violations and not simply of several important examples. I recognize, of course, that you must exercise great care in this area for a number of reasons, but we also feel that an overriding concern must be potential damage to the security of the United States arising from a failure of Congress to understand fully the complete extent of Soviet non-compliance and the exact nature and security implications of Soviet violations.

Finally, I view with some dismay reports that some top Administration officials are suggesting even further agreements with the Soviets when it is becoming increasingly apparent that the United States abides by these negotiated limitations while the Soviet Union ignores them. While we must always seek opportunities for peaceful relations with the Soviet Union, I believe that the United States ought not to impede its own defenses with arms limitations until the Soviet Union has demonstrated through concrete action that it intends to cease violation of those agreements already extant.

For that reason, I commend you for the new realism that you have brought to our dealings with the Soviet Union in arms control (and in other areas), and I particularly value your resistance to the advice of some who would make any agreement with the Soviet Union, regardless of its security results, simply to obtain some perceived domestic political advantage in putting a bright face on relations with a deceptive, untrustworthy, and hostile adversary.

I, therefore, look forward to working with you in the coming months to develop a realistic and firm response to Soviet breach of its international obligations in arms control, and I reiterate my request for more comprehensive data bearing on that subject.

I request that I be provided answers to the following specific questions:

(1) Are there any indications that the Soviets are preparing to deploy both the new SS-X-24 and SS-X-25 ICBMs in both a silo and a mobile mode? Will one of these ICBMs be deployed in a mobile mode on railroads, and the other as a road-mobile ICBM? Is there some indication that hardened railroad tunnels might be used to shelter the rail-mobile missiles?

(2) Do the Soviets have underwater tunnels for protecting their strategic missile carrying submarines from nuclear attack? What percentage of the Soviet Submarine-Launched Ballistic Missile force not on patrol could be so protected?

(3) If the Soviets have already constructed large numbers of extremely hardened ICBM silos, road-mobile ICBMs, rail tunnels for rail-mobile ICBMs, underwater tunnels for SLBMs, and then go on to defend a high proportion of their ICBM warheads with an ABM system, will the Soviets largely erode the US deterrent retaliatory capability?

(4) When will the Soviets be able to significantly erode the US retaliatory deterrent capability?

(5) What will be the geo-strategic effects of such a Soviet invulnerable first strike counterforce capability?

With warmest personal regards,

Very respectfully,

JESSE HELMS.

THE WHITE HOUSE,
Washington, DC, April 23, 1984.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: This is in further response to your February 27 letter to the President concerning issues of arms control compliance. The President shares your concern about Soviet non-compliance with arms control agreements, as was evidenced by his January 23 report to Congress detailing seven specific areas of non-compliance or probable non-compliance by the Soviet Union.

With regard to your specific question on Soviet offensive biological warfare development, this was briefly covered in the President's Report to Congress. We are continuing to study these developments and if significant new information emerges relevant committees of the Congress will be briefed. As your letter also noted, the President has received a highly classified internal report on Soviet arms control compliance from his General Advisory Committee on Arms Control and Disarmament. Briefings on this internal report have been provided to selected Congressional Committees, and we are prepared to facilitate your receiving this briefing as well.

The question of deployment modes for the SS-X-24 and SS-X-25 have similarly been briefed to relevant committees. As analyses of these and other issues addressed in your letter, including Soviet protection schemes for strategic missiles-carrying submarines, progress and new information develops, the Congress will be appropriately informed.

All of the specific questions raised in your letter point toward a central theme concerning whether these Soviet developments, and particularly Soviet arms control compliance behavior, are eroding the U.S. deterrent retaliatory capability. We have carefully assessed the military impact of Soviet non-compliance. In particular, since the SS-X-25 and the Krasnoyarsk radars are not operational, there are no direct short-term military risks associated with these. Soviet chemical and biological warfare activities have security implications. In the near term, the U.S. defense modernization program, including strategic, conventional, and chemical programs, once fully funded, would be adequate to cope with the direct military implications and the potential dangers to U.S. security of these Soviet actions. However, there are serious longer-term implications of Soviet noncompliance for both Soviet and U.S. defense postures which we will need to take fully into account in terms of potential dangers to U.S. security.

Finally, it continues to be U.S. policy to seek to negotiate arms control agreements that reduce the risk of war, enhance U.S. and Allied security, and contain effective verification provisions. The President is committed to policies which enhance the prospect for peace and reduce the risks of war. He believes that equitable arms reductions agreements with effective verification provisions will, if complied with, enhance security at substantially reduced, equal levels of forces on both sides. In this way, such agreements can make a major contribution to international security and stability. However, ensuring compliance with arms control agreements remains a serious problem. Improved verification provisions and better treaty drafting will help, but it remains fundamentally important that the Soviets take a constructive attitude toward compliance.

I hope this information is helpful to you and clarifies the Administration's position regarding the negotiation of arms control agreements with the Soviet Union in light of the compliance problems analyzed in the President's Report to Congress.

With best wishes,

Sincerely,

M. B. OGLESBY, Jr.,
Assistant to the President.

U.S. SENATE,
Washington, DC, May 1, 1984.

DEAR COLLEAGUE: I am enclosing a statement by Senator Symms made yesterday on the floor of the Senate, which I found especially perceptive. I want to make sure that you are aware of it.

Senator Symms points out in his statement that the current funding for national defense is now well below levels recommended by former President Carter in January, 1981, and more than $123 billion below levels recommended by President Reagan in March of 1981. I found those facts particularly alarming, since they emphasize the failure of Congress to support required programs for national security.

I hope that you will take Senator Symms' comments and the facts he provided into account as you deliberate your own position on defense spending and on protecting our national security and preserving our freedoms.

With very best regards.

Sincerely,

JESSE HELMS.

REAGAN DEFENSE PROGRAM BELOW CARTER PLAN

Mr. SYMMS. Mr. President, on March 15, 1984 under congressional pressure, President Reagan agreed to $22 billion in further cuts in defense spending. As a result, the last vestiges of the 1981 Reagan defense build-up were eliminated, and the Reagan defense program is $5 to $10 billion below the levels of defense spending which President Carter felt were required but which were rejected by the American people as inadequate.

Although the Washington Post, the New York Times, and other so-called national media have studiously ignored this subject—about which the public ought to be better informed—the New York Post of March 26, 1984, published a superb editorial giving the facts on defense spending and bringing into focus the adverse national security effects of congressional attacks on the 1981 Reagan plan.

At a time when the number of Russian nuclear warheads aimed at the American people has almost doubled in little more than 4 years, I believe that Senators should take the time to read the New York Post editorial and to consider the implications of the facts outlined in it.

Accordingly, I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Post, Mar. 26, 1984]

DO NOT LET FALSE ECONOMY IMPERIL NATION'S DEFENSES

President Reagan's package deal with the Republican Congressional leaders for a $150 billion reduction in the deficit over the next three years clearly is not the end of the affair especially as it affects defense.

Indeed, the election-year battle over the deficit is only just beginning.

Reagan says he agreed to cut defense spending by $57 billion over the period only after the Republicans pledged that the new military budget proposal would be treated as the floor—not as a ceiling for still further cuts.

The President should watch out.

House Speaker Tip O'Neill describes Reagan's concession to the Republicans as merely a first step and Democratic House leader Rep. Jim Wright says: "We think we can do a better job."

DOUBLE CUT

The "better job" which the House Democrats propose is to cut defense spending by $95.5 billion—almost double the Republican figure—and impose much higher taxes and delay by at least two years the plan to link tax brackets to inflation.

When push comes to shove in an election year, what is the prospect for holding the line on defense spending?

Let no one be under any illusions. Under Reagan, there has actually been a steady reduction in the growth of defense spending.

The Joint Chiefs of Staff, in their latest posture statement to Congress, make this quite clear.

"The original (Reagan) defense program submitted in March 1981, was estimated to add $116 billion spending for fiscal year 1982 through fiscal year 1986 over the total proposed by the (Carter) administration.

"To date, almost $104 billion of that increment has been removed through a series of reductions and economies of operation—as well as the actions of the Congress."

The total cuts—by Congress and through Pentagon economies—left only $12 billion for increased spending before Reagan made his deal with the Republican leaders.

CARTER'S FIGURES

His compromise cut $6 billion from the proposed fiscal year 1985 budget and a further $16 billion from fiscal year 1986 spending.

The Defense Department is now operating at $10 billion below Reagan's original request for increased spending.

A comparison of President Carter's last budget in January 1981 with Reagan's budget when he took office and what he has now accepted is instructive (by fiscal years):

	Fiscal year—				
	1982	1983	1984	1985	1986
Carter:					
January 1981	184	210	238	268	300
Reagan:					
March 1981	189	226	256	304	343
March 1984	187	210	240	266	294

Reagan is $123 billion below the level of defense spending he originally proposed and at least $5 billion below what Carter considered necessary

Who would believe it? Carter, of course, tried to hold defense spending down during his four years and largely succeeded. But Afghanistan opened his eyes and when he left office real growth in defense spending was running at 12 percent anually.

Since Reagan's inauguration it has declined steadily to the present 4 percent.

How does this conform with reality?

Richard D. DeLauer, Under Secretary of Defense for Research and Engineering, has provided Congress with a disturbing answer.

SOVIET OUTLAYS

Except for major surface ships, between 1974-83 the Soviets have substantially outproduced the U.S.—not only for their own forces but also for their surrogates around the world. The Warsaw Pact military advantage over NATO in major weapons is two to one.

DeLauer lists 50 of roughly 200 Soviet weapons programs expected to become operational in the 1980's—to be added to 80 systems deployed since 1980 (twice the U.S. deployment).

Item: Soviet military research institutes doubled from 1,500 to 1960 to more than 3,000 today. Military R&D now accounts for virtually all Soviet research, compared with 30 percent in the U.S.

Item: The dollar cost of Soviet military investment over the last 10 years has exceeded that of the U.S. by $450 billion—due to increased R&D spending.

Item: The Soviets spent $200 billion more to buy weapons than the U.S. in the past 10 years. The cost of Soviet weapons R&D alone was $185 billion more than in the U.S.

Item: Over the past 10 years, total dollar costs of Soviet strategic forces exceeded that of the U.S. by about $250 billion (in constant 1985 dollars) almost double U.S. spending for strategic forces.

Item: The cost of Soviet strategic defense weapons—the world's most extensive—was many more times that of U.S. spending on bomber forces.

Item: The estimated inventory value of Soviet strategic offensive weapons has exceeded that of the U.S. since the mid-1980's. It is now about one-fourth greater. During the 1970's detente—or SALT—period the U.S. "essentially eliminated stategic defense procurement and forces."

HOLD THE LINE

"While there is significant uncertainty in these estimates," says DeLauer, "this long-term trend cannot be allowed to continue."

Is it reasonable, in an election year, to expect that we at least can hold the line?

U.S. SENATE,
Washington, DC, January 27, 1984.

Hon. RONALD REAGAN,
The President, the White House, Washington, DC.

DEAR MR. PRESIDENT: We strongly congratulate you on your statesmanlike leadership in publishing The President's Report to the Congress on Soviet Noncompliance with Arms Control Agreements. This was an excellent report. We look forward to working with you to strengthen United States national security in the face of the Soviet SALT violations.

Yet we respectfully suggest there is more to be done. We need not remind you that the July 1980 Republican Party Platform explicitly states:

"The Republican Party deplores the attempts of the Carter Administration to cover-up Soviet non-compliance with arms control agreements. * * * We pledge to end the Carter cover-up of Soviet violations of SALT I and II."

It has been widely discussed in the intelligence community that there were over 32 outstanding cases of Soviet SALT and other arms control violations which occurred under the Carter-Mondale Administration prior to July 1980, and which were covered up or explained away by the Carter-Mondale Administration. Intelligence information on some of these SALT violations was actually suppressed by the Carter-Mondale Administration, which issued a White Paper in February 1978 giving the Soviets a clean bill of health on SALT I compliance. Many of the multiple Soviet SALT I violations have been confirmed by former Secretary of State Kissinger and former Defense Secretary Laird.

We have carefully studied the seven violations in your recent report. We believe that it is reasonable to conclude that all seven Soviet SALT and arms control treaty violations cited in your report were either detected after the July 1980 Platform Statement or became conclusive after that time.

Your report states that there is "an expanding pattern of Soviet violations or possible violations of arms control agreements." It also states that "Additional issues of concern are under active study." State Department policy guidance for public diplomacy has stated that "The Soviets are violating or probably violating certain provisions of other major agreements. There have been additional Soviet activities over the past year which have added to our concern."

We strongly agree. The legislative history in the Senate of the amendment requesting your report on Soviet SALT violations specified that all Soviet violations of both the letter and the spirit of all arms control treaties to which the Soviets are party should be provided.

Accordingly, we respectfully request an additional Presidential report on all Soviet SALT I and II and other arms control treaty violations which occurred prior to July 1980. Some of these pre-1980 SALT I violations such as Soviet deployment of the SS-19 ICBM and Soviet construction of ABM Battle-Management radars and ABM mode SAM tests, appear to be even more conclusive and serious than the seven cases in your report. Moreover, many of them have been confirmed by Dr. Kissinger and Secretary Laird. We therefore request that you update the Carter-Mondale White Paper of 1978.

We also request that you send to us a copy of the report of your Arms Control General Advisory Committee analyzing seventeen Soviet arms control violations since 1958.

Attached is an unclassified partial list of these Soviet SALT and other arms control treaty violations which were covered-up by the Carter-Mondale Adminstration.

Mr. President, we strongly support efforts to preserve the integrity of the arms control process by challenging Soviet SALT violations. We all are trying to safeguard world peace.

As you yourself said at the United Nations General Assembly on June 17, 1982:

"Simply collecting agreements will not bring peace. Agreements genuinely reinforce peace only when they are kept. Otherwise we are building a paper castle that will be blown away by the winds of war."

And as former Reagan Administration Arms Control Director Eugene Rostow testified to Congress in July 1981: "No arms control agreement can contribute to the goal of a peaceful world unless we have confidence that the Soviet Union is abiding by its terms."

With warmest personal regards.

Sincerely,

JESSE HELMS.
JEREMIAH DENTON.
JAMES A. MCCLURE.
LARRY PRESSLER.
ORRIN HATCH.
ROGER W. JEPSEN.
BOB KASTEN.
STEVE SYMMS.

SOVIET SALT I AND II VIOLATIONS COVERED UP BY CARTER-MONDALE ADMINISTRATION

A. SALT I ANTI-BALLISTIC MISSILE TREATY

1. Soviet SAM testing in an ABM mode. Former Secretary of State Henry Kissinger has conceded this is a Soviet SALT "violation" on September 12, 1982.

2. Soviet deployment of ABM Battle Management Radars.

3. Soviet ABM camouflage.

4. Soviet falsification of ABM deactivation.

5. Soviet creation of a new ABM Test Range without the required prior notification.

6. Soviet deployment of a rapidly deployable, mobile ABM.

B. SALT I INTERIM AGREEMENT ON OFFENSIVE WEAPONS

1. Soviet deployment of the heavy SS-19 ICBM as the replacement for the light SS-11 ICBM, which is the most dangerous of all Soviet SALT violations. On August 12, 1979. Dr. Henry Kissinger conceded that this deployment constituted "sharp practice" by the Soviets. In 1974, former Defense Secretary Melvin Laird termed SS-19 deployment a clearcut "violation".

2. Soviet failure to deactivate old ICBMs on time, and falsification of official reports.

3. Bringing back ICBM equipment to a deactivated ICBM complex.

4. Keeping 18 SS-9 ICBMs illegally operational at a test range, which was conceded in the explanation of the SALT II Treaty.

5. Soviet deployment of "III X" silos with a configuration similar to a missile launch silo.

6. Soviet massive use of deliberate camouflage, concealment, and deception which actually increased after 1972, and which constituted deliberate interference with United States National Technical Means of verification:

Encryption of missile telemetry,

Camouflage of ICBM testing, production, deployment,

Concealment of SLBM submarine construction, berthing, construction of dummy submarines and their concealment, construction of berthing tunnels.

7. Constructing over 68 strategic submarines, when only 62 were allowed.

8. SS-20 mobile missile deployment, which should count as mobile ICBM deployment.

9. Violation of Brezhnev's pledge not to build mobile ICBMs.

10. Deploying SS-11 ICBMs at SS-4 MREM sites, probably having a covert soft launch capability.

11. Keeping about 1,300 to several thousand old ICBMs stockpiled for both covert launch and rapid reload of silos for refire.

C. SALT II TREATY

1. Soviet encryption of telemetry on SS-NX-20 "Typhoon" SLBM.

2. Soviet encryption of telemetry on SS-16 Mod X ICBM.

3. Soviet encryption of telemetry on SS-NX-19 SLCM.

4. Soviet encryption of telemetry on SS-20 IRBM.

5. Soviet camouflage of new submarines.

6. Soviet SS-20 deployment.

7. Soviet continued stockpiling of SS-16 mobile ICBMs.

8. Soviet AS-3 Kangaroo Air-to-Surface missiles with range of 650 kilometers on the TU-95 Bear bomber.

9. Soviet AS-6 Air to Surface missile with range of 1,000 kilometers on Backfire bombers.

10. Reported Soviet rapid reload and refire exercises for the SS-18 cold-launched ICBM.

D. OTHER ARMS CONTROL TREATY VIOLATIONS COVERED UP BY CARTER ADMINISTRATION

1. Over 30 unambiguous Soviet ventings of radioactive debris from underground nuclear tests in violation of the 1963 Limited Test Ban Treaty. These ventings are all unequivocal, and resulted in the spread of radio-active debris outside of Soviet borders.

2. Over eight Soviet underground nuclear weapons tests probably over 150 kilotons, in violation of the 1974 Threshold Test Ban Treaty.

3. Over six Soviet violations of the Kennedy-Khrushchev Agreement of 1962.

(a) Soviet Combat Brigade in Cuba.

(b) Golf and Echo Class submarines at Cienfuegos.

(c) Cienfuegos strategic submarines base with nuclear warhead storage facility.

(d) Nuclear delivery capable aircraft. 40 MIG-23 or 27 Floggers. 1[illegible] TU-95 Bear bombers with operable bomb-bays.

(e) Use of Cuba as a revolutionary base.

(f) Probable Biological and Chemical Warfare Facilities.

U.S. SENATE,
Washington, DC, January 26, 1984.

Hon. RONALD REAGAN,
The President, the White House,
Washington, DC.

DEAR MR. PRESIDENT: We greatly appreciate your excellent recent President's Report to Congress on Soviet Noncompliance with Arms Control Agreements. We believe that the report has serious implications for national security, and we intend to cooperate with you fully in dealing with the increased threat to United States national security which Soviet SALT violations represent.

Your report states that there is "an expanding pattern of Soviet violations or possible violations of arms control agreements." It also states that "additional issues of concern are under active study." State Department policy guidance for public diplomacy has stated that "The Soviets are violating or probably violating certain provisions of other major agreements. There have been additional Soviet activities over the past year which have added to our concern."

We strongly agree with you. The legislative history in the Senate of the amendment requesting your report on Soviet SALT violations specified that all Soviet violations of both the letter and the spirit of all arms control treaties to which the Soviet Union is party should be provided in an unclassified report.

In particular, therefore, we request a further public report on some serious new Soviet violations of the SALT II Treaty reported recently in the press:

Production of more than 30 Backfire bombers per year;

Arctic staging of Backfire bombers;

The Intercontinental range of 8,900 kilometers and refueling capability of the Backfire bomber;

Continued production of TU-95H Bear bombers to be equipped with long range cruise missiles;

Development of a new heavy Submarine-Launched Ballistic Missile, the SS-NX-23;

Early deployment of 100 SS-X-24 Inter-Continental Ballistic Missiles carrying Multiple-Independently-Targetable Re-entry Vehicles, in single warhead SS-11 ICBM silos;

Soviet admission in November 1983 at the SALT Standing Consultative Commission of the fact that their forces exceed all three SALT II ceilings on MIRVs and bombers equipped with long range cruise missiles, 820, 1200, and 1320;

The Soviet refusal to dismantle over 250 strategic delivery vehicles by the end of 1981 in order to comply with the SALT II ceiling of 2250 strategic delivery vehicles: and continued expansion of their forces since 1981;

The seriously increased and widespread pattern of Soviet camouflage, concealment, and deception.

Several additional well known Soviet violations of SALT II need to be reported upon:

SS-18 rapid reload refire capability as a violation of the SALT II prohibition on rapid reload and refire capabilities;

Deployment of AS-3 Kangaroo Air to Surface missiles with range of "650 Kilometers" (see Soviet Military Power) on 100 TU-95 Bear bombers in further violation of the SALT II Data Exchange and the 1320 ceiling;

Deployment of new long range air-launched cruise missiles on Bear and Backfire bombers, in further violation of the 1320 ceiling.

In addition, there have been some recent press reports of Soviet violations of the SALT I ABM Treaty which also need to be reported on:

Soviet testing of Surface-to-air missiles in a prohibited ABM mode, such as SAM-5s, SAM-10s, and SAM-12s;

Deployment of five other prohibited Battle-Management radars, in addition to the Abalakovo radar;

Development and mass production of a prohibited mobile, rapidly deployable ABM, the ABM-3 and its SH-04 and SH-08 interceptor missiles and mobile radars;

Testing of a prohibited ABM rapid reload and refire capability;

Deployment of a prohibited nation-wide ABM defense;

Deployment of more than 100 ABM launchers around Moscow.

Mr. President, we strongly support your efforts to preserve the integrity of the arms control process by challenging Soviet SALT violations. We all are trying to safeguard world peace.

As you yourself said at the United Nations General Assembly on June 17, 1982:

"Simply collecting agreements will not bring peace. Agreements genuinely reinforce peace only when they are kept. Otherwise we are building a paper castle that will be blown away by the winds of war."

And as former Reagan Administration Arms Control Director Eugene Rostow testified to Congress in July 1981: "No arms control agreement can contribute to the goal of a peaceful world unless we have confidence that the Soviet Union is abiding by its terms."

We thank you in advance for your prompt responsiveness to this request.

With warmest personal regards.

Sincerely,

Jesse Helms, Larry Pressler, Roger W. Jepsen, Steve Symms. James A. McClure, Jeremiah Denton, Orrin Hatch, Bob Kasten.

U.S. SENATE,
Washington, DC, June 18, 1984.

Hon. CASPAR WEINBERGER,
Secretary of Defense, Department of Defense,
Washington, DC.

DEAR CAP: Comparison of the last two editions of the United States Defense Department's book, Soviet Military Power, reveals that the Soviets are producing Backfire bombers at the rate of 35 per year. But the Soviets promised, as an integral part of the SALT II Treaty, not to produce more than 30 Backfire bombers per year.

I would like to receive answers to two simple questions.

First, are the Soviets in fact producing 35 Backfires per year, as the Defense Department's own information reveals? If so, this would be another violation of SALT II.

Second, are we able to determine with confidence the annual Soviet Backfire production rate? If not, then SALT II must be deemed unverifiable.

I thank you in advance for your prompt answers to my two questions.

With warmest personal regards,

Sincerely,

JESSE.

The **PRESIDING OFFICER.** Is there further debate?

Mr. **KENNEDY.** I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

Mr. **WARNER.** Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. **KENNEDY.** I object to that, Mr. President.

The **PRESIDING OFFICER.** Objection is heard.

Mr. **WARNER.** Mr. President, I ask unanimous consent that the quorum call be rescinded.

The **PRESIDING OFFICER.** Is there objection? The Chair hears none, and it is so ordered.

Mr. **WARNER.** Mr. President, for purposes of assisting those who may examine the RECORD and study the legislative history of the pending amendment, I will read from Article 60 of the Vienna Convention on the Law of Treaties as published on April 24, 1970. Commencing on page 27:

TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY AS A CONSEQUENCE OF ITS BREACH

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Mr. **NUNN.** Mr. President, I have had an opportunity to look at this Symms amendment as it has been modified. As I understand it—and I do not have it in front of me—the Senator's amendment would read now that in accordance with international law, the United States should have no obligation to comply with treaties that are being violated by the Soviet Union.

It seems to me that that is taking care of the problem I had with the amendment. It seems to me that that is a clear statement of precisely the obligations the President of the United States would have right now if he concluded, in a determinative way, that a treaty was being violated. He would behave in accordance with international law; and international law clearly provides, as the Senator from Virginia has said, what the obligations are of countries that are parties to treaties in the case of a breach. If there is a minor breach, there is one set of responses appropriate. If there is a major breach, another set of responses is appropriate.

It seems to me that, all the way around, this amendment has been cured of any problem I had with it, and I urge the authors of the underlying amendment to accept it. I see no need for a rollcall vote, but it is up to the parties.

I yield the floor.

The **PRESIDING OFFICER.** Is there further debate?

Mr. **MATHIAS.** Mr. President, I make a point of order that a quorum is not present.

The **PRESIDING OFFICER.** The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **KENNEDY.** Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. **KENNEDY.** Mr. President, I have had an opportunity to review this language in some detail, and I must say that I believe it merely restates what is already the basic understanding under international law—that is, as described by my colleague from Virginia. I do not believe that this in any way detracts from the positive nature of the sense of the Senate amendment before us. So I support the amendment, and I urge my colleagues to do so.

The **PRESIDING OFFICER.** Is there further debate?

Mr. **TOWER.** Regular order, Mr. President.

The **PRESIDING OFFICER.** The question is on agreeing to the amendment in the second degree. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. **CRANSTON.** I announce that the Senator from Colorado [Mr. HART] is necessarily absent.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 147 Leg.]

YEAS—99

Abdnor
Andrews
Armstrong
Baker
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
East
Evans
Exon
Ford
Garn
Glenn
Goldwater
Gorton
Grassley
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Huddleston
Humphrey
Inouye
Jepsen
Johnston
Kassebaum
Kasten
Kennedy
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Quayle
Randolph
Riegle
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Tower
Trible
Tsongas
Wallop
Warner
Weicker
Wilson
Zorinsky

NOT VOTING—1

Hart

So the amendment in the second degree (No. 3264), as further modified, was agreed to.

Mr. **KENNEDY.** Mr. President, I ask for the yeas and nays on the underlying amendment.

The **PRESIDING OFFICER.** Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The **PRESIDING OFFICER.** The question is on agreeing to the amendment, as amended, of the Senator from Massachusetts [Mr. KENNEDY]. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. **CRANSTON.** I announce that the Senator from Colorado [Mr. HART] is necessarily absent.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 77, nays 22, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—77

Abdnor
Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran

Cohen
Cranston
D'Amato
Danforth
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Garn
Glenn
Gorton
Grassley
Hatch
Hatfield
Hawkins
Heinz
Hollings
Huddleston
Humphrey
Inouye
Jepsen
Johnston
Kassebaum
Kasten
Kennedy
Lautenberg
Leahy
Levin
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Randolph
Riegle
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stafford
Stennis
Trible
Tsongas
Warner
Weicker

NAYS—22

Armstrong
Baker
Denton
East
Goldwater
Hecht
Heflin
Helms
Laxalt
Long
Lugar
Mattingly
McClure
Nickles
Quayle
Stevens
Symms
Thurmond
Tower
Wallop
Wilson
Zorinsky

NOT VOTING—1

Hart

So Mr. KENNEDY's amendment (No. 3262), as amended, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MATHIAS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3265

(Purpose: To strike out the provision relating to the continued operation by the Secretary of Defense of the Defense Dependents' Education System, and for other purposes)

Mr. STAFFORD. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for himself, Mr. ROTH, Mr. PELL, Mr. EAGLETON, and Mr. RANDOLPH, proposes an amendment numbered 3265.

On page 112, beginning with line 13, strike out through line 15 on page 115.

Mr. STAFFORD. Mr. President, this amendment, which is very brief, eliminates about 1½ pages of the pending bill which affects the Department of Defense schools within the Department of Defense and their relationship to the Department of Education.

What it does is eliminate those sections and, in very brief, return us to existing law. This has been worked out in consultation with the managers of the bill and with the very able Senator from Indiana, Senator QUAYLE, of whom this is a principal interest.

At this point, I yield to the Senator from Indiana.

Mr. QUAYLE. Mr. President, what we are basically doing is going back to the language that we adopted last year. This language states that the DODDS transfer cannot occur before May 1986. There are different circumstances surrounding the DOD schools transfer language this year as it emerged from the Armed Services Committee. The first is that the Department of Defense and the administration for the first time recommended that the transfer not take place. This recommendation to keep the schools in the Department of Defense is one which the committee, time and time again, has agreed with. This is, however, the first time that the administration has requested repeal of the transfer in the defense bill it sent to the Congress.

Second, Mr. President there was, in conformance with last year's legislation, a poll conducted to see where the teachers themselves stood on the issue. Over 75 percent of the teachers polled said they did not want to see the transfer to the Department of Education take place. This coincides with the opinions of parents and students alike—all are opposed to the transfer. Ask any teacher, counselor, parent, or student in the DODDS system and they will all tell you they are opposed to the transfer. Nothing has changed in this regard since the schools have been run by DOD.

Again last year, DOD students scored approximately 10 points higher on their aptitude tests. This is the eighth consecutive year that average scores for DODDS students on the scholastic aptitude test are above the national average.

It is interesting that a lot of people who advocate the schools transfer to the Department of Education—for purely political reasons—are also strong advocates of quality education. If we really look at the issue of quality education and what is best for those kids, we would choose to leave the DOD schools within the Department of Defense on a permanent basis. But I do not think that, in this election year, the Senate is going to do that. Knowing the House and the Senate, we are going to have to revisit this issue again at a less politically volatile time. It is a most distasteful thing for me to ever have to disagree with the chairman of the Education Committee, one of the most respected people in this Chamber, but I want to reiterate that the idea of transferring these schools out of DOD into the Department of Education, for what I think are politically motivated reasons, is equally distasteful to the Senator from Indiana. Very soon, at some point down the road, we are going to have to look this issue right in the face and resolve it. I do not know whether this will be in 1985, or 1986, but at some point, we are going to have to look certain educational interest groups right in the face and say, look, "We respect you, we are all for quality education, but you are just flat out wrong on this issue."

It is very interesting, Mr. President, that when we contacted people in the Office of Education on this issue, they all said, "Yes, we are very interested in the transfer and we understand the merits of the approach, but we have to deal with the NEA."

We all work daily with interest groups Mr. President, but I want to stress to the Senate that sometime we are going to have to look right down the pipe and do what is right for those military dependent children. That obviously it is not going to be now, given the climate of an election year, but I want to reiterate my strong and intense interest in this issue. We will be back before the Senate on this issue—and very soon.

Believe me, Mr. President, people who vote with the Senator from Indiana are not going to get any political brownie points. Those who vote the merits on this issue will not mollify any large interest groups. These groups keep a close watch over our shoulder Mr. President. The last major mailgram on this issue stated pointedly, "The NEA intends to use the floor votes associated with this issue in its voting record." A vote on the merits of this issue then, will put some Members of this body on some sort of blacklist.

It is going to be a throwaway vote because nobody is going to write you from home and thank you. There is no constituency in Indiana for this transfer, no constituency in any State for what the Senator from Indiana and many teachers, parents, and students overseas want to do.

Sometime soon we are going to revisit this issue. Now is not the time to do it. The Senator from Vermont is right. We ought to go back, take a look at what we did last year, and decide this issue once and for all on the merits. I certainly hope, as this debate continues, that the issue of quality of education remains paramount. We should recognize that the DODDS students are getting a better education. I have received many letters. One came from a father who said, "Thank God for the DOD schools, because my son is doing so much better now than he did in that stateside school. I would stress to my colleagues again that the teachers that are overseas do not want the transfer, the students that are overseas do not want the transfer, and the parents that are overseas do not want the transfer. Mr. President, there are some select interests that do. We must not allow them to prevail.

So Mr. President, I reluctantly go along and join my esteemed colleague from Vermont in a compromise that will not put the Senate to a vote on this issue. These votes have always been close, except in 1982 when the Senate voted foursquare, 59 to 38, to prohibit the transfer of the schools to the Education Department, only to see our wishes eroded in conference committee.

I do plead however, to this body and individual Senators, that we really are going to have to take a serious substantive look at this issue. We really need to think of the children and think of what is really right rather than think in terms of political accommodation.

I thank the Senator from Vermont for helping me work this compromise out. I think his instincts are correct to forgo any kind of vote or long protracted debate in this sensitive political year. I have lived with this issue and followed it closely for a long time, beginning in the House of Representatives and continuing for my 3½ years here in the Senate. I will be living with it for a couple of more years, I suspect. I thank the Senator from Vermont for his spirit of accommodation. at least we do not have to cross swords this year because as I say, it is distasteful any time I have to do that even though we always do it in a pleasant manner.

Mr. STAFFORD. Mr. President, I thank the Senator from Indiana for his gracious comments here. I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3265) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3266

(Purpose: To prescribe an end strength level on United States forces assigned to permanent duty in European NATO countries, to request certain improvements in allied defense capabilities, and to provide for the reduction of United States forces in other NATO countries under certain circumstances)

Mr. NUNN. Mr. President, I have an amendment I send to the desk on behalf of myself, Mr. Roth, Mr. Zorinsky, Mr. Glenn, Mr. Pressler, Mr. Bentsen, Mr. Johnston, Mr. Chiles, Mr. Levin, Mr. Lautenberg, Mr. Bingaman, Mr. Metzenbaum, Mr. Cranston, Mr. DeConcini, Mr. Baucus, Mr. Huddleston, Mr. Melcher, and Mr. Sasser and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. Nunn], for himself and Mr. Roth, Mr. Zorinsky, Mr. Glenn, Mr. Pressler, Mr. Bentsen, Mr. Johnston, Mr. Chiles, Mr. Levin, Mr. Lautenberg, Mr. Bingaman, Mr. Metzenbaum, Mr. Cranston, Mr. DeConcini, Mr. Baucus, Mr. Huddleston, Mr. Melcher, and Mr. Sasser, proposes an amendment numbered 3266.

Mr. NUNN. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 128, between lines 12 and 13, insert the following new section:

IMPROVEMENTS TO NATO CONVENTIONAL CAPABILITY

Sec. . (a) The Congress finds that the North Atlantic Treaty Organization (NATO) should improve its conventional defense capability so as to lengthen the time period that Western Europe can be defended adequately by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country. The Congress further finds that increasing defense spending, improving conventional sustainability, and providing support facilities in Western Europe for rapid reinforcements from the United States are crucial to accomplishing that objective.

(b) After September 30, 1985, none of the funds appropriated pursuant to an authorization contained in this or any subsequent Act may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

(c) Beginning on December 31, 1987, and ending December 31, 1989, the permanent ceiling prescribed in subsection (b) shall be reduced effective December 31 each year by 30,000 unless, during the previous calendar year, member nations of NATO, other than the United States, have increased their defense spending by an aggregate average of at least 3 percent, after inflation, as measured in the annual report of the Secretary of Defense on the allied contribution to the common defense required by section 1001.

(d) The Secretary of Defense may waive the reduction required by subsection (c) for any calendar year if he certifies to Congress in writing that, during the previous calendar year, member nations of NATO (other than the United States) have accomplished the following objectives:

(1) Those member nations of NATO (other than the United States) who have committed forces to the Center Region have placed on firm order, or accepted delivery of, an increase in the supply of air and ground munitions so as to reduce, on an average, 20 percent of the gap between the goal, as established in NATO Ministerial Guidance, of 30 days supply and the level of such munitions available in the Center Region of NATO as of January 1, 1985.

(2) Member nations of NATO (other than the United States) have increased the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe so as to reduce, on an average, 20 percent of the gap between the number of such facilities and shelters available on January 1, 1985, and the number required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, the annual commitment of United States reinforcing tactical aircraft in the previous year's Defense Planning Questionnaire (DPQ) Response. Such reduction in the gap must be accomplished by real increased spending and may not be met by reallocation within existing spending levels of infrastructure funds.

(3) The Supreme Allied Commander in Europe has certified to the Secretary of Defense in writing that in the previous calendar year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity which contributes to lengthening the time period between an armed attack on any NATO country and the time the Supreme Allied Commander would have to request the release and use of nuclear weapons.

(e) If the Secretary of Defense is unable to certify to the Congress that member nations of NATO (other than the United States) have met all three objectives of subsection (d) in any calendar year, but is able to certify that some of those objectives have been met, the permanent ceiling prescribed in subsection (c) shall be reduced as follows:

(1) If the Secretary certifies to the Congress that one of the three objectives has been met, the permanent ceiling shall be reduced by 20,000.

(2) If the Secretary certifies that two of the three objectives have been met, the permanent ceiling shall be reduced by 10,000.

(f) Whenever a reduction in the permanent ceiling is required to be made under this section in any year, such reduction shall be in addition to any reduction in the ceiling required to be made under this section in any previous year.

(g)(1) Not later than March 1 in each of the calendar years 1985 through 1988, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Center Region.

(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

(C) The measures taken to accomplish the objectives of subsection (d) (3).

(2) The March 1985 report shall establish the baseline for measuring the annual performance of member nations of NATO (other than the United States) in meeting the objectives established in subsection (d) (1) and (2); the March 1986 report shall describe and employ, on a trial basis, the methodology to be used.

(3) The report required by this subsection shall also include an assessment of whether any reduction in—

(A) the gap in air and ground munitions (referred to in subsection (d)(1)) was accomplished by reallocation of funds within existing or planned spending levels; and

(B) the gap in minimum essential and emergency operating facilities and semihardened aircraft shelters (referred to in subsection (d)(2)) was accomplished by real increased spending or by reallocation within existing spending levels of infrastructure funds.

(4)(A) Beginning with the fiscal year 1986 budget submission to the Congress, but not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall report to the Congress on the status and cost of the United States commitment to NATO as reflected in the DPQ Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report on "United States Expenditures in Support of NATO", first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677), and shall include not only the information required by that section but also information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

(B) In addition to the requirements under subparagraph (A), the Secretary of Defense shall include in such report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

(i) Allied contributions to the common defense (this requirement is satisfied by submission of the report required by section 1001).

(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft (this requirement is satisfied by submission of the report required by paragraph (1).

(iii) Meeting NATO force goals.

(iv) Increasing NATO infrastructure funding.

(v) Improvements in air base defenses.

(vi) Increasing trained manpower levels, particularly reserves.

(vii) Increasing war reserve material .

(viii) Improving initial defense capability.

(ix) Improving NATO's ability to neutralize enemy follow-on forces, particularly use of emerging technologies.

(x) Improvements in mine/counter mine capability.

(xi) Improvements in offensive counter air capability.

(h)(1) The Congress finds that a viable "two-way street" of defense procurement improves NATO interoperability and therefore is important to overall improvements in conventional defense.

(2) In addition to any funds appropriated pursuant to the authorization contained in section 116(a) for the activities of the Director of Test and Evaluation, Defense, the Director may utilize an additional amount, not to exceed $50,000,000, to acquire certain types of weapons, subsystems, and munitions of European NATO manufacture (including submunitions and dispensers; anti-tank and anti-armor guided missiles; mines; runway-cratering devices; torpedoes; mortar systems; light armored vehicles; and high-velocity anti-tank guns) for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act.

(i)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor.

Mr. NUNN. Mr. President, this is an amendment that has been discussed here in the course of this debate. I made a rather lengthy presentation on the amendment the other day and we have seen a great deal of discussion about it. I started off my presentation on Monday describing the opposition that was likely to develop to this amendment. If anything, I underestimated it. I will not name everyone who has now come forward, but I might say at the outset that, as far as the leadership of NATO is concerned, this may be one of the few times that they have been united in recent years. They have all united against this amendment. So I do not want to pretend to anyone that this is a little old noncontroversial amendment that does not do anything to anybody.

It is far from that, Mr. President. It is an amendment that will have, I hope, a very strong message attached. That message, though the amendment itself is not that simple and has some rather complicated parts to it, is very simple. The message is that we want to be a part of NATO; that we are going to continue to be a part of NATO whether this amendment passes or does not pass; that we will even continue to be a part of NATO if our European allies do not comply with any of the provisions of this amendment; that we shall continue to have hundreds of thousands of troops in NATO even if this amendment passes and even if the allies do not comply with any of the provisions or tests. We will still have a nuclear deterrent that will not only protect this Nation but explicitly help protect our European allies. We will continue to have theater nuclear capability and commitment to our European allies. We will continue to have naval commitment.

This is not an amendment designed to terminate America's position in NATO. We will continue to have a strong political, economic, and social attachment to NATO. So this is not a petition for divorce.

This is a petition for the alliance to carry out its vows that have been made over and over and over again but have since not been carried out.

First let me explain the amendment. I will not go into a lengthy explanation. But the amendment is designed to give NATO as an alliance every incentive to improve its conventional defense. The reason we need to improve conventional defense is that the continued reliance on the early use of nuclear weapons is diametrically opposed to the national security interests of this country and the security interests of our Western European allies. If any point has been debated in Western Europe over and over and over again in the last 2 years, it is that very question about relying on nuclear weapons.

The thing which has been most disappointing to me—and I know that our allied political and military leaders have had their hands full with all of the problems. I recognize the severe strain the Europeans have been under during this period of trying to deploy the Pershing II and ground-launch cruise missile—is that at a period of time where public opinion was most focused in Europe on the alliance, on the nuclear problems, on the need to modernize our nuclear weapons, there was not a more explicit relationship developed by the leadership in Europe between our continued heavy reliance on the early use of nuclear weapons in response to any kind of attack, conventional or otherwise, and conventional improvements which desperately need to be made.

There is a direct relationship between NATO's continued reliance on early use of nuclear weapons and the lack of conventional capability which is reflected because of the lack of effort.

This amendment sets a permanent ceiling of 326,414 U.S. forces ashore in Europe. That is the exact level requested by the Department of Defense for fiscal year 1985. Beginning in 1987 and continuing for 1988, 1989, this troop ceiling is reduced 30,000 per year unless during the previous year the allies have increased their defense spending by the NATO goal of 3 percent. That is a big, big "unless," because this is something that our allies have committed to do over and over again. This is not something we are imposing on our allies from the floor of the Senate. There is not a single provision of this amendment that imposes on our European allies a single thing that they have not pledged to do themselves over and over and over again. We are not imposing anything new. We are saying carry out your commitment.

There is another path that the allies can take to avoid any kind of troop reductions. I might say at the very beginning the troop reductions are not in this amendment from the point of view of punishing, from the point of view of blackmail, from the point of view of threatening. They are here because the simple reality is, if we do not have allies that are going to do their part, there is no need for the American taxpayer to continue to spend billions and billions and billions and billions of dollars on troops, on ammunition, on airlift, on all types of equipment for modernization. We can have a tripwire—that is, having our forces basically link the American nuclear deterrent to the defense of Europe—for a lot less money.

We do not have to spend $90 billion a year for the purpose of keeping our forces in NATO and for the purpose of having rapid reinforcements within the first 10 days. That is how much it cost us for forces in NATO and the rapid reinforcements. We do not have to spend $170 billion a year for those forces to be there in the first 10 days and those that will follow. That is what we are spending, $170 billion a year on NATO alone.

We do not have to do that. We can save a lot of money.

Now, that is not the course I would like because I believe in a strong conventional defense of NATO. I do not believe in the early use of nuclear weapons. I do not believe in placing the President of the United States and our Western leaders in a position of having to decide between two very unpleasant alternatives in the event of a conventional attack by the Soviet Union and the Warsaw Pact.

One alternative, of course, is to capitulate, to surrender. The other alternative, as General Rogers has said over and over again, is the alternative he would have to choose now in the event of any kind of war of that nature. He would have to choose to turn to the early use of nuclear weapons.

Now, this posture is not necessarily new for NATO. We have had conventional disadvantages since World War II, but what is new in the last decade and a half is that we no longer have strategic nuclear superiority. We are in a period of parity. Some people believe it is clinging parity. The President of the United States says it is inferiority. I disagree with him on that, but he says that.

We no longer have that overwhelming advantage to say to our adversaries, "You come across the border with a few tanks or all your tanks or any kind of conventional attack, and we are going to start raining down on your territory nuclear weapons."

That was our posture in the 1950's and for a great deal of the 1960's.

Something else has changed also. We no longer have theater nuclear advantage. For a long time we had the stronger theater nuclear force. That is no longer true. The Soviets have SS-20's all over the territory of the Western Soviet Union and putting them in Eastern Europe. So the threat of nuclear retaliation in response to a conventional attack is becoming less and less credible.

Why do you escalate into an area in which you have disadvantage? What is the advantage of escalation? Those are serious questions. Those questions have not been connected in the debate in Europe that I have followed during the considerable discourse on deployment of Pershing II missiles and ground-launched cruise missiles.

Let me describe just briefly the second path. The first path the allies are being asked to take is the 3-percent path, the goal they have already set over and over and over again.

The second path, if they do not meet the 3-percent path—and I call that an input test; that is how much they put in. That does not measure output. There is another path that would measure output. Again, these output goals are what the allies have set themselves. These are not goals that I thought of or that the Senate is imposing or being asked to impose on the alliance. The first goal would be to reach the 30-day munition level, for the allies to be able to sustain their military, their conventional military capability for 30 days—not 120 days, not World War II, not World War I, but 30 days. That is what they pledged to do over and over again, 30 days.

They have not done that. We are in what I consider to be an almost absurd situation—and we cannot discuss the exact number of days of supply, and I will refrain from doing that, but we can say that the United States has met our 30-day commitment. We have more than that. We have twice the sustainability in general terms with munitions that our allies have. We have $6.5 billion in this bill for new munitions for NATO. The $6.5 billion in this bill exceeds the test on output that we are asking the allies to meet over the next 5 years. Their total output would not have to be more than $6 billion to meet these tests. We have more in this bill than that on munitions.

In the next 5 years, the U.S. defense budget on the 5-year plan has projected $52 billion worth of ammunition for NATO alone. That does not count Korea. It does not count the Middle East. It does not count the Rapid Deployment Force.

Now, are we going to ask the American taxpayers to pay $52 billion to increase a munitions supply in NATO when we already have twice the amount that our allies have in their 5-year plan, which does not show that they plan to increase at all in munitions? Ask any military leader what happens in NATO, any of them—retired, active—when the allies give out of ammunition? Are American forces that comprise between 10 and 20, 25 percent at most of all the forces in a wartime scenario going to be over there fighting by themselves? Are they going to fight when everybody on the flank is out of ammunition?

I think the answer to that is clear. When the allies give out of ammunition in a conventional war, the conventional war is over, and at that stage we are back to the choice of going to nuclear weapons. As our Supreme Allied Commander there says, we have to throw out the white flag of surrender.

Mr. President, the goals here are very clear; they are goals to which the allies have agreed.

The first one is the 30-day munition goal.

The second goal, I think, is equally important. It says that the allies will carry out the commitment they have made to provide the essential facilities for our rapid reinforcement aircraft. Those are not aircraft in Europe now. Those are aircraft that are over here. Our aircraft in Europe occupy almost all the space we have available in American bases. So we said to our allies several years ago: "We will greatly increase our rapid reinforcement force with aircraft. We will spend a lot of money. We will keep the aircraft here. If war breaks out, we will fly them over. But you have to do something for us. You have to provide minimum essential facilities for those aircraft so that when they land, they can refuel; so that after they have flown one sortie, they can resupply with ammunition; so that they can be maintained and sheltered."

Guess what has happened? We have spent $50 billion in procuring the finest aircraft in the world. We have excellent pilots. We have some of the finest young people in those airplanes that any fighting force has ever had. They are ready to go. If we have a war in Europe, they are ready to fly over there.

What happens if the tanks come tomorrow morning and those aircraft take off to go to Europe? When they get there, they find a war going on. They find that approximately only 300 of those aircraft would have a way to be resupplied with ammunition. Only 300 of those aircraft, out of 1,500, would have any way of being repaired.

And guess what? None of them would have any shelters. They would be landing in Europe, in the middle of world war III, the largest conventional capabilities any two fighting forces have ever had in the history of the world. They would be at airbases there with not only no fuel resupply, no way to maintain themselves, but also, they would have zero shelters.

Can you imagine that? Can you imagine the young American pilots who have been trained as well as any pilots in the world—and better than most, I think—getting to Europe and finding that their military and political leaders in the alliance had not provided any way to fight the war they have been trained to fight—not having any ability to refuel, not having any ability to be repaired? Our sophisticated aircraft require a great deal of maintenance. That is one of the down problems. They would not have any shelter. They would be sitting there like sitting ducks, the finest young men we have, because our European allies had not done what they said they would do over and over again. What kind of deal is that?

We are not talking about something here that does not ruffle feathers. This amendment ruffles some feathers. This is a cage-rattling amendment, make no mistake about it. Those who are going to vote against it should go to an airbase and tell those young men who are being trained that the mission they are going on in Europe is mission impossible; that there are no fuel facilities for them—or 20 percent will have it and 80 percent will not—that none of them would have any shelters; that they will be sitting in the middle of an airfield and will be bombarded from every side by an awesome Soviet air capability, and they are not going to have any shelters. Go tell them that.

Tell them that we did not want to ruffle any feathers, if this amendment fails. Tell them that we did not want to make the Europeans nervous; it is a bad time. It is never a good time. They have had a lot of problems, economic problems and deficits. We have $200 billion deficits for the next foreseeable number of years. They have problems—no doubt about that.

Let us tell our young men and young women who are going to be over there in the first 10 days what awaits them. I do not think they know it. I know that the American taxpayers do not know it—most of them. They have not read about it or heard it.

So, to make a long story short, the second part of the output measure is to say to our European allies: "We expect you to carry out your commitment. We expect you to provide the minimum essential shelters for our aircraft, $50 billion worth. We expect you to provide the shelters necessary, as you said you would do. That is what we expect, nothing more. No requirements. No invasion of sovereignty. No decisions being made on the floor of the U.S. Senate telling our Allies what to do. Just carry out your commitments. That is all we want. If you do not carry out your commitments, we are going to start saving some money."

If they decide on using nuclear weapons at the early stage of a war and do not give our leaders a chance to pause, without escalating up the nuclear ladder, then I think it is very regrettable and very dangerous. I am very much opposed to it, but I am opposed even more to spending billions of dollars and at the same time not improving very much our NATO defense.

Guess what it costs. I ask my colleagues who are listening—and I hope some of them are listening in their offices—if they know what it would cost for the allies to do what they said they would do with these bases for the $50 billion. My colleagues may be thinking in terms of $10 billion, $20 billion, $30 billion. No. $1 billion is what it would cost, and that would be a collective expenditure. That would be the cost for non-U.S. portion.

Guess what? Uncle Sugar would pick up 26 percent of the total. I have not included that in the $1 billion. That would be above that. Uncle Sam pays 20 percent of the infrastructure before. We would be paying some $300 million to $400 million of the total. We would be paying our part. That is what we are asking.

So the output test would cost, if fully complied with, about $1 billion extra, collectively, for the whole alliance, each year for 5 years. The second output test would cost about $1 billion. Those two output tests and two-thirds of what I call path 2.

The third part of the path would be a simple certification. It would not be simple in terms of the way it would be arrived at. It would be simple in terms of being able to understand it.

The Supreme Allied Commander in Europe is being asked in this amendment to certify to the Secretary of Defense for the United States that the alliance has taken conventional steps that have the effect in the measuring year of raising the nuclear threshold, of making it a little more remote in terms of the number of days we have to wait before we have the ability to fight, before we turn to nuclear weapons.

Those are the three tests. The third test would be a subjective test. Senator ROTH and I do not try to specify in this amendment the exact ways as to how you would go about it. We have put confidence in the man there to make that determination. I know that I have confidence in General Rogers. He has said over and over that we will have to turn to nuclear weapons in the early stages. We want to give him authority to take a good look during the measuring period to determine if we have to raise the nuclear threshold.

Guess what? If the European allies meet the 3-percent test, there is no withdrawal. But if they fail to meet the 3-percent test, they can go down path two and, if they meet one of those goals, there is only a 20,000 withdrawal. If they meet two of those goals, there is only a 10,000 withdrawal. If they meet three of those output goals in path two, there is zero withdrawal.

Again I want to repeat: According to the best calculations we have, the total amount of expenditure for the Europeans to meet path two over the 5-year period would be approximately $6 billion. We do not measure all of these years. We measure only 3 of those years. So you can take 60 percent of that and the 60-percent figure would be the applicable figure for the 3 years of measuring.

The reason we do not measure all 5 years, we set up 20 percent each year to get to that goal, that would give us 100 percent, if this amendment were carried through 5 years. We cut off at 3 years because we felt that Congress should review it and our allies should review it. Projecting beyond 5 years is very difficult. I think it is important for our allies to recognize that we are giving them plenty of time on this amendment. This amendment does not take effect in 1985. We are measuring it in calendar years. In 1985 calendar year nothing happens, except debate, deliberation, hopefully better economic periods, hopefully more NATO consensus, hopefully more commitment. The first measuring year is 1986.

We have a measuring year in 1986, calendar year, not fiscal year. We have a measuring year in 1987. We have a measuring year in 1988. And following each one of those measuring years we have a year that the amendment would be implemented if the tests are failed. So the years where the amendment would be implemented would be 1987 calendar year, 1988 calendar year, and 1989 calendar year.

If the allies do not comply with their previous commitments as set forth in this amendment, the first troops would be withdrawn by reason of this amendment in December 1987. This is when this bill started. It was 1984. I think it still is. This is June 1984 to December 1987. That would be 3½ years, 3½ years before there are any sanctions, 3½ years. It seems to me that is pretty reasonable.

We are basically saying in spite of our frustrations, in spite of the fact if we were honest with our American airmen, we are going to have to tell them they are going to be in the middle of world war III without any place to go when they get to Europe. In spite of the fact that 10 divisions of Army forces are going to be put over there, I think we have to be honest with them, too. As things now stand, according to our own military commander, when those young people land they are going to be landing right in the middle of a nuclear escalation. They would get there about the time or within a reasonable number of days of the time the ammunition will run out in terms of our allies. So they will be welcomed to Europe with the information, if they cannot feel it themselves, that we are in the middle of a theater nuclear war or something worse and none of us know how fast that would escalate up the ladder.

So I pose to my colleagues the question, are we willing to continue this posture from now on? It is not like we are impatient. I have been probably at least one of the strongest supporters of NATO since I have been in the Senate and I still am. I think it is the very heart of our Western defense. I think the alliance is attached in many ways socially, politically, economically. We feel very close to our European allies. We have corresponding commitments to democratic values. We have corresponding commitments to human rights. Most of our interests in the world coincide. We have tremendous economic stakes together in the world. I do not think we could say we have not been patient. This effort to strengthen NATO's conventional defense did not start in the Reagan administration or the Carter administration or the Ford administration. It started way back in the 1960's, way back in the Kennedy administration, and it was intensified in the late 1960's under the Nixon administration when Secretary Schlesinger was Secretary of Defense. There was a very intensive effort made, and I worked very closely with Secretary Schlesinger, and I know the Senator from Texas did also, and the Senator from Virginia was a vital part of the administration back during those years.

Strenuous efforts were made then to begin to strengthen our NATO conventional defense. The Carter administration made strong efforts. That is where the 3-percent pledge came from. The Reagan administration has done more perhaps than anyone else in terms of the U.S. part of the NATO conventional defense. We have done an awful lot. We are spending an enormous amount of money. But it is time for someone to look the American people in the eye and tell them no matter how much we spend, we are in an alliance and if we do not want to be in the alliance we can go our own way. I think we should be part of this alliance. As long as we are in that alliance as long as 10 or 20 percent of the total forces are U.S. forces, in the event of a war over there, unless our allies do their part all this money we are spending is not going to change the balance in Europe.

It has not changed it in the last 3 years. In fact, General Rogers says the gap has gotten worse. That does not mean we have not improved American forces. We have. I do not want to misinterpret it there. Our forces are better off than they were 3 or 4 years ago in Europe and I think in most other places in the world. But it does mean we are fighting as an alliance and when our allies have problems, they will determine, as the weakest link in the chain always does, how long we can fight.

Mr. President, let me just mention a couple other things, and then I will turn to the Senator from Delaware. I know he has thought on this. No one has worked harder than the Senator from Delaware, as I know of, in the last 5 or 6 years, to try to get some degree of cooperation between the United States and Europe. Time after time the Senator has spent numerous hours meeting with Europeans. He has gone to many conferences. He has offered amendments, several amendments, that I have coauthored with him on the whole NATO two-way street, the efforts to coordinate our procurement, the effort to convert what is each year a larger NATO expenditure than the Warsaw Pact into a real fighting capability. So he has done a great deal and my hat is off to him and I know it has taken a great deal of courage and fortitude for the Senator to stick to this position over a long period of time.

So I am proud to have the Senator from Delaware as a sponsor of this amendment, and I hope that the word is very clear that this is a bipartisan effort. This is not an effort that stems from party politics. It is an effort that stems from facing reality.

So I will at this point defer to my colleague from Delaware.

Mr. TOWER. Mr. President, I wish to respond if I may.

Mr. NUNN. I will in deference to the chairman at this point yield the floor.

Mr. TOWER. Mr. President, this amendment came to my attention less than a week ago, and it came to my attention in the form of an explanation rather than a printed text when the Senator from Georgia was kind enough to tell me what he had in mind. That was last Thursday. This is Wednesday. And this is a very complicated amendment with rather far-reaching foreign policy implications and one on which no hearings have been held at all by either the Armed Services Committee or the Foreign Relations Committee.

The Senator from Georgia was quite right. It has precipitated a very strong reaction and the fact it has should give us pause and suggest to us that perhaps we should have some hearings and some inquiries on the impact of this amendment.

I would hope that the Senator from Georgia would see fit at some point to perhaps withdraw this amendment, offer it as freestanding legislation, and let us have hearings on it both in the Foreign Relations Committee and the Armed Services Committee to examine what the long-term implications of it might be, because we have not really had time to deliberate on it and as sophisticated as many Members of this body are on such matters, I would have to conclude that probably most of them are not familiar with all the details of a rather complex amendment, nor have they had an opportunity to avail themselves of some information on how this would actually affect the achievement of the objectives that the Senator from Georgia himself seeks.

Let us understand first why we are in Europe in the first place. We are not there for altruistic reasons. We are not there just to defend the blue-eyed Europeans. We are there because we have concluded that it is in our national interest to be there. It is axiomatic that, when confronted by a very, very powerful adversary with a global military capability, you establish your defense perimeter as close to his shores as possible and as far from your own shores as possible. That is a lesson that we have certainly already learned in previous military conflicts.

The United States had been spared from the devastation of war ever since the unpleasantness between the States, except for, of course, the devastating attack on American territory at the outset of World War II in Hawaii, because we have had two oceans, and those oceans have been a barrier, and we have had a naval capability of holding our adversaries at bay.

Now, we have drawn the line in Western Europe. We had to draw the line there, because of the aggressive behavior of the Soviet Union and because, as we were disarming after World War II, they were rebuilding their military capability. They violated the Teheran and Yalta accords, imposed their will on Eastern Europe. And NATO was formed in response to that threat. We were in on its formation from the onset because we understood that it was in our national interests to be there. We are not there just to defend Europe. We are there to defend our own interests.

I think that the objectives of the Senator from Georgia are laudable. The Senator from Georgia has set forth very well what the objectives are in the way of increased defense spending, improved sustainability, better facilities for aircraft, all of these things; he is correct. Our European friends have undertaken a commitment to do these things, and I think we must continue to insist that they do them.

The question is whether or not the amendment proposed by the Senator from Georgia will accomplish those objectives or whether or not it might indeed thwart those objectives.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. TOWER. I yield for a question.

Mr. JOHNSTON. Is the amendment of the Senator from Georgia self-executing, or would it not, in fact, require congressional action to do anything in the year 1987, or 1988, or 1989?

Mr. TOWER. No, it is self-triggering. It does not require congressional action.

Let me complete my statement, and then I will be glad to yield to questions from anybody.

The fact is that this is the wrong way, the wrong time, to try to achieve through this means the kind of result we seek. Everybody that is on the cutting edge of the problem opposes the amendment.

So the burden of proof, I think, is on those who propose it to show us substantial evidence that this will get Europe moving in the direction we want them to move. I do not know where that proof is. I do not know how you can prove it.

When Dave Abshire, our American Ambassador, says, "This would be disastrous; this will be counterproductive"; when Tap Bennett, our long-respected Ambassador there, says, "This would be counterproductive; don't do it," Jimmy Carter's Ambassador to Brussels; when General Rogers says, "Don't do it, it will be counterproductive"; when the President of the

United States says, "We must not do this"; when the Secretary of State says, "Don't do it"; the Secretary of Defense says, "Don't do it," then the burden of proof is on those who all they have to do is legislate something here and walk away from it.

We do not have any responsibility beyond this, do we? Are we out on the cutting edge? No. Are we responsible for the day-to-day conduct of the diplomacy with our allies? No, we are not. This is easy for us. We can say, "We don't like the fact that the Europeans have not met their commitment. We don't like the fact that they have not met the level of burden-sharing we expect them to meet. Therefore, we are going to get tough with them; beat up on them a little bit. Then maybe they will respond." That is all we have to do.

Then if this legislation fails or it is counterproductive, then who do we blame? Well, it is unlike the Congress to ever accept any blame for something of that sort. We get involved in foreign policy issues, but we do not have to go in and clean up the aftermath of it.

We are told by everyone in a position to know that this amendment is counterproductive.

Let me tell you one thing we would do. We would kick our friends in the teeth. That is the first thing we would do. Take these European politicians that, in the face of enormous popular sentiment, enormous propaganda efforts by the Soviet Union, who have nonetheless staunchly supported American policy in the deployment of theater nuclear weapons. Are we helping them? Are we reinforcing them with this? No. We are embarrassing them politically.

They have just gone through a heck of a battle. They have gone through tough political battles. How many of us could have accomplished what they have accomplished? Put yourself in that position. If we had polls showing a majority of the people in this country were opposed to the deployment of a particular weapons system in this country, would all of us say: "It is right, therefore we will go against public opinion and we will do it?" Would the Congress react that way? We do not know how we would react, do we? But they did. They did.

And so what we have proposed to do now is embarrass the Margaret Thatchers, the Helmut Kohls of this world that have stood fast for what they thought was right and gone ahead with deployments.

The Italians—a fragile coalition government, made up of many leftwing elements; a fragile government, indeed—stands fast on deployment. Should we kick them in the teeth; let them have it? Of course, they are economically in very, very bad shape now, but, by gosh, we want them to do more. So we are going to jam them with this. "We are going to take our troops out if you Italians don't get off of it, put up 3 percent more in real terms of your money, because we know you buy nine times as much military hardware from us as we buy from you, but we want you to up that defense budget anyway and buy some more from us."

In the context of these times, are we going to kick our friends in the teeth? That is what they regard it as. Nobody regards this as a signal; they regard it as bullying. Certainly, we want them to meet those objectives. But you know there are a number of things that have to be done. They have got economic problems that have to be resolved. They have got their own political and diplomatic problems that have to be resolved.

We have made great progress. We have just gone through a series of ministerial meetings, meetings of defense ministers, foreign ministers, a Presidential summit meeting, and the cohesion of the alliance is good; not perfect—never is—but good.

In this climate, are we going to say: "Now, you better do everything that you have undertaken to do and that we expect you to do or we are going to start withdrawing troops"?

That is going to be regarded as intimidation. How would you react to attempted intimidation from another country? Even if you tended to support the policies of those countries, that kind of heavyhanded tactic would more likely turn you against them. What are these friends of the United States and the Governments of these respective countries going to say to their people? The United States zapped us again. No. This is not going to enhance the popular climate in those countries for the achievement of these objectives that we seek because it is going to look like a heavyhanded effort by Uncle Sam. Boy, we have been on this floor for days saying we have got to be a little more conciliatory toward the Russians. Let us unilaterally restrain ourselves on certain weapons tests, or weapons production, or weapons deployment, and let us tell the President he has got to go to Moscow and negotiate with them. That is the attitude we take toward the Russians. They have not lived up to their commitments either, remember. There is strong evidence—if not conclusive, certainly strong circumstantial evidence—that they are not living up to their treaty obligations but we are to act with unilateral restraint. We are to tell our President, by George, Mr. President, you have to go to Moscow and negotiate. Then we turn around on the other hand, and are conciliatory to big Russia. What about our weaker friends? Zap, take that. Get off your duff and do what you are supposed to do. That is the way we treat them. What kind of signal does that send? Boy, is that a clear signal. What is it going to do to the efforts of the Soviet Union to drive a wedge between the United States and our European allies? Does anybody doubt the Soviets are trying to drive a wedge between the United States and European allies? I can assure you they are. And our friends in those countries know that they are.

You know, some of our friends have even caught the Soviets infiltrating their press, groups that oppose Government policy, and oppose NATO policy. Yes, they are trying to influence us. They propagandize those people like it is going out of style. Is this going to have absolutely no deleterious effect on that relationship? Can anybody prove to me beyond a shadow of a doubt, or even make a good case, that the Soviets will not try to use this piece of legislation as a vehicle to further drive that wedge between the people of Western Europe and the people of the United States? Are the Soviets going to come in there and say: "See, the Americans are bullying to tell you what to do. Are you going to take that?"

How would you take it if some foreign power told you what you had to do, or we will pull our support away, take our troops out?

We do not think we are doing enough. We say they have to have a 2-percent increase in real terms. Are we going to stick to 3-percent real increase in real terms? Maybe we should have something in here that says if it exceeds that, and we fall below 3½ percent in real-term increase, that the provisions of this amendment will not go into effect. Are we willing to do that? Let us look at spending trends.

In the decade of the seventies, defense spending declined in real terms in the United States by 20 percent. What do they do in Europe? They increased. Look at the overall trend of the defense spending in Europe over the last 15 years. Ours has gone like this, up and down, fluctuating. Theirs has had a constant upward trend. Another thing they have that we do not is a draft. Sometimes they say to us: "Why don't you Americans have a draft?" We do not need one. We have an All-Volunteer Army. I agree we do not need one. But with their draft, there is one thing they produce in addition to their standing armies. They produce a substantial trained reserve component. There are a lot of things that they do that we do not do.

I think there has been a great deal of talk about the tripwire. It occurs to me if, for some reason, economic reasons, political reasons or other, they cannot meet these commitments, we start withdrawing troops, oh, does that raise the likelihood of the tripwire? Does that raise the nuclear threshold? No. It lowers it.

What if, in the process of this withdrawal, the Russians decided now is the time to go in there and hit them? Are we going to get the rest of our troops out of there? The troops that will remain will be in greater hazard as a result of our having pulled 90,000 troops out over a 3-year period of time.

I think we all want to shore up the defenses of Western Europe. We all want to do more. But I think, really, the most damaging argument against this amendment comes from a report—I do not know what has changed since this report was issued 2 years ago—of May 1982, "NATO: Can the Alliance be Saved?" And this is what a very outstanding Member of this body and a great expert on Western Europe said. He wrote:

> Some have suggested we simply pull U.S. troops out of Europe in order to punish our NATO allies.
>
> As satisfying as this might be as a vehicle for expressing American frustration—I might say this is a pretty satisfying vehicle here, satisfying American frustration—it is a recipe for the destruction of NATO and for a neutralized Western Europe. Though some believe these proposals are a means of compelling the Europeans to do more, if implemented, they are likely to do the opposite by strengthening the very political forces in Europe that now oppose NATO.

These words of SAM NUNN are as true now as they were when he said them 2 years ago. I commend him for them because they are fully applicable to the amendment that he proposes here today.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I am happy to cosponsor the amendment.

Mr. NUNN. Mr. President, would the Senator from Delaware yield for one brief, very mild but pertinent rebuttal of that excellent quotation which the Senator just read?

Mr. ROTH. Yes; I yield.

Mr. TOWER. Senator, if you can rebut that quotation you are very, very good indeed. I think it is almost unrebuttable.

Mr. NUNN. The context of it I think is important.

What is the date of that?

Mr. TOWER. May 1982.

Mr. NUNN. I said some things even stronger than that on the Mansfield debate, if the Senator will get his capable staff to go back.

Mr. TOWER. That goes too far back. This is fresher.

Mr. NUNN. The difference, if I might say to my friend from Texas, is this amendment is not designed to pull troops out of Europe. This amendment could result in that. This amendment has a 2-year delay on it. We are going to measure what our allies do. I do not choose to pull troops out of Europe but I do not choose to continue to ask the American taxpayer to foot the bill if we are not going to have a conventional defense. So I am still opposed, would oppose, and join the Senator from Texas in opposing any amendment that would affect the 1985 level in terms of pulling troops out of Europe. This is an entirely different approach. This is an approach designed to keep our NATO allies together. This amendment is designed to keep our troops in Europe providing we have a viable conventional defense opportunity.

I might just say that going back a few years in history—I do not know whether the Senator from Texas recalls this—there was an amendment in 1974 called the Nunn-Jackson amendment. Interestingly enough, that amendment dealt with the balance of payments problem which was very critical at that time. That amendment provided that in the event the United States failed to obtain through negotiations with our NATO allies a total offset resulting from our stationing of troops in Europe within 12 months of the enactment of the amendment, we would reduce our forces in Europe by a percentage equal to the percentage formula.

Interestingly, enough, Senator Jackson said during that debate, "If the offset is only 75 percent, then we shall retain only 75 percent of the present force level in Europe; if the shortfall is 10 percent, then 10 percent of the forces will be withdrawn."

If the shortfall had been, under that amendment—and it passed and became law—10 percent, we would have withdrawn 27,000 troops. If the shortfall had been 20 percent, we would have withdrawn 54,000 troops. If the shortfall had been 30 percent, we would have withdrawn 81,000 troops. If the shortfall had been 40 percent, we would have withdrawn 108,000 troops, and so on.

Interestingly enough—and the Senator from Texas has always, in debate, recognized that there have been some points in history where we had to put pressure on to have burden sharing become a reality—the Senator from Texas joined with 82 other Senators, including the Senator from Georgia, in supporting that amendment which, in the present context of debate, I am sure the Senator would also label radical because that amendment would have resulted in many more withdrawals of forces in Europe than this.

It did not, because it achieved its purposes. We got $2 billion in offsets from our allies. Otherwise, that would not have occurred.

I remember very well the context of that amendment. The reason our colleagues did not think it was so radical then is because the Mansfield amendment was being proposed at that time, which was a unilateral statement of withdrawal.

So the Senator from Texas has supported the right side of this issue on occasion, and I hope during the course of this debate he will harken back to his 1974 position.

Mr. ROTH. Mr. President, as I said a few minutes ago, I am pleased to cosponsor the amendment offered by the Senator from Georgia.

I might say that I think the situation has substantially changed since SAM NUNN made those comments 2 years ago.

Recently, I attended the biannual meeting of the North Atlantic Assembly in Luxembourg, and because of what I heard there, I felt obliged to inform some of our allies that problems are developing in the North Atlantic Treaty Organization. I would like to share some of my observations with my colleagues here today, since I believe they are highly relevant to the pending debate.

Frankly, I was deeply concerned by what I heard at the NATO assembly. I was concerned because, like the Senator from Georgia, I am one of those people who believe that the NATO Alliance continues to be of critical importance, as it has been in the past.

I believe that people on both sides of the Atlantic have insufficiently appreciated the fact that the alliance has kept the peace for some 35 years.

Nevertheless, the question is whether NATO can meet the challenge of the future.

The conference was indeed disquieting. Our so-called flexible defense is not flexible. General Rogers has said That since we do not possess genuine flexibility, our current military posture will require us, if attacked conventionally, to escalate fairly quickly to the first use of nuclear weapons.

The possibility of nuclear war is something abhorred by the people on both sides of the Atlantic. The people demand that we reduce the nuclear risk, and that can only be done by building a credible conventional defense.

The rebuilding of a conventional defense is costly. Yet I believe if NATO is to remain viable, it must be done.

I was deeply concerned at the NATO conference that in the military reports being issued there, it was said that our European allies cannot—and I underscore the word cannot—allocate significantly more resources to their conventional defense budgets, either for the present or for the next 3 to 5 years.

Both the draft report on conventional defenses and the draft general report on alliance security made this clear. The European leadership made it clear that there is no prospect for additional significant real growth in the European defense budget.

Mr. President, if this be true, I believe it would mean the alliance would be in serious difficulty for the balance of the eighties. President Reagan is seeking significant real increases, over 7 percent, in defense spending for fiscal year 1985. Whether the President succeeds, or whether he is obliged to compromise the U.S. defense budget nevertheless, will be in marked contrast to defense disbursements on the other side of the Atlantic.

Mr. President, I believe it to be important for our European friends to understand how serious this matter is. There are strong voices, respected voices, in the United States calling for reform of the alliance, for the reallocation of the burdens and responsibilities.

Dr. Henry Kissinger has called for greater European responsibility for the conventional defense of Europe. Such voices will not be muted; I believe they will grow louder.

The United States cannot be expected to increase its defense allocations to Europe and in other areas such as the Middle East which have a direct bearing on the defense of Europe without concomitant European efforts.

Many of our European allies have pointed to the past success of the alliance and claimed that it constitutes evidence that the alliance should be maintained as is, the structure unaltered. However, I must disagree with any such position. Alliances, like people, must develop with time, adapt to new circumstances, or they will be doomed to decay with time and be the victims of circumstances over which they have no control.

Let us not forget that while NATO has proved an extremely successful institution, success has been achieved only at a price.

In a recent symposium published by Harper's magazine, Earl Ravenal pointed out that according to his calculations NATO has cost the United States between $1.5 and $2 trillion since its establishment. I must stress, however, that this was money well spent.

When NATO first was established, Western Europe was bled white by the strains of World War II. Democracy did not then have the robust appearance which it now has. Economic devastation prevented Western Europe from providing a fully credible defense against the Warsaw Pact.

Consequently, the United States came to the assistance of Europe to guarantee both its future security in the safety of democracy. The policy proved successful. The U.S. commitment to Western Europe saved it from Warsaw Pact aggression and permitted democracy to flourish once more on European soil.

However, the NATO alliance cannot afford to bask in the golden glow of past successes. Past successes cannot be allowed to mask the current crisis. The economic factors which obliged the United States to take responsibility for such a large proportion of NATO's conventional defenses no longer pertain. The economic circumstances of the alliance have changed and the alliance must adapt to those changed circumstances.

Western Europe boasts a population larger than that of the United States, and, collectively, a higher level of government spending.

Europe is no longer the United States' junior partner in NATO. I think it is worth reading in that regard a recent editorial in the Economist magazine which, I remind my colleagues, is a European publication.

This article is entitled "The Old Wife of Europe Has to Recapture Her American Husband's Attention by Being More Intelligent about Defense." I urge my colleagues to listen carefully to what this British magazine says:

> Of course, Western Europe has to put more effort into defending itself and protecting its interests outside Europe.
>
> Future historians will scratch their heads when asked to contemplate the fact that the United States, with fewer people and less government spending than Western Europe, nevertheless provides most of Europe's nuclear protection, a large chunk of its non-nuclear defenses, and almost all of the men, ships and aircraft which guard the gulf oil that European industry depends on while Europe provides no reciprocal service for the United States. (The Economist, May 18, 1984 p. 12.)

Mr. President, those are not American words, those are the words of a distinguished English periodical, and I think we ought to listen to them with care.

I know there are those who do not approve of the timing of this amendment. They believe the United States should not press Western Europe for greater defense contributions at a time of economic difficulty and that any effort to do so will prove deleterious to the state of diplomatic relations between the United States and Western Europe. To the first, economic argument, I reply that the requirement for a 3 percent real increase in European defense spending contained in this amendment is reasonable and well within European capabilities. If it were economically unreasonable, the European leadership would not have committed itself to just such an increase time after time. Let us not forget that this amendment requires nothing new of Western Europe. It simply requires that the governments of our NATO allies proceed with the commitments which they have freely made already. The United States has managed to make much greater improvements in its defensive capabilities and, while we are enjoying a strong recovery, I submit that a $190 billion annual deficit proves that we are not exactly out of the economic woods, ourselves.

Diplomatically, I would argue that the implementation of this amendment will actually improve diplomatic relations between Europe and the United States. The current inequitable distribution of the NATO burden is bad for both the United States and Western Europe. In the United States, it feeds the disturbing new neoisolationist trend which seeks to ignore any U.S. national security concern which lies beyond our own borders. So far as Western Europe is concerned, I believe that the diplomatic consequences of overdependence upon the United States have been best described by Dr. Henry Kissinger:

> Military dependence on another nation has a cumulative impact. When dependence no longer results from wartime destruction but from a policy choice, made under conditions of relative property, it can breed guilt, self-hatred and a compulsion to display independence of the United States wherever doing so is safe, especially with regard to some third world issues and certain aspects of East-West relations. (Dr. Henry Kissinger, Time, March 5, 1984, p. 21.)

Ironically, a Western Europe which could not shelter behind the overheavy protection of the United States would be obliged to face its security problems in a straightforward and honest manner and would, consequently, prove much more supportive of U.S. international policy in general.

Mr. President, I should stress at this point that neither the Senator from Georgia nor I is attempting to reduce the U.S. conventional presence in Europe. Rather, we are trying to bring about a situation which will enable the United States to maintain its current level of commitment to the defense of Europe.

Make no mistake, the people of this country simply will not continue to spend large amounts of U.S. tax revenue for the defense of Western Europe if Europe itself is not willing to join in the effort.

The opponents of this amendment have argued that it is premature, the time is not right. I would reply that time is actually running out, that we must act now or we will quickly find ourselves in a situation where a significant proportion of the U.S. electorate is demanding much more drastic action. The senior Senator from Mississippi already has remarked upon the growing profusion of so-called anti-NATO amendments which have been submitted to the defense authorization bill this year.

I did not support any of those amendments. However, I submit that, unless Europe steps forward to take a more active role in its own conventional defense, the number of those anti-NATO amendments will increase each year and they will begin to pass.

I hope that the Senator from Mississippi will discern that the Senator from Georgia and I are not introducing an anti-NATO amendment. Rather, it is our very commitment to the future of the North Atlantic Treaty Organization which causes us to perceive the present danger to the alliance and to move quickly to remedy the situation before it is too late and the alliance sustains severe, irremediable damage.

The time has come for action, Mr. President. At the moment, the NATO alliance is held together by a fragile web of fond memories and strategic myths. The current defensive posture of NATO vis-a-vis the Warsaw Pact has been dubbed flexible response. Theoretically, should the forces of the Warsaw Pact attack Western Europe, NATO would enjoy a variety of military options; it could confront the pact on a conventional level and resort to nuclear weapons only when all conventional options had been exhausted.

However, as has already been pointed out, NATO does not, in fact, enjoy any such flexibility. The current status of NATO's conventional defenses insures that, in the event of war, we, the NATO alliance, will be obliged to escalate quickly to the nuclear level. According to General Rogers, such escalation should be conceived in terms of days, not weeks.

NATO's conventional weakness is all the more surprising in light of the general consensus, on both sides of the Atlantic, that we must seek to raise the nuclear threshold, to become less dependent upon nuclear weapons for our collective defense. Raising the nuclear threshold will require a new Western commitment to increase the quality of U.S. European conventional forces.

Here in the United States we have succeeded, through a series of difficult and costly defense spending increases, in making many improvements. However, as the Senator from Georgia has pointed out, the European cart is far too heavy to be pulled by the United States alone, and no concomitant trend is visible in Europe. I would like to quote from the draft report of the North Atlantic Assembly's Subcommittee on Conventional Defense in Europe:

> There is general consensus in most West European countries that it is desirable to lessen NATO's reliance on nuclear weapons, yet there is no prospect for additional real growth in most European defense budgets over the next five years, even among defense-minded conservative governments such as in the United Kingdom and the Federal Republic of Germany. (North Atlantic Assembly, Draft Interim Report of the Sub-Committee on Conventional Defense in Europe, May 1984 p. 20.)

Mr. President, the Senator from Georgia and I have been in the forefront of the effort to remove disincentives to European participation in a NATO-wide conventional improvement program. In 1982, we introduced the Roth-Glenn-Nunn amendment to establish a cooperative defense-industrial effort in NATO to share more equitably and efficiently the financial burdens as well as the economic benefits of NATO defense.

A few days ago we introduced an amendment requiring the Secretary of Defense to submit to Congress by December 1, 1984, a plan for the implementation of the amendment. The amendment now before the Senate contains a provision for side-by-side testing of United States and European weapons systems to remove other barriers to the two-way street in transatlantic arms trade. However, I would have to admit that, as yet, our efforts do not appear to have galvanized Western Europe into a conventional defense effort.

In closing, let me say, Mr. President, I think it is important to understand that the whole purpose of this amendment is to strengthen the conventional defense so that the NATO alliance is as viable in the future as it has been in the past.

Mr. President, I ask unanimous consent to have printed in the RECORD my statement before the North Atlantic Assembly at Luxembourg in May 1984.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR WILLIAM V. ROTH, JR., NORTH ATLANTIC ASSEMBLY, LUXEMBOURG, MAY 1984

Mr. President; I asked for permission to speak today as I am greatly concerned by what I have heard in our earlier committee meetings. I am concerned because I am one of the people who believes the NATO alliance will continue to be as critically important in the future as it has been in the past. I believe people on both sides of the Atlantic have under-appreciated the fact that the Alliance has kept the peace in with the East for 35 years.

The question is whether NATO can meet the challenge of the future. What I have heard and read here is, indeed, disquieting.

The fact is that our so-called flexible defense is not flexible. General Rogers has said: "Instead of possessing genuine flexibility . . ., our current military posture will require us, if attacked conventionally, to escalate fairly quickly to the first use of nuclear weapons." The possibility of nuclear war is something abhorred by the people on both sides of the Atlantic. The people demand that we reduce the nuclear risks and that can only be done by building a credible conventional defense.

The rebuilding of a conventional defense is costly; it is expensive; it will as General Rogers has said cost more. Yet, if NATO is to be viable, it must be done. Still, I read in the military reports being considered here that our European allies cannot allocate significantly more resources during the next three to five years. Both the draft report on conventional defense and the draft general report on alliance security make this clear. They say there is no prospect for additional real growth in the European defense budget.

If this be true, not only for now, but for the remainder of the 80's, I believe it means the Alliance will be in serious difficulty. President Reagan is seeking significant real increases—over 7½% in defense spending for FY 1985. While the President may not get this much, there is a strong contrast in the allocation of resources between the two sides of the Atlantic.

Mr. President, I believe it to be important for our European friends to understand how serious this matter is. There are strong voices, respected voices, in the United States calling for reform of the Alliance, for the reallocation of the burdens and responsibilities, Henry Kissinger calls for greater European responsibility for ground defense; Sam Nunn, a staunch supporter of NATO, is saying that NATO's conventional forces must be improved, if the U.S. commitment is to be sustained politically; a member of our delegation, who left Sunday for Geneva, will call for a reduction in U.S. troops in a speech he will make in that city. These voices will not be muted, but will grow louder. The U.S. cannot be expected to increase the budget, its burden, not only in Europe but in other areas, such as the Middle East, which have a direct bearing on the defense of Europe.

There are not only voices in the U.S. calling for the reform of the Alliance and reallocation of burdens. It is also important to understand we are witnessing the growth of neo-isolationism in the U.S. from both the left and the right. From the left, one sees a groundswell for non-involvement of forces: non-involvement in Lebanon; non-involvement in Central America. In an way the Hart phenomenon is a product of this development. From the right, one sees visions of unilateral activism, of going it alone.

Both camps join hands, though for different reasons, in supporting the loosening and even leaving the NATO alliance.

While I do not foresee these camps becoming a majority, I think it's important this assembly consider the new realities; that is, if NATO is to continue strong and robust, as it must, Western Europe with a collective economy as large as the U.S. must do more. The people of the United States will not support an ever-increasing burden without commensurate sacrifice on the part of our Allies.

Part of the answer is, of course, better arms cooperation; to do better with the funds we already have.

I would hope arms cooperation is a matter that would be on the agenda of the next Summit Conference later this month. I am happy to state that a group of us have agreed to form a bipartisan congressional caucus in support of arms cooperation. But this is not enough. More needs to be done. So I believe it important for this organization to address the challenges of reform and reallocation of responsibilities next fall. Surely, we can find the answers to these perplexing problems that will insure the continued success of the Alliance as the guarantor of peace between the East and West.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I strongly endorse the amendment proposed by the Senator from Georgia, but I do not like it. I do it as a necessity. When the distinguished Senator from Texas, the chairman of the Armed Services Committee, talks about not wanting to kick our friends in the teeth, I agree with him. We do not want to do that, but what can we do when we get kicked in the teeth, when we have relied on the teamwork of the NATO alliance that has made it successful. And it has been that kind of teamwork. We have been very understanding team players in the NATO alliance through the years when our partners have had tough times. We have kept our troops over there. We voted down the Mansfield amendments of past years. We did all these things to show that we are reliable partners in NATO. We understood that these were nations recovering from World War II and that they needed help. We gave that help. We had the Marshall plan and we developed trade. We have kept our borders open for trade.

We have kept a cooperative stance with regard to the world economy. We have done all these things, and then some years ago we finally made an agreement that, we share the burden and we say this burden can be more fairly distributed among all the NATO alliance members rather than us being a blank check for NATO.

Europe has recovered from World War II. They have a gross national product approximately equal to that of the United States. Japan has recovered from World War II and is a major competitor in world markets, as we are well aware in this country. We have about a $21 billion trade deficit with Japan. I will get into that in some remarks a little bit later.

To say that we are kicking our friends in the teeth is just not an indicator of what the correct situation is. If anything, we have seen them let down in fulfilling the commitments they made once they had had a complete economic recovery following World War II.

I do not see this as playing into Soviet hands. I can see that this might be the interpretation. But I submit that if this alliance is not strong enough so that we can have a team which operates as a team and meets its commitments as a team, then we are going to be weakened and we might as well face up to that right now. So we find ourselves in a catch-22 situation to some extent.

I do not want to disagree with our NATO allies. I do not want to force them into something they do not want to do, but I also do not want to see them force us into ever and ever and ever and ever higher defense expenditures in this country; $300 billion a year we are now spending. Well, we have increased that, but are we to just go on into the indefinite future saying we will pick up the tab if NATO does not see fit to fulfill their commitments? Can we not rely on them as team members?

The distinguished floor manager of the bill pointed out that they have conscription, the draft, selective service. They are prone to pointing that out every time we get together. I have not met with a single NATO foreign minister, defense minister, or prime minister, either singularly or in a group, that has not said to us, "You folks don't have the draft."

OK, we do not have the draft. Maybe we will have to go to that some time. I doubt that but perhaps we will. But it is not up to them to determine how many people we get into our military service or by what means.

Mr. NUNN. Will the Senator yield?

Mr. GLENN. If they want to propose a draft, that is fine. They can have a draft. But we put our people in by a different means, and they should understand that.

I yield for a question.

Mr. NUNN. Will the Senator yield on that point? I think that is an important point. I have heard that statement made. It has been attributed to high-ranking officials in Europe, including the former Chancellor of Germany. I happen to believe that eventually we will need a draft. I am not one of those who is shy about saying so. I think there are many reasons for that. But for the Europeans to raise that when they are going to run out of ammunition in the first stages of any NATO war—while any draft would take a period of months to produce forces—is almost the height of absurdity. They do not have any right to raise this issue. They might if they had a 30- or 40-day supply of munitions. When they get to that stage, then they can raise the question of the U.S. draft and reinforcements. But not when they are going to run out in the early stages of a war and not when the forces we are going to be putting in there in the first couple of weeks of war are going to arrive about the time their ammunition runs out. For them to say we need a draft, so we draft people and start training them and getting them there 90 days later after it has already escalated to a nuclear conflict, is absurd. They may be for the draft, but it is for invalid reasons.

Mr. GLENN. I thank the distinguished Senator from Georgia.

We are keeping some, what, 340,000 Americans in Europe?

Mr. NUNN. 326,000 on the ground.

Mr. GLENN. 326,000 on the ground right now. So we are meeting our manpower commitment in Europe, and we are doing it with an All-Volunteer Force. We may have to go to a draft sometime. I do not disagree with that. I am not for it right now. But we can certainly keep that as an option. We will meet our manpower commitment. It is up to us how we do it. So I do not think this idea they keep talking about to us every time: "You don't have a draft, you don't have a selective service, you don't have conscription" is appropriate. We are meeting our manpower requirements in our own way. They are meeting theirs in their way. So be it. To say we should pick up the tab for all the other things going on because we do not have a draft is just not logical.

Mr. LONG. Will the Senator yield at that point?

Mr. GLENN. Certainly.

Mr. LONG. Just to try to put this in such a way the ordinary person understands it, is not a way of saying it: What difference is it how we raise our level of manpower if they do not have enough ammunition to hold out until our troops can get there?

Mr. GLENN. That is exactly right.

Mr. LONG. What difference does it make how we got our men into uniform if they do not have what it takes to hold out long enough for our troops to arrive on the scene?

Mr. GLENN. I certainly agree with the distinguished Senator from Louisiana.

Mr. NUNN. If the Senator will yield, the Senator is absolutely correct. Nobody that runs out of ammo in the first couple weeks of battle has any standing to talk about a draft that would produce troops months later.

Mr. LONG. It is like saying it would be nice if all our troops had a college education. What difference does it make if they cannot hold out until the first one arrives on the scene?

Mr. GLENN. I completely agree with the Senator from Louisiana. The other day when I read the résumé of what the distinguished Senator from Georgia was proposing, I went to him and I said, "I think you have left out a couple of important areas that should be considered." I said then that I support what he is trying to do. I dislike intensely the necessity for doing it. But I thought that just focusing attention on Europe and NATO and nothing else missed a couple of good points in other parts around the world with our allies.

Now, with NATO, one of the things we are doing is maintaining our presence just outside the Strait of Hormuz. Traditionally, Europe has received somewhere around 50 percent of its oil through the Strait of Hormuz. Europe's miraculous industrial recovery after World War II would not have been possible and would not continue to be possible today were it not for that strait remaining open. Who is picking up the loan there? Well, the French have deployed some small forces down in that area. By and large, however, we are the ones who are looking into a Rapid Deployment Force. We are the ones who are buying new carrier task forces—and at what cost? $13 billion to $15 billion for each complete carrier task force ready to project power at sea in that part of the world in order to keep the sealanes open for Europe and for Japan.

Yet, NATO has refused to recognize these out-of-area responsibilities, as they call them. Go and talk to the

NATO people and go to the defense conferences in Europe, and they will not even consider anything out of area. "Our responsibilities are for NATO," they say.

Their economic well-being is going to be determined by whether or not the Strait of Hormuz remains open, and we take the responsibility for that.

Rapid Deployment Forces, carrier task forces, deployments in that area—we are doing these things. We think it is for the betterment of the whole world. It is for the protection of NATO and for carrying out our responsibilities. Yet, they do not take into consideration that we are expending extra money there and have driven our defense expenditures up to almost $300 billion a year. Traditionally, our European NATO allies have received about 50 percent of their oil from that area; Japan, about 75 percent.

Mr. President, I ask unanimous consent that several sets of figures be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GROSS NATIONAL PRODUCT, 1982, AND ESTIMATED 1983 DEFENSE EXPENDITURES AS A PERCENTAGE OF GROSS NATIONAL PRODUCT

[As reported by the Congressional Research Service]

Country	GNP (billions)	1982	Estimated 1983
United States	$3,070.0	6.4	6.9
Canada	276.7	2.2	2.1
Britain	531.0	5.1	5.6
West Germany	720.0	3.4	3.4
Greece	40.2	7.0	7.1
Turkey	65.2	5.2	4.9
Norway	58.5	3.0	3.1
Iceland	2.8	0	0
Belgium	101.7	3.4	3.4
Luxembourg	5.1	1.0	1.3
Netherlands	146.3	3.2	3.3
Italy	374.0	2.6	2.8
Spain	197.0	2.1	NA
Denmark	61.2	2.6	NA
Portugal	24.5	3.4	3.4
Japan	1,200.0	[1] 1.0	[1] 1.0
France	607.0	4.2	4.2

[1] Limit.

1984 UNCLASS BURDEN SHARING—CHART II-23—REAL INCREASE IN COUNTRY DEFENSE SPENDING

[Percent change from previous year in constant prices—excluding inflation] [1] [2]

	1980	1981	1982	1983
Belgium	1.9	0.9	−3.3	−3.0
Canada	5.1	3.1	4.9	5.0
Denmark	.7	.6	−.3	−.2
France	[3] 3.7	[3] 3.7	[3] .9	[3] .9/1.5
Germany	2.3	3.2	−.8	1.9
Greece	−9.4	22.8	.1	1.3
Italy	4.9	−.5	3.2	1.1
Luxembourg	16.3	4.8	3.9	3.5
Netherlands	−2.1	3.3	2.1	2.7
Norway	1.8	2.7	4.1	2.8
Portugal	6.0	.9	.5	.4
Turkey	2.0	1.8	4.6	1.9
United Kingdom	2.8	1.4	6.4	3.0
United States	4.9	4.7	7.6	7.6
Non-United States-NATO [4]	2.6	2.8	2.3	1.9/2.1
NATO total [4]	4.0	4.0	5.7	5.6/5.7

[1] All of the figures depicted in this table are based on the NATO definition of defense spending and are the best estimates that can be made on the basis of information now available.

[2] National fiscal years correspond to calendar years except as follows: Canada and the United Kingdom (April–March), United States (October–September). Turkish data through 1981 are based on a March–February fiscal year. In 1983 Turkey converted to a January–December fiscal year.

[3] DOD estimate.

[4] Non-United States-NATO and NATO totals reflect weighted average growth rates developed using 1982 constant prices and 1982 exchange rates.

Mr. GLENN. Mr. President, one of the tables has the GNP of each of these nations and the percentage they are spending on defense. The only one that is spending more than we are as a percentage of GNP, and it is not the largest nation in the world, is Greece. They are spending 7.1 percent. These are estimated 1983 figures. This table lists these nations and shows that they are putting forth, on the average, less than half of what we do in GNP terms. This is for all of the NATO nations.

The other table deals with burden-sharing. It shows the real increase in a country's defense spending as a percentage change from the previous year in constant prices. It goes through the same lineup of nations. It shows that Belgium has gone down 3 percent. Denmark is minus 0.2 percent. Germany is up 1.9 percent; Greece is up 1.3 percent. This gives an indication of what efforts are being made.

Our gross national product is, according to figures we received today, around the $3.3 trillion level. Western Europe is at the $2.9 trillion level. Japan is a little less than the $1.2 trillion level. That gives us an idea of what the strength of our economies is and our failure to share our defense commitments. So, I do not see those defense commitments as being things we cannot expect those governments of Europe to meet.

I now turn to a different part of the world, because I think this also has to do with what we are spending on defense. We think of our traditional trading partners with respect to our heritage in Europe—families that came to this country years ago. We have a close kinship to Europe. But what has happened to the world economy? I think that in 5 of the last 6 years we have had more trade with the Far East, with Japan. That little tail in the world economy is beginning to wag the whole dog. It is bigger than the dog. It is wagging the whole world, in some respects.

We talk about trade deficits. We have trade deficits of $21 billion a year, at current rates, with Japan.

What is happening so far as defense expenditures are concerned? They have their self-imposed limit of under 1 percent of GNP which they have stuck to.

I fully appreciate the Japanese constraints in this area. Coming out of World War II, they did not want to be involved in war again.

I was in that war, and it was a big one, and we remember it very well. But Japan came out of that war and set up their own constitution, with our help. That constitution said they would never again buy offensive weapons, that they would not set up offensive forces, that they would not set up expeditionary forces any time again. They wrote that into their constitution. Their public sensitivities in this area are extreme, and I understand that.

Public opinion in Japan has changed somewhat, however. In the 1950's, only 23 percent favored even having a self-defense force in Japan. In the 1980's, that has come up to about 75 percent of the people who now say they support a Japanese defense force.

However, the Japanese will not end that 1-percent limit, and we have provided the basic defense for Japan through all these years, and we continue to do so right now. Their defense expenditures, I believe, are running around $12 billion or $13 billion.

How does that compare with our efforts? That is about what one carrier task force costs us. We are building a couple of additional carriers. We want to keep the sealanes open and provide that kind of security for Japan, to keep the Strait of Hormuz open. That is where Japan gets about two-thirds of their oil and has traditionally received three-fourths of their oil. We are guaranteeing those sealanes.

I have gone to Japan for years and years and talked and talked about their assuming a greater share of the expense of their defense requirements than they have ever been willing to do.

Mr. President, I ask unanimous consent to have printed in the RECORD a speech I delivered in 1981 at the Shimoda conference in Japan on this subject. That was 3 years ago this summer. The remarks I made there are apropos. Some of the figures have since changed, but the basic thrust of that speech is still valid today.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

THE UNITED STATES-JAPAN SECURITY RELATIONSHIP: THE CHALLENGE AHEAD

SHIMODA CONFERENCE, 1981

(By Senator John Glenn)

The Shimoda Conference marks the last stop for me on a rather lengthy tour of Asia. For the past several weeks, I have been travelling extensively throughout the People's Republic of China and Taiwan. While I was on the mainland, I learned of an ancient Chinese curse that says, "May he live in interesting times." Well, whether we consider it a curse or blessing, we do live in extremely interesting times. And in my view, few things are more interesting than the steadily evolving Japanese-American relationship. That relationship has recently been buffeted by a series of disagreements—disagreements that have ranged from economic and trade issues to the area of defense cooperation. To be sure, these disputes have been somewhat unsettling. But I also believe that they clearly demonstrate the resiliency of the ties between our two countries. Only good friends can quarrel with no lasting or serious damage to their relationship. And despite our disagreements, the United States-Japanese friendship remains as strong as ever. But keeping it that way will require us to do at least two things.

First, we must do our best to minimize the frictions that *do* occur. And second, both sides must dedicate themselves to strengthening our cooperative efforts in the future.

CHANGING CIRCUMSTANCES

In my judgment, much of the difficulty we have been experiencing stems from what might be described as "growing pains." With countries—as with individuals—circumstances change, growth occurs and relationships mature. Perhaps nowhere is this phenomenon more apparent than in the evolving relationship between the United States and Japan.

At the close of World War II, Japan was a war-ravaged nation looking to the United States for guidance as a kind of "older brother." Today—three and a half decades later—Japan has become an industrial giant, looking upon the United States as a sometimes "ailing father" whom it still respects, but now occasionally has to help. In many ways, the age is past when Japan needs an "older brother." Time and changing circumstances have combined to firmly link our two countries as full and equal partners.

Naturally, this dramatic metamorphosis has generated uncertainty and tension for both Washington and Tokyo. But if our partnership is to grow and prosper, each side must recognize, accept and adjust to today's new realities. In part, that will require each of us to rethink our respective roles and responsibilities. Although this process is slow and often difficult, I believe we are now moving in the right direction. As Saburo Ohkita, Japan's Special Trade Representative, has so eloquently put it:

"There has been a kind of zigzag in our relations because we are moving. We are changing our neutrality and this is a new role. Until now, people have thought of Japan as a small, weak nation located in the corner of Asia. Now because of its economic growth, it has come to the stage of playing a larger role in global affairs. And this is accompanied by larger responsibilities."

As usual, Mr. Ohkita is right. Japan and the United States have come a long way together since the end of World War II. We now find ourselves on the threshold of what should and can be a new and exciting adventure. But like the traveler in Robert Frost's immortal poem, Japan is also at a crossroads. In one direction lies the mutual benefit of close, continuing cooperation between Japan and the United States. In the other direction lies potential danger; a rearmed Japan walking alone and acting independently of its friends and allies.

THE DEFENSE ISSUE

Fortunately, I see no signs that the Japanese people desire to embark upon the second path. Numerous public opinion polls suggest that most Japanese favor a continuation of the U.S.-Japan Security Treaty. Alliance with the United States is still viewed as fundamental to Japan's security and to the protection of her economic interests around the world. True enough, we cannot take these Japanese attitudes for granted or assume that they are necessarily permanent. But neither should we overreact to the questions that periodically arise in Japan about America's willingness to come to Tokyo's defense if she were threatened with attack. Quite often, such doubts are more a reaction to U.S. words and undiscussed actions than an expression of Japan's desire for greater military independence.

A case in point was President Carter's announcement in 1977 that he planned to withdraw American combat troops from the Korean peninsula. Shock waves immediately reverberated throughout the region. Many observers believed that the decision meant further U.S. disengagement from the burdens of leadership in Asia. Unsurprisingly, some Japanese began to question America's resolve.

In fact, however, the importance of the U.S.-Japan Security Treaty—and of our defense cooperation generally—have increased in both Washington and Tokyo. Each side recognizes that we must work closely together if we are to maintain regional peace and stability. That is because our mutual security arrangements are a linchpin, a key point of connection—not only for the defense of Japan, but for U.S. military activities and commitments throughout all of Asia. Without American bases in Japan, for example, our ability to deter Soviet aggression in East Asia would decrease substantially. Similarly, the defense of South Korea heavily depends on the logistical support provided by U.S. bases here. And American forces based in Japan also help patrol the sea lanes to the Middle East and are an essential element in our defense of the Persian Gulf.

Well, if both nations recognize the importance of working together, why is there so much talk back in America about the so-called "Japanese defense issue"? And why is there similar discussion here in Japan about "U.S. pressure tactics"? One reason, of course, is the uncertainty and tension created by the evolutionary nature of the U.S.-Japan partnership. But I think there is another problem as well; namely, a mutual failure to communicate our positions properly. Not only are the resulting misunderstanding unnecessary, but they are often compounded by sensationalized reporting in the news media.

In my view, this is one area where "quiet diplomacy" could truly be effective. On the defense issue, we need more frankness in our private talks and less rhetoric in our public pronouncements. At present, our positions too often come out looking like legal briefs—or what I refer to as the "you're wrong; I'm right" syndrome. In consequence, Japan's growing defense contributions during the decade of the 1970's are ignored, while U.S. efforts in the Persian Gulf on behalf of our allies are similarly downplayed. Before discussing the future, I think it's important to accurately assess the past.

JAPAN'S CONTRIBUTIONS

Japan's defense contribution over the last 10 years has increased. As my good friend, Mike Mansfield, has pointed out:

"During the 1970's the Japanese increased their defense spending by about 8 percent annually, while NATO increased its spending 2 percent annually and we decreased ours by 2 percent annually."

I hasten to add, however, that Japanese percentage increases applied to a starting point of under 1 percent of GNP still leave the total dollar amount for defense at a very low actual level for the world's second most powerful economy.

Ambassador Mansfield also notes that Japan's projected 1981 defense budget of $12 Billion is double what she spent in 1975. Indeed, Japanese defense expenditures are now the eighth highest in the world. The results? Fourteen well-equipped Army divisions or their equivalents now stand guard over the home islands, while some 500 combat aircraft protect Japan's airspace. Japan's naval inventory includes almost 50 major surface combatants and 14 submarines. These totals become ever more important when they are compared with U.S. forces currently in the region. More specifically, regionally, Japan now possesses about 1½ times as many combat aircraft as the United States, more than double the number of naval combatants and twice as many attack submarines. Once again, however, $12 Billion for defense, in a time of growing mutal concern, hardly seems adequate in burden-sharing when compared to the planned $160 Billion U.S. expenditures, much of it dedicated to Persian Gulf efforts, of even more importance to Japan than to the United States and Europe.

And numbers alone do not tell the entire story. In Japan, neither the Constitution nor public opinoin permit the development of military forces outside the country's borders. So while Japan has done well in providing for the defense of its own terriroty, Tokyo's allies cannot depend on Japanese forces being used where they might be needed most: in the Korean peninsula or Indochina.

CHANGE JAPANESE ATTITUDES

There is recent evidence, however, that Japanese attitudes toward defense issues are changing. In the 1960s, only 23 percent of the Japanese public wished to maintain the Self-Defense Forces. Today, 90 percent favor the SDF. We might also recall the famous Diet debates of the 1950s. On one occasion, for instance, a dispute arose over the proper definition of a "defensive aircraft." Everyone agreed that the Japanese Constitution prohibited the purchase of offensive fighters; the question was whether jet aircraft possessed to much offensive capability. After much wrangling, it was decided that only propeller-driven airplanes could be purchased. Today—only 25 years later—Japan not only uses jets, but will soon be introducing into its inventory the world's most sophisticated air superiority fighter—the F-15 Eagle. That, my friends, is change.

Even the controversy surrounding nuclear weapons appears to have receded somewhat. Admittedly, sensitivities remain and understandable passions still flare on occasion. But most Japanese seem to accept American assurances that we will not introduce nuclear weapons into Japan. At the same time, they recognize that U.S. nuclear forces must operate within the region if Japan is to retain protection under the American nuclear umbrella. The shift in public opinion is unmistakable. In the early 1960s, hundreds of thousands of demonstrators took to the streets to protest the U.S. nuclear presence. Today—even in the wake of all the recent allegations concerning nuclear issues—only a few thousand do so. Indeed, when the *U.S.S. Midway* returned to Japan from the Persian Gulf, local Japanese officials actually turned out to *welcome* her. Who would have thought *that* possible only a few short years ago?

Now none of this means that I am insensitive to the importance of consensus building here in Japan. I am simply suggesting that while attitudes about defense are changing slowly, they are nevertheless changing dramatically. What seemed impossible only 10 years ago has come to pass. And, likewise, changes that appear improbable today may become possible in the future.

THE U.S. EFFORT: CHANGING CIRCUMSTANCES

As for the U.S. defense contribution, I think we can all agree that it has been crucial to Tokyo's reemergence as a world economic power. Moreover, the U.S. military presence and commitment in Asia has helped preserve peace and stability throughout the region. Traditionally, U.S. forces in the Pacific provided three benefits: a nuclear umbrella for Japan; a buffer against North Korean adventurism; and protection for our Southeast Asian friends and allies. Periodically, the Seventh Fleet sent a small patrol contingent into the Persian Gulf. But this required only minor adjustments and did not lead to any significant drawn-down of U.S. combat power in Asia. Well, the seizure of American hostages in Iran and the Soviet invasion of Afghanistan have changed all that. Those events clearly demonstrated that a major and long-term U.S. military presence would be required in the Middle East.

Prior to the invasion of Afghanistan, the United States employed a so-called "Swing Strategy" in which forces would be maneuvered to whatever part of the world was in danger. If a crisis erupted in East Asia, for example, Atlantic forces would be sent to reinforce our Pacific fleet. In fact, that actually occurred during the Vietnam War. Today, however, clear and present dangers in the Middle East demand that U.S. forces from both the Atlantic and Pacific be massed in the Persian Gulf. In my judgment, this commitment may last a decade or longer.

THE U.S. EFFORT: DOMESTIC FACTORS

Fortunately, the ominous situation in the Middle East is occurring at a time of widespread American recognition that our military posture—particularly in its conventional aspects—seriously eroded during the 1960s and '70s. It has not been as much a matter of U.S. decrease, as it is massive Soviet increases. As a consequence, both Presidential candidates called for increased U.S. defense expenditures during last fall's election campaign. The Reagan Administration assumed office indicating that it planned to increase defense spending while holding the line—and in some cases, cutting—domestic programs.

Lately, however, the picture has been somewhat complicated by passage of the President's huge tax cut program. Unless the economy responds spectacularly to the tax cut stimulus, huge budget deficits will loom large on the economic horizon. In that event, the Administration, as recent reports have indicated, may feel the necessity to make further budget cuts—perhaps even larger than those we have made already. Some observers fear that defense may prove to be a tempting target. Indeed, on August 5th, Deputy OMB Secretary Edwin Harper said that he "doubted" future budget cuts would come from social programs, but from "every other program in government . . . (including) defense." Now I hope and I believe that Mr. Harper was suggesting only that we cut unnecessary and wasteful defense spending. But the larger point is this: in America—as everywhere else—difficult economic times can sorely test an otherwise firm consensus on the need for higher military spending.

The U.S. defense dilemma is further complicated by the need to replace those forces shifted to the Persian Gulf from Asia and Europe. On top of all the other pending military requests, the American people will be asked to provide for two or three additional carrier battle groups over the next five years. At $10,000,000,000 a copy, many American taxpayers are likely to swallow hard. When you realize that Japan's total defense budget in 1980 would purchase only one battle group, I think you can appreciate the scope of the problem.

NEW CHALLENGES: THE PERSIAN GULF

Moreover, the American people will be asked to shoulder these enormous costs not in defense of our homeland, but in support of our commitment to the Persian Gulf. And it is no secret to anyone that protecting the Gulf's oil lifeline benefits Japan and Western Europe more than the United States. America imports only 20 percent of its oil from the Middle East, while Western Europe and Japan receive 50 and 74 percent, respectively, from that source. To put it in stark and realistic terms, what will become of Japan's economic miracle, if we receive word this evening that the Persian Gulf is closed?

Now it may be obvious and beyond dispute that a growing American economy depends on the economic health and vitality of our trading partners. But that argument will become much less persuasive if American sacrifices are perceived to be greater than those of the nations we are protecting. If Americans find that there is no such thing as a "free ride" for themselves, they will be in no mood to provide "free rides" for their friends. In short, demands for larger defense contributions from Europe and Japan are likely to increase—not diminish—over the next few years.

And in purely military terms, the next few years are what really count. The United States has already begun the painstaking process of rebuilding its military strength. There are no shortcuts and no bargain basement ways of achieving military sufficiency. The lead time on such big-ticket items as ships and aircraft is long. Components, key metals and trained manpower are already in short supply. American money alone cannot solve the problem because our defense industry can only absorb so much before waste and inefficiency set in. So even if the American consensus on an expanded defense holds, it will take several years before results are realized. That's why the defense efforts of our allies are critical in the short term. We need your help now—not your promises of assistance later.

NEW CHALLENGES: THE GROWING SOVIET THREAT

Over the next five years or so, I believe that the cohesion and strength of the Western Alliance will be severely tested. Because in addition to our new requirements in the Middle East, we must also respond to the growing Soviet threat around the world. I need not remind anyone here tonight about the Soviet occupation of the Northern Territories or of the $6 Million per day that Moscow is pumping into Southeast Asia. But the situation is much worse than that. Whether one looks at Asia, Africa or Latin America, the picture is of an imperialist Soviet power clearly on that march.

What does all of this mean for Japan? For one thing, you must recognize that with U.S. military assets already spread thin, it would prove extremely difficult, under certain circumstances, and no matter how solid our resolve and commitment, for us to provide adequate conventional defensive forces. Although the American nuclear shield will remain intact, a crisis in the Middle East, a war on the Korean peninsula or a major conflict in Indochina might hinder our ability to simultaneously respond to a contingency involving Japan. This does not mean that our will or our commitment to Japan has slackened. It does mean that there are limits to U.S. military capability, particularly for the remainder of the 1980s.

We Americans recognize and appreciate Tokyo's past efforts. We are also aware of the constraints that are imposed on you by both your history and your Constitution. But we need your understanding as well. We make no demands—and I would not try to pressure you other than by presenting the facts as I see them. The fact, however, is this: Japan—along with our other allies and the American people themselves—will be asked to do more. This will be opposed by some; it will doubtlessly be painful for many others. But it must be done. It's just that simple.

JAPAN'S NEW RESPONSIBILITIES: MILITARY

Americans are often accused of asking for things without specifying exactly what they expect. So let me be specific. Militarily, I believe it is essential that Japan speed up completion of its "National Defense Program Outline." In that outline, as you know, Japanese defense experts identified critical military problem areas and then posed solutions for them. I accept the judgments those experts made, and in particular believe that implementing the plan with emphasis on (1) interoperability with U.S. forces, as well as (2) a maximum of defense consultation and joint planning, will make it maximally effective. But I am concerned about the arguments that have ensued about the program's implementation.

Many Japanese want to stretch out the program so as to stay within the annual 1 percent of GNP target that their country usually sets for defense. Although I understand that desire, I believe such a course would endanger Japan's security and would jeopardize the close working relationship that exists between Washington and Tokyo. I repeat, we are faced with danger now. We cannot wait ten years to meet it.

If the United States were asking Japan to do more so that we could do less, your reluctance would be easier to understand. But clearly, that is not the case. Nor are we asking you to do anything that would contravene your Constitution, create major economic difficulties or alarm your neighbors. All we are asking is that Japan complete its own plan one year early. That's all; nothing more, nothing less.

That hardly seems unreasonable—particularly since the American people are being asked to make much greater sacrifices. Some analysts have estimated that the United States will be spending an average of 7 to 8 percent of GNP—as against Japan's 1 percent—for at least the next five years. And whatever we end up allocating for such projects as the MX missile, the neutron bomb or the B-1 bomber, much of that increase will be used to replace Pacific forces now transferred and on station in the Persian Gulf—an undertaking that is of direct benefit to Japan. U.S. forces in the Middle East will also be gradually improved. Here, too, Japan will be among the prime beneficiaries, given her overwhelming dependence on oil from the Persian Gulf. And that brings me to my second point.

JAPAN'S NEW RESPONSIBILITIES: NONMILITARY

Americans know that your direct military contribution will be strictly confined to improving the defenses of the Japanese home islands. We know that the political consensus required to change that policy will come only slowly. We are also aware of your constitutional prohibitions against any SDF involvement in offensive operations. We accept all of these constraints. But given the magnitude of our other needs—and the extraordinary cost of our Persian Gulf deployments—we must ask that you find nonmilitary ways in which to ease our common burden.

Numerous suggestions have already been made in this connection, and I will not even attempt to catalog them all tonight. In any event, it is for Tokyo to decide what can and cannot be done. But let me mention a few of the more obvious examples of what I have in mind.

PERSIAN GULF COST SHARING

One area in which Japanese assistance would be helpful is in support of America's Persian Gulf Deployments. Just the shipping and maintenance costs of keeping U.S. forces in the Middle East are staggering. American personnel and equipment must be transported from the Pacific to the Indian Ocean, and our maintenance facilities are located in Japan. Surely a way can be found to share these costs without trampling on the Japanese Constitution. In fact, the Diet decided last year that Japanese contributions to allied defense efforts in the Middle East were not necessarily unconstitutional.

BASE SUPPORT PAYMENTS

A second possibility for greater non-military efforts by Japan concerns the Status of Force Agreement and base support payments. Tokyo contributes roughly half of the $2 Billion a year required to maintain American forces in Japan. If we were talking only about the defense of Japan, splitting the costs 50-50 might be equitable. But when U.S. activities in the Persian Gulf are factored into the equation, I think it is resonable to expect a higher Japanese contribution to maintaining bases located on their own soil. I might add that by assuming such a responsibility, Japan could help mute Congressional critics who accuse her of hitching a "free ride" on defense.

FOREIGN ASSISTANCE

A third alternative that has received widespread support is for Japan to expand its foreign assistance program. Indeed, Tokyo has already announced its intention to double foreign aid over the next five years. Although I find it difficult to accept normal foreign aid as applying in the same category as direct military preparation, nevertheless, this certainly is a step in the right direction. Global security cannot help but improve if economic growth is enhanced in less developed countries.

In the past, the major share of Japanese aid has gone to Asian countries, especially those in Southeast Asia. Recently, Japan has broadened the scope of its assistance program and has provided increased aid to nations of the Middle East, Africa, and Latin America. That is all to the good. What is troubling, however, is that while the dollar amounts of Japanese assistance has increased as advertised, aid as a percent of GNP is in decline. This trend must be reversed if your program is to have the intended effect. And if Japanese aid is to be counted as a substitute for defense expenditures, it must be more than rhetorical.

It is difficult for me to make the suggestions I have made this evening. It is not easy to ask for help. Like Japan, America is a very proud nation. In the past, we have sometimes tried to dictate to our partners and—as in the case of the "China Shock"—to consult with them only after the fact. Let me assure you that on this matter, we are not attempting to dictate. Japan's defense contribution must be decided upon and supported by the Japanese people themselves. If it is not, any decision to increase Japan's contribution could quickly be reversed. The Japanese leaders here tonight know much better than I what their country can afford and how much the fragile security consensus will bear. But I urge your careful consideration of what I have said this evening. America treasures its special relationship with Japan. It has served each of our nations well for over 35 years. We hope and believe that it will endure in the future. But to ensure that outcome, both countries must work to allay unnecessary stresses and strains. For it is only through our own efforts that our relationship will remain strong.

JAPANESE POWER AND THE REACTION OF HER NEIGHBORS

Finally, let me say a few words about the future. With or without U.S. encouragement, I believe the decades ahead will witness a substantial growth in Japan's military capability, perhaps even reaching a major military power by the 1990s. Now don't misunderstand me. I am *not* prophesying the reemergence of Japanese militarism nor proposing an offensive role for the SDF. I am only underlining the obvious. By spending even only a modestly-increased percent of her GNP on defense over the next 10 to 15 years, Japan—already the world's second leading economic power—could easily become one of the globe's top 4 or 5 military powers as well.

Personally, I have no fear of such a development, and I don't think the Japanese people should either. Working together, we can guarantee Japan's future security and do much to discourage military adventures elsewhere in Asia. History demonstrates that strength deters aggression, while weakness invites it. Peace in Asia has always been a laudable goal in and of itself. And today, a peaceful environment is essential for continued economic success throughout the region.

And yet we must not deceive ourselves. Many Asian nations can be expected to view Japan's growing military power with alarm. They remember the days of the "Greater East Asian Co-Prosperity Sphere." Although they do not deny that Japanese attitudes have changed profoundly; although they recognize the sincerity of Japan's permament renouncement of aggressive force—they are nervous nevertheless. Old soldiers may fade away, but old suspicions tend to linger. Most Japanese are conscious of these fears, and it probably helps explain their reluctance to discuss publicly the implications of their nation's military modernization.

THE PACIFIC COMMUNITY CONCEPT

The same situation occurred in Europe, of course, when it was decided that Germany's rearmament was crucial to the defense of that continent. Many feared that Germany's military might would again be directed against them. These apprehensions were largely overcome by the even greater threat of a Soviet invasion. But to calm those who remained fearful, it was agreed that Germany's rearmament would take place only within the confines of a close military alliance—the North Atlantic Treaty Organization. Thirty years later, this arrangment continues to serve well, all of the parties involved. We should keep the German example in mind when discussing Asian security issues.

Let me hasten to emphasize, however, that I do not advocate the creation of a Pacific NATO. However well that approach worked in the European context, I do not believe that a formally structured, multilateral military arrangment is appropriate for the dilemmas we face in Asia.

The proposal I make this evening is much less ambitious—but one that takes the Euopean experience into account. For many years now, I have argued that bilateral relations are an insufficient means of dealing with certain Asian problems. Especially with regard to economic and trade issues, I believe that bilateral relations must be supplemented with a multilateral mechanism. In my view, many of our difficulties could be ameliorated if we identified potential problems early and worked out solutions collectively—worked multilaterally on "consensus" development.

It is for this reason that I commissioned, as Chairman of the Senate Foreign Relations Subcommittee on East Asia, a 1978 report entitled "An Asian-Pacific Regional Economic Organization: An Exploratory Concept Paper." The report—authored by Professor Hugh Patrick of Yale University and Professor John Drysdale of the Australian National University—concluded that the United States ought to consider participating in the formation of an Organization for Pacific Trade and Development, or OPTAD for short. Although the acronym obviously has not caught on—and although I myself have reservations about forming yet another international organization—the concept of a "Pacific Community" has attracted numerous supporters. That is a welcome development, because I believe that many potential benefits could be realized in an association of Pacific Community Nations.

BEYOND ECONOMICS

There are some problems, however. One of the most formidable is that those who advocate the Pacific Community concept tend to focus exclusively on economic issues. Now economic issues are vitally important—particularly for the United States, which has seen its trade with East Asia exceed its trade with Europe in four out of the last five years. But if the Pacific Community idea is to be truly meaningful, it must go beyond economics. In my view the organization's agenda should include a broad range of politico-military issues as well. Annual—or even semiannual—conferences could be convened to discuss these topics. Although academics and representatives from the business sector could be encouraged to participate, I believe government support and sponsorship of these meetings would be necessary to produce the desired results.

Operationally, I would propose that separate discussions among political, economic and military experts precede plenary sessions attended by high-level government officials. Issues like Japan's military modernization and its regional implications might provide useful topics for discussion in this kind of forum. Although Pacific Community meetings would not replace the countries' bilateral consultations, I believe that a regional organization might be a helpful adjunct to more traditional forms of diplomacy.

I know that there are those who will shy away from this proposal; those who will say that Pacific security issues are too sensitive to be discussed in regional forums. I disagree. Philosophically, what I am suggesting could be described as an expanded and more formalized version of the Shimoda Conferences. Just as consensus building is a vital component of government in Japan, I think the Pacific Community at large would benefit from a more systematic attempt to achieve agreement on matters of common concern. Now I don't claim that such an arrangement would solve all our problems. But surely identifying and talking about issues before they become irritants is preferable to letting them fester. In Japanese, I am told, there is a word for cutting through a problem to the core. It is wari kiru. Perhaps that is the essence of what I am proposing tonight. Because I believe that ignoring or postponing difficult problems rarely leads to their solution.

Let me close my remarks this evening with one final thought. Tonight I have sought to address a few of the challenges facing Japan and the United States as we enter the final decades of the 20th Century. For the most part, these challenges are the inevitable result of tremendous global change. Meeting them will, therefore, often require fundamental changes from us; changes in thought as well as in behavior. But change is the law of life, and it brings opportunity as well as danger.

Over 100 years ago, one of our greatest American Presidents—Abraham Lincoln—also confronted a churning and changing world. He responded this way:

"The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so must we think anew and act anew."

I believe those words are equally applicable today. So let us go forward together in the work that must be done, remembering that upon our success rests the only future our children will ever have.

Thank you very much.

Mr. GLENN. Mr. President, I do not want to see the Japanese set up expeditionary forces. I do not want to see any new greater Asia coprosperity sphere. If you want to frighten Singapore and other places in that part of the world, start talking about massive Japanese forces and task forces. I do not want to see us push the Japanese into that mold. I did suggest in the Shimoda speech some things that I think, 3 years later, the Japanese should still consider and break out of the 1 percent mold.

They are now no longer a little brother around the world. They are a big economic factor, the second largest economic factor in the world. That nation has recovered and is very competitive with us. They are now able to take more of the defense load. They could do that. There are several billion dollars that could help us immeasurably, if they did several things. What if they helped take care of some of our shipping costs for the Indian Ocean?

What if they took care of all of the base support in Japan instead of just a portion of it which they pick up now for our people who are stationed in Japan? What if they said that they would overhaul and help maintain the ships and do that in Japan at their expense? What if they said that they would increase foreign assistance in that part of the world where we try and help other nations? These are all areas that would involve several billions of dollars that they could help us out on. I think they should.

We used to have a swing strategy. We do not hear much about the swing strategy any more. We did not figure there would ever be trouble in the Far East and in Europe at the same time. We therefore provided sufficient naval forces in Europe and additional forces in the Far East. In case of an emergency the swing forces from Europe would swing over to the Far East or come in the Persian Gulf area. If they were out in the Far East and something happened in Europe we would swing them over the other way to Europe. That was the swing strategy.

We do not hear too much about the swing strategy these days, because commitments now are widespread. We are going to have additional carrier task forces, and I support that.

But while we are going to all this expense for carrier task forces—each carrier task force, I will say once again, equals about the total defense expenditure of Japan—it is not fair to say they cannot share some of the expense we are putting out. I am not trying to force them into a mammoth new carrier task force, or deployment of troops.

I am saying we are providing that kind of defense in that part of the world for Japan, and I think they can better share some of that burden with us and take some of the load from us and help us get the several extra billion we would like to have, instead of us just providing everything.

We run into some people in Japan who say, "What danger are we in?" All they need to do is look no farther than what they call the northern territories, the disputed islands north of Japan. They have had an argument with the Soviet Union for quite a number of years as to who really owned that territory, and it was supposed to be adjudicated in international court proceedings. They had negotiations going back and forth.

What happened is the Soviets moved in, just took them, put 12,000 troops on the islands, fortifying them, setting up northern bases there in the northern territories, and now these northern territories are Soviet territories for all practical purposes.

So that is what can happen to Japan.

What if we could not supply all the equipment necessary? What if we wind up in this country unable to buy or supply all of the equipment necessary to keep those sealanes open? Japan, what happens then? What happens if Japan goes its own way?

What if the Strait of Hormuz does not remain open? Will they still have that same two-thirds to three-fourths of their oil that normally comes out of that Strait of Hormuz?

That is something the Japanese are going to have to answer.

I want to see us develop a Pacific community concept. I have talked about this in the past, and I met with officials in Japan on this. It has been called, for the lack of a better name, the PT&D Organization, for Pacific Trade and Development. It should go beyond economic considerations. It should cover political, economic, and military matters, because Asia is important for us and certainly important to Japan.

We keep forces in Korea. We keep logistic supplies in Japan to help back up that commitment in Korea which certainly is in the Japanese interest.

But, Japan, I say today in the Senate Chamber, we need your help also. We are spending up to $300 billion a year while you skimp by with about $13 billion a year on the Japanese self-defense force.

I would not offend the Japanese constitution nor would I violate public sensitivities in Japan because they, beyond almost any nation in this world, certainly their older people, remember what it was like to be devastated in World War II. They came out of it with a commitment never to be a party to such a warlike situation again, and I support them in that effort.

But these suggestions do not violate their constitution. It does not violate their public sensitivities to support the protection that we are giving them and the equipment we are buying to keep those sealanes open out of that Persian Gulf that benefits Japan and benefits Europe.

So while I am firmly in support of what the Senator from Georgia is doing with this amendment, I think we need to extend it to some of the other allies around the world beyond just the NATO allies.

Certainly NATO needs to live up to commitments. We are living up to our commitments and beyond.

I do not think we can go into the indefinitive future being the bankroller of European defense and Japanese defense, when they both are fully capable, to take a greater share of the load.

I think we need to emphasize this. I do not like to rattle a cage. I do not like to say we are going to cut anything off.

The Senator from Georgia has given 2 years for them to adjust to living up to the commitments they solemnly made to us, and I would say there is no teamwork in NATO unless these commitments are lived up to.

We have our own economic problems in this country. The Senator from Delaware mentioned we are down $190 billion a year right now. Well, that is a lot of money.

I addressed that during my recent Presidential efforts in some detail. That is perhaps one of the reasons I am back now in this Chamber and not out campaigning, because I did so specifically state that I was concerned about what was going on around the world, the military conditions and the economic conditions. I am concerned that the United States is going back in debt, driving interest rates up and causing the dollar to be so strong and causing economic disruptions for Europe. This hurts their ability to come up with the additional 3 percent as well as us to do what has to be done in this country.

So I am concerned that we get this under control.

I think it is time our European allies decided finally they are going to live up to this commitment. They cannot expect the United States of America to just forgo any consideration of what the Europeans should be putting into the pot. They can no longer assume that we have an unlimited budget in this country to just continue on and on building, building, and building. We are now right at $300 billion a year. They cannot expect us to keep on going up forever.

They are a recovered portion of the world. Japan is a recovered nation of the world. Europe is now almost equal to our gross national product. Japan has about one-third of our gross national product. These are recovered parts of the world that can now take more of this defense load in working with us as allies.

So that is the reason I support this. I wanted to emphasize these two main points in addition to the very excellent presentation that the Senator from Georgia has made. I wanted to point out Europe's refusal to consider out-of-area situations. The additional defense expenditures we are putting in to take up those responsibilities in the Mideast and the Persian Gulf area benefit Europe more than they do us. This is something that they should consider.

The same thing for Japan. The Japanese are very proud. They were very proud back when their defense expenditure went up 7 percent. There were big headlines in the newspapers. It was big news in Japan. The defense expenditures were up 7 percent. Big deal.

It was on the basis of their 1 percent of GNP limitation. They moved—I think it was 0.87 percent of GNP up to 0.933, as I recall. It was a little under a 7-percent increase. They were very proud of that. I guess that is fine. They can be very proud of that.

That sounds like a great advance in their defense expenditures, but it was starting at a base of under 1 percent, so it did not mean that much; and their total defense expenditures now are less than we pay for one carrier task force fully equipped and ready to go.

So, Mr. President, I support the amendment of the Senator from Georgia. I support it for all the above reasons, but I support it very reluctantly because I do not like to rattle the cage on them. I do not like to rub their nose in this thing, but, on the other hand, they have been rubbing our nose in it, expecting us to just come up with a bigger check every year to bail them out. They say they cannot afford it. They want more social programs. We do also. We wish we had more money for social programs in the United States of America.

I have people in Ohio where we have a half million people still unemployed, despite the economic recovery, and some of them are hurting. Their unemployment benefits have run out, and their health benefits are not there any more.

So we have a lot of problems in our own country. I think it is time that they realize that.

We helped them recover. We did not conquer these nations, saying we are going to take you over as U.S. territory. We did not form bloc countries as the Soviets did in Europe. No; we turned around and in what probably was the greatest economic missionary effort in the history of the world, we helped them recover. We gave them technology and worked with them. We gave them military protection against Soviet expansionism.

Now it is time they come back and help us a little bit. They committed to these figures in Europe. It is time they lived up to them. I think they should realize that the Japanese have gotten by with a free ride. They do not like that term, but that is exactly what it is.

We have to face facts. It has been a free ride and although we do not want to push the Japanese into a great new military expansion, I think it is time they spent the additional money and go above that 1-percent limit to help us in our efforts. We are willing to do it. We want to be strong. We want to help them. We want to provide security in that part of the world as well as in Europe. It is time they picked up their own fair share.

Mr. President, I yield the floor.

SEVERAL SENATORS addressed the Chair.

The VICE PRESIDENT. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, I will not take but a very little time. But this is one of the drain holes, one of the drags on our tax money. Something must be done about it.

Now I would not support the provision that just arbitrarily said we were going to withdraw 10 percent, 20 percent, 30 percent, or any percent, just as an abject, immediate matter. But this is a gradual approach that has a lot of reason, a lot of common sense behind it, and something that is certainly within the reach of attainment of our allies.

This goes back. We used to have fights here year after year, and fine debates. At that time I was handling the appropriation bill for the Department of Defense and also some of the armed services. And a very influential, popular, splendid man, Mike Mansfield—his name has already been mentioned—was very insistent on a withdrawal of some of the forces. He would introduce that amendment. I remember one time he had 42 signers calling for such action of that kind. Somewhere in there we had a tie vote, it was so close; up the hill and down the hill and along the fence.

I was here when NATO was formed. I remember General Eisenhower's testimony. He said, for one thing, that "I would risk my name in history on the success of this venture." Never heard a finer statement from a man under those circumstances.

I have been proud of what it has done all these years and have supported it in every possible way that I knew how. But I am fully convinced, until we take some steps, and it will have to come, I think, from the legislative branch—and I say that with all deference to the executive branch; they have their problems, they have their ideas, and they have their arguments.

But I tell you, we have got troubles closer to home than this. We have had a lot of talk but we have not done much toward improving our budget. We have not accomplished much, with everyone acting in good faith. I give them credit for it, but we have not made a real start yet. We are going to have to give this matter some special attention.

I have no doubt in my mind—and I am not an expert on what the Germans think or anything like that—but I feel that an amendment of this kind will draw just a little blood but it will draw a lot of attention and it will make a start, make a start, in this field. And it has got to go on. I think we will have to continue this for years and years and years, I mean NATO or its equivalent. I believe Russia would have gotten control and having been dominating, totally dominating, Western Europe by this time if we had not intervened.

I mention those things just to show you that I am no stranger to the worrying about this very subject. But I have been driven to this conclusion that I have already briefly outlined.

If we can make a start—and this is the kind of a start that is not going to wreck anything or hurt anybody, but it will become the basis, I think, of a better understanding. It will be a second start for NATO.

If we just go on and on taking their explanations—I did not say excuses, I say their explanations—and our executive branch, the Pentagon and elsewhere, just keep on taking those same facts, over and over again, this thing will not get better. It will get worse and get so bad, in my opinion, that that could be the basis for a breach or a breaking up or the failure of the whole affair.

So I hope that we can deliberately, positively, move forward on this positive approach and start getting some results.

So that is why I have not changed my mind about anything. But I am going to change my vote about this.

Several Senators addressed the Chair.

The VICE PRESIDENT. The Senator from Maine.

Mr. CHILES. Will the Senator from Mississippi yield?

Mr. STENNIS. Yes.

The VICE PRESIDENT. The Senator from Maine has been recognized.

Mr. COHEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. STENNIS. Mr. President, I have no complaint. It is not customary to cut a man off.

Mr. NUNN. Mr. President, a point of order. Did the Senator from Mississippi lose the floor?

Mr. STENNIS. I am not complaining.

Mr. NUNN. He never gave up the floor.

Mr. COHEN. As I understand it, Mr. President, the Senator had yielded the floor. If there is any question about that, I would be happy to yield to the Senator.

Mr. STENNIS. Well, I had finished, but the Senator from Florida asked if I would yield to him. Would that be all right?

The VICE PRESIDENT. It was the view of the Chair that the Senator from Mississippi had finished. But, in the opinion of the Chair, if the Senator from Mississippi wants to yield to the Senator from Florida, the Chair will recognize the Senator from Florida.

Mr. STENNIS. I have no complaint about the ruling.

Mr. COHEN. Mr. President, I yield to the Senator from Mississippi.

Mr. CHILES. I thank the Senator from Maine for allowing the Senator from Mississippi to yield.

I wanted to ask the Senator from Mississippi, I remember when he stood on the floor and fought the Mansfield amendments, not 1 year, but over several years, I remember that that was over many hours and the votes were very, very close.

At that time, as I recall, the proposition of the Senator from Mississippi was that we should not do anything to weaken NATO. As I recall the thrust of the amendment of the Senator from Montana, the distinguished majority leader, it was the basis of cost to the United States, it was not in arguing to get NATO to do something extra. It was not used for that matter.

So I just wanted to ask the Senator if my understanding is correct that his position is still what it was then; that he wants a strengthened NATO and that is the basis for which he supports the Nunn amendment.

Mr. STENNIS. I think we have got to strengthen it by a step of this type.

Mr. LONG. Will the Senator yield for a further question?

Mr. STENNIS. If I am permitted to yield, I will yield.

Mr. LONG. Mr. President, the Senator from Mississippi is one of those few Senators who was here when we voted for the North Atlantic Treaty Organization. This Senator was here at the same time. For one, I recall very well the debate. The treaty carried overwhelmingly.

But the case for it was overwhelming. It had compelling logic to it. The case for it was if we had more than 400 million people in the most advanced and developed countries of the world, standing together and sharing the burden and working together in cooperation, we could be so strong that nobody would dare invade this "sanctuary." That was the language that Tom Connally, the committee chairman, used at the time.

It was not told to us that this thing was going to be so weak that all this would amount to would be to make a commitment to go to war in a war we could not win. That is the trend. That is where it is going—a commitment to fight a war with conventional weapons that we cannot win and a commitment to fight a nuclear war that we cannot win, either.

Now, if the United States, plus Western Europe, will share the burden, this thing could be made to work and everybody would be more secure.

The one thing that the Communists can claim a good record on is keeping the peace insofar as a strong defensive power is concerned. They have never been known to attack somebody who is in a position to defend himself.

Mr. STENNIS. I think the Senator has correctly described the beginning of this thing and the present situation, too.

Mr. LONG. But their record, as far as respecting the rights of a weaker neighbor, is absolutely horrible. If one cannot defend himself, you can almost count on them to move against them.

Mr. COHEN. I thank the Senator.

Mr. President, I ask unanimous consent that I may yield to the Senator from Indiana without losing my right to the floor.

The PRESIDING OFFICER (Mr. Nickles). It there objection? Without objection, it is so ordered.

The Senator from Indiana.

Mr. LUGAR. Mr. President, I have learned much from Senator Nunn's contributions over the years to Senate debates on national security matters and issues of strategy. I think I understand the intent of this amendment, and I share with him some of the frustrations and concerns in achieving a more equitable sharing of the defense burden by our NATO allies.

I fully recognize the strong imperative for increasing NATO's conventional capabilities in order to have a true flexible response, with no semblance of an extended tripwire. The issue is: Will this amendment in its present form, and particularly because of its timing, have its intended effects if enacted now? Or, will enactment of this amendment now have precisely the opposite effects?

There are several factors that enter into my judgment that enactment of this amendment at this time will produce consequences that would be totally at odds with the intention of the amendment's sponsor.

First, our European allies are still contending with the fallout from the INF deployment decision. The Soviet Union engineered and is still pursuing a massive campaign of intimidation against the deploying countries. Yet, all basing nations with one exception have stayed with the 1979 INF deployment schedule. These deployments indeed constitute a major ongoing effort to redress the middle leg of the triad of flexible response which has been of concern to Members of this body. Our European allies have met the test of sharing the burden in the deployment of these systems. These deployments in the face of Soviet intimidation efforts and massive demonstrations in the streets is a reflection of the willingless of European governments to buttress the NATO deterrent.

Equally important, the emergence of the alliance from major test case of its vitality and cohesion has been accompanied by attitudinal charges and a growing conviction that more must be done to improve the conventional leg of the triad. The last two meetings of the NATO Defense Ministers are testimony to the fact that the alliance has begun to shift the focus of its attention from the now successful improvements of NATO's theater nuclear posture to means of enhancing the alliance's conventional posture. There has emerged from those meetings an impressive consensus on the need for better conventional defense through such measures as improved sustainability and exploitation of emerging technologies. These are measures long supported by Senator Nunn.

European support for such measures is reflective of conclusions drawn from debates in Europe over the dangers of reliance on any kind of extended tripwire. Discussions of NATO strategy—either its alteration or the development of capabilities to meet the current one—are to be encouraged.

Mr. President, there are three essential prerequisites to a stronger NATO conventional option: First, a broad alliance consensus regarding the threat;

second, a similar consensus that deterrence of this threat requires enhanced conventional defense; and third, a widespread belief that this can be generated at a cost politically acceptable to free societies. The feasibility of any NATO conventional option will depend critically on these prerequisites being met. However, enactment of this amendment is unlikely to contribute to a more enligntened debate on NATO strategy, nor to an alliance willingness to draw the appropriate conclusions from such a review of strategy.

It is worth remarking that the prospects for enhancing the conventional defense posture seem greater than at any previous time in NATO's 35 years. While deterrence remains NATO's overriding aim, the advent of nuclear stalemate has endangered a growing recognition that nuclear deterrence-on-the-cheap—even cheaper for the Europeans—is eroding in credibility. The result has been a renaissance of interest in conventional deterrence in both Europe and the United States, particularly since the gap between Warsaw Pact and NATO conventional capabilities is far wider than in nuclear capabilities. This is not to suggest that nuclear deterrence has been robbed of all credibility, but only that the NATO nuclear deterrent is no longer to be relied upon as heavily as in past decades. In effect, NATO is in a period of strategic transition from primary reliance on nuclear deterrence toward a more balanced flexible response posture which its strategy has long called for but which the alliance has never adequately funded in practice.

The fact of the matter is that NATO is already buying and paying for the great bulk of the capabilities required to develop a credible conventional defense—at least in the crucial central region. With European NATO already spending over $100 billion per annum—1982 figure—on defense, an approximately 25 percent real increase over the level of a decade ago, and the United States spending even more, NATO is already within shooting distance of this goal. Yes, it may seem strange that, when they are already spending so much, the allies have seemed unwilling to fund the relatively modest additions necessary to maximize the deterrent value of the huge sums that they already collectively invest.

Nonetheless, it has been a political fact of life that, with economic recession throttling much of Europe, even modest increases on the order of 3 to 4 percent in real defense spending per annum could not be funded by NATO parliaments. Under these circumstances, the only viable solution has appeared to be efforts to impose stricter priorities, focus as much as possible on low-cost measures, seek realistic phasing, stress more rational burden sharing, and seek offsets and tradeoffs within existing defense program levels.

Third, the Department of Defense has laid before the Senate a report on improved conventional defense, a report containing some 30 recommendations. The Senate displayed concern and imagination in requesting this report. However, all parties concerned need some time to digest these recommendations and to arrive at considered judgments with respect to priorities for implementation. I would expect the Senate to take a lead in attempting to translate these recommendations into action programs. In short, the United States and its allies are becoming more specific on how the allies can do more in the conventional sphere. But we—the Senate, the Department of Defense, and the allies—need some time to react. Enactment of this amendment could well derail, if not scuttle, efforts to implement many of these recommendations.

Further, Mr. President, I would note that in a few days time Lord Carrington will take over as the new Secretary General of NATO. Lord Carrington is not only well acquainted with congressional concerns about more equitable burden sharing within the alliance; he has also made known the priority he will attach to enhancing the alliance's conventional force posture upon his assumption of office. Lord Carrington will need positive support from Washington as he undertakes this task, support that could be seriously eroded if this amendment is enacted.

Moreover, Mr. President, in the aftermath of the "Euro-missile" debate and at a time of chilled Soviet-American relations, political harmony and cohesion within the alliance are a prerequisite to improved East-West relations. After a period of Soviet intransigence with respect to all Western efforts to revive the East-West negotiating process, and with the recent calls by the President to the Soviet leadership to sit down with us to discuss East-West issues, we may be seeing some light at the end of the cold East-West tunnel.

Yes, this amendment may be intended to send a signal to our allies. But it would also send a very unhelpful signal to the Soviet Union, a signal that could constitute an open invitation to Moscow to redouble its efforts to drive a wedge between Europe and North America. And yes, it could lessen rather than encourage Soviet interest in dealing seriously with the United States on a variety of strategic and global issues. We must not do by legislation what the Soviets have failed to do with threats and intimidation. During the months ahead, as we seek to revive the East-West dialog, unity is particularly important between and within the NATO countries.

Mr. President, the issue as well is how to move forward with conventional improvements at a time when European economic recovery lags behind the U.S. recovery. First, we have to make better use of existing NATO resources. Second, we need to increase the contribution of defense resources by all NATO partners.

Senator Nunn has been in the lead of encouraging NATO planners to develop a more effective resources strategy. In particular, efforts have to be undertaken to promote more effective armaments cooperation, both transatlantic and within Western Europe, and further, we must move forward with the sound application of new technologies. The more effective use of resources through improved NATO planning will in turn strengthen the political support in allied countries so necessary for increased NATO contributions.

An increase in the amount of resources devoted to defense—that is, a greater burden sharing on the part of our allies—cannot be exacted through threats. Such increases can only flow from a European appreciation of the fact that European security is enhanced by improvements in the conventional leg of the triad. From my travels in Europe and from conversations with European officials, I am convinced that European governments, despite relatively poor economic conditions at present, want and will move in this direction.

In sum, Mr. President, concerns expressed in this body in the past over the need for more equitable burden sharing on the part of our allies have had an impact in Europe. We are beginning to see the allies move in the direction that we have long advocated. However, an amendment of the kind that we are currently debating, despite its constructive intent, can only be misinterpreted in Europe and will pull the rug out from under recent efforts and advances to enhance our conventional force posture. Such an amendment, if enacted, would prove especially harmful and dispiriting to those European governments and parties who have painfully held the line against opponents during the INF debates and sought to move publics in the direction of improved conventional defense.

We cannot allow our commitment to and interests in NATO to become hostage to the politics of the day. Moreover, we should take no comfort from the fact that any reductions proposed in the amendment, if certain conditions are not met by our allies, would only take effect at the end of 1987. Passage of this amendment in its present form will invite immediate reaction in Europe which could interrupt precisely those efforts of the day by our allies that are leading in the direction of an improved conventional capability.

If the proponents of this amendment are primarily interested in shaping the terms of reference for the policy debate on this issue, I applaud this intention. And the debate currently underway in this body will go a long way in that direction. However, passage of this amendment would destroy the prospects for a meaningful debate with our allies and derail current and planned efforts to work toward an improved conventional deterrent.

Mr. President, we are asking the American people to make sacrifices in the interest of a strong national defense. We can do no less in urging our NATO partners and European publics to make equally painful sacrifices in the interest of Western security. Without burden sharing, there can be no collective defense. The views of the Congress, and the Senate in particular, must be heard on this issue. There should be no doubt in the mind of any European ally that this body stand for a strong alliance, a credible strategy, and the capabilities to meet the strategy. However, I do not believe that those objectives are furthered by enactment of this amendment. I, too, pledge that the concerns of this body will be transmitted to our allies at every opportunity. The message of the need to make better use of existing NATO resources in defense and to increase the contribution of defense resources by our European partners will be delivered loudly and clearly.

Mr. President, I would urge my colleagues to work with our allies in improving the Alliance's conventional force posture. For that reason, Mr. President, I would also urge my colleagues to reject the Nunn amendment.

Mr. President, I deeply appreaciate the Senator from Maine yielding to me so that I could present this statement. I applaud his efforts of a constructive intent, which I know will be coming before the Senate.

Mr. BINGAMAN. Mr. President, I rise in support of the amendment offered by the Senator from Georgia. I agree with him that it is time to challenge our European allies to meet their commitments to NATO conventional defenses. The proposal he has made seems to me a measured response to the inaction of our NATO allies in improving their conventional defenses and in reducing the nuclear threshold.

Every year NATO outspends the Warsaw Pact on defense. This has been true since the 1950's. And yet, we have the statements of Gen. Bernard Rogers, our NATO Commander, which Senator NUNN quoted extensively earlier, that we are still very far from an adequate conventional deterrent in Europe. And, as General Rogers has indicated, this does not have to be the case.

But we cannot build an adequate conventional deterrent by ourselves. It makes little sense for us to increase the sustainability of our forces if our allies fighting alongside are only going to stock a week's worth of ammunition. If the allies really do not want to make the effort needed to raise the nuclear threshold, then they should admit that to their publics. They should admit that they are willing to make early use of nuclear weapons on European territory in the face of Soviet conventional aggression.

I hope that this amendment will cause the Europeans to face this choice squarely, something the quiet diplomacy of recent years has not forced them to do. What we are asking of them is not onerous. It is far less than we are asking today of the American people. Seven percent of our gross national product is going to our military budget. None of our allies even approaches that level of effort. What we are asking of our allies is really nothing more than they have repeatedly promised to do since the Washington NATO ministerial meeting in May 1978, when the goal of 3 percent annual real increases in military funding was established. We have shown leadership in the alliance. We have met our commitments to the NATO goals, even at times of recession in this country. Our allies should do no less.

I would commend to my colleagues a book by David N. Schwartz, "NATO's Nuclear Dilemmas," published late last year. This analysis of NATO's military posture makes it clear that NATO's "nuclear addiction," as he terms it, has been a fundamental problem in the alliance since the 1950's. For more than three decades the Europeans have used a series of excuses for not improving their conventional capabilities: the expense of conventional forces; the supposedly insurmountable Warsaw Pact superiority in conventional forces; and the notion that conventional capabilities would undermine the credibility of a nuclear response.

None of these excuses stands up to scrutiny, especially at a time when our earlier strategic nuclear superiority has disappeared and an overall strategic balance exists. Today, I believe the threat of nuclear escalation by NATO is an increasingly hollow threat. I believe that NATO should not force itself to chose between conventional defeat and the use of nuclear weapons to repel Soviet conventional aggression. I believe that together with our allies we can forge an adequate conventional shield. Without them, our efforts will be for nought.

Mr. President, I ask unanimous that two excerpts from Mr. Schwartz's book be printed in the RECORD.

Mr. President, I urge my colleagues to support this amendment. I know how carefully Senator NUNN has worked out its provisions. This is not an anti-NATO amendment. This is perhaps, the most pro-NATO amendment the Senate will consider in this decade. It is a plea to our allies to make the NATO alliance work, one that, I hope, they will have the political courage to respond positively to. We must place the burden of nuclear escalation squarely on the shoulders of the Soviet leadership, where that burden belongs.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

CONTROVERSIES OVER CONVENTIONAL DEFENSE

When the alliance was formed in 1949, some Americans hoped that NATO would develop a strong military posture across the board, including robust nonnuclear, or conventional, forces. Over the next decade several factors worked to undermine these hopes. First, the Soviet nonnuclear threat to Western Europe was incorrectly perceived as so large that efforts to counter it would be futile. The recovering economies of Western Europe, along with the United States, had neither the resources nor the political will to match the 175 Soviet divisions allegedly poised to invade the West. Second—and this was one reason the nuclear guarantee became so important—the United States had nuclear weapons, which when used in battlefield operations would supposedly compensate for NATO's nonnuclear deficiencies, and which when used as a strategic threat would provide a stronger deterrent against a Warsaw Pact invasion than any conventional posture could provide. Third, relying on nuclear weapons as a substitute for nonnuclear strength was far more affordable to budget-constrained NATO governments than trying to achieve adequate nonnuclear capabilities.

All these factors militated against the development of strong conventional forces for NATO during the early years of the alliance. It would be convenient if one could attribute, as some have, a "trip-wire" function to NATO's conventional force posture at that time, a posture that when challenged by Warsaw Pact aggression would serve merely to unleash the strategic nuclear forces. Perhaps this was the theory behind the forces; however, they were too large for this function alone. Yet they were too small to meet serious conventional defense requirements.

Not everyone was satisfied with this state of affairs. Some observers criticized NATO's heavy reliance on nuclear forces and its neglect of conventional forces. They charged that such a posture reduced NATO's flexibility in meeting less-than-ultimate threats. They argued that it lacked fundamental credibility as a deterrent threat. They believed that it simultaneously exaggerated the size of the Warsaw Pact conventional threat and underestimated NATO's capability to deal with it. They pointed to data from exercises and analyses which suggested that manpower deficiencies would not only remain relevant in nuclear battlefield operations but would actually magnify NATO's disadvantage. Finally, they charged that NATO had neglected the problems of controlling a nuclear war in Europe, in particular the pressure that would mount to escalate such a conflict to even greater levels of destruction and the incredible damage Western Europe would suffer even in a "limited" battlefield nuclear exchange.

Attempts to move toward a more serious conventional capability for NATO, particularly in the 1960's, ran into serious trouble. As much as European governments were reluctant to endorse policies that seemed to portend the nuclear decimation of Western Europe, they were equally fearful of moving toward greater reliance of conventional forces. Some saw such a move as an admission of Washington's unwillingness to extend the nuclear umbrella over Europe, while others who were more confident of Washington's intentions feared the Kremlin would misread the move as such as admission. Some saw the move as a cynical attempt to undermine the national nuclear aspirations of other member nations; others, though more generous toward Washington's intentions, challenged the factual validity of its revised assessment of the Warsaw Pact threat. In general, Europeans were convinced that whatever the merits of the new approach put forward in the 1960's by the United States, it simply was not politically or financially affordable. They also clung to the notion, erroneous but understandable given the history and their relative ignorance of the technical facts of nuclear war, that nothing could be worse than a replay of World War II. These doubts about the proper role of conventional forces proved just as damaging to alliance cohesion as those about the strategic nuclear guarantee, and just as exasperating for American leadership.

CONCLUSIONS

The historical perspective of this study shows why the deliberations leading up to December 1979 took the form they did. To leave the analysis at this point, however, would be to miss the forest for the trees. NATO has been wrestling with the same problem for more than three decades and has never developed a permanent solution. Will the December 1979 decision be any different? Will it put to rest the doubts over the U.S. nuclear guarantee? So far as history suggests anything, it suggests that the solution is only temporary.

That said, history also demonstrates that some solutions have been more temporary than others. Some, like the Norstad MMRBM proposal and the MLF initiative, never really materialized. The stationing of Thors and Jupiters did materialize in Europe and may have quelled doubts for a while, but the systems were prone to obsolescence and were soon withdrawn, to be replaced by more explicit reliance on the central strategic arsenal of the United States. Once adopted, the doctrine of flexible response seems to have withstood the ravages of time, in part because of its ambiguity, in part because the battle over it was so unpleasant that no country is eager to reopen the issue. But the doctrine did not forestall concern over new Soviet theater nuclear deployments. The NPG proved to be a useful forum for quieting fears, but it did not forestall concern over new Soviet theater deployments either, nor did it seem an adequate forum in itself to deal with the perceived problem once that problem was articulated.

Because the December 1979 decision is viewed as a response to concerns about the U.S. nuclear guarantee in an era of strategic parity, as a test of U.S. leadership of the alliance, and as a test of alliance cohesiveness and resolve, it has taken on an importance totally out of proportion to the size and scope of the military role the new weapons systems are likely to play in the event of war. Perhaps this development is to be regretted. Nevertheless, it is a fact of life for the alliance. Controversial as the decision may be, the interests it has engaged make its successful implementation imperative. If the arms-control part of the decision can moderate the planned deployment, reduce the threat to the NATO allies, and make deployments less controversial, it can significantly reduce the political costs the alliance will pay in implementing the decision, and moderate the Soviet response to deployments. But the December 1979 decision will not put to rest the basic problem it was intended to address.

Is there a more permanent solution to be found? The history of NATO's nuclear dilemmas suggests there may be one, though one unlikely to be palatable to governments that have grown comfortable with the way in which the debate over flexible response was resolved. As long as the alliance relies on a deterrent based on the U.S. threat to use its nuclear weapons in defense of its allies, doubts will always exist about whether the United States will make good on that threat. Measures that have been adopted since the 1960's have increased the options open to the United States, should escalation to nuclear conflict seem necessary. This fact has been, and should continue to be, the basis for reducing the importance of these doubts.

A complementary policy could be built on the observation, inherent in McNamara's original conception of the flexible response doctrine that the nuclear posture of the alliance, and the U.S. willingness to use its terrible arsenal in defense of its allies, is manifestly more credible if the alliance has a strong enough conventional posture to force the Soviet Union to contemplate using nuclear weapons to achieve its military objectives. This was the goal first put forward by McNamara in his Athens speech of 1962, the goal eventually rejected in the version of flexible response adopted by the alliance in 1967. Whether the alliance is ready to re-examine this goal, and whether such a posture is technically feasible, given the improvements in Soviet conventional and nuclear forces since 1967, must await treatment in another study. Yet, only by reexamining that goal can NATO determine whether it is doomed to revisit the problem of the credibility of the U.S. nuclear guarantee time and again, or whether it can place the burden of nuclear escalation on the shoulders of the Soviet leadership, where that burden belongs.

BRINGING NATO INTO THE 1980'S

Mr. PRESSLER. Mr. President, I am pleased to cosponsor and support the NATO amendment offered by my distinguished colleague from Georgia, Senator NUNN.

Through all my years in Congress, I have repeatedly voiced a concern, shared by citizens of my home State of South Dakota, that the NATO alliance needs to be restructured to reflect current conditions. Unfortunately, NATO is an organization of the late 1940's which was best suited to meet security needs in the years following World War II.

The United States spends too much on NATO defense when compared to the NATO defense efforts exhibited by most of our allies. The inequity in shouldering NATO's burden is not limited to finances alone. Perhaps even more disturbing to many Americans is the failure of our allies to fully share in the political and strategic risks of Western security. The American people rightly ask why the Allies fail to join the United States in protecting the Persian Gulf oil routes, when Europe would suffer far more than the United States from an oil supply disruption.

Similarly, on the issue of nuclear weapons in Europe, let us remember that the U.S. supplied cruise and Pershing II missiles in response to our allies' strong request for such weapons. Even the decision to control these weapons using a single key, rather than under a dual-key arrangement, reflected European desires to leave the responsibility for these weapons to the United States it was, therefore, disappointing to find European opinion critical of U.S. missile deployments as soon as the Soviet Union began to protest.

The decision to deploy intermediate-range nuclear weapons in Europe was a joint response by the West to Soviet deployments of SS-20 missiles, begun several years earlier. We must now ask why opinion in Europe is protesting these counterdeployments when Western opinion remained almost silent at the start of the SS-20 deployments. This imbalance in critical European opinion might lead us to believe that some Western Europeans are more concerned about avoiding Soviet wrath in peacetime than in deterring Soviet activities that could lead to war.

Mr. President, let me say that the debate on missiles in Europe has had one very positive outcome, and that is the reawakening of an earlier debate on strengthening NATO conventional defenses. In earlier times, NATO looked toward nuclear weapons as a substitute for manpower and high conventional defense spending. This more bang for the buck approach to security should be reassessed, and this reassessment must be followed by action.

The Nunn amendment would help to encourage action by our allies to strengthen conventional defense capabilities in Europe. I believe that U.S. troop strength in Europe should be reduced and redeployed to the United States. At the same time, U.S. forces remaining in Europe must be part of an effective defense force. They should not simply be hostages in a nuclear confrontation with Moscow. More needs to be done to protect our personnel in Europe. They should serve a larger role than as American witnesses to the use of nuclear weapons. Such a revision requires greater attention to building up NATO's conventional military muscle.

This amendment provides an important mechanism for bringing about a change in NATO strategy and burden sharing in the 1980's. It would require U.S. troop reductions in the event that our allies fail to increase their spending for conventional capabilities.

In conclusion, Mr. President, I believe this amendment deserves the support of the Senate. It sends an important, though long overdue, signal to our allies that if they fail to contribute more to an effective conventional defense in Europe, U.S. troop levels will be reduced. I urge adoption of the amendment.

Mr. KENNEDY. The amendment offered by our ranking minority member, Senator NUNN, raises one of the most important issues facing our national defense posture today. For many years, I have been strenuously advocating a significant increase in our conventional warfare capabilities as a means of deterring aggression and reducing the likelihood that we will be forced to resort to nuclear weapons to defend ourselves and our allies. Nowhere is the need to raise the nuclear threshold more important than in Europe.

We are under no illusions that increased reliance on conventional deterrence is a simple or inexpensive alternative to dependence on nuclear weapons. To achieve the reality of conventional deterrence will require a major commitment not only by the United States, but by our allies as well. The enormity of this undertaking is so great that the United States could not shoulder the responsibility alone, even if we were so inclined. In the context of our collective security arrangements in NATO, it is even more imperative that each member of the alliance bear its share of the responsibility and burden.

Unfortunately, the reality is clear: the United States and its NATO allies are woefully lacking in the means to carry out conventional deterrence, as General Rogers, the Supreme Allied Commander, NATO, has stated:

> Allied command Europe's current conventional posture does not provide our nations with adequate deterrence and it leaves the nuclear threshold at a disturbingly low level. Thus, NATO's deterrence is jeopardized by our current heavy reliance on the early use of nuclear weapons to stop a non-nuclear attack. The remedy is for NATO to strengthen its conventional forces which will also raise the nuclear threshold. There are a number of shortcomings in NATO's non-nuclear forces that put us in the predicament I describe. However, the fundamental cause is a low level of sustainability. Ace is simply unable to sustain its conventional forces in combat for long with manpower, ammunition and war reserve material to replace losses and expenditures on the battlefield.

In 1977 and 1978, the NATO allies, recognizing the dilemma facing us, pledged to increase their real spending for defense by a modest 3 percent per year. Since that pledge was made, our NATO partners have failed, on average, to meet that goal every year. By contrast, since 1980 the U.S. increases have ranged from 4.9 percent to 9 percent real growth. Little progress has been made in achieving the agreed upon goal of 30 days sustainability for essential munitions, and our severe lack of airbase facilities and defense leaves vulnerable the tactical aircraft we would deploy to Europe in the event of war.

Mr. President, achieving our goals for conventional defense in Europe should be a matter of cooperation, not confrontation. To a considerable extent, I believe that responsibility for failure to achieve these goals must be laid at the door of the President of the United States, whose attitude toward our NATO allies has exacerbated, not improved our cooperative efforts.

It is bad enough that the President has systematically aggravated the tensions between the United States and the Soviet Union; it is inexcusable that he has undermined our vital relations with our allies. Our European partners, staggering under the burden of an economic policy which exports recession and unemployment, are hard pressed to provide the fiscal resources needed to meet the agreed upon targets. With cooperation and constructive leadership in the White House, I am convinced that we could succeed in persuading our allies to meet the obligations they assumed in the late 1970's, without the need to resort to such a dramatic step as the possibility of American troop reductions. I am hopeful that we will elect a new President this year, who will accomplish this goal, rather than following the course of finger pointing and strained relations that have characterized the past 3½ years.

Nevertheless, I believe it is essential that our NATO allies understand the importance that Congress attaches to the effort to improve our conventional defenses. Many of us in Congress have been fighting hard to increase the emphasis on conventional forces, and to scale back our reliance on wasteful, destabilizing nuclear weapons. But our efforts will be in vain if the United States tries to go it alone. There is little point in making this investment if, in the end, we will still be forced to resort to nuclear weapons within a few days of the outbreak of conflict. Only with a sustained, common effort can we hope to reduce or even eliminate the requirement for first use of nuclear weapons in the event of war in Europe. For we all know that once nuclear weapons are employed, even theater nuclear weapons, the escalation that will follow will surely and inevitably lead to full-scale nuclear conflagration and the end of the human race.

Although I have reservations concerning the approach of the Senator's amendment, I believe adoption of this amendment will send an appropriate signal to our allies that we are ready and willing to pursue the desired goal of strengthened conventional defense, but that we need and must have their support.

Equally important, I also view this amendment as a message to the President, that the Senate wants him to abandon his divisive policies toward Europe, and begin the effort to replace confrontation with the vital cooperation that should lie at the heart of our alliance.

I urge my colleagues to support the Senator from Georgia's amendment.

Mr. GRASSLEY. Mr. President, the amendment offered by the Senator from Georgia and the Senator from Delaware deserves careful consideration by the Senate, not only because of its budgetary implications—which are substantial, but also because it encourages greater accountability in the NATO security arrangements.

There is not a Member of this body, I would venture to guess, who does not at some time during deliberations on defense matters have lurking doubts about the upward spiral of U.S. contributions to NATO. Few, if any, Members of this body would suggest, however, a sudden and precipitous reduction of NATO support. This amendment is focused in its intent, not on sudden reductions, but rather on creating reasonable goals based on economic and military realities. There cannot be a blank check from the United States always available for NATO. Our own budgetary problems are so serious now, and may become even more serious, that it is only the better part of wisdom to set in motion clear, concise standards for increases by the NATO nations.

The concept of an alliance such as NATO is based on burden sharing. Creating a common defense against the Soviet bloc, which has amassed a mammoth force in Europe, must be built through a well-managed plan for increased European support for NATO. There is simply no alternative; America cannot play the beast of burden much longer. A glance at the growth of the gross national products of European nations shows they are able to pick up more of the costs for their protection. Look then at the levels of the real increases in defense spending by those nations and it is abundantly clear that the increases in our own defense budget—much of which goes directly and indirectly to European support—simply dwarf European increases. It is no wonder the United States portion appears to build and build and build.

I will say again, America cannot bear this much of the burden forever. If the Congress and the administration do not establish some new directions for NATO spending, we risk in the future savage reductions not even contemplated today. The economic pressures may become so severe for the United States that drastic changes in the NATO spending formula might develop. Isn't it far more rational to set in motion limited, gradual, reachable goals for European support increases?

Respected analysts like Henry Kissinger stress that Europe should take a greater part in solidifying its conventional forces. General Rogers has noted that there is an increasingly serious gap between Warsaw and European conventional capabilities. Will that gap be narrowed? Who will bear the burden? Look back on the history of NATO and the answer is clear—the United States is likely to bear an inordinate portion of that strategic burden, unless specific goals are set for European increases. At its very least this amendment is good management. We should not forget that NATO nations themselves made this amendment possible by undertaking commitments to increase their support for NATO. The amendment before us asks that our allies meet the standards which they have set in the best interests of the alliance.

NATO must work as a cooperative team with balanced responsibilities. The objectives, goals and standards which will guide the spending policies of NATO must, of course, be reachable and reasonable. This amendment offers a graduated scale of increases that have their origin in the expressed intention of the NATO nations.

AMENDMENT NO. 3267 TO AMENDMENT NO. 3266

(Purpose: To delete certain portions of the Nunn amendment requiring reductions under certain circumstances in the number of United States forces assigned to NATO)

Mr. COHEN. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The VICE PRESIDENT. The clerk will report the amendment of the Senator from Maine.

The bill clerk read as follows:

The Senator from Maine [Mr. COHEN], for himself Mr. DOMENICI, Mr. GORTON, Mr. PERCY, Mr. WARNER, and Mr. RUDMAN, proposes an amendment numbered 3267 to amendment numbered 3266.

Mr. COHEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the amendment, insert the following:

IMPROVEMENTS TO NATO CONVENTIONAL CAPABILITY

SEC. . (a) The Congress finds—

(1) that the North Atlantic Treaty Organization (NATO) should improve its conventional defense capability so as to lengthen the period of time that Western Europe can be defended adequately by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country;

(2) that fulfillment by NATO member nations, other than the United States, of their goals and commitments to increase defense spending, improve conventional sustainability, and provide support facilities in Western Europe for rapid reinforcements from the United States is crucial to accomplishing that objective; and

(3) that the continued modernization of United States conventional forces in Western Europe and the continued maintenance of current and projected United States military personnel levels in European member national of NATO can be fully justified only if these goals and commitments are substantially met by NATO member nations (other than the United States).

(b) The Congress urges the President and the Secretary of Defense to continue to encourage member nations of NATO (other than the United States) to work expeditiously to fulfill the following commitments they have undertaken;

(1) An annual increase in their defense spending of at least 3 percent, after inflation.

(2) A 30-day supply of air and ground munitions among those NATO members which have committed forces to the Center Region.

(3) Construction of the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, the annual commitment of United States reinforcing tactical aircraft.

(c)(1) After September 30, 1985, none of the funds appropriated pursuant to an authorization contained in this or any Act enacted after the date of the enactment of this Act may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

(2) If the Secretary of Defense certifies to the Congress in writing in any fiscal year after fiscal year 1985 that in the previous fiscal year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity consistent with the goals set forth in section 3(b) which contributes to lengthening the time period between an armed attack on any NATO country and the time the Supreme Allied Commander, Europe, would have to request the release and use of nuclear weapons, the Congress would give strong consideration to authorizing an increase in the permanent ceiling prescribed in paragraph (1) for fiscal years after such fiscal year.

(d)(1) Not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Center Region.

(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

(2)(A) Beginning with the fiscal year 1986 budget submission to the Congress, but not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall report to the Congress on the status and cost of the United States commitment to NATO as reflected in the DPQ Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report on "United States Expenditures in Support of NATO", first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677), and shall include not only the information required by that section but also information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

(B) In addition to the requirements under subparagraph (A), the Secretary of Defense shall include in such report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

(i) Allied contributions to the common defense (this requirement is satisfied by submission of the report required by section 1001).

(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft (this requirement is satisfied by submission of the report required by paragraph (1)(B)).

(iii) Meeting NATO force goals.

(iv) Increasing NATO infrastructure funding.

(v) Improvements in air base defenses.

(vi) Increasing trained manpower levels, particularly reserves.

(vii) Increasing war reserve material.

(viii) Improving initial defense capability.

(ix) Improving NATO's ability to neutralize enemy follow-on forces, particularly use of emerging technologies.

(x) Improvements in mine/counter mine capability.

(xi) Improvements in offensive counter air capability.

(e)(1) The Congress finds that a viable "two-way street" of defense procurement improves NATO interoperability and therefore is important to overall improvements in conventional defense.

(2) In addition to any funds appropriated pursuant to the authorization contained in section 116(a) for the activities of the Director of Test and Evaluation, Defense, the Director may utilize an additional amount, not to exceed $50,000,000, to acquire certain of weapons, subsystems, and munitions of European NATO manufacture (including submunitions and dispensers; anti-tank and anti-armor guided missiles; mines; runaway-cratering devices; torpedoes; mortar systems; light armored vehicles; and high-velocity anti-tank guns) for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act.

(f)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor.

Mr. COHEN. Mr. President, I offer this amendment on behalf of myself, Senator DOMENICI, Senator GORTON, Senator EVANS, Senator PERCY, Senator WARNER, and Senator RUDMAN.

Before proceeding with the discussion, let me say to the Senator from Mississippi I offer my apologies to him. I had been on my feet for at least 10 or 15 minutes seeking recognition and was under the impression I was about to be recognized. But there was a changing of the guard at the Chair, and he obviously was compelled by the Senator's voice to recognize him. I was simply trying to protect the Senator from Indiana, who had to leave for another engagement. I do offer my apology.

Mr. STENNIS. I appreciate deeply the Senator's sentiments, but there is no call for an apology. I thank the Senator very much.

Mr. COHEN. Mr. President, first let me say that I do not wish to weigh my knowledge of military issues against that of the Senator from Georgia, Senator NUNN, or indeed the Senator from Ohio, Senator GLENN. I might point out that one of the very first trips that I took part in was with the Senator from Georgia, Senator NUNN, the Senator from Ohio, Senator GLENN, and the Senator from Colorado, Senator HART, when we went on a rather quick visit to the Far East to visit China, Japan, the Philippines, South Korea, and Thailand. I had enormous respect for him at that time. I think he was one of the reasons that I decided to ask to serve on the Armed Services Committee, because of the kind of quality individual that he is, with the kind of substantive knowledge that he does possess, and with the experience obviously he has brought to this body.

So I do not at all wish to in any way pit my limited experience against that of the Senator from Georgia.

I do not wish to have this seen as a vote of the Democrats versus Republicans or as the headline in the Washington Post read, "Nunn versus Reagan." I think that is very destructive. It was not intended.

I know the Senator from Georgia, in my experience, has never sought a partisan opportunity at the expense of national security. I know he deeply feels passionately about this issue, and it is not born from any political opportunity or advantage but rather his own very deep-seated conviction.

He has worked on a number of committees and conferences, on CSIS study groups that I have joined him on. I think that ought to be clear from the very beginning.

As to my own record while serving in the Congress since 1972, I have tried to the best of my ability to support Presidents, be they Republicans or Democrats, when they were in office, when they were right, and to oppose them when I thought they were making a mistake. I hope I might continue in that fashion.

Mr. NUNN. Will the Senator yield for a brief comment?

Mr. COHEN. Yes.

Mr. NUNN. I am grateful to the Senator for his remarks and for his past friendship. I appreciate our working relationship. I am deeply grateful for his remarks.

Mr. COHEN. I thank the Senator.

I was about to say that this is not a new or unique issue at all. I was going back and reading some of the statements made during a conference of the Center for Strategic and International Studies. The Senator from Georgia chairs these conferences many times during the course of the year. I read with interest one particular publication in which former Secretary of Defense James Schlesinger discussed the time he had worked so hard and so successfully in defeating the original Mansfield amendment that would have called for a withdrawal of troops from Europe.

After having savored that particular victory, he was then told by his staff that he had another problem, that the chairman of the Senate Appropriations Committee, John McClellan, "was on the warpath," and he better get up and see him right away.

He said he went in to see Senator McClellan, Who was then 81 or 82 years old and was not a figure likely to be understood by most Europeans. McClellan apparently went quickly and bluntly to the point and indicated that he was tired of those Europeans.

Schlesinger wrote:

> I asked him why. He had heard of this fellow De Gaulle who had thrown us out of Paris. I confessed that indeed that had happened though it had occurred some 6 years earlier.

Schlesinger continued:

> I pressed the case that, whatever the misbehavior of the French, whatever the tenets of De Gaulle's policy, the United States had an obligation to the other peoples of Europe—to Germany above all, simply because of our responsibilities that flowed initially from the occupation, and to the Dutch, to the Danes, to the Belgians, to the Norwegians, and to others.

He wrote that the old gentleman responded to that argument and finally relented. He agreed not to press his amendment.

Then Senator McClellan said, "You told me you were going over to NATO tomorrow," and Schlesinger responded, "yes."

"Once again," wrote Schlesinger, "I encouraged him to come. He said, 'tell them for me: They're just a bunch of damned ingrates.'"

So nothing much has changed, apparently, over the years. There is a very deep and pervasive feeling not only in this body but perhaps the entire country that echoes Senator McClellan's opinion of the Europeans.

Even as recently as 1982, I was getting ready to make a speech to the American-German Roundtable conference. I was reading a lot of materials at that time. Notwithstanding the dedication of the Reagan administration to seeking greater communication with and cooperation and support from our allies and to impressing upon them the importance of sharing responsibility for defending areas of vital interest, it was evident that something was amiss, even as early as 1982. Apparently, something had happened the way to the Atlantic Forum and on the road to restoring Western security.

I recall reading almost one article a week with titles such as "Can the Alliance Be Saved?" That occurred in Business Week.

"The Shaky State of NATO." That was the lead in Time magazine, on the cover.

"NATO at a Dead End." That was the Wall Street Journal.

"Something Is Deeply Wrong in the Atlantic Alliance." That was Henry Kissinger.

Then an article appeared in the Washington Post that said "Let's Tell Our Allies Uncle Sucker Is Dead." That was written by William Greider.

So we can see something is wrong not only in recent history but going back much farther. I think there is a reason for that. In peacetime, there usually exist inherent jealousies and rivalries in any alliance of democracies. In time of war, those differences are submerged in a joint effort to survive. The most dangerous time for any such alliance is when we are a long way from peace but something short of actual war. Then the rivalry and the competition can dissolve rather easily into rancor and recrimination, producing either a paralysis of thought and action, or a fracture in the common bond itself. That, I think is unfortunately very much where we find ourselves today.

The Senator from Georgia has spoken, I believe forcefully and correctly, about the failures of our allies. They have not measured up to their commitment. There is no dispute about that—not allegation but factual statement—none whatsoever. By the same token, I think that Mr. Schlesinger pointed out in the speech that I referred to earlier that it is not all a one-way street, that we have some problems, too.

He said during that conference:

> At the same time the Europeans have discovered that the great Sir Galahad of the West has weaknesses that were not discerned during those early days after World War II—weaknesses in a political system that was designed in the eighteenth century and has something called the "separation of

> powers," which means the dispersion of power. Europeans have discovered that the great protector indeed has feet of clay. This is clearly reflected in the opinion surveys with the decline of European admiration—to put it euphemistically—for the United States. Over the course of the last decade, any visitor from the United States has been amply, if painfully, reminded of that decline.

He went on to say, and I think it is important to remind ourselves of this:

> This new understanding of the defects of the U.S. political system is reinforced by the "outsider syndrome." Since the disenchantment with Washington that came with the Watergate affair, the American people have elected as president men whose principal virtue has been that they have never been contaminated by any experience in foreign policy. Europeans, quite understandably, have been irritated by what appeared to be the erratic weakness of Jimmy Carter, and they have been almost equally irritated by what appeared to be the erratic strength of President Reagan.
>
> This erratic quality, which flows partly from the dispersion of power and partly from the outsider problem, has led to European doubts about U.S. political wisdom—doubts that regrettably have been thoroughly justified. Indeed, they have become increasingly justified as the power of the United States has fallen—for the Free World has become even more dependent upon the wisdom and judiciousness of U.S. policy. In this very period in which we need wiser and steadier policy, we have become more erratic.

Those are the key words I would like to focus upon: "In this very period in which we need wiser and steadier policy, we have become more erratic."

I offered some complimentary words, I believe, to the Senator from Georgia earlier, and I would offer even more, because part of this erraticism has occurred upon and down over the years, Republicans and Democrats alike. I recall the Senator from Georgia was very, very influential in restraining one American President from engaging in a unilateral act of withdrawal of troops from South Korea. That was part of the purpose of the trip that we went on, to meet with South Korean allies—not only South Korean but the Japanese as well. They were alarmed at the signal that had been sent that we were going to engage in the unilateral withdrawal of troops in South Korea and they were worried about whether this new attitude, quasi-isolationism, whatever they might have called it at that time, was going to take root and spread and perhaps even call for a reduction in our support of the defense of Japan and others in that region.

The Senator from Georgia was a very, very persuasive—quietly persuasive, I might add—voice going to the White House and saying it is a mistake, we ought not to do this, the consequences of such an action are clearly detrimental to U.S. foreign policy and military as well.

We also went through that period of time in which one German chancellor, Helmut Schmidt, had put himself out on a limb by endorsing the neutron weapon, the enhanced radiation weapon, and it was canceled without prior notice to him, so he was in a very embarrassing position. So the Europeans have something to complain about in our consistency as well as in the lack of coherence of American foreign policy as well. I think this has to be taken into account so we can place it all in better perspective.

No one, including this Senator, can dispute Senator NUNN's statement of fact. There is no dispute as to anything he has said on the merits of his amendment. Those of us standing up now can only question the wisdom of the proposed action because the consequences are unknown to any of us, including, I submit, the Senators, from Georgia, Ohio, Mississippi, or anyone else, including also the Senators from Maine or Indiana.

I find myself in a rather unusual position, Mr. President, agreeing with the essence but opposing the action. I do so principally because of timing. I listened very carefully to the Senator from Georgia when he mentioned the action that was taken back in 1974, when he joined with Senator Jackson in offering an amendment to the Mansfield proposal. That was 1974 and we were coming out of Vietnam at that time. What was appropriate in 1974 is not necessarily appropriate today.

I might say to my friend from Georgia, there is never a good time for change. There is never a good time to change the status quo. There is never a good time for a tax increase, as Senator DOLE is finding out during the conference that is taking place right now. There is never a good time for spending cuts, there is never a good time to deploy the Pershing, there is never a good time to deploy the GLCM's, the ground-launched cruise missiles, or to take, I suggest, Omaha Beach. There is never a good time.

I submit there is never a good time. But there may very well be a bad time. That is something on which I think we have to deliberate at some length. Because it is not at all clear whether this is a bad time. I could be wrong. It might be the right time. It could be a bad time.

It could be, as the Senator from Georgia, I think, implies with some justification, that our European friends will always say, "Just give us a little more time." Some day, we shall be able to persuade our constituents that we need to spend more for our collective defense. Some day, some time. I am reminded of what the poet, Emily Dickinson, wrote to a friend. She said "Don't say sometime. Say in a long time. Sometime is never."

So perhaps the Senator from Georgia is right. Perhaps today is a time when we say to NATO, "Time to shape up or ship out."

But I wonder, I seriously wonder, whether foreign or military policy is so clear, so final, and, I might submit, even so dictatorial. I find it somewhat ironic that we have tried to use the stick approach with the Soviets and we have found it unsuccessful. In fact, we are now, during the course of these deliberations, urging negotiations on behalf of the President with the Soviet Union. "Go negotiate. Let us not use the stick approach, let us not send Cyrus Vance or some other Secretary of State to Moscow and demand that they take down those SS-18's." The stick approach did not work, so now we have tried to construct a more flexible approach. We have tried to encourage our President to negotiate the kind of reductions that we all want.

So after we have urged our President to negotiate, after we found the stick approach has not worked with our adversaries, now we have determined we have to use it on our allies, we have to write it into law. I am struck by the irony of that particular posture. When we make such a declaration, we also have to ask, ship out to where? Ship out to Asia, ship out with Mike Mansfield, our Ambassador to Japan, a strong ally in the East that we defend at great expense, as the Senator from Ohio has told us at length, while they flood us with Toyotas, or Sonys, or microelectronics. Why are they not added to this list?

The Senator from Ohio made a very compelling case as to why we ought to include Japan in any kind of deliberation in terms of a sharing of the burden, but they are not included. This is the same nation that is carrying on trade with North Korea while we spend billions helping to defend South Korea. This is the same nation that has built the largest drydock facility in the world and sold it to the Soviet Union, thereby allowing them to imperil the very seas that we are now required to help defend.

So if we are going to talk about burden sharing, it seems to me we have to talk about Japan. It is inevitable. It is inextricably intertwined with this whole issue, but it also serves to demonstrate the complexity of the issue. Times have changed. We are no longer in a post-World War II situation—economically, strategically, tactically, domestically, or politically. It is a different time. It is going to require the development of a different strategy, and that strategy should not be developed on the floor of the Senate in my judgment. It ought to be developed in the wiser councils away from the glare of the lights, carrying on negotiations with our allies not mandated on the Senate floor. And so I ask the question again rhetorically: Are we going to ship out? And the next question is, to where?

Is our future security in the Far East with Japan, as then-Senator Mansfield suggested years ago, or are we implicitly putting them, too, on notice that we intend to gradually reduce our presence in the Asian seas and that they should build their own navy and offensive capability against the Soviet threat? Or how about shipping out to China? Are we so eager to embrace that sleeping giant of the Orient for either economic or strategic purposes that we are prepared to rest our future upon the inscrutible leaders of that large and mystifying nation?

The time to break a person psychologically, I think everyone would recognize, is when he or she is under the most extreme point of stress. The way to break a board is to put it under pressure from both ends and then strike it directly in the middle.

Well, the NATO countries are under extreme pressure right now from their peace movements, from their churches, from their enemies—the Soviet Union and the Warsaw Pact countries—and now we propose to put them under even more intense pressure from their friends.

Mr. NUNN. Will the Senator yield for a brief observation?

Mr. COHEN. I yield.

Mr. NUNN. I think the Senator is correct that they are under stress now. I do not think there is any doubt about that. I will not dispute that. The Senator has not disputed a good many things I have said.

The thing, though, that is not coincident in this Senator's view is that that stress has built over the years as it became more and more obvious that the United States no longer had nuclear superiority and therefore massive retaliation for conventional attack was less and less credible. It has become even more apparent in the last 10 years that we no longer have a threater nuclear advantage—in fact, some would say disadvantage. And I think I would agree with that analysis.

So I do not think it is a coincidence that that stress is there. I think that stress is being caused by a creeping realization that the Europeans themselves have not yet fully understood—the realization that the threat of escalation to a nuclear war is becoming less credible. Its credibility is eroding. They have not taken the second step, though, in logic; that if it is eroding, you better address the conventional capability. So I think what the Senator described is a condition of anxiety in Europe that is not going to end with the deployment of intermediate range nuclear missiles but is going to continue year after year. As conventional defense gets less credible, which it is, that kind of anxiety and stress is going to get more prevalent.

So my answer to the Senator's observation, which is valid to the extent it goes, is that the conditions of stress and strain and anxiety and political turmoil that exist in Europe now vis-a-vis the defense issue are going to grow every year; they are going to get more intense in 1985 and more intense in 1986, because those people who are in possession of the facts over there recognize that defense credibility is eroding.

So I say in answer to the Senator's query of when the time will be correct, the time is better this year than it is going to be next year. The time will be better next year than the year after, because every year that goes by, the defense of NATO becomes less credible unless something is done in the conventional area. If we want to do something about that stress, we may have to make the headache worse for a short period of time, until the headache gets so bad that the allies are willing to take some medicine. That is what this body has to consider.

Mr. COHEN. I thank the Senator for his comments. My only concern is that we not only make the headache worse but amputate the head. What I am trying to do is avoid the amputation. Let me just respond to the statements of the Senator because we have for our part contributed to that very anxiety as well during the seventies. So I do not think it is fair to simply say that this movement has grown and there has been a realization that perhaps now the strategic superiority we once enjoyed is now gone; that the theater superiority we once may have had is now gone, that it is equal or at parity. I think that we have also, through our inconsistent actions during the course of the seventies for our own domestic political reasons, contributed to that. So I think we have got to take that into account as we prescribe a remedy as to how we are going to shock them out of the current state of either apathy, indifference, or simple expedience of taking advantage of our commitment.

Mr. NUNN. I agree with the Senator. We have had a lot of changes but for a democracy like ours the last 5 years, the last couple years of the Carter administration and the 3 years of this administration, have been very, very consistent. I do not think we can look forward in the next 20 to having a more consistent 4-, or 5-, or 6-year pattern of strong, strong support for NATO than we have in the last 2 years of Carter and first 3 of Reagan. So I would make a case that now is the better time if you base it on U.S. performance.

I am not sure the next administration is going to be nearly as consistent—whether it is the Reagan administration or Mondale administration, or Hart administration, or other—in terms of NATO dedication and support and expenditures. I would say if they are, then we are not going to do much about getting our substantial deficits under control.

Mr. COHEN. Let me just add to the comments of the Senator. It is not only whether we have given strong support to the NATO alliance. Also, we must take into account the statements that contributed to the anxieties. Statements about limited nuclear war being fought on the continent of Europe, about firing shots across the bow, about no foreseen movement toward negotiations as far as they were concerned. We have had some contribution to that anxiety, so it is not only a question of do we support the NATO alliance and have we done it for the last years of the Carter administration and first years of the Reagan administration. We have done some things, I think, politically or diplomatically, which have not exactly contributed to a soothing of those anxieties. So I do not think you can just look at it in terms of dollars and cents.

Mr. NUNN. The Senator is correct. I think there have been anxieties created there by some statements that have been inflammatory, statements that have not been well thought out, statements that have not considered sensitivities, not only in those countries but in this country and particularly the one—I cannot quote exactly—where it says, "Nuclear war is in effect not so bad; everybody gets a shovel and digs a hole and puts a board on top and three feet of dirt, and the problems go away." That is not exactly a confidence builder in American leadership. And there are a number of others, so the Senator is entirely correct. I think there have been a number of statements. I used the term, quoting a British parliamentarian, what we have been engaged in in the last few years on both sides is "megaton diplomacy."

Mr. COHEN. I thank the Senator for his comments.

I come back to the point: Is it the right time to put additional pressure upon our allies in order to bring them around to what I believe to be the right, fair, and equitable position, to a greater contribution in the field of conventional weapons? Is it possible? I think it is possible.

It is possible that this threat we propose to write into law will permit them—if I may use a term that the chairman of the Armed Services Committee has used from time to time—to screw up their courage to do what is right, fair, and necessary. But I seriously doubt it. I think we will succeed in doing that which the Soviet Union was unable to do, and that is to weaken and eventually break the alliance.

It may very well be, as I think the Senator from Georgia was at least intimating, that NATO is drifting toward Finland, toward neutrality, no matter what we do. If so, I submit that this action would surely hasten the arrival of that unhappy day. And perhaps we can take comfort in the knowledge that better we know now rather than later.

I submit that it is equally possible that they may no longer be drifting toward neutralism and that perhaps their course is not irreversible and that perhaps, under the leadership of Kohl, and Craxi, and Thatcher, we are seeing new backbone, and realization that they will have to do more in the future.

If that is the case—and I do not categorically say that it is—but if that is the case, do we really want to shove them back when they are starting to walk in the right direction? Is that the way to get cooperation from your allies—give them a big push just as they are starting to walk in our direction? I have a limited understanding of human psychology or even diplomacy, but I do not think that is a very successful strategy to be offering.

Do we tell them, "Shape up faster or we are shipping out"? I use that phrase which has been in the headlines: "Shape up faster. We give you 2 more years or we ship out."

Ship out to where? Ship out to Japan? The Senator from Ohio does not think too much of that. They are not doing much in the way of defense. Ship out to China? We are not too sure about that relationship just yet. How about Canada? How about a North American strategy? The Canadians spend less then 2 percent of their GNP on defense.

Ship out to Nicaragua? Send the troops and take over the Sandinistas? Is that where we are going to ship out to? Ship out to Argentina? Ship out to Saudi Arabia? Wrap our security around the oil fields in the Persian Gulf, oil which we hope we will one day find unnecessary for our economic survival.

The answer is that we do not know where we are shipping out to, but that is no reason not to go.

It reminds me of a scene in "Alice in Wonderland." Alice has a little exchange with a Cheshire cat.

She said to the Cheshire cat, "How do I get from here to there?"

The cat responded, "It all depends on where you want to get to."

Alice said, "I don't much care where."

The Cheshire cat responded, "Then it doesn't matter which way you go."

That is the message, I think, we have to keep in mind: Any road will take us there if we do not know where we are going. We may not like the road we have been traveling for the past 25 or 30 years, but before we take action to turn on to a different path, I think we should ponder, and ponder very carefully, and I hope we have some understanding of exactly where we intend to go.

So what we may do, if we act today on the amendment of the Senator from Georgia, is to ship out to some imaginary pillar of stability which might turn to salt, or we will ship out and only return to our own shores, back to Fortress America. And thus, the far right in our country will join hands with the far left, which maintains that we no longer should extend American power or influence beyond our own continent.

That is not the intent, the purpose, the design of the amendment of the Senator from Georgia. Before we start shipping out, we had better know where we are going to go and who is going to be there and what kind of alliance we are going to develop.

Or are we pulling back, saying we should pull the troops back home, forget about the Persian Gulf because we are not defending Japan or the NATO countries, let them fend for themselves. That leaves us with China, Mexico, or Canada. It may leave us with the United States of America period.

So, before we say, "Shape up or ship out," we should know exactly where we are going and when we are going to arrive.

Yes, they have tread upon our patience. But shall we now feed fat the ancient grudge we bear them? Is that what we do—feed fat the ancient grudge? I submit that there is precisely what we should not do.

I quote now from former Secretary of Defense Schlesinger. He wants a strong conventional force in Europe, but he also said:

> Hectoring will pay few dividends, but it will serve to weaken the alliance.

He concluded:

> Therefore, all of our public comments should be carefully gauged according to the realization that the fundamental defense of Western freedom lies in preserving the cohesion of the alliance. I am not one to underestimate the need for strong military forces. If, however, in the (possibly fruitless) quest for such forces, we break up the minimal consensus necessary in the alliance, we will have done ourselves more political damage than we will have achieved military benefit.

Mr. NUNN. Mr. President, will the Senator yield for a question on that point?

Mr. COHEN. I yield.

Mr. NUNN. The Senator quoted the Secretary of Defense, who I think has understood this whole area better than any other Secretary we have had in the last 10 to 15 years, and the Senator has quoted Secretary Schlesinger very accurately.

Interestingly enough, I sent him a copy of this amendment and my speech on Monday and received a telephone call from him, and I think he would be agreeable to my making the following statement.

I do not have a letter from him, but he told me unequivocably that he was very much in favor of this amendment. He thought the time was past due to put the allies to the test. He felt that this was a responsible approach, because it gave a whole year before the alliance would even be measured, let alone any sanctions determined. He would oppose any withdrawal this year or next. He thought it was a well thought out approach, and felt that the test had to be made.

The Senator from Maine quoted Secretary Schlesinger correctly, and I think he does not view this amendment as being in that context. I think it is important for people to recognize that this is not a troop withdrawal. This is an effort to strengthen NATO's conventional capability.

I believe it is also important because the Senator from Maine used the words "This is a big stick," and the Senator from Texas used the term "Let's don't kick our allies in the teeth." It is a strange circumstance that you get to the point where——

Mr. TOWER. Mr. President, will the Senator yield for a correction?

Mr. NUNN. I yield.

Mr. TOWER. I did not say our allies—our friends in European governments who have embraced American policy in the face of a great deal of popular dissent from that policy.

Mr. NUNN. I accept that amendment.

I think it is a strange paradox that we have done so much so long that we consider this kind of approach a big stick or this kind of approach kicking our friends in the teeth, as the Senator from Texas has said, when we are asking them to do no more than what they have pledged to do.

Is it too much to ask your friends and allies to do what they have pledged to do? There is not a single new requirement here. There is not a single thing in this amendment that they have not pledged to do—pledged not once, but twice and three times.

I think it is time, as I mentioned earlier, for us to be able to look our airmen in the face and say to them: "We are going to do what we can to see that you have bases to land on if there is a war in Europe." I think it is time we think about them.

I think it is time for us to think about the 6 divisions of Army troops in this country that in an emergency would be sent to NATO in the first 10 or 15 days. I think it is time for us either to try to do something about the Dunkirk they face there, or else be able to look them in the eye and say, "Fellows, you are going over there and about the time you arrive the allies are going to run out of ammunition."

They are going to run out of ammunition, but we have not wanted to rattle anyone's cage. We did not want to say anything about it because it might make some of our friends nervous. It might make them nervous. But we are going to have 10 divisions of Americans in Europe just as our allies are running out of ammunition.

What kind of friendship is that? What kind of tolerance is that? What kind of tolerance is it when we have approximately 1,500 aircraft, the most sophisticated in the world, that we have spent $50 billion on, and when they land in Europe only 20 percent of them will have anyplace to get ammunition, and anyplace to get refueling, or anyplace to be maintained and not a single one of them will have shelter? They will be landing in the middle of world war III with no aircraft shelters.

What kind of patience is that? What kind of patience? I do not think the alliance requires that kind of patience on the part of one party.

I thank the Senator for his patience.

Mr. COHEN. Mr. President, let me say when it comes to rattling cages, the Senator from Georgia has already rattled cages. He has, in my judgment, already sent a message to the European alliance, and I think it was Oliver Wendell Holmes, Jr., who said there is nothing quite so exhilarating—perhaps I am not citing the right person—there is nothing quite so exhilarating as having been shot at and missed.

Mr. NUNN. That was Winston Churchill.

Mr. COHEN. Winston Churchill. But he was a fan of Oliver Wendell Holmes then, because Holmes was shot at and hit on several occasions. But he too relished the battle, much as did Winston Churchill, the last of the great leaders, I think, of the free world, at least during this period of time.

By introducing this amendment the Senator from Georgia has shot at the European allies and hopefully he will miss tonight, because I think the message has gotten there and what we should do is what I am suggesting we do. What I have done is really try to incorporate the basic factual statements contained in the amendment of the Senator from Georgia. There is no dispute. There is none. Everything he has said is factually accurate. He may even be right in proposing that we take this action this year in this way. I have my doubts about it and because the consequences are so grave I have suggested that what we should do is to do what we are doing now with the President in dealing with the Soviet Union—that we put the burden on the President to go forward and negotiate with our allies with the same goals in mind, the same reporting requirements, letting the world know of the disenchantment in this body, the frustration, the anxiety that we are having here, and yet not lock into a mechanical formula that says "You will do this, or else."

I think that that kind of action would actually prove counterproductive. I do not think we should run that risk at this time.

So, in the amendment I have offered, I have taken all of the Senator's language but I have deleted that portion that would set in place the mechanism imposing an automatic reduction. I think the Senator has sent a message. I think the message is heard.

I would respond to the Senator's comments about Mr. Schlesinger that I was going to submit his statement for the Record, and I will, because I do think he pointed up the kind of dilemma that this poses and, whether or not he supports the Senator's amendment or not, I think his statement in this particular publication is an invaluable contribution to the debate.

So in a moment I will yield the floor so that Senators standing on their feet may have it.

But I simply urge that we do not run the risk of breaking that board by striking it in the middle at this time.

I think that we really accomplished the goal. The phones are ringing in the capitals of Bonn, Rome, and London, and everyplace throughout Europe. I think they understand that this country is getting fed up with not having them measure up, but I suggest that perhaps the better way to achieve the Senator's goal, which I share, is to allow the President, through the channels of diplomacy, to accomplish that, rather than for us to dictate it.

Mr. NUNN. Mr. President, will the Senator yield for a couple of short friendly questions and no observations at this point?

Mr. COHEN. I yield.

Mr. NUNN. The Senator's substitute, as I understand it, would keep the ceiling that I have put on the forces in my amendment.

Mr. COHEN. That is right.

Mr. NUNN. 326,414.

Mr. COHEN. That is correct.

Mr. NUNN. This means, if the Senator's substitute does pass, that the plans that our Department of Defense has to increase our own forces over the next 3 or 4 years by 35,000 to 40,000 more could not be implemented if the Senator's amendment became law without amendment.

Mr. TOWER. Without coming back.

Mr. NUNN. Is that right?

Mr. COHEN. The way it is worded, the cap placed on U.S. forces at the level requested by the DOD for fiscal year 1985 could not be exceeded unless the Secretary of Defense were able to certify that the goals were met consistent with the section regarding the 3-percent commitment and the increase in munitions.

Mr. NUNN. We will have to take another act in Congress?

Mr. COHEN. Congress would have to take action. We would review that, and we would see strong support to remove it if they did in fact comply.

Mr. NUNN. There is nothing automatic about it? There is nothing automatic about the ceiling being lifted?

Mr. COHEN. We would have to lift the ceiling.

Mr. NUNN. Mr. President, if the Senator will yield for one other question, the two-way street provision in there provides $50 million for testing of European weapon systems, munitions, and submunitions. Is that in the Senator's substitute?

Mr. COHEN. Yes; it is in there.

Mr. NUNN. And the reporting requirements that measure the defense plan, the so-called NATO DPQ versus our budget, so we can tell how much of our DPQ response is reflected in our own budget and how much is called for?

Mr. COHEN. That is all in there.

Mr. NUNN. And the reporting provision on performance of the allies, is that in there?

Mr. COHEN. All the language is contained.

Mr. NUNN. So we have an annual report of what we are doing in munitions and doing on colocating bases and other measures.

I thank the Senator.

Mr. COHEN. In sum, Mr. President, I believe that this is not the time to enact measures such as those contained in Senator Nunn's amendment. I believe, however, that there may be another way to accomplish the very laudable goals that Senator Nunn has outlined: by retaining much of the text and thrust of his amendment, while deferring—for the present at least—the troop reduction mechanism.

Thus, I have proposed a substitute amendment that among other things, would make clear to our NATO allies that the United States will not increase the number of U.S. military personnel in NATO after fiscal year 1985. In formulating this substitute, I have taken many elements of Senator Nunn's amendment:

Language which states that NATO should improve its conventional defense capability in order to lessen its reliance on the early use of nuclear weapons.

A cap on the number of U.S. troops stationed in NATO at 326,414—the level requested by the Defense Department for fiscal year 1985.

A requirement for an annual report by the Defense Department on the amount of munitions committed to NATO's center region and on the number of aircraft shelters and facilities located at colocated operating bases.

A requirement for an annual report by the Defense Department on U.S. expenditures in support of NATO and or allied performance in making certain military improvements.

Authority for the Defense Department Director of Test and Evaluation to acquire European-produced defense equipment for side-by-side testing with comparable U.S. equipment.

My substitute amendment would preclude further growth in the number of U.S. troops stationed in NATO after fiscal year 1985 while the Congress assesses the necessity for further action. The reports required by the substitute will enable the Congress to closely monitor the performance of our allies in meeting certain force improvement goals.

Mr. President, the underlying issue at stake here tonight is not whether the allies should do more for the common defense—we all know that they should—but, rather what is the most effective and productive manner in which to elicit greater defense contributions from our allies. I do not profess to have a definitive answer, but I believe my substitute amendment will serve notice to our allies that the Congress is deeply concerned about the burden-sharing problem and will take increasingly stringent action to ensure an equitable arrangement. I urge my colleagues to support the amendment.

Mr. President, I congratulate Senator **Nunn** on his thoughtful and constructive statement. He has, once again, spurred this body to grapple substantively with a difficult NATO issue. I agree with his objectives and look forward to continued efforts to achieve them.

Mr. President, I ask unanimous consent that a speech by Mr. Schlesinger be printed in the Record.

There being no objection, the speech was ordered to be printed in the Record, as follows:

An American Perspective

(By James R. Schlesinger)

For some 25 years I have been a NATO buff. During the troubled 1970s I worked long and hard to sustain our involvement in NATO. I mention these credentials at the outset. Everybody ought to make clear his credentials—whether they be professedly pro-American, before a tirade, or pro-NATO, before a disquieting analysis.

The organizers of this conference have achieved some novelty, in that the conference has, indeed, turned out to be different. The difference comes in the breaking of the normal routine—in Chancellor Schmidt's oration of last evening. This is not the first time that the Chancellor has uttered some of his views, but it was the first time to my knowledge that he has gathered all of them together in a single speech of one hour, appropriately titled, I believe, the Summa Contra Americanos.

Many of us would have agreed with much of the substance of his remarks. But the tone was plain wrong—especially for American ears and sensibilities. As a consequence, I feel that he significantly detracted from the effect of those substantive comments (for which, incidentally, he has had an enthusiastic American audience) by creating, even in some surprising quarters, sympathy for both President Carter and President Reagan. If the means employed to effect a change in American opinion and policy is simultaneously to alienate the supporters of Jimmy Carter and Ronald Reagan, one inevitably will have a shrinking audience.

Last night we were informed that above all Marshal Ogarkov and Marshal Ustinov were impressed by the 1.2 million men that West Germany could put in the field. I think indeed that they are impressed by this mobilization capability. They would, however, be far more impressed if those forces were effectively equipped. But however impressed they might be, I still doubt that they will regard West Germany's contingent as decisive. For the Soviets the critical element is and will remain the role of the United States, the other superpower.

So, lest we be too readily swept away, I think it is important to express a few home truths. No less than the intra-alliance trade in weapons, candor also should be a two-way street. Let me deal with these home truths in two areas—first on the issue of the budget and military capabilities, and then on the nature of U.S. foreign policy.

MILITARY SPENDING AND CAPABILITIES

The numbers that I will present now are not symbolic numbers—as in "Soviet foreign policy is roughly 75 percent Russian, 25 percent Communist"; they are real numbers. U.S. defense spending now exceeds 7 percent of the U.S. gross national product (GNP). By contrast, laying aside subsidies to Berlin, support for the border guards, and the like, the share of the German GNP allocated to the Ministry of Defense has shrunk over the decades and is now some 2.5 percent. If the United States allocated to its Department of Defense the same share of GNP that the Federal Republic allocates to its Ministry of Defense, U.S. federal spending would shrink by an amount approaching $200 billion a year.

I mention that number with a certain low cunning. Some of you will have already discerned that, were we to follow the German example in regard to defense spending, it would virtually eliminate the federal deficit. A decline in U.S. deficits would no doubt bring down interest rates, both real and nominal. However, under this hypothetical situation of such a reduction in defense spending, I do not know whether the capital flow to the United States (which so rightly concerns Chancellor Schmidt) would diminish simply because interest rates had declined, or whether the capital flow would increase because of the more desperate search for a safe haven.

U.S. defense spending this year will exceed $240 billion. That is a 12-fold the comparable spending by our larger European allies—a little less in the case of the United Kingdom, which rivals the United States with regard to the share of GNP going to the military establishment. Yet, it is almost 15 times German military spending, at the current rate of exchange.

Upon what is all this money being spent? I must now go into a subject once characterized by Helmut Schmidt as the alliance "division of labor." Thus I shall discuss certain burdens that the United States bears alone, or virtually alone, on behalf of the alliance. The United States bears virtually all of the intelligence and reconnaissance costs of this alliance, including space satellities. None of our allies is required to make these expenditures that alone, at the current exchange rate, would equal half of the German defense budget.

Whether or not one agrees with recent American comments regarding maritime strategy, the United States maintains what is known as a "blue water navy." That naval force bears a global responsibility in behalf of this alliance. Sometimes its role may be unwelcome to Europeans, as in the case of Grenada, but clearly it is welcome in establishing a deterrent in the Persian Gulf—from which Western Europe and Japan obtain the energy resources needed to sustain their economies. The United States does this not because it is dependent on the Persian Gulf, but because it alone in the alliance has the necessary mobile forces. Navies do not come cheap. The cost of the U.S. Navy alone is more than four times German defense spending. Since World War II Germany itself has not been required to maintain anything on the order of a blue water navy—only a coastal defense force.

The United States also bears the cost of 97 percent of the total nuclear capabilities of the alliance—the backbone, incidentally, of alliance strategy. In addition to these burdens, it continues its deployments to supplement regional military forces in Korea and in Western Euorpe, operating 7,000 miles and 3,000 miles respectively from the United States. That deployment, which the United States has sustained for almost 40 years, remains indispensable to the security of Western Europe, because, in this era, the European nations by themselves cannot deter the Warsaw Pact powers—without the stiffening presence of the only superpower available to the Western European democracies, the United States.

To sustain these distant deployments imposes upon the United States special problems of manpower rotation and also serious logistical problems. Both involve additional costs. The United States prepositions both equipment and supplies. Indeed we are now going up to six division-sets prepositioned in Europe. That implies redundancy and extra cost. The United States also must maintain the airlift and sealift capabilities to move its forces, which perforce must operate far from the U.S. shores. In sum, the United States is obliged to sustain a very complex and costly set of military responsibilities and requirements. By contrast, the Federal Republic of Germany has been asked to perform one simple task—to provide a stalwart conventional capability in the heart of Europe. That straightforward task lends itself to economy in resources. I trust that enough has been said to make clear that comparative effort cannot appropriately be measured by manpower contributions on the Central Front of NATO.

Last night there was a good deal of talk that featured manpower comparisons. So let me say this: When the portion of population under arms in the German armed forces reaches the level that the United States achieves under the all-volunteer force, criticism by German leaders of the lack of the draft will seem less captious and rhetorical.

To be sure, I have always been a supporter of the draft. Along with Colonel Alexander Haig, then with the NSC, I helped make in the spring of 1970 the last pitch to the administration not to go over to the all-volunteer force. We were told, firmly, by Richard Nixon, to desist. That battle was lost then. The draft was abolished in the Nixon administration and then subsequently the Selective Service System was unwisely abolished in the Ford administration. (I might say parenthetically that I do not recall any great applause from Bonn for Jimmy Carter when he attempted to restore the system of registration.) I continue, now as then, to support restoration of the draft. So, incidentally, does Richard Nixon. But the draft is a technical matter only tangentially related to the defense of Europe. It is not an appropriate basis for denigrating the American defense effort.

Regarding the distribution of effort within the alliance, we have regularly indulged in something of a fiction in dealing with Congress, perhaps most notably during the period of the Mansfield amendment—I myself have participated in that fiction. Some on the Hill might even call it a confidence game, but I call it putting the best face on things. We have had a regular refrain: "as SACEUR has pointed out, our NATO allies provide 40 percent of the ships, 50 percent of the aircraft, and 90 percent of the manpower of the alliance." That statement sounded good. It was intended to sound good—and deflect congressional criticism of the European effort. But there were severe problems with it.

First, the statement dealt only with those forces that were earmarked to the principal NATO commanders. It thus excluded the greater part of the U.S. military establishment not formally committed to NATO, but clearly related to the defense of Europe. Much of it has as a priority the reinforcement of NATO.

Second, the statement simply ignores critical differences in complexity and quality. A $3 billion carrier (if it were earmarked) is the equivalent of a World War II destroyer, one-fortieth its size. Perhaps this is most dramatically indicated with respect to tactical air capabilities. The U.S. Air Force now includes some 26 tactical air wings of high quality, most not formally committed to NATO, but slated for its reinforcement. Bear this in mind when you hear assertions about the Warsaw Pact having air superiority—for such "analyses" ignore quality and involve only the earmarked forces. Even for the earmarked forces alone, the quality of U.S. aircraft over Soviet aircraft is probably best indicated by the performance of U.S.-supplied F-15s and F-16s over Soviet-supplied MiGs—in the 1982 Mideast War—with 102 MiGs downed and zero Israeli losses. (That suggests one should remain skeptical regarding the numbers game sometimes played by NATO intelligence.)

Third, such arguments ignore what the relative defense efforts should be. For example, in relation to GNP, German defense spending has fallen since the days of Konrad Adenauer. The relatively light burden of the German defense effort is sometimes disguised—either by making attacks on the Americans for not having the draft or by pointing out that German defense spending has grown by higher percentages in recent years. Starting from so low a base means that percentage increases do not reveal the national effort involved.

Candor, as I have said, requires a two-way street. The GNP of the Federal Republic of Germany is half that of the Soviet Union. The Soviet Union has the full range of capabilities as does the United States—including a blue water navy, intelligence and reconnaissance, and a massive nuclear capability—even larger in volume and in cost than that of the United States—plus an air defense system. If one lays aside those components of military forces, a nation with a GNP 50 percent that of the Soviet Union should be doing more in providing that stalwart conventional capability in the heart of Europe that is the only military responsibility assigned to the Federal Republic.

If one recalls the narrow range of German capabilities and responsibilities, one is nevertheless surprised to discover that the German defense budget, remembering that its GNP is 50 percent of the Soviet level, is roughly 5 percent of the dollar estimate of Soviet defense spending—5 percent! German production of military equipment—even in that narrower range in which they compete with the Soviets—has been running roughly 8 percent of the Soviet level. There is no reason why German forces themselves, including the reserves, should not now be fully equipped.

Last night we heard about the 1.2 million men that the Germans can put in the field. Fine! They should be equipped. If they are not appropriately equipped, they become part of an equivalent of Mao's People's War. I do not think that People's War is the model that the Federal Republic wishes to follow.

These are, to be sure, not the things I said to the Congress when I was secretary of defense. I state them to you now, because I fear that European irritation with the United States may have led to a lost sense regarding what the respective roles have been and should be. I have singled out the German defense effort—not because it is less effective in producing military forces than other nations, but more effective. I single it out also because of Chancellor Schmidt's comments last night and during his years in office. While high in quality, the German defense remains, nonetheless, surprisingly limited. It is not properly the basis of invidious assertions about the American defense effort.

A European commentator should therefore be careful in talking about relative performance. Since World War II, the United States has willingly taken on responsibility for the protection of Europe because, in the immediate postwar period, there was no one else to do it, and the United States could do it easily, given its vast superiority in nuclear weapons. Now, however, the balance is much closer. There is much work for all to do. If the deterrent is to be made more effective in this era, it will require a much larger European effort. Sniping at the Americans will not solve the problem.

THE AMERICAN STYLE IN FOREIGN POLICY

Let me turn to the other aspect of the American nation that I wanted to discuss—its instincts in foreign policy. We heard last night that it is crucially important for Americans to read the history of Russia. (Though the voice may be that of the former chancellor, the words are those of Egon Bahr.) But if we are all to read the history of one superpower, we should all, I believe, also be prepared to read the history of the other superpower. It might be illuminating.

The American nation is quite different in its underlying assumptions about foreign policy from all of the nations of Europe. In the first place, it has no dynastic past. It shed its dynastic past at the time of the American Revolution. Subsequently it was warned by the "Father of His Country" against "entangling alliances"—reflecting his concern (and experience) that America might be too readily caught in the caldron of ideological, national, and dynastic ambitions that was Europe. Indeed, as we have observed the two European civil wars of this century from our own distant shores, Washington's disdain for Europe's dynastic past and national tensions may not seem wholly without validity.

On the old Continent, reflecting Europe's dynastic past subsequently transformed into modern nationalism, a political calculus developed embracing such concepts as Realpolitik or raison *d'état*. This is foreign to the beliefs of the American people—although you will find a smattering of Washington officials, journalists, college professors, and the like, who can talk in terms of European *Realpolitik*. These last are frequently the most welcomed visitors to Europe.

The United States is largely a romantic country. It has encountered little opposition and does not think in terms of moves and countermoves in a never-ending game. It sees no reason that it can't accomplish its presumably formidable objectives. Its history is marked by a belief in Manifest Destiny—abetted by a Puritan past in which the American nation was foreordained to be a Beacon unto the World. In order, therefore, to understand American policy, one should not simply go through a careful calculation of the national interest. However important such a calculation may be to officals of the Department of State, it would acquire little visceral support among the American people.

As a result of that Puritan missionary zeal, political eruptions occur in the United States that are somewhat confusing in Europe. One such example was called Wilsonianism in which the United States stepped forward to make the World Safe for Democracy—a commitment that has not as yet been entirely lived up to. Carterism—especially in its emphasis on human rights—was a later version of Wilsonianism. Whether or not it reflected a grasp of *Realpolitik*, it was close to the fundamental spirit of the country. That can be confirmed by that master politician, Franklin Roosevelt, who very astutely manipulated these underlying beliefs of the American people to achieve what he regarded as the national interest.

The Puritan impulse helps to explain why, as Henry Kissinger mentioned yesterday, there is an American tendency to try to innovate every four years. The Puritan impulse—an atavism if you will—may not be enormously helpful in the formulation of policies designed to achieve the national interest. But no one should fail to understand the large role that it has played in the past and continues to play in the deployment of American forces in Europe. That deployment ultimately is driven more by a sense of mission than by a calculation of the national interest.

I shall give you a small anecdote along these lines. Some years ago, I devoted almost six months achieving what was regarded at the time as unachievable—defeating the Mansfield amendment on the floor of the U.S. Senate. That vote rather surprised the majority leader, who discovered that he had lost only after it was too late.

Some weeks later, as I basked in a new complacency, I got some intelligence from one of my liaison people that the chairman of the Senate Appropriations Committee, John McClellan, was on the warpath. It was reported that he intended to remove our forces from Europe, which the Appropriations Committee can do by the simple act of writing legislation that "no monies appropriated under this Act shall be used to sustain American forces in Europe." I immediately went up to see the old chairman—of whom I was immensely fond. He was then 81 or 82 years of age. He was not a figure likely to be understood by Europeans. He had grown up, a hard-shell Presbyterian, in a small town in Arkansas. Although I had frequently urged him to come over to NATO, he had never done so. He was one of those Americans that as, Chancellor Schmidt suggested last evening, did not have much experience in Europe. Nonetheless, he had steadily supported spending 2 or 3 percent of the U.S. GNP on the protection of Europe, though he himself had never been there.

McClellan quickly and bluntly got to the point. He indicated that he was tired of the Europeans. I asked him why. He had heard of this fellow De Gaulle who had thrown us out of Paris. I confessed that indeed had happened, though it had occurred some six years earlier. I pressed the case that, whatever the misbehavior of the French, whatever the tenets of De Gaulle's policy, the United States had an obligation to the other peoples of Europe—to Germany above all simply because of our responsibilities that flowed initially from the occupation, and to the Dutch, to the Danes, to the Belgians, to the Norwegians, and to others. The old gentleman responded to that argument. He finally relented and agreed not to press his amendment. Then he said, "You told me you were going over to NATO tomorrow." I responded, "Yes sir"—and once again I encouraged him to come. He said, "Tell them for me: they're just a bunch of damned ingrates."

I did not deliver that message at that time. I cite that experience today because McClellan's attitude is the quintessential American attitude: such things as sympathy or gratitude are more important than reasons of state. American support for Europe does not reflect any precise calculation of the national interest. Otherwise why would we spend 7 percent of GNP to help defend those whose own estimate of the value of their security apparently was only, say, 3 percent of their GNP. Americans support Europe out of a sense of moral obligation.

Europeans are, in the view of Americans, good people; thus, they are deserving of our protection. That protection does not arise out of a sense of Realpolitik. Michel Jobert, one of Jean Francois-Poncet's predecessors, said some years ago, in private, that the Americans have so clear a national interest in remaining in Europe that they must stay here whatever Europeans do. You can abuse them, you can insult them, and, because of the compulsion of that national interest, they must remain.

We have had other examples of Jobert's belief, both antagonistic and benign, but it reflects a fundamental misconception regarding the forces that move the American democracy. In the American democracy, no expert opinion, no government bureaucracy, no East Coast establishment would be able to maintain forces in Europe—unless the American public believes that it is right.

As I suggested earlier, we may be a strange nation given to romanticism in foreign policy, but our missionary zeal has served Western Europe and other countries well since the close of World War II. Some of that zeal, no doubt, is based upon the simple desire to defang the Communists, but much of it is based upon the belief that America has that pressing international obligation.

In the long sweep of American history, if one observes the cycle of American international involvement, it swings suddenly from isolation to overcommitment and then back again. So, in simple terms of European Realpolitik, in terms of a true appreciation of the national interests in Europe, I think that a better understanding of its American protector is required. It is a vital interest for Europe to keep the Americans committed. That implies understanding American attitudes and motives, not just assuming they are (or should be) the same as those in Europe.

PROBLEMS IN NATO

Let me turn now to some concrete issues facing the alliance. At this conference we have, as usual, talked about whether or not there is a crisis in NATO. That crisis cannot be primarily military for the military balance is not changing that rapidly. It is a real problem in NATO that, from time-to-time, we have the heralding of false crises. To be sure, we have had some real crises in the past—the Skybolt episode, the Suez crisis, and the expulsion of NATO from Paris—but we also have false crises.

The death of nuclear deterrence, announced here in Brussels at a CSIS meeting in 1979, is announced with greater frequency than is the death of God. It is about as relevant. The root issue regarding nuclear deterrence is not whether Europeans can have 100 percent confidence that the Americans will exchange New York for Hamburg, or New York for Paris. If there is a 20 percent chance or a 30 percent probability or a 50 percent probability—something less than 100 percent—what calculations must go on in the minds of the leaders of the Kremlin? Clearly they are not going to move. Nuclear deterrence, though diminished, is alive and well.

Perhaps the crisis is one of too many announced crises. I can recall, from the early days of NATO, an air force colonel who kept on his desk a rubber stamp that said: "In this perilous moment in the history of the alliance. . . ." He used that stamp with great frequency. Although the kind of discontent currently within the alliance is not unique, I believe it to be different—qualitatively different. Today there is a degree of mutual disenchantment. There are a number of reasons for their mutual disenchantment. They have been well stated by the panel on public opinion. Both Elizabeth Noelle-Neumann and John Rielly have provided excellent papers, which go much more to the heart of the alliance problems than does the Pershing missile deployment.

There is the American discovery, a little belated, that for some reason or other—one difficult to discern in the eyes of Americans.—Europeans take European security less seriously than Americans have taken European security. The American have been coming over here since the demise of massive retaliation arguing that, if we wish a high-confidence deterrent, it is essential to have a stalwart conventional capability. That has been stated repeatedly by various secretaries of defense. Yet not all that much has happened—even though the ideological resistance to strengthened conventional forces, in the name of preserving nuclear deterrence, has now happily disappeared.

Americans must come to understand that the modesty of the response is not due to Europeans failing to hear the message. Americans keep on proselytizing for strengthened forces—like the American visiting Paris who seems to believe that, if he repeats his message frequently enough in English to the French waiter, ultimately the fellow will understand. Something of that sort has gone on with regard to these issues of European defense. It is not that the Europeans have failed to understand; they have understood quite well both the message and its implications. They differ from the Americans, however, regarding the nature and gravity of the Soviet threat. (As a matter of fact, I myself believe that the Europeans are probably a bit more accurate in their assessment of the Soviet threat than are the Americans.) Perhaps more important, the Europeans are sufficiently satisfied with a low-confidence deterrent that they do not want to put up significantly more resources to raise the confidence level. Meanwhile, the Americans, misunderstanding the problem, go on preaching the gospel of a high-confidence deterrent.

Increasingly the question of who is bearing the burden is the source of disenchantment in the United States. The resentment applies even more strongly in the case of Japan. The present U.S. recovery is masking a politcal problem, perhaps most starkly revealed by the U.S. $100 billion trade deficit. That is scarcely an insignificant sum even by U.S. standards. Somewhere down the road it will, almost inevitably, bounce back on the Japanese. For the American public the simple question is: why should the United States encourage import flows at the expense of U.S. jobs from a nation that is putting up less than 1 percent of its own GNP for defense?

Increasing irritation with our allies occurs far less in the American elites than in the general public. On the political right, this exasperation has led to global unilateralism—whatever in God's name that may mean. It has no logical underpinning; it simply reflects a frustration on the right that U.S. policy must be circumscribed by the attitudes of its allies—a simple fact of life if we will only recognize it. On the political left, this irritation has led to renewed doubts about the military budget—increasing doubts, which are reflected in the Rielly paper.

At the same time the Europeans have discovered that the great Sir Galahad of the West has weaknesses that were not discerned during those early days after World War II—weaknesses in a political system that was designed in the eighteenth century and has something called the "separation of powers," which means the dispersion of power. Europeans have discovered that the great protector indeed has feet of clay. This is clearly reflected in the opinion surveys with the decline of European admiration—to put it euphemistically—for the United States. Over the course of the last decade, any visitor from the United States has been amply, if painfully, reminded of that decline.

This new understanding of the defects of the U.S. political system is reinforced by the "outsider syndrome." Since the disenchantment with Washington that came with the Watergate affair, the American people have elected as president men whose principal virtue has been that they have never been contaminated by any experience in foreign policy. Europeans, quite understandably, have been irritated by what appeared to be the erratic weakness of Jimmy Carter, and they have been almost equally irritated by what appeared to be the erratic strength of President Reagan.

This erratic quality, which flows partly from the dispersion of power and partly from the outsider problem, has led to European doubts about U.S. political wisdom—doubts that regrettably have been thoroughly justified. Indeed, they have become increasingly justified as the power of the United States has fallen—for the Free World has become even more dependent upon the wisdom and judiciousness of U.S. policy. In this very period in which we need wiser and steadier policy, we have become more erratic.

WHAT IS TO BE DONE

This is the background to the present discontent within the alliance. All these issues have been discussed in various panels. The question is: what should we now do? Let me say, picking up a few comments from the panels, that the old formulas won't do. The legitimacy of the postwar dispensation is under challenge. There is a ferment out there. That ferment reflects far more than the gender gap that we discussed this morning. The American people, who began to doubt whether it was necessary to destroy villages in Vietnam in order save them, has now developed a few inhibitons about an all-out nuclear strategy—when the other fellow can respond. And we cannot, "Star Wars" or otherwise, take away that capability of the Soviets to respond. The Catholic bishops have now weighed in. There is a problem that the youth, particularly in Europe, does not share the old views—referred to rather disarmingly as the problem of the successor generation.

Thus, there is this ferment out there. There is the peace problem. We do not need old answers to new problems.

In addition, Soviet propaganda has become more subtle and effective. No longer is it the old, clumsy apparatchiks dropping in from time-to-time in their blundering way. The new breed is better groomed and more ingratiating. They arrive at the UN or in Western Europe (notably in Germany) and, in contrast to their predecessors, are utterly charming. Soviet propaganda has become more impressive. As we talked about Eastern Europe in one of the panels, somebody quite rightly observed that the West needs differentiation in its policies toward the East—rather than impose uniform punishment on those who have had the misfortune to be victims of Soviet rule.

For at the same time, the Soviet Union is engaged in a reassessment of its own Western policy (Westpolitik) and is differentiating among the Western nations with some care. Most significantly, it has focused a major effort on West Germany, which in Soviet eyes has now undergone a conversion from the West German revanchism of old to a state of potential reasonableness—unlike some others in the Western alliance.

From this follows a very simple conclusion. Given the greater subtlety of Soviet propaganda, preserving alliance cohesion has now become the predominant goal. It is even more important than the deployment of Pershing missiles or whether or not the Europeans really achieve the 3 percent real growth in defense spending to which they have committed themselves. Therefore, all of our public comments should be carefully gauged according to the realization that the fundamental defense of Western freedom lies in preserving the cohesion of the alliance. I am not one to underestimate the need for strong military forces. If, however, in the (possibly fruitless) quest for such forces, we break up the minimal consensus necessary in the alliance, we will have done ourselves more political damage than we will have achieved military benefit.

This points to something that the Reagan administration must accept—indeed all administrations must accept. From time-to-time Americans have been annoyed to discover that, for some reason or other, Europeans do not wish to see the Cold War resumed in the heart of Europe—just because the Russians dispatched military forces into a country—Afghanistan in 1979—that they had politically taken over a year earlier—or because of conflicts in the Caribbean, Central America, the Horn of Africa or wherever. A gratuitous spillover of Third World struggles into Europe is unacceptable to the Europeans—and Americans simply have to accept this reality.

Europeans, whatever the Americans tell them, are also not going to end their contacts with East Germany or Eastern Europe. Indeed, the ferment in Eastern Europe is one of the new realities we are obliged to take into account. If the United States continues to press Europe that détent must be either indivisible or invisible, the Europeans will shrug off these pressures—and conclude that the Americans are unwise and dangerous. We Americans will have to accept the fact of differential détente—because nobody in Europe is going to accept the premise that, irrespective of what is going on in El Salvador or Nicaragua, the Cold War should be returned here in the heart of Europe. Our ideologues won't like it. Sometimes our realists won't like it. But it is a fact of life within the alliance.

Let me turn back to the issues of arms control and alliance arms policy. Europeans generally believe in arms control more fervently than do most Americans. Nonetheless, to ridicule arms control—as in 1980-1981—whatever the intellectual merits may be, will surely undermine the cohesion of the alliance.

In an era in which the problem is conventional forces, this alliance will not flourish militarily unless the Europeans are prepared to take the lead—including the financial burden. If the Europeans are willing to settle for a low-confidence deterrent, no amount of hectoring from the United States will lead them to spend the vast sums needed to achieve a high-confidence deterrent. Hectoring will pay few dividends, but it will serve to weaken the alliance.

Europeans may be willing to settle for a lower confidence deterrent than the Americans urge upon them, yet it is primarily the Europeans who would have to pay to raise the confidence level in the deterrent. And there is a good deal of vocal support for improving the conventional forces. Many now believe that they have seen the light—and the light is that nuclear warfare is no fun! (No more than did Horatio should we require a ghost come from the grave to tell us that, my Lord!) All have seen the light, and, therefore, there is a good deal of superficial babble about the need to get rid of nuclear deterrence. "No first use" is a rational though pernicious version of that desire.

In my judgment, we should have a full-fledged conventional deterrent. I myself have been making this plea for some 25 years. Yet, over the course of those years, I have lost confidence in the probable success of that plea. Moreover, the economic environment that must sustain such increased defense expenditures has deteriorated with the continuing recession in Europe. And even the political base has to some extent deteriorated. The belief that we are actually going to create a stalwart, all-out, full conventional capability is, I fear, akin to Samuel Johnson's definition of second marriage: the triumph of hope over experience.

CROSS-ATLANTIC SNIPING

These, for better or worse, are the realities. I must say that sniping back and forth across the Atlantic is unlikely to help very much. We have a changed situation. We have new challenges. We should seek to understand them. We should not spend so much time using each other's weaknesses as a justification for doing less. That is the easy and fatal way out—but more quickly fatal for Western Europe than for the United States.

Yet we have had a good deal of needless sniping. Last night I listened to Helmut Schmidt with some perplexity. For two years during the SALT II negotiations, I fought to keep out of the negotiations the so-called forward-based systems—the American nuclear deployments in Europe. I did it because it was the right policy—but also at the urging of most Europeans. For in that period, the Europeans would go wild at the notion that theater nuclear weapons should be lumped together with strategic weapons. Imagine my amazement last evening to discover the historical anomaly that Jimmy Carter was being chided for not including theater weapons in the SALT II discussions when he took over as president. In short, Jimmy Carter was damned for following the advice steadily offered by Europe for six years.

We have observed similar inconsistencies on economic issues. When one came to the continent some years ago, German bankers were prominent in offering advice. Americans were told quite firmly that they must fight inflation. They must bring to an end this steady rise in the price level. "Think of our experiences of 1923—and beware! You're on a dangerous slope; you must do whatever you can." Yet, when interest rates were put up to fight inflation, we received entirely different advice, which came down to: "the results of fighting inflation are unacceptable to us."

Some years ago, U.S. Treasury Secretary Michael Blumenthal said: "Let the free market work; let the dollar find its own level." He was immediately accused of talking the dollar down, which I take to be an offense. Nonetheless, as the dollar has risen in recent years, we have had numerous attempts to do precisely what Blumenthal was then accused of doing: many attempts, though this time abroad, to talk the dollar down.

There is a problem here of "crying wolf" too often. I realize that the great power in an alliance inevitably will be criticized more than the lesser powers. Yet, this kind of sniping back and forth—and we've had some illustrations here of late—will not help with the long-term goal of sustaining freedom. Sustaining freedom is more important to all of us—including to those of us from Europe—than is the dubious pleasure of scoring points off the American democracy.

Today I have provided, not a summary of the panels, but, instead, an American perspective. With respect to Europe's defense we must follow Europe's lead. Above all, however, all of us—in Europe and North America—must work to avoid divisive issues and to maintain alliance cohesion. The preservation of this alliance of democracies, unique in the world's history, is the fundamental political goal for all of us—for those who value security and for those who value freedom.

Mr. WARNER. Mr. President, I have in hand a speech by U.S. Ambassador to NATO, David Abshire, given to the Southern Council on International Affairs in Atlanta, GA, May 4, 1984. This speech analyzes the NATO commitment in historical light of two tragic world wars where 65 million lives were lost. As my colleagues may know, Dr.

Abshire was the former head of the Center for Strategic and International Studies at Georgetown University and did his doctorate in history. The speech discusses in detail the tragedy of two world wars resulting from uncertain and unclear commitments. An alliance like NATO could have prevented those two wars.

I realize the good intentions of the Nunn amendment. But with its timing, it could send a message to the leaders and people of Western Europe and of the Warsaw Pact that there is wavering in the U.S. commitment to the defense of Western Europe. Senator NUNN does not intend this. The amendment is, however, long and complicated. Perceptions and realities are two different things. The headlines abroad in the Times of London, of last Sunday, and elsewhere have already centered on U.S. troop withdrawals and not on the purpose of the Nunn amendment, namely, the need to improve conventional defense by NATO.

Lord Carrington will arrive next Monday, June 25, as Secretary General of NATO. With Ambassador Abshire, the new Assistant Secretary General for Defense Support, Robin Beard, and with Gen. Bernard Rogers as an outspoken, effective Supreme Allied Commander, Europe, we have strong leadership in place. Some new beginnings are being made. Furthermore, Europe is coming out of its economic recession. Now is not the time for an amendment that is being interpreted in Europe as calling for dramatic American troop withdrawals.

Mr. President, let's keep our commitment clear and unambiguous, and learn from the lessons of history. I ask unanimous consent that the entire text of Ambassador Abshire's speech given in Atlanta, GA, be placed in the RECORD following my remarks. I have been in communication with Ambassador Abshire on this amendment and he stresses these points.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPEECH BY AMBASSADOR DAVID ABSHIRE, U.S. PERMANENT REPRESENTATIVE ON THE COUNCIL OF THE NORTH ATLANTIC TREATY ORGANIZATION [NATO], TO THE SOUTHERN CENTER FOR INTERNATIONAL AFFAIRS

THE AMERICAN COMMITMENT TO THE NORTH ATLANTIC ALLIANCE

The focus of my remarks this afternoon is the American commitment to the North Atlantic alliance.

American attitudes about wanting to be left to themselves began to change around the turn of this century. But the change focused on Pacific, not Atlantic, involvement. We took control of the Philippines, annexed Hawaii, and developed deep involvements with China and Japan.

What changed this attitude? The answers lie in the tragedies of World War I and World War II and the horror of more than 65 million casualties.

As Dean Acheson said, NATO was "not an improvisation. It was born out of the facts and lessons of history." The founders of the alliance—men of great wisdom—were determined to avoid these mistakes of the past. Precisely because ambiguity and miscalculation were the catalysts of two disasters, NATO's founders made an unambiguous commitment the centerpiece of the North Atlantic Treaty. Article V states that an attack against one member would be taken as an attack against all. There is no room for misperceiving the meaning of that promise.

If the United States couldn't stay out of war by staying out of Europe, it would deter war by being in Europe from the beginning.

Dean Acheson collaborated closely with Republican Senator Arthur Vandenberg on the bipartisan congressional resolution of June 11, 1948, that paved the way for the creation of NATO. Our commitment to Europe in the North Atlantic Treaty of 1949 was based on our belief that by being in Europe we could prevent World War III.

From this perspective, the U.S. presence in and commitment to Europe has little to do with trade balances with, and investment in Europe versus the Pacific. It relates to "no World War II," and "no, no never, a nuclear war between the East and West," and no possible situation of blackmail with the threat of war.

Thus this new alliance was different from those alliances which George Washington loathed. Most alliances in history were offensive in nature, aimed at expansion and conquest. This one was defensive, designed to prevent war, especially nuclear war.

Almost all alliances in history were between non-democratic countries. NATO was to be an alliance of democracies.

Most alliances in history had no common ideals. NATO affirmed its shared faith in the principles of the United Nations; aimed at the peaceful resolution of disputes, safeguarding the freedom, common heritage and civilization of its peoples and the principles of democracy, individual liberty and the rule of law.

Most alliances were pacts or loose coalitions of countries with uncertain commitments and secret agreements. This alliance set up a North Atlantic Council with subordinate bodies, committees and military commands, with public commitments and open agreements. NATO moved from a pact to an institution with a sound structure that could adapt to a changing world.

Truly the Atlantic Alliance is without parallel in human history. But it had better be, because never before in human history have we had the nuclear risk endangering mankind.

This alliance has survived tremendous internal crises. The Suez crisis of 1956, the French withdrawal from the integrated military command (but not the alliance), and the dilemma of deterrence and defense involving nuclear weapons. I want to devote some attention to this last issue for it indeed manifests the difficulty and the complexity of the United States' commitment to Europe.

THE DILEMMAS OF NUCLEAR WEAPONS

There are two basic nuclear dilemmas for NATO, one strategic and one moral. Both relate critically to the U.S. commitment. Let me discuss first the strategic dilemma.

Two facts stand out about the historic uniqueness of NATO's nuclear strategy. First, such a strategy was designated to prevent rather than fight a war. NATO's strategy is first and last a deterrent strategy.

Second, the failure of deterrence could lead to destruction and devastation on a scale previously unknown. Thus it is doubly important that an adversary not miscalculate and that the NATO commitment be clear, credible and unambiguous.

AN EVOLVING STRATEGY

In the early 1950s, with the massive Soviet armies threatening and even stronger than they were in 1945, an economically troubled Europe backed away from the costly effort of providing conventional forces as the major component of its deterrent. Rather, it embraced the massive retaliation nuclear doctrine. As the 1950s came to a close and Soviet nuclear capabilities increased, the contradictions inherent in this policy for lesser forms of aggression became impossible to ignore. Therefore, in the early 1960s the United States bagan to talk about flexible response.

Not everyone agreed, and the debate raged for five years. Finally, in 1967 the alliance adopted flexible response as official NATO strategy.

Flexible response was designed to provide not just one category of alliance response to aggression—a strategic nuclear one—but a range of possible reactions to suit the challenge, including conventional options and theater nuclear options, as well as possible strategic nuclear responses.

This strategy never caused much controversy so long as NATO retained an advantage in theater nuclear weapons in Europe and an advantage in strategic capabilities. Control of escalation was almost a guarantee that deterrence would not fail.

By the late 1970s, the massive Soviet buildup of both its conventional and nuclear capabilites meant that NATO no longer necessarily would control escalation.

NUCLEAR WEAPONS AND ALLIANCE MANAGEMENT

The Soviet buildup also made the management of the alliance more difficult as a result of NATO's lengthy and heavy dependence on the U.S. nuclear guarantee. Just as the U.S. nuclear umbrella shielded Europe from Soviet aggression, it has unintentionally, shielded NATO governments from making some of the hard decisions necessary to improve NATO's conventional capabilities and thus lower the nuclear risk.

A gap developed between the theory of flexible response, which remained adequate, and the practical capabilities to implement it. The critics poured into that gap. In 1977, then West German Chancellor Helmut Schmidt asked for U.S. theater nuclear deployments in view of a buildup of SS-20 intermediate-range nuclear missiles in Europe. The Soviets could use these missiles to blackmail, to discredit the U.S. commitment, and to separate the defense of Europe from the defense of North America. In 1979 Henry Kissinger said in Brussels that mere expression of the U.S. commitment by the U.S. President was inadequate for defense. To make the American commitment practical, concrete measures should be taken to shore up the theater nuclear and conventional dimensions of NATO.

Later in 1979 NATO made its historic decision to deploy Cruise and Pershing II missiles to insure that an attack on Europe in effect would be an attack on America as well. There would be a duel track, however: We would also try to negotiate the removal of all intermediate nuclear missiles.

It is most important to improve conventional defense because we must never be forced to contemplate the prospect of too early use of nuclear weapons.

NATO is now working to correct these conventional deficiencies, to lower the nuclear risk, and to insure that the U.S. commitment has a practical way of being carried out.

The alliance is doing this by exploiting new technologies—smart weapons—some of which can substitute for nuclear ones, providing NATO's forces with more training, increasing stocks of munitions and supplies, improving communications, and developing appropriate doctrines and tactics.

All of these measures are being taken to keep our strategy of flexible response vibrant and effective.

Another important part of the deterrent is the capacity in a crisis for North America to reinforce Europe. This depends not just on our forces, but on the infrastructure in Europe to receive those forces. Thus Western Europe and North America must cooperate to make possible the American commitment. As a famous American basketball coach said, the will to prepare to act is as essential as the will to act.

THE MORAL PROBLEM

Second, I mention as a part of the American commitment the moral and ethical dilemma of nuclear weapons. Ethics and nuclear war is one of the most vibrant public policy issues in our churches today. Last fall I spoke at a conference on "NATO at the Moral Crossroads" at a large meeting at the Protestant Academy in Hanover, West Germany. I share President Reagan's wish that there were no nuclear weapons in the world today. This not being the case, we are left with the moral and political questions of dealing with them and reducing the nuclear risk.

In an imperfect world, faced with the fact of nuclear weapons, the Soviet buildup and the possibility of nuclear intimidation, we have a moral responsibility to see that flexible response is truly workable, and deters. We also have a moral responsibility to keep NATO unified in order to foster negotiations for genuine and verifiable arms reduction and stability.

There is another aspect of the moral dimension of the U.S. commitment to NATO. As the ancient Hebrew word, shalom, reminds us, peace is more than the absence of war. It involves the total well-being of man, his dignity, and indeed the dignity of all mankind.

An example of NATO's contribution in this area can be found in the Conference on European Security and Cooperation. There the NATO members have worked tirelessly, and effectively, to follow up on the Helsinki accords regarding basic human rights. the Soviets and Warsaw Pact countries continue to violate these rights, paying only lip service to these new standards.

We have moved to the moral offensive. And we have made progress. The Stockholm Conference on confidence and security in Europe aims at increased openness in military movements to avoid surprise attack and miscalculation. NATO nations have tabled a good package of concrete proposals for consideration. We have taken the moral high ground, ultimately not just to benefit ourselves but the peoples of Eastern Europe as well. I stress this, for the American comitment is a moral one with legitimacy and principle.

THE ECONOMIC PROBLEM

The will and the capability to carry out the U.S. commitment depend in this difficult nuclear age on action both by Europe and America. Effective action, however, confronts a difficult problem: the economic aspect of the alliance.

NATO's funding fathers recognized that potential exonomic conflict within this alliance could cause untold harm. In those days of the Marshall plan we were the economic suppliers of a war-torn Europe. Today we are competitors with a rebuilt Europe. But Europe's infrastructure is out of date and Europe is falling behind the United States and Japan in its economic recovery. Europe is missing out on part of the technological revolution. Western Europe remains divided. The dreams of Jean Monnet have never come to pass.

This division confuses some Americans. Our European allies collectively have a GNP, but not a defense effort, as great as ours. All this gave rise to the Newsweek article on "The Decline of Europe" and an earlier book by Italian Luigi Barzini, "The Europeans," in which he compares contemporary Europe to a group of renaissance Italian city states.

Against this background, a unified NATO works. It is a great success story in a continent of trouble.

Furthermore, western Europe is not sunk in despair. It is courageously facing its economic problems, moving to austerity budgets, exploring new ways to strengthen NATO's European pillar and to stimulate an economic revival. Not just conservative governments like Margaret Thatcher's, but socialist government led by Mitterrand of France, Gonzalez of Spain, and Soares of Portugal have moved forward on the problems of structure and labor reform.

Following the wisdom of article II of the NATO Treaty, it is essential that we encourage this revival of western Europe, that all of us eschew protectionism, and that we devise ways for the better total use of our resources. In my speech to the Atlantic Treaty Association, I called this the need for "a resources strategy" in the area of common defense.

Third, in addition to the more traditional pattern of alliance consultation on such issues as INF or Poland, NATO is also giving increasing attention to global problems of common concern. It was within NATO that the West developed its common response to the Soviet invasion of Afghanistan. We frequently discuss events taking place in and around the Persian Gulf. When the Soviets shot down a Korean airliner on the other side of the world, the West coordinated its response at NATO headquarters.

My point is that NATO's problems must be resolved and our differences bridged in a way that sustains the cohesion of the alliance, not by resort to shock tactics or expressions of pique. If that cohesion is not maintained, we will be back to the 1930's. Unlike the 1930's, however, the risk would be a worldwide war and a devasting nuclear war.

Plainly the Atlantic Alliance remains central to America's national security.

But not only ours. Japan, too, has maximum interest in reducing the nuclear risk, which is done in such large part through NATO.

From the very beginning of the post-war era, there has been an interrelationship between Asia and Europe because deterrence of the Soviet Union is global requirement. President Truman's Secretary of State made a speech in 1950 that did not include South Korea in our defense perimeter. Yet when Communist North Korea suddenly attacked the South, Truman and Acheson feared that our lack of response might encourage a Soviet move on West Berlin, in Western Europe.

Today the dynamics of deterrence operate both regionally and globally. NATO Europe remains greatly dependent for much of its oil on the Middle East. Over 50 percent of the reinforcement and resupply of NATO Europe in a major crisis would come through the Caribbean. Prevention of Communist hegemony or radicalization in either of these areas is clearly important to NATO's future.

Likewise a pro-Western Japan, a China unaligned with the Soviets, and a strong U.S. Pacific Fleet are all major elements in the deterrence of war. In sum, as the 1983 Williamsburg Summit Communique stated: "The Security of our countries is indivisible and must be approached on a global basis."

We will soon have a change of leadership at NATO. Secretary General Joseph Luns has served with magnificent dedication since 1970. He pulled the alliance through the ups and downs of detente and the critical two-track decision that, on the one hand, through deployment, made it possible for the U.S. commitment to be exercised, and, on the other, offered negotiation with the Soviets to eliminate all such missiles.

His successor, Lord Peter Carrington, comes with new challenges; the economic problems faced by alliance members, the need to develop a strategy for better use of resources, better use of new technologies, better harmony and balance in transatlantic and transeuropean arms cooperation. In short, how to improve the conventional deterrence and thus raise the nuclear threshold and shove it way back.

Finally there is the task Carrington addressed in his IISS lecture: Developing an overall political strategy for NATO. This has already started. In December 1983, acting on the initiative of Belgian Foreign Minister Tindemans, NATO Foreign Ministers commissioned an "appraisal of East-West relations with a view to achieving a more constructive East-West dialogue."

Completion of this study, reviewing the vicissitudes of East-West Developments since the Harmel Report in 1967, is NATO's major objective this spring. Indeed, our highest political priority is strengthening overall alliance management of East-West relations. The president and Secretary Shultz have called upon the allies to bring a greater measure or realism into the pursuit of relations with the East than had generally been the case in the heyday of détente. Our efforts in this direction build upon and complement the endeavor we undertook in 1983 to adjust East-West economic so as to safeguard long-term Western security interests.

President Reagan seeks a constructive relationship with the Soviet Union, not the ups and downs of false détente. Such a relationship must be based on realism over time.

The tasks are great, but NATO is ready for them. It has the structure and strategy, the programs and potential to meet the challenges ahead.

The Atlantic Alliance is above all an idea. It is fired by our vision of a world sharing the benefits that flow from the values that all NATO members believe in—especially peace with freedom and justice. That idea remains the core of the transatlantic relationship. Ideas can unite people and cross borders. If we hold high the idea that NATO embodies, it will enjoy at least another 35 years as the greatest peace movement the world has ever known. Were George Washington living today, I truly believe he would say: This is indeed, without precedent in human history, the good and grand alliance.

Mr. THURMOND. Mr. President, I would like to voice my opposition to the amendment offered by the distinguished Senator from Georgia. Senator NUNN has done a great deal of work and research in the area of strengthening NATO conventional forces, and he has the respect and admiration of all our colleagues for his efforts. I do not, however, believe that his amendment is the best way to strengthen NATO conventional war fighting capability.

It is true that our NATO allies, on the average, are not meeting the 1977 agreed upon 3 percent real growth in annual defense spending. This recent trend, however, must be viewed in a broader context. From 1971 to 1981 the United States experienced about 7 percent negative real growth in defense spending. During the same period our NATO allies increased their defense spending by about 27 percent in real terms. While our NATO allies maintained a consistent effort to modernize their conventional war fighting capability, the United States did not. Our allies did not treat us in the manner now recommended by the distinguished Senator from Georgia; and I do not believe that we should treat them in such a manner when they are experiencing a period of political and economic difficulty.

Much has been said about our NATO allies not maintaining stocks of conventional ammunition equal to, or nearly equal to, those maintained by the United States in Europe. It is only fair to examine our record in this area also. During the October war of 1973, the United States transferred large quantities of conventional ammunition stockpiled in Europe to Israel. Our actions at that time most certainly weakened the NATO conventional warfighting capability, and it was not until recent years that we began to adequately replace these stockpiles of conventional ammunition.

Mr. President, I very strongly support the idea that we must strengthen our conventional capabilities in NATO, but I do not believe that the Nunn amendment will help reach that objective. The amendment offered by my distinguished colleague from Maine, Senator COHEN, is a much more reasonable approach in dealing with our allies.

Freezing U.S. troop strengths at current levels will serve sufficient notice to our NATO allies that the Congress is very concerned about the failure of NATO countries, other than the United States, in meeting agreed upon goals for defense spending. Senator COHEN's amendment also provides a positive incentive for our allies in that the United States can increase troop strength levels if our allies meet agreed upon levels of defense spending.

Mr. President, again I must state that I strongly endorse the idea of an enhanced conventional war-fighting capability. We must, however, choose one of two approaches. The first, which I oppose, will force a weakened conventional defense posture if certain criteria are not met. The second approach sends a strong signal that we may choose not to further strengthen our conventional forces, if certain criteria are not met. The choice is ours; automatically weaken NATO conventional forces, and increase the risk of early resort to nuclear weapons in a conflict, or automatically maintain current levels, with a built in mechanism to increase the strength of conventional forces.

Mr. President, I urge my colleagues to support my distinguished friend from Maine, Senator COHEN, because it is unwise to intentionally endanger the security of the Alliance to prove a point.

Mr. MATTINGLY. Mr. President, I commend Senators NUNN, COHEN, and ROTH for their amendments. I believe that they have captured the tone of the times with their proposals and that the NATO alliance can only benefit from the type of wide ranging discussion in which we are engaged on the nature of the allied relationship and the direction and form that the Atlantic alliance should take in the future.

And let there be no misunderstanding about my belief that the interests of the United States will be well served by a continued allied relationship with the nations of Western Europe.

But a belief in the need for such a continued relationship does not and should not be allowed to prevent an honest and exhaustive assessment of the current state of the NATO structure nor should it mitigate against making whatever changes are required to insure a healthy relationship between NATO members in the future.

My distinguished colleagues on both sides of this debate have eloquently cited the wide body of opinion that shares a belief in the need for structural changes in the NATO alliance. In my view, that alliance must change, adapt and grow or face certain death.

Any fair assessment of the allied relationship cannot ignore the common heritage of Western Europe and America. It cannot ignore our shared democratic principles; the mutual and interdependent commercial, industrial, technological and social ties that bind.

That assessment must include a recognition of the reality that the defense of the West has been, is and must remain indivisible.

And that assessment must recognize and understand the nature of the common threat that faces the democratic west.

But the simple fact of the matter is, Mr. President, that the NATO alliance needs to undergo some reforms. It needs to recognize todays realities and it needs to move away from a structure that was formed amid the ruins of postwar Europe. It needs to move forward on a course that has the European nations assuming a greater responsibility for the conventional defense of Europe and gaining, as a result of assuming this increased burden, an enhanced position of leadership within the alliance. The United States must be prepared to accept the fact that with its diminished role will come a reduction in its current decisionmaking authority.

That is as it should be. And that is why I will support the Nunn-Roth amendment as modified by the Cohen amendment.

It is clear to me, Mr. President, that the genesis of the so-called strain within the alliance is the refusal or inability to recognize that, because the world in which the alliance was formed 30 years ago has changed, it is necessary to conform the allied relationship to the times. Thus, we are faced with a continual and impossible struggle to somehow mold, craft, and otherwise paste, patch, and fit a 30-year-old structure into today's political environment.

It is natural and not unexpected that the necessary changes are being challenged and fought. It would be surprising if, in fact, that were not so. But that is why the modified amendment of the Senator from Georgia is so valuable. The amendment is hard but not really harsh. Its direction is clear, its intent plain. And without such an amendment, Mr. President, the changes that are necessary to save the alliance will not occur. They simply will not occur.

Using the diplomatic channels of the State Department to persuade our NATO allies to meet the NATO defense spending goal of 3 percent real growth will not be successful. They have not been successful to date and I see no reason to expect sudden success in the future. Resistance to change is universal and without some sort of specific direction from Congress, resistance to changes within NATO will probably continue to be successful.

Some aspects of the amendment trouble me. As a general rule I have found that legislated demands and directives to the foreign ministries of our allies do not bring the desired results. However, under the terms of the modified amendment, we are merely insisting that those allies live up to previously negotiated agreements. The amendment does not make new demands on the allies.

I was greatly concerned that the troop withdrawal provisions of the original Nunn amendment could be interpreted as presaging a move by America into isolationism. That is why I concluded that the Cohen proposal deleting the troop withdrawal provisions, deserved support. To state the obvious, it is a fact of legislative life that those provisions can resurface, if necessary, in the future.

So, Mr. President, I view the amendment as an opportunity to take a challenging, an exciting first step toward a revitalized NATO alliance; an alliance characterized by a strengthened European component, an enhanced allied conventional defense capability, and a raised nuclear threshhold.

The United States can't be expected to continue to shoulder the lion's share of NATO's financial burdens and at the same time watch our NATO allies become ever more entangled in economic relationships with the Soviet Union. The American taxpayer cannot be expected to support the alliance at current levels only to see our European allies subsidize their exports with an enormous resultant cost to those same taxpayers. And we in the Congress are kidding ourselves if we believe that the problems in NATO can be remedied with anything less than fair but firm initiatives such as the proposal before us.

Mr. President, I ask unanimous consent that an article by Hedley Bull entitled "European Self-Reliance and the Reform of NATO" appear in the RECORD at this point. The article, which appeared in the spring 1983 edition of Foreign Affairs is an outstanding, scholarly look at the NATO alliance and contains what I believe to be a workable blueprint for the structural changes necesssary to insure the survival and effectiveness of that critical allied relationship.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EUROPEAN SELF-RELIANCE AND THE REFORM OF NATO

The security of Western Europe requires us to explore a radically new line of policy to which, in the present debate about this subject, little attention has so far been paid.[1]

In this debate, two points of view are predominant. On the one hand, entrenched in government circles, there are the Atlanticists, who seek to recall us to the old verities of the Alliance: preservation of the existing structure of NATO, support for American efforts to maintain the nuclear balance, maintenance of a strong defense posture toward the East. On the other hand, acting as a powerful influence in public opinion, at least in all the northern European countries belonging to NATO, there are the Neutralists, who favor total or partial withdrawal from the Alliance, unilateral nuclear disarmament and expulsion of foreign nuclear bases, and, in some cases, reduction of conventional defense expenditure. We need, I believe, to examine a third alternative that would recognize the necessity for a more independent posture for Western Europe, but seek to base this on strength rather than on weakness. I call this a Europeanist alternative. It does not imply the break-up of NATO, but it does require its reform: the transfer from North American to European hands of a greater share of the burden of European defense, and along with it of a greater share of responsibility for decisions. In what follows I seek to show why this new policy should be pursued, what it would involve and how one might grapple with the difficulties to which it would lead, which I do not wish to disguise.

II

There are three reasons why the countries of Western Europe should explore a Europeanist approach to their security. First, the old formulas of North Atlantic unity do not adequately recognize the differences of interest, both real and perceived, that divide the United States from its European partners. There are differences over trade, made more urgent by the recession and more visible by the fact that the European Community negotiates as one bloc. There are differences over "values," which are often said to unite the Alliance, yet the moral attitudes of the present U.S. Administration toward questions of peace and social justice have contributed heavily to the alienation of West European opinion from the Alliance. There are differences arising over the commitment of the United States to a global struggle with the Soviet Union for power and influence. It is a European interest as well as an American one that in this struggle the United States should ensure that the Soviet Union does not establish military supremacy over the world as a whole, but Europe's interests in the struggle are not the same as America's: Western Europe has no particular interest, for example, in the restoration of the kind of U.S. predominance in the world as a whole that existed from the late 1940s to the early 1960s, which some elements in American society seek to rebuild for reasons of national pride or nostalgia, or misplaced ideological zeal. There are differences in attitudes toward political and economic change in the Third World, which the United States at present is inclined to resist and to equate with Soviet penetration, but to which West European countries, in their policies toward the Arab world, black Africa and Latin America (admittedly with some exceptions), have been more ready to accommodate in recent years.

More important than any of the above, for they touch the core of NATO itself, there are differences over the security of Western Europe. The basic common interest that underlies the Atlantic Alliance is that which all the members perceive in providing Western Europe with security and—no less important—a conviction of its security, against the threat of Soviet attack. This common interest is still present, and is still recognized to exist by all governments and predominant public opinion in all the countries concerned on both sides of the Atlantic. But, in Western Europe, security against threats from the East is believed (correctly) to rest not only on the defensive strength of the West but also on preservation of the structure of agreements with the Soviet Union that political coexistence, normalization of frontiers and economic cooperation to which we give the name détente in the United States, on the other hand, détente has been treated as subordinate to the widening needs of the global struggle with the Soviet Union. In Western Europe, moreover, the security of the region is perceived to be threatened, and is in fact threatened, not only by the military power of the Soviet Union but also by the possibility of war itself, especially of nuclear war, which could begin not only as the result of failure to deter the Soviet Union, but also through accident or miscalculation, or as the consequence of decisions taken by the United States.

It is true that the security of the United States also rests on a structure of understandings with the Soviet Union, even if the declaratory positions of the United States in recent years have tended to obscure this. The United States also faces a danger of war by accident or miscalculation and has a vital need for the control of nuclear armaments, as the American peace movement proclaims. But the United States is not as vulnerable to the effects of decisions on matters of nuclear peace and war taken by the West European countries as the latter are to the effects of decisions taken in Washington: it is the West European countries which are dependent on the United States for a nuclear deterrent against a Soviet attack, and it is on their soil that American nuclear weapons are deployed that can bring destruction upon them but whose use they are not able to control.

Differences of interest among their members should not be regarded as fatal to alliances, which never rest upon a complete identity of interests and only require a partial one. NATO has survived the differences that arose over German rearmament and over the Suez war in the 1950s, over Gaullism and the Vietnam War in the 1960s, and the oil crisis and the October War in the 1970s. It did so, however, by adapting to change. Underlying the peace movement in the West European countries and the wider spectrum of opinion that is uneasy about our present defense arrangements, there is the correct perception that the risks of alliance with the United States on present terms have grown to such an extent that they threaten to outweigh the gains. This points to the conclusion that the West European countries should seek to assume greater control of their own security, not by leaving the Atlantic Alliance but at least by seeking to change its structure.

Second, the policies advocated by the Neutralists, while they are based partly on a correct perception of the differences of interest between the United States and Western Europe, would expose the latter to Soviet domination. We do not have to suppose that the Soviet Union has some plan to invade Western Europe or to subvert its political system; the evidence suggests that Moscow's chief preoccupations in Europe are defensive, and that if it has any hope of extending its ascendancy in Eastern Europe to the West, policies to realize them are not given a high priority. But these Soviet intentions have been formed in a strategic context in which the defensive measures taken by the Western powers render aggressive plans in any case unrealizable. If the West's defensive guard were to be lowered, Soviet intentions would be likely to change; options not now taken seriously by the Soviet leadership would be likely to be taken more seriously, and, if they were not, a new leadership, prepared to adopt these options, would displace them.

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[1] But see Bernard Burrows and Geoffrey Edwards, "The Defence of Western Europe," Guildford (Eng.): Butterworth Scientific, 1982.

If the West European countries were to choose to loosen their connections with the United States but at the same time to leave themselves without nuclear arms of their own, to allow their conventional defenses to run down and to take no steps to bind themselves together in a defense combination in which they could define their common interests and pool their resources, the likely consequence would be that Soviet hegemony would extend itself over the whole of Europe, even if not totally or at once. The security of Western Europe still requires that there should be a balance of military power on the European continent. If Western Europe is to disengage from the United States and rely upon it less in matters of defense, then it must seek to maintain the balance against the Soviet Union in Europe from its own resources.

A third reason why Western Europe should explore this new course relates to what may be called its dignity. The countries of Western Europe form one of the principal centers of population, wealth and human skills in the world today, and have a historical position that has placed them for centuries at the forefront of world affairs. There is no objective or material reason why Western Europe cannot provide the resources for its own security without depending on others; the reasons why it has failed to do so are not material but spiritual or psychological. It may be honorable for small and weak nations to look to outside powers to provide their security for them, as it was for the battered and impoverished European nations that looked to the United States when the Atlantic Alliance was formed in 1949. But it is demeaning that the rich and prosperous democracies of Western Europe in the 1980s (admittedly, to different degrees in different cases) should fail to provide the resources for their own security and prefer to live as parasites on a transatlantic protector increasingly restless in the role.

A policy of increased expenditures on armaments would impose a cost upon European standards of living. It would be unpopular with those elements in our societies that regard defense expenditure as mere waste and tell us that the money should be spent on building hospitals or aiding the Third World, forgetting that security is the first responsibility of every society and that societies which do not allocate an adequate proportion of their resources to providing for it do not survive. The effects of defense spending on industry and technology may be more harmful than beneficial, although this is not clear. But the cultivation of greater self-reliance in providing for the security of Western Europe might help to stimulate a process of renewal. It would certainly restore our self-respect. It would, I believe, by separating the issue of national and European defense from the issue of support for U.S. policies, help to make possible a rebuilding of the public consensus for defense policies, as has been done in France. It might bring about a more responsible climate of public debate about defense issues in place of the facile posturing and humbug about disarmament that constitute the sum total of what some of our political leaders have to say to us about our security. And it might clear away the sometimes shallow and uninformed criticism of American policies that thrives in Western Europe because so few people have needed to confront the problems of security in the nuclear age as they really are, and to think the issues through. I believe finally that it is only by confronting directly the problems of their security (and not, as the organs of the European Economic Community have done, seeking to steer clear of them) that the European nations can make progress toward realizing the idea of their unity.

III

The countries of Western Europe are superior to the Soviet Union in population, wealth, technology and military potential, and the idea that Russia is the naturally dominant power in Europe, against which Europe itself can construct no counterbalance without importing outside help, is a very recent one. It should not be regarded as an axiom left unquestioned during the next three or four decades of European politics, as it has been in the last. It remains unassailable only if we assume that the Soviet Union will retain its internal cohesion, that West Germany will remain militarily emasculated, that Western Europe is without any effective form of political and strategic unity and that its peoples remain unwilling to shoulder larger defense burdens. It is not unthinkable that a West European defense combination might one day have strength enough to balance the Soviet Union without bringing the United States directly into the equation.

But no serious student of these matters can imagine that such a goal is realizable now, or even that it can command sufficient support in Western Europe to be adopted now as a long-term goal. The physical presence of American troops in Western Europe and the deterrent effect of its strategic nuclear forces will remain necessary ingredients in Western Europe's security, and in its sense of security, for many years to come. Any steps toward making Western Europe more self-sufficient in military terms should be taken in such a way as not to jeopardize America's commitment to maintain them. What I do contend is that within the context of NATO, Britain and its West European allies should seek to develop a distinct European strategic pillar of the Alliance that will reduce the old dependence on the United States without creating a new dependence on the Soviet Union, and sustain the distinct interests and objectives of which West European countries are increasingly conscious in world affairs.

In relation to a number of major issues in world politics (world trade; detente in Europe; the conferences on European Security and Cooperation; policy toward the Middle East; policy toward black Africa) the countries of Western Europe, or at least (thanks largely to the process of coordination of foreign policies known as European Political Cooperation) those of them that are members of the European Community, now adopt substantially similar positions. It is not unrealistic to speak of the existence of a European foreign policy line, or even of the emergence of a diplomatic concert of West European states.

This emerging diplomatic concert, however, does not embrace matters of defense and security. For all the member-states of the European Community, leaving aside neutralist Ireland, it is NATO and not any European grouping that they regard as the association that is basic to their military security. The foreign ministers of the Community countries meet to coordinate their policies, but the defense ministers do not; the European Economic Community itself, despite some efforts within its Commission and within the European Parliament to prod it in this direction, has played no role in this field. It is true that the 1948 Brussels Pact linking Britain, France and the Benelux countries, expanded in 1954 to facilitate West Germany's entry into NATO and the renamed Western European Union, provides an association which is purely European and rests upon formal defense obligations more rigorous than those of NATO itself. But it is at present largely moribund, as well as being limited in its membership and distasteful to West Germany because of its association with arms control restrictions discriminating against Bonn. It is also true that within the framework of NATO certain European groupings have sprung up—notably the Eurogroup, a caucus of European NATO members set up in 1968 but without the participation of France and the IEPG (Independent European Programmes Group)—concerned with various aspects of arms production and trade. But these do not answer the need for a combination of European powers that would in substantial measure shift the responsibility and the burden of defending Western Europe from American to West European hands.

The present distribution of responsibilities and burdens within NATO is still, despite some modification, that which was established in the early years of the Alliance when the United States enjoyed an immense preponderance of power—economic and political as well as military—in relation to its European allies. The United States assumed a disproportionately large share of the burdens—in terms of defense expenditures and with respect to both nuclear and conventional forces—and in return expected a privileged position in Alliance decisionmaking, which the allies freely conceded. Now that the power relationship between the American and European halves of the Alliance is less unequal, both parties are restive about the old arrangements, and adjustments should be made.

American opinion insists, very reasonably, that the European allies are now in a position to shoulder a larger share of the military burdens—not only of the conventional defense of Western Europe and its sea and air space and communications, but also of the defense of its interests outside the NATO area. At the same time, European opinion insists, also reasonably, that the United States can no longer assert the kind of predominance in Alliance decisionmaking to which it became accustomed at the time when the countries of Western Europe were, to one degree or another, its dependents or wards. American opinion, perhaps, has yet to recognize that a more equal sharing of the burdens of the Alliance must bring with it a diminished role for the United States in determining common policies. European opinion has yet to recognize that its claim to a larger part in Alliance decisionmaking has to be validated by a willingness to assume a larger share of common burdens. A European foreign policy posture that rests upon so-called "civilian power" alone, and is not made credible by military instrumentalities which European states control, will make only a limited impression on the rest of the world, and leave the European allies still with no alternative to following in the wake of the United States, where matters involving peace and war are concerned.

The immediate need is that governments of the West European members of NATO should come together to define their common interests in the political and strategic fields, and devise means through which they may be promoted. At the center of these common interests there lies the issue of west European security, and the policies that should be devised are preeminently in the area of defense and arms control. Various forums for such conversations—the European Council (the meetings of heads of government of the Community countries), meetings of foreign ministers in the context of European Political Cooperation, a regular meeting of defense ministers—may be appropriate. What is necessary is that, in one of these ways or another, a European strategic identity should be brought into being, within the wider framework of the Alliance, and given permanent institutional form.

This is the present step which, it appears to me, is the vital one. What common interests in the field of security might be agreed upon were such a European strategic identity brought into being, and what policies might grow out of it, are more speculative questions. In what follows I seek to present, as it were, an agenda for a meeting, or series of meetings, addressed to these issues.

IV

A basic element in a Europeanist defense policy must be the strenthening of western Europe's conventional defenses in relation to the Soviet Union. This requires a radical change in public attitudes toward defense expenditure, but some powerful arguments may be presented in favor of such a change.

It is widely recognized that the Alliance needs to reduce its dependence on the early use of nuclear weapons to stem a Soviet advance in a conflict initially restricted to conventional weapons. Various schemes for reducing the likelihood that such a conflict might expand to the nuclear level now command a degree of public interest and support (a commitment to no first use of nuclear weapons; a nuclear/free zone in central Europe; a unilateral Western reduction in the number of battlefield nuclear weapons deployed in Central Europe), but such schemes can form part of a responsible security policy only if they are put forward in the context of the raising of conventional force levels to the point where they will provide an acceptable balance against those of the Soviet Union. We need, of course, to bear in mind that an acceptable balance does not necessarily require numerical equality of tanks divisions, combat personnel, etc., given the advantages now thought to lie with the defensive in conventional warfare; and also that conventional rearmament does not imply abandonment of the longstanding (but admittedly thus far fruitless) attempt through the negotiations on Mutual and Balanced Force Reductions to reach agreement with the Soviet Union on reducing the level of the balance.

European conventional rearmament can also help to sustain the American public's flagging commitment to the defense of Western Europe. The defense efforts of the West European countries, especially of the larger ones, may not be as feeble relative to those of the United States as they are sometimes said to be in the latter country, but they certainly lag behind. A withdrawal or drastic reduction of U.S. forces in the near future would present Western Europe with a crisis which it is still not ready to meet. At a time when demands for withdrawal in the United States are strengthened by public irritation toward Europe over conflicts of policy, growing attention toward American commitments in other areas of the world and the demographic shift away from the Atlantic seaboard, there is a West European interest in demonstrating a willingness to assume a greater share of common burdens.

Such a policy is also required if the West European allies are to substantiate claims for a larger role in the making of defense decisions. The West European allies, through consultative machinery to which I have referred above, should seek to establish common views as to the circumstances in which, and the ways in which, the Alliance should use or threaten the use of force in Europe. A restructuring of the present machinery of the Alliance, perhaps involving the appointment of a European to the office of Supreme Allied Commander, Europe, is desirable to this end. There is no possibility of agreement on changes of this nature unless the European member-countries can show, by increasing their role in European defense, that they are entitled to a greater voice in shaping it.

V

A basic cause of the legitimate anxieties being expressed in West European countries about security is their present dependence on U.S. nuclear forces deployed within some of them, over which European governments and peoples have no control, either in the positive sense of being able to order their use, or in the negative sense of having a veto over it.

While Western Europe is confronted by a nuclear-armed Soviet Union, it is illusory to imagine that Britain and its European partners can dispense with the double-edged protection of their security afforded by a nuclear force. We must work to reduce our dependence on nuclear weapons, and to reduce the role played by nuclear weapons in world affairs more generally; and conventional rearmament will help us to do this, as argued above. But this does not mean that we can rely on a conventional defense alone. While the Soviet Union has the capacity itself to use, or threaten to use, nuclear weapons against us, we must seek a nuclear counterpoise to it. For the present, moreover, such a counterpoise cannot be provided without reliance on the United States.

We do, however, need to recognize the double-edged nature of the protection afforded by nuclear weapons, which on the one hand serve to deter attack by an adversary but on the other hand expose us to increased risks in the event of war. We have also to recognize that the risks for Europe are magnified because the nuclear weapons on which we mainly depend for this form of protection are not under the physical control of European governments. It follows from this that there are two objectives which Western Europe should seek to achieve: one is European control, in a negative sense, over U.S. nuclear forces deployed in Europe; the other is European control, in a positive sense, over nuclear forces serving the objectives of the European peoples themselves. Neither objective is immediately attainable, but we may at least identify the direction in which it is desirable to move.

Western Europe is now host to six or seven thousand U.S. nuclear weapons. Although their use is nominally subject to agreement by host governments, the latter do not have any physical capacity to veto their use, except under "double key" arrangements for employment of tactical or battlefield nuclear weapons held in U.S. custody. In Britain, for example, this situation applies to the nuclear-armed U.S. bomber forces deployed in the United Kingdom for many years, and presumably to nuclear-armed submarines using Holy Loch, as well as to the proposed cruise missile deployments. A basic European security objective should be to remove these weapons from European soil where this is consistent with European security, and to establish some form of European physical veto over their use where it is not. Such steps may be at the expense of the efficacy of deterrence of the Soviet Union, however, we have to bear in mind the need to balance considerations of deterrence against the other risks to our security contained in the present arrangements. The proposed deployment of cruise and Pershing II missiles in certain European countries—whether or not it goes ahead in the absence of arms control agreements with the Soviet Union—should not be acceptable to European governments without physical arrangements that would provide the host governments with negative control.

If West European peoples are to reduce their dependence on U.S. nuclear protection, they must also grasp the nettle of establishing positive control over nuclear forces of their own. The obstacles to this course are familiar. The nuclear forces of Britain and France are miniscule compared to those of the United States. British nuclear policy is tied closely to that of the United States, and Britain's decision to purchase the Trident missile ensures that it will remain so tied. Neither Britain nor France has yet displayed any willingness to collaborate in nuclear weapons policy, either as regards production or strategy, and the latter has repudiated suggestions of some form of Franco-German collaboration. Outside Britain and France there has been little willingness in Western Europe to regard British or French forces as serving a European role, as opposed to purely national roles, or to regard them as possible substitutes for the U.S. deterrent. A European nuclear force is commonly thought to presuppose a European federal government, and thus to be beyond the bonds of practical possibility. Public opinion in some West European countries, moreover, is at present in an anti-nuclear mood, and would view proposals for increased reliance on European-controlled nuclear weapons with disfavor.

These obstacles appear to me less formidable than they are sometimes thought to be. The effectiveness of a deterrent force is measured not only by its size and technical capacity to penetrate defenses and bring about destruction but also by the values at stake for the deterrer in a given conflict. In a situation in which Britain or France itself is threatened, the fact that a nuclear force is under the control of the British or French government may be more important than its size relative to that of the U.S. force. We should not assume, moreover, that a West European nuclear force must duplicate the forces available to the United States and the Soviet Union; its purpose would not be to enable Europe to dispute world primacy with the superpowers, but rather to provide a minimum deterrent against the extreme and highly improbable contingency of a direct Soviet nuclear threat.

Britain and France are not now in a position to make arrangements for joint production of nuclear weapons, but this is no reason why they cannot enter into arrangements for coordination of policy and strategy. It is true that West European opinion as a whole attaches little credibility to the idea that British and French forces play a European role; but no attempts has yet been made to give them such a role, or to create structures that would lead other European peoples to regard them as having such a role. A first step in this direction would be the establishment of a European Nuclear Planning Committee, analogous to the NATO one, to which Britain and France would report on their policies in regard to nuclear weapons, and at which other European governments could make known their concerns. A European political authority controlling nuclear forces of its own is indeed beyond the bounds of practicability at present, but this does not preclude the taking of steps toward a European role for the Anglo-French forces, especially at a time when concern about dependence on U.S. weapons is high in Western Europe, and a broad consensus about policy toward the East unites the West European countries.

The anxieties, including the many legitimate ones, which large sections of public opinion have today about our present dependence on nuclear weapons in no way preclude this course. For these anxieties derive in part not from reluctance to recognize the role that nuclear weapons must continue to play in our security, but from the fact that the particular nuclear weapons on which we chiefly depend are controlled by an ally whose policies in the matter of security are substantially at variance with those of the West European countries. In France, of course, where there are no foreign nuclear weapons or proposals to deploy them, but rather a national nuclear force, there is a broad basis of public support for the government's approach to nuclear security. It is notable also that, in Britain, public opinion polls indicate a majority against deployment of the U.S.-controlled cruise missiles, but also a majority for retention of a British nuclear force. This should not be put down to misguided nationalist sentiment in these two countries; it is eminently arguable that our security is better served by nuclear forces that we control than by those we do not. If West European governments can demonstrate that their attitude toward nuclear weapons is a responsible one, that they are committed to minimizing the role of these weapons and to paying proper regard to Soviet fears and susceptibilities, they should be able to secure public support for preserving the element of nuclear force that is still necessary for their security.

Soviet General Secretary Yuri Andropov's recent proposals that the size of the medium-range Soviet theater nuclear force should be related to the size of Anglo-French nuclear forces is interesting in this connection. There are familiar reasons why the Western powers should not accept it: Britain and France, like Western Europe as a whole, are threatened not only by Soviet theater forces but also by Soviet long-range forces; they would be unwise to appear to allow the Soviet Union the right to have a say in the size of their nuclear forces; and the West as a whole might hesitate to accept the principle that the Soviet Union may claim nuclear forces equal to those of the NATO allies in combination. Nevertheless, the concept of the European nuclear balance, which is not dependent on U.S. nuclear deployments in Europe (although it might still depend on U.S. continental and ocean-based forces) but basically on European-controlled nuclear forces, is one for which there is a great deal to be said.

An important task for a European strategic entity that is brought into being will also be to consider Western Europe's political and strategic interests outside the NATO area.

It is sometimes said, both by American critics bemoaning Europe's parochialism" and by Europeans wishing to dissociate themselves from America's global involvements, that European interests are now purely regional.

This is a view which should be resisted. The countries of the European Community are collectively one of the great forces in world trade. Britain, France, Spain, Portugal, Belgium and Holland have enduring extra-European involvements arising out of their roles as colonial powers. Western Europe as a whole has a vital interest in access to Persian Gulf oil. Its security may be directly affected by relations between the Soviet Union and China, by racial war in southern Africa, by the outcome of conflicts in the Middle East, or by the prospects for a return to détente between the superpowers.

Western Europe's interests vis-à-vis the great array of international political issues around the globe, are unlikely to be always the same as those of the United States. The fact that today the Community countries have taken somewhat different attitudes from the United States over, for example, access to oil and Middle Eastern issues relations with South Africa, Central America and North-South relations is a sign not of their parochialism but of their different interests and perceptions. Suggestions that there might be a division of labor in which the European countries concentrate on European defense and the United States on global issues wrongly take for granted an identity of interests and approaches. It will surely be necessary for the European allies to develop their own capabilities to influence events outside Europe, rather than regard the United States as the trustee of their interests.

VI

A Europeanist policy is not possible unless a more positive role comes to be played by West Germany. Germany is the largest and richest country in Europe. It is only on the basis of West German power that a West European counterpoise to the Soviet Union can be constructed. This means that West Germany will need to play some role, even if at first a small one, in the control of European nuclear forces; that West Germany's already considerable preponderance in West European conventional land forces will increase; that the discriminatory arms control provisions applying to West Germany under the 1954 agreements must further erode, if not disappear altogether; and that West Germany must come to play a more prominent role in the taking of political and strategic decisions.

No step can be taken in this direction without at once encountering the old and powerful inhibitions felt by the Soviet Union and its Warsaw Pact allies, by West Germany's own allies and, not least, by the West Germans themselves, about the very idea that Germany might return to a "normal" status in world affairs. Even apart from these inhibitions, West Germany's continuing interest in the restoration of German unity, to which the Soviet Union holds the key, raises a persistent doubt about the permanence of its alliance with the West, which no number of affirmations of Bonn's unswerving loyalty will wholly eradicate. It must also be recognized that a decline in America's role in Europe's defense might lead to a reopening of the question of the status of West Berlin.

But these nettles, sooner or later, will have to be grasped. It will soon be 40 years since the end of the Second World War. West Germany is an exemplary social democracy. The broad lines of its present foreign policy enjoy a wide measure of support in Western Europe as a whole. The legitimization of its eastern frontiers has removed some, even if by no means all, of the sources of its neighbors' anxieties. It is on German soil that a war for the defense of Western Europe is most likely to take place. A sudden change would alarm all parties, but an accelerated evolution toward West Germany's assumption of a more normal role is a vital element in the package.

West Germany's continued interest in Germany unity does indeed raise the question whether its commitment to West European unity can ever be unqualified. It would be erroneous to suppose, however, that West Germany will be drawn irresistibly, in the long run, to opt for German unity rather than for maintenance of its West European ties, whatever the cost. If, over the last century, we have come to regard a politically united Germany as the norm, we have to remember that in a longer view of history—indeed, since the fall of the Hohenstaufen in the thirteenth century—the normal condition of Germany has been one of political fragmentation. Nor would it be correct to assume that West Germany is bound some day to have the option of restoring national unity; indeed, for as long as the Soviet Union remains a great power, this is unlikely.

The tensions arising from the unsolved problem of German unity are in any case a feature of the Alliance as it stands at present, in which there is no European strategic identity within the wider Atlantic framework; it seems likely that West Germany's loyalty to the West would not be weaker but stronger if there were a militarily powerful European pillar of NATO in which the Federal Republic were a leading element.

A Europeanist strategic policy, moreover, can have no meaning without the loyalty and commitment of France. In some ways the course I am prescribing for Western Europe as a whole has already been adopted by France: indigenously controlled nuclear weapons, loyalty to NATO but insistence on a distinct personality within it. Of course, it is possible to doubt whether France would be prepared to qualify its purely national aims in defense policy by participating in a European strategic grouping. France may be no more prepared to join an integrated military structure of a European character, supposing this were established, than it has been to remain in the integrated structure of NATO (from which it withdrew in 1966). France has so far given no encouragement to the idea that the European Community should involve itself in defense questions. Yet the recent proposal of the Mitterrand government to revamp the Western European Union, the grouping of seven European NATO countries set up in connection with West Germany's entry into NATO in the mid-1950s, demonstrates some sympathy in France for the direction of the present argument. A European defense grouping today would not be likely to require France to merge its military identity into an integrated international structure of the kind France rejected when its National Assembly failed to ratify the treaty for a European Defense Community in 1954. France has also shown as in the decision to station the Pluto missile in Germany, a willingness to move away from a purely national role for its nuclear forces.

A Europeanist solution also requires a change of policy in Britain. There are many factors in Britain that cause it to hesitate before moving in the direction I have been outlining. Britain is the principal foreign architect of the American commitment to Western Europe. It has been in many ways a favored beneficiary of this relationship. Its reliance on America in defense is older than the Alliance itself. There is a deep fear within the older generation in Britain—in contrast to the younger—that American withdrawal would mean a return to the situation that existed before 1941 when Britain was uncomfortably alone in a Europe without America. There is the known antagonism of a majority of ordinary British people toward membership in the European Community. Within that very substantial section of the British public that is deeply uneasy about the American alliance, many are drawn toward the alternative example offered by neutralist, nuclear-free Scandinavia.

It is, however, with its European allies rather than with the United States that Britain is aligned on the most serious issues that divide the Atlantic Alliance, and it is only by combining with them that Britain can effectively promote its point of view. The idea, deeply embedded in Whitehall, that cooperation in political and economic areas may continue to develop among the European partners, while military matters remain the preserve of NATO, is basically unsound. If Britain were aligned militarily in a European combination within the Atlantic framework that could give priority to European interests and objectives, had the capacity to disengage from American policies when these were at loggerheads with those of Western Europe, and to take initiatives independent of America, a climate of public opinion more favorable to defense, including nuclear defense, might come about.

VII

A Europeanist approach to defense has to be worked out with careful attention to the reaction of the Soviet Union. Moscow might welcome a diminished American role in Western Europe, but not the emergence of a more powerful West European defense capability, especially if this were to involve a more prominent role for Western Germany, perhaps including what the Soviet Union would claim to be "a finger on the nuclear trigger." This is no reason to flinch from carrying out these policies; West European rearmament would indeed be intended to deprive the Soviet Union of options it would rather have complaints; are only to be expected. On the other hand, it is also an object of the Europeanist policy to preserve the fruits of East-West detente in Europe by disengaging from an American policy that puts them in danger. There would be a need, in strengthening Western Europe's military capacity, to do so in such a way as not to threaten the Soviet Union or undermine its interest in coexistence and cooperation. Western Europe would need to demonstrate its continuing acceptance of the territorial settlements reached between West Germany and its eastern neighbors, its continuing interest in economic cooperation with the Soviet bloc and its willingness to explore arms limitation in the European theater.

Western Europe already exerts a great attraction—economic, cultural and political—over the countries of Eastern Europe. It cannot and should not disavow its links with them, or its interests in political change in Eastern Europe and in a more intimate relationship with it; and it should continue to explore frameworks for all-European security and cooperation. But this should be on the basis of willingness to live with the Soviet-dominated socialist bloc and not of attempts to subvert it.

Equally important, a Europeanist policy would have to be executed with careful attention to its effect on the United States. There are good reasons why American opinion should be gratified by the emergence of a Western Europe that is more willing to shoulder the common burdens of defense, more united and more relaxed about its relationship to the United States because it has become less dependent on it. On the other hand, this Europe is likely to disappoint some of the expectations that Americans commonly have about it. It would be less willing to follow the American lead, more capable of working against American policies should it wish to do so, and more of a risk as an ally of the United States that one America is able to control. The policy I have sketched out would mean that the North American and European sides of the Atlantic Alliance were less effectively coupled to one another, if not wholly decoupled: this would carry both disadvantages and advantages for the United States, as it would for Europe. A division of the Alliance between American and European pillars, moreover, would be unwelcome in Canada, whose interest in maintaining a European defense commitment would be more difficult to sustain.

Nevertheless, a Europeanist policy would serve the best interests not only of Europe but also—at least in an enlightened view of what they are—of the United States. It might also provide the best prospects for preserving the unity of the Western world in the years ahead, when unity will only be possible on the basis of adjustments to changed conditions. These adjustments, however, will have to be carried out with care and sensitivity on both sides. If Western Europe has an interest in reducing its dependence on America, it also has to remember that it will need America's strategic support for a long time to come, and that a neoisolationist mood in the United States, fed by neutralism and anti-Americanism in Europe, may lead to a premature withdrawal. A turning toward what I have called a Europeanist course by the West European countries is bound to result in an America that will regard its interest in European defense more cautiously and critically; it will be for Europe to ensure that the United States continues to preceive this interest.

Finally, a Europeanist policy is not viable unless the nations of Western Europe can develop some appropriate form of unity. This is the greatest uncertainty of all.

There is as yet no supranational community in Western Europe but only a group of nation-states. Their history is one of endemic mutual conflict, and if they have recently established a habit of cooperation, this has been against the background of the physical presence of the United States and common fear of the Soviet Union. If the physical presence of the United States were reduced or eliminated, is there not a danger that the Western European nations would fall apart? In a crisis brought about by pressure from the East, would a putatively more self-sufficient Western Europe pull together, or disintegrate? If the present diplomatic concert of West European states has some capacity to endure, can it be stretched to include on the one hand neutral Sweden and quasi-neutral Denmark and Norway, and on the other hand Spain, Greece and Turkey, whose entry or projected entry into European institutions is likely still further to dilute their unity?

Every new course in politics, however, has to begin with some vision of an alternative to present realities. There are some important elements of unity on which to build. We do not have to wait for the European Community to evolve into a political federation. Important as the Community is as a symbol of European unity and a vehicle of cooperation, it is nation-states that are the major political realities in contemporary Europe, and it is their recognition of common interests that gives the idea of West European unity its chief content. The first steps should be taken by the major powers, which need to create a forum in which the European NATO allies meet at the highest level to define their strategic interests, and coordinate defensive policies so as to promote them. They will need to discuss strategic plans and doctrines, defense budgets, arms and armed forces. They will need to assess Western Europe's strategic objectives outside the North Atlantic area as well as within it. They will need to establish consultative procedures, administrative machinery and chains of command that will make the armed forces of the European pillar of the Alliance the instrument of common European policies. They will need to enter into binding commitments.

It would be wrong, I believe, to attempt to prescribe in detail the precise nature of the organizational structure or structures that might be devised, but there are a number of existing institutions which could be developed: the European Council—the meetings of heads of government of Community countries; the meetings of foreign ministers of the Community countries engaged in coordination of foreign policy; the Western European Union. It should be an objective to bring about ultimately a coincidence between the membership of the European strategic combination and that of the European Community.

The objective should be a West European military alliance—an alliance within an alliance, preserving the wider structure of NATO. There might ultimately be a European alliance without NATO, just as there was in 1948 when the Atlantic Alliance had not yet been established. The idea of a Europe responsible for its own security can breathe new life into the movement for European unity. The European Community will never become a community in the true sense while it continues to steer clear of this problem. If it were to take courage and grapple with the question of defense, which has always been much more at the heart of the issue of European unity than any matter of economic policy, it might recapture the vitality and sense of purpose which today it has so conspicuously lost.

The PRESIDING OFFICER [Mr. Cochran]. The Senator from Tennessee is recognized.

Mr. SASSER. I thank the Chair.

Mr. President, I rise this evening in support of the amendment of the distinguished Senator from Georgia and in opposition to the amendment offered by my able friend from Maine.

Mr. President, for the past several years I have drafted legislative language which has been inserted in the Military Construction Appropriations Act which, in effect, is almost identical to the amendment being offered by the Senator from Maine.

For 3 years, the military construction appropriations bill has carried the following language and I quote:

> It is the sense of the Congress that the administration should call on the pertinent member nations of the North Atlantic Treaty Organization to meet or exceed their pledges for at least a 3 percent per annum real increase in defense spending in furtherance of increased unity and equitable sharing of common defense burden and international stability.

So much, Mr. President, for the gentle diplomacy. So much for leaving this matter to the administration and to their powers of gentle persuasion in this regard.

So much with getting our allies to live up to the solemn commitment they made in 1977 to increase defense spending at the rate of 3 percent per year in real dollars corrected for inflation.

What we need now, Mr. President, is legislation with some teeth in it, and that is precisely what the Nunn-Roth amendment carries.

We have miserably failed, in this Senator's judgment, to convince our NATO allies that either this Congress, or this administration, or previous Congresses, or previous administrations were serious about more equitable burden sharing, and I am sad to say that few of our NATO allies this evening are meeting their solemn defense commitments.

So the time has come at long last to put some teeth into legislation which will be a clear signal to the Europeans that we are serious about achieving a better balance of defense expenditures.

I am pleased that the distinguished Senator from Georgia has seen fit to offer this amendment because many others in this Chamber, and indeed millions of citizens across this country, have felt the same frustration that the Senator from Georgia, I think, is feeling this evening.

The United States will stick by its defense commitment in Europe. Who can doubt that? We have over 300,000 troops on the ground there now. We have lived up to our commitment there for over 35 years.

But the American taxpayers should not be asked to continue to bear an inordinate share of the European defense. We in this country are staggering under great budget deficits, deficits which remain a severe impediment to a healthy world economy and indeed represent a clear and present danger to the economies of our NATO allies. The defense budget increases recommended by this administration are substantially responsible for the budget deficits which threaten the world recovery.

This country simply cannot continue to assume the role of financing a disproportionate share of the defense of the free world and borrowing most of the money to do it with, to boot. Such a policy runs two risks. First, it lulls our allies into thinking that the United States will assume the burden of meeting almost all of the Western World's security challenges. Second, it will ultimately lead to a growing isolationist trend among the population of the United States; a trend, I might say, Mr. President, that is growing and has been growing since the abortive adventure in Vietnam, and is fueled by such follies as what occurred in Lebanon last year.

Presently, the United States of America spends more than 50 percent of our defense budget on the defense of Western Europe. In addition, we have assumed almost the entire burden of defending Western interests in the Middle East and in Southwest Asia. And the fact is not lost on the American people that we only get 3 percent of our oil out of the Persian Gulf while some of our NATO allies are much more dependent.

If the NATO alliance is going to survive and prosper for another 35 years, there must be a reawakening by our European partners that the United States simply cannot be expected to continue to carry the burden substantially alone.

Last January, former Secretary of State Henry Kissinger recommended, in a Time magazine article, that if Europe fails to increase its share of the common defense—and I say the common defense—the United States should consider cutting its troop strength in Europe by 50 percent.

Well I say this evening that I am not prepared to endorse such a deep cut as Henry Kissinger proposed, but I am prepared to endorse reductions if it becomes clear that our NATO allies will not pay more to meet their own defense.

Mr. President, I would point out that in the NATO infrastructure program alone this country has invested $4.2 billion. In the process we have prefinanced over $800 million for NATO-eligible construction projects, with the understanding that these projects would eventually be funded by our NATO allies. I regret to say, however, that the Department of Defense has failed to recoup a substantial portion of these expenditures—and today over $300 million has yet to be repaid.

The failure to recoup these funds, I believe, is but one reason why this amendment should be passed by the Senate and signed into law.

The U.S. Army in Europe is presently stationed in more than 29,000 individual buildings. We have more than 300,000 U.S. troops on European soil. Clearly, the magnitude of our commitment to Europe's defense is substantial. Well, what are we getting in return? The opponents of this amendment will make several good points. But the fact remains, our European allies are not living up to their defense commitments.

Yes, most of our NATO allies have the draft or universal military training. Yes, they do sustain a substantial reserve. But of what use is this if there is only 10 days of ammunition supply?

For instance, the Department of Defense has drafted a master restationing plan for our forces in Germany. U.S. military forces in Germany are presently based in locations which date back to the end of World War Two, in many of the same locations as the old Wermacht of WW II. These are not the best locations to meet the threat of a conventional Warsaw Pact invasion. Therefore, the master restationing plan would consolidate U.S. troops at more forward locations in Germany. The master restationing plan would cost more than $1.2 billion for the construction of all facilities which have been suggested. The Congress, particularly the Military Construction Subcommittee, has insisted that the Germans provide a substantial amount of financing and real estate in order to implement the restationing plan. But Assistant Secretary Korb of the Department of Defense testified before Congress last February that "the Germans have told us that they have no money to help pay for the master restationing plan."

In other words, Mr. President, the Germans are not contributing to this proposal which would improve their own defense.

It is time that we send our NATO allies a clear message. It is time that we insist that they provide more for their own defense. It is time that the Congress take action to reinforce its rhetoric.

Mr. President, NATO's doctrine of flexible response provides for the potential use of nuclear weapons early in a conflict. Everyone agrees that efforts must be made to raise the nuclear threshold in Europe. There is only one way that is going to occur. Our conventional forces must be qualitatively and quantitatively improved. The U.S. Army, alone, is instituting a 5-year, $40 billion equipment modernization program for U.S. troops in Europe. But our European allies are lagging behind in modernization. And there is no indication that our allies have any plans to accelerate their own contributions.

Mr. President, the Nunn amendment will not weaken the Atlantic alliance. Instead, it should actually strengthen the alliance. It serves as an opportunity for our allies to reassert their own position in the defense of Europe. That should be a healthy and a positive step.

Our allies need to know that we are serious when we demand that they increase their defense expenditures. In years past we have tried the carrots, and now it's time to try the sticks.

The United States has demonstrated its commitment to Western Europe in two World Wars which took a terrible toll in American lives. We demonstrated our commitment when we helped rebuild the European industrial base following World War II. We have continued that commitment every year since that time, we will never back away from that commitment.

But must we do more than the Europeans themselves are willing to do in defending their soil? Should we make more of a sacrifice as a nation than the Europeans are willing to make for their own defense? Should each American taxpayer be required to pay a larger portion of his or her income for the defense of Europe than European taxpayers?

The answers to these questions are obvious. The defense of Europe must be based on a full and equal partnership with our European allies. Until Europe agrees to that full and equal partnership, we must let the European Governments know that we cannot continue to bear the brunt of their defense. The Nunn amendment we are considering today is an important step in that direction, and I urge my colleagues to adopt it.

Mr. COHEN. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER [Mr. EVANS]. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

SEVERAL SENATORS addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me first of all suggest to my friend from Georgia what was suggested by our colleague from Maine, that the military implication of his amendment is not one that I would care to engage him in. I certainly do not feel qualified to argue over the question of military strength and what our allies are doing, either collectively or individually, in this area or what their burden ought to be specifically. I do not think that element of this debate is much in question. I think all of us agree without any hesitation that the burden of our European allies is not what it ought to be. And that certainly is not the reason which provokes this Member to rise to address himself to this particular amendment, the Nunn-Roth amendment, and also to the amendment offered by the distinguished Senator from Maine.

On the question of purpose—it has been said by others and I would just repeat it—that on the goal which the Senator from Georgia is seeking, there is unanimity in this Chamber or a very small minority of dissent, if any.

It is, Mr. President, over the means that the distinguished Senator from Georgia has selected and the effect of those means that causes the junior Senator from Connecticut to object. My concern is, that the effect of this amendment could have profound implications on the political questions associated with NATO. NATO is more than just a military alliance. Its importance as a military alliance is without question. But there is also a political alliance associated with NATO. And I would suggest that the political alliance represented by NATO is no less important than the military alliance and that we ought to keep that consideration very much in mind when we consider the means by which we seek to achieve the goals identified by the distinguished Senator from Georgia and others.

My concern, quite frankly and bluntly, is that the result desired by this amendment would not be achieved and that there is a far greater likelihood that the result would be just the opposite of those desired by the author and supporters of this amendment. Rather than increasing and building support within the individual nations represented in NATO, we would find a growing political constituency that would use the very debate we are engaged in this evening as weapons in the political discussion over whether or not they ought to in fact increase their participation in NATO.

We are all politicians in this body. Every single country represented in NATO has a parliamentary body of one kind or another. We can certainly appreciate, as politicians, how we would respond in our respective jurisdictions were we in this country to receive an ultimatum from our European allies suggesting a specific course of action which, if we did not follow, would result in certain economic, political or military reprisals.

Mr. NUNN. Will the Senator yield for a question?

Mr. DODD. I am glad to yield.

Mr. NUNN. Does the Senator really consider it an ultimatum to make known our position that, if our allies do not live up to their own commitments, we will begin to save money by cutting back because it is not possible to continue in this manner? Is that an ultimatum?

Mr. DODD. Not at all.

Mr. NUNN. In other words, we are not telling them what to do, we are just asking them to do what they said they would do and have not done.

Mr. DODD. But my point would be to my good friend—and I understand what he is trying to do—that, as a political fact of life, if you were to say to me that if I do not do something, the following will occur, then the political body represented by the NATO alliance and individuals within that body are apt to do just the opposite of what we want them to do.

What we want them to do this evening is to contribute more to the NATO burden. That is what we want them to do.

Mr. NUNN. Does the Senator think it would be better not tell them to do anything, to wait to see if they do it in a couple of years, and if they do not, just start reducing our commitment? For instance, we are going to spend, $52 billion in ammunition in the next 5 years. They are not going to increase theirs appreciably. We are going to have twice the ammunition level they are. We are going to go up from there very substantially and they are not going to increase at all. At some point, what do we do; just start cutting back; tell our Air Force, guys, fellows, you will be flying over to Europe, you will not have any aircraft shelters, and no place to refuel; you will not have any place to have your airplane repaired; you are going to be landing in the middle of world war III; you will not have any protection? At what stage do we do something? I am not saying punish anybody. The Senator is making a good point. I try to stress this is not punishment. This is recognizing U.S. taxpayers should not continue to sacrifice over and over again if our European allies are not going to make a contribution to provide for a credible initial defense. That is the point. It is not punishment. It is not an ultimatum. It is a simple recognition that a great percentage of our NATO expenditures are now futile; absolutely futile. It is not going to make any difference in the balance of power.

Mr. DODD. Let me suggest to my good friend from Georgia that while I do not question for 1 second what his intentions are, or what he is trying to accomplish with this amendment, my fear is that the interpretation elsewhere, particularly in Europe would be rather significantly different than the intention of the authors of the amendment. I do not think that is stretching or exaggerating to say that it would do just the opposite of what we want it to do.

I am not going to spend 1 second arguing with what my friend from Georgia has just suggested are the economic facts and the military facts. He is absolutely correct. The question is, Are there not other means through the use and influence of the executive branch, or through the debate we are engaging in here this evening, to have the same kind of effect on our colleagues within NATO, so that they may understand the importance of this issue to us?

Unfortunately, what I preceive to be at least the amendment is—and it is a tough amendment—that it says specifically if this does not occur, this will result. While I certainly understand the frustration—of everyone who has risen to speak and to address this particular proposition—that frustration, no matter how well founded, we have to understand its implications. We need to think in terms of what happens if this does not develop the desired results. What is the reaction if in 2 or 3 years the alliance individually as countries or collectively decide not to move forward. We need to understand that the NATO alliance is not just a favor to Europe. The NATO alliance is in our interest as well. It also protects us. I think that becomes important when we address these issues, and far too often it is forgotten that NATO is not just something we do for Europe. We do it for ourselves. So when we talk about these things as a way of trying to increase burden sharing it is important to remember that.

Let me mention a second point. Too often I think we think of Europe as one nation. Granted Europe is coming closer together. The European Parliament is certainly an institution which is growing in its cohesiveness. But Europe is not one nation. There are independent, nation states that make up that community. It is unrealistic for us as one nation to assume that every single nation that makes up that community will act in unison. In fact, each and every nation that makes up that community has its own unique problems and difficulties. We need to be conscious of that.

I suggest that, in part, the problem we see our NATO allies suffering under today occurs as a result of the economic conditions which exist here: High interest rates, and the strength of the dollar certainly contributes in no small measure to the economic difficulties that plague Europe, and contribute in part, as it did in Holland to not being entirely supportive. That is disappointing to all of us.

But I urge my colleagues to remember this as well: Whether you agreed or disagreed with the decision to place Euromissiles in Europe—I am not going to debate that issue—the fact of the matter is our European allies went through some tremendous debates. Italy, which has a very strong Communist Party, stood up, stood with us during that crisis, and suffered as a result of the position they have taken. France, a socialist government, the Mitterrand government, went around, and warned Europe about Soviet influence in those debates.

Certainly we say what happened in West Germany on the same issue. I do not think it is insignificant for us to be mindful of what occurred and what happens to those particular politicians if we pass this amendment. What happens to them when they then go back, if this is the reaction.

Again, I say to my friend from Georgia, and others, that I am in no position to argue with him over the merits of the goals they desire. But we need to think longer. We need to understand that if we had an ear inside the Politburo, what the Soviet Union would love to see more than anything else is that the Senate adopt this amendment. What could be more favorable in terms of their own political intentions within the European Community than to have the United States lay down an ultimatum?

So, Mr. President, I share, as I have said at the outset, the goal, the purpose, the facts, and the frustration of the authors of this amendment. But I would respectfully suggest, as I did at the very outset of these remarks, that my fear is that we will have the opposite effect, and that the political implications of this decision will be more far-reaching than we imagine as we respond to the economic and political anger—I think that is a proper word to use—of our constituency.

Mr. President, I will support the substitute as I believe it is a substitute, the amendment, offered by the Senator from Maine. But I say here this evening that I am not happy with that either, quite frankly, because I think the implications still are negative. But it does not have the same effect, obviously, as the amendment being offered by my colleague and friend from Georgia. I would prefer on this particular issue that we steer the influence that we need to bring to bear on our European allies, to other avenues that are available to us. But I see the Cohen amendment as the lesser of two evils in this debate, and will therefore support it as a substitute. I hope and urge that my colleagues in the remaining time in this debate would think long and hard, and remember this evening that a 1-percent growth in defense spending in a fragile European economy can topple a government. We do not think of it unfortunately as being that significant. It is there. It can have that kind of an effect. I think we need to be more conscious of that, and to recognize that in 1984 Europe is not the same community politically that it was in 1954.

Mr. CHILES. Would the Senator yield?

Mr. DODD. I yield.

Mr. CHILES. Could the Senator tell me what 1 percent would mean in dollars or in any other foreign currencies to the United Kingdom, to the Dutch, to Belgium, to West Germany, to any of those countries? What would 1 percent additional growth for their defense budget mean? I cannot quantify what he says when he says it could topple the government. Can he tell me in dollars?

Mr. DODD. No.

Mr. CHILES. Can the Senator tell me the percentage of their GNP?

Mr. DODD. My point to my good friend from Florida is this: we have heard in this country Europe is one united community, that it is not made up of nation states. Certainly my colleague from Florida as an expert in budget matters understands that the country of Holland, for instance, certainly not a nation that has a large GNP, has significant economic difficulties such as access to our markets of their export products because of high interest rates, for instance.

I am not suggesting that 1 percent, 1.5 percent is that large but I hope we understand, that in economies that are still trailing significantly behind the United States in terms of economic recovery, an issue like that becomes important. When we think of 1 percent about our budgets, it does not have that much political effect, it seems.

My point was, without getting into a dollars and cents issue, that because of the fragility of their governments, the likelihood was that there may be strong implications. That was my point. It was not to address the budgetary figures of individual countries within the alliance.

Mr. CHILES. My friend from Ohio talked about the Japanese bragging they went up 7 percent in their budget, and they went from 0.92 to 0.97. It was still less than 1 percent. I think 1 percent is still 1 percent of 100 in Holland or in the United States. Unless we have some kind of knowledge as to what that means in our currency or in theirs, it is hard to make a sweeping statement that an increase of 1 percent could topple the Government.

Mr. DODD. I will add that Japan has been raised several times here tonight. Unless I have missed something in the last few weeks, I did not know that Japan had moved. I still presume it is outside the NATO alliance. If we want to address the issue of the failure of the Japanese to do more in defense, the Senator from Florida and I would probably end up in unison on that particular issue. I am talking about the European Community in this particular case and the implications of this kind of decision.

I will just conclude, Mr. President, by suggesting that I would hope, even though I do think it is still not what I would prefer, that the substitute being offered by the Senator from Maine would be adopted as a substitute for the well intentioned and certainly in many ways laudable amendment being offered by the Senator from Georgia.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I am very pleased to speak tonight in support of the aims of the amendment being offered by my close friend and colleague from Georgia and my friend from Delaware. Not only do I think it is a well structured and well thought out proposition, but uniquely I am for it. I not only praise the sponsors of this amendment, but I stand with them.

I would hope that we would not get overly confused on some of the debate that has been taking place. It has been said that the Lord has made a special place for the fainthearted. I do not believe it is in the U.S. Senate.

But, you know, once in a while we have to bite the bullet and stand up for what we believe in, or at least what history has taught us.

My good friend and colleague from Connecticut just made a point in his remarks, what would the Kremlin think of this?

I heard the same argument on this floor not too many weeks ago when we debated whether or not we should send aid to certain Central American countries. It was said then, "If we do not send this aid, there is going to be dancing in the streets in Moscow."

I would simply say that I suggest that the decisions that we make here should have no bearing on what we think the Soviets will do as a counterpart. We must move and must move correctly in a whole series of areas.

There is one thing that I think we should try and eliminate, as the thought process begins with regard to the upcoming vote. That is to suggest the shape-up-or-ship-out theory. I do not know how that got into the debate, but this certainly is not a shape-up-or-ship-out theory.

What it says instead is that we are saying to our NATO friends and our NATO allies—and they are good friends and in most instances they are good allies—"Let us go forward hand in hand meeting the commitments to help secure the peace that has been agreed to." There is nothing more and nothing less.

We are not saying, "Shape up or ship out." What we are really saying is, "If you cannot meet your commitments to the defense of the free world in NATO, in your country, then we cannot continue to spend the full amount of money that we have been spending now for a number of years."

How long have we been spending it? I think that should be made very clear. We have been spending this money since the end of World War II, some 40-odd years ago.

How much has it cost us in that time? I do not know how many trillions of dollars. I suspect that the money has been well spent. Certainly, we are a tripwire there. Certainly, I agree with my friend from Connecticut that this just is not in the defense of Western Europe but it is in the defense of the United States as well.

But we are not getting out. We are simply saying we want to go forward together and if we cannot go forward together, "Then we, like you members of NATO, are going to have to begin to make some savings because we are cutting back on food stamps, on aid to dependent children, on aid to education. We cannot afford educational support for either the public or private sector. We are in a budget crunch."

We are saying, "We are not going to save any money if you simply meet the commitment you have agreed to." I think that point has been clearly made by the Senator from Georgia.

A lot of very learned men spoke on this a long time before this Senator from Nebraska. A very thoughtful, dedicated man by the name of Mike Mansfield took this up first. There may even have been someone before him.

He has high respect from anyone whoever served with him in this body. I did not. He has my respect and those who have come later. We have so much respect for Mike Mansfield that we made him Ambassador to Japan under a previous administration. His name was resubmitted and confirmed as the Ambassador to Japan under this administration. He is a very worldly wise individual.

But at that time, the U.S. Senate rejected his movement to do something about the ever increasing commitment of men, women, and dollars to NATO without them making a corresponding commitment.

I simply say when I look at Mansfield and others, when I look at such distinguished Members of this body right now—by friend JENNINGS RANDOLPH from West Virginia, my good friend and close associate since I have been here; JOHN STENNIS of Mississippi—those people have been here all during this 40-year period when we have been voting this money time and time again.

How much money are we talking about for 1985? I do not know how much we spent before but it is certainly in the trillions.

In 1985, the total cost of the European-deployed U.S. forces will be approximately $55 billion.

To back that up, we have a D-day plus 10 or, if the Soviet Union attacks, we would be in there with a total of $90 billion—in D-day plus 10, or 55 up to 90. Shortly thereafter, without a commitment of forces and equipment, we would be over there with a total of $177 billion. That is the cost of our initial commitment, our planned commitment to NATO.

I think it is necessary, Mr. President. Is it not fair to ask, then, that if we are making that kind of commitment while we are facing a decrease in many programs here at home, have the worst deficit we have ever seen, have a skyrocketing national debt—all that we are asking, I remind my colleagues, is that the NATO countries live up to the commitment that they made as modest as that might be.

I simply say, Mr. President, if we do not begin to do something about this now, rather than commissioning another study, as has been suggested as a substitute, then some of the younger Members of this body, including two who have been on the floor—my friend, Senator BINGAMAN——

Mr. TOWER. Will the Senator yield for clarification? What the Senator refers to is also in the Nunn amendment. He talks about a study. That language is in the Nunn amendment.

Mr. EXON. I do not yield, Mr. President.

Mr. TOWER. I just want——

Mr. EXON. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Including my friend, Senator BINGAMAN, who is in the 40-year-old category, and my friend, Senator DODD, who just spoke, in that same category—I suggest when they are 80 years old, they will be here on the floor of the U.S. Senate, trying to get through something that Mike Mansfield and others tried to alert this Nation to a long time ago.

I say, Mr. President, I think this is a totally reasonable proposal. It is not shape up or ship out. It is only telling our allies that we expect them to make the same commitment in dollars, to make the same commitment in manpower that we do on a cooperative basis.

With that, Mr. President, I am pleased to yield to my friend from Texas for any question or any statement he would like to make.

Mr. TOWER. I was just going to ask the Senator if he was aware that the study he refers to not needing, is in the Nunn amendment? In fact, the substitute is, for the most part, the Nunn language truncated to remove the mandated phase 2 withdrawal.

Mr. EXON. Is it not true, though, that the main thrust of the amendment offered by the Senator from Maine is to do away with the main thrust of the amendment offered by the Senator from Georgia?

Mr. TOWER. That is correct.

Mr. BIDEN. Will the Senator yield?

Mr. EXON. Yes, I think if that is clear, we should know that it is a substitute, a study only. I make my point once again: Let us not study. Let us get up and take a stand. I think this is the time indeed to make a stand and not conduct another study.

Mr. BIDEN addressed the Chair.

Mr. EXON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I enter this debate with some reluctance because I would have strongly preferred that this issue not be put to a vote. While I believe that it would be unfortunate if the Nunn amendment were approved, I believe it would be even worse if the Nunn amendment were voted on and defeated. I therefore believe that the best outcome at this point lies in the substitute proposed by the Senator from Maine. Let me try to put a couple of things in focus as I see it.

Being much older than the Senator from Nebraska, I was here with Senator Mansfield when those debates took place on troop withdrawals. There was one important distinguishing feature between the effort of the former Senator from Montana, our present Ambassador to Japan, and the effort by the Senator from Georgia. That is that the former Senator from Montana [Mr. Mansfield] had absolutely no punitive edge to his initiative. He simply felt the time had come for America to come home.

It had nothing to do with whether or not Europe was meeting its commitment or not meeting its commitment. It had nothing to do with whether or not Europe promised 2 percent or 10 percent, were good guys or bad guys. Senator Mansfield just decided, and he used to say it because I used to cosponsor his amendments, "The war is over now. It has been 30 years; it is time to come home."

This amendment has a punitive aspect to it. What worries me about it is not that it is substantively incorrect if you look at it from a military perspective, but that it is potentially political dynamite. This is more a political question than it is a military question at this point.

We are asking the Europeans just to live up to what we do. You know, there is a funny question asked in Europe, which is why do we not live up to what they do? Let me give a little case in point: the MX missile.

I was for the MX missile when two conditions prevailed: One was that it was going to be an multiple aim point system and that in fact we would make it survivable; and two was it would be deployed within the context of an arms control agreement. That is when we first came up with MX, if we all remember.

I cannot tell the Senator from Nebraska much about the MX. He knows more about it than I do. He is on the committee and he knows the historical perspective. The MX was thought of in the context of SALT and a survivable mode. It was not a bargaining chip.

The Europeans said, in the same period of time, "All right; old Helmut Schmidt, Chancellor of Germany, and the U.S. Congress and the U.S. Senate and the U.S. President, are saying we have to modernize our nuclear weapons systems in Europe. Well, that is going to be hard for us politically to do," they said, "But we will sign on to a decision in December 1979 that said we, the Europeans, will in fact deploy intermediate nuclear weaponry that can strike Moscow in the form of Pershing II's and cruise missiles. It may cause a little problem, but the Americans are going forward with the MX. They are meeting their part of the commitment on the strategic side."

Then what happened? I do not denigrate my colleagues that I am about to refer to, but I just point out what appears to be a political fact of life. Our very prodefense, very independently rugged, very pronuclear Republican Senators from the West found out that the folks out West did not like that old MX rolling around in multiple-aim points. They had an area bigger than all of Europe to do it in, with a population probably one one-hundredth of Europe's. But they said, "Now, wait a minute. Those cowboys out on the range"—and I do not say that disparagingly, I am serious. "The cowboys out on the range don't want those MX missiles out there on our range; it's going to ruin our environment."

Then we heard, "My God, we don't want to put those missiles on highways. Put them on highways and the American public will go crazy. It will be survivable if we do either of those things, but they will go nuts."

Mr. CHILES. Will the Senator yield?

Mr. BIDEN. Not yet, Mr. President.

So the President of the United States goes on the air and says—right after he has held a press conference in which he says be believes we can limit a nuclear war to Europe, which gave a real warm feeling to the hearts and stomachs of all Europeans—he said, "We are going to scrap that multiple aim point system. By the way, we are going to lift the grain embargo at the same time, but that is irrelevant."

The Europeans began saying, "Wait a minute. We have 60 million folks in Germany;" 60 million in a state not even as big as one of the States that would be part of the multiple aim point system, with a population, if I am not mistaken, of under 1 million. Maybe I am wrong, maybe it is 2 million. But one-thirtieth or one-sixtieth the population. And guess what? We yielded to the political pressure.

But we stood here and we said, we strong, prodefense types like the Senator from Delaware and the Senator from Nebraska, and said, "You Europeans, don't back off your commitment to deploy, even though, by the way, you are going to roll those Pershing missiles on highways, even though you are going to put them in neighborhoods. Be strong; be stout of heart; go to it." Well, they did; 1 million people—not 100,000, not 200,000, 1 million people—marched the streets of Bonn, Germany, in a country of 60 million people, and said, "We don't want those missiles." The German Government said, "You are getting them." They said, "What about the Americans? What are they doing?" They said, "They are going to supply them to us."

Let me ask the rhetorical question of my colleagues in this body: would you rather go home with your constituency and pay for the missiles or put the missiles in your back yard? What choice do you want as a politician? I give you that choice. Do you want to vote to pay for the missiles or do you want to put the missiles in Omaha? Do you want to vote to pay for the missiles or do you want to put the mobile aim point system in the greater Las Vegas, NV, area? Do you want to pay for the system or do you want to put it in Utah? I just wonder.

Now, maybe you would rather have it in your backyard. The Senator from Wyoming is a courageous man. He says he wants it in his backyard. Both of them said it. I compliment them for their courage. But most of us around here would probably say, "My taxpayers would rather pay for having those missiles that can hit the Soviet Union in Germany than have the Germans pay," if that were the option, which it is not, "to have them in Delaware."

Mr. NUNN. Would the Senator yield?

Mr. BIDEN. No, not yet. So when we talk about what the Europeans do not do, I respectfully suggest that the Senator from Georgia is absolutely correct. They do not spend enough money. I respectfully suggest they do not meet their commitment on conventional force capability. I respectfully suggest they are unwilling to do what we have done and cut social programs to pay for that. But I suggest, as we self-righteously point out what those bad old NATO folks are not doing, that we do what my father always said; "Walk a mile in their shoes," because some might argue that because of our incredibly high interest rates, due to our unwillingness and lack of political gumption to deal with our deficit, they have a serious economic problem in Europe. That is not the only reason they have a problem. But I do not think any would argue that our deficit does not aggravate their problem, our interest rates do not aggravate their problem.

Now, we have an economic recovery going on while the Europeans are just crawling out from under. It is the highest unemployment since World War II. And what have we all learned from our European history? Our European history tells us the time that you have the Hitlers of Europe is the time that you have social unrest and the time you have social unrest more than any other time in Europe is when there is unemployment. Their unemployment rate exceeds ours.

Now, notwithstanding that, we have a couple of conservative governments who have gone out on a limb, Helmut

Kohl in Germany, the Iron Butterfly in Great Britain, and a few others. And what did they do? They said in effect, "My public opinion be damned; we are going forward with deployment. We made a commitment."

Now, do we expect them now, at this moment, when they have in fact followed through on their commitment and when their economy is still on the balls of its heels and when they have unemployment to in addition go to the Bundestag and say, "By the way, we are going to increase spending another 1½ percent on defense this year." How many of you think the government of Helmut Kohl would stand much longer beyond that vote of confidence? How many of you think that Prime Minister Thatcher—or let us just take it to the low countries, folks. What shot do you think you have in the low countries?

Did you all happen to notice the elections in Italy? Did any of your staffs put that together for you? There was an election in Italy. The Communists made tremendous gains. So far Italy has been good on deployment. Now, are you going to go into that legislature where the Communists have just made gains, where they have economic chaos, where they are presently in the process of meeting the deployment commitment, and say, "By the way, as prime minister, my first official act this week is going to be to increase defense spending." Now, I ask the question rhetorically, how many of you would rather have the Government of Germany stand, the Government of Great Britain stand, and no further chaos in Italy and no defense increase for the next year and how many of you want to take a chance that you will force the requirement of bringing to the people of Germany, Italy, Great Britain, and so forth, while deployment is going on, an increase in the defense budget?

Let me ask it in another way. What do you think our friends on the left, the greenies in Germany, the churches in the low countries, the Labor Party in Great Britain, the Communists in Italy will say if in fact we pass an amendment that allows triggering of a reduction of up to 90,000 troops from Europe, almost one-third our entire commitment?

Now, what do you think the mind set is going to be at the same time we are beating them up and about the head——

Mr. CHILES. Will the Senator yield?

Mr. BIDEN. No; I will in a moment.

Mr. CHILES. I thought the Senator asked a question.

Mr. BIDEN. I said rhetorical. The Senator knows what rhetorical means. It means I do not expect an answer.

Mr. CHILES. I missed the word "rhetorical."

Mr. BIDEN. The fact of the matter is that while we are beating them up and about the head to deploy, at that same moment we are going to say, "By the way, we are going to withdraw." Now, how much hay do you think the opposition can make of that?

The concern I have is the timing. Senator ROTH of Delaware and Senator NUNN of Georgia are dead right on the merits, the military equation. The Europeans just do not do it. But I want to tell you, you give me the choice of moving forward with our current progress or creating what I think could be a conflict on this, and it will take modernization of those nuclear weapons.

I find it hard to make the case to the Europeans that "you guys are deploying nuclear weapons in your back yard and we scrapped an MX system that was survivable because of political pressure."

I yield for a question to the Senator from Florida.

Mr CHILES. I would just as soon have the floor now.

Mr BIDEN. I do not want to yield the floor.

Mr. EXON. I have a question. How long does the Senator from Delaware intend to keep the floor?

Mr. BIDEN. Perhaps an hour or so.

Mr. EXON. I thank the Senator very much. I anticipate that.

Mr. DECONCINI. Mr. President, will the Senator yield for a question?

Mr. BIDEN. I yield.

Mr. DECONCINI. The Senator from Arizona is always educated by the remarks of the Senator from Delaware. I mean that sincerely. That is true whether I happen to be in Arizona or on the Senate floor or anywhere else.

I wonder what objection the Senator from Delaware has to proceeding to a vote on the Cohen substitute, to see if we can resolve this.

Mr. BIDEN. I am persuaded. I yield the floor. I am ready to vote.

Mr. CHILES. Mr. President, there used to be a football coach by the name of Herman Hickman. He was an outstanding football coach. He was also a great storyteller, and he was often called on to give after-dinner speeches. Coach Hickman weighed about 300 pounds, and he loved to eat.

I am reminded of an occasion when Coach Hickman came to speak to a group of ladies in Florida. He had enjoyed his dinner, and he was introduced and stood up to speak. As he did so, the buttons popped on his britches and he lost his pants. They fell down and he had to bring them back up again. When he did that, the ladies did not know exactly what to do.

Herman said: "Back where I come from, we always have the feeling that the more you get to see of each other, the more you understand and appreciate each other."

I think that what the Senator from Georgia has here is an amendment that allows our European friends to see a little of us.

I take issue with the fact that we are doing a great favor for our European allies if we recognize that this is a tough time for them and we should not say anything about the fact that they have not met their commitments.

I really think that the reason for this amendment is not to punish the Europeans. I do not want to do that. I do not think the Senator from Georgia does. I think we want to save them. We want them to be able to live. That is what we are talking about here. We are talking about saving them.

I think of the great European leader of this century, the great world leader of this century, Winston Churchill. I think of the number of days and nights he stood on the floor of the House of Commons, between World War I and World War II, the speeches he made, saying, "You have to get ready. You have to be prepared." I think of everything he did to try to get Britain to start doing something to rearm.

He talked about the readiness, or the absence of readiness, of their air force; for a long time they would not allow him to get reports. He talked about the navy, and they would not allow him to get reports.

Time after time, he was the only one who spoke on that. They booed and hissed him and said he should not be saying those things. But he stood there, time after time, and they really did not listen. They really did not prepare. They did not arm. They sought to appease.

We saw Chamberlain go to meet Hitler and give away Czechoslovakia: "The last thing we will ask for."

Then we saw the war, after that. Then what did Churchill do? He started trying to get the United States to prepare. He worked with Roosevelt over much of the time, trying to alert us as to what we need to do.

What would Churchill say in a debate now in the House of Commons?

The Senator from Connecticut has talked about all these Europeans having parliamentary bodies. What are those parliamentary bodies going to say if the Nunn amendment is agreed to? "Here are these old Americans telling us that if we don't provide 3 percent, they are going to withdraw their troops."

Think of the consternation that is going to cause. Think of the debate that is going to go on in those parliamentary bodies when they see that the Americans are going to withdraw troops unless they increase by 20 percent the gap of conventional munitions toward the goal of a 30-day supply.

Do you know what I think? I do not think that a lot of members of those parliaments and a lot of people in those governments know that they have 9 or 10 days' supply.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. CHILES. I yield. I have not even been asked a rhetorical question.

Mr. JOHNSTON. The Senator knows where the 3 percent came from, does he not? Is not the 3 percent the goal they imposed upon themselves, by mutual agreement with us?

Mr. CHILES. The Senator from Louisiana is correct.

My understanding is that it was about 1978. It was before Europe was in this great recession. They did not meet it then. They did not meet it in 1978. They did not meet it in 1979. They did not meet it in 1980. They have not been meeting it. But now it is tough times, so do not ask them to meet it.

Mr. JOHNSTON. The Senator has heard this debate. We heard the Senator from Delaware and the Senator from Texas: My goodness, the sky is going to fall if we make the Europeans even try to make their self-imposed goal of 3 percent. The Government of Italy is going to fall. Helmut Kohl is going to be severely embarrassed in Germany.

Do not those people in those countries know that this is their own figure of 3 percent, that in good times and in bad times they have not met their goal, and that we have far exceeded that goal in good times and bad?

Mr. CHILES. I hope they know that. But what I do not think they know in some of those parliaments—and certainly some of the people—I do not think they know that they have 9 or 10 days' supply of ammunition. I do not think they know that.

I listened, also, and tried to ask a question about this—that we should not say that because we do it, you have to do it, because we have always done it when they did not do it.

I thought we were talking about an agreement. I thought we were talking about a contract. The way I studied contracts, contracts have to be a meeting of the minds. There has to be reliance on the contract in order for it to be valid. We have relied and we have performed. There has to be performance. If we have relied and we have performed—actually, out performed our 4 percent—are we not entitled, under our contract, to ask them to perform?

Mr. JOHNSTON. If the Senator is asking a question, and not a rhetorical question——

Mr. CHILES. Not a rhetorical question.

Mr. JOHNSTON. I say, yes, we are entitled to expect that. They know in good faith that is what they have done for themselves.

I ask the Senator this question: What would you do if you were a member of the British Parliament, or the Italian Parliament, or any of these parliamentary bodies, or any of the governments in Europe, and every time you would reduce your share of the budget, the United States, good old Uncle Sugar, would increase its share and take up the slack? Would you not think that is a pretty good deal?

Mr. CHILES. I would think that was a great deal, and I would always have some reason why this is not the best time to ask me to perform, to handle my contract.

Mr. JOHNSTON. Kind of like a pay raise in Congress?

Mr. CHILES. Absolutely.

Also, they talk about what they are doing on the Pershing missiles. Why are they really doing it? Because we called on them to perform another agreement. That was an agreement. They made it. They asked for the Pershing missiles, to start with. They said, "You have to do something." We finally insisted that they perform, and they did perform. They did not do it until we insisted.

Before they did it, they said, "How about delaying it a year?" They asked all those questions. It was only when we finally said "no" that we got an agreement here. We said, "We expect you to honor it." They did honor it, and I am glad. I think that is the happiest thing that has happened. But I do not think that because they honored that, we should turn them loose on every other agreement.

Mr. JOHNSTON. Let us suppose that this amendment is agreed to, and then our diplomats go to Europe and plead with them in NATO to do what they promised the alliance they would do, which they mutually agreed with us they would do, and 1985 comes along and they have not done it, and 1986 comes along and they have not done it, and then this trigger date of 1987 comes along and they still have not done it. Can we not change our mind? Do we not have one of these authorization bills every year? Can we not say, "Gosh, the Europeans have done the best they could, and they still have a recession going on over there"? Can we not change our minds and not bring the 30,000 troops home, if we want to?

Mr. CHILES. Absolutely.

Mr. JOHNSTON. So really what this is, is a good—we are talking about a bargaining chip—this is the best bargaining chip I know of. Does the Senator not think this is the best way to force some action? All of our sweetness and light, all of our persuasion and rhetoric has not worked since 1978. Maybe this will work.

Mr. CHILES. I think that is right, but when people talk about this toppling governments and they talk about what is going to happen in these parliamentary bodies, when they start debating that "The United States is using this club on us and the United States is saying that if we do not keep the agreement, lo and behold, they are not going to keep the agreement," that is the club.

We are saying, "If you are not going to keep it, we are not going to keep it."

How could they do that? But I would like to hear that debate when they say that, "They really want us to increase by 20 percent our ammunition supply toward the 30 days we promised. Can you understand that they want us to go from 10 to 12 days all in one year?"

I would like to hear that debate. There must be a few conservatives in some of those parliamentary bodies. I would like to hear that debate, this, "Oh, my goodness, it will topple our government if we go from 10 to 20."

The other thing is that I wish to really discuss——

Mr. ROTH. Mr. President, will the Senator yield?

Mr. CHILES. Not now. I will in a minute.

I wish to make this one point and that is this: I have heard about the danger, rhetorically, of the Greens, the labor parties, and the church, and "What do you think these people are going to do if the United States says this?"

The fact of this is the grievance of those protest groups is very real. I have been in Germany. I have talked to the people over there. I have seen the marches.

What is the thrust of those parties? What is the thrust of that protest? The thrust of it is, as I understand it, "We do not want a nuclear confrontation. We are scared to death of a nuclear war, and we know that we will be in the middle. That is the thrust."

What is the Senator from Georgia and his amendment trying to do? Cause a nuclear confrontation or delay it, keep it from happening?

What happens when you run out of ammunition in 10 days and the Russian tanks are rolling and they are coming across the plains? You either crank out the nuclear deterrent—you either pull the nuclear trigger or you give up, one or the other.

The Greens are not dumb. The labor party is not dumb. The church parties are not dumb. They understand that.

And I cannot see them toppling a government that is going to prevent from happening the thing that they are afraid of.

I can see their understanding of this when we are talking about trying to beef up, trying to put some shelters for some planes that are going to come over there, trying to add to the ammunition supply for conventional warfare. Is that the kind of thing that is going to trigger protests across Europe?

I think the thing that would trigger protest is if they understand the nuclear trigger that is there today. I think that is the thing that we would have to worry about that would trigger protest.

I listened also to the rhetorical thing of do as we say do. We are not saying do as we do. We are saying we have an agreement that makes up the alliance. We have honored the agreement and we are honoring it.

The Senator from Montana in his old amendment did say let us just come home. We are not saying that. We are not saying that at all. We are saying we want to strengthen the alliance, and I think we have an opportunity to do it here. I think that we have to send this kind of medicine, this kind of message, and I do not think we are being good friends if we fail to do that. I do not think we are being good friends if we do not realize what Churchill stood for if we do not go in and just call this thing the way it is.

The Senator from Georgia said we do have that responsibility to our own boys who are going to go over there, that responsibility to those 10 divisions that we are going to send at the time that there is no ammunition. There is some responsibility here.

I know that there is a strong feeling in this country against the use of nuclear weapons. I know there is a strong feeling that says we should have a nuclear freeze.

It would seem to me those kind of feelings would be for making sure that we have the conventional force that we can handle this and try to do it without tripping that nuclear flare.

That, I think, is what this amendment does.

Mr. NUNN. Mr. President, will the Senator yield briefly?

Mr. CHILES. I am happy to yield.

Mr. NUNN. I thank the Senator from Florida because he, I think, has done a splendid job of explaining exactly what the purpose of this amendment is, and explaining why all those people in Europe who are bringing pressure on all our good friends over there should be the very ones to be in favor of this amendment, because it reduces the likelihood and the necessity in some scenarios of nuclear war in Europe. That is what it does.

Mr. CHILES. It certainly does.

Mr. NUNN. It is something that should be embraced by those who fear the GLCM and Pershing II missiles and fear the short-range battlefield missiles that will begin to pop off all over Europe if we do not have a conventional defense.

I think the Senator from Florida has done a splendid job of pointing that out. He is right. This amendment is fundamentally different from the Mansfield amendment.

The Senator from Delaware [Mr. BIDEN] is correct. It is a fundamental departure from the Mansfield amendment.

The Mansfield amendment was designed to get troops out of Europe and elsewhere. This amendment is designed to keep them in but keep them in in a way that makes sense, keep them in in a fashion that gives our young men and young women who are in Europe and those who will be rapid reinforcement troops a chance. It gives them a chance to survive when they land. It gives them a chance to survive in an environment that is not already permeated by nuclear weapons.

So it is a fundamental difference from the Mansfield amendment.

Mr. CHILES. The interesting thing, I say to my friend from Georgia, when we talk about whether we are trying to do a favor to our friends in Europe or not, we could cut part of that $52 billion that is talked about that we are prepared now to put up to increase our ammunition from 30 to 60 days. We could cut that and we would not hear a word. We would not hear a word over there. That would be the easy thing to do, to just say if they are not going to honor their commitments, we just will not put that up. We could say to ourselves we have 30 days and they have 10 for ammunition so we will just save that $52 billion. That would be the most dangerous thing we could do.

So the Senator from Georgia is not saying do that. He is saying that we should do that but we have to know that we have the time. It is the whole strategy we have. If we do not have that, why should we fool ourselves? How long will we stick our heads in the sand? How can we do that and say this is our battle plan?

I was shocked when the Senator from Georgia told me the numbers. I could not believe those kind of numbers. I could not believe that we would have to say that we have a credible defense there, say that we will have the time and go through the things we have gone through in this country toward mobilization, toward the fight we had even about registration so we would be able to do that. That is all moot. None of that means anything.

I do not know why we even talked about it [illegible] there is only 10 days.

I was so shocked. I do not really think that our friends in Europe understand this.

Mr. NUNN. I might say to the Senator from Florida that he is correct in terms of the thrust of his remarks. The exact number of days of supply differs with different types of ammunition. It varies.

Mr. CHILES. I understand.

Mr. NUNN. I think the best way to express it is we have our 30 days and more and we have twice the overall munition levels as our European allies. The Senator is exactly correct.

Mr. CHILES. Let us just say it this way. I do not want to use any figure that may be 1 day or 2 wrong or may be 5 days and it may be classified anyway. Let us say it this way: we have decided that 30 days is not enough to allow us to carry out the game plan of resupplying Europe, have we not?

Mr. NUNN. Correct.

Mr. CHILES. So we have said, based on that, that we are prepared to spend $52 billion.

Mr. NUNN. Correct.

Mr. CHILES. To add to our number. So it sure does not make sense that our allies have less than half the time that we have, or half the time.

Mr. NUNN. The Senator is correct. If I could make one other observation, the Senator from Delaware alluded to an effort to get Europeans to do as we do. We really are not asking them to do as we do. We are far beyond where we are asking them to go in this amendment. We are asking them to do as they say they will do.

Mr. CHILES. As they promised.

Mr. NUNN. As they promised over and over again. We have reached the stage of fragile allies, if one ally cannot say to the other one that we expect you to live up to your commitment without people coming in and saying, "You're going to disrupt the whole alliance; this is divisive; don't make us do what we promised."

Mr. CHILES. "Don't make us keep our word."

Mr. NUNN. "Don't make us keep our word. We would be shocked if you did that. Uncle 'Sucker' is supposed to just keep on pouring in the money, pour in the money, pour in the money. Don't make us do what we said we would do. That would be divisive. That would split the alliance."

In effect, when they say that, they are saying they have no intention—and the 5-year plan says that—they have no intention.

Mr. TOWER. Will the Senator yield for a question?

Mr. NUNN. I do not have the floor. If I can make one other observation, I will yield back the floor to the Senator from Florida.

The Senator from Delaware mentioned the MX and deployment. And I agree with everything he said about that. I think our basing mode has evolved into absolutely absurdity. The Senator is correct on that and there is no rebuttal. He will not get any from this Senator.

But on the INF deployments, if someone read the record, they might think that we were the ones that asked the Europeans to let us put Pershing II and ground-launched cruise missiles in Europe. I think it is important to recognize that this noble idea originated with Chancellor Schmidt and the Europeans. We are not over there begging them. We may have evolved that into the public perception, but it was their idea to have the

Pershing II's and the ground-launched cruise missiles.

As a matter of fact, there was a pretty vigorous debate, and some high ranking Americans, at the time the original decision was made, wanted to put them offshore, did not want to put them on European soil. The argument was made by our European friends, "Don't do that, because that won't have the credibility and it might decouple; we might not be coupled to America's strategic nuclear force." So let us put that in the proper order. They were the ones that asked for it. We paid for it. I mean, they have paid for it politically, I will acknowledge that.

But it has been my view, and still is my view, if we had European allies and leaders in those countries that stood up and said, "Folks, the reason we are trying to improve our Pershing II nuclear position is because we are so weak conventionally and if we would all do more conventionally we would not have to do nearly as much in this nuclear area." Because it is my firm view that if the Soviets are convinced that we have the capability of fighting for a matter of weeks, in NATO, we will never have a war. We will never have a war. They do not want a 30- or 40-day battle in Europe. The Soviets cannot afford that. They are very fragile with their Eastern European allies. They have got to come across Poland. Their lines of communications are very, very fragile. They are worried about 25 to 30 percent of their whole military forces they have on the Chinese border. I would submit the last thing the Soviets want is a long war in Europe.

But, if they continue to get the message from the alliance that we do not have the staying power to fight beyond a few days without escalating to nuclear weapons—and that is exactly what our Supreme Allied Commander said; that is his description of our state of affairs—if they continue to get that impression, then, whether or not they want to fight, the perception is going to continue to grow in Europe that we do not have a chance. We really have got to become more and more neutral. So it is the neutralization of Europe that is at stake.

Some people have said that the Secretary of State has been quoted as saying—I have not seen it directly, so I am not trying to quote him directly—that this is a signal that would help the Russians; we are helping the Russians with this.

Well, you can only believe that if you believe the allies are going to continue for the next 5 years not to do what they said they would do. The assumption the Secretary of State makes there is that the allies are not going to live up to their commitments. That is the only way he can arrive at that conclusion. Because if the Soviets believe that the Europeans will do what they said they were going to do over and over again, there would not be any withdrawal of forces. There would not be any withdrawal.

So to argue that is to assume, as the Secretary of State must assume, that the allies never are going to live up to their commitments. We are just going to go on and on and on. If he assumes that, then somebody better come up here in the next defense bill and explain to the Budget Committee, which the Senator from Florida and the Senator from Delaware serve on, and the Appropriations Committee, which the Senator from Louisiana serves on, and the Armed Services Committee, which we serve on, and ask the simple question: Why are we going to spend $52 billion on NATO ammunition if your assumption was, when we were debating this amendment last June, that the allies were not going to live up to their commitment in the next 5 years? And 5 years from now we are going to have a withdrawal of American forces because we still have no munitions that are adequate, no 30-day supply, and we have no colocated bases that can house America's aircraft.

So that is the Secretary of State's assumption. Make no mistake about it. And that is the assumption of people who say that this is going to send a signal of comfort to the Soviets. They are assuming that our allies will continue to fail to meet their obligations and their own promises. That is a pretty sad state of affairs.

If this amendment fails, believe me, there will be a lot of hard questions asked about every penny in the military budget that relates to staying power in NATO. I am not saying we will pull out of NATO. I do not want anyone to mistake that. I am not saying we should. I am not saying we will not continue to live up to our commitments.

I am saying that there are absolutely absurd expenditures that we are spending billions of dollars on that make no sense if you accept the basis assumption that the Secretary of State must accept and also, I might say, that President Reagan must accept.

Mr. CHILES. If the Senator from Georgia is asking that of me as a question——

Mr. NUNN. That was a question

Mr. CHILES. I would say yes.

Mr. ROTH. Mr. President, I wish to congratulate the distinguished Senator from Florida for his very perceptive statement.

I would like to make a couple of observations. First of all, there has been many predictions that this legislation, if adopted, is going to backfire; that is, it is going to have the opposite effect from what is intended; that there are going to be angry people in Europe who are going to do the opposite of what we intend.

No one can deny that there will be those who will not like this amendment. But I would like to point out that just this week, in a conversation with one European parliamentarian, he asked me to send the material to him to help him argue the case for increased spending on defense in the Bundestag. He said to me that it is about time that the United States speaks up and supports those that are trying to help them in Europe.

I would also like to make one other observation. It has been said that we should not speak frankly; this is not the time for this country or this Congress to tell Europe what we think.

Let me just point out the fact is that the Europeans have been very frank with us. And for us not to reply I think would be a serious mistake.

It has been said that there is evidence that the Europeans are moving ahead. But where is that evidence? I would submit that the opposite evidence is available.

For example, the NATO Assembly, in their reports, has said very precisely that there is no prospect for additional real growth in most European defense budgets over the next 5 years, even among defense-minded conservative governments, such as in the United Kingdom and the Federal Republic of Germany.

If we do not respond to that statement, then we are acquiescing to Europe doing less. I think that would be a mistake. And I must say that I think it is important that the message, the clear signal be given to Western Europe, that we expect them to keep their commitment. I again congratulate the distinguished Senator from Florida for his statement.

Mr. CHILES. I thank the Senator from Delaware.

I yield to my good friend, the junior Senator from Delaware.

Mr. BIDEN. I would like to ask the Senator from Florida two questions. I point out that there is not anything that the Senator from Delaware, Senator ROTH, has just said, nor much of what the Senator from Florida has said that I disagree with. In fact, the only message worse than sending the message that is being asked to be sent here is to vote on it and not send a message.

So I am in a difficult spot. I will end up voting this because the only thing worse than this passing is its failure. My concern should not have been brought up in the first place. My question is this: The Senator from Florida makes a very, very compelling case about why the Greens and the other parties that I mentioned would in fact rather see this than not see it because it will move Europe away from reliance on nuclear and more to conventional. That makes absolute sense.

On the merits, the Senator is correct. On the merits, it is an amendment on which the Senator from Georgia is absolutely correct, and my colleague from Delaware is absolutely correct. But that is not how human nature works.

My question is this: Does the Senator from Florida believe that the freeze movement in the United States, which is kids' play compared to the peace movement in Europe, if given the option of cutting our nuclear program, if in fact we would significantly increase our conventional capability—that those freeze people would be for the increase in conventional forces?

Mr. CHILES. I think they would be for the cutting of our nuclear forces.

Mr. BIDEN. How about the second part?

Mr. CHILES. I think if they thought that they could get the cut of the nuclear forces to have the money go the other way, yes, I think they would be for it very quickly.

Mr. BIDEN. I have a second question. I come to a different conclusion.

My second question—and I will not thrust this upon the Senator's good graces, which are particularly good in light of the fact I would not let him ask me questions—is the Senator aware that of the origins of the 3-percent decision—the Senator from Georgia is right about the origins of the TNF decision. I might point out parenthetically that I mentioned it was Helmut Kohl in the statement that I made about why we got to the point of deployment. But between the years 1971 and 1982, is the Senator aware that France increased its military budget in real terms 42 percent; Germany, 27 percent; the United Kingdom, 12 percent; Belgium, 46; Holland, 16; Luxembourg, 89?

During this period of time we in the United States were not meeting our commitment, and the reason for the 3 percent, I would ask, was in order to put pressure on the United States to increase its spending? It is a distinction I will argue with a difference. It does not say there has not been that agreement. There has. The Senator is right. There was agreement. Does he agree with my interpretation as how it came about?

Mr. CHILES. I do not disagree with the Senator's interpretation, but we did rely, and we did meet our agreement. We have more than met it, and considerably more than met it, but agreements are not what really concerns me. What really concerns me, the Senator from Florida, is to me this shocking information. I say shocking, and I say when it hit me, it hit me like a ton of bricks to find out after all of the debate we went through on whether we should have registration or not, the reason we should have registration was to speed up the time, cut the number of days because if we had a battle in Europe, we were going to have to resupply, that the whole thing—it has always been told to us that the Russians have the tremendous advantage in the first 2 weeks. We have to survive over that period of time. We have to then hold for the next 10 days after that. At the end of 30 days, it starts. If we are still alive, still there, still have our beachhead, and we begin to resupply, and it starts to turn in our direction. I think all of us have felt that is our conventional defense. That is our structure.

To find out that we literally will not have the time to do that, that that is true today, just frightens me to death, and shocks me to death. I would say to any of our European friends, I think it has to frighten them to death.

If they are strong enough to decide they would take the Pershings in the face of this protest—and I think that was a noble thing to do, it was a strong protest, but if they were strong enough to do that, surely if they really understand this, if they start thinking about it on this ammunition, and the fact that we have to have some place to put our planes, all of these things to have a conventional deterrent—I think they will go along with it.

Mr. BIDEN. If the Senator will yield just one more moment, I say to my colleague I think every point he makes is absolutely accurate. My concern is to make clear the timing of this. I would much rather than this see us doing this in the beginning of next year, after the deployment is well underway in three of the five countries we are talking about, and giving them an opportunity to then make the next move or face the consequences. But given the option that I have—which will be to vote against this now that it is up here—I am going to have to vote for it because I think the Senator is right. An even worse message is that the U.S. Congress, once having brought this to the point of debate, is not willing to ask them to do what they should. But I still say to you that I think it is very bad.

Mr. CHILES. I think I will sit down while I am ahead.

Mr. BIDEN. I am going to stop, too.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, the Senator from Georgia has asked a hard question but he has asked it in the right way. He has not posed the same question that Senator Mansfield asked so often—"How many troops shall we bring home from Europe?" The Senator from Georgia asks, as I hear him—"How many troops should we keep in Europe?" There is a big difference in philosophy and in tone between these questions. The question posed by Senator Mansfield may have been appropriate when he asked it, but it would be inappropriate in the changed climate of 1984. Today such a question would confuse our allies and send the wrong signal to the rest of the world. But when the Senator from Georgia asks how many troops we should maintain in Europe, he sends no such signal. At least, I do not think he intends to send such a signal. On the contrary, he addresses himself to housekeeping issues within the Atlantic community; in other words, to who is bearing the burden within the family.

There is no single indicator which can serve as an adequate basis for the assessment of equitable burden sharing. The NATO allies make important contributions to defense that are not easily quantified in the way defense spending is usually measured. Contributions, such as allied host nation support, West German support for Berlin, the earmarking civilian assets for defense, resource contributions to less-developed countries—all must be considered in rounding out the total expenditure picture. The data on allied defense efforts must be viewed in historical perspective as well. In short, burden sharing is not a simple comparison of expenditures but must somehow be translated into an equitable measure of sacrifice relative to a nation's capability.

On the basis of historical trends, non-U.S.-NATO allies have gradually taken on more of the common burden. For example, between 1971 and 1981, real U.S. defense spending declined by about 7 percent. On the other hand, NATO defense spending excluding the United States and Japan increased by 27 percent over the same 10-year period. For that same period, U.S. active duty military and civilian defence-related manpower declined by almost 20 percent, while that of the NATO allies declined by only 3.5 percent. So, Mr. President, we see that these burden-sharing comparisons must be made not in a single year but over an extended period of time.

The United States is now engaged in an effort to redress some of the deficiencies that occurred during the years when defense resources were steadily declining. Thus, the burden sharing pendulum is only now beginning to swing in the opposite direction, at least for some indicators. For example, U.S. increases in real defense spending have exceeded the increases of the non-U.S.-NATO allies in recent years.

Over the years several programs have been developed within NATO for the cooperative development and production of NATO weapons. Among these are coproduction, dual production, and the families of weapons concept. These programs all involve the sharing of development and production costs and have produced large savings in research and development costs to countries. Such programs are one on the primary avenues of technology transfers among the nations of the alliance. We should encourage weapons programs operating in both directions. For example, the United States has bought the MAG-58 machinegun and the 120-millimeter tank gun from Europe and European manufacturers have fabricated the F-16 airframe and components.

In defense equipment trade, the balance is clearly titled in the U.S. favor. In dollar terms we sell approximately six times more equipment to Europe than we buy from them.

Identical amounts of dollars will not necessarily translate into identical amounts of military capability, particularly since some allied countries get their manpower at a lower cost. The defense effort of countries which rely mostly on conscripts receiving pay below that which would correspond to the value of their services to the economy is therefore somewhat understated in relation to that of other countries with volunteer forces—for example, West Germany, the Netherlands, Norway, and Denmark.

In addition to military assistance, which is included in NATO's definition of defense expenditures, most industrialized NATO nations extend various types of developmental assistance to developing countries in excess of similar U.S. assistance. In fact, since 1979, every industrialized member of NATO except Italy has spent a larger percentage of their GDP on official developmental assistance than the United States. In the cases of Denmark, France, the Netherlands, and Norway, the percentage is regularly three to five times that of the United States.

West Germany makes substantial outlays for the defense of West Berlin which include the support of three allied garrisons—United States, United Kingdom, and France. Due to several wartime and postwar agreements, West Berlin expenditures—even those for garrison maintenance cannot be included as defense expenditures in NATO tallies. Yet it is alliance doctrine that the defense of West Berlin is a NATO commitment. If the funds West Germany spends in West Berlin—over $7 billion per year—were included in her NATO total, her officially documented alliance burden sharing level would rise by 25 percent.

Some NATO nations, especially West Germany, incur additional expenditures by hardening or building redundancy into civil projects such as roads, pipelines, and civilian communication systems. Much of this expenditure, as well as real estate provided is not reported under the NATO definition of defense expenditure. In addition, the value of civilian assets such as trucks that are planned for military use in time of war, cannot be counted. Again, this is particularly true for Germany, which has a significant program for registration of civilian assets that would be used by the Bundeswehr and allied forces in wartime.

After 2 years of negotiations, the Germany/United States Host Nation Support Agreement was signed in April 1982. Under the terms of agreement, Germany will provide approximately 93,000 reservists in support of U.S. forward-deployed and reinforcing troops in Europe during crisis or war. This support includes security of U.S. Air Force facilities, support of USAF elements at colocated bases, airfield damage repair, U.S. security of U.S. Army facilities, transport, transshipment and resupply services, and more. In addition, Germany will provide crucial support to U.S. forces from the civilian sector.

The costs of the programs mentioned are shared equitably by the United States and Germany. Other host nation support initiatives have been signed with Belgium, the Netherlands, and Luxembourg.

I fear that congressional efforts to encourage increased contributions by our NATO allies could, in the current international climate, be counterproductive. For example, there is no evidence to indicate that U.S. troop withdrawals would spur our allies to do more. On the contrary, to many Europeans, a unilateral withdrawal could convey the impression that the United States no longer considers the Warsaw Pact a threat. U.S. admonitions to the allies to do more would be met with considerable skepticism. For other Europeans, a unilateral U.S. withdrawal would lead to the conclusion that a successful forward defense of Europe is not achievable, perhaps increasing the likelihood that accommodation should be sought with the East bloc.

So, Mr. President, I am constrained to oppose the amendment offered by my friend from Georgia. It is not so much that I disagree with the sentiment expressed in his amendment as that the formula proposed will serve only to antagonize our NATO allies. It is appropriate to air the concerns contained in the Senator's amendment and to do so regularly and candidly. This has been done ever since I became a Member of the Senate. And I applaud such discussion. In time and after further consultation here at home and with other NATO countries it may even be proper to establish conditions such as those proposed by the Senator from Georgia. But today is not the proper time.

Mr. NUNN. Mr. President, will the Senator yield for a brief observation?

Mr. MATHIAS. I will yield for a question.

Mr. NUNN. I do not have a question.

Mr. MATHIAS. Make it a question.

Mr. NUNN. I thank the Senator for his remarks, and I thank him for his leadership. He is an outstanding leader in the Congress.

I would ask the Senator from Maryland if that, indeed, was in the form of a question?

Mr. MATHIAS. It sounded like a question to me and, indeed, a very good question.

Mr. President, I yield to the Senator from Illinois for a question.

Mr. PERCY. The Senator from Illinois wishes to make a statement.

Mr. MATHIAS. Mr. President, I yield the floor.

SEVERAL SENATORS addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I rise in support of the Nunn-Roth amendment, which I have cosponsored, to strengthen the conventional defense of NATO.

Mr. President, one of the arguments against the amendment is that it has a punitive aspect to it—that we are seeking to punish our NATO allies for their burden-sharing failures.

The amendment of the Senator from Georgia is not punitive. The present circumstances in Europe are punitive. It is the status quo which is punitive. The amendment seeks to change that status quo.

The status quo is punitive because our Armed Forces, if they have to go to Europe to fight a conventional conflict, would be severely jeopardized by the circumstances that exist there.

It is punitive because our Armed Forces would find themselves in a war that they would have difficulty prevailing in because of the failure of our European allies to carry their fair share of the burden of the common defense.

It is the status quo which is punitive, and which this amendment seeks to change, because the American taxpayer is punished when we carry far more than our fair share for the common defense.

It is the status quo which is punitive when the world is placed in jeopardy by NATO's excessive reliance on nuclear weapons, which results from our European allies not carrying out their commitments to help improve the alliance's conventional military capabilities.

Mr. President, this Nation is shouldering an unfair proportion of the cost of defending our common interests. To tell it straight and to put it in a nutshell, we are being taken advantage of by our allies, many of whom watch us spend more and more each year, while they spend less.

The issue is not whether we have a stake in the freedom of Western Europe, Japan, or other areas. We do. The question is whether they have at least as great a stake as we do in their own freedom, and whether the commitments they have made to share the costs of the defense of freedom should be kept.

Yes, we have a stake, certainly, in the defense of our allies, but surely we do not have a greater stake than they do, and surely we have an obligation to our own military forces to make sure that they have a chance to prevail in a conventional military test.

Without the Europeans carrying a fair share of the burden, our forces have much less of a chance.

The only response that we get from opponents of this amendment is that this is not the right time nor the right place for it. Mr. President, that is the same refrain that we have been hearing for years. "Use diplomacy," we have been told. "Use diplomacy, quiet diplomacy."

Let us take a look at what that has produced in the last few years in terms of burden sharing.

Despite their 1977 commitment to increase defense spending annually by 3 percent after excluding inflation, our NATO allies had an average 2.8-percent increase in real growth in their defense budgets in 1981. In 1982, that average went down to 2.3 percent real growth. In 1983, it declined to about 2 percent real growth. In 1984, it is tentatively projected that the average real growth for non-United States-NATO nations will be only between 1.2 and 1.7 percent—the lowest average ever since the NATO heads of government endorsed the 3-percent commitment in 1978.

That is what our quiet diplomacy has produced over the last few years with our allies, a steady reduction in non-United States-NATO nation burden sharing.

To opponents of this amendment, I would ask, do you have any alternative ideas that have not already proven unsuccessful in getting our allies to keep their commitments to us and to each other? Do you have any new ideas, other than "quiet diplomacy," to get our allies to carry out their commitment to increase annually their defense budgets by 3 percent after inflation?

The sorry record of broken commitments by many of our NATO allies and Japan is outlined starkly and in detail in the Defense Department's report on allied contributions to the common defense. Known as the burden-sharing report, this document is required annually from the Defense Department by an amendment which I offered to each of the last four defense authorization acts. Each year this report demonstrates that many of our allies, and NATO overall, except for the United States, continue to fall far short of meeting their formal 3 percent commitments to maintain and improve our mutual security.

The most notable laggards appear to be the nations with the strongest economies, such as Japan, West Germany, Denmark, the Netherlands, and Norway. The latest version of this report highlights this irony.

It is a sad state of affairs for our mutual security, as well as for the American taxpayers, when the United States and just a few of our NATO allies are keeping their commitments and thereby bearing an unfair share of the common defense burden.

This amendment is a necessary and prudent response to the continued reluctance of several of our allies to keep their promises regarding our mutual security. It is an appropriate method to encourage them to put their yen, their marks, their dollars, their kroner, and their guilders where their mutual commitments are.

I want to emphasize that the purpose of the amendment of our friend from Georgia is not to bring our troops home; it is to protect our troops in Europe. It is exactly the opposite of the Mansfield amendment. Our friend from Georgia does not seek to bring our troops home. He seeks to give them a chance on the European battlefields, should war come. He seeks to reduce the risk of nuclear annihilation.

Again, there is no punitive aspect to this amendment. This amendment seeks to change a state of affairs which punishes our fighting force, our taxpayers, and ultimately the world because it places excessive reliance on nuclear weapons to defend NATO.

The burden-sharing reports that I have mentioned from the Department of Defense focus their harshest critique of allied defense efforts on Japan, which clearly deserves such criticism.

An unclassified conclusion in the classified report comes the closest the American Government has ever come in recent years to accusing Japan of abusing its alliance relationship with the United States and taking unreasonable advantage of our Nation. Here is what the 1984 Pentagon report says about Japan's defense contributions:

> But there is no doubt that the Japanese remain content to limit their investment in defense to a level so low as to cause a disproportionate share of defense commitments to be borne by the rest of the free world. Specifically, Japan's failure to provide adequately for its own defense requires the U.S. to attempt to cover Japanese defensive requirements in addition to other Asian commitments. To attempt to perform all of these roles simultaneously stretches U.S. resources beyond reasonable limits.

Mr. PRESIDENT. The amendment now before us does not deal with Japan, but I hope the Japanese understand clearly its implications for them. Unless Japan substantially increases its burden-sharing performance—unless it begins to meet its willingly agreed-to commitments—I am confident Congress will consider similar legislative proposals affecting our Pacific troop levels.

Mr. President, I am wondering if I could ask my friend from Georgia in this regard whether or not, if this amendment is adopted—or, indeed even if it is not adopted—some appropriate action in future years should not be considered to try to seek to get the Japanese to do more and to assume a fairer share of the common-defense burdens.

Mr. NUNN. Mr. President, the Senator from Michigan, I think, has expressed it very well. I agree with him, the situation relates to the United States and Japanese alliance, which is vastly different in the military sense from the NATO alliance. It is different in concept, different in treaty obligation, it is different in threat, it is different in perception of the public in both countries. Yet there are some similarities that I think at some point need to be addressed because, as we try to protect NATO and live up to our commitments there, our commitments in Northeast Asia; as we try to keep our commitments in keeping the lines of supply open in the Pacific; as we try to expand our commitments in the Persian Gulf and basically protect more and more the Japanese and European interests there; as we expand our commitments in Central America and the Middle East, as all of those things occur, we simply have to have help. We have to have an awful lot of help.

No country in the world has as much potential for help, not just in the military sense but in the economic sense, in the foreign aid sense, and in the overall diplomatic sense, as Japan—as much potential that is not yet fulfilled.

There is a whole history of reasons relating to the present Japanese reluctance to increase their own share of the military burden. Some of those are valid, some are not, are purely spurious. They have to be addressed.

It is not an easy problem. We do not have a specific set of goals laid out as we do in NATO. But the Senator is correct: There is a burden there that has to be borne by Japan much more than they are presently doing, both in defense and in economic terms.

Mr. LEVIN. I thank my friend.

Mr. President, the 1984 burden-sharing report presents distressing evidence about the lagging defense burden sharing efforts of our European allies, based on several meaningful ways to measure military contributions.

Among other measures, the report examines the percent of gross domestic product (GDP) devoted to defense, defense spending per citizen, GDP per citizen, defense contributions compared to the ability to contribute, whether each NATO Nation is meeting the alliance commitment to increase military budgets annually by 3 percent after excluding the impact of inflation, and defense manpower.

By these standards, many of our allies are not bearing an equitable share of the defense burden and the United States is carrying a disproportionately heavy share of the load according to this latest Defense Department report. Specifically, the report shows that we carry more than our fair share, NATO less than its fair share, and Japan lags behind considerably.

On a per capita basis, the United States far exceeds all its allies in defense spending. We spent $819 per American citizen in 1982, the latest year for which information is available in the report; our nearest ally—financially—was the United Kingdom, which spent $467 per capita. Thus we spent almost twice as much as Great Britain on defense, and more than that compared to other allies.

Relatively rich NATO nations did poorly by this measurement: Norway—$412 per capita; West Germany—$363; the Netherlands—$312; Belgium—$293; Denmark—$272; and Canada—$257. Japan, with the worst performance of all among rich nations, spent only $93 per citizen in 1982.

On the two most important selected indicators comparing contribution with ability to contribute, the U.S. ranks second and fifth among all NATO nations and Japan. No economically well-off nation exceeds our performance in these categories, and Japan ranks last.

The report's assessment of our NATO allies' compliance with the 3-percent annual real growth commitment is bleak. It more than justifies this amendment requiring average future accomplishment of this objective as one of the requirements our European allies must meet to avoid future American troop withdrawals.

The report concludes:

> Many of our allies in NATO cite the fiscal stringencies imposed by the recent recession as precluding the levels of defense spending necessary to meet Alliance targets for readiness improvements and essential modernization. The classic dilemma of limited resources versus competing demands has forced allied Governments—like that of the United States—to make hard choices and set priorities. While this prioritization process has, in the case of the United States, produced constant dollar increases in defense spending over the last three fiscal years that exceeded the 3 percent target figure NATO adopted in 1977, real growth in defense spending for a number of our NATO allies has been below 3 percent, and a few allies have experienced negative growth.

It continues:

> Six of our allies (Canada, France, Italy, Luxembourg, Portugal and the UK) had increases in the region of 3 percent or more in 1980. (NATO interprets "in the region of 3 percent" as any increase of 2.8 percent or greater.) The list of allies reporting such increases in 1981 also includes six nations (Canada, France, Germany, Greece, Luxembourg, and The Netherlands), while Norway came close with an increase of 2.7 percent. Six nations (Canada, Italy, Luxembourg, Norway, Turkey and the UK) were also in the 3 percent region in 1982.
>
> Estimates reported to date for 1983 indicate that four countries (Canada, Luxembourg, Norway and the UK) achieved increases in the 3 percent region, while The Netherlands came close with estimated increases of 2.7 percent.

The United States is spending far more of its much larger gross domestic product on defense than any other NATO nation and Japan. In 1982, we spent 6.5 percent of our GDP on defense. Other economically strong allies spending far less were West Germany—3.4 percent; The Netherlands—3.2 percent; Norway—3 percent; Denmark—2.5 percent; and Canada—2.1 percent. By the NATO definition, Japan spends just 1 percent of its GDP on defense, although by the more popular method of measuring her military budget, she still spends less than 1 percent of her gross national product on defense.

NATO's poorest nations are spending relatively more of their national treasure for the common defense than are the much more prosperous countries. In 1982, the report shows that Greece spent 7 percent of its GDP on defense; Turkey—5.2 percent; the U.K.—5.1 percent; and Portugal—3.4 percent.

Finally, the unclassified highlights of this year's classified burden-sharing report, which—no doubt for diplomatic reasons—do not appear in the unclassifed version, provide further evidence of allied burden shirking. Let me read but a few unclassified excerpts:

> (1) In 1982 Belgium ranked . . . considerably below the overall NATO average of $501 in per capita defense spending.
>
> (2) . . . regardless which measure of burdensharing is used, in virtually every case Canada has the lowest performance of any NATO country except Luxembourg—also Japan is also lower.
>
> (3) Denmark spends only about 2.5 percent of its GDP on defense. This is, except for Canada and Luxembourg, the lowest in NATO.
>
> (4) For most burdensharing indicators, Germany falls in the group moderately below fully equitable shares.
>
> (5) Norway is one of the nations of the alliance that by most indicators falls slightly to moderately below standards.
>
> (6) Japan, the non-NATO country included in this report, ranks last or close to last on all of the ratio measures surveyed, and, thus, quite clearly appears to be contributing far less than its fair fare.

Mr. President, I ask unanimous consent that the remainder of the report is unclassified highlights and be printed in the Record.

There being no objection, the ordered unclassified highlights will be printed in the Record, as follows:

Highlights of Report on Allied Contributions to the Common Defense, March 1984—Unclassified Excerpts From Classified Report

BELGIUM

(U) In 1982 Belgium ranked 7th in per capita defense expenditures (293) about the same as the non-U.S. NATO average of 292 but considerably below the overall NATO average of 501.

CANADA

(U) Based on this record of defense spending, it should be no surprise that regardless which measure of burden sharing is used, in virtually every case Canada has the lowest performance of any NATO country except Luxembourg—although Japan is also lower.

(U) Per capita expenditure for defense has remained about $256 from 1971 to 1982 in constant 1982 prices. For 1982, this is the 10th highest in NATO and except for Luxembourg and Japan it is only higher than Portugal, Italy, and Turkey.

(U) Military personnel strength of the Canadian armed forces decreased from 86,900 in 1971 to 82,200 in 1982, a decline from 0.40 percent of the total population to 0.33 percent of the population. This means that Canada now has relatively the smallest armed forces in NATO. When civilian personnel are included, the total defense personnel declined from 127,800 in 1971 to 122,600 in 1982, or from 0.59 percent of the population to 0.50 percent of the population. In 1982, this was above only Luxembourg's 0.36 percent and Japan's 0.22 percent.

DENMARK

(U) Denmark spends only about 2.5 percent of its GDP on defense. This is, except for Canada and Luxembourg, the lowest in NATO. It should be noted, however, that the percent of GDP for defense remained relatively constant during the 1970s fluctuating between 2.4 percent and 2.2 percent. In spite of having the fourth highest per capita GDP in NATO, Denmark spent only $274 per capita in 1982 or about 8th highest.

(U) Military personnel in denmark accounted for about 0.59 percent of the population in 1982, or 12th among NATO countries. When total defense manpower (military and civilian) is taken into account, Denmark used 0.80 percent of the population for defense, or 12th among NATO countries and ahead of only Canada and Luxembourg.

FRANCE

(U) In earlier years the cost of maintaining such forces has meant that France had traditionally been in the vanguard of NATO allies with respect to real annual increases in its defense budget as well as the proportion of overall financial resources it was devoting to defense. More recently, however, French defense budgets have been influenced by the unfavorable domestic economic situation. Although still considered by the GOF to be a "priority" area, defense spending nonetheless has reflected recent austere overall GOF budgetary guidelines. Thus in 1982, the Mitterrand Administration's first defense budget nominally rose 17.63 percent in comparison with 1981, a figure which represented between 3 and 4 percent real growth. In contrast, the 1983 defense budget was projected to rise by 8.44 percent, which as it turns out, was less than the rate of overall price inflation, and therefore represented a real decline.

(U) The proposed 1984 French defense budget follows the Government's stated desire to limit public spending. Current plans call for a 11.0 percent rise over 1983, with a projected inflation rate close to 10 percent, which is virtually certain to go higher. Thus, 1984 again will be a zero (or more likely, negative) growth defense budget. The Mitterrand Administration has explained that it will be emphasizing equipment acquisition and making savings through more efficient management and cuts in operational and personnel costs. The 1984-88 military programs law authorized a reduction in manpower, with 45,000 to be cut by 1988. Official statements have stressed the desirability of a smaller, better equipped multipurpose force. To some extent, deleterious effects on readiness owning to the recent emphasis have been attenuated by voting special end-of-year supplementals to meet the shortfalls in operational costs.

FEDERAL REPUBLIC OF GERMANY (WEST GERMANY)

(U) For most burdensharing indicators, Germany falls in the group moderately below fully equitable shares.

ITALY

(U) The period of expanding defense spending appears to be at an end for a foreseeable future. The 1984 appropriations request forecasts an increase in defense appropriations of 14.5 percent over 1983. The Government's inflation target for 1984 is 10, and most government department budget increases were held to that level. The negative impact on Italy's struggling modernization effort is obvious.

LUXEMBOURG

(U) For the decade of the 1970s, the percent of Luxembourg's GDP going to defense expenditures increased from 0.8 in 1971 to about 1.3 in 1982. This is commendable but still substantially below the next lowest percentage in NATO. Luxembourg was also below Japan in the early years, but climbed above by 1975 and has remained there.

(U) In spite of having the 9th highest per capita GDP of any NATO country ($9,044), it ranked only 12th in per capita defense expenditure ($113) exceeding only Japan, Portugal and Turkey.

(U) From 1971 through 1982 the proportion of total population in the military remained about constant at about .33 percent, the lowest in NATO tied with Canada. When total defense personnel (civilian and military) are counted, the percent increases only slightly to 0.36 percent, still the lowest in NATO.

NORWAY

(U) Norway is one of the nations of the Alliance that by most indicators falls slightly to moderately below standards. Norway is a small country and has 0.6 percent of the population (14th largest) and 0.8 percent of the GDP (11th highest) of the countries in this report. On the other hand, Norway is the wealthiest nation of the Alliance ranking highest with a per capita GDP ($13,648) well above the U.S. ($13,057). Its share of the prosperity index is 1.01 percent.

PORTUGAL

(U) Most burdensharing indicators show Portugal doing its share and in some cases more. Portugal is a small country which is not as economically developed as most other NATO countries. It has only about 0.34 percent of the total GDP, which exceeds only Luxembourg. Portugal ranks 10th in population with 1.4 percent of the total. Portugal's per capita GDP ($2,365) exceeds only Turkey and is only 17 percent of the highest nation. Portugal is above only Luxembourg for the lowest share of the prosperity index.

SPAIN

(U) Spain's defense budget policy for the period 1984-1990 was set forth in a July 1982 law to modernize and maintain the armed forces. Under the terms of this law, total budget expenditures for the ministry of defense will achieve average annual increases of 2.5 percent in real terms, and expenditures for procurement, operations, and maintenance (i.e., armed forces modernization) will achieve average annual increases of 4.4 percent in real terms. Over the eight-year period from 1983-1990, therefore, total defense expenditures will amount to about $33 billion (in constant 1982 dollars) of which about $20 billion is earmarked for armed forces modernization. Of this $20 billion, 38 percent (or $7.6 billion) is earmarked for weapons procurement.

(U) Under the terms of this law, personnel expenditures are projected to remain constant in real terms so that all expenditure increases can be devoted to procurement and maintenance. Personnel expenditures are projected to drop from 51 percent of defense expenditures in 1982 to 38 percent in 1990. This reduction in personnel costs will be accomplished by cutting current manning levels by one-third, primarily in the Army. The reduction in personnel expenditures will make it possible to achieve an annual average real increase of 4.4 percent for armed forces modernization while, at the same time, holding total defense expenditures to around 2 percent of gross domestic product (GDP).

(U) Spain's defense budget has consistently increased as a percentage of gross domestic product over the past five years (from 1.9 percent of GDP in 1980 to 2.2 percent of GDP in 1984). Over this same time period, Spain's defense expenditures achieved an annual average real growth of 5.4 percent.

(U) Spain has not yet started to report defense data to NATO. Therefore, comparable information is not available to measure burdensharing.

UNITED KINGDOM

(U) By all important measures, Britain makes a significant contribution to our common defense. Though not among the Alliance's wealthiest members, the UK has long borne the heaviest defense burden, as a proportion of GDP, of our major European allies—about five percent per year over the last decade. Moreover, in 1983 defense spending was higher in both absolute terms and in per capita terms than any other major European ally.

(U) Most burdensharing measures, except for manpower indicators, show the UK carrying at least its share of the burden and sometimes more. The UK is one of the larger countries of NATO; it is the fifth most populous country covered by this report with 8 percent of the total population. It also has the fifth largest GDP with 6.9 percent of the total. In recent years, the UK has not been as prosperous as most other economically developed European countries and now has only the eleventh highest per capita GDP ($8,430), 61.8 percent of that of the highest country. This results in a prosperity index share of only 5.25 percent.

(U) We make continual efforts to eliminate or reduce disparities in defense efforts. The British level of effort, however, when measured in the simple terms of share of GDP going to defense, is at or beyond their fair share of the Alliance burden.

JAPAN

(U) Japan, the non-NATO country included in this report, ranks last or close to last on all of the ratio measures surveyed and, thus, quite clearly appears to be contributing far less than its fair share. This validates our major emphasis over the last several years on encouraging the Japanese to increase their defense spending capabilities.

(U) The problems in both equipment and sustainability which prevent Japan from effectively providing for its self-defense, which were pointed out in this report last year, have not been significantly dealt with in 1983, nor will the budget planned for 1984 adequately assist in what needs to be accomplished. Nonetheless, Japan did make significant progress during the year in clarifying its defense policy, which, if carried out, would provide for a realistic Japanese self-defense posture. This capability would not threaten Japan's Asian friends and trading partners, but it would realistically complement U.S. power deployed near Japan and elsewhere in the Western Pacific and Indian Oceans. This Japanese-American capability would not only make Japan's local security more assured but also would significantly complicate Soviet planning and thereby aid deterrence. Japanese defensive power in the Northwest Pacific complemented by U.S. offensive mobility would allow U.S. Forces to operate more flexibly throughout the Asian Pacific/Indian Ocean theater in the interests of the U.S., Japan and other Asian countries.

(U) In the evolution of defense policy, 1983 was an eventful year in Japan. Sparked by Prime Minister Nakasone, the Japanese Government made clearer its intention to carry out defense responsibilities realistically. In January, Japan exempted the U.S. alone from Japanese restrictions on the export of defense technology to foreign countries, acknowledging that the United States was a special case deserving separate treatment as a matter of reciprocity. Later the same month, the Prime Minister visited Washington and signaled Japan's need to protect itself by calling for the Japanese islands to become an invulnerable air defense barrier through which Soviet aircraft cannot penetrate. He also supported Japan's possessing the capability to provide defense of the straits between the Pacific Ocean and the Sea of Japan, and reaffirmed his predecessor's policy of defending the approximately 1000-mile sealanes southeast and southwest from central Japan in the directions of Guam and the Taiwan Strait, respectively.

(U) The recent economic performance of Japan compares favorably with that of most other industrialized countries, the United States being a significant exception in some respects. Japan's Economic Planning Agency projected in December of last year real GNP growth in Japanese Fiscal Year (JFY) 1983 (ending March 31, 1984) at 3.4 percent (after 3.3 percent real GNP growth in JFY 1982), consumer price inflation at 3.3 percent and trade and current account balances of $20 billion and $9 billion, respectively. Private forecasts published in October and November generally agree that the economy will achieve the EPA's forecast growth rate in JFY 1983, but project considerably larger trade and current account surpluses, usually exceeding $30 billion and $20 billion respectively, and even lower inflation. Early private forecasts of real GNP growth for JFY 1984 have ranged from 3.7 percent to 4.4 percent and usually have forecast still larger trade and current account surpluses, despite continuing limitations on a wide variety of Japanese exports either because of or to avoid frictions with Japan's trading partners.

(U) The prospect of long-term budgetary restraint insures that defense budgets, thus far excepted from the low-growth or no-growth ceilings placed on the spending of other ministries, will continue to come under pressure from the budget compilers of the Ministry of Finance and will continue to spark political controversy.

(U) Evaluation of Japanese performance toward achieving self-defense has been based on measuring the gap between targets given in official defense planning statements—particularly the Defense Agency's Mid-Term Defense Plan (MTDP)—and the funding of that plan provided in the annual defense budget. The MTDP is a five-year plan for equipment procurement and force augmentation, revised annually and completely rewritten every three years, and is the yardstick against which progress represented by annual budgets can be measured. The current MTDP was established in 1981 to cover the period 1983-87.

(U) Japanese progress toward completion of the 1983-87 MTDP is now at least a year behind schedule unless significant increases in the defense budget can be made in the remaining two years of the program. Major equipment purchases have fallen short of annual goals, and Japanese defense procurement plans have seriously neglected the stockpiling of ammunition for training and war reserve and the acquisition of spare parts. It is now highly unlikely that the JSDF will achieve its stated goal of having at least a 30-day supply of war reserve material by the end of the current MTDP. Shortfalls notwithstanding, various U.S. experts have questioned the adequacy of the current MTDP itself to provide Japan with the capability to accomplish the role and missions required of a credible defense.

Mr. LEVIN. Mr. President, such disappointing defense efforts by many of our NATO allies and Japan cannot continue without further jeopardizing our national security, and the amendment before us is an attempt to prevent this from happening.

In supporting such an amendment, I recognize that our allies in NATO and Japan contribute more than is commonly realized to our mutual defense, and I understand the methodological and philosophical difficulties attendant in trying to measure what constitutes a fair share for each of our allies.

But the present sacrifices being asked of the American people to support defense improvements for the common good must be shared more fully by our alliance partners. This more mutual sacrifice is in the long-term best interests of all our nations, as well as of the rest of the free world.

This amendment is not an unreasonable effort to impose new burdens on our NATO allies. Nothing in it requires the allies to do anything that they have not already willingly agreed to do in NATO agreements at the highest levels.

This amendment ties future U.S. troop strength in NATO to progress by the allies in improving conventional defense capabilities in the areas of sustainability, and sheltering, and supporting U.S. tactical combat aircraft sent to reinforce Europe if war breaks out.

We are calling on our allies to buy more ammunition and other munitions, so that they may reach NATO's 30-day sustainability goal within the next 5 years. We are calling on them to increase their contributions to NATO's commonly funded facilities improvement program so that the alliance can build enough hardened shelters in the next 5 years to protect all the tactical combat aircraft we will deploy to Europe from the United States in the early days of a conflict.

We are calling on our allies to meet the mutually agreed upon 3-percent annual real growth in defense spending commitment, and we are calling on our allies to make significant progress to lengthen the interval between the beginning of a conventional attack by the Warsaw Pact and the time when NATO's commander would have to request permission to use nuclear weapons to prevent an alliance defeat.

A major goal of this amendment is to raise the nuclear threshold in Europe, Mr. President, something our allies should desire as much as we do.

This amendment improves NATO's conventional defenses not only to increase deterrence to a conventional war, but to enable NATO to fight long enough on the battlefield to avoid a hasty, possibly desperate decision to use nuclear weapons first. Such a momentous decision should not be made under such circumstances, for the fate of the world literally could hang in the balance.

NATO's Supreme Allied Commander, Europe, Gen. Bernard Rogers, has provided eloquent testimony that now this would be the case. Before the House Armed Services Committee earlier this year, General Rogers said:

> Allied Command Europe's current conventional posture does not provide our nations with adequate deterrence and it leaves the nuclear threshold at a disturbingly low level.
>
> Thus, NATO's deterrence is jeopardized by our current heavy reliance on the early use of nuclear weapons to stop a non-nuclear attack. The remedy is for NATO to strengthen its conventional forces which will also raise the nuclear threshold.

In an interview last July 10, in the New York Times, General Rogers was even more direct. He stated:

> We have mortgaged our defense to the nuclear response. People are concerned about nuclear weapons; the question is whether they are prepared to spend additional money to improve the conventional deterrent.

Mr. President, the price of that nuclear mortgage is too high in terms of the risks to our survival. The price of improving NATO's conventional defense is a much more acceptable bargain for ourselves and our NATO Allies.

Congress has more than enough information to conclude that NATO's sustainability and aircraft sheltering capabilities need to be strengthened, as our amendment calls for, along with the accomplishment of other improvement's to NATO's conventional posture.

Just 2 weeks ago, on June 7, the Defense Department delivered to Congress a special report entitled "Improving NATO's Conventional Capabilities." Several unclassified paragraphs reinforce our position here today.

In its introduction, this report states that "it is essential . . . that the alliance come to grips with the need for sustained conventional defense." The introduction further says the report places special emphasis on:

> . . . urging the allies to meet minimum standards for munitions stockage and on substantial expansion of infrastructure program funding to speed completion of shelters for reinforcing aircraft. . . .

On pages 59, 60, and 90, this report concludes:

> (U) The lack of adequate capability to sustain combat operations for long with manpower, munitions, and war reserve equipment to replace losses is one of NATO's most critical and persistent shortfalls. In war, such shortages would force commanders to curtail operations to avoid running out of critical consumables, and the price of such rationing would be measurable directly in lives and kilometers lost. In turn, those losses would increase the pressure on NATO to escalate to nuclear weapons. Improvement of sustainment is thus one of NATO's most critical requirements.
>
> (U) Of all factors of sustainment perhaps ammunition stocks receive the most attention, and for good reason. History records that of all the reasons given for military defeat, running out of ammunition ranks near if not at the top. In our judgment, the need to increase munition stocks is important enough to give that effort a higher priority, if necessary, than the priority given to other force improvements which may be currently in national programs.

Mr. President, no Allied country has reached the NATO agreed goal of a 30 days supply of munitions. Most allies have indicated that they plan little or no progress toward this goal in their current 5-year budget projections. During this same period, the U.S. plans to spend $52 billion to increase its already substantially larger ammunition stocks.

The Protective Sheltering Program already lags well behind the number of aircraft the United States has committed to deploy to NATO during the outbreak of a war, a situation which only increases the vulnerability of our expensive tactical combat aircraft once they arrive in Europe.

Our amendment is the proper incentive to our allies to reverse this situation in an affordable manner.

Mr. President, I would like to address some of the arguments used against this amendment. Some contend that this proposal signals a future U.S. withdrawal from NATO, and that this will be used by some European nations as an excuse to decrease their common defense efforts.

If anything gave the Europeans an excuse to decrease their defense efforts, and in fact, ultimately created the need for our amendment, it was this administration's statements when it came to office that there was no magic to the 3-percent commitment. Those statements severely undercut the NATO 3-percent commitment and basically let the allies off the burden-sharing hook.

This amendment is intended to try to solve the burden-sharing problems this administration caused early in its term by minimizing and dismissing the importance of the 3-percent commitment. The administration should join with the Congress to support our amendment. The administration should view our amendment as a complement to its own efforts, albeit belated, to obtain increased allied defense efforts.

Administration opposition to our amendment runs directly counter to its own words earlier this year, as expressed by Vice President BUSH to the prestigious annual German-American Wehrkunde Conference on NATO security. That speech actually was read by our committee's chairman in the Vice President's absence.

On behalf of the Vice President, Chairman TOWER read:

> In strengthening our conventional forces, our efforts must be reinforcing on both sides of the Atlantic, especially in the troubled economic times from which my country, as well as yours, is now emerging. Americans have been mindful that the United States devotes a much higher percentage of its GNP to defense than do our NATO allies. Americans have noticed that, in the last couple of years, our defense contribution has grown by multiples of the three percent annual increase agreed by the NATO heads of government in 1978, while more and more of our allies have fallen behind. Clearly, the Alliance as a whole must contribute to the effort needed to strengthen the conventional element of the NATO triad.
>
> We recognize the difficult economic problems many of our allies face, and NATO has never demanded that its members do the impossible. But speaking as a politician, I can tell you that continued increases in the U.S. contribution to NATO's defense will only be possible, if the effort is seen to be mutual.

Now Chairman TOWER and the administration are arguing against an amendment which is designed to make this NATO defense effort much more mutual. Yet our amendment simply reinforces this message to our allies from Vice President BUSH.

There are limits to the private diplomacy the administration tries to practice on burdensharing issues, and Congress, as the elected representatives of the American people, is best able to practice the public and legislative diplomacy which is needed to achieve the objective of expanded allied defense contributions.

If the administration is as genuine in its desire to achieve this objective as it claims, it will recognize this and join in supporting our amendment.

This amendment will not unravel the NATO Alliance. Indeed, the contention that this will happen if our effort passes, is contradicted by recent statements from NATO's retiring Secretary General, Joseph M.A.H. Luns.

In the latest edition of NATO Review, published and distributed by our own State Department in April, Secretary General Luns concluded that, despite disagreements among NATO Allies in the past 4 years:

> ". . . time and again, NATO's commitment to mutual consultation and co-operation triumphed. I am proud to say that the alliance has again reached an admirable degree of unity and concertation. . . ."

He continued:

> What, in short, I am saying is: NATO, entering its 36th year, is after all in pretty good shape!

The political solidarity of NATO demonstrated in last December's successful deployment of the intermediate range nuclear forces, as well as the alliance's inherent strength which has permitted it to weather even more-severe disagreements among member nations, is not so fragile that this amendment will rent them asunder.

If NATO is so fragile an alliance, it would have disintegrated long ago.

Instead, NATO remains strong, and it is an alliance worth a great deal to our mutual security. Its underlying cohesion will survive this disagreement among Allies on burden sharing, and our amendment is intended to strengthen this unity.

Mr. President, I commend the Senator from Georgia, who has been a staunch advocate of the NATO alliance. He has championed the alliance all the years he has been in the Senate. It is obvious this amendment seeks not to weaken the alliance, it seeks to try to make the alliance become what we all want it to be.

This amendment should be viewed by our allies as the constructive criticism it is from a nation which, according to latest Defense Department estimates, spends at least $90 billion to help defend Europe—a defense which we all recognize is in our own best interests as it is in the best interests of the Europeans.

This amendment is not a precipitate measure to divide the alliance. Indeed, since any troop cuts which might occur under it would not begin until late 1987, our allies have almost 4 years to reverse their current burden-sharing course. I might add that, in the unlikely event our opponents' contentions begin to appear valid, this time period also permits Congress to modify this amendment in the future before any feared negative results occur.

Instead, this amendment should be viewed for what it is—an effort which has the laudable objective of making all NATO allies safer, stronger, more secure, and better able to protect NATO's freedoms and shared values. I urge its adoption

Mr. President, I yield to the floor.

Mr. NUNN and Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I modify my amendment by accepting the amendment of the Senator from Maine.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. NUNN. Mr. President, I ask for the yeas and nays on the Nunn-Roth amendment as amended by the amendment of the Senator from Maine.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3268

(Purpose: To prescribe an end strength level on United States forces assigned to permanent duty in European NATO countries, to request certain improvements in allied defense capabilities, and to provide for the reduction of United States forces in other NATO countries under certain circumstances)

Mr. NUNN. Mr. President, I send a perfecting amendment to the desk to the pending Nunn-Roth amendment as amended.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Georgia [Mr. NUNN] proposes an amendment numbered 3268.

Mr. NUNN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the word "IMPROVEMENTS" and insert the following:

TO NATO CONVENTIONAL CAPABILITY

SEC. . (a) The Congress finds that the North Atlantic Treaty Organization (NATO) should improve its conventional defense capability so as to lengthen the time period that Western Europe can be defended adequately by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country. The Congress further finds that increasing defense spending, improving conventional sustainability, and providing support facilities in Western Europe for rapid reinforcements from the United States are crucial to accomplishing that objective.

(b) After September 30, 1985, none of the funds appropriated pursuant to an authorization contained in this or any subsequent Act may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

(c) Beginning on December 31, 1987, and ending December 31, 1989, the permanent ceiling prescribed in subsection (b) shall be reduced effective December 31 each year by 30,000 unless, during the previous calendar year, member nations of NATO, other than the United States, have increased their defense spending by an aggregate average of at least 3 percent, after inflation, as measured in the annual report of the Secretary of Defense on the allied contribution to the common defense required by section 1001.

(d) The Secretary of Defense may waive the reduction required by subsection (c) for any calendar year if he certifies to Congress in writing that, during the previous calendar year, member nations of NATO (other than the United States) have accomplished the following objectives:

(1) Those member nations of NATO (other than the United States) who have committed forces to the Center Region have placed on firm order, or accepted delivery of, an increase in the supply of air and ground munitions so as to reduce, on an average, 20 percent of the gap between the goal, as established in NATO Ministerial Guidance, of 30 days supply and the level of such munitions available in the Center Region of NATO as to January 1, 1985.

(2) Member nations of NATO (other than the United States) have increased the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe so as to reduce, on an average, 20 percent of the gap between the number of such facilities and shelters available on January 1, 1985, and the number required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, the annual commitment of United States reinforcing tactical aircraft in the previous year's Defense Planning Questionnaire (DPO) Response. Such reduction in the gap must be accomplished by real increased spending and may not be met by reallocation within existing spending levels of infrastructure funds.

(3) The Supreme Allied Commander in Europe has certified to the Secretary of Defense in writing that in the previous calendar year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity which contributes to lengthening the time period between an armed attack on any NATO country and the time the Supreme Allied Commander would have to request and use of nuclear weapons.

(e) If the Secretary of Defense is unable to certify to the Congress that member nations of NATO (other than the United States) have met all three objectives of subsection (d) in any calendar year, but is able to certify that some of those objectives have been met, the permanent ceiling prescribed in subsection (c) shall be reduced as follows:

(1) If the Secretary certifies to the Congress that one of the three objectives has been met, the permanent ceiling shall be reduced by 20,000.

(2) If the Secretary certifies that two of the three objectives have been met, the permanent ceiling shall be reduced by 10,000.

(f) Whenever a reduction in the permanent ceiling is required to be made under this section in any year, such reduction shall be in addition to any reduction in the ceiling required to be made under this section in any previous year.

(g)(1) Not later than March 1 in each of the calendar years 1985 through 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Center Region.

(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

(C) The measures taken to accomplish the objectives of subsection (d)(3).

(2) The March 1985 report shall establish the baseline for measuring the annual performance of member nations of NATO (other than the United States) in meeting the objectives established in subsection (d)(1) and (2); the March 1986 report shall describe and employ, on a trial basis, the methodology to be used.

(3) The report required by this subsection shall also include an assessment of whether any reduction in—

(A) the gap in air and ground munitions (referred to in subsection (d)(1)) was accomplished by reallocation of funds within existing or planned spending levels; and

(B) the gap in minimum essential and emergency operating facilities and semihardened aircraft shelters (referred to in subsection (d)(2)) was accomplished by real increased spending or by reallocation within existing spending levels of infrastructure funds.

(4)(A) Beginning with the fiscal year 1986 budget submission to the Congress, but not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall report to the Congress on the status and cost of the United States commitment to NATO as reflected in DPO Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report on "United States Expenditures in Support of NATO", first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677), and shall include not only the information required by that section but also information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

(B) In addition to the requirements under subparagrqph (A), the Secretary of Defense shall include in such report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

(i) Allied contributions to the common defense (this requirement is satisfied by submission of the report required by section 1001).

(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft (this requirement is satisfied by submission of the report required by paragraph (1)).

(iii) Meeting NATO force goals.

(iv) Increasing NATO infrastructure funding.

(v) Improvements in air base defenses.

(vi) Increasing trained manpower levels, particularly reserves.

(vii) Increasing war reserve material.

(viii) Improving initial defense capability.

(ix) Improving NATO's ability to neutralize enemy follow-on forces, particularly use of emerging technologies.

(x) Improvements in mine/counter mine capability.

(xi) Improvements in offensive counter air capability.

(h)(1) The Congress finds that a viable "two-way street" of defense procurement improves NATO interoperability and therefore is important to overall improvements in conventional defense.

(2) In addition to any funds appropriated pursuant to the authorization contained in section 116(a) for the activities of the Director of Test and Evaluation, Defense, the Director may utilize an additional amount, not to exceed $50,000,000, to acquire certain types of weapons, subsystems, and munitions of European NATO manufacture (including submunitions and dispensers; anti-tank and anti-armor guided missiles; mines; runway-cratering devices; torpedoes; mortar systems; light armored vehicles; and high-velocity anti-tank guns) for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act.

(i)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor.

Mr. TOWER. Mr. President, will the Senator from Georgia yield?

Mr. NUNN. I yield.

Mr. TOWER. Mr. President, the Senator from Georgia showed me an amendment a while ago that he wanted to offer either as an amendment to the Cohen amendment should it carry, or as an amendment to his underlying amendment. Is this amendment any different from an amendment in the second degree? The Senator has offered an amendment in the second degree.

Mr. NUNN. No, Mr. President, I say to the Senator from Texas, I certainly would regret it if the Senate got that impression. I mentioned once before that had it been voted on, had we clearly had a vote on the merits of this entire matter, at that stage, I would actively seek to modify. The amendment I have sent to the desk has a few changes but is basically the same amendment that was pending in the first degree by Senator ROTH and myself. So we now have as the pending business the amendment in the first degree.

Mr. TOWER. Mr. President, I am still unsure about what this adds to the Cohen amendment, because the Cohen amendment had much of the wording of the Nunn amendment. The Senator from Georgia showed me an amendment that he intended to offer, which I assume he has not changed.

Mr. NUNN. No, Mr. President, I am sorry. I would like to clarify that. This is not the same amendment at all that I showed the Senator when talking about after the Cohen amendment had been dealt with on its merits and voted up or down that I would ask for. This is the original Nunn-Roth amendment.

Mr. TOWER. Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The Senator from Texas does not have the floor. Did the Senator from Georgia yield for the purpose of calling for a quorum?

Mr. NUNN. Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. TOWER. Mr. President, I think I can explain what is happening so Senators can understand.

I think most Senators thought that once the Cohen amendment was accepted, this would dispose of the matter of the mandated troop withdrawal under certain conditions. As of now, the amendment that has been proposed by the Senator from Georgia would bring back the mandated troop withdrawals. I think everybody should understand that. So those who were supporting the Cohen amendment as a substitute for the Nunn amendment would now have to vote against the Nunn amendment to accomplish that objective.

Mr. NUNN. Mr. President, I agree with the Senator's observation on the parliamentary situation, but would only say that those who supported the original Nunn-Roth amendment would support the pending business, which is the original Nunn-Roth amendment as perfected.

Mr. MELCHER addressed the Chair.

The **PRESIDING OFFICER.** The Senator from Montana.

Mr. MELCHER. Mr. President, I find it very commendable that we have this amendment before us, the Nunn-Roth amendment. I think it is necessary and I think it is very timely; indeed, it is refreshing to find that an approach is going to be made to bring into perspective our share of the NATO defense costs. My predecessor in this seat, Senator Mansfield, offered his version of an amendment to bring that about, which was a stronger proposal, more quickly accomplished than what has been proposed here by Senator NUNN and Senator ROTH.

I am very pleased to have had the opportunity to be a cosponsor of this amendment, and I am extremely interested that the amendment prevail with a majority of votes.

Several Senators who oppose this amendment have stated that it has merit but, unfortunately, it comes at the wrong time. Since 1945, we have carried the burden of defense costs for Europe. There never has been a right time since then to equalize proportionately by size of the countries involved and the economic capabilities of those countries, the costs of NATO defense.

Immediately after the Second World War, the devastation of Europe required the very imaginative, the bold, and the very much-needed Marshall plan. Since that time there has been the continuous need for not only our commitment in terms of personnel but also in the cost of maintaining that joint defense. we have borne that burden far too long and we can no longer afford to do more than our share. There will never be a time when, economically, our European allies will volunteer to us that they should pay a greater percentage of the burden, not as long as we will provide it, and that is not good defense at all. As was so eloquently pointed out by the Senator from Georgia, it is poor defense and it leads nowhere that is good for the joint defense of NATO.

The junior Senator from Delaware, deliberating on the merits of this amendment, finally relieved my mind when he stated that his position would be to vote for the amendment. But he posed two questions. In one of them he quoted what his father had advised him—and it was good advice—that before he made judgment on any other person or group, try walking in their shoes for at least a mile. I walked not in their shoes, not in the shoes of our NATO allies, but I walked in their countries, that is, in the countries of France, Belgium, Luxembourg, and Germany, in 1945 as an infantryman. I have a high regard for their capability in defense and a high regard for them as allies. I would not want to lose that.

The second question the junior Senator from Delaware posed was whether we would want to have missiles in our own back yard or would we prefer to pay for those missiles to be in Europe. Well, in our State we already have missiles in our own back yard. Through much of northern and central Montana, we have the Minuteman missiles. And so I say as a Montanan, like my predecessor from Montana before me, Senator Mansfield, we do have concern for our European allies and we want their friendship and their alliance to be strong and to continue. But in order for that to happen, it is high time—almost 40 years since the end of World War II—that we have a readjustment on who pays how much of the share. We can no longer afford to pay as much as we are now paying of their share and keep up an adequate defense ourselves.

The Senator from Georgia and the senior Senator from Delaware have proposed a very meritorious, timely, and necessary amendment. I hope that we pass it because the time is right.

Mr. PERCY addressed the Chair.

The **PRESIDING OFFICER.** The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, it is with a profound sense of regret that I take the floor to speak in opposition to the amendment offered by the distinguished Senator from Georgia. I regard the ranking minority member of the Armed Services Committee as a man of extraordinary vision and intelligence, a Senator who has rightfully gained recognition as one of the preeminent military thinkers of our era. On issue after issue that has come before this body, whether it be nuclear risk reduction, the build-down proposal, or government reform, I have derived strength and confidence in knowing that I would be tackling the issue shoulder to shoulder with the Senator from Georgia. In particular with my participation in the North Atlantic Assembly and as chairman of the subcommittee on balance of payments—in other words, the burden-sharing subcommittee that we established in order to properly share burdens—we have participated together and had the closest consultations between the Foreign Relations and Armed Services Committees.

I have taken special pleasure in working together with Senator NUNN to promote and strengthen NATO, and certainly this spring I had the pleasure of attending the National Convention of Reserve Officers Association award banquet, at which Senator NUNN was honored as the individual who had contributed more to the defense of this Nation than any other citizen. In receiving this prestigious award, Senator NUNN took his place beside such legendary leaders on defense matters as Richard Russell, Carl Vincent, and Mendel Rivers, and certainly the present chairman of our Armed Services Committee [Mr. TOWER], who has rightfully been applauded and properly decorated for his devotion to building a very, very strong national defense. I can say as chairman of the Foreign Relations Committee there is no possibility of a credible foreign policy without a very strong national defense.

For these reasons, I am saddened, but it is my duty to stand in opposition to an amendment that I feel would be contrary to our common objective and purposes.

Mr. President, my sense of regret is deepened by the realization that Senator Nunn and I are fully in accord with the objectives which his amendment purports to promote. This Senator would raise no quarrel whatsoever with the proposition that our allies can, should, and must do more to contribute to the improvement of NATO's conventional defenses. In speaking against the amendment, I make no apologies for our allies recent level of minimal defense improvements. Nor would I disguise the frustration and consternation that I feel when I read the most recent Defense Department burden-sharing report and learn that our allies are falling even further behind in their efforts to meet their commitment to a 3-percent defense spending increase.

The issue raised by this amendment is not, however, whether or not this Senator or any other Senator condones this poor level of allied performance in meeting our common defense goals. Rather, the question which must be addressed is whether the amendment itself provides an approach to meeting our goals that is realistic and likely to succeed. With the deepest respect for the sincerity of the Senator from Georgia, and in full recognition of the enormous amount of time that he and his staff have put into the drafting of this amendment, I am compelled to say that I simply believe the amendment will not achieve its intended result. On the contrary, I fear that the effect of this amendment, if passed and enacted into law, would be to provoke both confusion and resentment in Europe, and in so doing set in motion a devisive confrontation that in time could lead to the fundamental unraveling of the alliance.

No one would be more pleased to see that happen than the Soviet Union, just as they were extraordinarily pleased to see our pipeline embargo and its effect upon our allies.

Our allies are sovereign nations. They deeply resented our imposing an embargo and attempting to frustrate them in their decision to buy a very small part of their energy from the Soviet Union. It was counterproductive. It was going against what we were trying to achieve. It was causing tremendous pleasure in the Kremlin and dismay between our allies and ourselves.

So, too, I feel that this amendment and the issue raised by this amendment could possibly contribute toward not the unity of ourselves and our allies but disunity.

Mr. President, it was only 2 years ago that the United States tried to dictate various conditions and restrictions to our allies on the pipeline issue. Then, as now, the result was predictable. Sovereign nations, including the United States, simply do not take well to attempts by another nation to dictate terms. I fully recognize that the thrust of this amendment is not to reduce NATO's military capabilities but to increase them. I recognize that the amendment is intended to get the allies to fulfill commitments that they have repeatedly pledged. But even if in their heart of hearts the allies know that this amendment seeks to achieve rational and much-needed results, they will resent it simply because it is being dictated from afar.

Yesterday, I talked by telephone with Gen. Bernard Rogers, the respected and highly capable Supreme Allied Commander in Europe. General Rogers informed me that he had just met with the 12 Permanent Representatives of those allied states participating in the integrated military command, and of the 12, 10 made a point of telling him that the amendment if passed would be counterproductive and would provide the Soviet Union with a windfall that they have thus far been unable to achieve despite all of their disruptive efforts throughout the long ordeal which has accompanied the INF deployment issue.

Mr. President, I am reminded of an old parable. The parable concerns a contest between the wind and the Sun to see who was more powerful. The wind said to the Sun, "See that man with the overcoat; I can blow that coat off his back." But the harder the wind blew, the tighter the man drew his coat about him. Finally, the Sun said, "Let me try." And the Sun just quietly shined brighter and brighter until the man, by his own volition, removed his coat.

This is the approach, Mr. President, which I think we must follow on the burden-sharing issue. As I said in a speech on this subject to the North Atlantic Assembly meeting in London 2 years ago, I believe that a great power, a superpower, leads by example. It determines the course that must be followed and, by force of logic and persuasion, encourages its friends and allies to make greater efforts and greater sacrifices than otherwise might be the case. This is the challenge, and the obligation, that now confronts the United States as the alliance tries to emerge from the economic recession while at the same time taking those steps which are absolutely vital if we are to maintain a credible conventional deterrent.

Were the United States to go the other way, to do less and to pull 100,000 troops out of Europe, just because some of our allies are lagging in their defense efforts, would be a total abdication of leadership. It would stand the alliance on its head and hold progress in meeting our mutual defense goals hostage to the lowest common denominator.

Mr. President, the debate on this bill has gone on and on. We are now well into the 10th day and night, and well over 50 amendments have been considered. We are growing weary. Senators are understandably eager to finish this bill. Yet the amendment before us today entails the most fundamental choices concerning the future of an alliance that has preserved the peace for over three decades. As the author of the amendment himself has emphasized, the effect of the amendment, if its conditions are not met, will be to trigger an abandonment of the strategy of flexible response and put us on the road back toward a nuclear tripwire strategy.

In my opinion, Mr. President, Congress should have more time to consider carefully the full ramifications—military, political, and economic—of such a fundamental shift in NATO doctrine, including full hearings in the Armed Services Committee and the Foreign Relations Committee.

Mr. President, I hope the Senate will defeat the pending amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER [Mr. Mattingly]. The Senator from Virginia.

Mr. WARNER. Mr. President, I have been present on the floor for several hours during this debate, and I think I can accurately say that all perspectives on this issue have been rather carefully covered.

I yield the floor to the distinguished Senator from Texas.

Several Senators addressed the Chair.

Mr. METZENBAUM. Mr. President, I object. One Senator cannot yield the floor to another Senator.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, it has been said in the course of this debate that the debate itself will help cure the problem which the Nunn amendment seeks to address. I do not believe that is true. We have been debating this matter, in one way or another, for many years, though I think the proposal by Senator Nunn is the most succinct and conceivably the most effective way of approaching this problem. Therefore, I will not delay this debate for more than a moment or two.

It has also been said that merely suggesting that certain steps be taken is enough. We have been suggesting for many years, and I do not believe suggestions are enough. Therefore, I support the proposal by Senator Nunn and Senator Roth.

It is not merely a matter of dealing with our economic needs. We are spending vast sums on the defense of Europe. The basic question is, should we be doing that; but, more important, Should we continue to spend money in ways that are not really meeting our needs?

The next to the last paragraph of the letter addressed to us by Senator NUNN and Senator ROTH reads:

> In summary, the United States cannot continue to expend billions and billions to prepare for the conventional war that our Allies are not prepared to fight. These precious resources are better applied for other purposes, to meet our other worldwide interests and commitments.

The heart of the issue before us is whether we are going to find ways to reduce the danger of nuclear war in Europe. For all the reasons that have been expressed, that is what is really at stake here. That is why I support the Nunn amendment.

I do hope that, in the course of time, we will find that we can reach, through negotiations, a situation where we need not spend vastly increased sums on conventional methods of war and means of war as we reduce what we are investing in nuclear weapons. But that day has not yet come, and I therefore support the proposal of the Senator from Georgia.

Mr. METZENBAUM. Mr. President, the amendment offered by the Senator from Georgia says to our NATO allies precisely what needs to be said—that the time is coming to an end when the United States can be counted upon to bear a disproportionate share of the cost of defending Europe. I am pleased to join him as a cosponsor.

The NATO alliance was formed at a time when the nations of Western Europe had only begun to recover from the devastation of World War II.

Britain was exhausted. France, Italy, the Benelux countries all had been battlefields. Germany was devastated.

At that time, only our country had the wealth and the will to save Western Europe from internal turmoil and external aggression. And we did so.

The Marshall plan is undoubtedly one of the great success stories of this century. And so, I would add, is NATO—the heart and soul of a security system that has for nearly 40 years now kept the peace in Europe.

Today, our European allies are strong.

They are rich—per capita income in several of the NATO countries now equals or exceeds our own.

But, Mr. President, when it comes to contributing to the common defense, our NATO allies seem to think that their circumstances and ours have not changed in the past four decades.

At a time when we in the United States are pouring unprecedented resources into defense—including the defense of Europe—our NATO allies are telling us they cannot afford to carry their fair share of the burden.

Their motto is "Let Uncle Sam do it."

We are today spending in excess of $100 billion a year to defend Europe.

A million Europeans owe their jobs to the U.S. presence.

For the past 4 years, we have increased our annual spending on NATO by between 4.9 and 9 percent per year.

And what have the allies done.

Their expenditures in this same period have increased at an annual rate of between 1.2 and 1.7 percent.

The allies have failed to stockpile adequate supplies of ammunition. Not one of them could today sustain combat operations for 30 days.

And by their unwillingness to act prudently to provide for their own defense the NATO allies have moved themselves—and us—closer to a nightmare choice between intimidation by the Soviet Union and nuclear war.

That is so, Mr. President, for the simple reason that the Soviet Union and its allies can today credibly threaten to militarily overrun Western Europe by purely conventional means. And as long as that remains true, we must rely primarily on nuclear weapons to deter any Soviet adventure.

The Senator from Georgia has rightly pointed out, Mr. President, that the failure of the allies to meet their NATO commitments raises grave doubts about our role in the conventional defense of Europe.

If the forces of our allies are unprepared to resist a Soviet attack, what good does it do to keep 365,000 American troops on the line?

If escalation to nuclear weapons would be all but inevitable, why should we spend billions on prepositioned equipment on Europe?

Why should we designate four divisions as NATO reinforcements? Or build up our NATO-designated tactical air wings and transport capabilities?

It makes sense to do these things, Mr. President, only if our allies are prepared to invest in a credible conventional defense, a defense that could raise the nuclear threshold.

And that is precisely what the Nunn amendment is designed to encourage.

I do not believe that the Nunn amendment is in any way offensive to our allies.

It asks of them nothing they have not already agreed to do.

But I do believe that this amendment reflects accurately the feelings of the people of this country.

The American people support NATO—and so do I.

But I think that there is a deep resentment in this country—which I share—of our bearing an unfair proportion of the NATO burden.

And I believe that there is also a widespread sense that we are too easy—too eager to help—too willing to do for others what they should be doing for themselves.

I share that feeling.

And I hope, Mr. President, that the Senate will adopt this amendment and send thereby a message, loud and clear, that this country cannot, should not, and must not be expected to go it alone in defense.

Mr. GOLDWATER. Mr. President, I have spent all day listening to the debate. I only have one thing to say.

When the Senator from Ohio says we are in Europe to protect the Europeans, he is just as wrong as he can be. We are in Europe to protect us.

Mr. BYRD. Mr. President, I wish to commend the distinguished senior Senator from Georgia [Mr. NUNN] for this important initiative. he is without a doubt one of the most thoughtful, innovative, knowledgeable, and respected Senators on defense matters to have served in this body for many years.

Mr. President, the burden for the common defense of Europe and the United States requires an initiative which will shake up the alliance and ultimately make credible our common goals.

We need an alliance which is able to show the Soviet leadership that we can wage a sustained conventional conflict against them in the event that they initiate aggression against Europe. All worthwhile partnerships need periodic refreshing to forestall their atrophy—and I view this amendment as a positive effort.

The distinguished Senator from Georgia has recited the evidence that the alliance is ill-prepared to wage sustained conventional war on the European continent. No one in this body, and I am sure no one in the alliance, wishes us to be forced to resort to nuclear weapons within 2 weeks of conventional aggression against Europe. But what are we left with if we run out of ammunition in the first 10 days of such a conflict?

It is indisputable that our allies have failed to meet the NATO goals of increasing defense spending at least 3 percent annually in real terms in each NATO country. For fiscal year 1983, the increase for our allies was on the average between 1.9 and 2.1 percent. For fiscal year 1984 it was worse—on the average the real growth in defense spending dropped to between 1.2 and 1.7 percent. The United States has faithfully and annually far exceeded the 3 percent target since 1980, and my colleagues know that even a 5 percent increase has already been rejected by this body for fiscal year 1985 as too modest. The legislation before us stands at 6.9 percent real growth.

Our NATO allies are not funding conventional support at anywhere near an adequate level of effort—including the provision of aircraft shelters for American reinforcing aircraft in the case of an emergency.

Mr. President, we have heard it said in this Chamber today that this amendment intimidates our allies or that it is an effort to intimidate our allies.

Mr. President, I think we all know who is doing the intimidating. We all know that the intimidation comes from the east of our Western European allies—the Soviet Union. Have we forgotten their threats? They have missiles pointed to the heart of European cities. They have refused to withdraw those weapons. They have refused to dismantle those weapons.

We have seen and heard the intimidation that has come from the Soviet Union and which addresses itself to those Western European allies that have undertaken to have Pershing missiles deployed by us on their land, and we see the results of that intimidation when a government delays accepting those missiles for another year or a couple of years. There should be no question as to what nation is the intimidator of West Europeans.

So let us not be persuaded by the argument that this amendment is an attempt to intimidate our allies. Our European allies have been twice saved by the United States of America—actually three times saved; in the first place, saved in World War I; in the second place, saved in World War II; and, in the third place, through the Marshall plan, have been saved and have been able to revitalize their economies and rebuild their industries to new and greater heights.

It is said that this is an effort to bully our allies. Now who is the real bully? Everybody knows what country has invaded Afghanistan. Everyone remembers that the Soviet Union was the bully in dealing with Czechoslovakia, and Hungary, and Poland. So it is not very difficult to identify the country that has been the bully, is the bully, and will be the bully in the future unless our allies take action to live up to their own commitments in contributing to the alliance.

It is true that the alliance is in the best interests of the United States, but it is also true that it is in the best interests of our West European allies.

Someone has said that this amendment would make it difficult for our Western European allies because of their economic situation. Well, have we forgotten that we have an economic problem of our own in this country? We need only to look at the unemployment rates in some States like my own to realize that we have a serious economic problem and a heavy economic burden of our own.

What are we doing other than working with the alliance, living up to our commitment and more to the alliance? In addition to our heavy responsibilities toward the NATO alliance, we have assumed the additional burden of protecting the Middle East. The United States is in the process of assuming a tremendous burden in the Middle East and should oil shipments from that area be shut off by one means or another, or a combination of means, then the United States will be expected to take action in the interest not only of ourselves but more so in the interest of our Western European allies, and Japan, and Israel.

Our country depends on the Persian Gulf countries for oil in far less measure than do our Western European allies. Yet, it is the United States that is going to bear the brunt of dealing with any crisis in that area. It is the United States that has helped Saudi Arabia to defend itself against planes from Iran. It is the United States that has 50,000 troops, more or less, in Korea. So we have a heavy financial burden in Korea, and in the Middle East, and we are carrying an additional major portion of the burden as far as our NATO allies and ourselves are concerned respectively in guarding against a Soviet and Warsaw Pact attack against Western and Southern Europe.

It seems to me, Mr. President, that we need to just draw back and take a little better look at the forest so that we might see the trees.

So as far as intimidation is concerned, we know who is doing the intimidating. As far as being the bully of the town is concerned, we know that the Soviet Union is the bully. And as far as the economies of our European allies are concerned, while they are having serious problems, we also have a very serious economic problem.

So this amendment is merely asking the European allies to live up to the pledges that they have already voluntarily given. It is not an onerous amendment. It has a 3-year time delay. It offers a number of optional ways for European NATO nations to forestall any reductions in American troops presently stationed in their countries. It allows the President to negate any withdrawal in the event of an "emergency." The Nunn amendment only asks the allies to fulfill the pledges they have made for the common defense—the common defense, their own defense, as well as ours.

It is time for us to face the reality of the cohesion and strength of our alliance. This amendment serves this important purpose, and I strongly support it.

CALL OF THE ROLL

Mr. TOWER. Mr. President, I suggest the absence of a quorum and I intend the quorum to go live.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 6 Leg.]

Armstrong
Bingaman
Byrd
Chiles
Cohen
Cranston
Danforth
Domenici
Goldwater
Mathias
Matsunaga
Mattingly
Melcher
Nunn
Pressler
Roth
Rudman
Tower

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

Abdnor
Andrews
Baker
Baucus
Bentsen
Biden
Boren
Boschwitz
Bradley
Bumpers
Burdick
Cochran
D'Amato
DeConcini
Denton
Dixon
Dodd
Dole
Durenberger
Eagleton
East
Evans
Exon
Ford
Garn
Glenn
Gorton
Grassley
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Jepsen
Johnston
Kassebaum
Kasten
Kennedy
Lautenberg
Laxalt
Leahy
Levin
Lugar
McClure
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Packwood
Pell
Percy
Proxmire
Pryor
Quayle
Randolph
Riegle
Sarbanes
Sasser
Simpson
Specter
Stafford
Stennis
Stevens
Thurmond
Trible
Tsongas
Wallop
Warner
Weicker
Wilson
Zorinsky

The PRESIDING OFFICER [the Vice President]. A quorum is present.

The Senator from Texas.

Mr. TOWER. Mr. President, as we say, some may probably wonder why I called this meeting. We put in a live quorum so that there would be no confusion about what the parliamentary situation is because I think there are so many Senators that have a vital interest in this issue that they should be informed.

The Cohen amendment to the Nunn amendment has been pending for most of the evening, and I think many Senators expected the first vote would come on the Cohen amendment. But that will not be the case. The Cohen amendment was taken by the Senator from Georgia [Mr. NUNN], and used to modify his original amendment; that is to say, he accepted the Cohen amendment as a modification to his amendment, because he wants to get a vote on his amendment first, and he has a perfect right to do that. He then offered his original amendment as a perfecting amendment in the second degree striking out all of the word "improvement" and in fact substituting his original amendment for the Cohen amendment. It is my intention to eventually move to table the Nunn amendment in the second degree. I would advise all Senators who intend to vote for the Cohen amendment that they would have to support that tabling motion if they are to have an opportunity to vote on the Cohen amendment.

Once the amendment in the second degree of the Senator from Georgia has been tabled, if indeed it is tabled—and it may not be, but in the event that it is tabled—it is my intention to ask for a record vote on the Cohen amendment, which now becomes the Nunn amendment in that it was incorporated into the original amendment of the Senator from Georgia. So although it has Senators NUNN's name on it, it will be Mr. Cohen's amendment. I submit that a rose by any other name would smell as sweet.

Therefore, the substantive difference is the Cohen amendment was essentially the original Nunn amendment with the language calling for a phased troop reduction if certain conditions are not met. In other respects, it is substantially the same as the Nunn amendment.

Mr. NUNN. Mr. President, may we have order? The Senator from Texas is speaking and I believe we should be able to hear him.

The VICE PRESIDENT. The Senate will be in order.

Mr. TOWER. Mr. President, that is about all I have to say about it. I would be delighted to yield to the Senator from Georgia for any expansion on my explanation, or any correction.

Mr. NUNN. If the Senator will yield for a brief additional statement, I agree with the description of the procedural situation as outlined by the Senator from Texas. I had an amendment with Senator ROTH. Senator COHEN proposed an amendment in the nature of a substitute and I did accept it. I accepted his as a modification to the amendment, or as an amendment to the amendment. The Nunn-Roth amendment had a perfecting amendment. It is the original text, although there have been some changes. It is essentially the original text of the Nunn-Roth amendment.

While the chairman is on the floor and we have quite a few Senators present, I think there may be some word floating around that this was sleight of hand. I will submit to my colleagues that this was well within the rules.

I also want to make it clear, because the chairman and I have had an excellent relationship and have worked closely on this—we have disagreed on some matters and agreed on others—we have a tough road ahead in the conference. I have continued to offer to assist. But if anyone believes that there has been sleight of hand here that is in any way amiss from the courtesies of the Senate, I would be willing to unwind the procedural situation and move back to where we were before the Cohen amendment was accepted, as modified, and it would place us in exactly the parliamentary situation we were in at that time.

I would ask the chairman if he desires that, or if anyone has this lingering feeling I would be glad to do that.

I would at that stage let everyone know, as I thought I had attempted to let them know earlier, that it would then be my intention, within the Rules of the Senate, to find a way—and I think there are ways—to still have this amendment voted on first.

Mr. TOWER. If the Senator will yield, let me say that I do not believe the Senator from Texas said anything in his remarks that suggested sleight of hand.

Mr. NUNN. The Senator did not.

Mr. TOWER. I said the Senator was perfectly within his rights.

Mr. NUNN. The Senator did say that. But I believe there are people on the floor that have been saying that. I am acting within the rules. But I am offering to everyone here, if they feel there has been anything amiss in terms of senatorial courtesy, I would do what I said.

Mr. TOWER. Mr. President, I would hope that very generous offer would be rejected because I think we have this sorted out in everybody's mind and perhaps we can proceed to vote.

Mr. President, if there is no further debate, I move to table the amendment in the second degree.

Mr. NUNN. Will the Senator withhold for a moment?

Mr. TOWER. I withhold.

IMPROVING NATO'S CONVENTIONAL DEFENSES

Mr. NUNN. Mr. President, this amendment has as its goal major collective improvements in NATO's conventional defense capabilities. I am hoping that this amendment will become known as the "NATO Conventional Defense Improvements Amendment" and not the "NATO Troop Withdrawal Amendment."

Let me begin by quoting an assessment by Gen. Bernard Rogers, NATO's Supreme Allied Commander Europe, of the state of conventional defenses in Europe:

> Allied Command Europe's current conventional posture does not provide our nations with adequate deterrence and it leaves the nuclear threshold at a disturbingly low level.
>
> Thus, NATO's deterrence is jeopardized by our current heavy reliance on the early use of nuclear weapons to stop a non-nuclear attack. The remedy is for NATO to strengthen its conventional forces which will also raise the nuclear threshold.
>
> There are a number of shortcomings in NATO's nonnuclear forces that put us in the predicament I describe. However, the fundamental cause is a low level of sustainability. ACE is simply unable to sustain its conventional forces in combat for long with manpower, ammunition and war reserve material to replace losses and expenditures on the battlefield.[1]

Mr. President, we cannot continue to paper over such serious and dangerous military problems in NATO. Here we have the highest military leader of the alliance stating bluntly that NATO's current conventional posture is little more than a delayed tripwire for early resort to nuclear escalation. The alliance has spent hundreds of billions of dollars for the common defense to this point.

During the decade of the 1980's and beyond we need more than a military posture that, to quote General Rogers again, would require:

> The release of nuclear weapons fairly quickly after a conventional attack. And I'm talking about in terms of days, not in terms of weeks or months.

The citizens of both this nation and Europe will, and should, question why their hundreds of billions in defense investment buys such a limited conventional defense that NATO must rely on the untenable military strategy of early resort to nuclear weapons.

Some would argue that the Europeans want it this way; they do not want more robust conventional defenses and are content to rest deterrence of Warsaw Pact conventional attack on the threat of rapid nuclear escalation.

Others would suggest that it is a matter of economics, that while a nuclear tripwire may be less than desirable, it is the best that can be obtained for the funds that the Europeans are willing to spend on defense.

Still others suggest the Europeans have merely recognized a soft touch, that they know the United States will continue to "cover their gaps" by spending the money for all our forces in NATO, for six POMCUS division sets, for many hundreds of tactical aircraft, for airlift and aerial tankers to move these assets to Europe in a crisis, and for munition stocks substantially above those of most allies. They figure that as long as the United States will spend over 30 percent of our annual budget—$90 billion—in support of NATO, why should they spend more? I ask unanimous consent that a DOD chart showing the range of U.S. cost in supporting NATO be entered in the record.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE RANGE OF NATO COSTS[1]

The Range of NATO Costs.—As noted in the preceding section, estimates of the cost of the United States' commitment to NATO can vary widely, depending on the categories of forces and the types of expenditures being evaluated. The following examples illustrate a range of possible estimates (expressed as total obligational authority for fiscal year 1985), along with the assumptions that were made in developing them:

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[1] Testimony before HASC, Mar. 6, 1984.

[1] The following is a verbatim transcript from page 9 of the June 1984 Secretary of Defense's Report to Congress on "United States Expenditures in Support of NATO."

(a) the incremental operating costs incurred by stationing U.S. forces in Europe rather than in the United States (about $2 billion);

(b) the incremental operating costs associated with maintaining European-deployed U.S. forces in the active force structure (about $15 billion);

(c) the total cost of European-deployed U.S. forces (about $55 billion);

(d) the total cost of European-deployed U.S. forces and those U.S.-based forces that we have pledged to contribute as NATO reinforcements in the early stages of a conflict (about $90 billion);

(e) the total cost of European-deployed U.S. forces and all of the U.S.-based forces that we have pledged to contribute as NATO reinforcements over the course of a conflict (about $177 billion);

(f) the total cost of all U.S. conventional forces (about $227 billion); and

(g) the total cost of all U.S. forces (about $306 billion).

Mr. NUNN. Mr. President, I do not know which reason or combination of reasons can explain the current situation but I do know that it is high time—indeed past time—to put the issue of European intentions to a reasonable and responsible test. Our Ambassador to NATO, David Abshire, believes that European intentions are changing for the better. I hope he is correct. We must begin, however, to measure programmatic progress and not just intentions. If the allies are not prepared to make more modest efforts to improve conventional defenses in the remainder of this decade, while the United States plans to spend many hundreds of billions of dollars on our NATO commitment—if the allies really want, or will continue to settle for, a nuclear tripwire, then I believe the United States should recognize this and adjust our own military commitment and our defense priorities. We can provide for a nuclear tripwire—or even what some call an extended tripwire—with far fewer conventional forces and personnel than the United States currently has stationed in NATO. And, I might add, without the expense of massive reinforcements, all at significantly less cost than we now incur.

Mr. President, I consider myself a longstanding and strong suporter of the NATO alliance. I have written three reports to the Senate on the subject, have sponsored various legislation over the years to improve NATO's defense capabilities and was a leader in the floor fights in the mid-1970's to defeat the Mansfield amendments to cut U.S. forces in NATO unilaterally. I want to emphasize one point at the outset. Although my amendment calls for sizable troop reductions in the late 1980's if our European Allies do not show a willingness to improve conventional defense capabilities, this amendment in not intended either as blackmail or as punishment. I am hopeful that no troops will ever be withdrawn by reason of this amendment. It is merely a recognition that continued, even redoubled, U.S. sacrifices to improve conventional defenses and to raise the nuclear threshold in Europe are to no avail without similar allied efforts. We must move forward and improve the alliance in tandem. We must head for these goals on a bicycle built for two—the United States can have the front seat but it takes someone pedaling behind as well.

In an era of well-recognized NATO disadvantage in theater nuclear weapons, at a time of rough strategic nuclear parity between the United States and the Soviet Union, it is, in my view, unrealistic and dangerous to rest the fate of the alliance on a strategy of deliberate, early nuclear escalation. Yet what General Rogers has described in clear testimony is a situation in which, in the event of a major Warsaw Pact conventional attack on NATO, the alliance leaders would be faced with choosing "in term of days, not weeks" between capitulation or NATO being the first to use nuclear weapons. Even if the Soviets limit their attack to conventional means, NATO will be forced to escalate the conflict into a nuclear exchange, an area of alliance disadvantage. We cannot continue this posture.

Mr. President, the United States is pledged to ship to Europe, within the first 10 days of such a war, a total of six Army divisions and 20 tactical fighter wings as early reinforcements to the fourth divisions and seven wings we already have over there. Yet if this huge early reinforcement nonetheless leads only to days, not weeks before nuclear weapons are used, I question the soundness of the basic plan under which we in America are spending hundreds of billions of dollars.

If NATO is going to have to surrender, then six more U.S. divisions added to the four already there more than doubles our Dunkirk problem. If instead, NATO is going to resort to early nuclear escalation, our additional divisions will be irrelevant by the time they arrive there.

Indeed, Mr. President, General Rogers addressed this situation, too:

> Because of the failure to meet commitments in the conventional area by all nations and through trying to buy alliance defense on the cheap by relying on nuclear weapons, we have mortgaged our defense to the nuclear response.

To his considerable credit, General Rogers has done everything in his power to correct this militarily untenable situation. Now the U.S. Senate must lend a helping hand. We cannot permit the bulwark of Western defense—NATO—to continue this situation endlessly into the future. If it does, the alliance has no real future.

Mr. President, we can debate why we are in this untenable military trap today and there are many sides to this argument. However, two things are clear—first, we must improve conventional defenses; and second, NATO is not currently planning to make these improvements. This is the case despite alliance agreements in principle year after year, starting in the late 1970's, to implement specific measures to improve NATO's conventional defense capability.

From a major set of alliance meetings in 1977 and 1978 emerged the following agreed goals which are still in effect today:

The pledge to increase defense spending in each country by at least 3 percent per year in real terms; the pledge to acquire a 30-day supply of conventional munitions within 5 years in the center region; and the agreement on what ultimately became the rapid reinforcement plan.

These goals have been agreed to in NATO Ministerial Guidance and have been reaffirmed at their annual meetings. The rapid reinforcement plan constitutes the commitment by the United States to move a total of six Army divisions and roughly 20 tactical fighter wings from the United States to Europe within 10 days to reinforce our forces already there.

Now, Mr. President, as noted, the United States has been spending many billions of dollars on Army combat equipment to go into the six prepositioned overseas material configurated in unit sets [POMCUS] sites, so that we can fly only the troops from the United States to Europe and have them match up over there with their equipment. This means we have to buy two sets of equipment—one here to train with, one there to fight with. We have been spending many more billions to acquire the 20 wings of tactical aircraft for rapid deployment. We have been spending still more billions of dollars on airlift and tanker support, in order to carry out these times-urgent deployment plans. We have been spending billions for U.S. stocks of munitions in Europe, which are well above the 30-day NATO goal and climbing. We plan to spend $52 billion on munitions for our NATO forces over the next 5 years to increase this sustainability level even higher.

In return for all this, the allies agreed to do two things. First they agreed to provide "host-nation support" in wartime, the provision of some of their reservists and equipment and to provide rear area support for our reinforcing combat divisions. To give our allies their due there has been some progress in this wartime host nation support area. The chairman of the Armed Services Committee and I have led the fight in Congress to back up these agreements. Second, the allies also agreed to fund critical facilities and aircraft shelters for our reinforcing aircraft.

Finally, we have carried out our 3-percent pledge every year in the process of implementing all of these activities. The Secretary of Defense has just reported to Congress that we have exceeded our 3 percent goal every year since 1979 and that the total cost of European-deployed U.S. forces and those U.S. based forces that we have pledged to contribute to a NATO reinforcement in the early stages of a conflict is about $90 billion of the fiscal year 1985 budget, or over 30 percent of the entire budget. The Secretary's report also indicates that the total cost of all the U.S. NATO deployed forces and reinforcements planned over the course of a NATO conflict is $177 billion in this year's budget.

Now, Mr. President, let me briefly recount what our allies have done to meet their commitments:

They have not achieved the goal of a 3-percent increase after inflation, on average, in any year since the pledge was made; indeed the size of their increases has gotten smaller each year. For fiscal year 1983, DOD estimates that the average allied increase will be 1.9 to 2.1 percent; for fiscal year 1984, 1.2 to 1.7 percent. The United States, however, has met the goal every year and continues defense spending that is substantially above 3 percent real growth. Starting with 1980, our increases have ranged from 4.9 to 9 percent.

No allied country has reached the agreed goal of a 30-day supply of munitions. Allied sustainability is uneven at best; some kinds of munitions are close to the goal but others are in critically short supply, measured in days, not weeks. Most allies have indicated that they plan little or no progress toward the 30-day goal in their current 5-year projections. During the same period, the United States will be spending $52 billion to increase its stocks which are already substantially larger.

Secretary Weinberger has summarized this situation well in his May 1984 report to Congress on "Improving NATO's Conventional Capability." He stated:

> The lack of adequate capability to sustain combat operations for long with . . . munitions . . . is one of NATO's most critical and persistant shortfalls. In war, such shortages would force commanders to curtail operations to avoid running out . . . and the price of such rationing would be measurable directly in lives and kilometers lost." Secretary Weinberger added, "History records that of all the reasons given for military defeat, running out of ammunition ranks near if not at the top.

The Secretary also stated:

> The current situation is sufficiently serious that the need to increase munitions stocks is important enough to give that effort a higher priority than other national force improvements.

The situation is not much better in terms of the facilities and shelters the allies are to provide on their air bases for U.S. reinforcing tactical aircraft. Our own United States main operating bases in Europe are so crowded with our seven wings already there that most of the roughly 20 U.S. reinforcing wings will be scattered across many European air bases operated by other NATO countries. Those bases are called colocated operating bases, or COB's; they have enough space to accept our arriving aircraft. However, these COB's do not have extra minimum essential facilities, such as fuel and ammunition storage adequate for 7 days operations, extra emergency operating facilities such as control towers and maintenance facilities and extra semi-hardened aircraft shelters to protect our reinforcing aircraft. Without these facilities and shelters that the Allies have agreed to provide, the arriving $50 billion worth of U.S. aircraft are unlikely to survive, let alone be able to operate effectively.

Where are we specifically in terms of the facilities and shelters to support our early reinforcement aircraft?

Today—6 years after the agreement—there are minimum essential facilities in place for less than 20 percent of our reinforcing aircraft. There still are virtually no hardened aircraft shelters for any of these reinforcing aircraft. In other words, only a relatively few aircraft will have fuel and ammunition available and they will be unsheltered, in the open, in the middle of world war III. Now, we learned as long ago as the 1973 Middle East war that unsheltered aircraft really are sitting ducks. Yet, year after year, we renew in the "Defense Planning Questionnaire" our commitment to deploy over $50 billion worth of the finest and most modern U.S. fighters to become sitting ducks. These aircraft have little chance to survive since our NATO allies have been unwilling to provide the roughly $1 billion extra to fuel, arm, and protect these aircraft. That is right—the total cost to the allies to provide minimum essential facilities, emergency operations facilities, and hardened shelters for our $50 billion worth of aircraft is about $1 billion more. It is incomprehensible that $50 billion of sophisticated aircraft would be virtually useless because our allies refuse to provide an additional $1 billion to house them.

Mr. President, we could continue this sorry tale. Let me give only one more pertinent example. The NATO force goals, which are developed every 2 years by the NATO military commanders and cover 6 years, are considered an expression of the forces and facilities necessary for the accomplishment of NATO military commanders' assigned missions. These goals are designed to challenge each nation to meet these critical missions.

It should be no surprise to anyone that the performance toward these goals has been less than satisfactory for the most part.

In fact, General Rogers recently said that NATO was running in the wrong direction in terms of the force goals:

> When we figured out the force goals—not the one we just approved earlier this month but the previous one approved in 1982—we figured that they would require a 4 percent real increase in defense spending per year, per nation for each of the 6 years from 1983 to 1988 to fully meet those force goals. New force goals have just been approved for the years 1985 to 1990. Now we calculate that to meet those force goals fully, it's only going to cost a little over 3 percent. So you see we're running in the wrong direction. We're going down to 3 percent to meet those force goals. Those force goals, even if fully implemented, won't give us the kind of conventional capability that I've talked about.

General Rogers is pessimistic that the NATO allies will even meet these lower force goals:

> When you ask the question do I think its logical that they're going to be able to meet it, the answer is no.

Mr. President, it is my belief that it is time to challenge our European allies to begin to make good on longstanding commitments like those I have described. Without achieving these goals, a more robust conventional defense of Europe is virtually impossible. It is time to turn our attention to raising the nuclear threshold by improving NATO's collective conventional defenses.

It is time to put to a reasonable and responsible test the proposition of whether the Europeans want to continue a nuclear tripwire posture or seriously want to improve conventional capability. It is shape up or ship out time for NATO.

Let me briefly describe how my amendment is designed to test this proposition. The test will be comprised of two optional paths: one based on input goals; the other based on output goals.

First, the amendment extends and makes permanent the troop ceiling on U.S. ground forces stationed in NATO at a level of 326,414. This is a cap at exactly the level DOD has requested for the end of fiscal year 1985. The Department does plan over the next 5 years to request additional increases. Given the current situation and the lack of any major indication that the allies are moving forward, it makes no sense for us to increase our forces beyond the fiscal year 1985 level at this time. Since 1977, U.S. forces in NATO have increased by almost 45,000 personnel while allied force levels have remained essentially static. Interestingly enough, 1977 was the year the United States began to have serious discussions with our allies on improving conventional defenses.

Second, the intent of the amendment is to establish a 5-year period during which the NATO allies will be expected to meet certain goals related to improving conventional defense. All of these goals have been formally agreed to by the alliance, but the allies may need a year to discover America is finally ready to fish or cut bait on conventional improvements.

The amendment works as follows: The allies would have 1 year to get ready—1985, plus the balance of 1984—and then 3 years of performance would be measured—1986, 1987, 1988. Serious deficiences would be corrected at a rate of 20 percent a year in those 3 years. By requiring performance over only the 3 of the 5 years needed to make up 100 percent of the deficiencies in the designated areas, Congress will have an opportunity for a mid-term review and to make adjustments should unforeseen circumstances arise.

The amendment ties future U.S. troop strength in NATO to progress—or lack of it—by the allies in improving conventional defense capabilities in certain specified areas.

The input oriented test is the NATO agreed target of a 3-percent average increase in defense spending, after inflation, by the non-U.S. NATO allies. This goal, first established in 1979, has just been reaffirmed by the NATO Ministers. If the non-U.S. allies reach this goal, no troop reductions are required. As indicated, this would be adequate for the allies to achieve the current force goals.

However, if in any year the allies fail to meet the 3-percent test in any year, the amendment offers an output oriented path for the allies to forestall the U.S. troop reductions, by meeting a set of three other goals in specific areas of longstanding deficiency. Each could be considered a war stopper in its own right.

What we are essentially asking the allies to do is either meet the longstanding 3 percent increase pledge; or

First, to increase systematically over 5 years their munitions sustainability to reach the 30-day goal, at the rate of 20 percent of the shortfall each year. These increases would require the six center region allies collectively to spend less than $1 billion per year. While these allies together would have to spend about a billion a year more to get to 30 days, the United States is spending $6.2 billion this year on our NATO munitions, and plans to spend $52 billion over the next 5 years to increase our stocks which are already substantially higher than theirs.

Second, to commit to an infrastructure funding level adequate to provide over 5 years the roughly $1 billion extra needed from the allies to build the facilities and shelters to give the $50 billion we have invested in U.S. reinforcing tactical aircraft a fighting chance; the needed facilities and shelters also must be committed to construction at the rate of 20 percent of the shortfall per year. To meet this test, the allies would have to agree to contribute about $600 million more to the NATO infrastructure fund during the 3-year measuring period; $1 billion is needed to completely close the gap.

Third, to make significant progress in lengthening the interval between onset of a conventional attack by the Warsaw Pact and the time at which nuclear release would have to be requested, as determined and certified to the U.S. Secretary of Defense by the SACEUR, General Rogers.

If, upon reflection and with 2 years in which to plan and begin responses, the allies are nonetheless unwilling to make these essential and agreed upon improvements, the United States will have a clear indication of allied intent. It will be evident that the allies are content with nothing more than a tripwire, and we can begin to reduce the number of our forces stationed in NATO and also begin to reduce our related NATO expenditures.

Let me now describe the reductions. If the allies do not make the first path of 3 percent, and also fail to meet any of the three goals under path two, then the ceiling will be reduced by 30,000 per year. If, however, the allies meet one of the three goals under path two, the ceiling would be reduced by only 20,000; if 2 out of 3 under path two, by 10,000, and if they meet all three, or if they meet the 3 percent there would be no reduction.

I repeat, either of the compliance paths offered, the 3-percent growth path or the specific goals path, is both realistic and affordable. Moreover, for the second path the spending is entirely in Europe on European goods and services, and produced by European labor. Indeed, in the case of facilities and aircraft shelters at European bases, the United States will also pay more that one-fourth of the total bill as its share of common infrastructure funding. Moreover, Mr. President, nothing in this amendment forces the allies to do anything that has not been agreed to previously—indeed, agreed, and agreed again. All that has been missing is performance on the agreements.

Thus, Mr. President, if NATO's de facto strategy really is a conventional tripwire with early resort to nuclear weapons, the last thing the United States should be planning is to send six more divisions and about 1,500 more tactical aircraft into Europe just as the alliance is ready to escalate to nuclear weapons.

Indeed, if that is the strategy the Europeans want, I believe that a far smaller commitment of U.S. stationed forces than those we now maintain in peacetime would be called for. That is why I regard as wholly appropriate the troop reductions called for in this amendment, if the allies are not serious about improving conventional capability.

Mr. President, this amendment also requires the Secretary of Defense to submit an annual report outlining U.S. defense expenditures in support of NATO. This report would provide a direct link between our defense spending and our formal commitment to NATO as reflected in the NATO "Defense Planning Questionnaire Response." This is an annual document in which the member nations commit forces to NATO. We will be able, using this report, to determine just what this commitment costs.

This reporting will also include an assessment of allied performance in meeting the following:

Increasing overall defense spending;

Increasing sustainability as well as support for U.S. reinforcing tactical aircraft;

Improving airbase defenses;

Meeting NATO force goals;

Increasing NATO infrastructure funding;

Increasing trained manpower levels, particularly reserves;

Increasing war reserve material;

Improving initial defense capability;

Improving NATO's ability to neutralize enemy follow-on forces, particularly through the use of emerging technologies;

Improving mine/counter mine capability;

Improving offensive counter air capability.

With this assessment, Congress will be able to look at U.S. expenditures in support of NATO and how the allies are performing in certain key areas. Congress can then make judgments on whether or not the U.S. expenditures should be approved in the annual authorization process or whether they should be reduced.

In my judgment, this is an appropriate way to link allied performance to our own commitment to NATO. If the Europeans simply shift their priorities and resources to meet these formal tests, abandoning other agreed goals, we will soon recognize this shift.

Finally, Mr. President, I must note one area where the United States has clearly not done enough over the years—making the two-way street in armaments cooperation work. The chairman and I have been strong supporters of the emerging technology initiative in NATO, and I welcome the recent tangible progess in this area. Nonetheless, our European allies spend a great deal more on U.S. weapons systems and components than we do in acquiring European-developed systems. While some of that can legitimately be justified on the grounds that our worldwide commitments sometimes impose requirements beyond those typically considered by European manufacturers, I am inclined to believe that much more of that stems from U.S. industry and service reluctance to buy somebody else's product rather than being involved from the very beginning.

However, Mr. President, I say that if we are ever to get to the point where NATO's resource inputs, which are larger than those of the Warsaw Pact, are efficiently transformed into a larger defense output, it must be because we have done a better job of mutual planning, cooperative development, and equitable sharing of production. Therefore, I have included in the amendment a provision to encourage the side-by-side testing, by the Secretary of Defense's Office of Test and Evaluation, not by the services themselves, of systems and subsystems of European manufacture against those developed by our military establishment. This is but a small step toward greater transatlantic cooperation in armaments, but I hope it will mark an important new start, and help persuade European governments that we do not want troop cuts, we want more effective conventional defenses, and we are willing to look closely at what they have to offer.

In summary, the United States cannot continue to expend billions and billions to prepare for the conventional war that our allies are not prepared to fight. These precious resources are better applied for other purposes, to meet our other worldwide interests and commitments.

I am under no illusions about the ability of the legislative branch of one nation to influence the actions of other nations. Also I am under no illusions about the many obstacles to improved conventional defense capabilities that would remain even if the allies fully comply with the goals of the amendment.

It is not a panacea but it is a beginning—a modest test of whether the vitality of the alliance is still capable of being energized. If such movement is begun, the amendment has a significance beyond its modest scope.

In my judgment, the citizens of the Western democracies will not long sustain nor support large defense establishments that can only provide a military posture that has as its end result either capitulation or resort to early use of nuclear weapons. In an era of pronounced NATO theater nuclear disadvantage and rough strategic nuclear parity between the United States and U.S.S.R., this makes no sense.

I urge my colleagues to send a strong signal that we want this to change—we want NATO to improve its conventional capability—over a 5-year period—within defense spending levels that are readily achievable.

Mr. TOWER. Mr. President, I move to table the amendment in the second degree of the Senator from Georgia and ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas to lay on the table the amendment in the second degree of the Senator from Georgia. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island [Mr. CHAFEE] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I further announce that, if present and voting, the Senator from Idaho [Mr. SYMMS] would vote yea.

Mr. CRANSTON. I announce that the Senator from Kentucky [Mr. HUDDLESTON] and the Senator from Louisiana [Mr. LONG] are necessarily absent.

The VICE PRESIDENT. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 41, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—55

Abdnor
Andrews
Armstrong
Baker
Boschwitz
Cochran
Cohen
D'Amato
Danforth
Denton
Dodd
Dole
Domenici
Durenberger
East
Evans
Garn
Goldwater
Gorton
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Jepsen
Kassebaum
Kasten
Laxalt
Lugar
Mathias
Mattingly
McClure
Mitchell
Moynihan
Murkowski
Nickles
Packwood
Percy
Quayle
Rudman
Simpson
Specter
Stafford
Stevens
Thurmond
Tower
Trible
Tsongas
Wallop
Warner
Weicker
Wilson

NAYS—41

Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Bumpers
Burdick
Byrd
Chiles
Cranston
DeConcini
Dixon
Eagleton
Exon
Ford
Glenn
Grassley
Hollings
Humphrey
Inouye
Johnston
Kennedy
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Metzenbaum
Nunn
Pell
Pressler
Proxmire
Pryor
Randolph
Riegle
Roth
Sarbanes
Sasser
Stennis
Zorinsky

NOT VOTING—4

Chafee
Huddleston
Long
Symms

So the motion to lay on the table amendment No. 3268 to amendment No. 3266 was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote.

Mr. BAKER. I move to lay that motion on the table, Mr. President.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3267

Mr. TOWER. Mr. President, now the vote occurs on the amendment of the Senator from Maine [Mr. COHEN], which actually is the Nunn amendment and has been incorporated in that amendment. I ask for the yeas and nays.

The VICE PRESIDENT. The yeas and nays have been ordered. The clerk will call the roll.

Mr. NUNN. Mr. President, before we have this vote, I would like to state that this amendment basically is the original Nunn-Roth amendment, but it does not have any sanctions in it. In other words, in the goals that are set up, like the 30 days of ammunition, the colocated bases, the 3 percent—if that is accepted, nothing happens. It is better than nothing, but I would say in military terms, this is a tail without teeth. It is certainly better than nothing. It has the ceiling on troops, it also has the two-way street provisions. I think both of those are important and I urge our colleagues to vote for this amendment.

Mr. TOWER. Mr. President, while there are a number of Senators in the Chamber, I might note that the amendment to be expected to be offered is an amendment by the Senator from Georgia [Mr. NUNN] having to do with strategic defense initiatives. This is a very important issue but we do not expect to take a great deal of time on it. Therefore, I advise Senators that they can expect another record vote about 30 to 35 minutes or at the most an hour after this vote is completed.

Mr. NUNN. I might say to the Senator from Texas that people who have other amendments might want to stay for 4 or 5 minutes because I am going to be discussing this amendment with a number of people. It may be that that SDI amendment will not be offered or will be withdrawn. In that case, we will need some more amendments.

Mr. TOWER. Mr. President, in that case, there will be fewer amendments, and we may finish tonight. I think we can finish tonight. Because after the SDI amendments, there are major weapons amendments, policy amendments, then we go to what we might call the lesser amendments.

Let me say if Senators would not stray so far from the floor, we would eat up less time in our rollcall votes and get on with our business.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER [Mr. HEINZ]. The Senator from Montana.

Mr. LEAHY. Mr. President, I will take just a minute. I know the distinguished majority leader wants to get moving.

I note for the record that this last vote, for me, was a very difficult one, as one who constantly opposed the so-called Mansfield amendment in the past, to bring troops home. I found the debate actually an enlightening one. Neither side had done anything to try to influence my vote. In fact, neither side asked me how I was going to vote, and I appreciate that very much. It was a very close thing.

I must say that one of the things that swayed my thinking was that it was on a tabling motion instead of a straight up and down vote. I am not sure how I would have voted on a straight up and down vote. I could have gone the other way.

I must say that I find it disturbing that on issue after issue of significance in this bill, it is always on a tabling motion. I cannot believe it is done to save time. After all, we have spent about a day and a half in stalling quorums, starting at noon, or 1 o'clock, or 2 o'clock or 3 o'clock in the afternoon, and find we are able to go on until 1 o'clock in the morning.

It is called banker's hours. It is after the bank is closed before we start.

I think it is unfortunate that these major issues are always voted on by tabling motions. I heard somebody in the corridor say that that was a sign of arrogance. I disagree with that, of course, because nobody in this body would show any sense of arrogance. Nobody would have the ego to do that.

It is unfortunate on these issues that we do not have straight up and down votes.

Mr. TOWER. Mr. President, will the Senator yield?

On this particular issue, the only way we could vote for the Cohen amendment was to table the Nunn amendment. There are many who wanted a vote on the Cohen amendment. That was the only way we could get at it.

Mr. LEAHY. I recall the Senator from Georgia saying that he was perfectly willing to unravel the thing, to get back to a point where we could have straight up and down votes.

As I said, I defended against any suggestion that there might be any other motives in having a tabling motion, but I say that it is unfortunate that issue after issue comes up on a tabling motion.

On this particular one, I did not make up my mind until probably the last minute or so of the vote. I must admit that the final thing in my mind was the fact that it was a tabling motion, and I really felt that we should have had an up and down vote. That is why I voted the way I did. I have consistently voted against these kinds of things, and I consistently voted against the Mansfield-type amendments in the past.

I hope that on some of the major issues we have remaining there will be an up and down vote, not a tabling motion.

Mr. MELCHER. Mr. President, the Senator from Georgia, in describing the amendment we are going to vote on, was extremely generous and said that it was a tail without teeth. That is very generous.

The strongest point in the amendment we will be voting on is the phrase that Congress urges "the President and the Secretary of Defense to continue to encourage member nations of NATO, other than the United States, to work expeditiously to fulfill the following commitments."

I think that is the kind of message that has been murmured, muttered, and discussed but never has gotten any results.

Mr. BYRD. Mr. President, may we have order? The Senator is entitled to be heard.

The PRESIDING OFFICER [Mr. HEINZ]. The Senator is correct. Senators will retire to the cloakroom if they wish to converse. Staff members will be seated. The Senate will come to order.

Mr. MELCHER. Mr. President, those kinds of love letters sent to our friends, our allies in Europe, are not likely to gain any results. They have not in the past, and there is no reason to think that they would now.

I do not find fault, necessarily, with our allies in Europe. I would like to see them do more.

The PRESIDING OFFICER. The Senate is not in order. Staff will sit down. Senators will refrain from conversation. We are not going to proceed until people stop having conversations. Senators in the aisles will please take their seats.

Mr. MELCHER. Mr. President, if Congress is willing to spend more than our share, then I think it is likely that our NATO allies will continue to be financially prudent and permit us to do so.

I think the Nunn-Roth amendment is not only the proper way to go but also is very constructive—not just for the sake of saying to our allies, "Pay your share; or at least pay more of your share"; not just for the sake of admitting that we cannot continue to increase the amount we are spending indefinitely because it is strapping us economically and adds to our deficit; but also because it is constructive for the joint defense of the NATO allies to require that they meet their commitment or we will use the sanction of withdrawing part of our troops. They do not want us to withdraw part of our troops, so they will meet the rather mild requirement of increasing the amount of their contribution to our joint defense.

I think the loser in the Cohen amendment we are about to adopt is not just the American people but also our European allies, because they are going to have less joint defense.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island [Mr. CHAFEE] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Kentucky [Mr. HUDDLESTON] and the Senator from Louisiana [Mr. LONG] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 94, nays 3, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—94

Abdnor
Andrews
Armstrong
Baker
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Byrd
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
East
Evans
Exon
Ford
Garn
Glenn
Goldwater
Gorton
Grassley
Hart
Hatch
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Jepsen
Johnston
Kassebaum
Kasten
Kennedy
Lautenberg
Laxalt
Leahy
Levin
Lugar
Matsunaga
Mattingly
McClure
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Quayle
Randolph
Riegle
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Tower
Trible
Tsongas
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—3

Burdick
Hatfield
Mathias

NOT VOTING—3

Chafee
Huddleston
Long

So the amendment (No. 3266), as modified, was agreed to.

Mr. WALLOP. I move to reconsider the vote by which the amendment was agreed to and I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. WILSON. Mr. President, it is my understanding that the senior Senator from Oregon wishes to lay down an amendment and, after doing so, will move to set aside the amendment briefly for the purpose of allowing the senior Senator from Wyoming to lay down an amendment that has been cleared on both sides. I ask that we proceed in that fashion.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 3270

(Purpose: To establish a U.S. Academy of Peace)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oregon, [Mr. HATFIELD] proposes an amendment numbered 3270.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 239, after line 2, add the following:

TITLE IV—UNITED STATES ACADEMY OF PEACE ACT

SHORT TITLE

SEC. 401. This title may be cited as the "United States Academy of Peace Act".

DECLARATION OF FINDINGS AND PURPOSES

SEC. 102. (a) The Congress finds and declares that—

(1) a living institution embodying the heritage, ideals, and concerns of the American people for peace would be a significant response to the deep public need for the Nation to develop fully a range of effective options, in addition to armed capacity, that can leash international violence and manage international conflict;

(2) people throughout the world are fearful of nuclear war, are divided by war and threats of war, are experiencing social and cultural hostilities from rapid international change and real and perceived conflicts over interests, and are diverted from peace by the lack of problem-solving skills for dealing with such conflicts;

(3) many potentially destructive conflicts among nations and peoples have been resolved constructively and with cost efficiency at the international, national, and community levels through proper use of such techniques as negotiation, conciliation, mediation, and arbitration;

(4) there is a national need to examine the disciplines in the social, behavioral, and physical sciences and the arts and humanities with regard to the history, nature, elements, and future of peace processes, and to bring together and develop new and tested techniques to promote peaceful economic, political, social, and cultural relations in the world;

(5) existing institutions providing programs in international affairs, diplomacy, conflict resolution, and peace studies are essential to further development of techniques to promote peaceful resolution of international conflict, and the peacemaking activities of people in such institutions, government, private enterprise, and voluntary associations can be strengthened by a national institution devoted to international peace research, education and training, and information services;

(6) there is a need for Federal leadership to expand and support the existing international peace and conflict resolution efforts of the Nation and to develop new comprehensive peace education and training programs, basic and applied research projects, and programs providing peace information;

(7) the Commission on Proposals for the National Academy of Peace and Conflict Resolution, created by the Education Amendments of 1978, recommended establishing an academy as a highly desirable investment to further the Nation's interest in promoting international peace;

(8) an academy, strengthening and symbolizing the fruitful relation between the world of learning and the world of public affairs, would be the most efficient and immediate means for the Nation to enlarge its capacity to promote the peaceful resolution of international conflicts; and

(9) the establishment of an academy is an appropriate investment by the people of this Nation to advance the history, science, art, and practice of international peace and the resolution of conflicts among nations without the use of violence.

(b) It is the purpose of this title to establish an independent, nonprofit, national institution to serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence.

DEFINITIONS

SEC. 403. As used in this title, the term—

(1) "Academy" means the United States Academy of Peace established under this title;

(2) "Board" means the Board of Directors of the Academy; and

(3) "Center" means the Jennings Randolph Center for International Peace of the Academy.

ESTABLISHMENT

SEC. 404. (a) There is hereby established the United States Academy of Peace.

(b) The Academy is an independent nonprofit corporation and an organization as defined in section 170(c)(2)(5) of the Internal Revenue Code of 1954. The Academy does not have the power to issue any shares of stock or to declare or pay any dividends.

(c) The Academy shall maintain its principal office in the District of Columbia with a designated agent or agents to accept service of process for the corporation. Notice to or service upon an agent shall be deemed notice to or service upon the Academy.

(d) The Academy may rent, lease, purchase, or receive and hold in its name property for offices, schools, and other facilities and to carry out activities under this title. As determined by the Board, the Academy may establish offices, schools, and other facilities outside the District of Columbia for purposes not inconsistent with this title.

(e) As determined by the Board, the Academy may establish, under the laws of the District of Columbia, a legal entity which is capable of receiving, holding, and investing public funds for purposes in furtherance of the Academy under this title. The Academy may designate such legal entity as the "Endowment of the United States Academy for Peace".

(f) The Academy is liable for the acts of its directors, officers, employees, and agents when acting within the scope of their authority.

(g)(1) The Academy has the sole and exclusive right to use and to allow or refuse others the use of the terms "United States Academy of Peace", "Jennings Randolph Center for International Peace", and "Endowment of the United States Academy of Peace" and the use of any official United States Academy of Peace emblem, badge, seal, and other mark of recognition or any colorable simulation thereof. No powers or privileges hereby granted shall interfere or conflict with established or vested rights secured as of September 1, 1981.

(2) Notwithstanding any other provision of this title, the Academy may use "United States" or "U.S." or any other reference to the United States Government or Nation in its title or in its corporate seal, emblem, badge, or other mark of recognition or colorable simulation thereof in any fiscal year only if there is an authorization of appropriations for the Academy for such fiscal year provided by law.

(h) In selecting a site for the principal office of the Academy, the Board shall give preference to federally-owned facilities first and then to university-owned and privately-owned facilities. The Board's decision in this matter shall be based on the need for a setting in which to encorage the pursuit of scholarly research and educational activities. The Board shall bear in mind in site selection that the purpose of the Academy is not to serve as a base for public political activity of any kind against United States foreign policy or United States peacemaking efforts. The site selection decision shall be as cost-effective as possible.

POWERS AND DUTIES

SEC. 405. (a) The Academy may exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act consistent with this title, except for section 5(o) of the District of Columbia Nonprofit Corporation Act (section 1005(o) of title 29 of the District of Columbia Code).

(b) The Academy, acting through the Board, may—

(1) establish a Center for International Peace and appoint to it for periods up to two years scholars and leaders in peace from the United States and abroad to pursue scholarly inquiry and other appropriate forms of communication on international peace and conflict resolution and, as appropriate, provide stipends, grants, fellowships, and other support to the leaders and scholars;

(2) establish such divisions, programs, schools, and offices as the Board deems appropriate to carry out this title;

(3) enter into formal and informal relationships with other institutions, public and private, for purposes not inconsistent with this title;

(4) conduct research and make studies, particularly of an interdisciplinary or of a multidisciplinary nature, into the causes of war and other international conflicts and the elements of peace among the nations and peoples of the world, including peace theories, methods, techniques, programs, and systems, and into the experiences of the United States and other nations in resolving conflicts with justice and dignity and without violence as they pertain to the advancement of international peace and conflict resolution, placing particular emphasis on realistic approaches to past successes and failures in the quest for peace and arms control and utilizing to the maximum extent possible United States Government documents and classified materials from the Department of State, the Department of Defense, the Arms Control and Disarmament Agency, and the intelligence community;

(5) develop programs to make international peace and conflict resolution research, education, and training more available and

useful to persons in government, private enterprise, and voluntary associations, including the creation of handbooks and other practical materials;

(6) provide promote, and support peace education and research programs at graduate and postgraduate levels;

(7) conduct training, symposia, and continuing education programs for practitioners, policymakers, policy implementers and citizens and noncitizens directed to developing their skills in international peace and conflict resolution;

(8) develop, for publication or other public communication, and disseminate, the carefully selected products of the Academy;

(9) establish a clearinghouse and other means for disseminating information, including classified information that is properly safeguarded, from the field of peace learning to the public and to government personnel with appropriate security clearances;

(10) recommend to the Congress the establishment of a United States Medal of Peace to be awarded under such procedures as the Congress may determine, except that no person associated with the Academy may receive the United States Medal of Peace; and

(11) secure directly, upon request of the president of the Academy to the head of any Federal department or agency and in accordance with the Freedom of Information Act (5 U.S.C. 552), information necessary to enable the Academy to carry out the purposes of this title if such release of the information would not unduly interfere with the proper functioning of a department or agency, including classified information if the Academy staff and members of the Board who have access to such classified information obtain appropriate security clearances from the Department of Defense and the Department of State.

(c) The Academy may undertake extension and outreach activities under this title by making grants and entering into contracts with institutions of postsecondary, community, secondary, and elementary education including combinations of such institutions, with public and private educational, training, or research institutions—including the American Federation of Labor, the Congress of Industrial Organizations, and libraries—and with public departments and agencies including State and territorial departments of education and of commerce. No grant may be made to an institution unless it is a nonprofit or official public institution, and at least one-fourth of the Academy's annual appropriations shall be paid to such nonprofit and official public institutions. A grant or contract may be made to—

(1) initiate, strengthen, and support basic and applied research on international peace and conflict resolution;

(2) promote and advance the study of international peace and conflict resolution by educational, training, and research institutions, departments, and agencies;

(3) educate the Nation about and educate and train individuals in peace and conflict resolution theories, methods, techniques, programs, and systems;

(4) assist the Academy in its publication, clearinghouse, and other information services programs;

(5) assist the Academy in the study of conflict resolution between free trade unions and Communist-dominated organizations in the context of the global struggle for the protection of human rights; and

(6) promote the other purposes of this title.

(d) The Academy may respond to the request of a department or agency of the United States Government to investigate, examine, study, and report on any issue within the Academy's competence, including the study of past negotiating histories and the use of classified materials.

(e) The Academy may enter into contracts for the proper operation of the Academy, including maintenance of its offices, schools, and other facilities.

(f) The Academy may appoint and fix the compensation and duties of officers, employees, and agents and establish such advisory committees, councils, or other bodies as the efficient administration of the business and purposes of the Academy may require.

(c) The Academy may adopt, amend, and alter bylaws, not inconsistent with the laws of the United States and the District of Columbia, for the management of Academy property and the regulation of Academy affairs.

(h)(1) Except as provided in paragraph (2) and section 410(e), the Academy may obtain grants and contracts, including contracts for classified research for the Department of State, the Department of Defense, the Arms Control and Disarmament Agency, and the intelligence community, and receive gifts and contributions from government at all levels.

(2)(A) The Academy may not accept any gift, contribution, or grant from, or enter into any contract with, a foreign government, any agency or instrumentality of such government, any international organization, or any foreign national, except that the Academy may accept the payment of tuition by foreign nationals for instruction provided by the Academy.

(B) For purposes of this paragraph, the term "foreign national" means—

(i) a natural person who is a citizen of a foreign country or who owes permanent allegiance to a foreign country; and

(ii) a corporation or other legal entity in which natural persons who are nationals of a foreign country own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity.

(C) For purposes of this paragraph, the term "person" means a natural person, partnership, association, other unincorporated body, or corporation.

(i) The Academy may charge and collect subscription fees and develop, for publication or other public communication, and disseminate, periodicals and other materials.

(j) The Academy may charge and collect fees and other participation costs from persons and institutions participating in the Academy's direct activities authorized in subsection (b).

(k) The Academy may sue and be sued, complain, and defend in any court of competent jurisdiction.

(l) The Academy may adopt, alter, use, and display a corporate seal, emblem, badge, and other mark of recognition and colorable simulations thereof.

(m) The Academy may do any and all lawful acts and things necessary or desirable to carry out the objectives and purposes of this title.

(n) The Academy shall not itself undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, or by the United Nations, except that personnel of the Academy may testify or make other appropriate communication when formally requested to do so by a legislative body, a committee, or a member thereof.

BOARD OF DIRECTORS

SEC. 406. (a) The powers of the Academy shall be vested in a Board of Directors unless otherwise specified in this title.

(b) The Board of Directors shall consist of nineteen members appointed as follows:

(1) two Members of the Senate, one from each of the major political parties, to be appointed by the President pro tempore of the Senate no later than five days after the confirmation of the members nominated by the President;

(2) two Members of the House of Representatives, one from each of the major political parties, to be appointed by the Speaker of the House of Representatives no later than five days after the confirmation of the members nominated by the President;

(3) eleven persons each of whom shall have appropriate practical or academic experience in peace and conflict resolution efforts of the United States, no more than six of whom may be members of the same political party and none of whom may be employees of the Federal Government, appointed by the President, by and with the advice and consent of the Senate. Not later than ninety days after the date of enactment of this title, the President shall nominate the eleven individuals for the initial Board and transmit their names and any other information to the Senate. If the Senate fails to confirm a nominee, it shall so inform the President. The President shall submit the name of a new nominee within fifteen days of notice of rejection by the Senate; and

(4) four officials who shall serve as ex-officio members of the Board, consisting of the Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the Commandant of the National Defense University or their designees.

(c) A director shall take an oath of office administered by the Vice President of the United States within two weeks after appointment, if a Member of Congress, or after confirmation by the Senate, if a Presidential appointee.

(d) Members of the Board of Directors shall serve the following terms of office:

(1) A Member of Congress appointed to the Board shall serve for a single term of six years and only while serving as a Member of Congress.

(2) When submitting nominations for the initial Board, the President shall stipulate by name four directors who shall serve for five-year terms, four directors who shall serve for four-year terms, and three directors who shall serve for three-year terms. Thereafter, each Presidential appointee, except for a director appointed to fill an unexpired term, shall serve for a five-year term. No Presidential appointee may serve on the Board for more than ten years.

(3) No person may be appointed to less than a full term unless appointed to fill an unexpired term.

(e) Whenever a vacancy occurs on the Board before the expiration of a director's term of office, the vacancy shall be filled—

(1) if a Member of Congress, pursuant to paragraph (1) or (2) of subsection (b) with the appointment made to a full term no later than thirty calendar days after the vacancy occurs; or

(2) if a Presidential appointee, by the Board submitting a list of nominees of no less than three and no more than five names to the President no later than thirty calendar days after the vacancy occurs. The President shall select a nominee from the list and submit the nominee's name to the Senate for confirmation no later than thirty calendar days after receiving the Board's recommendations.

(f) At least ninety days but no more than one hundred and twenty days before the timely expiration of the term of office of any Presidential appointee to the Board, the Board shall submit to the President a list of no less than three and no more than five recommendations for each position. The President shall submit the name of the nominee for each position selected from the Board's list of recommendations, to the Senate for confirmation at least forty-five calendar days before expiration of the term of office to be filled.

(g) A director may be removed from the Board as follows:

(1) A member of the Board appointed from the Congress may be removed by the appointing authority for malfeasance in office, persistent neglect of duties, or inability to discharge duties.

(2) A member of the Board appointed by the President may be removed by the President—

(A) in consultation with the Board, for conviction of a felony, malfeasance in office, persistent neglect of duties, or inability to discharge duties;

(B) upon the recommendation of ten members of the Board; or

(C) upon the recommendation of a majority of the members of the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives and a majority of the members of the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate.

A recommendation made in accordance with clause (B) may be made only pursuant to action taken at a meeting of the Board, which may be closed pursuant to the procedures of subsection (i). Only members who are present may vote. A record of the vote shall be maintained. The President shall be informed immediately by the Board of the recommendation. If the President removes the member based on any of the grounds described in clauses (A) through (C), the President shall nominate a successor pursuant to subsection (e).

(h) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly and financially benefits the member or pertain specifically to any public body or any private or nonprofit firm or organization with which the member is then formally associated or has been formally associated within a period of two years.

(i) Meetings of the Board shall be conducted as follows:

(1) The President shall stipulate by name the nominee who shall be the first chairman of the Board. The first Chairman shall serve for a term of three years. Thereafter, the Board shall elect a Chairman every three years from among the directors appointed by the President and may elect a Vice Chairman if so provided by the Academy's bylaws.

(2) The Board shall meet at least semiannually, at any time pursuant to the call of the Chairman or as requested in writing to the Chairman by at least five members of the Board, and as may be provided by the bylaws of the Academy not inconsistent with this title. A majority of the members of the Board, including one member appointed from the Congress, shall constitute a quorum for any Board meeting.

(3) Upon majority vote of the members of the Board, the Board shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Academy.

(4) All meetings of the Board shall be open to public observation and shall be preceded by reasonable public notice. Notice in the Federal Register shall be deemed to be reasonable public notice for purposes of the preceding sentence. In exceptional circumstances, the Board may close those portions of a meeting, upon a majority vote of its members present and with the vote taken in public session, which are likely to disclose information likely to affect adversely any ongoing peace proceeding or activity or to disclose information of matters exempted from public displosure pursuant to subsection (c) of section 552b of title 5, United States Code.

(j) A director appointed by the President shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule in section 5332 of title 5, United States Code, for each day during which the director is engaged in the performance of duties as a member of the Board.

(k) While away from his home or regular place of business in the performance of duties for the Academy, a director shall be allowed travel expenses, including a per diem in lieu of subsistence, not to exceed the expenses allowed persons employed intermittently in Government service under section 5703(b) of title 5, United States Code.

OFFICERS AND EMPLOYEES OF THE ACADEMY

SEC. 407. (a) The Board shall appoint the president of the Academy and such other officers as the Board determines to be necessary. The president shall be a nonvoting ex officio member of the Board. All officers shall serve at the pleasure of the Board. The president shall be appointed for an explicit term of years. Notwithstanding any other provision of law limiting the payment of compensation, the president and other officers appointed by the Board shall be compensated at rates determined by the Board, but no greater than those provided for by level I of the Executive Schedule of chapter 53 of title 5, United States Code.

(b) Subject to the provisions of section 410(e), the Board shall authorize the president and any other officials or employees it designates to receive and disburse public moneys, obtain and make grants, enter into contracts, establish and collect fees, issue certificates and other honorifics, and undertake all other activities necessary for the efficient and proper functioning of the Academy.

(c) The president, subject to Academy bylaws and general policies established by the Board, may appoint, fix the compensation of, and remove such employees of the Academy as the president determines necessary to carry out the purposes of the Academy. In determining employee rates of compensation, the president shall be governed by the provisions of title 5, United States Code, relating to classification and General Schedule pay rates.

(d)(1) The president may request the assignment of any Federal officer or employee to the Academy by an appropriate department, agency, or congressional official or Member of Congress and may enter into agreement for such assignment, if the affected officer or employee agrees to such assignment and such assignment causes no prejudice to the salary, benefits, status, or advancement within the department, agency, or congressional staff of such officer or employee.

(2) The Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the Director of Central Intelligence each may assign officers and employees of his respective department or agency, on a rotating basis to be determined by the Board, to the Academy if the affected officer or employee agrees to such assignment and such assignment causes no prejudice to the salary, benefits, status, or advancement within the respective department or agency of such officer or employee.

(e) No officer or full-time employee of the Academy may receive any salary or other compensation for services from any source other than the Academy during the officer's or employee's period of employment by the Academy, except as authorized by the Board.

(f)(1) Officers and employees of the Academy shall not be considered officers and employees of the Federal Government except for purposes of the provisions of title 28, United States Code, which relate to Federal tort claims liability, and the provisions of title 5, United States Code, which relate to compensation and benefits, including the following provisions: chapter 51 (relating to classification); subchapters I and III of chapter 53 relating to pay rates); subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance), the Academy shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions of title 5 referred to in this section.

(2) No Federal funds shall be used to pay for private fringe benefit programs. The Academy shall not grant academic tenure or make long-term commitments to employees that are inconsistent with rules and regulations applicable to Federal employees.

(g) No part of the financial resources, income, or assets of the Academy or of any legal entity created by the Academy shall inure to any agent, employee, officer, or director or be distributable to any such person during the life of the corporation or upon dissolution or final liquidation. Nothing in this section may be construed to prevent the payment of reasonable compensation for services or expenses to the directors, officers, employees, and agents of the Academy in amounts approved in accordance with the provisions of this title.

(h) The Academy shall not make loans to its directors, officers, employees, or agents, or to any legal entity created by the Academy. A director, officer, employee, or agent who votes for or assents to the making of a loan or who participates in the making of a loan shall be jointly and severally liable to the Academy for the amount of the loan until repayment thereof.

PROCEDURES AND RECORDS

SEC. 408. (a) The Academy shall monitor and evaluate and provide for independent evalution if necessary of programs supported in whole or in part under this title to ensure that the provisions of this title and the bylaws, rules, regulations, and guidelines promulgated pursuant to this title are adhered to.

(b) The Academy shall prescribe procedures to ensure that grants, contracts, and financial support under this title are not suspended unless the grantee, contractor, or person or entity receiving financial support has been given reasonable notice and opportunity to show cause why the action should not be taken.

(c) In selecting persons to participate in Academy activities, the Academy may consider a person's practical experience or equivalency in peace study and activity as well as other formal requirements.

(d) The Academy shall keep correct and complete books and record of account, including separate and distinct accounts of receipts and disbursements of Federal funds. The Academy's annual financial report shall identify the use of such funding and shall present a clear description of the full financial situation of the Academy.

(e) The Academy shall keep minutes of the proceedings of its Board and of any committees having authority under the Board.

(f) The Academy shall keep at its principal office a record of the names and addresses of its Board members; copies of this title, of any other Acts relating to the Academy, and of all Academy bylaws, rules, regulations, and guidelines; required minutes of proceedings; a record of all applications and proposals and issued or received contracts and grants; and financial record of the Academy. All items required by this subsection may be inspected by any Board member of the member's agent or attorney for any proper purpose at any reasonable time.

(g) The accounts of the Academy shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The audit shall be conducted at the place or places where the accounts of the Academy are normally kept. All books, accounts, financial records, files and other papers, things, and property belonging to or in use by the Academy and necessary to facilitate the audit shall be made available to the person or persons conducting the audit, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(h) The Academy shall provide a report of the audit to the President of the United States and to each House of Congress no later than six months following the close of the fiscal year for which the audit is made. The report shall set forth the scope of the audit and include such statements, together with the independent auditor's opinion of those statements, as are necessary to present fairly the Academy's assets and liabilities, surplus or deficit, with reasonable detail, including a statement of the Academy's income and expenses during the year including a schedule of all contracts and grants requiring payments in excess of $5,000 and any payments of compensation, salaries, or fees at a rate in excess of $5,000 per annum. The report shall be produced in sufficient copies for the public.

(i) The Academy and its directors, officers, employees, and agents shall be subject to the provisions of section 552 of title 5, United States Code (relating to freedom of information).

INDEPENDENCE AND LIMITATIONS

SEC. 409. (a) Nothing in this title may be construed as limiting the authority of the Office of Management and Budget to review and submit comments on the Academy's budget request at the time it is transmitted to the Congress.

(b) No political test or political qualification may be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, employee, agent, or recipient of Academy funds or services or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this title.

FUNDING

SEC. 410. (a) For the purpose of purchasing, leasing, renting, or otherwise acquiring and improving a suitable site for a principal office for the Academy, the Center for International Peace, and for the legal entity authorized to be established under section 404 of this title, in or within easy reach of the District of Columbia, there are authorized to be appropriated on or after October 1, 1983, to the Academy a capitalization fund of $7,500,000 which shall remain available to the Academy without regard to fiscal year limitations, except that none of such funds may be used to pay for the construction of any building or facility for the Academy.

(b) For the purpose of establishing the programs and administering the affairs of the Academy as authorized by this title (except for paragraph (10) of section 405(b)), there are authorized to be appropriated for the fiscal year 1985, $6,000,000 and for the fiscal year 1986, $10,000,000. Monies appropriated for the fiscal year 1985 shall remain available to the Academy through the fiscal year 1986.

(c) The Board of Directors may transfer to the legal entity authorized to be established under section 4(e) any funds not obligated or expended appropriations to the Academy for a fiscal year, and such funds shall remain available for obligation or expenditure for the purposes of such legal entity without regard to fiscal year limitations. Any use by such legal entity of appropriated funds shall be reported to each House of the Congress and to the President of the United States.

(d) Any authority provided this title to make contracts shall be effective for a fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(e) Notwithstanding any other provision of this title, the Academy and the legal entity described in section 404(e) may not obtain any grant or contract or receive any gift or contribution from any private agency, organization, corporation or other legal entity, institution, or individual.

DISSOLUTION OR LIQUIDATION

SEC. 411. Upon dissolution or final liquidation of the Academy or of any legal entity created pursuant to this title, all income and assets of the corporation or other legal entity shall revert to the Treasury of the United States.

REPORTING REQUIREMENT AND REQUIREMENT TO HOLD HEARINGS

SEC. 412. Beginning two years after the date of enactment of this title, and at intervals of two years thereafter, the chairman of the Board of Directors of the Academy shall prepare and transmit to the Congress and the President a report detailing the progress the Academy has made in carrying out the purposes of this title during the preceding two-year period. The President shall prepare and transmit to the Congress within a reasonable time after the receipt of such report the written comments and recommendations of the appropriate agencies of the United States with respect to the contents of such report and their recommendations with respect to any legislation which may be required concerning the Academy. After receipt of such report by the Congress, the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives and the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate shall hold hearings to review the findings and recommendations of such report and the written comments received from the President.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. If the Senator from Oregon will withhold, the Senate is not in order. Senators will take their seats and vacate the well. Staff will sit down or leave the Chamber. Senators wishing to converse will retire to the cloakroom.

Mr. HATFIELD. Mr. President, I ask unamimous consent that the amendment now pending be temporarily laid aside for not longer than 5 minutes in order that the Senator from Wyoming may offer an amendment which has been cleared on both sides of the aisle and that the Senator from Oregon then be recognized to resume the explanation of his amendment.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon? Without objection, it is so ordered.

The Senator from Wyoming.

Mr. WALLOP. I thank the Senator from Oregon.

AMENDMENT NO. 3271

Mr. WALLOP. Mr. President, on behalf of the Senator from Virginia [Mr. WARNER], and myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for himself and Mr. WARNER, proposes an amendment numbered 3271.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(E) The funds authorized to be appropriated for the Strategic Defense Initiative shall be managed by the Director of the Strategic Defense Office, subject only to the approval of the Secretary of Defense, and applicable laws, including the submission to the Congress of plans for reprogramming of funds. The Director of the Strategic Defense Office is authorized to establish all appropriate programs and demonstrations and to contract directly with private industry or the national laboratories.

Mr. WALLOP. Mr. President, this amendment establishes the management of the Strategic Defense Initiative on a sound footing, and provides realistic interim goals for its work. Many people, including myself, have noted that the Strategic Defense Program has had an uncertain beginning. It took the Pentagon 1 full year, after it received the President's order, to set up a Strategic Defense Office, and find a Director. The study which occupied most of that year, the Fletcher panel's study, was so technically incompetent that I challenge anyone in this Chamber, or elsewhere, for that matter, to defend its main technical points.

The premises on which the Fletcher panel worked are plainly ridiculous—that we should design an overall system that would be 99.75 percent effective, and that we should build no part of it until all parts were ready to go, sometime in the 21st century. Thus, the American people would have been asked to spend billions for 20 years, while receiving no safety in return, and while at the same time the Soviet Union is building effective antimissile weapons month after month, year after year.

Spokesmen for the administration immediately recognized that this makes no sense strategically or politically. Thus they began to speak of interim goals for strategic defense. Hence the Congress and the press began to speak of contraditions within the administration. But, in the realm of common sense, there is no contradiction at all between the intention of taking a long journey toward the eventual elimination of ballistic missiles, and the taking of the necessary first steps. The only people that can see this as a contradiction are the utopians who were appointed to the Fletcher Panel, and the utopians here in the Congress who believe that somehow we ought to demand either an instant, foolproof defense, or vow to be forever without a defense. Commonsense, however, counsels us to do what we can with what we've got.

The newly appointed Director of the Strategic Defense Office understands this elementary truth. The new Strategic Defense Office not only has to do a very big job; it also has to overcome the Pentagon's bureaucracy and a start that has left doubts in many minds.

The Armed Services Committee, in its report, acknowledges the difficulties and points out the solutions. It notes that the Director of the Strategic Defense Office should have the authority to actually decide which programs should be pursued, and to pursue them according to his best judgment.

The report of the Armed Services Committee also seeks to bolster the Strategic Defense Office's hand in overcoming the false start in the program.

There continues to be strong bureaucratic pressure for spending the money authorized for research alone on strategic defense, not for providing protection for the American people, but for the development of exotic technology that might or might not be useful a generation from now. That is why the report tries to focus the program toward near-term results. This is thoroughly consistent with the intention of the Director of the Strategic Defense Office.

However, Mr. President, report language is not enough. The Director of the Strategic Defense Office does not now have the power to do what the report says he ought to do. He does not have the power to take us into a new field competently and efficiently. Look back one generation to the few brief years when our present strategic weapons were conceived, designed, and built in a burst of creativity and efficiency. In those years we simply confided the task to competent individuals, and gave them the power commensurate with their responsibility.

Gen. Bernard Shriever thus delivered to us the IRBM in less than 4 years, while Adm. "Red" Raborn delivered to us the Polaris system in about 4 years. Today, too, when we are serious, as we are in certain highly classified programs authorized by the Intelligence Committee, this is what we do. This is what we do when we want technical success at a reasonable price and in good time.

When we are not serious, then we get programs managed regularly, like MX. They take a generation, cost unbelievable amounts, and end up of doubtful worth. That is why, Mr. President, we have to give the Director of the Strategic Defense Office full power and full responsibility, under the Secretary of Defense, to shape the program and move it forward. In a new field it is especially important to be able to fix responsibility.

Mr. President, what we are doing is authorizing the funds authorized to be appropriated for the strategic defense initiative to be managed by the Director of the Strategic Defense Office, subject only to the approval of the Secretary of Defense, and applicable laws, including the submission to the Congress of plans for reprogramming of funds.

What we have now is a Director for this office and will have somebody in charge who can make some quick decisions and some valid decisions as to what is the best path for this country to pursue, both near and far term.

Congress is in no position to do that. I think nobody but that office is for a year or two while we get down to the business of doing it and then having a submission back to us as to what he has undertaken.

It is my understanding that the distinguished managers of the bill for the majority and the minority have agreed to this.

Mr. WARNER. Mr. President, I am privileged to be a cosponsor of this amendment. It simply reinforces the concept of the role of the program manager. He can determine the content of the program. He can manage the resources and he can contract directly.

I think it strengthens the hand of a very important program manager. I urge our colleagues to accept the amendment.

Mr. WILSON. Mr. President, I would ask the Senator from Wyoming to add me as a cosponsor, and I ask unanimous consent that I be so added.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILSON. Mr. President, I think the Senator from Virginia has put the case very well. Unless there is additional debate, we are prepared to accept the amendment.

Mr. WALLOP. Mr. President, I am pleased to add the Senator from California as a cosponsor.

The PRESIDING OFFICER. Is there further debate?

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I send a perfecting amendment to the——

The PRESIDING OFFICER. Under the previous order, the Senator had 5 minutes for the amendment. The Senator's 5 minutes have expired.

Mr. WILSON. Mr. President, I wonder if we might ask unanimous consent to extend to the Senator from Wyoming time of 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. I object; I want to have more discussion on this.

Mr. President, I suggest the absence of a quorum.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. A quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that further proceeding under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, a disagreement having been discovered over the recent amendment of the

Senator from Wyoming, I ask unanimous consent that we go back to the order of business, the amendment of the Senator from Oregon, and that we be permitted to consider this at such time as it is appropriate without prejudice.

The **PRESIDING OFFICER.** The Chair would advise the Senator that regular order is a consideration of the amendment of the Senator from Oregon.

Mr. **WALLOP.** Mr. President, I ask unanimous consent that I may be permitted to call up my amendment at the appropriate time.

The **PRESIDING OFFICER.** The Senator has that right any time without unanimous consent.

Mr. **WALLOP.** I thank the Chair.

The **PRESIDING OFFICER.** Under the previous order, the Senator from Oregon is recognized.

AMENDMENT NO. 3270

Mr. **HATFIELD.** Mr. President, I thank my colleagues. I rise on behalf of my colleagues, Senators Matsunaga, Randolph, Jepsen, Stafford, Moynihan, Bingaman, Mathias, Heinz, Murkowski, Kennedy, Riegle, Sarbanes, Cranston, Huddleston, Bumpers, Lautenburg, Boschwitz, Sasser, Simpson, Boren, Pryor, Metzenbaum, Baucus, Biden, Dodd, Exon, Ford, Glenn, Hollings, Bradley, Burdick, Byrd, Mitchell, Melcher, DeConcini, Chiles, Inouye, Johnston, Levin, and Leahy, to propose an amendment authorizing the establishment of a National Academy of Peace.

During the past days and nights, we have been making important decisions about the type and level of weaponry our Nation must develop and deploy in the coming year. We also have been making decisions which will shape not only U.S. foreign policy, but also the role of the Department of Defense in the coming years.

During our sometimes heated debates, our goal has been a shared one: Defending the national security of the United States. To defend is to protect, to guard, and to uphold. The role of the Department of Defense, and indeed the Government of our Nation is to defend our Nation, its people, and its interests.

The cosponsors of this amendment and I are convinced that the maintenance of that defense is well served by education in peaceful means of conflict resolution. If we as a Nation understand negotiation and view it as a viable response to conflict, perhaps we will be able to lessen the drain on our economic and human resources demanded by our military complex. We may then better address the needs of the homeless, the poor, and the economically underprivileged of our Nation and our world.

If wars do indeed begin in the minds of men, it is there that we must wage the battle for peace.

Nine years ago, Senator Vance Hartke and I introduced legislation creating a National Academy of Peace. We envisioned the creation of an academic institution designed to foster the study of peaceful means of conflict resolution. The initiative has been through numerous congressional hearings, studied by a congressional commission and endorsed by more than 200 Members of Congress. And yet, there has never been a Senate vote on the Peace Academy.

S. 564, the National Academy of Peace Act, is the most recent version of this initiative to be introduced in the Senate. Senator Matsunaga and Senator Randolph, who have consistently joined me in calling for the establishment of a National Academy of Peace, again joined me in sponsoring this bill more than 1 year ago. It was reported favorably by the Senate Labor and Human Resources Committee last summer. Currently claiming 55 Senate cosponsors from all over the policital spectrum, the bill has been on the Senate calendar since September.

The individuals, institutions, and Members of Congress who share my dream deserve an opportunity to make that dream a reality. We have worked too hard for too long to see this legislation die of inaction.

In several months, we will bid farewell to our distinguished colleague, Jennings Randolph, who has served the people of West Virginia and the people of our Nation as a Member of Congress for 40 years. In those 40 years, Senator Randolph consistently has called his colleagues to search for the humanitarian response to national and international crises. As one of the original planners of the National Academy of Peace legislation, he has provided vision and strength to our drive for its creation. Included in the amendment I propose tonight is a provision naming the Peace Academy's Center for International Peace after the Senator from West Virginia—a fitting tribute to his commitment.

Mr. President, every 45 minutes, the world spends enough money on arming itself to operate the Peace Academy for 2 years. The funding level included in the amendment I propose tonight for the Peace Academy would cost every American 5 cents a year; the budget we are likely to pass tomorrow will cost each American more than $1,000 a year. Over 2 million U.S. soldiers are on active duty around the world at any given time, ready to defend our national interests. It is high time that the Federal Government employ some people to make peace. It is high time someone's job description included the responsibility to make peace, to pursue peace, to prepare for peace, and to advance the search for peace.

The time for a vote on the Peace Academy is now. We can wait no longer.

Mr. President, let me summarize briefly the purpose of this amendment.

The Father of our Country, President George Washington, recognized the need for adequate training and education of our citizenry in the ability to defend this Nation in a time of war, and the sometimes necessary use of force. In his wisdom as the Father of our Country, he also perceived that it was equally important to develop the capabilities of reconciling differences, mediating, and conciliating. In other words, as President, George Washington demonstrated his ability to train people for the purposes of peacemaking as well as the ability and capability for warmaking. I believe the overwhelming majority of Presidents succeeding President Washington has advocated and supported the proposition incorporated in this particular amendment.

Mr. President, this amendment has not come about on a whim or on the basis of the recently conceived concept or idea of an individual Senator or group of Senators. The first bill was introduced 9 years ago, Senator Vance Hartke of Indiana and I introduced a bill creating the Academy of Peace.

It was never voted on.

We now have over 200 Members of the Congress who have endorsed this concept. Yet the Senate has not had an opportunity to vote on it.

When this proposal was first offered, there was repeated nonaction. Because of the nonaction, however, a blue ribbon commission was appointed by the President of the United States, by the Speaker of the House, and by the President of the Senate, composed of distinguished legislators and citizens from the public, and assigned the duty and responsibility to make a complete and total survey of the idea, the concept, and the proposal.

That distinguished Commission made a very comprehensive report to the Congress. It was presented as an official report of the Vice President representing the President of the United States on a monumentous occasion. It was then made as a report back to the Congress.

A bill was introduced following the commission report and was referred to the Senate Labor and Human Resources Committee.

Mr. President, that committee made its report to the Senate last summer. The proposal now has 56 Senate cosponsors.

If there ever was an idea whose time has come for consideration, I believe it is embodied in this amendment.

Mr. President, I am not suggesting that, by establishing a Peace Academy, we are going to be guaranteed the peace we all seek in the world and the absence of hostilities. But I do believe, however, that there is a definite skill required in reconciling differences in peaceful ways. Such skill is required whether it is labor or arbitration, whether it is conciliation between management and labor, or whether it is a reconciliation effort between husband and wife. There is that definite skill required in this complex society of ours.

I believe, therefore, that it is important to have this kind of skill encouraged within the educational and academic programs of this country. Such encouragement would actually be provided by this amendment.

In the most recent version of this initiative introduced in the Senate a year ago, Senator RANDOLPH and Senator MATSUNAGA, who have consistently joined in this effort for the establishment of a National Peace Academy, again joined me as the major sponsors. These two Senators have certainly served, both in the Senate and the Commission which made the study, which was chaired by Senator MATSUNAGA, and deserve the accolades of all the Members.

I must add a very personal note, which I believe will again reflect the sentiment of my colleagues here in the Senate.

In several months we will bid farewell to our distinguished colleague, Senator JENNINGS RANDOLPH of West Virginia, who has served the people of that State and the people of our Nation as a Member of Congress for 40 years. In those 40 years, Senator RANDOLPH has consistently called his colleagues to search for the humanitarian response to national and international crises. As one of the original planners of the National Academy of Peace legislation, he has provided vision and strength to our drive for its creation. Included in the amendment, Mr. President, I propose tonight is a provision naming the Peace Academy center for international peace after the Senator from West Virginia, paying tribute, I believe, to his commitment. Senator RANDOLPH has known nothing of this provision as we have worked to draft this amendment. The tribute is an earned one, paid for by dedication and vision.

Mr. President, every 45 minutes the world spends enough money on arming itself to operate the Peace Academy for 2 years.

It is important to recognize that the funding level included in the amendment I propose tonight for the peace academy would cost every American 5 cents a year. The budget we are likely to pass tomorrow will cost each American more than $1,000 a year, an outrageous price for the ability to defend this country through warmaking activities. Over 2 million United States soldiers are on active duty around the world at any given time, ready to defend our national interests. I believe it is high time that the Federal Government employ some people in an army of peacemakers, skilled in training and in purpose. I believe it is high time somebody's job description included the responsibility to make peace, to pursue peace, to prepare for peace, and to advance the search for peace.

Mr. President, let me be very frank. I know that there have been those who have been suspect of any effort to establish such an academy. There have been those who have felt that perhaps in some way or another such an academy would become a front for some of the people who have been involved in other peace movements around the world.

There is no question that there have been those who have exploited the yearning for peace in the hearts of people everywhere, in America and around the world. And there have been those who have hidden behind such peace movements, people who have infiltrated; not for the purpose of peace, but for the purpose of advancing some political ideology or some other cause.

But, let me also say to my dear colleagues that such people who have infiltrated have worked through churches, labor unions, and other institutions for those causes. Peace movements are not alone. I believe that in the structuring of this academy, with the Secretaries of Defense and State as members of the board of overseers, with other persons who are appointed by the President of the United States, that we have as much safety and security from this kind of program being infiltrated or dominated or influenced as does Annapolis, West Point, the Colorado Air Force Academy, or any other military academy where we are training people in warmaking capability.

Again, this is something that is not new to our scene. George Washington and all the other Presidents have advocated this. They have been men of peace; men who are willing to take their stand for the defense of this country in time of war. I would hope that we not draw the red herrings and raise straw men, because this is a straightforward proposal that is well-founded in the history of the Republic. I believe it is a proposal which deserves the support of all the Members of this body, even beyond those 56 who have cosponsored this bill.

Mr. President, by just a matter of courtesy of the Senate, I would urge the Chair to give recognition to those chief sponsors, Senator RANDOLPH, Senator MATSUNAGA, and Senator STAFFORD for opening remarks. These are the men who have really been on the battleline, in the committee and elsewhere, for this idea for many years.

I do not expect to call for a rollcall. I do not expect to speak long. I have spoken my piece. I will be happy to answer questions, as a sponsor of this amendment.

There are those who have ideas about this on both sides of the question. I would hope that we could bring this colloquy and this discussion to a conclusion and take final action on this, hopefully by a voice vote, unless others require a rollcall. I do not seek a rollcall on it.

I would like to yield, Mr. President, to my good colleague, Senator RANDOLPH, at this time, if the Chair would so order.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I hesitate, but I do hope that, there can be order in the Senate so that those of us who wish to discuss the pending amendment will have the opportunity to do so. I well understand the desire to discuss other matters.

The PRESIDING OFFICER. The Senator's point is well taken. Those Senators wishing to converse will retire to the cloakrooms to do so. The Senator is entitled to be heard.

Mr. RANDOLPH. Mr. President, at the outset of the remarks that I shall make on the pending amendment, I wish to speak from the depth of my being in appreciation of the commitment of so many Members of the Senate, regardless of party affiliation, who compose the some 58 sponsors of this legislation. I especially wish to thank the Senator from Oregon [Mr. HATFIELD] for his commitment expressed tonight, in quiet terms, but from within him. Over a long period of time there have been the understandable stirrings of a hope for passage, not only in this body but in the House of Representatives, of legislation to bring about the creation of a National Peace Academy.

Joined with Senator HATFIELD, I express a very, very deep appreciation to our colleague, Senator MATSUNAGA of Hawaii. He has been such an integral part of this program on which we have worked for many, many years. In fact, I think that I want the record to indicate that within our Committee on Labor and Human Resources, we have had often the understanding and the help of the chairman of that committee, ORRIN HATCH of Utah, and ROBERT STAFFORD, also of the majority on that committee, our esteemed colleague in the years that I have served in the Senate as well as in connection with the Committee on Environment and Public Works, ROBERT STAFFORD, of Vermont. And last, but never least, our esteemed colleague, Senator CLAIBORNE PELL, then chairman of the Education Subcommittee from whence came the original Peace Academy bill in 1976.

Mr. President, I wish to be thoroughly understood when I say that, to me, it was a well-reasoned appeal when, recently, our able majority leader did something that I believe to be a good thing. He appealed to the President of the United States, Ronald Reagan, and asked, in a sense, that our Chief Executive of this Republic shift his approach to the Soviets by scheduling annual summit meetings in an effort to ease superpower tensions.

Let us go back across the years. Let us return to the Presidency of Franklin Roosevelt. I remember in April 1945 Franklin Roosevelt was to speak to a very important group of citizens in what was then known as the "Museum Beneath the Arch" in St. Louis, MO. It was an address prepared by President Franklin Roosevelt which he did not live to present to that audience and which was never known to the populace generally. I quote to my colleagues from that undelivered speech Franklin Roosevelt's words, truer to me today than they were 39 years ago. Please listen to those prophetic words.

"Today," said Franklin Roosevelt in a speech never to be delivered, "we are faced with the preeminent fact that if civilization is to survive, we must cultivate the science of human relations—the abilities of all people, of all kinds, to live together and work together in the same world at peace."

I come into the last 6 months of working here in the Senate with good friends regardless of political sides of the aisle, my years have spanned more than 51 in this historic city, and nearly 40 years—since I came here to the Capitol as a Member of the House, being sworn in in March 1933. I have worked, as other Senators and Members of the House have worked, on what we would not call so much legislative battles, but crusades, often, which have been a part and parcel of our work here.

Mr. President, the idea of creating a peace office within the U.S. Government is one project that remains unfinished, not just for myself but for the Members of Congress and the people of the United States. My experience with others in creating institutions convinces me that the proper launching of a new institution requires appreciation for the history of the development of the idea itself. I am grateful that for perhaps the last time in this body, I shall be speaking affirmatively as I am now speaking for that which is not for one or two or three Senators, but hopefully will, if it becomes law, benefit all the citizens of the United States and contribute to understanding among humankind around the world. The impressions that I have had I consider often as important elements and themes in the sometimes extended debates which have moved forward on the academy concept. I say to my friends, the Peace Academy concept has had its roots in the drafting of the Constitution of the United States. This is a fact and it has special relevance because of the often asked question: Should the Federal Government be involved in this sort of educational activity?

There are those, and I am not critical of them, who claim that education is the responsibility always of the private sector and that the Peace Academy represents a deviation from that principle. Supporters—some of them—of this amendment believe that this is an idea which can be, perhaps without overstatement, a catalyst, and we believe it will, if it is established, enhance the national security of the United States. In my opinion, it is a logical, appropriate Federal responsibility.

I draw my colleagues' attention to the year 1793.

Those were the hours when the architects of our Republic conceived the Federal Government's most important role as that of the protector of our collective security.

The question is not whether education is a Federal responsibility but whether the maintenance of our national security should include governmental involvement in certain types of education. My response is in the affirmative. National security has come to take on a new meaning in the modern age—a meaning that poses new and demanding challenges. National security, I believe, includes the maintenance of military might. We surely must remain adequately prepared to defend ourselves and our interests—yes, our very country and its people. And to do that upon the battlefields if necessary. And I commend all the Members of this body and our associate body, the House of Representatives, who have served in conflicts.

However, national security has also come to include the ability to avoid armed conflict if it is possible to do so. The potential consequence of failing to avoid armed conflict—yes, perhaps nuclear conflict—certainly staggers the imagination as we think of war and of its implications and its results in this nuclear age. We do not leave the preparation of our military approaches to conflict resolution to the private sector. Neither can we leave the pursuit of nonmilitary approaches to the private sector alone.

The Federal Government has on many occasions injected itself into educational situations with what I call positive results. For example, we cannot discount—I do not—our military academies. I had not thought to say this, but in our office, our administrative assistant is Philip McGance of West Virginia, a graduate of West Point.

There are those educational institutions, as Senator HATFIELD has said—West Point, the Naval Academy, the Air Force Academy, Coast Guard Academy, and other units of preparation—all of which have been brought into being by the actions of Congress. They are justified in my opinion because of our need to adequately train young men and young women in what I call the military arts to protect, as I have emphasized, the national security of this country.

Now, the Peace Academy is in a sense much the same. It represents the recognition of our Federal Government's responsibility to investigate and prepare ourselves for all facets of the maintenance of our national security. I know there is one fact that is certain. The Federal Government has long been in the business of creating educational and research institutions such as:

First, the U.S. Department of Agriculture's Graduate School;

Second, the Uniformed University of Health Sciences;

Third, the Federal Executive Institute;

Fourth, the Naval Post-Graduate School;

Fifth, the National Institutes of Health;

Sixth, the Air Force Institute of Technology;

Seventh, Howard University; and

Eighth, all land-grant colleges and universities.

Our Government has not hesitated to exercise a constructive role in research and education when it became necessary to fill a need not met by the private sector.

The free exchange of ideas, the freedom of expression, and the multiplicity of paths of inquiry are all major factors in making our system of education the very best in the world.

In order to promote, and not stifle, pluralism in education, the Peace Academy bill calls for outreach and involvement of educators and institutions of all kinds around the country and the world.

We have resisted any attempts to make the Academy a monolithic, Washington-based think tank.

It must become and remain an entity of the American people.

Our committee report notes that:

> It is our expectation that the Academy's primary role is to coordinate its own programs with, and enhance the efforts of, existing institutions with programs in peace studies and conflict resolution.

The Peace Academy is intended to be a catalyst.

It will build on pluralism, while greatly accelerating the process through which our outstanding educational system has begun the development of the field of peace and conflict resolution.

The most critical question raised during the debate about the Academy is that of independence.

The Academy must function with a freedom that leaves no doubt as to its academic integrity and autonomy.

We desire to create an institution that, like any educational institution of good reputation, is regarded as one that is capable of free and independent analysis and inquiry.

The question of autonomy and control quite naturally raises the issue of the governance of the Academy.

Who will be its board of directors? This is one of the most important issues that underlines the debate, for the makeup of the board—and particularly the first board—will be perhaps the most crucial factor in setting the direction and credibility of the Academy.

Above all, balance is required. The political right must not come to believe that the political left controls the Academy—and vice versa. A political test is required of board nominees—that is, there are stipulations as to how many registered Democrats or Republicans can serve at one time, but the issue goes much deeper than simple political party affiliation. The Academy, quite literally, must remain above question of partisan politics—its board must bring to it stature, credibility, and a deep commitment to academic integrity based upon ideological balance.

That is precisely what the Labor Committee had in mind when it charged the board with the responsibility to ensure that, for the purposes of balance, a wide variety of viewpoints in relevant areas be represented among those individuals and entities receiving assistance from the Academy.

The committee suggested to the President that Presidential nominees be men and women of eminence in the issues of peace and conflict resolution.

It went on to recommend a mix of eminent academicians, lawyers, corporate figures, labor leaders, and others who have contributed to the resolution of conflict throughout the world.

Our concern about an independent, freestanding Peace Academy is heightened by experience with the evolution of the Arms Control and Disarmament Agency. Here is an entity that, in many ways, is a direct ancestor of the Peace Academy; I actually was given some of the responsibilities of the proposed Academy when it was first created in 1962. But the Arms Control and Disarmament Agency lost its true ability to perform independent research and analysis because it became controlled by—administratively and bureaucratically—whichever administration happened to be in power at the time. It became completely dependent upon the State and Defense Departments, and therefore could not become an independent advocate of arms control within the Government. The Arms Control and Disarmament Agency became a policy-generating entity. As experience would seem to confirm, a policy role and an independent educational role simply do not mix.

None of this is meant to denigrate the performance of the Arms Control Agency. Over the years I have consistently recognized and supported the need for a strong and dynamic Arms Control Agency. But, the research and education function is one that has become nearly nonexistent, due to the Agency's dwindling resources. For the Peace Academy to fill that void, it is going to have to be modeled on something other than that Agency. Its board and executive staff must be able to operate free from Federal control. The enabling legislation includes safeguards which make this possible. It must not become embroiled in ongoing policymaking disputes. It must maintain an image of thoroughness, evenhandedness, and integrity. It must remain, in the truest sense of the word, nonpartisan. The Arms Control and Disarmament Agency is an important entity, but when its creators foresaw for it that sort of nonpartisan, educational role, they were asking for more than it could structurally deliver. The two functions—education and policymaking—simply must be kept separate. Hence, the Peace Academy.

I noted earlier that even some of our critics agree on this point. By that, I mean that there are a number of people—from both the left and right—who have objected to the Peace Academy proposal on the grounds that its independence cannot be guaranteed, therefore, we ought not move forward. This sort of criticism is clearly based upon at least an implied recognition of the value and potential in the idea. Many critics will concede that, if done correctly, they do indeed see the need for the Academy. The key will be in setting the Academy up in such a way that Congress—and the American people—can be confident that its chances for being successfully insulated from outside influence have been maximized.

There is one other issue which often raises real passion within the Peace Academy debate. It is an issue which is often left below the surface—but it has dogged the Peace Academy legislation from its inception. I refer to the argument over the symbolic impact that the Peace Academy will have both at home and abroad.

We would never advocate creation of a Peace Academy based solely on a symbolic impact. Clearly, a solid justification based on real need and potential performance is a prerequisite to congressional approval. However, it is important to consider the potential within the idea for making a profound impact overseas. I am convinced that the announcement of the Peace Academy's creation will have an enormously positive impact, sending a signal to the world that the United States is prepared to dedicate the same sort of resources—and I refer more to intellectual resources than to financial—to the preparation for peace as is dedicated to the preparation for war.

The question of international perception of the Peace Academy is one that, I believe, creates deep disagreements which are based on fundamental differences of opinion about today's world, and America's role in it.

The argument has been made in opposition to the Academy that its creation will send a signal of weakness to our adversaries and friends abroad, that it will encourage unfavorable Soviet perceptions. Some opponents have contended that by taking this step we run the risk of neglecting the other important issues which play on the vital questions of war and peace.

This is a misguided and unaware attitude. It is rooted, I think, in the notion that strength is a single-dimensional element in international politics of the 1980's. To me, that is a most dangerous assumption. I have never been an advocate of unilateral disarmament—you will never find me furthering any position other than that we need to maintain a strong and ready national defense. But today's world demands recognition of new elements and new realities in international relations, and the creation of the Peace Academy—among other things—would send a signal to the world that we are capable of that sort of recognition.

I feel strongly that we have got to realize that in today's world, power, security and international prestige mean more than just guns and the ability to use them. In fact, real security today rests firmly on the capability to avoid using guns whenever possible. I think former Assistant Secretary of State Harold Saunders said it best when he noted that:

> A strictly military or strategic approach to the problems of the world does not meet the full challenge to the U.S. interest in building a more stable world.

I submit that the Peace Academy will not say to the world, we are weak. Rather, it will say to the world, we are strong; we are imaginative, we are dedicated to new and bold ideas to help bring peace to the world.

To those who argue that the Academy will signal our lack of resolve, I must ask: Which would be the real sign of weakness—and I mean not just military, but intellectual and moral weakness—creating the Peace Academy, or not creating the Peace Academy?

I am gratified by the progress we've made to date—and I remain confident

that the Congress will now move to pass this historic piece of legislation. If it does, I am convinced that the creation of the U.S. Academy of Peace will be regarded by those who come after us as one of the most significant investments in the future our country has ever had.

Mr. President, I extend my commendation and thanks to the Senate staff members who have worked so diligently, some of them over a period of years, in the formulation of this legislation to establish a U.S. Academy of Peace. There are many such individuals in both our Senate offices and on the Committee on Labor and Human Resources. I particularly express appreciation to Birdie Kyle who has been my principal staff person since 1976 on the Peace Academy. Her commitment and staff work have been vital to the development of this measure and in bringing it to fruition.

Senators and Senate staff have been assisted also by the representatives of the National Peace Academy Campaign.

Mr. President, I ask unanimous consent to have printed in the RECORD related articles and letters.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A Brief Summary—S. 564, U.S. Academy of Peace

The Peace Academy legislation originated from a Congressionally-mandated Commission on Proposals for a National Academy of Peace and Conflict Resolution. There have been three Senate hearings on this proposal and two favorable Committee votes. S. 564 has been on the Senate Calendar since September, 1983. There are 55 Senators and 176 Representatives who have cosponsored this legislation and who view this bill as an effective way to strengthen our national security.

The Peace Academy would be a federally-created, federally-funded, independent, nonprofit institution. It would serve as a national research, educational, and resource center in the fields of peace and conflict management. Not only would it perform such work on its own, but it would also support and initiate this work at colleges and universities, Federal Agencies, the Foreign Service Institute, and the National Defense University. It is our hope that the Academy will spearhead a truly national effort to expand the resources—in both financial and human terms—being directed at the study of peace.

Although establishing the U.S. Academy of Peace does not involve any weakening in our defensive posture or preparedness, it will serve to strengthen our national security capability by enhancing this nation's ability to reduce tensions and to settle international disputes before they erupt into violence. It will improve the training and education of those who make and implement U.S. foreign policy whether in Government, private enterprise, or voluntary associations. In doing this, it will provide a range of effective options—in addition to the military—to leash violence and manage conflict. Such a balanced approach to areas vital to America's interests, can only serve to increase this country's ability to influence the course of world events.

The Peace Academy will cost $23,500,000 over two years. This is a small percentage of this country's budget and is one of the few Federal investments with the potential to return far more than the initial costs. If peace is our goal, then we must prepare and train and perform as well at the bargaining table as we have on the field. The Peace Academy is an inexpensive and cost-effective opportunity.

The Peace Academy, however, must not, and will not, become a mouthpiece of political ideologies. To ensure that the Academy performs its work in a nonpartisan and independent way, it will be governed by an independent Board of Directors composed of two Senators appointed by the president of the Senate (one from each party), two Representatives appointed by the Speaker (one from each party), eleven Presidential appointees who have proven practical or academic experience in peace and conflict resolution efforts of the U.S. (no more than six from any one party), and four ex officio members: the Secretaries of State and Defense, the Director of ACDA, and the Commandant of the National Defense University.

The U.S. Academy of Peace

THE NEED FOR A PEACE ACADEMY

Charge: The recent growth of private sector research and education in the field of conflict resolution makes a federally supported institution unnecessary.

Rebuttal: What is envisaged for the Peace Academy would be a national insitution to tailor private sector research to the needs of the Federal Government, to enhance the negotiating and mediating capabilities of those who represent American interests abroad (whether in Government or private enterprise), and to develop a corporate memory of diplomacy. The absence of such an institution significantly inhibits America's potential effectiveness in negotiating treaties and settling international disputes.

The Congressional Commission on Proposals for the National Academy of Peace and Conflict Resolution issued its report in 1981 indicating that general interest in the conflict resolution (CR) field exceeded the actual level of understanding. While the field is well beyond the basic research stage, private sector programs lack the sufficient cohesiveness and focus to enable them to be relevant and useful to those who make and implement U.S. foreign policy.

Private sector educational programs in CR can accomplish only a small fraction of the work possible if the Federal Government bypasses opportunities to foster independent research and education or fails to incorporate such work when developing national security strategies. The Commission also found that existing CR programs are predominantly theoretical, and that those who work in conflict-prone situations need more practical education which they can readily apply. Finally, according to Senate and House staff who have either worked at ACDA itself or with ACDA legislatively, there is no federal or private program or facility working to archive and analyze the successes and failures of past diplomatic missions.

Three factors add urgency to this proposal for improving Federal involvement in the CR field: 1) the maintenance of international peace and national security depends on developing a range of options—in addition to the military—to manage conflict and leash violence, 2) the clear lack of effective policies in the Falkland Islands and Lebanon to reduce tensions before resorting to military solutions, and 3) the growing public fear that international conflict can quickly and easily escalate into violence, military confrontation, and increased U.S. military involvement in regions vital to America's interest.1If the peaceful resolution of international conflict is one of the biggest challenges this nation has ever faced, our response, our preparation, is abysmally small. In light of recent history, "business as usual" is not enough.

COSTS

Charge: In a time of severe budget stringencies it is difficult to justify the expenditure of Federal funds.

Rebuttal: The costs of a Peace Academy are a serious concern of the bill's proponents. In fact, Senator Jennings Randolph, one of the principal sponsors, in recognition of this concern and of the Administration's willingness to support an $8 million funding level (contained in Senator Jeremiah Denton's substitute bill, S. 1466), has proposed in a letter to Majority Leader Howard Baker that the Peace Academy be funded at $8 million over two years rather than at the current level of $23.5 million.

This small investment for the Peace Academy boils down to roughly 2¢ for every American every year, compared to the $1,100 for every American every year to prepare military solutions to international conflict. The Peace Academy has the potential to become the best paying investment in FY 1984. If the Peace Academy could contribute to the peaceful resolution of one small conflict in some future year—a conflict no larger than the Falklands incident which cost about $6 billion total—it would save enough money to operate for 1,500 years.

It could also save businesses loss in revenue through lost trade due to interruptions or embargoes; it could aid in the control of international terrorism which has cost the U.S. millions of dollars in 1984 alone; and it could help lower tensions and risk of inadvertent war from misperception and miscalculation.

EFFECT ON U.S. NATIONAL SECURITY

Charge: The Peace Academy would divert our attention and our efforts from the need to insure our own security by finding real and effective ways to preserve peace in a troubled world.

Rebuttal: Supporters and detractors of the Peace Academy proposal agree that not all conflicts can be settled by peaceful means rather than through resort to force. The Peace Academy is no substitute for military preparedness and strength, and the Soviets, Third World countries, NATO, and our own citizens must not be given reason to perceive it as such.

On the contrary, Peace Academy proponents do not seek a diminished role for the military or any one-sided, untimely, or precipitious letting down for our defensive guard. S. 564 simply increases America's capability to settle conflicts before conditions deteriorate to such a point that military solutions become unavoidable.

The Academy will also improve the effectiveness of traditional diplomatic solutions by building a corporate memory for diplomacy's past successes and failures on which to base future diplomatic strategies, and through programs designed to enhance the CR skills of those involved in the foreign process.

Harold Saunders, former Undersecretary of State, submitted for the House hearing record a statement saying, "The United

States in the last two decades of this century needs to give at least as much attention to strengthening its peace-making arsenal as it needs to give to assuring its military power. If the United States is actively engaged in the pursuit of peace in dealing with the causes of conflict, the U.S. ability to influence the course of events in the world and its position in the world in relation to the Soviet Union is strengthened, provided we do not neglect continued development of our own military power. Peacemaking is an instrument of power. . . ."

THE EDUCATIONAL COMMUNITY

Charge: Educators oppose the Peace Academy proposal.

Rebuttal: Of the 37 academics who have testified concerning the Peace Academy, the overwhelming majority have favored it. In addition, nine professional educational organizations have supported the Peace Academy, including the National Education Association, the American Council on Education, and the American Federation of Teachers.

A sample of comments by educators directly involved with the fields of peace studies and CR:

Father Timothy Healy, President of Georgetown University, wrote to the principal sponsors: "I would like to commend you and the other members of the Senate who have proposed the establishment of an independent U.S. Academy of Peace, and to add Georgetown University's support to the fostering and enhancing of independent research and analysis in conjunction with colleges and universities. . . ."

Guthrie Birkhead, Dean of the Maxwell School of Citizenship and Public Affairs at Syracuse University, submitted testimony to the House saying. "Developing our knowledge and improving our skills in managing conflicts are matters too important to be impeded by parochial defenses of academic turf. The establishment of a Peace Academy will enhance our activities, not harm them."

Roger Fisher, Director of Harvard University's Negotiation Project, wrote in the Boston Herald American that "the needs of the United States go far beyond those for scholarly research and academic teaching. To teach the history of diplomacy is no substitute for professional training. What is taking place, however, falls far short of what is required. We need tough, professional training."

Only a handful of schools have expressed reservations, arguing that if the Academy granted degrees, it would unfairly compete with them for students and faculty, and that if it received private contributions, it would compete with them for grants and thus hinder their already underfunded programs.

The Senate Committee on Labor and Human Resources amended S. 564 to address these concerns. The principal sponsors deleted degree-granting language to indicate their intentions not to allow the federally chartered Peace Academy to compete with private sector educational programs. Also, Senator Orrin Hatch amended the bill so that at least one-fourth of the federal appropriations would be passed through to existing institutions, increasing their total federal financial support. Finally, Senator Mark Hatfield, principal sponsor and floor manager of the bill, offered to amend S. 564 to prohibit the Peace Academy from solicting or receiving any private contributions.

THE PROPRIETY OF FEDERAL INVOLVEMENT

Charge: It is not advisable for the U.S. Government to begin providing education to the general public even though it is limited to graduate-level education in peacemaking and CR.

Rebuttal: The most important priority of the Federal Government is to preserve our national security. Just as the U.S. does not defer to the private sector in the development, training and execution of military approaches to conflict resolution, it is not appropriate to defer to the private sector in the aggressive pursuit of non-military solutions to international disputes.

It is not true that the Federal Government would be breaking from precedent by establishing the Peace Academy. When the Government has deemed a subject necessary for it to function effectively, it has provided the institution and the funds to perform the needed work: the Department of Agriculture Graduate School, the Naval Post-Graduate School, the Air Force Institute of Technology, and the Maritime Institute of Technology and Graduate Studies, for example. The Federal Government is even involved in the study of international relations and giving university-level credit for the successful completion of course work at the Foreign Service Institute.

The Federal Government has also created specialized mid-career and post-graduate level educational programs such as the National Defense University, the Uniformed Services University of the Health Sciences, the FBI Academy, the National Academy of Corrections and the National Fire Academy.

The much-needed Federal impetus, and the unique educational role in the preparation of those who make and practice U.S. foreign policy intended for the Peace Academy, makes this opportunity a fitting and worthy investment on the part of the Federal Government. National security, after all, is the job of this and of every other Administration, and real security today rests firmly on the capability to resolve conflicts before they escalate to violence.

INTERNATIONAL IMPACT

Charge: It is difficult to see how such an Academy could be effective or perceived as impartial in the international arena when it would be funded by the U.S. Government, would be governed by a Board, including Presidential appointees confirmed by the Senate, and bear an official title.

Rebuttal: The Peace Academy is designed and intended to strengthen this country's CR capability by enhancing the education and skills of those making and practicing U.S. foreign policy abroad. The Peace Academy's effectiveness in achieving this modest goal is not dependent upon outside and foreign perceptions. The effectiveness of this "internal" work will depend wholly upon the Academy's Board of Directors.

To many nations, the U.S. Academy of Peace symbolizes that America is genuinely—and actively—working hard to lower international tensions, to peacefully settle international disputes, and to create the conditions for international peace. There are even indications that other countries will follow America's lead. Canadian Prime Minister Pierre Trudeau recently proposed to Parliament the creation of the Canadian Institute for International Peace and Security, a Government-financed independent corporation to perform and foster research and to disseminate information and ideas on international peace and security.

The Denton Substitute, S. 1446 (Not Offered)

PUBLIC CREDIBILITY

S. 1466: Senator Denton first proposed this bill in the Senate Committee on Labor and Human Resources on June 15, 1983 where it was defeated 10 to 8. There have been no hearings, no study, no consideration in the Senate Committee on Foreign Relations which has jurisdiction over the Arms Control and Disarmament Agency. The Denton substitute is cosponsored by seven Senators (Symms, Thurmond, Hatch, Cochran, Humphrey, Quayle, Hawkins) and no Members of the House.

S. 564: A Congressional Commission on Proposals for a National Academy of Peace and Conflict Resolution held hearings in 12 cities and submitted their report to the President in 1981. There have been one House and three Senate hearings on the topic of the Peace Academy, the Senate Labor and Human Resources Committee favorably reported the bill twice, and there are 55 Senate and 176 House cosponsors from both sides of the aisle and every point along the political spectrum.

CONTROL

S. 1466: This substitute authorizes the Director of ACDA to carry out the provisions of the bill and establishes an Advisory Board to consider what the Director has done and to advise him. In the words of the present Director, Mr. Adelman, "I would carry out the program as prescribed in the legislation, in keeping with the administration's program under the guidelines of the Office of Management and Budget."

S. 564: The Peace Academy will be an independent, nonprofit, national institution whose powers shall be invested in a Board of Directors composed of 2 Senators, 2 Representatives, 11 Presidential appointees, and 4 ex officio members: the Secretaries of Defense and State, the Director of ACDA, and the Commandant of the National Defense University. The President shall appoint the first Chairman of the Board, and thereafter the Board shall elect the Chairman.

INDEPENDENCE

S. 1466: The Director of ACDA is a political appointee and ACDA is charged with the preparation for negotiations by the Administration—this prevents exploring alternative strategies. Its public information service defends the Administration's policy and program, and is not capable of publishing alternatives to it.

S. 564: The Peace Academy's Board of Directors are appointed to staggered terms to prevent the Academy from becoming politicized.

COST

S. 1466: The Denton substitute bill authorizes the Director of ACDA to spend $8 million over two years to carry out the bill's provisions, without specifying how that money must be used—the Director may keep all of it within ACDA or may give any percentage of it to existing institutions.

S. 564: The Peace Academy will cost $8 million over two years, and Senator Hatch amended the bill in Committee requiring that the Board of Directors pass through to existing institutions at least one-fourth of its federal appropriation.

ACCOUNTABILITY

S. 1466: It will be very difficult for Congress to maintain oversight of just one more small program imbedded within a much larger bureaucracy: ACDA.

S. 564: The Peace Academy, as an independent corporation, will be much easier to oversee, to control and to zero fund (if in some future year the Academy proves not to be a useful Federal investment).

RELEVANCE

S. 1466: There is no provision in this substitute bill insuring that this new program at ACDA would be relevant or useful to Government.

S. 564: The Peace Academy bill was written specifically to address the findings of the Congressional Commission, and Senator Hatch amended the bill in Committee so that Federal employees at State, Defense, ACDA and the CIA could be assigned to the Academy on a rotating basis.

Comptroller General
of the United States,
Washington, DC, January 4, 1984.

Hon. Orrin G. Hatch,
Chairman, Committee on Labor and Human Resources, U.S. Senate.

Dear Mr. Chairman: You requested our views on S. 1466, 98th Congress—a bill "to amend the Higher Education Act of 1965 to provide authorities for the Study of peace, arms control, and conflict resolution, and for other purposes." The bill authorizes the Director of the Arms Control and Disarmament Agency (ACDA) to perform such actions related to the study areas as making grants; paying stipends; conducting research, training, conferences, and symposia; establishing a clearinghouse for disseminating information; and publishing an annual report. The bill does not specifically direct any particular level of activity under any of its various authorities, but some level of effort is clearly implied in the bill's purpose. ACDA would thus need to apply some of its resources in carrying out the bill's provisions. For example, making grants to, or entering into contracts with, institutions of higher education would require additional administrative effort by ACDA. We believe that parts of this bill would (1) place added responsibility upon ACDA which may be beyond its present capabilities, and (2) duplicate existing statutory authority.

On the first point, we recently issued the following series of reports as part of the work we did at the request of the Chairman and Ranking Minority Member of the House Foreign Affairs Subcommittee on International Security and Scientific Affairs.

Need to Improve Management of ACDA's Automatic Data Processing and Operations Analysis Functions (GAO/NSIAD-83-66).

ACDA's Coordination of Federal Arms Control Research and Management of its External Research Program Still Need Improvement (GAO/NSIAD-83-67).

Need for Internal Control Improvements at ACDA, Including Adequate Internal Audit Coverage (GAO/NSIAD-83-68).

These reports, as well as our testimony before the Subcommittee in March 1983, highlight our concerns about ACDA. These concerns, in part, relate to ACDA's resource (budget/staffing) levels. For example, the levels have fluctuated over time and, in recent years, have been declining without related reductions in ACDA's legislated responsibilities. Each report indicates that ACDA resource levels affected ACDA's capabilities to carry out its current responsibilities. For example, ACDA's noncompliance with some of its arms control research coordination responsibilities was attributed by ACDA officials to insufficient resources. Also, obtaining the adequate internal audit coverage it needs but has not had, will increase ACDA's costs.

Correcting these as well as other problems discussed in our recent reports would require additional resources for ACDA. It is not known whether the administration's recently announced authorization request increase of about $2 million and 25 staff positions will be sufficient to enable ACDA to adequately administer its current programs and activities as well as to effectively discharge significant additional duties. If it appears that ACDA could not adequately perform all its required activities as well as significant additional responsibilities, the Congress may need to give specific direction to the agency for assigning its priorities and allocating its resources.

Regarding the second point, Section 632 of the Higher Education Act of 1965, which would be added by S. 1466, would authorize the Director, ACDA, to make grants to, and enter into contracts with, institutions of higher education to establish, strengthen, and operate, graduate and undergraduate centers, schools, and programs, for the provision of academic and professional training and research in areas of international affairs, including foreign languages. This authority could be duplicative of 20 U.S.C. § 1122(a)(1) which authorizes the Secretary of Education to make grants for the teaching of foreign languages and international studies. Also, the Department of State is already responsible for research in the international affairs area.

The Committee should be aware of this possible duplication of functions so that, if it believes necessary, it can add language to the bill to require coordination between ACDA and other appropriate agencies, or to eliminate or otherwise redirect the bill's duplicative provisions. In the absence of adequate coordination, duplicaton of authority could result in inefficient use of resources. The desirability of such duplication should be considered in light of the additional efforts required by ACDA to administer international research and foreign language training programs and to coordinate such efforts with other agencies already responsible for similar activities.

Additionally, Section 643(a)(2) would authorize the Director, ACDA, "to conduct research . . . into the causes of war . . . and the elements of peace . . . and into the experiences of nations in ending conflicts and resolving disputes without violence." This proposed authority at least partially overlaps the Director's existing authority under Section 31 of the Arms Control and Disarmament Act of 1961, as amended (22 U.S.C. § 2571), to (1) ensure the conduct of research, development, and other studies in the field of arms control and disarmament, and (2) make arrangements, including contracts, agreements, and grants, for the conduct of research, development, and other studies in the field of arms control and disarmament by private or public institutions or persons. Activities included under the existing authority relate to the prevention of war and to problems which the Director, ACDA, determines need research, development, or study in order for ACDA to carry out arms control and disarmament activities. Since ACDA already has sufficient authority in this area under its broader research charter, the Committee may wish to eliminate the duplication contained in the subject bill and consider alternative ways of focusing the agency's attention on the desirability of supporting research in these specific areas, such as amending the existing authority to specify such research.

My staff is available to discuss these matters with you in further detail should you desire.

Sincerely yours,

Charles A. Bowsher,
Comptroller General of the United States.

Sample of Federal Educational and Research Institutions

DEPARTMENT OF DEFENSE, THE NATIONAL DEFENSE UNIVERSITY, 1983-84

Divisions of the University: Industrial College of the Armed Forces, National War College, Armed Forces Staff College, Strategic Concepts Development Center, War Gaming and Simulation Center, Department of Defense Computer Institute, Institute of Higher Defense Studies.

Curriculum

International Security Environment considers the institutions and instruments available to achieve national objectives, alleviate tensions, reduce or eliminate sources of conflict, prevent war, and refine judgments about uses of military power.

Terrorism and Counterterrorism is a political-military simulation focusing on decisions involved in developing a strategy and for using the instruments of statecraft in countering and resolving a terrorist incident with international implications.

Strategic Nuclear Conflict Management is a conflict management political-military simulation designed to explore the implications of escalation in conflict; the problems and uncertainties escalation poses for decision makers; and the difficulties inherent in deescalation and war termination.

Diplomacy of Influence: the Management of Perceptions examines the psychological dimension of the instruments of statecraft and the importance of the management of perceptions to the conduct of foreign relations and the use of military power.

Negotiating Principles and Practices examines the principles, practices, and applications of different negotiating styles with emphasis on the differences between Soviet and U.S. approaches; and the role of negotiations in diplomacy and developing national security policy.

Why Human Warfare: the Causes of War aims at developing an understanding of the various approaches to the problem of human conflict, to become familiar with the latest research into the causes of war, and to develop an understanding of how the causes of war might affect crisis management in international affairs and strategic thinking.

Patterns of American Diplomacy: U.S. Security Commitments

Patterns of American Diplomacy: Decisions for War

DEPARTMENT OF STATE, THE FOREIGN SERVICE INSTITUTE, 1984-85

Center for the Study of Foreign Affairs: coordinates all research done under FSI auspices to assure maximum relevance to the needs and interests of the Department of State. The Center serves to bring together academics, leading private citizens, and U.S. government practitioners, and FSI students in order to address issues that are of current concern to the foreign affairs community.

School of Professional Studies and Academic Affairs: it has a division on "Function Training" which includes a segment on negotiation training.

Administrative Training Coping with Violence Abroad is a seminar on terrorism (1 day seminar)

Executive development

National Security and Arms Control on how arms control fits into the broader spectrum of national security issues; the forces and capabilities which constitute the coin of trade-offs; the military, political, and security issues which affect negotiations; and the structure of the arms control community and how it arrives at decisions. (1 week)

Negotiation Art and Skills is designed to give the participant an in-depth opportunity to increase their proficiency in the techniques of negotiation. Using both bilateral and multilateral models, participants engage actively in simulation exercises in which they reinforce their knowledge of negotiating skills. (1 week offered twice a year)

Methods of Analysis in Foreign Policy provides a conceptual framework for the process of political analysis and the relationship of analysis to policy formulation and decision-making. (3½ weeks)

DEPARTMENT OF AGRICULTURE, THE GRADUATE SCHOOL, 1982-84

The Graduate School does not grant degrees and has never sought that authority nor accreditation. It prefers to offer a dynamic continuing education program for working adults. Courses offering credit are of standard graduate and undergraduate quality and are taught by competent and experienced instructors.

The U.S. Office of Personnel Management accepts the credits of the Graduate School, for examination and qualification purposes, on the same basis as those from accredited colleges and universities.

Subject Areas include: Accounting, Agriculture, Art, Building, Chemistry, Computer Sciences, Czech, Dance, Environmental Studies, Greek, Horticulture, Law, Library Technician Program, Marketing, Music, Personal Enrichment, and many other areas.

Some of the more unusual courses in this Government Graduate School cover such topics as: Beginning Quilting, COBOL Programing I, College English Preparation, Writing for Fun, Pre-College Algebra I, Homesteading for Self-Sufficient Living, Typewriting I, Spelling Improvement, Fundamentals of Written Communication, The Management of Conflict, Basic Electricity, Hydraulics I.

DEPARTMENT OF DEFENSE, A MEDICAL SCHOOL AT NIH

The Defense Department spent about $30 million on its own medical school to train some 500 students at NIH not only in general medicine but also in "military medicine."

Does not the United States have the finest network of private sector medical schools in the world?

DEPARTMENT OF DEFENSE, THE NAVAL POSTGRADUATE SCHOOL, 1984

The Naval Postgraduate School is a naval institution of higher learning dedicated to the advanced education of commissioned officers. It is in effect, a "naval university." Since 1946, the School has awarded over 6,000 bachelor's degrees and more than 11,000 graduate degrees.

"Currently, the Naval Postgraduate School occupies an attractive and well-appointed campus, graduates approximately 600 students per year and offers a range of curricular programs specifically tailored to impart the scientific, engineering, operational and administrative knowledge required to meet the present and projected needs of the Department of Defense.

"The site of the School is the former Del Monte Hotel of the pre World War II days. The beautifully landscaped campus contains most of the academic and administration buildings within the main grounds. There is an adjacent beach area for research and a nearby laboratory and recreational area. The total campus covers approximately 600 acres.

"Recreational facilities include a swimming pool, an 18-hole golf course, tennis and badminton courts, basketball and volleyball courts, a softball diamond, picnic grounds, bowling lanes, driving range, archery range, and gymnasium."

"The Superintendent is authorized to confer Bachelor's, Master's, Engineer's or Doctor's degrees upon qualified graduates of the School."

The curriculum includes: Administrative Science, Aeronautical Engineering, Air-Ocean Science, Computer Science, Meteorology, National Security Affairs, Nuclear physics, Oceanography, Space Systems Engineering, Underwater Acoustics.

The National Security Affairs/Intelligence Programs (The Area Specialty Curricula focuses on the following areas: Middle East, Africa, South Asia, Far East, Southeast Asia, Pacific, Europe, and USSR, and has eleven educational objectives: analytical and research skills, culture and religion, current issues, economics, geography, geopolitics, historical development, language, military forces, politics, and strategic posture.)

Functional Specialty Curricula: International Organizations and Negotiations includes an overview of the history of international negotiations since 1945, and a history of arms control negotiations since 1920, with emphasis on the post 1960 period, and internal aspects of international negotiations. The second part of the course is an analysis of international negotiations, with emphasis on applying theories of negotiation to such issues as conflict resolution and arms control.

Strategic Planning: Strategies for National Security includes a section on crisis management procedures.

DEPARTMENT OF DEFENSE: THE AIR FORCE INSTITUTE OF TECHNOLOGY, 1982-84

"A fundamental ingredient to the success of most endeavors is enducated leadership. Because the Air Force is in the forefront of the use of science and high technology to fulfill its part of the national security mission, we continue to have a demand for well-educated—both professionally and academically—people. The Air Force provides this through the Air University.

"Other components of the Air University are the Air War College, the Air Command and Staff College, the Squadron Officer School, the Academic Instructor and Foreign Officer School, the Air Force Reserve Officer Training Corps, the Extension Course Institute, the Leadership and Management Development Center, the USAF Senior Noncommissioned Officer Academy, the Air University Library, HQ CAP-USAF and the Air Force Logistics Management Center.

"As part of the Air University, the Air Force Institute of Technology (AFIT) is assigned the graduate and professional continuing education mission of the Air Force. The Institute performs two closely related services: degree-level education and professional continuing education, and specialized training. University-level work is designed to give carefully selected officers and Air Force civilians the broad educational background that will equip them both to understand their technological and cultural environment and to analyze and attempt to solve its problems."

A sample of the Graduate Programs leading to the M.S. degree: Aeronautical Engineering, Applied Mathematics, Astronautical Engineering, Computer Systems, Electrical Engineering, Nuclear Engineering, Logistics management.

Other Graduate Programs include courses in the Humanities, and the Physical and Social Sciences. Also, there are separate Schools of Engineering, Systems and Logistics, Civil Engineering, and Civilian Institution Programs.

DEPARTMENT OF JUSTICE: THE FBI NATIONAL POLICE ACADEMY

In 1935 when the FBI was organized into its current form, the FBI National Police Academy was established—besides the Training School for Newly Appointed Agents, the Retraining School, and other schools specifically for FBI personnel—as a training school for law enforcement officers from across the country. Approximately 200 officers per year attended 12 week courses to prepare experienced officers for administrative and instructional duties in their home agencies.

In 1965, Congress appointed $15 million to expand the Academy, and intensified use of the Academy was planned under the Omnibus Crime Control and Safe Street Act. Congress also authorized funds to expand training throughout the nation, and new facilities were built in Quantico, VA. FBI agents train at the Academy for fourteen weeks when they are newly appointed and return for refresher courses and special programs. The Academy teaches such things as processing fingerprints, investigative methods, arrest techniques, and defensive tactics.

FEDERAL EMERGENCY MANAGEMENT AGENCY: THE NATIONAL FIRE ACADEMY

"The National Fire Prevention and Control Act of 1974 (Public Law 93-498) established the National Fire Academy to advance the professional development of the fire service and other professions engaged in fire prevention and control.

"Since 1977, the Academy has been offering programs in fire science technology, management and planning, and educational methods. Courses have been delivered to nearly 5,000 fire service officers, firefighters, instructors, planners, professionals in related trades, and federal and state fire officials in more than 100 locations around the country.

"In 1979, a new 'cluster' concept in field programs was introduced. The cluster program is a grouping of 14-17 available courses offered over a two-week period in accessible metropolitan locations. One distinct feature of the outreach program . . . is its mandate to address local needs and to coordinate and make available courses desired by particular areas. This facet of the outreach is designed to support existing training efforts at the State and local levels. . . .

"The 110 acre campus has 39 fully equipped classrooms and can accommodate up to 1,000 students. The Emmitsburg (MD) facility also contains a modern student center with a pub, a water-side log cabin and boat house, tennis courts, gymnasium, and indoor pool for on-campus recreation."

A SAMPLE OF LEADING FOUNDATIONS WORKING IN THE AREA OF PEACE AND CONFLICT RESOLUTION

The Carnegie Endowment for International Peace was established in 1910, and charged by Mr. Carnegie to use the fund to "hasten the abolition of international war, the foulest blot upon our civilization."

The Endowment was initially organized into three divisions: one to aid in the development of international law and dispute settlement, another to study the causes and impact of war, and a third to promote international understanding and cooperation.

Staff and Projects: Jonathan Dean in the area of arms control in Europe covers the East-West relations . . . arms control negotiations affecting Europe . . . security aspects of US-Western European relationship.

Larry Fabian on the Middle East includes a section on the US policy toward Arab-Israeli peace negotiations. . . .

Books in Print: "Negotiating Security: An Arms Control Reader."

The Carnegie Corporation recently developed a news release detailing four areas in which it intends to invest this year for the over-riding purpose of strengthening the capacity to avoid nuclear war: 1) to develop new ideas and understanding pertinent to decreasing the chance of nuclear war, and to relate this development closely to the policymaking, policy-advising community; 2) to take the results of this work and support serious educational efforts to build a broad nonpartisan interest in them; 3) to explore what the behavioral sciences have to offer in near-term applied advice about negotiations, decision making, and conflict resolution, and in long-term understanding of human conflicts and its resolution; and 4) to work for long-term changes in the relationship between the United States and the Soviet Union, including some improvement of our negotiating capability and some support for experimentation with new forms of communication.

On December 18, 1983, Kathleen Teltsch wrote in The New York Times that "Carnegie's Board recently agreed to devote $5 million to $7 million annually for the new activities, which Dr. Hamburg said was the largest commitment by any foundation for work on the avoidance of nuclear war. The "flagship" grant, as Dr. Hamburg calls it, is being used to bring together a "novel mix" of scientists, experts in nuclear weaponry, specialists in Soviet studies and dispute settlement. The group would also include individuals who have served in Government or may serve in a future administration. The Foundation expects to establish similar groups at a number of other universities."

The Ford Foundation, according to the New York office of International Relations, spends about $3 million per year in the areas of international peace, national security, and arms control. That is, the focus of their financial support has been directed to "negative peace" (reduction of conflict and the avoidance of war) more than to "positive peace" (conditions of a peaceful universe—economic development, minority education, etc., which they pursue through other grant-making programs).

The Ford Foundation Letter has occasionally detailed the programs in the areas of dispute settlement and international peace that they support. These are some of the more relevant projects which the Ford Foundation has funded:

The Office of Environmental Mediation at the University of Washington received a two-year grant of $350,000 enabling it to continue to mediate the growing number of disputes, conduct workshops and training programs for negotiators, and to carry out research on the mediation process.

The New England Natural Resources Center received a $61,500 grant for work leading to the establishment of an environmental mediation service for Northeastern states.

The International Peace Academy has devoted most of its work to improving the expertise of civilians and military officials whose countries contribute to peace-keeping operations. The IPA recently established a permanent Negotiation/Mediation Project to design techniques for ending international conflicts before there is a need for peacekeeping operations. The Foundation contributed $143,849 to hire three research associates from Africa to work the project for the next three years, and to prepare a "Handbook for Multilateral Negotiators."

The National Institute for Dispute Resolution will fund various initiatives in dispute resolution, provide technical assistance to public and private groups, sponsor research, and generally serve as a source of information. The Ford Foundation has provided an initial grant of $50,000 to help the institute get started.

According to the bi-monthly Letter, the Ford Foundation spends from about $300,000 to over a million dollars every two months in the field of international affairs. And it has reported that "over the past decade the Foundation has granted more than $8 million for experiments aimed at resolving a range of disputes through third-party mediation rather than through litigation."

The Baltimore Sun reported on March 5, 1984, that the Ford Foundation awarded $3.7 million to 16 universities and research institutions to seek "fresh approaches" to the study of international peace and security. Studies they are funding include the ethical questions of nuclear deterrence, the psychological bases of Soviet-U.S. relations and strains in the NATO and Warsaw Pact alliances, the Soviet-American conflict, security in South Asia, the defense budget, Soviet and U.S. naval strategies, the future of U.N. peacekeeping operations, etc. And these grants have gone to range of institutions, including the University of Maryland, Columbia University, Brookings, MIT, the Rand Corp., the French Institute of International Relations, the University of Southampton, England, the Norwegian Institute of International Affairs, the Research Institute on Peach and Security in Tokyo, and the Stiftung Wissenschaft and Politik of West Germany.

Two purposes of these grants include: "analysts were asked to develop fresh approaches that would engage scholars from a wide range of disciplines" and they were urged to "foster public consideration of security and arms control issues."

The Hewlett Foundation awarded a three-year grant totaling $500,000 to the Harvard Program on Negotiation. According to Lawrence Susskind, Executive Director of the Program, "The grant from the Hewlett Foundation . . . will enable us to implement an ambitious series of teaching, research, and practice-related activities aimed at helping individuals, communities, corporations, and countries deal with their differences more effectively."

"The Rockfeller Foundation considers peaceful relations among nations a vital corollary to the objectives of its grantmaking efforts. It provides funding to strengthen the contribution of independent research and policy analysis to the articulation of the long-range interests facing governments in international security and economic cooperations."

One of the goals the Foundation has set for itself is, "within the United States, to strengthen the contribution of nongovernmental international relations research to U.S. foreign policy." And one of the issues which the Foundation considers to warrant sustained attention is, "how might threats to peace arising from the intersection of local tensions and the competition for security or influence between the United States and the Soviet Union, be reduced?"

On November 14, 1983, Kathleen Teltsch wrote in The New York Times that the Rockefeller Foundation would be taking a "one world" perspetive on issues and will be focusing on issues such as resources and global "security," including arms control and international relations. Mr. William M. Dietel, president of the fund, estimated that about $6 million a year would go to projects concerned with security or resources.

LAW SCHOOLS WITH COURSES IN DISPUTE RESOLUTION

The American Bar Association Special Committee on Alternative Means of Dispute Resolution published a 1983 Directory of Law schools which lists the programs in negotiation, arbitration, and university or community-based services.

Mr. Ronald Olson, Chairperson of the Special Committee, writes in the introduction: "The courts, certainly, are overburdened. With rising court costs and delay, increased bureaucracy and decreased access to the system, many groups and individuals have sought out more equitable, prompt, and accessible alternatives to formal litigation. It was for this reason that the American Bar Association first brought the Special Committee on Resolution of Minor Disputes into being. After five years of operation, recognizing the increase of activity in alternative means of dispute resolution (mediation, conciliation, arbitration) the Board of Governors extended the responsibilities of the Special Committee and renamed it: the Special Committee on Alternative Dispute Resolution."

The following is a list of the law schools having programs in negotiation:

The University of Akron, School of Law, Akron, OH.

Baylor University, Law School, Waco, TX.

Brigham Young University, School of Law, Provo, UT.

Brooklyn University, Law School, Brooklyn, NY.

University of Calif., at Davis, School of Law, Davis, CA.

Capital University, College of Law, Columbus, OH.

Chicago Kent, College of Law, Chicago, IL.

University of Colorado, Boulder School of Law, Boulder, CO.

Cornell University, Law School, Ithaca, NY.

Duke University, School of Law, Durham, NC.

Emory University School of Law, Atlanta, GA.

University of Florida, College of Law, Gainsville, FL.

George Mason University, National Law Center, Washington, DC.

Harvard University, School of Law, Cambridge, MA.

Indiana University, School of Law, Indianapolis, IN.

University of Iowa, Iowa College, Iowa City, IA.

John Marshall, School of Law, Chicago, IL.

University of Kentucky, College of Law, Lexington, KY.

Louisiana State University, College of Law, Baton Rouge, LA.

Loyola University, School of Law, Los Angeles, CA.

University of Maine, School of Law, Portland, ME.

University of Michigan, School of Law, Ann Arbor, MI.

University of Minnesota, Law School, Minneapolis, MN.

Missouri-Columbia, School of Law, Columbia, MO.

University of Nebraska, at Lincoln, College of Law, Lincoln, NE.

New England University, School of Law, Boston, MA.

Northeastern University, School of Law, Boston, MA.

University of Oklahoma, Law Center, Norman, OK.

Ohio State University, School of Law, Columbus, OH.

University of Pacific, McGeorge School of Law, Sacramento, CA.

Pepperdine University, School of Law, Malibu, CA.

Rutgers University, Law School-Newark, Newark, NJ.

Saint Louis University, School of Law, St. Louis, MO.

State University of New York at Buffalo, School of Law, Buffalo, NY.

Suffolk University, School of Law, Arlington, MA.

University of Texas, School of Law, Austin, TX.

Texas Tech University, School of Law, Tulsa, OK.

Valparaiso University, School of Law, Valparaiso, IN.

Vermont Law School, Environmental Law Center, South Royalton, VT.

Washburn University, School of Law, Topeka, KS.

University of Washington, School of Law, Seattle, WA.

Washington and Lee, School of Law, Lexington, VA.

University of Wisconsin-Madison, School of Law, Madison, WI.

Organizations and States Supporting the Peace Academy Concept

ASSOCIATIONS

American Arbitration Association; American Association for the Advancement of Science; American Association of Retired Persons; American Association of University Women; American Psychological Association; American Sociological Association; Association of Catholic Colleges/Universities; Consortium of Social Science Associations; International Studies Association; National Education Association; United Nations Association; United States Student Association; YMCA of the USA; YWCA of the USA, National Board.

ORGANIZATIONS

AFL-CIO; American Council on Education; American Federation of Teachers; American Veterans Committee; Center for Peace Studies, University of Akron, Ohio; Dwight D. Eisenhower Society; Executive Committee of Consortium of Peace Research, Education and Development; Federation of American Scientists; Fellowship of Reconciliation; International Longshoremen's and Warehousemen's Union; International Peace Research Institute; National Committee of Retired Peace Corps Volunteers; National Convergence of Justice and Peace Centers; National Council of LaRaza; National Women's Political Caucus; SANE; Society for the Psychological Study of Social Issues; Women's Equity Action League; Women's International League for Peace and Freedom; World Federalists Association; World Peace Tax Fund; World Without War Council.

THE RELIGIOUS COMMUNITY

Amercian Baptist Churches; American Friends Service Committee; Board of Church and Society, United Methodist Church; Central Conference of American Rabbis; Church of the Brethren; Friends United Meeting; House of Bishops of the Episcopal Church; International Council of B'nai Brith; Mennonite Central Committee, Peace Section; National Conference of Catholic Bishops; Unitarian Universalist Association; United Church of Christ; United Presbyterian Church U.S.A.; United States Catholic Conference.

STATE LEGISLATURES SUPPORTING A U.S. ACADEMY OF PEACE

California State Legislature; Hawaii State Legislature; Illinois State House of Representatives; Michigan State Legislature; Nebraska State Legislature; New York State Assembly; North Dakota State Legislature; Oregon State Legislature; Washington State House of Representatives; Wisconsin State Assembly; Massachusetts State Senate; Minnesota State Legislature; Rhode Island State Senate; Iowa State Legislature.

[From the Washington Post, Oct. 5, 1983]

Peace Academy's Time Has Come, But Not Money

(By Jack Anderson)

It's easy to get billions of dollars from Congress to wage war or prepare for it. But it is almost impossible to squeeze a few pennies out for peace.

For 28 years in the House and Senate, Democratic Sen. Jennings Randolph, a gentle soul from Elkins, W.Va., has been trying to establish a Peace Academy. It would train young Americans to promote peace, just as the three military academies prepare young Americans to fight when war breaks out.

It's an idea whose time has come from sheer necessity. War has become unthinkable in the nuclear age, but it may become inevitable unless we have the kind of skilled negotiators who can protect national interest without resort to military force.

An envisioned by Randolph and co-sponsor Sen. Spark M. Matsunaga (D-Hawaii), one-fourth of the Peace Academy's budget would go for grants to universities and other institutions for historical research on successful and unsuccessful peace negotiations of the past. This information would be gathered in a central clearing-house. There is no such facility available now.

For example, anyone examining President Jimmy Carter's successful 1978 negotiations of the Camp David accords between Israel and Egypt must dig through the National Archives and the participants' memoirs. The Arms Control and Disarmament Agency, which might be expected to keep such background information, has none.

The Peace Academy's budget would be modest indeed by government standards: $7.5 million for the academy's site, a $6 million operating budget for fiscal 1984 and a $10 million budget for 1985. The Pentagon spends more than this on a tank or airplane that often doesn't even work.

Critics of the Peace Academy proposal offered my associate Kathy McDonald some strangely contradictory arguments.

They complain that establishment of such an academy would be viewed by the Soviet Union and other nations as a sign of pacifist weakness. They also argue that foreign governments would cynically regard the academy as nothing more than a front for the CIA. Yet they also insist that the CIA be involved in the academy by law, or at least be permitted to be involved.

Meanwhile, the idea has acquired some dedicated supporters. They argue that a Peace Academy would show a dubious world that the United States is serious about resolving international conflicts without resort to military might.

"Peacemaking is an instrument of power," former assistant secretary of state Harold Saunders told Congress, "because . . . it puts the United States on the side of the highest aspirations of mankind, and not just the pursuit of its own self-interest."

The White House, citing "severe budgetary constraints," has refused its support. Yet the Randolph-Matsunaga legislation has 53 co-sponsors in the Senate and more than 100 in the House.

Boondoggle of the Week Never underestimate the power of a comic strip "Ripley's Believe It or Not" had noted the loss a company could expect from employee theft. So the Right Away Foods Corp. of Texas negotiated $412,000 for theft loss in a Pentagon contract to assemble combat-ration packages, even though its actual loss was only $58,000. The difference was a whopping over-estimate of $354,000.

The boondoggle didn't stop there. Overruns on the $28 million contract totaled more than $3.5 million. To make matters worse, the Pentagon could have bought the same amount of battle rations from another company for $10 million less. Rep. Jack Brooks (D-Tex.) has asked Defense Secretary Caspar W. Weinberger for an explanation.

American Federation of Labor
and Congress of Industrial Organizations,

Washington, DC, October 31, 1983.

Hon. Howard Baker,
U.S. Senate,
Washington, DC.

Dear Senator Baker: I write to let you know of the AFL-CIO's support of S. 564, the United States Academy of Peace Act. The Federation hopes along with a large and growing number of organizations and individuals around the country that the Senate will act as soon as possible to pass this historic piece of legislation.

Our support for S. 564 grows out of the Federation's long-standing commitment to promoting the cause of peace among nations. We are especially interested in the Peace Academy because of Labor's lengthy history of participation in the development of negotiation techniques and other procedures for resolving conflict which many authorities believe may have relevance to the challenges we face in the field of international relations.

The Peace Academy, it seems to us, presents an opportunity for the U.S. to reaffirm its historic dedication to the cause of world peace, and to take an important and practical step forward based on our determination to bend every effort in the search for that peace. As an institution dedicated to research, education, and information services in the ways and means of peace, the Academy would carry out programs both on its own and in close cooperation with other institutions around the country. As such, the Academy would occupy a place at the forefront of a national effort to accelerate the dedication of resources—both human and financial—to this, the most pressing issue facing mankind.

Our times demand the kind of creative response to the questions of war and peace that the Peace Academy proposal provides. In fact, never has there been a time when we have needed to be more earnest in—and inject more urgency into—our efforts to achieve lasting peace.

Thank you for your time and attention in this matter.

Sincerely,

RAY DENISON,
Director, Department of Legislation.

GEORGETOWN UNIVERSITY,
Washington, DC, October 17, 1983.

Hon. JENNINGS RANDOLPH,
U.S. Senate,
Washington, DC.

DEAR SENATOR RANDOLPH: Thank you for your letter concerning the establishment of a national independent U.S. Academy of Peace. This Academy would serve as a nonprofit corporation providing endowment and operational services to enhance current research and education efforts in the fields of diplomacy, international affairs, peace studies and approaches to conflict resolution. We here at Georgetown University with our long tradition of concentration on international studies and diplomacy have followed your work in support of such a Peace Academy with deep interest.

We have watched the development of S564 closely and have warmly welcomed changes made during the recent mark-up which recognize the irreplaceable and essential contribution to be made by colleges and universities. The solution of international conflict requires a deep knowlege of other societies—their languages, cultures, histories, governments and economies—and an appreciation of how these social factors work together to promote a context conducive to peace and conflict resolution. We strongly support the Committee's commitment to these colleges and unversities. It would be helpful to include a clarifying statement on the floor which would apply the established record of the recipient institutions in providing professional training in international affairs, diplomacy and intercultural studies as the primary criterion in awarding grants and contracts under this authority.

The credibility of the Academy will depend directly upon the integrity and independence of the research and publications produced by the Academy, its grantees and contractees. This credibility will be enhanced by the Academy's strong ties to universities and colleges where free and independent research and analysis are most able to flourish. The role of eminent academicians on the Board of Directors, especially those from universities with experience in programs of international studies and diplomacy, is vital to the credibility and the effectiveness of the Academy.

As President of Georgetown University, I would like to commend you and the other members of the Senate who have proposed the estalishment of an independent U.S. Academy of Peace, and to add Georgetown University's support to the fostering and enhancing of independent research and analysis in conjunction with colleges and universities that have a tradition of experience in this field.

Sincerely,

TIMOTHY S. HEALY, S.J.

AMERICAN COUNCIL ON EDUCATION,
Washington, DC, May 11, 1983.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the associations listed below, I offer the following comments in support of S. 564, the bill to establish the United States Academy of Peace. With certain minor adjustments, we believe that the proposed Academy could constitute a genuine national resource and serve as a focal point to advance this nation's commitment to peace.

The adjustments we seek are designed to deal with the concern that the establishment of the Academy as a degree-granting entity could serve to weaken the extensive programs related to peace and conflict resolution already being conducted in institutions of higher education. To encourage contact and collaboration between the Academy and U.S. colleges and universities, and to build on the broad research base that currently exists, we offer two suggestions:

(1) On page 8, Sec. 5(b)(6), we recommend adding the words "and support" after the word "provide", adding the word "undergraduate," after the word "at", inserting a period after the word "levels", and striking the remainder of the sentence. This would clarify that the Academy would complement, rather than compete with existing programs. For consistency, the word "schools" should be struck where it appears on page 5, lines 14 and 17, on page 7, line 12, and on page 10, line 23.

(2) We recommend inclusion of a new paragraph in the Declaration of Findings and Purposes to acknowledge the diversity and strengths of U.S. higher education institutions in teaching and research related to peace, international relations, and conflict resolution. This could be added as Sec. 2 (a)(5) with existing paragraphs 5-9 renumbered accordingly.

With these modifications, which are designed to ensure a closer relationship between the Academy and the higher education community, we urge your approval of S. 564.

This letter is sent on behalf of:

American Association of State Colleges and Universities.

American Council on Education.

Association of Catholic Colleges and Universities.

Association of Urban Universities.

Council of Independent Colleges.

National Association of Independent Colleges and Universities.

National Association of Schools and Colleges of the United Methodist Church.

Sincerely,

CHARLES B. SAUNDERS, Jr.,
Vice President for Governmental Relations.

THE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES,
Washington, DC, May 12, 1982.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: On the occasion of the Executive Session of the Labor and Human Resources Committee for the markup of S. 1889, I am writing to support the establishment of the United States Academy of Peace.

For some time now I have been familiar with and supportive of the national peace academy idea. I commend the work of the Commission on Proposals for the National Academy of Peace and Conflict Resolution, its excellent report entitled "To Establish the United States Academy of Peace," and the legislative proposal given as the report's Appendix A, which is substantially represented by S. 1889. The Academy idea is now mature and well explained.

I am concerned about opposition to S. 1889 represented by suggestions that the schools of international affairs are doing or are even able to do the job. These schools are an important element in developing the peacemaking capacities of the nation, but they hardly replace the potential of the Academy of Peace. Not only are they limited in the number of people they reach, but they have not been successful in producing and sustaining top quality comprehensive research on peace matters.

The Academy should be a tremendous boon to education and training in international affairs. I look forward to my own Center's collaboration with the Academy. There is too much isolation in this critical area. The Academy can help break the logjam, create the critical mass of scholarship, educators, and trained personnel, and be the catalyst to move the United States to the forefront of peace efforts in the world.

Sincerely yours,

DAVID M. ABSHIRE, *Chairman.*

CHRISTIAN CHURCH (DISCIPLES OF CHRIST) IN WEST VIRGINIA,
Parkersburg, WV., May 22, 1984.

Hon. JENNINGS RANDOLPH,
U.S. Senator,
Washington, DC.

DEAR SENATOR RANDOLPH: Enclosed is a copy of a resolution passed by the 108th West Virginia Regional Assembly of our denomination held in Princeton, WV., April 26-28, 1984.

It calls upon your support of bills S564 and HR1249 pertaining to the establishment of a National Peace Academy.

There were about 261 voting delegates from among our more than 9,000 members in West Virginia from all parts of the State.

Having voiced our support of a National Peace Academy we look forward to your support.

Most sincerely,

CHARLES E. CRANK, Jr.

RESOLUTION CONCERNING THE NATIONAL PEACE ACADEMY

Whereas when human beings live together differences of opinion arise which may lead to conflict; and,

Whereas these conflicts when they occur between nations often lead to fighting and often to war; and,

Whereas there are many internatonal and national wars going on around the world; and, Whereas people living in a state of war often suffer a diminished vision as to alternative solutions to the battles and to bringing peace; and,

Whereas we have experienced the futility and cost of war and armed conflict as a means of settlement of international problems; and,

Whereas the Christian Church (Disciples of Christ) General Assembly in 1981 adopted peace with justice as priority for 1982-1985; and,

Whereas the Christian Church (Disciples of Christ) General Assembly in 1981 resolved to endorse the advocacy of a National Peace Academy; and,

Whereas we who are of the Judeo-Christian tradition have become aware of options other than armed conflict for the resolution and/or management of conflict;

Therefore be it resolved that the Christian Church (Disciples of Christ) in West Virginia meeting in Assembly at Princeton, WV on April 26-28, 1984, endorse the formation of a National Peace Academy for the purpose of training persons to work for peaceful solutions to national and international problems; and

Be it further resolved that the Regional Minister be instructed to voice this support by calling upon the entire West Virginia Congressional delegation to support S564 and HR1249, and convey to the members of the House Foreign Affairs Committee and the Labor Committee in the House of Representatives and the Senate Majority leader as well as the West Virginia delegation a copy of this resolution and call upon them to pass the bills to the floor for Senate and House action; and,

Be it further resolved that all congregations in the Christian Church (Disciples of Christ) in West Virginia be encouraged by this assembly to show their support for the National Peace Academy by joining the National Peace Academy Campaign and by writing similar letters of support from the various Church Boards after appropriate action to the aforenamed members of the Congress who have the opportunity to pass legislation to bring a National Peace Academy into reality during this session of Congress.

First Christian Church,
Morgantown, WV.

U.S. Senate,
Committee on Foreign Relations,
Washington, DC, February 21, 1984.

Hon. Howard H. Baker, Jr.,
U.S. Senate,
Washington, DC.

Dear Howard: With tensions rising around the globe and troubling world events dominating the news, the American people are anxiously looking to Washington to address their growing concern about the state of the world.

With this in mind, we write to let you know of our continued support for S. 564, the United States Academy of Peace Act. What better time for the Senate to act on this legislation than now? We look forward to giving S. 564 our support on the floor, and hope that you will schedule the Act for a vote as soon as possible.

With best wishes,
Sincerely,

Charles McC. Mathias, Jr.
Roger W. Jepsen.
Mark Andrews.
Dave Durenberger.
Robert T. Stafford.

U.S. Senate,
Washington, DC, March 22, 1984.

Hon. Howard H. Baker,
Majority Leader, U.S. Senate,
Washington, DC.

Dear Howard: As you know, S. 564, the United States Academy of Peace Act, is currently on the Senate calendar awaiting floor action. I respectfully request your assistance in bringing this bill speedily to the floor.

I believe the creation of a National Academy of Peace will aid this country in our continuing efforts to keep the peace and to achieve a lasting peace. The Academy will serve as a nonprofit corporation to provide endowments and operational services to research and educate in the areas of diplomacy, international affairs, peace studies and conflict solutions.

I hope the Senate will be given an opportunity soon to discuss this legislation and the proposed alternatives to it. I believe we could all benefit from the exchange.

Thank you for your assistance.

Sincerely,

Rudy Boschwitz.

Mr. MATSUNAGA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. MATSUNAGA. Mr. President, as a cosponsor, I rise in strong support of the amendment offered by the Senator from Oregon [Mr. Hatfield] to establish a U.S. Academy of Peace. The proposed Academy of Peace was recommended by the U.S. Commission on Proposals for the National Academy of Peace and Conflict Resolution. I was honored and privileged to serve as the Chairman of that Commission which was established by Congress and funded in 1979 and which conducted a year's study in 1980-81. To implement the Commission's recommendations, I introduced a bill, S. 1889, in November 1981 with 55 cosponsors, and after extensive hearings and markup sessions it was favorably reported by the Senate Committee on Labor and Human Resources in mid-1982, but it was not considered by the full Senate prior to adjournment sine die in that election year. Early in the current Congress the measure was reintroduced as S. 564 and again after hearings it was favorably reported by the Committee on Labor and Human Resources. The bill S. 564, which has 55 cosponsors, has been pending on the Senate Calendar since September of last year. It fully deserves consideration by the Senate, and I certainly congratulate the Senator from Oregon and the Senator from West Virginia, both of whom persisted in trying to get the measure considered, and for their untiring efforts in offering the measure finally as an amendment to the pending bill.

As envisioned by the Commission on Proposals for the National Academy of Peace and Conflict Resolution, and by the Senate Labor and Human Resources Committee, the Peace Academy would be an independent, graduate-level institution, headed by a board of directors and a president. It would have three major functions: First, it would conduct research and fund research at other institutions; second, it would provide graduate-level and post-graduate level education and training for students enrolled in other institutions and for members of government, the private sector and voluntary organizations with an interest in international peace and stability; and, third, it would establish an information service to gather and disseminate information related to the field of peace learning.

The Academy would also establish a Jennings Randolph Center for International Peace where leaders and prospective leaders from this Nation and other nations would be appointed to study the art of peacemaking.

In support of its principal recommendation, the Commission on Proposals for the National Academy of Peace and Conflict Resolution cited eight major findings which, I believe, answer the question: Why an Academy of Peace?

First, the Commission found that the U.S. Academy of Peace would advance the national interest by developing peacemaking expertise that can reduce the chances that this Nation, or any other nation, will breach peace and risk nuclear war by escalating conflicts into violence; second, the Commission found that the United States has a special capacity to promote peace in the world, as well as throughout the Nation, and that the United States Academy of Peace would build upon and expand this precious heritage; third, the Commission found that the U.S. Academy of Peace would strengthen national security and reduce the cost of international conflict through its research and training in a range of options to conflict, in addition to military capacity; fourth, the Commission found that through its education, training, and information services, the peacemaking capabilities of Americans in government, private enterprise, and voluntary associations, thereby advancing this Nation's world leadership in promoting international peace; fifth, the Commission found that the U.S. Academy of Peace would amplify the field of peace learning and extend peacemaking expertise by focusing national attention on peace research, education and training; sixth, the Commission found that the U.S. Academy of Peace should use both international and national peacemaking and conflict resolution experiences in designing its education and training and information services, and should give priority to research on cultural differences in peace and conflict resolution processes; seventh, the Commission found that the absence of a coordinated national commitment to research, education, and training in the field of peace learning has caused neglect of peacemaking knowledge and skills to the deteriment of our Nation's effectiveness in policymaking, and policy implementation, in international affairs, conflicts and war; and, finally, eighth, the Commission found broad government and public support for a Federal institution devoted to this Nation's peacemaking capacities that would have complimentary programs of research, education, training, and information services, one which would serve people in and out of government, and one which would be sheltered from undue government or private domination.

In short, the Commission found that the American people have an untapped and unutilized capability for peacemaking which would be enhanced and focused by a U.S. Academy of Peace. It would build upon the existing talents and skills of Americans in all walks of life, and it would increase our ability to maintain world peace and compliment our military capability and policy of deterrence—not replace them.

Although opponents of the Peace Academy have tried to label it a "radical" idea and a new one, it is neither radical nor especially new, as was pointed out by the Senator from Oregon. The concept of a national institution devoted to peace research and training was first advanced shortly after the American Revolutionary War and has been attributed both to Benjamin Rush, a prominent physician and signer of the Declaration of Independence, and to Benjamin Banneker, a black mathematician who was the editor and publisher of Banneker's Almanac, in which the "Plan for a Peace Office" within the Federal Government first appeared. George Washington, himself, urged the former colonists to include "a proper peace establishment" within the Federal Government.

In the 20th century, the idea reappeared in 1935 when Senator Matthew M. Neely of West Virginia introduced legislation providing for a Federal Department of Peace similar to the Rush/Bannecker "Peace Office." A "Bureau of Peace and Friendship," to be located within the U.S. Department of Labor, was also proposed in 1935 by Congressman Fred Bierman of Iowa. The Bureau, to be headed by an eminent sociologist, was to carry out research on matters pertaining to peace and war. Research was also the focus of two congressional resolutions introduced in 1945 and 1947 by then-Congressman Everett Dirksen, later a U.S. Senator from Illinois. The Dirksen resolution called for the establishment of a Division of Peace within the U.S. Department of State.

In later years, the concept was expanded. In 1945, Senator Alexander Wiley of Wisconsin proposed legislation to establish a small, high-level Department of Peace, with the Secretary serving, among other things, as the U.S. Representative on the United Nations Security Council. That same year, JENNINGS RANDOLPH, then a Congressman from West Virginia, introduced a Department of Peace bill which incorporated for the first time the idea that the international exchange of ideas and people is an effective means of keeping peace. Senator RANDOLPH's ideas are still very much a part of the Peace Academy concept and are clearly embodied in the proposed Jennings Randolph Center for International Peace, as proposed in our amendment.

Although congressional hearings were held on measures introduced in 1945 and 1947, the real developments during that era were the successful creation of the Marshall plan and the subsequent addition of a technical assistance program in 1949.

In 1955, President Dwight D. Eisenhower, pointing to "the unprecedented destructive power of (the) new weapons and the international tensions which powerful armaments aggravate," appointed a Special Assistant to the President for Disarmament. That individual, Gov. Harold Stassen of Minnesota, was given cabinet rank and was often referred to as the "Secretary of Peace."

Also in 1955, Senator Mike Mansfield of Montana, now the American Ambassador to Japan, and Congressman Harold Ostertag of New York introduced legislation providing for the establishment of a national peace college.

Between 1959 and 1961, the proposal which eventually became the Arms Control and Disarmament Agency took shape in Congress. Two of its principal sponsors in this body were Senator Hubert H. Humphrey of Minnesota, later the Vice President of the United States and a candidate for the Presidency, and Senator John F. Kennedy, later the President of the United States.

So it is clear, Mr. President, that the Peace Academy, far from being a radical or foreign idea, is actually one which is deeply rooted in our American heritage and which has been espoused for over 200 years by some of our Nation's most distinguished citizens.

Unlike the U.S. Department of State, the Department of Defense, or the Arms Control and Disarmament Agency, the U.S. Academy of Peace would not be charged with advancing specific U.S. interests abroad. Indeed, it would be prohibited by law from intervening directly in any international dispute. Its independence would free it to study international conflicts objectively and to propose innovative alternatives to violent conflict. Recent history provides many examples of problems which might be the subject of Peace Academy study: Disputes arising from the shortage of strategic minerals or food, border disputes, the situation in the Middle East, the war in the Falkland Islands, the conflict in Northern Ireland, and civil wars and revolutions in South America. A recent Associated Press survey, I might point out, revealed at least 15 small wars raging around the world, along with a score or more lesser conflicts.

The AP reported "The cost is unknowable. Each day uncounted hundreds die, thousands are maimed or driven from their homes, and untold wealth is consumed."

The tragic fact is that some 300 such wars, yes, 300 such wars, have been fought since the end of World War II. If graduates of a Peace Academy had been on the scene to help resolve just a few of these disputes without violence, no one, I am sure, would today object to the establishment of the proposed U.S. Academy of Peace.

Mr. President, today we take the best and brightest of our Nation's high school graduates and send them to military academies to learn the art of warfare, and I am not opposed to that because so long as there are nations on the face of this Earth which will choose to decide international differences on the field of battle, we do need our military experts for our own defense and security.

But why not take a few of our brightest young people at the college, post-college level, and teach them the art of peacemaking for peacemaking is as much an art to be learned if not a more difficult art than warmaking?

My own interest in the establishment of the U.S. Academy of Peace dates back to my youth when I noted that despite our long heritage as a peace-loving nation, our society tended to glorify war and violence.

My experience as a member of the 100th Infantry Battalion/442d Regimental Combat Team during World War II and as a member of which I was twice wounded on the battlefield reinforced my belief that we must teach the youth of our country and the youth of other countries not to glorify war but to glorify peace. Indeed, the need for the teaching of nonviolent means of settling international disputes is even more urgent today than it was when I was a boy for then we did not have the new weapons of "unprecedented destructive power" which President Eisenhower spoke of with such concern in 1955.

Mr. President, the need for a U.S. Academy of Peace has never been greater than it is today.

This need has been recognized by a majority of my colleagues, 55 of them who are cosponsors of the bill. The Peace Academy has been endorsed by over 50 national organizations and associations, including the National Education Association, the American Council on Education, the American Federation of Teachers, the Council of Independent Colleges, and the executive committee of the Consortium for Peace Research, Education, & Development, known as [COPRED], a coalition of colleges with undergraduate peace studies programs, and the churches—every church practically has endorsed at the national level. The Peace Academy is certainly an idea whose time has at long last come, and I urge a favorable vote on this amendment.

Mr. STAFFORD. Mr. President, as chairman of the Subcommittee on Education, from which the Peace Academy bill originated, I rise in support of the amendment offered by my distinguished colleague from Oregon, on behalf of myself, Senator RANDOLPH, Senator JEPSEN, Senator MATSUNAGA, and a host of other Members.

Mr. President, this amendment is substantially similar to S. 564, reported from the Committee on Labor and Human Resources on July 23 of last year. It is the product of careful consideration and debate, originating with the deliberations of a national commission on the establishment of a Peace Academy. This idea has twice been reviewed through extensive hearings by the Subcommittee on Education. A Peace Academy bill was reported from the Labor and Human Resources Committee in the 97th Congress. And this year, after extensive debate and modification, the Committee on Labor and Human Resources once again gave its stamp of approval to this concept, reporting the bill by a vote of 11 to 6.

Mr. President, I believe my colleagues will agree with me that the preferable procedure for evaluation of this measure is consideration of a freestanding Peace Academy bill. Yet, it is increasingly clear that the time constraints and priorities of the Senate will not permit this. And it is also very clear that the authorization bill before us relates as much to the maintenance of peace as any bill we consider in this body. It is entirely appropriate that legislation authorizing a mere $23 million to promote peaceful resolution of conflict be debated in the context of a multibillion dollar bill designed to ensure peace through military strength.

At the outset Mr. President, I want to draw the attention of this body to the tireless efforts of our distinguished colleague of West Virginia, [Senator RANDOLPH] in his advocacy of this concept. Senator RANDOLPH first pioneered efforts to create a peace institution by introducing in the House of Representatives a bill to establish a Department of Peace. To this day, the establishment of a National Peace Institution has not been far from my good friend's mind.

I should also like to note, Mr. President, that we have included in this amendment a provision not included in the bill as reported in committee. This provision names the Center for International Peace authorized in the bill the Jennings Randolph Center for International Peace. It is a compelling tribute to the persistence, commitment, and foresight of a man whose years of service in this body form a model for others to follow.

What we propose, Mr. President, is the creation of an institution designed, through education, training, and information dissemination, to improve our response to the resolution of international conflict. While there are some conflicts that cannot be resolved through reasoned analysis of politics, culture, and international affairs, there is much we can do—indeed, there is much we must do—to improve the way we address international disputes.

The Peace Academy bill proposes a three-pronged approach to integrating peacemaking techniques more solidly into the domain of our diplomats, military leaders, international businessmen, and citizens.

First, the Academy would operate its own programs, symposia, conferences, and other public activities. To carry out these responsibilities, the Academy is authorized to establish appropriate schools and other training facilities. Envisioned, for example, are a series of satellite branches—preferably operating under joint contract between the Academy and an existing school, nonprofit group, or library—to provide educational services promoting techniques and methods of conflict resolution.

Second, the Academy is authorized to establish a Center for International Peace, which, as I have just mentioned, we propose to name in honor of our distinguished colleague, Senator RANDOLPH. The Academy's Board may appoint for periods of 2 years scholars and leaders in peace and conflict resolution from the United States and abroad.

We envision this portion of the Academy as an International Center attracting outstanding members in the fields of peace and conflict resolution. The Center will offer long-term courses, extended periods of cooperative research, continuing education programs, library services, and other educational programs. These opportunities would serve as a readily available resource for Government policymakers, private sector officials, and other actively involved in arms control, international conflict resolution, and diplomacy.

Third, the Academy is charged with the task of developing for publication and other public communication the products of the Academy. A national conflict resolution information clearing house is authorized and would contribute significantly to the dissemination of innovative and relevant information in peace studies, and conflict resolution.

Mr. President, this legislation has been painstakingly crafted. It has received an exhaustive review by the Committee on Labor and Human Resources. More than 20 amendments were considered in committee, and more than half of these were accepted.

The amendment creates an institution relevant to the real life conflict resolution needs of this Nation. The Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the Director of the CIA may assign employees of their respective departments to the programs authorized by the Academy. The amendment requires that research and related studies place particular emphasis on realistic approaches to past successes in the quest for peace and arms control. Researchers with appropriate security clearances are urged to use U.S. documents and material from the State Department, DOD, the Arms Control and Disarmament Agency, and the intelligence community. Indeed, policymakers at all levels are urged to take advantage of the Academy's research, training, and information dissemination opportunities.

Yet the Academy is not an intervention agency. It is not a national policy-setting agency, nor would it participate in the policy decisions of any Federal or non-Federal body. It is not an institution with either the role or the authority to undermine the ability of Congress, the President, the Secretary of State, the Secretary of Defense, or other policymakers to develop and implement foreign policy.

It is, however, a tool for these officials. It is an institution designed to serve as a resource to facilitate serious consideration of strategies and techniques to help prevent violence in the world, while protecting freedom.

Mr. President, the amendment we offer today is the product of many long years of work. It is, I hope, the start of an era where conflict resolution techniques form an integral part of our response to international tension and dilemma. I urge my colleagues to lend their strong support to this amendment.

Mr. JEPSEN. Mr. President, I rise in support of the amendment of the Senator from Oregon. As my record clearly shows, I have been in the forefront of those who have decried the neglect of our national defense in the 1970's and the resulting increase in Soviet aggression. I have strongly supported our renewed efforts to strengthen our defense so that we can remain firm peacekeepers.

Mr. President, we must go beyond these efforts. The establishment of the U.S. Academy of Peace is a modest proposal that could add significantly to our ability to resolve conflicts at all levels through peaceful means. The cost of the Peace Academy will be about $23.5 million next year which is about the cost of one F-18 fighter plane.

Mr. President, we have a dual commitment to be competent peacekeepers and aggressive peacemakers. Mr. President, for the last 3½ years we have shown our commitment to be strong peacekeepers. I will continue to support that resolve. Now we must also add to our commitment to become aggressive peacemakers. I support that also in my cosponsorship of U.S. Academy of Peace.

SEVERAL SENATORS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr President, the Peace Academy is before us once again. Once an idea has been planted Congress rarely spurns the opportunity to establish a new Federal agency or program. But to be against the Peace Academy is to seem to be against peace, which only sustains my conviction that labeling is one of the most critical steps toward the passage of any legislation. There's an instant psychological barrier to surmount to vote against an Academy for Peace, just as there is with the Clean Air Act or the National Endowment for Democracy. But it is our responsibility to look beyond the cover of the book, and to examine the content of the legislation, its impact, and whether or not it constitutes a proper use of Federal funds.

I believe that we can objectively examine the devices we have established to pursue peace in the past, and consider whether these same kinds of mechanisms are capable of ensuring peace in our day. I sincerely hope that we can undergo this review and analysis process without being accused of being antipeace.

There is not a Member in this body who oppposes peace. But while all of us believe peace is a noble objective, we are at odds as to the best means to achieve it, as the debate on the defense bill this past week has shown George Will, in an article on the subject of the Peace Academy, remarked that:

> Peace is so desirable that, if an academy were relevant to it, it would be worth paying the terrible price of having yet more graduate students. But the idea of a peace academy flows from many premises, all mistaken. One is that mankind's "natural" condition is peace, the breakdown of which results from remedial "mistakes" and "misunderstandings." Another premise is that peace can be taught as a discrete subject, like dentistry. A third premise is that conflicts between individuals, and domestic social discords, are closely analogous to, and pregnant with lessons about, conflicts between nations.

Will, not surprisingly, is right on target. The problem with the Peace Academy is that it inevitably will be an exercise in self-delusion. Somehow, we seem to be led into believing that the simple creation of a government institution to promote conflict resolution and negotiation will effect peace. We put all of our eggs in the basket of these peace institutions, and all of our confidence in the faceless people who will be providing this instruction in how to achieve peace.

History is replete with examples of nations that were overcome because their people failed to provide for their defense because they took refuge in deceptive assurances of peace. Most of England undoubtedly breathed a sigh of relief when Neville Chamberlain returned from Munich, proudly displaying his agreement with Adolf Hitler and announcing that we had "peace in our time." Hitler launched his stunning blitzkrieg of Poland shortly thereafter. The people of Europe had put their eggs in that piece of worthless paper, and were temporarily and dangerously deluded about the growing threat that would grip them with terror in the coming years of the world's worst war.

Neville Chamberlain has gone down in the history books as the great proponent of appeasement, the dupe of a shrewd adversary. Appeasement was widely recognized to have been a foolish, disastrous policy. Today, many of our politicians would pursue the same disastrous policies with the Soviets, leaders who have proven that they are every bit as ruthless and determined as Adolf Hitler.

Winston Churchill, who proved to be one of the war's greatest leaders, was ostracized by most of England's leading politicians and statesmen, at the same time that Chamberlain was being applauded for negotiating with Hitler. In 1934, Churchill had sounded the same warnings about Nazi Germany that many here in Congress express today about the Soviet Union. At one dinner party in England, a lady socialite and Labour Party member asked Churchill why he was trying so hard to convince everyone that Hitler was such a dangerous man. Churchill's response: "If I do not succeed, Madam, I'm afraid you will find out." Well, I for one do not wish to find out what the Soviets will do if we fail to provide for our own protection and disarm ourselves in the hope that somehow unilateral disarmament will have a pacifying effect on the Soviets. We've unilaterally canceled major weapons systems in the past, and it has not enticed the Soviets to follow suit. They have never stopped building weapons in the face of U.S. resistance.

I believe that peace, at least between the United States and the Soviet Union, the world's greatest military powers, will continue to rest upon the United States continuing to understand the nature of the Soviet leadership. The Soviets have three constant and unchanging objectives in their position relative to the United States. They have sought nuclear superiority, for the purpose of nuclear blackmail. They have sought control of the strategic and material resources upon which the United States, NATO, and other Western Allies depend. And, they have sought, with great success, to mask their intentions through widespread use of disinformation and propaganda. Most important, the Soviets are unimpeded in their pursuit of these objectives, while democratic governments must contend with Soviet-orchestrated peace demonstrations, with Soviet and Eastern bloc agents posing as diplomats, and with Communist Party and front organizations actively soliciting support for their causes among our own citizens. Now these activities can occur legitimately in a free society, and I would have it no other way, considering the alternative. But, we must recognize the inherent weaknesses of our political system, and make tireless efforts to separate what is truth and what is propaganda and disinformation about the world situation and our national security interests.

Hitler's autobiography, "Mein Kampf," detailed his plans for the conquest of the world. The Soviets, similarly, have provided us with ample evidence of their geopolitical objectives. It is common knowledge that they show no scruples in their efforts to reach their objectives. They flagrantly violate arms control agreements, advocate international terrorism and subversion of democratic governments, use slave labor to build their oil pipeline to Europe, forge official documents to discredit the West, and blast civilian airliners out of the skies with impunity. Most recently, the Soviet hand was revealed in the assassination attempt on the world's foremost religious figure, Pope John Paul II. And the Soviets, despite polite objections from the West, have persisted in the psychological torture of one of their most eminent scientists and a Nobel Peace Prize recipient, Dr. Andrei Sakharov.

The Soviet peace offensive, in spite of Western knowledge of Soviet behavior, is relentless. The Kremlin leaders have manipulated the institutions of peace already in existence, such as the United Nations, to further their goals. How can we be assured that yet another government entity will succeed where the United States has failed?

Some Americans cling desperately to the hope that the Soviets are civilized people like Americans are, that our leaders are separated only by past disputes that can be ironed out so that we can be friends again. Of course the alternative, to recognize the Soviets for what they are, and have always been, is deeply unsettling. Yet we accept the fact that we must lock our doors at night, that evil exists in the world, and that vulnerability can be dangerous. Soviet peace offensives are only a modification of Soviet tactics, a new method in which to achieve their goal of world domination, not a change in their grand strategy.

What the Soviets really want we cannot negotiate; we cannot negotiate our freedoms. There are fundamental and divisive differences between our societies. They build walls to contain the many people that would escape their country if they could; we must hire border patrols to keep out the people that want to become Americans, that would like the chance to worship freely, to speak their minds, and to have a voice in their government.

The Russian people have never enjoyed, since the Bolshevik revolution the basic rights we have as Americans. They are largely ignorant of what America is all about because the news they read is censored. The papers in the Soviet Union are solely the mouthpiece of the Government. So, the Soviets continue to build weapons of mass destruction, to mount peace offensives in the West, and to orchestrate well-timed campaigns to defeat Western resistance to Soviet aggression and expansionism. What is the Western response? As Henry Hyde noted in a recent "Dear Colleague" letter, the House of Representatives responded by temporarily halting the MX, temporarily halting antisatellite weapons testing, temporarily halting nuclear-tipped sea-launched cruise missile development, abandoning modernization of our chemical warfare capability, and obtaining nothing in return. And now the Senate is considering spending taxpayer money on a national Peace Academy.

Why do we seem to be so confused about achieving peace? I lay part of the blame on the national media, which polls have indicated hold decidedly leftist opinions on major policy issues. The Soviets, as defectors from the Gulag have told us, need the media. Their journalist training schools churn out hundreds of professionals designated to infiltrate the Western media and to characterize the Soviets in a beneficial light. Newscasters harangue President Reagan's warmongering, bellicose, anti-Soviet rhetoric. The media castigates America's gunboat diplomacy, hard-line positions, provocation, and confrontation. Yet, Soviet Navy maneuvers in the Caribbean are observed as part of Chernenko's new assertive foreign policy. This attitude is in keeping with what Congressman John Ashbrook called the postwar-era phenomenon—liberal fear of American power. Ashbrook said that:

> The only question we really have to ask ourselves is whether it is better for us to continue to possess the power to be the leader in the world to use it for principles which we clearly espouse or to relinquish that power to other forces who surely would not use it for the lofty goals and ideals which have been the American dream and the American reality.

I agree with Congressman Ashbrook that the real dangers to world peace come from other quarters, not from Americans, who elements of the liberal persuasion believe is too strong, too rich, and too powerful.

I would ask the Peace Academy supporters how much money should we spend on peace projects before they will be satisfied that we are spending enough? Are there any limits? If we spend money now for the State Department, foreign embasssies, for the Peace Corps, for public and private cultural exchanges, for international fellowships, book fairs, and for National Endowment for the Humanities' Russian Awareness weeks, then do we need a Peace Academy too? If all these agencies and projects actually advance peace, then why have we witnessed so many nations subjugated to the permanent peace of the Communist bloc since the end of World War II? These enslaved people are a living testament to the fact that our institutions advocating peace have done nothing to stop the Marxist-Leninist advance upon the free world. Therefore, although the superpowers have avoided global warfare for four decades, there has never been peace. We are locked into a continuous struggle, and the Soviets have successfully used terrorism, subversion, propaganda, and proxy forces to make their gains.

Peace and freedom could better be preserved if we recognize that there are limits to negotiation and conflict avoidance, that there is a point at which we can acquiesce no further without sacrificing our principles or jeopardizing our national security. My concern about peace activists is that they interpret peace to mean offering no resistance. That dangerous attitude, that arbitration always is the solution, will undoubtedly pervade any Peace Academy.

A better alternative would be to create a Freedom Academy. As a famous Soviet dissident, Vladimir Bukovsky, explained, the United States has never had a similar weapon against the ideological expansion movement that has propelled communism forward in spite of its monstrous failure as a political and economic institution. Democratic government has already been accepted by the people of the world as a better system, but the West has failed to promote that better way of life. The Soviets, in contrast, have relentlessly and steadfastly propagated the myth that capitalism is profligate and corrupt, using all the ideological tools at their disposal, both legitimate and illegitimate. We should consider an ideological offensive of our own, and work at more effective ways to get information from the free world into the Eastern bloc, to offer ideas, hope, and encouragement to their imprisoned masses of people.

I submit to the RECORD the following articles by George Will, one entitled "Giving Peace a Bad Name," the other, "Why Arms Control is Harmful." I am also submitting the excellent remarks of our former colleague, John Ashbrook, who was a member of the Commission on Proposals for the National Academy of Peace and Conflict Resolution.

GIVING PEACE A BAD NAME

(By George F. Will)

Sen. Jennings Randolph, a West Virginia Democrat, is an affable slab of a man who looks like a piece of Stonehenge that walked away. He first came to Congress 50 years ago. He is leaving next year, and many colleagues want to honor him by fulfilling his fondest desire, establishment of a United States Academy of Peace. Unfortunately, that is another idea that could give peace a bad name.

The proposal for a peace academy is as American as, well, the Kellogg-Briand Pact, which outlawed war many dozens of wars ago. A peace office was proposed for the government in 1793. In 1945 a young congressman from Pekin, Ill.—et tu, Everett Dirksen?—proposed a division of peace within the State Department. Today the lobby for the peace academy claims 30,000 supporters. Its list of advisers begins with Ed Asner. A fund-raising letter begins, "Dear Fellow Human." I never learn how letters that begin that way end.

A peace academy would be part graduate school, part think tank. It would sponsor research about the causes of conflict, and techniques of conflict resolution, duplicating work done at many universities. If it were just a slice of pork for the academic lobby, it would not matter. It matters because it illustrates odd ideas about peace.

Terrible Price: Peace is so desirable that, if an academy were relevant to it, it would be worth paying the terrible price of having yet more graduate students. But the idea of a peace academy flows from many premises, all mistaken. One is that mankind's "natural" condition is peace, the breakdown of which results from remediable "mistakes" and "misunderstandings." Another premise is that peace can be taught as a discrete subject, like dentistry. A third premise is that conflicts between individuals, and domestic social discords, are closely analogous to, and pregnant with lessons about, conflicts between nations. Hence conflicts are opportunities for applying clear, teachable techniques of "conflict resolution." A fund-raising letter for the peace-academy lobby proclaims: "There is now a science—tested and proved in actual practice—that can help make war absolete."

Supporters speak of learning to "wage peace." They say, "peacemaking is as much an art to be learned as war." But it is not. War is the intense focusing of will and materiel, of leadership and technique, to achieve clearly definable political aims. War is a profession; peace is a condition.

The words "war" and "peace" are misleading when used in ways that suggest a clean, clear distinction. At different times and places the words have denoted quite different things. Gen. Sir John Hackett says that when Britain and France were engaged in the Seven Years' War (1756-1763) most citizens of both countries were unaffected by it and many never even heard about it. Today in the continuum between peace and war lies a broad terrain of troubles such as terrorism, subversion and ideologial aggression. Hackett says that weapons of mass destruction have made the prevention of war rather than the waging of it the principal purpose of armed forces. But he also notes that in the less than 40 years since peace (of sorts) came to Europe, outside Europe there have been at least 40 wars with more than 40 million dead.

And now add the population of Kansas City to the casualty list. ABC is about to treat the nation to a prime-time entertainment movie, "The Day After," portraying the reduction of that city to a cinder. The movie is this month's—they come about one a month—original discovery that nuclear war would be awful. It is safe to assume that some of the persons who made the movie consider it a political act. It will have the predictable and intended effect of stirring recruits for the "peace movement." One thought behind movies like this is that it is morally frivolous for anyone to go through life other than weighed down by woe about living in dangerous times. A related and equally dumb thought is that if everyone can just be scared witless, everyone will act constructively to make a less scary world.

In the current climate, the last thing the nation needs is a peace academy staffed by people stuffed full of the ideas you would expect in people attracted to a peace academy. All that an academy could usefully do is what every liberal-arts school does: teach history. Taught properly, history refutes the idea that there is some social or scientific key to peace.

However, the academy bill has 55 Senate and 158 House cosponsors. It is a double temptation. Peace is a good thing, and Americans believe in academies because they believe that any unpleasant fact is a "problem" solvable by good will backed by education.

Counter-Hijacking: Besides, an important tactic in contemporary politics is semantic hijacking: factions make certain words their private property. The agreeable adjective "gay" has been ruined. Let's see: "environmentalists" want a nice environment, so the people environmentalists oppose must be opposed to that. Then there is the "peace movement," which has cornered the market on "concern" about war. (Some people want to ban the bomb. I want to ban the word "concern" as used by groups calling themselves Clergy and Laity Concerned About This or That.) A peace academy is another instrument for moral posing: everyone who loves peace, line up behind our latest peace-promoting scheme (the League of Nations, the Oxford Resolution, the United Nations, SALT I, SALT II, cultural exchange, East-West trade, nuclear freeze, peace academy); eveyone who doesn't care a fig if Kansas City goes poof, line up over there. Of course there are all sorts of ways of loving peace. As Clausewitz said, "The conqueror is always peace-loving; he wishes to make his way into territory unopposed."

Peace is made possibly by many factors, but not least by (in words Herman Wouk once spoke at West Point) "the willingness of an able few to give up personal freedom in the necessary discipline of a military arm. On a planet which is mostly not free, a free society can only live by such a sacrifice of this able few." So, if I can attempt a counter-hijacking: we already have three peace academies. One is on the eastern slope of the Rockies, one is on Chesapeake Bay and one is where Wouk spoke.

WHY ARMS CONTROL IS HARMFUL

(By George F. Will)

Today's arms-control controversy is remarkable for the virtual absence of the most important argument. It is that the arms-control process is injurious to U.S. interests. That argument offends conventional wisdom and (what is much the same thing) wishful thinking. It has the redeeming merit of being true, as Seymour Weiss knows. In a paper presented at the Lehrman Institute, Weiss, retired ambassador and State Department director of political and military affairs from 1960-67, argues that enthusiasm for the arms-control process—a process barren of achievements—reflects misapprehensions about the usefulness of that process in slowing the arms race, saving money and taming the Soviet Union.

The idea of an arms "race"—often described as "spiraling"—is odd. The U.S. nuclear-weapons inventory has been sharply reduced. It contains 8,000 fewer warheads and 25 percent less megatonnage than in the 1960s. This is the result not of arms agreements but of modernization programs that produced safer, more effective weapons—modernizations of the sort that arms-control advocates try to block with agreements.

Safer World? During the era of détente and arms control the Soviet nuclear arsenal has grown quantitatively and qualitatively. A study commissioned during the Carter administration compared 41 categories of nuclear capabilities (warheads, megatonnage, delivery systems, etc.) in the period beginning with the Cuban missile crisis. It concluded that the United States had been well ahead in every category in 1962 and was behind in all but two by the late 1970s. Since SALT II was signed in 1979 the Soviet Union has added more than 3,400 warheads. Does anyone think the world is safer than it was when the SALT process began in 1969?

The achievement most celebrated by arms-control enthusiasts is the 1972 treaty effectively banning antiballistic missiles. True, we saved the cost of ABM's. But partly as a result of that decision we will spend many more billions on MX missiles, an unsatisfactory response to the fact that our undefended land-based ICBM's are vulnerable. Because MX is unsatisfactory, billions more may be spent on smaller, mobile "midgetman" missiles. Why is MX so unsatisfactory? Because of an arms agreement.

SALT I limited the number and size of launchers—basically, holes in the ground—rather than numbers or megatonnage of warheads. Limits on those would be hard to verify, given Soviet secrecy. So SALT I drove arms planning toward big missiles packing maximum megatonnage. SALT I did what arms agreements usually do: it did not restrain competition, it turned it in a new direction. It was a direction in which the Soviet Union, with its huge SS-18s, had a lead. SALT I ratified a Soviet advantage and, by giving rise to the inherently vulnerable MX, reduced the stability of deterrence.

This republic overflows with laws, lawyers and faith that the world can be tamed by words on parchment. Americans see arms control as a way of freezing the status quo; the Soviets see it as one arena in a comprehensive, unending competition. Furthermore, Weiss says, persons who think arms control should be the "centerpiece" of U.S.-Soviet relations ignore the fundamental incompatibility of U.S. and Soviet objectives. The configuration of the Soviet buildup in the arm-control era is unambiguous. The arms are not designed for defense but for producing a world pliant to Soviet designs. Weiss says there is no reason to expect the Soviets to negotiate away advantages, and ample reason to expect the Soviets to exploit the American thirst for agreements.

In addition to selling discord among U.S. allies and paralyzing U.S. procurements, Soviet negotiators have, Weiss says, five aims. First, limit the wrong things (e.g., launchers). Second, make sure the limits on important things are ambiguous. (SALT I limited but did not define "heavy" missiles.) Third, accept specific limits only if they are unverifiable (e.g., the ban on biological weapons or the SALT II limits on cruise-missile ranges). Fourth, evade even strict, verifiable limits by claiming they do not apply to this or that program. (The Soviets claim their ABM system is just a defense against bombers.) Fifth, get the treaty to legitimize violations of the treaty. (SALT II's flimsy verification terms forbid encryption of data from missile tests—except when encryption is not intended to evade arms-control limits. But given that it is encrypted, how are we to tell?)

Because ours is an open society, our government cannot cheat on agreements, and because our society invests such hope in arms control, even an administration as starchy as Reagan's is apt to forgive Soviet cheating or mute even required reports of it. When, complying with a Senate demand, the administration submitted a list of Soviet violations, The New York Times denounced the—you guessed it—administration for "initiating this damaging laundry list."

Weapons: The arms-control era has coincided with unparalleled Soviet aggression and threats from Indochina through Afghanistan. Try to tell victims of "yellow rain" about the wonders of arms control. Biological weapons are controlled—on paper. What has violation of the controls produced? A U.S. clamor for yet more agreements. And arms-control enthusiasts, their enthusiasm impervious to evidence, continue to use slogans that were threadbare when Dean Acheson refuted them.

Acheson demolished the bromide that "as long as the Russians are talking they are not fighting." Acheson said that Americans are so wedded to the belief that negotiations are means of ending conflicts that they are blind to the fact that negotiations are equally suited to continuing conflicts. Of the slogan "There is no alternative to negotiations with the Russians," Acheson said: "This is, of course, silly. For if there is no alternative, and if the Russians will only negotiate, as is now the case, on their own terms, then there is no alternative to surrender."

For that reason someone should tell Ronald Reagan to quit saying that nothing is more important than "development of a better working relationship with the Soviet Union." Such talk worsens the asymmetry in U.S.-Soviet negotiations by building pressure on the U.S. government for concessions to produce "movement." An immoderate and unempirical belief in arms control produces a policy of apologetic retreats.

COMMISSIONER STATEMENTS: DISSENTING VIEWS OF COMMISSIONER JOHN ASHBROOK

Peace is like health in the limited sense that everyone is for it. If "peace learning" (to use the Commission majority's phrase) were like health learning, the case for a new Federal agency analogous to the National Institutes of Health would be persuasive. But it is not.

There is no consensus among scholars, even among those who support the concept of a Federal Peace Academy, on whether peace research is now or ever will be a coherent and rigorous academic discipline. Professor Kenneth Boulding wrote in 1978 that the field is still in the first phase of a new discipline: it has a bibliography, and you can give an examination in it. In the second phase, according to Professor Boulding, "the intellectual ferment has produced a moderately homogeneous brew which can be summarized in a textbook. The conflict and peace studies discipline . . . has not yet reached this stage, but I would expect it to do so in the next ten years."

The Commission majority makes no such prediction, but it argues . . . that peace studies is a distinct and definable field of learning for three reasons: it has a literature, courses of study, and professional organizations; it has well-defined assumptions and definitions, and a variety of research methodologies; and it has a strong applied component in the practice of conflict intervention.

By those standards, "health" has been a distinct field of learning for most of the last millenium, including the centuries when the average encounter between the average doctor and the average patient was as likely to shorten the latter's life as to lengthen it. So are astrology, Lysenkoism, and Keynesian economics.

But an academic field which wants to have an official government agency of its very own should be held to higher standards. It should demonstrate the kind of conceptual solidity and compelling explanatory power which irresistibly command the attention and transform the thinking habits of scholars in related or competing fields. It should prove beyond reasonable doubt that it is more than a passing fad.

Peace learning has not yet done this. It may never do so. But some 80 colleges and universities currently have departments of peace studies or conflict resolution; we do not need a new Federal agency to give peace studies a chance.

The Commission's staff has mentioned its concern that an official Peace Academy might be "too close to the government to ask the hard questions such an institution should ask." The Commission majority apparently believes that it is possible to solve this problem, but I do not. By its very nature it is impossible to solve.

Peace is inseparable from justice, and justice is inseparable from morality. Sometimes it is impossible to secure justice without conflict, and that means that some conflicts are desirable. The best outcome for some conflicts is not compromise or arbitration, but a clearcut victory for the side that deserves to win.

Unless a Peace Academy confines itself to trivia, it will have to make judgments about which conflicts are desirable, which not. Such judgments are inescapably value-laden; as the Commission majority observes, "questions of ethics and values are central, not peripheral, to peace inquiries." But the formulation of values is not a proper activity for a government agency. Government-formulated values are almost always warped values: bent by the pressures of special interests and ideologues.

What would those pressures be? As a practical matter, the danger of an official Peace Academy's being unduly influenced by the selfish interests of, say, the Joint Chiefs of Staff is rather small. Given the ideological predilections of most "peace studies" professionals, it is more likely that the Academy would become a sounding board for the antinationalist, accommodationist views which are increasingly unpopular among American taxpayers. (The Commission proposal increases this danger by allowing the Academy to receive and spend funds from private organizations.) But the dilemma is unavoidable: if a government Peace Academy exists, it will either force citizens to subsidize the promotion of beliefs they disagree with, or allow research decisions to be swayed by popular pressures. The only way out of this dilemma is to leave the frontiers of controversial research in the private sector, which is where they belong in a free society.

Judging by the Commission's hearing record, most proponents of an official Peace Academy seem to believe that the United States should have a government agency which views the world, not from the perspective of American values and interests, but with the sort of pseudo-cosmopolitan outlook that prevails at places like the United Nations. Embedded in this outlook are a number of tacit premises:

Ideologies, except for so-called "colonialism," are mostly benign or unimportant. In any case, ideology can be defused by neutral expertise.

The chief barrier to worldwide progress is Western arrogance and selfishness.

"Nationalism" is a bad thing, except in the Third World.

Power politics is inherently immoral, at least when used by the West.

It is more important to "resolve" conflicts than to win them, except for selected conflicts in places like southern Africa.

There is no irreconcilable conflict of values between the United States and the Soviet Union.

So much for some of their major premises.

The type of thinking which is based on these premises has been with us for a long time. It was stated as ably as it can be by Zbigniew Brzezinski, who wrote in 1970 that "Today the old framework of international politics . . . with their spheres of influence, military alliances between nation-states, the fiction of sovereignty, doctrinal conflicts arising from 19th-century crisis is clearly no longer compatible with reality." For the last four years, this view was the dominant one in our foreign policy. The results are plain for all to see.

In March 1980, the staff of this Commission produced a "Design Paper" which allows further insight into the pro-Peace Academy philosophy. On page 6 of this document, the writers state that "when conflict resolution or conflict management is taken to mean pacification, delay, placation, * * * of the status quo, justice is not served and often more violence is apt to occur." With all due respect to my fellow Commissioners and to our staff, I must say that this statement is pure malarkey. It reflects a naive view of historical change, which is all too common among modern liberals confronted by revolutionaries who believe in dialectical materialism.

In the real world, the status quo is often the least violent, least unjust choice available—as it was in Indochina, Ethiopia, and Iran. There is often a lot to be said for "delay," especially when the changes being delayed are nasty, and difficult to reverse.

On page 7 of this document there appears another passage worth pausing to consider. The writers opine that inflation, unemployment, and the limits of resources, combined with poverty, racial discrimination, the problems of social services delivery, equal educational opportunity, consumer and environmental protection, and prison conditions are among the conditions which have resulted in an increase in the number of conflicts to almost unmanageable proportions. The degree to which society deals with such disputes in creative, just, and direct ways may affect future levels of social violence.

The fascinating thing about this passage is the way it manages to be both selective and expansive at the same time. Why do the writers not include on their list of "conditions" such items as high taxes, zero-growth economics, regulatory strangulation, street crime, pornography, race/sex quotas, and forced busing? Why do they include only those problems which are thought by some (usually the liberals) to require more Federal activism rather than less? The list's selectivity pinpoints one of the fundamental problems with any government research academy: it will not bite the hand that feeds it.

On the other hand, why do the writers lump together so many different kinds of disagreements which one human being might have with another? There is no particularly good reason to do so unless one believes that conflict is unnatural to the human condition and can be banished through some exotic new blend of therapeutic and managerial techniques. Since this belief is totally founded on hope rather than experience, each of us is free to accept or reject it. I reject it.

The most frequent argument I have heard in favor of an official Peace Academy is also the most exasperating. It goes like this: the government spends a lot of money on the military, but relatively little on peace. If we really care about peace, we should give it a bigger share of the Federal budget.

Aside from the fact that this argument implicitly denies that our military spending is at least intended to help keep the peace, it reflects a fundamental misunderstanding as to who "we" are. "We," the American people, are not identical to the national government. We pursue many important and diverse goals through means other than Federal programs; in some areas, like education, we have learned the hard way that Federal programs do more to strangle than to promote creativity and progress.

If dollars are the measure, consider that in 1978 Americans spent more than $337 billion in international trade and tourism: three times the size of that year's defense budget. Most of that sum represented "spending for peace," and it was spent a lot more efficiently than it would have been under any conceivable government program.

If Peace Academy proponents really believe that the Federal government should have a monopoly on peace—or should stop having a monopoly on war—they should say so. If not, they should drop this whole line argument. I am glad to see that the majority report does not use this argument; I wish it had explicitly repudiated it.

While I would be known as a hawk, not a dove in the modern concept of those terms, peace and pursuit of peaceful goals would be uppermost in my conscience. We all want peace. Americans have no apologies to make for our 200 year history when compared to any other nations in history. Most of us follow the thesis set out by John Adams who said something to the effect that he studied war so his sons could study politics and so his grandsons could study poetry and the classics.

The Commission majority has tried to anchor its proposal in the American heritage by citing numerous proposals, from the 1790's to the present, for an official "peace office" or "department of peace" in the Federal bureaucracy. (The 1783 quotation from George Washington is grotesquely distorted: Washington was actually recommending a peacetime militia, not a peace agency in the sense conveyed by the majority report.) All these proposal have had one striking element in common: they have always been rejected, no matter what faction or party was in power. Benjamin Banneker's 1792 essay actually lamented that neither the victorious Federalist not the anti-Federalist opposition seemed interested in the idea. Despite frequent repetition, the proposal has never been accepted by the mainstream of American political thinking.

A common thread seemed to go through the thinking of most of the individuals and groups who favor this Peace Academy. Indeed, one of the phenomena of this postwar era has been the fear that liberals seem to have about American power. I have no fear of American power because it is my sincere belief that it will continue to be exercised for good. History shows that power has alway existed and someone has alway had it—like it or not. There are no vacuums and with modern technology we will no longer have the safety margin of time and distance.

The only question we really have to ask ourselves is whether it is better for us to continue to possess the power to be the leader in the world to use it for principles which we clearly espouse or to relinquish that power to other forces who surely would not use it for the lofty goals and ideals which have been the American dream and the American reality. There is a guilt feeling among many Americans of the liberal persuasion who think we are too strong, too rich, too powerful. Some even argue, therefore, too dangerous to world peace. I cannot agree with them. The real dangers to world peace come from other quarters.

I cannot agree that Congress should embark on the Peace Academy route envisioned by my fellow commissioners. Years ago it became apparent to me that we should have some Freedom Academy, a place where Americanism can be taught and courses on communism made available to teachers, scholars and other interested citizens. I would favor that before we embark on the course cited in this report. Even in a Freedom Academy, I would have difficulty in advocating the model set out by my fellow commissioners. I just can't trust Federal prime responsibility for such a venture, whether it be in the climate of a Carter or a Reagan administration.

If Congress should be so foolish as to create a Federal Peace Academy and even if it became a forum wherein its one foreign policy philosophy were identical to my own, I still would not welcome any such official favoritism. But more likely, the Peace Academy would soon become a haven for our Andrew Youngs, Ramsey Clarks, and others who believe that the way to make peace with the assorted ayatollahs and other titled bandits of today's world is to grovel.

The irony is that this "new" idea has already had its chance, has already been thoroughly tested and explored. For the last four years, an official Federal agency was dedicated to this very philosophy and embarked on this very experiment: the White House.

Mr. SYMMS. Mr. President, I hope that the Senate would reject this amendment tonight. I have the greatest respect for my dear colleague from Oregon who is my neighbor and who the former president of Willamette University which is, incidentally, an outstanding liberal arts institution that provides a great platform for this kind of activity in the great Northwest.

I think for us to submit taxpayers' dollars to duplicate what goes on at the liberal arts colleges all across the United States is totally unnecessary and unworthy of the labors of our taxpayers.

I yield the floor.

SEVERAL SENATORS addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. WILSON. Mr. President, will the Senator from New Hampshire yield?

Mr. HUMPHREY. For what purpose, and for how long?

Mr. WILSON. For the purpose of allowing a unanimous consent that has been cleared on both sides so that the Senator from Iowa [Mr. GRASSLEY], may have 10 minutes to dispose of an amendment. I am asking that there be a unanimous consent to set aside the pending business to allow the Senator from Iowa [Mr. GRASSLEY], to be recognized to offer an amendment on spare parts; and, I further ask unanimous consent that upon the disposition of the Grassley amendment, the pending amendment on the Peace Academy shall recur.

Mr. NUNN. Mr. President, reserving the right to object——

Mr. HUMPHREY. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. HUMPHREY. Is the Senator from California asking to set aside this business now?

Mr. WILSON. Yes.

Mr. HATFIELD. Mr. President, I object to that unanimous-consent request.

The PRESIDING OFFICER [Mr. TRIBLE]. Objection is heard.

The Senator from New Hampshire.

Mr. HUMPHREY. The matter of peace is not of itself controversial, but the means of attaining and keeping the peace most certainly is controversial. I think, if the Congress chooses to enact and create the Peace Academy, it will behoove us to keep a very close eye on that institution to insure that it is not captured by one philosophy or another, and especially to insure that it does not become a sounding board for pacifists and Soviet apologists.

During the consideration of the Peace Academy bill in the Labor Committee, the Senator from New Hampshire succeeded in persuading his colleagues to adopt a number of amendments, amendments which are now contained in the language offered by the Senator from Oregon to the Department of Defense authorization bill.

The purpose of the amendments was to tighten up the language of the bill, at least in the eyes of this Senator, to narrow the possibility of abuses of the Peace Academy, and to hold it more accountable to the Congress. The amendments, among other things, require that the board chairman of the Peace Academy must prepare and transmit to the Congress and the President a progress report on implementing the purposes of the legislation every 2 years to be followed by Executive comment and congressional hearings on the record and the Academy's activities; second, Mr. President, additional grounds were provided for Presidential removal of members of the board of directors of the Academy, including upon the recommendation of the majority of the members of the congressional authorizing committees.

Another provision prohibited the use of the U.S. designation in the title or seal of the Peace Academy in any year that no authorization of appropriations is made by Congress.

In addition to those safeguards, which were included in the bill as reported by the committee and which are part of the amendment pending now, Mr. President, the Senator from Oregon has agreed to include and has included in the pending amendment an additional safeguard that precludes the acceptance by the Peace Academy or the expenditure by it of any private funds. In other words, Mr. President, the Peace Academy will have to operate exclusively on funds authorized and appropriated by the Congress.

Inasmuch as control of the purse strings is the ultimate means by which the Congress holds agencies of the Government accountable to the taxpayers, I think this safeguard is very much in order in this particular case.

I thank the Senator from Oregon, as I thank the other members of the Labor Committee, for cooperating in the efforts of this Senator to tighten the language of the bill and include some provisions which we saw as safeguards.

Now, I would like to engage in a brief colloquy with the Senator from

Oregon to clarify, if that is necessary, the legislative intent of the provision which he has incorporated which precludes the acceptance or expenditure of private funds.

Mr. HATFIELD. I would be very happy to.

Mr. HUMPHREY. I thank the Senator from Oregon.

Do I understand correctly that the sponsors have included in this amendment now pending the language of the Senator from New Hampshire to preclude the Academy from accepting private funding? Is that correct?

Mr. HATFIELD. The Senator from New Hampshire is correct. In the original version of the bill there was a provision for the receipt of private contributions. Due to the persuasive arguments of the Senator from New Hampshire, that provision was deleted and the Peace Academy is now to be exclusively and solely funded by the Government.

Mr. HUMPHREY. I must confess a little uneasiness on this point, Mr. President. I hope that in the future we will not see efforts to overturn this provision by amendment or otherwise. We cannot guarantee that in advance. But I will say I am going to keep a very close eye on this Peace Academy, especially on this provision. If I see any efforts to overturn it or if I see some problems emerging of the kind about which I expressed concern earlier, I am going to become a watchdog of the Peace Academy and try to eliminate as best I can any troublesome problem that might arise.

I think it is utterly essential, given the potential of this Academy becoming a controversial sounding board, that the Congress maintain absolute oversight responsibility. It is utterly essential that we retain, as years go by, this provision which precludes private funding or the expenditure of private funding by the Peace Academy.

I thank the Senator from Oregon for this clarification of the legislative intent. I hope that others who may be unclear in the future about the intent will refer to this legislative colloquy and these remarks to be assured of just what our intention was. I thank the Senator from Oregon. I yield the floor.

Mr. HATFIELD. Mr. President, I thank the Senator from New Hampshire. The Senator had a very profound concern about this proposal. After a number of sessions with the staff and the principals, we were able to work this out to his satisfaction. I can assure the Senator that, as chairman of the Appropriations Committee I feel that as long as I serve on that committee I will be in a position to be certain that it is properly funded and to see that those funds are handled by the committee and by the Congress. I would hope he would feel totally relieved of the concerns he expressed at the time he raised this particular issue.

Mr. HUMPHREY. I thank the Senator.

Mr. HATFIELD. Mr. President, I have some material I would like to insert into the Record at this point.

Mr. President, there is a gentleman by the name of Mike Mapes, who was the director of the National Peace Academy campaign. He died of leukemia just 2 weeks ago. He did not live long enough to see the fruition of his efforts. Mike Mapes was a very outstanding American. I would at this time like to introduce into the Record a tribute in the context of some historical background leading up to the formation of that assistance group. I ask unanimous consent that it appear in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

A Tribute

The idea of a Federal organization to study peaceful means of conflict resolution is nothing new. Indeed, it is the shared dream of many statesmen throughout history. In the early years of our Nation, voices of sanity and vision began calling for a Department of Peace. West Virginia Senator Matthew Neely introduced the first legislation in this century calling for the creation of such a department in 1935.

The establishment of a National Academy of Peace would bring to a close not only my 9-year personal fight but also a 200-year attempt to force the Federal Government to give proper priority to the study of peace.

Since Senator Vance Hartke and I introduced legislation establishing the National Academy of Peace in 1976, it has been my privilege to become acquainted with a number of committed individuals around this country. Perhaps one of the most visionary and dedicated advocates of not only this idea but also the pursuit of peace around the globe was Mike Mapes.

Mr. President, as 9 years of work finally brings the supporters of the Peace Academy to the Senate floor, my enthusiasm is tempered by sadness. Mike Mapes, the director of the National Peace Academy Campaign, died of leukemia 2 weeks ago. Mike brought a personal face to this fight, a strength and vision to the crusade.

If the potential of the Peace Academy can be realized, perhaps we will succeed in making the world about which Mike cared so very much a little better.

Mr. BINGAMAN. Mr. President, I rise to lend my support to the amendment sponsored by my distinguished colleagues from Hawaii, West Virginia, and Oregon establishing a U.S. Peace Academy. Well over a majority of this body is listed in cosponsorship, and I am pleased to be part of this majority.

The level of funding for this institution is minuscule: It comes to less than one thirty-thousandths of the Defense authorization level of funding. This is hardly a budget buster. Having spent so much of our resources to deter war by the threat of retaliation, is it not a good idea to spend just a small amount on investigating peaceful means of conflict resolution?

While some institutes of higher learning already do have small efforts in the area of peaceful conflict resolution, it is, I feel, desirable to broaden the field on a national level and to establish a clear Federal commitment to serious scholarly effort in the area of peaceful conflict resolution. While certainly the Peace Academy will not solve all military and strategic problems, it is clear that a small effort in this direction is justified, if only on the chance that some solutions may possibly be developed and studied which would have the potential of savings billions of dollars, not to mention an untold number of lives. For our world is full of conflicts today needing new approaches to negotiation.

It is noteworthy that my distinguished colleague from West Virginia has spent nearly four decades over his long and illustrious career in an effort to develop such an institution. I can think of no more filling tribute to him, in the closing months of his many years of service in this body, than the passage of this amendment and the establishment, at long last, of the object of his labors.

Mr. President, the human race has studied war for millenia. We have, as a species, made a practice of sparing no effort to develop more and more sophisticated means of delivering death and destruction, and of trying to defend against these sophisticated means. I have not noticed that conflicts are generally being resolved in more rational or less violent manners as a result of this massive, long-term and nearly universal striving of humankind. From bows and arrows to the most sophisticated ballistic missiles, the strategy has been the same: To gain a clear technical advantage over the other side in techniques of waging war. Can anyone argue that the world is safer today than 5, than 50, than 500 years ago as a result of all this work, much of it brilliant, deriving from the most ingenious labors of some of the brightest members of our species?

My point is perhaps it is time to try another tack. Not that we can afford to stop our military efforts, of course. One side or one nation cannot do that unilaterally. But it cannot be seriously argued that, after we have failed to achieve security through the study of war, we should not devote less than 1 percent of 1 percent of our military budget to study peaceful conflict resolution. At the worst, we shall certainly not be in any worse position for having expended this tiny effort. And at the best, we might just possibly, for that tiny expenditure, discover something about the human being, about the human psyche, about modern nation states, in all their varieties, which would make war less likely; which could provide nonviolent avenues of solution to disputes on all levels.

In other areas of endeavor, the current administration admits to a role for Government in research when the potential payoff is high, although the likelihood of success may not be. A Peace Academy, under Federal Government auspices, seems to me to fit such criteria for Federal support, even if one is pessimistic about the possibility of success. I can see no reason not to support this proposal strongly. Its time has certainly come, and I give it my most sincere support.

Mr. PELL. Mr. President, as a cosponsor of the legislation to establish the U.S. Academy of Peace, I strongly support this amendment.

Today, we are in an era of international turmoil. Tensions between the United States and the Soviet Union are at a high point and dialog, particularly in the all-important area of arms control, has broken down.

The two superpowers are on a collision course which, if not reversed, could lead to nuclear war.

Conflicts in El Salvador and Nicaragua threaten to engulf the entire Central American region, and in the Middle East, the war between Iraq and Iran is a tinder box which could explode at any moment.

Under these circumstances, there is no question that the need for a peace academy is great.

The primary purpose of the academy is to enhance current research and training in the fields of conflict resolution, diplomacy, international affairs and peace studies.

The Academy will have the authority not only to engage in its own research and training but also to make grants to existing institutions to carry out programs in these areas.

Thus, the Peace Academy will not be a substitute or a duplication of existing efforts but rather a much-needed complement.

The cost of the Academy is small—only 5 cents per American.

At a time when we are spending billions of dollars every year on weapons of destruction, surely we can afford to spend a few million annually on peace and conflict resolution.

The Peace Academy will be a symbol of the American commitment to peace and an affirmation of our intention to do all that we can to turn swords into plowshares.

I urge my colleagues to vote for its creation.

Mr. KENNEDY. Mr. President, I rise in support of this very important amendment to establish the U.S. Academy of Peace. Before I go on, I must commend my good friend Senator RANDOLPH for his long and unyielding dedication to the cause of peace as embodied in this bill. I also commend Senator MATSUNAGA for his leadership in this area—both as chairman of the Commission on proposals for the National Academy of Peace and Conflict Resolution and as a sponsor of this legislation. As well, I thank Senator HATFIELD and Senator STAFFORD for their hard work in bringing this amendment before the Senate.

We know that peace is not simply the absence of war. It possesses a positive side that must be valued, preserved and promoted in every way. The Peace Academy stands for that positive side. Its creation will certainly advance the cause of peace.

All of us, I hope, recognize the need for peace in this conflict-torn world of ours. All we need to do is read the morning paper or watch the evening news to be reminded about the wars—in the Middle East, in El Salvador, Nicaragua, in Afghanistan, and so many other countries, and the near wars that blaze around the world.

An Academy of Peace will not end those wars and conflicts because these conflicts have no simple answers. But the dead and maimed in so many countries should remind us all of the horror of war. And it should emphasize the need to resolve our conflicts and problems, in a peaceful manner. In that quest for a peaceful resolution, the Peace Academy can play a very important role.

I know some of my colleagues may wonder about spending $23.5 million on creating an Academy for Peace in this time of economic difficulties and budget restrictions. What the Peace Academy offers this Nation is not an extravagant expense but, rather, an absolute bargain. The President asks to spend over $1 trillion on national defense to protect our national security. We have and will continue to provide billions of dollars for military security to our allies around the world. How much more security will the promotion of peace provide to ourselves and to our children? And in a budget of hundreds of billions of dollars, how extravagant is $23.5 million?

For those who ask: How can we afford to spend this money on a Peace Academy? I respond: How can we justify economizing on the pursuit of peace? We live in a world of heightened tensions—where a misstep in international relations could mean the end. We, quite simply, have no choice but to pursue peace with all our resources. To say that we cannot afford an Academy of Peace in such a world as this is not only shortsighted, but, in the end, dangerous. A price tag cannot be placed on peace—because the price of war is always too high.

For too long, we have expended untold billions on weapons of war and in training the next generation to wage war. It is time for us to invest in conflict resolution through peaceful means. It is time to invest in building mechanisms for peace and training our youth to promote and preserve peace. This country has always stood for peace. The establishment of an Academy of Peace continues our historic dedication to this quest.

I urge my colleagues to support this valuable amendment and to reject any alternatives.

Mr. BOSCHWITZ. Mr. President, I am happy to join with my colleagues to cosponsor and vote for the establishment of a National Academy of Peace. It is, I'm afraid, a sad commentary on our national priorities that we have been so slow in approving this legislation, which now comes before us in the form of an amendment rather than as a freestanding bill. The Senator from Georgia referred earlier this week to the fact that, between the budget, authorization, and appropriation debates we engage in for defense, there seems to be little time left over for matters of this sort. And this idea, which the senior Senator from West Virginia has championed so faithfully, ought to receive more than leftover time on our calendar. This is a measure that should capture both the imagination and the enthusiasm of all who hope for peace. I certainly hope that all the Members of this body fall into that category. I'm sure they do, despite the lengthy wait which this idea has endured.

But that idea's time has now come, Mr. President. I sense among our people a heightened awareness of the perils our international system presents, and with it has come the hope of new developments in the field of peace studies which will reduce the threats with which our peace is faced. Peace is not a common commodity. Indeed, if we look at human history, it appears to be rather rare. If we hope to find it, we have to expect that research, study, and plain hard work will be necessary. The Academy of Peace will help provide a focal point for that sort of hard work. In conjunction with other private and public centers around the country, I expect to see the National Academy of Peace perform a vital role in our Nation's search for the elusive idea of peace. While I don't expect miracles, I do think that this effort will quickly repay the relatively small cost which this amendment represents. By attracting some of our Nation's best men and women, by putting them in touch with each other, and by putting high officials of our Government in touch with them, we begin to erect the structure which can in time become a monument to human progress.

Mr. President, I don't think anyone will object if I offer a personal note at this point. While it may be argued that war can never be completely eliminated, I think we would all agree that many of the wars man has engaged in were preventable. I left Germany in the years leading up to one of the worst wars this planet has endured. The true tragedy is that it was probably also one of the most preventable. I hope that all the members of this Academy will set as their immediate goal the elucidation of the most basic principles of peace, so that such preventable wars, at least, are rendered less likely by virtue of the positive action which I hope the Senate will take here today.

Mr. DECONCINI. Mr. President, the call of the majority leader and Foreign Relations Committee chairman last week for regular, annual summit meetings with the Soviet Union received widespread national press coverage, indicating the high degree of public interest in seeing the current impasse in East-West talks broken. Although the White House response has at best been lukewarm to this idea—fearing that such a summit would lead to false expectations and disappointment—it would seem to me that now is the time to move ahead in this direction. And the Peace Academy, which we debate here tonight, could be the first step in a process of moves to get the East-West talks back on track.

For those in the White House who are worried about diplomatic failure, the Peace Academy would be the perfect starting point since its major goal is to upgrade our knowledge and application of dispute management and negotiation techniques.

Gleaning lessons from past diplomatic successes and failures, systematically developing a documents archive in the fields of dispute settlement and peace studies, and giving training to public servants and private sector employees would all be functions of the Peace Academy. This information and these skills would be of tremendous use in summit meetings, not just with the Soviets but in talks around the world.

Although much of our attention during this Defense authorization debate has been focused on the context in which we must be prepared to respond militarily, it is important to affirm that diplomatic solutions should also be sought and are, in most instances, preferable. I urge my colleagues to join me in support for the U.S. Academy of Peace amendment.

[The following proceedings occurred after midnight:]

Mr. EAST addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EAST. Mr. President, I regret that I must take up such a substantive matter at such a late hour. I will make this as concise as I possibly can because I am about as weary of spirit and body as anybody in this Chamber with what we have been grinding through in the past 10 days.

Senator GOLDWATER pointed out the other night, properly, that we have been faced with more amendments that have nothing to do with the Department of Defense authorization bill than any bill I can think of. This one does not belong in the Department of Defense authorization bill. It came through the Labor Committee, we considered it there, and it ought to be on a Labor Committee bill.

But I guess the feeling is this is not a deliberative body any more. You finally get worn down physically and you finally say, "Let it go. For God's sake, let us get out of here."

But this is a bad idea. I respect the Senator from West Virginia and the Senator from Hawaii. I wish this had not come up on DOD, it has nothing to do with DOD, but that is not of my making. Here it is midnight and we are discussing something as important as this is. I apologize for imposing upon my colleagues, but it has worked out this way not by my design but simply by the way the institution works.

So if I might, I will tell you what I think is defective about it.

First of all, in a period of budgetary restraint, which we all admit we are under, I do not know how you will justify it. You will note so far the proponents have not mentioned dollar figures.

The first year it will cost around $23.5 million to get started, and then $10 million every year thereafter, at least. And, like every Federal agency or bureaucracy, it will grow and expand. You know how that goes.

Budgetarywise, it is a matter of priority spending in a period of the need for retrenchment. I do not see how you can put this high on a budgetary priority list.

The OMB is opposed to it. The State Department has indicated we do not need it. The Department of Education has indicated we do not need it. But, yet, I know it is going to be voted through tonight, I regret it.

Budgetarywise, I think, with all due respect to the old politics Senator HART has referred to, this is old vintage—and I do not mean this in a harsh way—typical New Deal politics of 40 years ago. That is why Senator HART has been saying we need to be a country of new ideas.

I never thought at 12 o'clock at night I would be quoting the distinguished Senator from Colorado in making my point.

What I am saying is it works this way: Somebody says—and this has been the rationale, has it not? "We have war academies, we have Annapolis, West Point, and the Air Force Academy in Colorado. Therefore, would it not be wonderful to have a Peace Academy?"

"Why, of course, it would be."

What do you do? Well, you just start a new Federal program. Those are the old politics.

Mr. STAFFORD. Would the Senator yield so I may ask a quick question to get one figure straight?

Mr. EAST. If I am incorrect on my figures, I got these figures from the distinguished Senator from Vermont. I would be willing to yield briefly for the purpose of allowing him to clarify a figure.

Mr. STAFFORD. I want to advise the distinguished Senator that the $23.5 million really covers 2 years: $7.5 million to capitalize the program, $6 million for the first year, and $10 million for the second year.

Mr. EAST. I thank the Senator for clarifying that point, but again, it is the old problem, as Everett Dirksen said: "a million here and a million there, a million here and a million there"—you have heard that old refrain.

You are starting another Federal agency bureau and you are doing it here at 10 after midnight. And you are doing it on one simplistic rationale: we have a war academy; therefore, gentlemen, ought we not to have a Peace Academy? And it has great sex appeal. But budgetwise, I do not see how you justify it.

Let me turn finally, because I wish to be precise. People, again, are weary. Let me turn to the academic soundness of it because I came from a background of higher education before I was elected to the Senate. Not that that makes me an expert on all the implications of the Peace Academy, but I think it gives me a slight expertise, and I would like to avail myself of it if I may.

First, the subject we are talking about is conflict resolution. That is the way they put it in the behavioral sciences and the social sciences and the humanities: conflict resolution.

Is this not already covered in higher education in America today? Is it not covered, for example, in the public sector? It is. The current academies at West Point, and Annapolis, and in Colorado already offer subjects on conflict resolution. And there is an infinite variety of private institutions in this country offering B.A. degrees as well as M.A. and Ph.D. degrees. I have an M.A. and a Ph.D. degree in political science in addition to a law degree and I can tell my colleagues, these things are already dealt with in undergraduate programs and graduate programs in good liberal arts institutions. It is redundant. Academically, it is redundant, and therefore, budgetwise, it is wholly unwarranted.

It is a legitimate issue to raise as part of a broader liberal arts curriculum in the social sciences, the behavioral sciences, and the humanities.

I was a teacher of political science and frankly, more specifically, of political philosophy. Let me ask this question: Why, in terms of concepts, would you single out this one for special Federal funding? For example, Plato, in "The Republic," said justice was the ultimate concept we sought, the well-ordered commonwealth. Then he examined the concept of justice and what it would mean and how you would achieve it. Why not, then—I suppose I could get people to vote $23 million for that if I could get it through the Labor Committee—have a justice academy, because everybody is for justice in the world, are they not? Of course they are. Or John Stuart Mill, in this classic work on liberty, would say what you need is a liberty or freedom academy. Is not everybody for liberty or freedom? Of course they are.

So let us establish a liberty and freedom academy.

Thomas Hobbes, the very famous English political theorist, said the ultimate concept in politics is order and security. That is important, too, as a whole composite of the well-ordered commonwealth that Plato talked about. So I propose that we might wish to have an academy dedicated to order and security. Why not? I makes just as much sense as singling out peace or justice or freedom. Machiavelli, in his classic work, said the ultimate concept in politics is power and the pursuit of it. Why not a power academy?

I do not mean to be facetious or to make light of it, but my colleagues see my point. Why peace? Why peace? You are not talking about peace, you are talking about conflict resolution. And it is already covered in higher education in America today in the public and in the private sector.

If you want special projects on it, for example, you could get those through the National Endowment for the Humanities, which we already fund. Again, academically, it is unwarranted and budgetwise it is wholly unjustified.

I simply leave my colleagues with that thought, that I do not see how the U.S. Senate or the U.S. Congress, from either perspective, in a period of budgetary restraint, can spend this kind of money at this late hour on something that has nothing to do with the Department of Defense authorization. I shall say again, 1980 was the last year I taught in the academic community. I do not see how you justify it academically. It is simply a bad idea.

I respect the Senators who proposed it, but I intend to vote "nay" on it, and I urge my colleagues to do likewise. It is ill-conceived but well-intentioned.

I yield the floor, Mr. President.

Mr. DENTON. Mr. President, I am reluctant to take the time of this body when we are engaged in consideration of a matter as important as the bill before us, and I fully understand the concerns of the majority leader and the floor managers for its speedy disposition. It is unfortunate, in my view, that we must consider in detail an amendment that is so nongermane to the bill, as well as highly controversial. Nonetheless, the matter raised by my distinguished friend from Oregon [Mr. HATFIELD] and his colleagues is one that we cannot deal with hastily or under the impression that it is really minor.

The substance is weighty, and I do not believe that the Congress can ever consider lightly the establishment of a new agency of the Federal Government.

Mr. President, I yield to no one in my admiration, respect, and affection for our senior Senator from West Virginia, my friend and colleague [Mr. RANDOLPH]. He knows that I have debated with him on this subject from honor, as he has. We have made pledges to one another which we have kept. I have not procedurally interfered with the progress of his bill.

I yield to no one in my respect for the Senator from Hawaii [Mr. MATSUNAGA], with whom I have had hours of debate and discussion. This Senator also has the highest regard for the Senator from Oregon [Mr. HATFIELD].

I must try to establish beyond any doubt that no one here yearns for peace more than I. Nor do I doubt that all the Members of the House and the Senate who have served in combat also yearn especially deeply for peace.

In that regard, I especially respect and acknowledge the record of Senator MATSUNAGA, and I need not remind him of a bill which was not at all popular in my State, but on which I recognized his contribution and some correlated contributions by Japanese-Americans, or Americans who were formerly Japanese, in those days.

Mr. President, I question not the end sought by these gentlemen, but the means. The means tend to reinforce what I consider to be a false thesis abroad today. There is war, declared or undeclared, in Ireland, Afghanistan, Southeast Asia, Central America, and other places in the world. There is prospect for more wars. There is the possibility of nuclear war. And the thesis runs that the reason for this situation and these prospects is a lack of support or love for, or understanding of, peace and the means by which peace can be achieved on the part of the United States or on the part of its Chief Executives as they have proceeded through the decades since, say, 1965.

I believe the cause of war lies not in that thesis but partly in the worst part of human nature, partly in the weakness of some nations who were the objects of the greed on the part of other nations which choose to use war, as Hitler did, to take advantage of others' weakness to satisfy their greed.

I believe that today the biggest cause of war is not that which the thesis maintains. Today the biggest cause of war and the threat of war is the expansionist, calculated, unscrupulous policy of the U.S.S.R. I believe that it is weakness of understanding on the part of too many in this and the other legislative body, weakness in understanding on the part of too many in the media as to the causes of war and the means to avoid it while preserving our own vital interests. And I pray that those interests remain valid as they had been, in the sense of morality and justice.

This weakness of understanding includes a tendency today to see the United States and the U.S.S.R. as two very similar superior powers. The Washington Post recently had a cartoon in which two identical arms with identical sleeves, except for a hammer and sickle insignia on the one and the stars and stripes on the other, were pushing nuclear weapons toward one another. What an absurd and unjust postulation.

The thesis today extends to a possibly sincere belief, certainly a widely promulgated view, that it is President Ronald Reagan who is the problem; he is a warmonger; he is antagonizing the Soviets by using unpleasant language about them.

I have lived among Communists, and I can assure you that they do not respond one way or another to a nation that uses pleasant or unpleasant language toward them. They respond with the kind of answer that would be given to Stalin's question about the many Roman Catholics in the world. It was suggested to him that they were a threat to his expansion, and he said, "How many divisions does the Pope have?"

I consider that this trend, this rationale, this thesis, is folly, and I truly fear that, if it continues to grow, it will become fatal folly. I believe the motives behind the establishment of the Peace Academy are good. I believe the contrary regarding the timeliness; 30 years ago, 40 years ago, I would have gone for it.

Today, this thesis alters our attitudes toward aid to Central America which, if not prompt and sufficient enough, thereby preserving the freedoms of people who deserve to have those freedoms preserved, means that we can find ourselves expensively contributing not only economically but possibly in terms of blood, our blood. Will we fight on the Rio Grande, or will we respect the need to hold out against the truly real Moscow-Havana-Managua line of exporting communism to the people of El Salvador?

I cannot understand the popularity of that thesis here when in my State it is almost unheld by anyone. I have not, in going around the United States, found it so prevalent as I find it in these two bodies of Congress.

Thus, I believe that a vote to establish the Peace Academy in this time, in this era of false thinking which affects policy, which affects commitments, which resulted in the copping out on the word of four Presidents in Southeast Asia—and I place that blame principally on Congress. We had won that war. They pled with me eye to eye, "Will you go back and plead with President Nixon to come through with the development of the Mekong Delta?" They thought we were through because we had shown how to protect our interests. We applied force to break their will by legitimate bombings of strategic targets, according to the Geneva Convention. We sacrificed thousands of American lives, including hundreds of aviators, too many of whom were my friends, and thousands of men who fought on the ground in the South. I believe that a vote to establish a Peace Academy will further that kind of folly. I would vote for a Peace Academy jointly held with the U.S.S.R., or for separate Peace Academies with participation on the part of each nation in the other's academy, the way we have with our allies in our so-called war colleges.

I have been to a number of those war colleges. I can assure Senators that they are misnamed. I stood with a man, now very ill with cancer, who was then president of the then called National War College during a cold rain, when President Nixon was about up to his hips in Watergate, and we were having to wait because he was caught in a traffic jam. The Marines were standing out there at attention in the freezing rain, and the rain was freezing on our coats. Adm. Marmaduke Bayne turned to me and said, "What am I going to say? They hate us." It is in 1974 or 1975. "They hate us. They think that this college breeds war. They are beginning to hate this President. They are blaming the war on him. What can we say today?"

I said, "Duke, point up to the name and say it's a misnomer. This isn't a war college. It's a peace college." He did that in his speech, his introduction, to the President and to all of us.

That was my critique of the Naval War College. I am for peace, but if you are going to a war college you want to learn how to fight war. We went there, to the Naval War College, and learned how to become Secretaries of State. We studied about the League of Nations and other international organizations. And I deplore the fact that we did not enter the League of Nations because of three Republican Senators from the Midwest, LaFollette, Borah, and Lodge, who decided that we had to be isolationist; we could not get into it.

I deplore, as a man who has studied conflict resolution, that if we had had a more informed policy toward Cuba, we would never have had Castro. I deplore that if we had had for a century a better policy toward Central America, we would not have the conditions there that we do have. But those conditions will not change in a day. The conditions will not be changed by the unrealistic land reform methods which we imposed and have since reneged on in reality. They cannot be imposed that fast and in that manner, nor can they be imposed by unilateral U.S. imposition of its point of view upon the people in those countries. It is going to be gradual, and in the meantime we have to defend them against an unspeakably worse and infinitely opposite philosophy than that which they believe.

They at least believe in God. The issue today is between those who, from Abraham on down, believe in God. If you read Alger Hiss and Whittaker Chambers—I thought I knew about communism in Vietnam, and I know plenty about it. But when somebody gave me that book, "The Witness," and I saw the differences between those who believe in God and those who think man can do it all, I learned something.

That is what the solution to our problems in NATO is, and our solution with respect to the Mideast. We can work that out if we will approach them that way. We have to respect their differences. We have to respect the differences down there in Latin America.

Mr. TOWER. Will the Senator from Alabama yield?

Mr. DENTON. I will conclude very briefly, I assure the Senator. I cannot in conscience, having argued this for hours in the House, having three Congressmen, all Democrats, come to me and say, "You won; we are never going to bring it up," not talk for 20 or 25 minutes in this body on such an important matter.

I regret that in fact, in political fact, there is an almost irresistible magnetism to the hope that such an institution would train individuals to wage peace, just as service academies and war colleges, it is thought, train individuals to wage war. But I believe that the concept is flawed, contributory toward a possibly fatal thesis and rationale, that it would do little good, that it would have negative consequences.

The fact of the matter is that the proposal can and must be faulted in three very pragmatic respects: the attitude of the executive branch; the additional costs the Academy would create for the budget; and the failure to consider fully, or even adequately, the capabilities and views of our existing educational institutions that deal with international affairs, with the questions of war and peace.

Mr. President, the Office of Management and Budget opposes the proposal because of the additional costs it would impose. Mr. Stockman has been accused of a lot of things but not of being a warmonger. The Department of State and the department of education have stated their opposition to the Senate bill in the strongest possible terms, and have expressed the considered views that the goals would be better achieved at less cost by encouraging existing capabilities in our education system. The President has been on record since 1981 as opposing the proposal.

The costs of the proposal, as set forth in S. 564, would be $13.5 million in fiscal year 1985, of which $7.5 million would be allocated for acquisition of physical facilities, and $10 million in fiscal year 1986. The Commission's report suggests that the operating costs would escalate very rapidly in succeeding years.

Although that may not seem like much money to us, the way that we tend to pass it out, it may indeed be a great deal to our constituents and to our educational institutions. The $23.5 million, for example, is more than we are spending under title VI of the Higher Education Act to support foreign language and area training in 90 centers at institutions of higher education throughout the country. We consider the proposal at a time when Members of both sides of the aisle have argued strenuously about the need for budget restraint, have criticized waste and inefficiency, have opposed programs far more sound in concept and more promising in execution.

We are now asked to approve the creation of a new Government agency. I ask my colleagues to pay attention to that, because that is what we are talking about. How else can one describe an institution that has a board appointed by the President and Congress, that is funded by congressional appropriation and only by congressional appropriation? We know that such agencies acquire a life and dynamic of their own that bears no relationship to the merit of their efforts, and that their financial costs to the taxpayer tend to be greater than projected, not less, as time goes by.

Finally, I fear that the proposal does not adequately consider the capabilities and views of our existing education institutions that deal with international affairs, with the questions of war and peace. The proposal implies, and many of its private supporters maintain, that peace is not a subject taught at our military academies; at our State colleges and universities; at our private institutions of undergraduate and graduate education; in connection with our ROCT programs; or in any form at all. Nothing could be further from the truth.

The fact of the matter is that the establishment of a United States Academy of Peace would be, in educational terms, a symbolic act, for the structure it seeks to erect for peace studies already exists in universities, foundations, our service academies, the so-called war colleges, the National Defense University, and the professional schools of international affairs.

From all over the world, students come to study at our colleges, universities, and graduate schools of all kinds. They come particularly to our private institutions that provide training in international affairs, conflict resolution, area studies, and all the other disciplines that apply to the relations among States and peoples. They come because our institutions are the best in the world at providing that kind of education.

Mr. President, I believe that we would further the prospects of peace and better develop the capacity of our education system to address the issues of war and peace for the largest number of our young people if we devoted our scarce Federal dollars to the strengthening of programs of peace studies already well developed and thriving in healthy, creative, dynamic, already existing institutions.

I hope the Members of the Senate will read, themselves, the materials that pertain to consideration of the proposed United States Academy of Peace. When they read those materials, they will find, as I have, that the emperor has no clothes.

Whatever may have been the genesis of the idea, however commendable the goal, even after laborious and exhaustive study by the commission established for the purpose, what the Senate bill and the amendment would do is simply to create, at great cost, a new Government agency with no clear program and no clear mandate, to conduct undefined activities in an area already dealt with extensively and effectively by private institutions and by the appropriate agencies of the Federal Government.

Some people argue that the Academy would become the center and base for an internationally recognized group of conciliators and mediators who could have stopped, for example, the Falkland Island crisis short of hostilities. I find this a charming notion, but charming only in its naivete, and it is in any case precluded by the commission's report and the legislation as drafted. Over the years, we have had many private and unofficial Secretaries of State and Departments of State, few of whom have been able to resolve disputes or contribute much to the national interest.

Moreover, I fear that those in other countries would justifiably view an Academy of Peace, constituted as the Peace Academy proposal provides and lavishly supported with Federal dollars, as nothing more than an instrumentality of the American Government, whatever it might in fact be. For example, I know of few who believe that the World Peace Council is an autonomous body rather than a wholly owned subsidiary of the Soviet propaganda apparatus. We would gain little, and lose much, by creating an analogue.

Some argue that the U.S. spends billions on its defense establishment but spends nothing on a "peace establishment." That argument simply not credible, as our debates during the past 2 weeks have clearly shown. Peace is the mission of the Department of State and the Arms Control and Disarmament Agency and the Agency for International Development and a host of other civilian agencies. It is, moreover, as most of us are surely aware, the mission of the Department of Defense and our military services.

However commendable the goal, however articulate the rhetoric, however impressive the commitment, the creation of a new Federal agency called the U.S. Academy of Peace will gain us little. Many in this country and abroad would see it as hypocritical and propagandistic; others could hardly consider as impartial or objective an institution lavishly funded by the U.S. Government and bearing the official title U.S. Academy of Peace.

I hope that my colleagues in the Senate will reject the proposal now before us for the establishment of a U.S. Academy of Peace, without at the same time rejecting the commendable goals that motivate those in the Congress and among our citizenry who support it. We can provide leadership in finding better, more effective, more lasting, ways to achieve those goals.

I think we should have more in mind than a subjective love for peace, or even than an extremely well-justified love for the Senator from West Virginia. I believe that this is an important matter of state which should be considered on that basis.

However commendable the goal of my colleagues who have brought this forth, I must express reservations. I believe there have been improvements made in the proposal, particularly those recommended by the Senator from New Hampshire. I believe that further improvements could be made in it.

I am most concerned about the administration of it. I believe that it probably will be adopted by the Senate, because not many are listening to me tonight, though perhaps I am wrong.

I will not bring forth a series of other arguments. I was going to offer a substitute, but I will not do so. I believe that the time of the Senate is better devoted to the effort to assure our national security by passing a good defense authorization bill.

Mr. President, I ask unanimous consent that the following letters be printed at this point in the RECORD:

A letter dated November 23, 1981, from President Reagan to Senator MATSUNAGA, in which the President expresses his inability to support the Peace Academy proposal; three letters from Secretary of Education Bell, dated May 12, 1982, April 13, 1983, and June 14, 1984; three letters from Powell A. Moore, Assistant Secretary of State, dated May 2, 1982, May 11, 1982, and May 24, 1983; a letter from Kenneth L. Adelman, Director of the Arms Control and Disarmament Agency, dated May 31, 1983; and two letters from David A. Stockman, Director of the Office of Management and Budget, dated May 12, 1982, and May 23, 1983.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, November 23, 1981.

Hon. SPARK M. MATSUNAGA,
U.S. Senate,
Washington, DC.

DEAR SENATOR MATSUNAGA: Thank you very much for forwarding to me the Report of the Commission on Proposals for the National Academy of Peace and Conflict Resolution. You and your fellow commissioners have clearly invested much time, energy and thought in the preparation of the Report; I commend your efforts.

With regard to the Commission's recommendations, I regret to say that we are unable to support the establishment of a National Academy of the sort proposed. In a time of severe budget stringencies, I find it difficult to justify the expenditure of some $66 million in federal funds over the next several years for research, educational and informational activities in an area where much work is already being done by private universities, institutes and foundations.

I want you to know, however, how deeply I share your hope, and that of all the Commissioners, that we can advance the cause of peace. My address of a few days ago should have made that clear. That, precisely that, is the reason why I am determined to restore our country's economic strength, military capability, and moral fibre. For in the final analysis, a strong America is still the world's best hope for peace.

Our work for a more peaceful world can succeed only if we labor together, despite party lines and disagreements on other issues. I hope I can count on your help in this most vital endeavor.

With best wishes,

Sincerely,

RONALD REAGAN.

THE SECRETARY,
Washington, DC, May 12, 1982.

Hon. JEREMIAH DENTON,
U.S. Senate,
Washington, DC.

DEAR JEREMIAH: Thank you for your letter of April 30 regarding your substitute bill to amend S. 1889, which would establish a United States Academy of Peace. I understand that your bill would amend Title VI of the Higher Education Act of 1965 to author-the support of institution-based centers, dedicated to the provision of research and training in the disciplines of international affairs. A special provision of the bill would also authorize fellowships for the study of peace-and-conflict resolution.

As you correctly noted in your statement before the Subcommittee on Education, Arts, and Humanities, every member of the Executive Branch is committed to, and works for, peace. However, we do not believe that the establishment of a new Federally funded Academy of Peace, as proposed in S. 1889, is a proper approach to the study of conflict resolution and the promotion of peace and security.

We would prefer that the important goals of supporting research and training in international affairs be addressed through the existing framework of programs authorized under Title VI of the Higher Education Act, as your amendment proposes, and we support your efforts to amend S. 1889 to clarify that Title VI funds may be used for such purposes.

Thank you again for giving me the opportunity to review and comment on your proposal. The Office of Management and Budget advises that there is no objection to the submission of this report.

T.H. Bell.

The Secretary,
Washington, DC, April 13, 1983.

Hon. Robert T. Stafford,
Chairman, Subcommittee on Education, Arts, and Humanities, Committee on Labor and Human Resources, Washington, DC.

Dear Mr. Chairman: Thank you for your recent letter requesting my comments on S. 564, a bill to establish a United States Academy of Peace. Specifically, you have asked me to comment on the need for a Federal institution designed to offer graduate and postgraduate programs, research opportunities, and information services in peace studies and conflict resolution.

Mr. Chairman, while I share the Committee's concerns about the importance of promoting peaceful resolution of international conflict, I continue to believe that creating an independent, federally-funded Academy of Peace *is not* the most appropriate or cost-effective way to encourage international understanding and to foster the study of conflict resolution.

As this Administration has stated previously and most recently reiterated by Stephen Low, Director of the Service Institute, Department of State before the Senate Subcommittee on Education, Arts, and Humanities on March 16, 1983, "In a time of severe budget stringencies . . . it [is] difficult to justify the expenditure of . . . federal funds over the next several years for much work is already being done by private universities, institutes and foundations."

Therefore, Mr. Chairman, I must continue to oppose the creation of an unnecessary governmental entity which would duplicate activities and research already conducted by private organizations and institutions of higher education.

I am advised by the Office of Management and Budget that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

T.H. Bell.

U.S. Department of Education,
Washington, DC, June 14, 1984.

Hon. Jeremiah Denton,
United States Senate,
Washington, DC.

Dear Senator Denton: I understand that the provisions of S. 564, a bill to establish a United States Academy of Peace, may be offered as an amendment to the Department of Defense authorization.

As stated in our letter of April 13, 1983, the Department of Education shares congressional concerns about the importance of promoting peaceful resolution of international conflict, but continues to believe that creating an independent, federally-funded Academy of Peace is not the most appropriate or cost-effective way to encourage international understanding and to foster the study of conflict resolution.

As this Administration has stated previously, in this time of severe budget constraints, it would be difficult indeed to justify this expenditure of federal funds for research, educational and informational activities when much of this same work is already being done by private universities, institutes and foundations.

Therefore, I must continue to oppose the creation of an unnecessary governmental entity which would duplicate activities and research already being conducted by private organizations and institutions of higher education.

I am advised by the Office of Management and Budget that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

T.H. Bell.

Department of State,
Washington, DC, May 24, 1982.

Hon. Jeremiah Denton,
U.S. Senate, Washington, DC.

Dear Senator Denton: I thank you for your letter of April 30 and its enclosed material. The Administration's position on S. 1889 has been transmitted to Chairman Hatch, and I have already sent a copy to you.

I have also read your April 28 statement in the Subcommittee markup, and, as my letter to Chairman Hatch indicates, I agree with you that studies concerning peace are best carried out by our existing educational institutions. I also point out that while we do recognize a need for better sharing of research results and better coordination among existing programs, these results and an increase in the volume of such work could be achieved without incurring the cost contemplated to fund the proposed Peace Academy.

As you know, we also have an Administration position on your proposed "Centers and Fellowships for Peace and Conflict Resolution Act," which you intend to substitute for S. 1889 and to offer as an amendment to the Higher Education Act of 1965. The Administration strongly supports your efforts to amend S. 1889 to reinforce the traditional role of programs under Title VI of the Higher Education Act as the primary source of governmental assistance to studies in the area of international peace and understanding.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

With cordial regards,

Sincerely,

Powell A. Moore,
Assistant Secretary for
Congressional Relations.

Department of State,
Washington, DC, May 11, 1982.

Hon. Orrin G. Hatch,
Chairman,
Committee on Labor and Human Resources,
Washington, DC.

Dear Mr. Chairman. This letter is to present the Department of State's comments on S. 1889, a bill which would establish a United States Academy of Peace.

The Department supports the development of peace research and conflict resolution. Indeed, the Department encourages the work of private institutions, foundations, universities, international and nongovernmental organizations active in this field. The results of such research are brought to the attention of, and used by, foreign policy practitioners. In fact, conflict resolution theories and techniques are incorporated in courses offered by the Department of State's Foreign Service Institute.

The Department, however, does not support the passage of S. 1889, inasmuch as it would create a new quasi-governmental institution and bureaucracy complete with "buildings and grounds", to perform a function which is already being handled by the private sector. Although it might be helpful if university programs or private "think tanks" were to address the issue of peace negotiation and conflict resolution, we do not believe that it is necessary for the Federal government to establish an academy such as that proposed.

The Department fully recognizes that a better sharing of research results and better coordination among existing programs would be desirable. Both these results and an increase in the volume of such work could be achieved through a judicious use of only a small portion of the funding contemplated to initially fund the proposed Peace Academy. Continued encouragement of a variety of organizations can produce these results and keep policymakers abreast of the latest in conflict resolution theory and practice without the construction of a bricks-and-mortar institution.

One of the prime strengths of current research in this area is the wide variety of approaches and proposed solutions. The research community's ability to educate is so effective and fertile because it reflects the diversity of the American character. As Mr. Carleton Coon, former Deputy Director of the Foreign Service Institute, testified before the Subcommittee on International Operations, Committee on International Relations (January 25, 1978): "It is such an enormously wide and varied field and there is so much room for creative thinking and innovation that we feel that this creativity and innovation is better expressed in a thousand different universities and institutions across the range of our country than in one centrally funded, essentially bureaucratic institute."

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

With cordial regards,

Sincerely yours,

Powell A. Moore,
Assistant Secretary
for Congressional Relations.

U.S. DEPARTMENT OF STATE,
Washington, DC, May 24, 1983.
Hon. JEREMIAH A. DENTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR DENTON: Thank you for the opportunity to comment on your proposed amendment entitled "Peace, Arms Control, and Conflict Resolution Act," which, I understand, you intend to offer as a substitute to S. 564, a bill to establish the United States Academy of Peace. The Department of State opposes S. 564. As the Department has previously indicated, and, as the Director of the OMB wrote to you last year, we believe that the private sector has done a commendable job of promoting the study of negotiations, mediation arbitration, and conflict resolution. Establishing a new governmental entity such as the United States Academy of Peace to pursue such work is therefore unnecessary.

For the same reasons outlined in previous Administration correspondence with you, the Department of State is pleased to support your alternative legislative proposal which will reinforce the traditional role of programs under Title VI of the Higher Education Act and will make it a primary source of governmental assistance to studies in the area of international peace and understanding.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

With cordial regards,
Sincerely,
POWELL A. MOORE,
Assistant Secretary for Legislative and Intergovernmental Affairs.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY,
Washington, DC, May 31, 1983.
Hon. ORRIN G. HATCH,
Chairman,
Committee on Labor and Human Resources,
Washington, DC.

DEAR MR. CHAIRMAN: I would like to express my support for Senator Denton's proposed amendment entitled "Peace, Arms Control, and Conflict Resolution Act." I understand the Senator intends to offer this amendment as a substitute to S. 564, which would establish the United States Academy of Peace. I concur with the views of the Office of Management and Budget and the Department of State opposing the establishment of such a new governmental entity. The Arms Control and Disarmament Agency's statutory mandate, among other things, already covers "the conduct, support, and coordination or research for arms control and disarmament policy formulation." Also under Section 31 of the ACDA Act the Director is authorized "to make arrangements (including contracts, agreements and grants) for the conduct of research, development, and other studies in the field of arms control and disarmament by private or public institutions or persons."

Should Senator Denton's substitute legislation become law, as Director of the Arms Control and Disarmament Agency, I would carry out the program as prescribed in the legislation, in keeping with the administration's programs under the guidelines of the Office of Management and Budget.

Sincerely,
KENNETH L. ADELMAN.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, May 12, 1982.
Hon. JEREMIAH DENTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR DENTON: The Administration shares your concerns about the bill S. 1889, which would establish a new governmental unit to promote activities currently undertaken in the private sector to encourage international understanding and foster the study of conflict resolution.

As the State Department has previously indicated, the Administration believes that the private sector has done a commendable job of promoting these values, and ensuring that the benefits of private research are available to policymakers in both the Executive Branch and the Congress. Establishing a new governmental entity in this area is therefore unnecessary, and may in fact supplant the private sector initiatives currently being undertaken in these areas.

For this reason, the Administration strongly supports your efforts to amend S. 1889 to reinforce the traditional role of programs under Title VI of the Higher Education Act as the primary source of governmental assistance to studies in the area of international peace and understanding.

Thank you for this opportunity to express the Administration's support for your efforts.

Sincerely,
DAVID A. STOCKMAN,
Director.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, May 23, 1983.
Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, Washington, DC.

DEAR ORRIN: This is in reply to your request of March 2, 1983, for the views of the Office of Management and Budget on S. 564, the "United States Academy of Peace Act."

The Office of Management and Budget concurs in the views on S. 564 as expressed by the Department of State in testimony before your Committee on March 16, 1983. Establishing a new governmental entity is unnecessary and would duplicate and compete with efforts already under way. Accordingly, you are advised that this Office remains opposed to enactment of S. 564.

The Administration does support, however, Senator Denton's proposed substitute for S. 564 which would authorize $3 million in fiscal year 1984 and $5 million in fiscal year 1985 under a new Part D of Title VI of the Higher Education Act. This authority, to be administered by the Arms Control and Disarmament Agency, would serve as the primary source of governmental assistance to studies in the area of international peace and understanding.

Sincerely,
DAVID A. STOCKMAN,
Director.

Mr. DENTON. Mr. President, I offer these reservations as my own opinion, and with deep deference to the opinions of others and respect for the proposal that they have put before us.

Mr. President, I yield the floor.

Mr. LEVIN. Mr. President, I am pleased to be a cosponsor of this amendment, and I am pleased that people in Michigan have played such an important role in the field of peace studies. The major focus of the National Academy of Peace would be to coordinate the educational, research, and resource work carried on currently in centers such as the one first established at the University of Michigan in 1957.

This center, the Center for Conflict Resolution, was established by Drs. Elise and Kenneth Boulding contemporaneously with the formation of the professional umbrella organization COPRED, the Consortium on Peace, Research, Education and Development. As the Commission to establish the U.S. Academy of Peace stated: "the center was a major force in bringing together scholars and practitioners whose work would contribute to the promotion of International Peace."

Currently, work in peace studies is also being carried on in Michigan at the Center for Peace and Conflict Studies at Wayne State University in Detroit. Dr Lillian Genser and her colleagues have been working there to develop a comprehensive curriculum guide for teachers working in the field of global education.

I urge my colleagues to support this amendment to establish the National Academy of Peace.

The PRESIDING OFFICER. Is there further debate?

Mr. EAST. Mr. President, I assume that what the Senate prefers to do at this late hour is simply to voice vote this through. That is all right. I will yield to it. It still think it is a bad idea, but I suppose the handwriting is on the wall.

I will not put my colleagues through the ordeal, but I should like the RECORD to show that the junior Senator from North Carolina voted "no" on the voice vote.

I think it is a bad idea, and I regret that the imprimatur of the U.S. Senate is going to go on it by voice vote, which obviously will go through tonight. I will not impose upon my colleagues. Apparently, I am the only one. I would like to have a rollcall vote, but I will not impose. However, I should like the RECORD to show that if there were, I would vote "no" and that in the voice vote I am voting "no."

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3270) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, now we can get on with the amendments. Senator GRASSLEY has been waiting patiently and is prepared to offer his amendment.

Mr. President, I joined the "noes" on the previous vote. As a former academician, I think it is an exercise in intellectual dishonesty. I think there are many more things worthy of my distinguished and good friend JENNINGS RANDOLPH that we could name after him than this Peace Academy, which has dubious academic intellectual value.

What is proposed to be taught here is taught in every political science faculty throughout the country. I want to express my opposition to this idea, along with that of Senator EAST.

AMENDMENT NO. 3272

(Purpose: To further improve procurement practices)

Mr. GRASSLEY. Mr. President, I send to the desk an amendment cosponsored by myself, Mr. LEVIN, Mr. PRYOR, Mrs. KASSEBAUM, Mr. CHILES, Mr. DIXON, Mr. JEPSEN, Mr. GLENN, Mr. BINGAMAN, Mr. CRANSTON, and Mr. MELCHER.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Iowa (Mr. GRASSLEY), for himself and others, proposes an amendment numbered 3272.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 84, line 14, strike out "The head of an agency" and insert in lieu thereof the following: "A person denied the opportunity to demonstrate its ability to meet the standards specified for qualification pursuant to subsection (a)(4) may not be denied the opportunity to submit and have considered an offer for a contract to be made by the Department of Defense solely because the person—

"(1) is not on a list of qualified bidders prescribed or maintained by the Department of Defense; or

"(2) in the case of a contract for the purchase of a product, does not have its product on a list of qualified products prescribed or maintained by the Department of Defense. The head of an agency."

On page 92, line 22, strike out the question marks and the second period.

On page 92, between lines 22 and 23, insert the following:

"§ 2323. Competition for spare parts

"(a) A contractor's legitimate proprietary interest in technical or other data shall be defined by regulations prescribed as part of the single system of Government-wide procurement regulations (commonly referred to as the Federal Acquisition Regulations), as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

The regulations shall assure that, except as provided by statute, the United States shall retain unlimited rights to technical or other data which is developed exclusively with Federal funds. The following factors shall be considered in prescribing the definition:

"(1) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

"(2) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(b) The Secretary of Defense shall—

(1) prescribe regulations establishing within appropriate agencies of the Department of Defense programs which provide domestic business concerns an opportunity to purchase or borrow spare or replacement parts from the United States for the purpose of reverse engineering, or design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States, but nothing in this clause shall limit the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restrictions otherwise required by law; and

"(2) consult with representatives of associations representing small business concerns before regulations are prescribed under paragraph (1).

On page 94, beginning with line 15, strike all through line 5 on page 95, and insert in lieu thereof the following:

"(7) 'Technical data' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including engineering data) relating to the property procured by an agency and used throughout the life cycle of the property for the purposes of performing management, engineering, maintenance, modification, test, and other functions relating to the property and to procure spares or additional spares of such property, and includes data resulting from work which was specified and directly funded as an element of performance of a contract from the United States, but does not include computer software, or financial, administrative, cost or pricing, management data, or other information incidental to contract administration. For purposes of commercial products, technical data shall be restricted to only that data necessary to fully operate and maintain the system during its service life.".

On page 96, between lines 11 and 12, insert the following:

(d) Section 2303 (a) of title 10, United States Code, is amended by adding at the end thereof the following:

"(6) Defense Logistics Agency.".".

Mr. GRASSLEY. Mr. President, first, let me announce that I believe that all of the problems in this amendment have been worked out.

I should like to thank and commend my colleagues and their staffs for the many hours they contributed toward negotiating this amendment and reaching an agreement.

I thank our original sponsors, Mr. PRYOR, Mr. CHILES, and Mrs. KASSEBAUM, for their support, and especially the efforts of Senators LEVIN and DIXON for the tremendous work they had done throughout the legislative process on the issue of spare parts procurement. Without the persistence and industry of Senators LEVIN and DIXON and others, Congress might not be in its present position of making a significant stride toward ending the enfeebling outrages of the $435 hammer and the $1,000 stool cap.

This amendment provides a good, stiff application of the principles which made our Nation great: competition. It facilitates the participation of 2½ million small businesses across the country in the bidding process for spare parts. It helps provide this country what it urgently needs at a price it can afford.

This amendment represents substantial movement in this body for the language on procurement so overwhelmingly approved in the House under the hard work and leadership of my good friend and colleague from Iowa, Congressman BERKLEY BEDELL.

This amendment also has the backing of the National Federation of Independent Business, the National Tooling & Machining Association, the Small Business Legislative Council, and the National Small Business Association, and I especially acknowledge and thank the Business Executives for National Security for their assistance and expertise in working out this amendment. I urge each of these associations to take up the challenge that we confronted them with—the opportunity to help provide this Nation with more national security at an affordable cost.

I wish to make it very clear that these provisions are good, solid steps toward addressing the problem of spare parts overpricing. But it is by no means a cure all.

Mr. President, that is my statement, and I yield the floor to the Senator from Iowa, the senior Senator from Iowa.

Mr. JEPSEN. Mr. President, this year I joined with my colleagues on the Armed Services Committee in attempting to put a stop to some of the outrageous prices that were being charged for spare parts and equipment for our armed services. The ad hoc committee on selected procurement matters was able to dispose of a wide range of proposals to improve spare parts procurement. We were able to compress a tremendous amount of review and hearings into a very short period of time.

We made substantial progress, however, largely through the efforts of Senator QUAYLE, Senator LEVIN, and Senator DIXON.

Since we completed our work in the Armed Services Committee, my distinguished colleague from Iowa has made additional suggestions for ways to cut wasteful defense spending by expanding competition even further. Senator GRASSLEY has been doggedly determined in pursuing waste in defense spending. I am pleased to cosponsor his amendment to our bill.

Mr. PRYOR. Mr. President, I am pleased to speak in support of the amendment by the Senator from Iowa [Mr. GRASSLEY] making improvements in the procurement process. Senator GRASSLEY and I have introduced a comprehensive reform measure, S. 1904, designed to increase competition in defense contracting, and I welcome this opportunity to take an important step toward the reform embodied in the Grassley-Pryor bill.

This amendment would assure that acquisition reform procedures really open up Government contracting to the businesses that form the backbone of the American economy—the small businesses of America. For too long, billions of dollars in purchases by the Federal Government, especially by the Defense Department, have gone to a relatively small group of corporate giants, often at noncompetitive prices.

Restrictions that exclude small business suppliers of goods and services hurt the taxpayers by increasing Government costs and hurt small businesses through the loss of sales opportunities. Such procedures also erode public confidence and support. Mr. President, people across this country are no longer willing to simply accept the business-as-usual approach that pervades Government contracting.

I am especially pleased that the National Federation of Independent Business has given its support to this proposal. NFIB has worked tirelessly to develop legislation that serves the public's interest in greater competition and reduced costs, and also serves the interests of small businesses who simply want a fair opportunity to compete in the Government marketplace.

Mr. President, I want to commend the Armed Services Committee for including in this year's bill several provisions to increase the use of competition in defense procurement. I commend all who worked so hard for these provisions, and I'm hopeful that these provisions will be enacted into law this year and bring significant savings to the taxpayers.

Although studies have demonstrated that competition can reduce the costs of goods and services by as much as 25 to 30 percent, the Federal Government far too frequently has chosen the more expensive route of sole source contract awards. I believe the Federal Government must use all available tools to make Government services more economical, effective and efficient, and this bill takes important steps in that direction.

Defense procurement is, of course, the largest block of Federal purchasing, and we are all painfully aware of horror stories relating to overcharging on everything from plastic stool caps to aircraft carriers. These reports weaken the credibility of the Defense Department and the Congress and hurt our efforts to fund necessary Defense items.

I am particularly pleased that the committee included a very important provision establishing the advocate for competition within the Department of Defense to assure that no opportunities for obtaining competition are neglected and that the Senate approved Senator BYRD's amendment to this section.

I proposed the creation of competition advocate positions in legislation which I introduced in the last Congress. Although present regulations require contracting officers to maximize competition for each contracting award, the General Accounting Office has found that these officials often acquiesce to the sole source procurement requests of headquarters, technical personnel and end users. In effect, there is no clear responsibility and accountability for competition in Government contracting.

The primary responsibility of this official will be to ensure implementation of new operating procedures, which require that agencies make an affirmative effort to obtain competition. The individual will ensure that competition is not foreclosed by restrictive need statements, unnecessarily detailed specifications, poor procurement planning or arbitrary agency action. The objective is to instill accountability into the procurement process.

Mr. President, I believe the Federal Government's procurement policies and practices must include basic and essential cost reduction procedures. Today we are putting some accountability and cost reduction opportunities into the Defense procurement system, and I believe our effort will pay huge returns in the long run.

I commend Senator GRASSLEY on his efforts and urge adoption of this amendment.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Senator KASTEN be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I yield to the Senator from Michigan.

Mr. LEVIN. Mr. President, first of all, let me commend Senator GRASSLEY and his staff and indeed all of our staff who have worked so long and hard to settle differences that have existed in this matter.

Senator GRASSLEY's original amendment had, or might have, overlapped and contradicted portions of the language in the spare parts procurement reform title that is already in this bill. He has labored long and hard, with his staff and our staff, to make his proposed changes consistent with the spare parts procurement reform title. They now are consistent. They represent, in my opinion, a real contribution to our efforts to reduce and eliminate waste in the purchase of spare parts, and in our efforts to enhance competition. Senator GRASSLEY has been unwavering in his effort to reduce waste, not just in the Defense Department but in other parts of our Government.

This amendment is now one again that is consistent with our reform package, and I am happy to cosponsor it with my friends from Iowa.

Mr. President, I want to explain one clarifying provision of the Grassley-Levin amendment that was added at my request.

As currently written, the proprietary rights language of this bill contains a definition of technical data that has been reported in a way that would appear to have an unintended result. With this amendment we would hope to solve this problem as it exists in the definition section of the bill, and address the concerns that were sought to be addressed through amendments to provisions elsewhere in the bill.

Both the Small Business and the Armed Services Committees have been concerned about the proprietary data rights section of this bill as it applies to commercially sold items and to items developed entirely at private expense. In an effort to address these concerns, all have agreed that at least in these two cases there should not be any contract clauses that automatically grant to the Government unlimited rights in that proprietary data.

In our attempt to provide for these two situations in the bill, we placed these exemptions in the definition of technical data—found on page 94 of the bill. However, the effect of placing these two exemptions in the definition section would prevent the United States from ever getting data in those situations when the United States needs the technical data for reasons other than for competitive reprocurement, such as the use of the data for such legitimate functions as performing management, engineering, maintenance, modification, test, or other activities. In these cases, the Department of Defense needs some latitude in data for systems it purchases.

At the same time that we remove the commercial product and private expense exemptions from the definition of technical data it is important that these concerns be addressed elsewhere in the bill. The authors of this provision have agreed that in order to provide guidelines on what would be a valid assertion of a proprietary right in data, we will add a section to the bill that will require the Office of Federal Procurement Policy to write Governmentwide regulations to define the circumstances under which the Government will recognize as valid a contractor's assertion of rights in technical data.

In this section, the OFPP has been instructed that the Congress is not interested in obtaining data for the purposes of competitive reprocurement when such data relates to items developed at private expense, or is developed at private expense and offered for sale to the general public. Only when the contractor is willing to relinquish rights to that data as part of a competitive effort to obtain a Government contract would such data be delivered to the Government with unlimited rights. Thus, our treatment of these data issues in this bill has been to make them a subject of contract negotiation.

Mr. GRASSLEY. Mr. President, I thank the Senator from Michigan for those kind remarks.

I also thank Senator TOWER and his staff of the Armed Services Committee for being very conscientious and faithful in helping us reach this agreement.

Mr. President, I ask unanimous consent that Senator INOUYE be added as a cosponsor of the amendment.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

If there be no further debate on this amendment, the question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 3272) was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS addressed the Chair.

Mr. TOWER. Mr. President, if the Senator from Alaska will yield just a moment, it is my understanding that this is the only amendment the Senator from Iowa will have this evening. Am I correct?

Mr. GRASSLEY. Yes; that is true. I did anticipate discussing the one on creeping capitalism and having a vote on it, but I am not going to do that on this bill at this time. So I think this is the last Grassley amendment.

Mr. TOWER. I thank the Senator from Iowa.

AMENDMENT NO. 3269

(Purpose: To retain authority for payment of overseas housing allowance for members of the Uniformed Services assigned to Alaska and Hawaii)

Mr. STEVENS. Mr. President, I have an amendment at the desk on behalf of myself and the distinguished Senator from Hawaii, which is No. 3269, and ask for its immediate consideration.

The **PRESIDING OFFICER.** The amendment will be stated.

The bill clerk read as follows:

> The Senator from Alaska [Mr. STEVENS], for himself and Mr. INOUYE, proposes an amendment numbered 3269.
>
> On page 28, line 18, insert after "States" "(other than Alaska and Hawaii)".
>
> On page 34, delete all after line 3 through and including line 3 on page 35.

Mr. STEVENS. Mr. President, I will be as brief as possible.

Mr. President, this amendment will retain the current satisfactory practice of treating servicemen assigned to Alaska and Hawaii as holding overseas assignments for the purposes of housing assistance. This practice has long been accepted and justified because of the extraordinary costs in these States of owning and renting a home.

I am not really certain why the House Armed Services Committee proposed eliminating this needed assistance in favor of shifting service assignments to the variable housing allowance program used in what we call the lower 48 States.

This amendment would delete the provisions that is opposed by the uniformed services and by the Department of Defense. They have informed us that it will cause unnecessary hardship for service members in Alaska and Hawaii by sharply reducing housing allowances.

On top of that, the proposed shift from the overseas rent-plus program to variable housing allowance—called VHA—will create inequities. Under VHA, for instance, most servicemen will recieve far lower housing allowances in Hawaii and Alaska, but 30 percent would actually receive more than they need.

Perhaps the House Armed Services Committee is proposing this change to save money. It is true that shifting Hawaii- and Alaska-based servicemen from rent-plus to VHA will save about $3 million in 1985. But it is also true that the resulting hardships will increase unaccompanied tours and sharply increase permanent change of station moves. These unwanted changes will more than offset the small savings in housing benefits.

Mr. President, I shall read briefly from the statements furnished to me by the Department of Defense and the three uniformed services stating their clear opposition to the provision that is in the bill.

First, the Department of Defense on May 22 stated that:

> The Department is opposed to an arbitrary conversion to VHA as proposed by the HASC. Before any legislative change is considered, the Department's position is that it should be given the opportunity to examine the program thoroughly and, if necessary, to propose viable alternatives that are developed on an informed basis.

The Navy has indicated that "Implementation of VHA program in Hawaii and Alaska will have a severe impact on service members."

That is from the paper that was provided us also from the Department of Defense.

The Air Force has stated that it is "opposed to changing to the variable housing allowance system in Alaska and Hawaii. Conversion to VHA would cause substantial out-of-pocket housing costs."

The Army says:

> The Army strongly opposes the elimination of Rent Plus in Alaska/Hawaii. It has long been recognized that these locations are extremely unique because of their economies. As a result, higher supplements are needed by all service members assigned to these locations.

Finally, in the Air Force Times on May 28, there was a long article entitled "Services Rally for Rent-Plus," and contained in that is a statement of the director of Air Force personnel/plans. He states:

> We estimate that only 30 percent of service members in Alaska and Hawaii would be fully reimbursed for their housing expenses under the VHA program, compared to about 90 percent under the RPHA system.

The Chief of Naval Operations stated:

> I will continue to oppose termination of the RPHA (rent-plus housing allowances) in Hawaii and Alaska, but it is also clear to me that much of the opposition to RPHA is not without good justification.

Mr. President, I ask unanimous consent to have printed in the RECORD all of the statements in full at the conclusion of my remarks.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

(See exhibit 1.)

Mr. STEVENS. Mr. President, let me just summarize this.

Under the current system 85 percent of the servicemen in Alaska and Hawaii receive full and fair compensation for housing costs, but none of them receive more than they actually spend. About 15 percent must absorb housing costs that average about $200 a month more than their allowances.

Under VHA, as proposed by the committee in the House, only 5 percent will be fully reimbursed for costs. Some 65 percent will be underpaid by up to $800 a month. And, as I said before, 30 percent, strangely enough, would be overpaid. They would be paid more than their actual costs.

The relatively small savings achieved by going over to VHA would be more than offset by these permanent change of station moves because the high extension rates that have been achieved in Hawaii and Alaska would fall off. These voluntary extensions would fall off considerably.

I emphasize to the Members of the Senate that the Senator from Hawaii and I are not talking about people who are residents of our States. They do not vote for us. We are talking about servicemen from all over the Union. They are residents of other States but they deserve equity and they deserve to be treated fairly as they have in the past.

We do not suggest that military housing compensation concepts do not need improvement. We had to limit VHA because of the sharp cost increases; and rent-plus undoubtedly has problems, too.

The Inspector General is currently examining the rent-plus program. Our Defense Appropriations Subcommittee is asking the General Accounting Office to look at all military housing compensation programs to see if we can improve them and, hopefully, reduce the overall costs. But if any permanent changes should be made, we believe we should await these studies.

It has been my practice, Mr. President, to support the Armed Services Committee when it brings a bill to the floor. I think I generally have done that. I had one exception in terms of the battleships, but I lost that on three separate occasions. I have given up that attack.

In this case, it is just difficult for me to see anything good in the attempt to treat the Alaska and Hawaii assignments in a manner different than they had been treated in the past. They are not the same as those in the lower 48 States because we have such a huge difference in housing costs and housing availability.

I hope that the Senate will join Senator INOUYE and me in supporting the uniformed services by preserving the current housing compensation practice that is working so effectively and continue to provide the rent-plus program which is the fullest and fairest payment plan for these high-cost areas.

EXHIBIT 1

DEPARTMENT OF DEFENSE INFORMATION PAPER, MAY 22, 1984

Service/agency: Office, Assistant Secretary of Defense (MI&L).
Appropriation account: N/A.
Budget activity: N/A.
Subject: Variable Housing Allowance in Alaska and Hawaii.

1. Question/request: The House Armed Services Committee markup of the FY 85 DoD Authorization Act contains a provision which would replace the current Rent Plus overseas housing allowance with the VHA in Alaska and Hawaii. The HASC language provides for "grandfathering" for those members assigned to Alaska or Hawaii as of December 31, 1984.

2. Response: DoD Position: The Department is opposed to an arbitrary conversion to VHA as proposed by the HASC. Before any legislative change is considered, the Department's position is that it should be given the opportunity to examine the program thoroughly and, if necessary, to propose viable alternatives that are developed on an informed basis.

Service/agency: U.S. Navy.
Appropriation account: Military Personnel, Navy.
Budget Activity: Pay and Allowances for Officers (BA 1); Pay and Allowances for Enlisted (BA 2).
Subject: Navy Position regarding Variable Housing Allowance (VHA) Vice Rent Plus Housing Allowance (RPHA) in Alaska and Hawaii.

Question/request: What is the Navy position in regard to the HASC move from "rent plus" to VHA for military personnel in Alaska and Hawaii?

(Navy primarily concerned about impact in Hawaii as Navy has relatively few service personnel in Alaska and most are provided on base housing (Adak)).

In Hawaii 66% of all members drawing RPHA are in paygrades E-6 and below.

32.5% of E-6 and below population pay rents which exceed RPHA max.

Change to VHA will reduce net pay by $193 per month (E-6); $94 per month (E-1); equates to a 16-20 percent loss of basic pay.

39.5% of officers in paygrades 01 to 03 stationed in Hawaii are paying rents which exceed current RPHA max.

Change to VHA will reduce net pay by $278 per month (0-3); $126 per month (0-1); equates to a 11-14 percent loss of basic pay.

Housing development has not paced population growth in Hawaii.

99% of housing occupied; very competitive rental situation.

Military family housing currently filled to 99% of capacity.

No new family housing programmed for Oahu through 1988.

Major concern—VHA not flexible enough to accommodate rapid and significant changes in unique Hawaiian rental market.

Since March 1983 average single family residence rental has increased about 23% on Oahu.

RPHA gives members most flexibility to cope with escalating rental cost spiral in housing market where prices chase availability.

Landlords prefer short-term leases (six months or less) due to low supply/extraordinarily high demand for rental units. Rent increases upon renewal.

VHA rates set at average areas housing cost based on historical data, less the absorption off-set (now 30% of BAQ) and cannot respond immediately to rising housing costs.

Recommendation: Rent Plus Housing Allowances (RPHA) be retained in order to ensure service members may compete for suitable family housing in Alaska and Hawaii.

Service/agency: Department of the Air Force.
Appropriation account: (Military Personnel Appropriation).
Budget activity: Officer and Enlisted Pay and Allowances.
Subject: Rent plus vs VHA in Alaska and Hawaii.

Question. Senate Appropriations Defense Subcommittee requests an official position on whether or not the Air Force supports the HASC recommendation of changing the rent plus system in Alaska and Hawaii to the Variable Housing Allowance system.

Under rent plus approximately 85% of members receive full reimbursement for their housing expenses compared to about 30% under the VHA concept (see attachment). For example, a staff sergeant (E-5) in Anchorage, Alaska could receive up to $4,000 less in housing allowances in 1985 than his counterpart receives today under the rent plus system and this assumes that the Congress adopts the recommendations of the 1984 VHA study (i.e., where members would have average unreimbursed housing costs that equal 15% of median housing costs in CONUS; equates to 21.4% of BAQ). Even if VHA were funded at entitled levels, only about 40% of members would be fully reimbursed for their housing costs. To exacerbate the problem the lower VHA would disqualify most members from the high priced homeownership market—average price of homes is well in excess of $125,000 in Alaska and Hawaii. An E-5, with three dependents who now qualifies for a $79,000 home loan through the Alaska Housing and Finance Corporation would qualify for a maximum loan of $69,000 under VHA; a drop of $10,000.

Eliminating many servicemembers from the housing market would result in saturating an already oversaturated rental market (Hawaii has lowest rental vacancy rate—1%—in the Nation) and tend to drive up rental costs since more would be forced to enter the rental market. The VHA will also make it extremely difficult for current homeowners to sell in an already depressed resale market. VHA is not flexible enough to deal with the "unique" Alaska and Hawaii housing market, particularly in Hawaii where "six-month" rental leases are the norm rather than the exception. With the rent plus system, there is room between the average rental and the rent plus ceiling (set at the 80th percentile of reported rents) to accommodate rapidly increasing rents as they occur; i.e., as rents increase so do members' housing allowances—VHA offers no such leeway (when rents increase, VHA remains static until the annual VHA adjustments are made). Eliminating rent plus will likely reduce the number of volunteers for Alaska and Hawaii (to avoid financial hardships). This could result in more unaccompanied tours and, in turn, result in more permanent change of station (PCS) moves in a time when the Services are trying to reduce the number of PCS assignments. If VHA were fully implemented today under the recommendations of the 1984 VHA study, between $15 and $20 million annually would be lost to servicemembers, and, in turn, to the local economies—more than double this amount if the current VHA caps and BAQ plus VHA ceiling (i.e., $800 for members with dependents and $600 for members with dependents) is not lifted.

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11 MAY 1984.

Service/agency: Army.
Appropriation: Military Personnel, Army.
Budget activity: N/A.
Subject: Rent Plus vs Variable Housing Allowance (Alaska/Hawaii).

1. On 19 April 1984, the House Armed Services Committee (HASC) recommended extending VHA to Alaska/Hawaii and eliminating the Rent Plus System for those assigned on or after 1 January 1985.

2. Currently, there are approximately 1,300 Army servicemembers in Alaska and 4,821 in Hawaii drawing Rent Plus Housing Allowances. If a Variable Housing Allowance replaces the current Rent Plus System, these servicemembers will suffer significant reductions in their housing allowances. For example, reflected below is a comparison between these two housing allowances for Oahu, Hawaii:

	Total rent plus BAQ	BAQ plus VHA (estimate)	Monthly loss
Grade:			
E-3	$642	$490	−$152
E-5	782	551	−231
E-7	882	650	−232
O-3	1,032	730	−302
O-5	1,102	847	−255

3. The Army strongly opposes the elimination of Rent Plus in Alaska/Hawaii. It has long been recognized that these locations are extremely unique because of their economies. As a result, higher supplements are needed by all servicemembers assigned to these locations. If a Congressional decision is made to the contrary, personnel who arrived prior to 1 January 1985 should be fully grandfathered.

[From the Air Force Times, May 28, 1984]

SERVICES RALLY FOR RENT-PLUS

(By Tom Philpott)

WASHINGTON.—The services are battling behind the scenes in the Pentagon and Congress to keep the rent-plus housing allowance program alive for members in Alaska and Hawaii.

The House Armed Services Committee last month voted in its version of the defense authorization bill to put persons assigned to Alaska and Hawaii, on or after October 1, under a variable housing allowance program rather than the higher-paying rent-plus system.

The committee action caught the Defense Department and the services by surprise. But now, military commanders in the two states and service leaders here, are warning the lawmakers of substantial increases in unreimbursed housing costs and declines in members' morale if the HASC recommendation is adopted.

Officials want the bill amended on the House floor or, if that fails, they want the provision killed in a conference committee that will be held when Senate and House representatives meet to iron our differences in their versions of the authorization bill. It's unclear, however, whether the Senate would support a similar provision.

In general, VHA payments in Hawaii and Alaska would be significantly lower than those provided under rent-plus because VHA rates are based on average rental costs in the assignment area while rent-plus payments are set to cover full rental costs for 80 to 90 percent of members living off base.

Service officials estimate that housing allowances paid to an E-5 living off base in Anchorage, Alaska could decline by as much as $4000 a year in 1985 if rent-plus is eliminated in favor of VHA.

The average monthly drop in housing money for those living off base with dependents in the two states would range from $46 a month for an E-3 to $108 a month for an O-5, officials said.

The maximum decline in Alaska, for members with dependents whose rental costs bump up against the local rent-plus ceilings, would range from about $157 a month for an E-3 to about $354 for an O-3, the services estimate. In Hawaii, the fall off in allowances could be as much as $152 a month for an E-3 with dependents and as high as $302 a month for an O-3 with dependents.

Here are some specific examples. Under rent-plus, an E-5 with dependents in Anchorage can receive up to $1081 a month in combined housing allowances, which would include basic allowance for quarters and rent-plus payments, including reimbursements for utilities and average moving in/moving-out expenses. That would be the maximum reimbursement. The payments, however are based on actual rental costs and average about $815 a month for the married E-5. Under VHA, the monthly allowance payment would fall to $755, or $326 from the maximum under rent-plus and $60 from the average.

Maximum allowances for an O-5 with dependents in Anchorage is $1256 a month. Under VHA they would fall to $1039 or by $217. From the $1147 average allowance payment for married O-5, that would be a decline of $108 a month.

Under rent-plus in Oahu, an E-5 with dependents can receive up to $782 in combined allowances but the average total payment is $611. Under VHA, total allowances would fall to $551, down $231 from the maximum and $60 from the average payment.

Maximum allowances under rent-plus for an O-5 with dependents in Oahu is $1102 and the average combined payment is $955. Under VHA, total allowances would drop to $847 a month, down $225 from the maximum and $108 from the average.

"We estimate that only 30 percent of service members in Alaska and Hawaii would be fully reimbursed for their housing expenses under the VHA program compared to about 90 percent under the RPHA system," said Maj. Gen. Robert C. Oaks, Air Force Director of Personnel Plans, in a recent letter.

"We also estimate that between $15 (million) and $20 million annually will be lost to service members and, in turn to the local economy," Oaks said.

Adm. William J. Crowe Jr., commander-in-chief, Pacific, urged the Defense Department and service leaders in a April 30 priority message to fight the HASC proposal. If the two-year-old rent-plus program is replaced by VHA, he said, some members will have to spend up to 20 percent of their basic pay on rental payments.

"This is a significant erosion of benefits and could result in difficulties in filling billets in Hawaii. Rather than face personal financial hardships, many members may choose unaccompanied tours resulting in increased turnovers, additional (permanent change-of-station) costs and higher training requirements," Crowe said.

He added that VHA will not keep military people competitive in the Hawaiian rental market where 99 percent of units are occupied.

"A major long-range fallout of bringing Hawaii and Alaska in line with the 48 contiguous states (now under VHA) is the probability of the redefinition of an overseas area," Crowe said. "This could eventually lead to the loss of multiple compensations made necessary by the distance to ConUS and the follow-on high cost of living in these states."

While all the services and DoD oppose the HASC provision, Adm. James D. Watkins, Chief of Naval Operations, gave a bleak assessment of the chances for saving rent-plus in a May 14 return message to the Pacific area.

"I will continue to oppose termination of the RPHA (rent-plus housing allowances) in Hawaii and Alaska, but it is also clear to me that much of the opposition to RPHA is not without good justification," Watkins said.

A statistic used in the Crowe message that one-third of officers in pay grades O-1 to O-3 are paying rents that exceed the rent-plus ceilings suggests that two-thirds of the same group pay rent below the ceiling, the CNO said.

Also, the observation by Crowe that by switching to rent-plus Hawaii will lose millions of dollars in housing income "is fuel for opponents of RPHA that RPHA leads to rent gouging."

"In the final analysis, support for RPHA on the Hill is weakening, and, quite frankly, I am not confident our appeals will be successful," Watkins said.

But the CNO promised to continue to fight to provide service members in Hawaii and Alaska with either acceptable government housing or compensation to compete with civilians for housing on the local market.

Mr. INOUYE. Mr. President, this amendment is fair and equitable. This amendment means much to the men and women who serve in Alaska and Hawaii. This amendment will play an important role in the morale of those who serve us in our uniform.

I am pleased to be a cosponsor. I wish to commend my colleague from Alaska for his leadership on this matter. I wish to have myself associated with his remarks.

Mr. TOWER. Mr. President, I wanted to ask some questions of the Senator from Alaska. Is it not a fact that for the past 2 years appropriations acts have frozen or reduced the rates of housing compensation for members in the continental United States but that no caps were placed on the rates of housing compensation for personnel in Alaska and Hawaii by the Appropriations Act?

Mr. STEVENS. The funding that was provided in the appropriations bill provided for total housing compensation. It was a combination of the variable housing allowance and the basic allowance for quarters. It was the same as requested by the Department of Defense. No enlisted person is receiving less for housing in fiscal year 1984 than he or she received in fiscal year 1983. No officer is receiving less total compensation than was paid in 1983.

We did impose a freeze on housing compensation as requested by the Department of Defense. We do believe that the new variable housing allowance program must be looked into. When we held a hearing, we found that costs of the variable housing allowance program that was started in 1981 had risen by 160 percent from the original estimate. VHA was set up to cover high cost areas, but VHA now is paid to members of the armed services everywhere in the continental United States except Gallup, NM; 98 percent of all military people living off base in the United States receive VHA, in addition to the basic allowance for quarters.

We are asking for a study of that by the General Accounting Office and, as I have indicated, the Inspector General of the Department of Defense is looking into rent plus. But we have not changed the program, other than to impose the freeze as was requested by the Department of Defense and the cap on maximum payments.

Mr. TOWER. I simply say to the Senator from Alaska that it is my impression that because the cap was imposed last year, personnel in some high cost areas in the continental United States, like Washington, Boston, and San Diego, had their housing compensation reduced, but no reduction was imposed on personnel in Alaska. And the cost of housing in areas like Boston and San Diego are at least equal to those in Alaska. I hope we can get some equitable treatment for those in the lower 48 that face the same high housing costs as they face in Alaska and Hawaii, perhaps.

Mr. STEVENS. Mr. President, we attempted to do that through the variable housing allowance, but it was not operated on a subjective basis, as rent-plus is. It was operated on a total across-the-board basis. Under VHA, we found that many service people are receiving more money in allowances now than they actually incur in costs. There are others that have not been given the assistance that VHA was supposed to give them. VHA was supposed to cover high cost housing in the contiguous 48 States. The way it has been handled, as I have said, is nearly every member, now gets VHA in addition to the basic allowance for quarters. A program that did not exist in 1981 has not become an entitlement in terms of a second allowance, as far as the quarters are concerned.

We raised this in a hearing and, as a result of that, we put a cap on the total amount of both basic allowance for quarters and VHA. The result of that, as I said, is that no enlisted person is receiving less for housing than he or she received in 1983. In the officer category, some of them—very few—were put in the position where they had to absorb some of the increased cost that they had because of the cap that was imposed on the program as a whole.

But the difficulty is that the Congress provided for an increase in one element of the housing compensation, basic allowance for quarters, which the Defense Department did not request. We recommended an offset because of that into the VHA Program. It was the total compensation that the cap was on. We just said they had to take into account the increase in the basic allowance for quarters as they did to VHA.

But I think that we are trying to work out a totally fair and adequate compensation system for all service members. We believe it should be subjective, as it has been overseas, as it has been in Alaska and Hawaii, and that the VHA Program, had it been carried out as the Senator's committee intended, would have provided a very fair and adequate system.

We hope Alaska and Hawaii will be included in that system when the VHA Program is straightened out. But right now, as I indicated, the net result of changing Alaska and Hawaii servicemen over to this would mean that we would have a situation where 65 percent or more of the people covered would be underpaid.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska [Mr. Stevens].

The amendment (No. 3269) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GOLDWATER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3273

(To authorize certain programs and reports concerning the National Guard and Reserves)

Mrs. KASSEBAUM. Mr. President, on behalf of myself, Mr. Leahy, Mr. Gorton, Mr. Levin, Mr. Pryor, Mr. Grassley, Mr. Pressler, Mr. Huddleston, Mr. Dole, and Mr. Sasser, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mrs. Kassebaum], for herself, Mr. Leahy, Mr. Gorton, Mr. Levin, Mr. Pryor, Mr. Grassley, Mr. Pressler, Mr. Huddleston, Mr. Dole, and Mr. Sasser, proposes an amendment numbered 3273.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, line 9, strike out "$20,000,000" and insert in lieu thereof "$40,000,000, of which not less than $20,000,000 shall be used for the procurement of 30mm antitank gun pods for the exclusive use of the Air National Guard and the Air Force Reserve."

On page 9, between lines 2 and 3, insert the following new subsection:

(e)(1) Not less than $5,000,000 of any funds appropriated for Air National Guard equipment pursuant to the authorization contained in subsection (a) shall be used for the procurement of so-called "smoke kits" for the F-4 aircraft.

(2) On and after the date of the enactment of this Act for the fiscal year 1985, for each F-4 aircraft in the Regular component of the Air Force that is "de-smoked," at least one F-4 aircraft assigned to the Air National Guard or the Air Force Reserve shall be "de-smoked."

(3) It is the sense of Congress that the F-4D "smoke kit" modification program for the Air National Guard and Air Force Reserve should become a priority program and should be the subject of requests for increased funding commencing in the fiscal year 1986 Department of Defense budget request.

Mrs. KASSEBAUM. Mr. President, I will not take long. This is a very simple amendment. It has two parts. One would be an addition of $20 million for 30-millimeter antitank gun pods that would be for the Air National Guard and Marine Corps Reserve for the F-4D plane. This is a very effective antitank weapon. It is a very inexpensive weapon. It has been requested by the Guard and Reserves and I think shows clearly why it is important for us to keep our Guard and Reserves in top form with the best and most efficient equipment possible.

The second part earmarks $5 million already in the bill for the desmoking of F-4D aircraft. The reason for this is that these planes, which were very effectively used in Vietnam, left quite a trail of smoke, which was easily detected. The desmoking kits have been put in all of the active planes now being used and it would certainly be, I think, very important to earmark this money for those that are now being used by the Guard and the Reserves.

There have been concerns raised about adding this additional money, Mr. President, at this time for the F-4D's, saying that we should be moving the F-16's, and the better planes we could be using in the Guard. This is true. I think we would all agree with that. But that is a very costly plane. It is going to be a long time before we move in that direction. So it seems to me we should be giving the Guard and the Reserves the best equipment that we can in the meantime.

The PRESIDING OFFICER. Is there further debate?

The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I hate to do this. I am forced to oppose the amendment by my friend from Kansas. Let me try to explain it. No. 1, we will accept the part for the smoke pod. The smoke box as it is called is a box that will eliminate smoke from an aircraft engine on takeoff particularly, and it also improves the operation of the engine. There is no question on that. But the $20 million for gun pods is something that they do not need. To begin with, the F-4 aircraft started manufacture back in about 1957. I think the first one I flew around 1957 or 1958. It was a Navy aircraft at the time. Then it came to the Air Force. It is a supersonic aircraft.

It has two afterburners, and an almost 18,000-pound thrust engine. We have produced about 3,000 of these so far. There are 400 of the F-4's that have the 30-millimeter cannon; 48 of them are in the National Guard. I have to say, too, that the number 48 includes some modified A-7 aircraft. We have made the F-4A Phantom tactical fighter, the F-4G Wild Weasel, and the National Guard has six squadrons of the F-4C tactical reconnaissance aircraft.

Mr. President, giving $20 million for these gun pods that sell for around $200,000 a piece—I might say that the Guard already owns about 299 of these pods, and they weigh pretty close to 2 tons unless they have been modified. There is no question it is an excellent gun. I have been to the factory twice to watch them being made. I fired the guns in different aircraft. But the F-4 is now an old airplane, and growing older.

There is no provision in the administration position in HASC or in SASC for these guns. The guns would be delivered to the Guard and Reserve F-4D units, and they would also benefit from the fencing of funds to desmoke which I have already ageed to. There is an argument that we are not doing enough for the Air National Guard and Reserve itself.

Mr. President, I ask unanimous consent that a list of Guard and Reserve add-ons that are in this bill be placed at this point in my remarks, and they total over one-half billion dollars which is already in the bill.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Guard and Reserve add-ons—Army National Guard

[In millions of dollars]

Program	*Subcommittee recommendation*
AH-IS Cobra mods	+30.0
Chaparral	+32.0
Improved TOW vehicle	+27.0
Miscellaneous equipment	+50.0
A-7d FLIR	+52.0
Communications equipment	+20.0
C-130H's	+149.0
C-130 spares	+6.0
C-131 modifications	+16.0
SH-2F helicopters	65.9
Combat engineering equipment	20.0
T-700 engine R&D	17.0
Marine Reserves	20.0
Total	504.9

Mr. GOLDWATER. The argument is being made here that the gun pod is a high priority program for the Air National Guard. I have just spoken to the Commander of the Air National Guard. If he gets the $20 million, he would much rather have the choice of where he puts that $20 million because, according to the Guard, there are other higher priority programs to which the Guard would apply additional funds before they would procure additional 30-millimeter pods.

They include an improved 10 mill bombing computer for the F-4D's, which they are now in the process of being modified, upgrading the F-4D radar, and modifying the F-4D's to carry the AIM-7 and the AIM-9L missile. I do not think, Mr. President, that we here on the floor should dictate to the Air National Guard that the 30-millimeter gun is a higher priority than those that the Commander of the Guard would like to have the liberty of spending the $20 million on, if we allowed the $20 million. So, Mr. President, I have to oppose that $20 million portion of the Senator's amendment. But the smoke box which comes I believe to $5 million—I believe I speak for the committee chairman when I say that—we would accept that.

NATIONAL GUARD AND RESERVES: A VIABLE AND COST-EFFICIENT PROPOSITION

Mr. DOLE. Mr. President, the combat, combat support, and combat service support forces of the National Guard and Reserves are a critical and essential part of our Nation's defense. For those reasons, I rise in support of the amendment of my fellow Senator from Kansas, and indeed, have agreed to cosponsor.

To bring the quantity and quality of National Guard and Reserves equipment up to acceptable levels is an extremely costly proposition. There is no Member in this Chamber today that is more concerned about fiscal restraint than this Senator. Nevertheless, this is a necessary and cost-efficient approach in dealing with three of the most serious problems affecting National Guard and Reserve aircraft and tanks. The Guard and Reserve Forces must be prepared and be maintained in a state of readiness for immediate use should the need arise.

The new and vital role of the Guard and Reserve components in our national defense is evident. The National Guard and Reserves possess not only a strong sense of duty and obligation, but the self-confident professionalism gained from training and experience. However, despite the fact that total force readiness has been rapidly improving, our National Guard and Reserves must possess the proper equipment to perform their missions. Active and Reserve units should have equal claim on modern equipment inventories. Therefore, it is not unreasonable to correct certain equipment deficiencies in the National Guard and Reserves.

We cannot afford to wait until world conditions dictate that we concern ourselves with the present quantitative and qualitative equipment problems. I, therefore, urge my colleagues to vote for this amendment so we can continue to correct the present deficiencies in order for the National Guard and Reserves to meet their full responsibility.

Mr. PRYOR. Mr. President, I am proud to be a cosponsor of this amendment, which takes a small step in the direction of strengthening our National Guard and Reserve forces.

For too long the Guard and Reserves have been treated like stepchildren by the armed services and have not received the credit or attention they deserve.

In terms of sheer size, the Army National Guard would qualify as the eighth largest army in the world. The Guard makes up 46 percent of our Army's combat forces and 37 percent of its support forces. The Air Guard and Reserves provide 65 percent of our air defense force and a significant portion of our tactical reconnaissance, tactical fighter force, tactical airlift and strategic airlift refueling capability.

The National Guard and Reserve provide all these services for less than 5 percent of the Defense budget.

Based on the "Vista 1999" report and on testimony before the Armed Services Committee, it appears that the most immediate need of the Guard and Reserves is for better equipment. Our amendment addresses three areas of concern:

First, the Guard and Reserve fighter force consists almost entirely of F-4D's. The problem with these planes, however, is a smoking engine which leaves behind a trail that allows the enemy an extra 90 seconds to aim and shoot down our pilots. Although a small desmoking program was begun in 1984, much more needs to be done, and the Air Force rejected efforts this year for more smoke kits.

Our amendment earmarks a modest $5 million in the bill for desmoking kits, to be shared between Active and Reserve Forces.

Second, the most important Air Guard mission is ground support, and the 30mm anti-tank gun pods have proved to be the best antitank weapon available and relatively inexpensive. Although some Guard ground attack units have been equipped with this weapon, we feel that Guard and Reserve F-4's should have the same capability. If fully implemented, this program would cost about $100 million; our amendment today adds $20 million to get us started.

Third, the third element of our amendment would add no funds; It would simply halt the drain of Guard and Reserve tanks to our allies.

It also calls for a plan to modify the M-60 tanks, which have shown themselves to be highly effective as used by the Israelis in the Lebanon fighting. Until they are modified, however, they will present a grave danger to our own troops, who, if hit, are likely to be trapped inside the burning vehicle. The issue here is the survivability of our troops, and we should lose no time in making the same sort of modifications which have served the Israelis using the same tanks.

None of these items was addressed in this year's budget, and I congratulate Senator KASSEBAUM for taking the lead on these vital programs.

We must remember that the Guard and Reserve have a vital wartime role to play, and we should provide them with adequate equipment—not just Active Force hand-me-downs. As Governor of my State, I was commander-in-chief of the Arkansas National Guard, and I urge all my colleagues who are former Governors to consider the valuable contributions of their own Guard Forces and support this amendment.

Mr. LEAHY. Mr. President, I have stated time and again on this floor that in the last few years our defense priorities have become overbalanced toward expensive and unnecessary nuclear weapons and gold-plated conventional systems, to the neglect of less glamorous aspects of our security. I see proof of this when looking at the deficiencies that plague our National Guard and Reserves.

The National Guard is supposed to serve as the first line reinforcement for our troops in Europe. After a number of discussions with senior officers of Vermont's Guard and Reserves, I have come away with the feeling that we are doing less than we should to ensure they have the equipment they really need to be combat ready.

While I realize that upgrading National Guard equipment is a long and expensive process, I do think the amendment that the Senator from Kansas and I are offering is a valuable step toward that goal.

Our amendment has two parts:

First, it will earmark $5 million already in the bill for F-4 engine smoke kits. It is critical that engine exhaust smoke be eliminated if we expect our National Guard pilots to have any hope of success in combat.

Second, our amendment would add $20 million to improve the Guard's ground attack and antitank capabilities by expanding the procurement of the 30mm antitank gun pods. Just as Air National Guard A-7 ground attack units have been equipped with this system, our F-4 units with a similar mission must have such a capability.

Originally, we had wanted the Secretary of Defense to provide a report on the Department of Defense plans to upgrade the tanks in our reserve component inventories. I was especially concerned because the Vermont brigade is an armored unit in the 50th armored division. The report was to include a program of concrete measures to increase Guard tank inventories and replace older outdated Guard tanks with more modern models able to combat Soviet armor.

In the interest of obtaining the other needed improvements, I have been persuaded not to pursue this part of our original amendment. However, in place of that, Senator KASSEBAUM and I will be sending a letter to the administration seeking information on plans for modernizing Guard and Reserve armor. I will study the response to see whether legislation directing improvements may be necessary.

I have received a number of letters from concerned members of the National Guard in Vermont strongly supporting this amendment of Senator KASSEBAUM and myself. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JUNE 14, 1984.

Hon. PATRICK LEAHY,
Burlington, VT.

DEAR SENATOR LEAHY: I am writing as a citizen soldier and a concerned citizen of Vermont. I have devoted half of my life to the defense of our nation, on both a full-time and part-time basis. Consequently, the status of that defense is a high priority to me.

My concerns center on the allocation of modern equipment and weapon systems to the Reserve Components of our armed forces, specifically the Vermont Army and Air National Guards.

The Vermont National Guard trains with Korean War era tanks, the M48 series. Although they have been modernized and rebuilt to M60 standards, they still are not the technical or tactical equivalent of the M60, nor are they a tactical match for the Soviet systems we will face on any future battlefield. Request your leadership and support for the issue of M60A3 tanks to the Vermont Army National Guard, and other Reserve Component armor units.

The Vermont Air National Guard has recently reorganized and is tasked with a tactical mission in support of Air Force responsibilities for the defense of the United States. The F-4 is a fine aircraft with an impressive combat record. However, the public perception of the F-4 is one of smoke, noise and questionable necessity. The modernization of the F-4 through engine modification or replacement will allow for the continued vigilance of the Vermont Air Guard, but with a more supportive public. Request your support of this modernization program.

As a soldier, I am concerned with the battlefield survivability of our combat forces. Anti-armor weapon systems help assure that survivability. The air-land battle concept dictates use of tactical air forces to win that most important first battle, as well as subsequent confrontations.

The availability of technology in support of our forces has always been the forte of the United States. The anti-armor fighter-mounted weapons are an absolute must for victory. Request your support in modification programs to assure our survival on an armor-heavy battlefield.

I respectfully request your personal support of programs, as cited, to assure our survivability, if our commitment to deterrence fails. Thank you for your enlightened leadership and support in these matters.

Sincerely,

STEPHEN J. TIERNEY, Captain,
Vermont Army National Guard.

NATIONAL GUARD
ASSOCIATION OF VERMONT,
Barre, VT, June 12, 1984.

Senator PATRICK J. LEAHY,
Burlington, VT.

DEAR SENATOR LEAHY: I am writing as the newly elected President of the National Guard Association of Vermont, asking for your continued support to the Vermont Army and Air National Guard. We appreciate you and your staff's recent effort to identify items of interest to the Reserve Components that contribute to the National defense. Thank you for your support.

I would like to solicit your support in three additional areas that are important to National Guardsmen and their continued effort to maintain readiness standards.

1. The ground-gaining forces need support in the continued development and deployment of the "anti-tank gun pod" used by fighter aircraft to counter enemy tank formations. Increased deployment of this Air Force weapons system is needed to realistically counter potential enemy armored warfare.

2. The Vermont Air National Guard is currently equipped with F4 Phantom aircraft. Request that you support an advanced schedule to re-engine all F4s with the more efficient, quieter, and smokeless engine. Quick conversion of all the nation's F4s would be beneficial to all units thus equipped.

3. The Vermont Army National Guard is currently equipped with the M48A5 tank. This is an older, third generation tank that offers little survivability on the battlefield when countering modern threat tanks. Request that you support the retrofitting of M60 series tanks to M60A3 status and issue those tanks to the Army National Guard.

Thank you for your consideration and support. I look forward to talking with you during future months.

Sincerely,

HOWARD C. LEWIS, *President.*

MONTPELIER, VT,
June 12, 1984.

Hon. PATRICK J. LEAHY,
U.S. Senator,
Burlington, VT.

DEAR SENATOR LEAHY: As a citizen and a Vermont Guardsman, I am very concerned about the status of weapon systems currently found in both the Active and Reserve components of the U.S. Armed Forces. Namely, those systems and/or components are the Main Battle Tank (MBT), F4 Phantom jet and the armament currently used for anti-tank defense by most Alpha jet aircraft in the U.S. Air Force arsenal.

Presently, there is a great discrepancy between the Main Battle Tanks in the Army's armor fleet. In Europe, there is a two phase armor force modernization program whereby the former M60A3 MBT is being replaced by the M1 MBT while lower priority USAREUR units are converting from the old M60A1 MBT to the M60A3 MBT. However, there is now an indication that the excess M60A3 MBT's will replace POMCUS (Prepositioning of Material Configured Unit Sets) stocks of M60A1 MBT's. The crux of the problem with this trend is that Army units from the continental U.S. that will be using this equipment if and when they are mobilized in event of war will not have trained on the more sophisticated weapon system of the M60A3. If one conducted an in-depth survey of Reserve and Active component Armor Brigades within CONUS, I am certain that the results would be startling. Factually I know that many Reserve component units have only the M48A5 MBT which is three (3) generations behind the M60A3 (yet many of these same units will have POMCUS stocks of M60A3's).

Therefore, I would ask that you portion the Armed Forces Committees to start balancing the present armor fleet of MBTs by increasing the allocation of M60A3's to Reserve components. Thus, the Reserve components would train on the same equipment that would enable them to fight outnumbered and win, in the European theatre.

In this same light, the Air Force has similar problems with their weapons delivery systems. The F4 Phantom jet is definitely hindered in its performance by an outdated engine system that creates an unneeded noise and smoke signature which allows for quick acquisition by enemy ground to air defense systems. Secondly, the noise and smoke pollution created by rapid acceleration (especially on takeoff) becomes a restricting factor on pilot sustainment training time due to civil-military concern over this unwanted pollution. Based on the above, I would ask that the retrofit of a more efficient engine system for the F4 be brought to the attention of the appropriate Armed Forces Committee.

Based on publicized threat estimates (5:1 ratio of Soviet Tank/Motorized Regiments vs U.S. Armor/Mechanized Forces in Europe) and the increasing priority strategists place on tactical air systems in the next Air-Land Battle, it would seem logical that short range fighter aircraft be outfitted with an anti-tank weapon system that would increase the number of weapons systems available to a ground/air commander in replusing and eliminating the threat of armor attack. Presently, the tactical air support needed by a ground commander is limited due to the reliance on an over committed A-10 fighter to perform this mission. I realize that there are many solutions to the above, but a possible cost effective approach/solution might be an anti-tank gun pod adapted to those aircraft not so equipped.

In closing, I would appreciate your support of Congressional action that would provide for budget increases to design and improve the efficiency of the fore-mentioned weapon systems.

Thank you.

Sincerely,

Craig G. Birchard.

Vermont Air National Guard,
Burlington International Airport, VT,
June 11, 1984.

Hon. Patrick J. Leahy,
U.S. Senate,
Washington, DC.

Dear Senator Leahy: I am delighted to hear that you are co-sponsor of a bill that is near and dear to the hearts of F-4 drivers that potentially could have to fight with "Old Smoky". As you probably know, we are highly visable with our smoking engines unless we are in afterburner. This is not practical as it uses 4 times the amount of gas and severely cuts our range and fighting time down. Our business requires surprise and "see before being seen". All F-4 crews will be forever thankful if you are successful in selling the program to replace all F-4 engines with the smokeless modification.

Be happy to take you up in the first modified jet to demonstrate its effectiveness.

Sincerely,

John D. Leonard,
Colonel, VTANG, Air Commander.

Bristol, VT,
June 12, 1984.

Senator Patrick J. Leahy,
Burlington, VT.

Dear Senator Leahy: I am writing as a citizen and an Army National Guardsman. The defense of our nation is an extremely important priority to me, and I am concerned that emphasis is not being placed where needed in the deployment and re-allocation of modern weapons systems.

There are three areas that I would like your support in, if possible:

1. The Army National Guard has M48A5 tanks. These have recently been rebuilt to M60 standards but still do not have the fire control and range finder found on the M60A3 or M1 tank. As set up now, the M48A5 is no match for the Russian T72 or T80 tank that we may be facing. Requests that M60A3 tanks be issued to the Army National Guard.

2. The Air Force has been issued a new anti-armor gun system that is mounted on fighter aircraft. This would increase U.S. tanks' surviviability on the battlefield by squaring the odds against us. Request that all fighter aircraft be equipped with this new anti-armor gun pod system as soon as possible.

3. The Vermont Air National Guard is flying F4 aircraft now, and I understand they are supposed to be modernizing those F4s with new engines. Request that the modernization be completed as soon as possible. That will make Burlington quieter and smoke free (at least when the F4s take off).

Thank you for your support.

Yours truly,

Allan C. Willey.

June 14, 1984.

Senator Patrick Leahy,
Federal Building,
Montpelier, VT.

Dear Senator Leahy: As a citizen of Vermont and a member of the Army National Guard I would like to take a few moments of your time to address some issues of concern to me.

I would like to express my support for several programs you will be addressing concerning our country's defense. They are; (1) Continued development and deployment of the anti-tank weapons PODS for fighter aircraft. There is no question in my mind that in the next conventional war all American equipment will need to have the most advanced tank fighting weapons available. I would urge you to support the funding of this program. (2) I believe it is extremely important that the engine of the F-4 fighters be up-graded as soon as possible. Just yesterday the Burlington Free Press carried an article concerning the noise of the F-4 fighters in Burlington. I believe that we should consolidate the three year program into a one year program to make these planes quieter, less smokey and increase their horsepower. This would be a good investment for our country. (3) This one is most near and dear to my heart considering I am a Tank Battalion Commander here in Vermont. Considering the National Guard is a large portion of our military strength, I believe that they should get first priority for the M-60A3's which are being replaced by the MX-1 tanks in Europe.

The up-grading of our equipment to M-60's would make the National Guard units much more interchangeable with the active army, particularly in the area of spare parts. In no way should we consider selling these weapons systems to other countries until we take care of our own needs.

I appreciate your time and effort and look forward to receiving some M-60A3's in Vermont soon.

Sincerely yours,

Thomas D. Kinley,
Major, VTANG, Commander 2-172, Armor.

Montpelier, VT,
June 12, 1984.

Subject: Request for support.

Senator Patrick J. Leahy,
Federal Building,
Montpelier, VT.

Dear Senator Leahy: As a member of the Vermont Army National Guard and the National Guard Association for the State of Vermont, there are three items that have come to my attention that I feel are of great importance to both the Army and Air Guard throughout the country and need your support:

1. Continued development and deployment of antitank pods for all fighter aircraft.

2. Retrofitting of the F-4 engines to increase horse power and reduce smoke and noise emissions. Request that in this area that the current three year program be reduced to a one year program.

3. Reallocation of M60 series tank to the guard and reserve as the actived units receive the M1 tanks.

I feel these items are go great importance to the guard, not only in Vermont but nationwide. Any support that you may be able to provide would be greatly appreciated.

Thank you in advance for any support that you can provide.

Sincerely,

Stephen R. Sands,
Major AR, VTARNG.

Milton, VT,
June 11, 1984.

Hon. Patrick J. Leahy,
U.S. Senate,
Washington, DC.

Dear Senator Leahy: Knowing of your concern in maintaining the readiness of the National Guard, I invite your attention to the following issues concerning both the Air and Army Guard.

On the Air Guard side, I'd like to mention the current technology which allows the F-4 Phantoms to be fitted with low-smoke producing engine which has many benefits in the combat arena. This modification is currently being made piecemeal. It would seem logical, both in terms of readiness enhancement and cost effectiveness, to work toward a fleet-wide contract. Additionally, the procurement of the attachable gun pod (G-POD 30) would further enhance the combat role of the F-4.

The Army Guard also suffers from a lack of the most current technology in its armored vehicles. The present fleet of tanks should be upgraded to approach state of the art. Without upgrading our tanks, the Guard will be considerably less effective in its significant role in the total force.

Sincerely,

Ronald H. Morgan,
Lieutenant Colonel, VTANG.

The PRESIDING OFFICER. Is there further debate?

Mrs. KASSEBAUM. Mr. President, if I might respond briefly to the priority and trying to dictate them here, I would agree with the Senator from Arizona. But we have also had the request from many who have spoken on behalf of the priority of this need. The general of the Air National Guard from New Jersey was here just yesterday. I think as the Senator from Arizona knows far better than I the importance of the Guard, the needs of the Guard, and realizes that sometimes there is a difference between the sitting Guard Board here, the active Board and the Department of Defense's interpretation of the needs of the Guard, and those who are out in the field, so to speak. I think there are those discrepancies that occur. Let me ask the Senator from Arizona. Would you have any objection to a $20 million addition add-on if it does not specify the 30-millimeter antitank gun pods?

Mr. GOLDWATER. Yes. I would have to say as chairman of the Tactical Warfare Subcommittee, I do not know where we would find $20 million more. As it is now, we are short literally hundreds of millions of dollars for tactical equipment that we know we have to have. So I cannot agree. I have not talked with the chairman, but I cannot agree to $20 million more for any purpose in the Guard.

Mr. TOWER. Will the distinguished Senator from Kansas yield to me for a moment?

Mrs. KASSEBAUM. I am happy to yield.

Mr. TOWER. We already have an add-on of $1½ billion for the Guard at our own initiative for everybody's Guard and Reserve interests. We sort of came up together, and got a package based on the top priority. The 30-millimeter pod was not among them. It is still not regarded as a high priority, and not a requested item. So if the Senator from Kansas could permit rather than add on, I would prefer that come out of the hide of the $500 billion package we already have in, and permit the Guard itself to establish its priorities. They have several that are actually more pressing priorities than the 30-millimeter pod. I think we can make that judgment just looking at what the requirements are, and what they need.

Mr. GOLDWATER. If the Senator will further yield, I understand perfectly well how the National Guard operates. I happen to be one of the people who organized the Air National Guard nationally after World War II.

I used to delight in coming to Washington at this time of the year in my civilian clothes as a colonel in the National Guard, walking into a four-star general's office, and giving him literal hell about what I wanted, and I usually got it because it was political. Well, I then went into the Reserve. When I had to wear my uniform back there as a colonel and salute a four-star general, I did not get much. I understand full well the pressures that are being put on not only the Senator from Kansas, but probably every Senator in this body, from the visiting National Guardsmen, Air Guardsmen, and ground.

I have had, I do not know, 20, 25 people in town from Arizona wanting everything in the books. We do not happen to have a fighter outfit. So they did not mention 20-millimeter cannon, but they all want new engines for their tankers, and they want their tankers repainted. We are doing the best we can. But I have to remind my friend from Kansas who has been one of the strongest objectors to defense spending that we are just plumb out of money.

Mrs. KASSEBAUM. Indeed, I have, and I could find some other places in the budget where I would of course feel that it could come out of, be added here, and could be used more effectively. But we all make judgment calls. I am appreciative of your needs. I have been a very strong supporter. It is not that there is not money in this defense budget for the Guard and Reserves. But proportionately to some of the needs, it really is not very much. If the Senator from Arizona would feel we could add $20 million but not specify the gun pods, then I would certainly feel that would be acceptable.

But I think that it does not allow us the improvements that I believe to be necessary.

Mr. TOWER. If the Senator will yield, we have to choose between the valid military requirements. Even at that we plussed up our Guard and Reserve account $500 million more than was recommended by the Defense Department. So we have already taken money out of programs that they have recommended. But the $20 million add-on gets us up to busting our ceiling.

If the distinguished Senator from Kansas has specific areas which she would like to take this money out of, that is the problem.

Everybody says, "Cut defense. Cut it. Take that $14 billion out that the President recommended, bring it down to $299 billion, and then take some more out."

We come out on the floor and nobody agrees with what we have done because maybe an airbase here or a naval station there did not get what their Representative or Senator wanted. That is tough.

What I am saying to the distinguished Senator from Kansas is that you have every Guard unit in the country coming here to tell you what they need. They can mention that they need it badly, that it is more important than a battleship, the MX, or anything else, such is their readiness. We have to make some evaluations about these things. Obviously, every Member is going to have some idea about some Guard or Reserve interest that they believe is well served by our spending money on it.

Mrs. KASSEBAUM. I believe the Senator from Arkansas wants to speak, but I would first like to say that this is part of the recommendations made in the fiscal 1990 report. It is something that has been looked at. It is not just the various units requesting this. In fact, I would be glad to exclude Kansas and make this apply exclusively to combat units. Kansas has only training units. I would be happy to do that because I believe it is an important emphasis. It is not just a parochial interest being served. It was presented to us with reports from many of the units from around the country.

Mr. TOWER. I would like to suggest that I get convinced sometimes about these things being of top priority, but, on close examination, I find that they are not.

Mr. PRYOR. Will the Senator from Arizona yield?

Mr. GOLDWATER. Did the Senator want to ask a question?

Mr. PRYOR. Yes; I am a cosponsor of the Kassebaum amendment. I have not had the opportunity during these few short moments to discuss with the Senator from Kansas a possible solution to the problem.

In view of the fact that the Guard has testified or stated on several occasions that the program of putting smoke kits on the F-4's is ultimately about a $25 million program, as I understand it, and we have $5 million in the Kassebaum proposal, I am wondering if it might not be a reasonable approach to take $25 million total funds rather than earmarking for the pods, and then trying to obtain the additional money for the pods, say roughly the $30 million, from the $500 million the distinguished Senator from Texas made reference to in his comments with regard to upgrading the National Guard.

I do not know, frankly, whether that would be agreeable to my colleague, the chief sponsor of this legislation.

Mr. GOLDWATER. If the Senator will yield, I have conferred with the Commander of the Air National Guard. His statement, and I have to agree with it, is if we can give the Guard another $20 million, he has places of much, much higher priority to place $20 million than remodeling of the F-4's that are now in the National Guard inventory.

If there had been some specific request for that money during the hearings that we held, during the ample and full hearings on the subject we are discussing now, I have no question that we would have put it in. But now, with $500 million more being added to the Guard and Reserve, and never having had any case made for the 30-millimeter gun pods, we cannot add those on, but we can put the $5 million on to continue the modification of the smoke pods, or boxes. I am sure that we can consider a continuing expenditure for that in next year's budget.

Mr. PRYOR. It is my understanding that there has been testimony given before the Armed Services Committee that one of the very highest priorities in the Air Guard is the smoke kits for the F-4's. It is my understanding that the $5 million that Senator KASSEBAUM, myself, and others are proposing is only a beginning of this program and would not complete the program.

My proposal is this: If we funded, say, $25 million and earmarked that for the smoke kits, and left the pods to the good discretion of the National Guard and the $500 million extra add-on for the Guard, I am wondering if that might not be a proposed solution to the dilemma at this time.

Mr. GOLDWATER. I can understand the Senator's thinking, but in drawing up our budget with such great limitations placed on it, I do not know how much more it would take. For example, the Guard never testified before us as to how many millions of dollars it would take to supply every F-4 aircraft with the smoke pod. I know it makes a better engine out of it. As I say, next year, if the Guard will come in and spell out before my committee, I feel very certain that we could supply the Guard with the money when we know exactly what they need it for.

I think the commanding general wants the 10 MIL bombing computer, and we now have to use the old iron sight bombsight for the F-4, which is not too satisfactory. The old F-4D radar has had difficulty all through its life. The life in Vietnam was 45 minutes, whereas the average radar in a transport aircraft might be 6 or 8 months. We want to modify the F-4D's, and this would apply mostly to the National Guard aircraft, to carry the A-7 and A-5L missiles.

I cannot make any promises as to whether we can take part of the $20 million and spend it on smoke pods this year. I would feel very hesitant in doing it. As I tried to explain to my good friend from Kansas, the Air National Guard has a whole lot of aircraft. They have F-16's, F-4's, A-7's, KC-135's, and everybody wants something done to them. I am happy to report that a lot of that work is done in Kansas and they do a good job.

If I, as chairman of the Tactical Warfare Committee, would say to my friend, "Yes, I will give you $5 million for this," I will have a whole contingent in tomorrow who want their airplanes repainted, they want air-conditioning put in, they want the new avionics systems.

I am sorry, I have to say no. But we will agree to the $5 million for the smoke pods. I think that is quite a victory.

Mrs. KASSEBAUM. That is already in the bill. That is not an additional amount. It is earmarked in there.

Mr. President, the Senator from Arizona said there has not been any request. I am sure, as he knows, in the original DOD 1985 budget, there was a request for 85 of the gun pods by the Marine Reserves. That was taken out at the last minute.

Mr. GOLDWATER. That was for the Marines. The Marines did not request it again this year, so we did not supply it.

Mrs. KASSEBAUM. That is right.

Mr. GOLDWATER. I checked on that and the Marines are not requested again this year, so we did not supply that.

Mrs. KASSEBAUM. I see, Mr. President.

If I may, I do not see any need to prolong the debate.

Mr. GOLDWATER. I can make the Senator this promise, because I happen to have a real affection for this wonderful airplane. I have a deep affection for the Air National Guard, being sort of a grandpappy of it. I promise the Senator that I shall hear this in the next year's hearing on improving the F-4, maybe even pass what the Senator is asking for. The Air National Guard is going to fly these birds and I think they are good up until the 1990's. I want to see them have the best aircraft we can supply them with. I am sure the money the Senator is asking for plus a little more than we might put in will bring them all up to real combat top.

Mrs. KASSEBAUM. I wish to suggest, Mr. President, that I would like to amend my amendment to have the $20 million addition, but not targeting it to the 30-millimeter gun pods, leave that at the discretion of the Senator. It would be a $20 million addition, and with that amendment to the original amendment, I shall agree and I request the yeas and nays.

The **PRESIDING OFFICER.** Is the Senator modifying her amendment?

Mrs. KASSEBAUM. I am, Mr. President.

The **PRESIDING OFFICER.** Will the Senator please send the modification to the desk?

Mr. GOLDWATER. Mr. President, if the Senator from Kansas wants to push this amendment, I shall offer an amendment in the second degree as follows:

On line 2, strike beginning with "$940,000,000" through the end of line 4 and insert in lieu thereof the following:

"$20,000,000, all of which may be expended for the procurement of 30 mm gun pods should the Director of the Air National Guard deem such gun pods to be of sufficiently high priority."

This would do exactly as I have suggested, Mr. President. It would permit the Director of the Air National Guard to spend $20 million to secure the gun pods if he determines it to be of sufficiently high priority. I would much prefer, however, to simplify the whole thing, in view of the fact that we are providing a half billion more than was asked for Air and Ground Guard and Reserve, I would rather have the amendment of the Senator from Kansas defeated. It would eliminate the necessity for any more arguing about it.

The **PRESIDING OFFICER.** The Senator has the right to modify her amendment. The modification having been sent to the desk, the amendment is so modified.

The amendment (No. 3273), as modified, is as follows:

On page 8, line 9, strike out "$20,000,000" and insert in lieu thereof "$40,000,000, of which not less than $20,000,000 shall be used for the exclusive use of the Air National Guard and the Marine Corps Air Force Reserve."

On page 9, between lines 2 and 3, insert the following new subsection:

(e)(1) Not less than $5,000,000 of any funds appropriated for Air National Guard equipment pursuant to the authorization contained in subsection (a) shall be used for the procurement of so-called "smoke kits" for the F-4 aircraft.

(2) On and after the date of the enactment of this Act for the fiscal year 1985, for each F-4 aircraft in the Regular component of the Air Force that is "de-smoked," at least one F-4 aircraft assigned to the Air National Guard or the Air Force Reserve shall be "de-smoked."

(3) It is the sense of Congress that the F-4D "smoke kit" modification program for the Air National Guard and Air Force Reserve should become priority program and should be the subject of requests for increased funding commencing in the fiscal year 1986 Department of Defense budget request.

The **PRESIDING OFFICER.** Is there a sufficient second?

Mr. GOLDWATER. Mr. President, will the Senator accept this prefecting amendment?

The **PRESIDING OFFICER.** Is there a sufficient second for the yeas and nays? There is a sufficient second.

The yeas and nays were ordered.

Mr. GOLDWATER. Mr. President, what is the vote being called on?

The **PRESIDING OFFICER.** The yeas and nays are being ordered on the amendment as modified by the Senator from Kansas.

Mr. GOLDWATER. Has the modification been accepted?

The **PRESIDING OFFICER.** The modification has been accepted.

Mr. GOLDWATER. I do not believe my amendment has been accepted yet, so I do not know how we can vote on it.

AMENDMENT NO. 3274

Mr. GOLDWATER. Mr. President, I send the amendment to the desk and ask that it be read. I ask the sponsor of the original amendment to accept this second-degree amendment.

The **PRESIDING OFFICER.** The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. GOLDWATER] proposes an amendment numbered 3274, as a perfecting amendment to the Kassebaum amendment No. 3273, as modified.

On line 2, strike beginning with "$40,000,000" through the end of line 4 and insert in lieu thereof the following: "$20,000,000, all of which may be expended for the procurement of 30mm gun pods should the Director of the Air National Guard deem such gun pods to be of sufficiently high priority."

Mr. GOLDWATER. Mr. President, I think that will satisfy me. I am ready to vote if the Senator is.

Mr. TOWER. Mr. President, may I have the attention of the Senator from Kansas?

Mrs. KASSEBAUM. Yes, Mr. President.

Mr. TOWER. Mr. President, if the amendment of the Senator from Arizona is acceptable to the Senator from Kansas, we can vitiate the yeas and nays.

Mr. GOLDWATER. Will the Senator repeat that?

Mr. TOWER. I was about to say that if the amendment offered by the Senator from Arizona is acceptable to the Senator from Kansas, we could vitiate the yeas and nays.

Mrs. KASSEBAUM. Perhaps the Senator from Arizona could clairify his amendment, because essentially, it does not do a lot. As I understand it, it would simply say that the funding that is already in the budget for the Guard Reserve would have earmarked——

Mr. GOLDWATER. Mr. President, it would not say that at all. It has no reference to what is presently contained in the budget. It merely permits the director of the Air National Guard to spend $20 million of those funds to procure 30-millimeter gun pods if he determines them to be of sufficient priority. And the $5 million for smoke kits are already in. I am not taking that out.

Mrs. KASSEBAUM. But it would be $20 million of the funds that are already there if he deems——

Mr. GOLDWATER. $20 million of authorized funds, yes. That is about the only way we can do it.

Mrs. KASSEBAUM. It is not the only way, I suggest.

Mr. GOLDWATER. Well, we do not have any money lying around.

Mr. PRYOR. Mr. President, may I ask this question of the distinguished Senator from Alabama? Would the $5 million for the smoke kits be in the program——

Mr. GOLDWATER. That would stay in the amendment. I am only modifying line 2 in the original amendment and would start the modification of F-4's of all types, those desired, with the smoke pods. Next year, as I say, we can consider the continuation of that program and other programs as the director of the Air National Guard wants.

Mrs. KASSEBAUM. Mr. President, let me just say the hour is late and I certainly do not wish to continue this. Senator Stennis has supported this effort. I have had statements from Senator Dole and Senator Leahy.

I can accept Senator Goldwater's amendment. However, of course, it really eliminates the additional $20 million that I had hoped to add at this time. I hope that through this debate, we have asserted the importance of this matter. I hope that the sitting board here of the Guard will take into consideration the desires of the units out in the field, because this is, indeed, where we frequently run into difficulty. I do not intend to prolong the debate at this time.

Mr. GOLDWATER. I repeat to my dear friend this is how we write the budgets for the ground and air reserve. The commanders come in and tell us what they have found out they want in the field. Then about this time, about the time we get to page xxi which has the money for the Guard Reserve, all the units start coming in here and telling all of us what they want.

For example, my outfit in Arizona is a tanker outfit. They do not care about F-4's. Do you know what they want? They want us to buy a bunch of C-12 Beachcraft airplanes made in Kansas. I do not think they need them so they are not going to get them. That is about the way it runs.

Mrs. KASSEBAUM. I am sorry to hear that, too.

Mr. TOWER. Mr. President, I ask unanimous consent the order for the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the second-degree amendment of the Senator from Arizona.

The amendment (No. 3274) was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the amendment of the Senator from Kansas, as modified.

The amendment (No. 3273), as modified, was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GOLDWATER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3275

(Purpose: To prohibit use of funds to divert cargo for consolidation or reduction of ports of call for breakbulk shipments on Military Sealift Command Vessels with a Pacific Ocean destination less than the number of ports used on January 1, 1984)

Mr. DENTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. DENTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama [Mr. Denton], for himself and Mr. Heflin, proposes an amendment numbered 3275.

Mr. DENTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 128, between lines 12 and 13, insert the following new section:

RESTRICTION ON DIVERSION OF CARGO CARRIED ON MILITARY SEALIFT COMMAND VESSELS

Sec. . None of the funds appropriated pursuant to an authorization contained in this Act may be used by the Department of Defense to divert cargo on a permanent basis for any consolidation or reduction of the number of ports of call for breakbulk shipments carried on Military Sealift Command vessels with a Pacific Ocean destination which would be fewer than the number of ports of call which were being utilized by such ships on January 1, 1984.

Mr. DENTON. Mr. President, the amendment I introduce is straightforward and involves no increase in obligations or expenditures.

The amendment addresses a problem affecting our national capacity for shipment of goods to support our Armed Forces and national interests overseas, particularly during a period of national emergency.

The amendment states that the Department of Defense may not, on a permanent basis, divert break-bulk cargo, that is, noncontainerized cargo, from ports from which it is now shipped for the purpose of reducing the number of ports below the number in use as of the first of the year.

I have discussed my amendment with other Senators who have an interest in the maintenance of our sealift ability, and its diversification, and I am under the impression that it has the support of the managers.

I thank the Chair.

Mr. NUNN. Mr. President, is the amendment of the Senator pending?

The PRESIDING OFFICER. Yes.

Mr. NUNN. I do not want to interrupt the Senator. Is the Senator finished for a moment?

Mr. DENTON. Yes, I am.

Mr. NUNN. Mr. President, we have been over this and, as I understand it, this is the amendment that was presented, I believe last night, although the time is hard to keep up with under this procedure. But as I understand what the Senator has done, he has scratched out the words "or any other" so that this amendment reads "none of the funds appropriated pursuant to an authorization contained in this act." That would make this provision applicable for 1 year rather than permanently and would not be as broad an application. And he has also eliminated the words "as a temporary test or." That means that it could be a temporary test but not on a permanent basis and we are limiting it to 1 year. Is that the understanding of the Senator?

Mr. DENTON. The Senator is correct as to the wording and as to the intent.

Mr. NUNN. Mr. President, I have no objection to the amendment. I thank the Senator for his cooperation in working this out.

Mr. WARNER. Mr. President, I join with my distinguished colleague from Alabama.

Mr. WARNER. Mr. President, I rise to join the Senator from Alabama in this important amendment.

For 5½ years I served in the Secretariat of the Department of the Navy.

From that experience, I know that the ability of our Nation to mobilize the necessary sealift and port-handling capability to move the vast quantities of war materials to a forward site during a conflict is directly related to the quantity and type of port facilities and personnel dedicated to this activity.

Our capacity to handle break-bulk cargo today is far more limited than those required to effectively support mobilized and deployed forces.

The proposed action by the Department of Defense would serve to further restrict the already limited capabilities of our Nation.

Last week I cosponsored with Senator BYRD a measure related to this issue.

That measure established a Commission on Merchant Marine and Defense to examine our current merchant marine capability and provide recommendations for improving our sealift capacity.

As I noted last week during discussion of the Byrd-Warner amendment, the Joint Chiefs, in their fiscal year 1984 posture statement, emphasized the importance of sealift during a conflict as follows:

> Successful response to global contingencies depends upon sufficient mobility assets to project combat forces rapidly and sustain them in the theater as long as necessary to meet U.S. objectives.
>
> In general, airlift will transport deploying forces during the early days of a crisis until sealift begins to arrive.
>
> These movements will include personnel and equipment to use prepositioned stock.
>
> As the crisis progresses, sealift will provide the vital sustaining power for deployed forces, and will ultimately account for 90 to 95 percent of the total cargo delivered over an extended period of time.

Mr. President, it is obvious that our ability to transport large amounts of material during a conflict will absolutely depend on our sealift capability.

Last week, in discussing sealift, we concentrated primarily on the ship portion of the sealift equation.

Senator DENTON's amendment deals with an equally important aspect of sealift, which is the ability of our port facilities to rapidly handle and load material aboard seagoing vessels.

It makes little sense, in my opinion, to address the question of merchant shipping and defense sealift as required by the Byrd-Warner amendment while DOD is taking actions which will reduce port capability which offset overall sealift.

The amendment offered by Senator DENTON, which I am cosponsoring, would have DOD discontinue the series of actions currently in process that would reduce the capability of at least five U.S. port facilities.

I applaud the actions of the Department of Defense in their efforts to cut costs.

In this case, however, the potential savings which might accrue from consolidating break-bulk cargo operations into a single port are far outweighed by the serious impact such an action would have on mobilization capability.

Mr. President, I commend the distinguished Senator from Alabama and urge my colleagues in the Senate to support this amendment.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I send an amendment to the desk on behalf of myself and Senator MATHIAS and ask for its immediate consideration.

Mr. DENTON. Mr. President, is my amendment pending?

The PRESIDING OFFICER. The amendment of the Senator from Alabama is pending.

Mr. SARBANES. I withhold the amendment.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. I join with Senator DENTON in this amendment. I believe it has been worked out and is agreeable to both sides. I congratulate Senator DENTON. I also thank Congressman JACK EDWARDS, of Mobile, who had some ideas on these matters that have been incorporated into the amendment. I fully support it. I move the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Alabama.

The amendment (No. 3275) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3276

(Purpose: To authorize the conveyance of certain land at the United States Naval Academy to the Naval Academy Athletic Association)

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I call up the amendment on behalf of myself and Senator MATHIAS.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Maryland [Mr. SARBANES] for himself and Mr. MATHIAS, proposes an amendment numbered 3276.

Mr. SARBANES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 218, between lines 7 and 8, insert the following new section:
>
> LAND CONVEYANCE, ANNAPOLIS, MD
>
> SEC. 293. (a) Subject to subsection (b), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey to the Naval Academy Athletic Association, a nonprofit organization located in the State of Maryland (hereinafter in this section referred to as the "Association"), all right, title, and interest of the United States in and to approximately 4.3 acres of unimproved land comprising a portion of the United States Naval Academy, Annapolis, Maryland.
>
> (b) In consideration for the conveyance under subsection (a), the Association shall pay in the United States an amount equal to the appraised fair market value of the property to be conveyed (as determined by the Secretary).
>
> (c) The unimproved land to be conveyed under subsection (a) shall be land that was conveyed by the Association to the United States in 1965. The exact acreage and legal description of the land to be conveyed shall be determined by surveys that are satisfactory to the Secretary. The cost of any such survey shall be borne by the Association.
>
> (d) If the Secretary determines that—
>
> (1) the land conveyed under subsection (a) has not been expeditiously developed by the Association for a use compatible with and in support of the activities of the United States Naval Academy, or
>
> (2) the Association has not so used the land and the improvements on the land for any period of one year or more beginning after the development of the land has been completed,
>
> all right, title, and interest in and to the land, including the improvements on the land, shall revert at no cost to the United States, which shall have the right of immediate entry thereon.
>
> (e) The Secretary may require such additional terms and conditions under this section as he considers appropriate to protect the interests of the United States.

Mr. SARBANES. Mr. President, the amendment which I have offered for myself and my distinguished colleague [Mr. MATHIAS] is one which will transfer a parcel of land at the Naval Academy in Annapolis to the Naval Academy Athletic Association, a nonprofit corporation whose sole function is support of the Academy's programs. The purpose of this transfer is to facilitate construction of facilities in support of the Naval Academy facilities which will be financed by the Athletic Association.

This particular piece of real estate was originally part of a larger tract of land comprising 16.9 acres of unimproved land which was sold to the Navy by the association in 1965. The land covered in this amendment is a 4.3-acre portion of this original lot which will be sold back to the association at a fair market value to be determined by the Secretary of the Navy.

This amendment will involve no cost to the Government. Indeed, it will represent a net gain.

Mr. MATHIAS. Mr. President, the purpose of the amendment offered by my colleague from Maryland and me is to authorize the Secretary of the Navy to convey roughly 4.3 acres of unimproved land currently part of the Naval Academy to the Naval Academy Athletic Association at fair market value. The NAAA is a not-for-profit organization that promotes and supports the Academy and its teams. The association is the original owner of the property to be sold and plans to construct a motel for official visitors and tourists.

This sale meets both the objectives of optimum use of the property for visitor housing and full, fair return to the Government for the land. I understand that the proposed project meets with the approval of local officials and community leaders and would be constructed in accordance with local zoning and preservation regulations.

This amendment has been included in the other body's version of the fiscal year 1985 military construction authorization bill.

Mr. NUNN. Will the Senator yield for a brief question? There have been questions raised directly from the Army as to whether this amendment, if it passed, might be of assistance and aid to the Navy football team.

Mr. SARBANES. I am not sure that amendment will provide the assistance that is needed.

Mr. NUNN. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland.

The amendment (No. 3276) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3277

(Purpose: To authorize $6,800,000 for military construction at the Naval Submarine School, New London, CT)

Mr. WEICKER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Connecticut (Mr. WEICKER) proposes an amendment numbered 3277.

Mr. WEICKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 157, between lines 22 and 23, insert the following:

Naval Submarine School, New London, Connecticut, $6,800,000.".

On page 185, line 20, strike out "$2,351,581,000" and insert in lieu thereof "$2,358,381,000".

On page 185, line 23, strike out "$1,161,555,000" and insert in lieu thereof "$1,168,355,000".

On page 5, line 2, strike the numeral and insert "12,191,400,000".

Mr. WEICKER. Mr. President, the purpose of my amendment is to authorize $6.8 million to build a new classroom facility to house the Basic Enlisted Submarine School at the Naval Submarine Base New London, in Groton, CT.

While not requested in the budget and not approved by the committee, the project has been authorized by the House. The Navy has had a valid, documented need for this project since December 1976. There is general agreement that the project is fully justified in every respect. It has had to be deferred in the past because of a need to fund higher priority projects elsewhere. We have reached a point where further dalay is no longer reasonable. The time has come to authorize the project.

The conglomeration of buildings that comprise the school today are in terrible condition, having been constructed in 1940-44—some as temporary buildings. Though not officially condemned, these buildings are unfit for use. There are structural deficiencies, uncorrectable fire hazards, which have been repeatedly cited by fire inspectors, there is no air-conditioning, and there are no effective barriers between classrooms, and an overall shortage of space. If you could see these buildings, you would be appalled.

The school is the only place in the Navy where prospective submariners are given a preliminary indoctrination on the inner workings and complexities of the nuclear-powered submarine. In the course, which is 6 weeks in length, they are taught the fundamentals of how to operate a submarine and are also screened for suitability for submarine duty. Of the 5,000 students who are trained there each year, more than 50 percent report directly to a submarine for duty. The number trained at the school is projected to increase to an annual total of 6,000 by the late 1980's, rendering the need for new facilities all the more compelling. Even if project were approved today, the new building would not be ready for occupancy until 1986.

The most important function of the school is to instill the highest performance standards possible for those men about to enter the submarine service. The dilapidated state of these buildings does not facilitate the accomplishment of that goal. In my opinion, it is wrong to spend $750 million to buy one SSN-688 class submarine and then fail to provide adequate facilities to train the men who must operate it. This is just one more example of how the Department of Defense fails to strike a proper balance between procurement and readiness or operation and support programs.

In line with the chairman's policy regarding amendments, I am proposing an offsetting reduction in the Trident submarine program, for which the committee is recommending an authorization of $1.5 billion. Due to anticipated contract savings, a reduction of $6.8 million can be easily accommodated in a program of this size with no adverse effects whatsoever.

As you all know, I have consistently been in favor of cutting the defense budget where such cuts eliminate wasteful and unnecessary programs. This is not the case with the Basic Enlisted Submarine School. The House has authorized two additional projects at the Naval Submarine Base, New London, that were not requested in the budget. While they may be justified, I am asking that only one—the most important one—be authorized.

Mr. President, I understand that as a result of discussions with the floor managers of the bill both sides are willing to agree with this amendment. This is a noncontroversial amendment, and I urge its adoption.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, before the Senator made his excellent presentation, I had serious reservations about the amendment. But, having heard the persuasive argument and having been briefed by staff, and having also talked to the majority and knowing the Senator from Connecticut and his diligent and thorough work, I will accept the amendment.

Mr. WEICKER. I thank my distinguished friend.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment (No. 3277) was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3278

Mr. WILSON. Mr. President, I have an amendment that has been cleared on both sides. I send it to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 3278.

Mr. WILSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, line 3, insert after the word "Defense" the following: "and of which $5,000,000 is authorized only for the purpose of adapting Free Electron Laser technology to medical applications and medical research. None of the $5,000,000 authorized for the purpose of adapting Free Electron Laser Technology shall be taken from amounts authorized for appropriations in this Act for basic research and exploratory development."

Mr. WILSON. Mr. President, this amendment seeks to fence $5 million from the roughly $4.5 billion that is allocated in the defense authorization bill for research by the defense agencies to promote a medical application of free electron laser research. Free electron laser is a laser that will selectively destroy human tissue, permitting removal of unwanted tissue, stop internal bleeding, and modify abnormal tissue without affecting adjacent normal tissue.

The great advantage of the free electron laser is that its wavelength can be tuned to the absorption of almost any animal tissue, thus theoretically allowing medical operations previously unobtainable.

We would safeguard basic technology research, so that this $5 million would not affect that. This represents an obvious civilian benefit from defense research.

This amendment has been cleared on both sides.

Mr. TOWER. Mr. President, I am perfectly prepared to accept the amendment of the Senator from California.

Mr. NUNN. Mr. President, I have talked to the Senator from California about his amendment. We have looked into it.

It was brought up in committee, and it was delayed so that we could get further information on it on both sides.

Former Senator Curtis of Nebraska also spoke to me about this. He has been involved in this. It does have significant potential for the purpose of medical research, and I recommend that the amendment be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3278) was agreed to.

Mr. WILSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3279

(Purpose: To insure that the rate of hazardous duty incentive pay for enlisted crewmember flight pay is equitable with such pay for non-crewmember duty)

Mr. TOWER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Texas (Mr. TOWER) proposes an amendment number 3279.

Mr. TOWER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out lines (1) through (2) on page 39, and insert in lieu thereof the following:

(c) The table at the end of section 301(b) of title 37, United States Code, is amended to read as follows:

"Pay grade	Years of service computed under section 205—						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E-9	$131	$131	$131	$131	$131	$131	$131
E-8	131	131	131	131	131	131	131
E-7	110	110	110	110	113	119	131
E-6	110	110	110	110	110	113	119
E-5	110	110	110	110	110	110	113
E-4	110	110	110	110	110	110	110
E-3	110	110	110	110	110	110	110
E-2	110	110	110	110	110	110	110
E-1	110	110	110	110	110	110	110
E-4 under 4 months	110	110	110	110	110	110	110
Aviation cadets	110	110	110	110	110	110	110

"Pay grade	Years of service computed under section 205—						
	Over 12	Over 14	Over 16	Over 18	Over 22	Over 26	Over 30
E-9	$131	$131	$131	$131	$131	$131	$131
E-8	131	131	131	131	131	131	131
E-7	131	131	131	131	131	131	131
E-6	119	125	125	125	125	125	125
E-5	119	119	119	119	119	119	119
E-4	110	110	110	110	110	110	110
E-3	110	110	110	110	110	110	110
E-2	110	110	110	110	110	110	110
E-1	110	110	110	110	110	110	110".

(d) The amendments made by this section shall apply to duty performed on or after October 1, 1984.

Mr. TOWER. Mr. President, my amendment is designed to avoid a situation, which if uncorrected, would result in an unacceptable difference in the rates of hazardous duty incentive pay for certain enlisted personnel participating frequently and regularly in aerial flight.

Included in the bill are provisions that elevate the rate for hazardous duty incentive pay for nine types of hazardous duty performed by enlisted members to $110 a month, the same rate payable to officers who perform such duty. One of those nine types of duties is the frequent and regular participation in aerial flight as a noncrewmember.

Hazardous duty incentive pay is also paid to enlisted members who perform aerial flight as crewmembers. That form of hazardous duty is compensated at rates based on grade and years of service, rather than at a flat rate.

Because of the increases proposed for other hazardous duties, a situation would arise in which enlisted members performing flight duty as crewmembers would be paid at a rate less than those flying as noncrewmembers. The Air Force has advised that this could affect all crewmembers in pay grades E-4 and below and some in grades E-5 and E-6, and that this inequity could create severe morale problems among its flying personnel.

Therefore, my amendment would increase the rate of hazardous duty incentive pay for enlisted crewmember flight duty to a minimum of $110 a month, the same amount paid to enlisted noncrewmembers performing flight duty.

Mr. NUNN. Mr. President, I agree with the assessment of the Senator from Texas on this matter. It is an inequity that I think he is correcting with his amendment, and I recommend its approval.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3279) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3280

(Purpose: To extend the time by which the report of the commission established by the Military Justice Act of 1983 must be forwarded to the Committee on Armed Services of the Senate and House of Representatives)

Mr. TOWER. Mr. President, I call up my amendment which is at the desk.

The **PRESIDING OFFICER**. The amendment will be stated.

The bill clerk read as follows:

The Senator from Texas [Mr. TOWER] proposes an amendment numbered 3280.

Mr. TOWER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

At the end of Part I of title I of the bill, insert the following new section:

SEC. . Section 9(b)(4) of the Military Justice Act of 1983 (Public Law 98-209, 97 Stat. 1393) is amended by striking out "first day of the ninth calendar month" and inserting in lieu thereof "fifteenth day of the twelfth calendar month".

Mr. TOWER. Mr. President, the Military Justice Act of 1983 required the Secretary of Defense to establish a nine-member commission to study judge-alone sentencing in noncapital cases, suspension of sentences by military judges, the confinement powers of special courts-martial, tenure of military judges, and the retirement system of the Court of Military Appeals. The act requires the report to be submitted not later than September 1, 1984. The Commission, which by law includes three experts from the private sector, has been working diligently on this study. As part of its analysis, the Commission has designed a detailed survey on these issues to be completed by counsel, judges, and commanders in the field. The initial expectation was that the survey could be completed and tabulated in July. However, it has now been determined that the results may not be completed until mid-September. Although the Commission could complete its work without the survey, the quality and utility of the study would be enhanced considerably by inclusion of this data. The proposed amendment would move the deadline to December 15, 1984.

Mr. NUNN. Mr. President, I have no objection to the amendment.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment.

The amendment (No. 3280) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3281

(Purpose: to make technical corrections in part J of title I of the bill relating to the codification of certain recurring provisions of law)

Mr. TOWER. Mr. President, I send to the desk another amendment.

The **PRESIDING OFFICER**. The amendment will be stated.

The bill clerk read as follows:

The Senator from Texas [Mr. TOWER] proposes an amendment numbered 3281.

Mr. TOWER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection it is so ordered.

The amendment is as follows:

On page 128, line 19, strike out "issue of" and insert in lieu thereof "the issuance of authorized".

On page 128, line 22, strike out "authorized issues of articles" and insert in lieu thereof "issue of authorized articles".

On page 129, line 20, strike out "authorized issue articles" and insert in lieu thereof "issue of authorized articles".

On page 130, strike out line 22 and all that follows through line 5 on page 131 and insert in lieu thereof the following:

"Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

"(1) the informed consent of the subject is obtained in advance; or

"(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

On page 131, beginning on line 25, strike out "any member of the armed forces or civilian employee of the Department of Defense while such member or employee" and insert in lieu thereof "a civilian employee of the Department of Defense while such employee".

On page 132, beginning on line 6, strike out "member, employee," and insert in lieu thereof "employee".

On page 133, line 10, strike out "enlistments" and insert in lieu thereof "enlistment".

On page 134, line 16, strike out "personnel" and insert in lieu thereof "persons".

On page 134, beginning on line 18, strike out "such care" and all that follows through line 19 and insert the following: "such care (other than elective private treatment) in private facilities for members of the armed forces".

On page 142, beginning on line 12, strike out "Secretary of the Army, Navy, or Air Force" and insert in lieu thereof "Secretary of the military department concerned".

On page 145, line 13, strike out "tips," and insert in lieu thereof "tips; or".

On page 145, line 15, strike out "706, 707, and 716" and insert in lieu thereof "706 and 707".

On page 146, after line 3, insert the following:

(d) Section 809 of the Department of Defense Appropriation Authorization Act, 1979 (10 U.S.C. note), is repealed.

Mr. TOWER. Mr. President, this is a technical amendment to correct several drafting errors in part J of title I of the bill which have been identified by the legislative counsel.

I believe that the staff of the floor manager for the minority have seen these amendments and I am aware of no objections, I therefore move the adoption of the amendment.

Mr. NUNN. Mr. President, we have no objection to the technical amendments.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment.

The amendment (No. 3281) was agreed to.

AMENDMENT NO. 3282

(Purpose: To correct a drafting error in section 142 of title I of the bill)

Mr. TOWER. Mr. President, I call up another technical amendment which is at the desk.

The **PRESIDING OFFICER**. The amendment will be stated.

The bill clerk read as follows:

The Senator from Texas [Mr. TOWER] proposes an amendment numbered 3282.

Mr. TOWER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

On page 27, lines 1 and 3, strike out "1985" both times it appears and insert in lieu thereof "1984"

Mr. TOWER. Mr. President, this is a technical amendment to correct a drafting error in section 142, title I of the bill which has been identified by the legislative counsel.

I believe that the staff of the floor manager for the minority have seen this amendment and I am aware of no objections. I therefore move the adoption of the amendment.

Mr. NUNN. Mr. President, there is no objection.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment.

The amendment (No. 3282) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3283

(Purpose: To promote the use of methanol by the Department of the Army)

Mr. LEVIN. Mr. President, I send an amendment to the desk.

The **PRESIDING OFFICER**. The amendment will be stated.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 3283.

Mr. LEVIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

On line 10 on page 11 insert the following new section:

(e)(1) Of the funds authorized to be appropriated by subsection (a) for the Army, the sum of $1,300,000 shall be available only for—

(A) the purchase of new methanol cars;

(B) establishing the reliability and durability of such vehicles in laboratory and fleet tests;

(C) testing a percentage of the methanol fleet in cold weather environments and;

(D) resolving related support functions for the safe and efficient storage, distribution, and the use of neat methanol fuel for such vehicles.

(2) The Secretary of the Army shall submit a written report to the Committee on Armed Services of the Senate and the House of Representatives not later than September 30, 1985, on the progress of the methanol fuel program referred to in paragraph (1).

None of the funds authorized pursuant to section (e) above shall be taken from amounts authorized by appropriations in this Act for basic research and exploratory development.

Mr. LEVIN. Mr. President, this is essentially the same amendment as the Senate adopted 2 years ago but which we dropped in conference.

The amendment authorizes $1.3 million within the Army's $4.6 billion research and development account in order to test a methanol car fleet.

It requires a report by the Army on the methanol program no later than September 30, 1985.

The Department of Defense is the single largest energy consumer in the United States, and it is appropriate that it actively pursue the research and development of methanol in a car fleet.

The research and development effort authorized in my amendment will not only benefit the armed services, but will also benefit other Government agencies who have methanol R&D programs.

My amendment authorizes $1.3 million for research and development of methanol within the Department of the Army. The funds should be used for the purchase of new methanol cars and testing of the fleet. Although my amendment does not specify all of the necessary research needed on methanol, it does specify that the Army test a percentage of the methanol fleet in cold weather bases, test the reliability and durability of the fleet and develop storage and distribution plans for the use of methanol. In addition, the Secretary of the Army is required to submit a progress report to the Senate Armed Services Committee and the House of Representatives no later than September 30, 1985.

Encouraging the use of methanol in the Department of Defense makes good sense. Secure fuel availability is a preeminent military concern in wartime, and the variety of potential feedstocks may make methanol available when oil-based fuels are not. Furthermore, there may be additional military applications for methanol, other than its automobile fleet. The potential to use methanol in DOD should be explored in light of the vulnerability to national energy supply disruptions of oil.

One of the real needs in the further development of methanol use, is extensive testing in cold weather. Although small demonstration projects in cold weather have been conducted in Canada and Norway, these are not well documented in technical literature.

Another area which should be investigated is the distribution and storage of methanol. In other words, the Army should devise a plan to make the use of methanol viable. Plans must be made on where and how many methanol pumps should be installed by the Army. There is also question whether methanol should be shipped through interstate pipelines.

I offered a similar amendment in 1982, which was accepted in committee and passed as part of the fiscal 1983 Defense authorization. The funding level approved then was approximately the same as in my amendment today. The need for such a program remains, and I urge the passage of the amendment.

I understand that it has been cleared on both sides of the aisle.

Mr. President, I ask unanimous consent to have pertinent material printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

PROVISIONS OF LEVIN METHANOL AMENDMENT

1. Authorizes $1.3 million in the Army R&D program for the purchase of new methanol cars and R&D on methanol by the Army.
2. Requires the Army to test a percentage of the methanol fleet in cold weather bases.
3. Requires the Army to specifically analyze the delivery, storage, distribution and dispensing requirements for utilization of neat methanol in its fleet.
4. Requires the Secretary of the Army to submit a written report to the Committee on Armed Services of the Senate and the House of Representatives on the progress of the Army's R&D methanol program no later than September 30, 1985.

Mr. TOWER. Mr. President, there is no objection to the amendment on this side.

Mr. DIXON. Mr. President, this side has no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3283) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DIXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3284

(Purpose: To limit the contracting out of certain core logistics and readiness functions)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Delaware [Mr. Biden], for Mr. Hollings, proposes an amendment numbered 3284.

Mr. BIDEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of Part I—General Provisions, page 128, line 13, add the following new section:

CONTRACTING-OUT CORE LOGISTICS ACTIVITIES

Sec. (a)(1) It is essential for the national defense that Department of Defense activities maintain a logistics and readiness capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency' situations, and other emergency requirements.

(2) The Secretary of Defense shall identify those logistics activities that are necessary to maintain the logistics capability described in paragraph (1).

(b)(1) Except as provided in paragraph (2), performance of a logistics activity identified by the Secretary of Defense under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as "OMB Circular A-76").

(2) The Secretary of Defense may waive paragraph (1) in the case of any logistics activity and provide that performance of such activity shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary of Defense and shall be based on a determination by the Secretary that Government performance of the activity is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of a logistics activity identified under subsection (a)(2) is no longer required for national defense reasons.

(3) Any waiver under paragraph (2) will be identified by the Secretary of Defense in a report to the Committees on Armed Services of the Senate and House of Representatives.

(c) Identification of logistics activities that are necessary to maintain the logistics capability described in subsection (a)(1) shall be completed, and a report describing those activities (including a detailed specification or listing) shall be submitted to the Committees on Armed Services of the Senate and House of Representatives, not later than April 1, 1985.

Mr. BIDEN. Mr. President, I offer this amendment on behalf of the Senator from South Carolina [Mr. Hollings].

I understand from Senator Hollings' staff that this amendment has been cleared on both sides of the aisle.

Mr. President, this amendment is offered on contracting out because Senator Hollings believes it may settle once and for all much of the controversy surrounding this tumultuous issue.

Mr. HOLLINGS. Mr. President, I am very pleased to offer this amendment on contracting out because I believe it may settle once and for all much of the controversy surrounding this tumultuous issue.

I want to point out to my colleagues that this is not an anticontracting out amendment.

This amendment recognizes the need for the Government to have the ability to perform its functions in the most effective and least costly manner—and this will often involve the contracting out of jobs to private industry. What I am proposing is very simple and straightforward. My amendment requires that the DOD identify those activities that are considered critical logistics and readiness tasks in fulfilling the military mission of the activity involved.

The key words are critical logistics and readiness tasks and mission essential activities. These are the basic jobs that should be under the direct control of the DOD because they are absolutely necessary for mobilization programs, national defense contingency situations, and other emergency requirements.

All of us are besieged from both sides of the contracting out issue. Private industry would like many Government jobs open to contracting. Government unions would like to prevent contracting out. I believe there is a middle ground that we in Congress and the Executive can agree on.

Mr. President, this amendment would require the Secretary of Defense to prepare a list of key logistics and readiness functions and submit this list to the Armed Services Committee of each House by April 1, 1985. The list would then constitute those defense functions that would not be contracted out under the precedures of OMB Circular A-76 precluding such contracting when not in the interest of national security.

This amendment is consistent with ongoing efforts within the DOD to identify logistics functions that would be exempt from A-76 review. I believe that the amendment is a responsible one, and I thank the chairman of the committee for his willingness in working with me on this matter.

I would also urge the chairman of the committee to retain the Senate language in conference instead of accepting the very broad provisions of the House bill prohibiting contracting out. The House bill includes a moratorium on contracting out of core logistics functions that is written in a way that would virtually prohibit all contracting out. I believe the approach embodied in my amendment is much more preferable, and I would ask the floor managers to resist changes to the Senate language. This includes opposition to (1) the moratorium provision—which I understand the House is willing to drop and (2) the House provision for a 30-day waiting period after submission to the Congress before a waiver allowing contracting out of previously prohibited activities takes effect.

In my view, we should not go beyond the provisions of my amendment, and I would hope the chairman of the committee could assure that.

Mr. BIDEN. Mr. President, I move the amendment.

The PRESIDING OFFICER. Is there objection to the amendment?

Mr. DIXON. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Delaware.

The amendment (No. 3284) was agreed to.

Mr. NUNN. Mr. President, I thank the Chair.

AMENDMENT NO. 3285

(Purpose: To limit the obligation of funds for the high mobility multipurpose wheeled vehicle pending the completion of follow-on evaluation testing)

Mr. ROTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Delaware [Mr. ROTH] proposes an amendment numbered 3285.

Mr. ROTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, after line 16, insert the following new section:

HIGH MOBILITY MULTIPURPOSE WHEELED VEHICLE

(a) None of the funds appropriated pursuant to the authorization of appropriations in section 101 may be obligated for the high mobility multipurpose wheeled vehicle until—

(1) follow-on evaluation testing of such vehicle has been completed as currently scheduled;

(2) the Secretary of the Army has reported to the appropriate committees of the Congress the results of such testing and based on such test results has provided written assurance to the committees that continued production of such vehicle is in the national interest; and

(3) a period of at least 10 days has elapsed after the day on which the committees have received the report and the written assurance referred to in subsection (a)(2) above.

(b) The report required by subsection (a) shall—

(1) include a comprehensive description of the actions taken or planned in response to the results of such testing,

(2) identify areas, if any, where such testing indicates that such vehicle does not meet the reliability and maintainability requirements in the contract for such vehicles, and

(3) indicate the action that will be taken with regard to those areas identified in paragraph (2).

Mr. ROTH. Mr. President, this amendment has a simple but important purpose. It would prohibit the obligation of fiscal year 1985 funds for the production of the high mobility multipurpose wheeled vehicle or HMMWV until follow-on evaluation tests on the vehicle are completed and evaluated. In addition, it would require the Secretary of the Army to report to the Congress on the results of the tests, on what will be done to correct the problems and deficiencies in the weapon uncovered during the tests and would require as well the advice in writing of the Secretary of the Army that the production of the HMMWV is in the national interest. Congress would have 10 days to review the Secretary's report before the Army could obligate fiscal year 1985 funds.

Mr. President, it is critically important that weapons being developed by the Defense Department are thoroughly and objectively tested. It is just as important that the results of those tests are used in making the modifications necessary to ensure that the weapons we produce and buy are as effective when fielded as possible.

There are two basic types of testing used in defense weapon programs: Development testing, used to determine whether or not a weapon will satisfy engineering standards and contractual specifications and operational testing normally conducted under simulated battefield conditions to determine whether or not a weapon will work effectively to protect our troops once deployed.

Unfortunately, the operational testing conducted on many weapons is inadequate, unrealistic or limited and test results in some instances are ignored. In hearings I convened in my Committee on Governmental Affairs last year, we heard from the General Accounting Office that the operational testing was so inadequate in some cases that weapons are being deployed without assurance that they will meet performance expectations.

Mr. President, my aim in offering this amendment is to ensure that the Army carefully considers and uses the operational test results on the HUMMWV before committing substantial amounts of fiscal year 1985 production funds on the vehicle. The evidence indicates that this four-wheel-drive truck, which is being built by the Army for its use as well as for adaptation by the Air Force and Marines, appears to be a generally capable machine but it has experienced numerous failures during operational tests and has had significant mechanical problems in a combat environment.

Despite the evidence developed during the testing process that the weapon will not yet perform its mission reliably and successfully, the

Army has already awarded a $1.2 billion multiyear contract for the production of 55,000 HMMWV's and plans to authorize full scale production to begin shortly. This is the largest tactical wheeled vehicle contract ever awarded by the Army. We should do everything we can to ensure that the vehicle will work effectively when fielded before we spend too much money producing it. That is the aim of my amendment.

Mr. President, I believe the Congress must show the Defense Department we are serious about preventing the expenditure of the taxpayers' dollars on inadequately proven weapons. The all too typical pattern in defense weapon programs is for operational tests to be conducted poorly or under substantially compressed time schedules, for test results to be ignored and for weapons to be produced despite poor performance in testing and sometimes serious reliability or operational problems. All too often, we field weapons even though we know they may be ineffective and may cost substantial amounts of money to retrofit and redesign once they are deployed.

I believe the HMMWV presently has serious reliability problems. Initial operational tests showed these problems. Yet, in the face of poor operational test results, the Army awarded a multiyear contract for the HMMWV and it will begin full-scale production in the not too distant future.

The GAO just completed a review of the HMMWV which I have released. The GAO states in its report that the Army's decision to approve production of the HMMWV despite its poor performance in operational testing was a breakdown of the acquisition process. We should not perpetuate this breakdown by allowing the obligation of fiscal year 1985 production money before the test results on the HMMWV have been gathered and analyzed.

One of the problems GAO found was that the HMMWV has not received the high level attention such a large program deserves. The Army designated the program nonmajor instead of major as is normally required for procurement programs whose estimated costs exceed $1 billion. By doing this, the program never received high level review in the Army, or in the Office of the Secretary of Defense. To quote from the GAO report on the HMMWV:

> So far as we could determine, it was not until after the production contract was awarded (for HMMWV) that the low reliability scores achieved in operational testing on the weapon became known at the higher levels in the Office of the Secretary of Defense and the Department of the Army.

Mr. President, in the operational tests that were conducted last year, the HMMWV fell short by a wide margin of achieving reliability requirements due to various hardware malfunctions. The vehicle achieved an average of only 367 miles between mission failures versus a requirement of 1,300. Despite the recommendation of Marine Corps evaluators in February 1983 that further operational tests be conducted before the Defense Department committed major amounts of production dollars, the advice was ignored. The Army in March 1983 awarded a 5-year contract for 55,000 vehicles, each one to cost between $20,000 and $30,000.

Mr. President, I believe the HMMWV is a significant and important weapon program. All I am saying is that before we commit $1.2 billion to its production, let's do everything we can to get it right.

The real problems with the HMMWV have surfaced during the operational tests. More tests are tentatively scheduled for this fall. My amendment simply ensures that the Army will conduct operational tests on the HMMWV, which it only reluctantly agreed to schedule, and show us what it has done to make the HMMWV work as a result of those tests, before we spend fiscal year 1985 funds on the vehicle.

My amendment will allow us to take advantage of the production delays in the HMMWV to ensure that it is thoroughly tested and made to work as well as possible before we find ourselves with hundreds or even thousands of unreliable vehicles on our hands.

Mr. President, I urge the adoption of my amendment and ask my colleagues for their support.

Mr. ROTH. Mr. President, this amendment has a simple but important purpose.

The PRESIDING OFFICER. Is there further discussion of the amendment?

Mr. QUAYLE. Mr. President, will the Senator yield for a question?

Mr. ROTH. I am happy to yield.

Mr. QUAYLE. I wonder if the Senator could tell us has he been recently briefed by the Army on where the HMMWV stands in the latest position of this program? Has the Senator been briefed by the Department of the Army, which is the contracting service?

Mr. ROTH. I have been briefed by the contractor and by the Army staff.

Mr. QUAYLE. You have been briefed by the Army?

Mr. ROTH. By the contractor, not by the Army.

Mr. QUAYLE. Not by the Army. The Army is the contracting service, but you have not been briefed by the Army or the contracting officer or anybody else that is running the program, is that correct?

Mr. ROTH. I am saying to the distinguished Senator that we have had this matter reviewed by the General Accounting Office, the watchdog for the Congress. It is their report that was just issued. They point out that there is a lack of reliability, that this particular vehicle does not meet the requirements as far as maintenance is concerned. It is supposed to run without maintenance for over 320 miles when in fact it only runs 82 miles. That means in effect if you went from here to New York, it would require maintenance almost three times. It is this reliability that is the problem. And of course we are relying upon the work of the General Accounting Office, which is the watchdog for the Congress.

Mr. QUAYLE. I wonder if the Senator might tell me at what time did that test run. I do not think it was 82 miles. I think you meant the average of 356 miles. What time was that? Was that last month, 2 months ago, 2 years ago?

Mr. ROTH. Let me point out, I mean 82 miles.

Mr. QUAYLE. Complete failures; is that correct?

Mr. ROTH. No; that is not correct. There are two different categories involved here. One is unscheduled maintenance test. This vehicle is supposed to operate 320 miles without requiring an unscheduled maintenance action. Instead, during the operational test, it only averaged 82 miles.

There is what is known as the mission failure. In that case, it was supposed to run 1,300 miles without mission failure, but in fact it only ran 367 miles.

Mr. QUAYLE. I wonder if the Senator knows that this deficiency that is referred to has been cleared up; that the Department of the Army now certifies this has been cleared up. I wonder if the Senator also knows that a number of other deficiencies they found in the operational testing and development have also been cleared up?

Mr. ROTH. Unfortunately, I will have to disagree with my distinguished colleague. That is not the fact. As a matter of fact, there are scheduled now two different additional sets of tests. They propose, I think it is in August, what they call the initial production test. That is supposed to be a test that runs 7 months. And then there is what is known as the follow-on operational testing. That will begin in September. That is the operational test that will show whether or not the vehicle is reliable, as required under the specifications.

Mr. QUAYLE. If the Senator would further yield, I was certainly aware that the full evaluation tests must go forward; that, as a matter of fact, that they are scheduled to do this. They are scheduled to do this this summer and this fall. But I also want to know, How old is the data that the GAO study is predicated upon?

Mr. ROTH. I am advised that the General Accounting Office checked just within the last 2 weeks with the contracting officer for the Army and reconfirmed its data.

Mr. QUAYLE. I might add, according to the information we have, the report of the GAO is based on data that is 2 years old. This comes from information that we have.

Furthermore, the Senator referred to in his press release that on this testing work on the HMMWV we had a goal of 1,300 miles between failures and that during the testing the problems arose which resulted in obtaining only 356 miles between failures. Tests now have been made and the latest estimates are over 5,000 miles without a failure.

Given that statistic, I wonder if the Senator might agree they certainly have improved this HMMWV that he does not think is a very good piece of equipment.

Mr. ROTH. Well, let me answer the Senator. First of all, it is important to distinguish from the so-called developmental test and the so-called operational test. It is true that the vehicle in its developmental test has met a number of requirements. That was true when the five vehicles were tested over 2 years ago.

But what we are talking about is not developmental tests, but operational tests. An operational test is supposed to test the weapon under simulated wartime conditions to ensure that the weapon will do what it is supposed to do in the field.

The fact is that this weapon is not seen as reliable. It is not seen as reliable because of the reasons I have already spelled out. It does not meet the maintenance requirements. It does not meet the so-called mission failure requirements. That is the reason further tests are going to be conducted this fall.

What I am suggesting is that it is important that, before we proceed with large-scale production, we ensure that the operational tests are successful. It is important to understand—and I would call this to the attention of my colleagues—that the failures that result in the operational tests must be corrected at the cost of the Government. It is that that I want to prevent. We think it is important, before we go into large-scale production, that we have ironed out or eliminated these problems, so that the retrofitting is not at Government expense.

The Government itself admits that further tests are required. As a matter of fact, they are engaged in renegotiating the terms of the contract and the production.

Basically, I would point out to my distinguished colleague that what we are proposing here is very reasonable. It has been worked out. We have been in close contact with various members of the military as well as the General Accounting Office. All we are proposing is that the operational tests proceed and, upon their completion, the Army report to the Congress, to the Armed Services Committees of the House and Senate, the results of those operational tests to tell, what is being done to eliminate any problems that may be uncovered, and to give the Congress 10 days to react.

This will in no way interrupt or interfere with the process. But I think it is about time that we make clear to the military that not only are we concerned about schedules, and about getting into production, but we want to do it on a cost-effective basis.

Mr. TOWER. Will the Senator yield?

Mr. ROTH. Yes; I yield.

Mr. TOWER. I suggest what the Senator is attempting to do here will add to the cost. This is a good contract. GAO is not always 100 percent right.

Let me point out that under the terms of this contract there will be extensive testing conducted on 17 of the first production line vehicles and the contractor is required, by the terms of the contract and at his own expense, to fix any defects where the vehicle does not meet the reliability and maintainability requirements in the contract.

It seems to me the Army has done everything right in this particular procurement. They did not try to reinvent the jeep. They used existing technology. They used the leverage of competition to get a favorable price and wrote the best possible protection for the Government in the contract.

If the Senator insists on his amendment and it passes, it means an abrogation of that contract and one that will cost us more.

Mr. ROTH. I would just answer the distinguished chairman that I have to respectfully disagree. First of all, I would point out that the U.S. Marine Corps itself recommended that the Army not proceed with production. In its report of last year, February 7, 1983, it specifically says in its recommendations:

> It is recommended that (a) no HMMWV candidate as tested be approved for service use; (b) that the Army conduct operational training of the system prior to the commitment of major quantities of production dollars.

I have to say that to proceed now without further testing is in conflict with what the Under Secretatry of the Army himself has said.

Mr. QUAYLE. Will the Senator yield at that point?

Mr. ROTH. No; I will not yield at that point.

Mr. QUAYLE. Well, the Senator is just wrong.

Mr. ROTH. I have the floor.

As I was saying, the Under Secretary of the Army has insisted that further tests be made because he is concerned about the reliability of the weapon.

All we are asking here is to make certain that the tests are carried out under operational conditions, that the results of those tests be analyzed, and that a report be made to the Congress through the Armed Services Committee of the House and Senate, and that they not be permitted to proceed until this is accomplished. I think it is an important message to give to the military, that they must follow their own procedures and regulations, which has not been the case with the HMMWV weapon.

I yield the floor.

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Mr. President, I rise to take strong exception to this amendment. The fact is that we are going to go ahead, have the testing and evaluation on the HMMWV, and further testing and evaluation later on this summer and this fall as scheduled.

So anyone that says we are not going to have other developmental testing and operations is simply not stating the record accurately. Furthermore, I would like to insert in the RECORD, Mr. President, that all of the deficiences that were pointed out in that initial operation and testing have either been corrected or will be corrected. I ask that these corrections be inserted in the RECORD at this particular time.

There being no objection, the corrections were ordered to be printed in the RECORD, as follows:

DT/OT problem	Correction	Shakedown status
Tires, wheels, runflats:		
Flat tires	Add Nylon breaker plies to tread for a stronger tire, reduce runflat device width	Four tires flat in 20,000 vehicle miles vs. 23.5 per 20,000 miles during DT II.
Cracked wheel disc	Larger diameter drive hub, thicker wheel material	No failures experienced during shakedown testing.
Deformed, cracked clamp ring	Clamp ring material thickness changed from .110" to .180"	Do.
Loose, missing rim studs/nuts	Changed studs from grade 5 to grade 7	Do.
Incandescent lamps: Inoperative side marker lamps.	Relocate side marker lamp assembly mounting	Bulb life did not improve with a revised mounting. A new configuration bulb is currently being evaluated on extended shakedown vehicles. Preliminary results indicate an improvement in bulb life.

DT/OT problem	Correction	Shakedown status
Brake pads: Excessively worn	Improved caliper with increased brake pad to guide rail clearance, revised linkage. Established post-operation cleaning procedure for extreme mud conditions.	Improvement in pad life has been experienced during shakedown testing. Alternate pad friction materials are also being evaluated for further improvements.
Shock absorbers:		
Leaking	Shock absorber mechanical jounce stop revised to prevent seal rupture	Two shock absorbers developed leaks during extended shakedown testing. This represents an improvement in shock absorber consumption from the DT II rate of approx. 5 per 20,000 vehicle miles to 1 per 20,000 miles at shakedown testing. It should be noted that the shakedown shock leaks were not the result of impacts with the mechanical jounce stop.
Separated lower mount stems, cracked mount cushions.	Stem-type lower mount revised to eye-type	No failures experienced during shakedown testing.
Separated upper mount stem connection.	Incorporation of eye-type mount at both ends to accommodate suspension angularity during articulation.	Do.
Accessory drive pulleys and belts: Excessively worn aluminum pulleys and belts.	Revised pulley coating to preserve use of aluminum to attain light weight configuration	No incidents of pulley or belt wear have occurred during shakedown testing.
Mirrors:		
Cracked mirror arms	Stronger arm	No failures experienced during shakedown testing.
Loose pivots	Revised mounting, prevailing torque nuts on pivot points	Occasional minor loosening has occurred during shakedown testing and is being corrected by the crew during scheduled services.
Engine performance: Air contamination of fuel system.	Reconfigured fuel system	No failures experienced during shakedown testing.
Hood, hood latches and supports:		
Cracked hood	Production material to be stronger than prototype material	Production material just became available and is on extended shakedown testing.
Loose, broken latches	Revised latch mounting, higher tension latches	Latch is performing satisfactorily on the shakedown vehicles.
Loose, worn hood supports	Change in support design	Supports improved in wear during shakedown testing, but not up to the standard we would like. A new support material is being evaluated on extended shakedown vehicles.
Geared hubs, upper and lower ball joints:		
Fractured geared hub housing	Material change from cast aluminum to nodular iron	No failures experienced during shakedown testing.
Loose lower ball joints	Increased strength lower ball joint fasteners	Do.
Brake pedal pushrod:		
Separated primary pushrod	Redesigned linkage and rod	Do.
Separated secondary pushrod	Redesigned linkage to eliminate the secondary pushrod	Do.
Deep water fording: Water contamination of major components.	Pressurized vent system	Do.
Tie rod brackets: Cracked	Redesigned as a clevis-type bracket	Do.
Parking brake: Pedal not releasing	Park brake system redesigned from a foot actuated system to a hand actuated system	Problems have been encountered with the rod-type linkage. This linkage has been changed to a cable-type system on Extended mileage vehicles. Final test results are not yet available.
Air induction system:		
Water-Mud contamination of air filter	Installed baffles in air cleaner box	No failures experienced during shakedown testing.
Separated hood-to-intake seal	Redesigned hood to eliminate the need for a seal	Do.
Dirt contamination of engine	Redesigned air plenum-to-intake manifold seal	One incident of engine dirt ingestion occurred at shakedown testing due to an faulty seal. This seal had been redesigned again and is being re-evaluated during extended mileage testing.
Driver's seat:		
Cracked seat frame welds	M151-type seat used for production	No failures experienced during shakedwon testing.
Failed adjustment mechanism	Simplified adjustment mechanism	Do.
Front prop. shaft:		
Worn center support bearing	Bearing eliminated by redesign to one-piece from prop. shaft	Do.
Worn U-joints	Reduced U-joint angularity	Do.
Battery hold downs: Allow batteries to move.	Redesigned hold downs and battery tray	Do.

Mr. QUAYLE. Furthermore, the data that the Senator from Delaware refers to in his GAO report is 2 years old; furthermore, the Senator from Delaware has not talked to the Department of the Army. I spent 2 hours with the contracting officer last Friday in my office going through each one of the points that was raised by the Senator from Delaware. Each one of those points were resolved. They could have been resolved had the Senator from Delaware called in the contracting officer from the Department of the Army, sat down, and gone over with him those particular points. But no, we are not doing that. We are here at the floor at 2 a.m. with some GAO report that is outdated, that is misleading, and taking up the Senate's time on a very, very valid, good program. The Senator from Texas is absolutely right. What the Senator from Delaware would like to do is make sure you get cost effectiveness. This program is a good program. They have corrected the deficiencies. They are now beyond the requirements that they talked about.

If the Senator from Delaware's amendment were to survive tonight, it will delay this program, money in the pipeline for this contract, and a lot of the subcontractors in the country would be delayed. There would be a lot of problems out there, even though it is only going to be for 90 or 120 days. There is absolutely no reason to pick on this program that is fully justified, that is meeting all the requirements, and that is on schedule.

I obviously happen to be very concerned about this because of the impact that it may have on my particular State. That is an additional responsibility that we have. But this amendment is only going to delay. It is not going to add one iota to efficiency. The deficiencies have been spotted. They have been worked out. There will be further developmental testing. There will be further operational testing. And I think that it is high time that these type of amendments that are just put up here and based on some data that comes out of the GAO or somewhere else be called for what they are; that is, nothing more than nuisance amendments that have no substance whatsoever. I am sorry that we have got to take up the Senate's time with this right now. We are not going to go forward with the people in my State, and the people that have put in long, hard work on this program, and the implication of this is that the people in the Department of the Army the Senator has not even talked to, and the contracting officers are somehow not living up to what they say they are. I can assure you after the meetings that I have had that I am fully convinced beyond any reasonable doubt that the data will show that.

Mr. President, I have reviewed the General Accounting Office report, entitled "Premature Decision to Produce the High Mobility Multipurpose Wheeled Vehicle," and would like to comment on its findings and recommendations. While they represent some of the typical problems we encounter in the development and production of our major weapon systems and other defense equipment, with respect to this particular program, they are not significant impediments to fielding this important replacement for our current general utility and light cargo trucks and ambulances.

First, the GAO criticized the Department of the Army for designating the HMMWV as a "nonmajor" program, thereby removing oversight by the Defense Systems Acquisition Review Council, or DSARC, and its service counterpart, the Army Systems Acquisition Review Council. Review at these two levels is considered to constitute attention by senior executives within the defense establishment. Instead, the Army delegated oversight to a "lower level In-Process Review Board" which is comprised of representatives from all three services. What the GAO report fails to mention is that a prospective procurement of over a billion dollars does not escape the attention of either the service Secretaries or the Secretary of Defense. Everyone who understands how the Department of Defense works, including the Senator from Delaware, will agree that the Army decision to manage the program in-house, while consulting with the other services, was evidently cleared by higher level executives after adequate advance notice.

Second, the GAO criticized the condensed acquisition strategy that would field the system in 5 years rather than 7. The implication here is that this is somehow an adverse management decision. On the contrary, fielding systems in shorter timeframes saves taxpayer dollars over the long run if designs are stable and required quantities are known.

Related to this point, is GAO's criticism that the Army improperly compressed the testing schedule from 14 months into 5 months by conducting development and operational testing simultaneously—a practice which would not be acceptable to any prudent program manager. However, in all fairness, it should be pointed out that developmental testing is usually the type which occurs for completely new programs, with new or unproven technologies. While the HMMWV is a newly configured system, automotive transportation and basic combat support is not something that employs "state of the art technology."

The Army considered this vehicle a low risk technology and proceeded to their next stage of development. In July 1981, the initial development for the HMMWV was competitively awarded to three companies for the production of 11 prototypes each to be run off against each other. This process is a reasonable equivalent for the normal "developmental" testing process that the GAO is so concerned about. The outcome of this runoff resulted in the Army awarding AM General of Detroit a 5-year, multiyear contract for the production of about 55,000 variants of the HMMWV, worth about $1.2 billion. This contract was to incorporate all the "developmental" and operational testing results and corrective procedures which would make the HMMWV acceptable to the Army.

Like any new product, working out the bugs takes time, but this is the natural order of things and can be accommodated within the first year's production models. In affirming their position, the Army officially informed the Under Secretary of Defense for Research and Engineering on May 10, 1984, that the initial developmental testing plus an analysis of the proposed corrections to the development testing/operational testing [DT/OT] conducted from April to November 1982 did constitute sufficient grounds of which to issue a production contract. They reinforced their position that HMMWV was a low risk program which incorporated many commercial engineering applications and parts.

Mr. President, in an effort to get to the heart of this situation, I have requested both the Army program manager and representatives from the prime contractor to explain the problems encountered to date and either what has been done to resolve them or what will be done. I would like to point out that the attached list, which I have submitted for the RECORD, is typical of how minor problems are discovered during scheduled testing, resolved and immediately incorporated into the production models.

As an example of how this testing process works, the HMMWV had a goal of 1,300 mean miles between failures [MMBF]. During testing, however, problems arose which resulted in obtaining only 356 mean miles between failure. After corrections were made the latest test resulted in over 5,000 miles without a failure.

I would like to point out—especially since all of the minor problems will be worked out by the time the Army gets its first production vehicles—that the probability of a new problem occurring which did not show up in either the previous development or operational testing is highly remote. In other words, low risk.

The GAO report eventually focused on two rather noncritical questions: Whether the initial test results reasonably supported the decision to issue a multiyear contract, and whether the scheduled production vehicles tests will be sufficient to establish the HMMWV's reliability. In response to the first question, public and private sector production decisions on a particular item are not postponed until all the kinks have been worked out, but are pursued when no major obstructions exist and when any minor problems are within a high probability of being worked out without impairing the item's performance. The HMMWV fits into this normal business practice. The decision to go with a multiyear contract is also prudent business practice. One of the purposes of a multiyear contract is to encourage production stability and economies while encouraging new capital investment. This is certainly the case with the HMMWV. A complete new production line has been established, with new tooling and production machinery purchased.

The GAO's second concern about operational testing of production vehicles will be accommodated during the August to December 1984 test schedule. Warranty provisions are currently being negotiated which will ensure the contractor's compliance with the performance specifications. In the meantime, the government is assured of reliability performance under the current contract.

While the concept of holding up production of an item until all development and operational tests have been completed, and all discrepancies resolved, is a laudable ideal, this is not a realistic way of doing business. How would we have thoroughly tested the space shuttle without entering into the contracts to build the first couple of production models? Or similarly, any commercial automobile? Prudent business practice does not require the complete elimination of all problems or risks—only their minimization.

Postponing the awarding of funds for the production models under the current contract until May or June 1985, after the results of the operational testing of the production variants and a subsequent 30-day congressional review, would have grave economic and contractual problems. First, the prime contractor, AM General, initiates negotiations with their subcontractors immediately after the Congress appropriates funds. Delaying this process until mid-1985 would be a costly nightmare. Of the $671 million spent to date, at least $236 million has been subcontracted to small businesses. This represents 34 percent of the total value of the program. A 7- to 10-month delay would cause many of these small businesses, whose stability and participation this Congress tries to support, to suffer severe financial hardships.

Second, the production rate is projected to be about 20 vehicles per month from June through December of this year, with none of these going to the services. These are production testing vehicles for the manufacturer. However, with about 1,000 vehicles per month targeted for February 1985, does anyone in this Chamber, given our current weapon systems procurement experience, believe that the costs of this vehicle would, as a result of such a delay, not dramatically increase? Such an increase would in no way be attributable to contractor problems, but rather to direct congressional interference.

When looking at the cost of this program, we should also note the potential terminations liability of approximately $23.7 million which could be incurred if the contractor is forced to close his production line for even the shortest period of time. So far, 12,000 vehicles have been contracted for under the first 2 years of the 5-year contract. Over 15,000 vehicles are scheduled for the fiscal 1985 buy. By the time the operational tests will have been completed and reviewed by this Congress, over 5,000 HMMWV's will have been delivered. If any discrepancies are encountered, it may be far easier and less costly to retrofit these vehicles with kits in the field, than to hold up the production line.

Like any prudent businessman, these delivered vehicles will not sit idle in some inventory area, but are scheduled for fielding with Army and

Marine Corps deployments in Europe and the Indian Ocean, with the prepositioned Rapid Deployment Force, and field units all over the United States. Even a 7-month delay will severely disrupt this fielding effort.

Mr. President, this program, like most real world activities, does not operate in a vacuum. It its not managed in a linear, sterile environment. It is a dynamic and coordinated effort, well within our management experience. In its effort to crank out a report on the HMMWV, the General Accounting Office has done a disservice to those public and private sector managers who engage in real production processes. but worst of all, this is a matter of trust. How can we not trust those same men and women to build the necessary combat support vehicles who would be required to use them in the event of war or national emergency?

Mr. President, we have bought no major replacement vehicles for the military services on any large scale since 1979. Most vehicles in our inventory have expected useful lives of about 7 years. Over 70 percent of our Jeeps are over age. With improved readiness and force modernization becoming high priority defense needs, this program must not be delayed—Particularly by congressional meddling and micro-management.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, of course, if all the problems had been worked out as suggested by the Senator from Indiana, there would be no purpose in the military delaying the production themselves. There would be no purpose in them proposing further developmental and operational testing which has been required by the Under Secretary of the Army.

I will point out that the General Accounting Office has just released this report. It is based upon the best information that they can secure. I point out, as I already have, that the Marine Corps itself has recommended that production should not proceed until the problems of reliability have been worked out.

You can totally discount the GAO report if you want. But I think most Members of Congress feel that they do a good job. I quote from this report. It says:

> The fact that the Army approved the HMMWV for production in the face of the poor reliability results in operational testing indicated, in GAO's opinion, a breakdown in the acquisition process. It was not until after the production contract was awarded that the low reliability scores achieved in operational testing became known at higher levels in the office of the Secretary of Defense and the Army. This is attributable largely to a Department of Defense decision made early in the development program not to designate the HMMWV as a major system, even though its production cost was estimated to exceed $1 billion, one of the criteria cited for designating these weapons systems as major systems.

We are not trying to slow down the production of the weapons unnecessarily. As a matter of fact, our amendment basically meets the time requirement. The Army does not have to make a decision concerning the fiscal year 1985 production option until April 1985. The current series of operational tests on the vehicle are scheduled to begin in September 1984, and conclude in late November. At the very latest, test results will have been analyzed by February or early March 1985, leaving plenty of time to use the test results to decide on the fiscal year 1985 production option.

I point out again that the amendment is reasonable. It meets these time schedules.

All we ask is that the tests be completed, analyzed, and then reported to the Armed Services Committee of the House and Senate. I assume that the Senator from Indiana has confidence in those committees. But I think it is important to underscore that it is about time that the Senators, even though it involves production in their States, be concerned about cost effectiveness. The fact is that General Accounting Office studies have shown that the general pattern is that we are procuring weapons which are less effective than required. They do not meet the necessary specifications of the weapons. In many cases we are putting things in the field that are not as excellent as they should be. I think we have a chance here to take significant action to ensure that this vehicle, which I think can become an excellent vehicle, will proceed safely, cost effectively, and on time as well.

So I would again urge the acceptance of my amendment.

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Mr. President——

Mr. LUGAR. Would the Senator yield?

Mr. QUAYLE. I yield to my distinguished senior colleague.

The PRESIDING OFFICER. The senior Senator from Indiana.

Mr. LUGAR. Mr. President, I rise to support, I think, the eloquent arguments that have been given by my colleague. But I will read from the GAO report, which has become the substance of our debate here. On page 10 of the report, it says clearly:

> DOD did not agree that awarding the HMMWV contract was premature, or that the design was not sufficiently stable to warrant a multiyear contract. DOD stated that extensive study of the test results as well as analysis of the correction to the problems disclosed in testing preceded the HMMWV production decision. The failures were understandable problems, and were therefore all within the state of the art. A high level of confidence was evident to the decision makers that the recommended fixes would be adequate and would not advesely affect the production hardware.
>
> DOD believed that the cost advantage associated with the multiyear award as opposed to single year awards outweighed the risk associated with the corrections to be made.

On page 11, it states:

> DOD did not agree that the Army was not in a good position to approve the use of a multiyear contract in October 1982, prior to the completion and analysis of the testing. DOD commented that only the concept of a multiyear contract was approved in October 1982 and that since the contract was not awarded until March 1983, the test results were available for evaluation prior to the award.

Mr. President, I make these points simply to indicate that the Department of Defense and the Department of the Army have been clear with regard to the multiyear award and the basis for it. I would say simply that having personally visited the assembly plant in Indiana, the plant producing the HMMWV in Indiana, I am confident that the procedures are not only adequate with regard to testing and production, but I am simply amazed that this argument arises at all.

I have deep respect for the distinguished Senator from Delaware and the work he has done in this particular field. But I would simply respectfully suggest that in this particular instance he has struck out altogether. The demonstrable evidence is zero.

Mr. President, I think it is time to bring the debate to a halt and suggest the Senator ought to take a look at another area for his investigations. In this particular case he ran into a stone wall. In my judgment, production is going to proceed well; testing will proceed well. It has the confidence of the Department of Defense and the concerned persons.

We are sorry that the GAO data was replicated in a new report. That does not update it one iota.

Mr. President, I ask that the amendment be soundly defeated and that we proceed.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, what it would mean is that we totally ignore the report to the Secretary of Defense by the General Accounting Office. I want to underscore the fact that this report was issued June 12, 1984. So it is a current report.

I know that the contracting officer and the Army are denying that there is anything wrong with what was being done. I would just say that, as chairman of the Governmental Affairs Committee, time and again we have made investigations into defense procurement issues, including the issue of spare parts, and I have yet to see the Army or the services come forward and admit a mistake. You are always wrong, according to the military. They always have some rationalization.

Mr. President, I think these facts cannot be denied. If the reliability had been proven, as indicated by the GAO report, it would not be necessary now to schedule additional tests. Because of the concern in the Army, they are scheduling both additional so-called development tests as well as operational tests.

Mr. President, it is a fact that no one is in a position to say that this vehicle has the necessary reliability specified for this weapon. I have already spelled out twice how this has failed. The weapon required maintenance every 82 miles in the last test, rather than 300 miles.

There is mission failure roughly every 300 miles instead of 1,300 miles.

The purpose of a new test is to see how the weapon today will perform.

Mr. President, all we are asking is that these new results be analyzed, and if there are any problems that a report be made to the Armed Services Committees of the House and the Senate on how they will be handled. These reports will be in time for the production of 1985 vehicles in 1985 dollars. But we want to make certain that the tests are adequate, that the analyses are sufficient, and that the vehicle will do what is claimed.

Mr. President, I urge that the amendment be adopted.

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Mr. President, I want to again emphasize that the data is based on information we had 2 years ago. It is simply outdated.

The Senator from Delaware referred to the miles between mission failures, where the GAO properly pointed out there were only 367 and also that the Army requirement was 1,300.

Well, now, that has been corrected. The last vehicle test was not 1,300, but it was 5,000 miles. They are now averaging 2,000 miles, which is 700 miles more than the requirement. This is the latest data. This is the way the new Army jeep is performing, way above standards.

The Senator from Delaware is citing erroneous facts as happening at this particular time. I will not stand by and let the RECORD show that.

Furthermore, there is no dispute that what was in the GAO report, what is included in that GAO report, is accepted by the Department of the Army, accepted by the contracting officer in the Department of the Army, and they have said that everything the GAO points out is either taken care of or will be taken care of.

I would like to read what the recommendations are from the GAO. After listening to the Senator from Delaware, you may think that they recommend simply not to go ahead with this program. There are two recommendations:

> 1. To assure that the HMMWV reliability can be properly evaluated, GAO recommends that the Secretary of Defense direct the Secretary of the Army to conduct follow-on testing in an environment that actually represents field conditions and does not impose restraints that invalidates such testing.

Recommendation 1 is taken care of.

> 2. GAO also recommends that the Secretary of Defense emphasize to all DOD procurement agencies the need to be certain of an item's designed ability before entering into multiyear production contracts.

Done. Agreed to. They are going to carry out the recommendations of the GAO.

Mr. President, I would simply say in conclusion that not only is this data old, but everything is being lived up to. The Senator from Delaware, perhaps tomorow or some other day, if he really and truly wants to pursue this beyond tonight, might want to sit down with the contracting officer of the Army and have the same conversation I had. He can get the same updated information. If he sees that there are some problems which I did not see, so be it. But that will not be what he is going to find. He is going to find out that the program is going on schedule, that the deficiencies have been met, that the HMMWV is now performing to requirements.

Furthermore, we are going ahead with the further operation testing and development.

Mr. President, I believe that this amendment would do precisely what the Senator from Delaware does not want to see happen. That is to impede the cost effectiveness. It will hurt the cost effectiveness to slow down 2, 3, or 4 months. It will cause not only economic destruction, but be a real disservice to a program that does not deserve this kind of statement attached to it.

Mr. President, it is a good program. It will continue to be a good program. On the idea that somehow no one is paying attention to it, the Under Secretary of Defense, Mr. Carlucci at the time, designated the Department of Defense. Everyone over there knows this program. It is a major program.

Mr. President, I hope the amendment is soundly defeated.

Mr. ROTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I shall not belabor this. I know the Senate has already voted on this. I shall support the Roth amendment. I think in all likelihood, these problems are not problems that cannot be solved, but I think the principle the Senator from Delaware is setting forth here about having these tests performed in a thorough way before we make commitments is a sound principle. I know the General Accounting Office said so. I know the Senator from Indiana disagrees and the chairman disagrees with that. But I think it is important for some of us to follow some procedure here.

I know the Senator from Delaware has done an enormous amount of work in the Governmental Affairs Committee trying to establish at least a modicum of consistency in procurement contracts. This program has had some problems, I know they are not significant problems, but the principle is correct.

Interestingly enough, the committee has in its bill the DIVAD program with precisely this same kind of language. The DIVAD program has had more serious technical problems than this program but I think——

Mr. QUAYLE. Will the Senator yield for a question?

Mr. NUNN. I shall be delighted.

Mr. QUAYLE. Where does the Senator from Georgia think they are not going to get the evaluation of testing, developmental testing and operational testing, before they go into production? How many jeeps does he think are coming off the line now in the next month or couple of months?

Mr. NUNN. I cannot really answer the Senator's question, but I will say this: The Senator has talked about holding this up and that this could cause contract problems. All the information I have is the only way this can be held up is if the testing the Senator from Delaware has in mind were to reveal serious enough problems so that then the contract itself could be interfered with, in which case it should be interfered with. So the testing that is going to take place under the Roth amendment, as I understand it, will not cause a contractual problem.

Mr. QUAYLE. The testing is going to go ahead with or without the amendment. The testing is scheduled to take place later on this summer. No one is disputing that. The Roth amendment simply delays the reporting and stretches this out for a period of 90 days.

Mr. NUNN. The difference is——

Mr. QUAYLE. The production schedule does not even begin until next spring.

Mr. NUNN. Mr. President, I do not disagree with the Senator. The difference is under the principle of the Senator from Indiana, we would not be able to do anything until the testing of group E.

Mr. QUAYLE. This is not unusual. You go out and have a few of the trucks and have the full evaluation and testing. The Senator knows that. We are following regular procedure on this. This is not an irregular procedure.

Mr. NUNN. The problem is we have too many procedures that have been followed too long that have not been careful enough and prudent enough. I think the principle the Senator from Delaware has in his amendment is a sound principle. I think the GAO principle is a sound one.

I am very much in support of multiyear procurement. But when we start going into multiyear procurement when we do not have a stable design, we are deviating from the rules that almost everyone in favor of multiyear programs has approved of from the beginning.

I do not say this is not going to work out. I do not believe what the Senator from Delaware is advocating is going to interfere with the contract unless there are serious problems that develop, in which case the contract should be interfered with.

Mr. QUAYLE. I suggest the Senator might want to talk to the contractors or some of the subcontractors. This is going to cause a delay of up to 3 or 4 months no matter what if this amendment passes. If the Senator does not believe that, he ought to sit down and talk to some of the contracting or subcontracting people, because it is going to cause a delay and there is going to be a disruption. I do not know what principles the Senator is talking about because the Department of the Army accepts what the GAO pointed out. They have accepted it and corrected it. That is the way this thing is supposed to work.

What I am saying is that this program is working well, going along on schedule, on procedure, and this is simply a delaying type of amendment. If you want to talk about procedure and talk about regular procedure, they have lived up to what is in the GAO report. They do not dispute that.

I just read the two recommendations. They accept that. I do not know what principle the Senator from Georgia is talking about.

The PRESIDING OFFICER. If there is no further debate, the yeas and nays have been ordered.

Mr. LEVIN. Mr. President, I rise in opposition to the amendment. Many of the problems that have been identified in previous tests of the vehicle appear to be well on their way to solution. At this point, in light of the newer evidence and given this later testing, the delays in this program that might result from this amendment are no longer justified.

The amendment now before us is neither the best nor the most appropriate method by which to ensure that the HUMVEE program is properly managed and that the HUMMER actually performs as advertised.

I have several reasons for this position:

First, many of the problems identified in the previous testing of the vehicle appear to be well on the way to solutions. The Army has concluded that later testing indicates that the contractor has corrected the deficiencies identified in earlier development and operational testing.

Second, the contract for the HUMVEE already is being renegotiated to permit a slower and steadier increase in the production rate. This means that fewer vehicles will be produced initially this partially meets the objective of this amendment.

Third, while this program was designated as a "nonmajor" procurement program, it has come under increasing oversight by high level officials in the Army. I also understand that officials in the Defense Department also have examined this program. Thus, its technical designation has not prevented senior officials from following its progress and exercising responsibility for its management. Therefore, another goal of the amendment already has been met, and passage of the amendment is not necessary for this major objective of the amendment's sponsor to have been accomplished.

Fourth, under the worst circumstances, and we all know how "Murphy's Law" works to ensure that our Government bureaucracies work more slowly than planned, this amendment might interfere with exercise of the 3d-year production option on this contract until after May 1, 1985. If that is the case, the Government might face the loss of almost $24 million in contract termination liability costs.

Mr. President, considering all these factors, the best way to protect the American soldiers, who need these vehicles to replace their overage jeeps, and the American taxpayers, is to defeat this amendment.

Mr. TOWER. Mr. President, I point out the very GAO report the Senator from Delaware refer to says:

> Should the Government now act to modify or terminate the contract, the long-term production and financial commitments of A. M. General and subcontracts render such action more difficult and expensive.

I move to lay the amendment of the Senator from Delaware on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment of the Senator from Delaware on the table. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island [Mr. Chafee], the Senator from Minnesota [Mr. Durenberger], the Senator from Kansas [Mrs. Kassebaum], the Senator from Oregon [Mr. Packwood], the Senator from South Dakota [Mr. Pressler], and the Senator from Vermont [Mr. Stafford], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Colorado [Mr. Hart], the Senator from South Carolina [Mr. Hollings], the Senator from Kentucky [Mr. Huddleston], the Senator from Louisiana [Mr. Long], and the Senator from Mississippi [Mr. Stennis], are necessarily absent.

The PRESIDING OFFICER [Mr. Goldwater]. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 38, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—51

Abdnor
Armstrong
Baker
Boren
Boschwitz
Cochran
Cohen
D'Amato
Danforth
Denton
Dixon
Dole
Domenici
East
Exon
Ford
Garn
Glenn
Goldwater
Gorton
Grassley
Hatch
Hawkins
Hecht
Heflin
Heinz
Helms
Humphrey
Jepsen
Kasten
Kennedy
Laxalt
Levin
Lugar
Mattingly
Murkowski
Nickles
Percy
Quayle
Riegle
Rudman
Specter
Stevens
Symms
Thurmond
Tower
Trible
Wallop
Warner
Weicker
Wilson

NAYS—38

Andrews
Baucus
Bentsen
Biden
Bingaman
Bradley
Bumpers
Burdick
Byrd
Chiles
Cranston
DeConcini
Dodd
Eagleton
Evans
Hatfield
Inouye
Johnston
Lautenberg
Leahy
Mathias
Matsunaga
McClure
Melcher
Metzenbaum
Mitchell
Moynihan
Nunn
Pell
Proxmire
Pryor
Randolph
Roth
Sarbanes
Sasser
Simpson
Tsongas
Zorinsky

NOT VOTING—11

Chafee
Durenberger
Hart
Hollings
Huddleston
Kassebaum
Long
Packwood
Pressler
Stafford
Stennis

So the motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. JEPSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, if I can have the attention of the Senate and if we can have a little order, I will explain what might happen next.

The PRESIDING OFFICER. The Senate will be in order.

Mr. TOWER. Mr. President, on my list, other than technical amendments which can be accomplished by unanimous consent, I have only three amendments remaining—one by the distinguished Senator from Louisiana [Mr. JOHNSTON] which is going to be agreed to by the committee; two by the Senator from Montana [Mr. MELCHER] which I, for one, cannot agree to. I do not know whether he wants record votes on them.

Those are the only three amendments that I find on my list that are still outstanding. If any other Senators have amendments that I have overlooked, I would appreciate it if they would come forward at this time. It appears that no other Senators have amendments. There will not be a rollcall vote required on the amendment of the Senator from Louisiana.

Mr. NUNN. Mr. President, I understand that the Senator from Arkansas [Mr. BUMPERS] has an amendment.

Mr. BUMPERS. I have, and it will take about 30 seconds.

Mr. TOWER. Perhaps we could deal with the Johnston amendment and the amendment of the Senator from Montana. I do not know whether he wants a voice vote or a rollcall vote. I will have to oppose them.

May we have the attention of the Senator from Montana? Does the Senator from Montana want record votes on his two amendments? I understand that he has only two.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. TOWER. I yield for response to my question.

Mr. MELCHER. I have two amendments that, as I understand, the committee wants to accept. I have two housing amendments that I do not know whether the chairman is referring to those or not.

Mr. TOWER. The two housing amendments are the ones I was referring to, and I am afraid I cannot accept them.

Mr. THURMOND. Mr. President, will the Senator yield to me?

Mr. TOWER. I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, we have included every possible project that I can conceive of that could be built out of savings. We have given every consideration to all these projects and we have included a great many hoping there will be savings, but there is no use to include any more because I think we have included all we can possibly take.

I would be very glad to accommodate the Senator. I do not see any way to do it.

Mr. TOWER. I think we should withhold debate on the amendments of the Senator from Montana.

The Senator from Louisiana has been waiting patiently for some time, so I yield the floor.

AMENDMENT NO. 3286

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 3286.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert at the appropriate place in Title III of the bill the following new section:

"AUTHORIZATION FOR PRODUCTION OF THE 155-MILLIMETER ARTILLERY-FIRED, ATOMIC PROJECTILE

SEC. . (a) Notwithstanding any other provision of law, the Secretary of Energy may obligate not more than $50 million from funds otherwise authorized to be appropriated in this Act for the construction of facilities necessary to produce the 155 millimeter artillery-fired, atomic projectile (Project 82-D-109).

(b) Notwithstanding any other provision of law, in the case of the 155 millimeter atomic-fired artillery projectile (W-82) and the 8-inch atomic-fired artillery projectile (W-79), the following conditions shall be adhered to:

(1) the total number of both such warheads produced may not exceed 925;

(2) the total funds that may be expended for the production of both such warheads subsequent to the date of enactment of this Act shall not exceed $1,100,000,000;

(3) no such warheads produced after the date of enactment of this Act may be produced in the enhanced radiation version;

(4) in producing both such warheads, special emphasis shall be placed upon improvements in the safety, security, range and survivability of such warheads; and

(5) replacement of obsolete atomic-fired, artillery projectiles now in Europe with such improved warheads will be accomplished within the nuclear stockpile limits agreed to by NATO Defense Ministers at Montebello, Canada, in October 1983, which required the withdrawal of 1,400 warheads from the European stockpile in addition to the 1,000 warheads withdrawn in 1980.

(c) No action may be taken to implement the authority contained in this section until the Secretary of Defense has submitted a plan for the implementation of the provisions of this section to the Committees on Armed Services of the Senate and the House of Representatives."

Mr. JOHNSTON. Mr. President, in last year's defense authorization bill I and others opposed a plan of the Department of Defense to go into a very large program involving enhanced radiation 155-millimeter and 8-inch shells. Our reasoning was it was too expensive and that the deployment of that many weapons in Europe was unnecessary and was not a good expenditure of money.

This year, Mr. President, the Department of Defense has come to me and others with a new plan involving the same limitations in money and the same prohibition on enhanced radiation shells that we had last year but allowing flexibility to use the same $1.1 billion for either the 155-millimeter shell or the 8-inch.

The reasoning is very simple, that the number of 155-millimeter tubes as compared to the 8 inch has a ratio of about 5 to 1. As there be distributed approximately the same number of rounds among 155-millimeter tubes as you can the 8-inch, then it will be theoretically and I think in fact five times more difficult for the enemy to defend against the deployment of the 155-millimeter shells as with the 8 inch.

We continue the prohibition in this amendment against enhanced radiation.

I want to emphasize we keep the same $1.1 billion limitation in the total amount of dollars that may be spent. We further provide that production may not proceed of the 155-millimeter shell until and unless the Secretary of Defense has submitted to Congress a production plan, showing that these shells may in fact be produced within the limitation and showing that the plan for deployment.

We also take forward, Mr. President, the positive requirement that the nuclear stockpile limits as agreed to in Montebello, Canada, in October 1983, be complied with and that requires the withdrawal of the 1,400 warheads from the European stockpile in addition to the 1,000 warheads withdrawn in 1980.

I might add that this is not conceding very much on the part of the Department of Defense because the present warheads which are deployed in Europe are very unpredictable, ineffective, and have such low yield that you do better not to have atomic warheads.

So, Mr. President, I submit the amendment and ask for its approval.

SEVERAL SENATORS. Vote! Vote!

Mr. NUNN. Mr. President, I support the amendment of the Senator from Louisiana. I have been involved in this. He and I worked together on it.

This overall effort starting last year has resulted in cutting the program approximately in half and also saved $3 billion. This is a restructuring program, but we have a definite cap so the program costs will not go up. The numbers will be much less than the original numbers and the program is a matter of shifting not a matter of increasing. I think it is a good amendment and I will support it.

Mr. TOWER. Mr. President, I rise for the purpose of commending the distinguished ranking member, Senator NUNN, and my colleague from Louisiana, Senator JOHNSTON, for offering this important amendment. This amendment provides the Department of Defense with authority to proceed with production of a modern 155-millimeter nuclear artillery shell. The package they have presented is not completely satisfactory from my own point of view, but I believe that it represents an important compromise that addresses many of the concerns raised by my colleagues last year. Importantly, it permits this modernization program to proceed, albeit in a form substantially scaled down from that which the administration originally requested.

There is one specific concern that I would like to express. The total of 925 new 8 inch and 155-millimeter nuclear artillery shells that this amendment permits to be produced is low. This concerns me because the Montibello decision of October 1983 to unilaterally withdraw 1,400 nuclear weapons from Europe was made by NATO in the expectation that our tactical nuclear inventory would be fully modernized. This will be a matter that we can address in conference, and there will be other opportunities to review it in the future.

Notwithstanding this concern, I commend my colleagues for their hard work on this matter and I urge that the Senate adopt their amendment.

I commend my colleague from Georgia and Louisiana who worked together on this amendment. I am prepared to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment (No. 3286) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, we only have three more amendments to dispense with, the amendment of the Senator from Arkansas [Mr. BUMPERS], and I see he is not in the Chamber now.

Here he is.

I am prepared to accept the amendment of the Senator from Arkansas and take it to conference, but in that it is out of the jurisdiction my guess is the House Members will probably raise a point of order against it.

So with that understanding I will accept it and take it to conference.

AMENDMENT NO. 3287

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] for himself and Mr. PRYOR proposes an amendment numbered 3287.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the bill insert the following new section:

"Sec. . Notwithstanding any other provision of law, lands in the vicinity of Bull Shoals Lake in Arkansas administered by the Army Corps of Engineers which have been declared excess to the Department of the Army needs shall remain under the administration of the Corps of Engineers and shall not be disposed of by the General Services Administration or the Bureau of Land Management.

Mr. BUMPERS. Mr. President, the amendment I am offering to S. 2723, the Defense Authorization Act, would prohibit the Army Corps of Engineers from disposing of important undeveloped lands near Bull Shoals Lake in Arkansas that are now under its administration. The proposed disposal of 850 acres is opposed by many local citizens, business groups, and the Arkansas Game and Fish Commission.

During March and April 1982, the Corps of Engineers surveyed its holding around Bull Shoals Lake pursuant to Executive Order 12348. The corps determined on January 21, 1983, that 12 parcels of land near the lake comprising roughly 850 acres were excess to the Department of the Army's needs. As a result, 530 acres of acquired land will soon be reported to the General Services Administration for disposal, and 320 acres of public domain land will be reported to the Bureau of Land Management for disposal.

The sale of these tracts does not appear to be warranted by any pressing management problem, nor would it generate substantial revenues for the Government. The sale would, however, threaten the area with accelerated commercial development. By offering these tracts to the highest bidder, the General Services Administration and the Bureau of Land Management will almost certainly guarantee that they will be intensively developed, contributing to water quality problems in the lake and destroying the character of its shoreline.

A number of groups and individuals have objected to the proposed sale for these and other reasons. The Chamber of Commerce of Mountain Home, AR, the community which would be most affected by the disposal of these lands, has protested the sale because of the negative effect on the tourism industry that would result from increased development along the lake. The Arkansas Game and Fish Commission has also expressed strong opposition to the sale. In a letter to the Corps of Engineers, the Commission noted that the area is heavily used by hunters and other sportsmen, and provides the only significant remaining wildlife habitat along the lake.

I have had serious reservations about the asset management program since its initiation by Executive Order 12348 in 1982. Although I am not opposed to the disposal of all surplus Government property, I am convinced that an accelerated Federal land sales program is not in the best interests of either the Federal Government or those citizens most directly affected by the sale of specific tracts.

The Corps of Engineers' decision to make 850 acres near Bull Shoals Lake available for disposal is but one recent illustration of the shortsightedness of the asset management program. This amendment will merely ensure that these important lands remain in Federal ownership where they will best serve the needs of all citizens. I urge its adoption.

Mr. President, let me say to my friend from Texas I certainly do not want to burden the bill. If there were not some sense of urgency about this, Senator PRYOR and I would not offer it.

It simply is that the Corps of Engineers has in excess of 850 acres of land on Bull Shoals Lake, which is one of our big tourist attractions; 550 acres of this goes to the General Services Administration; 300 acres of it goes to BLM.

They soon will be selling that land. It will be developed. The people in that part of the State are in a state of rebellion about it.

Mr. NUNN. Mr. President, if the Senator will yield for an observation, I believe the Senator's persuasive argument has convinced both managers of the bill.

Mr. BUMPERS. The Senator does not want me to call for a rollcall vote?

Mr. NUNN. I really think the argument has been overpowering.

Mr. BUMPERS. I yield back the remainder of my time.

Mr. TOWER. Mr. President, I say to the Senator from Arkansas that I will be delighted to argue with him in favor of the amendment in conference, but the House could raise a point of order against it because of a point of jurisdiction.

Mr. BUMPERS. Mr. President, I do not wish to slow this process up with this amendment, but I may offer it again on the debt ceiling limit.

Mr. TOWER. On what?

Mr. NUNN. Mr. President, if the Senator will yield, both my predecessor, Senator STENNIS, and I will be delighted to take this amendment to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (No. 3287) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JEPSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, all we have are two amendments of the Senator from Montana and, I beg the Senator's pardon, Senator BYRD has an amendment, and I am very sorry. It was crossed off my list by mistake. I proffer my deepest apologies to the distinguished minority leader.

Mr. BYRD. The Senator need not apologize.

AMENDMENT NO. 3288

(Purpose: To require certification of metal millform products procured by the Department of Defense, its contracting elements, contractors, or subcontractors, as containing no Cuban or Russian nickel)

Mr. BYRD. Mr. President, I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment No. 3288.

At the appropriate place in the bill, add the following:

"SEC. ( ). The Department of Defense shall certify that all metal millform products procured by the Department or any of its elements, its contractors, or its subcontractors, contain no Cuban or Russian nickel."

Mr. BYRD. Mr. President, my amendment requires the Department of Defense to certify that all metal millform products procured by DOD, its contractors, or its subcontractors, contain no Cuban or Russian nickel.

Some Senators may be surprised to learn that there are indications that Cuban and Russian nickel is making its way into the United States. Even more surprising is the strong possibility that Cuban and Russian nickel has been procured, unwittingly, by the Department of Defense.

Cuban nickel imports into the United States have been banned since 1963, when President Kennedy put pressure on Fidel Castro by ordering a comprehensive trade ban with Cuba.

On November 21, 1983, the U.S. Treasury Department announced that Russian nickel was deemed to contain Cuban nickel feedstock, and therefore was no longer acceptable for entry into this country. The Treasury Department decision stated that the ban on Russian nickel would remain in effect until the United States and the Soviet Union have arranged for inspection of Russian nickelmaking facilities. The Soviets will not agree to such inspections. The Treasury Department decision does not apply to Soviet nickel-bearing materials that are reexported to the United States from a third country, when the nickel has been combined with other elements to form nickel alloys or stainless steel. That is a gaping hole in the embargo on Cuban and Russian nickel.

Cuban nickel is totally banned from entering the United States under the terms of section 5(b) of the Trading With the Enemy Act, 50 U.S.C. appendix 5, and by sections 515.201 and 515.204 of the Cuban assets control regulations, 31 CFR part 515.

The Treasury ban did not extend to nickel alloy or stainless steel products made from Soviet nickel outside the Soviet Union, and then shipped to the United States. The Treasury Department apparently was unsure of how much Soviet nickel was being used in the manufacture of such products. Without detailed knowledge of whether Soviet nickel was being used in all of the wide range of nickel alloy and stainless steel products, the Treasury decided to control only the products that came directly from the Soviet Union to the United States in their unfabricated form.

Without commenting on the merits of the Treasury decision to exclude third-country millforms such as bars, plates, and sheets from the ban, it is clear that the U.S. Department of Defense should not be procuring critical materials from the Soviets or the Cubans. The exclusion of third-country products may be defended by the Treasury as a matter of trade policy, but DOD procurements are matters of national security policy.

CUBAN NICKEL INDUSTRY

Cuban nickel mines produce about 4 million tons of ore per year, from which the Cubans recover approximately 40,000 metric tons of semirefined nickel, according to reliable metals industry publications.

Production of semirefined nickel is carried out at two sites in Cuba—Moa Bay and Nicaro—and two additional facilities are under construction.

Cuba's domestic consumption of nickel is virtually nil, so most semirefined nickel is exported. There is evidence that virtually the entire production of the Moa Bay facility is shipped to the Soviet Union for refining. The material is apparently shipped to the Soviet port of Murmansk, near Finland, and is then sent by railroad to a large Soviet nickel refinery at Montschegorsk.

SOVIET NICKEL INDUSTRY

Information on the Soviet nickel industry is more difficult to verify than material pertaining to the Cuban industry. Certain patterns have emerged, however, as to the nature and volume of Russian nickel production and trade.

The Soviets produce about 185,000 metric tons of finished nickel per year. Some 15 percent of that total is sold to non-Communist countries, with West Germany being the largest purchaser.

The large nickel refinery at Montschegorsk has an apparent capacity of about 185 million pounds per year. Approximately 25 percent of the output of that plant—45 million pounds—appears to come from Cuban semirefined nickel feedstock.

The refinery's location close to the port of Murmansk makes it ideal for shipping refined nickel to European buyers. The metal is exported in unwrought forms; this is, as sheets or briquettes. The European buyers use the unwrought forms as ingredients in the manufacture of nickel alloys and stainless steel bars, plates, sheets, strips, and other millforms.

It is these products that are exported to the United States and, at times, procured by the Department of Defense. The Defense Supply Center in Philadelphia, the Defense Contract Supply Center in Columbus, OH, and the Defense Industrial Supply Center in Mechanicsburg, PA, are all likely to have procured mill forms that contain Cuban or Russian nickel. This is important because the items containing Cuban or Russian nickel are used in submarines and aboard surface ships. The items are used in the production of tanks and some aircraft.

It is unthinkable that the Department of Defense would knowingly procure items that contained Russian or Cuban nickel. The use of Cuban nickel in any form is a violation of U.S. law. While the use of Russian nickel as part of a product that has been mixed with other metals and wrought outside the Soviet Union is not illegal, the security drawbacks of such an arrangement for the Department of Defense are obvious.

My amendment gets at this problem by requiring the Department of Defense to certify that all metal millforms that it procures contain no Russian or Cuban nickel. The requirement also applies to the individual procurement units of DOD and for DOD contractors and subcontractors.

Huntington Alloys, Inc., of Huntington, WV, is a leading producer of special nickel alloys and stainless steel. Many of Huntington Alloys' products are used in military applications. The company has been disadvantaged by foreign metal-making companies that have used Cuban or Russian nickel as a raw material in the manufacture of stainless steel and nickel alloys. The likelihood that DOD has procured some materials that contain Cuban nickel is violation of U.S. law. My amendment will correct that situation by stopping the flow of underpriced Cuban and Russian nickel to the Department of Defense. Huntington Alloys, Inc., and other domestic makers of nickel alloys and stainless steel will be in a position to win contracts that otherwise could have been awarded to foreign users of Cuban or Russian nickel.

Mr. President, I have discussed this amendment with the managers. I see no reason to take further time. I hope they will accept the amendment.

Mr. TOWER. Mr. President, I think it is a very, very meritorious amendment. I am certainly prepared to accept it.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. TOWER. Mr. President, the Senator from Georgia, I am sure, is delighted with it, as well.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia [Mr. BYRD].

The amendment (No. 3288) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank the managers.

Mr. TOWER. Mr. President, I think the Senator from Montana has the only remaining amendments.

Mr. MELCHER. Mr. President, first, I want to compliment the managers of this bill for their patient, persistent, and evenhanded manner they have handled the procedures in considering this bill.

These are important issues. True some of the amendments have related to foreign policy, but national defense and foreign policy are intertwined and debate on these issues by the Senate contributes to the countries understanding and these debates are of great concern domestically and internationally.

I want to express my support and commendation for the handling of this bill in addition to the floor managers, also to the majority leader. I believe the late sessions that we have had last week and these past three nights of this week have been necessary.

The authorization total in this bill is the greatest amount ever considered by the Senate. The authorization of $300 billion should not be quickly disposed.

I have a few amendments which deal with pertinent issues involving authorization matters of the Air Force and personnel of the Armed Forces. I have during the hearings of the Armed Services Committee testified on these matters and have distributed these amendments previously to the floor managers and the Armed Services Committee to allow them ample opportunity to become familiar with them.

I am hopeful that they either find favor with them or are prepared to dispel any doubt in my mind that the bill better addresses the matters than I have ascertained.

AMENDMENT NO. 3289

(Purpose: To require a report from the Air Force by January 1, 1985 analyzing the planned operational utilization of the Air Force's air refueling fleet throughout the remainder of this decade)

Mr. MELCHER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 3289.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill add the following new section:

"SEC. . The Secretary of the Air Force shall prepare and submit a report to the appropriate Committees of Congress, not later than January 1, 1985, analyzing the planned operational utilization of the Air Force's air refueling fleet throughout the remainder of this decade. This study shall include the planned utilization of the air refueling fleet for the Single Integrated Operational Plan [SIOP] and consider the growing number of potential contingency operations throughout the global spectrum of conflict to include multiple and simultaneous global threats."

Mr. MELCHER. Mr. President, the amendment that I am offering at this time directs the Secretary of the Air Force to prepare and submit a report to the appropriate committees of Congress by no later than January 1, 1985, analyzing the planned operational utilization of the Air Force's air refueling fleet throughout the remainder of this decade. The amendment also directs that the study shall include the planned utilization of the air refueling fleet for the single integrated operational plan, or SIOP, and consider the growing number of potential contingency operations throughout the global spectrum of conflict to include multiple and simultaneous global threats.

I believe that such a study is required to accurately ascertain the shortfall between our tanker requirements and our tanker capabilities throughout the remainder of this decade. We currently have two tanker programs underway and partially funded by the bill before us. One of these is the KC-135R modernization program, which entails the replacement of the CFM-56 turbofan engine with a J-57 engine. This replacement will give greater lifting power and more flexibility to this older tanker aircraft.

The 5-year defense plan calls for modernization of 392 KC-135 aircraft through fiscal year 1989. Only one of these engine modernizations has actually been completed, and that aircraft will be delivered next week. There are 58 aircraft funded and on contract through fiscal year 1984 with another 42 aircraft to be funded through the bill now before us for 1986 and 1987.

Our second tanker program is the KC-10A program. This newer tanker aircraft has several advantages over the older KC-135A. For example, the KC-10 can offload 260,000 pounds of fuel on a 1,000-nautical-mile mission radius, while the KC-135A can offload 110,000 pounds for the same radius. The tanker itself can be refueled in air, and the KC-10A can boom refuel all fixed-wing receptacle-equipped aircraft, from the lowest and slowest to the highest and fastest.

In missions flown in September 1981, September 1982, and October 1982, the KC-10 has proven its ability to meet almost every need the Air Force has today for tanker aircraft.

The current multiyear contract for KC-10 aircraft will result in 60 aircraft being delivered by the end of 1987—32 of these aircraft are scheduled to be delivered by the end of 1985 with a remaining 28 scheduled for delivery by the end of 1987.

Mr. President, I believe that we have taken steps forward in recent years to upgrade the Air Force's tanker capability and make sure that we have the air refueling capability we will need in the latter part of the 20th century. However, I for one am still not certain that current planned tankers production will provide us with either the needed numbers or mix of air refueling aircraft needed to meet the possible contingencies we face around the globe today. For example, in recent discussions with Gen. Jerome O'Malley, commander of the Pacific Air Forces, I learned that he feels there is definitely a tanker need in the Philippines to support fighter aircraft operations out of Clark Air Force Base. Also, during briefings earlier this year by the Military Airlift Command, the point was strongly made that they do not have sufficient tanker capability to refuel the aircraft that would be needed to meet a Grenada-type crisis in Southwest Asia or the Middle East.

I believe that the best way to clear up the confusion over our tanker capabilities throughout the end of the decade and our needs over the same period of time is to have the Secretary of the Air Force prepare a comprehensive report on this subject and submit it to the appropriate committees of Congress. It is important that this be done in a timely fashion because decisions are going to have to be made no later than next year's defense authorization bill if we are going to provide the needed funds to ensure that production capability for tankers is not lost as a result of premature decisions that will result in the shutdown of tanker production lines.

I hope that the chairman of the committee shares my concern for accurately identifying our future tanker needs and can accept this amendment. I also urge the support of my colleagues for this proposal.

Mr. TOWER. Mr. President, this is one of the amendments the Senator from Montana intends to offer that we are prepared to accept, if the distinguished minority manager of the bill has no objection.

Mr. NUNN. I have no objection.

Mr. TOWER. We have no objection, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana [Mr. Melcher].

The amendment (No. 3289) was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3290

(Purpose: To require a report from the Air Force on the effectiveness of current security arrangements at Clark Air Base Philippines under the provisions of the U.S.-Philippine basing agreement and suggestions on how to improve overall security at Clark Air Base)

Mr. MELCHER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. Melcher] proposes an amendment numbered 3290.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill add the following new section:

"Sec. . Within 180 days after enactment of this bill, the Secretary of the Air Force shall submit a report to the appropriate committees of Congress analyzing and reviewing the effectiveness of current security arrangements at Clark Air Base, Philippines, and reviewing the provisions of the U.S.-Philippine basing agreement, and also suggest measures that could be taken to improve overall security at Clark Air Base."

Mr. MELCHER. Mr. President, I am offering an amendment that requires that the Secretary of the Air Force provide to the appropriate committees of Congress a report analyzing the current security arrangements at Clark Air Base in the Philippines and review the provisions of the United States-Philippine basing agreement, concerning the base's security. The amendment also requires the Secretary to suggest measures that could be taken to improve the overall security of the base.

During a trip to the Philippines last December, I visited Clark Air Base. In briefings from Maj. Gen. Kenneth Burns, commander, 13th Air Force, and Colonel Macfarland, commander of the 3d Tactical Air Wing, I was disappointed in the obvious neglect of this important facility. Since that time, I have also discussed defense issues related to Southeast Asia and our presence in the Philippines with Adm. W.J. Crowe, commander in chief, Pacific, and Gen. Jerome O'Malley, commander, Pacific Air Force.

I came away from my Philippine visit and my discussions with our military leaders in the Pacific convinced that we are neglecting the strategic military importance of Clark Air Base which, along with the Navy's Subic Bay, are our lone outposts in Southeast Asia. These bases are also the outposts for Diego Garcia in the Indian Ocean. As much as we have increased defense spending, it is hard to understand why we have neglected our bases in Southeast Asia and in the Philippines. Subic Bay and Clark Air Base are the kind of facilities that could not be duplicated elsewhere in Asia.

The history of Clark Air Base goes back to the beginning of the 20th century. At that time, detachments of U.S. Army Cavalry had been assigned to patrol activities following the conclusion of the war with Spain. While stationed in the Barrio of Angeles, one such detachment discovered a luxuriant supply of fodder on a grassy plain outside the barrio. In 1902, the 2d Battalion of Army Engineers surveyed the encampment, and in September 1903 President Theodore Roosevelt declared this area a military reservation and named it Fort Stotsenburg after Col. J.M. Stotsenburg of the 1st Nebraska Volunteers, who was killed while leading his regiment in action on the island of Luzon, April 23, 1899.

During the early years of the 20th century, Fort Stotsenburg garrisoned the 1st, 5th, 7th, 8th, 9th, 10th, and 14th Army Cavalry Regiments. In these early days, Fort Stotsenburg served as a garrison camp and its first fixed structures were wooden and bamboo barracks with tarpaper roofs.

By 1917 a new breed—the aviator—made their appearance at the fort, and with them came the era of military aviation to the Philippines. Steel hangars and dirt runways were constructed in 1917 to house the elements of the aviation section of the Army Signal Corps; 2 years later, in 1919, a portion of the fort was renamed Clark Field in honor of Maj. Harold M. Clark, who served as a pilot in the aviation section of the U.S. Signal Corps. The development of Clark Field continued throughout the 1920's and 1930's as American aviation took on a greater role.

World War II came to Clark Field at 12:48 a.m. on December 8, 1941, Philippine time, when two flights of Japanese bombers, 54 planes in all, bombed Clark Field. Most of the buildings were hit and many were afire. The bombers were followed by strafing Zeroes, which completed the destruction of the B-17's and P-40's that were stationed at Clark Field.

The attack on Clark Field resulted in the scattering of units and men. With most of the aircraft destroyed on the ground, many of the aviators joined the ground troops in the battle against the enemy. After the Japanese were defeated our Armed Forces remained in the Philippines.

Following the reoccupation of Clark Field and Fort Stotsenburg by American Forces in 1946, the installation was renamed Clark Air Base and became the home of the 13th Air Force.

Over the years, since the end of World War II, Clark Air Base, has taken its place as the air logistics hub of Southeast Asia. Today, Clark's mission is to support U.S. air operations in the western Pacific, particularly the Western Pacific-Southern Air Defense Region, which includes the Philippines, the Trust Territory of the Pacific Islands, and Taiwan. Clark is also the home of the 13th Air Force headquarters, which has responsibility for the command, control, administrative and logistical support for operations in the western Pacific. For the Military Air Command, Clark is the significant Southeast Asia base vital to servicing Diego Garcia.

Our other major installation in the Philippines, Subic Bay, actually began as a Spanish naval base in 1884. By 1898 the Spaniards had completed dredging the harbor and several permanent buildings had been built.

At the end of the Spanish-American War, the United States determined that Subic Bay had the potential to be an excellent naval port. At the turn of the century, the United States was especially interested in obtaining a deepwater port in the Far East for purposes of ship repair and replenishment. The Philippines was the logical place for the establishment of such a base, and Admiral Dewey had high regard for the choice of Subic Bay as the U.S. naval base in the Philippines. He regarded the harbor as having "no equal in the Philippine Islands because it commanded the trade routes between Manila and Asia and because it was easily defensible by land and sea." In 1901, Subic Bay was chosen to be the U.S. naval base in the Philippines, but it wasn't until 1904 that the base was finally established.

Prior to World War II, the naval station was home for a squadron of flying boats and was garrisoned by the 4th Marine Regiment from Shanghai. The Japanese began bombing the area around Subic on the 12th of December, and station personnel were ordered to Corregidor by General MacArthur. Most of this naval station was ultimately destroyed by U.S. Marines and the station was not retaken until the 30th of January 1945.

By the 1960's, Subic Bay had become the home for eight major commands and several smaller units. During the Vietnam conflict the naval base at Subic took on the task of providing upkeep and maintenance of ships and supplying the fleet with food and fuel and ammunition to sustain them in the western Pacific.

The expanded 7th Fleet converted Subic Bay to the busiest port in the western Pacific. Today, the Subic Bay/Cubi Point complex constitutes the largest American naval base west of Hawaii and is the key to the effective performance of U.S. naval missions in the Indian Ocean-Pacific Ocean region. The distance from Guam to Subic to Diego Garcia is 5,235 miles.

The importance of Subic Bay stems from the advantageous combination of several factors, the most obvious of which is geographical location. Subic Bay is the center of the U.S. 7th Fleet's areas of responsibility and is the only base we have for rapid projection of naval power or the logistical support of ships already operating from the Persian Gulf through the Indian Ocean on the South China Sea. No other naval facility in the region—Diego Garcia, Guam, Japan, or the Marianas—offer the natural assets of Subic Bay.

Mr. President, yet, in a quick tour of Clark, I was surprised to see just how ancient many of the base facilities are—some of them even predate the Japanese invasion of the Philippines. My concern over the condition of many of the facilities on Clark led me to testify before the Military Construction Subcommittee last March on the need to upgrade our facilities there. I am glad to see that the Air Force and Navy requests in that area have been largely approved. However, the most startling discovery that I made during my tour of Clark was the lack of adequate security, particularly around the airfield and sensitive weapons storage areas, but also around the perimeter of the base itself. In later conversations, both Admiral Crowe and General O'Malley agreed that security at Clark was a problem that needed immediate attention.

The terms of the United States-Philippines memorandum of agreement, signed June 1, 1983, may have complicated security but part of the problem must also come from a lack of sufficient security personnel, equipment and funding.

I believe that the best way to get a thorough answer to the security questions at Clark and determine what ought to be done to upgrade the security of sensitive areas on the base, as well as the base itself, is to direct the Secretary of the Air Force to study the situation and provide the Senate Armed Services Committee with a report on the current situation, the cause of the security problems, and suggestions on what can be done to get base security up to adequate standards.

The Air Force tells me that a study of the security needs of Clark has already been initiated under the auspices of the Pacific Air Force security personnel. This amendment will emphasize the need to complete that study quickly and communicate the findings directly to Congress so that action can be taken in the shortest possible period of time.

In discussion with the chairman and the ranking member of the committee, we have reached an agreement on this amendment.

Mr. NUNN. Mr. President, if the Senator will yield, we have discussed this amendment with the Senator, and he has graciously agreed not to push the amendment to a vote. The chairman of the Armed Services Committee and I have agreed to seek this information by joint letter. We hope that the information would, therefore, be available on a more rapid basis.

Mr. TOWER. Mr. President, we can provide this by joint letter much more quickly than it could be accomplished by statutory regulation.

Mr. MELCHER. Mr. President, I think the suggestion of the chairman and the ranking member of the committee is a sound one. I, therefore, withdraw the amendment in preference to having a letter that they have spoke of.

The PRESIDING OFFICER. The amendment is withdrawn.

MILITARY HOUSING, CONRAD, MT

Mr. MELCHER. Mr. President, the amendment I am offering today is based on commonsense and fairness. The Department of Defense authorization bill before us contains $4,260,000 for the construction of a strategic training range complex at Conrad, MT, and an additional $3,705,000 for construction of associated military housing. This training range complex site at Conrad is part of the new strategic Air Force training range comprised of some six sites located in Montana, North Dakota, South Dakota, and Wyoming. This program is a high priority SAC mission to modernize the training of our strategic manned bomber force.

There will be a total of 74 personnel permanently assigned to operate the site in Conrad. SAC and the Air Force requested 50 units of family housing to meet the needs of these personnel and their families. These 50 units of family housing are considered essential by the Strategic Air command because there simply is no adequate rental housing in Conrad to meet the needs of married military personnel stationed there.

In its review of the military construction budget, the Defense Department reduced the Air Force request from 50 to 40 units of housing, eliminating the junior enlisted married quarters. There are clear reasons why this action is not justified. First, adequate private housing is simply not available in Conrad, MT, to accommodate these 10 families. Conrad is a small town of some 2,700 persons and has a very stable population and housing market. For example, an initial housing survey in December 1982 identified virtually no rental properties and only five adequate houses for sale. A followup survey in September 1983 identified only one property for sale or rent. Another check in January 1984 identified only three suitable properties for rent.

Finally, a check of the housing market on June 13, 1984, indicated that there was not even one suitable rental property available in Conrad. Second, the nearest community with adequate rental housing to meet the needs of the personnel assigned at Conrad is Great Falls, MT, 63 miles away. That would necessitate that young, enlisted personnel assigned at Conrad commute over 120 miles each day, which would create an unreasonable economic burden on them, as well as a severe safety hazard, considering the severe winter driving conditions in Montana.

Mr. President, I realize the tight constraints that the Military Construction Subcommittee is working under in allocating funds for the 1985 military construction program. However, I also believe that we can sometimes be penny-wise and pound-foolish when it comes to individual projects, and I think that this is just the case in connection with the family housing in Conrad, MT. I testified earlier this year before the subcommittee on this problem and requested that the committee include $594,000 for the additional 10 housing units. I now feel it is necessary to bring this issue up again before we pass the 1985 DOD authorization.

The amendment I have discussed is meant to be a compromise. Because of the slowdown that had been caused to the construction industry as a result of high interest rates and a poor housing market in the private sector last year, we found that many of the bids that came in for military construction projects were below the estimates that had been prepared by the Department of Defense.

As a result, there were substantial savings in the military construction projects as authorized in fiscal year 1984 and this led to additional projects being added to the military construction program for fiscal year 1984 which had not been originally authorized. With interest rates on the rise again and the recent slowdown in construction and housing, we may once again find that case to be true in connection with the fiscal year 1985 military construction authorization.

As a result, the proposal I have discussed would direct the committee to use savings that may become available in the 1985 military construction program, as a result of lower-than-expected bids, for the purpose of constructing the additional 10 units of needed military housing at Conrad.

The amendment that I would like to have accepted by the committee deals with the 10 housing units for noncommissioned officers. It is part of a housing plan of 50 units, which is needed. Forty have been cleared in the bill, and my amendment covers the additional 10, which deals with $573,000.

That is a small amount. The reason it is so essential is that at Conrad, MT, there is no housing available. We do not attempt to add money to the bill. We simply would like to get on the list; that if there are savings available from contracting for other housing and buildings for the Air Force, that these 10 units could be on that list. It is entirely discretionary with the Pentagon whether or not any on this list share in the savings.

The alternative, if these houses are not built, simply is this: There will be 10 families where the serviceman will have to drive from Great Falls, MT, where there is housing. It does not sound so bad until you figure out that Great Falls is 63 miles away from Conrad and that is 126 miles round trip. We are not asking to increase the amount of funding in the bill. We are only asking to be on the shopping list.

In section 222 of the bill, there is a list of buildings including some housing that will be built if there are savings available. Some of these items on this list may not be ready for contracting in 1985. Among those is a $35 million item for the Netherlands for the ground-launched cruise missile support facilities. Now the Netherlands have not approved that yet, and they may not approve it in 1985. Granted, they are going to have a higher priority if they do.

I simply would like to get this and the other amendment on this shopping list. I might say for the enlightenment of the Senate that the other amendment covers basic housing needs at Clark Air Force Base in the Philippines.

Mr. THURMOND. Mr. President, unfortunately, I must oppose the amendment of the distinguished Senator from Montana. We all have projects in our own State. Every Senator here has projects in this bill and others that would like to be added. We have given most careful consideration to all of these projects and did the very best we can.

Let me make two points. First, the amendment seeks to add 10 units of family housing requested for Conrad Air Station by the Air Force. My colleagues should know that the Air Force requested 40 units of housing and we have given the Air Force very unit they asked for.

This is an additional amount he wants to add there that the Air Force did not request. If this amount is added it will have to come out of some other Senators' projects in this bill. And we do not think that would be fair or right to do it after having given it the careful consideration we have.

The amendment does seek to build these units with savings. We admit that. But we have included now more projects probably than can be built out of savings, and therefore, it would be impossible in my judgment to add any more. I think it would be a mistake to try to do it. It may jeopardize some other project of some other Senator in this bill.

Mr. MELCHER. Mr. President, I appreciate the comments of the Senator from South Carolina. As you know, the committee has diligently attempted to arrive at the most equitable solution. But, nevertheless, I am not asking the committee for a firm commitment. Indeed, section 222 does not give a firm commitment. It just says to the extent that money is available these buildings will be constructed, including the few housing. I would merely like to, with all considering all merits, to get on that, if it is available, and the Pentagon decides that it is of a priority nature. They can choose to use some of the savings for that purpose.

Mr. TOWER. Mr. President, I move to table the amendment of the Senator from Montana.

Mr. MELCHER. Mr. President, there is no amendment.

The PRESIDING OFFICER. There is no amendment.

Mr. TOWER. Would the Senator offer his amendment?

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I want to very briefly support the statements of the Senator from South Carolina. I believe the process that was followed on the Subcommittee on Military Construction was a very fair one. He gave serious consideration to all the requests that came before that subcommittee. I think the staffwork was excellent there. I think the committee fairly tried to choose those projects they felt were of highest priority, and should be included in the bill. I would have to reluctantly agree with him, and oppose the amendments that have been offered this evening.

Thank you, Mr. President.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. I have not offered either amendment. I have attempted during the course of the evening and the night to find the opportunity for agreement by the committee. That has not been possible. There is no point in offering either amendment and dragging out the procedures by further debate and rollcall vote. So I do not propose at all to do that. I have described in detail, I think, the needs at Conrad. We will see what means there are. If the Air Force wants those houses bad enough, perhaps in a supplemental they can be considered. And in that event, it need not be prejudiced by an adverse vote tonight.

CLARK AIR FORCE BASE

Mr. President, the proposal I have discussed with the committee would permit upgrading of the proposed military housing site at Clark Air Force Base out of any savings that may occur in fiscal year 1985 authorized Clark Air Base military construction programs or other reprogrammed funds up to an amount of $6½ million.

There are currently between 9,000 and 11,000 military personnel and dependents at Clark Air Force Base who are living off the base. Recent Air Force studies show a need for additional military housing at Clark so that eligible personnel can be properly housed. The Air Force has programmed the construction of 750 housing units in fiscal year 1986.

I believe we should provide that any savings that may occur from the $41 million in construction projects in this bill for Clark Air Force Base and any other available reprogrammed funds which may become available may be used for site preparation at Clark Air Force Base, which must proceed the actual construction of the housing units themselves. By providing the Secretary with the authority to get a head start on this site preparation with possible savings from fiscal year 1985 military construction funds, we can help ensure that this badly needed family housing is not delayed further and that construction can begin as soon as the fiscal year 1986 money is made available.

The site preparation that must be done before housing construction can start includes roads and driveways, storm drains, sewage treatment plants and sewers, water mains, electrical transformers and distribution lines, water well and storage facilities. The estimate of the cost of the site preparation is $6½ million.

I very recently talked to Gen. Jerome O'Malley, commander of the Pacific Air Force, about the needs at Clark Air Force Base, and speeding up this family housing construction as much as possible is one of his very top priorities. There is no adequate housing off base at Clark and there is, as I have pointed out earlier, a significant shortfall in onbase housing. I believe that the most effective way to get at this problem is to ensure that any savings that may result from current programmed construction or other reprogrammed funds within the Air Force be made available for beginning work on the site preparation.

On Clark Air Force Base, the amount is greater. It would be $6.5 million if there were savings, and if the Pentagon found that those savings could be best used at Clark. I only want to mention that in closing there are 10,000 of our Armed Forces personnel at Clark; that is, personnel and their families, that are living off base. That is not a good situation because the off-base housing is generally substandard.

There is a question of whether the water is potable. It ought to be potable. That situation should be corrected as soon as possible, and the $6.5 million would not correct it. It would merely start the procedure on the base for the sewer and water, and necessary streets. This would be an attempt to get the project started. I do not want to prejudice that opportunity either. I shall not offer the amendment, and shall seek perhaps in a supplemental if the Pentagon and the Air Force think it is important enough to have it at that time.

Mr. THURMOND. Mr. President, I wish to express appreciation to the able Senator from Montana for that position.

Mr. President, there is no amendment before the body at the moment, is there?

The PRESIDING OFFICER. That is correct. There are no amendments.

TRIBUTES TO SENATOR JOHN TOWER

Mr. THURMOND. Mr. President, I would like to take a half minute. That is all I will take on another subject concerning this bill. As we all know, the distinguished Senator from Texas is retiring after this year. I have been on the Armed Services Committee almost the full 30 years I have been here. I have never known a man who has worked harder on defense matters or has proved to be more knowledgeable and to render more dedicated service to this body than the able Senator from Texas, the chairman of the Armed Services Committee. We are certainly going to miss him on that committee. I felt in view of the fact that this is the last defense authorization bill he is going to bring to this body that we will want to express our appreciation to him in some way. In view of that, I make a motion that the Senate give him a rising vote of thanks for the great and important work he has done as chairman of the Senate Armed Services Committee for the last 4 years.

[Applause.]

Mr. TOWER. I move to lay that on the table. [Laughter.]

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. I would like to echo the remarks of my colleague from South Carolina. The Senator from Texas has done a tremendous job on this committee for a long number of years.

He has managed this bill this week with a great deal of skill. I think the appreciation of all the membership is reflected in the fact that it is evident we did not want his last authorization bill to end rapidly. We wanted him to continue as long as possible and this bill has therefore been stretched out because of his magnificent leadership. [Laughter.]

I have made a number of statements at the beginning of this bill complimenting the Senator from Texas. I will not repeat those at this time. But I say to my colleague and friend from Texas, you have done a masterful job, and you will be indeed missed, although I am afraid we are going to be together a great deal more on defense matters before this bill is completed. We have a long, difficult conference. So it is not all over. But I do commend the Senator from Texas, and I share the great enthusiasm for his performance as stated by the Senator from South Carolina.

Mr. TOWER. I thank my distinguished colleagues from South Carolina and Georgia for their great generosity.

I am sure that most of my colleagues will be dancing in the streets on the completion of this bill, the thought that this is the last time old TOWER will be here to kick them around. [Laughter.] That is sort of a twist on an old saying.

Mr. President, we will have a record vote on final passage. I know of no other record votes. However, I must suggest the absence of a quorum because there are housekeeping amendments that we have to get straightened out with the minority leadership.

Mr. TOWER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I rise in support of S. 2723, and particularly the commitment of the Congress as expressed in the bill to the rebuilding of our naval forces.

Since World War II, we have witnessed a tremendous expansion of Soviet naval power. Today the Soviet Navy is regarded as a "blue water navy" capable of projecting Soviet influence and strategic missions on the oceans of the world. From a force designed for coastal defense, it has evolved into a multiocean force capable of maintaining a Soviet presence around the world and providing a flexible instrument of Soviet foreign policy. It has been said that for much of the postwar period the Soviet Union had a global foreign policy but not a global military reach. However, as a result of their current naval capabilities, they now have both.

Changes in Soviet naval strategy and capability have necessitated a revision of our own naval strategy. When President Reagan came into office, our fleet had shrunk to half the number of ships and 80 percent of its tonnage size of just 10 years earlier. Secretary Lehman recently referred to the situation as a 1½-ocean navy with a 3-ocean commitment.

Today we are making significant progress in the effort to strengthen our Navy. As a maritime Nation dependent upon keeping critical sealanes open for the free movement of commerce and vital strategic materials, we cannot afford to do less.

The growing Soviet threat at sea requires our committment to a maritime strategy based on our treaty relationships with out allies and our own security. Recent Soviet exercises at sea have demonstrated Soviet capability and a willingness to project large numbers of combatants far from the homeland.

U.S. naval exercises are constantly encountering Soviet intruders in the midst of our forces. These activities and news reports of Soviet submarines and surface ships operating just off our own coasts and in the Caribbean are proof that their navy is forward deployed and capable of worldwide operations.

I believe we have recognized the threat and are responding in a way that protects our interests. I also believe we are making great strides in developing new technology and applying it to our naval forces to insure that we will have the necessary quantity of naval vessels, and the quality of weapons and hardware to project force and insure its survivability.

The bill we have before us reflects our ongoing committment and support for a shipbuilding program that is now underway. The bill provides funding for 22 new construction ships, reactivation of the U.S.S. *Missouri*, three ship conversions, service life extension for the U.S.S. *Independence*, and an additional Trident ballistic missile submarine. Included in the new construction ships are three CG-47 guided missile cruisers equipped with the Aegis system which is critical to the protection of our carrier battle groups and other battle groups at sea. Recently completed Navy operational tests of the system aboard the *Ticonderoga* were the most comprehensive and demanding tests of the Aegis system to date and proved the effectiveness of the system in destroying incoming antiship missiles in a wartime environment.

I am also pleased that the bill will provide authority to reactivate the U.S.S. *Missouri*. In my view, the reactivation program has proven to be a cost-effective way to add tremendous firepower and force projection to the fleet in a hurry. The *New Jersey's* service off Lebanon serves as an example of how these reactivated battleships enable the United States to fulfill naval commitments without placing a strain on our over-extended carrier forces. The U.S.S. *Iowa* was recently delivered by Ingalls Shipyards in Pascagoula, MS, under budget and ahead of schedule, and I am hopeful that the third battleship will be in the fleet at an early date.

The authorization in this bill to construct the lead ship of the DDG-51 *Arleigh Burke*-class guided missile destroyer, which will be equipped with a derivative of the Aegis system, is an important step in replacing our aging DDG-2 and DDG-37 class destroyers and upgrading capability.

I also recognize that we in the Congress must continue to demand that this overall effort be accomplished in the most cost-effective manner possible. For too long we have heard the horror stories of cost overruns and waste in defense spending. However, I am glad that we have begun to hear some positive reports. Competition in the Aegis cruiser program and the forthcoming DDG-51 program will help ensure that shipyards will continue to build these ships at the best price possible and get them into the fleet on or ahead of schedule. In fiscal year 1984, 19 of 22 ships were awarded competitively, and I am pleased that the Navy will continue to compete shipbuilding contracts.

Mr. President, I am pleased to support S. 2723 and would like to commend the chairman and members of the Committee on Armed Services for their hard work and commitment to our national defense.

Mr. BRADLEY. Mr. President, I would like to ask the Senator from South Carolina a question about the state of military housing at Fort Monmouth. I have visited the base and have seen the Wherry family housing project. The roach infestation and dirty water is hardly supportive of military morale.

As you know, the President asked for $2.1 million to begin improvements on these units in the fiscal year 1985 budget. DARCOM and the Corps of Engineers have also approve follow-on phases of the housing improvement projects, now scheduled for fiscal year 1986 and fiscal year 1987.

I understand that the House bill includes the $4.8 million necessary to accelerate the schedule for family housing improvement at the Wherry housing project at Fort Monmouth.

Can the Senator from South Carolina tell me if favorable consideration could be given to this project during the conference?

Mr. THURMOND. I appreciate the Senator from New Jersey bringing this matter to my attention and he may be assured that it will be given the most careful consideration in conference.

COMPETITION IS GREAT WHEN IT INCLUDES ALL PARTIES

Mr. DOLE. Mr. President, there is no question that U.S. Armed Forces must be adequately prepared to fight if they are to constitute a credible deterrent and effective tool for defending our national interest. Weapons must be operational, manpower well trained, and units well stocked with the appropriate ammunition and munitions. We can all agree to that. However, what the Senator from Kansas cannot agree with—and this should concern other Senators in this Chamber who have munitions plants in their States—is the singling out of a specific munitions plant for special treatment in the Department of Defense authorization.

For Senators who have not had an opportunity to look closely at the Air Force procurement section in the DOD authorization bill—and you would have to read the committee report language carefully to understand what is happening. Let me explain. In the combined effects munition section, the Senate Armed Services Committee directs the Department of Defense to assess the desirability of the facilitization of a second source for load assembly and pack of the combined effects munition. It goes on to recommend that the assessment should include consideration of the Joliet army ammunition plan. What this does not say is that this may come at the expense of a Parsons, KS, munitions plant. There is nothing wrong with a little competition. This Senator is a strong advocate of competition. But what about the other plants around the country who are presently involved in the munitions program. Why shouldn't they be recommended as part of the DOD authorization?

I'm very sympathetic to both the Senators from Illinois in their desire to bring jobs to their State. The Senator from Kansas has the same concerns. However, this Senator does not want to see jobs lost in his State in order for a plant, which hasn't been fully utilized in 10 years, fired up at an enormous cost. It's not equitable. It's not cost-effective.

Figures from the General Accounting Office indicate that it would cost about $30 million just to put Joilet's plant on line. This does not include start up costs and initial overhead. The plant in Parsons, KS, is only running 25 to 30 percent of capacity and could easily be expanded. The physical plant is there and ready to go.

We all like to bring jobs to our States. But let's do it only if it's cost effective and only if the opportunity is presented to all competing interests. Starting up an old plant to do the job that existing plants are capable of accomplishing is just not good sense.

Hopefully, the Senator from Kansas has been both instructive and constructive in bringing this report language regarding other munitions plants to the attention of other Senators. Perhaps an amendment clearly obviating this language would be appropriate, and indeed my conversations with other colleagues indicate it would resoundingly pass. So let me just say that is the hope of this Senator that the Defense Department uses a little fiscal sense and discretion and disregards the language entirely.

Thank you Mr. President.

MSE

Mr. KENNEDY. I wish to express my continued concern regarding the Army's procurement of mobile subscriber equipment to be utilized for tactical communications. Although our committee has recommended that any system procured must from the start be compatible and interoperate with the present U.S. tactical communications system, I would like to be reassured by you that these directions to the Army are intended to be more than merely advisory in nature.

Mr. TOWER. I want to assure the Senator from Massachusetts that I agree with his interpretation of the language in the committee report on this issue. I can also assure my colleague that the Defense Department well understands the weight that the Armed Services Committees give to committee report language. I think there should be no question that any contract awarded by the Army for mobile subscriber communications equipment should require that the equipment procured must be compatible with existing Army communications equipment. It is my understanding that the language does not in any way limit who may compete for this program and that there may be many firms that can meet the compatibility and interoperability requirements contained in the committee report language.

Mr. KENNEDY. I thank the Senator.

Mr. TOWER. Mr. President, the senior Senator from Washington and the senior Senator from Hawaii have been discussing with the senior Senator from Georgia and myself a matter of common interest. This discussion has now resolved itself to an agreement that can be taken care of by a colloquy among us.

Mr. GORTON. On May 31, 1984, the House, over substantial objection, passed an amendment to H.R. 5167, the Defense authorization bill, which would permit two foreign-built passenger ships to be reflagged as American vessels and granted the privilege of operating in our domestic trades. Our cabotage laws restrict operation in these trades to vessels which are built in the United States. Among other things, those laws are intended to promote our domestic shipbuilding industry which is especially vital to our national defense.

The Committee on Commerce, Science, and Transportation, on November 10, 1983, especially rejected the reflagging of these vessels. I fear that allowing these two British ships to be reflagged and enter our protected trades assures that no passenger cruise ships will be built in the United States. The Cunard bill in the House was originally a private bill, but could not pass on the private calendar in the House. Therefore, to circumvent the Senate Commerce Committee, it was added, in the middle of the night, to the Defense authorization bill in the House.

We believe that this provision is another example of piecemeal, "chipping away," at the foundations of our maritime policy. If the policy should be changed, then Congress should address that fundamental question. Ad hoc legislation is not a substitute for policy. Congress should examine our cabotage laws, and indeed all of the laws expressing our national maritime policy. Perhaps those laws and policy are outmoded, and if they are, then should be changed or repealed. But if so, change should only come after thorough study and consideration of the consequences and alternatives. It is this kind of analysis and deliberation which is lacking here, and it would be folly, in our view, to change longstanding law and policy on the freestanding assertion that such a change would enhance sealift mobility. Indeed, our Defense Department refused to make precisely that finding.

Moreover, if we choose to ignore the Defense Department in this instance, logic will dictate that in the future we should legislate an exception every time a similar argument is made. Our cabotage laws will soon become a dead letter without ever having been replaced.

I would now like to yield to my colleague, the distinguished Senator from Hawaii.

Mr. INOUYE. I thank my colleague, the distinguished Senator from Washington. Although explained by its proponents as a "sealift defense" proposal to increase available troopships, the provision is specifically intended to grant an exception to our cabotage laws so that two, and only two, foreign-built vessels—the Cunard *Princess* and the Cunard *Countess*—may enter our domestic passenger cruise trades. Legislation to do expressly this (S. 1197) was rejected by the Senate Commerce Committee on November 16, 1983, after full hearings and in spite of the same sealift mobility arguments advanced by proponents of this provision. In rejecting those national defense contentions, the committee considered the earlier refusal in 1983 by the Department of Defense to grant an administrative waiver for these two vessels on precisely that basis.

On behalf of my colleague, the distinguished Senator from Washington, I would inquire of the distinguished chairman of the committee and the distinguished ranking minority member their view of the House amendment.

Mr. TOWER. The committee will strongly oppose this House amendment in conference. We will do so for three reasons: First, the measure does not have a legitimate national defense rationale; second, it is designed to benefit a single party at the expense of many others; and, third, it is a private bill that has already been rejected by the Committee on Commerce, Science and Transporation. Moreover, the Navy has already denied the waiver this legislation seeks based on national security grounds. I question the propriety of allowing only one operator to benefit amog the many who are interested in the passenger ship industry; we in the Congress would, in fact, be granting an unjustified and unnecessary monopoly. This is particularly unjustified at this time because adoption of the Cunard amendment may well cause the cancellation of other ongoing U.S. cruise ship projects. Congress has and will continue to work on the revival of our ship projects. Congress has and will continue to work on the revival of our maritime industry. We have granted special tax privileges to the cruise industry, and the Senate Merchant Marine Subcommittee is considering other measures to help. However, the measure adopted by the House is a step in the wrong direction. It is an artifice and has no place in a DOD authorization bill.

Mr. NUNN. The gentleman from Texas, is quite correct in his statement to the distinguished Senator from Hawaii and the distinguished Senator from Washington, and this Senator adds his personal assurance that we will work in conference to have the House recede to us on section 1010 of H.R. 5167, the DOD Authorization bill.

EXPLANATION OF VOTE ON NUNN AMENDMENT

Mr. BOSCHWITZ. Mr. President, I wish to offer a brief explanation of my vote on the Nunn amendment. My initial inclination was to support the effort of the Senator from Georgia in his attempt to wring greater defense contributions from our NATO allies. I was, however, prevailed upon to be patient a bit longer, to allow our Government's private urgings and the improving European economy to have their hoped-for effect. I gave a reluctant ear to these earnest appeals and voted to refrain from laying a specific ultimatum before our European friends.

But I wish to make clear that my patience, never my greatest virtue, is being sorely tested by the pattern of neglect which our allies have exhibited toward their own defense. I was forced as a child to flee that continent because of similar neglect by the western democracies during the 1930's, so I suppose that I find it particularly galling to see this same problem arising a brief 50 years later. But I think that Americans of many backgrounds agree with this Senator that the United States can no longer be asked to bear a disproportionate share of NATO's conventional defense.

With 43 percent of NATO's gross domestic product, the U.S. contributes over 62 percent of NATO's total defense spending. We count less than one-third of NATO's population among our citizenry, yet we provide the alliance with over 42 percent of its active defense manpower. This situation cannot continue unchanged.

In fairness to our allies, I should out that they have made substantial improvements in both these areas. Between 1971 and 1982 their contribution to NATO defense spending rose by over 25 percent, while ours actually declined slighly. Similarly, the contribution to active defense manpower for most of our allies increased during that decade while ours declined by over 16 percent. I recognize then that our allies have been making some progress in this area. Nevertheless, the fact remains that our allies have been either unable or unwilling to meet the goals we have set in our joint councils. Their defense budgets have not kept pace with their professed commitments.

I will be watching European defense budgeting with critical interest in the near future, Mr. President. I expect to see the first fruits of our diplomatic overtures and the European economic recovery in short order. I recognize that the Europeans, to an even greater degree than the United States, have suffered severe economic reverses in recent years and have also lagged behind us in economic recovery. I recognize also that many of our European allies face peculiar political problems with respect to defense and I have no desire to place undue pressure on those friendly governments. But we cannot be expected to wait much longer.

At what point will these allies be in a stronger political position? If the will to upgrade their own defense doesn't materialize soon in Europe, we will have to draw certain inevitable conclusions. Some Members of this body have already begun to draw those conclusions. Those conclusions lead, as the Senator from Georgia has described with his usual perspicacity, to the actions his amendment embodies.

I have, as I have said, been dissuaded from reaching that conclusion just yet. But I am not far from reaching it, Mr. President. And I hope that our friends in NATO will heed the distant thunder heard here today.

We hope for cordial relations with our allies, but they must surely be sympathetic to the necessity we feel in this country to have our contributions to European defense matched by an equal will among Europeans to defend themselves. I look with expectation to see a stronger evidence of that will in upcoming European defense budgets.

Mr. PERCY. Mr. President, I should like to commend the committee for including language in its report recommending against the imposition of user fees for civilians wanting to take advantage of the military satellite system known as the global positioning system [GPS].

Shortly after the downing of the Korean Air Lines flight 007, I introduced Senate Concurrent Resolution 69, urging the Defense Department to make available GPS to civilian airlines on an expedited basis. GPS could help avoid a tragic repetition of the KAL incident by giving airline crews an independent position monitor to backup existing air navigational systems, such as the inertial navigational system. The resolution urged free access to the system as a way of accelerating civilian commercial airline acceptance of this safeguard system that can tell a pilot his or her position almost anywhere on the Earth within the length of one football field.

On May 23, 1984, Senator NANCY KASSEBAUM chaired a hearing of the Aviation Commerce Subcommittee, on the resolution. Almost all of the testimony favored lifting of the user fee requirement. I commend the committee for the position it has taken on this issue.

Mr. DODD. Mr. President, I intend to vote for the passage of the Defense authorization bill, although not without reservations. I realize, however, that a bill of this magnitude and complexity can never be fully satisfactory in all its details for any Member of this body. So, while I certainly would have preferred to rearrange somewhat the spending priorities incorporated in the bill, I had to realize that this is the best attainable at present, given the political realities. I vote for it in the belief that doing so will contribute to the discharge of our most important obligation, the defense of our country. To make my reservations known, I would like to say a few words on certain controversial aspects of the bill.

My first reservation concerns the overall funding level in the bill. I find a 7.5-percent real growth too high. Too high in the light of the size of the deficit, too high compared to our domestic needs, too high as a sustainable, supportable rate of growth for the long term. That is why I voted to recommit the bill to the Armed Services Committee with instructions to reduce its overall budget authority to $293.7 billion. That amount represented a real growth of 5 percent.

Arguing with the enormous spending in this bill is impossible in the abstract. Who is to determine in absolute terms that spending $299 billions on the defense of our country is to much, but $293.7 billion is just about right? You cannot make such a comparison without using certain points of reference.

One point of reference is the achievement of a balanced, moderate, sustainable rate of growth in our defense spending. Another one is the health of our economy. A third one is the maintenance of the well-being of our society by providing adequately for education, health care, and other crucial social needs. As far as I am concerned, these are also Defense issues. If we run our economy into the ground by excessive spending, we will lose the resource that powers and sustains our military strength. If we let our educational standards deteriorate further, there will be no educated brains to coordinate those military muscles.

Mr. President, it often seems to me that those who prepare our Defense budget can only think in terms of muscles. Our military is on steroids. We have too many muscles and too little flexibility and balance. There are too many strategic nuclear weapons, too much procurement, too much high technology, and it comes at the expense of conventional strength, operation and maintenance funds, and readiness. Protracted use of steroids may build formidable muscles, but will eventually upset the inner balance of the body and make it weaker, not stronger.

It is not the bottom line of the budget, as reported by the Armed Services Committee that troubles me the most—but how it was reached. The bill includes too much money for unnecessary or extravagant strategic systems. We can do without some of these items while not imperiling the security of our Nation. In fact, by eliminating them we will enhance our security.

The prime example is, of course, the MX missile. Anything that can be said about the MX must have already been said in this Chamber. The MX missile is on its deathbed, and as one of my colleagues suggested, we ought to put it out of its misery. Whatever the outcome of the Senate-House Conference on this bill, it is certain that the MX project has been drastically scaled back once again.

Those who still argue for the deployment of the system base their argument on the Scowcroft report. That very report, however, was the one that suggested the first major cut in the project by halving the number of missiles down to 100. What has been forgotten since April of last year is that the scaled-down plan itself stood out as a major inconsistency in the Scowcroft report. It was clear that the members of the Commission assumed, probably correctly, that the administration would not accept their report without some sort of MX deployment proposal. The compromise of a scaled-down deployment was meant to salvage politically the other fruits of their careful labor.

I do not think Congress should be bound by these considerations. If we really accept the logic of the Scowcroft report, the last thing we need is a huge, costly, new multiple-warhead ICBM. If we intend to follow the Midgetman recommendation for which there seems to exist a fairly broad consensus, it is terribly wasteful to commit ourselves to this enormous program. It may even endanger Midgetman itself. We ought to heed the words of Adm. Noel Gayler. He used to be Director of the National Security Agency and Commander-in-Chief of U.S. Forces in the Pacific, so he has some experience behind his judgment. Admiral Gayler predicted to the Foreign Relations Committee:

> When an MX program, already underway, already funded, when all of the momentum confronts in the budgetary sense the Midgetman program, it will be the Midgetman that will not survive.

Admiral Gayler's fear is not based on fantasy. For a couple of years now I have followed and supported the efforts of the distinguished Democratic leader Senator BYRD to protect the advanced technology bomber, the so-called Stealth program, from exactly the same danger. It seems that the B-1B program has become unstoppable by now, at least short of the 100 planes planned at this point. The only question has become whether it is stoppable beyond that. Now, it is a wonderful plane, I realize that. But it is also a terribly wasteful expenditure in light of the very limited stategic role that it will be able to fulfill. On the other hand, as it gathers momentum as it occupies hundreds of production facilities, as it provides a livelihood for tens of thousands of workers, it may eventually smother its younger sibling, the Stealth. This is exactly the fear that Admiral Gayler expressed in the MX-Midgetman context.

I supported the amendments on the MX missile. Senator LEAHY's amendment was particulary relevant in trying to reprogram part of the MX funds for the strengthening of our much neglected conventional forces. I also supported Senators CHILES' and MOYNIHAN's amendments which resulted in the first tied vote on the MX ever in the Senate decided only by the Vice President's vote. I regard the vote on the Moynihan amendment as a turning point, a victory for the opponents of the MX and I think the future will bear me out on this.

As most arguments supporting the strategic utility and cost-effectiveness of the MX have been eroded, many of its supporters fell back on the Bargaining chip argument. Frankly, I could never understand how the MX could be supported a merely a bargaining chip. To my mind, there is no such quality as bargaining chip independent of the strategic utility of a weapons system. How can a system be strategically trivial, extravagantly expensive, militarily destabilizing, but an excellent bargaining chip, nonetheless? The bargaining value is identical with the utility of a system that makes us stronger, more effective and, therefore, is a quality that we can bargain away for a comparable advantage.

Finally, I want to address the phenomenon which one of my colleagues referred to yesterday as the "Russian approval caveat." Both the House and the Senate passed amendments recently putting a unilateral hold on the testing, production or deployment of various weapon systems with a proviso requiring either some arms control gesture, statement or action by the President, or similar restraint by the Soviets, or both.

It may surprise my colleague from Idaho, who made the remark I just referred to, but I agree with him to a great extent. This is hardly the way to go about arms control. It is an awkward legislative device, especially in trying to bargain with the Russians this way. Still, occasionally I voted for such an approach because it was about the only way left for us to send a message to the President and influence him to reinforce his efforts in the arms control area. It is a sign of the legitimate frustration of Congress.

Let me go back for a moment to the Scowcroft report. Among its many recommendations the administration took note of only one: deploy the MX missile. To my mind that was the only recommendation that stood out as inconsistent with the rest of the report. To me, the most important policy recommendation of the report was the strong connection it drew between arms control and strategic modernization. As the report stated:

> Whether the Soviets prove willing or not, stability should be the primary objective both of the modernization of our strategic forces and of our arms control proposals. Our arms control proposals and our strategic arms programs should thus be integrated and be mutually reinforcing. They should work together to permit us, and encourage the Soviets, to move in directions that reduce or eliminate the advantage of aggression and also reduce the risk of war by accident or miscalculation.

What this report says, Mr. President, is that, contrary to extremists on either side of this issue, arms control and force modernization are not antitheses. You do not have to reject one to be for the other. Strategic modernization is not macho and arms control cowardly. They are the two most important aspects of the defense of our national security; they have to work hand in hand in a mutually reinforcing fashion. We cannot have meaningful arms control without strategic modernization because we would not have anything to take with us to the negotiating table. Strategic buildup without arms control on the other hand may also make us less rather than more secure by forcing destabilizing developments on us and bankrupting our economy.

President Reagan did a disservice to the country by the contemptuous attitude he and his advisers exhibited toward the idea of arms control. Last year he changed his rhetoric, and maybe his thinking as well. I am ready to give him the benefit of the doubt. Still, we see day by day, week by week, what difficulties he has in establishing some credibility with respect to his newly found devotion to arms control. I am not talking about the Soviets. They would be suspicious of us, no matter what we did. The President, however, frightened our closest friends and allies, and even the American people, with his careless rhetoric. That causes his credibility problem now, as he tries to restore at least a semblance of progress on the arms control field in an election year.

This is the background of those Russian approval caveats. We denounce Soviet intransigence at and withdrawal from the arms control talks; and we are right to do so. But we all know that our government is not blameless either. The so-called Russian approval caveats are very imperfect tools but perhaps the only tools we have at this point to place the onus back on the Soviets and to encourage the President to pursue arms control goals aggressively. If he does that and fails because of Soviet intransigence, every one will know who is to be blamed and we would not be torn by these mixed emotions.

As far as weakening of our defenses is concerned, the amendments are written skillfully enough to provide safety provisions for any unforeseen national need or emergency. I can assure my colleagues that as soon as we have a President who provides real leadership on arms control these amendments will simply disappear.

As I indicated, on balance I favor the passage of this bill. Its positive elements more than make up for its shortcomings. It continues the modernization of the air- and sea-based legs of our strategic deterrence. It increases our tactical strength on the ground, in the air and on the oceans. It initiates a significant new force projection program among other important research and development projects.

For our military personnel it provides a much needed cost-of-living increase.

The bill establishes permanent provisions on warranty requirements. It takes steps to make our procurement process more rational and cost-effective.

Overall, it is a prominent demonstration of our national will to protect our territorial and moral integrity, our way of life. On controversial issues that I feel strongly about—MX, arms control—we made progress compared to previous years.

Mr. PELL. Mr. President, with reluctance I have decided to vote against the 1985 defense authorization bill. I do so despite my very strong support for many provisions in this bill, such as the improvements which have been made in conventional programs, the continuing commitment to both the Trident and attack submarine programs, and a number of other initiatives of positive importance to our national security.

I must express, however, my very deep reservations about a number of provisions in the bill as well as my hope that several of these areas will be improved in conference with the House-passed bill.

My most overriding concern is with the level of real growth in military spending contained in the bill. I support a strong national defense, and remain convinced that we can achieve that objective at a reasonable cost. This legislation, however, continues the trend established in the past three defense authorization bills—a trend which will result in a doubling of the national defense function in the years 1981-85. I question whether this enormous increase in defense spending has actually produced greater national security for the United States, and whether our citizens believe they are more secure today than they were 4 years ago.

Moreover, I question whether this bill can be justified in light of the growing threat posed by budget deficits to our national economic security. This bill represents a nearly 7-percent real growth in the defense budget over fiscal year 1984. Given the overriding need, which we all recognize, to reduce the Federal deficit, the rate of growth in defense spending contained in this bill cannot, in my view, be justified. For that reason, I strongly supported Senator DIXON's motion to recommit S. 2723 to the committee to be revised to the level of a 5-percent real growth increase. This motion, together with other amendments to reduce funding for the MX and other strategic programs, would have in my judgment, produced a far more acceptable bill from the standpoint of our national economic security.

I would like to briefly indicate several other areas where I am in serious disagreement with certain provisions of S. 2723. Our failure to follow the wise lead of the House in relation to the MX missile represents, in my view, a serious mistake. I have, on other occasions, set forth my reasons for opposing this costly and destabilizing weapon, and will only state that the case for the MX has not become any more compelling in the year that has elapsed since our extended debate on the matter last summer. The idea that moving forward with the MX would prompt the Soviets to reach an arms control agreement has been disproven. As we have moved ahead with the MX, they have walked away from the arms control negotiations. Surely we need a more inventive way to get the Soviets back to the bargaining table than continuing with this destabilizing and unnecessary program.

I also regret that the Senate has not seen fit to substantially reduce funding for the President's strategic defense initiative. As the ranking member of the Foreign Relations Committee, I have had the opportunity to hear extensive testimony on the SDI or "Star Wars" question. I have concluded that pursuing SDI will ultimately be a dangerous program and a waste of billions of dollars. So long as the United States remains dedicated to rendering Soviet strategic forces impotent, I cannot believe that we can halt the arms race and bring about the necessary reductions in strategic weapons that we profess to desire. A number of experts believe that we will live in a much less stable world if both sides proceed with ASAT and space weapons. Under such circumstances, the temptation to strike first and bring about a nuclear confrontation will be heightened.

Finally, in the matter of Central America, I regret the Senate's failure to place limitations on the commitment of U.S. troops and the disapproval of the Inouye/Kennedy proposal to phase down our support for the covert operations against the Government of Nicaragua. There is no question that the American people are becoming quite fearful that policies of this administration are leading the Nation dangerously close to military intervention in Central America. Reflecting these legitimate concerns, the House approved language placing a limitation on the introduction of U.S. Armed Forces into the region by a resounding 341-to-64 margin. The amendment offered by Senators KENNEDY and HATFIELD was essentially the same as the House-passed provision, and should, in my view, have been adopted as a safeguard against U.S. military involvement in a widening war in Central America. Similarly, the compromise offered by Senators INOUYE and KENNEDY to phase out our support for the "secret war" in Nicaragua was a positive initiative and should have been adopted by the Senate.

There are a number of areas where S. 2723 represents an improvement over past authorization bills. Conventional programs in a number of areas have been strengthened, modest procurement improvements have been initiated, and the budget in long range research and development has not suffered as greatly as in past years at the expense of weapons procurement. I am pleased that the Senate has reaffirmed the principle of the Tsongas amendment that negotiations take priority over testing of ASAT weapons. I led a delegation of nine U.S. Senators to Moscow last summer where the late Chairman Andropov stated that the Soviets were prepared to dismantle existing ASAT weapons and ban new ones. This proposal has been renewed recently by the new Soviet leadership and, while it is premature to judge the seriousness of the Soviet commitment to this proposal, it is only prudent that we put the Soviet offer to the test.

I also strongly support the committee's continuing commitment to our submarine building program, including the authorization for a 12th Trident submarine and authorization for 4 additional *Los Angeles* class attack submarines. These programs are certainly the most dependable and proven part of our defense arsenal, and I commend the committee for its positive action in this area.

I was also pleased to have worked with the committee on several smaller aspects of the bill, such as the authorization for expanded impact aid for school districts with military installations and the provision calling for the construction of two new submarine research laboratories at the Naval Underwater Systems Center in Newport, RI.

Despite my strong support for these measures and many other positive provisions in this bill, I have concluded that the tremendous rate of increase in defense spending embodies in this bill, together with the continuing commitment to costly and destabilizing strategic programs, compels me to vote against this legislation. If we are to avoid the ultimate apocalypse of nuclear war, the path lies not in the pursuit of strategic weaponary like MX and exotic programs like "Star Wars." Rather, our hope for survival lies in a strong national defense based on credible deterrents, conventional strength, and national economic security. I do not believe that S. 2723 contains the balance necessary to achieve this goal, and thus I have reluctantly decided to oppose this bill.

Mr. MITCHELL. Mr. President, I will vote for the Defense authorization bill for fiscal year 1985. But I will do so reluctantly.

The authorization contained in this measure is enormous: over $230 billion. Increases in U.S. defense spending are necessary. But we will reach a point of diminishing returns if this rate of increase is maintained. My position has been, and continues to be, that defense spending should be increased in this and each of the 2 succeeding fiscal years by no more than 5 percent, after adjustment for inflation. This is a reasonable and sustainable effort, one which will provide for a cost-effective national defense program.

The $230 billion represents a real growth increase of about 7 percent over what the United States is expected to spend on defense in the fiscal year which ends on September 30. We do not need that much of an increase. We cannot afford an increase of that magnitude during this period of high deficits, cutbacks in important domestic programs and a decline in citizen purchasing power.

Nor do we need some of the more costly weapons this bill authorizes the Defense Department to develop and buy. For instance, I strongly oppose the MX missile and the B-1 bomber; with the authority this bill provides, we will buy more of both systems, neither of which enhances our national security.

However, I do believe that we must maintain a strong national defense and that we cannot leave anyone—especially any foreign power—with the impression that this Congress is not committed to a strong national defense.

Current events are such that this Congress must permit and indeed, require, the Department of Defense to undertake the defense effort necessary to counter Soviet activities and to contend with other threats to our Nation's interests, wherever and whenever they occur.

While I would have preferred the opportunity to vote for a defense authorization bill which provides a lesser increase, I am pleased that the Committee on Armed Services has pared down the administration's initial request from $242.8 billion to $230 billion. This latter figure is consistent with the first concurrent resolution on the budget for fiscal year 1985.

As I have already mentioned, this bill would continue the MX missile program. While I regret this, I am pleased that it denies the President his full request of 40 MX missiles. The committee cut that request by 19 missiles and $550 million. Unfortunately, a floor amendment to eliminate the entire MX program, which I cosponsored, failed. I am hopeful that the number of missiles approved in the Senate-passed bill will be further reduced in the conference between the House and Senate, and perhaps eliminated altogether during consideration of the defense appropriations bill for fiscal year 1985.

I have additional reasons for supporting the bill despite its excessive cost and the inclusion of some highly questionable weapons systems.

First, the bill totally eliminates the President's request for funds with which the Army planned to establish a facility to produce binary chemical munitions. For the past 3 years, the Senate, over my opposition and by the narrowest of margins, has approved funding for such facilities, though this funding was eliminated in subsequent conferences with the House. The President should now make a concerted effort to initiate multilateral and bilateral negotiations designed to stop future use of all chemical and biological agents as tools of war.

Second, the bill continues the necessary effort to rebuild U.S. naval forces to insure that the U.S. maintains superiority on the seas. Notable items contained in the naval forces section of the bill include construction of four SSN-688 class attack submarines; construction of three CG-47 class guided missile cruisers; construction of the lead ship of the DDG-51 *Arleigh Burke* class of guided missile destroyers; procurement of nine P-3C Orion maritime patrol aircraft; and procurement of other needed naval aircraft.

Third, the bill contains some important provisions the purpose of which is to save money by improving Defense Department procurement policies. Included are provisions which seek to lower the cost of spare parts by increasing contract competition and tightening up on the amount of overhead a prime contractor can load on a contract; encourage greater economies of scale; provide rewards and incentives to personnel who devote thought and energy to cost-cutting; and increase the number of defense suppliers who can compete to produce high quality goods at the lowest possible cost to the Government.

The Defense authorization bill presents a difficult choice. Obviously, we need a strong defense. That requires a substantial authorization bill. Just as obviously, this authorization bill is somewhat excessive and includes weapons systems we neither need nor can afford. My decision to support this bill is based on a belief that its benefits outweigh its deficiencies. But the bill does contain many deficiencies, some of which I hope will be rectified as we proceed with the defense appropriations process. Indeed, last year the Defense authorization bill provided for a 7-percent increase in spending. But during the appropriation process that increase was reduced by about half. I will work toward that same end in this year's appropriation process. And I pledge that I will continue at that time to seek improvements in the policies on which the security of our country depends.

Mr. KENNEDY. Mr. President, I have serious reservations concerning a number of provisions in the legislation as it now stands before the Senate. The authorization is well over 7 percent real growth—a level neither justified in terms of our requirements for national security nor appropriate in light of the enormous deficits facing our Nation and the sacrifice many of our least well off citizens have been forced to make as a result of drastic reductions in domestic programs. The bill continues funding for the destabilizing and wasteful MX missile, albeit at a rate below that proposed by the President. Funding is also continued for the B-1 bomber, a program which is costly and unnecessary in light of the Senate's strong support for the advanced technology bomber. Funding for the "Star Wars" strategic defense initiative is unacceptably high, and the whole premise underlying the SDI is a dangerous step toward a new, destabilizing and costly arms race in space. Although the Senate strengthened the conditions surrounding testing of ASAT systems, the provisions continue to permit the President latitude to launch a new arms race in space, which may eventually threaten our important surveillance and command and control satellites—without any serious exploration of promising potential arms control limitations.

I deeply regret the Senate's rejection of my amendments concerning the use of combat troops in El Salvador and Nicaragua, and funding for the Contras and the not-so-secret war in Nicaragua. Our policy in that vital area of the world threatens further strife and conflict, and continues to turn its back on the prospects for peace and dignity for all citizens, by emphasizing war over diplomacy. I fully intend to press these issues in the months ahead, because I believe they are essential to assuring a lasting peace in Central America.

A number of important provisions were added to this legislation during our debate. I am particularly pleased that the Senate has overwhelmingly adopted the provisions of the Kennedy-Mathias resolution concerning ratification of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, as well as the Senate's strong support for resuming negotiations on the Comprehensive Test Ban Treaty. The Senate's vote on this amendment sends a strong and clear message to the President that words are not enough; what the Senate and the American people want is serious movement toward genuine arms control. I hope the President will heed this important expression of congressional sentiment.

I strongly support a number of important initiatives the committee has taken to strengthen our conventional forces. In the long run, I believe that these efforts will lead us away from our current, dangerous reliance on our nuclear deterrent. However, I regret that the Senate has failed to adopt what is most essential to preserving the strength, capability, and readiness of our forces—an adequate pay raise necessary to attract and retain the kind of quality individuals who are the key to our national defense.

The extended debate on this legislation demonstrates above all else the Senate's deep concern over the administration's indifference to the most critical issue facing our Nation—the pursuit of effective, verifiable arms control regimes that will strengthen our national security and lessen the dangers of an all-out, ultimate nuclear war, in which there will be no winners, not even any survivors. In the areas of intercontinental missiles, SLCM's, ASAT's, and nuclear testing, the Senate has made clear its deep misgivings over the President's dangerous course. The amendments adopted on this bill are a start, but much, much more remains to be done. We owe the American people, and all the citizens of this world, no less. I vote no.

COMPETITION IN SPARE PARTS

Mr. GRASSLEY. Mr. President, the legislation adopted by the U.S. Senate to enhance competition in spare parts addresses the problem of excess profits allowed by the Defense Department. This problem points to a lack of willingness on the part of the Defense Department to independently utilize the forces of the competitive market to receive the lowest prices and highest quality merchandise.

Some products are purchased by DOD by as much as 17 times their market price. Spares contracts signed between the Defense Department and suppliers would never hold up to the rigors of a truly competitive marketplace. The spare parts procurement revisions contained in this bill were a solid contribution and a necessary first step toward dealing with the underlying problems that cause spares to be overpriced.

Competition is visibly lacking in the defense procurement industry. It makes sense that the principles that made this country great would also contribute to our desire to buy more defense at more affordable prices.

The procurement language in the committee bill left me with concerns which my amendment attempted to address. Various waivers were interspersed throughout the bill which might have given contracting officers too much flexibility as to whether competition should be used. I also felt the bill was not clear enough on the means to allow small businesses and other potential bidders into the bidding process.

My amendment made substantial movement toward the House-passed language offered by Congressman BERKLEY BEDELL of Iowa. Most of the provisions in the Bedell language were addressed in my amendment, while maintaining consistency with the Senate committee bill. The one area which must yet be addressed by the Congress and which I consider to be of extreme importance is that of overhead. Before this very difficult subject can be addressed, however, it should be explored in hearings in both the House and Senate. I fully intend to pursue this subject in coming months with my colleagues, and it is my hope in the meantime that the conference committee on this bill will give full and serious consideration to the Bedell language on overhead.

Mr. LEVIN. Mr. President, I should like to take this opportunity to elaborate on why I voted for final passage of the Senate's version of the fiscal 1985 Defense Authorization Act.

There are several positive aspects to this bill:

A major defense procurement reform package which incorporates most of the features of my own legislation to eliminate wasteful Pentagon purchasing practices;

Increased funding—although not as much as I would recommend and prefer—for improving our conventional forces, in both the procurement and readiness areas. In this regard, I am pleased the committee and Senate agreed to authorize 120 more M-1 main battle tanks than sought by the administration.

More program control statements in a Defense authorization bill than in recent memory, which recognizes that mutual and verifiable arms control initiatives can contribute to our national security as complements to military programs. This bill improves on the committee's recommendation regarding antisatellite weapons arms control and also supports more aggressive arms control efforts regarding under sea-launched cruise missiles and a comprehensive nuclear test ban. The U.S. policy not to undercut the SALT agreements as long as the Soviets do not, was reaffirmed.

No funding for binary chemical weapons which would create troubles for the NATO alliance.

Establishment of the National Peace Academy.

There are many portions of the bill I strongly opposed, including the MX funding and the excessive funding for SDI. I hope we move closer to the House position on these items in conference.

The pluses outweighed the minuses, although there were too many minuses, certainly.

We will work to reduce the number of minuses in conference and hope that the conference report improves in numerous ways on the bill we passed tonight.

Mr. TOWER. Regular order, Mr. President. Third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. TOWER. Mr. President, I ask unanimous consent that the Chair lay before the Senate the bill (H.R. 5167) and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

> A bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. TOWER. Mr. President, I move to strike out all after the enacting clause of H.R. 5167 and insert in lieu thereof the text of S. 2723, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. TOWER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island [Mr. CHAFEE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Iowa [Mr. GRASSLEY], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Oregon [Mr. PACKWOOD], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Colorado [Mr. HART], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Kentucky [Mr. HUDDLESTON], the Senator from Louisiana [Mr. LONG], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 82, nays 6—as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—82

Abdnor
Andrews
Armstrong
Baker
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Eagleton
East
Evans
Exon
Ford
Garn
Glenn
Goldwater
Gorton
Hatch
Hawkins
Hecht
Heflin
Heinz
Helms
Humphrey
Inouye
Jepsen
Johnston
Kasten
Lautenberg
Laxalt
Leahy
Levin
Lugar
Mathias
Matsunaga
Mattingly
McClure
Melcher
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Percy
Pryor
Quayle
Randolph
Riegle
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stevens
Symms
Thurmond
Tower
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—6

Hatfield
Kennedy
Metzenbaum
Pell
Proxmire
Tsongas

NOT VOTING—12

Chafee
Durenberger
Grassley
Hart
Hollings
Huddleston
Kassebaum
Long
Packwood
Pressler
Stafford
Stennis

So the bill (H.R. 5167), as amended, was passed.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, I move that the title of H.R. 5167 be amended to read as follows:

An act to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1985, to authorize certain construction at military installations for such fiscal year, to authorize appropriations for the Department of Energy for national security programs for such fiscal year, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDEFINITE POSTPONEMENT OF S. 2723

Mr. TOWER. Mr. President, I ask unanimous consent to indefinitely postpone consideration of S. 2723.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I ask unanimous consent the bill be printed as passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I move the Senate insist on its amendments and request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. BOSCHWITZ] appointed Mr. TOWER, Mr. THURMOND, Mr. GOLDWATER, Mr. HUMPHREY, Mr. COHEN, Mr. JEPSEN, Mr. QUAYLE, Mr. EAST, Mr. WILSON, Mr. NUNN, Mr. STENNIS, Mr. HART, Mr. EXON, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. DIXON, and solely for consideration of any benefits to be paid by the Veterans' Administration, Mr. SIMPSON, and Mr. CRANSTON.

MILITARY CONSTRUCTION AUTHORIZATION 1985

Mr. TOWER. Mr. President, I ask unanimous consent that when H.R. 5604, a bill to authorize certain construction at military installations in fiscal year, 1985, and for other purposes, is passed by the House and received by the Senate, the Senate be deemed to have proceeded to that bill, that all after the enacting clause be stricken and the language of title II of S. 2723, as amended, be inserted in lieu thereof; that the bill be deemed to have been read a third time and passed, and that the Senate insist on its amendments and request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

I also ask unanimous consent the bill be printed as passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF ENERGY AUTHORIZATION FOR NATIONAL SECURITY PROGRAMS

Mr. TOWER. Mr. President, I also ask unanimous consent that the Committee on Armed Services be discharged from further consideration of S. 2459, a bill to authorize appropriations for the Department of Energy for national security programs for fiscal year 1985 and fiscal year 1986, and for other purposes and, that the Senate proceed to its immediate consideration.

Mr. BYRD. Reserving the right to object——

Mr. President, I remove my reservation.

Mr. TOWER. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the language of title III of S. 2723, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I ask for third reading.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2459) to authorize appropriations for the Department of Energy for national security programs for fiscal year 1985 and fiscal year 1986, and for other purposes.

Mr. TOWER. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the language of title III of S. 2723, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read a third time.

The bill (S. 2459), was as amended, passed, as follows:

S. 2459

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act, 1985".

TITLE I—NATIONAL SECURITY PROGRAMS

OPERATING EXPENSES

SEC. 101. Funds are authorized to be appropriated to the Department of Energy for fiscal year 1985 for operating expenses incurred in carrying out national security programs (including scientific research and development in support of the Armed Forces, strategic and critical materials necessary for the common defense, and military applications of nuclear energy and related management and support activities) as follows:

(1) For naval reactors development, $426,400,000.

(2) For weapons activities, $3,340,754,000.

(3) For verification and control technology, $73,700,000.

(4) For materials production, $1,377,490,000.

(5) For defense waste and byproducts management, $358,700,000.

(6) For nuclear safeguards and security, $58,000,000.

(7) For security investigations, $34,000,000.

PLANT AND CAPITAL EQUIPMENT

SEC. 102. Funds are authorized to be appropriated to the Department of Energy for fiscal year 1985 for plant and capital equipment (including planning, construction, acquisition, and modification of facilities, land acquisition related thereto, and acquisition and fabrication of capital equipment not related to construction) necessary for national security programs as follows:

(1) For naval reactors development:

Project 85-N-101, general plant projects, various locations, $2,000,000.

Project 82-N-111, materials facility, Savannah River, South Carolina, $40,000,000, for a total project authorization of $165,000,000.

Project 81-T-112, modifications and additions to prototype facilities, various locations, $6,000,000, for a total project authorization of $110,000,000.

(2) For weapons activities:

Project 85-D-101, general plant projects, various locations, $29,600,000.

Project 85-D-111, general plant projects, various locations, $30,200,000.

Project 85-D-102, nuclear weapons research, development, and testing facilities revitalization, phase I, various locations, $35,400,000.

Project 85-D-103, safeguards and security enhancements, Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, California, $4,700,000.

Project 85-D-104, test devices assembly building, Los Alamos National Laboratory, Los Alamos, New Mexico, $800,000.

Project 85-D-105, combined device assembly facility, Nevada Test Site, Nevada, $3,000,000.

Project 85-D-106, hardened radiography facility, site 300, Lawrence Livermore National Laboratory, Livermore, California, $800,000.

Project 85-D-112, enriched uranium recovery improvements, Y-12 Plant, Oak Ridge, Tennessee, $4,500,000.

Project 85-D-113, power plant and steam distribution system, Pantex Plant, Amarillo, Texas, $4,500,000.

Project 85-D-114, safeguards vaults, Y-12 Plant, Oak Ridge, Tennessee, $3,100,000.

Project 85-D-115, renovate plutonium building utility systems, Rocky Flats Plant, Golden, Colorado, $5,800,000.

Project 85-D-121, air and water pollution control facilities, Y-12 Plant, Oak Ridge, Tennessee, $5,000,000.

Project 85-D-122, safeguards and site security upgrade, Mound Facility, Miamisburg, Ohio, $2,700,000.

Project 85-D-123, safeguards and site security upgrade, phase I, Pantex Plant, Amarillo, Texas, $1,000,000.

Project 85-D-124, safeguards and site security upgrade, Rocky Flats, Golden, Colorado, $1,000,000.

Project 85-D-125, tactical bomb production facilities, various locations, $10,000,000.

Project 84-D-102, radiation-hardened integrated circuit laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $20,000,000, for a total project authorization of $22,000,000.

Project 84-D-103, hardened central guard force facility, Los Alamos National Laboratory, Los Alamos, New Mexico, $5,600,000, for a total project authorization of $6,200,000.

Project 84-D-104, nuclear materials storage facility, Los Alamos National Laboratory, Los Alamos, New Mexico, $6,500,000, for a total project authorization of $7,200,000.

Project 84-D-105, safeguards and security upgrades, phase I, Los Alamos National Laboratory, Los Alamos, New Mexico, $10,100,000, for a total project authorization of $15,100,000.

Project 84-D-106, security system upgrade, Sandia National Laboratories, Albuquerque, New Mexico, $2,300,000 for a total project authorization of $3,800,000.

Project 84-D-107, nuclear testing facilities revitalization, various locations $21,900,000, for a total project authorization of $45,400,000.

Project 84-D-112, TRIDENT II warhead production facilities, various locations, $60,700,000, for a total project authorization of $80,000,000.

Project 84-D-114, consolidated manufacturing facility, Rocky Flats Plant, Golden, Colorado, $18,100,000, for a total project authorization of $42,200,000.

Project 84-D-115, electrical system expansion, Pantex Plant, Amarillo, Texas, $10,000,000, for a total project authorization of $11,500,000.

Project 84-D-117, inert assembly and test facility, Pantex Plant, Amarillo, Texas, $11,700,000, for a total project authorization of $13,200,000.

Project 84-D-119, railroad track replacement and upgrade, Pantex Plant, Amarillo, Texas, $6,800,000, for a total project authorization of $7,600,000.

Project 84-D-120, explosive component test facility, Mound Facility, Miamisburg, Ohio, $16,900,000, for a total project authorization of $20,000,000.

Project 84-D-121, safeguards and site security upgrading, Rocky Flats Plant, Golden, Colorado, $11,200,000, for a total project authorization of $21,200,000.

Project 84-D-124, environmental improvements, Y-12 Plant, Oak Ridge, Tennessee, $21,400,000, for a total project authorization of $29,000,000.

Project 84-D-211, safeguards and site security upgrading, Y-12 Plant, Oak Ridge, Tennessee, $8,000,000, for a total project authorization of $15,500,000.

Project 84-D-212, safeguards and site security upgrade, Pinellas Plant, Florida, $2,700,000, for a total project authorization of $3,700,000.

Project 83-D-199, buffer land acquisition, Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, California, $7,000,000, for a total project authorization of $17,000,000.

Project 82-D-107, utilities and equipment restoration replacement and upgrade phase III, various locations, $161,600,000, for a total project authorization of $572,500,000.

Project 82-D-111, interactive graphics systems, various locations, $6,800,000, for a total project authorization of $20,000,000.

Project 82-D-144, simulation technology laboratory, Sandia National Laboratories, Albuquerque, New Mexico, $11,500,000, for a total project authorization of $23,700,000.

Project 82-D-150, weapons materials research and development facility, Lawrence Livermore National Laboratory, Livermore, California, $16,800,000, for a total project authorization of $27,200,000.

Project 81-D-101, particle beam fusion accelerator-II Sandia National Laboratories, Albuquerque, New Mexico, $3,500,000, for a total project authorization of $45,650,000.

Project 81-D-115, missile X warhead production facilities, various locations, $20,900,000, for a total project authorization of $125,000,000.

Project 81-D-120, control of effluents and pollutants, Y-12 Plant, Oak Ridge, Tennessee, $1,400,000, for a total project authorization of $7,800,000.

Project 81-D-134, earthquake damage restoration, Sandia National Laboratories, Livermore, California, $4,900,000, for a total project authorization of $8,600,000.

Project 79-7-0, universal pilot plant, Pantex Plant, Amarillo, Texas, $3,800,000, for a total project authorization of $15,900,000.

(3) For verification and control technology:

Project 85-D-171, space science laboratory, Los Alamos, New Mexico, $1,000,000.

(4) For materials production:

Project 85-D-131, general plant projects, various locations, $30,000,000.

Project 85-D-132, plant engineering and design, various locations, $2,000,000.

Project 85-D-136, components protection system, 100-N area, Richland, Washington, $3,300,000.

Project 85-D-137, vault safety special nuclear material inventory system, Richland, Washington, $2,500,000.

Project 85-D-139, fuel processing restoration, Idaho Fuels Processing Facility, Idaho National Engineering Laboratory, Idaho, $10,000,000.

Project 85-D-140, productivity and radiological improvements, Feed Materials Productions Center, Fernald, Ohio, $6,000,000.

Project 85-D-142, fuel tube facilities, fuel preparation area, Savannah River, South Carolina, $8,000,000.

Project 85-D-145, uranyl nitrate to oxide conversion facility, Savannah River, South Carolina, $1,800,000.

Project 84-D-130, modification processing facility substations, Savannah River, South Carolina, $200,000, for a total project authorization of $5,800,000.

Project 84-D-134, safeguards and security improvements, Plantwide, Savannah River, South Carolina, $14,900,000, for a total project authorization of $26,900,000.

Project 84-136, enriched uranium conversion facility modifications, Y-12 Plant, Oak Ridge, Tennessee, $8,000,000, for a total project authorization of $12,400,000.

Project 84-D-137, facility security systems upgrade, Idaho Fuels Processing Facility (IFPF), Idaho National Engineering Laboratory, Idaho, $8,000,000, for a total project authorization of $10,000,000.

Project 83-D-146, water pollution control, Feed Materials Production Center, Fernald, Ohio, $4,100,000, for a total project authorization of $9,500,000.

Project 83-D-147, pollution discharge elimination, Savannah River, South Carolina, $2,150,000, for a total project authorization of $8,650,000.

Project 83-D-148, nonradioactive hazardous waste management, Savannah River, South Carolina, $11,500,000, for a total project authorization of $19,000,000.

Project 83-D-180, facility storage modifications, various locations, $6,500,000, for a total project authorization of $15,800,000.

Project 82-D-124, restoration of production capabilities, phases II, III, IV, and V, various locations, $68,800,000, for a total project authorization of $300,634,000.

Project 82-D-128, plant perimeter security systems upgrade, Idaho Fuels Processing Plant, Idaho National Engineering Laboratory, Idaho, $400,000, for a total project authorization of $5,400,000.

Project 82-D-136, fuel processing facilities upgrade, Idaho Fuels Processing Facility, Idaho National Engineering Laboratory, Idaho, $1,000,000, for a total project authorization of $46,000,000.

Project 82-D-201, special plutonium recovery facilities, JB-Line, Savannah River, South Carolina, $28,800,000, for a total project authorization of $65,800,000.

(5) For defense waste and byproducts management:

Project 85-D-156, general plant projects, interim waste operations and long-term waste management technology, various locations, $23,645,000.

Project 85-D-157, seventh calcined solids storage facility, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho, $7,000,000.

Project 85-D-158, central warehouse upgrade, Richland, Washington, $700,000.

Project 85-D-159, new waste transfer facilities, H Area, Savannah River, South Carolina, $11,000,000.

Project 85-D-160, test reactor area security system upgrade, Idaho National Engineering Laboratory (INEL), Idaho, $2,000,000.

Project 83-D-157, additional radioactive waste storage facilities, Richland, Washington, $3,155,000, for a total project authorization of $53,155,000.

Project 81-T-105, defense waste processing facility, Savannah River, South Carolina, $238,000,000, for a total project authorization of $440,000,000.

Project 77-13-f, waste isolation pilot plant, Delaware Basin, Southeast, New Mexico, $51,100,000, for a total project authorization of $394,200,000.

(6) For capital equipment not related to construction—

(A) for naval reactors development, $22,500,000;

(B) for weapons activities, $239,850,000;

(C) for inertial confinement fusion, $9,500,000;

(D) for verification and control technology, $2,000,000;

(E) for materials production, $122,660,000;

(F) for defense waste and byproducts management, $35,771,000; and

(G) for nuclear safeguards and security, $4,700,000.

TITLE II—GENERAL PROVISIONS

REPROGRAMMING

SEC. 201. (a) Except as otherwise provided in this Act—

(1) no amount appropriated pursuant to this Act may be used for any program in excess of 105 percent of the amount authorized for that program by this Act or $10,000,000 more than the amount authorized for that program by this Act, whichever is the lesser, and

(2) no amount appropriated pursuant to this title may be used for any program which has not been presented to, or requested of, the Congress.

unless a period of thirty calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after receipt by the appropriate committees of Congress of notice from the Secretary of Energy (hereinafter in this title referred to as the "Secretary") containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or unless each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action.

(b) In no event may the total amounts of funds obligated pursuant to this title exceed the total amount authorized to be appropriated by this Act.

LIMITS ON GENERAL PLANT PROJECTS

Sec. 202 (a) The Secretary may carry out any construction project under the general plant projects provisions authorized by this Act if the total estimated costs of the construction project does not exceed $1,000,000.

(b) If at any time during the construction of any general plant project authorized by this Act, the estimated cost of the project is revised because of unforeseen cost variations and the revised cost of the project exceeds $1,000,000, the Secretary shall immediately furnish a complete report to the appropriate committees of Congress explaining the reasons for the cost variation.

(c) In no event may the total amount of funds obligated to carry out all general plant projects authorized by this Act exceed the total amount authorized to be appropriated for such projects by this Act.

LIMITS ON CONSTRUCTION PROJECTS

Sec. 203 (a) Whenever the current estimated cost of a construction project which is authorized by section 102 of this Act, or which is in support of national security programs of the Department of Energy and was authorized by any previous Act, exceeds by more than 25 percent the higher of (1) the amount authorized for the project, or (2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to the Congress, construction may not be started or additional obligations incurred in connection with the project above the total estimated cost, as the case may be, unless a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three days to a day certain) has passed after receipt by the appropriate committees of the Congress of written notice from the Secretary containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the action, or unless each committee before the expiration of such period has notified the Secretary it has no objection to the proposed action.

(b) Subsection (a) shall not apply to any construction project which has a current estimated cost of less than $5,000,000.

FUND TRANSFER AUTHORITY

Sec. 204. To the extent specified in appropriations Acts, funds appropriated pursuant to this Act may be transferred to other agencies of the Government for the performance of the work for which the funds were appropriated, and funds so transferred may be merged with the appropriations of the agency to which the funds are transferred.

AUTHORITY FOR CONSTRUCTION DESIGN

Sec. 205. (a)(1) Within the amounts authorized by this Act for plant engineering and design, the Secretary may carry out advance planning and construction designs (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such planning and design does not exceed $2,000,000.

(2) In any case in which the total estimated cost for such planning and design exceeds $300,000, the Secretary shall notify the appropriate committees of Congress in writing of the details of such project at least thirty days before any funds are obligated for design services for such project.

(b) In any case in which the total estimated cost for advance planning and construction design in connection with any construction project exceeds $2,000,000, funds for such design must be specifically authorized by law.

AUTHORITY FOR EMERGENCY CONSTRUCTION DESIGN

Sec. 206. In addition to the advance planning and construction design authorized by section 102, the Secretary may perform planning and design utilizing available funds for any Department of Energy defense activity construction project whenever the Secretary determines that the design must proceed expeditiously in order to meet the needs of national defense or to protect property or human life.

FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY

Sec. 207. Subject to the provisions of appropriation Acts, amounts appropriated pursuant to this Act for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

ADJUSTMENTS FOR PAY INCREASES

Sec. 208. Appropriations authorized by this Act for salary, pay, retirement, or other benefits for Federal employees may be increased by such amounts as may be necessary for increases in such benefits authorized by law.

AVAILABILITY OF FUNDS

Sec. 209. When so specified in an appropriation Act, amounts appropriated for Department of Energy defense programs may remain available until expended.

CONTRACTOR LIABILITY FOR INJURY OR LOSS OF PROPERTY ARISING OUT OF ATOMIC WEAPONS TESTING PROGRAMS

Sec. 210. (a)(1) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or by the Act of March 9, 1920 (46 U.S.C. 741-752 and 781-790), as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(b) A contractor against whom a civil action or proceeding described in subsection (a) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (a), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(c) The provisions of this section shall apply to any action now pending or hereafter commenced which is an action within the provisions of subsection (a) of this section. Notwithstanding section 2401(b) of title 28, United States Code, if a civil action or proceeding pending on the date of enactment of this section is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28, United States Code.

(d) For purposes of this section, "contractor" includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

COST-EFFECTIVE FUNDING OF NUCLEAR WEAPONS

Sec. 211. (a) The President shall establish a Blue Ribbon Task Group to examine the current procedures used by the Department of Defense and the Department of Energy in establishing requirements for, and in providing resources for, the research, development, testing, production, surveillance and retirement of nuclear weapons. The purpose of the Group's effort will be to recommend any needed change in such procedure.

(b) The Group shall consist of seven members, qualified by reasons of experience and education. The President shall appoint three members and shall designate one member to act as chairman of the Group. The majority and minority leaders of the Senate and the House of Representatives shall each appoint one member. None of these members shall be an employee of the

Department of Energy, the Department of Defense, or any contractor employed by either such Department and involved in the research, development, testing, production, surveillance or retirement of nuclear weapons.

(c) Within 90 days of the date of enactment of this Act, the President shall submit the names of those persons appointed to such Group, together with the qualifications of such persons to serve on such Group, and a detailed plan for completing the report required by subsection (e) to the Committees on Armed Services of the Senate and the House of Representatives.

(d) The President shall insure that the Group has complete and timely access to Department of Energy and Department of Defense employees and records pertaining to such procedures.

(e) The Group shall submit a report of their findings and recommendations to the President and the Armed Services Committees of the Senate and the House of Representatives within 180 days of the date of enactment of this Act. Such report shall include any additional or dissenting views that any members of the Group may wish to submit. As a minimum, the study shall include recommendations in the following areas—

(1) ways to improve coordination between the Department of Energy and the Department of Defense to ensure cost-effective implementation of weapon activities and materials production;

(2) cost-effective improvements that can be made in budgeting and management procedures that affect weapon activities and materials productions; and

(3) whether the Department of Defense should assume the responsibility for funding current Department of Energy weapon activities and materials production programs.

REVIEW OF THE INERTIAL CONFINEMENT FUSION PROGRAM

Sec. 212. (a) The President shall establish, within 30 days after the date of the enactment of this Act, a review body to be known as the Technical Review Group on Inertial Confinement Fusion (hereinafter in this section referred to as the "Technical Review Group"). The President shall appoint to serve on the Technical Review Group only persons who are highly qualified experts in the related fields of laser technology and plasma physics as well as persons who are highly qualified in the development and testing of nuclear weapons.

(b) It shall be the function of the Technical Review Group to thoroughly review the current inertial confinement fusion program of the United States and to report its findings to the President and to the appropriate committees of Congress as provided in subsection (c).

(c) The Technical Review Group shall submit written reports to the President and to the appropriate committees of the Congress containing the results of its review, together with such recommendations regarding priorities for future work in the inertial confinement fusion program as the Technical Review Group determines appropriate, as follows:

(1) A first interim report on or before October 1, 1984.

(2) A second interim report on or before February 1, 1985.

(3) A final report on or before January 1, 1986.

(d) Upon the submission of its final report, the Technical Review Group shall cease to exist.

NAVAL NUCLEAR PROPULSION PROGRAM

Sec. 213. The provisions of Executive Order Numbered 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program, shall remain in force until changed by law.

AUTHORIZATION FOR PRODUCTION OF THE 155-MILLIMETER ARTILLERY-FIRED, ATOMIC PROJECTILE

Sec. 214. (a) Notwithstanding any other provision of law, the Secretary of Energy may obligate not more than $50,000,000 from funds otherwise authorized to be appropriated in this Act for the construction of facilities necessary to produce the 155-millimeter artillery-fired, atomic projectile (Project 82-D-109).

(b) Notwithstanding any other provision of law, in the case of the 155-millimeter atomic-fired artillery projectile (W-82) and the 8-inch atomic-fired artillery projectile (W-79), the following conditions shall be adhered to:

(1) the total number of both such warheads produced may not exceed 925;

(2) the total funds that may be expended for the production of both such warheads subsequent to the date of enactment of this Act shall not exceed $1,100,000,000;

(3) no such warheads produced after the date of enactment of this Act may be produced in the enhanced radiation version;

(4) in producing both such warheads, special emphasis shall be placed upon improvements in the safety, security, range, and survivability of such warheads; and

(5) replacement of obsolete atomic-fired, artillery projectiles now in Europe with such improved warheads will be accomplished within the nuclear stockpile limits agreed to by NATO Defense Ministers at Montebello, Canada, in October 1983, which required the withdrawal of 1,400 warheads from the European stockpile in addition to the 1,000 warheads withdrawn in 1980.

(c) No action may be taken to implement the authority contained in this section until the Secretary of Defense has submitted a plan for the implementation of the provisions of this section to the Committees on Armed Services of the Senate and the House of Representatives.

Mr. TOWER. Mr. President, I ask unanimous consent that the title of the bill be amended to read as follows:

A bill to authorize appropriations for the Department of Energy for national security programs for fiscal year 1985 and fiscal year 1986, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I ask unanimous consent that the bill be printed as passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXPRESSIONS OF APPRECIATION AND GRATITUDE

Mr. BYRD. Mr. President, I want to express appreciation and gratitude for the fine work that has been done by Mr. Tower and Mr. Nunn in guiding this complex and controversial bill through the Senate. They have been most considerate of all Senators who have had amendments to be called up.

I do not know when I have seen two managers work with greater skill than these two Senators have in connection with this bill.

Mr. STEVENS. Mr. President, I join my good friend, the Democratic leader, in commending the two managers of the bill and the fine relationship they have developed over the years they have served together on the Armed Services Committee, and we are all aware of the fact that this is Senator Tower's last bill that he will manage in this capacity. As I have indicated, it should literally be called the Tower bill. It is a monumental bill in terms of the Department of Defense and a tribute to the Senator from Texas and the Senator from Georgia.

ROUTINE MORNING BUSINESS

(During the day morning business was transacted and statements were submitted, as follows:)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

DEFERRAL OF CERTAIN BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 152

The PRESIDIING OFFICER laid before the Senate the following message from the President of the United States, with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, and the Committee on Energy and Natural Resources:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three new deferrals of budget authority totaling $1,850,000 and five revised deferrals of budget authority which now total $98,533,000. The deferrals affect the Department of Energy.

The details of the deferrals are contained in the attached reports.

Ronald Reagan.

The White House, *June 20, 1984.*

12TH ANNUAL REPORT ON FEDERAL ADVISORY COMMITTEES—MESSAGE FROM THE PRESIDENT—PM 153

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

As provided by the Federal Advisory Committee Act, I am pleased to transmit the Twelfth Annual Report on Federal Advisory Committees.

In fiscal year 1983, Federal advisory committees contributed significant expertise to the discussion of important issues facing our Nation. With the assistance of these committees major initiatives were undertaken in areas such as social security reform, national security, and government efficiency. Other committees furnished valuable advice to Federal agencies concerned with scientific research, health programs, environmental issues, international diplomacy, as well as economic, social, and cultural affairs.

Since 1981, Federal agencies have achieved substantial overall savings in advisory committee program costs while continuing to make active use of committees in the Government decisionmaking process. These savings have been achieved without the sacrifice of the quality advice the agencies have required. The participation of the best possible members on a voluntary basis where possible, but on a compensatory basis where appropriate, must continue to be the goal. I plan to issue shortly a memorandum to executive branch agencies providing further guidance to sustain and improve upon these accomplishments.

The efficient and selective use of advisory committees was one of the major objectives of the Congress in enacting the Federal Advisory Committee Act. I am particularly concerned that advisory committees be established only when they are necessary, that they be carefully supported and monitored during their existence, and that they be promptly terminated when their mission is completed.

I commend the members who have served on advisory committees and thank them for sharing their experience, knowledge, and advice. Advisory committees can and have demonstrated the value of a continuing partnership between citizens and their government.

Ronald Reagan.

The White House, *June 20, 1984.*

MESSAGES FROM THE HOUSE

At 12:43 p.m., a message from the House of Representatives was delivered by Ms. Goetz, one of its reading clerks, announced that the House had passed the following bill without amendment:

S. 2776. A bill to continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes.

ENROLLED BILL SIGNED

At 5:28 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 2776. An Act to continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. Thurmond].

At 5:30 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5174) to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstances under which collective bargaining agreements may be rejected in cases under chapter 11, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. Rodino, Mr. Kastenmeier, Mr. Edwards of California, Mr. Seiberling, Mr. Hughes, Mr. Synar, Mr. Glickman, Mr. Morrison of Connecticut, Mr. Fish, Mr. Moorhead, Mr. Kindness, and Mr. Sawyer as managers of the conference on the part of the House.

MEASURE HELD AT DESK

The following bill was held at the desk by unanimous consent:

H.R. 5365. An act to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order.

MEASURES PLACED ON THE CALENDAR

The Committee on Labor and Human Resources was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 2878. An act to amend and extend the Library Services and Construction Act.

The Committee on Environment and Public Works was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 4585. An act to authorize appropriations for the Office of Environmental Quality and the Council on Environmental Quality for fiscal years 1985, 1986, 1987, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary reported that on today, June 20, 1984, he had presented to the President of the United States the following enrolled bill:

S. 2776. An act to continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WEICKER, from the Committee on Small Business, with an amendment in the nature of a substitute:

S. 2375. A bill to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

By Mr. PERCY, from the Committee on Foreign Relations, without amendment:

S. Con. Res. 121. Concurrent resolution expressing the sense of the Congress regarding the nondelivery in the Soviet Union of certain mail from the United States, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

Robert N. Broadbent, of Nevada, to be an Assistant Secretary of the Interior; and

Charles G. Stalon, of Illinois, to be a member of the Federal Energy Regulatory Commission for a term expiring October 20, 1987.

(The above nominations were reported from the Committee on Energy and Natural Resources with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PERCY, from the Committee on Foreign Relations:

Treaty Doc. 98-4. Supplementary Convention on Extradition With Sweden (Exec. Rept. No. 98-27).

Treaty Doc. 98-15. Convention With France on the Transfer of Sentenced Persons (Exec. Rept. No. 98-28).

Treaty Doc. 98-16. Extradition Treaty with Thailand (Exec. Rept. No. 98-29).

Treaty Doc. 98-17. Extradition Treaty with Costa Rica (Exec. Rept. No. 98-30).

Treaty Doc. 98-18. Extradition Treaty with Jamaica (Exec. Rept. No. 98-31).

Treaty Doc. 98-19. Extradition Treaty with Ireland (Exec. Rept. No. 98-32).

Treaty Doc. 98-20. Extradition Treaty with Italy (Exec. Rept. No. 98-33).

Treaty Doc. 98-23. Convention on the Transfer of Sentenced Persons (Exec. Rept. No. 98-34).

Treaty Doc. 98-24. Convention on Mutual Legal Assistance with the Kingdom of Morocco (Exec. Rept. No. 98-35).

Treaty Doc. 98-25. Mutual Legal Assistance Treaty With Italy (Exec. Rept. No. 98-36).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PRYOR (for himself and Mr. Riegle):

S. 2778. A bill to reorganize the Department of Health and Human Services by establishing an independent agency, governed by a bipartisan board, to administer the old-age, survivors, and disability insurance program and the supplemental security income program under titles II and XVI of the Social Security Act, to provide appropriate delegations of authority to such agency from the General Services Administration and the Office of Personnel Management, and for other purposes; to the Committee on Governmental Affairs.

By Mr. CHAFEE:

S. 2779. A bill to require shareholders approval for certain repurchases of corporate stock; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WILSON:

S. 2780. A bill for the relief of Henry Brimmer; to the Committee on the Judiciary.

By Mr. HEFLIN (for himself, Mr. Nunn, Mr. Stennis, and Mr. Zorinsky):

S. 2781. A bill to amend the Packers and Stockyards Act, 1921 to remove processed poultry marketings from coverage of such Act; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. D'AMATO (by request):

S. 2782. A bill to amend the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

S. 2783. A bill to amend the Securities Exchange Act of 1934 to prohibit acquisitions of corporate control except by means of tender offers for all outstanding shares, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

S. 2784. A bill to amend the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

S. 2785. A bill to amend the Securities Exchange Act of 1934 to authorize the Securities and Exchange Commission to subject banks, associations, and other entities that exercise fiduciary powers, to the same regulations as brokerdealers, pursuant to section 14(b) of the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DeCONCINI (for himself and Mr. Grassley):

S.J. Res. 317. Joint resolution to designate August 1, 1984, as "Helsinki Human Rights Day"; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. Weicker, Mr. Kennedy, Mr. Randolph, Mr. Garn, Mr. Nickles, Mrs. Hawkins, Mr. Metzenbaum, Mr. Dole, Mr. Nunn, Mr. Chafee, Mr. Riegle, Mr. Eagleton, Mr. Stafford, Mr. Chiles, Mr. Dixon, Mr. Lautenberg, Mr. Heinz, Mr. Hollings, Mr. Quayle, Mr. Durenberger, Mr. Jepsen, Mr. Tsongas, Mr. Glenn, Mr. Humphrey, Mr. Grassley, Mr. Thurmond, and Mr. Cochran):

S.J. Res. 318. Joint resolution to designate the week of September 16, 1984 through September 22, 1984, as "National Developmental Disabilities Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HOLLINGS (for himself, Mr. Kennedy, Mr. Jepsen, Mr. Dole, Mr. Tsongas, Mr. Matsunaga, Mr. DeConcini, Mr. Abdnor, Mr. Nunn, Mr. Symms, Mr. Goldwater, Mr. Cochran, Mr. Lugar, Mr. Eagleton, Mr. Weicker, Mr. Hart, Mr. Proxmire, Mr. Percy, Mr. Burdick, Mr. Sarbanes, Mr. Cranston, Mr. Dodd, Mr. Chafee, Mr. Thurmond, Mr. Johnston, Mr. Levin, Mr. Stennis, Mr. Hatch, Mr. Gorton, Mr. Lautenberg, Mr. Dixon, Mr. Boschwitz, Mr. Mitchell, Mr. Huddleston, and Mr. Riegle):

S. Res. 412. Resolution to congratulate and commend the USA Philharmonic Society; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR (for himself and Mr. Riegle):

S. 2778. A bill to reorganize the Department of Health and Human Services by establishing an independent agency, governed by a bipartisan board, to administer the old-age, survivors, and disability insurance program and the supplemental security income program under titles II and XVI of the Social Security Act, to provide appropriate delegations of authority to such agency from the General Services Administration and the Office of Personnel Management, and for other purposes; to the Committee on Governmental Affairs.

SOCIAL SECURITY REORGANIZATION ACT

● Mr. PRYOR. Mr. President, today I am introducing legislation to create an independent Social Security agency to administer the old-age and survivors, disability, and supplemental security income benefit programs. I believe this change is clearly needed, and I urge my colleagues to join me in this effort.

In 1935, the Social Security Program was established to provide some stability and insurance in old age against the loss of income in retirement. The size and scope of this agency has grown dramatically—in 1940 less than $1 billion in benefits were paid out, but by 1985 Social Security Administration expenditures are expected to be $200 billion, or 30 percent of the Federal domestic expenditures. In that year, SSA will issue approximately 600 million checks to over 40 million recipients. This is in addition to the administrative work necessary to process 6.2 million new claims, and action to keep present claims in order and accurate. And SSA's responsibilities will only increase as our population continues to age. By 1990 some estimate that almost $400 billion in benefits will be paid out.

It comes as no surprise—considering SSA's broad range of responsibilities, the recent concerns over the financial stability of the trust funds and general national budget concerns, and SSA's history of operating and management problems—that public confidence in this most important agency is at an all-time low.

One of the major factors contributing to SSA's operating and management problems has been the lack of strong and consistent leadership. Over the last 12 years there have been nine different Commissioners of the Social Security Administration, each with his own priorities and directives from the administration by which he was appointed. And since January 1983, when then-Commissioner John Svahn was nominated for Under Secretary of the Department of Health and Human Services, the Senate has not received a nomination for this most important position. Thus, the Congress has found it necessary to draft, debate, and approve two historic pieces of Social Security legislation, the 1983 reform bill and the 1984 disability reform bill, without a confirmed Commissioner.

The structure of the legislation I am introducing today would greatly improve the stability and continuity of the leadership at Social Security. The five-member Board with staggered 10-year terms and a Board-appointed Commissioner with a 5-year term should prevent the frequent turnover and extended vacancies in leadership experienced in recent years.

But beyond these concerns, independence of the Social Security Administration at this time is a logical proposal. This agency has unique responsibilities, and its activities affect nearly every citizen in the United States at one time or another. Social Security benefits are funded through combined employer-employee contributions, and this program should not be viewed in the same manner as other general revenue financed programs are. Yet, as but one of the agencies under the Health and Human Services umbrella, Social Security has not received the independent attention it should have relative to its size and degree of importance to all Americans.

While administrative independence from the Department of Health and Human Services would not, of itself, correct all the Social Security Administration's management and image problems, and automatically restore public confidence, I believe that, as a separate agency organized under the structure in the legislation I am proposing today, the Social Security Administration should be able to attract capable management personnel and be held more accountable for its responsibilites. In addition, a separate agency, headed by a governing board which develops program policy, and managed by an able administrator, will help to depoliticize Social Security issues, and insulate beneficiaries from the threat of precipitous benefit reductions and arbitrary budget cutting measures.

I also believe that this legislation would greatly improve the structure of the Appeals Council, and enhance procedural fairness in what has been an adjudicative nightmare over the last several years. During discussion on this legislation I would hope that some consideration be given to S. 1911, legislation which I introduced last year to create an independent review commission for Health and Human Services administrative law judges.

Perhaps one of the best arguments for restructuring the Social Security agency has been the deplorable manner in which the triannual reviews of disabled individuals have been conducted. These reviews are an excellent example of a way in which a simple directive to an agency can result in the wholesale benefit terminations of thousands of truly disabled individuals with the sole purpose of saving program dollars. These terminations represent a very dark period in our Nation's history. If the Social Security Administration had been an independent agency, free of political pressure, the crisis we have recently weathered with regard to Social Security disability might never have occurred.

In addition, over the last few years, there has been growing concern over the manner in which the trust fund reserves have been invested, particularly in light of Social Security's recent financial crisis. I believe that a board of directors responsible for developing program policy could place emphasis on the investment of trust fund reserves and look forward to a higher yield on our citizens' contributions to Social Security through a carefully planned and monitored investment policy.

Originally the Social Security Program was administered by an independent agency, governed by a board of directors. The 1981 Commission on Social Security and the 1983 Commission on Social Security Reform both recommended restoration of this original independent administrative structure for Social Security. On June 12, the Congressional Panel on Social Security Organization, headed by the distinguished former Comptroller General of the United States, Elmer B. Staats, recommended to the Congress a somewhat different independent administrative structure. I believe the legislation I am introducing today incorporates the best recommendations of previous studies and proposes an organizational structure that meets the unique requirements of this agency.

This legislation is being introduced in the House of Representatives by Congressman ROYBAL, the distinguished chairman of the Select Committee on Aging, and others, today, and I commend Chairman ROYBAL and his colleagues for their efforts. I am pleased to be joined by the Senator from Michigan [Mr. RIEGLE] in introducing this bill in the Senate, and I invite the support of my colleagues.

Mr. President, I ask that a factsheet on this legislation be printed at this point in the RECORD, and that the text of the bill be printed following the factsheet.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AN INDEPENDENT SOCIAL SECURITY AGENCY

1. GENERAL STRUCTURE AND RESPONSIBILITY

Remove the Old Age, Survivors and Disability Insurance programs plus Supplemental Security Income from HHS and place them under a free standing Social Security Agency. (Leave Medicare/Medicaid, Refugee Resettlement, AFDC, Energy Assistance and Child Support Enforcement in HHS).

The Agency is governed by a five member Board of Directors which appoints a single Commissioner to a five year term. A public Ombudsman represents citizen concerns expressed by a nine member Citizens' Advisory Committee. An Inspector General assesses Agency performance.

The management of the Agency is strengthened by giving it greater flexibility and independence from GSA and OPM as recommended by the Staats Panel.

2. THE BOARD OF DIRECTORS

Membership

Five members nominated by the President and confirmed by the Senate for ten year terms staggered so that one term expires at the end of each even numbered year. The Chairman is appointed by the President. (Three initial board members are appointed to terms ending in 1989, 1991, and 1993. Two additional board members are added in 1989 with terms expiring in 1995 and 1997). Removal during term requires a finding of neglect of duty or malfeasance by the President which must be transmitted in writing to Congress in five days.

Responsibilities

(A) To govern the Agency through regulation.

(B) To appoint a Commissioner to be the Chief Operating Officer.

(C) To act as Trustees for the Social Security Trust Funds. Other Trustees are the Secretaries of the Treasury and HHS and two public members required by the 1983 Amendments.

(D) To make budgetary recommendations and defend such recommendations before the Congress.

(E) To provide analysis, information and recommendations to the Congress and the President on proposed changes in Social Security programs.

(F) To conduct policy analysis and research.

Due to the board's responsibilities, its staff includes SSA's current Office of the Actuary, Office of Policy, and Office of the General Counsel.

THE COMMISSIONER

The Commissioner is appointed by the Board to a five year term (except that the first term ends December 31, 1989). Removal during the term requires a majority vote of the full Board following findings of neglect of duty or malfeasance which must be transmitted in writing to the Congress within five days.

Responsibilities

(A) To be the chief operating officer responsible for administering Social Security programs in a manner consistent with law and regulations.

(B) To devise and implement long-run plans to improve the effectiveness and administration of these programs.

(C) To organize and maintain an efficient and effective operational structure. Such structure shall include a separate Office of Hearings and Appeals headed by a Chief Administrative Law Judge nominated by the Commissioner and appointed by the Board to a five year term (except that the initial appointment ends December 31, 1990). Among other qualifications, the chief ALJ must have at least five years experience as an ALJ in SSA.

(D) To prepare and defend the administrative budget and special administrative initiatives before the Board and the Congress.

(E) To advise the Board and the Congress of the administrative impact of legislative changes in Social Security programs.

(F) To act as Secretary to the Board of Trustees.

(G) To make an annual report to the Board and the Congress on the administrative endeavors and accomplishments of the Agency.

One organizational structure a Commissioner at his/her discretion might establish could include offices for: (1) Program Operations; (2) Field Operations; (3) Central Operations; (4) Management, Budget and Personnel; (5) Computer Systems; (6) Assessment and Evaluation; and (7) External Affairs.

4. THE OMBUDSMAN

An Ombudsman is appointed by the Board to a 5 year term (except that the initial term ends December 31, 1991). Removal during term requires a majority vote of the full Board following findings of neglect of duty or malfeasance which must be transmitted in writing to the Congress within five days.

Responsibilities

(A) To represent the concerns of the public, including beneficiaries, to the Board and Commissioner and to the President and the Congress.

(B) To provide staff support to a permanent Citizens' Advisory Committee which issues a biennial report to the Congress assessing Social Security programs, financing and administration.

(C) To make such studies and surveys of administrative effectiveness and program policy goals as he/she deems proper and as requested by a majority of the members of the Citizens' Advisory Committee.

The Citizens' Advisory Committee consists of nine part-time members appointed for staggered three year terms with its chairperson elected by the Committee for a one year term. The Speaker of the House, the Majority Leader of the Senate (in consultation with the Chairman of the Committee of Government Operations, Ways and Means, Government Affairs, and Finance) and the Chairman of the Board each appoint three members to be equally representative of beneficiaries, employers (including the self-employed), and employees.

5. THE INSPECTOR GENERAL

An Inspector General, nominated by the President and confirmed by the Senate, is established pursuant to the Inspector General's Act of 1978 as amended.

6. OTHER

The legislation includes a statement of a beneficiary's "bill of rights".

The legislation incorporates the recommendations of the Staats Panel on Social Security organization with regard to strengthing management. These recommendations: 1) base SSA personnel budget on a workforce plan rather than a personnel ceiling; 2) allow SSA greater authority for computer acquisition and property management; and 3) allow SSA greater flexibility in recruiting new employees and compensating senior executives.

The Board, GAO and the Secretary of HHS are required to report to the Congress in five years an assessment of these organizational changes.

S. 2778

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Reorganization Act of 1984".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Establishment of Social Security Agency as an independent agency; Social Security Board.
Sec. 3. Commissioner of Social Security.
Sec. 4. Social Security Ombudsman; Citizens' Advisory Committee.
Sec. 5. Transfer of functions.
Sec. 6. Transitional rules.
Sec. 7. Budgetary and fiscal affairs of the Social Security Agency.
Sec. 8. Technical and conforming amendments; rules of construction.
Sec. 9. Reports assessing organizational changes.
Sec. 10. Beneficiary bill of rights.
Sec. 11. Effective date and interim rules.

ESTABLISHMENT OF SOCIAL SECURITY AGENCY AS AN INDEPENDENT AGENCY; SOCIAL SECURITY BOARD

SEC. 2. (a) Section 701 of the Social Security Act is amended to read as follows:

"SOCIAL SECURITY AGENCY; SOCIAL SECURITY BOARD

"ESTABLISHMENT

"SEC. 701. (a) There is hereby established, as an independent agency of the executive branch of the Government, a Social Security Agency (hereinafter in this title referred to as the 'Agency').

"SOCIAL SECURITY BOARD

"(b)(1) The Agency shall be headed by a Social Security Board (hereinafter in this title referred to as the 'Board').

"(2) The Board shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. The members shall be chosen, on the basis of their integrity, impartiality, and good judgment, from among individuals who, by reason of their education, experience, and attainments, are exceptionally qualified to perform the duties of members of the Board.

"(3)(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of ten years. A member may be nominated by the President for appointment to a term of office only if the term of office commences before or during the President's then current term of office. A member of the Board may be removed only pursuant to a finding by the President of neglect of duty or malfeasance in office. The President shall transmit any such finding to the Speaker of the House of Representatives and the Majority Leader of the Senate not later than five days after the date on which such finding is made.

"(B) Of the members first appointed—

"(i) one shall be appointed for a term ending January 31, 1989,

"(ii) one shall be appointed for a term ending January 31, 1991,

"(iii) one shall be appointed for a term ending January 31, 1993,

"(iv) one shall be appointed for a term commencing February 1, 1989, and ending January 31, 1995, and

"(v) one shall be appointed for a term commencing February 1, 1989, and ending January 31, 1997,

as designated by the President at the time of appointment. Such members shall be appointed after active consideration of recommendations made by the Chairman of the Committee on Ways and Means of the House of Representatives and of recommendations made by the Chairman of the Committee on Finance of the Senate.

"(C) Any member appointed for a term after the commencement of such term shall be appointed only for the remainder of such term. A member may, at the request of the President, serve for not more than one year after the expiration of his or her term until his or her successor has taken office.

"(4) Not more than three members of the Board shall be of the same political party.

"(5) A member of the Board may not, during his or her term as member, otherwise serve as an officer or employee of any government. If any member of the Board becomes an officer or employee of any government, he or she may continue as a member of the Board for not longer than the 30-day period beginning on the date he or she becomes such an officer or employee.

"(6) Three members of the Board shall constitute a quorum, except that two members shall constitute a quorum until February 1, 1989. A lesser number may hold hearings.

"(7) A member of the Board shall be designated from time to time by the President to serve as Chairperson of the Board.

"(8) The Board shall meet at the call of the Chairperson or a majority of its members.

"FUNCTIONS OF THE BOARD

"(c) The Board shall—

"(1) govern by regulation the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI,

"(2) appoint a Commissioner of Social Security, as described in section 702, to act for the Board as the chief operating officer of the Agency responsible for administering such programs,

"(3) constitute five of the members the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund,

"(4) make annual budgetary recommendations relating to the Agency and defend such recommendations before the appropriate committees of each House of the Congress,

"(5) make recommendations to the Congress and the President as to the most effective methods of providing economic security through social insurance, and, in consultation with the Commissioner of Social Security, as to legislation and matters of administrative policy concerning such programs,

"(6) provide the Congress and the President with the ongoing actuarial and other analysis undertaken by the Agency with respect to such programs and any other information relating to such programs, and

"(7) conduct policy analysis and research relating to such programs.

"OFFICE OF THE BOARD

"(d)(1) The Office of the Board shall include an Office of the Actuary, to be headed by a Chief Actuary appointed by the Board. To the extent provided by the Board, the Office of the Actuary shall assist the Board in carrying out its actuarial functions.

"(2) The Office of the Board shall include an Office of Policy and Legislation, to be headed by a Director of Policy and Legislation appointed by the Board. To the extent provided by the Board, the Office of Policy and Legislation shall assist the Board in carrying out its functions relating to policy analysis, research, and legislation.

"(3) The Office of the Board shall include an Office of General Counsel, to be headed by a General Counsel appointed by the Board. To the extent provided by the Board, the General Counsel shall serve as the principal legal counsel in the Agency.

"(4)(A) The Board shall appoint such additional attorneys, actuaries, and other employees as it considers necessary to carry out its functions.

"(B) The Board may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such technical or professional employees as the Board considers appropriate, and such employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) The Board may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"(D) Notwithstanding section 3133 of title 5, United States Code, the Director of the Office of Personnel Management shall authorize for the Agency a total number of Senior Executive Service positions equal to 150 percent of the number of such positions in the Social Security Administration of the Department of Health and Human Services as of immediately before the date of the enactment of the Social Security Reorganization Act of 1984, and the total number of such positions authorized for the Agency pursuant to such section 3133 shall not at any subsequent time be less than such number.

"(E) In addition to the positions of the Agency in the Executive Schedule specified in subchapter II of chapter 53 of title 5, United States Code, the Board may establish additional positions at levels IV and V of the Executive Schedule.

"ORGANIZATION OF THE AGENCY; DELEGATION OF FUNCTIONS

"(d)(1) The Board may establish, alter, consolidate, or discontinue such organizational units or components within the Agency as the Board considers necessary or appropriate to carry out its functions, except that this paragraph shall not apply with respect to any unit or component established by this Act.

"(2) The Board may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, with respect to the functions of the Board under this section. Within the limitations of such delegations, redelegations, or assignments to officers or employees of the Agency, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Board.

"INSPECTOR GENERAL

"(e) There shall be in the Agency an Office of the Inspector General, to be headed by an Inspector General appointed in accordance with the Inspector General Act of 1978.

"COORDINATION BETWEEN THE AGENCY, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND THE DEPARTMENT OF THE TREASURY

"(f)(1) The Board, the Secretary, and the Secretary of the Treasury shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of titles II, XVI, and XVIII and the other provisions of this Act and the applicable provisions of the Internal Revenue Code of 1954, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden on beneficiaries and other persons of compliance with the provisions of this Act.

"(2) In order to avoid unnecessary expense and duplication of functions, the Board, the Secretary, and the Secretary of the Treasury may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under titles II, XVI, and XVIII and the other provisions of this Act and the applicable provisions of the Internal Revenue Code of 1954 as they find to be practicable and consistent with law.".

(b)(1) Section 5313 of title 5, United States Code (relating to level II of the Executive Schedule), is amended by adding at the end thereof the following new item:

"Chairperson of the Social Security Board, Social Security Agency.".

(2) Section 5314 of such title (relating to level III of the Executive Schedule) is amended by adding at the end thereof the following new item:

"Members of the Social Security Board, Social Security Agency (4).".

(3) Section 5315 of such title (relating to level IV of the Executive Schedule) is amended by adding at the end thereof the following new items:

"Inspector General, Social Security Agency.

"Chief Actuary, Social Security Agency.

"Director of Policy Analysis and Legislation, Social Security Agency.

"General Counsel, Social Security Agency.".

COMMISSIONER OF SOCIAL SECURITY

SEC. 3. (a) Section 702 of the Social Security Act is amended to read as follows:

COMMISSIONER OF SOCIAL SECURITY

"ESTABLISHMENT

"SEC. 702. (a) There shall be in the Agency an Office of the Commissioner, to be headed by a Commissioner of Social Security (hereinafter in this title referred to as the "Commissioner') appointed by the Board.

"TERM; APPOINTMENT; REMOVAL

"(b)(1) The Commissioner shall be appointed for a term of five years, except that—

"(A) the individual first appointed to the office of Commissioner shall serve for a term ending December 31, 1989,

"(B) an individual appointed Commissioner for a term after the commencement of such term shall be appointed only for the remainder of such term, and

"(C) an individual may, at the request of the Chairperson of the Board, serve as Commissioner after the expiration of his or her term for not more than one year until his or her successor has taken office.

An individual may be appointed as Commissioner for successive terms.

"(2) An individual may be removed from the office of Commissioner before completion of his or her term only upon the vote of a majority of the full membership of the Board, pursuant to a finding by the Board of neglect of duty or malfeasance in office. The Board shall transmit any such finding to the Speaker of the House of Representatives and the Majority Leader of the Senate not later than five days after the date on which such finding is made.

"FUNCTIONS OF THE COMMISSIONER

"(c) The Commissioner shall—

"(1) constitute the chief operating officer of the Agency, responsible for administering, in accordance with applicable statutes and regulations, the old-age and survivors insurance program under title II and the supplemental security income program until title XVI,

"(2) establish and maintain an efficient and effective operational structure for the Agency,

"(3) devise and implement long-term plans to promote and maintain the effective implementation of such programs,

"(4) make annual budgetary recommendations of the Agency for the ongoing administrative costs of the Agency and defend such recommendations before the Board and before the appropriate Committees of each House of the Congress,

"(5) advise the Board and the Congress of the effect on the administration of such programs of proposed legislative changes in such programs,

"(6) serve as Secretary of the Board of Trustees of the Federal Old-Age, Survivors, and Disability Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and

"(7) report in December of each year to the Board and the Congress concerning the administrative endeavors and accomplishments of the Agency.

"OFFICE OF HEARINGS AND APPEALS; CHIEF ADMINISTRATIVE LAW JUDGE

"(d)(1) There shall be in the Office of the Commissioner an Office of Hearings and Appeals, to be headed by a Chief Administrative Law Judge. The Chief Administrative Law Judge shall be appointed by the Board from among individuals recommended by the Commissioner who have served for not less than five years as an administrative law judge in the Agency, in the Social Security Administration in the Department of Health and Human Services, or any combination thereof. The Chief Administrative Law Judge shall assist the Commissioner in carrying out responsibilities of the Commissioner relating to hearings under this Act.

"(2) The Chief Administrative Law Judge shall be appointed for a term of five years except that—

"(A) the individual first appointed to the office of Chief Administrative Law Judge shall serve for a term ending December 31, 1990,

"(B) an individual appointed Chief Administrative Law Judge for a term after commencement of such term shall be appointed only for the remainder of such term, and

"(C) an individual may, at the request of the Chairperson of the Board, serve as Chief Administrative Law Judge after the expiration of his or her term for not more than one year until his or her successor has taken office.

An individual may be appointed as Chief Adminstrative Law Judge for successive terms.

"(3) An individual may be removed from the office of Chief Administrative Law Judge before completion of his or her term only upon the vote of a majority of the full membership of the Board, pursuant to a finding by the Board of neglect of duty or malfeasance in office. The Board shall transmit any such finding to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate not later than five days after the date on which such finding is made.

"ORGANIZATION OF THE OFFICE OF THE COMMISSIONER; DELEGATION OF FUNCTIONS

"(e)(1) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Office of the Commissioner as the Commissioner considers necessary or appropriate to carry out his or her functions, except that this paragraph shall not apply with respect to the Chief Administrative Law Judge and the Office of Hearings and Appeals.

"(2) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, with respect to the administration of the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI, to such officers and employees as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

"(3)(A) The Commissioner shall appoint such additional employees as he or she considers necessary to carry out the his or her functions.

"(B) The Commissioner may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such technical or professional employees as the Commissioner considers appropriate, and such employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) The Commissioner may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"(D) The Commissioner may delegate such powers of appointment and procurement to any of the employees in the Office of the Commissioner as he or she determines appropriate.

"(4) To the extent requested by the Commissioner, the Director of the Office of Personnel Management shall delegate to the Commissioner, pursuant to section 1104 of title 5, United States Code, and subject to applicable limitations under such title relating to delegations under such section, functions relating to—

"(A) recruitment and examination programs for entry level employees, and

"(B) classification and standards development systems and pay ranges for those job categories identified by the Commissioner in assuming such delegation.

The Director of the Office of Personnel Management shall provide any assistance requested by the Commissioner in assuming any such delegation.".

(b)(1) Section 5313 of title 5, United States Code (relating to level II of the Executive Schedule) is further amended by adding at the end thereof the following new item:

"Commissioner of Social Security, Social Security Agency.".

(2) Section 5315 of such title (relating to level IV of the Executive Schedule) is further amended by adding at the end thereof the following new item:

"Chief Administrative Law Judge, Social Security Agency.".

(3) Section 5315 of such title is further amended by striking out the following item:

"Commissioner of Social Security, Department of Health and Human Services.".

SOCIAL SECURITY OMBUDSMAN; CITIZENS' ADVISORY COMMITTEE

Sec. 4. (a) Section 703 of the Social Security Act is amended to read as follows:

"SOCIAL SECURITY OMBUDSMAN; CITIZENS' ADVISORY COMMITTEE

"SOCIAL SECURITY OMBUDSMAN

"Sec. 703. (a) There shall be in the Agency an Office of the Ombudsman, to be headed by a Social Security Ombudsman (hereinafter in this title referred to as the 'Ombudsman') appointed by the Board.

"TERM, APPOINTMENT, AND REMOVAL OF OMBUDSMAN

"(b)(1) The Ombudsman shall be appointed for a term of five years, except that—

"(A) the individual first appointed to the office of Ombudsman shall serve for a term ending December 31, 1991,

"(B) an individual appointed Ombudsman for a term after commencement of such term shall be appointed only for the remainder of such term, and

"(C) an individual may, at the request of the Chairperson of the Board, serve as Ombudsman after the expiration of his or her term for not more than one year until his or her successor has taken office.

An individual may be appointed as Ombudsman for successive terms.

"(2) An individual may be removed from the office of Ombudsman before completion of his or her term only upon the vote of a majority of the full membership of the Board, pursuant to a finding by the Board of neglect of duty or malfeasance in office. The Board shall transmit any such finding to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate not later than five days after such finding is made.

"FUNCTIONS OF THE OMBUDSMAN

"(c) The Ombudsman shall—

"(1) represent the concerns of the public, including beneficiaries, relating to the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI, to the Commissioner, the Board, the President, and the Congress, and

"(2) conduct such studies and surveys of the administrative effectiveness and program policy goals of the Agency as he or she considers appropriate or as requested by the Citizens' Advisory Committee.

"STAFF OF THE OMBUDSMAN

"(d) The Ombudsman shall appoint such additional employees as he or she considers necessary to carry out his or her functions and may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"CITIZENS' ADVISORY COMMITTEE

"(e)(1) There shall be in the Office of the Ombudsman a Citizens' Advisory Committee (hereinafter in the subsection referred to as the 'Committee').

"(2) The Committee shall consist of—

"(A) three members appointed by the Board,

"(B) three members appointed by the Speaker of the House of Representatives (in consultation with the Chairperson of the Committee on Ways and Means and the Chairperson of the Committee on Government Operations), and

"(C) three members appointed by the Majority Leader of the Senate (in consultation with the Chairperson of the Committee on Finance and the Chairperson of the Committee on Governmental Affairs).

"(3)(A) The members of the Committee shall be chosen on the basis of their integrity, impartiality, and good judgment, from among individuals who, by reason of their education, experience, and attainments, are exceptionally qualified to perform the duties of members of the Committee.

"(B) Of the members appointed under each of subparagraphs (A), (B), and (C) of paragraph (2)—

"(i) one shall be appointed from individuals representing the interests of employers (including self-employed individuals),

"(ii) another shall be appointed from individuals representing the interests of employees, and

"(iii) the remaining member shall be appointed from individuals representing the interests of beneficiaries.

"(4)(A) Except as provided in subparagraphs (B) and (C), the appointed members shall be appointed for terms of three years.

"(B) Of the members first appointed—

"(i) the member appointed under paragraph (2)(A) representing the interests of employees, the member appointed under paragraph (2)(B) representing the interests of employers, and the member appointed under paragraph (2)(C) representing the interests of beneficiaries shall each be appointed for a term of one year,

"(ii) the member appointed under paragraph (2)(A) representing the interests of employers, the member appointed under paragraph (2)(B) representing the interests of beneficiaries, and the member appointed under paragraph (2)(C) representing the interests of employees shall each be appointed for a term of two years, and

"(iii) the member appointed under paragraph (2)(A) representing the interest of beneficiaries, the member appointed under paragraph (2)(B) representing the interests of employees, and the member appointed under paragraph (2)(C) representing the interests of employers shall each be appointed for a term of three years.

"(C) Any member appointed for a term after the commencement of such term shall be appointed only for the remainder of such term.

"(5) Members of the Committee appointed under paragraph (2) shall be appointed without regard to the provisions of title 5, United States Code, governing appointment in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Committee, shall be paid at rates fixed by the Board, but not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Committee; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(6) The Committee may engage such technical assistance as may be necessary to carry out its functions. The Ombudsman shall make available to the Committee such Secretarial, clerical, and other assistance available in the Office of the Ombudsman, and the Commissioner shall make available any pertinent data prepared by the Office of the Commissioner, as the Committee may require to carry out its functions.

"(7) The Committee shall—

"(A) prepare and transmit to each House of the Congress a biennial report, in May of each odd-numbered year, assessing the administration and objectives of the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI, and

"(B) as it considers appropriate, request, and assist in the preparation of, studies and surveys by the Ombudsman pursuant to subsection (c)(2).".

(b) Section 5315 of title 5, United States Code (relating to level IV of the Executive Schedule) is further amended by adding at the end thereof the following new item:

"Social Security Ombudsman, Social Security Agency.".

TRANSFER OF FUNCTIONS

Sec. 5. (a) There are transferred to the Social Security Agency all functions carried out by the Secretary of Health and Human Services with respect to the programs and activities the administration of which is vested in the Social Security Agency by reason of this Act and the amendments made thereby. The Social Security Board shall prescribe such regulations as are necessary to allocate such functions in accordance with sections 701, 702, and 703 of the Social Security Act (as amended by this Act).

(b)(1) There are transferred from the Department of Health and Human Services to the Social Security Board, for appropriate allocation by the Board by regulation in the Social Security Agency—

(A) the personnel employed in connection with the functions transferred by this Act and the amendments made thereby, and

(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection such functions.

(2) Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) The position of Commissioner of Social Security in the Department of Health and Human Services is abolished.

TRANSITIONAL RULES

Sec. 6. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or his delegate), and (B) which relate to functions which, by reason of this Act, the amendments made thereby, and regulations prescribed thereunder, are vested in the Social Security Board or the Commissioner of Social Security, and

(2) which are in effect at the time this Act takes effect,

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Board or Commissioner (as the case may be).

(b) The provisions of this Act (including the amendments made thereby) shall not affect any proceeding pending at the time this Act takes effect before the Secretary of Health and Human Services with respect to functions vested (by reason of this Act, the amendments made thereby, and regulations prescribed thereunder) in the Social Security Board or the Commissioner of Social Security, except that such proceedings, to the extent that they relate to such functions, shall continue before such Board or Commissioner (as the case may be). Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Board or Commissioner (as the case may be), by a court of competent jurisdiction, or by operation of law.

(c) Except as provided in this subsection—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect; and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Health and Human Services, shall abate by reason of the enactment of this Act. Causes of action, suits, actions, or other proceedings may be asserted by or against the United States and the Social Security Agency, or such official of such Agency as may be appropriate, and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of a party, enter an order which will give effect to the provisions of this subsection (including, where appropriate, an order for substitution of parties).

(d) This Act shall not have the effect of releasing or extinguishing any criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this Act, the amendments made thereby, and regulations prescribed thereunder) is vested in the Social Security Board or the Commissioner of Social Security.

(e) Orders and actions of the Social Security Board and the Commissioner of Social Security in the exercise of functions vested in such Board or Commissioner (as the case may be) under this Act (and the amendments made thereby) shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately preceding the effective date of this Act. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Board or Commissioner shall continue to apply to the exercise of such function by such Board or Commissioner (as the case may be).

(f) In the exercise of the functions vested in the Social Security Board or the Commissioner of Social Security under this Act, the amendments made thereby, and regulations prescribed thereunder, such Board or Commissioner (as the case may be) shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of the same in such Board or Commissioner, and actions of such Board or Commissioner shall have the same force and effect as when exercised by such Secretary.

BUDGETARY AND FISCAL AFFAIRS OF THE SOCIAL SECURITY AGENCY

Sec. 7. Title VII of the Social Security Act is further amended by adding at the end thereof the following new section:

"BUDGETARY AND FISCAL AFFAIRS OF THE SOCIAL SECURITY AGENCY "APPORTIONMENT OF APPROPRIATIONS

"Sec. 711. (a) Appropriations requests of the Social Security Agency for staffing and personnel shall be based upon comprehensive workforce plans. The entire amount of appropriations provided for the administrative costs of the Social Security Agency shall be apportioned in the time period provided in title 31, United States Code, for apportionment and shall be apportioned for the entire period of availability without restriction or deduction by the apportioning officer or employee of the Office of Management and Budget or any other entity within the executive branch of the Federal Government, except as othereise provided in this section.

"APPROPRIATIONS FOR ADMINISTRATIVE EXPENSES; CONTRACT AUTHORITY; AVAILABILITY OF TRUST FUNDS; CONTINGENT APPROPRIATIONS

"(b)(1) Authority of the Social Security Agency for automated data processing procurement and facilities construction shall be provided in the form of contract authority covering the total costs of such acquisitions, to be available until expended.

"(2) Amounts necessary for the liquidation of contract authority provided pursuant to this section are hereby made available from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund to the extent that the Social Security Board, with the concurrence of the Secretary of the Treasury, determines that any of such amounts to be provided from either such Trust Fund are not necessary to meet the current obligations for benefit payments from such Trust Fund.

"(3) Funds appropriated for the Social Security Agency to be available on a contingency basis shall be apportioned only upon the occurrence of the stipulated contingency, as determined by the Social Security Board and reported to each House of the Congress.

"MANDATORY DELEGATIONS FROM ADMINISTRATOR OF GENERAL SERVICES

"(c)(1) To the extent requested by the Commissioner, the Commissioner shall have—

"(A) all authorities permitted to be delegated under title 40, United States Code, that the Commissioner considers are necessary for the acquiring, operating, and maintaining of the facilities needed for the administration of programs for which the Commissioner is given responsibility under this Act,

"(B) all authorities permitted to be delegated under section 111 of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 759) relating to the lease, purchase, or maintenance of automated data processing equipment, and

"(C) the authority to contract for any automated data processing equipment or services which the Commissioner considers necessary for the efficient and effective operation of such programs.

"(2) The Administrator of the General Services Administration shall provide any assistance requested by the Commissioner in assuming the delegations required under paragraph (1).".

TECHNICAL AND CONFORMING AMENDMENTS; RULES OF CONSTRUCTION

Sec. 8. (a) Title II (other than section 201, section 231(c), section 226, and section 226A) and title XVI of the Social Security Act are each amended—

(1) by striking out, wherever it appears therein, "Secretary of Health and Human Services" or "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Commissioner",

(2) by striking out, wherever it appears therein, "Department of Health and Human Services" or "Department of Health, Education, and Welfare" and inserting in lieu thereof "Social Security Agency",

(3) by striking out, wherever it appears therein, "Department" (but only if it is not immediately succeeded by the words "of Health and Human Services" or "of Health, Education, and Welfare", and only if it is used in reference to the Department of Health and Human Services or the Department of Health, Education, and Welfare) and inserting in lieu thereof "Social Security Agency", and

(4) by striking out, wherever it appears therein, each of the following words (but, in the case of any such word only if such word refers to the Secretary of Health and Human Services or to the Secretary of Health, Education, and Welfare): "Secretary", "Secretary's", "his", "him", and "he", and inserting in lieu thereof (in the case of the word "Secretary") "Commissioner", (in the case of the word "Secretary's") "Commissioner's", (in the case of the word "his") "the Commissioner's", (in the case of the word "him") "the Commissioner", and (in the case of the word "he") "the Commissioner".

(b)(1) Section 201(a)(3) of such Act is amended by striking out "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Commissioner".

(2) Section 201(c) of such Act is amended—

(A) in the first sentence, by striking out "shall be composed of" and all that follows down through "ex officio" and inserting in lieu thereof the following: "shall be composed of the members of the Social Security

Board, the Secretary of the Treasury, and the Secretary of Health and Human Services, all ex officio'';

(B) by inserting after the first sentence the following new sentence: "The Chairperson of the Social Security Board shall be the Chairperson of the Board of Trustees."; and

(C) in the seventh sentence (before application of subparagraph (B)), by striking out ": *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report".

(3) Section 201(g)(1)(A) of such Act is amended—

(A) in clause (i), by striking out "by him and the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "by him, the Commissioner, and the Secretary of Health and Human Services", and by striking out "by the Department of Health, Education, and Welfare and the Treasury Department" and inserting in lieu thereof "by the Social Security Agency, the Department of Health and Human Services, and the Department of the Treasury";

(B) in clause (ii), by striking out "method prescribed by the Board of trustees under paragraph (4)" and inserting in lieu thereof "applicable method prescribed under paragraph (4)", by striking out "the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "the Commissioner and the Secretary of Health and Human Services", and by striking out "the Department of Health, Education, and Welfare" and inserting in lieu thereof "the Social Security Agency and the Department of Health and Human Services"; and

(C) by striking out the last sentence and inserting in lieu thereof the following: "There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem apppropriate to pay the costs of the part of the administration of this title and title XVI for which the Commissioner is responsible, the costs of title XVIII for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Agency, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.".

(4) Section 201(g)(1) fo such Act is amended—

(A) in the fourth sentence of subparagraph (A), by inserting "(if any)" after "amounts"; and

(B) by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs:

"(B) After the close of each fiscal year—

"(i) the Commissioner shall determine (I) the portion of the costs, incurred during such fiscal year, of administration of this title and title XVI and of carrying out the functions of the Social Security Agency, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury, (II) the portion (if any) of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund, and (III) the portion (if any) of such costs which should have been borne by the Federal Disability Insurance Trust Fund, and

"(ii) the Secretary of Health and Human Services shall determine (I) the portion of the costs, incurred during such fiscal year, of administration of title XVIII which should have been borne by the general fund in the Treasury, (II) the portion (if any) of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and (III) the portion (if any) of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund, except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the applicable method prescribed under paragraph (4) of this subsection.

"(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Commissioner and the Secretary of Health and Human Services shall each certify to the Managing Trustee the amounts (if any) which should be transferred from each of the Trust Funds to the general fund in the Treasury and from the general fund in the Treasury to each of the Trust Funds, in order to ensure that each of the Trust Funds and the general fund in the Treasury have borne their proper share (if any) of the costs, incurred during such fiscal year, for (i) the part of the administration of this title and title XVI for which the commissioner is responsible, (ii) the part of the administration of title XVIII for which the Secretary of Health and Human Services is responsible, and (iii) carrying out the functions of the Social Security Agency, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee shall transfer any such amounts in accordance with any certification so made.".

(5) Section 201(g)(2) of such Act is amended, in the second sentence, by striking out "established and maintained by the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "maintained by the Commissioner", and by striking out "Secretary shall furnish" and inserting in lieu thereof "Commissioner shall furnish".

(6) Section 201(g)(4) of such Act is amended to read as follows:

"(4) The Commissioner shall utilize the method prescribed pursuant to this paragraph, as of immediately before the date of the enactment of the Social Security Reorganization Act of 1984, for determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Commissioner, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (1) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Commissioner considers such action advisable, it may modify the method of determining such costs.".

(7) Section 201(i)(1) of such Act is amended to read as follows:

"(i)(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund or to the Social Security Agency, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.".

(8) Subsections (j) and (k) of section 201 of such Act are each amended by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner".

(9)(A) Section 201(l)(1) of such Act is amended—

(i) by striking out "Managing Trustee" the first place it appears and inserting in lieu thereof "Social Security Board";

(ii) by striking out "Managing Trustee may borrow" and inserting in lieu thereof "Managing Trustee, on the request of the Board, shall borrow"; and

(iii) by striking out "he determines" and inserting in lieu thereof "the Board determines".

(B) Section 201(l)(3)(A) of such Act is amended—

(i) by striking out "Managing Trustee" and inserting in lieu thereof "Social Security Board";

(ii) by striking out "he shall make" and inserting in lieu thereof "the Managing Trustee shall make"; and

(iii) by striking out "he determines" and inserting in lieu thereof "the Board determines".

(C) Section 201(l)(3)(B)(i) of such Act is amended—

(i) by striking out "Managing Trustee" and inserting in lieu thereof "Social Security Board"; and

(ii) by striking out "he shall transfer" and inserting in lieu thereof "the Managing Trustee shall transfer".

(D) Section 201(l)(3)(B)(iii)(II) of such Act is amended by striking out "Secretary" and inserting in lieu thereof "Social Security Board".

(E) Section 201(1)(3)(C)(ii) of such Act is amended, in the last sentence, by striking out "The Managing Trustee may" and inserting in lieu thereof "To the extent requested by the Social Security Board, the Managing Trustee shall".

(F) Section 201(1)(4) of such Act is amended by striking out "Board of Trustees" and inserting in lieu thereof "Social Security Board".

(10) Section 201(m)(3) of such Act is amended by striking out "Secretary of Health and Human Services" and inserting in lieu thereof "Commissioner".

(c) Section 231(c) of such Act is amended by striking out "Secretary determines" and inserting in lieu thereof "Commissioner and the Secretary jointly determine".

(d)(1) Section 402 of such Act is amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary".

(2) Section 411 of such Act is amended—

(A) in subsection (a), by striking out "Secretary" and inserting in lieu thereof "Commissioner, at the request of the Secretary,", and by striking out "Social Security Administration" and inserting in lieu thereof "Social Security Agency"; and

(B) in subsection (b), by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner".

(e)(1) Section 704 of such Act is amended in the heading by inserting "by the secretary" after "reports".

(2) Section 709(b)(2) of such Act is amended by striking out "(as estimated by the Secretary)" and inserting in lieu thereof ", as estimated by the Commissioner or the Secretary (whichever administers the program involved),".

(3) Title VII of such Act is further amended by adding at the end thereof the following new section:

"DUTIES OF SECRETARY

"Sec. 712. The Secretary shall perform the duties imposed upon him by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security and as to legislation and matters of administrative policy concerning the programs administered by the Secretary and related subjects; except that nothing in this section shall be construed to require the Secretary to make studies or recommendations with respect to programs administered by the Social Security Agency.".

(f)(1) Section 1101(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(10) The term 'Commissioner' means the Commissioner of Social Security.".

(2) Section 1106(a) of such Act is amended—

(A) by inserting "(1)" after "(a)";

(B) by striking out "Federal Security Agency" and inserting in lieu thereof "applicable agency";

(C) by striking our "Administrator" and inserting in lieu thereof "head of the applicable agency"; and

(D) by adding at the end thereof the following new paragraph:

"(2) For purposes of this subsection and subsection (b)—

"(A) the term 'applicable agency' means—

"(i) the Social Security Agency, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Agency,

"(ii) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department, or

"(iii) the Department of Labor, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department, and

"(B) the term 'head of the applicable agency' means, in the case of the Social Security Agency, the Commissioner.".

(3) Section 1106(b) of such Act is amended—

(A) by striking out "Secretary" and inserting in lieu thereof "head of the applicable agency"; and

(B) by striking out "Department of Health, Education, and Welfare" and inserting in lieu thereof "applicable agency".

(4) Section 1106(c) of such Act is amended—

(A) by striking out "the Secretary" the first place it appears and inserting in lieu thereof "the Commissioner or the Secretary"; and

(B) by striking out "the Secretary" each subsequent place it appears and inserting in lieu thereof "such Commissioner or Secretary".

(5) Section 1107(b) of such Act is amended by striking out "the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "the Commissioner or the Secretary".

(6) Section 1110 of such Act is amended—

(A) by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner";

(B) by striking out "he", "his", and "him" each place they appear and inserting in lieu thereof "the Commissioner", "the Commissioner's", and "the Commissioner", respectively; and

(C) by striking out "or makes them himself", in subsection (b)(1), and inserting in lieu thereof "or the Commissioner makes them".

(7) Section 1127 of such Act is amended by striking out "Secretary" and inserting in lieu thereof "Commissioner".

(8) Section 1131 of such Act is amended by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner".

(g) Subsections (a) and (f) of section 1817 of such Act are amended by striking out "Secretary of Health, Education, and Welfare" each place it appears and inserting in lieu thereof "Commissioner".

(h) The Inspector General Act of 1978 is amended—

(1) in section 2(1), by striking out "and the Veterans' Administration" and inserting in lieu thereof "the Veterans' Administration, and the Social Security Agency";

(2) in section 9(a)(1), by striking out "and" at the end of subparagraph (M), and by adding at the end thereof the following new subparagraph:

"(O) of the Social Security Agency, to the extent provided in the Social Security Reorganization Act of 1984, the functions of the Inspector General of the Department of Health and Human Services relating to the administration of the old-age, survivors, and disability insurance program under title II of the Social Security Act and of the supplemental security income program under title XVI of such Act; and";

"(3) in section 11(1), by striking out "or" after "Transportation" and inserting in lieu thereof a comma, and by inserting after "Affairs," the following: "or the Commissioner of Social Security of the Social Security Agency,"; and

"(4) in section 11(2), by striking out "or" after "Transportation", and by inserting after "Veterans' Administration," the following: "or the Social Security Agency,".

(i)(1) Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act, such reference shall be considered a reference to the Social Security Agency.

(2) Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under such programs, such reference shall be considered a reference to—

(A) the Social Security Board, with respect to functions described in section 701 of the Social Security Act (as amended by this Act), and

(B) the Commissioner of Social Security, with respect to functions described in section 702 of the Social Security Act (as amended by this Act).

(3) Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under such programs, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Agency.

REPORTS ASSESSING ORGANIZATIONAL CHANGES

Sec. 9. (a) Five years after the date of the enactment of this Act, the Social Security Board, the Comptroller General of the United States, and the Secretary of Health and Human Services shall each submit to each House of the Congress a report setting forth in detail an assessment of the organizational changes made by this Act and the amendments made by this Act.

(b) Not later than one year after the date of the enactment of this Act, the Social Security Board, the Comptroller General of the United States, and the Secretary of Health and Human Services shall submit to each House of the Congress their recommendations for further technical and conforming amendments necessary to effectively and efficiently carry out the purposes of this Act.

BENEFICIARY BILL OF RIGHTS

Sec. 10. Title VII of the Social Security Act is further amended by adding at the end thereof the following new section:

"BENEFICIARY BILL OF RIGHTS

"PRINCIPLES FOR IMPLEMENTATION OF ACT

"Sec. 713. (a) The provisions of this Act should be implemented consistent with the following principles:

"(1) All persons should be treated fairly and equitably by the Social Security Board, the Commissioner, and the Secretary with proper regard and protection for their rights under this Act, their constitutional rights, and their privacy.

"(2) The Social Security Board, the Commissioner, and the Secretary should not discriminate against persons on account of their age, sex, race, creed, color, handicap, national origin, or economic condition.

"(3) The Commissioner and the Secretary should each maintain prompt, professional, and effective service which is accessible and responsive to the communities and persons which they serve.

"(4) Each beneficiary under this Act should receive timely and proper payment of benefits to which he or she is entitled. Benefits under this Act should not be reduced, ceased, or withheld by the Commissioner or the Secretary or assigned to any representative payee by the Commissioner or the Secretary without due process of law or without adequate safeguards to protect those who may be adversely affected by any injustices or undue hardships which may result from such actions.

"(5) Each beneficiary under this Act should be provided a personal conference with a competent officer or employee of the Social Security Agency or the Department of Health and Human Services with respect to any determination by the Commissioner or the Secretary (as the case may be) which adversely affects him or her.

"(6) In any administrative matter subject to appeal under this Act, each beneficiary should be provided a full, fair, and impartial evidentiary hearing before an adminstrative law judge who is authorized to render independent judgment of the issue, consistent with applicable laws and regulations, and who is not subject to coersion, discrimination, or interference with in the exercise of his responsible judgment.

"ENFORCEMENT OF PRINCIPLES

"(b) In carrying out their responsibilities under this Act, the Social Security Board and the Secretary, pursuant to authority otherwise available, shall take any action, including the issuance of rules, regulations, or directives, which is consistent with the provisions of this Act and which the Social Security Board or the Secretary (as the case may be) determines is necessary to ensure that the Administration of this Act is based on and embodies the principles set forth in subsection (a) and that such principles are publicly displayed in each office of the Social Security Agency.".

EFFECTIVE DATE AND INTERIM RULES

SEC. 11. (a)(1) Sections 2, 3, 4, 5, 6, and 8 of this Act shall take effect October 1, 1986.

(2) Notwithstanding the effective date set forth in paragraph (1), effective on the date of the enactment of this Act—

(A) the initial members of the Social Security Board whose terms of office begin before February 1, 1989, may be appointed before such effective date, after the date of the enactment of this Act, and the Commissioner of Social Security, the Social Security Ombudsman, the Inspector General, the Chief Actuary, the Director of Policy Analysis and Legislation, and the General Counsel of the Social Security Agency may be appointed by such Board at any time after such initial members of the Social Security Board have been appointed,

(B) the persons appointed under subparagraph (A) shall be compensated from the date they first take office, at the rates provided for in the amendments to title 5, United States Code, made by sections 2(b), 3(b) and 4(b) of this Act,

(C) such compensation and related expenses of such persons shall be paid from funds available in the Department of Health and Human Services for the functions vested in the Social Security Agency by this Act and the amendments made thereby, and

(D) the Social Security Board and the Commissioner of Social Security may each utilize, as appropriate, the services of such officers, employers, and other personnel of the Department of Health and Human Services, and funds appropriated to the functions of such Department to be transferred by this Act and the amendments made thereby, for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

(o) The amendment made by section 7 of this Act shall apply with respect to fiscal years beginning on or after October 1, 1986.●

● Mr. RIEGLE. Mr. President, today I am pleased to join with my colleague in the Senate Mr. PRYOR, and my colleague in the House, Mr. ROYBAL, in introducing legislation to create an independent Social Security Agency. For several years I have supported efforts to remove Social Security, once and for all, from the arena of political or budgetary expediency.

There is great anxiety across America today among those who are presently retired and receiving Social Security benefits and also among millions of people who are moving toward retirement age. Several factors contribute to this feeling of unease including the recent financial difficulties of the old age and survivors trust funds, which were satisfactorily addressed in the Social Security Amendments of 1983. In addition many of our citizens find confusing the gap between the political rhetoric of the current administration which claims to support protection of the Social Security system, and repeated attempts to cut benefits, limit eligibility and to reduce the number of people on the Social Security rolls.

Throughout the 1980 Presidential campaign, candidate Reagan repeatedly promised to keep the Social Security system intact, to protect it, to treat it as part of the safety net. In an address before a joint session of Congress on February 18, 1981, President Reagan said, "We will continue to fulfill the obligations that spring from our national conscience * * * the full retirement benefits of more than 31 million Social Security recipients will be continued along with an annual cost of living increase * * *." Less than 2 months later the administration proposed devastating cuts in Social Security as part of the fiscal year 1982 budget revisions; including the elimination of the Social Security minimum benefit for both future and current beneficiaries. This proposal alone would have left 3 million recipients, approximately 75 percent of whom were elderly women, without even a $122 a month minimum benefit.

In May 1981, the administration introduced to Congress an $88 billion Social Security reduction package including proposals to:

Reduce benefits of individuals who retired before the age of 65 from 80 percent to 55 percent of their full retirement benefits;

Delay the annual cost-of-living adjustment scheduled for July 1982 for 3 months;

Revise the formula used to determine a recipient's initial benefit so that initial benefits would be lower than under then current law—thereby reducing the primary benefits of recipients by 10 percent;

End benefits for children of retirees under the age of 65;

Tax sick pay for the first 6 months of a worker's illness; and

Extend from 12 to 24 months the anticipated period of disability required for eligibility for disability benefits.

Because of the public outcry the administration withdrew these proposals, yet a year later the administration supported a budget proposal to cut $40 billion from Social Security over a 3-year period, without specifying where those cuts would be made. Again because opposition was so great the administration dropped this proposal.

Mr. President, no more striking example exists of why we need an independent Social Security agency than the recent fiasco surrounding the disability review process. In a misguided effort to reduce the growing deficit the administration began the continuing disability investigations [CDI] program 9 months earlier than mandated by law, while at the same time tightening eligibility standards and applying those standards not only to new applicants for the program, but also to existing beneficiaries. This accelerated review process, coupled with stricter criteria, resulted in the wrongful termination of benefits for hundreds of thousands of disabled persons. Of those terminated from the disability rolls, 67 percent who appealed were eventually reinstated. SSA's own employees and adminstrative law judges have joined together to sue HHS alleging that they were forced to deny benefits to certifiably disabled beneficiaries. Had there been an independent Social Security agency and a Social Security budget separated from the rest of the Federal budget this never would have occurred.

In April 1983, legislation based on the recommendation's of a bipartisan Commission on Social Security was enacted into law, ensuring the health of the Old Age Survivors Insurance Program well into the next century. Yet in March 1984, President Reagan, when asked what he envisioned for Social Security after the 1984 election, stated that, "what we need to do is a revamping of the program." In May of this year, Treasury Secretary Donald Regan said, "we're going to have to revisit Social Security in the late 1980's * * * and rethink why do we have Social Security and what do we want it for."

In 1981, I called for the creation of an independent board to administer Social Security. The idea of an independent Social Security agency is by no means a new one. In fact, when Social Security was enacted in 1935, an independent Social Security Board was established to administer the programs of the act. The Board was abolished in 1946 and replaced by a single administrator. In 1953, Social Security was included in the predecessor to the Department of Health and Human Services—the Department of Health Education and Welfare. In the past decade, more than 20 bills have been introduced in Congress to set up an independent Social Security agency.

Most recently the National Commission on Social Security Reform in its recommendations to Congress in 1983, advocated the establishment of an independent agency. A recommendation that led to inclusion in the Social Security Amendments of 1983 of a requirement to establish a panel charged with the responsibility of conducting an implementation study for an independent Social Security agency under a bipartisan board appointed by the President, by and with the consent of the Senate. That study prepared by the Congressional Panel on Social Security Organization was released on May 12, 1984.

The National Commission's recommendations were based on a number of concerns surrounding the administration of Social Security in the past decade. SSA's standards of beneficiary services and its overall operation efficiency and effectiveness have come under attack in recent years. Problems with computer systems and payment errors have been highlighted, but other problems persist as well. Placement as a subordinate component in the Department of Health ahd Human Services has led to operational confusion, duplication of functions, and inadequate administrative resources to deal with an expanding clientel.

In addition there have been four major internal reorganizations of SSA since 1975 as well as rapid turnover of top level Social Security management including nine new commissioners and acting commissioners in 12 years.

The National Commission on Social Security Reform felt that significant improvement in the operation of social and the public's understanding of the system and its stability would result from creation of an independent agency. I wholeheartedly agree.

The bill that I am supporting today would establish an independent Social Security agency with a Board of Directors nominated by the President and confirmed by the Senate for 10-year terms. The Board would appoint a Commissioner for a 5-year term and a nine member Citizens Advisory Board would be appointed jointly by the Board of Directors and Congress. In addition, this bill would give the newly formed agency greater autonomy from GSA and OPM for computer acquisition, administrative services and personnel management.

The independent agency would be responsible for the Social Security trust fund financed cash benefits programs and the general revenue financed Supplemental Security Income Program.

Mr. President, I feel it is important to immediately respond to the important work done by the Congressional Panel on Social Security Organization through the introduction of legislation. It is my hope that the bill we are introducing today will be used as a starting point for discussion and congressional hearings on this proposal to establish the Social Security Administration as an independent agency. There are several issues that need further exploration. For example, in the bill we are introducing today, Medicare remains in the Department of Health and Human Services. This is an issue that needs to be further explored. I hope all of my colleagues will join with us in this critical effort to improve the administration of Social Security by insulating it from the potential abuse of short term political objectives.●

By Mr. CHAFEE:

S. 2779. A bill to require shareholder approval for certain repurchases of corporate stock; to the Committee on Banking, Housing, and Urban Affairs.

REPURCHASES OF CORPORATE STOCK

Mr. CHAFEE. Mr. President, much attention has been given in the media recently to corporate takeover tactics. One such tactic, "greenmail," is a practice by which a "raider" who has bought a large block of stock in a company threatens to make a hostile bid for the company. Since the target company does not want to be taken over, it agrees to buy back the stock at a price above the existing market price for the stock.

Greenmail, as in blackmail, has existed for years, but it seems to have reached epidemic proportions in the past new months, coincidental with the huge boom in corporate takeovers. The most recent incident involved Saul P. Steinberg's greenmail tactics that netted him $60 million in profits and expenses from Walt Disney just for promising to leave the entertainment giant alone.

All Mr. Steinberg did to earn that $60 million was buy up a 12.2-percent stake in Disney over a few months, threaten to takeover—driving up the price of Disney stock—and then sell his stock back to the company.

Greenmailers like Steinberg are successful, whether they really intend a full-scale takeover or not, because of the takeover threats, proxy contests, and lawsuits which make life so uncomfortable for management that they find ways to pay them to leave the company alone.

This practice of greenmail should be eliminated.

These practices demand our urgent attention not only because of the effect of these takeovers on the economy in general, but also because the takeover tactics themselves have severely damaged the financial health of some companies. In the case of Disney, the greenmail tactics of Mr. Steinberg cost the company $60 million; left it with absolutely nothing to show for that expenditure.

Stockholders are the first victims of greenmail activities, but workers and consumers suffer as well when management elects to use corporate assets to protect itself from raiders.

Greenmail robs a company—including its workers, its stockholders, and its consumers—of money that could better be spent on improved productivity, research, and development or investment in new plants or equipment. In short, the only beneficiaries of greenmail are corporate raiders and management that uses company assets to protect itself. Indeed, the intense, high-level corporate warfare that has become part of the takeover process has left executives spending more time worrying about their unwanted investors than they spend managing the company.

Most public and congressional concern has focused on the tactics used by corporate raiders to gain control. In the heat of a takeover contest, as the offensive and defensive battle escalates, important shareholder, employee, and community interests are frequently overlooked.

Defensive tactics with exotic names such as the "poison pill," sale of "crown jewels," and "scorched earth defense" reflect the corporate gamesmanship involved in attempts by management to thwart hostile takeovers through actions that may, at the same time, damage the target company itself.

Is it fair that corporate management has virtually unlimited discretion to use or sell corporate assets to defend against a takeover? In the case of a hostile takeover, it is clear that management's interest in perpetuating its control may conflict with the interest of the shareholders, the employees, and the company itself.

The natural human reaction expected in face of any challenge to one's possession of control over assets, power or prestige is to fight back, angrily, and wildly. And that is precisely what management, and their boards of directors, too often have done when they are confronted with an uninvited challenge to their corporate control. As the takeover battle escalates, challenged incumbents have not hesitated to pursue patently self-destructive corporate actions solely to preserve their management positions.

Profitable subsidiaries important to the enterprise are placed on the block. Valuable assets and crucial income are sold. Bizarre devices and instruments are invented and deployed in haste and often incur waste. Executives are voted exorbitant extended contracts.

As it stands now there is no clear legislative remedy available to stockholders or the public to redress this blatant disregard of their interests; and courts have deferred to the judgment of the managers under the "business judgment rule."

This rule applied by courts in a majority of jurisdictions provides that a court will not not interfere with the judgment of a board of directors unless there is a showing of gross and palpable overreaching. Management enjoys a presumption of sound business judgment, and its decisions will not be disturbed if they can be attributed to any rational business purpose. This rule developed from the philosophy that corporate managers should not be subject to lawsuits from shareholders simply because the decisions they make turn out to be unprofitable or unwise.

Mr. President, I submit that this business judgment rule is inappropriate in the context of hostile takeovers or other situations involving a threatened change in control in a corporation. I believe that the soundness of management's judgment fades as its position and status are threatened; its decisions under those circumstances are solely self-serving.

Corporate managements have engaged in transactions costing corporations million, or even hundreds of millions of dollars, in defending a takeover. If the courts cannot adquately protect shareholder's interests and the interests of the corporation itself because of existing rules of corporate law, then we need a clear legislative remedy to eliminate this abuse.

The bill I am proposing today would give shareholders the final say in whether a corporate raider will reap enormous profits. This legislation would require shareholder approval before 3 percent or more of the shares held for less than 2 years can be repurchased from the greenmailer at a premium.

Further, it would allow shareholders and the Securities and Exchange Commission to seek injunctive relief from harmful defensive tactics by management in corporate takeover situtations.

Mr. President, I ask unanimous consent that the text of the bill be printed in the **Record**.

There being no objection, the material was ordered to be printed in the **Record**, as follows:

S. 2779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

Section 1. Section 14 of the securities and Exchange Act of 1934 (15 U.S.C. 78n) is amended by inserting after subsection (e) the following new subsection:

"(f) It shall be unlawful for an issuer to purchase, directly or indirectly, any of its own securities at a price above the existing market from any person who holds more than 3 per centum of the class of the securities to be purchased and has held such securities for less than two years, unless such purchase has been approved by an affirmative vote of a majority of the aggregate voting securities of the issuer, or the issuer makes an offer to acquire, of at least equal value, to all holders of securities of such class and to all holders of any class of securities into which such securities may be converted."

Sec. 2. Section 14 of the Securities Exchange Act of 1932 (15 U.S.C. 78n) is amended by adding at the end thereof the following new subsection:

"(h)(1) No issuer whose securities are registered under this title, or any affiliate of any such issuer, shall engage in any transaction in contemplation of effecting, or of defending against, a change in control of such issuer that is not prudent for the issuer and fair to the issuer's shareholders. The Commission or any shareholder of that issuer may bring a suit in the proper district court of the United States or of the District of Columbia to enjoin any such transaction and for such other equitable relief as may be appropriate. In any such suit, the burden shall be upon such issuer or such affiliate to prove by a preponderance of the evidence that the transaction complained of is both prudent for the issuer and fair to the issuer's shareholders. A court may award attorney's fees to a shareholder in such a case.

"(2) The provisions of this subsection shall only apply to transactions taken by an issuer or by any officer or director on or after July 1, 1984."

By Mr. HEFLIN (for himself, Mr. Nunn, Mr. Stennis, and Mr. Zorinsky):

S. 2781. A bill to amend the Packers and Stockyards Act, 1921 to remove processed poultry marketings from the coverage of such act; to the Committee on Agriculture, Nutrition, and Forestry.

REGULATION OF POULTRY FOOD PRODUCTS

● Mr. HEFLIN. Mr. President, I am today introducing a bill which would provide for poultry food products to be subject to the same regulatory scheme as the vast majority of other food products sold in this country. It would delete the questionable jurisdiction over processed poultry products which the Packers and Stockyards Administration of the Department of Agriculture has asserted recently, while leaving intact that agency's right to regulate transactions in live poultry.

It is clear that Congress never intended to give packers and stockyards authority to regulate the sale of processed poultry products, but an accident of legislative drafting has put ambiguous language into the Packers and Stockyards Act which might be construed to give the agency that jurisdiction. This bill would remove that ambiguity.

The marketing of slaughtered and processed poultry by vertically integrated processors should not be covered under the Packers and Stockyards Act (7 U.S.C. § 181, et seq.). That statute was adopted in 1921 to regulate the commercial practices of meatpackers in the wake of a major Federal Government investigation and a Federal antitrust action challenging monopolistic and other anticompetitive conduct believed prevalent in the meatpacking industry at that time. The legislation authorized the Department of Agriculture to take action against unfair and related practices of meatpackers. Meatpackers were defined to include firms which sold, in addition to meat products, poultry and poultry products, if such firms also purchased livestock for purpose of slaughter; the legislation did not authorize the Department to take any action against sellers of poultry products unless they also qualified as meatpackers.

In 1935, the Packers and Stockyards Act was amended to remedy a situation involving racketeering and extortion associated with the marketing of live poultry in New York City. This objective was accomplished by covering live poultry dealers and handlers under the act and prohibiting them from engaging in unfair acts, just as meatpackers had been forbidden to commit them. In enacting that amendment, Congress did not express any concern with the marketing of slaughtered poultry, and, in fact, the commercial processed poultry industry was then insignificant.

The act was again amended in 1958—this time to limit its jurisdictional scope, in order to prevent firms which were not primarily meatpackers from escaping the jurisdiction of the Federal Trade Commission altogether. Before the amendment, persons who qualified as meatpackers covered by the Packers and Stockyards Act were exempt entirely from the jurisdiction of the Federal Trade Commission. This led to some anomolous results. For example, the FTC was challenging certain food chains for inducing and receiving discriminatory promotional allowances. One of these chains operated a meat slaughter and packing plant; however, the products involved in the FTC complaint were not meat or poultry products. Nevertheless, the chain successfully asserted a total exemption from FTC's jurisdiction because its slaughter and packing operation made it a meatpacker subject only to P&S jurisdiction. Such results prompted the 1958 legislation. To narrow the coverage of the P&S Act as to meatpackers, Congress made subject to the P&S Act only those unfair practices by such firms which involved meat and meat food products and poultry and poultry products—essentially by lifting the same list of the products as had been used as part of the definition of meatpackers in 1921. As a side effect, however, this drafting technique also resulted in the incidental coverage of unfair practices involving the same products by live poultry dealers or handlers. (See 72 Stat. 1749 (1958), 7 U.S.C. § 192.) In effect, the language limiting coverage as to packers appears to give P&S jurisdiction over the processed poultry transactions by "live poultry dealers," a term which might be construed as covering most poultry processors today, since almost all have a few purchases or sales of live poultry. Such an interpretation is, I believe, improper. In 1958, as in 1935, Congress expressed no concern about or even any interest in commercial practices in processed poultry.

This historical chain of amendments to the Packers and Stockyards Act has provided what can without exaggeration be characterized as the accidental basis for the Department of Agriculture's assertion of jurisdiction over processed-broiler marketing. Interestingly, although on several occasions in the 1960's and 1970's, bills have been introduced which would explicitly give the Department of Agriculture jurisdiction over transactions in processed poultry, none has been enacted.

In a 1982 decision, a 2-to-1 majority of a Second Circuit U.S. Court of Appeals panel, it was held that the act covered alleged exclusive dealing agreements in processed poultry. *United States* v. *Perdue Farms, Inc.*, 680 F.2d 277 (2d Cir. 1982). The result was based on sporadic sales by the firm of excess live poultry to other processors and of spent hens, all accounting for less than one-half of 1 percent of the processor's total broiler sales. All members of the appeals court panel agreed that Congress had never expressed any concern with the practices or competitive health of the processed poultry industry. The two-judge majority, however, concluded that it was bound by the literal language of the statute, as amended in 1958, unless it could be shown by convincing evidence that Congress specifically intended not to cover transactions by poultry processors in slaughtered poultry. Since Congress never focused on the industry at all, such a showing could not, of course, have been made. Concurring Judge Newman strongly suggested that congressional relief might be appropriate.

Removal of Packers and Stockyards Act jurisdiction over processed poultry marketing by nonpackers would correct the situation unintentionally created by successive amendments adopted for wholly unrelated purposes. There is no justification for specialized, virtual public-utility-type, trade practices regulation of processed poultry marketing. The poultry industry should be subject to no different statutory provisions or no other enforcement agencies, for example, FTC and the Department of Justice, than are other sectors of the food industry, such as baking or canned and frozen food processing. There is nothing in the history or current condition of the broiler industry which calls for continued Packers and Stockyards Act surveillance over processed broiler marketing.●

By Mr. D'AMATO (by request):

S. 2782. A bill to amend the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

S. 2783. A bill to amend the Securities Exchange Act of 1934 to prohibit acquisitions of corporate control except by means of tender offers for all outstanding shares, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

S. 2784. A bill to amend the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

S. 2785. A bill to amend the Securities Exchange Act of 1934 to authorize the Securities and Exchange Commission to subject banks, associations, and other entities that exercise fiduciary powers, to the same regulations as broker-dealers, pursuant to section 14(b) of the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

CORPORATE TAKEOVERS

● Mr. D'AMATO. Mr. President, I am introducing legislation today which would alter the current scheme of corporate takeovers. The Williams Act, which provides the statutory framework for corporate takeovers, has gone virtually unamended since its enactment in 1968. The Williams Act was intended to "correct the gap in our securities laws by amending the Securities and Exchange Act of 1934 to provide for full disclosure in connection with cash tender offers and other techniques for accumulating large blocks of equity securities of publicly held companies." The goals of the Williams Act were consistent with those of the Securities Act of 1933 and the Securities Exchange Act of 1934, protect investors by requiring full disclosure of material information in conjunction with the public offering or trading of securities.

The Senate Banking Committee's hearing record on the Williams Act indicated that takeover bids should not be discouraged, because they serve a useful purpose in providing a check on entrenched but inefficient management. The Senate Banking Committee Report on S. 510—the Williams Act—stated that, "The committee has taken extreme care to avoid tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid. The bill is designed to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case."

Clearly, the Williams Act was intended to balance the need to protect investors with the needs of offerors and target companies. Events of the last year indicate that Congress needs to revisit this issue. The practice of making and defending tender offers has evolved into a game of skill over the last decade. The winner in these games can be the offeror, or the target company shareholder. However, on many occasions, the big loser is the shareholder of the target company whose management, under the protection of State corporation law, has gone to extreme lengths to fend off the "raider." In the name of defending against a hostile tender offer, we have seen many companies sell off valuable assets in order to acquire cash with which to make a countertender offer or self-tender offer. Other companies have purchased unneeded assets in order to dilute the control of the original offeror. Too often the target company's shareholders are left with a highly leveraged company which is stripped of its most productive assets.

This is not to say that all tender offers are bad, they are not. In our free market society tender offers continue to be a check on inefficient management. However, it is evident that the disclosure required by the Williams Act in 1968 is no longer adequate to protect investors.

Mr. President, I am introducing four bills today which would amend the Federal securities laws in order to "fill the gap," and ensure that investors receive adequate protection. Two of these bills are legislative proposals submitted by the Securities and Exchange Commission. The third bill is based on a proposal submitted by Martin Lipton, a prominent New York attorney who is an authority on tender offers.

The fourth and final legislative proposal, the Shareholder Protection Act of 1984, includes the parts of SEC's proposal that I feel are most urgently needed in the name of investor protection. My bill would eliminate the practice of "greenmail" where an investor buys up a significant amount of stock and is then bought out at a premium to the exclusion of other shareholders. It would provide the SEC the authority to reduce the 10-day section 13(d)—of the Exchange Act—filing period after an investor has reached the 5-percent threshold. Under current law investors reach the 5-percent threshold and continue to purchase shares aggressively before filing a statement under section 13(d). The bill clarifies current law to ensure that section 13(d) reporting requirement applies to holdings of voting securities by a group of persons acting together. Finally, my bill would eliminate "golden parachutes" by prohibiting a target company from increasing the compensation of officers and directors during certain tender offers.

It is my hope that this bill will be enacted during the remaining days of the 98th Congress in order to deal immediately with the more egregious offensive and defensive tender offer tactics. I also intend to pursue the broader issues related to tender offers in the context of hearings before the Securities Subcommittee in September.

Mr. President, I ask unanimous consent that copies of these bills be printed in the RECORD together with a section-by-section analysis of the "Shareholder Protection Act."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2782

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. This Act may be cited as The Shareholder Protection Act of 1984.

SEC. 2. Section 13(d)(1) of the Securities Exchange Act of 1934 is amended by striking the words "within ten days after such acquisition," and inserting in lieu thereof the following words: "within such time after such acquisition, and in such manner, as the

Commission shall prescribe, announce such acquisition, and".

Sec. 3. Section 13(d) of the Securities Exchange Act of 1934 is amended by adding a new paragraph (7) as follows:

"(7) The Commission, by rule or regulation, in the public interest or for the protection of investors, may restrict or prohibit any person subject to the requirements of subsection (d)(1) of this Section from acquiring, directly or indirectly, beneficial ownership of any additional shares of the equity security that is the subject of the statement required by subsection (d)(1) for such time period subsequent to the acquisition subjecting such person to the filing requirement of subsection (d)(1) as the Commission shall designate. *Provided*, That such time period shall not exceed 2 business days after the filing of the statement required by subsection (d)(1)."

Sec. 4. Section 13(d)(3) of the Securities Exchange Act of 1934 is amended by inserting, after the word "acquiring," the word: "voting,". Section 13(g)(3) of the Securities Exchange Act of 1934 is amended by inserting, after the word "acquiring," the word: "voting,". I21Sec. 5. The Securities Exchange Act of 1934 is amended by adding thereto new subsection (g) of Section 14, to read as follows:

"(g) It shall be unlawful, during a tender offer for any class of securities of an issuer if (i) with respect to at least 10% of such class, the offer is unconditional and (ii) the offer is made at a price at least 25% greater than the average market price for such securities during the 10 trading days prior to the commencement of the offer, for the issuer to enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event of contingency, that increase, directly or indirectly, the current or future compensation of any officer or director."

Sec. 6. The Securities Exchange Act of 1934 is amended by adding thereto new subsection (h) of Section 14, to read as follows:

"(h) It shall be unlawful for an issuer to purchase, directly or indirectly, any of its securities at a price above the market from any person who holds more than 3 percent of the class of the securities to be purchased and has held such securities for less than two years, unless such purchase has been approved by the affirmative vote of a majority of the aggregate voting securities of the issuer, *or* the issuer makes an offer to acquire, of at least equal value, to all holders of securities of such class and to all holders of any class into which such securities may be converted.

Sec. 7. The Securities Exchange Act of 1934 is amended by adding thereto new subsection (i) of section 14, to read as follows:

"(i) The Commission may, by rule, regulation or order, in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, provide exemption from any or all of the provisions of subsections (g) and (h)."

Sec. 8. This Act shall take effect immediately upon its enactment.

S. 2783

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end thereof the following new subsection:

"(h)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to acquire or agree to acquire any shares of any class of voting equity securities of a corporation registered pursuant to section 12 of this title, or any shares of any class of voting equity securities of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any shares of any class of voting equity securities issued by a closed-end investment company registered under the Investment Company Act of 1940 if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of voting equity securities which would entitle such person to cast 10 percent or more of the votes that all holders of outstanding voting equity securities would be entitled to cast in an election of directors of the issuer, unless such acquisition shall be by means of a tender or exchange offer for all of the outstanding shares of common stock of the issuer (including all shares of common stock issuable upon conversion or exercise of outstanding securities, warrants, options or other rights issued or granted by the issuer) either—

"(A) for cash at a price per share equal to the highest price per share (including any brokerage commissions and soliciting dealers fees) paid by such person for shares of common stock of the issuer during the twelve months preceding the date of commencement of the offer, or

"(B) if such person has not purchased any shares of common stock of the issuer during the twelve months preceding the date of commencement of the offer, for cash, or for securities, or for any combination of cash and securities, except that, in any offer in which cash is offered for part of the common stock of the issuer, the securities offered for the remaining common stock shall have a fair market value, on a fully distributed basis, per share of common stock of the issuer at least equal to the amount of the cash offer per share of common stock of the issuer.

"(2) The provisions of this subsection shall not apply to—

"(A) any person that on the effective date of this subsection beneficially owns voting equity securities of a corporation which would entitle such person to cast 10 percent or more of the votes that all holders of outstanding voting equity securities would be entitled to cast in an election of directors of the corporation unless, subsequent to such effective date, such person increases its beneficial ownership of voting equity securities of the corporation to a percentage in excess of the percentage of outstanding voting equity securities of the corporation beneficially owned by such person on such effective date;

"(B) acquisitions of any voting equity security by the issuer of such security;

"(C) acquisitions of any voting equity security from the issuer of such security;

"(D) acquisitions of voting equity securities pursuant to an agreement with the issuer under which all of the outstanding shares of common stock of the issuer (including all shares of common stock issuable upon conversion or exercise of outstanding securities, warrants, options or other rights issued or granted by the issuer) are to be acquired;

"(E) acquisitions of voting equity securities by gift or inheritance or by transfer from an existing holder to an individual related to such holder by blood or marriage;

"(F) acquisitions of voting equity securities of any issuer that on such effective date is a subsidiary of any other corporation by such other corporation; or

"(G) existing holders of voting equity securities of an issuer acting in concert or in a coordinated manner for the purpose of soliciting proxies from other holders of voting equity securities of the issuer or otherwise seeking to influence the management policies of the issuer, except that no such existing holder has acquired any voting equity security of the issuer other than as set forth in subparagraph (A) of this paragraph.

"(3) When two or more persons act in concert or in a coordinated manner or as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, or influencing the management policies of an issuer, such syndicate or group shall be deemed a 'person' for purposes of this subsection.

"(4) For purposes of this subsection—

"(A) the term 'voting equity security' means any equity security of a corporation that entitles the holder thereof to vote generally in an election of directors of the corporation; and

"(B) the term 'subsidiary' means any issuer as to which another corporation beneficially owns voting equity securities that would entitle such corporation to cast at least 50 percent of the votes that all holders of outstanding voting equity securities of the issuer would be entitled to cast in an election of directors of the issuer.".

Sec. 2. The amendment made by this Act shall become effective upon enactment.

S. 2784

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as "The Tender Offer Reform Act of 1984".

Sec. 2. Section 13(d)(1) of the Securities Exchange Act of 1934 is amended by striking out the words "within ten days after such acquisition," and inserting in lieu thereof the following words: "within such time after such acquisition, and in such manner, as the Commission shall prescribe, announce such acquisition, and".

Sec. 3. Section 13(d) of the Securities Exchange Act of 1934 is amended by adding a new paragraph (7) as follows:

"(7) The Commission, by rule or regulation, in the public interest or for the protection of investors, may restrict or prohibit any person subject to the requirements of subsection (d)(1) of this Section from acquiring, directly or indirectly, beneficial ownership of any additional shares of the equity security that is the subject of the statement required by subsection (d)(1) for such time period subsequent to the acquisition subjecting such person to the filing requirement of subsection (d)(1) as the Commission shall designate: *Provided*, That such time period shall not exceed 2 business days after the filing of the statement required by subsection (d)(1).".

Sec. 4. Section 13(d)(3) of the Securities Exchange Act of 1934 is amended by inserting, after the word "acquiring," the word: "voting,". Section 13(g)(3) of the Securities Exchange Act of 1934 is amended by inserting, after the word "acquiring," the word: "voting,".

Sec. 5. The title of section 14 of the Securities Exchange Act of 1934 is hereby amended to read as follows: "PROXIES AND TENDER OFFERS." Subsections 14(f) and 14(g) of the Securities Exchange Act of 1934 are redesignated as Subsections 14(j) and 14(k), respectively.

Sec. 6. The Securities Exchange Act of 1934 is amended by deleting paragraph 14(d)(2); redesignating paragraphs 14(d) (3) through (8) as paragraphs 14(d) (2) through (7); and adding new subsection (f) of section 14, to read as follows:

"(f) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, voting, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for purposes of subsections (d), (e), (g), (h) and (i) of this Section 14.".

Sec. 7. The Securities Exchange Act of 1934 is amended by adding thereto new subsection (g) of section 14, to read as follows:

"(g) It shall be unlawful, during a tender offer for any class of securities of an issuer if (i) with respect to at least 10 percent of such class, the offer is unconditional and (ii) the offer is made at a price at least 25 percent greater than the average market price for such securities during the 10 trading days prior to the commencement of the offer, for the issuer to enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event or contingency, that increase, directly or indirectly, the current or future compensation of any officer or director.".

Sec. 8. The Securities Exchange Act of 1934 is amended by adding thereto new subsection (h) of section 14, to read as follows:

"(h)(1) It shall be unlawful, during a tender offer for any class of securities of an issuer if (i) with respect to at least 10 percent of such class, the offer is unconditional and (ii) the offer is made at a price at least 25 percent greater than the average market price for such securities during the 10 trading days prior to the commencement of the offer, for the issuer to acquire, by a tender offer or otherwise, any of its securities: *Provided*, That an issuer may undertake routine acquisition of securities through ongoing programs undertaken in the ordinary course of the issuer's business.

"(2) It shall be unlawful, during (i) a tender offer for any class of securities of an issuer if (A) with respect to at least 10 percent of such class, the offer is unconditional and (B) the offer is made at a price at least 25 percent greater than the average market price for such securities during the 10 trading days prior to the commencement of the offer, or (ii) a third party solicitation of proxies, consents, or authorizations from any holder of securities of an issuer, for the issuer to grant voting power or to issue any combination of securities, including, but not limited to, options, rights, warrants, convertible or other securities, which, upon granting or issuance, or if converted or exercised upon issuance, would in the aggregate constitute more than 5 percent of the issued and outstanding securities of a class or have more than 5 percent of the aggregate voting power of the issuer after such grant, issuance, conversion or exercise, unless the specific grant or issuance and its terms are approved by the affirmative vote of a majority of the aggregate voting securities of the issuer.

"(3) It shall be unlawful for an issuer to purchase, directly or indirectly, any of its securities at a price above the market from any person who holds more than 3 percent of the class of the securities to be purchased and has held such securities for less than two years, unless such purchase has been approved by the affirmative vote of a majority of the aggregate voting securities of the issuer, or the issuer makes an offer to acquire, of at least equal value, to all holders of securities of such class and to all holders of any class into which such securities may be converted.".

Sec. 9. The Securities Exchange Act of 1934 is amended by adding thereto new subsection (i) of section 14, to read as follows:

"(1) The Commission may, by rule, regulation or order, in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, provide exemptions from any or all of the provisions of subsections (g) and (h).".

Sec. 10. None of the foregoing shall be construed to limit or condition the authority of the Commission, in the public interest or for the protection of investors, to supplement the proration, withdrawal, and minimum offering periods applicable to a tender offer.

Sec. 11. This Act shall take effect immediately upon its enactment

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S. 2785

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as "the Shareholder Communications Act of 1984."

Sec. 2. Section 14(b) of the Securities Exchange Act of 1934 is amended by inserting, after the phrase "under this title," the phrase "or any bank, association or other entity that exercises fiduciary powers,".

Sec. 3. The amendments made by this Act shall become effective one year after the enactment of this Act.

Analysis of the Bill by Section

Section 1. The Act may be cited as "The Shareholder Protection Act of 1984."

Sections 2 and 3. Sections 2 and 3 of the Act allow the Commission to close the "ten-day window" in current section 13(d) of the Exchange Act. The legislation permits the Commission to require a public announcement and to specify the time, after the 5-percent acquisition, for filing the required statement and a length of time, not to exceed 2 business days after filing, for which additional purchases may be restricted.

Section 4. Current paragraphs 13(d)(3) and 13(g)(3) cover groups acting in concert for certain purposes. While the current language is intended to encompass groups acting for the purpose of voting securities, the term "voting" is added to these paragraphs for clarity.

Section 5. Section 5 of the Act, adding subsection 14(g), prohibits an issuer, during certain tender offers, from entering into or amending, directly or indirectly, agreements containing certain compensation provisions.

This provision prohibits an issuer, during certain types of third-party tender offers, from entering into or amending agreements containing "provisions, whether or not dependent on the occurrence of any event of contingency, that increase, directly or indirectly, the current of future compensation of any officer or director." The prohibition does not prevent hiring new officers or directors, nor does it prohibit compensation increases even during a tender offer, if such increases result from the provisions of an agreement pre-dating the tender offer. The Commission can, under section 7 of the Act, exempt transactions by rule or order.

Section 6. Paragraph (h) prohibits issuer purchases of any of its securities at a price above the market from a person who holds more than 3 percent of the class of securities to be purchased and has held such securities for less than two years, unless (A) such purchase has first been approved by a majority of the aggregate voting securities of the issuer or (B) the issuer makes an offer "of at least equal value" to all holders.

Section 7. Section 7 of the legislation authorizes the Commission to grant exemptions from new paragraphs (g) and (h) of Section 14. The intent of this provision is to prevent unintended or inequitable results by providing for flexible administration in a rapidly evolving area, consistent with the Commission's investor protection mandate. In addition, the Commission will have the authority, under current law, to define terms pursuant to Section 3(b) of the Exchange Act and to engage in general rulemaking, under Section 23(a) of the Exchange Act, to implement the Act.●

By Mr. DeCONCINI (for himself and Mr. GRASSLEY):

S.J. Res. 317. Joint resolution to designate August 1, 1984, as "Helsinki Human Rights Day"; to the Committee on the Judiciary.

HELSINKI HUMAN RIGHTS DAY

Mr. DeCONCINI. Mr. President, I am pleased to introduce today a joint resolution that authorizes and requests the President of the United States to designate August 1, 1984, as "Helsinki Human Rights Day." This bill is similar to the legislation I sponsored last year which became Public Law 98-58.

The purpose of this resolution is simple. It sets aside a specific day to recognize the plight of thousands of citizens, particularly in the Soviet Union and its satellites, in their pursuit of fundamental rights guaranteed by the Helsinki accords. Their cause is a significant one. We are all members of the human family, and so long as any member of that family does not enjoy full human dignity and rights, none of us is truly free. While men and women are oppressed in other lands, our freedom is only partial. But so long as we defend the freedom of all men, the tyranny under which they live is mitigated.

In agreeing to the Helsinki accords, the signatory nations have acknowledged their adherence to the principles of freedom. Not, perhaps, to the sophisticated modes of parliamentary democracy, but to the basic rights of citizens to emigrate, to be reunited with their families and to enjoy at least the minimal respect by their government of their individuality and personal worth. In the contemporary world where governments seek the respect and recognition of other nations, this is the least we can demand.

Soviet emigration policy, especially in the case of minorities, exemplifies the individual, cultural and religious repression that the Soviet regime imposes on many of its citizens. Because they have been denied the right to speak, the right to publish freely, the right to freedom of expression, and above all the right to freely practice their religion, many Soviet citizens have felt compelled to apply for emigration visas. However, the emigration process itself is demoralizing. It is unpredictable and arbitrary, and becomes for many a futile, nightmarish experience. Applicants systematically are demoted or fired from their jobs, watched, followed, harassed, interrogated, searched, silenced by being sent to psychiatric hospitals, and ultimately imprisoned or banished to hard labor camps in Siberia.

In recent years the rate of emigration from the Soviet Union has dramatically declined. For example, only 1,314 Jews were allowed to emigrate in 1983 as compared with 51,320 in 1979. These statistics are alarming and are in direct contravention of the Helsinki accords.

By proclaiming August 1, 1984, the ninth anniversary of the signing of the Helsinki accords, as "Helsinki Human Rights Day," we are reaffirming our commitment to the principles upon which our own democracy was founded. We are sending a message to the signatory nations, particularly the Soviet Union and its satellites, that we expect them to live up to their international agreements.

Mr. President, I urge each Member of this body to let his commitment be known. As President Gerald Ford so eloquently stated at the signing ceremony of the Helsinki accords:

"History will judge this conference not by what we say here today, but by what we do tomorrow—not by the promises we make but by the promises we keep."

Mr. President, I ask unanimous consent that the text of the resolution be printed in the Record at this point.

There being no objection, the joint resolution was ordered to be printed in the Record, as follows:

S.J. Res. 317

Whereas August 1, 1984, will be the ninth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe (hereafter in this preamble referred to as the "Helsinki Accords");

Whereas the Helsinki Accords express the desire of the participating States to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion";

Whereas the Helsinki Accords also express the commitment of the participating States to "facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connection";

Whereas the Helsinki Accords specify that the participating States will "deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family" and will "deal with applications in this field as expeditiously as possible";

Whereas the Helsinki Accords also state that the participating States will facilitate travel by citizens of such States for both personal and professional reasons and that for this purpose such States will simplify exit and entry procedures;

Whereas the Government of the Union of Soviet Socialist Republics, in agreeing to the Helsinki Accords, has acknowledged an adherence to the principles of freedom and to the basic human rights of citizens to emigrate, to be reunited with their families, and to enjoy at least minimal governmental respect for their individuality and human worth;

Whereas the Soviet Government has not fulfilled its commitment to the Helsinki Accords by denying individuals inherent rights to freedom of religion, thought, conscience, and emigration;

Whereas the governments of the Soviet Union and its satellites have increased the difficulties faced by citizens who wish to reunite with family members in other countries, resulting in a drastic decline in recent emigration figures;

Whereas Jews, Ukrainians, Balts, Byelorussians, Armenians, Georgians, and members of other nationalities in the Soviet Union are persecuted and often imprisoned for attempts to celebrate their national heritage, to practice their religion, to express freely their opinions, to emigrate, or to monitor Soviet Government compliance with the provisions of the Helsinki Accords;

Whereas the satellite nations of the Soviet Union have increased repression against labor union members, peace activists, religious and political dissenters, and other desiring to emigrate; and

Whereas the denial of fundamental rights by the Soviet Government is a threat to peace throughout the world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) August 1, 1984, the ninth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe, is designated as "Helsinki Human Rights Day";

(2) the President is authorized and requested to issue a proclamation reasserting the American commitment to full implementation of the human rights and humanitarian provisions of the Helsinki Accords, urging all signatory nations, particularly the Soviet Union and its satellites, to abide by their obligations under the Helsinki Accords, and encouraging the people of the United States to join the President and Congress in observance of "Helsinki Human Rights Day" with appropriate programs, ceremonies, and activities; and

(3) the President is further requested to continue his efforts to achieve full implementation of the human rights and humanitarian provisions of the Helsinki Accords by raising the issue of noncompliance with authorities of the Soviet Union and East European countries at every available opportunity.

Sec. 2. The Secretary of the Senate is directed to transmit copies of this joint resolution to the President, the Secretary of State, and the Ambassadors of the thirty-four Helsinki signatory nations.

By Mr. HATCH (for himself, Mr. Weicker, Mr. Kennedy, Mr. Randolph, Mr. Garn, Mr. Nickles, Mrs. Hawkins, Mr. Metzenbaum, Mr. Dole, Mr. Nunn, Mr. Chafee, Mr. Riegle, Mr. Eagleton, Mr. Stafford, Mr. Chiles, Mr. Dixon, Mr. Lautenberg, Mr. Heinz, Mr. Hollings, Mr. Quayle, Mr. Durenberger, Mr. Jepsen, Mr. Tsongas, Mr. Glenn, Mr. Humphery, Mr. Grassley, Mr. Thurmond, and Mr. Cochran):

S.J. Res. 318. Joint resolution to designate the week of September 16, 1984, through September 22, 1984, as "National Developmental Disabilities Awareness Week"; to the Committee on the Judiciary.

NATIONAL DEVELOPMENTAL DISABILITIES AWARENESS WEEK

Mr. HATCH. Mr. President, today I am introducing a joint resolution calling for the recognition of September 16-22, 1984, as "National Developmental Disabilities Awareness Week." I am joined by 27 other Senators including both the chairman and the ranking minority of the Subcommittee on the Handicapped, Mr. Weicker and Mr. Randolph. Other members of my Labor and Human Resources Committee listed as original cosponsors are Senators Kennedy, Nickles, Hawkins, Quayle, Stafford, Metzenbaum, Eagleton, Riegle, Thurmond, and Grassley.

As you know, developmental disabilities affect nearly 4 million children and adults in the United States. These disabilities result in lifelong substantial limitations of major activities such as self-care, mobility, self-direction, the capacity for independent living and economic self-sufficiency. Developmental disabilities are attributed to chronic mental and/or physical impairments manifested before the age of 22.

Persons with developmental disabilities require a combination and sequence of special interdisciplinary or generic services and treatment for their entire life. Due to the severity of their handicaps, developmentally disabled people need to have individually planned and coordinated services.

We are introducing this resolution in order to educate the general public about the potential and special needs of persons with developmental disabilities. In addition, professional personnel, parents, and concerned citizens deserve to be recognized for their contribution in serving this special population. It is our hope that commemoration of a "National Developmental Disabilities Awareness Week" will serve as a vehicle to achieve both goals.

Mr. President, I ask unanimous consent that the joint resolution be printed in the Record at the conclusion of my remarks and I urge the prompt approval of this resolution.

There being no objection, the joint resolution was ordered to be printed in the Record, as follows:

S.J. Res. 318

Whereas there are three million nine-hundred thousand children and adults with developmental disabilities in the United States;

Whereas such persons have severe chronic disabilities attributed to mental or physical impairment which begin early in life and result in substantial limitations in major life activities such as self-care, mobility, language, learning, and self-direction;

Whereas handicaps of persons with developmental disabilities need interdisciplinary or generic service and treatment for extended periods or life;

Whereas despite substantial limitations, persons with developmental disabilities have the capability to become more independent and economically self-sufficient;

Whereas the services and expertise provided by professional personnel, parents, and concerned citizens enable persons with developmental disabilities to participate more freely in education, employment, and community living;

Whereas increasingly more persons with developmental disabilities are living in the community enabling them to live less restricted lives;

Whereas the Developmental Disabilities Assistance and Bill of Rights Act will be reauthorized this year in support of the developmental disabilities programs;

Whereas through increased national awareness of such programs the public will better understand the potential and needs of persons with developmental disabilities: Now, therefore, be it:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of September 16, 1984, through September 22, 1984, is designated as "National Developmental Disabilities Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe the week with appropriate programs and activities.

ADDITIONAL COSPONSORS

S. 905

At the request of Mr. Mathias, the names of the Senator from South Carolina [Mr. Thurmond] and the Senator from Iowa [Mr. Jepsen] were added as cosponsors of S. 905, a bill entitled the "National Archives and Records Administration Act of 1983."

S. 2128

At the request of Mr. Long, the name of the Senator from New Jersey [Mr. Bradley] was added as a cosponsor of S. 2128, a bill to amend the Internal Revenue Code of 1954 to provide a rollover of the gain on stock of an employer sold to certain employees, and for other purposes.

S. 2301

At the request of Mr. Hatch, the name of the Senator from New Jersey [Mr. Bradley] was added as a cosponsor of S. 2301, a bill to revise and extend programs for the provisions of health services and preventive health services, to establish a program for the provision of home and community-based services, and for other purposes.

S. 2308

At the request of Mr. Hatch, the name of the Senator from New Jersey [Mr. Bradley] was added as a cosponsor of S. 2308, a bill to revise and extend provisions of the Public Health Service Act relating to the provision of primary health care services.

S. 2548

At the request of Mr. Levin, the name of the Senator from Georgia [Mr. Nunn] was added as a cosponsor of S. 2548, a bill to authorize the Secretary of Housing and Urban Development, through the Federal Housing Administration, to assist homeowners in taking corrective measures with respect to urea formaldehyde foam insulation in their homes.

S. 2559

At the request of Mr. Hatch, the name of the Senator from Hawaii [Mr. Inouye] was added as a cosponsor of S. 2559, a bill to revise and extend provisions of the Public Health Service Act relating to health professions educational assistance.

S. 2574

At the request of Mr. Hatch, the name of the Senator from Mississippi [Mr. Cochran] was added as a cosponsor of S. 2574, a bill entitled the "Nurse Education Amendments of 1984".

S. 2665

At the request of Mr. Roth, the name of the Senator from Maine [Mr. Cohen] was added as a cosponsor of S. 2665, a bill to strengthen the criminal and civil penalty provisions of environmental protection laws.

S. 2719

At the request of Mr. Lautenberg, the name of the Senator from Minnesota [Mr. Boschwitz] was added as a cosponsor of S. 2719, a bill to amend title 23, United States Code, to direct the Secretary of Transportation to withhold a percentage of the apportionment of certain Federal-aid highway funds to be made to any State which does not establish a minimum drinking age of 21 years.

S. 2731

At the request of Mr. Cohen, the names of the Senator from Kentucky [Mr. Huddleston] and the Senator from Illinois [Mr. Dixon] were added as cosponsors of S. 2731, a bill to provide for orderly trade in nonrubber footwear, to reduce unemployment and for other purposes.

S. 2766

At the request of Mr. Thurmond, the name of the Senator from Maryland [Mr. Sarbanes] was added as a cosponsor of S. 2766, a bill to amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor-piercing ammunition.

SENATE JOINT RESOLUTION 253

At the request of Mr. Pressler, the name of the Senator from New York [Mr. D'Amato] was added as a cosponsor of Senate Joint Resolution 253, a joint resolution to authorize and request the President to designate September 16, 1984, as "Ethnic American Day."

SENATE JOINT RESOLUTION 258

At the request of Mr. Biden, the name of the Senator from Wyoming [Mr. Wallop] was added as a cosponsor of Senate Joint Resolution 258, a joint resolution to designate the week of June 24 through June 30, 1984, as "National Safety in the Workplace Week."

SENATE RESOLUTION 294

At the request of Mr. Boren, the names of the Senator from Nebraska [Mr. Exon] and the Senator from Massachusetts [Mr. Tsongas] were added as cosponsors of Senate Resolution 294, a joint resolution to designate the week of July 1, 1984, through July 7, 1984, as "National Softball Week."

SENATE RESOLUTION 402

At the request of Mr. Boschwitz, the name of the Senator from South Carolina [Mr. Thurmond] was added as a cosponsor of Senate Resolution 402, a resolution opposing certain proposed import restrictions by the European Community on U.S. agricultural products.

SENATE RESOLUTION 412—COMMENDING THE USA PHILHARMONIC SOCIETY

Mr. HOLLINGS (for himself, Mr. Kennedy, Mr. Jepsen, Mr. Dole, Mr. Tsongas, Mr. Matsunaga, Mr. DeConcini, Mr. Abdnor, Mr. Nunn, Mr. Symms, Mr. Goldwater, Mr. Cochran, Mr. Lugar, Mr. Eagleton, Mr. Weicker, Mr. Hart, Mr. Proxmire, Mr. Percy, Mr. Burdick, Mr. Sarbanes, Mr. Cranston, Mr. Dodd, Mr. Chafee, Mr. Thurmond, Mr. Johnston, Mr. Levin, Mr. Stennis, Mr. Hatch, Mr. Gorton, Mr. Lautenberg, Mr. Dixon, Mr. Boschwitz, Mr. Mitchell, Mr. Huddleston, and Mr. Riegle) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 412

Whereas the USA Philharmonic Society is a nonprofit corporation, organized under the laws of the District of Columbia, promoting the performance of music and dedicated to educational activities;

Whereas the goal of the USA Philharmonic Society is to inaugurate an orchestra unique in the United States and unique in the lives of the American people thereby providing an enduring cultural landmark for the Nation;

Whereas the first activity of the USA Philharmonic Society is the formation and maintenance of the USA Philharmonic, the only professional orchestra designed to assemble the best musicians between 18 and 28 years of age in the United States, and to belong to the entire Nation, based in the Nation's capital, which will, through its tours, generate international understanding of the musical talent that lives in our Nation's youth;

Whereas opportunities for orchestral employment are limited since relatively few openings occur each year in major orchestras, thereby many talented music graduates are unable to begin their careers, the USA Philharmonic bridges this gap between formal training and the start of an orchestral career by providing professional experience and by assisting its members with placement in major United States orchestras;

Whereas other countries are draining United States talent by offering immediate employment to young musicians, USA Philharmonic offers a superior alternative for our young musicians trying to launch their careers, and provides a unique opportunity for them to participate in an international exchange of musical cultures as well;

Whereas more than forty years have passed since the musical genius of our Nation's youth has been shared with other nations, when through the leadership of Maestro Leopold Stokowski in 1940 and 1941, the "All-American Youth Orchestra" inspired nations in South America with its tours, USA Philharmonic will bring together musicians and music lovers of other countries, not for political, but for artistic and spiritual interchange;

Whereas musicians for USA Philharmonic will be determined by two auditions in each of six regions, thereby offering participation to youth of all States, and coordinated by the Audition Committee with music associations, universities, colleges and independent schools of music to insure the broadest representation and the most outstanding talent;

Whereas USA Philharmonic on tour will present the classical repertorie and recent compositions from the United States and the host country, and, by alternating tours abroad with domestic tours, USA Philharmonic will showcase the musical genius of our Nation's youth, display the high standard of our Nation's musical invention, and play the first performance in the United States of prominent new music from other nations, including those of South America in 1984; and

Whereas the growth of the USA Philharmonic Society to date is due to the dedication of its many volunteers who have generously contributed their time and energy, and that the USA Philharmonic Society enjoys the support of a distinguished and very able Board of Directors: Mr. Michael L. Ainslie, Mr. Roger Alexander, Mr. Jahangir Amuzegar, Mr. Rick Barwick, Dr. John Bitter, Mr. Patrick J. Daly, Ms. Nancy Hyman, Mr. Paul Hume, Mr. Karl Jaeger, Mr. Afshin Khalatbary, Mr. Viktor von Lillienfeld, Mr. J. Walter Lund, Mr. Garrick, Ohlsson, Professor Efrain Paesky, Mr. Richard Salmon, Mr. John Philip Sousa III, and Miss Elizabeth Taylor: Now, therefore, be it

Resolved, That the United States Senate congratulates and commends the USA Philharmonic Society for its dedicated work on behalf of the Nation's young musicians, and its commitment to furthering better understanding among peoples of all nations through the universal language of music.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President of the USA Philharmonic Society, Washington, D.C.

● Mr. HOLLINGS. Mr. President, I am joined today by Senators Kennedy, Jepsen, Dole, Tsongas, Matsunaga, DeConcini, Abdnor, Nunn, Symms, Goldwater, Cochran, Lugar, Eagleton, Weicker, Hart, Proxmire, Percy, Burdick, Sarbanes, Cranston, Dodd, Chafee, Thurmond, Johnston, Levin, Stennis, Hatch, Gorton, Lautenberg, Dixon, Boschwitz, Mitchell, Huddleston, and Riegle in introducing a resolution to congratulate and commend the USA Philharmonic Society, Inc., "for its dedicated work on behalf of the Nation's young musicians, and its commitment to furthering better understanding among peoples of all nations through the universal language of music."

The USA Philharmonic Society is a nonprofit corporation organized and incorporated under the laws of the District of Columbia which promotes the performance of music and which is dedicated to educational activities. The first activity of the USA Philharmonic Society is the formation and maintenance of a symphony orchestra—USA Philharmonic.

The USA Philharmonic, Mr. President, is the only professional orchestra designed to assemble the best musicians between 18 and 28 years of age in the United States. USA Philharmonic belongs to the entire Nation, is based in the Nation's Capital, and through its tours will generate worldwide understanding of the musical talent that live in our Nation's youth.

One primary reason for creating this orchestra, Mr. President, is that it will provide young musicians with employment opportunities. Openings for orchestras are limited and only a relative few occur each year. As a result, many talented music graduates are unable to begin their careers with an orchestra. USA Philharmonic bridges this gap between formal training and the start of an orchestral career by providing professional experience and by assisting its members with placement in major U.S. orchestras. The experience working with leading conductors and soloists, combined with actual concert performances, is of tremendous importance to new careers. In this way we nurture and encourage the young talent of America.

Other countries are draining U.S. talent by offering immediate employment to young musicians. USA Philharmonic offers a superior alternative for young musicians trying to launch their careers, and provides a unique opportunity to participate in an international exchange of musical cultures.

More than 40 years have passed since the musical genius of our Nation's youth has been shared with other nations. Through the leadership of Leopold Stockowski in 1940 and 1941, the "All-American Youth Orchestra inspired nations in South America with its tours." USA Philharmonic will bring together musicians and music lovers of other countries for purposes, not of political, but of artistic and spiritual interchange.

Musicians for USA Philharmonic will be determined by two auditions in each of six regions (eastern, southern, south-central, north-central, northwestern, and western). The Audition Committee will coordinate with music associations, universities, colleges, and independent schools of music to arrange the first audition. The second audition will determine the finalists. And, to maintain the highest standard, Mr. President, member's of the previous year's orchestra must reaudition each year with new applicants.

USA Philharmonic on tour will present the classical repertoire and recent compositions from the United States and the host country. In 1984, USA Philharmonic will tour four countries in South America and in 1985 will tour the United States and Canada. By alerting tours abroad with domestic tours, USA Philharmonic will showcase the musical genius of our Nation's youth, display the high standard of our Nation's musical invention, and play the first performance in the United States of prominent new music from other countries.

Mr. President, the growth of the USA Philharmonic to date is due to the dedication of its many volunteers who have generously contributed their time and energy. The USA Philharmonic Society presently enjoys the support on its board of directors of Mr. Michael Ainslie, Mr. Roger Alexander, Mr. Jahangir Amuzegar, Mr. Rick Barwick, Dr. John Bitter, Mr. Patrick J. Daly, Ms. Nancy Hyman, Mr. Paul Hume, Mr. Karl Jaeger, Mr. Afshin Khalatbary, Mr. Viktor von Lillienfeld, Mr. J. Walter Lund, Mr. Garrick Ohlsson, Prof. Efrain Paesky, Mr. Richard Salmon, Mr. John Philip Sousa III, and Miss Elizabeth Taylor.

Mr. Khalatbary emphasizes, out as a comparison, that a similar orchestra, the "European Community Youth Orchestra," is supported by 10-member nations of the European Community. This is the only cultural project so supported by these nations.

Mr. President, it is my hope that many of my colleagues will join with me and the distinguished cosponsors of this bill and see to it that it gets quick attention and speedy approval. Not only will young musicians in our Nation have increased opportunities to

pursue their artistic endeavors, but the entire Nation will benefit from the outpouring of this talent and the good will associated with their performances both here and abroad.

Mr. President, I ask unanimous consent that a letter from Mr. Afshin Khalatbary, president of the society, be printed in the Record at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

USA Philharmonic,
Washington, DC, May 15, 1984.

Hon. Ernest F. Hollings,
U.S. Senate,
Washington, DC.

Dear Senator Hollings: My friend and colleague Rick Barwick suggested that I might seek your guidance and sponsorship for a bill granting a Congressional Charter to the USA Philharmonic Society. The Society is forming a professional symphony orchestra derived from the best of this nation's youth. The fact that no such orchestra yet exists is of valid concern.

It is necessary that I draw a comparison between the musical youth of Europe and the musical youth of the United States of America.

An extremely gifted young musician from Europe, who dreams of being in an orchestra of similarly gifted peers, aspires to being in the "European Community Youth Orchestra" (ECYO). The ECYO is the only cultural project in the European Community which is supported by all the member countries. The ECYO is powerfully endorsed by Heads of State, Chief Executives, Banking Houses and Corporations. The Heads of State and Chief Executives are:

Belgium.—His Royal Highness King Baudouin and M. Wilfred Martens, Prime Minister.

Denmark.—Her Majesty Queen Margrethe II and H. Poul Schlüter, Prime Minister.

France.—President Francois Mitterand and M. Pierre Mauroy, Prime Minister.

Germany.—Professor Dr. Karl Carstens, President, and Dr. Helmut Kohl, Chancellor.

Greece.—President Constantine Karamanlis and Andreas Papandreou, Prime Minister.

Ireland.—Dr. Patrick J. Hillary, President, and Dr. Garret FitzGerald, Prime Minister.

Italy.—President Sandro Pertini and S. Amintore Faffani, Prime Minister.

Luxembourg.—H.R.H. The Grand Duke Jean and M. Pierre Werner, President.

The Netherlands.—Her Majesty Queen Beatrix and H.R.F.M. Lubeers, Prime Minister.

Great Britain.—Her Majesty Queen Elizabeth II and Mrs. Margaret Thatcher, Prime Minister.

No orchestra of this calibre exists in the United States that can attract international focus and recognition of the collective representation of the best of this nation's musical youth. The irony should also be noted that the ECYO is receiving substantial backing from internationally recognized corporations such as the Coca-Cola Company and International Business Machines.

The USA Philharmonic Society looks to those in this country who have long been arbiters of this country's history, both cultural and political, and hopes to win their confidence and endorsement. The example of the ECYO is not called up idly as a *quid pro quo* comparison, nor is it the intention of the Society to replicate a carbon-copy of the ECYO in this country. Our intention is to provide an orchestra to which the best of this nation's youth can aspire, and be proud of, to an international and professional standard that can stand a comparison. In short, a standard that can be proudly flown anywhere in the world.

I hope our aims might merit your sponsorship for the Charter as proposed. It would indeed be an honor if this Charter of the United States Congress were the cornerstone of our foundation.

Yours sincerely,
A.R. Khalatbary,
Secretary,
USA Philharmonic Society.

AMENDMENTS SUBMITTED

OMNIBUS DEFENSE AUTHORIZATION ACT, 1985

NUNN AMENDMENT NO. 3263

Mr. NUNN proposed an amendment to amendment No. 3262 proposed by Mr. Kennedy (and others) to the bill (S. 2723) to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1985, to authorize certain construction at military installations for such fiscal year, to authorize appropriations for the Department of Energy for national security programs for such fiscal year, and for other purposes; as follows:

On page 2, line 17, insert the following: in section (b)(1) after the word "ratification": "with a report containing any plans the President may have to negotiate supplemental verification procedures, or if the President believes it necessary, any understanding or reservation on the subject of verification which should be attached to the treaty.".

SYMMS (AND OTHERS) AMENDMENT NO. 3264

Mr. SYMMS (for himself, Mr. Wallop, and Mr. Helms) proposed an amendment (which was subsequently modified) to amendment No. 3262 proposed by Mr. Kennedy (and others), as amended, to the bill S. 2723, supra; as follows:

At the end of the amendment add the following:

"In accordance with international law the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating."

STAFFORD (AND OTHERS) AMENDMENT NO. 3265

Mr. STAFFORD (for himself, Mr. Roth, Mr. Pell, Mr. Eagleton, and Mr. (Randolph) proposed an amendment to the bill S. 2723, supra; as follows:

On page 112, beginning with line 13, strike out through line 15 on page 115.

NUNN (AND OTHERS) AMENDMENT NO. 3266

Mr. NUNN (for himself, **Mr. Roth, Mr. Zorinsky, Mr. Glenn, Mr. Pressler, Mr. Bentsen, Mr. Johnston, Mr. Chiles, Mr. Levin, Mr. Lautenberg, Mr. Bingaman, Mr. Metzenbaum, Mr. Cranston, Mr. DeConcini, Mr. Baucus, Mr. Huddleston, Mr. Melcher,** and **Mr. Sasser**) proposed an amendment to the bill S. 2723, supra; as follows:

On page 128, between lines 12 and 13, insert the following new section:

IMPROVEMENTS TO NATO CONVENTIONAL CAPABILITY

Sec. . (a) The Congress finds that the North Atlantic Treaty Organization (NATO) should improve its conventional defense capability so as to lengthen the time period that Western Europe can be defended adequately by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country. The Congress further finds that increasing defense spending, improving conventional sustainability, and providing support facilities in Western Europe for rapid reinforcements from the United States are crucial to accomplishing that objective.

(b) After September 30, 1985, none of the funds appropriated pursuant to an authorization contained in this or any subsequent Act may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

(c) Beginning on December 31, 1987, and ending December 31, 1989, the permanent ceiling prescribed in subsection (b) shall be reduced effective December 31 each year by 30,000 unless, during the previous calendar year, member nations of NATO, other than the United States, have increased their defense spending by an aggregate average of at least 3 percent, after inflation, as measured in the annual report of the Secretary of Defense on the allied contribution to the common defense required by section 1001.

(d) The Secretary of Defense may waive the reduction required by subsection (c) for any calendar year if he certifies to Congress in writing that, during the previous calendar year, member nations of NATO (other than the United States) have accomplished the following objectives:

(1) Those member nations of NATO (other than the United States) who have committed forces to the Center Region have placed on firm order, or accepted delivery of, an increase in the supply of air and ground munitions so as to reduce, on an average, 20 percent of the gap between the goal, as established in NATO Ministeral Guidance, of 30 days supply and the level of such munitions available in the Center Region of NATO as of January 1, 1985.

(2) Member nations of NATO (other than the United States) have increased the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe so as to reduce, on an average, 20 percent of the gap between the number of such facilities and shelters available on January 1, 1985, and the number required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, the annual commitment of

United States reinforcing tactical aircraft in the previous year's Defense Planning Questionnaire (DPQ) Response. Such reduction in the gap must be accomplished by real increased spending and may not be met by reallocation within existing spending levels of infrastructure funds.

(3) The Supreme Allied Commander in Europe has certified to the Secretary of Defense in writing that in the previous calendar year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity which contributes to lengthening the time period between the armed attack on any NATO country and the time the Supreme Allied Commander would have to request the release and use of nuclear weapons.

(e) If the Secretary of Defense is unable to certify to the Congress that member nations of NATO (other than the United States) have met all three objectives of subsection (d) in any calendar year, but is able to certify that some of those objectives have been met, the permanent ceiling prescribed in subsection (c) shall be reduced as follows:

(1) If the Secretary certifies to the Congress that one of the three objectives has been met, the permanent ceiling shall be reduced by 20,000.

(2) If the Secretary certifies that two of the three objectives have been met, the permanent ceiling shall be reduced by 10,000.

(f) Whenever a reduction in the permanent ceiling is required to be made under this section in any year, such reduction shall be in addition to any reduction in the ceiling required to be made under this section in any previous year.

(g)(1) Not later than March 1 in each of the calendar years 1985 through 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Center Region.

(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

(C) The measures taken to accomplish the objectives of subsection (d)(3).

(2) The March 1985 report shall establish the baseline for measuring the annual performance of member nations of NATO (other than the United States) in meeting the objectives established in subsection (d)(1) and (2); the March 1986 report shall describe and employ, on a trial basis, the methodology to be used.

(3) The report required by this subsection shall also include an assessment of whether any reduction in—

(A) the gap in air and ground munitions (referred to in subsection (d)(1)) was accomplished by reallocation of funds within existing or planned spending levels; and

(B) the gap in minimum essential and emergency operating facilities and semihardened aircraft shelters (referred to in subsection (d)(2)) was accomplished by real increased spending or by reallocation within existing spending levels of infrastructure funds.

(4)(A) Beginning with the fiscal year 1986 budget submission to the Congress, but not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall report to the Congress on the status and cost of the United States commitment to NATO as reflected in the DPQ Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report on "United States Expenditures in Support of NATO", first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677), and shall include not only the information required by that section but also information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

(B) In addition to the requirements under subparagraph (A), the Secretary of Defense shall include in such report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

(i) Allied contributions to the common defense (this requirement is satisfied by submission of the report required by section 1001).

(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft (this requirement is satisfied by submission of the report required by paragraph (1)).

(iii) Meeting NATO force goals.

(iv) Increasing NATO infrastructure funding.

(v) Improvements in air base defenses.

(vi) Increasing trained manpower levels, particularly reserves.

(vii) Increasing war reserve material.

(viii) Improving initial defense capability.

(ix) Improving NATO's ability to neutralize enemy follow-on forces, particularly use of emerging technologies.

(x) Improvements in mine/counter mine capability.

(xi) Improvements in offensive counter air capability.

(h)(1) The Congress finds that a viable "two-way street" of defense procurement improves NATO interoperability and therefore is important to overall improvements in conventional defense.

(2) In addition to any funds appropriated pursuant to the authorization contained in section 116(a) for the activities of the Director of Test and Evaluation, Defense, the Director may utilize an additional amount, not to exceed $50,000,000, to acquire certain types of weapons, subsystems, and munitions of European NATO manufacture (including submunitions and dispensers; antitank and anti-armor guided missiles; mines; runway-cratering devices; torpedoes; mortar systems; light armored vehicles; and high-velocity anti-tank guns) for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act.

(i)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor.

COHEN (AND OTHERS) AMENDMENT NO. 3267

Mr. COHEN (for himself, Mr. Domenici, Mr. Gorton, Mr. Percy, Mr. Warner, and Mr. Rudman) proposed an amendment to amendment No. 3266 proposed by Mr. Nunn (and others) to the bill S. 2723, supra; as follows:

In lieu of the matter proposed to be inserted by the amendment, insert the following:

IMPROVEMENTS TO NATO CONVENTIONAL CAPABILITY

Sec. . (a) The Congress finds—

(1) that the North Atlantic Treaty Organization (NATO) should improve its conventional capability so as to lengthen the period of time that Western Europe can be defended adequately by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country;

(2) that fulfillment by NATO member nations, other than the United States, of their goals and commitments to increase defense spending, improve conventional sustainability, and provide support facilities in Western Europe for rapid reinforcements from the United States is crucial to accomplishing that objective; and

(3) that the continued modernization of United States conventional forces in Western Europe and the continued maintenance of current and projected United States military personnel levels in European member nations of NATO can be fully justified only if these goals and commitments are substantially met by NATO member nations (other than the United States).

(b) The Congress urges the President and the Secretary of Defense to continue to encourage member nations of NATO (other than the United States) to work expeditiously to fulfill the following commitments they have undertaken:

(1) An annual increase in their defense spending of at least 3 percent, after inflation.

(2) A 30-day supply of air and ground munitions among those NATO members which have committed forces to the Center Region.

(3) Construction of the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, the annual commitment of United States reinforcing tactical aircraft.

(c)(1) After September 30, 1985, none of the funds appropriated pursuant to an authorization continued in this or any Act enacted after the date of the enactment of this Act may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

If the Secretary of Defense certifies to the Congress in writing in any fiscal year after fiscal year 1985 that in the previous fiscal year the member nations or NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity consistent with the goals set forth in § 3(b) contributes to lengthening the time period between an armed attack on any NATO country and the time the Supreme Allied Commander, Europe would have to request the release and use of nuclear weapons, the Congress would give strong consideration to authorizing an increase in the permanent ceiling prescribed in paragraph (1) for fiscal years after such fiscal year.

(d)(1) Not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Center Region.

(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

(2)(A) Beginning with the fiscal year 1986 budget submission to the Congress, but not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall report to the Congress on the status and cost of the United States commitment to NATO as reflected in the DPQ Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report on "United States Expenditures in Support of NATO", first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677), and shall include not only the information required by that section but also information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

(B) In addition to the requirements under subparagraph (A), the Secretary of Defense shall include in such report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

(i) Allied contributions to the common defense (this requirement is satisfied by submission of the report required by section 1001).

(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft (this requirement is satisfied by submission of the report required by paragraph (1)(B)).

(iii) Meeting NATO force goals.

(iv) Increasing NATO infrastructure funding.

(v) Improvements in air base defenses.

(vi) Increasing trained manpower levels, particularly reserves.

(vii) Increasing war reserve material.

(viii) Improving initial defense capability.

(ix) Improving NATO's ability to neutralize enemy follow-on forces, particularly use of emerging technologies.

(x) Improvements in mine/counter mine capability.

(xi) Improvements in offensive counter air capability.

(e)(1) The Congress finds that a viable "two-way street" of defense procurement improve NATO interoperability and therefore is important to overall improvements in conventional defense.

(2) In addition to any funds appropriated pursuant to the authorization contained in section 116(a) for the activities of the Director of Test and Evaluation, Defense, the Director may utilize an additional amount, not to exceed $50,000,000, to acquire certain types of weapons, subsystems, and munitions of European NATO manufacture (including submunitions and dispensers; antitank and anti-armor guided missiles; mines; runway-cratering devices; torpedoes; mortar systems; light armored vehicles; and high-velocity anti-tank guns) for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act.

(f)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefore.

NUNN AMENDMENT NO. 3268

Mr. NUNN proposed an amendment to amendment No. 3266 proposed by him and others (and subsequently modified) to the bill S. 2723, supra; as follows:

Strike out all after the word "IMPROVEMENTS" and insert the following:

TO NATO CONVENTIONAL CAPABILITY

SEC. . (a) The Congress finds that the North Atlantic Treaty Organization (NATO) should improve its conventional defense capability so as to lengthen the time period that Western Europe can be defended adequately by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country. The Congress further finds that increasing defense spending, improving conventional sustainability, and providing support facilities in Western Europe for rapid reinforcements from the United States are crucial to accomplishing that objective.

(b) After September 30, 1985, none of the funds appropriated pursuant to an authorization contained in this or any subsequent Act may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

(c) Beginning on December 31, 1987, and ending December 31, 1989, the permanent ceiling prescribed in subsection (b) shall be reduced effective December 31 each year by 30,000 unless, during the previous calendar year, member nations of NATO, other than the United States, have increased their defense spending by a aggregate average of at least 3 percent, after inflation, as measured in the annual report of the Secretary of Defense on the allied contribution to the common defense required by section 1001.

(d) The Secretary of Defense may waive the reduction required by subsection (c) for any calendar year if he certifies to Congress in writing that, during the previous calendar year, member nations of NATO (other than the United States) have accomplished the following objectives:

(1) Those member nations of NATO (other than the United States) who have committed forces to the Center Region have placed on firm order, or accepted delivery of, an increase in the supply of air and ground munitions so as to reduce, on an average, 20 percent of the gap between the goal, as established in NATO Ministerial Guidance, of 30 days supply and the level of such munitions available in the Center Region of NATO as of January 1, 1985.

(2) Member nations of NATO (other than the United States) have increased the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe so as to reduce, on an average, 20 percent of the gap between the number of such facilities and shelters available on January 1, 1985, and the number required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, the annual commitment of United States reinforcing tactical aircraft in the previous year's defense Planning Questionnaire (DPQ) Response. Such reduction in the gap must be accomplished by real increased spending and may not be met by reallocation within existing spending levels of infrastructure funds.

(3) The Supreme Allied Commander in Europe has certified to the Secretary of Defense in writing that in the previous calendar year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity which contributes to lengthening the time period between an armed attack on any NATO country and the time the Supreme Allied Commander would have to request the release and use of nuclear weapons.

(e) If the Secretary of Defense is unable to certify to the Congress that member nations of NATO (other than the United States) have met all three objectives of subsection (d) in any calendar year, but is able to certify that some of those objectives have been met, the permanent ceiling prescribed in subsection (c) shall be reduced as follows:

(1) If the Secretary certifies to the Congress that one of the three objectives has been met, the permanent ceiling shall be reduced by 20,000.

(2) If the Secretary certifies that two of the three objectives have been met, the permanent ceiling shall be reduced by 10,000.

(f) Whenever a reduction in the permanent ceiling is required to be made under this section in any year, such reduction shall be in addition to any reduction in the ceiling required to be made under this section in any previous year.

(g)(1) Not later than March 1 in each of the calendar years 1985 through 1986, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Center Region.

(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

(C) The measures taken to accomplish the objectives of subsection (d)(3).

(2) The March 1985 report shall establish the baseline for measuring the annual performance of member nations of NATO (other than the United States) in meeting the objectives established in subsection (d)(1) and (2); the March 1986 report shall de-

scribe and employ, on a trial basis, the methodology to be used.

(3) The report required by this subsection shall also include an assessment of whether any reduction in—

(A) the gap in air and ground munitions (referred to in subsection (d)(1)) was accomplished by reallocation of funds within existing or planned spending levels; and

(B) the gap in minimum essential and emergency operating facilities and semi-hardened aircraft shelters (referred to in subsection (d)(2)) was accomplished by real increased spending or by reallocation within existing spending levels of infrastructure funds.

(4)(A) Beginning with the fiscal year 1986 budget submission to the Congress, but not later than March 1, 1985, and annually thereafter, the Secretary of Defense shall report to the Congress on the status and cost of the United States commitment to NATO as reflected in the DPQ Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report on "United States Expenditures in Support of NATO", first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677), and shall include not only the information required by that section but also information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

(B) In addition to the requirements under subparagraph (A), the Secretary of Defense shall include in such report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

(i) Allied contributions to the common defense (this requirement is satisfied by submission of the report required by section 1001).

(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft (this requirement is satisfied by submission of the report required by paragraph (1).

(iii) Meeting NATO force goals.

(iv) Increasing NATO infrastructure funding.

(v) Improvements in air base defenses.

(iv) Increasing trained manpower levels, particularly reserves.

(vii) Increasing war reserve material.

(viii) Improving initial defense capability.

(ix) Improving NATO's ability to neutralize enemy follow-on forces, particularly use of emerging technologies.

(x) Improvements in mine/counter mine capability.

(xi) Improvements in offensive counter air capability.

(h)(1) The Congress finds that a viable "two-way street" of defense procurement improves NATO interoperability and therefore is important to overall improvements in conventional defense.

(2) In addition to any funds appropriated pursuant to the authorization contained in section 116(a) for the activities of the Director of Test and Evaluation, Defense, the Director may utilize an additional amount, not to exceed $50,000,000, to acquire certain types of weapons, subsystems, and munitions of European NATO manufacture (including submunitions and dispensers; anti-tank and anti-armor guided missiles; mines; runway-cratering devices; torpedoes; mortar systems; light armored vehicles; and high-velocity anti-tank guns) for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act.

(i)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor.

STEVENS (AND INOUYE) AMENDMENT NO. 3269

(Ordered to lie on the table.)

Mr. STEVENS (for himself and Mr. Inouye) submitted an amendment intended to be proposed by them to the bill S. 2723, supra; as follows:

On page 28, line 18, insert after "States": "(other than Alaska and Hawaii)".

On page 34, delete all after line 3 through and including line 3 on page 35.

HATFIELD (AND OTHERS) AMENDMENT NO. 3270

Mr. HATFIELD (for himself, Mr. Jepsen, Mr. Stafford, Mr. Matsunaga, Mr. Randolph, Mr. Moynihan, Mr. Bingaman, Mr. Kennedy, Mr. Riegle, Mr. Sarbanes, Mr. Cranston, Mr. Huddleston, Mr. Bumpers, Mr. Lautenberg, Mr. Boschwitz, Mr. Sasser, Mr. Simpson, Mr. Boren, Mr. Pryor, Mr. Metzenbaum, Mr. Baucus, Mr. Biden, Mr. Dodd, Mr. Exon, Mr. Ford, Mr. Glenn, Mr. Hollings, Mr. Bradley, Mr. Burdick, Mr. Byrd, Mr. Levin, Mr. Leahy, Mr. Mitchell, Mr. Melcher, Mr. DeConcini, Mr. Chiles, Mr. Inouye, Mr. Johnston, Mr. Humphrey, Mr. Mathias, Mr. Murkowski, and Mr. Heinz) proposed an amendment to the bill S. 2723, supra; as follows:

On page 239, after line 2, add the following:

TITLE IV—UNITED STATES ACADEMY OF PEACE ACT

SHORT TITLE

Sec. 401. This title may be cited as the "United States Academy of Peace Act".

DECLARATION OF FINDINGS AND PURPOSES

Sec. 402. (a) The Congress finds and declares that—

(1) a living institution embodying the heritage, ideals, and concerns of the American people for peace would be a significant response to the deep public need for the Nation to develop fully a range of effective options, in addition to armed capacity, that can leash international violence and manage international conflict;

(2) people throughout the world are fearful of nuclear war, are divided by war and threats of war, are experiencing social and cultural hostilities from rapid international change and real and perceived conflicts over interests and are diverted from peace by the lack of problem-solving skills for dealing with such conflicts;

(3) many potentially destructive conflicts among nations and peoples have been resolved constructively and with cost efficiency at the international, national, and community levels through proper use of such techniques as negotiation, conciliation, mediation, and arbitration;

(4) there is a national need to examine the disciplines in the social, behavioral, and physical sciences and the arts and humanities with regard to the history, nature, elements, and future of peace processes, and to bring together and develop new and tested techniques to promote peaceful economic, political, social, and cultural relations in the world;

(5) existing institutions providing programs in international affairs, diplomacy, conflict resolution, and peace studies are essential to further development of techniques to promote peaceful resolution of international conflict, and the peacemaking activities of people in such institutions, government, private enterprise, and voluntary associations can be strengthened by a national institution devoted to international peace research, education and training, and information services;

(6) there is a need for Federal leadership to expand and support the existing international peace and conflict resolution efforts of the Nation and to develop new comprehensive peace education and training programs, basic and applied research projects, and programs providing peace information;

(7) the Commission on Proposals for the National Academy of Peace and Conflict Resolution, created by the Education Amendments of 1978, recommended establishing an academy as a highly desirable investment to further the Nation's interest in promoting international peace;

(8) an academy, strengthening and symbolizing the fruitful relation between the world of learning and the world of public affairs, would be the most efficient and immediate means for the Nation to enlarge its capacity to promote the peaceful resolution of international conflicts; and

(9) the establishment of an academy is an appropriate investment by the people of this Nation to advance the history, science, art, and practice of international peace and the resolution of conflicts among nations without the use of violence.

(b) It is the purpose of this title to establish an independent, nonprofit, national institution to serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence.

DEFINITIONS

Sec. 403. As used in this title, the term—

(1) "Academy" means the United States Academy of Peace established under this title;

(2) "Board" means the Board of Directors of the Academy; and

(3) "Center" means the Jennings Randolph Center for International Peace of the Academy.

ESTABLISHMENT

Sec. 404. (a) There is hereby established the United States Academy of Peace.

(b) The Academy is an independent nonprofit corporation and an organization as defined in section 170(c)(2)(B)(5) of the Internal Revenue Code of 1954. The Academy does not have the power to issue any shares of stock or to declare or pay any dividends.

(c) The Academy shall maintain its principal office in the District of Columbia with a designated agent or agents to accept service of process for the corporation. Notice to or service upon an agent shall be deemed notice to or service upon the Academy.

(d) The Academy may rent, lease, purchase, or receive and hold in its name property for offices, schools, and other facilities and to carry out activities under this title. As determined by the Board, the Academy may establish offices, schools, and other facilities outside the District of Columbia for purposes not inconsistent with this title.

(e) As determined by the Board, the Academy may establish, under laws of the District of Columbia, a legal entity which is capable of receiving, holding, and investing public funds for purposes in furtherance of the Academy under this title. The Academy may designate such legal entity as the "Endowment of the United States Academy for Peace".

(f) The Academy is liable for the acts of its directors, officers, employees, and agents when acting within the scope of their authority.

(g)(1) The Academy has the sole and exclusive right to use and to allow or refuse others the use of the terms "United States Academy of Peace", and "Endowment of the United States Academy of Peace" and the use of any official United States Academy of Peace emblem, badge, seal, and other mark of recognition or any colorable simulation thereof. No powers or privileges hereby granted shall interfere or conflict with established or vested rights secured as of September 1, 1981.

(2) Notwithstanding any other provision of this title, the Academy may use "United States" or "U.S." or any other reference to the United States Government or Nation in its title or in its corporate seal, emblem, badge, or other mark of recognition or colorable simulation thereof in any fiscal year only if there is an authorization of appropriations for the Academy for such fiscal year provided by law.

(h) In selecting a site for the principal office of the Academy, the Board shall give preference to federally-owned facilities first and then to university-owned and privately-owned facilities. The Board's decision in this matter shall be based on the need for a setting in which to encourage the pursuit of scholarly research and educational activities. The Board shall bear in mind in site selection that the purpose of the Academy is not to serve as a base for public political activity of any kind against United States foreign policy or United States peacemaking efforts. The site selection decision shall be as cost-effective as possible.

POWERS AND DUTIES

SEC. 405. (a) The Academy may exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act consistent with this title, except for section 5(o) of the District of Columbia Nonprofit Corporation Act (section 1005(o) of title 29 of the District of Columbia Code).

(b) The Academy, acting through the Board, may—

(1) establish a Center for International Peace and appoint to it for periods up to two years scholars and leaders in peace from the United States and abroad to pursue scholarly inquiry and other appropriate forms of communication on international peace and conflict resolution and, as appropriate, provide stipends, grants, fellowships, and other support to the leaders and scholars;

(2) establish such divisions, programs, schools, and offices as the Board deems appropriate to carry out this title;

(3) enter into formal and informal relationships with other institutions, public and private, for purposes not inconsistent with this title;

(4) conduct research and make studies, particularly of an interdisciplinary or of a multidisciplinary nature, into the causes of war and other international conflicts and the elements of peace among the nations and peoples of the world, including peace therories, methods, techniques, programs, and systems, and into the experiences of the United States and other nations in resolving conflicts with justice and dignity and without violence as they pertain to the advancement of international peace and conflict resolution, placing particular emphasis on realistic approaches to past successes and failures in the quest for peace and arms control and utilizing to the maximum extent possible United States Government documents and classified materials from the Department of State, the Department of Defense, the Arms Control and Disarmament Agency, and the intelligence community;

(5) develop programs to make international peace and conflict resolution research, education, and training more available and useful to persons in government, private enterprise, and voluntary associations, including the creation of handbooks and other practical materials;

(6) provide, promote, and support peace education and research programs at graduate and postgraduate levels;

(7) conduct training, symposia, and continuing education programs for practitioners, policymakers, policy implementers, and citizens and noncitizens directed to developing their skills in international peace and conflict resolution;

(8) develop, for publication or other public communication, and disseminate, the carefully selected products of the Academy;

(9) establish a clearinghouse and other means for disseminating information, including classified information that is properly safeguarded, from the field of peace learning to the public and to government personnel with appropriate security clearances;

(10) recommend to the Congress the establishment of a United States Medal of Peace to be awarded under such procedures as the Congress may determine, except that no person associated with the Academy may receive the United States Medal of Peace; and

(11) secure directly, upon request of the president of the Academy to the head of any Federal department or agency and in accordance with the Freedom of Information Act (5 U.S.C. 552), information necessary to enable the Academy to carry out the purposes of this title if such release of the information would not unduly interfere with the proper functioning of a department or agency, including classified information if the Academy staff and members of the Board who have access to such classified information obtain appropriate security clearances from the Department of Defense and the Department of State.

(c) The Academy may undertake extension and outreach activities under this title by making grants and entering into contracts with institutions of postsecondary, community, secondary, and elementary education including combinations of such institutions, with public and private educational, training, or research institutions including the American Federation of Labor-the Congress of Industrial Organizations and libraries, and with public departments and agencies including State and territorial departments of education and of commerce. No grant may be made to an institution unless it is a nonprofit or official public institution, and at least one-fourth of the Academy's annual appropriations shall be paid to such nonprofit and official public institutions. A grant or contract may be made to—

(1) initiate, strengthen, and support basic and applied research on international peace and conflict resolution;

(2) promote and advance the study of international peace and conflict resolution by educational, training, and research institutions, departments, and agencies;

(3) educate the Nation about and educate and train individuals in peace and conflict resolution theories, methods, techniques, programs, and systems;

(4) assist the Academy in its publication, clearinghouse, and other information services programs;

(5) assist the Academy in the study of conflict resolution between free trade unions and Communist-dominated organizations in the context of the global struggle for the protection of human rights; and

(6) promote the other purposes of this title.

(d) The Academy may respond to the request of a department or agency of the United States Government to investigate, examine, study, and report on any issue within the Academy's competence, including the study of past negotiation histories and the use of classified materials.

(e) The Academy may enter into contracts for the proper operation of the Academy, including maintenance of its offices, schools, and other facilities.

(f) The Academy may appoint ans fix the compensation and duties of officers, employees, and agents and establish such advisory committees, councils, or other bodies as the efficient administration of the business and purposes of the Academy may require.

(g) The Academy may adopt, amend, and after bylaws, not inconsistent with the laws of the United States and the District of Columbia, for the management of Academy property and the regulation of Academy affairs.

(h)(1) Except as provided in paragraph (2) and section 410(e), the Academy may obtain grants and contracts, including contracts for classified research for the Department of State, the Department of Defense, the Arms Control and Disarmament Agency, and the intelligence community, and receive gifts and contributions from government at all levels.

(2)(A) the Academy may not accept any gift, contribution, or grant from, or enter into any contract with, a foreign government, any agency or instrumentality of such government, any international organization, or any foreign national, except that the Academy may accept the payment of tuition by foreign nationals for instruction provided by the Academy.

(B) For purposes of this paragraph, the term "foreign national" means—

(i) a natural person who is a citizen of a foreign country or who owes permanent allegiance to a foreign country; and

(ii) a corporation or other legal entity in which natural persons who are nationals of a foreign country own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity.

(C) For purposes of this paragraph, the term "person" means a natural person, partnership, association, other unincorporated body, or corporation.

(i) The Academy may charge and collect subscription fees and develop, for publication or other public communication, and disseminate, periodicals and other materials.

(j) The Academy may charge and collect fees and other participation costs from persons and institutions participating in the Academy's direct activities authorized in subsection (b).

(k) The Academy may sue and be sued, complain, and defend in any court of competent jurisdiction.

(l) The Academy may adopt, alter, use, and display a corporate seal, emblem, badge, and other mark of recognition and colorable simulations thereof.

(m) The Academy may do any and all lawful acts and things necessary or desirable to carry out the objectives and purposes of this title.

(n) The Academy shall not itself undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, or by the United Nations, except that personnel of the Academy may testify or make other appropriate communication when formally requested to do so by a legislative body, a committee, or a member thereof.

BOARD OF DIRECTORS

SEC. 406. (a) The powers of the Academy shall be vested on a Board of Directors unless otherwise specified in this title.

(b) The Board of Directors shall consist of nineteen members appointed as follows:

(1) two Members of the Senate, one from each of the major political parties, to be appointed by the President pro tempore of the Senate no later than five days after the confirmation of the members nominated by the President;

(2) two Members of the House of Representatives, one from each of the major political parties, to be appointed by the Speaker of the House of Representatives no later than five days after the confirmation of the members nominated by the President;

(3) eleven persons each of whom shall have appropriate practical or academic experience in peace and conflict resolution efforts of the United States, no more than six of whom may be members of the same political party and none of whom may be employees of the Federal Government, appointed by the President, by and with the advice and consent of the Senate. Not later than ninety days after the date of enactment of this title, the President shall nominate the eleven individuals for the initial Board and transmit their names and any other information to the Senate. If the Senate fails to confirm a nominee, it shall so inform the President. The President shall submit the name of a new nominee within fifteen days of notice of rejection by the Senate, and

(4) four officials who shall serve as ex-officio members of the Board, consisting of the Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the Commandant of the National Defense University or their designees.

(c) A director shall take an oath of office administered by the Vice President of the United States within two weeks after appointment, if a Member of Congress, or after confirmation by the Senate, if a Presidential appointee.

(d) Members of the Board of Directors shall serve the following terms of office:

(1) A Member of Congress appointed to the Board shall serve for a single term of six years and only while serving as a Member of Congress.

(2) When submitting nominations for the initial Board, the President shall stipulate by name four directors who shall serve for five-year terms, four directors who shall serve for four-year terms, and three directors who shall serve for three-year terms. Thereafter, each Presidential appointee, except for a director appointed to fill an unexpired term, shall serve for a five-year term. No Presidential appointee may serve on the Board for more than ten years.

(3) No person may be appointed to less than a full term unless appointed to fill an unexpired term.

(e) Whenever a vacancy occurs on the Board before the expiration of a director's term of office, the vacancy shall be filled—

(1) if a Member of Congress, pursuant to paragraph (1) or (2) of subsection (b) with the appointment made to a full term no later than thirty calendar days after the vacancy occurs; or

(2) if a Presidential appointee, by the Board submitting a list of nominees of no less than three and no more than five names to the President no later than thirty calendar days after the vacancy occurs. The President shall select a nominee from the list and submit the nominee's name to the Senate for confirmation no later than thirty calendar days after receiving the Board's recommendations.

(f) At least ninety days but no more than one hundred and twenty days before the timely expiration of the term of office of any Presidential appointee to the Board, the Board shall submit to the President a list of no less than three and no more than five recommendations for each position. The President shall submit the name of the nominee for each position selected from the Board's list of recommendations, to the Senate for confirmation at least forty-five calendar days before expiration of the term of office to be filled.

(g) A director may be removed from the Board as follows:

(1) A member of the Board appointed from the Congress may be removed by the appointing authority for malfeasance in office, persistent neglect of duties, or inability to discharge duties.

(2) A member of the Board appointed by the President may be removed by the President—

(A) in consultation with the Board, for conviction of a felony, malfeasance in office, persistent neglect of duties, or inability to discharge duties;

(B) upon the recommendation of ten members of the Board; or

(C) upon the recommendation of a majority of the members of the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives and a majority of the members of the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate.

A recommendation made in accordance with clause (B) may be made only pursuant to action taken at a meeting of the Board, which may be closed pursuant to the procedures of subsection (1). Only members who are present may vote. A record of the vote shall be maintained. The President shall be informed immediately by the Board of the recommendation. If the President removes the member based on any of the grounds described in clauses (A) through (C), the President shall nominate a successor pursuant to subsection (e).

(h) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly and financially benefits the member or pertains specifically to any public body or any private or nonprofit firm or organization with which the member is then formally associated or has been formally associated within a period of two years.

(i) Meetings of the Board shall be conducted as follows:

(1) The President shall stipulate by name the nominee who shall be the first Chairman of the Board. The first chairman shall serve for a term of three years.

Thereafter, the Board shall elect a Chairman every three years from among the directors appointed by the President and may elect a Vice Chairman if so provided by the Academy's bylaws

(2) The Board shall meet at least semiannually, at any time pursuant to the call of the Chairman or as requested in writing to the Chairman by at least five members of the Board, and as may be provided by the bylaws of the Academy not inconsistent with this title. A majority of the members of the Board, including one member appointed from the Congress, shall constitute a quorum for any Board meeting.

(3) Upon majority vote of the members of the Board, the Board shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Academy.

(4) All meetings of the Board shall be open to public observation and shall be preceded by reasonable public notice. Notice in the Federal Register shall be deemed to be reasonable public notice for purposes of the preceding sentence. In exceptional circumstances, the Board may close those portions of a meeting, upon a majority vote of its members present and with the vote taken in public session, which are likely to disclose information likely to affect adversely any ongoing peace proceeding or activity or to disclose information or matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code.

(j) A director appointed by the President shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule in section 5332 of title 5, United States Code, for each day during which the director is engaged in the performance of duties as a member of the Board.

(k) While away from his home or regular place of business in the performance of duties for the Academy, a director shall be allowed travel expenses, including a per diem in lieu of subsistence, not to exceed the expenses allowed persons employed intermittently in Government service under section 5703(b) of title 5, United States Code

OFFICERS AND EMPLOYEES OF THE ACADEMY

SEC. 407. (a) The Board shall appoint the president of the Academy and such other officers as the Board determines to be necessary. The president shall be a nonvoting ex officio member of the Board. All officers shall serve at the pleasure of the Board. The president shall be appointed for an explicit term of years. Notwithstanding any other provision of law limiting the payment of compensation, the president and other officers appointed by the Board shall be compensated at rates determined by the

Board, but no greater than those provided for by level I of the Executive Schedule of chapter 53 of title 5, United States Code.

(b) Subject to the provisions of section 410(e), the Board shall authorize the president and any other officials or employees it designates to receive and dispurse public moneys, obtain and make grants, enter into contracts, establish and collect fees, issue certificates and other honorifics, and undertake all other activities necessary for the efficient and proper functioning of the Academy.

(c) The president, subject to Academy bylaws and general policies established by the Board may appoint, fix the compensation of, and remove such employees of the Academy as the president determines necessary to carry out the purposes of the Academy. In determining employee rates of compensation, the president shall be governed by the provisions of title 5, United States Code, relating to classification and General Schedule pay raises.

(d)(7) The president may request the assignment of any Federal officer or employee to the Academy by an appropriate department, agency, or congressional official or Member of Congress and may enter into agreement for such assignment, if the affected officer or employee agrees to such assignment and such assignment causes no prejudice to the salary, benefits, status, or advancement within the department, agency, or congressional staff of such officer or employee.

(2) The Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the Director of Central Intelligence each may assign officers and employees of his respective department or agency, on a rotating basis to be determined by the Board, to the Academy if the affected officer or employee agrees to such assignment and such assignment causes no prejudice to the salary, benefits, status, or advancement within the respective department or agency of such officer or employee.

(e) No officer or full-time employee of the Academy may receive any salary or other compensation for services from any source other than the Academy during the officer's or employee's period of employment by the Academy, except as authorized by the Board.

(f)(1) Officers and employees of the Academy shall not be considered officers and employees of the Federal Government except for purposes of the provisions of title 28, United States Code, which relate to Federal tort claims liability, and the provisions of title 5, United States Code, which relate to compensation and benefits, including the following provisions: chapter 51 (relating to classification); subchapters I and III of chapter 53 (relating to pay rates); subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Academy shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions of title 5 referred to in this section.

(2) No Federal funds shall be used to pay for private fringe benefit programs. The Academy shall not grant academic tenure or make long-term commitments to employees that are inconsistent with rules and regulations applicable to Federal employees.

(g) No part of the financial resources, income, or assets of the Academy or of any legal entity created by the Academy shall inure to any agent, employee, officer, or director or be distributable to any such person during the life of the corportion or upon dissolution or final liquidation. Nothing in this section may be construed to prevent the payment of reasonable compensation for services or expenses to the directors, officers, employees, and agents of the Academy in amounts approved in accordance with the provisions of this title.

(h) The Academy shall not make loans to its directors, officers, employees, or agents, or to any legal entity created by the Academy. A director, officer, employee, or agent who votes for or assents to the making of a loan or who participates in the making of a loan shall be jointly and severally liable to the Academy for the amount of the loan until repayment thereof.

PROCEDURES AND RECORDS

SEC. 408. (a) The Academy shall monitor and evaluate and provide for independent evaluation if necessary of programs supported in whole or in part under this title to ensure that the provisions of this title and the bylaws, rules, regulations, and guidelines promulgated pursuant to this title are adhered to.

(b) The Academy shall prescribe procedures to ensure that grants, contracts, and financial support under this title are not suspended unless the grantee, contractor, or person or entity receiving financial support has been given reasonable notice and opportunity to show cause why the action should not be taken.

(c) In selecting persons to participate in Academy activities, the Academy may consider a person's practical experience or equivalency in peace study and activity as well as other formal requirements.

(d) The Academy shall keep correct and complete books and records of account, including separate and distinct accounts of receipts and disbursements of Federal funds. The Academy's annual financial report shall identify the use of such funding and shall present a clear description of the full financial situation of the Academy.

(e) The Academy shall keep minutes of the proceedings of its Board and of any committees having authority under the Board.

(f) The Academy shall keep at its principal office a record of the names and addresses of its Board members; copies of this title, of any other Acts relating to the Academy, and of all Academy bylaws, rules, regulations, and guidelines; required minutes of proceedings; a record of all applications and proposals and issued or received contracts and grants; and financial records of the Academy. All items required by this subsection may be inspected by any Board member of the member's agent or attorney for any proper purpose of any reasonable time.

(g) The accounts of the Academy shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The audit shall be conducted at the place or places where the accounts of the Academy are normally kept. All books, accounts, financial records, files, and other papers, things, and property belonging to or in use by the Academy and necessary to facilitate the audit shall be made available to the person or persons conducting the audit, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(h) The Academy shall provide a report of the audit to the President of the United States and to each House of Congress no later than six months following the close of the fiscal year for which the audit is made. The report shall set forth the scope of the audit and include such statements, together with the independent auditor's opinion of those statements, as are necessary to present fairly the Academy's assets and liabilities, surplus or deficit, with reasonable detail, including a statement of the Academy's income and expenses during the year including a schedule of all contracts and grants requiring payments in excess of $5,000 and any payments of compensation, salaries, or fees at a rate in excess of $5,000 per annum. The report shall be produced in sufficient copies for the public.

(i) The Academy and its directors, officers, employees, and agents shall be subject to the provisions of section 552 of title 5, United States Code (relating to freedom of information).

INDEPENDENCE AND LIMITATIONS

SEC. 409. (a) Nothing in this title may be construed as limiting the authority of the Office of Management and Budget to review and submit comments on the Academy's budget request at the time it is transmitted to the Congress.

(b) No political test or political qualification may be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, employee, agent, or recipient of Academy funds or services or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this title.

FUNDING

SEC. 410. (a) For the purpose of purchasing, leasing, renting, or otherwise acquiring and improving a suitable site for a principal office for the Academy, the Center for International Peace, and for the legal entity authorized to be established under section 404 of this title, in or within easy reach of the District of Columbia, there are authorized to be appropriated on or after October 1, 1983, to the Academy a capitalization fund of $7,500,000 which shall remain available to the Academy without regard to fiscal year limitations, except that none of such funds may be used to pay for the construction of any building or facility for the Academy.

(b) For the purpose of establishing the programs and administering the affairs of the Academy as authorized by this title (except for paragraph (10) of section 405(b)), there are authorized to be appropriated for the fiscal year 1985, $6,000,000 and for the fiscal year 1986, $10,000,000. Monies appropriated for the fiscal year 1985 shall remain available to the Academy through the fiscal year 1986.

(c) The Board of Directors may transfer to the legal entity authorized to be established under section 4(e) any funds not obligated or expended from appropriations to the Academy for a fiscal year, and such funds shall remain available for obligation or expenditure for the purposes of such legal entity without regard to fiscal year limitations. Any use by such legal entity of appropriated funds shall be reported to each House of the Congress and to the President of the United States.

(d) Any authority provided by this title to make contracts shall be effective for a fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(e) Notwithstanding any other provision of this title, the Academy and the legal entity described in section 404(e) may not obtain any grant or contract or receive any gift or contribution from any private agency, organization, corporation or other legal entity, institution, or individual.

DISSOLUTION OR LIQUIDATION

Sec. 411. Upon dissolution or final liquidation of the Academy or of any legal entity created pursuant to this title, all income and assets of the corporation or other legal entity shall revert to the Treasury of the United States.

REPORTING REQUIREMENT AND REQUIREMENT TO HOLD HEARINGS

Sec. 412. Beginning two years after the date of enactment of this title, and at intervals of two years thereafter, the Chairman of the Board of Directors of the Academy shall prepare and transmit to the Congress and the President a report detailing the progress the Academy has made in carrying out the purposes of this title during the preceding two-year period. The President shall prepare and transmit to the Congress within a reasonable time after the receipt of such report the written comments and recommendations of the appropriate agencies of the United States with respect to the contents of such report and their recommendations with respect to any legislation which may be required concerning the Academy. After receipt of such report by the Congress, the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives and the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate shall hold hearings to review the findings and recommendations of such report and the written comments received from the President.

WALLOP (AND OTHERS) AMENDMENT NO. 3271

Mr. WALLOP (for himself, Mr. Warner, and Mr. Wilson) proposed an amendment to the bill S. 2723, supra; as follows:

On p. 11, line 11, add:

(e) The funds authorized to be appropriated for the Strategic Defense Initiative shall be managed by the Director of the Strategic Defense Office, subject only to the approval of the Secretary of Defense, and applicable laws, including the submission to the Congress of plans for reprogramming of funds. The Director of the Strategic Defense Office is authorized to establish all appropriate programs and demonstrations and to contract directly with private industry or the national laboratories.

GRASSLEY (AND OTHERS) AMENDMENT NO. 3272

Mr. GRASSLEY (for himself, Mr. Pressler, Mr. Levin, Mr. Pryor, Mrs. Kassebaum, Mr. Chiles, Mr. Dixon, Mr. Jepsen, Mr. Glenn, Mr. Bingaman, Mr. Cranston, Mr. Melcher, and Mr. Kasten) proposed an amendment to the bill S. 2723, supra; as follows:

On page 84, line 14, strike out "The head of an agency" and insert in lieu thereof, the following:

"A person denied the opportunity to demonstrate its ability to meet the standards specified for qualification pursuant to subsection (a)(4) may not be denied the opportunity to submit and have considered an offer for a contract to be made by the Department of Defense solely because the person—

"(1) is not on a list of qualified bidders prescribed or maintained by the Department of Defense; or

"(2) in the case of a contract for the purchase of a product, does not have its product on a list of qualified products prescribed or maintained by the Department of Defense.

"The head of an agency".

On page 92, line 22, strike out the quotation marks and the second period.

On page 96, between lines 22 and 23, insert the following:

"§ 2323. Competition for spare parts

"(a) A contractor's legitimate proprietary interest in technical or other data shall be defined by regulations prescribed as part of the single system of Government-wide procurement regulations (commonly referred to as the Federal Acquisition Regulations), as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

The regulations shall assure that, except as provided by statute, the United States shall retain unlimited rights to technical or other data which is developed exclusively with Federal funds. The following factors shall be considered in prescribing the definition:

"(1) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97 219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

"(2) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(b) The Secretary of Defense shall—

"(1) prescribe regulations establishing within appropriate agencies of the Department of Defense programs which provide domestic business concerns an opportunity to purchase or borrow spare or replacement parts from the United States for the purpose of reverse engineering, or design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States, but nothing in this clause shall limit the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restrictions otherwise required by law; and

"(2) consult with representatives of associations representing small business concerns before regulations are prescribed under paragraph (1).

"§ 2324. Commercial pricing for spare parts

"(a) Except as provided in subsections (b) and (c), a contract made by the Department of Defense for the purchase of spare or replacement parts and offered for sale to the general public may not result in a cost to the United States that exceeds the lowest price at which such parts are made available by the contractor to commercial buyers.

"(b) A person who submits an offer to the Department of Defense for the supply of spare or replacement parts having a commercial application shall certify that the offered price is its lowest commercial price for the items submitted, or shall submit with the offer a written statement specifying the difference between the lowest commercial price of the offeror for the parts and the price offered, and providing a justification for that difference.

"(c) Subsections (a) and (b) do not apply to a contract if the contracting officer determines that the use of the price otherwise required is not appropriate because of—

"(1) national security considerations; or

"(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.".

On page 93, above line 1, strike out the close quotation marks and the second period after "restrictions".

On page 93, above line 1, insert the following: "2323. competition for spare parts. "2324. Commerical pricing for spare parts."

On page 94, beginning with line 15, strike all though line 5 on page 95, and insert in lieu thereof the following:

"(7) 'Technical data' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including engineering data) relating to the property procured by an agency and used throughout the life cycle of the property for the purposes of performing management, engineering, maintenance, modification, test, and other functions relating to the property and to procure spares or additional spares of such property, and includes data resulting from work which was specified and directly funded as an element of performance of a contract from the United States, but does not include computer software, or financial, administrative, cost or pricing, management data, or other information incidental to contract administration. For purposes of commercial products, technical data shall be restricted to only that data necessary to fully operate and maintain the system during its service life.".

On page 96, between lines 11 and 12, insert the following:

(d) Section 2303 (a) of title 10, United States Code, is amended by adding at the end thereof the following "(6) Defense Logistics Agency.".".

KASSEBAUM (AND OTHERS) AMENDMENT NO. 3273

Mrs. KASSEBAUM (for herself, Mr. Leahy, Mr. Gorton, Mr. Levin, Mr. Pryor, Mr. Grassley, Mr. Pressler, Mr. Huddleston, Mr. Dole, Mr. Sasser, and Mr. Andrews) proposed an amendment (which was subsequently modified) to the bill S. 2723, supra; as follows:

On page 8, line 9, strike out "$20,000,000" and insert in lieu thereof "$40,000,000, of which not less than $20,000,000 shall be used for the exclusive use of the Air National Guard and the Marine Corps Air Force Reserve."

On page 9, between lines 2 and 3, insert the following new subsection:

(e)(1) Not less than $5,000,000 of any funds appropriated for Air National Guard equipment pursuant to the authorization contained in subsection (a) shall be used for the procurement of so-called "smoke kits" for the F-4 aircraft.

(2) On and after the date of the enactment of this Act for the fiscal year 1985, for each F-4 aircraft in the Regular component

of the Air Force that is "de-smoked," at least one F-4 aircraft assigned to the Air National Guard or the Air Force Reserve shall be "de-smoked."

(3) It is the sense of Congress that the F-4D "smoke kit" modification program for the Air National Guard and Air Force Reserve should become a priority program and should be the subject of requests for increased funding commencing in the fiscal year 1986 Department of Defense budget request.

GOLDWATER AMENDMENT NO. 3274

Mr. GOLDWATER proposed an amendment to amendment No. 3273 proposed by Mrs. KASSEBAUM (and others), as modified, to the bill S. 2723, supra; as follows:

On line 2, strike beginning with "$40,000,000 through the end of line 4 and insert in lieu thereof the following: "$20,000,000, all of which may be expended for the procurement of 30 new gun pods should the Director of the Air National Guard deems such gun pods to be of sufficiently high priority."

DENTON (AND HEFLIN) AMENDMENT NO. 3275

Mr. DENTON (for himself and Mr. HEFLIN) proposed an amendment to the bill S. 2723, supra; as follows:

On page 128, between lines 12 and 13, insert the following new section:

RESTRICTION ON DIVERSION OF CARGO CARRIED ON MILITARY SEALIFT COMMAND VESSELS

SEC. . None of the funds appropriated pursuant to an authorization contained in this Act may be used by the Department of Defense to divert cargo on a permanent basis for any consolidation or reduction of the number of ports of call for breakbulk shipments carried on Military Sealift Command vessels with a Pacific Ocean destination which would be fewer than the number of ports of call which were being utilized by such ships on January 1, 1984.

SARBANES (AND MATHIAS) AMENDMENT NO. 3276

Mr. SARBANES (for himself and Mr. MATHIAS) proposed an amendment to the bill S. 2723, supra; as follows:

On page 218, between lines 7 and 8, insert the following new section:

LAND CONVEYANCE, ANNAPOLIS, MARYLAND

SEC. 293. (a) Subject to subsection (b), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey to the Naval Academy Athletic Association, a nonprofit organization located in the State of Maryland (hereinafter in this section referred to as the "Assocaition"), all right, title, and interest of the United States in and to approximately 4.3 acres of unimproved land comprising a portion of the United States Naval Academy, Annapolis, Maryland.

(b) In consideration for the conveyance under subsection (a), the Association shall pay to the United States an amount equal to the appraised fair market value of the property to be conveyed (as determined by the Secretary).

(c) The unimproved land to be conveyed under subsection (a) shall be land that was conveyed by the Association to the United States in 1965. The exact acreage and legal description of the land to be conveyed shall be determined by surveys that are satisfactory to the Secretary. The cost of any such survey shall be borne by the Association.

(d) If the Secretary determines that—

(1) the land conveyed under subsection (a) has not been expeditiously developed by the Association for a use compatible with and in support of the activities of the United States Naval Academy, or

(2) the Association has not so used the land and the improvements on the land for any period of one year or more beginning after the development of the land has been completed,

all right, title, and interest in and to the land, including the improvements on the land, shall revert at no cost to the United States, which shall have the right of immediate entry thereon.

(e) The Secretary may require such additional terms and conditions under this section as he considers appropriate to protect the interests of the United States.

WEICKER AMENDMENT NO 3277

Mr. WEICKER proposed an amendment to the bill S. 2723, supra; as follows:

On page 157, between lines 22 and 23, insert the following:

Naval Submarine School, New London, Connecticut, $6,800,000.".

On page 185, line 20, strike out "$2,351,581,000" and insert in lieu thereof "$2,358,381,000".

On page 185, line 23, strike out "$1,161,555,000" and insert in lieu thereof "$1,168,355,000".

On page 5, line 2, strike the numeral and insert "12,191,400,000".

WILSON AMENDMENT NO. 3278

Mr. WILSON proposed an amendment to the bill S. 2723, supra; as follows:

On page 10, line 3, insert after the word "Defense" the following: "And of which $5,000,000 is authorized only for the purpose of adapting Free Electron Laser technology to medical applications and medical research. None of the $5,000,000 authorized for the purpose of adapting Free Electron Laser Technology shall be taken from amounts authorized for appropriations in this Act for basic research and exploratory development."

TOWER AMENDMENTS NOS. 3279 THROUGH 3282

Mr. TOWER proposed four amendments to the bill S. 2723, supra; as follows:

Strike out lines (1) through (2) on page 39, and insert in lieu thereof the following:

"(c) The table at the end of section 301(b) of title 37, United States Code, is amended to read as follows:

"Pay grade	Years of service computed under section 205-						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E-9	$131	$131	$131	$131	$131	$131	$131
E-8	131	131	131	131	131	131	131
E-7	110	110	110	110	113	119	121
E-6	110	110	110	110	110	113	119
E-5	110	110	110	110	110	110	113
E-4	110	110	110	110	110	110	110
E-3	110	110	110	110	110	110	110
E-2	110	110	110	110	110	110	110
E-1	110	110	110	110	110	110	110
E-1 under 4 months	110	110	110	110	110	110	110
Aviation cadets	110	110	110	110	110	110	110

"Pay Grade	Years of service computed under section 205-						
	Over 12	Over 14	Over 16	Over 18	Over 22	Over 26	Over 30
E-9	$131	$131	$131	$131	$131	$131	$131
E-8	131	131	131	131	131	131	131
E-7	131	131	131	131	131	131	131
E-6	119	125	125	125	125	125	125
E-5	119	119	119	119	119	119	119
E-4	110	110	110	110	110	110	110
E-3	110	110	110	110	110	110	110
E-2	110	110	110	110	110	110	110
E-1	110	110	110	110	110	110	110

"(d) The amendments made by this section shall apply to duty performed on or after October 1, 1984."

AMENDMENT NO. 3280

At the end of Part I of title I of the bill, insert the following new section:

SEC. . Section 9(b)(4) of the Military Justice Act of 1983 (Public Law 98-209, 97 Stat. 1393) is amended by striking out "first day of the ninth calendar month" and inserting in lieu thereof "fifteenth day of the twelfth calendar month".

AMENDMENT NO. 3281

On page 128, line 19, strike out "issue of" and insert in lieu thereof "the issuance of authorized".

On page 128, line 22, strike out "authorized issues of articles" and insert in lieu thereof "issue of authorized articles".

On page 129, line 20, strike out "authorized issue articles" and insert in lieu thereof "issue of authorized articles".

On page 130, strike out line 22 and all that follows through line 5 on page 131 and insert in lieu thereof the following:

"Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

in advance; or

"(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

On page 131, beginning on line 25, strike out "any member of the armed forces or civilian employee of the Department of Defense while such member or employee" and insert in lieu thereof "a civilian employee of the Department of Defense while such employee".

On page 132, beginning on line 6, strike out "member, employee," and insert in lieu thereof "employee".

On page 133, line 18, strike out "enlistments" and insert in lieu thereof "enlistment".

On page 134, line 16, strike out "personnel" and insert in lieu thereof "persons".

On page 134, beginning on line 18, strike out "such care" and all that follows through line 19 and insert the following: "such care (other than elective private treatment) in private facilities for members of the armed forces".

On page 142, beginning on line 12, strike out "Secretary of the Army, Navy, or Air Force" and insert in lieu thereof "Secretary of the military department concerned".

On page 145, line 13, strike out "tips." and insert in lieu thereof "tips; or".

On page 145, line 15, strike out "706, 707, and 716" and insert in lieu thereof "706 and 707".

On page 146, after line 3, insert the following:

(d) Section 809 of the Department of Defense Appropriation Authorization Act, 1979 (10 U.S.C 2102 note), is repealed.

AMENDMENT No. 3282

On page 27, lines 1 and 3, strike out "1985" both times it appears and insert in lieu thereof "1984".

LEVIN AMENDMENT NO. 3283

Mr. LEVIN proposed an amendment to the bill S. 2723, supra; as follows:

Following line 10 on page 11 insert the following new section:

(e)(1) Of the funds authorized to be appropriated by subsection (a) for the Army, the sum of $1,300,000 shall be available only for—

(A) the purchase of new methanol cars;

(B) establishing the reliability and durability of such vehicles in laboratory and fleet tests;

(C) testing a percentage of the methanol fleet in cold weather environments and;

(D) resolving related support functions for the safe and efficient storage, distribution, and the use of neat methanol fuel for such vehicles.

(2) The Secretary of the Army shall submit a written report to the Committee on Armed Services of the Senate and the House of Representatives not later than September 30, 1985, on the progress of the methanol fuel program referred to in paragraph (1).

None of the funds authorized pursuant to section (e) above shall be taken from amounts authorized by appropriations in this Act for basic research and exploratory development.

(A) A maximum range of 200 kilometers.

(B) A payload at maximum range of 1,000.

HOLLINGS AMENDMENT NO. 3284

Mr. BIDEN (for Mr. HOLLINGS) proposed an amendment to the bill S. 2723, supra; as follows:

At the end of Part I—General Provisions, page 128, line 13, add the following new section:

CONTRACTING-OUT CORE LOGISTICS ACTIVITIES

SEC. . (a)(1) It is esstential for the national defense that Department of Defense activities maintain a logistics and readiness capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify those logistics activities that are necessary to maintain the logistics capability described in paragraph (1).

(b)(1) Except as provided in paragraph (2), performance of a logistics activity identified by the Secretary of Defense under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as "OMB Circular A-76").

(2) The Secretary of Defense may waive paragraph (1) in the case of any logistics activity and provide that performance of such activity shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary of Defense and shall be based on a determination by the Secretary that Government performance of the activity is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of a logistics activity identified under subsection (a)(2) is no longer required for national defense reasons.

(3) Any waiver under paragraph (2) will be identified by the Secretary of Defense in a report to the Committees on Armed Services of the Senate and House of Representatives.

(c) Identification of logistics activities that are necessary to maintain the logistics capability described in subsection (a)(1) shall be completed, and a report describing those activities (including a detailed specification or listing) shall be submitted to the Committees on Armed Services of the Senate and House of Representatives, not later than April 1, 1985.

ROTH AMENDMENT NO. 3285

Mr. ROTH proposed an amendment to the bill S. 2723, supra; as follows:

On page 4, after line 16, insert the following new section:

HIGH MOBILITY MULTIPURPOSE WHEELED VEHICLE

(a) None of the funds appropriated pursuant to the authorization of appropriations in section 101 may be obligated for the high mobility multipurpose wheeled vehicle until—

(1) follow-on evaluation testing of such vehicle has been completed as currently scheduled;

(2) the Secretary of the Army has reported to the appropriate committees of the Congress the results of such testing and based on such test results has provided written assurance to the committees that continued production of such vehicle is in the national interest; and

(3) a period of at least 10 days has elapsed after the day on which the committees have received the report and the written assurance referred to in subsection (a)(2) above.

(b) The report required by subsection (a) shall—

(1) include a comprehensive description of the actions taken or planned in response to the results of such testing,

(2) identify areas, if any, where such testing indicates that such vehicle does not meet the reliability and maintainability requirements in the contract for such vehicles, and

(3) indicate the action that will be taken with regard to those areas identified in paragraph (2).

JOHNSTON AMENDMENT NO. 3286

Mr. JOHNSTON proposed an amendment to the bill S. 2723, supra; as follows:

"AUTHORIZATION FOR PRODUCTION OF THE 155-MILLIMETER ARTILLERY-FIRED, ATOMIC PROJECTILE

SEC. . (a) Nothwithstanding any other provision of law, the Secretary of Energy may obligate not more than $50 million from funds otherwise authorized to be appropriated in this Act for the construction of facilities necessary to produce the 155 millimeter artillery-fired, atomic projectile (Project 82-D-109).

(b) Notwithstanding any other provision of law, in the case of the 155 millimeter atomic-fired artillery projectile (W-82) and the 8-inch atomic-fired artillery projectile (W-79), the following conditions shall be adhered to:

(1) the total number of both such warheads produced may not exceed 925;

(2) the total funds that may be expended for the production of both such warheads subsequent to the date of enactment of this Act shall not exceed $1,100,000,000;

(3) no such warheads produced after the date of enactment of this Act may be produced in the enhanced radiation version;

(4) in producing both such warheads, special emphasis shall be placed upon improvements in the safety, security, range and survivability of such warheads; and

(5) replacement of obsolete atomic-fired, artillery projectiles now in Europe with such improved warheads will be accomplished within the nuclear stockpile limits agreed to by NATO Defense Ministers at Montebello, Canada, in October 1983, which required the withdrawal of 1,400 warheads from the European stockpile in addition to the 1,000 warheads withdrawn in 1980.

(c) No action may be taken to implement the authority contained in this section until the Secretary of Defense has submitted a plan for the implementation of the provisions of this section to the Committees on Armed Services of the Senate and the House of Representatives."

BUMPERS (AND PRYOR) AMENDMENT NO. 3287

Mr. BUMPERS (for himself and Mr. PRYOR) proposed an amendment to the bill S. 2723, supra; as follows:

At an appropriate place in the bill insert the following new section:

SEC. . Notwithstanding any other provision of law, lands in the vicinity of Bull Shoals Lake in Arkansas administered by the Army Corps of Engineers which have been declared excess to Department of the Army needs shall remain under the administration of the Corps of Engineers and shall not be disposed of by the General Services Administration or the Bureau of Land Management.

BYRD AMENDMENT NO. 3288

Mr. BYRD proposed an amendment to the bill S. 2723, supra; as follows:

At the appropriate place in the bill, add the following:

"SEC. . The Department of Defense shall certify that all metal millform products procured by the Department or any of its ele-

ments, its contractors, or its subcontractors, contain no Cuban or Russian nickel."

MELCHER AMENDMENTS NOS. 3289 AND 3290

Mr. MELCHER proposed two amendments to the bill S. 2723, supra; as follows:

AMENDMENT No. 3289

At the appropriate place in the bill add the following new section:

"SEC.   . The Secretary of the Air Force shall prepare and submit a report to the appropriate committees of Congress, not later than January 1, 1985, analyzing the planned operational utilization of the Air Force's air refueling fleet throughout the remainder of this decade. This study shall include the planned utilization of the air refueling fleet for the Single Integrated Operational Plan (SIOP) and consider the growing number of potential contingency operations throughout the global spectrum of conflict to include multiple and simultaneous global threats."

AMENDMENT No. 3290

At the appropriate place in the bill add the following new section:

"SEC.   . Within 180 days after enactment of this bill, the Secretary of the Air Force shall submit a report to the appropriate committees of Congress analyzing and reviewing the effectiveness of current security arrangements at Clark Air Base, Philippines, and reviewing the provisions of the U.S.-Philippine basing agreement, and also suggest measures that could be taken to improve overall security at Clark Air Base."

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public that H.R. 5740, the Barrow Gas Field Transfer Act of 1984, has been added to the agenda of the hearing scheduled before the Subcommittee on Public Lands and Reserved Water on Friday, June 22, at 10 a.m. In addition, I would like to announce that the hearing will be held in room SD-366 instead of room SD-562, as previously scheduled.

For further information regarding this hearing, you may wish to contact Mr. Tony Bevinetto of the Subcommittee staff at 224-5161.

SUBCOMMITTEE ON ENERGY REGULATION

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Subcommittee on Energy Regulation on Friday, June 22 at 9 a.m. to consider S. 1069, S. 817, and H.R. 555, relating to construction work in progress, has been canceled and will be rescheduled at a later date.

For further information regarding this hearing you may wish to contact Mr. Howard Useem of the subcommittee staff at 224-5205.

ADDITIONAL STATEMENTS

AGRICULTURAL TAX POLICY

● Mr. ABDNOR. Mr. President, my colleagues are well aware of my efforts, as chairman of the Joint Economic Committee's Subcommittee on Agriculture and Transportation, to highlight the importance of agriculture to the Nation and to provide a focal point for consideration of policies in the best interest of agriculture in the long run.

One major thrust of those efforts is to assess the impacts, intended and incidental, of various tax policies upon agriculture as well as the fairness of those impacts and the effectiveness of those policies in achieving their intended purposes.

In that regard, I recently wrote a number of knowledgeable individuals, asking their assistance in formulating the pertinent questions to be addressed by the subcommittee in this important inquiry, and I would like to share with my colleagues and interested members of the public a few of the responses received thus far.

First of all, Prof. Harold F. Breimyer of the University of Missouri—Columbia was perhaps the most outspoken and direct in stating:

> . . . for years I have deplored the negative effects of tax deductions. They overstimulate agricultural production; they transform agriculture from an economy that generates income from its productiveness to a tax shelter economy; and they are devastating to a proprietary owner-operator agriculture . . . The farming community has been slow to recognize that the devices by which farmers minimize their tax obligations are a Trojan horse.

Chairman D. Gale Johnson of the University of Chicago's Department of Economics offers some pointed comments which appear in agreement with Professor Breimyer's "Trojan horse" theory:

> . . . given the tendency of U.S. agriculture to increase production at a faster pace than the growth of demand is capable of providing a profitable outlet, it is clearly against the best interests of American farmers to have policies that encourage further investment in agriculture . . . tax policies that encourage investment in agriculture serve not only to increase farm production but also reduce the demand for farm labor by encouraging the substitution of capital for labor . . . It seems especially important that there be recognition that while some people gain from the tax provisions, the net effects include lower incomes for farm operators as a group and a substantial net cost to taxpayers.

Prof. Hoy F. Carman at the University of California and Dr. Mark A. Edelman at South Dakota State University both picked up on the "fairness" theme implied in Dr. Johnson's observation that the net effect of tax policies for most farmers is lower income.

Dr. Edelman commented on the notion that "a tax system should be neutral economically," and says, "I've always had a problem with this concept because what is neutral for one group is not neutral for another. There has been a big debate * * * as to whether tax policy favors large versus small producers * * * we cannot agree on what it means to treat small and large farms 'equally.'"

Reacting to statistics showing that total tax receipts would be higher if agricultural income were not subject to taxation at all but agricultural losses could not be deducted either, Professor Carman suggests, "It would seem to be useful from a policy point of view to learn about the characteristics of farm firms who pay taxes and those who do not."

Mr. Larry Lindsey from the Council of Economic Advisers has noted one way in which the leveraged purchase of farm land is treated more favorably for tax purposes than certain other investments, and he has suggested that it would not be unreasonable to impose a limitation on the interest deduction allowed on the purchase of farm land.

Speaking of leveraged farm land purchases, Mr. Lindsey says:

> . . . a similar situation exists with the leveraged purchase of many financial instruments—equities which do not pay dividends and retain all earnings are a good example. The tax code has a good rule for . . . financial instruments, however. The taxpayer is limited to an interest deduction . . . equal to $10,000 plus investment income. . . . Why shouldn't the leveraged holding of farm land be subject to the same restriction as the leveraged holding of other assets?

No doubt, based upon their comments, Professor Breimyer and Chairman Johnson, at least, would agree with Mr. Lindsey's suggestion and would argue—despite Dr. Edelman's observations on the difficulty of establishing how to treat large and small farms equally—that most farmers would be better off if the interest deduction attributed to the purchase of farm land were effective capped.

If our Nation's tax policies are a Trojan horse and unfair to most farmers, they are indeed a disaster in many respects for taxpayers at large. Consider the comments of E. Gerald Corrigan, president of the Federal Reserve Bank of Minneapolis:

> Though I am not an expert on agricultural taxation in particular, I do recognize the problems . . . as part of a larger problem. The labyrinth of special exemptions and loopholes in our tax code constitutes a huge federal tax expenditure that complicates the task of coming to grips with our federal budgetary problems. As I have noted in our Annual Report, the shear magnitude of aggregate tax expenditures may have unintended negative effects on the sectors they directly affect but also contribute, collectively, to higher deficits and interest rates.

The pertinent portions of Mr. Corrigan's annual report include the following:

> In short, tax expenditures are an alternative to direct government spending, but they may also be thought of as foregone tax collections or a form of entitlement program in which the test of entitlement is any one of a myriad of possible circumstances. Regardless of how tax expenditures are labeled, to the extent they are increasing, they tend to add to the deficit and the Treasury's external financing requirements in much the same way as do direct spending programs and tax rate reductions.
>
> . . . the growth and sheer size of tax expenditures speak for themselves. For example, in 1967, it is estimated tax expenditures were about 20 percent of federal outlays; by 1977, they were about 28 percent of outlays; and in 1985, they are expected to amount to an astonishing 40 percent of outlays. In 1985, federal outlays are expected to be about 24 percent of GNP. However, if tax expenditures are added to direct outlays, the combination amounts to 33 percent of GNP . . .
>
> Thus, tax expenditures are now a major factor contributing to the overall federal budgetary problem and in the aggregate are larger than any single line item in the budget even though they do not appear directly in the budget. Indeed, while each individual tax expenditure was designed to serve some wholly reasonable public policy objective, the cummulative weight of all such expenditures is now a major element in the overall budget dilemma. Moveover, since these programs—via their impact on the deficit—may contribute to higher market interest rates, they can work at cross-purposes with their stated or implied objectives.

The cost to taxpayers alone is ample justification for a thorough and painstaking review of each and every deduction, credit, loophole, or tax expenditure—call them what you will—but it will be a cruel irony if we are forced to conclude that policies designed to help agriculture as a whole actually have proven detrimental to the vast majority of individual farm families in the long run.

It would be still crueler, however, if we failed to address these questions in an exhaustive and forthright manner. While the Subcommittee on Agriculture and Transportation has not yet concluded, as those who I have quoted here have, that our tax policies excessively stimulate agricultural production, promote overinvestment in farm assets, reduce employment in farming, lower incomes for farm operators as a group, and devastate the owner-operated, family farm system, I am dedicated to pursuing the subcommittee's inquiry to an effective resolution of these vital issues.

I welcome the input, guidance, and assistance of my colleagues as well as interested members of the public in this important endeavor.●

PRIME MINISTER OZAL'S VISIT

● Mr. TSONGAS. Mr. President, it has come to my attention that Prime Minister Ozal of Turkey recently visited Col. Mu'ammar al-Qadhafi of Libya in Tripoli. Since Libya is one of the countries that the administration considers a terrorist state, I find the following text of their meetings quite disconcerting.

I submit for the RECORD the following statement:

> FOREIGN BROADCAST INFORMATION SERVICE—MAY 29, 1984
>
> A joint Libyan Arab-Turkish statement was issued today in both Tripoli and Ankara at the end of the visit paid to the Jamahiriyah by Turgut Ozal, Prime Minister of the Republic of Turkey, and the accompanying delegation. Here is the text of that statement:
>
> At the invitation of Brother Staff Major 'Abd as-Salam Ahmad Jallud, the leader of the Motherland Party and Prime Minister of the Republic of Turkey, Turgut Ozal, paid a formal visit to the Socialist People's Libyan Arab Jamahiriyah 22-25 May 1984.
>
> During the visit Brother Turgut Ozal was received by Brother Colonel Mu'ammar al-Qadhafi, leader of the Great 1 September Revolution. The Turkish Prime Minister conveyed to the brother leader greetings and wishes from his Brother Kenan Evren, President of the Turkish Republic. The two sides exchanged views and ideas on means of deepening and developing cooperation between the two fraternal countries, and also on the most important issues of the region and the Islamic world and the leading international issues.
>
> At the end of the meeting the brother leader asked the Turkish Prime Minister to convey his greetings and wishes to president Kenan Evren of the Turkish Republic and confirm his acceptance of the invitation to visit Turkey. Official talks were held between Brother Staff Maj. 'Abd as-Salam Ahmad Jallud and Brother Turgut Ozal with the participation of the two countries' delegations.
>
> Brother Staff Maj. 'Abd as-Salam Ahmad Jallud expressed his wishes for the success of the government of Brother Ozal. The two sides analyzed the most important issues and problems of the region in particular and on the international arena in general. They expressed their conviction of the need and importance of the unity and solidarity of the Islamic states. They agreed to exert joint efforts to achieve this end.
>
> The two sides affirmed their stand by the side of the Palestinian Arab people for their liberation. They also condemned the Zionist occupation of Lebanon and declared their support for the struggle of the Lebanese Arab people for the independence and unity of all Lebanese territory.
>
> At the end of the meeting, minutes of agreement were signed for the development of cooperation in economic, scientific, technical, and cultural fields between the two fraternal countries.●

THE SENIOR COMPANION PROGRAM

● Mr. CHILES. Mr. President, voluntarism is an important American tradition. And nowhere is it more exemplified than in the Senior Companion Program. Because of its success in providing volunteer opportunities for older Americans, I am pleased to cosponsor Senate Concurrent Resolution 124 commending the Senior Companion Program on its 10th anniversary.

Currently, there are 76 local sponsors of Senior Companion Programs throughout the country. Through this program, low-income Americans over age 60 serve as senior companions for older adults in their own homes, in nursing homes, or in residential institutions. Senior companions receive a stipend of $2 an hour and other benefits, including a meal, transportation, an annual physical examination, and insurance coverage. While the reimbursement is not much, the contribution made by these Senior Companion to their peers is invaluable.

Last week, 25 senior companions visited Washington to celebrate the 10th anniversary of the program. These individuals are special—they were original participants in the program when it first began 10 years ago. Mae Williams, 77, of Miami, was one of the original participants honored during the celebration. Mrs. Williams, who was accompanied to Washington by her granddaughter Barbara Williams, is sponsored by the Metropolitan Dade County Community Action Agency. She regularly visits three to five patients at a local nursing home, 4 hours a day, 5 days a week. Mrs. Williams escorts these individuals to nursing home and outside activities, helps them with personal needs and, most importantly, provides them with much needed and greatly appreciated companionship.

I would like to take this opportunity to thank Mae Williams and all the other senior companions for their contributions to their peers, as well as for keeping alive this great American tradition of voluntarism. I am pleased to join with my colleagues in cosponsoring Senate Concurrent Resolution 124 honoring the Senior Companion Program on its 10th anniversary.●

A TRIBUTE TO JAMES J. WADSWORTH

Mr. MOYNIHAN. Mr. President, a few short months ago, the Nation lost James J. Wadsworth, an individual who served this country long and well. During his career, his considerable talents took him to the New York State Assembly, the Federal Communications Commission, and the American delegation to the United Nations. And in each post in which he served, James J. Wadsworth brought with him a considerable reservoir of intelligence and ability. With his death, we were all diminished.

I would like to share with my colleagues an obituary which appeared in the March 15 New York Times, and I ask that it be printed in the RECORD.

The obituary follows:

JAMES J. WADSWORTH DIES AT 78; HEADED U.S. DELEGATION TO U.N.

(By Joseph B. Treaster)

James J. Wadsworth, a former chief American delegate to the United Nations, government administrator and New York state Assemblyman, died Tuesday at Strong Memorial Hospital in Rochester. He was 78 years old.

Mr. Wadsworth, a tall, affable man, retired from public life 14 years ago and since then had managed the 3,000 acres of dairy farm land in upper New York that his family cleared in Colonial days.

During Mr. Wadsworth's yearlong tenure as the head of the delegation to the United Nations in 1960, Nikita S. Khrushchev, the Soviet leader, demanded the resignation of Secretary General Dag Hammarskjold and later stunned diplomats by waving one of his shoes and banging it on his desk.

Mr. Wadsworth rose to extemporaneously criticize Mr. Khrushchev's attack on the Secretary General and later told reporters that the Soviet leader's proposal that the office of the Secretary General be replaced by a three-member committee was "ludicrous."

WAS DEPUTY CHIEF 7 YEARS

Before succeeding Henry Cabot Lodge as the head of the United Nations mission, Mr. Wadsworth had served for 7 years as deputy chief of the delegation. In that time he was often a trouble-shooter in negotiations with the Russians. On one assignment he represented the United States in talks that led eventually to a partial ban on nuclear testing.

In 1965 President Johnson appointed Mr. Wadsworth to the Federal Communications Commission.

When he resigned in 1970, to join the American team negotiating a charter for the International Telecommunications Satellite Consortium known as Intelsat, an article in The New York Times characterized him as "an unpredictable maverick" on the Commission.

He had cast the key vote in the first case in which the FCC ever denied renewal to a major television licensee, and he later joined a bare majority to withhold renewal for a second licensee.

After his work on the Intelsat charter, Mr. Wadsworth returned to the family property outside Rochester in the town of Geneseo, a community founded by the Wadsworths in 1790.

'BLESSED WITH A HEAD START'

In 1980 he published at his own expense an autobiography called The Silver Spoon, in which he said in the introduction that the title was "a somewhat wry admission that I have been considered all my life as a rich person descended from rich people, and thus, blessed with a head start over most of my contemporaries."

A grandfather, James W. Wadsworth Sr., commanded a division of the Union Army at Chancellorsville and Gettysburg and was mortally wounded in battle. His father, James W. Wadsworth Jr., was a speaker of the New York State Assembly, a United States Senator and member of the House of Representatives. His grandfather on his mother's side, John Hay, was President Lincoln's private secretary during the Civil War and later was Secretary of State.

James Jeremiah Wadsworth was born on June 12, 1905 in Groveland, N.Y. He played varsity football and baseball at Yale University and after graduating in 1927 with a bachelor's degree worked on the family farm.

In 1931, at the age of 26, he ran successfully for the New York State Assembly and served there for a decade. In the Depression era he became an acknowledged expert on relief problems, heading a committee that devoted 3 years to studying the problems of unemployed men over 40.

He was rejected for military service in World War II because of a bad leg and went into defense work, joining the Curtiss-Wright Corp. plant in Buffalo and serving as assistant manager of industrial relations.

AN ACCOMPLISHED PAINTER

In 1950 Mr. Wadsworth became deputy administrator of the civil defense office of the National Security Resources Board. His office drafted many of the civil defense plans that became standard practice.

Mr. Wadsworth was an accomplished painter who, beause of his primitive style, was sometimes referred to as "Grandpa Moses."

He is survived by his second wife, Mary Alphin Wadsworth of Geneseo; a daughter, Mrs. Alice Wadsworth Strong of Marberth, Pa.; a stepdaughter, Mrs. Jean D. Ogilvie of Bethesda, Md.; a stepson, Scott W. Donaldson of Geneseo; five grandchildren, and three step-grandchildren.

A private funeral and burial will be held Friday morning in Geneseo with a memorial service at 2 p.m. Friday at the Central Presbyterian Church in Geneseo.●

HIGH SPEED RAIL COMPACT

● Mr. HEINZ. Mr. President, yesterday the House passed H.R. 4308, a bill introduced by Representative JOE KOLTER of Pennsylvania to grant the consent of Congress to a compact between the States of Pennsylvania, Ohio, Indiana, Michigan, and Illinois for the preparation of a feasibility study for the development of a system of high speed intercity rail passenger service. I commend Congressman KOLTER for this expeditious action.

I have introduced similar legislation in the Senate, S. 2564, the High Speed Rail Act of 1984, along with my colleagues, the Senator from Pennsylvania [Mr. SPECTER], the Senator from Ohio [Mr. GLENN], the Senators from Michigan [Mr. RIEGLE and Mr. LEVIN], and the Senators from Illinois [Mr. PERCY and Mr. DIXON]. I have requested, with the consent of the chairman of the Judiciary Committee, that H.R. 4308 be held at the desk for passage by the Senate. I thank Senator THURMOND for his courtesy in this matter.

The High Speed Rail Act of 1984 will give Federal consent to the High Speed Rail Compact between the States of Pennsylvania, Ohio, Indiana, Illinois, and Michigan, enabling this compact to undertake feasibility studies for a high speed rail system linking Philadephia and Chicago, stopping in such major cities as Pittsburgh, Cleveland, Detroit, and Indianapolis. High speed rail passenger service is a proven success throughout Europe and Japan, and studies are currently underway for possible systems in Florida, Texas, California, Louisiana, and Mississippi. These feasibility studies are essential, given the magnitude of the capital costs and potential economic benefits; State and local government officials and private investors must consider these impacts to determine whether the substantial investment needed for high speed rail passenger service is warranted.

Preliminary reports have shown that a high speed rail system in Pennsylvania would have very favorable economic consequences. As many as 45,000 construction jobs and 9,800 permanent jobs could be created in connection with a high speed rail system between Pittsburgh and Philadelphia. Similar economic benefits would be found in the construction of high speed rail systems in the other compact States.

Several years ago, the Congress established a panel to study America's future transportation needs. The panel, composed of both Senate and House Members as well as transportation leaders, worked with a technical staff for several years as the National Transportation Study Commission. The final report by the Commission predicted that the United States will almost double its present infrastructure for passenger travel by the year 2000. Currently, only one-tenth of 1 percent of all passenger travel in America is by train. If we are to meet the travel needs predicted by the National Transportation Study Commission, the first priority should be the development of our rail system.

High speed rail envisions a new type of railroad passenger service. The trains, traveling at speeds in excess of 150 miles per hour, would produce competitive traveltimes for regional trips. High speed rail lines will become the favored transportation of the future for medium-range trips, moving people along the Nation's densest population corridors more efficiently and conveniently than airlines or private autos. The French high speed rail system, Tres Grande Vitesse [TGV], set a world speed record in 1981, moving at 236 miles per hour. A high speed rail line between Philadelphia and Pittsburgh would move as fast as 185 mph and the trip would take 2 hours, 15 minutes; by air, adding transportation to and from the cities' downtowns, it takes about 2½ hours; driving, it takes about 5½ hours; and conventional trains take about 7 hours.

As I mentioned, this network will not only provide the transportation system necessary for future growth in our region, but it will also deliver benefits related to its planning and construction. The five States will supply the components, services, and labor for the project, boosting the local construction and manufacturing industries.

According to a preliminary study conducted for the Pennsylvania High Speed Intercity Rail Passenger Commission, Pennsylvania industries could experience a direct increase of $1.6 billion to $2.5 billion in expenditures for their goods and services, depending on the type of technology and the level of service provided. In addition, these direct effects, according to the study, would stimulate further multiplier effects as successive rounds of spending occur within the economy. The total economic benefits to the State of Pennsylvania during the construction period would be almost three times the amount of direct effects, as much as $7.5 billion.

Once operational, the high speed rail network will bring downtown revitalization for those cities along the line and the potential for enhancing the attractiveness of local businesses. The improved accessibility that would be offered by high speed rail service may attract service-oriented businesses to locations in the vicinity of stations. The transportation improvement provided by high speed rail service, and perhaps even advanced technology for rail freight service, could enhance the competitive position of industries in these States and make them an attractive place to locate new businesses. This would mean new investment and increased demand for goods and services from the States of Pennsylvania, Ohio, Michigan, Indiana, and Illinois.

As envisioned, the establishment of a high speed rail system would be privately financed and operated on a profit-making basis. The project will only be undertaken if it can be demonstrated that solid market potential to support high speed rail lines exists. This legislation officially recognizes the compact between the five States by Congress; the compact itself has been in existence for the past 2 years. It is essential that Federal agencies be in a position to contribute to the extensive planning efforts which are being conducted in these States. Two years ago the Congress authorized a high speed rail compact between the States of Louisiana and Mississippi for similar feasibility studies to be conducted; Alabama has subsequently been added to the compact. This is all part of a broad partnership between the Federal and State governments and private companies to encourage new rail systems. The development of the high speed rail line will depend on private investment much as did the original development of America's railroads in the last century.

The vast resources of the Federal Government must also facilitate this effort, in a planning and support role, complementing the State and private capital investment in various systems. I am confident that this partnership will be successful, and I urge unanimous consent to the passage of H.R. 4308.●

JOHN KNECHT IS 100

● Mr. ABDNOR. Mr. President, today in Rapid City, SD, one of South Dakota's premier housing experts is celebrating the centennial of his birth.

John Knecht is a pioneer in the truest sense and his biography ranks with the best of the Horatio Alger stories. He has persevered through good years and bad—went broke at age 45, started a family business at 47, became a millionaire at 68—mostly by working hard 12 to 16 hours a day, 6 days a week, serving his customers through his expertise and by providing them with good building materials.

Knecht Industries has its foundation like many other institutions and industries in South Dakota in sod buildings. John Knecht grew up in four different sod houses and went to school in a sod structure. Knecht Industries which began as a lumber yard, expanded into Macon, Inc., Housing Unlimited, Inc., Knecht Bros. Partnership, Western Dakota Construction, Inc., and Sheridan Heights, Inc., the latter firm involved in managing properties. His sons and grandchildren direct the operations today.

In 1973, John Knecht responded to an inquiry on sod house construction. His letter says a good deal about pioneer attitudes and perseverance and as a salute to this good friend on his centennial, I would like to share his observations with my colleagues.

The letter follows:

July 10, 1973.

Sod House Society,
Colby, KS.

Dear Sirs: I noticed in a recent issue of the Rapid City Daily Journal that your society is gathering data on sod houses. I spent a great deal of my younger years living in sod houses and thus furnish you with the following information:

I was born June 20, 1884 in Cayuga, Illinois—a small town near Pontiac. Our family moved to Ord, Nebraska in 1886. In 1890, my father, George Knecht, and my mother traded their hotel and bakery for a 160 acre farm, located 3 miles southeast of Ord. Because there was no house on the farm, we lived the first year in a dug-out belonging to Frank Hewitt and survived mostly on beans that had been planted by the former owner of our farm. The floor and roof of Hewitt's dug-out were dirt, with walls nearly 2 feet thick, providing excellent insulation from the heat and cold.

It was about 1 mile from here that I attended the Pigman School which was 14 miles north and a little east of Ord, Nebraska in Valley County. The school house was a 16 by 20 foot sod house with a board roof covered with tarpaper and topped with sod. It had a hard packed dirt floor and the teacher was placed in the center of the room on a 4 by 6 foot wood platform with a small homemade table and kitchen chair. The students sat on board benches 12 inches wide placed all the way around the room, so that we could lean against the sod walls. Our books and slate were kept beside us on the bench because we had no desk or table to put them on. No plaster, either inside or out, was used in the construction of the Pigman School.

The next year, 1891, we built a new sod house on the homeplace. This house had a wood shingle roof, was plastered with clay mud and straw to hold it together and whitewashed inside with lime and skim milk. The upstairs had a garret room made of 12 inch rough boards. The dirt floor was cared for by shaving off the grass about two inches from the top. It was then wet lightly, let dry a little and swept with a regular broom to get rid of the loose dirt. Each week it was again sprinkled and swept until the dirt formed a hard crust on it that could not be dented by the heavy furniture legs. After a couple of months, the floor was properly set and resembled a cement floor, though not as hard. If our shoes were caked with mud or cow manure, we were expected to take them off outdoors before walking on the floor. The family lived in this sod house, with no changes, until 1899.

The summers of 1894 and '95, during the severe depression in Nebraska, I worked for 18 months at $5 per month for the Hurlburt family. I cannot recall the man's first name, but I do remember that they had a son, Frank, and a Daughter, Bertha. Their homeplace was 20 miles east of Burwell, Nebraska.

They also had a Kingkade Homestead, used for summer pasture, 10 miles north of their homeplace in the middle of the Nebraska Sand Hills. I was given 2 horses, 1 dog and 75 head of cattle and sent to this summer pasture for a 3 month period. The house was made of sod, with dirt floor and dirt roof so prairie fires would not be so great a threat. The house was 10 by 12 foot and equipped with a 2 hole topsy wood stove for cooking. Cow chips were used for fuel because there was no wood for miles. The nearest neighbor was 8 miles away, so the only people I saw during my 6 months with the cattle were the Hurlburts who brought me food every 10 days or so. This place was in Garfield County, 12 miles northwest of Erickson, Nebraska.

I also recall the depression prices of 1897 when we sold ear corn for 7¢ a bushel, hogs sold for $3.50 per hundred pounds and three kinds of coffee—Lyon Head, XXXX and Arbuckles—was available at 7¢ per pound.

As a bachelor in 1905, I acquired my own homestead five miles northeast of Gregory, South Dakota. There, I built a 12 by 16 foot sod house with dirt floor. The roof was board, covered with tarpaper and topped with sod. The door was made of shiplap with strap barn door hinges. The only lock was the screen door latch because there was no way to lock the inside door. The only windows were 10 by 12 inch four light barn sash. This homestead shack was not plastered inside or out and the total cost for material was less than $100. I lived in this house for approximately two years and during that time, worked for a lumber yard at Gregory, South Dakota.

In 1907, I proved up as a homesteader and sold my sod house and the surrounding land for $5600.

December 18 of that same year, I married Edna M. Clem and four sons were born of this marriage. In 1928, I moved my young family to Rapid City, South Dakota and bought a small lumber yard to operate as a family enterprise. Incorporated as Knecht Industries, it has now become a multi-million dollar building materials, housing and land development sales operation. Married now for 66 years, my wife, Edna, and I are both in good health.

I hope the enclosed information will be helpful to you. If you have other questions, I will be glad to try to answer them for you.

Sincerely,

JOHN KNECHT.●

PAPAL ASSASSINATION INVESTIGATION

● Mr. D'AMATO. Mr. President, I rise today to call my colleagues' attention to a significant event in the Italian investigation into the May 13, 1984, attempted assassination of Pope John Paul II. On May 8, 1984, State Prosecutor Atonio Albano filed his report on the investigation in court, requesting the indictment and trial of three Bulgarians and six Turks for conspiring to assassinate the Pope.

This is a major step toward resolution of the questions surrounding the attempted assassination. It marks the conclusion of the investigative phase. Now, Judge Ilario Martella must review the prosecutor's report and the defense attorneys' rebuttal, and decide if the requested indictments should issue so that trials may proceed.

The prosecutor's report is very strong. It supports the conclusions I reached after my February 1983 visit to Italy to look into our role in the investigation. Its key point is that Mehmet Ali Agca, the failed assassin who was convicted for his deed, was hired by the Bulgarian Secret Service to commit this monstrous crime.

It finds that the motive for the crime was to weaken Poland's solidarity movement, stating that:

> Some political figure of great power took note of this most grave situation (in Poland) and, mindful of the vital needs of the Eastern bloc, decided it was necessary to kill Pope Wojtyla.

The clear implication is that this "political figure of great power" was a high official of the Soviet Union, possibly Yuri Andropov, who was the Chief of the KGB when this conspiracy was hatched.

This report was the subject of a lengthy and detailed article appearing on the front page of the Sunday, June 10, 1984, edition of the New York Times. This article, by the distinguished author and freelance journalist Claire Sterling, produced an astonishing lack of response in the mass media. While we debate issues of war and peace involving the Soviet Union, somehow this story received only cursory coverage. Yet, the conclusions of the Italian investigation should weigh heavily in our deliberations as we consider courses of action we may follow in our national security policy and our relations with the Soviet Union.

The people of the world have the right to know—did the plot to kill the Pope originate in the Kremlin? Is Pope John Paul II's blood on the hands of not just the Bulgarian Secret Service, but the KGB as well? The world's media should be seeking the answers to these question. However, except for a handful of courageous and expert journalists, the story of this investigation has been ignored. In this climate, the New York Times' publication of the Claire Sterling article is all the more remarkable as an act of responsible journalism, and I commend the Times for it.

This issue was discussed at length by Suzanne Garment in her "Capital Chronicle" column in the June 15, 1984, edition of the Wall Street Journal. This column, entitled "Soviet Connection: How Much Proof Do We Need?" deserves our attention. In it, Ms. Garment discusses both the media's and the Government's resistance to the Italian investigation's conclusions and the necessary policy consequences which must flow from them.

Mr. President, I ask that Ms. Garment's article be printed in the RECORD at this point.

The article follows:

SOVIET CONNECTION: HOW MUCH PROOF DO WE NEED?

(By Suzanne Garment)

"No, I haven't heard anything," said a senator much involved in foreign affairs. "Maybe it's because I've been absorbed in the defense appropriation." An aide to Sen. Claiborne Pell (D., R.I.) allowed, "He hasn't been following this one particularly closely." Stuart Eizenstat, a former high Carter administration official and now a Washington lawyer said, "I've been on the Hill since the story broke. I've been talking to senators and representatives. The staggering thing is that this has not had any major impact."

These local citizens were talking about Washington's reaction to the huge front-page story by free-lance journalist Claire Sterling in last Sunday's New York Times. Ms. Sterling had gotten hold of a still-unreleased report by Italy's state prosecutor concluding that the Bulgarian government had indeed hired and controlled the man who shot the pope.

Her news was a shocker. True, from the day three years ago when a Turkish gunman struck down John Paul II in St. Peter's Square, a few writers and reporters had pursued the "Bulgarian Connection." Ms. Sterling was one. So was Marvin Kalb, chief diplomatic correspondent for NBC News. Mr. Kalb remembers that while he worked, some American intelligence officials undertook "a deliberate, sustained effort to undercut the validity of the story." And the foreign-policy establishment voiced sophisticated doubt: The Russians would never run such a sloppy operation and risk making a martyr of the pope.

Now, with the prosecutor's report, the Italian judicial system is moving quite deliberatey toward confirmation of the worst suspicions about the Bulgarian role. The report leaves little doubt that the Italians also believe the Soviets ultimately pulled the strings. Mind you, this is from Italians—no American hawk paranoids but instead people who live with a new government it seems every 30 days. You simply cannot doubt their word.

For the first time we cannot avoid the full horror of what the Soviets have done. They shot the Pope. This was not just stealing an election in some Godforsaken place or jabbing a poor slob in the leg with a poisoned umbrella or slipping a venom cocktail to some miserable Third World leader whom no one would ever miss. This was the actual Pope, symbol of God's spirit through time on earth not only in theory but even occasionally in fact. How are we to deal with a regime that no longer fears to commit such a crime?

Washington seems to entertain none of these large worries. Since the report is not yet official the Reagan administration cannot make much of an official response. But as late as this week, Mr. Kalb reports, some American intelligence types were still saying that the assassin was "controlled" for the purpose of running drugs into Western Europe but shot the Pope on his own.

Michael Ledeen, a foreign-policy scholar and consultant to the State and Defense departments, is a longtime exponent of the Bulgarian connection. He expressed no surprise this week that parts of our government should resist the implications of the news about the Pope. The trouble was not just ideological: Even some hawks had always maintained that the formidable Russians would not run an operation as inept as the one that wounded the Pontiff.

For some time, he explained, our government has not been good at gathering the type of information crucial to this case. The shooting was characterized as a domestic matter and investigated by the Italian judicial system, not by an intelligence agency with which our agents have many contacts. Our people did not know enough to be convinced of the Bulgarian plot, and our high government officials are reluctant to challenge the judgment of their own troops. By now our people have developed a stake in their own theories and a typical case of bureaucratic resentment. They've become stubborn customers.

An editor of a national news magazine said he had heard just about nothing in the wake of the Times story and pointed to structural reasons why the press, [illegible] was keeping quiet. There was no conspiracy, but journalists will always denigrate a story they didn't get first. " 'Oh,' they'll say, 'we already knew that.' " There was also an ideological component. The theory of Bulgarian involvement had bloomed mainly in the right-wing press. This devalued the story in the eyes of establishment journalists. "They think it's a version of Redbaiting, and that they're much too sophisticated for such things," the magazine editor said.

Kenneth Adelman, head of the Arms Control and Disarmament Agency, has also come across a lot of silence: "The pope story arouses no self-doubt in true arms controllers. They just keep repeating that we and the Soviets have a common stake in preventing nuclear war. But dialogue doesn't moderate Soviet behavior. I've actually made up a chart for the years 1972 through 1979, showing how we keep talking to them and they keep right on doing unpleasant things. We sign SALT I and they ship new weapons to North Vietnam; we sign SALT II, they put a brigade in Cuba. Are there any circumstances under which we're finally supposed to say 'no'?"

Students of American foreign policy today all read the work by Roberta Wohlstetter telling how America ignored the warning it got about the impending Japanese attack on Pearl Harbor. The information was lost among too many messages and too much clever explaining away. So far, the Bulgarian story here is sinking like a stone, and we can see clearly how our foreign-policy elite's routines and assumptions conspire to keep it at the bottom of the lake.

Mr. D'AMATO. Mr. President, so that those of my colleagues who may not have seen Claire Sterling's original article may have the opportunity to review Mr. Albano's official conclusions, I ask that Mrs. Sterling's article appear in the RECORD at this point.

The article follows:

BULGARIA HIRED AGCA TO KILL POPE, REPORT OF ITALIAN PROSECUTOR SAYS

PLOT WAS EFFORT TO WEAKEN SOLIDARITY MOVEMENT, OFFICIAL SAYS IN HIS REQUEST FOR 9 INDICTMENTS

(By Claire Sterling)

BONN, June 9.—An Italian state prosecutor has filed a report in court saying that the Bulgarian secret services recruited the man who shot Pope John Paul II in 1981 in a plot to weaken the Solidarity movement in Poland.

The rise of the Solidarity labor union in Poland "and consequent social convulsions," the report says, were "perceived as a mortal danger" to Eastern Europe and were "mostly due to the fervid religious faith of the population, sustained and helped above all by the first Polish Pope in history."

These conclusions are in a 78-page report by State Prosecutor Antonio Albano, who is the equivalent of a district attorney. The report is based on some 25,000 pages of documentation gathered by Judge Ilario Martella in his investigation of the attempt to assassinate the Pope.

The report, which was filed in court May 8 and is still officially secret, asks for the indictment and trial of three Bulgarians and six Turks for conspiring to assassinate the Pope. The Turks include Mehmet Ali Agca, who has been convicted of shooting the Pope on May 13, 1981, in St. Peter's Square.

Under Italian law, the report cannot be made public until Judge Martella issues his own comprehensive report, which is expected next month, when he rules whether there is to be a trial. The Prosecutor's report is not binding on the judge, but it is based on the same material the judge will use in his report. There has been virtually no public disagreement between the Prosecutor and the judge on the case, and most people think the report faithfully reflects the judge's views.

The prosecutor's report, which has come into my possession, makes these additional points:

Although the K.G.B., the Soviet intelligence and internal security agency, is not mentioned by name, the report, speaking of the turmoil in Poland, says "some political figure of great power took note of the most grave situation and, mindful of the vital needs of the Eastern bloc, decided it was necessary to kill Pope Wojtyla."

Mr. Agca was promised more than $400,000 by the Bulgarians to kill the Pope but has not received it.

The man who was supposed to help Mr. Agca escape was spirited out of Italy in a sealed diplomatic truck of the Bulgarian Embassy. The truck was sent to Bulgaria under a diplomatic procedure not used before or since by the Bulgarians. Since then no one has reported seeing the man, Oral Celik, a leader of Turkey's neo-Nazi Gray Wolves and a close friend of Mr. Agca.

Mr. Agca did not start to confess until a year after the shooting. He apparently concluded that he had been abandoned by the Turks and Bulgarians who he thought would manage to obtain his freedom.

The authorities think Mr. Agca's testimony against the Turks and Bulgarians is accurate, despite his earlier lies, because such a preponderance of the details he provided have been independently confirmed in the investigation.

First report of findings

Although the Prosecutor's request for indictments has been reported, the broad outlines of the judge's findings are presented here for the first time.

They point to an elaborate conspiracy involving the Gray Wolves, the Sofia-based Turkish Mafia and, in the Prosecutor's words, "organs and institutions of the Bulgarian state."

The three Bulgarians facing indictment—Sergei I. Antronov, Todor S. Aivasov and Zhelyo K. Vasilev—were all operating in Rome when the Pope was shot. They are described as "agents of the Bulgarian secret service." Evidence also shows active involvement by the Bulgarian Embassy.

The confession of Mr. Agca, the Turkish gunman, also implicated the others who face indictment—Bekir Celenk, Omer Mersan, Musa Serdar Celibi, Omer Bagci and Mr. Celik, the man who was supposed to help Mr. Agca escape. Mr. Agca, is described as "a despicable mercenary" and a liar. Nevertheless, the core of his confession seems to have stood up under severe magisterial scrutiny.

Agca is convincing

"Every declaration of Agca's, every circumstance and detail, was checked and investigated," the report says. In the end, "Agca is convincing in his reconstruction of the crime."

Since Mr. Agca started to confess in May 1982, Bulgaria in particular has branded him a pawn in an imperialist plot against the Communist East, coached in prison by the Italian security services or the United States Central Intelligence Agency or both. Prosecutor Albano dismisses this as "archaic cold war propaganda."

"Nothing—I repeat, nothing—supports this theory," the Prosecutor adds. Speaking of the Italian security services, he says: "Agca had one sole meeting with the services, authorized in December 1981. He gave vague, uncertain and irrelevant replies to his visitors, who were utterly ignorant of the facts."

It was not until five months later that Mr. Agca "began spontaneously to collaborate with Italian justice." What follows is the State Prosecutor's description of the evidence found as the court's investigation proceeded. The narrative is based directly on his text, and the quoted matter is the language in his report. My own remarks appear in brackets.

MURDER OF AN EDITOR IN TURKEY SETS STAGE FOR AGCA TO SHOOT THE POPE

The Italian investigation began with the premise that Mr. Agca "did not act alone"; "was not mentally infirm but psychologically lucid and composed"; was "possessed of lively intelligence and savage criminial instincts," and was "the material executor of a broader conspiracy, conceived, decided upon, organized and perfected by other people elsewhere."

The behavior of this intelligent and lucid man of 23 baffled Italian interrogators from the start. Always insisting that he had acted alone, he showed no interest in striking a bargain with them, deliberately misled them or remained silent, refused to testify at his own trial and above all refused to appeal his life sentence. His "boastful indifference" to a lifetime behind bars seemed beyond understanding.

The key to this bahavior would be found in Turkey.

For some years before fleeting his country in 1980, Mr. Agca earned "lucrative sums" by smuggling "arms, cigarettes, drugs, anything." His most powerful chiefs were, to use the terms used in Turkey, the Godfather of the Turkish Mafia, Abuzer Ugurlu, and the equally high-ranking Mafia boss Bekir Celenk, who were partners with different areas of responsibility in the underworld. For the most part, "this contraband passed through Bulgaria."

Agaca was not disturbed

Having been "trained in Syria," Mr. Agca felt "professionally efficient and ready for criminal and terrorist action." The same went for his friends in the Gray Wolves, the armed branch of the ultranationalist National Action party and the dominant terrorist force of the extreme right. These friends included Oral Celik, Abdullah Catli and three or four others on the fringes of this case, all pushing drugs or running guns for the Turkish Mafia as well.

On Feb. 1, 1979, "on orders from the Turkish Mafia—that is, Abuzer Ugurlu—Agca participated in the murder of the Turkish editor Abdi Ipekci" for reasons that have never been ascertained. He was picked up the following June after an anonymous tip to the police.

"Agca was not disturbed. He promptly declared that he was the sole assassin and so maintained until the end of October 1979, when he threatened to identify his accomplices." He thereupon escaped from Istanbul's impregnable Kartal-Maltepe military prison, "walking calmly out the front door, thanks to the power of money and efficiency of the Mafia."

The Ipekci case "became Agca's operative model for safety from punishment." Eighteen months later, he would "show up in St. Peter's Square in the insolvent certainty that, even if arrested, he would get away with it."

In fact, Mr. Agca used the same procedure after his arrest in Rome, "saying he acted alone, offering a congeries of motives and illogical, unverifiable circumstances and sending cryptic messages to his accomplices and patrons." Among these last was his announcement in July 1981 of a hunger strike to come to the following December, the same five-month period that elapsed between his arrest and escape from prison in Turkey.

In substance, he was giving his patrons to understand, indirectly but clearly, that he expected to be liberated, "by escape or exchange with some kidnapped Italian hostage or subversive plans for noisy terrorism beginning elsewhere and ending up at Ascoli Piceno," where he was held in solitary confinement.

Seen in that light, his early behavior in prison was plausible. So long as he expected to be liberated, his overriding concern was to protect his patrons. That explained his refusal even to appeal his life sentence lest the appeal lead to deeper judicial investigation.

"But Italy wasn't Turkey, and Ascoli Piceno wasn't Kartal-Maltepe. Agca, who had fired solely for money, had not even received the conspicuous sum agreed upon. He began to understand that nothing would come of all the promises, that he was alone and abandoned by all and had traded his life for nothing."

After a year, Agca talks

That was when he began to talk, exactly a year after his arrest.

While Mr. Agca had undoubtedly harmed himself by telling so many tall stories, that did not necessarily ruin his credibility. "Can we dismiss him solely as a vulgar liar because he did not tell the complete truth at once?" the Prosecutor asks. "We must keep in mind that he was trying to bargain for his freedom with three interlocutors at the same time: his Turkish accomplices, his Bulgarian accomplices and Italian justice."

For all his erratic assertions and retractions, Mr. Agca's continuing confession "was coherent and firm in the substance of the charges he made" regarding his main accomplices: the Turkish Gray Wolf leaders Oral Celik and Musa Serdar Celibi, the Turkish Mafia boss Bekir Celenk and the Bulgarian nationals Sergei I. Antonov, Todor S. Alvasov and Zhelyo K. Vasilev. The Prosecutor has not asked for the indictment of the other Mafia boss, Abuzer Ugurlu, who is under indictment in Turkey in the Ipekci case.

"Their roles and behavior, closely connected to the plot, have never been modified or altered. Changes and contradictions in Agca's statements involved minor details and superfluous indications of times and places, which never affected the relevant aspects of the case."

PLANS ARE MADE AT MEETINGS IN BULGARIA ON HOW TO ASSASSINATE THE POPE

This is the substance of the story Mr. Agca told, borne out by independent witnesses and verifiable evidence.

In the first days of July 1980, "with a false Indian passport in the name of Yoginder Singh procured by Abuzer Ugurlu," the Mafia boss, Mr. Agca went to Sofia, Bulgaria. "An obliging functionary at Turkey's frontier in Kapikule waved him through" and he "entered Bulgarian territory without particular controls or formalities."

At once upon his arrival—"as he was advised to do in Turkey"—Mr. Agca looked up a fellow Turk named Omer Mersan in Room 911 of the Hotel Vitosha.

[Mr. Mersan's name was the only one Mr. Agca volunteered in his first Italian interrogation, along with the name and phone numbers of the Vardar Export-Import Company, which employed Mr. Mersan in Munich. According to Mr. Agca at that time, Mr. Mersan was "tied to people involved in the black market on a vast scale in Turkey." But no evidence to that effect would come to light until some two years later. Questioned by the West German police in those first weeks, Mr. Mersan confirmed his meeting with Mr. Agca in Room 911 of the Vitosha but denied helping him in any way or even knowing his true identity. He was released within 24 hours. C.S.]

During his stay in Bulgaria, Mr. Agca was in fact helped in several ways by Mr. Mersan, "a wheelerdealer agent extremely well-connected with the Bulgarian authorities, dedicated to a traffic of arms, drugs and contraband of all kinds."

Contacts are established

It was Mr. Mersan who "reserved Agca's room at the Vitosha, gave him money on the orders of Abuzer Ugurlu and furnished documents permitting his sojourn in Sofia. Mersan also put him in contact with Bekir Celenk, a potent Turkish Mafia boss."

Mr. Celenk in turn then arranged a meeting toward the end of July 1980 between Mr. Agca and a "'Sotir Kolev,' an agent of the Bulgarian secret services and a functionary of the Bulgarian Embassy in Rome." This was Mr. Aivasov, the embassy's treasurer.

Mr. Agca's close friend Oral Celik, also in Sofia by then, took part in that and three or four other such meetings in the Bulgarian capital.

During these meetings with "Kolev" that summer, agreement was reached on the "conceptual, organizational and contractual bases for the assassination of Pope Wojtyla, to be carried out in the spring of 1981."

The motive centered on Poland. "The Bulgarian secret services had a specific political interest in killing Pope John Paul II. The imposing rise of Solidarity in Poland in the summer of 1980 and consequent social convulsions constituted a most acute crisis for the socialist states of Eastern Europe. This was perceived as a mortal danger to their political cohesion and military strategy. And since Poland's ideological collapse was mostly due to the fervid religious faith of the population, sustained and helped above all by the first Polish Pope in history, the Polish rebellion might be greatly weakened and fragmented" by this Pope's "physical elimination."

Secrets wrapped in secrets

"As this is no mere rhetorical exercise but the history of our times, it is easy to see what really happened," the State Prosecutor says. "In some secret place, where every secret is wrapped in another secret, some political figure of great power took note of this most grave situation and, mindful of the vital needs of the Eastern bloc, decided it was necessary to kill Pope Wojtyla."

[The report does not answer the question of whether or not the Soviet Union was involved. This is as close as it comes. C.S.]

The machinery of the plot would be set up like this:

"1. Through Bekir Celenk—bound to the Bulgarian services faithfully and for self-interest by reciprocal illegal activities—the Bulgarian services contracted with the Turkish terrorists Agca and Oral Celik for the organization and execution of the plan."

"2. The Bulgarian secret service was committed to:

"a. Payment, through Bekir Celenk, of three million deusche marks [roughly $1.25 million. C.S.], to be evenly divided between Agca, Celik and the leader of the Turkish Gray Wolves' Federation in West Germany, Musa Serdar Celibi. Closely tied to Oral Celik as a fellow Gray Wolf, Celibi was also associated intimately with the Mafia boss Bekir Celenk."

"b. Safe and undisturbed refuge in the Bulgarian port of Varna, on the Black Sea."

"c. Arrangements and facilities for flight, for Agca and Celik, through immediate departure from Italy by TIR truck or diplomatic vehicle." Trucks with TIR registration are bonded and can pass through customs points in Europe with a minimum of checking.

Plan is set in motion

From the end of July to the first days of August 1980, Mr. Celenk, the Mafia boss, met with Mr. Agca and Mr. Celik. On Mr. Celenk's instructions, Mr. Agca telephoned from Sofia to the Gray Wolf leader, Musa Serdar Celibi, in Frankfurt, to set the plan in motion.

In effect, he was arranging to rent Mr. Celibi's organization, whose services in Europe would provide him with safe houses, protective cover, security, intelligence-gathering and small amounts of cash when needed.

Mr. Celenk left Bulgaria early that August. "Kolev," Mr. Aivasov, returned to Rome at the end of the month.

On the night of Aug. 30, 1980, Mr. Agca met Mr. Celik and another Gray Wolf associate named Abdullah Catli—a lieutenant of the Godfather, Mr. Ugurlu—near the Turkish border post at Kapikule. Mr. Catli gave him a counterfeit passport, regularly stamped, in the name of Faruk Ozgun, and Mr. Agca boarded a tourist bus for Yugoslavia.

FOR 9 MONTHS, AGCA TRAVELS IN EUROPE AND OBTAINS THE PISTOL HE WILL USE

Over the next nine months, Mr. Agca wandered back and forth across Europe, seemingly without purpose. Reportedly, he was covering his tracks. Between holiday jaunts and evenings at discos, he was setting things up "for an attack as simple as taking candy from a baby. Firing some shots at the Pope in St. Peter's Square during a public audience was laughably easy."

Almost everything up to the moment of the shooting would be virtually untraceable later: phone calls, verbal agreements, meetings on the street, in bars, homes, restaurants and railroad stations. It was in arranging for safe flight afterward that the plan broke down.

When he reached Rome in November 1980, Mr. Agca's first step was to call the Bulgarian Embassy as arranged and meet "Sotir Petrov." This was Mr. Vasilev, secretary to the military attache.

Mr. Vasilev, already told of the plans made in Sofia, was running the show in Rome. Among other things, he would take care of Mr. Agca's financial needs until the day of the shooting, five months afterward. [He is said to have spent the better part of $50,000 during that period. C.S.]

Frequent meetings in Rome

In November, December, January, April and May, Mr. Agca met frequently with Mr. Vasilev at Rome's Hotel Archimede, Doney's cafe on the Via Veneto, the Piccadilly Bar in Piazza Barberini and an apartment at 36 Via Galiani belonging to Mr. Aivasov, the "Kolev" he met in Sofia.

There, along with Mr. Aivasov and Mr. Vasilev, Mr. Agca met "Bayramic," who was Mr. Antonov, deputy director of Bulgaria's Balkan Air in Rome. All three were secret agents, but Mr. Antonov was plainly a subaltern who "took his orders from Vasilev."

[Mr. Antonov's arrest in Rome on Nov. 25, 1982, has inevitably focused public attention on him alone. Skeptics have argued that he looks a most unlikely master spy, and it now seems clear he was not, that he just happened to be caught while his superiors made their way back home. C.S.]

During one or more of Mr. Agca's meetings with these three, in January 1981, "a project was discussed to assassinate Lech Walesa," the leader of Solidarity, "if possible combining that with an attack on the Pope at the same time." Mr. Walesa was to have a private audience with the Pope during a five-day visit to Rome that month.

Walesa subplot is dropped

Mr. Agca told Judge Martella about this subplot on Dec. 29, 1982, describing Mr. Walesa's itinerary in Rome, the exterior and interior of the Hotel Vittoria where Mr. Walesa stayed, the route from there to the Casa del Pellegrino, where he also stayed, the press room for his scheduled conference. A police check some days later confirmed these details. For reasons still unclear to the Prosecutor, the Walesa project was dropped.

In December 1980, Mr. Agca had a first meeting with Mr. Celibi, the Gray Wolves' leader, in a Milan hotel room. On March 31, 1981, at the Sheraton Hotel in Zurich, a final meeting was held to "work out definitive terms, settle money questions and assign tasks." Among those present were Mr. Agca, Mr. Celik, Mr. Celibi and Mr. Celenk, the Turkish Mafia boss. It was agreed that three million deutsche marks would be made available for the operation, "provided by Bulgaria and paid over by Bekir Celenk." The money would be split three ways: a third each for Mr. Celibi, Mr. Celik and Mr. Agca.

Before that meeting, Mr. Agca had gone to Vienna, where Mr. Celik joined him. A longtime and close associate of Mr. Celenk's in "illicit affairs," Mr. Celik telephoned the Turkish Mafia boss, who instructed him to go to an Austrian arms dealer called Otto Tintner for the Browning semiautomatic pistol that Mr. Agca would use in St. Peter's Square. Proceeding to Switzerland, they entrusted the weapon to a local Gray Wolf leader named Omer Bagci, who agreed to deliver it promptly on request.

The final preparations

In April 1981, Mr. Agca returned to Rome, checked into the Hotel Torino and got back in touch with the three Bulgarians. "On Vasilev's advice, Agca then went to Perugia," where he registered at the Foreign Language School to acquire student's credentials.

Back in Rome, he met with all three Bulgarian agents "to settle the final details."

Soon afterward, he took off for a two-week holiday in Palma, Majorca. From there, he called Mr. Celibi in Frankfurt to ask if Mr. Celenk had come through with the money. Assured that the payment had been made to Mr. Celibi and Mr. Celik, Mr. Agca then called Mr. Celenk in Athens to be doubly sure. Mr. Celenk confirmed payment, and everything "was set to go." Four days later, Mr. Agca called Mr. Bagci in Switzerland and made a date to pick up the Browning at the Milan railroad station.

From Milan, Mr. Agca returned to Rome that same evening "for a scheduled meeting in Piazza Indipendenza with Vasilev and Oral Celik, who was in the city already." [On May 10, Mr. Agca and Mr. Celik each exchanged 1,000 Swiss francs for Italian lire, a couple of hours apart, at a Rome branch of the Banca Commerciale Italiana, C.S.]

"In a room at the Y.M.C.A., Vasilev showed Agca and Celik folders on the Vatican and photographs of the Pope. Then, by telephone, Vasilev reserved a room for Agca at the Pensione Iva, not far from the Vatican, for May 11.

Countdown to the shooting

"Between the afternoons of May 10 and May 13, Agca and Celik met Aivasov, Vasilev and Antonov, with whom they inspected St. Peter's Square several times. Together they went over the timing and placement and settled last-minute details on the particulars of escape and flight.

"At 1 P.M. on May 13, Agca, Celik, Aivasov and Vasilev met at the usual bar near Piazza Repubblica. Antonov was driving a blue car—perhaps an Alfa 2000—driven by Vasilev the previous day. After lunch near Piazza Barberini, the three went off in the same car to an address near Via Nomentana [where Antonov lived. C.S.]. Antonov left them and returned with a small valise containing two guns and two panic bombs for Oral Celik.

"Around 3 P.M., they drove on to the Vatican, parking in front of the Canadian Embassy in Via della Conciliazione. Together they made a final inspection of the square. Alvasov left. The other three had coffee in a nearby bar.

"Around 4 P.M. Antonov left also. Agca and Celik returned to St. Peter's Square, where Agca fired on the Pope shortly after 5 P.M."

That was when Mr. Celik was supposed to set off the panic bombs, creating confusion to cover Mr. Agca's escape. Instead, Mr. Celik fled the square. He was photographed on the run by Lowell Newton, a news editor for a Detroit television station, who saw a gun in his hand.

[Mr. Celik's failure to use the panic bombs is not explained in the Prosecutor's report. He does say, however, that Mr. Celik was Mr. Agca's best friend, "dearer to him than a brother." Mr. Celik had been sent to the scene with a gun. Some Italian investigators assume that he had orders to shoot Mr. Agca after the Pope was shot and that the panic bombs were meant to cover the killing of Mr. Agca rather than their joint escape. If so, Mr. Celik may simply have lost the nerve to carry out the order, but nobody knows for sure. C.S.]

With Mr. Celik's flight, for whatever reason, the vital last stage of the whole assassination plan—a swift exit to safe harbor for Mr. Agca and Mr. Celik—collapsed.

The plan for a sealed truck

From the time Mr. Agca first mentioned the escape plan to the judge, on Dec. 22, 1982, he "asserted repeatedly that the three Bulgarian agents in Rome had promised to get him out of St. Peter's Square in Antonov's car, and then out of Italy by TIR truck." [The letters stand for Transport International Routier. The designation is used for trucks carrying cargoes across more than one European border. By international agreement, such trucks are sealed by customs in the country of departure and may cross borders unchecked until customs clearance at their final designation. C.S.]

The TIR truck would "apparently be set up for transporting diplomat's furniture, to reach Bulgaria by way of Yugoslavia," Mr. Agca contended. The Italian police found evidence to that effect.

Just over an hour after the Pope was shot, a "Bulgarian TIR Magirus, license number CK 3572 and trailer number CE 6176, left the Bulgarian Embassy in Rome for the Yugoslav frontier." It has come in from Sofia the day before "with a banal shipment of liquors and other beverages," according to the manifest, and its return cargo—"books, crockery, personal effects and so on"—was no less banal.

'Grave suspicions'

Despite the trivial nature of both cargoes, the Bulgarian Embassy had urgently requested the TIR's free passage across Italian borders both coming and going, with customs clearance on the embassy grounds. It was the first and last time that the Bulgarian Embassy resorted to such an urgent and extravagant customs procedure.

"The exceptional nature of this operation raises grave suspicions," the State Prosecutor writes. "Our Finance Police know all too well what can happen after a TIR truck is sealed. What was so immensely important and useful in the TIR's cargo that the Bulgarian Embassy should make such unique demands for urgency—exactly on May 13, 1981?"

"We must conclude that on board that TIR truck, hidden among those personal effects, was Oral Celik."

[Whether or not this was so, there have been no reported sightings of Mr. Celik and no one has reported hearing from him, even in his own Gray Wolf circles, from that day to this, C.S.]

For the Prosecutor, "the circumstances surrounding this TIR truck are of fundamental relevance [in] giving Agca the right to be believed."

THE CORROBORATION OF AGCA'S ACCOUNT: WHY THE AUTHORITIES BELIEVE HIM

Judicial belief in Mr. Agca's confession was apparently fortified by a mass of corroborative evidence. Only the highlights are included in the Prosecutor's report, which refers to still-secret numbered documents for the rest.

The credibility of Mr. Agca's confession depends on "documents, testimony and ascertained facts" establishing that what he said proved right, and what those he accused said proved wrong.

Some of his statements were "unverifiable because of insurmountable difficulties in the investigation." Of all the rest, "only two elements could be proved to be untrue." One was that Mr. Agca mistook Mr. Vasilev's height, saying Mr. Vasilev was shorter than he. Mr. Agca is actually the shorter. The other was that Mr. Agca lied about the identity of the man photographed in flight at St. Peter's Square—not Mr. Alvasov, as he contended at first, but his intimate friend, Mr. Celik.

Otherwise, his recollections of times, places and people appear to have been borne out to a remarkable degree.

He exactly described the rooms and exteriors of the Hotel Vitosha and four other hotels he claimed to have stayed at in Sofia during the summer of 1980. His assertions about the money deposited to Mr. Celibi's account in Frankfurt were established as "a certainty"; the deposit was made while Mr. Agca was in Palma.

All those he said were his collaborators turned out to have been where he said they were at the crucial times between July 1980 and May 1981. Mr. Celik was the only one who could not be found for interrogation, but all the others perfectly matched his detailed descriptions in physical features and personal habits. [Mr. Vasilev's height was his sole error, C.S.]

The description of Antonov

His accuracy in describing Mr. Antonov is particularly noteworthy. He described an eye defect of Mr. Antonov and his constant use of glasses to drive. He said he drove a Fiat 124 and occasionally a blue Peugeot, called his wife Rosy and had one child of 10, collected miniature liquor bottles as a hobby, loved flowers and often left some in the car, liked pop music, smoked cigarettes heavily and sometimes Havana cigars, disliked walking because of a tendency to fatigue and breathing difficulties, had a taste for whisky and spoke "a little English," although far less well than Mr. Vasilev and Mr. Aivasov.

Under questioning in prison, Mr. Antonov confirmed every one of these details himself. Even the shops he frequented to buy the miniature liquor bottles were found to be where Mr. Agca said they were. [The car he drove, although a Russian-made Lada, had the body of a Fiat 124. His admission that he spoke some English—and could therefore have communicated with Mr. Agca in that language—shattered a major Bulgarian argument in his defense, which was that he did not speak English, C.S.]

In addition, Mr. Agca "provided the location and description of Antonov's apartment, its contents, the street, the trees, the view from the windows, the floor of the building, the buildings opposite."

The details were correct.

Bulgarians' alibis rejected

The alibis cited by the Bulgarian authorities for both Mr. Antonov and his wife, Rossica, turned out to be useless "It is certain and ascertained that Rossica did not leave Italy" on the decisive days in May when she claimed to have been in Sofia, the Prosecutor states. Mr. Antonov's alibi "for the afternoon of May 13" could not be verified either.

Although Mr. Agca's general descriptions of the other two Bulgarians were harder to check—Judge Martella could question them only once, in Sofia, with a dozen Bulgarian officials present—they proved no less accurate.

Mr. Alvasov's passport showed that he was in Sofia when Mr. Agca claimed to have met him as "Kolev" "between the end of July and the second half of August 1980." Mr. Agca had described his features down to "the state of his dentures." He said Mr. Alvasov did not smoke, spoke good Italian and drove a Fiat 124. He referred to the presence of Mr. Alvasov's family in the Via Galiani apartment that May. He described the built-in wardrobe and large mirror in the hall, a desk in a room to the side, the rug in the dining room, the details of the bathroom. And he gave Mr. Alvasov's unlisted phone number, 327-2629—which existed despite insistent Bulgarian claims to the contrary.

"All this corresponds to the truth," the Prosecutor says, adding: "Alvasov's alibi for May 11, 12 and 13, 1981, has not only proved unverifiable but has been denied by witnesses and incontestable documents."

Mr. Vasilev's passport "confirms his presence in Italy during the months Agca claimed to have met with him": November and December 1980, January, April and May 1981. Agca's unerring description of him, his height aside, included "a small dark wart on his left cheek." According to the Prosecutor, "the wart is not visible in photographs." He added, "Only somebody who saw him face to face could notice it."

Particulars on Mr. Celenk, the Turkish Mafia boss, were equally precise. His passport showed that he had been in Sofia between late July and early August 1980, as Mr. Agca asserted, and in Switzerland on March 31, 1981, and in Athens when Mr. Agca claimed to have phoned him there early in May.

Among other characteristics described correctly by Mr. Agca were Mr. Celenk's liking for nightclubs and gambling casinos, a cigarette habit and "a specific way of walking, as if he had a slight limp in his right leg."

Mr. Agca's account of Mr. Celenk was fortified unwillingly by the Turkish wheeler-dealer living in Munich, Omer Mersan, "who—like so many others—only after infinite denials, ended by confirming various points Agca had made."

Details on the others

Among these was Mr. Mersan's relationship with Mr. Celenk. Arrested in Munich at the end of 1983 on Judge Martella's request, Mr. Mersan was extradited to Italy on charges of having given "false testimony," largely about Mr. Celenk. After correcting it, he was shipped back to Germany. Despite his "conspicuous reticence," he had admitted by then to knowing Mr. Celenk for years and lying about it "to safeguard Celenk from any possible connection to Agca."

Judging from what he said, the State Prosecutor says, "Agca would seem to have told the truth about what happened in Sofia, since Mersan also admitted that he had been authorized by Abuzer Ugurlu to give Agca money there."

The Gray Wolf leader in Germany, Mr. Celibi, was also obliged in the end to admit his special "business connections" with Mr. Celenk. Arrested and extradited to Italy in October 1982, he appears to have admitted little more under interrogation in prison. Faced with the testimony of other witnesses, however, he was forced to confirm his meeting with Mr. Agca in Milan in December 1980, and witnesses have placed him at the gathering in Zurich the following March 31, with Mr. Agca, Mr. Celik and Mr. Celenk.

The Gray Wolf entrusted with Mr. Agca's Browning pistol in Switzerland, Mr. Bagci, has been imprisoned in Italy since his extradition in June 1982. He has confessed to keeping the gun in storage when Mr. Agca said he did and delivering it to Mr. Agca in Milan on May 9, 1981.

The prospects for trials

State Prosecutor Albano has now requested the formal indictment and trial of all these people: the Bulgarians, Sergei I. Antonov, Todor S. Aivasov and Zhelyo K. Vasilev; the Turkish Mafia boss, Bekir Celenk; Omer Mersan, his longtime business acquaintance; the Gray Wolf people, Musa Serdar Celibi, Omer Bagci and Oral Celik; and Mr. Agca himself.

Four would probably have to be tried in absentia. Mr. Aivasov and Mr. Vasilev, who had diplomatic immunity in Rome, cannot be extradited from Bulgaria. The extradition of Mr. Celenk from Bulgaria, where he has been since October 1982, seems unlikely, although the Prosecutor has asked for it. Mr. Celik has vanished.

Along with the other defendants now in prison, Mr. Agca would have to stand trial again, this time on charges of "importing weapons into Italy."

Despite widespread press reports, Mr. Agca will probably not have to face the curious charge of "self-slander and slander" that arose from his brief retraction of some testimony that had already been corroborated. Judge Martella sent him a communication that he was under investigation for such a charge last September in regard to certain confusing allegations of his in the Lech Walesa plot. The State Prosecutor has recommended that the charge be dropped.

Prosecutor Albano's report ends with an unusual tribute to Judge Martella, whose patient, meticulous and professionally dedicated labor "made it possible for me to perceive the logical design, the causes, the objectives, the moral miseries and penal responsibilities in this extraordinary case."

"No amount of praise could repay the Judge for the immense labor and spiritual solitude imposed upon him," it says.

LEGAL PROCESS ITALY USED

Under Italy's judicial process the State Prosecutor's office worked closely with an investigating magistrate to determine whether or not the evidence gathered was sufficient to warrant trial. The prosecutor makes his recommendation one way or the other when the investigation is done, and the investigating magistrate then makes the final ruling.

In the case of the shooting of the Pope, State Prosecutor Antonio Albano has been in close consultation with Judge Ilario Martella since the investigation began in November 1981 and has consistently supported the judge's position.

His support was reflected in five rulings by various judicial authorities rejecting appeals for the release of the Bulgarian prisoner Sergei I. Antonov.

He disagreed publicly with Judge Martella only once, last December, when the judge agreed to transfer Mr. Antonov from prison to house arrest for health reasons. Mr. Antonov had been refusing food and had lost about 15 pounds. On the day of the transfer, Mr. Albano appealed to the Tribunal of Liberty for Mr. Antonov's swift return to prison "because of the gravity of the charges against him" and as a "pretrial precaution." He feared Mr. Antonov might otherwise escape or be murdered, he said.

The Tribunal of Liberty ruled in the prosecutor's favor, and Italy's Supreme Court upheld this ruling, whereupon Mr. Antonov was sent back to prison.

While the prosecutor's recommendation is not binding on Judge Martella, most people take it for granted that his report faithfully reflects the judge's views.—C.S.

MAJOR EVENTS IN REPORT

These are the major events cited in the Italian State Prosecutor's report on the shooting of the Pope.

1979: Feb. 1—Agca takes part in murder of Abdl Ipekci, a Turkish editor. June—Agca is arrested in Turkey. October—Agca threatens to identify his accomplices. November—Agca escapes from Turkish prison.

1980: July—Agca goes from Turkey to Bulgaria, and Agca and Bulgarians start to plan assassination. Aug. 30—Agca starts nearly nine months of travel around Europe, presumably trying to cover his tracks.

1981: March 31—Agca has final meeting in Zurich with co-conspirators to settle money questions and assign tasks. May 9—Agca goes to Milan to pick up pistol. May 13—Pope is shot. July—Agca announces he plans a hunger strike in December, thus warning his sponsors that he expects them to arrange for his freedom.

1982: May—Agca starts to confess. December—Agca tells of plans for escape after assassination.

1984: May 8—State Prosecutor's report is filed in court.

THE PEOPLE IN THE REPORT

These are the people mentioned in the report on the Italian investigation into the attempt to assassinate Pope John Paul II and what the report says their roles were:

Mehmet Ali Agca—Turk, convicted of shooting the Pope, indictment requested.

Todor S. Aivasov—Bulgarian, indictment requested.

Sergei L. Antonov—Bulgarian, indictment requested.

Omer Bagci—Turk, Gray Wolf in Switzerland with whom Agca stored the rifle used to shoot the Pope, indictment requested.

Bayramic—alias for Antonov.

Abdullah Catli—Turk, a Gray Wolf leader.

Bekir Celenk—Turk, underworld leader, indictment requested.

Musa Serdar Celibi—Turk, Gray Wolf leader, indictment requested.

Oral Celik—Turk, friend of Agca, a Gray Wolf leader, indictment requested.

Abdi Ipekci—Turk, editor murdered by Agca in 1979.

Sotir Kolev—alias for Aivasov.

Omer Mersan—Turk, indictment requested, business associate of Celenk and Agca's first contact in Bulgaria after escaping from prison in Turkey.

Faruk Osgun—alias for Agca.

Sotir Petrov—alias for Vasilev.

Yoginder Singh—alias for Agca.

Otto Tintner—Arms dealer in Vienna who provided the weapon Agca used.

Abuser Ugurlu—Turk, underworld leader.

Zhelyo K. Vasilev—Bulgarian, indictment requested.●

(Conclusion of routine morning business transacted during the day and statements submitted for the RECORD:)

ORDER HOLDING AT THE DESK H.R. 5365

Mr. STEVENS. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 5365, a bill to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER DISCHARGING LABOR COMMITTEE OF H.R. 2878

Mr. STEVENS. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of H.R. 2878, a bill to amend and extend the Library Services and Construction Act, and that it be placed on the Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR STAR PRINT OF S. 2766

Mr. STEVENS. Mr. President, I ask unanimous consent that S. 2766, a bill to amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor-piercing ammunition, be star printed to reflect the following changes:

On page 2, strike out line 16 and insert in lieu thereof the following:

Code is amended—

(a) by striking out "and" at the end of paragraph (5);

(b) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(c) by adding after paragraph (6) the following:

On page 3, line 12, strike out "is" and insert in lieu thereof "are".

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO HOLD AT THE DESK H.R. 4308

Mr. STEVENS. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 4308, a bill granting the consent of Congress to an interstate compact for the preparation of a feasibility study for the development of a system of high-speed intercity rail passenger service, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY

Mr. STEVENS. Mr. President, is there an order for convening later today?

The PRESIDING OFFICER. No, there is not.

ORDER FOR RECESS UNTIL 1 P.M. TODAY

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate stands in recess today it convene at the hour of 1 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, after the time for the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business not to exceed 1:30 p.m. with statements limited therein to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE SCHEDULE

Mr. STEVENS. Mr. President, let me state for the membership that following routine morning business, it will be the intention of the leadership to turn to any of the following appropriations bills hopefully under time agreements: the first would be the energy and water appropriations bill, H.R. 5653; the second, the Department of Housing and Urban Development appropriations bill, H.R. 5713; and the last, the legislative appropriations bill, H.R. 5753.

Senators should be on notice that we will take up one of those bills and I hope all three of them this afternoon and that there will be a possibility of rollcall votes during the session this afternoon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, it has been called to my attention that there is an agreement to turn to the math-science bill following the disposition of the appropriations bills that are available for consideration by the Senate following consultation with the distinguished Democratic leader. It is the intention of the majority leader to consider that matter and hopefully turn to it this afternoon following consideration of these appropriations bills. These appropriations bills should be disposed of rather quickly, according to the information we have received.

Mr. President, I stand corrected. The existing order may require the consideration of the math-science bill before the appropriation bills. It is our intention to change that if possible, and turn to the appropriations bills to accommodate departing Senators before the math-science bill.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, while Senator BYRD is still on the floor, and Senator STEVENS, because of the urgent importance of the summer jobs program with schools letting out next week, Senator ALAN DIXON and I have been working on the supplemental program that covers 16,000 jobs in Chicago. In addition, and independently, the President has supported legislation for a reduced level of wages at $2.50. I presume that matter, not having been fully subject to hearings would, not be able to be taken care of before the summer months this year. But if the other bill which is part of the supplemental, could be taken care of by at the latest Tuesday morning, would there still be time then to clear it through, cover that legislation which would authorize summer jobs across the country, 16,000 jobs of which would be vital for the city of Chicago, and we would be able to clear that before we recess for the convention to be held by the Democratic Party?

Mr. STEVENS. Mr. President, I say to my good friend from Illinois that the majority leader earlier today, I believe made a statement concerning the intention of the leadership with regard to the supplemental appropriations bill which the Senator from Illinois has mentioned as early as possible the first of next week, that these other items, the appropriations bills, have been pending. It is the intention that the leadership would take those up tomorrow, and the first of the week turn to the supplemental appropriations bill that is awaiting action. It is our hope that can be cleared for its return to the House as soon as possible the first part of next week. I am hopeful that we will be able to meet the schedule that the Senator from Illinois has indicated. It is so critical to his State, and it has been brought to our attention by the senior Senator and the junior Senator from Illinois.

Mr. PERCY. I thank the Senator very much indeed. It now being 4:12 a.m. on Thursday morning, I believe it was yesterday, Wednesday morning, that Senator BAKER took that matter up. Another day has passed while we have been in steady session. But I believe it is my understanding also that Senator BAKER had that in mind.

Mr. STEVENS. The Senator is correct.

Mr. PERCY. He assured us that he could get it done, but we have now had another all-night session. By Tuesday morning I think would mean that we could have the conference, get it done, and put those young people to work which is quite vital.

I thank the acting majority leader very much indeed for his assurance in that regard.

Mr. STEVENS. I thank the Senator from Illinois for his persistence in this matter.

RECESS UNTIL 1 P.M. TODAY

Mr. STEVENS. Mr. President, if there be nothing further to come before the Senate, I move in accordance with the previous order that the Senate stand in recess until 1 p.m. today.

The motion was agreed to; and, at 4:13 a.m., the Senate recessed until today Thursday, June 21, 1984, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate, June 20, 1984:

IN THE AIR FORCE

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Gen. James P. Mullins, 012-24-1664FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Earl T. O'Loughlin, 382-26-5822FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Marc C. Reynolds, 504-16-1608FR, U.S. Air Force.

EXTENSIONS OF REMARKS

HUMAN RIGHTS IN CHILE IN 1983

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● **Mr. ACKERMAN.** Mr. Speaker, as a result of my involvement in the effort to seek justice in the case of the recently deceased Nazi war criminal Walter Rauff, I have become increasingly concerned about the human rights situation in Chile. Unfortunately, in the past year we have witnessed a further deterioration of human rights conditions in that country. At the same time, there have been signals from the administration regarding its desire to restore military ties with Chile. Any individuals who takes the time to read the reports on Chile of various human rights groups will get a chilling look at the brutality and oppression meted out by the Pinochet regime. At this time, I would like to commend to my colleagues a study written by David B. Lawrenz at the Council on Hemispheric Affairs, which sheds additional light on the human rights abuses in Chile today.

The article follows:

HUMAN RIGHTS IN CHILE IN 1983

(By David B. Lawrenz)

In the aftermath of two national demonstrations in Chile, on March 27 and May 11, President Gen. Augusto Pinochet seems determined to repeat a tragic pattern of human rights violations and violent repression.

The military regime mobilized riot police armed with tear gas and water cannons to preserve peace during the March rally, which had the support of a broad range of social sectors. At least eight persons were killed throughout the country during the protest actions, and over 400 people were arrested. Security forces reacted with near-equal repression on May 11, during a day of national protest organized by the National Workers Command; one person was killed, 22 were wounded, and 169 were arrested.

The military government also has severely restricted the press in recent weeks. On the eve of the March 27 demonstration, the regime imposed prior censorship on four opposition publications, and warned media outlets to "refrain from stressing facts or reporting on behavior that can induce, lead to or favor the disturbance of public order." The latest official sanction against the Chilean press came in mid-May, when the regime issued a decree that prohibits reporting on an individual's private life "if it causes material or moral damage to him." Many observers feel that this restriction is aimed at preventing further domestic coverage of allegations that Gen. Pinochet was involved in fraudulent land purchases in 1981.

The aging Chilean dictator has turned a deaf ear to internal critics of the military government, including the Catholic Church, labor organizations and political parties, who demand an accelerated transition to democratic rule. The country's political stalemate, and Pinochet's adamant refusal to depart from a time table for a political opening that would leave him in power until the end of the decade, are, in part, to blame for the series of terrorist bombings and attacks on police stations that have occurred this year.

In reaction to this surge of leftist violence, the ruling military junta has proposed an anti-terrorist act that would reenact several provisions of the "state of emergency" that was lifted in August 1983. Under the proposed law, authorities conducting investigations of terrorist activities—which are defined in very broad and vague terms—would be allowed to make arrests, as well as to search for and seize evidence, without a judicial warrant, "in cases in which the request for a warrant would jeopardize the success of the operation." As well, the act would empower courts to request that accused persons be held incommunicado for up to ten days, and to call for the interception and inspection of private mail.

On May 25, eight days after the anti-terrorist act was made public, Gen. Pinochet told a rally of government supporters that "this new law will allow us to use the strong hand you demand, and we will use it."

International pressure has mounted against Pinochet since the beginning of the year. The foreign ministers of the European Economic Community recently condemned the regime's stepped up press restrictions and heavy-handedness during the March rallies.

Unfortunately, Reagan administration officials seem intent on maintaining a two-track policy toward Chile, one that encourages respect for human rights and the restoration of an elected civilian government while expressing skepticism about the continued effectiveness of the existing prohibition against U.S. military assistance to that country.

In early March, U.S. Ambassador James Theberge criticized Chile's "political stagnation," and called for the resumption of the dialogue begun last September between the military and democratic political parties. More recently, the State Department raised objections to the April 11 detention of Juan Pablo Cardenas, director of the opposition magazine Analisis.

But statements made on April 12 by James H. Michel, deputy assistant secretary of state for inter-American affairs, undermined these positive signs of growing U.S. impatience with the intransigence of the Pinochet regime. Michel bluntly stated that "the absense of a foreign military and security assistance relationship [with Chile] may be a strong symbolic statement, but it is not clear that a policy of denial is an effective way of encouraging a transition to democracy." Michel did not elaborate upon what leverage the U.S. conceivably would gain with the Chilean regime by doing away with what he termed the "legislative constraints" of the Chilean certification requirements.

The following report details only some of the most significant human rights violations committed by the Pinochet regime during the past year. It is clear from this record that in 1983, the Reagan administration's "quiet diplomacy" had no noticeable impact in lessening the Chilean military government's violation of its citizens' human rights and civil guarantees. And while there is little reason to believe that the inconsistent U.S. criticism of the Pinochet regime in 1983 altered the behavior of the Chilean government, there is no indication whatsoever that ending the U.S. ban against military assistance will improve conditions in that country.

The Chilean people paid dearly in 1983 for expressing their opposition to the military government. The Pinochet regime's efforts to combat a growing popular opposition movement, composed of multi-party political coalitions, labor unions, the Catholic Church, human rights organizations, and other sectors of the population which united to hold monthly days of national protest, produced a rapidly mounting toll of security force killings, arbitrary arrests, torture of detainees and internal banishment. Not since the 1973-1974 post-coup era has official repression and the violation of human rights reached the levels of the past year.

Throughout 1983 the Chilean government sought to keep a tight lid on labor unions and their most active leaders, who rallied to transform proposed union strikes into broad-based popular protests. Beginning in April 1983, when the Congress of the 23,000-member Confederation of Copper Workers [CTC] approved a proposal to call for a national strike on May 11, labor unions provided much of the leadership and support for 1983's eight days on national protest, held monthly starting that month.

On May 1, plain-clothes police violently disbanded a gathering of union groups in Santiago's Plaza de Artesanos, leading the national Command of Workers [CNS], created one month earlier by CTC and opposition union leaders, to switch their national strike to what became a Day of National Protest. One day after the June 14 Second Day of National Protest, which the CTC again helped to organize, the government jailed Rodolfo Seguel, who had recently finished serving a second, 12-day September jail term for allegedly slandering Gen. Pinochet. Seguel was to lead the march, but he was again arrested along with five other union leaders at the start of the planned course. These arrests touched off a spontaneous sit-in demonstration in which police arrested an additional 100 people.

One of the year's most harsh government attempts to discourage labor activism came on October 10, when unidentified armed civilians brutally attacked Raul Montecinos, a high-ranking CTC member. Seguel denounced this aggression and pointed out the similarity between it and the February 1982 assassination of Chilean union leader Tucapel Jimenez.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

In an attempt to deal with rising popular opposition, the Chilean security forces made a staggering number of arbitrary arrests during the first five Days of National Protest. The Fourth Day of National Protest, held on August 11, witnessed the highest level of security force violence against demonstrators up to that time and resulted in the largest number of arbitrary, short-term arrests. The most severe brutality appears to have been in Santiago, where the government called in 18,000 air force troops to augment the carabineros (military police) forces. In two days of protests in Santiago, On August 11 and 12, 24 people were killed, 100 were wounded by gunshots, and over 1,000 persons were detained. The Chilean Commission on Human Rights [CCDH] reported that many wounded citizens did not seek medical attention at emergency stations for fear of being arrested. Medical assistance was extremely inadequate during the protests in the capital city. As a result of the government's 6:30 curfew in Santiago, people seeking medical care, even some carrying white flags, reportedly were attacked by security forces. The CCDH also stated that police randomly attacked unarmed individuals in their homes, where a number of the killings took place.

CCDH figures reveal that in the first nine months of 1983, security forces made 482 individual arrests, and detained 8,866 people in collective sweeps. During the same period (January-September) of 1982, there were 263 individual and 999 mass arrests.

The alarming number of persons arrested in mass detentions in the first nine months of 1983 was an indication of the government's disregard for citizens' rights during the National Protests. The majority of these incidents involved short-term detentions, usually overnight, and served little purpose other than to discourage and intimidate demonstrators. The number of people killed during the National Protests reached 70 by November. The three National Protests held in October, November and December of 1983 were more orderly, involved fewer clashes between security forces and protesters, and resulted in less than 70 arrests.

While security forces were extensively involved in arbitrary collective arrests during the National Protests, significantly, they also made a large number of individual arrests of persons singled out as political activists or prominent opposition figures. In these cases, Chilean authorities used decrees issued in 1981 to justify their actions. Under Transitory Act 24 of the 1981 military Constitution, detainees suspected of terrorism may be held for up to 20 days. Moreover, the 1981 Constitution's "exceptional state of emergency" provision gives the security forces free reign to apply the 20-day detention period to political activists arrested for minor public disturbances. The "exceptional state of emergency" has been in effect almost continuously over the last three years. Transitory Act 24 also empowers government authorities to hold suspected "terrorists" in "places other than jails," which generally means that these persons are transferred to secret National Intelligence Center [CNI] holding locations.

Judging from the number of individual arrests that occurred during the first five National Protests, and subsequent allegations of those detained, the CNI seems to have routinely subjected these purported "terrorists" to torture at its secret facilities. Over the course of the first four National Protests, the number of persons tortured following arrests made during demonstrations rose from 3 in May to 150 in July. A total of 280 torture cases were reported in the first nine months of 1983.

In late 1982, the Chilean government finally addressed the question of citizens living in political exile abroad by establishing an official commission to review the problem and authorize the return of certain exiles. No official figures exist on the Chilean exile population, but government representatives have estimated the total to be between 11,000 and 30,000. The CCDH cites a much higher figure of 200,000 political exiles. In testimony before a Congressional hearing on human rights in the Southern Cone on October 18, 1983, James Michel perhaps understated the case by claiming that "perhaps as many as 7,000 exiles, plus [their] families, remain outside Chile.

Although Gen. Pinochet dissolved the exile commission shortly after establishing it, his government has since published ten lists containing the names of persons permitted to return to Chile. Initially, these lists did not include exiled political leaders, and opposition spokesmen denounced the entire program as merely an attempt to improve Pinochet's international image. Bowing to domestic and international pressures, the government published long lists, with over 1,000 names each, in August and September. These lists included the names of two well-known exiles, CCDH president Jaime Castillo and labor leader Manuel Bustos. Despite the return of its president, the CCDH remained highly critical of Pinochet's repatriation measures, pointing out that the government padded the official lists by adding to them the names of deceased persons as well as Chileans who left the country for non-political reasons. The government permitted 2,500 exiles to return before ending the publication of the monthly lists in October 1983.

Although Gen. Pinochet maintains that his government does not censor the press, Chilean authorities have broad powers to punish critics, and the media is hesitant to report on matters the government considers sensitive, particularly the growth of the opposition movement. During the past year, the military concentrated on limiting press coverage of the Days of National Protest. In May, the regime suspended news broadcasts of the Radio Cooperativa station for 13 days because it had reported on the copper miners' strike. During the July 14 Second Day of National Protest, the regime prohibited the country's media outlets from discussing the day's demostrations, limiting reporting to "descriptions of vandalism." Prior to the truck workers' strike on June 23, government officials warned newspapr editors that all coverage of the work stoppage would be prohibited.

Chilean authorities also acted against individual journalists, often arresting and charging them with slander. Analysis director Juan Pablo Cardenas, who was arrested on September 27 on that charge, was later released on jail following court intervention on his behalf. During the August national protest, Santiago police arrested a Spanish journalist, Santiago Aroca of Tiempo magazine, while he was photographing clashes between the police and civilians in the capital city. A French television team reported that they were required by the security forces to destroy their film of street demonstrations on the same day.●

TRIBUTE TO THE MERCHANT MARINERS OF D-DAY

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Ms. MIKULSKI. Mr. Speaker, I would like to take this opportunity to pay tribute to all members of the merchant marine who participated in the invasion of Normandy 40 years ago. The merchant mariners were an integral part of the allied force's endeavor and their heroic actions contributed to the invasion's success. It is unfortunate that this participation has not received the public recognition that it deserves. Pete Earley of the Washington Post clarifies this point in his article, "Merchant Mariners' Saga At D-Day Remains Unsung." The article follows:

MERCHANT MARINERS' SAGA AT D-DAY REMAINS UNSUNG

(By Pete Earley)

Abe Rapaport calls himself one of the "forgotten men" of D-Day.

He was at Omaha Beach during the intense fighting in June, 1944, and saw several of his comrades killed.

But Rapaport wasn't part of any military force, and neither he nor his colleagues were recognized yesterday during the 40th anniversary celebration of the Normandy invasion, even though Allied commanders once described their actions as a "heroic and invaluable service."

Rapaport was in the merchant marine during the war, working for an American steamship company under the direction of the War Shipping Administration. With about 800 other seamen, Rapaport volunteered during the invasion to sail old or damaged ships from Britain into the shallow waters along the Normandy coast, where they were scuttled to form a breakwater.

The merchant seamen used the ships and prefabricated piers that they towed across the English Channel to form two harbors, called Mulberries. These were needed to land troops and supplies because the Germans had heavily fortified the existing major ports.

No one knows how many merchant mariners died during the operation—the military didn't record civilian casualties. But Rapaport, president and historian of the U.S. Merchant Marine Veterans of World War II, estimates that at least 40 men were killed.

Frank Braynard, curator of the American Merchant Marine Museum at the Merchant Marine Academy on Long Island, describes the seamen's D-Day service as a lost chapter in American history. "Most people don't realize that they participated in the invasion," he said.

The 168,000 men, who served in the merchant marine during the war were primarily responsible for delivering supplies to U.S. troops overseas, Braynard said. More than 6,000 of them were killed, according to steamship company records; many were victims of German U-boats.

Percentage-wise, the merchant mariners' wartime casualty rate was exceeded only by the Marines', according to Marty Skrocki of the Merchant Marine Academy.

Rapaport arrived in Britain on a supply ship a few days before D-Day. He said he was recruited immediately by the British Admiralty for a mission described only as "extremely dangerous but important."

Rapaport, who was 29, didn't know he was headed for Omaha Beach until after he left port. His 20-year-old ship, the West Nilus, was scuttled the morning of June 7, 1944, about a half mile off Omaha Beach in water 15 to 18 feet deep.

The most dangerous part of the voyage, he said, was when the skeleton crew abandoned ship, climbing into small boats that would take them to Navy vessels. "It was like shooting fish in a rain barrel," he said of the opportunity this presented to the German batteries on the shore.

Rapaport volunteered for a second trip four days later, and the fighting along the coast was even more intense, he said.

World War II mariners held a reunion last weekend in Seal Beach, Calif., but Rapaport said that most of the 6,000 members of the veterans' group "don't feel like we have much to celebrate."

"We're proud of the role that we played during the war, especially at D-Day," he said, "but we've been betrayed by our government."

In January, 1982, the Pentagon denied an AFL-CIO request to give World War II mariners the same benefits that military veterans receive.

The Pentagon praised the merchant seaman for "meritorious performance . . . critical to the success of the war effort," but said they didn't meet the qualifications set by Congress for veterans' benefits. Among other things, they weren't required to enter combat zones, could resign, and weren't under the military justice code, the Pentagon said.

The decision outraged many mariners, according to Rapaport, who was decorated for bravery six times during the war by the War Shipping Administration. Many of the merchant seamen had been told by their draft boards to stay on with private shipping companies to transport military supplies, he said. "Some of our men also were prisoners of war," Rapaport said.

The Pentagon is reviewing a second petition that would extend veterans' benefits to seamen who participated in military operations, but Rapaport isn't optimistic.

"We were promised in 1944 by . . . the War Shipping Administration that, and I quote, 'When the national security permits the full story of your exploits to be told, it will be possible to accord you the public recognition you so well deserve.'

"Well, we're still waiting," said Rapaport, 69, "and none of us is getting any younger."●

TORTURED IN URUGUAY

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. BARNES. Mr. Speaker, I want to call to my colleagues' attention a recent editorial in the New York Times concerning the continuing problem of torture in Uruguay's prisons. The editorial focuses on the case of Hiber Contreris, a minister who was tortured into confessing, given a mock trial, and sentenced to 20 years for supposed subversive activities. Amnesty International has adopted Mr. Contreris as a prisoner of conscience. I am among those who have pressed for his release. I must say that neither the Uruguayan Government nor our own administration have given me very satisfactory answers to the question of why Mr. Contreris is still being held.

Mr. Speaker, Mr. Contreris ought to be released forthwith. Our own Government ought to be applying some real pressure to achieve that. And we should not be talking about military aid to Uruguay while Mr. Contreris and others like him remain in prison and subject to torture.

The editorial referred to follows:

TORTURED IN URUGUAY

Torture is the dirty little secret of modern politics, and typically, victims are punished not only for real or imagined crimes, but also because they know the secret. They die, or "disappear," or languish in jail for years to prevent their bearing witness against the degrading use of technology to smash bodies and bend minds.

In Uruguay, for example, why else has Hiber Conteris been denied a fair trial in open court? A 50-year-old Methodist minister, Mr. Conteris, was arrested in 1976 on his return from a church conference in Europe. He was charged with "assault upon the Constitution" and "criminal" association with suspect subversives. To secure a confession, he was hung from the wrist, burned and submerged in filthy sewage.

After a "trial," in which he was forbidden to choose his own lawyer, he was sentenced to 15 years, plus five years for "security."

Satisfied that he never advocated or engaged in violence, Amnesty International has adopted Mr. Conteris as a prisoner of conscience. When 26 United States Senators and 81 Congressmen signed a plea in his behalf, Uruguay's only response was to repeat the vague charges against him.

His plight is commonplace in Uruguay, long a stable democracy but under military rule since 1973. In a country of 3 million, there are 800 political prisoners—the highest ratio anywhere. Torture routinely occurs immediately after detention. At least 96 prisoners have died in custody.

The armed forces originally seized power to subdue a violent, lawless leftist insurgency. That threat ebbed long ago, and elections are supposed to be held in November. But the best-known opposition leader, Wilson Ferreira Aldunate, has been denied a chance to participate. His announcement that he plans to return from Argentine exile has already prompted a fresh round of arrests.

So the miserable cycle threatens to continue: detention, torture, fake trial, prolonged imprisonment. A high price for the dirty little secret.●

ARE DOCTORS OVERPAID?

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. PHILIP M. CRANE. Mr. Speaker, the ongoing national debate on ways to improve the delivery of cost-effective health care services for all citizens is most worthwhile. Contrary to what many believed would happen when medicare was first enacted nearly 20 years ago, Government intervention in the health care field has caused the Nation's medical bill to soar, not drop. I believe we must strengthen the time-honored concept of privately insured, fee for service arrangements for reimbursement of doctors, nurses, and hospital services. Such controversial medicare proposals as mandatory physician assignments and fee freezes would crush the principle of free market competition, reduce the willingness of doctors to treat medicare patients, and represent an unnatural Government barrier between the patient and his physician.

The issue of expensive doctor fees was recently addressed in Private Practice magazine by a doctor who worries if his son, a third-year medical student, will be able to afford the high costs of medical education and malpractice insurance. The author, Dr. Fred L. King, highlights the fears of many in the medical community who wonder if future costs will be so prohibitively expensive as to terminate the once beloved American institution known as the private physician. I commend this article to the attention of my colleagues.

[From Private Practice, April 1984]

ARE DOCTORS OVERPAID?

(By Dr. Fred L. King)

The other day I overheard a conversation between two men at the supermarket. One remarked that he thought it was ridiculous that he had paid $110 per day for a hospital room during a recent hospital stay. The other thought doctors were getting rich by charging $20 for an office call that only lasted 20 minutes. They raised the question: Are doctors overpaid?

A much more important question is: Will doctors be overpaid in the future? It is a bit late to do anything about the past, but it would be good to look at the future. I have a son who is a third-year student in the osteopathic medical school I attended 25 years ago. His tuition payments alone are $13,250 per year compared to the $750 per year I paid during 1957 to 1961. In addition, there are books and a myriad of other expenses that a medical education requires. Medical school is expensive. Many of my son's classmates will be $80,000 in debt upon graduation, not including the cost of undergraduate school.

EDUCATIONAL COSTS

It appears that Americans, including our esteemed congressmen, never think of the cost of a medical education. A young man or young woman who chooses to become a physician must invest a considerable sum just to obtain a medical degree. It would be tempting to compare the lost income with a highly paid athlete who may never have been to college at all, but let us be fair. What income is lost by going to college? Consider the income of a factory worker during the time a medical student is in school. It is reasonable to assume that practically all students today have spent at least four years to obtain an undergraduate premedical degree for entrance to either an allopathic or osteopathic school, and some students have more education than that. In addition, there are four years of medical school and for most physicians an internship of a year and three or four years of residency. That means the student has been in school for about 12 years. During those 12 years, the factory worker has been making money.

I heard not long ago that auto workers now make about $26 per hour; in 12 years that's more than $500,000. Most physicians fresh from a residency are already about $600,000 behind.

Perhaps my son will recoup the loss by huge fees when he practices. He has determined to become an orthopedic surgeon and such specialists seem to be fairly well paid. But the factory worker is still better off, it seems to me. My son is highly intelligent and mighty fussy about doing a perfect job in everything he does, but I suspect he will be sued by an unhappy patient eventually; it is the mood of our society. And he will probably pay at least $50,000 per year for liability insurance. He will have to earn twice what he owes plus interest to pay any debts he has. No part of his educational costs is tax deductible, except interest. He will be rewarded eventually by being placed in a 50 percent tax bracket for working longer and harder and investing his time, money and energy in an education which makes him more valuable to society. He will eventually make a larger income than an auto worker, but it will be because he works 60 or 70 hours a week instead of 40, and the IRS will be waiting for the surplus.

My son will probably not receive the rewards he deserves from the great financial and emotional investment he is making in a medical education. The liberal, socialistic trends of our country will prevent that. But consider what reforms in our laws would be reasonable to give doctors an equal break with the rest of society in a country that was so successfully built on a free enterprise system.

LEGISLATIVE REFORMS

First, everyone, physicians included, deserves a flat-rate income tax schedule. Next, the ridiculous malpractice liability situation in America needs reform. A socialistic approach of no-fault insurance is certainly not the answer. The only approach which will correct the problem is access to the courts for physicians who have been harassed with ungrounded suits so they may countersue for malicious prosecution of civil suits. Physicians would then only have to pay for their mistakes, not for bad results where they were not at fault.

I cannot promise my son that such reforms will come about. In fact, it seems only a matter of time before physicians will be forced to work for the government for a fee congressmen decide physicians should be paid, and even that will be heavily taxed. Whatever the government lets my son keep, he won't be overpaid.●

SAYING "NO" TO THE NED

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. OTTINGER. Mr. Speaker, the alleged use of National Endowment for Democracy [NED] funds to influence the recent Presidential elections in Panama spurred the House of Representatives to strike from the authorization bill H.R. 5712, $31.3 million earmarked for the endowment for fiscal year 1985.

Statements cited in the New York Times article of May 28 which related the fears of Ambassador Briggs concerning the American Institute for Free Labor Development's questionable role in financing electoral activities in Panama were enough to result in House action blocking future funding of the NED.

I would like to present to my colleagues a memorandum on the history of the NED, prepared by Joanne Alfandre and Susan Povich of the Council on Hemispheric Affairs, with the hope that it will shed further light on the mysterious nature and intent of the NED. I also hope that the report will be of use in evaluating the possible negative ramifications of NED-financed projects in Latin America.

THE NATIONAL ENDOWMENT FOR DEMOCRACY: OPENING A PANDORA'S BOX

(A Council On Hemispheric Affairs Staff Memorandum, by Joanne Alfandre and Susan Povich, COHA Research Associates)

Allegations of improper use of funds have imperiled the future of the National Endowment for Democracy (NED), a controversial program established over a year ago with the praise of the Reagan administration to finance private-sector organizations in "democracy-building" efforts overseas.

Influenced by the damaging reports the House voted May 31 to delete the entire $31.3 million earmarked for disbursement by the United States Information Agency (USIA) to the Endowment during FY 1985. Although a Senate appropriations subcommittee approved funding for the NED by a narrow margin after a June 12 hearing, a key staff aide said the full Senate may also cut the NED monies.

The House's refusal to allocate funds for the NED stemmed from accusations that the American Institute for Free Labor Development (AIFLD) had used NED funds to help a group supporting Nicolas Ardito Barletta's victorious campaign for president in Panama. Although the U.S. ambassador in Panama, Everett Briggs, was the source of information that AIFLD contributed $20,000 to pro-Barletta unions prior to the May 6 balloting, he has not confirmed charges that the NED financed this activity.

The Endowment is the brainchild of the American Political Foundation (APF), a private group formed by U.S. politicians in 1979, which established a research team in 1982 to "examine what the United States could do to support democratic forces abroad." In December 1982 the Agency for International Development (AID) allocated $150,000 to fund the APF study, dubbed "The Democracy Program." AID later gave an additional $250,000 toward the project when anticipated private funding did not materialize. President Reagan earlier had launched the APF project in a June 1982 speech before the British Parliament.

The Reagan administration's first formal proposal for a democracy-promoting campaign abroad came in February 1983, with the announcement of Project Democracy. This White House initiative differed structurally from the project envisioned by the Democracy Program by calling for the expansion of State Department, USIA and AID exchange and training activities and the establishment of government and private programs to "promote democracy" abroad. The brutal irony of the scheme arises from the fact that the administration has been hell-bent on privatizing many governmental public-sector functions, including vital domestic social programs, while it can accept placing the business of selling values abroad under the providence of the public sector.

PROPAGANDA POTENTIAL

In its April 1983 initial report, the Democracy Program recommended incorporating the NED as a private, nonprofit entity, and proposed that the Endowment allocate USIA funds to four groups: the AFL-CIO's Free Trade Union Institute (FTUI); the national Republican and Democratic parties' International Institutes, created expressly for the NED program; and the Center for International Private Enterprise of the National Chamber Foundation, a private affiliate of the U.S. Chamber of Commerce. Although some lawmakers were skeptical about Project Democracy's potential for propagandistic overtones and rejected most of its provisions, Congress approved $18 million in fiscal year 1984 funds for the NED, enacting legislation that closely followed the Democracy Program's recommendations.

Congressional opponents of the Endowment, including Reps. Richard Ottinger (D-N.Y.) and Hank Brown (R-Colo.), are concerned about the lack of accountability of NED-financed projects carried out by these private bodies, because these activities are not subject to information disclosures guaranteed by the Freedom of Information Act. This point is particularly critical in light of the experience of a number of similar West European organizations, among them the controversial West German Adenauer Foundation, which as an ostensible private organization was not open to public accountability and was revealed to have functioned as a conduit for the channeling of CIA funds in Central America.

Critics of the NED also contend that the private organizations slated to receive Endowment funding have inadequate or the wrong kind of experience in conducting foreign affairs. In fact, the FTUI and AIFLD are the sole major NED grantee organizations that existed prior to 1983.

While the recent negative Hill vote focussed discontent on the use of NED money in the Panamanian elections, a confidential General Accounting Office (GAO) draft report released in April points out other problems in the preparation and scope of the Endowment. According to the congressional watchdog agency's finding, the Democracy Program's initial research was still incomplete when Congress hurriedly approved the NED bill in November 1983. The only areas that the APF research staff had thoroughly investigated before the NED was established pertained to strategies for pushing their project through Congress and the Endowment's administrative structure.

The GAO report notes that "in some respects, the legislative calendar may have driven the sequence of events." From the start of its research, the Program's four-member staff raced "the congressional clock in completing [its] work," having determined that an off-election year was the optimum time to implement their project successfully.

IGNORED EMBASSIES' CONCERNS

The Democracy Program's research staff consisted only of representatives from the business and labor groups and the Democratic and Republican parties later named as NED grantees. It also paid little attention to the possibility of expanding existing government and private sector institutional programs to accomplish the Endowment's planned objectives.

The GAO study also notes that the Democracy Program's final report ignored concerns expressed by a number of U.S. embassies abroad—in response to the staff's own queries—regarding possible duplication or competition with existing in-country programs, as well as the need for a sober assessment of whether "a program promoting the growth of democratic institutions could realistically operate in certain countries."

Another aspect of the NED that clearly rankles many members of Congress is the role of the two political party institutes in foreign "democracy-building." Although each of these institutes would receive $5 million under the proposed FY 85 NED budget, one congressional opponent, Sen. Malcolm Wallop (R-Wyo.), noted that as of late March, "the Boards of Directors of the two party institutes had not approved organizational structures, staff functions or grant proposals." While John P. Loiello, Executive Director of the Democratic Party institute, reported to the GAO that his agency "generally will not fund foreign parties directly," the specter of U.S. intervention in elections overseas plainly haunts the NED's stated objectives.

The NED-financed activities of the FTUI are likely to stir up problems similar to the controversy surrounding AIFLD's contribution to the Panamanian union, ostensibly for "get-out-the-vote purposes." In the description of its NED program for FY 1984, the FTUI stated that it would allocate part of its $11 million budget to "democratic unions" in several Latin American nations, including Chile and Guatemala.

DEMONSTRATION ADVICE

The activities of the FTUI's "labor projects" in Latin America would include "aid to national trade union centers for infrastructure development," "training on combatting anti-democratic forces," "education on how to demonstrate" and "training dealing with campaigning and election organization."

In Guatemala, the FTUI plans to spend NED money to support the Guatemalan Confederation of Trade Union Unity (CUSG). The FTUI program outline notes that the "labor movement was reborn after a nightmare of years of persecution, with the formation of the [CUSG]," and adds that this group "has raised the hopes of the Guatemalan workers for an authentic democratic solution" in the country's July 1 Constituent Assembly elections.

The report fails to mention that then-President Gen. Efrain Rios Montt created the CUSG in 1983 in an effort to gain working-class support for his military regime and to weaken the popular appeal of the eight-year-old National Committee of Trade Union Unity (CNUS). To date, the CUSG, which grouped together unions tied to AIFLD and the Christian Democratic-oriented Latin American Confederation of Workers (CLAT), has failed to gain widespread rank-and-file support in Guatemala.

In Chile, the FTUI hopes to finance a conservative labor confederation, the Democratic Union of Workers (UDT), that is closely linked to AIFLD. The FTUI program description states that "should the military dictatorship ease, the UDT will be one of the most important institutions upon which Chilean democracy will depend."

In its current state, the NED is a crude product, resulting from an incomplete and hurried feasibility study, that proposes vague methods to achieve undefined goals. Despite the noble language surrounding the Endowment's goals, many charge it would open a murky and dangerous door that could ultimately enroll quasi-private organizations in the position of acting as surrogate conduits for covert CIA operations.●

PRIVATE WETLANDS AND CRITICAL HABITAT PROTECTION

HON. JOHN B. BREAUX

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. BREAUX. Mr. Speaker, I am today introducing legislation that will provide tax incentives for conservation of natural areas.

I realize that introducing legislation granting tax incentives in a year when we are facing $200 billion deficits may strike some as inappropriate. I believe, however, that there are instances where encouraging private landowners to take actions which enhance the conservation value of their land will save the Government money in the long term. In addition, the legislation I am introducing today is narrow in scope, concentrating the tax benefits on areas which Congress has determined are worthy of protection.

The bill I have introduced would provide tax credits for conservation actions on two types of habitat that are particularly valuable to wildlife and to our Nation—wetlands and critical habitat for endangered species. As many of the Members know, the loss of wetlands has been a severe problem in this country. Several years ago, we held a hearing on wetlands loss in the Mississippi flyway. At that hearing we learned that we are losing over 40 square miles of coastal wetlands per year to erosion and approximately 250,000 acres per year in other parts of the flyway to agricultural conversion.

In some areas, particularly where the problem is erosion, there are actions which can be taken to protect the wetlands and enhance their value. The legislation provides for the Secretary of the Interior to designate wetland areas that would require improvement or protection to preserve their wetland characteristics and to specify actions that would improve the quality of the wetlands. Landowners carrying out these actions would get a 15-percent tax credit.

A similar program would be in effect for endangered species critical habitat whereby the owner of habitat designated as critical habitat would be eligible for a 15-percent credit for actions that improve the habitat.

In addition, the bill would provide for a number of benefits to landowners who donate or sell land or conservation easements on land that is particularly valuable for conservation purposes. In addition to wetlands and critical habitat, these categories include lands designated under the Coastal Barrier Resources Act, lands identified for inclusion in the National Wildlife Refuge or Park System, natural heritage areas identified by the Park Service and areas identified by the States as part of a natural heritage inventory.

I must acknowledge a debt to Senator WALLOP, Congressman LAGOMARSINO and others for their work on similar legislation. Many of the tax provisions are adopted from legislation introduced by Senator WALLOP. The major change I have made is to limit these tax benefits to specific categories of lands. I think this approach is important for two reasons. First, it will limit the revenue impact of this legislation. Second, it is important to remember that persons who own property that is designated as a wetland or critical habitat for endangered species or some other Federal or State land classification often lose some potential benefit from their land. They are subjected to Federal regulatory programs or prevented from receiving some form of Federal assistance available to other citizens because of the location of their land.

Often the purposes behind the regulatory programs are worthwhile, and we in Congress have determined that they are necessary. I think that it is time, however, to provide some small benefits to people who find themselves enmeshed in Federal regulatory schemes.

Mr. Speaker, I believe this legislation is important because it will encourage people to care for special lands in a special way. Over 40 years ago, the great conservationist Aldo Leopold wrote of developing a land ethic—a way of viewing land that treats it with respect and as a resource over which we are stewards. Too often, when we realize that some piece or category of land is biologically or esthetically important, our instinct is to buy it, regulate its use or place other encumbrances on it. The time has come to offer landowners some incentives to be better stewards of their own land.

Finally, Mr. Speaker, I want to stress that, while I feel strongly about some of the concepts in this legislation, the bill itself is offered as a starting point for discussions on this issue. My colleagues in the Ways and Means Committee will no doubt find some of the tax provisions impracticable or at variance with other tax policies. My friends in the conservation community may suggest other lands that should qualify for tax benefits. I encourage comments and hope that my colleagues will join with me to perfect this legislation.●

PERSONAL EXPLANATION

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. TORRES. Mr. Speaker, I was not present for rollcall vote No. 239—amendment No. 35 to H.R. 1510, Immigration Reform and Control Act—on Thursday, June 14. Had I been present on the House floor, I would have voted "aye."●

MS. DOROTHY PITTS

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. DELLUMS. Mr. Speaker, I call to the attention of my colleagues an article which recently appeared in the Sun Reporter of Oakland, CA, concerning a woman whom I am proud to have known for a number of years.

Dorothy Pitts has been a truly model member of her community. In the time I have known her she has been a selfless and dedicated worker toward the goal of improving life for her fellow women and men. I commend this article to your attention:

DOROTHY PITTS: A BELIEVER IN TAKING ACTION

(By Lorene Marks-Foreman)

When Dorothy Pitts began to show her power in the community as a concerned citizen, as she was once called, she began to be considered by many as an activist. "I am not in the habit of defining myself; however, if activist is what people want to call me, it's okay. However, I am not a revolutionist or a radical," she continued, "but I believe in taking action on the issue."

As a professional social planner and a supervisor of recreation in Oakland, where she has worked with teenagers to reduce juvenile delinquency, Pitts has seen many distressing things. As a Black woman born in 1913, she has overcome many personal difficulties. But nothing made her "so sick," she recalls now, as walking within those grey nursing-home walls and seeing those uncared-for residents.

At age 59, Dorothy Pitts was asked to conduct a study on the needs of the elderly in Berkeley. She was shocked at what she found. From her findings, she recommended that the city set up a division on aging so that it could tie in with similar state and federal networks. Then she recommended that she become the division's first chief. During her tenure, she helped create three multi-purpose senior centers, the first ones in the area.

When she and others saw a need for housing for the minority elderly, she went to the Progressive Black Business Women in the East Bay, which she had helped create years before. She felt that something had to be done.

Within four years they helped build and manage Sojourner Truth Manor, a non-profit low-income elderly housing development in Oakland.

Now, the National Council of Negro Women California State Mechanism will present a Conference on Children Having Children, June 1 and 2, at Laney College, 900 Fallon Street, Oakland. Registration is from 11 a.m. to 1 p.m. Friday, June 1. Keynote speaker is Dr. Wade Nobles. On Saturday, June 2, registration is at 8 a.m. and keynote speaker is Johan Klehs, Assemblyman.

The objective of the conference is to examine the causes contributing to the disproportionate number of Black adolescents having babies; to examine more effective preventive strategies which can be utilized to impact on Black adolescents having babies; to impact on policies and services affecting young parents; to strengthen Black women's energy and organizational networks to work more effectively to prevent and alleviate this perplexing phenomenon; and to improve the image of teenagers.

Pitts left for Washington to participate on the Board of the Older Women's League on Monday, May 14. While there, she said, she will address the issue of children having children. Moreover, Pitts has been disappointed with President Ronald Reagan's fulfillment of some of his campaign promises. Concerning the funds granted to the Progressive Black Business Women, Pitts said, "We didn't get the kind of assistance we needed to learn how to manage and complete the job, and we are now in catch twenty-two because they have cut the funds and an accountance report is due. As we do not have the money to pay an accountant, I will go to the EDA office to see what happened," Pitts said. Pitts said that the State of California never gave them enough money to operate on. "We need straight money instead of government funds," she said.

Now, at the golden age of 71, six years after her official retirement, the "activist" is still working to improve the quality of life for others.

On May 10 Alumnae Resources of San Francisco, a non-profit organization founded to provide career development services to women, honored Dorothy Pitts for her achievement, vision and excellence.

According to Pitts, Mary McLeod Bethune had a dream, and that dream, according to Pitts, was to mobilize all women under one umbrella. When you have all of them working together, however, she stated, it is very difficult to get all the women, especially those with so many diverse interests, to come together. However, she said, during the last two conferences, she has been able to do just that, especially on the matter of children having children.

"Children having children is one of the major problems in the Black family," Pitts said. "There are children ages eight and nine having children," Pitts continued, "and that is what shocked me."

"The question is being raised in the community," said Pitts. "This is a consciousness raising period, educating the community to address the question by educating children so as to prevent the pregnancies of those nine, ten, and under sixteen years because the health of the children is terrible," Pitts continued. Moreover, Pitts contends that it is important to get the cooperation of parents, education and legislatures, and to get the male or the father to help with the children and with setting up support services for the mother.

For more information regarding Black women and the conferences, call Dorothy Pitts at 529-1383 or 843-5790.●

INDEPENDENCE FOR THE SOCIAL SECURITY ADMINISTRATION

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. ROYBAL. Mr. Speaker, today a number of my colleagues and Senators PRYOR and RIEGLE in the other body have joined together to introduce legislation to reorganize the Government for the purpose of establishing an independent Social Security Administration [SSA] governed by a bipartisan board.

There have been several examples in the last few years of the need for an independent Social Security Administration. The disaster that befell hundreds of thousands of terminated disability beneficiaries would not have occurred had SSA been more concerned with its historical mission and less worried about short-term budget savings. The egregious errors of the disability process are so severe that SSA's own employees rallied against them, and its association of administrative law judges have sued HHS alleging that they are forced to deny benefits to certifiably disabled beneficiaries.

The retroactive elimination, and subsequent restoration of minimum benefits could have been avoided had high SSA officials been independent enough to advise the Congress of the true effect and impracticality of this proposal. Also the method by which the administration has frightened old and sick people who are inadvertently overpaid brings no credit to anyone.

A proposal such as that put forth last week by the Congressional Panel on Social Security organization establishes an independent agency without a strong governing board. This will neither reestablish SSA's lost integrity nor revitalize its administrative capabilities. Such an organizational structure may even make it easier for the Office of Management and Budget to cut Social Security benefits and further cripple SSA employees' ability to get the job done.

Our proposal establishes an independent Social Security Administration, governed by a bipartisan board, which will ensure that the excessive and disturbing actions of the past few years will never be repeated. This structure is similar to the original organization of the agency prior to its inclusion in the Department of HEW [now HHS] during the Eisenhower administration. Under our plan, five board members would be appointed by the President for staggered 10-year terms. The Commissioner will be the chief operating officer appointed by the board for a 5-year term. During his/her term the Commissioner can only be removed for gross mismanagement or improper conduct. Our proposal also establishes an Inspector General's office, a public Ombudsman and a permanent Citizens' Advisory Committee.

The debate on this issue has just begun. As the discussion proceeds, we may need to refine some of the proposals in this legislation and to focus on other issues not encompassed within this bill. The growing concern for the independence of the administrative law judges [ALJ's], who many perceive as being pressured to deny benefits by management under the current structure of a Presidentially appointed Commissioner, is less likely to occur with a Board-appointed Commissioner and Chief ALJ. However, the final legislation might ensure even more independence for the ALJ's by establishing an independent Review Commission as suggested in H.R. 3541 introduced by Mr. Wise in the House and S. 1911 introduced by Senator Pryor.

I am encouraged by the interest shown by members of the Aging Committee who are also members of the relevant legislative committees and I encourage my colleagues to review it on the merits and to cosponsor it.

Mr. Speaker, I insert a copy of the proposed organizational structure into the Record at this point.

An Independent Social Security Agency

1. GENERAL STRUCTURE AND RESPONSIBILITY

Remove the Old Age, Survivors and Disability Insurance programs plus Supplemental Security Income from HHS and place them under a free standing Social Security Agency. (Leave Medicare/Medicaid, Refugee Resettlement, AFDC, Energy Assistance and Child Support Enforcement in HHS).

The Agency is governed by a five member Board of Directors which appoints a single Commissioner to a five year term. A public Ombudsman represents citizen concerns expressed by a nine member Citizens' Advisory Committee. An Inspector General assesses Agency performance.

The management of the Agency is strengthened by giving it greater flexibility and independence from GSA and OPM as recommended by the Staats Panel.

2. THE BOARD OF DIRECTORS

Membership

Five members nominated by the President and confirmed by the Senate for ten year terms staggered so that one term expires at the end of each even numbered year. The Chairman is appointed by the President. (Three initial board members are appointed to terms ending in 1989, 1991, and 1993. Two additional board members are added in 1989 with terms expiring in 1995 and 1997). Removal during term requires a finding of neglect of duty or malfeasance by the President which must be transmitted in writing to Congress in five days.

Responsibilities

(A) To govern the Agency through regulation.

(B) To appoint a Commissioner to be the Chief Operating Officer.

(C) To act as Trustees for the Social Security Trust Funds. Other Trustees are the Secretaries of the Treasury and HHS and two public members required by the 1983 Amendments.

(D) To make budgetary recommendations and defend such recommendations before the Congress.

(E) To provide analysis, information and recommendations to the Congress and the President on proposed changes in Social Security programs.

(F) To conduct policy analysis and research.

Due to the board's responsibilities, its staff includes SSA's current Office of the Actuary, Office of Policy, and Office of the General Counsel.

3. THE COMMISSIONER

The Commissioner is appointed by the Board to a five year term (except that the first term ends December 31, 1989). Removal during the term requires a majority vote of the full Board following findings of neglect of duty or malfeasance which must be transmitted in writing to the Congress within five days.

Responsibilities

(A) To be the chief operating officer responsible for administering Social Security programs in a manner consistent with law and regulations.

(B) To devise and implement long-run plans to improve the effectiveness and administration of these programs.

(C) To organize and maintain an efficient and effective operational structure. Such structure shall include a separate Office of Hearings and Appeals headed by a Chief Administrative Law Judge nominated by the Commissioner and appointed by the Board to a five year term (except that the initial appointment ends December 31, 1990). Among other qualifications, the chief ALJ must have at least five years experience as an ALJ in SSA.

(D) To prepare and defend the administrative budget and special administrative initiatives before the Board and the Congress.

(E) To advise the Board and the Congress of the administrative impact of legislative changes in Social Security programs.

(F) To act as Secretary to the Board of Trustees.

(G) To make an annual report to the Board and the Congress on the administrative endeavors and accomplishments of the Agency.

One organizational structure a Commissioner at his/her discretion might establish could include officers for: (1) Program Operations; (2) Field Operations; (3) Central Operations; (4) Management, Budget and Personnel; (5) Computer Systems; (6) Assessment and Evaluation; and (7) External Affairs.

4. THE OMBUDSMAN

An Ombudsman is appointed by the Board to a 5 year term (except that the initial term ends December 31, 1991). Removal during term requires a majority vote of the full Board following findings of neglect of duty or malfeasance which must be transmitted in writing to the Congress within five days.

Responsibilities

(A) To represent the concerns of the public, including beneficiaries, to the Board and Commissioner and to the President and the Congress.

(B) to provide staff support to a permanent Citizens' Advisory Committee which issues a biennial report to the Congress assessing Social Security programs, financing and administration.

(C) To make such studies and surveys of administrative effectiveness and program policy goals as he/she deems proper and as requested by a majority of the members of the Citizens' Advisory Committee.

The Citizens' Advisory Committee consists of nine part-time members appointed for staggered three year terms with its chairperson elected by the Committee for a one year term. The Speaker of the House, the Majority leader of the Senate (in consultation with the Chairman of the Committees of Government Operations, Ways and Means, Government Affairs, and Finance) and the Chairman of the Board each appoint three members to be equally representative of beneficiaries, employers (including the self-employed), and employees.

5. the inspector general

An Inspector General, nominated by the President and confirmed by the Senate, is established pursuant to the Inspector General's Act of 1978 as amended.

6. Other

The legislation includes a statement of a beneficiary's "bill of rights".

The legislation incorporates the recommendations of the Staats Panel on Social Security organization with regard to strengthening management. These recommendations: 1) base SSA personnel budget on a workforce plan rather than a personnel ceiling; 2) allow SSA greater authority for computer acquisition and property management; and 3) allow SSA greater flexibility in recruiting new employees and compensating senior executives.

The Board, GAO, and the Secretary of HHS are required to report to the Congress in five years an assessment of these organizational changes.●

CONSTITUENT REMEMBERS PREWAR POLAND

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. KOLTER. Mr. Speaker, in my district there are a great many people who can trace their roots across the Atlantic Ocean to the countries of Europe. This month marks the 40th anniversary of D-day, that day when allied forces began the liberation of much of Europe. It was a great and heroic time for this country and for those people, like the ones in my district who are of European descent.

Unfortunately, much of Europe was not completely freed. The nations of Eastern Europe found that their Nazi overlords were soon to be replaced by Russian masters. But freedom still lives in those countries, in the hearts and minds of the citizens.

One man remembers. Jerzy Patejak, from Wampum, PA, is a scholar of sorts, and an American proud of his Polish heritage. His recollections of life in prewar Poland are vivid and enlightening accounts of a vibrant culture before the catastrophe. His opinions are colored by his great knowledge and passion for Poland.

Freedom of speech and its natural companion, freedom of the press, are very fundamental rights of every member of the free society. But those freedoms are not absolute and if not legal then moral restrictions must be self-imposed in the presentation of facts damaging to someone's reputation. No newspaper should be free from this guideline. It is therefore very distressing when a reputable newspaper like The New York Times lends its pages to statements damaging to Poland's reputation, which verges on propaganda.

Mr. Rosenthal's article in The New York Times Magazine on August 7, "The Trees of Warsaw" full of sympathy for Poland, the country which gallantly contributed to the allied victory, only to lose its freedom at the conference table. The statement "Poland lives in its history, nationhood, patriotism, miracles, dreams, defeats, hopes," should include one more characteristic, "and determination to be free at any price."

If love of one's country is not fashionable today, the Poles will rather continue with this outmoded virtue. The statement that hope makes the Polish nation stay alive does not fit the present situation though the hope of success is a necessary ingredient of any undertaking. Hope alone is a passive phenomenon which makes people expect that some supernatural force will change the situation. In other words, miraculous fulfillment of one's expectations.

Unfortunately, we Poles do not have such miracles. What history documents, however, is heroic stands of the defenders, like the Siege of "Czestochowa Shrine," which shook the nation and sparked the determination to liberate Poland from the Swedish invaders. We also call the victory of the Polish army over the U.S.S.R. invaders as "Miracle on the Vistula" to emphasize how the imminent collapse of Poland was turned by the will of one man and determination of poorly armed soldiers into a decisive victory.

As a child I remember the distant rumbling guns on the doorstep of Warsaw only to notice a few days later hordes of "Red Prisoners" marching through the streets of Warsaw. Yes, that was a miracle, but not in the supernatural sense, a miracle which saved not only Poland, but also stopped Communism from reaching the Rhine. 150 years of "the nonexistence of the Polish state" with 3 unsuccessful uprisings against the major oppressor Russia, constant conspiracies punishable by the lifetime free accommodation in the Siberian salt mines, those were not the signs of blind hope, but rather proof of an unyielding determination to be free. And now again the poor nation, sold to the ancient enemy, manifests its determination to be free, rejects any cooperation with the puppet Polish regime on the terms dictated in Moscow.

It is regrettable that the article, which shows a great deal of sympathy for the sufferings of the Polish people, could not limit itself to this subject only. His statement about Polish anti-Semitic feeling before the War implies that the present suffering is an atonement for past transgressions. I do not know how well acquainted the writer is with Jewish history in Poland. I only would like to mention that Jews in Poland enjoyed a great deal of freedom, never subject to any master, except the Crown.

In comparison with the peasants who lost their freedom of movement to the landowner, the Jew was free to arrange his life without anybody's interference. No wonder that over the centuries Jews persecuted in other countries found the refuge in Poland. 3½ million Jews, a population larger than in the rest of Europe could not possibly grow to this size in the atmosphere of hostility. On the contrary, it was the Jewish population which did not choose to become a part of the integrated Polish community. The wish for the autonomy for all Jews living in Poland and its denial by Polish government, did not improve the situation. Yiddish was their daily language though their roots went back many generations.

It would be foolish to pretend that anti-Semitic feelings did not exist, but it was often ignited by the strong anti-Polish feeling of the members of the Jewish community which tended to look on Poland as a place of business only. This is not to say that some, especially those whose roots went back many centuries, did display not only loyalty to the country they lived in, but were ready to pay the highest price one can offer in defending the land of one's ancestors. But, unfortunately, the great majority did show total indifference or outright hostility to the Polish people.

The students, young and easily excitable, aware of the cultural differences, incited by provocateurs, would from time to time vent their anger in violence. But those were rather isolated cases, confined mostly to university towns and always dealt with firmly by civil authorities. At no time to my recollection, did the Polish government yield to the students' demands to limit admission to an institution of higher learning, based on the population ratio or any other forms of discrimination.

One can study the lists of "Practicing Attorneys, Physicians and Dentists" to get the true picture of any discrimination. How many Jews born and educated at Polish universities are now guiding the destiny of Israel or enjoying a good living in this country? They are living proof of the Polish government's anti-Semitic policy. Furthermore, to characterize the prewar Polish government as "cavalery minded Fascists," one is to put them side by side with Hitler, Mussolini and his followers.

Poland was not a perfect democracy. The incidents of government overreaction to provocation did exist. The press did not enjoy absolute freedom. But despite these restrictions, the Parliamentary opposition existed with its own newspapers available for sale at any newspaper stand.

Satirical publications enjoyed great latitude of freedom with the government often a subject of ridicule. No one was ever incarcerated without due process of law, except for members of the outlawed Communist Party, detained until the court's final verdict. Education, the main tool of any dictatorship to shape the minds of the young, was not politicized. The universities, "the hot beds of political activities," maintained their centuries-old freedom of self-government, with territorial integrity undisturbed. That does not sound like a dictatorship, Mussolini's style, or does it?

We do accept the journalistic freedom of interpretation of facts and expression of one's opinion, but feel very uneasy when these freedoms start to follow the "Volkisher Beobachter" or "Pravda" thinking.●

FRIENDS OF THE CLOSE UP FOUNDATION

HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. JONES of Oklahoma. Mr. Speaker, the outstanding work of the Close Up Foundation and the educational experiences it provides for thousands of young people across the country could not be possible without strong support from business and the private sector of America. Recently the publication, Update, published a statement by J. Tylee Wilson, chairman and chief executive officer of R.J. Reynolds Industries, Inc., which is one of the loyal financial supporters of Close Up. Because of the meritorious statement which Mr. Wilson makes, I insert this statement in the RECORD:

R.J. REYNOLDS SUPPORTS FOUNDATION

(By J. Tylee Wilson)

"At R.J. Reynolds Industries, we are committed to supporting activities and programs that help young people become more active citizens and more informed voters. We believe that the Close Up Foundation provides students with just such an opportunity.

"Close Up's program of seminars, question and answer sessions, classroom work and onsite briefings adds a new dimension to students' understanding of what goes on in their state and federal governments. Young people who understand the legislative process are more inclined to participate in it. And citizens who participate in their government are helping to ensure that the decisions that are enacted into law accurately reflect the feelings of the people.

"R.J. Reynolds Industries is the largest private sponsor of the Close Up Foundation. In 1984, our contribution to Close Up will exceed $850,000.

"We see our investment in Close Up as a long-term investment in this country's quality of life. By spending money now to help young people become more involved in the political process, we hope that they will make informed decisions as voters. In this election year, we are reminded how critically important an active and informed electorate is to the future of America's citizens and business community.

"The American educational system has received much criticism lately. RJR sponsors programs nationwide at strengthening our schools and educators. But I think we make a serious mistake if we put the entire responsibility for educating our young people on the school systems. Programs like Close Up are an exceptional learning experience. Adults and students need to be reminded that learning is a lifelong process, and the portion of our education that we receive in a classroom, though important, is only a part of the process.

"R.J. Reynolds Industries' commitment to leadership development and citizenship education is an important facet of the role we play as a responsible corporate citizen. We are proud of the programs that we support. And we are especially proud to count an outstanding organization like the Close Up Foundation among them."●

PRINCE WILLIAM SOUND FEDERAL PILOT REQUIREMENTS

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. YOUNG of Alaska. Mr. Speaker, I am introducing legislation to clarify the Federal pilot requirements for Prince William Sound, AK.

The current Federal requirement is that vessels en route to the Port of Valdez, AK, take on a Federal pilot at Hinchinbrook entrance and that departing vessels keep the pilot on board until clearing Hinchinbrook entrance. However, vessels currently pick up and drop off pilots in Valdez Arm, 60 miles closer to Valdez inside Prince William Sound from the Hinchinbrook entrance. The reason for this is safety. The waters of Hinchinbrook entrance are usually too rough to permit the safe boarding of a pilot at that point. In fact, a pilot boat sank and a pilot was nearly lost during a transfer. The Hinchinbrook entrance is wide enough to permit even the large tankers to transit without a pilot and without creating any risk of a collision or grounding.

Further, once in Prince William Sound, vessels must observe the vessel traffic separation regulations of the Coast Guard which ensures the safe passage of vessels to and from the entrance to Valdez Harbor without a pilot. It is at the Valdez end of the vessel traffic lanes that the pilots are put on board to navigate a vessel into the pipeline terminal. Thus, the boarding of a pilot at or near Rocky Point inside Prince William Sound permits the safe boarding of a pilot at the point when a pilot is truly necessary for the safe navigation of a vessel.

In April, the Coast Guard and Navigation Subcommittee of the Merchant Marine and Fisheries Committee held hearings in Alaska and also conducted a field investigation of various Coast Guard facilities. The Coast Guard Subcommittee traveled to Valdez to investigate the Coast Guard marine safety activities regarding the pipeline terminal operations. It was at that time the subcommittee became aware of this dangerous situation created by a strict interpretation of current law. This legislation should correct this by clarifying that current practice is permitted. In doing so, it provides for the safe passage of vessels throughout Prince William Sound as well as ensures the safety of individual pilots.

The bill makes no substantive changes in the Federal pilot requirements in current law or the regulatory authority of the Coast Guard, except for permitting the Secretary of Transportation to determine by regulation those points in Prince William Sound where pilots are not needed. The reformation of subsection (a) is merely technical in nature. Specifically, the bill I am introducing today would direct the Secretary of Transportation to designate the areas of the approaches to and waters of Prince William Sound on which a vessel would not be required to have the Federal pilot that current law seems to require. Thus, this would permit the Secretary of Transportation to avoid the unsafe requirement of requiring a pilot to board at Hinchinbrook entrance.●

THE REVERSAL OF CIVIL RIGHTS IN THE 1980'S

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. RANGEL. Mr. Speaker, I rise to discuss a very important issue, one which was raised recently by the attorney general of New York State, Mr. Robert Abrams. Mr. Abrams, a respected public servant who has a fine reputation in the legal profession, has made a very revealing observation.

In light of the current administration's record on civil rights, Mr. Abrams points out how gains made under the Civil Rights and Voting Rights Acts are now in jeopardy. Enforcement of these acts is being hampered by administration resistance to Federal involvement in civil rights. This distressing attitude is dangerous, and will hamper the gains of those who have historically fought for their basic civil rights.

The attorney general has done extensive work in this area, and has concluded—using empirical data—that the Reagan administation is allowing certain inconsistencies to occur. This attitude disregards past legislation by adhering to the strict letter of the law in instances that are favorable, and overlooking other areas when convenient.

Civil rights require constant monitoring and consistent enforcement. I trust my colleagues will examine the material at hand and work toward protecting the constitutional rights of all citizens.

[From the New York Law Journal, Apr. 25, 1984]

ATTORNEY GENERAL FAULTS REPUBLICANS ON CIVIL RIGHTS

(By Robert Abrams)

The Reagan Administration came to office advocating judicial restraint and the "strict construction" of the Constitution and laws of the United States. At the same time, the President and his appointees all took oaths to uphold the Constitution and laws, and presumably understood that they were bound to uphold those provisions as interpreted by the Supreme Court of the United States. However, in the area of civil rights, among others, and particularly on the subject of affirmative action, this Administration has been anything but a proponent of judicial restraint or an advocate of strict construction. In fact, under the leadership of William Bradford Reynolds, the head of the Justice Department's Civil Rights Division, the Administration has abandoned positions taken by prior administrations of both parties and endorsed by Congress and the courts and has sought to enlist the federal courts and the Supreme Court in its own form of judicial activism—a re-interpretation of the laws and a reversal of decisions which have allowed advances toward equality for members of racial and ethnic minority groups.

Beginning in the 1960's, Congress enacted civil rights laws to give meaning to what for too many years had been the empty promise of equality embodied in the Thirteenth, Fourteenth and Fifteenth Amendments of our Constitution. These laws prohibit discrimination on the basis of race, color, and national origin in employment, voting, housing and public accommodations. Relying on these laws, courts again and again struck down barriers to racial intergration in every aspect of American life. Substantial and visible change began to take place.

ENFORCEMENT MECHANISMS

Though the drama ebbed, change continued to take place in workplaces, voting booths, schools and communities throughout the land, as courts and legislatures began the difficult task of developing the enforcement mechanisms needed to overcome discrimination deeply embedded in hiring and promotion decisions, in college admissions practices and in a wide range of decision-making processes. By the mid-1970's, the courts recognized, as Justice Blackmun explained in his concurring opinion in *Bakke*: "[i]n order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently . . ." Accordingly, courts required civil rights violators to undertake race-conscious affirmative action to eradicate the effects of their past discriminatory practices.

Throughout the 1970's courts grappled with the question of the circumstances under which our Constitution and statutes require (or permit) race-conscious remedies to combat discrimination. In 1979, in *United Steelworkers of America v. Weber*, the United States Supreme Court held that Title VII of the Civil Rights Act of 1964, the Federal fair employment statute, does not prohibit voluntary race-conscious affirmative action plans. In 1974, the Kaiser Aluminum and Chemical Corporation adopted an affirmative action plan to integrate black workers into its craft work force, which was then almost exclusively white. The plan established an in-plant training program and reserved 50 percent of the openings for black employees. Brian Weber, a white worker challenged the plan, charging that it discriminated against him in violation of Title VII. The Justice Department under President Carter and the Equal Employment Opportunity Commission ("EEOC") submitted an *amicus* brief that Title VII permits race-conscious actions such as those undertaken by Kaiser, and a majority of the Supreme Court agreed.

Now, abandoning the Federal government's position of the last 30 years and ignoring the clear precedent of Weber, and scores of other federal court decisions, the Reagan Administration and Assistant Attorney General Reynolds state that under no circumstances will the United States Justice Department support, much less advocate, race-conscious affirmative action. The Justice Department's position that Title VII and the Constitution forbid all race-conscious affirmative action is not supported by statute or case law. That view did not prevail in the Supreme Court and has never been adopted by Congress. Nevertheless, it is the view that this Administration has pledged to defend, and indeed the record shows that the Administration has vigorously advocated this view whenever possible as intervenor, plaintiff and amicus curiae.

Last year, for example, the Justice Department filed an amicus brief in the Supreme Court challenging a voluntary race-conscious affirmative action plan adopted by the City of Detroit. Under the plan, promotions from the rank of sergeant to lieutenant were to be divided equally among black and white police officers until 50 percent of the lieutenants were black. The plan had been created, as the Justice Department acknowledged in its brief, in response to "undeniable past discrimination against blacks that had created a police force that was largely unresponsive to the concerns of a substantial portion of the City's population." Despite this factual predicate and the holding in the Weber case, the Justice Department took the position that the action by the City of Detroit could not be sustained under the relevant statutes nor squared with the Constitution.

The Reagan Administration's action in the Detroit case is not an isolated incident. The Justice Department has also opposed court orders preventing the layoff of minority firefighters in the cities of Boston and Memphis. Although the layoffs would have thwarted the attempts of the cities to integrate their respective fire departments and perpetuated their past discriminatory practices, the Federal government opposed the court orders characterizing them as the "archetypical form of relief" Congress intended to prohibit under Title VII. Similarly, the Justice Department intervened in a 10-year-old case involving New Orleans and its black police officers after the parties had agreed to a consent decree with a race-conscious promotion plan. Not only did the Justice Department argue against a solution adopted by local authorities to solve a local problem, but it prevented the EEOC from filing an amicus brief in the case which would have argued that the position of the Department of Justice was incorrect. To advocate its particular philosophy of equality, the Justice Department sacrificed the rule of law, and denied the public and the court the benefit of the expertise of the EEOC.

Indeed, so determined is the Executive Branch to ensure that its philosophy prevails, that it has changed positions in the midst of litigating a single case. In 1981, the Justice Department under President Reagan negotiated and the Federal court approved a race-conscious affirmative action plan to increase the hiring and promotion of blacks in the police and fire departments in Birmingham, Alabama. The Justice Department has now joined white employees in challenging the very decree it wrote, signed and was instrumental in having approved by the Court.

ABOUT-FACE STRATEGY

One need not travel as far as Birmingham to find examples of the Federal government's about-face litigation strategy. We in New York have also been the victims of this erratic practice. In 1971, the Justice Department under the Nixon Administration sued Local 28, the New York local of the Sheet Metal Workers' International Association, to enjoin its racially discriminatory practices. New York City and New York State joined the Justice Department. And in 1975, after a three week trial, the federal court in Manhattan found that the union had long discriminated against black and Hispanic workers in violation of Title VII and ordered it to increase its minority membership from 3 percent to 29 percent by 1982. In 1982, when the union's minority membership was only 10.8 percent, the City and the State, supported by the EEOC, moved for contempt. The district court found the union in contempt and ordered it to indenture one minority apprentice for each white apprentice until the union's minority membership reached 29 percent. The case is currently on appeal and the EEOC, now remolded in the Reagan Administration's own image, states in its brief: "Although the EEOC improperly supported the imposition of the 1 for 1 indenture ratio in the district court, we urge this court to vacate the ratio . . ."

In every area of civil rights law, the Reagan program has been implemented with a vengeance. That program seeks to restrict the remedies available to victims of discrimination and to narrow the reach of Federal civil rights laws, and to do so notwithstanding established legal precedent. Equality in education, housing and voting has fared no better than in employment.

Thirty years ago in *Brown v. Board of Education*, the United States Supreme Court held, in explicit terms, that state imposed segregation by race in this nation's public schools denies equal protection of the laws. In the ensuing years, the Supreme Court grappled with the question of remedy, and concluded, *inter alia*, that school boards have the burden of developing desegregation plans that work *now*. "Freedom of choice" plans are unacceptable if there are other plans reasonably available, which promise a speedier and more effective conversion to a unitary, non-racial school system. More than ten years ago in *Swann v. Charlotte-Mecklenburg Board of Education*, Justice Burger wrote, for a unanimous Court, that mandatory school busing is one technique available to integrate school systems. The *Swann* decision remains the law today. Nonetheless, it is the policy of the Justice Department to reject any form of mandatory reassignment of students and rely entirely on freedom of choice plans to remedy unconstitutional segregation. In the words of the Justice Department's chief civil rights attorney: "We are not going to compel children who don't choose to have an integrated education to have one." In essence he is saying that the Justice Department will not enforce the law.

As in the area of employment discrimination, the Administration's opposition to busing, no matter the circumstances, has caused it to change sides in case after case—arguing against court-ordered busing where previously it had advocated busing. Indeed, it now takes the extreme position of opposing voluntary busing plans as well. In *Washington v. Seattle School District*, the Justice Department unsuccessfully argued to the United States Supreme Court in favor of a Washington State law that restricted voluntary local attempts to achieve desegregation by busing.

TAX-EXEMPT STATUS

The Justice Department's failure to enforce the law in the area of school desegregation goes beyond the issue of busing. In January, 1982, the Treasury Department announced that it would reverse an 11-year-old policy, initiated by the Nixon Administration, of denying tax-exempt status to racially discriminatory private schools. To support this startling pronouncement, the Administration claimed that Section 501(c)(3) of the Internal Revenue Code did not authorize the Treasury Department's rule denying the tax exemptions. In fact, both Congress that drafted Section 501(c)(3) and the Judiciary that interpreted it had years earlier held to the contrary.

In 1970, after an adverse court decision, the IRS announced that pursuant to Section 501(c)(3) of the Internal Revenue Code it would no longer allow tax-exempt status to any private school in the nation which practiced racial discrimination. This IRS ruling was subsequently affirmed by the courts, which held that the Internal Revenue Code requires the denial and elimination of Federal tax exemptions for racially discriminatory private schools. and for the next eleven years the IRS staunchly defended its interpretation of the Code, and Congress repeatedly endorsed the interpretation adopted by the IRS. Nonetheless in 1982, with the issue pending in the United States Supreme Court, the Justice Department concluded that the IRS overstepped its authority in promulgating its tax exemption policy and filed a brief with the Court advocating a 180-degree reversal of the position advanced by the Nixon, Ford and Carter Administrations.

The Justice Department's position was rebuffed in the strongest terms by the Supreme Court in an 8-to-1 decision finding the IRS interpretation "wholly consistent with what Congress, the Executive and the courts had repeatedly declared . . ." Indeed, Justice Burger wrote, it would have been "anomatous" for the IRS in 1970 to "blissfully ignore" the policy on racial discrimination adopted by all three branches of government. It was no less anomalous for the Justice Department to do so in 1982.

ADMINISTRATION'S FAILURE

Fortunately, to date, the Administration has not prevailed in any of the cases mentioned in this article nor in the vast majority of others where it has urged a reinterpretation of established civil rights precedent. However, the devastating potential of the Administration's continued legal advocacy of its civil rights philosophy must not be ignored. At stake is the effectiveness of our civil rights laws. At stake is the still unfulfilled promise of equality of opportunity in education, housing and employment. And that is not all. By advocating positions authorized neither by Congress nor the courts, the Administration has invited disrespect for our laws and has abdicated its constitutional responsibility to enforce the law. Although the Administration's commitment to equality has waned, ours must not.●

WEST VIRGINIA—121 YEARS AGO TODAY

HON. HARLEY O. STAGGERS, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. STAGGERS. Mr. Speaker, 121 years ago there occured three events that changed the course of American history. In the year 1863, the Battle of Gettysburg was fought, Abraham Lincoln issued the Emancipation Proclamation, and West Virginia became the 35th daughter of the American Union.

Long before the outbreak of the Civil War, the people of what is now West Virginia were known for their patriotism and rugged individualism. The decision on the part of the western Virginia counties not to join in seceding from the Union was an affirmation of the loyalty citizens felt to their Nation. Following the adoption of a State constitution, Congress admitted West Virginia to the Union on June 20, 1863—121 years ago today.

The contribution made by the newly admitted State during the severest test of our national strength is something all West Virginians can be proud of. Prior to admittance, President Lincoln noted:

> We can scarcely dispense with the aid of West Virginia in this struggle; much less can we afford to have her against us, in Congress and in the field. Her brave and good men regard her admission into the Union as a matter of life and death. They have been true to the Union under very severe trials.

Some 30,000 West Virginians were to serve in the Union Army during the War.

As we celebrate the birth of our great State, I am proud to call attention to the guiding principle that provided the seed and continues as the underlying strength of West Virginia and her people, which is best summed up by the State motto—"Mountaineers are always free." The freedom that guided the State's founders to declare independence is the same freedom that gives us hope for the future.

West Virginians are equally an important part of our national fabric. The State enjoys one of the proudest records of contributions made to our Nation's defense in war and in peace. Our vast supplies of coal, oil, and natural gas have helped to forge the great industrial machine known as America. The workforce, second to none, provides business and industry with individuals who are as dedicated as they are capable. Our natural heritage, as rugged as the mountaineers who first explored the State, continues to enthrall visitors.

It is a great honor for me to salute my home State on this noteworthy occasion. I am confident that the progress made in West Virginia since its founding will only be surpassed by its future.●

CHUCK NORMAN FILIAGA

HON. FOFO I. F. SUNIA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. SUNIA. Mr. Speaker, I am pleased today to honor the third recipient of the Presidential Scholars Program from the Territory of American Samoa.

Chuck is a recent graduate of Samoana High School where he served as the president of the student government. He was also inducted into the national honor society. He served as an editor for his high school yearbook and provided volunteer work for handicapped children. He is also an active member of his church youth group.

Mr. Filiaga is the son of Manaia and Joeanne Filiaga of Amaua. He is becoming quite familiar with Washington, DC, since he and his brother Carl were among seven seniors selected to participate in the recent Close-Up Program here in Washington.

I join the people of the Territory of American Samoa in expressing to you the pride that we hold for Chuck's achievements and academic success. He has set a fine example for his peers and for other American Samoan students who are striving to attain excellence.

When Chuck receives his Presidential scholar medallion at the White House, he can do it knowing that we all are proud and supportive of the hard work that he has done and wish him the best in all his future endeavors.

In a larger sense, I hope that Chuck will remember that our territory can also be a beneficiary of this program and his work. By recognizing him, the United States reaffirms the commitment to our young people to lead lives of challenge, accomplishment, and fulfillment. We all look forward to his continued success.●

A TRIBUTE TO REV. PHILIP W. SOMERS, SR., OF CLARKSTON, MI

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. CARR. Mr. Speaker, I rise today to recognize and praise the accomplishments of an extremely special person, a man who has dedicated his life to serving God and the people of Michigan. On June 30, 1984 the Reverend Philip W. Somers, Sr., will retire from his duties as pastor of the Maranatha Bapist Church in Clarkston, MI, where he has served for the past 17 years. His dedication to Clarkston has been amply demonstrated through his work in community service and his great concern for the welfare of his parishioners.

In his efforts to build a stronger community, Reverend Somers has served as a chaplain in local hospitals and as chaplain and Bible instructor in prisons across the State. During his 35 years in the ministry in my State, he has also served at the local and State levels as an officer in the Michigan Pastors Association. Reverend Somers is nationally recognized as a friend to pastors and missionaries around the world. Throughout all of his many other responsibilities, however, he has provided inspirational and faithful leadership to his congregation.

Reverend Somers has many other qualities that have made his ministry a unique asset to our community. He has combined his Christian beliefs with the fine sense of patriotism. He is a stalwart in his belief in our country's heritage of democracy, and every Memorial Day recites the Gettysburg address for his congregation. He is also an accomplished student of scriptural history, and has taught the Old Testament for more than 11 years in the Birmingham Bible Institute. But perhaps most importantly, he is an outstanding family man, raising four children, three sons and a daughter. His sons have followed in his footsteps, and are active in religious service.

Reverend Somers has set a fine example for his family, the community, and our State. We are sorry to see him retire from the active service that has so richly benefited many people, but we wish him the best as he begins to take a new step in his life.●

SGT. BILLY FINLEY TO BE HONORED ON JUNE 26

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. DURBIN. Mr. Speaker, today, I am introducing a resolution with my colleague, Mr. Hopkins of Kentucky, to honor one of our Nation's heroes, one of its most decorated soldiers of World War II and a man who is being honored on June 26 by the citizens of Cherbourg, France.

Sgt. Billy Finley of Decatur was typical of many young men who answered a desparate nation's call in the early 1940's. He dropped out of high school to enlist in the Army. He served with distinction on the field of battle.

As a participant in the liberation of Cherbourg on June 26, 1944, Sergeant Finley so impressed the residents of that community that, 40 years later, when they made plans to commemorate the day, he was selected as representative of America's fighting men.

On June 26, Sergeant Finley's three sisters will be in Cherbourg to participate in the ceremonies honoring their brother, who was killed in action only a few weeks before the war in Europe ended.

This resolution calls public attention to Sergeant Finley's contributions both on the field of battle and in the arena of good relations between nations. It also publicly honors his sisters for their brother's outstanding example of courage and humanity.

Mr. Speaker, I view this resolution in a larger context. Just as Sergeant Finley represented America's soldiers and sailors to the people of Cherbourg, I believe his example is one that we should honor as representative of all his comrades.●

ITC DECISION ON FOOTWEAR IMPORTS

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. JONES of Tennessee. Mr. Speaker, recently the International Trade Commission voted against temporary relief for the American footwear industry. In fact, the ITC ruling denied that the footwear industry in our country had even been injured by imported footwear. That decision was an erroneous one and one that will have a continued negative impact on the footwear industry in my State as well as in our country.

In 1981, President Reagan did not extend the marketing agreements that were initiated earlier to assist the footwear industry and its workers. Since that time, production in the industry has dropped by 13 percent; 70 percent of shoes in the U.S. market are imported compared with 51 percent in 1981; and employment in the footwear industry dropped to 132,700, the lowest level in history.

The footwear industry petitioned the International Trade Commission back in January for relief under section 201 of the 1974 Trade Act. This requested relief was in the form of a temporary, 5-year period of quotas on nonrubber footwear from all foreign sources. The relief was simply to allow the footwear industry to compete fairly and to allow jobs that stem from this industry to remain intact.

In Tennessee, the footwear industry employs about 10,600 people making it the fourth most important footwear-producing State in the Nation. This industry also ranks seventh among all manufacuring industries in the State. Since 1981, the number of people employed in it has decreased by 16.3 percent. Of the 15 counties in my congressional district, this industry is the major employer in one, is the second major employer in another county, and significantly contributes to employment in five other counties.

This negative action by the International Trade Commission could prove to be devastating to the shoe industry. With so many people dependent on this industry for employment, it is inconceivable to me why a recommendation for a temporary quota was not granted. The over 200,000 employees of the industry in the United States and the 10,600 employees in Tennessee deserve action to help this depressed domestic industry; not to insure its eventual elimination.●

OPEN LETTER TO PRESIDENT REAGAN ON ACID RAIN

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. SIKORSKI. Mr. Speaker, every day more scientific evidence becomes available demonstrating the environmental devastation acid rain is causing across North America. Yet the Reagan administration continues to ignore the acid rain problem. The President continues to call for more research, while leaving our lakes and lungs, forests and farmland exposed to permanent and irreversible damage.

I am putting in the RECORD an open letter sent to President Reagan on March 14, 1984, from a number of prominent Canadian church leaders. These officials ask that joint action be taken by the United States and Canada to bring about significant control of acid rain emissions.

Unfortunately, the President has failed to reply to this letter, providing another example of the current administration neglect toward the acid rain problem.

I believe we cannot afford to wait until acid rain destroys our environment, or ignore our responsibilities as stewards of our continent. It is time for Congress to take action on a comprehensive, national solution to acid rain control.

AN OPEN LETTER TO PRESIDENT REAGAN ON ACID RAIN

March 14, 1984.

President RONALD REAGAN,
United States of America, the White House, Washington, DC.

DEAR MR. PRESIDENT: Acid rain constitutes a major threat to God's creation. From a biblical and theological perspective, we believe humanity has the responsibility to protect and nurture the earth, not exploit and destroy it.

We are deeply disappointed and frustrated that your Administration appears unwilling to support measures to reduce emissions that cause acid rain. Your own White House Office of Science and Technology, as well as the U.S. National Academy of Science, have reinforced the need for action. Our Churches find it a sad commentary on our age that your Administration claims to lack the resources for protecting the environment through acid rain control and yet is devoting vast sums toward the production of more armaments capable of destroying the earth.

Concern about acid rain as reflected in our Government's recent diplomatic protest is shared by the Canadian people, including members of our Churches. One can well understand the anger of many Canadians as we see vulnerable areas of the environment in our country damaged by acid rain coming from your country.

A recent Consultation brought together representatives of 25 Canadian and U.S. religious bodies to plan joint strategies for tackling acid rain. They agreed that any serious commitment by Churches to a stewardship of God's creation includes action on issues like acid rain. We learned from the Americans at the Consultation that there are many U.S. citizens, including members of the churches represented at the Consultation, who are disappointed and embarrassed by U.S. inaction.

We fully recognize that Canada has the responsibility to reduce its own emissions of sulphur dioxide (SO_2) and nitrogen oxides (NO_x). As well as meeting with companies such as INCO and Noranda which have smelters which are major sources of emissions, some Canadian Churches are pressing federal and provincial governments to be more assertive in regulating those companies and making immediate action financially possible. The Churches want to see Canada's standards for motor vehicle nitrogen oxide emissions significantly tightened by the federal government. Be assured that we will be placing continued pressure on the Canadian Government and the provinces for specific major reductions in emissions.

While we acknowledge responsibility for reducing our own emissions, we feel that our government at least recognizes the seriousness of the acid rain problem and is committed to reduce this threat to the environment as quickly as possible. We hope and pray that the U.S. Administration will change its position and come to see acid rain control as being in its own interests as well as a responsibility to its northern neighbour.

We look forward to your response.

Yours truly,

The Rev. Dr. Robert Binhammer, President, The Lutheran Church in America—Canada Section.

The Rev. Dr. Russell Legge, President, The Canadian Council of Churches.

The Rev. Dr. Donald MacDonald, Moderator, The Presbyterian Church in Canada.

The Right Rev. W. Clarke MacDonald, Moderator, The United Church of Canada.

The Most Rev. Remi De Roo, Chairman, Social Affairs Commission, The Canadian Conference of Catholic Bishops.

The Most Rev. E. W. Scott, Primate, The Anglican Church of Canada.●

RESOLUTION TO RESTORE FUNDING FOR PVO'S IN NICARAGUA

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. MOODY. Mr. Speaker, today I have introduced a concurrent resolution urging the President to restore U.S. funding for private and voluntary organizations [PVO's] carrying out development assistance programs in Nicaragua.

When President Reagan cut off all foreign aid and assistance to Nicaragua in April 1981, he also prohibited the Agency for International Development [AID] from funding private and voluntary organizations with development assistance programs in that country. Regardless of partisan feelings toward the administration's foreign policy, I do not believe the peasants of Nicaragua should suffer because of disputes between their government and the United States.

Development programs in Nicaragua sponsored by PVO's are nonpolitical and provide continuity in developmental assistance independent of strains at the government level. Most important, the work carried out is directed on a people-to-people basis and is targeted to help those persons who need it most. Organizations which currently maintain programs in Nicaragua include some of the most widely respected in the field—CARE, Project Hope, OXFAM, and Save the Children.

The work of PVO's in Nicaragua is especially important to my constituents. Though the Partners of the Americas, another outstanding PVO, Wisconsin is privileged to have Nicaragua as its sister state. The Partners in Wisconsin are sending regular shipments of medical supplies needed by the Nicaraguan people and are working on a food preservation project using low-cost solar dryers.

My resolution is noncontroversial. It urges the President to reaffirm the commitment of the United States to the valuable work and services provided by PVO's and to reinstate AID funding for PVO's which currently have development assistance programs in Nicaragua.●

ANTIDEFAMATION LEAGUE OF B'NAI B'RITH HONORS JOSEPH ETTINGER

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. ACKERMAN. Mr. Speaker, I rise today to inform my House colleagues of a very prominent member of the Antidefamation League of B'nai B'rith, Joseph Ettinger. On Sunday, June 24, Mr. Ettinger will be presented with the Antidefamation League Torch of Liberty Award, during the Stephen S. Wise/Jamaica Lodge Breakfast, at the Hillcrest Jewish Center, in Jamaica, Queens County, NY.

Each year, the Torch of Liberty Award is given to a member of the Antidefamation League [ADL] in recognition and appreciation of devoted leadership in advancing the cause of human rights. I congratulate Mr. Ettinger for being selected to receive this most prestigious honor from one of our Nation's oldest human relations organizations. The ADL is dedicated to the security and fair treatment of Jews and other minority groups, and takes particular concern to preserve their the safety, status, rights, and image. In its seven decades of existence, the ADL has helped advance democratic principles and objectives, and the ethics of Judaism.

Joseph Ettinger, a mechanical engineer, has been a member of the Stephen S. Wise/Jamaica Lodge of B'nai B'rith for 28 years. Known as Jerry by his fellow members, he served as the president of the lodge during 1964-65. In addition, he has attended the district convention of B'nai B'rith as a delegate representing the New York and New England areas.

He has also taken a leadership role in the Antidefamation League's development division. In the past, he has led the organization's fundraising activities and remains today an active member of B'nai B'rith's ongoing drive—the ADL appeal. Twice a year at holiday times, Mr. Ettinger participates in B'nai B'rith's Project Hope, which distributes food to needy families in the community.

Mr. Speaker, I ask all of my colleagues in the Congress of the United States to join me in saluting Jerry Ettinger and in wishing him mazel tov, and in commending the distinguished chairman of the breakfast, Sidney H. Siegel, and the honorary chairman, Rabbi Israel Moshowitz, for their dedication and support of the Jewish community in Jamaica.●

COMPROMISE ON COP KILLER BULLETS IS ACCEPTABLE TO ALL CONCERNED

HON. JOSEPH G. MINISH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. MINISH. Mr. Speaker, every once in a while, legislation that has been logjammed suddenly breaks loose and moves downstream on the way to certain passage. That's what happened to three bills (two in the House, one in the Senate) seeking to ban the high-powered bullets known as "cop killers."

As a cosponsor of the original bill by Mr. BIAGGI of New York, I found it very refreshing to learn that the Departments of Justice and Treasury came up with a new method of defining these vest-piercing bullets which dissipated the opposition of sportsmen and gun collectors and remains acceptable to the ban-the-handgun groups and police organizations. This was announced at a press conference in the Senate Judiciary Committee room recently.

The new version would outlaw the manufacture and import—except for use by military or law enforcement authorities—of hard metal bullets which have awesome penetrating ability and because they do not shatter on impact, can easily go right through the standard 18-layered Kelvar bulletproof vest.

It should be noted that these bullets were originally thought to be useful in stopping moving vehicles, but because of their greater ricochet ability, many police departments will not use them, such is the danger of hitting other persons in the vicinity.

It is particularly satisfying that the provision which makes certain exceptions for ammunition used by hunters, has the approval of not only the National Rifle Association, but has raised no objections from Handgun Control, Inc. Of course, this makes sense, as hunters generally use rifles while criminals prefer handguns because they can be easily concealed.

But there is no rationale for permiting these high-powered bullets to be made commercially for handguns which are rarely used by sportsmen but are usually purchased or stolen to perpetrate a crime and to thwart law enforcement officers.

So, I think the compromise concerning the definition of these cop killer bullets puts the legislation on the fast track. I have long held that any handgun bullet which can penetrate the soft body armor worn by police officers should be banned. This is essentially how the new bills have defined the bullet, and thus how the compromise was effected in the Senate bill.

Here in the House, we now have Mr. BIAGGI's new bill (H.R. 5835) and Mr. BROOK'S bill (H.R. 5845) both of which contain these same provisions. Naturally, I'd like to see the House bill enacted first, but in such a vital measure as this, one which touches the lives of every law-abiding citizen and the men and women who are entrusted with the public safety, I'll be happy to vote on the first bill that comes out.●

BALANCE THE BUDGET NOW

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. IRELAND. Mr. Speaker, the American public has been told on many recent occasions to ask themselves, "Are we better off today than we were in 1980?"

The economic indicators are definitely pointing to an economy which is good for all Americans, particularly with an inflation rate of 4 to 5 percent today as compared to 12.4 percent in 1980. During the recent economic summit, our allies expressed outright jealously at our lowered unemployment rate. In addition, our gross national product is growing at a rate of 4 to 5 percent per year as opposed to negative growth in 1980.

Such an optimistic outlook gives one pause to wonder why all the ruckus about balancing the Federal budget. It is obvious to me, as it is to many of our colleagues, that if the Government continues its excessive demand for money, there will not be enough to finance investments needed to continue the recovery. Unless we change course, interest rates will rise driving many prospective buyers out of the money markets.

While there can be more than one reason for rising interest rates, the Federal deficit is certainly the most obvious culprit and one which we can control.

Thirty-two of our States, including my own State of Florida, have already called for a constitutional convention to balance the budget. Two more are about to make the same declaration. In addition, 39 States have adopted restraints on their own spending. If the need to balance the budget is so clear to two-thirds of our States, why have we, here in Washington, failed to see the light?

As early as 1977, my first term in Congress, I voted against House Concurrent Resolution 341, the fiscal year 1978 budget resolution which carried an estimated deficit of $61.6 billion. The actual deficit that year was $48.8 billion. In 1982 I voted for the constitutional amendment to balance the budget, an amendment which failed to gain the two-thirds majority necessary for passage. The actual deficit that year was $110.6 billion. And, for fiscal year 1984 we face an estimated deficit of $180 billion—more than three times the fiscal year 1978 deficit in 8 short years.

The establishment of congressional leaders united for a balanced budget (CLUBB) is the result of the frustration of many of us who have long sought to balance the Federal budget. By encouraging the States to pass their own legislation calling for a constitutional convention we hope to convince those in Congress who have yet to support such an amendment that the people of the United States want their Government's financial house put in order.

There has been some controversy over the possibility of a runaway convention in which a number of issues, other than the balanced budget, might come up for consideration. In the first place, the greatest danger is not a runaway convention, but the runaway spending which has characterized our Government's fiscal policies for the last 20 years. In addition, I offer that the greatest check against such an occurrence is for the U.S. Congress to propose such an amendment itself nullifying the need for a constitutional convention.

Mr. Speaker, I urge all of my colleagues to immediately sign discharge petition No. 10. This will discharge House Resolution 512 which is the rule to bring the Conable-Jenkins proposed constitutional amendment—House Joint Resolution 243, the balanced budget/tax limitation amendment—to the floor of the House for consideration. It's time Congress exercised its responsibility for balancing the Federal budget.●

LET US NOT BE CONFUSED: GOVERNMENT OF NICARAGUA SHOULD BE CALLED COMMUNIST NATIONAL DIRECTORATE

HON. CONNIE MACK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. MACK. Mr. Speaker, It was reported yesterday by the official Tass news agency that the leader of the Nicaraguan Government, Daniel Ortega, met in the Kremlin on June 18 with Soviet President Konstantin Chernenko. No details were reported of this meeting, although it was announced that it followed earlier talks with Geidar Aliev, First Deputy Chairman of the Council of Ministers. Nicaragua's Minister of Planning, Henry Ruiz Hernandez, met with Soviet Foreign Minister Andrei Gromyko.

Prior to his arrival in the Soviet Union, Mr. Ortega announced that he would be seeking Soviet Mig jets and heavy tanks to combat the freedom fighters who, in conjunction with the Nicaraguan Catholic bishops, are trying to legitimize a democratic process in that country.

This visit, and its purpose, points to a fundamental truth not easily recognized in the confusion of today's political language—the Government of Nicaragua, as it is currently constituted, is a Communist state. This is true despite the fact that it calls itself the "Sandinista National Directorate."

The Sandinista movement has had a long history in Nicaragua dating back to the early 1900's. Its' patron saint, Augusto Cesar Sandino, began his political movement in 1925 around three fundamental themes: (1) Sovereignty; (2) nationalism; and (3) democratic socialism.

"Sandinismo," then, is a political movement which can in no way be identified with Marxist-Leninism. Marxist-Leninism is by its very nature internationalist, totalitarian, and atheistic. Sandinismo, on the other hand, is nationalist, democratic, and religious. In short, Marxist-Leninism is a view of man and the state antithetical to Sandinismo and the two cannot be identified without doing an injustice to the truth.

With this in mind, it is reasonable—in spite of the fact that for propaganda it insists upon aligning itself with Sandinismo—that we no longer refer to the Government of Nicaragua as the Sandinista National Directorate. This does violence to the true spirit of Sandinismo and, in my judgment, to the national spirit of Nicaragua. Marxist-Leninism is a political view antithetical to all history of Nicaraguan nationalism and our political vocabulary should not be insensitive to this fact. Instead, we should refer to that Government as the Communist National Directorate. This title more accurately reflects the pronouncements, the actions, and the substance of the Government of Nicaragua.

Eden Pastora, one of the heroes of the 1979 Sandinista revolution which overthrew the dictatorship of Anastasio Somoza, has stated this truth in a recent interview conducted by Tomas Regalado, news director for WRHC in Miami. Speaking by phone from Panama on May 24, 1984, Mr. Pastora stated the following:

INTERVIEW WITH EDEN PASTORA, MAY 24, 1984

> It is not true that the Managua regime is Sandinista. The regime is Communist and only Communist. Sandinismo is totally opposed to communism because communism is internationalist and Sandinismo is nationalistic, Sandinismo is democratic and communism is totalitarian, Sandinismo is religious and communism does not believe in God. Let us not be confused.●

SUPPORT MILITARY CONSTRUCTION

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. ORTIZ. Mr. Speaker, soon this body will have the opportunity to vote on authorization of military construction fiscal year 1985.

All too frequently, we forget about the importance of this measure to our total defense effort. Granted other areas of our defense budget receive the lion's share of the funding; however, this measure provides something all the billions of dollars we spend on research and development, and all the billions of dollars we spend on procurement can never provide. Military construction provides for increased readiness and it strengthens morale among our men and women in uniform.

The 27th Congressional District of Texas, which I represent, is the home of an Army depot and two naval air stations. From my discussions with personnel at these installations, I have become acutely aware of the need to beef up readiness and to do everything possible to maintain morale. We must not victimize military construction to provide for budget busting weapons programs.

I believe this bill not only satisfies many of the construction needs of the military, but is also stresses quality of life. More than one-third of this $9.3 billion request has been designated for family housing. I know many of my colleagues have seen the facilities we force many of our military personnel to call home, and frankly, they're embarrassing. This bill continues the long process of eradicating much of the military's disreputable housing.

Aside from housing though, the other two-thirds of this bill places a strong emphasis on replacing antiquated operational, training, and maintenance facilities. With the deployment of new weapons systems, present facilities at many installations are being pushed to limits that they were never designed to endure. If we want modernization in weaponry, we must also shoulder the responsibility for constructing those facilities that are needed for successful integration of these new weapons into our arsenal.

Mr. Speaker, I hope all of us here keep these points in mind when this bill is considered. A nation cannot have a strong defense without the facilities to sustain its successful operation.●

THE HUMAN COSTS OF DEFENSE DEPARTMENT OVERSIGHTS

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. FEIGHAN. Mr. Speaker, we are all too familiar with the astronomical economic costs of waste, fraud, and abuse in the Defense Department. Tales of $400 hammers and $1,000 wrenches don't even raise an eyebrow any more.

But we must not forget that shoddy work and slipshod testing methods also carry tragic human costs.

Nearly 7 years ago, Sgt. Charles Anderson and 30 fellow soldiers were killed in a helicopter crash over Mindoro Island in the Philippines. The crash occurred because of a design defect in their helicopter that had been discovered 10 years earlier, but was continuously overlooked by the Pentagon.

In order to make sure that oversights like this don't happen again, Sergeant Anderson's wife—Gloria Anderson—has written a poignant story describing the circumstances surrounding her husband's death. It is an informative and insightful article, and I commend it to all of my colleagues.

Why Helicopters Don't Fly and Young Men Die

(By Gloria Anderson)

I have been hiding from helicopters for six years now. I censor all movies and television shows that might contain a helicopter scene. When I hear the unmistakable drone of a helicopter overhead, I cover my ears and pray for the moment the sound diminishes and I can breathe easily again. However, sometimes I get caught off guard. I will be carelessly watching television, when one of those "Join the Army, Air Force, Marines," commercials will appear. Before I have time to dart out of the room, there it is, a giant helicopter silhouetted against the sky. The purpose of this propaganda is to entice young men to join in on the adventure and excitement. However, the helicopter scene before me represents no vision of adventure—only a dark, ominous, specter of death, looming out of the sky, waiting to claim its next victim.

Perhaps you are wondering what is the root of this fear? Is some diabolical fiend roaming military helicopters waiting to stalk lives? The answer is no, it is not that simple. My fear arises from what I know about helicopters and then transcends into an even greater fear of what I suspect about helicopters.

It all started with my marriage, on September 23, 1977, to Marine Sgt. Charles W. Anderson. It was perhaps the greatest day of my life. Having been previously married and the mother of a young son, I had thought happiness passed my life by until I met Chuck.

The three of us were very happy. It was a sad, rainy day that my son, Sam and I took Chuck to the airport. He had to return to Okinawa to complete the remaining 6 months of overseas duty. We had been married one week.

On October 8, Chuck called and told me he was going on a special two week training mission that was to take place in the Philippines. He did not want me to worry if the mail was slow during this period, since he wrote everyday. However, the mail was slow. I still received letters from him for over a week after I was notified that he was one of 30 men killed in a helicopter crash at Mindoro Island in the Philippines, on October 21, 1977, just four weeks after we had been married.

What seemed like the end of my life slowly began to evolve into a long search to find out why my husband was killed. It was the least I could do for a life that meant so much to me. The Marine Corps promised a full report. The "report" arrived several months later. It consisted of one sentence stating that Chuck was killed in a helicopter crash. Somehow I felt I deserved a little more explanation than this. My whole world was deteriorating before me: Sam couldn't concentrate at school I could hardly get through a day of work without breaking down and sobbing at my desk. I would come home from work and Sam, trying to be too grown up for his eight years, would wear something of Chuck's and try to act like him to compensate for our loss. Our lives were shattered and the only explanation we could get was one sentence.

I just couldn't shake the feeling that something was wrong. My inquiries into the "accident" were met with polite warnings to drop the whole matter. I began to doubt myself. Perhaps I was becoming too paranoid because I just did not want to accept my husband's death.

Not knowing what to do next, I turned to what was left of my best friend, my companion, my husband—Chuck's letters. I reread all of them hoping for some sort of clue or answer to tell me what to do. It was in a letter he had written to me in May, before we were married, that I found what I was looking for. His letter reads as follows:

"Gloria I'm the operations chief, the NCOIC of a CH 53 Squadron . . .

"Well this may sound good but it's really a mess—the squadron lost 4 aircraft here in the past 6 months. All crashed with pilot mishap killing all crew. What a mess. As you can guess I'm not going to fly unless I really have to."

I never realized the significance of this statement before. How could there be so many crashes in a non combat time period? I knew then that I had a right to know what happened. No matter how long it took, I was going to find out.

The following summer, an attorney from San Francisco contacted me and asked me to join in a class action suit against Sikorsky Aircraft, the manufacturer of the CH-53's. A little leery of this unexpected visitor from out of town, I employed a local firm to investigate the accident.

Three years had already passed since my husband's death, when the law firm turned over their findings to me. The following of which I will relate to the best of my knowledge.

During the late 1960's, a new engine, the T G4-GE-413 was installed in the CH-53's. The purpose of this was to increase the power of the main rotor and on a whole to make the helicopter more powerful. However, it was soon evident that a mistake had been made. The tail rotor could not balance the increased power created by the main rotor. Under certain conditions the aircraft would become unstable and lose directional heading. In a letter dated May 20, 1970, to Naval Air Systems Command, Sikorsky warns of these conditions: Hover at high gross weights; hover at altitude; and maximum power climbs.

To compensate for the mistake that had been made Sikorski designed and tested a bell crank system to stabilize the rear rotor. They requested that all aircraft be equipped with the new system as soon as possible. Seven years later my husband and several other young men were destined to be killed aboard a CH-53, without a bell crank system installed, while trying to attempt a maximum power climb.

With the information released to me, which consisted of various correspondence between and within the Navy, Marine Corps, and Sikorski, concerning the crash, I have been able to reconstruct certain notable events leading up to and including the tragedy at Mindoro, as follows:

THE LARGE NUMBER OF PREVIOUS CRASHES

My husband wrote of 4 fatal CH-53 crashes within 6 months in a letter to me in May. A USMC correspondence refers to the Mindoro crash as "In the wing alone this is the second helicopter crash within 3 months." Since the Mindoro crash occured in October I can only conclude that within a 10-month period there were 6 fatal CH-53 helicopter crashes. I cannot prove that these were all related, however it seems obvious that the absurdity in this high number is enough to raise suspicion. Also I cannot help but ask myself if and how many other crashes could there have been that I never heard of?

THE "NEAR MISS" INCIDENT 2 WEEKS PRIOR TO THE CRASH

This is directly quoted from the writing of my husband's commanding officer. It speaks for itself:

"The entire CH-53 community must bear the blame for this oversight (failure to install the bell crank system). Pilots will readily admit the seriousness of the problem and can relate numerous "hairy tales" of near accidents related to loss of tail rotor authority. One such tale relates that a squadron aircraft, less than two weeks prior to the mishap (Mindoro), attempted to lift two fuel eliveta, after computing that huge capability existed. Tail rotor authority was lost by the aircraft while still within ground effect on the deck. The relative acceptance of this deficiency in the CH-53's performance capability is evident in the fact that the incident was not documented."

THE CRASH

On October 21, 1977, my husband was one of two crew members along with two pilots to participate in a training program in the Philippines. Their mission was to fly a CH-53 to a hill, pick up 33 infantry men, pick up an empty water trailer, take off, and deliver the crew and cargo to another location. This maneuver called for a "maximum power climb" which Sikorsky had warned of 7 years earlier. True to their prediction, shortly after lift off the helicoper began to lose directional control. It slowly started to rotate in mid air. The crew tried desperately to stabilize. They released the water trailer to lessen the weight. For a moment there was hope that they might come back into control, then being in such a mountainous region, the tail of the helicopter hit a tree and broke apart. The helicopter then started to fall uncontrollably for 400 feet. It impacted the jungle and burst into flames.

Therefore it was an accumulation of poor planning, errors, negligence, mishaps, and possibly lost lives, spanning almost a decade, that went into the making of this tragedy at Mindoro. The only answer I have been able to come up with as to how such a lack of responsibility for human life was allowed to continue for such a long period lies in the fact that no one was legally responsible. When Sikorski issued their letter of warning to the Navy in May of 1970, they were no longer liable in the eyes of the law. The government wasn't liable because a serviceman is not permitted to sue the U.S. for injuries or death sustained in the line of duty. Therefore everyone was off the "hook." That is everyone except people like my husband who were dead and people like me who were left over. I wonder how many of us there are?

To further complicate the situation, I became aware of another problem. A friend from my husband's squadron kept in touch with me for a few years. He was thoroughly convinced that the crash at Mindoro was due to pilot error and had nothing to do with mechanical defect whatsoever. I would think that by now some of the people involved would have at least questioned pilot training if they refused to believe in anything else to explain the plague of helicopter mishaps. The legacy continues.

The Navy, in a panic after all the casualties at Mindoro, issued orders to install the bell crank system on all remaining aircraft. I do not know if or when this was ever carried out. However, I could not help but notice that, after the fact, 4 out of 8 CH-53's developed operational difficulties during the mission to rescue the hostages being held in Iran several years ago. The cause of these difficulties somehow got dropped during the shuffle of events. Later, the hostages came home free on an airplane. All the men who flew on one of the CH-53's were dead.

During the six years since Chuck's death, there still seems to be a lot of helicopter crashes going on. I know because of the pain I feel each time I read or hear of one. The reasons, the kind of aircraft, the number of people killed, all vary. The worst of these news reports is one that I read on the front page of the Cleveland Plain Dealer, April 1, 1984. To quote directly from the opening sentence that appeared in the newspaper, "A design problem in Bell Military helicopters may be responsible for 231 deaths since 1967, but remains largely uncorrected even though the Army discovered it ten years ago." I read this with a numbing realization. It was the same story over again with a few changes. Instead of the Marine Corps, it was the Army. Instead of the manufacturer being Sikorski, it was Bell. Ironically, more military men have been killed in peace-time helicopter crashes than in Beirut. Somehow this senseless slaughter must stop.

I can still remember my husband, tall, confident, and proud. There was always something so special about him that when he wrote to me in one of his last letters, "I guess I never, ever, will get over falling so completely in love with you." I can not help but reply to a person that is no longer there. "I guess I never, ever, will get over how carelessly your life was tossed away."●

ENERGY SECURITY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for Wednesday, June 20, 1984, into the CONGRESSIONAL RECORD.

ENERGY SECURITY

The escalating conflict between Iran and Iraq has led people to ask once again whether the United States should fear a disruption in its foreign oil supply. On the one hand, our capacity to withstand a disruption in the short term has improved. Over the past few years, we have cut consumption, stockpiled crude in reserve, shifted away from sources in the Middle East to more stable Mexican, Canadian, and British sources, and entered into agreements with other oil-importing countries to bear the burden equally during a crisis. Any optimism, however, should be tempered by the realization that expectations about the security of oil supplies can be shattered by unforeseen political or military developments such as the revolution in Iran in 1978 or the war between Egypt and Israel in 1973. Likewise today, any number of events, ranging from a takeover of oil fields to the overthrow of a friendly government in the Middle East, could produce chaos in the economies of both the industrialized and the developing worlds.

But I am more concerned about our situation in the long term. Even if we are lucky enough to avoid a catastrophe that wipes out our Middle East oil supply, several trends are pushing us once more toward greater dependence on the Organization of Petroleum Exporting Countries (OPEC). For the first time in five years, our imports of oil are increasing, and our continued economic recovery will require more energy. At the same time, our domestic reserves of oil are shrinking, and recent efforts to discover new oil here at home generally have not succeeded. Also, reserves held by our current non-OPEC suppliers soon will be peaking, our work on synthetic fuels is being put off, much construction of new nuclear power plants has been suspended, and federal programs in the areas of solar energy and fusion power have been cut back sharply. Overall, the result of these trends could be grave: the quantity of oil that we must import could rise very sharply by 1990, and we would be under OPEC's thumb again.

Reducing our use of imported oil makes sense for several reasons. In the first place, a cutoff of imported oil could reduce our gross national product by more than 25% even today, so reliance on it makes our industries vulnerable to economic blackmail. Second, we simply cannot afford to send $40 billion or more overseas each year to pay for the imported oil. Third, we may be compelled someday to wage an incredibly dangerous and costly war to protect energy sources located halfway around the world. Given these dire possibilities, it is not easy to see why we have continued our short-sighted dependence on foreign energy.

Real security does not require a drive for total energy independence. Instead, it means reducing our dependence in the near term to the extent that our economy can weather a sudden cutoff of the imported oil, while making the transition in the far term to more stable sources of energy available within our borders. A consensus seems to be developing that there are at least five basic steps to be taken:

First, we must step up our efforts to fill the Strategic Petroleum Reserve. Since 1977, the federal government has been purchasing crude and storing it in salt caves in Louisiana and Texas for use during an emergency. To date, we have accumulated 400 million barrels, enough to meet our needs for 200 days if OPEC oil were cut off, and 80 days if all imports of oil were stopped. This reserve would keep the wheels of industry turning while our diplomats and military men worked to restore the status quo.

Second, we must continue to promote energy conservation. Past efforts, from turning down the thermostat to adding insulation, have reduced our per capita use of energy 14% over the past ten years. However, even more significant savings could result from new technology being developed—pulse-burning furnaces, super-insulated houses, and the like. The federal government has a role to play in disseminating information and in supporting research and development. A welcome change is the administration's embracing of energy conservation after initially leaving it to the private sector.

Third, we must expand domestic energy output. The idea popular a few years ago—that the oil firms would find what we needed if we unleashed them—must be re-examined. The recent surge in exploration has shown that it will be extremely difficult and expensive to discover new oil reserves. On the other hand, there is growing evidence that our undiscovered reserves of natural gas are enormous. Almost 25% of the energy that we consumed last year was domestic natural gas. We must guarantee that producers have adequate incentives to expand their output.

Fourth, we must find ways to burn coal cleanly. Our reserves of coal are large enough to meet our needs for 200 years, yet coal supplies only 22% of the energy that we consume today, primarily due to concern about the environment. In the past few years we have tried hard to develop the technology to convert coal to cleaner synthetic fuels, but the results have been disappointing. More promising technologies, such as fluidized bed combustion and other methods of burning coal with fewer emissions, are being tested and should be pursued vigorously with federal support.

Fifth, we must speed up the development of renewable energy resources. Our best hope for the distant future is to harness inexhaustible and abundant energy from the sun, the wind, the tide, and the experimental process of nuclear fusion. Renewable resources cover only 8% of our present energy needs, and much of that energy comes from government-sponsored hydroelectric projects built decades ago. The administration's cuts in ongoing research and development reveal a misunderstanding of industry's capacity and government's role. Due to the misunderstanding, valuable time is being lost and the appropriate technologies may not be available when we need them.

We have both the resources and the creativity to achieve energy security. A continuing national commitment is the missing ingredient.●

THE IMF MUST RECONSIDER ARGENTINA

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. KEMP. Mr. Speaker, every developing nation which has been successful in attaining the goals of a growing economy and creation of jobs for its people has begun the long process with capital from other nations. With this capital has come the entrepreneurial and technical skills of the owners of the capital, the foreign investors who share the goals and the dreams of those in the developing nation.

In the course of finding solutions to their current economic problems, those developing nations which are facing massive debt repayment problems and domestic stagnation would do well to remember the history of the industrial nations. From the Medici bankers who began capital markets in England to the English, German, and French capitalists who provided capital and skills for the development of North American, foreign equity investment has been a key ingredient for economic expansion.

In today's Wall Street Journal the lead editorial graphically describes the reluctance of those nations deepest in debt to energize their economies with foreign capital. This editorial correctly points to the provision of equity capital and the associated benefits of that capital as the greatest lever available to the creditor nations.

But, Mr. Speaker, those who negotiate for us do not use this lever. Instead of insisting that nationalized industries be placed in the free markets, the IMF insists that imports be limited. Instead of insisting that tax rates on savings, investment and work be lowered, it insists that surcharges be levied. Instead of requiring that capital markets and industry be opened to all investors—while retaining full political control for the sovereign power—it seeks to repay old debts by squeezing even more from the already impoverished people who seek only jobs and security for their families.

I hope that my colleagues will consider the very accurate analysis in the Journal editorial and I ask that it be printed in the RECORD.

We need to help nurture democracy and prosperity in Argentina as they are but a symbol of the many friendly nations who look to us for leadership, friendship and the right kind of help.

The editorial follows:

[From the Wall Street Journal, June 20, 1984]

THE CREDITOR'S CLUB

As the Latin American debtors convene tomorrow in the Colombian spa of Cartagena, they will no doubt be reflecting on the dramatic change since April Fools' Day. Back then, the debtors' club was basking in its success, in the closing hours of March, in averting an Argentine default. Overdue interest payments on Argentine public-sector debt were met with loans from creditor banks and from Mexico, Venezuela, Brazil and Colombia—that is, everyone at Cartagena except Peru and Ecuador. Congratulations about cooperation and constructive steps rang loud.

As Cartagena dawns, Argentina is careening toward a spectacular default. It has chosen a head-to-head confrontation with the International Monetary Fund, and no doubt will be asking its debtor partners for cooperation if not emulation. In the most hopeful recent development Manufacturers Hanover, the bank with the biggest Argentine exposure relative to its capital, announced that it was writing down the loans. Other creditors that stand to be burned include Mexico and Venezuela at $100 million each and Brazil and Colombia, both in for $50 million. We would love to be a fly on the wall as the debtors' club discusses this part of the issue.

The big club at the table, however, belongs to the creditors. An Argentine agreement with the IMF is necessary to activate the U.S. Treasury's pledge to pick up the $300 million tab for the other debtors' March loans. The Federal Reserve has lent its, er, good offices to get interest-rate relief for Mexico for doing the things Argentina is refusing to do. As the Manny Hanny action shows, the banks are finally girding to take the problem seriously, bearing some responsibility for the mistakes they share with the debtors.

The big question is, to what purpose will the creditors' club be wielded? What advice is being offered the debtors by the IMF, the Treasury and the Fed? What hope? Do the IMF, the Treasury and the Fed ask or offer anything beyond having the debtors stage a recession to curb imports and promote exports? How is it that in this debate the IMF speaks for "austerity" and the Argentines speak for "growth"?

Clearly growth is a prerequisite if these debts are ever to be repaid. The domestic austerity and external devaluation prescribed by the IMF may typically be necessary as a recognition of past reality, but they certainly are not a recipe for the future. Tax increases and unsound money do not promote growth. And, as Britain's Lord Lever so eloquently argued on this page June 7, there is no way to squeeze Third World economies hard enough to promote the trade surpluses needed to repay those loans. His answer is to have Western taxpayers ante up to buy out the loans. Happily, there is a more constructive solution.

The foreign exchange to service the bank debts does not have to come from the trade accounts. Indeed, it cannot. But there is another source: the capital accounts. The solution to the Latin and other Third World debt is to promote capital inflows. This need not be hard, since in a free-market environment developing nations offer good profit potential, as Singapore, South Korea and Taiwan have demonstrated even recently. The whole problem is to promote a free-market environment, allowing investment to be rewarded. Why can't an IMF ask for this very thing—a recipe for growth, indeed almost a guarantee? The opportunities, and failures, have been spelled out recently by our own correspondents' reports from the world's economic trouble spots.

To take one example, in the Dominican Republic people have literally been dying in the streets over an IMF austerity program; import restrictions were the ostensible reason for the riots in which 60 people were killed. the Dominican Republic's largest investor, Gulf & Western Industries, just announced that it wants out. Among its problems, Roger Lowenstein reported from the island Monday, is a law intended to deal with the external imbalance by forcing exporters to turn in dollar earnings at an artifically low exchange rate. Somehow the IMF had less success in changing this insane tax on exports than in cutting subsidies for food. This is the difference between looking at the short-term trade balance and austerity, and at the long-term capital accounts and growth.

Even Mexico, the measure of success with IMF austerity, is not yet on a long-term growth path. Here, after all, is an enormously wealthy nation. If could wipe out its foreign debt overnight, by selling 20 billion barrels of oil still in the ground at $4 a barrel. OK, we understand the sensibilities; oil cannot be sold to foreigners until it has been pumped out of the ground. President Cardenas nationalized oil back in 1938. If he hadn't, Mexico would have been ready to sell the oil when the price was high, but by now there is no going back. In its own interest, though, Mexico could open its doors to direct foreign investment in other fields, but as Steve Frazier reported recently from Mexico City, promises of liberalization remain mostly promises.

There is no better example of the impact of capital accounts, though, than Argentina. In this case the disarray in internal policies is proving too much even for the IMF. If there is a big Argentine default, it will be a learning experience for debtors and for banks, and we hope for the international bureaucrats as well.

When Argentina ended military rule with elections last October, the big surprise was that the Peronistas did not win after all. Naturally (we suppose), President Raul Alfonsin's Radical Party quickly proposed a bunch of Peronist policies. The one that sends the IMF over the brink is a proposal for real wage increases of 6% to 8% in the face of 500% inflation.

Listen, though, to the policies Argentine Finance Minister Bernardo Grinspun described to the Journal's Neil Ulman in Buenos Aires in January: As all good economists demanded, the budget deficit was to be reduced—from 14% of GNP to 4% of GNP. This was to be accomplished by reducing government spending by 2% of GNP, by tax increases on the wealthy amounting to 4% of GNP and tighter enforcement of current taxes amounting to another 4% of GNP. In other words, Argentina's new democrats wanted a tax increase of 8% of GNP, to be borne mostly by holders of capital.

Argentina's ranchers, we hear, are grinding their breeding stock into hamburger so that it can be exported and turned into something resembling cash. The Grinspun economic program is only the latest in an ongoing assault on Argentina's productive sector; the government, for example, has given ranchers an exchange rate 25% below market, pocketing the difference. While the bankers were pumping $40 billion in loans into Argentina, we understand, the Argentines were taking out some $30 billion to park abroad. No amount of IMF credit, let alone loans from other debtors at Cartagena, is going to salvage Argentina's democracy if these internal economic policies are allowed to persist.

Now, there is plenty of homegrown folly in the world. The IMF can't carry every nation's economic mistakes on its shoulders; perhaps it shouldn't even try. But inevitably creditors do have a club to wield either directly or through official institutions. They even more than debtors need to offer a unified message: However painful short-term adjustments may be, in the long term the interests of both creditor and debtor are served by growth, and the way to growth is well established. To wit, get suicidal policies out of the way and allow the market system to work, externally and—in the long run even more important—internally as well.●

A TRIBUTE TO DR. JOHN P. GELSOMINO

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. LIPINSKI. Mr. Speaker, I would like to recognize an outstanding citizen of Illinois' Fifth Congressional District, which I am privileged to represent, and he is Dr. John P. Gelsomino. Dr. Gelsomino has been recognized for his dedication and numerous achievements in the education and music field, and for his contributions toward improving our community.

Dr. Gelsomino has been actively involved in organizations and dedicated to the betterment of the southwest side. Through the years, Dr. Gelsomino has received numerous awards and honors for his community service and for his dedication in the music field.

I join with the residents of the Fifth Congressional District in paying tribute to Dr. Gelsomino for his work in our behalf, and I would like to introduce into today's CONGRESSIONAL RECORD a newspaper article honoring Dr. Gelsomino upon his receipt of the Ray McDonald Community Achievement Award.

The article follows:

[From the Midway Sentinel, December 1983]

GELSOMINO RECEIVES MCDONALD AWARD

The Midway Sentinel proudly salutes Doctor John P. Gelsomino, Assistant Principal of Curie High School as our monthly recipient of the Ray McDonald Community Achievement Award. This recognition is given to John for his dedication and numerous achievements in the education and music field, and also for his outstanding service to our community.

Gelsomino, a resident of the southwest side, attended and graduated from Austin High School. In 1960, he graduated from DePaul University attaining a Bachelor of Arts Degree in music education. In 1970, he earned a Masters Degree in music education. And in 1973, a Masters Degree in General Education. To further his knowledge in the education field, Gelsomino attended the Nova and University of Florida, Sarasota, where he earned a Doctorate Degree in education graduating in 1975.

John attributes his success in music from his grandfather who was an accomplished musician and who played in the opera at Palermo, Italy where he was born and raised.

On a community level Doctor Gelsomino has been actively involved in organizations and dedicated to the betterment of the Southwest Side, serving on the Archer Brighton Community Conservation Council. He presently serves as President of the Southwest Cultural Arts Council and as Secretary of the District 12 Education Council. He is past President of the Gregorian Society and member of the Joint Civic Council of Italian Americans.

Over the years, John has received numerous awards and honors for his community service and for his dedication in the music field.

Some of his honors include: A.B.C.C. Youth Award, 1968; West End Lions Club Teachers of the Year Award, 1969; National Teacher Award from the Freedom Foundation, 1970; American Cancer Society Award for Community Service, 1971; Catholic War Veterans Post #500 Man of the Year Award, 1972; Who's Who in American Education, 1971-72; Archer Road Kiwanis Teacher of the Year, 1973; Outstanding Alumni Award from DePaul University, 1974; National Bicentennial Merit, 1975; District 12 Education Council Award, 1976; American Legion Citation of Merit, 1982.

Along with Lita DiVita, President of the District 12 Education Council, John is actively working to secure funds for the Community Weekend Performing Arts Program at Curie High School.

John is married to Anisia, and they have two children, ages two and five.

The Staff of Midway Sentinel wishes Doctor Gelsomino and his family a Merry Christmas and a Happy New Year and honors him for his dedication and unselfishness towards the community of the 23rd Ward and the Southwest Side.●

THE DOUBLE STANDARD OF HUMAN RIGHTS

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. PHILIP M. CRANE. Mr. Speaker, human rights abuses are antithetical to all that our country stands for. It is our solemn duty to oppose and denounce these abuses whenever and wherever they occur. Perhaps this is why it is particularly distressing that egregious human rights abuses in some countries go all but unnoticed while much less serious violations in countries friendly to the United States attract almost incessant attention. Unfortunately, a definite pattern seems to have developed; the disparity of response from this country and more particularly from this body reflects an undeniable double standard.

It seems that many people have allowed themselves to be put in the hypocritical and paradoxical position of treating enemies of the free world as friends and friends of the free world as enemies—all in the name of human rights. It is absolutely ludicrous to support sanctions or penalties against South Africa or Chile at the same time one is supporting most-favored-nation status for Romania or improved relations with the Soviet Union or Communist China. Imperfect as conditions may be in South Africa or Chile, insofar as human rights are concerned, they are far better than those in Cuba, Red China, the Soviet Union, or many Third-World nations such as Mozambique. We should remind ourselves that Mozambique's President, Samora Machel, an avowed enemy of South African apartheid, has stated unequivocally that he does not believe in white minority rights in his own country.

This is not to condone certain practices of some free-world nations or to suggest that they not be urged to open up their institutions to permit fuller participation by all their citizens. Quite the contrary. It is rather, an attempt to put the subject in its proper perspective. The trend that seems to have developed is one that consistently condemns human rights violations in friendly nations while glossing over them or completely ignoring them in developing or even Communist nations. The effect is potentially disastrous; we often aid, albeit unwittingly, the takeover of these friendly nations by those that are even less democratic or more communistic. This is a trend, regardless of how well intentioned, that can only benefit the Kremlin. In a very real sense we defeat ourselves with such a policy.

The following editorial from the most recent issue of Strategic Review describes in some detail this double standard and its effects. I believe that it provides an interesting and timely addition to the debate on human rights violations throughout the world, and I therefore commend it to my colleagues.

[From the Strategic Review, Spring 1984]

THE DOUBLE YARDSTICK OF HUMAN RIGHTS

In Conakry, Guinea, in early April, the military men who had seized power in that African state after the death of President Ahmed Sékou Touré opened the gates of the prison at Camp Boiro. The stench that billowed from the blood-encrusted torture cells was so overpowering that it penetrated some international newsprint, at least briefly.

Even to a world that has become somewhat inured to spectacles of man's inhumanity to man, Camp Boiro offered some "refinements." It seems that the thousands of suspected opponents of Touré's regime who were consigned there during the 26 years of his rule received no food, and sometimes no water, during the first nine days of their confinement. Those who survived were then either given "half-rations" of bread or rice, or they were placed on the "black diet"—a euphemism for death by total starvation.

What is noteworthy about Camp Boiro, beyond the detailing of inhumanity, is that it etches into sharp relief a double standard in Western judgments of human rights and their abuses. During the past decade, the spotlight of human rights condemnation alternated among such as the Colonels in Greece, the Park regime in South Korea and—with special glare—the Shah of Iran. Although the known facts of constant oppression in Guinea had been reported by the more objective human rights organizations like Amnesty International, they were scarcely noted in the Western media.

What accounts for the double standard? The case of Guinea gives us a few clues.

Sékou Touré was the first black African leader of stature to emerge in the storms of the postwar decolonization of the subcontinent when he assumed the presidency of Guinea after its independence from France in 1958. His striking appearance and compelling powers of oratory combined into a considerable personal charisma.

Touré was a self-avowed "scientific socialist" who proceeded to hammer Guinea into the first Marxist enclave in Africa. He was also the first sub-Saharan head-of-state to open his country to the full inflow of Soviet assistance, presence and influence. In the process he became a hero not only of Soviet propaganda, but also of the salons of chic radicalism in Western Europe and America.

The heroic bloom faded with time and stage-competition from other emergent African figures. Eventually the hand of the Soviets became too heavy even on Touré's ego, and he evicted their mission. Nevertheless, the grafting of "scientific socialism" onto a hapless country continued as the screen for a personal rule that stands revealed today in all its depravity at Camp Boiro.

The clear inference from this compressed history is that old heroes of "liberation struggles" are not easily selected for human rights condemnation in the West. But there is patently more to the double standard.

We in the West have become subject to a process that might be characterized as a combination of semantic conditioning and image-association. The process is constantly purveyed by the Soviet propaganda transmitters and their various local amplifiers in the West. But it also has its roots in lingering myths related to our own "revolutionary heritage."

Basic to the process is the proposition that insurrections, by the very fact of their occurrence, offer proof of a justifying cause. Americans may not swallow completely, the Soviet propaganda staple that all "national liberation wars"—that lofty euphemism for insurgencies supported by Moscow—are by definition "just" wars. Nonetheless, they are inclined to give revolutionary movements at least the ample benefit of doubt with the reasoning: "If people take up arms against the authorities, there has got to be good cause." The traditional American predilection for the underdog also plays a role.

Consciously or not, by extended association, the "popular" uprising (in the double connotation of that term) becomes a "progressive" one. Conversely, the actions by the authorities that stand in the way are "repressive." The latter term, of course, has become interchangable with "right-wing" regimes.

This dual yardstick is very much in evidence in current reactions in the U.S. media—and in the halls of Congress—to the conflict in El Salvador. Consider just one telling example: The focus of human rights criticism of the Salvadoran Government in the United States continues to be on the "right-wing death squads" that have victimized ideological opponents. Yet, in 1984 already three members of the Salvadoran legislature have been assassinated. All were conservatives. Thus, are there not also "left-wing death squads" in El Salvador?

There is yet another, more subtle, dimension to the double standard. In the story that he filed on his visit to the death-camp in Conakry, *New York Times* correspondent Clifford D. May noted some of the justifications that had been adduced for Touré's brutal rule. One of these came from Stokely Charmichael, the former American Black Panther leader who moved to Guinea in 1969. Carmichael pronounced: "In all the world's great historical movements from Christ's to Gandhi's, blood has had to flow." He opined that Touré, if anything, had been "too soft."

The overwhelming majority of Americans would not buy the macho-radical notion that human blood, including innocent blood from tortured bodies, is the indispensable lubricant of revolutionary experiments. Nevertheless, there is a prevalent tendency to allot to revolutionary movements, even after they have sized power a certain margin of leeway in their observance of basic human rights. Their breaches of those rights are rationalized as "transitory" emotional responses to a dehumanizing struggle in progress or recently completed. And, in more academic parlance, there is acceptance (or at least professed understanding) of the need for some measure of "social discipline" in the post-revolutionary setting. The strands of such reasoning are manifest in current urgings for tolerance toward the Sandinista regime in Nicaragua.

History—particularly the torture history of our own century—exposes such sweeping assumptions and notions as myths. Revolutions, even the successful ones, are not necessarily "popular." Indeed, most of those in more recent experience were ignited by distinct minorities and then fanned into broader conflagrations by means of the deliberate provocation and escalation of violence. This elementary tactic for creating a "revolutionary situation" can be found in every modern insurgent's handbook, from Mao to Che Guevara.

Revolutionary conflicts may batten on local causes or grievances, but this does not ipso facto enshrine their nobility. Revolutions can be usurped, manipulated and perverted toward ends that will have little or no relation to the alleged causes or grievances.

Revolutions are not "progressive" by definition. Unless we accept the Marxist equation of "progressive" with "socialist," the term would suggest that the people, in whose name the revolutionary banner was hoisted, became thereby better off than they were before. Was the lot of the Russian people, during Stalin's immense horrors, really improved over that during the Tsars? What about the revolution (and it was truly that) which thrust National Socialism into power in Germany in the inter-war period? In our own day, what have the Iranian people accomplished by exchanging the Shah's autocracy for the fanatical fundamentalism (and massive blood-lettings) under the Ayatollah Khomeini? Have the Nicaraguans shed the injustices of the Somoza oligarchical rule only to wear the Marxist yoke of the Sandinistas?

These are only some salient examples. Indeed, if achievement of greater freedom is the governing criterion for the "progressiveness" of revolutionary outbursts, then it is a poignant symbol of our own times that previous few have thus qualified.

By all means, let us treasure our revolutionary heritage—but let us also recognize those factors, conditions and motives that set some modern revolutionary onslaughts starkly apart from the winter at Valley Forge. By all means, let us hew to the cause of human rights—but let us also apply it fairly, without ideological blinders or emotionally misguided "discounts" for revolutionaries because they claim that title. If we were truly to do so, we might discover that the human rights cause is in no manner at odds with our strategic interests as a nation.●

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10 SUCCESSFUL YEARS IN THE PARSIPPANY-TROY HILLS OFFICE ON AGING

HON. JOSEPH G. MINISH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. MINISH. Mr. Speaker, it is my pleasure to honor the office on aging, in Parsippany-Troy Hill, NJ, as they celebrate their 10th anniversary. The township can truly be proud of the many contributions their office has made to the community.

This office has been noteworthy from its inception. Parsippany-Troy Hills was the first municipality in the State of New Jersey to establish an office on aging. A forerunner in their field, the Parsippany-Troy Hills office has since assisted many other towns in launching similar programs.

The general goal of the office on aging is to provide assistance to any citizen of Parsippany-Troy Hills, who is 60 years of age or older. To this end, the office sponsors many programs, such as Adopt a Grandparent, the Choral Connection, which puts senior citizens in touch with schoolchildren, a food drive, and seminars on aging. The focus of the programs is on intergenerational activities.

To me, one of the finest contributions that this office makes to the community is their recognition that senior citizens have so much to contribute to us all. The years when people may be retired from daily employment are still full and productive. Too often our popular culture extolls the virtues of youth, while forgetting that mature people have the decided advantages of wisdom, experience, and judgment. Organizations like the office on aging, help to place a balance back in our thinking and establish programs so the larger community can benefit from the experience and abilities of our senior citizens.

On the social side, the office on aging is a place where friendship and community spirit is fostered. Their activities are interesting and exciting events, which participants look forward to with good reason.

One of the primary reasons why this office has been so successful is due to the devoted work of its executive director, Rosemarie Agostini. Its director since the office opened in 1974, Rosemarie has developed and nurtured the programs. A specialist in the field of aging, she is a familiar friend to the senior citizens of Parsippany-Troy Hills. Without her knowledge, expertise, and diligence, the office on aging would not have flourished as it has. I think Rosemarie can feel special pride in this 10th anniversary celebration as it is her personal achievement, as well. I would like to join others in thanking her for her efforts.

Mr. Speaker, the Parsippany-Troy Hills Office on Aging has received national commendation from such distinguished groups as the U.S. Conference of Mayors and the National Council on Aging. It is indeed my honor and pleasure to recognize the Office on Aging today and restate that I look forward to working with them in the future.●

ANTIGO, WI: MODEL OF OLYMPIC SPIRIT

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. ROTH. Mr. Speaker, the Soviets have done all they could to dampen the spirit of the summer Olympics. But they have failed.

Across the country, Americans are gearing up for the Olympic games, ready to cheer our athletes on. I would like to tell the House how the Olympic spirit is thriving in Antigo, WI, an all-American town of 10,000 people.

A group of businessmen in Antigo decided to hold a drawing for a special prize. They are not doing this for profit or promotion. Their sole purpose is to bring the Olympics closer to home. During the town's July 4 celebrations, hundreds of people from Antigo and surrounding Langlade County will gather to hear the announcement of the drawing's two lucky winners. The prize: an all-expenses paid trip to Los Angeles to root for the American team on behalf of the whole town.

Americans can score a victory over the Soviet boycott—and the political cynicism it represents—by showing our unflagging belief in the principle of peaceful competition among nations.

Last November, we in the House passed a resolution that supports and encourages the goals and ideals of international Olympic competition. I want the House to know that the people of Antigo, WI, are doing their part to keep the Olympic spirit alive.●

RESOLUTION INTRODUCED FOR DOUGLAS MACINTOSH

HON. BRUCE A. MORRISON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. MORRISON of Connecticut. Mr. Speaker, I am pleased today to introduce a resolution that would grant honorary citizenship posthumously to Douglas Clyde MacIntosh.

Douglas MacIntosh was a professor at the Yale Divinity School for 30 years, beginning in 1909. A Canadian by birth, he served as a chaplain with the Canadian Forces in World War I. After being a resident of the United States for many years, he applied for citizenship. His application was denied in 1931 for refusal to pledge to bear arms in war.

Fifteen years later, the rule under which his application was denied was overturned by the Supreme Court in Girouard against United States. By then, however, Dr. MacIntosh had suffered an incapacitating stroke and could not renew his petition for naturalization. He died soon after without receiving citizenship.

The right of conscientious objection had been long established prior to World War I. The Founding Fathers believed that right to be implicit in the first amendment. In ratifying the U.S. Constitution, North Carolina and Virginia suggested that "any person religiously scrupulous of bearing arms, ought to be exempt * * *" And in 1946, Justice William O. Douglas reaffirmed the freedom of religious belief:

> Throughout the ages, men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the first amendment is the product of that struggle.

Mr. Speaker, the purpose of this resolution is to right the wrong done to Dr. MacIntosh over 50 years ago. I urge my colleagues today to make Douglas Clyde MacIntosh an honorary citizen of the United States.

The resolution reads as follows:

H.J. RES. —. PROCLAIMING DOUGLAS CLYDE MACINTOSH TO BE AN HONORARY CITIZEN OF THE UNITED STATES

Whereas Douglas Clyde MacIntosh, a native of Canada and a Baptist minister, distinguished himself as an outstanding theologian and respected teacher in more than 30 years of service on the faculty of the Yale Divinity School, and as a visiting lecturer in philosophy and religion at the universities of California, Chicago, Calcutta, and Harvard;

Whereas in World War I Douglas Clyde MacIntosh voluntarily served as a chaplain with the Canadian Army at Vimy Ridge and in the Battle of the Somme, lectured in the United States on behalf of the Allies, and operated an American Y.M.C.A. outpost at the front until the armistice in 1918;

Whereas in 1931 the Supreme Court of the United States, in *United States* v. *MacIntosh*, 283 U.S. 605 (1931), affirmed the decision of the Federal District Court of Connecticut denying Douglas Clyde MacIntosh's petition for naturalization as a citizen of the United States because he would not promise to bear arms in defense of the United States unless he believed the war to be morally justified;

Whereas in proceedings before the District Court Douglas Clyde MacIntosh stated that he was ready to give to the United States all the allegiance he had ever given or ever could give any country, but could not put allegiance to the government of any country before allegiance to the will of God;

Whereas in 1946, in *Girouard* v. *United States*, 328 U.S. 61 (1946), the Supreme Court overruled *United States* v. *MacIntosh;*

Whereas Douglas Clyde MacIntosh was not able to renew his petition for naturalization because he suffered an incapacitating stroke in 1942;

Whereas one of the cardinal principles upon which this Nation was founded is the unalienable right to the free exercise of religion, according to the dictates of conscience; and

Whereas Douglas Clyde MacIntosh died in 1948 without being vindicated for his personal sufferings on behalf of that principle: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America *in Congress assembled*, That Douglas Clyde MacIntosh is proclaimed to be an honorary citizen of the United States of America.●

SOVIETS MUST ALLOW YAKIR FAMILY TO EMIGRATE

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. WOLF. Mr. Speaker, I have just heard the deplorable news that Alexander Yakir of Moscow was arrested on the spurious charges of failing to appear for Soviet military service in 1978.

Alexander (Sasha) and his parents, Rimma and Yevgeny, were denied permission to leave the U.S.S.R. in 1974. The reason was that Rimma had access to state secrets when she worked as an engineer in 1971. Some of her coworkers have been allowed to leave. The family are activists in the refusenik community and their participation in political and Jewish cultural activities have made them targets for KGB harassment.

Alexander (Sasha) graduated from a Moscow scientific institute as an electrical engineer with a specialty in remote control technology. However, due to his status as a refusenik, he has never worked in his field. For several years, he was forced to work as an elevator operator. Sasha's parents, both denied positions as mechanical engineers, have managed to eke out a living in Moscow. Yevgeny strings tennis rackets and Rimma works as a typist. The Yakirs have fluency in English and Hebrew.

As we all know, the Soviets frequently attempt to draft young male refuseniks, thus effectively detaining them for 7 years on the grounds of army secrets. The Soviet Union's case against the Yakirs in denying them permission to emigrate is itself a flagrant and deplorable violation of the Helsinki Accords, which the Soviets have signed. The further harassment and outrageous arrest of Alexander must not go unnoticed.

I urge the Soviet Union, in the strongest possible terms, to release Alexander and to allow the Yakir family to emigrate, and to end the brutal harassment of Jews living in the Soviet Union.●

JEAN MARIE GLENN EARNS HIGHEST ACADEMIC AWARD

HON. GEORGE M. O'BRIEN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. O'BRIEN. Mr. Speaker, academic excellence is always a remarkable accomplishment and a treasure for those who have earned it. But the accomplishment becomes that much greater for the student who involves herself in campus activities and responsibilities over and above her devotion to studies alone.

I would like my fellow Members of Congress to join with me in recognizing Jean Marie Glenn, who has been cited by her school, the Rochester Institute of Technology, for receiving a perfect 4.0 grade point average at the Institute's National Technical Institute for the Deaf.

Jean Marie is an accounting major in the School of Business Careers, an active member of the NTID Student Congress, and the 1983-84 student representative on the NTID Curriculum Study Committee.

NTID Director William E. Castle says in winning the Academic Achievement Award, Jean Marie demonstrated "outstanding academic achievements and contributions to the community. Her high level of accomplishment is the result of hard work, dedication, and motivation."

Jean Marie, who also has a brother enrolled as a student at NTID, is the daughter of Mr. and Mrs. Bernard Glenn, 1517 North Center Street in Joliet, IL.●

DANIEL NATHAN ROSENBLUM, AN OUTSTANDING YOUNG MAN

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Ms. OAKAR. Mr. Speaker, in May, 1984, one of my fine constituents, Daniel Nathan Rosenblum graduated from Yale University with a B.A. in history. He graduated summa cum laude with distinction in his major. He was also elected to Phi Beta Kappa.

Daniel was valedictorian of the 1980 graduating class from Midpark High School in Middleburg Heights, a suburb of Cleveland, OH.

He served as a congressional intern in my office from May through July, 1983. During this time spent in my office Dan did outstanding work in preparation for a hearing I chaired. He was most cooperative and a great asset to my office. Not only was he one of the most outstanding interns who have served in my office, but will be remembered as an outstanding young man.

Dan is now in London, England, serving as a research assistant to Lord Eric Avebury, MP. I am certain that he will serve with distinction in Lord Avebury's office.

I extend my most sincere congratulations to Dan and his parents, Evy and Lou Rosenblum, upon his achievements now and in the future.●

HIGHEST CIVILIAN AWARD

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Ms. KAPTUR. Mr. Speaker, recently one of the outstanding citizens in my district, Mr. Herman Schmalzried, was honored with the highest civilian award given by the state of Baden-Wuerttemberg, Germany, for his work in promoting the German culture. This award has rarely been given to an individual living outside of West Germany.

Mr. Schmalzried, president of the Toledo Schwaben Verein, was presented with this award by a special West German delegation at the 100th anniversary celebration of the Schwaben Verein in Toledo, OH, on May 19, 1984. The Schwaben Verein, composed of persons of German ancestry from the Black Forest region of West Germany, has contributed greatly to my community.

Mr. Schmalzried has been president of the Schwaben Verein since 1968. Through his leadership, this organization has remained a strong and vital part of the German American community. He has also worked very hard in promoting the German culture in my district. He has initiated many exchanges of choral groups, bands, and other cultural affairs with the state of Baden-Wuerttemberg.

Not only has Mr. Schmalzried been involved in the promotion of social and cultural activities for the German American people, but has also exhibited a deep concern and commitment to their human needs. Many have been comforted and cared for during their times of need by Mr. Schmalzried. He has always given unselfishly of his time and energy.

Mr. Speaker, I know my colleagues in the House of Representatives join me in saluting Mr. Herman Schmalzried.

A TRIBUTE TO DR. ALBERT A. BUCAR

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. PHILIP M. CRANE. Mr. Speaker, on this day, June 20, 1984, I would like to recognize and congratulate a member of my constituency, Dr. Albert A. Bucar, for his installation as the president of the American Optometric Association. This is a special honor for the State of Illinois as there has not been an AOA president from Illinois since 1962. In addition, there have been only four AOA presidents from Illinois in the 86-year history of the association.

This is not the first achievement for Dr. Bucar. His professional involvements concerning optometric care and public health have been many and include national, State, and county organizations and commitments. The AOA has benefited greatly from his service as he has held many positions before becoming its president for the 1984-85 year. Dr. Bucar has also devoted much time and energy to the Illinois chapter of the AOA, having been its president, selected as its optometrist of the year, and served on many committees. Dr. Bucar should also be commended for his community involvement with the Antioch Lions Club, the Knights of Columbus Council 3800, the Antioch High School Board of Education and many other worthy organizations.

Again, allow me to reiterate my recognition of Dr. Albert A. Bucar for his commendable service to and achievements for his country, State, and community.●

50 YEARS OF SERVICE TO THE COMMUNITY—THE RAINBOW LAKES FIRE DEPARTMENT

HON. JOSEPH G. MINISH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. MINISH. Mr. Speaker, it is my distinct pleasure to send my congratulations to the Rainbow Lakes, NJ, Fire Department, as they mark an important occasion. This Saturday, June 23, the fire department will celebrate the 50th anniversary of their founding. Since 1934, the local fire department has provided their community with superior fire services.

As one can imagine, the community of Rainbow Lakes has changed in 50 years and the fire department has kept pace with it. When the department was first organized, Rainbow Lakes was overwhelmingly a community of summer residents, with few people living there all year. But through the decades, as the industrial and business area has grown in Morris County, Rainbow Lakes has changed and developed to where it now is predominantly a community of year-round homeowners. During these years, the Rainbow Lakes Fire Department has grown too, meeting the new demands of an expanded community through the dedicated efforts of the volunteer squad.

I would like to make a special point of noting that this is an all-volunteer squad, composed of 40 men. In the fast-paced and hectic world in which we live today, it can be particularly difficult for people to offer their free time for community service. These men provide their time and skills to help protect the lives and property of their neighbors. I would like to join others in the community in sending my wholehearted thanks and appreciation to the members of the Rainbow Lakes Fire Department for their efforts. My best wishes are with you for continued success for many, many years to come.●

IMMIGRATION REFORM AND CONTROL ACT

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. LELAND. Mr. Speaker, it is with deep regret that I will be unable to register my "no" vote on the final passage of the Simpson-Mazzoli Immigration Reform and Control Act later this afternoon. My presence is required on a very important matter in my home State of Texas.

As I have stated throughout this debate and in the past, I firmly believe that it is unconscionable for us to enact any piece of legislation that fails to ensure the Nation's civil liberties and in fact, only serves to foster and perpetuate discrimination.

While the existence of an illegal immigration problem in this country is almost unanimously accepted, the myths regarding illegal immigrants and their economic impact that have surfaced give evidence to the fact that few have addressed the true nature of the problem. Until a full understanding of this problem is achieved, a just, nondiscriminatory immigration reform bill cannot be formed.

The root causes of illegal immigration are not addressed by the Simpson-Mazzoli bill; the debate preceding the vote on the bill's final passage clearly indicated the necessity for further exploration of the alternatives at hand.

My Houston and Washington offices have received numerous calls, letters, and telegrams expressing sincere concern for illegal immigrants and those affected by their presence in this country. However, the majority agreed that while there does exist a problem that needs to be addressed, the Simpson-Mazzoli bill is not the solution. I, too, agree that there is a problem that must be addressed as soon as possible, but the problem must be addressed with compassion and justice; the Simpson-Mazzoli bill does neither.●

COMMENDATION OF WOMEN'S CLUB OF BURBANK

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. BERMAN. Mr. Speaker, I would like to commend the Women's Club of Burbank for its 75 years of outstanding service to the city of Burbank, the State of California, and the country.

Since its inception in 1909, the club has promoted the cultural and educational enrichment of the community. The efforts of this nonprofit, nonpartisan organization have included the sponsorship and support of the Family Crisis Center, the Center for the Retarded, the Sepulveda Veterans Hospital, and the Wesley Nursing Home, to name just a few.

We owe the Women's Club of Burbank a debt of gratitude and wish them continued success in the future.●

TRIBUTE TO LEO HAMMER—TENANT LEADER

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. TORRICELLI. Mr. Speaker, I rise today to honor Leo Hammer, one of New Jersey's foremost tenant leaders and community activists. For his 15 years of direct and effective action in defense of tenant rights, Mr. Hammer will be honored by the New Jersey Tenants Organization on Sunday, June 24, 1984.

Since 1969, Leo Hammer has set a high standard for tenant action and community awareness. He is a founder of the New Jersey Tenants Organization, which today stands at the forefront of the grassroots political movement in America. Leo also founded the Elmwood Park Tenants Association, once the State's largest tenants organization.

Among his friends and colleagues, Leo Hammer is referred to as the unsung hero of the tenant's movement. He has made his name as a hard bargainer with landlords and local politicians for fair rents and decent services. His commitment to confrontation has played a pivotal role in the progress of tenant rights in New Jersey.

It is the Leo Hammers of our country who express the needs and set the goals for those we represent in public office. I am grateful for his contribution and am proud of his work for our community.●

THE SOCIAL SECURITY ADMINISTRATION IS UNDERMINING THE STRUCTURE OF FEDERAL LAW

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 20, 1984

● Mr. ROYBAL. Mr. Speaker, Erwin Griswold, the Solicitor General in the Nixon administration and a former dean of the Harvard Law School, has stated that while he was Solicitor General, his office acquiesced to court of appeals decisions on a nationwide basis when three—or at most four—circuits decided a legal issue in the same way. Yet, the Reagan administration's Deputy Solicitor General defends the continuing policy of "nonacquiescence" in the disability program despite unanimous circuit court decisions.

For example, in almost every Federal circuit the courts have ruled that the Social Security Administration [SSA] must demonstrate that an individual's medical condition has improved prior to terminating disability benefits. Yet, SSA's policy of nonacquiescence and nonappeal to the Supreme Court forces each beneficiary to relitigate the same issue in the same circuit, and is increasing Social Security court case backlogs by 2,000 a month.

The resolution of the issue of nonacquiescence is included in the disability reform legislation recently passed by the House and awaiting conference. The House bill (H.R. 3755) requires SSA to abide by a Federal circuit court decision for all beneficiaries within the circuit, or appeal the decision to the Supreme Court. This is common policy in the Federal Government, and, in fact, the Internal Revenue Service applies a decision to all cases within that circuit, even when it disagrees with the decision. The Senate bill, on the other hand, condones SSA's unconstitutional violation of the checks and balances between the executive and judicial branches.

The House provision on this issue must prevail during the conference committee. I applaud the efforts of the gentleman from Illinois, Lane Evans, who will soon be sending a "Dear Conferee" letter expressing opposition to the policy of nonacquiescence and urge my colleagues to sign it.

In order to describe this issue more thoroughly, I ask permission to insert the Anthony Lewis article from Monday's New York Times. The article is appropriately entitled, "Respect for the Law?"

The article follows:

[From the New York Times, June 18, 1984]

Respect for the Law?

Boston.—Does the Reagan administration show contempt for the rule of law? A sharp denial of that charge has come from a distinguished legal figure in the administration. Paul M. Bator, a Harvard law professor now serving as Deputy Solicitor General, addressed the question in a speech to the American Law Institute. His analysis deserves reflection.

The particular context is the legal treatment of Americans getting disability benefits under social security. Since taking office the Reagan administration has moved to cut about 500,000 individuals from the disability rolls. Federal Courts around the country have held in case after case that improper standards were used in stripping people of benefits. But the Social Security Administration has repeatedly refused to follow those decisions in other, similar cases.

The pattern of official "nonacquiescence" in judicial decisions was described in a New York Times news story on May 13. It quoted strong criticism of the practice by several Federal judges. In a subsequent column I used the disability situation as an example of official lawlessness.

The two pieces were severely criticized by Professor Bator. He said they showed how the press oversimplified public issues, reducing hard problems to "superficial one-liners."

The disability cases, he suggested, were not about disregard for the rule of law. Rather they raised a "subtle and interesting" problem of how the Government could assure adequate judicial consideration of difficult legal issues.

If the Government had to treat every case it lost in the lower courts as binding in all like cases, Professor Bator said, there would be terrible consequences. There would be no chance of other Federal circuits to consider the issue, for conflicts among the circuits to develop, for reflection to deepen understanding. There would be pressure on the Solicitor General to take every such case on up to the Supreme Court, and for the Court to rush to judgment.

Professor Bator was quite right to say that the first judicial decision cannot be the last word on the question of Federal law. But that theory does not reach the reality of what has been happening in the disability cases.

First of all, the Government has not just resisted a decision in one or two circuits, waiting for a possible legal conflict to develop with others. Most of the 12 Federal Courts of Appeals have now rejected one or more of the Administration's standards for revoking disability benefits. Most have held, for example, that there must be evidence of medical improvement before an administrator can say that someone is no longer disabled.

Erwin N. Griswold, former dean of the Harvard Law School, worked in the Solicitor General's office 50 years ago and was Solicitor General in the Nixon administration. He says the office followed the practice of acquiescing if three or at most four courts of appeals decided a legal issue the same way—unless the issue was taken to the Supreme Court. For example, Mr. Griswold said, the Treasury did not want to recognize professional corporations, "but after three or four losses in the courts of appeals I said I wouldn't authorize any more appeals."

Second, when a Court of Appeals has laid down a rule of law, the general Government practice has been to apply it within that circuit even while seeking a different outcome elsewhere. That has not been done in the disability cases. If a disabled New Jersey woman goes to court and gets her benefits back, the administration keeps taking them away from others in New Jersey in similar situations.

Professor Bator conceded that the refusal to follow decisions within a circuit raised concerns of fairness, but he said there were countervailing interests of national uniformity in "mass programs of welfare and tax." But the Internal Revenue Service, even when it disagrees with one circuit's decision, applies it to all cases in that circuit.

That the disability cases are different from the model described by Professor Bator is also evident from the judicial reaction. Judges all over the country are expressing outrage at the policy of nonacquiescence, and speaking of official contempt. If Mr. Bator has any quarrel with the talk of administration lawlessness, it should be with judges before jounalists.

Federal District Judge Joseph S. Lord III of Philadelphia, finding last month that a woman whose illness had her down to 88 pounds was totally disabled, said it was "blatant hypocrisy" for the Government to find otherwise. "If the purpose of the Department of Health and Human Services is to crush defenseless human beings," he said, "as it seems to be, it would succeed unless in cases like this courts interposed a protective arm."

That is the other thing about these disability cases. They are not just abstractions of legal theory. They involve human beings: mostly poor, desperate people with wasted intestines and missing limbs. Few know about their rights or have lawyers to fight for them. For a Government to say that each must litigate an issue of law again, no matter how often it has been decided, is lawless in the most profound sense.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the Congressional Record on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, June 21, 1984, may be found in the Daily Digest of today's Record.

MEETINGS SCHEDULED

JUNE 22

9:30 a.m.

Environment and Public Works

To hold hearings on proposals for establishing appropriate levels of lead in gasoline, including S. 2609.

SD-406

Judiciary

Constitution Subcommittee

To resume hearings on Senate Joint Resolution 10, proposing an amendment to the Constitution of the United States relative to equal rights for women and men, focusing on the impact of ERA on family law.

SD-226

10:00 a.m.

Energy and Natural Resources

Public Lands and Reserved Water Subcommittee

To hold hearings on S. 2762, the Barrow Gas Field Transfer Act of 1984.

SD-366

Finance

International Trade Subcommittee

To hold hearings on measures to provide import relief to the domestic nonrubber footwear industry, including S. 2731, American Footwear Act of 1984, and amendments to section 201 of the Trade Act of 1974.

SD-215

2:00 p.m.

Finance

Health Subcommittee

To hold oversight hearings on medicare home health care benefits and the difficulty interpreting the intermittent care rule.

SD-215

Foreign Relations

To hold hearings on the nominations of Owen W. Roberts, of New Jersey, to be Ambassador to the Republic of Togo, John W. Shirley, of Illinois, to be Ambassador to the United Republic of Tanzania, and Leonardo Neher, of Maryland, to be Ambassador to the Republic of Upper Volta.

SD-419

JUNE 25

10:00 a.m.

Environment and Public Works

Business meeting, to consider pending calendar business.

SD-406

Judiciary

Administrative Practice and Procedure Subcommittee

To hold oversight hearings on congressional access to reliable agency information.

SD-226

2:00 p.m.

Foreign Relations

To hold hearings on the nominations of Alberto M. Piedra, of Maryland, to be Ambassador to the Republic of Guatemala, and Clint A. Lauderdale, of California, to be Ambassador to the Cooperative Republic of Guyana.

SD-419

JUNE 26

9:00 a.m.

*Judiciary

Constitution Subcommittee

To hold oversight hearings on issues of religious freedom.

SD-106

9:30 a.m.

Environment and Public Works

Environmental Pollution Subcommittee

To hold oversight hearings on the implementation of the Lacey Act Amendments (Public Law 97-79), to control international trade in wildlife.

SD-406

*Governmental Affairs

Permanent Subcommittee on Investigations

To hold hearings to examine measures to combat adolescent drug use.

SD-342

10:00 a.m.

Energy and Natural Resources

Energy Conservation and Supply Subcommittee

To hold oversight hearings on Outer Continental Shelf leasing activities.

SD-366

Finance

International Trade Subcommittee

To hold hearings to examine the impact of the American Telephone and Telegraph divestiture on international trade and the future of international trade in telecommunications.

SD-215

Foreign Relations

To hold hearings to examine the practice of torture by foreign governments and U.S. efforts to oppose its use.

SD-419

Judiciary

To hold hearings on S. 2051, Health Care Cost Containment Act of 1983.

SD-226

Labor and Human Resources

Education, Arts, and Humanities Subcommittee

To hold oversight hearings on the status of college athletic programs.

Rules and Administration

Business meeting, to consider Senate Resolution 365, to authorize expenditures by the Select Committee on Indian Affairs, Senate Resolution 369, to direct the Secretary of the Senate to design and make available to Senators an official Senate flag, Senate Concurrent Resolution 122, to provide for a Joint Congressional Committee on Inaugural Ceremonies, and other pending legislative and administrative business.

SR-301

2:00 p.m.

Appropriations

Business meeting, to mark up H.R. 5798, appropriating funds for fiscal year 1985 for the Department of the Treasury, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, proposed legislation appropriating supplemental funds for fiscal year 1984, and appropriating funds for fiscal year 1985 for foreign assistance programs, and proposed legislation appropriating funds for fiscal year 1985 for the Departments of Labor, Health and Human Services, and Education.

SD-192

Environment and Public Works

Toxic Substances and Environmental Oversight Subcommittee

To resume hearings on S. 2649, authorizing funds through fiscal year 1989 for the Environmental Protection Agency to develop regulations for monitoring of unregulated contaminants now found in surface and underground drinking water sources.

SD-406

Labor and Human Resources

To hold hearings on S. 2568, the Civil Rights Act of 1984.

SD-430

4:00 p.m.

Temporary Select Committee to Study the Senate Committee System

To hold an organizational business meeting.

SR-301

JUNE 27

9:00 a.m.

Environment and Public Works

Environmental Pollution Subcommittee

To hold hearings on amendment No. 2807, proposed Wildlife and the Parks Act of 1984, to S. 978, to provide financial assistance to States for wetlands conservation.

SD-406

Labor and Human Resources

Handicapped Subcommittee

To hold hearings to review recommendations to improve services for the mentally retarded.

SR-428A

9:30 a.m.

Judiciary

Constitution Subcommittee

To hold oversight hearings on the implementation of the Voting Rights Act.

SD-226

Special on Aging

To hold hearings on the scope of medical malpractice, and to examine options to Medicare.

SD-628

10:00 a.m.

Commerce, Science, and Transportation

Merchant Marine Subcommittee

To hold hearings on Senate Concurrent Resolution 56, to express the sense of the Congress in opposition to further expansion of cargo preference requirements.

SR-253

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD-366

Finance

International Trade Subcommittee

To hold hearings on the state of the U.S. automobile industry, focusing on the competitiveness of the industry, effects of the Japanese auto export restraints, and the future of international trade in autos.

SD-215

Foreign Relations

International Economic Policy Subcommittee

To hold hearings protectionism in international trade, focusing on the automotive industry.

SD-419

*Judiciary

Administrative Practice and Procedure Subcommittee

To resume oversight hearings on congressional access to reliable agency information.

SD-226

Labor and Human Resources

Business meeting, to consider S. 2568, the Civil Rights Act of 1984, and the nomination of Rosemary M. Collyer,

of Colorado, to be General Counsel of the National Labor Relations Board.
SD-430

*Veterans' Affairs
To hold hearings on measures to provide for certain veteran compensation programs, including S. 2736, S. 2737, S. 2267, S. 2268, S. 2451, S. 2759, and S. 2760.
SR-418

Joint Economic
To hold hearings on the minimum wage.
340 Cannon Building

3:00 p.m.
Judiciary
To hold hearings on pending nominations.
SD-226

JUNE 28

9:00 a.m.
Energy and Natural Resources
Public Lands and Reserved Water Subcommittee
To hold hearings on S. 2692 and H.R. 2982, bills to exempt certain water conveyance systems from right-of-way fees and conditions under the Federal Land Policy and Management Act of 1976, H.R. 2889, to authorize funds for fiscal years 1984 through 1987 for the National Museum for the Building Arts for operating expenses during its renovation, and to change the name of the museum to the National Building Museum, and H.R. 2838, to provide assistance to certain groups and organizations volunteering to plant tree seedlings on public lands.
SD-366

Labor and Human Resources
To hold hearings on S. 2748, to revise the procedures for new drug applications and to provide for the extension of patents for certain regulated products, and the proposed Drug Export Amendments of 1984.
SD-430

9:30 a.m.
*Foreign Relations
To hold joint hearings with the Committee on Governmental Affairs' Subcommittee on Energy, Nuclear Proliferation and Government Processes on Senate Resolution 368 and Senate Resolution 283, measures calling for a ban on chemical weapons.
SD-419

Governmental Affairs
Energy, Nuclear Proliferation and Government Processes Subcommittee
To hold joint hearings with the Committee on Foreign Relations on Senate Resolution 368 and Senate Resolution 283, measures calling for a ban on chemical weapons.
SD-419

10:00 a.m.
Environment and Public Works
Business meeting, to consider pending calendar business.
SD-406

Finance
To hold hearings on the trade deficit.
SD-215

Judiciary
Business meeting, to consider pending calendar business.
SD-226

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To hold hearings on S. 2561, authorizing funds for fiscal year 1985 to facilitate the transfer of computerized training programs of the Federal Government to the private sector and to State and local governments for use in manpower training programs.
SD-562

JULY 6

9:30 a.m.
Joint Economic
To hold hearings on the employment/unemployment situation in June.
SD-106

JULY 10

9:30 a.m.
Labor and Human Resources
To hold hearings on the practice of defensive medicine by the medical profession in an effort to avoid malpractice suits and its effects on the quality of medical care.
SD-430

JULY 26

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To hold hearings to discuss whether tax law should encourage employers to provide certain fringe benefits.
SD-215

JULY 27

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To continue hearings to discuss whether tax law should encourage employers to provide certain fringe benefits.
SD-215

JULY 30

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To resume hearings to discuss whether tax law should encourage employers to provide certain fringe benefits.
SD-215

SEPTEMBER 18

9:30 a.m.
Labor and Human Resources
Labor Subcommittee
To resume oversight hearings to examine the scope and impact of certain occupational diseases.
SD-430

11:00 a.m.
Veterans' Affairs
To hold hearings to review the legislative priorities of the American Legion.
SR-325

CANCELLATIONS

JUNE 21

9:30 a.m.
Finance
Energy and Agricultural Taxation Subcommittee
To hold hearings on S. 463, to limit the amount of severance taxes imposed by States on oil, natural gas, and coal.
SD-215

10:00 a.m.
Environment and Public Works
Business meeting, to consider pending calendar business.
SD-406

JUNE 22

9:00 a.m.
Energy and Natural Resources
Energy Regulation Subcommittee
To resume hearings on S. 817, S. 1069, and H.R. 555, bills to authorize the Federal Energy Regulatory Commission to approve the inclusion in the rate base of a public utility of the costs of construction work in progress.
SD-366

HOUSE OF REPRESENTATIVES—*Thursday, June 21, 1984*

The House met at 10 a.m.

Rev. Stephen L. Skardon, retired rector, St. John's Episcopal Church, Florence, SC, offered the following prayer:

O God, the fountain of all wisdom, whose will is good and gracious and whose law is truth. We beseech Thee so to guide and bless the Members of this House here assembled that they may enact such laws as shall please Thee, to the glory of Thy name and the welfare of the people of this Nation. Give them courage, wisdom, and foresight to provide for the needs of all people and to fulfill our obligation in the community of nations.

We pray for peace in the world so that all nations may live together as a family of nations. All this we ask in Your Son's name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Saunders, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills of the House of the following titles:

On May 17, 1984:

H.R. 3240. An act to authorize the President of the United States to present on behalf of Congress a specially struck medal to the widow of Roy Wilkins.

On May 21, 1984:

H.R. 3635. An act to amend chapter 110 (relating to sexual exploitation of children) of title 18 of the United States Code, and for other purposes; and

H.R. 4176. An act to confirm the boundaries of the Southern Ute Indian Reservation in the State of Colorado and to define jurisdiction within such reservation.

On May 22, 1984:

H.J. Res. 537. Joint resolution designating the Brigantine and Baregat units of the National Wildlife Refuge System as the Edwin B. Forsythe National Wildlife Refuge.

On May 24, 1984:

H.R. 4107. An act to designate the Federal building in Salisbury, Md., as the "Maude R. Toulson Federal Building"; and

H.R. 5576. An act to designate certain land and improvements of the National Institutes of Health as the "Mary Woodard Lasker Center for Health Research and Education."

On May 25, 1984:

H.R. 2174. An act to extend the transition period under the Bankruptcy Reform Act of 1978;

H.R. [illegible]211. An act to exempt electric and telephone facilities assisted under the Rural Electrification Act from certain right-of-way rental payments under the Federal Land Policy and Management Act of 1976;

H.R. 5515. An act to authorize the President to award the Medal of Honor to the unknown American who lost his life while serving in the Armed Forces of the United States in Southeast Asia during the Vietnam era and who has been selected to be buried in the Memorial Amphitheater at Arlington National Cemetery;

H.R. 5692. An act to provide for a temporary increase in the public debt limit, and for other purposes; and

H.J. Res. 526. Joint resolution designating the week of May 27, 1984, through June 2, 1984, as "National Animal Health Week."

On May 31, 1984:

H.R. 2751. An act to amend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes;

H.J. Res. 451. Joint resolution designating the month of November 1984 as "National Alzheimer's Disease Month"; and

H.J. Res. 487. Joint resolution to designate June 6, 1984, as "D-day National Remembrance."

On June 12, 1984:

H.R. 3547. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to extend the authority of the Mayor to accept certain interim loans from the United States and to extend the authority of the Secretary of the Treasury to make such loans;

H.R. 5287. An act to amend title III of the Higher Education Act of 1965 to permit additional funds to be used to continue awards under certain multiyear grants; and

H.R. 5308. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to increase the amount authorized to be appropriated as the annual Federal payment to the District of Columbia.

On June 19, 1984:

H.R. 3578. An act to establish wilderness area in Wisconsin;

H.R. 3921. An act to establish wilderness area in New Hampshire, and for other purposes;

H.R. 3960. An act to designate certain public lands in North Carolina as additions to the National Wilderness Preservation System; and

H.R. 4198. An act to designate certain National Forest System lands in the State of Vermont for inclusion in the National Wilderness Preservation System and to designate a national recreation area.

REV. STEPHEN SKARDON

(Mr. TALLON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TALLON. Mr. Speaker, our guest chaplain this morning is the Reverend Stephen Skardon, who just recently retired as rector of St. John's Episcopal Church in Florence, SC. Mr. Skardon is a graduate of Clemson University and the Virginia Theological Seminary. He also attended Oxford University. During his 35 years in the ministry, he has served parishes in Pinopolis, SC; Pineville, LA; New Orleans, LA; and Summerville, SC. During his 13 years in Florence, Mr. Skardon has been a prominent civic and religious leader, and his decision to retire has been a great loss to that community.

Mr. Skardon is married to the former Frances Stukes of Manning, SC. Her father was formerly the chief justice of our State supreme court.

The Skardon name is familiar to us on the majority side. Mr. Skardon's son, Steve, is the floor assistant to our chief deputy whip, BILL ALEXANDER.

It is a pleasure to welcome Reverend Skardon here today.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair appreciates that the coach of the winning baseball team was up last night preparing remarks, so the Chair will honor him by recognizing him first, Mr. CONTE of Massachusetts.

The gentleman is entitled to a long minute.

Mr. CONTE. Thank you, Mr. Speaker, for your graciousness.

A HISTORIC MOMENT—REPUBLICANS WIN BASEBALL GAME

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I am here to mark a historic moment—a moment that only the great bards and poet laureates could ever put into words. I have called upon my muse—the same muse who was known to visit Edgar Allen Poe—and would like to recite for you this inspired masterpiece, "The Rantin' and The Ravin'."

Once within a dugout dreary, I sat angered, weak and weary
Over dirty plays and tricks the Dems had used to up their score.
While I stewed there, nearly boiling, over my team's tears and toiling,
My machine, it needed oiling, oiling to get one run more.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

31-059 O-87-14 (Pt. 13)

"I need batting help," I muttered, "Help to get me one run more. Only this and nothing more."
Ah, distinctly I remember, how I wanted to dismember
Each lousy, lying Democratic member who'd been drug up off the floor.
Eagerly I wished the morrow, and a pitcher I could borrow
There was nothing there but sorrow, sorrow for our lower score.
Seeming hopeless, winning faded underneath the glaring score. I couldn't take it anymore.
Then Kasich's cleats, they were a-pounding as the bases he was rounding
His run was sure, his feet astounding, pounding onward, one base more.
His move was to remain unbroken, opposition gave no token
And the only words there spoken was the cheering cry, "Go, Score!"
"Take that, old Chappell," I muttered, "Watch us even up the score." We'll laugh last and evermore.
LeVine complied with lousy pitching, useful for our score enriching
Oh the plays that they were glitching, helping us to score some more
McKernan, Hiler, Crane, and Chandler, such a wonderful ball handler,
Led the pack-a-derms in charging onward in this partisan war.
"End it now," Bill cried, "Have mercy! End it soon, this bloody war!" Chuckled I, "Oh, we've got more!"
When the Hist'ry books are written, they will tell of one strong smitten
Congressman and baseball coach from Bay State on New England's shore.
All his yellin', rant and ravin', over points the Dems were shavin'
How a vict'ry he was cravin'—losing, he thought, was a bore.
And his mighty team of elephants and the trophy that they bore. You'll hear him boast forevermore On the score, 13 to 4.

GIVING THE AMERICAN DREAM A CHANCE

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, Mr. Conte is a tough act to follow. I will do my best. I have a good subject, talking about the GI bill of rights.

On June 22, 1944, the Servicemen's Readjustment Act became public law after being signed by President Roosevelt.

□ 1010

It was referred to as the GI bill of rights. This program and its two successors in the Korean war and Vietnam war have assisted over 18 million veterans. They have been given a fresh start in readjustment to civilian life.

The impact of the GI bill has moved our Nation to the No. 1 position of nations. It has given our veterans and service personnel the opportunity to improve their lives, thus improving the quality of American life overall.

Mr. Speaker, tomorrow we celebrate the 40th anniversary of the GI bill. The House of Representatives has passed a new GI bill to help the military. I would hope that the Senate, as did the House, would recognize this need.

I ask my colleagues, many of whom were educated under the GI bill, and the American public, to join with me in grateful recognition of the program which enabled so many to realize the American dream.

The American Legion has been very active in sponsoring this anniversary. I see a number of my colleagues here today who would also like to talk about the GI bill.

THE GI BILL

(Mr. McCLOSKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLOSKEY. Mr. Speaker, I rise today in support of the GI bill, one of the most successful programs in our Nation's history. Without the GI bill, millions of men and women who served this country in times of need might never have been able to attend college, law school, business school, and vocational education programs. Without the GI bill, millions of men and women would not now be providing the leadership, commitment, and productivity that has made the United States the richest, strongest, and most free country in history. And without the GI bill, hundreds of millions of tax dollars which annually pour into this country's coffers would be lost. The GI bill has been a beacon of opportunity and symbol of thanks from a grateful nation.

But, Mr. Speaker, on this, the 40th anniversary of the GI bill of rights, our commitment to the men and women of the armed services is in doubt. Support by this House for the new GI bill must not waver since the Senate did not include a similar strong provision in its version of the DOD authorization bill. My friend and colleague, the gentleman from Mississippi [Mr. Montgomery], the chairman of the Veterans' Committee, has performed yeoman work by his untiring efforts to reinstitute the GI bill. I salute his efforts and urge this House to give its full support to his work. The hopes of all those who serve this country in uniform are depending on our continued action.

NATIONAL PEACE ACADEMY

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Speaker, last night as a part of the massive Department of Defense authorization bill passed in the Senate, the Senate also passed an authorization to create a National Peace Academy.

I have been fortunate to be the chief sponsor of that bill in the House, along with 176 of my colleagues, liberals and conservatives, Republicans and Democrats.

Some may find a bit of irony that in the largest defense bill in our history, when we procure all sorts of weapons systems, that we are funding a National Academy of Peace and Conflict Resolution. Yet, there really is no conflict between the two ideas.

What we have now in this bill are two edges of the sword of peace, both the military and the nonmilitary method to avoid war and achieve peace in this world.

So I urge my colleagues to let our House and Senate conferees know that they support the Peace Academy as part of the defense authorization bill.

ISRAEL'S PART IN THE IRAQ-IRAN WAR

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, as the horrible Iraq-Iran war drags on and threatens world security, I wish to invoke some history—and put into proper perspective—an action taken by the Government of Israel 3 years ago.

On June 7, 1981, in a clear action of self-defense—Israel bombed and largely destroyed Iraq's Tamuz-1 nuclear reactor. At that time it was felt by Israel, and later confirmed by U.S. intelligence, that the Iraq reactor would be operational in a matter of weeks and could have been able to begin producing weapons.

What is not in issue today is that by this year—1984—Iraq would have been in full-scale production of nuclear weapons were not the reactor destroyed. Iraq has already used deadly mustard gas and Soviet-supplied mycotoxins in this war. There is little doubt that they would use nuclear weapons if they had them.

Israel was roundly condemned for their action in 1981. At that time I stated that the Iraq nuclear reactor did pose a real and present danger to Israel. As it turned out this may have been only part of the story. In their legitimate quest to protect their own security Israel did far more. They spared the people of Iran from a possible nuclear holocaust and prevented the world from becoming embroiled in a larger and more catastrophic conflict.

40TH ANNIVERSARY OF GI BILL

(Mr. DANIEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANIEL. Mr. Speaker, as has been pointed out by the gentleman from Mississippi, tomorrow we observe the 40th anniversary of the signing by President Roosevelt of the GI bill of rights, a law which did more to encourage homebuilding, to stimulate interest in education and educational training than all of the laws combined ever passed by the Congress of the United States. It was motivated by a desire to place those who returned from military service on the same rung of the economic ladder they would have attained had they not gone off to war.

The author of that bill was a very dear friend, Harry Colmery from Topeka, KS, a giant of a man, an outstanding attorney. And its chief sponsor in Congress was Champ Clark from Missouri. Both men were past national commanders of the American Legion.

It is said that the bill cost the American taxpayer roughly $55 billion. That investment has been returned many times to the taxpayers because of the increased earning power of those who benefited from the GI bill.

I want to commend those farsighted men who wrote this bill and shepherded it through the Congress and pay tribute again to President Roosevelt for signing that important piece of legislation.

COMMEMORATING THE 40TH ANNIVERSARY OF THE GI BILL OF RIGHTS

(Mr. HUTTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUTTO. Mr. Speaker, as a direct recipient and beneficiary of Public Law 78-346, the original GI bill of rights, I too am pleased to take part in commemorating the 40th anniversary of this historic veterans' program.

After service in the U.S. Navy during World War II, the GI bill made it possible for me to attend and graduate from college and, later, to complete some postgraduate work. The World War II GI bill was the forerunner of GI bills for veterans who participated in the Korean conflict and the Vietnam era and the proposed GI bill for peacetime veterans, as proposed in H.R. 5167, the DOD Authorization Act of 1985.

I am 1 of the approximately 18 million veterans who have been trained under one of the three GI bills that Congress has provided at a cost of about $55 billion. I believe this is money highly deserved by our veterans. It has helped veterans make up for time lost by serving in the Armed Forces and assisted them in their transition to civilian employment. We owe it to our veterans to continue an effective educational assistance program.

□ 1020

GI BILL OF RIGHTS

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, it has now been 40 years since Franklin Roosevelt signed into law the GI bill of rights. Without question, this legislation has enriched the lives of millions of American veterans and has strengthened the entire Nation. Since the bill was enacted into law more than 18 million Americans, including myself, have been permitted to seek higher education, job training, housing assistance, and by backing loans of more than $225 billion for homes, for farms, and businesses. The GI bill has proven to be a major stimulus to our regional and economic development.

Mr. Speaker, the GI bill of rights stands as a monument to creative and innovative political leadership, and it demonstrates clearly what good government can do and must do. It shows what a President and a Congress are able to achieve when they are willing to work together to solve problems of our Nation.

I stand here today, as others here, to salute millions of our citizens and the progress that the GI bill has permitted to transform the American dream into the American reality.

40TH ANNIVERSARY OF SIGNING THE GI BILL

(Mr. TORRES asked and was given permission to address the House for 1 minute.)

Mr. TORRES. Mr. Speaker, tomorrow marks the 40th anniversary of the signing of the GI bill.

Over the past 44 years, more than 18 million veterans received some form of training or assistance because of the GI bill. For the serviceperson who interrupted education and work to defend our Nation, the GI bill gave them a chance to obtain skills in order to pursue new opportunities.

I am one who took advantage of the tremendous benefits that this program offers. When I returned from the Korean war, the GI bill allowed me to attend college and work toward a degree.

Of course, I am hardly alone. Many of the 59,000 veterans living in my district took advantage of the GI bill. These many veterans are successful in large part because of the chance the GI bill gave them upon returning from service.

In fact, I just learned that of the six small businesses in my district receiving the SBA's veterans loans this year, two are owned by veterans who took advantage of the GI bill.

Mr. Speaker, the GI bill has unquestionably improved the quality of life not only for America's veterans but for America herself.

THE 40TH ANNIVERSARY OF GI BILL

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, tomorrow will mark the 40th anniversary of the signing of the Servicemen's Readjustment Act of 1944, the GI bill of rights. I believe it is appropriate that we take a moment to reflect on the outstanding successes of this historic legislation. The GI bill enabled our society to make an orderly transition from World War II, when as many as a million servicemen were being discharged every month. The education and training provisions of the bill provided the opportunities for over 18 million veterans to develop the skills and knowledge to effectively meet the challenges of returning to a productive civilian life. According to the Veterans' Administration statistics, the return on the money spent on these veterans has been an outstanding $3 for every $1 invested.

The GI bill of rights also contained important loan provisions which helped veterans to invest in homes, farms, and small businesses. The impacts of this loan program were not only beneficial to returning veterans, but also proved enormously helpful in stimulating the economy of the Nation as a whole. There can be no doubt about the significant role the GI bill has played in allowing this country to move forward.

I am hopeful that my colleagues will keep in mind the overwhelming achievements of the GI bill of rights as we now consider the enactment of a GI bill for peacetime veterans. History has certainly proven that a GI bill is not simply a readjustment benefit for our veterans, but is an important investment in the future of our society.

RESOLUTION CALLING ON THE PRESIDENT TO AFFIRM AND MAINTAIN HIS COMMITMENT NOT TO UNDERCUT EXISTING ARMS CONTROL AGREEMENTS SO LONG AS THE SOVIETS SHOW SIMILAR RESTRAINT

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, today I have introduced a joint resolution urging the President to affirm that the policy of the United States is not to undercut the restraints on strategic forces included in existing arms control agreements, so long as the Soviet Union shows equal restraint.

In my view, it is critically important to maintain restraints on strategic force levels of both superpowers while we seek to conclude an agreement in the START negotiations. The only way we can maintain such restraints is through continued observance of the provisions in existing agreements, including SALT I, SALT II, the ABM agreement and the Outer Space Treaty.

The President, in his May 31, 1982, address, stated: "As for existing strategic arms agreements, we will refrain from actions which undercut them so long as the Soviet Union shows equal restraint."

However, serious questions about whether this remains U.S. policy have been raised as a result of recent statements by Secretary Shultz and the State Department on the question of whether we will continue with our earlier actions to deactivate older strategic submarines as new Trident submarines come on line. Specifically, the reports on the State Department statement indicate that "no decision need be taken at this time" on continuing this policy. It goes on to say, "The United States will carefully evaluate both the international situation and our own national security requirements" in deciding what to do about adhering to these limitations in the future. In addition, testimony from Defense Department officials has raised the question of whether we should resort to "classical defense" and abandon the constraints of existing agreements.

In order to make U.S. intentions absolutely clear, I think it is important for the President to again let the world know that it will not be this Nation that acts first to undercut existing agreements, especially at a time when we are seeking to get the Soviets back to the bargaining table on START and INF. I believe nothing could do more to undercut those efforts than uncertainty of our commitment to existing agreements.

I remain convinced that the President supports our continued observance of these limitations. Without them, the Soviet challenge would only be greater. This resolution simply asks him to affirm beyond any doubt that position, and thus make a very clear statement of U.S. policy. It also urges the President to provide information to the Congress on how the administration's plans for strategic and related forces will remain consistent with this commitment.

GI BILL OF RIGHTS

(Mr. VALENTINE asked and was given permission to address the House for 1 minute.)

Mr. VALENTINE. Mr. Speaker, 40 years ago tomorrow the GI bill of rights was signed into law, and with it a new era of opportunity for those who have served their country in the military.

That GI bill, and the ones that followed it, made possible the smooth readjustment of veterans to civilian life, and helped them to make up for the time they spent defending our Nation. Their education and training gave them valuable skills which made them more productive citizens and thereby benefited our society.

I take a special, personal interest in this because, like many of my colleagues, I too went to college on the GI bill. It made a profound difference in my life, a difference shared by 18 million fellow veterans.

Mr. Speaker, I am pleased that the House passed the GI bill for peacetime veterans. It is only right, especially when our recruits are now all volunteers, that we extend the same benefits to all who willingly put their civilian plans on hold in order to protect our freedom.

THE 40TH ANNIVERSARY OF GI BILL OF RIGHTS

(Mr. ANNUNZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Speaker, I rise to join with the distinguished chairman of the House Veterans' Affairs Committee, Congressman SONNY MONTGOMERY, and the ranking minority member of the committee, Congressman JOHN PAUL HAMMERSCHMIDT, in commemorating the 40th anniversary of the GI bill of rights.

Since the enactment of this historic legislation on June 22, 1944, and with the GI bills which have followed, millions of veterans of the U.S. Armed Forces and their families have greatly benefited from this important law to help veterans readjust to civilian life.

The GI bill of rights is a small act of gratitude by our country when compared to the great contributions and sacrifices our veterans have made in protecting our freedoms. Providing education and training to our veterans has helped them make up for time lost while serving our country, and has enabled them to readjust and get back quickly to civilian life.

On this occasion of the 40th anniversary of the enactment of the GI bill of rights, I am glad to have this opportunity to commemorate the beginning of this worthwhile and highly successful law for our veterans. I join my colleagues in the hope that our country shall continue in the generous spirit of our GI bill: Never forgetting our veterans, who have served our country courageously both in peace and war, their dependents and their needs.

□ 1030

THE FORESIGHT OF THE 78TH CONGRESS

(Mr. ROTH asked and was given permission to address the house for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, the individuals who served in this great body 40 years ago exhibited remarkable foresight by passing legislation that enhanced the educational opportunities of our veteran population, as well as its ability to purchase homes and establish businesses. As a result of the actions of the 78th Congress and the organizations who stood firm for its passage, we continue to reap the benefits of a program that has strengthened the character of our Nation.

As we commemorate the 40th anniversary of the GI bill of rights, we can simply turn to any segment of American activity, including academia, government, entertainment, and sports, to see its effects. Many of my distinguished colleagues are products of this exceptional program.

The GI bill has trained, educated, and assisted more than 18 million, many of whom might have been forced to settle for a lesser quality of life had it not been for its practical and far-reaching alternatives.

More important than any battleship, any aircraft, or any weapon in assuring the defense and security of a nation is the manner in which it cares for those who serve. In our comprehensive system of veterans benefits and services, there is no truer measure of our concern and our caring than the GI bill.

BELATED THANKS FOR THE GI BILL OF RIGHTS

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, I want to join my colleagues in the commemoration of the 40th anniversary of the signing of the GI bill. I was rather surprised, it was only a few weeks ago that we commemorated the 40th anniversary of D-day. Following so closely on the heels of that anniversary was the commemoration of the signing of the GI bill.

I would be willing to wager that all of us who were fighting on that day way back when were not thinking about what was going on here in this body; but, however, after having been discharged just a few weeks before the beginning of a new semester in college, I became one of those recipients of the GI bill of rights. I want to express my very belated thanks and appreciation to those who have preceded us in this House and in the other body, who had the wisdom and foresight to provide us with a GI bill of rights and the opportunity—a precious opportunity—to get our education.

I might say that I was one of those who joined the unemployment compensation ranks at what I seem to recall was either $18 or $20 a week for the 5 or 6 weeks prior to our entering the semester in which we got our college education. Those were tough times, but they could have been much worse had it not been for that bill.

So I would, too, doff my hat to the members of the Veterans' Affairs Committee for what they are doing continually using that original GI bill of rights as a benchmark to serve our veterans this day. My hat is off to each and every one of them.

STEPHEN BOLLINGER WILL BE SORELY MISSED

(Mr. OXLEY asked and was given permission to address the House for 1 minute.)

Mr. OXLEY. Mr. Speaker, I was saddened to learn of the sudden passing of Stephen Bollinger, Assistant Secretary for Community Planning and Development at the Department of Housing and Urban Development.

I came to know Steve through his active involvement in Republican politics in my home State of Ohio, where he served as chairman of President Gerald Ford's campaign in 1976, and was a candidate for the Cincinnati City Council in 1975 and 1977. Prior to coming to HUD in 1981, he served as executive director of the Columbus Housing Authority.

Steve's successes in Ohio continued at HUD, where he was responsible for Federal programs with budgets of $4 million per year, including the Community Development Block Grant Program and Urban Homesteading.

Steve's reputation for hard work and his extremely likable personality made him a favorite of those who knew him. At age 36, he had a bright future ahead of him, and certainly departed much too soon. He will be sorely missed by all of us.

A SALUTE TO AMERICAN VETERANS

(Mr. KLECZKA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLECZKA. Mr. Speaker, I am honored to join with Representative MONTGOMERY and my esteemed colleagues in commemorating the 40th anniversary of the GI bill of rights.

The three GI bills are an appropriate way for this Nation to show its appreciation to those men and women who have fought to defend liberty.

America will realize the benefits of the GI bills for years to come. In 1983, over 300,000 Wisconsin veterans took advantage of the bill's educational benefits alone, which will enable them to improve their station in our country.

Millions of veterans have used GI loans to not only further their education, but also to purchase a home, and to improve their lives. These veterans were people who left their jobs and families when America called, and they fought so that we may all remain free. It is gratifying to see so many women and men taking advantage of the opportunities the GI bills offer. The GI bills have enabled veterans to better themselves with the same drive and determination with which they have defended freedom around the globe.

I salute America's veterans for their contributions to our great land—past, present, and future.

THE 40TH ANNIVERSARY OF THE SIGNING OF THE GI BILL

(Mr. DURBIN asked and was given permission to address the House for 1 minute.)

Mr. DURBIN. Mr. Speaker, I would like to express my unqualified support for the GI bill of rights on the 40th anniversary of its signing. It is without a doubt one of the most successful investments of Federal money in our history—an investment that has paid off in countless ways.

The GI bill is also one of the most egalitarian of Federal programs. It has allowed Americans of all different backgrounds to take advantage of educational benefits, which they have earned, to make the most of their lives. These veterans have paid for their educational benefits not only through their service to the country, but also in terms of their higher income tax payments that result from better education and training.

Because of the success of the GI bill approach, legislation I have introduced with Representative BOEHLERT to provide retraining for displaced workers is based on this concept. This legislation, the National Individual Training Account Act (H.R. 4832), would issue vouchers to workers, financed from both employer and employee contributions, to be used for retraining. These vouchers, similar to those issued under the GI bill, will allow workers to purchase the training of their choice to acquire new skills that will enable them to find employment. Under the GI bill, this type of voucher-based system has proved to be an overwhelming success. Reliance on individual choice rather than Government direction ensures that workers get the training they wish, whether it is under an ITA system or the GI bill.

Mr. Speaker, I urge that we continue to keep in mind the valuable lessons we have learned in the first 40 years of the GI bill program as we commemorate its anniversary.

DEMOCRACY ABROAD

(Mr. BROWN of Colorado asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Colorado. Mr. Speaker, since the other body is about to decide whether to continue to fund the National Endowment for Democracy, I thought our colleagues on both sides of the Capitol would be interested to know how the Endowment is spending taxpayer dollars.

Earlier this year we learned of the Endowment's efforts to promote democracy through its trade union institute by interfering with the Panamanian elections. Now the activities of the Endowment's funding of the Chamber of Commerce Center for International Private Enterprise [CIPE] is coming to light.

In April, they also ventured out to save democracy. First stop was the Caribbean. Did they go to Grenada or Nicaragua? No. The first battleground for democracy was Jamaica.

Imagine their delight when they discovered Jamaica already is a democracy with a duly elected government.

These determined disciples of democracy pressed forward. The institute picked Europe for its next battleground.

Representatives of the institute are there today spreading democracy even as we speak. Where are they, you ask? Are they bringing hope to the enslaved men and women behind the Iron Curtain? No.

The June crusade for democracy began in Stockholm, Sweden. Thanks to their valiant efforts, I can report that Sweden has decided to continue its long tradition of democracy. Then our warriors for freedom headed to Brussels to find new converts. From Brussels, our traveling troubadours went to Geneva, Switzerland, one of the oldest continuous democracies in the world. Imagine the delight of the Swiss when they learned we were there to instruct them on democracy.

Yesterday, they left Switzerland to find converts for democracy in Paris, France. It's a tough job traveling for democracy, but someone has to do it.

Mr. Speaker, these taxpayer-financed tours of the world illustrate just the beginning of what the National Endowment can do to democracy. Jamaica in April, Stockholm, Geneva, and Paris in June—the war for the minds of men goes on. The real lesson in democracy may come when Congress discovers the initials "NED" stand not for the National Endowment for Democracy, but for "New and Exciting Destinations."

□ 1040

THE ALZHEIMER'S RELIEF PACKAGE

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute.)

Mr. BILIRAKIS. Mr. Speaker, this week, along with Congressman ROYBAL, I introduced the Alzheimer's relief package—two bills that have been designed to meet the growing needs of Alzheimer's victims and their families.

The first bill, the community support groups bill, promotes the establishment of a national network of family support groups for families of victims of Alzheimer's disease or a related memory disorder.

The second bill, the demonstration projects for Medicare bill, provides for Medicare demonstration projects for alternative Medicare benefits for individuals with Alzheimer's disease or a related memory disorder, similar to what had been done with the hospice concept.

The elderly of this Nation, the victims of Alzheimer's disease and their families have asked Congress for assistance. These bills are a direct response to the needs of these people and I strongly encourage my colleagues to join in this effort.

THE GI BILL—HOPE WHEN THEY NEEDED US MOST

(Mr. WYLIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, I want to join my distinguished colleague, the gentleman from Mississippi [Mr. MONTGOMERY], and others of my colleagues for calling attention to the 40th anniversary of one of the most successful Government programs this Nation has ever experienced.

On June 22, 1944, just 16 days after American and allied soldiers waded ashore at Normandy to secure the peace in Europe, as Mr. MICHEL recalled here a little earlier, Public Law 346 was enacted to begin the first of a series of GI bills that would revolutionize the lives of veterans of World War II, the Korean conflict, and the Vietnam era.

Beginning with the World War II veterans, the Veterans' Administration paid up to $500 per year for school or job training. There were also other provisions for subsistence payments and allowances for veterans with dependents.

Of the more than 15 million veterans eligible for the program, 7.8 million took advantage of its provisions between 1944 and July of 1956, and I am proud to say, Mr. Speaker, that I was one of those. Through the first GI bill, nearly 3.5 million veterans enrolled in vocational schools, while a little more than 2 million entered colleges or institutions of higher learning.

All told, the Government invested $14.5 billion to train and educate those who sacrificed their best years and opportunities to serve the Nation.

With the onset of the Korean conflict, and the continued disruption of the education and jobs on our young men and women, the Congress once again came to the fore and enacted Public Law 82-550, a GI bill similar to the first but with some restrictions on certain allowances and increased levels of others. In terms of total numbers and percentages, fewer veterans availed themselves of this GI bill, but still more than 2 million veterans participated in this program. The Government provided $4.5 billion for this program.

The most progressive period of GI benefits was to come with the Vietnam-era program which will continue through 1989 and has, to date, provided educational assistance to 8 million veterans. In addition, the current GI bill instituted home and farm loans, job placement and counseling services as well as other programs.

Mr. Speaker, the past 40 years have been valuable ones to our veterans. The GI bill was a good investment for our Nation. As a member of the House Veterans' Affairs Committee, I am proud to have been a part of the hope this country offered to her veterans, at a time when they needed us most.

INTERFERENCE BY "THE COMMITTEE OF 24"

(Mr. SUNIA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SUNIA. Mr. Speaker, 2 years ago I stood at this very well to speak against interference by a body called The Committee of 24, of the United Nations, in the internal affairs of this country. This is the "decolonization" subcommittee of the United Nations which deals with administered areas.

Following a visit to American Samoa 2 years ago, they reported that the United States was not moving fast enough to prepare American Samoa for independence. Last week they went through the same exercise again, only this time, more noisy.

I made a trip to New York and appeared before the committee to inform them that American Samoa is a part of the United States, and not a colony. The American Samoans are members of this country and have no desire to be independent. American Samoa is not an "administered" territory, but a territory that is "governed" by its own elected officials. The Secretary of the Interior administers Federal programs in the territory. He does not rule the territory.

This Congress made sure of that last year when it took away from the Secretary the power to unilaterally change the Constitution of American Samoa.

Today, American Samoans elect their own legislature, elect their own Governor, and elect their own Representative to this Congress.

I wish the Committee of 24 would understand that, and I hope they will leave us alone.

But then of course they need something to do to justify their stay in New York and their trips around the world, something besides making speeches that interfere with other people's business, and smiling and bowing to each other in the halls of the U.N. building.

GOVERNMENT SPENDING IN REPUBLICAN DISTRICTS

(Mr. COELHO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COELHO. Mr. Speaker, I found it intriguing last night to hear many of our Republican colleagues lambast the majority for the Republican budget deficits.

In typical Republican fashion, they used distorted information to demand a bogus amendment to balance the budget they have bloated.

What I found most intriguing, though, was that many of these same Republicans who criticized us yesterday on the floor and in a "Dear Colleague" letter, have been turning a deaf ear to government spending in their own districts.

For example, the gentleman from Idaho, failed to mention the $700 million spent in 1983 in his district.

The gentleman from Minnesota failed to mention the $1.8 billion spent in his district.

The gentleman from Florida failed to mention the $4.150 billion spent in his district.

And the gentleman from California failed to mention the $1.150 billion spent in his district last year.

I trust these gentleman will soon have a special order calling for cuts in this spending as well unless their motto is don't cut mine but cut someone else's.

NOW WE WILL, NOW WE WON'T

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BURTON of Indiana. Mr. Speaker, today's news has both encouraging and discouraging reports concerning the struggle for freedom and democracy in Central America.

The good news is that with United States help the Government of El Salvador is now engaged in an offensive which is stomping out Communist-backed guerrillas in that country. Rebel strongholds, which only a month ago were thought to be invincible are now under the control of the Salvadoran Army.

The bad news is that the freedom fighters in southern Nicaragua are now retreating and near collapse according to statements made by their own leaders.

Unfortunately, the U.S. House of Representatives is in part responsible for the dimming hopes of freedom lovers in Nicaragua. It's as if we're pulling the petals off a daisy, saying "Now we'll support freedom, now we won't, now we will, now we won't." It's time we adopted a consistent policy in Central America, and abandoned the practice of helping freedom with one hand while slapping it with the other.

HEAVY-USE VEHICLE TAX SHOULD NOT BE COLLECTED YET

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, on July 1, the U.S. Treasury Department can and may in fact attempt to collect the heavy-use vehicle tax imposed by the Surface Transportation Assistance Act of 1982 [STAA]. Today I am presenting a resolution which would express to the Secretary of the Treasury the sense of this House that the higher rate of this tax not be collected until the House and Senate complete action on the tax bill, H.R. 4170, which will reduce the heavy-use vehicle tax.

While our colleagues are near completion of their task in the conference committee on H.R. 4170, it is unlikely that the final bill will be considered until after our July recess.

Should the Treasury Department attempt to collect these taxes it will place a financial burden, which we recognized by reducing the tax in this year's tax bill, on many independent trucking operations and upon our agricultural producers and farmers.

The result would be more redtape and paperwork, unnecessary spending and waste in refunding the excess tax if collected.

Therefore, I would urge you to support this resolution, which I will introduce today.

□ 1050

THE 40TH ANNIVERSARY OF THE GI BILL OF RIGHTS

(Mr. NELSON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NELSON of Florida. Mr. Speaker, it is my pleasure to rise today to speak on the 40th anniversary of the GI bill of rights.

In the last 40 years, some 18.2 million veterans have benefited from the educational and training opportunities afforded by the GI bill. The young men and women returning from World War II, the Korean conflict, and Vietnam were assured by this important act that Congress and the American people had not forgotten their dedication and service.

By providing over $55 billion to veterans during the past four decades, we have made a wise investment in America's future. The financial commitment of the GI bill has resulted in better educated, higher earning veterans who have returned more taxes to the U.S. coffers than the costs of the program itself.

As a former captain in the U.S. Army, and as a Congressman with 250,000 veterans in my district, I stand today to express appreciation for the GI bill which offered educational and career challenges since its enactment in 1944.

REAGAN SPEAKS TO SHERIFFS ON CRIME

(Mr. WILLIAMS of Montana asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. WILLIAMS of Montana. Mr. Speaker, yesterday President Reagan spoke with the sheriffs, the National Sheriffs' Association, and in his remarks he was particularly and unusually harsh and partisan with regard to his criticism of this House for not having passed what he calls his omnibus crime bill.

The President forgot to tell the sheriffs that this House has passed through either the full House or through our committees or is actively pursuing anticrime pornography, child protection, pharmacy robbery, witness protection, insanity defense, local law enforcement assistance, contraband in prison, drug enforcement, white-collar crime, foreign evidence, and bail reform. The President also forgot to tell the sheriffs that in the last Congress he asked for an omnibus crime bill and the Congress passed it, both this House and the other body. He forgot to tell the sheriffs that he vetoed that omnibus crime bill.

Mr. Speaker, apparently withholding the truth for political purposes is not a crime, even when you do it with sheriffs, but it is an act unbecoming of the Nation's highest elected official.

GOVERNOR EARL'S DOUBLE STANDARD

(Mr. PORTER asked and was given permission to address the House for 1 minute.)

Mr. PORTER. Mr. Speaker, recently Wisconsin Gov. Anthony Earl called on the EPA to impose penalties on Illinois for polluting Wisconsin's air. The Governor said that pollution from Chicago area cars, which violates the Clean Air Act standards, drifts north into Wisconsin.

Well, Governor, how about the water that Wisconsin dirties by dumping raw sewage into Lake Michigan, which drifts downs to Illinois shores?

For 12 years Illinois has been battling with the city of Milwaukee over its repeated dumping of raw sewage into Lake Michigan. Recently, the Federal court, ruling that the Clean Water Act preempts common law remedies, dismissed Illinois' suit to enjoin Milwaukee from polluting the sources of much of Illinois' drinking water and water recreation facilities.

Perhaps, Governor Earl, you can explain to us the difference between drifting dirty air and drifting dirty water.

Illinois is about to adopt auto testing procedures to end its air pollution problem. It would be nice to hear, Governor, that simultaneously Wisconsin has made its commitment to stop polluting Lake Michigan.

GI BILL OF RIGHTS

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. APPLEGATE. Mr. Speaker, I join with my colleagues in celebration of the anniversary of the GI bill of rights. Tomorrow, June 22, marks the 40th anniversary of the enactment of the Servicemen's Readjustment Act of 1944, or more commonly known as the GI bill of rights.

The GI bill of rights was signed into law by President Roosevelt in 1944. This act has been singled out as the single most comprehensive piece of legislation ever passed by Congress. It is also a tribute to the veterans of World War I who gave their uniform support for the bill to their World War II buddies.

Mr. Speaker, when millions of World War II servicemen were being discharged, the GI bill of rights with its education and training provisions played a major role in preventing a complete disruption of America's peacetime economy by helping ex-GI's return to the mainstream of civilian life.

Now 40 years later, we have successfully educated 18.2 million men and women veterans from World War II, the Korean conflict, and the Vietnam conflict. This may have cost the Government $59 billion, but that's money well spent. Our better educated, higher earning veterans have returned to the U.S. Treasury, in tax dollars, three times what the veteran received as benefits from the GI bill. And that, Mr. Speaker, is a good return on our investment, an investment in those men and women veterans who have served in this Nation's Armed Forces since 1941 and an investment in the future of America since those veterans have been trained in every field from aeronautics to zoology.

Through the GI bill, we have also improved the quality of education throughout the country. Before World War II, a college education was beyond the means of the great majority of Americans, but today, thanks to the GI bill and other measures passed by Congress, a college education is by no means rare.

Much has been accomplished over these past 40 years; we in the Congress can be proud that no law has had more of an impact on the fabric of America than the GI bill. It has educated millions of veterans; helped them purchase homes, farms, and small businesses; and set the stage for construction and renovation of hospitals to help meet the medical needs of all veterans.

All in all, the GI bill of rights and its successors have enabled millions of veterans from three wars to benefit, rather than suffer, from their service to the Nation. Yes, 40 years after its birth, the GI bill stands as a model of enlightened social legislation to every other nation in the world.

THE 40TH ANNIVERSARY OF THE GI BILL

(Mr. McEWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McEWEN. Mr. Speaker, tomorrow we celebrate a program that educated, trained, or counseled more than 18 million veterans, at a cost of nearly $55 billion, and simply passed on the thanks of a grateful nation. At age 40, the GI bill is, indeed, one of the most treasured concepts any nation has offered her soldier citizens.

Those who served this country in time of war, and those who were prepared to defend, should the need arise, gave up much when they entered the Armed Forces. Their high school classmates went on to college while they went on to Normandy, Pork Chop Hill, the Mekong Delta.

Their friends, with high school or college diplomas in hand, entered the job market that they, too, might have competed in, except that duty, not opportunity, knocked first.

That Congress 40 years ago paved the way around these obstacles with the first GI bill. We can be thankful that subsequent Congresses saw the need to keep the program alive.

Clearly we cannot begin to measure the total value of this farsighted legislation, but we can celebrate that it has done so much to educate, to establish new jobs, and to secure personal pride in those who risked everything, and asked for nothing in return—our Nation's veterans.

SOME INDIRECT BENEFITS OF THE GI BILL

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, we have spoken of the direct benefits of the GI bill. I would like to spend a minute talking about some of the indirect benefits. I was among those who came to college while many of the veterans of World War II were still on campus. I learned as much from their dedication, their enterprise, and their maturity as I did from the classroom. I was a product in a sense of that generation of veterans.

We as a nation learned from the GI bill that when we benefit some in the country, we also assist others.

So, Mr. Speaker, today I salute our GI's. They fought for our country, and then they came home, not only to pick up the threads of their own lives but to strengthen the fabric of the entire Nation.

40TH ANNIVERSARY OF THE GI BILL

(Mr. MOORHEAD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, I would like to take this opportunity in joining SONNY MONTGOMERY and my other colleagues in commemorating the 40th anniversary of the immensely successful and important GI bill. This bill, signed into law on June 22, 1944, marked the beginning of an ongoing effort to assist those men and women who have served their country in gaining an education and finding meaningful employment after returning to civilian life.

When it was proposed in 1944, the GI bill was intended not only to assist individual servicemen in their readjustment to civilian life, but also to prevent a glut of the labor market as 10 million returning service men and women attempted to find employment after the war. By providing these educational opportunities, the GI bill effectively diverted many job seekers into our Nation's schools. This substantial increase in the enrollment of our universities and colleges had the welcome side effect of significantly expanding and democratizing our system of higher education.

Today, close to 18 million men and women have taken advantage of the educational aid offered by the GI bill and its subsequent extensions and amendments. In a message to Congress in 1943, Franklin Roosevelt noted that, "what our service men and women want, more than anything else, is the assurance of satisfactory employment upon their return to civil life." I believe that their concerns remain the same today. The peacetime GI bill has given our service men and women the assurance that the American people do not intend to forget their contributions to the Nation's security.

The peacetime GI bill not only benefits the individuals who give their time to serve our country, it benefits the whole country. An educated America is a prosperous America. Many of the veterans who have taken advantage of the GI bill's education assistance programs have become the first members of their families to attend college. The educational benefits offered by the bill have also proven to be a valuable recruitment tool for our volunteer forces.

Let us take this occasion of the commemoration of the 40th anniversary of the GI bill to acknowledge the invaluable contributions of those who have chosen to serve their country. Let us also acknowledge the immense contribution of the GI bill to the education and security of our men and women in the armed services.

IN COMMEMORATION OF THE 40TH ANNIVERSARY OF THE GI BILL

(Mr. MOAKLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, June 22 marks the 40th anniversary of the signing of the Servicemen's Readjustment Act of 1944, better known as the GI bill.

The GI bill has served both the veteran of the United States as well as the entire country itself very well. For the veterans the GI bill has allowed those who have served our Nation in World War II, Korea, and Vietnam to further their education and training, so that they might receive positions that only a good education can provide. I, myself, am personally indebted and grateful to the GI bill which enabled me to attend college and law school along with more than 18 million other Americans. This Nation too has benefited from the GI bill as well with the large numbers of veterans using the GI bill to further their education. This country after each of the last three wars, has been able to gear down from a wartime to a peacetime economy without forcing millions of people into unemployment. Also, the money paid out by the GI bill has received handsome returns. According to the Veterans' Administration participating veterans return to the Federal Treasury several times the amount spent on their education assistance due to additional taxes paid on higher income earned as a result of better education and training.

I stand here today in thankful commemoration of this great act of Franklin D. Roosevelt's, an act that has immensely served this Nation and many of its citizens to a better way of life than would have been possible without the GI bill.

□ 1100

THE 40TH ANNIVERSARY OF ORIGINAL GI BILL OF RIGHTS

(Mrs. MARTIN of Illinois asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MARTIN of Illinois. Mr. Speaker, I am proud to join my colleagues today in commemorating the 40th anniversary of the original GI bill of rights. The GI bill, throughout these years, has offered countless and important opportunities to the men and women who have served with dedication and valor in the Armed Forces.

Educational opportunities, housing opportunities, and job opportunities have all been guaranteed to our Nation's veterans so that they might more easily and fully return to the American mainstream after their terms in the service have been completed. Men and women who might otherwise never have had the resources to attend college or purchase a home have taken advantage of the GI bill to help realize their goals.

Since 1944, over 18 million Americans have received some form of training under the GI bill. Loans amounting to over $225 billion have been made for homes, farms, and businesses. The dreams of many American veterans and their families have been realized with the help of the GI bill. Nearly every family has been in some way touched by the support the bill has provided.

I believe we should not be content to simply retell how the GI bill has helped those in the last 40 years today, but should also make a firm commitment to Americans who are currently serving their Nation and to those who will serve in the Armed Forces in the years to come. I am convinced that the GI bill's continuation is an important part of supporting those who stand by the American ideals of freedom, democracy, and liberty, and demonstrate their commitment by giving parts of their lives to those ideals.

40TH ANNIVERSARY OF GI BILL OF RIGHTS

(Mr. ROEMER asked and was given permission to address the house for 1 minute and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, I rise today to join my colleague and friend, the gentleman from Mississippi [Mr. Montgomery] and the many others who have stood in the well today and commemorated the 40th anniversary of the original GI bill of rights.

We do that not only for what it has done for the hundreds of thousands of people who fought for our country, and it bought my father a college education, for example, but I think we do it for a more important reason and that is what the original GI bill of rights did for our country.

Thomas Jefferson said in the year 1801 that a nation that expects to be both free and ignorant expects what never was and never will be.

The GI bill because it extended education across America did as much for our freedom as the weapons and the bullets of any war we ever fought.

I join countless others in celebrating this anniversary.

AMERICAN LIFE PROFOUNDLY AFFECTED BY GI BILL

(Mr. HAMMERSCHMIDT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Speaker, I want to associate myself with the remarks of my friend and distinguished chairman, the gentleman from Mississippi [Sonny Montgomery], and the Veterans' Affairs Committee and others who have spoken on this 40th anniversary to commemorate the GI bill of rights.

Mr. Speaker, few programs have affected American life so profoundly as has the GI bill, which we celebrate tomorrow for its 40 years of tireless and immeasurably valuable service.

It was only right that the 78th Congress recognized the inequities that military service can impose on our young men and women. And in that spirit, our colleagues of 40 years past, created a bill that sought to repay our soldiers for the sacrifices they made.

In the four decades since that 22d day of June 1944 approximately 18 million men and women have used the benefits of the three GI bills to the greater benefit of the Nation. If America is a stronger and richer Nation with each citizen who seeks and achieves higher education, or who holds gainful employment, then we are strong beyond measure and rich beyond compare, thanks to the GI bill.

Thank you.

40TH ANNIVERSARY OF GI BILL OF RIGHTS

(Mr. GORE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GORE. Mr. Speaker, I, too, want to join with my colleague, the gentleman from Mississippi [Mr. Montgomery] and the others who have come in the well today. Like several others who have spoken, I have a personal debt of gratitude to acknowledge for the GI bill of rights. After returning from Vietnam, I attended law school with the help of the GI bill.

Mr. Speaker, 40 years ago tomorrow, President Franklin Delano Roosevelt signed the original GI bill of rights, 16 days after the D-day invasion of France. Passed unanimously by the 78th Congress, the Servicemen's Readjustment Act of 1944 gave "emphatic notice to the men and women of our Armed Forces that the American people did not intend to let them down." The Nation's generosity was unmatched; America had the best veterans' program in the history of the world.

June 22, 1944, marked the beginning of a period of rebuilding and an opportunity for new hope for America's veterans and their families. Passage of the GI bill of rights opened the door for legislation for veterans from the Korean conflict and the Vietnam war. Just recently, Congress passed the Department of Defense Authorization Act of 1985 to offer assistance to peacetime veterans.

The GI bill of rights has made a significant contribution to our society, affecting the economic, academic, governmental, social, and cultural environment in America. More than 84 million veterans and their dependents have been made eligible for needed benefits and services. The law has helped provide education and training programs for veterans and their families.

Under the original GI bill of rights, low-interest loans are provided so that veterans can buy, build, or improve their homes.

Perhaps the most important of all services provided are the hospital and medical care and life insurance programs. Under the law the Veterans' Administration hospital network has expanded from 54 hospitals to 172. These medical centers treat 1.4 million patients a year and provide accommodations for 80,000. Twenty-nine thousand veterans each year are provided nursing home and domiciliary care. VA outpatient clinics register more than 18 million annual visits. VA health care facilities have provided training for one-half of all physicians in practice in the United States.

Today, I believe we should focus our attention on the men and women who sacrificed so much to preserve our heritage and freedom. So, on this 40th anniversary of the GI bill of rights, I want to join in paying tribute to all of America's veterans and to those leaders who 40 years ago had the vision to create the GI bill.

GI BILL OF RIGHTS

(Mr. WINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WINN. Mr. Speaker, the efforts of the many GI's who served this country and its allies were to ensure that you and I could speak freely, publicly voice our opposition and our support of Government without fear of retaliation, travel this country and beyond, and worship as we please. Indeed, GI's helped to ensure our strength, freedom, and security.

In recognition of their significant contributions and sacrifices, Americans supported three GI bills which have contributed greatly to the readjustment of approximately 18 million veterans during the past 40 years. Today marks the 40th anniversary of the signing of the GI bill of rights. Many would agree that this landmark legislation is probably the most important and significant bill ever to be passed by Congress. It provided so many veterans with the opportunity to further their education, expand their employable skills and improve their place in the community which ultimately, made our society a better place to live. It is fitting that we acknowledge this considerable achievement for it has assisted so many who so bravely served our Nation. It is my hope that we will always continue to recognize and support those who served our country in times of need as we did 40 years ago with this historic veterans' program.

THE 15TH ANNUAL REPORT ON MOTOR VEHICLE SAFETY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore (Mr. DANIEL) laid before the House the following message from the President of the United States; which was read, and together with the accompanying papers, without objection, referred to the Committee on Energy and Commerce and the Committee on Public Works and Transportation:

(For message, see proceedings of the Senate of today, Thursday, June 21, 1984.)

THE ORGAN TRANSPLANT ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 507 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5580.

□ 1107

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, with Mrs. BOXER (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Wednesday, June 20, 1984, all time for general debate had expired.

Pursuant to the rule, the bill will be considered under the 5-minute rule by titles, and each title shall be considered as having been read.

The Clerk will designate title I.

The text of title I is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ORGAN PROCUREMENT ACTIVITIES

SEC. 101. Part H of title III of the Public Health Service Act is amended to read as follows:

"PART H—ORGAN TRANSPLANTS

"ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS

"SEC. 371. (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

"(2) The Secretary may make grants for the establishment, initial operation, and expansion of qualified organ procurement organizations described in subsection (b).

"(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

"(A) is a nonprofit entity,

"(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

"(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

"(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

"(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least fifty potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

"(F)(i) except as provided in clause (ii), has a Board of Directors which includes—

"(I) members who represent hospital administrators, neurosurgeons or neurologists, intensive care or emergency room nurses, tissue banks, and voluntary health associations in its service area and the general public residing in such area, and

"(II) from each transplant center in its service area which has with the organization arrangements described in paragraph (2)(G), a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

"(ii) in the case of an organization which is an organization which was in existence on the date of the enactment of this section and which on that date was engaged in the procurement of organs, establishes an advisory board for organ procurement which will be an advisory board to its Board of Directors, which will include the representation prescribed by clause (i), which will have authority to establish policy for the procurement of organs and the other functions described in paragraph (2), and which will have no authority over any other activity of the organization, and

"(G) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area.

"(2) An organ procurement organization shall—

"(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

"(B) conduct systematic efforts, including professional education, to acquire all usable organs from potential donors.

"(C) arrange for the acquisition and preservation of donated organs and provide quality standards for surgery performed to acquire organs,

"(D) arrange for the appropriate tissue typing of donated organs,

"(E) have a system to allocate donated organs among transplant centers and patients according to established criteria,

"(F) provide for the transportation of donated organs to transplant centers,

"(G) have arrangements to coordinate its activities with transplant centers in its service area,

"(H) participate in the United States Transplantation Network established under section 372,

"(I) have arrangements with tissue banks for the retrieval, processing, preservation, and storage of tissues as may be appropriate, and

"(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs.

"(c)(1) For grants under subsection (a) there are authorized to be appropriated $4,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, $12,000,000 for fiscal year 1987, and $16,000,000 for fiscal year 1988.

"(2) There are authorized to be appropriated for fiscal years 1989 and 1990 such sums as may be necessary to continue grants for the initial operation or expansion of organ procurement organizations which received initial grants for such purpose under subsection (a) in fiscal year 1987 or 1988.

"UNITED STATES TRANSPLANTATION NETWORK

"SEC. 372. (a) The Secretary shall by contract provide for the establishment and operation of a United States Transplantation Network which meets the requirements of subsection (b) and which will assist organ procurement organizations in the distribution of organs which cannot be placed within the service areas of the organizations and facilitate the matching of organ donors and organ recipients, especially individuals whose immune system makes it difficult for them to receive organs. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after the date of the enactment of this section.

"(b)(1) A United States Transplantation Network shall carry out the functions described in paragraph (2) and shall—

"(A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and

"(B) have a board of directors which includes representatives of organ procurement organizations described in section 371, transplant centers, voluntary health associations, and the general public.

"(2) A United States Transplantation Network shall—

"(A) maintain a national list of individuals who need organs,

"(B) provide, through the use of computers and in accordance with established criteria, a national system to match organs and individuals included in the list,

"(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

"(D) establish and maintain standards of quality for the acquisition and transportation of donated organs,

"(E) prepare and distribute, on a regionalized basis, samples of blood sera from individuals, included in the list, to facilitate matching the compatibility of organ donors and organ recipients, especially individuals whose immune system makes it difficult for them to receive organs,

"(F) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

"(G) provide information to physicians and other health professionals regarding organ donation, and

"(H) collect, analyze, and publish data concerning organ donation and transplants.

"SCIENTIFIC REGISTRY

"Sec. 373. The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status or organ transplantation. The Secretary shall prepare for inclusion in the report under section 376 an analysis of information derived from the registry.

"GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

"Sec. 374. (a) No grant may be made under section 371 or 373 or contract entered into under section 372 or 373 unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

"(b)(1) In considering applications for grants under section 371, the Secretary shall give priority to any applicant which has a formal agreement of cooperation with all transplant centers in its proposed service area, and the Secretary shall give special consideration to organizations which met the requirements of section 371(b) before the date of the enactment of this Act. In considering such applications the Secretary shall not discriminate against an applicant solely because it provides health care services other than those related to organ procurement. The Secretary may not make a grant for more than one organ procurement organization which will serve the same geographical area.

"(2) A grant for planning under section 371 may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

"(3) Grants under section 371 for the establishment, initial operation, or expansion of organ procurement organizations may be made for three years. No such grant may exceed $500,000 for any year and no organ procurement organization may receive more than $1,000,000 for initial operation or expansion.

"(c)(1) The Secretary shall determine the amount of a grant made under section 371 or 373. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

"(2)(A) Each recipient of a grant under section 371 or 373 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under section 371 or 373 that are pertinent to such grant.

"(d) For purposes of this part:

"(1) The term 'transplant center' means a health care facility in which transplants of organs are performed.

"(2) The term 'organ' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas) included by the Secretary by regulation.

"ADMINISTRATION

"Sec. 375. The Secretary shall, during fiscal years 1985, 1986, 1987, and 1988, establish in the Public Health Service and maintain an identifiable administrative unit to—

"(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act,

"(2) conduct a program of public information to inform the public of the need for organ donations,

"(3) provide technical assistance to organ procurement organizations receiving funds under section 371, the United States Transplantation Network established under section 372, and other entities in the health care system involved in organ donations, procurement, and transplants, and

"(4) submit to Congress an annual report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.

"REPORT

"Sec. 376. The Secretary shall publish an annual report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report. The Secretary shall make the report and other related information available to service benefit plans, health insurers, and other entities which are responsible for making payments for health care.".

TASK FORCE ON ORGAN TRANSPLANTATION

Sec. 102. (a) The Secretary of Health and Human Services shall establish a Task Force on Organ Transplantation. The task force shall conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation.

(b) The task force shall be composed of twenty-two members appointed by the Secretary as follows:

(1) Nine members shall be appointed from physicians who are eminent in the various specialties of medicine related to human organ transplantation. Of the physicians, six shall be transplant surgeons.

(2) Three members shall be appointed from individuals who are not physicians and who represent the field of human organ procurement.

(3) Four members shall be appointed from individuals who are not physicians or scientists and who as a group have expertise in the fields of law, theology, eithics, health care financing, and the social and behavioral sciences.

(4) Three members shall be appointed from individuals who are not physicians or scientists and who are members of the general public.

(5) Three scientists or physicians who are eminent in the field of histocompatability.

No individual who is a full-time officer or employee of the Federal Government may be appointed to the task force. A vacancy in the task force shall be filled in the manner in which the original appointment was made.

(c) The task force shall, within six months of the date of its establishment, conduct a national conference to consider questions respecting—

(1) the equitable access by patients to organ transplantation.

(2) the allocation of donated organs among transplant centers and among patients equally medically qualified for an organ transplant, and

(3) payment for nonrenal organ transplantation.

Upon the completion of the conference the task force shall submit a report to the Secretary on the findings of the conference.

(d) The task force shall terminate upon the expiration of twelve months from the date of the report under subsection (c).

IMMUNOSUPPRESSIVE DRUGS

Sec. 103. (a) The Secretary of Health and Human Services shall make immunosuppressive drugs available, upon request and without cost, to transplant centers for use in accordance with subsection (b), on an outpatient basis by individuals who have received an organ transplant at such centers.

The Secretary shall allocate such drugs to centers in proportion to the number of organ transplants performed at the centers in the fiscal year preceding the fiscal year in which the drugs are to be made available. For purposes of this subsection, the term "transplant center" means a health care facility in which at least 25 transplants of kidneys, pancreases, livers, or hearts, or any combination of such organs, are performed in any fiscal year.

(b) A transplant center receiving immunosuppressive drugs under subsection (a) shall furnish such drugs, without charge, to outpatients who have received an organ transplant at such center on the basis of the center's determination of the patient's need for such drugs and the patient's inability to pay for such drugs through insurance coverage or other resources.

(c) The Comptroller General of the United States shall report to the Congress not later than December 31 of each year during which immunosuppressive drugs are made available under subsection (a) on the allocation of such drugs to transplant centers and the methods used by transplant centers to distribute such drugs to patients.

(d) The Secretary of Health and Human Services shall submit a recommendation to the Congress not later than October 1, 1985, respecting the feasibility and desirability of authorizing reimbursements under title XVIII of the Social Security Act for immunosuppressive drugs on an outpatient basis by individuals who have received organ transplants.

(e) To carry out subsection (a), there are authorized to be appropriated $10,000,000 for fiscal year 1985 and $20,000,000 for fiscal year 1986.

The CHAIRMAN pro tempore. Are there any amendments to title I?

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WAXMAN: Page 10, insert before the period in line 18 the following: "and for purposes of section 372 such term includes bone marrow".

Page 15, insert after line 6 the following:

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

SEC. 104. (a) The Secretary of Health and Human Sevices, acting through the Assistant Secretary for Health, shall, for purposes of the study under subsection (b), establish a bone marrow registry of voluntary donors of bone marrow. The Secretary shall assure that—

(1) donors of bone marrow listed in the registry have given an informed consent to the donation of the bone marrow; and

(2) the names of the donors in the registry are kept confidential and access to the names and any other information in the registry is restricted to personnel who need the information to maintain and implement the registry, except that access to such other information shall be provided for purposes of the study under subsection (b).

The Secretary shall establish the registry not later than of twelve months after the date of the enactment of this section.

(b) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall study the establishment and implementation of the registry under subsection (a) to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry is needed and appropriate. The Secretary shall report the results of the study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than two years after the date the registry is established under subsection (a).

Mr. WAXMAN (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Madam Chairman, this amendment would require the Secretary of Health and Human Services to establish a registry of people who have volunteered to be potential live donors of bone marrow. The amendment incorporates safeguards to make sure that potential donors have had the procedure explained to them and have given informed consent. It also contains safeguards to preserve the confidentiality of potential donors and prevent them from being subjected to pressure to donate their bone marrow.

H.R. 5580 currently provides for a registry of recipients of other organs. The procedure for bone marrow transplantation, however, is quite different from other organs. Many medical experts believe the key to future success with bone marrow transplantation is the identification of live donors who are not related to the recipient, and have compatible blood typing. A registry of potential donors is, therefore, critical.

A registry of live donors does raise important concerns, such as assuring informed consent and protecting the donor's confidentiality. Moreover, there remain medical and scientific questions about bone marrow transplantation between unrelated parties. Although the technology is advancing rapidly, more study is required before the procedure becomes more widely approved. The dilemma faced by transplant researchers is that without a registry unrelated donors are so difficult to find that the research becomes impossible.

For these reasons, we think it is appropriate to establish this registry at this time. However, we also think the range of potential donors maintained in the registry should initially be limited, until questions about the transplantation procedure and questions about the registry are further examined. The Secretary would be required to evaluate how the registry is working and report back to the Congress after 2 years on whether it should be extended. It is our expectation that the Secretary would award a grant or contract to a nonprofit agency to establish the registry.

I want to recognize the efforts of our distinguished colleague Congresswoman MIKULSKI, who has been the catalyst for developing this amendment and who would have offered it herself if she could have been here today. I also want to commend our colleagues and cosponsors on this bill, Congressmen GORE and MADIGAN, who have worked to perfect this amendment and have agreed to support it.

☐ 1110

Mr. MADIGAN. Madam Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Illinois.

Mr. MADIGAN. Madam Chairman, I rise in support of this amendment which requires the Secretary of Health and Human Services to study the use of a registry of voluntary donors of bone marrow.

Bone marrow transplantation holds great promise for some patients, especially those with a fatal form of anemia—aplastic anemia. But, the techniques of bone marrow transplantation between nonrelated donors are still experimental and require further study.

The donors of bone marrow are living donors with special requirements for protection including methods to assure confidentiality and informed consent.

The implications of the use of such a registry for living donors are as yet not well studied; this amendment calls for the establishment of a registry as a demonstration project, spells out the necessary assessments that need to be made and requires a report to the Congress before a permanent registry would be established.

I ask you to join me in the adoption of this amendment.

Mr. GORE. Madam Chairman, will the gentleman yield?

Mr. WAXMAN. I am pleased to yield to the gentleman from Tennessee.

Mr. GORE. I would also like to commend the gentlewoman from Maryland without whom this amendment would not be possible.

Bone marrow transplantation is yet another example of a rapidly improving technology that will help save thousands of lives. Recently, the physicians involved with this therapy have begun to do transplants between unrelated living donors. But to be successful, they need a list of those individuals who have through their generosity and commitment to help, have agreed to serve as bone marrow donors—unlike other organ transplants, bone marrow requires a living donor.

The amendment takes the first step to the creation of such a registry. It also puts in place important safeguards to protect the confidentiality of those who have agreed to become donors, so that they retain their right to decide in each case whether they still want to donate and so they are protected from unfair coercion.

This amendment should not be controversial at all and I support it very strongly, and I thank my colleague for yielding.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from California [Mr. WAXMAN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GORE

Mr. GORE. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GORE: Page 7, line 12, strike out "establish and maintain" and insert in lieu thereof "adopt and use".

Mr. GORE. Madam Chairman, this is a technical change and I think both sides are familiar with it.

Mr. MADIGAN. Madam Chairman, will the gentleman yield?

Mr. GORE. I yield to my colleague, the gentleman from Illinois.

Mr. MADIGAN. I thank the gentleman for yielding.

Madam Chairman, we have had an opportunity to review the amendment and recognize that it is merely a technical amendment. I would urge adoption of the amendment by the committee and thank the gentleman for yielding.

Mr. GORE. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Tennessee [Mr. GORE].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MC KERNAN

Mr. McKERNAN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McKERNAN: Page 14, beginning in line 5, strike out "For purposes" and all that follows through line 9 and insert in lieu thereof the following: For purposes of this subsection, the term "transplant center" means—

(1) a health care facility in which at least 25 transplants of kidneys, pancreases, livers, or hearts, or any combination of such organs, are performed in any fiscal year, or

(2) in the case of a State in which there is no health care facility which meets the requirements of paragraph (1), the health care facility in the State which has performed at least 15 of the transplants described in paragraph (1) in the fiscal year preceding the fiscal year in which immunosuppressive drugs are to be made available under this subsection and which has performed in such preceding fiscal year the most transplants of the organs referred to in paragraph (1).

Mr. McKERNAN (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Maine?

There was no objection.

Mr. McKERNAN. Madam Chairman, I am offering an amendment to H.R. 5580, the Organ Transplant Act, which will enable all States with transplant centers to benefit from the immunosuppressive medications provision of this bill.

H.R. 5580 establishes a 2-year pilot program which makes vital immunosuppressive drugs available to transplant patients who need, but cannot afford, them. This legislation proposes a 2-year authorization, providing $10 million in fiscal year 1985 and $20 million in fiscal year 1986, for the Department of Health and Human Services to purchase immunosuppressive drugs for outpatient use by individuals who have had organ transplants. Hospitals, in turn, would be responsible for determining which patients shall receive which drugs in which amounts. Under this provision, immunosuppressive medication would be provided only to transplant centers which perform 25 or more transplants per year.

Establishing this "floor" of 25 or more inadvertently excludes from eligibility six hospitals which are clearly "transplant centers" but which narrowly miss that number. Transplant centers in Maine, Vermont, Arkansas, New Mexico, Hawaii, and Puerto Rico performed between 16 and 24 transplants per hospital, per year last year, yet these hospitals—and their patients—would not qualify for the essential medication provided under this provision of H.R. 5580.

My amendment would bring these hospitals within the eligibility limits at no additional cost. With my amendment, in the case of a State in which there is no health facility which meets the 25 transplant requirement, then the health care facility in the State which has performed the most transplants described by the bill over the past year would qualify for the immunosuppressive drugs, so long as that facility performed at least 15 such transplants.

I urge my colleagues to support this amendment. It equalizes eligibility under the immunosuppressive drug provision of the bill among all States, it broadens the range of support for the medication assistance provision, and it does so at no additional cost to the taxpayer.

Mr. MADIGAN. Will the gentleman yield?

Mr. McKERNAN. I will be happy to yield.

Mr. MADIGAN. I want to thank the gentleman for yielding and rise in support of his amendment. The legislation as now written would limit the distribution of immunosuppresive drugs to transplant centers which perform at least 25 transplants a year.

I understand the gentleman's amendment would allow the Secretary to distribute these drugs to transplant centers which do less than 25 but at least 15, and so do the most transplants in a specified State.

I think it is a good amendment and I appreciate the gentleman calling it to the committee's attention.

Mr. McKERNAN. I appreciate the gentleman's support.

Mr. WAXMAN. Will the gentleman yield to me?

Mr. McKERNAN. I yield to the gentleman from California.

Mr. WAXMAN. I also join in supporting this amendment. The gentleman has raised an important issue. It was the intention of the committee to limit the allocation of immunosuppresive drugs to those transplant centers which perform at least 25 transplant procedures annually. It was not intended that this limitation impact disproportionately upon rural States that only have a single transplant center.

The gentleman's amendment is reasonable and will strengthen the legislation, and I urge support for the amendment.

Mr. McKERNAN. I thank the gentleman for his support. The people from the State of Maine thank you because this is an important program and we are pleased to be able to participate.

I yield back the balance of my time.

Mr. JEFFORDS. Madam Chairman, I rise in support of the McKernan amendment to H.R. 5580, the National Organ Transplant Act. This amendment will not effect many States, nor will it have much effect upon funding.

This amendment will give the six small States which are excluded by the 25 transplant limit a chance to benefit from this program. As the bill currently stands, a transplant center must have performed 25 transplants in 1983 in order to be eligible for funding for immunosuppressive drugs. This amendment would lower this requirement to 15 for those six States in which no center performed 25 transplants in 1983. The choice of 15 transplants as the minimum number of transplants is not an arbitrary number. This is also the number used by the Department of Health and Human Services as one factor in determining eligibility for Federal funding for kidney transplants, the main type of transplant done at these hospitals.

In my State of Vermont, we have only one large medical facility which performs kidney transplants, although it serves a wide area, including parts of upper New York State and northern New Hampshire. The medical center hospital of Vermont performed 22 kidney transplants in 1983. It does not seem reasonable to require patients to travel 200 miles to Boston in order to receive Federal funding when excellent facilities exist close to home. It is likely that the number of transplants at the medical center will increase in the future, so it does not seem wise to exclude them at this time from Federal funding.

So I ask my colleagues, regardless of your overall feelings about Federal funding for immunosuppressive drugs, to give these few States a chance to offer the same health care coverage to their residents as their large neighbors. I ask your support for this amendment. I also want to thank the gentleman from Maine for his diligent efforts on behalf of the small States.

● **Ms. SNOWE.** Madam Chairman, I am pleased to speak in support of the McKernan amendment to H.R. 5580, the National Organ Transplant Act. This amendment ensures that all States with transplant centers will benefit from the immunosuppressive drugs provided by the bill.

As the bill is written, residents of Maine, Vermont, Arkansas, Mississippi, Hawaii, New Mexico, and Puerto Rico are unable to participate in the Immunosuppressive Drug Program. Patients in these States will be forced to either absorb the very sizable expense of these medications or assume the added financial and emotional burden of traveling to other centers where the drugs are available.

This is not a minor discrepancy. These drugs are expensive. For instance, cyclosporine, a recently approved immunosuppressive drug, costs approximately $6,000 per year for the first year of transplantation and $3,000 each year thereafter, all currently borne by the patient. It is cruel to otherwise encourage transplants, but then prevent certain patients from receiving the medication that will reduce organ rejection and promote a speedy recovery.

By revising the participation requirements, the McKernan amendment is fair to residents of these States. They are not penalized for living where population, the availability of organs, or even the difficulty of the operation limits the number of transplants a center can do. In the interest of fairness, I urge my colleagues to support the McKernan amendment.●

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Maine [Mr. McKernan].

The amendment was agreed to.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DANNEMEYER

Mr. DANNEMEYER. Madam Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Dannemeyer: Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Organ Procurement and Transplantation Act".

FINDINGS

Sec. 2. The Congress finds and declares that—

(1) the lack of suitable donor organs for patients awaiting surgery is a major obstacle to all organ transplant programs;

(2) a number of patients waiting for donor organs face certain death within a predictable time period;

(3) the absence of coordinated and effective systems to solicit, identify, and match organ donors with transplant patients has forced such patients and their families to resort to public appeals through the mass media in order to procure the organs needed for transplantation;

(4) a cooperative relationship between an informed public and a receptive medical community is necessary for the identification and procurement of organs for transplantation; and

(5) there is a need for additional medical centers which are capable of performing human organ transplant surgery.

TITLE I—TASK FORCE ON ORGAN PROCUREMENT AND TRANSPLANTATION ESTABLISHMENT

Sec. 101. Within thirty days after the date of enactment of this Act, the Secretary of Health and Human Services shall, under the authority of section 301 of the Public Health Service Act, establish a Task Force on Organ Procurement and Transplantation.

DUTIES OF THE TASK FORCE

Sec. 102. (a) The Task Force shall assess the nature and extent of public and private efforts that are needed to create a widely known, well defined, and effective organ procurement system, and shall develop a plan to assure the establishment of a national organ donor network and organ procurement system which emphasizes involvement by the private sector and provides for the coordination of existing organ procurement programs and services.

(b) The plan developed under subsection (a) shall include—

(1) an analysis of the factors that affect and determine the availability of organs for transplantation;

(2) a specification and clarification of mechanisms that exist or can be developed in the private sector to identify potential organ donors, encourage health care providers to promptly notify appropriate organizations of the availability of organs for transplant, provide for rapid matching of donors with appropriate organ recipients, facilitate the removal of organs, maintain the viability of organs, and transport organs to appropriate organ recipients, including mechanisms such as a national donor identification system;

(3) provisions for the education and training of health professionals, including physicians, nurses, and hospital and emergency care personnel;

(4) provisions for the education of the general public, the clergy, law enforcement officers, members of local fire departments, and other agencies and individuals that may be instrumental in effecting organ procurement;

(5) an identification of barriers to the donation of organs to pediatric patients, including an assessment of—

(A) barriers to the improved identification of pediatric organ donors and their families and pediatric organ recipients;

(B) current health care services provided for pediatric patients who need organ transplantation and organ procurement procedures, systems, and programs which affect such patients;

(C) cultural factors affecting the family with respect to the donation of the organs of a minor; and

(D) ethical and economic issues relating to organ transplantation needed by chronically ill pediatric patients;

(6) recommendations for the conduct and coordination of continuing research concerning all aspects of the transplantation of organs;

(7) an analysis of barriers to the interstate transportation of organs for transplantation;

(8) an analysis of the factors involved in insurance reimbursement for transplant procedures by private insurers and the public sector;

(9) an analysis of the factors relating to insurance reimbursement for long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector; and

(10) an assessment of need for additional medical centers which are capable of performing human organ transplant surgery and recommendations for the expeditious establishment of such centers.

MEMBERSHIP

Sec. 103. (a) The Task Force shall be composed of nineteen members as follows:

(1) The Secretary of Health and Human Services (or the designee of the Secretary).

(2) The Surgeon General of the United States (or the designee of the Surgeon General).

(3) The Director of the National Institutes of Health (or the designee of the Director).

(4) The Administrator of the Health Care Financing Administration (or the designee of the Administrator).

(5) Seven individuals appointed by the Secretary who are not officers or employees of the United States and who represent health professionals with expertise in the field of organ transplantation, including physicians, nurses, and hospital and emergency care personnel.

(6) Two individuals appointed by the Secretary who are not officers or employees of the United States and who represent private health insurers.

(7) Four individuals appointed by the Secretary who are not officers or employees of the United States and who represent the clergy, patient advocacy organizations, and voluntary organizations.

(8) Two individuals appointed by the Secretary who are not officers or employees of the United States and who have experience with respect to organ procurement.

(b) A vacancy in the Task Force shall be filled in the same manner as the original appointment was made. A vacancy in the Task Force shall not affect its powers.

(c) Members shall be appointed for the life of the Task Force.

(d) The Secretary shall select a Chairman from among the members of the Task Force who are not officers or employees of the United States.

(e) Eleven members of the Task Force shall constitute a quorum, but a lesser number may hold hearings.

(f) The Task Force shall hold its first meeting on a date specified by the Secretary which is not later than thirty days after the date on which the Secretary establishes the Task Force under section 101. Thereafter, the Task Force shall meet at the call of the Chairman or a majority of its members, but shall meet at least three times during the life of the Task Force.

(g)(1) Each member of the Task Force who is not an officer or employee of the United States shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) during which such member is engaged in the actual performance of duties as a member of the Task Force. Each member of the Task Force who is an officer or employee of the United States shall receive no additional compensation.

(2) While away from their homes or regular places of business in the performance of duties for the Task Force, all members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

DIRECTOR AND STAFF OF TASK FORCE

SEC. 104. (a) The Secretary shall appoint an Executive Director who shall be compensated at a rate not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) With the approval of the Task Force, the Executive Director may appoint and fix the compensation of such additional personnel as the Task Force considers necessary to carry out its duties.

(c) The Executive Director and the additional personnel of the Task Force referred to in subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) Subject to such rules as may be prescribed by the Task Force, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $100 per day.

(e) Upon request of the Task Force, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Task Force to assist the Task Force in carrying out its duties under this Act.

(f) The Secretary shall provide the Task Force with such administrative and support services as the Task Force may request.

REPORT

SEC. 105. (a) The Task Force may transmit to the President, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives such interim reports as the Task Force considers appropriate.

(b) Not later than nine months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a final report to the President, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives. The final report of the Task Force shall contain a detailed statement of the findings and conclusions of the Task Force and such recommendations as the Task Force considers appropriate.

DEFINITIONS

SEC. 106. For purposes of this title—

(1) the term "Federal agency" has the meaning given to the term "agency" in section 551(1) of title 5, United States Code;

(2) the term "Secretary" means the Secretary of Health and Human Services; and

(3) the term "Task Force" means the Task Force on Organ Procurement and Transplantation established under section 101.

TERMINATION

SEC. 107. The Task Force shall terminate one month after the date on which the Task Force transmits the final report required under section 105 to the President, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives.

TITLE II—FACILITATION OF ORGAN PROCUREMENT AND TRANSPLANTATION

ESTABLISHMENT OF PROGRAM

SEC. 201. Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART K—ORGAN TRANSPLANTS

"ESTABLISHMENT OF ORGAN PROCUREMENT AND TRANSPLANTATION REGISTRY

"SEC. 399A. (a) Under the authority of section 301, the Secretary shall assure the establishment and operation in the private sector of an Organ Procurement and Transplantation Registry which meets the requirements of subsection (b). To the extent necessary to carry out this section, the Secretary may make grants and enter into contracts in a total amount not in excess of $2,000,000 in any fiscal year.

"(b) The Organ Procurement and Transplantation Registry shall—

"(1) promote the establishment, in one location or by coordinating regional centers, of—

"(A) a national registry of individuals who need organs for transplantation;

"(B) a national registry of individuals who, prior to their death, have voluntarily made commitments to donate organs for transplantation and be listed in the registry, which shall include provisions to—

"(i) permit any such individual, prior to death, to rescind any commitment made by such individual to donate organs and be listed in the registry;

"(ii) require a health care provider who cared for any such individual at the time of death of such individual to, prior to releasing any organ of such individual for donation, verify through the registry the commitment of such individual to donate such organ; and

"(iii) ensure, in accordance with Federal and State laws and criteria established by health care providers governing the confidentiality of medical records, access to the registry for physicians and other health care professionals; and

"(C) a national system to match organs available for donation with individuals listed in the registry described in subparagraph (A);

"(2) assure the operation of a twenty-four-hour telephone service to facilitate the matching of organs with individuals included in the registry described in paragraph (1)(A);

"(3) establish and maintain standards of quality for the acquisition and transportation of donated organs;

"(4) promote the coordination, as appropriate, of the transportation of donated organs to transplant centers;

"(5) provide information to the public and to physicians and other health professionals regarding organ donation; and

"(6) develop, prepare, and distribute, in conjunction with appropriate governmental and private entities, model uniform national organ donor cards in order to—

"(A) assure participation in the national registry described in paragraph (1)(B); and

"(B) assure the continuation of a system of organ donor cards under which individuals may agree to donate organs for transplantation without participation in such registry.

"(c) For purposes of this section, the term 'organ' means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue included by the Secretary by regulation.

"ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS

"SEC. 399B. (a)(1) Subject to paragraph (2), the Secretary may make grants for the planning, establishment, and initial operation of organ procurement organizations described in subsection (b).

"(2)(A) No grant authorized under paragraph (1) shall be made by the Secretary until 30 days after the Task Force on Organ Procurement and Transplantation transmits the final report required under section 105(b) of the Organ Procurement and Transplantation Act.

"(B) The Secretary may make grants authorized under paragraph (1) only if such grants are made in a manner that is not inconsistent with any recommendation of the Task Force on Organ Procurement and Transplantation contained in the report referred to in subparagraph (A) that addresses the issue of Federal assistance for organ procurement agencies.

"(b)(1) An organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

"(A) is a nonprofit entity;

"(B) has the capability of becoming self-supporting;

"(C) is not an organization which provides health care services or carries out other activities not related to the procurement of organs, except that it may be an organization which provides health care services or carries out other activities not related to the procurement for organs if it was being reimbursed or organ procurement activities under title XVIII of the Social Security Act before the date of the enactment of this part;

"(D) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization;

"(E) has a defined service area which—

"(i) includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget); or

"(ii) does not include any part of such an area and is of sufficient size which will include at least fifty potential organ donors each year; and

"(F) has sufficient staff to effectively obtain organs from donors in its service area.

"(2) An organ procurement organization shall—

"(A) have agreements with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations;

"(B) conduct systematic efforts, including professional education, to acquire organs from potential donors;

"(C) arrange for the acquisition and preservation of donated organs;

"(D) arrange for the appropriate tissue typing of donated organs;

"(E) Have a system to allocate donated organs among transplant centers according to established criteria;

"(F) provide for the transportation of donated organs to transplant centers;

"(G) have arrangements to coordinate its activities with transplant centers in its service area;

"(H) participate in the Organ Procurement and Transplantation Registry established under section 399A;

"(I) have arrangements with tissue banks for the preservation and storage of tissues as may be appropriate; and

"(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs.

"(c) For grants under subsection (a) there are authorized to be appropriated $5,000,000 for fiscal year 1985 and for each of the two succeeding fiscal years.".

TITLE III—ANNUAL REPORT ON ORGAN TRANSPLANTATION

REPORT REQUIRED

SEC. 301. Title IV of the Public Health Service Act is amended by adding at the end thereof the following new section:

"ANNUAL REPORT ON ORGAN TRANSPLANTATION

"SEC. 480. The Secretary shall publish an annual report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.".

TITLE IV—PROHIBITION OF ORGAN PURCHASES

PROHIBITED ACTS

SEC. 401. (a) Subpart 1 of part F of the Public Health Service Act is amended by adding at the end thereof the following new section:

"PURCHASE OF HUMAN ORGANS PROHIBITED

"SEC. 352A. (a) It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation if the transfer affects interstate commerce.

"(b) Any person who violates subsection (a) shall be fined not more than $50,000 or imprisoned not more than five years, or both.

"(c) For purposes of this section:

"(1) The term 'interstate commerce' has the same meaning as in section 201(b) of the Federal Food, Drug, and Cosmetic Act.

"(2) The term 'human organ' means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue included by the Secretary by regulation.

"(3) The term 'valuable consideration' does not include the reasonable costs associated with the removal, storage, processing, preservation, quality control, and transportation of a human organ.".

(b) Such subpart is further amended by adding at the end of the heading for such subpart "and Human Organs".

(c) The heading for part F of such Act is amended—

(1) by inserting a comma and "HUMAN ORGANS," after "PRODUCTS"; and

(2) by inserting a comma after "LABORATORIES".

Mr. DANNEMEYER (during the reading). Madam Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

Mr. WAXMAN. Madam Chairman, reserving the right to object, I reserve a point of order against the amendment.

We have not yet seen the amendment.

I have no objection, however, to the unanimous-consent request, and I withdraw my reservation of objection.

The CHAIRMAN pro tempore. The gentleman reserves a point of order on the amendment.

Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANNEMEYER. Madam Chairman, my comments with respect to this bill relate to an effort to put into perspective the funding that is involved in its consideration.

This bill is a classic illustration of the dilemma that Members of Congress encounter in terms of examining the conflict that inevitably arises between the legitimate needs of a special interest group and the concerns of the taxpayers at large. It points up the dilemma that we have in attempting to resolve that conflict.

I want to begin my remarks in support of this amendment by just drawing the Members' attention to the tremendous growth in Federal spending for Medicare and Medicaid over just the last 3 or 4 years. In 1981 the Federal Government spent $39,149,000,000 for medicare and medicaid over just that sum will be $69,683,000,000, an increase of over $30 billion in just 4 years. That is far in excess of any rate of inflation that any person is able to attribute to our economic system.

Then, in medicaid expenditures, the Federal Government in 1981 spent $16,833,000,000. In 1985 it will spend roughly $22,129,000,000, an increase of a little under $6 billion.

The percentage change between 1981 and 1985 for medicare is 78 percent growth and, in medicaid between 1981 and 1985, it is 31.5 percent. If you take the growth of medicare from 1974 to 1985 it is up 514 percent. If you take medicaid over the same span of time it is 279.4 percent.

The growth in medical care costs for all Americans, Federal Government, State government and private sector, has been so profound since the adoption of medicare in the mid-1960's, that we are seeing today some very unusual and unpredictable actions on the part of important segments of the medical care establishment in America.

Specifically, in some States of the Union, for instance, California, my home State, physicians have voluntarily adopted a freeze on their physician fees for 1 year.

□ 1120

We in Congress have been talking about, as a part of the reconciliation package, the imposition of a freeze on physician fees for 1 year. Why is this? Because we are raising questions in America today as to whether we citizens can afford all of the medical care that the medical care establishment is able to bring to relieve human suffering on the part of Americans.

These profound questions deserve to be raised because the increase in GNP that is going in this country to serve the medical needs of we Americans has grown dramatically in the course of the last 10 years.

And with this thought in mind, I stand in the well of the House, offering an amendment to the bill before us not to stop this program from coming into existence; but to bring it to the point where I think we can justifiably go forward with the adoption of it.

The amendment that I am offering is identical to one that was offered and adopted in a committee of the other body, S. 2048. I offer it in the nature of a substitute to be considered by the House.

(By unanimous consent, Mr. DANNEMEYER was allowed to proceed for 5 additional minutes.)

Mr. DANNEMEYER. In terms of cost, the amendment in the nature of a substitute that I am offering would cost $21 million. The bill, H.R. 5580, would cost $76 million. There are essentially two differences where this difference in cost comes into existence.

H.R. 5580 authorizes $40 million for OPO's, otherwise known as Organ Procurement Organizations, for a 3-year period. My amendment authorizes $15 million.

This seed money, in my amendment, would go to private nonprofit organ procurement organizations for the purpose of assisting and expanding the network that is in existence to serve this need.

Let me say to my colleagues that today, without the benefit of the Federal Government program being involved, we have in existence a national kidney procurement system, two computer matching systems; one of them a federally supported system for kidneys and a non-Federal system for matching other organs. They are in existence right now and have come into existence to serve this growing need.

The data indicates that we have about 20,000 potential donors of organs each year, about 2,200 of whom actually become donors of hearts, kidneys, or livers. However, the number of intended recipients is far in excess of these figures.

I do not think anybody in this Chamber suggests that by somehow, with the passage of a Federal law, we can expand the number of organs that are available to be transplanted.

The network that is in existence is not as extensive as it can be, I admit that; it needs to be expanded, I admit that; and the amendment that I am offering by providing $15 million as opposed to $40 million in H.R. 5580, I submit to my colleagues is sufficient to serve that purpose.

There is no necessity for spending more money on this purpose that reasonably can be estimated to be needed. I serve on the Health and Environment Subcommittee, where this policy option was considered, and there was no witness who came before the committee and said or provided a pro forma analysis of how much in the way of funds would be needed.

This figure of $40 million that is in the bill, so far as I can determine, was just an estimate of some person making a reasonable prognostication; and I submit that the figure of $15 million is just as accurate in terms of filling the need as the figure of $40 million is.

Then there is another, very important, way in which this amendment differs from H.R. 5580, and that deals with immunosuppressive drugs.

My amendment leaves that issue where it is today, and I remind my colleagues that 35 of the 50 States already cover immunosuppressive drugs for needy patients, 35 of the 50 States under existing law.

Now think this through for a moment. If H.R. 5580 becomes a law and you are a policymaker in a State currently expending money for these immunosuppressive drugs, do you think that you are going to continue recommending to your Governor that funds for immunosuppressive drugs be funded at the State level when there is a Federal program on the block that will provide the funds that are needed without the benefit of providing some State match? Yet that is what this bill contains, the immunosuppressive drug feature of it, to the extent of $30 million for the first year.

That is the second basis of difference between H.R. 5580, totaling $76 million, and the amendment that I am offering totaling some $21 million as an alternative.

There is a very profound policy question we must consider when we consider immunosuppressive drugs in H.R. 5580, because we are saying, as a policy option, that we will make these drugs available at Federal expense.

Today, outpatient drugs are not covered for medicare recipients. If we go down the road of making these drugs available—Federal reimbursement for these drugs available—it does not take a great deal of imagination to hear the arguments, in a short time, that other patients requiring outpatient drugs should be covered by the Federal Government as well.

(By unanimous consent, Mr. DANNEMEYER was allowed to proceed for 3 additional minutes.)

Mr. DANNEMEYER. When we make this policy option we are staking out new territory for Federal spending which cannot help but expand the horizons for those who seek to expand it further for this purpose.

Let me close by making this observation: When we examine the needs of this particular program—and in general debate yesterday we had Members stand up and relate how, in their districts, they had patients who had need of this service is there anybody with any compassion can say, how can be, against establishing a program to serve the needs of these recipients? When you look at programs like this in isolation, the need is there, without question. But put them all together, as we have done today in our Federal process, and the collective need currently expends about $180 billion a year more than we are willing to extract in the way of taxes out of the taxpayers of this country. I suggest to you that it is not unreasonable for a Member to suggest to this body that with the need that has been demonstrated—and I do not quarrel with that need—instead of embarking on a new course which costs $76 million, in the face of a $180 billion deficit it would be better to embark on a course with an expenditure of $21 million. I think it is responsible to make that suggestion. And that is the thrust of this amendment.

I yield back the balance of my time.

The CHAIRMAN pro tempore. Does the gentleman from California [Mr. WAXMAN] insist on his point of order?

Mr. WAXMAN. No; I do not.

Madam Chairman, I withdraw my point of order.

Madam Chairman, I move to strike the last word, and I rise in opposition to the amendment in the nature of a substitute.

The committee has thoroughly reviewed the Nation's organ transplant system. The National Organ Transplant Act is the product of extensive study by Members and medical and scientific leaders in the transplantation field. Nine separate hearings have been conducted by subcommittees of the Energy and Commerce Committee and Science and Technology Committee.

Virtually every medical and scientific organization involved in organ transplantation has endorsed the legislation. These organizations include the American Society of Transplant Surgeons, the Association of Independent Organ Procurement Agencies, the South Eastern Organ Procurement Foundation, and the National Association of Organ Procurement Coordinators.

The substitute deletes the authorization of appropriations for immunosuppressive drugs. These drugs can improve the success of transplant operations and reduce the dialysis costs the Federal Government now pays through the End Stage Renal Disease Program. This provision is highly cost effective and the substitute would delete it.

No one who has heard the President plea on behalf of individual children can question the need for improvements in the way organs are procured for transplantation. While there are transplant issues that deserve further study, there is universal support within the transplant field that grants to improve local organ procurement activities are critically needed. The substitute would reduce funding for local community efforts by $25 million.

Madam Chairman, further delay in addressing this issue will result in the loss of thousands of potentially lifesaving organs. Hundreds of kidney, liver, and heart patients will lose their chance for life.

I urge my colleagues to reject the substitute.

□ 1130

Mr. GORE. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, my colleague from California is well intentioned, but his amendment would do grave damage to the legislation which is before the House today.

He says that the current system is already working and points to the kidney system in particular. That system is federally funded today. If we are spending Federal money on the current system we have an obligation to make that system work as well as it can work. It is not working as well as it can today. There are 110 separate organ procurement networks around the United States. Through the heroic efforts of the individuals in charge, those networks are coordinated to some extent, but they are not well coordinated.

We have heard the evidence, as my colleague from California, Mr. WAXMAN, said, there have been so many hours of hearings on this. We have worked for 1½ years on this bill. We have had 10 days of hearings and 5 days of legislative markups on this bill. We have worked very closely with all of the medical and professional groups that are involved in transplantation and all of the significant groups support this bill: The American Society of Transplant Surgeons, the North American Transplant Coordinators Organization, the Southeastern Organ Procurement Foundation, the Association of Independent Organ Procurement Agencies, the American Society of Transplant Physicians and others.

Now, H.R. 5580 is based upon the input from all of these medical and scientific experts. The amendment in the nature of a substitute, which is offered by my colleague from California, benefits from none of this input.

I do not want to dissect the gentleman's substitute. I will say that all of the groups that I mentioned who work every single day on transplants and organ retrieval and are familiar with these issues down to the last dotted "i" and crossed "t" strongly opposed the substitute.

There are many reasons that could be cited. Just to take one small example. My colleague from California proposes a Federal Government computerized list of individuals who prior to their death have voluntarily made commitments to donate organs. In other words, if you sign an organ donor card the gentleman from California would put you in a government computer and have the Government keep track of you.

Now we need to look carefully at that. These groups that I have mentioned, and all of the medical and scientific experts who testified before the committee, are strongly opposed to that kind of provision. There are a lot of reasons why. Here is a letter from the American Society of Transplant Physicians about this particular part of the Dannemeyer substitute. They say:

> We strongly hope this provision is not included in the final bill. While we obviously support voluntary agreements to donate organs in the event of death, our experience has been that maintenance of a "living bank" adds nothing to organ and tissue retrieval, is expensive, and can actually obstruct obtaining organs and tissues if there is a requirement to consult the registry before acting on available donors.

So the experts have looked at the Dannemeyer substitute. They say it would be a disaster and might actually obstruct the efforts to improve organ procurement—I know my colleague did not intend that. I know that it is just because his substitute has not had the benefit of this 1½ years of hard work and 10 days of hearings and 5 days of legislative markups.

Now my colleague appropriately talks about the cost of the legislation. The cost issues involved here are difficult. We need not kid ourselves about that. But we also ought to have a full understanding of exactly what is involved because in many respects this legislation is going to save money.

The Health Care Financing Administration did a lengthy study of kidney transplant. One of the things they found is that for every increase of 1,000 patients receiving kidney transplants, you take that out over a 5-year period for every 1,000 patients transplanted, not only would 800 lives be saved, but $12 million would also be saved since many patients now tied to costly dialysis will have the opportunity to return to a near-normal life.

The gentleman talks about the cost of cyclosporine.

Mr. VOLKMER. Madam Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman for yielding.

Just very briefly, I would like to point out to the gentleman from California, who is the author of the amendment which I oppose and I join with the gentleman from Tennessee in opposition to it, that I have one constituent who if he is not able to receive cyclosporine and since he is blind he is not going to have the money. He is on Social Security disability. He cannot afford the approximately $700 to $800 a month that it costs for the drug. Since he has had a kidney transplant and been on cyclosporine for a free period that runs out in September, if he is not able to continue with that then he will have to go back on dialysis.

The CHAIRMAN pro tempore. The time of the gentleman from Tennessee [Mr. GORE] has expired.

(By unanimous consent, Mr. GORE was allowed to proceed for 3 additional minutes.)

Mr. VOLKMER. Dialysis will cost about $30,000 a year. That is going to be paid for by Medicare. And that is $30,000 a year that Medicare will pay for.

Would it not be better to just pay the $7,600 or $8,000 for the drug cyclosporine than to pay for that. Also he has a better life to live. To me it just makes sense financially to do that; $7,600 is a lot less than $30,000. Plus what we have done is the Government has already paid for that kidney transplant. That would be foolish now to say no, we are not going to continue the drug that enables a person to be able to be active to any extent and say that it is foolish. I am glad the gentleman has pointed that out that with the kidney transplants and the use of cyclosporine, we would save a lot more money than using the old dialysis method.

Mr. GORE. That is absolutely right. I would also point out that immunosuppressive drugs that are given in the hospitals are already covered. Some of the new immunosuppressive drugs such as cyclosporine can be given out of the hospital yet they are not paid for simply because they can be taken on an outpatient basis. But you can actually save money in many, many cases if you use these new drugs. This policy should be reviewed.

Mr. WALGREN. Madam Chairman, will the gentleman yield?

Mr. GORE. I yield to the gentleman from Pennsylvania.

Mr. WALGREN. I thank the gentleman for yielding.

I just take this opportunity to point out the situation raised by the gentleman from Missouri is an example of the absurdity of the present Medicare law. As I understand it the reason Medicare will not pay for cyclosporine is because the statute prohibits payment for any drug taken by mouth. This is held over from days before anyone ever anticipated life saving transplant operations. A provision adopted originally to save money now prevents us from saving money and results in the tragedy cited by the gentleman from Missouri.

I hope when we revamp the medicare system that we will look for just this kind of inconsistency.

The CHAIRMAN pro tempore. The time of the gentleman from Tennessee [Mr. GORE] has again expired.

(By unanimous consent, Mr. GORE was allowed to proceed for 2 additional minutes.)

Mr. GORE. Madam Chairman, let me just wrap up my opposition to this amendment in the nature of a substitute and I will not take the full 2 minutes.

We have looked carefully at this problem. The experts have looked carefully at this problem. All the studies have been done. The answers are in. There is a consensus in the medical community, a consensus in the scientific community, a consensus among the patient groups, all who are involved with transplantation. They know what needs to be done. It is contained in H.R. 5580.

It is now up to us to enact that national system so that transplants do not go just to those who can organize a nationwide publicity campaign or to those who can organize the massive fund raising drives and get ahead of the list and get extra attention.

☐ 1140

We need to look at the problems encountered by all Americans who need transplants. We need to create a national system, as this bill would do.

I urge my colleagues to vote against the substitute and for the bill.

Mr. MADIGAN. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment in the nature of a substitute.

Madam Chairman, the gentleman from California is a very responsible and very respected member of the Health and Environment Subcommittee of the Energy and Commerce Committee, and he is sincerely concerned about the $180 billion deficit that this Government will experience this year.

I share that concern, as I am sure many other Members of this body do.

Regretfully, I oppose the gentleman's amendment because I think the gentleman's amendment is an example of false economy.

For example, we are presently spending some $2 billion a year in medicare funds—$2 billion a year in medicare funds—to provide people with kidney dialysis treatment.

It has been established that if these people were the beneficiaries of kidney transplant operations that we could save a considerable sum of money with regard to each one of these patients. According to HCFA, only 23 percent of the end stage renal disease population is eligible for both medicare and medicaid benefits. As a consequence of this, we are talking about funding for drug therapy, which is a very, very expensive part of the transplant operation and is the financial responsibility of the organ recipient. In many cases these individuals because of their station in life or their financial status, cannot afford the immunosuppressive drug treatment. As a result of that, they are not going to have the transplant operation.

But as the gentleman from Missouri has pointed out, they are going to continue to have the dialysis treatment, which is costing taxpayers about $2 billion a year.

Now, I think it is false economy to be arguing about the difference between $70 million and $21 million when we have the potential of putting into place a program that may save us hundreds of millions of dollars a year. That is what we are trying to do.

As the gentleman from Tennessee has pointed out, we have had 1½ years to study all of the various suggestions with regard to how we might approach this. We have had almost 2 weeks of hearings, where every expert in the country came and testified before us. And what we have before us today is a bipartisan piece of legislation that represents the best judgment of both Republicans and Democrats as to how we can approach this problem not only in terms of creating a substantial additional health benefit to a great many of our citizens, but also in terms of being able to actually save some money for the taxpayers of the United States. It is that dual objective which we are pursuing. I would suggest that the Dannemeyer amendment would not be beneficial to that effort.

Mr. WALGREN. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the substitute.

Madam Chairman, I want to associate myself with the points that have been made by the chairman of the Subcommittee on Health, the ranking member, and the gentleman from Tennessee [Mr. GORE], who have played such a large part in bringing this legislation to the floor of the House and to the view of the American public.

I speak in opposition to the amendment offered by the gentleman from California [Mr. DANNEMEYER], especially because that amendment strikes and substitutes a study for a section of the bill providing support for immunosuppressive drugs. The need for this kind of support is especially evident in my part of the country where we are doing a lot of transplants, particularly in this innovative area of children's liver transplants being done at Children's Hospital in Pittsburgh, PA.

The gentleman from California indicates that we provide $30 million to pay for immunosuppressive drugs. But that is over 2 years, I would hasten to point out, rather than 1 year, as indicated by the gentleman.

Organ transplants are opening up a totally new area of medical science. I certainly appreciate the gentleman from California raising the larger perspective of medical costs in the context of the Federal deficit. At the same time, in raising those perspectives, we should keep in mind that this is a very special group of people indeed which we seek to serve by this bill. Rather than, as the gentleman from California indicated, this group being just another of the special interests that seek Government support, these are people who will be dead if we do not recognize their interests.

I do not think anyone can say at this point where the area of transplant will take us in medical science. Yet it is clear that if we do not take some steps like this which will provide for the individual lives that will be lost in the very immediate future, we will not develop this area to its fullest.

It may be very well true, as the gentleman suggests, that we might want to take a different course for funding these programs down the road than this general appropriation, particularly in these areas served by Medicare area. The fact that a drug is taken by mouth should not exclude it from being available for the kidney program when we are paying, as the gentleman from Illinois says, $2 billion a year in another form of therapy to do the same thing.

We will have to make adjustments down the road. But not to put in place this small amount of money, not to save those lives that we would be walking right by in these next 2 years because we do not know where the area is ultimately going, I think would be morally wrong. I am sure that the gentleman from California is sincere in saying it is not unreasonable to raise the issue of this high cost of medical care. But I think he would agree with us that, although it might not be unreasonable, it may very well be wrong to take the course that he suggests.

Mr. SKEEN. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Madam Chairman, with great respect for my friend, the gentleman from California [Mr. DANNEMEYER], I do joyfully rise to oppose this amendment rather than regretfully. I think that this amendment offered by the gentleman from California is a genuine expression of his concern, but in my strong support of H.R. 5580, the National Organ Transplant Act of 1984, I would like to make several points in regard to immunosuppressive drugs.

Madam Chairman, section 103 of this legislation, which authorizes the Department of Health and Human Services to conduct an experimental 2-year program to provide immunosuppressive—that is, antiorgan rejection—drug therapy to certified transplant centers is one of the most important sections of the bill. I can't emphasize enough that H.R. 5580, including section 103, is needed cost-saving legislation.

First of all, Madam Chairman, providing immunosuppressive drug therapy to transplant patients would make transplant surgery more effective—that is, it would decrease the rate of organ rejection. In so doing it would save the lives of many persons who need liver, heart, or lung transplants and save the Government millions of dollars currently spent under the End Stage Renal Disease Program of medicare for costly kidney dialysis and rejection treatment.

Presently, Madam Chairman, medicare pays not only for kidney dialysis but also for in hospital costs for organ transplantation. Once the patient leaves the hospital, however, medicare ceases to cover the cost of maintaining the transplanted organ—principally immunosuppressive drug therapy. If the kidney fails, the patient must return to the hospital for costly medical treatment, perhaps including removal of the kidney and return to dialysis, all of which medicare would pay for, and ultimately, the taxpayer.

The recently approved immunosuppressant drug, cyclosporine, has brought about dramatic increases in transplant success by substantially reducing organ rejection. Because of its complex and expensive manufacturing process, however, it is a costly drug. Current estimates are $6,000 for the first year after transplantation and $3,000 each year thereafter, all presently borne by the patient.

This bill would encourage and facilitate organ transplantation in part by establishing a need-based program under the Public Health Service Act to cover patients' costs for outpatient immunosuppressive drug therapy after transplantation. Because of the dramatic success of cyclosporine, such coverage represents a means of saving the lives of those who need heart, liver, or lung transplants. Such coverage also offers potential savings to medicare in kidney transplants, not only by reducing hospital costs during successful transplantations, but also by reducing the substantial costs, also paid for by medicare, of transplant failure. These include costs for additional hospitalization for rejection treatment, possible kidney removal, and subsequent return to dialysis.

In the interests of saving the lives of patients for whom organ transplantation is vital and of reducing Medicare payouts over the long term, I believe the Government should facilitate and encourage organ transplantation where appropriate and ensure its maximum possible success by providing immunosuppressive therapy. H.R. 5580, the National Organ Transplant Act is designed to accomplish this goal.

□ 1150

Mr. NIELSON of Utah. Madam Chairman, I move to strike the requisite number of words and I rise in support of the amendment in the nature of a substitute.

Madam Chairman, there are many good things that have been said about this bill and against the amendment. The gentleman from New Mexico [Mr. SKEEN] says that it is a very good thing to save lives and to provide immunosuppressant drugs for that purpose, and everyone will agree with that.

However, there is a question of equity. It is difficult to justify singling out and providing free of charge these kind of drugs when there are many other expensive drugs needed for other patients with life-threatening illnesses. The State already has the option to provide them, and if the Federal Government takes over that responsibility, the States will opt out, and there will be further changes in medicaid that the States are now bearing.

The gentleman from Tennessee [Mr. GORE] implied that this amendment had not had much study. I might remind the gentleman that this was S. 2048 as passed by the other body after many hearings and much debate. Senator HATCH, of course, was involved with those hearings, and I have been told that a lot of work went into their bill, so it is not brand new. It was also presented in committee and did receive several votes there.

Let me just hit the differences between the House version as it is now presented, and the Senate bill which we are suggesting as an alternative. No. 1, it has a 22-member task force instead of 19. It requires the task force to hold a conference in 6 months, then write a report and disband 12 months after the report is filed.

The Senate bill simply says have a task force, have it done in 9 months total, and disband 1 month later. Why do we need to spend 12 months after the report is written? That is something that I cannot understand. It also establishes two new administrative agencies which are unnecessary. I can see why we would want to have a scientific registry of the donors, but I am not sure a case has been made for a new organization for that purpose.

H.R. 5580 also creates an administrative unit within the Public Health Service to carry out the organ transplant program. This unit is not wanted by the administration or the Department of Health and Human Services.

As has already been mentioned, the bill calls for $70 million instead of the $15 million over the 3-year period.

The Federal Government will be taking on what the States are now doing. The bill is setting up potentially a very expensive, limitless program in providing these drugs.

For those reasons, I support the amendment, and I yield to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. I thank my colleague for yielding me this time, and for what time is available.

You know, when I listen to the arguments of my colleagues against the amendment, one would almost think that the option that I am offering to the House is up or down on the program; that is not it at all. Under the amendment that I am offering to the House, the coordination, the development, the expansion of the network for providing association or a link between the donor and the recipient will be there. We are just reducing the cost by some $25 million for that purpose. I think that is adequate, based on the testimony that I heard to make this link.

As has been pointed out by my colleague from Utah, the policy option to the Members of the House is quite clear. We serve the need, but we do it at significantly less cost.

Mr. WALGREN. Will the gentleman yield?

Mr. NIELSON of Utah. I yield to the gentleman from Pennsylvania.

Mr. WALGREN. I thank the gentleman for yielding.

Admittedly, the gentleman from California's amendment does do some things in the area of networking. But it does nothing to provide for immunosuppressive drugs. I will not forget the testimony of the liver transplant surgeon who came before our committee literally without sleep after transplanting a child in Pittsburgh, PA, and said that the most important thing we can do is assure access to these kinds of drugs.

So the gentleman's amendment completely strips that part of the bill.

Mr. NIELSON of Utah. Reclaiming my time, I admit that those are touching things and I agree we need to provide them; however, we are doing it quite well through the private section and through the State agencies.

Mr. MADIGAN. Will the gentleman yield?

Mr. NIELSON of Utah. I yield to the gentleman from Illinois.

Mr. MADIGAN. I thank the gentleman for yielding.

I regret that the gentleman from Utah and I are not on the same side at this moment, because the gentleman from Utah is also a very constructive contributor to the deliberations of this committee and subcommittee.

The CHAIRMAN pro tempore. The time of the gentleman from Utah [Mr. NIELSON] has expired.

(On request of Mr. MADIGAN and by unanimous consent, Mr. NIELSON of Utah was allowed to proceed for 2 additional minutes.)

Mr. MADIGAN. Madam Chairman, will the gentleman yield?

Mr. NIELSON of Utah. I continue to yield to the gentleman from Illinois.

Mr. MADIGAN. The gentleman from California made the point that there are 33 States which are engaged in some kind of grant program for immunosuppressive drugs or provide support for this therapy in a financial way. The point needs to be made that while that statement is true, we are talking about very, very modest efforts. We are talking about State programs that in some instances provide this therapy for only a 12-month period of time following the surgery, when a lifetime need exists for the drug therapy. In other instances we are talking about State programs that provide only two prescriptions or two monthly refills of a prescription following the surgery.

The problem that we have is the same problem that we have been talking about for the last half-hour: The people who cannot afford subsequent drug therapy do not have transplant surgery. These individuals cannot afford the drug therapy and the State programs are so modest that they do not relieve the anxiety.

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from California [Mr. DANNEMEYER].

The question was taken, and on a division (demanded by Mr. DANNEMEYER) there were—ayes 3, noes 11.

RECORDED VOTE

Mr. DANNEMEYER. Madam Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that she will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 252]

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
AuCoin
Badham
Barnard
Barnes
Bartlett
Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bethune
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boland
Bonior
Bonker
Bosco
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CO)
Broyhill
Burton (CA)
Burton (IN)
Byron
Campbell
Carney
Carper
Chandler
Chappie
Cheney
Clarke
Clay
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Craig
Crane, Daniel
Crane, Philip
Crockett
D'Amours
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson

Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Franklin
Frenzel
Fuqua
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Gregg
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hansen (UT)
Harkin
Hartnett
Hatcher
Hawkins
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter

Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kogovsek
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Lent
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Mack
MacKay
Madigan
Markey
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McKernan
McKinney
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore

Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Patterson
Paul
Pease
Penny
Perkins
Petri
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts

Robinson
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Seiberling
Sharp
Shaw
Shelby
Shumway
Sikorski
Siljander
Simon
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stenholm
Stokes
Studds

Stump
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (OH)
Wilson
Winn
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)
Zachau

□ 1210

The CHAIRMAN pro tempore. Three hundred ninety-seven Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN pro tempore. The pending business is the demand of the gentleman from California [Mr. DANNEMEYER] for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 25, noes 379, not voting 29, as follows:

[Roll No. 253]

AYES—25

Archer
Bartlett
Broyhill
Cheney
Crane, Daniel
Crane, Philip
Dannemeyer
Fields
Gekas

Hansen (UT)
Hartnett
Lowery (CA)
McCandless
Michel
Moorhead
Nielson
Packard
Patman

Paul
Rudd
Shumway
Stump
Vandergriff
Walker
Zachau

NOES—379

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)

Annunzio
Anthony
Applegate
Aspin
AuCoin
Badham
Barnard
Barnes

Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bethune

Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boland
Bonior
Bonker
Bosco
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CO)
Burton (CA)
Burton (IN)
Byron
Campbell
Carney
Carper
Chandler
Chappie
Clarke
Clay
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Craig
Crockett
D'Amours
Daniel
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fish
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gaydos
Gejdenson
Gephardt
Gibbons

Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Gregg
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Harkin
Hatcher
Hawkins
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kasich
Kastenmeier
Kazen
Kemp
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NOT VOTING—29

Boggs
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Borski
Brown (CA)
Bryant
Carr
Chappell
Edwards (AL)
Fiedler
Ford (MI)
Fowler
Garcia
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Hansen (ID)
Harrison
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Leland
Lloyd
Marriott
Ottinger
Pepper
Schumer
Sensenbrenner
Shannon
Stratton
Towns
Williams (MT)
Young (FL)

☐ 1220

So the amendment in the nature of a substitute was rejected

The result of the vote was announced as above recorded.

Mr. WAXMAN. Madam Chairman, I move to strike the last word.

Mr. MITCHELL. Madam Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Maryland.

Mr. MITCHELL. Madam Chairman, I thank the gentleman for yielding. I will be very brief.

Point No. 1. This legislation is particularly significant to me because a 2-year-old child in my district, John Turpin is undergoing an operation right now in the Pittsburgh Children's Hospital where a donor did provide a liver for him.

Madam Chairman, I want to call to the attention of the gentleman from Illinois [Mr. MADIGAN] and the gentleman from California [Mr. WAXMAN] of the problems of Howard University with this legislation.

Madam Chairman, I rise to acknowledge a problem in H.R. 5580, the National Organ Transplant Act. Although I believe this bill would enhance the strides made to improve organ procurement activities, I want to cite section 103A, the provision concerning immunosuppressive drugs, as a counterproductive aspect of this legislation. This provision would have a damaging impact on the small, progressively expanding medical transplant centers that are located in predominately black and lower income communities.

Allow me to cite an example. In accordance with section 103A, the Department of Health and Human Services would purchase as much of the immunosuppressive drugs as funding would permit, and have them available for distribution to outpatients of those centers which perform at least 25 transplants in a given fiscal year. The Howard University Medical Center has not performed 25 transplants in any given year and cannot be assured of doing so during the current fiscal year.

Since its inception in 1974, Howard's medical center has performed 141 kidney transplants on high-risk, generally low-income patients and is committed to continuing this policy. However, if this legislation passes with section 103A in tact, Howard's ability to offer low-cost postoperative care will be hampered severely.

Immunosuppressive drugs suppress rejection of transplanted organs by the body's immune system, and are therefore essential to the success of an organ transplant. These drugs must be taken on a regular basis throughout the life of the patient and are extremely expensive; some types can cost up to $5,000 per year.

It is a fact that blacks have the highest rate of complications and renal failures due to the body's rejection of an organ transplant. Therefore, the low cost availability of immunosuppressive drugs to those hospitals serving predominately black and low-income individuals is paramount.

I call on Mr. WAXMAN, members of the House Energy and Commerce Committee's Subcommittee on Health and the Environment and Secretary Heckler of the Department of Health and Human Services to come to a speedy resolution that will correct the problem that medical centers in the black and lower income communities will face.

I firmly believe that section 103A of H.R. 5580 is counterproductive to the patients in need of organ transplants in the black and lower income communities, the respective medical centers, and the national transplantation network.

Mr. WAXMAN. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. Are there any other amendments to title I?

Mr. TAUKE. Madam Chairman, I move to strike the last word.

Madam Chairman, in passing the National Organ Transplant Act, we take an important, firm, well-considered step toward closing the gap between our society's rapid advances in health care technology and our public health care policies.

A number of nonprofit organizations across the Nation have taken the lead in developing means to link available donor organs with those in need of transplants. This measure recognizes these initiatives and provides Federal support to continue and expand and coordinate them.

But this measure leaves many major problems unresolved. And we should be fully aware of the major issues which we still need to address.

The big question is, put simply, "Who is going to pay?" Should an individual's access to a lifesaving transplant depend upon whether or not he or she can raise the $100,000 to $200,000 or more many transplant centers require before this surgery can be performed? Should Medicare and Medicaid cover transplants? Should private insurance cover them? Will transplant coverage under Medicare and Medicaid necessitate pouring public revenues into these Government plans at a cost to all taxpayers, many of whom themselves may be without coverage or may have health insurance which does not include transplants? Will requiring private insurers to offer transplant coverage result in premiums so high that many individuals will not be able to afford health insurance?

Our need to address the question of "Who is going to pay?" is evident not only in the availability of and access to organ transplants, but also in other areas of advancement in health care technology. Today, as a result of advances in technology and training, many individuals who would in the past have faced spending a lifetime in the hospital because of their dependency on ventilators and other equipment can be cared for at home with familial and professional home health care services support. Perhaps you remember the situation of Katie Beckett, the little girl confined to a Cedar Rapids hospital whose parents desperately wanted the chance to bring her home and care for her and whose doctors believed that home care was the preferable alternative for Katie's further progress. But if Katie came home, her Medicaid coverage stopped, and her parents could not afford the expenses they would have incurred.

The President brought Katie's situation to the attention of the Nation. The Medicaid regulations prohibiting the reimbursement of home health care for Katie were waived, and Katie came home, at far less cost to the Medicaid program than had she remained hospitalized. The Beckett waiver was created for other Katies across the Nation to provide home health care coverage on a case-by-case basis. We in Congress acted in the Tax Equity and Fiscal Responsibility Act to give States the option of providing for a model waiver program under their State Medicaid plans. Under this program, the States would determine eligibility for home health care reimbursement, with no Federal bureaucratic involvement.

In spite of these efforts, many Katies remain hospitalized across the Nation. States are reluctant to enter the model waiver program, because the possible resultant expansion in the number of persons on the rolls could more than offset the savings from a specific case.

But even if we are able to overcome the problem of State participation, we will again confront the question which dogs us when we discuss high-tech medical services. Who is going to pay? Does private insurance "kick back in" for Katie and her counterparts when they are out of the hospital for the required length of time? If the private insurers are required to provide coverage once these individuals are at home, will the pressure to keep these individuals hospitalized grow?

These questions are compounded with the newer self-insurance plans being implemented in many businesses. Under these plans, which are generally covering limited numbers of individuals, the requirement to provide home health care coverage for medical technology dependent individuals could result in significant premium increases for every other member of the plan, increases which could force others to drop their coverage.

These are but a few of the problems which the rapid development of medical technology has thrust upon us. We are faced with this dilemma: We do not want to ration services, yet we cannot afford to pay to provide everyone with the best available technology. If we refuse to confront this problem now, it may get away from us. So we should not view this bill as an end, but as a beginning of our effort to realistically address the concerns raised by rapidly advancing medical technology.

Now we need to bring together private insurers, State and Federal health program administrators, and legislators to develop, together, a comprehensive approach to assuring the availability, accessibility, and affordability of health care services for all Americans.

□ 1230

The CHAIRMAN pro tempore. The time of the gentleman from Iowa [Mr. TAUKE] has expired.

(On request of Mr. GORE, and by unanimous consent, Mr. TAUKE was allowed to proceed for 2 additional minutes.)

Mr. GORE. Madam Chairman, will the gentleman yield?

Mr. TAUKE. I yield to the gentleman from Tennessee.

Mr. GORE. I want to compliment my colleague on his statement. I think you have correctly defined the payment issue. You are correct in saying that this legislation does not, as in the End Stage Renal Disease Program, create a new Federal program that pays for all transplants. It does not.

It does create a national system for dealing with the transplant issue. It does help patients with the immunosuppressive drugs that they need after transplantation. It helps those patients whose transplants are covered under the kidney program.

It makes for a rational system and through its annual report on the clinical status of transplant procedures removes some of the obstacles that have in the past impeded payment for transplants by private insurance companies and by the Federal programs that could cover it.

The central point here is that transplants are no longer experimental. They are life-saving, proven therapy. They should be covered the same as other life-saving treatments are covered.

As with other life-saving treatments, they can sometimes be expensive. But, they should be treated no differently than other procedures that also save lives.

And like many other very costly procedures, they point up the need for some kind of a program to deal with catastrophic insurance coverage.

People that need transplants are not alone in this category. As the gentleman points out very well, passage of this bill should be not an end but a beginning. It is a long step to solve the problems that transplant patients face, and it will help tremendously. But we need continuing attention in the area of health care financing and I think the gentleman's statement puts those additional problems in the proper perspective.

Mr. TAUKE. I thank the gentleman for his comments and I compliment him on his work on this legislation.

As I indicated, I think this is an excellent measure. But the problem we continue to face, and which we do not address here, is that in all areas of advanced medical care the costs are very high. The private insurance companies are reluctant to extend coverage to those services. Of course, State and Federal Governments are reluctant to extent coverage because of the costs involved.

We need to figure out how we are going to handle that problem because even though we now have taken some of the uncertainty out of finding organs for organ transplants, we still face the problem that is faced by a farmer in my district who called me last week. He needs $100,000 downpayment for a heart transplant at the Mayo Clinic in Rochester. His private insurance does not cover it. Medicare and Medicaid do not cover it. And there are significant problems for the insurers, the insured, and the taxpayers if these programs do cover these services. So that leaves my farmer trying to raise the needed money.

Mr. GORE. He should be covered. We do not require downpayments for other medical procedures and transplants should be treated no differently. Organ transplant procedures are no longer experimental and we must, as the gentleman points out, come to face that.

AMENDMENT OFFERED BY MR. MORRISON OF CONNECTICUT

Mr. MORRISON of Connecticut. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MORRISON of Connecticut: Page 4, strike out "organ" in lines 20 and 22 and insert in lieu thereof "organ and tissue".

Page 4, line 24, strike out "organs" and insert in lieu thereof "organs and tissues".

Page 5, insert "and" at the end of line 14, strike out lines 15 through 17, insert after line 3 the following:

"(D) coordinate, to the maximum extent feasible, with tissue banks to effect the retrieval, processing, preservation, and storage of tissue unless such activities can be more effectively performed by the organ procurement organization itself, and redesignate subparagraphs (D) through (H) as subparagraphs (E) through (I), respectively.".

Page 10, insert after line 18 the following:

"(3) The term 'tissue' means the human skin, bone, and any other muskuloskeletal tissue included by the Secretary by regulation.".

Mr. MORRISON of Connecticut [during the reading]. Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. MORRISON of Connecticut. First I want to say I very much support H.R. 5580 and the entire thrust of the effort which has brought this bill to the floor today. I want to in particular commend the gentleman from Tennessee [Mr. GORE] for his leadership on this issue, as well as the managers of the bill on the floor, the gentleman from California [Mr. WAXMAN] and the gentleman from Illinois [Mr. MADIGAN]. There is no question that we need to improve the organ procurement system in this country and this bill takes an important first step toward that goal.

The amendment I am offering is rather modest in scope but I believe addresses a very important area where this particular legislation is weak. At this time, we have for the most part separate organizations which are engaged in the business of retrieving organs and others which are in the business of retrieving and using tissues such as skin and bone which are often transplanted as well.

The one thing that I think is most important with respect to this legislation is that we not neglect the need for coordination and cooperation between these two efforts.

The major obstacle to the necessary availability of organs and tissues with respect to transplantation is the lack of public education and public understanding of the need to make organs and tissues available when someone dies. Right now, organs are available in much smaller numbers than tissue because organs are generally not useful for transplantation except in cases of brain death. It is estimated that the number of persons in this situation is about 20,000 individuals a year. There is a critical problem with respect to identifying and making these organs available.

In contrast, tissues can be made available not only in cases of brain death but also from many other individuals who die with tissue intact.

Given the fact that this legislation focuses on grants to organ procurement organizations there is a danger of setting up a competitive situation between those organizations which are in the business of procuring and retrieving and making available organs and those organizations which are focusing on tissues. I do not think that it is the intention of the sponsors of this legislation or the people managing this legislation that that be the case. In fact, there is language in the bill as reported to the House which does speak in terms of cooperation and coordination.

However, there really is no teeth in that language and there is no real requirement that organ procurement organizations which receive funding under this bill will in fact cooperate with tissue procurement processes within their own area.

The purpose of my amendment is to move us in that direction. It would require that organ procurement organizations become involved with the tissue banks in their area and that there be active coordination between them.

I fear that without this kind of language what could develop is a competitive rather than a cooperative arrangement in our communities.

I know from experience in my district and in my State that there have been instances where this lack of cooperation, this competition has already occurred under our existing system.

The purpose of my amendment thus is not in any way to interfere with the goals that this bill pursues. Rather, it is to pursue those goals and hope that they will be further advanced by a cooperative arrangement with those who are already in the business of preserving and transplanting tissues so that their activities will be supportive of and cooperative with the activities of those who are involved in organ transplant activity.

I thank the sponsors for having considered this and I would hope that they might comment on the amendment.

□ 1240

Mr. WAXMAN. Madam Chairman, will the gentleman from Connecticut yield?

Mr. MORRISON of Connecticut. I am happy to yield to the gentleman from California.

Mr. WAXMAN. I appreciate the thoughts the gentleman expressed and the point he is making as to why this amendment ought to be part of the legislation.

Madam Chairman, I can only say that at this point while we have considered the issue, we have had mixed signals from the parties involved as to what they think is appropriate.

The representatives of the Red Cross and others involved in the procurement of tissues have consistently advised us not to include tissues as a responsibility of organ procurement organizations. I think there has to be some coordination. Of course, the bill provides for some coordination.

Let me suggest to the gentleman that I am aware of his sincere interest in this and would hope that we could discuss it further with the others involved in this field as we go into conference with the Senate and see at that point whether we can get a modification that would meet the concerns that have been expressed by a number of different parties on this question.

(By unanimous consent, Mr. MORRISON of Connecticut was allowed to proceed for 2 additional minutes.)

Mr. MORRISON of Connecticut. I know there have been differing opinions expressed with respect to this issue and there has been some controversy. My only hope is that, in the process of going from here to the conference, every effort will be made to promote this goal. From all the discussions I have had with members of the committee and other interested parties, I have come to believe that building a bridge between these two activities is an extremely important end.

Unless anyone else wishes to speak on this matter, I will ask unanimous consent to withdraw the amendment and hope that the gentleman will cooperate with me between now and the time that this bill goes to conference.

Mr. WAXMAN. Madam Chairman, will the gentleman from Connecticut yield further?

Mr. MORRISON of Connecticut. I yield to the gentleman from California.

Mr. WAXMAN. I want to express to the gentleman my sincere desire to work with him on this amendment, to look at the various possibilities as we go to conference and to try to come up with a reconciliation of this controversy in a way that would be, it seems to me, consistent with the point of view of the legislation.

Mr. GORE. Madam Chairman, will the gentleman from Connecticut yield?

Mr. MORRISON of Connecticut. I would be pleased to yield to the gentleman from Tennessee.

Mr. GORE. I also want to compliment the gentleman on his foresight in offering this amendment.

Madam Chairman, the gentleman is one of the most thoughtful Members of this Congress and he is extremely farsighted in bringing this matter to the attention of the House. The gentleman is so farsighted that he is in advance of the hearing process and in advance of the arrangements that I think need to be worked out between the tissue banks and the organ people.

There is a completely different universe of tissue donors beyond that available for organ donation. There is overlap, but you have approximately 250,000 hospital deaths each year, only 20,000 of them each year are brain deaths and can be organ donors. The universe of potential donors of tissue is therefore 12 to 13 times as large as the universe of potential organ donors.

There are also different technical requirements in the tissue retrieval part of it and the organ retrieval part of it.

The gentleman is correct in that it is extremely important that there is close cooperation between these two groups. We fully expect them to work closely together. We have included language in the bill to that end.

The CHAIRMAN pro tempore. The time of the gentleman from Connecticut has expired.

(On request of Mr. GORE and by unanimous consent, Mr. MORRISON of Connecticut was allowed to proceed for 1 additional minute.)

Mr. GORE. If the gentleman will continue to yield, we fully expect them to work close together to the maximum extent feasible, and we have language in the bill to do that by calling for arrangements with tissue banks for the retrieval, processing, preservation, and storage of tissues as may be appropriate. There would be nothing worse for both organ and tissue retrieval than to have a situation where the family of a potential donor is approached by a long line of individuals each seeking a different organ or tissue.

Frankly, I cannot stand here and tell the House that the gentleman's amendment is not a good idea and should not be attached to this bill. I would feel much more comfortable, however, going through the process of getting the evidence which I think may support the gentleman's contentions and we will make every effort before the gentleman from California goes into the conference committee to try to get that evidence and convince those who are now a little worried about it, in the tissue side, to support this amendment and perhaps it will come out of the conference.

I again compliment the gentleman from Connecticut.

Mr. MORRISON of Connecticut. I very much thank the gentleman from Tennessee for his words.

Madam Chairman, I ask unanimous consent that the amendment be withdrawn.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. PAUL. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise to make a few comments as a physician about this particular piece of legislation before us. I do not challenge, actually I compliment, the gentleman from Tennessee for his humanitarian concerns and good intentions with this legislation.

However, I am quite convinced that good intentions have very little meaning with the ultimate results of any of our legislation. There is no way we can equate good results with good intentions. I happen to think that this piece of legislation, when passed, because I assume it will be passed, will do nothing really to help the problem of distribution of human organs.

The short-term apparent benefits are there, but on the long run, I think we will be creating a lot more problems which will prompt more legislation, which will prompt more appropriations and actually make a more inefficient system than we could develop in a more voluntary way.

Anything that we do in economics or in medicine, where our goal is to seek a more equitable and fair distribution of a good product, or organ, generally this can be achieved by the market better than by Government legislation.

You can get more equity, but it is always at the sacrifice of those who are getting something fairly achieved. Actually, you never raise the standards, you get equity by lowering the standards and lowering the efficiencies.

I think this will be the case with this legislation as well. If there is allocation of a scarce resource, and that is what we are talking about here, it still follows that the marketplace, that the private sector is better equipped to do this than a Government bureaucracy.

I can see some analogies of this proposed legislation with that of any rationing legislation; even though it might not have the same rigidity of rationing. This is what we are introducing.

If you want people to wait in lines as we did in 1979 after we decided we would allocate gasoline, this is precisely the long-term negative results of legislation like this.

We do have one example in medicine that existed here a few decades ago that handled a similar problem, and I think in a magnificent way, in a voluntary way, in a regional way, and that was the allocation of blood, which is a human organ. It has been done voluntarily and fairly. Actually people are paid to donate blood and there has never been legislation proposed that I know of that says there is some heinous crime for a blood bank giving somebody $25 or $35 for the donation for a pint of blood. This generally has worked very, very well.

I think if we would have had centralized control of blood distribution introduced 50 years ago, it would have been a very negative thing. Already we have seen in medicine and in the private sector in other humanitarian ways of solving this problem, some very good successes.

For instance, the Red Cross is involved with blood distribution; we have the Living Bank of Houston which is very successful; we have the Lions Eye Bank, we already see the oil companies voluntarily providing jet aircraft and helicopters and making the transportation of organs much more economic than they would be otherwise.

So to me, I think that there is a strong argument for rejecting this legislation, allowing the marketplace to work and rejecting the idea that we need to distribute organs somewhat the way we distribute mail. We do know that sometimes it takes a week or so to get mail delivered across the street. I think this is the type of program that is similar.

So again I say I understand the motivation, I understand the good intention and I believe I have humanitarian concerns just as much as those who propose the legislation, but I do foresee some bureaucratic problems that will hinder the medical profession, the voluntary organizations from handling this job in a more efficient, effective manner.

Mr. GORE. Madam Chairman, will the gentleman from Texas yield?

Mr. PAUL. I yield to the gentleman from Tennessee.

Mr. GORE. I thank the gentleman for yielding.

Madam Chairman, as a physician, the gentleman's words always carry weight in this Congress. I would simply point out that over 1,000 transplant surgeons who deal with this issue every day in their professional lives strongly endorse this legislation and have worked closely with us in the development of it.

The CHAIRMAN pro tempore. The time of the gentleman from Texas [Mr. Paul] has expired.

(On request of Mr. Gore and by unanimous consent, Mr. Paul was allowed to proceed for 1 additional minute.)

Mr. GORE. Madam Chairman, will the gentleman from Texas yield?

Mr. PAUL. I yield to the gentleman from Tennessee.

Mr. GORE. I thank the gentleman for yielding.

The reason I wanted to respond to my colleague in the well is because he made a statement that in his opinion the legislation would not do anything to increase the availability of organs. I just wanted to take just a second to tell you how it will, how I believe it will.

□ 1250

First of all, we know from pilot projects that the kind of educational programs in hospitals and medical communities that this bill will require can double and triple the rate of organ donation.

Second, by better coordinating the system more will become available. Let me just give the gentleman one example why. The University of Pittsburgh, which is one of the three or four leading transplant centers in the country, out of every eight telephone calls they get saying a liver is available, out of every eight they can only get one of the eight. The reason is the other seven times they are already in the operating room performing a transplant or they are totally exhausted having stayed up all night and just completed a transplant.

By having a more rational system coordinating the 110 separate networks around the country we will have a better distribution system and with the educational program in hospitals and medical communities, we will ensure available organs will get to where they can be used.

Third, by requiring organ procurement organizations to establish effective agreements with a substantial majority of local community hospitals, with the ability to identify donors, that are located within their geographic region, the bill addresses one of the single biggest reasons we are not retrieving more organs. Organ procurement organizations need to retrieve as many organs as are potentially available and what they cannot use locally, they should then share with centers outside their region. The bill addresses all these issues.

I thank the gentleman for his kind words and I respect his disagreement.

Mr. PAUL. I thank the gentleman.

I close with one comment saying that it is true that there could quite probably be many physicians who would support this, but it is also true that there are physicians who do not understand economic allocation and would support a lot of other lend programs as well.

The CHAIRMAN pro tempore. The time of the gentleman from Texas [Mr. Paul] has expired.

(By unanimous consent, Mr. Paul was allowed to proceed for 1 additional minute.)

Mr. PAUL. But this legislation in itself does not automatically create the experts that you need. There may be a shortage of doctors who have the expertise as the physicians in Pittsburgh, but immediately overnight this does not create it.

So again I just suggest that this legislation is not quite what it is planned to be, but I do not for a moment challenge the intention.

Mr. STENHOLM. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise in support of the organ transplant legislation we are considering today, H.R. 5580. This bill provides a desperately needed improvement of regional organ procurement agencies and creates a national computerized network to match organs to donors.

Madam Chairman, I believe my record clearly shows that I am not one to quickly invite the Federal Government into areas previously handled exclusively by the private sector. I have heard the arguments, the latest argument from my good friend and colleague from Texas [Mr. PAUL], that the Federal Government need not really become involved in the organ transplant system—that the current channels of communication and procurement agencies are completely capable of handling all needs that arise. But every time someone tells me that, I wish I could take them to Clyde, TX, where they could meet face to face with the parents and grandparents of Ashley Bailey.

In some respects, Ashley's case was similar to that of other babies suffering from biliary artesia who must have liver transplants if they are to live. But in other respects, Ashley's case was truly exceptional. From a remarkable statewide effort to raise more than $100,000 to pay for the transplant to a national plea by President Reagan for a donor, an exceptional effort was made on the part of so many. And still, the efforts of everyone combined were not enough for Ashley.

For nearly 15 long months Ashley fought bravely to hold on to life, depending on the present organ procurement system to locate a liver for her. And many people within that system fought hard along with her to locate that lifesaving organ. But in the race with time, the organ donor system and Ashley lost. On November 11 of last year, Ashley died.

Every time I think of Ashley Bailey, I can't help but think that our system somehow failed her. There must be a way of improving communication between independent organ procurement agencies around the country. There must be a better way of educating the public to realize that when tragedy strikes their family, they can find some meaning in death by giving life to others. There must be a way to train physicians and nurses and ministers and emergency personnel to deal more constructively with families in the middle of tragedy. There must be a way to spare parents of children needing transplants the desperation of seeking publicity techniques as the best or only way to give their children life. There must be a better way, a less haphazard way, of deciding who may live and who must die. For the sake of giving meaning to Ashley's life, and for the sake of all of the children and adults still hanging on to life, there must be a way.

H.R 5580 does much to find that way. Through seed money to regional organ procurement organizations and the establishment of a coordinating U.S. Transplantation Network within HHS, this bill provides incentives for private and local organizations to become more effectively involved in the transplant system. Precautions against excessive dependency on the Government are incorporated through a 3-year limitation on grant money and a requirement that the recipient organizations demonstrate a capability of operating independently on a fiscally sound basis.

Furthermore, this legislation provides some necessary guidance to the way the organ procurment system will develop in upcoming years. In an area with such complex medical, legal, ethical, economic, and social aspects, there are certain considerations which, to a minimal but necessary degree, should be policed by the Federal Government for the public good. Experience has taught us over and over again that the most appropriate role for the Government, however, is as a referee, not a quarterback. I am very pleased that H.R. 5580 acknowledges this role by requiring eligible organizations to have a system for allocation donated organs among transplant centers, but does not dictate any particular criteria that must be used. It is appropriate for the Federal Government to outline what must be accomplished without specifying exactly how it must be done. The establishment of the Task Force on Organ Transplantation and the prohibition against selling human organs will provide further referee-type safeguards.

I believe that to a large extent, H.R. 5580 shows admirable constraint in its scope. The need for coordination and funding in the organ transplant system could have been addressed in ways which would have led to massive Federal intervention, but fortunately, this has not been the case. I want to commend the advocates of this bill for not creating new, open-ended entitlements and a new bureaucratic maze which could have meant far greater Federal funding and intervention.

We are all amazed by, and grateful for, the lifesaving techniques that modern medical advancements have brought us, but we also are faced with new dilemmas that demand concerned, creative, constructive responses. I believe that H.R. 5580 is one such response. For the sake of the memory of Ashley Bailey and the lives of so many others, I urge all of my colleagues to vote in favor of this bill.

And I would say in reference to my colleague from Texas' comparison of the blood donor system that works so well, the thought occurs to me and crosses my mind that there is certainly a very large difference betwen donating blood from the living and donating a heart or a liver from someone who has died.

Mr. BLILEY. Madam Chairman, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Virginia.

Mr. BLILEY. I thank the gentleman for yielding.

Madam Chairman, I rise in strong support of the bill.

Mr. TRAXLER. Madam Chairman, I move to strike the last word.

Madam Chairman, I am pleased to see this legislation on the floor. I have read the report accompanying it. I would like to make a couple of observations.

First, I am delighted with the annual report required of the Department of Health and Human Services relative to organ transplantation. I raise this issue and make this point for one reason. About 5 months ago a charming young lady of about 27 years of age came into my office in her wheelchair. She is a diabetic, regretfully blinded by that condition and had required a kidney transplant which she did receive and which was most successful.

□ 1300

She is a lady of great courage and stamina. Regretfully, as a result of this condition, her pancreas was affected, and it is necessary that she receive a pancreas transplant or her life will be snuffed out in a matter of months.

The pancreas transplant operation, as I understand it, is experimental. There has been no movement within the Department of Health and Human Services to examine the success rate on pancreas transplants. In my judgment they are no longer experimental. Some people, however, place monetary considerations and the Public Treasury above the issue of life and death. In my judgment, a nation that can afford the B-1 bomber or the MX missile systems and their billions of dollars of costs, can afford to classify pancreas transplants as ordinary procedures and eligible for Medicare, Medicaid, and/or health insurance payments.

I think this is an illustration of the seriousness of the life and death transplant issues that confront medical practitioners, the Congress, and the people of the United States of America. I only wish that I could call the woman involved and tell her that with the passage of this bill and, hopefully, by its favorable consideration in the Senate, there had been a favorable resolution to her financial dilemma. Regretfully, I cannot. There is progress that is being made. Probably it will come too late in her case.

The CHAIRMAN pro tempore. Are there other amendments to title I?

The Clerk will designate title II.

The text of title II is as follows:

TITLE II—PROHIBITION OF ORGAN PURCHASES

SEC. 201. (a) It shall be unlawful for any person to acquire, receive, or otherwise transfer any human organ for valuable consideration and for use in human transplantation if the transfer affects commerce.

(b) Any person who violates subsection (a) shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) For purposes of subsection (a):

(1) The term "human organ" means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, bone, and skin, and any other human organ or tissue included by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term "commerce" means trade, traffic, or transportation between a place in a State and any place outside thereof or which affects such trade, traffic, or transportation.

The CHAIRMAN pro tempore. Are there any amendments to title II?

Are there any amendments to the bill?

● Mr. MRAZEK. Madam Chairman, I rise today in strong support of H.R. 5580, the National Organ Transplant Act. Passage of this legislation is vital to improving and facilitating the ability of our Nation's health care system to provide organ transplants to those who desperately need them.

Currently, in the United States, the systems available to organ transplant patients are fragmented and overburdened. There are no uniform policies or procedures. H.R. 5580 greatly improves the situation by, among other things, establishing a federally funded computer network to help match donor organs with patients who need them, and authorizing grants to establish and expand regional organ procurement organizations.

Madam Chairman, I would like to focus briefly on one particular provision of the bill which I believe is critically important. The legislation authorizes appropriations of $10 million for fiscal year 1985 and $20 million for fiscal year 1986 to make immunosuppressive drugs available upon request and without cost to transplant centers.

These drugs are taken by transplant patients after surgery to suppress the body's rejection of the new organ. These drugs are crucial to the continued success of an organ transplant but are of course, extremely expensive. In the past, organ transplant patients have been confronted with an enormous financial burden in having to pay for immunosuppressive drugs. This provision greatly relieves that burden.

Madam Chairman, a member of my personal staff is now in New York recovering from a successful kidney transplant operation. He is one of the fortunate ones. After years of dialysis and waiting, a suitable donor organ was finally found. However, if the transplant is to remain a success, he must continue to have access to immunosuppressive drugs.

H.R. 5580 would instruct HHS to purchase as much of the needed drugs as funding permits and distribute these drugs to transplant centers across the country. The transplant centers would then distribute the drugs to patients, without charge, on the basis of the center's determination of the patients need for, and ability to pay for, the drugs.

Madam Chairman, I urge my colleagues in the House to vote in favor of this vital piece of legislation. I commend my colleague from Tennessee [Mr. GORE] for his tremendous work in this area and hope that passage of H.R. 5580 will be a comprehensive first step in aiding thousands of transplant patients, and would-be patients, throughout the Nation.●

● Mr. GILMAN. Madam Chairman, I rise in support of H.R. 5580, and I wish to address my remarks in support of the long overdue legislation on organ donation and transplantation. H.R. 5580 amends the Public Health Service Act to provide financial assistance for organ procurement organizations. The bill authorizes grants to strengthen and expand local organ procurement organizations and supports the development of a national computer system to match available organs with waiting recipients. This bill also authorizes appropriations for 2 fiscal years to assist transplant procedures and develop a scientific registry of transplant patients. Finally, the bill prohibits the buying and selling of human organs.

The significance of this legislation is not judged by the scrutiny of this bill's meaning but in the attempt to initiate constructive legal action to combat the problems of organs procurement.

Modern medicine is a wonder in and of itself. The marvels of the scientific world have opened new horizons, expanded the range of treatments for once incurable diseases, and redefined hope for a healthier, longer, more fulfilling life. However, the successes of the medical field's technological advances have grown at a rate faster than the rest of the country can absorb them. Thus, the technology exists to almost literally "save the world" but the implementation and costs for such an undertaking limit the availability of our country's technological expertise.

Organ procurement is one such area where technology and implementation are out of sync. I believe that H.R. 5580 is a beginning step in the realignment of modern medicine with the average American's needs.

Two parallel problems exist with organ procurement. First, the demand for organs exceeds the supply. In addition to kidneys, many people are waiting for livers, pancreases, eyes, hearts, and lungs. And, although private organ donor programs have laid the framework in educating the general public on the need for organs, the actual number of donors has not met the demand.

Many place the blame for this organ deficit on the medical profession itself, claiming that doctors do not want to ask grieving families to authorize the donation of their beloved's organs after the doctor has failed to save the patient. We must bear in mind that the organs must be removed within minutes after one is declared "brain dead" or else the organs serve no useful purpose.

Another drawback in the medical profession's pursuit of organ procurement are the high costs involved. This is the coinciding problem between technology and practicality. Organ transplantations are extravagantly expensive. The cost of one liver transplant can easily run to $50,000 or more. When the End Stage Renal Disease Program was initiated by Congress on July 1, 1973, Federal subsidies through Medicare became available for kidney transplants. This enabled thousands of patients to afford the cost of the operation and has proven effective in principle in the fight against kidney disease. Insurance companies were more willing to help after the Government provided Medicare coverage for kidneys, and this allowed hospitals to expand their services in kidney research and treatment. The result has been the saving of thousands of young lives.

Yet, the development of the kidney dialysis system has compensated for the lack of sufficient matching kidneys. Such dialysis programs do not exist for other organs, and the tragedy of the race against time has too often been witnessed by this Nation. Even President Reagan's pleas to find a liver for Ashley Bailey failed because no suitable, matching kidney was available in time to save her life.

This is where H.R. 5580's importance comes to light. The two parallel problems of few suitable organs and high costs can begin to be rectified by an intense educational and research campaign by both the Federal Government and the private sector. The establishment of a national computer network to match organ donors with recipients, as stated in the bill, is an excellent concept. But, this can work only if there is sufficient data to store in the computer. Donors must be found and lines of communication must be improved, especially within the hospitals themselves at that horrible time of loss. Both doctors and families must realize that the grief of a loss can be eased with the hope of saving another's life with the deceased's organs. During this grief-stricken time, an alert doctor, intern, or nurse must act quickly.

I was pleased to learn of the many contributions being made in the formulation of this computer network when I was contacted by two of my constituents. Both Morris Braverman and his son, Dr. Jeffrey Braverman, are actively engaged in helping to solve the serious problem of an organ donor registry. In discussions with both the sponsor of this measure, Congressman GORE and myself, it was brought to light that one primary problem is that of incentive and personal motivation to participate in the computer network, and to that end, Medical Development Systems, of which Dr. Braverman is president, has developed a comprehensive approach that will hopefully alleviate the problem we now face. I commend them for their dedication and creativity, and hope that their plan succeeds in being implemented.

Additionally, research must be ongoing in the search for alternative methods of saving patients suffering from an insufficient organ. Today, only kidney patients can stay alive on dialysis without having an organ transplant. I also support the appropriation for 2 fiscal years to assist transplant procedures and research. Liver patients especially need some form of medication to sustain them until a suitable donor can be found.

The immunosuppressive drug cyclosporine is a pioneer in the fight to combat liver disease. As such, H.R. 5580 authorizes the Department of Health and Human Services to purchase immunosuppressive drugs for distribution to transplant recipients without charge. These immunosuppressive drugs are essential for successful transplant surgery and must be taken regularly by recipients for life. Recently, the Department announced that liver transplants for children would be designated "nonexperimental." This means that Medicaid can be used toward liver transplants for children up to 18. The States, however, must still participate, since this is a Federal/State matching program. If a State chooses not to include transplants on their Medicaid list, the Federal Government cannot match it. This new ruling also means that many private insurers will follow the lead of Medicaid and will cover liver transplants for children, thus lessening many, but not all, of the financial concerns of the operation. This legislation attempts to lessen the financial burdens of the patient even more so.

Moreover, the Federal Government should continue to encourage research in the development of additional drugs like cyclosporine that are nonexperimental. This would express Congress' desire that insurance companies expand their coverage in this vitally important sector of medicine.

And, among these important provisions, I support fully the section of the bill that prohibits the buying and selling of organs. This practice has no place whatsoever in our society. Fairness and equity in the procurement of organs for all in need is the basis of this legislation, and no individual should benefit commercially from the sale of human organs.

Accordingly, although H.R. 5580 will not solve every organ procurement problem, it is a sound start to saving many lives as well as a lot of emotional and financial grief. I strongly urge my colleagues to support this legislation. Too many lives will be lost with yet another delay. There is a definite need for more studies, and an even stronger need for action.●

● Mr. LELAND. Madam Chairman, I rise in strong support of H.R. 5580, the National Organ Transplant Act and am proud to be a cosponsor of this lifesaving legislation. I would also like to take this opportunity to express my appreciation to the gentleman from Tennessee [Mr. GORE], the gentleman from Ohio [Mr. LUKEN], the gentleman from New Mexico [Mr. SKEEN], and the gentleman from Illinois [Mr. MADIGAN] as well as the distinguished chairman of the Subcommittee on Health and the Environment [Mr. WAXMAN], for their leadership and compassion on this issue.

H.R. 5580 is a truly vital piece of legislation. Under this bill, a coordinated, national effort to tissue-type match organs to critically ill patients will be possible. A U.S. Transplantation Network will be able to facilitate the procurement of organs for those whose lives so desperately depend on minutes saved. This network will in no way eliminate or jeopardize the activities and accomplishments of the fine voluntary private sector programs, such as the Living Bank of Houston, TX; on the contrary, it is a necessary and much needed compliment.

The National Organ Transplant Act is supported by many transplantation organizations, including the American Society of Transplant Surgeons and the Association of Independent Organ Procurement Agencies. The missions and goals of H.R. 5580 are clear, necessary, and long overdue; the need incalculable. I know first hand, through the world-reknown Texas Kidney Institute at Hermann Hospital in Houston, TX, of the tremendous advances in, and benefits of, transplant surgery.

Madam Chairman, the provision of H.R. 5580 to assist transplant recipients with the cost of immunosuppressive drugs, such as cyclosporine, is a particularly important one. Dr. Barry Kahan, surgical director of the Texas Kidney Institute in Houston, has testified before the Health and Environment Subcommittee about the critical role of cyclosporine in transplant surgery and rehabilitation. I have also received letters from organ recipients in my district pleading that a reimbursement system for immunosuppressives be implemented. As they have so eloquently pointed out, low-cost availability of cyclosporine means the difference between their normal daily existence or the burdens of renal dialysis. I am grateful, as are my constituents, to Mr. WALGREN for his thoughtful amendment providing for a distribution system for immunosuppressives.

In closing, Madam Chairman, I cannot overstate the importance and value of this legislation. Its passage will usher in a beginning of hope, a future, for many persons. I am wholehearted in my conviction that H.R. 5580 is a hallmark in health care legislation, and I strongly urge my colleagues to pass this bill.●

● Mr. MRAZEK. Madam Chairman, I rise today in strong support of H.R. 5580, the National Organ Transplant Act. Passage of this legislation is vital to improving and facilitating the ability of out Nation's health care system to provide organ transplants to those who desperately need them.

Currently in the United States, the systems available to organ transplant patients are fragmented and overburdened. There are no uniform policies or procedures. H.R. 5580 greatly improves the situation by among other things, establishing a federally funded computer network to help match donor organs with patients who need them and authorizing grants to establish and expand regional organ procurement organizations.

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Madam Chairman, a member of my personal staff is now in New York recovering from a successful kidney transplant operation. He is one of the fortunate ones. After years of dialysis and waiting, a suitable donor organ was finally found. However, if the transplant is to remain a success, he must continue to have access to immunosuppressive drugs.

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Madam Chairman, I urge my colleagues in the House to vote in favor of this vital piece of legislation. I commend my colleague from Tennessee, Mr. Gore, for his tremendous work in this area and hope that passage of H.R. 5580 will be a comprehensive first step in aiding thousands of transplant patients, and would be patients, throughout the Nation.●

● Mr. ADDABBO. Madam Chairman, I would like to rise in support of the National Organ Transplant Act, H.R. 5580. This bill is designed to strengthen our Nation's ability to assist organ transplant patients. By expanding regional organ donor organizations through Federal grants, and by providing funding for a nationwide computerized system to match donated organs with recipients, we can offer some national assistance. In addition, this bill authorizes new temporary programs to assist patients in paying for the expensive drugs necessary to suppress the rejection of transplanted organs.

The issue here is that this bill is a major effort to set up a national network to help people in desperate need of emergency organ transplants. In the past, no concerted Federal assistance has been available. The only channel of communication has been haphazardly through newspaper appeals. Often they have gone unmet because there is no coordinated system.

The need for our Federal Government to become involved with assisting organ transplant patients never became clearer to me than when I learned of an 11-year-old boy in my neighborhood who needed a liver transplant this winter.

Carl Loria, Jr., is a sixth grader at Nativity Blessed Virgin Mary School in Ozone Park, NY. Up until this year, he was a healthy, active young man especially fond of the playing baseball. Sometime during the winter, Carl contracted hepatitis and his liver began to malfunction. Doctors determined that he needed a liver transplant to survive the illness.

Carl has since undergone two liver transplants and is presently battling an infection that lowers his red blood cell count. He is a courageous young man and draws on the support of his family, his friends, and the entire community. Hopefully with the advances in modern medicine, the prayers of our community, and his tremendous inner strength to fight this disease, Carl will resume a normal life in the near future.

His story however illustrates a national need. Almost overnight, the Loria family was faced with a frantic search for an organ donor. As if that was not enough, they had to assume an exorbitant financial burden to pay for the costs of this operation. It is estimated that the costs for Carl's operation will be more than $250,000. The Loria's bills for Carl's drugs are $1,000 a month. There is no question that most Americans cannot possibly afford this type of operation without a great deal of assistance. Without the support of their friends and neighbors the Loria's would not be able to pay for Carl's treatment.

It is very clear to me that no American should be deprived of medical care, especially emergency transplant operations, because they are unable to afford the costs. As medical science advances, so must we. We cannot go on making haphazard media appeals to find organs for patients and expect a high success rate.

This legislation is a first step, so that in the future, families such as the Loria's will have someplace to turn. I urge my colleagues to look at Carl Loria's case as one representative of all Americans, and recognize the national need for organ transplant assistance.●

● Mr. RITTER. Madam Chairman, I rise in support of H.R. 5580, the National Organ Transplant Act, although I have certain reservations regarding the way this bill currently is written.

Madam Chairman, last year I introduced a bill to establish a "National Task Force on Organ Procurement and Transplant Reimbursement," H.R. 3977. While that is not the bill the House is considering today as I would have hoped, H.R. 5580 does contain provisions utilizing the task-force concept to examine the medical, legal, ethical, economical, and social issues presented by human organ procurement and transplantation. I believe this task-force approach is a necessary first step that has to be taken before committing millions of Federal dollars to subsidize organ transplants.

For this reason, I supported in the Energy and Commerce Committee an amendment in the nature of a substitute to establish a task force composed of health professionals, private insurers, organ procurement coordinators, and Government representatives to first, assess the nature and extent of public and private efforts needed to create an effective organ procurement system; and second, develop a plan to establish a national organ donor network emphasizing private-sector involvement.

My concerns on H.R. 5580 center around two sections: Grants to organ procurement organizations [OPO's] and free distribution of immunosuppressive drugs to transplant centers. OPO's currently receive full reimbursement through the Medicare end-stage renal disease [ESRD] program for kidney procurement and through private insurers for other programs. I question whether or not more Federal financial assistance for these organizations will have any impact on increasing the supply of harvested organs. I also question the need to duplicate many private initiatives currently underway to address procurement and transplantation issues.

Regarding the availability of immunosuppressive drugs at no cost to transplant centers, I feel this program may open the door for a limitless, very expensive program which may unintentionally shift responsibility for covering pharmaceutical costs from the Medicaid program and private insurers to the Federal Government.

Despite these misgivings about H.R. 5580, I fully support increased Federal involvement in organ transplantation from an organization point of view. I look forward to working with my colleagues to perhaps make some changes so that the important progress made in the field of organ transplantation will continue. With transplant success stories like that of Jamie Fisk, we all have a worthwhile goal to work toward. Thank you.●

The CHAIRMAN pro tempore. If there are no amendments to title II and no further amendments to the bill, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mrs. Boxer, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, pursuant to House Resolution 507, she reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The **SPEAKER**. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The **SPEAKER**. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The **SPEAKER**. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. **MADIGAN**. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 396, nays 6, not voting 31, as follows:

[Roll No. 254]

YEAS—396

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
AuCoin
Badham
Barnard
Barnes
Bartlett
Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boland
Bonior
Bonker
Bosco
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CO)
Burton (CA)
Burton (IN)
Campbell
Carney
Carper
Chandler
Chappell
Chappie
Cheney
Clarke
Clay
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Craig
Crockett
D'Amours
Daniel
Darden
Daschle
Daub
Davis
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Gregg
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Hansen (UT)
Harkin
Hartnett
Hatcher
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kogovsek
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Lent
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Markey
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Penny
Perkins
Petri
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Seiberling
Sharp
Shaw
Shelby
Shuster
Sikorski
Siljander
Simon
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Traxler
Udall
Valentine
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Wilson
Winn
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)
Zschau

NAYS—6

Broyhill
Crane, Daniel
Crane, Philip
Dannemeyer
Paul
Stump

NOT VOTING—31

Bethune
Boggs
Boner
Borski
Brown (CA)
Bryant
Byron
Carr
de la Garza
Downey
Edwards (AL)
Fowler
Garcia
Gramm
Hansen (ID)
Harrison
Hawkins
Kaptur
Leland
Lloyd
Marriott
McKinney
Pepper
Schumer
Sensenbrenner
Shannon
Shumway
Towns
Vander Jagt
Williams (OH)
Young (FL)

□ 1310

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. **BYRON**. Mr. Speaker, earlier today, H.R. 5580, the National Organ Transplant Act was overwhelmingly passed by the House. I was unable to record my vote on this legislation because I was attending a funeral for a family relation at the time. Had I been able to record my vote, I would have supported this bill which I believe will effectively expand and strengthen organ procurement efforts across the Nation.

PERSONAL EXPLANATION

Mr. **McKINNEY**. Mr. Speaker, because of my attenance at Assistant Secretary Bollinger's funeral, I was unavoidably absent for rollcall 254 on H.R. 5580, final passage. If I had been able to be here, I would have voted "yea."

GENERAL LEAVE

Mr. **WAXMAN**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1320

Mr. **WAXMAN**. Mr. Speaker, pursuant to House Resolution 507, I call up from the Speaker's table the Senate bill (S. 2048) to provide for the establishment of a Task Force on Organ Procurement and Transplantation and an Organ Procurement and Transplantation Registry, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. WAXMAN

Mr. **WAXMAN**. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WAXMAN moves to strike out all after the enacting clause of the Senate bill, S. 2048, and to insert in lieu thereof the provisions of the bill, H.R. 5580, as passed, as follows:

TITLE I—ORGAN PROCUREMENT ACTIVITIES

SEC. 101. Part H of title III of the Public Health Service Act is amended to read as follows:

"PART H—ORGAN TRANSPLANTS

"ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS

"SEC. 371. (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

"(2) The Secretary may make grants for the establishment, initial operation, and expansion of qualified organ procurement organizations described in subsection (b).

"(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

"(A) is a nonprofit entity,

"(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

"(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

"(D) has procedures to obtain payment for nonrenal organs provided to transplant centers,

"(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least fifty potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

"(F)(i) except as provided in clause (ii), has a Board of Directors which includes—

"(I) members who represent hospital administrators, neurosurgeons or neurologists, intensive care or emergency room nurses, tissue banks, and voluntary health associations in its service area and the general public residing in such area, and

"(II) from each transplant center in its service area which has with the organization arrangements described in paragraph (2)(G), a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

"(ii) in the case of an organization which is an organization which was in existence on the date of the enactment of this section and which on that date was engaged in the procurement of organs, establishes an advisory board for organ procurement which will be an advisory board to its Board of Directors, which will include the representation prescribed by clause (i), which will have authority to establish policy for the procurement of organs and the other functions described in paragraph (2), and which will have no authority over any other activity of the organization, and

"(G) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area.

"(2) An organ procurement organization shall—

"(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

"(B) conduct systematic efforts, including professional education, to acquire all useable organs from potential donors.

"(C) arrange for the acquisition and preservation of donated organs and provide quality standards for surgery performed to acquire organs,

"(D) arrange for the appropriate tissue typing of donated organs,

"(E) have a system to allocate donated organs among transplant centers and patients according to established criteria,

"(F) provide for the transportation of donated organs to transplant centers,

"(G) have arrangements to coordinate its activities with transplant centers in its service area,

"(H) participate in the United States Transplantation Network established under section 372,

"(I) have arrangements with tissue banks for the retrieval, processing, preservation, and storage of tissues as may be appropriate, and

"(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs.

"(c)(1) For grants under subsection (a) there are authorized to be appropriated $4,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, $12,000,000 for fiscal year 1987, and $16,000,000 for fiscal year 1988.

"(2) There are authorized to be appropriated for fiscal years 1989 and 1990 such sums as may be necessary to continue grants for the initial operation or expansion of organ procurement organizations which received initial grants for such purpose under subsection (a) in fiscal year 1987 or 1988.

"UNITED STATES TRANSPLANTATION NETWORK

"SEC. 372. (a) The Secretary shall by contract provide for the establishment and operation of a United States Transplantation Network which meets the requirements of subsection (b) and which will assist organ procurement organizations in the distribution of organs which cannot be placed within the service areas of the organizations and facilitate the matching of organ donors and organ recipients, especially individuals whose immune system makes it difficult for them to receive organs. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made availablefrom funds available to the Public Health Service from appropriations for fiscal years beginning after the date of the enactment of this section.

"(b)(1) A United States Transplantation Network shall carry out the functions described in paragraph (2) and shall—

"(A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and

"(B) have a board of directors which includes representatives of organ procurement organizations described in section 371, transplant centers, voluntary health associations, and the general public.

"(2) A United States Transplantation Network shall—

"(A) maintain a national list of individuals who need organs,

"(B) provide, through the use of computers and in accordance with established criteria, a national system to match organs and individuals in the list,

"(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

"(D) adopt and use standards of quality for the acquisition and transportation of donated organs,

"(E) prepare and distribute, on a regionalized basis, samples of blood sera from individuals, included in the list, to facilitate matching the compatibility of organ donors and organ recipients, especially individuals whose immune system makes it difficult for them to receive organs,

"(F) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

"(G) provide information to physicians and other health professionals regarding organ donation, and

"(H) collect, analyze, and publish data concerning organ donation and transplants.

"SCIENTIFIC REGISTRY

"SEC. 373. The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 376 an analysis of information derived from the registry.

"GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

"SEC. 374. (a) No grant may be made under section 371 or 373 or contract entered into under section 372 or 373 unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

"(b)(1) In considering applications for grants under section 371, the Secretary shall give priority to any applicant which has a formal agreement of cooperation with all transplant centers in its proposed service area, and the Secretary shall give special consideration to organizations which met the requirements of section 371(b) before the date of the enactment of this Act. In considering such applications the Secretary shall not discriminate against an applicant solely because it provides health care services other than those related to organ procurement. The Secretary may not make a grant for more than one organ procurement organization which will serve the same geographical area.

"(2) A grant for planning under section 371 may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

"(3) Grants under section 371 for the establishment, initial operation, or expansion of organ procurement organizations may be made for three years. No such grant may exceed $500.000 for any year and no organ procurement organization may receive more than $1,000,000 for initial operation or expansion.

"(c)(1) The Secretary shall determine the amount of a grant made under section 371 or 373. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

"(2)(A) Each recipient of a grant under section 371 or 373 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under section 371 or 373 that are pertinent to such grant and for purposes of section 372 such term includes bone marrow.

"(d) For purposes of this part:

"(1) The term 'transplant center' means a health care facility in which transplants of organs are performed.

"(2) The term 'organ' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas) included by the Secretary by regulation.

"ADMINISTRATION

"Sec. 375. The Secretary shall, during fiscal years 1985, 1986, 1987, and 1988, establish in the Public Health Service and maintain an identifiable administrative unit to—

"(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act,

"(2) conduct a program of public information to inform the public of the need for organ donations,

"(3) provide technical assistance to organ procurement organizations receiving funds under section 371, the United States Transplantation Network established under section 372, and other entities in the health care system involved in organ donations, procurement, and transplants, and

"(4) submit to Congress an annual report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.

"REPORT

"Sec. 376. The Secretary shall publish an annual report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report. The Secretary shall make the report and other related information available to service benefit plans, health insurers, and other entities which are responsible for making payments for health care.".

TASK FORCE ON ORGAN TRANSPLANTATION

Sec. 102. (a) The Secretary of Health and Human Services shall establish a Task Force on Organ Transplantation. The task force shall conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation.

(b) The task force shall be composed of twenty-two members appointed by the Secretary as follows:

(1) Nine members shall be appointed from physicians who are eminent in the various specialties of medicine related to human organ transplantation. Of the physicians, six shall be transplant surgeons.

(2) Three members shall be appointed from individuals who are not physicians and who represent the field of human organ procurement.

(3) Four members shall be appointed from individuals who are not physicians or scientists and who as a group have expertise in the fields of law, theology, ethics, health care financing, and the social and behavioral sciences.

(4) Three members shall be appointed from individuals who are not physicians or scientists and who are members of the general public.

(5) Three scientists or physicians who are eminent in the field of histocompatability.

No individual who is a full-time officer or employee of the Federal Government may be appointed to the task force. A vacancy in the task force shall be filled in the manner in which the original appointment was made.

(c) The task force shall, within six months of the date of its establishment, conduct a national conference to consider questions respecting—

(1) the equitable access by patients to organ transplantation,

(2) the allocation of donated organs among transplant centers and among patients equally medically qualified for an organ transplant, and

(3) payment for nonrenal organ transplantation.

Upon the completion of the conference the task force shall submit a report to the Secretary on the findings of the conference.

(d) The task force shall terminate upon the expiration of twelve months from the date of the report under subsection (c).

IMMUNOSUPPRESSIVE DRUGS

Sec. 103. (a) The Secretary of Health and Human Services shall make immunosuppressive drugs available, upon request and without cost, to transplant centers for use, in accordance with subsection (b), on an outpatient basis by individuals who have received an organ transplant at such centers. The Secretary shall allocate such drugs to centers in proportion to the number of organ transplants performed at the centers in the fiscal year preceding the fiscal year in which the drugs are to be made available for purposes of this subsection, the term "transplant center" means—

(1) a health care facility in which at least 25 transplants of kidneys, pancreases, livers, or hearts, or any combination of such organs, are performed in any fiscal year, or

(2) in the case of a State in which there is no health care facility which meets the requirements of paragraph (1), the health care facility in the State which has performed at least 15 of the transplants described in paragraph (1) in the fiscal year preceding the fiscal year in which immunosuppressive drugs are to be made available under this subsection and which has performed in such preceding fiscal year the most transplants of the organs referred to in paragraph (1).

(b) A transplant center receiving immunosuppressive drugs under subsection (a) shall furnish such drugs, without charge, to outpatients who have received an organ transplant at such center on the basis of the center's determination of the patient's need for such drugs and the patient's inability to pay for such drugs through insurance coverage or other resources.

(c) The Comptroller General of the United States shall report to the Congress not later than December 31 of each year during which immunosuppressive drugs are made available under subsection (a) on the allocation of such drugs to transplant centers and the methods used by transplant centers to distribute such drugs to patients.

(d) The Secretary of Health and Human Services shall submit a recommendation to the Congress not later than October 1, 1985, respecting the feasibility and desirability of authorizing reimbursements under title XVIII of the Social Security Act for immunosuppressive drugs on an outpatient basis by individuals who have received organ transplants.

(e) To carry out subsection (a), there are authorized to be appropriated $10,000,000 for fiscal year 1985 and $20,000,000 for fiscal year 1986.

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

Sec. 104. (a) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall, for purposes of the study under subsection (b), establish a bone marrow registry of voluntary donors of bone marrow. The Secretary shall assure that—

(1) donors of bone marrow listed in the registry have given an informed consent to the donation of the bone marrow; and

(2) the names of the donors in the registry are kept confidential and access to the names and any other information in the registry is restricted to personnel who need the information to maintain and implement the registry, except that access to such other information shall be provided for purposes of the study under subsection (b).

The Secretary shall establish the registry not later than of twelve months after the date of the enactment of this section.

(b) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall study the establishment and implementation of the registry under subsection (a) to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry is needed and appropriate. The Secretary shall report the results of the study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than two years after the date the registry is established under subsection (a).

TITLE II—PROHIBITION OF ORGAN PURCHASES

Sec. 201. (a) It shall be unlawful for any person to acquire, receive, or otherwise transfer any human organ for valuable consideration and for use in human transplantation if the transfer affects commerce.

(b) Any person who violates subsection (a) shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) For purposes of subsection (a):

(1) The term "human organ" means the human kidney, liver, heart, lung, pancreas, bone marrow, corneas, bone, and skin, and any other human organ or tissue included by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term "commerce" means trade, traffic, or transportation between a place in a State and any place outside thereof or which affects such trade, traffic, or transportation.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5580) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 2048

Mr. WAXMAN. Mr. Speaker, pursuant to clause 1 of rule XX and by direction of the Committee on Energy and Commerce, I move to take from the Speaker's table the Senate bill, S. 2048, with the House amendment thereto, insist on the House amendment, and request a conference with the Senate thereon.

The motion was agreed to.

The SPEAKER pro tempore (Mr. Traxler). Without objection, the Chair appoints the following conferees: Messrs. Dingell, Waxman, Luken, and Walgren, Ms. Mikulski, and Messrs. Gore, Broyhill, Madigan, and Dannemeyer.

There was no objection.

PUEBLO DE COCHITI INDIAN LANDS

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2403) to declare that the United States holds certain lands in trust for the Pueblo de Cochiti, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2403

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all right, title, and interest of the United States in the lands described in section 2 (including all improvements thereon and appurtenances thereto) are declared to be held in trust by the United States for the Pueblo de Cochiti (hereinafter in this Act referred to as "the Pueblo"), subject to the provisions of sections 3 and 7.

Sec. 2. The lands referred to in the first section are the lands—

(1) situated in the counties of Sandoval and Santa Fe in the State of New Mexico,

(2) known as the Santa Cruz Spring tract,

(3) described on page 6 of the report of Milford T. Keene, Land Surveyor, Southern Pueblos Agency, Bureau of Indian Affairs, Albuquerque, New Mexico, dated February 26, 1981, and

(4) recorded in the files of the Bureau of Indian Affairs, Southern Pueblos Agency.

Sec. 3. Nothing in this Act shall be construed to deprive any individual or entity of any legal existing right-of-way, legal mining claim, legal grazing permit, legal water right, or other legal right or legal interest such individual or entity may have in the lands described in section 2.

Sec. 4. Before the end of the one-year period beginning on the date of enactment of this Act, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall—

(1) conduct a cadastral survey of the lands described in section 2,

(2) make any correction in the description of such lands which is necessary as a result of such survey, and

(3) publish any such correction in the Federal Register.

Sec. 5. The lands which are declared to be held in trust by the Secretary pursuant to the first section shall be part of the Pueblo Reservation and shall be subject to the laws and rules of law of the United States relating to Indian lands. Such lands shall not be developed for any use other than a use in existence on the date of enactment of this Act.

Sec. 6. (a) Nonmembers of the Pueblo who, on the date of enactment of this Act, are permittees of lands described in section 2 of this Act shall be given the opportunity to renew their permits under rules and regulations of the Secretary to the same extent and in the same manner that such permits could have been renewed it this Act had not been enacted, subject to the provisions of subsection (b) of this section.

(b) Permits renewed under subsection (a) of this section shall expire upon the death of the permittee or within thirty years of the date of enactment of this Act, whichever occurs later: *Provided:* That, if the permittee dies within thirty years of the date of enactment of this Act, his spouse or children may assume the permit for the balance of the thirty-year period upon notice to the Pueblo and the Bureau of Indian Affairs.

(c) If the Pueblo obtains the relinquishment of grazing permits in the Caja del Rio allotment in the Santa Fe National Forest for that number of animal unit months equal to the number of animal unit months provided under permit the United States Forest Service as of the date of enactment of this Act within that portion of Caja del Rio allotment which overlaps the Santa Cruz Spring tract, then the remaining permittees in the Caja del Rio allotment shall have no further interest in the Santa Fe Cruz Spring tract and no further right to renew their permits within said tract. The remaining permittees of the Caja del Rio allotment shall suffer no diminution of their grazing rights within that portion of the Caja del Rio allotment which does not overlap the Santa Cruz Spring tract.

(d) After the date of enactment of this Act, the Secretary shall deposit any and all fees paid by permittees under existing or renewed permits for grazing animal unit months on the Santa Cruz Spring tract into the Treasury of the United States to the credit of the Pueblo.

(e) The Pueblo may obtain the relinquishment of any or all of the permits in the Santa Cruz Spring tract, or as provided in subseaction (c) of this section, in the Caja del Rio allotment under such terms and conditions as may be mutually agreeable. In consideration of such relinquishments, the Pueblo is authorized to grant leases, permits, or licenses for agricultural or grazing purposes to existing permittees in lands presently part of the Pueblo reservation or added thereto pursuant to section 5 of this Act, subject to the approval of the Secretary for terms not to exceed fifty years. The Secretary is authorized to disburse from tribal funds in the Treasury of the United States to the credit of the Pueblo so much thereof as may be necessary to pay for such relinquishments and for the purchase of any rights or improvements on said lands owned by nonmembers of the Pueblo. The authority to pay for relinquishment of a permit pursuant to this subsection shall not be regarded as a recognition of any property right of the permittee in the land or its resources.

Sec. 7. Until such time as the Cochiti Lake Project is deauthorized by the Congress, the Secretary shall give full recognition to all interests in lands acquired by the Department of the Army through fee acquisition and under Memorandums of Agreement with the Departments of Agriculture, Interior, and Energy, the University of New Mexico, and the Pueblo de Cochiti, for the operation and maintenance of Cochiti Lake on a portion of the lands herein declared in trust.

Sec. 8. The Secretary shall recognize and grant necessary easements for access to lands described in section 2 of this Act for the following purposes:

(1) Access to recreational sites maintained by the United States.

(2) Access to parcels of land owned by private parties.

(3) Access to lands subject to valid permits as necessary to allow the permittees to exercise rights granted in such permits.

The fees charged for any valid utility right-of-way or easement shall not be greater than the current Federal rate for such an easement.

Sec. 9. The water rights appurtenant to the lands described in section 2 shall be those water rights existing under State law on the date of enactment of this Act. Nothing in this Act shall be construed to create or convey any water rights other than those existing under State law on the date of enactment of this Act.

Mr. RICHARDSON. Mr. Speaker, I want to thank you for the opportunity to appear before you today in support of a bill I have introduced to right an ancient wrong inflicted upon the Cochiti Indians nearly 200 years ago. I want the committee to know how much I appreciate the courtesy it has extended to me and to my friends from the Pueblo de Cochiti in scheduling this hearing so rapidly. It is clear that the members of the committee also recognize the importance this legislation has to the Cochiti Indians. Finally, I want to thank my colleague from New Mexico, Congressman Lujan, for the time, help and support he has given to this effort.

Mr. Speaker, I would like to begin by discussing the events which led to the introduction of H.R. 3259. It is indeed a fascinating story.

Unlike most American Indian tribes, the Indians of New Mexico were not nomadic. Rather, they tended to congregate in pueblos (towns) where they and their descendants remained for centuries and still reside today. They lived, raised their families, worked, farmed, raised cattle, and worshipped in their pueblo.

The Indians of the Cochiti Pueblo have occupied what is now their reservation in north-central New Mexico since time immemorial. At least as early as the 18th century and probably earlier, the Indians of Cochiti frequented and held religious services in the Santa Cruz spring tract, an area of some 25,000 acres immediately to the east of their present reservation. In 1744, they formally purchased this tract by deed from its Spanish owner. This deed is still in existence today.

Approximately 50 years later, a local Spaniard, in violation of Spanish colonial law, coerced the Indians into selling the tract to him. The fraud and illegality of the transaction was soon recognized, but it took nearly 15 years for the Spanish colonial court to void the sale and order the tract restored to the Pueblo. Although the Indians learned of the court's ruling in their favor, the written copy of that order was suppressed and it never reached the Pueblo.

The suppression of that order is the key event that has plagued the Pueblo since the court's restoration order in 1819. Without it they were unable to prove their ownership of the land to their subsequent Mexican sovereign or to the United States when we acquired the New Mexico territory in 1848. Early in this century, the Cochiti Indians tried to persuade a New Mexico court that they, not the heirs of the offending Spaniard, owned the Santa Cruz spring tract. But without a copy of the restoration order from the Spanish colonial court, their case failed.

During the depression, the tract, together with other adjoining lands, was sold to the United States. In 1972, Congress expanded the boundaries of the Santa Cruz spring tract. It remains part of that 1.5-million-acre forest today.

Finally, in 1978, Prof. William B. Taylor was doing research in a Mexican archive. He fortuitously discovered the long-suppressed colonial court order which proved conclusively that the then sovereign, Spain, recognized the Cochiti title to the tract. Had that order been available, Mexico and the United States would have been able to recognize that title as well.

Mr. Speaker, I strongly believe that Congress should recognize the Cochiti Pueblo's title to their religious and historic homeland. I urge this committee to make such recommendation to the House by favorably reporting my bill H.R. 3259, which would transfer the Santa Cruz spring tract to the Interior Department to hold in trust as part of the Cochiti Reservation.

It is essential to note that this transfer will involve no cost to the Government, will have no adverse effect on the environment, and will not interfere with the public's enjoyment of the national forest. The legislation restricts use of the tract to its present uses which are limited to livestock grazing, and traditional Indian worship activities at several important religious sites. No Forest Service recreational areas are located within the tract boundaries; nonetheless, the bill allows for public access through the tract to such areas located in nearby parts of the forest.

The Cochiti Indians have also made arrangements to accommodate the cattlemen who hold permits for livestock grazing on the tract. The Pueblo has escrowed significant funds to buy out these permit interests, and has already secured buyout agreements from more than one-third of these interests. Negotiations to purchase the remaining permit interests are continuing. It is expected that most permittees will agree to the buyout offer rather than elect the 10-year permit renewal option that my bill provides.

Mr. Speaker, let me close by offering a hearty commendation to the many past and present officials of the Pueblo de Cochiti who have so diligently and honorably pursued their goal of restoration. They consider this land to be theirs and they want it back in their reservation. At the same time, however, they recognize that other persons—the livestock permittees—lawfully use part of the land today. In keeping with the traditions of the Cochiti people, they have, at great expense, undertaken good faith efforts to compensate the grazing permittees. I am indeed proud to represent these fine people and to call them my friends.

I urge the House to validate the legitimate claim of the Cochiti Pueblo by favorably reporting H.R. 3259.

The Senate bill was ordered to be read a third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2403, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

PERSONAL EXPLANATION

Mr. BATEMAN. Mr. Speaker, I would like the Record to reflect that had I not strayed beyond the reach of my beeper and had been present, I would have voted "aye" on the amendment offered by the distinguished majority leader, Mr. Wright, to the Immigration Reform and Control Act. This amendment, No. 48, improved the bill as it emerged from the committee and would have had my vote and support had I been on the floor.

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION BILL, 1985

Mr. ROYBAL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5798) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1985, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Ohio [Mr. Miller] and myself.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Roybal].

The motion was agreed to.

☐ 1325

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5798, with Mr. Beilenson in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

There was no objection.

The CHAIRMAN. Under the unanimous-consent agreement, the gentleman from California [Mr. Roybal] will be recognized for 30 minutes, and the gentleman from Ohio [Mr. Miller] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California.

Mr. ROYBAL. Mr. Chairman, I yield myself such time as I my require.

Mr. Chairman, the Committee on Appropriations has reported the Treasury, Postal Service, and General Government bill for your consideration, but before I go on with a brief description of the bill, I would like to thank, first of all, the members of my committee who worked so many hours to bring this bill to the floor.

I wish to thank the gentleman from New York [Mr. Addabbo], the gentleman from Maryland [Mr. Hoyer], the gentleman from Massachusetts [Mr. Boland], and the gentleman from Maryland [Mr. Long], who are all members of the committee on the majority side. But I would like to thank and compliment the members of the committee who are on the other side of the aisle, the gentleman from Ohio [Mr. Miller], for example, who has done a tremendous job as the ranking minority member of that committee.

We have had some disagreements, that is true, but the fact remains that without his cooperation and the cooperation of the other members of the committee on the minority side, this bill would not be on the floor today.

I wish to thank also, then, the gentleman from Arizona [Mr. RUDD] and the gentleman from Kentucky [Mr. ROGERS].

These three gentleman definitely deserve commendation for the excellent job that they have done.

This bill, Mr. Chairman, provides $12.8 billion in recommended appropriations for 1985. This is an increase of $432 million over the budget, and it is $838 million over the budget for 1984. The departmental amounts are as follows:

For the Treasury Department, $5.2 billion, which is an increase of $88.6 million over the budget and $346 million over 1984.

For the Postal Service, it is $1,040 million, which is an increase of $349 million over the budget and $162 million over 1984.

For the Executive Office of the President, $101 million was appropriated. This is the exact amount that was requested by the President.

For the independent agencies covered by this bill, such as the General Services Administration, the Office of Personnel Management, the Tax Court, and other departments, there is an appropriation of $6.4 billion, which is a reduction of $5.5 million below the budget and $324 million over the budget of 1984.

□ 1330

In the Bureau of Alcohol, Tobacco and Firearms, the committee restored $7.5 million, which is to restore funding for the arson program. The BATF is, and always has been, a very effective force in Federal antiarson efforts. The committee has been informed by the Bureau that the solution rate in suspected area crimes is approximately 10 percent when BATF does not provide investigation assistance. When BATF actively participates in the investigation, the solution rate immediately jumps to approximately 63 percent. The statistics underscore the success of BATF in the antiarson area. This recommended appropriation will ensure BATF's continued ability to continue the arson program at the 1984 level of operations.

In the U.S. Customs Service, the committee recommends funds to retain 923 personnel that were recommended in the budget to be fired, and we added an additional 650 positions. The budget proposes a reduction in personnel of 923 below present on board strength, including many customs officers. The committee feels that in view of the severe drug problem in this country, it is just not prudent to reduce the very agency that mans our borders and ports of entry.

This was a subject of great discussion before the committee, and I think it was acknowledged by all that this is one of the problems that weighs most heavily upon the American people, and that is the importation of narcotics coming from all over the world. It is this agency that acts to stop that, and it has been successful and will continue to be successful only if properly funded. The committee believes that the high level of drug abuse and related crimes in this country require a strong law enforcement effort to stem the tide of illicit drugs coming into the United States.

The proposed reduction would also slow down the processing of visitors to this country and of our own citizens returning from abroad. Further, this reduction would also slow down the processing of commercial goods being imported into the United States, and, more importantly, this reduction would have a severe adverse impact on the Government's ability to interdict the flow of illegal drugs and other contraband into the country, as well as its ability to prevent the illegal exportation of high-technology items to unfriendly countries.

This requires an appropriation of $65 million over the budget. In addition, the committee has recommended $32 million—and that is the full budget request—to support the Customs Service air interdiction effort.

In the Internal Revenue Service, the committee restored $18.5 million in the investigations, collection, and taxpayer service activity in order to continue these programs at their present levels.

In the Postal Service, the committee provided $1,040,509,000, the amount necessary to keep the postage rates for nonprofit mailers at the present level for fiscal year 1985. This is an increase of $349 million over the budget.

The committee also directed the Postal Service to continue 6-day mail delivery, including rural mail delivery. These details can be seen on pages 26, 27, and 28 of the committee report, which provides the details that will give Members the required information.

Now, in the National Archives and Records Service, the committee added $9.2 million over the budget—$4 million for grants for historical publications and records, and $5.2 million for additional on-site archival space and access facilities and auditorium and meeting space at the John F. Kennedy library.

For allowances for former Presidents, the committee recommends the full amount requested in the budget, and details of the amounts used can be found on page 55 of the report.

The committee recommends continuation of the language contained in the continuing resolution for 1984 which delayed implementation of certain personnel reforms proposed by OPM.

Mr. Chairman, I think that this is a good bill. The committee has worked long hours on it. I think it is a bill that can and will be supported by both sides of the aisle in this House.

Mr. Chairman, I reserve the balance of my time.

Mr. MILLER of Ohio. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, our very capable chairman has given a good summary of the bill, and I will not take the time of the House to duplicate all the information he has provided. I do want to take this opportunity to commend him for his hard work and the careful attention he has given to this bill, and to thank him for the courteous manner in which he conducts the business of the subcommittee. The other subcommittee members are also to be commended for their hard work. Lastly, I want to add a word of appreciation to our staff, Tex Gunnels and Bill Smith, for the time and effort they have put in on this bill. They, too, are always courteous and helpful.

I will not detail the amount provided for each of the departments and agencies funded under this bill. I will just provide a brief rundown of the bill totals by title, highlighting those areas in which we have exceeded the administration's requests.

This is a $12.8 billion bill. This amount is $800 million over the fiscal year 1984 level, and $432 million over the President's request.

The total for title I, Department of the Treasury, is $5,247,293,000. This exceeds the administration request for Treasury by about $89 million. The largest increase over the budget request in this title is $65 million for the Customs Service.

This increase came in two stages. The subcommittee added $36 million to provide for the restoration of 923 positions that the administration proposed to eliminate. Then, in full committee, an additional $29 million and 650 positions were added.

Other increases in title I, in addition to the Customs increase, were $18.5 million for the IRS, $7.5 million for the Bureau of Alcohol, Tobacco and Firearms, and $2.6 million for the Secret Service. The increases in IRS and ATF were, again, for restoration of some positions the administration felt were unnecessary because greater productivity could be achieved through better management and systems modernization. The additional amount for the Secret Service was for improvements to the training center.

Title II is the appropriation for the Postal Service. The total amount in this title is $1,040,509,000. This includes a payment of $239,500,000 to cover unfunded liabilities of the former Post Office Department. The $239.5 million amount is the same as the administration request. The remaining $801 million is for revenue forgone, which is a subsidy for certain mails such as charities, nonprofit magazines, small newspapers, library materials, and mail for the blind and handicapped. The amount provided for revenue forgone is $349 million above the President's budget. Under the administration request, the subsidized mailers would have experienced a substantial rate increase. With the amount the committee has provided, the current rate for subsidized mailers will be maintained throughout fiscal year 1985.

The total for the Executive Office of the President Agencies funded under title III is $100,695,000. In each case the committee provided the full amount of the budget request.

The total for title IV—independent agencies—is $6.4 billion. This is $5.5 million below the administration request. The largest single reduction was $17 million in the general management account of the General Services Administration. The subcommittee provided an increase of $2.6 million for the Federal Election Commission. An increase of $9.2 million was also provided for the National Archives.

Almost half of the spending in this bill is mandatory. The Office of Personnel Management is funded in this bill, and in addition to appropriating OPM's operating budget, we must also appropriate a payment to the civil service retirement and disability fund and a payment for Federal annuitants health benefits. These two mandatory payments together total $5.7 billion.

Amounts of permanent budget authority—not included in our bill total—are made available to some of the departments and agencies funded by our subcommittee. One such item of permanent authority is the payment of interest on the national debt. Our subcommittee appropriates directly the operating budget for the Bureau of Public Debt. Included in our bill total is $198 million for the Bureau of Public Debt, which is the amount of the budget request. But the interest payment on the national debt—which is provided for under permanent authority—is expected to reach $164.5 billion in fiscal year 1985—nearly 13 times our bill total of $12.8 billion.

Several language items may be of particular interest to Members. The bill again includes language barring the Office of Personnel Management from implementing proposed personnel regulations relating to reduction-in-force procedures and a new performance-based incentive system for Federal civilian employees. The bill also includes language prohibiting the funding of abortions under Federal employees health benefit plans unless the mother's life is in danger.

The administration objects to the language continuing the ban on implementation of OPM's proposed personnel regulations. In addition, the administration objects to three other language items. These are:

Prohibition on reducing, consolidating, or centralizing any of the Customs Service's offices.

Language expanding GSA's Public Building Service authority by permitting the lease/purchase of selected new facilities.

And language prohibiting the Office of Management and Budget from reviewing agricultural marketing orders.

The administration also, of course, opposes the funding increases contained in the bill, and urges that the language items and the spending increases be addressed by the House.

□ 1340

Mr. ROYBAL. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. ADDABBO].

Mr. ADDABBO. Mr. Chairman, I want to commend our subcommittee chairman, ED ROYBAL of California. No one who watched him on the floor of the House these past weeks on the immigration legislation can doubt the industry and stamina he brings to any undertaking. I extend my personal respects to him and to the ranking minority member, CLARENCE MILLER of Ohio. They, and every member of our subcommittee, have worked hard on this bill. I also want to thank our subcommittee staff, Tex Gunnels, Bill Smith, and Leslie Pardo for their invaluable support.

The fiscal year 1985 Treasury, Postal Service, and general government appropriation bill provides $12.78 billion in new obligational authority. This amount is $432 million over the budget request and continues the support of the House for the Postal Service Revenue Foregone Program. We can afford this excess for this bill brings in more revenue then it spends and protects people.

Title I of the bill provides funding for the Department of the Treasury. Among the primary responsibilities of the Secretary is the conduct of domestic and international monetary policy. The committee report again this year expresses our intent that U.S. representatives on the multilateral development banks should strongly oppose loans for textile and apparel projects which might lead to additional imports. Our own domestic industries have been subjected to a virtual giveaway policy to foreign competition funded with our own taxpayers dollars. We expressed this concern last year. We have repeated it this year. Unless action is taken I personally would support bill language to force all U.S. delegations in every international forum to remember who they are—our representatives—and to act accordingly.

Our national interest is equally at stake when we view proposals to shrink the law enforcement and revenue collecting arms of the Federal Government.

The Congress has already rejected the administration's proposal that would have terminated the Bureau of Alcohol, Tobacco, and Firearms. This year we are acting to ensure that the BATF level of effort is not gradually whittled away. A reduction of 176 positions in the Alcohol Enforcement Program was proposed. A reduction of only 25 has been allowed. The proposal to shift 33 positions out of the Arson Program was rejected. Arson is a critical problem in my city of New York, and elsewhere. We need more, certainly not less, Federal support for our battle against this heinous crime.

BATF is also responsible for enforcement of the Cigarette Smuggling Program. The interstate bootlegging of cigarettes circumvents State tax laws and has cost millions of dollars in lost revenues to our State of New York. Nationwide, the losses amount to hundreds of millions of dollars. Last year I opposed the administration's decision to terminate the Federal enforcement effort and was successful in maintaining the program. This year I am pleased to note that reason has prevailed and funding was included in the fiscal year 1985 budget request.

As Members know, any weakening of our Customs Service would have severe impact in every State in the Union. Our industries, our jobs, are reliant upon customs enforcement of our trade and tariff laws. Drug abuse is not a problem confined to the big cities. It is a growing problem everywhere, from coast to coast and border to border. We are reliant upon customs to stem the tide of drugs coming into the country to the maximum extent possible. Passengers and goods moving legitimately into and out of the United States must be processed efficiently. And that, again, is a job of the Customs Service. To carry out their ever-increasing law enforcement and revenue-collecting responsibilities the Service must have trained, experienced people in adequate numbers, in the right place, at the right time, and ever on alert. There is no machine that can substitute for an officer on the beat.

I firmly support the action of the committee which added $65 million; rejected the proposal to RIF, yes RIF, nearly 1,000 customs personnel; added 650 additional positions, and directed the Service to fill the authorized positions which are currently vacant. Additionally, I proposed language in the report to put in place proven procedures and equipment to assist customs in meeting the projected workload increase in future years.

The committee report notes that the administration is proposing to consolidate certain primary functions of the

Customs Service and the Immigration and Naturalization Service. We have directed that that consolidation not proceed until Congress has reviewed and approved the plan.

When the budget was submitted to the Congress last February the committee noted that funding for support of the Customs Air Interdiction Program had been slashed. Testimony revealed that the Service had acted on the premise that the Department of Defense should pay for the maintenance of military equipment made available for use by customs. This proposal was not approved by DOD, and no funding had been included in their budget for that purpose. The issue was resolved by the submission of a Treasury budget amendment in time for inclusion in the subcommittee markup. It is mildly interesting that the Treasury Department assumed that the Defense budget included excess funding that could better be spent on other needed programs!

For the Internal Revenue Service, the committee has gone along with a number of the personnel increases and reductions proposed in the budget. In the area of investigations, collection and taxpayer service, however, I proposed the restoration of 500 of the more than 700 positions the budget would have reduced. The report again underscores our dependence on voluntary tax compliance and the need for the strongest possible enforcement activity against those who persistently dodge their legal tax obligations. At the same time, we have continued our support for the Taxpayer Service Program to assist and advise honest taxpayers in filing their returns.

Title II of the bill covers payments to the Postal Service. The Revenue Foregone Reimbursement Program, which I strongly support, is funded at $801 million in order to maintain the current rates charged to our charitable and other nonprofit organizations.

Title III provides the exact amount requested by the administration for the Executive Office of the President.

The general Government title of the bill covers a number of offices and activities that collectively account for $6.39 billion in new obligational authority. This amount is one-half of the total funding included in the bill. Among the larger offices in title IV are the Office of Personnel Management and the General Services Administration. I am pleased to report that this year we start actual construction of our Jamaica, NY, Federal Office Building with occupancy scheduled to begin in 1986. As work goes forward, the committee has again urged the contracting officer to provide the maximum practicable opportunity for local participation of minority contractors in the performance of subcontracting work, in accordance with the law.

In sum, this is a good bill. I urge its swift adoption by the House.

Mr. MILLER of Ohio. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky [Mr. Rogers].

Mr. ROGERS. Mr. Chairman, I thank my colleague for yielding me the time.

Let me open by saying, Mr. Chairman, that our distinguished chairman, the gentleman from California, and the ranking member of our subcommittee, the gentleman from Ohio [Mr. Miller] have worked long and hard on this bill, as well as the other members of the subcommittee.

I think the gentlemen in the leadership and the committee I think overall have done a remarkable job on this bill and I rise in strong support of the bill for that reason.

Let me highlight some of the salient features of the bill that I think are important to most Members. Let us talk a moment about the Customs Service and how significant that is to all of us. This bill provides about $650.3 million for salaries and expenses, which is in fact $65.4 million over the fiscal year 1984 level and it does restore significant numbers of positions in the Customs Service. While that figure may be open for debate, perhaps there could be some change in that downward, nevertheless it is within I think a good ball park, because the Customs Service brings in money. It is one of those money-earning agencies of this Government. For every dollar spent in the Customs Service, you realize $17 of income.

I would point out as well the importance to those in the steel-producing sections of the country, where in the Customs Service the accuracy and the classification of the imports in steel can make or break certain sectors of the steel industry. That is why it is important that we provide adequate funding for the Customs Service.

It is important to the textile industry, where overseas exporters have a history of skirting our trade agreements and where already double-digit unemployment exists in this country.

It is important in combating drug imports. I would remind all of our colleagues that the drug and narcotics problem in this country is reaching epidemic proportions. Ninety percent of those illegal narcotics and drugs used in this country are produced abroad. The problem is, in fact, escalating. The Select Committee on Narcotics recently reported that the manufacture of drugs in source countries is in fact increasing dramatically under bumper crops. The increased availability of drugs in this country substantiated by the falling prices of the markets around the country; cocaine street price is just one-third of what it was 1 year ago.

Today there 10 times the number of heroin addicts in this country than there were just two decades ago.

The best way to solve the drug problem, the problem of drug addiction, is to reduce the demand, but until that time every dollar spent on preventing drugs from entering this country would save us many more dollars in lost work days, crime, treatment centers, and the pure misery that it causes.

For anyone who knows a parent suffering from the dread of a child's addiction to narcotics from abroad, this increased funding for the Customs Service is of unquestionable value.

Another important feature of the bill I think is its revenue foregone provisions in the Postal Service. The bill maintains the current postage rate of nonprofit mailers and rural newspapers, which I think is a very important feature of the bill. The importance of this as the Government role decreases and we begin to turn more toward the private sectors for meeting our social needs, this provision of the bill is terribly important to those agencies, charitable organizations, as a means of fund raising to provide those services.

□ 1550

And there are many, many groups supporting this particular feature of the bill, and I will not attempt to name them all. But, for example, the American Cancer Society, the American Lung Association, the March of Dimes, the National Easter Seal Society, the National Society To Prevent Blindness, the Salvation Army, Save the Children, and the AFL-CIO, and so on.

Let me get back a moment to the textile feature in the customs part of the bill. I would like to remind the Members that there is report language in this bill that the subcommittee inserted directing our delegates to these multilateral development banks to oppose loans for overseas textile and apparel projects with products meant for import into this country.

So I urge my colleagues to support this bill.

Mr. ROYBAL. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. Coleman].

Mr. COLEMAN of Texas. Mr. Chairman, I thank the gentleman from California, chairman of the subcommittee. This bill does contain a long-needed increase in the level of customs personnel.

As the chairman of the Congressional Border Caucus and as a representative with one of the two largest land ports of entry along the United States-Mexico border, I am well aware of the crisis situation our Nation faces with respect to delays of trade and tourism.

I have also been well informed about the low morale and increased job risks confronting our customs personnel. Indeed, this entire Nation should have been placed on notice about that increased risk as we lost the life of a customs agent in Del Rio, TX, very recently.

Mr. Chairman, I think that it is time that we finally discussed not just the appropriation and the increase of personnel that is sought in this legislation, but the real problem confronting this Nation because of what this administration has done and has failed to do. And I do not think it is right for us to remain silent on this subject.

This administration had proposed a consolidation of Customs and the Immigration and Naturalization Services they are two separate and distinct agencies, one under Treasury and one under Justice. And in proposing that merger they have frozen positions for customs.

We indeed have so many fewer customs personnel working along our borders enforcing our laws that they themselves are placed at risk. I do not think it is right for anyone in this Chamber or in this country or in this administration to cause these fine men and women who are trying to enforce the laws of our Nation to be placed at risk, indeed, of their own lives.

So, Mr. Chairman, I rise in support of this legislation and I only hope that this administration will see fit to provide the actual filling of those slots which have been created.

In that regard, Mr. Chairman, if the gentleman from California [Mr. ROYBAL] would permit me, I would like to engage in a colloquy on this section of the bill pertaining to the funding of the Customs Service. The funds provided under this section of title I would increase the level of customs personnel by 650 positions; am I correct in that statement?

Mr. ROYBAL. Will the gentleman yield?

Mr. COLEMAN of Texas. I am happy to yield.

Mr. ROYBAL. Title I of the bill would increase the level of customs personnel by exactly 650 positions.

Mr. COLEMAN of Texas. I thank the gentleman.

In the U.S. Customs authorization which was a bill that the House only, not the other body, has passed, called H.R. 5188, which we have already passed, of those 650 positions, 450 of those positions are to be customs inspectors. Does that pertain to this legislation, Mr. Chairman?

Mr. ROYBAL. If the gentleman will yield further I will be happy to respond by saying that it definitely does.

Mr. COLEMAN of Texas. I thank the chairman. I do have a list which was provided to me by the budget of the Customs Service which outlines the amount of vacancies of customs inspectors at each border point of entry. Using the fiscal year 1981 as the base level, as you will notice, the present level of customs inspectors is 154 below the fiscal year 1981 level.

In my own district, the El Paso point of entry, which is certainly one of the largest land port entries along the United States-Mexico border, the level is 14 below the 1981 level, nearly a 20-percent reduction. And according to the Customs Services officers I have spoken with, even with the restoration of the 1981 level, the number of inspectors would still be below the recommended level.

My question, Mr. Chairman, is will some of the additional personnel provided for in this bill be placed at the border points of entry in order to bring them up to at least fiscal year 1981 levels?

Mr. ROYBAL. It is the intention of the committee that personnel be placed at ports of entry. The gentleman is correct.

Mr. COLEMAN of Texas. I thank the gentleman very much for engaging in the colloquy. I only submit to the Members of Congress that the time has finally come that we force the issue upon this administration to actually fill the slots because we can no longer put our law enforcement people at risk, as they have been doing.

I thank the chairman.

Mr. Chairman, this bill contains a long needed increase in the level of customs personnel. As the chairman of the Congressional Border Caucus and a Representative with one of the two largest land ports of entry along the United States-Mexico border in my district, I am well aware of the crisis situation our Nation faces with respect to the delay of trade and tourism. Furthermore, I have been well informed of the low morale and increased job risk confronting customs employees.

Mr. Chairman, as the committee is well aware, the Customs Service is presently understaffed by 197 positions for which it was budgeted last year. With respect to the border, I have been able to obtain data from the budget office of the Customs Service which shows that the level of customs inspectors is 154 positions below the fiscal year 1981 level.

The result of all this as been further delays at all crossings, which was confirmed by Customs Commissioner William Von Raab at a meeting with me last week. As a matter of fact, Mr. Von Raab admitted that inadequate staffing was a problem at ever border port of entry. When asked what the Congress could do, he said give him the resources.

Mr. Chairman, this bill does three important things with respect to the problems we are facing at our borders. First, it increases the level of personnel, above the fiscal year 1981 level in order to handle increasing traffic at ports of entry. Second, in the report, the committee expresses its intent that the Customs Service will fill the present vacancies for which it has been budgeted, and will hire the additional personnel provided for in this bill. And third, this bill provides the resources asked for by the Commissioner of Customs.

The situation at the border ports of entry is severe. We have already experienced one death in Del Rio, TX, due to the lack of personnel, and thus inadequate security. In El Paso, we too have had dangerous experiences. Along with that, those who live along the border, who must cross daily as one may go from Washington to Virginia or Maryland are becoming further disgusted with the situation. As a result of their discontent, they blame the Customs Service, whom I believe, as does the committee, is not to blame. If we are to keep this boiling pot from exploding, pass this bill, and provide some relief to our borders.

Thank you, Mr. Chairman.

Mr. MILLER of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina [Mr. HARTNETT].

Mr. HARTNETT. I thank my distinguished ranking member for yielding. I wish to express sincere appreciation to the chairman of the subcommittee, the gentleman from California [Mr. ROYBAL].

I realize, Mr. Chairman, that this is general debate time on this bill and it is not open for amendments at this time. But I intend to offer an amendment to the general provisions section of this bill which I would urge my colleagues to help me with.

It is my understanding that the chairman and the ranking member of the subcommittee have agreed to accept this amendment. Let me briefly explain what it will do when I offer it.

We have in Charleston, SC, an intersection of two streets known as our four corners of law. We have located at those corners the city hall, the county courthouse, St. Michael's Church, and the Federal courthouse and postal facility.

The General Services Administration has proposed to build an annex to our courthouse facility there which is in complete violation of all of the historic value of the buildings and of the National Advisory Council for Historic Preservation, and the mayor and the city council.

In this four-block section there are over 22 national historic landmarks and in the city of Charleston itself over 2,500 buildings with historic value to the country.

What we are going to urge the committee to do, urge the House to do, Mr. Chairman, would be to adopt an amendment which would in fact say no funds appropriated by this act or any other act shall be available for construction of an annex to the U.S. Post Office.

I have furnished the chairman with telegrams from the mayor of the city of Charleston, from the city council, from the Charleston Preservation Society, from the Charleston Historical Society, and the National Advisory Council on Historic Preservation, all endorsing this amendment.

I am sorry to have to take this time to explain it, but I was hoping that if any of my colleagues had any questions on it they would ask me about it now so that I might explain it and not take up their time during the debate section.

Mr. ROYBAL. Will the gentleman yield?

Mr. HARTNETT. I am happy to yield.

Mr. ROYBAL. The gentleman is correct, this is not the correct time to present his amendment. But the arguments in favor are quite persuasive.

The CHAIRMAN. The time of the gentleman from South Carolina [Mr. Hartnett] has expired.

Mr. ROYBAL. Mr. Chairman, I yield the gentleman an additional minute.

I have in hand a telegram sent by the mayor and the city council of Charleston and they oppose it. I have a telegram from the Charleston Foundation which is also in opposition.

It seems to me that your viewpoint is well represented by these telegrams, and that they clearly state the opposition that exists to this project.

Mr. HARTNETT. Mr. Chairman, I appreciate that and I want you to know that the citizens of Charleston and preservationists everywhere across this country will be grateful for the steps you can take today if you will help me with this, and I sincerely appreciate your cooperation and help.

I yield back the balance of my time.

Mr. ROYBAL. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin [Mr. Obey].

Mr. OBEY. Mr. Chairman, I, too, would like to say a few words in support of the words already indicated about the hard work put in by both the gentleman from California [Mr. Roybal] and the gentleman from Ohio [Mr. Miller]. We may differ on substance, but I think they are two of the hardest working Members of the House.

I simply take this time to bring to the attention of the House a series of amendments which either I or the gentleman from Georgia [Mr. Levitas] will be offering on the White House budget, and on the OMB budget, and also an across-the-board budget cut which I will be offering at the end of the bill.

☐ 1400

On the across-the-board item, I will be offering an amendment which requires all discretionary items in this bill to be reduced by 64 percent. I will be doing that for two reasons. First of all, because the President goes on television and he has continually told the American people that he, in his heart, is really for a balanced budget and in fact he is so much for a balanced budget that he is for a constitutional amendment to balance the budget.

However, he wants it to only go into effect in the hereafter. He does not want it to go into effect at the present time and he has presented to the Congress, as you know, a budget for the following fiscal year which is out of balance by almost $180 billion.

The second reason I am offering it is because frankly a lot of Members in the Congress like to pose for holy pictures on the issues of balanced budgets. This will give Members an opportunity to really vote for an amendment that would if spread over the 13 appropriation bills actually balance the budget.

I think you could call it the Put-up or Shut-up Balanced Budget Act; I think you could also call it the Hypocrisy Reduction Act of 1984. The figure 64 is arrived at for a very simple reason; we have no authority in appropriation bills to reduce spending for mandatory items.

So therefore if we are going to balance the budget solely through the appropriations process, it is necessary to reduce every act which is of a discretionary nature by 64 percent. That is what my amendment will do.

I do it to illustrate how serious the situation is and how deeply we would have to cut into each discretionary program if the White House and the Congress continue to refuse to recognize that we have to put strong limits on the military budget and also deal with the rapid growth in entitlement programs.

I also do it because it is my view that the approach which has been taken around here to limit or to reduce across-the-board appropriation bills by 1 percent, 2 percent, 4 percent, represents simply a symbolic effort. It really accomplishes very little.

It just seems to me that what it does is to encourage committees around this place to simply add 2 or 3 percent to their original numbers, so that the Congress can then pretend it has done something by cutting 2 or 3 percent. In contrast this would give you an opportunity to really do something real.

Unless Mr. Levitas does so, I would also offer amendments which would limit the increase in the White House and OMB's budget to the same amount of increase provided in the legislative appropriations bill for House operations before the 2-percent cut was adopted when it was offered by Mr. Frenzel. We would treat the White House the same way we attempted to treat the House of Representatives and it seems to me that is only fair.

I simply wanted to put the House on notice that those amendments will be offered at their proper time.

Mr. MILLER of Ohio. Mr. Chairman, I yield 10 minutes to the gentleman from Massachusetts [Mr. Conte].

Mr. CONTE. Mr. Chairman, I, too, want to join with many of my colleagues to commend the chairman of the subcommittee, my good friend, Ed Roybal from California and the ranking minority member, my good friend, Clarence Miller for a fine job in bringing this bill to the floor.

Over the years, especially last year, this particular appropriations bill has become a very difficult bill to handle. In the last session, both gentlemen, Chairman Roybal and Mr. Miller, demonstrated determination and exceptional leadership by passing the fiscal year 1984 bill in October, after, after the bill went down here in the House of Representatives.

Their hard work, their perseverance, are a credit to the Appropriations Committee and to this House.

I served on this committee as a ranking minority member when I first came to the Congress 26 years ago. And I served under some real giants; Mr. J. Vaughan Gary of Virginia and my good friend, the late lamented Tom Steed of Oklahoma. I said in full committee, and I say it here, Ed Roybal has really filled their shoes. He has been a good chairman. He has been a fair chairman, and he is one of the most decent human beings that I have had the privilege of meeting here in the House.

Of course he has had the great help of our good friend, Tex Gunnels. Tex has been with that subcommittee for the entire 25 years that I have been on the Appropriations Committee, and he is as good now as he was 26 years ago.

I will submit my prepared remarks for the Record, but I want to address a few issues in this bill. I have a letter here from my good friend "the young slasher," who is very upset about this bill. He mentions a serious problem the administration has with this bill: the addition of 650 new positions for the Customs.

He writes in the letter:

> The requirements to operate at a fully authorized level, without vacancies, and to stipulate staffing levels for certain functions and locations unduly restrict agency management prerogatives.

I will submit this entire text for the Record.

The letter follows:

Office of Management and Budget,
Washington, DC, June 19, 1984.

Hon. Silvio Conte,
House of Representatives,
Washington, DC.

Dear Sil: As the House prepares to consider the 1985 Treasury, Postal Service, and General Government Appropriations bill, I want to review the Administration's major concerns about the bill reported by the House Appropriations Committee.

The total for annually funded discretionary programs approved by the Committee exceeds the deficit down payment plan's cap on discretionary appropriations. Moreover, the bill contains a number of program level funding excesses and language provisions that the Administration finds objectionable.

The major increases in the bill relative to the President's budget are for Treasury's law enforcement bureau's (Customs, Alcohol, Tobacco, and Firearms, and Secret Service—$75 million), the Internal Revenue Service ($19 million), and the payment to the Postal Service ($349 million). The increases for Customs, Alcohol, Tobacco, and Firearms, and the Secret Service hinder ongoing efforts to achieve more efficient use of personnel and other resources in these bureaus.

The Administration objects particularly to the Committee's staffing provisions for the Customs Service. The addition of 650 new positions lacks justification. The requirements to operate at a fully authorized level, without vacancies, and to stipulate staffing levels for certain functions and locations unduly restrict agency management prerogatives.

The increase for IRS provides additional unneeded staff, while the increase for payment to the Postal Service continues the excessive subsidization of preferred-rate mailers.

The objectionable language provisions would:

Expand GSA's Public Building Service authority by permitting the lease/purchase of selected new facilities. The change is an inappropriate extension of Federal credit that will permit GSA to build projects that could not otherwise be funded from current Federal Buildings Fund resources.

Prohibit the use of funds to implement proposed OPM personnel regulations. These proposed regulations would implement new reduction-in-force procedures as well as establish a new performance-based incentive system for Federal civilian employees. These regulations represent an attempt to implement many of the stated principles of the Civil Service Reform Act of 1978.

Prohibit the Customs Service from reducing, consolidating, or centralizing any of the Service's offices. This is an inappropriate interference with agency management and efficiency.

Prohibit the use of Office of Management and Budget funds appropriated in the bill to review any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937. Agricultural Marketing orders were identified early in 1981 by the Presidential Task Force on Regulatory Relief as a type of regulatory program needing reexamination and possible modification. From 1981 to 1983, marketing order rules were reviewed for consistency with the President's program under Executive Order 12291 on the same basis as all other agency regulations. The Administration finds this provision highly objectionable because it would purport to restrict the President's exercise of fundamental Executive oversight authorities under the Constitution.

I hope that when this bill is considered by the full House you will support the elimination of unwarranted spending increases and removal of objectionable restraints and thereby establish the basis for an acceptable bill.

Sincerely,

DAVID A. STOCKMAN.

Mr. CONTE. Let me review this situation with you. The budget request by the administration proposed a cut in the salaries and expenses of the U.S. Customs Service. I might say, before I start, that this may be a moot question. I understand my good friend from Minnesota, BILL FRENZEL, will raise a point of order against this section due to a lack of authorization, and of course that point of order will be sustained. So it will be a moot question.

If this amendment was not a moot question, then I was ready to make a fight here on the floor of the House.

The amendment that I intended to offer would have been relatively painless but absolutely necessary to maintain the viability of this bill. If adopted, my amendment would reduce by $29 million the funding level for salaries and expenses of the U.S. Customs Service. In effect, 650 new customs personnel, now unauthorized, would be deleted.

This $29 million add-on—deleted by my amendment—was included in the bill during the full committee markup, despite the recommendation of the subcommittee. Chairman ROYBAL and most of the subcommittee members agreed that this addition of new personnel for the Customs Service was unnecessary and impractical at this time. However, the subcommittee did restore the proposed cut by the administration of 923 positions or some $36 million. During the hearings and subsequent markup, the subcommittee closely examined this question of increased customs personnel. Realizing the fiscal mess we're in and considering the merits of new positions during a current hiring freeze, the recommendation was clear to me: not now.

We must, at some point, hold the line on new starts and increased personnel. I'm not saying that we should dismantle the customs enforcement effort. At this time, however, we cannot afford the luxury of increased personnel without compelling justification.

As the chairman [Mr. ROYBAL] explained earlier, this bill is $432 million above the President's request and $837.3 million above the fiscal year 1984 level. The Customs Service alone is $65.4 million above or 10.8 percent more than last year's appropriation.

As regular as clockwork, the "young slasher" sent me, just yesterday, my "Dear Sil" letter on this bill. As expected, he's not very pleased. Let me read to you his comments on the committee's recommendation for increased customs personnel levels. Mr. Stockman warned that "the administration objects particularly to the committee's staffing provisions for the Custom's Service. The addition of 650 new positions lacks justification."

On this point, I agree with the young slasher. Considering the improved efficiency and centralization of the Customs Service, there's no compelling reason to increase funding at this time.

Over the past several years, the efficiency of Customs operations has increased tremendously, despite personnel cuts. From fiscal year 1981 to fiscal year 1983 total employment in the Customs Service dropped by 418 average positions or about 3 percent. In fact, the number of customs inspectors decreased by over 6 percent.

During the same period of time—when personnel levels were cut—customs enforcement and drug interdiction programs were demonstrating remarkable success. Take, for example, the effort by customs to stop the flow of cocaine into this country. In fiscal year 1982, more than 11,000 pounds of cocaine was seized, an increase of more than 200 percent above the previous year. In fiscal 1983, the seizures reached almost 20,000 pounds or more than 400 percent above the fiscal year 1981 level. In total, over $5 billion of cocaine sales have been taken off the streets by the customs enforcement effort.

I'm proud of the work these investigators and inspectors have done. They deserve the recognition and encouragement of Congress, but not the company of more coworkers. The centralization and increased efficiency of customs enforcement efforts has produced results.

In closing, let me make two observations about the effect of this personnel increase.

First, in practical terms, this $29 million add-on recommended by the committee will not have its desired effect, but will only load down this already over-budget bill. Currently, there's a hiring freeze on at Customs. In fact, according to the Commissioner's testimony before the subcommittee, many positions budgeted for this fiscal year remain unfilled. Common sense suggests that if current levels can't be maintained, then new positions will not be filed.

Second, this amendment would have offered a relatively painless and reasonable approach to cutting excessive spending in this bill. As I mentioned before, the spending total in this bill is $837.8 million above the last year's level. Those opposed to across-the-board cuts should have supported this amendment.

Be prepared. If there's no serious attempt to reduce spending levels in a rational way, then you can count on this irrational approach. An across-the-board cut will adversely affect nonprofit organizations benefiting from postal revenue foregone, will hamper new Federal building starts and improvements in districts across the country, and will curtail increased enforcement and collections efforts by the IRS. We should cut where the adverse impact will be minimal.

I understand the gentleman has cited a very impressive statistic about our Customs Service. For each dollar spent on Customs, over $17 in revenues is generated for the Treasury.

This sounds like a good deal to me. I wonder if the gentleman has considered the far-reaching benefits of this excellent rate of return for the Federal dollar. Just think, with enough funding for Customs we can balance the budget. According to my calculations, it would take only $11.8 billion for Customs to solve one of the most pressing problems facing this country today, a challenge unmet by the President, this Congress, or several commissions.

I would suggest that the gentleman consider this possibility.

H.R. 5798—TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS BILL, 1985

(Roybal, California)

The total for annually funded discretionary programs provided in the bill exceeds the deficit down payment plan's cap on discretionary appropriations. Moreover, the bill reported by the House Appropriations Committee version of the bill contains a number of program level increases and objectionable language provisions. Action by the House to reduce the unnecessary funding increases and remove the objectionable language provisions would establish the basis for an acceptable bill.

The items of most concern in the bill include:

An increase in the Treasury Law Enforcement bureaus of $75 million. The $65 million Customs Service increase is particularly objectionable. The addition of 650 position lacks justification, and the requirements to operate at a fully authorized level, without vacancies, and to stipulate staffing levels for certain functions and locations unduly restrict agency management prerogatives.

An increase in IRS of $19 million that provides 500 new positions for investigation and compliance. During this Administration, collections staff has increased by over 20 percent in efforts to increase taxpayer compliance.

An increase of $349 million over the President's request for the payment to the Postal Service fund. This action will continue an unnecessary subsidy to non-profit mailers at taxpayer expense.

Expansion of GSA's Public Building Service authority by permitting the lease/purchase of selected new facilities. The change is an inappropriate extension of Federal credit that will permit GSA to build projects that could not otherwise be funded from current Federal Buildings Fund resources.

Continuation of the ban on OPM's implementation of regulations on reduction-in-force procedures and performance based incentive systems. OPM's proposed regulations implement personnel practices that would enhance the role of an employee's performance when considering RIF's and promotions.

A prohibition from reducing, consolidating or centralizing any of the Customs Service's offices. This is an inappropriate interference with agency management and efficiency.

A general provision (Section 512) providing that no funds appropriated for the Office of Management and Budget be used for reviewing Agricultural Marketing orders. The Administration finds this provision highly objectionable because it would purport to restrict the President's exercise of fundamental Executive oversight authorities under the Constitution.

I heard my good friend just speak about our borders. I am as interested in the borders as anyone else. I have traveled to those borders with customs officials, throughout the 26 years that I've been on the committee.

I have also come down on the side of Customs. We have an internal fight in Treasury Department right now where they are trying to consolidate Customs with the Immigration Service.

ED ROYBAL and I came on the side of Customs. We fought it, we stopped it. So we do not have to show our credentials here today on where we stand on Customs.

I had a customs official in my office this morning, and I spoke to him like I am going to speak to you right now.

The administration tried to cut 923 positions from Customs. This committee, under the leadership of ED ROYBAL and CLARENCE MILLER, put those 923 positions back in. Then an attempt was made by my good friend JOE ADDABBO of New York to add another 650 agents, and that amendment was defeated.

When the bill was considered in the full committee, Mr. MURTHA of Pennsylvania offered an amendment supported by the steelworkers. We debated that issue, and I lost it in full committee.

Let me go back one step further. I checked the record, and I checked the hearings of this year. We appropriated enough funds last year to provide 13,370 average positions. The Customs Commissioner reported that 500 of those agents and inspectors were never hired. The positions were left vacant.

Therefore, in full committee, I put language in, as a substitute to the Murtha amendment, mandating that Customs hire those 500 agents. That is what we ought to go after—the jugular vein. We should make Customs hire those 500 vacancies still unfilled.

Recently I returned from Canada through Duluth, MN, and we checked out Customs there. You should go up there before you start voting for these amendments. You ought to visit some of these places. They built a $1.5 million facility to handle foreign visitors coming into Duluth, MN. A $1.5 million building for foreign visitors coming into Duluth, MN.

The last two times I have been in Duluth, MN, it was like a morgue; no one was there, not a soul was there. So I talked to the customs official, I said, "How many foreign planes do you get here a year?" He said, "Three, we will have three planes coming in here this year." I said, "How many customs agents do you have here, inspectors in Duluth?" "Five," he responded. I asked, "How many private planes do you get in?" He said, "Yesterday was a stormy day; there were none. Today there were eight."

□ 1410

Their planes are either two-seaters, maybe five-seaters at the most. It takes about 5 to 10 minutes to check out. Usually fisherman coming down from Canada or a few business people. It takes about 10 minutes to clear customs through Duluth, MN.

We have five people here. He said, "We are bored sick. We have nothing to do. We are just sitting here. Why doesn't somebody from the customs office go around to some of these border stations and find out where they have no work and take some of us and put us down on border stations, down in Laredo and other places where there is a lot of work."

I said it was a good idea. I am going to mention that on the floor. And I did mention it to the customs official in my office this morning.

But really what we ought to go after here is forcing the administration to fill the 500 vacancies that we have rather then moving forward with 650 more. What good is it if they are not going to hire them? Let us force them to hire the people that we have provided the funds for in this particular bill.

As I say, this will be a moot question. BILL FRENZEL will raise a point of order, and we will not be able to debate it. Otherwise I was ready to debate this issue and I had hoped that the House would see the wisdom of going along with me because this budget is pretty close to being on target, even though it is over in some respects. It is pretty close to going over on target, but I was told by Dave Stockman and I will repeat here, that if the 650 additional customs agents were to go in here, then the bill would be vetoed. And believe me, if there ever was a bill where a veto could be sustained it is this bill here. It has got the abortion amendment. The liberals do not like it. It is an easy vote for them. The conservatives on this side of the aisle do not like the bill because it goes over the administration's budget. They are ready to vote to sustain the veto.

So what do we end up with? We end up with a continuing resolution.

I have been around this Congress 26 years. I would like to see something done. This committee has worked so hard and laboriously for weeks and weeks to get a bill.

Mr. FRENZEL. Mr. Chairman, will the distinguished coach of the Republican baseball team yield?

Mr. CONTE. I would be glad to yield to my good friend from Minnesota.

Mr. FRENZEL. I thank the gentleman from Massachusetts.

Coach, manager, spiritual leader, and everything else, may I inquire of the gentleman if that is his victory uniform he is wearing today?

Mr. CONTE. It certainly is.

Mr. FRENZEL. I thank the gentleman.

Mr. CONTE. On another issue, my good friend, Dave Obey and I have worked together for a long time, and we are friends. I think Dave would agree.

But, Dave, I have always voted against these across-the-board cuts and I agree with the gentleman. I think they are wrong. The only time I ever voted for one was on the legislative bill, and it was for a good reason. But I always vote against them because I think if you are going to cut this bill go after certain items in the bill. Let us fight it out and let the chips fall where they may. Vote it up or down, but do not go across the board and cut after all the work the committee has done. It is an easy way out, but it is a bad way to legislate.

I hope that we will not make this debate into a partisan issue by trying to cut the Executive Office of the President. We have always had comity in this Congress. The White House does not bother with the Congress; the House does not bother with the Senate, and the Senate does not bother what we do. We do not bother with what the Supreme Court does. Let us not start getting into that wrangle. We are not free from criticism. There are plenty of abuses right here in our own budget, in the House of Representatives, that the White House could demagog on us. I hope we will not do that.

Mr. Chairman, I rise in support of H.R. 5798, the Treasury/Postal Service appropriations bill for fiscal year 1985. Let me say from the outset that I will support final passage of this bill, but I am concerned about several provisions, including the overall funding level increase.

As recommended by the full committee, H.R. 5798 provides a total of $12.8 billion in new budget authority in fiscal year 1984 for the departments, agencies, and commissions funded under this act. The bill is $432 million above the President's request and $837.8 million above the fiscal year 1984 level. Overall, the funding level in this bill is 7 percent more than provided in fiscal year 1984.

Faced with these overall funding increases, the overriding questions that all Members must ask are obvious: Where's the increase and why?

Almost 90 percent of the funding increase over the fiscal year 1984 level can be attributed to four accounts.

First, the bill provides over $1 billion in fiscal year 1985 for the Postal Service, $801 million for the revenue "foregone subsidy." This payment covers Postal Service carriers from delivering rural newspapers, books, magazines, and other "preferred mail" for less than cost. Thousands of nonprofit organizations across the country benefit from this subsidy. Some organizations use the reduced rates to raise funds for private sector projects and programs that compliment public assistance programs.

The administration proposed a $427 million reduction below the fiscal year 1984 level in the revenue forgone subsidy. The committee report clearly predicts the impacts of this proposed cut:

> A reduction of the magnitude proposed in the budget request would result in an average increase in postal rates of about 50 percent for preferred rate mailers.

The committee recommended that this subsidy be kept at a level high enough to maintain current services. As a result, the Federal payment to the Postal Service is $161.5 million above the fiscal year 1984 appropriation.

Second, the appropriations for the Internal Revenue Service is increased by more than 8 percent under this bill. Of the $270.6 million increase, $18.5 million was added to the President's request to hire an additional 500 personnel to investigate tax evasion. The committee expects this IRS enforcement effort to increase general revenue and to pay for this additional personnel many times over. In any case, the increase for the Internal Revenue Service is $270.6 million over the fiscal year 1984 level.

Third, $65 million was added to the President's request for the U.S. Customs Service. The Treasury-Postal Subcommittee wisely recommended a restoration of $36 million or 923 positions targeted for elimination by the President's budget. The subcommittee rejected an attempt to load down the bill with an additional 650 new positions at a cost of $29 million. This add-on was included during the full committee markup.

Fourth, this bill provides the Office of Personnel Management the requested $5.8 billion for fiscal year 1985, $297.5 million more than appropriated last year. This level represents a 5-percent increase over the fiscal year 1984 amount.

These four items account for $730 million of the increase over last year's level.

In addition to these funding increases, this bill contains several general provisions for this act Government-wide. Regarding OPM, language in the bill, also included in last year's continuing resolution, prohibits the implementation of Federal employee performance regulations. The standard buy-American provisions for handtools and stainless steel flatware is included. And finally, section 618 of the general provisions, title VI, prohibits the use of funds appropriated to pay for abortions under Federal employee health plans. Section 619 provides an exemption to this restriction when "the life of the mother would be endangered if the fetus were carried to term." Last year, both sections were included in the same general provision.

Mr. Chairman, final passage of this bill requires a very delicate balance between fiercely competing interests. As Members will recall last year, it took two tries to pass a Treasury/Postal Service bill in the House. This year, under the leadership of Chairman Roybal and Mr. Miller, the committee has achieved this delicate balance. I urge my colleagues to support H.R. 5798.

The CHAIRMAN. The Committee will rise informally in order that the House may receive a message from the Senate.

MESSAGE FROM THE SENATE

The SPEAKER pro tempore (Mr. Gephardt) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments, in which the concurrence of the House is requested, a bill of the House of the following title:

> H.R. 5167. An act to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5167) entitled "An act to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Tower, Mr. Thurmond, Mr. Goldwater, Mr. Warner, Mr. Humphrey, Mr. Cohen, Mr. Jepsen, Mr. Quayle, Mr. East, Mr. Wilson, Mr. Nunn, Mr. Stennis, Mr. Hart, Mr. Exon, Mr. Levin, Mr. Kennedy, Mr. Bingaman, and Mr. Dixon; solely for consideration of any benefits to be paid by the Veterans' Administration, Mr. Simpson and Mr. Cranston to be the conferees on the part of the Senate.

The message also announced that Mr. Heflin, Mr. Kennedy, Mr. DeConcini, and Mr. Metzenbaum be the Democratic conferees, on the part of the Senate, on the bill (H.R. 5174) entitled "An act to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes."

The SPEAKER pro tempore. The Committee will resume its sitting.

TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATION BILL, 1985

The Committee resumed its sitting.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. Roybal].

Mr. ROYBAL. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. Anderson].

Mr. ANDERSON. Mr. Chairman, I rise in support of H.R. 5798, the Treasury, Postal Service, and general Government appropriation bill for fiscal year 1985.

At the outset, I want to commend my good friend from California [Mr. Roybal], and the ranking minority member of the subcommittee, our colleague from Ohio [Mr. Milller], for another fine job in crafting this year's bill.

Of particular interest to me is title IV of the bill relating to the General Service Administration's [GSA] Federal Buildings Fund. Specifically, line 23, page 18 of the bill earmarks $20 million for construction to begin on a new Federal office building in Long Beach, CA.

I would like to take just a moment to make some brief comments on why this facility is so badly needed.

On July 6, 1982, the Public Works and Transportation Subcommittee on Public Buildings and Grounds held a field hearing to study the past, current, and projected space needs of the Federal Government in Long Beach.

At this hearing, we found that GSA annually spends millions of dollars to rent a vast array of Federal office space at several scattered locations throughout the city. Not only are these rent payments a drain on the Treasury but, because Long Beach is California's fifth largest city, with a population in excess of 360,000, it is quite difficult for persons to move from one location to the next to conduct business with the Federal Government.

At any respect, a consensus developed at the hearing that we should move forward with construction of a new Long Beach Federal building. Among those who testified in support of this facility were GSA, the mayor of Long Beach, and the Long Beach Area Chamber of Commerce.

As a result of the subcommittee's findings, the House, on July 27, 1982, authorized the construction of a new Long Beach Federal building of 105,000 occupiable square feet at a total estimated cost of $21,680,000.

Just over 1 year later, however, GSA came back to us, after reexamining the future needs in Long Beach, and said we needed to practically double the size of the originally authorized building.

As such, in order to accommodate this request by the administration, the House, on August 3, 1983, amended the original prospectus and authorized the construction of a larger Long Beach Federal building. This new facility is now authorized to contain 187,000 occupiable square feet and cost $41,101,000.

Legislation appropriating $6.2 million—$3.0 million in fiscal year 1983 and $3.2 million in fiscal year 1984—for site acquisition and design of the Long Beach Federal building has been approved by the Congress and signed into law by the President.

Mr. Chairman, GSA officials told me that when we originally authorized construction of this facility, it would save the taxpayers $69.8 million over the next 30 years in annual rent payments. And this figure is based, as I've just said, on the originally approved building which contained 105,000 occupiable square feet. Thus, I think its safe to assume that when we nearly doubled the size of the Long Beach Federal building last August, savings to the taxpayers jumped accordingly. As such, by constructing the Long Beach Federal office building we could safely estimate that savings to the taxpayers on annual rent payments could well exceed $100 million over the next 30 years. And, we would, of course, own a building of our own. No longer would we be faced with the problem of paying millions of dollars annually simply to rent Federal office space in the city of Long Beach.

In conclusion, let me again express my strong support for this legislation and urge my colleagues to support it. The provision appropriating $20 million for construction of the Long Beach Federal building will save us badly needed revenue in the long run and will allow us to better serve the taxpayers in and around Long Beach.

□ 1420

Mr. MILLER of Ohio. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota [Mr. Frenzel].

Mr. FRENZEL. Mr. Chairman, I oppose this bill, mainly for the general reason that it is overfunded.

The bill carries an increase over last year of about 7 percent and undoubtedly will be followed by a supplemental as has been the case at least in the last 4 or 5 years. That means it is now twice as high, and will be even higher, than the House budget target of a 3.5-percent increase.

The House Budget Committee chairman sends us regular little notices. They used to compare the bills to our budget. Now, of course, he does not compare the bill with the House passed budget, he compares it as over or under current policy because the Congress has not agreed on a budget. He did not bother to remind us that this bill is way over the budget we passed.

But suffice it to say, the bill is between $400 million and $500 million over the 3.5-percent increase that this House decided would be granted to agencies which did not deal either with the defense of the country or with low-income needs-based programs. Therefore, I oppose the whole program.

I should state, as my friend from Massachusetts has already indicated, that I do intend to make points of order against certain items in the bill relating to the Customs Department which have not been authorized.

I do so with some regret and for the principal reason not of the money, which is too much, but because the committee has seen fit to put many items of legislation into its bill, contrary to House rules, and, therefore, has actually taken away the jurisdiction of the committee that should have it under our rules.

I note in this Chamber the chairman of a Foreign Affairs Subcommittee that has a great interest in the Operation EXODUS. Both the committee of original jurisdiction, the Trade Subcommittee, and the committee of the gentleman from Washington have established lower levels for Operation EXODUS spending. But according to the committee report of this bill, the Appropriations Committee wants to open the floodgates. The Service is instructed by the report to do literally whatever it wants with EXODUS. I think that is a real mistake.

Mr. BONKER. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the distinguished subcommittee chairman, the gentleman from Washington.

Mr. BONKER. I thank the gentleman for yielding.

Mr. Chairman, I am pleased the gentleman has raised this issue because this is not the first time that the authorizing committee has set a lower amount only to be superseded by the Committee on Appropriations.

It seems to me that both the Ways and Means Committee, as well as the House Foreign Affairs Committee, have recommended lower expenditures for the Customs Service Operation EXODUS Program. Even the Senate has set a lower amount. I thought that Appropriations Committee could not exceed amounts set by the authorizing committee. So I do not think we are being consistent with the House rules on dealing with these matters.

Mr. FRENZEL. I thank the gentleman for his contribution. His judgment is my judgment, as well.

I note on page 5 of the bill, in the Customs Service section, that there are six separate legislative mandates demanded by a committee which is supposed to have no such jurisdiction. One of them would rob the Service of the ability to make the adjustment that the gentleman from Massachusetts just asked for in the well. And then again on section 617 on page 50 there is a repetition of the prohibition on the Service against making any changes that might save the taxpayers a dime, or diverting agents to other parts of the country where they might be more useful.

In addition, there are three other sections of the bill which relate to customs work which are legislating in an appropriations bill. I am sorry that it is necessary to make the point of order, but I think if you have half a dozen to a dozen of these purely legislative items on an appropriations bill we are going beyond the normal bounds of reasonableness in relations between committees.

Nobody minds an isolated legislation item on an appropriations bill. Many of the committees, including my own, often ask the Appropriations Committee to help us out if we do not have an authorization bill. But, obviously we have not asked the committee for all the items it included, nor the general direction the committee is moving.

I also notice in the committee report that the Customs Service is directed to do so many things that I do not know if it is going to be able to carry out its main mission, to say nothing of the dozen extra mandates that are laid on the committee in this bill and report.

I shall try to make points of order, I shall vote against the bill on a general fiscal basis.

Mr. Chairman, the appropriation bill we are considering today would appropriate money for the Customs Service far in excess of the President's 1985 budget request for the agency and well above the guidelines of the first concurrent budget resolution adopted by the Congress in April. The amount would provide for 650 new positions next year, including additional customs inspectors and import specialists, which the administration believes can not be justified given recent increases in automation and the sacrifices being made in other areas to reduce budget deficits.

I am very concerned that the annual authorization bill for the Customs Service is often ignored by both the House and Senate Appropriations Committees as well as the Senate authorizing committee. During the 97th Congress, for example, the fiscal year 1984 authorization bill was agreed to by both Houses during the last hour of the last day of the session, long after appropriations had been approved.

The figure in H.R. 5798 represents another violation of the guidelines of the budget process and the rules of the House. To approve this level of funding before passage of authorizing legislation will diminish the effectiveness of important oversight functions of the authorizing committees. In my view we must maintain our commitment to the procedures of the budget process and work with the administration to find acceptable funding levels in order to further the overall goal of effective and efficient agency operations without big funding increases.

Mr. Chairman, I oppose H.R. 5798, Treasury, Postal Service and General Government Appropriations for fiscal year 1985.

The bill costs $12,781,692,000. That is $837,792,000, or 7 percent, more than last year. That is exactly twice the increase allowed for this category of spending in the House budget resolution. It is, even without comparison to any budget resolution, an overly generous increase.

Mr. Chairman, in a year in which we face both overwhelming deficits and low projected inflation rates, we should be passing nothing but frugal appropriations bills. Our efforts toward a deficit downpayment should be the highest priority. If we're going to spend 7 percent more on the bureaucracy, how will we ever hold the line on the really popular appropriations, like Labor-HHS, or Defense.

Moreover, this bill has historically been expanded through supplementals. In fiscal year 1981, final spending was about $726 million, or 7.6 percent greater than the bill reported by the committee. In fiscal year 1982, we increased it $430 million, or 4.4 percent, above the committee bill. Fiscal year 1983 saw a $704 million, or 6.5 percent increase. Last year's increase was only $56 million, or one-half percent. We have been told that $341 million more in supplementals are pending, which will increase spending about 3 percent more than the committee bill.

We can expect a supplemental again for fiscal year 1985. This bill will almost certainly be reported as under the Appropriation Committee's 302(b) allocation. That should be taken very lightly, of course. We will completely bust that allocation when we pass the inevitable supplemental to this bill.

I shall vote no on this bill.

Mr. ROYBAL. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. Dicks].

Mr. DICKS. Mr. Chairman, first of all, I want to compliment my colleague, the gentleman from California [Mr. Roybal] our subcommittee chairman, and the gentleman from Ohio [Mr. Miller] and other members of this committee for the fine job they do in presenting this important legislation to the Congress and to the American people.

Being from the State of Washington I have been very concerned about the Reagan administration policies as they relate to the Customs Department, and I certainly appreciate the debate that we have heard here about the Customs Agency. I think it happens to be one of the most important agencies of the Federal Government. I can tell you that in the State of Washington both the Port of Seattle and Port of Tacoma and the Seattle-Tacoma International Airport have been adversely impacted because of the major cuts in personnel made by this administration.

I heard the gentleman from Kentucky mention earlier that the Customs Department brings in $7 for every dollar that we spend on it. I certainly believe that we in this Congress have got to insist that this administration carries out the mandate.

I was appalled to hear the distinguished ranking minority Member, the gentleman from Massachusetts [Mr. Conte] say that this administration has not spent the money for 500 positions that we created last year. I think that is wrong, and I think it is time for this Congress to stand up and to insist that its directives and its appropriations be enacted by this administration.

Mr. BONKER. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to my friend, the gentleman from Washington.

Mr. BONKER. Mr. Chairman, I fully support what the gentleman is saying. I think what is happening here is that the Customs Service is neglecting its vital traditional duties, particularly around airports and enforcement matters, and yet it is anxious to take on a whole new program that is aimed primarily at harassing our high-tech exporters. If they would stick with their traditional duties, then perhaps, they would have the money.

Mr. ROYBAL. Mr. Chairman, I yield 3 minutes to the gentleman from Hawaii [Mr. Akaka].

Mr. AKAKA. Mr. Chairman, I rise in support of H.R. 5798, the Treasury, Postal Service and related agencies appropriations bill for fiscal year 1985, and ask unanimous consent to revise and extend my remarks.

First, I want to commend the chairman of our subcommittee, Mr.

ROYBAL, and our ranking member, Mr. MILLER, for their tireless efforts on the bill we have before us today. Few people are aware of the many hours of work and the countless hearings that have been devoted to the preparation of this bill. I am proud to be a member of this subcommittee, and thank my colleagues and our subcommittee staff for their hard work.

EXECUTIVE OFFICE

Mr. Chairman, this is a good bill, and one that every Member of the House should support. It contains funding for many essential operations of government, most notably, the Executive Office of the President. This Office, and the many policy offices under it, provide essential support for the President and his senior advisers. The subcommittee thoughtfully reviewed the budget request for the White House, and has acted in a truly nonpartisan manner. Title III of our bill contains every penny requested by the President for his Executive Office.

U.S. CUSTOMS SERVICE

Title I of our bill contains funding for the U.S. Customs Service. The Customs Service has one of the most important law enforcement functions of any government agency. The principal mission of the Customs Service is to intercept narcotics traffic and other contraband crossing our borders and to monitor the flow of travelers and merchandise through U.S. ports of entry. This agency is working to stem the tide of illicit drugs that flow through our borders.

Drug trafficking is one of the most insidious forms of crime in America today. Narcotics smuggling continues to grow at an alarming rate and breeds an epidemeic of crime in our communities. What is most frightening, however, is the fact that drug trafficking and drug abuse is on the increase in our country. The Customs Service is on the battle line when it comes to fighting drugs. When it comes to drug interdiction at our seaports and airports, there is simply no substitute for having trained law enforcement personnel at our borders.

This administration has declared a war on drugs. Yet the budget request for fiscal year 1985 proposed drastic cuts in customs personnel. These cuts are hardly consistent with waging a war on drugs. The proposed budget for Customs, which the subcommittee did not approve, would have amounted to adopting an honor system in fighting the tide of drugs entering our borders. The administration asked us to approve a cut at a time when there are fewer narcotics inspectors and import specialists on the job today than there were in 1975.

As a member of the Select Committee on Narcotics, I am well aware of the important function of the Customs Service. During fiscal year 1983, for example, customs inspectors were responsible for: 20 percent of the morphine and opium seizures; 57 percent of the heroin seizures; 59 percent of the cocaine seizures; 70 percent of the hashish seizures; and 80 percent of the marijuana seizures.

The reductions proposed by the administration would have cut into the very heart of the Customs Service and its drug interdiction efforts.

U.S. POSTAL SERVICE

Title II of our bill contains funding for the operations of the Postal Service. By far, the largest item in this title is the funding for the revenue forgone account. Appropriations for revenue forgone compensate the Postal Service for the revenue lost as a result of their providing subsidized mail service to small community newspapers, libraries, and nonprofit organizations.

There are many fine organizations providing service to the public that benefit from reduced postal rates. Organizations such as the American Cancer Society, the American Heart Association, the American Lung Association, the Arthritis Foundation, the American Red Cross, the National Audobon Society, the National Easter Seal Society, the National Society for the Prevention of Blindness, and the Salvation Army benefit from the revenue forgone subsidy, just to name a few.

The budget request submitted by the administration for the Postal Service was wholly inadequate, and would have resulted in an increase in postal rates of over 50 percent for these public service agencies. The committee has recommended sufficient funding to continue subsidized mailing by nonprofit organizations at the current rate.

Once again, I want to thank Chairman ROYBAL for this leadership on legislation and urge my colleagues to support the bill. I yield back the balance of my time.

● Mrs. SCHROEDER. Mr. Chairman, H.R. 5798 appropriates funds for the four central personnel management agencies of the Federal Government. As chairwoman of the Subcommittee on Civil Service, I rise to congratulate the Appropriations Committee for its rigorous oversight of these agencies and to urge continued scrutiny. I believe the record on these agencies should be supplemented.

OFFICE OF PERSONNEL MANAGEMENT

H.R. 5798 appropriates $110,953,000 for salaries and expenses of the Office of Personnel Management [OPM]. The taxpayers have not been getting $111 million worth of public service from this agency. Rather, what was once a high quality personnel management agency has been transformed into a political action committee. Under Director Donald J. Devine, there has been created in OPM a large public relations shop which spends its time issuing offensive or trivial press releases. One offensive release, which was factually incorrect to boot, said that civil service retirement cost more than welfare. Another attacked House Democrats for adopting limitation language on last year's continuing resolution. As an example of a trivial release, consider the one issued a few weeks ago reporting that Dr. Devine congratulated George Nesterczuk for being nominated as Deputy Director of the U.S. Information Agency. A telephone call would have saved the taxpayer money. I do not understand how OPM can use appropriated funds for such purposes.

OPM is now filled with a record number of political hacks. Most of them know nothing about personnel management and many could care less about it. One of them, a man named Byrnes, wrote a venomous memorandum suggesting how the Democratic Party could be thrown into civil war if the administration decided to do something dishonest about pending pay equity legislation. Earlier, this same Mr. Byrnes wrote a memorandum describing how to slant the published results of the Federal employee attitude survey.

I am not complaining because I disagree with the brand of ultra rightwing politics now current at OPM. The fact is that Congress and the administration have refused to implement any of the extreme ideas coming out of OPM. The punitive retirement proposals have been soundly rejected by this body. The performance pay, labor relations, and reduction in force proposals are all blocked in this legislation. Efforts to change the Federal wage survey have been stopped by more rational people in the administration, as have efforts to close the Federal Executive Institute. Every year OPM comes up with new harebrained ideas for changing the Federal charity drive; ideas which are quickly shelved by the administration or by the courts. Indeed, Federal employees are fortunate that OPM is filled with far right zealots. Had the President appointed individuals with political sophistication and the ability to compromise, substantial cuts in employee rights and benefits probably would have resulted.

One particularly costly OPM proposal is discussed in the report accompanying this bill. This is the plan to move the Executive Seminar Center from Denver to Grand Junction, a move which GAO tells us would cost the taxpayer half a million dollars extra over the next 3 years, and nearly 20 percent next year. One reason for the extraordinary cost is that OPM plans to pay rent both on the facility in Denver and on the new facility in Grand Junction, even though it intends to leave the one in Denver vacant. I cannot speculate on OPM's motives for this move. I can say that the taxpayer is paying a high price to achieve whatever it is the OPM wants to accomplish.

Earlier I mentioned the language in the bill to block OPM's regulations on performance management. The tragedy of these poorly designed regulations is that they discredit a very important concept—that of pay for performance. OPM should have worked with Congress to design a workable system which links an employee's pay with his or her performance. Instead, OPM went ahead on its own, without consultation and scornful of the suggestions of others, and produced an exceedingly bad package of changes. This bill quite appropriately blocks the implementation of these changes.

Someone hearing this might well wonder why I am not offering an amendment to slash the budget of OPM. Unfortunately, the current leadership of OPM would love for us to do so. It has been quite prone to conducting reduction in force [RIF's] at OPM. Were we to cut this budget, OPM would use that as an excuse to force out of the agency more of the competent career staff. I believe we have to keep this staff in place so that when responsible leadership takes over OPM, the agency will have the expertise available to develop programs to heighten the efficiency and productivity of the Government.

MERIT SYSTEMS PROTECTION BOARD

H.R. 5798 appropriates $20,477,000 for the Merit Systems Protection Board. Recently, the Subcommittee on Civil Service completed an investigation into the appointment of Gretchen Thomas, a close personal friend of Chairman Herbert E. Ellingwood, to the San Francisco Regional Office of the Board. We found that Mr. Ellingwood had a job especially created for Mrs. Thomas and that no one else was permitted to compete for that job. I believe that Mr. Ellingwood should resign because such cronyism has no place in the agency which is supposed to be the guardian of the merit system. Since completing that investigation, I have heard allegations that the Gretchen Thomas case was not unique at the Board. The Subcommittee on Civil Service will go ahead and investigate the other instances of alleged cronyism at the Board.

Federal employees and agencies are quickly losing confidence in the Board. They are losing confidence not solely because of Chairman Ellingwood's contempt for the merit personnel system but also, trust is waning because the quality of Merit Board decisions has plummeted in the last 3 years. I'm not speaking about the outcome of the cases, although employee rights are being construed much more narrowly. Rather, pre-1981 decisions of the Board were well written, comprehensive, understandable, and signed by the members of the Board. Since then, decisions have been abrupt, meaningless to those who have not reviewed the file, and signed by the secretary to the Board. Agencies and employees deserve better adjudication than the Board has been providing.

OFFICE OF SPECIAL COUNSEL

H.R. 5798 appropriates $4,583,000 for the Office of Special Counsel. It is hard to imagine an agency which got off to a worse start than this one. After nearly 4 years of weak or destructive leadership, K. William O'Connor was named Special Counsel in the fall of 1982. By then I had become so upset at the failure of this office that I introduced legislation to abolish it. In the nearly 2 years that Mr. O'Connor had held office, he has raised the legal quality of the office. It hasn't done any good, however, since the Special Counsel seems incapable of winning any important cases in front of the Board.

Recently, the Special Counsel has lost two open and shut cases. In one, the Board decided that the deputy director of the Defense Contract Audit Agency did not take a reprisal against George Spanton, the well-known whistleblower. In another, the Board dismissed disciplinary charges against James Cummings, who was HUD regional administration in Chicago. Prior to being appointed to the Reagan administration, Cummings managed a nonprofit housing project. Because of management irregularities, HUD foreclosed on the project and refused to assume the debts, which Cummings had to pay. As soon as Cummings became regional administrator, he found the two civil servants who were behind the foreclosure and tried to transfer them from Indianapolis. A clearer case of reprisal is hard to imagine, yet the Board voted that Cummings was not subject to disciplinary action.

While Mr. O'Connor has been willing to pursue some cases, he has been reluctant to get involved in others, such as the political activities of James Byrnes at OPM or the firing of an Interior whistleblower by Secretary Watt or the transfer of a VA hospital nurse for blowing the whistle on the use of unapproved drugs on veterans. On some cases, like the blacklists at EPA, the special counsel has spent a year and a half playing with the case, but has made no decision on whether to pursue it. This has prejudiced the rights of private litigants. Further, the Office of Special Counsel is lousy at communicating, both with complainants and with Congress.

At my request, the General Accounting Office is trying to come up with some recommendations about what to do with the Office of Special Counsel. My view is that the $4.5 million in this bill is a total waste. Yet, I do not want to wipe out this office until we can provide some alternative protection for whistleblowers. Next Congress, I hope we can correct this problem.

FEDERAL LABOR RELATIONS AUTHORITY

H.R. 5798 appropriates $17,197,000 for the Federal Labor Relations Authority. This agency has made itself largely irrelevant to labor-management relations in the Federal Government by taking so long to decide cases. An unfair labor practice complaint or a negotiability appeal coming in the front door today will not emerge again for over 2 years. By that time, the issue will have lost its importance. Since most contracts between unions and agencies last 3 years, if it takes 2 years to decide whether an issue is negotiable, the decision is worthless.

The Authority is aware of the problem, and the new chairwoman, Barbara Mahone, is acting to speed up the process. I hope the Appropriations Committee will join with me in pressing for rapid correction.

Mr. Chairman, this administration has been terrible for civil servants. The actions of the individuals who run OPM and MSPB manifest the low regard that this administration holds for the civil service. Cutting their appropriations will not solve the problem. Greater responsiveness to congressional intent is.●

● Mr. RANGEL. Mr. Chairman, I want to express my strong support for the funding levels provided for the U.S. Customs Service in H.R. 5798, the fiscal year 1985 Treasury, Postal Service, and general Government appropriation bill. The Customs Service is one of our Nation's primary drug enforcement agencies, charged with protecting our Nation's borders and ports of entry from illegal narcotics smuggling. As chairman of the Select Committee on Narcotics Abuse and Control, I am especially interested in assuring that Customs has sufficient resources to carry out its drug enforcement responsibilities.

The bill provides a total of $682.4 million for Customs in fiscal year 1985. This amount includes $650.3 million for salaries and expenses, $65 million more than the administration's request. An appropriation of $32.1 million is included for the Customs air interdiction program.

H.R. 5798 restores over 920 permanent positions, including 452 inspectors, that the administration proposed to eliminate. It also funds 650 new positions in the Customs Service to aid in narcotics enforcement and the processing of passengers and cargo entering our country. Thus, the bill provides for a total increase of 1,573 positions as authorized by the full House earlier this year.

The trafficking of illegal narcotics and other dangerous drugs into the

United States continues to grow. The administration claims to be conducting a war on drugs, but I fail to see how we can win this war or even put up a good fight by reducing Customs law enforcement personnel.

Customs inspectors and patrol officers comprise the front line of the agency's narcotics enforcement team. In the case of drug interdiction at our seaports and airports, there is no adequate substitute for having a trained drug enforcement officer on the scene. During fiscal year 1983, Customs inspectors were responsible for making 70 percent of all Customs arrests, 20 percent of morphine and opium seizures, 57 percent of heroin seizures, 59 percent of cocaine seizures, 70 percent of hashish seizures, and 80 percent of marijuana seizures. Customs patrol officers are primarily responsible for the drug enforcement efforts of Customs tactical interdiction program. They participate in contraband enforcement teams and the air interdiction and marine enforcement programs.

The additional inspectors and patrol officers that will be funded by H.R. 5798 are vitally needed to help Customs meet the expanding threat posed by narcotics smuggling. I believe these additional enforcement positions will also be cost effective. In 1983, Customs enforcement efforts produced $17 million in revenue collections for every appropriated dollar spent by Customs in carrying out its responsibilities.

I am especially pleased that the committee's report on H.R. 5798 directs the Customs Service not to make any reductions in the number of Customs inspectors in New York City. New York is the major gateway and distribution center for illegal drugs entering the country. The drug trade enveloping New York spreads out to affect many other parts of the country. Maintaining a strong Customs presence in New York to stem the flow of illicit drugs not only benefits New York but much of the rest of the Nation as well.

The committee report also prohibits the proposed Customs/INS consolidation until Congress has had the opportunity to review and approve the reorganization plan. I support this approach. I am concerned that the proposed Customs/INS consolidation could seriously weaken our drug enforcement efforts. This consolidation should not take place without a full opportunity for careful congressional consideration of the consequences.

Finally, I want to mention briefly the Customs air interdiction program, a vital link in our Nation's defense against airborne drug smuggling. The budget originally submitted by Customs assumed that the Defense Department would provide funding in 1985 to operate and maintain DOD aircraft and other equipment used by Customs in its air interdiction efforts. When Defense refused to assume this cost, Customs belatedly requested the necessary funds to operate its program. The $32.1 million appropriated in H.R. 5798 will assure that Customs will be able to maintain its air interdiction program at current operating levels. It will also permit Customs to increase its air detection capability by stationing an aerostat radar balloon in the Bahamas.

In sum, I urge my colleagues to support the increased levels of Customs funding provided in H.R. 5798.●

● Mr. YOUNG of Missouri. Mr. Chairman, I rise in support of H.R. 5798, the Treasury, Postal Service and general Government appropriations bill for fiscal year 1985.

At this time, I want to compliment the distinguished chairman of the subcommittee, the gentleman from California [Mr. ROYBAL] and the distinguished ranking minority member of the subcommittee, the gentleman from Ohio [Mr. MILLER] for bringing before the House a sound and workable bill.

As chairman of the Subcommittee on Public Buildings and Grounds of the House Committee on Public Works and Transportation, I particularly want to compliment them on title IV of the bill relating to the General Services Administration's Federal buildings fund. As the authorizing committee for General Services Administration projects, I applaud the wisdom of the members of the Appropriations Committee in determining what projects were worthy of funding in fiscal year 1985 in view of the limited resources available in the Federal buildings fund.

I am hopeful, however, that in fiscal year 1986 we can find new techniques that will provide necessary additional funds which could be made available for increased Federal construction necessary to house Federal departments and agencies, thereby, providing for a decrease in the rental of space. The taxpayers of this Nation would be the winner if this can be accomplished.

Mr. Chairman, to conclude, I again commend the work of the chairman and ranking minority member of the subcommittee for a fine bill.●

□ 1430

The CHAIRMAN. All time for general debate having expired, the Clerk will read.

The Clerk read as follows:

Office of the Secretary

SALARIES AND EXPENSES

For necessary expenses of the Office of the Secretary including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; not to exceed $22,000 for official reception and representation expenses; not to exceed $200,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on his certificate; not to exceed $1,683,000 for repairs and improvements to the Main Treasury Building and Annex, to remain available until expended; $56,474,000.

Mr. ADDABBO. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it had been my intention to offer an amendment to correct what I believe is a great inequity imposed upon our custom brokers, many of whom are in my district. I am informed that it had been the practice of Customs, when there had been a clerical error in the excess payment of duties by the broker, the check was returned to the broker and correct duty paid.

The proceeding has been changed by Customs. Now the check is deposited, and excess refund is not paid to the broker until after liquidation, which can take over 1 year. On the other hand, if the broker underpays, he is notified within 48 hours and must pay immediately with a penalty. Where, indeed, is the equity? If the broker must immediately pay before liquidation, they should be entitled to a refund of excess duties deposited also before liquidation.

As I have stated, I had intended to offer an amendment which could possibly have been struck on a point of order. I have discussed this with the chairman of the subcommittee, and I am informed that our subcommittee will be looking into this matter.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman.

Mr. FRENZEL. I thank the gentleman for yielding.

The gentleman makes an excellent point. The inequity that he cites does indeed exist. Our Trade Subcommittee is working on a bill, as the gentleman knows, that would seek to remedy that problem, and we hope to be able to move it very quickly. The gentleman's point is well taken and his leadership is badly needed on this important matter.

Mr. ADDABBO. I thank the gentleman.

AMENDMENT OFFERED BY MR. ENGLISH

Mr. ENGLISH. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ENGLISH: Page 2, line 18, strike out "$56,474,000" and insert in lieu thereof "$54,474,000".

Mr. ENGLISH. Mr. Chairman, I have really three amendments that I am offering today which are all related to one issue; namely, the restoration of funds needed to effectively operate the air support branches of the Customs Service, and since the amendments do not change the overall totals contained within the bill, but rather simply restore the funds to the accounts for which the Office of Management and Budget approved them, I ask unanimous consent that all three amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Oklahoma?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, I reserve a point of order on the English amendment.

The CHAIRMAN. The gentleman from Minnesota [Mr. FRENZEL] reserves a point of order on the amendment.

Mr. FRENZEL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The CHAIRMAN. The Clerk will report the remaining amendments.

The Clerk read as follows:

Amendments offered by Mr. ENGLISH: Page 3, line 2, strike out "$22,768,000" and insert in lieu thereof "$20,768,000".

Page 6, line 7, strike out "$32,070,000" and insert in lieu thereof "$36,070,000".

Mr. ENGLISH. Mr. Chairman, as several congressional committees and administration spokesmen have recently pointed out, we are having a difficult time and enjoying far too few successes in the war on drugs. Drug availability is up everywhere, and prices are dropping. Almost half of the cocaine, and much of the marijuana that is smuggled into the United States comes in by private aircraft, and the difficult mission of stopping those airborne drug traffickers falls to the air branches of the Customs Service.

The Government Operations Subcommittee which I chair has held 15 hearings on drug smuggling in the past 2 years. Our investigation has documented that those air branches are woefully underequipped, and that they cannot perform at an acceptable level anywhere in the country. We have worked with the administration, with the Defense Department under the recently relaxed provisions of the Posse Comitatus Act, and with the Customs Service to bring new airplanes and radar detection equipment to Customs so that they would at least reach the same level of capability as the criminals they are trying to arrest. Together with the House and Senate Appropriations and Armed Services Committees, we have worked out a program which is endorsed by everyone involved, and which is being accomplished within the budget amounts requested by the President.

I would particularly like to recognize the valuable contributions of the gentleman from California [Mr. ROYBAL], the chairman of the Appropriations Subcommittee on Treasury-Postal Service-General Government, who has participated actively in our hearings. He has taken a personal interest and provided distinguished leadership in helping to remedy the enforcement deficiencies which we have identified.

The necessary level of funding for the air interdiction effort was determined and requested by the Customs Service and Treasury Department, and approved by OMB, but the funds were subsequently and unilaterally reprogrammed by Treasury just before the budget was submitted to Congress in January. In fact, the air support budget was cut in half, to a level which would not even support last year's operations.

At the same time, the budget request for the account of the Office of the Secretary of the Treasury was increased by an amount similar to the air support branch reductions. Following the predictable outcry from Congress, Secretary Regan testified in March that the two actions were completely unrelated, but promised to reprogram the missing funds back into the drug war.

He came up $4 million short. The amendments which I offer today would reduce the Office of the Secretary account and the International Affairs account by $2 million each, and restore the funds to the war on drugs. This still allows the Secretary an increase of 20.5 percent over his fiscal year 1983 funding level.

I repeat: This is not new money. It does not alter the total contained in the bill. But, even though the amounts are small, they are vital. The new aircraft which were obtained for Customs from DOD—helicopters, interceptors, and radar patrol aircraft—are already arriving. The funds are needed now to keep them in the air, doing the job for which they were so desperately required—stopping drug smugglers. Without this modest reprogramming there will simply not be enough money available to Customs to maintain and operate them, and drug traffickers will continue to violate our borders almost without opposition.

Mr. Chairman, it is easy to criticize this Nation's drug interdiction agencies, and to wring our hands over the drug problem. But we have finally taken the complicated steps to bring truly improved forces to the war. We cannot allow these new assets to go unused.

Mr. ROYBAL. Mr. Chairman, will the gentleman yield?

Mr. ENGLISH. I yield to the distinguished chairman.

Mr. ROYBAL. It is the understanding of the chairman that in this amendment, starting on page 2, line 18, the gentleman will delete $2 million from the appropriation to the Office of the Secretary. On page 3, line 2, it is a deletion of $2 million for International Affairs. That full amount then is placed on page 6, line 7, air interdiction. Is that correct?

Mr. ENGLISH. The chairman is correct.

Mr. ROYBAL. I thank the gentleman and I would have no objection to his amendment.

The CHAIRMAN. The time of the gentleman from Oklahoma [Mr. ENGLISH] has expired.

Mr. SHAW. Mr. Chairman, I ask unanimous consent that the gentleman from Oklahoma be allowed to proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, is my point of order reserved?

The CHAIRMAN. Yes; the gentleman's point of order is reserved.

Mr. FRENZEL. Mr. Chairman, I withdraw my reservation of objection.

Mr. SHAW. Mr. Chairman, will the gentleman yield?

Mr. ENGLISH. I yield to the gentleman.

Mr. SHAW. I thank the gentleman for yielding to me.

I would like to compliment the gentleman on a very worthwhile amendment. Perhaps the piece of legislation that I am most proud to have participated in since I have been here in the Congress of the United States was that that allowed the Federal Government to use the military, under limited circumstances, in the war against drugs.

□ 1440

The gentleman is quite right. The war on drugs goes on, but there is still no clear victory in sight. The tactics being used are becoming more and more difficult, but yet I do not believe that we are using the full force of the posse comitatus exemption to the benefit of the Federal Government. I think there are those who still have not gotten the word that there is a new way to fight crime, and it is a very expensive way, but I would say that with the priorities as we have them today that the gentleman's amendment makes a most meaningful change and perhaps sends a message also to the Treasury as to the priority that this House places on our war against drugs.

It is a most important one, and it is one that can only be won with the assets of this country being pledged to the extent necessary. I compliment the gentleman on his amendment and I plan to support him.

Mr. ENGLISH. I thank the gentleman, and I would simply like to state that he has contributed greatly to our subcommittee. He is not a member of that subcommittee, but he has participated in many hearings. We have appreciated that contribution and we have appreciated his support. I thank the gentleman very much.

The CHAIRMAN. Does the gentleman from Minnesota [Mr. FRENZEL] seek to make his point of order at this time?

POINT OF ORDER

Mr. FRENZEL. Mr. Chairman, I do insist on my point of order.

Mr. Chairman, I make a point of order that the amendment offered by the gentleman from Oklahoma contains appropriations of funds not previously authorized, and, therefore, is in violation of clause 2 of rule XXI.

Clause 2 of rule XXI states:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law. . . .

The amendment provides $4 million in additional funds for the Customs Service on page 6. Funding for the Customs Service has not been authorized by the Congress and, in addition, the amounts contemplated by the English amendment are inconsistent with those approved by the authorizing committee, the Committee on Ways and Means.

Mr. Chairman, I make a point of order that the funding in the English amendment has not been authorized and, therefore violates clause 2 of rule XXI.

The CHAIRMAN. Do the gentlemen from California or Oklahoma care to comment on the point of order?

Mr. ROYBAL. Mr. Chairman, I concede the point of order.

The CHAIRMAN. The Chair sustains the point of order.

PARLIAMENTARY INQUIRIES

Mr. COLEMAN of Texas. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COLEMAN of Texas. The gentleman from Minnesota [Mr. FRENZEL] has suggested that we cannot pass any appropriations because we have not had an authorization. It is my understanding that the other body has not passed the authorization.

Is that the reason for the ruling of the Chair?

The CHAIRMAN. The authorization has to be in enacted law before the appropriation can be considered.

Mr. BONKER. Mr. Chairman, will the gentleman yield?

Mr. COLEMAN of Texas. I yield to the gentleman from Washington.

Mr. BONKER. Mr. Chairman, it is my impression that the authorizing bill has passed the House but it has not passed the other body, so the gentleman's point of order would have to be sustained.

The CHAIRMAN. The gentleman is correct.

Mr. COLEMAN of Texas. Again, a parliamentary inquiry, if I might.

The CHAIRMAN. The gentleman will state it.

Mr. COLEMAN of Texas. Can we then not pass any appropriation unless it was authorized in 1983 or 1982 or 1981? Is that what we are having to go back to now?

The CHAIRMAN. The authorization for the ensuing fiscal year might have been enacted earlier than this year.

Mr. COLEMAN of Texas. I thank the Chair.

Mr. ENGLISH. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ENGLISH. Mr. Chairman, I would also like to inquire, the amendment that the Chair previously ruled on pertained also to the Office of the Secretary.

The CHAIRMAN. The Chair would advise the gentleman that because all three amendments were considered en bloc, all three were ruled out of order.

Mr. ENGLISH. Mr. Chairman, the point I was trying to make was, is the Chair ruling on all three amendments or simply on one of the amendments by itself?

The CHAIRMAN. The amendments, the Chair would advise the gentleman, were being considered en bloc, and all three, therefore, are ruled out of order.

Mr. ENGLISH. So any provisions within the bill which would pertain to any increases in the Office of the Secretary of the Treasury would also be out of order in the bill? Is that correct?

The CHAIRMAN. The Chair would respond to the gentleman that the answer is no, not if authorized by law for that office; just the particular amendments as they relate to the Customs Service.

Mr. ENGLISH. Again, if I could continue my inquiry——

The CHAIRMAN. The gentleman may.

Mr. ENGLISH. Then the Chair was ruling only upon one of the three amendments that affected all three; is that correct?

The CHAIRMAN. That is true, but as the gentleman knows, because of the gentleman's request, they were being considered en bloc.

Mr. ENGLISH. I thank the Chair.

The CHAIRMAN. Are there other amendments to the first paragraph? If not, the Clerk will read.

The Clerk read as follows:

BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

SALARIES AND EXPENSES

For necessary expenses of the Bureau of Government Financial Operations; $239,908,000 of which $5,700,000 shall remain available until expended for systems modernization initiatives.

AMENDMENTS OFFERED BY MR. DANNEMEYER

Mr. DANNEMEYER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DANNEMEYER: Page 3, line 18, strike out "$239,908,000" and insert in lieu thereof "$226,608,000".

Mr. DANNEMEYER. Mr. Chairman, I request unanimous consent that the two amendments that I furnished to the Members on the majority side and to the minority side be considered en bloc. They contain five separate amendments. The first one relates to the appropriate point in this appropriations bill which the Clerk has just read, and the others relate to title IV.

I am requesting unanimous consent to have them all considered now on the rationale that these represent recommendations of the Grace Commission that are within the purview of this bill and for the sake of expediting the consideration by the House of the issue, I would request unanimous consent that they be considered en bloc.

The CHAIRMAN. The Clerk will report the remaining amendments which the gentleman desires to be considered at this time.

The Clerk read as follows:

Amendments offered by Mr. DANNEMEYER: Page 22, line 16, strike out "$695,148,000" and insert in lieu thereof "$685,848,000";

Page 24, line 18, strike out "$167,244,000" and insert in lieu thereof "$156,944,000";

Page 25, line 3, strike out "$101,525,000" and insert in lieu thereof "$98,925,000";

Page 30, line 23, strike out "$110,953,000" and insert in lieu thereof "$106,653,000".

The CHAIRMAN. Is there objection to the unanimous-consent request of the gentleman from California [Mr. DANNEMEYER] to have these amendments considered en bloc?

There was no objection.

Mr. DANNEMEYER. Mr. Chairman, my explanation will be brief.

The members are aware that several years ago the President appointed the Cost Commission on Federal Spending, otherwise known as the Grace Commission. A great number of persons in the private sector, led by Peter Grace, analyzed the entire gamut of Federal spending, and they came up with certain recommendations that made their way to our attention last December and January of this year.

The recommendations of the Grace Commission totaled some $424 billion of spending reductions over 3 years. OMB analyzed a portion of those recommendations and concluded that at least $98 billion of them had viability. There is a contest as to which figure is correct, the $98 billion or the $424 billion.

These recommendations, these five, were gleaned from the recommendations of the Grace Commission as pertaining to this particular bill, the Treasury, Postal Service appropriations bill.

I will remind my colleagues that of all the recommendations of the Grace Commission, about 72 percent required legislative change to be implemented; that is, a basic change in the law. As to 28 percent of them, they could be implemented as a result of executive action. These five that are now being considered en bloc total some $39.8 million, a three-tenths of 1 percent reduction in the $12.8 billion bill before us.

□ 1450

They are each in the category that they can be implemented through administrative action. In other words, it does not take a subsequent change in the law by Congress to have these implemented. They can come about as the result of administrative action and therefore I think it is appropriate for us to consider these five, which are modest in total, as a means of implementing the recommendations of the Grace Commission by appropriating in this instance $39.8 million less in this bill for all purposes.

Now, it breaks down as follows: $13.3 million would come out of the Treasury Bureau of Government Financial Operations. This is what the Commission said with respect to a justification for this issue:

> Agencies deposit collections in either the Federal Reserve Banks or in Treasury general accounts, TGA's, and approved banks. An inspector general audit indicates there are delays in 75 percent of the cases, most attributed to banks themselves. Increased use of competitive bid TGA's in interest bearing accounts.

Now, the 3-year estimated savings by the Grace Commission were $283 million for the adoption of this one.

This amendment has telescoped that down in a spirit of trying to be very conservative in the impact of it to $13.3 million, which I believe is a very rational figure to be implemented.

The next one deals with GSA personal property, $10.3 million reduction. The rationale for that is:

> GSA needs to streamline its operations. Study reveals that GSA spends 6 times as much for less worthy computerized information system than private firms and has 17 times as many administrative personnel. Considerable duplication of effort exists. Concise goals for property management need to be precise. Data base needs to be updated and management procedures need to be defined.

The next item deals with real property under the management of GSA. The total here is some $9.3 million and this is the language the Grace Commission recommended:

> Use greater management discretion in contracting out for high skilled maintenance. Whereas contracting out has been successful for low skilled and custodial services, it is of limited use in higher skilled areas. Property managers ought to have greater discretion to decide not conduct OMB circular A-76 studies where contracting out is neither practical nor cost effective.

The 3-year estimated savings of the Grace Commission totaled $197 million. This amendment presupposes merely the adoption of $9.3 million of that.

Then two more, National Archives and Record Service. Under the auspices of the GSA and it relates as follows——

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. DANNEMEYER was allowed to proceed for 3 additional minutes.)

Mr. DANNEMEYER. The report goes on further:

> The National Archives and Records Service stores more than 37 million cubic feet of Federal records and this volume grows by two and a half percent each year. Establishing a schedule for timely disposition of records not necessary for reference or historical purposes and standardized management of such scheduling will allow for the orderly replacement of obsolete records by new ones, thereby slowing if not eliminating the constant need for new storage space.

The 3-year Grace Commission recommendations were $55 million. This amendment utilizes merely $2.6 million of that total.

Then finally, Office of Personnel Management salaries and expenses. This recommendation was made:

> OPM should act as a broker and coordinate the use of 25 separate government operated instructional TV studies in the Washington area. Proper coordination will reduce under-utilization currently 20 to 30 percent and expensive start up time.

This 3-year savings was estimated at $91.1 million and the savings in this amendment is $4.3 million; altogether, $39.8 million, none requiring legislative change, each can be adopted and implemented by administrative action.

I think it is a modest effort, an indication by Members of the House that we truly are concerned about reining in spending where we can in a responsible way and it is in this spirit that this amendment is offered and I ask for your support.

Mr. HOYER. Mr. Chairman, will the gentleman yield?

Mr. DANNEMEYER. I am happy to yield to my colleague, the gentleman from Maryland.

Mr. HOYER. Mr Chairman, I appreciate the gentleman yielding.

I know the gentleman has given a great deal of time and attention to the study of the Grace Commission. I am wondering whether or not the distinguished gentleman from California has had the opportunity of discussing his proposed cuts with Mr. Stockman of the Office of Management and Budget, and if so, his view as to the validity of the recommendations made by the Grace Commission in this instance.

Mr. DANNEMEYER. I can respond to my colleague that the administration has issued directives to the various departments of the executive branch to study the recommendations of the Grace Commission and to report back as to their interpretation or analysis of how they can be implemented. I think that process is going on right now.

I do not have a response from Mr. Stockman as to these specific recommendations. I cannot say that he supports them or that he opposes them.

The executive branch is merely analyzing now as to whether they can be implemented and I can observe to my friend that suggesting that a three-tenths of 1 percent reduction in a budget of $12.8 billion of this purpose, Treasury and Postal appropriations, is not asking him to take too much by way of a cut.

Mr. HOYER. Mr. Chairman, I thank the gentleman for his response.

Mr. ROYBAL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think it is important that this committee recognize a few basic facts about the Grace Commission report.

First, I believe as do so many others on both sides of the aisle that the amounts of savings that the Grace Commission arrived at are savings that do not include reductions in budget.

Second, many of the appropriation accounts which are proposed to be reduced are not the same accounts where the savings would occur, so what the gentleman is proposing in this reduction is really not directed at various appropriation accounts that would be reduced as a result of his amendment.

Now, savings intensified do not apply to appropriations to operate the Bureau of Government Financial Operations. Some of the savings are interest savings and result from speeding the flow of cash to the Treasury from financial institutions which serve as our collection agency. The interest savings reduce the borrowing cost to the Treasury to finance the public debt and do not affect the appropriation process.

Other savings result from reducing fees paid to these institutions. Now, these fees are not paid by appropriated funds, but the banks use the funds during the collection process and again this is not related to the appropriation.

The Treasury Department is implementing approximately 90 percent of the Grace Commission recommendations. In fact, several of the Grace Commission proposals that impact directly on Treasury appropriations are already in this bill.

With regard to the purchase of automobiles, even if the Grace Commission report were accurate, the account being reduced by the amendment is not the account where the savings would occur. They would occur in appropriation accounts Governmentwide, in agencies that were actually purchasing the automobiles from GSA.

The Office of Personnel Management conducts training courses and charges Government agencies who send personnel to these courses for that service.

Thus, even if the Grace Commission amounts were accurate, the cuts would not be in the accounts that are being reduced.

Finally, the offering of this amendment indicates a lack of faith in the administration implementing the Grace Commission report. The administration has the study and wherever possible they are implementing these recommendations already.

In many cases the 1985 budget already reflects savings as a result of some of the Grace Commission recommendations.

All that this means, Mr. Chairman, is that the Grace Commission has definitely made recommendations, but nowhere do I see that the Grace Commission is recommending that the budget be cut. In fact, in some of the places where this cut will be made, for example with regard to the agencies for the collection of deposits, what the Commission says in that instance is merely to just improve the supervision of bank accounts. They say nothing about cutting the budget.

Then they go on to others. For example, in the streamlining of the GSA Office of Personnel Management, they do not say that we must cut the budget, but they do insist in the Grace Commission that there must be streamlining in the GSA Office of Personnel Property, and with that I agree.

□ 1500

I think if we put efficiency to work in the bureaucracy of this Government that a great many savings will result. With that I agree with the Grace Commission.

In procurement, for example, again they do not advocate cutting the budget but, nevertheless, they do say that we must revise the multiple awards schedule program by increasing use of competitive limited awards. There is nothing wrong with a recommendation such as that, and I can go on and read others. In personal property, for example, what they recommend is to revise the vehicle procurement process. They do not say take away money for that particular purpose, for the purpose of buying needed automobiles. But they do say that we must revise the procurement process and with that we agree.

We can also look at other places where this cut would actually be effective and that is in the facilities and personal property, again there is no recommendation for a cut but merely that we must improve the records management.

Mr. HOYER. Mr. Chairman, I move to strike the requisite number of words.

Mr. ROYBAL. Will the gentleman yield?

Mr. HOYER. I yield to the chairman of the committee.

Mr. ROYBAL. Mr. Chairman, just to summarize, the Grace Commission does make certain recommendations that are excellent, there is no doubt about that. But, on the other hand, I see no place where the Grace Commission has recommended budget reductions. But they make recommendations to bring about efficiencies in Government that would reduce cost. With that I agree.

But the gentleman's amendment simply strikes approximately $39 million from agencies that could perhaps bring about a savings if they went along with the Grace Commission recommendations and installed efficiency methods. A reduction in budget will not bring efficiency.

Therefore, I oppose the gentleman's amendment.

Mr. HOYER. Reclaiming my time, Mr. Chairman, I rise in support of the chairman's remarks and in opposition to the proposals, not because they cut by only three-tenths of a percent, as the distinguished gentleman from California has pointed out. That is a relatively small amount, and it is not necessarily the specific amount of the accounts that is in question, but as the chairman has pointed out very accurately, that in many instances the savings could not be effected in the particular accounts referred to.

Mr. Chairman, in my question directed to the distinguished gentleman from California, I asked him if he had checked with Mr. Stockman, who is very interested in balancing the budget, and very interested in Government efficiency. The distinguished gentleman from Kentucky, a member of the subcommittee, asked Mr. Stockman a question when he was before our committee with reference to a Grace Commission recommendation that the Office of Management and Budget itself be reorganized into an office of Federal Management and pointed out that the Grace Commission had observed that there might be an additional savings or at least an additional savings in interest of some $23 billion, much more consequential than a three-tenths of 1 percent savings in a $12 billion budget.

Mr. Stockman's response, and I think this bears hearing of all of those who are concerned about the Grace Commission, because I know we are going to hear a lot about it over this year and the coming years, Mr. Stockman's response with reference to that particular Grace Commission recommendation was, and I quote, "Well, I will be quite frank. I think it is a dumb recommendation. I think it was read by people who don't know any—" and then he stopped. "* * * who had no idea of what they were talking about." This is Mr. Stockman talking about the Grace Commission recommendations with reference to his own Department, OMB.

Mr. DANNEMEYER. Will the gentleman yield?

Mr. HOYER. I will be glad to yield to the gentleman from California.

Mr. DANNEMEYER. It is interesting you would characterize Mr. Stockman in that language because when I reflect upon his job, professional background before he got that job at OMB, I find that he worked as well as he ever worked in the private sector. But the people who comprise——

Mr. HOYER. I am not as close to him as you perhaps are.

Mr. DANNEMEYER. But the people who were on the Grace Commission recommendations are some of the men and women of this country who have demonstrated professional management competence in their capacities to lead and direct people and in handling multibillion-dollar sums in the private sector where if you do not make a profit you are out of business.

I think Dave Stockman is doing a tremendous job in his office down there. But when I compare the background of David Stockman sitting in OMB with the likes of the business experience of Peter Grace and analyze which of those people we are going to believe in terms of analyzing the respectability of a recommendation of the Grace Commission, to be honest with you I am inclined to say that those business people did not get where they are by being slow. And I would be inclined to accept what they are telling us.

Mr. HOYER. I am not sure what the answer to that question is other than to say I appreciate that that is your observation and feeling. I think it is important to note Mr. Stockman's observations in light of the fact that the President of the United States has appointed Mr. Stockman Director of the Office of Management and Budget, which is the management oversight and coordinating position in the Federal Government. He is, in that position, this administration's spokesperson with respect to the management of the Federal Government's bureaucracy.

In response again to the specific question as to how he liked the Grace Commission's recommendations as it related to OMB, he said, "I think it was read by some people who don't know any—" obviously he was going to say anything. "* * * who had no idea what they were talking about. And I would hope that we never do it."

That was the administration's manager speaking with respect to those particular recommendations.

Mr. DURBIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment of the gentleman from California.

About 1 month ago Mr. Grace came and met with a number of freshman Democrats. He came in the room with six or eight aides. I do not know if that is a demonstration of efficiency. But he came armed with a statement to defend the Grace Commission report.

We sat down with him and said that the statement was not necessary. What was necessary was for him to sit down and realize that Democrats and Republicans can both agree that waste, inefficiency, and the things that come from these two evils are things that people of both parties should agree have to be exterminated from the Federal budget. And we began working with the Grace Commission.

I will readily concede that many of the proposals which Mr. Grace has made in his report are so controversial that they will never be enacted by this Congress. And I am also ready to concede that before the ink had dried on this report that the suggestions of Mr. Grace, many of them, had even been rejected by Secretary Weinberger, Director Stockman, and many people within the administration.

But, ladies and gentlemen of the House, there are over 2,400 recommendations in this report. For us to take the attitude in Congress that because some are wrong or some are controversial or some are not going to be implemented that we should categorically reject the millions of man-hours of work that have gone into this effort I think is a mistake.

The Grace Commission recommendations being made by the gentleman from California I believe are reasonable. They represent a small amount of money, three-tenths of 1 percent of this appropriation.

It is not the amount of money that is important. What is important I think is that we are ready to open up the doors on this process and look for some new ideas. The savings will require some administrative changes.

I believe the chairman has rightfully pointed out that the budget is not being cut on its face. But we are directing those who administer these budgets to make changes to be more efficient and to save the taxpayers dollars.

There indirect savings are just as good as any direct savings and I believe the gentleman from California will accomplish these with his recommendations.

There are a dozen reasons not to vote for this amendment. The President is against it. Director Stockman is against it. Many people involved in the committees on Capitol Hill are against it. But there is one very good reason to vote for this amendment. We will demonstrate that we on the inside are ready to listen to those on the outside who take a critical look at this process and this budget process.

I would like to commend the gentleman from California, and I would like to state publicly that having worked with his staff I know that he has diminished the projected savings on these amendments to a point that is realistic. We could easily overstate what might be saved, but he has diminished it to a point where I think this House should accept the amendment.

Mr. LEVITAS. Will the gentleman yield?

Mr. DURBIN. At this point I would be happy to yield to the gentleman from Georgia [Mr. Levitas].

□ 1510

Mr. LEVITAS. I thank the gentleman for yielding. I want to commend the gentleman on his statement and would like to associate myself with his remarks.

Mr. Chairman, the Grace Commission report, of course, is not the Holy Scripture and may have some errors contained therein. But the thrust behind the Grace Commission approach is valid; it is something that we in Congress as well as the American people need to endorse.

There are enormous savings that can be made either through legislative changes or administrative changes. These savings could be either returned to the taxpayers in reduced taxes or utilized for other needed programs that cannot today be funded.

Even in the Defense Department itself, the largest single area—one in which the Grace Commission has found over $130 billion worth of possible savings—we know these can be accomplished.

I recently served as a conferee on the deficit reduction conference. In the Government operations portion of that conference, we adopted approaches recommended by the Grace Commission. I think the time to begin to do it is now. Even though the Grace Commission might have been created by the administration and now they may not fully accept its recommendations, I think we have a responsibility to the American people, to the taxpayers, to begin to do something.

I commend the gentleman on his statement and I commend the gentleman from California on his amendment. I intend to support it.

Mr. DURBIN. Reclaiming my time, I might add that we did, the House may take note of this fact, we did accept the Grace Commission amendment to the Department of Defense authorization, a major change, offered by Mr. McCloskey, the gentleman from Indiana, which I think can result in significant savings.

There has been significant work done by the gentleman from Arizona [Mr. McNulty] and others in the freshman Democratic class on a bipartisan basis I might add, to try to find those recommendations that are effective and meaningful and we can agree, both sides of the aisle, both parties, to bring new efficiencies and streamline the operation of the Federal Government.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. DURBIN. I would be glad to yield to the gentleman from Texas.

Mr. COLEMAN of Texas. The problem I see with the amendment, though, and I was part of that freshman class project.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. Durbin] has expired.

(By unanimous consent Mr. Durbin was allowed to proceed for 2 additional minutes.)

Mr. COLEMAN of Texas. If the gentleman will continue to yield, the problem I see with the amendment, though, is that it only has number amounts in the amendment, there is no language contained in the amendment that says how those savings would be accomplished.

Mr. DANNEMEYER. Mr. Chairman, will the gentleman yield?

Mr. DURBIN. I would be happy to yield to the gentleman from California.

Mr. DANNEMEYER. I appreciate that observation, but we are kind of faced with this dilemma, the moment that this gentleman from California, advocate of the amendment, adds some language, somebody is going to object that I am attempting to legislate on an appropriation bill.

So in my explanation, as brief as it was, I will furnish the gentleman a copy of the language of the Grace Commission recommendation that is a summary of that particular item. That is the best I can do under the rules of the House.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. DURBIN. I yield to the gentleman from Texas.

Mr. COLEMAN of Texas. I appreciate the gentleman from California's statement, but I am going to continue to point out that the gentleman from Minnesota on your side of the aisle is objecting only to any language changes in the bill that he feels may be something that an authorization bill should have done, which we of course did do in this body, but the other body has not yet agreed to it in the authorization for Treasury-Postal bill.

So I am just wondering how much effect your amendment has if passed. I understand the effect would be to reduce the total appropriation by some amount, but in terms of actual implementation of those you are just hoping that from the legislative record made here, I suspect, that somewhere in the bureaucracy they will understand what that meant.

Mr. DURBIN. Let me reclaim my time. I think that is precisely what is about to occur is that the message delivered by the gentleman from California as to the reasons for the cuts will be communicated to the proper parties and they will find reason, I hope, to implement these recommendations at the administrative level.

Mr. DANNEMEYER. I thank my colleague from Illinois for that obervation. I agree with it 100 percent. I really cannot add anything more.

The explanation of the Grace Commission that I read from the well of the House should give anyone in the bureaucracy sufficient understanding of how to proceed.

The CHAIRMAN. The question is on the amendments offered en bloc by the gentleman from California [Mr. DANNEMEYER].

The amendment were agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

U.S. CUSTOMS SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Customs Service, including purchase of two hundred motor vehicles for replacement only, including one hundred and ninety for policy-type use; hire of passenger vehicles; not to exceed $10,000 for official reception and representation expenses; and awards of compensation to informers, as authorized by the Act of August 13, 1954 (22 U.S.C. 401); $650,335,000, of which not to exceed $150,000 shall be available for payment for rental space in connection with preclearance operations and not to exceed $1,000,000, to remain available until expended, for research: *Provided*, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: *Provided further*, That none of the funds made available by this Act shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $25,000: *Provided further*, That the Commissioner or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service: *Provided further*, That none of the funds made available by this Act may be used for administrative expenses in connection with the proposed redirection of the Equal Employment Opportunity Program: *Provided further*, That none of the funds made available by this Act shall be available for administrative expenses to reduce the number of Customs Service regions below seven during fiscal year 1985.

POINT OF ORDER

Mr. FRENZEL. Mr. Chairman, I make a point of order that the language from line 21 of page 4 through line 7 on page 6 contains appropriations of funds not previously authorized and is therefore in violation of clause 2, rule XXI.

The CHAIRMAN. If the Chair may, the Chair would like to advise the gentleman that he must confine his point of order at this time to the pending paragraph.

PARLIAMENTARY INQUIRY

Mr. FRENZEL. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. FRENZEL. Would the Chairman restate his suggestion?

The CHAIRMAN. To advise the gentleman to confine his point of order to the first paragraph at this time, through page 5.

Mr. FRENZEL. And that is line 21, page 4, through line 23, page 5?

The CHAIRMAN. That is correct.

Mr. FRENZEL. Mr. Chairman, then I restrict my point of order to that language and would continue making the argumentation.

This part of the bill appropriates $650 million and a little change for the Customs Service. The figures, in addition to being inconsistent with those that have been approved by the authorizing committee, have not been authorized by an act of this Congress.

In addition, of course, the language in this section digresses into legislative matters and much of it would be subject to a point of order on other grounds. But, Mr. Chairman, in this instance I make a point of order based on clause 2, rule XXI, that the amount has not been authorized and therefore the language should be striken from the bill.

The CHAIRMAN. Does the gentleman [Mr. ROYBAL] desire to be heard on the point of order?

Mr. ROYBAL. Mr. Chairman, I would like to point out first of all that it is not the committee's intention to take away jurisdiction from any other committee. The truth of the matter is that the only reason that the gentleman is correct in what he is attempting to do is that there has been no authorization.

In other words, the authorization committee on the part of the House passed the legislation; but nothing has happened in the other body. Therefore, that makes the gentleman's request and places the gentleman's request in order. That is the only reason.

But I want to reiterate that it is not this committee's intent to take jurisdiction away from any other committee.

Now, if this legislation had passed both bodies then everything would be in order. But something has happened with the legislation so that at this moment and perhaps not for the rest of the year, the other body will not pass the legislation.

Now for the last 4 years, for example, the House has passed the authorization but the other body has not.

Therefore this committee has been in the same position for the last 4 years, where a point of order can be called on this specific article and it has to be, in my opinion, sustained.

Therefore, Mr. Chairman, I concede the point of order.

The CHAIRMAN. The point of order is conceded and sustained and the paragraph is stricken.

The Clerk will read.

Mr. KAZEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this time to ask the distinguished chairman of the subcommittee, Mr. ROYBAL, in connection with the Customs personnel and the point of order which was just raised which will do away, apparently, with the 1,500 positions which the gentleman had provided for in the bill and for which there is no authorization, am I correct in stating that at the present time, in the Bureau of Customs, that they have many vacancies which have not been filled—authorized vacancies—simply because no money has been appropriated? Am I correct in this or is that wrong information?

Mr. ROYBAL. Will the gentleman yield?

Mr. KAZEN. I would be delighted to yield to the gentleman from California.

Mr. ROYBAL. I would like to inform the gentleman that this committee has had long discussions on this subject matter, that more than 900 positions were to be eliminated by the recommendation of the White House. We put those positions back in.

□ 1520

We also provided an additional 650 positions with the total number of positions being restored within the neighborhood of 1,570 positions.

The money which of course is needed to pay for the personnel is $65 million. That is in the bill.

Mr. KAZEN. Now, those are authorized positions.

Mr. ROYBAL. Yes. There are 500 positions that have not been filled by Customs. They were also funded.

What the committee wishes to do is to be sure that agents that are needed at the border and elsewhere are actually hired and put to work wherever the need occurs. We heard this morning a statement that in one particular port of entry there were five agents that just sit waiting for airplanes that arrived only once in a while. And that even those agents who worked there were saying that they get so bored that they wished they could go somewhere else where there was a need for them, like the border, as an example.

So the committee has done everything possible to restore the personnel. We have provided the money, but apparently nothing much has happened, since the administration has refused to hire the authorized strength.

Mr. KAZEN. Am I to understand that the point of order which was just sustained did away with a lot of these positions?

May I ask the distinguished gentleman from Ohio what his understanding is?

Mr. MILLER of Ohio. Mr. Chairman, as I understand, the point of order strikes on page 4, line 21 through page 5, line 23, which is all of the Customs Services.

Mr. ROYBAL. That is correct.

Mr. MILLER of Ohio. All of the Customs Service because it has not been authorized. So it would include, yes, of those almost 1,500 that were added on. The Customs Service in complete is out of the bill.

Mr. KAZEN. All right, then, where do we go from here?

Mr. MILLER of Ohio. That is a mighty good question, but we need the authorization in order to put this back in the bill. So the authorizing committees of the House and the Senate have to go to conference, they have to approve it. We will have a Customs Service I am sure. But at this point in time it was properly removed from the bill.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. KAZEN. I yield to the gentleman from Minnesota.

Mr. FRENZEL. I thank the gentleman for yielding.

The normal procedure to get around my point of order would be to go to conference, accept the Senate number, bring it back here, and then all I get is a vote and I may not prevail.

The other thing that could be done is put it in the continuing resolution, make it proof against points of order by a rule of this House. That is the normal way they do it.

I assure the gentleman we are going to have a Customs Service. My problem is that I would like to have it done with a little help from the authorizing committee, not wholly managed by the Appropriations Committee.

Mr. KAZEN. Well, it is regrettable that we have not had any authorizing legislation pass both Houses. But, at the same time, I am very much concerned, representing a district on the border and after having sat here for a week and a half discussing the problems of illegal aliens, discussing the securing of our borders and now faced with the fact that we will be short of personnel.

The CHAIRMAN. The time of the gentleman from Texas [Mr. KAZEN] has expired.

(By unanimous consent, Mr. KAZEN was allowed to proceed for 2 additional minutes.)

Mr. KAZEN. At the same time in that bill we made provisions for many, many more positions.

I am not worried about the future 2 or 3 years down the line. I think the Congress will make adequate provisions in any type of immigration reform bill that is passed. But I am worried about the Customs Service and I am worried about the Immigration personnel at this time, this year and next year because I have three inadequately manned international bridges in my district. And every single year I have had to go through this exercise to make sure that we get enough authorization, over appropriations, to properly man those bridges.

For some reason or other, we have not been able to do it even though we have received guarantees on this floor that what we have provided for in the bill will guarantee the fact that there will be adequate personnel handling the people coming back into this country from Mexico.

Today I am told that the lines will be longer than ever this coming Fourth of July, when our American tourists come back from Mexico, in 106 degree weather, with their automobiles overheated, their engines stopped, cannot get them started, and there they are left sitting in the middle of a bridge over the Rio Grande, not being able to move simply because there are closed lanes on the bridge because we are without any personnel to man them. Now that is a shameful situation. We in the Congress ought to make sure that this does not happen because we are serving American citizens on that bridge and it is only right that we take care of our people.

The CHAIRMAN. The time of the gentleman from Texas [Mr. KAZEN] has again expired.

(At the request of Mr. MYERS and by unanimous consent, Mr. KAZEN was allowed to proceed for 2 additional minutes.)

Mr. MYERS. Mr. Chairman, will the gentleman yield?

Mr. KAZEN. I yield to the gentleman from Indiana.

Mr. MYERS. I thank the gentleman for yielding.

I share the concern, each of us shares the concern that the gentleman from Texas is expressing here, but there is one other remedy that was available to the subcommittee which we on the Appropriations have had to use on practically every bill we have brought to the floor. That is to go to the Rules Committee and express to the Rules Committee the dilemma that we find ourselves in and ask for a waiver of the rule.

Now the gentleman from Minnesota would have objected, but he would have had one vote on the rule.

But it is going to happen quite often because of the process we are in today. We have expressed it before. We are forced by a timeframe to bring our appropriations bills to the floor in a timely fashion, but yet also we face a situation where we do not have the authorization.

May I ask, if the gentleman would yield to the chairman, why we did not get a waiver of the rule, go to the Rules Committee for a rule, and bring this bill under a rule.

Mr. KAZEN. I yield to the gentleman from California.

Mr. ROYBAL. First of all, the mere process of going to the Rules Committee does not solve the problem of the legislation we are on now. It can only create other problems.

Therefore, this is a committee that can come directly to the House. That is what we decided to do. We think that the matter of customs should be of great concern to every man, woman, and child in the United States.

I did not think that anyone would call a point of order on this, but they have and they are in the right. It must be sustained.

But the truth of the matter is that I agree with the gentleman from Texas. It is creating a tremendous problem.

This committee has put in the necessary funds. We put back in the personnel, 500 of the personnel we put in last year were not hired. Those are the 500 who should be at the border. I remember the gentleman's colloquy with me last year when we were talking about just 100.

Mr. KAZEN. For the border.

Mr. ROYBAL. For the border alone. I have not seen those additional agents 100 at the border, maybe the gentleman from Texas has.

Mr. KAZEN. Let me urge my colleagues and particularly the members of this committee to make sure that whatever we do in this Congress, that whatever we provide for in legislation is carried out by the Executive.

The CHAIRMAN. The time of the gentleman from Texas [Mr. KAZEN] has again expired.

(At the request of Mr. OBEY and by unanimous consent, Mr. KAZEN was allowed to proceed for 2 additional minutes.)

Mr. KAZEN. Whenever we say in legislation there should be this number of positions, here is the money to hire people for these positions, that should be done. Yet we find today that we have authorized and funded those positions and yet I am told that there is not enough money to fill those vacancies.

Now certainly we should make sure that this does not happen, that the money is there, and that the Customs Bureau hire these people which the Congress says they must hire.

Now, we do not want any excuses, we do not want any vacancies, we do not want any of these positions going begging, because the need for them is there.

□ 1530

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. KAZEN. I yield to the gentleman from Wisconsin.

Mr. OBEY. I would just like to respond to the question of the gentleman from Indiana, and others, by indicating that the Appropriations Committee is always in a damned if you do and damned if you don't situation. If we do not go to the Rules Committee, people knock out the language on a point of order and say that we ought to follow the regular process and go to the Rules Committee. If we do go to the Rules Committee, then we are accused of trying to hide legislation on appropriation bills by getting a rule. Either way, we get shot at because the authorizing process has not yet been completed.

So I would point out that, either way, Members are going to get stuck until they recognize we have no choice except to proceed with appropriation bills if you want anything at all done on any vehicle except a continuing resolution.

Mr. MYERS. Mr. Chairman, will the gentleman yield?

Mr. KAZEN. I yield to the gentleman from Indiana.

Mr. MYERS. This is the reason why I explained that we have come before with asking for a waiving of points of order not because we like to legislate on an appropriation bill but because it is necessary. Here is the Customs Service, very vital to this country; it is in jeopardy right now. And we are going to turn the decisionmaking how much over to the other body. Now, we on the Appropriations Committee do not like that.

Mr. FRENZEL. Mr. Chairman, I move to strike the last word.

I would like to direct some remarks to the distinguished gentleman from Texas [Mr. KAZEN] about the Customs Service.

In the first place, remember that the administration has brought in a request for smaller amounts of money than has been granted in the last 3 or 4 years. Both the authorizing committee and the appropriating committee raised the amounts of money granted.

On the other hand, the Appropriations Committee cannot claim to be guiltless in this matter because if you will notice their report on this bill, it tells the Customs Service what to do with a large number of those people. It tells them to use personnel in Operation Exodus, mostly not a good use of money. That is an operation the principal authority for which lies with the Commerce Department.

It tells them what to do in the Olympic games, on Adirondack passenger trains, on preclearance; it tells them to send people to Hawaii, and on page 50 of the bill, the Appropriations Committee has said the Customs Service cannot move anybody anywhere.

> None of the funds made available in this Act may be used to plan, implement, or administer (1) any reduction in the number of regions, districts or entry processing locations * * * or (2) any consolidation or centralization of duty assessment * * *.

This bill handcuffs the service so it cannot put people on your bridges. It has got to leave them in Duluth or Boston or L.A. or wherever they are now.

Now, I have not argued with the committee chairman on the subject of money. I asked my staff to see his staff and say I will forthwith agree to too much money being spent on the Customs department if you will agree to recede from your legislating on the appropriations bill. Apparently no agreement could be reached. For that reason, I felt obliged to make the point of order.

I am not trying to cripple the Customs department. I am trying to see if we are still going to have one committee that authorizes and another one that appropriates.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Texas.

Mr. KAZEN. I appreciate the gentleman's position. But for the last 3 years we have made provisions for 100 positions both in Customs and in Immigration, specifically for the border. Some of them were filled temporarily, others were in the process of being filled permanently, because we provided in the bill last year that they should be permanent positions. But I understand that there are still many vacancies, that the Customs Bureau has not hired the people that we told them to hire and that we gave them the money to do it with.

Mr. FRENZEL. The gentleman is right. We gave them the money. They spent the money. They spent the money for other things than this, and there were other things that were directed by the Appropriations Committee. The trouble is, the Appropriations Committee responded to you and somebody else and somebody else, and said, yes, we are going to run Operation Exodus; we are going to take care of preclearance in Winnipeg; we are going to take care of the Adirondack trains; we are not going to let anyone be shifted from Seattle or New Orleans or Baltimore.

We gave the administration more money than it asked for. Then we gave it a supplemental. But, before the positions the gentleman is talking about could be filled, all the money was spent.

Mr. KAZEN. Well, all I have got to say to my distinguished friend is that we ought to get our act together in this Congress and decide what really it is that we want done, where the needs are, and then proceed to authorize and fund those needs, because it inures to the benefit of this country.

Mr. FRENZEL. I could not agree more with the gentleman. His is a great statement.

Mr. HOYER. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the distinguished gentleman from Maryland, a member of the committee.

Mr. HOYER. I thank the gentleman for yielding.

The gentleman has made a statement that the Customs Service could not perform certain services because of direction by this subcommittee or perhaps additional committees as well, authorizing or appropriating committees, and therefore could not apply its resources in the ways that the gentleman from Texas is concerned about.

Does the gentleman have specific information on that? Because frankly we did not hear any of that testimony before our subcommittee.

Mr. FRENZEL. That was simply a deduction that I made. You gave last year the administration more money than it asked for, and you told it lots of things that it had to do in your bill. And I assume it did as many of the things that it could with the funds available and ended the year with no money, and some of those tasks still undone.

I think that is our problem. You tell them to do things; my committee tells them to do things; DON BONKER's committee tells them to do things. The reason I have made this point of order is to try to restore some orderly process so that all of us know exactly what they are going to do.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. FRENZEL] has expired.

(By unanimous consent, Mr. FRENZEL was allowed to proceed for 1 additional minute.)

Mr. FRENZEL. I yield to the gentleman from Maryland.

Mr. HOYER. I understand that the gentleman assumes they are applying their resources someplace else. But the point I want to make to the gentleman was that there was no testimony either last year or this year, to my recollection, before the subcommittee which indicated they were having problems carrying out their duties save for the fact that they did not have sufficient personnel, which is taken care of by the committee's actions last year and this year, because of directions given to them by either our subcommittee or your committee or any other committee.

Mr. FRENZEL. Perhaps the gentleman did not ask the right questions.

Mr. HOYER. Perhaps.

Mr. CHAIRMAN. The Clerk will read.

The Clerk read as follows:

OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

For expenses, not otherwise provided for, necessary for the hire, lease, acquisition (purchase of three and transfer or acquisition from any other agency), operation and maintenance of aircraft, and other related equipment of the Air Program; $32,070,000.

POINT OF ORDER

Mr. FRENZEL. Mr. Chairman, I make the point of order that the language from line 1, page 6, through line 7, page 6, is an appropriation of funds not previously authorized and is therefore in violation of clause 2, rule XXI.

The same rationale that I used previously applies.

The CHAIRMAN. Does the gentleman from California [Mr. ROYBAL] desire to be heard on the point of order?

Mr. ROYBAL. Mr. Chairman, again, had the appropriation process been completed, this would not be in order.

Therefore, I concede the point of order.

The CHAIRMAN. The point of order is conceded and is sustained. The paragraph is stricken.

The Clerk will read.

The Clerk read as follows:

BUREAU OF THE MINT

SALARIES AND EXPENSES

For necessary expenses of the Bureau of the Mint; $47,758,000.

POINT OF ORDER

Mr. ANNUNZIO. Mr. Chairman, I make a point of order that the appropriation for the Bureau of the Mint, Salaries and Expenses, contained in title I are not authorized by law.

The CHAIRMAN. Does the gentleman from California [Mr. ROYBAL] wish to be heard on the point of order?

Mr. ROYBAL. Mr. Chairman, again, the appropriation process has not been completed. Therefore, I concede the point of order.

The CHAIRMAN. The point of order is conceded and sustained, and the paragraph is stricken.

The Clerk will read.

The Clerk read as follows:

OFFICE OF ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Office of Administration; $16,172,000 including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, and hire of passenger motor vehicles.

□ 1540

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Chairman, I offer an amendment.

Mr. Chairman, I have three amendments; one on page 12, one on 13, and one on 15. I ask unanimous consent that the three amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

Mr. ROGERS. Mr. Chairman, reserving the right to object, what pages are the amendments on?

Mr. LEVITAS. Twelve, thirteen, and fifteen.

Mr. ROGERS. Are there three amendments?

Mr. LEVITAS. There are three amendments which I am offering on behalf of myself and the gentleman from Wisconsin [Mr. OBEY] and which were filed initially in the name of the gentleman from Wisconsin.

Mr. ROGERS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. OBEY. Mr. Chairman, I ask unanimous consent that the first two amendments be considered en bloc.

I might say that the only reason we are doing this is to save about an hour's time. If people want three rollcalls rather than one, we can accommodate that.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. ROGERS. Mr. Chairman, reserving the right to object, may I inquire of the gentleman specifically what the amendments are that he is referring to?

Mr. OBEY. The ranking member on the subcommittee has the three copies of the amendments.

Mr. ROGERS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: Page 12, line 16, strike out "$16,172,000" and insert in lieu thereof "$14,645,000".

Mr. LEVITAS. Mr. Chairman I regret, that because of the objection to my request, that we will have to engage in a much more extended and delaying debate on this subject because we cannot consider all three of these relevant amendments together. Let me explain what these amendments will accomplish.

They will have the Administrative Office of the President, the White House Office, and the Office of Management and Budget to be treated in the same way as the legislative appropriations bill treated the Congress and the House of Representatives. This would provide a 1.3-percent growth for these offices over the fiscal year 1984 appropriation with the supplemental included therein.

At the time of consideration of the appropriations bill for the legislative branch, I was one of those who supported the amendment offered by the gentleman from Minnesota [Mr. FRENZEL]. This amendment made about a 2-percent across-the-board reduction in the legislative branch. That resulted in an overall cut beneath fiscal year 1984 of a minus 0.7-percent growth. In other words, there was actually less money appropriated for the legislative branch this year as compared to last year as a result of the actions taken on that bill. We actually reduced the spending level below last year's.

My support of that approach indicates my feeling about where we ought to be going in terms of leadership to reduce spending, and I think it is important for those of us in the Congress to provide leadership. But I also think it is important for the President of the United States and the White House to provide some leadership and not just lipservice. Charity and spending cuts should begin at home.

Now the proposed budget by the Appropriation Committee, as I pointed out during the debate on the legislative appropriation, calls for an increase for the White House which is far above that recommended for the legislative branch. For example, this bill calls for an 11.9-percent increase in the Executive Office of the President, the Office of Administration, for fiscal 1985 over 1984, including the supplemental. The White House Office is a 6.7-percent increase, and the Office of Management and Budget is a 7-percent increase.

The leadership shown by the Legislative Appropriations Subcommittee simply brought in a modest 1.3-percent increase for the legislative branch. After we wisely worked our wills and came out with an actual reduction over the previous year, I think we ought to give the Executive Office of the President and the President the opportunity to demonstrate this same real leadership in cost cutting and reductions. This is what needs to be done if we are going to move toward a balanced budget.

Therefore, I have offered these three amendments which will now be considered. I suggest these be voted on by rollcall votes, separately, in order to be even more generous. In that manner those of you who oppose the 2-percent across-the-board cut can treat the White House in the same way you treated the legislative branch.

For those of us who supported the gentleman from Minnesota in his approach last week, we are being more generous than we were to the House of Representatives and to the Congress. I think what is good for the goose is good for the gander; what is fair is fair.

Now, I received a letter just yesterday, hand delivered to me from the White House and signed by John F.W. Rogers, Assistant to the President for Management and Administration. When we get back into the House of Representatives, I will make this entire letter a matter of record.

I want to give the Members the gist of what he says, and it is interesting because it reads like every other bureaucrat who comes before Congress asking for money. It says we understand we have to cut, we understand we need to save money, but we are different, we have special problems. Well, let me tell you what the special problems are that Mr. Rogers has called to our attention.

He says, "Unlike the Congress, the White House and other agencies of the Executive Office of the President must pay 'rent' for the use of the Government-owned office space they occupy." Unlike Congress.

Now, I would like to ask my colleagues, when you rent space in your district for your district offices, do you not pay rental to GSA or to the private lessor as required by law? It comes out of the same fund that Mr. Rogers says is a major cause of the increase that they are requesting. And he is wrong when he says their rent is unlike Congress.

The second problem, he says, that they needed to be treated differently and asks for an 11.9-percent increase rather than the 1.3 that was provided for the Congress.

The CHAIRMAN. The time of the gentleman from Georgia [Mr. LEVITAS] has expired.

(By unanimous consent, Mr. LEVITAS was allowed to proceed for 5 additional minutes.)

Mr. LEVITAS. The second point he makes is that they have to annualize the 4-percent cost-of-living increase for salaries in fiscal year 1985. Now, does he think that does not apply to the other branch of Government as well? His next statement is:

> The White House is a labor-intensive organization with over 65 percent of our budget concerned with personnel compensation.

Well, what does he think the legislative branch does, manufacture automobiles and baseball bats? This is a service-oriented, labor-intensive organization as well. I suggest to the Members that what is fair for one is fair for the other. In fact, if my amendment and the other two are adopted, we will actually be treating the executive branch much more generously than the legislative branch was treated.

Now Mr. Rogers enclosed a chart with his letter to me pointing out that the modest increases in appropriations for the Executive Office of the President justify their request this year. I have done some calculations. In 1978, there were $71 million involved as far as the Executive Office of the President appropriations are concerned. In 1985, there are $111,000,948 being requested for that appropriation, which is a modest increase between 1978 and 1985 of a mere 58-percent, almost 60-percent increase.

I think it is important for all of us in a bipartisan way to work together to reduce Federal expenditures in every area of Government. It does not make any sense for the leadership in the White House to ask for increases of 11.9 percent, 6.7 percent, 7 percent, far in excess of the percentage increases that have been requested in any other department or agency of the Government. I think that we should demonstrate our seriousness about wanting not just to make a modest downpayment on the budget deficit, but really in a leadership way, to make a significant step in the direction of reducing the budget deficit so we can have a balanced budget some day. I would ask my colleagues on both sides of the aisle to join with me in supporting all three of these amendments which will simply have this effect. I want to put it in the RECORD.

We will be reducing the Office of Administration in the Executive Office of the President from $16.1 million to $14.6 million. The White House Office from $24.9 million down to $23.7 million, and the Office of Management and Budget from $40 million down to $37 million. We will not touch the President's salary or his personal and entertainment expenses; we will leave those alone. I think in these other areas, what is sauce for the goose is sauce for the gander, and leadership ought to be spread around equally amongst the branches of the Government.

Hon. ELLIOTT H. LEVITAS,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN LEVITAS: I recently read your floor remarks of June 6, 1984, in which you criticized the White House for the percentage increase of its FY 1985 budget request. While I share your expressed concern for controlling government spending, I think it is important to recognize some extraordinary factors that have contributed to our increases.

Unlike the Congress, the White House and other agencies of the Executive Office of the President must pay "rent" for the use of the government-owned office space they occupy. This intragovernmental transfer to the General Services Administration accounts for approximately 10 percent of the White House budget, which compares with 1 percent for civilian government agencies and a government-wide average of 0.4 percent. Consequently, rent increases have a significant impact on our appropriation. The FY 1985 increase for rent (standard level users charges or SLUC) is over $600,000, which represents a 30 percent increase from FY 1984. This increase alone represents 34 percent of the FY 1985 budget request increase.

Another factor in the budget request increase is the annualization of the 4 percent Cost of Living increase in FY 1985. The White House is a labor-intensive organization with over 65 percent of our budget concerned with personnel compensation. The FY 1985 increase for the congressionally approved pay adjustment alone is over $900,000. This amount represents 42 percent of the FY 1985 increase. It is worth mentioning that the White House was able to request that the Treasury, Postal Services, and General Government Appropriations Subcommittee reduce the amount of our pay supplemental for FY 1984—absorbing $240,000 of the original requested amount.

As you can see, the two factors described above represent 76 percent of the total budget increase for FY 1985 and are factors over which we have no control. The remaining 24 percent of our budget increase represents a 2.8 percent increase over our FY 1984 appropriation. Thus, any action to restrict the White House to a flat 3.5 percent increase would unfairly penalize us.

I was also concerned about your comments regarding the leadership of the White House in budget-related matters. To this end, I have enclosed a chart which graphically illustrates the relatively small growth of Executive Office appropriations during this Administration. In fact, you may note that the first two budget requests of this Administration were less than the last budget request of the previous Administration.

I hope that you will bear these comments in mind when discussing our appropriation request, as I feel they are important in understanding the whole picture.

Sincerely,

JOHN F.W. ROGERS,
Assistant to the President for Management and Administration.

Total EOP Appropriations—Direct Funds

Fiscal year:	(In thousands of dollars)
1978	$71,023
1979	79,076
1980	97,186
1981	99,669
1982	89,044
1983	97,006
1984	104,304
1985	111,948

□ 1550

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Kentucky.

Mr. ROGERS. I thank the gentleman for yielding.

Mr. Chairman, I am wondering if the gentleman is aware that, for example, in the Office of Administration, which the gentleman's present amendment refers to, where he is asking for a cut from $16.1 million to $14.6 million, I wonder if the gentleman realizes that of that increase that that office has requested and the committee has given to it this year over fiscal year 1984, of that $1.7 million increase over fiscal year 1984, if the gentleman realizes that $638,000 of that is as a result of the SLUC charge, the standard level user charge, which that office is being required to pay against its will?

Mr. LEVITAS. I thank the gentleman for making that point. It is in the letter from the White House that the gentleman from Kentucky [Mr. ROGERS] called to my attention, which is in the RECORD. I remind the gentleman, however, that is also true about every other agency of Government. We are all treated alike.

But let me just say this before I yield back to the gentleman—this is not even the beginning of the story. This is the tip of the iceberg.

I would like to ask the chairman of the subcommittee how many people are working at the White House today, who are not on the White House payroll, who are detailed from other agencies, perhaps from EPA, the Commerce Department, the State Department, and all these others? How many are there over there who are working, not even on their payroll, but are spending full time working in the White House. How many consultants are working over there who are not on this payroll and how much are they getting paid?

Mr. ROYBAL. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I would be happy to yield to the gentleman from California.

Mr. ROYBAL. Mr. Chairman, I can assure the gentleman that this committee does not know. I do not know if there is anyone in the House who does know the number of personnel who are detailed to the White House.

The CHAIRMAN. The time of the gentleman from Georgia [Mr. LEVITAS] has expired.

(By unanimous consent, Mr. LEVITAS was allowed to proceed for 3 additional minutes.)

Mr. ROYBAL. Mr. Chairman, if the gentleman will yield further, we do not know that number. It is most difficult to get that information. But this committee is constantly taking the position that this is a subject that must be determined by the President of the United States.

Mr. LEVITAS. I would simply suggest that maybe somebody on the minority side knows. It is my information that there are literally hundreds of people who are working at the White House and in the Executive Office of the President, who are not on the payroll of the White House. They are being detailed and shown on the manifests of other agencies of Government. There are consultants over there running around the place, getting money that is not reflected as employment money, for short periods of time.

Let me say this: These facts have nothing to do with this administration. It has been true in every administration. I raised this same point during the last administration, when a fellow Georgian was President of the United States.

I think it is outrageous that we cannot even find out how many people are detailed from Commerce and State and DOT and these other agencies. They are working in the White House, but not even showing up on this payroll.

Does the gentleman from Minnesota know?

Mr. FRENZEL. I do not know that. The gentleman, however, gave me a great credit for reducing the legislative appropriation, and I will tell the gentleman that, based on the appropriation last year and the rescissions in force, my amendment reduced that to an increase of 3½ percent, which was the budget target of the House.

I support symmetry, as I told the gentleman at the time, and I will support an amendment that applies that kind of symmetry, but I want to be sure that we treat them all alike. I will tell the gentleman that we are about to have a bill that is going to give the FAA a 25-percent increase, that is going to give the Federal Highway Administration a 31-percent increase.

I just tell the gentleman I hope he is with me right down the line for symmetry all the way through.

Mr. LEVITAS. I am glad the gentleman made that point, and I would certainly expect that appropriate, across-the-board amendment reductions would be offered.

I would simply point out what the gentleman from Minnesota knows even better than the gentleman from Georgia knows: That the FAA and the Department of Transportation happen to have an earmarked user tax that is designated for the use of those particular programs, the aviation user tax, the ticket tax, the general aviation gasoline tax, and the highway tax. These moneys raised through these taxes cannot be used for any general revenue funding. In fact, it is almost outrageous to tax people for an earmarked purpose and then not spend it for the purpose for which it was taxed, since it cannot be used to pay for either welfare programs or tanks.

So I think there is that difference, which I know the gentleman is aware of, but within that limitation, I agree.

Mr. FRENZEL. I thank the gentleman for reminding me of that.

Mr. ROGERS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is political fun and games now. We are into the silly season, it appears. In this appropriations bill we have some strictly partisan air being blown down toward the White House from this Chamber, and I would hope that we would not waste our time with this while we must be getting on with the Nation's business, the important business.

The amendment offered by the gentleman from Georgia seeks to cut the requested increase in the Office of Administration at the White House. The requested increase was $1,715,000. Let me point out to my colleagues where that requested increase comes from.

We require now that those agencies pay rent, the rent equivalent, in the standard level user charge, to the GSA. The GSA has increased the amount of rent equivalent charged to this agency, among others. We do not pay rent on this Chamber to the GSA, nor do we pay rent for our offices in one of the House office buildings. We do not pay that standard level user charge, but the Executive Office of the President is required to, and they were given an increase last year from $15.07 a square foot to $29.79 a square foot.

Are we going to make them swallow that and reduce something else to pay the rent? That is what is being asked here, because $638,000 of the requested increase is for higher rent we are requiring them to pay; $499,000 of that increase is for disaster recovery program computers to help our communities recover from disasters.

The $250,000 for phase 2 of the Disaster Recovery Program; $249,000 to provide the lease costs of a disc-controlled unit, four disc drives and an additional high-speed laser printer in the Disaster Recovery Program; $578,000 of that requested increase is to maintain the current level of administrative support.

That is the real increase that is being requested. I would point this out, too: That agency, the Office of Administration, has already absorbed the planned 1984 supplemental pay increase of $162,000 which will come along later this year. They are going to pay that out of what they have already gotten. They are not asking for additional money. They are absorbing 100 percent of the pay raises that are mandated by this body.

So I think we are playing fun and games here.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from Georgia.

Mr. LEVITAS. I thank the gentleman for yielding.

Mr. Chairman, let me assure the gentleman I am not playing fun and games. I have taken this same position regardless of which administration was in office. As the former minority leader of the Senate, Senator Dirksen, once said, "A million here, a million there, and pretty soon it adds up to some real money," and particularly when it has the symbolism of leadership.

First of all, I would point out in order to get the symmetry straight, the President and the White House do not pay rent on the White House, just as we do not pay rent on the Capitol.

Mr. ROGERS. Reclaiming my time for a moment, I would beg to differ with the gentleman because the GSA charges $29.79 per square foot to this agency for this next current fiscal year.

Mr. LEVITAS. The Executive Office of the President, but not for the White House itself.

Mr. ROGERS. We are talking about the Office of Administration, which is in the EOB, and they do pay rent.

Mr. LEVITAS. And the gentleman from Kentucky pays rent on his offices in his district to GSA, just as the other Government offices pay rent.

Mr. ROGERS. Reclaiming my time, that is correct on our offices in the district, but we do not pay rent for our office here in our office building in Washington.

Mr. LEVITAS. Nor does the President.

Mr. ROGERS. Nor does this Congress pay a user charge on the Chamber in which we meet now.

☐ 1600

What I am simply pointing out to the gentleman is that his amendment is not fair because it is not symmetrical. There are charges in here which I pointed out that are mandated by Congress through the GSA to increase the amount of equivalence of rent that this agency has to pay, and to take that out of their hide, I think, is unfair.

Mr. LEVITAS. Mr. Chairman, that is true of every other agency of the Government, including the Congress of the United States.

Mr. ROGERS. Well, it is not true of the Congress——

Mr. LEVITAS. Mr. Chairman, will the gentleman just yield further and permit me one more point. I respect the gentleman, and I want to assure him that this is very serious.

How can the American people believe that we are all serious about reducing deficits if it does not apply to the President and the White House and everybody else? The one point that I think is very important for the gentleman to understand is that the same type of increases in 4-percent cost of living that the gentleman from Kentucky is talking about in the White House apply to Congress.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. ROGERS] has expired.

(On request of Mr. RUDD, and by unanimous consent, Mr. ROGERS was allowed to proceed for 3 additional minutes.)

Mr. RUDD. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from Arizona.

Mr. RUDD. Mr. Chairman, in conjunction with the gentleman's statement about the west wing of the White House, let me point out also to my friend, the gentleman from Kentucky, that the assessments on the east and west wings of the White House have increased more than 100 percent. There are the charges the General Services Administration is bringing against the White House as payment of rent. They increased from $15.07 per square foot to $30.97 per square foot, and assessments on the Executive Office Building, as the gentleman pointed out earlier, increased to the figure which he named, $29.79 a square foot, but it was increased from $15.07 a square foot.

This does not really tell the whole story because when we take all of the rents into account, these figures are a little bit misleading, because the office rents for the Executive Office of the President account for 10.6 percent of the budget that he has asked for, and the Government-wide average, which includes all of those items of Government rents that we were talking about just a moment ago, amount to only 0.4 percent, according to the figures that I have had presented to me.

Very disproportionately large increases in rent will distort this overall budget with regard to the White House itself, and the fact is that the Executive Office of the President has made a great number of savings overall during the course of this administration over the last administration, and the permanent Executive Office of the President positions have decreased a total of 261. It amounts to about 16 percent less, over the years of the previous administration.

So there have been savings, and there has been a great attempt by this administration to do something about decreasing the costs. The figures that the gentleman and I have just talked about indicate that some of these are not within control of the White House, and that is why the increases have taken place.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. Mr. Chairman, reclaiming my time for one brief final moment here, if this amendment is passed, now, I want the Members to know what they are doing here.

You are talking about cutting out $500,000 from the Disaster Recovery Program. This is the Disaster Recovery Program; that is what you are cutting here, as well as the standard level user charge which you placed on the Executive Office Building. Now, if you want to do that and be that political about this thing, it is your business.

Mr. Chairman, I yield back the balance of my time.

Mr. FAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have a high regard for my friend and colleague, the gentleman from Kentucky [Mr. ROGERS], and I am sure that if he had been here when we took up the legislative branch bill, it would have had his support. I know he has a great interest in that bill for a variety of reasons, and I know that when he points out the political nature of the debate here today, he is doing so without having had the experience we had on the floor when the legislative branch bill was before us. So I certainly absolve him from any appearance of irony.

But I do think it is important that we make clear that Members of the House of Representatives, when they rent office space from GSA, pay the SLUC charge, the same SLUC charge that the Executive Office of the President must pay, and it is that same kind of reasoning that went into the decision the Committee on House Administration made to increase the allowances that Members can draw upon for the operation of their offices.

It is important to point out as well that when our bill was brought to the floor, we had an increase, after the supplemental was factored in, of nothing at all. In fact, we had a decrease of 0.7 of 1 percent under the 1984 level. We also absorbed over 20 percent of the mandatory increases that were required because of the mandatory membership in Social Security or the Federal retirement system. We absorbed some of the pay increase that we automatically pass on to our employees, the same procedure that applies to all Federal workers.

It is my understanding from the gentleman who chairs this subcommittee that the executive branch did not absorb any. So we have been fiscally responsible in the legislative branch, and at the same time we are confronted with, I think, a bipartisan effort on the part of the committee to play fair with the executive branch, and yet we received the body blow of a 2-percent cut, in addition to the seven-tenths we had already come in below in 1984.

We hear objections, and I find them very hard to understand. I really do not like to debate this bill in this manner. I do not like the partisan nature of this debate, and I abhorred the partisan nature of the debate on the legislative branch bill. I think it was really unfortunate, and it kicked off what turned out to be, I think, something that is almost unseemly to us, those of us who understand how this institution and the Office of the President should work. I find it regrettable.

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from Kentucky.

Mr. ROGERS. Mr. Chairman, I was not here at the time the legislative branch debate took place, and I cannot relate to that. However, let me ask the gentleman this question:

The gentleman is not saying that we as Members pay the so-called SLUC charge, the standard level GSA charges, for our offices here in Washington, does he?

Mr. FAZIO. No; I am saying that when we rent space in Federal buildings, as many of us do, around the country and those charges go up, we must absorb those increases. That rationale which was not given any credence at all when our bill was debated although it had been factored into the decision that the Committee on House Administration made to increase allowances. Our subcommittee simply pays the bill. We write the check for decisions that were made along the line, as this subcommittee must when it is confronted with increases that must be paid by the Executive Office of the President.

Mr. DORGAN. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from North Dakota.

Mr. DORGAN. Mr. Chairman, I appreciate the gentleman's yielding.

As all of us know, virtually every area of public spending can be defended by some Member on this floor. Some Member will stand up and say, "Well, here are the perfectly legitimate reasons that spending in this bill was increased," just as the gentleman from Kentucky has done with the budget in question.

But I have been curious enough over the last several years to take a look at the increases in budget for the OMB and the White House, and I see increases in the range of 12 to 14 percent. I have been curious as to why, if budget restraint is good to the rest of the American people, if budget restraint is good for domestic programs, and if budget restraint is good for other agencies, budget restraint is not good for the President's own budget. Why is budget restraint not good for the OMB and the White House?

We have been saying that the programs for the poor, the programs for the elderly, the programs for the students, and the programs that deal with domestic problems in this country have to be subject to some budget restraint. That is fine. I agree with that. I have voted for a lot of that discipline and I voted for budget restraint. But why on earth is it called silly or political when we suggest that maybe the White House ought not get 12- to 14-percent increases in their budget year after year? Why on earth is it silly to recommend budget restraint for the White House?

I think it is just asking the obvious. Why should the President preach budget restraint and then ask for big budget increases for himself?

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield to my friend, the chairman of the Committee on House Administration.

Mr. HAWKINS. Mr. Chairman, I certainly do not intend to get into the politics of the situation, but may I make it plain and clear, in regard to the position of the Committee on House Administration on the payment of rent for office space rented from GSA, that we followed the same pattern as other groups and agencies and individuals.

The CHAIRMAN. The time of the gentleman from California [Mr. FAZIO] has expired.

(By unanimous consent, Mr. FAZIO was allowed to proceed for 3 additional minutes.)

□ 1610

Mr. HAWKINS. We charge to each individual Member each increase that is made and that is paid directly by this body.

May I also remind the gentleman in the well that at the present time in addition to the payment for that space, the GSA is demanding that the House assume also such personnel as may be involved in the computation of that space. We must, therefore, anticipate that beginning in the fiscal year 1985 that this House will be faced with an appropriation on an outlay of somewhere in the neighborhood of $1½ million to pay GSA for the personnel even involved in the computation of that space. That is now being negotiated and we have asked and the House Administration Committee has asked the GAO to negotiate with the GSA for that reasonable amount.

I just simply want to say that from that point of view we do not want anyone to misunderstand what the position of the House is in the payment of your office space through GSA. It is fully amortized. It is fully evaluated at the going rate and we do not get any particular break because the House happens to be a part not of the executive branch, but of the legislative branch.

Mr. Chairman, I thank the gentleman.

Mr. FAZIO. Mr. Chairman, I appreciate the gentleman's comments. I think they are very pertinent to the debate.

My point, and I will just summarize, is this. We are very quick to be self-critical. We are very quick to appeal to the folks back home on the basis of our willingness for self-denial and perhaps inflict a blow on the legislative branch without even thinking about the fundamental obligations and costs that accrue that we must include when we bring our bill to the floor; but when it comes to the executive branch, many of us are simply willing to go along giving, for example, the Office of Management and Budget an additional advantage over the Congressional Budget Office which serves us. That does not really serve our constituents very well.

It is of real importance of having these competing interests in the legislative and executive branches battling out the fiscal policy of our country. That's what makes the system work for our constituents when it does work.

So I am critical of those Members who will be very quick to lay another cut on the legislative branch for political benefit after we bring a responsible budget to the floor, even after we have made reductions in the 1984 level and then simply stand and either oppose a commensurate reduction in the Executive Office of the President or at least equivocate about how appropriate it would be to take this kind of an amendment, which is nowhere near as Draconian as some that were offered when our bill was on the floor.

Mr. HOYER. Mr. Chairman, I move to strike the requisite number of words.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman from Maryland, a member of the committee, for yielding.

I would like first to make a point and then I would like to direct a question to the distinguished chairman of the subcommittee.

I want to make it very clear that this effort is neither a partisan effort nor a spur of the moment effort. It is the same position that many of us have taken over past administrations and during the consideration of the legislative appropriations.

On June 6 of this year, I engaged in a colloquy with the distinguished gentleman from Minnesota and served notice that I would deal in the same way on a bill of this sort as I would on the legislative appropriations and, indeed, voted for a 2-percent across-the-board cut. I did so because I think that we can obtain some savings from these types of appropriations.

We are talking about an amendment which treats the Executive Office of the President more generously than this House treated the legislative branch in the legislative appropriations.

Now, if I may direct this to the distinguished subcommittee chairman. It is very troubling to me that the House and its Appropriations Committee cannot provide the Members and the American public with information as to how many detailed employees there are working in the White House. I would be interested to know how many there are working there this year as compared to last year. In addition, I would like to know how many consultants there are working in the White House this year, as compared to last year and how much they are being paid, because this does not even show up in this appropriation.

It seems to me, based on the information I have received, that we are talking about literally hundreds of people and millions of dollars. We are not even touching that in this amendment.

I would hope—and I make this request of the distinguished subcommittee chairman—that at the proper time a hearing will be held by the gentleman's subcommittee at which this information will be specifically requested from representatives of the White House and the Office of Management and Budget so we in the Congress and the American public may know the truth.

Mr. HOYER. Mr. Chairman, I yield to the chairman for a response.

Mr. ROYBAL. Mr. Chairman, I would like to respond to the gentleman from Georgia by saying that, first of all, this committee has considered all of the gentleman's concerns. This is not the first time that we deal with the concern of the committee and Members of this House with regard to the detailees in the Office of the President.

In fact, I remember very well the first bill that I brought to the full Committee on Appropriations. I took the exact position that the gentleman from Georgia has taken. I thought that by doing so and still prevailing in the subcommittee that we would be going to the full committee with the assurance that the members would listen to reason.

I made the same presentation that the gentleman has made, but may I say that perhaps that of the gentleman from Georgia was more articulate than mine; but at least I made the same points.

Finally, a vote was taken. I was concerned about the fact that we did not know how many consultants, how many detailees were in the Office of the President. I was concerned about the fact that the Office of the President or the Executive Office of the President and those offices under that title had increased the appropriation. I had reduced that, leaving that appropriation exactly as it was the previous year; but when the vote was taken, a motion to increase was made by a Member of my side and the discussion went on. I was told in [illegible] uncertain terms that this committee [illegible] tradition had always granted to the Office of the President whatever they requested.

They went on further and said that this was not a partisan issue at all, that if the President needed a certain amount of money for his operation, that the committee had always granted that and, therefore, they were telling me as a freshman to the first presentation I had made to that committee that I was wrong in my assumption that the Office of the President could be reduced; but it was pressed to a vote and it prevailed.

Well, you know, you do not have to get hit over the head more than once to learn that something is not wanted by your own committee, so this year we took the position that, yes, the President should be held responsible for his own operation.

The **CHAIRMAN.** The time of the gentleman from Maryland has expired.

(At the request of Mr. Roybal, and by unanimous consent, Mr. Hoyer was allowed to proceed for an additional 5 minutes.)

Mr. ROYBAL. Mr. Chairman, if the gentleman will yield further, what has happened is that we come now to this House with the full appropriation, plus the increases that they have received.

I still take the position now after having learned through this process that the President should be held responsible for whatever he spends in his office. Right or wrong, it is his responsibility.

Therefore, in doing that, I am opposing the gentleman's amendment, even though less than 2½ years ago I took the same position, which comes down then to the one factor that has to be considered and that is the actual voting process I mean of this House.

I think that this is now the prerogative of the House. You have three amendments. They were not presented en bloc, but I suppose that whatever happens in this amendment would happen to the other three.

I still feel that the Office of the President should be actually managed by the President himself and I hope that the Members respect the so-called traditional position that this subcommittee has taken.

Mr. HOYER. Mr. Chairman, reclaiming my time, and I appreciate the comments of the chairman and the gentleman from Georgia, I rise, too, in opposition to the amendment on the same rationale that the chairman spoke of.

I served for a substantial period of years in the Maryland Senate and 4 years as president of the Maryland Senate. One of the functions of the president of the Maryland Senate was, with the speaker of the house, to formulate the legislative budget. That budget was not in turn submitted to the budget process of the legislature and was by virtue of comity included by the Governor in the Governor's budget, the executive budget.

□ 1620

The State of Maryland has one of the strongest executive budgets in the Nation. And the legislature cannot add or shift funds within that budget framework.

It was always the Governor's position then to include such funds as were requested by the legislative leadership and in turn it was the practice of the legislature to include in its budget and to approve the sums requested by the executive department for the operation of the Governor's office, not other agencies, but of the Governor's office.

Mr. Chairman, I think that was a good policy. It was a good policy because the executive department, at least as to the Office of the President, is directly responsible to the people, and the people, as the chairman has pointed out, will have to make a judgment on the responsible operation of that office by the incumbent. Therefore I think it makes good sense practically, politically, and from policy standpoint to allow the President the flexibility of requesting such funds as he or she deems to be appropriate.

That is not to say that it ought to be without oversight, but it is to say that we ought not to involve ourselves in the political response that I think we have involved ourselves in today.

I think we make a good point, however. And I think the gentleman from Kentucky, who has spoken before me and who serves on the subcommittee, understands the point that is being made. It is that many of the cuts that have been requested on this floor, particularly as they related to the legislative budget, which was itself below budget estimates when it came to the floor, are requested solely for political reasons; solely to make up lists on who is for saving money, no matter whether the savings are justified and in the best interests of our democracy.

So I agree with the gentleman from California, the chairman of the Legislative Appropriations Subcommittee, when he makes the point that it is unfortunate that we are in this debate; it is unfortunate that we are observed perhaps to be making political points back and forth.

It is unfortunate that we have allowed this floor and this budget process to diminish to the extent that we have now allowed the Customs Service to fall, not because there was an illegal appropriation, not because the appropriation would not be valid if it passed this House and passed the other body and was signed by the President, but because of a technicality, which under the rules allows a Member to object to the particular appropriation. I think that is unfortunate.

The **CHAIRMAN.** The time of the gentleman from Maryland [Mr. Hoyer] has again expired.

(On request of Mr. Traxler, and by unanimous consent, Mr. Hoyer was allowed to proceed for 2 additional minutes.)

Mr. TRAXLER. Mr. Chairman, will the gentleman be kind enough to yield to me?

Mr. HOYER. I will be pleased to yield to my friend from Michigan.

Mr. TRAXLER. I know the gentleman is making a very good point, which I partially agree with, but just so this issue is framed properly in my mind and so I understand the consequences of the proposal, if the gentleman would be kind enough, I have a question for the chairman of the subcommittee.

That is, as I understand the amendment, the responsibility for determining where these reductions would be made would fall upon the White House itself. And we are not mandating where these cuts would have to come within the overall White House budget. So the White House could, if they chose, keep the valets, could keep the hairdresser. If the President chooses next summer, if he wants to go to Europe again, he could take 400 people with him as he did 2 weeks ago and the three airplanes, and three press persons for the First Lady? Nothing mandates that they not do that in this proposal. In other words the President and First Lady would make the decisions as to which, if any, of the personal servants would be cut?

Mr. ROYBAL. Will the gentleman yield?

Mr. HOYER. I will be glad to yield to the chairman.

Mr. ROYBAL. The gentleman is correct. There is no mandate that anything like that be done.

In the law there is a certain amount appropriated to the First Lady so that she can hire the personnel that she would require, that she would need. The kind of personnel that she is to hire depends entirely on her, and that is her prerogative. We have that in the law and she exercises that right any way she so desires.

Mr. TRAXLER. I thank the gentleman for yielding.

Mr. HOYER. I yield back the balance of my time.

Mr. OBEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I really have mixed feelings about the course upon which we are engaged here this afternoon. Those of us who know me know that I believe in concepts like comity. I believe in recognizing the responsibility that the President has to run his branch of Government and I believe in recognizing the responsibility that the majority party has to all Members, not just Democrats, in this House, to carry the baggage on other items that cannot be avoided in our branch.

It is with great hesitation that I support the idea of reducing the budget for the White House because I institutionally prefer that none of this go on. It seems to me that the process which has begun the last 2 or 3 years of using every possible political opportunity present to embarrass Members of this House or members of opposite parties in the end cheapens the political process, it cheapens the legislative process most certainly, and it also cheapens the practice of politics in general, which I believe to be one of the most honorable of all professions because it is public service.

But I want to say that if there is to be restraint exercised, and without restraint we cannot function as a legislative body, if there is to be restraint exercised then it must be mutual, it must be by the majority as well as by the minority. It must be by the Congress as well as the White House and vice versa.

And it seems to me that whenever an opportunity is pursued to embarrass Members of this body simply because they are doing their institutional duty and, therefore, must cast votes that are not readily understood back home, then the Members who carry that baggage by virtue of their responsibilities in this Chamber have no choice but to insist that everybody be treated the same way.

And it seems to me that when we are lectured because we object to Federal budgets which reduce in real terms support for programs that aid the non-elderly poor by 40 percent over a 5-year period, when we are told that we are spendthrifts because we object to reducing education as the President's budget indicates it does in real terms by 19 percent, when we object to things like that and are told we are spendthrifts and yet are attacked when we try to apply the same restraints to the White House that have been applied to a good many other people in this society and have already been applied to this House * * * it seems to me that when we are attacked for taking those positions that we are in fact seeing a great inconsistency which in the end does nobody any good.

So it is with great reluctance that I support the amendment of the gentleman from Georgia, but I think in the interests of illustrating the necessity for fairness and for true comity, not only between branches of Government but between parties on institutional issues, we ought to be keeping that in mind that we have the obligation to provide that comity not just between branches of Government but I would submit between parties as well.

I think we are left with no choice but to pursue this course and support the amendment. We are simply providing the same limitation on this office that we had in House operations when the legislative appropriations bill came to the floor, and it seems to me that is equitable.

□ 1630

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do commend the gentleman from Maryland [Mr. HOYER] for his reasonable statement earlier on this matter and I will yield to the gentleman from Kentucky.

Mr. ROGERS. I thank the gentleman for yielding.

Mr. Chairman, likewise I would like to commend both the chairman and the gentleman from Maryland for their statements. I had thought about offering an amendment to the amendment, to provide for the level that the gentleman's motion states, plus the standard level user charge increase that these agencies are required by GSA to absorb.

But in view of the chairman and Mr. HOYER's remarks and others, I do not plan to offer that amendment.

Let me say this: I have only talked about one of the agencies, the office of the administration, which is the pending amendment, but the gentleman had mentioned the other two offices, that is OMB and the White House Office; let me mention those briefly.

The OMB request, which the committee pared down and set at $40 million for fiscal 1985, is an increase over fiscal 1984's figure of $2.2 million. But of that $2.2 million increase, OMB is being made by GSA to pay $2.1 million for rent.

So 98 percent of the requested increase by the Office of Management and Budget is for the standard level user charge which GSA requires they pay. And I think it is terribly unfair to cut them and make them absorb cuts in the rest of their operation.

The White House Office, the third agency that is being mentioned in this series of three amendments, requested $24,985,000, which is $1,559,000 over last year, but $610,000 of that is increased rent that they have to pay to GSA and $526,000 of it is for personnel compensation mandated by the annualization of pay and benefit increases which are mandated by law.

So practically all of their increase in the request goes for things over which they have no control.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Wisconsin.

Mr. OBEY. I thank the gentleman for yielding.

I would like to point out that this House also had no choice when we were required to include the additional costs that accrued to the House because employees of the House were required to be placed under Social Security, so they were like everybody else in the country.

We also had no control over GSA increases in costs of our home offices. There are a number of items beyond our control as well. Yet that was not taken into account when the House bill was reduced.

It seems to me if you do not take them into account for one branch of Government, you should not take them into account for the other branch of Government.

Mr. RUDD. Mr. Chairman, I yield back the balance of my time.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if I understand correctly the remarks of the gentleman from California [Mr. FAZIO] and perhaps the remarks of the gentleman from Georgia [Mr. LEVITAS], this amendment was somehow inspired by an amendment which took two tries to pass the other day on the legislative appropriations.

Nobody has made the point, however, that my amendment was across the board. It applied to all of the operations of the legislature.

This amendment applies to a very small item in a total budget which is, in total, miles over the budget that this House has agreed to. It contains, as I pointed out earlier, a 7-percent increase in an area where we agreed there would be a 3.5-percent increase.

If you want symmetry with my amendment, which I might state lasted about 24 hours before the Senate overturned it, then you have to make a 3.5-percent cut against the total bill. You cannot selectively pick out little things that you do not like, such as this particular amendment.

The amendment pending before us does not leave the agency, after its last year's appropriation and supplemental, with a 3.5-percent increase.

But in my judgment, if we want to share sacrifice, we should apply to the appropriation of each agency the exact criteria that we applied to our overall budget. To do that on this bill, you will need to cut about $440 million across the board. That will leave all agencies with about a 3.5-percent increase, and it will take off about 3.5 percent of each appropriation in this bill.

That is shared sacrifice. That is equality of sacrifice. I believe that should be the course of the House.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Wisconsin.

Mr. OBEY. I thank the gentleman for yielding.

Mr. Chairman, the gentleman is correct; we have not included all of the times in the White House. We exempted from any limitations the Executive residence at the White House; we exempted the official residence of the Vice President; we exempted compensation for the President; we exempted a number of other items.

We exempted the Council on Economic Advisers and the Office of Policy Development the reduction because we did not want to apply reductions in some of the areas in the President's Office which we regarded as either too essential or too personal.

Mr. FRENZEL. I thank the gentleman.

However, the entire bill is about $12 billion. The amendment applies this cut to only about $15 million. That is not spreading the sacrifice.

Mr. OBEY. If the gentleman will continue to yield, I will be offering an across-the-board cut at a later point. The gentleman will have an opportunity to vote for it.

Mr. FRENZEL. The gentleman's 64-percent cut is very exciting, but it is, if you will pardon a pejorative description, is mischievous.

I yield back.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. LEVITAS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LEVITAS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 326, noes 74, not voting 33, as follows:

[Roll No. 255]

AYES—326

Ackerman
Albosta
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
Barnard
Barnes
Bartlett
Bateman
Bates
Bedell
Bennett
Bereuter
Bethune
Bevill
Bilirakis
Bliley
Boehlert
Boner
Bonior
Bonker
Borski
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CO)
Broyhill
Burton (CA)
Burton (IN)
Byron
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chappie
Cheney
Clarke
Clay
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conyers
Corcoran
Coyne
Crane, Daniel
Crockett
D'Amours
Daniel
Dannemeyer
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Feighan
Ferraro
Fiedler
Fields
Fish
Flippo
Florio
Foley
Ford (MI)
Ford (TN)
Franklin
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Goodling
Gore
Gradison
Gregg
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hance
Harkin
Hatcher
Hayes
Hefner
Heftel
Hightower
Hiler
Hillis
Holt
Hopkins
Howard
Huckaby
Hughes
Hutto
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lent
Levin
Levine
Levitas
Lewis (FL)
Lipinski
Long (LA)
Long (MD)
Lott
Lowry (WA)
Lujan
Luken
Lungren
Markey
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McHugh
McKernan
McKinney
McNulty
Mica
Mikulski
Miller (CA)
Mineta
Minish
Mitchell
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Myers
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Paul
Pease
Penny
Pepper
Perkins
Petri
Pickle
Price
Pursell
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Rodino
Roe
Roemer
Rose
Roth
Roukema
Rowland
Russo
Savage
Schaefer
Schroeder
Schumer
Seiberling
Sharp
Shaw
Shumway
Shuster
Sikorski
Siljander
Sisisky
Skelton
Smith (FL)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stenholm
Stokes
Studds
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitley
Whittaker
Williams (MT)
Wilson
Winn
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (MO)

NOES—74

Addabbo
Akaka
Anderson
Andrews (NC)
Badham
Benenson
Berman
Biaggi
Boland
Brown (CA)
Conable
Conte
Cooper
Coughlin
Courter
Dixon
Donnelly
Early
Edgar
Erlenborn
Fazio
Foglietta
Frank
Gray
Green
Hammerschmidt
Hansen (UT)
Hartnett
Hawkins
Hertel
Horton
Hoyer
Hunter
Hyde
Kostmayer
Lehman (FL)
Lewis (CA)
Livingston
Loeffler
Lowery (CA)
Mack
Madigan
Mavroules
McCain
McGrath
Michel
Miller (OH)
Moakley
Murtha
Natcher
O'Brien
Patterson
Porter
Quillen
Robinson
Rogers
Rostenkowski
Roybal
Rudd
Sabo
Sawyer
Scheuer
Schulze
Skeen
Slattery
Smith (IA)
Stratton
Stump
Taylor
Vucanovich
Whitehurst
Whitten
Young (AK)
Zschau

NOT VOTING—33

Alexander
AuCoin
Boggs
Bosco
Bryant
Craig
Crane, Philip
Daub
Edwards (AL)
Fowler
Gingrich
Gramm
Hansen (ID)
Harrison
Hubbard
Kogovsek
Leland
Lloyd
Lundine
MacKay
Marriott
Pritchard
Schneider
Sensenbrenner
Shannon
Shelby
Simon
Stark
Torricelli
Towns
Williams (OH)
Wise
Young (FL)

□ 1650

Messrs. EDGAR, FOGLIETTA, GREEN, MAVROULES, PORTER, BIAGGI, MOAKLEY, SCHEUER, and

DONNELLY changed their votes from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The **CHAIRMAN**. The Clerk will read.

The Clerk read as follows:

THE WHITE HOUSE OFFICE

SALARIES AND EXPENSES

For expenses necessary for the White House Office as authorized by law, including not to exceed $3,850,000 for services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; including subsistence expenses as authorized by 3 U.S.C. 105, which shall be expended and accounted for as provided in that section; hire of passenger motor vehicles, newspapers, periodicals, teletype news service, and travel (not to exceed $100,000 to be expended and accounted for as provided by 3 U.S.C. 103); not to exceed $20,000 for official entertainment expenses, to be available for allocation within the Executive Office of the President; $24,985,000.

AMENDMENT OFFERED BY MR. LEVITAS

Mr. **LEVITAS**. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: Page 13, line 6, strike out "$24,985,000" and insert in lieu thereof "$23,731,000".

☐ 1700

Mr. **LEVITAS**. Mr. Chairman, this is the second of the three amendments which the gentleman from Georgia sought to offer en bloc. I think the arguments would be the same in this respect as were made in behalf of and in opposition to the last amendment.

I just want to compliment the Members of this House for their vote. I think that perhaps as much as any other vote we have passed recently, it shows that we are serious that we are going to cut and that there is not any place in the Federal Government where savings cannot be made. That includes the legislative branch, the executive branch, and the agencies. I think that with the last vote we have sent the signal that needs to be sent, not only to the American people but to those of us in government, that we can reduce and begin to make not only a downpayment but a real inroad into the enormous and outrageous deficits. And, perhaps, one day we can achieve the balanced budget.

Mr. Chairman, I yield back the balance of my time.

The **CHAIRMAN**. The question is on the amendment offered by the gentleman from Georgia [Mr. LEVITAS].

The amendment was agreed to.

The Clerk read as follows:

OFFICE OF MANAGEMENT AND BUDGET

SALARIES AND EXPENSES

For necessary expenses for the Office of Management and Budget, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109; $40,005,000: *Provided*, That none of the funds appropriated in this Act for the Office of Management and Budget may be used for the purpose of reviewing any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.).

AMENDMENT OFFERED BY MR. LEVITAS

Mr. **LEVITAS**. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS: Page 15, line 5, strike out "$40,005,000" and insert in lieu thereof "$37,889,000".

Mr. **LEVITAS**. Mr. Chairman, this was the third of the three amendments which the gentleman had sought to offer en bloc. It pertains to the Office of Management and Budget. They are, perhaps, as skilled as any other agency of Government in finding places where savings can be accomplished, and I think that this amendment would be consistent with the other two that have been adopted.

Mr. **DANNEMEYER**. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of this amendment and I commend my colleague from Georgia [Mr. LEVITAS], for offering this amendment to the House. This reduction is modest in nature, it will still permit budget growth in the OMB of approximately 3.5 percent over what was spent in 1984, and I do not think it is unreasonable to ask even that august group of budget reviewers to live within the confines of a 3.5-percent increase.

I hope the House will adopt this amendment.

The **CHAIRMAN**. The question is on the amendment offered by the gentleman from Georgia [Mr. LEVITAS].

The amendment was agreed to.

The Clerk read as follows:

GENERAL SERVICES ADMINISTRATION FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

The revenues and collections deposited into the fund pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; rental of buildings in the District of Columbia; restoration of leased premises; moving Government agencies (including space adjustments) in connection with the assignment, allocation and transfer of space; contractual services incident to cleaning or servicing buildings and moving; repair and alteration of federally owned buildings, including grounds, approaches and appurtenances; care and safeguarding of sites; maintenance, preservation, demolition, and equipment; acquisition of buildings and sites by purchase, condemnation, or as otherwise authorized by law, conversion and extension of federally owned buildings; preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, taxes, and any other obligations for public buildings acquired by purchase contract, in the aggregate amount of $2,250,228,000, of which (1) not to exceed $106,814,000 shall remain available until expended for contruction of additional projects as authorized by law at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:

New Construction:

California:

Long Beach, Federal Building, $20,000,000

Texas:

El Paso, Ysleta, Border Station, $6,893,000

Washington:

Lynden, Border Station, $2,386,000

Sumas, Border Station, $4,618,000

Construction Projects, less than $500,000, $1,000,000

Purchase:

Acquisition and Improvements of United States Postal Service Properties, $1,700,000

Other Selected Purchases including options to purchase, $70,217,000:

Provided, That each of the immediately foregoing limits of costs may be exceeded to the extent that savings are effected in other such projects, but by not to exceed 10 per centum: *Provided further*, That all funds for direct construction projects shall expire on September 30, 1986, and remain in the Federal Buildings Fund except funds for projects as to which funds have been obligated in whole or in part prior to such date: *Provided further*, That claims against the Government of less than $40,000 arising from direct construction projects, acquisitions of buildings and purchase contract projects pursuant to Public Law 92-313, the liquidated with prior notification of the Committees on Appropriations of the House and Senate to the extent savings are effected in other such projects, (2) not to exceed $228,432,000 which shall remain available until expended, for repairs and alterations: *Provided further*, That funds in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount by project as follows, except each project may be increased by an amount not to exceed 10 per centum unless advance approval is obtained from the Committees on Appropriations of the House and Senate for a greater amount:

Repairs and Alterations:

California:

San Francisco, Appraisers Stores, $9,711,000

Colorado:

Denver, Denver Federal Center, #20, $6,210,000

Denver, Denver Federal Center, #810, $8,590,000

District of Columbia:

Archives, $4,696,000

Auditors, $8,980,000

Blair House, $6,611,000

Health and Human Services, North Building $1,504,000

Interior, $4,131,000

Illinois:

Chicago, 844 N. Rush Street, $1,931,000

Peoria, Federal Building and Courthouse, $1,357,000

Iowa:

Des Moines, Federal Building, $3,083,000

Sioux City, Post Office, Courthouse, $809,000

Maryland:

Suitland, Naval Intelligence #1, $8,809,000

Michigan:

Detroit, Parking Garage, $1,832,000

Lansing, Federal Building and Courthouse, $1,395,000

Missouri:

Kansas City, 1500 E. Bannister, $907,000

St. Louis, Courthouse and Customshouse, 1114 Market Street, $8,654,000

New York:

New York, 201 Varick Street, $1,508,000

Pennsylvania:

Pittsburgh, Post Office, Courthouse, $8,672,000

Philadelphia, 5000 Wissahikon Ave., $2,635,000

Texas:

Fort Worth, Warehouse #5, $710,000

Virginia:

Alexandria, Post Office, Courthouse, $1,370,000

Arlington, Pentagon, $4,602,000: *Provided further*, That additional projects for which prospectuses have been fully approved may be funded under this category only if advance approval is obtained from the Committees on Appropriations of the House and Senate: *Provided further*, That all funds for repairs and alterations prospectus projects shall expire on September 30, 1986 and remain in the Federal Buildings Fund except funds for projects as to which funds have been obligated in whole or in part prior to such date; (3) not to exceed $178,911,000 for payment on purchase contracts entered into prior to July 1, 1975; (4) not to exceed $865,000,000 for rental of space; (5) not to exceed $695,148,000 for real property operations; and (6) not to exceed $117,040,000 for program direction and centralized services; and (7) not to exceed $58,883,000 for design and construction services which shall remain available until expended: *Provided*, That for the purposes of this authorization, buildings constructed pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 356), the Public Buildings Amendments of 1972 (40 U.S.C. 490), and buildings under the control of another department or agency where alterations of such buildings are required in connection with the moving of such other department or agency from buildings then, or thereafter to be, under the control of General Services Administration shall be considered to be federally owned buildings: *Provided further*, That none of the funds available to the General Services Administration shall be available for expenses in connection with any construction, repair, alteration, and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus: *Provided further*, That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations of the House and Senate: *Provided further*, That amounts necessary to provide reimburseable special services to other agencies under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)(6)) and amounts to provide such reimburseable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056 as amended, shall be available from such revenues and collections: *Provided further*, That revenues and collections and any other sums accruing to this fund during fiscal year 1985, excluding reimbursements under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)(6)) in excess of $2,250,228,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriation Acts.

AMENDMENT OFFERED BY MR. LUNGREN

Mr. LUNGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LUNGREN: Page 18, strike out lines 16 through 23 and insert in lieu thereof the following:

$2,230,228,000, of which (1) not to exceed $86,814,000 shall remain available until expended for construction of additional projects as authorized by law at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:

New Construction:

Mr. LUNGREN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LUNGREN. Mr. Chairman, this is a fairly simple amendment. This strikes $20 million to be committed for the next fiscal year for the actual construction phase of a Federal building in my district. I have heard the debate that we have had here today about how we ought to make everybody be treated the same, and how we ought to require that the White House be as efficient as we are supposed to be, and I happen to think that makes good sense. I supported the amendments that were presented just previous to this.

In this case, we do have a Federal building that some wish to build in my own district, my own hometown, the community in which I have lived for 38 years. One of the concerns I have about us trying to balance the budget in this place, is that we always point to the other guy, or we point to the other agency, or we point to the other branch of Government. I have a concern about how the entire Federal building process takes place in this House.

It is my information that out of eight buildings that were considered to be built in the Western region, the building in my district ranked eighth out of eight; it was the last they wanted to build. But we did in the past authorize legislation to require it to be built. The argument has been made that we save money by building this building instead of continuing to lease, and that may well be true if you take it out of the context of all spending.

But if you compare it to the other eight buildings that were being considered in the Western region, building this building saves less money than building any of the others, and yet we proceed here. Now that decision to build is not the decision we are going to make here today.

The GSA has informed me that at the stage the building is in right now, they cannot possibly use $1 of the $20 million that is in this bill for next year. If we have got a deficit into the hundreds of billions of dollars next year, I ask what sense it makes to commit $20 million that the GSA tells us they cannot build because in any event they will not be in the building phase next year.

Now I know I will be opposed in this amendment by the gentleman who represents the adjoining district, and you will be told that the mayor of my community wants this building. Well, I will tell you that is true; the mayor of my community does want this building, as many mayors want any free money you can send to them.

□ 1710

In fact, when he went to my staff and asked why I was opposing this money, I said in the city of Long Beach in which this building is to be built, we do not appropriate money that we have been told by our agency it cannot be used. The response of my mayor was, "Well, that is true because we cannot get away with it."

I just ask my colleagues, after we have just taken a comparable amount of money from the White House staff, the staff that supports the President of the United States, who was elected by all the people of the United States, why some will wish that we impose this $20 million on the taxpayers of all of your communities that the GSA has told us we cannot spend?

I will await with interest the comments to tell you why we should do that, but frankly, I think if we are going to balance the budget, we have to start looking at programs a little more carefully than we have, even in our own districts.

One of the arguments that has been made is that my hometown happens to be the largest city in America without a Federal building. We may be the largest city in America without a Federal building, but it seems to me we have to go a little deeper than that to see whether, in fact, we should spend taxpayers' money to build buildings.

Would this building be nice in my community? Sure, we would like to have it. Would we like to have $20 million committed to a fund even though we cannot use it next year? If all of my colleagues would like to send $20 million to sit in an account that will be used for no purpose, then they should vote "no" on my amendment. If my colleagues want to take one small step toward eliminating $20 million that is unnecessary, I would ask Members to support this amendment.

Mr. ROYBAL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I do so because this matter was thoroughly considered by the subcommittee. The arguments that have just been presented were also presented to the subcommittee by letter. It was in writing, and not verbally.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield on that point?

Mr. ROYBAL. I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding.

Mr. Chairman, I understand that the gentleman informed the subcommittee members at the time this was brought up that this building was, in fact, not in my district, and that tended to undercut the credibility of my letter suggesting that it not be spent.

I would like to state for the record that the building happens to be in my district, so that information was not given to the subcommittee members.

Mr. ROYBAL. May I say that the gentleman was misinformed by someone. I did not say that the building was not in the gentleman's district. But I did say that that building was at one time in another Member's district and that now it was in the gentleman's district.

We, as members of the committee, read your letter and read it thoroughly, and it was decided at that time that the best thing to do was to bring this matter to the House in its present form. I sincerely hope that this matter can be clarified as to the need for the building, regardless of whose district that building is in.

If there is need, let us construct that building. If there is no need, then we should not appropriate the funds. But it is my understanding that there is a need for that building that has been under consideration a long time and that it is necessary that the committee take the action that it took.

I am sure that we will hear from the gentleman from California, Mr. ANDERSON, who will take the opposite position; that is, opposite from that position which the gentleman from California, Mr. LUNGREN, has taken. Let us find out what the facts are here, and then we will vote accordingly.

Mr. ANDERSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, first, let me respond to my distinguished colleague from Long Beach by saying that I was quite surprised to learn of his opposition to this badly needed project. As you know, the construction of a new Long Beach Federal office building is not only supported by the General Services Administration but also, by the mayor of Long Beach and the Long Beach Area Chamber of Commerce. Frankly, as far as I am aware, he may be the only resident in the Long Beach area who does not want to move forward with construction of this facility.

Now let me address his points one at a time:

The gentleman is correct that this facility would be constructed in his district. After checking a map, I found that this building would be located outside of my district by approximately one block. To enlighten my colleagues, the new facility will be included in a proposed world trade center in the heart of Long Beach. I might add that this is an area I represented in this chamber for 12 years, from 1968 to 1980.

Second, the gentleman has said that if Congress appropriated construction money for the Long Beach building in the upcoming year, fiscal year 1985, GSA would be unable to spend the money. Frankly, I have heard just the opposite. Recently, at my request, staff on the Public Works and Transportation Subcommittee on Public Buildings and Grounds called GSA to check on this. Contrary what you may have been told earlier, GSA would in fact have the ability to spend money in the upcoming fiscal year for construction of a new Long Beach Federal building.

The last point I want to address that the gentleman has raised concerns the Long Beach Federal building's priority by GSA. The gentleman is correct that this facility is not on GSA's 1985 construction list, but it has top priority in the Public Works Committee. As with anything else in the budget, the administration submits its requests to Congress and it is the Congress which decides what projects should be funded. This is nothing new. I think the gentleman would agree with me that we should not support every budget request submitted by this or any other administration. The bottom line is that the Long Beach facility is badly needed, it is widely supported throughout the community, and it would save the Treasury well over $100 million over the next 30 years in annual rent payments.

As far as GSA's priorities go, it is my understanding that the No. 1 project on GSA's list of construction projects is a new $350 million building right here in our Nation's Capital. I have heard several comments to the effect that the last thing we need in this town is another big Federal building. I am pretty sure our constituents would want us to move forward with construction of a $41 million facility to better service their needs in Long Beach rather than construct a $350 million building here in Washington.

I would like to take just a moment and read from the committee hearing record from July 1982 when we discussed this project. I am quoting now my colleague from California:

> We have a number of Federal offices that serve this area. They are scattered about. I suppose the question ought to be whether the taxpayers of this area and the Nation will be better served by having a building wholly built and owned by the Federal government rather than the leased space around in different areas of this community.
>
> I hope that we will decide on that basis because, frankly, I would have to say to my constituents that we looked at this, we looked at it objectively, we made the decision based on a true analysis of whether the funding was more appropriate in these circumstances for construction as opposed to leasing.

As I have said previously, if we move forward like we should with construction of the new Long Beach Federal building, we could save the taxpayers well over $100 million in rent payments over the next 30 years. And, of course, we would have a building of our own in the end.

Thus, if the gentleman looks at this matter as a purely financial one, I think he would agree with me that construction is much more cost effective than leasing.

Mr. CHENEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from California.

Mr. LUNGREN. I thank the gentleman for yielding.

Mr. Chairman, I really do not want to spend a great deal of the Committee's time on this, but I think there is a fundamental question here that we should start looking at one time or another.

□ 1720

We have what I refer to sometimes as "an edifice complex" around here. It seems to me that the only way we can be fulfilled at times is somehow to create one more building.

That is not the question here. Let me just respond to what the gentleman has said in a couple of ways. One is, if we had an unlimited amount of money, we could justify this building without any problem because we could say it is going to cost less to build it than to lease it. But then, when we compare it to that circumstance everywhere else in the country and in the region, the answer is not so clear.

The lease costs for San Francisco, for instance, in our area range from $30 to $45 per square foot; in Los Angeles they range from $25 to $45 per square foot; and in Long Beach they are in the range from $18 to $32 per square foot. So if we are going to save money, it probably makes more sense, if we have an option of building a building in San Francisco, Los Angeles, or Long Beach, to build it in one of those other two places rather than in my hometown in the first place.

So let us talk about that. That is the answer that I gave to the gentleman when I testified in the hearing in my hometown a number of years ago.

The other point is that at the time I testified I was unaware that the GSA had said this was ranked eighth out of eight and it only became first when the committee decided to put it up to first. So I asked GSA to respond to me: "If in fact you had not been instructed by the subcommittee to put it first, where would it rank?" And the acting Administrator of GSA stated in letter of March 26 of this year that "Given available funding levels and other identified needs, we would have preferred to build or buy in other locations first."

All I am saying, Mr. Chairman, is that sometime we had better stop the way we are operating around here. Yes, I would like to have a wonderful building in my district, but doggone it, at some point in time we had better start talking to the taxpayers about the fact, first, that we have got enormous deficits.

Second, we have been told by GSA and I have been told by GSA most recently that even if they build this building, they cannot use the money appropriated in this bill next year. They are going to have $20 million they cannot use even if they go ahead and build it. They already have $6.2 million for the design phase and the site selection. They cannot go into construction next year because they will not be in the mode to do it.

So if you want to just go ahead and keep $20 million in this bill to add to the deficit for next year for no reason, then I say you might as well vote no; but at some point in time I would suggest that we have got to rid ourselves of the idea that all we have got to do is bring home the bacon to our constituents with building after building, even when in fact the GSA has told us they cannot spend the money.

We went through a big debate on the first amendment for taking, I think, $1.5 million away from the White House, and then we had a couple more. But this is $20 million. We are going to agonize over whether we should take that amount of money from the President of the United States, and here we are told, "Keep it in there. It's a good program. Even though they are not going to spend it, appropriate these funds, even though they are never going to be used." It does not make sense.

The gentleman may have represented this area before. I have lived in this community for all 38 of my years. The gentleman has represented this area, but he has never been a resident of that community. And I will tell the Members that sometimes even the chamber of commerce is wrong, and sometimes even an elected mayor is wrong when they see the money coming from Washington, DC, that is so free. I suggest to the Members that our constitutents do not believe it is so free.

Mr. Chairman, I would also suggest to the Members that it may be unique to have a Member coming to them and asking them not to throw away money in his district next year, but that is in fact what I am asking them to do.

Mr. CHENEY. Mr. Chairman, I yield back the balance of my time.

Mr. YOUNG of Missouri. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the amendment offered by the gentleman from California [Mr. LUNGREN].

The House Committee on Public Works and Transportation has jurisdiction over the General Services Administration program for constructing, altering, and leasing space to house Federal agencies around the country. In this regard, the committee traditionally has been in strong support of construction versus leasing, yet in fiscal year 1985, the General Services Administration budget request of the Congress, sought only a mere $14 million for new construction. However, sought approximately $900 million for leasing to house Federal agencies nationwide.

The Long Beach Federal building is estimated to cost approximately $41 million. To date $6.2 million has already been signed into law by the President and the General Services Administration has already obligated those funds for site aquisition and design of the Long Beach Federal building. The $20 million contained in H.R. 5798 is necessary in fiscal year 1985 so that the General Services Administration can proceed with the award of a contract for construction of this needed Federal facility.

Mr. Chairman, prior to approving construction of the Long Beach Federal Building, the Subcommittee on Public Buildings and Grounds of the House Committee on Public Works and Transportation held a hearing in Long Beach at which time we received testimony from officials of the General Services Administration, city, and numerous civic organizations in Long Beach. The testimony we received was unanimous—everyone supported construction of the Federal building in Long Beach, despite the fact that once constructed the property and Federal building will not be on the local tax rolls of Long Beach. We learned that over a 30-year period there would be a cost savings to the Government of at least $70 million, and now, due to the increased size of the building, that figure over a 30-year period is in excess of $100 million.

Mr. Chairman, with respect to the General Services Administration not being able to obligate the $20 million in fiscal year 1985, that is an incorrect statement. To the contrary, GSA has the capability to award a contract for the phased construction of this building in fiscal year 1985 which achieves considerable cost effectiveness and will allow a great many Federal agencies to have space in the facility by 1987 and thereby discontinue current high rental outlays of approximately $2.2 million annually. Fiscal year 1985 funding will also allow the building to be completed in conjunction with the overall World Trade Center project currently underway in Long Beach and thereby participate in the economies attendant to that major west coast development.

To conclude, the House Committee on Public Works and Transportation rejected the GSA proposal to continue leasing space in Long Beach, and instead, approved construction of the Federal building.

Mr. Chairman, I strongly recommend this amendment be defeated, thereby affording the taxpayers across the Nation a savings in excess of $100 million.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Missouri. I am happy to yield to the gentleman from California.

Mr. LUNGREN. Mr. Chairman, is it not true that originally we were talking about a $15 million building, we then went to a $25 million building, and the gentleman said it is now a $41 million building, but in fact the latest cost estimate is $48 million?

Mr. YOUNG of Missouri. Mr. Chairman, the original proposal, I believe, was $20 million, but after we had the hearing there and we had the different Federal agencies that would take advantage of this building, obviously the price did escalate, and I understand that now, according to our staff, it is a $41 million building. But on the $48 million, I do not know where that figure came from.

Mr. LUNGREN. Well, these are our figures, and I might suggest that maybe if we got it up to $100 million, maybe we could save the taxpayers even more money.

Mr. YOUNG of Missouri. Well, I disagree with the gentleman on that. I disagree with the gentleman's whole premise on this matter.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. LUNGREN].

The question was taken, and the Chairman announced that the ayes appeared to have it.

Mr. ANDERSON. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call.

Mr. ROYBAL. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from California [Mr. ROYBAL].

The question was taken, and the Chairman announced that the noes appeared to have it.

So the motion was rejected.

The CHAIRMAN. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 256]

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
Badham
Barnard
Barnes
Bartlett
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bethune
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boland
Boner
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CA)
Brown (CO)
Broyhill
Burton (CA)
Burton (IN)
Byron
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chappie
Cheney
Clarke
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Crane, Daniel
Crockett
Daniel
Dannemeyer
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dixon
Donnelly
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Fiedler
Fields
Flippo
Florio
Foglietta
Foley
Ford (MI)
Frank
Franklin
Frenzel
Frost
Fuqua
Gaydos
Gejdenson
Gekas
Gephardt
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Gregg
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Hansen (UT)
Harkin
Hartnett
Hawkins
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Huckaby
Hughes
Hunter
Hutto
Hyde
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Lent
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lungren
Mack
Madigan
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McNulty
Mica
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Patterson
Paul
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schroeder
Schulze
Seiberling
Sharp
Shaw
Shumway
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Wilson
Winn
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)
Zschau

☐ 1740

The CHAIRMAN. Three hundred eighty-five Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from California [Mr. LUNGREN] for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair will remind the Members that this is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 166, noes 226, not voting 41, as follows:

[Roll No. 257]

AYES—166

Andrews (NC)
Andrews (TX)
Archer
Badham
Bartlett
Bereuter
Bethune
Bilirakis
Boehlert
Broomfield
Brown (CO)
Broyhill
Burton (IN)
Byron
Campbell
Carney
Carper
Chandler
Chappie
Cheney
Coats
Coleman (MO)
Conable
Conte
Cooper
Corcoran
Courter
Crane, Daniel
Daniel
Dannemeyer
Davis
DeWine
Dickinson
Dorgan
Dreier
Duncan
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Fiedler
Fields
Fish
Franklin
Frenzel
Gekas
Gibbons
Gilman
Gingrich
Goodling
Gradison
Green
Gregg
Gunderson
Hall, Ralph
Hall, Sam
Hansen (UT)
Hiler
Hillis
Holt
Hopkins
Horton
Huckaby
Hunter
Hyde
Jacobs
Jeffords
Jones (OK)
Kasich
Kastenmeier
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leach
Lent
Lewis (CA)
Lewis (FL)
Livingston
Loeffler
Long (MD)
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (NY)
McCain
McCandless
McCollum
McCurdy
McDade
McEwen
McGrath
McKernan
McKinney
Michel
Miller (OH)
Minish
Molinari
Moore
Moorhead
Morrison (WA)
Murphy
Myers
Nelson
Nichols
Nielson
Oxley
Packard
Parris
Pashayan
Paul
Pease
Petri
Porter
Pursell
Quillen
Regula
Ridge
Rinaldo
Roberts
Robinson
Roemer
Roth
Roukema
Rudd
Schaefer
Schroeder
Schulze
Shumway
Siljander
Skeen
Slattery
Smith (NE)
Smith (NJ)
Smith, Denny
Snowe
Solomon
Spence
Spratt
Staggers
Stenholm
Stump
Sundquist
Swift
Tallon
Tauke
Thomas (CA)
Valentine
Vucanovich
Walgren
Walker
Weber
Whitehurst
Whittaker
Winn
Wolf
Wortley
Wylie
Zschau

NOES—226

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Annunzio
Anthony
Applegate
Aspin
Barnard
Barnes
Bateman
Bates
Beilenson
Bennett
Berman
Bevill
Biaggi
Bliley
Boland
Boner
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Britt
Brooks
Brown (CA)
Burton (CA)
Carr
Chappell
Clarke
Clinger
Coelho
Coleman (TX)
Collins
Conyers
Coughlin
Coyne
Crockett
D'Amours
Darden
Daschle
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
Evans (IL)
Fascell
Fazio
Feighan
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Fuqua
Gaydos
Gejdenson
Gephardt
Glickman
Gonzalez
Gore
Gray
Guarini
Hall (IN)
Hall (OH)
Hamilton
Hammerschmidt
Hance
Harkin
Hartnett
Hawkins
Hayes
Hefner
Heftel
Hertel
Hightower
Howard
Hoyer
Hughes
Hutto
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kaptur
Kazen
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Leath
Lehman (CA)
Lehman (FL)
Levin
Levine
Levitas
Lipinski
Long (LA)
Lowry (WA)
Luken
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McHugh
McNulty
Mica
Mikulski
Miller (CA)
Mineta
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murtha
Natcher
Neal

Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Panetta
Patman
Patterson
Penny
Pepper
Perkins
Pickle
Price
Rangel
Ratchford
Ray
Reid
Richardson
Ritter
Rodino
Roe
Rogers
Rose
Rostenkowski
Rowland
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Seiberling
Sharp
Shaw
Shuster
Sikorski
Sisisky
Skelton
Smith (FL)
Smith (IA)
Smith, Robert
Snyder
St Germain
Stangeland
Stark
Stokes
Stratton
Studds
Synar
Tauzin
Taylor
Thomas (GA)
Torres
Traxler
Udall
Vander Jagt
Vandergriff
Vento
Volkmer
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whitten
Williams (MT)
Wilson
Wirth
Wolpe
Wright
Wyden
Yates
Yatron
Young (AK)
Young (MO)

NOT VOTING—41

AuCoin
Bedell
Boggs
Bryant
Clay
Craig
Crane, Philip
Daub
Edwards (AL)
Ferraro
Fowler
Garcia
Gramm
Hansen (ID)
Harrison
Hatcher
Hubbard
Ireland
Kogovsek
Leland
Lloyd
Lundine
MacKay
Marriott
Martin (IL)
Martin (NC)
Owens
Pritchard
Rahall
Schneider
Schumer
Sensenbrenner
Shannon
Shelby
Simon
Solarz
Torricelli
Towns
Williams (OH)
Wise
Young (FL)

☐ 1750

The Clerk announced the following pairs:

On this vote:

Daub for, with Mr. Rahall against.

Williams of Ohio for, with Mr. Leland against.

Mr. SAWYER changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. ROYBAL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. WRIGHT] having assumed the chair, Mr. BEILENSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5798) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1985, and for other purposes, had come to no resolution thereon.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to make an announcement as to our program for the remainder of the day and for tomorrow. Is the gentleman from Mississippi [Mr. LOTT] rising to ask about the program?

Mr. LOTT. Yes, I am, Mr. Speaker. I would like to ask unanimous consent for the purpose of addressing the House for 1 minute so that we could inquire as to what the schedule might be for the rest of the evening and, hopefully, tomorrow afternoon, because the Members are very anxious to know that.

The SPEAKER pro tempore. The Chair is just about to announce that.

Members are aware that there is an event at the White House this evening to which all Members are invited. It is not a formal event. In an effort to be accommodating, the Chair would attempt to consider a minimum amount of business that needs to be considered this evening and would ask for the cooperation of all the membership.

First, we would like to entertain a motion, which will be made by the chairman of the Committee on Armed Services, to go to conference on the Department of Defense authorization bill, and a recorded vote will be necessary to close that conference. The Chair would hope that we would be able to have some reasonable degree of cooperation on that and the appointment of conferees.

Then the House could take up one rule rather than two rules as originally had been planned, and hope to conclude that rule expeditiously. In doing so, Members could hope to leave at a reasonable hour.

Mr. LOTT. Mr. Speaker, at that point, could the Chair indicate which rule the House will take up, so that we will have that information?

The SPEAKER pro tempore. It was the Chair's intention to recognize the Rules Committee to bring up a rule providing for consideration of H.R. 5490, to clarify the application of title IX of the Civil Rights Act.

Mr. LOTT. I thank the Chair.

Is the Chair going to give us the schedule for tomorrow at this point?

The SPEAKER pro tempore. The Chair will be glad to do that.

Tomorrow the House will convene at 10 o'clock and will adjourn at 3 o'clock.

The House will take up the rule providing for consideration of H.R. 5680, the Federal Pay Equity Act.

Then the House will go to H.R. 5604, the military construction authorization bill. That will be considered under an open rule, 2 hours of debate.

We then hope to adopt a rule providing for consideration of H.R. 4784, the Trade Remedies Reform Act.

That would be our business for tomorrow. We hope that we can conclude that by 3 o'clock.

Mr. LOTT. As I understand it, we will have suspensions and general debate on Monday but it is not anticipated that we will have recorded votes on those suspensions on Monday; is that correct?

The SPEAKER pro tempore. The gentleman is correct. There will be debate on suspensions on Monday, but it is not expected that there will be recorded votes on those suspensions on Monday. Any recorded votes requested would be postponed until Tuesday.

Mr. LOTT. I thank the Chair.

PERMISSION FOR COMMITTEE ON AGRICULTURE TO HAVE UNTIL MIDNIGHT TOMORROW TO FILE REPORT ON H.R. 5183

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture may have until midnight Friday, June 22, 1984, to file a report on the bill, H.R. 5183.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

☐ 1800

APPOINTMENT OF CONFEREES ON H.R. 5167, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985

Mr. PRICE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

There was no objection.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees—

Mr. CHENEY. Mr. Speaker, I reserve the right to object.

The SPEAKER pro tempore. The gentleman reserves a right to object to the Chair's appointment of conferees?

Mr. CHENEY. That is correct, Mr. Speaker.

Mr. Speaker, it is my understanding that one of the individuals to be appointed to serve on the conference from the House on the Defense authorization bill is not a member of the appropriate committee. I wonder if the Chair could clarify that for me.

The SPEAKER pro tempore. The Chair will tell the gentleman that the Members to be appointed are those who were designated by Speaker O'NEILL, and they are Members designated under the rule, members of the committee, and for purposes of specific amendments, as the rules of the House provide, when requested by the author of a specific amendment, the author of that specific amendment may be appointed to the conference expressly and solely for purposes of consideration of that amendment.

Mr. CHENEY. Further reserving the right to object, it is my understanding, to be specific, that the gentleman from Oregon [Mr. AuCoin], who is not a member of the Armed Services Committee, is being appointed as a member of the conference specifically with respect to the MX.

I wonder if the Chair could confirm that for me.

The SPEAKER pro tempore. The Chair would simply declare that the Speaker's designation of conferees is not for that reason subject to challenge, and whomever the Speaker has asked this presiding officer to appoint, will be appointed.

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, it is indeed my understanding under rule 10, clause 6, section F, that the Speaker does indeed have that authority, but the gentleman in the chair, obviously, is currently serving in that capacity but has asked for unanimous consent that we proceed with the appointment of the conferees.

I am deeply concerned about the precedent of appointing someone to serve on a conference committee who is not a member of the authorizing committee, and on that basis, I would be constrained to object to the appointment of conferees.

ELECTION OF HON. JIM WRIGHT AS SPEAKER PRO TEMPORE DURING THE ABSENCE OF THE SPEAKER

Mr. LONG of Louisiana. Mr. Speaker, I offer a privileged resolution (H. Res. 531) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 531

Resolved, That the Honorable Jim Wright, a Representative from the State of Texas, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of the Honorable Jim Wright as Speaker pro tempore during the absence of the Speaker.

The SPEAKER pro tempore. The question is on the resolution.

Mr. CHENEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 148, not voting 55, as follows:

[Roll No. 258]

YEAS—230

Ackerman
Akaka
Albosta
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
Barnard
Barnes
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Biaggi
Boner
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Britt
Brooks
Brown (CA)
Burton (CA)
Byron
Carper
Carr
Clarke
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
D'Amours
Daniel
Darden
Daschle
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Flippo
Florio
Foglietta
Foley
Frank
Frost
Fuqua
Gaydos
Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gore
Gray
Guarini
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hance
Harkin
Hatcher
Hayes
Hefner
Heftel
Hertel
Hightower
Holt
Howard
Hoyer
Huckaby
Hughes
Hutto
Jacobs
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kastenmeier
Kazen
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Leath
Lehman (CA)
Lehman (FL)
Levin
Levine
Levitas
Lipinski
Long (LA)
Lowry (WA)
Luken
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McNulty
Mica
Mikulski
Miller (CA)
Minish
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Panetta
Patman
Patterson
Pease
Penny
Pepper
Perkins
Pickle
Price
Rangel
Ratchford
Ray
Reid
Richardson
Rodino
Roe
Roemer
Rose
Rostenkowski
Rowland
Roybal
Russo
Sabo
Savage
Scheuer
Schroeder
Seiberling
Sharp
Sikorski
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Spratt
St Germain
Staggers
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Traxler
Udall
Vandergriff
Vento
Volkmer
Walgren
Watkins
Weaver
Weiss
Wheat
Whitley
Whitten
Wilson
Wirth
Wolpe
Wright
Wyden
Yates
Yatron
Young (MO)

NAYS—148

Archer
Badham
Bartlett
Bateman
Bethune
Bilirakis
Bliley
Boehlert
Broomfield
Brown (CO)
Broyhill
Burton (IN)
Campbell
Carney
Chandler
Chappie
Cheney
Clinger
Coats
Coleman (MO)
Conable
Conte
Corcoran
Coughlin
Courter
Dannemeyer
DeWine
Dickinson
Dreier
Duncan
Edwards (OK)
Emerson
Evans (IA)
Fiedler
Fields
Fish
Franklin
Frenzel
Gekas
Gilman
Gingrich
Goodling
Gradison
Green
Gregg
Gunderson
Hammerschmidt
Hansen (UT)
Hartnett
Hiler
Hillis
Hopkins
Horton
Hyde
Jeffords
Johnson
Kasich
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leach
Lent
Lewis (CA)
Lewis (FL)
Livingston
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCain
McCandless
McCollum
McDade
McEwen
McGrath
McKernan
McKinney
Michel
Miller (OH)
Molinari
Moore
Moorhead
Morrison (WA)
Myers
Nielson
O'Brien
Ottinger
Oxley
Packard
Parris
Pashayan
Paul
Petri
Porter
Pritchard
Pursell
Quillen
Regula
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rogers
Roth
Roukema
Rudd
Sawyer
Schaefer
Schulze
Shaw
Shumway
Shuster
Siljander
Skeen
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solomon
Spence
Stangeland
Stump
Sundquist
Tauke
Taylor
Thomas (CA)
Vander Jagt
Vucanovich
Walker
Weber
Whitehurst
Whittaker
Winn
Wolf
Wortley
Wylie
Young (AK)
Zschau

NOT VOTING—55

Addabbo
Alexander
AuCoin
Bedell
Boggs
Boland
Bonior
Bryant
Chappell
Clay
Craig
Crane, Daniel
Crane, Philip
Daub
Davis
Edwards (AL)
Erlenborn
Ferraro
Ford (MI)
Ford (TN)
Fowler
Garcia
Gramm
Hansen (ID)
Harrison
Hawkins
Hubbard
Hunter
Ireland
Kogovsek
Leland
Lloyd
Long (MD)
Lundine
MacKay
Marriott
Martin (NC)
Mineta
Owens
Rahall
Schneider
Schumer
Sensenbrenner
Shannon
Shelby
Simon
Solarz
Torricelli
Towns
Valentine
Waxman
Williams (MT)
Williams (OH)
Wise
Young (FL)

☐ 1810

Mr. TAYLOR changed his vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

☐ 1820

SWEARING IN OF HON. JIM WRIGHT AS SPEAKER PRO TEMPORE DURING ABSENCE OF THE SPEAKER

The SPEAKER pro tempore (Mr. Wright). Will the dean of the House please come forward and administer the oath of office?

Mr. WRIGHT assumed the chair and took the oath of office administered to him by the gentleman from Mississippi [Mr. Whitten].

ORDER OF BUSINESS

Mr. DANNEMEYER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The Chair will recognize the gentleman from California [Mr. Dannemeyer] later. At this moment the Chair is appointing conferees.

APPOINTMENT OF CONFEREES ON H.R. 5167

The SPEAKER pro tempore. The Chair appoints the following conferees on H.R. 5167:

From the Committee on Armed Services: Messrs. Price, Bennett, Stratton, Nichols, Daniel, Montgomery, Aspin, Dellums, Dickinson, Whitehurst, and Spence, Mrs. Holt, Mr. Hillis, and Mr. Badham.

As additional conferees: From the Permanent Select Committee on Intelligence, solely when differences regarding intelligence-related activities are under consideration: Messrs. BOLAND, MINETA, HAMILTON, MCCURDY, ROBINSON, and STUMP.

From the Committee on Education and Labor, solely for the consideration of sections 1026, 1036, and 292, and title IV of the Senate amendment and modifications committed to conference: Messrs. PERKINS, FORD of Michigan, ANDREWS of North Carolina, MILLER of California, SIMON, ERLENBORN, GOODLING, and COLEMAN of Missouri.

From the Committee on Foreign Affairs, solely for the consideration of sections 1021, 1025, 1029, 1030, 1035, 1037, 1038, 1039, 1041, 1042, and 1047, and title IV of the Senate amendment and modifications committed to conference: Messrs. FASCELL, HAMILTON, YATRON, SOLARZ, BONKER, MICA, BROOMFIELD, WINN, and PRITCHARD.

Solely for the consideration of section 207 of the House bill and section 1011 of the Senate amendment: Mr. BROWN of California and Mr. MAVROULES.

Solely for consideration of sections 110 and 1132 of the House bill and section 1008 of the Senate amendment: Mrs. SCHROEDER, Mr. MAVROULES, and Mr. AUCOIN.

Solely for consideration of section 812 of the House bill and those portions of section 199 of the Senate bill which add section 2323 to title 10 of the United States Code relating to spare parts: Mr. BEDELL.

Solely for consideration of section 1112 of the House bill and modifications committed to conference: Mr. SKELTON.

PARLIAMENTARY INQUIRY

The SPEAKER pro tempore. The Chair is going to recognize the gentleman from California [Mr. DANNEMEYER] for his parliamentary inquiry but will state that immediately following the inquiry the Chair expects to recognize the chairman of the committee for a motion which, under the rules, is necessary to be voted upon by the yeas and nays.

The Chair will now recognize the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, my parliamentary inquiry is that we just saw the distinguished majority leader raise his hand and mutter something, but we could not understand or hear what was being said.

Would the Chair mind telling us what happened?

The SPEAKER pro tempore. The Chair took the oath, with which I am sure the gentleman from California is familiar.

Mr. DANNEMEYER. Well, I thank the distinguished Speaker for that understanding of what is taking place, and I can only add, good luck, and may the minority have 5 days within which to file its views?

I thank the Chair.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Illinois [Mr. PRICE].

MOTION TO CLOSE CONFERENCE COMMITTEE MEETINGS ON H.R. 5167 AT CERTAIN TIMES

Mr. PRICE. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. PRICE moves that, pursuant to rule XXVIII 6(a) of the House rules, the conference committee meetings between the House and the Senate on H.R. 5167, the fiscal year 1985 Department of Defense authorization bill, be closed to the public at such times as classified national security information is under consideration, *Provided however*, That any sitting Member of Congress shall have the right to attend any closed or open meeting.

The SPEAKER pro tempore. Under the rules, this vote must be taken by the yeas and nays.

Without objection, the Chair is going to order that this shall be a 5-minute vote.

Is there objection? The Chair hears none, and it is so ordered.

Members will record their votes by electronic device.

The vote was taken by electronic device, and there were—yeas 337, nays 28, not voting 68, as follows:

[Roll No. 259]

YEAS—337

Ackerman
Akaka
Albosta
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Archer
Badham
Barnard
Barnes
Bartlett
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bethune
Bevill
Biaggi
Bliley
Boehlert
Boner
Bonker
Borski
Bosco
Boucher
Boxer
Britt
Brooks
Broomfield
Brown (CA)
Brown (CO)
Broyhill
Burton (CA)
Byron
Campbell
Carney
Carper
Carr
Chandler
Chappie
Clarke
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Crockett
D'Amours
Daniel
Dannemeyer
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dowdy
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
Edwards (OK)
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Frank
Franklin
Frenzel
Frost
Fuqua
Gaydos
Gejdenson
Gibbons
Gilman
Glickman
Goodling
Gore
Gradison
Gray
Green
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Harkin
Hartnett
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Huckaby
Hughes
Hutto
Jeffords
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Lent
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Loeffler
Long (LA)
Lott
Lowery (CA)
Lujan
Luken
Lungren
Mack
Madigan
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKernan
McKinney
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Rinaldo
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schroeder
Schulze
Seiberling
Sharp
Shaw
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Traxler
Vander Jagt
Vandergriff
Vento
Volkmer
Walgren
Watkins
Weaver
Weiss
Wheat
Whitehurst
Whitley
Whitten
Wilson
Winn
Wirth
Wolf
Wolpe
Wyden
Wylie
Yates
Young (AK)
Young (MO)
Zschau

NAYS—28

Bilirakis
Burton (IN)
Cheney
Crane, Daniel
Emerson
Gekas
Gingrich
Gregg
Hyde
Jacobs
Johnson
Lowry (WA)
McCain
McCandless
McEwen
Myers
Nielson
Paul
Pritchard
Ritter
Roberts
Shumway
Siljander
Thomas (CA)
Vucanovich
Walker
Weber
Whittaker

NOT VOTING—68

Addabbo
Alexander
Applegate
Aspin
AuCoin
Bedell
Boggs
Boland
Bonior
Breaux
Bryant
Chappell
Clay
Craig
Crane, Philip
Daub
Dorgan
Downey
Edwards (AL)
Ferraro
Ford (MI)
Ford (TN)
Fowler
Garcia

Gephardt
Gonzalez
Gramm
Hance
Hansen (ID)
Hansen (UT)
Harrison
Hatcher
Hawkins
Hubbard
Hunter
Ireland
Kogovsek
Kramer
Leland
Lloyd
Long (MD)
Lundine
MacKay
Marriott
Martin (NC)
Owens
Rahall
Ridge
Schneider
Schumer
Sensenbrenner
Shannon
Shelby
Simon
Smith (FL)
Solarz
Torricelli
Towns
Udall
Valentine
Waxman
Williams (MT)
Williams (OH)
Wise
Wortley
Wright
Yatron
Young (FL)

□ 1830

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 953 AND H.R. 5835

Mr. MARTIN of New York. Mr. Speaker, I ask unanimous consent that my name be removed from the list of cosponsors of H.R. 953 and H.R. 5835.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 5174, BANKRUPTCY AMENDMENTS OF 1984

Mr. RODINO. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint two additional conferees to the conference committee on the bill, H.R. 5174, the Bankruptcy Amendments of 1984.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey? The Chair hears none, and appoints the following additional conferees: Mr. BROOKS and Mr. LUNGREN.

PERMISSION FOR COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS TO SIT ON TUESDAY, JUNE 26, 1984, DURING 5-MINUTE RULE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance and Urban Affairs be permitted to sit during the 5-minute rule on Tuesday, June 26, 1984, having cleared this with the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 5898, MILITARY CONSTRUCTION APPROPRIATIONS, FISCAL YEAR 1985

Mr. FROST, from the Committee on Rules, submitted a privileged report (Rept, No. 98-854) on the resolution (H. Res. 532) waiving certain points of order against consideration of the bill (H.R. 5898) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 5899, DISTRICT OF COLUMBIA APPROPRIATIONS, FISCAL YEAR 1985

Mr. FROST, from the Committee on Rules, submitted a privileged report (Rept, No. 98-855) on the resolution (H. Res. 533) waiving certain points of order against consideration of the bill (H.R. 5899) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 5490, CIVIL RIGHTS ACT OF 1984

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 528 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 528

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5490) to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

□ 1840

The SPEAKER pro tempore. The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Mississippi [Mr. LOTT], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 528 provides for the consideration of H.R. 5490, the Civil Rights Act of 1984. This bill is the congressional response to the February Supreme Court decision in Grove City College against Bell. In that decision, the Supreme Court held that Title IX of the 1972 Education Act, which bars sex discrimination in any educational program or activity receiving Federal funds, does not apply to all activities at a recipient institution. Rather, the Court held, title IX applies only to those specific programs receiving the Federal funds.

Prior to the Grove City decision, the courts and the executive branch interpreted the provisions of title IX as applying to an entire institution and all of its program and activities if that institution received any Federal funds. That application was the intent of Congress when the law was passed, and that was how title IX was interpreted by the Department of Education as well as the Federal courts. In the face of the Supreme Court decision, which narrowed the application of the law, H.R. 5490 explicity extends the board interpretation to an educational institution as a whole if that institution receives any Federal funds.

Because Grove City narrowed the antidiscrimination provisions of title IX, the provisions of H.R. 5490 also extend to the antidiscrimination provisions of title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color or national origin, section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped, and the Age Discrimination Act of 1975. H.R. 5490 makes clear that the provisions of all four of these important civil rights laws are not to be applied just a specific program or activity receiving Federal funds, but rather, the antidiscrimination provisions of these laws apply to the recipient entity or institution as a whole.

The Committee on the Judiciary and the Committee on Education and Labor are to be commended for moving with such speed and bipartisan accord to bring this bill to the full House in the wake of the Grove City decision. Passage of H.R. 5490 will again ensure the citizens of this country that our Government will not tolerate discrimination.

Mr. Speaker, House Resolution 528 is an open rule providing for 2 hours of general debate to be equally divided between the Committee on the Judiciary and the Committee on Education and Labor. The rule also provides one motion to recommit. While the bill was reported from both committees without amendment, the rule will permit the full House to work its will on the bill and any germane amendment can be offered and considered.

Mr. Speaker, H.R. 5490 is a vitally important piece of legislation and it is imperative that we consider it as soon as possible to reestablish the principle that no Federal funds can be used to support any activity that discriminates against the citizens of this country. I urge adoption of the rule and adoption of this most meritorious legislation.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 528 is a 2-hour, open rule providing for the consideration of H.R. 5490, the Civil Rights Act of 1984. The rule divides the debate time equally between the Committees on the Judiciary, and Education and Labor, and the chairmen and ranking minority members of those committees. There are no other special provisions or waivers in this rule, though I did make an attempt in the Rules Committee to make in order an amendment by the gentleman from Texas [Mr. BARTLETT] which would apply the antidiscrimination provisions of this legislation to the Congress. That would have required a germaneness waiver because the amendment would expand the scope of the bill. The Bartlett amendment lost in the Committee on Education and Labor by a vote of 14 to 19. My attempt to make it in order under the rule failed on a 4 to 5 division vote in the Rules Committee. I just think it's time that the Congress started holding itself accountable to the same laws it expects everyone else to abide by. I regret that my majority colleagues on the Rules Committee did not see fit to at least give the House a chance to consider that proposition.

Mr. Speaker, we hear a lot of talk in this Chamber about equal justice under the law, and yet we turn around and exempt the Congress from the laws we enact. Some have referred to the Congress as a zoo. I think maybe it's more analogous to George Orwell's "Animal Farm," because what we are saying in taking ourselves out from under the laws we enact is that "some animals are more equal than others."

We've set ourselves above the laws the way the pigs did in Orwell's fabled farm. And I think we better take the lesson of that story to heart: in setting themselves above the law, they were really setting themselves up for a fall. How can we expect the American people to take seriously and comply with the laws we enact when we refuse to apply them to ourselves? And yet, we've exempted ourselves from the civil rights laws, the environmental protection laws, the occupational safety laws, the freedom of information law, and even the paperwork reduction law—and heaven knows we could benefit from a reduction of paperwork around this place.

Mr. Speaker, Justice Brandeis once said, and I quote: "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." Well, just what kind of example are we setting for the people by setting ourselves apart from the very same laws we have laid on the people? I would submit that it's a lousy example, a dangerous example, and one we should set about rectifying now. I want to commend the gentleman from Texas on his amendment to require that the Congress be subject to the laws which prohibit discrimination on the basis of sex, age, race, national origin, and disability.

Mr. Speaker, the bill this rule makes in order, the Civil Rights Act of 1984, is presumably offered in response to the Supreme Court's decision in the case of Grove City College against Bell, in which the Court held that the title IX prohibition on sex discrimination in the Education Act Amendments of 1972 is program-specific and not institutionwide. This legislation is intended to expand that coverage to the entire institution if any part is the recipient of Federal financial assistance. However, the bill not only amends title IX, but also amends the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, or national origin. The committee report indicates that this was done in anticipation that the Grove City ruling would be similarly applied in future cases to these acts as well.

The administration has indicated that it could support legislation which amends title IX of the education amendments so that the program or activity definition is replaced by the concept of institutionwide coverage, and which assures that the Supreme Court's holding does not contract civil rights enforcement authority as exercised prior to the Grove City decision. However, the administration has indicated its opposition to the bill in its present form because its language contains ambiguities and raises significant questions regarding the intended scope and application of the bill. I do not intend to go into those arguments further in this debate on the rule. But I did want my colleagues to be aware of the administration's concern that we do not overreact and create more problems than the one we are attempting to solve by this legislation.

In conclusion, Mr. Speaker, I regret that we will not have a chance to consider the Bartlett amendment to apply this to the Congress. But otherwise, this is an open rule, subject to germane amendments under the 5-minute rule.

Mr. MYERS. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Indiana.

Mr. MYERS. I thank the gentleman for yielding.

Mr. Speaker, I rise to ask a question. When is this bill likely to come to the House floor? All afternoon we were discussing a very important appropriations bill and by the rules of the House we should have completed those appropriations bills by next week.

Yet, we rose to take up this rule. I ask the question: When is this bill likely to come to the consideration of this House?

Mr. LOTT. That is an interesting question, because I had been led to believe earlier that we would not take up this rule today, that this rule and two others, maybe as many as three others would be taken up on Friday, tomorrow.

But that was changed about an hour and a half ago and we were going to take up two rules, but we decided—or it was decided, we were told we would take up the one rule, the general debate will be taken up on this on Monday, but I presume that votes under the 5-minute rule and amendments and final passage will not come until some time in July. I do not know.

Mr. MYERS. It seems to me there should be a sense of urgency around here, especially for the appropriations bills.

We are here stopping the very important appropriations bill for a bill on which I see no sense of urgency.

I just wonder if the gentleman could help us in any way.

Mr. LOTT. No; I am afraid I cannot.

Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. I thank the gentleman for yielding and I thank the gentleman for his eloquent testimony on behalf of at least four members of the Rules Committee to try to make this amendment in order.

I know it has been a long day. As the gentleman from Mississippi stated, this rule came up, consideration of the rule came up as somewhat of a surprise tonight; we had planned to take it up tomorrow but we are tonight considering the rule.

I rise in reluctant opposition to the rule being considered, and I say reluctant opposition because I supported and worked in the committee to support this legislation, to support the extension of the Civil Rights Act and to support the intent of the act.

Frankly, I think H.R. 5490 may well be improved by the open rule of this House or in the other body. But there is a fundamental flaw in this legislation and the Rules Committee and the House tonight has the opportunity to correct that fundamental flaw.

This legislation would extend the antidiscrimination statutes to all recipients of Federal funds and to prohibit those recipients from discriminating on the basis of race, age, sex, or handicap; all recipients of Federal funds save one, and that is the Congress of the United States.

The Rules Committee and the House tonight have the opportunity to end that exception, to make that exception, to put it back into the law and to make these antidiscrimination laws apply to Members of Congress as well as to everyone else.

□ 1850

The Rules Committee declined on a 5-to-4 bipartisan vote to grant a waiver to allow this amendment to come into order. I think that is a fundamental flaw. Therefore, I will urge this House tonight to turn down the rule, to send it back to the Rules Committee and say, let us be fair about it. Maybe we will want to vote for, maybe we will want to vote against a special exemption for Congress, but let us at least give the House the opportunity to vote on that exemption.

Now, this amendment was accepted in the Education and Labor Committee. It was accepted and debated and then voted down on another bipartisan rollcall vote of 19 to 14. The amendment itself is just simply a matter of common sense and that is, if H.R. 5490 is going to expand the coverage of the civil rights laws, I think it is fair that we at the same time take an historic occasion and expand coverage of those civil rights laws to the Congress of the United States as an institution. That is essentially what the amendment does.

Now, make no mistake. As I have checked the record and looked at the institutional history, the Congress has never had the opportunity to extend basic coverage of civil rights laws to itself.

The vote on this rule will be the first vote that Members have ever had to cover themselves with the civil rights statutes. It will be the only vote you will have. We will not get another vote next week on the floor I am afraid. So I would suggest that every Member think very carefully about the vote on the rule.

I would strongly urge a vote against the rule so that we can bring the amendment back up to include the antidiscrimination prohibitions to Congress as an institution.

Mr. FISH. Mr. Speaker, I urge my colleagues to support House Resolution 528, the rule under which the Civil Rignts Act of 1984 (H.R. 5490) will be considered. As one of the principal sponsors of H.R. 5490, I am pleased that the House of Representatives is acting promptly in order to expedite consideration of this legislation. Without question, H.R. 5490 is the most important civil rights legislation that Congress will consider this year.

H.R. 5490 was introduced on April 12, 1984, in response to the Supreme Court decision in *Grove City College* v. *Bell*, 104 S.Ct. 1211 (1984). In that case, the Supreme Court ruled that the nondiscrimination requirements of title IX of the 1972 Education Amendments applied only to the particular program receiving Federal funds and not to all activities at a recipient institution.

This bill in intended to legislatively overrule the holding in the Grove City College decision. One hundred seventy-nine Members of the House of Representatives and sixty-three Members of the other body have joined in sponsoring this measure. It amends four major civil rights statutes: First, title IX of the Education Amendments of 1972; second, title VI of the Civil Rights Act of 1964; third, section 504 of the Rehabilitation Act of 1973; and fourth, the Age Discrimination Act of 1975. In each of these statutes the term "Program or activity" is replaced with a defined term "recipient."

Specifically, H.R. 5490 makes it clear that any recipient of Federal aid would be required to conform to these Federal nondiscrimination laws in virtually all aspects of their operations. The only exceptions to this general rule would be with respect to employment under title VI and the Age Discrimination Act. Under title VI employment discrimination is not included, unless the primary purpose of the Federal assistance is to provide employment. Employment discrimination based upon age is not addressed in the Age Discrimination Act but, rather, is covered in the Age Discrimination in Employment Act (29 U.S.C. 621 et seq.). The word "recipient" is defined so as to cover an entire educational institution as well as State and local governments, public or private agencies, institutions, organizations, or other entities—and their subunits.

Mr. Speaker, H.R. 5490 was unanimously reported by the Subcommittee on Civil and Constitutional Rights and by the full Judiciary Committee. No amendments were offered either in subcommittee or full committee. I strongly support the 2 hours of debate and the open rule under which H.R. 5490 will be considered and urge my colleagues to support the rule. The administration, through the Department of Justice, has expressed certain reservations about the breadth of the language in H.R. 5490. In particular, they are concerned that it may result in unnecessary interference in State and local affairs. Valid and substantive questions have also been raised as to how the administrative enforcement of this new language will be achieved.

The open rule give the membership of the House the full opportunity to debate and analyze the language contained in H.R. 5490.

Again, Mr. Speaker, I urge my colleagues to support House Resolution 538.

Mr. LOTT. Mr. Speaker, just one final point before I yield my time because I have no further requests for time.

The vote on this rule will be a vote on whether or not the 1984 Civil Rights Act will apply to Congress like it will everybody else. That will be the vote, not just a vote on the rule.

So I caution my colleagues to be aware of that.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Texas.

Mr. BARTLETT. I thank the gentleman for yielding.

What the gentleman is saying is those Members, of which I am one, who supports or may support H.R. 5490, a good vote to in fact strengthen the coverage of H.R. 5490 for a supporter of civil rights would be to vote against the rule so we can strengthen H.R. 5490. Is that the gentleman's statement?

Mr. LOTT. That is correct.

Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. FROST. Mr. Speaker, I would only call attention to the House that under the rules of the House, rule 43, clause 9, we have the following provision existing as it applies to the House of Representatives.

Clause 9, rule 43, provides as follows:

> A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Should this rule of the House be violated by any Member, this rule will then be enforced by the Committee on Standards of Official Conduct.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. FROST. I yield to the gentleman from Texas.

Mr. BARTLETT. I thank the gentleman for yielding.

I would just remind the gentleman and the gentleman knows that the rules of the House then only apply to employment and not to the other antidiscrimination provisions and do not prohibit discrimination based on age or handicap; is that correct?

Mr. **FROST**. The rule that I have read to the gentleman specifically applies to an individual's race, color, religion, sex, or national origin. And it applies with respect to compensation, terms, conditions, or privileges of employment. The rule speaks for itself.

Mr. **BARTLETT**. I thank the gentleman.

Mr. **FROST**. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The **SPEAKER** pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. **LOTT**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER** pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 224, nays 136, not voting 73, as follows:

[Roll No. 260]

YEAS—224

Ackerman
Akaka
Albosta
Anderson
Andrews (NC)
Andrews (TX)
Anthony
Applegate
Barnard
Barnes
Beilenson
Berman
Bevill
Biaggi
Boner
Borski
Bosco
Boucher
Boxer
Britt
Brooks
Broomfield
Brown (CA)
Burton (CA)
Carper
Carr
Clarke
Clay
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coyne
Crockett
D'Amours
Daniel
Darden
Daschle
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frost
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gore
Gray
Green
Guarini
Hall (IN)
Hall (OH)
Hall, Ralph
Hamilton
Hance
Harkin
Hayes
Hefner
Heftel
Hertel
Hightower
Howard
Hoyer
Huckaby
Hughes
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kastenmeier
Kazen
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Leach
Lehman (CA)
Lehman (FL)
Levin
Levine
Lipinski
Long (LA)
Lowry (WA)
Luken
Lundine
Markey
Martinez
Matsui
Mazzoli
McCloskey
McCurdy
McDade
McHugh
McNulty
Mica
Miller (CA)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Morrison (CT)
Mrazek
Murphy
Natcher
Neal
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Panetta
Patman
Patterson
Pease
Penny
Pepper
Perkins
Price
Pursell
Quillen
Rangel
Ratchford
Regula
Reid
Richardson
Rodino
Roe
Roemer
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Seiberling
Sikorski
Sisisky
Skelton
Slattery
Smith (IA)
Snowe
Spratt
St Germain
Staggers
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Traxler
Udall
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Williams (MT)
Wilson
Wirth
Wolpe
Wright
Wyden
Yates
Young (MO)
Towns
Valentine
Whitehurst
Whitten
Williams (OH)
Winn
Wise
Wylie
Yatron
Young (FL)

NAYS—136

Archer
Badham
Bartlett
Bateman
Bates
Bennett
Bereuter
Bethune
Bilirakis
Bliley
Boehlert
Brown (CO)
Broyhill
Burton (IN)
Campbell
Carney
Chandler
Chappie
Cheney
Clinger
Coats
Conable
Corcoran
Coughlin
Courter
Crane, Daniel
Dannemeyer
Davis
DeWine
Dickinson
Dreier
Edwards (OK)
Emerson
Erlenborn
Evans (IA)
Fiedler
Fields
Franklin
Frenzel
Gekas
Gingrich
Gradison
Gregg
Gunderson
Hall, Sam
Hammerschmidt
Hansen (UT)
Hartnett
Hiler
Hillis
Holt
Hopkins
Hunter
Hutto
Hyde
Jacobs
Jeffords
Johnson
Kasich
Kemp
Kramer
Lagomarsino
Latta
Lent
Levitas
Lewis (CA)
Lewis (FL)
Livingston
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McEwen
McGrath
McKernan
McKinney
Mikulski
Miller (OH)
Moorhead
Morrison (WA)
Myers
Nelson
Nielson
O'Brien
Packard
Parris
Pashayan
Paul
Petri
Porter
Ray
Ridge
Rinaldo
Ritter
Robinson
Rogers
Rudd
Schaefer
Schulze
Sharp
Shaw
Shumway
Shuster
Siljander
Skeen
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snyder
Solomon
Spence
Stangeland
Stump
Sundquist
Tauke
Taylor
Thomas (CA)
Vander Jagt
Vandergriff
Vucanovich
Walker
Weber
Whittaker
Wolf
Wortley
Young (AK)
Zschau

NOT VOTING—73

Addabbo
Alexander
Annunzio
Aspin
AuCoin
Bedell
Boggs
Boland
Bonior
Bonker
Breaux
Bryant
Byron
Chappell
Craig
Crane, Philip
Daub
Downey
Edwards (AL)
Ferraro
Fish
Ford (MI)
Fowler
Frank
Fuqua
Garcia
Goodling
Gramm
Hansen (ID)
Harrison
Hatcher
Hawkins
Horton
Hubbard
Ireland
Kindness
Kogovsek
Leath
Leland
Lloyd
Long (MD)
MacKay
Marriott
Martin (NC)
Mavroules
McCain
Michel
Murtha
Owens
Oxley
Pickle
Pritchard
Rahall
Roberts
Schneider
Schumer
Sensenbrenner
Shannon
Shelby
Simon
Smith (FL)
Solarz
Torricelli

☐ 1910

Messrs. **BATEMAN, JACOBS**, and **CAMPBELL** changed their votes from "yea" and "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. **FROST**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The **SPEAKER** pro tempore (Mr. DE LA GARZA). Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. **PENNY**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include therein extraneous material on the subject of the special order today by the gentleman from Mississippi [Mr. MONTGOMERY].

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

TRIBUTE TO CHIEF JAMES M. POWELL

(Mr. **HAWKINS** asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. **HAWKINS**. Mr. Speaker, I want to take a moment to call to my colleagues' attention that June 30 of this year is the scheduled retirement date of Chief Powell of the U.S. Capitol Police Force. Certainly for most of us it marks an occasion that ends an era of distinguished service to the Congress of the United States as an institution, and one of devotion and remarkable public service by a gentleman whom we have all come to know and admire.

Chief Powell was born in Chapel Hill, TN, and was appointed to the Metropolitan Police Department on November 1, 1940. In 1958, he was promoted to captain and assigned to the Capitol detail as supervisor of the plainclothes detail. In 1965, he was appointed Chief of the Capitol Police, and in early 1980 was transferred from the Metropolitan Police Department to become the first Chief on the rolls of the legislative branch of Government to fill the position of Chief of the Capitol Police, pursuant to Public Law 96-152.

During his career he found himself involved not only in changing times but also living history—gas ration stamp racketeering in the 1950's; the attempted assassination of President Harry S. Truman; various periods of high unrest during the 1960's and 1970's; and demands for increased security and protection for Members of Congress, the public and the Capitol Buildings and Grounds.

Chief Powell, throughout his career has been a great public servant, and on the occasion of his retirement deserves the highest commendation for his loyalty and dedication throughout the years. I hope you will join me in extending all best wishes to the Chief on the occasion of his retirement.

In recognition, I submit for inclusion in the RECORD the following resolution which was adopted by the Committee on House Administration at our meeting of June 20, 1984:

RESOLUTION

Be it resolved, That the Committee on House Administration expresses its sincere appreciation to James M. Powell, Chief of the United States Capitol Police Force on the occasion of his retirement, and acknowledges with gratitude his dedication to the modernization and professional development of the Police Force during his 26 years of service to the Congress, and his 19 years of leadership as Chief of the Capitol Police.

Be it further resolved, That the Committee on House Administration hereby collectively extends every best wish to Chief Powell for a happy, healthy and rewarding retirement in the years to come.

Mr. GORE. Mr. Speaker, will the gentleman yield?

Mr. HAWKINS. I yield to the gentleman from Tennessee.

Mr. GORE. I thank the gentleman for yielding.

Mr. Speaker, I would like to take this time to pay tribute to a fellow Tennessean who has performed an invaluable role for every Member of this body—Chief James Powell of the Capitol Police Force.

Chief Powell, who hails from my district in Marshall County, TN, is retiring after serving 44 years in law enforcement.

In 1965, Chief Powell was appointed by the District Metropolitan Police, as the Chief of the Capitol Hill Police. On February 1, 1980, when the Capitol Police Force became autonomous, Chief Powell became the first Chief on the rolls of the legislative branch of Government.

Chief Powell has provided an outstanding service that has protected Congress, the President and visiting heads of States during many uncertain times. He has maintained a low profile during his tenure, yet none have doubted that he has been a sturdy and reliable friend who was ready to mobilize his formidable force on a moments notice.

Too often we take for granted the fine and unheralded work performed by Chief Powell and his staff. I take great pride that through the years this body has grown to rely on a Tennessean to provide this vital protection. I offer my congratulations for a job well done, and I wish Chief Powell the best of luck in his retirement days ahead.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. HAWKINS. I yield to the gentleman from Maryland.

Mr. HOYER. I thank the gentleman for yielding.

Mr. Speaker, Chief Powell is now from my district and I would like to join my colleagues.

Mr. Speaker, for nearly two decades, our Nation's Capitol Police Force has been operating with distinction and efficiency under the outstanding leadership of Chief James M. Powell. On June 30, 1984, 18 years later than he originally planned, Chief Powell will retire from the force.

Chief Powell's career in public service began in 1940 when he was appointed to the Metropolitan Police Department. He was assigned to a plainclothes detail in 1943 and promoted to precinct detective a year later. In 1946, he became a detective sergeant attached to the robbery squad and he remained at that post until his promotion to detective lieutenant 7 years later. He attained the rank of captain in 1958 and was assigned to the Capitol detail as the supervisor of the plainclothes detail.

Even before being named as chief of the Capitol Police, James Powell performed admirably in a number of crucial situations. During World War II, as a plainclothes detective, he was instrumental in breaking up a gas ration stamp racket in the District. In 1950, then Detective Sergeant Powell was the first plainclothesman on the scene after the attempted assassination of Harry S. Truman and he later assisted in the apprehension of one of the two would-be assassins.

After he was appointed chief of the Capitol Police Force in 1965, Powell skillfully commanded the law enforcement team during a period of social unrest in the late 1960's and early 1970's. He successfully handled a spectrum of tasks ranging from crowd control and bomb threats to organizing high-level diplomatic meetings with heads of state, including Anwar Sadat.

Chief Powell's record indicates he has been instrumental in the expansion of the Capitol Police from a small group of untrained security guards 20 years ago to a force of 1,220 officers and officials today. Under his guidance, protection and security has been provided not only for Members of Congress, but for all Americans who come to visit the site of our Nation's Federal legislative branch.

Mr. Speaker, I urge my colleagues to join me in wishing Chief Powell the very best of luck as he retires from the Capitol Police Force. He has compiled an admirable record, distinguished by the fact that he is the first person to have held the title of Chief in the Capitol Police Force, and he will long be remembered.

DRUNK DRIVING

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. Speaker, I applaud the action of this House to set a minimum drinking age of 21. Much more needs to be done.

I want to read excerpts from a poem written by a teenager who lost her friend to a drunk driving murder. It's called Jenny, by Susannah Miller.

JENNY

The voice faltered, sorrow ungraciously interfered
"a sad tragedy" the voice called it.
Precarious, unsure, and
So deceivingly otherwise, life had ended.
powerful, brutal, and
So devastatingly clear death took over.
The math unit she'll never finish;
The college she'll never attend,
The senior ball she'll never dance at,
The goals she'll never reach,
The vacation she'll never enjoy;
The plans, the effort, the energy,
The time all must mean something . . .
Drunk; driving; murder
I'll bet it was so easy to get into the car,
To start it up,
To figure he can drive just fine
So much easier than calling a cab
Or bothering someone . . .
But it's sure hard to understand
It hasn't soaked in yet, will it ever?
I can't stop thinking about it, will I ever?
Saying "Hi" in the hall,
Helping each other in math,
Hearing about last weekend,
Talking about next year,
I can't believe it, will I ever?

I also want to place in the RECORD written thoughts of three teenage constituents of mine who were brutally killed by a drunk driver who had been previously convicted. These writings were collected by Redwood High School and placed in a book called In Memoriam: Jenny, Patrick, Nicole. They will not be forgotten.

CHANGE

(By Patrick Lee)

In the sixth grade, I was a little shorter than I am now, and a lot more immature (rebellious, wise, but immature). However, now I am more mature (I don't run in the hallways very much any more).

With my maturity came more responsibilities. I used to be able to get away with not doing the dishes. Today, to the contrary, I have to do them every three nights. When I was in the 6th grade, we would wait and find out what classes we were chosen to be in, but in high school, we get to have self scheduling.

As I grew up, I began to think more. I thought how the Soviet Union might disintegrate because of all their recessions and repressions. I also began to think liberals were the best political party (I still think that), and Democrats and Republicans were just old, stupid, fat, rich, bums (I still think that, too). I began to make political ideas and theories because I thought it affected me.

In the past year, people (old ladies and such) have been saying that I've been growing like a weed; shot up like a weed; become a young man, and I'm going to be very tall. My sister is now always bugging me about how "I tower over her," and stuff.

When I have finished high school, I hope to be about seven feet tall, minimum. However, while growing up, I hope to retain some of my childishness.

LIFE

(By Nicole Adams)

(A song)

Love is so beautiful to me
Look out the window and see the blossoming cherry tree
Chorus:
Spring is here, the blossoms they bloom
The birds how they sing
Oh, what a beautiful thing.
Children come near and hear how the world should be
The birds and the bees live in perfect harmony
So why can't we?
Chorus
Life is so beautiful to me
Look out the window and see the blossoming cherry trees.

MARCH

(By Jenny Lee)

I only hear the freeway when I remember it is there.
Wet hill, carpeted with pine needles and decorated with fir trees that poke out of the mist like mirages.
On a free day, I can see the bay, but often there is only a world trapped in white.
Evasive, dancing fog.
At night I see the bay bridge red lights blinking.
Black figures like fences—branches feel the sky.
House lights, friendly but far, burn like fires through the trees.
Passion of lavish, violent winter storms passed.
We are held captive by the eternal epilogue of rain.
Used, uninteresting water paints the world gray and green by day.
Black night sliced by second-hand daggers.
Gloomy stagnated sky waits through light and dark.
Misty memory, it is becoming hard to remember Charley.
Shy—the world frightened him.
His masters had beaten him.
Charley never forgot things.
That was the only way he differed from me.
At our castle at the top of the hill we rested on the cold rock, the sprinkling rain barely tickling us.
I sang at the top of my voice anything that came to my mind.
Charley closed his deep brown eyes and listened.
His tail beat out a rhythm on granite.
Sometimes we cried.
Or raced as hard and as fast as we could and fell down laughing in the pine needles, best friends.
I did not own Charley—
Crushing man-made metal and steel, death claimed him.
Charley fought. His eyes rolled frantically.
His tongue turned white.
He went the way of Caesar—leaving in cold March.
I could find no tears.
I knew nothing of death.
Charley died alone.
The stiff, small, cold body was a stranger.
The bones buried beneath the Juniper bush bear no name.
But entombed forever in my disobedient memory is Charley's playful, elusive spirit.
Like stammering music, the creek trips and tumbles down the hill.
It slips by the house as the time I have spent growing here.
In the misty morning I can only hear it murmur.
It whispers to be of the water's descent to the earth.
Its sighing song has disappeared beneath thorns and choking ivy, and emerged clean.
It slept in cool gray grasses, gliding rudely awakened upon pebbles.
It has kissed sweet-smelling moist blossoms and embraced thick, grating sand.
It breathes softly and touches me.
Soon, a warmer, unwittingly choking sun will come.
Gasping its warning, the creek will trickle into death.
And next year?
As though it has forgotten those that have gone before it, a new creek will bubble to life.
Cold sunlight shyly touches my cheek.
Traveler of millions of miles rests upon me, a weak friend in need of support.
The first yellow light after many cool mornings.
The gray disappears, all around me is ignited with the touch of this faint finger.
It flickers, exhausted.
Gray cloud conquers, but the weary ray did find me.
I am cheered, not by thought of good or bad, but by the promise of change.
Tucked inside my room we are safe from the weather.
And the tiny heater chugs out warmth. My room, like all the world, is filled with sharp corners and cobwebs.
Yet we are comfortable.
Our blankets protect us from the chill as silence and masks will guard us from probing eyes.
Giggling, we speak of the fame and fortune we all expect, that many of us will never know.
We will be friends forever.
Silent undesired feelings—many of us will disappear.
Maybe soon.
We delight in future loves and joys. Tragedy, as of yet, has no place.
We close my bedroom door as though trying to close our minds.
Maybe that's all right.
If life is really a death sentence, why shouldn't we want to fill our moments with miracles.
Friends, yet competitors.
Each one of us wants to be the brightest light.
Chilled toes curl.
I sit on the damp counter with my feet in the kitchen sink.
The windows open, the light off.
Gray sky darkening, dripping rain welcomes the evening.
With the night comes a shield of silence.
Beneath this intangible armor, I can hear the musicians of March.
Ghosts of dead seasons.
Old leaves being eaten by the earth make way for new buds, arrogantly assuming their right to live.
Death and birth riddle the frosty air.
March is my reflection.
I, too, have a beginning and ending.
My mirror shows stubborn storms, violent whipping winds.
It shows innocence and gentleness.
Newly born consciousness.
With the chains of its mist, it protects and imprisons me.
March skies give me tears for feelings I cannot name.

TRESS McLAUGHLIN

(Mr. ROBERTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROBERTS. Mr. Speaker, on Saturday, May 26, 1984, the Congress lost a true and and gentle friend. Teresa Davidson McLaughlin died after a short illness at Georgetown Hospital in Washington, DC.

I knew Tress during most of her congressional service with Illinois Representatives Findley, Collier, and MICHEL as well as with the House Republican conference and the House Agriculture Committee and share the sense of personal loss of her many friends.

On Thursday, May 31, a memorial service for Tress was conducted by Dr. Arnold Keller at the Lutheran Church of Reformation on Capitol Hill. At that service, six of Tress' friends traced her time with us here on the Hill.

Our former colleague, the Honorable Paul Findley of Illinois was the lead-off speaker at the memorial service. He recalled the time when Tress first came to Washington, DC, to work for him upon the recommendation of an old friend in Illinois. He went on to recount how pleasant and effective Tress was in performing her duties in his office, and emphasized her loyalty to the Congress and her dedication to doing a good job for him and the people of his congressional district.

The other five speakers were: Ms. Dorothy K. Cavanaugh, executive assistant to the Honorable COOPER EVANS of Iowa; Mr. Ted Miller, general manager, the Capitol Hill Club; Mr. Fowler West, Commissioner, U.S. Commodity Futures Trading Commission; Ms. Glenda Temple, staff assistant, House Committee on Agriculture; Mr. Hyde Murray, minority counsel, U.S. House of Representatives. I commend to the attention of my colleagues their remarks at this point in the RECORD:

Ms. Dorothy K. Cavanaugh

My Friend, Tress McLaughlin, May 31, 1984

Tress and I have been friends for a long, long time—going back to the days when Tress was working diligently to organize the Republican Women of Capitol Hill, an organization of Republican staffers which continues today.

Today I want to share my memories of Tress with you.

In recent years, Tress and I often lunched together. Those dates began with a phone call from Tress when she would say, "If you don't have a better offer, how about lunch?"

I would join her at the Capitol Hill Club where that fashionable gal would be at "her table." We had many interesting and diversified conversations ranging from girl talk to politics and matters of everday living. In one of those conversations, Tress told me she wanted no mourning when she passed on. Rather she wanted all her friends to get together and have a ball. That is Tress and her advice to all of us.

Mr. Ted Miller

One of Tress' favorite songs was called "Memories" and that is what today is about—memories of Tress.

I remember meeting Tress almost 9 years ago. I was not only new to Washington, but new to America.

Tress took me under her wing and in fact Americanized me. Tress had to explain what the G.O.P was; The Republican and Democratic system; the difference between the 2 Houses; the election system. In reality she made me want to become an American.

Over the course of the next few years we became friends. Tress came to the club daily, to say "Hi" to her friends. She was so proud of her "club". When she did not have a guest with her, which wasn't often, I would join her.

During these periods I came to realize that Tress was often in pain and feeling as she used to say "grumpy". Yet she never really let on how badly she felt.

Tress was always able to inject a laugh or a giggle into the conversation, to throw you off the track on how ill she really felt.

Many evenings Tress would come into the club and ask me to take her home. Trying to find out what was wrong with her on the way was like pulling teeth. She just said I'm "poorly", "just plain old tired, sweety", never admitting that she was very ill.

The next day Tress would be back at her special table for lunch smiling—with a grin and a wave for everyone saying "hi, sweetie."

Perhaps the real measure of anyone's worth at the end is the people that you have touched in your life. In my case Tress showed me the decency of Americans and the values of this country. She showed me how to hide pain behind a smile, and even in the last days of her life she showed concern for others.

When I called her in the hospital her concern was for my injured back, not her own pain, this was so like Tress.

The members of the club loved her. The employees adored her. She was our special member, the one who made our days sweeter. We all wanted to do so much for her and yet she asked for so very little.

Her favorite chair; her special potatoes; a smile; a few kind words. We gave her these little things, and she gave us her love and concern.

On Tuesday morning when the club opened we had all learned of Tress' passing. I and all of her friends on the staff at the club felt empty. A part of our "family" was gone, a feeling of loss.

Everyone on the staff gravitated to the "75 Room," to look at the empty chair and offer up a silent prayer for her.

You may not be amongst us in body, dearest Tress, but you were that special person that leaves so very many of us better for having known you. And you will always be with us in our hearts. God bless and love you, your pain is ended.

From your little family at the club, the board of Governors, and the membership: Theresa, Sonny, Brooks, Jackie, Marua, Donny, George, Janice, Ted, Curtis, Miss Molly.

Mr. Fowler West

We share something in common today. We each had the privilege and good fortune to know Tress McLaughlin. We feel the loss of our friend in our particular ways.

Tress was a person of many endearing qualities. There are always the upbeat greeting—the smile and compliment that lifted so many spirits. There was "Mother Tress", as she called herself, always there to comfort and care, always taking the lonely and forgotten under her wing. So many young and new to Washington, myself included, found themselves invited to her apartment with others for a Sunday brunch. Tress had rightly sensed that we had nothing in particular to do—no place to go, and she knew that deep down we were just homesick.

There was Tress the dedicated and professional receptionist who served for so long at the House Committee on Agriculture, handling the endless flow of telephone calls with patience and pride, greeting Members, staff and visitors in a manner that made them all feel special and they were special to her.

How many days were brightened? How many hearts were lightened by something she said or did? Tress was there to clip a stray thread, to brush away lint from a coat, to straighten a tie or a collar. How many times did she pull from her desk a piece of candy to ease a pang of hunger late in the day, or an aspirin to ease an ache or pain?

She had so many ways of caring, of making us all feel special—clerk, Member, lawyer, staff director or intern—it mattered not. While joy came to Tress from giving, she also received great thrills from the simplest of things. How happy she was when someone thought to pick a few flowers on the way to work for her desk. She was so appreciative of the simple gestures—a kind greeting, a word of thanks—just being polite. Tress, though, gave far more than she received. We will miss her for there are few Tress McLaughlins.

We will miss her but we shall not forget her. How much brighter the world would be if we were to honor her memory by making her ways—even a small part of our lives. What if, just for a few moments a day, we were to treat others as she did? What if, just for an instant, we were to make others feel special—even if they were strangers or did not have a particularly important position? What if, as she did so many times, we were to adopt someone, lonely or down and out, becoming their friend, willing to help in any manner we could? Perhaps by doing these things we can best pay tribute to Tress.

There are so few with her spirit, her love for life, her love for the simple things. I marvel at the amount of happiness and love squeezed into her life—how much more she lived than so many with far more years.

There is a passage in the Book of Matthew that was written with the Tress McLaughlins of this world in mind: The King will reply, "I tell you, whenever you did this for one of the least important of these brothers of mine, you did it for me!"

Ms. Glenda Temple

There are so many stories to demonstrate the loving, giving and caring nature of Tress McLaughlin that it is hard to know where to begin. Examples include: The early morning calls that the weather was bad and one should bundle up or drive carefully—the line at her desk, sometimes three or four deep, to get our scarves or bows tied—her desk that always seemed to hold what anyone needed whether it be candy, pins, combs, brushes, bandaids, aspirin, or a match—her pushing herself to arrive at the office early so everything would be ready for the new day and the coffee made for everyone—or, perhaps with her comment that she "never learned not to be friendly" so she spoke to people she met walking down the hallway or the street.

Tress was faced with and won battles with cancer and arthritis some 30-40 years ago. Those of us who came to know her are the recipients of her willingness to share, at a deep level, her personal experiences in those early illnesses in order to help others facing illnesses. Her courage and optimistic outlook served as an inspiration to all.

Since this is a time for all of us to share our memories and to reflect, I wanted more of you to share in this moment and that is why I have been asking some of her friends and acquaintances with whom I have been in contact over the past few days to describe Tress in one or two words or perhaps describe the quality that she embodied that meant the most. I know, as I read the list, that the responses will trigger many fond recollections. These are the replies:

Gracious, sense of humor, caring, compassionate, very honest, always there, sincere, easy to get to know, joyous, classic, forgiving, humble, happy, kind, good hostess, organized, friendly.

Good natured spirit, warm, loyal and true Republican, barked with a soft bite, love of music, never spoke ill of anyone, not pretentious, helpful, unselfish, pleasant and gracious, always hospitable, mother Tress, positive thinker, made everyone feel comfortable, interested in helping, charitable in thought and deed, open way of welcoming people, made newcomers feel a part of the office or group.

Good disposition, understanding, giving, loving, courageous, sympathetic, considerate, good listener, loyal, patient, steadfast, good teacher, optimistic, patriotic, good cook, "had class", sense of comraderie, cheerful, concerned.

Kept everyone up-to-date, subdued bravery, gallant, knew how to enjoy life, ladylike—never lost her composure, like a grandmother, enjoyable to be around, up-beat, able to cope with adversity, warm and caring, enthusiastic, worked every day to surmount many struggles, a lady in the true sense of the word, never an effort for her to go out of the way to assist.

And, the reply received most frequently—warm friend.

We are all Tress's friends, and we will miss her. Perhaps we can take some consolation in the words of an ancient Greek philosopher: "Do not grudge your sister her rest.

She has at last become free, safe and immortal, and ranges joyous through the boundless heavens; she has left this low-lying region and has soared upwards to that place which receives in its happy bosom the souls set free from the chains of matter. Your sister has not lost the light of day, but has obtained a more enduring light. She has not left us, but has gone on before."

MR. HYDE H. MURRAY

It is my sad but great privilege to be the final tracer of our time together with Tress. I think I remember what Tress would say first . . . and that is "thanks." Thanks to Dr. Keller and the Church for providing for the speakers and for all of us to remember Tress together.

. . . And next she would probably say, "Don't be so glum, chums—let's have a party." . . . probably at a notorious Republican establishment somewhere near and about Metro's Capitol South.

In remembrance of Tress . . . three words keep coming back to us . . . courage-kindness-joy.

Courage

Cicero called courage life's sweetest virtue. We all knew Tress had it. Her final struggle with cancer wasn't her first; she had met and conquered it before . . . and as in other adversities of life, she did her brave best without complaint.

Kindness

Who among us cannot recall a kindness from Tress? The great, the near-great, the once-great, the would-be-great . . . even the not so great . . . everybody in big league politics and little league politics . . . all of us could always count on kind and gentle times with Tress.

The quintessence of that kindness is manifested by her donating her body to medical research . . . but somewhere in the small print, I'm sure she included a disclaimer that said, "I may not be perfect, but I do have some good parts."

Joy

Tress not only brought joy to others, but she was one of those rare souls who could accept joy, joyously.

In the hospital, she was so pleased when the women at the House Republican Conference gave her a shampoo and hair styling to look beautiful.

She was so tickled when John Hogan and Steve Adams brought her favorite candy.

And she was so happy to get your calls and your cards, your visits and your flowers which turned her room into a mini-greenhouse.

Put it all together: courage-kindness-joy, and we have Tress McLaughlin, a lady of love to remember.

So, thanks Tress; thanks for the memories of a friend who helped teach us what the true landlord of this building teaches us too:

The greatest thing we'll ever learn,
Is just to love and be loved in return.

□ 1920

THE NATIONAL TAXPAYERS UNION RATES THE BIG SPENDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DANNEMEYER] is recognized for 60 minutes.

GENERAL LEAVE

Mr. DANNEMEYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include therein extraneous material on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANNEMEYER. Mr. Speaker, one of the more difficult tasks of any citizen, irrespective of their party registration, now that we are close to the voting season in the country is to have an appreciation or an understanding of who is responsible in our political process for the runaway spending that exists in this country. We all know that only one time in the last two decades has the Congress had the courage to balance its budget. The deficit for the current fiscal year is estimated to be about $180 billion and the national debt is about a trillion and a half. The interest expense on the national debt is the third highest item in the budget of some $900 million for the next fiscal year, and on and on it goes.

Voters sometimes have difficulty in figuring out how their Members acquitted themselves with respect to the establishment of this level of spending. The reason is not too difficult, because most of us who serve in this body when we go home to our districts and campaign for reelection, if that is our pleasure, face opponents in town hall forums or in radio or TV settings where we are asked to give an account of our voting record here in the House, and what do you know, most of us are quite capable of defending what our voting record was in total or with respect to a particular item.

So I have taken this special order this evening for the purpose of talking a little bit about records of votes by Members of the House of Representatives in this the 98th Congress, specifically calendar year 1983.

I will be very candid with you. There are at least 15 organizations of which this Member from California is aware that rate Members of the House on how we voted on specific issues. Most organizations with which I am familiar have a practice of selecting certain votes, usually 10, 15 or 20, that are of peculiar interest to them and they will rate Members of Congress on how they voted and if they are favorable to their point of view, such as an environmental group and the Member voted against their position, they will label that person as someone who wants to desecrate the environment, or labor organizations do the same thing. They will pick out 15 or 20 votes and analyze how Members have voted and then put out a report that the Member is prolabor or antilabor, and business does the same thing.

In other words, you have to understand the bias of the voting record that is being analyzed as to how Members voted if you want to really appreciate what the point of view is of that particular organization.

One organization that I think stands head and shoulders above all of them is one that every year takes all the spending votes that relate to issues that resolve or result in spending by the Congress of the United States and on the basis of how Members of the House of Representatives have voted on that issue, they rate us all, and that organization is the National Taxpayers Union.

The publication for 1983 came out very recently and in the publication, it took 202 votes in 1983 and rated all Members of Congress on how we voted on those particular issues.

These 202 are the votes that involve spending, that is, raising spending or cutting spending, and each of us in the House and in the other body were rated on our total record with respect to this assessment.

The National Taxpayers Union was founded in 1975. They have about 130,000 members. They are nonpartisan. There is nothing partisan about what they do. They just rate us all on spending issues. They divide the result that comes about from their analysis into four categories. The lower the number, the bigger the spender. For instance, big spenders are 20 percent or less. Average spenders, 21 to 39 percent; fair spenders are 40 to 66 percent, and good are 67 percent or more.

In other words, the higher the number that the Member has received, the more that person is reflecting a bias toward concern for taxpayers as opposed to special interest groups that are all around this place asking us to fund them with funds for some purpose, most of them legitimate, by the way; but when we put them all together, we have the chaos which exists in our country; namely, runaway Federal spending.

I will repeat that again. The higher the score, the more concerned the Member is for preserving the interests of the taxpayers, and the lower the score, in this instance 20 percent or less for calendar year 1983, the result is that such a person is categorized as a big spender.

Well, in preparation for this special order this evening, this Member from California procured a letter that was signed by about 30 of my colleagues in the House and we attached as an exhibit A those Members in the House of Representatives in this, the 98th Congress, who received a spending score of 20 or less.

We served notice on them, in effect, that we would be discussing their voting record on this assessment of the National Taxpayers Union as big spenders this evening and it is our hope that they will show up here for the purpose of discussing this matter so that we can put in perspective perhaps some indication of their justification for how they choose to be categorized as big spenders.

My purpose in bringing this special order and bringing this to the attention of the Members is just for the purpose of information. It is for the purpose of establishing accountability. People around this country are interested in knowing how their Member of Congress voted in toto for the calendar year 1983. I hope that this information will be of interest to those persons.

I do not deny that there are districts around this country that send Members to Congress for the purpose of, in effect, loading up a wheelbarrow with money and bringing it home to their districts. Some Members, I think, reflect that bias when they vote on issues of spending here in the House.

Other districts, I think, are of a different persuasion. They ask their Member to be frugal about stewardship in conducting the public's business and they ask us to match the outgo with the income and to balance the budget by cutting spending and not raising taxes.

So I have prepared this list, as I have indicated, the names of Members from different States that I will read off, scored as big spenders. They total some 150 from the several States of the Union. This analysis is available to any Member who chooses to look at it, as produced by the National Taxpayers Union.

It was not my intent in any way to make this a partisan exercise, far be it from that, but the fact is that the evidence of how the Members have voted indicates that that is about the way it comes out, because it so happens that all the Members, some 150-plus who received the category of the National Taxpayers Union as big spenders for 1983, happen to be registered Democrats and serve in this House as Members of the Democratic Party. So I will read their names.

Mr. WILLIAMS of Montana. Mr. Speaker, will the gentleman yield?

Mr. DANNEMEYER. I will be happy to yield to my friend.

Mr. WILLIAMS of Montana. Mr. Speaker, I tell my friend that I was not on the floor for all of his statement and I hope that my question therefore will not be some type of an inappropriate interjection of something the gentleman may have explained.

I was passing the floor when I heard the gentleman say something to the effect that in his opinion the rating system by the National Taxpayers Union was the fairest of perhaps all the organizations, a dozen or more, of national organizations that are involved in rating the Members of Congress.

Does the National Taxpayers Union, and I am unfamiliar with their system, so I ask the gentleman, does the National Taxpayers Union rate each spending vote without weighing that vote with regard to how much money was involved in the spending measure?

□ 1930

Mr. DANNEMEYER. That is their practice, that is correct.

Mr. WILLIAMS of Montana. If the gentleman will yield further, does the gentleman then mean to advise the House that it is his opinion that a group counts a vote in favor or against a $20 million expenditure such as we had today on a Federal building in California the same as it would count or weigh a vote on a $20 billion vote such as the MX; is that fair?

Mr. DANNEMEYER. That is not only the way they have done it, but I believe it is fair and I will explain to you why.

Sometimes Members have said, well, now, just as the Member from Montana has observed, my colleague, Mr. WILLIAMS, saying that you must adjust the vote for the dollars that are involved in order that you can give proper perspective, but of the 202 votes, for instance, that were analyzed by the NTU for 1983, 22 were in the defense area, which is about 11 percent of the total. If you seek to analyze 10 votes or 15 or 20, I think the gentleman has a point in suggesting that in order to give the matter fair perspective you should put a dollar amount to a specific item. But when you take every spending vote that we cast in 1983, some 202, 22 of which are defense votes, I think in balance you can get a general assessment of the flavor of how a Member has acquitted himself.

First, I am delighted to say to my friend from Montana that you missed the cut. You are at 21. The big spender is 20 and below, so you are in the category of average, and I commend the gentleman.

Mr. WILLIAMS of Montana. Will the gentleman yield?

Mr. DANNEMEYER. I will be happy to yield to my friend.

Mr. WILLIAMS of Montana. I voted for less spending, less total dollars spending than that requested by President Reagan in his budget, President Reagan who is not known in the country as a liberal spender, and yet the National Taxpayers Union has this gentleman from Montana apparently missing the cut and they count me a big spender. That is because the way they rate is unfair.

Mr. DANNEMEYER. Maybe I did not make myself clear. The gentleman's record for 1983 was 21, and a big spender is at 20 and below. So you are not designated a big spender; you have just missed it.

Mr. WILLIAMS of Montana. I just missed it, but the point is the same and the gentleman understands my point and may disagree with it, but I know he understands it.

Let me just make it again. At one time, as I understand it, the National Taxpayers Union had three rating systems, one which I believe, in my judgment, was the most fair, which was the one which said look, we are going to simply add up the total number of dollars voted upon and the Members who voted to spend the most dollars are going to be the big spenders and the Members who voted to spend the least dollars are going to be the smaller spenders. Then they had another rating system which is the one I think they now use exclusively. And back in those early years they also had a third rating system which said, look, we know both of our other two rating systems taken by and of themselves are a little bit misleading, so what we are going to do is blend the two. We are going to blend the number of votes without regard to the weight of the amount of money involved with them, with the votes, and we are going to give weight to the amount of money involved in them and it was on that third scale, as I understand it, that the National Taxpayers Union used to rate Members.

They no longer do it that way and I would suggest to the gentleman the reason they no longer do it that way is based on partisanship.

I thank the gentleman for yielding.

Mr. DANNEMEYER. You can make your observation as to your reason for why they changed it. Maybe you would like to prepare an analysis along the lines you have indicated and see how we all shake down. I am prepared to stand with respect to my voting record. We have all cast them. We will have to live with them.

If you would choose to prepare that analysis I will be happy to discuss it with you on the floor of the House for what it would tell us.

Mr. WILLIAMS of Montana. I thank the gentleman.

Mr. DANNEMEYER. I thank my colleague for his comments.

I will then read these names who have been listed by the National Taxpayers Union as big spenders, naming 20 percent or less for calendar year 1983 on the basis of 202 votes cast in the House. As I have indicated, the names that I have and that I will read are all Democrats serving in the House of Representatives at this time.

From Arizona: Mr. UDALL 13, Mr. McNULTY 20.

From Arkansas: Mr. ALEXANDER 8.

From California: Mr. BOSCO 19, Mr. MATSUI 11, Mr. FAZIO 8, Mrs. SALA BURTON from San Francisco 16, Mrs.

Barbara Boxer from the San Francisco Bay area 18, Mr. Edwards from San Jose 16, Mr. Lantos 14, Mr. Mineta 14, Mr. Coelho 10, Mr. Lehman 12, Mr. Waxman 18, Mr. Roybal 16, Mr. Berman 16, Mr. Dixon 14, Mr. Levine 16, Mr. Hawkins 14, Mr. Martinez 15, Mr. Dymally 16, Mr. Torres 13, Mr. Brown 18, Mr. Patterson 18.

From Connecticut: Mrs. Kennelly 12, Mr. Gejdenson 13, Mr. Ratchford 13.

From Florida: Mr. Fuqua 18, Mr. Smith 14, Mr. Lehman 20, Mr. Pepper 9, Mr. Fascell 13.

From Georgia: Mr. Fowler 16.

From Hawaii: Mr. Heftel 19, Mr. Akaka 11.

From Illinois: Mr. Hayes 19, Mr. Lipinski 17, Mr. Rostenkowski 17, Mr. Yates 20, Mr. Annunzio 13, Mr. Price 7, Mr. Simon 18.

From Indiana: Mr. McCloskey 18.

From Iowa: Mr. Smith 19.

From Kentucky: Mr. Perkins 12.

From Louisiana: Mrs. Boggs 8, Mr. Long 12.

From Maryland: Mr. Long 17, Ms. Mikulski 20, Mr. Hoyer 8, Mr. Mitchell 20, Mr. Barnes 16.

From Massachusetts: Mr. Boland 15, Mr. Mavroules 15, Mr. Moakley 14.

From Michigan: Mr. Carr 18, Mr. Traxler 19, Mr. Albosta 19, Mr. Bonior 17, Mr. Ford 15, Mr. Dingell 16, Mr. Levin 18.

From Minnesota: Mr. Sabo 15, Mr. Oberstar 19.

From Mississippi: Mr. Whitten 17, Mr. Dowdy 14.

From Missouri: Mr. Clay 20, Mr. Young 17, Mr. Gephardt 15, Mr. Wheat 16.

From Nevada: Mr. Reid 19.

From New Jersey: Mr. Howard 14, Mr. Dwyer 13, Mr. Roe 9, Mr. Torricelli 18, Mr. Rodino 11, Mr. Minish 18, Mr. Guarini 15.

From New Mexico: Mr. Richardson 18.

From New York: Mr. Downey 19, Mr. Addabbo 15, Mr. Ackerman 17, Mr. Scheuer 15, Ms. Ferraro 16, Mr. Schumer 17, Mr. Towns 19, Mr. Owens 18, Mr. Solarz 14, Mr. Rangel 18, Mr. Garcia 16, Mr. Biaggi 15, Mr. McHugh 15, Mr. LaFalce 19, Mr. Nowak 13.

From North Carolina: Mr. Neal 19, Mr. Britt 19, Mr. Rose 12, Mr. Hefner 17, Mr. Clark 18.

From Ohio: Mr. Pease 20, Mr. Seiberling 19, Ms. Oakar 19, Mr. Stokes 20.

From Pennsylvania: Mr. Foglietta 14, Mr. Gray 16, Mr. Borski 16, Mr. Kolter 17, Mr. Yatron 19, Mr. Kostmayer 18, Mr. Harrison 13, Mr. Murtha 9, Mr. Coyne 11, Mr. Gaydos 13.

From Rhode Island: Mr. St Germain 15.

From South Carolina: Mr. Spratt 19, Mr. Tallon 19.

From South Dakota: Mr. Daschle 20.

From Tennessee: Mr. Boner 12, Mr. Gore 14, Mr. Ford 13.

From Texas: Mr. Wilson 15, Mr. Bryant 14, Mr. Brooks 20, Mr. Pickle 20, Mr. Wright 10, Mr. de la Garza 13, Mr. Coleman 14, Mr. Leland 17, Mr. Gonzalez 14, Mr. Frost 11, Mr. Ortiz 11.

From Virginia: Mr. Sisisky 20, Mr. Boucher 11.

☐ 1940

From Washington: Mr. Swift 16, Mr. Bonker 16, Mr. Foley 10, Mr. Dicks 16.

From West Virginia: Mr. Mollohan 12, Mr. Staggers 15, Mr. Wise 20.

From Wisconsin: Mr. Aspin 13, Mr. Obey 19.

All of those Members whose names I called qualify in the category as big spender, all Democrats serving in the House of Representatives, some 150 or thereabouts.

If the people of this country want to change the spending habits, if they like that spending habit of a big spender, we are going to continue to have it if people elect from those districts where those people represent to come back here when we organize the 99th Congress in January of next year.

If, on the other hand, the people of this country do not approve of that level of big spending, then with this knowledge they can ask their incumbents how they acquit themselves with respect to being labeled a big spender, and if that reflects the sense of the district they will come back, but if it does not reflect the sense of the district, then in this representative form of a democracy, form of accountability, perhaps the voters would choose somebody else to come back to represent their interest in this body.

Does my friend from California desire recognition?

Mr. PATTERSON. Yes.

Mr. DANNEMEYER. I will be happy to yield to the gentleman from California.

Mr. PATTERSON. I thank the gentleman from California for yielding to me.

Mr. Speaker, as we are debating, the two of us in this nearly empty Chamber, let me just point out that while I was patiently listening to you in the previous statements that you made, you know it is really no accident that every one of the 153 Members that have been identified today by the gentleman as supposedly big spenders just happen to be members of the Democratic Party, as am I.

It is no accident that the gentleman from California [Mr. Dannemeyer], as those who signed on to this special order with him and each and every one of them just so happened to be a member of the Republican Party; it is no accident that this supposedly objective National Taxpayers Union, which has come up with a list of the 153 big spenders includes a large group of all Republican, ultraconservative members on its advisory board.

What wild-eyed radical big spending votes has the National Taxpayers Union been counting in order to determine which one of us were the big spenders? Let me give some of those statistics for the benefit of the viewers here who might want to know why some of us are classified by some of you as big spenders.

First of all, some of the appropriations: Appropriations for the CIA, appropriations for the National Security Agency, two of the votes counted by the National Taxpayers Union; funding for State crime prevention and detection programs. I voted for it, that makes me a big spender.

First concurrent budget resolution. I voted for it, $20 billion lower than President Reagan recommended, and that makes me a big spender and you a small spender. Voting to prevent the social security age from going up from 65 to 67 because I think it ought to stay at 65, makes me a big spender, makes me a big spender.

Mr. DANNEMEYER. I am going to reclaim my time.

Mr. PATTERSON. Of course you have the time, you can take it away from me.

Mr. DANNEMEYER. I am going to reclaim my time. I am going to yield again, but I am going to reclaim my time.

I have a list here by chance of each of the 202 votes that the National Taxpayers Union utilized in analyzing and establishing a voting record for all of us for 1983.

Mr. PATTERSON. I just want, I can go through 25 more.

Mr. DANNEMEYER. If you would like to make reference to any of them in the course of your discourse, I will be happy to refer to them here and explain precisely what that vote did.

Now I will be happy to yield to my friend.

Mr. PATTERSON. I thank the gentleman for yielding.

Voting for funds for prevention of drug abuse, is among the votes you counted as big spending; protection of materials determined by the Defense Department to be critical to our national security, among the votes you cite; the basic appropriations for the National Science Foundation counted as a big spending vote; continuation of FHA mortgage loans, across this country, counted as a big spending vote by you; funding for a mean program for the homebound elderly, people that cannot get out of their home, are not able to be there, they are elderly, voting for the program is a big spending vote, according to the National Taxpayers Union; job training funds for unemployed Vietnam war veterans, job training for Vietnam war veterans.

They fought a war for us and we are going to say no benefits for them?

Appropriations to continue the buildup in our military strength, these are counted as big spending. Wives and children of Federal law enforcement officers who are killed on the job, firefighters killed in the line of duty; voting for those appropriations which I voted for in the past and I shall vote for again, you count as the big spending vote.

Continuation of funding for nutritional programs for low-income women, infants, and children;

Job-training programs for long-term unemployed Americans;

Funds for Voice of America broadcasts to Cuba;

Authorization for the programs of the Justice Department;

Funds for continuing educational assistance to the handicapped; and

Authorization for the programs of the Department of State.

This is just a sample of the wild, budget busting bills that the big spenders named today had the audacity to support. A review of the entire set of 202 House votes included in this survey reveals that the only way a Member could receive a good rating is to diligently vote against nearly every appropriations bill that comes before the House. Those of us who strive to be contributors to the development of sound public policy would be hard pressed to vote in such a negative and unconstructive fashion.

Let me finally point out that many of the votes cited by the National Taxpayers Union as examples of excessive spending were supported by the President and the leadership of the Republican Party. I suggest that rather than single out 153 Democrats as the source of deficit spending, the so-called National Taxpayers Union might better look to the real cause of the deficits for the last 4 years.

And it is funny that it just kind of hits only 153 Democrats and zero Republicans.

Mr. DANNEMEYER. I am going to reclaim my time.

Mr. PATTERSON. Isn't that amazing? Isn't that amazing?

Mr. DANNEMEYER. I point out to my colleague it is not surprising that you would make this recitation, because I will say it again, every vote of the votes we cast in 1983 that relate to spending was considered in establishing the record that the NTU developed.

Two hundred and two of those votes related to spending, either raising it or cutting it. The gentleman is absolutely correct; when you mention each of those votes in isolation with specificity and focalize only on that specific program, in most cases you can make a defensible record for explaining why we should support that program, as you have just done.

But our problem, as the gentleman will probably concede, is that when you put all these programs together we have got chaos. I mean, I do not think we can justify to anyone with any degree of certainty how we can with good conscience go home and explain to our constituents how we put our stamp of approval on deficits of $180 billion.

What right do we who are living today have the moral authority to spend and consume and transfer the debt, for living today, to our children and our grandchildren? I do not think we have that moral right.

Somebody has to speak for these kids who are not around who are really being vested with this debt that you and I are standing here talking about. You are saying "I should be able to vote for this because those people need it."

What about the kids who have to pay the bill? Who speaks for them? That is what the whole drill is about; accountability.

Mr. PATTERSON. I would certainly agree with the gentleman in terms of trying to balance the budget and reduce the deficit. But what the gentleman has been citing and what this special order is all about is the so-called objective enunciation of 202 votes established by the National Taxpayers Union which is composed literally of nothing but conservative Republicans who are identifying programs that they do not want to vote for and then saying some of us who vote for those programs are the big spenders.

I would say to you that I have voted for smaller budgets than President Reagan has recommended in each of the past 4 years. He is not a big spender? Why not? Can you answer the gentleman from California?

Mr. DANNEMEYER. Last time I noticed, unless he is here now, he does not serve in the Congress of the United States.

Mr. PATTERSON. Maybe you can speak for him.

Mr. DANNEMEYER. It has been said before Presidents do not establish a level of spending, we in Congress do; Presidents propose and Congress disposes. And you and I, along with our 433 colleagues set the level of spending for this country; the President does not set it. The buck stops here.

Mr. PATTERSON. Who prepares the budget?

Mr. DANNEMEYER. The President sends it up.

Mr. PATTERSON. The President prepares it, his departments prepare it. Who presents it to the Congress? The President. Who signs it? The President. Who enacts it, the Congress; who spends it? The President.

So we have one little shot there to balance the President's budget and that one little shot comes when it comes to the floor. But would it not be a lot simpler if the President would give us a balanced budget, say, "Here is my budget, Members of the Congress, and it is balanced." Then we could all vote for it and go home.

□ 1950

Mr. DANNEMEYER. Well, I hope, now that you mentioned that—have you signed discharge petition No. 10, which is an open rule which would permit you to offer that constitutional amendment? I will ask my colleague that. Have you signed that yet?

Mr. PATTERSON. Does the gentleman not think that the President ought to have to present a balanced budget, as well as just the Congress adopt one?

Mr. DANNEMEYER. I believe that the Congress has the responsibility under the Constitution to set the level of spending. And what the President proposes is, of course, entitled to great respect—and I respect that—but so far as our constitutional system is concerned, we, with a 2-year lease on life in this House, have the responsibility of setting the level of spending, and I think we should be accountable for what we have done.

Mr. PATTERSON. Well, I thank the gentleman for yielding to me.

Mr. DANNEMEYER. I thank my colleague for entering into the dialog.

Mr. Speaker, in conclusion, let me just make this observation, that for those Members who have been categorized as big spenders, I would hope that they would turn up here this evening and discuss it. Unfortunately, there are many things going on this evening and they were not able to be here.

Does my colleague, the gentleman from Colorado, desire recognition?

Mr. BROWN of Colorado. I thank my friend from California, and I would like recognition.

Mr. DANNEMEYER. I will be happy to yield to the gentleman.

Mr. BROWN of Colorado. I think the gentleman from California has brought forth a very important issue that merits attention in this body. We just went through a number of very deserving programs, some that my colleague from California and I have supported, some that we have not. But I think an interesting aspect of this whole question is that you could literally have voted—what was it, 25 special programs that were listed? Perhaps more—you literally could have voted for every single one of them, without exception, and still not have fallen into the category of being a big spender.

Mr. DANNEMEYER. I think that is a correct statement. They selected 202.

Mr. BROWN of Colorado. That is right. But I think sometimes folks who listen to this fail to understand that every single one of those programs could have received a positive vote and the people involved would not have been labeled under this system a big spender. As a matter of fact, they could have been in one of the categories of the more economical spenders, according to this rating.

The other observation I would like to make, if I would be permitted, is that I think so often we hear folks talk about: Where would you cut Government? Or, for that matter, where would you bring it in line?

And I think that is really a more significant question.

I would like to just suggest a few small areas that have been turned down by this House by large margins, unfortunately.

We have something like 44 elevator operators in the Capitol, in our offices, who operate automatic elevators, in other words, elevators that go automatically, do not require any people at all, and yet we have someone paid there to push the button for Members of Congress. Yet this body has refused to reduce those numbers of elevator operators even by attrition.

Our committee staffs, they literally are an unspoken scandal. The committee that I serve on, the Interior Committee, when my predecessor's predecessor, Mr. Aspinall, came to Congress, had four full-time staff members. Incidentally, at that time they had more business in the Interior Committee and wrote more legislation with those four full-time staff members than they have at any time since. Those staff members did a fine job. But when Mr. Aspinall left and my predecessor came, Mr. Johnson, they had gone from 4 to 15. Yet this body with a straight face passes every year funding for staff members on that committee. When my predecessor, Mr. Johnson, left and I came, they had gone from 15 to 69. They are now at 73. And the astonishing thing is that we literally have 73 people doing less work in terms of legislation and bills than the 4 people did.

Unfortunately, the Interior Committee is not the worst example. There are other committees that are even far worse.

What we are saying is not that we spend money on programs that are needed but the clear issue is the spending of money in areas of clear waste.

We brought before this body a number of issues. For example, the policemen who are on Capitol Hill. We literally have 1,200 policemen on the payroll. That is more than two for every Member of Congress, just for our offices, not for Washington, DC. We have a larger police force for just our offices in this building than they do for the entire city of San Diego.

We have a number of agencies that the gentleman from California has brought forth amendments on to this floor that pinpoint waste, and yet time after time the Members of this body unfortunately have turned them down, not because they perform a valuable needed function to help the poor in this country, an objective I share. I know the gentleman from California shares and that I share, but simply turned down because this body is so used to spending they are unable to say no.

I would hope that the folks who are considering this question, reading the RECORD and viewing this tonight, would remember a couple of things: First of all, the kinds of issues that were delineated here just prior to my entering into the discussion could have been voted on and voted on in positive terms and would still have left someone on that list of the National Taxpayers Union as one of the more conservative spenders.

So there is no reason that people viewing this have to feel that you would have to cast any votes against really need programs to avoid being called a big spender. You would not.

The second thing I think is an understanding that there is an enormous amount of waste, starting with this building and going on throughout the Federal Government. This body has conscientiously refused to address that issue, and that is the major issue: How do we trim that waste?

The other aspect of it I would like to suggest is this, because I hear it discussed so often: I had hoped that we would ask ourselves: Who is really hurt by the enormous spending spree this Federal Government has been on?

I so often hear my colleagues talk about how the poor are the ones who would suffer if we brought the budget into balance.

Let me suggest a little commonsense would indicate exactly the opposite.

I had the pleasure of working my way through school, as I think many Members of this Chamber have. I know what it is like to work and produce, as the American people know what it is like to work and produce, because we are the most effective at it of any nation in the world. But who pays for this enormous spending, whether it is done through taxes or whether it is done through inflation, to finance a large deficit?

The truth is, it is not the wealthy few who pay those taxes. It is the working men and women of this country who pay those taxes. Oh, yes, the wealthy have high rates. Some of them who are not able to take advantage of some of the deductions pay enormous taxes. But the fact is that the bulk of the taxes in this Nation are paid by working people. And as we run those taxes up, it is working men and women who are impacted on those taxes.

The other question, is really, is: Who is impacted by the deficits?

You know, so often I hear wasteful spending justified on the basis that you are somehow helping the poor. And yet anyone who stops and thinks about it realizes how totally incorrect that is.

First of all, what are the products of these huge deficits? High interest rates and high inflation are clearly the background.

Who benefits from high inflation? Is it someone who has no property? Of course not. They are stuck with higher bills. They have no property that goes up with that inflation. The people who benefit by high inflation are the wealthy. Rather than helping the poor and the working class of this country by generating enormous inflation, we are actually harming them, we are doing the one thing that could harm them most by raising their costs and yet not allowing them a pickup in the property values. It is the wealthy of this country who benefit by the enormous inflation factors. They benefit because they have the appreciation in property that they own that comes about through those higher prices.

And while we are at it, let us talk about interest rates. Who really benefits by high interest rates? Is it the people who borrow the money? Of course not. The people who borrow the money are the ones who have to pay those higher interest rates. The poor and the working people of this country are the ones who have to pay the price of those enormous deficits because they are the ones who are impacted by those high interest rates, they are the ones who have to pay the bill.

It is people with large sums of money to loan out that benefit by high interest rates.

The framework of discussion with regard to spending issues has been tipped over. Somehow people who want to bring down inflation and bring down interest rates are labeled as favoring the rich. Nothing could be further from the truth. I say that without regard to party or without regard to philosophical labels, whether you are liberal or conservative. It is a simple fact of life that high interest rates and high inflation harm the poor more than any other class. And high interest rates and high inflation help the wealthy.

So the justification for this enormous spending spree that has seen an explosion in spending throughout this last decade and in particular the last several years in this House of Representatives cannot be justified by a concern for the poor of this country. It is exactly the opposite of that. And I think it is that arrogant disregard of the commonsense approach to Government that I think has motivated my colleague to bring this issue to the floor. I commend him for it. I certainly join him in his efforts to bring this to light.

I might mention one other factor that I think is terribly important. I would hope this body in a bipartisan way would join together to attack the waste and fraud. As you know, the President has appointed a Commission, the Grace Commission, which has identified areas of waste. I do not agree with all of the things in there, but I think the vast majority of them are extremely good. I think it is a sad occasion that this House has been unwilling to bring those recommendations to the floor.

I commend the gentleman from California for his efforts to bring up parts of that Grace Commission report in terms of amendments, as the rules of this House permit. I only regret that the House has been unwilling to bring that package to the floor so that we could really put the American economy back on the right track.

I yield back to my friend.

Mr. **DANNEMEYER**. I thank my colleague very much for his very eloquent statement. It is worth repeating that the spending is really a paradox in American politics, that so often we hear that the spending that is going on, as the gentleman from Colorado pointed out, is for the benefit of the poor and the downtrodden and the deprived in our country, whereas in truth and in fact the inflation and high interest rates which this excessive spending generates hurt the very people ostensibly it is designed to help.

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That is this message of accountability that I seek to bring to the House and to the country this evening, and to our CONGRESSIONAL RECORD. If the people of this country want to know who is responsible for the high level of spending, they could start by an analysis of who is the big spender as demonstrated by the National Taxpayers Union, a nonpartisan group.

If you like what your Member is doing, send him back; if you do not, perhaps you would want to consider an alternative.

● Mr. **RITTER**. Mr. Speaker, the National Taxpayers Union recently published its scorecard on support for Federal spending in Congress. The National Taxpayers Union is a nonpartisan organization of approximately 130,000 members founded in 1969 and dedicated to lower taxes and removing wasteful Government spending practices. The NTU believes that it is the taxpayer who is best able to determine the use of his or her tax dollars. As a cosponsor of the balanced budget/tax limitation amendment offered by Messrs. JENKINS and CONABLE and Mr. KEMP's flat tax bill, I believe that as representatives we have a duty to carry out the wishes of our constituency regarding these tax issues.

Over the past several years, we have been barraged continually by reports in the media and elsewhere stating that the Reagan tax cuts were a giveaway to the rich. But recently released Treasury Department statistics indicate that all of those people opposed to the President's tax reduction were wrong! For example, the Treasury Department at a hearing on June 13, 1984 before the Joint Economic Committee released statistics indicating that a cut in the top marginal tax rate on interest and dividend income from 70 percent to 50 percent resulted in the collection of 42 percent more revenue from taxpayers making $1 million or more. Income earners above $50,000 and now paying some 38 percent of the total burden as opposed to 34 percent prior to the tax cut. For persons in the bottom 20 percent of the income scale, the percent of taxes paid by them decreased after the tax cut. The tax cut did work and we are now reaping a greater flow of revenue from those in upper income brackets.

I would urge my colleagues to examine the testimony presented to the Joint Economic Committee, portions of which are reprinted in the CONGRESSIONAL RECORD on June 13, 1984, pages 16029-16042 inserted by Senator SYMMS.●

INTERNATIONAL WHALING CONVENTION

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from California [Mr. DYMALLY] is recognized for 30 minutes.

Mr. **DYMALLY**. Thank you very much, Mr. Speaker.

Mr. Speaker, recently I had the opportunity to attend the International Whaling Convention in Buenos Aires, Argentina. During the sessions of the IWC, I disseminated a position paper. Today I wish to present this paper using this forum because of its importance.

I am fully aware that the formal session of the House is completed and most if not all the Members have since departed. As I indicated earlier, I believe the paper is of some significance and I shall proceed to deliver it in this special order:

THE 36th ANNUAL MEETING OF THE INTERNATIONAL WHALING CONVENTION (JUNE 18-22, 1984, BUENOS AIRES, ARGENTINA)

Mr. Chairman, distinguished representatives of the member nations of the International Whaling Commission (IWC), I am attending this meeting as a member of the Committee on Foreign Affairs and the Committee on Science and Technology of the United States House of Representatives.

As a member of the United States delegation, I wish to commend the nations convened here for their dedication to the ideal of conservation of natural resources, and for their admirable work in ensuring that the world's whales will not perish.

The International Whaling Commission and its Scientific Committee have greatly advanced the science of conservation management, with the result that a continued yield can be taken from the resource while safeguarding whale populations from depletion.

As a member of the Committee on Foreign Affairs and the Committee on Science and Technology of the U.S. House of Representatives, I am here because I am greatly concerned with a situation which is creating a great deal of problems among otherwise friendly nations, and which may threaten the common conservation, economic and political goals of some of this Convention's member nations. I am speaking, of course, about the whaling moratorium issue.

As a Legislator and an outside observer until now, I am aware of the history and developing circumstances which have culminated in the vote of the IWC for this moratorium on commercial whaling. It is my understanding that this moratorium will take place on all commercial whaling in spite of the fact that all the highly depleted species were already fully protected against commercial whaling. The moratorium would prohibit catches of species and stocks which could well support the low levels of utilization permitted, particularly when the condition of such stocks are so carefully monitored by your Scientific Committee, and the allowable catch quotas are established at such conservative levels. As a Legislator under whose Committee jurisdiction this issue arises, I take serious note of the fact that the moratorium was voted with nonconforming opinions from your own Scientific Committee and that of the Food and Agriculture Organization of the United Nations.

I know that a whaling moratorium was set as a goal by many environmental groups in the early 1970's, when it appeared that the International Whaling Commission could neither set its own house in order nor develop scientific management procedures that could adequately safeguard whale populations from depletion. But to your great credit you have now done both. There now is no question that you have succeeded in protecting those species in need of protection and in reducing catches to levels that will not deplete the stocks.

My own government in 1972 set a total whaling moratorium as a goal. We even continued endorsing this goal year after year, in spite of the resource management progress which was being made by the IWC. Unfortunately, we have not taken notice of possible hardship suffered by nations which traditionally lived by harvesting the food resources of the seas. Because it had little direct effect on Americans and was lobbied by various anti-whaling groups, officials of my government took an active part in promoting a commercial whaling moratorium for a decade, even though some of their allies believe that whales are a natural resource and should be utilized as long as they are not endangered.

A reflection of this dichotomy of concern for both the international marine environment, as well as the appropriate taking of marine stock, is represented in the United States Congress today. Two major committees of the Congress are currently considering several pieces of legislation—the Committee on Foreign Affairs and the Committee on Merchant Marine and Fisheries are grappling with congressional policy related to marine mammal protection as well as the policy of sanctions regarding whaling nations who object to the moratorium of the IWC.

Recently in April, 1984, my colleague Congressman John B. Breaux submitted testimony to the Subcommittee on Human Rights and International Organizations, concerning his serious reservations regarding the imposition of sanctions on whaling nations who object to the moratorium, and which may continue after 1985 when the moratorium goes into effect. On the other hand, it appears the Subcommittee will send to our full Committee on Foreign Affairs, their recommendation on this issue to which all sides of the issue of sanctions will be heard.

I would be less than candid if I were to say to you that Congress is overwhelmingly of one opinion on this issue of imposing sanctions on friendly nations. Clearly our relationships with other nations will be impacted and affected!

With his permission, let me quote the Chairman of the Subcommittee on Fisheries and Wildlife, Congressman John B. Breaux:

"The United States has been a world leader in the development and implementation of programs to encourage the wise use and protection of living Marine resources. For example, the Marine Mammal Protection Act of 1972 is a landmark in conservation efforts for cetaceans and other marine mammals. Certainly, we all applaud and support efforts to conserve threatened and endangered international whale resources. The means through which we express our support are an important consideration, however, and I believe that a balanced approach which recognizes the status and potential of current diplomatic efforts and the realities of the U.S. Fishing Industry is desirable.

"The U.S., in conjunction with other concerned nations, has applied steady pressure over the years to encourage wise management of international whale resources. While the status of some whale stocks is unfortunate evidence that we have not always been as successful as we would like, we have made inexorable progress in our quest for rational management, particularly in recent years, and I believe that we will continue to do so."

Before this issue becomes a divisive element among all nations, it would be wiser to settle the differences between the whaling nations and protectionist nations in the spirit of compromise and comity. If sanctions are imposed and relationships deteriorate, Congress may have to review its legislative policy in support of the moratorium and the sanctions which it has authorized the Federal executive agencies to implement.

As an ethnic politician representing a multi-minority community in the Los Angeles area of the State of California, I have come to appreciate the subtleties on political life, and so it is, that the policy of the moratorium on commercial whaling is now a "fait d'acomplait". The world will have a moratorium on commercial whaling in 1985, although the effectiveness of such a moratorium will depend upon voluntary compliance based on rational conviction.

As the IWC monitors and assesses the effectiveness of its moratorium during the period after the effective date, it would be wise and prudent to remain open to both the scientific management data generated about the whaling stock, as well as to the resulting political ramifications inherent in the use of sanctions and other methods to obtain compliance. The political repercussions and the effect that it exerts on world comity and international relationships will be closely monitored by Congress. The effects of possible retaliation forced upon the objecting whaling nations could cause severe internal problems for the United States, particularly with regard to our joint venture fishery agreements, and more importantly, to a world co-existing under greater pressure now among the United States, its European and Asian allies, specifically Japan, and the Soviet Union.

For members of the International Whaling Commission, there are momentous decisions ahead of you; in particular, I am certain that you will give serious deliberate consideration to the steps which the IWC and its member nations will take regarding enforcement of the impending moratorium. In my view, the choices will be difficult at best:

Choices involving complex negotiations in the years ahead toward voluntary compliance;

Or for stringent enforcement sanctions which would exacerbate current relationships among the whaling and non-whaling nations;

Or for continued monitoring and continued adjustment of the moratorium policy in order to meet the realities of the limited and diverse world in which we all live; of our racial and cultural diversities; and of our perceived values and national interests.

The work you are doing here is very important, and I wish each of you well during coming years. Thank you.

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TRIBUTE TO BILL LEE, PRESIDENT OF THE CHICAGO FEDERATION OF LABOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, I rise today to pay tribute to William Aloysius Lee, president of the Chicago Federation for 38 years, whose death on June 16 was a tremendous loss to the people of Chicago.

Bill Lee's career as a labor official spanned more than a half century, and the labor movement truly has lost a great leader who contributed mightily to the lives of all working people.

Growing up on Chicago's West Side, Bill Lee paid his first union dues in 1915 to Bakery Drivers Union Local 734, upon being promoted from his job as a shipping clerk to a driver of a horse-drawn bakery delivery wagon. After serving his country with distinction during World War I in the Army Observation Balloon Corps, he returned to his old job, and in 1926 was elected president of Local 734. Although he lost this post briefly, he regained it in 1929, and then held this office for the next 32 years.

Elected president of the Chicago Federation of Labor in 1946, Bill Lee continued to devote his life to organized labor and was a champion of the rights of workers. In 1962, he was instrumental in merging the Chicago Federation of Labor with the Cook County Industrial Union Council, forming a combined organization with about 400,000 members aligned with the AFL-CIO. He also was elected vice president of the International Brotherhood of Teamsters in 1950, a post he held for 7 years.

As a labor leader, Bill Lee provided valuable assistance, acting as a liaison between organized labor and the city of Chicago, and ensuring labor stability for several decades in the city. He favored negotiations and conciliation whenever possible, and his skills as an outstanding negotiator, as well as his ability to avoid strikes, were unmatched.

In addition to his labor activities, Bill Lee regularly devoted his time to countless civic activities. He served on the boards of the Chicago Public Library and the Chicago Park District, and was a member of the Mayor's Advisory Committee on School Board Nominations for more than 20 years.

Bill Lee was a highly respected member of the community, and he will remain a legend in the city of Chicago. He was a gentle man, who was admired by business, industry, and labor for his integrity and his outstanding abilities.

Mrs. Annunzio and I extend our deepest sympathy to his wife, Pamela, on her great loss.●

STEEL CAUCUS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. COYNE] is recognized for 5 minutes.

● Mr. COYNE. Mr. Speaker, the finding by the International Trade Commission last week that foreign imports damage the American steel industry may help preserve jobs in western Pennsylvania.

Imports accounted for 26 percent of domestic steel consumption in the United States during the first 4 months of this year. Many of these imports are not just subsidized by foreign governments to slightly undercut American prices. Some are part of a dumping process in which steel is sold in this country for less than the cost of production in another nation.

The steel industry has attempted to confront the growing problem of imports with selected antidumping and countervailing duty cases. But the problem is a global one which cannot be answered at this point on a country-by-country, product-by-product basis. Section 201 of the Trade Act of 1974 allows a more comprehensive remedy to industries facing serious harm as a result of imports. For the remedy to apply, the Commission must find that imports are increasing, actually or relative to production. In addition, a domestic industry must be seriously injured, or threatened with injury. Increased imports must be a substantial cause of the serious injury.

I should point out to my colleagues that this law applies to all industries, not just the steel industry. But it is the steel industry, more than any other, which has failed to reap the benefits as a result of the current economic upturn, in part because imports weaken its ability to capitalize on an upturn.

The International Trade Commission has recognized the serious threat to American industry and jobs by opening the door, as the current law allows, to tariffs, quotas or a combination of the two on several categories of imported steel. These include plates, sheets and strips, semifinished steel products, wire and wire products, and structural shapes.

Later this week, the International Trade Commission will hold hearings on the appropriate steps to take to curb imports. It should forward recommendations to President Reagan by July 24, after which the President has 60 days to act on the recommendations.

The Commission has weighed the evidence and made a good recommendation. In the face of the growing trade deficit, it is difficult to come up with any alternative other than some type of protection for the domestic steel industry.

I hope that President Reagan recognizes the seriousness of the economic situation in western Pennsylvania and that he acts promptly on the Commission recommendations. Failure to do so would make worse an already desperate situation in steel.●

URBAN RENEWAL AND PRIVATE ENTERPRISE: A PARTNERSHIP FOR PROGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island [Mr. ST GERMAIN] is recognized for 5 minutes.

● Mr. ST GERMAIN. Mr. Speaker, I wish to submit to my colleagues the following speech, delivered recently by August A. Busch, Jr., chairman emeritus of Anheuser-Busch Cos., Inc.:

URBAN RENEWAL AND PRIVATE ENTERPRISE: A PARTNERSHIP FOR PROGRESS

Distinguished members, guests, ladies and gentlemen, my colleagues, friends. It is indeed an honor and a rare privilege to address you on this memorable occasion. First, I would like to congratulate each one of you here on the attainment of the objectives for which we have worked so hard. The disturbing feature of all this is despite the bitter lessons we know better. As that great statesmen once said, and I need hardly remind you of this, and without fear of successful contradiction, we hand down to posterity as a matter of policy a few words about your splendid activities and this great association of ours. We view with alarm, but under our present wise leadership, and some may be surprised, for above and beyond we begin to see the sun break through. We are counting on your continued support, because as you so well know money must be forthcoming to our way of life. Patrick Henry said taxation without representation is tyranny. If he had known what taxation with representation is like, he would have kept his mouth shut.

As we travel the long road ahead down to the grass roots of America, there are those extremists whose voices cry out in the middle of the night. In this worthy cause we must not forsake but, rather, with wisdom recall that there are those who say that tomorrow may be to late. Make no mistake! In our overall appraisal no one will dispute this fact and it is a sobering thought, indeed.

It is perhaps more than coincidence and honesty demands whether we desire it or not that we rise up to the issue. This observation has led me to one conclusion: These are indeed trying times and we are all trying at this time. The world looks to us for leadership, and we point with pride. In considering the credit size of the ledger, keeping always abreast of the times, the record shows that we are a group. It is gratifying to hear like all good Americans and these are simple hard facts. We can do anything that we can accomplish, but we must never be afraid of anything that doesn't frighten us. Have no illusions! This is no dream but a challenge. History teaches us that the greatest period of crisis lies before us, and especially disillusioning has been our experience in this worthy cause. Yet, we must not falter. Where than shall we turn? In our judgment we do not wish to confuse the issue. The primary aim has always been to understand the problem better.

I do not pretend to know the answers. There are unmistakable signs I submit to you, and in such view we are perhaps more to be applauded than condemned as the world may one day see. As we go forward arm in arm together, into the sunrise of tomorrow, we are advancing, because we know that a nation that stands still is not moving.

Another and wiser man has said it far better, for therein lies the common denominator of a people who will never give up. We should then pause and reflect. It was gratifying to hear in our overall appreciation and as a matter of fact it is this very spirit of unselfishness which is beyond preadventure of a doubt. Whoever would challenge these words of our founding fathers? I say to you let us look at the record as set forth by them. Of this we can be assured, as those who have gone before us and these splendid men and women in this room whose very presence here testifies.

With heartfelt thanks and unyielding determination as in the immortal words first uttered by my illustrious colleague we hear the hallowed voices, blue and gray, who made it the great common heritage of those dauntless pioneers and in this tradition we must and will under God. Remember: The solution to each of our political problems can be best weighed in the inverse proportion that our national determination bears to the overall situation.

It has been a distinct honor and privilege and in conclusion let me reiterate once again what words can not express. On that note may I leave you with this parting thought which I know will be taken in the spirit in which it is offered: "Always follow the golden rule—them as has the gold makes the rules, may it always be thus."●

COMMUNITY AND STOCKHOLDER RIGHT TO KNOW

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota [Mr. PENNY] is recognized for 60 minutes.

Mr. PENNY. Mr. Speaker, today I am introducing legislation to protect the public's interest when one big corporation decides to take over another against its will. We have heard a great deal about these "hostile takeovers" in recent months. It is time to do something about them.

It is time to do something because there are many people in society who can be hurt by these takeovers but who do not have any say about the takeover transaction itself. These are little people. The loyal, long-term employee concerned about his or her job and retirement. The owner of a small hardware store who has a longstanding relationship with a plant that might be closed. The elderly property taxpayers in a small town threatened by a business relocation.

Minnesota wellspring, a coalition of businessmen, labor leaders, legislators, and others from my home State, recently concluded that there are several aspects of these hostile business transactions that are especially troublesome to the economy, to the individuals who work for the target company and its suppliers, and to those who live in the communities where the target companies are located.

The national economy itself is affected when investment dollars are tied up in a takeover battle. The interests of society would be better served by using this scarce capital for purposes other than empire building. Dozens of takeovers have tied up tens of billions of dollars over the past 2 years, economists agree that this is a very unproductive use of capital. The funds would be better used to buy equipment, renovate plants, build buildings, and do more research on new products.

For employees, even the threat of a hostile takeover has a negative impact. They rightfully fear plant closings, job losses and the wholesale restructuring of the combined business if a takeover is successful. These fears undermine employer/employee cooperation that becomes even more important if a merger occurs.

Customers and suppliers of a company that are bought out in a hostile takeover face the same type of threat. Longstanding relationships, both nationally and within communities, can be disrupted by management and organizational decisions made by a new company resulting from a forced merger.

In addition, if plants are closed and jobs are lost, local Governments lose their tax base, and communities lose their economic vitality. Local businesses are hurt economically, churches and schools close, residential property taxes skyrocket—too often communities die.

Finally, if the new, combined company is weakened by the cost of the takeover, the stockholders of both companies lose.

Recognizing the negative consequences of many hostile takeovers, I believe that something should be done. However, we should rely on the free market to do it. We can rely on the free market by providing additional information to the shareholders of both the target company and the acquiring company before the takeover begins and by guaranteeing that all shareholders of the target company are treated equally in the takeover process.

Therefore, the legislation that I am introducing has two fundamental provisions designed to prevent the negative consequences of hostile takeovers. First, it requires that a company planning to acquire another prepare a statement of its plans for plant closings, changes in work force, modifications of supplier agreements, and any other major changes in its business, corporate structure, management, or personnel. This statement must be made available to the shareholders of the target company. The takeover would be permitted to proceed only if the transaction were approved by a majority vote of the shares of the target company that are not owned already by the company planning the takeover.

This requirement of a "social impact statement" guarantees that shareholders have more information about the planned takeover than just the price they are being offered for their stock.

The legislation that I am introducing today has a second major provision. It is common practice for an acquiring company to pay more for the first shares acquired in a takeover than for those remaining after the takeover has progressed. To prevent this "two-tier" pricing, under the terms of this bill, an acquiring company must pay the same amount for all shares acquired over a period of 2 years following an initial takeover attempt. Otherwise, shareholders are forced to ignore the overall implications of takeovers and concentrate only on their own, short-term individual financial interests as they compete with one another in a short period of time for the best price for their shares.

Mr. Speaker, company mergers affect more than the price of stocks. The individuals who own those stocks should have information about planned corporate changes and should be given time to consider those plans. This bill requires both. It is time to provide the free market with more information about the implications of hostile mega-mergers. I urge my colleagues to support this legislation.

NATIONAL COMMISSION TO STUDY AGRICULTURAL EXPORT PROBLEMS

The SPEAKER pro tempore (Mr. DYMALLY). Under a previous order of the House, the gentleman from Texas [Mr. DE LA GARZA] is recognized for 5 minutes.

Mr. DE LA GARZA. Mr. Speaker, I have today introduced legislation creating a national commission to study agricultural export problems and to recommend steps which can help improve our export trade.

The need for such a study is clear. Earlier this week, newspapers carried a report from the Department of Commerce stating that our national trade deficit rose to another new record during the first quarter of 1984. That is bad news for our national economy, although the news would have been even worse if we had not been able to continue heavy exports of agricultural products.

Our agricultural exports have been down from the levels of a few years ago, and the volume of farm exports has continued to decline in fiscal 1984. But on a dollar basis, the Agriculture Department reports that the value of agricultural exports during the first 7 months of fiscal 1984 was up 13 percent from a year earlier.

These facts underline the importance of agricultural exports to our agricultural community and to the entire Nation. The hard truth is that we need a strong agricultural export market for two reasons—to keep our farm economy healthy, and to help improve the growing problem in our national balance of payments.

The legislation creating a study commission is a bipartisan effort which has the support of many segments of our agricultural community.

The legislation is simple. It creates a commission that will include 10 members appointed by the speaker and 10 appointed by the president pro tem of the Senate. These 20 members will be private citizens representing farmers, agricultural traders, and other segments of agriculture and agribusiness. In addition, 12 members of the House and Senate would be ex officio voting members of the commission. Finally, the President would appoint three Government officials as nonvoting members.

The commission would be directed to study our national trade and export policies which affect agricultural trade. It will look at how current programs are working and at new programs which could be considered. It will also consider factors including foreign protectionist policies, international economic trends, and the manner in which the United States can best adjust its policies to meet changing economic conditions.

On the basis of this study, the commission will be required to report to Congress on the results of its review and on any recommendations it can make for improving exports. An interim report will be due on March 31, 1985, and the chairmen of congressional committees which have ex officio representation on the commission could request other interim reports. A final report would be due by July 1, 1986.

Finally, I want to point out that the cost of this study could be very largely borne by our private agricultural industries, because the legislation permits private contributions to the commission.

I hope, Mr. Speaker, that many of my colleagues on both parties will join in cosponsoring this legislation.

IN COMMEMORATION OF THE FATHER JUNIPERO SERRA BICENTENNIAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

● Mr. PANETTA. Mr. Speaker, I rise today to bring to the attention of my colleagues the bicentennial of the death of Father Junipero Serra, the famed Spanish missionary, apostle, and founding father of California, and to a resolution I am introducing on behalf of myself and 36 of my California colleagues to recognize Father Serra on August 28, 1984.

On August 28, the 21 missions of California will celebrate the achievements of this great man who founded the west coast's original nine missions and by so doing sowed the seeds from which grew the State of California. Junipero Serra, whose statute stands in this Capitol's Hall of Fame as a representative from the State of California, portrays the importance of Spanish influence and culture to the development of California and the United States. The series of nine missions he established laid the foundations of settlement on the west coast which provided an impetus for the westward expansion of the United States.

In the late 1700's very little was known of the west coast of North America, the explorers Cabrillo (1542) and Vizcaino (1603) had discovered San Diego Bay and Monterey Bay but had not yet found the great harbor of San Francisco or explored inland of these coastal locations. In 1769, the Spanish Government in Mexico seeking to consolidate its claim on the northern coast chose a pious, enthusiastic Franciscan padre, Junipero Serra, to head an expedition to establish a series of mission settlements in this unknown land.

After great personal struggle with an infected leg, Junipero Serra arrived in San Diego to establish the first mission of the California chain. By 1770, Junipero Serra traveled overland up the coast to arrive in Monterey and establish the second mission San Carlos Borromeo de Carmelo which was subsequently moved to nearby Carmel. From these two missions Father Serra worked to create a series of missions one day's travel apart, linked by the Camino Real or "Kings Highway." Missions were established under the direction of Father Serra at San Antonio (1771), San Gabriel (1771), San Luis Obispo (1772), San Francisco (1776), Santa Juan Capistrano (1776), Santa Clara (1777), and Ventura (1782). After Father Serra's death in 1784, the missions continued to expand until they formed a chain of 21 missions spanning from San Diego in the south to San Francisco in the north.

In addition to introducing the Californian Indians to Christianity, Father Serra and the other padres introduced the cultivation of grain, fruit trees, and grape vines to California. Out of these humble beginnings has grown the food basket of America and the California wine industry.

Father Serra demonstrated himself to be a brilliant teacher, a devout missionary, and a skilled administrator. His compassion, drive, and perserverance earned him the respect of the Spanish military commanders as well as the California Indians. During the dedication of Father Serra's statue in the U.S. Capitol's Hall of Fame, President Hoover's Secretary of Interior eulogized him as the west's torchbearer of civilization who "bravely, zealously, lovingly, and indefatigably remain steadfast in gaining the devotion and respect of the California Indians." As the American essayist Elbert Hubbard wrote:

> Among the world's great workers—and in the front rank have been only a scant dozen—stands Fray Junipero Serra. This is the man who made the California missions possible. In artistic genius, as a teacher of handicrafts, and as an industrial leader, he performed a feat unprecedented, and which probably will never again be equaled. In a few short years he caused a burst of beauty to bloom and blossom, where was only a desert waste.

Father Serra represents a striking contrast to the other explorers of our continent: driven not out of personal adventure or interest but from a spiritual mission, Father Serra sought not to conquer an unknown region but to cultivate its land and educate its people. In recognition of the contributions and work of Fray Junipero Serra, the Catholic Church in 1943 initiated the long process of considering him for sainthood, a procedure which has been referred to as the most complicated legal process in the world.

Mr. Speaker, many individuals from different backgrounds, faiths, and cultures have contributed to the creation of the United States. Father Serra is one such rare individual. Junipero Serra, a poor farmer's son from the Island of Mallorca off the coast of Spain, is now a household word among the people of the Pacific Coast; for California schoolchildren the name Junipero Serra represents the beginning of American history from their western perspective. It has been said that Junipero Serra is to the Pacific Coast what the Pilgrims are to New England—a founding father. In light of Father Serra's central role in the Spanish settlement of America and the national importance of his efforts, I urge my colleagues to join with me in cosponsoring this resolution declaring August 28, 1984, as a national day of recognition of Junipero Serra. For my colleagues' reference, I am including the text of my resolution to honor Father Junipero Serra:

H.J. RES. 603

Joint Resolution designating August 28, 1984, as a national day of recognition of Father Junipero Serra

Whereas August 28, 1984, marks the bicentennial of the death of Father Junipero Serra, the famed Spanish missionary and a founder of California;

Whereas Father Junipero Serra, through personal hardship and perseverance, established a series of nine missions along the length of California from San Diego to San Francisco;

Whereas these missions at San Diego, Carmel, San Antonio, San Gabriel, San Luis Obispo, San Francisco, San Juan Capistrano, Santa Clara, and Ventura became religious and community centers which grew and developed into the State of California;

Whereas Father Junipero Serra, through this introduction of cattle, grain, and fruit cultivation to the west coast, established what has become the food basket of our Nation;

Whereas Father Junipero Serra's work demonstrates the importance of Spanish influence and culture to the development of the United States of America;

Whereas in 1931, California included a statue of Father Junipero Serra as one of its two representatives in the United States Capitol Hall of Fame and in 1943 the Roman Catholic Church initiated the long process of considering Father Junipero Serra for sainthood; and

Whereas the twenty-one California missions and the Carmel Mission Basilica, the center of Father Serra's activities and his burial place, have designated August 28, 1984, as the beginning of a year of celebration of Father Junipero Serra's many contributions to California and our Nation: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating August 28, 1984, as a national day of recognition of Father Junipero Serra and calling upon the people of the United States to observe such day with appropriate ceremonies and activities.●

WHO'LL HOLD REINS OF SECRET FORCES?

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, recently, the New York Times carried an article by Jeff Gerth and Phillip Taubman revealing the startling, indeed frightening, news that the Defense Department has developed secret, elite military forces without the knowledge of even the Secretary of Defense, the Director of the Central Intelligence Agency, or the Congress.

As the article, reprinted in the Akron Beacon Journal of Friday, June 8, points out, the development of these elite units has raised concerns that they might become a uniformed version of the CIA and be used to circumvent congressional restrictions and reporting requirements regarding intelligence activities and the use of American forces in combat operations. These concerns are not academic. According to the article, the Joint Special Operations Command had developed its own weapons procurement and research, as well as communications.

The Constitution gives Congress the sole power to provide for the national defense, to declare war, and to appropriate funds. Nevertheless, the President has asserted the right, and indeed taken actions, to send American forces into combat without consulting Congress in advance, as required by the War Powers Act. Lebanon and Grenada are the most recent examples.

Now we may well wonder whether Congress will even know what military actions are being taken by U.S. forces or whether, in the end, such forces may become totally out of control.

It appears that the creeping militarization of our foreign policy is taking us a long way down the road toward a military entirely free of effective civilian control. The full text of the article follows these remarks:

WHO'LL HOLD REINS OF SECRET FORCES?

(By Jeff Gerth and Philip Taubman)

WASHINGTON.—The Defense Department has created several secret commando units in recent years, and they have tried to rescue missing Americans in danger spots abroad, participated in the invasions of Grenada and supported Central Intelligence Agency covert operations in Central America, according to administration officials and members of Congress.

The development of these elite units, which has extended the military's traditional concept of special forces, has raised concern in Congress that they might become a uniformed version of the CIA and be used to circumvent congressional restrictions and reporting requirements on intelligence activities and the use of American forces in combat operations.

But a senior intelligence official denied that such a risk exists. He said that although the new special operations forces constituted a resource for intelligence operations, any such use of them would be directed by the CIA and properly reported to the Congress.

Some of the units, the training and activities of which are highly classified, were created to combat terrorism but have acquired broadened mandates and training to conduct missions to counter insurgencies in developing countries in Central America, Africa and Asia, according to the administration officials and members of Congress.

The growth of the units, administration officials said, stems from a general concern at senior levels in the government that the United States must improve its ability to use specialized forms of force in situations in which the open exercise of power and the deployment of large numbers of men and weapons would be politically unacceptable.

Although in a few instances, including operations in Central America, these new units have worked in conjunction with CIA covert activities, they are not officially considered intelligence organizations.

Maj. Gen. Wesley H. Rice, the director of the Joint Special Operations Agency, which provides high-level Pentagon planning and coordination for the units, told a House subcommittee in April that he did not view his organization "as an agency of interest to the intelligence oversight committee."

Some of the congressional committees that have jurisdiction over intelligence and military matters, including the Armed Services and Intelligence committees in the House and Senate, are seeking clarification from the Defense Department about the role of the new units and their relationship to laws and regulations governing intelligence activities.

Much about the units remains secret. The Defense Department would not provide information about the organization, training or activities of the groups, and the military officers who dirct them declined to be interviewed.

However, interviews with current and former Defense Department and intelligence officials, members of Congress and staff members of key congressional committees disclosed these details about the new units:

They operate under the direction of the Joint Special Operations Command, centered at Fort Bragg in Fayetteville, N.C. The command was created to coordinate U.S. counterterrorist activities in the wake of the failed 1980 mission ro rescue Americans held hostage in Iran. The command, which is headed by Brig. Gen. Richard A. Scholtes, has a separate budget for the development and procurement of special assault weapons. It has a core force of elite troops who can be quickly supplemented with more traditional commando units from the military services, including the Army Special Forces, better known as the Green Berets.

The special operations units and the command structure above them have provided limited resources, both material and equipment, to the CIA for its covert operations in Central America, according to an American official familiar with the operations.

Under the terms of a secret 1983 memo to President Ronald Reagan from Defense Secretary Caspar W. Weinberger, the Pentagon pledged to provide a wide range of logistical support and manpower to assist CIA covert operations in Central America, including support of Nicaraguan rebels.

Some of the special operations command units played a key but still large secret role in the American invasion of Grenada last fall, according to American officials. The units, including Navy Sea Air and Land teams, known as SEALs, infiltrated Grenada during the predawn hours before the landing of Marines and Army Rangers.

The command's units tried to locate missing or captured Americans in Lebanon in the last 18 months and assisted in the 1982 search for Brig. Gen. James L. Dozier, who was held hostage by Italian terrorists.

As the government's primary counterterrorist strike force, the units under the special operations command have been deployed in other unspecified situations around the world when American citizens were involved in airplane hijackings and attacks on American embassies or diplomats.

The units will be involved in protecting against terrorist attacks at the Los Angeles Olympics.

One unit, identified as Navy SEAL Team Six, based at the Little Creek Naval Amphibious Base outside Norfolk, Va., operates amid extraordinary secrecy. Its members dress in civilian clothes, are permitted to have long hair and beards and train at civilian installations, including the Pinal County Air Park near Tucson, Ariz., which was a CIA air base in the 1970s, according to former intelligence officials.

Starting in 1980, after the failure of the mission to rescue American hostages in Iran, the Army, under the direction of Gen. Edward C. Meyer, then chief of staff, created a small, secret intelligence organization called the Intelligence Support Activity.

The group was formed without the knowledge of the secretary of defense, the director of central intelligence or Congress, according to intelligence officials.

Its original mission, according to former Army officers familiar with the group's origin, was to collect intelligence to plan for special military operations such as the Iran rescue attempt.

Eventually, however, the unit developed the ability to conduct special operations and became involved in supporting CIA covert activities in Central America, including aid to Nicaraguan rebels, according to intelligence officials.

In the last few years, the Joint Special Operations Command has evolved beyond its original mandate of countering terrorism to other kinds of special operations, according to American officials familiar with its operations.

As one official described it, the command "has become mostly a nighttime operation, with its own weapons procurement and research, as well as communications."

Congress has carefully prescribed, through legislation and practice, reporting and oversight responsibilities for covert operations conducted by the CIA. In addition, a 1981 executive order issued by the President required agencies engaged in intelligence activities to cooperate with Congress.

The executive order also limited "special activities," a synonym for covert activities, to the CIA unless the president determined that another agency was better able to conduct these kinds of activities.

The order, however, did not fully spell out the definition of "special activities," and, according to national security experts and congressional officials, there is some ambiguity over whether some types of commando operations carried out by the Pentagon would fall within the definition of special activities.

SECRET COMMANDO UNITS

Established after failure of 1980 hostage rescue mission in Iran.

Formed without the knowledge of the secretary of defense, the CIA director or the Congress.

Used when open exercise of military power would be unacceptable.

Sometimes operate in conjunction with the CIA.

Aided in search for Brig. Gen. James L. Dozier, who was rescued from kidnappers by Italian authorities in 1982.

Participated in Grenada invasion.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. LLOYD (at the request of Mr. WRIGHT), on June 21 and 22, on account of official business.

Mr. WILLIAMS of Ohio (at the request of Mr. MICHEL), from 1 p.m. today and for the balance of the week, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LEWIS of Florida) to revise and extend their remarks and include extraneous material:)

Mr. DANNEMEYER, for 60 minutes, June 26.

Mr. DANNEMEYER, for 60 minutes, June 27.

Mr. DANNEMEYER, for 60 minutes, June 28.

Mr. LOTT, for 60 minutes, June 25.

(The following Members (at the request of Mr. PENNY) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. COYNE, for 5 minutes, today.

Mr. AUCOIN, for 5 minutes, today.

Mr. ST GERMAIN, for 5 minutes, today.

Mr. DE LA GARZA, for 5 minutes, today.

Mr. PANETTA, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, today.

Mr. LEVIN of Michigan, for 60 minutes, on June 28.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. JEFFORDS, prior to the vote on the McKernan amendment, today.

Mr. WINN, to revise and extend his remarks and to have them appear prior to consideration of the bill H.R. 5580.

Mr. MCKINNEY, to enter a personal explanation following rollcall 254.

(The following Members (at the request of Mr. Lewis of Florida) and to include extraneous matter:)

Mr. Gilman.
Mr. Gekas.
Mr. McGrath.
Mr. Clinger.
Mr. Philip M. Crane.
Mr. Green.
Mr. Courter in two instances.
Mr. Daub.
Mr. McCollum.
Mr. Solomon.
Mr. Hansen of Idaho.
Mr. Hyde.
Mr. Porter.
Mr. Denny Smith.

(The following Members (at the request of Mr. Penny) and to include extraneous matter:)

Mr. Coyne.
Mr. Towns.
Mr. Downey of New York in two instances.
Mr. Lipinski.
Mr. Beilenson.
Mr. AuCoin.
Mr. Leland.
Mr. Minish in two instances.
Mr. Feighan.
Mr. Garcia in two instances.
Mr. Ray.
Mr. Lantos.
Mr. Swift.
Mrs. Burton of California.
Mr. Rangel.
Mr. Sikorski.
Ms. Mikulski.
Mr. Matsui in two instances.
Mr. Boland.
Mr. Pease.
Mr. Dyson.
Mr. Dellums.
Ms. Oakar.
Mr. Carr.
Mr. Williams of Montana.
Mr. Schumer.
Mr. Luken.
Mr. Jones of Oklahoma.

ADJOURNMENT

Mr. de la GARZA. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 15 minutes p.m.) the House adjourned until tomorrow, Friday, June 22, 1984, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3606. A letter from the Secretary of Energy, transmitting the ninth semiannual report on alternative fuels production, pursuant to Public Law 96-126, title II (93 Stat. 971); to the Committee on Appropriations.

3607. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Navy's proposed lease of defense articles to the Federal Republic of Germany (Transmittal No. 11-84), pursuant to AECA, section 62 (a) or (b) (95 Stat. 1525); to the Committee on Foreign Affairs.

3608. A letter from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a) (92 Stat. 993); to the Committee on Foreign Affairs.

3609. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a copy of the original report of political contributions for Howard B. Schaffer, Ambassador-designate Republic of Bangladesh, pursuant to Public Law 96-465, section 304(b)(2); to the Committee on Foreign Affairs.

3610. A letter from the Director, Administrative Office of the U.S. Courts, transmitting information reports on the financial condition of the judicial retirement system and the judicial survivors' annuities system for the year ended December 31, 1983, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

3611. A letter from the Acting Commissioner, Bureau of Reclamation, Department of the Interior, transmitting information on the proposed modifications to the Fruitgrowers Dam, Fruitgrowers Dam project, Colorado, pursuant to Public Law 95-578, section 5; to the Committee on Interior and Insular Affairs.

3612. A letter from the Acting Commissioner, Bureau of Reclamation, Department of the Interior, transmitting information on the proposed modifications to the Heart Butte unit, Pick-Sloan Missouri Basin Program, North Dakota, pursuant to Public Law 95-578, section 5; to the Committee on Interior and Insular Affairs.

3613. A letter from the Secretary of the Interior, transmitting the annual report on the implementation of the Alaska Native Claims Settlement Act during 1983, pursuant to Public Law 92-203, section 23; to the Committee on Interior and Insular Affairs.

3614. A letter from the Acting Administrator, General Services Administration, transmitting copies of two prospectuses for alterations to the Federal Building in St. Louis, MO, and the General Accounting Office Building in Washington, DC, pursuant to Public Law 86-249, section 7(a) (86 Stat. 217); to the Committee on Public Works and Transportation.

3615. A letter from the Administrator of Veterans' Affairs, Veterans' Administration, transmitting a copy of a lease prospectus for the establishment of a new outpatient clinic in Pensacola, FL, pursuant to 38 U.S.C. 5004(b) (93 Stat. 56); to the Committee on Veterans' Affairs.

3616. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting the results of the study on the feasibility of establishing a Caribbean Trade Institute in Harlem, NY, pursuant to Public Law 98-67, section 217(c); to the Committee on Ways and Means.

3617. A letter from the Director, Office of Private Sector Liaison, Office of the U.S. Trade Representative, transmitting the report of the Industry Policy Advisory Committee [IPAC] on "A National Strategy to Increase the Competitiveness of American Enterprise in International Trade;" to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SWIFT: Committee On House Administration. H.R. 1250. A bill to provide that registration and polling places for Federal elections be accessible to handicapped and elderly persons, and for other purposes; with amendments (Rep. No. 98-852). Referred to the Committee of the Whole House on the State of the Union.

Mr. MITCHELL: Committee On Small Business. H.R. 4773. A bill to amend the Small Business Act to assist in the creation of a secondary market for the portions of loans guaranteed by the Small Business Administration; with an amendment (Rep. No. 98-853). Referred to the Committee of the Whole House on the State of the Union.

Mr. DERRICK: Committee on Rules. House Resolution 532. Resolution waiving certain points of order against H.R. 5898. A bill making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes; (Rep. No. 98-854). Referred to the House Calendar.

Mr. WHEAT: Committee on Rules. House Resolution 533. Resolution waving certain points of order against H.R. 5899, a bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes (Rept. No. 98-855). Referred to the House Calendar.

Mr. BROOKS: Committee on Government Operations. H.R. 5584. A bill to improve the preservation and management of Presidential records, and for other purposes; with an amendment (Rept. No. 98-856). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 3605. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize an abbreviated new drug application under section 505 of that Act for generic new drugs equivalent to approved new drugs; with amendments; referred to the Committee on the Judiciary for a period ending not later than August 1, 1984, for consideration of such portions of the amendment as fall within that committee's jurisdiction pursuant to clause 1(m) of Rule X (Rept. No. 98-857 Pt. I). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ACKERMAN (for himself, Mr. Hayes, Mr. Levine of California, and Mr. Moody):

H.R. 5906. A bill to amend title IX of the Act commonly called the Civil Rights Act of 1968, to prevent violence and intimidation against persons participating in tenant organizations; to the Committee on the Judiciary.

By Mr. ASPIN (for himself, Mr. Kastenmeier, Mr. Gunderson, Mr. Kleczka, Mr. Moody, Mr. Petri, Mr. Obey, and Mr. Sensenbrenner):

H.R. 5907. A bill to allow the State of Wisconsin to use the proceeds of veterans' mortgage bonds for the purpose of acquiring or replacing mortgages of veterans who were unable to obtain veterans' bond financing because of a court challenge to the constitutionality of such State's borrowing power; to the Committee on Ways and Means.

By Mr. BATES (for himself and Mr. Heftel of Hawaii):

H.R. 5908. A bill to amend the Clean Air Act to modify certain provisions requiring warranties of automobile emission control systems; to the Committee on Energy and Commerce.

By Mr. BETHUNE (for himself and Mr. Hammerschmidt):

H.R. 5909. A bill to provide for civil rights in public schools; to the Committee on the Judiciary.

By Mr. CONYERS (for himself, Mr. Edwards of California, Mr. Seiberling, and Mr. Boucher):

H.R. 5910. A bill to amend chapter 87 of title 18, United States Code, to improve provisions imposing criminal penalties for contraband and riots in Federal prisons; to the Committee on the Judiciary.

By Mr. FRANK:

H.R. 5911. A bill to amend the copyright law regarding work for hire; to the Committee on the Judiciary.

By Mr. FRENZEL:

H.R. 5912. A bill to allow Federal employees a 1-year period to modify or revoke any survivor benefit election made under section 8339(j) or (k) of title 5, United States Code; to the Committee on Post Office and Civil Service.

By Mr. GARCIA (for himself and Mr. Schumer):

H.R. 5913. A bill to limit the amount of short-term broker deposits which may be accepted by any insured depository institution; to the Committee on Banking, Finance and Urban Affairs.

By Mr. PENNY:

H.R. 5914. A bill to amend the Securities Exchange Act of 1934 to improve the protection of the public interest and of investors in corporate takeovers; to the Committee on Energy and Commerce.

By Mr. RAY (for himself, Mr. Levitas, Mr. Barnard, Mr. Fowler, Mr. Jenkins, Mr. Gingrich, Mr. Hatcher, Mr. Rowland, Mr. Thomas of Georgia, and Mr. Darden):

H.R. 5915. A bill to authorize the establishment of the Jimmy Carter National Historic Site in the State of Georgia, and for other purpose; to the Committee on Interior and Insular Affairs.

By Mr. de la GARZA (for himself and Mr. Madigan):

H.J. Res. 600. Joint resolution to amend the Agriculture and Food Act of 1981 to provide for a establishment of the commission to study and make recommendations concerning agriculture-related trade and export policies, programs, and practices of the United States; jointly, to the Committees on Agriculture, Foreign Affairs, and Ways and Means.

By Mr. DICKS:

H.J. Res. 601. Joint resolution calling upon the President to affirm and maintain his commitment not to undercut existing strategic arms agreements so long as the Soviet Union shows equal restraint; to the Committee on Foreign Affairs.

By Ms. MIKULSKI:

H.J. Res. 602. Joint resolution designating the Maryland Institute for Emergency Medical Services Systems at the University of Maryland in Baltimore, MD, as the National Study Center for Trauma and Emergency Medicine; to the Committee on Energy and Commerce.

By Mr. PANETTA (for himself, Mr. Lowery of California, Mr. Dymally, Mr. Fazio, Mr. Dixon, Mr. Coelho, Mr. Bates, Mr. Edwards of California, Mr. Lagomarsino, Mr. Stark, Mr. Lantos, Mr. Lewis of California, Mr. Torres, Mrs. Boxer, Mr. Moorhead, Mrs. Burton of California, Mr. Dreier of California, Mr. Badham, Mr. Hawkins, Mr. Roybal, Mr. Anderson, Mr. Pashayan, Mr. Chappie, Mr. Shumway, Mr. Waxman, Mr. Lungren, Mr. Lehman of California, Mr. Packard, Mr. Berman, Mr. Brown of California, Mr. Matsui, Mr. Dannemeyer, Mr. Miller of California, Mr. Martinez, Mr. Mineta, and Mr. Levine of California):

H.J. Res. 603. Joint resolution designating August 28, 1984, as a national day of recognition of Father Junipero Serra; to the Committee on Post Office and Civil Service.

By Mr. COURTER:

H. Con. Res. 325. Concurrent resolution deploring Soviet violations of arms control agreements and advocating certain U.S. policies which respond to these violations of arms control agreements; to the Committee on Foreign Affairs.

By Mr. LONG of Louisiana:

H. Res. 531. Resolution electing Hon. Jim Wright, a Representative from the State of Texas, Speaker pro tempore during the absence of the Speaker; considered and agreed to.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 2094: Mr. Evans of Illinois, Mr. Scheuer, Mr. Pashayan, Ms. Fiedler, Mr. Reid, Mr. Williams of Ohio, and Mr. Wise.

H.R. 2729: Mr. Rudd.

H.R. 2837: Mr. Neal and Mr. Hertel of Michigan.

H.R. 3605: Mr. Synar.

H.R. 3989: Mr. Hartnett and Mr. Stump.

H.R. 4098: Mr. Gekas.

H.R. 4457: Mr. Goodling and Mr. Yates.

H.R. 4566: Mr. Seiberling.

H.R. 4659: Mrs. Boxer.

H.R. 4774: Mr. Carper.

H.R. 4832: Mr. Madigan and Mr. Addabbo.

H.R. 4966: Mr. McNulty.

H.R. 5024: Mr. Thomas of Georgia, Mr. Williams of Montana, and Mr. Whitley.

H.R. 5111: Mr. Hammerschmidt.

H.R. 5377: Mr. Annunzio, Mr. Wheat, Mr. Borski, and Mr. Simon.

H.R. 5526: Mr. Edwards of California, Mr. Seiberling, Mr. Boucher, Mr. Gekas, Mr. McCollum, and Mr. DeWine.

H.R. 5591: Mr. Sabo.

H.R. 5638: Mr. Ray, Mr. Quillen, Mr. Clarke, Mr. Valentine, Mr. Yatron, Mr. Gingrich, Mr. Roe, Mr. Addabbo, Mr. Wilson, Mr. Spence, Mr. Moakley, Mr. Neal, Mr. McNulty, Mr. Boland, and Mr. Regula.

H.R. 5640: Mr. Conte, Mr. Moakley, Mr. Donnelly, Mr. Simon, Mr. Evans of Illinois, and Mr. Savage.

H.R. 5664: Mr. Fauntroy, Mr. Richardson, Mr. Frost, and Mr. de la Garza.

H.R. 5677: Mr. Schumer, Ms. Ferraro, and Mr. Addabbo.

H.R. 5752: Mr. Leland, Mr. Roe, Mr. Fauntroy, Mr. Mrazek, and Mr. Mineta.

H.R. 5799: Mr. Biaggi, Mr. Mollohan, Mr. Richardson, and Mr. Rangel.

H.R. 5893: Mr. Dellums, Mr. Lowry of Washington, Mrs. Boxer, Mr. Moakley, Mrs. Burton of California, Mr. Bonior of Michigan, Mr. Edgar, Mr. Jeffords, Mr. Lagomarsino, Mr. McCollum, Mr. Sawyer, Mr. Bennett, Mr. Eckart, Mr. Seiberling, and Mr. Mrazek.

H.J. Res. 428: Mr. Carper and Mr. Martinez.

H.J. Res. 435: Mr. Broomfield.

H.J. Res. 472: Mr. Vander Jagt.

H.J. Res. 482: Mr. Dorgan and Mr. Shumway.

H.J. Res. 491: Mr. Dymally and Ms. Oakar.

H.J. Res. 499: Mr. Kindness, Mr. Green, Mr. Oxley, Mr. Torricelli, Mr. Scheuer, and Mr. Gunderson.

H.J. Res. 508: Mr. Ritter and Mr. Wylie.

H.J. Res. 529: Mr. Wylie, Mr. Tallon, Mr. Montgomery, Mr. Bateman, Mrs. Lloyd, Mr. Skeen, Mr. Williams of Ohio, Mr. Anderson, Mr. Lowery of California, Mr. Annunzio, Mr. Mack, Mr. Hutto, Mr. Kolter, Mr. Ackerman, Mr. Owens, Mr. McHugh, Mr. Lent, Mr. Rose, Mr. Martin of North Carolina, Mr. Hoyer, Mr. Carper, Mr. Traxler, and Ms. Kaptur.

H.J. Res. 543: Mr. Kazen, Mr. O'Brien, Mr. Derrick, Mr. Ford of Michigan, and Mr. Bartlett.

H.J. Res. 555: Mr. Neal, Mr. Chappell, Mr. Campbell, Mr. Addabbo, Ms. Fiedler, Mrs. Martin of Illinois, and Mr. Schaefer.

H.J. Res. 572: Mr. Schaefer, Mrs. Boggs, Mr. Livingston, Mr. DeWine, Mr. Hefner, Mr. Chandler, Mr. Corcoran, and Mr. Carr.

H.J. Res. 573: Mr. Kolter, Mr. Richardson, Mr. Hughes, Mr. Darden, Mr. Sam B. Hall, Jr., and Mr. Evans of Illinois.

H.J. Res. 590: Mr. Whitley and Mr. Hopkins.

H. Con. Res. 260: Mr. Hyde and Mr. Feighan.

H. Res. 395: Mr. Packard.

H. Res. 430: Mr. Carper, Mr. Coyne, Mr. Evans of Illinois, Mr. Green, Mr. Lundine, Mr. Sikorski, Mr. Tauke, Mr. Traxler, and Mr. Yates.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 953: Mr. Martin of New York.

H.R. 5835: Mr. Martin of New York.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

390. By the SPEAKER: Petition of the Suffolk County Legislature, Riverhead, NY, relative to the use of the computer as an

educational tool; to the Committee on Education and Labor.

391. Also, petition of the Township Committee of Warren, NJ, relative to cable legislation; to the Committee on Energy and Commerce.

392. Also, petition to the House of Representatives of the Republic of Cyprus, relative to the colonization of Famagusta; to the Committee on Foreign Affairs.

393. Also, petition of the International Institute of Municipal Clerks, Pasadena, CA, relative to the separation of the National Archives from the General Services Administration; to the Committee on Government Operations.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3282

By Mr. BENNETT:

—Page 62, strike out lines 7-19.

By Mr. McNULTY:

—Page 75, after line 9, insert the following:

STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS

SEC. 41. (a) The Administrator of the Environmental Protection Agency, in conjunction with State and local agencies and with the opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following groundwater systems and aquifers:

(1) the groundwater system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington; and

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey.

(b) After completion of each study under subsection (a), the Administrator of the Environmental Protection Agency, in conjunction with State and local agencies and with the opportunity for full public participation, shall prepare a proposed management plan describing methods of implementing the measures and practices identified for each groundwater system and aquifer under subsection (a).

(c) The Administrator of the Environmental Protection Agency shall submit to Congress an interim report of the studies and proposed management plans under this section not later than one year after the date of enactment of this Act. The Administrator shall complete such studies and plans and submit to Congress a final report of such studies and plans not later than two years after the date of enactment of this Act.

(d) There is authorized to be appropriated $10,000,000 for fiscal years beginning after September 30, 1984, to carry out this section.

H.R. 5580

By Mr. McKERNAN:

—Page 14, beginning in line 5, strike out "For purposes" and all that follows through line 9 and insert in lieu thereof the following:

For purposes of this subsection, the term "transplant center" means—

(1) a health care facility in which at least 25 transplants of kidneys, pancreases, livers, or hearts, or any combination of such organs, are performed in any fiscal year, or

(2) in the case of a State in which there is no health care facility which meets the requirements of paragraph (1), the health care facility in the State which has performed at least 15 of the transplants described in paragraph (1) in the fiscal year preceding the fiscal year in which immunosuppressive drugs are to be made available under this subsection and which has performed in such preceding fiscal year the most transplants of the organs referred to in paragraph (1).

SENATE—*Thursday, June 21, 1984*

(Legislative day of Monday, June 11, 1984)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The morning prayer will be offered by Rabbi Max B. Wall, Ohavi Zedek Synagogue, Burlington, VT.

PRAYER

Rabbi Max B. Wall, Ohavi Zedek Synagogue, Burlington, VT, offered the following prayer:

Our God and God of our ancestors.

By Thy will the planets in the universe whisper of Your glory and the amoeba came into being.

You have put us into a universe replete with mystery and power beyond compare.

From the smallest of Your planets You took some dust, touched it with Your spirit and called it Adam.

A soul You gave us and then commanded us to have dominion over all Your creation.

We who have the mandate to lead and serve this Nation pray that our deliberations and decisions will unite all the inhabitants of our country, whatever their origin and creed, into a bond of true brotherhood to banish hatred and bigotry, and to safeguard the ideals and free institutions which are our country's glory.

May this land under Thy providence be an influence for good throughout the world, uniting people in peace and freedom and helping to fulfill the vision of Thy prophets: "Nation shall not lift up sword against nation, neither shall people learn war any more." Amen.

RECOGNITION OF THE LEADERSHIP

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. Mr. President, if the minority leader wishes me to do so, I would be willing to postpone taking my time so the minority leader might yield to the Senator from Vermont.

Mr. BYRD. I thank the majority leader.

The PRESIDING OFFICER (Mr. EVANS). The minority leader is recognized.

Mr. BYRD. I thank the Chair. I yield to the Senator from Vermont.

Mr. BAKER. Mr. President, before that, after the junior Senator from Vermont speaks, might I yield to the senior Senator from Vermont?

Mr. BYRD. Surely.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

A PROUD DAY FOR VERMONT

Mr. LEAHY. Mr. President, I want to note that it is a proud day for me as it is for all Vermonters to have Rabbi Max Wall open this august body with a prayer. All Vermonters, of all religious faiths, have turned to Rabbi Wall for decades for spiritual leadership. He is a close and dear and beloved friend of the Leahy family. He is a man to whom I have, throughout my career in public life, turned for help and guidance and spiritual leadership. I hope that we, as a Senate, will take heed of what he has said, especially when he said, "Nation shall not lift up sword against nation. Neither shall people learn war any more."

All Americans yearn for peace. Americans know in a nuclear age that peace also requires true arms control. When an arms control treaty is finally negotiated the responsibility for its acceptance will be here in the Senate.

This is the body. We are the 100 people who will eventually, someday, vote on arms control treaties. At that time, I shall repeat again what Rabbi Wall has told us today.

I thank my good friend for praying with the Senate today and seeking the blessings of our God.

Shalom.

I yield back my time.

Mr. BAKER. I yield 1 minute to the senior Senator from Vermont.

Mr. STAFFORD. I thank the majority leader.

Mr. President, I share in the pride Senator LEAHY has expressed and the sentiments he has expressed for the most distinguished member of the clergy from Burlington, VT, Max Wall. I have known Rabbi Wall ever since I came into State affairs and I shall not mention for him or for me how long that is, but it covers a considerable period of time. As Senator LEAHY and all Vermonters, I have looked up to Rabbi Wall as one of the cultural and spiritual leaders of Burlington and the entire State and one of the true community leaders in the broadest meaning of that term in Burlington, VT.

I am very proud that he is here representing Vermont spiritually.

I yield the floor.

Mr. BAKER. Mr. President, I ask unanimous consent that each leader may have 15 minutes today instead of 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield 10 minutes to Mr. CRANSTON.

Mr. CRANSTON. Mr. President, I yield 2 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator from California.

S. 2263—UNIFORM MINIMUM DRINKING AGE

Mr. LAUTENBERG. Mr. President, I would like to address a question or two to the majority leader about the schedule.

Yesterday, the majority leader indicated on the floor that he would try to get a vote on the so-called 21 bill before the recess. He has let me know personally of his support for the proposal and his hope to get it to a vote.

Yesterday, the President of the United States visited a high school in my State to focus attention on the problem of drunk driving by youngsters. He reiterated his support for the 21 bill.

Mr. President, this legislation has been pending in the Senate since February when I introduced it. It passed the House unanimously on June 7 with strong bipartisan support. In the Senate, 24 Senators have also joined as cosponsors of this legislation, and many others have indicated their support. The support is from both parties.

Mr. President, at best, we have 7 legislative days left before recess for most of July and perhaps for the rest of the summer. We have very little time left for us to get a vote on the 21 legislation.

The majority leader is a supporter of this proposal, I know, and is anxious to have it scheduled for a vote. The minority leader has also indicated to the Senator that he supports this proposal. I know it has been cleared on both sides.

May I ask the majority leader about his plans for getting this bill up, or getting a report of progress and when he might be able to have a vote on this issue.

Mr. BAKER. Mr. President, I thank the Senator from New Jersey. I have had an opportunity to confer with him from time to time on this matter. He is correct in saying that I support this measure, as does he and so many other Senators.

I have asked certain Senators who have expressed an interest in this matter to meet with me in my office this afternoon at 3 o'clock, I believe it is, to see whether or not we can work out the remaining differences. There are a number of differences between Senators on this matter, but I think it is not irreconcilable.

Mr. President, I would hope that we would be able to work out the differences and establish a time to deal with the drunk driving bill, and do it well before the recess on the 29th of June. That is my intention and I believe it is possible to do.

Mr. LAUTENBERG. I very much appreciate the majority leader's efforts in this regard. As he knows, there are very few days between now and next Friday.

Mr. President, could the majority leader suggest any other vehicle for an amendment if we take it up under a time agreement?

Mr. BAKER. I would rather not suggest that yet, Mr. President. I do not want us to have any more troubles than we have to have. I think we can probably do this. I am not certain that we can get this bill up, but I think the odds are that we can. Let me persist in the strategy I mentioned for a moment and then we will see whether we have to follow another path.

Mr. LAUTENBERG. Mr. President, I thank the majority leader for his assistance. I know there are certain priorities, but I wanted to make my own point clear, to see if we have a chance to get it to the President's desk before the recess.

I thank the majority leader.

Mr. BAKER. I thank the Senator from New Jersey. I know he is most interested in this matter and has been most persistent in his request that it be called up. I join with him.

Mr. President, I am certain that there are no irreconcilable details to prevent us from getting to this bill.

Mr. President, we have been unfair to the Senator from California, but I have been unfair to the President pro tem. There are 10 minutes allocated to the two leaders under the standing order.

Mr. President, let me do this: I ask unanimous consent that each leader may have today 15 minutes instead of 10 minutes. I think that will put us back pretty much to the status quo.

Could I ask the Chair, how much of the minority leader's time and my time remains?

The PRESIDING OFFICER. The minority leader has 11 minutes remaining. The majority leader has 15 minutes remaining.

Mr. BAKER. I thank the Chair.

Mr. President, may I ask the Senator from California if we can do this: If he anticipates yielding to the junior Senator from Vermont, I would like then to yield briefly to the senior Senator from Vermont.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I have consulted with the Senator from California and I understand his need for time today to make a major statement. May I make a suggestion that I hope may prove attractive to the Senator from California? The distinguished President pro tempore wishes to make remarks at this point which he says will consume 4 minutes. I propose that I yield 4 minutes to the President pro tempore and then I offer to the distinguished Senator from California the time remaining under the standing order that is allocated to me this morning.

Mr. CRANSTON. Mr. President, I accept that generous offer of the majority leader.

Mr. BAKER. I thank the Senator from California and I yield 4 minutes to the distinguished President pro tempore.

40TH ANNIVERSARY OF THE GI BILL

Mr. THURMOND. Mr. President, on June 22, 1944, 40 years ago tomorrow, President Franklin D. Roosevelt signed into law the Servicemen's Readjustment Act of 1944, more commonly known as the GI bill. Today our Nation and our veterans continue to experience the many benefits that have resulted from the action taken by Congress and President Roosevelt to enact the GI bill.

Mr. President, our Nation has always been blessed with citizens who have answered, with courage and dedication, the call to defend the freedoms we hold dear. When the GI bill was originally signed, millions of Americans were still making great sacrifices in the effort to win World War II. In fact, its signing came only 16 days after D-day.

The GI bill was enacted as one of the means through which a grateful Nation might repay the tremendous debt owed to those who spent years of their lives in our defense. The GI bill education and housing assistance programs provided valuable assistance to returning servicemen in their readjustment to civilian life and in resumption their lives as productive private citizens.

Mr. President, more than 15 million World War II veterans were eligible for the benefits of the GI bill. Between 1944 and 1956, more than 7.8 million veterans, or slightly more than 50 percent of those eligible, received education or job training assistance.

In 1952, Congress passed, and President Truman signed, the Veterans Readjustment Assistance Act of 1952. This legislation extended to the veterans of the Korean conflict the education and housing assistance, with some variations, that had been offered to World War II veterans under the original GI bill. During its 12½-year history, nearly 2.4 million out of 5.5 million eligible Korean conflict veterans received training.

Mr. President, the Veterans Readjustment Benefits Act of 1966 extended the GI bill education programs to veterans of the Vietnam era. While the period for eligibility for the Vietnam era GI bill was terminated on December 31, 1976, there are still veterans utilizing the benefits they earned prior to that date. As of the end of fiscal year 1983, nearly 6.6 million out of 9.1 million, or 72 percent of eligible Vietnam era veterans, have entered training under the current GI bill.

Additionally, under the GI bill the Veterans' Administration has guaranteed more than 11 million home loans for veterans at a value at over $225 billion. These VA guarantees have had a major impact on the growth of the housing industry in this country.

Mr. President, when the original GI bill passed in 1944, only 25 percent of the people in our country had graduated from high school. Today, more than half of our citizens are graduates. I believe that the GI bill made a large contribution to the improvement of this graduation rate and to the vast improvement of adult education in the United States.

Today, therefore, I applaud those who in 1944 sought to assist our wartime veterans by participating in the enactment of the GI bill, which has proven to be one of our Nation's most successful programs.

Mr. President, we are very pleased to celebrate this date and we are very honored on this occasion to have the national commander of the American Legion present in the Capitol, Commander Keith Kreul, who is so much interested in this matter; and also other prominent officials of veterans' organizations and many members of those organizations, all of whom feel that the GI bill has been of tremendous benefit to our Nation.

Mr. SIMPSON. Mr. President, as chairman of the Committee on Veterans' Affairs, I am most pleased to participate in this very special occasion in order to pay tribute to the 40th anniversary of the signing of that most historic piece of legislation, the Servicemen's Readjustment Act of 1944—the GI bill of rights.

As we are all excruciatingly and exhaustedly aware, the Senate has been engaged in prolonged and often difficult debate on national defense which has droned on into the wee hours of the night several times over the past few days. In the midst of that frenetic activity it is most important that we slow up a bit to take stock and remember the goals that we all share as Senators who represent the constituents back home, many of whom are veterans, many of whom have benefited from the results of these long arduous debates over the years as we struggle to craft worthwhile legislation. An outstanding example which resulted from such a struggle was the original GI bill, signed June 22, 1944, by President Roosevelt. This signing ended a tough, intense, dramatic campaign and set into motion one of our Nation's most successful Federal programs which provided many forms of important readjustment programs and benefits for our Nation's veterans who were returning from war and so anxious to return and reintegrate into civilian life.

Many of us in this Congress have benefited from the original GI bill or its successors. I used it, educated under it, and am everlastingly grateful for it. The primary purpose of that important legislation was to provide a mechanism by which returning veterans could overcome the period of time missed during which such individual served his Nation, and frequently under very adverse conditions. That young serviceman returned to civilian life an older, more mature person, having experienced the horrors of war. Congress recognized the importance of merging the needs of such veterans with the needs of the postwar economic boom, which was taking place. The country needed more highly skilled and educated citizens who could participate and contribute to the rebuilding of the society in the aftermath of war.

The GI bill of rights included a range of benefits which included training, education, and direct loan provisions which have enabled millions of ex-GI's to purchase homes, farms, and small businesses, and it acted vigorously to aid the Nation's economy. Another benefit of the original bill was a readjustment allowance. The American Legion, of which I am so proud to be a member, deserves much credit for their initial participation and contribution to the pioneering efforts in creating the GI bill of rights. I do want to note and recommend to my colleagues an exhibit, now on display in the rotunda of the Russell Office Building, and established by the legion to demonstrate their role in the history of the enactment of the GI bill.

This anniversary will serve to remind all of us that veterans who returned from war could be successfully reintegrated into our society in order to become productive and important contributors and that education training and the ability to own a home and a business is an important part of that process. The importance of the original GI bill for World War II veterans can never be overstated. The three successor GI bills, each serving its own generation of returning veterans, have been modeled after the original.

I thank my friend, the Senator from South Carolina, "Mr. Veteran" himself, STROM THURMOND, who has arranged for this special time to pay our tribute to the 40th anniversary of this important legislation, and at this point in the RECORD, I ask unanimous consent to have printed the text of an article from the June 1984 issue of the American Legion magazine entitled "The Act That Changed America."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE ACT THAT CHANGED AMERICA

When astronaut Neil A. Armstrong set foot upon the moon in 1969, his "great leap for mankind" was made possible by a single law: The GI Bill of Rights.

If that sounds extravagant, consider the education of the engineers, the technicians, the myriad tradespeople who made that epochal journey possible.

Consider, too, that in the 40 years that have passed since the GI Bill became law, 18.2 million veterans have gained $59 billion worth of education and training, in every field from aeronautics to zoology, from electrical engineering to plumbing, auto mechanics and truck driving.

Indeed, the GI Bill's educational provisions have made America what it is today. Not only has a sizeable percentage of the millions of men and women who have served in the nation's armed forces since 1941 been able to gain higher education—including the teachers of other millions—but the GI Bill also has effected a significant improvement in the quality of education available throughout our society. Before WWII, a college education was beyond the means of the great majority of Americans; today, thanks to the GI Bill and other measures, passed in the meantime, a college education is by no means rare.

Better yet, the bill's guaranteed and direct-loan provisions (since 1944, over 11.3 million loans, amounting to $224 billion, have been guaranteed by the VA) not only enabled millions of ex-GIs to purchase homes, farms and small businesses, but it also acted to spur the nation's economy as a whole, as the construction industry geared up to meet the demand generated by millions of first-time home buyers. Adding extra impact to this thrust were the bill's initial expenditures of over $4.6 billion for construction and renovation of hospitals and other facilities.

Additional "downstream" effects of the GI Bill have included increased demand for all the things a family needs in daily life: furniture, appliances, grass seed, cars, trucks, schools, highways and business locations convenient to residents of newly populated areas. Indeed, it has been said that the landscape architect of post-WWII America has been the VA loan-guarantee officer.

To ease veterans' transition back to civilian life, the original GI Bill also authorized a "readjustment allowance" of $20 per week for up to 52 weeks while the ex-serviceman sought employment. Between 1944 and 1949, 9 million veterans took advantage of this benefit—but, on the average, they used only 17.2 weeks of the full-year eligibility. As a result, less than 20 percent of the potential total benefit under this portion of the bill ever was claimed. (That was a sharp refutation of Congressional critics of the provision, who felt that most veterans would claim the full 52 weeks of eligibility before looking for work.) The total amount expended under this title accordingly amounted to less than $3.5 billion.

Unemployment compensation for Korean and Vietnam War veterans became the responsibility of individual states in 1952, but it still provided "breathing time" for discharged veterans unable to locate immediate employment.

These and other effects of the GI Bill are why, in the words of VA Administrator Harry N. Walters, it is widely hailed as "the most significant piece of social legislation ever passed by Congress." In sharp contrast to the economic and social upheavals that America experienced following all its previous conflicts, the US has repeatedly been able to make the transition from a wartime economy to a peacetime society virtually without tremor. No "down-and-out" veterans today peddle apples on street corners, a fairly common sight in the years that followed WWI. No groups of maladjusted ex-servicemen live in shantytowns now, and none organize marches on Washington to demand bonuses or other benefits.

All in all, the GI Bill of Rights and its successors have enabled millions of ex-GIs in three wars to benefit, rather than suffer, from their service to the nation. Forty years after its birth, the GI Bill stands as a model of enlightened social legislation to every other nation in the world.

Mr. THURMOND. Mr. President, how much time have I left?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. THURMOND. I thank the Chair.

Mr. CRANSTON. Mr. President, 40 years ago tomorrow, one of the most remarkable and important pieces of legislation ever to have come before this body was signed into law by President Franklin D. Roosevelt. On that day, June 22, 1944, The Servicemen's Readjustment Act of 1944—which widely and rapidly became known as the GI bill of rights—became a reality.

The war in Europe was still almost a year from over and the war in the Pacific would not end for another 15 months. Yet, this Nation sent a message to those who were embroiled in that conflict that their country recognized and greatly valued their sacrifices and their contributions. This Nation told those in uniform that it not only stood behind them at the lines but that it would continue to stand behind them when they returned home. The GI bill of rights made clear that we, as a nation, understood our deep moral commitment to those who wore the uniform.

Mr. President, Members of this body have heard me say on many occasions that the costs of programs for the veterans of this Nation and their survivors are a continuing cost of war. In this regard, I would like to read to the Senate from the first sentence of the original GI bill of rights:

> The Veterans' Administration is hereby declared to be an essential war agency and entitled, second only to the War and Navy Departments, to priorities in personnel, equipment, supplies and material under any

laws, Executive orders, and regulations pertaining to priorities * * *.

The 78th Congress made clear its commitment to this concept when it unanimously approved the GI bill of rights. That legislation established, in provisions that have become known as the World War II GI bill, our Nation's first program of educational assistance available to all veterans of a period of war. It also established the VA's loan guaranty program, enhanced job counseling and placement service for veterans, and strengthened and provided for the expansion of the VA Hospital system.

Throughout the four decades that have since passed, a remarkably extensive and complex system of veterans' benefits and assistance has been built on the framework enacted in 1944. Over 18 million veterans—8 million from World War II, 2.4 million from the Korean conflict, and 8 million from the Vietnam era—have received assistance for education, training, or rehabilitation under the education program. Guaranties for loans totaling more than $225 billion have assisted more than 11 million veterans in obtaining their piece of the American dream—a home, farm, or business. The VA health-care system now operates 172 hospitals, 226 outpatient clinics, 98 nursing homes, and 16 domiciliaries; last year, the VA provided health care to more than 3.1 million veteran-patients through this system. Millions of veterans have received employment assistance, counseling, and job placements under the many provisions of law now in place to ensure that those who left their civilian pursuits to defend and preserve this great Nation are able to participate in its economic life.

It is clear that the GI bill and the structure that it fostered have been and continue to be good for not only our Nation's veterans but for our Nation itself.

The contributions made by those who served were magnified many times by the enactment of the GI bill of rights and its successor programs. The tens of millions of young men and women who left their homes, farms, schools, and jobs to serve in time of war and returned home afterward were able, with GI bill assistance, to continue their education, to buy their first homes, and to find productive employment. The $55 billion that have been devoted to veterans' education and training over these 40 years—as a result of service in World War II, Korea, the cold war, Vietnam, and now the post-Vietnam era—have been excellent investments, yielding a manifold return to our gross national product and our Nation's productive capacity.

Mr. President, it is most fitting that we should pause and reflect on the 40th anniversary of the enactment of the GI bill of rights. In so doing, we should keep in mind that the obligations recognized by, and the basic principles established in, that landmark statute are as important today as they were 40 years ago. The moral obligation to those who defend our Nation is as deep now as it was then.

The debt to our Nation's service men and women is one that we can never fully repay.

As the ranking minority member and former chairman of the Veterans' Affairs Committee, I'm delighted to participate in this tribute to the GI bill, along with my good friends and colleagues, the chairman of the committee [Mr. SIMPSON], the President pro tempore of the Senate and longtime senior member of our committee [Mr. THURMOND], and the senior Democrat on our committee and the only Member of this body who actually took part in congressional consideration of the GI bill of rights in 1944 [Mr. RANDOLPH].

Mr. President, I would also like to join my good friend from South Carolina [Mr. THURMOND] in extending a warm welcome to the national commander of the American Legion, Keith Kruel, who is with us in the gallery today and the other distinguished officials from that organization. A large portion of the credit for the enactment of the original GI bill 40 years ago must go to the American Legion, which spearheaded the effort to enact such a measure. The role of the Legion in the development of the GI bill was a key factor in its success. Today, the Legion and the other veterans organizations are staunch supporters and defenders of the system of veterans' benefits and assistance that has followed in the wake of the 1944 GI bill of rights.

Mr. President, we can best honor this occasion by rededicating ourselves to making certain that this great Nation never falters in its resolve to honor its commitments and obligations to our veterans and to the survivors of those who made the ultimate sacrifice. I urge my colleagues to join me in rededicating ourselves to these principles which were most splendidly embodied in the enactment in 1944 of the GI bill of rights.

Mr. President, much has been done since that day long ago, and we are now working to insure that this approach helps with our personnel needs of the All Volunteer Armed Forces and with the educational and opportunity needs of young Americans by strengthening and expanding it once again.

I now yield to the distinguished senior Senator from West Virginia for 1 minute.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I thank my friend from California [Mr. CRANSTON], who chairs our Veterans' Affairs Committee, and others who have chaired that committee, including the able Senator from Wyoming [Mr. SIMPSON], who have made constructive programs really become a part of that effort, which has been merited by the veterans of this country.

It is a privilege to join our colleagues as we commemorate the 40th anniversary of the enactment of the GI bill of rights.

The Servicemen's Readjustment Act of 1944 was signed into law by President Franklin Roosevelt on June 22, 1944, 16 days after the Normandy invasion.

I was a Member of the House of Representatives and I actively supported and voted for the legislation. It was approved in the House on May 18 by a vote of 388 to 0. I am one of two Members serving in Congress today who were in the House at that time. The able chairman of the House Appropriations Committee, JAMIE WHITTEN, joined me on May 18. He voted for the GI bill.

I considered my positive vote to be one of the most crucial votes I have cast in 40 years of congressional service.

The GI bill has proven to be one of the most effective and most successful Federal programs. Over $55 billion has been invested in the GI bill education program. Since 1944 more than 18 million veterans have received assistance under the measure.

Including approximately 8 million World War II veterans, 2.4 million Korean war vets and 8 million post-Korean and Vietnam era veterans and active duty personnel.

Approximately $225 billion in loans have been provided for homes, farms, and business. More than half of the VA home loans have been paid in full.

I recall well the 6 days of debate on the proposal commencing on May 11, 1944 and continuing on the 12th, 15th, 16th, 17th, and 18th, when it was unanimously approved in the House.

My former friend, the chairman of the Committee on War Veterans, John Rankin of Mississippi, ably managed the bill with the dedicated ranking minority member of the committee, Edith Nourse Rogers of Massachusetts.

At the beginning of the debate questions remained in the minds of Members of the House as to what type of veterans readjustment that should be provided for our returning veterans.

I recall even Chairman Rankin had to be overridden by the majority of the members of his committee in reporting the bill from the committee. The chairman had problems with the jobs portion of the measure.

Without the strong and consistent support of the membership of the

American Legion, we may not have enacted the legislation in a timely manner. The West Virginia State commander, T.H. McGovran of Charleston, was in close contact with our office and we were helped by his suggestions. The mailings we received on issues were not as large as today, but my able assistant, Marie Lantz and I relied on the advice received from the citizens of the 2d district and the mail generated by National Commander Atherton and the American Legion.

A debt of gratitude goes to Legionnaire Harry Colmery. It was his draft proposal that prompted the legislation.

I have continued to support the program by my affirmative votes and helpful amendments in our Senate career. I was an original member of the Veterans Affairs Committee and former chairman of the Subcommittee on Veterans Affairs. I have continued to support the program.

Mr. CRANSTON. I thank the Senator from West Virginia. It is a great privilege to work with him with his vast knowledge on these matters.

NUCLEAR PROLIFERATION AND U.S. NATIONAL SECURITY INTERESTS

Mr. CRANSTON. Mr. President, nowhere in the world is war raging with fewer restraints and more serious threats to U.S. national security interests than in the Middle East and South Asia.

In conflicts in this region, international treaties have been no bar to the use of chemical weapons, to the seizure of diplomatic personnel, to several attacks on nuclear installations, to assaults on religious sites, to the deployment of brigades of children as human "mine sweepers," and to numerous attacks on neutral commercial shipping.

It takes little imagination to consider the dangers posed to U.S. national security interests—and to the interests of our friends and allies in the region—if nuclear weapons were to play a role in these unrestrained wars. If nuclear weapons were in the hands of many of these combatants, there is every reason to believe that they would be used. Superpowers allied with one or another nation might be drawn directly into a regional conflict after the nuclear threshold was crossed. This is perhaps the most likely way that a general nuclear war could begin.

I am today releasing substantial new evidence that Pakistan has acquired all the capability necessary to produce their own nuclear weapons.

I base this conclusion on four new facts: First, Pakistan has operated and expanded its clandestine uranium enrichment facility at Kahuta; second, Pakistan has operated its clandestine plutonium reprocessing facility at PINSTECH; third, Pakistan has expanded its nuclear weapons design team at Wah and has stepped up imports of nuclear warhead components; and fourth, Pakistan's KANUPP reactor has been subject to continuing chronic failures in its safeguard system, making plutonium diversion highly feasible.

This evidence has come to me on a nonclassified basis from a variety of Government sources. I have confirmed it to my satisfaction with U.S. officials. None of this information has been volunteered to me in classified briefings by the administration. Inasmuch as this information does not pertain to any alleged U.S. covert operations, but is required for informed U.S. policymaking, I feel a responsibility to reveal it to Congress.

I have no evidence that Pakistan has actual nuclear bombs in hand, or that Pakistan has already produced a specific amount of weapons grade material. The Pakistanis may have done so—and simply decided to wait until 1986, after delivery of all the $3.2 billion in U.S. aid and the 40 F-16's, before they conduct a nuclear explosive test on their own soil. Many well-informed observers believe that Pakistan will not test until 1986. Others believe Pakistan may not need to test because of weapons design information and test data they can get from the People's Republic of China. As with India and Israel, we may never be able to say exactly when it was that Pakistan crossed the threshold to achieve a nuclear weapons capability, or exactly how many bombs they might have in hand at a given time. The point is that they now have what they need to produce their own nuclear weapons. Henceforth, U.S. security policies must be premised on the fact that Pakistan now has the designs, the hardware, the plants and the personnel capable of producing several nuclear weapons per year. According to my information, this capability will grow to where Pakistan could produce at least a dozen nuclear weapons during the next 3 to 5 years if their facilities function smoothly.

Pakistan also has the ability, should it so choose, to export the nuclear-trained technicians, the highly advanced nuclear technology and designs—and perhaps even nuclear weapons—to supportive colleagues in other nations. This export capability and the extent of Pakistan's nuclear weapons capability have far more profound implications than were presented by the Iraqi nuclear program before the Osirak reactor was bombed in 1981.

There is substantial evidence that Pakistan has developed all of these capabilities including both uranium enrichment and plutonium recovery. Based on new information I have received, here is how the Pakistani nuclear program stands on the basis of these five key criteria:

First. Intellectual resources: Pakistan has an extensive cadre of nuclear scientists, technicians, metallurgy experts and engineers. Pakistan has tenaciously accumulated all necessary components for their nuclear bomb building program. For a time, they bought parts on the open market from firms in the United States, the United Kingdom, France, Switzerland, Italy, Belgium, Sweden, and West Germany. Subsequently, elaborate third-country drops have been devised for smuggling and transshipment of needed components from the West. Highly classified designs and critical subcontractor lists were stolen from the URENCO enrichment plant in Holland. Parts recently intercepted by a belated U.S.-initiated export control effort were subsequently stolen from a customs warehouse in Europe. Exports of key inverter equipment for uranium enrichment were halted first by the British and more recently, by the Canadians.

But components needed for this part of the process are now being hand-tooled in a specially designed shop constructed at the site of the clandestine Kahuta enrichment facility. The majority of materials smuggled from the West continue to move through Turkey, principally from West German and French companies. But Pakistan already has a significant quantity of all components necessary for a small-scale nuclear weapons program; they are now just expanding their capabilities.

Second. Money: Though a single "quick and dirty" nuclear bomb could be produced quite cheaply, Pakistan has spent hundreds of millions of dollars to develop an extensive nuclear capability since Pakistan's Zulfikar Ali Bhutto first promised that "we will eat grass or leaves * * * but we will get one of our own." The Libyans provided some early cash assistance. More recently the Saudis have taken over as significant financial contributors to Pakistan's nuclear effort. And since 1981, Pakistan has enjoyed the subsidy of the $3.2 billion aid program from the United States.

Third. Production capacity: (a) Uranium Enrichment—Pakistan imported substantial quantities of uranium from Libya before developing its own uranium mining capability. With the assistance of West German companies, it now has its own uranium fuel fabrication facilities. Following designs which were stolen in Holland, the Pakistanis built a large centrifuge uranium enrichment plant at Kahuta, near Islamabad. By 1983, they had completed nearly 1,000 units—enough to produce at least 15 kilograms of weapons-grade highly enriched uranium [HEU] a year. The Kahuta plant is estimated to have a current capacity of 2,000 to

3,000 swu [separative work units]. This is enough capacity to produce 45 kilograms of HEU, of which 16 kilograms is deemed more than sufficient for fabricating one nuclear warhead. Pakistan has had numerous difficulties fully mastering the intricate centrifuge technology. These difficulties will doubtless continue. But those who are all too ready to be reassured that after 10 years of relentless effort, Pakistan is still not able to build and operate a centrifuge enrichment facility, are mistaken. Pakistan is now enriching uranium and expanding its enrichment capacity. Both General Zia and the director of the Pakistani enrichment effort, A.Q. Khan, have acknowledged reports of successful production at Kahuta. In a February 9, 1984, interview with the Pakistani journal NAWA-I-WAQT, Khan was asked: "Can Pakistan make an atomic bomb?" He answered:

> You have me cornered. I do not know whether to say yes or no. Either way, I get caught. First of all, I must say that our atomic program is peaceful. . . . The question is now one of our abilities. We have made major strides in this difficult field and we have a team of patriotic scientists and extremely brilliant engineers and local experts in the fields of metallurgy, electronics, mechanical engineers, etc. which is not found elsewhere. In brief, Pakistan has a proficient and patriotic team capable of performing the most difficult tasks. Forty years ago no one was familiar with the secrets of the atom bomb and education was not so widespread, but American scientists did the job. Today, 40 years later, we have ended their monopoly in this most difficult field of the enrichment of uranium in only 10 years. This job is undoubtedly not beyond our reach. India achieved this 10 years ago, although other countries definitely assisted it. We have the capacity to complete such a task. This is a political decision in which my colleagues and I have no concern except for the sake of the country's safety and security. Our honorable president had to make such a momentous decision and we were entrusted with this duty. We, my friends and I, will stake our lives but we will not disappoint the country and the nation, by the grace of God. In short, I wish to say that if India could accomplish such a feat 10 years ago, we are not so abnormal or mentally retarded that we cannot do this, and God willing, we will do it better as we have proved in the field of uranium enrichment.

Clandestine Pakistani purchases of the technology and hardware almost identical to that used in the Kahuta plant have been accelerated over the past 12 months and are being sent both to Kahuta and to a new underground site in Multan. The latter is nearby a large electric power source necessary for extensive uranium enrichment. The Pakistanis already have a significant stockpile of aluminum centrifuges—ideal for production of weapons-grade material, but of less utility for energy production. And they have stockpiles of baffle connectors to deal with centrifuge vibration, high vacuum valves, and gasification and solidification units. General Zia has permitted Khan to emerge as a national hero in recent Pakistan press interviews. And purchases for Kahuta expansion have accelerated. It is unlikely that either of these developments would have taken place if the Kahuta R&D project had not succeeded in producing weapons-usable uranium. Estimates are that these purchases are suitable for construction of a larger HEU plant with a 6,000 to 8,000 swu annual capacity or 90 to 120 kgs. of HEU—five to seven bombs' worth—a year. A recently declassified report, submitted this spring to the Director of the U.S. Defense Nuclear Agency, by the collaborative efforts of more than 90 government and academic experts, estimates Pakistan's maximum production potential as six bombs' worth of highly enriched uranium each year for the latter half of this decade. This estimate would give Pakistan an accrued total of 30 uranium bombs by 1990. Pakistan's nuclear weapons production rate could be significantly higher if substantial amounts of spent fuel are diverted from Pakistan's KANUPP reactor for plutonium extraction in their PINSTECH facility. If the KANUPP reactor was operated smoothly year round, it could produce enough plutonium for as much as 10 weapons per year, though I believe substantial hurdles remain in the Pakistani reprocessing program which bar extraction of more than a fraction of this total for several years yet.

(b) Pursuing both avenues to nuclear weapons, Pakistan has also pressed development of a reprocessing capability. Ninety-five percent of the French plans for a reprocessing plant at Chasma were delivered before the French canceled the contract on nonproliferation grounds. The Pakistanis are proceeding with work on a Chasma plant, completing civil engineering and building construction at the Chasma site and continuing purchases of needed components in Europe. With a steady supply of plutonium-bearing spent nuclear fuel, Chasma could separate plutonium sufficient for its own substantial nuclear arsenal. Clandestine technology purchases for Chasma have gone forward for more than 9 years. But the Pakistanis have lacked a steady source of unsafeguarded spent reactor fuel. Their only power reactor, the Canadian-supplied KANUPP reactor, produces plutonium. But this spent fuel is supposed to be accounted for under the only operative Pakistani agreement with the International Atomic Energy Agency (IAEA). In 1981, IAEA officials expressed worries that possible diversions of plutonium bearing fuel from KANUPP may have taken place due to the combination of inadequate safeguards and the ominous development by Pakistan of a capability for fabricating their own uranium fuel not subject to IAEA accounting safeguards. In 1982, Pakistan ran cold tests on an indigenous pilot reprocessing facility, built along Chasma designs, called PINSTECH. Since these cold tests, well-informed observers believe that this facility has "gone hot" and has been in operation with radioactive material. This facility has a production capacity of about 15 kilograms. of weapons-usable plutonium per year, or enough for at least one nuclear weapon. Some observers believe that the Pakistanis diverted spent fuel from the KANUPP reactor by mixing their own, unaccounted-for uranium fuel into the reactor and bypassing the faulty IAEA accounting system. These safeguards were, by the admission of the IAEA staff, easily defeatable between the fall of 1980 and the spring of 1983 because of faulty cameras and inadequate accounting procedures—as well as the development of the indigenous Pakistani fuel fabrication capability. Reassurances were subsequently given by IAEA and Reagan administration officials that these serious deficiencies had been taken care of. But new information indicates that continued chronic failures of monitoring cameras and other suspicious "irregularities" at KANUPP have made routine diversions of Pakistani-produced fuel from KANUPP to a weapons program highly feasible to this day.

Fourth. Design: The Pakistanis have been engaged in advanced nuclear warhead design work since at least 1980, having received design assistance from the People's Republic of China beginning in the late 1970's. Pakistan prepared a nuclear weapons test site in the Baluchistan Mountains about 40 miles from the Afghan border in early 1981. These preparations were completed with the installation of extensive cable sensors and construction of a nearby test monitoring facility. This effort may have been a bluff, pressed by Zia in a cat-and-mouse game with the Indians, who were simultaneously digging large holes at their Pokohran test site amidst high security. Or it might have been a genuine preparation with an actual, in-country nuclear test deferred until after Pakistan got all of its 40 F-16's and the United States $3.2 billion in 1986. But the mountain tunnel is still there and the prospective test site remains intact. A nuclear weapons design team—"the Wah group"—was assembled and has operated alongside key components of the Pakistani armaments industry at Wah. It includes experts in high explosives, metallurgy and fast electronics. After the 1981 test site preparations, assertions were made by administration advocates of the Pakistani aid program that this Pakistani weapons design team had dispersed. That is not true. To the contrary, there is new evidence that this nuclear weapons design team has been expanded and has accelerated its efforts. Pakistan has stepped up clandestine imports of high speed electronics equipment and precision spherical cutting machinery for the nuclear design group at Wah. These are essential components for fabricating nuclear warheads. They have no place whatsoever in a peaceful nuclear energy program.

Fifth. Delivery capability: Pakistan has already received 12 F-16's from the United States. The F-16 is currently the world's most capable penetrating fighter-bomber. Pakistan is slated to receive another 28 in the next several years for a total of 40.

Each of the foregoing Pakistani efforts are essential building blocks for a nuclear arsenal production line. None are appropriate to any civil nuclear energy program that could possibly be developed by Pakistan in the next 20 years. The Pakistanis have only one small power reactor—which runs on natural uranium, not enriched fuel. They have no breeder reactor program, so have no legitimate excuse for crash efforts to separate plutonium. Showy public efforts soliciting bids for Pakistan's first large power reactor to be built at Chasma received no takers.

The Pakistanis have been pursuing nuclear weapons relentlessly for 10 years. They have now succeeded in attaining an indigenous capability to produce them.

IMPLICATIONS FOR U.S. SECURITY

This Pakistani nuclear weapons program has grave implications for U.S. national security interests. We stand on the brink of a full-fledged nuclear arms race amongst turbulent Third World powers in the globe's most unstable regions.

First, the Pakistani nuclear weapons program increases the danger of the nuclear threshold being breached by a nuclear conflict in the Third World—an initially regional nuclear war between Pakistan and India that could bring in their respective patrons, the U.S.S.R. on one side, and the United States or the People's Republic of China on the other.

Second, it increases the likelihood of India's embarking on a dedicated nuclear military program. India is likely to respond to an overt Pakistani nuclear capability by building a large nuclear arsenal and possibly developing thermonuclear weapons.

Third, it increases the danger that extremist forces may employ nuclear threats in a holy war against India, Israel, or some other nation.

Fourth, it weakens America in the Third World; extensive U.S. financial support for a rightwing military dictator has undermined nonproliferation efforts and helped subsidize a Pakistani bomb.

Fifth, it raises the prospect of a preemptive strike against Pakistan's nuclear facilities. Responsible sources have reported that serious consideration has been given to a strike against Pakistani nuclear facilities, which are heavily guarded—including deployments of French Crotale antiaircraft missiles at Kahuta. Many Indians perceive this to be the only alternative to major nuclear weapons program of their own.

Sixth, and finally, it is extremely destabilizing. Along with other potential nuclear forces in the region, it could threaten the very survival of several countries. Quoting the study conducted for the Defense Nuclear Agency:

> The small physical size or concentration of population in small areas and the importance of capital cities for national identity means that a minimal Small Nuclear Force (SNF) could threaten national survival, a fact that would make SNF appearance immensely destabilizing. Oil and other physical assets could also be destroyed more thoroughly and quickly by SNFs than by conventional forces.

Much has been made of the extent to which the Pakistani nuclear program has been supported and advanced as promising an "Islamic bomb."

It is fair to ask whether it is in the Pakistanis' eye—or in the eyes of nervous Americans or Israelis or Hindus—that this nuclear program is so viewed.

One should be reluctant to brand people and characterize forces poorly understood in the West. But concerns about the use of the military potential of Pakistan's nuclear bomb in a holy war seem justified by the words of the program's architects. At some point, one has to take seriously the statements of Pakistan's leaders. Let me quote from General Zia: "China, India, the U.S.S.R. and Israel possess the atomic arms. No Muslim country has any. If Pakistan had such a weapon, it would reinforce the power of the Muslim world." Or as Prime Minister Bhutto wrote in his memoirs: "We know that Israel and South Africa have full nuclear capability. The Christian, Jewish and Hindu civilization have this capability. The Communist powers also possess it. Only the Islamic civilization was without it, but that position was about to change"—with the advent of Bhutto's nuclear program.

Most to the point are recent statements by Dr. A.Q. Khan, whom the Pakistani journal NAWA-I-WAQT on March 16 of this year called the world renowned and legendary-in-his-lifetime Dr. Khan.

In his startlingly frank interview with NAWA-I-WAQT published on February 10 of this year, the "father" of the Pakistani bomb stated:

> All the Western countries including Israel are not only Pakistan's enemies but also enemies of Islam. If some other Muslim country country had accomplished the same thing (as Pakistan's breakthrough on uranium enrichment), the same venomous and false propaganda would have been conducted against it as well. The examples of Iraq and Libya are before you. Even though these countries are not capable of manufacturing an atomic bomb for a long time yet, western media sources are conducting a violent propaganda campaign against them. All this is part of the crusades which the Christians and Jews initiated against the Muslims 1000 years ago. They are afraid that if Pakistan makes obvious progress in this field that the whole Islamic world will stand to benefit.

Khan went on to charge that "the 'Islamic bomb' is a figment of the Zionist mind and this has been used full force by the anti-Islamic Western countries." He insisted that the only reason he was convicted of stealing sensitive nuclear design information by a Dutch court was that "all these charges and court cases were imposed at the insistence of Zionists and Western anti-Islam elements."

The new evidence on Pakistan leads one to question whether there has been a serious intelligence failure or a deliberate misrepresentation of the facts by the Reagan administration.

Similarly, the administration has repeatedly dodged congressional inquiries on the appropriateness of the pending nuclear agreement with China in light of China's assistance to Pakistan's nuclear weapons program. Did the President know of this assistance when he hastily concluded the United States-People's Republic of China nuclear agreement? If he did, why has he withheld official confirmation of these facts to Congress? If he did not, why was he operating in ignorance when the April 1984 agreement was concluded in Beijing? Whichever is the case, the result of this sloppy diplomacy may seriously set back both United States-China relations and nonproliferation efforts. Already, the United States-China nuclear agreement, once hailed as the major diplomatic breakthrough of this administration has been sidetracked and withheld from Congress.

Mr. President, administration officials are now confirming to the press what they have refused to confirm to Congress—that is the fact that China has played an important role in Pakistan's development of a nuclear-weapons capability. The administration has refused repeated and specific requests from many of us in Congress for more information on this key issue. They have begrudgingly come up for a few one-on-one briefings of some Hill leaders—and then still insisted in these closed meetings that they cannot talk about China because it is too sensitive. It is now clear that the China agreement is a disaster. The China card may turn out to be a joker. The administration is backing away. They had an agreement with inadequate verification procedures which did not protect American security interests.

And they initialed a document that may be in violation of provisions of U.S. law governing the reexport of U.S.-supplied sensitive nuclear materials. An administration obsessed with verification has failed to provide for adequate verification of a major nuclear accord with a Communist power.

I understand that, as usual, the White House is trying to blame this all on Congress, saying the China agreement is dead because of congressional opposition. That is nonsense. I know of no one in the Congress who has yet taken a position of opposition to this agreement. We just want to see an official copy of the secret text and be reassured that U.S. security and nonproliferation interests are protected. And we want more information about China's assistance to Pakistan for the record.

What type of help has China given for Pakistan's clandestine uranium-enrichment facility at Kuh-hoot'-uh? What type of nuclear-weapons design information has China provided to Pakistan? What of the persistent unconfirmed reports that China tested a weapon for Pakistan in the spring of 1983 and has provided Pakistan with test data? Has Pakistan imported plutonium-bearing spent fuel from China to reprocess in their Pans-tech facility? There are many questions that this administration needs to provide answers to before Congress can make a better informed judgment on the wisdom of nuclear trade with the PRC. I will have more to say on this subject in the days ahead.

I have carefully monitored developments in the Pakistani nuclear program since well before the beginning of the U.S. aid program in 1981. Close congressional scrutiny of this program has been acutely needed under the Reagan administration. It has become clear that certain Reagan administration State Department officials have a vested interest in obscuring, withholding or downright misrepresenting the facts about Pakistan's program. I have repeatedly expressed my objection to this practice; it contravenes the statutory obligation of the executive branch to keep Congress "fully and currently informed" on nuclear-proliferation developments relevant to national security policymaking.

Reagan administration officials have not been forthcoming about repeated IAEA safeguards deficiencies in Pakistan. They belittled Iraq's growing nuclear capabilities. They kept silent on the P.R.C.'s assistance to Pakistan's nuclear-weapons program. And administration officials have withheld new information on Pakistan's continuing nuclear-weapons-production effort.

I have thus found it necessary to share with my colleagues information I have received independently, information which has been generally known among informed observers, but which has not been officially conveyed to Congress. This has been a consequence of the unwise and unacceptable politicization of intelligence on these issues undertaken by the Reagan administration—and of their failure to give us timely and complete classified briefings.

NEW POLICY INITIATIVES

The United States has an overriding national security interest in checking the growth of Pakistan's nuclear-weapons capability and averting a move by Pakistan, India, and other regional powers to the announced deployment of nuclear weapons. We must take every practical initiative to discourage the continuing Pakistani nuclear-weapons drive and to avert any possible use of nuclear weapons by Pakistan, or any other nation. It is essential for Congress and the Reagan administration to put nuclear nonproliferation again at the very top of our list of priorities. We must do more with our allies; we must push harder on the IAEA; we must press harder on Pakistan. And we must get serious about curbing the bloated United States and Soviet arsenals—which make those of emerging nuclear-weapons states pale in comparison.

The American people must no longer subsidize Pakistan's nuclear-weapons development. Therefore, when the Senate takes up the foreign aid bill in the days ahead, I will move to bar all further military assistance to Pakistan until all of that nation's nuclear facilities are placed under international inspection and until President Reagan can certify that the United States has absolutely reliable assurances that Pakistan has halted its nuclear-weapons drive. American tax dollars should not be subsidizing nuclear weapons development by a rightwing military dictator. The alleged justification for this $300 million a year military assistance program—to make General Zia feel militarily secure so he would not pursue nuclear weapons—ceased to exist long ago. To continue this expenditure is like paying ransom money after the kidnap victim has been found dead.

Providing General Zia the best penetrating fighter-bomber for delivering nuclear weapons is simply not in our national security interest. Therefore, I will move at the appropriate time to bar any further transfer of U.S.-built F-16's to Pakistan until all of that nation's nuclear facilities are placed under international inspection and until President Reagan can certify that the United States has absolutely reliable assurances that Pakistan has halted its nuclear-weapons drive.

I call upon the Reagan administration to work with Congress to make these sanctions meaningful so that they might further U.S. policy interests.

I call upon the Reagan administration also to reinvigorate its efforts to work with NATO allies and nuclear exporters to stop once and for all the flow of any more dual-use items that are being used in Pakistan's nuclear-weapons program. Despite bipartisan efforts under the Ford and Carter administrations, these sales continue. The Reagan administration has an obligation to defend our security interests by pressing other nations to halt these exports.

I call upon the Reagan administration to address more effectively our obligation under article VI of the NPT "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date." The administration's refusal to pursue a comprehensive nuclear test ban [CTB] has been a major setback to nonproliferation efforts and is inconsistent with our article VI obligations. The failure to achieve any progress on a START, INF, or ASAT Treaty has also weakened the entire nuclear-nonproliferation effort.

Also I call upon the Reagan administration to address the grave threat nuclear proliferation poses to the security of our people. For nearly 4 years, Reagan administration policymakers have failed to give this issue the seriousness it deserves. Reagan administration officials have failed to press the issue with allies in Europe and to discuss it at annual summit meetings with them. Reagan administration officials have failed to heed the warnings of allies most threatened by proliferation developments. Reagan administration officials have failed to keep the Congress fully and currently informed on proliferation developments relevant to national policymaking. Reagan administration officials have shunted aside evidence of serious threats to our interests. And Reagan administration officials have refused to accept the failure of lavish U.S. assistance to stop Pakistan's acquisition of nuclear-weapons capability.

Every step the Reagan administration can now take to reduce the dangers of nuclear proliferation will warrant congressional support. The time for getting going on this essential task has long passed.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the full text of my statement in the Senate on April 27, 1981.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

NUCLEAR ARMS RACE IN SOUTH ASIA ENDANGERS U.S. SECURITY INTERESTS

Mr. CRANSTON. Mr. President, for many years the specter which has most concerned those trying to stem the proliferation of nuclear weapons is a scenario in which unstable nations in a volatile region of the world, hostile to each other while in varying degrees of cooperation with other radical or

Communist nations, might engage in a regional nuclear arms race. This in turn could provoke a direct superpower confrontation in a conflict where the nuclear threshold had already been crossed.

In recent weeks, these fears are beginning to become reality in South Asia. India and Pakistan, long rivals and military opponents, are currently making the final preparations for what very well could be an unrestrained nuclear arms race in this region, a race which could threaten the security of these two free world nations and of other U.S. friends.

Several weeks ago, I made a speech on the floor of the U.S. Senate disclosing in detail information I have received regarding a full-scale drive by the radical Iraqi regime to attain a nuclear weapons capability. I also expressed concern about new developments in the Pakistani nuclear program, including the construction of a small-scale reprocessing plant which could produce weapons-usable nuclear material within 18 months.

In addition, I cited new threats by Indian officials to extract plutonium from U.S.-provided spent nuclear fuel and I called for a termination of U.S. nuclear trade with India under conditions which vigorously defend U.S. rights to approve use of our exported nuclear material and to maintain safeguards on this material.

NEW INFORMATION ON INDIAN-PAKISTANI NUCLEAR PROGRAMS

I have since received information which establishes that even more ominous developments are underway, developments which bode ill for U.S. efforts to bring greater stability to South Asia and the Middle East. I have been assured, and I am satisfied, that none of the information which I am disclosing today would jeopardize any U.S. intelligence sources and I am prepared to give my own assessments, which are based on information I have received from a number of sources within the executive branch. These facts have been thoroughly verified to my satisfaction.

It is now clear that the Governments of both India and Pakistan are undertaking significant construction at sites in their respective countries which are suitable for testing nuclear bombs.

The Indian test site involves surface excavations for burial of a nuclear warhead—for an underground test—and has been under preparation for several months in the Phar Desert at Pokhran. It is alongside the site of India's 1974 bomb test, approximately 100 miles southeast of the Pakistani border. Given the similarity with the 1974 site, the location in the remote Phar Desert, and the nature of the construction underway, U.S. officials have little doubt but that this new work, which apparently began in February 1981, is site preparation for a nuclear bomb test.

The Pakistani site includes a horizontal tunnel into a hillside in the Baluchistan Mountains some 40 miles from the Afghanistan border. While previous concern voiced by U.S. officials in August 1979 about a possible bomb site preparation here had once waned, new construction is underway at this site in recent weeks, justifying renewed concern for observers. This, too, is believed by U.S. officials to be a probable nuclear weapons test site.

There is a high possibility that India, which first tested a nuclear bomb in 1974—but which has refrained under international pressure from further tests—will decide to make another test at the Pokhran site in the next few months. And Pakistan could produce the fissile materials for a similar test, perhaps by the end of this year, most likely by the end of 1982.

I need not overemphasize the seriousness of the consequences of any such regional nuclear bomb testing competition.

A nuclear bomb explosion by India would be the first known test since renewed global efforts to curb nuclear proliferation, initiated in the U.S. Congress after the Indians' 1974 explosion, and would thus be a severe setback for nonproliferation efforts.

A test of a nuclear bomb by Pakistan would mean that the horror of nuclear weapons had extended to yet another country, this time to an unstable regime ruled by an unpopular military leader.

A Pakistani test would also be the first by an Islamic nation and would raise the danger that the current Pakistani ruler, General Zia, or some even less prudent successor, might yield to pressures from such radical Arab States as Libya to export nuclear bombs to pose a direct threat against Israel. Pakistan currently holds the presidency of the Islamic Conference which, meeting this past January in Saudi Arabia, called for a jihad or "holy war" against the State of Israel.

And perhaps most significantly, dual bomb tests by Pakistan and India would raise the spectre of a regional nuclear war which, given Indian ties with the Soviet Union and Pakistani ties with the United States and China, could well lead to direct superpower involvement in a confrontation where nuclear weapons had already been used.

RECOMMENDATIONS FOR U.S. INITIATIVES

The fundamental challenge confronting the Reagan administration—as with any new administration—is to demonstrate its unrelenting commitment to protect the security interests of the United States. Of the many threats to our national security, few are as serious as the spread of nuclear weapons to nations which do not already possess them. The risk of nuclear conflict between the two superpowers—whether by accident or miscalculation—is a Damocles sword which hangs over the human race. The chances of a nuclear conflict, and the accompanying risk of escalation to the ultimate holocaust, are incomparably greater in a world of many nuclear states, especially when these states include ones locked into bitter regional rivalries.

The Reagan administration has demonstrated a commitment to take a tough line against terrorism and other potential threats to U.S. security interests. The administration has also expressed a desire to reassert America as a leader of the free world and to pursue vigorously our global interests. I believe these worthy goals obligate us to take swift action when our security interests are challenged by such dangers as nuclear proliferation, particularly when such proliferation threatens U.S. allies and other free world nations and threatens to fuel potential conflicts which can only benefit our adversaries.

I believe it is essential for the U.S. Government to do what we can to prevent the danger of an India-Pakistan bomb testing competition. We need to make clear to both the Indian and the Pakistani Governments the seriousness with which we would view any such bomb testing. We must redouble efforts underway with European suppliers of the Pakistani program—including France and Switzerland—to insist that Pakistan accept international inspection and pledge not to divert plutonium or enriched uranium from its facilities for the purpose of making a bomb. Pakistan agreed in 1975 to such International Atomic Energy Agency safeguards on reprocessing plants, but has not yet adhered to this pledge.

We must also stress to the Indians that another test by their Government would not only seal the final termination of United States-Indian nuclear trade, the terms of which are currently being negotiated, but would also cause a cessation of U.S. development assistance, which totaled $241 million in 1981 and for which the Reagan administration has requested $256 million in fiscal year 1982.

NUCLEAR WEAPONS AND PAKISTANI SECURITY

It is important for Reagan administration officials to acknowledge that it was nuclear proliferation—India's diversion of commercial United States and Canadian materials for bomb production in 1974—which sparked Pakistan's nuclear ambitions. India's leaders must bear the lion's share of the blame for the perilous nuclear arms race now moving ahead in South Aisa. They abused peaceful United States and Canadian assistance. And they took no remedial actions after international condemnation of their 1974 test which could have reduced the nuclear threat perceived by Pakistan.

But this does not mean that we should acquiesce in Pakistan's "going nuclear." We need to continue diplomatic initiatives to discourage any further Indian testing even as we try to convince Pakistan that its security interests do not lie in developing a nuclear capability.

Nuclear weapons will not help Pakistan. Pakistan does not possess any capability for penetrating Indian air defense and thus it may be inviting a preemptive strike without any meaningful retaliatory capability. Certainly its attainment of a nuclear capability will insure Indian moves toward developing their own nuclear capability. Nuclear weapons cannot be produced in sufficient quantities by Pakistan to help deter Soviet aggression, if it came. A nuclear-capable Pakistan could be put under extreme pressure from radical Arab States to become embroiled in dangerous Middle East fighting. And were Pakistan to go nuclear, it could well spell the end to the contemplated U.S. program of security assistance to Pakistan's shaky defense forces.

Pakistan's nuclear ambitions have doubtless been fueled by its sense of insecurity. Discussions are currently underway between our two governments for U.S. assistance to Pakistan's conventional forces. This may be the best way to address Pakistan's sense of insecurity and thus a genuine nonproliferation instrument. But we must make clear to Pakistan leaders that any nuclear testing by them would end hopes for any such aid package.

CONGRESSIONAL ACTION

Subsequent to my recent speech on the Iraqi and Pakistani nuclear programs, I have gained agreement for a new congressional investigation of the dangers posed by nuclear proliferation in the Middle East and South Asia. The Congressional Research Service is working with the Arms Control Subcommittee of the Senate Foreign Relation Committee on this investigation, and a CIA briefing for committee members has been set for early next month, to be followed by several days of hearings on nuclear proliferation problems and policy later in May and June?

But I believe Congress must act on the new dangers in South Asia even sooner. The

Senate Foreign Relations Committee will vote in early May on an administration proposal to weaken the nonproliferation restraints contained in the Symington amendment—which has the effect of barring military aid to Pakistan.

A House Foreign Affairs subcommittee earlier this month unanimously rejected this administration proposal. I believe the Senate should not consider making any such exception for Pakistan unless and until the administration is able to provide the following:

A Presidential commitment that any nuclear bomb test would cause a termination of U.S. security assistance which would not be waived; such a termination is required by current U.S. law but authority is provided for a Presidential waiver;

An explanation of the details of any agreed United States-Pakistan security assistance package; and

An announcement of a comprehensive administration policy for combating nuclear proliferation.

I believe it is essential that these conditions be met before the Congress even considers making an exception to the Symington amendment so that the Pakistanis—and other nations around the world—appreciate the commitment of the U.S. Government to continued strong nonproliferation efforts. We must also make clear to Pakistan that there will be stiff American opposition to the use of our taxpayer dollars to subsidize its military programs if it is squandering valuable resources on a destabilizing clandestine nuclear bomb program.

NEED FOR A VIGOROUS ADMINISTRATION COMMITMENT TO NUCLEAR NONPROLIFERATION

The bottom line on the Indian-Pakistan nuclear danger is that it is essential for the Reagan administration to make clear its commitment to nuclear nonproliferation as a central component of our national security policy.

I am deeply concerned by the direction the administration's nuclear nonproliferation policy has been heading. So far all we have in the way of a Reagan administration policy statement on nonproliferation is a transition team report calling for the loosening of export safeguards. This report was authored by James Malone, the administration's nominee for the key State Department nonproliferation post—who, when he wrote this report, was on the payroll of foreign utilities and nuclear exporters who stood to benefit from his recommendations.

The administration absolutely must do more than view nonproliferation as a nuisance which hampers the commercial concerns of U.S. nuclear exporters.

The United States has no direct commercial stake in the Indian and Pakistani nuclear programs because the 1978 Nuclear Nonproliferation Act appropriately bars nuclear commerce with these states since they are pursuing a nuclear weapons capability. Nevertheless the Reagan administration has yet to demonstrate a commitment to addressing these and other nonproliferation dangers as national security issues too important to be shunted aside in deference to other pressing items on our bilateral agenda with key nuclear supplier and recipient nations or to be compromised for U.S. commercial interests. It is of deep concern to me that several Reagan administration officials—including Mr. Malone—have loosely criticized U.S. nonproliferation under the Carter and Ford administrations as allegedly "counterproductive."

Clearly earlier efforts were not a perfect success. If they had been, we would not face the proliferation dangers which confront us today in the Middle East and South Asia.

But U.S. adherence to prudent nuclear export standards and pressure on European suppliers to exercise similar prudence have slowed the rate of proliferation. They have bought us valuable time and have yielded important successes which the Reagan administration should not overlook. These include:

Prevention to date of any known additions to the "nuclear club";

Interruption of the France-Pakistan reprocessing plant sale;

Blocking of the sale by France to South Korea of a similar weapons-usable plant;

Revision of the West German-Brazilian nuclear sale to include important safeguards and to exclude certain sensitive technology;

Agreement by leading nuclear supplier nations on minimum nuclear safeguards requirements;

Articulation of specific U.S. nuclear export licensing criteria in the 1978 Nonproliferation Act;

Establishment of an independent Nuclear Regulatory Commission to license all U.S. commercial nuclear exports;

Convocation of a landmark International Nuclear Fuel Cycle Evaluation Conference (INFCE) to evaluate and promote more safeguardable nuclear technologies and to perform international nonproliferation consciousness raising; and

Development by France of a non-weapons usable "caramel" enriched uranium fuel for developing countries' nuclear programs which will reduce the proliferation danger of legitimate research programs.

None of these efforts would have succeeded without determined U.S. leadership.

Thus it is essential for us to press ahead with similar time-buying measures even as the world community tries to do more to deal with the root causes of nuclear weapons proliferation, to think anew on the problem and to devise more effective long-term remedies.

As we undertake such efforts we must not abandon or back away from the progress we have achieved so far. If Reagan administration officials are to deal effectively with proliferation dangers such as those posed by the Indian and Pakistani programs, they must recognize the centrality of the security aspects of this problem. They must show the same determination in dealing with these non-proliferation security dangers that they demonstrate in opposing potential Soviet adventurism and in combating international terrorism. The Reagan adminstration must show leadership and must defend vigorously our interests if the grave nonproliferation danger is to be reduced.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. GORTON). Under the previous order, there will now be a period for the transaction of routine morning business.

Mr. ANDREWS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, since we modified the time for the two leaders, and that will have an indirect effect on morning business, when will morning business expire?

The PRESIDING OFFICER. Time for morning business has expired.

Mr. BAKER. I ask unanimous consent that it be extended until 1:45 p.m., under the same terms and conditions.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXEMPLARY HANDLING OF DEFENSE AUTHORIZATION BILL

Mr. BAKER. Mr. President, last evening it seemed too late and inappropriate to speak at length about the great dedication of the two managers to passage of the Department of Defense authorization bill. However, I should like to take this opportunity this morning to pay my respects to Senator TOWER and his staff and his fellow committee members, as well as to Senator NUNN and his staff and his fellow committee members, for their cooperation over an extended period of time, which made it possible, once more, for the Senate to deal effectively with complex and difficult issues. Not that every issue was decided, perhaps, the way all of us would like; but, on balance, it was a good effort and produced a good result, and I think we are fully prepared now to go to conference with the House of Representatives on a worthwhile measure.

Mr. President, all together, the Senate spent 10 days on this bill—that is, 10 days in session. As of 3:38 this morning, there had been 88 hours of consideration, with 39 rollcall votes. One hundred ten amendments and motions were considered; and of those, 82 were agreed to, 1 was rejected, 14 were tabled, and 6 were withdrawn, and a few then fell for other reasons. But, by any measure, that is a major bill and is a major effort.

Mr. President, I particularly wish to call attention to the participation of the distinguished chairman of the committee, Senator TOWER, who managed the bill with such excellent results and so diligently over such a long period of time. Senator TOWER always does that in his role as chairman, as he did in his earlier role as ranking minority member of the Armed Services Committee. He knows this field and these subjects perhaps better than anybody else in Washington, in my opinion, and he exhibited that knowledge and talent in full measure during the consideration of this bill.

Senator THURMOND, Senator GOLDWATER, Senator WARNER, Senator COHEN, Senator JEPSEN, Senator QUAYLE, and Senator WILSON would head any list of Senators on this side of the aisle who were very active and contributed in a very meaningful way to our deliberations on that measure. I especially express my thanks to them.

The list is not complete. Many other Senators participated and did so with energy and effectiveness, and I congratulate them as well.

With the respect to the other side of the aisle, I have already mentioned the distinguished ranking minority member of the Armed Services Committee, Senator NUNN, who is an acknowledged and recognized expert in this field and who handled himself, as he always does, not only in a gentlemanly way but also in a senatorial way—that is, with a clear understanding of the rules and precedents of the Senate and of the need and requirement that we transact useful business on behalf of the Nation.

Senator STENNIS is a legend, Mr. President, and no recitation of accomplishments by the Senate in this field would be complete without once again calling attention to the generous dedication of time and energy of the Senator from Mississippi and the contribution of his special insights which are important to the final determination of this measure.

There are many other Senators—Senators DOMENICI, MCCLURE, and WALLOP, to name a few on this side of the aisle—who also were directly engaged in the debate in a major way. But once I get into the name listing, I always end up leaving out somebody, so I express now my apologies for doing so.

I also wish to include at this point in my remarks a list of the staff people who played a major roll in this measure. The staff, after all, are the backbone of the Senate, in the sense that they carry the great burden of the detailed work in preparation for the debate. They are as follows:

FOR THE MAJORITY

Jim McGovern, Staff Director and Chief Counsel.

Alan Yuspeh, General Counsel.

Chris Dauth, Chief Clerk

PROFESSIONAL STAFF MEMBERS

Wayne Arny, Bob Bott, John Campbell, Mike Donley, Rick Finn, Drew Harker, Ken Johnson, Jim Locher, Jose Martinez, Gordon Riggle, Mark Robinson, Ann Sauer, Carl Smith, Jim Smith, and Pat Tucker.

RESEARCH ASSISTANTS

Judy Freedman, Doug Graham.

SPECIAL ASSISTANT

Toni White.

FOR THE MINORITY

Arnold Punaro, Staff Director for the Minority, Jeff Smith, Minority Counsel.

PROFESSIONAL STAFF MEMBERS

John Hamre, Bill Hoehn, David Lyles.

RESEARCH ASSISTANT

Patty Watson.

THE MEMORY OF THE NAZI GENOCIDE MUST NOT DIM

Mr. PROXMIRE. Mr. President, Hitler's final solution, as originally set forth, called for the death of more than 14 million persons. Today, the awesome figure of 6 million is recognized as the death toll of the Jews under Nazi rule. The number 6 million is impossible to fathom. Six million persons would populate at least a dozen large cities or an entire large State. The Nazis were not successful in silencing the Jews, for the enormity of their loss enabled them to awaken the world to the perversity and extremism of Hitler's genocidal plan.

Hitler's plan included the extermination of Gypsies as well as Jews. The genocide of the Gypsies, however, is often ignored in discussions of the Holocaust. Gypsies were once a distinct cultural group concentrated in Eastern Europe. Of the 700,000 Gypsies living in Europe in 1939, at least 250,000 of them were slaughtered in concentration camps under Nazi rule. Gypsies were deported to Buchenwald and Dachau, Auschwitz, and Babi-Yar. They were restricted to special sections of the Jewish ghettos in Poland, and in some camps, those who were not murdered were forcibly sterilized.

The Nazis were stopped, but only after they had achieved partial success in their extermination plan.

Genocide can be compared to no other horror. It is the world's most heinous and destructive crime. It must therefore be made an international crime punishable by law. The near extermination of the Jews and Gypsies in World War II made clear the need for the Genocide Treaty in 1948.

The passage of time has not diminished the horrors of the genocide of the Jews and the Gypsies, and the treaty's importance should be just as obvious in 1984 as it was in 1948. In fact, the persistence of crimes against humanity in modern societies makes ratification of the treaty by the United States even more crucial.

The world must never allow the memories of the Jewish and Gypsy genocides to dim. The United States can show the world that it has forgotten. The Senate should ratify the Genocide Convention.

YES; WE WILL SUFFER A NUCLEAR WAR UNLESS WE STOP PROLIFERATION NOW

Mr. PROXMIRE. Mr. President, if nuclear war comes, how is it most likely to come? Here are the odds this Senator would give on this biggest of all catastrophes occurring in the next 20 years:

First, an attack by the Soviet Union on the United States or by the United States on the Soviet Union like a bolt from the blue—without either country engaging in conventional hostilities against the other first: Odds 1,000 to 1 against.

Second, a nuclear war growing out of a conventional war between the two superpowers: Odds 100 to 1 against.

Third, an accidental nuclear war between the two superpowers provoked by a mistaken warning of an oncoming attack from the other superpower adversary: Odds 25 to 1 against.

Fourth, a nuclear war initiated by one of the 31 countries which U.S. military intelligence tells us will have nuclear arsenals within the next 16 years. Odds 1 to 10. That's right 1 to 10.

What I am saying is that the prospects is that such a war will occur, I repeat will occur, the odds are 10 to 1 that it will. I am saying that if we continue to follow our present nuclear weapons proliferation policies the odds that the world will suffer nuclear war are overwhelming. Within the next 20 years there will—given present proliferation policies—be very little chance that we will be able to avoid such a war.

Let us consider: First, what such a war would mean to U.S. citizens. Second, why such a war is so very likely? Third, what we can do to prevent it.

First, would a nuclear war involving say a Syrian or Libyan attack on Israel, or a Pakistan attack on India, or an Argentinian attack on Brazil constitute a serious threat to the life of American citizens? If so, how serious? First, once a nuclear war—even a relatively small nuclear war starts, how do we stop it? Any country moving in to try to protect or defend either side would be vulnerable to devastating nuclear retaliation, even from a relatively small nuclear power. That retaliation could take the form of state-directed terrorist attacks designed to accomplish several things. It could use small, miniaturized, easily concealed nuclear devices to wipe out the entire top policy making echelon of the government of a superpower. Three or four carefully placed and timed such nuclear devices in Washington, for instance, could eliminate the President, the Cabinet, the Congress, and the Pentagon. Similar nuclear devices deployed in the Soviet Union could destroy the entire leadership of the other superpowers. There would be no one left to retaliate and no assured way to know who perpetrated the attack. Three or four or far more of the major cities of any country that intervened could be totally destroyed even by a small nuclear power as a preliminary warning of the certain and far greater destruction that would follow any retaliation against either of the nuclear combatants. With the 6 present nuclear armed nations swollen to 31 as predicted by our military intelligence, the nuclear war could very quickly and easily spread as nations decided to make preemptive strikes to take out protential adversaries before the adversary took them out. In this event the nuclear conflagration would almost certainly trigger the nuclear winter that Dr. Carl Sagan and others have warned us about. The result: Even if the United States had been spared completely from any nuclear attack, it would suffer an environmental disaster that bring weeks of utter darkness and months of bitter subfreezing cold. Animals and plants would die. Tens of millions of Americans would starve.

Second, why is such a war likely? Just look around. Wars have been going on in some part of this trouble globe almost every day throughout human history. At this very moment the Iran and Iraq war would almost certainly go nuclear, if either or both countries developed nuclear arsenals. Both are earnestly trying to achieve that status. Our military intelligence tells us they will succeed in the next few years, unless we bring our proliferation policies under control. Libya, South Africa, Argentina, Pakistan, and others are well on their way to nuclear armed power. In some of these cases we are helping. One would have to be more than a cockeyed optimist to assume that these countries would develop their nuclear arsenals and simultaneously renounce violence and follow the teachings of Ghandi. So should the odds be 10 to 1 in favor of nuclear war—unless we stop nuclear proliferation. Yes, indeed.

Finally, what can we do to prevent this nightmare? Answer: simple, stop proliferation. Stop it cold. Stop taking any risks with it. Stop exporting any element of nuclear technology that could under circumstances be converted into nuclear weapons. Go all out to strengthen the International Atomic Energy Agency, including increasing their resources and negotiating the most thorough and effective possible inspections to prevent the diversion of nuclear materials to military purposes. And finally enact legislation that will serve notice that not only will we stop all nuclear exports that could be diverted to weapons use, but we will refuse to trade with any nation that provides nuclear materials, nuclear equipment or nuclear designs that could build a nuclear arms arsenal.

Yes; these are extreme remedies. But we face an extraordinary danger, far worse than mankind had ever faced before. The sacrifice involved in the kind of action I have proposed would be truly insignificant compared to the advantage of avoiding that 10-to-1 chance that otherwise we will face a nuclear war.

What an irony. Here we are pouring hundreds of billions of dollars and most of our military strategy into measures designed to prevent a nuclear attack by the Soviet Union on the United States, although the prospects of such an attack are relatively remote. Meanwhile, we have failed to adopt strong and effective policies to stop the spread of nuclear weapons. That nuclear weapon proliferation constitutes by far the most likely cause of nuclear war.

JUNE GOLDEN FLEECE TO INTERIOR DEPARTMENT

Mr. PROXMIRE. Mr. President, my Golden Fleece of the Month Award for June goes to the Department of the Interior for gross mismanagement by allowing the Territory of Guam to waste millions of dollars on such boondoggles as paying for paving parking lots at a private nightclub and an apartment building and hiring people who spent much of their time drinking coffee. In the days of old, Nero fiddled while Rome burned. In this modern update, the Department of the Interior fiddles around while the taxpayer gets burned. The Department must now face the music and deserves to take the heat for this mismanagement.

$16 MILLION SPENT BY GUAM ON HIRING AND PAVING

The Government of Guam spent over $16 million on these paving and hiring programs. About 50 percent of this money came from the Federal Government, although in this instance mismanagement was so extensive that the Department of the Interior auditors were unable to determine exactly how much Federal money was wasted. The Department of the Interior gets into the act because it is responsible for overseeing the Federal money flowing to this flag territory of the United States.

While the Interior Department closed its eyes, Guam went on a hiring spree in fiscal years 1982 and 1983. It used a special hiring authority—provisional appointments—to hire thousands of new employees, whose ages ranged from 14 to 81 years old. Here is how hiring exploded under this authority:

Fiscal year:	Hired
1979	0
1980	2
1981	179
1982	1,189
1983—first quarter	1,100

LITTLE USEFUL WORK DONE

Did these employees do any useful work? Don't hold your breath. Here are some examples cited by the auditors: one employee counted traffic and worked a 28-hour week while getting paid for 40 hours work. The employee stated that she was paid for the additional 12 hours "because she used her own transportation." Another employee said that "he spent most of his time talking and drinking coffee."

What caused this hiring binge? The auditors noted that "provisional hiring increased significantly in about July 1982, 2 months before the 1982 primary election" and that "many provisional employees were initially referred for provisional appointments by staff working directly in the Governor's Office . . ." To add insult to injury, these part-time employees, some working only a few days, received a full $838 cost of living allowance, amounting to a grand total of over $1 million. For failing to halt this featherbedding, the Department deserves to be tarred.

SITUATION GETS STICKIER

This situation only gets stickier. The Interior Department also stood by passively and let the Government of Guam start an island-wide paving program, which began about the same time as the hiring spree. What was wrong with this program? It was not legally authorized. It was not planned. It did not identify the roads to be paved. It did not specify the work to be done. It did not identify the materials to be used. And to top it off, although the road to Hades is paved with good intentions, this program had a devilish time even establishing ownership of the land to be paved.

Did the virtually uncontrolled spending of about $8 million of public money for this paving program accomplish anything? Only if you had the right connections. This money was used to pave the parking lot at an apartment building and a nightclub. Private streets, roads, and driveways also got the asphalt treatment.

These misdeeds may result in criminal prosecutions but no money has yet been recovered. Departmental auditors say they are looking for ways to prevent a recurrence of this costly episode. Here is one taxpayer who says, "Amen, brother."

MRS. MAUDE E. CALLEN OF SAINT STEPHEN, SC, AS A 1984 JEFFERSON AWARD RECIPIENT

Mr. THURMOND. Mr. President, today, the American Institute for Public Service will present the 1984 Jefferson Awards to 10 distinguished Americans whose lives are dedicated to serving mankind.

I am proud that one of the recipients is a native daughter of my home State, Mrs. Maude E. Callen of Saint Stephen, SC, who was chosen for rendering the "Greatest Public Service Benefiting the Disadvantaged." This 85-year-old lady has been committed to providing health care to impoverished people in Berkeley County for more than 60 years, and is well-deserving of this prestigious distinction.

Mr. President, the inspiring story of Mrs. Callen's contributions to the needy is familiar to many in South Carolina, particularly to the people of the low country. She is a remarkable individual whose strong faith in God and deep sense of compassion have motivated her to bring healing and comfort to thousands in her community over the years.

Mrs. Callen has received numerous honors and awards for her service in the fields of medicine and education. Among those important distinctions are: the Alexis de Tocqueville Society Award, the highest volunteer award given by the United Way of America; the Governor's Division of Volunteerism Outstanding Volunteer Award; the Outstanding Older South Carolinian of 1981; and an honorary doctor of philosophy degree from Clemson University. In addition, the Maude E. Callen Clinic in Berkeley County was named for her and continues to care for the elderly.

I know that my colleagues in the Senate join me in saluting Mrs. Callen on receiving the 1984 Jefferson Award, and in order to share more about this outstanding South Carolinian, I ask unanimous consent that the following articles be included in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

MAUDE E. CALLEN: NURSE

Maude Callen is nominated for providing health care to impoverished people in Berkeley County, South Carolina for more than 60 years.

Ms. Callen, at 85, renders daily service to people in the Pineville community where she is the volunteer manager of a nutrition center for senior citizens. Each weekday she prepares food for some 50 elderly persons, many of whom she brings to the center herself at mealtimes or else delivers food to the bedridden in her 14-year-old automobile.

Her present work is the latest chapter in a life of dedication to the sick and needy in Berkeley County. After her 1922 graduation from Florida A&M College and completion of nurse's training at the Georgia Infirmary in Savannah, Ms. Callen settled near Pineville as a missionary-nurse for the Protestant Episcopal Church.

There, for more than 60 years, she ministered to rural people who had no access to hospitals or other health services often travelling by wagon and cart in early years to make her rounds. Dedicated to educating residents about nutrition and health care, she taught local women how to be midwives; visited schools where she gave innoculations against tuberculosis; was on hand to care for patients struck down by influenza and smallpox. Ms. Callen estimates that she has delivered more than 800 babies in the rural areas of Berkeley County during the last sixty years.

Beginning in 1936, Ms. Callen was a public health nurse for the Berkeley County Health Department until her retirement in 1971. And she continued her education by enrolling in a tuberculosis refresher course at the Homer G. Phillips Hospital in St. Louis and trained as a nurse-midwife at Alabama's Tuskeegee Institute.

After a 1951 LIFE Magazine article featured her work, donations flowed in from across the country to assist her ministry. Ms. Callen used the $27,000 to build the Maude E. Callen Clinic, the first in the county, and it is used today to serve the community's elderly people. Now funded by the state's Agency on Aging, residents are not charged for their meals and their participation is based on economic or social needs.

Ms. Callen's work also was featured last year on the nationally-televised program, "On the Road with Charles Kuralt." After its airing, South Carolina Governor Richard Riley wrote her to "say thank you for spending your life in the service of others; for their better health; for their better nutrition; for their better quality of life."

But Ms. Callen had the last word upon her being honored as the Outstanding South Carolinian of 1981: "I wonder what this is all about; I've never done anything special."

[From the Charleston (SC) Evening Post, May 1, 1984]

LOCAL WOMAN GETS HIGH HONOR

Maude E. Callen, a nurse, midwife and teacher from rural Berkeley County, was honored Monday in New York City as the recipient of the highest volunteer award given by the United Way of America.

During ceremonies at the New York Hilton, Mrs. Callen, 84, was thanked for her volunteer efforts to help countless people in the rural community of Pineville. CBS news correspondent Charles Kuralt presented the Alexis de Tocqueville Society Award to her for 60 years of volunteer service, which she still continues as manager of the senior citizens nutrition center in Pineville.

Mrs. Callen's work was brought to national attention in a 1951 pictorial essay in Life magazine featuring her work to ease the pain of birth, life and death among hundred of rural and poor residents. She estimates she has delivered more than 800 babies during the last 60 years.

In 1983, her story again was told to a national audience when she was featured in a segment "On The Road with Charles Kuralt." Since then, she has received an honorary doctorate from Clemson and the Governor's Division of Volunteerism Outstanding Volunteer Award.

"The spring of good will in Mrs. Callen never runs dry," Kuralt said as he presented the award to her Monday. "Thousands have felt the healing touch of her hand," Kuralt added. "She reminds us of people who are not for themselves alone, but their neighbors . . . and their country."

President Reagan sent Mrs. Callen a letter, saying she was "most deserving of this tribute."

"It is the American tradition of neighbor helping neighbor that helped make our nation great," Reagan said. "It takes a very special person to give so much of her time and talent for others, and I commend you."

The 1951 Life magazine article helped generate donations of $27,000, which were used to build the Maude Callen Clinic.

She retired as a public health nurse with the Berkeley County Health Department in 1971, but has continued her volunteer work, managing a senior citizens nutrition center and delivering meals to the homebound in her 13-year-old car.

The awards dinner was attended by more than 1,500 volunteers from local United Ways across the country, who are holding their annual conference at the New York Hilton.

The de Tocqueville Award is named for the French philosopher and historian who wrote "Democracy in America" about his travels to the United States in 1831. In the book, he praised Americans for "forever forming associations" to carry out good works voluntarily.

Previous winners of the award include Bob Hope, George Meany, Vernon Jordan, and Henry Ford II.

[From the Charleston (SC) Evening Post, May 3, 1984]

THE GOOD NEIGHBOR

When Maude E. Callen of the Pineville section of Berkeley County stepped up to receive the Alexis de Tocqueville Society Award in New York on Monday night, she stepped into a circle of fast company. Past recipients of the award, presented in recognition of outstanding volunteer service to country or community, include entertainer Bob Hope, industrialist Henry Ford II, former Urban League president Vernon E. Jordan, Jr. and the Rev. Theodore Hesburgh, president of Notre Dame University. Miss Maude can keep up with that kind of company, though, when it comes to volunterism.

"The spring of good will in Mrs. Callen never runs dry," said CBS correspondent Charles Kuralt in presenting the de Tocqueville citation. "Thousands have felt the healing touch of her hand. She reminds us of people who are not for themselves alone, but (for) their neighbors . . . and their country."

That's Miss Maude, all right. She's been doing for the people of Pineville for more than 60 years now. She has been nurse, midwife, teacher, adviser. She helped set up a health clinic and extended medical assistance into a rural area that had known none. She has fed the hungry and clothed the naked. She has eased the burdens of the bone-weary. She has been, above everything else, a good neighbor in the truest sense.

That is why presentation of the de Tocqueville award, created by United Way of America, was appropriate. Neighbors voluntarily helping neighbors was one of the things that impressed French philosopher and historian de Tocqueville most during his visit to America in the 1830s. Miss Maude embodies the spirit that caught his attention and inspired him to write glowingly of voluntary associations formed to do good works.

Neighbors, friends and other admirers in Berkeley, Charleston and Dorchester counties recognized that spirit in their own way at the award dinner Monday. They surprised Miss Maude with a brand new car to replace the 1966 model she had driven so many miles to so many houses to help so many others in times of need. That shiny new car was a token of appreciation—and love—for all those years of unselfish, unstinting service to those around her.

[From the Charleston (SC) News and Courier, Dec. 18, 1983]

CLEMSON TO HONOR MAUDE CALLEN OF PINEVILLE

For most of her 85 years, Maude E. Callen has served others as nurse, midwife and teacher.

Now, the people her life touched are taking time to honor the woman from Pineville who estimates she has delivered 600 babies in the last 60 years.

Miss Maude, as her friends call her, will be honored Tuesday by Clemson University for her lifetime of service to the sick and needy in rural Berkeley County, according to Margaret Pridgen, director of university news services.

She will be given an honorary Doctor of Humanities degree during the University's fall commencement exercise at Littlejohn Coliseum. The degree honors her for serving the people of Pineville "who she birthed, nursed, comforted, sometimes clothed and fed, and even taught to read."

Miss Maude has also been nominated to receive the Alexis de Tocqueville Award, the most prestigious volunteer service award given by the United Way of America, said Charles W. Fruit, executive director of the Trident United Way. Fruit said the National Board of Directors will meet this week to approve the award; it will be presented in April during ceremonies in New York City.

The award is named after the French philosopher-writer who lived between 1805 and 1859 and wrote "Democracy in America" after he toured the United States to study the American penal system. In recent years the award has been given to Alvin "Pete" Rozelle, commissioner of the National Football League, and Father Theodore Hesburgh, president of the University of Notre Dame, Fruit said.

Miss Maude came here from Florida in 1923 as a missionary nurse for the Protestant Episcopal Church under the auspices of the United Thank Offering. In her early 20s, her training as a nurse was desperately needed in the community.

Although many modern-day advances in medicine had not touched the area, life was just as precious, and health education was needed. Miss Maude dedicated her life to educating the residents about nutrition and health care.

Initially her home was used as a clinic and she taught local women how to be midwives. She visited schools, gave inoculations against tuberculosis and comforted the sick during outbreaks of influenza and smallpox.

And it was her inspiration and love, as shown in a 1951 pictorial essay in Life magazine by W. Eugene Smith, that brought some $37,000 in contributions to help build the first clinic in the county.

The Maude E. Callen Clinic is now the location of a Senior Citizens Nutrition Site, which she manages as a volunteer. At 85, Miss Maude serves meals each weekday to some 50 elderly residents, most of them younger than she is.

This summer, she was featured in a segment of "On The Road with Charles Kuralt," which was filmed after members of the CBS News crew remembered the Life magazine essay of the nurse-midwife—a woman whose strength, compassion and love has touched the lives of many.

[From the Charleston (SC) Evening Post, Dec. 20, 1983]

HONORING MISS MAUDE

Honorary degrees have become tarnished in the public eye through misuse as rewards for financial contributions or political favors, rather than for true achievement or service. The honorary degree Clemson University conferred on Maude E. Callen the other day was, therefore, a welcome example of how significance can be restored to the bestowal of such degrees.

Clemson gave Miss Maude the degree of doctor of humanities. Whoever thought of that had a feel for words and an appreciation for deeds. Miss Maude wrote a whole chapter in the book on humanitarianism.

For more than 60 of her 85 years Maude Callen has served the people of the Pineville community in Berkeley County. She has been nurse, midwife, counselor, teacher and friend. She has helped deliver children of children of the children she delivered when she first took up the duties of a missionary nurse under the auspices of the Episcopal Church. She extended medical aid to a rural area that had known none, and was instrumental in setting up a clinic that bears her name. She educated the residents in basic nutrition and health care. She gave immunization shots to children and comforted the aged stricken with influenza. And she did more.

She showed her concern not only for patients but for all people in need. She taught the illiterate to read, helped clothe the desperately poor and fed the hungry. After her "retirement" in 1971 she began running a food program for the elderly—cooking, delivering meals to the housebound, picking up others and taking them to the senior citizens' center. In Pineville they still come looking for Miss Maude in the middle of the night, when somebody's bad sick. Tributes like that are hard to top.

Clemson University has honored itself in honoring Maude Callen.

[From the Charleston (SC) News and Courier, May 22, 1983]

MAUDE E. CALLEN

PINEVILLE.—At 84, every inch of Maude E. Callen's diminutive 5 foot-1-inch frame is full of energy.

Her work in this small community as a nurse, midwife and teacher has helped countless people who know her personally. But she also has been an inspiration to people who know of her selfless dedication only through the media.

A small woman, Miss Maude, as her friends call her, does not show her age. Although her hair is gray, her eyes remain clear, her memory sharp and the wrinkles in her face are few. She is generous with a smile. Miss Maude is a living example that helping others does help oneself.

Her life has again attracted national attention, but she is not letting it slow down her work. Miss Maude's attention remains firmly focused on her daily activities that include being volunteer manager of a senior citizens nutrition site here. She serves meals to some 50 elderly residents, most of them younger than she is, each weekday. Many of the meals she delivers to bedridden residents herself in her 13-year-old car.

A CBS news crew recently spent several days in the area filming Miss Maude's daily life for an upcoming segment of "On The Road with Charles Kuralt." The show is scheduled to air this summer, although no date has been set.

Notoriety, though, is not new to her, she was featured in a 1951 pictorial essay in Life magazine by photographer W. Eugene Smith. Those photos told the story of a woman who spent her days and nights helping others: a nurse-midwife, who in her own estimation, has delivered some 100 babies during her last 60 years in this rural area of Berkeley County.

After the 1951 article, some $27,000 was sent to Miss Maude to help her ministry. She used the money to build the Maude E. Callen Clinic, the first in the county and the current location of the Senior Citizens Nutrition Site.

Smith's pictorial essay about a nurse in rural Berkeley County was remembered 32 years later by a CBS producer.

Producer Shareen Brysac said she was looking for stories for a "What ever happened to . . ." segment for the upcoming show when she remembered Smith's photos.

Not remembering the name of the nurse-midwife featured, Ms. Brysac said she checked with the University of Arizona, which has an archive of Smith photographs. After finding the name, she said she was surprised when she called local telephone information and found that Miss Maude was still listed.

"That was such a beautiful story and I had no idea she would still be alive. I assumed she would be retired, but she said she was running a clinic for senior citizens and was delivering and serving meals," Ms. Brysac said.

The series has several producers, with each filming several segments for the show, she said. Kuralt, she said, will be doing some of the segments himself and may be back to visit Miss Maude before the show airs.

During her several days in the area, Ms. Brysac said she found Miss Maude a "really unique woman. There are not enough people like her around."

Miss Maude came here from Florida in 1923 as a missionary nurse for the Protestant Episcopal Church under the auspices of the United Thank Offering.

"When I came up here, there wasn't a paved road in this area. There were no telephones or electric lights. There was no hospital. They had to travel by wagon or buggy to King Street (in Charleston)," according to Miss Maude.

In her early 20s, her training as a nurse was needed desperately in the community.

SHE HELPS OTHERS

Although unaffected by the modern-day advances in medicine, life was just as precious in this rural area and health education was needed. Miss Maude Callen works in a nutrition program for senior citizens though many of the people she serves are older than she is. Mrs. Callen was photographed after taking blood pressures at the nutrition center.

Maude dedicated her life to educating the residents about nutrition and health care.

Initially her home was used as a clinic and she taught local women how to be midwives. She visited schools, gave innoculations against tuberculosis and comforted the sick during outbreaks of influenza and smallpox.

In 1936, she was hired as a public health nurse for the Berkeley County Health Department. A graduate of Florida A&M College and the Georgia Infirmary in Savannah, Miss Maude continued her education, taking a refresher course in the care of tuberculosis at the Homer G. Phillips Hospital in St. Louis, Mo., and training as a nurse-midwife at the Tuskeegee Institute in Alabama.

She retired from her job with the county in 1971, but her work was not complete.

Miss Maude saw the need for a nutrition site in the area and continually asked county Senior Citizens Director Nancy J.

Cash about such project until it became a reality in September 1980.

The site, one of three in the county, is funded by the area Agency on Aging, Mrs. Cash said. Residents are not charged for the meals, and participation is based on economic and social need.

Miss Maude is at the site each weekday, preparing food, picking up residents and delivering meals.

She said she doesn't know the secret of living to be 84, but she enjoys her work and the people, doesn't drink or smoke and "I do not unto others as I would have them do unto me."

PAUL TULLY—"PRINCE OF PLANKS"

Mr. KENNEDY. Mr. President, among the greatest joys of public service are the persons we meet and the friends we make in election campaigns—the men and women who care deeply about people, about the issues and about the direction of the country, and who give so unselfishly of themselves to make our democracy work.

One of the individuals I have come to respect the most in my own career is Paul Tully, who did a superb job in my 1980 Presidential campaign, and who now has a leading role in the Mondale campaign in 1984.

Today's Washington Post contains a warm and revealing portrait of Paul Tully by T.R. Reid. In a sense, it is also a tribute to the many other individuals who, like Paul Tully, have made a real difference in modern American politics and our Nation's life. It was leaders like Paul Tully whom I had in mind in 1980 when I told the Democratic National Convention of the "golden friends" I had.

Mr. President, I welcome this latest recognition of the talents and dedication of Paul Tully, and I ask that the article by T.R. Reid, enitled "Prince of Planks," be printed in the RECORD.

The article follows:

[From the Washington Post, June 21, 1984]

PRINCE OF PLANKS—PAUL TULLY, MONDALE'S PLATFORM BUILDER

(By T.R. Reid)

The drafting of the Democratic Party's 1984 platform is essentially a function of Paul Tully's thumb.

Tully, 40, a rotund, curly-haired, chain-smoking, coffee-swilling political veteran—a Central Casting archetype of the harried campaign operative—is Walter F. Mondale's main man this week as the Democrats put together their platform.

Hour after hour, the 15-member drafting committee wades through amendments and amended amendments from Gary Hart's five delegates and Jesse Jackson's two delegates. With each new proposal, the delegates debate perfunctorily while Tully and his staff, sitting on the sidelines, figure out what's up. Then Tully gives the signal—thumbs up, thumbs down, or sometimes just a discreet nod of the head.

The eight Mondale delegates cast their votes, and the issue is settled.

It's June and it's a leap year, after all, and under those circumstances a Democratic Platform Committee is Tully's natural habitat. He worked the platform for the antiwar campaign in 1968, for Morris Udall in 1976, for Edward M. Kennedy in 1980.

But this year things are different, which accounts for the leprechaun smile gracing Tully's large face. "It's nice like this when you have the votes," he says happily.

Those eight delegates include members of Congress and other important party poohbahs; but this week, their votes are all firmly in Tully's hand.

Just once has a Mondalite tried to ignore the signal. When Hart's people proposed language endorsing a particular tax bill, Sen. Daniel Patrick Moynihan (D-N.Y.), a Mondale delegate, noted that he was a cosponsor of that bill. Moynihan voted for Hart's proposal.

Tully, who once was—and is still built like—a defensive tackle, came blitzing up from the staff table for an earnest chat with the senator. After a moment, Moynihan sheepishly looked down his glasses and asked permission to reverse his vote. Mondale won again.

Over the years Tully has worked on countless campaigns for liberal causes and candidates, oncliding Gene McCarthy, Robert Kennedy, Allard Lowenstein, Udall, George McGovern and Edward Kennedy.

"The way it works is, about the time of the midterm election, I start looking around for the candidate I'm going to work for for president," Tully explained yesterday, casually flicking the ashes from his Marlboro into the nearest styrofoam cup.

"Literally, the way it works, I will always work for the most progressive candidate who has a chance of winning . . . Like in '76 I worked for Udall and not Fred Harris because that was a choice between some small shot at winning and no shot at all."

The notion of not working in a liberal's campaign has never occurred to Tully. Liberal politics, trade unions, organizing the down-todden—they are all in his blood.

Born in 1944 in Long Island's Levittown, Tully was the grandson of a charter member of the Steam-fitters Union and the son of a plumber. "My father was an officer in George Meany's own local of the Plumbers [Union]," he says with pride.

"I come out of that urban, union, ethnic environment. That's what's inside me," he says. "And growing up in Levittown in the McCarthy days with a bunch of conversatives running things, I was raised with a much different attitude toward authority figures than most American kids are taught."

The drafting of a platform may sound like an excursion into deepest ennui, but in fact, like all Washington dramas, the platform committee is rich with intriguing scenes and characters.

There is Rep. Claude Pepper (D-Fla.), a Mondale man, who first served on a platform committee 44 years ago and is still at it today at the age of 83.

During a debate on foreign policy, Pepper politely pointed out that one of Gary Hart's vaunted "new ideas" sounded exactly like a proposal set forth by Secretary of State Cordell Hull in 1936.

The platform committee is also the only place in town where one can hear the "Rainbow Coalation" rhetoric of Jesse Jackson delivered in an easy, lilting Irish brogue—by Paul O'Dwyer, the New York liberal who is one of Jackson's two delegates on the drafting unit.

But Tully—as the Mondale campaign's political director—has been the leading player. He is a perfect specimen of a classic Washington genus: the dedicate political pro.

As an undergraduate at Yale, Tully played tackle on the football team quaterbacked by "B.D.," Brian Dowling, and rendered immortal by classmate Garry Trudeau in his comic strip "Doonesbury."

Even before he had graduated in 1968, Tully was at work in the antiwar movement. Unlike some others of his generation, he directed his considerable energies through the established political process, trying to make first McCarthy and then Robert Kennedy the Democratic presidential nominee.

After that fateful year, Tully took a law degree at Penn and settled down, sort of, in Philadelphia, where he lives with his wife and 3-year-old daughter in the respites between campaigns.

The respites have been growing shorter as presidential campaigns get longer and as more and more people come around pleading for the kind of polished professional campaign direction that Tully and his ilk can provide.

When the 1984 campaign was starting to take shape two years ago, most Democrats figured, correctly, that Tully would be a Kennedy man again. When Kennedy withdrew, a half-dozen other Democrats stopped by in Philadelphia—where Tully was running political training programs for citizen action coalitions from around the country—to recruit him.

"Basically, my problem with Hart was that I figured out he's not my kind of Democrat," Tully says.

"The process guys, they're worried about whether the system is fair, whether everybody had the right opportunity to be involved, all that stuff.

"I'm much more a constituency-oriented economic Democrat. Who benefits from the policies? Who loses? That's always my test. And that's what Mondale is."

By February 1983, Mondale's people had corralled Tully into part-time work. Within a month, he was the full time political director of the campaign, and he's been there ever since, winning broad respect from reporters and his fellow politicos for telling the truth whether Mondale was winning or losing.

But now, for the first time since the McGovern drive in 1972, Tully has (apparently) won a Democratic nomination. And there is on the horizon the prospect of snagging the White House in November.

The Mondale people are already making lists of which campaign aide will get what government job. But Tully is having none of that.

"I work for change. That's my life," he says. "I organize. I don't do governments."

OPPORTUNITIES FOR ARMS CONTROL

Mr. BIDEN. Mr. President, the Senate sent an important message to the President last night when we overwhelmingly approved the Kennedy-Mathias amendment calling, among other things, for the President to submit the still-unratified treaties limiting the size of nuclear explosions. As a cosponsor of that landmark legislation, I was especially pleased that 77 Senators supported that measure, far more than would be required for actual ratification.

That amendment contained in legislative form the suggestion which Senator COHEN and I made to the President when we reported on our trip to Moscow last winter. We expressed the view that the Threshold Test Ban [TTB] and peaceful Nuclear Explosions [PNE] Treaties provided a significant, already available means of furthering our common goal of restraint on the nuclear arms race.

I believed then and now that Senate ratification of those treaties would demonstrate America's renewed commitment to arms control, not only to the Soviet Union but also to other nations which may have begun to doubt that the superpowers would ever show restraint. The very process of ratification would also reopen important channels of Government-to-Government contact on arms control.

These treaties would have military utility as well as diplomatic significance because they would set a binding legal limit—150 kilotons—on the size of underground nuclear explosions and thus forestall the testing of large nuclear devices. The longtime Soviet preference for high-yield weapons and associated tests makes these treaties more restrictive on the Soviet Union than on the United States.

As a member of the Intelligence Committee, I am confident that none of the arguments about the verifiability of the TTB and PNE is decisive. Both treaties prescribe procedures for improving verification. Indeed, the PNE Treaty has unprecedented provisions for onsite inspections. The TTB also requires the parties to exchange geological data about their test sites and yield information on several tests. Such information would help us to narrow the range of uncertainty which afflicts our calculations of Soviet test yields.

If there are residual verification concerns, the administration can address them in the course of Senate consideration of these treaties. But at least we would be moving toward mutual and binding limits, and toward a comprehensive ban on nuclear weapons tests.

Mr. President, the Kennedy-Mathias amendment also put the Senate on record in favor of an immediate resumption of talks on a comprehensive test ban. Such a treaty would prevent the development of newer and more deadly warheads, because they would not be confidently deployed if they could not be thoroughly tested.

I believe that one of the quickest ways to halt the momentum of the nuclear arms race would be to have such a mutual and verifiable ban on all nuclear weapons testing. Regrettably, negotiations on such an agreement have been suspended since 1980, and the current administration has expressed doubts about the desirability of resuming negotiations. The Senate has now taken a different view, for we recognize the urgency of moving toward this goal.

Mr. President, the Senate has not had an opportunity to vote on a major arms control agreement since I entered this body. Despite years of negotiations and at least three significant agreements concluded by three different Presidents, it has been 12 years since the Senate has had an opportunity to agree to mutual limits on nuclear weapons. By approving this amendment, we have said not only that we want that chance to help reduce the risks of nuclear war but also that we want this administration to seek more far-reaching agreements to enhance our security.

The hour is late, but we must act to halt the terrifying momentum of the nuclear arms race. The Senate has spoken, eloquently and overwhelmingly. I hope that the President seizes this opportunity for action on arms control.

USDA'S FAILURE TO IMPLEMENT THE FARMLAND PROTECTION POLICY ACT

Mr. DIXON. Mr. President, I would like to call the attention of my colleagues to one of the most grievous examples of Federal bureaucratic footdragging I have ever witnessed. Tomorrow marks the second anniversary of the failure of the Department of Agriculture to implement the Farmland Protection Policy Act.

I am happy to have my distinguished colleague, Senator LEAHY, who was instrumental in passage of this act, join me today regarding this matter.

This law attempts to get the Federal Government out of the business of promoting and subsidizing the wasteful and shortsighted conversion of prime farmland to nonagricultural uses. The Congress adopted it as the law of the land in response to findings by the Department of Agriculture that millions of acres of farmland each year are being permanently taken out of agricultural production, and being planted with their last crop—housing developments, shopping centers, industrial parks, sewage treatment plants, highways, and other construction.

These findings were part of the national agricultural lands study, which Congress commissioned back in 1979. The finding awakened all of us to the threat posed to this Nation by allowing too much of its productive agricultural land base to be squandered. Much of the conversion of prime farmland is unnecessary. The study found that there is plenty of land for both food production and urban development, if we choose our use of land wisely.

Unfortunately, the Federal bureaucracy is one of the biggest culprits when it comes to developing the wrong kinds of rural land. Federally sponsored and funded development projects are being built on some of our best prime agricultural soil, instead of on the less productive and more marginal farmlands. What is more, some of these Federal projects are either not needed to serve public objectives, or are oversized and out of scale with actual need they purport to serve. This practice is a pure and simple waste—not only of this Nation's most precious natural resource, but also of the taxpayers' money.

If the United States hopes to maintain the agricultural capacity that has made it the envy of the world, if we are to continue to earn foreign exchange through our agricultural exports, if we want to maintain our food independence and national security, and if we wish to cut the Federal deficit in a rational manner, then we must insist that the Farmland Protection Policy Act be implemented.

The Farmland Protection Policy Act became law with President Reagan's signature of the farm bill in December 1981. It directed the Department of Agriculture to prepare guidelines for other Federal agencies to use in evaluating their development projects, and to consider alternatives, so as to minimize "the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that * * * will be compatible with State, unit of local government and private programs and policies to protect farmland."

The act applies only prospectively. That is, it does not affect any Federal development that was in the design or construction phase prior to its effective date of June 22, 1982. It does not apply to private land development, unless the developer is using Federal funds. Finally, the act does not apply to development projects in which the Federal role is limited to regulation; for example, a pollution discharge permit or interstate land sales disclosure regulation. The law expressly says that it shall not be grounds for litigation, so it cannot be used to hold up needed development projects.

Even though this is a very limited and moderate piece of legislation, and even though it received broad bipartisan support as part of the 1981 farm bill, the Department of Agriclture has been dragging its feet in an apparent attempt to make sure that the practical benefits of the law never see the light of day. It was not until July 1983—1 year after the effective date of the act—and only weeks before the Secretary of Agriculture was required to file his first report to the Congress on progress in implementing the act, that the USDA issued its formal draft of the guidelines in the Federal Register.

A public comment period followed and the comments that were received by the Department were apparently so favorable to the act, and so at odds with the Department's own intentions, that USDA extended the deadline for comment, and during that additional time an organized effort was apparently made to generate negative comments—opposing implementation of the act—from real estate and land development interests.

Almost another year later, and now 2 years after the act was supposed to be working to conserve farmland from Federal Government waste, the final guidelines still have not been issued.

Mr. President, there is simply no excuse for further delay in issuing the guidelines, and every reason to believe that a golden opportunity is being lost to save both prime farmland and taxpayers' dollars. In my own State of Illinois, I am proud to say, we have a law that is the State's equivalent of the Farmland Protection Policy Act. It was initiated when Secretary of Agriculture John Block was the State director of agriculture. Under this law, our State agencies do the same thing the Federal act requires of the agencies here in Washington. They review State-supported development projects to see how prime farmland conversion can be minimized. Our agencies in Illinois have been very successful.

Let me cite two examples. A review of a highway project resulted in design changes that saved 1,300 acres of prime Illinois farmland and $7.5 million of the taxpayers' money, and served its intended purpose just as well as the original, wasteful design. Likewise, State review of a flood control project resulted in the protection of 700 prime acres of land and a saving to the taxpayer of $2.5 million in construction costs, and again the redesigned project is serving its intended purpose. Here we can see 2,000 acres and $10 million saved on only two projects.

How many more projects than that does the Federal Government underwrite every day, or every year? And how much of our irreplaceable farmland and tax dollars are going to waste as a result of USDA's delay in implementing the Farmland Protection Policy Act?

I have two final questions, Mr. President. One: When is the Department of Agriculture going to do what Congress directed it to do? Two: Will I be rising on this floor a year from now to make this same inquiry as to why the Department of Agriculture refuses to do its job?

Mr. LEAHY. Mr. President, I thank my distinguished colleague from Illinois, Senator DIXON, for bringing this matter to the attention of the Senate and for the leadership that he has demonstrated on this issue.

I certainly share his great displeasure with the sequence of events that have occurred at the U.S. Department of Agriculture [USDA] since enactment of the Farmland Protection Policy Act.

My good friend from Illinois is quite correct that tomorrow marks the second anniversary of the effective date of that act, June 22, 1982.

Mr. President, on that date, USDA was to have implemented the provisions of this law. They have not, and I would submit USDA has clearly violated the intent of Congress in this instance.

Mr. President, the landmark 1981 agricultural lands study found that America was losing prime farmland at the rate of 12 square miles per day. Those who claim that this is less of a problem than it is are deluding themselves.

Land added to the agricultural base now—that some say makes up the loss of 3 million acres of prime farmland each year—are weak and vulnerable to soil erosion.

Mr. President, this body has twice passed legislation, the so-called sodbuster bill, which would deny farm price support benefits to farmers who produce crops on these highly erodible lands.

It is clear that with passage of the Farmland Protection Policy Act and the sodbuster legislation, Congress intended that USDA pursue policies designed to lessen the loss of and damage to our agricultural land base.

Mr. President, USDA's continued resistance to publishing rules that implement the Farmland Protection Policy Act violates this intent of Congress.

American agriculture is the envy of the world. It is our largest industry and the most productive system of food production in history.

Prime farmland forms the lifeblood of this great industry. Its protection is vital to the continued strength of farming in this country, for once an acre of farmland is lost to another use, it is very rarely returned to agriculture.

Shopping centers, highways, subdivisions, and airports contribute to the loss of prime farmlands. The Federal Government plays a significant role in this loss. In fact, it has been estimated that actions of the Federal Government account for up to one-third of the loss of our prime agricultural lands.

That is why in February 1981, I introduced the Farmland Protection Policy Act and joined with the distinguished Senators from Illinois [Mr. DIXON] and Iowa [Mr. JEPSEN] in October of last year in the introduction of legislation (S. 2004) to strengthen its provisions.

Mr. President, this act is not intended to limit the rights of private property owners in any way. Section 1547 (a) of the act is explicit on this point.

Nor is it intended to interfere with ongoing State and local efforts to protect prime farmland. Section 1541(b) of the act is quite clear on this point.

Mr. President, local and State governments have for years worked to protect prime farmlands. In fact, the town of Vernon in my home State of Vermont last year approved a spending measure which will allow the town to purchase the development rights to farmlands within their borders.

The town of Brattleboro, VT, completed an exhaustive study of prime farmland within their border and the town is now at work on methods to protect it.

Mr. President, nothing in the Farmland Protection Policy Act is intended to override or interfere in any way with these and other efforts.

What my good friend from Illinois and I do intend and do want is for USDA to follow the law.

Mr. President, the Department has taken some steps in the right direction. It did publish proposed rules to implement the act and took public comment on them. That was almost a year ago.

Since then, according to Secretary Block, the rules have been examined in something called final review at USDA and the Office of Management and Budget.

Mr. President, at this point I am wondering just what the word "final" in USDA's definition of final review means. If its connotation is final, as in dead, then I would strongly suggest they change their policy.

The continued loss of prime farmland poses a threat to the long term sustainability of this Nation's agriculture.

It is time that USDA implemented the Farmland Protection Policy Act and began the process to stem the loss of our prime agricultural lands due to actions of the Federal Government.

Mr. President, I want to again thank my good friend from Illinois for his work on this issue and urge my other colleagues to join with us in our effort to protect the lifeblood of this Nation's largest industry.

CHICAGO SUN-TIMES SUPPORTS ITEM VETO

Mr. DIXON. Mr. President, we have from time to time in our deliberations had occasion to discuss a proposal I have made to grant to the President of the United States a line item veto.

I have felt during my public career that we should amend our Constitution to give the President the lineitem and reduction veto power. Congress would retain the power, under my proposal, to override the President's line-item veto by a constitutional majority vote rather than the present two-thirds requirement.

The line-item veto concept is an idea whose time has come, Mr. President. We need public discussion of the proposal, and I was delighted to see in today's edition of the Chicago Sun-Times a thoughtful editorial in support of the line-item veto. I ask unanimous consent to have printed in the RECORD the Sun-Times editorial.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TWO BLOWS FOR FISCAL SANITY

The U.S. Conference of Mayors, two-thirds of it Democrats, has struck two important blows for federal fiscal sanity by adopting resolutions in support of a presidential line-item veto and calling for restraint on the swelling entitlement programs. Enactment of the former will ensure action on the latter.

For the Democrats, supporting the line-item veto puts them in league with President Reagan, who has requested such authority, and at odds with such party leaders as House Majority Leader Jim Wright (Texas), who says that would give a president dictatorial powers.

On the other hand, it puts most of the nation's mayors in the company of the governors of 43 states, including Illinois, plus the state legislators who gave them this power, all of whom recognized the need for this additional check upon the public checkbook.

For all practical purposes, Congress has obliterated any president's power of veto over spending through catchall spending bills, such as continuing resolutions, which must be signed to avoid a governmentwide shutdown. No president wants to risk such a crisis because he opposed a few million—or even hundred million—for some parochial boondoggle . . . and so it goes.

In effect, Congress has voided the constitutional check and balance on spending, and, given its well-demonstrated refusal to control spending, the only recourse left is the line-item veto.

Actually, Congress should welcome it because, as the mayors themselves demonstrated in a third resolution calling for more federal spending on streets, housing, mass transit and other favorite urban topics, the item veto enables politicians to have their cake and eat it, too.

Congress could pass all kinds of spending measures with accompanying hoopla for the folks back home, then blame the president when he vetoes it, as they knew all along he would. Of course, if it's really important, Congress could still try to overturn any veto with a two-thirds vote.

The mayors could show they're serious by supporting the efforts of Sen. Alan J. Dixon (D-Ill.) to get a hearing on his measures in the Senate. How about it?

OUR FRIEND, JAMES ROWE

Mr. MELCHER. Mr. President, it was 1934. President Franklin Roosevelt and congressional leaders had set in motion extraordinary policies to get the unemployed back to work, to keep farmers and ranchers on the land, to open the doors of closed businesses and banks, to put the Nation on the road to economic recovery.

Some bright enthusiastic, compassionate, determined, hard-working young people were migrating to Washington. They came with hope and faith in the future sharing the confidence of President Roosevelt when he sought to dispel feelings of gloom and doom saying "The only thing we have to fear is fear itself." They had faith in the democratic system and faith in the ability of men and women to make it work.

One of these new arrivals in 1934 was James Henry Rowe, Jr., of Butte, MT, who has been editorially described by the Montana Standard, as "one of Butte's most celebrated exports."

Mr. Rowe was 25. He came to Washington to clerk for retired Supreme Court Justice Oliver Wendell Holmes and remained to contribute to the New Deal programs that shaped the United States we know today.

Jim Rowe, known to his Butte and Montana friends as "Bim," died Sunday at 75.

We have lost one of the last, if not the last, of the New Deal "young Turks" who surrounded F.D.R. in the early years of his Presidency. They were called the brains trust. They were encouraged to produce legislation, much of which has stuck for political, economic and social changes. These changes have influenced the lives of all of us. However, Jim Rowe's influence did not end with his active Government service—which lasted for only 12 years—but extended to all of F.D.R.'s successors to the Presidency through advice and counsel born of his experience. As J.Y. Smith wrote in the Washington Post, "By reason of his judgment, his influence was greater than the positions he held."

His positions included the National Emergency Council, the Reconstruction Finance Corporation, the Department of Labor, the Public Works Administration, the Securities and Exchange Commission, the White House, and the Justice Department. At 28, he went to the White House, the youngest principal staffer there, first as assistant to James Roosevelt and then as one of six assistants to the President. We cannot imagine a White House staff of only a half dozen aides sharing secretarial help. There were no assistants to the assistants and he was told along with other top aides to be anonymous and invisible.

A favorite anecdote was reported in the Washington Post. It told how a 29-year-old Jim Rowe tried to advise President Roosevelt how to handle a personnel problem: The President said he would do as suggested, but do it his own way. When Mr. Rowe persisted, the President replied, "I do not have to do it your way and I will tell you the reason why. The reason is that, although they may have made a mistake, the people of the United States elected me President, not you."

It was in those years that Mr. Rowe and Thomas G. "Tommy the Cork" Corcoran worked together and after World War II, they went into private law practice. Mr. Rowe never retired. He came to my office on business only a few weeks ago.

Born and reared in Butte, where his father, James H. Rowe, Sr., served as a State highway commissioner, Mr. Rowe worked on the former Butte Daily Post during his summers home from Harvard from which he received bachelor and law degrees. He never practiced law in Butte but his first job after law school was with another Butte native, Frank Walker, who later became Postmaster General. From time to time he would return to Montana on behalf of national and Montana Democratic candidates.

Now Jim Rowe is gone. As our Montana Democratic Party Chairman Bruce Nelson said, "It's a sad day for Montana. He gave us one of the last links to times when Government really became active for the public welfare of Montana."

As New York Times reporter Seth King wrote, "Mr. Rowe may have best described himself in the eulogy he delivered at the funeral of * * * Corcoran * * * Mr. Rowe quoted from a Memorial Day speech of Justice Holmes, saying the following phrase could well be applied to the young New Dealers as well as to Mr. Holmes old Civil War comrades: 'Through our great good fortune, in our youth our hearts were touched with fire.' "

Or, as reporter David Roach wrote in the Missoulian of Missoula, MT, "The old concrete highway in Butte—Rowe Road—still honors James Rowe, Sr., onetime Montana highway commissioner. The legacy of James Henry Rowe, Jr., his son, is less visible but no less durable."

I attended this funeral today. James Rowe II gave his father's eulogy.

Let me add my footnote: Jim's legacy is broad and bright. Broad because he created among the many of us who counseled with him a sense of the value of integrity and a sense of continuity of Government and that it should be both practical and progressive.

His legacy is bright because his very presence demonstrated that good and extremely intelligent citizens do have the willingness and commitment to lend the brawn of their shoulders, the genius of their intellect, and the compassion of their hearts to assure that our Government continues to be of the people and for the people.

For me, I say so long, Jim—the people of Butte would say "So long, Bim."

For all of us from Montana I add "Thanks a lot, Jim, for all your help. It makes us proud to have known you."

Mr. **RANDOLPH**. Will my colleague yield?

Mr. **MELCHER**. I yield to the senior Senator from West Virginia.

Mr. **RANDOLPH**. Mr. President, I wish to be associated with the remarks of the Senator from Montana as he remembers the passing and today's services for James Rowe.

He was, of course, a man from Montana, and a close confidant for many years of Franklin Delano Roosevelt when he was the President of the United States.

I did attend the services at the Washington Cathedral today, a very beautiful tribute to him, especially the one from his son.

I thank the Senator for yielding.

Mr. **MELCHER**. I thank my friend from West Virginia, who, along with Jim Rowe, graced this town in the real trying times of the deep part of the Depression and like Jim Rowe has served the Nation well during the 50 years past.

ORDER OF PROCEDURE

Mr. **BAKER**. Mr. President, before we close the time for the transaction of routine morning business, I am advised by the minority leader, who is not present here in the Chamber, but the acting minority leader, Senator JOHNSTON, is, that there is no objection to proceeding now to the consideration of the energy and water bill.

Mr. **JOHNSTON**. The Senator is correct.

We do have permission to temporarily lay aside the pending business for the purpose of taking up energy and water.

Mr. **BAKER**. I thank the Senator.

It would be the intention of the leadership on this side to do it that way, that is, to do it by unanimous consent, not wishing to displace math-science as the unfinished business.

CONCLUSION OF MORNING BUSINESS

The **PRESIDING OFFICER**. Is there further morning business? If not, morning business is closed.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1985

Mr. **BAKER**. Mr. President, I ask unanimous consent that the Senate turn to the consideration of the energy and water appropriations bill, which is H.R. 5653, Calendar Order No. 948.

The **PRESIDING OFFICER**. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5653) making appropriations for energy and water development of the fiscal year ending September 30, 1985, and for other purposes.

The **PRESIDING OFFICER**. Is there objection to the request of the Senator from Tennessee.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts intended to be inserted are shown in italic.)

H.R. 5653

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1985, for energy and water development, and for other purposes, namely:

TITLE I—DEPARTMENT OF DEFENSE—CIVIL DEPARTMENT OF THE ARMY

Corps of Engineers—Civil

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to rivers and harbors, flood control, beach erosion, and related purposes.

General Investigations

For expenses necessary for the collection and study of basic information pertaining to river and harbor, flood control, shore protection, and related projects, restudy of authorized projects, miscellaneous investigations, and when authorized by law, surveys and detailed studies and plans and specifications of projects prior to construction, **[$151,851,000]** *$125,639,000*, to remain available until expended.

Construction, General

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by laws; and detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction), **[$913,014,000]** *$856,280,000*, to remain available until expended, **[**of which, for that increment of the project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, $1,300,000 shall be made available for the Ocean Township to Sandy Hook reach with the first Federal construction increment being a berm of approximately 50 feet at Sea Bright and Monmouth Beach extending to and including a feeder beach in the vicinity of Long Branch with the non-Federal share of construction and maintenance of the Ocean Township to Sandy Hook reach to consist of monies expended by non-Federal interests for reconstruction of the seawall at Sea Bright and Monmouth Beach, New Jersey; and**]** of which $3,000,000 shall be made available for the construction of the South Williamson, Kentucky, floodwall as authorized by Public Law 96-367, section 202 (94 Stat. 1339); and of which **[$4,000,000]** *$2,000,000* shall be made available for the construction of the West Turning Basin extension of the Canaveral Harbor, Florida project, as authorized in the Rivers and Harbors Act of 1962; and in addition, notwithstanding any other provision of law, **[$20,000,000]** *$5,000,000*, to remain available until expended, for the construction of the Yatesville Lake construction project; *and in addition, $10,000,000, to remain available until expended, for construction of the Elk Creek Lake construction project as authorized in the River and Harbor and Flood Control Act of 1962, Public Law 87-874; and in addition, $500,000, to remain available until expended, for construction of Lock and Dam 3, Red River Waterway project, as authorized by law.*

Flood Control and Coastal Emergencies

For expenses necessary for emergency flood control, hurricane, and shore protection activities, as authorized by section 5 of the Flood Control Act, approved August 18, 1941, as amended, **[$10,000,000]** *$30,000,000*, to remain available until expended.

Flood Control, Mississippi River and Tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee

For expenses necessary for prosecuting work of flood control, and rescue work, repair, restoration, or maintenance of flood control projects threatened or destroyed by flood, as authorized by law (33 U.S.C. 702a, 702g-1), **[$326,309,000]** *$310,300,000*, to remain available until expended: *Provided*, That not less than $250,000 shall be available for bank stabilization measures as determined by the Chief of Engineers to be advisable for the control of bank erosion of streams in the Yazoo Basin, including the foothill area, and where necessary such measures shall complement similar works planned and constructed by the Soil Conservation Service and be limited to the areas of responsibility mutually agreeable to the District Engineer and the State Conservationist.

Operation and Maintenance, General

For expenses necessary for the preservation, operation, maintenance, and care of existing river and harbor, flood control, and related works, including such sums as may be necessary for the maintenance of harbor channels provided by a State, municipality or other public agency, outside of harbor lines, and serving essential needs of general commerce and navigation; administration of laws pertaining to preservation of navigable waters; surveys and charting of northern and northwestern lakes and connecting waters; clearing and straightening channels; and removal of obstructions to navigation, **[$1,339,683,000]** *$1,317,557,000*, to remain available until expended, of which $15,000,000, shall be for construction, operation, and maintenance of outdoor recreation facilities, to be derived from the special account established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 4601).

General Expenses

For expenses necessary for general administration and related functions in the office of the Chief of Engineers and offices of the Division Engineers; activities of the Board of Engineers for Rivers and Harbors and the Coastal Engineering Research Board, **[$113,000,000]** *$108,150,000*, to remain available until expended.

Administrative Provisions

Appropriations in this title shall be available for expenses of attendance by military personnel at meetings in the manner authorized by 5 U.S.C. 4110, uniforms, and allowances therefor, as authorized by law (5 U.S.C. 5901-5902), and for printing, either during a recess or session of Congress, of survey reports authorized by law, and such survey reports as may be printed during a recess of Congress shall be printed, with illustrations, as documents of the next succeeding session of Congress; not to exceed $2,000 for official reception and representation expenses; and during the current fiscal year the revolving fund, Corps of Engineers, shall be available for purchase (not to exceed 144 for replacement only) and hire of passenger motor vehicles.

General Provisions, Corps of Engineers

Sec. 101. None of the funds appropriated in this title, except as specifically contained herein, shall be used to alter, modify, dismantle, or otherwise change any project which is partially constructed but not funded for construction in this title.

[Sec. 102. The authorization for the Sardis Lake Project, Oklahoma, contained in section 203 of the Flood Control Act of 1962, as amended by section 108 of the Energy and Water Development Appropriation Act of 1982 is hereby amended to authorize and direct the Secretary of the Army, acting through the Chief of Engineers, to plan, design, and construct access road improvements to the existing road from the west end of Sardis Lake to Daisy, Oklahoma, at an estimated Federal cost of $10,000,000 and the State or political subdivision shall agree to operate and maintain said facilities at their own expense.

[Sec. 103. The authorization for the Eufaula Lake Project, Oklahoma, contained in the Rivers and Harbors Act of 1946 is hereby amended to authorize and direct the Secretary of the Army, acting through the Chief of Engineers, to plan, design, and construct bridges on Piney and Muddy Creeks to replace existing unsafe structures, at an estimated total Federal cost of $1,700,000 and the State or political subdivision agrees to operate and maintain said improvements at their own expense.]

[Sec. 104] *Sec. 102.* The Secretary of the Army, acting through the Chief of Engineers, is authorized to review, in cooperation with the State of Florida, its political subdivision, agencies and instrumentalities thereof all previous published reports of the Chief of Engineers pertaining to shoreline erosion on the entire coast of Florida with a view to determining whether any modifications of the recommendations contained therein are advisable at this time, with particular reference to developing a comprehensive body of knowledge, information, and data on coastal area changes and processes.

[Sec. 105. The Secretary of the Army, acting through the Chief of Engineers, is hereby directed to deepen, at full Federal expense, the waterway within the marina facility at the Harbor Beach Harbor, Michigan project authorized by the River and Harbor Act of January 21, 1927, at a cost not to exceed $450,000.

[Sec. 106. The Secretary of the Army, acting through the Chief of Engineers, is hereby directed to construct and maintain, at full Federal expense, a breakwater access for recreational purposes at the Port Austin Harbor, Michigan project authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-Ninth Congress at an estimated cost of $500,000.]

[Sec. 107] *Sec. 103.* Funds appropriated under any provision of law for the operation of the Summersville Lake, West Virginia Project shall be used to carry out all authorized project purposes of such project, including but not limited to whitewater recreation of the Gauley River downstream of such project.

[Sec. 108. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to undertake the necessary construction measures to increase the level of flood protection currently afforded by the Mauvaise Terre Levee, at and in the vicinity of Naples, Illinois, to a one hundred-year recurrence interval flood event.

[Sec. 109. Section 1304 of the Supplemental Appropriations Act, 1984, Public Law 98-181, is amended by adding at the end thereof the following: ". . . including a determination of the advisability of the preservation, enhancement, and rehabilitation of Peoria Lake in the vicinity of Peoria, Illinois, in the interest of recreation, fish and wildlife resources, environmental quality, and local and regional development.".]

[Sec. 110] *Sec. 104.* Flood control measures authorized by section 202 of the 1981 Energy and Water Development Appropriation Act involving high levees and floodwalls in urban areas should provide for a standard project flood level of protection for Barbourville, Kentucky.

[Sec. 111] *Sec. 105.* The Secretary of the Army, acting through the Chief of Engineers, is directed to construct the Lorean and Calloway Branches, Hurst, Texas, flood control projects under the authority of section 205 of the Flood Control Act of 1948, as amended, except that bridge and utility costs shall be at Federal expense.

[Sec. 112] *Sec. 106.* The Secretary of the Army, acting through the Chief of Engineers, is directed to construct the Miami Harbor, Bay Front Park, Florida project under the authority of Public Law 98-50 except that the sheetpile foundation and utility trench for the Park's fountain and land fill necessary for Park development shall be at Federal expense.

[Sec. 113] *Sec. 107.* Section 1301 of Public Law 98-181 is amended by striking the amount "$2,000,000" and inserting in lieu thereof the amount "$3,000,000".

[Sec. 114] *Sec. 108.* Within available funds, channel widening and bends easing shall be accomplished at the Savannah Harbor, Georgia navigation channel in the vicinity of miles 11.6, 13.5, and 14.5 to allow for the free movement of vessels.

[Sec. 115. Funds heretofore or hereafter appropriated to the Corps of Engineers—Civil, Operation and Maintenance, General account may be used to acquire and develop emergency relocation sites for the various offices of the Corps of Engineers.

[Sec. 116. Subject to approval by the Committees on Appropriations, funds herein or hereafter provided may be used (1) to acquire improved real property or to acquire unimproved real property and construct or have constructed thereon an appropriate residence for the official use of Corps of Engineers Division Commanders in those areas where appropriate housing cannot otherwise be provided; and (2) to operate and maintain such property. Provisions of law and regulations applicable to the acquisition, operation, and maintenance of military housing shall not apply to housing acquired under this section.]

[Sec. 117] *Sec. 109.* The Corps of Engineers is authorized and directed to design and construct repairs to stabilize the existing levee at York, Pennsylvania, in the vicinity of the city's wastewater treatment plant, including, but not limited to placing drainage material and gabion protection along a 600-foot section of unstable levee, at [an estimated cost of $300,000] *a cost not to exceed $200,000.*

TITLE II—DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

For carrying out the functions of the Bureau of Reclamation as provided in the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and other Acts applicable to that Bureau as follows:

GENERAL INVESTIGATIONS

For engineering and economic investigations of proposed Federal reclamation projects and studies of water conservation and development plans and activities preliminary to the reconstruction, rehabilitation and betterment, financial adjustment, or extension of existing projects, to remain available until expended: *Provided,* That of the total appropriated, the amount [$35,566,000] *$31,023,000,* for program activities which can be financed by the reclamation fund shall be derived from that fund: *Provided further,* That all costs of an advance planning study of a proposed project shall be considered to be construction costs and to be reimbursable in accordance with the allocation of construction costs if the project is authorized for construction.

CONSTRUCTION PROGRAM

For construction and rehabilitation of projects and parts thereof (including power transmission facilities for Bureau of Reclamation use) and for other related activities as authorized by law, to remain available until expended, [$707,817,000] *$752,397,000,* of which [$166,503,000] *$163,503,000* shall be available for transfers to the Upper Colorado River Basin Fund authorized by section 5 of the Act of April 11, 1956 (43 U.S.C. 620d), and [$146,950,000] *$137,550,000* shall be available for transfers to the Lower Colorado River Basin Development Fund authorized by section 403 of the Act of September 30, 1968 (43 U.S.C. 1543): *Provided,* That of the total appropriated, the amount for program activities which can be financed by the reclamation fund shall be derived from that fund: *Provided further,* That transfers to the Upper Colorado River Basin Fund and Lower Colorado River Basin Development Fund may be increased or decreased by transfers within the overall appropriation to this heading: *Provided further,* That the final point of discharge for the interceptor drain for the San Luis Unit shall not be determined until development by the Secretary of the Interior and the State of California of a plan, which shall conform with the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters: *Provided further,* That no part of the funds herein approved shall be available for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument: *Provided further,* That of the amount herein appropriated, $1,580,000 shall be available to enable the Secretary of the Interior to continue work on rehabilitating the Velarde Community Ditch Project, New Mexico, in accordance with the Federal Reclamation Laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) for the purposes of diverting and conveying water to irrigated project lands. The principal features of the project shall consist of improvements such as the installation of more permanent diversion dams and headgates, wasteways, arroyo siphons, and concrete lining of ditches in order to improve irrigation efficiency, conserve water, and reduce operation and maintenance costs. The cost of the rehabilitation will be nonreimbursable and constructed features will be turned over to the appropriate entity for operation and maintenance: *Provided further,* That the design, construction and operation of the Garrison Diversion Unit are to be accomplished so as to meet the United States' obligations under the Boundary Waters Treaty of 1909 [and that no construction potentially affecting waters flowing into Canada will be undertaken] *and that no appropriation, fund, or authority under this heading shall be used for construction of features of the Garrison Diversion Unit in North Dakota affecting waters flowing into Canada: Provided further, That of the amount herein appropriated not to exceed $20,000 shall be available to continue a rehabilitation and betterment program with the Twin Falls Canal Company, Twin Falls County, Idaho, to rehabilitate facilities under the Act of October 7, 1919 (63 Stat. 724), as amended, to be repaid in full by the lands served and under conditions satisfactory to the Secretary of the Interior.*

OPERATION AND MAINTENANCE

For operation and maintenance of reclamation projects or parts thereof and other facilities, as authorized by law; and for a soil and moisture conservation program on lands under the jurisdiction of the Bureau of Reclamation, pursuant to law, to remain available until expended, $149,689,000: *Provided,* That of the total appropriated, the amount for program activities which can be financed by the reclamation fund shall be derived from that fund: *Provided further,* That of the total appropriated, such amounts as may be required for the Boulder Canyon Project shall be derived from the Colorado River Dam Fund and such amounts as may be required for replacement, which would require readvances to the Colorado River Dam Fund under section 5 of the Boulder Canyon Project Adjustment Act of July 19, 1940 (43 U.S.C. 618d), are to be considered as though readvanced under said section: *Provided further,* That funds advanced by water users for operation and maintenance of reclamation projects or parts thereof shall be deposited to the credit of this appropriation and may be expended for the same objects and in the same manner as sums appropriated herein may be expended, and such advances shall remain available until expended: *Provided further,* That nonreimbursable funds will be available from revenues for performing examination of existing structures on participating projects of the Colorado River Storage Project.

LOAN PROGRAM

For loans to irrigation districts and other public agencies for construction of distribution systems on authorized Federal reclamation projects, and for loans and grants to non-Federal agencies for construction of projects, as authorized by the Acts of July 4, 1955, as amended (43 U.S.C. 421a-421d), and August 6, 1956, as amended (43 U.S.C. 422a-422[illegible]), including expenses necessary for carrying out the program, [$72,037,000] *$67,537,000,* to be derived from the reclamation fund and to remain available until expended: *Provided,* That during fiscal year 1985 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed [$70,500,000] *$68,500,000*: *Provided further,* That any contract under the Act of July 4, 1955 (69 Stat. 244), as amended, not yet executed by the Secretary, which calls for the making of loans beyond the fiscal year in which the contract is entered into shall be made only on the same conditions as those prescribed in section 12 of the Act of August 4, 1939 (53 Stat. 1187, 1197).

GENERAL ADMINISTRATIVE EXPENSES

For necessary expenses of general administration and related functions in the offices of the Commissioner of the Bureau of Reclamation and in the regional offices of the Bureau of Reclamation, [$58,917,000 of which $11,900,000] *$56,350,000 of which $9,333,000* shall remain available until expended, the total amount to be derived from the reclamation fund and to be nonreimbursable pursuant to the Act of April 19, 1945 (43 U.S.C. 377): *Provided,* That no part of any other appropriation in this Act shall be available for activities or functions budgeted for the current fiscal year as general administrative expenses.

EMERGENCY FUND

For an additional amount for the "Emergency fund", as authorized by the Act of June 26, 1948 (43 U.S.C. 502), as amended, to remain available until expended for the purposes specified in said Act, $1,000,000, to be derived from the reclamation fund.

SPECIAL FUNDS

Sums herein referred to as being derived from the reclamation fund, the Colorado River Dam fund, or the Colorado River development fund, are appropriated from the special funds in the Treasury created by the Act of June 17, 1902 (43 U.S.C. 391), and the Act of December 21, 1928 (43 U.S.C. 617a), and the Act of July 19, 1940 (43 U.S.C. 618a), respectively. Such sums shall be transferred, upon request of the Secretary, to be merged with and expended under the heads herein specified; and the unexpended balances of sums transferred for expenditure under the head "General Administrative Expenses" shall revert and be credited to the special fund from which derived.

ADMINISTRATIVE PROVISIONS

Appropriations for the Bureau of Reclamation shall be available for purchase of not to exceed 16 passenger motor vehicles of which 13 shall be for replacement only; purchase of one additional aircraft; payment of claims for damages to or loss of property, personal injury, or death arising out of activities of the Bureau of Reclamation; payment, except as otherwise provided for, of compensation and expenses of persons on the rolls of the Bureau of Reclamation appointed as authorized by law to represent the United States in the negotiations and administration of interstate compacts without reimbursement or return under the reclamation laws; for service as authorized by section 3109 of title 5, United States Code, in total not to exceed $500,000; rewards for information or evidence concerning violations of law involving property under the jurisdiction of the Bureau of Reclamation; performance of the functions specified under the head "Operation and Maintenance Administration", Bureau of Reclamation, in the Interior Department Appropriations Act, 1945; preparation and dissemination of useful information including recordings, photographs, and photographic prints; and studies of recreational uses of reservoir areas, and investigation and recovery of archeological and paleontological remains in such areas in the same manner as provided for in the Acts of August 21, 1935 (16 U.S.C. 461-467) and June 27, 1960 (16 U.S.C. 469): *Provided,* That no part of any appropriation made herein shall be available pursuant to the Act of April 19, 1945 (43 U.S.C. 377), for expenses other than those incurred on behalf of specific reclamation projects except "General Administrative Expenses" and amounts provided for plan formulation and advance planning investigations, and general engineering and research under the head "General Investigations".

Sums appropriated herein which are expended in the performance of reimbursable functions of the Bureau of Reclamation shall be returnable to the extent and in the manner provided by law.

No part of any appropriation for the Bureau of Reclamation, contained in this Act or in any prior Act, which represents amounts earned under the terms of a contract but remaining unpaid, shall be obligated for any other purpose, regardless of when such amounts are to be paid: *Provided,* That the incurring of any obligation prohibited by this paragraph shall be deemed a violation of section 3679 of the Revised Statutes, as amended (31 U.S.C. 1341).

No funds appropriated to the Bureau of Reclamation for operation and maintenance, except those derived from advances by water users, shall be used for the particular benefits of lands (a) within the boundaries of an irrigation district, (b) of any member of a water users' organization, or (c) of any individual when such district, organization, or individual is in arrears for more than twelve months in the payment of charges due under a contract entered into with the United States pursuant to laws administered by the Bureau of Reclamation.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

SEC. 201. Appropriations in this title shall be available for expenditure or transfer (within each bureau or office), with the approval of the Secretary, for the emergency reconstruction, replacement, or repair of aircraft, buildings, utilities, or other facilities or equipment damaged or destroyed by fire, flood, storm, or other unavoidable causes: *Provided,* That no funds shall be made available under this authority until funds specifically made available to the Department of the Interior for emergencies shall have been exhausted.

SEC. 202. The Secretary may authorize the expenditure or transfer (within each bureau or office) of any appropriation in this title, in addition to the amounts included in the budget programs of the several agencies, for the suppression or emergency prevention of forest or range fires on or threatening lands under jurisdiction of the Department of the Interior.

SEC. 203. Appropriations in this title shall be available for operation of warehouses, garages, shops, and similar facilities, wherever consolidation of activities will contribute to efficiency, or economy, and said appropriations shall be reimbursed for services rendered to any other activity in the same manner as authorized by the Act of June 30, 1932 (31 U.S.C. 686): *Provided,* That reimbursements for costs of supplies, materials, equipment, and for services rendered may be credited to the appropriation current at the time such reimbursements are received.

SEC. 204. Appropriations in this title shall be available for hire, maintenance, and operation of aircraft; hire of passenger motor vehicles; purchases of reprints; payment for telephone services in private residences in the field, when authorized under regulations approved by the Secretary; and the payment of dues, when authorized by the Secretary, for library membership in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members.

SEC. 205. The cost of foundation treatment, drainage, and instrumentation work planned or under way at Twin Buttes Dam, Texas, shall be nonreimbursable under Federal reclamation laws.

SEC. 206. The cost of foundation treatment, drainage, and instrumentation work planned or underway at Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under the Federal reclamation law.

TITLE III—DEPARTMENT OF ENERGY

ENERGY SUPPLY, RESEARCH AND DEVELOPMENT ACTIVITIES

(INCLUDING TRANSFER OF FUNDS)

For expenses of the Department of Energy activities including the purchase, construction and acquisition of plant and capital equipment and other expenses incidental thereto necessary for energy supply, research and development activities and other activities in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; purchase of passenger motor vehicles (not to exceed 19 for replacement only), [$1,986,149,000] *$2,046,168,000,* to remain available until expended; of which $60,000,000 shall be derived by transfer from Uranium Supply and Enrichment Activities provided in fiscal year 1984, and [of which $7,000,000 shall be available to establish a supercomputer center and computational institute as described in the report accompanying this Act; and] acquisition of one aircraft for replacement only at no cost by transfer from the National Science Foundation.

URANIUM SUPPLY AND ENRICHMENT ACTIVITIES

For expenses of the Department of Energy in connection with operating expenses; the purchase, construction, and acquisition of plant and capital equipment and other expenses incidental thereto necessary for uranium supply and enrichment activities in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; purchase of passenger motor vehicles (not to exceed 171 of which 164 are for replacement only); [$1,650,300,000] *$1,675,300,000,* to remain available until expended: *Provided,* That revenues received by the Department for the enrichment of uranium and estimated to total [$1,650,300,000] *$1,675,300,000* in fiscal year 1985, shall be retained and used for the specific purpose of offsetting costs incurred by the Department in providing uranium enrichment service activities as authorized by section 201 of Public Law 95-238, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484): *Provided further,* That the sum herein appropriated shall be reduced as uranium enrichment revenues are received during fiscal year 1985 so as to result in a final fiscal year 1985 appropriation estimated at not more than $0.

GENERAL SCIENCE AND RESEARCH ACTIVITIES

For expenses of the Department of Energy, activities including the purchase, construction and acquisition of plant and capital equipment and other expenses incidental thereto necessary for general science and research activities in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), including the acquisition or condemnation of any real property or facility or for plant or facility acquisition, construction, or expansion; purchase of passenger motor vehicles (not to exceed 4 for replacement only); $726,905,000, to remain available until expended.

NUCLEAR WASTE DISPOSAL FUND

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, including the acquisition of real property or facility construction or expansion, $327,669,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in this account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury.

ATOMIC ENERGY DEFENSE ACTIVITIES

For expenses of the Department of Energy activities including the purchase, construction and acquisition of plant and capital equipment and other expenses incidental thereto necessary for atomic energy defense activities in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; purchase of passenger motor vehicles (not to exceed 354 of which 339 are for replacement only) including 35 police-type vehicles; and purchase of one aircraft, [$7,404,901,000] *$7,324,051,000,* to remain available until expended.

DEPARTMENTAL ADMINISTRATION

For salaries and expenses of the Department of Energy necessary for Departmental Administration and other activities in carrying out the purposes of the Department of Energy Organization Act (Public Law 95-91), including the hire of passenger motor vehicles and official reception and representation expenses (not to exceed $35,000); $356,034,000, all of which is available for fiscal year 1985 and shall remain available until expended, plus such additional amounts as necessary to cover increases in the estimated amount of cost of work for others notwithstanding the provisions of the Anti-Deficiency Act (31 U.S.C. 1511 et seq.): *Provided,* That such increases in cost of work are offset by revenue increases of the same or greater amount, to remain available until expended: *Provided further,* That moneys received by the Department for miscellaneous revenues estimated to total $219,459,000 in fiscal year 1985 may be retained and used for operating expenses within this account, and may remain available until expended, as authorized by section 201 of Public Law 95-238, notwithstanding the provisions of section 3302 of title 31, United States Code: *Provided further,* That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during fiscal year 1985 so as to result in a final fiscal year 1985 appropriation estimated at not more than $136,575,000.

POWER MARKETING ADMINISTRATIONS

OPERATION AND MAINTENANCE, ALASKA POWER ADMINISTRATION

For engineering and economic investigations to promote the development and utilization of the water, power, and related resources of Alaska, and for necessary expenses of operation and maintenance of projects in Alaska and of marketing electric power and energy, $3,233,000, to remain available until expended.

BONNEVILLE POWER ADMINISTRATION FUND

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are provided for Three Mile Dam Fish Passage Facilities, Sunnyside Dam Passage, Wapato Diversion Dam Passage, Toppenish Creek/Satus Unit Diversion, Prosser Dam Passage, Roza Dam Passage and for Easton Dam Passage. These expenditures and the transfer of funds to the Bureau of Reclamation for the purpose of constructing fish passage facilities are approved. Expenditures are also approved for: (1) Lake Pend Oreille Kokanee Hatchery, (2) the Umatilla Hatchery, and (3) official reception and representation expenses in an amount not to exceed $2,500.

During fiscal year 1985, and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $40,000,000.

OPERATION AND MAINTENANCE, SOUTHEASTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy pursuant to the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southeastern power area, $35,744,000, to remain available until expended.

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, and for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses connected therewith, in carrying out the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southwestern power area, $31,208,000, to remain available until expended.

CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (Public Law 95-91), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed $1,500, the purchase of passenger motor vehicles (not to exceed nine for replacement only), purchase, maintenance, and operation of one helicopter, [$218,230,000] *$248,230,000,* to remain available until expended, of which [$217,380,000] *$221,821,000* shall be derived from the Department of the Interior Reclamation fund and $850,000 shall be derived from the Colorado River Dam fund for power marketing and transmission expenses of the Boulder Canyon Project: *Provided,* That notwithstanding the provisions of section 8 of Public Law 88-552, the Secretary of Energy is authorized to construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California and to accept funds contributed by non-Federal entities for that purpose: *Provided further,* That all revenues collected in connection with the operation of Navy Geothermal projects shall be credited to a separate fund, to be established in the Treasury of the United States, and shall be available to Western Area Power Administration, without further appropriation, for payment of energy costs, contract administration costs, and the design, construction, operation, maintenance and replacement, and administrative costs of all required transmission facilities and power marketing activities directly associated with Navy Geothermal projects.

Emergency Fund, Western Area Power Administration

For the "Emergency Fund", as authorized by the Act of June 16, 1948 (43 U.S.C. 502), to remain available until expended for the purposes specified in that Act, $500,000, on a continuing basis to be recovered from the Reclamation Fund against receipts for the transmission and sale of electric power and energy which are deposited into the Treasury through Western Area Power Administration which shall be available for transfer to the Western Emergency Fund: *Provided,* That expenditures from the Western Emergency Fund shall be replenished from project power revenues for which funds were expended on an emergency basis.

Federal Energy Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (Public Law 95-91), including services as authorized by 5 U.S.C. 3109, including the hire of passenger motor vehicles; official reception and representation expenses (not to exceed $1,500); $95,677,000, of which $4,000,000 shall remain available until expended and be available only for contractual activities: *Provided,* That notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), revenues from licensing fees, inspection services, and other services and collections estimated at $60,000,000 in fiscal year 1985 may be retained and used for necessary expenses in this account, and may remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced as revenues are received during fiscal year 1985, so as to result in a final fiscal year 1985 appropriation estimated at not more than $35,677,000.

Geothermal Resources Development Fund

For carrying out the Loan Guarantee and Interest Assistance Program as authorized by the Geothermal Energy Research, Development and Demonstration Act of 1974, as amended, $121,000, to remain available until expended: *Provided,* That the indebtedness guaranteed or committed to be guaranteed through funds provided by this or any other appropriation Act shall not exceed the aggregate of $500,000,000.

General Provisions, Department of Energy

Sec. 301. Appropriations for the Department of Energy under this title for the current fiscal year shall be available for hire of passenger motor vehicles; hire, maintenance and operation of aircraft; purchase, repair and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services. From these appropriations, transfers of sums may be made to other agencies of the United States Government for the performance of work for which this appropriation is made. None of the funds made available to the Department of Energy under this Act shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriation Act. The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private, or foreign.

(TRANSFERS OF UNEXPENDED BALANCES)

Sec. 302. Not to exceed 5 per centum of any appropriations made available for the current fiscal year for Department of Energy activities funded in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations of the House and Senate.

(TRANSFERS OF UNEXPENDED BALANCES)

Sec. 303. The unexpended balances of prior appropriations provided for activities covered in this Act may be transferred to appropriation accounts for such activities established pursuant to this title. Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

Sec. 304. The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Sec. 305. None of the funds in the Department of Energy shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in the Department of Energy.

TITLE IV—INDEPENDENT AGENCIES

Appalachian Regional Commission

SALARIES AND EXPENSES

For necessary expenses of the Federal Cochairman and the alternate on the Appalachian Regional Commission and for payment of the Federal share of the administrative expenses of the Commission, including services as authorized by section 3109 of title 5, United States Code, and hire of passenger motor vehicles, [$2,700,000] *$1,700,000.*

Funds Appropriated to the President

Appalachian Regional Development Programs

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, except expenses authorized by section 105 of said Act, including services as authorized by section 3109 of title 5, United States Code, and hire of passenger motor vehicles, to remain available until expended, [$157,300,000] *$118,000,000* of which [$100,000,000] *$80,000,000* shall be available for the Appalachian Development Highway System.

Delaware River Basin Commission

SALARIES AND EXPENSES

For expenses necessary to carry out the functions of the United States member of the Delaware River Basin Commission, as authorized by law (75 Stat. 716), $172,000.

CONTRIBUTION TO DELAWARE RIVER BASIN COMMISSION

For payment of the United States' share of the current expenses of the Delaware River Basin Commission, as authorized by law (75 Stat. 706, 707), $283,000.

Interstate Commission on the Potomac River Basin

CONTRIBUTION TO INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

To enable the Secretary of the Treasury to pay in advance to the Interstate Commission on the Potomac River Basin the Federal contribution toward the expenses of the Commission during the current fiscal year in the administration of its business in the conservancy district established pursuant to the Act of July 11, 1940 (54 Stat. 748), as amended by the Act of September 25, 1970 (Public Law 91-407), $70,000.

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by 5 U.S.C. 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $3,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, [$438,200,000] *$458,200,000,* to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3302 of title 31, United States Code, and shall remain available until expended.

Susquehanna River Basin Commission

SALARIES AND EXPENSES

For expenses necessary to carry out the functions of the United States member of the Susquehanna River Basin Commission, as authorized by law (84 Stat. 1541), $167,000.

CONTRIBUTION TO SUSQUEHANNA RIVER BASIN COMMISSION

For payment of the United States share of the current expense of the Susquehanna

River Basin Commission, as authorized by law (84 Stat. 1530, 1531), $230,000.

Tennessee Valley Authority

TENNESSEE VALLEY AUTHORITY FUND

For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C., ch. 12A), including purchase, hire, maintenance, and operation of aircraft, and purchase and hire of passenger motor vehicles, and for entering into contracts and making payments under section 11 of the National Trails System Act, as amended, [$126,308,000] *$129,547,000*, to remain available until expended, *of which $14,239,000 shall be derived from prior year unobligated balances in the Tennessee Valley Authority Fund: Provided*, That this appropriation and other monies available to the Tennessee Valley Authority may be used for payment of the allowances authorized by 5 U.S.C. 5948.

TITLE V—GENERAL PROVISIONS

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.

Sec. 503. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Sec. 504. None of the funds in this Act shall be used to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

Sec. 505. None of the funds appropriated in this Act shall be used to implement a program of retention contracts for senior employees of the Tennessee Valley Authority.

Sec. 506. Notwithstanding any other provision of this Act or any other provision of law, none of the funds made available under this Act or any other law shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required "at cost" to a "market rate" or any other non-cost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted.

Mr. BAKER. Mr. President, the chairman of the Appropriations Committee is here, and I will yield the place to him so that he may manage the bill, but before I do so, however, may I say that we have been shopping for a time agreement which we are not yet able to clear, but I urge the managers on both sides just to plow ahead. I think we can finish this bill in fairly short time, and after this bill it is the hope of the leadership that we can go to two other appropriations bills yet today. That would be the HUD appropriations bill and the legislative appropriations bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. Mr. President, will the Chair inform the Senate precisely the parliamentary situation.

The PRESIDING OFFICER. The clerk has reported H.R. 5653, a bill making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes.

Mr. HATFIELD. All right.

So the Chair then has laid before the Senate H.R. 5653.

Let me make a further inquiry of the Chair.

I believe we will have to move to comply with section 904 of the Budget Act, to waive section 303 of that act with respect to the pending measure as reported by the committee, and any amendments thereto. Is that not correct?

The PRESIDING OFFICER. No point of order has been made at this stage.

Mr. HATFIELD. Mr. President, I move that in accordance with section 904 of the Budget Act to waive section 303 of that act with respect to the pending measure H.R. 5653, as reported by the committee on appropriations and any amendments thereto, and I make this motion because as the Chair knows, we do not have a budget resolution at this time, and in order to make this appropriations measure now pending that is being brought before the Senate, I make this motion.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon.

The motion was agreed to.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill as thus amended by regarded for the purpose of amendment as original text, provided that no point of order shall have been considered to have been waived by agreeing to this request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I am pleased to bring before the Senate today, H.R. 5653, the annual energy and water development appropriation bill for the fiscal year ending on September 30, 1985.

As the Senate knows, this is the first of the fiscal year 1985 appropriations bills, and we hope to act upon a number of these bills before the recess in July. We have four such bills now pending on the calendar, and that is as a result of a lot of energy and hard work that has gone into these bills by the Committee on Appropriations.

The bill as recommended by the committee provides $15,371,133,000 in new budget authority for energy and water development through the activities of the Department of Energy, Corps of Engineers, Bureau of Reclamation, and several independent agencies.

The amount of the reported bill is $503 million lower than the President's budget estimate, and I wish to emphasize this point, this bill is a half billion dollars lower than the President's budget estimate, and approximately $100 million below the House-passed version.

The amount of the reported bill is $503 million lower than the President's budget estimate, and approximately $100 million below the House-passed version. This proposal is within the preliminary budget allocation, and, I believe, it represents a responsible appropriations measure,

Before proceeding further, Mr. President, I want to commend all the members of the subcommittee and full committee, but particularly the Senator from Louisiana, Senator Johnston, the ranking minority member. As the former chairman of the Energy and Water Subcommittee and in his leadership role on the Senate Energy Committee, Senator Johnston has developed a mastery of these programs which is unparalleled in the Senate.

In fact, I lean on him very heavily to be the expert on the committee on many of these programs on which he has far greater expertise than I have or any other member of the committee.

I extend my appreciation to him for his counsel and assistance in developing this legislation. As in previous years, Mr. President, this has been a nonpartisan and harmonious working relationship which has produced a balanced proposal that should gain overwhelming support in the Senate.

The committee recommendation is the result of long hours of testimony from agency officials and private citizens during 17 sessions of hearings and two markup sessions.

No other committee or subcommittee has more public participation. In fiscal year 1984, we heard from numerous State and local government officials, conservation organizations, professional groups, industry representatives, and hundreds of citizens from throughout the United States.

Among Members of Congress, this subcommittee also ranks high in interest. We have received hundreds of individual requests from Senators and Congressmen.

While we cannot support all these items within the limited funds available, I believe that priority requests have been adequately addressed as well as all the urgent national priorities of energy and water development.

Mr. President, the recommendation before us today provides $3.8 billion for Federal water resource development programs. This includes projects and related activities of the U.S. Army Corps of Engineers, the Bureau of Reclamation, and the Tennessee Valley Authority. This water development program provides capital investment funding—capital investments with lasting benefits to the Nation in the areas of flood control, municipal and industrial water supply, irrigation, water conservation, commercial navigation, hydroelectric power, recreation, and fish and wildlife enhancement.

Despite the impressive benefits of these projects, the process through which these capital investments are authorized and made eligible for funding has been delayed to the point of creating a slow death to the water resource development program. For example, the last major construction bill for the Corps of Engineers was enacted in 1970. This type of delay in the authorization process has now and will continue to have serious impacts in the 1980's. The Appropriations Committee is under increasing pressure to fill this void created by the lack of authorizing legislation and to provide project authorizations for some of these critical projects. The committee wants to underline the importance of timely authorizations for this priority, capital investment projects that contribute to the strength and vitality of this Nation.

In the energy area, the committee recommends approximately $10.8 billion for the Department of Energy. While most of the activities of the Department have been maintained at level funding, there is an overall increase of fiscal year 1984 levels due to the amount provided for atomic energy defense activities. In the energy defense area, there is an increase of $763 million above the 1984 level for a total of $7.3 billion. This amount represents a reduction of $480 million in energy defense below the original budget request and is fully consistent with earlier Senate action on the deficit reduction package.

As most of my colleagues know, I personally do not support any increase for these atomic weapons programs. That personal view, however, is not shared by the majority of my colleagues in the committee.

In any event, the production of nuclear bombs and warheads has been under civilian control since development of the atomic bomb during the Truman administration. Currently, the Department of Energy has the responsibility for the testing, development, and production of nuclear bombs and warheads, for the production of nuclear weapons materials, including plutonium, and for the management of defense nuclear waste. The DOE coordinates these defense functions closely with the Department of Defense through a special military liaison committee comprised of DOD and DOE personnel.

Under the Reagan administration, funding for the energy defense activities at DOE has doubled since fiscal year 1981, and the funding for production of nuclear warheads and nuclear bombs more than doubled from fiscal year 1981 to fiscal year 1983. These increases go far beyond our efforts to modernize, safeguard, and maintain the current nuclear weapons stockpile.

In my view these increases are excessive, but the increases would be even larger without the reductions and savings which have been imposed over the last 4 years. Each year, the Appropriations Committee has reduced the amount requested by the administration for these nuclear weapons activities. Each year, we have trimmed the excessive appetites of the nuclear weapons planners and developers. We have accomplished these minimal cuts despite the reluctance of some members of the authorizing committee. Nevertheless, the Appropriations Committee has worked closely again this year with the authorizing committee and in order to develop the recommendation has used all the documents which were available from the authorization process.

It must be apparent, Mr. President, that I believe our priorities in the energy area are misplaced. The weapons program now consumes over 70 percent of the amount provided in the bill for energy activities. This is over three times the total amount of funding provided for all energy technologies in the energy supply, research and development account. I submit that energy security and independence are every bit as important to our national strength and security as is our nuclear arsenal and nuclear stockpile. It is not an either/or proposition, of course, but we must move away from our tendency to think of our national security only in terms of hardware and sophisticated weaponry. In view of these concerns, I would support further reductions in the energy defense area.

In conclusion, Mr. President, it is with ambivalence that I present this bill today, but I believe, that based on the temperament of the Senate, this is a reasonable bill. It is a lean bill in all areas other than energy defense. With that personal reservation, we urge expeditious action by the Senate.

Mr. President, I yield the floor to the ranking minority member of the committee, the Senator from Louisiana [Mr. JOHNSTON].

Mr. JOHNSTON. Mr. President, first of all, let me thank my distinguished colleague, the Senator from Oregon, for his overly generous remarks about me. They are inaccurate at best and downright wrong probably in truth, but I very much appreciate them.

Second, let me thank him for his leadership, his expertise, and his hard work on putting this bill together.

He and his excellent staff have really done a monumental job in bringing to the Senate this work product.

Each year that the Senator from Oregon has been the chairman of this subcommittee, the work process has gone very smoothly. There has never been the slightest taint of partisanship. It has been of the highest professional nature, and I am proud to be associated with this committee and with his leadership, and I commend him for it.

Mr. President, I am pleased to join the distinguished Senator from Oregon, the chairman of our Subcommittee on Energy and Water Development, in presenting for the Senate's consideration H.R. 5653, the energy and water development appropriation bill for fiscal year 1985.

The total amount of the bill in the new budget obligational authority, as recommended by the committee, is $15,371,133,000. This is almost $100 million less than the House-passed bill and is almost $504 million under the President's budget estimates considered by the committee. The bill amounts are within the amounts allocated to us, based on the earlier Senate action in passing the deficit reduction plan.

The purpose of this bill is to provide appropriations for fiscal year 1985 for energy and water development and for other related purposes. The bill supplies funds for water resources development programs, and related activities of the Department of the Army, U.S. Army Corps of Engineers' Civil Works Program, in title I; for the Department of the Interior's Bureau of Reclamation in title II; for the Department of Energy in title III; and for related independent agencies and commissions, including the Appalachian Regional Commission and regional development programs, the Nuclear Regulatory Commission, and the Tennessee Valley Authority in title IV.

The chairman has already given an explanation of the committee's recommendations and I shall not undertake to elaborate on all the details of the bill. The report accompanying the bill carries a full explanation and presents detailed information regarding our recommendations. I urge Members to take a look at the report, especially the bill highlights as shown in the first few pages. I will, of course, be happy to answer any questions and will only highlight a few of the committee's actions in summary form at this time.

For the Army Corps of Engineers in title I, we are recommending $2,763,426,000. This amount is $110 million less than the House-passed bill and includes $125.6 million for general investigations; $871.8 million for construction, general; $310 million for flood control, Mississippi River and tributaries; $1,317,000,000 for operation and maintenance, general; and $108 million for general expenses. The tables and charts in the report show the committee allocations to individual studies, projects, and activities on a State by State basis.

For title II, Bureau of Reclamation, the recommendation provides a total of $1,058,000,000, of which $31 million is for general investigations, $752 million is for the construction program, $150 million is for operation and maintenance, $72 million is for the loan program, and $59 million is for general administrative expenses. The total amount is approximately $19 million under the President's budget request.

In title III, Department of Energy, total new budget obligational authority of $10,855,581,000 is contained in the bill. This is about $562 million less than the amount requested by the President in his budget transmitted to the Congress in January. Of this amount, $7.3 million is recommended to carry out the Department's atomic energy defense activities. Defense energy programs and activities in the Nuclear Weapons Program include $620 million for testing, $1,045,000,000 for research and development, $4.2 billion for weapons production and surveillance and related activities, $1.7 billion for nuclear materiels production, and $753 million for defense waste management.

For energy supply, research and development, the bill recommended by the committee provides a total of $1,986,000,000, including $470 million for magnetic fusion, $183 million for solar energy, $31 million for geothermal energy, $412 million for basic energy sciences, $88.5 million for nuclear converter reactors, $311 million for breeder reactor systems, and $167 million for remedial action programs under the nuclear budget. An amount of almost $727 million is provided for general science and research activities, principally high energy physics which is $548 million, and nuclear physics which is $181 million.

The committee has included an amount of $119.7 million in the bill for the Appalachian regional development programs; $458 million is provided for the Nuclear Regulatory Commission; $115.3 million is for the Tennessee Valley Authority.

Mr. President, the bill as reported to the Senate is approximately $875 million more than the comparable fiscal year 1984 appropriations. Most of this increase over last year's amount is due to the atomic energy defense activities appropriation which is $763 million more than the 1984 appropriation. This is a good bill in light of the budgetary circumstances and fully reflects the necessary budgetary restraint required if we are to make any headway in reducing the huge deficits confronting us. If all of the appropriations bills which will be coming before the Senate show the same restraint as we have shown here, we will clearly be on the right track. I urge the Senate's favorable consideration and expeditious handling of this appropriation bill.

Mr. President, let me just say finally that I think the commitee has done an excellent job with a very few amounts of dollars. Two things have hindered us to do the full job we would have liked to have done this year, and the first is the recurring problem of the insufficiency of funding and second is the inability to have new projects authorized.

There are any number of projects that we would have liked to have funded, but they have not been authorized because of that again perennial problem of not having an authorization bill.

I hope this is the year that we will get an authorization bill, but there are any number of projects we would have liked to have funded, both to begin construction, in some cases; to have investigations in other cases. But there is no authorization in most cases for that, and I hope my colleagues understand the difficulty that we have been operating under.

So with that, Mr. President, and with thanks to the distinguished chairman, I yield the floor.

AMENDMENT NO. 3292

Mr. JOHNSTON. Mr. President, I send a technical amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 3292.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 26, line 8 starting with "Top-" strike all thru the second "Passage" on line 10 and insert: "and Toppenish Creek/Satus Unit Diversion".

Mr. JOHNSTON. Mr. President, during the committee markup an amendment was adopted which struck three facilities related to the Bonneville Power Administration. The amendment did not get into the bill. Therefore, this technical amendment is necessary so that the bill clearly reflects action taken by the committee. It is a purely technical amendment.

The PRESIDING OFFICER. Is there further discussion of the amendment? If not, the question is on agreeing to the amendment of the Senator from Louisiana [Mr. JOHNSTON].

The amendment (No. 3292) was agreed to.

AMENDMENT NO. 3293

(Purpose: To make the annual salary rates for the Chairman and Members of the Federal Energy Regulatory Commission comparable to those for the Nuclear Regulatory Commission)

Mr. JOHNSTON. Mr. President, I have another small amendment here relating to pay levels for the Federal Energy Regulatory Commission.

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 3293.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, between lines 10 and 11, insert the following:

"Sec. 306. The Department of Energy Organization Act (42 U.S.C. 7101) is amended in section 204 (42 U.S.C 7134) by striking the words 'level III of the Executive Schedule under section 5314' and inserting 'level II of the Executive Schedule under section 5313' and by striking the words 'level IV of the Executive Schedule under section 5315' and inserting 'level III of the Executive Schedule under section 5314'.".

Mr. JOHNSTON. Mr. President, the amendment I am offering today is a simple one. It would make the pay rates for the chairman and members of the Federal Energy Regulatory Commission comparable for those of the Chairman and members of the Nuclear Regulatory Commission.

The FERC Chairman is now paid according to Executive Level III. My amendment would change that position to Executive Level II. The other Commissioners are now at Executive Level IV; my amendment would make them Executive Level III.

Mr. President, the Congress will again be faced with the issue of what pay levels are appropriate for officials in the judicial, executive, and legislative branches of our Government next year. The existing law requires the Commission on executive, legislative, and judicial salaries to review rates of pay for senior officials in all three branches of Government. The Commission's recommendations are reviewed by the President, who submits his own recommendations with his budget. The Commission has repeatedly recommended higher rates of pay than have been included in the President's budget. Those recommendations have not fared too well, either with the President or with the Congress.

In addition to the issue of how high Federal pay levels should be, there is the issue of comparability among the branches of Government. I know of no rational basis for paying a Federal district court judge more than a commissioner on an independent regulatory commission. But we do. I also know of no rational basis for paying the Chief Justice of the United States more than the Speaker of the House of Representatives or the President pro tempore of the Senate. But we do.

I call this issue to the attention of my colleagues because I believe there is an inherent inequity in the present system. I, for one, intend to review the Commission's recommendations on this issue when they become available this fall and to review what the President proposes to do with those recommendations when he submits his budget in January. The system has gotten out of whack and I think it is about time for us to change it.

Mr. President, this amendment simply brings the salary level of the chairman of the Federal Energy Regulatory Commission from level III to level II and the other Commissioners from level IV to level III. The level II is the same level at which the Nuclear Regulatory Commission Chairman is paid. It is still substantially below that of Federal district judges. Frankly, I think we should, at a future time, bring the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission up to at least the level of district judges. When you consider that billions of dollars of work, the huge responsibility, the tremendous staffs that both of these Commission say grace over, I think to have them paid at a lower level than Federal district judges is really inconsistent with the kind and nature of their duties.

At least this amendment will bring the FERC up to the level of the NRC, which is executive level II.

Mr. President, I ask for its favorable consideration.

Mr. HATFIELD. Mr. President, there is no objection on this side to the amendment. The Senator from Louisiana is the authorizing committee member that would handle this. So I assume, as the author of the amendment, he has cleared it with himself as a member of the authorizing committee. There is no objection.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Louisiana [Mr. JOHNSTON].

The amendment (No. 3293) was agreed to.

AMENDMENT NO. 3294

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] proposes an amendment numbered 3294.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, after line 10, insert the following new section:

"SEC. 306. For carrying out activities authorized by title II of Public Law 93-410 the Department of Energy is authorized to transfer no more than $25,000,000 to the Geothermal Resources Development Fund from unobligated balances within the Uranium Supply and Enrichment Activities account: *Provided*, That such transfer shall be reported promptly to the Committees on Appropriations of the House and Senate. The amount authorized to be transferred by this provision is in addition to the authority provided in section 302 of this Act."

Mr. HATFIELD. Mr. President, this amendment is designed to respond to a problem with the Geothermal Resources Loan Guarantee Program.

The Department of Energy has requested additional transfer authority to meet obligations associated with protential loan defaults.

This amendment would authorize the transfer of up to $25 million to the Geothermal Resources Development Fund account from unobligated balances in the uranium supply and enrichment account.

This amendment would not increase the budget, it is transfer authority only.

It has been cleared on both sides and I move adoption of the amendment.

Mr. JOHNSTON. Mr. President, we approve of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Oregon [Mr. HATFIELD].

The amendment (No. 3294) was agreed to.

AMENDMENT NO. 3291

(Purpose: To establish a commission to develop modifications to the Garrison Diversion Unit of the Pick-Sloan Missouri Basin program as presently authorized)

Mr. ANDREWS. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Dakota [Mr. ANDREWS], for himself and Mr. BURDICK, proposes an amendment numbered 3291.

Mr. ANDREWS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place in the bill insert the following:

SEC. . (a) It is the sense of Congress that—

(1) The Garrison Diversion Unit was authorized by Congress and reflects the entitlement of the State of North Dakota to a federally funded water development program as compensation for North Dakota's contributions to the Pick-Sloan Missouri Basin program;

(2) there is a need to put to beneficial use water from the Missouri River with the State of North Dakota;

(3) there are municipal and industrial water resource problems in North Dakota that are presently unmet;

(4) there are irrigation and agricultural water needs in areas which can not be met by the Garrison Diversion Unit as presently authorized;

(5) the Garrison Diversion Unit, as presently authorized, raised significant issues of economic, environmental, and international concern;

(6) the water of the State of North Dakota should be resolved by contemporary water development alternatives; and

(7) a Secretarial commission should be established to examine the water needs of North Dakota and propose development alternatives which will lead to the early resolution of the problems identified.

(b) No funds appropriated under this title for the Garrison Diversion Unit, Pick-Sloan Missouri Basin program, shall be expended or committed for expenditure on constuction contracts prior to December 31, 1984. Notwithstanding the preceding sentence, funds appropriated may be expended or committed for expenditure for the work associated with the Commission established by this section. Funds may be expended or committed for expendtiture after such date for construction of the Garrison Diversion Unit—

(1) in accordance with the recommendations of the Secretarial commission established under subsection (c); or

(2) if the commission fails to make such recommendations, as presently authorized.

(c)(1) The Secretary of the Interior, within thirty days after the date of enactment of this section, appoint a commission, composed of 12 individuals, to review the contemporary water development needs of the State of North Dakota and propose modifications to the Garrison Diversion Unit consistent with the existing authorization. The Secretary shall designate one member who shall serve as chairman of the commission who shall set the dates of hearings, meetings, and other official commission functions in carrying out the purpose of this section. The Commission, in developing its recommendations, shall hold no fewer than three public hearings, at least two of which shall be in the State of North Dakota. Any recommendations of the commission shall be agreed to by at least 8 members. The commission shall cease to exist on December 31, 1984.

(2) The commission is directed to examine, review, evaluate, and make recommendations with regard to the contemporary water development needs of the State of North Dakota, taking into consideration—

(A) the costs and benefits incurred and opportunities foregone by the State of North Dakota between 1944 and 1984 as a result of the establishment and implementation of the Pick-Sloan Missouri Basin program;

(B) the need and potential for North Dakota to put to beneficial use within the State water from the Missouri River;

(C) the need for construction of additional facilities to put to beneficial use water from the Missouri River;

(D) the municipal and industrial water needs and development potential within the State of North Dakota, including such matters as—

(i) quality of water supply,

(ii) the ability of existing systems to meet present and future demand,

(iii) related groundwater problems,

(iv) water treatment,

(v) water delivery by pipeline, and

(vi) instream flow needs;

(E) the possible use of groundwater recharge for municipal and industrial uses, as well as irrigation;

(F) the current North Dakota water plan, including proposed projects, to determine if elements of the plan (such as the southwest pipeline project) should be recommended for Federal funding;

(G) whether or not the Garrison Diversion Unit can be redesigned and reformulated;

(H) the institutional and tax equity issues in the State of North Dakota as they relate to the authorized project and alternative water development proposals;

(I) the fiscal and economic impacts of the Garrison Diversion Unit, as compared with alternative proposals for irrigation and municipal industrial water supply;

(J) the environmental impacts of the water development alternatives mentioned in this section, compared with those of the Garrison Diversion Unit, including impacts on wildlife refuges, wetlands, wildlife habitat, waterfowl, and other environmental impacts as well as make recommendations to reduce and minimize those impacts; and

(K) the international impacts of the water development alternatives described in this section compared with those of the Garrison Diversion Unit and make recommendations to reduce and minimize those impacts.

All recommendations of the commission shall retain the originally authorized discount rate.

(3) The commission shall submit to the Secretary of the Interior, the chairmen of the Senate Committees on Energy and Natural Resources and Appropriations, and the House Committees on Interior and Insular Affairs and Appropriations, no later than December 31, 1984, a report which contains the conclusions and recommendations of the commission with regard to the items described in paragraph (2).

(d) The Secretary of the Interior is authorized and directed to implement the recommendations of the commission report consistent with existing authority.

(e) Nothing in this section shall affect any litigation initiated prior to June 1, 1984.

Mr. ANDREWS. Mr. President, I rise to offer a truly noteworthy amendment to the energy and water development appropriations bill. This amendment, which relates to the funding of the Garrison diversion unit in North Dakota, was forged in the fires of arduous and intense negotiations between parties which have long found themselves unable to come to terms over even the most fundamental questions concerning this now famous water project. I believe that the amendment I am offering here today will do much to ensure that this Nation will honor a decades-old commitment to the people of North Dakota.

Before proceeding to a more detailed discussion of the amendment itself, I feel that it is appropriate to pause for a moment to review briefly the grand ambitions and troubled history of the Garrison diversion project.

In December 1944, President Franklin Delano Roosevelt signed into law the Flood Control Act which Congress had passed earlier that year. That act created the framework for a regional flood control and water resource development program which encompassed the 10 States within the Missouri River Basin.

This comprehensive program, known as the Pick-Sloan Missouri Basin plan, directed the Bureau of Reclamation and the Army Corps of Engineers to cooperate in the construction of a series of mainstem dams for the purposes of flood control and power generation along with subsequent irrigation and related water resource projects.

As part of this vast undertaking, the Garrison Dam was built in west-central North Dakota. The waters impounded behind this dam flooded an area comprising over one-half million acres, forcing the evacuation and relocation of entire communities, and inundating some of the States finest farmland.

To compensate for this permanent loss necessitated by the flood control requirements of downstream States, North Dakotans were originally promised the opportunity to reap the benefits of a million acre irrigation program in addition to much-needed municipal water supply systems and recreation projects.

To the citizens of North Dakota, authorization of the Garrison diversion project in 1965 marked the U.S. Congress' first step in fulfilling the promise it had initially made two decades earlier.

Sadly, the road to completion of this fine water project has not been unobstructed. Since the early 1970's Garrison has struggled under the heavy burden of public controversy. The issues in dispute have been varied, ranging from questions involving the rights of landowners to the environmental impact of the project and the legal constraints of an international treaty

In recent years, these steady attacks have eroded the once-overwhelming support that the Garrison diversion project had formerly enjoyed in both Houses of Congress. In fact, with the continual inaction of the House of Representatives in this matter, the responsibility for honoring our Nation's pledge to the people of North Dakota has now fallen almost entirely on the Members of this Chamber.

Throughout this difficult period, one undeniable fact has withstood the ravages of the opposition: The citizens of North Dakota need, want, and deserve a sound water resource project. Such a water resource project was promised; such a water resource project was authorized; and such a water resource project must be built, because it is in the best interest of our State's and Nation's environment, as well as its economy.

In the past, opponents of Garrison diversion have often taken the position that North Dakotans were not entitled to a water project, and that, even if they were, discussions involving what form such a project might take could not be conducted while construction of the congressionally authorized Garrison diversion unit continued.

In essence, supporters of Garrison were told, "Stop everything, then we will negotiate whether you will receive something we really don't think you deserve." Such conditions were emphatically, consistently, and quite justifiably rejected by our States' elected representatives, regardless of political affiliation.

Given this history of unreasonable and irresponsible negotiating demands by Garrison opponents, I was understandably very pleasantly surprised by the contents of a letter from the National Audubon Society which I received June 1.

Mr. President, I ask unanimous consent that the letter I received from the National Audubon Society be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ANDREWS. Mr. President, in that letter, Mr. Donald O'Brien, chairman of the board of directors, and Russell Peterson, the society's president, stated that "we now recognize and accept the position of North Dakota that it is entitled to compensation for the acreage inundated by the creation of the Garrison Dam and the formation of Lake Sakakawea. Further, we recognize and accept that North Dakota, by its participation in and support of the Pick-Sloan plan, has waited almost 40 years for project benefits."

The letter proceeded to explicitly relate the National Audubon Society's offer to enter into legitimate negotiations designed to fashion proposals which will ensure that North Dakota will receive that to which I feel it is entitled—a sound, responsible water resource development program.

This historic document concluded with an appeal to project supporters to seize the opportunity to address effectively the areas of disagreement that now cloud Garrison diversion's prospects for the future.

My distinguished colleague and good friend, the senior Senator from North Dakota, Senator BURDICK, and I, following intense and difficult negotiations, have agreed to join with the National Audubon Society in supporting the amendment which we offer here today. We firmly believe that this amendment represents the best opportunity to guarantee the completion of a water project designed to meet the water resource needs, and economic and environmental concerns, of our State as we prepared to enter the 21st century.

Joining in this agreement is the Governor of North Dakota Allen Olson, who was present during the final negotiations.

In a nutshell, this is what our amendment does: It reaffirms the commitment of the U.S. Congress to fulfilling its longstanding pledge to compensate North Dakota for the losses it incurred as a result of the Pick-Sloan Missouri River Basin Program; it calls for the establishment of a 12-member Commission appointed by the Secretary of the Interior to examine the water resources needs of the State of North Dakota and to propose development alternatives which will lead to the early resolution of the problems identified;

It requires that no funds appropriated in the fiscal year 1985 energy and water development appropriations bill will be released prior to December 31 of this year, by which time the Secretarial Commission shall have reported its recommendations to the Secretary of the Interior and to Congress; and it further directs the Secretary of the Interior to implement those recommendations of the Commission which are consistent with the existing authorizing legislation.

At this point I might note that I am well aware that our good friends in Canada have concerns with the authorized project which have been expressed to the United States on a number of occasions. Canada's concerns are based upon the 1977 findings and conclusions of the International Joint Commission regarding the potential for biota transfer stemming from the interbasin transfer of water.

However, Canada has also explicitly recognized the need for water in North Dakota and has stated in its meetings with U.S. officials that it has no objection to the development of a Garrison water project that meets North Dakota's needs, as long as Canada's concerns regarding water quality are met.

I wish to assure my good friends in Canada that this secretarial Commission will be seeking alternatives that will be consistent with the findings and conclusions of the International Joint Commission and consistent with the Boundary Waters Treaty between the United States and Canada.

Mr. President, I firmly and sincerely believe that this amendment fairly, honestly, and effectively addresses the legitimate concerns of those who have previously harbored misgivings concerning the Garrison diversion project.

Mr. President, let me point out in an aside that people have had their feet frozen in concrete for far too long over this project. When it was first authorized 20 years ago, it was hailed across the Nation as one of the soundest environmental projects in western water resources history. The project itself has not changed, Mr. President. And, with some modifications, all that can be accomplished under the original authorization and retaining the original discount rate we can achieve that kind of project that will satisfy the needs of North Dakota for our environmental future as well as the concerns of the nationally recognized environmental experts.

I would emphasize that this amendment is the product of diligent and determined good-faith negotiations between Senator BURDICK and myself, the Governor of the State, the conservancy district with representatives of the National Audubon Society, an organization which has long opposed the Garrison diversion project but which now fully supports our efforts as embodied in this amendment. It is also supported by the board of directors of the Garrison Diversion Conservancy District.

I ask unanimous consent that their telegram of support be printed at this point in the RECORD, Mr. President.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

CARRINGTON, ND, *June 18, 1984.*

Senator MARK ANDREWS,
Senate Hart Building,
Washington, DC.

DEAR SENATOR ANDREWS: The Executive Committee of the Garrison Diversion Conservancy District agrees with your judgement to amend the Garrison Diversion Unit appropriation bill and will cooperate with the appointed Commission.

CHARLES RICHTER,
Chairman, Garrison Diversion
Conservancy District.

Mr. ANDREWS. Mr. President, also I ask unanimous consent that at this point in the RECORD there be printed the letter of support addressed to our colleagues from William A. Butler, vice president for government affairs and counsel of the National Audubon Society.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL AUDUBON SOCIETY,
NATIONAL CAPITAL OFFICE,
Washington, DC, June 6, 1984.

DEAR SENATOR: The FY 85 Energy and Water Appropriations bill will be on the floor of the Senate in the very near future. At that time, Senator Andrews and Senator Burdick of North Dakota will offer a compromise amendment on funding for the Garrison Diversion Unit. The National Audubon Society urges you to support the compromise Andrews-Burdick amendment.

The amendment would establish a Secretarial Commission to conduct a review of alternatives to the Garrison Diversion Unit and to make recommendations regarding current water development needs of the State of North Dakota.

For nearly two decades, the Garrison Project has been a center of controversy in North Dakota, Congress, and the nation. The Commission would be created in an attempt to resolve the outstanding issues, and to devise Garrison modifications and alternatives that will avoid and eliminate the current controversies while at the same time more effectively meeting the current and future water development needs of the State.

Much effort has gone into negotiating this compromise. We ask you to support it.

Sincerely,

WILLIAM A. BUTLER.

EXHIBIT 1

NATIONAL AUDUBON SOCIETY,
Washington, DC, June 1, 1984.

Hon. MARK ANDREWS,
Hon. QUENTIN BURDICK,
U.S. Senate,
Hon. BYRON DORGAN,
House of Representatives, Washington, DC.
Hon. ALLEN I. OLSON,
Governor, State Capitol, Bismarck, ND.

DEAR NORTH DAKOTA LEADERS: This letter is intended to set forth the current views of the National Audubon Society regarding the Garrison Diversion Unit, a project of longstanding controversy in your state, and to advise you of a major change in our position.

For many years now, a difficult battle has been waged over this project. The manner in which the Bureau of Reclamation treated the landowners along the McCluskey Canal began the fight. The Bureau's failure to tell the people of North Dakota and Canada what the project would do, and how and where it would be done, consumed another period. Our concerns, and those of the environmental, hunting, and fishing communities generally, have been primarily centered on the tremendous disruption and destruction imposed by the project on National Wildlife Refuges, prairie potholes and wetlands, and the resulting impact on wildlife, most especially waterfowl.

We believe that this fight has gone on too long. It is time for reconciliation and resolution. It is time to redirect the project. It is time for compromise. It is time for courageous political leadership.

The National Audubon Socity has opposed the authorized project in the past and will continue to oppose it in the future for very basic reasons: it is a bad project. It's a destructive project. It's impact on the land and the resource is too great. It should not, as presently designed, be built.

Worst of all, our analysis of the project leads us to conclude that, if built, at an incredible cost in dollars and resources, the project will not meet the contemporary water and development needs of North

Dakota. This view is not just ours. It is also shared by many people who know Garrison.

Beginning last year, the Board of Directors of the National Audubon Society undertook a comprehensive review of this project and our position on it.

The conclusion of that review led the National Audubon Society to take a new position on the Garrison Diversion Unit. In the past, we have opposed the project and challenged its very premise. We now recognize and accept the position of North Dakota that it is entitled to compensation for the acreage inundated by the creation of the Garrison dam and the formation of Lake Sakakawea as well as that of Lake Oahe. Further, we recognize and accept that North Dakota, by its participation in and support of the Pick-Sloan plan, has waited almost 40 years for project benefits.

However, at the risk of being guilty of understatement, those benefits will not arrive in the immediate future, and with a protracted confrontation, they may never arrive.

Our new position was not reached easily and represents major concessions on our part. But, these concessions do not diminish our opposition for the authorized project, and particularly that portion of it known as "Phase 1."

It is our view that Phase 1 does not legally exist. Congress has never authorized it. Its problems are many. Phase 1, as a "stand alone" project, is not economical. It involves the construction of all the reservoirs and pumping plants of the entire project and 67 percent of the 258 miles of planned canals, all built to a size and capacity to service the 250,000 acre project. Two major features of Phase 1, the Lonetree and Taayer Reservoirs, are storage units designed to service irrigation within the Hudson Bay drainage, water transfer fervently opposed by the Canadians. Neither reservoir is necessary if Phase 1 is all that is ever built.

Phase 1 will cost over $700 million to build yet will irrigate less than one-third of the acreage of the full project. The Interior Department and the Congress will have a difficult choice in the future when Phase 1 is scheduled for completion: either the original project will have to be built to make better use of such features as the Lonetree and Taayer Reservoirs and to justify the expense of $700 million, Canadian concerns notwithstanding, or Phase 1 will be allowed to stand on its own, a monument to poor planning.

Further, Phase 1 will by itself cause substantial environmental damage. The Sheyenne National Wildlife Refuge, Kraft Slough, and other areas deemed unique for wildlife by the U.S. Fish and Wildlife Service will either be destroyed or seriously harmed by Phase 1, especially by Lonetree and Taayer Reserviors. Nor will these adverse environmental impacts be adequately compensated for by the present mitigation plan.

In the past decade, there have been numerous attempts to modify the project, virtually all of which have been rejected by North Dakota. The Nixon and Ford Administrations tried. So did the Carter Administration. The House Government Operations Committee tried, as did the International Joint Commission. There were still other attempts. Notwithstanding the lack of progress in identifying and selecting a suitable and acceptable alternative, Audubon believes it is time to try again.

A political victory for North Dakota in this year's funding is not a victory. Litigation will continue. Legislative efforts to stop the project will continue, and in the meantime, a valuable national resource will be lost forever.

If Garrison is built, North Dakota will have a water project. It will also have a monument for all to see, to evaluate and to judge, not just for now but for the ages to come. If built, an historical promise will be fulfilled. Our Nation will have spent more than a billion dollars. But will North Dakota have met its contemporary water needs? We think not. For, in the end, if you prevail, you will not have served your current needs. And that seems a travesty.

This year's Bureau of Reclamation budget for Garrison requested more than $53 million for continued construction. We must vigorously oppose this funding. We do so because these funds are earmarked for the construction of features that will cause tremendous damage to some of the country's most valuable wetlands and waterfowl breeding grounds. The negative impact will be felt throughout the Central and Mississippi flyways for years to come.

We seek a responsible solution and resolution. We are prepared publicly to support a responsible alternative. We are prepared to support responsible water development in North Dakota.

As you are aware, Audubon retained a western engineering firm and asked them to determine if there were reasonable alternatives. Indeed, there are. We find that encouraging. We are not engineers and we are not capable of designing a water project, nor will we try. We are, however, extremely knowledgeable in assessing and understanding the impact of one as these past years have demonstrated.

The work completed by Wright-Water Engineering is a framework for what's possible. It's a good faith beginning.

Audubon pledges should the Senate reject funding for Garrison this year, to work with you to define a responsible and contemporary North Dakota water plan for the '80s and '90s.

Let us restate this pledge plainly and clearly: if the Senate rejects funding for Garrison when the Energy and Water Bill is presented on the floor, we don't intend to walk away and declare that "we've won and the battle's over." Rather, we are then prepared to enter into detailed discussions for a revised water plan.

However, should the Senate decide to fund the project as is, then we have no choice but to consider other means of stopping the project.

Let us say what this letter is not. It is not a backdoor plan to stall the project for another long period of time. It is not a proposal to paralyze action by lengthy analysis. There is no hidden agenda. Rather, there is a genuine and sincere commitment on behalf of the National Audubon Society to forge a resolution of a major issue that concerns both of us.

We strongly believe an acceptable alternative can be fashioned that is worthy of our collective support. We further believe that massive destruction can be avoided, and yet your development goals achieved. We are prepared to work, and to do so in good faith, to achieve these goals.

This battle has gone on too long and has been too devisive. The times and circumstances demand that a new plan be developed. To be sure, there are many technical and institutional problems. We are convinced they can be overcome if, collectively, we commit ourselves to address and to resolve them.

We are prepared to try.

As leaders of North Dakota, the initial decision is yours. We appeal to you to seize this opportunity.

Sincerely,

Russell Peterson,
President.
Donald C. O'Brien, Jr.,
Chairman of the Board.

Mr. ANDREWS. Mr. President, I ask unanimous consent that the Senator from New Hampshire [Mr. Humphrey] be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. I hope, Mr. President, that my colleagues in the Senate will join in that support.

I yield to my colleague, the senior Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. BURDICK. Mr. President, I rise in support of H.R. 5653 as reported by the Senate Appropriations Committee. I also want to express my personal appreciation to Chairman Hatfield, Senator Johnston, and Senator Stennis and their staffs for their leadership in producing this bill.

As many of my colleagues are aware, H.R. 5653 includes $53,580,000 for the Garrison diversion project in North Dakota, and reaffirms the Senate's longstanding support for establishment of the Garrison diversion unit as it was authorized by the Congress in 1965. The bill also includes language which protects Canadian interests by prohibiting the expenditure of funds on any of the project's features affecting water flowing into Canada. The bill also affirms the U.S. obligation to comply with the Boundary Waters Treaty of 1909.

I am fully aware of the criticisms and concerns about the Garrison diversion unit that have been voiced over the years by opponents of the project. To that end, I have cosponsored with Senator Andrews an amendment to this bill that will establish a 12-person Commission to be appointed by the Secretary of the Interior to review and examine the plan for the Garrison diversion unit. The Commission is to be appointed within 30 days after this bill becomes law and its work is to be completed before January 1, 1985. The Commission's recommendations, which the Secretary is authorized and directed to implement, must be consistent with the current Garrison diversion unit authorization, including retention of the current discount rate.

Last year the Senate debated the merits of the Garrison diversion project and voted to provide $22.3 million in fiscal year 1984. This year the administration has requested $53,580,000 to continue work in phase I of the project. I strongly support the request, and I urge my fellow Senators to vote for this appropriation. I would like to share with my colleagues the reasons I have supported Garrison diversion all of my public life, and why all of North Dakota's Governors and congressional delegation have been united behind this project since its inception.

North Dakota's water resources are very limited. The climate varies from subhumid to semiarid and although 80 percent of our people depend on surface water to meet their water needs, the annual average rainfall is only 16 inches. In the 1930's, the average annual rainfall fell to 6 inches and the drought created a statewide disaster. Hundreds of farmers lost their farms, bankruptcies became commonplace and the population declined as people were forced to seek a better life elsewhere.

The people of North Dakota turned to Congress in an attempt to solve the problems of drought in the upper Missouri River Basin States. In response to drought in the upper basin States and floods in downstream States, Congress in 1944 approved a multipurpose plan known as the Pick-Sloan Missouri River Basin plan. Significantly, it was the first attempt on the part of our Government to bring about comprehensive development and use of land and water resources of a major river basin.

The passage of the Flood Control Act of 1944 brought the people of North Dakota and the Federal Government into contractual agreement. Even though this contract was weighted for the benefit of other States and regions beyond our own borders, we entered into the contract.

Briefly, here is how the agreement has worked out so far:

The people of North Dakota have performed their part of the contract; 550,000 acres of our land now lie under the mainstem Garrison and Oahe Reservoirs. In addition, the State of North Dakota has been very active in contributing irrigation research and the planning and development of recreational and fish and wildlife resources which are a part of Garrison diversion.

Benefits realized by the downstream States have been massive. Flood damage amounting to $1.7 billion have been prevented, and $450 million of that savings was realized in 1977 alone. Since construction of the mainstem dam, there has been no major flooding on the Mississippi-Missouri Rivers. Other downstream benefits include improved navigation allowing an average of 1.28 billion ton-miles of freight on the lower Missouri River, streamflow stabilization has maintained the minimum flows necessary for municipal and industrial usage and has allowed for increased commercial and industrial developments in the flood plain area, and the generators in Garrison Dam are producing power that flows in greater quantities to our sister States than to our own. Minnesota, for example, receives more than half the power generated by this project.

In return for the sacrifice of land made by North Dakotans, and in consideration for the benefits to our neighboring States, North Dakota was given assurance that it would receive economic development benefits of irrigation, development of municipal and industrial water supplies, fish and wildlife development, and development of recreational facilities. These benefits have been a long time in coming. The Garrison diversion project, promised in 1944 and authorized in 1965, is now but 25 percent complete. The benefits from sound water development are as necessary today as they were in 1944 and 1965, and the people of North Dakota have earned them.

Unlike most of those who are critical of the project, we are North Dakotans and are particularly concerned about the preservation of our State. Those who oppose the Garrison project cite the environmental impacts as substantial. We share their concern about the need to preserve our wildlife refuges, wetlands, and prairies, and we have gone to great lengths to enhance wildlife habitat and protect waterfowl. The affected wildlife refuges so often referred to will either be replaced or modified, and in several cases actually improved by the Garrison project. Working together, the Fish and Wildlife Service, the Department of the Interior, the Bureau of Reclamation, the Garrison Conservancy District, and the State of North Dakota have developed a plan to mitigate acreage to be used on the project.

Phase I of the project calls for the acquisition of 42,000 acres over the next 10 years, 12,600 acres of which have already been acquired. Property owners have offered about 125,000 acres for sale. In addition to the 42,000 acres, 16,000 acres of wetlands in West Bay of Devils Lake have already been transferred to the Federal Government. In addition, 5.2 million wetland and upland acres in North Dakota are part of the National Wildlife Refuge System, including both fee and easement acquisitions. Preservation of waterfowl is also of the utmost importance to North Dakotans, and studies have shown that phase I of the project has the potential not only to enhance waterfowl, but to increase its population through the improvement of habitat.

North Dakota is known as the "Peace Garden State" because of the beautiful gardens which stand as a symbol of friendship between North Dakota and its neighbor to the north, Canada. Supporters of the Garrison project are extremely concerned about any adverse impacts that the project might hold for Canada, and consultations between the two Governments have been ongoing for the past several years. In an effort to resolve these differences, project supporters agreed to proceed with the project on a phased basis, working first on those features of the project not affecting waters flowing into Canada. Funding provided in this bill will be restricted to those features, and a provision in the bill clarifies this prohibition.

This approach is another example of the willingness of project advocates to seek and accept alternatives in order to address the concerns of our northern neighbor. In recent weeks, representatives of the United States and Canadian Governments met to discuss the project and the Canadians agreed to the design and adequacy of the Lonetree Dam and the phase I mitigation plan.

One of the specific concerns addressed by the Canadians is the possibility of transfer of species and aquatic organisms from one drainage system to another. This biota transfer was the subject of a study by scientists at the Tri-College University Center for Environmental Studies in Fargo, ND. I am pleased to report that the study indicated that while birds have been demonstrated to transport certain aquatic organisms, such as algae, aquatic plants, and small invertebrates, the scientists did not find documentation of such movement with fish. In related research, the Bureau of Reclamation completed a comprehensive laboratory study on the use of fish screens. The conclusion was that fish screens will effectively remove all fish, eggs, and larvae of concern to Canada. The relevance of this data lies with later phases of the project since the funds in this bill will be directed only to features not affecting Canadian waters. During recent United States and Canadian consultations, the United States agreed to Canada's request to initiate designs for the McClusky Canal fish screen, and these designs will be the subject of reviews by the Joint United States-Canadian Technical Committee.

Inflation has taken its toll on all Federal projects, and unfortunately the Garrison project is no exception. In the case of Garrison, however, the impact of inflation tells only half the story. The inflationary factor is a direct result of legal delays which halted the project for years. After several years of litigation over a stipulation between the National Audubon Society and former Secretary of Interior Andrus, the U.S. Court of Appeals for the District of Columbia finally terminated that stipulation in May 1982, and the District court dismissed the lawsuit on October 15, 1982. In terms of money, the 5-year delay cost nearly $550,000,000. The only remaining litigation is an appeal by opponents which is now pending before the U.S. Court of Appeals from the Federal District Court of South Dakota.

Another important factor which is often forgotten in analyzing the cost of the project is the payback provision. Nearly 90 percent of the total cost of the project will be repaid through hydroelectric sales and water user fees. Since the Government began selling electricity from the Pick-Sloan dams, the Federal coffers have received about $1,930,583,000, with $122,372,000 received in fiscal year 1983 alone. The only costs to be fully absorbed by the Federal Government will be those expenses for wildlife enhancement, public recreation, and flood control.

In spite of rumors to the contrary, public support in North Dakota for the Garrison diversion project continues to be strong. Private polls have indicated at least 70 percent favorable rating. One reason for the widespread support for the project is its multipurpose features. In addition to its irrigation benefits, more than 30 communities, including three in South Dakota, one in Minnesota, and one rural water district, are interested in its water for municipal purposes. Most North Dakotans recognize the overall importance of the project and the benefits it will bring to them. But of equal importance they also recognize that the Federal Government has made a commitment, and on this principle they remain firm. As a demonstration of statewide support for Garrison, the following is a list of state organizations and associations which actively support the project:

Fargo, Minot City Commission.

Senate of State of North Dakota.

House of Representatives of North Dakota.

North Dakota Water Users Association.

North Dakota Irrigation Association.

North Dakota Irrigation District Directors Association.

North Dakota Farm Bureau.

North Dakota Farmers Union.

North Dakota Water Resource Districts Association.

North Dakota AFL-CIO.

North Dakota Bankers Association.

North Dakota Building and Construction Trades Council.

Associated General Contractors of North Dakota.

North Dakota Association of Counties.

Greater North Dakota Association.

North Dakota Association of Rural Electric Cooperatives.

North Dakota Association of Soil Conservation Districts.

North Dakota Stockmen's Association.

Coalition of Garrison Supporters.

North Dakota Rural Water Systems Association.

North Dakota League of Cities.

Water Resource Congress.

National Water Resources Association.

National Association of Rural Electric Cooperatives.

Oahe Conservancy Sub-district Board of Directors.

Basin Electric Power Cooperative.

Upper Missouri Water Users Association.

Mr. President, I hope that in considering this bill today my colleague will be mindful of the commitment made to North Dakota and of the numerous attempts we have made to allay the fears of our neighbors to the North and the many concessions we have already made. We are proceeding in good faith with the Canadians, but we cannot in the process cast aside promises made to our own citizens.

Mr. ABDNOR. Mr. President, I am encouraged by the compromise reached between the North Dakota delegation and the National Audubon Society regarding the Garrison irrigation project.

The agreement acknowledges that Garrison represents an entitlement to the State of North Dakota as compensation for over a half million acres sacrificed under the Pick-Sloan Missouri Basin Program to provide flood control for the downstream States. It also recognizes that North Dakota has both a need and a right to divert Missouri River water, and that such diversions should be accomplished through "contemporary water development alternatives."

Mr. President, this agreement is encouraging to me not just because of what it does for our sister State to the north, but also because of its implications for my own State of South Dakota. As my colleagues know, with respect to the Pick-Sloan Missouri Basin Program, both the sacrifices and the promises made to each of the Dakotas were essentially the same. North Dakota is entitled to expect the Federal Government honor its commitments and so, too, is my State.

While the original commitments are contained in the form of specific projects authorized in the Flood Control Act of 1944, those commitments should now, at long last, be carried out through the development of projects deemed by the two States to meet their contemporary water needs.

In that regard, I should point out for the record that South Dakota has a well-conceived and established State water planning process to identify needs, formulate solutions, and implement projects consistent with those needs and locally supported solutions. And while our experience has not been good with respect to getting the Federal Government to honor its commitments to us under the Pick- Sloan Program, whenever the Federal Government is ready to do so, we are prepared to go forward expeditiously with contemporary water development alternative to meet the needs of our citizens.

In fact, one of the alternatives identified under our State water planning process relates rather directly to the Garrison unit in that it would utilize water delivered to the James River by Garrison. The so-called South Dakota water deliveries study is investigating this contemporary alternative to the previous commitments made to us, and the fiscal year 1985 appropriations for Energy and Water Development contains $1.9 million to accelerate completion of this study. Two hundred thousand dollars of this total is provided under the Bureau of Reclamation's general investigations authority, and $1.7 million is contained in the appropriations for Garrison itself.

If I may ask my North Dakota colleagues, it is my understanding this study will go forward as envisioned in the Senate committee report and complements the compromise you have worked out on the Garrison project itself. Is that your understanding and your intent as well?

Mr. ANDREWS. My colleague from South Dakota is correct; that is certainly my understanding as well as my intent.

Mr. BURDICK. I certainly agree, too, that the study of the impacts and potential benefits for South Dakota should go forward as quickly as possible.

Mr. ABDNOR. I thank my North Dakota colleagues for those assurances, and I commend and congratulate them on the success of their efforts to gain recognition of the entitlement of the Dakotas under the Pick-Sloan Missouri Basin Program. As they know, I have included in section 310 of S. 1739, the Water Resources Development, a reaffirmation of the "ultimate development" concept of the program or, in other words, a restatement of the fact the Federal Government will be expected to honor its commitments to the Upper Basin States.

It is my hope as well as my expectation that S. 1739 will become law this year, and that section 310 will constitute a definitive, statutory statement of the responsibility of the Federal Government to honor its word to the Dakotas, thereby dispelling any notion that projects like Garrison and/or other contemporary alternatives will not be completed and may be forgotten.

Again, I thank and commend my North Dakota colleagues, and I look forward to continuing to work closely with them in fulfilling, under the promises of the Pick-Sloan Program, the contemporary water development needs and priorities of our two respective States.

Mr. PROXMIRE. Mr. President, I rise in support of the Garrison diversion project compromise worked out between Senators ANDREWS and BURDICK and the National Audubon Society, National Wildlife Federation, and other environmental groups.

Last year, along with Senator HUMPHREY, I opposed further spending for this project. I stated at that time that it was too expensive, too environmentally harmful and too damaging to our relations with Canada, our closest ally.

The compromise eliminates my objections. It calls for the appointment of a Presidential commission to examine alternatives and modifications to the authorized project. No appropriations can be obligated for Garrison until the study is completed.

I expect the Commission to recommend a much cheaper, more environmentally sensitive project which answers the Canadians objections including objections to transboundary transfers of water.

I commend the members of the North Dakota delegation and representatives of environmental groups for setting aside their differences and producing a solution which aids everyone including the U.S. taxpayer.

Mr. STAFFORD. Mr. President, I wish to express my strong support for the amendment offered by the Senators from North Dakota [Mr. ANDREWS and Mr. BURDICK].

This amendment authorizes a study of alternatives to the Garrison diversion project; no money is to be released for the project until this thorough reevaluation and debate on alternatives has been completed. If an alternative wins the support of two-thirds of the panel, then that alternative will become the Garrison new project.

Each Member of the Senate, I feel certain, recognizes the legitimate needs of the people of North Dakota for sound water resources development. But such development must be responsive to our guest for environmental quality; it must be a responsible project from an economic view.

I have long held serious reservations regarding the Garrison project. I voted against funding for this project last year; I would have voted against such funding this year. I am convinced that the project, as now designed, posed serious environmental risks.

First, it poses serious dangers to the environment of North Dakota, which is our most productive State for waterfowl production, with the exception of Alaska. The destruction of prairie potholes and other wetland areas must be halted.

Second, the Garrison project poses an unacceptable threat to our neighbors to the north in Canada. Studies have calculated that Garrison, as presently designed, could destroy up to 75 percent of the commercial and sports fisheries in Manitoba.

Both of those impacts must be avoided, if at all possible.

The amendment we are considering strikes a reasonable and responsible balance. Under the amendment, as I understand it, Secretary Clark of the Department of the Interior will select a group of 12 outstanding citizens to examine alternatives to Garrison. The deliberations of this panel will guide this project and our Nation.

The Commission will consider alternatives to meet the contemporary needs of North Dakota, while resolving the legitimate environmental and international concerns posed by the current project. The Commission must report by the end of this calendar year.

I am so convinced that this can be accomplished that I am willing to agree that the sum of $53,600,000 appropriated in this bill can be spent unless a suitable alternative is developed. If the panel recommends an alternative, it is expected that we will alter the project and develop the alternative.

It is a hard bargain. But it is a fair bargain.

Secretary Clark, I know, will select Commission members with great care, for the credibility of this process, indeed the credibility of the water resources program in general, hangs in the balance.

The panel must not be a rubber-stamp for what has gone before. Secretary Clark, I know, recognizes that challenge and this opportunity.

Mr. President, I want to commend the Senators from North Dakota [Mr. ANDREWS and Mr. BURDICK] for their leadership in developing this responsible middle-ground position. I also commend the environmental community, in particular, the National Audubon Society, for its leadership and willingness to work toward this reasonable and responsible alternative.

Mr. President, there is great uncertainty built into this amendment. It may not produce the kinds of alternative that I would select. But it is in the best traditions of the political process. It moves a tough issue away from confrontation into the area of compromise. The Senate should support this amendment. I urge its adoption.

Mr. HUMPHREY. Mr. President, I rise to support the amendment offered by our colleagues from North Dakota [Senators ANDREWS and BURDICK] regarding the Garrison diversion unit in their State. This amendment is the result of many long hours of negotiation among parties which have been involved over the years in the debate surrounding this project. In my view, the proposal incorporated in this amendment represents a reasonable and responsible compromise. I commend both Senators ANDREWS and BURDICK for their efforts, and I am happy to lend my endorsement to this amendment.

Under the Andrews and Burdick amendment, the fiscal year 1985 appropriation of $53.6 million for the Garrison project would be frozen while a blue-ribbon commission appointed by the Secretary of Interior would study alternatives and modifications to the original plan. The ultimate recommendations of the commission must take into consideration the water development needs of the State of North Dakota, as well as outstanding controversies surrounding the project. The commission is required to report to the Secretary of Interior before December 31, 1984. The Secretary is authorized to implement whatever the commission recommends.

Over the years, I have raised strong objections to the Garrison project on environmental and fiscal grounds, as well as my concern over the effect of this project on the resources of our neighbors in Canada. More importantly, I have continually sought to highlight the extent to which there are reasonable alternatives to the present Garrison plan that would both address the objectives of the State and satisfy other legitimate concerns. For this reason, I am particularly pleased with the proposal that is before us today.

Mr. President, I did not relish the prospect of having to actively oppose the Garrison project before the Senate this year. Over the years, the Senate has become all-too-familiar with the arguments surrounding this project and the Senators from North Dakota have proven to be formidable proponents. However, I do feel a commitment to defend what I perceive to be in the Nation's best interests.

In that regard, I intend to follow the deliberations of the Secretary's commission with great interest, as well as to carefully review its recommendations.

Mr. President, I urge the adoption of this amendment.

Mr. PERCY. Mr. President, I am delighted that this compromise had been worked out on the Garrison diversion unit. As the Senators know, I have voted against appropriations for Garrison in the past, primarily because of the project's potential international environmental impact.

Our neighbors in Canada, led by Manitoba Environment Minister Al Mackling, have visited Washington on a number of occasions to express their legitimate concerns about the project. Minister Mackling, Ambassador Allan Gotlieb, and the highly professional staff of the Canadian Embassy have alerted Senators over the years to the potential impact of the Garrison project on Manitoba. They have led the way in seeking viable alternatives to the project that would be consistent with the report filed in 1977 by the International Joint Commission. I believe the compromise which we are adopting today could not have been achieved without their help.

I wish to focus on one aspect of the proposed Garrison compromise. Subsection (c)(2)(K) of the proposal would require the secretarial commission to assess and determine the international impacts of Garrison and of the various water development alternatives. Since the International Joint Commission spent 2 years thoroughly investigating the international impacts of the authorized Garrison project, my understanding is that under subsection (c)(2)(E) the IJC's findings and conclusions will serve as a guideline for the secretarial commission's deliberations, and that the commission will be developing alternatives that are consistent with the IJC's report.

I'm also pleased to hear my colleague from North Dakota, Senator ANDREWS say that the commission will be developing alternatives that are consistent with our international obligations.

I congratulate my colleagues from North Dakota for helping to work out this compromise. I look forward to the development of an alternative to Garrison which will meet the water needs of North Dakota without the potential environmental damage that has concerned us all in recent years.

Mr. DANFORTH. Mr. President, once again the Senate is set to review the much-debated issue of the Garrison diversion irrigation project in North Dakota. This project has been in the works for almost 20 years—since first authorized by Congress in 1965—and the debate over the project has raged almost as long. At stake are a wide variety of interests, much of this country's most precious wildlife and wetlands, and about $1.2 billion. It's no wonder that passions on this issue run so deeply.

Under the circumstances, I am pleased that this year a compromise has been reached on this longstanding controversy. My colleagues from North Dakota, Senator ANDREWS and Senator BURDICK, together with the Audubon Society, have drafted an amendment to the fiscal year 1985 energy and water appropriations bill which is a fair approach to the Garrison project.

This amendment calls for the establishment of a commission to conduct a review of alternatives to the Garrison diversion unit and to make recommendations regarding current water development needs in the State of North Dakota. It prohibits the expenditure of any of the $53.6 million in appropriated funds prior to December 31, 1984, except for those funds necessary for the work of the Commission, or, if the Commission fails to make such recommendations, as presently authorized.

Mr. President, I am well aware of the arguments in favor of constructing a water project in North Dakota. As part of the Pick-Sloan plan in 1944, North Dakota sacrificed 550,000 acres of prime farmland for flood control, river navigation, hydropower generation, and provision of industrial for municipal water to downstream States. In fact, the flooding which Missouri is suffering might be greater had North Dakota not given up this large amount of land. In exchange for this sacrifice, North Dakota was promised the 250,000 acre Garrison diversion irrigation. It would be unfair to renege completely on this promise.

However, there are serious problems involved with completion of this project as it was originally envisioned. These problems fall into three categories: Its exorbitant cost, its significant threat to the environment, and the fact that the project, as originally designed, is no longer necessary.

Cost estimates for Garrison have increased from $207 million to $1.2 billion. Given the current state of the Federal deficit, such expenditures should not be made unless the cost-to-benefit ratio is clearly justified and there are no less expensive alternatives. The problem is that the Garrison diversion project would cost $3,800 per acre irrigated for land worth $400 per acre. This is equivalent to a $700,000 subsidy for each farm benefited or $2,000 for every man, woman, and child in North Dakota. It is impossible to conceive of a justification for such an expenditure in one region even for a project with obvious benefits. But the fact is that the benefits of the Garrison diversion plan are questionable, at least.

Proponents of the project say that the Garrison irrigation will aid the farmers of the northeastern part of North Dakota by permitting them to grow wetland crops, such as corn and alfalfa, which command a higher price on the agricultural market than the dryland crops, such as wheat and soybeans, which they currently produce. However, the dryland crops currently grown in this region of the State are in high demand, while wetland crops are in surplus. Unless a drastic change in circumstances should occur, it is unlikely that these farmers would be interested in converting to the production of wetland crops. They may wish to continue producing dryland crops or simply to let the land lie fallow. It is interesting to note, as a matter of fact, that North Dakota currently has the highest rate of participation in the Federal PIK—payment in kind—program of any State.

In addition, many of the farmers themselves are against this project because they believe that the destruction to their land which would be necessitated by completion of the project outweighs its uncertain benefits. Even if Garrison were completed according to the current plan it would provide benefits to less than one-half of 1 percent of the farmers and farmland in the State.

The single most serious problem associated with the current Garrison plan, however, is the serious environmental threat it poses. It has been projected that completion of the Garrison diversion plan will harm or destroy 12 national wildlife refuges and tens of thousands of acres of wetlands. This, in turn, would adversely affect the migrating waterfowl which live in the wetlands and would cause wildlife losses up and down the Mississippi and central flyways.

The environmental threat would be serious enough if it were confined to North Dakota. But the Canadian Government also has expressed concern about Garrison and is adamantly opposed to any further construction following the current design. The Canadian Government fears that any transfer of water from the Missouri River watershed into the Hudson Bay watershed will cause a migration of undesirable fish species, fish eggs, and disease into Manitoba. These watersheds have been separated by nature for the last 10,000 years. An introduction of potentially incompatible aquatic species could destroy Manitoba's commercial and sport fishing industries—upon which millions of Canadian jobs depend.

Mr. President, the competing interests in this controversy are clear. A fair solution has been hard to find. Last year the Senate provided, and I supported, limited funding for the Garrison diversion project. I voted with the majority for two reasons.

First, I believed that the citizens of North Dakota legitimately deserve necessary irrigation in return for the farmland they sacrificed in 1944. I still hold that belief.

Second, the limited funding which the Senate appropriated last year was for completion of phase 1 only. Under phase 1, all diverted water would remain in the Missouri River watershed. None would cross over to Canada. Consequently, environmental fears of chemical and biological pollution of the Hudson Bay watershed would not be realized.

My vote was not intended to slight the interests of environmentalists. Rather, it was intended as a step toward a balancing of all legitimate interests by cautiously proceeding with construction of the least controversial and least environmentally threatening part of the project. Much money had already been spent on the design and initiation of the Garrison project, and to have completely abandoned already constructed facilities would have been throwing away a sizable investment.

Now a better balancing of interests has been achieved. Today, Congress has the opportunity to take the cautious approach to Garrison one step further. I therefore support the Andrews-Burdick amendment—a sensible amendment which attempts to salvage our Federal investment, follow through on the Government commitment to the citizens of North Dakota, and protect our precious environment from those portions of the project which pose an unreasonable threat.

The **PRESIDING OFFICER.** The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, the managers of the bill have been over this carefully. We are willing to accept it on this side of the aisle.

Can the distinguished Senator from Louisiana clear it on his side of the aisle as well?

Mr. JOHNSTON. Mr. President, with congratulations to the two distinguished Senators from North Dakota for working out this compromise, we are enthusiastically in support of this amendment.

The **PRESIDING OFFICER.** Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from North Dakota [Mr. ANDREWS].

The amendment (No. 3291) was agreed to.

AMENDMENT NO. 3297

(Purpose: To expedite construction of fish passage facilities within the Yakima Basin, Washington)

Mr. EVANS. Mr. President, I send my amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The asisitant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS], for himself and Mr. GORTON, proposes an amendment numbered 3297.

Mr. EVANS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

On page 12, line 11, after "$752,397,000," add "of which $4,800,000 shall be available for the construction of fish passage facilities at Prosser Dam Passage authorized by the Act of June 12, 1948 (Public Law 80-629, 62 Stat. 382) and Roza Dam Passage authorized by the Act of March 10, 1934 (Public Law 73-121, 48 Stat. 401),".

Mr. EVANS. Mr. President, I rise to propose an amendment to H.R. 5653, the energy and water development appropriations bill for fiscal year 1985. The amendment provides $4.8 million in fiscal year 1985 to expedite construction of fish passage facilities at Prosser diversion dam and Roza diversion dam and wasteway on the Yakima River in Washington State. As described in the text of the amendment, these facilities were authorized by acts of Congress in 1934 and 1948. Construction of the fish passage facilities was recommended in the Columbia River basin fish and wildlife program adopted by the Pacific Northwest Power Planning Council. I served as chairman of the council when the recommendations were made and I share the council's enthusiasm for the project.

Mr. President, there are currently 18 diversion dams in the Yakima basin owned by the Bureau of Reclamation, the Bureau of Indian Affairs, the city of Yakima, and various irrigation districts. These projects are utilized to maximize the benefits of water in the Yakima River basin. The Yakima basin is one of the most productive agricultural areas in the United States. The Yakima River was once one of the most productive rivers for anadromous fish as well. Historically, the Yakima River supported an estimated 500,000 to 600,000 returning adult salmon annually. By 1920, the number of returning salmon had declined to about 11,000 each year as a result of a number of factors including the construction of water diversion dams and canals without fish ladders or protective screens, partial or total blockage of migratory routes, and dewatering of spawning and rearing habitats. By 1982, the runs had declined to an estimated 2,000 fish.

I believe it is critically important to begin construction of these high priority fish passage facilities as soon as practically possible. Fish passage facilities at Prosser diversion dam and Roza diversion dam and wasteway were identified as two of the more critical projects for restoring the fish runs in the Yakima River. According to a letter from the Bureau of Reclamation to the present chairman of the Northwest Power Planning Council, it is possible to perform the engineering aspects of the work, collect design data and commence construction of fish passage facilities at Prosser diversion dam and Roza diversion dam and wasteway during fiscal year 1985. The Bonneville Power Administration, in consultation with the Bureau of Reclamation, has determined that $4.8 million are necessary to commence construction of these projects.

Mr. President, the Senate has passed S. 1027, legislation concerning the construction of fish passage facilities throughout the Yakima River basin. The bill encompasses a carefully crafted cost-sharing arrangement among the Bonneville Power Administration, the Bureau of Reclamation and the State of Washington. If passed by the House, the legislation will resolve a number of issues connected with construction of fish passage facilities including the transfer of funds between the Bonneville Power Administration, the State of Washington and the Bureau of Reclamation. This amendment and other provisions of the Energy and Water Appropriations bill concerning the Yakima basin fish enhancement program do not prejudice in any way the final resolution of S. 1027. I share the belief of the Senate Appropriations Committee that reconciliation of the provisions of that bill will provide valuable guidance in making further allocations for the Yakima fish enhancement program.

Mr. President, construction of these fish passage facilities on the Yakima River will result in a tremendous benefit to the pacific Northwest and to the Nation as a whole, and will go far in rectifying the damage to the region's anadromous fishery resource caused by the construction of hydroelectric dams on the Columbia River system by the Federal Government. I strongly urge adoption of this amendment.

The **PRESIDING OFFICER.** The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, we have reviewed the amendment of the Senator from Washington State, and have no objections. We would be willing to accept it on this side of the aisle.

Mr. JOHNSTON. Mr. President, the minority also accepts the amendment as well.

The **PRESIDING OFFICER.** Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Washington [Mr. EVANS].

The amendment (No. 3297) was agreed to.

AMENDMENT NO. 3298

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] proposes an amendment numbered 3298.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

On page 24, line 17 strike the figure "$7,324,051,000" and insert: "$7,272,925,000"

Mr. HATFIELD. Mr. President, this is an amendment that is cleared on by both sides of the aisle. Basically this amendment seeks to bring this bill into closer conformity with the action taken by the Senate yesterday in the Department of Defense authorization measure. We concluded this morning at about 4:30 a.m.

Basically, it strikes the figure $7.324 billion and subtracts from that figure in various and sundry programs and activities relating to the atomic energy defense activities a total of $51.126 million.

As I say, it is basically a conforming amendment. It has been cleared on both sides of the aisle, I believe.

Mr. JOHNSTON. That is correct, Mr. President. We endorse it.

The **PRESIDING OFFICER.** Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Oregon [Mr. HATFIELD].

The amendment (No. 3298) was agreed to.

Mr. HATFIELD. Mr. President, I ask unanimous consent to include a table showing the breakdown of these adjustments in the RECORD.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

ATOMIC ENERGY DEFENSE ACTIVITIES

Reductions	Recommendation	Difference
Research and development:		
Operating expenses	$880,625,000	−$10,000,000
Project 85-D-102 [illegible]	35,400,000	−1,200,000
Project 83-D-190 [illegible]	7,000,000	−4,000,000
Project 82-D-144 technology laboratory	11,500,000	−5,000,000
Testing: Operating expenses	532,000,000	−6,000,000
Production and surveillance:		
Operating expenses	1,787,900,000	−25,000,000
Capital equipment	117,400,000	−7,000,000
Project 83-D-167 [illegible]	161,600,000	−13,500,000
Program direction	60,229,000	−626,000
Materials production:		
Operating expenses	400,770,000	−3,000,000
Project 82-D-124 [illegible]	68,000,000	−4,000,000
Defense waste:		
Project 86-D-156 DPP	23,645,000	−2,000,000
Project 77-12-F WIPP	51,100,000	−10,000,000
Total		−91,326,000
Additions:		
Project 85-D-125 tactical bomb	10,000,000	+5,000,000
Project 82-D-111 interactive graphics	6,000,000	+3,900,000
Project 82-D-150 materials R&D	16,800,000	+5,000,000
Inertial confinement fusion—operating	155,000,000	+16,000,000
Project 79-7-0 pilot plant	3,800,000	+3,800,000
Project 83-D-180 Facility storage		+6,500,000
Total		+40,200,000
Grand total		−51,126,000

Mr. HATFIELD. Mr. President, the bill is open for further amendments.

AMENDMENT NO. 3299

(Purpose: To provide $100,000 to the Bureau of Reclamation to study the feasibility of a hydroelectric project at the existing Yellowtail Afterbay Dam (Montana))

Mr. MELCHER. Mr. President, I send my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 3299.

At the end of the subsection on General Investigations in Title II of the bill, add the following:

"*Provided further,* That $100,000 shall be made available to study the feasibility of a hydroelectric powerplant at the existing Yellowtail Afterbay Dam (Montana).".

Mr. MELCHER. Mr. President, this amendment is necessary to incorporate something into the bill to indicate a continuation of the very preliminary work on generating capacity in the Yellowtail Afterbay Dam for $100,000. The reason that becomes very necessary at this time is that an application for a license for installing that generating capacity is before a court now by a private company.

The problem comes because not only is this a Federal project, by the Bureau of Reclamation, but also it is a project where the river from the dam to the Afterbay, and from the Afterbay 20 miles lower on the Big Horn, is an area of fishing intensity. The Crow Indians and the local fishermen want to have the same quality of stream maintained if it changes from Federal hands. It becomes urgent only because of the application before FERC.

Mr. President, we have to do something to indicate this, indeed, is going to continue to be a Federal project.

Mr. HATFIELD. Will the Senator yield for a question?

Mr. MELCHER. Yes.

Mr. HATFIELD. The Senator originally proposed a new construction start for this project. And as the Senator knows, we are opposing all new construction starts in this bill. The Senator from Montana has compiled with that policy and is now asking for $100,000 for a feasibility study; is that correct?

Mr. MELCHER. That is correct.

Mr. HATFIELD. I wonder if the Senator would cross out "an additional".

Mr. MELCHER. Will the clerk read the copy at the desk?

Mr. JOHNSTON. Just strike the words "an additional".

The PRESIDING OFFICER. The Chair advises the Senator his amendment is being copied at this moment and is not available.

Mr. MELCHER. Mr. President, I want to be sure that the copy of the amendment at the desk reads the same as the copy the Senator from Louisiana has in his hand right now.

Mr. President, I withdraw the amendment I submitted, and I now submit this amendment for the RECORD.

AMENDMENT NO. 3300

(Purpose: To provide $100,000 to the Bureau of Reclamation to study the feasibility of a hydroelectric project at the existing Yellowtail Afterbay Dam (Montana))

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 3300.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the subsection on General Investigations in Title II of the bill, add the following:

"*Provided further,* That $100,000 shall be made available to study the feasibility of a hydroelectric powerplant at the existing Yellowtail Afterbay Dam (Montana).".

Mr. HATFIELD. Mr. President, that is acceptable to this side.

Mr. JOHNSTON. Mr. President, we also approve of the amendment.

Mr. MELCHER. Mr. President, I ask unanimous consent that Mr. BAUCUS be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 3300) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, the next Senator to offer an amendment is the Senator from Delaware.

AMENDMENT NO. 3301

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 3301.

Mr. BIDEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 35, line 2, strike the period and insert a colon followed by: "*Provided further,* That from this appropriation, the Commission shall conduct a study, to be submitted to the Committee on Environment and Public Works of the Senate and the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives within six months of the date of enactment of this Act, of the need for and feasibility of an independent organization responsible for conducting investigations of significant safety events, including significant operational incidents, at facilities licensed by the Commission and for making reports of such investigations, and that such study shall include a discussion of, (1) the need for and feasibility of an independent organization to investigate significant safety events, including significant operational incidents, at facilities licensed by the Commission, and further including the types of events for which such an organization would be responsible, (2) alternative approaches to the composition of such an organization and the functions it might perform, (3) the various powers and authorities, including administrative authorities, that might be exercised by such an organization, (4) the relationship of such an organization to the Commission's existing offices, including, but not limited to, the Office of Investigations, the Office of Inspection and Enforcement, and the Office for Analysis and Evaluation of Operational Data, further including a discussion of the functions that such an organization might perform beyond those currently carried out by any such existing offices, (5) the cost of setting up and operating such an organization, (6) the need for additional legislative authority to establish such an organization, (7) the advisability of separating determinations with respect to nuclear safety from all other issues to be considered by the Commission in issuing or reviewing licenses and the alternative procedural approaches both formal and informal, to include non-adjudicatory processes, that might be employed for the collection of facts and the resolution of safety issues, and (8) the advantages and disadvantages of the present organization of the Commission for the determination of matters of safety, including an analysis of all existing procedural constraints on the Commission's abilities to carry out those functions effectively and efficiently, to include, but not limited to, the Commission's *ex parte* and separation of functions rules and the Commission's statutory responsibilities under the Government in the Sunshine Act."

INDEPENDENT ASSURANCE OF NUCLEAR SAFETY WORTHY OF STUDY

Mr. BIDEN. Mr. President, the amendment that I have called up would add an additional proviso within the section of this bill dealing with the Nuclear Regulatory Commission. Very simply, and I would hope this would not be controversial, the thrust of my amendment asks the Nuclear Regulatory Commission [NRC] to report back to the Congress within 6 months on the feasibility of establishing an independent nuclear safety board that would do the investigatory followup of incidents at nuclear powerplants. The amendment does not add money to the bill and I would expect the study could be readily done by the experts at the NRC.

My interest in this concept, Mr. President, stems from having followed the accident at the Salem nuclear plant, across the river from my State in New Jersey, and the investigation that followed. I said a few months after that occurrence that the concept of an independent safety board to do the investigation after a nuclear plant incident was an idea worthy of study. I only regret that I have not had the opportunity to put this idea before the Senate in more detail before this time.

Mr. President, the concept that I am putting forward in this amendment is not new, although time and experience should tell us that it is needed now more than ever. Over the years many people—nuclear power experts, members of the Nuclear Regulatory Commission, and Members of Congress—have suggested the concept of a safety board totally or partially independent of the NRC, even though the NRC is already an independent Commission. Although there has not been specific agreement on the organizational form such a board would take, the common thread has been to stress that the group that examines safety related incidents would operate independent of the other functions of the NRC.

One formulation of this proposal was put forward in 1980 by our distinguished colleague in the House of Representatives, Mr. UDALL, when he included an additional title to H.R. 6390, establishing a Nuclear Safety Board. Although that bill passed the Committee on Interior and Insular Affairs, because it primarily dealt with the controversial subject of high level radioactive waste, it did not see further action in the 96th Congress.

A framework for the concept of an independent safety board has more recently appeared in a letter to the chairman of the Commission, Dr. Nunzio Palladino, from the NRC's Advisory Committee on Reactor Safeguards. This group has made the argument for at least a Commission level office, with significant independence that would deal with safety related issues.

It is interesting to note that the office which the Advisory Committee suggested be given greater independence was the Office for Analysis and Evaluation of Operation Data, one of the organizational entities established after the Three Mile Island reactor incident. I would ask unanimous consent that a copy of this letter appear following my statement.

My amendment, Mr. President, does not attempt to specify a singular model that a safety board would take. Rather it asks that the NRC study the overall question of an independent organization to investigate significant safety related incidents at nuclear facilities. The amendment also asks that the NRC provide a discussion of the alternative approaches to the composition of an independent safety organization, the functions it might perform, the various powers it might exercise and its relationship to the existing structural elements of the NRC.

Although I would not want to prejudge what is the best model for an independent safety organization to take, I would say to the Senate that I have had the model of the National Transportation Safety Board in mind when drafting this amendment. Without going into great detail, I think the NTSB structure has some advantages that might prove beneficial in the nuclear industry. In the first instance, such a board would be fully independent of the functions of licensing and operation of nuclear power reactors. Second, this structure would permit the cause of a nuclear powerplant incident to be determined without the pressures related to the assignment of cause in an adjudicatory sense. Third, the powers given to such a safety board—and this may be the most important feature—would allow them to study the operating experience at a nuclear plant and to better anticipate what problems may occur. Finally, an independent safety board would be better able to criticize not only the operating utility but the NRC itself in its regulatory capacity.

Mr. President, the incident that prompted my thinking on this issue is illustrative. Last year the Salem nuclear generating plant, located across the Delaware River from my State in New Jersey, experienced key failures of the safety system. By way of summary, the Salem No. 1 reactor had two failures of the automatic shutdown system in a period of 3 days. The NRC responded to the problems there with an investigation and a record $850,000 fine against the utility. But in the end it appeared that even after a fairly in depth review by NRC, they finally threw up their hands and as much said, "we don't know what more we could do prior to restarting the plant." This appeared to be the case even though it was clear that several members of the Commission were far from satisfied with what they had learned during the investigation.

Mr. President, I have used the analogy before, and it is worth repeating, that the Nuclear Regulatory Commission is under pressure similar to a teacher in a classroom with a number of disruptive and uncontrollable students. The teacher has a limited number of tools by which he or she can single out one of the troublemakers and hope that the rest then improve on their conduct. The teacher can also suspend a student on occasion and hope that the student will conform to classroom procedures upon return to the classroom. But ultimately the teacher must face the mandate that the student is to be in school and attending class, and a degree of disruption just gets tolerated.

The economic imperatives behind a functioning nuclear powerplant, Mr. President, inevitably means that the Nuclear Regulatory Commission is under great pressure to put a plant, even a troubled plant, back on line. In part, the concept of an independent safety organization is a release valve for that situation.

You would think that given the uncertainty and uneasiness expressed by the NRC that they would have followed up to look at the operating experience at the Salem 1 plant and its twin, the Salem 2 plant. But when I attended this year's NRC budget hearing at the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, almost a year to the day of the initial incident, I found that very little followup had occurred by the Commission. True, there may have been staff level people keeping an eye on the operation, but the Commissioner's themselves had not, in the words of one, "followed up on Salem." At that hearing we also learned from the Director of the NRC's Office of Inspection and Enforcement that the response of the utility to the problems had been slower than the NRC staff would have liked. In sum, Mr. President, it was hardly a ringing endorsement of the operation at Salem.

About 2 months later, the NRC Commissioners finally did hold an oversight hearing on the status of Salem. The Commissioners learned that the management study that the utility had promised the Commissioners at the time of restarting Salem 1, had apparently never been forwarded to the Commisioner's offices, although it had been given to the Commission staff.

A second fact revealed, Mr. President was that reactor trips, when the automatic shutdown mechanism senses something wrong at the plant, were running 1½ to 2 times the national average. Despite a somewhat improved response on the part of operators to analyze unscheduled shutdowns, it is cause for concern when any nuclear plant experiences such a deviation from normal operations.

To again use an analogy, Mr. President, bringing a nuclear plant up to the point at which it produces power, or down from producing power, is a bit like the takeoff and landing of an airplane; it is the time at which the various components of the nuclear plant are put through their greatest stresses and when there is the greatest potential for mechanical or human failure. Very simply, this fact about the operating experience at the Salem plants provides little comfort to the people of Delaware.

Perhaps the most interesting point learned from the recent NRC hearing, Mr. President, was to learn how the utility and the NRC staff have placed a reliance on an independent nuclear oversight committee, established voluntarily by the utility, that is designed to advise the utility's senior management on actions to correct organizational and operational problems. It is to the credit of this utility that they have voluntarily established this group in an attempt to improve safety and quality assurance following last year's incidents. But it has also taken over a year before the group has begun to function and for results to be forthcoming.

Mr. President, the very purpose of my amendment is to study whether the safety assurance at nuclear plants would benefit from the establishment of a safety board, either within the present organizational structure of the NRC, or as a new independent entity or as a supplemental entity, that would critique not only the utility but also the NRC.

I would like to clarify, however, one aspect of my amendment. In items (7) and (8), I have intended that the Commission's report would address fully all possible procedural approaches to determining safety. This should not be interpreted however, as direction to develop procedures that would restrict public participation in the consideration of safety issues.

I do not know, Mr. President, whether the NRC will return a study to the Congress that fairly and adequately evaluates the safety board concept and other ideas that might be addressed to improve and assure safety at our nuclear powerplants. I may, in fact, become their worst critic once I read what they have to say. But I think the issue of an independent safety organization, even an organization that supplements the existing mechanisms on safety, is a concept worthy of study and of our attention. I would hope that the Senate would agree.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NUCLEAR REGULATORY COMMISSION,
Washington, DC, April 11, 1984.

Hon. NUNZIO J. PALLADINO,
Chairman, U.S. Nuclear Regulatory Commission, Washington, DC.

Subject: ACRS comments on the possibility of an organization like the National Transportation Safety Board (NTSB) for Nuclear Safety.

DEAR DR. PALLADINO: Since the ACRS discussion with the Commission about the possibility of an NTSB-like organization for nuclear safety has been postponed, we would like to pass on some recommendations we would have made during the meeting.

You will recall that the Committee and the Commission reacted negatively to the idea when it first appeared in 1978, partly because up to that time there has not been accidents recognized as worthy of the kind of detailed study implied by the creation of a new agency, and partly because there was confusion about the role of the study of precursors in accident avoidance. Nonetheless, the Commission created the Office for Analysis and Evaluation of Operational Data (AEOD). It has provided independent analyses of operating events, and has contributed to the identification of precursors. We believe the time has come to take an additional step, by elevating its status to that of a Commission-level office.

Although the original proposal for an "NTSB" for an independent organization (simply to assure its freedom to criticize the NRC), we have seen no evidence that the independence of AEOD has been infringed. Yet, it is a part of the NRC Staff structure and conflicts are not beyond reasonable conjecture. It seems to us prudent, now that AEOD has proven itself, to point to the future by removing this possibility.

Such conflicts are not unthinkable. The NTSB has just issued its findings on the amazing event in which an Eastern L-1011 lost all three of its engines because O-rings were left off the master chip detector plugs in the lubricating oil systems on all engines during the same maintenance operation. The NTSB placed much of the blame on the airline and the maintenance crew, but also placed substantial blame on the FAA inspectors for having failed to follow up earlier incidents of the same kind involving the same airline. Given the current reporting chain of AEOD, it is easy to see where problems might arise in a similar circumstance. We believe there is much to be gained and little to be lost by having AEOD report at a higher organizational level, especially as we move to a more operationally oriented NRC.

There is a clear administrative problem which we propose to solve by volunteering. We would suggest that Commission overview of AEOD be supported by asking ACRS to establish a standing subcommittee for that purpose. Such a subcommittee could, inter alia:

(a) provide a critical link to the full Committee and thereby an additional link to the Commission on the activities of AEOD,

(b) meet frequently with AEOD for mutual reinforcement,

(c) act as a technical bridge, to sharpen both groups' awareness of potential nuclear safety problems, and

(d) seek full Committee action and Commission support, as needed, to assure the independence and continuity of AEOD.

We believe the suggestion represents a reasonable compromise between the original idea of a wholly independent agency and the NRC organization now in place.

We would be happy to discuss these matters further with you.

Sincerely yours,

JESSE C. EBERSOLE,
Chairman.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, as I understand the amendment which has been offered by the Senator from Delaware, this is within the funds available.

Mr. BIDEN. Yes.

Mr. HATFIELD. Mr. President, this has been reviewed, and we will accept this amendment on this side of the aisle.

Mr. JOHNSTON. Mr. President, we endorse this amendment as well. This study, Mr. President, may serve as the basis for making some important new modifications in the investigation of safety incidents at nuclear plants. At present, those investigations are done in an adversary adjudicatory process, and frequently that leads to more obfuscation than light. It leads to more emphasis on the lawyering than in a finding proving some incident.

Mr. President, I think it is very important that this study be conducted to determine the advisability and feasibility of having these determinations made in a nonadjudicatory process.

I congratulate the Senator from Delaware. I think this may be a great step forward.

Mr. BIDEN. I thank my colleague.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3301) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote on the amendment of the Senator from Delaware.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I support the energy and water appropriation bill as reported by the committee.

I would like to commend my distinguished colleague, Chairman HATFIELD, and the members of the committee for working so quickly to report the first fiscal year 1985 appropriation bill. H.R. 5653 provides $15.4 billion in budget authority and $7.6 billion in outlays for fiscal year 1985 for the Corps of Engineers, the Bureau of Reclamation, the Department of Energy, and related independent agencies.

With outlays from prior year budget authority taken into account, fiscal year 1985 outlays associated with this bill would be $15.3 billion. Using informal staff assumptions, this bill is consistent with the Deficit Reduction Act and the first budget resolution for fiscal year 1985 which have been passed by the Senate. Nondefense discretionary spending in the bill is consistent with the guidance given to the subcommittee by the full Senate Appropriations Committee on June 14, 1984.

Mr. President, I ask unanimous consent that a table showing this relationship be inserted into the RECORD at the conclusion of my remarks.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Energy and Water Subcommittee—Nondefense discretionary budget authority

[In billions of dollars]

	Nondefense discretionary
Senate/reported bill (H.R. 5653)	9.8
Subcommittee total	9.8
Committee guidance [1]	9.8
House-passed	9.8
President's request	9.8
Subcommitte total compared to:	
Committee guidance [1]	....
House-passed	....
President's request	....

[1] Nondefense discretionary cap guidance approved by the Appropriations Committee on June 14, 1984.

Mr. DOMENICI. Mr. President, I want to personally thank Senator HATFIELD and the staff for the manner in which this bill was prepared, especially from the standpoint of the Senator from New Mexico, for the consideration given to the various functions of the Federal Government in my State.

I yield the floor.

Mr. HATFIELD. Mr. President, I would like to express my appreciation to the Senator from New Mexico, the chairman of the Budget Committee. As everyone knows, this has always been, in the past, a great problem in working out the respective duties and responsibilities, the overlapping responsibilities of the two committees.

The Senator from New Mexico has been a very extraordinary person in helping in these efforts. I appreciate his fine support and cooperation.

Mr. President, we endeavor to reciprocate in the difficult task he has as chairman of the Budget Committee. Frankly, one committee cannot function effectively without the support of the other. We enjoy that excellent relationship, and I appreciate it.

Mr. DOMENICI. I thank the Chairman.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I would like to join my colleagues in support of H.R. 5653, the energy and water development appropriations bill for 1985. Furthermore, I wish to commend the committee members for their genuine spirit of cooperation in formulating a bill that shows responsible fiscal restraint, but at the same time, provides balanced and broad-based funding levels that will allow the agencies represented to proceed with ongoing programs at a pace adequate to respond to this country's growing needs.

I would like to take a moment to express my particular concern for several energy programs which became vulnerable as a result of House Appropriations Committee actions, but which nevertheless hold the greatest potential for solving our long-term energy needs.

The first program to which I refer is the breeder basic research program. While the bitter debate over Clinch River is behind us now, we must nevertheless preserve the breeder energy option in this country, by protecting the tremendous amount of expertise and the extraordinary capabilities of the breeder research facilities that currently exist in our national laboratories. The Department of Energy is presently reviewing its breeder research capabilities to determine how to best utilize these resources, in order to advance the technology in a direction that will lead to the effective commercialization of a breeder option. In order for this to happen, we must provide a breeder design that will address the requirements for cost-effective, safe, and proliferation-resistant deployment of the breeder. There are several new, exciting concepts in the wings, waiting to be considered, that will accomplish these goals more fully than ever before—and I mention, as just one example, the integral, metal-fueled fast-reactor concept that is being developed at Argonne National Laboratory. Funding of the Department's breeder research program at the administration's requested level is, in the committee's opinion, the very minimal level within which we can proceed to that end.

Second, I commend the committee for its balanced judgment in restoring the fusion research budget to a level that will allow not only the lead projects to continue at an uninterrupted pace, but will also allow the smaller—but no less important—research programs to continue. Those programs that now may be considered small appendages to the overall fusion effort may someday provide the creative technological advances that will enable the fusion program to realize a commercial viability that, up until that point, might have been unachievable. For, despite all the scientific breakthroughs that have been and will be made in the fusion program, if we cannot provide a machine that is attractive to our utilities as a manageable source of electricity, our efforts will have been in vain.

Last, I wish to point out that, while there may be many Members of Congress that are concerned about the effectiveness and the wisdom of the Nuclear Regulatory Commission in this country's extremely volatile nuclear climate, this is not the time to tie the commission's hands by severely cutting the funds by which they must operate. For, although we may not have had any new nuclear powerplant orders for several years, we nevertheless have a tremendous amount of ongoing activity in the inspection and licensing of nuclear plants that were started in the 1970's. To restrict the NRC's ability to function at this crucial time would be equivalent to turning our backs on the nuclear industry as a whole. With all the difficulties that our nuclear industry is already facing, we do not need to—nor should we—add another hardship to their already troublesome travails.

Furthermore, we can least afford to reduce the NRC's safety research budget, which is already $19 million below last year's budget, at a level of $168 million. This is the critical floor-level of funding that would be required to continue a credible research program. Whereas, in times of fiscal restraint, programs such as research—which have a long-term payoff—tend to play second fiddle to programs of a more near-term urgency, we nevertheless need to remind ourselves of the tremendous benefits that such research activities will have for our nuclear licensing activities—and thus for our entire nuclear industry—in answering many key safety and licensing issues that only research can adequately address.

Again, I express my appreciation to the members of the Appropriations Committee for their balanced, objective approach to formulating a bill that will serve our energy and water projects well in 1985.

Mr. HATFIELD. Mr. President, I have an informal list of anticipated amendments. Some of those have been worked out to the point that now there are only a few amendments left to be offered: The Senator from Arkansas [Mr. BUMPERS], the Senators from California [Mr. CRANSTON and Mr. WILSON], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Arizona [Mr. DeConcini]. Those are the only amendments that we know of that may yet be offered.

The Senator from South Carolina, I believe, has an amendment ready to offer now.

Mr. THURMOND. Mr. President, I do have an amendment.

Mr. HATFIELD. I yield to the Senator from South Carolina.

AMENDMENT NO. 3302

(Purpose: To provide funding for continuation of planning and engineering of the Charleston, South Carolina harbor deepening)

The PRESIDING OFFICER. Will the Senator please send his amendment to the desk?

Mr. THURMOND. Mr. President, I send my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from South Carolina [Mr. Thurmond] for himself and Mr. Hollings, proposes an amendment numbered 3302.

On page 4, at the end of line 4, add the following: "And in addition, within available funds, $550,000 shall be made available for the continuation of planning and engineering for the deepening of the Charleston, South Carolina Harbor.".

Mr. THURMOND. Mr. President, I am joined by my distinguished colleague from South Carolina, Senator Hollings, in introducing this amendment which would provide funding for continuation of planning and engineering for improvements of the Charleston, SC, harbor.

The channel at Charleston is currently authorized at a depth of 35 feet. This means that ships calling at the port must draw no more than 31 feet, in order to safely navigate the channel. In light of the large size of ships routinely plying the world's oceans and calling at American ports, it is important that our Nation not fall further behind in port development.

Mr. President, the engineering of these improvements must go forward. We cannot allow this worthy project to fall by the wayside as Congress deliberates omnibus water resource legislation and alternative cost-sharing mechanisms. The port of Charleston is a very significant element in our worldwide trade posture. In 1981, customs revenue in Charleston was approximately $150 million. Maritime Administration figures for calendar year 1983 rank Charleston third in containerized cargo for the east and gulf coasts, and seventh nationally. The port handled 2.1 million tons of containerized freight in 1983, and is expected to handle 2.8 million tons this year.

Mr. President, this amendment simply directs that $550,000, a figure based on corps estimates, be set aside for further planning of this essential project. If we are to maintain a high profile in world commerce, we cannot ignore the needs of high volume/high value ports such as Charleston. It is imperative that the engineering and planning go forward for harbor improvements to accommodate the larger containerships. I believe this issue is important to our Nation, and I urge my colleagues to support it.

Mr. President, I shall appreciate any consideration the manager of the bill will give to this important project. It is very essential to my State and I think to the entire Nation.

Mr. HOLLINGS. Mr. President, I second all that my senior colleague has said about the urgent need to infuse an additional $550,000 into the Charleston Harbor project. The corps has indicated that this amount is within the approved capability of the corps to continue the vital engineering and planning toward the preparation of specifications.

The $550,000 is required for work on 17 separate tasks; including the foundation materials study, the study of ocean dumping sites, other environmental studies, archeology studies, hydrographic surveys, and all the other work necessary to deepen the channel to a safe depth for modern shipping.

Our chairman, the distinguished Senator from Oregon [Mr. Hatfield], is always most gracious to our requests. Earlier today I explained to him that this great need had just come to our attention. I appreciate the cooperation of the chairman and the distinguished ranking minority member [Mr. Johnston] in working out this critical addition to the funding of the essential improvement to one of the Nation's strategic harbors.

Mr. HATFIELD. Mr. President with regard to the amendment offered by the Senator from South Carolina [Mr. Thurmond] on behalf of himself and Mr. Hollings, as it states in the amendment, it is within available funds——

Mr. THURMOND. Yes, Mr. President; it is.

Mr. HATFIELD. With that understanding, we are willing to accept the amendment. I believe the Senator from Louisiana has cleared it on his side, too.

Mr. JOHNSTON. Yes, Mr. President, that is cleared on our side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3302) was agreed to.

Mr. THURMOND. Mr. President, I express my deep appreciation to the distinguished chairman of the committee and the distinguished ranking member, the Senator from Louisiana [Mr. Johnston] for their consideration and cooperation in this important matter.

Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I believe the Senator from Ohio is interested in offering an amendment.

Mr. METZENBAUM. Mr. President, I have a statement to make and it might not be necessary to offer an amendment if I can get some understanding from the chairman of the committee.

Over the past year, I have become increasingly concerned about a number of business practices of the Bonneville Power Administration which impact on the people of the Northwest and on citizens throughout the country. I am particularly concerned with the fact that BPA has accumulated a debt of almost $7.9 billion—but it has repaid only $638 million. In fact, it has repaid only $43 million of that debt over the past 10 years. Senator Hatfield is correct in saying that.

Originally, I had intended to offer an amendment to this legislation, the energy and water appropriations bill for fiscal 1985, that would take steps to insure that this huge debt would be repaid to the Treasury in an orderly, timely, businesslike fashion. The amendment that I would have offered simply requires BPA to establish a repayment schedule on that debt, so that principal and interest is paid to the Treasury on a straight-line amortization basis in annual installments. In other words, the amendment requires BPA to repay the debt just as a homebuyer repays the bank on a regular installment basis.

Since I announced my intention to introduce this amendment, however, Senators Evans, McClure, and Hatfield have announced their willingness to hold hearings in the near future on the general set of questions involving BPA. In light of their willingness to hold such hearings, I have agreed to delay offering this amendment.

But I wish to make it clear that I will continue to push such legislation until BPA begins to make regular installment payments to the Treasury, either through an administrative or legislative change.

One newspaper article I have seen indicates that such an amendment would raise the rates of customers served by BPA by about 8 percent. I have not seen that figure previously.

But it is not my amendment, or any other amendment, that will raise the rates of BPA's customers. It is the debt itself to which BPA is already obligated that will cause those rates to increase. BPA officials and Senators from the Northwestern States consistently say they have every intention of repaying that debt in later years. So, the question is, will they start to pay smaller amounts now, or will they make larger balloon payments later?

And what kind of impact would that have in the future? My amendment in fact would make it easier for BPA and its customers to cope with that $7.9 billion debt. My amendment would require BPA to repay the debt in installment amounts each year. It makes repaying the debt a manageable exercise. The alternative is to delay repayment each year, as BPA has done, and then to face huge balloon payments in the later years of each contract. In fact, that is what BPA anticipates. According to its own repayment schedule submitted in September 1983, BPA points out that it will need to make payments in the amount of about $150 million each year from now through the year 2017. But then its payments—the payments necessary to pay the debt so BPA does not default on its obligations—will jump dramatically, so that BPA will be forced to pay $491 million in the year 2018, $642 million the next year, $691 million the next year, rising to a level of $924 million in the year 2026. Those are costs, using constant 1983 dollars. In other words, BPA admits in it own documents that huge payments to the Treasury will be required in the future if the debt is to be repaid on time.

BPA has objected to the requirement to make installment payments on the debt. But virtually every other agency that has looked into BPA's repayment program has recommended this course. GAO recommends that the debt be repaid in a regularly amortized fashion. So does the Treasury Department. The Grace Commission recommends this proposal, and notes that it would generate a savings to the Treasury of $1.2 billion over a 5-year period.

It should be noted that TVA makes annual installment payments on its debt to the Treasury for similar obligations. Even BPA itself used to make installment payments, until it changed its practice in 1964. I believe it is time to get that system back in place, so that the ratepayers will be spared sharp increases in their rates, and the Treasury will receive the money owed to it.

Mr. President, I look forward to a hearing in the Committee on Energy and Natural Resources to review this matter. But there are a number of other questions that must also be addressed when we look into the practices of the Bonneville Power Administration.

Question 1. Why does BPA receive funds as borrowing authority from the Treasury from a permament account, instead of receiving direct appropriations from Congress? This bill includes $371 million in new borrowing authority for BPA, which it draws from a special account. That account was originally provided up to $1.25 billion in borrowing authority in 1974, and it was replenished with $1.25 billion in borrowing authority in the 1984 energy and water appropriations bill. Why is it necessary to go this funding route? Why isn't BPA subjected to the same budget and appropriations scrutiny that other programs receive.

Question 2. How much of the delay in making regular repayments to the Treasury can be attributed to the escalating costs of the nuclear power facilities constructed by the Washington Public Power Supply System—whoops, as it is called—under net billing arrangements with BPA? What will happen to those costs now that one plant, WPPSS No. 2, is coming on line this summer, and plants Nos. 1 and 3 have been mothballed, at least temporarily?

Question 3. Where will BPA be able to sell its surplus energy over the next few years? BPA says it will repay the Treasury debt through sales of that surplus energy, but others indicate that it will be difficult to sell that surplus power. What happens if that market does not develop?

Question 4. How effective is the oversight by Congress and the administration of the BPA system? Last year the Washington Public Power Supply System defaulted on its bonds, the largest municipal bond default in the Nation's history. In addition, as I have stated, there is a large and growing debt to the Federal Treasury. The Nation as a whole has begun to feel the impact of those BPA decisions. BPA practices are no longer only a regional concern, but increasingly a concern for the whole country.

I believe these are important questions that should be addressed during hearings in the Energy Committee. I appreciate the willingness of my colleagues to hold this hearing and to give this matter the attention it deserves.

It is my understanding, and I hope that the chairman of the Energy Committee will be good enough to confirm the fact—I just came onto the floor. I have been out of the city this morning, but as I arrived here I was advised by my staff that the chairman of the Energy Committee has indicated, on a date to be agreed upon, set by him, of course, in September there would be a full hearing on this subject. Am I correctly informed?

Mr. McCLURE. Mr. President, will the Senator from Ohio yield?

Mr. METZENBAUM. I certainly will.

Mr. McCLURE. Mr. President, I thank the Senator for asking the question. And, yes, as we have said on previous occasions we do intend to hold hearings with respect to the repayment schedule. The Senator and I have had colloquys on the floor in this respect in the past as well as the present. I do hope we can find a mutually satisfactory date. The Senator knows that period in July is very, very tightly constrained between the two conventions. It is my hope we can find a mutually acceptable date in September and, if we can, it will be my intention to hold those hearings.

I also hope those who are interested in this matter, as the Senator from Ohio is, will help us prepare for those hearings, will look at the witness list, will help us prepare those who should appear and testify, and will participate in the hearings because I think we badly need to get the record clear about some of the myths and misconceptions as well as the problems that do exist. I look forward to working with the Senator in that regard.

Mr. METZENBAUM. I thank the Senator from Idaho, the chairman of the committee. I might say that the Senator from Washington [Mr. EVANS] has made inquiry of the BPA itself and asked them to get some of the factual data necessary for us to go forward with those hearings. I assure the Senator from Idaho that my staff will work with his so that we might have an appropriate witness list so that we might make some headway in moving forward to resolve this matter rather than having to return to the floor time and time again.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I join in assuring the Senator from Ohio that I am very anxious to participate in the hearings, but I do feel constrained to set the record in a little better perspective than the Senator from Ohio his indicated it to be this afternoon. There is no one who has followed Bonneville Power Administration closer than I, especially through the appropriations process.

There has been a great recession in the Northwest economy; it is probably one of the most severely affected areas in this country. We have had low water years. And, of course, a hydroelectric system by its very title indicates that we are dependent a great deal on the efficiency and production of that system and of course, on the flow of water in the river. We had very low water years one after another. In addition, we had the debacle of the WPPSS projects, projects that I did not support from the beginning but nevertheless those plants went forward and the Senator from Ohio is familiar with that debacle. All of these impact upon the Bonneville Power Administration's financial situation. Interest payments as a result were deferred for 4 years; 1979, 1980, 1982, and 1983. But let me say to the Senator from Ohio, as I am sure he knows, in October all deferred payments will be repaid with interest and the BPA will be current.

I wonder if I might repeat that.

Mr. METZENBAUM. I am sorry.

Mr. HATFIELD. I want to assure the Senator from Ohio that those 4 years of deferred interest payments will be current and those payments will be made by October with interest, which means that those interest payments will be current. In addition, in fiscal year 1985, it is projected, and all the fiscal forecasts will be performed, $780 million will be sent to the Treasury as part of the principal and the interest.

Now, I am very grateful the Senator has not pressed his amendment because if he did, the people of our area are fully aware that it could mean as much as a 40-percent increase in rates. I am sure the Ohio Senator is not interested in imposing such a burden in a time of recession upon the ratepayers of the Pacific Northwest.

So I make those statements as chairman of the Appropriations Committee, who has followed the repayment situation closely. That does not mean that the whole system could not be improved.

I think it is time for a review since Mr. Roosevelt established it in 1934; that that system has been patchworked in some cases, has been modified and changed, but basically the $8 billion, which is in effect the outstanding debt owed to the Treasury of the United States for dams and transmission lines, all the other things that have been added, is in sound condition as far as the Treasury is concerned. An oversight function should periodically review things like this over a period of time. But I do assure the Senator there will be a currency of those deferred interest payments. I am fearful that somehow the description given today will lead people to believe that perhaps the fiscal situation is in shambles out there, and it is not. It is not. I do not think the Seantor from Ohio would want to communicate that because it would not be accurate to do so.

Mr. METZENBAUM. I thank the manager of the bill. I certainly do not wish to suggest that their condition is in a shambles and I certainly do not want to create an unfair economic burden on an area that is having its own difficulty. I do believe we need a reasoned and rational approach to this matter so that the rest of the Nation will not be called upon to bear the burden of those in the Northwest.

And the assurances that the Senator from Oregon gives with respect to the amount that will be repaid and by date certain—I do not think I have gotten the exact date. Was it October?

Mr. HATFIELD. October.

Mr. METZENBAUM. October is very encouraging.

Mr. HATFIELD. At the end of the fiscal year of 1985, October 1985.

Mr. METZENBAUM. October 1985.

Is it the fact, will there be any payments made prior to that time, or will it all come in October?

Mr. HATFIELD. Yes; there are payments being made currently.

Mr. METZENBAUM. There will be payments made?

Mr. HATFIELD. Yes; by the end of 1984, fiscal 1984.

Mr. METZENBAUM. I thank the Senator for advising to that effect. I think he may be making some progess along this line.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina has been seeking recognition.

Mr. McCLURE. Mr. President, I wonder if the Senator will withhold the amendment so I may complete the discussion on the pending matter.

Mr. THURMOND. Mr. President, I am glad to yield to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCLURE. I thank the Senator.

I wish to follow what has already been said with respect to Bonneville Power rates.

I think the record should reflect that the Bonneville Power Administration has already gone to the Federal Energy Regulatory Commission in a rate case which has been approved by FERC which includes the payment schedule to which the distinguished Senator from Oregon has made reference. That has already been accomplished. That was something upon which Bonneville has been working for over the last 18 months or 2-year period in order to get that rate approved, and that is in place, and it will make possible the payments to which the Senator from Oregon has referred.

Second, not because I wish to debate the issue, but because I think the record should be clear at this point, the default on the WPPSS bond has nothing to do with Bonneville. I made that statement repeatedly, and still it creeps back into the discussion that somehow Bonneville is responsible for the default on the bonds issued by the Washington Public Power Supply System. Again, the bonds upon which Bonneville has some responsibility have not been defaulted. It is the bonds issued with respect to the plants over which Bonneville has no authority or control upon which default has occurred.

I think it is essential that we do make the record clear because that is a complicated enough situation that has enough people concerned that inaccurate statements could be disseminated to the public and cause undue financial concern on the part of other people who are not affected in that way.

Mr. METZENBAUM. Mr. President, I understand what the chairman of the Energy Committee is saying. I wish to point out that we have a distinction between WPPSS 1, 2, and 3 and WPPSS 4 and 5. There is some confusion, but the fact is that these are the kinds of facts that I think the hearing will bring out. I think that the main thrust of this Senator at least is to try to move this entire subject into an orderly manner so that the U.S. Treasury will be repaid the money that is owed to it, and I think it is irrefutable at this point that has not occurred and there is a substantial default. I think the hearing will do more than we probably will do here in the Chamber, but we probably will not confuse the issue a little bit more.

Mr. McCLURE. Mr. President, if the Senator will yield at that point, I agree with that. That is one of the reasons why I have been so very willing to have the hearings.

I also agree with the Senator from Oregon that after many years it is worthwhile for Congress to stop and take a look at what has been done and where we are now, and have a clear picture of what the situation is.

The hearings should contribute, and I hope will contribute, to a public understanding of what the situation really is with respect to Bonneville.

Mr. METZENBAUM. I hope a solution as well as an understanding.

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. McCLURE. Mr. President, if the Senator will yield for one more sentence, and I thank the Senator, the last comment of the Senator from Ohio presupposes that there is a problem, which in fact a hearing may reveal does not exist.

AMENDMENT NO. 3303

(Purpose: To designate the Lowndesville Recreation Area located within the Richard B. Russell Dam and Lake Project, South Carolina and Georgia as the "Jim Rampey Recreation Area")

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND], for himself, Mr. HOLLINGS, Mr. MATTINGLY, and Mr. NUNN, proposes an amendment numbered 3303.

Mr. THURMOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 11, following line 9, insert the following:

SEC. . The Lowndesville Recreation Area, located within the Richard B. Russell Dam and Lake Project, South Carolina and Georgia, shall hereafter be known and designated as the "Jim Rampey Recreation Area." Any reference in any law, map, regulation, document, record, or other paper of the United States to such recreation area shall be deemed to be a reference to such area as the "Jim Rampey Recreation Area."

Mr. THURMOND. Mr. President, the amendment which I am proposing for myself and Senators HOLLINGS, MATTINGLY, and NUNN would rename the Lowndesville Recreation Area within the Richard B. Russell Dam and Lake project the "Jim Rampey Recreation Area."

During the developmental stages of the Richard B. Russell project, the area contemplated by this amendment was referred to in the master plan as the Lowndesville Recreation Area. In fact, however, this land has not at any time been a part of the nearby Lowndesville community. Prior to the Russell project, this was farmland in an unincorporated section of Abbeville County, owned and farmed by the late Mr. Jim Rampey, for whom the recreation area would be renamed.

Mr. President, on two prior occasions, I have introduced similar bills, which were incorporated into omnibus water resources measures. Unfortunately, in the 97th Congress, we were unable to get the measure to the Senate floor before adjournment. This type of legislation should not be delayed by the time-consuming needs of such major legislation. All this amendment does is change the name of a recreational area in a national hydroelectric project. There is no additional cost involved.

Mr. President, it is appropriate that we recognize the contribution to the productivity and prosperity of our Nation made by the farmers and families who lived in this area. The naming of this park after Jim Rampey has the support of the South Carolina Department of Parks, Recreation and Tourism, the Clarks Hill-Russell Development Authority, the Abbeville County Council, the Lowndesville Town Council, and State Representative Michael S. Gulledge of Abbeville County.

The four Senators from the two States involved strongly approve it, and I appreciate the managers agreeing to accept this amendment.

Mr. HATFIELD. Mr. President, if the Senator will simply yield for a question, has the Senator checked with the authorizing committee on this matter? We have frequently had requests for change of names or for naming projects and so forth. The Appropriations Committee has diligently tried to follow a policy of having this type of matter cleared and handled through the authorizing committees.

Mr. THURMOND. Mr. President, I wish to say that since the authorizing committee has already approved it twice, we felt that was adequate and felt that they had no objection.

Mr. HATFIELD. That is the Environment and Public Works Committee?

Mr. THURMOND. Yes.

Mr. HATFIELD. Mr. President, we will be delighted to accept the amendment as offered by the Senator from South Carolina.

Mr. JOHNSTON. Mr. President, on behalf of the minority, we also accept the amendment with the caveat that this not set a precedent for other renaming in our appropriations bills.

● Mr. HOLLINGS. Mr. President, I am pleased to join my distinguished colleague, Senator THURMOND, in proposing the amendment before you now. As he has said, the purpose of this amendment is to rename the Lowndesville Recreation Area within the Richard B. Russel Lake and Dam project the "Jim Rampey Recreation Area."

Jim Rampey and his family owned the property upon which the park is to be located from 1919 until 1980 when they sold 73 acres to the Government for a State park within the dam project. Given the fact that Mr. Rampey was a farmer who cultivated and tended this acreage, I believe it is a very fitting tribute that we rename this recreation area for him.

This amendment has the endorsement of the South Carolina Department of Parks, Recreation and Tourism, the Clarks Hill-Russell Development Authority, the Abbeville County Council, and the Lowndesville Town Council. It is noncontroversial and requires no Federal moneys. I hope my colleagues will join us in supporting the passage of this amendment.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment (No. 3303) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I wish to express my appreciation to the managers of the bill.

AMENDMENT NO. 3304

(Purpose: To increase by $5,000,000 the funding available for solar-thermal research in the Department of Energy)

Mr. DECONCINI. Mr. President, I have an amendment I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 3304.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 22, line 10, strike out the period and insert in lieu thereof "; and of which $16,885,000 shall be available for solar building energy systems.".

On page 23, line 20, strike out "$726,905,000" and insert in lieu thereof "$721,905,000".

On page 23, line 20, strike out the period and insert in lieu thereof "; of which $542,800,000 shall be available for high energy physics.".

Mr. DECONCINI. Mr. President, I offer an amendment which increases the appropriation for research on active and passive solar energy research by $5 million. This added funding would bring the program back to its fiscal year 1984 funding level and would permit an important measure of continuity in the planning and objectives of this research.

My amendment also does reduce the appropriation for the high energy physics program by the same 45 million, so that this bill can remain the formal budget ceiling of the Energy and Water Development Subcommittee.

Mr. President, I feel my amendment can stand on its own merits. I regret the need to transfer funds from some place else. But it is obviously necessary that I do so in order to remain within the spirit of the budget ceilings we have recently passed. The high energy physics program, however, has been blessed with enormous funding increases, which I have supported, while the funding for solar energy research has steadily declined. The bill before us gives the high energy physics program a $69 million increase over last year's budget, and $117 million increase over that program's fiscal year 1983 level of support.

Let me emphasize that the total funding remaining for the high energy physics program would remain at over a half billion dollars; namely $542,800,000 to be exact, if my amendment is passed.

Mr. President, the glory days of solar energy are definitely behind us. The popular and congressional romance with these programs has ended. Those who have opposed them from the very beginning now seem to have the upper hand.

In some respects this outcome is a result of the failure of the solar energy research community to demonstrate to the public that it was wisely investing the taxpayers money. There are other reasons that are just as noteworthy.

One could probably graph the fortunes of the solar energy research program over the years and note that its level of support has almost exactly reflected the price of crude oil posted at Rotterdam. When our energy costs were at their highest, and our national anxieties at their peak, no amount was too much for solar energy. Now that we are lulled by the prospect of stable and reasonably affordable energy prices, the emotions spent in support of solar research have since dwindled.

Neither extreme, in my judgment, is praiseworthy. If too much money was poured into Federal research in the past, it was because some assumed they could simply buy their way out of the energy crisis we were facing. No matter that basic research sets its own time schedule and we have an opportunity to make it work. No matter that the promises of new energy alternatives were often no more concrete than the words that were talked about in this area.

Now that the solar honeymoon is over, we are verging on indictable behavior of the opposite extreme. The Nation's research program on active and passive solar energy, termed in our committee's report as the solar building energy systems program, has been dealt a 28-percent cut in the bill before us. Our bill recommends funding of $11.9 million, down from fiscal year 1984 funding of $16.5 million.

I report to my colleagues that there is no obvious reason for this cut other than the strong feeding on the weak. I am familiar with some of the work done in the active and passive solar programs. It meets the most rigorous definitions of basic science. It has to do with materials testing, fluid mechanics, and the testing of alternative configurations for both solar heating and cooling.

In every case, we are talking about the development of technology that promises significant energy conservation. More importantly, it promises the utilization throughout the year of the solar resource that is so plentiful in many regions of the country.

My amendment does not specify the particular activities to which DOE would apply the amendment's funds; however, I believe that the Department should pay close attention to two important solar reseach programs that the administration budget proposes to terminate for fiscal year 1985. These programs are systems integration research and technology transfer, which received $1.2 million and $0.5 million respectively for fiscal year 1984.

Systems integration research produced information on the most cost-effective ways for homebuilders and architects to integrate passive solar features and active solar systems into different building types. Such research has been conducted into certain residential and commercial building types, but none is scheduled for fiscal year 1985 in light of the administration's recommendation. The technology transfer program channels the results of research programs to groups and individuals who would make use of it. Both programs make important contributions to energy conservation through the increased use of passive and active solar features.

The active and passive solar research programs are small potatoes as research programs go; $16 million is a pale shadow compared to a half a billion each for the fusion program and the high energy physics program—neither of which can offer any prospect of concrete contribution within this century.

I want it to be made clear I do support those programs as well. It is time that we commit ourselves to alternative fuels. But certainly, let us not shortchange active and passive solar energy systems.

I ask my colleagues to permit researchers at the Department of Energy, at universities throughout the country, to maintain a steady flow of work. That is what this amendment would provide. Let them at least have some year-to-year continuity in the research objectives that are underway. This is valuable work. I have seen some of the results. I have seen some of it functioning in buildings, and I hate to see us take a step backward at this time.

Mr. HATFIELD. Mr. President, I reluctantly rise to oppose this amendment offered by the Senator from Arizona, as he offered it in committee. We indicated, in order to try to accommodate him in committee, that we would shift the funds within the solar section to make room for this $5 million that he wished to apply to that one particular section.

I rise to oppose, not because I am other than a strong supporter of solar energy—in fact, I am proud to be designated as the solar man of the year for my work for many years in solar energy. But let me remind the Senate today that we have increased the solar energy program by $1.4 million this year and this is over the budget request by $20 million; it is over the House level by $8 million.

As chairman of the subcommittee who made the proposal of these funding levels, I did so with really the fine cooperation of the Senator from Louisiana who, as the ranking member of that committee, was reluctant to really go that high. And by his gracious manner and cooperative spirit, he did agree to an increase. I think we have really stretched this funding level about as much as we can.

Now the Senator from Arizona is suggesting we take the $5 million from the high energy physics account. Let me remind the Senator from Arizona that we have reduced that account from the budget request by $19-plus million.

The budget requests are not sacrosanct and we do not feel that is something we have to go along with. But they are benchmarks, they are indications of the kind of priorities that the Senate has placed on these programs as contrasted to the budget request.

Let me repeat that we have put the priority on solar energy. We have put the priority in the Senate Committee on Solar Energy at the expense of high energy physics because we reduced that in the budget request level by $19 million and we went in excess by $20 million of the budget request in solar programs and even went higher than the House in solar programs.

I think the request of the Senator from Arizona at this point is not meritorious, because we have demonstrated our priority in the same way that he has set his priorities. But there are limits to what we can do. Five million dollars—again, I say to the Senator, we offered to work that out within the various parts of the solar energy budget. He rejected that. Therefore, I will have to oppose this amendment today. As far as the manager from this side of the aisle, I will have to oppose this amendment.

Mr. DECONCINI. Will the Senator yield?

Mr. HATFIELD. Yes; I am happy to yield.

Mr. DECONCINI. I do not want the record to indicate that this Senator questions the commitment the Senator from Oregon has to solar energy. I commend the ranking member and the chairman of the Energy and Water Subcommittee for their support of increases.

What has baffled me is why that same approach was not applied to the active and passive solar area. At least to keep those budgets at the 1984 level—no increase, just maintain them at the 1984 level. Had that been done, I would not be here today offering my amendment. The Senator is correct. The thermal area and the photovoltaic area have had the attention of both the ranking member and the chairman. I think that is most appropriate. I am only trying to reach at least parity, not an increase, but at lease some parity in the active and passive solar programs.

Mr. HATFIELD. The Senator is correct. In the passive solar energy area, we are at the budget request, but we are $2 million over the House level in that area. So again we put a higher priority on the passive solar energy area than the House of Representatives did and we ascribed to the budget request level. So in that subdivision of the solar account, that is correct. But still in the overall solar program, we are over last year by $1.4 million.

Mr. DECONCINI. Will the Senator yield?

Mr. HATFIELD. Yes.

Mr. DECONCINI. Would the Senator agree that the amount before us here is roughly $5 million less than the 1984 funding in the passive solar area?

Mr. HATFIELD. I am sorry, I did not hear the last part of the Senator's question.

Mr. DECONCINI. Would the Senator agree that the funding before us here in the committee bill is approximately $5 million below the 1984 funding of this particular item?

Mr. HATFIELD. That is correct.

Mr. DECONCINI. That is the point that I am trying to understand. Why was this program overlooked when there was such careful attention given to the other solar programs by the ranking member and the chairman of the committee? Why did active and passive solar not get some increase—if not $5 million, some increase—because of the fine work that has been demonstrated? I think the Senator from Oregon is also, aware of some of the breakthroughs and successes in the active and passive solar areas.

Mr. HATFIELD. As the Senator knows, there are many benchmarks, and many measuring lines that we use for compiling the new budgets for the coming fiscal year. The current level is one such benchmark. That is, as the Senator has pointed out, less but also there is the benchmark of the present request. We are at that level in this fiscal year 1985 budget.

Another one is the House level. We are $2 million over the House level. So in using the various and sundry benchmarks again we feel that this is an allocation made with equity and with sustaining a program which, like the Senator from Arizona, I am committed to.

But again I say that we are willing to boost this higher than the $2 million over the House level by taking it from within other solar areas and making a redistribution. But to take it out of the high energy physics at this point I do not think represents a responsible action.

Mr. JOHNSTON. Mr. President, I also would like to reluctantly join with my distinguished chairman in opposing this amendment. Mr. President, through the years we have done tremendous things in terms of funding solar energy. We have spent about $5 billion in funding solar energy in the last 10 years since I have been here. I happened to have been a coauthor with, I believe, Senator Humphrey who proposed the first solar energy program. That was over 10 years ago. We have put about $5 billion in that in direct appropriations, and in terms of tax expenditures or tax credits on top of that.

One year, when I was chairman of this subcommittee, our total estimated peak funding was $1.6 billion including tax expenditures; a huge amount.

Mr. President, I think that demonstrates not only our commitment to solar energy but also our experience with solar energy. Let me talk first about the commitment this year. This year, Mr. President, in spite of a huge Federal deficit we have $183 million, which is more than last year, and $20 million more than the President has requested, and in some of the key areas like photovoltaic, we are over $5 million above last year.

So much for commitment, Mr. President. This subcommittee has shown its commitment to solar energy. But let us talk about the real reason the administration requested less money here, and we put in less money than last year, even though we fully funded the President's request.

The reason is, Mr. President, experience. We have had experience with solar energy. We found that some of the areas of solar energy are relatively mature, and it is no longer a question of having money to develop new techniques or new materials, but rather it is a question of application. So it is, Mr. President, that we added money for photovoltaic because that is still an area which is in research and development. Photovoltaic does have a great promise for the future. If we can learn with new materials, we can move beyond the silicon, the growing of the silicon, and maybe go to gallium arsenide or some of the new materials as they are dealing with in the Photovoltaic Program. We may make a great breakthrough in photovoltaic. But, Mr. President, this particular area which is called solar building energy systems—if you say the words very fast, it sounds important: "new materials, new techniques, new applications." But, Mr. President, really what we are talking about when we talk about passive solar and new buildings is designing your building in a certain way so that the Sun shines through the window in the wintertime and heats it up on the inside. It does not do the same in the summer because of the angle; or for collectors for hot water heating.

Mr. President, hot water heating and hot water collectors have been around this country since the 1920's, and before. They have been around in Israel for over a half a century. It is an old and mature technology. You do not have to get some scientists to get out and put up more solar area for hot water heating on the roof in order to show that it works, or to prove its efficiency. The problem on solar hot water heating, Mr. President, is to get mass production techniques, plumbers, installers, and that sort of thing that can make it work in a cost-effective way. That simply is a question of getting out and doing it. That is not paying some scientist somewhere to build a new collector. They have been building them for over half a century, Mr. President. It is not as if we do not have any money here. We have almost $12 million for these passive systems. The other kind is the passive where the Sun shines through the glass, on the rock, and heats the rock or the floor or wall, the masonite, or whatever it is in the wintertime. That makes the room warm.

I do not mean by the tone of voice to make it sound as though that is not important. It may be the most important kind of solar energy. But it is not a question of research. It is a question of getting the architects knowledgeable so that they will design the buildings and use the knowledge that we have right now. That is why we have had tax credits to encourage the architects and the builders to use the technology that we have right now.

Mr. President, this is a mature technology unlike photovoltaic. That is why the President did not request in his budget as much for passive energy this year as he did last year. That is why we have added $5 million more in photovoltaics. Our commitment to solar energy is clear: $20 million more this year than the President requested. That shows commitment but it also shows some discrimination that we put the money where it is needed, and not where the technology is mature.

If I may ask the distinguished Senator from Arizona, can he tell me precisely what this money would be used for, and where it would be spent?

Mr. DECONCINI. Yes; if the Senator would yield. I want to point out to the Senator that he is correct. Passive and active solar energy certainly have advanced over the years. But they have not come to fruition because technology is still being studied, such as the solar absorption cooling and passive solar cooling, which are not as far along as the heating systems that the Senator has pointed out. The funds in my amendment would be available for that type of research.

Mr. JOHNSTON. Could the Senator tell me precisely what kind of research?

Mr. DECONCINI. There is a need for research on absorption cooling and passive cooling. We do not have operative passive cooling systems that I have seen. We do have solar heating systems that work as the Senator has explained.

An additional point is that a number of universities would receive, grants to do research in passive cooling, not just the solar heating work that has already been achieved. I am not trying to perpetuate a program that is already completed, I am trying to move that program into the cooling area. Maybe it is because I come from a

State that is searching for ways to cool the air, as the Senator knows. And we believe that there is a great opportunity, as do many solar scientists, that passive solar cooling can also be developed. It has not been. Maybe I am mistaken. Maybe it cannot. I am not a scientist. But that is how this additional money would be used.

Mr. JOHNSTON. So what the Senator is saying is you would hope it could be used for passive solar cooling, and that that work would be carried on through grants at some universities, and we do not know where the universities are?

Mr. DECONCINI. If the Senator would yield, I am not here to tell you whether the grants would be to the universities or other research facilities. But that research would be for active and passive solar technology, for solar cooling, and also for solar dehumidifying systems that have not reached full development and demonstration.

This Senator realizes that maybe you cannot reach passive and active solar cooling. I am not sure. But it seems to me we have achieved, as the Senator from Louisiana has pointed out, success in passive and active heating. I would like to continue the research in the area of cooling.

Mr. JOHNSTON. Mr. President, I appreciate the Senator's explanation. It would be nice to be able to fully fund all the grants that all the colleges might be able to figure out. But I think the administration is correct when they basically have said let us emphasize the areas that are not mature and those that are mature, fund them fully, which we did at $12 million, in this particular instance. But we have to make our priorities, and it seems to me we properly prioritized this particular area by fully funding the administration's request at a time of budget stringency.

Mr. DECONCINI. Mr. President, I am prepared to vote. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER (Mr. COCHRAN). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DECONCINI. Mr. President, let me summarize. We are talking about a very modest increase in the active-passive solar energy accounts. The amendment before us is for $5 million. This would bring this program to the 1984 level, and would permit the research and technological advancement into active and passive absorption cooling, passive solar cooling, solar dehumidifying, and the availability of continued research, and cataloging of information which can be made available to all builders and architects so that we can continue the advancement of these technologies.

The Senator from Louisiana has pointed out that there have been great advances made in active and passive solar heating. I think a lot can be attributed to the fact that the Department of Energy and various administrations have continuously pushed in this area.

The chairman of the committee also points out that total solar funding is up. Why this one program should be decreased from 1984, when there is a tremendous need, escapes me.

I am prepared to yield the floor.

The PRESIDING OFFICER. Is there further debate? The Senator from Oregon.

Mr. HATFIELD. Mr. President, I move to table the amendment of the Senator from Arizona.

Mr. DECONCINI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island [Mr. CHAFEE], the Senator from Alabama [Mr. DENTON], and the Senator from Kansas [Mr. DOLE] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Colorado [Mr. HART], the Senator from Louisiana [Mr. LONG], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 60, nays 33, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—60

Abdnor
Andrews
Armstrong
Baker
Baucus
Bingaman
Boschwitz
Bumpers
Cochran
Cohen
Danforth
Domenici
Durenberger
Eagleton
East
Evans
Exon
Garn
Goldwater
Gorton
Grassley
Hatch
Hatfield
Hecht
Helms
Hollings
Huddleston
Humphrey
Jepsen
Johnston
Kassebaum
Kasten
Laxalt
Levin
Lugar
Mattingly
McClure
Murkowski
Nickles
Packwood
Pell
Percy
Pressler
Proxmire
Quayle
Roth
Rudman
Simpson
Specter
Stafford
Stevens
Symms
Thurmond
Tower
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—33

Bentsen
Biden
Boren
Bradley
Burdick
Byrd
Chiles
Cranston
D'Amato
DeConcini
Dixon
Dodd
Ford
Glenn
Hawkins
Heflin
Heinz
Inouye
Kennedy
Lautenberg
Leahy
Mathias
Melcher
Metzenbaum
Mitchell
Moynihan
Nunn
Pryor
Randolph
Riegle
Sarbanes
Sasser
Stennis

NOT VOTING—7

Chafee
Denton
Dole
Hart
Long
Matsunaga
Tsongas

So the motion to lay on the table amendment No. 3304 was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I should like to update the situation on the floor for the benefit of Senators. We are aware, as managers of the bill, of amendments that Senators DECONCINI, BUMPERS, WILSON, CRANSTON, and BINGAMAN may offer. I believe there is a strong possibility we will be able to work out most of those amendments with the sponsors hopefully to avoid any other rollcall. I am not aware of any request at this time for a rollcall for final passage of the bill.

As soon as we finish this bill, we will go to the HUD appropriations and then from the HUD appropriations to the legislative appropriations, completing those three appropriations bills this afternoon. I believe this bill will have been the most extensive one, and I think the other two will go even more rapidly than this one on the basis of those known amendments.

Mr. BAKER. Mr. President, will the Senator yield to me?

Mr. HATFIELD. I yield.

Mr. BAKER. Everybody in the Senate, Mr. President, knows that I never try to dangle a carrot in front of Senators, but as a departure from my usual practice I should like to say that if we can hurry up and finish this bill and finish HUD and legislative appropriations this afternoon, it would be the intention of the leadership on this side not to be in tomorrow.

Mr. HUDDLESTON. Third reading.

The PRESIDING OFFICER. The Senator from Oregon has the floor.

Mr. HATFIELD. Mr. President, notwithstanding the call for third reading, I think the Senator from Arizona would like to offer an amendment.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, I say to the majority leader that I am going to be very brief, I can assure the Senator of that.

AMENDMENT NO. 3305

Mr. DECONCINI. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 3306.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, after line 13 but before line 14, insert the following new section:

SEC. . A sum of $6,000,000 appropriated by Public Law 96-367 and expended for Contract No. 2-07-30-W0024, dated May 14, 1982, for flood control work on the Gila River Channel within the Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona, shall be non-reimbursable. A contract amendment pursuant to this provision shall not subject the District to Sections 203 through 208 of Title II of Public Law 97-293.

Mr. DECONCINI. Mr. President, I support the funding measure for Federal energy and water programs presently being considered by this body. This bill contains funding for many very important and worthwhile projects across the country, including those in my State of Arizona. Perhaps the most important appropriation in the measure, to this Senator, is the $193 million for construction activities on the Central Arizona Project. As you have heard me repeatedly state many times over the years, the final completion of the Central Arizona Project represents a lifeline to Arizonans. It will insure that there is adequate availability of one of our most basic necessities and critical resources—water—for residential, industrial, municipal, agricultural, and Indian use in our desert State. Without the CAP, I am afraid our State could not continue to grow and prosper, and communities like Tucson, where there are already signs of a groundwater shortage, would be forced to suffer undue social and economic hardships, not to mention possible adverse health consequences for its citizens. This is why it is so crucial, Mr. President, that we continue to build the CAP as quickly as possible. Keeping this project on schedule will help to reduce its costs over the long terms and guarantee a sufficient supply of water to meet the needs of our States' citizens.

While I am pleased that the committee has included an additional $5 million for the project above the President's budget request, I believe the House figure of $202 million will better enable the Bureau to move more rapidly toward their projected water delivery dates and keep this vital project on track. It is for this reason, that I urge my colleagues, as conferees on the measure, to recede to the House level of funding for this very important and urgent project.

Mr. President, when this energy and water development appropriations bill came before the full Appropriations Committee, I offered an amendment to make a drainage and minor construction contract for flood control work within the Wellton-Mohawk Irrigation and Drainage District nonreimbursable. This contract for $6 million is for work the irrigation district has undertaken to allow increased floodflows into the lower Gila River. The entire cost of the flood control project is $8 million—the district will be paying $2 million out of its own funds to complete the necessary work. In addition, any operation and maintenance costs incurred after the project has been completed will be the sole responsibility of the irrigation district. Mr. President, this channelization work on the lower Gila River, in effect, represents a major modification of an already authorized Corps of Engineers project costing hundreds of millions of dollars, all nonremibursable. The modified project provides comparable benefits and at a much reduced cost. It was undertaken by the irrigation district by means of a reclamation D&MC loan after the corps decided to shelve the original flood control project because of costs and environmental problems. The resulting irrigation district project is one that is supported by the corps, the State, and the Bureau of Reclamation. It is wholly a flood control project and as such should be nonreimbursable. The funds have already been authorized and appropriated and no new money is required. The only action required is that the district needs to be relieved of its obligation to repay the $6 million. I did not press this issue with the committee because there was some question over jurisdiction and precedence. Mr. President, I believe those questions have been adequately answered and I would hope that the managers of the bill before the Senate will accept the amendment at this time.

I am hopeful that the distinguished chairman will accept this amendment. We discussed it with the chairman of the Energy Committee, Mr. MCCLURE, and I believe he finds it satisfactory. Perhaps he has had a discussion with you.

Mr. HATFIELD. Mr. President, I will have to oppose this amendment as well. This was brought up in the committee. The Senator at that time was asked to set it over until we could gather in some additional information and facts.

I just talked to our staff and there has been no discussion with us. They have not heard about this from the minority side.

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. HATFIELD. Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will have to have order. Please be in order so Senators can be heard. Those wishing to converse could please do so outside the Chamber.

Mr. HATFIELD. Mr. President, there is a question of what portion of the flood-control work is rightly a local cost. I believe some $3.5 million of this $6 million would normally be paid for by local interests—some $3 million for bridges and $500,000 for lands.

This is not an urgent matter. I wish to suggest to the Senator that because we did set this aside in the full committee, there has not been any change in the events or in the circumstances between the time of the full committee and now. I suggest to the Senator that if we could get out staffs together, as I suggested at the time in the full committee, get out staffs together and get a little better understanding of what this is all about, I would support the Senator if that data then proves that it is a worthy project which I am sure it is. I would support the Senator's efforts then to use the supplemental vehicle that the House of Representatives is marking up now.

We have another vehicle coming down the track that we could attach this to, but I do feel reluctant to accept this amendment at this time with the paucity of data.

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. HATFIELD. I yield.

Mr. DECONCINI. I say to my distinguished colleague from Oregon, he is correct. This is not an emergency or I would have sought a vote in the committee, even though I might have lost. It was not necessary that it happen that day or today.

As the Senator will recall, we did put it off with the understanding that we would talk to the Senator's staff, as well as to the chairman of the Energy Committee.

Now I am advised that this has not occurred. I am of the opinion that my staff has discussed these matters at some length with the chairman's staff and with the staff of the Energy Committee. The committee chairman has looked at it, and he can speak for himself, as he is sitting right behind the chairman. His only reservation was that he wanted a clear history made, but he saw no objections to this amendment. I thought we had reached an agreement, or I would not have brought this amendment up. I would have waited for the supplemental.

Am I incorrect?

Mr. HATFIELD. Perhaps there is a misunderstanding. Our staff informs me they have not had that opportunity to get together and clear up the matter with the Senator's staff.

Therefore, I just feel that the situation has not changed from the time we met in the full committee markup as far as I am concerned, and, therefore, we will have to oppose it.

Mr. McCLURE. Mr. President, if the Senator from Oregon will yield, because the matter has been broached, I think I have no objection; however, the Senator from Arizona and the Senator from Oregon can work out this matter, but I think in fairness to the Senator from Arizona his statement about my position is accurately stated by the Senator, but again I do not want to interfere in any way in the determinations made by the chairman of this committee.

Mr. HATFIELD. I urge the Senator to consider withdrawing the amendment at this time and with the assurance that we will give all support we can based upon the development of the data and the material on the supplemental.

Mr. DeCONCINI. Mr. President, I appreciate what the distinguished Senator is asking. I am going to accede to his request in just a moment. But I am deeply concerned because I came here believing that this was all worked out. If I believed there had been substantial discussions with my staff, and I am, quite frankly, somewhat embarrassed. I think there is some miscommunication.

I am more than happy to work with the chairman. He has been most reasonable, as has the chairman of the Energy Committee to help find a solution. As a matter of fact, Senator McClure has worked with us on this, and this is the solution upon which we agreed.

So what I wish to ask the distinguished chairman of the Appropriations Committee is if he can give me some assurance that if we do get a supplemental, we can provide some relief in this area. That would at least pacify me. But the problem that I am very upset about is your statement that no discussion has occurred, when my office feels that there have been substantial discussions.

Mr. HATFIELD. I say to the Senator that based upon the record I know of no other Senator with whom I have worked more often with many amendments. I do not know of any other Senator who has offered more amendments in the committee process than the Senator from Arizona. We have worked out most of them, not all of them, but most of them.

I have just rechecked with my staff. They inform me the first they knew of this amendment was at 12 noon today and therefore there was nothing that we knew of in the updating of data, and so forth.

But I will assure the Senator again on the basis of past performance I will do my best to help him in resolving this problem on a future bill.

Mr. DeCONCINI. Mr. President, if the Senator will yield, I thank the chairman. He has indeed been cooperative, and as he said, we do try to work everything out, I can assure him that this Senator appreciates the assurance that the chairman and his staff will work with us to find a solution. As the Senator from Oregon astutely said, this is not an emergency, and for that reason, Mr. President, I ask unanimous consent that the amendment be withdrawn, and I thank the distinguished chairman.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The amendment is withdrawn.

Mr. HATFIELD. I thank the Senator from Arizona for his cooperation.

AMENDMENT NO. 3306

(Purpose: To provide funding for the extended uranium burn-up program)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3306.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 22, line 3, strike out "$2,046,168,000, to remain available until expended;" and insert "$2,050,168,000, to remain available until expended; of which $4,000,000 shall be available for the Light Water Reactor Improvement Program,".

Mr. BUMPERS. Mr. President, this amendment deals with a program which probably has the best cost-benefit ratio in the entire Department of Energy.

This is called the Extended Uranium Burn-Up Program. The purpose of the program is to extend the life of the uranium used in nuclear reactors. That reduces the cost of producing electricity and the cost of handling, storing, transporting, and disposing of fuel waste.

We have $327 million in a fund that is designed to find the best method of disposing of fuel waste from civilian nuclear reactors.

My first thought was to take $4 million to continue the Extended Uranium Burn-Up Program from that fund, but as the floor managers have correctly pointed out, if we start tapping that fund, there might be no end to it. So I do not propose that.

This program is authorized, and the Department of Energy has said it has a potential cost-benefit ratio of 1 to 385.

We do not get a chance to vote around here very often on programs that will return $385 for every dollar we spend.

It is an ongoing program. The House of Representatives has appropriated $4 million, and while I would like to see three times that much money in the program, in the interest of frugality and fiscal responsibility I am only asking for the House level. It just simply means it would not be a conferenceable item, and I am told by DOE that $4 million is enough to keep the program going.

With such a tremendous potential payout, discontinuing it would be the height of folly. I have talked with the floor managers and I believe they are prepared to accept this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. HATFIELD. Mr. President, as I understand the amendment of the Senator from Arkansas, originally I believe he was seeking $10 million in this project. The managers of the bill discussed this matter and we would agree with the House level of funding. I believe that is $4 million; is that correct?

Mr. BUMPERS. Yes.

Mr. HATFIELD. And it would be earmarked within the nuclear waste R&D program?

Mr. BUMPERS. That is correct.

Mr. HATFIELD. I have no objection, Mr. President, to the amendment on this side.

Mr. JOHNSTON. Mr. President, this is indeed an excellent program that has great promise. It is not as generously funded as many would like, but the $4 million will keep the program going and alive and research proceeding. We approve of this amendment.

Mr. McCLURE. Mr. President, there was a comment made that caused me some concern, because I understood the Senator from Arkansas has intended to ask that this come out of the radioactive waste fund and he modified the amendment.

Mr. BUMPERS. Mr. President, I want the Senator to know that I stand corrected. I gave the chairman an erroneous answer just a moment ago. I was thinking about the program the Senator just mentioned and not the waste R&D program.

Mr. McCLURE. So it does not come out of the radioactive waste?

Mr. BUMPERS. Not out of the $327 million pot that the utility companies have contributed.

Mr. McCLURE. It does not come out of that?

Mr. BUMPERS. It does not.

Mr. McCLURE. The reason I expressed that concern is because I think we have to be very careful about the use of that fund and any precedent that may be established. I am grateful the Senator from Arkansas has changed his amendment to make clear it does not come from that fund, because I could foresee the day when a lot of people would seek to tap that fund for a whole host of different activities that might have the same logic and same reason that might be expressed for this one.

Mr. BUMPERS. I might say to the Senator from Idaho that I would personally have no objection, but I can understand why that fund is jealously guarded. If this program succeeds, it will eliminate 25 to 40 percent of all the nuclear waste in this country. The waste disposal fund is devoted only to disposing wastes, but the extended burn-up program could cut 25 to 45 percent of the waste, so it would not be unthinkable to come out of that fund.

Nonetheless, I agree that once we start tapping that fund there might not be any end to it, so I have agreed not to try to do that.

Mr. McCLURE. I thank the Senator for that information. As an example—and I do not mean to exacerbate or extend this debate at all—we could make exactly the same argument with respect to the nuclear reprocessing plants and we might then go back to regenerating Barnwell from that particular fund. It has a host of implications. I think we should be very careful before we start down that road.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Arkansas [Mr. BUMPERS].

The amendment (No. 3306) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3307

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3307.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place in the bill, add the following new section:

SEC. . An additional $100,000 is hereby made available for the Corps of Engineers, General Investigations, for the Arkansas River Basin study, to be expended along with the other funds made available under this Act for the Arkansas River Basin Study without requiring cost sharing by non-Federal entities.

Mr. BUMPERS. Mr. President, I owe the chairman an apology. I failed to give him a copy of that amendment. I gave that to the ranking member and failed to give it to the chairman.

I suggest the absence of a quorum.

Mr. HATFIELD. Mr. President, will the Senator withhold that request for a moment?

Mr. BUMPERS. Yes.

Mr. HATFIELD. Mr. President, while there is some communications going on that is necessary, let me offer a brief amendment.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Arkansas is temporarily set aside.

AMENDMENT NO. 3308

(Purpose: Clarify congressional intent)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], on behalf of Mr. HECHT and Mr. LAXALT, proposes an amendment numbered 3308.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 28, strike lines 11-20 and insert in lieu thereof the following: "all revenues collected in connection with the operation of NAVY Geothermal projects at Fallon, Nevada, may be credited to a separate fund, to be established in the Treasury of the United States, and shall be available to the Secretary of Energy, without further appropriation, for payment of energy costs, contract administration costs, and the design, construction, operation, maintenance and replacement, and administrative costs of all required transmission facilities and power marketing activities directly associated with the Fallon, Nevada Navy Geothermal projects.".

Mr. HATFIELD. Mr. President, I offer this amendment on behalf the Senators from Nevada, Mr. HECHT and Mr. LAXALT. The amendment is in some sense a technical amendment. There is language in the bill that has been interpreted by some as being too broad that relates to marketing of power from the Navy's Fallon Geothermal project in Nevada. All this amendment does is to specify in very precise language that the only authority given to market Navy-generated power is at this project and not in California or any other place where the Navy has similar generation capacity.

That is the basis of the amendment. It has been cleared on both sides of the aisle. I urge its adoption.

Mr. HECHT. Mr. President, the Navy Department is currently developing significant geothermal resources at its air station in Fallon, NV, and at other Western locations. At present there are no electric transmission lines to carry power from the remote naval facilities to distant load centers.

The Navy has contracted with the Western Area Power Administration to market Navy power from Fallon and to construct and operate the necessary transmission lines. The bill we are now debating would establish a revolving fund available to WAPA to carry out these contracted activities.

The problem that has come to our attention is that the language in the bill is too broad. It allows for the interpretation that WAPA is to market electric power from all Navy geothermal facilities. Southern California Edison Co., a major electric utility in the region, is concerned that if passed this way, the law would override their already existing contract with the Navy for purchasing and transmitting power from another Navy geothermal project at the China Lake naval facility in southern California. This amendment would restrict WAPA activities to the Navy's Fallon project only.

In addition, we believe that the proper authority to manage the revolving fund is the Secretary of Energy. Therefore the proposed amendment substitutes the Secretary of Energy for WAPA, and allows Secretarial discretion in setting up a separate operating fund.

The proposed amendment has been endorsed by representatives for WAPA, the Navy, Congressman FAZIO's office, and Southern California Edison Co.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment offered by the Senator from Oregon [Mr. HATFIELD].

The amendment (No. 3308) was agreed to.

AMENDMENT NO. 3309

(Purpose: To expedite the completion of Hooker Dam and Reservoir of the central Arizona project)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Arkansas is temporarily set aside. The clerk will report the amendment of the Senator from New Mexico.

The bill clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 3309.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 14, line 14, strike out the period and insert in lieu thereof: "; *Provided further*, That in order to expedite the completion of the Hooker Dam and Reservoir of the central Arizona project (1) the selection of the site for the Hooker Dam or an alternative as authorized by section 301 of the Colorado River Basin Project Act shall be completed by January 1, 1985, (2) the initial draft of the environmental impact statement required for Hooker Dam or alternative shall be completed and available by August 1, 1985, (3) the final environmental impact statement for Hooker Dam or alternative shall be completed and available by August 1, 1987, and (4) the Secretary shall make a record of his decision as soon as practically possible after the completion of the final environmental impact statement.".

Mr. BINGAMAN. Mr. President, this is an amendment which does not involve expenditure of additional funds. It merely sets some deadlines, dates by which we would ask that the administration take action with regard to a project in southwestern New Mexico which is generally referred to as the Hooker Dam project. That is a project which was authorized in 1968 by the Congress. Unfortunately, since that time the project has not gotten very high priority by the administration, by any of the previous administrations.

The purpose of this amendment would be to provide that, by the beginning of this next year, the Bureau of Reclamation would be directed to come up with a selection of a site for this project; 18 months after that, they would be directed to do an initial draft of an environmental impact statement and have that available; and then a year after that, they would be directed to have completed the environmental impact statement and to make a decision as quickly as practically possible after that.

Mr. President, I want to make it clear on the record that this amendment is in compliance with the dates that we have been given by the Bureau of Reclamation for the timetable that they expect to follow with regard to this project. The purpose of the amendment is to lock in those dates as much as we can, assuming that no unexpected circumstances arise that require those dates to slip. Clearly, if there are unexpected circumstances, then that would have to be taken into account.

Mr. President, I believe that this is a project that was authorized nearly 20 years ago. It is one that the Congress should now begin to require some attention to. I believe the amendment has been cleared both with the chairman of the committee, the manager of this bill, and with the ranking minority member.

Mr. President, on September 30, 1968, the Congress of the United States authorized in Public Law 90-537 the central Arizona project. This project is for the purpose of supplying irrigation water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico through the direct diversion or exchange of water; control of floods; conservation and development of fish and wildlife resources; and enhancement of recreational opportunities. One of the units of the central Arizona project authorized was the Hooker Dam and Reservoir or a suitable alternative in New Mexico, for the development of 18,000 acre-feet of water from the Gila River primarily for municipal and industrial users. The Secretary of Interior was authorized to contract with water users in New Mexico for water from the Gila River in amounts that would permit 18,000 acre-feet of use per year.

Since that authorization, in 1968, construction of the major elements of the central Arizona project is well advanced. The works necessary to bring the water from the Colorado River to the Phoenix area are currently expected to be completed in 1986. These works are necessary to deliver water to Gila River users in Arizona to offset the effect of the authorized new users in New Mexico. Unfortunately, the work on the New Mexico project has not progressed as far as has been anticipated by the Bureau of Reclamation and the State of New Mexico. For a number of years the Governor of New Mexico and the New Mexico Interstate Stream Commission have urged that completion of the works in New Mexico be scheduled to coincide with completion of the works needed to bring water from the Colorado River to effect the necessary exchange with Gila River water users in Arizona.

I am offering this amendment to ensure that necessary steps be taken as quickly as possible toward initial construction. The amendment would set specific dates for completion of the site selection and environmental impact statements for the Hooker Dam or alternative. It further orders the Secretary of Interior to make a record of decision with regard to the project as soon as practically possible after the completion of the final environmental impact statement. With the amendment, it is my hope that construction could begin as early as 1988. The dates specified in the bill are dates currently being used by the Bureau of Reclamation in its planning for this project.

The residents of the Gila River area and the State of New Mexico are understandably frustrated by the lack of action on the part of the Federal Government since authorization of the dam in 1968. Feasibility investigations by the Bureau of Reclamation of the Hooker Dam and Reservoir or an alternative site began in the 1970's. In 1977 the administration directed that no additional study be made. It was not until 1980, following insistent urging by the State of New Mexico, that the Bureau of Reclamation began its current upper Gila water supply feasibility study.

In 1982, the Department of Interior recognized the importance of expediting completion of this project. Garrey Carruthers, Assistant Secretary for Land and Water Resources, ordered the feasibility study for the dam site to be expedited from the scheduled spring of 1986 to the fall of 1984. Unfortunately, this 1984 date has already slipped to 1985. It is essential to move toward construction of the project before any additional delay occurs.

The State of New Mexico has demonstrated its good faith in the effort of completing an initial site determination. In 1983, New Mexico provided $300,000 for the investigation program of the now-preferred Connor site near Red Rock, NM. This non-Federal contribution to the study of the New Mexico unit of the central Arizona project arose as a result of current severe Federal budget constraints. The State's willingness to invest moneys in the site selection process demonstrates its commitment to this project. Southwestern New Mexico residents have actively pursued this project since its authorization and formed the Hooker Dam Association. The association has been active in keeping the Bureau of Reclamation's attention on the project. Their efforts and perseverance are to be commended.

There are other issue to be resolved in addition to final site selection. These include determining the potential users of the 18,000 acre-feet of water to be made available for New Mexico and the places of use; assuring that providing this water to New Mexico can be accomplished without causing downstream economic injury or cost; and resolution of any water rights issues that relate to the project. I am confident that the Federal Government, working with the State and local residents, can resolve these issues and move toward construction of the project. I intend to offer all the assistance I can toward this end.

In order for this project to be completed as quickly as possible, a schedule for action is necessary. I hope my colleagues will support this amendment which provides such a schedule.

The PRESIDING OFFICER. Is there further debate?

Mr. HATFIELD. Mr. President, the amendment of the Senator from New Mexico has been reviewed by the managers of the bill and we are willing to accept it and take it to conference.

Mr. JOHNSTON. We will accept it, as well, on the minority side, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico [Mr. BINGAMAN].

The amendment (No. 3309) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I believe we have an amendment pending that has been set aside offered by the Senator from Arkansas.

AMENDMENT NO. 3307

Mr. BUMPERS. Mr. President.

The PRESIDING OFFICER (Mr. SPECTER). The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I modify my amendment by striking all after the word "study" on line 6.

The PRESIDING OFFICER. The Senator has the right to so modify.

Mr. BUMPERS. Mr. President, there is $100,000 in this bill for an Arkansas River basin study, and the amendment that I originally offered provided that there would be no cost sharing. There has been a continuing fight between the Department of the Army and the Congress over cost sharing. Congress has never voted to make communities and States share costs of water projects. Once we start that, of course, we are going to stop all projects because most States and communities cannot come up with their share. But having said that, if you look at the official corps policy, here is what the corps says in a February 29, 1984, policy statement:

> Cost-sharing policy when implemented will provide for the feasibility phase of a two-phase feasibility study to be shared 50-50 with a non-Federal sponsor.

This in a sense is not a feasibility study because we are not asking that this study be done with a view toward building some sort of a dam or hydroproject if determined to be feasible. Let me digress to say we built the Arkansas River navigation system at a cost of $1.2 billion. It was completed in 1972. It is a fantastic success by every measurement. Yet, since that project was completed, we have never done a water feasibility study on that system.

What we want is a study to determine at what point on the river the water can be used for swimming; at what point we can use it for irrigation. There are a number of communities up and down the river that are going to soon be reaching the point where their municipal water supplies are inadequate. We want to determine if it is suitable for drinking purposes or industrial use, and if not, what kind of treatment will it require to make it suitable. So there is no follow-on project that will result from the study. Once this study is done, that is all we are asking for. I think that former Secretary Gianelli's cost-sharing policy is designed to cause people to put up half the money for feasibility studies where there is supposed to be some sort of hardware project to follow such a study. That is not the case here.

This is all we want; the study so the people in Arkansas will know what part of that river water can be used, and for what purposes.

Mr. HATFIELD. Will the Senator yield?

Mr. BUMPERS. I will be happy to.

Mr. HATFIELD. The Senator makes an excellent case. Senator JOHNSTON and I have discussed this matter. I wonder if the Senator would modify his amendment to read an additional $100,000 within available funds. I assure the Senator that we will take every action to make sure this is a conferenceable item, but to do it within available funds because we want to hold the line here.

Mr. BUMPERS. You have my concurrence on that, Senator.

Mr. HATFIELD. Mr. President, with the modification offered by the Senator from Arkansas, the manager on this side of the aisle would be willing to accept the amendment.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Mr. HATFIELD. The modification is "within available funds" to follow line 2, the "$100,000." So it would read "an additional $100,000 within available funds is hereby made available."

The PRESIDING OFFICER. The Senator from Arkansas has the right to so modify his amendment.

Mr. BUMPERS. Mr. President, I so modify my amendment in concurrence with the terms just stated by the chairman of the committee.

The PRESIDING OFFICER. The amendment is so modified as just stated.

The amendment, as modified further, follows:

> At the appropriate place in the bill, add the following new section:
>
> SEC. . An additional $100,000 within available funds is hereby made available for the Corps of Engineers, General Investigations, for the Arkansas River Basin study, to be expended along with the other funds made available under this Act for the Arkansas River Basin Study.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, for the minority we also accept this amendment. We also endorse what the Senator has said with respect to cost sharing.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Arkansas [Mr. BUMPERS].

The amendment (No. 3307 as modified further), was agreed to.

Mr. BUMPERS. Mr. President, I thank the managers for their cooperation on this amendment.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise on behalf of the citizens of the very small community called Haysi, VA, spelled H-a-y-s-i. It might be interesting to know the origin of that name. It has a small river that flows through this community and the river periodically floods. That is the purpose of my remarks today. But when it is not flooding, in the old days there was a small ferry operated by a man named Si. The local residents would come to either bank of the river and call across "Hey, Si, please send your ferry." Well, Si has long since gone, as is the ferry. But the floods are still there. Each year, the flooding takes its toll. The Corps of Engineers has been studying the project for a long time.

Fortunately, the distinguished Congressman from this section of Virginia, the Ninth Congressional District, has obtained in the House bill the necessary funding for the dam that the corps has been planning these many years. Recognizing the fiscal constraints, and in respect to the managers of this bill and their desire at this time not to have any added funds, I will forego sending an amendment to the desk. But I urge my distinguished colleagues during the course of the conference to look favorably upon the action by the House of Representatives and the provision inserted by Mr. BOUCHER in the hopes that it can be accepted.

Mr. HATFIELD. If the Senator will yield, I will assure the Senator from Virginia that there will be great sympathetic response to looking upon the matter referred to, both from the standpoint of its presence in the House bill, but more especially the Senator's request for us to do so. I appreciate the Senator's raising the issue at this point.

Mr. WARNER. Mr. President, I rise to bring to the attention of the Senate a critical Virginia water project—the proposed Haysi reservoir and flood control project in Dickenson County, VA.

The recent severe flooding in Haysi and the surrounding southwest Virginia communities resulted in the President declaring Dickenson County as well as neighboring Buchanan County as disaster areas.

Last month's floods resulted in $1.2 million in damage to Dickenson County and $3.5 million in damage to adjoining Buchanan County.

The Corps of Engineers is now studying the Haysi Lake project as part of a broader study on flood reduction measures for the Levisa Fork of the Big Sandy River under the authority of section 202 of Public Law 96-367.

I am advised that the Corps of Engineers is scheduled to complete its study of the Haysi project at the district level this fall.

Both the House and the Senate fiscal year 1985 energy and water appropriation bills include $10 million for continued planning of the Levisa and Tug Forks of the Big Sandy and Cumberland Rivers.

Funds for continued planning of the Haysi project will be available out of this total sum.

In addition, the House bill includes $600,000 for engineering and design work on the proposed project.

Because of Federal budget constraints, the Senate Appropriations Committee resisted my efforts to include a funding provision for $600,000 comparable to the measure included by the House of Representatives, as sponsored by Congressman BOUCHER.

This is most unfortunate.

Therefore I strongly urge that Senate conferees to recede to the House funding level for this Haysi project.

In addition, I intend to convey to the Corps of Engineers that they should complete the planning for the Haysi project as expeditiously as possible and report to the Congress the corps' findings on the continued viability and recommended design of the Haysi project consistent with section 202.

Time and time again the patient citizens of the Haysi area have suffered from severe floods, and time and time again they have been told that the Federal Government is studying the issue. Now is the time for action!

Mr. HATFIELD. Mr. President, checking with the manager, I believe there is one last colloquy that the Senator from Arkansas would like to propose.

Mr. PRYOR. Mr. President, I appreciate the distinguished chairman, the Senator from Oregon, yielding to me for the moment. I have not had the opportunity to visit personally with the distinguished chairman about a request that I have which will be embodied in the colloquy with the Senator from Louisiana, Senator JOHNSTON. I am very hopeful that this will be acceptable.

Mr. President, the legislation that we now have before us contains the authorization for many, many very fine projects.

One of those is the Felsenthal National Refuge project. In the committee that brought the legislation to the floor this afternoon, Mr. President, there is a $2 million authorization for the Ouachita-Black River construction and revetment program. There is also a $1.5 million authorization for recreational facilities for the Felsenthal National Wildlife Refuge, being a sum total of $3.5 million.

I will just say to the chairman I am very hopeful. My request in this colloquy is that we could establish the fact that we could transfer certain funds—with no changes in the overall authorization—to put $1 million for the Ouachita-Black River construction project and $2.5 million for the Felsenthal National Wildlife Refuge project, rearranging some funding levels there.

We have talked with our participants there who are involved in both of these projects in the State of Arkansas this afternoon. They are agreeable to this. We are very hopeful that this can be done and that the conferees from our side going to the conference would serve to carry out the intent of this request.

Mr. HATFIELD. Mr. President, if the Senator will yield, I have no objection specifing the use of those funds within the amount that has been provided in the bill.

Mr. PRYOR. I am very appreciative of the chairman.

Mr. JOHNSTON. Mr. President, the minority also has worked with the distinguished Senator from Arkansas. In effect, what this amounts to is changing report language found on page 41 of the report.

These are two different features of the same project and within the same dollars. We think it is a good, appropriate change. We will seek to carry this out in the conference committee. That is the committee's full intent.

Mr. PRYOR. I am very appreciative of that. I say to the distinguished Senator from Louisiana and the distinguished chairman of the committee, my colleague, Senator BUMPERS, does concur in this request, as does Congressman ANTHONY and others from my State.

Mr. President, I would also like to say in closing how appreciative we are of this transfer, and, finally, that we are very hopeful that the Corps of Engineers will carry out the intent, the specific policy and the commitments of the Federal 1981 Ouachita-Black River master plan for the Felsenthal project.

This is a very, very fine project, and hopefully the Corps of Engineers will carry out their commitment as to the recreational values that they will be responsible for in the Felsenthal area.

Mr. President, I have no further requests. I am very appreciative of the chairman and also the Senator from Louisiana.

Mr. HATFIELD. Mr. President, third reading.

Mr. JOHNSTON. Mr. President, I believe the distinguished Senator from California has an amendment.

AMENDMENT NO. 3310

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mr. WILSON], for himself and Mr. CRANSTON, proposes an amendment numbered 3310.

Strike the appropriate section of Title III, page 28, lines 4-10 and insert the following:

Provided, That notwithstanding section 8 of Public Law 88-552, the Secretary of Energy, taking into account all the interests involved, is authorized to accept and use funds contributed by non-Federal entities, including investor owned and publicly owned utilities, to modify and upgrade or participate in the modification and upgrading of existing Federal transmission facilities and to assist such non-Federal entities in the development of a new 500 kV AC line and associated facilities from Northern California to the California-Oregon border area;

Mr. HATFIELD. If the Senator will yield, will the Senator give the managers of the bill a copy of his amendment?

Mr. WILSON. By all means.

Mr. President, I allowed the clerk to read the language of the amendment in full because it is quite simple and brief.

I am offering this amendment, Mr. President, on behalf of my colleague from California and myself to preserve a historic compromise agreed to by Congress in 1964 which governs the construction of intertie capacity between the Pacific Northwest and California.

The goal of this amendment, Mr. President, is to clarify authority granted to the Secretary of Energy through the energy and water appropriations bill to proceed with construction of additional intertie capacity between Oregon and California. As presently worded, H.R. 5653 jeopardizes the framework established in the 1964 compromise, and, instead, provides wide and unreviewable discretion with respect to the determination both of the number of new lines to be built in the future and, most important, how the benefits of these lines are to be distributed.

For the benefit of my colleagues who may be unfamiliar with this project, I should explain that the intertie connects the Pacific Northwest, a region rich in the natural resource of hydroelectric capacity, with California. It provides an outlet for great quantities of hydropower generated by northwestern reservoirs which are filled with water that accumulates from melting snow. If not used in this fashion, this water would simply be wasted through spillage. The intertie project also provided access for California utilities to Canadian entitlement treaty power.

The intertie has proven to be of great benefit to both regions by producing revenues for the Northwest from its hydro resources and needed low-cost electricity for my home State of California. This transfer has resulted in millions of dollars in savings for California utility customers.

Mr. President, the issue of how such transmission should be conducted and its benefits distributed is not a new one for this body. In 1964, Congress approved a historic compromise plan to build a three-line intertie between the Pacific Northwest and California. This compromise followed years of controversy, but ultimately allowed development of the first intertie. This compromise sought to ensure that the benefits of importing northwest electric power would be conferred to maximum advantage within California. To this end, it preserved congressional oversight of any additions or upgrades to the intertie.

Continuing growth in demand for electricity in California has produced the need for additional intertie capacity, producing efforts during the past several years to upgrade existing facilities and to add a third high voltage alternating current line. For many reasons, however, progress on this proposal has been slow.

In an effort to speed construction of this additional capacity, Representative Vic Fazio requested language in this appropriations bill which eliminates the need for congressional approval of any new lines, delegating instead authority to the Secretary of Energy to develop a plan for electric transmission between these two regions. As presently worded, H.R. 5653 abdicates the oversight authority of Congress both with respect to how many lines will be built in the future, and how the benefits of those lines will be distributed. It is my concern and that of my colleague that these provisions leave open the possibility that the new alternating current line, as well as subsequent lines, could be built and operated without first evaluating the interests of all segments of California's utility sector.

The amendment which I am offering with Senator Cranston addresses the ambiguities which have been perceived in the House language. It specifies that authority is granted for only one additional line, and most important ensures that the interests of all interested parties will be evaluated when determining how the costs and benefits of this transmission line will be distributed.

I commend Representative Fazio for bringing this matter to the attention of Congress. I want to make it clear that I agree with the Congressman's objective of realizing additional intertie capacity, and that I anticipate that all parties will enter into good-faith negotiations regarding their respective levels of participation in this expansion project to bring about the earliest completion of the new 500 kilovolt line. It is not the intent of this amendment to block or delay expansion of intertie capacity. I believe that this amendment advances the goal of achieving this expansion and ensures that the interests of all utilities and parties will be considered.

I am pleased that we have been able to gain consensus among all interested parties in our State on this amendment. It is my understanding that Representative Fazio has agreed to the language being offered by Senator Cranston and me, and that it has the support of both investor and publicly owned utilities. I ask my colleagues to join in supporting its passage.

Mr. HATFIELD. Mr. President, this is a very complex issue and I really feel the committee has established what it desires with very proper language in the bill. I shall not attempt to deal here with the subject of monopoly of the private power companies. What we are seeking to do is make sure that in these additional lines, all entities will have access and be able to get into the market of California.

I should like to try to accommodate the Senators from California. Let me suggest the way we might be able to accommodate the Senators by modifying the language of this amendment, with the purpose of trying to do two things. One is to broaden the access of the types of entities that can participate in these lines; and at the same time, not to create any hindrance or encumbrance upon the expeditious building of these lines, which are desperately needed.

We do not want to provide lawyers with more legal fees and ways to stop or obstruct the basic objective of developing these lines. So what my suggestion would be is to take the language of the Senators from California on line 3 and strike, on line 3, following "the Secretary of Energy," the language "taking into account all the interests involved."

Let me state why I suggest that we strike that language: it may provide the lawyers with a hook to hang their hat on in channeling or delaying the construction of these lines.

In addition to that, and I would like to have it understood in this amendment, and that would be the language I propose:

> Congress instructs that the new 500 KV line be built promptly. Accordingly, should any of the participating entities refuse to cooperate or otherwise act to delay the construction of the line, the Secretary is instructed to proceed promptly with any of those remaining interested non-Federal entities to develop the line.

What we are doing here is broadening the access. At the same time, we are expressing the congressional desire to see these lines built promptly and not let the lawyers get into this thing to try to delay or use excuses to avoid the basic principle of getting access for a multiple base of entities.

Mr. JOHNSTON. Would the Senator yield at that point?

Mr. HATFIELD. Yes, Mr. President, I am happy to yield.

Mr. JOHNSTON. I think, if I understand it, the real problem is the allocation of the new line's capacity between the private or investor-owned utilities and the public utilities. The investor-owned utilities, as I understand it, originally wanted to allocate the new capacity on the basis of 80 to 20, which is the approximate breakdown or percentage of customers or loads that they serve.

Mr. WILSON. Will the Senator yield on that point so I may clarify that?

Mr. JOHNSTON. Yes, Mr. President.

Mr. WILSON. That is really not an accurate statement.

Mr. JOHNSTON. Then I shall direct the question to the distinguished Senator from California. As I understand it, the fight is between the IOU's and the public power people as to the allocation of the capacity of this proposed intertie transmission line.

Mr. WILSON. No, Mr. President, the tense is wrong. That is what I want to make clear. What is before us now represents an agreed-upon compromise that has been worked out between the IOU's and the public utilities. This language is their agreed-upon compromise.

Mr. JOHNSTON. I understand, Mr. President, but they have not agreed upon the allocation of the capacity, have they?

Mr. WILSON. No; they would be required to do that, but this provides the authority for them to do that and they are quite willing to do that, to work out the distribution of both the benefit and the burden.

Mr. JOHNSTON. I understand that, Mr. President. What I was asking the Senator from Oregon is with regard to the language he proposed to add on that is, if the public power people say they are willing to proceed according to a certain split and the private power people say they are willing to proceed but with another split—in other words, there is no agreement as to the split, but both want to proceed—then how does the Senator's last sentence directing the Secretary of Energy to proceed with those as to whom there is no agreement—what does it tell him to do at that point?

Mr. HATFIELD. It tells him to actively participate——

Mr. WILSON. Mr. President——

Mr. HATFIELD. Mr. President, I believe the question was addressed to me. May we have order?

The PRESIDING OFFICER. The Senator will be in order.

Mr. HATFIELD. In response to the question of the Senator from Louisiana—I believe I had the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Oregon does have the floor.

Mr. HATFIELD. I would say in response to the question that the Secretary would then be directed to proceed with the remaining entities or non-

Federal entities to develop the line. Let me tell the Senator the whole picture here in the question he posed to the Senator from California.

In the original draft language of the Senator from California, on his proposal, this is the earlier draft language:

> —the Secretary of Energy shall allocate on an equitable basis among the customers of California.—what that does is allude to the 80-20 split of the private power companies. The language has been changed in this new modification. They have camouflaged that language by saying "taking into account all the interests involved."

I submit that this is language for the lawyers to argue that it is allocated on an equitable basis among the customers of California that gets back to the 80 to 20 allocation.

Mr. WILSON. Mr. President, I have to say to my friend from Oregon that I doubt, if they felt that way, that the municipals would have agreed to it. In fact, they have agreed to it.

Mr. President, I thought the Senator from Louisiana was addressing his question to me. If he chooses to do so, I shall be happy to complete the answer.

Mr. JOHNSTON. Mr. President, I initially addressed the question to the Senator from Oregon.

Let me, if I may, first question the Senator from Oregon and then the Senator from California.

I guess what I am trying to get at is, first, are there any words of art intended or implied here that would suggest there should be an 80 to 20 split or any particular kind of split? Or, on the other hand, is this simply an authorization to the parties to try to compromise the capacity question?

Mr. HATFIELD. Mr. President, I believe that, as I indicated earlier, the language as offered by the Senator from California—both Senators from California—and taking the history of this language from the other proposal which was circulated around that, provides ample opportunity for lawyers to go in and challenge this allocation.

Mr. JOHNSTON. If the Senator will yield at that point——

Mr. HATFIELD. If we take that out, then that removes that possibility.

Mr. JOHNSTON. The Senator will agree with me that there is no allocation provided now, that that must be by compromise between the public and the private power interests?

Mr. HATFIELD. That is correct.

Mr. JOHNSTON. And there is no particular split directed or implied by this language?

Mr. HATFIELD. The point is, I say to the Senator, he as a lawyer knows that you can confuse the situation very easily by putting in confusing language that has no meaning to maybe one person and it has all kinds of meaning to someone else.

What does this language mean? I suggest that from my legal counsel—I am not a lawyer—this can raise a question on allocation, and that is something that ought to be totally removed from this bill.

Mr. JOHNSTON. I agree with the Senator.

Mr. HATFIELD. That is why the committee left that for negotiation.

Mr. JOHNSTON. That is what I thought the Senator was driving at. I just want to make that clear, that in its original form the language as proposed, it was asserted would imply words of art which would indicate an 80 to 20 split. At least I heard different parties assert that what the language meant. By taking that out, it tells the parties in effect to negotiate and there is no prejudgment as to that negotiation by this language.

Mr. HATFIELD. That is correct. It is open to negotiation. The Congress has not settled this, it has not made the allocation. That is open to negotiation.

Mr. JOHNSTON. Will the Senator from California agree with that statement?

Mr. WILSON. I think there is some confusion, Mr. President, and let me explain to my friends from Louisiana and Oregon what has gone forward here.

The language which was the original version, which the Senator from Oregon read, was that presumably in the law there was a phrase of art that would have dictated a split of 80 to 20 based on population, based on consumption. But that was deliberately changed to the language which the Senator sees before him now in this amendment, which does not dictate an 80 to 20 split. I would be happy to conduct a colloquy and place in the RECORD that fact.

What has happened is that the parties in negotiation have agreed upon this language precisely as the medium or the mechanism which will require them, with the direction of the Secretary of Energy, to negotiate both the distribution of the burden of the cost for construction of the intertie and how the power shall be distributed.

Now, the language which the Senator from Oregon has suggested might be removed is the compromise agreed upon because it does require that there can be no wholesale exclusion of either party, neither the investor-owned utilities and their ratepayers, who happen to be the vast majority in California, nor those who are securing any new source of power, the municipals, the publicly owned. This language simply says that there will be a distribution between the two. It does not dictate what the formula for distribution will be. It was for that reason—because this language would compel that negotiation—that the two sides agreed to this language as a suitable alternative.

So I urge my colleagues to accept the negotiation that has taken place between the interested parties.

Mr. CRANSTON. Mr. President, is my colleague finished?

Mr. WILSON. Yes.

Mr. CRANSTON. I believe that we may be able to work this out if we can talk it over, and I would like to suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ANDREWS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, if my friend will give us an opportunity to talk for a moment, I think we might expedite matters.

Mr. ANDREWS. Fine. But let me point out to my colleagues from California, who are talking about a deal they made and that all interested parties have been included, that is simply not the case. We have a number of entities, including some major generating cooperatives in the Dakotas, in Colorado, in Nebraska, and other areas who are very, very much concerned about this intertie situation.

Might I point out, Mr. President, the language the committee put in this bill leaves it wide open for everybody. So nobody is going to be fenced out. It says that the Secretary of Energy is authorized to construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California, and so on.

Now, what we see, apparently, is this operation that is said to us, Mr. President, to be somehow or another worked out, but nobody has asked our people who wheel power into this area what they think about it. We think we have an opportunity under the language that is in the bill to do the things which need to be done to strengthen the distribution of power in this country, which is a legitimate national goal. We do not want to see that opportunity hedged.

I should point out, Mr. President, that the Senator from Oregon, the floor manager of this bill, has worked out a compromise midway between these positions. It does not fence the opportunity away from our rural electric cooperatives or our public utilities. This is what we would like to see.

Mr. President, I have no objection to a quorum, but I think there are a number of States that are extremely interested in what is accomplished now and if we do not follow the suggestion of the floor manager of the bill, the chairman of the overall Appropriations Committee, the senior Senator from Oregon, then I am sure a number of us are going to feel very, very constrained to, shall we say, discuss this issue.

Mr. **CRANSTON**. Will the Senator yield?

Mr. **ANDREWS**. I will be glad to yield to my colleague.

Mr. **CRANSTON**. The two Senators from California are well aware of the interests of the Senators from the Dakotas and others in this matter. We had no intention of excluding them from any conversation we might have during a quorum call. I think there is a chance we can work this out if we have an opportunity to talk about it face to face. I, therefore, would like to repeat, if the Senator does not object to my suggestion, we suggest the absence of a quorum.

Mr. **ANDREWS**. Mr. President, still on my time, the reason I took this opportunity to speak was to make sure that my colleagues from those States involved, who might be in their offices, could hear this particular issue coming up so they also might take part either in the debate on the floor or in the agreement that might be reached while the quorum call is in progress.

Mr. President, I would be more than happy to join my colleague and good friend from California in suggesting the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The **PRESIDING OFFICER**. The Chair in his capacity as the Senator from Pennsylvania suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **HATFIELD**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

ENERGY RELATIONSHIPS BETWEEN THE NORTHWEST AND CALIFORNIA

Mr. **HATFIELD**. Mr. President, at this time the House and Senate bills include language calling for the upgrading of both the direct current and alternating current legs of the Pacific Northwest-Pacific Southwest [PNW-PSW] intertie. This series of major electric powerlines running from California to the Pacific Northwest has historically been of great value to both regions.

The future holds the prospect for even greater mutual benefit through sales of surplus energy, surplus capacity, exchange arrangements, mutual backup, and other arrangements that capitalize on the differences between the electric power systems of California and the Pacific Northwest. Therefore, it is in the California, Pacific Northwest, and national interests to enhance these interconnections as described in the report of the Senate Appropriations Committee. Unfortunately, recent developments can, if they continue, greatly erode the benefits of these transactions for both regions.

For many years power transactions between the Pacific Northwest and California involved sales to California at about the same prices as those of sales to Pacific Northwest customers. This provided two major benefits. First, in the Pacific Northwest, surplus energy could be disposed of with full recovery of costs, and the revenues from these sales held rates down for Pacific Northwest customers of BPA and other utilities. Second, California received large amounts of energy at prices substantially below their cost of generating with oil and gas, which are heavily relied upon to meet California power needs.

In the last 3 years, circumstances have changed dramatically. California continues to use power from the Northwest to displace the operation of oil and gas plants. In 1982 alone, 33.5 million megawatt-hours of electricity went south over the intertie lines, enough energy to meet the demands of the cities of Los Angeles and San Diego combined.

This is an impressive amount of power, Mr. President. What is considerably less impressive is the price California utilities paid for this precious commodity. In 1983, the average price of BPA's wholesale power to utilities and direct-service industries in the Northwest was 18 mills per kilowatt-hour. During this same period, California paid an average price of 11 mills per kilowatt-hour, only about one-half of BPA's wholesale price to its own customers. This price is 10 times cheaper than the average price California would have to pay to build a nuclear or other thermal powerplant today.

In short, Mr. President, this windfall has been a great deal for California consumers. It is something else entirely, however, for the consumers of Oregon and other northwest States.

As it stands, a handful of utilities exercise near-complete control over the intertie in California. As a result, the majority of California utilities, which serve a significant portion of the load in California, are denied the opportunity to compete for Northwest power. By contrast, at the present time BPA allows virtually any utility in the Northwest, to sell its surplus power south. When a free market faces severely limited competition among buyers, the result is predictable. Major costs associated with northwest energy are unrecovered. Because of sales at bargain-basement prices, BPA alone had $140 million in 1963 of unrecovered surplus power costs which fell on the economic backs of Pacific Northwest consumers.

Mr. President, it is a physical reality that the Pacific Northwest can store very little energy from year to year and must, in effect, sell what it has each year or spill it. This fact is not lost on California utilities. Indeed, in the past 2 years, they have declined to purchase large amounts of available surplus energy from BPA early in the operating year, forcing BPA to accumulate it in reservoirs. Later in the year much energy is spilled and the remainder is sold at depressed prices, resulting in highly inefficient operation of the Pacific Northwest system and wastage of a much valuable resource. In the last 2 years, for example, approximately 1,500 average megawatts of energy has been spilled and lost forever.

In effect, California has been utilizing current energy circumstances and its control over the intertie to maximize its ability to purchase power at the lowest possible price in the short run from the Pacific Northwest. This results in substantial benefits to California, substantial underrecovery of costs in the Pacific Northwest, and great amounts of energy being wasted.

While this may look good on the balance sheets of California utilities in the shortrun, it will not in the longrun. Studies performed by BPA indicate that surplus power purchases by California in the future could save California utilities and its customers billions of dollars. The realization of these savings is jeopardized by the short-term policies of California utilities.

Work is underway to secure long-term sales arrangements with California which would stabilize this situation, more equitably share benefits, and optimize resource planning in both regions. We are at a critical juncture in relationships between California and the Pacific Northwest. We have the potential for extremely favorable future arrangements and also the potential for the development of circumstances which would advantage both regions—not one at the serious expense of the other.

The actions necessary to assure the best of all worlds in this relationship consist of (a) purchases by California utilities at prices which more evenly share the savings associated with displacement of oil- and gas-fired generation and more nearly approach the price that Pacific Northwest purchasers pay for energy from BPA, (b) successful conclusion of long-term arrangements between the Pacific Northwest and California that maximize benefits to both regions, and (c) cessation of the game which has come to be known as electric chicken, where the Northwest is forced to hold energy until it can be held no longer, and then sell and spill.

Mr. President, the existing language in both the House and Senate report encourages ac and dc intertie expansion. This will help reach a far better balance between the economic interests of the Northwest and California in the long run.

Mr. EVANS. Mr. President, I strongly support the construction of additional transmission capacity between the Pacific Northwest and California. The bill reported by the Appropriations Committee would accomplish this by providing for upgrading the existing direct current [dc] line and by authorizing the Western Area Power Administration [WAPA] to construct or participate in the construction of a third 500-kilovolt alternating current [ac] line from the Pacific Northwest into central California. Studies by the Bonneville Power Administration [BPA] have concluded that together these two projects would produce net present value benefits of $2.4 billion at a cost of only $916 million—a benefit/cost ratio of 2.6 to 1.

This additional transmission capacity would enable BPA to sell more of its nonfirm surplus energy, earn more revenue, and more confidently assure repayment of the Federal investment in the Federal Columbia River Power System. At present, the existing transmission capacity between the Northwest and California is insufficient to handle all of the nonfirm surplus energy available during the heavy streamflow periods of winter and spring. Consequently, during each of the past 2 years, the Federal hydrosystem has spilled past unloaded turbines enough water to have produced 12 billion kilowatt-hours, or the equivalent of two 1,000 megawatt powerplants operating at normal capacity factors—68.5 percent. In the meantime, the California utilities have continued to burn huge quantities of oil and gas for electricity generation.

With the additional dc and ac transmission capacity authorized by this bill, the Northwest could have sold about two-thirds of this "spilled" hydropower—8 billion kilowatt-hour per year—and have earned an additional $120 million per year in revenue, while the annual savings to California would have exceeded $200 million per year. More transmission capacity between the regions would also allow more efficient operation of the Northwest's nuclear and coal-fired powerplants, now often shut off due to lack of market.

Mr. CRANSTON. Mr. President, I am pleased to join with my good friend and colleague from California [Mr. WILSON] in offering this amendment to the fiscal year 1985 energy and water development appropriation bill, H.R. 5653, to clarify that all non-Federal entities, including public and private utilities, will have the opportunity to participate in the costs and benefits of a new transmission line between Oregon and northern California.

Both the House and Senate Appropriations Committees have expressed concern with the lack of progress in increasing the capacity of the transmission of electrical power from the Pacific Northwest to California. Thus, the committees have included language in the fiscal year 1985 energy and water appropriation bill giving the Secretary of Energy the necessary authority to cooperate with non-Federal entities in constructing additional intertie capacity.

Investor owned utilities in California feel, however, that the language in the bill is too broad—that it authorizes any new facilities the Secretary of Energy deems necessary—and could preclude their participation in the development of the new transmission line. This amendment responds to these concerns.

The amendment authorizes the Secretary of Energy to accept and use funds contributed by non-Federal entities to finance the modification and upgrading of existing Federal transmission facilities as part of the development of a new 500-kilovolt ac line from northern California to the California-Oregon border area. The amendment specifically limits authorization to one new line. It also specifically provides that both investor owned and public utilities would be able to participate in the development of the new 500-kilovolt ac transmission line.

In fact, it is comtemplated that all non-Federal entities, including investor owned and public utilities, the California Department of Water Resources, and irrigation districts, will be allowed, should they so desire, to participate.

The non-Federal entities and the Western Area Power Administration have assured me that they will enter into good-faith negotiations concerning their participation in the development of this new 500-kilovolt ac line. It is my understanding that all parties will cooperate in the ultimate distribution of power from the 500-kilovolt ac line to the participating entities. I further understand that the costs and the benefits of the line will be allocated fairly among all the interested parties, both Federal and non-Federal, desiring to participate and that, in accepting and using non-Federal funds, the Secretary of Energy will consider and take into account all the relevant needs and interests of the various non-Federal entities. The amendment does not suggest or impose on the Secretary any particular value for him to hold paramount when exercising his discretion over participation in this 500-kilovolt ac line.

Mr. President, we have worked hard to gain consensus among all interested parties in California on this amendment. I urge that the amendment be adopted.

Mr. HATFIELD. Mr. President, I would like to have the careful attention of Senators on this matter because I would like to restate the proposal that the managers of the bill offer as a compromise for the amendment offered by the Senators from California.

First of all, the bill language would remain intact. Second, there would be language for the clarification of all parties concerned.

The legislative history would reflect, taking from the original language of the amendment of the Senators from California and would be an item for consideration in the conference: "Provided that notwithstanding section 8 of Public Law 88-552, the Secretary of Energy is authorized to accept and use funds contributed by non-Federal entities," and concluding with the rest of the statement.

In other words, we would delete on line 3 the language, "taking into account all the interests involved."

In addition to that, we would add the following language in the report:

> Congress expects that the new 500 kV ac line will be built promptly. Accordingly, should any of the participating entities refuse to cooperate or otherwise act to delay construction of the new line, the Secretary is directed to proceed promptly with those remaining interested, non-Federal entities to develop the line.

I believe that is what has been agreed to.

Mr. WILSON. Mr. President, that is agreeable. I would ask that that be made a modification to the amendment.

The PRESIDING OFFICER. The Senator has a right to modify his own amendment and the Senator's amendment is now so modified.

Mr. HATFIELD. Mr. President, I think that is not quite correct parliamentarily. I think, in order to clarify the action that has been agreed to, the Senators from California ought to withdraw their amendment and that we ought then to make this legislative history and consider similar language in the statement of managers accompanying the conference report to clarify the existing bill language that is not affected.

Mr. EVANS. Will the Senator from Oregon yield for a question?

Mr. HATFIELD. Yes.

Mr. EVANS. Do I understand correctly, then, that the original bill language that is in the bill reported from the committee would remain as the bill language and what the Senator has just mentioned would be legislative history?

Mr. HATFIELD. The Senator is correct.

Mr. CRANSTON. Will the Senator yield?

Mr. HATFIELD. Yes.

Mr. CRANSTON. I wish to thank the Senator from Oregon and all others who have been involved for their cooperation in working this out. The suggestion made by the Senator from Oregon, the chairman of the committee, does clarify clearly the legislative intent of what we are doing in accordance with the needs of the people of California and the interests there that Senator WILSON and I have been seeking to cope with in terms of what they wish.

I appreciate the understanding that we now have worked out and the legislative intent for action is very, very clear.

Mr. JOHNSTON. Mr. President, this action is agreeable with the minority. Just to be sure that we understand, what the Senator from Oregon just read is legislative history representing the agreement of all parties that are here on the floor—that is, the two Senators in California, the majority and minority and the two Senators from North Dakota—with reference to the meaning of the bill language as contained in the House bill. Am I correct on that?

Mr. HATFIELD. The Senator is correct. The Senator from California indicated earlier he would be satisfied with this as legislative history, leaving the bill language intact.

Mr. CRANSTON. Will the Senator from Oregon yield?

Mr. WILSON. Will the Senator from Oregon yield?

Mr. HATFIELD. Yes; I will first yield to the senior Senator from California.

Mr. CRANSTON. I wanted to clarify one point. Do we now have any difference between the House and Senate language so that we can cope with this in conference, if need be? If not, we need to make some modification.

Mr. HATFIELD. There is no difference between what at this moment has been explained between the House language and the Senate language in the bill. The only difference is the Senate has clarified and agreed to in the legislative history of this bill what the procedure or what the more specific intent is.

Mr. CRANSTON. Would that be conferenceable? Could we deal with that in conference in view of the identical language?

Mr. HATFIELD. We can adjust the statement of the managers to do so.

Mr. CRANSTON. We could do this in conference and there could be changes in the language in the bill?

Mr. HATFIELD. We can make this as a matter in conference by addressing it in the conference managers' report. It does not make it a conferenceable item in terms of the language in the bill because it is precisely the same language.

I am happy to yield to the junior Senator from California.

Mr. WILSON. My senior colleague from California has touched on precisely the point that concerned me. I was agreeable to the change in the language, but it was my understanding that what the Senator from Oregon was offering is something that would be conferenceable. I thought we were talking about language that would be in the bill and would get us to conference. My concern, quite candidly, is that without that and with only the report language, we do not have a conferenceable item.

Mr. CRANSTON. I say to the Senator from California that we would like to suggest that we just strike one sentence from what has been proposed with the clear understanding that it is not to change the intent of the Senate but it is to make this matter conferenceable.

Mr. HATFIELD. I have no objection to that request on the part of the Senator.

Let me suggest this. The Senator from Washington stated a while ago a concern about a matter which we can insert. If you have a copy of the bill, it is on page 28, line 9.

After the word "accept" we could insert, "and use funds contributed by non-Federal entities, including investor-owned and publicly owned utilities."

The Senator from Washington State raised that question a while ago which would make this a conferenceable item by inserting that language that he indicated a concern about and interest in.

Mr. EVANS. Mr. President, if the Senator will yield, I have no objection to that. I think that is a good way out. It does give us a conferenceable item and it gives us a chance to adjust the committee language report.

Mr. HATFIELD. Is that agreeable?

Mr. CRANSTON. Yes.

Mr. WILSON. That is agreeable with this Senator. I withdraw the earlier modification.

Mr. CRANSTON. I thank the Senator very much.

Mr. ANDREWS. Mr. President, I think the Senator from Oregon has done his usual great work on this. What it does is, it answers the specifics of the request of the Senators from California and it also, Mr. President, takes care of the concerns that we in the upper Midwest had for opportunities for yet additional lines into that area.

I want to commend the Senator for his action. I think we are moving in the right direction.

Mr. HATFIELD. I thank the Senator.

Mr. President, in order now to bring this to a conclusion, I would send to the desk the language which I have just read. Again let me read it—and use funds contributed by non-Federal entities including investor-owned and publicly owned utilities for that purpose—to be inserted on line 9, on page 28, of the bill after the word "accept". By doing that, the language of the bill is modified which makes it a conferenceable.

The PRESIDING OFFICER. There is a pending amendment offered by the Senator from California, Mr. WILSON.

Mr. HATFIELD. Mr. President, the Senator from California I believe withdrew his amendment.

The PRESIDING OFFICER. The Senator withdrew his modification. The Senator has the right to withdraw his amendment. He has not yet done so.

Mr. WILSON. Mr. President, the Senator from California would be pleased to withdraw the amendment to allow the Senator from Oregon to offer that amendment to the bill which the Senator from California would support.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3311

Mr. HATFIELD. Mr. President, I send my amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon (Mr. HATFIELD) proposed an amendment numbered 3311.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 28, line 9, after "accept", insert: "and use"

On page 28, line 10, after "entities", insert: "including investor owned and publicly owned utilities,"

Mr. HATFIELD. Mr. President, that would be the pending amendment to make it a conferenceable item. I move the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Oregon [Mr. HATFIELD].

The amendment (No. 3311) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I am delighted to be able to work this out with the Senators from California. I think it probably clarifies this matter for everyone's benefit. Hopefully, we can get the line built.

Mr. METZENBAUM. The committee report contains language instructing the Inspector General of the Department of the Interior to audit all major reclamation projects completed or under construction. Is it your intent that this language apply to all Bureau of Reclamation projects, including those previously audited?

Mr. HATFIELD. I understand the Senator's concerns. I might point out the language contained on page 79 of the Senate committee report covers the concerns expressed by the Senator from Ohio.

Mr. METZENBAUM. I thank the Senator. I am also interested in the status of repayment contracts of all Bureau of Reclamation projects. I believe we should encourage the Bureau and all local interests to move as expeditiously as possible to reach agreements, where necessary, to assure the timely repayment of the Federal interest.

Mr. HATFIELD. I share your concern and I thank the Senator.

Mr. President, I know of no other amendments at this time to be offered.

APPALACHIAN REGIONAL DEVELOPMENT PROGRAMS

Mr. BYRD. Mr. President, the Senate committee reported fiscal year 1985 energy and water development appropriation bill which are now considering contains $118 million for Appalachian regional development programs. This amount is $36.4 million less than the amount appropriated last year and $39.3 million less than the House-passed level.

Mr. President, I ask the distinguished chairman of the Appropriations Committee to confirm my understanding that we expect to move much closer to the House allowance for Appalachian regional development programs when this matter is considered by the conference committee.

Mr. HATFIELD. The minority leader is correct. I expect that the conference agreement for the ARC will be substantially higher than the $118 million presently contained in the Senate bill. I must condition my optimism, however, on the premise that there will be room within the bill's overall nondefense discretionary ceiling of $9.8 billion to accommodate such an increase.

Mr. BYRD. I thank the chairman for his explanation.

The appropriation of these funds is well justified. The 397 Appalachian counties which receive this aid generally suffer severely higher unemployment rates than the rest of the Nation. While the unadjusted national unemployment rate stood at 8.4 percent in February of this year, there were 324 Appalachian counties above this rate; so, nearly 82 percent of the Appalachian counties were above the national average.

In my State of West Virginia all 55 counties had an unemployment rate higher than the national average; and, West Virginia continues to have the highest unemployment rate in the Nation. Throughout Appalachia, approximately 50 counties had unemployment rates in excess of 20 percent. Clearly, there are serious regional problems stemming from these high levels of unemployment.

The economic development programs of the ARC offer some hope to reverse many of these problems in Appalachia. Highway construction and business development programs will lead to a more productive region. The people of West Virginia and Appalachia overall are not looking for a Federal handout. They simply want an opportunity to compete and contribute to a healthy U.S. economy.

So, again I thank the chairman for the consideration he has given to the funding of the Appalachian regional development programs this year.

Mr. HUDDLESTON. Mr. President, I also want to express my support for the higher number in conference.

It is in the interest of eastern Kentucky, Appalachia, and the national economy that we provide 1985 funding so that the Appalachian Regional Commission can get on with completion of its successful development programs in an orderly manner.

ARC's highway and area development programs have helped the people of Appalachia come closer to achieving the level of employment, income, housing, education, and health enjoyed by the rest of the country.

In 1960, 58 percent of all the people living in 49 eastern Kentucky counties were living in poverty by national standards. By 1980, we had cut that percentage in half and were catching up with the rest of the country.

Per capita incomes of people in Appalachian Kentucky back in 1960 were well under half the national average. By 1980, with ARC help, they were up to almost two-thirds the national average—still behind but gaining.

In 1960, fewer than 1 in 5 of eastern Kentuckians over 25 had completed high school. But we had better than doubled that by 1980.

Similar progress was made throughout the region as we moved toward the national level.

Measures of health, housing, and other aspects of life, during the period through 1980, tell a similar story—considerable progress but still well below national standards.

That was the story until the economic blows of the 1980's hit eastern Kentucky and the rest of Appalachia. What the recession and the oil glut did to our coal industry, the recession and foreign competition did to manufacturing. And the Appalachian economy is much more dependent on manufacturing jobs than the rest of the country.

As a result, the progress we were making in Appalachia was slowed and, in some cases, reversed. Unemployment has been running about one-third above the national levels and we are lagging behind the Nation in emerging from the recession.

In eastern Kentucky, 47 of the 49 counties are suffering unemployment rates higher than the national average. Seven counties have rates more than three times the national average. Nineteen have rates more than double the national average and 13 have rates more than 1½ times the national figure.

These unemployment rates would be higher if people were not leaving the eastern Kentucky labor force, resuming the outmigration of the period before the 1970's and other giving up the search for a job.

Clearly it is not in the interest of the national economy to resume the tragic patterns of the past when the people of Appalachia were driven from their beloved mountains to seek some kind of job in the big northern cities, especially since now jobs are scarce in those cities.

The Appalachian Governors and I are not asking for a continuation of ARC business as usual. We ask only for a reasonable level of funds for a short period of time to finish up the ARC job in an orderly manner.

ARC has already taken severe cuts. ARC 1984 appropriations were $154.4 million, down from $378.6 million in 1979. In terms of fixed 1967 dollars, the cut has been even more drastic: down from $174.5 million in 1978 to $52.9 million in 1984.

And the 1985 appropriations already voted by the House, while more generous than those we are considering here today, are less than the 1984 funds in terms of fixed dollars.

We do not apologize for requesting this special help for Appalachia. The region needs help. Experience shows that the ARC investment pays off for the region and the country. And—even with this special ARC help—Appalachia still gets less than 80 percent of its share of Federal expenditures.

We should not deny the 20,000,000 people of Appalachia this modes amount of help the region needs and deserves.

Mr. BOREN. Mr. President, during consideration of the energy and water appropriations bill, the distinguished chairman of the committee, Senator HATFIELD, has entered into a colloquy regarding the funding of an important Oklahoma project in Tulsa, called Mingo Creek. Senator HATFIELD was very understanding of the importance of the project and gave his assurances that the conference would consider the funding very carefully.

In addition, several other Oklahoma projects, such as Parker Lake, Arcadia Lake, and Copan Lake, which are critically important to the people of my State, will be discussed in conference. Once again, Senator HATFIELD has promised to urge the conference committee to give these projects very serious consideration. I want to express my appreciation to the chairman for his efforts. The Arcadia Lake project is of particular concern to the people of Edmond and I know they, too, would appreciate any consideration that could be given to the full funding of this much-needed project.

SECTION 55 FUNDS

Mr. SIMPSON. Mr. President, the senior Senator from Wyoming, Mr. WALLOP, and I have a matter in which my fine friend, the Senator from Oregon, may be able to be of great assistance. It is with regard to language found in the committee report, numbered 98-502, which is accompanying the Energy and Water Development appropriations bill for fiscal year 1985. On page 24, there is language recommending the use of $500,000 under the authority of section 55 of Public Law 93-251 in order to develop flood control and bank stabilization measures along the South Platte River.

The unusually heavy and formidable snowpack in the tristate region of Wyoming, Colorado, and Nebraska has posed serious flood threats along and through the entire Platte River drainage. To avoid severe damage, the Corps of Engineers and the Bureau of Reclamation have been drastically increasing the flows from all of the dams along the Platte River in the past few weeks in order to prepare for the very heavy runoff still expected. For example, the Seminole Reservoir, near Casper, WY, has recorded the highest inflows in 30 years for the month of May. All of the reservoirs along the North Platte face similar circumstances.

The irrigators along the Platte River have cooperated fully with the Bureau of Reclamation and the Corps of Engineers and have agreed to release water that would normally be reserved for irrigation use in order to lessen the flood threat.

Last month, the area was hit with extremely heavy spring snowstorms which have resulted in the release of even higher flows from the reservoirs. Unfortunately, these higher releases have caused widespread erosion damage throughout the Platte River drainage—often to the detriment of the very conscientious irrigators that had agreed to the higher flows in the first place. Some landowners have reported losing over a foot of topsoil a day due to erosion.

Through the efforts of Wyoming's extraordinary Congressman, DICK CHENEY, and with the cooperation of the able and thoughful Congresswoman VIRGINIA SMITH and Congressman TOM BEVILL, an agreement was reached during the debate of this bill on the House floor whereby the Corps of Engineers was also authorized to use section 55 funds to provide assistance along the Platte River and its tributaries in each of the States of Nebraska and Wyoming.

Mr. WALLOP. Mr. President, my colleague and I thank the Chairman for retaining this provision in the Senate report. However, we would like clarification of one very important point. That is that a portion of this money under section 55 of Public Law 93-251 is also available for similarly affected areas in Colorado and Wyoming in addition to Nebraska. That, at least, is what the House provided during the floor debate on H.R. 5653.

I ask the same question of the Senator from Oregon and the committee as was asked on the House floor "Would the committee agree, therefore, that the committee allowance under this provision is intended to include not to exceed an additional $200,000 from existing funds in each of the States of Colorado and Wyoming, for similar work, in order to provide a survey of the damage and engineering assessment of the work required to control such damage?"

Mr. HATFIELD. Yes; that is the understanding of the Senate Appropriations Committee. I and the committee appreciate the concerns that the gentlemen from Wyoming have raised. The damage along the Platte River system is indeed extensive. Where appropriate assistance is available within the U.S. Army Corps of Engineers, it should be provided. I have no objection to this reading of the language in section 24 of the report. In this provision, the intent of the Senate Appropriations Committee is identical to that of the House-passed bill.

Mr. MATTINGLY. Mr. President, I should like to commend the chairman, the distinguished Senator from Oregon, and the ranking member, the Senator from Louisiana, for their capable management of this bill and for their efforts to keep our spending levels within the target. I would like to ask the Senator from Oregon if we can anticipate keeping the bill within the target figure?

Mr. HATFIELD. I thank the Senator from Georgia, and I appreciate his assistance as a member of the Energy and Water Development Subcommittee for his role in helping shape this bill. In answer to his question, the bill was within our target when reported to the Senate and I have every confidence that with the assistance and understanding of our colleagues, we will be able to keep spending levels below the target figure.

Mr. MATTINGLY. Mr. President, I ask if the Senator recalls that, when the subcommittee and later the full committee marked up this measure, the amounts which were included in the Corps of Engineers operations and maintenance account for Savannah Harbor, GA, were based upon the best information available at that time and included about $1.5 million for bend widening in the Savannah Channel? And I ask further if the Senator recollects that we refrained from making other requests for other projects at that time in order that we could help keep the overall spending figures within the target?

Mr. HATFIELD. As the Senator has indicated, I do recall the events surrounding the amount appropriated for the Savannah operations and maintenance account which included funding for some vitally needed bend widening on an expedited basis. I also am aware that there were other important projects and studies in the Senator's own State, and I fully appreciate his understanding and cooperation in deferring funding requests during the committee markup so that we could better meet our overall funding goals.

Mr. MATTINGLY. Mr. President, I think I know what the Senator's response will be, but I would ask if he would agree that if additional information has become available which would allow us to reduce some of the figures contained in the bill as reported and to shift some of that money into other projects or studies which had earlier been deferred that we should do so at this time, or at least in the House-Senate conference which will follow Senate passage of this measure?

Mr. HATFIELD. I say to the Senator from Georgia that it is almost, and I stress "almost", never too late to make constructive and necessary changes so long as we retain the total necessary to meet our target spending figures. I urge my colleague to bring forward at this time any necessary changes which will meet this criteria.

Mr. MATTINGLY. Mr. President, I thank the able chairman, and I ask whether he might be agreeable to a suggestion which would allow the following redistribution of the $1.5 million which the committee has identified in the bill for the bend widening at Savannah: (1) Change the Savannah Harbor O&M account to $9.750 million, a reduction of $900,000; (2) shift $450,000 into the general investigations account to expedite the follow-up feasibility study at Brunswick Harbor, GA, upon completion of the reconnaissance study which is currently being finished; (3) restore $100,000 to the Lake Lanier reregulation, Metro Atlanta (CP&E) project which had been reduced to help hold the spending line; (4) and allow the remaining

$350,000 to be shifted to another Corps of Engineers project or study, either in Georgia or elsewhere, as the committee or chairman may deem appropriate in order to help satisfy other important needs. Again, I would ask whether the chairman would be agreeable to this type of modification, and if he would help ensure that we can reflect changes of this nature in the conference and that the same be reflected in the conference report?

Mr. HATFIELD. Mr. President, if I correctly understand the Senator, what he proposes most generously involves not only a minor shifting of funding among projects and studies within this own State of Georgia, but also in his suggestion he would actually reduce the total funding for his State by about $350,000 and would make those savings available to meet other critical needs. My answer to the Senator's question is that I will certainly use my best efforts to ensure that his requested modifications are adopted in conference and incorporated in the final conference report on this measure. I thank the Senator from Georgia for his constructive suggestions which will serve the citizens of his home State well, and commend him for his thoughtfulness in considering the concerns of other Senators as well.

Mr. MATTINGLY. Mr. President, I thank the distinguished Senator from Oregon, and I want to call attention to the efforts which have been extended by my district engineer and his staff in Savannah. I had asked that they try to limit to a bare minimum the funds which would be required for Georgia projects and studies, and even though it had earlier seemed that appropriation of the full $1.5 million would be necessary for the bend widening, the engineer got back to me just this past Monday to let me know that due to other savings he would not need the full amount originally included in the bill.

Mr. GLENN. Mr. President, I should like to address the floor manager of this bill, the Senator from Oregon [Mr. HATFIELD]. I understand that the energy and water appropriations bill, H.R. 5653, which we are considering today, does not contain continued planning and engineering funds for Maumee Bay State Park. As the Senator knows, this project is of great importance to the State of Ohio and particularly to the Toledo area.

The city of Toledo, which is still suffering from the shock of our recent recession, is building a new convention center. The park at Maumee Bay is expected to act as a catalyst to promote Toledo convention trade. Along with the tourism benefits, the project will protect the environmental quality of the park which is adjacent to Cedar Point National Wildlife Refuge.

The State of Ohio is also proceeding with its development plans for Maumee Bay State Park and has set aside $6.25 million in its 1985 capital improvement budget for the park. But the State's development plans depend upon the Federal shoreline erosion project. Without the Federal project, the State's $36 million plan will be impractical.

So, I am requesting that the Senate include $250,000 in this bill for continued planning and engineering for Maumee Bay State Park. This will allow the Crops of Engineers to complete its preliminary work and prepare for construction.

Mr. HATFIELD. The Senator from Ohio is well aware that the Senate has been concerned with the levels of spending authority while debating H.R. 5653.

Mr. GLENN. I am aware of that point and I am glad the Senator from Oregon has brought that to the attention of the Senate. The shoreline erosion control project at Maumee Bay State Park is included in both the House and the Senate water development bills. The House of Representatives has already included $250,000 for continued planning and engineering funds for the Maumee Bay project. I hope the Senate would do likewise and supply the necessary funds to keep this project moving.

Mr. HATFIELD. I know how important this project is to my colleague from Ohio. In order to keep this project moving on schedule, we will give Maumee Bay State Park our most thorough consideration when this bill moves into conference with the House of Representatives.

Mr. PERCY. Mr. President, I should like to ask the distinguished Senator from Oregon a question regarding a certain provision in the fiscal year 1985 Energy and Water Development appropriations bill.

One very important provision which was originally included in the bill by the other body dealt with the north branch of the Chicago River in Illinois. The House Appropriations Committee marked up $300,000 for the north branch. This money would be used for a continuation of planning and engineering for a flood control project of great importance to northern Cook County and southern Lake County in Illinois. Funding for the north branch is not presently in the Senate bill. This project is authorized in the Water Resources Development Act which is presently pending on the Senate calendar.

Am I correct in my understanding that he recognizes the importance of the north branch and will agree to work for its inclusion in the conference report when the bill is sent to conference with the House?

Mr. HATFIELD. Mr. President, let me say to my good friend from Illinois that he is absolutely correct in his understanding. I will support in conference an appropriation for planning and engineering for this project as is provided for in the fiscal year 1985 bill passed by the House of Representatives.

Mr. PERCY. I thank my colleague for his help on this vital matter.

FLOOD CONTROL PROJECT

Mr. BOSCHWITZ. Mr. President, H.R. 5653, the 1985 energy and water development appropriations bill, as reported by the Appropriations Committee, contains $100,000 for planning and engineering work on phase two of the South Fork Zumbro River Flood Control Project. This is a reduction from the $400,000 earmarked in the House-passed bill.

I want to take this opportunity to emphasize the importance of this project to the distinguished chairman of the committee and the rest of my colleagues. This project is urgently needed to protect lives and property in the Rochester, MN, area. In that flood plain, a flood occurs every 1.6 years; there have been 19 separate floods since 1951. In the severe flood of 1978 alone, five lives were lost, 3,500 homes and 260 businesses were destroyed, and $60 million of property damage was incurred.

In light of the facts, it is not surprising that this project is a top priority for the Corps of Engineers.

Moreover, there are very special and unique circumstances surrounding this project. The city of Rochester has already begun to collect a city sales tax that was enacted specifically to contribute local funding for the project. The Minnesota State Legislature has authorized Rochester to be one of only two cities to collect a city sales tax and the reason was to raise the local share for the flood control project.

Mr. President, this is a key project. I believe my friend from Oregon realizes this, but I wanted to take this opportunity to be sure.

Mr. HATFIELD. Mr. President, my friend from Minnesota has talked to me many times about the Rochester project. Last fall when we were considering H.R. 3959, at his urging we included $200,000 for the project.

I want the Senators from Minnesota to know that the reduction made by the committee is not an indication of a lower priority for the Rochester project. But since there was no budget request for this project, the committee provided the minimum amount needed to continue planning. Unfortunately, construction of the project has not been authorized and we are rapidly reaching the point where authorization is critical to ongoing activities.

Mr. DURENBERGER. Mr. President, as a member of the Environment and Public Works Committee and the Water Resources Subcommittee, I heartily agree with the Senator from Oregon about the need to consider and pass S. 1739, which includes an authorization to construct the Rochester project. As he knows, we have not had a water resource authorization bill pass Congress since 1976. The last real construction authorization was passed in 1970.

Last week the Finance Committee, on which I serve, reviewed S. 1739 and reported out a committee amendment which I believe will not be helpful in getting the bill considered and passed. Despite that, I am ready to do whatever I can to expedite getting the bill considered on the floor because it contains authorization for important projects, like Rochester, and we simply must move it along.

Mr. **HATFIELD**. Mr. President, I want to assure both of my friends from Minnesota that when construction of this project is authorized it will receive every consideration by the committee and subcommittee I chair for funding its construction.

Mr. **BOSCHWITZ**. I thank the Senator from Oregon for that assurance. I look forward to working with him and my colleague from Minnesota in working to get the authorization bill passed.

Mr. **PERCY**. Mr. President, I support passage of the legislation before the Senate, and I wish to commend the distinguished chairman of the Appropriations Committee for all his fine work on the fiscal year 1985 energy and water development appropriations bill. He and his outstanding staff on the Energy and Water Subcommittee have done an admirable job in expeditiously reporting this legislation.

There a number of initiatives in Illinois which will be funded next year under this bill, and I wish to briefly touch on some of these.

QUINCY BAY SILTATION STUDY

H.R. 5653 contains $200,000 for a study by the U.S. Army Corps of Engineers of the siltation problem in Quincy Bay, along the Mississippi River in Illinois. Severe siltation in the bay with associated flooding and other problems has become a real problem. This item in the Senate bill will help bring us closer to a solution of this problem.

LARGE UNNAMED CREEK IN LOVES PARK

The bill also contains a provision allocating $200,000 for the continuation of planning and engineering for a major flood control project along large unnamed creek in Loves Park near Rockford, IL. Construction of this project is authorized in the Water Resources Development Act which is pending in the Senate and the House. These planning funds in the appropriations bill will ensure that we are ready to go full speed ahead on construction when the Water Resources Development Act is passed. A similar provision for Loves Park is contained in the House-passed energy and water development appropriations bill as well.

LOCK AND DAM NO. 26, MISSISSIPPI RIVER AT ALTON, IL

There is $89,500,000 included in the appropriations bill for the ongoing construction of lock and dam No. 26 along the Mississippi at Alton. This funding is crucial for the completion of the second lock. Even as I speak, barges and other ships carrying valuable cargo along the Mississippi are backed up near Alton because of the inadequate lock situation at lock and dam No. 26. The Senate's action today will contribute mightily to a solution of this problem.

NORTH BRANCH, CHICAGO RIVER, COOK AND LAKE COUNTIES

There is $300,000 included in the House fiscal year 1985 appropriations bill for continuation of planning and engineering on the flood control project for the north branch. Flooding along the north branch has been severe in past years. Senator **HATFIELD** has assured me that, although there is no funding in the Senate bill at this time, he will do all he can to see that $300,000 as contained in the House bill for the north branch is accepted by Senate conferees during House-Senate conference on the water development appropriations bill. The north branch project is another initiative which is authorized for construction in the Water Resources Development Act. I look forward to passing both these bills and solving the flooding problems for my constituents living along the stream in northern Cook County and southern Lake County.

SAVANNAH RIVER WATER RESOURCES

Mr. **THURMOND**. Mr. President, I inquire of the distinguished chairman of the Appropriations Committee concerning the funding needs of two very important water resource and supply issues which affect the citizens of South Carolina and Georgia. The first of these involve intrusion of seawater into the freshwater aquifer at the northern end of Hilton Head Island. As part of the Metropolitan Savannah Water Resources Management Study, it was recommended that a number of test wells be installed and a seawater intrusion model be developed, so that freshwater supplies may be more accurately defined.

The second issue is one of water supply and availability in the Upper Savannah River Basin. As communities along this river grow through industrial expansion and become more populous, the needs for freshwater will likewise increase. For this reason, it is important that the supply question, including the possibility of withdrawing water from corps reservoirs along the Savannah River, be carefully studied.

It is my understanding that the funding needs for these studies, totaling $575,000 in Federal money, will be addressed in an fiscal year 1984 supplemental appropriations bill. I would ask the chairman of the Appropriations Committee if that is correct?

Mr. **HATFIELD**. The Senator from South Carolina is correct. The committee is aware of these two studies, and plans to consider them in the fiscal year 1984 supplemental appropriations bill or the continuing resolution for 1985.

Mr. **THURMOND**. I thank the Senator for his assistance and cooperation.

Mr. **ABDNOR**. Mr. President, the State of South Dakota and the local CENDAK organization, in cooperation with the Bureau of Reclamation, are funding a portion of the central South Dakota water deliveries study.

The committee has recommended $50,000 for general investigations and $1.95 million for advance planning for CENDAK in fiscal year 1985, and the State and the local project sponsors have asked me to clarify congressional intent with respect to the expenditure of these funds.

If I may engage the distinguished chairman of the Appropriations Committee, is it not our intent that in expending these funds the Bureau of Reclamation should continue to cooperate closely with the State and local sponsors and that, with respect to drainage and land classification in particular, current practices and drainage conditions should be taken fully into account?

Mr. **HATFIELD**. My colleague from South Dakota is correct.

Mr. **ABDNOR**. I thank the chairman for that assurance.

FLOODING IN CASSIA COUNTY, ID

Mr. **McCLURE**. Mr. President, as we have all been aware, there has been massive flooding in many States this year due to heavy snows last winter and heavy rains this spring. Many areas have been inundated by streams and rivers leaving their banks and flooding homes, businesses, and land. Lakes and reservoirs have reached their full capacity, with many threatening to breach and flood those areas below.

This recently happened in my State of Idaho. A local reservoir, that has not topped the dam or spillway in 50 years, was filling rapidly, threatening to overflow the dam and flood farms, homes, businesses, and hospitals. The local people, aided by the Corps of Engineers—whom I commend highly for their fast, effective action—took steps which diverted a major disaster. Volunteers working in conjunction with the corps built two canals from Oakley Reservoir south of Burley, ID, to divert water to the Snake River. Their quick action saved the town of Burley from millions of dollars of damages from flooding, dollars that would have come from the Federal Government in disaster payments.

The local economy of this area has taken on a debt of $4 to $7 million in construction costs, land damages, and other damages, which they now find themselves unable to pay.

The people of Cassia County, ID, are to be congratulated for their actions, along with the Corps of Engineers and the Idaho National Guard. All lent many hours and a great deal of expense, personally, to saving the city of Burley and farmers and businesses millions of dollars in damages.

The situation that exists now in this area is still serious. The county has no funds with which to pay those who spent time and equipment in the effort to save the city. The county has asked for help—our help—in paying this debt. Their request is only for construction costs of the canal, $1 million, the cost of the construction of the sections of the canals which the corps did not pay for. I am not bringing forward an amendment to provide for these moneys at this time. I am simply requesting that this body recognize the tremendous cost that Cassia County, ID, undertook to save their community from flooding that could have cost the Federal Government millions of dollars in disaster assistance.

I will be holding a meeting in Cassia County to discuss Federal aid for this situation. A problem exists. We cannot ignore the fact that the people in Cassia County, ID, may be punished for taking preventive measures that not only saved the town of Burley but also the Federal Government millions of dollars in damages.

Mr. HATFIELD. Mr. President, I appreciate the situation in Idaho and realize that this problem may exist in many other places throughout the United States. However, at this time it would be premature to ask for moneys to pay for damages. The problem of flooding is widespread.

After the Senator concludes his meeting in Cassia County, perhaps further discussions on this issue can be held here.

Mr. PRESSLER. Mr. President, I rise to support the fiscal year 1985 energy and water development appropriations bill. This is the first of the fiscal year 1985 appropriations bills the Senate has acted upon, and I commend the Appropriations Committee and the Senate for their prompt action on this important matter.

This legislation is especially important to South Dakota. My home State has several water projects that are just getting started. Under this bill, various South Dakota water projects will receive over $18 million. The majority of these funds are for the construction of the WEB water pipeline project in north-central South Dakota. When it is completed, the project will provide domestic and municipal water for approximately 30,000 people in a 10-county area.

I would like to see more funding for this important project than the $10 million provided in the bill. Its construction capability for 1985 is $18 million. But I realize the budget constraints with which the bill must comply. Although the House provided only $5 million, I urge that the Senate members of the conference committee insist that the $10 million for WEB be maintained. Completion of the WEB project will be delayed for several years if the project receives only $5 million in 1985, and the end result of such a delay would be substantially higher final construction costs. In fact, an appropriation of only $5 million would represent a cut in the funding that was available for the WEB project in fiscal year 1984.

Besides the WEB project, the bill provides $710,000 to begin rehabilitation work on the 75-year-old Belle Fourche irrigation project. This project has proved its value many times over and its continued benefits will be assured with the modernization of the irrigation project.

Another project that has awaited initial funding for several years is the Missouri National Recreation River streambank stabilization project. The bill provides $200,000 for this important project. These funds will do a great deal to protect valuable property from being lost to streambank erosion along the Missouri River in South Dakota and Nebraska.

The bill also provides funding for the continuation of important water studies in South Dakota. Included are the CENDAK, Lake Andes-Wagner and Garrison extension irrigation projects, and several water supply studies across South Dakota. These studies and projects under construction are just the beginning of what South Dakotans expect will be the repayment for sacrifices they made for the construction of four Missouri River dams in South Dakota. The construction of the dams flooded over 500,000 acres of South Dakota land to provide flood control and navigation benefits for downstream areas. In return for these sacrifices, South Dakota was promised water development, but that promise has never been realized. Passage of this bill and the funds included in it for the various South Dakota water projects will help to continue South Dakota's water development efforts.

Mr. President, I urge my colleagues to join me in support of this important appropriations bill.

Mr. SIMPSON. Mr. President, I greatly admire and appreciate the fine skills and talents of the Senator from Oregon in his efforts to push this needed energy and water appropriations bill through the Senate. I doubt that any other colleague has the knowledge and forbearance to skillfully maneuver this and other appropriation bills through this fascinating process. Because of his patience and understanding, the respected senior Senator from Wyoming and myself will presently hold off in attempting to amend this bill to include money for the Buffalo Bill Dam.

However, I must also add that the good people of Wyoming have indeed waited long enough. During my tenure here I have seen the Congress fund vast and costly projects in which there was very little or no non-Federal cost sharing. That is wholly wrong. I have also watched Congress appropriate funds for water related projects that have not yet been authorized, which is even more wrong. Yet, we have patiently waited while this duly authorized dam enlargement has been sidelined although the cost sharing mechanism has been agreed to for several years. That cannot go on.

I trust that my good friend from Oregon will assist us in appropriating construction funds for this project in the very near future.

Mr. WALLOP. Mr. President, on behalf of Senator SIMPSON and myself, I would like to express our strong objections to the House deletion of $5 million in construction money requested by the President in his fiscal year 1985 budget for modification of the Buffalo Bill Dam in Cody, WY. It should have been added to the Senate bill.

While H.R. 5653 authorizes the Bureau of Reclamation to use available construction funds for preconstruction planning work on the Buffalo Bill modification project, this is not enough. Commitments have been made. They must be kept.

A year ago, Senator HATFIELD and I were engaged in a Senate floor dialog on funding for Buffalo Bill Dam when the 1984 energy and water appropriations bill, H.R. 3132 was considered by the Senate. At that time Senator HATFIELD made the following statement about the merits of Buffalo Bill:

> I know that funding for the Buffalo Bill project is of critical importance to both of my distinguished colleagues from Wyoming as they have spoken to me about it on a number of occasions and their offices have been working with mine on this at both the subcommittee levels and during the full Appropriations Committee markup of this measure. The Senators from Wyoming make a convincing case that the Buffalo Bill project is meritorious and deserves funding as soon as possible. As he recognizes, Congress does not need to resolve the broader issue of cost sharing on a national policy level and for that reason neither the House nor the Senate have provided any funding for new construction projects as is the case here.

Senator HATFIELD then went on to say that as soon as a new start bill or some other appropriations measure was sent over by the House, that he would immediately begin considering it. Further, he intended to move it to the Senate floor for prompt action. In closing, he said: "Let me add that I do not intend to wait an inordinate amount of time for the Senate Environment and Public Works Committee to pass new cost-sharing legislation."

While the good Senator did move to keep part of his bargain by adding funding for the Buffalo Bill construction in H.R. 3958, this bill has been pending Senate floor action since October 19 of last year. It may never see the light of day on the Senate floor at this rate.

I, for one, believe we have passed that benchmark of waiting "an inordinate amount of time" for new-start legislation, or for H.R. 3958 to move to floor action. Holding a unique and innovative project such as Buffalo Bill hostage to promise of "new-starts bills" simply doesn't cut the mustard back home in Wyoming. Wyoming has already put up its share of the money for the funding of this project, and the legislature, and many citizens of the State are waiting for Congress to act.

It has already been over 3 years since Wyoming appropriated $47 million for this project, and if that isn't cost sharing, I don't know what is. That is precisely what is so frustrating about the delay. Buffalo Bill is not just another water project. It is an innovative example of Federal-State cost sharing with $47 million hard-earned Wyoming dollars in the till waiting to begin modification work. If the Congress would just do its part to appropriate the money, construction could begin.

There is no question of its worth. As Senator HATFIELD admitted last year, the project is meritorious and deserves funding as soon as possible. Raising the dam by some 25 feet to provide increased storage capacity for power production, irrigation, municipal and industrial water supplies, and water quality and fish and wildlife benefits are all byproducts of this water project.

Needless to say, it is a cruel joke when Buffalo Bill is repeatedly held hostage to cost sharing when the authorizing language for the project contains non-Federal participation levels which exceed every cost-sharing bill in the House and Senate, including those reported from the authorizing committees. It is more cruel still when a modification is termed and treated as a "new-start."

Mr. President, I have said this before, and will say it again. Congress is encouraging the concept of cost-sharing as a method by which the States will be encouraged to join with the Federal Government in joint water project initiatives. We have had the very embodiment of that policy in our laps in the form of the Buffalo Bill modification project. If the Appropriations Committee keeps deleting funding for Buffalo Bill when it is continuously requested by the administration, then we better think twice about encouraging the States to enter into partnership with the Federal Government.

Not only will the deletion of this money discourage Wyoming from appropriating money for such projects in good faith during hard budgetary times, but every other State will be discouraged from entering into cost-sharing agreements with the Federal Government. We are only as good as the bargins we keep.

I have refrained from offering an amendment to add the $5 million back in title II of H.R. 5653 for only one reason. That is because in its report on the fiscal year energy and water appropriations bill the Senate Appropriations Committee has stated its intent to move high priority water projects to the floor for appropriations funding by no later than September of this year.

I have been advised by Appropriations Committee staff that the Buffalo Bill Dam modification project falls into this category of high priority projects. Therefore in the belief that the Appropriations Committee will honor its intent, I will wait just a little longer. Good-faith merits the effort on my part. However, waiting is difficult.

St. Augustine told us that patience is the companion of wisdom. I try to remember that when I am trying to practice it. But, when it comes to the subject of deleting the construction funds for the Buffalo Bill Dam modification project from the fiscal year 1985 energy and water budget, it brings to mind that what Publius said: "Patience provoked often turns to fury." The latter is a more comforting proverb when you are dealing with an injustice.

Between now and September I shall do all within my power, as will Senator SIMPSON, to hold the Senate Appropriations Committee to its promise to push through construction dollars for high priority water resource projects such as Buffalo Bill this Congress.

Mr. HATFIELD. I thank the two Senators from Wyoming for their patience. I understand how important the Buffalo Bill Dam modification project is to Wyoming. However, the hold up due to the lack of a cost sharing policy is a unique situation. You may be sure that I will work very hard to get Buffalo Bill and other high priority projects before the Senate for consideration hopefully before the end of this year.

Mr. STAFFORD. Mr. President, I wish to comment on language that appears in the report of the Committee on Appropriations regarding the lack of an omnibus water resources bill in recent years.

The committee report discusses the backlog of need, together with the fact that there has been no omnibus law since 1976. The report states: "The committee, therefore, believes that it is in the best interest of the Nation to proceed as soon as possible, and expedite the authorization process so that resultant benefits can be realized."

I agree. As the chairman of the committee responsible for developing such authorizing legislation, no one feels a greater sense of frustration than I do. We need to develop a water resources bill this year, if at all possible. But we need a bill that will move the Nation's water resources development program forward in a responsible manner; we need a bill that will be signed by the President.

The Committee on Appropriations report goes on to suggest that unless there is such an omnibus bill by September, the Committee on Appropriations expects to present high priority water resources projects for consideration.

While I regret that implied threat, I understand the frustration from which it springs. Instead of threatening the authorizing committees, I trust that the Committee on Appropriations will bring its views to the attention of the administration, as well as those outside groups that continue to press for unrestrained spending, without reforms.

I also hope the administration will read the committee report, and will recognize the need to work with Congress to develop a responsible omnibus water resources bill.

The Committee on Environment and Public Works has worked diligently to obtain such a bill. Given a genuine commitment by the interest parties, I remain confident we can obtain a bill this year.

Mr. MATTINGLY. Mr. President, language in the Appropriations Committee's report (98-502) accompanying the energy and water development appropriations bill for fiscal year 1985 states on page 107:

> The committee recognizes that support for research programs on computational, physical, and material sciences at minority graduate universities is important. The committee recommends that the department provide appropriate assistance to Atlanta University and other such institutions in the development of its graduate science and technology research center.

The committee has recommended that the department support the Atlanta University Graduate Science and Technology Research Center because the committee is convinced that the important work going on at Atlanta University is critical to a strong future for this country's energy-related sciences. This work is designed to increase the role of minority students in graduate schools and in the scientific research community and to develop an innovative model for interdisciplinary energy-related research.

At present, less than 2 percent of the Ph.D. scientists in this country are black. Of all the doctorates granted by American universities, only 3 percent are awarded to black students. In fact the number of blacks earning graduate degrees has been decreasing since the late 1970's. As a result, black scientists do not yet fully participate in the important research efforts of this country.

Founded in 1865 for the education of freemen following the Emancipation Proclamation, Atlanta University is a special resource in our Nation's efforts to increase minority participation in the scientific research community. As a solely graduate historically black institution, Atlanta University plays a unique role in the education and training of black research scientists.

The faculty has played a major role in establishing the minority biomedical research support program [MBRC] and the minority access to research careers program [MARC] at the National Institutes of Health. It was also instrumental in creating the very first resource center for science and engineering at the National Science Foundation.

Each year Atlanta University enrolls and graduates nearly 10 percent of all black graduates in the biological sciences. In the fields of chemistry, physics, and computational sciences, the figure actually exceeds 10 percent of all black graduate students nationwise.

The Graduate Research Center for Energy Sciences and Technology at Atlanta University represents a major new interdisciplinary approach to research focused on energy-related problems. The emergence of alternative energy technologies has stimulated the development of research into the problems that sometimes evolve in the growth of such new technologies. The center includes four research clusters which are linked together to address particular energy-related problems from a variety of perspectives and academic disciplines. This includes the Center for Basic and Applied Energy Research, the Polymers and Materials Research Center, the Biotechnology Research Center, and the Computational Sciences Research Center. The development of this center is the fruit of a number of cooperative efforts already underway between Atlanta University, the Department of Energy and several of national laboratories.

As the Appropriations Committee has noted in its report, the Graduate Research Center for Energy Sciences and Technology at Atlanta University not only deserves the Nation's attention but its strong support as well.

THE APPALACHIAN REGIONAL COMMISSION

Mr. HUMPHREY. Mr. President, I rise today to express my concern over the appropriation level for the Appalachian Regional Commission [ARC] contained in the energy and water appropriations bill. Though the figure before us today is significantly lower than in the House version, I am concerned that it is still far away from the original administration proposal.

For the past few years, the administration has recommended that the Appalachian development programs be zero funded, and that the highways program be transferred to the Department of Transportation.

I agree with the administration's position. The ARC, which provides grants to 13 Appalachian States, is the only such Commission which exists today. Other regions of the country, including my own, have learned to do without this special funding from the Federal Government.

Mr. President, there is little doubt that the Appalachian region has had its problems in the past, and through the work of the ARC, these problems have been successfully addressed. Real income is up, poverty is down, and education and health standards have been increased. To be sure, some problems persist, but these are challenges which are similar to those faced by rural regions all over the country. Yet, these regions must get by without special Federal attention.

I strongly believe that it is time to end this kind of preferential treatment of one area of the country over others.

Mr. LUGAR. Mr. President, it has come to my attention that the House of Representatives failed to include moneys under "General Investigations: Corps-Civil" for the continuation of planning and engineering for the Little Calumet River project, Indiana. During fiscal year 1984, $300,000 in CP&E funds were appropriated for this vital control and recreational improvements project.

Mr. HATFIELD. That is correct.

Mr. LUGAR. I had intended to offer an amendment to appropriate $630,000 for continuation of planning and engineering for the Little Calumet River project, but I understand that there is no feasible way to add these moneys to this bill without increasing the amount of spending authority.

Mr. HATFIELD. That is correct.

Mr. LUGAR. I can appreciate the Senator's interest in resisting amendments to this bill which would increase spending levels. I understand that the House of Representatives may soon send to the Senate a supplemental appropriations bill and that such a bill would provide an appropriate vehicle to add necessary funds for continuation of planning and engineering for the Little Calumet River project, Indiana.

Mr. HATFIELD. It is very likely that the Senate will have an opportunity prior to the beginning of fiscal year 1985 to add these funds.

Mr. LUGAR. Would the Senator be inclined to support an appropriation for this purpose on a supplemental appropriations bill that the Senate might consider this summer?

Mr. HATFIELD. Yes. I would be pleased to lend my support to such an appropriation.

In the event that the Senate does not consider a supplemental appropriations bill, the continuing resolution would provide another appropriate vehicle. It is also possible that a reprogramming of funds could accomplish the same objective. I will lend my support to whatever efforts may be necessary to prevent any interruption or any diminution of effort in planning for this important project.

Mr. McCLURE. Mr. President, I note that this bill does not contain the limitation on loan guarantee authority available to the Bonneville Power Administration as in last year's bill. I would like to seek the assurance of the subcommittee chairman that the loan guarantee authority available to BPA is subject to review in future appropriations bills and that authority be used only in a prudent and businesslike manner pursuant to the provisions of the Northwest Power Planning and Conservation Act and other authorities applicable to BPA. I am also concerned that the authority be used only to the extent that it does not have an adverse impact on ratepayers in the region. Do I have these assurances?

Mr. HATFIELD. The Senator has my assurance that this is what is intended.

Mr. McCLURE. I thank the Senator.

Mr. President, would the chairman answer a question for purposes of clarifying legislative report language in the energy and water development appropriations bill?

Mr. HATFIELD. Yes; I would be happy to respond to the Senator's question.

Mr. McCLURE. I refer to the report language in the energy and water appropriations bill that relates to the high temperature gas reactor [HTGR]. As the Senator knows, the report language directs the Department of Energy to designate a lead laboratory to focus efforts on modular HTGR designs. However, the statement is unclear as to the extent to which the modular research should be carried out, relative to other HTGR efforts. As I authored the report language on this subject, I wish to clarify my intent:

While I fully support a level of effort toward modular HTGR research, I never intended that the Department should totally refocus its HTGR work toward modular HTGR development, at the expense of other ongoing research. It would be precipitous to refocus an overly large amount of HTGR dollars on modular research until this option has been more thoroughly explored.

Will the chairman confirm that this was also the intent of the committee with regards to this report language?

Mr. HATFIELD. I most definitely confirm that. In fact, the committee's intentions reflect those of the distinguished Senator from Idaho, that some reasonable portion of the HTGR money be used to support modular HTGR research, but that other ongoing HTGR research and development activities shall still receive adequate focus.

Mr. RANDOLPH. Mr. President, it is most gratifying that the energy and water appropriations bill again includes funding to support the vital operations of the Appalachian Regional Commission in fiscal year 1985. This action marks the continuing commitment of the Congress to this vital program.

The Committee on Appropriations has recommended financing for the Appalachian program. I regret the level of funding does not more nearly approach that approved by the House of Representatives. The committee proposal of $118 million will allow the Commission to move forward with its work. The House level of $160 million would permit substantially greater progress in addressing the most crucial unmet needs of the 13-State region. I strongly recommend that the conferees agree to the House level. The amount in the House bill is consistent with the $167.5 million budget level recommended in March by the Committee on Environment and Public Works. Even this amount is only about half of what was provided for the Appalachian program prior to 1981.

Since that time, the Appalachian Regional Commission has concentrated its efforts in line with the modified program developed by the region's Governors to accommodate to reduced financial resources.

The Appalachian program has a solid record of success in a region which continues to merit help to catch up economically with the rest of the country.

The dramatic progress made in Appalachia between 1965, when we created ARC, and 1980 is known throughout the world.

Back in 1960, one-third of the people in Appalachia were living in poverty; but that rate was cut in half by 1980.

Per capita income rose from 78 percent of the national average in 1960 to 85 percent in 1980.

Outmigration from the region was reversed. More than 1,800 miles of development highways and 700 miles of access roads have been built to penetrate the isolated parts of the region. Vocational and technical schools now are helping extend training to more than half the young people and high school dropout rates are falling. Basic health care was extended to more than 80 percent of the 397 counties in the region. Infant mortality was sharply reduced toward the national average, and more than 19 million jobs were created in Appalachia from 1965 through 1979.

But these same figures which measure Appalachian progress through 1980 also define the magnitude of the gaps that still separate the economic health of the region from that of the Nation.

And, tragically, Appalachia has suffered severe setbacks since 1980. Due to its disproportionate dependence on basic manufacturing and mining for jobs—the segments of our economy suffering most from the recession and foreign competition—Appalachia has been enduring unemployment rates consistently one-third above the high national rate. West Virginia, the only State wholly within Appalachia, continues to suffer the highest State unemployment rates in the Nation.

I question whether there is ever a good time to terminate a successful program like ARC; clearly there could not be a worse time to abruptly terminate this program than now, one of Appalachia's greatest hours of need. Wracked by the recession foreign competition, and an oil glut which has severely reduced our coal market, the fragile economy of the region urgently needs continued help.

Even with special ARC aid, Appalachia still receives only about 80 percent of its share of Federal dollars. For many decades it has been shortchanged. The region and the Nation will not be served well if this unique Federal-State partnership embodied in the Appalachian Regional Commission does not have adequate resources.

Mr. LAXALT. Mr. President, will the Senator yield?

Mr. HATFIELD. I yield to the Senator from Nevada.

Mr. LAXALT. The bill we are considering includes an additional $800,000 to study the effects of cloud seeding activities in Nevada and California. The Sierra cooperative pilot project is currently conducting engineering studies of cloud seeding and its effects on snowpack augmentation in central Sierra Nevada. These studies are at present confined to the California west slopes. It is equally important that, concurrently, there be equivalent studies conducted on the Nevada eastern slopes to determine the impacts of precipitation falling in Nevada. This enhanced funding is to enable the Desert Research Institute of Nevada to conduct these important investigations under the management of the Bureau of Reclamation. I appreciate the assistance of the distinguished floor manager and chairman of the subcommittee for assisting in this important matter.

Mr. HATFIELD. The subcommittee understands the importance to the West of water augmentation. It appeared clear to the subcommittee that eastern slope studies were important, and I was pleased to support the necessary funding.

OKLAHOMA WATER PROJECTS

Mr. NICKLES. Mr. President, I would like to bring to the attention of my colleagues several water development projects that were funded either below the administration's budget request or below the House's budget allowance. These projects, Parker Lake, Arcadia Lake, and Copan Lake, are vitally important to the whole State of Oklahoma and deserve sufficient Federal funding.

Parker Lake, proposed for central Oklahoma, is a key to providing flood control and water supply benefits for cities and towns in that part of my State. The authorization for construction of Parker Lake is included in S. 1739. The full administration request of $300,000 is needed for the continuation of planning and engineering so we might be in a position to quickly proceed with construction once the project is authorized.

The administration has requested and the House has approved $11,500,000 in construction funding for Lake Arcadia. This project, which is now about 63 percent complete, will bring desperately needed water supply and flood control benefits to the rapidly growing city of Edmond and recreational facilities to be enjoyed by a large number of central Oklahomans. The city has expressed their commitment to this project and will fund 58 percent of the total cost. The full $11,500,000 is necessary to keep the construction on schedule toward the final completion target date of September 1987.

Last, $2,300,000 is necessary to complete recreational facilities at Copan Lake in northeastern Oklahoma. This would finance the construction of five public use areas and thus complete all promised recreational facilities. With this funding the Corps of Engineers would fulfill its commitments made to local sponsors and supporters that the total costs of construction for recreational facilities be a Federal responsibility.

These projects are of great importance to the whole State of Oklahoma, and it is imperative that they be completed. Knowing the chairman's desire that no amendments be offered at this time, I will offer no amendments. I would, however, strongly urge that the conference committee gives these projects serious consideration.

Mr. HATFIELD. Mr. President, I thank my colleague from Oklahoma for complying with my request to withhold any amendments on this legislation. The Senator from Oklahoma makes a persuasive case for these projects which are important to his home State of Oklahoma. I appreciate the Senator's comments and will urge the conference committee to give these projects very serious consideration.

Mr. President, the Bonneville Power Administration has undertaken an extensive review of the average system cost methodology and sent those recommended changes to the Federal Energy Regulatory Commission for examination and interim approval. The methodology was established under section 5(c)(7) of the Pacific Northwest Power Planning and Conservation Act—Public Law 96-501.

Since BPA announced changes in the methodology, there has been a great deal of concern and division among the affected interest groups in the Northwest; namely, the investor-owned utilities, direct service industrial customers and public utility districts, over what changes are appropriate.

In the last couple of months, I have been approached by every one of these groups requesting that I direct BPA to change their proposal in some manner. I point out today that the original average system costs methodology, formulated in 1981, was done so in a spirit of cooperation and give and take. I am concerned that same spirit does not seem to have been evidenced in the formulation of the current proposed methodology.

The Regional Power Act was passed by Congress in 1980 and a key component of that act was a sincere effort to bring the interested parties together to plan for the future. I am concerned that the mood of compromise has been lost in development of the average system cost methodology. I would therefore urge that BPA and the affected parties work together to achieve a consensus on the implementation of the final proposal or future revisions as well as the other issues which remain in the difficult process of electric power planning and conservation in the Northwest.

Mr. McCLURE. Mr. President, the Senator has expressed a view which I share. While some of the assumptions which led to the passage of the Northwest Power Act have changed, neither the region nor the Nation will benefit by placing a single interest above another. All parties must earnestly seek to consult, work together, and demonstrate a willingness to compromise so that actions may be taken which reflect a consensus position of regional interests.

Mr. EVANS. Mr. President, I concur with my colleagues on the need for building a consensus in the Northwest regarding the appropriate average system cost methodology. This proposal is a complex and technical subject that has required a great deal of our time. My particular interest in this matter is to ensure that section 5(c)(7) of Public Law 96-501 is carried out—nothing more and nothing less.

The need for cooperation and consensus in the region is especially critical in light of upcoming rate determinations which will establish new power rates for all BPA customers after July 1985. While it is important to have a new ASC methodology in place soon in order that planning can proceed for the post-1985 rate cases, it is also equally important that the proposed methodology be given a full and substantive review by the Federal Energy Regulatory Commission. I am concerned that FERC will grant interim approval of BPA's proposal on an expedited basis and not grant final approval until some months afterward. The uncertainty created by a revision of the interim proposal and retroactive paybacks by BPA is great, in my view, and could hamper BPA's planning for the post-1985 period. For that reason, I hope that FERC will expedite the process leading to final approval to the greatest extent possible.

Mr. GORTON. Mr. President, I join my colleagues from the Pacific Northwest in expressing concern over the controversy that has developed in the region as a result of the Bonneville Power Administration's efforts to revise the average system cost methodology. Section 5(c)(7) of the Pacific Northwest Electric Power Planning and Conservation Act—Public Law 96-501—establishes this methodology. The revised methodology is currently pending before the Federal Energy Regulatory Commission.

I share the concern expressed by my distinguished colleagues that the cooperative spirit that existed among the affected interest groups during the development of the current average system cost methodology is missing from the development of the revised methodology. With all of the difficult electric power planning issues that must be addressed in the Northwest in the future, it is certainly in the best interests of BPA and the affected groups to work together in a cooperative manner and to reach consensus on these regional issues that are so important to the economic well-being of the Northwest.

I also commend Senator HATFIELD, the distinguished chairman of the Appropriations Committee and the Energy and Water Development Appropriations Subcommittee, and the distinguished ranking minority members of the full committee and subcommittee for their fine work on the energy and water development appropriations bill.

I appreciate the committee's careful consideration of several items and programs in this bill that are important to my State. I am particularly pleased that the committee supported funding for the following items: the programs at the Department of Energy's Hanford nuclear reservation site, the ongoing efforts by the Corps of Engineers to respond to the problems resulting from the eruption of Mount St. Helens, the continued studies of three deep-draft water projects in my State that will provide for the more efficient movement of waterborne commerce, and support for the implementation of certain items in the Yakima basin water enhancement project.

Again, I commend the chairman for his work on this bill and his success in bringing it before the full Senate in an expeditious manner.

MINGO CREEK FLOOD CONTROL PROJECT

Mr. BOREN. Mr. President, the city of Tulsa in my home State was recently the scene of devastating floods which killed 14 persons and caused millions of dollars in damage. It was the worst flood in memory. One of the most severely flooded areas was Mingo Creek in the east-central part of the city. It has been a dangerous flood area for many years. The city of Tulsa has already constructed 3 miles of channel and one excavated detention facility, and has removed 22 homes to start construction of another excavated detention site. The Corps of Engineers has already completed extensive study in preparation to construct, in conjunction with the city of Tulsa, a major flood control project.

My colleague, Senator NICKLES, and I have both had conversations with the distinguished chairman of the Appropriations Committee, Senator HATFIELD, about continued funding for these efforts. Senator HATFIELD has given us his complete assurance that we have nothing to worry about, and for that assurance I want to thank him on behalf of the people of Tulsa.

Mr. NICKLES. Mr. President, I wholeheartedly concur with my colleague, Senator BOREN. I was in Tulsa shortly after this flooding occurred and saw the devastating effects firsthand. Fourteen lives were lost and damages to public and private property have been estimated at $150 million.

The Reagan administration has already requested $400,000 for the next phase of development on the Mingo Creek project, and the House has already approved such funding. This money will be used for the engineering and design studies that are needed before construction can begin. The tragedy that engulfed Tulsa last month only emphasized the need for continuing funding of this very important flood control project.

Although Senator BOREN and I have an amendment ready to offer on this issue, we know that it is the chairman's desire that we withhold the amendment. With the chairman's assurance that the two Oklahoma Senators have nothing to worry about when this item is considered in conference, we will be happy to comply with his request.

Senator Boren and I would like to express our appreciation for the chairman's understanding and assistance with this very important matter.

Mr. HATFIELD. Mr. President, I thank my two colleagues from Oklahoma for complying with my request to withhold any amendments on this legislation. And I want to assure them that I am completely aware of Tulsa's recent tragedy and believe the Mingo Creek flood control project is vitally imporatant to the security of many Tulsans. I renew my assurances to both Senators and will do everything possible to secure funding for the necessary studies.

Mr. MITCHELL. Mr. President, before the Senate votes on final passage of H.R. 5653, the energy-water appropriation for fiscal 1985, I want to express my concern about language in the report accompanying this bill which directs the Nuclear Regulatory Commission to issue regulations that would affect the emergency preparedness plans for commercial nuclear powerplants.

For those of my colleagues who may not be familiar with this language, it appears on pages 222 and 223 of Senate Report 98-502. It reads:

> In utilizing the funds appropriated for review of emergency preparedness of civilian nuclear powerplants, NRC shall, in connection with licensing decisions and in consultations with the Federal Emergency Management Agency, determine those discrepancies which are easily correctable and not of substantial import to the public health and safety and distinguish them from those discrepancies which are both not susceptible of ready resolution by the utility and are of substantial importance to the protection of the public health and safety. It shall then issue such regulations as may be necessary to allow appropriate action to be taken to license plants while protecting the public health and safety.

The Subcommittee on Nuclear Regulation of the full committee on the Environment and Public Works, which is the authorizing committee of the Senate having direct jurisdiction over the Nuclear Regulatory Commission, has been particularly active in its oversight of the NRC's regulations regarding emergency planning.

The subcommittee held extensive hearings on the question of emergency planning in April 1983.

In developing the 2-year authorization for the Nuclear Regulatory Commission for 1984 and 1985, the subcommittee specifically declined to issue such a directive to the Commission as is contained in the appropriations bill report. The full committee just this past week also declined to do so, and instead approved an extension of current NRC authority to review utilities' emergency plans.

The development of appropriate regulatory guidelines in this field is complex. The guidelines must protect the public safety, preserve the rights of States and localities, and provide for the construction of plants.

I am concerned that the report language accompanying this bill may adversely affect our efforts to reconcile those different interests. The language does not have the force of law, since it is not found in the legislation directly. At the same time, as a directive to the NRC it is unambiguous. It clearly says the Commission shall determine discrepancies and shall issue regulations. So although it does not constitute a direct grant of authority to so regulate, it creates the risk that regulations issued pursuant to that instruction would be readily open to court challenge.

Not only is this unwise, since it further complicates an area of regulatory authority which is already very subject to court challenge and adjudication, but to the extent that it asserts a right to set standards to be followed by NRC it is also unwarranted intrusion into the jurisdiction of the Committee on Environment and Public Works.

There is much in this bill which is worthy of support, and I intend to vote in favor of final passage. But I must register my objection to the report language to which I have referred.

Mr. WILSON. Mr. President, I rise in support of H.R. 5653, the energy and water development appropriation bill for fiscal year 1985, and to commend the chairman, my distinguished colleague from Oregon. As usual, the committee and its staff have done an outstanding job.

Mr. President, I would like to engage the chairman, Mr. Hatfield, in a colloquy with regard to the need to maintain the Corps of Engineers' responsibility for dredging of harbors in my State.

As Senators know, Mr. President, the corps for many years has assumed the responsibility for dredging of several California harbors including Santa Barbara Harbor, Santa Cruz Harbor, and Ventura Harbor, among others. Although funds have been provided for dredging of these harbors in the past, the list of navigation projects specifically mentioned in the bill for fiscal year 1985 does not include these harbors, although the corps estimates that these harbors will need dredging during fiscal year 1985. In Santa Barbara alone, the corps estimates that closure of the harbor would lead to a loss of revenues ranging upward from $900,000 for a 2-month closure to many millions for a longer closure.

If I may ask the chairman, is it the intention of the committee that the corps should honor its obligation to maintain these harbors in the event that dredging is needed during fiscal year 1985?

Mr. HATFIELD. The committee is aware of growing operation and maintenance requirements nationwide, and the continuously changing needs and priorities. Thus, specific allocations impede the corps' ability to adjust to continuously changing needs. Only when the corps' financial flexibility to respond to emergencies and other unanticipated urgent requirements is preserved can the Chief of Engineers carry out his responsibility to perform the O&M work with greatest overall importance to the Nation.

Therefore, in response to my friend from California, it is the intention of the committee that the corps honor its obligation to maintain the Santa Barbara, Santa Cruz, and Ventura Harbors in the event that dredging is needed during fiscal year 1985.

Mr. WILSON. I thank the distinguished chairman for his words, and for his continuing attention to the needs of our coastal communities and industries.

Mrs. HAWKINS. Mr. President, I am pleased that the committee has included language requiring the Corps of Engineers to proceed with construction of the Port Canaveral west turning basin project this year.

The corps has been delaying construction, despite clear congressional expressions of support for the project, in order to conduct unnecessary and duplicative market analysis of cruise ship activity. This project was authorized in 1962. The Congress appropriated $885,000 for construction in fiscal year 1983, and $3 million last year. Despite this, and language in the House report on this legislation last year directing the corps to begin construction, they continue to delay.

It is therefore totally appropriate that the committee inserted language in the bill requiring construction. The Port Canaveral Authority has already conducted, through an independent contractor, an extensive analysis, using accepted methodology, which indicated a cost-benefit ratio approaching 3 to 1. The port authority will be expending local funds far in excess of the Federal investment to complete the basin. Continued delay would benefit no one.

I trust the Corps of Engineers will now abandon its defiance of congressional authority and complete the project.

I would like to express my concern over the large number of Florida water, erosion and flood control general investigations which have been reduced or eliminated by the committee. All of the projects have been properly funded by the House, and although I will not delay matters here today by attempting to restore the funds by amendment, I would like to express my strong feelings that the House position with respect to funding these programs should be accepted in conference.

Mr. DOMENICI. Mr. President, I should like to comment on a few of the intiatives undertaken by the Appropriations Committee, at my request, which are in the Energy and Water Appropriations Act.

A great deal has been made of the need to encourage the Department of Energy and its national laboratories to promote technology transfer and the need to share their expertise in supercomputers with universities. Senator JOHNSTON and I included funds in this bill for those purposes. For example, under applied mathematical sciences up to $2 million is included in this bill. In the area of technology transfer we had in mind that these funds could be used as seed money to promote innovative concepts. Much of the technology transfer activity which takes place today is done on an ad hoc basis. I do not think that is such a bad idea. More control from Washington may not be the right idea. There may be some new ideas which have some merit and we would hope these funds could be used to try them out.

I am aware that the DOE has shown some interest in establishing fellowships at the national labs for individuals from industry. The costs of this effort would be shared by the private sector. Such a concept is in line with what I had in mind. A number of proposals have been put together to more familiarize the private sector and universities with supercomputing techniques and the vast data bases which reside in our labs. These are rapidly developing areas where new ideas for promoting interaction are needed. We intend that the DOE use these funds for this purpose.

In the electric energy storage systems the committee provided an additional $2 million to fully fund the administration's request including the area of electrochemistry and catalysis in fuel cells. These systems have great potential for applications in transportation as well as electricity production.

Mr. President, the DOE has within it an Office of Minority Economic Impact. It receives relatively low levels of funding but its programs are nonetheless impressive. Its efforts in vocational training are just an example. The committee agreed to allocate an additional $500,000 of the funding for the departmental administration account to this office, thus bringing its total funding to $2,900,000 for the coming fiscal year.

Last, Mr. President, I must comment on the level of funding for magnetic fusion in this bill. The committee, after an amendment, determined that the level of funding should be approximately constant in fiscal year 1985 relative to fiscal year 1984. This is about $12 million below the administration request. A number of us, including the distinguished Senator from Idaho, the chairman of the Energy Committee, are concerned about the long-term goals of the program and the fact that the short-term scientific experiments may force the sacrifice of research on new and innovative concepts which may lead to more economic commercial concepts. For this fiscal year, the only way to deal with this concern was to hold funding relatively high. In future years we expect the DOE to set its goals and objectives in such a way as to achieve this even if funding does decline.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 5653) was passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. BURDICK. Would the Senator from Oregon yield, Mr. President?

Mr. HATFIELD. I yield.

Mr. BURDICK. Mr. President, I compliment the managers for the skill and fairness with which this matter was resolved.

Mr. HATFIELD. I thank the Senator from North Dakota.

Mr. President, I move that the Senate insist on its amendments and request a conference with the House and the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer [Mr. SPECTER] appointed Mr. HATFIELD, Mr. MCCLURE, Mr. GARN, Mr. COCHRAN, Mr. ABDNOR, Mr. KASTEN, Mr. MATTINGLY, Mr. DOMENICI, Mr. JOHNSTON, Mr. STENNIS, Mr. BYRD, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. BURDICK, and Mr. SASSER.

Mr. HATFIELD. Mr. President, I want express my deep appreciation again to my colleague, Senator JOHNSTON, to all the members of the committee, and to the members of the staff. I put the staff of our committee up for any kind of an award that would be offered to committee staff because they would well earn such a recognition. I am delighted to have that kind of support and assistance in this role that we play as managers of the bill.

I want to thank them especially.

Mr. President, I believe we now have the next appropriation bill, the HUD bill, to be followed by the legislative bill. We can get those two out of the way, I am sure, as expeditiously as possible. The Senator from Utah [Mr. GARN] is on the floor.

I yield the floor at this time.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. Mr. President, I compliment the managers of the bill, the chairman of the full committee, Mr. HATFIELD——

The PRESIDING OFFICER. The Senate will be in order. Will all staff please cease conversing, and carry any conversations into the cloakroom?

The Senate will be in order.

The minority leader may proceed.

Mr. BYRD. Mr. President, I thank the Chair.

I compliment the Chair on securing order, which is the responsibility of the Chair under the rules without a point of order being made from the floor.

I commend our chairman of the full committee, who is the manager of the bill that was just adopted, Mr. HATFIELD. He is doing an excellent job as chairman of the committee. He has great patience. He is very skillful in piloting the appropriations bills through the committee, and extremely dedicated, always fair, and I believe that the Senate is in his debt.

I also wish to compliment Mr. JOHNSTON, who is likewise very attentive to his work, and to the problems of his colleagues. He too works with great skill, patience, and dedication.

Mr. President, I yield the floor.

Mr. HATFIELD. Mr. President, I want to thank the Senator.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I join our leader in extending our congratulations to the managers on both sides. I especially wish to congratulate Senator HATFIELD who persists in the most remarkable way in believing that we can pass all of these appropriations bills, and I continue to doubt him without justification. He has now passed the first one just as he said he would, with the Senate concurring. I support him in that. I think it is a mark of great respect to him and to the Appropriations Committees in general.

This is the first of the regular appropriations bills that we have passed, and altogether done in a very short time.

Mr. President, may I inquire of the minority leader if he would be prepared for me at this time to put a unanimous-consent request that the Senate turn to the consideration of the second regular appropriation bill, and that is scheduled on this side. That would be the HUD appropriation bill.

Mr. **BYRD**. Mr. President, I am pleased to answer the distinguished majority leader in the affirmative. Mr. HUDDLESTON is here ready to go forward with the responsibility as manager on this side of the aisle.

Mr. **BAKER**. Mr. President, I do not wish to push my luck, but I am encouraged to think that I might be able to get a favorable answer on the next request.

I wonder if the minority leader would be prepared at this time to agree that after we finish HUD by unanimous consent we go to the legislative appropriation bill.

Mr. **BYRD**. With the math-science measure temporarily laid aside?

Mr. **BAKER**. Yes, Mr. President. It would still be by unanimous consent, and I would propose, therefore, that the math-science bill continue as the pending business.

Mr. **BYRD**. Mr. President, I am pleased to inform the majority leader that this side of the aisle is ready in the manner that the Senator wishes.

Mr. **BAKER**. Mr. President, I am most grateful to the minority leader. I now ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 967, H.R. 5713, making appropriations for the Department of Housing and Urban Development; I further ask unanimous consent, Mr. President, that after that bill is disposed of, the Senate by unanimous consent turn to the consideration of Calendar Order No. 982, H.R. 5753, the appropriations bill for the legislative branch. I make those two requests.

The **PRESIDING OFFICER** (Mr. HEINZ). Is there objection to the unanimous-consent request of the Senator from Tennessee? The Chair hears none. It is so ordered.

Mr. **BAKER**. I thank the minority leader. I thank all Senators. We are now prepared to proceed to the HUD appropriations.

Mr. President, let me say one thing, a statement of a situation that we are about to accomplish. Assuming that we finish these two bills, and I think we will, it would not be the intention of the leadership on this side to ask the Senate to be in tomorrow.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—INDEPENDENT AGENCIES APPROPRIATIONS, 1985

The **PRESIDING OFFICER**. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5713) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1985, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts intended to be inserted are shown in italic.)

H.R. 5713

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1985, and for other purposes, namely:

TITLE I

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

[The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in appropriation Acts, is increased by $834,963,123: *Provided*, That $11,215,073 of such contract authority shall be available only for contracts using contract authority released by Acts of Congress prior to 1976: *Provided further*, That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriation Acts by $9,969,127,500: *Provided further*, That of the budget authority provided herein, $156,380,000 shall be for assistance in financing the development or acquisition cost of public housing for Indian families; $1,890,000,000 shall be for public housing new construction or acquisition with or without rehabilitation other than for low-income housing for Indian families; $1,550,000,000 shall be for modernization of existing public housing projects pursuant to section 14 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437l); $1,360,000,000 shall be for assistance for projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q); $2,550,802,500 shall be for assistance under the section 8 existing housing program, and $628,875,000 shall be for the section 8 moderate rehabilitation program (42 U.S.C. 1437f); and $709,695,000 shall be for assistance payments in the housing voucher program under section 8(o) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f): *Provided further*, That any balances of authorities made available prior to the enactment of this Act which are or become available for obligation in fiscal year 1985 shall be added to and merged with the authority approved herein, and such merged amounts shall be made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1985.**]**

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in appropriations Acts, is increased by $905,613,123: Provided, That $11,215,073 of such contract authority shall be available only for contracts using contract authority released by Acts of Congress prior to 1976: Provided further, That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriation Acts by $10,393,395,000: Provided further, That of the budget authority provided herein, $390,950,000 shall be for assistance in financing the development or acquisition cost of public housing for Indian families; $1,900,000,000 shall be for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l), of which (a) $100,000,000 shall be for the modernization of vacant uninhabitable dwelling units in vacant buildings located in public housing projects, pursuant to section 14 of such Act, other than section 14(f) of such Act, other than projects for which budget authority for this purpose was reserved or obligated during fiscal years 1983 or 1984, and (b) $250,000,000 shall be made available for modernization under such section 14, other than section 14(f) of such Act, through June 30, 1985, and any balances of such authority remaining unreserved after such date shall only be available for the section 8 existing housing program utilizing a term of one hundred and eighty months (42 U.S.C. 1437f); $710,517,500 shall be for assistance payments in the housing voucher program under section 8(o) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f); $1,993,880,000 shall be for assistance for projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q); and, $2,294,557,500 shall be for the section 8 existing housing program (42 U.S.C. 1437f), of which (a) $815,325,000 shall be for assistance contracts having a sixty-month term, which shall be used to compare the effectiveness of such assistance to assistance in the housing voucher program, (b) up to $23,295,000 may be used for assistance for tenants who received assistance under the section 8 new construction or substantial rehabilitation programs until the owner decided not to continue participation in the respective programs upon expiration of a section 8 housing assistance payment contract, and (c) up to $58,237,500 may be used for assistance for tenants of public housing projects in which their units are demolished: Provided further, That the Secretary shall not approve the use of any of the budget authority provided herein, (except such amounts as are provided for in the third proviso of this paragraph), or reserved and obligated in years prior to fiscal year 1985, for assistance under the housing voucher program authorized under section 8(o) of the United States Housing Act of 1937, as amended: Provided further, That any balances of authorities made available prior to the enactment of this Act which are or become available for obligation in fiscal year 1985 shall be added to and merged with the authority approved herein, and such merged amounts shall be made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1985: Provided further, That none of the merged amounts available for obligation in 1985 shall be subject to the provisions of *section 213(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 1439): Provided further, That all amounts of budget authority equal to the amounts of such budget authority which are recaptured during fiscal year 1985 shall be rescinded.*

RENT SUPPLEMENT

(RESCISSION)

The limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) is reduced in fiscal year 1985 by not more than $81,617,000 in uncommitted balances of authorizations provided for this purpose in appropriation Acts.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

The limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (12 U.S.C. 1715z-1) is reduced in fiscal year 1985 by not more than $7,631,000 in uncommitted balances of authorizations provided for this purpose in appropriation Acts.

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

In 1985, [$500,000,000] *$700,000,000* of direct loan obligations may be made under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q), utilizing the resources of the fund authorized by subsection (a)(4) of such section, in accordance with paragraph (C) of such subsection: *Provided*, That such commitments shall be available only to qualified nonprofit sponsors for the purpose of providing 100 per centum loans for the development of housing for the elderly or handicapped, with any cash equity or other financial commitments imposed as a condition of loan approval to be returned to the sponsor if sustaining occupancy is achieved in a reasonable period of time: *Provided further*, That the full amount shall be available for permanent financing (including construction financing) for housing projects for the elderly or handicapped: *Provided further*, That the Secretary may borrow from the Secretary of the Treasury in such amounts as are necessary to provide the loans authorized herein: *Provided further*, That, notwithstanding any other provision of law, the receipts and disbursements of the aforesaid fund shall be included in the totals of the Budget of the United States Government: *Provided further*, That, notwithstanding section 202(a)(3) of the Housing Act of 1959, loans made in fiscal year 1985 shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program.

PAYMENTS FOR OPERATION OF LOW-INCOME HOUSING PROJECTS

For payments to public housing agencies for operating subsidies for low-income housing projects as authorized by section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g), [$1,123,500,000] *$1,148,500,000: Provided, That of the authority provided herein, not more than $25,000,000 shall be obligated to public housing agencies by April 1, 1985, for planning costs associated with the preparation of applications submitted to the Secretary in fiscal year 1985 for modernization assistance under section 14 of such Act, without offset by any amount of operating subsidy payment to which a public housing agency may otherwise be entitled.*

HOUSING COUNSELING ASSISTANCE

For contracts, grants, and other assistance, not otherwise provided for, for providing counseling and advice to tenants and homeowners—both current and prospective—with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and meeting the responsibilities of tenancy or homeownership, including provisions for training and for support of voluntary agencies and services as authorized by section 106(a)(1)(iii) and section 106(a)(2) of the Housing and Urban Development Act of 1968, as amended, [$4,000,000] *$3,500,000*.

TROUBLED PROJECTS OPERATING SUBSIDY

For assistance payments to owners of eligible multifamily housing projects insured, or formerly insured, under the National Housing Act, as amended, in the program of operating subsidies for troubled multifamily housing projects under the Housing and Community Development Amendments of 1978, all unobligated balances of excess rental charges and any collections after **September 30, 1984, to remain available until September 30, 1986**: ***Provided*, That assistance** payments to an owner of a multifamily housing project assisted, but not insured, under the National Housing Act may be made if the project owner and the mortgagee have provided or agreed to provide assistance to the project in a manner as determined by the Secretary of Housing and Urban Development.

FEDERAL HOUSING ADMINISTRATION FUND

For payment to cover losses, not otherwise provided for, sustained by the Special Risk Insurance Fund and General Insurance Fund as authorized by the National Housing Act, as amended (12 U.S.C. 1715z-3(b) and 1735c(f)), $387,683,000, to remain available until expended.

During 1985, within the resources available, gross obligations for direct loans are authorized in such amounts as may be necessary to carry out the purposes of the National Housing Act, as amended.

During 1985, additional commitments to guarantee loans to carry out the purposes of the National Housing Act, as amended, shall not exceed $50,900,000,000 of loan principal.

During fiscal year 1985, gross obligations for direct loans of not to exceed $65,448,000 are authorized for payments under section 230(a) of the National Housing Act, as amended, from the insurance fund chargeable for benefits on the mortgage covering the property to which the payments made relate, and payments in connection with such obligations are hereby approved.

NONPROFIT SPONSOR ASSISTANCE

During 1985, within the resources and authority available, gross obligations for the principal amounts of direct loans shall not exceed $1,880,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

PAYMENT OF PARTICIPATION SALES INSUFFICIENCIES

For the payment of such insufficiencies as may be required by the Government National Mortgage Association, as trustee, on account of outstanding beneficial interests or participations in assets of the Department of Housing and Urban Development (including the Government National Mortgage Association) authorized by the Independent Offices and Department of Housing and Urban Development Appropriation Act, 1968, to be issued pursuant to section 302(c) of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1717), $745,000.

GUARANTEES OF MORTGAGE-BACKED SECURITIES

During 1985, new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721g), shall not exceed $68,250,000,000 of loan principal.

SPECIAL ASSISTANCE FUNCTIONS FUND

(TRANSFER OF FUNDS)

The Secretary shall transfer all assets acquired and liabilities incurred pursuant to section 305 of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1720), to the management and liquidating functions fund established pursuant to section 306 of such Act (12 U.S.C. 1721): *Provided*, That on October 1, 1984, each outstanding obligation issued by the Secretary of Housing and Urban Development to the Secretary of the Treasury pursuant to section 305(d) of such Act, together with any promise to repay the principal and unpaid interest which has accrued on each obligation, and any other term or condition specified by each such obligation, is canceled.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE

(TRANSFER OF FUNDS)

The Secretary shall transfer all assets acquired and liabilities incurred pursuant to section 313 of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1723e), to the management and liquidating functions fund established pursuant to section 306 of such Act (12 U.S.C. 1721): *Provided*, That on October 1, 1984, each outstanding obligation issued by the Secretary of the Housing and Urban Development to the Secretary of the Treasury pursuant to section 313(c) of such Act, together with any promise to repay the principal and unpaid interest which has accrued on each obligation, and any other term or condition specified by each such obligation, is canceled.

[SOLAR ENERGY AND ENERGY CONSERVATION BANK

[ASSISTANCE FOR SOLAR AND CONSERVATION IMPROVEMENTS

[For financial assistance and other expenses, not otherwise provided for, to carry out the provisions of the Solar Energy and Energy Conservation Bank Act of 1980 (12 U.S.C. 3601), $25,000,000, to remain available until September 30, 1986.]

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT GRANTS

For grants to States and units of general local government and for related expenses, not otherwise provided for, necessary for carrying out a community development grant program as authorized by title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), [$3,468,000,000] *$3,472,000,000*, to remain available until September 30, 1987: *Provided*, That not to exceed 20 per centum of any grant made with funds appropriated herein shall be expended for "Planning and Management Development" and "Administration" as defined in regulations promulgated by the Department of Housing and Urban Development.

During 1985, total commitments to guarantee loans, as authorized by section 108 of the aforementioned Act, shall not exceed $225,000,000 of contingent liability for loan principal.

URBAN DEVELOPMENT ACTION GRANTS

For grants to carry out urban development action grant programs authorized in section 119 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), pursuant to section 103 of that Act, $440,000,000, to remain available until September 30, 1988: *Provided, That $2,500,000 of such amount shall be made available for technical assistance grants under section 119(q) of such Act: Provided further, That notwithstanding section 119(q) such $2,500,000 shall be made available for such grants only to cities and urban counties eligible for assistance under section 119 which have not been grantees before fiscal year 1985 for programs under section 119 of such Act: Provided further, That with respect to funds provided herein the provisions of section 119(i) shall be construed as not applying to such $2,500,000.*

REHABILITATION LOAN FUND

During 1985, collections, unexpended balances of prior appropriations (including any recoveries of prior reservations) and any other amounts in the revolving fund established pursuant to section 312 of the Housing Act of 1964, as amended (42 U.S.C. 1452b), after September 30, 1984, are available *and may be used* for commitments for loans and operating costs and the capitalization of delinquent interest on delinquent or defaulted loans *notwithstanding section 312(h) of such Act.*

URBAN HOMESTEADING

For reimbursement to the Federal Housing Administration Fund for losses incurred under the urban homesteading program (12 U.S.C. 1706e), and for reimbursement to the Administrator of Veterans Affairs and the Secretary of Agriculture for properties conveyed by the Administrator of Veterans Affairs and the Secretary of Agriculture, respectively, for use in connection with an urban homesteading program approved by the Secretary of Housing and Urban Development pursuant to section 810 of the Housing and Community Development Act of 1974, as amended, $12,000,000, to remain available until expended: *Provided*, That up to $1,000,000 of the budget authority provided herein shall be made available for the demonstration program authorized pursuant to section 810(i), and for evaluation of such demonstration program pursuant to section 810(j), of such Act.

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z-1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, [$15,900,000] *$20,000,000*, to remain available until September 30, 1986: *Provided, That of the funds provided herein $500,000 shall be used in addition to the $4,000,000 provided for the modernization study in Public Law 98-45 (97 Stat. 223, 224): Provided further, That not more than a total of $500,000 of the funds available for use on the modernization study shall be used for the energy analysis and program evaluation component of the study: Provided further, that $500,000 of the funds provided herein shall be for the design and implementation of the housing voucher demonstration evaluation, including a comparison of the housing voucher program with five year, and fifteen year assistance contracts under the section 8 existing housing program.*

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ASSISTANCE

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended, $6,700,000, to remain available until September 30, 1986.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and nonadministrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including not to exceed $4,000 for official reception and representation expenses, [$577,320,000] *$580,220,000*, of which $282,085,000 shall be provided from the various funds of the Federal Housing Administration.

ADMINISTRATIVE PROVISION

Section 1305 of title 31, United States Code, is amended by adding to the end thereof the following new paragraphs to provide for indefinite appropriations to be available currently and permanently:

“ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

“(7) to make payments required under contracts made under section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c).

“COLLEGE HOUSING GRANTS

“(8) to make payments required under contracts made under title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.).

“RENT SUPPLEMENT PROGRAM

“(9) to make payments required under contracts under section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. 1701s).

“HOMEOWNERSHIP AND RENTAL HOUSING ASSISTANCE

“(10) to make payments required under contracts under sections 235 and 236, respectively, of the National Housing Act, as amended (12 U.S.C. 1715z, 1715z-1).”.

TITLE II

INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries when required by law of such countries; $11,065,000: *Provided*, That where station allowance has been authorized by the Department of the Army for officers of the Army serving the Army at certain foreign stations, the same allowance shall be authorized for officers of the Armed Forces assigned to the Commission while serving at the same foreign stations, and this appropriation is hereby made available for the payment of such allowance: *Provided further*, That when traveling on business of the Commission, officers of the Armed Forces serving as members or as Secretary of the Commission may be reimbursed for expenses as provided for civilian members of the Commission: *Provided further*, That the Commission shall reimburse other Government agencies, including the Armed Forces, for salary, pay, and allowances of personnel assigned to it.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18, and not to exceed $500 for official reception and representation expenses, [$36,000,000] *$35,000,000*: *Provided*, That funds provided by this appropriation for laboratories shall be available only for the acquisition or conversion of existing laboratories.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of one passenger motor vehicle for replacement only, $7,759,000, to remain available until expended: *Provided*, That reimbursement shall be made to the applicable military appropriation for the pay and allowances of any military personnel performing services primarily for the purposes of this appropriation.

ENVIRONMENTAL PROTECTION AGENCY

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; and not to exceed $3,000 for official reception and representation expenses; [$672,275,000] *$639,275,000*: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).

RESEARCH AND DEVELOPMENT

For research and development activities, [$193,000,000] *$184,437,000*, to remain available until September 30, 1986: *Provided, That within the amount under this head $4,000,000 appropriated shall be available for necessary expenses to conduct an estuarine pollution monitoring and assessment program under section 104(a)(5) of the Federal Water Pollution Control Act: Provided further, That such funds shall remain available until expended.*

ABATEMENT, CONTROL, AND COMPLIANCE

For abatement, control, and compliance activities, [$436,000,000] *$462,142,000*, to remain available until September 30, 1986: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913), or for support to State, regional, local and interstate agencies in accordance with subtitle D of the Solid Waste Disposal Act, as amended, other than section 4008(a)(2) or 4009: *Provided further, That in addition to the $237,688,300 provided for State grants, no less than $32,400,000 of the amount appropriated under this head shall be made available for environmental enforcement and training activities under Clean Air Act section 105 air pollution control program grants, Clean Water Act section 106 water pollution control program grants, Safe Drinking Water Act section 1443(a) public water system supervision program grants, Safe Drinking Water Act section 1443(b) underground water source protection program grants, Solid Waste Disposal Act section 3011 hazardous waste management program grants, Federal Insecticide, Fungicide, and Rodenticide Act section 23 (a) and (b) pesticide enforcement program grants, pesticide certification and training and Toxic Substances Control Act sections 28(a) toxic substances enforcement program grants and that no less than $1,500,000 shall be made available for environmental enforcement and training under each of these eight categories of program grants: Provided further, That these funds will be made available only on application to the Environmental Protection Agency under applicable grant regulations. In addition to the funds requested by the President, no less than $2,500,000 of the amount appropriated under this head shall be made available for Clean Water Act section 314 clean lakes grants: Provided further, That within the amount appropriated under this head $6,000,000 shall be available for grants to States and interstate agencies under section 104(b)(3) of the Federal Water Pollution Control Act for the development and implementation of interstate pollution management and abatement programs: Provided further, That such funds shall remain available until expended.*

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment for facilities of, or use by, the Environmental Protection Agency, [$13,000,000] *$10,500,000*, to remain available until expended: *Provided*, That none of the funds available under this heading may be obligated for construction of new facility projects without the prior approval of the Committees on Appropriations.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For payment to the Hazardous Substance Response Trust Fund as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), $44,000,000.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), [$600,000,000] *$640,000,000*, to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That not to exceed $87,573,000 shall be available for administrative expenses. Funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided further, That for performance of specific activities in accordance with section 104(i) of Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, $9,495,000 shall be made available to the Department of Health and Human Services on October 1, 1984, to be derived by transfer from the Hazardous Substance Response Trust Fund.*

CONSTRUCTION GRANTS

For necessary expenses to carry out title II of the Federal Water Pollution Control Act, as amended, other than sections 201(m)(1)-(3), 201(n)(2), 206, 208, and 209, $2,400,000,000, to remain available until expended.

Executive Office of the President

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses of the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91-190), the Environmental Quality Improvement Act of 1970 (Public Law 91-224), and Reorganization Plan No. 1 of 1977, including not to exceed $500 for official reception and representation expenses, and hire of passenger motor vehicles, $700,000.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, not to exceed $1,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, $2,194,000[: *Provided*, That the Office of Science and Technology Policy shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it].

Federal Emergency Management Agency

DISASTER RELIEF

For necessary expenses in carrying out the functions of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq.), $100,000,000, to remain available until expended.

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; expenses of attendance of cooperating officials and individuals at meetings concerned with the work of emergency preparedness; transportation in connection with the continuity of government program to the same extent and in the same manner as permitted the Secretary of a Military Department under 10 U.S.C. 2632; and not to exceed [$1,000] *$2,000* for official reception and representation expenses, [$129,316,000] *$130,649,000*.

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

For necessary expenses, not otherwise provided for, to carry out activities under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 et seq.), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.), the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 et seq.), the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), section 103 of the National Security Act (50 U.S.C. 404), and Reorganization Plan No. 3 of 1978, [$325,593,000] *$329,219,000*: *Provided*, That of this amount $4,778,000 for expenses under section 1362 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4103, 4127), shall be available until September 30, 1986.

NATIONAL FLOOD INSURANCE FUND

For repayment under notes issued by the Director of the Federal Emergency Management Agency to the Secretary of the Treasury pursuant to section 15(e) of the Federal Flood Insurance Act of 1956, as amended (42 U.S.C. 2414(e)), $200,205,000. In fiscal year 1985, not to exceed (1) $37,045,000 for operating expenses, (2) $59,283,000 for agents' commissions and taxes, and (3) $8,500,000 for interest on Treasury borrowings shall be available from the National Flood Insurance Fund without the approval of the Committees on Appropriations.

[ADMINISTRATIVE PROVISION

[No part of the appropriations in this Act for the Federal Emergency Management Agency shall be available for the establishment or operation of a western extension of the National Emergency Training Center, Emmitsburg, Maryland.]

General Services Administration

CONSUMER INFORMATION CENTER

For necessary expenses of the Consumer Information Center, including services authorized by 5 U.S.C. 3109, $1,149,000, to be deposited into the Consumer Information Center Fund: *Provided*, That the appropriations, revenues and collections deposited into the fund shall be available for necessary expenses of Consumer Information Center activities in the aggregate amount of $4,449,000. Administrative expenses of the Consumer Information Center in fiscal year 1985 shall not exceed $1,449,000. Appropriations, revenues and collections accruing to this fund during fiscal year 1985 in excess of $4,449,000 shall remain in the fund and shall not be available for expenditure except as authorized in appropriation Acts.

Department of Health and Human Services

OFFICE OF CONSUMER AFFAIRS

For necessary expenses of the Office of Consumer Affairs, including services authorized by 5 U.S.C. 3109, $2,096,000.

National Aeronautics and Space Administration

RESEARCH AND DEVELOPMENT

[For necessary expenses, not otherwise provided for, including research, development, operations, services, minor construction, maintenance, repair, rehabilitation and modification of real and personal property;

purchase, hire, maintenance, and operation of other than administrative aircraft, necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration; including not to exceed (1) $155,500,000 for a space station; (2) $195,000,000 for space telescope development; (3) $120,200,000 for the gamma ray observatory; (4) $92,400,000 for upper stages; (5) $92,500,000 for the Venus radar mapper mission; and (6) $56,100,000 for Galileo; without the approval of the Committees on Appropriations; $2,422,600,000, to remain available until September 30, 1986; including $155,500,000 for a space station, of which $5,500,000 shall be made available from prior year appropriations: *Provided*, That of this amount, $63,800,000 is available for space station systems definition and integration studies, including not less than $15,000,000 for complementary space station studies to define an alternative concept employing an initial "man-tended" capability rather than a "permanently manned" capability.]

For necessary expenses not otherwise provided for, including research, development, operations, services, minor construction, maintenance, repair, rehabilitation and modification of real and personal property; purchase, hire, maintenance, and operation of other than administrative aircraft necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration: $2,424,100,000, to remain available until September 30, 1986: Provided, That none of the $58,300,000 proposed for space station systems definition and integration provided in this Act shall be obligated or expended before April 1, 1985: Provided further, That the recommendations contained in the report required in the seventh proviso under the head "Research and Program Management" be incorporated in any contract entered into as part of the systems definition and integration studies.

SPACE FLIGHT, CONTROL AND DATA COMMUNICATIONS

For necessary expenses, not otherwise provided for; in support of space flight, spacecraft control and communications activities of the National Aeronautics and Space Administration, including operations, production, services, minor construction, maintenance, repair, rehabilitation, and modification of real and personal property; tracking and data relay satellite services as authorized by law; purchase, hire, maintenance and operation of other than administrative aircraft; [and including not to exceed (1) $1,505,600,000 for space shuttle production and operational capability; and (2) $1,339,000,000 for space transportation operations; without the approval of the Committees on Appropriations; $3,602,800,000] *$3,600,300,000*, to remain available until September 30, 1986: *Provided, That up to 5 per centum of the amount appropriated for "Research and Development" or "Space Flight, Control and Data Communications" may be transferred between such accounts with the approval of the Committees on Appropriations.*

CONSTRUCTION OF FACILITIES

For construction, repair, rehabilitation and modification of facilities, minor construction of new facilities and additions to existing facilities, and for facility planning and design not otherwise provided, for the National Aeronautics and Space Administration, and for the acquisition or condemnation of real property, as authorized by law, $150,000,000, to remain available until September 30, 1987: *Provided*, That, notwithstanding the limitation on the availability of funds appropriated under this heading by this appropriation Act, when any activity has been initiated by the incurrence of obligations therefor, the amount available for such activity shall remain available until expended, except that this provision shall not apply to the amounts appropriated pursuant to the authorization for repair, rehabilitation and modification of facilities, minor construction of new facilities and additions to existing facilities, and facility planning and design: *Provided further*, That no amount appropriated pursuant to this or any other Act may be used for the lease or construction of a new contractor-funded facility for exclusive use in support of a contract or contracts with the National Aeronautics and Space Administration under which the Administration would be required to substantially amortize through payment or reimbursement such contractor investment, unless an appropriation Act specifies the lease or contract pursuant to which such facilities are to be constructed or leased or such facility is otherwise identified in such Act: *Provided further*, That the Administrator may authorize such facility lease or construction, with the approval of the Committees on Appropriations, if he determines that deferral of such action until the enactment of the next appropriation Act would be inconsistent with the interest of the Nation in aeronautical and space activities: *Provided further, That with funds appropriated under the Research and Development account and the Space Flight, Control and Data Communications account to NASA in this Act, and subsequent appropriations acts, NASA may enter into a contract with the California Institute of Technology to amortize the Central Engineering Building over a twelve-year period for a total cost of not to exceed $17,000,000, plus applicable financing costs equal to the prime rate plus two percent, under the authority granted under Public Law 98-45. The building shall be built at the Jet Propulsion Laboratory with title to be vested initially in the California Institute of Technology, and to revert to NASA upon completion of payments.*

RESEARCH AND PROGRAM MANAGEMENT

For necessary expenses of research in government laboratories, management of programs and other activities of the National Aeronautics and Space Administration, not otherwise provided for, including uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); awards; lease, hire, maintenance and operation of administrative aircraft; purchase (not to exceed thirty for replacement only) and hire of passenger motor vehicles; and maintenance and repair of real and personal property, and not in excess of $100,000 per project for construction of new facilities and additions to existing facilities, repairs, and rehabilitation and modification of facilities; [$1,316,000,000] *$1,317,000,000*: *Provided*, That contracts may be entered into under this appropriation for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year: *Provided further*, That not to exceed $35,000 of the foregoing amount shall be available for scientific consultations or extraordinary expense, to be expended upon the approval or authority of the Administrator and his determination shall be final and conclusive: *Provided further*, That the National Aeronautics and Space Administration may test a flat rate per diem system for employee travel allowances under regulations prescribed by the Administrator: *Provided further*, That the rates will be consistent with those authorized by the Administrator of the General Services Administration: *Provided further*, That per diem allowances paid employees under a flat rate per diem system shall be amounts determined by the Administrator of NASA to be sufficient to meet normal and necessary expenses in the area in which travel is performed, but in no event will the travel allowances exceed $75 for each day in travel status within the continental United States, *unless the statutory maximum rate of $75 per day is increased by the Congress and implemented by the Administrator of the General Services Administration*: *Provided further*, That the test approved under this section shall expire on September 30, 1985, or upon the effective date of permanent legislation establishing a flat rate per diem system for civilian personnel, whichever occurs first: *Provided further, That the Administrator shall establish an Advanced Technology Advisory Committee in conjunction with NASA's Space Station program and that the Committee shall prepare a report by April 1, 1985, identifying specific space station systems which advance automation and robotic technologies, not in use in existing spacecraft, and that the development of such systems shall be estimated to cost no less than 10 per centum of the total Space Station costs.*

GENERAL PROVISIONS

The National Aeronautics and Space Administration has authority, notwithstanding any other provision of law, to take such actions as the Administrator deems necessary to provide to the National Science Foundation, on a fully reimbursable basis, Class VI Computers, otherwise acquired for service at NASA installations under authorized acquisition procedures, with accompanying peripheral equipment, as requested by the Foundation: Provided, That the National Science Foundation is authorized to receive from the National Aeronautics and Space Administration, Class VI Computers, with such accompanying peripheral equipment as NASA makes available, and, upon receipt, to sell said computer and peripheral equipment to an institution of higher education under such terms as it deems appropriate notwithstanding any other provision of law.

National Credit Union Administration

CENTRAL LIQUIDITY FACILITY

During 1985, obligations of the Central Liquidity Facility for new loans to member credit unions as authorized by the National Credit Union Central Liquidity Facility Act (12 U.S.C. 1795) shall not exceed $600,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 1985 shall not exceed $850,000.

National Science Foundation

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876-1879), and the Act to establish a National Medal of Science (42 U.S.C. 1880-1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; hire of passenger motor vehicles; not to exceed $2,500 for official reception and representation expenses; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; [$1,293,212,000] *$1,307,512,000*, to remain available until September 30, 1986: *Provided*, That of the funds appropriated in this Act, or from funds appropriated previously to the Foundation, not more than [$69,902,000] *$70,902,000* shall be available for program development and management in fiscal year 1985: *Provided further*, That contracts may be entered into under the program development and management limitation in fiscal year 1985 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year: *Provided further*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: *Provided further*, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: [*Provided further*, That none of the funds available under this heading may be obligated for the very long baseline array until and unless the National Science Foundation submits to the Congress a fiscal year 1986 budget request for science education which is at least 8.5 per centum of the total fiscal year 1986 National Science Foundation budget request:] *Provided further*, That the Foundation is authorized to indemnify grantees, contractors, and subcontractors associated with the ocean drilling program under the provisions of section 2354 of title 10 of the United States Code, with all approvals and certifications required thereby made by the Director of the National Science Foundation: *Provided further, That the Foundation award no fewer than 13,000 grants during fiscal year 1985.*

UNITED STATES ANTARCTIC PROGRAM ACTIVITIES

For necessary expenses in carrying out the research and operational support for the U.S. Antarctic Program pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875); maintenance and operation of aircraft and purchase of flight services for research and operations support; maintenance and operation of research ships and charter or lease of ships for research and operations support; hire of passenger motor vehicles; not to exceed $1,000 for official reception and representation expenses; [$115,080,000] *$110,080,000*, to remain available until expended: *Provided*, That receipts for support services and materials provided to individuals for non-Federal activities may be credited to this appropriation: *Provided further*, That no funds in this account shall be used for the purchase of aircraft.

SCIENCE EDUCATION ACTIVITIES

For necessary expenses in carrying out science education programs and activities pursuant to the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), including award of graduate fellowships, services as authorized by 5 U.S.C. 3109, and rental of conference rooms in the District of Columbia, [$88,700,000] *$81,400,000*, to remain available until September 30, 1986: *Provided*, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further, That $5,000,000 shall be transferred from funds provided under this head to and merged with funds made available under "Research and related activities" for the purpose of conducting research on teaching and learning: Provided further, That $2,000,000 shall be made available for a contract to develop a science education plan and management structure for the Foundation.*

SCIENTIFIC ACTIVITIES OVERSEAS (SPECIAL FOREIGN CURRENCY PROGRAM)

For payments in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States, for scientific activities, as authorized by law, $2,800,000, to remain available until September 30, 1986: *Provided*, That this appropriation shall be available in addition to other appropriations to the National Science Foundation for payments in the foregoing currencies.

Neighborhood Reinvestment Corporation

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101-8107), [$15,271,000] *$15,512,000.*

Selective Service System

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by law (5 U.S.C. 4101-4118) for civilian employees; and not to exceed $1,000 for official reception and representation expenses; $27,780,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever he deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States.

Department of the Treasury

PAYMENTS TO LOCAL GOVERNMENT

FISCAL ASSISTANCE TRUST FUND

For payments to the Local Government Fiscal Assistance Trust Fund, $4,566,700,000.

OFFICE OF REVENUE SHARING, SALARIES AND EXPENSES

For necessary expenses of the Office of Revenue Sharing, including hire of passenger motor vehicles, $7,941,000.

Veterans' Administration

COMPENSATION AND PENSIONS

For the payment of compensation, pensions, gratuities, and allowances, including burial awards, plot allowances, burial flags, headstones and grave markers, emergency and other officers' retirement pay, adjusted-service credits and certificates, and other benefits as authorized by law; and for payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, $13,992,900,000, to remain available until expended.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 31, 34-36, 39, 51, 53, 55, and 61), $1,137,800,000, to remain available until expended.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, and service-disabled veterans insurance, as authorized by law (38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487), $11,000,000, to remain available until expended.

MEDICAL CARE

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities; for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Veterans Administration, including care and treatment in facilities not under the jurisdiction of the Veterans Administration, and furnishing recreational facilities, supplies and equipment; funeral, burial and other expenses incidental thereto for beneficiaries receiving care in Veterans Administration facilities; repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the Veterans Administration, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); aid to State homes as authorized by law (38 U.S.C. 641); and not to exceed $2,000,000 to fund cost comparison studies as referred to in 38 U.S.C. 5010(a)(5); [$8,807,435,000] *$8,792,165,000*, plus reimbursements.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development, as authorized by law, to remain available until September 30, 1986, [$192,695,000.] *$193,695,000* plus reimbursements.

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction and supply, research, employee education and training activities, as authorized by law, [$69,013,000] *$72,213,000*, plus reimbursements: *Provided, That the total FTEE for the following offices within the Department of Medicine and Surgery not exceed 106 FTEE during fiscal year 1985: (1) Program Analysis and Development; (2) Health Systems Planning Service; (3) Planning Methods and Systems Development Service; (4) Facilities Planning Service; and (5) MEDIPP field personnel.*

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Veterans Administration, not otherwise provided for, including uniforms or allowances therefor, as authorized by law; not to exceed $3,000 for official reception and representation expenses; cemeterial expenses as authorized by law; purchase of twelve passenger motor vehicles, for use in cemeterial operations, and hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail; $750,454,000.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities under the jurisdiction or for the use of the Veterans Administration, or for any of the purposes set forth in sections 1004, 1006, 5002, 5003, 5006, 5008, 5009, and 5010 of title 38, United States Code, including planning, architectural and engineering services, and site acquisition, where the estimated cost of a project is $2,000,000 or more or where funds for a project were made available in a previous major project appropriation, [$619,594,000] *$568,194,000*, to remain available until expended: *Provided*, That, except for advance planning of projects funded through the advance planning fund and the design of projects funded through the Design Fund, none of these funds shall be used for any project which has not been considered and approved by the Congress in the budgetary process: [*Provided further*, That, notwithstanding any other provision of law, not to exceed $15,000,000 shall be available in fiscal years 1984 and 1985 for the Design Fund:] *Provided further*, That funds provided in the appropriation "Construction, major projects" for fiscal year 1985, for each approved project shall be obligated (1) by the awarding of a working drawings contract by September 30, 1985 and (2) by the awarding of a construction contract by September 30, 1986: *Provided further*, That the Administrator shall promptly report in writing to the Comptroller General and to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above; and the Comptroller General shall review the report in accordance with the procedures established by section 1015 of the Impoundment Control Act of 1974 (title X of Public Law 93-344): *Provided further*, That no funds from any other account may be obligated for constructing, altering, extending, or improving a project which was approved in the budget process and funded in this account until one year after [substantial completion and beneficial occupancy] *final acceptance* by the Veterans Administration [of the project or any part thereof with respect to that part only: *Provided further*, That the final proviso under this heading in the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 (Public Law 98-45) is hereby repealed]: *Provided further, That prior to the issuance of a bidding document for any construction contract for a project approved under this heading (excluding completion items), the director of the affected Veterans Administration medical facility must certify that the design of such project is acceptable from a patient care standpoint.*

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities under the jurisdiction or for the use of the Veterans Administration, including planning, architectural and engineering services, and site acquisition, or for any of the purposes set forth in sections 1004, 1006, 5002, 5003, 5006, 5008, 5009, and 5010 of title 38, United States Code, where the estimated cost of a project is less than $2,000,000, [$200,200,000] *$201,619,000*, to remain available until expended, along with unobligated balances of previous Construction, minor projects appropriations which are hereby made available for any project where the estimated cost is less than $2,000,000: *Provided*, That not more than [$39,104,000] *$40,523,000* shall be available for expenses of the Office of Construction: *Provided further*, That funds in this account shall be available for (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Veterans Administration which are necessary because of loss or damage caused by any natural disaster or catastrophe and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist the several States to construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans, as authorized by law (38 U.S.C. 5031-5037), $34,500,000, to remain available until September 30, 1987.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding or improving State veterans' cemeteries as authorized by law (38 U.S.C. 1008), $5,000,000, to remain available until September 30, 1987.

GRANTS TO THE REPUBLIC OF THE PHILIPPINES

For payment to the Republic of the Philippines of grants, as authorized by law (38 U.S.C. 632), for assisting in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the Veterans Memorial Medical Center, $500,000, to remain available until September 30, 1986.

LOAN GUARANTY REVOLVING FUND

(INCLUDING TRANSFER OF FUNDS)

During 1985, the Loan guaranty revolving fund shall be available for expenses for property acquisitions, payment of participation sales insufficiencies, and other loan guaranty and insurance operations, as authorized by law (38 U.S.C. chapter 37, except administrative expenses, as authorized by section 1824 of such title): *Provided*, That the unobligated balances, including retained earnings of the Direct loan revolving fund, shall be available, during 1985, for transfer to the Loan guaranty revolving fund in such amounts as may be necessary to provide for the timely payment of obligations of such fund, and the Administrator of Veterans Affairs shall not be required to pay interest on amounts so transferred after the time of such transfer.

During 1985, with the resources available, gross obligations for direct loans and total commitments to guarantee loans are authorized in such amounts as may be necessary to carry out the purposes of the "Loan guaranty revolving fund".

DIRECT LOAN REVOLVING FUND

During 1985, within the resources available, not to exceed $1,000,000 in gross obligations for direct loans is authorized for specially adapted housing loans (38 U.S.C. chapter 37).

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

Not to exceed 5 per centum of any appropriation for 1985 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred to any other of the mentioned appropriations, but not to exceed 10 per centum of the appropriations so augmented.

Appropriations available to the Veterans Administration for 1985 for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

No part of the appropriations in this Act for the Veterans Administration (except the appropriations for "Construction, major projects" and "Construction, minor projects") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

No part of the foregoing appropriations shall be available for hospitalization or examination of any persons except beneficiaries entitled under the laws bestowing such benefits to veterans, unless reimbursement of cost is made to the appropriation at such rates as may be fixed by the Administrator of Veterans Affairs.

One or more pilot programs shall be conducted to determine the effectiveness of utilizing private contractual services to assist in the administrative collection of various types of delinquent debts or other funds due the Government.

TITLE III

CORPORATIONS

Corporations and agencies of the Department of Housing and Urban Development and the Federal Home Loan Bank Board which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Act as may be necessary in carrying out the programs set forth in the budget for 1985 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriation Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

FEDERAL HOME LOAN BANK BOARD

LIMITATION ON ADMINISTRATIVE AND NONADMINISTRATIVE EXPENSES, FEDERAL HOME LOAN BANK BOARD

Not to exceed a total of $67,565,000 shall be available for expenses of the Federal Home Loan Bank Board, which amount shall include nonadministrative expenses for the examination and supervision of Federal and State-chartered institutions in an amount not to exceed $43,184,000, including $500,000 which shall be available only for purposes of training State examiners, and administrative expenses in an amount not to exceed $24,381,000, and said total amount shall be available for procurement of services as authorized by 5 U.S.C. 3109, and contracts for such services with one organization may be renewed annually, and uniforms or allowances therefor in accordance with law (5 U.S.C. 5901-5902), and said amount shall be derived from funds available to the Federal Home Loan Bank Board, including those in the Federal Home Loan Bank Board revolving fund and receipts of the Board for the current fiscal year and prior fiscal years, and the Board may utilize and may make payment for services and facilities of the Federal Home Loan Banks, the Federal Reserve Banks, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Mortgage Corporation, and other agencies of the Government (including payment for office space): *Provided*, That, with the prior approval of the Committees on Appropriations, not to exceed 10 per centum of the lesser of the limitations on administrative and nonadministrative expenses may be transferred between said limitations: *Provided further*, That expenses for special examinations of Federal and State-chartered institutions determined by the Board to be necessary, all necessary expenses in connection with the conservatorship or liquidation of institutions insured by the Federal Savings and Loan Insurance Corporation, liquidation or handling of assets of or derived from such insured institutions, payment of insurance, and action for or toward the avoidance, termination, or minimizing of losses in the case of such insured institutions, or activities relating to section 5A(f) or 6(i) of the Federal Home Loan Bank Act, section 5(d) of the Home Owners' Loan Act of 1933, section 12(i) of the Securities Exchange Act of 1934, or section 406(c), 407, or 408 of the National Housing Act and all necessary expenses (including services performed on a contract or fee basis, but not including other personal services) in connection with the handling, including the purchase, sale, and exchange, of securities on behalf of Federal home loan banks, and the sale, issuance, and retirement of or payment of interest on, debentures or bonds, under the Federal Home Loan Bank Act, as amended, shall be excluded from the above limitations: *Provided further*, That members and alternates of the Federal Savings and Loan Advisory Council may be compensated subject to the provisions of section 7 of the Federal Advisory Committee Act, and shall be entitled to reimbursement from the Board as approved by the Board for transportation expenses incurred in attendance at meetings of or concerned with the work of such Council and may be paid in lieu of subsistence per diem not to exceed the dollar amount set forth in 5 U.S.C. 5703: *Provided further*, That not to exceed $1,500 shall be available for official reception and representation expenses: *Provided further*, That, notwithstanding any other provisions of this Act, except for the limitation in amount hereinbefore specified, the expenses and other obligations of the Board shall be incurred, allowed, and paid in accordance with the provisions of the Federal Home Loan Bank Act of July 22, 1932, as amended (12 U.S.C. 1421-1449).

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Not to exceed $1,343,000 shall be available for administrative expenses, which shall be on an accrual basis and shall be exclusive of interest paid, depreciation, properly capitalised expenditures, expenses in connection with liquidation of insured institutions or activities relating to section 406(c), 407, or 408 of the National Housing Act, liquidation or handling of assets of or derived from insured institutions, payment of insurance, and action for or toward the avoidance, termination, or minimizing of losses in the case of insured institutions, legal fees and expenses and payments for expenses of the Federal Home Loan Bank Board determined by said Board to be properly allocable to said Corporation, and said Corporation may utilize and may make payments for services and facilities of the Federal home loan banks, the Federal Reserve banks, the Federal Home Loan Bank Board, the Federal Home Loan Mortgage Corporation, and other agencies of the Government: *Provided*, That, notwithstanding any other provisions of this Act, except for the limitation in amount hereinbefore specified, the administrative expenses and other obligations of said Corporation shall be incurred, allowed, and paid in accordance with title IV of the Act of June 27, 1934, as amended (12 U.S.C. 1724-1730f).

TITLE IV

GENERAL PROVISIONS

Sec. 401. Where appropriations in titles I and II of this Act are expendable for travel expenses and no specific limitation has been placed thereon, the expenditures for such travel expenses may not exceed the amounts set forth therefor in the budget estimates submitted for the appropriations: *Provided*, That this section shall not apply to travel performed by uncompensated officials of local boards and appeal boards of the Selective Service System; to travel performed directly in connection with care and treatment of medical beneficiaries of the Veterans Administration; to travel performed in connection with major disasters or emergencies declared or determined by the President under the provisions of the Disaster Relief Act of 1974 to site-related travel performed in connection with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; or to payments to interagency motor pools where separately set forth in the budget schedules.

Sec. 402. Appropriations and funds available for the administrative expenses of the Department of Housing and Urban Development and the Selective Service System shall be available in the current fiscal year for purchase of uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); hire of passenger motor vehicles; and services as authorized by 5 U.S.C. 3109.

Sec. 403. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal home loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811-1831).

Sec. 404. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 405. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made, or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such audit.

Sec. 406. None of the funds provided in this Act to any department or agency may be expended for the transportation of any officer or employee of such department or agency between his domicile and his place of employment, with the exception of the Secretary of the Department of Housing and Urban Development, who, under title 5, United States Code, section 101, is exempted from such limitation.

Sec. 407. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

Sec. 408. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the maximum rate paid for GS-18, unless specifically authorized by law.

Sec. 409. No part of any appropriation contained in this Act for personnel compensation and benefits shall be available for other object classifications set forth in the budget estimates submitted for the appropriations without the approval of the Committees on Appropriations.

Sec. 410. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

Sec. 411. Except as otherwise provided under existing law or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within twenty-four months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

Sec. 412. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) for a contract for services unless such executive agency (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning (A) the contract pursuant to which the report was prepared and (B) the contractor who prepared the report pursuant to such contract.

SEC. 413. No part of any appropriation contained in this Act shall be available to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

SEC. 414. Except as otherwise provided in section 406, none of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 415. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

This Act may be cited as the "Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1985".

Mr. GARN. Mr. President, I would like to first of all thank Senator HUDDLESTON for the fourth year for his cooperation and help. Once again, there is simply no way we could have gotten to a bill this fast without his expertise in this area and his willingness to be cooperative.

I also must say one thing more. The majority leader just congratulated the chairman of the full committee and the manager of the first bill, Senator HATFIELD. I am pleased to have him being the manager of the first bill. As chairman, I think he deserves that honor. I must say that Senator HUDDLESTON and I have had that honor for 3 years in a row, until today. We are happy to see the progress on the appropriations bills. We are happy to yield that honor to Senator HATFIELD this year, but we are happy to be the second and to offer a bill in June.

Mr. President, the committee report (S. Rept. 98-506) shows new budget, obligational, authority of $56,083,879,000 for the Department of Housing and Urban Development, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, the Veterans' Administration and 13 other agencies, commissions, boards, corporations, institutes, and offices. The amount shown in the report is $27,852,000 less than the appropriations enacted for fiscal year 1984 and $1,415,381,000 more than the budget estimate for fiscal year 1985. It is also $2,352,617,500 less than the House allowance.

The fiscal year 1985 budget outlays from the new budget authority for the Department of Housing and Urban Development together with the independent agencies funded by this bill resulting from funding requested by the administration are estimated to be $35,953,000,000. Of this amount, $18,716,000,000 is mandatory and $17,237,000,000 is associated with new budget authority for the discretionary programs funded in this bill. The committee's recommendations would result in an increase in total outlays of $78,000,000.

In arriving at the recommendations, each agency's budget was reviewed in terms of two baselines—their fiscal year 1984 level and their fiscal year 1985 request. The recommendations presented to the Senate would result in 17 of the 18 agencies being funded at or below at least one of these baselines. Only EPA's budget recommendation exceeds both the fiscal year 1984 enacted level and the administration's fiscal year 1985 request and I might add it is also above the House level.

I am convinced that the buck really does stop here with each of these appropriations bills—we have an opportunity right here to either control the deficit or ignore it. The committee has provided substantial increases for NSF, NASA, EPA, various VA accounts and other smaller agencies.

I should note that there is a technical scoring error reflected in the committee report in reference to the section 202 HUD program. Early last month, we were informed by the Department, on several occasions, that because the President's fiscal year 1985 budget changed the 202 program from a budget authority basis to an obligational authority basis that the additional $200 million in authority to borrow needed to support the 4,000 additional units added by the Senate would be scored as budget authority in fiscal year 1986 rather than fiscal year 1985.

I now understand that this $200 million it should be reflected as new BA in fiscal year 1985. This scorekeeping change does not require a change in the bill, since the bill includes the additional $200 million limitation on direct loans. In addition, the bill does include the additional $633,880,000 in BA needed to support the section 8 assistance for the additional 4,000 202 units. Furthermore, the scorekeeping change in BA does not affect the outlay estimate associated with H.R. 5713. The comparison tables are, however, misleading and I intend to make the necessary adjustments in conference.

I would also like to note, for the record, that the limitation for the National Science Foundation contained on page 113 of the Senate report should read $70,902,000 as contained in the bill and the text of the report.

I would now like to discuss some of the specific provisions contained in the Senate version of the bill.

TITLE I—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ASSISTED HOUSING

The committee recommended $10,393,395,000 in new budget authority and $906,613,123 in additional contract authority for the Department's assisted housing program within this account. Also included in the program level is $22,300,000 in permanent authority and $209,871,258 in budget authority restored for accounting adjustments. The total program level resulting from the committee's recommendations is $10,625,566,258. This compares to a $9,102,992,000 program level proposed by the administration and $12,301,298,758 proposed by the House. The new budget authority proposed by the committee is reduced by $2,754,713,000 in a proposed rescission. This rescission is based on the administration's estimate of recaptures and would, if all realized, result in a net new BA for assisted housing of $7,638,682,000 for fiscal year 1985.

Given the program structure proposed by the committee, the recommended funding will result in the reservation of 113,000 incremental units. This contrasts with the administration's request for 100,000 incremental units and the 100,000 units provided by the House. Once again this year, the committee recommendations, in terms of the number of incremental housing units, were based on a housing model. The model was based on data obtained from the American Housing Survey, Bureau of the Census, and the Department's policy housing assistance to those most in need.

The committee proposed: 14,000 units of section 202 housing—versus 10,000 in the House and 10,000 proposed by the administration; 2,500 Indian housing units—versus 1,000 in the House and 2,500 proposed by the administration; 20,000 section 8, 15 year existing units—versus 36,500 in the House and none proposed by the administration; 38,500 housing certificates—versus 38,500 in the House and 251,000 proposed by the administration; and no moderate rehabilitation—versus 7,500 in the House and none requested by the administration. The committee has also funded 38,500 section 8, 5-year units.

Although the House included 10,000 units of new public housing development, the committee did not, at this time, recommend funding for public housing new construction. The committee is following the Department's action on the public housing pipeline and will consider new construction when the problems concerning the preconstruction backlog are resolved.

The public housing modernization program proposed by the committee contains the same base program of $1,550,000,000 as requested by the administration and recommended by the House. However, the Senate version also provided an additional $250,000,000 in budget authority for potential development to modernization swaps as authorized in the Housing and Urban-Rural Recovery Act of 1983 (P.L. 98-181). This $250,000,000, if not utilized by July 1, 1985, would become available for additional section 8 existing units.

In addition, the Senate bill contains $100,000,000 in budget authority to rehabilitate 3,000 units in approximately 500 vacant buildings. This rehabilitation would average about $33,000 in budget authority per unit versus $189,000 in budget authority for new construction. As a result of the committee action, $1,900,000,000 is available for modernization. This is $350,000,000 over the request and the House level.

In setting aside $100,000,000 in budget authority to rehabilitate 3,000 vacant units under the public housing modernization program, the committee intends the Department to fund modernization activity in buildings or projects that can provide decent, safe, and sanitary housing in a suitable living environment and that are expected to provide such viable housing over a period of time consistent with the magnitude of the Federal investment. A determination as to whether such a Federal investment is warranted should be made by the public housing authorities. These authorities should be required to certify to HUD that, given the appropriate level of funding, these projects would be expected to remain viable—except for normal maintenance due to wear and tear—for approximately the 20-year term required to finance the improvements.

A comparison of the number of housing units and budget authority associated with the major elements contained in the request, House allowance and Senate committee recommendation are contained in the following table:

COMPARISON OF ADMINISTRATION REQUEST, HOUSE MARKUP AND SENATE MARKUP

[Units or budget authority—dollars in millions]

	Administration request	House markup	Senate markup
Public housing:			
Public housing	(1)	10,000	(1)
Indian housing	2,500	1,000	2,500
Modernization	$1,550	$1,550	$1,550
Development to mod swaps	(1)	(1)	$250
Vacant building setaside	(1)	(1)	$100
Section 8—housing vouchers:			
Turnover/conversion (86 ACC expirations)	(53,333)	(1)	(1)
Turnover/conversion (87 ACC expirations)	(106,666)	(1)	(1)
Section 8 Opt Outs	1,000	1,000	(1)
Public housing demolitions	2,500	2,500	(1)
Incremental vouchers	87,500	35,000	38,500
Subtotal, vouchers	91,000	38,500	38,500
Section 8 existing	(1)	36,500	20,000
Existing 5-year term demo	(1)	(1)	35,000
Section 8 Opt Outs	(1)	(1)	1,000
Public housing demolitions	(1)	(1)	2,500
Section 202	10,000	10,000	14,000
Moderate rehabilitation	(1)	7,500	(1)
All other units	47,094	47,094	46,094
Total, public housing and section 8	150,594	150,594	159,594

[1] Not applicable.

HOUSING FOR THE ELDERLY AND HANDICAPPED (SEC. 202)

The committee recommends $700,000,000 as the loan limitation for the elderly and handicapped program. The committee also recommends: Continuation of language limiting the program to qualified nonprofit sponsors; providing long-term permanent financing at a rate not to exceed 9.35 percent; and requiring that section 202 loan authority be on budget in fiscal year 1985. At the level recommended by the committee, 14,000 section 202 housing units would be produced. This is 4,000 more than the request and the House allowance. This will maintain the program at the fiscal year 1984 levels.

As previously noted, because of a technical scoring error in the report, the comparison on page 108 of the report does not reflect the proper level for authority to borrow. The number contained in the Senate column should read $698,318,000.

PAYMENTS FOR OPERATION OF LOW-INCOME HOUSING PROJECTS

The committee recommended a level of $1,148,500,000 for public housing operating subsidies. This is $25 million more than the budget request and the House allowance.

On March 28, the fiscal year 1984 proposed operating subsidy rescission of $331,431,000 was released. The House version of the pay supplemental contains a provision that would make these funds—or any unobligated funds—carryover into fiscal year 1985. As a result, the request level of $1,123,500,000 may be augmented by $331,431,000 for a new base of $1,454,931,000, plus the $25 million added by the Senate for a total level of $1,479,931,000 or $117,731,000 over the fiscal year 1984 appropriations level.

The $25 million added by the Senate over the House allowance, is targeted for advanced architectural and engineering [A&E] work in conjunction with the CIAP program. By permitting PHA's to undertake advanced A&E, they will be able to better define the modernization needs and the expected costs of modernization.

The committee report notes that the committee expects the performance funding system to be 100 percent funded in fiscal year 1985 and to be notified of any potential shortfall in time to consider a supplemental.

HOUSING COUNSELING ASSISTANCE

The committee recommended $3,500,000 for housing counseling assistance. This is the same as the fiscal year 1984 level and $500,000 less than the House. This year the administration did not recommend any funding for the continuation of the program.

The funds provided will support grants to about 200 HUD approved counseling agencies and assist them in providing counseling services to an estimated 50,000 clients.

SOLAR ENERGY AND ENERGY CONSERVATION BANK

The committee did not recommend any new funding for the Solar Energy and Energy Conservation Bank during fiscal year 1985. The administration did not request funding for fiscal year 1985. The House included $25 million for the Bank.

The committee report noted that as of April 9, 1984, only $1,600,000 or 5.3 percent of the $30,100,000 obligated to program participants had been disbursed. An additional $36 million is planned for obligation during 1984 of which $18,700,000 has already been tentatively allocated. In view of the present low-disbursement level, the committee believes the $36 million planned for obligation during 1984—in addition to the $30 million already obligated—will make sufficient funds available to participants for use in 1985.

The committee included report language stating that the Bank should continue to use the competitive grant process that was used during the first round of awards. The Bank should not use formulas which set ceilings automatically on the amounts that any State may apply for, but should instead, respond to the competitive merit of the proposal.

COMMUNITY PLANNING AND DEVELOPMENT GRANTS

The committee recommended $3,472 million for the community development block grant program. This is $4 million more than the budget request and the House allowance.

The committee added this $4 million to the Secretary's discretionary fund. This increase will result in a fund level of $60,500,000 for fiscal year 1985 or $7,700,000 less than the fiscal year 1984 level. The committee expected that the Department will target a significant portion of these funds for special projects involving community and infrastructure needs. The committee also expects the Department to target some of these funds for additional technical assistance, especially for small UDAG eligible communities. This is consistent with the actions taken by the committee in reference to expanding the proportion of cities getting their first UDAG grant.

Language was included in the bill limiting loans under section 108 to $225 million, the same level as in 1984. Under this program, the Secretary is authorized to issue Federal loan guarantees for local government to cover the costs of acquiring real property or rehabilitating real property, owned by the units of general government.

URBAN DEVELOPMENT ACTION GRANTS

The committee recommended $440 million for the urban development action grant program. This is the same as the request and the house allowance.

The committee bill contains a provision that would require the Department to allocate $2,500,000 of the $440 million provided for UDAG grants to cities which had not received UDAG grants prior to fiscal year 1985. This $2,500,000 would be used to provide technical assistance to these cities. The committee desires that, in making new grant awards, HUD work toward increasing the number of awards to cities not previously receiving a UDAG award.

URBAN HOMESTEADING

The committee recommended $12 million for the urban homesteading program. This was the same as the request and the House allowance. These funds will permit the transfer of 1,160 single family properties in 1985, which includes approximately 150 VA and 75 FmHA properties. Funds not exceeding $1 million are made available for continuation of the one- to four-family property feasibility demonstration. In addition, $3 million of the appropriation is to be used to support the multifamily homesteading demonstration. This amount would permit the transfer of 5 HUD-held multifamily properties, averaging 30 units each.

REHABILITATION LOAN FUND

The committee recommended the continuation of the section 312 program during fiscal year 1985. An estimated $80 million from repayments and other income sources will be available in 1985 for new loans and other expenses. The committee included language in the bill to continue the program in 1985 with repayments. The Department is directed to allocate sufficient staff to maintain this program level.

POLICY DEVELOPMENT AND RESEARCH

The committee recommended $20 million for the Department's policy development and research [DP&R]. This is $900,000 less than the budget request and $4,100,000 more than the House allowance. The committee reduced PD&A funding to the fiscal year 1984 base level of $19 million and then added funds for two additional studies of $500,000 each for a total of $20 million.

The committee added $500,000 for the congressionally mandated modernization [CIAP] study. This will assure that the previously appropriated $4 million for the CIAP study will be sufficient to accomplish the main purpose of the study—highly reliable estimates of public housing modernization needs. At this same time, HUD would, with the extra money, be able to continue its work on the CIAP management and energy audit aspects of the study.

A second $500,000 was added to begin the evaluation of the voucher demonstration program. This will permit an assessment of the extent to which vouchers are appropriate for various segments of the population—elderly, large families, learning disabled, and so forth—in communities with different types of housing needs and vacancy rates.

FAIR HOUSING AND EQUAL OPPORTUNITY

The committee recommends the budget estimate of $6,700,000 for this activity in fiscal year 1985. This includes $4,700,000 in grants to support approximately 100 State and local fair housing agencies for capacity building, training, and complaint processing and monitoring. In addition, $2 million is provided to support community housing resource boards.

MANAGEMENT AND ADMINISTRATION

The committee recommended $298,135,000 in direct appropriations plus $282,085,000 from various funds of the Federal Housing Administration, for salaries and expenses of the Department of Housing and Urban Development in 1985. This amount, together with an estimated $8,846,000 in transfers from other sources, will provide a total of $589,066,000 for management of HUD. The Department estimates this level of funding will support 12,627 staff years.

Within the funds available, the committee directed the Department to provide $1 million to the Housing Assistance Council. This amount is $50,000 above the amount earmarked in fiscal year 1984. The Council is a nonprofit organization which attempts to improve housing credit availability and sanitation facilities in rural areas. The committee strongly supports continued funding of the Council as it represents one of HUD's few rural oriented efforts.

The committee restored $2,900,000 which HUD proposed to save by further reductions in regional and area office staff. The committee directs that no reductions be made in any area office staff during fiscal year 1985 if that office has been reduced by more than 15 percent over the fiscal year 1981 and that any of the $2,900,000 not used to maintain area office staff at such levels be used to restore area office staffing which have suffered disproportionate reductions since 1981.

TITLE II—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

The committee recommended $11,065,000 for the American Battle Monuments Commission. This is the same as the budget request and the House allowance.

These funds are sufficient to administer, operate, and maintain the American Battle Monuments Commission's military cemeteries, monuments, and memorials throughout the world. This amount will support 387 positions in fiscal year 1985.

CONSUMER PRODUCT SAFETY COMMISSION

The committee recommended $35 million for the activities of the Consumer Product Safety Commission. This is the same as the budget request and $1 million less than the House allowance.

The committee encouraged the Commission to continue to provide information identifying hazard and injury data, objectives, milestones, and measurements of effectiveness for each of the priority projects in future budget justifications. The nine priority projects chosen for fiscal year 1985 are chlorocarbons, electrocution hazards, gas heating systems, indoor air quality, nursery equipment, portable electric heaters, riding mowers, toxicity or combustion products, and safety for older consumers. The committee encouraged the Commission to limit the priority projects to areas where specific objectives and schedules can be established. The committee indicated that it expected that in fiscal year 1985, the Commission will devote at least as large a percentage of its total appropriation to the nine priority areas as was provided in fiscal year 1984.

The committee indicated that it expected the final evaluation reports on the three I&E campaigns to be provided prior to October 1, 1984, and restated its desire that the evaluations assess behavioral changes in order to determine the program's tangible benefits and ultimate success in reducing deaths and injuries. The Commission was instructed to seek the committee's approval before initiating any new I&E campaigns.

The committee noted that the Commission has had to absorb a portion of the pay increases during the past 2 years and indicated its intent to provide full funding for fiscal year 1985.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

The committee recommended $7,759,000 for Army cemeterial expenses. This is the same as the budget request and the House allowance. Of the $7,759,000 proposed by the committee, $6,211,000 is for the operation and maintenance of the Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery. The recommendation included $1,223,000 for construction at Arlington National Cemetery, of which $400,000 is for the final design of the permanent visitors center and the remainder is for the repair of cemetery roads. The recommendation also contains $325,000 for administrative expenses.

ENVIRONMENTAL PROTECTION AGENCY

SALARIES AND EXPENSES

The committee recommended $639,275,000 for EPA's salaries and expenses. This is the same as the budget request and $33 million less than the

House allowance. The recommended level of funding represented an increase of $64,375,000 over the fiscal year 1984 enacted level.

The committee recognized that EPA's fiscal year 1985 budget will require the Agency to increase its workyears by 750 in fiscal year 1985—400 in S&E and 350 in Superfund—and this will entail hiring 115 people per month—the highest hiring rate in EPA's history. With this fiscal year 1985 hiring, EPA will have 1,454 positions over the fiscal year 1983 level. Therefore, the committee earmarked 59 positions for high priority items rather than adding positions.

The committee addressed the issue of increased enforcement by reviewing EPA's request to OMB and adding the entire $30 million denied by OMB to EPA State grants—where most of the enforcement occurs.

RESEARCH AND DEVELOPMENT

The committee recommended $184,437,000 for EPA's research and development account. This is $21 million more than the budget request and $8,563,000 less than the House allowance. The funding recommended by the committee would result in an R&D program $41,737,000 or 29.2 percent above the fiscal year 1984 enacted level.

The committee provided funds for such programs as limestone injection through multistage burners, Great Lakes Research Program, and water quality research, pesticide exposure and environmental study of three estuaries and health effects research.

ABATEMENT, CONTROL, AND COMPLIANCE

The committee recommended $462,242,000 for EPA's abatement, control and compliance functions. This is $66,200,000 more than the budget request and $26,242,000 more than the House allowance. The committee recommendation represented an increase of 17.4 percent over the fiscal year 1984 level.

The largest increase was $32,400,000 for the State grant program which is to be used for increased enforcement and training activities. Within this amount, an additional $2,500,000 was provided for the Clean Lakes Program, bringing the total to $5 million for this effective program.

The committee added $200,000 for the Agency to design a compliance, monitoring, and enforcement policy and schedule that will insure 90 percent compliance with ground water monitoring, closure, post closure, and financial resonsibility requirements within 4 years.

The committee recommended an additional $3,800,000 for grants to the States to initiate and sustain necessary enforcement actions against POTW's which have submitted incomplete program approval applications or have not submitted an application, and to take necessary enforcement action against dischargers into POTW systems in violation of categorical standards.

The committee also provided funding for projects by the National Rural Water Association and the joint EPA/American Water Works Association Research Foundation drinking water research. The committee expressed strong support for EPA's regulatory decisions regarding the uses of asbestos, particularly in relation to use in the schools.

BUILDINGS AND FACILITIES

The committee recommended the budget request of $10,500,000 for this account.

The Senate and House provided $6,900,000 as requested for the new radiation lab in Montgomery, AL. Both bills required that the Appropriations Committees approve any new construction projects.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

The committee recommended $44 million for Federal payment to the hazardous substance response trust fund. This is the same as the budget request and the House allowance.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

The committee recommended $640,000,000 for this account. This is the same as the budget request and $40,000,000 more than the House allowance.

Without this $40,000,000, the Agency would not be able to maintain the 115 remedial investigation/feasibility studies agreed to by OMB as a reasonable workload. Consequently, the "pipeline" is likely to be reduced if the House action is allowed to stand.

The committee included a legislative provision, as it has in the past 2 years, earmarking $9,495,000 for the Department of Health and Human Services in conjunction with the Superfund. These funds would be used for medical and research activities to be undertaken by the Department of Health and Human Services.

The bill also included a provision limiting administrative expenses for traditional salary and expense items to $87,573,000.

CONSTRUCTION GRANTS

The committee recommended $2,400,000,000 for construction grants. This is the same as the request and the House recommendation.

No separate appropriation has been provided for combined sewer overflow (CSO) projects. However, in the past 2 years, $60,000,000 has been earmarked for this activity. The committee noted it expected EPA to submit funding recommendations for approval by the Committees on Appropriations around September 1984.

The committee noted, in its report, that the $60,000,000 provided for CSO should be made available under the 75:25 matching requirement. This in no way prejudices the future ratio of Federal funding that will be applicable to the projects funded with this $60,000,000 or future funds.

EXECUTIVE OFFICE OF THE PRESIDENT—COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

The committee recommended $700,000 for the Council on Environmental Quality. This is the same as the budget request and the House allowance. The committee indicated awareness of the extremely limited resources available to the Office and the Council and intend to review the funding situation in the next available appropriations bill.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

The committee recommended $2,194,000 for the Office. This is the same as the budget request and the House allowance. The committee deleted a House provision that would require OSTP to reimburse other agencies for not less than one-half of the personnel compensation costs of detailees.

FEDERAL EMERGENCY MANAGEMENT AGENCY FUNDS APPROPRIATED TO THE PRESIDENT DISASTER RELIEF

The committee recommended an appropriation of $100,000,000 for disaster relief. This is the same as the budget estimate and the House allowance. The committee continued to support FEMA's continuation of the 75-percent Federal and 25-percent State and local cost sharing for the repair and replacement of public facilities.

SALARIES AND EXPENSES

The committee recommended $130,649,000 for salaries and expenses. This is $3,365,000 less than the budget request and $1,333,000 more than the House allowance. The committee recommendation reflected a reduction of $3,365,000 from the request in civil defense activities. The committee deleted the House addition of $361,000 to administer the emergency food and shelter program. The committee will take the appropriate actions to provide necessary staffing at a future time in conjunction with any appropriation for emergency food and shelter.

The recommendation maintained the official reception and representation limitation of $2,000.

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

The committee recommended $329,219,000 for emergency management planning and assistance. This is $66,839,000 less than the budget request and $3,626,000 more than the House allowance.

The committee directed that a reduction of $67,689,000 be taken in the civil defense area. This would result in a total civil defense program of $181,424,000 in fiscal year 1985—including $30,113,000 provided under FEMA's S&E account. This is $12,220,000 higher than the fiscal year

1984 civil defense level. Within civil defense, the committee provided for: An increase of $1,000,000 in State and local emergency management program over the fiscal year 1984 level; continuing the radiological defense program at the fiscal year 1984 level of $10,300,000; an increase of $19,169,000 in the telecommunications and warning program over the fiscal year 1984 level—this has been targeted by the committee as the most time critical and the highest priority in the civil defense program.

None of the funds provided in this bill were to be used by FEMA for the production of low-level dosimeters. The total number of high-level and intermediate-level dosimeters produced through the use of funds provided in this bill were limited to 30,000.

The committee directed that all of the remaining programs in emergency management planning and assistance, other than comprehensive emergency preparedness planning, be funded at the budget request level. For comprehensive emergency preparedness planning, the committee has provided $850,000 above the requested level for hurricane and dam safety.

The committee deleted House bill language prohibiting appropriations for the establishment or operation of a western extension of the National Emergency Training Center, Emmitsburg, MD.

NATIONAL FLOOD INSURANCE FUND

The committee recommended $200,205,000 to repay funds borrowed from the Treasury by FEMA to carry out the National Flood Insurance Program in fiscal year 1985. This is the same amount as the budget estimate and the House allowance.

GENERAL SERVICES ADMINISTRATION CONSUMER INFORMATION CENTER

The committee recommended an appropriation of $1,149,000 for the Consumer Information Center. This is $800,000 more than the budget estimate and the same as the House allowance.

The CIC budget request assumed that significantly increased revenues can be derived from doubling the user fee, introducing a new marketing fee, and using CIC employees to market other General Service Administration (GSA) services. The committee strongly disagreed with these approaches which were viewed as a diluent to the roles and missions for which CIC was created.

DEPARTMENT OF HEALTH AND HUMAN SERVICES—OFFICE OF CONSUMER AFFAIRS

The committee recommended the budget request of $2,096,000 for activities of the Office of Consumer Affairs in fiscal year 1985. This level of funding which is the same as the budget request and the House allowance and represents an increase of $85,000 over the fiscal year 1984 appropriation.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION RESEARCH AND DEVELOPMENT

The committee recommended $2,424,100,000 for this account. This is $24,000,000 more than the budget request and $1,500,000 more than the House allowance. This represents an increase of $412,200,000 or 20.5 percent over the fiscal year 1984 level.

The committee provided the full request of $150,000,000 for the space station program and struck the House language directing NASA to plan for the design of a man tended rather than permanently manned station. Instead, the Senate bill required—under the research and program management account—a NASA automation report.

The committee acknowledged the need to peruse a manned space station, however, the committee believed that NASA needs to pursue the areas of automation and robotics more vigorously. Consequently, the bill language was provided to assure that such advanced technologies are indeed made an integral part of the planning and development for a manned space station.

In light of the huge costs of the space station, the committee indicated that it expected that NASA's fiscal year 1986 and outyear budgets will honor the agency's commitment to maintain the space science and applications functions of the NASA budget at approximately the same ratio to the total NASA funding for the research and development and space flight accounts as has historically been the case.

The Senate committee and the House included an additional $40,000,000 for the advanced communications technology satellite (ACTS). This communications satellite will facilitate advances in scanning beam technology.

In taking the $30,000,000 general reduction, the committee expects NASA to make this reduction in areas other than those augmented by the committee.

SPACE FLIGHT, CONTROL AND DATA COMMUNICATIONS

The committee recommended $3,600,300,000 for this account. This is the same as the budget request and $2,500,000 less than the House allowance. The committee added $50,000,000 for shuttle structural and engine spares bringing the total for structural spares to $160,000,000 and the total for engine spares to $101,700,000. This is the minimum level needed to retain the production capability until a decision on a fifth orbiter is made in fiscal year 1986.

CONSTRUCTION OF FACILITIES

The committee recommended $150,000,000 for the construction of facilities in 1985. This is $10,000,000 less than the budget request and the same as the House allowance. The committee included a legislative provision to fund a 170,000-square-foot engineering building housing approximately 825 people at the jet propulsion laboratory.

RESEARCH AND PROGRAM MANAGEMENT

The committee recommended $1,317,000,000 for research and program management. This is $14,000,000 less than the budget request and $1,000,000 more than the House allowance. Both the House and Senate committees took a general reduction in NASA's R&PM account. The committee, however, added back $1,000,000 resulting in a fiscal year 1985 level increase of $78,500,000 or 6 percent, over the fiscal year 1984 level. The savings from this account were used to increase activities in NASA's R&D account.

GENERAL PROVISION

The committee included a general provision that provides for the future transfer of supercomputers (class VI) from NASA to the National Science Foundation (NSF). The provision specifies that NSF can sell such equipment to universities in order to provide increased access to such supercomputers by the academic community. The committee expects that one or more computers will be transferred during fiscal year 1985.

NATIONAL CREDIT UNION ADMINISTRATION—CENTRAL LIQUIDITY FACILITY

The committee recommended a limitation of $600,000,000 on the amount that may be borrowed from the public or any other source, except the Secretary of the Treasury, as proposed in the budget estimate. The committee also recommended the budget estimate of $850,000 for the limitation on administrative expenses.

NATIONAL SCIENCE FOUNDATION RESEARCH AND RELATED ACTIVITIES

The committee recommended $1,307,512,000 for research and related activities. This is $700,000 less than the budget request and $14,300,000 more than the House allowance. This represents an increase of $167,212,000 or 14.7 percent over the fiscal year 1984 level. For fiscal year 1985, the committee recommends increases totaling $17,500,000 and a general reduction of $18,200,000. This compares to a House reduction of $42,500,000.

The committee added $10,000,000 to the $20,000,000 requested by NSF for supercomputer centers. The committee indicated that $30,000,000 is the highest level that can be utilized in fiscal year 1985.

The committee added $1,000,000 to start a second round of assisting States with the lowest level of scientific activities. This program known as Epscor (experimental program to stimulate competitive research), has been well received and appears to be an effective mechanism for stimulating research.

The committee also incremented several small programs by about 50 percent in keeping with the committee's automation initiative. The additions to these programs are: $3,000,000 for information sciences; $1,500,000 for intelligent systems computer research; and $2,000,000 for automation, instrumentation, and sensing systems.

The committee retained a House provision authorizing the National Science Foundation to indemnify ocean-drilling program contractors in the event of an oilspill accident while drilling operations are underway.

U.S. ANTARCTIC PROGRAM ACTIVITIES

The committee recommended $110,080,000 for the U.S. Antarctic program. This is $5,000,000 less than the budget request and the House allowance. The reduction is in the LC-130 life extension program. The fate of this program is uncertain and none of the $5,000,000 provided in fiscal year 1984 has been obligated.

The savings from this account were applied to offset the increases proposed in NSF's science education program.

SCIENCE AND ENGINEERING EDUCATION ACTIVITIES

The committee recommended $81,400,000 for science and engineering education activities. This is $5,700,000 more than the request and $7,300,000 less than the House allowance.

The committee added $700,000 to restore the 50 new fellowships proposed to be cut from the fiscal year 1984 level—thus restoring the number of new fellows to 600 as established by this committee last year. The committee also increased the fellowship stipends by $900 per year or 11 percent, as requested.

The committee bill also contained language, as per last year, setting aside $5,000,000 for learning and cognition research. This research, for which NSF has received over $20,000,000 in proposals, has helped develop working relationship between the educational and research communities. The effect of the provision is to also augment the behavioral and biological sciences programs.

The committee, like the House, added $5,000,000 for instrumentation at 4-year colleges. These liberal arts colleges are a training ground for a large number of future scientists.

The committee also earmarked, in the bill, $2,000,000 for a contract study to develop a plan for the science education program and to develop a management structure for the science education directorate.

NEIGHBORHOOD REINVESTMENT CORPORATION

The committee recommended $15,512,000 in new budget authority for the corporation. This is the same as the corporation's fiscal year 1984 enacted level.

These additional funds will provide a hedge against decreases in contributions from other agencies which total $800,000 in fiscal year 1984—there are no commitments to date for fiscal year 1985—and an OMB assumed level of local government contributions in fiscal year 1985 of $320,000 more than anticipated in fiscal year 1984.

As a result of this add-on, the corporation will be able to fund an additional NHS.

SELECTIVE SERVICE SYSTEM

The committee recommended $27,780,000 for the Selective Service System. This is $350,000 less than the budget request and the same as the House allowance. The recommendation represents a 13.4-percent increase over the fiscal year 1984 appropriation.

DEPARTMENT OF THE TREASURY—PAYMENTS TO LOCAL GOVERNMENT FISCAL ASSISTANCE TRUST FUND

The committee recommended an appropriation of $4,566,700,000 for payments to the local government fiscal assistance trust fund. This is the same amount as the budget estimate and the House allowance.

VETERANS' ADMINISTRATION—COMPENSATION AND PENSIONS

The committee recommended an appropriation of $13,992,000,000 for compensation and pensions. This is the same as the budget estimate and the House allowance.

READJUSTMENT BENEFITS

The committee recommended $1,137,800,000 for readjustment benefits for fiscal year 1985. This is the same amount as the budget request and the House allowance.

MEDICAL CARE

The committee recommended $8,792,165,000 for the medical care account. This is $24,730,000 more than the budget estimate, $721,439,000 above the fiscal year 1984 appropriation, and $15,270,000 less than the House allowance.

The committee eliminated from the VA's major construction account two proposed new nursing home care facilities which would have provided 180 beds of nursing home care. The committee increased the medical care account by $3,930,000 in order to provide for additional nationwide contract nursing home care. The committee noted that this will result in an increase of approximately 200 contract care beds.

The committee added $20,800,000 to the budget request and redirected $4,200,000 to provide an additional 500 FTEE above the requested increase of 2,747 FTEE. The committee directed that the VA allocate no less than 220 FTEE of the additional 500 FTEE made available to the medical care account to the in-house vet center program. The remaining FTEE are directed to be used at the discretion of the VA is such high priority areas as gerontology and pyschological services. The committee directed the VA to reduce the level of readjustment counseling outside contracts by $3,200,000. The committee also directed the VA to reduce employee travel in the medical care account by $1,000,000 below the budget request. The budget request contained an increase in employee travel above the fiscal year 1984 appropriation that the committee believes was excessive.

MEDICAL AND PROSTHETIC RESEARCH

The committee recommended $193,695,000 for medical and prosthetic research. This is $1,000,000 above the budget estimate and House allowance. The committee added $1,000,000 above the request for prosthetic research into voice-actuated robotic devices.

The committee deleted $3,224,000 from the request for the CDC agent orange study and directed the funds be used for rehabilitation research, health services research, and other non-agent orange medical research. The funds deleted do not affect the conduct of the research study. Excluding the CDC agent orange study, the true program funding of $188,269,000 recommended by the committee will support an average employment of 4,634 during fiscal year 1985. This is an increase of 200 FTEE over the 4,434 FTEE in fiscal year 1984.

GENERAL OPERATING EXPENSES

The committee recommended $750,454,000 for general operating expenses in fiscal year 1985. This amount is $5,000,000 below the budget request and the same as the House allowance. The committee recommendation is $38,366,000 above the 1984 level.

The committee recommended that the $5,000,000 reduction be taken at the discretion of the VA other than the Board of Veterans Appeals and the Board of Contract Appeals.

The committee directed the VA, no later than July 20, 1984, to report to the committee on the need for an appropriation necessary to ensure the solvency of the loan guaranty revolving fund in fiscal year 1984 and fiscal year 1985. The committee further directs the VA to investigate and submit a study on the need, if any, for restoration of staffing levels within the Loan Guaranty Service [LGS]. The study should evaluate the workload and the current staffing of the entire Department of Veterans Benefits to ascertain if there is a requirement for additional staffing within the entire Department of Veterans Benefits.

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

The committee recommended the budget request of $72,213,000 for medical administration and miscellaneous operating expenses in fiscal year 1985.

This is an increase of $5,661,000 above the 1984 level.

The committee recommendation denied $800,000 of the $1,742,000 requested employee travel increase.

Due to the committee's inability to obtain a documented list of major construction needs, the VA was directed to develop a report describing a new prioritization methodology. The report is due no later than March 15, 1985. The committee will work closely with the VA during the development of ranking schemes by the VA. The committee added bill language limiting the personnel, in DM&S construction planning to 106 FTEE during fiscal year 1985. The committee noted its intent to review the need to reinstate FTEE after the committee reviews the March 15, 1985, report on construction priorities.

CONSTRUCTION, MAJOR PROJECTS

A total construction budget of $688,144,000 was recommended. This consisted of $568,194,000 in new budget authority and $120,000,000 from the working reserve. The appropriated amount is $51,400,000 below both the budget request and the House allowance. It is $222,502,000 above the 1984 level.

The committee deleted $5,200,000 contained in the request for the VA Providence, RI, 60 bed nursing home care unit. A GAO investigation of this facility utilizing the VA's MEDIPP data indicated no justification for the project based on the 1990 needs. The committee also deleted $9,000,000 contained in the request for the 120 bed San Juan, PR, nursing home care unit.

The committee deleted $25,000,000 contained in the fiscal year 1985 major construction request for project design. The budget request contained the request for $20,000,000 for a pilot test of the accelerated design of working drawings for selected 1986 projects. The committee reduced this request from $20,000,000 to $15,000,000 and directed that these funds be available only for projects for which construction funds will be requested in the following year.

The committee directed a decrease in the reserve for the 1985 major construction funding contingencies to 5 percent. This is a reduction of 0.79 percent and deleted $4,200,000 in the contingency reserve which is in addition to the reserve provided to accommodate any increases due to inflation.

The committee deleted $3,000,000 provided to construct two additional floors at the planned parking garage at the San Francisco, CA, VA Medical Center. Land may be transferred from the Interior Department to provide parking equivalent to the two additional floors.

The committee included a new legislative provision which precludes the issuance of bidding documents for construction contracts of medical facility projects without the local medical director certifying the adequacy of the project design for patient care.

The committee did not provide a list of the major construction projects as it has done in previous years. However, it provided specific instructions as to the deletion of projects and reduction of $51,400,000 in funding below the request. The committee indicated that the requested priority list of 1985 major construction projects should be submitted to the committee for its consideration prior to October 1, 1984. The committee recognized the valuable efforts of the Senate Veterans' Affairs Committee in suggesting a bed sizing model for use in major construction projects (May 24, 1984). The committee directed the VA to consider the factors in the model such as service-connected disabilities in preparing the September list.

The committee also strongly urged the VA to reexamine the hospitals which the VA recommended but which were deleted by OMB (Philadelphia, Baltimore) in the fiscal year 1985 budget process when revising the list.

CONSTRUCTION, MINOR PROJECTS

The committee recommend $201,619,000 for this account. This is $581,000 less than the budget request and $1,419,000 more than the House allowance.

The committee directed a reduction of 17 FTEE below the 779 average employment in the budget request. This reduction was to be taken in the Office of Construction, VA central headquarters.

TITLE IV—GENERAL PROVISIONS

The committee concurred with all of the general provisions that were included in the fiscal year 1984 HUD-Independent Agencies Appropriations Act (Public Law 98-45) and were included by the House in this bill (sections 401-415).

Mr. HUDDLESTON. I thank the distinguished chairman of the subcommittee.

Mr. President, I want to thank the Senator from Utah for the tremendous job he has done in working this bill through the committee and having it prepared for consideration by the full Senate today. I appreciate the kind words he has had relative to my meager efforts in that regard.

Mr. President, as the ranking member of the Senate Appropriations Subcommittee on HUD-Independent Agencies, I am pleased to support H.R. 5713, the fiscal 1985 Department of Housing and Urban Development-Independent Agencies Appropriation bill, as reported from the Appropriations Committee on June 7.

As reported, H.R. 5713 provides $56.283 billion for the Department of Housing and Urban Development and the [illegible] administrations, agencies, commissions, boards, corporations, institutes and offices which come within the jurisdiction of the subcommittee.

With the technical accounting change mentioned by the subcommittee chairman, the bill is $172 million over the actual fiscal 1984 level and $2.1 billion under the House figure.

Under the assisted housing account, the committee has recommended several programs. The housing certificate or voucher program would be set at 38,500 units, the same figure as recommended by the House, rather than the 251,000 units recommended in the budget. This program, first funded with still unreleased fiscal 1984 appropriations, should start much more slowly than proposed. The section 8 Existing Housing Program, the current Principal Assisted Housing Program, is continued with 20,000 15-year units and 38,500 5-year units. In addition, 2,500 Indian housing units are provided.

The section 202 Housing for the Elderly and Handicapped Program is funded at 14,000 units, rather than the 10,000 units included in the budget request, and the current loan rate of 9.25 percent is maintained. This would continue this worthwhile program at the current level.

The committee recommendation includes $1.9 billion for the Public Housing Modernization Program. This includes $1.55 billion for the base program, $250 million for the development to modernization swaps authorized in the Housing and Urban Rural Recovery Act of 1983, and $100 million to rehabilitate 3,000 units in approximately 500 vacant buildings.

For public housing operating subsidies, the proposed amount is $1.148 billion. This includes the request plus $25 million for advanced architectural and engineering work in conjunction with the Comprehensive Improvement Assistance Program (CIAP). In addition, some $331 million of unrescinded funds are carried over. With this total amount, the committee expects the performance funding system to be fully funded in fiscal 1985.

The housing counseling assistance program would be funded at $3.5 million, the same as the fiscal 1984 level. There was no budget request for this program, which funds some 200 HUD-approved counseling agencies.

As requested, the bill includes a gross mortgage and loan insurance commitment limitation of $50.9 billion for the Federal Housing Administration (FHA) Fund Loan Program and a $68.2 billion limitation on the Government National Mortgage Association's guarantee of mortgage-backed securities. As in the past, the committee expects the administration to advise it if it appears that these levels are likely to be reached.

For the Community Development Block Grant Program, the recommendation is $3.472 billion. This represents level funding for block grants but an increase of $5 million in the Secretary's discretionary fund. Language is included in the committee report, as it was in the House report, urging HUD to be flexible in use of CDBG funds in communities restoring local facilities damaged by recent tornadoes, floods and other disasters.

The section 108 Loan Program is continued with a limitation of $225 million on loans.

Under the Urban Development Action Grant [UDAG] Program, $440 million is provided. The committee has directed that $2.5 million be made available for technical assistance for cities that have never received a UDAG grant. While no specific number or percent is directed, the committee urges HUD to increase the number of awards made to eligible areas that have never received a UDAG grant.

For the policy development and research account, we have provided the budget request of $20 million. Within this account, the Department is to continue the public housing modernization study and to restructure the annual housing survey so that reductions in the survey are not as deep as originally planned.

Fair Housing and Equal Opportunity efforts are funded at a $6.7 million level. Of this amount, $4.7 million will go to support the State and local fair housing agencies and $2 million will be used to support community housing resource boards.

In the salaries and expenses area, the subcommittee added and the full committee retained an additional $2.9 million to improve staffing and services in the field offices. I am deeply concerned about HUD's ability—or inability—to deliver services and believe a number of area offices need to be strengthened.

The American Battle Monuments Commission is funded at the request level of $11.065 million.

For the Consumer Product Safety Commission, the committee has included $35 million which is the budget request.

The overall budget for the Environmental Protection Agency is $4.380 billion, which represents an increase of $87.2 million over the budget request. In the salaries and expenses account, the funding is at the request level of $639.2 million. While this is the same as the budget request, it is an increase of $64.3 million over the fiscal 1984 level and will result in an increase of 750 work years. Within that amount, the committee has earmarked 10 additional positions for limestone injection multistage burners [LIMB] technology acceleration and six additional positions for asbestos enforcement.

In the research and development area, the committee has recommended $184.4 million, an increase of $21 million over the budget estimate. This includes an additional $8 million for limestone injection multistage burners [LIMB] technology.

For the abatement, control, and compliance account, the recommendation is $462.2 million, an increase of $66 million over the budget level. This will allow for an increase of $32.4 million in the State Grant Program, an addition of $2.1 million for the National Rural Water Association, an addition of $1 million for the American Water Works Association Research Foundation to continue the work it began last year, and an additional $2.6 million for wastewater treatment operator training.

The committee report on this section includes important report language regarding asbestos. The committee expects EPA to continue its present approach to the problem of asbestos in the schools. It is unnecessary for EPA to delay further regulatory action on asbestos while additional studies are completed as evidence already documents the link between exposure to asbestos and various types of cancer and other diseases.

As noted above, the committee has provided additional funds to help EPA undertake more school inspections for asbestos contamination. Until final action is taken by Congress on legislation to help schools remove asbestos hazards, EPA should continue its program of having schools identify asbestos hazards.

For Federal payment to the hazardous substance response trust fund, the recommendation is the budget request of $44 million. For the fund itself, the appropriation will be $640 million.

The Wastewater Construction Grant Program will be funded, as in the past several years, at the $2.4 million level.

The Council on Environmental Quality is funded at the request level of $700,000.

The Office of Science and Technology Policy will receive $2.1 million under the committee recommendations.

For the Federal Emergency Management Agency, the recommendation is $559.8 million. This includes $100 million for disaster relief, $130 million for salaries and expenses, and $329.2 million for emergency planning and assistance. The reductions are generally in the civil defense area, although the committee has directed a $19.1 million increase in the telecommunications and warning area. The committee mark funds the Earthquake Program at the $5.7 million level and and will allow continued work in the New Madrid fault area in the central United States. The committee also restored the Hurricane and Dam Safety Programs to the 1984 levels. The Dam Safety Program represents the only current Federal effort to deal with the disaster potential of thousands of small non-Federal dams throughout the country.

The committee has provided the budget request of $200.2 million for the Flood Insurance Program. It has also included report language urging that the October 1, 1983, decision not to cover finished portions of basements be reconsidered.

For the Consumer Information Center, the recommendation is $1.149 million. The Office of Consumer Affairs is funded at $2.096 million.

The research and development account for the National Aeronautics and Space Administration is set at $2.424 billion. This includes the full request for the Space Station Program, although some $57 million is fenced until April 1, 1985, pending completion of automation studies.

The Senate committee, like the House, has added $40 million for the Advanced Communications Technology Satellite [ACTS] Program. This program involves a number of new technologies and is important to keeping the U.S. communications industry competitive internationally in the years ahead. NASA should move ahead with this program.

Under the section, the committee included report language directing NASA to move ahead on the phase B studies for the space infrared telescope facility [SIRTF] and the advanced x ray astronomy facility [AXAF].

For the space flight, control and data communications, the recommendation is $3.6 billion. The committee has preserved the option for a fifth orbiter. A decision on that is expected in fiscal year 1986. In the research and program management account, the committee has provided $1.317 billion.

Under the committee recommendation, the National Science Foundation would be funded in fiscal year 1985 at $1.5 billion. Of this amount, $1.3 billion is for research and related activities, $110 million is for the Antarctic Program, and $81.4 million is for science and engineering education activities. The committee, like the House, added $5 million for instrumentation at 4-year colleges.

The Neighborhood Reinvestment Corporation is funded at $15.5 million.

For the Selective Service System, the committee recommends $27.780 million, the same amount as provided by the House.

An appropriation of $4.566 billion is recommended for the 39,222 local governments eligible to receive general revenue-sharing funds.

For the Veterans' Administration, the Entitlement Programs—Compensation and Pensions and Readjustment Benefits—are funded at the request level of $13.992 billion and $1.137 billion respectively.

The medical care account is increased by $24.7 million over the request for a total of $8.792 billion. Committee action will result in 500 additional personnel, including 220 for the in-house vet centers program. Other positions will go to gerontology and psychological services.

The medical and prosthetic research account is set at $193.6 million, $1 million above the request. For medical administration and miscellaneous operating expenses, the recommendation is $72.2 million. General operating expenses are set at $750.4 million.

For the major construction account, the committee mark is $568.1 million. The committee has deleted funding for the Providence, RI, and San Juan, PR, nursing home care units. However, the committee expects the VA to review all projects, including those stricken by the committee or OMB and to submit a new list based on objective criteria prior to October 1, 1984, for projects to be funded in fiscal 1985. Devising an acceptable formula or process for prioritizing of projects, especially for hospitals, has proven elusive to date; and the committee is trying to encourage the VA to proceed expeditiously on this.

Mr. President, I know there are programs that could effectively use more funds, but we sought to stay close to the overall fiscal 1984 level and our decisions were made within that context. The subcommittee chairman has sought to accommodate a large number of concerns which were brought to our attention, and I think he has done a fine job. This is a large, diverse bill, and yet we were able once again to move it promptly and efficiently. I commend him and his staff for their effectiveness.

Mr. GARN. Mr. President, I move in accordance with section 904 of the Congressional Budget Act to waive the provisions of section 303 of that act with respect to the consideration of the pending measure, H.R. 5713, and any amendments thereto.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Utah.

The motion was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HUDDLESTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, I ask unanimous consent that the committee amendment be agreed to en bloc, and that the bill as amended be regarded for the purpose of amendment as original text, provided that no point of order shall be considered to have been waived by reason of agreement to this order.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3312

(Purpose: To restore and strike the language contained in the official House passed version of H.R. 5713)

Mr. GARN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. GARN] proposes an amendment numbered 3312.

Mr. GARN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike starting on line 19 on page 38 through line 3 on page 39 of the House passed version.

Mr. GARN. Mr. President, this amendment is drafted to strike language in the official House-passed version of the bill, which was inadvertently omitted when the Senate reported version of the bill was printed. It is necessary to send this amendment to the desk in this form to accurately reflect the committee's recommendations to the Senate.

I am including the language starting on page 38, line 19 of the House passed bill for the information of the Senate, which is:

No part of any sum appropriated or otherwise made available in this Act for the Veterans' Administration may be obligated or expended for the purchase of any site for, or toward the construction of, any new hospital to replace the Allen Park Veterans' Administration Hospital, prior to the receipt and consideration by the Administrator of Veterans' Affairs of the ongoing General Accounting Office study of such replacement project, except that such funds may be obligated or expended for design and engineering studies for such replacement project without regard to the limitation under this paragraph.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3312) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HUDDLESTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, the bill is open to amendment.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I have before me two amendments to the fiscal year 1985 HUD and independent agencies appropriations bill. These two amendments, totaling just over $6 million, would extend two very significant HUD demonstration programs, the Congregate Housing Services Program [CHSP], and the Neighborhood Development Program [NDP].

The distinguished floor manager of the bill, Senator GARN, has indicated that he may be willing to accept these amendments. Is that correct?

Mr. GARN. The understanding of the distinguished Senator from Pennsylvania is correct.

Mr. HEINZ. I understand that he would be prepared to accept them when I send them to the desk.

Mr. GARN. That is correct. In fact, the first one should have been in the bill.

Mr. HEINZ. Mr. President, I thank the chairman of the committee.

AMENDMENT NO. 3313

(Purpose: To provide funds for congregate services)

Mr. HEINZ. Mr. President, I send the first amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ), for himself, Mr. GLENN, Mr. MELCHER, Mr. BURDICK, Mr. LAUTENBERG, Mr. CRANSTON, Mr. PRESSLER, Mr. MITCHELL, Mr. RIEGLE, and Mr. CHILES proposes an amendment numbered 3313.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, between lines 2 and 3, insert the following:

CONGREGATE SERVICES

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs in accordance with the provisions of the Congregate Housing Services Act of 1978, $4,144,000.

Mr. HEINZ. Mr. President, this amendment, which is cosponsored by a number of my colleagues—Senators GLENN, MELCHER, BURDICK, LAUTENBERG, CRANSTON, PRESSLER, MITCHELL, RIEGLE, and CHILES—provides $4.1 million for the Congregate Housing Services Program. It is my understanding that it has been cleared on both sides of the aisle.

Mr. President, this amendment will appropriate $4.1 million over an 18-month period to fund 29 Congregate Housing Services Program [CHSP] projects which would otherwise expire in 1985. Without this additional funding, these projects will be forced to close before any final determination has been made on the effectiveness of the program. I understand that the Department of Housing and Urban Development [HUD] will send its evaluation report of the program to Congress June 1, 1985, and I look forward to seeing the results of that study. However, it is essential that we keep the program fully operational until those results are in and Congress can determine the future of the program. Because of the present and future importance of the Congregate Housing Services Program to the many low-income elderly and handicapped in this Nation, let me take this opportunity to offer some comments on the program's merits.

The Congregate Housing Services Program was first authorized in 1978. In enacting the legislation, Congress was responding to two familiar, pressing realities—the growing number of frail elderly and the skyrocketing cost of elderly health care. The major purposes of the legislation were threefold. First, to prevent the unnecessary institutionalization of low-income elderly and handicapped persons who have some functional disabilities. At the time, it was conclusively demonstrated that placement in nursing homes could be delayed or prevented if some basic-support services were made available in a residential setting. Second, to encourage the construction of housing projects that are designed to meet the needs of the partially impaired elderly and handicapped. Third, to reduce Medicare, Medicaid, and other health-related expenditures.

Under the program, HUD awards 3- to 5-year grants to local public housing authorities and nonprofit 202 housing sponsors. The grants provide for nutritional meals and other supportive services, such as personal care. The law specifically prohibits the duplication of existing local services. Program participants are required to pay for the services they receive based on their ability to pay. Since enactment of the legislation, 62 congregate housing services projects have become operational serving 2,000 elderly and handicapped citizens.

Mr. President, I believe all Americans should be deeply concerned about the exorbitant fiscal and human costs of unnecessary institutionalization of the frail elderly. Recently as part of my responsibilities as chairman of the Senate Special Committee on Aging, it was my privilege to chair a hearing in Boston, MA, on sheltering America's aged: options for housing and services. The message from that hearing was clear: As the aging population grows, increasing numbers of frail, elderly persons will be without access to the supportive services they need to enable them to stay in their apartments or in other noninstitutional living arrangements such as congregate housing.

At the hearing, data from an independent national survey of the CHSP project was presented. It showed that total costs for rent subsidy and services for elderly tenants in publicly assisted housing average $4,400 per person per year, whereas the average cost to Government of institutionalization is $13,980—a dramatic difference of nearly $10,000 per person per year. Approximately 35 percent of the elderly tenants in Philadelphia's CHSP demonstration would be immediately institutionalized if the congregate program ended.

The preliminary data indicates that the CHSP program has been overwhelmingly successful in achieving its purposes. Premature institutionalization is being prevented, thereby protecting low-income elderly and handicapped individuals from an unnecessary loss of independence. Further, the development of housing designed for the partially impaired elderly and handicapped has been stimulated. Last, Federal health-related expenditures are being reduced; for each dollar spent on CHSP per participant, $3 can be saved by preventing or delaying institutionalization. I was particularly pleased that at the hearing, Under Secretary of HUD, Phillip Abrams, gave the Department's preliminary endorsement of the Congregate Housing Services Program.

Because of the demonstrated success of the Congregate Housing Services Program, I urge my colleagues to support this important amendment.

Mr. PRESSLER. Mr. President, I am pleased to join as a cosponsor of this amendment appropriating $4 million to fund the Congregate Housing Services Program projects for 18 months.

Since its inception, the Congregate Housing Program has offered an alternative to nursing-home care. Under the Congregate Housing Services Act of 1978, the Department of Housing and Urban Development was authorized to award grants to public housing authorities and section 202 housing sponsors who provide nutritional meals and supportive services for tenants in their projects. The program was set up to be a demonstration project with $20 million appropriated for a 5-year period.

Under the 1978 act, HUD was asked to prepare an evaluation and report to Congress. That report is due in June 1985.

In the meantime, we cannot allow these fine projects to be closed. The effectiveness of this program must be considered. Congregate housing has proved successful throughout this country. In South Dakota, the Heritage Court—a congregate housing facility in Wagner—serves as a fine example of the quality of care these projects provide. The project is only one of many which have saved health-care dollars by providing an alternative to nursing-home care.

During the debate on the fiscal year 1983 HUD approriations bill, I was successful in attaching an amendment increasing the amount allocated for congregate housing demonstration projects. My amendment provided $500,000 for new demonstration projects in rural areas.

Mr. President, I am proud to support congregate housing and urge my colleagues to support this amendment which will provide handicapped and older persons the opportunity to live independent with some supportive services available to them. These services will include prepared meals, housekeeping aid, and personal care.

I want my colleagues to know that many older people will be greatly appreciative of their support for this important amendment.

CONGREGATE HOUSING SERVICES

Mr. GLENN. Mr. President, I join my colleagues today in support of an amendment to the HUD and independent agencies appropriations bill that will provide funding to 29 Congregate Housing Services Program sites scheduled to terminate next year; 33 additional projects are funded through fiscal year 1985, terminating in 1986 or later. The $4 million for these projects will extend services in these existing HUD-sponsored projects pending the completion of the Department's evaluation. We must not let these programs lapse before we have the opportunity to review them, since they are proving both effective and efficient.

In 1978, I was an original cosponsor of the legislation which established the Congregate Housing Services Program. I remain a staunch supporter of congregate services. The delivery of meals, transportation, and simple home and personal care can mean the difference between independence and institutionalization for many of our vulnerable citizens. That is why congregate services has broad support from the elderly, as seen at the White House Conference on Aging, as well as from all professionals in the field of gerontology, including the nursing-home industry. It simply makes sense; 1 of the 29 projects is being run in the city of Cincinnati. The Redding Apartments project has been in operation since 1980. During this time, it has served between 20 to 25 elderly, many of whom otherwise would have been forced to seek alternative care. It is targeted to those residents who truly cannot cope without assistance. It is well received by the other tenants and the housing management. And it is cost effective. With the rent subsidy included, program costs remain well below the average Medicare or Medicaid reimbursement for an extended-care facility in Ohio.

Congregate housing services is a practical solution in our effort to respond to the long-term-care needs of our elderly population. And it is humane. As one older person explained: "To stay in one's own home means to hold on to selfhood, to maintain identity." Let us not be penny wise and pound foolish. I urge my colleagues in the Senate to join me in supporting this amendment.

Mr. CHILES. Mr. President, I am cosponsoring Senator HEINZ' amendment to the fiscal year 1985 HUD and independent agencies appropriations bill. Our amendment would appropriate $4 million to 29 congregate-housing services projects for an 18-month period. Sure, $4 million is a small amount considering the size of the Federal budget, but this $4 million now could have a very beneficial impact on the lives of our country's elderly today and well into the future.

If Congress does not pass this amendment, these projects will be forced to close before Congress had had time to evaluate and act on the Department of Housing and Urban Development's review of this demonstration program. This concerns me—what will happen to the handicapped and elderly that are participating in this experimental program in the meantime? From talking with those involved with the congregate housing services projects, including the Fort Pierce, FL, Housing Authority, I have concluded that the CHSP needs this money and 18-month extension while a full and complete analysis of the program is being completed. Congress will need time to fine tune this program and pass legislation establishing a permanent Congregate Housing Program. Otherwise, the elderly participating in this program will find themselves without a home come next June.

I was a strong supporter of the Congregate Housing Services Act when this legislation was passed in 1978. I believed then, and I still believe now, that this program could fulfill the needs of the growing number of elderly as well as go a long way toward controlling escalating health-care expenditures. I am pleased to report that preliminary studies show that the Congregate Housing Services Program is living up to expectations.

Currently, the Department of Housing and Urban Development [HUD] is studying the effectiveness of the congregate housing initiative. Although HUD's review, scheduled to be released on June 1, 1985, will be the most comprehensive evaluation of the program thus far, Senate Special Committee on Aging studies indicate that the program has proven to be effective in preventing these individuals, who are not fully capable of taking care of themselves, from being prematurely institutionalized.

In addition to assisting partially impaired individuals to maintain their sense of dignity and independence, the program is extremely cost effective. Estimates from the Senate Special Committee on Aging show that total costs for rent subsidy and services for elderly tenants in publicly assisted housing average $4,400 per person last year. The average cost to the Government for institutionalization is $13,980. That's almost three times as much or nearly $10,000 per person each year.

I believe the Congregate Housing Services project has proven to be an effective means for meeting the needs of our country's growing elderly population. By providing full meal services as well as other supportive assistance such as housekeeping aid, personal assistance, and other essential services, frail, elderly Americans have been able to maintain their independence and dignity. I hope that my fellow Senators will give their support to this important amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. GARN. Mr. President, let me say that it was a poor choice of words when I said "left out." HUD supplied us with the wrong figure; $4.144 million was intended to be in the bill, but they informed us there was no need for these funds. This is an amendment that I do accept.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3313) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HUDDLESTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3314

(Purpose: To appropriate funds for the Neighborhood Development Demonstration)

Mr. HEINZ. Mr. President, I send to the desk my second amendment to appropriate $2 million for the second year of the Neighborhood Development Program.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ] proposes an amendment numbered 3314.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, between lines 4 and 5, insert the following:

NEIGHBORHOOD DEVELOPMENT DEMONSTRATION

For the Neighborhood Development Demonstration Program authorized by section 123 of the Housing and Urban-Rural Recovery Act of 1983, $2,000,000.

Mr. HEINZ. Mr. President, I send to the desk an amendment to appropriate $2 million for the second year of the Neighborhood Development Program [NDP]. This program was authorized in the Housing Act of 1983 (Public Law 98-181) as a new demonstration effort in the Department of Housing and Urban Development [HUD] to stimulate revitalization activities by local, nonprofit groups in economically distressed neighborhoods.

As the distinguished chairman of the HUD and Independent Agencies Subcommittee, Mr. GARN, knows the appropriation of fiscal year 1984 funds for this program has been beset by all sorts of foulups and administrative false starts. The distinguished Senator who also chairs the Senate Banking, Housing, and Urban Affairs Committee and I have been trying for the last 8 months to straighten the snafu out with HUD. Secretary Pierce is now being very cooperative and the protocol and regulations for the program are now being finalized even though Mr. GARN and I have not yet managed to get the funding situation clarified. We are waiting to take the action on a fiscal year 1984 supplemental appropriations bills or a bill making necessary technical amendments to Public Law 98-181. Therefore, it is very important to me that we properly appropriate the $2 million for fiscal 1985 on this year's HUD-IA appropriations bill.

Let me take this opportunity to offer some comments on the Neighborhood Development Program. I first introduced the Neighborhood Development Demonstration Act (S. 3019) at the end of the 97th Congress. It was reintroduced early in the 98th Congress (S. 586), incorporated into the Senate Banking Committee's housing authorization bill (S. 1338), and enacted as section 123 of last November's housing bill.

Mr. President, the objective of the legislation is to promote public/private partnerships for neighborhood-revitalization activities such as new enterprise development, housing rehabilitation, and services improvement. The mechanism is to provide Federal matching funds to nonprofit neighborhood organizations which raise voluntary contributions from the individuals, businesses, and charitable organizations in their neighborhoods.

In my home State of Pennsylvania, the cities of Pittsburgh and Philadelphia already have outstanding records in some neighborhoods of nonprofits organizing to address specific community needs. This $4 million 2-year demonstration program will provide an additional incentive for greater public/private partnerships in neighborhoods across the country.

As I noted earlier, Mr. President, the Department of Housing and Urban Development [HUD] is close to finalizing the program's regulations and application forms. HUD is just waiting for Congress to clear up the fiscal year 1984 funding situation. With the total of $4 million over 2 years, HUD is expected to make matching grants of up to $50,000 to nearly 100 competitively selected neighborhood groups in economically distressed communities across the country. It is my hope that these grants can be made soon so that these vital community-based nonprofits can bring life to declining neighborhoods.

The **PRESIDING OFFICER.** The Senator from Utah.

Mr. **GARN.** Mr. President, I am willing to accept this amendment as well. I would simply ask my colleague from Pennsylvania to aid me in getting the first $2 million obligated.

Mr. **HEINZ.** The Senator from Pennsylvania assures the Senator from Utah of his best and most excellent efforts in that regard. I thank the Senator from Utah for his support in this matter.

The **PRESIDING OFFICER.** The question is on agreeing to the amendment.

The amendment (No. 3314) was agreed to.

Mr. **GARN.** Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **HUDDLESTON.** Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. **HEINZ.** Mr. President, I just take a moment to thank the chairman of the subcommittee for his help and also thank the ranking member of the subcommittee for his help.

Mr. President, I also commend Dr. Wallace Berger, who is about to leave the staff, thus depriving the Senate of one of its best sources of substantive legislative and political expertise in the fields of housing, environment, and outer space.

As a member of the Housing Authorization Subcommittee, I and my staff have had ample opportunity to watch him help the chairman to bring HUD-IA appropriations bills to the floor early and dispose of them quickly and with consummate skill—so much so that all the rest of us must surely be jealous of the skill of Dr. Berger and his most able, distinguished chairman. What a team they are.

We want to wish Wally good luck and every good wish in the future.

Wally, we hope you leave clear instructions for your replacement.

Mr. **GARN.** Mr. President, if the Senator from Vermont will bear with me for a moment, I had intended to make some remarks at the end of the bill about Wally and our relationship. However, I think this would be an appropriate time, as much as Senator HEINZ has brought it up, to make my statement.

Mr. President, before passage of Senate amended H.R. 5713, the fiscal year 1985 HUD-Independent Agencies appropriations bill, I would like to bring to the attention of the full body of the Senate the leaving of my Chief Clerk, Wally Berger. I know that somewhere along the process in the last 8 years Wally has served on the Appropriations Committee, he has aided many—if not all—my colleagues, whether it be his first 3 years as minority clerk on the transportation bill under the late Senator Clifford Case, as minority clerk on transportation for Senator MCCLURE, minority clerk on the HUD bill under Senator MATHIAS, or as my Chief Clerk these last 4 years. And it is because of Wally's dedication, loyalty, and hard work that all of us at one time or another felt comfortable going to Wally knowing that whatever was fair and right would be done.

I hate to see Wally leave for so many reasons. Not only because we have had such a good Senator-staff relationship or that he has become a good personal friend, but because now he is leaving me with my work cut out for me to fill that gap.

Wearing two hats as I do, as chairman of the Senate Banking Committee and chairman of the HUD-Independent Agencies Subcommittee, it has been a great pleasure for me to have Wally taking so much responsibility in all of those matters under my jurisdiction. I say to my colleagues, there is going to be a markup this week on this banking bill. It would be very helpful to me next year to pass that omnibus banking bill this year so that I shall have more time to devote to the HUD-Independent Agencies Subcommittee while my new clerk and I get together and get our procedures worked out.

Very seriously, Mr. President, I am filled with a lot of regret and sorrow over Wally's leaving and I offer him my sincerest best wishes in his new job and his new home. He will certainly be missed, not only by me but by all of our colleagues.

Mr. **HUDDLESTON.** Mr. President, will the Senator yield?

Mr. **GARN.** I am happy to yield.

Mr. **HUDDLESTON.** Mr. President, I want to join this discussion with some remarks about Wally Berger.

We know Wally is leaving at the end of this month to take a job in private industry. He will be missed not only by members and the staff of the subcommittee, but also Members who have had an interest or problem with the program under the jurisdiction of this subcommittee and the constituent groups served by the programs in the bill.

Wally has always been accessible, he has been helpful, he has been fair with the multitude of people concerned with diverse interests and activities. From the minority side, I join in commending Wally for his service, to express my appreciation for all his help, and to wish him well in the future.

AMENDMENT NO. 3315

(Purpose: To target funding within the Superfund program for toxicological testing)

Mr. **STAFFORD.** Mr. President, I have an amendment at the desk which I call up now and ask for its immediate consideration.

The **PRESIDING OFFICER** (Mr. HEINZ). The amendment will be stated.

The bill clerk read as follows:

The Senator from Vermont [Mr. STAFFORD] proposes an amendment numbered 3315.

On page 23, line 12, strike "$9,495,000" and insert "$14,620,000."

On page 23, line 15, insert before the ".", ", of which no less than $5,125,000 shall be available for toxicological testing of hazardous substances" after "Fund".

Mr. **STAFFORD.** Mr. President, this amendment I have offered to the HUD-Independent Agencies appropriation bill will not add funds to the amount provided in the bill. Rather, it provides a set-aside for a specific purpose from funds already provided within the bill for the Superfund Program.

The amendment adjusts the funding allocation in the Superfund Program to provide for toxicity testing of chemicals found in Superfund sites.

The bill currently provides $640 million for the Superfund Program, the level of the administration's fiscal year 1985 request. Within that total funding level for the Superfund Program, $9,495 million is set aside for the Department of Health and Human Services, to be transferred at the beginning of the fiscal year. This set-aside language was specifically included in the bill last year at my request, because the Department of Health and Human Services had had considerable difficulty in obtaining the funds from EPA, the manager of Superfund in prior years.

While I am pleased that that language has been retained in the Senate bill this year, I am concerned that the funding level provided to the Department of Health and Human Services is not adequate.

The Department of Health and Human Services has responsibility under the Superfund law to provide a specific set of health services under the lead of the Environmental Protection Agency. These include activities such as providing scientific support and health advice at toxic dumpsite inspections and investigations, including emergency sites; conducting health effects surveys, studies, and assessments; and conducting research on the toxicological effects of human exposures to chemicals. It is this latter function which would not be adequately funded in the bill as it now stands.

EPA requested $5.125 million from the Office of Management and Budget for fiscal year 1985 for the Department of Health and Human Services to identify and test chemicals found in

Superfund sites for which inadequate toxicological information exists. In fiscal year 1984, HHS began to look at the first five on a list of priority chemicals found in Superfund sites to establish prevalence, the population groups exposed, and the potential adverse general health effects of the substances. In fiscal year 1985, the Agency planned to continue its evaluations of the mutagenic and carcinogenic effects of the top five chemicals, and proceed to evaluation of the next seven chemicals on the priority list. No funding to accommodate this activity is presently in the bill.

This amendment simply increases the funding provided to the Department of Health and Human Services to the funding level which EPA requested from OMB, and specifies that the funds will be spent on toxicological testing.

Toxicological testing is an important aspect of Superfund responsibilities. Reliable information on the toxicity of the chemicals in Superfund sites is an important front-end step for determining the appropriate health-related response. I believe that keeping the Agency on a reasonable schedule of investigations will advance our understanding, and consequently, the effectiveness of our response to Superfund crises. It would be unfortunate if we were to delay advances in this area because of artificial budgetary restraints.

I understand that the Senator from Utah is sympathetic to this point of view and is willing to accept the amendment. I urge him to do so.

Mr. President, I understand the very able Senator from Utah, the manager of the bill, is willing to accept this amendment and is sympathetic with this point of view. I hope he and the manager from the minority side will be willing to do so.

Mr. GARN. Mr. President, I have no objection to this study. It simply earmarks $5.125 million for toxicological studies by HHS. I believe this is also acceptable to the minority. Therefore, I am willing to accept the amendment.

I have been told the minority is willing to accept it as well, Mr. President.

Mr. STAFFORD. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3315) was agreed to.

Mr. GARN. I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I thank the manager of the bill, the chairman of the committee, for his cooperation and gracious consent to this amendment.

Mr. GARN. I thank the Senator from Vermont.

AMENDMENT NO. 3316

Mr. GARN. Mr. President, I send an amendment to the desk in behalf of Senator RANDOLPH and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Utah [Mr. GARN] for Mr. RANDOLPH, proposes an amendment numbered 3316.

On page 20, strike line 25 through page 21, line 3 "4009;".

On page 20, line 25, insert "6913): Provided further, Funds may be made available to support activities in accordance with subtitle D of the Solid Waste Disposal Act, as amended, without regard to section 2007(d) of the Act:".

Mr. RANDOLPH. My amendment being offered today deletes from title II appropriations to the Environmental Protection Agency explicit language which prevents funding for key solid waste management activities mandated by the Solid Waste Disposal Act.

I do not propose at this time to target additional funds through legislative language for this purpose. This amendment simply removes a legal impediment to allocation of funds for comprehensive solid waste management programs under subtitle D of the Solid Waste Disposal Act. The amendment does, however, waive the statutory requirement of section 2007(d) of the act that a minimum share of appropriated funds must be used for subtitle D purposes.

The concerns about hazardous waste disposal in recent years have clouded the issue with respect to comprehensive management of all wastes. As a principal author of the 1976 Resource Conservation and Recovery Act, I reaffirm the intent of Congress to address waste management in a comprehensive fashion. The act mandates programs to address problems associated with disposal of hazardous materials present in both industrial and municipal waste. Since 1981, all Federal funding has been directed to the subtitle C, hazardous waste program, while solid waste management activities have virtually been abandoned.

This is a very near-sighted approach to hazardous waste disposal. Municipal landfills account for a large number of Superfund national priority list sites. Facilities including sanitary landfills and open dumps routinely receive hazardous materials through household waste, small quantity generator waste, and illegal dumping. In the absence of safeguards set forth in subtitle D, these problems will proliferate with time.

I emphasize that, this amendment will not divert funding, personnel, increase regulatory burdens or otherwise detract from existing EPA programs. I recognize that the Appropriations Committee has increased funds for Solid Waste Disposal Act implementation over the budget request. The subtitle D program is a major component and fully compatible with a sound hazardous waste mangement effort. To legislatively prohibit allocation of funds for this purpose unreasonably constrains EPA and the States from effectively using protective features in the law.

Support for a revitalized subtitle D program emerged during development of pending amendments to the Solid Waste Disposal Act. Many States are aware of the need to acquire information and apply better design and construction standards to municipal landfills, and the amendments in S. 757 will require revision of criteria and renewed activity in this area. I urge Members to support this effort to remove an obstacle which has hampered progress in this area, and I thank the distinguished floor manager, Mr. GARN, for his cooperation in this regard.

Mr. GARN. Mr. President, I have no objection to the amendment. It will add no new money to the bill. I move that it be accepted. I am told it is acceptable to the minority as well.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3316) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3317

(Purpose: To earmark urban development action grant technical assistance funds)

Mr. PRESSLER. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 3317: On page 14, following line 4, insert the following: *Provided further*, That with respect to funds provided herein at least one-half of such funds will be used to assist cities with populations under 30,000.

Mr. PRESSLER. Mr. President, the amendment I propose would target some of the funds provided for technical assistance under the urban development action grant [UDAG] program. The Senate Appropriations Committee has recommended that $2.5 million be used to provide technical assistance to the many cities which have never received UDAG grants. Only 9.2 percent of allocable cities have received grants. A recent GAO study disclosed that a major part of the problem is that many communities are not even aware of the existence of the program.

This money is badly needed, and I commend the distinguished chairman of the HUD appropriations subcommittee, Mr. GARN, for including these funds.

UDAG is a very worthwhile program which should be utilized by as many communities as possible. My concern is that the smaller cities, which are most in need of assistance, receive an adequate portion of this money. My amendment would simply require that one-half of the $2.5 million be directed toward cities with populations under 30,000. It very well may be that HUD may decide to direct an even greater portion of the funds to smaller cities. My amendment certainly would not preclude such action.

I hope my colleagues will agree that small communities are in great need of help in preparing UDAG applications. Many towns in my home State of South Dakota would welcome this assistance. I have always been a strong supporter of the small city set-aside for grants from the UDAG program. It makes sense that smaller cities have assistance funds as well.

Mr. GARN. Mr. President, I regretfully rise in opposition to this amendment. The first reason I do, once again I constantly get caught wearing two hats, one as chairman of the Banking, Housing, and Urban Affairs Committee and one as chairman of this subcommittee of appropriations. This really lies within my jurisdiction as an authorizing matter which I do not think we should be doing on an appropriation bill. But in the report accompanying the fiscal year 1984 HUD bill, we provided an additional $2 million in the Secretary's discretionary fund to increase technical assistance to small communities in conjunction with the UDAG program. The committee's concerns resulted from a recent GAO study which showed that 73 percent of eligible small cities that had not applied for a grant were unaware of the program.

So I emphasize that I do not disagree with what the Senator is attempting to accomplish. I believe it is the wrong place and the wrong way to go about it.

To date we have provided 2,200 UDAG grants totaling over $3.4 billion to over 980 communities. However, only 9.2 percent of the 10,713 eligible cities have received such grants. On the average, 2.2 grants have been made per grantee with some 12 cities getting over 17 grants each, some getting over 40 grants.

In the subcommittee I proposed an amendment that would have required a minimum of 50 percent of the number of new grant awards be given to cities not previously receiving UDAG awards. I proposed this amendment in order to highlight the need for the UDAG program in the full committee. I indicated my intent to pursue this issue on the Banking Committee and modified the amendment to provide $2.5 million in targeted small assistance to cities not previously receiving UDAG grants.

The reason I put the amendment in to require 50 percent of the grants to go to cities that had not previously received them was for the very reason the Senator from South Dakota is proposing his amendment today. I withdrew it in the full committee with the expectation that HUD would work with me on this rather than mandating it. The amendment of the Senator mandates 50 percent of the money. Mine would have mandated 50 percent of the grants.

Representing a State with mostly small cities and being a former mayor, I am not in disagreement with what my colleague wishes to do, but again I think this is the wrong place and the wrong time to do it.

Mr. President, I again indicate that we put $2 million in the Secretary's discretionary fund for technical assistance, $2.5 million in targeted technical assistance to the cities to immediately start working on the problem of small cities while we work with HUD and the full authorizing committee to correct the problem addressed by your amendment.

It is a very complicated situation that does not yield to a simple solution. Under the amendment, there will be winners and losers and the potential of putting large cities against small cities. Therefore, I would urge that it be looked at in considerable detail in the Banking Committee. We do need an answer to it. I emphasize that to my colleague. I cannot, again, emphasize enough how much I agree with him. I think is too complicated an issue just to simply go ahead on this basis and to establish a separate selection process for those cities that received a grant during fiscal year 1985. While this approach would result in more cities receiving grants, it would, because of the pipeline of applicants, result in few if any cities receiving more than one grant in 1985.

So what I would request of my colleague is he be aware that we are not in disagreement. We have no philosophical disagreement whatever; that as chairman of both committees I have already taken action in this area with the additional money and working in the authorizing committee and meeting with HUD to start correcting the problem.

But this is a complex problem, one which we can not solve by rewriting formulas on an appropriations bill. I would hope the Senator will accept my assurance as chairman of both committees that I agree with him and that I would hope he would withdraw his amendment and be willing to use this as a vehicle to say to HUD that there is more than just myself and members of the Banking Committee who consider this a problem and wish to rectify it. I think we will get a better solution if we approach it in that way, taking this temporary additional money this year. Working on it that way I think we will get a better solution for the cities of this country. I say that as a former vice president of the National League of Cities. So my colleague from South Dakota could hardly have a more sympathetic ear in trying to resolve the problem.

Mr. PRESSLER. I very much appreciate what the chairman has said. I accept his reassurances and I applaud his many efforts in this area. I look forward to working closely with the Senator.

Mr. President, I sponsor an annual conference of mayors from my State of South Dakota in Washington each year. We visit various agencies and meet with the Secretaries and assistant secretaries and other officials. We have found that the small cities and towns do not have the same advantages as the big cities in getting UDAG and other Federal grants. These small cities frequently have a volunteer city council, in some cases even a volunteer mayor essentially. They just do not have the lawyers and the expertise necessary to apply for these grants. As the chairman has said so well, sometimes it is hard to get HUD's attention for the smaller cities and towns. Small communities do not have an organized lobby and they turn to their Senators and Congressmen for help.

The lists of recipients of the grant programs illustrate that something is wrong. The money is not getting down to many of the eligible cities. I know the chairman has said he has made and will continue to make an effort in this direction and I accept his reassurances. I along with my staff want to be a part of any future meetings on this issue. We will be of any help possible. I think the chairman has done an excellent job, and I commend him.

I will be glad to see the Senate address the No. 1 problem discussed with me by the mayors who came to Washington for my seminar this year.

Mr. President, I ask unanimous consent that I may withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment. The amendment is withdrawn.

Mr. GARN. I thank my distinguished colleague from South Dakota very much for his cooperation, and we will keep him advised on our progress.

Mr. JEPSEN. Mr. President, the need for elderly housing in America is well documented. Those in public life share the same deep concern that there should be adequate housing to meet those needs. I commend the Senator from Utah for his concern and record of achievement on the behalf of all Americans to ensure decent housing.

The section 202/8 program has been particularly successful and popular in Iowa. Unfortunately a misunderstanding about legal terms has occurred between the city of Cedar Rapids and the State Housing and Urban Development Office concerning the application for 86 units by the Geneva Foundation.

This legal misunderstanding concerns the air rights necessary for the units to be built above the new Ground Transportation Center. All involved agree that this is a worthwhile project which should be considered, but is now prevented because of the misunderstanding and even misinterpretation by the Department of Housing and Urban Development.

Mr. GRASSLEY. Mr. President, will the Senator yield?

Mr. JEPSEN. I yield to my colleague from Iowa.

Mr. GRASSLEY. The Senator from Iowa is correct in that this project has widespread community support and interest. Two hundred and eighteen people have applied to live in the units. Obviously there is a need for this type of Federal assistance. The misunderstanding is indeed regrettable under the circumstances.

Mr. JEPSEN. Mr. President, will the Senator from Utah yield?

Mr. GARN. I yield.

Mr. JEPSEN. In light of the apparent difficulties which the Geneva project is facing, preventing it from fairly competing with Iowa projects, would the Senator from Utah be disposed to use his good offices to help clarify this situation between HUD, the Geneva Foundation, the city of Cedar Rapids, and work with the Senators from Iowa to see if there is a possible solution?

Mr. GARN. Not being familiar with this particular situation, I would be willing to meet with the Senators from Iowa in the near future to further understand the situation and to explore possible alternatives.

Mr. GRASSLEY. I thank the Senator.

Mr. JEPSEN. I too, thank the Senator from Utah. My staff and I will cooperate fully. If the Senator, after reviewing the situation, agrees with us, would he be willing to work with us to take the necessary corrective action on the urgent supplemental, which is expected in the near future? We would ask this in the light of time being important.

Mr. GARN. If the Senators' point of view is correct and HUD is misinterpreting the city's legal action, I would be willing to instruct HUD to take corrective action.

Mr GRASSLEY. I thank the Senator.

Mr. JEPSEN. I thank the Senator.

DULUTH—ACID RAIN RESEARCH

Mr. DURENBERGER. Mr. President, I congratulate the distinguished Senator from Utah for the excellent job he has done in getting the fiscal year 1985 HUD and independent agencies appropriation bill before the Senate at such an early date.

Senator GARN has an uncanny ability to take a major appropriations bill, which funds such controversial programs as FEMA, HUD, the Veterans' Administration, and EPA, and steer it through the Senate in a short period of time. One of the reasons is his willingness to accommodate the many demands placed on him by his colleagues in the Senate. Quite frankly, I am amazed that the Senator has been able to accommodate the needs of Minnesota as often as he has and still keep this bill under the budget. But he has, and though I might support slightly higher levels of spending for some of the programs, I would be the last person in the Senate to offer anything which would upset the delicate balance that has been struck in this bill.

But, Mr. President, I would hope that the distinguished Senator would be able to clarify a slight discrepancy between the report accompanying this bill and the report accompanying the House-passed bill. As Senators know, while these reports are not voted on by the House or the Senate, they seem to have substantial sway over the program decisions made by the agencies covered by the particular appropriation act. Accordingly, both Senator BOSCHWITZ and myself would like to make certain that the absence in the Senate report of language found in the House report is not indicative of the committee's position on acid deposition research in the upper Midwest in general and in Duluth, MN, in particular.

To digress a bit, last year the EPA's Office of Research and Development attempted to prematurely terminate a research project on the effects of acid deposition being conducted under a cooperative agreement by EPA's Duluth research lab and the University of Minnesota at Duluth. Reviewing the facts surrounding the decision to terminate the project, I could see no reason to cancel it before its completion. I prevailed upon Administrator Ruckelshaus to commit additional funds to continue the research project, and he agreed. There were no assurances that funding would continue into fiscal year 1985, but given the long-term nature of the research, many of those familiar with the project assumed that it would be funded in fiscal year 1985. It is important to note that the research was conceived as a 5-year assessment of aquatic and biological impacts from acid deposition in a three-State region of the upper Midwest. The three States, Minnesota, Wisconsin, and Michigan, contain more freshwater acreage than the rest of the Nation combined, and their water resources are thought to be extremely sensitive to acid deposition. The research program was designed in cooperation with State agencies to reflect priorities as they are perceived from the State perspective.

Before funding, EPA reviewed the proposed research program and found it to be wholly consistent with and complementary to the national acid rain research plan. Based on that review, EPA committed $450,000 per year to the program. It is now in its third year, and EPA has invested over $1 million to collect data on 900 lakes in the three-State region. All parties associated with the project agree that it is good science and will be of value in furthering the Nation's understanding of the acid rain phenomenon.

In fact, the House went so far as to place the following in the House report accompanying this bill:

> For the past several years, EPA has funded data collection efforts related to an acid rain research assessment of the Great Lakes. The committee believes it is essential for EPA to compile, interpret and publish all existing data as soon as possible in order to facilitate better informed policy decisions on acid rain. Furthermore, the committee directs that this inventory and research assessment effort be completed under the exclusive management of EPA's Duluth laboratory. This will avoid any disruption resulting from the transfer of project management responsibilities.

Just to be sure that the EPA does not misinterpret the omission of this language from the Senate's report, would the chairman be willing to comment on it?

Mr. GARN. Mr. President, this Senator strongly believes, as did the House of Representatives, that it is essential for EPA to compile, interpret, and publish all existing data as soon as possible in order to facilitate better informed policy decisions on acid rain.

Mr. BOSCHWITZ. Could the distinguished Senator from Utah also comment on the House language indicating that, to avoid any disruption resulting from the transfer of project management responsibilities, the inventory and research assessment effort should be completed under the exclusive management of EPA's Duluth laboratory?

Mr. GARN. Mr. President, I welcome the addition of the distinguished junior Senator from Minnesota to the discussion on this important matter, and thank him for his question. He has made his support for this project well known to me in our previous discussions. As the Senator knows, the Senate report contains language directing the EPA to submit a report, by

October 1, 1984, detailing for fiscal year 1984 any delays in, or terminations of, ongoing, long-term research projects. The committee inserted this directive for a number of reasons, one of which was to put the EPA on notice that the committee was concerned by the number of changes made in ongoing long-term research projects. In reply to the Senator's question, I would have to say that this committee would not look favorably upon changes in project management responsibilities that would result in the disruption of the inventory and research assessment efforts underway at EPA's Duluth laboratory.

Mr. BOSCHWITZ. I thank the distinguished Senator from Utah for his response, and look forward to completion of this valuable research project.

Mr. DURENBERGER. I, too, thank the distinguished Senator for his comments, and feel fortunate to have support in this important matter.

Mr. LAUTENBERG. Mr. President, I should like to address a question to the distinguished chairman of the Banking Committee and manager of the bill.

Under the annual contributions account in the appropriations measure for housing, there are funds for the rehabilitation of public housing. Is it the case that funds under this section of the bill can be used by HUD for the rehabilitation of vacant uninhabitable public housing?

Mr. GARN. The Senator is correct.

Mr. LAUTENBERG. In my State, there are examples of such needs in our cities, such as Marion Gardens in Jersey City. Would a public housing development such as Marion Gardens qualify for such assistance?

Mr. GARN. I can assure the Senator that if they meet the criteria of being vacant, then examples such as the one he cites were precisely what the committee intended.

NATIONAL SCIENCE FOUNDATION—RESEARCH AND UNDERGRADUATE INSTITUTIONS PROGRAM

Mr. HATFIELD. Mr. President, I would like to bring to the attention of my colleagues a program within the National Science Foundation budget regarding the Research and Undergraduate Institutions Program. The NSF has historically provided funding for research-related activities in undergraduate institutions and provided support to institutions that do not offer science doctorate programs. I would like to clarify the committee's strong endorsement of this program and our intent for NSF to continue such support.

Mr. President, the rationale for NSF's involvement is simple. Undergraduate institutions, including small liberal arts colleges, are the building blocks upon which advanced training begins. Without a strong research component in undergraduate institutions, and without support to institutions which do not offer science doctorates, thousands of bright, ambitious young people will lose an opportunity to later expand into more advanced science training. The modest sums made available from NSF will prove valuable investments in our future.

Again, Mr. President, this does not add any new money, rather it expresses the committee's intent that NSF continue to provide funds for this valuable activity through the research and related activities budget. For the record, I would like to ask the floor manager [Mr. GARN] if he agrees with the following statement:

> The National Science Foundation has indicated that a portion, no less than $4 million, of the research and related activities budget is to be spent on the Research and Undergraduate Institutions Program and that a estimated $18.9 million is to be provided for support in institutions without science doctorate programs in fiscal 1985. The committee wishes to affirm its interest in these activities and directs the Foundation to maintain such support for the Research and Undergraduate Institutions Program and other research in institutions without science doctorate programs through fiscal 1985. The committee also directs the Foundation to provide the committee with further documentation in next year's budget on how these moneys have been spent.

Mr. GARN. The distinguished chairman is correct and I agree with this declaration of committee intent. I am pleased to support the use of funds for undergraduate institutions and I am pleased you have brought this issue to our attention.

Mr. LEAHY. Mr. President, I rise to express my appreciation for the remarks made by my colleague, Senator HATFIELD regarding the Research in Undergraduate Institutions Program. I would also like to thank Chairman GARN for his consideration in engaging in this discussion as it relates to the National Science Foundation budget for fiscal year 1985.

The outstanding record of small liberal arts colleges in producing graduates going on to receive Ph.D.'s has been recognized by Dr. Edward Knapp, Director of the National Science Foundation. For example, Reed College, a 4-year college in Portland, OR, ranks first in the Nation for the percentage of male graduates earning doctorates in all fields, and second in the Nation for percentage of women graduates earning doctorates. Many small colleges have similar records of achievement.

The Research in Undergraduate Institutions Program has played a part in establishing this excellent record. The program is particulary important for educational institutions in rural areas. In my State of Vermont, the loss of this program will mean that few students will have the opportunity to engage in scientific research at the undergraduate level.

Therefore, I want to join the subcommittee chairman and the ranking minority member along with the full committee chairman in acknowledging the committee's intent on continuing this activity in NSF next year.

NEIGHBORHOOD BUSINESS REVITALIZATION

Mr. HEINZ. Mr. President, I want to take this opportunity to commend Senator GARN for including language in the report accompanying H.R. 5713 on the section 108 Demonstration Loan Program for Neighborhood Business Revitalization. The reestablishment of this important economic development tool was one of my legislative priorities for 1984.

This language was added in committee at the request of Senator D'AMATO, and I congratulate the Senator from New York for making that request. It instructs the Department of Housing and Urban Development [HUD] to reinstate the very successful 108 Demonstration Loan Program which HUD had administratively terminated last year. Under this program, the terms of 108 loans are extended from 6 to 20 years.

During the period of operation, 26 cities participated in the Demonstration Program and were approved by HUD for $79.1 million in loans. These loans were made to small and medium businesses which were seeking capital for expansion to create additional jobs. For every dollar of 108 demonstration money lent, an additional $2 of private or other capital was generated. The result of this effort by cities and HUD were 2,955 new jobs. In addition, there has not been one single default in the 26 cities where a variety of enterprises have borrowed nearly $80 million.

The HUD 108 Demonstration Program has served as a vital tool in the expansion of small- to medium-sized businesses in the industrial Northeast. The program was initiated at a time when major cities faced their highest levels of unemployment and economic distress. Private lenders offer only short-term financing at high interest rates, even for major capital investments such as purchase and rehabilitation of buildings and equipment for much-needed industrial preservation and expansion. Such conditions made it virtually impossible for even the strongest businesses to expand. Through the HUD 108 Demonstration Program, many central cities such as Pittsburgh and Philadelphia were able to make long-term financing, most of it private capital available to generate new permanent employment.

The two largest cities in my home State of Pennsylvania were among the most successful participants in the Demonstration Program. Philadelphia approved 14 loans for $10.5 million, which in turn leveraged another $18.5 million in investment. Using this program, a number of Philadelphia businesses including engineering firms, manufacturers and a distributor of fresh produce, were able to create 863 new jobs and retain 705 jobs.

In my hometown of Pittsburgh, city government participated in 15 projects involving investments of more than $11 million. HUD 108 moneys have accounted for approximately $3.1 million of the total project dollars, while $17 million has come from private sources. All loans are current; 450 new permanent jobs have resulted from these investments.

Because the city is sharing the risk by lending up to 40 percent of the project cost using section 108, and giving the private lender first collateral position, private lenders have typically extended their terms from the usual 7 years to the 15 years necessary to finance large capital expenditures. They have also reduced the equity required of the company from the typical 30 to 10 percent, thus freeing up added working capital to strengthen the projects. Such a financing package can reduce the company's monthly payment by almost one-half.

Two examples from Pittsburgh will make the program's benefits more concrete. In 1981, Colt Industries closed their steel spring operation in Pittsburgh, resulting in the layoff of 130 workers. The plant was profitable but other investments would bring an even higher return to the parent company. Several of the former managers have now bought and reopened the plant. The 108 Demonstration Program supplied $400,000 of the $2 million deal, a critical 20 percent. The plant now has 47 workers, many of whom had worked in the plant before it closed. Considerable growth is expected in the next year.

Another firm, Biodecisions Laboratories, tests medications for FDA approval. The company had outgrown its small initial quarters. A 108 Program loan of $400,000 contributed toward a total of $1.1 million used to buy a larger building and provide for the hiring of 61 new employees.

In summary, the HUD section 108 Demonstration Program, which allows for 20-year maturities on loans backed first by the assets of the companies being financed, and second by the future CD entitlements of the participating municipalities, have proven to be a valuable tool to promote long-term private capital investments in economic development projects in our cities at no cost to the Federal Treasure. I support its continuation. The language in the committee report is clear in that it instructs HUD to reinstate this program and begin to approve loans.

Again, I thank my friend, Senator Garn, chairman of the HUD-Independent Agencies Subcommittee, for his willingness to see to it that HUD reinstate this important business development.

TARGETING OF 202 ELDERLY HOUSING UNITS

Mr. HATFIELD. Mr. President, I am concerned that a HUD regulation which will take effect on July 1, 1984, may seriously jeopardize a number of elderly housing projects under the 202 program. This regulation will require that 100 percent of housing units be rented to very low-income families unless HUD grants an exception for families with income between 50 percent and 80 percent of median income. In Oregon and elsewhere, many projects are planned on the basis of market feasibility studies including 40 percent or more of the units for these moderate income families. I ask my good friend from Utah, "Was this rigid regulation intended when the Congress adopted authorizing legislation in 1981 targeting housing assistance funds for very low-income families?"

Mr. GARN. I share the concern that this regulation may make the 202 Elderly Housing Program unworkable in some circumstances if it is applied too rigidly. I served on the conference committee in 1981 which established the authorizing statute requirement that 95 percent of subsidized housing units becoming available for rent after October 1, 1981, be rented to very low-income families. The conferees recognized, though, that some flexibility would be necessary. The conference report indicated:

> The conferees, by establishing national percentage limitations, do not intend that each lower income housing project or each individual program be limited to the specified percentage.

Therefore, I expect HUD to use their authority to grant exceptions in a flexible manner to assure that the national 95-percent rule is applied with the least disruption to particular programs and housing projects. In particular, HUD should direct the field offices to grant exceptions in circumstances where a project was planned with significant portions of moderate income tenants, HUD implicitly accepted those plans, and current market analysis indicates that an exception is necessary to rent the units and maintain financial feasibility of the project.

Mr. HATFIELD. I thank my distinguished colleague, Senator Garn, for providing this clarification. As a member of both the Authorizing and Appropriations Committee he is uniquely qualified to help clarify this matter. Because of the potential adverse impact of these regulations on both the very low and lesser income individuals, and because of the financial impact it may have on many private housing assistance facilities, I want to emphasize the urgent need to grant exemptions to qualified and needy facilities. I would like to ask the distinguished subcommittee chairman if he would personally make the Secretary aware of the colloquy?

Mr. GARN. I would be happy to do so.

Mr. PACKWOOD. Mr. President, I am pleased that my senior colleague from Oregon [Mr. Hatfield], and the distinguished chairman of the Banking Committee have called attention to the impact on section 202 housing projects of the HUD regulations scheduled to become effective on July 1. I join them in encouraging the Secretary of Housing and Urban Development to judiciously waive the requirement that 95 percent of all 202 units available for occupancy after October 1, 1981, be occupied by very low income individuals when the project has demonstrated a good faith effort to meet this requirement. Several nonprofit sponsors of 202's in Oregon have informed me that they anticipate considerable difficulty in meeting this requirement.

Senator Hatfield and I are well aware of the effectiveness of 202 projects in Oregon in meeting the housing needs of elderly and handicapped Oregonians. It is good policy, whenever possible, to target federally subsidized housing to those most in need. I question the wisdom of imposing flat percentages which must be met without the assurance that exceptions will be made when necessary.

I thank the chairman of the Appropriations Committee and the chairman of the Banking Committee for their attention to this matter.

Mr. CHAFEE. Will the distinguished floor manager yield to respond to some concerns I have about title II of the bill—the section that deals with EPA's estuary program?

Mr. GARN. I would be glad to yield to my friend from Rhode Island, the distinguished chairman of the Subcommittee on Environmental Pollution.

Mr. CHAFEE. Under title II of the bill, $4 million is appropriated for an Estuarine Pollution Monitoring Program and $6 million is appropriated for grants to States and interstate agencies for development and implementation of Pollution Management and Abatement Programs. In accompanying report language these funds are directed to be spent in Long Island Sound, Narragansett Bay, and Buzzards Bay. As chairman of the subcommittee which authorizes programs under the Clean Water Act, I want to say I strongly support the thrust of this provision and want to thank and commend Senator Weicker for his efforts to have it included in the bill. I am concerned however, about the specific directives in the committee report as to how this money will be spent. I want to make sure all of us understand how the Environmental Protection Agency is going to spend this money.

Mr. WEICKER. I would be delighted to enter into a colloquy with my good friend from Rhode Island.

Mr. CHAFEE. I thank the Senator. In the report language it states that EPA should make recommendations on interstate pollution management and abatement activities in these estuaries—I presume that means developing technological standards, effluent limitations, guidelines, or other required actions aimed at abating pollution from these water bodies. However the report goes on to say that the National Oceanic and Atmospheric Administration is directed to prepare a report which shall also recommend pollution management and abatement measures in these estuaries. I am concerned about this because the Clean Water Act clearly establishes EPA as the Federal Agency responsible for developing and implementing management and abatement measures in our Nation's waters.

Although I strongly believe that NOAA, through its monitoring capabilities can make a very substantial contribution in assisting EPA in carrying out its responsibilities in these estuarine areas, I am concerned that the language in the report directs NOAA to develop pollution management programs which is EPA's responsibility.

Mr. WEICKER. Let me clarify the report language. It is not the intent to get NOAA into writing pollution management and abatement measures for the EPA. That is the sole responsibility of the EPA. NOAA however, as you mentioned, can and should play a role in providing monitoring of pollutant loadings and assessment of the effects organisms in these estuaries. As NOAA compiles this monitoring data and completes its assessment work, it should prepare reports for the EPA Administrator so that information can be used by EPA when developing management and abatement programs in these estuaries. In the reports NOAA should also notify EPA of pollution problems which NOAA has observed.

Mr. CHAFEE. Does the distinguished floor manager agree with that statement?

Mr. GARN. That is correct. This legislation does not give NOAA any new authority or a mandate to develop pollution management and abatement programs in estuary areas. EPA alone is responsible for developing and implementing water pollution control programs in estuaries. That is not to say that NOAA should not play an important role in assisting EPA with its responsibilities through water quality monitoring and assessment work. It is appropriate for such cooperation to take place and the groundwork for this cooperation is found in section 104(a) of the Clean Water Act.

Mr. CHAFEE. That brings me to my second question. Section 104(a) of the Clean Water Act states that the Administrator shall cooperate with other Federal agencies, including NOAA, when establishing programs for the prevention, reduction, and elimination of pollution. However, as I read the report language it states that the EPA Administrator shall transfer the $4 million for NOAA to carry out estuarine pollution monitoring. In other words the report language has blurred the intent of section 104's discretionary cooperation directive and forces the EPA to turn the monitoring program over to NOAA through a funding pass-through. I am concerned that this will hinder the EPA from developing Estuarine Pollution Abatement Program as mandated by the Clean Water Act.

Mr. WEICKER. My friend from Rhode Island makes a good point. But I would like to make one also. The report language was drafted that way to assure that the cooperation required in section 104 actually occurs. Over the years EPA has not fully utilized NOAA's capabilities and I believe this is bad policy. NOAA has well developed capacity to do research on matters affecting the marine environment.

Compared to EPA they have a larger staff and a greater number of labs which can do the kind of monitoring and assessment work that EPA is going to need as it moves forward with its estuarine program. I am upset that cooperation is not occurring between these two Agencies in this area and the report language was an attempt to see to it that such cooperation occurs.

Mr. CHAFEE. Your argument is well taken but I think this cooperation can occur without moving the program away from EPA. I am willing to work with you to achieve it.

My staff has been in contact with EPA on this matter and they have expressed a strong willingness to enlist NOAA's assistance in carrying out monitoring and assessment activities. And, I am sure if they review the discussion we are now having, it will provide an added incentive for them to work more closely with NOAA in the future. Given our mutual interest in having EPA utilize the services of NOAA, may I suggest that in lieu of a mandatory transfer of the $4 million, we direct EPA to transfer up to $4 million to NOAA for monitoring and assessment activities and for reports to EPA on the findings. Funds transferred should be sufficient to provide establishment and operation of 60 to 80 water quality monitoring stations on the three bodies of water, quarterly sampling from NOAA vessels, and an annual assessment of living resources in those waters. I understand NOAA has the capacity to do this work in-house. I believe such an approach will give EPA the flexibility it needs in designing its program and will make NOAA a partner in the process which will lead us to our common goal—the cleanup of Narragansett Bay, Long Island Sound, and Buzzards Bay.

Mr. WEICKER. I am willing to support my colleague's proposal but I want to make it very clear, putting EPA on notice, that it had better fully cooperate with NOAA in the expenditure of funds contained in this legislation. I fully expect EPA to utilize NOAA resources in the assessment and monitoring activities that are provided by this appropriation and plan to follow up with EPA to assure that such cooperation is taking place. I also expect NOAA and EPA to provide an informal report to the Environment and Public Works Committee and to the HUD Appropriations Subcommittee on the progress made in the transfer of funds and on the startup of the monitoring and assessment work by December 31, 1984.

Mr. GARN. If I may interject for a moment, in adopting this amendment in subcommittee markup I said that we should work closely with the authorizing committee to assure that we are not authorizing a new program. It is clear from listening to this colloquy that we are not authorizing a new estuarine program here but merely providing funds for EPA to develop management and abatement programs in Long Island Sound, Narragansett Bay, and Buzzards Bay. In carrying out the Estuarine Pollution Monitoring and Assessment Program, EPA shall utilize the services of NOAA and NOAA shall report to the EPA Administrator on its findings.

Mr. STAFFORD. I would just like to indicate, from my perspective as chairman of the Committee on Environment and Public Works, that I am pleased that the Senator from Connecticut has developed such a strong interest in the environmental pollution and control programs in these bays.

Like my friend from Rhode Island who chairs the subcommittee with jurisdiction over these programs, I was of course concerned that the projects specified in the appropriation bill might conflict with the policies and mechanisms of the Clean Water Act and amendments that we have reported from committee. However, I have been assured by this discussion that the funding provided for these efforts in the appropriation bill is consistent with existing authorizations and reported amendments to the Clean Water Act.

Mr. CHAFEE. I thank my distinguished colleague from Connecticut for his assistance in clarifying this matter and I look forward to working with him on making this a productive effort. I also thank my good friend from Utah, the distinguished floor leader for his assistance and support in this matter.

Mr. STAFFORD. Mr. President, I have expressed my concern regarding the funding for the Environmental Protection Agency [EPA] many times over the past several years. I have been chairman of the Committee on Environment and Public Works, the authorizing committee with jurisdiction over the substantive legislation that the Environmental Protection Agency must administer, for almost 4 years. I have served on the committee for 13 years. This experience has led me to the conclusion that without adequate financial support the Agency literally cannot enforce the laws or meet statutory mandates imposed by the Congress.

I am thus disappointed in the funding level provided for EPA in the bill that is now before us. I recognize that the Appropriations Committee faced the difficult task of allocating limited resources among competing programs. However, I attempted to make their job easier this year by cosponsoring an amendment to provide room for additional funding for EPA within the Senate appropriation caps on the Omnibus Deficit Reduction Act, and within the Senate budget resolution. That provision, as adopted, allowed the Appropriations Committee to fund the EPA operating budget at $1.353 billion in fiscal year 1985.

Thus, that specifc funding level was requested by Administrator Ruckelshaus from the Office of Management and Budget last fall, was endorsed by the Committee on Environment and Public Works, and was included in the appropriation caps.

While I am disappointed that the committee has not seen fit to include that full amount of funding at this point, I am somewhat encouraged by the opportunities both in conference and in future supplementals to bring fiscal year 1984 funding for the Agency to that level.

The Senate bill presently provides $1.296 billion for EPA. Although the funding level represents an increase of $87 million above the administration's fiscal year 1985 request, it is $57 million below the levels assumed by the Senate in the final appropriations caps. I understand that the House bill is over $40 million above the Senate bill in the salaries and expenses and the research and development accounts. I urge the Senate conferees to compromise upward in these particular areas.

I have long emphasized my belief that funding for research and development is grossly inadequate and I am not alone in my belief. There is a consensus among both environmental groups and industry that the scientific base on which the Agency's regulatory decisions are founded has seriously eroded in recent years because of severe cuts in the Agency's research and development budget.

In fact, the research and development program has absorbed the brunt of the reductions in the Agency's budget over the last 4 years, suffering cuts between 1978 and 1983 of 50 percent.

I note that the Senate has already included $21 million above the administration's request for research and development and I am pleased that like the House, the Senate has included $5 million for health effects research.

I also particularly support the committee's inclusion of additional funding and personnel in research on limestone injection multistage burners and the category of exploratory research and research centers.

I hope the Senate conferees will seriously consider adopting the House provisions and funding levels for hazardous waste control technology, for ground water research, and for long-term research.

I commend the Appropriations Committee for including language in the report rejecting House views regarding regulation of asbestos. My good friend from South Dakota, Senator ABDNOR, and I asked several experts in the field to comment on the need for an asbestos control program. I understand that Senator ABDNOR will include in the RECORD their responses to this inquiry. This information should prove helpful in maintaining the Senate position in conference.

The Senate has already voted for an authorization for an expanded program to abate asbestos in schools in S. 1285, the Emergency Mathematics and Science Education Act. I understand that the Appropriations Committee will consider including appropriations authorized in that provision in supplemental appropriations bills. I am pleased that funding for this purpose is likely to be part of the funding increase for EPA this year.

The Senate bill also increases funds for enforcement purposes, another of my longstanding concerns. It is my understanding that this increase is focused almost exclusively on State assistance. While our national environmental programs give the States primary responsibility for certain enforcement areas, I believe that a combination of Federal and State actions is required for environmental programs to succeed.

While the States will clearly be able to use these additional resources effectively, I am concerned that resources are not adequate for the Federal side of the partnership.

Administrator Ruckelshaus has stated his perception of the Federal role in enforcement as a need to have EPA serve as a "gorilla in the closet." He contends that the States will not be able to do their job "if they open the closet and find nobody there * * *." I hope that the Senate conferees will maintain the enforcement funding for the States and direct that funds added by the House for use at the Administrator's discretion be used for Federal enforcement efforts, particularly in the regions.

Mr. GARN. I thank the Senator from Vermont for his comments. I am always pleased to listen to the recommendations of the authorizing committees because of their particular knowledge of the statutory programs executive agencies must carry out. I will pay particular attention to those items in the Senate bill to which the Senator has alluded and will do my best to maintain those specific funding levels in conference. I believe that we will have the flexibility in conference to accept the specific items he mentioned that are contained in the House bill, and to focus the House discretionary funding and personnel provision on enforcement activities.

I will also carefully review the need to provide additional funding for EPA in subsequent appropriation bills.

Mr. STAFFORD. I thank the Senator for his pledge. I would also like to comment on the funding for Superfund included in the Senate bill. The funding now included in the bill is the level of the administration's request. It would almost fully exhaust the moneys now available, and for that reason I believe that it is the appropriate funding level at this time. I urge the Senate conferees to resist any reduction in that level.

The Committee on Environment and Public Works is working on a reauthorization of the Superfund Program which will make additional funds available within the fiscal year. I would hope the distinguished manager of the bill would consider additional appropriations for the program on the basis of that reauthorization.

Mr. GARN. I also believe that the Superfund Program serves an important national need, and I will, of course, defend the Senate position in conference. I will consider increases in the level of appropriations after the reauthorization is done. I would only urge that the Senator from Vermont work with EPA in order to assure that the actual cleanup of sites be accelerated, in order to match the request for funds.

Mr. GORTON. Mr. President, I commend the work of the distinguished Senator from Utah [Mr. GARN] in developing the NASA section of H.R. 5713. His efforts reflect an extensive and insightful examination of our Nation's aerospace goals and requirements. Furthermore, I am pleased that his bill funds the full $150 million, as requested by the administration, to initiate extended studies for a permanently manned space station.

The Senator's bill also directs NASA to establish an Advanced Technology Advisory Committee to recommend automation and robotics technologies which could be implemented aboard a manned space station. Could he comment on the charge of this Advisory Committee and its compatibility with manned presence on a space station?

Mr. GARN. Mr. President, I thank the Senator from Washington [Mr. GORTON], the chairman of NASA's Authorizing Subcommittee, for those kind words and his support of this portion of H.R. 5713. I have tried, during my years as chairman of the HUD-Independent Agencies Appropriations Committee, to coordinate my efforts with the various authorizing committees. I have had the opportunity to discuss the provisions of the NASA section of this bill with the distinguished Senator from Washington and to profit from his advice and counsel.

As the Senator noted, the bill contains the entire $150 million authorized for the Manned Space Station Program and directs NASA to assume a more aggressive role in advanced technologies not only for space use, but with an eye toward the ultimate utility of such technologies for terrestrial application. In this respect, I would expect that in addition to the Advanced Technology Advisory Committee established by the committee, NASA would maintain an industry/university-based advisory panel to identify technological targets of opportunity. Furthermore, this initiative is totally compatible with a manned space station. One of the purposes of the Advanced Technology Advisory Committee is to identify technologies that will free man so that his efficiency and productivity aboard a space station are optimized to the greatest extent possible.

Mr. GORTON. The Senator's bill also prohibits NASA from obligating the $58.3 million proposed for space station definition studies until April 1, 1985, so that the recommendations of the Advisory Committee may be incorporated into the definition studies contracts. To what extent does this provision or any other provision in the bill impact the release of NASA's request for proposals for these definition studies or the design of the manned space station?

Mr. GARN. Mr. President, NASA has been planning to release its request for proposals for these definition studies by the end of July 1984 and in no way does this bill delay the release of the request for proposals. And, while I expect that technologies identified by the Advisory Committee will be incorporated into the design of the space station, I also expect that the manned presence will still remain an integral and critical factor in the design of the space station.

Mr. GORTON. The appropriations bill report also directs NASA to make available $5.5 million of unallocated fiscal year 1984 funds for high-priority aeronautical programs, such as the Advanced Turboprop Program. Will the Senator comment on the intent of this bill report language with respect to the examination of the counter-rotation and single-rotation advanced turboprop designs?

Mr. GARN. Mr. President, both the counter-rotation and the single-rotation designs hold considerable promise for future fuel savings over our present aircraft engine technology, and I would expect that NASA would thoroughly examine both of these designs for the ultimate purpose of selecting one for an upcoming flight test.

Mr. GORTON. Again, I compliment the efforts of the Senator in managing the fiscal year 1985 NASA appropriations bill. I look forward to working with him in monitoring the new manned space station initiative and the Advanced Turboprop Program.

Mr. EVANS. Mr. President, as we consider this appropriations bill and, in particular, the recommendations for the Environmental Protection Agency, I would like to applaud the committee's commitment to ensuring the protection and preservation of one of our Nation's most valued assets—its estuaries and bays. I would be remiss if I did not take this opportunity to inform you of a similar commitment by the people of the Pacific Northwest to the protection and preservation of one of our national treasures—Puget Sound. The Puget Sound estuarine system—its shorelines, waters, and marine life—has always been a symbol of the quality of life so important to the people of my State. In a recent study, 66 percent of the people in the Puget Sound area indicated that preservation of our environment should take precedence over new economic growth; a clean, uncontaminated Puget Sound was a very high priority.

Puget Sound, located in the northwestern part of the State of Washington, is one of the most biologically productive and important estuaries in the United States. The 2,200 square miles of bays and inlets and over 2,000 miles of shoreline support rich and diverse commercial, industrial, recreational, and tourist activities.

My State's concerns about Puget Sound water quality are of long standing. During my first years as Governor, programs were initiated to study the flushing mechanisms of Puget Sound; even then, we were concerned that many contaminants might remain in the system. Our awareness of the possible long-term, cumulative effects of man's activities on the quality of Puget Sound waters led to controls on many traditional activities. For example, we required secondary treatment of wastes generated by pulpmills, then major contributors to water quality degradation in Puget Sound. Because of regulatory measures such as these, introduced during the past 20 to 30 years, the traditional sources of pollution have been brought under control. However, recent findings of biological abnormalities and persistent toxic pollutants in the sound have elevated our concern. To address current and emerging water quality problems in Puget Sound, citizen groups, the State of Washington, and the regional EPA office are now working together to develop an integrated and coordinated program to protect this important estuary.

In reviewing the committee's report on this bill, I note the committee's several funding and staffing recommendations. These specifically concern estuarine pollution monitoring and assessment activities on Long Island Sound, Narragansett Bay, and Buzzards Bay which are contained under the R&D and abatement, control, and compliance accounts. I assume the exclusion of Puget Sound—one of our Nation's major estuaries—was an oversight and that all the committee recommendations relating to the Long Island Sound, Narragansett Bay, and Buzzards Bay initiative would be equally applicable to Puget Sound. I would, therefore, urge the conferees, when the Senate and House meet in conference on this bill to remedy this situation and explicitly include Puget Sound in this initiative.

I thank my colleagues, and especially the members of the committee, for the opportunity to speak on this important matter.

Mr. GARN. I thank my distinguished colleague from Washington for bringing the issue of Puget Sound to my attention. He can be assured that I will raise this issue in the conference with the House and will urge the House conferees to include Puget Sound in any bay program that might be initiated through H.R. 5713.

Mr. GORTON. Mr. President, I join my good friend and colleague, Senator EVANS, in congratulating the committee for their fine work of the HUD and Independent Agencies appropriations bill for fiscal year 1985.

I commend the efforts of the committee to consider carefully the funding needs of the Environmental Protection Agency. I am particularly pleased to note one aspect of EPA's budget. The committee has made a strong commitment to protect certain critically important bays and estuaries, as listed in the committee report, through increased estuarine pollution monitoring and assessment activities under the R&D and abatement, control, and compliance accounts. I note that the committee report lists Long Island Sound, Narragansett Bay, and Buzzards Bay. I join Senator EVANS in urging the committee to add Puget Sound in Washington State, one of the Nation's most recreationally important and resource rich estuarine areas, to this list of project initiatives in the committee report when the Senate and House go to conference on this bill.

The significance of Puget Sound and its tremendous contribution to the quality of life that is so important to the people of the Northwest cannot be overstated. During the past couple years, a few water quality problems in Puget Sound, primarily the discovery of toxic contaminants in the urban/industrial embayments, were cause for concern, but more recent revelations have turned what once was concern into alarm. There is now solid evidence that serious water quality problems exist in many areas of Puget Sound. Recent discoveries of high concentrations of toxic pollutants in bottom sediments and the accompanying discovery of biological abnormalities in fish and shellfish indicate that the problems exist throughout Puget Sound, from Tacoma to Bellingham.

The entire shellfish industry which is so important to our State is threatened by the forced closure of shellfish beds in southern Puget Sound due to increasing incidences of bacterial contamination. Marine birds have also been affected by these toxic contaminants as well as one of our State's most precious resources, the Chinook salmon.

The growing list of resources affected by these toxic contaminants and the uncertainty of what the long-term cumulative effects of these contaminants will be on Puget Sound have generated a great deal of concern among the residents of Washington State. Recently, the State of Washington, the region 10 office of EPA, and local citizens groups joined forces and proposed a joint Federal/State program to identify and address the growing number of water quality problems in Puget Sound. Senator EVANS and I strongly support this cooperative effort.

I understand that the addition of Puget Sound to the committee's report and the passage of the Appropriations Committee's recommendations for the regional marine pollution research projects in the NOAA budget, coupled with discretionary funds that are available to the EPA Administrator under Superfund, will allow the proposed initiative between the State of Washington and EPA to move forward as planned.

The chairman's efforts to see that Puget Sound is added in conference to the committee's recommendations relating to the Long Island Sound, Narragansett Bay, and Buzzards Bay initiative are greatly appreciated.

Mr. DECONCINI. I wish to congratulate my colleague, the distinguished chairman of the Subcommittee on HUD-Independent Agencies, for his fine leadership in committee on the fiscal year 1985 appropriations bill for HUD-Independent Agencies. I wish to clarify with the chairman two points regarding appropriations for NASA. I understand that the bill provides for a general reduction of $30 million in the NASA R&D account.

Mr. GARN. That is correct.

Mr. DECONCINI. Is it correct that the committee intends that this general unspecified reduction is not to be applied against those program budget lines which have been augmented by the committee in the same bill?

Mr. GARN. Yes; that is the intention of the committee, as it was last year when the committee proposed a $10 million general reduction in research and development.

Mr. DECONCINI. I would hope that if the House-Senate conference on this appropriations bill mandates any general reductions in the NASA appropriations, that the chairman will seek the addition of explicit language which makes the intention clear that NASA is not to apply any general reductions against those budget lines which the Congress augments in the same bill.

Mr. GARN. As the Senator recalls, we included such language in last year's conference report and I will certainly urge the conferees to include such language again this year.

Mr. DECONCINI. I thank the Senator. I would like to thank the chairman for the addition of $10 million to the planetary exploration and physics and astronomy research and analysis. It is my understanding that it is the intention of the committee that no less than $7 million go to the Planetary Exploration Program and that an amount of approximately $3 million go to the Physics and Astronomy Program.

Mr. GARN. That is correct.

Mr. DECONCINI. Mr. President, during full committee markup of the HUD-Independent Agencies bill, I offered an unsuccessful amendment to augment certain programs within NASA research and analysis. There are two specific programs within research and analysis that are very important to me, and which I hope will be augmented during fiscal year 1986 and beyond. SIRTF—the shuttle infrared telescope facility—is the natural complement to the recently completed IRAS mission. The results of the IRAS Program prove the importance of infrared astronomy and the potential for new and monumental advances through SIRTF is unmatched by any recent programs. I urge NASA to move swiftly toward a new start for SIRTF. Additionally, I would like to mention the importance of the Planetary Research and Analysis Program. While the work done under the auspices of this program may not always be glamorous, the contributions to science are important and should not be ignored. I urge Chairman GARN to join me in ensuring that we continue to provide adequate funding levels for these programs in the future. And again, I congratulate the chairman and the entire subcommittee for their work on this bill.

VA CONSTRUCTION BUDGET FOR FISCAL YEAR 1985

Mr. SIMPSON. Mr. President, during the last 3 years I have actively attempted to learn more about how the VA's long-term and short-term medical construction policies are determined. I have been particularly concerned about soaring costs, determining needs and priorities of medical construction projects, and justifications for those projects. The Senator from Utah, as chairman of the Subcommittee on HUD-Independent Agencies, is well known for his thoughtful approach to fiscal responsibility, and I know he shares some of these same concerns.

I have two major concerns that I would wish to discuss with the Senator today. First, I wish to ensure that, before money is appropriated for VA medical construction, justification for medical facility construction will include the service connection veteran population and, second, that the size and location of projects proposed for the fiscal year 1985 budget will be revised to include service connection as a planning factor along with an explanation of other factors used. This means that service connection will be a factor in size and location of facilities. A repeat of the old way of doing business will not be considered as being satisfactory.

Since we do share some of the basic concerns regarding VA construction, I would have preferred that H.R. 5713 as reported by your subcommittee and the full committee might have contained either the substance or intent of the Veterans' Affairs Committee's unanimous recommendations. At a time when $784 million for major VA medical center renovations and modernizations has been requested, I have seriously considered offering an amendment to incorporate the essence of the authorizing committee's recommendations into the approrpiations measure now pending. However, an amendment at this point in the deliberations on the entire HUD bill to include language which would incorporate these recommendations might not be necessary. I would be pleased to have a clarification on the record of the Senator's intent if I can be assured that the intent of the Veterans' Affairs Committee's construction resolution will be a major factor in approving funding for fiscal year 1985 VA major construction projects. I am also concerned that we clarify at this time our expectations of what will constitute compliance with both the Veterans and HUD Committees' intent.

I am fully committed to comprehensive high quality VA medical care system. As we renovate and expand facilities, the VA system must be structured to consider first the needs of the veterans with service-connected disabilities. We cannot continue to build medical facilities without limit either in numbers of facilities or sizes of facilities.

The Committee on Veterans' Affairs, over the last few years, has requested information about and explanations of the assumptions, processes, justifications, and priorities for the array of medical facility construction projects for which the Veterans' Administration requests funding each year. After reviewing the VA's responses to these requests, the committee continues to be very concerned about current policies of the VA. As I understand it, the VA bases its planning on the demographics of the entire veteran population in the area to be served. However, it does not take into account relative statutory eligibility, especially as it relates to the needs of veterans with service-connected disabilities.

With specific regard to acute care facilities, the large potential demand for care from service-connected disabled and other priority groups within the fast-growing population of older veterans makes it essential that we evaluate the implications of the way the VA plans, justifies and sets priorities for medical construction. Present decisions regarding allocations of medical-facility construction dollars represent not only very large expenditures in the near term—$1.4 billion in total estimated costs for projects proposed for at least partial funding in fiscal year 1985—but will also have a marked influence on the VA's capacity to provide care over the next two to three decades.

Therefore, when it came time for the Veterans' Affairs Committee to review the VA's proposal for the five replacement and modernization projects for fiscal year 1985, the committee was concerned about the rationale for inclusion and exclusion of particular projects. No clear priority determinations has been made which would explain the inclusion of the five project and the exclusion of the two other projects. So, the committee in its adoption by a vote of 12 to 0—and you know how rare that kind of vote is around this facinating arena—of a resolution approving medical construction projects for fiscal year 1985, developed a form of structure and rationale for its action. This approach reflects my strong belief and the Congress' longstanding emphasis on ensuring a comprehensive hospital system which will provide quality care for service-connected disabled veterans and non-service-connected veterans within the limits of VA's facilities. The words "within the limits of VA's facilities" cannot and must not be interpreted as a mandate to build in order to accommodate all eligible non-service-connected veterans. The Veterans' Committee's approach would provide a rational planning tool which would permit scarce resources to be distributed in order to provide for more equitable access by veterans to better quality health care in a proportion which reflects a balance—first, with the Nation's commitment to the service-connected disabled and, second, to the truly needy and aging veteran—in order to allow for a workable and comprehensive system.

So I say to the Senator from Utah that I want to be sure that we both concur that there must be a rational basis for the projects presented in each year's VA medical construction budget, starting with fiscal year 1985, and that such proposals must be factors in an emphasis on service-connected disabled veterans. Do you agree?

Mr. GARN. I do share the concerns of the Senator from Wyoming about the manner in which the VA plans its construction. As the Senator knows, I experienced a serious problem with a VA construction project in my State which seemed to be a result of poor planning and monitoring. I certainly want to avoid that kind of thing happening again.

I also share with the Senator and my colleagues on the Veterans' Affairs Committee the belief that the Congress should emphasize existing statutory eligibility for service-connected veterans regarding eligibility for health care. I, as well as the members of the subcommittee, felt that the ideas of the authorizing committee were good—indeed, those ideas represent a creative attempt to bring a rational base to the VA's construction planning. It is significant that it is the work of congressional committees—and not of the VA—which has shown a way to implement the laws of our Nation in this regard. We felt, however, that the committee's recommendations came at the last moment only days before the resolution was adopted. The HUD-Independent Agencies Subcommittee did not have sufficient time to review the proposals thoroughly, and therefore, I believe that one more chance should be given to the VA to develop its own priority-setting scheme and criteria. However, I certainly agree that service connection must be taken into account in projecting hospital needs. It also seems proper to include needy wartime VA pension recipients.

Mr. SIMPSON. I am most pleased to have the Senator from Utah reaffirm his continuing concern about costs, planning, project justification, and priorities for VA medical construction. I know that he also shares my concern about the size of the Federal budget.

As I have said, I was concerned when I learned that the staff of the subcommittee which the Senator chairs—the Appropriations Subcommittee on HUD-Independent Agencies—was not able to incorporate in your bill the approach taken by the authorizing committee which emphasizes service-connected disabled veterans and veterans receiving VA pensions. The long-term result would have been a new approach toward construction planning by the VA. The exact formula used by the committee obviously can be modified. What cannot be modified is the policy-planning effort. I know that the Senator, too, would wish to have better planning by the VA. Your subcommittee has directed that the VA develop a new list of construction projects in a priority order by October 1, 1984. He certainly acknowledged and applauded the approach of the Veterans' Affairs Committee, and yet only advised the VA to "consider" the factors we recommended as the agency developed the basis for its new list.

We have heard reports that the VA intends to resubmit in the fall the list of projects proposed for construction in fiscal year 1985—the same list which you and I have seen. If there is not a new VA list proposed for October 1, 1984, which reflects the eligibilities emphasized by the Veterans' Affairs Committee, I will not be able to support reauthorizing or new authorizations of the recommended projects.

Let us take this opportunity—the Senator and I, together with the VA Administrator—to bring a clear priority-setting and planning process to the VA which will ensure that hospital construction will occur in locations and proportions that will be responsive to the needs of our Nation's deserving eligible veterans.

Mr. GARN. Let me emphatically state that the resubmission by the VA of the same list which has been before the Congress as part of the fiscal year 1985 budget request will be deemed to be in noncompliance with the actions and intent of the Appropriations Subcommittee on HUD-Independent Agencies. It would be disappointing to me if the VA missed this opportunity to demonstrate that it can and will respond in a positive and substantive manner to the important and crucial concerns raised by the authorizing and Appropriations Committee of the U.S. Senate.

Mr. SIMPSON. It is really the Senator from Utah who has led the way in exploring the problems that exist in the VA's construction program. Issues that he raised have been shown to be integral in developing a new VA approach for planning the size, site, and mission of VA medical centers; for justifying the projects and arraying them in some priority order of importance to the VA medical care system. I always find it an honor to work with a colleague such as the Senator from Utah whose dedication to the good stewardship of our Nation's resources is outstanding and whose dediciation to our Nation's veterans is exemplary. I look forward to working with him on these important topics.

VETERANS' ADMINISTRATION APPROPRIATIONS

Mr. CRANSTON. Mr. President, I would like to clarify two points with the distinguished chairman of the HUD-Independent Agencies Subcommittee [Mr. GARN]. The first relates to the 280 unearmarked FTEE out of the 500 FTEE that would be added to the medical care account by this appropriations measure.

Mr. GARN. Mr. President, I would be pleased to discuss the Appropriations Committee's views on those personnel positions.

Mr. CRANSTON. In its recommendations on the VA's fiscal year 1985 budget, the Veterans' Affairs Committee identified two major areas in the medical care account as in need of additional staffing: various mental health services, including readjustment counseling, and the unit dose pharmacy system. I note that the Appropriations Committee's report on this measure does specifically highlight the need for added staff for "psychological services" but does not specifically mention conversion to the unit dose in-patient pharmacy system.

Mr. GARN. Mr. President, the ranking minority member of the Veterans' Affairs Committee [Mr. CRANSTON] is correct on that point. As he knows, the wording in the committee's report regarding the remaining FTEE is that they are to be used "at the discretion of the VA in such high priority areas as gerontology and psychological services." Although the report does not highlight the importance of using these resources in support of conversion to the unit dose system, that would certainly be another example of such a high priority area.

Mr. CRANSTON. Mr. President, I appreciate the helpfulness of my colleague from Utah [Mr. GARN] on this point. I did want to clarify this, especially in light of the Veterans' Affairs Committee's finding that the unit dose system benefits VA health care on several levels. Specifically, our committee has found that the unit dose system has been shown to be beneficial to patients through reduced potential medication errors. It has also been shown to result in savings of nursing time, in reducing pharmacy inventory, in providing a cost-effective, cost-accounting system, and in reducing the opportunity for theft of drugs. Unfortunately, the VA is significantly behind in its schedule for conversion to the unit dose system. Thus, the Veterans' Affairs Committee recommended an increase of $7.8 million and 245 FTEE for the purpose of converting approximately 12 additional hospitals—7,000 more beds—to the unit dose dispensing system. This would have enabled the VA to complete conversion of an estimated 118 facilities—70 percent of the total VA facilities—by the end of fiscal year 1985, the level of conversion originally projected to have been completed by the end of fiscal year 1984. Of course, the 500 additional FTEE that would be provided for the medical care account by this measure fall short of the total of 1,162 additional FTEE recommended by the Veterans' Affairs Committee. The House's addition of 1,020 FTEE would more nearly accommodate our Committee's recommendations. In either case, the Veterans' Administration will have to weigh its priorities carefully in determining how to use these FTEE.

Mr. President, I appreciate the opportunity to clarify the purposes for which these FTEE may be used.

Mr. GARN. Mr. President, I am pleased to have provided this clarification for the record. I note that I am in favor of the VA's considering the unit dose system as one of its high priority areas in determining the distribution of the additional FTEE above the medical care budget request that the Appropriations Committee has provided.

Mr. CRANSTON. Mr. President, the second point I would like to clarify with the distinguished chairman of the HUD-Independent Agencies Subcommittee relates to the VA's construction program. In a departure from past practice, the Committee on Appropriations did not provide in its report on the pending measure a list of major construction projects that this bill would fund. Rather, on pages 96 through 98, in connection with $17.2 million of the total by which the committee reduced the administration's request for the VA's major construction account, the committee identified three projects for which it had deleted funding. On page 100 of its report, the committee, noting its dissatisfaction with VA methods for setting construction priorities, directed the VA to review and reconsider all construction projects and submit a revised list of such projects to the committee prior to October 1, 1984. The committee directed the VA, in conducting that review, to consider the factors that the Veterans' Affairs Committee used, such as the numbers of service-connected veterans treated, in developing its bed-sizing model. Your committee also stated its expectation that the VA will reexamine the scope of replacement/modernization projects. In addition, your committee strongly urged the VA to reexamine the hospitals which the VA recommended but which were deleted by the Office of Management and Budget in reviewing the agency's budget request.

With respect to this review and reconsideration of projects, which your committee expects to result in a revised list of projects to be submitted by the VA before October 1, I would like to clarify the status of the projects for which the committee has proposed the deletion of funding. One of these is the construction of two additional floors for the planned parking garage at the San Francisco VA Medical Center. In this regard, I note that the committee's report directed that "all" projects be reviewed and reconsidered by the VA. I presume then that those projects for which the committee had deleted funding—including these two floors of the planned parking garage should be included in this review and reexamination.

Mr. GARN. Mr. President, my colleague from California [Mr. CRANSTON] has raised a good point. Certainly in reassessing the priorities assigned various construction projects, it is our intent that the VA should perform a review that will consider and evaluate all projects. This review should include those projects that the Committee or OMB has deleted during the fiscal year 1985 and prior year budget cycle.

Mr. CRANSTON. As the Senator knows, I have followed developments regarding the garage for the San Francisco VAMC closely for years. I am convinced that a 4-story garage is very badly needed and strongly believe the top two floors should be constructed now as part of the project for building the garage itself. I believe that the HUD-Independent Agencies Subcommittee and the Appropriations Committee as a whole should reconsider their position regarding the top two stories, and I would like to have the opportunity of urging that view if the VA, after reconsideration, continues to propose the 4-story approach.

Mr. President, I thank the able chairman [Mr. GARN] for his assistance in clarifying these two points.

VETERANS' ADMINISTRATION FUNDING

Now, Mr. President, I would like to speak generally with regard to H.R. 5713, the Department of Housing and Urban Development-Independent Agencies Appropriations Bill, 1985, as it affects the Veterans' Administration.

As the ranking minority member of the Veterans' Affairs Committee, I have been following this measure, as it pertains to the Veterans' Administration, very closely. I want to thank the distinguished chairman of the Appropriations Subcommittee on HUD-Independent Agencies, the subcommittee's ranking minority member [Mr. HUDDLESTON], and other members of the subcommittee, as well as of the full committee, particularly the Senators from Arizona [Mr. DeConcini] and Pennsylvania [Mr. Specter] who also serve on the Veterans' Affairs Committee with me, for the consideration they have given to the recommendations of the Veterans' Affairs Committee in shaping this measure.

Mr. President, as the Senate has moved toward adopting a first concurrent resolution on the budget for fiscal year 1985 and shaping fiscal year 1985 appropriations measures, I have had serious concerns at certain points along the way as to whether sufficient funding of VA programs, particularly in the medical care area, would be provided. At one time, it appeared, under the freeze in nondefense discretionary spending assumed under the first concurrent resolution on the budget as reported from the Budget Committee—Senate Concurrent Resolution 106—and under the caps on nondefense discretionary spending proposed in the Baker amendment—amendment No. 3027—to H.R. 2163, the so-called boat safety bill, that VA medical and construction programs might incur severe reductions. Thus, Senator Huddleston and I, together with Senators Randolph, Matsunaga, DeConcini, and Baucus, had planned, during consideration of the boat safety bill, to offer an amendment to the Baker amendment. That planned amendment of ours would have increased the caps on nondefense discretionary appropriations in order specifically to provide for funding for the so-called discretionary accounts of the Veterans' Administration, primarily medical care and construction, at the level proposed in the President's budget and unanimously recommended by the Veterans' Affairs Committee in its fiscal year 1985 budget views and estimates on veterans' programs.

However, Senator Huddleston and I visited with Senator Garn to discuss his plans with respect to fiscal year 1985 appropriations for the VA, and received from him assurances that, within the overall levels that would be set by the appropriations caps and the budget resolution, the HUD-Independent Agencies Appropriations Subcommittee would have room to provide adequate funding for veterans' programs and assurance with respect to the VA funding levels he was then planning to propose during subcommittee markup of the appropriations bill. Based on those assurances, Senator Huddleston and I decided not to proceed with our amendment.

I am pleased to say that the measure now before us fully reflects those assurances, and I am most grateful that we were able to work with the distinguished chairman to resolve our concerns, and I thank him once more for his cooperation and follow through.

Mr. President, I would like to take this opportunity to highlight certain points in this measure that are of particular importance to veterans. With reference to the medical care account, I am pleased to note, as I indicated in my colloquy with Senator Garn, that this measure would add $20.8 million and 500 full-time equivalent employees—FTEE—to the administration's budget request. Of that number of additional FTEE's, the Appropriations Committee has, as I and the Veterans' Affairs Committee had strongly urged, earmarked 220 for the operation of the VA's Vet Center Program, which is the in-house and predominant part of the readjustment counseling program for Vietnam-era veterans.

Mr. President, the Veterans' Affairs Committee recommended in its views and estimates on the fiscal year 1985 budget for veterans programs that $35 million and 1,162 FTEE above the administration's request be added to the medical care account. The Veterans' Affairs Committee's recommended increase was to meet needs in two major areas: various mental health care services and conversion to the unit dose pharmacy system. Our committee recommended that these resources be distributed as follows:

First, add $19.4 million—450 FTE—for psychiatric treatment programs to improve the core staff-to-patient ratios in those facilities with core ratios below 1.9 to 1.

Second, add $5.8 million—180 FTEE—for treatment of posttraumatic stress disorder, a mental health problem that is being diagnosed in many Vietnam combat veterans.

Third, add $2 million—67 FTEE—to improve alcohol dependence treatment and/or create new psychiatric intensive treatment programs for veterans who require particularly intensive psychiatric care.

Fourth, add $7.8 million—245 FTEE—for the purpose of converting approximately 12 additional hospitals—7,000 more beds—to the unit dose dispensing system. This would enable the VA to complete conversion of an estimated 118 facilities by the end of fiscal year 1985, the level of conversion originally projected to have been completed by the end of fiscal year 1984.

Moreover, our committee recommended adding 220 FTEE and reprogramming $7.2 million of the fiscal year 1985 funds requested for support of readjustment counseling through contract and fee arrangements to the support of the in-house, or "Vet Center," readjustment counseling program. The Veterans' Affairs Committee was particularly concerned about the history of funds allocated for contract and fee arrangements under this program being reprogrammed to unrelated uses or lapsing and believes that funds appropriated for readjustment counseling services should be expended for those services. I am most pleased that the committee report on this appropriation measure reflects the committee's views on the need for these additional personnel.

Mr. President, in order to set forth in greater detail for my colleagues the recommendations of the Veterans' Affairs Committee, I ask unanimous consent that a May 7 letter from the chairman [Mr. Simpson] and me to the chairman and ranking minority member of the HUD-Independent Agencies Subcommittee be printed in the Record at the conclusion of my remarks.

Mr. President, although the appropriations bill as reported does not reflect in all respect these recommendations, I am satisfied that our views were given full consideration. I note that the House-passed measure added $40 million and 1,020 FTEE to the administration's request for the medical care account—$20.8 million and 520 FTEE more than the pending Senate bill would provide. For that reason, there is good reason to believe that the results in conference on the VA's medical care account will come closer to what the Senate Veterans' Affairs Committee has recommended. I surely urge that result.

Mr. President, I also greatly appreciate the serious attention given as well by the Appropriations Committee to the Senate Veterans' Affairs Committee recommendations on construction as set forth in the committee's May 27 construction resolution.

Mr. President, as many of my colleagues know, the HUD-Independent Agencies Subcommittee will soon be losing an extremely competent and diligent professional staff member, Wallace Berger. The Senator from Utah has already spoken at length about Wally's excellent work and how much he and other members of the subcommittee greatly regret Wally's departure. I regret it very much as well. I have deeply appreciated not just his mastery of the many issues that come before the subcommittee but also the courtesy and willingness to listen that he has extended over many years—as both a majority and minority staffer—to me and to the Veterans' Affairs Committee's staff. Wally Berger has gone out of his way to make himself accessible and has been open to discussion on numerous topics without regard to whether they may have involved controversy. The Senate is certainly losing a highly dedicated, skilled, and outstanding staff member, and I know that all of us want to wish him all the best in his future endeavors. Again, I thank him for his many courtesies and note his fine work and cooperation on this measure as well as the productive and astute contributions of subcommittee staff member Martin Reiss.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. Senate,
Committee on Veterans' Affairs,
Washington, DC, May 7, 1984.

Hon. Jake Garn, *Chairman,*
Hon. Walter D. Huddleston,
Ranking Minority Member,
Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

Dear Jake and Dee: As you prepare to mark up the FY 1985 HUD-Independent Agencies appropriation bill, we urge your favorable consideration of our Committee's recommendations, particularly those pertaining to the medical care account. Enclosed is a copy of our Committee's Budget Views and Estimates for FY 1985.

In light of the great need to restrain FY 1985 appropriations, our Committee originally identified total savings of $65.7 million to offset the cost of our recommendations for improving VA health-care programs. We recommended increases in health care of $35 million and 1,162 full-time employee equivalents (FTLE) and of $25 million for our proposed modifications of the GI bill cost-of-living adjustment. After careful review of new material provided by the VA subsequent to our budget hearing, the Committee determined that its recommended deletion of the entire requested increase for DM&S travel funds was too restrictive. Our revised recommendation reduces that increase by 50 percent. Hence, we now propose health-care decreases of $31.8 million to be combined with $31 million in pension savings to achieve a total savings of $62.8 million. The net effect of our recommendations is to produce $2.8 million in FY 1985 savings. A full justification of the proposed increases and reductions is included as an attachment to this letter.

Briefly, the recommended savings would be achieved by:

(1) Generally eliminating certain retroactive payments of VA pension, for a $31 million savings in FY '85.

(2) Deleting the proposed design fund appropriation for major construction projects, for a $20 million savings in FY '85.

(3) Delaying consideration of the request for a nursing home in Puerto Rico pending submission this spring of the VA's comprehensive plan for meeting veterans' health care needs in Puerto Rico, for a $9 million savings in FY '85.

(4) Reducing the increase proposed in the President's budget for expenditures in the medical care and MAMOE accounts for employee travel in the Department of Medicine and Surgery by 50 percent for a $2.8 million savings in FY '85.

The recommended increases and changes in the medical care account would be achieved by:

(1) Reprogramming $7.2 million in the medical care account requested for the Vietnam-era veterans' readjustment counseling program from the allocation for contract/fee arrangements to support staffing (adding 220 FTEE) for the readjustment counseling program.

(2) Adding $27.2 million (697 FTEE) to the VA's medical care account for mental health treatment programs, of which $19.4 million (450 FTEE) would be for psychiatric treatment programs, $5.8 million (180 FTEE) would be for inpatient treatment of PTSD, and $2 million (67 FTEE) would be allocated to alcohol dependence treatment programs or psychiatric intensive treatment programs.

(3) Adding $7.8 million (245 FTEE) to convert approximately 12 additional hospitals (7,000 beds) to the unit dose inpatient pharmacy dispensing system.

We appreciate your consideration of our Committee's recommendations. They were made after very careful deliberation, and in our view merit the support of your Subcommittee and the full Appropriations Committee. As we mentioned earlier, the cost of the recommendations would be more than offset by the proposed recurring savings that our Committee is recommending.

With warm regards,
Cordially,

Alan K. Simpson,
Chairman.
Alan Cranston,
Ranking Minority Member.

Justification for Appropriations Recommendations by the Senate Committee on Veterans' Affairs for VA Fiscal Year 1985 Health Care Programs

1. HEALTH PROGRAM REDUCTIONS

Construction Design Fund.—Delete the proposed design fund appropriation for major construction projects (FY 1985 savings: $20 million).

The Administration's request for the VA's major construction account includes $20 million to establish a "Design Fund", which would be used to expedite the progress of major projects by enabling working drawings to be prepared during the period between the completion of preliminary plans and the enactment of appropriations for the project.

In our view, this proposal is unnecessary in light of the enactment, in section 211 of Public Law 98-223, of authority for a $25 million FY 1984-85 pilot program to test this concept and the availability of, and specific authority to use for this purpose, that amount in the VA's major construction account's "working reserve." We believe that the results of the test should be analyzed prior to additional moneys being made available for implementation of this concept or making it permanent.

Puerto Rico Nursing Home.—Delay consideration of the request for a nursing home in Puerto Rico (FY 1985 savings: $9 million).

Despite repeated requests from our Committee and two statutory mandates to develop a comprehensive plan, the VA has not yet arrived at a settled, overall approach to the future of its health-care programs in Puerto Rico. The VA currently reports that its review and recommendations relating to those needs will be completed in spring 1984, in the context of its review of the FY 1986 MEDIPP proposals for Medical District 3, which includes Puerto Rico. Thus, we believe it would not be wise to proceed on a piecemeal basis with this one project—with no notion of the priority that the VA would attach to it in comparison with other possible projects or other funding needs, such as mental health services, in Puerto Rico.

DM&S Employee Travel.—Reduce by 50 percent ($2.8 million) the increase requested in the President's budget in the medical care and MAMOE accounts for expenditures for DM&S employee travel. We note that this amount of savings for FY 1985 is less than the amount—$5.7 million—the Committee recommended in the Views and Estimates submitted to the Budget Committee on March 16. The latter amount was based on freezing FY 1985 DM&S employee travel expenditures at the FY 1984 level. As noted in the Committee's Views and Estimates, the Committee was "deeply concerned" with the combined level of increases (over 38 percent) proposed for employee travel in the medical care and MAMOE accounts and recommended a freeze because, to that point, DM&S had "been unable to provide substantiation of its need for the increases sought."

Since that time, the VA has provided information to the Committee in order to attempt to justify the proposed increase. The Committee remains deeply concerned that the increases in funds for employee travel under both these accounts are widely disproportionate to other DM&S increases. However, based on our review of the agency's analysis, we are persuaded that a freeze in travel funds is not appropriate; instead, we are proposing a 50-percent reduction in the proposed increase for employee travel in both accounts (FY 1985 savings: $2.8 million—$1.96 million in medical care and $0.84 million in MAMOE). Because of the strong justification that the agency has put forward for the need for employee travel in connection with certain specific program areas or initiatives, we stress our intent that none of the proposed travel reductions be taken in the following areas: the postgraduate and inservice training program; readjustment counseling; strategic management initiatives (MEDIPP, resource realignment, and staffing guidelines); automated data processing; and the hospital-based-home-care program.

2. HEALTH PROGRAM INCREASES

Readjustment Counseling Program.—Reprogram $7.2 million in the medical care account requested for the Vietnam-era veterans readjustment counseling program from the allocation for contract/fee arrangements to support staffing (220 FTEE) for the in-house (Vet Center) readjustment counseling program.

Our Committee has cautioned the VA regarding the difficulty of exercising adequate control over the quality of the services provided under contract/fee arrangements and, therefore, we are generally sympathetic to the VA's not having used for contract/fee arrangements all the funds appropriated for that purpose in FY's 1981, 1982 and 1983. However, we strongly believe that funds appropriated for readjustment counseling services should be expended for those services and not be reprogrammed to unrelated uses or allowed to lapse. In addition, providing readjustment counseling services via the Vet Centers is generally cheaper than providing such services on a fee basis.

In this regard, we note that in order to meet the readjustment counseling needs of Vietnam-era veterans, there appears to be a demonstrated need to augment the staff at some existing Vet Centers which are experiencing heavy workloads and to substitute Vet Centers for fee-basis contractors in certain geographic areas. In terms of the numbers of new clients, total visits, and family visits, the program was the busiest in February 1984 that it has ever been. In the first five months of FY 1984, over 31,000 new clients have been counseled nationwide. Based on an analysis of existing workloads, 28 of the existing 135 Vet Centers and satellites are in need of additional staff.

Also, there appears to be a need for additional mental health professionals in the existing Vet Centers. We are concerned that the level of mental health services required by many clients is such that relatively brief and superficial supportive counseling, with referrals for more definitive treatment, is inadequate. The VA reports that 40 percent of Vet Center clients suffer from Post-Traumatic Stress Disorder (PTSD) to some degree; about 50 percent have a variety of readjustment problems in other areas; and about 10 percent are seen primarily for evaluation and referral. In testimony before the House Subcommittee on Hospitals and Health Care, the VA's Chief Medical Director, Dr. Donald Custis, reported that in view of the level of services needed, the VA's goal for the program is now to place a mental health professional in each Vet Center; currently, staff with such training are present in approximately 70 percent of the centers.

Over the past year, the VA has received requests (from Members of Congress, other public officials, veterans' organizations and others) regarding the location of Vet Centers in 45-50 different areas. The Committee understands that the VA is currently prioritizing these requests based on the size and nature of the Vietnam-era veteran population in the areas concerned, the distance to existing Vet Centers, and the current level of expenditures for fee-basis readjustment counseling in the areas to be served. We believe that the reprogramming we are recommending would, by substituting Vet Centers for fee-basis contractors in certain geographic areas, improve program accountability and quality of service.

In recommending the addition of 220 FTEE for the readjustment counseling program, however, the Committee also recommends that no more than 55 of the new hires be career personnel. This limitation reflects our concern that readjustment counseling funds should be used to ensure that a more highly trained staff becomes available but not in so permanent a fashion as to prejudice subsequent VA reports and recommendations and Congressional actions on the future of the program.

Add $27.2 million (697 FTEE) to the VA's medical care account for mental health treatment programs, as follows:

Psychiatric Core Staffing.—Add $19.4 million (450 FTEE) for psychiatric treatment programs. Although increases have been made in recent years in VA health-care staffing in other aspects of the DM&S system, some significant deficiencies continue to exist in the VA's staffing of psychiatric treatment programs. There are 24 VA psychiatric facilities with core staff to patient ratios below 1.9 to 1, 18 of which have core ratios below 1.5 to 1. A list of these 24 psychiatric facilities and their core ratios is set forth as an appendix to this Attachment. To address this staffing problem, the Committee recommends substantial increases in the core staffing for VA psychiatric facilities.

PTSD Treatment Programs.—Add $5.8 million (180 FTEE) for treatment of PTSD, a mental health problem that is being diagnosed in many Vietnam combat veterans. As noted above, for example, 40 percent of Vet Center clients are reported to be suffering some form of PTSD. Based on the size of the Vet Center clientele over the past four and a half years, the VA would have seen an average of 20,700 PTSD cases per year over that period.

The VA has made some efforts to date to deal with PTSD, including the establishment of ten inpatient treatment units as well as other programs. However, we believe that these efforts, which have been initiated and supported by local VA facilities, are not sufficiently well-staffed or dispersed to meet the existing need for services. We note that in FY 1983, there were 4,000 veterans—up from 1,269 in FY 1982—discharged from VA medical centers with diagnoses of PTSD. We are concerned that the vast majority of these patients were not able to receive treatment in the existing limited number of PTSD units. Given the length of stay (roughly 100 days) in these treatment programs, the 273 beds in existing PTSD units could provide capacity for treating only approximately 1,000 veterans a year. Given the current documented demand for services, the additional PTSD treatment resources recommended by the Committee would help address these needs and should enhance the VA's capacity to provide timely assistance to veterans suffering from this disorder.

Alcohol Abuse/Intensive Psychiatric Care Program.—Add $2 million (67 FTEE) to improve alcohol dependence treatment and/or create new psychiatric intensive treatment programs for veterans who require particularly intensive psychiatric care.

According to the VA's "1980 Supplement to Alcoholism and Problem Drinking 1970-1975", one out of four of the patients in the 1980 VA patient census was classified as an alcoholic or problem drinker—defined as a patient with an illness whose current treatment or prognosis is complicated by drinking. Testimony received at the Committee health care hearing on April 11, 1984, on the VA's efforts to provide alcoholism treatment stressed the importance of individualized treatment plans and follow-up care to effective alcohol treatment efforts. We expect that the additional resources we are recommending could help the VA to improve its alcohol treatment efforts at its 102 specialized alcohol treatment programs, especially with regard to the targeting of treatment efforts to the needs of individual veterans and the provision of follow-up services, as well as to make alcoholism treatment more widely available.

The psychiatric intensive treatment programs would give the VA enhanced ability to provide specialized care to veterans with particular needs, such as those with a history of assaultive or suicidal behavior. Approximately 3 VA medical centers would be likely candidates for such new programs.

In summary, the Committee's recommendation of a total overall increase of $27.2 million (697 FTEE) for mental health services reflects our Committee's strong belief that DM&S needs a significant infusion of these resources now in order to bring about necessary improvements in core staffing of VA psychiatric facilities and in PTSD, alcohol abuse, and intensive psychiatric treatment programs.

Unit Dose Conversion.—Add $7.8 million (245 FTEE) for the purpose of converting approximately 12 additional hospitals (7,000 beds) to the unit dose inpatient pharmacy dispensing system in order to enable the VA to reach the level of conversion originally projected to be achieved in FY 1984.

When the budget for FY 1984 was submitted, it was the VA's stated intention to convert an additional 12,342 beds to the unit dose system during FY 1984. This would have resulted in an estimated total of 118 facilities being converted by the end of that year. However, as was noted in our Committee's Budget Views and Estimates for FY 1984 (S. Prt. 98-44, pages 20-21), the resources included in the Administration's budget for FY 1984—and ultimately provided in the FY 1984 appropriations measure—are sufficient for the conversion of only 5,500 beds. No additional unit-dose-conversion funding was requested by the Administration for FY 1985. By providing funding for the conversion of 7,000 beds, as we recommend, the Congress would simply be enabling the VA to complete, with no more than a one-year delay, its own FY 1984 conversion plan.

The unit dose system has been shown to be beneficial to patients through reduced medication errors and beneficial to management efficiency through reduced nursing time, pharmacy inventory efforts, and drug theft opportunites. Both the General Accounting Office and the Office of Management and Budget have urged continued implementation of the unit dose system.

VA psychiatric facilities with core staff to patient ratios of less than 1.9:1

Facility:	*Core ratio 1982*
American Lake, WA	1.45
Battle Creek, MI	1.22
Bedford, MA	1.18
Brentwood, CA	1.57
Brockton, MA	1.10
Canandaigua, NY	1.33
Chillicothe, OH	1.65
Coatesville, PA	1.49
Ft. Lyon, NJ	1.64
Ft. Meade, SD	1.37
Knoxville, TN	1.78
Lyons, NJ	1.47
Marion, IN	1.49
Montrose, NY	1.17
Murfreesboro, TN	1.90
Northampton, MA	1.29
Perry Point, MD	1.34
Pittsburgh, (HD), PA	1.28
Salisbury, NC	1.21
Sheridan, WY	1.42
St. Cloud, MN	1.21
Tomah, WI	1.23
Tuscaloosa, AL	1.48
Waco, TX	1.35

Mr. HEINZ. Mr. President, I regret having to rise today to question on the floor of the Senate actions of the current leadership of the U.S. Department of Housing and Urban Development [HUD] with respect to public housing. Unfortunately, it appears as though the administration is not upholding an agreement it made with congressional leadership last November during passage of the Housing and Urban-Rural Recovery Act of 1983 [Public Law 98-181]. That agreement, articulated in a memorandum from the Director of OMB, David Stockman, said, in effect, that "the administration would not make any fundamental changes in the public housing operating subsidy or modernization programs in 1984."

I am sure the chairman will recall that memorandum sent to him and his counterpart in the House, Congressman ST GERMAIN, on November 16, 1983. The Senator may also recall the colloquy we engaged in to clarify for concerned Members of the Senate the assurances we felt we had from the administration. I ask unanimous consent that a copy of the Stockman memorandum be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

Executive Office of the President, Office of Management and Budget,
Washington, DC, November 16, 1983.

Hon. Jake Garn,
Chairman, Banking, Housing, and Urban Affairs Committee, U.S. Senate, Washington, DC.

Dear Mr. Chairman: This letter is intended to clarify the Administration's position concerning fundamental structural program reforms for the Public Housing Operating Subsidy and Modernization Programs in 1984 and 1985.

As you know, the Department of Housing and Urban Development has developed, through published regulations and other administrative procedures, a complex, technical system for allocating operating subsidies and modernization funds among more than 2,600 local public housing authorities. The Department will administer these programs in 1984 with the funding provided in the HUD-independent agencies Appropriations Act of 1984 (P.L. 98-45) pursuant to regulations and policies in effect as of November 15, 1983, except prescient to the pending authorization bill. The Administration has agreed that it would seek authorizing legislation for any fundamental changes or structural program reforms it might wish to make for these programs in 1985.

I hope these clarifications will remove any concerns Members of Congress may have concerning the Administration's position on this matter.

Sincerely,

David A. Stockman,
Director.

(Identical letter sent to the Honorable Fernand St Germain, chairman, Banking, Finance and Urban Affairs Committee.)

Mr. HEINZ. Mr. President, I draw my colleagues' attention again to two sentences in the second paragraph of that memo that say:

> The Department (HUD) will administer these programs in 1984 * * * pursuant to regulations and policies in effect as of November 15, 1983 * * * The Administration has agreed that it would seek authorizing legislation for any fundamental changes or structural reforms it might wish to make for these programs in 1985.

Mr. President, I am told that HUD is pushing a fundamental regulatory change in the way operating subsidies are calculated for vacant units in public housing. The complicated change also involves the modernization program. HUD is pursuing these changes despite expressions of concern from congressional staff members and others. In other words, the administration is on notice that it appears to be ignoring the assurances it made to Members of Congress just 8 months ago. Yet, HUD continues to pursue this change.

This, the first of what may be a series of regulatory changes inconsistent with the Stockman agreement, is contained in a proposed rule, published May 31, 1984, in the Federal Register, entitled "Annual Contributions for Operating Subsidy—Performance Funding System; Determination of Operating Subsidy." This regulation will make major changes in the calculation of operating subsidies and the administration of the modernization program with respect to vacant units in public housing.

Mr. President, I am not saying that I necessarily object to the administration's stated purpose in promulgating this regulation. Indeed, it certainly makes sense to reduce the excessive number of vacant public housing units being subsidized by the American taxpayer. Public housing management, itself, recognizes that this is a legitimate problem and is willing to work with HUD and Congress on a solution. And I do appreciate the efforts Assistant Secretary Lindquist and others from HUD have made to explain HUD's intentions on the Hill. However, I am not satisfied that HUD's proposal, in its current form, is substantially acceptable. A combination of reduced operating subsidies for vacant units and inadequate or nonexistent modernization funds would lead to the inevitable deterioration of vacant but repairable public housing stock. This is low-income rental housing that we need and are not going to be replacing in the near future.

I am concerned about the effect these changes could have on public housing authorities in my home State of Pennsylvania and across the country. Although HUD has been able to simulate the national impact of the changes, it has no specific data on the effects on individual authorities.

Worse, Mr. President, I am frankly disturbed that the administration is ignoring the explicit assurances it gave in writing to the distinguished chairman of the Senate and House Banking Committees. I can only guess that the administration is assuming that Members of Congress do not care enough about public housing to object. I ask my friend, the distinguished Senator from Utah, whether HUD has given him any explanation.

Mr. GARN. Mr. President, I thank the distinguished Senator from Pennsylvania for expressing his concern. I, too, am concerned. That is why I requested those assurances in writing and that is why I join the Senator in questioning the administration's actions. I will write to Mr. Stockman requesting an explanation. Let me point out, however, that the regulations that HUD is working on attempt to address some serious problems that currently exist in the management of our public housing projects.

Mr. HEINZ. Mr. President, I thank and congratulate Senator Garn for his actions. I agree with him that there are management problems in public housing. We do need to address them, but we should do so in a comprehensive fashion through appropriate legislative means. I would ask one further question of the chairman. Would he consider including language in the conference report to this bill if the administration continues to pursue these changes?

Mr. GARN. Mr. President, in response to the question of my friend from Pennsylvania, yes, I will consider working with my counterpart in the House to agree upon language instructing HUD to continue to work on these serious issues, but to refrain from making fundamental changes in the public housing operating subsidy and modernization programs in 1984 without seeking the approval of the authorizing committees or enacting enabling legislation.

Mr. HEINZ. Mr. President, I thank the distinguished chairman.

Mr. METZENBAUM. Mr. President, as the Senate considers H.R. 5713, the HUD-independent agencies appropriations bill for fiscal year 1985, I would like to call attention to the important pesticide research being conducted by the water quality laboratory at Heidelberg College in Tiffin, OH.

The Tiffin Laboratory is conducting important, breakthrough research on the occurrence of agricultural pesticides in rivers and public water supplies.

The laboratory has compiled extensive data on phosphorus, nitrate, and pesticide concentrations in the Lake Erie basin. Such information can go a long way in helping to develop sound national programs to curb the pollution problems associated with agricultural land use.

The Environmental Protection Agency's Great Lakes National Program Office provides the funds which underwrite much of the work being done by this nonprofit laboratory. I understand that both the House and Senate Appropriations Committees have increased the Great Lakes National Program Office's research and development budget by $3 million over the administration's initial request of $1.7 million.

I urge EPA to use this money wisely and continue to support the important pesticide research being conducted at the Water Quality Laboratory in Tiffin, OH.

I ask unanimous consent that correspondence I received about this issue from both the National Audubon Society and Mr. David Baker, director of the Tiffin Water Quality Laboratory, be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

National Audubon Society,
Washington, DC, June 19, 1984.

Hon. Howard M. Metzenbaum,
Russell Senate Office Building,
U.S. Senate, Washington, DC.

Dear Senator Metzenbaum: As the Senate considers H.R. 5713, the HUD-Independent Agencies appropriations Bill for FY 1985, the National Audubon Society would like to call your attention to research being conducted by a water quality laboratory in your district. The laboratory, at Tiffin, Ohio has been monitoring and analyzing pesticides applied to watersheds in the Lake Erie Basin for the last three successive years. High concentrations of pesticides occurred in areas of pesticide application in 1981, 1982, and 1983, which passed through municipal water supplies to tap water.

Of 17 pesticides tested, 14 were detected in surface water runoff. Five of the 17 tested have turned up in tap water in Ohio. Thirteen additional pesticides have not been monitored for detectable residues, and therefore their presence or absence in municipal water supplies is unknown at this time.

The monitoring of northwestern Ohio rivers draining into Lake Erie has been monitored for ten years for phosphorus loading. Conservation tillage has succeeded in reducing the phosphorus load. Unfortunately, excessive phosphorus loading is not the only pollution problem associated with intensive agricultural land use in that area. Excessive nitrate concentrations and pesticides occur in May through July.

As such problems are identified, public agencies need to develop removal technologies or restrict the use of such fertilizers and pesticides in a way to protect municipal water supplies.

The Great Lakes program was given an additional $1,500,000 to study the fate and effects of dioxin and other toxicants. This is an appropriate study for dramatically dangerous substances. Congress should also address prospective studies that will prevent future problems, such as work being done at the Water Quality Laboratory at Tiffin, Ohio. Audubon urges you to support the work being conducted at that laboratory, work that is truly at the cutting edge of scientific studies on the fate and environmental transport of pesticides to water.

Sincerely yours,

MAUREEN K. HINKLE,
Coordinator, Agriculture Policy.

NATIONAL AUDUBON SOCIETY,
Washington, DC, June 5, 1984.

Hon. WILLIAM D. RUCKELSHAUS,
Administrator, U.S. Environmental Protection Agency, Washington, DC.

DEAR MR. RUCKELSHAUS: The May 30, 1984 issue of Pesticide and Toxic Chemical News reports that cancellation of alachlor is being considered. The trade journal reports a finding of 1 ppb in tap water in Ohio, and 16.6 ppb in groundwater in northeast Iowa, with an implication that chronic exposure to the carcinogenic risk of alachlor, previously established at 1 x 10, would be increased for an enlarged population if such residues persist in drinking water.

EPA attention to alachlor and simazine (groundwater label restrictions) is timely. However, there are a dozen other pesticides, including herbicides, that have been detected in a northwestern Ohio agricultural watershed from which drinking water is drawn. High levels of pesticides have been found in tap water which correlate to levels in rivers serving as sources for raw water.

Nitrate levels in Iowa reached such levels in May of this year that two state agencies, the Iowa Department of Water, Air and Water Management and the Health Commissioner debated over whether or not the consistenly high levels of nitrate was dangerous to babies. Thirty of 45 Iowa communities had "violators" category of higher than 45 milligrams of nitrate. Some wells were over 100 milligrams. These levels were detected in 1981, 1982 and 1983. (The Des Moines Register, May 16, 17 and 25, 1984)

Human exposure to currently used (and untested) herbicides and other pesticides, as well as nitrates, through drinking water is much greater than exposure to chlorinated hydrocarbons through drinking water ever was. Yet, the small amount of routine pesticide monitoring that is done on tap water is routinely restricted to chlorinating hydrocarbons, such as DDT (banned in 1972), lindane, endrin, methoxychlor, chlordane and toxaphene. Of currently used herbicides, only 2,4-D is normally included in drinking water analyses.

It was previously held that most herbicides were low in mammalian toxicity, were not persistent, and broke down rapidly under sunlight. As in the case of other pesticides that were believed to break down in the environment, herbicides have not systematically been monitored for, and chronic human exposure was not anticipated. The finding of herbicides in drinking water reverses this assumption.

The persistence of herbicides in tap water also indicates that a new set of studies are required before uses are expanded as dramatically as projected.

The Soil Conservation Service is promoting conservation tillage on 95 to 100 percent of croplands by the year 2000. The area where herbicides were found in tap water has been targeted for major governmentally sponsored programs to accelerate farmer adoption of various forms of conservation tillage. The U.S. Army Corps of Engineers proposes enlarged conservation tillage programs for the same Ohio northwest region in order to reduce phosphorus loads to Lake Erie. EPA's Lake Erie Conservation Tillage Demonstration Program, the largest program of its kind in the United States, involving 33 counties, is also promoting conservation tillage.

Conservation tillage involves the substitute of herbicides to control weeds in place of crop rotations and use of plow rotations. In addition, a mulch is employed to cover the bare earth, to reduce runoff of sediment and nutrients and pesticides. If agricultural chemicals are water soluble, they enter the drainage system through the soil if not in runoff, and thereby enter surface and ground waters.

In the face of such heavy federal efforts to reduce transport of sediment and associated pollutants to rivers, some part of the federal government should be aware of, and pay needed attention to, the potential increase in concentrations of soluble herbicides and nitrates.

Pointing out the need and importance of information on these pesticides detected in such water is the statement by R.D. Wauchope in 1978:

> . . . Where information is most needed is on the fate of a pesticide load after it leaves the edge of a field . . . The dynamics of dilution and sediment exchange, and the uptake, transfer, and metabolism by aquatic life of most of the pesticides presently in use are not known. Without this knowledge, the impact of a given pesticide input on the quality of water in a river or lake cannot be predicted . . . In summary, what we have at present is a fair ability to estimate edge-of-field inputs to water systems, *combined with near complete ignorance of what those inputs mean.* (emphasis supplied)

This lack of data exists today, as the unexpected has happened. If these pesticides are not unsafe, or if filters can remove them, *we do need to know.* We can no longer knowingly remain in the dark.

EXPANDED AND EXPEDITED DATA CALL-IN

Section 3(c)(2)(E) of FIFRA gives the Administrator the discretion to require additional data on existing registrations. This provision was intended to permit the Administrator to require data that was not considered necessary either when the registration was first requested, or after a registration was approved and evidence came to light indicating the need for such additional information.

Data should be required immediately on all herbicides and other pesticides that have been found in tap water, and after monitoring for other pesticides used in such watersheds, if residues are detected, an expedited data call-in should be initiated accordingly. Table 3 of enclosure (a) lists several pesticides used in the Lake Erie Basin that were not included for monitoring, but should be.

The data call-in should include chronic effects (carcinogenicity, mutagenicity, teratogenicity, reproductive effects, neurotoxic effects), aquatic effects (acute, subacute and chronic); and a screening for those that meet any of the above adverse effects for synergistic effects with the spectrum of currently-used compounds and nitrates in the same watershed.

For some pesticides, the formulated product may need to be tested. In the latter category are those pesticides that contain epichlorohydrin, and those that nitrosate. The chemical nature of other materials used in formulation, such as solvent, emulsifying agent, and surfactant, drastically affect the interaction between the pesticide and the constituents of the soil system. It may in fact be the components of the formulation, other than the active ingredient, that enhances the persistence of the active ingredient, and affects the behavior of the pesticide in soil and water.

Table 2 of enclosure (a) indicates the 15 pesticides and two degradates that have been tested for in tap water. Fourteen need to be tested in the above listed studies because of detectable residues.

MONITORING OF WATERSHEDS

Monitoring for those pesticides applied to watersheds from which drinking water is taken should be initiated immediately. Without looking for what is being applied, there is no way of determining whether or not the pesticide(s) is surviving into drinking water. The possibility of pesticide contamination of drinking water and groundwater wells, an unfortunate reality, is so serious that EPA needs an immediate study. EPA needs to determine where pesticides are being used, in what quantities, what application rates, and by what application methods. In addition, monitoring of those pesticides applied to watersheds must be monitored in soil, surface water, groundwater, and municipal water supplies and wells.

ALTERNATE APPROACHES

At the same time as monitoring of substances and conduct of chronic and environmental studies, EPA should undertake alternative approaches to avoid unnecessary contamination of drinking water. Label restrictions for simazine on certain soils is being discussed. Charcoal filters and other devices should be evaluated. In regard to nonpoint source reduction, more attention needs to be paid to crop rotations, organic agriculture, filter strips of permanent grass, forbs and shrubs, sediment traps, grass waterways, reforestation, living residue management, hedgerows, windbreaks, and perhaps even mandatory land retirement of edge of field plots.

Obviously many of the alternative approaches are beyond EPA's purview. A crash program by EPA to look at what pesticides are entering water supplies and a test program to try to understand what these chemicals in water may mean, will force alternative approaches to nonpoint source pollution that are not now being considered.

CONCLUSION

The integrity of our drinking water requires a regulatory response, for we need to understand better the nature of these chemicals entering surface and groundwater. Nonchemical ways to reduce nonpoint source pollution can and should be encouraged today.

To the extent that the information in this letter is not included in your Groundwater Strategy, it should be included. The National Audubon Society would appreciate the opportunity to work with EPA to address this problem.

Sincerely yours,

Maureen K. Hinkle,
Coordinator, Agriculture Policy.

TABLE 2.—PESTICIDES INCLUDED IN THE SURVEY [1]

	Parts per billion [2]
Herbicides:	
Atrazine—Aatrex	49
Deisopropylatrazine (DIA)	—
Deethylatrazine (DEA)	—
Simazine—Princep	11
Metribuzin—Sencor, Lexone	8.2
Cyanazine—Bladex	—
Metolachlor—Dual	91
Alachlor—Lasso	70
Trifluralin—Treflan	0.321
Linuron—Lorox, Linurex	—
Butylate—Sutan	0.25
EPTC—Eradicane, Eptam	2.8
Penoxalin—Prowl	—
Insecticides:	
Chlorpyrifos—Lorsban	4.41
Ethoprop—Mocap	1.11
Fonofos—Dyfonate	0.211
Terbufos—Counter	0.161
Phorate—Thimet	0.022
Diazinon	0.083

[1] The common chemical name of the pesticide is followed by a common trade name of the pesticide.

[2] Highest concentrations found in 1982 water year.

TABLE 3.—SOME COMMONLY USED PESTICIDES IN THE LAKE ERIE BASIN THAT ARE NOT INCLUDED IN THE SURVEY [1]

Chemical name	Trade name
Herbicides:	
2,4D.	2,4 DB
Paraquat	Paraquat
Glyphosate	Roundup
Bifenox	Modown
Acifluoren	Blazer
Chloramben	Amiben
Dicamba	Banvel
Bentazon	Basagran
Oryzalin	Surflan
Insecticides:	
Carbofuran	Furadan
BHC	Isotox
Carbaryl	Sevin
Toxaphene	

[1] The common chemical name of the pesticide is followed by a common trade name of the pesticide.

Source: Studies of Sediment, Nutrient and Pesticide Loading in Selected Lake Erie and Lake Ontario Tributaries by David B. Baker, July 1, 1983.

Heidelberg College,
Water Quality Laboratory,
Tiffin, OH, June 19, 1984.
Hon. Howard M. Metzenbaum,
U.S. Senator, Russell Senate Office Building, Washington, DC.

Dear Senator Metzenbaum: As the budget for the Environmental Protection Agency is considered in the Senate, I hope that you will support an increase in funding for the Great Lakes National Program Office. This office supports many of the research and monitoring activities undertaken in response to the Great Lakes Water Quality Agreement of 1978 and to various task force reports of the International Joint Commission. The recently signed phosphorus load reduction supplement to Annex 3 of the 1978 Agreement specifically calls for improved measurements of tributary loadings to the Lower Lakes and for surveillance and monitoring to determine the progress of Phosphorus Load Reduction Plans.

In the Lake Erie Basin, Phosphorus Load Reduction Plans are currently being developed by individual states. In large measure, they are focusing on programs to accelerate adoption of conservation tillage, as recommended in the U.S. Army Corps of Engineers' Lake Erie Wastewater Management Study. While conservation tillage should economically reduce phosphorus loading to the lake, it could increase nitrate and pesticide concentrations, which already constitute significant problems in area rivers and public water supplies.

The extensive and unique background data sets on phosphorus, nitrate and pesticide concentrations in Lake Erie tributaries make this region an ideal location to evaluate water quality tradeoffs that may accompany widespread adoption of conservation tillage technology. It is essential that our nation's agricultural production systems develop in ways which not only sustain long-term soil productivity but also reduce adverse impacts of agriculture on water quality. The Lake Erie Basin programs, as supported by the Great Lakes National Program Office of the EPA, can play a lead role in the development and assessment of agricultural nonpoint source pollution control programs. I urge your support for an increase in funding for the Great Lakes National Program Office so that the work on reconciling agricultural production and water quality interests in the Lake Erie Basin can proceed.

Sincerely,

David B. Baker, Ph.D.,
Director.

Mr. RIEGLE. Mr. President, I want to briefly comment on the bill that is now before the Senate the HUD-Independent Agencies Appropriations Act for fiscal year 1985 (H.R. 5713). This bill includes several provisions that have real merit. It would provide for the construction of 14,000 elderly units which are sorely needed in many communities. It would provide $1.9 billion to modernize thousands of units of our older publicly owned low-income housing. It, therefore, continues a congressional commitment to conserve the substantial public investment that has been made in housing for low- and moderate-income Americans.

The funding in this bill, unfortunately, falls far short of adequately addressing the most pressing housing needs of our communities. The bill does not reverse the Reagan administration policy which has slashed Federal support for housing and community development more deeply than for any other Federal activity. If the funding levels in this bill are enacted, total Federal spending for housing assistance will, nevertheless, fall 75 percent in real terms below the fiscal year 1980 level. Community development block grant funding will be 32 percent less in real terms, and funding for the vital UDAG program will be, in real terms, more than 50 percent below the level of fiscal year 1980. These drastic cuts in housing will have been made at the same time that the total Federal budget has risen by 53 percent.

Mr. President, I do not intend to offer an amendment to this bill; however, I do want to express my deep concern over one important change in policy which is contained in it. This bill would drastically reduce the term of the contracts which the Federal Government offers local communities in order to provide housing assistance to lower income families. Up to now, Congress had appropriated funds sufficient to provide housing assistance under contracts for 15 years. This assurance of funding over 15 years has enabled local communities to manage their programs more efficiently, and provided a measure of security for low-income families.

The bill before us would dramatically change present policy. Only one family in five assisted would be under a 15-year contract. The other four families would be funded for a term of only 5 years. The bill would make this change, first, by increasing the administration's demonstration voucher program to 38,500 units from the fiscal year 1984 level of 15,000. And, second, by creating a new backdoor voucher program by providing only 5 years of funding for 38,500 section 8 existing housing certificates.

Proposals to shorten the commitment term for housing assistance have been made by the administration over the last several years. There has been little discussion of how such a change would affect lower income families. Local officials, who most understand the operation of housing programs, report that the policy change would be harmful. They indicate that it will, first, bring about a sharp reduction in the number of low-income families receiving housing assistance—unless Congress sharply increases appropriations in future years. Some administration officials have claimed that it would provide housing assistance to more families at a lower level of budget authority. This appears to be true only if you take a very short-term view. By definition, budget authority reflects the number of years over which a commitment is made. Accordingly, under the budget accounting system, a 5-year commitment shows only one-third the budget of the 15-year commitment.

But everyone knows there is no free lunch. Five years from now, new budget authority will be required simply to replace the expiring contracts. And, if Congress does not provide sharply increased levels of appropriations, the number of people actually receiving assistance will begin to decline within 5 years, and almost 1 million fewer families will be receiving housing assistance by the end of the next decade. This will happen at the same time that the cost of decent housing, according to industry projections, will be rising much faster than the incomes of our neediest families.

Second, this policy change may have an even more striking impact at the local level. According to a recent report by the U.S. Conference of Mayors, low-income families typically must wait 20 months to receive housing assistance. It is not unreasonable to expect that these families, which include large numbers of elderly and female-headed families, will continue to need housing aid.

It is likely, therefore, that when Federal housing assistance contracts expire at the end of 5 years, a local housing authority will have to use new contracts, simply, to continue assistance to those already receiving it.

The policy change in this bill could, within a few years, force many local communities to discontinue offering housing assistance to needy families who have not already been participating in the program. This action could have drastic implications that have not been debated, or even adequately considered, by the Congress.

Third, the policy change could needlessly complicate the administration of housing programs at the local level. Local housing authorities have reported that the process of entering into a new contract with HUD is fraught with many administrative difficulties and delays. Moreover, when a family relinquishes its certificate during the last 12 months of a contract with the local agency the remaining assistance often cannot be used to help another family, because HUD regulations prohibit lease agreements for less than 1 year. Shifting from a 15-year contract term to a 5-year term is very likely to increase administrative confusion and difficulty at the local level. Rather than do this, I believe we should work instead to make the program administration more stable and more efficient.

For these reasons, Mr. President, I believe that Congress should be very wary of the policy change proposed here and should monitor its impact at the local level very carefully.

I ask unanimous consent to have a letter from 21 national organizations concerned about the administration's backdoor voucher policy printed in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

National Low-Income
Housing Coalition,
Washington, DC, June 20, 1984.

To all Members of the U.S. Senate:

The undersigned organizations are all committed to support of adequate housing programs for low income people as a major priority.

We are deeply concerned that H.R. 5713, the HUD Independent Agencies Appropriation appropriates funds for what is, in effect, a new housing program which is half way between the present Section 8 Existing program and the Administration's voucher proposal. H.R. 5713 appropriates $1.4 billion for 20,000 incremental units under the regular Section 8 Existing program; it also appropriates $815 million for 35,000 "backdoor vouchers"—Section 8 Existing with a five-year, rather than fifteen-year contract term. In addition, it appropriates $655 million for a second year voucher demonstration, for an estimated 38,500 vouchers.

This "backdoor voucher" program is being included in the HUD appropriation without any opportunity for hearing, or even for informal review and comment by groups concerned with low income housing. There are serious issues raised by the proposal which merit more careful consideration than is possible by its sudden inclusion in an appropriation bill.

Two years ago, President Reagan's Commission on housing estimated that only one quarter of the ten million very low income households in this nation were living in subsidized housing. Almost all the rest were either in seriously substandard housing or were paying more than they could afford, or both. After half a century of providing housing assistance, we are far short of meeting the need. In part, this is because the provision of low income housing involves long-term financial commitments. The need for some assurance that the required subsidies will be available for a significant period of time underlies the nature of our housing assistance programs (and contributes to their high apparent cost, since the full budget authority over the life of the contract is included in the initial appropriation).

Our organizations are already on record as favoring increased funding for low income housing programs. We have also diligently sought better ways of providing housing for low income people—more responsive and at less cost. But we cannot support the backdoor voucher proposal. Instead, we urge the Senate to provide as much funding as possible for regular Section 8 Existing programs, and to reject this proposal.

American Association of Homes for the Aging.
American Association of Retired Persons.
American Institute of Architects.
American Planning Association.
Building and Construction Trades Department, AFL-CIO.
Center on Budget and Policy Priorities.
Center for Community Change.
Community Services Society of New York.
Council on Rural Housing and Development.
Council of State Housing Agencies.
McAuley Institute.
National Association of Counties.
National Association of Housing and Redevelopment Officials.
National Conference of Catholic Charities.
National Farmers Union.
National League of Cities.
National Leased Housing Association.
National Low Income Housing Coalition.
National Multi-Family Housing Council.
National Urban League.
U.S. Conference of Mayors.

Mr. HUDDLESTON. The Environmental Programs Assistance Act, S. 518, became law on June 12. It will convert the senior environmental employment [SEE] demonstration project into a permanent, ongoing national program. The Environmental Protection Agency [EPA] has administered this demonstration project since September 1976 in cooperation with the Administration on Aging and the Department of Labor. The SEE project currently employs about 2,000 persons 55 or older in a wide range of environmental activities in practically every State. The program has strong bipartisan backing and is enthusiastically supported by the administration.

For example, EPA Administrator William Ruckelshaus said in a recent letter to the Environment and Public Works Committee,

> There are few opportunities when an Agency head can express virtually unqualified support for pending legislation. I am pleased to be able to do so now in the case of S. 518 and urge that it be enacted in the 98th Congress.

My question to the distinguished floor manager of this bill is: How will the SEE program be funded and at what level?

Mr. GARN. As my good friend knows, the HUD-Independent Agencies appropriations bill, as approved by the Senate Appropriations Committee, provides $87.2 million more for EPA than requested in the fiscal year 1985 budget estimate. The bill would appropriate $4,380,454,000 for EPA. The budget request calls for $4,293,254,000. The bulk of this increase—approximately three-fourths—$66.2 million—is for abatement, control and compliance activities.

We have been informed by EPA officials that EPA plans to use about $3 million of the agency's fiscal year 1985 funds for the SEE program. In addition, the Senate committee has added $1 million for asbestos enforcement. These funds would be used for the SEE program. We would encourage EPA to find additional meaningful employment opportunities for older Americans when such employment advances the agency's mission in a cost effective manner. EPA should consider hiring older Americans to perform essential and useful pollution abatement and control activities, such as asbestos testing, conducting and inventory of buried gasoline tanks to determine whether they are rusting out and are contamination the ground water, monitoring of the removal of pollution control devices for cars, and many others.

Mr. HUDDLESTON. I am delighted that this effective program will be pursued by EPA. I also want to commend the floor manager of this bill for his support of SEE and his leadership in launching this jobs program which can improve our environment.

Mr. GARN. I thank my good friend from Kentucky and express my sincere appreciation for his efforts on behalf of SEE. His record in this area is well known and appreciated. I wish to reaffirm my support for SEE and EPA's decision to launch this program within existing EPA funds.

Mr. ABDNOR. Mr. President, the House report on H.R. 5713 (H. Rept. 98-803) is critical of the manner in which the Environmental Protection Agency is addressing the issue of asbestos. Based on selected data collected in Canada and Great Britain, the report states:

> Many researchers believe that "white" asbestos, which comprises 95 percent of all uses in this country, presents far less risk than the other types.

In contrast, the Senator report (S. Rept. 98-506) strongly endorses EPA's efforts and points out that other studies refute the assertions contained in the House report.

In light of this disparity, the distinguished chairman of the Committee on Environment and Public Works, Senator Stafford, and I asked Dr. David Rall, Director of the National Toxicology Program; Dr. Vernon Houk, Director of the Center for Environmental Health, Centers for Disease Control; and Richard A. Lemen, Director of the Division of Standards Development and Technology Transfer, National Institute of Occupational Safety and Health, to comment on the health effects of inhaled chrysotile, "white" asbestos.

Mr. President, I ask that the letters and supportive materials Senator Stafford and I received in response to our request be printed in the Record.

Mr. President, the able chairman of the subcommittee, Mr. Garn, is aware of my interest, which is shared by a number of our colleagues, in funding an asbestos-in-schools abatement program. It is my hope that an amendment authorizing EPA to administer such a program, which was adopted by the Senate on June 6, as an amendment to S. 1285, the "math-science" bill, will soon be enacted. I look forward to continuing to work with the chairman, and the distinguished ranking member of the subcommittee, Mr. Huddleston, who joined me as an original sponsor of the Asbestos School Hazard Abatement Act of 1984, to obtain funding for this program.

There being no objection, the material was ordered to be printed in the Record, as follows:

National Toxicology Program,
Research Triangle Park, NC,
June 18, 1984.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

Hon. James Abdnor,
U.S. Senate,
Washington, DC.

Dear Mr. Chairman and Senator Abdnor: Thank you for your letter of June 15 concerning the potential carcinogenicity of chrysotile asbestos and specifically about information reported to you of studies that demonstrate that Canadian chrysotile miners do not show adverse health effects from chrysotile exposure.

The International Agency for Research on Cancer (IARC) Monograph on Asbestos (Volume 14, 1977) states that chrysotile asbestos causes lung cancer and mesothelioma in humans and lung cancer after inhalation in laboratory animals (IARC, 1982; summary enclosed). This is the view held by scientists knowledgeable about the biological effects of asbestos.

With respect to the studies of Canadian miners, it is true that some early reports suggested that chrysotile was less carcinogenic than other forms of asbestos. Later reports (Graham, S., et al., Cancer in Asbestos-Mining an Other Areas of Quebec, *Journal of the National Cancer Institute* 59: 1139-1145, 1977; and McDonald, J. C., et al., Dust Exposure and Mortality in Chrysotile Mining—1910-1975, *British Journal of Industrial Medicine* 37: 11-24, 1980) showed that chrysotile causes lung cancer and there is a linear dose response relationship between chrysotile fiber concentration and lung cancer. Further, there has been an increased incidence of mesothelioma related to chrysotile exposure.

In addition, McDonald, J. C., et al. (*Cancer* 46: 1650-1656, 1980) have reported three cases of family contacts of chrysotile miners who developed mesothelioma.

These reports make it clear that chrysotile asbestos is carcinogenic to humans and should be considered hazardous. If you need further information, I shall be glad to assist you.

Sincerely yours,
David P. Rall, M.D., Ph.D.,
Director.

[From International Agency for Research on Cancer, Lyon, France, October 1982]

IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans

ASBESTOS (GROUP 1)*

A. Evidence for carcinogenicity to humans (sufficient):

Occupational exposure to chrysotile, amosite, anthophyllite and mixtures containing crocidolite has resulted in a high incidence of lung cancer. A predominantly tremolitic material mixed with anthophyllite and small amounts of chrysotile also caused an increased incidence of lung cancer. Pleural and peritoneal mesotheliomas have been observed after occupational exposure to crocidolite, amosite and chrysotile asbestos. Gastrointestinal cancers occurred in increased incidence in groups exposed occupationally to amosite, chrysotile or mixed fibres containing crocidolite. An excess of cancer of the larynx was also observed in exposed workers. Mesotheliomas have occurred in individuals living in the neighbourhood of asbestos factories and crocidolite mines, and in people living with asbestos workers. Cigarette smoking and occupational exposure to asbestos fibres increase lung cancer incidence independently; when they occur together, they act multiplicatively.[1]

B. Evidence for carcinogenicity to animals (sufficient):

All types of commercial asbestos fibre that have been tested are carcinogenic to mice, rats, hamsters, and rabbits, producing mesotheliomas and lung carcinomas after inhalation exposure and after administration intrapleurally, intratracheally or intraperitioneally.[1]

C. Evidence for activity in short-term tests (inadequate):

Asbestos was not mutagenic in *Salmonella typhimurium or Escherichia Coli.*[2] It has been claimed to be weakly mutagenic in Chinese hamster cells,[3] but negative results in rat epithelial cells were published recently.[4] It has been reported that asbestos produces chromosomal anomalies in mammalian cells in culture,[5] [6] but this may be secondary to toxic damage. No increase in chromosomal anomalies was seen in cultured human cells treated with asbestos.[7] Sister chromatid exchanges were not increased in treated Chinese hamster cells.[8] No data on humans were available.

AURAMINE (TECHNICAL-GRADE) (GROUP 2B) AND MANUFACTURE OF AURAMINE (GROUP 1)

A. Evidence for carcinogenicity to humans (*limited* for auramine and *sufficient* for manufacture of auramine):

The manufacture of auramine (which also involves exposure to other chemicals) was judged to be causally associated with an increased incidence of bladder cancer[1] on the basis of one study.[2] An increased risk of bladder cancer was reported to be associated with the manufacture of auramine in two further studies.[3] [4] No information on exposure to auramine alone was available to the Working Group.

B. Evidence for carcinogenicity to animals (*limited* for auramine):

Commercial auramine (of unknown purity) is carcinogenic to mice and rats after its oral administration, producing liver tumours, and after its subcutaneous injection in rats, producing local sarcomas.[1]

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* Categorised as Group I by the earlier Working Group, and data on humans and on animals not re-evaluated by the present Group.

[1] IARC Monographs, *Suppl. 1*, 23, 1979.

[2] Chamberlain, M. & Tarmy, E. M. (1977) Asbestos and glass fibres in bacterial mutation tests, *Mutat. Res., 43*, 159-164.

[3] Huang, S. L. (1979). Amosite, chrysotile and crocidolite asbestos are mutagenic in Chinese hamster lung cells, *Mutat. Res. 68*, 265-274.

[4] Reiss, B., Solomon, S., Tong, C., Levenstein, M., Rosenberg, S.H. & Williams, G.M. (1982) Absence of mutagenic activity of three forms of asbestos in liver epitheliol cells. *Environ. Res.*, *27* (in press).

[5] Huang, S.L., Saggioro, D., Michelmann, H. & Malling, H.V. (1978) Genetic effects of crocidolite asbestos in Chinese hamster lung cells, *Mutat. Res. 57*, 225-232.

[6] Sincock, A. & Seabright, M. (1975) Induction of chromosome changes in Chinese hamster cells by exposure to asbestos fibres, *Nature, 257*, 56-58.

[7] Sincock, A.M., Delhanty, J.D.A. & Casey, G. (1982) A comparison of the cytogenetic response to asbestos and glass fibre in Chinese hamster and human cell lines. Demonstration of growth inhibition in primary human fibroblasts. *Mutat. Res., 101*, 257-268.

[8] Price-Jones, M.J., Gubbings, G. & Chamberlain, M. (1980) The genetic effects of crocidolite asbestos; comparison of chromosome abnormalities and sister-chromatid exchanges. *Mutat. Res. 79*, 331-336.

CENTERS FOR DISEASE CONTROL,
Atlanta, GA, June 18, 1984.
Hon. JAMES ABDNOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABDNOR: This is in response to your letter, also signed by Senator Robert T. Stafford, to Dr. Vernon N. Houk of my staff regarding his views on the risk to human health associated with exposures to inhaled chrysotile asbestos fibers and his views on the "Canadian Study used by Mr. Ross in his briefing and the conclusions that can be drawn from it."

On May 2, 1983, Dr. Houk, representing the Public Health Service of the Department of Health and Human Services, testified before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives. Dr. Houk stated, "It (chrysotile asbestos) is one of the type of asbestos that is fibrogenic; it does lead to malignancy in man; it has been studied in man in its pure form as well as its combined form, and there is very substantial literature on this subject." He further stated that its hazards have been established as medical fact and that there is no good basis for debate to the contrary. A discussion of the scientific literature which formed the basis for that testimony is enclosed, including the appropriate literature citations. The opinion expressed by Dr. Houk represents the position of the Centers for Disease Controls.

The manner in which Mr. Ross uses data from the "Canadian Chrysotile Miners Study" is also discused in the enclosure.

Thank you for your concern, and we hope this helps to eliminate the confusion on this issue. I am sending an identical letter to Senator Stafford.

Sincerely yours,

J.P. KOPLAN
(For James O. Mason, M.D., Dr. P.H., Assistant Surgeon General, Director.)

STATEMENT ON CHRYSOTILE ASBESTOS AND DISEASE

(Prepared by the Centers for Disease Control June 1984)

Both animal and human epidemiological studies have shown that chrysotile asbestos is carcinogenic and fibrogenic. The scientific basis for this has been reviewed and supported in official publications of the World Health Organization's International Agency for Research on Cancer, 1976 [1]; the NIOSH Revised Recommended Standard for Occupational Exposure to Asbestos, 1976 [2]; and Asbestos, Volumes 1 and 2, Final Report of the Advisory Committee, Health and Safety Commission, United Kingdom, 1979 [3]. In addition to the data reviewed in these publications, new data have continued to provide more support for these conclusions.

Animals Studies by Wagner, et al. (1979) [4] have shown that a commercial grade 7 (predominately short) Canadian chrysotile can induce mesotheliomas when injected intrapleurally into rats and primary lung neoplasms when the animals were exposed by inhalation. This further supports Wagner's et al., 1973 [5] and 1974 [6] data which show that not only is chrysotile as potent as crocidolite and other amphiboles in inducing mesotheliomas after intrapleural injections, but also equally potent in inducing pulmonary neoplasms after inhalation exposures. In terms of degree of response related to the quantity of dust deposited and retained in the lungs of rats, Wagner et al., 1974 [6] found the chrysotile to be much more fibrogenic and carcinogenic than amphiboles. Stanton et al., (1977) [7] takes these findings even further and has shown that durable fibers with diameters less than 1.5 um and lengths greater than 8 um are carcinogenic in experimental animals regardless of their physiochemical properties.

Current epidemiologic data on worker populations exposed to chrysotile in addition to those mentioned in the three review publications include studies by Robinson et al. (1979) [8]; McDonald et al. (1979) [9]; Selikoff (1977) [10]; Nicholson et al. (1979) [11]; Rubino et al. (1979) [12]; and Boutin et al. (1979) [13]; Kogan (1972) [14]; and McDonald et al. (1983) [15]. Each of these studies shows a positive correlation between exposure to chrysotile asbestos and biological disease in humans including asbestosis, lung cancer, and mesothelioma of the pleura and peritoneum. Dement et al (1983) [16] has recently shown in a cohort mortality study of chrysotile asbestos textile workers between 1940 and 1975 that there is a dose response relationship for lung cancer and nonmalignant respiratory disease. Among 768 white males, statistically significant excess mortality was observed for lung cancer (SMR = 348) and nonmalignant respiratory disease (SMR = 263). These findings were consistent even at the lowest exposure category.

To address the conclusions of Dr. Malcolm Ross, a mineralogist with the United States Geological Survey, it should be pointed out that Dr. Ross's health analysis has been made using many statistical manipulations that are highly inappropriate. For example, he compares proportionate morality among various cohorts without any consideration for age, exposure, or interval between exposure and death. Furthermore, Dr. Ross does not consider asbestosis death rates which are quite high in some of the cohorts which he compares. Dr. Ross further bases many of his assumptions of the studies of miners and millers of chrysotile in Quebec, Canada, primarily carried out by Dr. J.C. McDonald. Most recently, Dr. McDonald has stated in a paper presented at the Asbestos Symposium in Johannesburg in 1977 that of the cases of mesothelioma at Thetford mines, "There is therefore no good reason to doubt chrysotile exposures as the cause". [17]

Liddell et al. (1977) [18] have further analyzed the mortality experience of the cohort of chrysotile asbestos miners and millers previously studied by McDonald and found excesses of respiratory cancer, asbestosis and mesothelioma.

A recent study by Nicholson et al. (1979), [11] examined the mortality of 544 Quebec mine and mill employees who corresponded closely in terms of exposure and periods of observation to cohorts of asbestos factory workers and insulation workers established in other studies. Among this cohort of 544 men with at least 20 years of employment in chrysotile mining and milling at Thetford Mines, Canada, 16% of the deaths were from lung cancer and 15% from asbestosis. The risk of death for asbestosis, at equal times from onset of exposure, was very similar in the miners and millers to that found in the factory workers and insulators. Lung cancer was similar among the miners and millers and in the factory workers but higher in the insulators.

Dr. Ross' superior in a letter to Governor Babbitt of Arizona stated that, "People involved in the mining or milling of chrysotile in Italy have an incidence of both lung cancer and mesothelioma that is lower than that of the control populations". Apparently they were not aware of Dr. Rubino's [12] most recent report on miners and millers in Italy which states that excess lung cancer was seen in the last quinquennium of observations and that mesothelioma has now also been observed in this population. It is not uncommon for persons who do not understand the concept of latency to make such a mistake since they frequently, as Dr. Ross has also done, do not consider the period of time from first exposure to disease manifestations. Asbestos induced diseases are diseases of long latent periods ranging anywhere from 15 to over 30 years from first exposure. To illustrate this point further, a paper presented by Wagoner et al. [19] of workers in an asbestos manufacturing facility utilizing predominately chrysotile found excess asbestosis and lung cancer but found no mesothelioma in the population as of 1968. A continuing follow up of this same population through 1976 has now reported 17 cases of mesothelioma death. [8]

The article by Thomas R. Fears [20] is often used as evidence of no association of disease with naturally occurring asbestos deposits. This study by the author's own admission suffers from a lack of sufficient information to draw such conclusions. For example, Mr. Fears has lumped all counties with asbestos deposits together with no assessment of exposure or length of residency of the population. While Mr. Fears concludes that his ". . . study provides no evidence that naturally occurring asbestos deposits provide a great risk to the general population of counties with asbestos deposits", the caveats he lists in his study could have easily led him to conclude just the opposite that "This study provides no evidence that naturally occurring asbestos deposits do not increase the risk of disease in the general population of counties with asbestos deposits".

In summary, the findings of this literature on chrysotile asbestos are very similar to findings on other forms of asbestos. They conclusively demonstrate that chrysotile asbestos is a hazardous substance and poses a substantial health risk when inhaled.

FOOTNOTES

[1] International Agency for Research on Cancer, 1977: IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man. Asbestos, Volume 14, International Agency for Research on Cancer, World Health Organization.

[2] NIOSH, 1976: Revised Recommended Asbestos Standard, U.S. Dept. of Health, Education and Welfare, Public Health Service, CDC, Publication No. 77-169.

[3] Advisory committee on Asbestos, 1979: Asbestos Volume 1 and Volume 2 final report of the Advisory Committee. Her Majesty's Stationary Office, Health and Safety Commission, United Kingdom.

[4] Wagner JC et al, 1979: The Comparative Effects of Three Cyrysotiles by Injection and Inhalation in Rats. Presented at the Biological Effects of Mineral Fibres. IARC, Lyon, France, September 25-27, 1979.

[5] Wagner JC et al, 1973: Mesotheliomata in rats after inoculation with asbestos and other materials. Brit. J. Cancer, 28, 175-185.

[6] Wagner JC et al, 1974: The effects of the inhalation of asbestos in rats. Brit. J. Cancer 29, 252-269.

[7] Stanton MF et al, 1977: Carcinogenicity of fibrous glass: Pleural response in the rat in relation to fiber dimension. J. Natl. Cancer Institute, 58:587-603.

[8] Robinson CF et al, 1979: Mortality Patterns, 1940-1975, Among Workers Employed in an Asbestos Textile Friction and Packing Products Manufacturing Facility. Dust and Disease. Ed: Lemen RA and Dement JM, Pathotox Publishers, Inc., Park Forest South, Illinois, 131.

[9] McDonald JC et al, 1979: Mortality in Canadian Miners and Millers Exposed to Chrysotile. Health Hazards of Asbestos Exposure, Ed: Selikoff IJ and Hammond EC. Annals of NY Acad. Sci., 330, 1-9.

Footnotes at end of article.

[10] Selikoff IJ, 1977: Clinical Survey of Chrysotile Asbestos Miners and Millers in Baire Verte, Newfoundland—1976. Report to the National Institute of Environmental Health Sciences, December 22, 1977, Research Triangle, North Carolina.

[11] Nicholson WJ, 1979: Long Term Mortality Experience of Chrysotile Miners and Millers in Thetford Mines, Quebec, Annals of the NY Acad. of Sciences. Ed: Selikoff IJ and Hammond EC, 330, 11-21.

[12] Rubino GF et al, 1979: Mortality of Chrysotile Asbestos Workers at the Balangero Mine, Northern Italy. Br. J. Ind. Med., 36:187.

[13] Boutin C et al, 1979: Radiological Features in Chrysotile Asbestos Mine and Mill Workers in Corsica. Presented at the Biological Effects of Mineral Fibres, Lyon, France, September 25-27, 1979.

[14] Kogan FM, 1972: The Cancer mortality rate among workers of asbestos industry of the Urals. Gig i. Sanit., 37, 29-32.

[15] McDonald AD et al, 1983: Dust exposure and mortality in an American chrysotile textile plant. Br. J. Ind. Med., 40:361-367.

[16] Dement JM et al, 1982: Estimates of Dose-Response for Respiratory Cancer Among Chrysotile Asbestos Textile Workers" Ann. Occup. Hyg. 26(1-4):869-887.

[17] McDonald JC, 1978: Exposure Relationships and Malignant Mesothelioma. Proceedings of Asbestos Symposium, Johannesburg, South Africa, 3-7 October 1977. Ed: HW Glen. National Institute for Metallurgy Randburg.

[18] Liddell FDK et al, 1977: Methods of Cohort Analysis: Appraisal by Application to Asbestos Mining. J. Roy. Stat. Soc., Part A, 140:469.

[19] Wagoner JK et al, 1973: Malignant and Non-Malignant Respiratory Disease Mortality Patterns Among Asbestos Production Workers. In: Congressional Record—Senate Proceedings and Debates of the 93rd Congress, First Session, 119, Part 6, Washington, D.C., U.S. Government Printing Office, S-4660-S-4662.

[20] Pears TR, 1976: Cancer Mortality and Asbestos Deposits. Am. J. Epi., 104, No. 5, 523-526.

CENTERS FOR DISEASE CONTROL,
Atlanta, GA, June 20, 1984.

Hon. JAMES ABDNOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABDNOR: At your request I have reviewed the scientific literature pertaining to the health effects of chrysotile asbestos. In my opinion this review provides evidence in support of the toxicity of this fiber type. In animal studies chrysotile is as potent as the other types of asbestos. Epidemiological studies recently completed demonstrate chrysotile's ability to induce nonmalignant respiratory disease and cancer in humans. The attached review supports these conclusions, which are consistent with the CDC position on chrysotile toxicity as expressed in Dr. Mason's June 18 letter to you.

Sincerely yours,

RICHARD A. LEMEN,
Director, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health.

EVALUATION OF THE TOXICITY OF CHRYSOTILE ASBESTOS

IN VIVO

Animal studies have adequately demonstrated that all commercial forms and several types of asbestos can produce mesotheliomas and primary bronchogenic neoplasms in animals.

Although mesotheliomas were most readily produced by intrapleural injections, they were also produced following inhalation in studies conducted by Wagner and colleagues (Wagner et al., 1974). Additional studies by Wagner et al. (1979) demonstrated that a commercial grade, predominately short fiber Canadian chrysotile, used primarily for paint and plastic tile fillers, can induce mesotheliomas when injected intrapleurally into rats, and primary lung neoplasms when the animals are exposed by inhalation.

Chrysotile is not only as potent as crocidolite and other amphiboles in inducing mesotheliomas after intrapleural injections (Wagner et al., 1973) but also equally potent in inducing pulmonary neoplasms after inhalation exposures (Wagner et al., 1974). In terms of degree of response related to the quantity of dust deposited and retained in the lungs of rats, chrysotile appears to be much more fibrogenic and carcinogenic than the amphiboles (Wagner et al., 1974). After 24 months of exposure by inhalation, the concentration of dust in the lungs of rats exposed to Canadian chrysotile was only 1.8-2.2 percent of the total dust concentration in the lungs of animals exposed to amphiboles. Despite this large difference, the lung tumor incidences and degrees of pulmonary fibrosis were similar in all groups. The reasons for higher incidences of lung cancer and mesotheliomas in workers exposed to amphiboles may therefore be related to the greater fraction of respirable fibers found in amphiboles.

Research to this day has not been able to establish a fiber length below which a carcinogenic risk does not exist. This may be due to the unavailability of specifically sized fibers (Pott, 1979).

EPIDEMIOLOGICAL STUDIES

Epidemiological studies also demonstrate chrysotile's ability to induce non-malignant respiratory disease and cancer in humans. These studies are evaluated below:

Robinson et al. (1979) reported an additional 8 years of observation and 385 deaths among the cohort studied by Wagoner et al. (1973). Those workers manufactured asbestos textile, friction, and packing products. Chrysotile accounted for more than 99 percent of the total quantity of asbestos processed per year, except for 3 years during World War II. During those 3 years, amosite was selectively used because of U.S. Navy specifications. However, during that period, amosite only accounted for approximately 5 percent of the total asbestos. The remainder, less than 1 percent, consisted of crocidolite and amosite which was used only in selected areas. Exposures to these two types may have had a role in the etiology of disease; however, due to the overwhelming exposure of the cohort to chrysotile, it is likely that the role was minor. Robinson et al. confirmed Wagoner et al.'s observations: a statistically significant excess of deaths due to bronchogenic cancer, suicide, heart disease, and nonmalignant respiratory disease including asbestosis. A statistically nonsignificant excess of digestive cancer and lymphoma was also detected.

Robinson et al. also described 17 mesotheliomas; whereas no mesotheliomas were detected in the Wagoner et al. study. This different observation is probably due to the fact that in the Wagoner study, observation of mortality ceased in 1967. The appearance of 17 mesothelioma in the Robinson study is consistent with a latency period for mesothelioma of 24 to 53 years. Analysis of the 17 mesothelioma cases indicated that 14 of the mesothelioma deaths occurred after the original study period. This observation confirms other findings that mesotheliomas are characterized by very long latency periods. Chovil and Stewart (1979) also reported latencies of 6 to 44 years, with a mean of 26.9 years.

Dement et al. (1982) have reported mortality among a cohort of asbestos textile workers exposed only to chrysotile. This cohort consisted of 768 white males employed at least six months and followed between 1940 and 1975. There were 26 lung cancer deaths observed versus 7.47 expected for a Standard Mortality Ratio (SMR) of 348. Of the 191 deaths in this cohort, 15 (7.9 percent) were due to asbestosis or pulmonary fibrosis and one (0.5 percent) was due to a peritoneal mesothelioma. Linear relationships were demonstrated between cumulative fiber dose and the risk of mortality for lung cancer and noninfectious respiratory diseases. An SMR for lung cancer of 223 was observed for the lowest cumulative exposure category of less than 39 fibers/cc times years.

In a subsequent study of the same plant studied by Dement et al. (1982), McDonald et al. (1983) reported on the mortality experience of 2,543 men employed at least one month from 1938-1958. Eight hundred sixty three deaths were reported to have occurred before December 31, 1977, with one from mesothelioma. Twenty one deaths were ascribed to asbestosis and 66 to cancer of the lung. Compared with the number expected from South Carolina there was an excess of 30 deaths from respiratory cancer in men 20 or more years after first employment with an SMR of 199.5. The life-table analysis and "log-rank" (case control) analysis both showed a steep linear exposure-response that was some 50 fold greater at similar accumulated dust exposures than in Canadian chrysotile mining and milling. McDonald et al. (1983) attributed the greater risk of lung cancer in the textile workers than in the Canadian miners and millers as possibly related to major differences in the size distribution of fibers in the submicroscopic range which are not detected by the usual fiber or particle counting procedures.

Cigarette smoking habits did not differ between the textile workers and the Canadian miners and millers. Therefore, McDonald et al. (1983) concluded that the far greater risk of lung cancer in textile workers may be related to major differences in the size distribution of fibers in the submicroscopic range which are not detected by the usual fiber or particle counting procedures.

Weiss (1977) reported no unusual mortality experience over a 30-year period among a cohort of workers employed in a paper and millboard plant stated to be using only chrysotile. Weiss concluded that the results suggested a minimal hazard from chrysotile. This conclusion must be viewed in light of the limitations of the study. The study population was small (n=264), and only 66 workers had died at the time of analyses; two of the workers died of asbestosis. Moreover, the unusually low SMR for many causes of death in this study suggests the possibility of a selection bias greater than that usually seen when contrasting industrial populations with the general population.

McDonald et al. (1973, 1974) reported an increased risk of lung cancer among men employed in Quebec chrysotile mines and mills. The risk of lung cancer among the most heavily exposed workers was 5 times greater than that of the least exposed workers. Liddell et al. (1977) further analyzed the mortality experience of the cohort of chrysotile asbestos miners and millers studied by McDonald et al. and found excesses of respiratory cancer, asbestosis, and mesothelioma. As of 1977, these same Quebec chrysotile miners and millers had experienced nine confirmed and two suspected mesotheliomas (McDonald, 1978). The author concluded for the seven cases observed at Thetford mines that "There is therefore no good reason to doubt chrysotile exposures as the cause."

A recent study by Nicholson et al. (1979) examined the mortality of 544 Quebec chrysotile mine and mill employees. These workers were similar in terms of duration of exposure and period of observation to workers in cohorts derived from factories with mixed fiber exposures and insulation workers. Among this cohort of 544 men with at least 20 years of employment in chrysotile mining and milling at Thetford Mines, Canada, 16 percent of the deaths were from lung cancer and 15 percent from asbestosis. The risk of death from asbestosis in the miners and millers was very similar to that found in the factory workers and insulators. The lung cancer incidence was similar among the miners and millers and in the factory workers but higher in the insulators. One death from mesothelioma was reported in this cohort.

Selikoff (1977) surveyed 485 current employees of a chrysotile mine in Baire-Verte, Newfoundland, which had been in operation since 1963. Fifty employees (10 percent) had one or more radiographic abnormalities of the type commonly associated with asbestos exposure. Parenchymal abnormalities were most common; pleural changes were detected in only 3 percent of the individuals surveyed. For those individuals employed fewer than 5 years the prevalence of abnormalities was 5 percent; this prevalence increased with duration of employment. Abnormalities were found most often among those with the most intense exposures. This study was designed only to assess asbestos-related disease under more modern conditions than previous studies (Kogan et al., 1972; Rossiter et al., 1972); thus, assessment of the effects of short duration of exposure and long latency could not be made. The interpretation of these data is further complicated by the lack of a control population and environmental measurements. The study does demonstrate the prevalence of chest X-ray changes in an appreciable proportion of employed workers despite a short period since initial exposure.

Rubino et al. (1979) reported nine asbestosis deaths among chrysotile asbestos miners in northern Italy. An excess of lung cancer deaths (7 versus 3.4) was seen only during the last 5 years of observation, 1971-1975—the period of greatest latency. One mesothelioma was also reported during this period.

Studies of lung tissue obtained from workers with mesothelioma and from comparison groups with no asbestos exposure have yielded equivocal results regarding the relationship between chrysotile in lung tissue and mesothelioma. Jones et al. (1979) found no evidence to indict chrysotile; whereas Acheson and Gardner (1979) estimated a 6-fold relative risk of mesothelioma for persons with only chrysotile in lung tissue as compared to controls with no asbestos fibers in their lungs.

Boutin et al. (1979) studied abnormalities detected by chest X-rays obtained from chrysotile miners and millers in Corsica. They studied 166 ex-workers of the mines and mill that had been closed in 1965; a comparison was made to 156 workers with no asbestos exposure but with similar demographic variables. The X-rays were read according to the ILO U/C Classification system. Compared with controls, chrysotile workers had a prevalence of all parenchymal abnormalities 2.4 times greater. For those with a profusion of 1/2 or more, the prevalence ratio was approximately twice that of the comparison group. Pleural changes were twice as prevalent in chrysotile workers as in controls. Exposures among this cohort were reported to have been very high, with exposure concentrations ranging from 85 to 267 million particles per cubic foot (mppcf).

Mr. SASSER. Mr. President, I rise today in support of H.R. 5713, the Department of Housing and Urban Development-Independent Agencies appropriations bill for fiscal year 1985.

There are several provisions which I would especially like to bring to the attention of my colleagues here today. The bill contains appropriate funding levels which will enhance the well-being of thousands of veterans by providing compensation for service-connected disabilities, medical care for elderly veterans, and additional readjustment counseling centers for Vietnam-era veterans.

Our commitment to those who have risked their lives for our country must remain a top priority. There are over 170 veterans medical centers throughout this country and many have been suffering from neglect. It is essential that we pursue efforts to modernize these health care facilities. One such facility which requires modernization is the facility located in Mountain Home, TN. The primary focus of this facility is to care for elderly veterans. It was first built in the early 1900's and over the years has become too old, too crowded, and incapable of providing for the many veterans in eastern Tennessee.

This bill contains some $600 million in construction funds which will go a long way in correcting problems like those encountered in Mountain Home. More specifically, funds are included for the construction of a new 470-bed hospital to replace the aging facility in Mountain Home. This will provide welcome relief to those veterans in east Tennessee who are in dire need of quality health care.

The bill also provides for 50 additional readjustment counseling centers for Vietnam-era veterans. This will mean two new centers in Tennessee, one in Chattanooga and the other in Johnson City.

There is substantial evidence that these outreach centers provide veterans with quality service at reasonable cost. This program provides assistance to veterans seeking to readjust to civilian life.

The funding contained in this bill represents a reversal from previous administration attempts to scale back benefits for America's veterans and I applaud the committee's actions.

Another matter which is addressed in the HUD-Independent Agencies report concerns the presence of hazardous asbestos in our public buildings.

I have long been active with regard to this issue, and I intend to continue my efforts to obtain funds for our needy school districts in their attempts to implement safe asbestos control programs.

The report recognizes the health risks presented by asbestos and cites conclusions drawn by many medical experts indicating that low-level exposure to asbestos is harmful and can cause respiratory disease for which there is no known cure.

Further, the Senate report goes beyond the House report in applauding the regulatory approach taken by the Environmental Protection Agency in controlling asbestos in public buildings. EPA has specifically moved to address the problems encountered in the asbestos-in-schools program. We now know that some 14,000 schools nationwide contain hazardous asbestos. Many of these school districts have not taken proper action because of the huge burden such action would place on their budgets. Mr. President, we simply cannot continue to hold our children hostage while the Congress debates this issue.

Two weeks ago, the Senate passed the Asbestos School Hazard Abatement Act. The legislation, however, is currently being held up because of a delay in consideration of S. 1285, the Education for Economic Security Act.

It is my sincere hope, Mr. President, that we address effective legislation in the very near future. The recognition of this problem in this appropriations report is an important step.

In conclusion, I lend my support to this legislation and would urge my colleagues in supporting not only the bill, but also future attempts to rid asbestos from our Nation's schools.

Mr. GARN. Mr. President, I understand the problem facing my distinguished colleague from Louisiana. However, Mr. President, there are over 17,000 communities under flood control map plans under FEMA, and if you exempt one parish or one county from the law, you set a bad precedent. I simply cannot do that and therefore I oppose the amendment.

Mr. JOHNSTON. Mr. President, I appreciate the concerns of the Senator from Utah. I, too, do not want to set a bad precedent. However, Cameron Parish is in a precarious position in relation to the other Louisiana parishes that have successfully appealed the preliminary flood plan determinations. I feel something must be done to address this issue. Consequently, Mr. President, can the Senator from Utah suggest a solution to this problem that will not set a bad precedent?

Mr. GARN. Mr. President, if the Senator from Louisiana would be willing to withdraw his amendment, rather than setting this kind of bad precedent, I would certainly be willing to discuss possible administrative remedies with him and with the FEMA people. In fact, I have already discussed this issue with the FEMA people, and I feel that there may be some other procedure whereby this problem could be settled administratively. I would much prefer handling this problem that way.

Mr. JOHNSTON. I accept the offer of assistance from the Senator from Utah and I withdraw my amendment.

Mr. GARN. Mr. President, I am not aware of any additional amendments. I have crossed all of those off my list that I am aware of.

I simply ask at this point if there are any amendments. I see no one here ready to offer amendments.

Mr. DOMENICI. Mr. President, I rise in support of the Department of Housing and Urban Development--independent agencies appropriation bill as reported by the Committee.

I would like to commend my distinguished colleague, Chairman HATFIELD, and the members of the Senate Appropriation Committee for advancing the fiscal year 1985 appropriation bills.

H.R. 5713 provides $56.3 billion in budget authority and $36.0 billion in outlays for fiscal year 1985 for important activities of the Department of Housing and Urban Development, the Veterans' Administration, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, and other independent agencies.

With outlays from prior-year budget authority taken into account, fiscal year 1985 outlays associated with this bill would be $61.5 billion.

The Senate Appropriations has not yet made its 302(b) allocations to subcommittees under a first budget resolution.

When Appropriations Committee subcommittee allocations are available, I will insert into the RECORD tables comparing the spending in this bill to this subcommittee's allocation.

Nondefense discretionary spending in this bill is consistent with the guidance given to the subcommittee by the full Senate Appropriations Committee on June 14, 1984. Mr. President, I ask unanimous consent that a table showing this relationship be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOMENICI. Mr. President, I urge my colleagues to support this bill as reported by the Appropriations Committee.

EXHIBIT 1

HUD-Independent Agencies Subcommittee nondefense discretionary budget authority

[In billions of dollars]

	Nondefense discretionary
Senate-reported bill (H.R. 5713)	36.1
Subcommittee total	36.1
Committee guidance [1]	36.1
House-passed	38.2
President's request	34.4
Subcommittee total compared to:	
Committee guidance [1]	
House-passed	−2.1
President's request	+1.7

[1] Nondefense discretionary cap guidance approved by the Appropriations Committee on June 14, 1984.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. GARN. Mr. President, I know of no request for a rollcall vote.

Mr. LEAHY. Mr. President, there is no request on this side.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5713), as amended, was passed.

Mr. GARN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LEAHY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, may I take this opportunity to thank my distinguished colleague from Vermont for his brilliant managing of the bill on behalf of the minority.

Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to H.R. 5713.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GARN. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer [Mr. HEINZ] appointed Mr. HATFIELD, Mr. GARN, Mr. WEICKER, Mr. LAXALT, Mr. D'AMATO, Mr. ABDNOR, Mr. DOMENICI, Mr. HUDDLESTON, Mr. STENNIS, Mr. LEAHY, and Mr. SASSER conferees on the part of the Senate.

Mr. GARN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GARN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE BRANCH APPROPRIATIONS, 1985

The PRESIDING OFFICER. Under the previous order, the Senate will now turn to the consideration of H.R. 5753, which the clerk will state.

The bill clerk read as follows:

A bill (H.R. 5753) making appropriations for the legislative branch for the fiscal year ending September 30, 1985, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations with amendments.

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts intended to be inserted are shown in italics.)

H.R. 5753

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending September 30, 1985, and for other purposes, namely:

TITLE I—CONGRESSIONAL OPERATIONS

SENATE

MILEAGE OF THE VICE PRESIDENT AND SENATORS AND EXPENSE ALLOWANCES OF THE VICE PRESIDENT, THE PRESIDENT PRO TEMPORE, MAJORITY AND MINORITY LEADERS, AND MAJORITY AND MINORITY WHIPS

MILEAGE OF THE VICE PRESIDENT AND SENATORS

For mileage of the Vice President and Senators of the United States, $60,000.

EXPENSE ALLOWANCES OF THE VICE PRESIDENT, THE PRESIDENT PRO TEMPORE, MAJORITY AND MINORITY LEADERS, AND MAJORITY AND MINORITY WHIPS

For expense allowances of the Vice President, $10,000; the President Pro Tempore of the Senate, $10,000; Majority Leader of the Senate, $10,000; Minority Leader of the Senate, $10,000; Majority Whip of the Senate, $5,000; and Minority Whip of the Senate, $5,000; in all, $50,000.

SALARIES, OFFICERS AND EMPLOYEES

For compensation of officers, employees, clerks to Senators, and others as authorized by law, including agency contributions, which shall be paid from this appropriation without regard to the below limitations, as follows:

OFFICE OF THE VICE PRESIDENT

For the Office of the Vice President, $1,083,000.

OFFICE OF THE PRESIDENT PRO TEMPORE

For Office of the President Pro Tempore, $145,000.

OFFICES OF THE MAJORITY AND MINORITY LEADERS

For Offices of the Majority and Minority Leaders, $1,062,000.

OFFICES OF THE MAJORITY AND MINORITY WHIPS

For Offices of the Majority and Minority Whips, $407,000.

CONFERENCE COMMITTEES

For the Conference of the Majority and the Conference of the Minority, as rates of compensation to be fixed by the Chairman of each such committee, $526,500 for each such committee; in all $1,053,000.

OFFICES OF THE SECRETARIES OF THE CONFERENCE OF THE MAJORITY AND THE CONFERENCE OF THE MINORITY

For Offices of the Secretaries of the Conference of the Majority and the Conference of the Minority, $177,000.

OFFICE OF THE CHAPLAIN

For Office of the Chaplain, $87,000.

OFFICE OF THE SECRETARY

For Office of the Secretary, $7,067,000.

ADMINISTRATIVE, CLERICAL, AND LEGISLATIVE ASSISTANCE TO SENATORS

For administrative, clerical, and legislative assistance to Senators, $98,789,000.

OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER

For Office of the Sergeant at Arms and Doorkeeper, $35,429,000.

OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY

For Offices of the Secretary for the Majority and the Secretary for the Minority, $856,000.

AGENCY CONTRIBUTIONS

For agency contributions for employee benefits, as authorized by law, $19,487,000.

Office of the Legislative Counsel of the Senate

For salaries and expenses of the Office of the Legislative Counsel of the Senate, $1,400,000.

Office of Senate Legal Counsel

For salaries and expenses of the Office of Senate Legal Counsel, $565,000.

Expense Allowance of the Secretary of the Senate, Sergeant at Arms and Doorkeeper of the Senate, and Secretaries for the Majority and Minority of the Senate

For expense allowances of the Secretary of the Senate, $3,000; Sergeant at Arms and Doorkeeper of the Senate, $3,000; Secretary for the Majority of the Senate, $3,000; Secretary for the Minority of the Senate, $3,000; in all, $12,000.

Contingent Expenses of the Senate

SENATE POLICY COMMITTEES

For salaries and expenses of the Majority Policy Committee and the Minority Policy Committee, $949,000 for each such committee; in all $1,898,000.

INQUIRIES AND INVESTIGATIONS

For expenses of inquiries and investigations ordered by the Senate, or conducted pursuant to section 134(a) of Public Law 601, Seventy-ninth Congress, as amended, section 112 of Public Law 96-304 and Senate Resolution 281, agreed to March 11, 1980, $48,050,000.

SECRETARY OF THE SENATE

For expenses of the Office of the Secretary of the Senate, $711,000.

SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

For expenses of the Office of the Sergeant at Arms and Doorkeeper of the Senate, $41,214,000.

MISCELLANEOUS ITEMS

For miscellaneous items, $10,341,000.

STATIONERY (REVOLVING FUND)

For stationery for the President of the Senate, $4,500, for officers of the Senate and the Conference of the Majority and Conference of the Minority of the Senate, $7,500; in all, $12,000.

ADMINISTRATIVE PROVISIONS

SEC. 1. Effective with respect to fiscal years beginning on or after October 1, 1983, the first sentence of section 101 of the Legislative Branch Appropriations Act, 1976 (2 U.S.C. 61a-9a) is amended by striking out "but such expenditures shall not exceed $10,000 during any fiscal year".

SEC. 2. (a) The last paragraph under the heading "Senate" in the First Deficiency Act, fiscal year 1926 (44 Stat. 162; 2 U.S.C. 64a) is amended to read as follows:

"For any period during which both the Secretary and the Assistant Secretary of the Senate are unable (because of death, resignation, or disability) to discharge such Secretary's duties as disbursing officer of the Senate, the Financial Clerk of the Senate shall be deemed to be the successor of such Secretary as disbursing officer.".

(b) The paragraph under the heading "Administrative Provision" in chapter IV of the Supplemental Appropriations Act, 1972 (2 U.S.C. 64b) is amended—

(1) in the first sentence thereof, by striking out ", except those matters relating to the Secretary's duties as disburing officer of the Senate,"; and

(2) in the third sentence thereof, by striking out ", except those matters relating to the Secretary's duties as such disbursing officer".

SEC. 3. (a) Paragraph (1) of subsection (d) of section 105 of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(d)), is amended—

(1) by striking out "(A)" where it appears in the paragraph designation for paragraph (1);

(2) by amending the second sentence to read as follows: "In the event that the term of office of a Senator begins after the first month of a fiscal year or ends (except by reason of death, resignation, or expulsion) before the last month of a fiscal year, the aggregate amount available for gross compensation of employees in the office of such Senator for such year shall be the applicable amount contained in the table included in the preceding sentence, divided by 12, and multiplied by the number of months in such year which are included in the Senator's term of office, counting any fraction of a month as a full month"; and

(3) by striking out subparagraph (B).

(b) The amendments made by subsection (a) of this section shall be effective with respect to fiscal years beginning after September 30, 1984.

SEC. 4. At no time during the first three months of any fiscal year (commencing with the fiscal year which begins October 1, 1984) shall the aggregate of payments of gross compensation made to employees out of any line item appropriation within the Senate appropriation account for "Salaries, Officers and Employees" (other than the line item appropriations, within such account for "Administrative, clerical, and legislative assistance to Senators" and for "Agency contributions") exceed twenty-five per centum of the total amount available for such line item appropriations for such fiscal year.

SEC. 5. The Sergeant at Arms and Doorkeeper of the Senate shall deposit in the United States Treasury for credit to the appropriation account, within the contingent fund of the Senate, for the "Sergeant at Arms and Doorkeeper of the Senate", all moneys received by him as reimbursement for equipment provided to Senators, committee chairmen, and other officers and employees of the Senate, which has been lost, stolen, damaged, or otherwise unaccounted for.

SEC. 6. The Sergeant at Arms and Doorkeeper of the Senate, in carrying out the duties of his office, is authorized to employ personnel at daily rates of compensation; no individual so employed shall be paid at a daily rate of compensation which is in excess of the per diem equivalent of the highest gross rate of annual compensation which may be paid to employees of a standing committee of the Senate; and payments under authority of this section shall be made from the account, within the contingent fund of the Senate, for the "Sergeant at Arms and Doorkeeper of the Senate", upon vouchers approved by the Sergeant at Arms and Doorkeeper of the Senate.

SEC. 7. (a) Section 117 of Public Law 97-51 (2 U.S.C. 61f-8) is amended by striking out "$60,000" and inserting in lieu thereof "$210,000".

(b) The amendment made by subsection (a) of this section shall be effective in the case of fiscal years beginning on or after October 1, 1984.

SEC. 8. Section 734 of title 31, United States Code, is amended—

(1) by striking out "(a)"; and

(2) by striking out subsection (b).

SEC. 9. Effective October 1, 1983, the allowance for administration and clerical assistance of each Senator from the State of Arizona is increased to that allowed to Senators from States having population of three million but less than four million, the population of such State having exceeded three million inhabitants.

SEC. 10 Notwithstanding any other provisions of law, a Senator who is the Chairman or Vice Chairman of the Senate Select Committee on Ethics may designate one employee employed in his Senate office to perform part-time service for such Committee, and such Committee shall reimburse such Senator for such employee's services for the Committee by transferring from the contingent fund of the Senate, upon vouchers approved by the Chairman of such Committee, to such Senator's Administrative, Clerical, and Legislative Assistance Allowance, with respect to each pay period of such employee, an amount which bears the same ratio to such employee's salary (but not more than one-half of such salary) for such period, as the portion of the time spent (or to be spent) by such employee in performing services for such Committee during such period bears to the total time for which such employee worked (or will work) during such period (as determined by the Chairman of such Committee) for such Committee and in such Senator's office. Any funds transferred under authority of the preceding sentence to a Senator's Administrative, Clerical, and Legislative Assistance shall be available for the same purposes and in like manner as funds therein which were not transferred thereto under such authority. For purposes of any law of the United States, a State, a territory, or a political subdivision thereof, an employee designated by a Senator pursuant to this section shall be considered to be an employee of such Senator's Senate office and not an employee of the Senate Select Committee on Ethics.

HOUSE OF REPRESENTATIVES

Mileage of Members

For mileage of Members, as authorized by law, $210,000.

House Leadership Offices

For salaries and expenses, as authorized by law, $3,240,000, including: Office of the Speaker, $748,000, including $18,000 for official expenses of the Speaker; Office of the Majority Floor Leader, $664,000, including $10,000 for official expenses of the Majority Leader; Office of the Minority Floor Leader,

$740,000, including $10,000 for official expenses of the Minority Leader; Office of the Majority Whip, $582,000, including $1,000 for official expenses of the Majority Whip and not to exceed $139,911 for the Chief Deputy Majority Whip; Office of the Minority Whip, $506,000, including $1,000 for official expenses of the Minority Whip and not to exceed $73,878 for the Chief Deputy Minority Whip.

Salaries, Officers and Employees

For compensation and expenses of officers and employees, as authorized by law, $46,947,000, including: Office of the Clerk, $13,254,000; Office of the Sergeant at Arms, including overtime, as authorized by law, $17,975,000; Office of the Doorkeeper, including overtime, as authorized by law, $6,645,000; Office of the Postmaster, $1,985,000, including $44,928 for employment of substitute messengers and extra services of regular employees when required at the salary rate of not to exceed $15,652 per annum each; Office of the Chaplain, $72,000; Office of the Parliamentarian, including the Parliamentarian and $2,000 for preparing the Digest of Rules, $602,000; for salaries and expenses of the Office for the Bicentennial of the House of Representatives, $188,000; for salaries and expenses of the Office of the Law Revision Counsel of the House, $822,000; for salaries and expenses of the Office of the Legislative Counsel of the House, $2,869,000; six minority employees, $422,000; the House Democratic Steering Committee and Caucus, $563,000; the House Republican Conference, $563,000; and Other Authorized Employees, $987,000.

Such amounts as are deemed necessary for the payment of salaries of officers and employees under this head may be transferred between the various offices and activities within this appropriation, "Salaries, Officers and Employees", upon the approval of the Committee on Appropriations of the House of Representatives.

Committee Employees

For professional and clerical employees of standing committees, including the Committee on Appropriations and the Committee on the Budget, $37,808,000.

Committee on Appropriations (Studies and Investigations)

For salaries and expenses, studies and examinations of executive agencies, by the Committee on Appropriations, and temporary personal services for such committee, to be expended in accordance with section 202(b) of the Legislative Reorganization Act, 1946, and to be available for reimbursement to agencies for services performed, $4,315,000.

Committee on the Budget (Studies)

For salaries, expenses, and studies by the Committee on the Budget, and temporary personal services for such committee to be expended in accordance with sections 101(c), 606, 703, and 901(e), of the Congressional Budget Act of 1974, and to be available for reimbursement to agencies for services performed, $329,000.

Members' Clerk Hire

For staff employed by each Member in the discharge of official and representative duties, $164,126,000.

Contingent Expenses of the House

Allowances and Expenses

For allowances and expenses as authorized by House resolution or law, $122,565,000, including: Official Expenses of Members, $68,200,000; supplies, materials, administrative costs and Federal tort claims, $18,160,000; furniture and furnishings, $1,270,000; stenographic reporting of committee hearings, $500,000; reemployed annuitants reimbursements, $1,782,000; Government contributions to employees' life insurance fund, retirement fund, and health benefits fund, $32,153,000; and miscellaneous items including, but not limited to, purchase, exchange, maintenance, repair and operation of House motor vehicles, interparliamentary receptions and gratuities to heirs of deceased employees of the House, $500,000.

Such amounts as are deemed necessary for the payment of allowances and expenses under this head may be transferred between the various categories within this appropriation, "Allowances and Expenses", upon the approval of the Committee on Appropriations of the House of Representatives.

Standing Committees, Special and Select

For salaries and expenses of standing committees, special and select, authorized by the House, $45,667,000.

Administrative Provisions

Sec. 101. Of the amounts appropriated in fiscal year 1985 for the House of Representatives under the headings "Committee employees", "Standing committees, special and select", "Salaries, officers and employees", "Allowances and expenses", and "Members' clerk hire", such amounts as are deemed necessary for the payment of salaries and expenses may be transferred among the aforementioned accounts upon approval of the Committee on Appropriations of the House of Representatives.

Sec. 102. The provisions of clause 10, rule I, of the Rules of the House of Representatives as in effect before the date of enactment of this Act, relating to the Office for the Bicentennial for the House of Representatives, established by House Resolution 621, Ninety-seventh Congress, shall be the permanent law with respect thereto. Rule I of the Rules of the House of Representatives is amended by striking out clause 10.

Sec. 103. The provisions of H. Res. 234, approved June 29, 1983, providing for appointment and education of House Pages; H. Res. 279, approved July 21, 1983, regarding the use of certain educational facilities; and the provisions of H. Res. 343, approved October 26, 1983, upgrading four positions on the Capitol Police Force, shall be the permanent law with respect thereto.

JOINT ITEMS

For joint committees, as follows:

Contingent Expenses of the Senate

JOINT ECONOMIC COMMITTEE

For salaries and expenses of the Joint Economic Committee, $2,569,000.

JOINT COMMITTEE ON PRINTING

For salaries and expenses of the Joint Committee on Printing, [$918,000] *$900,000*.

Contingent Expenses of the House

JOINT COMMITTEE ON TAXATION

For salaries and expenses of the Joint Committee on Taxation, [$3,646,000] *$3,565,000*, to be disbursed by the Clerk of the House.

For other joint items, as follows:

Office of the Attending Physician

For medical supplies, equipment, and contingent expenses of the emergency rooms, and for the Attending Physician and his assistants, including (1) an allowance of $1,000 per month to the Attending Physician; (2) an allowance of $600 per month to one Senior Medical Officer while on duty in the Attending Physician's office; (3) an allowance of $200 per month each to two medical officers while on duty in the Attending Physician's office; (4) an allowance of $200 per month each to not to exceed nine assistants on the basis heretofore provided for such assistance; and (5) $644,800 for reimbursement to the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician, such amount shall be advanced and credited to the applicable appropriation or appropriations from which such salaries, allowances, and other expenses are payable and shall be available for all the purposes thereof, $956,000, to be disbursed by the Clerk of the House.

Capitol Police

GENERAL EXPENSES

For purchasing and supplying uniforms; the purchase, maintenance, and repair of police motor vehicles, including two-way police radio equipment; contingent expenses, including advance payment for travel for training or other purposes, and expenses associated with the relocation of instructor personnel to and from the Federal Law Enforcement Training Center as approved by the Chairman of the Capitol Police Board, and including $80 per month for extra services performed for the Capitol Police Board by such member of the staff of the Sergeant at Arms of the Senate or the House as may be designated by the Chairman of the Board, $1,471,000, to be disbursed by the Clerk of the House: *Provided*, That the funds used to maintain the petty cash fund referred to as "Petty Cash II" which is to provide for the prevention and detection of crime should not exceed $4,000: *Provided further*, That the funds used to maintain the petty cash fund referred to as "Petty Cash III" which is to provide for the advance of travel expenses attendant to protective assignments shall not exceed $4,000.

CAPITOL POLICE BOARD

Funds available for obligations for fiscal year 1985 to enable the Capitol Police Board to provide additional protection for the Capitol Buildings and Grounds, including the Senate and House Office Buildings and the Capitol Power Plant, [$228,000] *$141,188*, to be disbursed by the Clerk of the House. Such sum shall be expended only for payment of salaries and other expenses of personnel detailed from the Metropolitan Police of the District of Columbia, and the Mayor of the District of Columbia is authorized and directed to make such details upon the request of the Board. Personnel so detailed shall, during the period of such detail, serve under the direction and instructions of the Board and are authorized to exercise the same authority as members of such Metropolitan Police and members of the Capitol Police and to perform such other duties as may be assigned by the Board. Reimbursement for salaries and other expenses of such detail personnel shall be made to the government of the District of Columbia, and any sums so reimbursed shall be credited to the appropriation or appropriations from which such salaries and expenses are payable and shall be available for all the purposes thereof: *Provided*, That any person detailed under the authority of this paragraph or under similar authority in the Legislative Branch Appropriation Act, 1942, and the Second Deficiency Appropriation Act, 1940, from the Metropolitan Police of the District of Columbia shall be deemed a member of such Metropolitan Police during the period or periods of any such detail for all purposes of rank, pay, allowances, privileges, and the benefits to the same extent as though such detail had not been made, and at the termination thereof any such person shall have a status with respect to rank, pay, allowances, privileges, and benefits which is not less than the status of such person in such police at the end of such detail.

No part of any appropriation contained in this Act shall be paid as compensation to any person appointed after June 30, 1935, as an officer or member of the Capitol Police who does not meet the standards to be prescribed for such appointees by the Capitol Police Board.

Official Mail Costs

For expenses necessary for official mail costs, $73,944,000, to be disbursed by the Clerk of the House, to be available immediately upon enactment of this Act.

Capitol Guide Service

For salaries and expenses of the Capitol Guide Service, [$814,000] *$810,000*, to be disbursed by the Secretary of the Senate: *Provided*, That none of these funds shall be used to employ more than twenty-eight individuals: *Provided further*, That the Capitol Guide Board is authorized, during emergencies, to employ not more than two additional individuals for not more than one hundred twenty days each, and not more than ten additional individuals for not more than six months each, for the Capitol Guide Service.

Statements of Appropriations

For the preparation, under the direction of the Committees on Appropriations of the Senate and House of Representatives, of the statements for the second session of the Ninety-eighth Congress, showing appropriations made, indefinite appropriations, and contracts authorized, together with a chronological history of the regular appropriation bills as required by law, $13,000, to be paid to the persons designated by the chairmen of such committees to supervise the work.

OFFICE OF TECHNOLOGY ASSESSMENT

Salaries and Expenses

For salaries and expenses necessary to carry out the provisions of the Technology Assessment Act of 1972 (Public Law 92-484), including reception and representation expenses (not to exceed $3,000 from the Trust Fund) and rental of space in the District of Columbia, and those necessary to carry out the duties of the Director of the Office of Technology Assessment under Section 1886 of the Social Security Act as amended by Section 601 of the Social Security Amendments of 1983 (Public Law 98-21), [$15,362,000] *$15,924,000*: *Provided*, That none of the funds in the Act shall be available for salaries or expenses of any employee of the Office of Technology Assessment in excess of [141] *145* staff employees: *Provided further*, That no part of this appropriation shall be available for assessment or activities not initiated and approved in accordance with section 3(d) of Public Law 92-484, except that funds shall be available for the assessment required by Public Law 96-151.

CONGRESSIONAL BUDGET OFFICE

Salaries and Expenses

For salaries and expenses necessary to carry out the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), $17,418,000: *Provided*, That none of these funds shall be available for the purchase or hire of a passenger motor vehicle: *Provided further*, That none of the funds in this Act shall be available for salaries or expenses of any employee of the Congressional Budget Office in excess of 222 staff employees: *Provided further*, That any sale or lease of property, supplies, or services to the Congressional Budget Office shall be deemed to be a sale or lease of such property, supplies, or services to the Congress subject to Section 903 of Public Law 98-63: *Provided further, That the Congressional Budget Office shall have the authority to contract without regard to section 5 of title 41.*

ARCHITECT OF THE CAPITOL

Office of the Architect of the Capitol

SALARIES

For the Architect of the Capitol; the Assistant Architect of the Capitol; the Executive Assistant; and other personal services; at rates of pay provided by law, [$5,137,000] *$5,112,000*.

TRAVEL

Appropriations under the control of the Architect of the Capitol shall be available for expenses of travel on official business not to exceed in the aggregate under all funds the sum of $20,000.

CONTINGENT EXPENSES

To enable the Architect of the Capitol to make surveys and studies, to incur expenses authorized by the Act of December 13, 1973 (87 Stat. 704), and to meet unforeseen expenses in connection with activities under his care, $235,000, which shall remain available until expended.

Capitol Buildings and Grounds

CAPITOL BUILDINGS

For all necessary expenses for the maintenance, care and operation of the Capitol Building and electrical substations of the Senate and House Office Buildings, under the jurisdiction of the Architect of the Capitol, including furnishings and office equipment; not to exceed $1,000 for official reception and representation expenses, to be expended as the Architect of the Capitol may approve; purchase or exchange, maintenance and operation of a passenger motor vehicle; for expenses of attendance, when specifically authorized by the Architect of the Capitol, at meetings or conventions in connection with subjects related to work under the Architect of the Capitol, [$11,256,000] *$11,615,850*, of which $1,200,000 shall remain available until expended: *Provided*, That appropriations under this head shall be available for replacement of Electro-mechanical Signal Devices for the legislative call system and for security improvements without regard to section 3709 of the Revised Statutes, as amended.

CAPITOL GROUNDS

For all necessary expenses for care and improvement of grounds surrounding the Capitol, the Senate and House Office Buildings, and the Capitol Power Plant, [$2,812,000] *$2,793,000*, of which $10,000 shall remain available until expended.

SENATE OFFICE BUILDINGS

For all necessary expenses for maintenance, care and operation of the Senate Office Buildings; and furniture and furnishings, to be expended under the control and supervision of the Architect of the Capitol, $19,241,000 of which $2,394,000 shall remain available until expended, and $1,521,000 to be made available immediately upon enactment into law of this Act; in all, $20,762,000.

HOUSE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of the House Office Buildings, including the position of Superintendent of Garages as authorized by law, $22,750,000, of which $2,070,000 shall remain available until expended: *Provided*, That, notwithstanding any other provision of law, the House Office Building Commission is authorized to use, to such extent as it may deem necessary, for the purposes of providing office and other accommodations for the House of Representatives, the building located at 501 First Street, S.E., on a portion of Reservation 17 in the District of Columbia when such building is acquired by the Architect of the Capitol at the direction of the House Office Building Commission under authority of the Additional House Office Building Act of 1955, and to incur any expenditures under this appropriation required for alterations, maintenance, and occupancy thereof: *Provided further*, That any space in such building used for office and other accommodations for the House of Representatives shall be deemed to be a part of the "House Office Buildings" and, as such, shall be subject to the laws, rules, and regulations applicable to those buildings.

CAPITOL POWER PLANT

(INCLUDING RESCISSION OF FUNDS)

For all necessary expenses for the maintenance, care and operation of the Capitol Power Plant; for lighting, heating, and power (including the purchase of electrical energy) for the Capitol, Senate and House Office Buildings, Congressional Library Buildings, and the grounds about the same, Botanic Garden, Senate garage, and for air conditioning refrigeration not supplied from plants in any of such buildings; for heating the Government Printing Office and Washington City Post Office and heating and chilled water for air conditioning for the Supreme Court Building, Union Station complex and the Folger Shakespeare Library, expenses for which shall be advanced or reimbursed upon request of the Architect of the Capitol and amounts so received shall be deposited into the Treasury to the credit of this appropriation; $23,834,000: *Provided*, That not to exceed $1,950,000 of the funds credited or to be reimbursed to this appropriation as herein provided shall be available for obligation during fiscal year 1985.

Of the funds appropriated under this head in Public Law 97-51, made available until expended, $914,000 are rescinded.

LIBRARY OF CONGRESS

Congressional Research Service

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946, as amended by section 321 of the Legislative Reorganization Act of 1970 (2 U.S.C. 166) and to revise and extend the Annotated Constitution of the United States of America, [$39,833,000] *$39,887,860*: *Provided*, That no part of this appropriation may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration or the Senate Committee on Rules and Administration: *Provided further*, That, notwithstanding any other provisions of law, the compensation of the Director of the Congressional Research Service, Library of Congress, shall be at an annual rate which is equal to the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code: *Provided further,* That this rate of basic pay shall take effect on the first day of the first applicable pay period commencing on or after the date of enactment of this Act.

GOVERNMENT PRINTING OFFICE

Congressional Printing and Binding

For authorized printing and binding for the Congress; for printing and binding for the Architect of the Capitol; expenses necessary for preparing the semimonthly and session index to the Congressional Record, as authorized by law (44 U.S.C. 902); and printing and binding of Government publications authorized by law to be distributed to Members of Congress, [$80,879,000] *$80,800,000*: *Provided,* That this appropriation shall not be available for printing and binding part 2 of the annual report of the Secretary of Agriculture (known as the Yearbook of Agriculture) or for printing and binding copies of the permanent edition of the Congressional Record for individual Representatives, Resident Commissioners or Delegates authorized under 44 U.S.C. 906: *Provided further,* That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years.

This title may be cited as the "Congressional Operations Appropriation Act, 1985".

TITLE II—OTHER AGENCIES

BOTANIC GARDEN

SALARIES AND EXPENSES

For all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections; purchase and exchange, maintenance, repair, and operation of a passenger motor vehicle; all under the direction of the Joint Committee on the Library, $2,044,000, of which $20,000 shall remain available until expended.

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

For necessary expenses of the Library of Congress, not otherwise provided for, including development and maintenance of the Union Catalogs; custody, care and maintenance of the Library Buildings; special clothing; cleaning, laundering and repair of uniforms; preservation of motion pictures in the custody of the Library; operation and maintenance of the American Folklife Center and the American Television and Radio Archives in the Library; preparation and distribution of catalog cards and other publications of the Library; and expenses of the Library of Congress Trust Fund Board not properly chargeable to the income of any trust fund held by the Board, $137,492,000, of which not more than $4,300,000 shall be derived from collections credited to this appropriation during fiscal year 1985 under the Act of June 28, 1902, as amended (2 U.S.C. 150): *Provided,* That the total amount available for obligation shall be reduced by the amount by which collections are less than the $4,300,000: *Provided further,* That, of the total amount appropriated, $5,242,000 is to remain available until expended for acquisition of books, periodicals, and newspapers, and all other materials including subscriptions for bibliographic services for the Library, including $40,000 to be available solely for the purchase, when specifically approved by the Librarian, of special and unique materials for additions to the collections.

Copyright Office

SALARIES AND EXPENSES

For necessary expenses of the Copyright Office, including publication of the decisions of the United States courts involving copyrights, $17,102,000, of which not more than $6,000,000 shall be derived from collections credited to this appropriation during fiscal year 1985 under 17 U.S.C. 708(c): *Provided,* That the total amount available for obligation shall be reduced by the amount by which collections are less than the $6,000,000.

Books for the Blind and Physically Handicapped

SALARIES AND EXPENSES

For salaries and expenses to carry out the provisions of the Act approved March 3, 1931, as amended (2 U.S.C. 135a), $36,592,000.

Collection and Distribution of Library Materials

(Special Foreign Currency Program)

For necessary expenses for carrying out the provisions of section 104(b)(5) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), to remain available until expended, $3,318,000, and, in addition, $300,000 to be derived by release of that amount withheld from obligation by the Librarian of Congress pursuant to section 311 of Public Law 95-391, of which $3,111,000 shall be available only for payments in any foreign currencies owed to or owned by the United States which the Treasury Department shall determine to be excess to the normal requirements of the United States.

Furniture and Furnishings

For necessary expenses for the purchase and repair of furniture, furnishings, office and library equipment, $1,673,000.

Administrative Provisions

Sec. 201. Appropriations in this Act available to the Library of Congress shall be available, in an amount not to exceed [$140,750] *$153,000*, of which [$53,100] *$56,800* is for the Congressional Research Service, when specifically authorized by the Librarian, for expenses of attendance at meetings concerned with the function or activity for which the appropriation is made.

[Sec. 202. (a) No part of the funds appropriated in this Act shall be used by the Library of Congress to administer any flexible or compressed work schedule which—

[(1) applies to any manager or supervisor in a position the grade or level of which is equal to or higher than GS-15; and

[(2) grants the manager or supervisor the right to not be at work for all or a portion of a workday because of time worked by the manager or supervisor on another workday.

[(b) For purposes of this section, the term "manager or supervisor" means any management official or supervisor, as such terms are defined in section 7103(a) (10) and (11) of title 5, United States Code.]

ARCHITECT OF THE CAPITOL

Library Buildings and Grounds

STRUCTURAL AND MECHANICAL CARE

For all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings and grounds, $5,709,000, of which $310,000 shall remain available until expended.

COPYRIGHT ROYALTY TRIBUNAL

Salaries and Expenses

For necessary expenses of the Copyright Royalty Tribunal, $722,000, of which $505,000 shall be derived by collections from the appropriation "Payments to Copyright Owners" for the reasonable costs incurred in proceedings involving distribution of royalty fees as provided by 17 U.S.C. 807.

GOVERNMENT PRINTING OFFICE

Printing and Binding

For printing, binding, and distribution of Government publications authorized by law to be distributed without charge to the recipient, [$13,269,000] *$13,200,000*: *Provided,* That this appropriation shall not be available for printing and binding part 2 of the annual report of the Secretary of Agriculture (known as the Yearbook of Agriculture): *Provided further,* That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years.

Office of Superintendent of Documents

SALARIES AND EXPENSES

For necessary expenses of the Office of Superintendent of Documents, including compensation of all employees in accordance with the provisions of 44 U.S.C. 305; travel expenses (not to exceed $88,300); price lists and bibliographies; repairs to buildings, elevators, and machinery; and supplying books to depository libraries; $28,868,000: *Provided,* That $300,000 of this appropriation shall be apportioned for use pursuant to section 3679 of the Revised Statutes, as amended (31 U.S.C. 1512), with the approval of the Public Printer, only to the extent necessary to provide for expenses (excluding permanent personal services) for workload increases not anticipated in the budget estimates and which cannot be provided for by normal budgetary adjustments.

Government Printing Office Revolving Fund

The Government Printing Office is hereby authorized to make such expenditures, within the limits of funds available and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the "Government Printing Office revolving fund": *Provided,* That not to exceed $5,000 may be expended on the certification of the Public Printer in connection with special studies of government printing, binding, and distribution practices and procedures: *Provided further,* That during the current fiscal year the revolving fund shall be available for the hire of two passenger motor vehicles and the purchase of one passenger motor vehicle: *Provided further,* That expenditures in connection with travel expenses of the advisory councils to the Public Printer shall be deemed necessary to carry out the provisions of title 44, United States Code: *Provided further,* That the revolving fund shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for grade GS-18: *Provided further,* That the revolving fund shall be available to acquire needed land, located in Northwest D.C., which is adjacent to the present Government Printing Office, and is bounded by New Jersey Avenue and the western property line of the Government Printing Office, between G and H Streets.

GENERAL ACCOUNTING OFFICE

Salaries and Expenses

For necessary expenses of the General Accounting Office, including not to exceed $5,000 to be expended on the certification of the Comptroller General of the United States in connection with official representation and reception expenses; services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for grade GS-18; hire of one passenger motor vehicle; advance payments in foreign countries notwithstanding 31 U.S.C. 3324; benefits comparable to those payable under sections 901(5), 901(6) and 901(8) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5), 4081(6) and 4081(8), respectively); and under regulations prescribed by the Comptroller General of the United States, rental of living quarters in foreign countries and travel benefits comparable with those which are now or hereafter may be granted single employees of the Agency for International Development, including single Foreign Service personnel assigned to A.I.D. projects, by the Administrator of the Agency for International Development—or his designee—under the authority of section 636(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(b)); [$307,557,000] *$294,704,000*: *Provided*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the Joint Financial Management Improvement Program (JFMIP) shall be available to finance an appropriate share of JFMIP costs as determined by the JFMIP, including but not limited to the salary of the Executive Director and secretarial support: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the National Intergovernmental Audit Forum or a Regional Intergovernmental Audit Forum shall be available to finance an appropriate share of Forum costs as determined by the Forum, including necessary travel expenses of non-Federal participants. Payments hereunder to either the Forum or the JFMIP may be credited as reimbursements to any appropriation from which costs involved are initially financed: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the American Consortium on International Public Administration (ACIPA) shall be available to finance an appropriate share of ACIPA costs as determined by the ACIPA, including any expenses attributable to membership of ACIPA in the International Institute of Administrative Sciences: *Provided further*, That this appropriation shall be available to finance a portion, not to exceed $50,000, of the costs of the Governmental Accounting Standards Board.

RAILROAD ACCOUNTING PRINCIPLES BOARD

Salaries and Expenses

For salaries and expenses of the Railroad Accounting Principles Board, $1,000,000, to be expended in accordance with the provisions of [H.R. 4439, as passed by the House of Representatives on February 7, 1984] *S. 2537, as reported to the Senate on May 17, 1984.*

TITLE III—GENERAL PROVISIONS

Sec. 301. No part of the funds appropriated in this Act shall be used for the maintenance or care of private vehicles, except for emergency assistance and cleaning as may be provided under regulations relating to parking facilities for the House of Representatives issued by the Committee on House Administration.

Sec. 302. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 303. Whenever any office or position not specifically established by the Legislative Pay Act of 1929 is appropriated for herein or whenever the rate of compensation or designation of any position appropriated for herein is different from that specifically established for such position by such Act, the rate of compensation and the designation of the position, or either, appropriated for or provided herein, shall be the permanent law with respect thereto: *Provided*, That the provisions herein for the various items of official expenses of Members, officers, and committees of the Senate and House, and clerk hire for Senators and Members shall be the permanent law with respect thereto.

Sec. 304. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

[Sec. 305. Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available is hereby reduced by 2 percent.]

This Act may be cited as the "Legislative Branch Appropriation Act, 1985".

Mr. GARN. Mr. President, the fiscal year 1985 legislative branch appropriations bill recommended by the Committee on Appropriations provides a total of $1,551,367,898, which is more than $46,000,000 below the President's request and $77,000,000 over amounts enacted to date for fiscal year 1984. That represents a 5-percent increase. The committee is now considering fiscal year 1984 supplemental requests in excess of $200 million, so it is likely that fiscal year 1984 appropriations will exceed the fiscal year 1985 amounts provided in this bill.

The funds in this measure provide for the operations of Congress and its support agencies—the Congressional Budget Office, the Office of Technology Assessment, the General Accounting Office, the Government Printing Office, the Library of Congress, and the Congressional Research Service. Every effort has been made to restrain expenditures while accommodating necessary requirements. The committee has been particularly careful in reviewing requests for additional positions in various offices and support agencies. For example, the Sergeant at Arms requested 19 new positions, and the committee has recommended 9; CRS requested 19 new positions, and 7 have been recommended; the GAO requested 500 new positions, and only 50 have been provided for in this bill.

At the same time, the committee has provided funds for programs to improve the efficiency and capability of the Congress. For example, the committee recommendation includes funds for the acquisition of additional computer equipment in both personal offices and committee offices. The committee is also recommending several administrative provisions, suggested by officers of the Senate, which will enable Senators to manage their offices with greater flexibility to adapt to changing requirements.

Mr. President, this is a straightforward workmanlike piece of legislation. I know of no controversy associated with it, and I believe we can move on it expeditiously.

I will yield to Senator Bumpers for any opening comments he may wish to make, and then I have three technical amendments I wish to offer.

Mr. BUMPERS. Mr. President, as the chairman has indicated, the bill, as reported, is $46 million below the amounts in the President's budget for the legislative branch.

For Senate operations, the bill includes a reduction of $4.2 million below the President's budget.

Mr. President, I want to congratulate the distinguished subcommittee chairman [Mr. D'Amato] for his very fine efforts to constrain the total amount in the bill to a 5-percent increase over the amounts enacted to date for fiscal year 1984. Moreover, the committee anticipates the enactment of numerous fiscal year 1984 pay and program supplementals later this year, which will have the effect of reducing the year-to-year increase to substantially below 5 percent.

I would also like to call the attention of my colleagues to the fact that the single major increase in staffing in this bill relates to the 50 additional positions provided to the General Accounting Office, which has often been called the financial watchdog of the Congress. Testimony before the committee indicates that collections and other measurable dollar accomplishments attributed to the work of the General Accounting Office for fiscal year 1983 is $4.3 billion. Consequently, I believe that this increase in staffing is fully justified.

Again, I congratulate the chairman of the subcommittee [Mr. D'Amato] and urge the adoption of this bill.

Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair informs the Senator from Arkansas that there are committee amendments pending which must be disposed of.

Mr. GARN. Mr. President, I failed to go ahead with those. I thought the

Senator from Arkansas was just going to make an opening statement and we would go back to the technical amendments. With his permission, I will proceed.

Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move that section 303 of that act be waived for the purpose of consideration of H.R. 5753, making appropriations for the legislative branch for fiscal year 1985, and any amendment thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GARN. Mr. President, I ask unanimous consent that the committee amendments to H.R. 5753 be considered and agreed to en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma has reserved the right to object.

Mr. GARN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GARN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GARN. Mr. President, I ask unanimous consent that the committee amendments to H.R. 5753 be considered and agreed to en bloc.

The PRESIDING OFFICER. Is there objection? The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I reserve the right to object, and I ask the distinguished chairman if he might amend his request to adopt all the committee amendments with the exception of the committee amendment dealing with section 305 which pertains to a 2-percent across-the-board cut.

Mr. GARN. Mr. President, in a conversation we had before taking up the quorum call, the Senator from Oklahoma indicated to me that he would object to the amendments being considered en bloc. It is preferable that we enact those that he does not object to. Therefore, I would modify the unanimous-consent agreement to eliminate that one amendment.

The PRESIDING OFFICER. Is there objection to the unanimous consent request as modified? Without objection, it is so ordered.

Mr. GARN. Mr. President, before we do that, let me just add, which should have been in the unanimous-consent agreement, and that the bill, as amended, be regarded for the purpose of amendment as original text, provided that no point of order shall be considered to have been waived by reason of agreement to this order.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

Mr. GARN. Mr. President, it is my understanding now that the legislative situation is that the lead amendment is now before the Senate.

The PRESIDING OFFICER. The one committee amendment that was not agreed to en bloc is the pending question.

Mr. GARN. That is correct.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, in order to expedite this, and I have not visited with the distinguished floor manager, but I would like to ask unanimous consent that that amendment be temporarily laid aside in order for me to present a couple of amendments. Apparently, there is going to be some controversy about it.

Mr. BAKER. Would the Senator let me ask a question before he makes that request, Mr. President?

Listening to parts of the conversation between Senators NICKLES and GARN, I get the impression that we probably will have a rollcall vote in this committee amendment. Could either of the Senators indicate to me that they expect a rollcall, or will ask for the yeas and nays on this amendment?

Mr. NICKLES. If I might respond, Mr. President, it is not my desire to have the yeas and nays but it is my expectation that the committee is going to insist on the committee position, and, therefore, the yeas and nays would be required.

Mr. BAKER. Mr. President, I think Senators who are listening in their offices should be aware of the fact that we do anticipate a rollcall vote, perhaps more than one. I have asked the cloakroom on this side to notify Senators. I do not know how soon it will come, but I would urge the Senators to come to the floor and be prepared for an early rollcall vote on this amendment.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, it is my understanding in conversation that it will not be long. I can ask the Senator from Oklahoma if this interpretation is correct. I would not expect more than 10 minutes before a rollcall vote. Is that correct?

Mr. NICKLES. The Senator is entirely correct. My statement will only take a couple of minutes.

Mr. GARN. Mr. President, if that is the case, the Senator from Arkansas might withdraw his request.

Mr. BUMPERS. I withdraw my request, Mr. President.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, so our colleagues will know what the situation is, we are on the legislative branch appropriation bill. It appropriates $1.551 billion for legislative branch appropriations.

In the House-passed language, in the House bill which we are considering today, on page 37 in the bill, it says "notwithstanding any other provision in this act each amount appropriated or otherwise made available is hereby reduced by 2 percent." The committee when they took this up have stricken that language. The issue before us is whether or not we will agree with the House-passed language which has presently been stricken from the bill or not. It is my hope that we will support the House-passed position and strike this 2 percent which will save taxpayers something like $31 million.

So the question—and I think that we will be voting in a very short period of time—will be whether or not we will agree to the committee amendment to strike this section, section 305 in the bill, and that pertains to the 2-percent reduction across the board. Does the Senator agree with that?

Mr. GARN. Mr. President, the description is correct.

Mr. NICKLES. Mr. President, I yield the floor.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I find myself in a rather unusual situation. As the chairman of HUD-Independent Agencies Subcommittee and asked to fill in on this bill, I have not participated in all of the hearings or the markup. Nevertheless, it is my understanding that there was originally in the House language a 2-percent cut applying to House items, not to the Senate. It has been removed by this committee amendment which the Senator from Oklahoma is objecting to, and wishes a rollcall vote.

I will oppose the amendment and vote against it, not because I am not for economy in the legislative branch. Our budgets over the years have risen, and in several years we have taken sizable cuts which I supported.

On taking the 2-percent across-the-board cut, I generally object to across-the-board cuts because where you have multidepartment budgets some may be able to absorb much more than 2 percent; some may not or should not have any cut. It is my understanding the Legislative Appropriations Subcommittee rejected the 2-percent across-the-board cut but made other cuts on an item-by-item basis, some more than 2 percent and others with no cuts. On balance, this was very close to cutting almost a slight bit more than would be included in a 2-percent cut. I wanted to indicate that.

I understand where the Senator from Oklahoma is coming from, attempting to save money. I have consistently voted for cuts in the allowances to run the Senate and the House. I would simply submit in opposition that those cuts, I believe, have already been made but in a different manner than across the board. I would, therefore, oppose this amendment.

Mr. NICKLES. Mr. President, just so our colleagues will understand the numbers, the Senate bill which is before us, without the 2-percent cut, increases the total functions $77.183 million.

The 2-percent reduction would save about $31 million. So the total amount of money still going up, even with the 2-percent reduction, will still increase something like $46 million.

Under the Senate committee bill, appropriations for the legislative function would increase something like 5 percent. I expect that if we are able to make this 2-percent reduction, the legislative function would increase in the 3-percent range.

Mr. President, that is just about what inflation is today. I think this is a responsbile position to take, and I hope the Senate will agree.

Mr. GARN. Mr. President, let me give two quick specific examples of what I was talking about. When the subcommittee decided to not have a 2-percent across the board, in the inquiries and investigation section that was cut $1 million, which is just about exactly on 2 percent in that particular. The Sergeant at Arms and Doorkeeper of the Senate, again, was cut a little bit more than 2 percent. All I am indicating is we are giving a double whammy here in making specific cuts and then applying the 2-percent across the board. If we took out all those individual cuts that were made in various departments and then wanted to apply a 2 percent, you would not have a great deal of difference in the total amount of money to effect the difference in those areas. I understand there is only a $13 million difference between the House and Senate version.

Mr. BUMPERS. I would respectfully oppose this proposal by the Senator from Oklahoma. This bill came to the Senate from the Legislative Branch Subcommittee and the full Appropriations Committee. I must say Senator D'Amato has worked much harder on it than I have. He is a very fiscally responsible Senator.

Here is a bill that contains $1,551,000,000. The Legislative Branch Appropriations is the title. We went through that bill item by item. We cut in places and we added in places, but the net effect was that if we were to adopt the proposal of the Senator from Oklahoma, we would cut $6 million from the Senate share of legislative appropriations. We cut $4 million by doing it very selectively.

I have on occasion, and I suspect most every Senator on occasion, voted for across-the-board cuts as the only really practical chance of getting a cut made. But percentage cuts are not nearly as good, not nearly as efficient, not nearly as sensible as selective cuts.

Here, as I say, we cut $4 million by going through this budget very carefully, item by item. To me, that would be much better. If we go back and adopt the proposal of the Senator from Oklahoma, what you have done is take a broad ax to all the Senate appropriations and you have destroyed the work that we tried to carefully do on a selective basis to come up with a reasonable compromise.

I would also like to point out that this bill is $46 million under the President's request.

I must respectfully oppose the request of the Senator from Oklahoma.

Mr. NICKLES. We hear about the cuts, cutting $4 million, and so on. But if you will look, you will see that in the committee bill, we are spending $77 million more than what we spent in 1984. That is not a cut; that is an increase. Even if this amendment is successful, with the 2-percent cut, you will still see an increase in the legislative function of $40-some million. That is an increase. It is not a cut. Granted, the increase will be more in the line of 3 percent or 4 percent instead of 5 percent; I realize that. But it still is an increase; it is not a cut. I think it is in line with inflation. For crying out loud, people have been telling us to get our house in order. I think we have to make some sacrifice ourselves if we are going to ask others to make sacrifices as well.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the committee amendment on page 37, lines 8 through 10. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Colorado [Mr. Armstrong], the Senator from Rhode Island [Mr. Chafee], the Senator from New York [Mr. D'Amato], the Senator from Arizona [Mr. Goldwater], the Senator from North Carolina [Mr. Helms], the Senator from Nevada [Mr. Laxalt], the Senator from Idaho [Mr. McClure], the Senator from Vermont [Mr. Stafford], the Senator from Alaska [Mr. Stevens], the Senator from Texas [Mr. Tower], the Senator from Virginia [Mr. Trible], the Senator from Connecticut [Mr. Weicker], and the Senator from California [Mr. Wilson] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. Bentsen], the Senator from Connecticut [Mr. Dodd], the Senator from Ohio [Mr. Glenn], the Senator from Colorado [Mr. Hart], the Senator from Kentucky [Mr. Huddleston], the Senator from Massachusetts [Mr. Kennedy], the Senator from Louisiana [Mr. Long], the Senator from Maine [Mr. Mitchell], the Senator from Arkansas [Mr. Pryor], the Senator from West Virginia [Mr. Randolph], the Senator from Maryland [Mr. Sarbanes], and the Senator from Massachusetts [Mr. Tsongas] are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia [Mr. Randolph], would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 39, nays 36, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—39

Abdnor
Andrews
Baker
Bingaman
Boschwitz
Bumpers
Byrd
Chiles
Cochran
Cranston
Domenici
Durenberger
Eagleton
Ford
Garn
Gorton
Hatch
Hatfield
Hawkins
Hecht
Heinz
Hollings
Inouye
Johnston
Lautenberg
Leahy
Lugar
Mathias
Matsunaga
Melcher
Moynihan
Murkowski
Packwood
Percy
Quayle
Riegle
Roth
Specter
Wallop

NAYS—36

Baucus
Biden
Boren
Bradley
Burdick
Cohen
Danforth
DeConcini
Denton
Dixon
Dole
East
Evans
Exon
Grassley
Heflin
Humphrey
Jepsen
Kassebaum
Kasten
Levin
Mattingly
Metzenbaum
Nickles
Nunn
Pell
Pressler
Proxmire
Rudman
Sasser
Simpson
Stennis
Symms
Thurmond
Warner
Zorinsky

NOT VOTING—25

Armstrong
Bentsen
Chafee
D'Amato
Dodd
Glenn
Goldwater
Hart
Helms
Huddleston
Kennedy
Laxalt
Long
McClure
Mitchell
Pryor
Randolph
Sarbanes
Stafford
Stevens
Tower
Trible
Tsongas
Weicker
Wilson

So the committee amendment on page 37, lines 8 through 10, was agreed to.

Mr. BUMPERS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

AMENDMENT NO. 3318

Mr. GARN. Mr. President, there are some technical amendments to be added to this bill. The first one is on page 3, line 11. I will not go further. We are simply correcting language. I send the amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. GARN] proposes an amendment numbered 3318.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 11, strike "as" and insert "at".

On page 4, line 18, strike "ALLOWANCE" and insert "ALLOWANCES".

Mr. GARN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order. Senators who wish to converse should do so some place other than the Chamber. The Senate will please be in order.

The question is on agreeing to the amendment.

The amendment (No. 3318) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3319

Mr. GARN. Mr. President, there is a second amendment to section 7, which I send to the desk.

The amendment increases limitation on consultant services for the Sergeant at Arms immediately upon enactment instead of October 1, 1984. It will enable the Sergeant at Arms to conduct a thorough study of computer center operations.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Utah [Mr. GARN] proposes an amendment numbered 3319.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, line 3, strike "(a)".

On page 9, strike lines 6 through 8.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3319) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3295

(Purpose: Relating to transfer of funds from a Senator's clerk hire allowance to his official office expense account)

Mr. BUMPERS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3295.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title I, under the heading "SENATE", insert the following new section:

SEC. . (a) Section 110 (a) of Public Law 97-12 (2 U.S.C. 58b) is amended—

(1) by inserting, immediately after the first sentence thereof, the following new sentence: "Each Senator, at his election, may, during any fiscal year (but not earlier than August 1 thereof), transfer from his clerk hire allowance to such Senator's Official Office Expense Account such amounts in such clerk hire allowance as the Senator shall determine, but not in excess of the balance (or accrued surplus in case of transfers made prior to October 1, 1984) as of the end of the month which precedes the date of such transfer.";

(2) in the second sentence thereof, by striking out "balance" and inserting in lieu thereof "amount"; and

(3) in the third sentence thereof, by striking out "December 31," and all that follows, and inserting in lieu thereof "December 31 of the calendar year in which occurs the close of such fiscal year, and such transfer shall be made on such date (but not earlier than August 1 of such calendar year) as may be specified by the Senator.".

(b) The amendments made by subsection (a) shall be effective in the case of fiscal years beginning after September 30, 1983.

Mr. BUMPERS. Mr. President, this amendment, which is of a technical nature, has been cleared with the chairman. The amendment is in the form of a general provision and does not require any additional appropriations.

The purpose of the amendment relates to the transfer of funds from a Senator's clerk-hire allowance to his official office expense account.

Under current law, a Senator may elect on or after October 1 of any year, to transfer surplus amounts in his clerk-hire allowance to his official office expense allowance. This amendment would merely advance the date from October 1 to August 1, in order to assist Members to cope with rising costs, especially in the transportation industry.

Mr. President, I urge the adoption of the amendment.

Mr. GARN. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3295) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3296

(Purpose: Relating to limitations on salary levels of Senate staff)

Mr. BUMPERS. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3296.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title I, under the heading "SENATE", insert the following new section:

SEC. . (a) The second sentence of paragraph (2) of section 105(d) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(d)(2)), is amended to read as follows: "The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,251 or in excess of $68,172 per annum.".

(b) The first sentence of paragraph (3) of section 105(e) of such Act (2 U.S.C. 61-1(e)) is amended to read as follows: "No employee of a committee of the Senate shall be paid at a gross rate in excess of $67,694, in case of an employee of a joint committee the expenses of which are paid from the contingent fund of the Senate, $68,172, in case of an employee of a select committee (including the conference majority and conference minority of the Senate), or $69,966, in case of an employee of any standing committee (including the majority and minority policy committees) of the Senate.".

(c) The amendments made by subsection (a) of this section shall take effect on October 1, 1984.

Mr. BUMPERS. Mr. President, this amendment, which is of a technical nature, has been cleared with the chairman. The amendment is in the form of a general provision and does not require any additional appropriations.

The purpose of the amendment relates to limitations on salary levels of Senate staff.

Under current law, there are certain limitations on second, third, and fourth levels on salaries on committee staffs and in Senators' offices. This amendment would merely eliminate the second, third, and fourth levels of salaries and give the Members increased flexibility. It would not provide any additional funds, just increased flexibility.

Mr. President, I urge the adoption of the amendment. It would not provide any additional funds; it would just increase flexibility.

Mr. GARN. Mr. President, I am willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3296) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, I ask for third reading.

Mr. DOMENICI. Mr. President, I support the legislative branch appropriations bill as reported by the committee.

I commend my distinguished colleagues, Chairman HATFIELD, and Subcommittee Chairman D'AMATO, and the members of the Senate Appropriations Committee on this bill.

H.R. 5753 provides $1.6 billion in budget authority and $1.4 billion in outlays for fiscal year 1985 for the operation of the Congress and its related agencies.

With outlays from prior-year budget authority taken into account, fiscal year 1985 outlays associated with this bill would be $1.6 billion.

The Senate Appropriations Committee has not yet made its 302(b) allocations to subcommittees under a first budget resolution.

When Appropriations Committee subcommittee allocations are available, I will insert into the RECORD tables comparing the spending in this bill to this subcommittee's allocation.

Nondefense discretionary spending in this bill is consistent with the guidance given to the subcommittee by the full Senate Appropriations Committee on June 14, 1984. Mr. President, I ask unanimous consent that a table showing this relationship be printed in the RECORD at the conclusion of my remarks.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Legislative branch subcommittee—nondefense discretionary budget authority

	Billions
Senate-reported bill (H.R. 5753)	$0.7
Subcommittee total	0.7
Committee guidance [1]	0.7
House-passed	0.6
President's request	0.7
Subcommittee total compared to:	
Committee guidance [1]	
House-passed	+(*)
President's request	−(*)

[1] Nondefense discretionary cap guidance approved by the Appropriations Committee on June 14, 1984.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. GARN. Mr. President, I have no request for a rollcall vote.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

The bill (H.R. 5753) was passed.

Mr. GARN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, I move that the Senate insist on its amendments, ask for a conference with the House of Representatives on the disagreeing votes of the Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the presiding officer appointed Mr. D'AMATO, Mr. HATFIELD, Mr. STEVENS, Mr. BUMPERS, and Mr. HOLLINGS conferees on the part of the Senate.

Mr. GARN. Mr. President, I should have learned many years ago when I was in the military never to volunteer for anything. I innocently managed my HUD appropriations bill. I am not a member of the Legislative Appropriations Subcommittee, but I volunteered to manage it, not knowing that I would get into so much trouble over a bill I knew nothing about.

So, in the future I will refuse to volunteer. I am going back to my old military experience.

Mr. HATFIELD. Mr. President, I should like to have the last remarks of the Senator from Utah stricken from the record, because, not only did he volunteer, but also, he did a masterful job in managing this bill.

I express my deep appreciation to him, because it was one of those situations where he filled in the void and filled up the breach. I commend him for an outstanding job.

It proves again that in the Appropriations Committee, we can interchange responsibilities with great ease, because every subcommittee is a part of the total committee; therefore, they can substitute when it is required.

I thank the Senator very sincerely for his outstanding efforts today in this particular and unique situation.

Mr. GARN. I thank the distinguished chairman.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I am happy to report that there will be no more votes today.

If I get the order I intend to ask for in a moment—and I believe I will—there will be no session tomorrow. If I ever saw the Senate earn a Friday off, it is this week.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business until 7:15 p.m., in which Senators may speak for not more than 3 minutes each, except as to the two leaders, against whom no limitation apply.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

REPORT ON MOTOR VEHICLE SAFETY—MESSAGE FROM THE PRESIDENT—PM 154

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

The Highway Safety Act and the National Traffic and Motor Vehicle Safety Act, both enacted in 1966, initiated a national effort to reduce traffic deaths and injuries and require annual reports on the administration of the Acts. This is the 15th year that these reports have been prepared for your review.

The report on motor vehicle safety includes the annual reporting requirement in Title I of the Motor Vehicle Information and Cost Savings Act of 1972 (bumper standards). An annual report also is required by the Energy Policy and Conservation Act of 1975 which amended the Motor Vehicle Information and Cost Savings Act and directed the Secretary of Transportation to set, adjust and enforce motor vehicle fuel economy standards. Similar reporting requirements are contained in the Department of Energy Act of 1978 with respect to the use of advanced technology by the automobile industry. These requirements have been met in the Sixth Annual Fuel Economy Report, the highlights of which are summarized in the motor vehicle safety report.

In the Highway Safety Acts of 1973, 1976 and 1978, the Congress expressed its special interest in certain aspects of traffic safety which are addressed in the volume on highway safety.

For the first time since 1974, fatalities resulting from motor vehicle accidents showed a significant change. A total of 49,301 persons lost their lives in traffic accidents in 1981, a 3.6 percent decrease over the preceding year.

In addition, despite large increase in drivers, vehicles and traffic, the Federal standards and programs for motor vehicle and highway safety instituted since 1966 have contributed to a significant reduction in the fatality rate per 100 million miles of travel. The rate has decreased from 5.5 in the mid-60's to the present level of 3.18. This means that motorists can drive more miles today with less risk. If the 1966 fatality rate had been experienced in 1981, more than 85,000 persons would have lost their lives in traffic accidents.

Although we can be proud of these accomplishments, the number of people meeting violent deaths in traffic accidents each year remains unnecessarily high. In 1981, an average of 135 lives were lost every day. Compounding the tragedy is the fact that most of the victims were young people, killed at a time when they had the most to contribute to society and the most to gain from life.

Given the magnitude of the problem, protecting motorists and pedestrians from the kinds of dangers they face as a result of motor vehicle travel continues to be an important national priority.

The overall regulatory framework established since 1966 has clearly enhanced motor vehicle safety in this country. At a minimum, Federal motor vehicle safety standards have accelerated the introduction of needed safety improvements. However, we must take care to see that new regulations enhance traffic safety without producing unnecessary costs for consumers and manufacturers. Where the marketplace can be made to work to provide automobile safety, such approaches must be sought and developed. In any case, we are convinced that needed reform can be achieved without jeopardizing the safety and consumer goals and policies established by the Congress.

In the highway safety area, we will continue to work closely with the States on priorities such as safety belts and child safety seats, alcohol safety, motorcycle safety, police traffic enforcement, traffic records and emergency medical services. Highway safety grant programs will be simplified and Federal aid directed to activities that achieve verifiable results in terms of reduced deaths and injuries, and to ones that are truly national in scope.

Continued reductions in the annual traffic death toll will not be easy. Motorists today are better informed and driving in safer vehicles and on safer roads. But they are still victims of habit and of human nature. They choose not to wear a safety belt because they do not expect to be in an accident. They drink and drive because alcohol is part of our social mores. And they sometimes speed and take unnecessary chances because being in a hurry is an unfortunate fact of modern life. Changing these driving behaviors is the traditional challenge to improving traffic safety.

We will continue to pursue a variety of approaches to increasing highway safety, including widespread public education efforts and a national traffic safety commitment that involves government, industry and the public. We are convinced that significant progress can be made and that American motorists and pedestrians will ultimately enjoy a greater level of personal safety as a result.

Ronald Reagan.

The White House, *June 21, 1984*.

MEASURES PLACED ON THE CALENDAR

The Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 4997. An act to authorize appropriations to carry out the Marine Mammal Protection Act of 1972, for fiscal years 1985 through 1988, and for other purposes.

The Committee on Armed Services was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 5404. An act allowing William R. Gianelli to continue to serve as a member of the Board of the Panama Canal Commission after his retirement as an officer of the Department of Defense.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 875. A bill to amend title 18 of the United States Code to strengthen the laws against the counterfeiting of trademarks, and for other purposes (Rept. No. 98-526).

By Mr. PERCY, from the Committee on Foreign Relations, with an amendment:

S. 2713. A bill to authorize appropriations for the fiscal year 1985 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. No. 98-527).

By Mr. DOMENICI, from the Committee on the Budget, without amendment:

S. Res. 399. A resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1967.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PERCY, from the Committee on Foreign Relations:

Thomas H. Etzold, of Rhode Island, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

(The above nomination was reported from the Committee on Foreign Relations with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Treaty Doc. 98-26. Treaty between the United States and Canada relating to the Skagit River and Ross Lake in the State of Washington, and the Seven Mile Reservoir on the Pend D'Oreille River in the Province of British Columbia (Exec. Rept. No. 98-37).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. NUNN (for himself and Mr. Mattingly):

S. 2786. A bill to authorize the establishment of the Jimmy Carter National Historic Site in the State of Georgia, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HEINZ:

S. 2787. A bill to suspend for a 3-year period the duty on o-Benzyl-p-Chlorophenol; to the Committee on Finance.

By Mr. METZENBAUM:

S. 2788. A bill to require the Bonneville Power Administration to make annual debt payments for its projects on an amortized basis using a straight line method over the service life of each project or 50 years, whichever period of time is less; to the Committee on Energy and Natural Resources.

By Mr. SPECTER:

S. 2789. A bill to establish a Select Commission on Climate and Agriculture; to the Committee on Governmental Affairs.

By Mr. DURENBERGER:

S. 2790. A bill for the relief of the law firm of Reynolds, Caronia, Gianelli of Hauppauge, NY, attorneys for the parents of Baby Jane Doe; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. Weicker, Mr. Kennedy, Mr. Randolph, Mr. Garn, Mr. Nickles, Mrs. Hawkins, Mr. Metzenbaum, Mr. Dole, Mr. Nunn, Mr. Chafee, Mr. Riegle, Mr. Eagleton, Mr. Stafford, Mr. Chiles, Mr. Dixon, Mr. Lautenberg, Mr. Heinz, Mr. Hollings, Mr. Quayle, Mr. Durenberger, Mr. Jepsen, Mr. Tsongas, Mr. Glenn, Mr. Humphrey, Mr. Grassley, Mr. Thurmond, and Mr. Cochran):

S.J. Res. 318. Joint resolution to designate the week of September 16, 1984 through September 22, 1984, as "National Developmental Disabilities Awareness Week"; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. Huddleston, Mr. Helms, Mr. Dixon, Mr. Boschwitz, Mr. Leahy, Mr. Cochran, Mr. Zorinsky, Mr. Jepsen, Mr. Boren, Mr. Andrews, Mr. Heflin, Mrs. Kassebaum and Mr. Kasten):

S.J. Res. 319. Joint resolution to amend the Agriculture and Food Act of 1981 to provide for the establishment of a commission to study and make recommendations concerning agriculture-related trade and export policies, programs, and practices of the United States; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BAKER (for himself and Mr. Byrd):

S. Res. 413. Resolution to direct the Senate Legal Counsel to represent Patrick J. Griffin in Lyndon H. LaRouche, Jr. and The LaRouche Campaign v. Donald T. Regan, Secretary of the Treasury; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2789. A bill to establish a Select Commission on Climate and Agriculture; to the Committee on Government Affairs.

SELECT COMMISSION ON CLIMATE AND AGRICULTURE

Mr. SPECTER. Mr. President, today I am introducing a bill that will help the United States establish a sensible and farsighted farm policy. The bill I am introducing establishes a Presidential Commission to study the impact that changes in climatic patterns have on agricultural production and to make recommendations for improving Federal programs for responding to farm problems caused by these climatic changes.

There is an emerging consensus among climate scientists that the mild and stable weather patterns, which have prevailed in the United States for the past 40 years, are changing. Unfortunately, future atmospheric conditions are anticipated to be harsh and unpredictable. Many reasons for these changes have been advanced and range from carbon dioxide causing a greenhouse effect to shifting ocean currents causing disruptions to moisture and wind movements. But the most important question is what impact will these changes have on farm production levels.

Two reports, one issued by the Environmental Protection Agency and the other by the National Academy of Sciences, have focused attention on the greenhouse effect. While both reports agree that carbon dioxide levels will continue to increase and eventually cause an overall heating of the Earth's surface, they differ in their estimates of when this will happen and what controls can be exerted to protect agriculture and the general economy. Clearly, advanced planning such as this Commission will provide needs to be started soon. Its is important to point out that the greenhouse effect is only one phenomenon which has the potential of changing the climatic patterns of the United States. The Commission will examine the full range of conditions and factors that impact on long-term weather patterns.

The Commission will assemble the available data in this area and has the authority to conduct new research. After gathering the information, the Commission will analyze it to project the effect changing weather patterns will have on farm production. Finally, the Commission will recommend changes to current programs and laws and suggest new programs and laws that will make the Federal Government more responsive to the needs of the farmer during periods of climatic uncertainty.

Agricultural productivity has continuously increased. Just 10 years ago an average farmer supplied the nutritional needs of 47 people. Today, 1 farmer provides all the food and fiber necessary to feed 78 people. Total agricultural output has more than doubled in the past 50 years through the acreage devoted to agriculture has remained essentially the same over the same period. It is a generally accepted fact that the American farmer is the most efficient producer in the world.

Climate is integral to food production. Cropping patterns, crop varieties and technology applications are based on historic observations of atmospheric patterns. Significant changes in regional weather patterns can severely disrupt food production. If climatic changes extend beyond a few years and the farmer is not prepared for them, the results could be disastrous.

Unfortunately, at this time, the Department of Agriculture is limited in the help it can offer farmers who have been harmed by drought or flood. Whenever a crisis occurs, the Department is forced to fashion an ad hoc response. I believe the Commission will be indispensible in identifying and providing for the future problems of the farmer and the general farm economy.

This Commission is unlike other commissions established by Congress recently. There have been a multitude of commissions appointed to develop answers to problems that are politically too hot for Congress to handle. The Social Security Commission and Secretary Kissinger's Central American Commission were very good examples of this type of commission. The Weather Commission created by this bill is different. It will bring together scientists and policy makers to discuss a developing problem. The purpose of this Commission is to fashion the best possible approaches and solutions to a changing environment. The topic is neither controversial or romantic. It is an attempt to provide for the future of American farmers in a responsible way.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2789

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Climate and Agriculture Act of 1983".

ESTABLISHMENT

Sec. 2. There is established a commission to be known as the Select Commission on Climate and Agriculture (hereafter in this Act referred to as the "Commission").

DUTIES OF COMMISSION

Sec. 3. The duties of the Commission are—

(1) to study historical and current patterns in the climate of the United States and the extent to which such patterns have changed in recent years;

(2) to assess whether such climatic changes are short or long range variations in climate patterns;

(3) to study the impact of such climate patterns and changes on agricultural production within the United States; and

(4) to make recommendations to the Congress for such legislative action and to the President for such administrative action as the Commission considers necessary and appropriate.

MEMBERSHIP

Sec. 4. (a)(1) The Commission shall be composed of seventeen members as follows:

(A) the secretary of Agriculture, or the designee of the Secretary;

(B) the Administrator of the National Oceanic and Atmospheric Administration of the Department of Commerce, or the designee of the Administrator;

(C) the President of the Council on Agriculture, Science, and Technology, or the designee of the President of the Council;

(D) the Chairman of the National Science Board of the National Science Foundation, or the designee of the Chairman;

(E) the Director of the Federal Emergency Management Agency, or the designee of the Director;

(F) the Chief of Engineers of the Corps of Engineers of the Department of the Army, or the designee of the Chief of Engineers;

(G) the Chairman of the National Advisory Committee on Oceans and Atmosphere, or the designee of the Chairman;

(H) two members to represent the interest of food consumers, appointed by the President;

(I) two members to represent the interest of farmers, appointed by the President;

(J) two members to represent the interest of State governments, appointed by the President;

(K) two members to represent the interest of institutions of higher education, appointed by the President; and

(L) two additional members appointed by the President.

(2) In appointing the members of the Commission referred to in paragraph (1)(H) through (L), the President shall, to the maximum extent practicable, appoint members who are representative of various geographic regions of the United States.

(3) A member of the Commission appointed under paragraph (1)(H) through (I) may not be a member or employee of the Congress or an officer or employee of the United States. If a member appointed under any of such paragraphs becomes a member or employee of the Congress or an officer or employee of the United States, such member may continue as a member of the Commission for not longer than thirty days after the date on which such member becomes such a member, officer, or employee.

(b) Except as provided in subsection (a)(3), the members of the Commission shall be appointed for the life of the Commission.

(c) Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the maximum annual rate of basic pay prescribed for grade GS-18 under section 5332 of title 5, United States Code, for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission under this Act.

(d) Eight members of the Commission shall constitute a quorum to conduct business other then hearings. Four members shall constitute a quorum to hold hearings.

(e) The President shall designate one member of the Commission as Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members.

(g) A vacancy on the Commission shall not affect its powers and shall be filled in the same manner in which the position was originally filled.

STAFF OF COMMISSION; EXPERTS AND CONSULTANTS

Sec. 5. (a) The Commission may appoint and fix the compensation of such personnel as the Commission finds necessary to enable the Commission to carry out its duties.

(b) The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(c) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates not to exceed the daily equivalent of the maximum annual rate of basic pay prescribed for grade GS-18 under section 5332 of title 5, United States Code.

(d) Upon the request of the Commission, the head of any department, agency, or instrumentality of the Federal Government is authorized to assign, on a reimbursable basis, any of the personnel of such department, agency, or instrumentality to the Commission to assist the Commission in carrying out its duties under this Act.

POWERS OF COMMISSION

Sec. 6. (a) The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(b) A member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) The Commission may secure directly from any officer, employee, department, agency, or other instrumentality of the Federal Government such information as the Commission considers necessary to enable it to carry out its duties under this Act. Upon the request of the Chairman of the Commission, such official or the head of such department, agency, or other instrumentality shall furnish such information to the Commission without requiring reimbursement by the Commission.

(d) The Commission may use the United States mails in the same manner and under the same conditions as departments, agencies, and other instrumentalities of the executive branch of the Federal Government.

(e) The Commission and the Administrator of General Services are authorized to enter into agreements for such Administrator to provide to the Commission such administrative support services as the Commission may request. The Commission shall reimburse the General Services Administration, from funds available to the Commission, for any such services in such amounts as may be agreed upon by the Commission and the Administrator.

(f) The Commission may make grants and enter into contracts, to such extent or in such amounts as are provided in appropriation Acts, for the conduct of any research or studies which will assist the Commission in performing its duties.

REPORT

Sec. 7. The Commission shall transmit to the President and to each House of the Congress a report not later than the date two years after the date of the enactment of this Act. The report shall include a detailed statement of the findings and conclusions of the Commission and the recommendations for such legislative and administrative actions as the Commission considers necessary and appropriate.

TERMINATION

Sec. 8. The Commission shall cease to exist sixty days after submitting its report pursuant to section 7.

AUTHORIZATION OF APPROPRIATIONS

Sec. 9. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of the Act.

By Mr. DURENBERGER:

S. 2790. A bill for the relief of the law firm of Reynolds, Caronia, & Gianelli of Hauppauge, NY, attorneys for the parents of Baby Jane Doe; to the Committee on the Judiciary.

RELIEF FOR THE ATTORNEYS OF THE PARENTS OF BABY JANE DOE

Mr. DURENBERGER. Mr. President, after many months in the public spotlight, the glare of publicity is finally fading from Baby Jane Doe in New York. The court cases are winding to a close, the activists on both sides of the issue are moving on to other causes, and the media are looking elsewhere for the next celebrity.

The Nation is turning its attention to other people and other matters. For most of those involved with Baby Jane Doe over the past months, the case is over. For the young parents and their infant daughter—for the people to whom this was so much more than just a legal test—their life as a family is just beginning.

Sadly, it is beginning under the most difficult of circumstances. The very heart and soul of any family—the parents' love of their child—has been questioned not only by complete strangers, but by their Government. The most personal and intimate details of their life have been tossed around like fall leaves in a wind storm.

Now, with their daughter finally home and a new life unfolding, they face financial burdens unimaginable to most families. Mr. President, it is for this reason that I stand before the Senate today. A large share of the family's financial burdens is caused by the Government and should be shouldered by the Government—by our Government. I am here to ask for compassion, for decency, for understanding, and for us to do the right things by this family.

There has been a great deal of confusion about the New York Baby Jane Doe case. It is not a duplicate of the Bloomington, IN, case. Quite to the contrary. Let me remind my colleagues that the Surgeon General of the United States—a man known and respected for his commitment to the sanctity of life—determined that Baby Jane Doe was not the victim of discrimination.

Medical experts agreed that surgery to Baby Jane Doe posed severe risks and that a nonsurgical course of treatment was a morally and medically acceptable course of action. The fact that Baby Jane Doe is now at home in a loving family environment and is doing as well as can be expected in light of her handicaps is convincing testimony to the quality of medical treatment this infant daughter received.

Yet, for months and months these young parents and their infant daughter were hounded through court after court, first by a self-styled savior of Baby Jane Doe and then by the full force of the Federal Government in the form of the U.S. Department of Justice. Not even loss after convincing loss in the judicial system stopped A. Larry Washburn, the self-appointed defender of Baby Jane Doe. And not even the Surgeon General's decision that no discrimination was involved stopped the Justice Department from pursuing this family all for the sake of a novel test of section 504 of the Rehabilitation Act.

Mr. President, the question here is whether this young family should be financially penalized and severely burdened by the Federal Government's experimental litigation. The family has incurred at least $78,000 in legal fees defending itself, and the Justice Department refuses to pay.

The family has won one battle—the Second Circuit Court of Appeals, on February 23, 1984, ruled that the Federal Government had acted beyond its authority and denied access to Baby Jane Doe's medical resources—but it is losing another.

On June 8, 1983, the Second Circuit Court of Appeals denied the Family's request for payment of attorneys' fees. The family is awaiting the decision of the U.S. District Court.

Mr. President, this family has incurred over $150,000 in medical and legal fees since the birth of their child. They anticipate it will take them a lifetime to pay these expenses. In addition, their daughter will require extensive medical care and treatment throughout her life. In short, this young, typical American middle-class family faces a lifetime of staggering bills.

The U.S. Government has abused its role as protector of rights. In the first days of the child's life, society and the Government worked to assure that the rights of the child were being protected. The Surgeon General, the judicial system and the current conditon of Baby Jane Doe all tell us that her rights were protected; she received proper treatment.

Unfortunately, the Government did not stop after her rights were affirmed. Instead of working to protect this child, the U.S. Government has made her family into a test case for a new interpretation of section 504. The parents were forced to help finance Justice's experiment when Justice refused to pay.

Mr. President, the Justice Department maintains that the family of Baby Jane Doe should not be allowed attorney's fees in this matter because defendants in civil rights actions are typically only awarded attorneys' fees when the plaintiff's case is frivolous, without foundation, or unreasonable. I believe the Baby Jane Doe case is, in no sense of the word, a typical civil rights case which should be subject to the usual rules governing an award of attorney's fees to prevailing defendants.

Although prevailing plaintiffs may be awarded attorney's fees in virtually all civil rights actions, prevailing defendants, on the other hand, may be awarded attorney's fees under more limited circumstances. The Baby Jane Doe case is so unusual that I believe fairness demands that attorneys' fees be paid on behalf of the family of Baby Jane Doe.

The usual restriction on the recovery of attorney's fees by defendants in civil rights actions should not be used to punish an innocent party who has been singled out to serve as the subject of experimental litigation. In the Baby Jane Doe case, such litigation was instituted despite the family's earlier successes at all levels of the New York State court system.

Furthermore, when the Government acts as the plaintiff and the defendant becomes a test model for future interpretation of the law, a more reasonable policy for awarding attorney's fees to prevailing defendants is warranted. In the Baby Jane Doe case, an award of attorney's fees to the family will not deter the Justice Department from pursuing future civil rights cases.

Likewise, if the goal of awarding attorney's fees is to encourage involvement in civil rights actions, this family should not be penalized for having advanced their civil and constitutional arguments by intervening in the case. Baby Jane Doe's parents faced no alternative other than to intervene—they could not have been expected to turn over sensitive family decisions to the hospital's corporate counsel. Although, in hindsight, it appears that the hospital did an excellent job of representing its interests and the family's hindsight does not justify punishing the family for intervention.

Finally, the Federal Government ostensibly entered this lawsuit to protect Baby Jane Doe's welfare. However, the effect of the Government's position will deprive the family of badly needed resources. This family is starting its life together with over $150,000 in medical and legal bills. Why should the $25,000 legal fees in the Second Circuit—and the $53,000 in the District Court—which the Government should pay, be added to the family's child rearing expenses?

Mr. President, on April 11, 1984, Senator HATFIELD and I wrote to the Justice Department asking that its decision to refuse payment of attorneys' fees be rescinded. On May 1, we received a response indicating that Justice continued to refuse to pay the attorneys' fees of the family of Baby Jane Doe. Thereafter, on June 7, 1984, Senator HATFIELD and I renewed our request for payment of attorneys' fees.

In response to the June 8 decision of the Second Circuit Court of Appeals, I am introducing a private relief bill today which would authorize the payment of $25,368.75 to the attorneys for the parents of Baby Jane Doe for their representation in the Second Circuit appeal. The intent of this private relief bill is to relieve Baby Jane Doe's parents of the financial burden of legal fees resulting from test litigation initiated by the Federal Government and decided against the Government by both the Federal and State judicial systems.

I believe passage of this private relief bill will demonstrate to the family of Baby Jane Doe that the Federal Government can, and does, care about the welfare of this child. Baby Jane Doe's family has suffered enough, both emotionally and financially, and they deserve to begin their lives together free of governmental interference and the crushing burden of these legal fees.

Mr. President, I urge my colleagues to join me in cosponsoring this private relief bill, and I am hopeful that it will be favorably considered by the Senate in the very near future to assist this deserving family.

By Mr. DOLE (for himself, Mr. HUDDLESTON, Mr. HELMS, Mr. DIXON, Mr. BOSCHWITZ, Mr. LEAHY, Mr. COCHRAN, Mr. ZORINSKY, Mr. JEPSEN, Mr. BOREN, Mr. ANDREWS, Mr. HEFLIN, Mrs. KASSEBAUM, and Mr. KASTEN):

S.J. Res. 319. Joint resolution to amend the Agriculture and Food Act of 1981 to provide for the establishment of a commission to study and make recommendations concerning agriculture-related trade and export policies, programs, and practices of the United States; to the Committee on Governmental Affairs.

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

● Mr. DOLE. Mr. President, it is my pleasure today to introduce a joint resolution to establish a National Commission on Agricultural Trade and Export Policy, and to be joined as original cosponsors by my distinguished colleagues, Senators HUDDLESTON, HELMS, DIXON, BOSCHWITZ, LEAHY, COCHRAN, ZORINSKY, JEPSEN, BOREN, ANDREWS, HEFLIN, KASSEBAUM, and KASTEN.

THE VALUE OF CONGRESSIONAL COMMISSIONS

Before describing the proposed work of this bipartisan commission, Mr. President, I must first confess to initially sharing the concern of many of my colleagues in both the House and the Senate: that commissions have a long history of saying much and accomplishing little. Too many times, Congress has tried to sweep pressing problems under the rug by creating some form of blue ribbon task force, commission, or other factfinding body.

In this case, however, I can think of two reasons for some optimism that the commission approach may yield tangible results. First is the vital importance of farm exports to our rural economy, and the dire effect which the recent decline in foreign sales and shipments of U.S. agricultural products has had on U.S. commodity surpluses and farm prices. Many farmers, farm groups, and their representatives here in Washington have become critical of market-oriented agricultural policies as exports have faltered or slowed their remarkable growth of the 1970's. Some may already have concluded that the United States is incapable of overcoming the forces which have cut into our farm exports, and would now advocate full-fledged retreat into mandatory production quotas and import protection.

AGRICULTURE IS EXPORT DEPENDENT

Mr. President, one point on which all concerned with agricultural trade policy are agreed is that the United States is export dependent. We all recognize that a 10- or 20-percent shift in world demand for U.S. agricultural products can result in a tremendous rise or fall in the prices our farmers receive for their hard work. In formulating the legislation under which this proposed Commission would operate, Members of both the House and Senate have tried to keep this vital reality in mind, rather than assumptions about any findings the Commission may make. Those who are critical of our current export policies and structure should be the firmest supporters of the Commission's efforts. For the Commission will either come up with recommended improvements that could lead us back to a more stable and profitable export situation, or it may decide that world economic and political circumstances will prevent such improvements. In either case, it makes no sense for critics of existing farm trade and export policy to oppose a thorough review of new possibilities and options by the proposed Commission.

PRIVATE SECTOR INVOLVEMENT

The other reason I see some cause for optimism Mr. President, is the extensive involvement of the private sector in the development and support of this proposal. The initial idea to establish a Commission on Agricultural Trade was first raised by the private sector about 2 months ago. Farm groups, companies, cooperatives, and agriculture-related associations have all worked on improving draft legislation over the past month.

Reflecting the commitment of these and other groups to the work of the Commission, the proposed legislation would fund all direct costs, including the Commission's core staff and the travel and per diem expenses of its members, with private contributions. In fact, without adequate outside financial support, the Commission will likely not hold its first meeting.

This commitment and interest by the private sector is also demonstrated by a letter from 15 important farm and agribusiness organizations, which members of both the House and Senate Agriculture Committees received today. Many of these organizations worked with congressional Members and staff in drafting various provisions of the bill, and their support will be crucial in obtaining its speedy passage as well as in providing adequate financial support for Commission operations. Mr. President, I ask that the full text of their letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JUNE 21, 1984.

Hon. ROBERT DOLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DOLE: The agricultural organizations listed below believe that the dire problems faced by U.S. export agriculture today call for creation of a National Commission on Agricultural Trade and Export Policy. Its purpose would be to study and make recommendations to Congress and the Administration on how to best maintain and expand U.S. agricultural exports.

U.S. agricultural exports face severe challenges in the world market today. Expanded foreign production, sold increasingly with the benefit of export subsidies, is taking over many of our traditional markets. Declining purchasing power in otherwise promising new markets inhibits U.S. ability to expand the global market. The world economic downturn and a strong dollar relative to other major currencies also stifle our ability to aggressively sell U.S. products abroad.

U.S. agriculture is export dependent. A 20% drop in farm export earnings over the past two years is a major cause of today's serious economic problems faced by American agriculture. In 1980, the U.S. sold $43.8 billion in agricultural products abroad. By last year, exports had fallen to $34.7 billion. Export volumes have also fallen in similar fashion.

Establishment of a National Commission on Agricultural Trade and Export Policy could be of vital importance to the future well-being of American agriculture. As Congress writes the 1985 Farm Bill, it will set the stage for U.S. agricultural trade and our ability to compete internationally over the next four years and beyond. The findings of this Commission could constitute a valuable resource in development of this important legislation. They could also prove useful in the event the U.S. enters into another round of multilateral negotiations under GATT.

Because of the urgent and serious nature of our export problems, prompt passage of this proposal in Congress is vital for the future prosperity of U.S. agriculture. We stand ready to work with you in this important endeavor.

Sincerely,

American Farm Bureau Federation, American Feed Manufacturers Association, American Soybean Association, Cooperative League of the U.S.A., Farmland Industries, National Agricultural Chemicals Association, National Association of State Departments of Agriculture, National Association of Wheat Growers, National Broiler Council, National Cattleman's Association, National Corn Growers Association, National Council of Farmer Cooperatives, National Grange, National Milk Producers Federation, The Fertilizer Institute.

Mr. DOLE. Mr. President, there are other private sector organizations which also participated in preparing this legislation who have not had the opportunity to express their support. In addition, I would hope that other agriculture-related groups will review the potential benefits of such a commission and be able to give it their endorsement and support.

ROLE OF CONGRESS AND THE ADMINISTRATION

As a congressional initiative, the Commission proposal reflects the expectation of a close working relationship with the Hill, and particularly with the Agriculture Committees of both Houses. Twenty of the 35 Commission members would be selected by the Speaker of the House and the President pro tempore of the Senate. In addition, the Commission would include as ex officio members the chairmen and ranking minority members of the Senate Committee on Agriculture, Nutrition, and Forestry, the House Agriculture Committee, the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Foreign Relations Committee, and the House Committee on Foreign Affairs. The remaining three positions on the Commission would be filled by the President from within the executive branch, and would be nonvoting members as well as ex officio. So there will be a good bipartisan balance in the membership of the Commission.

CONDUCT OF STUDY

The principal objective of the Commission will be to carry out as comprehensive as possible a study of the programs and practices that comprise U.S. agricultural trade and export policy, and to recommend ways in which they can be made more effective. Included in this broad mandate would be a review of existing Trade Agreements Program and proposals for a comprehensive U.S. position on agricultural trade during any future round of multilateral negotiations under the General Agreement on Tariffs and Trade [GATT].

In addition, the Commission would have the flexibility to examine our Export Incentive and Market Development Programs, the administration of the Food-for-Peace Program, the impact on the Export Administration Act on farm trade, and other current policies and legislation. Finally, the Commission would look at the macroeconomic factors in the international arena which are having an increasingly important impact on demand for and sales of U.S. agricultural products, including the high value of the dollar against other currencies, the world debt situation, the need to expand economic growth and purchasing power in developing countries, and the competitive practices of other exporting countries.

REPORTS AND RECOMMENDATIONS

In view of the broad mandate assigned the Commission, we have tried to provide the maximum possible flexibility in its required reporting schedule. With hearings on new farm legislation expected to begin next March, it was felt that the Commission should be able to provide an initial assessment of agricultural export issues relating to the jurisdiction of the congressional agriculture committees by no later than March 31, 1985. Additional interim reports would also be possible prior to the deadline for a final report on July 1, 1986. This date should provide sufficient time for a thorough analysis of the longer term trends affecting our farm exports.

BIPARTISAN SUPPORT NEEDED

Mr. President, in closing, I would only ask Members of Congress of both Houses and both sides of the aisle to reflect on the vital importance of agricultural trade to our national economy, and to recognize that, unless our farmers and ranchers believe that exports can be a positive factor in their businesses, it will be difficult for us as a nation to define and pursue our own economic best interest. The need to develop a comprehensive and workable agricultural export policy is too important to become entangled in partisan or election year politics. I earnestly hope that Congress will move this legislation as soon as possible, and that the Commission can be appointed and begin its work sometime this fall.

Mr. President, I ask that the text of the joint resolution to establish a National Commission on Agricultural Trade and Export Policy be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 319

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That title XII of the Agriculture and Food Act of 1981 is amended by inserting after subtitle B a new subtitle C as follows:

"Subtitle C—Agricultural Trade and Export Policy Commission Act

"SHORT TITLE

"SEC. 1217. This subtitle may be cited as the 'Agricultural Trade and Export Policy Commission Act'.

"FINDINGS AND DECLARATION OF POLICY

"SEC. 1218. (a) Congress finds that—

"(1) the economic well-being of the Nation's agricultural industry is directly related to its ability to compete in international markets; and

"(2) a thorough examination of agriculture-related trade and export policies, programs, and practices of the United States is needed to ensure that such policies, programs, and practices increase the competitiveness of United States agricultural commodities and products in international markets.

"(b) It is hereby declared to be the policy of Congress to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports.

"ESTABLISHMENT

"SEC. 1219. (a) There is established a National Commission on Agricultural Trade and Export Policy to conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States.

"(b) In addition to the ex officio congressional members specified in subsection (c) of this section, the Commission shall be composed of twenty-three members appointed or designated by the President and selected as follows:

"(1) The President shall select three members from among officers or employees of the Executive branch who shall serve in an ex officio capacity without voting rights; and

"(2) The President pro tempore of the Senate and the Speaker of the House of Representatives shall each select ten members from among private citizens of the United States to represent industries that are directly affected by agriculture-related trade and export policies, programs, and practices of the United States, including, but not limited to, the following:

"(A) producers of major agricultural commodities in the United States;

"(B) processors and refiners of United States agricultural commodities;

"(C) exporters, transporters, and shippers of United States agricultural commodities and products to foreign countries;

"(D) suppliers of production equipment and materials to United States farmers;

"(E) providers of financing and credit for domestic and export agricultural purposes; and

"(F) organizations representing general farm and rural interests in the United States.

"(c) The chairmen and ranking minority members of the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, the House Committee on Ways and Means, and the Senate Committee on Finance shall serve as ex officio members of the Commission and shall have the same voting rights as the members of the Commission selected and appointed under the provisions of subsection (b)(2) of this section. The chairmen and ranking minority members may designate other members of their respective committees to serve in their stead as members of the Commission.

"(d) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(e) The Commission shall elect a chairman from among the members of the Commission who are selected and appointed under the provisions of subsection (b)(2) of this section.

"(f) The Commission shall meet at the call of the chairman or a majority of the Commission.

"CONDUCT OF STUDY

"SEC. 1220. The Commission shall study the agriculture-related trade and export policies, programs, and practices of the United States and the international and domestic factors affecting such policies, programs, and practices, including the intergovernmental activities of the United States that affect the formulation of policies. In conducting the study, the Commission shall consider the following:

"(1) the effectiveness of existing agricultural export assistance programs, and the manner in which they can be improved;

"(2) new export assistance programs that should be considered, and the conditions under which they can be implemented;

"(3) practices of foreign countries that impede the export of United States agricultural commodities and products, and appropriate responses for the United States;

"(4) the effectiveness of the trade agreements program of the United States with respect to agriculture-related trade and exports, and the manner in which it can be improved;

"(5) international economic trends that affect agricultural exports, and the manner in which the United States can best adjust its policies, programs, and practices to meet changing economic conditions;

"(6) potential areas of conflict and compatibility between international agricultural trade and foreign food assistance programs, and the manner in which any conflict can be resolved; and

"(7) the relationship between international agricultural trade and foreign economic development programs, and the manner in which they can be made more compatible.

"RECOMMENDATIONS AND REPORTS

"SEC. 1221. (a) On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the President and Congress with respect to the agriculture-related trade and export policies, programs, and practices of the United States, and the manner in which such policies, programs, and practices can be improved to better develop, maintain, and expand markets for United States agricultural exports.

"(b) The Commission shall submit to the President and Congress—

"(1) a report containing its initial findings and recommendations by March 31, 1985,

"(2) such additional interim reports on its work as may be requested by the chairman of any of the Committees set forth in section 1219(c) of this subtitle, and

"(3) a report containing the final results of its study and its recommendations therefrom by July 1, 1986.

"ADMINISTRATION

"SEC. 1222. (a) The heads of Executive agencies, the General Accounting Office, the International Trade Commission, and the Congressional Budget Office shall, to the extent permitted by law, provide the Commission such information as it may require in carrying out its duties and functions.

"(b) Members of the Commission shall serve without any additional compensation for work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service under sections 5701 through 5707 of Title 5, United States Code.

"(c) To the extent there are sufficient funds available to the Commission in advance under section 1223 of this subtitle, and subject to such rules as may be adopted by the Commission, the chairman, without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power to—

"(1) appoint and fix the compensation of a director; and

"(2) appoint and fix the compensation of such additional staff personnel as the Commission determines necessary to carry out its duties and functions.

"(d) Upon request of the Commission, the Secretary of Agriculture shall furnish the Commission with such personnel and support services as are necessary to assist the Commission in carrying out its duties and functions.

"(e) Upon request of the Commission, the heads of other Executive agencies and the General Accounting Office are each authorized to furnish the Commission with such personnel and support services as the head of the agency or office and the chairman of the Commission agree are necessary to assist the Commission in carrying out its duties and functions.

"(f) The Commission shall not be required to pay or reimburse any agency or office for personnel and support services provided under this section.

"(g) In accordance with section 12 of the Federal Advisory Committee Act, the Secretary of Agriculture shall maintain such financial records as will fully disclose the disposition of any funds that may be at the disposal of the Commission and the nature and extent of its activities, and the Comptroller General of the United States, or any of the Comptroller General's authorized representatives, shall have access to such records for the purpose of audit and examination.

"(h) The Commission shall be exempt from section 7(d), section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act.

"(i) The Commission shall be exempt from the requirements of sections 4301 through 4308 of Title 5, United States Code.

"PUBLIC SUPPORT

"Sec. 1223. (a) Notwithstanding the provisions of section 1342 of Title 31, United States Code, the Secretary of Agriculture may receive, from persons, corporations, foundations, and all other groups and entities within the United States, contributions of money and services to assist the Commission in carrying out its duties and functions. Any money contributed under this section shall be available to the Commission for the payment of salaries, travel expenses, per diem, and other expenses incurred by the Commission under this subtitle.

"(b) The Secretary of Agriculture shall keep, and shall make available for public inspection during normal business hours, records that fully disclose a complete list of every person, group, and entity making a contribution under this section, the address of the contributor, the amount and type of each such contribution, and the date the contribution was made.

"(c) Any amount of money available to the Commission under this section that remains unobligated upon termination of the Commission shall be deposited in the Treasury as miscellaneous receipts.

"TERMINATION

"Sec. 1224. The Commission shall terminate sixty days after the transmission of its final report to the President and Congress.".●

● **Mr. HUDDLESTON.** Mr. President, I am pleased to join Senator Dole and several other colleagues in introducing a joint resolution to establish a national Commission on Agricultural Trade and Export Policy.

The resolution provides for a much-needed evaluation of agriculture-related trade and export policies, programs, and practices of the United States. The commission will conduct the study and make recommendations for improvements in Federal policies, programs, and practices to facilitate the development, maintenance, and expansion of export markets for U.S. agricultural products.

IMPROVED EXPORT POLICIES NEEDED

The United States is blessed with the most efficient and productive agricultural system in the world; and our agricultural production and distribution system is one of the most important parts of the national economy. Any sustained economic recovery will depend on the health of the agricultural economy.

Exports are crucial to our agricultural economy. Export markets are important outlets for the production of U.S. farmers; and, for many agricultural commodities, export sales are essential to maintaining farm prices at levels that cover costs of production.

Also, agricultural exports play a vital role in our Nation's international trade system. Agriculture consistently produces a net balance of trade surplus and, in recent years, has contributed perhaps more than any other sector of our economy toward improving our overall balance of trade.

As important as agricultural exports are to farmers and to the Nation as a whole, we have witnessed, in recent years, a disturbing decline in agricultural exports.

U.S. farm export volume is expected to decline again in fiscal year 1984, for the 4th consecutive year. Anticipated export shipments of 142 million metric tons in fiscal year 1984 would be 22 million tons less than the peak volume of 164 million tons in 1980. This greatly reduced volume of shipments has weakened market prices for many agricultural commodities and decreased employment opportunities in the industries that process and transport farm products for the export trade.

This disastrous trend toward reduced agricultural exports must be reversed. Unfortunately, current agriculture-related trade and export policies and programs do not seem to be working to stem the decline in agricultural exports.

The administration and Congress must fashion new policies and programs that will maintain and expand markets for U.S. agricultural exports.

An important first step in that process is to evaluate current policies and programs, and isolate the international and domestic factors affecting those policies and programs. This work will establish a sound basis for restoration of a vigorous agricultural export economy.

Further, because the agricultural export trade is both huge and complex, a thorough analysis and evaluation of agriculture-related trade and export policies and programs will be an extremely time-consuming process. Therefore, it is essential that the work begin immediately.

ESTABLISHMENT OF THE COMMISSION

I believe that dramatic action is necessary to focus the attention of the public, industry, and those in government on the deficiencies in our agriculture-related trade and export programs and policies. Further, the establishment of a blue-ribbon study commission is perhaps the best catalyst to getting the work on eliminating these deficiencies started. Therefore, I have worked with Senator Dole and other Members of Congress, representatives of agricultural commodity groups, and others to develop this joint resolution to establish a national Commission on Agricultural Trade and Export Policy.

Under the resolution, the commission will be composed of 35 members. The President will select three government officials to serve as ex officio members without voting rights. The Speaker of the House of Representatives and the President pro tempore of the Senate will each select 10 private citizens to serve as representatives of farmers and the industries that are directly affected by U.S. agriculture-related trade and export policies, programs, and practices.

The chairmen and ranking minority members of the House Committees on Agriculture, Foreign Affairs, and Ways and Means and the Senate Committees on Agriculture, Nutrition, and Forestry, Foreign Relations, and Finance will serve as ex officio members of the commission and will have the same voting rights as the private-sector members of the commission. The chairmen and ranking minority members will be authorized to designate other members of their committees to serve in their stead on the commission.

The commission will be given up to 2 years to study the agriculture-related trade and export policies, programs, and practices of the United States and come up with recommendations for consideration by the President and Congress on how U.S. agricultural exports can be developed, maintained, and expanded. However, the commission will be required to submit an interim report by March 31, 1985.

Included among the areas that the commission will study are: The effectiveness of existing agricultural export programs; new export programs that could be implemented; practices of foreign countries that impede the export of U.S. agricultural products; the effectiveness of the U.S. trade agreements program with respect to agriculture-related trade and exports; international economic trends that affect agricultural exports; potential conflicts between the agricultural export trade and foreign food assistance programs; and the relationship between the agricultural export trade and foreign economic development programs.

The work done by the commission will be at a minimum cost to the Government.

Direct funding for the commission will be provided through private contributions, to be handled by the Secretary of Agriculture. If adequate funds are available in advance from these contributions, the commission could employ a director and any additional staff necessary to assist it in the performance of its duties and functions. These funds would also be used to pay travel, per diem, and other expenses of the commission.

Additional support personnel and services to assist the commission would be available from the Department of Agriculture and other Government agencies. Also, the heads of executive agencies, the International Trade Commission, the General Accounting Office, and the Congressional Budget Office would provide, to the extent permitted by law, any information that the commission may require.

SOME AREAS OF STUDY

One of the most important areas that the commission will be studying is the influence of high interest rates, and the excessive foreign exchange value of the dollar produced by high interest rates, on agricultural export sales.

Between 1980 and 1983, the value of the dollar in terms of foreign currency increased by as much as 50 percent. Therefore, despite the lower market prices of U.S. agricultural commodities until recently, foreign purchasers did not have any price incentive for buying U.S. farm goods.

The high value of the dollar reflects the high interest rates that prevail in the United States. While nominal interest rates have declined from the record high levels of a few years ago, real interest rates remain very high.

Many maintain that U.S. interest rates will remain high because of the large Federal budget deficits and the Federal reserve policy of slow growth of the money supply. It is now projected that the Federal budget deficit for this fiscal year will hit $190 billion, and most economists predict annual deficits of a comparable magnitude for the foreseeable future. These forces will contribute to maintaining the foreign currency value of the dollar at a high level and depress the prospects for foreign purchases of U.S. agricultural products.

The commission will be in a position to objectively evaluate the influence of this distortion in exchange rates and provide Congress with a comprehensive set of recommendations concerning actions that can ameliorate the situation.

Also, I believe that the current administration can do more using existing programs to maintain and expand agricultural exports. I am hopeful that the commission will provide Congress and the President with a comprehensive review of past Government actions under programs designed to increase agricultural export sales.

That review, accompanied by the commission's analysis of why some efforts have succeeded and others have failed and its recommendations as to needed changes in the programs or their administration, will provide a sound basis for the development of effective, long-term agricultural trade policies.

CONCLUSION

Mr. President, the data showing the recent decline in our Nation's agricultural export industry provide forceful testimony to the need for changes in our agricultural trade and export policies, programs, and practices.

The National Commission on Agricultural Trade and Export Policy to be established under the resolution will lay the foundation for a productive revision of those policies, programs, and practices.

I urge my colleagues to support this joint resolution and work with me for its speedy enactment.

I ask unanimous consent that a summary of the joint resolution be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE JOINT RESOLUTION

The joint resolution will amend the Agriculture and Food Act of 1981 to add new provisions establishing an Agricultural Trade and Export Policy Commission. The Commission will conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States. On the basis of its study, the Commission will make recommendations to the President and Congress as to how those policies, programs, and practices can be improved to better develop, maintain, and expand export markets for United States agricultural products.

COMPOSITION OF THE COMMISSION

The Commission will be composed of thirty-five members, twenty-three of whom would be appointed by the President and selected as follows:

(1) The President will select three members from the Executive branch who will serve in an ex officio capacity without voting rights; and

(2) The Speaker of the House of Representatives and the President pro tempore of the Senate will each select ten members from outside the Government to represent industries directly affected by agriculture-related trade and export policies, programs, and practices of the United States. The remaining twelve members will be the chairmen and ranking minority members of the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, the House Committee on Ways and Means, and the Senate Committee on Finance. These congressional members will serve in an ex officio capacity with the same voting rights as the private-sector members of the Commission and will be authorized to appoint other members of their committees to serve in their stead on the Commission.

Any vacancy on the Commission would be filled in the same manner in which the original appointment was made. A chairman of the Commission would be elected from among the private-sector members of the Commission.

OPERATIONS OF THE COMMISSION

The Commission will submit to the President and Congress a report containing its initial findings and recommendations by March 31, 1985, and a report containing the final results of its study and its recommendations therefrom by July 1, 1986. The Commission will make such additional interim reports on its work as may be requested by the Chairman of the House Committee on Agriculture, Foreign Affairs, or Ways and Means, or the Senate Committee on Agriculture, Nutrition, and Forestry, Foreign Relations, or Finance.

The work of the Commission will be funded through private contributions. The Secretary of Agriculture will be authorized to accept, from persons, groups, and entities in the United States, contributions of cash and services to assist the Commission in carrying out its duties and functions. Money received by the Secretary will be available to the Commission for the payment of salaries, travel, per diem, or other expenses of the Commission. Government funds will not be available to pay the expenses of the Commission unless otherwise appropriated by Congress. The Secretary will be required to keep, and make available for public inspection, records that disclose the name and address of each contributor, the amount and type of the contribution, and the date on which the contribution was made.

The Secretary of Agriculture will also maintain financial records that fully disclose the disposition of funds by the Commission and the nature and extent of its activities. Such records will be subject to audit or examination by the General Accounting Office.

If there are sufficient funds available in advance to the Commission from contributions, the Commission will be authorized to employ a director and any other staff needed to assist the Commission in its work. Additional support staff and services would be available to the Commission on a nonreimbursable basis from the Department of Agriculture and other agencies of the Government.

The heads of all executive agencies, the International Trade Commission, the General Accounting Office, and the Congressional Budget Office, to the extent permitted by law, will be required to submit information that the Commission finds necessary in conducting its study and in developing recommendations for the President and Congress.

SCOPE OF THE STUDY

The scope of the study to be conducted by the Commission will be limited to the agriculture-related trade and export policies, programs, and practices of the United States and the international and domestic factors that affect those policies, programs, and practices. Included among the areas that the Commission will consider are: (1) the effectiveness of existing agricultural export assistance programs, (2) new export assistance programs that could be implemented, (3) practices of foreign countries that impede the export of United States agricultural products, (4) the effectiveness of the United States trade agreements program with respect to agriculture-related trade and exports, (5) the international economic trends that affect United States agricultural exports, (6) potential conflicts between international agricultural trade and foreign food assistance programs, and (7) the relationship between international agricultural trade and foreign economic development programs.

TENURE OF THE COMMISSION

The Commission will terminate sixty days after its final report is submitted to the President and Congress.●

● Mr. HELMS. Mr. President, I am pleased to join with my colleagues today in introducing this joint resolution establishing an Agricultural Trade and Export Policy Commission.

The health and prosperity of American agriculture and its related industries is very much dependent on our export markets. However, it something seems as though our domestic farm policies work at cross-purposes with our export policies.

This Commission promises to provide us with the comprehensive strategies we need to coordinate our domestic and export farm policies. It will complement the print the Committee on Agriculture will publish this fall emphasizing the role of farm exports in our overall agricultural policy.

Promoting farm exports is not just an agriculture issue, but a national issue of concern to all Americans. Farm exports are the largest single positive force in our balance of payments, and every $1 billion of last year's $35 billion of farm export earnings generated 30,000 jobs in the private sector—that's a total of 1.05 million jobs for persons other than farmers.

Exporting farm products and maintaining the strength of American agriculture is also of particular importance to my constituents. A recent USDA report revealed that North Carolina and Nebraska have the Nation's highest percentage of workers in agriculture and its related industries. In fact, nearly one out of every three workers in my State have jobs related to agriculture.

This proposal to establish an Agriculture Export Commission is something that all of us can support, and I hope it will be approved without delay.●

● Mr. DIXON. Mr. President, I am pleased to join my distinguished colleagues, Senator Dole and Senator Huddleston, in introducing this joint resolution establishing a Commission on Agricultural Trade and Export Policy.

Our agricultural economy depends upon our export market, since a major share of the total U.S. agricultural production is exported. The result is that many, if not most, American farmers are economically dependent upon expanding exports. However, instead of rising, exports are declining, with disastrous impacts on the farm community.

Agricultural exports totaled almost $44 billion in 1981, but declined to less than $37 billion in 1982, and to $34.8 billion in 1983. This is the first time since 1969 that exports have declined for 2 consecutive years. This drop in our exports can be attributed to the world recession, the strength of the U.S. dollar, the debt of many potential importers, the lingering effects of the Soviet grain embargo, and the use of subsidies and import barriers by many of our international competitors.

We have addressed some of these issues. This year, during consideration of the Export Administration Act, the Senate adopted my amendments regarding agricultural embargoes. The amendments would:

First, prohibit the use of agricultural embargoes for national security reasons, and

Second, prohibit unnecessary restriction on the export of agricultural products to any country for foreign policy reasons, unless the embargo is in conjunction with an across-the-board ban on all trade with a country, or unless Congress adopts a joint resolution approving the restrictions.

This legislation will ensure that the agricultural sector of our economy will not be singled out to bear a disproportionate share of the burden of difficult foreign policy decisions. Its enactment provides needed assurances to both the American farmer and our foreign customers that the United States intends to be a reliable supplier, and is committed to increasing agricultural exports.

But we need to do more.

The Commission we are establishing by this joint resolution will be comprised of producers, processors, refiners, exporters, suppliers, and representatives of farm organizations. It will help provide needed information and recommendations for our consideration with respect to current agricultural trade and export policies and programs. It will also recommend changes needed to develop, maintain, and expand our agricultural exports.

The work of this Commission will be very beneficial to us as we review our present practices. We will be writing a comprehensive farm bill in 1985. If we are to have an effective farm bill, we need to make certain that our export policies are a key ingredient of this legislation. We are in the process of reviewing many trade laws, and we need additional information to help determine what changes are needed.

Mr. President, we must develop a long-term agricultural export and trade policy. Too often we are reacting with short-term policies. This Commission will play a vital role in helping us develop a long-term agricultural export and trade policy for the 1980's and 1990's.●

ADDITIONAL COSPONSORS

S. 1128

At the request of Mr. Leahy, the names of the Senator from Alabama [Mr. Heflin], and the Senator from Minnesota [Mr. Durenberger] were added as cosponsors of S. 1128, a bill entitled the "Agricultural Productivity Act of 1983."

S. 2096

At the request of Mr. Packwood, the name of the Senator from Idaho [Mr. Symms] was added as a cosponsor of S. 2096, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to permit investment by employee benefit plans in residential mortgages.

S. 2222

At the request of Mr. Metzenbaum, the name of the Senator from South Dakota [Mr. Pressler] was added as a cosponsor of S. 2222, a bill to provide a deduction from gross income for individual taxpayers who maintain a household which includes a dependent of the taxpayer who suffers from Alzheimer's disease.

S. 2243

At the request of Mr. Helms, the name of the Senator from Arizona [Mr. Goldwater] was added as a cosponsor of S. 2243, a bill to amend the Internal Revenue Code of 1954 to provide for the safeguarding of taxpayer rights, and for other purposes.

S. 2380

At the request of Mr. Heinz, the names of the Senator from Ohio [Mr. Glenn], the Senator from South Carolina [Mr. Hollings], the Senator from New Hampshire [Mr. Rudman], and the Senator from South Carolina [Mr. Thurmond] were added as cosponsors of S. 2380, a bill to reduce unfair practices and provide for orderly trade in certain carbon, alloy, and stainless steel mill products, to reduce unemployment, and for other purposes.

S. 2423

At the request of Mr. Thurmond, the name of the Senator from Minnesota [Mr. Boschwitz] was added as a cosponsor of S. 2423, a bill to provide financial assistance to the States for the purpose of compensating and otherwise assisting victims of crime, and to provide funds to the Department of Justice for the purpose of assisting victims of Federal crime.

S. 2437

At the request of Mr. Goldwater, the names of the Senator from Georgia [Mr. Nunn], and the Senator from Wisconsin [Mr. Kasten] were added as cosponsors of S. 2437, a bill to amend the Communications Act of 1934 to clarify the policies regarding the right to view satellite-transmitted television programming.

S. 2472

At the request of Mr. Nickles, the name of the Senator from Iowa [Mr. Grassley] was added as a cosponsor of S. 2472, a bill to amend chapter 81 of title 5, United States Code, to establish in the Department of Labor a program to pay certain death benefits to survivors of Federal law enforcement officers and firefighters who die in the line of duty, and for other purposes.

S. 2620

At the request of Mr. Mattingly, the names of the Senator from Iowa [Mr. Jepsen], the Senator from Idaho [Mr. Symms], and the Senator from Nevada [Mr. Hecht] were added as cosponsors of S. 2620, a bill entitled the "Federal Reserve Reform Act of 1984".

S. 2665

At the request of Mr. Roth, the name of the Senator from New Hampshire [Mr. Humphrey] was added as a cosponsor of S. 2665, a bill to strengthen the criminal and civil penalty provisions of environmental protection laws

S. 2679

At the request of Mr. D'Amato, the name of the Senator from Pennsylvaina [Mr. Heinz] was added as a cosponsor of S. 2679, a bill to amend title IV of the National Housing Act and the Federal Deposit Insurance Act with respect to brokered deposits

S. 2719

At the request of Mr. Lautenberg, the name of the Senator from New Mexico [Mr. Bingaman] was added as a cosponsor of S. 2719, a bill to amend title 23, United States Code, to direct the Secretary of Transportation to withhold a percentage of the apportionment of certain Federal-aid highway funds to be made to any State which does not establish a minimum drinking age of 21 years.

S. 2766

At the request of Mr. Thurmond, the name of the Senator from North Dakota [Mr. Burdick] was added as a cosponsor of S. 2766, a bill to amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

SENATE JOINT RESOLUTION 287

At the request of Mr. D'Amato, the name of the Senator from Vermont [Mr. Leahy] was added as a cosponsor of Senate Joint Resolution 287, a joint resolution to authorize and request the President to designate January 27, 1985, as "National Jerome Kern Day".

SENATE JOINT RESOLUTION 295

At the request of Mr. Metzenbaum, the names of the Senator from Pennsylvania [Mr. Heinz], the Senator from California [Mr. Wilson], the Senator from Alabama [Mr. Heflin], the Senator from New York [Mr. D'Amato], the Senator from Kansas [Mrs. Kassebaum], the Senator from South Dakota [Mr. Pressler], and the Senator from Maryland [Mr. Mathias] were added as cosponsors of Senate Joint Resolution 295, a joint resolution to provide for the designation of the week of October 14 through October 20, 1984, as "Myasthenia Gravis Awareness Week."

SENATE JOINT RESOLUTION 317

At the request of Mr. DeConcini, the names of the Senator from Tennessee [Mr. Sasser], the Senator from Illinois [Mr. Dixon], the Senator from Hawaii [Mr. Inouye], the Senator from Pennsylvania [Mr. Heinz], and the Senator from Maine [Mr. Cohen] were added as cosponsors of Senate Joint Resolution 317, a joint resolution to designate August 1, 1984, as "Helsinki Human Rights Day."

SENATE CONCURRENT RESOLUTION 101

At the request of Mr. D'Amato, the names of the Senator from New Hampshire [Mr. Humphrey], and the Senator from Wisconsin [Mr. Proxmire] were added as cosponsors of Senate Concurrent Resolution 101, a concurrent resolution to commemorate the Ukrainian famine of 1933.

SENATE CONCURRENT RESOLUTION 117

At the request of Mr. Lautenberg, the name of the Senator from New Jersey [Mr. Bradley] was added as a cosponsor of Senate Concurrent Resolution 117, a concurrent resolution relating to the promotion of technological innovation in computer software and the protection of computer software.

SENATE RESOLUTION 294

At the request of Mr. Riegle, the names of the Senator from Alabama [Mr. Heflin], the Senator from Arkansas [Mr. Pryor], the Senator from Wisconsin [Mr. Proxmire], and the Senator from Texas [Mr. Tower] were added as cosponsors of Senate Resolution 294, a resolution expressing the sense of the Senate that the Government of the Soviet Union should allow Igor V. Ogurtsov to be released from exile and allowed to emigrate to the West without renouncing his views, and for other purposes.

AMENDMENT NO. 3053

At the request of Mr. Gorton, the names of the Senator from West Virginia [Mr. Randolph], the Senator from Arizona [Mr. DeConcini], and the Senator from New Hampshire [Mr. Humphrey] were added as cosponsors of amendment No. 3053 intended to be proposed to S. 2537, a bill to amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes.

AMENDMENTS SUBMITTED

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1985

ANDREWS (AND OTHERS) AMENDMENT NO. 3291

(Ordered to lie on the table.)

Mr. ANDREWS (for himself, Mr. Burdick, and Mr. Humphrey) submitted an amendment intended to be proposed by them to the bill (H.R. 5653) making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes; as follows:

At the appropriate place in the bill insert the following:

Sec. . (a) It is the sense of Congress that—

(1) the Garrison Diversion Unit was authorized by Congress and reflects the entitlement of the State of North Dakota to a federally funded water development program as compensation for North Dakota's contributions to the Pick-Sloan Missouri Basin program;

(2) there is a need to put to beneficial use water from the Missouri River within the State of North Dakota;

(3) there are municipal and industrial water resource problems in North Dakota that are presently unmet;'

(4) there are irrigation and agricultural water needs in areas which can not met by the Garrison Diversion Unit as presently authorized;

(5) the Garrison Diversion Unit, as presently authorized, raises significant issues of economic, environmental, and international concern;

(6) the water needs of the State of North Dakota should be resolved by contemporary water development alternatives; and

(7) a Secretarial commission should be established to examine the water needs of North Dakota and propose development alternatives which will lead to the early resolution of the problems identified.

(b) No funds appropriated under this title for the Garrison Diversion Unit, Pick-Sloan Missouri Basin program, shall be expended or committed for expenditure on construction contracts prior to December 31, 1984. Notwithstanding the preceding sentence, funds appropriated may be expended or committed for expenditure for the work associated with the Commission established by this section. Funds may be expended or committed for expenditure after such date for construction of the Garrison Diversion Unit—

(1) in accordance with the recommendations of the Secretarial commission established under subsection (c); or

(2) if the commission fails to make such recommendations, as presently authorized.

(c)(1) The Secretary of the Interior shall, within thirty days after the date of enactment of this section, appoint a commission, composed of 12 individuals, to review the contemporary water development needs of the State of North Dakota and propose modifications to the Garrison Diversion Unit consistent with the existing authorization. The Secretary shall designate one member who shall serve as chairman of the commission who shall set the dates of hearings, meetings, and other official commission functions in carrying out the purposes of this section. The commission, in developing its recommendations, shall hold no fewer than three public hearings, at least two of which shall be in the State of North Dakota. Any recommendations of the commission shall be agreed to by at least 8 members. The commission shall cease to exist on December 31, 1984.

(2) The commission is directed to examine, review, evaluate, and make recommendations with regard to the contemporary water development needs of the State of North Dakota, taking into consideration—

(A) the costs and benefits incurred and opportunities foregone by the State of North Dakota between 1944 and 1984 as a result of the establishment and implementation of the Pick-Sloan Missouri Basin program;

(B) the need and potential for North Dakota to put to beneficial use within the State water from the Missouri River;

(C) the need for construction of additional facilities to put to beneficial use water from the Missouri River;

(D) the municipal and industrial water needs and development potential within the State of North Dakota, including such matters as—

(i) quality of water supply,

(ii) the ability of existing systems to meet present and future demand,

(iii) related groundwater problems,

(iv) water treatment,

(v) water delivery by pipeline, and

(vi) instream flow needs;

(E) the possible use of groundwater recharge for municipal and industrial uses, as well as irrigation;

(F) the current North Dakota water plan, including proposed projects, to determine if elements of the plan (such as the southwest pipeline project) should be recommended for Federal funding;

(G) whether or not the Garrison Diversion Unit can be redesigned and reformulated;

(H) the institutional and tax equity issues in the State of North Dakota as they relate to the authorized project and alternative water development proposals;

(I) the fiscal and economic impacts of the Garrison Diversion Unit, as compared with alternative proposals for irrigation and municipal and industrial water supply;

(J) the environmental impacts of the water development alternatives mentioned in this section, compared with those of the Garrison Diversion Unit, including impacts on wildlife refuges, wetlands, wildlife habitat, waterfowl, and other environmental impacts as well as make recommendations to reduce and minimize those impacts; and

(K) the international impacts of the water development alternatives described in this section compared with those of the Garrison Diversion Unit and make recommendations to reduce and minimize those impacts.

All recommendations of the commission shall retain the originally authorized discount rate.

(3) The commission shall submit to the Secretary of the Interior, the chairmen of the Senate Committees on Energy and Natural Resources and Appropriations, and the House Committees on Interior and Insular Affairs and Appropriations, no later than December 31, 1984, a report which contains the conclusions and recommendations of the commission with regard to the items described in paragraph (2).

(d) The Secretary of the Interior is authorized and directed to implement the recommendations of the commission report consistent with existing authority.

(e) Nothing in this section shall affect any litigation initiated prior to June 1, 1984.

JOHNSTON AMENDMENTS NOS. 3292 AND 3293

Mr. JOHNSTON proposed two amendments to the bill H.R. 5653, supra; as follows:

AMENDMENT No. 3292

On page 26, line 8 starting with "Top-" strike all thru the second "Passage" on line 10 and insert: "and Toppenish Creek/Satus Unit Diversion"

AMENDMENT No. 3293

On page 32, between lines 10 and 11, insert the following:

"SEC. 306. The Department of Energy Organization Act (42 U.S.C. 7101) is amended in section 204 (42 U.S.C. 7134) by striking the words 'level III of the Executive Schedule under section 5314' and inserting 'level II of the Executive Schedule under section 5313' and by striking the words 'level IV of the Executive Schedule under section 5315' and inserting 'level III of the Executive Schedule under section 5314' ".

HATFIELD AMENDMENT NO. 3294

Mr. HATFIELD proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 32, after line 10, insert the following new section:

"SEC. 306. For carrying out activities authorized by Title II of Public Law 93-410 the Department of Energy is authorized to transfer no more than $25,000,000 to the Geothermal Resources Development Fund from unobligated balances within the Uranium Supply and Enrichment Activities account; *Provided*, That such transfer shall be reported promptly to the Committees on Appropriations of the House and Senate. The amount authorized to be transferred by this provision is in addition to the authority provided in section 302 of this Act."

LEGISLATIVE BRANCH APPROPRIATIONS, 1985

BUMPERS AMENDMENTS NOS. 3295 AND 3296

(Ordered to lie on the table)

Mr. BUMPERS proposed two amendments to the bill (H.R. 5753) making appropriations for the legislative branch for the fiscal year ending September 30, 1985, and for other purposes, as follows:

AMENDMENT No. 3295

At the appropriate place in title I, under the heading "SENATE", insert the following new section:

SEC. . (a) Section 110(a) of Public Law 97-12 (2 U.S.C. 58b) is amended—

(1) by inserting, immediately after the first sentence thereof, the following new sentence: "Each Senator, at his election, may, during any fiscal year (but not earlier than August 1 thereof), transfer from his clerk hire allowance to such Senator's Official Office Expense Account such amounts in such clerk hire allowance as the Senator shall determine, but not in excess of the balance (or accured surplus in case of transfers made prior to October 1, 1984) as of the end of the month which precedes the date of such transfer.";

(2) in the second sentence thereof, by striking out "balance" and inserting in lieu thereof "amount"; and

(3) in the third sentence thereof, by striking out "December 31," and all that follows, and inserting in lieu thereof "December 31 of the calendar year in which occurs the close of such fiscal year, and such transfer shall be made on such date (but not earlier than August 1 of such calendar year) as may be specified by the Senator.".

(b) The amendment made by subsection (a) shall be effective in the case of fiscal years beginning after September 30, 1983.

AMENDMENT No. 3296

At the appropriate place in title I, under the heading "SENATE", insert the following new section:

SEC. . (a) The second sentence of paragraph (2) of section 105(d) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1 (d)(2)), is amended to read as follows: "The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,251 or in excess of $68, 172 per annum.".

(b) The first sentence in paragraph (3) of section 105(e) of such Act (2 U.S.C. 61-1 (e)) is amended to read as follows: "No employee of a committee of the Senate shall be paid at a gross rate in excess of $67,694, in case of an employee of a joint committee the expenses of which are paid from the contingent fund of the Senate, $68,172, in case of an employee of a select committee (including the conference majority and conference minority of the Senate), or $69,966, in case of an employee of any standing committee (including the majority and minority policy committees) of the Senate.".

(c) The amendments made by subsection (a) of this section shall take effect on October 1, 1984.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1985

EVANS (AND GORTON) AMENDMENT NO. 3297

Mr. EVANS (for himself and Mr. GORTON) proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 12, line 11, after "$752,397,000," add "of which $4,800,000 shall be available for the construction of fish passage facilities at Prosser Dam Passage authorized by the Act of June 12, 1948 (Public Law 80-629, 62 Stat. 382) and Roza Dam Passage authorized by the Act of March 10, 1934 (Public Law 73-121, 48 Stat. 401),".

HATFIELD (AND OTHERS) AMENDMENT NO. 3298

Mr. HATFIELD (for himself, Mr. JOHNSTON, and Mr. TOWER) proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 24, line 17 strike the figure "$7,324,051,000" and insert: "$7,272,925,000".

MELCHER AMENDMENT NO. 3299

Mr. MELCHER proposed an amendment to the bill H.R. 5653, supra; as follows:

At the end of the subsection on General Investigations in Title II of the bill, add the following: "*Provided further,* That $100,000 shall be available to study the feasibility of a hydroelectric powerplant at the existing Yellowtail Afterbay Dam (Montana).".

MELCHER (AND BAUCUS) AMENDMENT NO. 3300

Mr. MELCHER (for himself and Mr. Baucus) proposed an amendment to the bill H.R. 5653, supra; as follows:

At the end of the subsection on General Investigations in Title II of the bill, add the following: "*Provided further,* That $100,000 shall be made available to study the feasibility of a hydroelectric powerplant at the existing Yellowtail Afterbay Dam (Montana).".

BIDEN AMENDMENT NO. 3301

Mr. BIDEN proposed an amendment to the bill H.R. 5653 supra; as follows:

On page 35, line 2, strike the period and insert a colon followed by: "*Provided Further,* That from this appropriation, the Commission shall conduct a study, to be submitted to the Committee on Environment and Public Works of the Senate and the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives within six months of the date of enactment of this Act, of the need for and feasibility of an independent organization responsible for conducting investigations of significant safety events, including significant operational incidents, at facilities licensed by the Commission and for making reports of such investigations, and that such study shall include a discussion of, (1) the need for and feasibility of an independent organization to investigate significant safety events, including significant operational incidents, at facilities licensed by the Commission, and further including the types of events for which such an organization would be responsible, (2) alternative approaches to the composition of such an organization and the functions it might perform, (3) the various powers and authorities, including administrative authorities, that might be exercised by such an organization, (4) the relationship of such an organization to the Commission's existing offices, including, but not limited to, the Office of Investigations, the Office of Inspection and Enforcement, and the Office for Analysis and Evaluation of Operational Data, further including a discussion of the functions that such an organization might perform beyond those currently carried out by any such existing offices, (5) the cost of setting up and operating such an organization, (6) the need for additional legislative authority to establish such an organization, (7) the advisability of separating determinations with respect to nuclear safety from all other issues to be considered by the Commission in issuing or reviewing licenses and the alternative procedural approaches both formal and informal, to include non-adjudicatory processes, that might be employed for the collection of facts and the resolution of safety issues, and (8) the advantages and disadvantages of the present organization of the Commission for the determination of matters of safety, including an analysis of all existing procedural constraints on the Commission's abilities to carry out those functions effectively and efficiently, to include, but not limited to, the Commission's *ex parte* and separation of functions rules and the Commission's statutory responsibilities under the Government in the Sunshine Act.".

THURMOND (AND HOLLINGS) AMENDMENT NO. 3302

Mr. THURMOND (for himself and Mr. Hollings) proposed an amendment to the bill H.R 5653, supra, as follows:

On page 4, at the end of line 4, add the following: "And in addition, within available funds, $550,000 shall be made available for the continuation of planning and engineering for the deepening of the Charleston, South Carolina Harbor.".

THURMOND (AND OTHERS) AMENDMENT NO. 3303

Mr. THURMOND (for himself, Mr. Hollings, Mr. Mattingly, and Mr. Nunn) proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 11, following line 9, insert the following:

Sec. . The Lowndesville Recreation Area, located within the Richard B. Russell Dam and Lake Project, South Carolina and Georgia, shall hereafter be known and designated as the "Jim Rampey Recreation Area." Any reference in any law, map, regulation, document, record, or other paper of the United States to such recreation area shall be deemed to be a reference to such area as the "Jim Rampey Recreation Area."

DeCONCINI AMENDMENT NO. 3304

Mr. DeCONCINI proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 22, line 10, strike out the period and insert in lieu thereof "; and of which $16,885,000 shall be available for solar building energy systems.".

On page 23, line 20 strike out "$726,905,000" and insert in lieu thereof "$721,905,000".

On page 23, line 20 strike out the period and insert in lieu thereof "; of which $542,800,000 shall be available for high energy physics.".

DeCONCINI AMENDMENT NO. 3305

Mr. DeCONCINI proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 21, after line 13 but before line 14, insert the following new section:

Sec. . A sum of $6,000,000 appropriated by Public Law 96-367 and expended for Contract No. 2-07-30-W0024, dated May 14, 1982, for flood control work on the Gila River Channel within the Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona, shall be non-reimbursable. A contract amendment pursuant to this provision shall not subject the District to Sections 203 through 208 of Title II of Public Law 97-293.

BUMPERS AMENDMENT NO. 3306

Mr. BUMPERS proposed an amendment to the bill H.R. 5653, supra, as follows:

On page 22, line 3 strike "$2,046,168,000, to remain available until expended;" and insert "$2,050,168,000, to remain available until expanded; of which $4,000,000 shall be available for the Light Water Reactor Improvement Program,".

BUMPERS AMENDMENT NO. 3307

Mr. BUMPERS proposed amendment (as modified) to bill H.R. 5653, supra, as follows:

At the appropriate place in the bill, add the following new section:

Sec. . An additional $100,000 within available funds is hereby made available for the Crops of Engineers, General Investigation, for the Arkansas River Basin study, to be expended along with the other funds made available under this Act for the Arkansas River Basin Study.

HECHT AND LAXALT AMENDMENT NO. 3308

Mr. HATFIELD (for Mr. Hecht) (for himself, and Mr. Laxalt) proposed an amendment to the bill H.R. 5653, supra, as follows:

On page 28, strike lines 11-20 and insert in lieu thereof the following: "all revenues collected in connection with the operation of Navy Geothermal projects at Fallon, Nevada may be credited to a separate fund, to be established in the Treasury of the United States, and shall be available to the Secretary of Energy, without further appropriation, for payment of energy costs, contract administration costs, and the design, construction, operation, maintenance and replacement, and administrative costs of all required transmission facilities and power marketing activities directly associated with the Fallon, Nevada Navy Geothermal projects.".

BINGAMAN (AND DOMENICI) AMENDMENT NO. 3309

Mr. BINGAMAN (for himself and Mr. Domenici) proposed an amendment to the bill H.R. 5653, supra, as follows:

On page 14, line 14, strike out the period and insert in lieu thereof: ", *Provided further,* That in order to expedite the completion of the Hooker Dam and Reservoir of the Central Arizona project (1) the selection of the site for the Hooker Dam or an alternative as authorized by section 301 of the Colorado River Basin Project Act shall be completed by January 1, 1985, (2) the initial draft of the environmental impact statement required for Hooker Dam or alternative shall be completed and available by August 1, 1985, (3) the final environmental impact statement for Hooker Dam or alternative shall be completed and available by August 1, 1987, and (4) the Secretary shall make a record of his decision as soon as practically possible after the completion of the final environmental impact statement.".

WILSON (AND CRANSTON) AMENDMENT NO. 3310

Mr. WILSON (for himself and Mr. Cranston) proposed an amendment to the bill H.R. 5653, supra, as follows:

Strike the appropriate section of title III, page 28, lines 4-10 and insert the following: *Provided*, That notwithstanding section 8 of Public Law 88-552, the Secretary of Energy, taking into account all the interests involved, is authorized to accept and use funds contributed by non-federal entities, including investor owned and publicly owned utilities, to modify and upgrade or participate in the modification and upgrading of existing Federal transmission facilities and to assist such non-federal entities in the development of a new 500 kV AC line and associated facilities from Northern California to the California-Oregon border area;

HATFIELD AMENDMENT NO. 3311

Mr. HATFIELD proposed an amendment to the bill H.R. 5653, supra; as follows:

On page 28, line 9, after "accept", insert "and use".

On page 28, line 10, after "entities", insert "including investor owned and publicly owned utilities,".

HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATION ACT, 1985

GARN AMENDMENT NO. 3312

Mr. GARN proposed an amendment to the bill (H.R. 5713) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1985, and for other purposes; as follows:

Strike starting on line 19 on page 38 through line 3 on page 39 of the House passed version.

HEINZ (AND OTHERS) AMENDMENT NO. 3313

Mr. HEINZ (for himself, Mr. Glenn, Mr. Melcher, Mr. Burdick, Mr. Cranston, Mr. Lautenberg, Mr. Chiles, Mr. Pressler, Mr. Mitchell, and Mr. Riegle) proposed an amendment to the bill H.R. 5713, supra; as follows:

On page 8, between lines 2 and 3, insert the following:

CONGREGATE SERVICES

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs in accordance with the provisions of the Congregate Housing Services Act of 1978, $4,144,000.

HEINZ AMENDMENT NO. 3314

Mr. HEINZ proposed an amendment to the bill H.R. 5713, supra; as follows:

On page 15, between lines 4 and 5, insert the following:

NEIGHBORHOOD DEVELOPMENT DEMONSTRATION

For the Neighborhood Development Demonstration Program authorized by section 123 of the Housing and Urban-Rural Recovery Act of 1983, $2,000,000.

STAFFORD AMENDMENT NO. 3315

Mr. STAFFORD proposed an amendment to the bill H.R. 5713, supra; as follows:

On page 23, line 12, strike "$[illegible],495,000" and insert "$14,620,000" on page 2[illegible], line 15, insert ", of which no less than $5,125,000 shall be available for toxicological testing of hazardous substances" after "Fund"

RANDOLPH AMENDMENT NO. 3316

Mr. GARN (for Mr. Randolph) proposed an amendment to the bill H.R. 5713, supra; as follows:

On page 20, strike line 25 through page 21, line 3 "4009:" On page 20, line 25, insert "6913): *Provided further*, That funds may be made available to support activities in accordance with subtitle D of the Solid Waste Disposal Act, as amended, without regard to section 2007(d) of the Act:".

PRESSLER AMENDMENT NO. 3317

Mr. PRESSLER proposed an amendment to the bill H.R. 5713, supra; as follows:

On page 14, following line 4, insert the following: *Provided further*, That with respect to funds provided herein at least one half of such funds will be used to assist cities with populations under 30,000.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1985

GARN AMENDMENTS NOS. 3318 AND 3319

Mr. GARN proposed two amendments to the bill (H.R. 5753) making appropriations for the legislative branch for the fiscal year ending September 30, 1985, and for other purposes; as follows:

AMENDMENT No. 3318

On page 3, line 11, strike "as" and insert "at"

On page 4, line 18, strike "ALLOWANCE" and insert "ALLOWANCES"

AMENDMENT No. 3319

On page 9, strike "(a)"

On page 9, strike lines 6 through 8

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ACT

MATHIAS AND EAGLETON AMENDMENT NO. 3320

Mr. BAKER (for Mr. Mathias) (for himself and Mr. Eagleton) proposed an amendment to the bill (S. 905) entitled the "National Archives and Records Administration Act of 1983;" as follows:

Strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "National Archives and Records Administration Act of 1984".

AMENDMENTS TO TITLE 44, UNITED STATES CODE

Sec. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as section 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by section (a)) the following new section:

"§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, the Federal agencies, and to the Congress for historical and other research purposes.".

(c) Section 2102 of such title (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

" 'Federal agency' means, notwithstanding section 2901(13) of this title, any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), any independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

" 'Archivist' means the Archivist of the United States appointed under section 2104; and

" 'Administration' means the National Archives and Records Administration established under section 2103.".

(d) Section 2103 of such title is amended to read as follows:

"§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.".

(e) Such title is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

"§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications, required to perform the duties and responsibilities of the office of Archivist.

"(b) There shall be in the Administration of Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132 (a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

"§ 2105. Administrative provisions

"(a) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(b) The Archivist may organize the Administration as he finds necessary or appropriate.

"(c) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(d) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(e) The Archivist may establish advisory commmittees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee who are not officers or employees of the Government shall serve without compensation but shall be entitled, when performing the duties of the committee, to travel and transportation expenses and a per diem allowance in the same manner and under the same conditions as provided for employees under section 5702 of title 5.

"(f) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advise and assistance in carrying out the purposes of this chapter.

"(g) If authorized by the Archivist, officers and employees of the Administration having investigative functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

"§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provisions of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officers and employees in other executive agencies, including personnel of the Armed Forces, with the consent of the head of the agency concerned.

"(d) Notwithstanding section 1342 of title 31, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

"§ 2107. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board. The report shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds.".

(f) Chapter 21 of such title is amended by adding at the end thereof the following new section:

"§ 2120. AUTHORIZATION OF APPROPRIATIONS

"There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Archivist and the Administration under this title.".

(g)(1) The table of sections for chapter 21 of such title is amended to read as follows:

"Chapter 21—National Archives and
Records Administration

"Sec.
"2101. Purpose.
"2102. Definitions.
"2103. Establishment.
"2104. Officers.
"2105. Administrative provisions.
"2106. Personnel and services.
"2107. Reports to Congress.
"2108. Acceptance of records for historical preservation.
"2109. Responsibility for custody, use, and withdrawal of records.
"2110. Preservation, arrangement, duplication, exhibition of records.
"2111. Servicing records.
"2112. Material accepted for deposit.
"2113. Presidential archival depository.
"2114. Depository for agreements between States.
"2115. Preservation of motion-picture films, still pictures, and sound recordings.
"2116. Reports; correction of violations.
"2117. Legal status of reproductions; official seal, fees for copies and reproductions.
"2118. Limitation on liability.
"2119. Records of Congress.
"2120. Authorization of appropriations.".

(2) The item relating to chapter 21 in the table of chapters for such title is amended to read as follows:

"21. National Archives and Records Administration 2101".

(h)(1) Section 1506 of such title is amended by striking out the third sentence.

(2) Section 2301 of such title is amended by striking out the second sentence.

(3) Section 2501 of such title is amended by striking out the last sentence.

(i) Section 2504(a) of such title is amended by striking out "the Administrator" in the last sentence and inserting in lieu thereof "the President and the Congress."

(j)(1) Section 2507 of such title is repealed.

(2) The table of sections for chapter 25 of such title is amended by striking out the item relating to section 2507.

(k)(1) Section 2108(4) of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" and inserting in lieu thereof "section 2112".

(2) Section 2113 of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112".

(l)(1) Section 1501 of such title is amended—

(A) by striking out the period at the end of the last paragraph and inserting in lieu thereof a semicolon and "and"; and

(B) by adding at the end thereof the following new paragraph:

" 'National Archives of the United States has the same meaning as in section 2901 (11) of this title.".

(2) Section 2109 of such title (as redesignated by section 2 (a) of this Act) is amended—

(A) by striking out "Administrator, the Archivist of the United States," in the second sentence and inserting in lieu thereof "Archivist";

(B) by striking out "the Administrator shall, if he concurs, and in consultation with the Archivist of the United States," in the third sentence and inserting in lieu thereof "the Archivist shall, if the Archivist concurs,"; and

(C) by striking out "Administrator of General Services, by order, having consulted with the Archivist and" in the fifth sentence and inserting in lieu thereof "Archivist, by order, having consulted with".

(3) Section 2204 (c)(1) of such title is amended by striking out "service of the General Services".

(4) Section 2205 (1) of such title is amended by striking out "Service of the General Services".

(5) Section 2110 of such title (as redesignated by section 2(a) of this Act) is amended by inserting "and Records" after "Historical Publications" in the last sentence.

(6) Section 2504(a) of such title is amended by inserting "and Records" after "Historical Publications" in the fourth sentence.

(7) Chapter 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of such title (as amended by this section) are further amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(8) Section 3504(e) of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

(9) Section 3513(a) of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States".

(m) The item relating to chapter 29 in the table of contents for such title is amended to read as follows:

"29. Records Management by Archivist of the United States .... 2901".

(n) (1) Section 2901 of such title is amended by striking out paragraph (13) and inserting in lieu thereof the following:

"(13) the term 'executive agency' shall have the meaning given such term by section 3(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.472(a)), and

"(14) the term 'Federal agency' means any executive agency or any establishment in the legiciative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capital and any activities under the direction of the Architect of the Capitol);".

(2) Section 2103(1) of such title is amended by striking out "or of the Congress" and inserting in lieu thereof a comma and "the Congress, or the Supreme Court".

(o)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112";

(B) by striking out "section 2101" and inserting in lieu thereof "section 2102";

(C) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States"; and

(D) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist". (2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2112"; and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(3) Section 103 of such Act is amended by striking out "Administrator" and inserting in lieu thereof "Archivist".

(4) Section 104 of such Act is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist";

(2) by striking out subsection (b);

(3) by redesignating subsections (c) and (d) as subsections (d) and (c), respectively; and

(4) by striking out "under subsection (b)" in subsection (b) (as redesignated by paragraph (3) of this subsection).

(p) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Archivist of the United States.".

(q) Section 141 through 145 of title 4, United States Code, are each amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(r) The Act of March 27, 1934 (48 Stat. 501, Chapter 93; 25 U.S.C. 199a) is amended—

(1) by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States"; and

(2) by striking out "section 2112 (b)" and inserting in lieu thereof "section 21117 (b)".

(s) (1) Sections 106a, 106b, 112, and 113 of title 1, United States Code are each amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States."

(2) Section 106b of such title (as amended by paragraph (1) of this subsection) is further amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration".

(t) (1) Sections 6, 11, 12, and 13 of title 3, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States," and "National Archives and Records Administration," respectively.

(2) (A) The heading of section 6 of such title is amended to read as follows:

"§6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection".

(B) The heading of section 12 of such title is amended to read as follows:

"§12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate".

(C) The table of sections for chapter 1 of such title is amended by striking out "Administrator of General Services" each place it appears in the items pertaining to sections 6 and 12 and inserting in lieu thereof "Archivist of the United States."

(u) Section 552a of title 5, United States Code is amended—

(1) by striking out subsection (b) (6) and inserting in lieu thereof the following:

"(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;"; and

(2) by striking out "Administrator of General Services" each place it appears in subsection (l)(1) and inserting in lieu thereof "Archivist of the United States".

DEFINITIONS

Sec. 3. For purposes of sections 3 through 8—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2104 of title 44, United States Code (as added by section 2 of this Act); and

(2) the term "Administration" means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

TRANSFER OF FUNCTIONS

Sec. 4. (a) functions of the Administrator of General Services under chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are transferred to the Archivist.

(b) The National Archives and Records Service of the General Services Administration is transferred to the Administration.

(c) The Office of Office Information Systems of the Office of Information Resources Management of the General Services Administration is transferred to the Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services prior to the transfer of such functions, and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

TRANSFERS

Sec. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. A percentage of the funds and associated positions in the General Management and Administration appropriation for the General Services Administration, proportionate to the percentage of National Archives and Records Service employees in the General Services Administration, is transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

SAVINGS PROVISIONS

Sec. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transfered under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Archivist, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken thereform, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

REFERENCE

Sec. 7. With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration, respectively.

EFFECTIVE DATE

Sec. 8. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Amend the title so as to read: "A bill to establish the National Archives and Records Administration as an independent agency.".

DOLE AMENDMENT NO. 3321

Mr. BAKER (for Mr. Dole) proposed an amendment to amendment No. 3220 proposed by Mr. Baker (for Mr. Dole) to the bill S. 905, supra; as follows:

At an appropriate place in the substitute insert the following:

( ) Notwithstanding any provision of this Title, no return or return information as defined in section 6103 of Title 26 of the United States Code may be disclosed except as authorised by Title 26.

HATFIELD AMENDMENTS NOS. 3322 AND 3323

Mr. BAKER (for Mr. Hatfield) proposed two amendments to amendment No. 3320 proposed by Mr. Baker (for Mr. Mathias) to the bill S. 905, supra; as follows:

Amendment No. 3322

On page 8, line 8, strike out "(m)" and insert in lieu thereof "(10)".

On page 8, between line 10 and the matter following line 9, insert the following:

(m) The first sentence of section 1506 of such title is amended by striking out "and" after "Attorney General," and by inserting before the period a comma and "the Administrator of General Services, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget".

Amendment No. 3323

On page 12, beginning with "A percentage" in line 26, strike out through the period in line 32.

FISHERIES PROGRAMS AUTHORIZATION ACT

PACKWOOD AMENDMENT NO. 3324

Mr. BAKER (for Mr. Packwood) proposed an amendment to the bill (S. 2463) to authorize appropriations of funds for certain fisheries programs, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following: That section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210); 97 Stat. 1409) is amended—

(1) in subsection (a), by inserting ", and $28,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by striking "of 1976".

Sec. 2. Section 3 of such Act is amended—

(1) in subsection (a), by inserting ", and $35,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by inserting "Magnuson" immediately before "Fishery", and by striking "of 1976".

Sec. 3. Section 4 of such Act is amended—

(1) in subsection (a)—

(A) by inserting ", and $12,000,000 for fiscal year 1985" immediately after "1984"; and

(B) by striking "boats" and inserting in lieu thereof "vessels"; and

(2) in subsection (b), by striking "of 1976".

Sec. 4. Sections 2, 3, and 4 of such Act are amended by adding at the end thereof the following:

"(c) The duties authorized in subsection (a) of this section shall be considered separate and distinct from duties and functions performed pursuant to moneys authorized in subsection (b) of this section. The total authorization for all such duties and functions shall be the sum of amounts specified in such subsections.".

Sec. 5. (a) Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended—

(1) by striking "October 1, 1984" and inserting in lieu thereof "October 1, 1987"; and

(2) by inserting ", other than payments from fees collected or revenues accruing from deposits or investments of such fees pursuant to subsection (c) of this section," immediately after "payments".

(b) The amendment made by subsection (a)(2) of this section shall become effective on October 1, 1985.

Sec. 6. (a) Section 4(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(c)) is amended by striking "September 30, 1984" each place it appears and inserting in lieu thereof "September 30, 1985".

(b) Section 7(c)(6) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)(6)) is amended by striking "and 1984" and inserting in lieu thereof "1984, and 1985".

Sec. 7. Section 221 of the American Fisheries Promotion Act (16 U.S.C. 742c, note) is amended—

(1) in subsection (a), by striking "September 30, 1984" and inserting in lieu thereof "September 30, 1985";

(2)(A) in subsection (b)(2)(A), by striking "and 1984," and inserting in lieu thereof "1984, and 1985,"; and

(B) in subsection (b)(2)(C), by striking "and 1984" and inserting in lieu thereof "1984, and 1985"; and

(3) in subsection (c)(1), by striking "and 1984," and inserting in lieu thereof "1984, and 1985".

Sec. 8. Section 310 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1470) is amended—

(1) by striking "and" immediately after "1983,"; and

(2) by inserting ", and $1,500,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986" immediately before the period at the end thereof.

Sec. 9. (a) Section 201(e)(1)(E)(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)(ii)) is amended—

(1) by inserting "both" immediately before "United States";

(2) by striking "or fishery" and inserting in lieu thereof "and fishery"; and

(3) by inserting the following immediately before the semicolon at the end thereof: ", particularly fish and fishery products for which the foreign nation has requested an allocation".

(b) Section 201(e)(1)(E)(ii) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)(ii)) is amended to read as follows:

"(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;".

(c)(1) Section 201(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(d)(4)) is amended by striking "shall" the first time it appears and inserting in lieu thereof "may".

(2) Section 201(e)(1)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(A)) is amended by striking "shall determine the allocation among foreign nations of" and inserting in lieu thereof "may make allocations to foreign nations from".

(3) Section 301(a)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1)) is amended by inserting "for the United States fishing industry" immediately before the period at the end thereof.

Sec. 10. Section 10 of the National Aquaculture Act of 1980 (16 U.S.C. 2809) is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking "1983;" and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $2,000,000 for each of fiscal years 1984 and 1985;";

(2) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking "1983; and" and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $2,000,000 for each of fiscal years 1984 and 1985; and"; and

(3) in paragraph (3)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking "1983." and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $1,000,000 for each of fiscal years 1984 and 1985.".

LIBRARY SERVICES AND CONSTRUCTION ACT AMENDMENTS

STAFFORD (AND OTHERS) AMENDMENT NO. 3325

Mr. BAKER (for Mr. Stafford) (for himself, Mr. Weicker, Mr. Dole, and Mr. Mattingly) proposed an amendment to the bill (S. 2490) to amend and extend the Library Services and Construction Act; as follows:

On page 24, line 21, strike out "(d)" and insert in lieu thereof "(c)".

On page 45, between lines 20 and 21, insert the following new title:

TITLE IV—HIGHER EDUCATION CONSTRUCTION PROJECTS LIBRARY PROJECT AUTHORIZED

Sec. 401. (a) The Secretary of Education (hereafter in this title referred to as the "Secretary") is authorized to provide financial assistance, in accordance with the provisions of this section, to pay all of the cost of construction, and related expenses, for an addition to the William H. Mortensen Library at the University of Hartford located at Hartford, Connecticut, to enable the University of Hartford to house a collection of materials relating to Presidential campaigns and to American political history, known as the Presidential Americana, together with other collections.

(b) No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) There are authorized to be appropriated such sums, not to exceed $6,500,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

HUMAN DEVELOPMENT CENTER FACILITY AUTHORIZED

Sec. 402. (a) The Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to the University of Kansas located in Lawrence, Kansas, to pay the Federal share of the cost of construction and related costs for a human development center facility at the University of Kansas, to be used as a national research and training resource for individuals acquiring expertise in the rehabilitation, education, parent training, employment, independent living, and public policy concerns of handicapped individuals and their families, and as a treatment resource for handicapped persons and their families.

(b)(1) No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) There are authorized to be appropriated such sums, not to exceed $9,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

CARL VINSON INSTITUTE OF GOVERNMENT AUTHORIZED

Sec. 403. (a) In recognition of the public service of Representative Carl Vinson, in order to enhance the program of service to State and local governments in Georgia and in other States provided by the Carl Vinson Institute of Government of the University of Georgia, and in order to preserve a historic landmark that provided special education opportunities for young women in Georgia and in other States at a time when such opportunities were limited or nonexistent, the Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to the State of Georgia to renovate the physical facilities of the former Lucy Cobb Institute for Girls in Athens, Georgia, for the purpose of providing a center for the Carl Vinson Institute of Government of the University of Georgia.

(b) No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) There are authorized to be appropriated $3,500,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

STATE JUSTICE INSTITUTE

HATCH AMENDMENT NO. 3326

Mr. BAKER (for Mr. Hatch) proposed an amendment to the bill (S. 384) to aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute; as follows:

On page 21, line 16, beginning with ", except" strike out all through "Act" on line 17.

HEFLIN AMENDMENT NO. 3327

Mr. BYRD (for Mr. Heflin) proposed an amendment to the bill S. 384, supra; as follows:

On page 3, strike out line 3 after "in" the first place it appears and insert in lieu thereof "any State, pursuant to section 4(a)(6) of this Act.".

On page 3, line 5, strike out "shall" and insert in lieu thereof "may".

On page 3, strike out lines 19 through 21.

On page 3, line 22, strike out "(4)" and insert in lieu thereof "(3)".

On page 4, line 1, strike out "(5)" and insert in lieu thereof "(4)".

On page 5, line 21, strike out "public members" and insert in lieu thereof "members from the public sector".

On page 5, line 25, after "submitted" insert "to the President".

On page 6, line 4, beginning with "The" strike out through the period on line 6 and insert in lieu thereof "Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals.".

On page 6, strike out lines 14 through 16 and insert in lieu thereof the following:

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after the date of the enactment of this Act. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

On page 6, line 17, after "The" insert "initial".

On page 6, line 21, strike out "office".

On page 9, line 16, strike out "156(a)" and insert in lieu thereof "6(a)".

On page 13, line 22, after "approved" insert ", consistent with State law,".

On page 15, line 22, strike out "their functioning" and insert in lieu thereof "the functioning of such judges and courts".

On page 15, line 25, strike out "their operation" and insert in lieu thereof "the operation of such rules, procedures, devices, and standards".

On page 16, line 3, strike out "their utility" and insert in lieu thereof "the utility of those alternative approaches".

On page 17, line 5, strike out "equal to" and insert in lieu thereof "not less than".

On page 17, line 21, strike out "or contracts made" and insert in lieu thereof "made and contracts or cooperative agreements entered into".

On page 18, line 4, before "by the Congress" insert "or constitutional amendment".

On page 18, line 6, after "petition," insert "or of any referendum,".

On page 18, line 15, after "grant" insert ", cooperative agreement,".

On page 18, line 19, beginning with "every" strike out through "which" on line 21 and insert in lieu thereof "each recipient that".

On page 19, line 5, after "grant" insert ", cooperative agreement,".

On page 19, line 9, after "into" insert "cooperative agreement,".

On page 19, line 11, after "provided" insert "in advance".

On page 20, line 7, strike out "nor allow sums" and insert in lieu thereof "or allow financial assistance".

On page 22, line 11, strike out "under this".

On page 23, line 3, after "any", strike out all through "regarding" on line 5 and insert in lieu thereof "recipient with respect to".

On page 23, line 7, strike out "grant or contract" and insert in lieu thereof "any grant, cooperative agreement, or contract under this Act".

On page 23, line 9, strike out "insuring" and insert in lieu thereof "ensuring".

On page 23, line 9, strike out "the grant" and insert in lieu thereof "such grant, cooperative agreement,".

On page 23, line 13, after "any" strike out through "entity" on line 16 and insert in lieu thereof "recipient shall be submitted on a timely basis to such recipient".

On page 25, line 20, after "section", strike out all through line 21 and insert in lieu thereof "3523(c) of title 31, United States Code.".

On page 26, line 2, beginning with "grantee" strike out through "Act" on line 3 and insert in lieu thereof "recipient".

OFFICE OF ENVIRONMENTAL QUALITY AND COUNCIL ON ENVIRONMENTAL QUALITY AUTHORIZATION, 1985

DURENBERGER AMENDMENT NO. 3328

Mr. BAKER (for Mr. DURENBERGER) proposed an amendment to the bill (H.R. 4585) to authorize appropriations for the Office of Environmental Quality and the Council on Environmental Quality for fiscal years 1985, 1986, 1987, and for other purposes; as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 205 of the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4374(c)) is amended by adding at the end thereof the following new paragraph:

"(d) $480,000 for the fiscal year ending September 30, 1985."

SEC. 2. The Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371–4374) is further amended by adding at the end thereof the following new section:

"OFFICE MANAGEMENT FUND

"SEC. 206. (a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the 'Fund') to receive advance payments from other agencies or accounts that may be used solely to finance—

"(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

"(2) Federal interagency environmental projects (including task forces) in which the Office participates.

"(b) Any study contract or project that is to be financed under subsection (a) may be initiated only with the approval of the Director.

"(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.".

ARCTIC RESEARCH AND POLICY ACT OF 1984

MURKOWSKI AMENDMENTS NOS. 3329 AND 3330

Mr. BAKER (for Mr. MURKOWSKI) proposed two amendments to the amendments of the House to the bill (S. 373), an act to provide comprehensive national policy dealing with national needs and objectives in the Arctic, as follows:

AMENDMENT No. 3329

On page 4, in section 102(b)(1), strike the words "physical and biological sciences," and insert in lieu thereof "physical, biological and health sciences,".

On page 11, in section 107(b)(2), insert a new subparagraph (H) as follows:

"(H) the Department of Health and Human Services;" Reletter the existing subsequent subparagraphs accordingly as subparagraphs (I), (J), and (K).

AMENDMENT No. 3330

On page 7, amend section 103(d)(1) to read as follows: "(d)(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS-16 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of Chapter 81 of title 5 (relating to compensation for work injuries) and Chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose."

McCLURE AMENDMENT NO. 3331

Mr. BAKER (for Mr. McCLURE) proposed an amendment to the amendments of the House to the bill S. 373, supra, as follows:

1. On p. 19, in section 202 (b)(1)(A), strike the words "Federal Government, and provide for" and insert in lieu thereof "Federal Government, and make recommendations for".

2. On p. 21, in section 204(a)(1), strike the words "in carrying out activities" and insert in lieu thereof "making recommendations".

3. On p. 24, in section 205(a), strike the words "have specific responsibility for overseeing and collaborating" and insert in lieu thereof "be responsible for coordination".

4. On p. 25, in section 205(a)(1)(A), strike the words "designating the key responsibilities for carrying out such research and providing for coordination with the Office" and insert in lieu thereof "recommend the designation of the key responsibilities for carrying out such research, and to provide for coordination of this plan with the Office".

5. On p. 25, in section 205(a)(2), strike the words "shall, in cooperation with" and insert in lieu thereof "shall make recommendations, in cooperation with".

On p. 25, in section 205(a)(2), strike the words "deemed appropriate, ensure" and insert in lieu thereof "deemed appropriate, to ensure".

6. On p. 26, in section 205(b), strike the words "shall consider all of such requests as" and insert in lieu thereof "and the recommendations of the Council, shall consider all of such requests and recommendations as".

On p. 26, in section 205(b), strike the words "reviewed by the Council and" and insert in lieu thereof "reviewed by".

7. On p. 27, in section 207(b), strike the words "The" at the beginning thereof and insert "Subject to existing law and regulations governing conflicts of interest, the".

8. On p. 30, in section 210(2), strike the words "property" and insert in lieu thereof the words "materials and supplies".

9. On p. 30, in section 210(4), after the words "publish" insert the words", consistent with Title 44 of the United States Code,".

10 On p. 30, in section 210, strike the "and" at the end of subsection (3) and add the following new subsection (4):

"(4) to utilize such services or personnel as may be provided to the Council on a reimbursable basis by any agency of the United States; and".

Renumber existing subsection (4) as subsection (5).

11. On p. 31, at the end of Section 211, strike the word "thereafter." and insert in lieu thereof "thereafter: *Provided*, that the authority provided for in this title shall expire on September 30, 1990, unless otherwise authorized by Congress.

GRATUITY TO MATTIE WASHINGTON

BAKER AMENDMENT NO. 3332

Mr. BAKER proposed an amendment to the resolution (S. Res. 397) to pay a gratuity to Mattie Washington; as follows:

On page one, line 4, strike out "Senate" and insert in lieu thereof "Architect of the Capitol assigned to duty on the Senate side of the Capitol grounds".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON INFORMATION MANAGEMENT AND REGULATORY AFFAIRS

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Information Management and Regulatory Affairs of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, June 21, to hold a hearing on Federal Advisory Committee Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 21, to hold a business meeting to consider title VI of S. 2713, the Intelligence Authorization Act for fiscal year 1985; the nomination of Thomas Etzold, to be Assistant Director of the Arms Control and Disarmament Agency; and to consider a prisoner-transfer treaty on Thailand.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

A NEW TAX SYSTEM TO ENCOURAGE SAVINGS AND ECONOMIC GROWTH

● Mr. ROTH. Mr. President, during the past 3½ years of the Reagan administration, we have witnessed a dramatic revitalization of the American economy. Nearly 5 million new jobs have been created. Unemployment is down significantly. Inflation has nearly been stopped in its tracks. A great deal has been accomplished; still more remains to be done.

All Americans, be they in the public or private sector, should be concerned not only about maintaining this recovery but also enhancing our long-term growth potential.

To further that end, I believe that our Nation should seriously consider adopting a threefold economic strategy. First, we must maintain the substantial economic recovery already underway. Second, we must reduce the very serious Federal budget deficit—not through increased taxation but rather through spending cuts. And, third, we must reform our present Tax Code. It is this latter point which I wish to more fully address this afternoon.

I have always been favorably disposed to the Old Farmer's Almanac not so much for its correct or near correct weather predictions but for its incisive and poignant political remarks. One such statement reads: "If Patrick Henry thought that taxation without representation was bad he should see how bad it is with representation." No truer words have ever been spoken or written.

Our present Tax Code has got to be one of the most archaic, complex, and cumbersome documents around. It is a maze of special rules, technical amendments, technical changes to technical amendments, special exemptions, and so on, and so forth. I'm currently involved in a conference that will add another 1,300 pages.

The reason that you see a lot of these things in the code is because the tax system penalizes a lot of economic activities that it shouldn't.

Congress, in turn, has tried to take the pressure off some of these activities by granting special exemptions. Other exemptions were, quite frankly, put into effect by the efforts of special interest groups.

The one activity that has been penalized the most in this economy has been savings and investment. And yet, it is this sector which is so crucial to our present and future international competitive posture.

All of us here today are well aware of the several significant tax reform proposals now under discussion. They're best known by acronyms like "FAST," "FAIR," and "FLAT." But they all suffer from one common failing: they don't go far enough to correct the existing tax system's bias against savings and investment.

All of these plans quite properly stress the need for greater equity and simplicity in the Tax Code. All have been proposed in response to the understandable public outrage over a tax system that appears to burden the many for the benefit of a few. But none of these plans moves effectively toward making the one key change that will enhance the long-term growth potential of our economy by restoring our ability to compete in the international marketplace.

I believe that everyone would agree that our Nation's declining ability to keep up with the international competition in recent years is, in large measure, the result of our dismal level of personal savings and investment.

America is a land of tremendous opportunity and growth: our country is welling over with new ideas and inventions; our entrepreneurial spirit is alive and as vigorous as ever; our Nation is still well ahead of the rest of the world in discovering and developing new technologies.

But when it comes to finding the capital to put these new ideas and technologies to use, we come up short. Our rate of personal savings—the chief source of capital for industrial growth and modernization—is pitifully small compared to those of our trading partners, like Japan and West Germany.

But why don't we save more? Why does a nation that has always recognized the importance and value of putting something aside for a "rainy day" have a personal savings rate of around a mere 4.5 percent?

I believe the answer can be found in a tax system which encourages consumption now and discourages saving for the future. Our current tax system contains an inherent bias against savings; in fact, it penalizes savings by taxing them twice. Once when the money is earned, and again when it produces income in a savings account or other interest-earning investment.

Eliminating this double taxation of savings is a vital ingredient is reforming our tax system. We need a tax system that encourages, rather than penalizes, personal savings. At the same time, we need a simplified Tax Code with lower rates for the average taxpayer.

How can this be done?

Any serious proposal for basic tax reform must meet four basic criteria. First, the system must be so structured as to remove the existing biases in the present code. Second, the system must be as fair as possible. Third, the system must be simplified significantly. And fourth, the new system should be so structured, in its initial form, so as to raise the same amount of revenue as the current system. The proposal, I am about to suggest, meets those criteria.

Let me interject one point at this time. For the past several months, we have worked closely with the staff of the Joint Committee on Taxation on the various technicalities and intricacies of our proposal. Unfortunately, because of the current tax legislation, the technicians on the committee have not yet been able to complete their work on this proposal. In the very near future, we hope to have a finalized plan.

My proposal would replace the current personal income tax with a broad-based system that contains generalized savings incentives to remove current antisaving biases and employs low, relatively flat marginal rates. By broadening considerably the Nation's tax base, this will enable us to lower the rate at which the average citizen is taxed with no loss in revenue.

Specifically, we should eliminate virtually all of the existing exemptions, deductions, and credits. The only exceptions should be the home mortgage interest deduction, a deduction for charitable contributions, and a deduction to protect against medical catastrophe.

In addition, to insure that no one below the poverty line is taxed, the system would include a substantial "zero bracket amount"—the old standard deduction—and generous personal exemptions. For example, a single taxpayer would receive a $3,000 deduction, a couple $6,000, and each individual in a taxpaying unit would be entitled to a $1,000 exemption. Thus, a family of four would be tax exempt on the first $10,000 of its income.

In this system, there would be one other deduction—and it is this deduction that makes this plan uniquely suited to stimulate savings and investment. Any income invested in a savings account or other savings instrument would not be taxed until it is withdrawn and spent.

The centerpiece of this plan would be the creation by Congress of "Super-Savings Accounts." This would be similar in many respects to individual retirement accounts [IRA], which have proved immensely popular and have done much to increase the rate of savings over the past few years.

Here's how the "Super-Savings Accounts" would work. In any given year, a taxpayer would be able to deduct from current taxable income any amount invested in a qualified account up to a specific limit—say $10,000 for an individual—$20,000 for a couple. Any withdrawals from the account would be added to taxable income. Funds invested in the account could be directed to any kind of financial instrument—say, for example, passbook savings, stocks, and bonds. Unlike

IRA's, funds in the account could be withdrawn at any time without penalty and could be used for any purpose—a new car, a downpayment on a house, a child's college education. The cap on that amount that could be deducted in any year would prevent those with large capital holdings from escaping taxation. The cap would be set high enough, however, to insure that middle-income taxpayers would have all their savings exempt from taxation. While many could not or would not save this much in the beginning, we believe Americans will increasingly use this savings incentive. What I am endeavoring to do is to change America into a savings nation that will provide the capital necessary to keep the United States on the cutting edge of new technology and thereby create jobs for our unemployed and underemployed.

Because of the broadened tax base, the rate structure in the system could be virtually flat. A marginal tax rate of about 20 percent would raise as much revenue as the current personal tax system. A graduated series of two or three rates between 10 and 30 percent would have the same effect. The important point, however, is that the tax plan would be revenue neutral—producing neither more nor less income than the existing system.

Let me also say something briefly about the corporate side of the picture. Obviously, a companion bill concerning corporate taxes will have to be developed. Four major points, however, should be included in that bill. First, all special credits and deductions should be eliminated. Second, depreciation should be replaced with immediate expensing. Third, the corporate tax rate should be lowered. Fourth, the corporate tax system should be so structured as to ensure revenue neutrality.

Our tax plan and the corporate companion bill would, I believe, create an enormous environment of growth. It would enhance our domestic economy and restore our ability to compete effectively abroad. It is high time that the United States went from a spending nation to a saving nation.

Who then should support such a tax system?

In my judgment, the broad spectrum of the American populace would benefit substantially from such a proposal and would be strong supporters of our initiative. They would include, first and foremost, the American business community. Our plan would provide a steady and expanding source of capital so necessary for business growth. Others that would benefit would include:

Young married couples—the future hope of our society—who look forward, for the first time, to owning their own homes. The supersavings accounts would provide low-interest mortgage money to help make home ownership a reality.

Middle-aged and middle-income families—the very backbone of our Nation—who want to save whether for their children's education, a summer home in the country, a long-awaited and needed vacation, or whatever.

The elderly, who have toiled countless hours to make our country great and now find themselves—under our present tax system—unable to save tax free. With our proposal, the elderly could save funds tax free to help protect themselves against catastrophic illness or to provide a legacy for their children.

The jobless and underemployed—unwilling victims of technological change—would support this initiative because this new system would create new jobs by increasing the competitiveness of U.S. products and services in world markets.

In short, anyone who wants to see the United States preserve its economic strength, anyone who wants to maintain and strengthen the benefits of this recovery, anyone who wants to see America reassert its leadership in world trade and industrial productivity will support our initiative.

Ladies and gentlemen, the future holds many challenges and opportunities. The creation of a new tax system that provides fairness, simplicity, and savings would, in my judgment, be an important and vital step forward toward creating an environment of growth.●

THE UNITED STATES: A DEBTOR NATION

● Mr. **METZENBAUM**. Mr. President, Senator LAWTON CHILES, the ranking Democrat on the Senate Budget Committee, has some very interesting and thought-provoking things to say about the country's economy and its imports and exports when he addressed the First Joint Convention of the National Conference of Editorial Writers & National Broadcast Editorial Association in Washington this morning.

I ask that his remarks, entitled "The United States: A Debtor Nation," be printed in the RECORD.

The remarks follow:

THE UNITED STATES: A DEBTOR NATION

How many times have you heard the United States described as the world's dominant economic power? Or as the Land of Plenty? Or as the Richest Nation on Earth?

We have those terms ingrained in our national folklore, and rightly so. It's all true.

Or at least it has been true. But "has been"—a chilling term all by itself—is much different from "continue to be."

We have all been hearing a lot lately about countries deep in debt, like Argentina, Brazil, and Mexico. And there are many other hard-pressed little nations like Togo, Zaire, Senegal, Guyana and Malawi who are on the roster of lands who can't pay their debts.

Well, next year, the world will add three new scarlet letters to the list of debtor nations. Those letters are "U.S.A."

In 1985 the United States will technically qualify for the designation "underprivileged" when we reach the point where we owe the rest of the world more than they owe us.

How can it happen that the mighty United States, the power that rebuilt Europe under the Marshall Plan, the nation that resurrected a devastated Japan, a nation which fought and won wars around the globe then restored the vanquished to economic life—how can it happen that such a mighty nation after building up so much world financial credit, can suddenly find itself with debits greater than its assets?

It wasn't easy. In fact, it took the kind of combined effort that had us bailing out other nations while we were drilling a hole in our own boat.

For the past three years we've been running up debt so fast, it is already approaching $1.5 trillion. That's shocking. But what's astounding is that if current economic policies are left unchanged, we will be well over $3.3 trillion in debt just five years from now.

Let me give you an idea of how we got so deep in the hole so fast.

To be fair and forthright, the nation has been on a spending binge for decades. A good many of the programs for which we spent all that money were not only well-intentioned, but national priorities selected by a compassionate public and enacted by an attentive Congress. We built up a whole inventory of programs to educate our young, house our poor, feed the hungry, tend the sick, care for the veteran, and defend the nation against would-be aggressors.

But at the beginning of this decade, we made another set of choices. We decided that unlimited spending could not go on forever. We decided to weed out many programs and hold down the costs of most others. It was a smart move.

At the same time, however, we made two other choices. First, we committed ourselves to a tremendous increase in military spending. And second, we decided upon a tremendous cutback in the level of revenues. The debt consequences have been practically geometric.

The new policies sent shudders through the economy, dumped millions of workers onto unemployment lines, and sent annual deficits soaring—not just over the $100 billion mark—but over $200 billion mark and beyond.

For much of the past year, we have been trying to convince ourselves that we have weathered the storm, and we have a solid and durable economic recovery. Let's not kid ourselves. Current economic statistics may give the impression of an oasis in our economic dilemma, but I'm afraid those numbers are only a mirage. The hard reality is that we are confronted with a desert of debt.

And all that debt is eating, not just our lunch, but our jobs for breakfast and our trade balance for supper.

It may be tempting to pin our problems on the predatory trade policies of a foreign competitor. But someday American workers will understand it isn't just aggressive nations overseas that threaten their jobs. No, they will realize it's a leaderless, American economic policy that's letting debt climb so fast and interest rates climb so high that other nations can't afford to buy what we sell.

This year, the United States is on its way to a record trade deficit—the amount by which our imports exceed our exports. But the trade deficit is a little deceptive. Actually, the United States is exporting more than ever before. The only trouble is our top, new export is American jobs. And if you doubt that, then you might want to visit the Ohio steel mill which will not reopen, or go to Pittsburgh or Detroit and see the jobless afraid of becoming the hopeless. The Department of Commerce tells us that for every $1 billion we add to that trade deficit—now climbing toward $100 billion—it means 25,000 jobs lost or not created. We end up with 2.5 million fewer American jobs.

At home, our record domestic deficits keep pushing interest rates higher. That has attracted a good amount of foreign investment. And this foreign investment has helped shelter the American economy from the worst effects of financing our own colossal debt.

Yet, it's one thing to live on money we owe to each other. And it's quite another thing to live on money we owe to other nations.

With huge uncertainty in the Persian Gulf, we are vulnerable to a big upturn in the price of oil. And we are just as exposed to decisions by foreign nations to put their investments elsewhere. If oil goes up, if foreign investments in our economy decline sharply, every debtor nation in the world will face a crisis.

What does our position as a debtor nation mean to developing countries? When they buy our government certificates, we call it "foreign investment". But what do those other nations call it? They call it "capital flight." They are not buying our goods because they cannot afford them. They are buying our debt with money they could otherwise be using to rebuild their nations into strong trading partners and reliable markets for American-made products.

In the past, those nations could look to the United States for prompt help to ease the strain, and we have given it generously before. But with our generosity curtailed by our own status as a net debtor, the fact is the United States is in fragile shape. And the next world economic crisis could very well be one we cannot solve.

How strange it is that the newest debtor nation—the United States—is arrogant enough to preach to the Zaires of the world that they must be more responsible in handling their own economies or we will not give them aid. The fact is, we are forcing those nations into awful choices.

We are telling new regimes to be hard on their own populations and then we wonder why we have to keep boosting foreign military sales to keep new governments in power. You need only look to a nation like the Dominican Republic where riots have been spawned because the nation had to double the cost of bread and cut wages to get their debt refinanced. Why should a foreign nation listen to the economic advice of the United States when no nation on earth has gone deeper in debt faster than we have?

We always lament the fact that we cannot control events in all parts of the world. We can, however, control our debts and the events we are spawning because of America's failure to exercise control.

This week, the Bank for International Settlements issued its annual report. The report surveyed world economic conditions, and I want to read you something of what it had to say.

For one thing, the report said that the "main reason for the current level of interest rates is the high and rising structural component of the United States deficit."

Contrast this statement with those of Treasury Secretary Donald Regan who said again at the Economic Summit what he has said so many times before, that huge American deficits have no provable connection with the level of interest rates. Show me an American businessman who does not believe a huge debt affects interest rates and I'll show you a very poor businessman.

When the Bank for International Settlements talked about its concern over the structural component of American deficits, they were getting right to the point. When they said "structural" they were telling us that even if the United States was operating at top capacity with the work force approaching full employment, we would still have a deficit. And that deficit would be over $100 billion annually, going to $200 billion in 5 years and you couldn't grow your way out of it.

The United States must face up to the fact that on top of continued restraint on spending for non-defense domestic programs, we must add to our revenues and slow the rate of increase in military spending. Maybe all that sounds like a bunch of cliches. If it does, I'm not surprised because all those things have become a part of our economic vernacular. But it doesn't make them any less true or any less essential to restoring the basic health of the American economy.

Paul Volcker, the Chairman of the Federal Reserve Board, warned only last week that "the more slowly we proceed in correcting our internal imbalance, the greater are the risks not only to our international trade position, but also to the health of our domestic economy and our financial markets."

And Volcker reiterated his warning about the mammoth federal deficits, as he added, "we cannot, in my judgment, escape the need for decisive action to reduce our federal budget deficit."

So the United States is on the threshold of becoming a debtor nation. Today, there seems to be no way of avoiding it. It is a sorry indictment of the lack of will power and leadership in the White House. It says little more for the lack of individual and collective responsibility in Congress.

We have recently watched the Democratic platform committee bend over backwards searching for economic language that won't offend anyone. What kind of gymnastics can we expect from the Republican platform committee when it tries to deal with the $200 billion annual deficits inflicted by the present Administration?

When I first heard the United States was about to become a debtor nation, I couldn't believe it. I wanted to know exactly what that meant, and Paul Volcker had the answer when he said this: "The net investment position of the United States overseas, built up gradually over the entire postwar period, will in the space of only three years—1983, 1984, and 1985—be reversed. The richest economy in the world is on the verge of becoming a net debtor."

So there it is, a turning point not just in the fortunes of the United States, but also in our self-esteem. We've seen these turning points happen to other nations. The beginning of this century saw it happen to England which, although its power seemed to have never been greater, was already paying the price for its far-flung empire. And the decline was aggravated when this ruler of the seas was caught short by the steady development of air travel.

In some ways, England was a victim of forces beyond its control. But what is happening to the United States is a self-inflicted wound. We saw the problem coming, and we have watched it grow. But we have pretended it did not exist, or that it would go away, or that we could grow out of it.

And now we are a nation in debt to the world.

I don't think that fact has sunk in on the general public. But when it does, they will have every right, and every reason to ask of their leaders why they failed to act when action was essential.

The United States has crossed a dark doorway. It need not have happened. But how much more foolish we would be if, having crossed the threshold, we slammed the door behind us. The United States still has the chance to reclaim its economic vigor. It will not be easy. But it is still possible. We must act now to cut Federal deficits, bring down interest rates, and restore a network of healthy trade.

We must do all of that. And the time is very short.

Indeed, it's time for America to realize, as it says in Proverbs, "The rich ruleth over the poor and the borrower is servant to the lender."

We do not seek to rule, but neither should we permit ourselves to be ruled.●

DEATH OF STEPHEN J. BOLLINGER

● Mr. GARN. Mr. President, it is with sadness and regret that Mr. TOWER and I report the death of Mr. Stephen J. Bollinger, Assistant Secretary of Community Development at the Department of Housing and Urban Development. Mr. Bollinger appeared before the Committee on Banking, Housing, and Urban Affairs on June 4, 1981, as a nominee for the position in which he was confirmed by the Senate on June 4, 1981. His statement to the committee was very strong and presaged the able, energetic, and courageous way he assumed the leadership of his position.

A memorial service was held at the Church of the Holy Comforter, Lutherville, MD, today, June 21, 1984. A host of friends he has made throughout his life attended the service to honor him and to express their sympathy to his family.

I submit for the RECORD this eulogy by Secretary Pierce.

EULOGY FOR STEPHEN J. BOLLINGER

It is with great sorrow that I tell you of the death of Stephen J. Bollinger, Assistant Secretary for Community Planning and Development. Steve died of a heart attack last night in Savannah, Georgia, at the age of 36.

This is a great and terrible loss for his wife, Lin; his three young daughters; and for all of us personally. I know of no one else like him, or who could have done the job that he did. He is responsible for so much of the Department's success in the past three years that it will be most difficult to replace him.

Steve Bollinger was unique. He had a zest for life, but he took his responsibilities seriously. Although he was a young man to hold such an important position, he gained—he earned—the respect and admiration of governors, mayors, Congressmen and Senators across the political spectrum. He never forgot a friend, and he made a great many of them.

Steve recognized the value of the career civil servants who made his programs work, and he spoke up on their behalf. He was both a sparkplug and a sounding board for his political associates. Morale was never a problem for the men and women who worked for Steve Bollinger.

Steve was born on April 11, 1948. He was a native of Louisville, Kentucky. He was a Harvard graduate, and worked for several years as Legislative Assistant for Congressman Gene Snyder of Kentucky. He later served as manager for a division of the Seagrams Corporation, Vice President of an insurance company, and President of a radio station. Before he joined the Department, he was Executive Director of the Columbus, Ohio, Housing Authority. He was co-founder and Vice President of the Public Housing Authorities Directors Association, and held national and state offices with NAHRO. He was a candidate for the Cincinnati City Council in 1975 and 1977.

Here at HUD, Steve truly became a recognized national leader. He was loyal both to President Reagan and me, and was a major advocate for a new renaissance in America's urban areas.

Funeral services will be held privately, and it is requested that in lieu of flowers, contributions be made to the Bollinger Children's Scholarship Fund, care of the Huntington National Bank, 17 South High Street, Columbus, Ohio 43215.

We will miss him greatly.●

VETERANS PREFERENCE MONTH

● Mr. PRYOR. Mr. President, I am pleased to be a cosponsor of Senate Joint Resolution 297, a resolution to designate the month of June 1984, as "Veterans Preference Month."

This resolution very appropriately recognizes the contributions in civilian work of millions of veterans over the last 40 years since the enactment of the Veterans Preference Act of 1944. The 1944 act was preceded by other laws since 1865 assuring special consideration for veterans in Federal employment. The current status has provided veterans preference eligibility to 43 percent of the 2.7 million employees of the executive branch of the Federal Government.

I think the words of President Franklin D. Roosevelt in 1944 should be remembered as we celebrate Veterans Preference Month:

> I believe the federal government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces that when they return, special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of our young men out of their normal pursuits for the purpose of fighting to preserve this Nation, and then expect them to resume their normal activities without having any special consideration shown them.

Veterans preference has benefited millions of veterans readjusting to civilian life but it has also benefited hundred of millions of Americans who have received the excellent service of Federal Government employees who are veterans. Senate Joint Resolution 297 honors the patriotic men and women who have served this country in both military and civilian life.●

ASAT VERIFICATION: THE RUSSIANS BACK REAGAN

● Mr. QUAYLE. Mr. President, in the last few weeks considerable attention has been focused on the desirability of negotiating a ban on antisatellite [ASAT] weapons. Central to the proponents' argument concerning the feasibility of such talks is the claim that both sides can verify the existence of ASAT weapons.

On this point, however, the President's recent report on ASAT verification was quite clear: There is no effective way to know what Soviet space vehicle or satellite is an ASAT weapon or whether or not the Soviets have stockpiled ASAT weapons on Earth or have facilities to jam our satellites.

Undaunted by this report's findings, proponents of ASAT negotiations have countered that we cannot know what is or is not verifiable unless and until we talk to the Soviets, who themselves believe that an ASAT ban can be verified.

Chernenko, of course, has stated that such a ban can be verified. What no one has bothered to ask, however, is what he and the Soviets mean by a ban.

Those anxious to stop further U.S. development of an ASAT capability simply assume that the Soviets share their optimism that the existence of ASAT weapons can be verified. If we are to believe what the Soviets say, however, this assumption is unwarranted.

Indeed, on June 6, several days before Mr. Chernenko's pronouncement on the verifiability of an ASAT ban, the Soviets broadcast in English to the United States precisely how little can be limited by an ASAT ban and what, in fact, can be verified.

In this official broadcast they were remarkably frank and candid: What they mean in proposing to ban ASAT's is not to ban their existence by trying to verify against their deployment—this, they concede is impractical—but only to prohibit the hostile use of ASAT's.

Mr. President, what the Soviets openly pronounce and the President has duly reported—that we cannot verify the existence of ASAT's—the public and Congress should understand. Certainly, in light of what both sides believe and have publicly announced it would be imprudent for us to expect to succeed in negotiations to a ban against anything more than ASAT's hostile use.

Mr. President, to promote better understanding of what the Soviets themselves believe and what we prudently can expect from any future ASAT negotiations, I ask that the full text of the Foreign Broadcast Information Service transcript of the Soviet broadcast to North America on ASAT's be entered into the RECORD at this point.

The material follows:

TREATY VERIFICATION; NASA

President Reagan and his people refuse to discuss negotiations on space because, they say, it is impossible to verify any kind of agreement. So what about that whole area of verification?

[Velikhov—in Russian with superimposed translation] What is verification, say, verification of your not having a gun in our country, the USSR, is based on the fact that the keeping and carrying of guns is against the law. In America, people have guns. Here we don't but we do have hammers. You can kill with a hammer. So it is logically stipulated that you'll be punished not because you have a hammer but because you try to kill with it. The same reasoning applies to the treaty on antisatellite weapons that we propose. Of course, there exist ways of destroying satellites, many stupid ways. If we can dock with a satellite, then clearly we can dock with an American satellite, but a bit carelessly, and thus destroy it. But the idea of our proposal is that there is no problem in verifying whether or not a satellite has been destroyed. It is visible to all concerned and, generally speaking, it is much easier to see what is happening in space than from space to see what is happening on earth.●

FOLLOWING UP ON DOD FRAUD: GAO TO INVESTIGATE

● Mr. SASSER. Mr. President, perhaps I can put into proper perspective the size of the DOD authorization bill we passed early this morning by pointing out that it calls for over 10 percent more funds than it took to run the entire U.S. Government just 10 years ago; fiscal year 1974 outlays of the U.S. Government amounted to $267.9 billion.

At the same time, Joseph Sherick, the Inspector General for the Department of Defense [DOD] has indicated that instances of waste and fraud could be costing the Department as much as $3 billion annually. This is roughly equivalent to what it took to operate the entire U.S. Government in 1931.

In this context—a record DOD budget, combined with waste and fraud at a level that would have run a Government of 122 million people a generation ago—we have every right to believe that allegations of waste or fraud will be pursued vigorously and thoroughly.

Yet, a criminal investigator told a Senate Governmental Affairs Committee hearing last March 1 that DOD contract auditors "were not encouraged to look for indications of fraud," and that in the instances of fraud he himself had investigated, none of the contract auditors who reported a case of fraud "had any idea of what the status of that report was after it left their office * * * and some of these things were several years old."

When you consider that the DOD fraud hotline gets nearly 1,000 reports of suspected waste and fraud each month, the reticence in following up on these allegations suggested at the March 1, 1984, hearing of the Government Affairs Committee does not reassure one.

For these and other reasons, Senator ROTH, chairman of the committee, and I have joined together in calling for an investigation by the General Accounting Office [GAO] into the way the DOD follows up on the reports of waste and fraud that come to its major hotline and the hotlines that the various DOD agencies have themselves. We will work with the GAO on this investigation, and feel confident that this endeavor will lead to recommendations for reforms in the way the DOD combats waste and fraud.

It will amount to very little if all the more celebrated cases of waste and fraud in the Department—the $400 hammers, the $9,600 wrenches, the $1,100 plastic stool caps—do not yield the procedural and systemic reforms that can prevent such episodes from happening in the future.

The Government Affairs Committee is now approaching a fourth year of continuous oversight hearings into the management practices of the DOD. Those of us who have taken part in these hearings realize that change, reform and improvement in this area come slowly, certainly less quickly than the increases in the Department's budget.

But continue along this path we must, otherwise it is not now unreasonable to project that this year's record DOD budget of $299 billion may someday be 1 year's cost to the American people in DOD waste and fraud.●

THE AMERICAN STEEL INDUSTRY: MYTH AND REALITY: VI

● Mr. HEINZ. Mr. President, today I present the sixth in a series of brief statements which will appear periodically in an effort to elevate the level of debate on the crisis in the American steel industry.

I should like to discuss the relationship between the national defense posture and our ailing industrial base, of which the steel industry is an important part. As imports have increased their share of the U.S. market, often with products subsidized by Government and unfairly priced, domestic industries in this country have suffered.

Declining profitability levels have led to diversification out of threatened areas or outright closures of plants in some import-flooded basic industries. Yet, the maintenance of a strong military capability for defense requires a strong industrial base.

The International Trade Commission's determination of injury for over 70 percent of the domestic steel industry, primarily due to unfairly traded imports, has heightened awareness of the seriousness of the situation. To help promote an intelligent and informed discussion of the problem, I am offering some further myths and realities about the state of the American steel industry.

Myth: The recent economic resurgence in the United States has maintained an industrial base adequate for national security purposes.

Reality: The current economic resurgence has merely masked the problems of our ailing industrial base. Unemployment levels, excess capacity levels and the number of plant closings in our basic industries remain high while foreign imports continue to claim ever-larger shares of the U.S. market. It is foolish to believe we can maintain our position as a first-rate military power with a second-rate industrial base. The loss of industrial leadership would mean the loss of political and military primacy in the Western world as well.

The problems of an ailing industrial base cannot be separated from our national defense posture. According to the report of the Defense Industrial Base Panel of the House Armed Services Committee, "an alarming erosion of critical industrial segments of our economy, coupled with a mushrooming dependence on foreign sources for critical materials, is endangering our industrial posture at its very foundation."

Myth: The growing trend toward the greater use of plastics, ceramics, and synthetics in industry has decreased the importance of steel to U.S. defense capabilities.

Reality: Steel remains basic to our long term security posture. Every major hardware system uses steel as a primary ingredient. Steel is used in the manufacture of products from fuel drums, to black boxes for electronic equipment, to intercontinental missiles. Ordinary jet engines require at least 10 different types of steel. Thin steel wires are needed to guide antitank missiles to their targets. Air Force F-15 fighters contain over one-half ton of steel. In fact, all modes of transportation used by military forces—roads, bridges, trucks, buses, trains, ships, tanks, and aircraft—are dependent for their construction upon steel in one form or another. Thus, steel remains a vital ingredient in a strong, defense capability.

Myth: In the event of a conflict, we can depend on our friends and allies for materials we don't have.

Reality: Many of the minerals critical to the U.S. defense effort come from areas of the world with a history of instability; for example, Zaire, Zambia, Botswana, Zimbabwe, Gabon, Guyana, and so forth. Should a national emergency occur, it would be difficult to guarantee access to these distant areas of supply. Yet we have been willing to allow our domestic mining, mineral processing, and smelting industries to decline and increasingly depend on supplies from abroad, even when supplies exist domestically.

In the case of basic processed materials like steel, the claim has been made that shortages occurring due to increased defense demand could be met by our steel-producing allies, like South Korea, Japan, West Germany, and others. Its adherents support the efficient consolidation of smokestack industries, allowing the world marketplace to determine which country produces which products most efficiently. Following this rational economic argument, the United States should concentrate on high technology content industries and depend on the cooperation of friends and allies for specific products not produced domestically should a threatening situation arise.

However, history shows that national interests do not always coincide in times of crisis. In 1973, all of America's friends and allies except for Portugal denied the United States landing rights for its aircraft which were resupplying Israeli forces against the Arab States. Alton Slay, retired Air Force general, stated at the 1984 American Iron & Steel Institute general meeting that he is "not at all sure that all our friends and allies would always consider it to be in their national interest to help us in all future emergencies and conflicts in which the United States might become involved."

Myth: American military power is of sufficient strength to guarantee access to foreign sources of materials essential to any defense effort.

Reality: Several factors make it unlikely that American military capabilities could ever be of sufficient strength to guarantee continued access to foreign supplies. Currently, 90 percent of American trade is carried by ship which means a vulnerable and thinly stretched supply line of either 3,500 miles from the east coast to Europe or 7,500 miles from the west coast to Japan would have to be defended. The difficulty of securing such a supply line is obvious.

In addition, U.S. forces might not be able to decisively influence events abroad. First, the possibility exists that foreign production capacity could be seriously injured or destroyed. Second, many exporting states depend exclusively on imports for their manufacturing industries whose supply would be by no means certain in times of crisis. For example, all raw materials and fuel for Japanese and South Korean steel mills must be imported.

A report from the general counsel of the Central Intelligence Agency explains the greatest threat to American security posed by dependence on foreign supplies for defense. It reads:

> A nation which lacks access to means of defense production will not survive; a nation which has access only to means of defense production controlled by other nations may survive, but it will not retain its independence.

America's national security is linked directly to the health of the American steel industry. The erosion of our industrial base can and very definitely will affect the defense capability of this Nation. However, without temporary assistance it is clear that the steel industry cannot survive the unfairly traded and priced steel import competition from abroad. As David Roderick, the chairman of United States Steel Corp. stated:

> For while there is excess capacity worldwide, we are the only nation that could not presently supply our own needs in a time of strong demand. We have not overbuilt, yet we suffer the direct and serious consequences of their overbuilding.

For this reason, Senators' support is needed for the Fair Trade in Steel Act, S. 2380, which outlines a comprehensive policy to restore competitiveness in response to the difficulties faced by the American steel industry.●

BILINGUAL EDUCATION REEXAMINED

● Mr. HUDDLESTON. Mr. President, the approach the Federal Government is taking to help limited-English-speaking children, through the bilingual education program, continues to concern me. We need to reexamine the wisdom of using Federal funds solely for the bilingual method of instruction, while other methods of teaching children English are just as promising. We also need to ensure that students who are receiving bilingual instruction are mainstreamed just as soon as possible.

An article in U.S. News & World Report on June 11 addresses some of these concerns about the future of bilingual education. I ask that the article be printed in the Record at this point.

The article follows:

[U.S. News & World Report, June 11, 1984]

A Second Look at Bilingual Education

(By Lucia Solorzano)

When Spanish-speaking children in Belen Rodriguez's kindergarten class in Miami say, *"Baño,* teacher, *baño,"* Rodriguez makes her pupils use English.

Says Rodriguez: "If the kids know they can lean on my ability to speak Spanish, they will never learn English. So I reply, 'I don't understand what you're saying,' and they immediately say, 'Bathroom, teacher, bathroom.' "

Such scenes are increasingly common in classrooms from Washington, D.C., to Houston as educators challenge the most widely used method of teaching 3.6 million schoolchildren who speak little or no English: Bilingual education.

Now even the parents of some immigrant children are backing moves to plunge them into classes conducted in English only—similar to the immersion process of past decades when waves of newcomers flocked to America and rapidly joined the mainstream.

In bilingual instruction, billed not long ago as most effective for children who do not speak English, subjects such as math and science are taught in native tongues while students learn English in separate classes.

Recently, critics have attacked that approach, arguing that young people grasp the language faster if they are immersed fully—all of their courses taught in English. Others counter that many young people are traumatized by immersion and that bilingual education should be continued.

STUDIES UNDERWAY

Among lawmaking and administrative bodies wrestling with the issue:

Schools in Dade County, Fla., including Miami, have started a three-year pilot project to assess whether students who speak little or no English learn subjects better using their home language or English only.

The District of Columbia is facing such a rapid influx of poorly educated refugees from Central America that it must push students into English-only classes as quickly as possible to make room for newcomers who even more desperately need bilingual support.

Congress is considering a broadening of the Bilingual Education Act to include funds for courses taught in English only as well as for those given in both English and another tongue.

Reflecting demands for change, the federal Office of Bilingual Education and Minority Languages Affairs, which under previous administrations pushed dual-language instruction, is conducting a study of English-immersion techniques. Says Jesse Soriano, the director: "We have never said there is only one way to teach math or social studies, so why should we say bilingual education is the only way?"

FEARS VOICED

Many Hispanics and members of other ethnic groups are opposed to returning to the wholesale immersion that was blamed for high dropout rates among children who were unable to learn through that method.

Warns Norma Cantu, head of educational programs for the Mexican American Legal Defense and Educational Fund: "We don't want to turn back the clock and head in that direction again."

Educators trying out intensified English programs say that their efforts differ greatly from the old "sink or swim" approach. In Houston, where eight elementary schools are testing an English-only approach, all instructors have had special training in teaching students who speak another language.

Students participating in Miami's pilot program receive 30 minutes of instruction daily in the language arts of their native tongues. Explains Ralph Robinett, director of Dade County's Department of Bilingual/Foreign-Language Education: "Developing good communications skills in the students' home language helps them to more rapidly translate these skills into learning English."

Educators find that English-immersion programs are most successful with younger children from families that speak and write their native language with sophistication. Such programs fall short, however, for a recent wave of newcomers—teenagers from rural villages in Central America who read and write their native language poorly.

Since last fall, District of Columbia public schools have received 2,000 students from Central America, and 15 to 20 more arrive each week. Teaching English and other subjects is a cultural and educational struggle because most students cannot relate words such as *traffic light* to familiar concepts from their rural homes.

Sixty teenagers from El Salvador, their ages 13 to 19, are enrolled at Washington's Francis Junior High School. About six years ago, the school switched from teaching courses such as science in Spanish. A major reason: Parents complained that their children were not learning English fast enough.

The school has since reintroduced a special bilingual program, and now 30 new Salvadoran refugees are learning subject matter in Spanish at the same time they are studying English. Notes teacher Bertha Lastre: "These students can hardly read and write Spanish, which makes the transition into English that much more difficult."

A typical problem at Francis: Many of the newcomers cannot find the subject in a sentence written in Spanish. But with home-language support, the math skills of one 18-year-old rose in a single semester from a third-grade to a seventh-grade level.

Educators are a long way from consensus on what approach is the most effective for equipping people who don't speak English for a productive life in the United States.

Many, however, are convinced that there may be no single solution—that using a variety of methods may turn out to be best.●

STOP THE GROVE CITY STEAMROLLER

● Mr. McCLURE. Mr. President, legislation intended to overturn the recent Supreme Court decision on Grove City College and title IX is likely to be considered sometime in the near future. The Labor and Human Resources Committee has scheduled a hearing on the bill for June 26 and markup is slated for June 27.

Sponsors of the bill claim that S. 2568 is a simple reversal of Grove City and is not intended to broaden the scope of title IX, section 504 of the Rehabilitation Act, the Age Discrimination Act, or title VI of the Civil Rights Act.

Aside from the question of whether Grove City should be overturned, I believe S. 2568 raises a host of other questions. It attempts to overturn Grove City by prohibiting discrimination based on sex, race, age, or handicap by any "recipient" of Federal financial assistance, rather than discrimination by any "program or activity." "Recipient" is defined as any State or political subdivision, any public or private agency, institution, or any organization to which Federal financial assistance is extended, directly or indirectly, or which receives support from the extension of Federal funds.

Mr. President, by instituting such a broad definition of the term "recipient," I fear it is conceivable we will have completely broken down the clear distinction this country has always held between the public and private sectors. Under the language contained in S. 2568, it is entirely possible that virtually all private and public entities, including most mom and pop operations, will have to comply with the extensive regulations and reporting requirements of four major civil rights laws originally intended to apply only to major recipients of Federal funds. The practical effect of the bill could well be a massive extension of the reach of Federal authority into areas and by means only now dimly perceived.

I feel that Congress would be remiss in its duties by summarily passing legislation that has the possibility of radically changing the scope of civil rights laws. S. 2568 must be more thoroughly examined than it has been to date. A Justice Department memorandum of May 24, 1984, concludes by saying:

> Our review of the foreseeable effects of S. 2568 leads us to conclude that the sweeping scope of the language proposed in the bill might well have much broader application than simply the reversal of the Grove City decision. We believe the consequences of the serious ambiguities in the bill and their constitutional implications, . . . , have not been adequately considered by Congress. . . .

If there is even a shadow of a doubt as to the possible ramifications of S. 2568, then Congress must, at the very least, delay action on the bill until the language is clarified. No matter what the intentions are of my colleagues who are supporting this measure, I believe it is foolhardy at best to pass this legislation.

Mr. President, on June 12 the Wall Street Journal published an editorial on this issue. In part, the article states:

> The upshot is that Federal regulations—complete with quotas and private-enforcement suits—would apply to just about anyone who gets Federal money of any sort, even if indirectly. This includes approximately all of us.

I call upon my colleagues to stop the Grove City steamroller and to further reflect on their intentions and the ramifications of this bill. I urge every Member of the Senate to read the editorial from the Wall Street Journal and the report from the Justice Department. I ask they be printed in the RECORD.

The material follows:

[From the Wall Street Journal, June 12, 1984]

GROVE CITY CHOO CHOO

"It's moving through the House like a steamroller," a congressional aide said. "Some piece of legislation like it is inevitable," a Reagan official judged grimly. They were talking about the Civil Rights Act of 1984, in which Congress set out to reverse a Supreme Court decision and has come up with a gross, irresponsible, truly off-the-wall mess.

Over the past 20 years civil rights enforcement has increasingly become an intellectually dishonest cat-and-mouse game. Various people in Washington want a better deal for minority groups. But national officials cannot just order everybody to straighten up and fly right, because annoying Constitutional obstacles like federalism stand in the way. So Washington acts indirectly, by putting strings on the federal money it hands out. Other institutions fight back by refusing to take the money, and so it goes.

Grove City College is one of those organizations that have tried to avoid federal control by refusing federal money. But some of its students take federal financial aid, and late this winter the Supreme Court said that even this indirect aid made the college subject to federal regulations. This was the liberal part of the decision.

There was also a conservative part. The court said that if an educational program within a school got federal funds, only this program had to follow the federal rules on sex discrimination. The whole institution did not automatically fall under the blanket.

Liberals in Congress immediately drafted the Civil Rights Act of 1984 to expunge the conservative part of the court's position. This bill says that when you take the federal dollar your whole school, or agency, or organization, or state or local government, or just about anything at all comes under federal oversight. Moreover, the bill calls for this expanded federal reach not only with sex discrimination in schools but in laws banning discriminations of all sorts in all sorts of places.

The upshot is that federal regulations—complete with quotas and private-enforcement suits—would apply to just about anyone who gets federal money of any sort, even if indirectly. This includes approximately all of us. You need not be a hysterical rightwinger to envision the enforcement nightmare.

These sorts of excesses do not occur by random accident. They happen because civil rights proponents do not think about the institutions they will vitiate through bureaucratic second guessing in their passion to insure that no culprit escapes through an inadvertent loophole. The problem is not that they love minorities so much but that they have no similar love for other citizens.

If we are lucky, the Senate may slow down the Civil Rights Act of 1984 so that someone can make mitigating fixes. But it will take a lot more to repair the underlying assumptions that cause these headaches again and again.

OFFICE OF LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS,
Washington DC, May 24, 1984.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This presents the views of the Department of Justice on S. 2568 and H.R. 5490, the proposed "Civil Rights Act of 1984."[1] The bill would amend Title IX of the Education Amendments of 1972,[2] Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[3] the Age Discrimination Act of 1975 ("ADA"),[4] and Title VI of the Civil Rights Act of 1964,[5] all of which prohibit certain types of discrimination in federally assisted programs. This memorandum sets forth the background and what we perceive to be the possible effects of the amendments. We use Title VI, after which the other three statutes were patterned,[6] to illustrate the proposed changes. We then discuss the constitutional issues raised by the bill. On the basis of this analysis, we conclude that the proposed amendments are not facially unconstitutional. Nevertheless, ambiguities in the language of the proposed amendments raise significant questions concerning their intended scope and application. Absent a clear statement in the language of the amendments or their legislative history, the courts will ultimately have to determine the proper extent and operation of the amendments. We have therefore examined the case law concerning the constitutional bases for such legislation—the Spending Clause and Section 5 of the Fourteenth Amendment—in order to evaluate how courts are likely to interpret the amendments and what limits, if any, the courts are likely to impose on them.

We have encountered considerable difficulty in interpreting a bill of such sweeping scope as S. 2568 without the benefit of full legislative history. Judging from discrepancies between the sponsors' explanations and the actual language of the bill, it is apparent that the consequences of this major legislation have not yet been fully considered by the Congress. The bill is amenable to interpretations that would reach far beyond the sponsors' declared purpose—to overturn *Grove City College* v. *Bell*, 104 S. Ct. 1211 (1984). We conclude that, while we express no view as to the necessity or wisdom of such legislation, there are alternatives to S. 2568 and H.R. 5490 that would accomplish the objective of overturning *Grove City* without risking upheaval of the entire civil rights landscape which has developed through twenty years of administrative and judicial efforts.

Whatever the intent of Congress in this area, because of the importance and potential impact of this legislation, we strongly recommend that Congress develop fully the legislative history, including committee hearings and reports. Potentially affected state and local government representatives and private sector recipients of federal financial assistance might be an appropriate source from which to seek views as to how the legislation would actually affect such entities. A thorough legislative analysis of this proposal will aid in reducing ambiguities and misunderstanding of the legislation and perhaps minimize lengthy judicial challenges to it.

I. BACKGROUND

The four civil rights statutes which the bill proposes to amend share a common design, having two basic elements: substantive coverage and an enforcement provision. The former defines what conduct is prohibited, while the latter sets out procedures for sanctions in the event of noncompliance. In the existing statutes, all fashioned after Title VI, as well as in the proposed amendments, these two aspects of the statutory scheme are treated distinctly.

Section 601 of the Civil Rights Act of 1964, the substantive prohibition of Title VI, currently provides that:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination *under any program or activity* receiving Federal financial assistance." 42 U.S.C. § 2000d (emphasis added).

Section 602, the enforcement provision, currently provides that compliance may be effected by a termination of federal assistance under a program or activity, upon a finding of noncompliance, "but such termination . . . shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, *shall be limited in its effect to the particular program*, or part thereof, in which such noncompliance has been so found." 42 U.S.C. § 2000d-1(1) (emphasis added). Alternatively, compliance may be effected "by any other means authorized by law." *Id.* § 2000d-1(2).

Although the fund-termination authority has rarely been invoked,[7] disagreement arose as to whether the "program-specific" language of § 602 was intended also to limit the scope of the nondiscrimination mandate of § 601. Thus, some court determined that § 601 was intended to prohibit all discrimination by recipients of federal aid *See, e.g., Flanagan* v. *President and Directors of Georgetown College*, 417 F. Supp. 377 (D.D.C. 1976) (by accepting federal aid for building construction, school was required under Title VI to refrain from discriminating in all services and benefits provided to students). Others found that § 601 proscribed only discrimination in the particular program which received the federal aid. *See, e.g., Stewart* v. *New York Univ.*, 430 F. Supp. 1305, 1314 (S.D.N.Y. 1976) (Title VI plaintiff must show "some material connection" between federal aid and alleged discrimination). Those who espoused the former view, extending private sanctions to all activities of a recipient, found support in the overall objective of the Civil Rights Act of 1964. *See* 110 Cong. Rec. 1521 (1964) (remarks of Rep. Celler) (to eradicate the "moral outrage of discrimination"). The latter, more restrictive view found support both in the "pinpoint" approach of § 602 and in the narrower policy expressed by Senator Humphrey during the floor debates on the Civil Rights Act of 1964:

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." 110 Cong. Rec. 6543 (1964) (Sen. Humphrey, quoting from President Kennedy's message to Congress, June 19, 1963).

This dispute was recently resolved when the Supreme Court adopted the less expansive view in *Grove City College* v. *Bell*, 104 S. Ct. 1211, 1222 (1984). In that case, the Court held that a college that accepts students who receive federal financial aid is subject to Title IX only in the administration of its financial aid program. Under the *Grove City* interpretation of Title IX, which presumably will affect application of the other three similar statutes as well,[8] an institution receiving federal aid in some of its departments would not be found to be in violation of the substantive prohibitions of the statute on the basis of discrimination in other programs. The Court rejected the argument that the entire recipient institution could be the "program or activity" and therefore be regulated in its entirety.

The sponsors of the bill purport to seek to overturn the *Grove City* decision and require the nondiscrimination mandate of § 601 and the similar provisions in the other three statutes to apply to all recipients of federal assistance. They assert their intention to "restore four major civil rights statutes . . . to the broad scope of coverage that was originally intended by Congress and that has marked their administration prior to [*Grove City*]." Cong. Rec. S4585 (Daily ed. Apr. 12, 1984) (joint explanation of Senators Kennedy and Packwood).

The bill proposes to effect this end by eliminating all references to "program or activity" which characterize the existing prohibitions and by replacing them with broad references to "recipients" of federal aid.

II. EFFECT OF THE AMENDMENTS

A. Prohibited conduct

The first change in the operation of § 601 is to broaden the class of entities to which the prohibition applies. In contrast to the current § 601, which has now clearly been interpreted to be program-specific, the amendment would delete the words "under any program or activity receiving" and simply substitute "by any recipient of" so that the amended statute would provide:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation be denied benefits, or be subjected to discrimination *by any recipient of* Federal financial assistance.

Under the bill, the term 'recipient' means—

(1) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and

(2) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit,

to which Federal financial assistance is extended (directly or through entity or a person), of which *receives support* from the extension of Federal financial assistance to any of its subunits. S. 2568, 98th Cong., 2d Sess. (1984) (emphasis added).[9] In short, the prohibition on discrimination in a federally-aided program or activity would be changed to prohibit any discrimination in any activity by a recipient of federal funds for any of its activities.

One sponsor of S. 2568 explained the effect of the "recipient" definition as follows:

"Consistent with past agency practice, when an entity receives federal aid for one of its parts or subdivisions, the entity—and not the specific subunit of the entity—is the recipient. Thus, in place of "program-specific" coverage as defined by the Supreme Court, the statutes will apply to all component parts of the recipient."

"Example: A state prison receives federal funding to develop a better inmate classification system, and no other federal assistance. Its education activities and related benefits, such as classes and training programs, are covered by Title IX. The entire prison—including its educational programs—would be covered by Title VI, Section 504, and the ADA, because it is a recipient of federal funding and those statutes are not limited to education." Cong. Rec. S4586 (Daily ed. Apr. 12, 1984) (statement of Sen. Kennedy).

By proscribing discrimination against any person by a recipient of federal aid, broadly defined, the bill would reverse the result of *Grove City*. The amended statute would prohibit discrimination in any endeavor sponsored by a grantee of federal aid, including those activities that receive no federal aid. The sponsors of S. 2568 claim that this result (the simple reversal of *Grove City*) is the primary purpose of the bill. *See, e.g.*, Cong. Rec. 9258 (Daily ed. Apr. 12, 1984) (statement of Sen. Packwood); *id.* at 9262 (statement of Sen. Cranston); *id.* at 9613 (statement of Rep. AuCoin); *id.* at 9632 (statement of Rep. Johnson).

It seems clear, however, that the bill could potentially have a much broader impact. In the first place, while the bill has been characterized as restoring the original legislative intent behind this legislation, the Supreme Court found that Congress *had* intended program-specific application. Thus the bill, to the extent it does reverse *Grove City*, widens materially the application of these federal statutes. Second, the bill extends the nondiscrimination mandate (and consequent reporting requirements) beyond merely the other unfunded programs of the same federally assisted institution. The combined effect of the change from program specificity to a prohibition on the recipient and the new definition of "recipient," is to impose the obligation not to discriminate on related entities as well. In this regard, the bill would expand substantive coverage beyond that necessary to accomplish the mere reversal of *Grove City* in two ways: (1) by imposing the nondiscrimination requirements upon an entire state, even if only one program of one subunit receives federal funds, if the state is deemed to "receive support" from the funds; and (2) by imposing those requirements on every subunit of a state if the state, directly or through any of its subunits receives any federal aid.[10]

In other words, the bill's definition of "recipient" is so broad that it could be construed to render a large and complex entity subject to the statutes as a result of the receipt of funds by its most insignificant component, depending upon how a court construed the term "receives support." The bill makes no attempt to define that term. The broadest construction would be that, by accepting federal aid to one state activity, the recipient state's treasury is facilitated in its ability to support other activities. The state would thus "receive support" from any amount of federal aid.

Although currently, if a federal agency extends federal assistance, for example, to a state university system, the broadest conceivable claim would be that the entire university system is a covered "program" within the meaning of these statutes, under the bill, it is not just the university that comes within the statutes. The bill could encompass all other state departments and agencies—whether or not they are educational or perform an education service—that can be shown to have eventually received some of the university funds (directly or indirectly) or to have received support from the existing funding arrangements.

The bill's sponsors have not specifically advocated this result, but they have emphasized repeatedly the "broad and comprehensive" coverage that the bill is intended to effect. On the basis of this legislative sentiment, a court might feel compelled to give the amended statute the broadest interpretation that is consistent with its plain language. The definition of "recipient" contains no words of limitation other than "receives support," an ambiguous safeguard at best.[11]

By the same token, the bill characterizes a subunit as a "recipient" if its parent unit receives federal aid. Thus if a state were to receive any aid, directly or indirectly, apparently every political subdivision and each of its component parts—that is to say, the entire structure of a state, including its county and municipal components and the tens of thousands of different units of local governments in this nation (*see City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389, 407-08 (1978))— could be included in the coverage of the statute. This broad sweep of the statutory application represents a substantial departure from past practice, and seems to create uncertainty and potential liability far beyond what is needed to reverse *Grove City*.

To summarize, the bill clearly creates the possibility that states, cities, counties—and even perhaps municipal corporations, state-owned utilities and water districts—could be required to submit to the requirements of the four statutes as a result of federal aid to one program. As we are aware of no state in the country that does not receive some federal assistance to at least some of its activities, we believe the bill is capable of surpassing any precedent in imposing federally determined standards upon state and local governments.

Thus, far from "restoring" coverage under the four statutes to their original reach, as represented, the bill potentially does precisely what the framers of the initial legislation were careful to avoid: it "spread(s) the tentacles of the Federal Government to choke off all State activity." 110 Cong. Rec. 705 (1964) (Sen. Pastore). Although there are many considerations that could restrain the courts from permitting the expansive application (*see* Part III, *infra*), the bill unnecessarily leaves to them the resolution of this vital issue.

B. Enforcement

1. Termination of funds:

In addition to expanding the coverage of the non-discrimination provisions, the bill makes significant changes in the standards of enforcement of the Act. As amended by the bill, the statute would allow compliance to be effected, as before, by fund termination, "but such termination or refusal shall be limited in its effect to the particular *assistance which supports* such noncompliance so found, or . . . by any other means authorized by law." S. 2568, § 5(b) (emphasis added).

Thus, the bill replaces the current language, limiting fund termination to "the particular program" in which noncompliance has been found, with new language limiting termination only to "the particular assistance which supports" noncompliance, ostensibly "retain[ing] the requirement that a nexus be established between the discrimination found and any federal funding. . . ." Cong. Rec. S4587 (Daily ed. Apr. 12, 1984) (joint explanation of Senators Kennedy and Packwood).

The sponsors have asserted that "[t]his bill does not change the enforcement structure and remedial tools available before *Grove City* raised questions about the statutes." *Id.* However, the ambiguous language of the amendments to the enforcement provision is subject to an interpretation that goes far beyond the enforcement scheme in place prior to *Grove City*. The new bill, by deleting the "particular program" language, could be construed to mean that "assistance which supports" discrimination encompasses all federal aid to an entity of which a subunit has violated that Act. That reading would deem any aid to the whole as "assisting" in the derelictions of the part, or conversely. Under this interpretation, discrimination by a single subunit or instrumentality of a state could result in termination of all federal aid to the state, including aid to its other subunits or instrumentalities not in violation. This broad potential for eliminating federal assistance programs would severely undermine the original intent of the program-specific limitation in Title VI, which "was not for the protection of the political entity whose funds might be cut off, but for the protection of the innocent beneficiaries of programs *not* tainted by discriminatory practices." *Board of Public Instruction* v. *Finch*, 414 F.2d 1068, 1075 (5th Cir. 1969) (emphasis by the court). Nor does this broad interpretation appear to be consistent with the overall context of the "assistance" phrase in the bill itself, the focus of which is on limiting, rather than expanding, the scope of funding termination as a sanction for noncompliance. Nevertheless, the bill does not specify in what respect a federal grant to one entity could be deemed to "assist" in discrimination committed by related entities and consequently implicate the vicarious termination requirement.[12]

On the one hand, the statements of the sponsors,[13] indicating their intent to preserve the "pinpoint" approach of the enforcement scheme, would counsel against imparting the most expansive potential interpretation. On the other hand, these generalized statements might not persuade a court to limit the statutory language, because such a construction would tend to render the amendatory language nugatory. A court would be reluctant to construe a statutory amendment in a way that merely preserves the effect of the prior law. *See Federal Ins. Co.* v. *Speight*, 220 F. Supp. 90 93 (E.D.S.C. 1963) ("The general rule is that a change in phraseology indicates persuasively, and raises a presumption, that a departure from the old law was intended. . . .").

The ambiguity of the bill on this critical question of the cutoff standard will present courts and administrative bodies with a difficult interpretative task, and will prevent beneficiaries of federal assistance from knowing the limits of the obligations and potential liabilities they have undertaken by receiving federal financial assistance. If the sponsors intend merely to retain the present law on this point, there is simply no need to change the operative language and thereby create such interpretative problems. It they wish to change it, it is unclear what the new language will require. There are much simpler and clearer means to reverse the *Grove City* decision without creating such uncertainty in the operative provisions of civil rights statutes that have been the subject of twenty years of jusdicial interpretation.

2. Other Enforcement Options:

In addition to providing for termination of funds, Title VI provides that compliance may be effected "by any other means authorized by law." 42 U.S.C. § 2000d-1(2). Two types of "other" enforcement actions have developed under Title VI. The Department of Justice may seek injunctive relief against the offending agency. *See* Cong. Rec. S4586 (Daily ed. Apr. 12, 1984) (joint explanation of Senators Kennedy and Packwood). In addition, an injured person may bring suit against a grantee under a private cause of action. *See Regents of the Univ. of California* v. *Bakke*, 438 U.S. 265, 419-21 (1978) (opinion of Stevens, J.) (Title VI); *Lau* v. *Nichols*, 414 U.S. 563 (1974) (Title VI); *Cannon* v. *University of Chicago*, 441, U.S. 677, 709 (1979) (Title IX). Strictly speaking, the applicability of these enforcement alternatives does not appear to be limited by the program-specific language in the existing provision relating to fund terminations. Recently, however, the Supreme Court held that, because the existing description of prohibited conduct itself imposes a "program-specific" limitation, enforcement under the "other means" clause is coextensive with the authority to terminate funds, and thus is limited under existing law to the "particular program" that has violated the statute. *North Haven Board of Education* v. *Bell*, 456 U.S. 512, 538 (1982) (Title IX).

The bill has an effect on these private enforcement alternatives as well as the fund-termination authority. Because it removes the "program-specific" limitation both in the nondiscrimination mandate of § 601 and in the granting agencies' authority to issue enforcement regulations, enforcement action taken "by any other means authorized by law" would appear not to be limited to the particular program in which noncompliance was found. Thus, the Department of Justice could seek to enjoin the prohibited activity even though the granting agency might not have authority to terminate funds. The sponsors clearly intend to permit this discrepancy in the two modes of enforcement. *See* Cong. Rec. S4595 (Daily ed. Apr. 12, 1984) (statement of Sen. Cranston). Similarly, the private cause of action for individuals seeking injunctive relief would presumably remain as an available remedy against any entity encompassed by the nondiscrimination provision. *See* Cong. Rec. S4587 (Daily ed. Apr. 12, 1984) (joint explanation of Senators Kennedy and Packwood) (bill intended to preserve private rights of action).

III. ADMINISTRATIVE AND ENFORCEMENT PROBLEMS

Because of the broad coverage conferred by deleting the concept of program specificity and expansively defining "recipient," S. 2568 constitutes a qualitative reshaping and possible enlargement of federal civil rights jurisdiction. There are any number of examples that point up the bill's potentially expansive reach. The bill could be construed so that federal food stamp programs would subject participating supermarkets and local grocery stores to federal civil rights compliance reviews and complaint investigations. Pharmacies and drug stores that participate in medicare/medicaid programs could also be "recipients," as could the "transferee" of an individual's social security check who, upon acceptance of such payment, would have signed an open invitation to federal enforcers to enter and investigate. The sponsors do not appear to envision this result, *see* n.10, *supra*, but they have not tailored the language of the bill to protect against it.

State and local governments—which under existing law are subject to coverage of the federal statutes only within their federal subsidized programs—must, under the bill, defer to federal civil rights oversight of all their programs for their political subdivisions (funded and nonfunded) upon receipt by any one program of a federal dollar. For example, assume that a federal agency has proof that a city's police department discriminates on the basis of handicap in employment but receives no federal funds from the agency. However, the fire department, also a subunit of the city government, receives substantial agency funds for its operations. Provided that the city or state received "support," that would be a sufficient basis for coverage under S. 2568. and, while defunding of the fire department might not be an available remedy in such circumstances, the federal agency could refer the matter to the Department of Justice for litigation in injunctive proceedings against the police department because the city is a recipient of federal funds (as a consequence of one of its subunits' receipt of federal funds from which it derives support) and thus is prohibited in all of its subdivisions from discriminating on the basis of handicap by section 504. This result is different from court decisions and agency practice before the *Grove City College* decisions. These four civil rights statutes have never been construed to provide authority for the Federal Government to regulate behavior in a unit of state or local government that received no federal funds.

There are, as well, serious enforcement problems raised by S. 2568. Agency regulations and paperwork requirements imposed under the four existing civil rights statutes are currently onerous in many respects. The bill, which would give all funding agencies authority—indeed, the statutory responsibility—to regulate all of the programs, activities, and subunits, will remove existing boundaries of agency jurisdiction to conduct compliance reviews and complaint investigations. The result, particularly for universities and state and local governments that typically receive funding from many agencies, would likely be multiple compliance reviews and reporting requirements. Complainants could file with several agencies, resulting in duplication of effort and inefficiency in the operation of federal civil rights enforcement. Further, because agencies would be statutorily responsible for the activities of its federally funded and unfunded components, agency expertise in the operation of programs and activities that they do fund would no longer promote the avoidance of inappropriate requirements.

For example, assume that a county water district receives a grant from the Environmental Protection Agency (EPA) to study the county's sewer needs. S. 2568 would appear to provide that all of the county's operations are subject to all four civil rights statutes because the federal financial assistance gives "support" to the county. Further assume that EPA received a complaint alleging discrimination in part of the county's operations that received no separate federal funds—the county's road maintenance. Even though EPA has no knowledge or expertise in this area (it would fall within the province of the Department of Transportation), under the bill, EPA would presumably have the responsibility to deal with the allegation of discrimination. The federal government would lose a forceful tool—the knowledge and expertise of those with specialized experience in the kind of discrimination involved.

There is no procedure contemplated by the bill for interagency referrals that might serve to alleviate the concern over inexpert or duplicative agency complaint investigations. Nor is it clear, even under some agency referral systems, how the fund termination provision would operate if the discriminatory activity existed in a nonfunded component, as investigated by a referral agency, and there developed a disagreement as to whether the federal funds "supported noncompliance." No attention appears to have been given to this set of complexities.

IV. CONSTITUTIONAL CONSIDERATIONS

In addition to the significant policy issues raised by the potentially expansive change in the law under S. 2568 as discussed above, the amendments may raise constitutional questions with respect to Congress' power to impose such requirements, and whether these requirements may be imposed on the states. Three possible sources of federal power are arguably available to support this legislation. First, the commerce power, U.S. Const. Art. I, §8 cl. 3, could be relied upon for the imposition of nondiscrimination obligations on certain private entities. *See Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 261 (1964) (Title II of the Civil Rights Act of 1964, prohibiting discrimination in public accommodations, is valid exercise of commerce power).

Application of coercive responsibilities on the states through the commerce power, however, is limited by the effect of the Tenth Amendment.[14] *See National League of Cities* v. *Usery*, 426 U.S. 833, 852 (1976) (federal government may not regulate the states as states to impair their ability to structure integral operations in areas of traditional governmental functions). *But see EEOC* v. *Wyoming*, 103 S. Ct. 1054. 1064 (1983) (application of Age Discrimination in Employment Act to states under commerce power did not violate Tenth Amendment in context presented). If this legislation is to avoid the constraints of the Tenth Amendment, two alternative sources of federal power exist: the power to impose conditions on expenditures of funds pursuant to the Spending Clause[15] and §5 of the Fourteenth Amendment.[16]

When the source of legislative power is not articulated by Congress and could be either the Spending Clause or §5, the Supreme Court generally looks to the type of obligations sought to be imposed by the legislation. If the claimed obligations involve affirmative financial outlays by the states, the Court will be less willing to infer that the power derives from §5 and more likely to infer spending power authority, "since we may assume that Congress will not implicitly attempt to impose massive financial obligations on the States." *Pennhurst State School* v. *Halderman*, 451 U.S. 1, 17 (1981) (*Pennhurst I*).[17]

A. The spending clause

The Supreme Court has long recognized that Congress may fix the conditions upon which it disburses federal funds to the states. *Pennhurst I*, 451 U.S. at 17. There are, however, limits on the power to impose such conditions. *Id.* Although the Court has never defined those limits, its use of spending power analysis to construe statutes passed under authority of that power sheds some light on the general contours of this type of legislation.

In *Pennhurst I*, the Court considered a statutory question involving the Developmentally Disabled Assistance and Bill of Rights Act ("Disabled Assistance Act"), a voluntary program whereby the Federal Government provides assistance to states to aid them in treating the mentally retarded. The issue before the Court was whether the Disabled Assistance Act created any substantive rights on behalf of the mentally retarded to particular types of treatment and, if so, whether Congress, which had not articulated its source of authority, could impose these obligations on the states either under its spending power or under §5 of the Fourteenth Amendment. The Court approached the question of power first, considering the scope of the spending power in order to determine what rights Congress had intended to create under the Act. The Court explained the principles of spending power analysis:

"[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the "contract." There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal money, it must do so unambiguously. By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation." 451 U.S. at 17 (citations and footnote omitted).

The Court approached this question in *Pennhurst I*, not in the context of the limits on Congress's power under the Spending Clause, but rather by attempting to determine whether Congress had intended to impose certain affirmative financial obligations upon state participants in the program to realize social benefits that the Act sought to achieve. Ambiguous statutory language and legislative history in the Disabled Assistance Act persuaded the Court that Congress could not have intended to use its spending power in a way that would impose affirmative obligations on recipient states without clear notice. *Id.* at 27.[18] Thus while Congress has broad power to place conditions upon funds expended under the Spending Clause, *Pennhurst I* stands for the proposition that legislation must clearly notify states accepting federal financial assistance that they are thereby incurring additional obligations. The Court declined to attribute to Congress an intent to impose significant financial obligations on the states without adequate notice. As in contract theory, the recipient must have the option to terminate or refuse a grant rather than assume the concomitant burdens. *Guardians Ass'n* v. *Civil Service Comm'n of the City of New York*, 103 S. Ct. 3221, 3229 (1983); *Fullilove* v. *Klutznick*, 448 U.S. 448, 474 (1980); *Rosado* v. *Wyman*, 397 U.S. 397, 420-21 (1970).

This construction of the spending power avoids the limitations of the Tenth Amendment, which apply with full force to Congress's power under the Commerce Clause. Because the State has a choice whether to accept a condition attached to federal funding, its sovereignty is not threatened as it is in certain mandatory applications of Congress's commerce power. This voluntary, knowing decision of a state to exchange burdens for benefits, at least in theory, preserves the autonomy of state governance and avoids the threat of federal coercion. *See Steward Machine Co.* v. *Davis*, 301 U.S. 548, 589 (1937) (rejecting Tenth Amendment challenge to federal social security tax law because state unable to claim duress); *cf. National League of Cities* v. *Usery*, 426 U.S. 833, 852 n.17 (1976) (expressing no view as to whether Tenth Amendment would pose an impediment to exercises of spending power); *Coyle* v. *Oklahoma*, 221 U.S. 559, 568 (1911) (under power to admit states to the union, Congress may impose terms and conditions but may not deprive a state of essential attributes).

An examination of S. 2568 in light of these principles discloses that the bill purports to set out the conditions under which a state will be deemed to have accepted the nondiscrimination obligations of the four civil rights statutes. If a state "receives support" from the federal money granted to it or to its subunit, then it must comply with the statutory mandates. (*See* pp. 6-8 *supra.*) Under a number of circumstances, it seems apparent that a state could not successfully claim that it was unaware of the intended effect of the bill, nor would a court have difficulty in such situations in determining that notice was adequate to ensure that the Spending Clause was properly invoked. Thus, for example, in a situation such as that involved in the *Grove City* case, an institution would be characterized as a "recipient" on account of aid to one of its departments, and could not successfully claim that it was unaware that the entire institution would be rendered subject to the Act through receipt of federal funding by a single department. This reading is consistent with both the language of the bill and the statements of its sponsors.

Different considerations might arise, however, if a state were charged with the responsibilities of the nondiscrimination statutes as a result of federal aid to a discrete component. Substantial uncertainty exists, for example, as to whether a federal research grant to a state university science facility would necessarily subject each and every other activity of the State or any of its subunits, no matter how remote in funding or activities, to statutory coverage. Assuming no other federal aid, the obligations and liabilities of the state's police department, legislature, or health clinics would depend on the extent to which the state could be said to "receive support" from the federal research grant. The bill does not provide a standard for determining this significant issue, nor does it clearly articulate the choice the state is making when it accepts the federal funds.

Clear notice to a state indicating the extent of the responsibilities it agrees to incur by accepting federal aid, therefore, might be absent in some circumstances, depending on the basis asserted for a claim that the state was covered by the statute. We believe that the bill is susceptible to certain applications that would not meet the notice standard articulated in *Pennhurst I.*

A challenge to the bill on this ground is unlikely to arise as a facial attack on the constitutionality of Congress's exercise of its spending power. Rather, it is more likely that a court would be asked to determine whether, under a specific set of facts, Congress had intended the ambiguous language to require that an entire state be covered by the statutes as a result of isolated federal assistance programs. As in *Pennhurst I*, the Court would tend to construe the statutes narrowly enough that they would not exceed the heretofore undefined limits of the spending power. *See Lau* v. *Nichols*, 414 U.S. 563, 569 (1974) ("whatever may be the limits" of the spending power, Title VI does not exceed them).

Only through a continuous process of judicial interpretation and reinterpretation could this legislation as presently drafted eventually develop meaningful contours of the type envisioned by the Court in *Pennhurst I.* Thus, while we do not believe that the ambiguity would necessarily require invalidation of any part of the amendments, we are concerned that considerable uncertainty would result with regard to the coverage of the four statutes affected by the bill. Although the statements of the sponsors of S. 2568 do not appear to recognize that the definition of "recipient" could extend statutory coverage far beyond the contours of a single institution and the *Grove City* facts, the language is broad enough to subject an entire state and all of its submits to coverage if the state, or any of its submits, receives any federal assistance. Evidently the sponsors either do not perceive or do not wish to emphasize the bill's amenability to this construction. Yet, the meaning of the "receives support" limitation—if indeed it is a limitation—is nowhere articulated. We believe that the amendments should be refined to achieve greater precision and to avoid unnecessary litigation and resultant confusion.

B. Section 5 of the 14th amendment

A possible alternative source of federal power to enact S. 2568, one which would surely be cited by litigants as additional support for the legislation, particularly if Tenth Amendment or Spending Clause limitations were raised, is § 5 of the Fourteenth Amendment. That section grants Congress the power to enforce, by appropriate legislation, the provisions of the Fourteenth Amendment.

On the one hand, reliance on § 5 would give Congress broad power to impose affirmative obligations on the states if the legislation fell within the purview of that grant of authority. Section 5 legislation is restricted neither by the voluntariness requirements of spending power conditions, nor by the Tenth Amendment restraint on interference with state sovereignty. *EEOC* v. *Wyoming*, 103 S. Ct. 1054, 1064 n.18 (1983); *City of Rome* v. *United States*, 446 U.S. 156, 179 (1980); *cf. Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 456 (1976) (Eleventh Amendment). "The prohibitions of the Fourteenth Amendment are directed to the States, and they are to a degree restrictions of State power." *Ex parte Virginia*, 100 U.S. 339, 346 (1880).

On the other hand, two considerations make it unlikely that all aspects of S. 2568 would be upheld as exercises of § 5. The considerations relate, generally, to two issues: (1) whether Congress intended to exercise § 5 power, a statutory question, and (2) whether § 5 in fact authorizes the particular exercise of power represented by S. 2568, a constitutional question. As to the first consideration, Congress has not specifically invoked § 5 as authority to enforce the Fourteenth Amendment in S. 2568. The Supreme Court indicated in *Pennhurst I* that it will not lightly infer a congressional intent to use § 5 to impose affirmative obligations on the States, although prohibitory legislation would be more susceptible to such an inference. 451 U.S. at 16, 17. The language of § 601 and its counterparts is facially prohibitory, but compliance with the prohibitions of some of the four statutes may require substantial outlays of state funds.[19] Thus a court would be unlikely to impute § 5 authority to such statutes unless Congress expressly invoked it. "Because such legislation [under § 5] imposes congressional policy on a State involuntarily, and because it often intrudes on traditional state authority, we should not quickly attribute to Congress an unstated intent to act under its authority to enforce the Fourteenth Amendment." *Pennhurst I*, 451 U.S. at 16.

As to the second consideration, it is unclear whether § 5 would support the sweeping requirements of the four nondiscrimination statues even if it were explicitly invoked. The limits of what may be the subject of "appropriate legislation" under § 5 have not been defined by the Court. *See Pennhurst I*, 451 U.S. at 16 n.12. The Court has extended to § 5 cases the test of *McCulloch* v. *Maryland*, 17 U.S. 315, 420 (1819), under which a statute passed under § 5 must be "plainly adapted" to the end of enforcing the Fourteenth Amendment and consistent with "the letter and spirit of the Constitution." *Katzenback* v. *Morgan*, 384 U.S. 647, 651 (1966). The Court has construed broadly Congress's exercise of § 5 powers to impose requirements beyond those mandated by the Fourteenth Amendment itself, but to date such expansive readings of the § 5 powers have been accorded primarily in the area of race discrimination. *See Fullilove* v. *Klutznick*, 448 U.S. 448 (1980); *City of Rome*, 446 U.S. at 177.

However, the breadth of Congress's power under § 5 is an area which the Supreme Court has not fully explored. In particular, it is unsettled how much latitude Congress has to determine the substantive content of Fourteenth Amendment rights in the course of deciding what "rights" are appropriate to enforce pursuant to § 5. Thus it is not clear to what extent or in what circumstances Congress can modify or expand Fourteenth Amendment rights by statute, either on the basis of legislative findings of fact or as a matter of "resolution of competing values and a delineation of substantive constitutional rights by Congress rather than the Court."[20]

The Court has not yet applied the deferential standard accorded legislation involving race discrimination outside the area of race, the principal target of the Civil War Amendments. This question sharply divided the Court in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). In that case, the Court upheld Congress's § 5 authority to ban literacy tests in State voting based upon evidence of racially discriminatory effects, but it struck down Congress's attempt under § 5 to require states to permit the 18-year-old vote in state elections. Some members of the Court evidently believed that legislation outside the area of racial discrimination cannot be accomplished under § 5, *id.* at 130 (Opinion of Black, J.); *id.* at 212 (Opinion of Harlan, J.); *id.* at 293 (Opinion of Stewart, J., with Burger, C.J. and Blackmun, J.), while others apparently believed that all principles of equality may be enforced under § 5. *Id.* at 143 (Opinion of Douglas, J.); *id.* at 240 (Opinion of Brennan, White, and Marshall, JJ.). More recently, the Court declined an opportunity to decide whether the Age Discrimination in Employment Act (ADEA) could be upheld as a valid exercise of § 5 powers. *EEOC* v. *Wyoming*, 103 S. Ct. at 1064. Four justices, in dissent, expressed the view that § 5 could not provide the basis for Congress's extension of the ADEA to the states. *Id.* at 1068 (Burger, C.J., with Powell, Rehnquist, and O'Connor, JJ., dissenting).[21]

Title VI has the strongest claim to validity under § 5 because it focuses on racial discrimination. Title IX, the ADA and § 504 stand on more tenuous footing in this respect, since they arguably reach beyond the mandates of Constitution in protecting classes of persons heretofore not judically recognized as entitled, as a class, to the protections afforded by the Fourteenth Amendment to victims of racial discrimination. Consequently, it is much more likely that at least these three statutes would be analyzed under the Spending Clause rather than as exercises of congressional power under § 5.

If so, the courts might well attempt to construe these statutes as applicable only in those instances where they may be perceived as providing sufficiently clear notice to constitute a valid imposition of conditions upon the acceptance of federal funds under the Spending Clause. However, this task should properly be undertaken in the first instance by the legislators.

Alternatives to S. 2468 and H.R. 5490

To the extent that the legislative objective is limited to removing the restraints found by the Court to have been written into present law in the *Grove City* decision, proponents might wish to consider alternative amendments which would reverse that decision without tampering with an otherwise effective and successful statutory scheme. Each possible alternative may raise its own set of issues to be considered carefully by the Congress, and because of the importance of any modification in these civil rights statutes, *any* proposed change deserves to be subjected to the full rigors of the committee hearing process, to provide an opportunity to develop fully its strengths and weaknesses, and to create a useful legislative history. One possibility for attaining the stated objective of reversing the *Grove City* decision through less drastic changes in the existing civil rights statutes would be the Schneider bill, H.R. 5011, currently before Congress, which would extend Title IX coverage to educational institutions as well as to "programs and activities." Indeed, Congress might well wish to consider expanding H.R. 5011 so that its institution-wide coverage pertains to discrimination on account of race, age, and handicap, as well as, on account of sex. Alternatively, an amendment to S. 2568 and H.R. 5490 could go far toward avoiding at least some of the difficulties outlined in this report. The Department of Justice stands ready to work with the Committee to devise language that will fully meet Congress's stated purpose while avoiding the sort of coverage, administrative and enforcement problems discussed above.

V. CONCLUSION

Our review of the foreseeable effects of S. 2568 leads us to conclude that the sweeping scope of the language proposed in the bill might well have much broader application than simply the reversal of the *Grove City* decision. We believe the consequences of the serious ambiguities in the bill and their constitutional implications, discussed above, have not been adequately considered by Congress or accurately reflected in the introductory statements of the bill's sponsors. The perhaps unintended ramifications of the bill are certain, at best, to create confusion in recipients, agencies, and courts. At worst, they may include impermissible interference with important state prerogatives or lead to adverse judicial decisions as to their enforceability.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

FOOTNOTES

[1] H.R. 5490 is in all respects identical to S. 2568. For the sake of convenience, we refer to them interchangeably as "S. 2568" or "the bill."

[2] No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . . . 20 U.S.C. § 1681.

[3] No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . 29 U.S.C. § 794.

[4] [With certain exceptions] no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance. 42 U.S.C. § 6102.

[5] Title VI prohibits discrimination on the basis of race, color, or national origin in federally assisted programs. 42 U.S.C. § 2000d (quoted at p. 4 *infra.*)

[6] *See, e.g., Cannon* v. *University of Chicago*, 441 U.S. 677, 694 (1979) (Title IX patterned after Title VI); *NAACP* v. *Medical Center, Inc.*, 657 F.2d 1322, 1331 (3d Cir. 1981) (en banc) (§ 504 and ADA patterned after Title VI). The four statutes are listed here in the order that they appear in the bill. The Appendix to this report contains the full text of every provision that S. 2568 would amend, reflecting both existing and proposed language.

[7] More common have been cases brought under § 1983, which permits private suits for state deprivations of rights secured by the Constitution and laws of the United States. 42 U.S.C. § 1983. Because early Title VI cases were generally brought against state school districts, the substantive prohibitions of Title VI could be enforced by means of actions under § 1983. *See, e.g., Singleton* v. *Jackson Municipal Separate School Dist.*, 355 F.2d 865 (5th Cir. 1966). Additionally, Title VI has been enforced through private causes of action. *See* p. 15, *infra.*

[8] Although the precedential effect of *Grove City* on the other three statutes is not altogether clear, we would anticipate that courts would continue to interpret each of the four statutes by analogy to the others. For example, in concluding that a private cause of action is available under Title IX, the Supreme Court examined at great length the resolution of the same issue under Title VI, and found that evidence highly persuasive. *Cannon* v. *University of Chicago*, 441 U.S. 677, 694-709 (1979). *See also NAACP* v. *Medical Center, Inc.*, 657 F.2d 1322, 1331 (3d Cir. 1981) (expressly adopting Title VI standard in case brought under § 504 and ADA). The introductory legislative history of the bill contains a statement suggesting that the bill's sponsors believe that the Department of Justice enforcement efforts will proceed on the assumption that the *Grove City* case is applicable to all four statutes. Cong. Rec. S4589 (Daily ed. Apr. 12, 1984) (statement of Sen. Packwood).

[9] This language is similar to the existing definition of "recipient" under Title VI regulations: "any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program." 28 C.F.R. § 42.102(f) (1983).

[10] Additionally, the bill adopts a separate holding of *Grove City*, that there is no substantive difference under Title IX between direct institutional assistance and aid received by a school through its students. 104 S. Ct. at 1217, 1220. The sponsors of S. 2568 have lauded this result and have included language in the bill to embody it. Cong. Rer. S4592 (Daily ed. April 12, 1984) (statement of Sen. Cranston). The language chosen to effect this outcome, however ("directly or through another entity or a person"), suffers from the same ambiguity that afflicts the bill as a whole. It is going to be very difficult to determine, without detailed legislative history, when an entity, including a successor, assignee or transferee entity, receives aid "through another entity or a person." The sponsors appear to hold the view that this undefined standard would exclude from the definition of "recipient" "ultimate beneficiaries such as food stamp recipients or student[s] receiving Federal loans." *Id.* at S4590 (statement of Sen. Dole); "the landlord whose tenant pays the rent with federal public assistance funds, the clothing store that is paid for a shirt with a Social Security check." *Id.* at S4586 (statement of Sen. Kennedy); and other similarly situated "individuals and businesses which may ultimately receive federally provided dollars." *Id.* at S4595 (statement of Sen. Cranston). The term "ultimate beneficiary" in these examples is used inconsistently to mean either an individual receiving federal funds or a business or institution receiving them from the individual. This limitation, which suffers from latent ambiguities of its own, especially in the examples recited, appears to be derived from existing Title VI regulations, which expressly exclude any "ultimate beneficiary" under federal assistance programs. *See* n.9 *supra.* We are unaware, however, of any statutory language which would lead an agency or a court to exclude these or other classes of beneficiaries from the reach of the statute. Nor are we aware of any explanation for why the definition of "recipient" in the bill, which apparently is modeled on the regulatory definition of this term contained in 28 C.F.R. § 42.102(f) (1983), *supra* n.9, fails to adopt that regulation's express provision that "recipient" "does not include any ultimate beneficiary under any such program." *Id.* The omission of this language might well lead a court construing the bill's definition to conclude that Congress did intend to reach the "ultimate benficiary," whatever that term means.

[11] It is possible that the term could be read more narrowly than we have described. A court could consider the ostensible purpose of the bill—to reverse the *Grove City* decision, which involved a private institution—and conclude that receipt of assistance should be attributed vicariously only within the confines of a discrete institution. A court could adopt this approach on the presumption that Congress would not create such significant changes in major civil rights legislation without, at the very least, clearly expressing its intention to do so. Arguing against such an approach, however, is the fact that Congress could have achieved the mere reversal of *Grove City* in much narrower terms. If Congress nevertheless passed the more expansive provisions contained in this bill, a court might reasonably conclude that it intended to reach a multitude of new classes of recipients.

[12] The term "assistance which supports" could also be read to authorize a narrower scope for termination than Title VI currently allows. Theoretically, a single grant program could be divided up into unaffected portions and portions used in discriminatory activities; only the latter segments of the grant would be terminated, rather than the entire program. This reading, although consistent with the language of the bill, is unlikely to prevail because it is contrary to the avowed intentions of the bill's sponsors to impart a broader coverage to Title VI. *See, e.g.*, Cong. Rec. S4585 (Daily ed. Apr. 12, 1984) (joint explanation of Senators Kennedy and Packwood).

[13] *See, e.g.*, Cong. Rec. S2487 (Daily ed. Apr. 12, 1984) (joint explanation of Senators Kennedy and Packwood) ("The bill also retains the requirement that a nexus be established between the discrimination found and any federal funding that is to be terminated or suspended by the administrative agency enforcing the law."); *id.* at S4595 (statement of Sen. Cranston) (bill "remains faithful to the original purpose of 'pinpointing' ").

[14] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X.

[15] U.S. Const. Art. 1, § 8, cl. 1.

[16] The Fourteenth Amendment provides, in part, that no state may "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 5 authorizes Congress "to enforce, by appropriate legislation," its provisions.

[17] This approach to determining the source of constitutional authority for federal legislation could create distinctions among the four civil rights statutes under consideration, depending on the claims raised in a particular case. The dispositive criterion would be whether the claimant sought merely to enforce prohibitory obligations or instead attempted to impose affirmative duties upon a recipient of federal aid. The extent to which the four statutes require affirmative steps has not been clearly resolved. *See Southeastern Community College* v. *Davis*, 442 U.S. 397, 411 (1979) (college not required by § 504 to make affirmative efforts to overcome disabilities caused by handicaps). *But see* 45 C.F.R. § 84.44 (1983) (under § 504 recipient must provide necessary "auxiliary aids" to handicapped).

[18] The Court reasoned further that since no provision in the Act authorized termination of funds for violation of the specific right claimed, affirmative accommodation of that right "can hardly be considered a 'condition' of the grant of federal funds." 141 U.S. at 23.

[19] For example, § 504 can require a covered entity to take some steps to provide auxiliary aids, includ-

ing personnel and equipment, to handicapped persons. See 45 C.F.R. § 84.44 (1983).

[30] G. Gunther, Constitutional Law 1088 (10th ed. 1980).

[31] The Chief Justice appears to have taken the position that the Court must declare a class to be constitutionally protected before Congress can exercise whatever § 5 power it may have vis-a-vis the states. 103 S. Ct. at 1074 n. 7.

APPENDIX: STATUTES AS AMENDED BY S. 2568 and H.R. 5490[1]

TITLE IX—EDUCATION AMENDMENTS OF 1972, § 901; 20 U.S.C. § 1681

§ 1681

(a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation [in], be denied [the] benefits [of], or be subjected to discrimination [under any education program or activity receiving] *by any education recipient of* Federal financial assistance, except that:

* * * * *

(c) "Educational institution" defined

* * * * *

(*2*) [*NEW*] For the purpose of this title, the term "recipient" means—

(A) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and

(B) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit,

to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.

§ 1682

Each Federal department and agency which is empowered to extend Federal financial assistance [to any] *for* education [program or activity], by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to [such program or activity] *recipients* by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance [under such program or activity] to any recipient as to [whom] *which* there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to [whom] *which* such a finding has been made, and shall be limited in its effect to the particular [program, or part thereof, in which] *assistance which supports* such noncompliance [has been] so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

REHABILITATION ACT OF 1973, § 504, 29 U.S.C. § 794

§ 794

(*a*) No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title, shall, solely by reason of [his] *such individual's* handicap, be excluded from the participation [in], be denied [the] benefits [of], or be subjected to discrimination [under any program or activity receiving] *by any recipient of* Federal financial assistance.

(*b*) [*NEW*] For the purpose of this section, the term "recipient" means—

(1) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and

(2) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit, to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.

AGE DISCRIMINATION ACT OF 1975, § 302; 42 U.S.C. § 6101

§ 6101

It is the purpose of this chapter to prohibit discrimination on the basis of age [in programs or activities receiving] *by recipients of* Federal financial assistance, including [programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)] *recipients of funds under chapter 67 of title 31, United States Code.*

§ 6102

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation [in], be denied [the] benefits [of], or be subjected to discrimination [under, any program or activity receiving] *by any recipient of* Federal financial assistance.

§ 6103

* * * * *

(b) Nonviolative actions

(1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter, for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if [, in the program or activity involved]—

(A) such action reasonably takes into account age as a factor necessary to the normal operations *of the recipient* or the achievement of any statutory objective [of such program or activity] *in furtherance of which the Federal financial assistance is used*; or

* * * * *

(c) Employment practices

(1) Except with respect to [any program or activity receiving] Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801 et seq.) as amended, nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice or any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

* * * * *

§ 1604

(a) Methods of achieving compliance with regulations

The head of any Federal department or agency who prescribes regulations under secton 6103 of this title may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance [under the program or activity involved] to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Limitations on termination

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this secton shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1) if this section. Any such termination or refusal shall be limited in its effect to [the particular program or activity, or part of such program or activity, with respect to which such funding has been made] *assistance which supports the non-compliance so found.* No such termination or refusal shall be based in whole or in part on any finding with respect to any [program activity] *noncompliance* which [does] *is* not [receive Federal financial] *supported by such* assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 6103 of this title withholds funds pursuant to subsection (a) of this secton, he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 6103 of this title.

(e) Injunctions

(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this [Act by any program or activity receiving Federal financial assistance] *title*, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health and Human Services, the Attorney General of the United States, and

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[1] New language is designated by underscoring or by "*NEW*;" portions that the bill would delete are in brackets.

the person against whom the acton is directed.

* * * * *

§ 6107

For purposes of this chapter—

* * * * *

(4) [*NEW*] the term 'recipient' means—

(A) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and

(B) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit,

to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.

TITLE VI—CIVIL RIGHTS ACT OF 1964, § 601; 42 U.S.C. § 2000d

§ 2000d

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation [in], be denied [the] benefits [of], or be subjected to discrimination [under any program or activity receiving] *by any recipient of* Federal financial assistance.

§ 2000d-1

Each Federal department and agency which is empowered to extend Federal financial assistance to any [program or activity] *recipient*, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such [program or activity] *recipient* by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance [*under* such program or activity] to any recipent as to [whom] *which* there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requlement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to [whom] *which* such a finding has been made and, shall be limited in its effect to the particular [program, or part thereof, in which such noncompliance has been] *assistance which supports such noncompliance* so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action, terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

§ 2000d-6 [*NEW*]

For the purpose of this title, the term 'recipient' means—

(1) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and

(2) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit, to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.●

DEFENSE AUTHORIZATION BILL

● Mr. PRYOR. Mr. President, I should like to make a few remarks about the Department of Defense authorization bill, which I voted for. I have a special interest in several of the programs which we are funding, especially those programs which will enhance our conventional forces.

"STEALTH" TECHNOLOGY

I strongly believe that the future success of our military efforts will be closely tied to the development of the radar-safe Stealth bomber and cruise missile and that we should proceed with this program just as quickly as we possibly can. This research and development program was fully funded by the committee; however, in spite of the very strong support for the Stealth program in the Congress, there was a danger that Pentagon officials might be tempted to shift Stealth funds to the B-1 program, which, in my view, has much less to offer than its cost would warrant.

I was pleased to support the amendment by Senator ROBERT BYRD to prohibit any diversion of the Stealth funds and to protect the development of this exciting and promising new technology.

C-17

A research and development project which deserves the Senate's full support is the C-17 cargo plane. Our long-range military-airlift capability is the keystone of our ability to respond to military emergencies around the world. The crisis in Grenada demonstrated the need for a quick response. We were able to meet that crisis, but the next emergency may occur halfway across the globe.

The C-17 will allow us to transport outsize equipment, such as our largest tanks, along with other equipment and troops for long distances and will be able to land on crude landing areas. No cargo plane currently in our inventory has this capability. The C-17 will also be less costly to maintain than the C-5 cargo plane, which can carry outsize equipment but requires a long, smooth landing strip.

All of the services are enthusiastic about the advantages offered by the C-17, and I congratulate the Armed Services Committee and the Senate for approving full funding for this important program and hope that the Congress will continue to listen to the armed services on this issue and meet the needs of our Military Airlift Command.

RESERVES

An area that deserves greater attention from the Congress is the equipping of our National Guard and Reserve Forces. These forces will play an important role in any major conflict, and they should have safe, up-to-date equipment.

I was pleased to cosponsor the Kassebaum amendment to provide three important improvements to our Reserve and Guard capability: kits to repair the dangerous, smoking engines on our F-4 fighters, antitank weapons for the F-4's, and additional, modern tanks.

I hope that this effort will be the beginning of a new emphasis on the needs of our Guard and Reserves, which for too long have been treated as the stepchildren of the U.S. defense forces.

OTHER PROVISIONS

Multiple-launch rocket system. This system, which has been developed in Camden, AR, is a multipurpose artillery weapon which, I believe, has an important place in our future defense needs. I am pleased that the committee shares my confidence in MLRS and has decided to fund a 7th year of this program.

Deep strike. In anticipation of conflicts in Europe or elsewhere, I believe that it is very important to develop a deep-strike capability to knock out enemy tanks while they are still well behind the line of combat. Disputes between the Army and Air Force on this matter have held up development of this capability for too long, and I urge these services to decide on what technology they want to pursue and to move this new technology from the drawing board into the field as soon as possible.

Educational benefits and pay raise. I was disappointed that efforts to establish a new GI bill and a 5.5-percent pay raise were defeated during consideration of this bill. I supported these efforts because highly qualified personnel are an essential element of our military strength, and these benefits would help attract the kind of recruit that we need in the Armed Forces.

PROCUREMENT ISSUES

Finally, Mr. President, I believe that this defense bill is significant for reasons which will probably escape the notice of many people in this country. While attention has been focused on the MX missile, educational benefits, and other highly visible issues, the Armed Services Committee and the Senate have begun to make some very significant reforms in the way we spend our defense budget, which this year totals nearly $300 billion.

We are all painfully aware of newspaper reports of spare parts horror stories—of 34-cent plastic stool caps that cost the Air Force over $1,000 and an ordinary $7 hammer that cost the Navy $436. The Armed Services and their contractors cried "foul" and claimed that these examples were aberrations. That is not so. Unfortunately, these outrageous expenditures of the taxpayers' money are symptomatic of a system which inhibits free-market competition and enriches Government contractors at the expense of the taxpayer and our national security.

Since I have been in the Senate I have made procurement reform—especially within the Defense Department—one of my top priorities. Now, these are not headline-grabbing issues. Our constituents do not turn on the evening news and hear newscasters breathlessly describing the contributions of an Inspector General or the benefits of dual-source contracting.

But our constituents are concerned about the budget. Our defense program is a substantial part of that budget, and it is clear to every observer that there is enormous waste within the Pentagon. We can perform no greater service to the beleaguered taxpayer than attacking this outrageous system of wasteful spending.

Over the last several years, I have worked on a number of procurement-related issues such as reduction of consultant costs, establishment of an Inspector General position and an Office of Operational Testing and Evaluation, and mandating increased competition.

This year, the Senate Armed Services Committee proposed significant reforms in the procurement process. The committee actions include:

Longer terms for procurement managers. Less turnover will result in more efficiency.

An effort to achieve a workable system of warranties.

Reduction of add-on costs charged by middlemen who merely deliver subcontractor goods to their military customers.

Increased scrutiny of cost data.

Instructions to order supplies in bulk whenever possible.

Development of computer management of spare parts.

Encouraging increased competition among Pentagon suppliers, and more opportunities for small businesses.

Creation of an advocate for competition.

I hope that the Senate will continue to make procurement reform a top priority. I believe these efforts will provide important benefits to taxpayers and to our national security.●

HANDGUN CONTROL

● Mr. KENNEDY. Mr. President, in our Nation's effort to combat violent crime, an essential component is strengthening laws to keep handguns—the preferred instruments of criminals—out of the wrong hands.

We cannot pretend we are working to control crime if we are not also working to control handguns.

This point was eloquently made last week before the Democratic Platform Committee by a victim of handgun violence, and an officer and director of the national citizens' organization Handgun Control, Inc., Ms. Lois Hess.

Tragically, her plea for arms control here at home is graphically illustrated by contrasting the statistics of those Americans killed abroad in military service versus those killed here at home in handgun violence. As she notes in her statement—

> More Americans are killed every week with handguns than American Marines were killed in the Beirut massacre. . . . More Americans were killed here at home during the Vietnam war than American servicemen were killed in combat.

Mr. President, I commend to the attention of the Senate the thoughtful statement of Ms. Hess, and I ask that it be printed at this point in the RECORD.

The statement follows:

TESTIMONY OF LOIS HESS

My name is Lois Hess. I live in Baltimore County, Maryland and I am a life-long Democrat. I am an officer and a director of Handgun Control, Inc., a national citizens' organization of ONE MILLION supporters, working to keep handguns out of the wrong hands.

But I am here today again, and I repeat again, as a victim—a victim of handgun violence.

Nine years ago my only son, Stuart, was murdered—shot in the head by a handgun while working on his father's construction job. Stuart was 24 and had just received his Master of Science degree in Real Estate and Urban Development Planning from American University.

If you're a parent, you know how you watch your child grow both bodily and mentally with great hopes for the future. A partnership in business was the dream of Stuart and his father. That dream was shattered by a gunshot.

Ever since that terrible moment when my husband said, "It's Stuart, he's dead," my life has taken on new meaning. Being a handgun victim has become my lifestyle. Although it's now been nine years since Stuart's death, I still grieve each day for my son. But I grieve too knowing that each and every day other sons and daughters are being killed because handguns so easily fall into the wrong hands.

More Americans are killed every week with handguns than American Marines were killed in the Beirut massacre. Yet, Congress took action and the Marines were brought home. Handguns kill as many Americans each year as drunk drivers do. Our legislators are finally passing laws that get tough on the drunk driver. More Americans were killed here at home during the Vietnam war than American servicemen were killed in combat. Even that long and painful war was finally ended. Still, nothing has been done to put an end to the tragic toll of handgun violence.

Many of you will visit the Vietnam War Memorial while you're in Washington. It lists the names of those gallant men and women who gave their lives in that foreign war. We don't have a memorial to those who've died in America's handgun war. If we stopped counting today and just used the names of those Americans who've been killed by handguns in the last decade, the monument would have to be five times the size of the Vietnam War Memorial in order to list the tens of thousands of names of America's handgun dead. Stuart Hess would be on that list.

A leader of this party once said, "The victims of the violence are black and white, rich and poor, young and old, famous and unknown. They are most important of all human beings whom other human beings loved and needed. No one, no matter where he lives or what he does, can be certain who next will suffer from some senseless act of bloodshed. And yet it goes on and on and on. Why?" That man was Robert F. Kennedy.

Yes, the violence goes on and on an on. The Congress and the President have not acted to stop the handgun warfare. During the next hour another American will be killed in handgun violence, others will be injured or threatened by handguns.

Four years ago, I appeared before the Democratic Platform Committee and urged it to adopt a position calling for tougher handgun laws. The 1980 Convention did that. And there are some courageous leaders in the Congress like Senator Edward Kennedy and Congressman Peter Rodino who continue to work for an effective federal law to keep handguns out of the wrong hands. Their legislation, the Handgun Crime Control Act, would ban the manufacture and sale of snub-nosed handguns, require a 21-day waiting period and corresponding background check on potential handgun purchasers, and impose a mandatory jail sentence on those who commit a federal crime with a handgun. The measure now has more support than any handgun control bill in history.

But it will take Presdential leadership to win this fight. All three Presidential candidates are united in a common belief that handguns should be kept out of the wrong hands. I urge this Committee to reaffirm this commitment in the 1984 Platform.

It's not easy for me to come here today and again tell my handgun story. I'm not asking for your sympathy but for your action. The Democratic Party has a long tradition of working to better our society. A common sense handgun law will make America a safer place, not only for us, but for our childern, and their childern.

Nothing will bring my son, Stuart, back to me. But it will stop other families from burying their sons and daughters because of a handgun's fatal wound.●

ADVANCE NOTIFICATION PROPOSED ARMS SALES

● Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the Record in accordance with previous practice.

I wish to inform Members of the Senate that three such notifications have been received.

Interested Senators may inquire as to the details of these advance notifications at the office of the Committee on Foreign Relations, room SD-423.

I ask unanimous consent that the notifications be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Defense Security Assistance Agency,
Washington, DC, June 18, 1984.

In reply refer to: I-03144/84ct.

Dr. Hans Binnendijk,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, DC.

Dear Dr. Binnendijk: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of $50 million.

Sincerely,

Philip C. Gast,
Director.

Defense Security Assistance Agency,
Washington, DC, June 18, 1984.

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The Department of State is considering an offer to a Northeast Asian country tentatively estimated to cost in excess of $50 million.

Sincerely,

Philip C. Gast,
Director.●

CAPITAL PUNISHMENT

● Mr. METZENBAUM. Mr. President, on February 8, 1984, during our debates on S. 1765, a bill that would authorize capital punishment for certain Federal crimes, I expressed my opposition to the death penalty. I cited a list of people who had been sentenced to death for murders they did not commit, and who were later exonerated by new evidence. I would like to thank Prof. Hugo Adam Bedau of Tufts University and Michael L. Radelet of the University of Florida for their invaluable research which uncovered these cases. More information on these cases is available from an unpublished paper they have written entitled "Miscarriages of Justice in Potentially Capital Cases." Their work serves as a reminder of the inevitability of human error and the irreversibility of the death penalty. I commend them for their efforts.●

TRIBUTE TO JIM FORT, RETIRING LEGISLATIVE COUNSEL FOR UNITED PARCEL SERVICE

● Mr. PRYOR. Mr. President, I rise today to pay tribute to a long-time laborer at the forge of democracy, Jim Fort. Jim Fort retires on July 1 from a most distinguished career as the legislative counsel for the United Parcel Service.

We have come to rely on Jim's good counsel for the past 17 years on matters impacting the parcel business. I wish I could claim him as one of our own in Arkansas, but he did have the good sense to be born in a neighboring State, Tennessee.

Jim Fort has been particularly kind to those who have served in my college intern program, by hosting them and explaining the role of the lobbyist in our system of government. His insight is always a highlight of the internship of our summer college corps. I especially want to thank him for dedicating his time to these young people to broaden their view of how our Federal Government works.

In retirement, we won't totally lose Jim as he plans to continue teaching and lecturing on the procedures of the Congress. And, in addition, he will be able to devote more time to his wood sculpturing, where he already has works being exhibited at the Torpedo Factory in Alexandria.

Mr. President, UPS employs almost 1,100 employees in my State serving the parcel needs of Arkansas.

Though we will miss his wise counsel, I want to wish Jim and his wife, Cathy, a most deserved and fruitful retirement.●

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I have an incredible amount of stuff here that has been handed to me.

Mr. MATHIAS. Important business.

Mr. BAKER. Important business, the Record should read.

The minority leader is going to be in the Chamber shortly, and I will expect we will have 30 minutes or so of routine work. But in the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BAKER. Mr. President, there are a great many items that appear to be cleared for action by unanimous consent. If the minority leader is willing for me to do so, I would go first to the NASA authorization bill, which I believe is cleared on both sides.

Mr. BYRD. Mr. President, that matter is cleared on this side.

Mr. BAKER. I thank the majority leader.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ACT, 1985

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 882.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5154) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and or other purposes.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert:

That this Act may be cited as the "National Aeronautics and Space Administration Act, 1985".

TITLE I—AUTHORIZATIONS OF APPROPRIATIONS

Sec. 101. There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1984:

(a) For "Research and development", for the following programs:

(1) Space transportation capability development, $356,400,000;

(2) Space station, $150,000,000;

(3) Physics and astronomy, $705,200,000;

(4) Life sciences, $63,300,000;

(5) Planetary exploration, $296,900,000;

(6) Space applications, $407,100,000, of which $50,000,000 is authorized only for the Advanced Communications Technology Satellite flight program which is designed to lead to a launch of such satellite no later than 1989;

(7) Technology utilization, $9,500,000;

(8) Space commercialization, $5,000,000;

(9) Aeronautical research and technology, $357,400,000, of which $29,000,000 is authorized only for activities which are designed to lead to a flight test of a single rotation or counter rotation turboprop concept no later than 1987 (and for supporting research and technology);

(10) Space research and technology, $150,000,000; and

(11) Tracking and data advanced systems, $15,300,000.

(b) For "Space flight, control and data communications", for the following programs:

(1) Space shuttle production and operational capability, $1,470,600,000;

(2) Space transportation operations, $1,319,000,000; and

(3) Space and ground network, communications and data systems, $795,700,000.

(c) Except as provided in section 102(a) of this title, for "Construction of facilities", including land acquisition, as follows:

(1) Repairs to test stand 500, George C. Marshall Space Flight Center, $1,600,000;

(2) Space shuttle facilities at various locations as follows:

(A) Modifications of site electrical substation, Lyndon B. Johnson Space Center, $3,200,000;

(B) Modification for single engine testing, National Space Technology Laboratories, $3,000,000;

(C) Construction of launch complex 39 logistics facility, John F. Kennedy Space Center, $10,000,000; and

(D) Construction of solid rocket booster assembly and refurbishment facility, John F. Kennedy Space Center, $15,000,000;

(3) Space shuttle payload facilities at various locations as follows:

(A) Construction of additions to cargo hazardous servicing facility, John F. Kennedy Space Center, $4,600,000; and

(B) Construction of biomedical research facility, Ames Research Center, $2,100,000;

(4) Construction of addition to network control center, Goddard Space Flight Center, $2,200,000;

(5) Construction of Earth and space science laboratory, Jet Propulsion Laboratory, $12,200,000;

(6) Construction of numerical aerodynamic simulation facility, Ames Research Center, $11,500,000;

(7) Modifications of the 8-foot high temperature tunnel, Langley Research Center, $13,800,000;

(8) Construction of 34-meter antenna, Madrid, Spain, $6,000,000;

(9) Modifications of 64-meter antenna, DSS-63, Madrid, Spain, $7,800,000;

(10) Repair of facilities at various locations, not in excess of $750,000 per project, $20,000,000;

(11) Rehabilitation and modification of facilities at various locations, not in excess of $750,000 per project, $25,000,000;

(12) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $500,000 per project, $5,000,000; and

(13) Facility planning and design not otherwise provided for, $12,000,000.

(d)(1) For "Research and program management", $1,331,000,000, and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

(2) Of the funds authorized under paragraph (1), $1,000,000 shall be available for the activities of the National Commission on Space, established pursuant to title II of this Act.

(e) Notwithstanding the provisions of subsection (h), appropriations authorized in this title for "Research and development" and "Space flight, control and data communications" may be used for (1) any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the Administration for the performance of research and development contracts, and (2) grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to insure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" and "Space flight, control and data communications" pursuant to this title may be used in accordance with this subsection for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds $500,000, unless the Administrator or the Administrator's designee has notified the President of the Senate and the Speaker of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives of the nature, location, and estimated cost of such facility.

(f) When so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development," for "Space flight, control and data communications" or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of 12 months beginning at any time during the fiscal year.

(g) Appropriations made pursuant to subsection (d) may be used, but not to exceed $35,000, for scientific contributions or extraordinary expenses upon the approval or authority of the Administrator and the Administrator's determination shall be final and conclusive upon the accounting officers of the Government.

(h) Of the funds appropriated pursuant to subsections (a), (b), and (d), not in excess of $100,000 for each project, including collateral equipment, may be used for construction of new facilities and additions to existing facilities, and for repair, rehabilitation, or modification of facilities: Provided, That, of the funds appropriated pursuant to subsection (a) or (b), not in excess of $500,000 for each project, including collateral equipment, may be used for any of the foregoing for unforeseen programmatic needs.

Sec. 102. (a) Notwithstanding the provisions of section 101(c) of this title, the total amount authorized to be appropriated by such section shall be $5,000,000 less than the sum of the amounts contained in paragraphs (1) through (13) of such section for individual projects.

(b) After the reduction specified in subsection (a) of this section is made, authorization is granted whereby any of the amounts prescribed in paragraphs (1) through (12), inclusive, of section 101(c)—

(1) in the discretion of the Administrator or the Administrator's designee, may be varied upward 10 percent; or

(2) following a report by the Administrator or the Administrator's designee to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives on the circumstances of such action, may be varied upward 25 percent,

to meet unusual cost variations, but the total cost of all work authorized under such paragraphs shall not exceed the total of the amounts specified in such paragraphs.

Sec. 103. Not to exceed one-half of 1 percent of the funds appropriated pursuant to section 101(a) or (b) of this title may be transferred to and merged with the "Construction of facilities" appropriation, and when so transferred, together with $10,000,000 of funds appropriated pursuant to section 101(c) of this title (other than funds appropriated pursuant to paragraph (13) of such section) shall be available for expenditure to construct, expand, and modify laboratories and other installations at any location (including locations specified in section 101(c)), if (1) the Administrator determines that such action is necessary because of changes in the national program of aeronautical and space activities or new scientific or engineering developments, and (2) the Administrator determines that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities. The funds so *made available may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No portion of such sums may be obligated for expenditure or expended to construct, expand, or modify laboratories and other installations unless a period of 30 days has passed after the Administrator or the Administrator's designee has transmitted to the President of the Senate and to the Speaker of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a written report containing a full and complete statement concerning (A) the nature of such construction, expansion, or modification, (B) the cost thereof including the cost of any real estate action pertaining thereto, and (C) the reason why such construction, expansion, or modification is necessary in the national interest.*

SEC. 104. *Notwithstanding any other provision of this title, no amount appropriated pursuant to this title may be used for any program—*

(1) deleted by the Congress from requests as originally made either to the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Science and Technology of the House of Representatives;

(2) in excess of the amount actually authorized for that particular program by section 101(a), (b), and (d); and

(3) which has not been presented to either such committee,

unless a period of 30 days has passed after the receipt by the President of the Senate and the Speaker of the House of Representatives and each such committee of notice given by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

SEC. 105. *It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.*

SEC. 106. *The authorization for shuttle production and operational capability under section 101(b)(1) of this title includes provisions for the production of structural spares and the critical skills necessary for installation of electrical, mechanical, and fluid systems, thereby maintaining production readiness for a fifth orbiter vehicle.*

SEC. 107. *No civil space station authorized under section 101(a)(2) of this title may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.*

SEC. 108. *The National Aeronautics and Space Administration shall, as expeditiously as possible, finalize and enter into a contract for the development of the Advanced Communications Technology Satellite, pursuant to section 101(a)(6) of this title. The Administration shall enter into such contract only with the entity with which negotiations pursuant to request for proposal numbered 3511907 had been conducted before the date of enactment of this Act. The Administration may not solicit additional bids or proposals regarding such satellite before entering into such a contract. The Administration may not award any other contract to carry out the same or similar purpose as the contract entered into relating to such request for proposal.*

SEC. 109. *(a) Section 102 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451) is amended—*

(1) by striking "(e), and (f)" in subsection (g) and inserting in lieu thereof "(e), (f), and (g)";

(2) by redesignating subsections (c) through (g) as subsections (d) through (h), respectively; and

(3) by inserting after subsection (b) the following new subsection:

"(c) The Congress declares that the general welfare of the United States requires that the National Aeronautics and Space Administration seek and encourage, to the maximum extent possible, the fullest commercial use of space.".

(b) Section 102(d)(1) of the National Aeronautics and Space Act of 1958, as redesignated by subsection (a) of this section, is amended by inserting "of the Earth and" immediately after "knowledge".

SEC. 110. *(a) Any Federal personal property may be disposed of in accordance with subsection (b) of this section if such property—*

(1) is scientific research or development equipment and is not personal property that may be used for general administrative purposes;

(2) has been loaned by the National Aeronautics and Space Administration to any academic institution or nonprofit organization; and

(3) as of March 31, 1984, has been on loan to any such institution or organization for at least 2 years.

(b) The Administrator may transfer title to property described in subsection (a) of this section to any academic institution or nonprofit organization if the Administrator certifies that—

(1) such property is being used by the institution or organization holding such property for a purpose consistent with the use intended when the property was loaned; and

(2) the Administration will no longer need such property.

TITLE II—NATIONAL COMMISSION ON SPACE

SEC. 201. *This title may be cited as the "National Commission on Space Act".*

SEC. 202. *It is the purpose of this title to establish a National Commission on Space that will assist the United States to—*

(1) maintain its preeminence in space science, technology and applications;

(2) promote the peaceful exploration and utilization of the space environment; and

(3) develop policy and program options for the future of the Nation's space program.

SEC. 203. *The Congress finds and declares that—*

(1) the United States space program has been an unparalleled success, providing significant economic, social and national security benefits, and helping to maintain international stability and good will;

(2) the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) has provided the policy framework for achieving this success, and continues to be a sound statutory basis for national efforts in space;

(3) the United States is entering a new era of international competition and cooperation in space, and therefore this Nation must strengthen the commitment of its public and private technical, financial, and institutional resources, so that the United States will not lose its leadership position during this decade;

(4) while there continues to be a crucial Government role in space science, advanced research and development, provision of public goods and services and coordination of national and international efforts, advances in applications of space technology have raised many issues regarding public and private sector roles and relationships in technology development, applications, and marketing;

(5) the private sector will continue to evolve as a major participant in the utilization of the space environment;

(6) future national efforts in space will benefit from a review and clarification of civilian and national defense responsibilities in space; and

(7) to maintain the Nation's preeminence in space in the next 25 years, it is necessary to develop clear policy and program goals, which would best be identified through a high-level, multirepresentational public forum that would provide the President and Congress with options from which such goals could be determined.

SEC. 204. *(a)(1) The President shall establish a National Commission on Space (hereinafter in this title referred to as the "Commission"), which shall be composed of 15 members appointed by the President. The members appointed under this subsection shall be selected from among individuals from State and local governments, industry, business, labor, academia, and the general population who, by reason of their background, education, training, or experience, possess expertise in scientific and technological pursuits, as well as the use and implications of the use of such pursuits. The President shall designate one of the members of the Commission appointed under this subsection to serve as Chairman, and one of the members to serve as Vice Chairman. The Vice Chairman shall perform the functions of the Chairman in the Chairman's absence.*

(2) Members appointed under paragraph (1) of this subsection shall be entitled to be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect under section 5332 of title 5, United States Code, for grade GS-18 of the General Schedule for each day, including traveltime, during which such members are engaged in the actual performance of the duties of the Commission. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, United States Code. Individuals who are not officers or employees of the United States and who are members of the Commission shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

(b)(1) The President shall appoint four individuals who are employees of the Federal Government to serve as ex officio members of the Commission.

(2) The President shall also appoint two advisory members of the Commission from among the Members of the Senate and two advisory members of the Commission from among the Members of the House of Representatives. Such members shall not participate, except in an advisory capacity, in the

formulation of the findings and recommendations of the Commission.

(3) Members of the Commission appointed under this subsection shall not be entitled to receive compensation for service relating to the performance of the duties of the Commission, but shall be entitled to reimbursement for travel expenses incurred while in the actual performance of the duties of the Commission.

(c) The Commission shall appoint and fix the compensation of such personnel as it deems advisable. The Chairman of the Commission shall be responsible for—

(1) the assignment of duties and responsibilities among such personnel and their continuing supervision; and

(2) the use and expenditures of funds available to the Commission.

In carrying out the provisions of this subsection, the Chairman shall act in accordance with the general policies of the Commission.

(d) To the extent permitted by law, the Commission may secure directly from any executive department, agency, or independent instrumentality of the Federal Government any information it deems necessary to carry out its functions under this title. Each such department, agency, and instrumentality shall cooperate with the Commission and, to the extent permitted by law and upon request of the Chairman of the Commission, furnish such information to the Commission.

(e) The Commission may hold hearings, receive public comment and testimony, initiate surveys and undertake other appropriate activities to gather the information necessary to carry out its activities under section 205 of this title.

(f) The Commission shall cease to exist 60 days after it has submitted the report required by section 205(d) of this title.

SEC. 205. (a) The Commission shall make a comprehensive investigation of existing and proposed space activities in the United States in order to assess their adequacy in meeting the present and future needs of the Nation. Such study shall include—

(1) a review of the known and possible economic, social, environmental, foreign policy and national security needs of the United States, and methods by which space science, technology, and applications initiatives might address those needs;

(2) a review of the adequacy of the Nation's public and private capability in space science, technology, and applications;

(3) a review and assessment of present issues and issues that may arise as space research, technology development and applications are utilized to meet future national needs; and

(4) an analysis of the findings of the reviews specified in paragraphs (1) through (3) of this subsection, and options and recommendations for a national space policy and program plan.

(b) Issues to be considered pursuant to subsection (a)(3) of this section shall include—

(1) the adequacy of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to serve as the basis for future national space policy;

(2) alternative roles and relationships of the civilian and national security space programs;

(3) alternative roles and relationships of the private and public sectors in national space efforts;

(4) the suitability of existing Federal organizational arrangements to carry out future governmental responsibilities in space research, technology development and applications;

(5) the opportunities for, and barriers to, private sector utilization of the space environment and participation in national space programs;

(6) the methods, occasions and circumstances under which the Nation should pursue a permanent presence in space; and

(7) considerations involving international cooperation and competition in the utilization of the space environment.

(c) Options and recommendations submitted in accordance with subsection (a)(4) of this section shall include an estimate of costs and time schedules, institutional requirements, and statutory modifications necessary for implementation of such options and recommendations.

(d) Within 12 months after the date of the establishment of the Commission, the Commission shall submit to the President and to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives the results of the study conducted under this section, together with recommendations for such legislation as the Commission determines to be appropriate.

Mr. GORTON. Mr. President, for the purpose of authorizing funds for fiscal year 1985 for the National Aeronautics and Space Administration [NASA], the Committee on Commerce, Science, and Transportation reported on May 14 an amendment in the nature of a substitute (H.R. 5154) which authorizes a total of $7,582,400,000 for NASA's fiscal year 1985 activities.

Recognizing the value of NASA's aerospace research and development to our country's scientific and technological capabilities, the Commerce Committee approved, without opposition, this authorization which supports NASA's ongoing activities and missions and several exciting new starts. One of these new starts is the planetary mission to Mars, the Mars Geoscience Climatology Orbiter. The bill also provides ongoing support for NASA's other plenetary missions, the Venus radar mapper mission and the Galileo mission to Jupiter.

The committee has also approved increases in NASA's Space Science and Applications Programs for increased research and analysis, much of which will be performed at our universities and colleges. These increases also provide for the replacement of aging instrumentation at many of our universities and for continued development of critical scientific satellites and observatories.

Consistent with its position in the past, the committee continues to support NASA's Advanced Communications Technology Satellite [ACTS] Program and believes that NASA and the Federal Government have a role in developing long-term, high-risk communications satellite technologies. For these reasons, the committee's authorization bill provides additional funding for an ACTS flight test program.

Historically, the committee and Congress have strongly supported NASA's Aeronautical Research and Technology Programs and, in particular, the Advanced Turboprop Program. This program is examining innovative propeller designs which promise increased fuel efficiency of 15 percent to 35 percent over our present aircraft engine technology. The committee's authorization bill provides additional funding for activities in this program which are designed to lead to a flight-test of a single rotation or counterrotation turboprop concept no later than 1987.

This legislation also provides funding for structural spares for the space shuttle fleet and preserves the option for procurement of a fifth orbiter.

Most importantly, the committee has authorized a new start for a permanently manned space station. This initiative will be a major factor in sustaining U.S. leadership in space as we enter the 21st century and will lead to more ambitious space programs, such as the development and operation of a lunar base, the mining of near-Earth asteroids, and the initiation of a manned Mars expedition.

Due to the relatively small crew size of the space station and its complex and varied functions, the committee believes that it is crucial that the station's automated technologies be designed in a manner that will allow man to perform more productive tasks. The space station, of necessity, will require the development of the optimum mix of man and machine to ensure maximum efficiency and productivity of the station and its inhabitants. Furthermore, the committee recognizes the importance of the timely initiation of the space station definition studies and anticipates that these studies will begin on schedule.

If ever the time were ripe to develop a manned space station, now is the time. This initiative promises an exciting future for the exploration and exploitation of space and for many other innovative initiatives which we are now unable to perceive. This authorization bill reflects the Commerce Committee's belief that a permanently manned space station will dramatically enhance our civil space program and will assert our commitment to maintaining our Nation's position of preeminence in space.

Therefore, I ask unanimous consent that the Senate accept the Commerce Committee's fiscal year 1985 NASA authorization bill as a means of continuing the success in aeronautics and space which NASA and our Nation have enjoyed in the past.

Mr. DOMENICI. Mr. President, I would like to bring to the attention of my colleagues, a significant effort on the part of the National Aeronautics and Space Administration to strengthen science and engineering programs at colleges and universities with significant minority enrollments. All of us recognize the critical importance of technology in our society today and we know that it takes the best education that money can buy to prepare our young people for careers in the high technology sciences. Good solid backgrounds in the sciences and engineering are critical keys to the younger generation's success in future careers. As NASA's fiscal year 1983 annual performance report, submitted in response to President Reagan's Executive Order 12320 to strengthen historically black colleges and universities has indicated, NASA has been making vigorous efforts to support minorities through improved hiring practices in science and engineering programs and I want to commend them for these efforts.

Mr. President, through no fault of NASA these successful efforts have tended to focus on universities and colleges which are historically black and which are located primarily in the Eastern and Southeastern areas of the United States. We in the West and Southwest also have colleges and universities with significant minority enrollments and with substantial needs as well. In fact these areas of the country have significant Hispanic and American Indian enrollments which can also benefit substantially from improved science and engineering programs. NASA understands this situation well and I understand that it is making an effort to focus these same efforts on other colleges and universities with a different mix of minority enrollments. For example, in my own State of New Mexico, there are many such schools: The College of Sante Fe, New Mexico State University, the University of Albuquerque, Eastern New Mexico University, New Mexico Highlands University, the University of New Mexico, and so on.

Mr. President, let me give you some idea of what we are talking about here. Across the United States the average Hispanic enrollment is about 4 percent or a little over 500,000 out of a total enrollment of about 12,390,000. In New Mexico, the numbers are strikingly different. Our total Hispanic enrollment statewide is about 15,300 out of a total of 62,100 or about 25 percent of our total statewide enrollment. While the American Indian enrollment nationally is about seven-tenths of 1 percent, the number is about 4 percent in New Mexico.

What is even more striking is that in 1975, Hispanic enrollment in New Mexico was 15.6 percent. Thus in only 7 years—the figures I have provided are all for 1982, the last year for which figures are available—Hispanic enrollment at colleges and universities in my State has increased an astounding 60 percent from its level in 1975. These increases have occurred at both public and private schools but they share at least one common factor—many of these bright minority students cannot afford to go away to the expensive and large research schools. And I believe they shouldn't have to go away. We have the resources, both human and otherwise to strengthen and improve our minority educational opportunities in the West and Southwest and NASA can play a significant role in assisting us in this task.

I understand that the House committee has conducted extensive discussions with senior officials at NASA and that NASA has agreed to conduct the same kind of successful effort on behalf of other minority groups. In view of this, I want to lend my support to the enlightened and farsighted effort by NASA. I encourage them to look at other colleges and universities in the West and Southwest having significant minority enrollments in an effort to find ways to build closer relations with these schools, meet NASA's research objectives and increase the number of individuals from underrepresented groups in the pool of graduate researchers.

Finally I want to compliment NASA for exercising good judgment in asking a fellow New Mexican, John Hernandez, to chair NASA's advisory committee which will be making recommendations to improve educational opportunities for other Institutions with large minority student enrollments. I look forward to reviewing Dr. Hernandez' recommendations and the NASA plan when they become available in early 1985 and I will continue to vigorously support these and other efforts to improve educational opportunities for minorities.

Mr. President, I understand that the House committee report accompanying this bill, H.R. 5154, contains language highlighting a NASA effort to improve science and education programs at colleges and universities with significant minority enrollments. I ask the Senator from Washington, am I correct?

Mr. GORTON. Yes; that is correct. Through a small but nevertheless very significant effort, NASA has doubled its research grant money that it is spending at what are known as the historically black colleges and universities, from about $3 million to $6 million.

Mr. DOMENICI. I further understand that these funding levels have tended to focus on colleges and universities with largely black minority enrollments.

Mr. GORTON. That is correct. Although it was recognized at the time that the effort would leave out institutions with other significant minority populations, NASA was responding to a specific Executive order and thus it concerned itself first with complying with the Executive order.

Mr. DOMENICI. Am I correct that this House report language now encourages NASA to look at ways in which the educational opportunities in the NASA supported science and engineering research grant programs might be improved for other institutions serving significant minorities.

Mr. GORTON. That is correct also.

Mr. DOMENICI. I am pleased to hear this from the Senator from Washington for as he knows we in New Mexico have experienced substantial increases in minority enrollments, especially among our Hispanic and American Indian students. As you may know New Mexico has a Hispanic student population at its colleges and universities of approximately 25 percent. In contrast the national average is about 4 percent. Whereas the national enrollment average for our American Indian students is about seven-tenths of 1 percent, the average enrollment in New Mexico is 4 percent.

Mr. GORTON. I understand the Senator's point and compliment him for his concern.

Mr. DOMENICI. Can the Senator tell me if I am correct that NASA will report back to the Congress what steps it will take to improve science and engineering research training for minority groups.

Mr. GORTON. The Senator is correct, NASA will provide a report to us in early 1985 spelling out the recommendations of an advisory group and I am sure you will want to review closely its recommendations.

Mr. HOLLINGS. Mr. President, I strongly support H.R. 5154, the fiscal year 1985 NASA authorization bill, and I would like to associate myself with the remarks of the distinguished ranking member of the Science, Technology, and Space Subcommittee.

I also would like to compliment the chairman of the subcommittee for the excellent job he has done in developing the fiscal year 1985 NASA authorization bill.

Mr. President, there has been much discussion during the 98th session of Congress as to the future of America and the importance of high technology research and development to that future. Well, if ever there was a bill that year in and year out enhanced the technological leadership posture of this Nation, it is the NASA authorization bill.

Mr. President, the bill that stands before us today promotes the Nation's Civilian Space Program and America's future. It promotes the type of programs that dreams are made of, and I hope this great Nation of ours never stops dreaming.

I am proud to associate myself with this legislation and with the committee's increased support of physics and astronomy, planetary exploration, space applications, and aeronautical research and technology.

I also am proud to associate myself with the committee's support of the design and engineering phase of a permanently manned space station and with the emphasis given to increased private sector and international participation in the Civilian Space Program.

Mr. President, we are entering another new era of space—the era of a permanent presence in space. I feel confident that the Senate version of H.R. 5154 and the committee's strong support of a permanently manned space station attest to our commitment to meet and respond to the future challenges and future opportunities of space.

I am particularly pleased that the Senate-reported version of H.R. 5154 would create a National Commission on Space. This is an initiative that I proposed early on in the 98th session of Congress. At that time, I realized that we had just finished the first 25 years of space with a record of significant and remarkable accomplishments—thanks to NASA—and that we were preparing to enter the next new and exciting era. I also was aware of the changing environment in the civilian space sector. I, therefore, thought it appropriate to establish an independent Commission to look at existing and future space activities and to make recommendations as to the preferred course of action for the United States to pursue.

Mr. President, there is a useful precedent for the creation of such a Commission with which many of my colleagues are familiar. A number of years ago we faced a new era of oceans development. In response, the Congress in 1966 established a Marine Resources Commission to assess the potential for marine resource development and to discuss a variety of policy issues related to the utilization of the oceans. The so-called Stratton Commission's report provided an extremely valuable guide in the oceans area, much as the National Commission on Space report would provide a useful guide for the future of space.

Mr. President, much has happened since the actions of the Soviet Union first mobilized U.S. efforts in space. Whereas for many years the only competition the United States faced in space was from the Soviet Union, today this no longer is true. Other nations have developed a capability to operate in space. We face increased competition in space, particularly for commercial purposes, from the Europeans and the Japanese. The future of the U.S. leadership position is at stake and with it the economic, scientific, and national security benefits that a strong national effort would provide.

In light of this situation, a National Commission on Space is required to reinforce the Nation's resolve to utilize the space environment for the maximum national benefit and to establish a public consensus on the direction of our space program.

As was noted in the Office of Technology Assessment Report, "Civilian Space Policy and Applications,"

> In order to plan for the future of the space program in the context of other national needs, the United States needs a multi-representative forum to discuss and recommend comprehensive, long-term goals. Such a forum could coordinate the interests of all the major actors in order to allow equitable and stable decisions to be made about the overall direction of the civilian space program. Though such a body would not itself direct the course of the space program, because this responsibility lies with the President and Congress, it could focus the debate and provide timely advice . . .

Mr. President, I support H.R. 5154, the National Commission on Space, and the permanently manned space station. I am pleased to be associated with this legislation and with NASA. NASA's "can do" attitude serves as an example for us all. I salute NASA for its accomplishments during its first 25 years in existence and ask my colleagues to support this legislation so that we can get on with the next 25 years of civilian space activities.

Mr. HEFLIN. Mr. President, I rise in support of H.R. 5154, the fiscal year 1985 National Aeronautics and Space Administration Authorization, and ask for my colleagues' support.

I also would like to thank my distinguished colleague, the able chairman of the Science, Technology, and Space Subcommittee, for his cooperation and for the excellent job he has done in drafting this legislation.

Mr. President, the Nation is about to enter a new era of space—the era of space commercialization—and I feel strongly that the legislation before you today is the best possible vehicle to facilitate entry into this new and exciting era. The creation of the National Commission on Space, the initiation of a space station, promotion of a new space commercialization program and increased funding for materials processing are all indicative of what needs to be done to meet the challenges that lie ahead.

Mr. Preisdent, we hear a lot about our space program, and as a nation we have a right to be proud of our accomplishments in space. Putting a man on the Moon, the development of a reusable space transportation vehicle, the Voyager and Explorer missions, Skylab, Spacelab, IRAS, and Solar Max, just to mention a few, are remarkable achievements. However, we cannot rest on our past laurels. We must be prepared to make the necessary commitment and commit the necessary resources to ensure the technological leadership of the United States in space.

I am proud to say that H.R. 5154, as reported by the Senate Commerce Committee, does just that.

Mr. President, the fiscal year 1985 NASA Authorization bill authorizes $7.6 billion for research and development, spaceflight, control and data communications, construction of facilities, research and program management, and other purposes. The proposed level of funding in H.R. 5154 is $0.1 billion more than the President's fiscal year 1985 budget request but $0.1 billion less than the Senate Commerce Committee's March 15 report to the Senate Budget Committee. The committee, therefore, presents a prudent request that addresses the desires of the Senate for the United States to maintain its technological leadership in space and to reduce the Federal budget deficit.

Mr. President, at this time I ask unanimous consent that a table depicting the relationship of the Senate bill to the administration's request be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

NASA BUDGET SPREAD SHEET FOR FISCAL YEAR 1985

[In millions of dollars]

Program	Fiscal year 1984 operating plan	Fiscal year 1985 budget request	Senate Commerce Committee fiscal year 1985 proposal	Comments
RESEARCH AND DEVELOPMENT				
Space transportation systems				
1(a)(1) space transportation cap. dev	431.7	361.4		
Spacelab	112.5	69.3		
Upper stages	143.2	92.4		
Engineering and tech. base	93.1	105.7		
Payload oper. and sup. equip	59.6	61.3	5.0	Reductions associated with payload schedule delays
Advanced programs	70.0	14.5		
Tethered satellite system	3.3	18.2		

NASA BUDGET SPREAD SHEET FOR FISCAL YEAR 1985—Continued

[In millions of dollars]

Program	Fiscal year 1984 operating plan	Fiscal year 1985 budget request	Senate Commerce Committee fiscal year 1985 proposal	Comments
Space station: 1(a)(2) space station		150.0		
Space science and applications:				
1(a)(3) physics and astronomy	567.6	677.2		
Space telescope dev	195.6	195.0		
Gama ray observatory dev	86.2	120.2		
Shuttle/spacelab payload dev	80.9	105.4	+14.0	Adv. tech. dev. for space plasma lab (+4) SOT (+6) SIRTF (+4)
Explorer development	48.7	50.9		
Mission opers. and data analysis	68.1	109.1		
Research and analysis	35.8	36.9	+14.0	Adv. tech. dev. for AXAF (+6) SR&T (+3) gravity probe B (+3) instrumentation (+2)
Suborbital program	52.3	56.7		
1(a)(4) life sciences	58.0	63.3		
1(a)(5) planetary exploration	217.4	286.9		
Galileo development	79.5	56.1		
Venus radar mapper mission	29.0	92.5		
International solar-polar mis	6.0	9.0		
Mars geoscience/climatology orb		16.0		
Mission ops. and data analysis	43.4	58.8		
Research and analysis	59.5	54.5	+10.0	Includes funding for planetary research at univ. (+8) and laboratory equipment (+2).
1(a)(6) space applications				
Solid Earth observations	(75.4)	(63.6)		
Landsat-4	16.8			
Extended mission oper				
Shuttle/spacelab payloads	16.0	18.1		
Geodynamics	28.0	29.9		
Agristars				
Research and analysis	14.6	15.6		
Environmental observations	(162.0)	(220.7)		
Upper atmos. res. and anal	28.5	31.0		
Atmospheric dynamics and rad. research and analysis	27.5	28.5		
Oceanic processes res and anal	18.2	19.4		
Space physics res. and anal	16.7	16.7	+8.0	+5 for adv. tech. dev. and +3 for instrumentations
Shuttle/spacelab payload dev	7.6	7.8		
Opor. sat. imp. prog	.6			
Earth radiation budget exp	15.5	8.1		
Extended mission ops	27.4	29.5		
Interdisciplinary res. and anal		1.0		
Tethered satellite payloads		3.0		
Scatterometer		15.0		
Upper atmos. res. sattelite	20.0	60.7		
Materials processing	23.6	23.0	+10.0	General increase
Communications	21.1	20.6	+45.0	Flight testing ACTS
Information system	8.9	16.2		
1(a)(7) technology utilization	9.0	9.5		
Space commercialization [1]			+5.0	National Centers of Excellence and R&D
Aeronautics and Space Tech.				
1(a)(8) aeronautical research and tech	302.3	342.4		
Research and technology base	(86.5)	(109.1)		
Systems technology programs	(86.5)	(109.1)		
Rotocraft sys. tech	27.6	26.5		
High-performance aircraft sys. tech	19.9	21.0		
Subsonic aircraft sys. tech	5.0	19.0		
Adv. prop. systems tech	17.0	16.1	+15.0	Advanced turboprop
Numerical aero. simu	17.0	26.5		
1(a)(9) space research and tech	137.0	150.0		
Space research and tech. base	125.4	136.0		
Systems tech. prog	(7.0)	(9.1)		
Space flight systems tech	7.0	7.0		
Chemical prop. sys. tech		2.1		
Standards and prac	4.6	4.9		
Space tracking and data systems:				
1(a)(10) tracking and data acquistion	14.2	15.3		
Advanced systems	14.2	15.3		
Space flight, control and data com:				
1(b)(1) Space shuttle prod./oper. cap	1,649.3	1,465.6		
Orbiter	716.3	606.8	+45.0	Structural spares and prod. readiness for 5th orbiter
Launch and mission sup	277.7	234.8	-15.0	General reduction
Propulsion systems	618.0	599.0		
Changes and systems upgrading	37.3	25.0	-25.0	Reduction of Administrator's reserve
1(b)(2) Space transportation oper	1,452.0	1,339.0	-20.0	General reduction
Shuttle operations	(1,402.0)	(1,339.0)		
Flight operations	323.9	316.0		
Flight hardware	739.1	758.0		
Launch and landing oper	339.0	265.0		
Expendable launch veh	50.0			
1(b)(3) space tracking and data acq	674.0	795.7		
Space network	(259.1)	(386.5)		
TDRSS contract	204.3	319.9		
Other	54.8	66.0		
Ground network	249.3	223.6		
Communicitions and data sys	165.6	185.6		
Total	3,775.3	3,600.3		
1(c) Construction of facilities	155.5	160.0	-5.0	General reduction and -5 for RAS program
1(d) Research and program management	1,258.5	1,331.0		
Net increase			+91.0	
Committee recommendation			7,582.4	

[1] New line item.

Mr. HEFLIN. Mr. President, in developing its fiscal year 1985 NASA authorization bill, the Senate Commerce Committee had four principal objectives:

First, provide the necessary support to ensure the technological leadership of the United States in space;

Second, send a signal to the private sector that the Federal Government is committed to the commercialization of space;

Third, indicate a strong commitment to and support of space science and space applications programs; and

Fourth, lay a firm foundation for the next logical step into space—a permanently manned space station.

Mr. President, the fiscal year 1985 NASA authorization bill blends strong support for ongoing activities with funding for important new initiatives such as the upper atmospheric research satellite and the Mars/geoscience/climatology orbiter. Of particular interest in the bill are two new line items—one to initiate a detailed front-end design of a permanently manned space station, the other to provide support for space commercialization—and one major policy initiative—creation of a National Commission on Space.

Mr. President, let met briefly address each of these items starting with the National Commission on Space.

Mr. President, the creation of a 15-member independent National Commission on Space would do much to assist the United States in maintaining its preeminence in space, promoting the peaceful exploration and utilization of the space environment, and in developing policy and program options for the future of the Nation's space program. Right now is a dynamic period in the space arena, and the creation of such a Commission could result in a set of useful recommendations, supported by the public, as to how best to approach the Nation's civilian space program and how best to meet the challenges of the 1980's and 1990's.

At this time, I would like to compliment the ranking member of the committee, my distinguished friend and colleague, who originally proposed the creation of such a National Commission on Space.

Next, I would like to to turn to the space commercialization initiative, a new initiative that I have strongly endorsed for quite some time.

Mr. President, over the past two decades, significant payoffs—both private and public—have been demonstrated in several space venture areas including communications satellites, meteorology satellites, Earth resources satellites, and, more recently, space manufacturing. With the space shuttle offering routine and reliable access to space and with other facilities for ground-based testing and onorbit research, the committee believes that the circumstances are appropriate for encouraging new private sector participation and investment in commercial space activities.

However, unless the public and private sector join to develop the opportunities presented by new space technologies and unless entrepreneurial forces are engaged more fully, the United States will fall behind in the contest for leadership in space and the economic rewards associated with that position.

Mr. President, the committee realizes that the commercial payoffs of a Government initiative in space commercialization may not be immediate. But the payoffs may never exist unless a foundation is established now and unless the Federal Government sends a signal to the private sector that it is committed to space commercialization.

With that end in mind, the committee urges NASA to consider the following elements within their overall space commercialization initiative:

First, the initiation of several National Centers of Excellence to encourage partnerships among industry, academia, and Government to perform research in areas with a high potential payoff;

Second, prioritized by NASA in selected areas where early research and development results can be expected to foster commercial space endeavors;

Third, the use of independent intermediaries with strong business community ties and credentials to identify and stimulate a much broader cross section of potentially interested American businesses;

Fourth, identification of NASA facilities and equipment available for increased private sector use in ground tests and flight experimentation; and

Fifth, provision of exploratory commercialization seed funding to help entrepreneurial technologists.

Finally, I come to the last new initiative I would like to address before turning to consideration of other important programs and missions included in the fiscal year 1985 NASA authorization—a permanently manned space station.

Mr. President, if ever the time were ripe to develop a space station, now is the time.

The required infrastructure is in place, the necessary transportation mode exists, and the degree of interest in commercial space activities by industry and foreign governments alike is at a peak.

Oh, I realize there is not complete unanimity on the question of the space station proposal, that some members of the science community are concerned with a major new initiative and some Members of the Congress are concerned about the budget implications. That is typically the case whenever any bold, new initiative is proposed. To those individuals, however, I give my pledge that the committee will exert the maximum degree of control over NASA to bring the space station on line in time and within cost and that the committee will continue to support the growth of space science and space applications programs. I can assure you that problems encountered with the development of the shuttle will not be allowed to repeat themselves.

Mr. President, as noted above the space station is a bold, new initiative. Not surprisingly, there is much debate. I would hope, therefore, that the Members take time to read the committee's comments in the report on the space station because I believe it includes some compelling arguments as to why the Nation should develop a permanently manned space station.

Simply stated, the space station represents a bold step into the future, into the 21st century, at a time when the degree of international and private sector interest in space is at a peak, as is the degree of competition to the U.S. space program from the international and private sector. The space station is a bold step toward the "continent" of low-Earth orbit and the development of a space infrastructure that represents a major evolutionary step in man's experimentation, use and conquest of space. It also is the type of action required if the Nation is to maintain its leadership role in space, a role that could easily be lost if the United States fails to proceed with the development of a permanently manned space station.

Mr. President, with your permission, I would like to digress a little because I think a recent experience I had is of value to any discussion of the space station.

On May 17, 1984, the Science, Technology, and Space Subcommittee of the Senate Commerce Committee held a hearing on the Solar Max shuttle mission. I can only say that the response to the mission's exploits by the Members and the public was overwhelmingly supportive. One has but to scan the related Solar Max press accounts to realize the world prestige this country earns from its space exploits. The Solar Max mission also made it clear that it is man in space that captures the hearts, minds, and attention of the world, that man in space presents the capability of turning potential failure into success.

Mr. President, the Solar Max hearing also made another very important but less publicized fact clear to this Member. The shuttle, despite the problems that were encountered in its development, has greatly improved upon the economics of space transportation and experimentation and is presenting new and untold opportunities to the user community, including space science, space science applications and the private sector commercial applications. The rescue and repair of the Solar Max satellite points to a whole new dimension of space exploration and scientific experimentation. The day and age of the disposable satellite are now passé. Reusable satellites and the capabilities of the shuttle combine to greatly enhance the economics of space and the future of the U.S. civilian space program.

Mr. President, the lessons of the shuttle are important and should not be forgotten as we prepare to enter the space station era. The lessons of the Solar Max mission are important, too. Together they point to the fact that a "Man's Reach Should Far Exceed His Grasp!" and that the United States must move forward with the exploration and exploitation of space.

Mr. President, I strongly support the development of a permanently manned space station and the contention that "it is man, not merely machines, in space that captures the imagination of the world." I intend to pursue the development of the permanently manned space station closely. I also intend to work hard to ensure the appropriate mix of man and machine, to involve the space science and applications communities in the design of the space station, and to insure accessible and affordable access to the space station by the user community.

Mr. President, great nations do great things. I think the United States is a great Nation and that the commitment to a permanently manned space station is a sign of that greatness. I strongly endorse the permanently manned space station and would ask my colleagues to support this new initiative.

As for the overall NASA budget, let me make a few brief remarks.

First, I should indicate that the committee made every effort to reduce unnecessary expenditures in the fiscal year 1985 NASA authorization in a responsible manner. The $75 million in proposed reductions to the President's fiscal year 1985 NASA budget request are meaningful cuts that will in no way affect the level of effort of any one program or NASA's overall capabilities. Second, every effort was made to insure a balanced NASA budget with an appropriate mix of activities. There were areas, therefore, where the committee was required to add additional moneys to insure the level of effort sought by the committee and to insure the diversity required of a civilian space program.

I am particularly pleased with the committee's proposed increases for space science and applications activities including gravity probe B, the solar optical telescope, the space plasma lab, the Shuttle Infrared Telescope Facility, the Advanced X-ray Astronomy Facility, as well as the proposed increase for research and analysis, materials processing and further investments in instrumentation.

Next, I should note that the committee seriously weighed the pros and cons of NASA's decision to terminate the flight test of the advanced communications technology satellite [ACTS]. Based on the testimony received by the committee, it is clear that the growing challenge of foreign competition warrants an aggressive governmental program in communications satellite research and development. I support the committee's decision, therefore, to provide an increase of $45 million for the ACTS program. This level of funding should lead to a flight test of ACTS in 1989 and help the United States maintain its technological lead in satellite communications.

At the same time, I fully support the proposed increases of $45 million for structural spares for the fifth orbiter and $15 million for the advanced turboprop program. I await NASA's study as to the consequences of any further delays in procurement of a fifth orbiter and the results of NASA's deliberations with interested private sector parties. I applaud NASA's efforts in the aeronautical research and technology program area to insure the competitive future of the U.S. aviation manufacturing industry.

Mr. President, overall I think the committee has done a commendable job in compiling a bill that prudently balances the diverse needs and requirements of the Nation's civilian space program. The fiscal year 1985 authorization bill blends the committee's desire to be competitive in the short term with the desire to be a world leader in the future, and I would ask that my colleagues support this bill.

Mr. LAUTENBERG. Mr. President, I rise in support of the NASA authorization bill for fiscal year 1985.

The bill provides for the continuation of several aeronautics and space programs, the initial design work on a proposed civil space station, and the creation of a National Commission on Space to help this Nation devise appropriate space policy and programs for the future. Finally, the bill reaffirms our commitment to NASA space applications programs to further space communications technology.

Pathbreaking work by NASA was responsible for the growth of a new industry in communications satellite manufacturing, and a new industry in satellite communications services. These are industries in which the United States has enjoyed a trade surplus and a technological edge. However, our dominance is being challenged by foreign nations that are eager to develop capabilities of their own.

The advanced communications technology satellite program, which is authorized at $50 million for fiscal year 1985, is intended to respond by leapfrogging existing technology in satellite communications. The bill contemplates a flight test program, with a launch in 1989. The ACTS program will test new high-risk technologies that will enhance spectrum efficiency and increase the economies of satellite communications for rural and remote areas.

Initial work on the project has been authorized in prior years. In 1983, bids were solicited. A team of contractors led by RCA in New Jersey, along with TRW in California, and Motorola in Arizona, was selected and a contract was negotiated.

Notwithstanding clear congressional support for the program, the contract was not signed and work on the project has been at a standstill since the end of the year. NASA argued this year, for the first time, that America's needs could be met by a ground-based research program, along with incremental technological advances wholly funded by private concerns. Nothing could be further from the truth, nor carry greater risks for American industry, the American user community, and America's technological superiority. In the course of Commerce Committee hearings on the ACTS program, the testimony overwhelmingly supported this assessment.

I am pleased that the committee has agreed to maintain the flight test program of ACTS, an initiative I have strongly supported. The bill we have reported does not tolerate further delay. For, in race for technological leadership, continuing delay can be fatal. The bill mandates the execution of the contracts that have already been negotiated, and the commencement of work without delay. Only then can NASA be expected to meet the 1989 launch date prescribed in the bill.

The bill also authorizes $150 million for a civil space station. This is an initial step in what may be the next major undertaking in space. A space station program could result in innovations in automation, robotics, and artificial intelligence, while providing the platform for scientific experiments and the development of manufacturing in space. The committee's initial authorization should start the process in earnest for planning and designing an appropriate civil space station.

Another important element in the NASA Act is the creation of a National Commission on Space. This proposal is similar to that embodied in Senator HOLLINGS' bill, S. 955, which I was pleased to cosponsor. There is no question that NASA's work in the past has made a significant contribution to American technological leadership and industrial growth. The advice of an independent commission on space should assist the Congress and the administration in charting our path for the future.

Mr. President, I want to acknowledge the work of the chairman of the Subcommittee on Science, Technology, and Space, Senator GORTON, and the ranking minority member, Senator HEFLIN, for their hard work in developing a NASA authorization bill. This legislation will enable us to continue to reap the benefits from our Nation's aeronautics and space activities.

I urge my colleagues to support it.

The PRESIDING OFFICER (Mr. Kasten). The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 5154) was passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I thank both the majority leader and the minority leader for their courtesy.

Mr. BAKER. Mr. President, I move the Senate insist on its amendment and request a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. Kasten) appointed Mr. Packwood, Mr. Gorton, Mr. Goldwater, Mr. Lautenberg, and Mr. Heflin conferees on the part of the Senate.

Mr. BAKER. Mr. President, next I would say to the minority leader that I propose that the Senate go to Calendar Order No. 871 if he does not object.

Mr. BYRD. Mr. President, there is no objection.

Mr. BAKER. I thank the minority leader.

AUTHORIZATION OF APPROPRIATIONS FOR NONPERFORMING ARTS FUNCTIONS OF THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 871.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2547) authorizing appropriations to the Secretary of the Interior for the services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 2547) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2547

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (e) of section 6 of the John F. Kennedy Center Act (72 Stat. 1698, 1699; 20 U.S.C. 76h, 76l) is amended by striking out the period in the last sentence and adding in lieu thereof ", and not to exceed $4,612,000 for the fiscal year ending September 30, 1985, and such sums as are necessary for the fiscal year ending September 30, 1986.".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATURAL GAS PIPELINE SAFETY ACT AMENDMENTS

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 889.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2688) to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

There being no objection, the Senate proceeded to consider the bill.

Mr. FORD. Mr. President, I had considered offering an amendment to S. 2688, the natural gas pipeline safety reauthorization bill. Because of the concern of the chairman of the Surface Transportation Subcommittee that this authorization bill be acted upon promptly, I am refraining from offering an amendment. I would like to take the opportunity to discuss the significance of a matter which needs to be addressed by this body. For many years, the companies engaged in the transmission of natural gas by pipeline have paid ad valorem property taxes much higher than taxes paid by the owners of other commercial and industrial properties due to inequality of assessment practices. Because of the relative inability to move pipeline property out of a "high tax State" to a more favorable tax climate, State assessors have utilized a higher assessment ratio against pipeline property than other commercial and industrial property.

Under current law, States assess the value of property of an interstate natural gas pipeline company in such a manner as to cause such property to bear a disproportionately greater share of the State property tax burden as compared to other commercial or industrial property in the State. The property belonging to an interstate natural gas pipeline company is assessed at a higher value relative to its true market value than other commercial and industrial property for State and local property tax purposes. This method of disproportionate assessment discriminates against pipeline property.

In the 94th Congress, the railroad industry sought and received relief from discriminatory State property tax treatment in the Railroad Revitalization and Regulatory Reform Act of 1976, the so-called 4-R Act—Public Law 94-210. Congress has also extended appropriate relief in the past to other businesses in interstate commerce such as trucks, buses, and airlines.

Natural gas pipeline companies are not attempting to avoid or evade paying their fair share of taxes. Rather, this would eliminate the imposition of an excessive portion of these taxes. Since the regulatory mechanism under which natural gas pipelines operate, however, allows inclusion of property taxes on "cost of service," such taxes are included in the price of the gas charged ultimate consumers. If property taxes are reduced, the "cost of service" is reduced and the consumer benefits by lower prices.

I ask unanimous consent to have printed in the Record the statement of former Senator Marlow W. Cook who appeared before the Surface Transportation Subcommittee on April 24.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Statement of Marlow W. Cook on Discrimination in Property Taxation of Interstate Commerce

My name is Marlow W. Cook and I am appearing before this Committee to address a matter of equity in the state taxation of gas pipeline property operating in interstate commerce. A coalition of 21 gas pipeline companies has formed itself to bring to the attention of Congress a wrong that badly needs to be set right. There exists in this country a pattern of assessment practices in many states which result in property taxes higher than the proportion of taxes paid by commercial and industrial property owners in many of the 48 states in which pipelines operate.

At the outset, I want to express my concern that certain state legislatures are currently considering or have recently enacted new legislation which will exacerbate the problem and further increase property taxes in a discriminatory way on pipeline property. Recently one state has passed legislation which would classify utility property at 30% of fair market value while setting the percentage at 15% for all other property. The effect of this is to tax pipelines 100% greater than commercial and industrial property. Other states have enacted laws setting percentages of assessed value on gas pipeline property from 30% to 67% higher than other commercial and industrial property.

Gas pipelines operating in interstate commerce serve consumers in states far beyond its borders. Since the additional taxes are passed on as "cost of service" to the consumer, the taxing states have effectively "experted" its tax burden to citizens of other states.

State action in the past to impose excessive property taxes on interstate gas pipeline threatened to burden citizens of other states was struck down by the U.S. Supreme Court in *Maryland* v. *Louisiana* in 1981. The State of Maryland joined by several other states challenged the constitutionality of the Louisiana "first use" tax on natural gas processed in Louisiana and sold to out-of-state customers. In upholding the challenge by the several states against Louisiana, the Court stated that the states right to tax interstate commerce is limited and no state tax may be sustained unless the tax, among other things, is fairly apportioned and does not discriminate against interstate commerce.

The imposition of a tax on property on a basis often twice as high as other property is an unfair burden on the pipelines. States which classify interstate gas pipeline property at a higher percentage of value than on other property are creating a discriminatory burden on interstate commerce.

For several years, the companies engaged in the transmission of natural gas by pipeline have paid property taxes much higher than taxes paid by the owners of other commerical and industrial properties due to inequitable assessment practices. Because of the relative inability to move pipeline property out of a "high tax state" to a more favorable tax climate, State assessors have utilized a higher assessment ratio against pipeline property than other commercial and industrial property.

Many states assess the value of property of an interstate natural gas pipeline company in such a manner as to cause such property to bear a disproportionately greater share of the state property tax burden as compared to other commercial or industrial property in the state. The property belonging to an interstate natural gas pipeline company is assessed at a higher value relative to its true market value than other commercial and industrial property for state and local property tax purposes.

Under current federal law, there is no provision to prohibit such discriminatory tax treatment of property belonging to interstate natural gas pipeline companies. With respect to property belonging to other companies operating in interstate commerce, several laws have been passed to prohibit discriminatory tax treatment very similar to that which interstate natural gas pipeline companies currently experience. Most recently, the Bus Regulatory Reform Act of 1982 (Pub. L. No. 97-261) amends the Interstate Commerce Act (49 U.S.C. 11503a) to prohibit discriminatory property tax treatment of all motor carriers, including buses. Formerly this section prohibited such discriminatory tax treatment only of motor carriers of property (such as trucks) and was enacted under the Motor Carrier Act of 1980 (Pub. L. No. 96-296). Also, the Tax Equity & Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248) protects the airlines from discriminatory taxes.

Prior to the above legislation, the railroad industry sought and received relief from discriminatory state property tax treatment in the Railroad Revitalization and Regulatory Reform Act of 1976, "4-R Act," (Pub. L. No. 94-210).

Current law should be amended to prohibit discriminatory state tax treatment of property of interstate natural gas pipeline companies so as to remove an undue burden on interstate commerce. Prohibition of this discriminatory tax treatment would promote equity and fairness as between the state property tax treatment of interstate natural gas pipeline company property and the property of other commercial and industrial companies not subject to discriminatory tax treatment. In addition, the prohibition of discriminatory tax treatment of interstate natural gas pipeline companies would be consistent with the policy and Congressional intent underlying recent legislation prohibiting such discriminatory state tax treatment of airline, buses, trucks and railroad companies.

Mr. FORD. Mr. President, I have been assured by the chairman of the Surface Transportation Subcommittee that he will hold hearings in this session of Congress so that this issue will be fully addressed and remedial legislation adopted. I appreciate the courtesies of the chairman and will cooperate in any way to move this matter toward an early resolution.

The **PRESIDING OFFICER.** The question is on the engrossment and third reading of the bill.

The bill (S. 2688) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2688

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(a)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $3,472,000, for the fiscal year ending September 30, 1985; and

"(4) $3,698,000, for the fiscal year ending September 30, 1986.".

(b) Section 17(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(b)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $3,728,000, for the fiscal year ending September 30, 1985; and

"(4) $3,970,000, for the fiscal year ending September 30, 1986.".

SEC. 2. (a) Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(a)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $900,000, for the fiscal year ending September 30, 1985; and

"(4) $985,500, for the fiscal year ending September 30, 1986.".

(b) Section 214(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(b)) is amended by—

(1) striking out "and" at the end of paragraph (1);

(2) striking out period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $500,000, for the fiscal year ending September 30, 1985; and

"(4) $585,000, for the fiscal year ending September 30, 1986.".

SEC. 3. (a) Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1683(a)) is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

(b) Section 213(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2012(a)) is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUREAU OF LABOR STATISTICS 100TH ANNIVERSARY

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 966.

The **PRESIDING OFFICER.** The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 278) to commemorate the 100th anniversary of the Bureau of Labor Statistics.

The **PRESIDING OFFICER.** Is there objection to the request of the majority leader?

There being no objection, the Senate proceeded to consider the joint resolution.

The **PRESIDING OFFICER.** The question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res 278) was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 278

Whereas legislation was enacted on June 27, 1884, to establish a bureau to "collect information upon the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity";

Whereas the Bureau of Labor Statistics has completed a century of service to government, business, labor, and the public by producing indispensable data and special studies on prices, employment and unemployment, productivity, wages and other compensation, economic growth, industrial relations, and occupational safety and health;

Whereas many public programs and private transactions are dependent today on the quality of such Bureau statistics as the unemployment rate and the Consumer Price Index which play essential roles in the allocation of Federal funds and the adjustment of pensions, welfare payments, private contracts, and other payments to offset the impact of inflation;

Whereas the Bureau pursues these responsibilities with absolute integrity and has a reputation for being unfailingly responsive to the need for new types of information and indexes of change;

Whereas the Bureau has earned an international reputation as a leader in economic and social statistics;

Whereas the Bureau meets the public need for timely and accurate information by publishing data in the most appropriate printed form, including press releases, periodicals, bulletins, and special reports, and by making data available through microfiche and new electronic services;

Whereas the Bureau has pioneered in the development of computer applications to data gathering and statistical analyses; and

Whereas the Bureau has established the highest standards of professional competence and commitment: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That special recognition and commendation be given on the one hundredth anniversary of the establishment of the Bureau of Labor Statistics for the century of exemplary service provided by the administrators and employees of the Bureau in collecting and disseminating vital information to the Nation.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BON SECOUR NATIONAL WILDLIFE REFUGE

Mr. BAKER. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 998.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4921) to provide for the selection of additional lands for inclusion within the Bon Secour National Wildlife Refuge, and for other purposes.

The PRESIDING OFFICER. Is there objection?

Without objection, the Senate proceeded to consider the bill.

Mr. CHAFEE. Mr. President, the primary purpose of H.R. 4921 is to provide for the inclusion of an additional area of 2,000 acres in the Bon Secour National Wildlife Refuge. The Bon Secour Refuge is an undisturbed gulf coast beach system on the Alabama shore near the mouth of Mobile Bay. It was established for the protection of migratory birds, endangered and threatened species, and other fish and wildlife, as well as to provide outdoor recreation and interpretative education opportunities.

Bon Secour National Wildlife Refuge was established by Public Law 96-267 in 1980, which authorized $23.5 million for land acquisition and $1.5 million for development. The refuge is composed of four units totaling 10,000 acres. The refuge encompasses some of the best remaining undisturbed gulf coast beach ecosystem between Pensacola, FL, and New Orleans, LA.

The additional acreage to be acquired under H.R. 4921 would be called the Sand Bayou unit, located around Oyster Bay. The proposed Sand Bayou unit contains diverse habitat and would increase the net wildlife value of the refuge. Approximately 800 acres of the proposed Sand Bayou unit are owned by the Doctors Land Trust and 1,200 acres are owned by private citizens in small acreage plots. A portion of the lands in the Sand Bayou tract of uplands will probably be developed in a manner similar to the other land in the vicinity if left unprotected. Such development would not only destroy the wildlife values of the lands being developed, but could significantly degrade those values of adjacent wetlands. The Nature Conservancy is actively trying to purchase this area and hold it until funds are appropriated.

Mr. President, prompt action on this bill is necessary to enable the Nature Conservancy to purchase a portion of this area prior to June 23 when an option they are holding expires. With passage of this bill, the Nature Conservancy will, at the request of the Fish and Wildlife Service, be prepared to acquire the parcel.

Although the Sand Bayou tract of land has an estimated value of $4.3 million, the addition of the approximately 2,000 acres to the Bon Secour National Wildlife Refuge will not result in any additional acquisition costs to the Federal Government. There is a proposal pending at the National Oceanic and Atmospheric Administration to establish an estuarine sanctuary at Skunk Bayou unit, a comparable parcel of land which is already within the authorized boundaries of the refuge. The establishment of an estuarine sanctuary could provide protection for that area without acquisition.

The refuge is being acquired by the U.S. Fish and Wildlife Service on a willing-seller basis. To date, $15.5 million has been appropriated and approximately 3,500 acres have been acquired. H.R. 4921 does not provide for an increase in the current authorization level. Approximately $8.5 million remains under the current authorization level for this refuge and approximately 6,500 acres of designated refuge plus the additional 2,000 acres remains to be acquired. There is adequate funding under the current authorization level to complete acquisition of these refuge lands.

An additional purpose of H.R. 4921 is to provide eligibility for American Samoa for funding under the Federal Aid in Wildlife Restoration Act.

When the House Merchant Marine Committee reported the bill, they added an amendment to the Federal Aid in Wildlife Restoration or Pittman-Robertson Act. Under that act, funds from excise taxes on arms and ammunition and bows and arrows are apportioned to the States on a statutorily determined formula for up to 75 percent of the cost of approved land acquisition, research, development and management projects. Some of the funds go for target ranges and hunter safety programs.

Puerto Rico, Guam, the Virgin Islands and the Northern Mariana Islands each receive a special apportionment from one-sixth to one-half of 1 percent of the amount available for distribution to the States and territories. American Samoa is not currently eligible under the act to receive funding. This bill would amend the act to give American Samoa one-sixth of 1 percent of PR funds. In 1984, that would have equaled $120,000. There would be no net impact on Federal expenditures although the amounts received by the States would decrease from $2,000 to $3,000 each.

Mr. President, by introducing H.R. 4921 and by shepherding it through Congress, Congressman EDWARDS has served us all well. The benefits that will be derived from preservation of these important refuge lands will accrue to all of us. This is a good bill and one that deserves the support of all of my colleagues.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to the bill, the question is the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, may I next say to the minority leader that I have a series of seven items that are cleared on this side for action by unanimous consent. They are Calendar Orders Nos. 988, 989, 990, 991, 993, 994, and 1,001. They are all Senate bills.

If the minority leader would not object, I propose that we consider those en bloc.

Mr. BYRD. Mr. President, those measures have been cleared on this side. Certainly, there is no objection to taking them up en bloc.

Mr. BAKER. I thank the minority leader.

Mr. President, I make that request.

The **PRESIDING OFFICER.** Without objection, the bills will be considered en bloc.

RELIEF OF RAMZI SALLOMY AND MARIE SALLOMY

The bill (S. 296) for the relief of Ramzi Sallomy and Marie Sallomy, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 296

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Ramzi Sallomy and Marie Sallomy shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas and conditional entries which are made available to natives of the country of the aliens' birth under section 202 of such Act.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF BARBARA CRISP, SEAN ANTHONY CRISP, AND ANDREA LEECH

The bill (S. 516) for the relief of Barbara Crisp, Sean Anthony Crisp, and Andrea Leech, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 516

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Barbara Crisp, Sean Anthony Crisp, and Andrea Leech shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 202 of such Act.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF REBECCA LYNN HIGGINS

The bill (S. 1414) for the relief of Rebecca Lynn Higgins, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1414

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Rebecca Lynn Higgins may be classified as a child within the meaning of section 101(b)(1)(F) of such Act, upon approval of a petition filed in her behalf by Ronald D. and Virginia L. Higgins, citizens of the United States, pursuant to section 204 of such Act: *Provided,* That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF JEAN WILLHELM WILLRICH

The bill (S. 2729) for the relief of Jean Willhelm Willrich, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That Jean Willhelm Willrich shall be held and considered to have satisfied the residence and physical presence requirements of section 319(a) of the Immigration and Nationality Act.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF BASSAM S. BELMANY

The Senate proceeded to consider the bill (S. 796) for the relief of Bassam S. Belmany, which had been reported from the Committee on the Judiciary with an amendment.

(The part intended to be stricken is shown in boldface brackets and the part intended to be inserted is shown in italic.)

S. 796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 212(a)(14) of the Immigration and Nationality Act, for purposes of such Act, **[**Bassam S. Bellmany**]** *Bassam S. Belmany* shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 202(e) of such Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Bassam S. Belmany."

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF PATRICK P.W. TSO, PH.D.

The Senate proceeded to consider the bill (S. 1140) for the relief of Patrick P.W. Tso, Ph.D., which had been reported from the Committee on the Judiciary with amendments.

(The parts intended to be stricken are shown in boldface brackets and the parts intended to be inserted to inserted are shown in italic.)

S. 1140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 212(a)(14) **[**and 212(e)**]** of the Immigration and Nationality Act, Patrick P.W. Tso, **[**doctor of medicine**]** *Ph. D.*, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa [fees] *fee*. Upon the granting of permanent residence to such [aliens] *alien* as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act, or, if applicable, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 202 of such Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMPROVEMENT OF OPERATION OF SMALL BUSINESS ADMINISTRATION LOANS

The Senate proceeded to consider the bill (S. 2375) to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

Mr. WEICKER. Mr. President, today we are voting on S. 2375, a bill to improve the operation of the secondary market for loans guaranteed by the Small Business Administration [SBA] for the purpose of opening up new sources of capital for small business at reasonable rates and terms.

The 1984 President's Report on the State of Small Business found that small businesses created all of the new jobs in 1981 and 1982. These firms, approximately 14 million in number, account for over 38 percent of the Nation's gross national product and provide over one-half of the private sector labor force.

Small businesses, however, operate under somewhat of a handicap in the competition for business funds in the financial markets. Economies of scale prohibit their access to many of the major sources of investment capital. The need for pension funds and insurance companies to invest in financial instruments with large denominations precludes small businesses from access to their funds. In the stock market, extensive registration requirements, which can only be accommodated if the costs are spread over a large number of shares, also present a barrier to small firms. As a result of these impediments, access to capital is often limited to individuals and local banks which have a relationship with the entrepreneur. This is illustrated by the fact that 70 to 80 percent of small business rely on debt financing.

Recognizing that an efficient effective secondary market is vital to ensuring that the small business community has access to a stable source of financing at reasonable interest rates, I, along with Senator BUMPERS and others, introduced S. 2375 on February 29, 1984. After working closely with the representatives of the small business banking and brokerage communities, and the House Small Business Committee, the Small Business Committee unanimously reported out of committee an amended version of S. 2375, which is identical to the amended House version, H.R. 4773. This legislation would do essentially five things. First, it would give statutory authority to the secondary market program instituted administratively by SBA in 1972. Second, the legislation would permit the pooling of SBA guaranteed loans into larger lots with SBA guaranteeing the timely payment of interest and principal on pool certificates. Third, the bill would require SBA to provide for central registration of all SBA guaranteed loans sold and resold in the marketplace. Fourth, the legislation would require the seller, prior to a sale, to provide purchasers of SBA guaranteed loans with a disclosure of sufficient information the agency considers necessary to make prudent investment decisions. Fifth, the legislation includes a provision giving SBA the authority to ensure that brokers-dealers operate consistent with the provisions of the act. Finally, the legislation should report annually to Congress on the secondary market operations during the preceding year.

The potential for enhancing the secondary market first came to the committee's attention in October 1982 with the release of the recommendations of the SBA Small Business Committee on Capital Access. This was a task force created by the Administrator on the recommendation of the SBA National Advisory Council, to study measures that could enhance the small business community's access to funds and reduce its borrowing costs. This committee, with members representing commercial banks, nonbank lenders, investment banking firms, institutional investors, and accounting firms, placed a special emphasis on the importance of an efficient secondary market process. In its final report, the Committee on Capital Access stated:

> This committee is convinced that encouraging development of the secondary market would attract much greater involvement in SBA loans from major financial institutions. Some of these institutions would be more interested in originating loans; others would only be interested in purchasing seasoned loans; but overall, this increased involvement, and the resulting competition among lenders, would ultimately increase the funds made available through SBA loans to small business borrowers and lower the cost to the borrower.

To enhance the workings of the existing secondary market, the Capital Access Committee proposed several changes which would facilitate transactions, permit easier calculation of prices, enhance the value of loans, and limit service fees charged by lenders. In addition, they recommended that steps be taken to create a new program of loan pooling and packaging to "make it more feasible for the Nation's largest financial institutions to purchase large quantities of SBA guaranteed fixed-rate loans in the secondary market."

The Committee on Capital Access' report was followed in April 1983 with a General Accounting Office [GAO] review of the entire SBA 7(a) loan guarantee program. In addition to reaching many of the same findings as the Capital Access Committee, GAO also found in its report that "administrative problems plague the secondary market" with SBA having no formalized goals or objectives. The report recommended that SBA establish clear goals and objectives to improve recordkeeping controls, require changes in interest accrual, examine methods of controlling servicing fees, and consider the use of loan pooling to provide fixed-rate financing.

Secondary market programs have been particularly successful in other financial areas, most notably in mortgage lending. The Government has promoted the secondary market for mortgages since 1938, when it created the Federal National Mortgage Association [FNMA]. Through FNMA and its sister organizations, the Government National Mortgage Association [GNMA] and the Federal Home Loan Mortgage Corporation [FHLMC], activity in the secondary market for mortgages has grown to over $100 billion annually. The secondary market was established as a means to attracting large institutional investors into the mortgage market, thereby opening up new source of capital for lenders and home purchasers.

In a similar manner, an effective secondary market for SBA guaranteed loans could attract capital from the securities markets for additional lending for small businesses. Investors may, through the secondary market, purchase an SBA-guaranteed loan while leaving the administration and servicing to the originating lender. The small business borrower indirectly receives the benefit of having access to a larger pool of capital and as a result of the increased supply can obtain more favorable rates and terms on a loan. Among the benefits are increased liquidity and leverage of capital for lenders; increased access to capital for borrowers; wider distribution of capital among geographic areas; greater accessibility to long-term fixed rate financing; and potentially lower costs of borrowing for small businesses.

As part of its overall responsibility, the committee conducted a 3-month inquiry to examine the current secondary market program at SBA to determine how well it was operating and what changes should be made to enhance its development. The committee discovered in its investigation that the current secondary market for SBA guaranteed loans leaves much to be desired. A combination of market imperfections and administrative problems have seriously hurt the secondary market for SBA guaranteed loans. Investors are unable to accurately determine a fair market value for loans due to a lack of information and the inability to assess associated risks, such as premium loss, payment deferrals, and slow payment by SBA on defaults. A few brokerage firms have used these imperfections in the market to exact exorbitant profits from unwary investors who have alleged a wide variety of unfair sales practices. As a result, many investors and brokers will no longer purchase or deal in SBA guaranteed loans. This narrowing of the market, by reducing the inflow of capital, has the potential to hurt small businesses in their ability to obtain financing at favorable rates.

In addition, the Small Business Administration has not done an effective job of overseeing and administering the market. The dual system of sales procedures, the inaccurate and incomplete records, the delays in approval of sales, and the slow payment on defaults have all contributed to the decline of the market. The agency has moved slowly in correcting problems and acting on recommendations of the SBA Committee on Capital Access and the GAO.

The committee believes that S. 2375 would go a long way in promoting the development of the secondary market and eliminating current inefficiencies and abuses. In giving statutory authorization to the current secondary market process, the legislation would provide SBA with the authority to make some major structural changes in the market process. In particular, the agency would better be able to monitor and regulate the market, which should minimize a recurrence of abuses in the current marketplace.

Another important part of the legislation the authorization for SBA to guarantee pools or trusts backed by the guaranteed portion of SBA loan. As the SBA Committee on Capital Access noted in its report:

> Many financial institutions have been loathe to invest in SBA-guaranteed loans because the existing secondary market does not permit participation on a scale appropriate for an institution of significant size . . . The committee is convinced that if blocks of homogeneous SBA-guaranteed fixed-rate loans were offered in pools of $10 million to $25 million, they would attract significant numbers of institutional buyers.

This sentiment was repeated by brokers and bankers in testimony before the Committee on March 6, 1984. Gordon R. Watson, managing director of marketing and sales at the Merrill Lynch Banking Division reported:

> . . . the creation of an effective pooling mechanism is the single most important step toward the development of a secondary market with the efficiencies necessary to provide small business owners greater ability to access capital markets at competitive rates and terms . . . With more financial institutions active in the origination and purchasing of SBA guaranteed loans the secondary market would expand, the rate of return required on these investments would be reduced, and ultimately the cost borne by the small business borrower would be reduced. . . . In sum, pooling would dramatically improve the efficiency of SBA's secondary market to the benefit of the small business borrower.

Likewise, Gary Grear, senior vice president and director of Morgan, Keegan & Co., Inc., called pooling the most critical element of an efficient secondary market. He went on to relate:

> Pooling will enable smaller businesses to utilize economies of scale when borrowing funds; thus overcoming shortcomings associated with current practices. As many of you know, lower interest rates are generally awarded to financial instruments of significant size.

The third major feature of S. 2375 provides for central registration of all SBA guaranteed loans sold and resold in the marketplace. The Administrator is instructed to appoint an agent to facilitate central registration, which may charge such frees as are necessary to cover expenses of administration and servicing. By requiring the administration to keep a record of all sales, and the essential terms of each sale, central registration will enable SBA and Congress to better monitor the market process and ensure that it functions efficiently.

Central registration will provide the administration with data which could be invaluable in determining the market value of SBA guaranteed loans. One of the major problems which led to abuses in the current market is the inability of investors to determine fair market value of SBA loans. With the information collected through central registration, SBA could on a periodic basis, provide investors with summary information such as average premiums paid for SBA loans, average servicing fees collected by lenders, the average life of a loan, the prepayment and default rates, and the amount of market activity. With this information, risks associated with SBA guaranteed loans could be more easily quantified and incorporated into determining a fair market value for the loans. Easier valuation will make the secondary market more attractive to both lenders and investors.

A fourth feature of the bill requires the administration to provide purchasers of the loans with sufficient information necessary and appropriate to make prudent investment decisions. As noted earlier, significant abuses have occurred in the secondary market, with some less reputable brokerage firms extracting exorbitant profits from unwary investors. Such sales are made by attracting the buyer with the Government guarantees and variable rate features of the loans. However, potential investors are often not told of the risks of prepayment, premium loss, and delays in payment by lenders and SBA. By requiring disclosure documents which provide investors with background information the nature of the investment and risk of SBA guaranteed loans, current abusive practices could be deterred.

Another feature of the bill requires the administration to annually transmit to the Committee on Small Business of the Senate and House of Representatives a report on the secondary market operations. The report will synthesize the data gathered with the central registration and provide summary information such as the share of SBA-guaranteed loans sold in the secondary market with a breakdown by interest rate, size of loan, size of lender, servicing fee, and premium. It will provide detailed information on pools, including the number of dollar amount of loans in each pool; the interest rate, amount, and terms of each loan in the pool; and the interest rate and terms on the trust certificates issued for each pool. Perhaps most importantly, the administration is to provide an analysis of this data to assess the effectiveness of the secondary market in providing additional capital to small business at reasonable rates.

Although the legislation also includes a provision giving SBA the authority to ensure that broker-dealers operate consistent with the provisions of this act, S. 2375 does not address the question of SEC registration of broker-dealers operating in SBA's secondary market. I believe these dealers working in this unregulated securities market should operate according to certain standards. There have been a number of questions raised about the activities of a few broker-dealers buying and selling SBA-guaranteed loans.

I know Senator BUMPERS shares my concerns in this area and we will continue to work closely with Senator D'AMATO, the distinguished chairman of the Subcommittee on Securities of the Banking Committee, in an effort to determine the appropriate legislative response to this problem, which

falls squarely within the jurisdiction of his subcommittee.

In the meantime, S. 2375 establishes certain reforms that will enable SBA to monitor interest rates to small business and prices to investors. The legislation also requires that SBA develop disclosure information which sellers must make available to every potential investor. These initial reforms will go a long way toward controlling the problems in SBA's secondary market that currently exist. We cannot and will not allow a market designed to aid small business to become a vehicle for harm to investors.

While the committee recognizes that this legislation will not work miracles in the secondary market overnight, it believes that S. 2375 will, by promoting the development of a more efficient and effective market, provide small business with additional sources of capital at reasonable rates. By relying on a more active particpation by the private sector, small business will be better served at virtually no additional cost to the government.

After analyzing S. 2375, the Congressional Budget Office provided the following statement:

S. 2375 would create no new liability on the part of SBA, but rather would facilitate the pooling of SBA guarantee loans by a private agent. . . . It is estimated that SBA would incur costs of approximately $200,000 in fiscal year 1985 to issue rules and regulations; to consult with various federal, state, financial and other authorities; and to administer, promote, and report to the Congress on the secondary market operations. Once implemented, the annual cost to SBA is expected to be less than $100,000 annually. The bill does not authorize any additional appropriations to carry out the required activities.

In addition, CBO noted that the bill would not affect the budget of State and local governments.

Mr. President, this legislation has the support of organizations and individuals representing all the major players in the market, including small businesses, commercial banks, investment banks, and broker/dealers. The committee has received testimony and letters of support from: the U.S. Chamber of Commerce, the Small Business United, the National Small Business Association, the Small Business Legislative Council, the Independent Bankers Association, the National Association of Small Business Investment Companies, the National Association of Business Development Corporations, the Smaller Business Association of New England, the American Association of Minority Enterprise Small Business Investment Companies, the National Council for Urban Economic Development, the Utah Council of Small Business, and the Independent Business Association of Wisconsin.

I urge my colleagues to join these organizations in supporting S. 2375 by voting in favor of this important piece of legislation.

Mr. BUMPERS. Mr. President, today the Senate is considering S. 2375, the Small Business Secondary Market Improvements Act of 1984, which was reported unanimously by the Small Business Committee. This is a bill that I introduced with Senator WEICKER and other members of the committee on February 29 that would improve the operations of the secondary market for loans guaranteed by the Small Business Administration. The committee amendment in the nature of a substitute for the bill now pending before the Senate would statutorily enhance the present secondary market operation, provide new authority for SBA to pool guaranteed loans for sale into the secondary market, and require SBA to take certain action to facilitate the operation and administration of this new authority.

Mr. President, this is the first bill that I cosponsored with Senator WEICKER since I became the ranking Democratic member of the Senate Small Business Committee last year. I hope that it will become law in the very near future.

As I noted in my February introductory statement on the bill, for small business there is no more significant issue than that of capital formation and retention. Much of the work that we have done in the Small Business Committee, both directly through the programs of the Small Business Administration, and through our work with other committees on tax or regulatory issues, has focused on this fundamental issue. Improving small business access to bank capital is so very critical to small business because approximatley 80 percent of all small businesses have borrowed from banks, and small firms owe 20 to 30 percent of their total liabilities to banks.

During the committee's consideration of this legislation, our staff reviewed the Small Business Administration's implementation of their 12-year-old, administrative established secondary market. We studied the recommendations of the Small Business Administration's blue ribbon task force on capital access, the General Accounting Office's substantial report on the operation of the SBA 7(a) guaranteed loan program, conducted hearings, and reviewed our opportunities and concerns with brokers, investors, bankers, and small businesses.

In my judgment, the pending committee amendment takes positive and constructive steps to address some of the limitations of the current system that have impeded the efficient operation of the market.

For example, I am pleased that the committee has included in the committee amendment my suggestion that there be a delay in the triggering of the authority for the pooling of loans until such time as the central registration and disclosure provisions, and rules and regulations relating to the pooling of loans, have been put into place. Given the fact that we are starting from ground zero on this concept, I believe it is important that it be done properly, and carefully, the first time. Given the record of the SBA secondary market operation to date, if this legislation is not implemented properly this time, we may never get a second chance.

In addition, the committee amendment addresses the concerns that I have expressed about demonstrating that the benefits of a streamlined secondary market bill flow to the small business community. The information required to be included in the disclosure provisions, coupled with the annual report which the two Small Business Committees will receive from SBA on the use of the secondary market, should provide us with ample evidence to determine, through oversight, whether the legislation is providing tangible results to small businesses in the form of longer term, fixed-term, and lower interest rate lending.

Mr. President, during our committee's review of this legislation, a number of other issues were raised about the operation of the secondary market, and additional improvements that were recommended. Not all of them have been addressed in this legislation. For example, I raised the question of the appropriateness of limiting the servicing fees that could be charged on secondary market sales. The General Accounting Office report on the SBA 7(a) program, and testimony before our committee, pointed to the appearance of overcharges through the imposition of unreasonably high servicing fees. I believe that the disclosure and reporting provisions in this legislation present a satisfactory interim approach to statutorily imposing a limit of fees. I hope that SBA will carefully review and monitor the servicing fee question; I certainly will.

In addition, given the information that the Small Business Committee has developed on the abuses of broker-dealers in trading SBA guaranteed loans in the present secondary market, I believe we need to provide for some form of effective regulation of the trading and traders in the loans under our enhanced system. I would urge SBA to take strong oversight and enforcement action on those who want to participate in this market. I will be prepared to work with the committee, and with our colleagues on other committees, in developing an effective mechanism for broker-dealer registration.

Mr. Chairman, I am puzzled, but not surprised, that the Small Business Administration, Treasury, and the President, are opposed to this legislation.

In June 1982, SBA formed a Small Business Committee on Capital Access. According to their final report issued in October 1982:

> The SBA has sought to develop an active secondary market in loans bearing its guarantees. Approximately 25 percent of the loans bearing SBA guarantees have been sold in the secondary market.
>
> This committee is convinced that encouraging development of the secondary market would attract much greater involvement in SBA loans from major financial institutions.

It appears that the administration has correctly pointed out the deficiencies in the current operation of the SBA secondary market, and acknowledge that the action that we are taking here will, in fact, make the secondary market more efficient.

In recent testimony before the House, SBA Administrator James Sanders noted that:

> We believe that the secondary market is an important component of our financial assistance programs. I personally place a high priority on improving our efficiency in this area. As we strive to perfect the programs, we look forward to a cooperative working relationship with Congress.

Furthermore, for the first time anywhere to my knowledge, Treasury has stated as a matter of "fact" that the enactment of this legislation will directly translate into an interest rate benefit for small business. I can understand, but do not agree with the administration's concern about the possibility that our enhanced secondary market may create some competition with Treasury securities. Hopefully, when this bill clears Congress, the President will carefully review the significant steps that we have taken here to improve small business access to affordable capital, and will sign the bill.

Mr. Chairman, I urge the Senate to act favorably on this legislation today. With action already taken by our counterpart committee in the House, I will work closely with the chairman to get this bill sent to the President as quickly as possible.

THE PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill, as amended, was engrossed for a third reading, read the third time, and passed, as follows:

S. 2375

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Small Business Secondary Market Improvements Act of 1984".

SEC. 2. Section 5 of the Small Business Act is amended by adding at the end thereof the following new subsections:

"(f)(1) The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

"(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

"(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

"(C) each loan shall have been fully disbursed to the borrower prior to any sale.

"(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

"(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

"(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a) of this Act, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 5(c), 7(a)(6), or 7(a)(8).

"(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, except those under section 7(a)(13): *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

"(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

"(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

"(4) The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

"(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

"(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

"(h) Upon the adoption of final rules and regulations, the Administration shall—

"(1) provide for a central registration of all loans and trust certificates sold pursuant to subsection (f) and (g) of this section. Such central registration shall include, with respect to each sale, and identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out functions described in paragraph (2) below; and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of the guranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term 'seller' does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

"(4) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.".

SEC. 3. (a) Within ninety days after the date of enactment of this Act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

(b) Within nine months after the date of enactment of this Act, the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act other than as provided for in subsection (a)

(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended, until final rules and regulations become effective.

SEC. 4. Section 10 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(h) The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as result of secondary market operations.".

SEC. 5. Section 4(c)(1)(B) and section 4(c)(2)(B) of the Small Business Act are each amended by inserting "5(g)," immediately after the word "sections".

SEC. 6. This Act does not authorize the appropriation of any funds.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ACT

Mr. BAKER. Mr. President, I would next propose to proceed to Calendar Order No. 736, S. 905, if the minority leader can agree.

Mr. BYRD. Mr. President, there is no objection.

Mr. BAKER. I thank the minority leader.

I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 736.

The **PRESIDING OFFICER.** The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 905) entitled the "National Archives and Records Administration Act of 1983," which had been reported from the Committee on Governmental Affairs with amendments.

The **PRESIDING OFFICER.** Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs with amendments:

On page 7, strike lines 19 through 25 and lines 1 and 2 of page 8, and insert:

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the National Archives and Records Administration, The National Historic Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and non-appropriated, by the Administration, Commission, and the Trust Fund Board. It shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and non-appropriated funds.".

On page 12, after line 4, insert "(t) Section 2507 of title 44, United States Code, is deleted.".

So as to make the bill read:

S. 905

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Archives and Records Administration Act of 1983".

AMENDMENTS TO TITLE 44, UNITED STATES CODE

SEC. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as sections 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by subsection (a)) the following new section:

"§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, to Federal agencies, and to the Congress for historical and other research purposes.".

(c) Section 2102 of title 44, United States Code (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

"§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.".

(e) Title 44, United States Code, is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

"§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

"(b) The Archivist shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

"(c) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

"§ 2105. Administrative provisions

"(a) The Archivist shall prescribe such policies, standards, criteria, procedures, rules, and regulations as he finds necessary or appropriate to carry out his functions. The head of each Federal agency shall issue such orders and directives as may be necessary to conform the activities of the agency with the policies, standards, criteria, procedures, rules, and regulations prescribed by the Archivist.

"(b) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(c) The Archivist may organize the administration as he finds necessary or appropriate.

"(d) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(e) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(f) Each Federal agency is authorized to furnish to the Archivist, upon his request, any information or other data which the Archivist finds necessary to carry out his duties.

"(g) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee shall serve without compensation but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

"(h) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

"(i) If authorized by the Archivist, officers and employees of the National Archives and Records Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

"§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officials, officers, and other personnel in other executive agencies, including personnel of the armed services, with the consent of the head of the agency concerned.

"(d) The Archivist is authorized to accept and utilize voluntary and uncompensated services.

"§ 2107. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the National Archives and Records Administation, the National Historic Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and non-appropriated, by the Administration, Commission, and the Trust Fund Board. It shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and non-appropriated funds.".

(f)(1) The table of sections for chapter 21 of title 44, United States Code, is amended to read as follows:

"Chapter 21—National Archives and Records Administration

"Sec.
"2101. Purpose.
"2102. Definitions.
"2103. Establishment.
"2104. Officers.
"2105. Administrative provisions.
"2106. Personnel and services.
"2107. Reports to Congress.
"2108. Acceptance of records for historical preservation.
"2109. Responsibility for custody, use, and withdrawal of records.
"2110. Preservation, arrangement, duplication, exhibition of records.
"2111. Servicing records.
"2112. Material accepted for deposit.
"2113. Presidential archival depository.
"2114. Depository for agreements between States.
"2115. Preservation of motion-picture films, still pictures, and sound recordings.
"2116. Reports; correction of violations.
"2117. Legal status of reproductions; official seal, fees for copies and reproductions.
"2118. Limitation on liability.
"2119. Records of Congress.".

(2) The item relating to chapter 21 in the table of chapters for title 44, United States Code, is amended to read as follows:

"21. National Archives and Records Administration.................................... 2102".

(g)(1) Section 2103(4) of such title is amended by striking out "section 2107" and inserting in lieu thereof "section 2112".

(2) Section 2108 of such title is amended by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112".

(h) Chapters 7, 15, 17, 21 (as amended by this section), 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" wherever they appear and inserting in lieu thereof "Archivist of the United States" and "National Archives and Records Administration", respectively.

(i)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112";

(B) by striking out "section 2101" and inserting in lieu thereof "section 2102";

(C) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States": and

(D) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2112", and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(3) Section 103 of such Act is amended by striking out "Administrator" and inserting in lieu thereof "Archivist".

(4) Section 104 of such Act is amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(j) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"( ) Archivist of the United States.".

(k) The item relating to chapter 29 in the table of contents for title 44, United States Code, is amended to read as follows:

"29. Records Management by Archivist of the United States.................. 2901".

(l) Sections 141-144 of title 4, Chapter 5, United States Code, are amended by striking out "Administrator of General Services," and "General Services Administration" wherever they appear and inserting in lieu thereof "Archivist of the United States," "Archivist," and "National Archives and Records Administration" respectively.

(m) Section 199a, title 25, United States Code, is amended by striking out "Administrator of General Services" wherever it appears and inserting in lieu thereof "Archivist of the United States."

(n) Sections 106a, 106b, and 112 of title 1, United States Code are amended by striking out "Administrator of General Services" wherever it appears and inserting in lieu thereof "Archivist of the United States."

(o) Sections 6 and 11-13 of title 3, United States Code are amended by striking out "Administrator of General Services" and "General Services Administration" wherever they appear and inserting in lieu thereof "Archivist of the United States," and "National Archives and Records Administration," respectively.

(p) Paragraphs (b)(6) and (l)(1) of the Privacy Act of 1974 are amended by striking out "Administrator of General Services" wherever it appears and inserting in lieu thereof "Archivist of the United States."

(q) Section 2301 of title 44, United States Code, is amended by striking out the second sentence of the section.

(r) Section 2501 of title 44, United States Code is amended by striking out the last sentence of the section.

(s) Section 2504(a) of title 44, United States Code is amended by striking out "the Administrator" from the final sentence of the section and substituting in lieu thereof "the President and the Congress."

(t) Section 2507 of title 44, United States Code, is deleted.

DEFINITIONS

SEC. 3. For purposes of sections 3 through 8—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2104 of title 44, United States Code, as added by section 2 of this Act; and

(2) the term "Administration" means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

TRANSFER OF FUNCTIONS

SEC. 4. (a) All authorities and functions of the Administrator of General Services specified in chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, U.S.C., are transferred to the Archivist of the United States appointed under section 2104 of title 44, U.S.C.

(b) The National Archives and Records Service of the General Services Administration is transferred to the National Archives and Records Administration.

(c) The office of Office Information Systems of the Office of Information Resources Automated Data and Management of the General Services Administration is transferred to the National Archives and Records Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services with respect to chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, U.S.C., and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

TRANSFER OF PERSONNEL

SEC. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are transferred to the Archivist for appropriate allocation. A percentage of the funds and associated positions in the General Management and Administration appropriation for the General Services Administration, proportionate to the percentage of National Archives and Records Service employees in the General Services Administration, is transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

SAVINGS PROVISIONS

SEC. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by any authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

REFERENCE

SEC. 7. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration.

EFFECTIVE DATE

SEC. 8. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc, and agreed to.

AMENDMENT NO. 3320

(Purpose: To make technical amendments)

Mr. BAKER. Mr. President, I send to the desk an amendment on behalf of the distinguished Senator from Maryland [Mr. MATHIAS] and the Senator from Missouri [Mr. EAGLETON] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. MATHIAS and Mr. EAGLETON, proposes an amendment numbered 3320.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Archives and Records Administration Act of 1944".

AMENDMENTS TO TITLE 44, UNITED STATES CODE

SEC. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as sections 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by subsection (a)) the following new section:

"§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, to Federal agencies, and to the Congress for historical and other research purposes.".

(c) Section 2102 of such title (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"'Federal agency' means, notwithstanding section 2901(13) of this title, any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), and independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

"'Archivist' means the Archivist of the United States appointed under section 2104; and

"'Administration' means the National Archives and Records Administration established under section 2103.".

(d) Section 2103 of such title is amended to read as follows:

"§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.".

(e) Such title is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

"§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

"(b) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

"§ 2105. Administrative provisions

"(a) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(b) The Archivist may organize the Administration as he finds necessary or appropriate.

"(c) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(d) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(e) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee who are not officers or employees of the Government shall serve without compensation but shall be entitled, when performing the duties of the committee, to travel and transportation expenses and a per diem allowance in the same manner and under the same conditions as provided for employees under section 5702 of title 5.

"(f) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

"(g) If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

"§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officers and employees in other executive agencies, including personnel of the Armed Forces, with the consent of the head of the agency concerned.

"(d) Notwithstanding section 1342 of title 31, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

"§ 2107. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board. The report shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds.".

(f) Chapter 21 of such title is amended by adding at the end thereof the following new section:

"§ 2120. Authorization of appropriations

"There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Archivist and the Administration under this title.".

"(g)(1) The table of sections for chapter 21 of such title is amended to read as follows:

"CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

"Sec.
"2101. Purpose.
"2102. Definitions.
"2103. Establishment.
"2104. Officers.
"2105. Administrative provisions.
"2106. Personnel and services.
"2107. Reports to Congress.
"2108. Acceptance of records for historical preservation.
"2109. Responsibility for custody, use, and withdrawal of records.
"2110. Preservation, arrangement, duplication, exhibition of records.
"2111. Servicing records.
"2112. Material accepted for deposit.
"2113. Presidential archival depository.
"2114. Depository for agreements between States.
"2115. Preservation of motion-picture films, still pictures, and sound recordings.
"2116. Reports; correction of violations.
"2117. Legal status of reproductions; official seal, fees for copies and reproductions.
"2118. Limitation on liability.
"2119. Records of Congress.
"2120. Authorization of appropriations.".

(2) The item relating to chapter 21 in the table of chapters for such title is amended to read as follows:

"21. National Archives and Records Administration.............................. 2101".

(h)(1) Section 1506 of such title is amended by striking out the third sentence.

(2) Section 2301 of such title is amended by striking out the second sentence.

(3) Section 2501 of such title is amended by striking out the last sentence.

(i) Section 2504(a) of such title is amended by striking out "the Administrator" in the last sentence and inserting in lieu thereof "the President and the Congress."

(j)(1) Section 2507 of such title is repealed.

(2) The table of sections for chapter 25 of such title is amended by striking out the item relating to section 2507.

(k)(1) Section 2108(4) of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" and inserting in lieu thereof "section 2112".

(2) Section 2113 of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112".

(l)(1) Section 1501 of such title is amended—

(A) by striking out the period at the end of the last paragraph and inserting in lieu thereof a semicolon and "and"; and

(B) by adding at the end thereof the following new paragraph:

" 'National Archives of the United States' has the same meaning as in section 2901(11) of this title.".

(2) Section 2109 of such title (as redesignated by section 2(a) of this Act) is amended—

(A) by striking out "Administrator, the Archivist of the United States," in the second sentence and inserting in lieu thereof "Archivist";

(B) by striking out "the Administrator shall, if he concurs, and in consultation with the Archivist of the United States," in the third sentence and inserting in lieu thereof "the Archivist shall, if the Archivist concurs,"; and

(C) by striking out "Administrator of General Services, by order, having consulted with the Archivist and" in the fifth sentence and inserting in lieu thereof "Archivist, by order, having consulted with".

(3) Section 2204(c)(1) of such title is amended by striking out "Service of the General Services".

(4) Section 2205(1) of such title is amended by striking out "Service of the General Services".

(5) Section 2110 of such title (as redesignated by section 2(a) of this Act) is amended by inserting "and Records" after "Historical Publications" in the last sentence.

(6) Section 2504(a) of such title is amended by inserting "and Records" after "Historical Publications" in the fourth sentence.

(7) Chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of such title (as amended by this section) are further amended by striking out "Administrator of General Services", "Administrator", "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(8) Section 3504 (e) of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

(9) Section 3513 (a) of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States".

(m) The item relating to chapter 29 in the table of contents for such title is amended to read as follows:

"29. Records Management by Archivist of the United States................ 2901".

(n)(1) Section 2901 of such title is amended by striking out paragraph (13) and inserting in lieu thereof the following:

"(13) the term 'executive agency' shall have the meaning given such term by section 3 (a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 (a)); and

"(14) the term 'Federal agency' means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;".

(2) Section 2103 (1) of such title is amended by striking out "or of the Congress" and inserting in lieu thereof a comma and "the Congress, or the Supreme Court".

(o)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112";

(B) by striking out "section 2101" and inserting in lieu thereof "section 2102";

(C) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States"; and

(D) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2112"; and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(3) Section 103 of such Act is amended by striking out "Administrator" and inserting in lieu thereof "Archivist".

(4) Section 104 of such Act is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist";

(2) by striking out subsection (b);

(3) by redesignating subsection (c) and (d) as subsections (b) and (c), respectively; and

(4) by striking out "under subsection (b)" in subsection (b) (as redesignated by paragraph (3) of this subsection).

(p) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following "Archivist of the United States.".

(q) Sections 141 through 145 of title 4, United States Code, are each amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(r) The Act of March 27, 1934 (48 Stat. 501, chapter 93; 25 U.S.C. 199a) is amended—

(1) by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States"; and

(2) by striking out "section 2112(b)" and inserting in lieu thereof "section 2117(b)".

(s)(1) Sections 106a, 106b, 112, and 113 of title 1, United States Code are each amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States."

(2) Section 106b of such title (as amended by paragraph (1) of this subsection) is further amended by striking out "General Services Administration" and insereting in lieu thereof "National Archives and Records Administration".

(t)(1) Sections 6, 11, 12, and 13 of title 3, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States," and "National Archives and Records Administration," respectively.

(2)(A) The heading of section 6 of such title is amended to read as follows:

"**§ 6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection**".

(B) The heading of section 12 of such title is amended to read as follows:

"**§ 12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate**".

(C) The table of sections for chapter 1 of such title is amended by striking out "Administrator of General Services" each place it appears in the items pertaining to sections 6 and 12 and inserting in lieu thereof "Archivist of the United States".

(u) Section 552a of title 5, United States Code is amended—

(1) by striking out subsection (b)(6) and inserting in lieu thereof the following:

"(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;"; and

(2) by striking out "Administrator of General Services" each place it appears in subsection (l)(1) and inserting in lieu therof "Archivist of the United States".

DEFINITIONS

SEC. 3. For purposes of sections 3 through 8—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2104 of title 44, United States Code (as added by section 2 of this Act); and

(2) the term "Administration" means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

TRANSFER OF FUNCTIONS

SEC. 4. (a) All functions of the Administrator of General Services under chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are transferred to the Archivist.

(b) The National Archives and Records Service of the General Services Administration is transferred to the Administration.

(c) The Office of Office Information Systems of the Office of Information Resources Management of the General Services Administration is transferred to the Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services prior to the transfer of such functions, and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

TRANSFERS

SEC. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. A percentage of the funds and associated positions in the General Management and Administration appropriation for the General Services Administration, proportionate to the percentage of National Archives and Records Service employees in the General Services Administration, is transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

SAVINGS PROVISIONS

SEC. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Archivist, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act has not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

REFERENCE

SEC. 7. With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration, respectively.

EFFECTIVE DATE

SEC. 8. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Amend the title so as to read: "A bill to establish the National Archives and Records Administration as an independent agency.".

Mr. MATHIAS. Mr. President, the reestablishment of a separate National Archives and Records Administration has been a subject of debate ever since 1949, when the then independent agency was incorporated into the newly created General Services Administration. At that time, in a major reorganization, several independent operations of Government were consolidated into the GSA superagency in an effort to achieve governmental efficiency.

Over the past 34 years, it has become clear that the mission of the National Archives—to preserve the Nation's documentary history—is fundamentally incompatible with that of GSA—to provide housekeeping services to the Federal Government. The result has been exactly the opposite of what was intended. Governmental inefficiency, confused lines of responsibility and authority, duplication of effort, and prolonged decisionmaking have hampered and increased the cost of operations of both the Archives and the General Services Administration. The preservation of the Federal Government's important historical records has been hampered because of the odd-couple arrangement between the two agencies.

S. 905, the bill before us, will cure this problem by reestablishing an independent agency, the National Archives and Records Administration. The agency is to be headed by the Archivist of the United States, a Presidential appointee, confirmed by the Senate for a 10-year term.

The bill returns authority, now with the Administrator of General Services, to the Archivist of the United States, with respect to the creation, management, appraisal, disposition, accession, and preservation of Federal records.

It transfers responsibility from GSA to the Archivist for the Federal Register, the Presidential Libraries, the National Archives Trust Fund, the National Historical Publications and Records Commission, and the regional records centers. It provides for a transfer of personnel, funds, contracts, property, liabilities, and records now employed in those activities from GSA to the new independent agency. In addition, a percentage of the funds and associated positions in the general management and administration appropriation for GSA proportionate to the percentage of NARS employees in GSA is transferred to the Archivist for appropriate allocation. The Congressional Budget Office estimates the net cost of this reorganization to be zero.

The sponsors of this legislation want to make clear that the savings provision of this legislation is intended to continue in full force and effect the current union-management agreement between American Federation of Government Employees Local 2578 and GSA/NARS. We also emphasize that the National Archives Trust Fund Board and the National Historical Publications and Records Commission should limit their independent hiring to those positions which cannot be filled in a practicable and timely way through civil service competitive hiring.

We recognize the unique expertise needed for certain positions such as financial and cash management; marketing and product development; publication, sales, and distribution; and reproduction of special works; as well as the museum functions of the Archives and Presidential libraries. We also recognize the need for flexibility in hiring for part-time, intermittent employees.

The sponsors of this bill on the Governmental Affairs Committee will continue to monitor these activities closely and will take appropriate action where warranted. In addition, the bill requires an annual report to the Congress by the Archivist concerning the program administration and expenditure of funds by the National Archives and Records Administration, the Trust Fund, and NHPRC. The report shall also describe research projects and publications undertaken by Commission and Trust Fund grantees. So the Committee on Governmental Affairs intends to continue its oversight of Archives operations and make adjustments as needed.

Mr. President, this bill has been before the Senate since 1980. The Committee on Governmental Affairs has held two hearings on the bill during that time as well as a number of hearings related to the present organizational arrangement between Archives and GSA and the costs and size of Presidential libraries. The committee has reviewed at least six major studies on the organizational placement of the Nation's archival functions dating back to the 1949 Leahy task force of the Hoover Commission. All but one concluded that the National Archives should be restored to its former independent status. The other, while stopping short of separating GSA and Archives, called for transferring basic archival responsibilities from the GSA Administrator to the Archivist, ensuring more autonomy for the agency in its decisionmaking, and making the Archivist a Presidential appointee. All of these proposals are incorporated in this bill.

The organizational placement of national archives in other countries was also instructive to the Senate Governmental Affairs Committee. In a survey of 99 countries, 25 make the national archives directly responsible to the president, prime minister, cabinet, council of ministers, or an independent board. Nineteen countries place their archives in a ministry of culture, 17 in a ministry of education, and 15 in a ministry of interior or home affairs. It is apparent that foreign governments attach more prestige and importance to their national archives than do we.

Mr. President, this legislation enjoys the broad bipartisan cosponsorship of 45 Senators. It is the sponsors' intent, and the bill plainly states that this legislation simply designs a reorganization. No new powers are conferred on the Archivist that are not currently held by the GSA Administrator. Current law, with respect to records management, access, appraisal, disposition, and preservation, is continued unchanged under the authority of the Archivist.

The sponsors did not set out to settle any turf battles over which agency and which statute has preeminent rule. Our purpose was simply to reorganize sensibly and in a cost-effective way. We believe existing case law should prevail with respect to the lines of authority and controlling statutes between and among departments and agencies.

If interagency squabbles persist, as they are bound to do, and if the efficient and effective working of Government is impaired by such ongoing disputes, then the Congress should devote reasoned, careful thought to such problems separately in formal hearings and debate.

It is not our purpose here either to increase or to diminish the current authorities of the Archivist of the United States now vested in the GSA Administrator. Now I am aware of certain concerns that have been raised recently by the Department of Justice and the Department of the Treasury. These issues, which were brought to our attention for the first time on May 3, long after this legislation was heard, marked up, and reported, are longstanding ones between those agencies and the GSA Administrator in his records management and archival role.

The concerns brought to us focus on access by the Archivist and, ultimately, the public to FBI records, grand jury records, electronic surveillance files, and IRS income tax returns and return information. In addition, national security concerns with respect to access by the Archivist have also been raised.

These are ongoing concerns of those two agencies and they are legitimate concerns. Nevertheless, those agencies' own statutes specifically protect those records from disclosure to other agencies except in very narrow circumstances.

Provisions for protecting Federal records for national security reasons are likewise contained both in the respective agencies' statutes and in the existing statutes governing the access, records management, and archival functions transferred by this bill from GSA to the Archivist.

Mr. President, I ask unanimous consent to have printed in the Record a memorandum by the American Law Division of the Congressional Research Service addressing these concerns.

There being no objection, the memorandum was ordered to be printed in the Record, as follows:

Congressional Research Service,
Washington, DC, May 7, 1984.

To: Senate Governmental Affairs Subcommittee on Governmental Efficiency and the District of Columbia (Attention Marion Morris).

From: American Law Division.

Subject: Access To Confidential Records By Archivist Under Bill To Establish Archives as Independent Agency.

This memorandum briefly addresses concerns expressed by agencies over a provision in S. 905, a bill to establish the National Archives and Records Administration as an independent agency, that enables the Archivist to secure certain information from other agencies.

S. 905, 98th Cong., 2d Sess., would remove the Archives from the purview of the General Services Administration, make the Archivist a presidential appointee with a fixed ten-year term, and conform existing functions and powers of the Archivist to the new administrative structure. The basic functions of the Archivist presently exercised under delegations of authority from the Administrator of the General Services Administration would remain essentially intact but would be transferred to the administrative control of an independent, presidentially-appointed Archivist. See, S. Rept. No. 98-373, 98th Cong., 2d Sess. 29-57 (1984).

Both the Department of Justice and the Secretary of the Treasury have objected to one provision in the bill that in their view enhances the Archivist's ability to obtain unrestricted access to confidential records, such as tax return information, classified data, grand jury material, and wiretap records, that are protected from disclosure by other laws. The provision in question, section 2(e) of the bill, would add a new 44 U.S.C. 2105(f), and states that "[e]ach Federal agency is authorized to furnish to the Archivist, upon his request, any information or other data which the Archivist finds necessary to carry out his duties."

Currently, the Administrator of General Services or his designee (in this case, the Archivist) in the course of his records management functions "may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs." 44 U.S.C. 2906(a)(1). However, the law further provides that "[r]ecords, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the agency concerned or of the President." 44 U.S.C. 2906(a)(2). Thus, the Archivist's access to records containing such information as tax return information, grand jury material, and wiretap data, protected from disclosure by other statutes, is subject to agency head approval pursuant to 44 U.S.C. 2906(a)(2). *American Friends Service Committee* v. *Webster*, 720 F.2d 29, 69 (D.C. Cir. 1983). S. 905 would not change these provisions of law except to substitute the Archivist for the General Services Administrator as the operative official.

It would seem unlikely that the proposed 44 U.S.C. 2105(f) would be interpreted to override the explicit provisions governing Archivist access to restricted information. To read the proposed provision with such breadth would arguably swallow all other provisions that detail the access rights of the Archivist. See, 44 U.S.C. 2906, 2103(2) (transfer of historical records), 3303a (schedules of records disposal); *American Friends Service Committee*, supra, 720 F.2d at 37, 77. The placement of the provision as one of several purely adminstrative provisions in the bill (proposed 44 U.S.C. 2105(a)-(i)) and the lack of explanatory material and attention in the Senate Report on the bill would seem to argue for a less expansive interpretation of the provision. See, S. Rept. No. 98-373, 98th Cong., 2d Sess. 24. Furthermore, the provision speaks of access to "information or other data" and not "records", the term used throughout the archival administration and records management laws to describe what it is the Archivist is to have access to and administer. See, 44 U.S.C. 2103, 2906, 3303. While semantically the terms "any information or other data" can conceivably encompass practically all records, such an interpretation would render meaningless the provisions that govern Archivist access to various records for particular purposes.

Richard C. Ehlke,
Specialist in American Public Law.

Mr. MATHIAS. Mr. President, the protection from disclosure of certain records and the national security concerns raised are ongoing ones for those agencies, as well they should be. But I believe, as do the other sponsors of this legislation, that the fears of those departments, that a change in the designation of the responsible Federal official for national archival functions brings with it a change in authority in those areas, are unfounded.

The courts have ruled recently on some of these very issues with respect to access for records management purposes by the Archivist to tax returns and tax return information, grand jury materials, and electronic surveillance materials. The U.S. Court of Appeals for the District of Columbia has ruled that those records fall within the statutory description, "records, the use of which is restricted by law." The court interpreted section 2906(a)(2) of title 44—inspection of agency records by the Archivist—to require approval by the FBI Director or the President for such records to be inspected by the Archivist for records management purposes. We believe such case law should remain undisturbed.

So the privacy safeguard already exists in current agency and Archives' statutes and has been reaffirmed by the courts.

The agency and Archives statutes also provide for protection of records for national security reasons. There is no intent to change such safeguards in this bill.

Section 2906 of the Record Management Chapter, which remains undisturbed by the bill before us, states, and I will read only the relevant parts:

Sec. 2906. (a)(1) "In carrying out his duties and responsibilities under this chapter the Archivist of the United States . . . may inspect the record or the records management practices and programs of any federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencie shall cooperate fully in such inspections, subject to the provisions of para. (2) and (3) of this subsection.

(2) "*Records, the use of which is restricted by law or for reasons of national security* or the public interest, shall be inspected, in accordance with regulations promulgated by the Archivist, *subject to the approval of the head of the agency concerned or of the President.* (emphasis added)

(3)(b) . . . "(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Archivist or his designee shall, in addition to complying with the provisions of law cited in subsec. (a)(3), *comply with all other federal laws and be subject to the sanctions provided therein.* (emphasis added)

Both the Department of Justice and the Department of the Treasury have expressed concern about two provisions of S. 905. One is section 2105(a) which provides, as does the current title 44, for rulemaking by the Archivist to carry out his duties and for conforming activities by other Federal agencies. We have deleted that section in order to assure the departments concerned that no new authority is contemplated for the Archivist than exists under the present title 44 for the GSA Administrator.

Second, the two departments objected to section 2105(f) of the bill which, again, tracks the current statute in authorizing other Federal agencies to voluntarily provide information and data to the Archivist to carry out his duties. We have deleted that section as well to assuage departmental concerns.

Mr. President, reestablishing the independent agency status of the National Archives is all that this bill seeks to do.

It can, we believe, restore professionalism to the archival appraisal, acquisition, disposition, preservation, and public presentation of the Federal Government's records. It can achieve governmental efficiencies by focusing on a clear mission with direct lines of authority to the Archivist. It can insulate the preservation and presentation of our Government's activities from political influence. And it can reduce the backlog of records to be accessioned, appraised, preserved and made available for scholarly research by present and future historians, genealogists and the Federal Government itself. The end result of this reorganization will be better service to the public—to American citizens seeking to learn about their government and its history and a better institutional memory by public policymakers.

I urge my colleagues to act favorably on this measure.

AMENDMENT NO. 3321

Mr. BAKER. Mr. President, I send to the desk an amendment on behalf of the distinguished Senator from Kansas [Mr. Dole] as a proposed substitute to the amendment by the Senator from Maryland [Mr. Mathias] and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Tennessee [Mr. Baker], for Mr. Dole, proposes amendment numbered 3321.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

> At an appropriate place in the substitute insert the following: Notwithstanding any provision of this Title, no return or return information as defined in section 6103 of Title 26 of the United States Code may be disclosed except as authorized by Title 26.

Mr. DOLE. Mr. President, the Senator from Kansas offers an amendment to assure that section 6103 of the Internal Revenue Code will continue to control the access to tax returns and return information. I understand the distinguished Senator from Maryland is willing to accept this amendment and I wish to thank him for his willingness to adapt the measure to reflect the concerns of the Internal Revenue Service.

The bulk of the records received by the Internal Revenue Service are tax returns or return information. Since enactment of 26 U.S.C. 6103 in the Tax Reform Act of 1976, the Congress has consistently reflected the public's concern that these records are confidential in nature and are to be disclosed only as expressly provided in 26 U.S.C. 6103. Comprehensive disclosure and safeguard restrictions apply to these records whether in the possession of IRS or another agency as the result of a disclosure authorized by this statute.

It has been brought to my attention that the provisions of S. 905 might be misconstrued as indicating changed congressional intent regarding the confidentiality of tax records. Accordingly, I offer an amendment to S. 905 that insures the primacy of 26 U.S.C. 6103 on this issue. It's my understanding that the sponsors of S. 905 have reviewed my suggested amendment and have agreed to its inclusion in the legislation. Nothing in this amendment would prevent the acceptance by the archivist of returns donated by the taxpayer or of tax records that have become part of the public record through judicial or administrative proceedings.

Mr. MATHIAS. Mr. President, we are prepared to accept this amendment on this side.

Congress in the Tax Reform Act of 1976 rejected the concept which had prevailed since 1920 that individual income tax information was a general Government asset. It amended section 6103 of the code to provide that tax return information "shall be confidential" and no one with access to it shall disclose it "except as authorized by the code." The basic premise of that section of the Tax Code was to ensure no disclosure of individually identifiable tax returns and return information for uses other than tax administration unless Congress specifically authorized such disclosure.

Section 6103 of the Tax Code authorizes the following persons to receive information in which an individual's identity is revealed:

Persons designated by the taxpayer.

State tax officials.

Persons having a material interest; for example, the taxpayer; a spouse; partners; certain shareholders.

Congressional committees.

The President.

White House personnel and the heads of Federal agencies in connection with "tax checks."

The Treasury Department and the Justice Department in civil and criminal cases.

Federal agencies in noncriminal tax cases.

GAO.

In addition, various other Federal agencies, such as the Bureau of the Census, can obtain tax return information for statistical use. But such access by these agencies is sharply circumscribed with respect to nontax purposes.

The Archivist is not one of those authorized by section 103 to see individually identifiable tax returns or tax information while in the possession of the custodial agency. He may request, as he has done in the past, to see such information for appraisal, records management, and disposition scheduling purposes under his own statute (see 44 U.S.C. 2906). But he may only gain access to such records to carry out these archival functions if the agency head or the President of the United States approves his request.

This amendment would restrict the Archivist in the performance of his duties even more than section 103. It not only precludes the Archivist from inspecting tax return and return information while in the possession of the agency, for records management purposes—that is, the responsibility to provide guidance to agencies with respect to records creation, records maintenance, and use and records disposition—but it also precludes the Archivist from future access to such records for archival purposes—that is, the appraisal, accessioning, preservation, and making available to the public of permanently valuable historic Federal records.

There are three areas of Archives activities which this amendment affects about which we wish to be clear with respect to congressional intent. we share the views of the chief counsel to the National Archives that this amendment does not change the status of current records storage services—that is handling of records without seeing their contents—now performed for the IRS by GSA/Archives at regional records centers pursuant to a reimbursable agreement between the two agencies.

Furthermore, we believe this amendment is prospective in nature and would not affect the status of those IRS records now held as part of the permanently valuable records of the Archives and currently available to the public. For example, they include Civil War era internal revenue assessment lists by State and collection district, among others.

We note, however, that this amendment carries with it a small paperwork and administrative cost which should be recognized. The cost arises when the National Archives acquires Federal records from agencies other than IRS, which records may contain tax returns or return information. The cost of screening and segregating such information, unless it has been previously publicly disclosed, from those permanently valuable Federal records has been estimated by the Archives at approximately $162,000 per year. The IRS would have to retain such tax return information in a retrievable form.

Mr. President, I ask unanimous consent to have printed in the Record the Archives chief counsel's memo on this amendment as well as a cost estimate by the Archives on the amendment.

There being no objection, the material was ordered to be printed in the Record, as follows:

General Services Administration,
Washington, DC, June 1, 1984.

Proposed Amendment to S. 905

This is in response to your inquiry about the impact of proposed legislative language upon certain archival functions. The proposed amendment to Senate Bill 905 (the "National Archives and Records Administration Act of 1983") submitted by the Internal Revenue Service (IRS) states in pertinent part: "(j) Notwithstanding any provision of this title, no return or return information as defined in section 6103 of title 26 of the United States, may be disclosed to the Archivist or to any officer or employee of the Administration by any Federal agency, except as authorized by title 26. . . ."

You have inquired what impact, if any, this language would have upon: (1) storage and reference services provided to the IRS in the Federal records centers; (2) future accessioning of permanently valuable records into the National Archives; and (3) status of accessioned records containing tax return information. In our opinion, the proposed amendment would have no impact upon (1) and (3) described above, but would adversely affect the archival function described in (2).

(1) FEDERAL RECORDS CENTERS

We understand that NARS currently stores and services IRS tax returns in Federal records centers. Indeed, NARS is involved in a dispute with IRS over the payment of standard level user charges for storage of IRS returns in these records centers.

In *American Friends Service Committee* v. *Webster*, 720 F.2d 29 (D.C. Cir. 1983), the court of appeals specifically addressed the issue of use of records containing tax return information and the prohibition of 26 U.S.C. § 6103. One of the disputes in this action involved whether NARS' archivists had the authority to inspect FBI files which contained tax return information. In general, the court held that, under 44 U.S.C. § 2906(a)(2), NARS archivists had no authority to review records containing tax return information unless approved by the Director of the FBI or the President. In its opinion, the court discussed expressly the use of Federal records centers by IRS and the prohibition of Section 6103.

"Section 6103 is a formidable law restricting the use of records. It contains many subsections listing persons and entities to whom disclosure may be made for specified purposes or under defined circumstances.[68] The district court regarded subsection (n) as authorizing the NARS inspection at issue.

Section 6103(n) provides:

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person . . . to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, and the programming, maintenance, repair, testing, and procurement of equipment, for purposes of tax administration.

"26 U.S.C. § 6103(n). The district court said of this provision: "On its face, the use of the word 'storage' appears to encompass the very sort of access envisioned by the archival statutes." Mem. op. of June 9, 1981, at 9, reprinted in App. at 47. The subsection does relate to one of the Archives' functions: returns and return information may be transferred *for storage* to a records center maintained and operated by NARS. *See* 44 U.S.C. § 2907, 3103.[69] But the Archives' storage or warehousing function is distinct from its records management function.[70] Section 6103(n) authorizes disclosure to any person to the extent necessary to the performance of the listed services."

"[69] Congress made no specific reference to NARS in § 6103. It apparently sought, through § 6103(n), to provide statutory authorization for the Internal Revenue Service's practice of contracting with private companies for the various recordkeeping services listed in the subsection. The Senate Report referred to § 6103(n) as authorizing "disclosures to contractors who perform processing, storage, transmission, reproduction, programming, maintenance, testing, or procurement of equipment services for the IRS." S. Rep. No. 94-938, pt. I, *supra*, at 344. *See also id.* at 341.

"[70] Nor should NARS' storage function be confused with its "archival administration" function. *Compare* 41 C.F.R. § 101-11.410-7 (1982) (records stored in Federal Records Centers are "considered to be maintained by the agency which deposited [them]") *with* 41 C.F.R. § 101-11.411-1 (1982) ("[NARS] is responsible for the custody, use, and withdrawal of records [accessioned into the Archives].")

Based upon the court's determination, quoted above, we conclude that 26 U.S.C. § 6103(n) provides authority for IRS tax return records to be stored and serviced in Federal records centers. Therefore, the provisions of the proposed amendment will not be violated because such a disclosure of IRS tax return records to Federal record center personnel is authorized by title 26.

2. FUTURE ACCESSIONING OF PERMANENTLY VALUABLE RECORDS

The second major archival function which could be affected by the proposed amendment to S. 905, quoted above, is that of accessioning permanently valuable records into the national archives. This function is presently outlined in 44 U.S.C. §§ 2103 and 2104. These provisions are carried over, with minor changes, in Sections 2108 and 2109 of S. 905. The first issue to be discussed herein is the present relationship between the NARS' authorities, set forth in Sections 2103 and 2104, and the prohibitions concerning tax return information, set forth in 26 U.S.C. § 6103. The second issue is whether this present relationship is affected by the proposed amendment.

The court in *American Friends Service Committee v. Webster, supra*, discussed the topic of restricted use records. First, the court determined that Section 6103 did not provide for access to NARS archivists to inspect for appraisal purposes tax return information in FBI records. In particular, the court concluded that under its records management function (44 U.S.C. Ch. 29), NARS had no authority to review tax return information unless approved by the Director of the FBI or the President. However, in its discussion the court stated further that its holding that NARS could not inspect restricted materials in FBI files did not deal with NARS' "archival administration" function, governed by 44 U.S.C. Ch. 21. 720 F.2d at 95.

Based upon the court's decision and the language of the respective statutes, it is our opinion that NARS may direct, under Section 2103, the transfer into the National Archives of records containing tax return information that are determined to have continuing value. It is also our opinion that, for these accessioned records, the restriction set forth under 26 U.S.C. § 6103 would be subject to the requirements of 44 U.S.C. § 2104.

The language of the proposed amendment to S. 905 would greatly affect NARS' present authorities under Sections 2103 and 2104. Because this added provision, by its own language, would apply to all of Chapter 21, the prohibitions of 26 U.S.C. § 6103 would then, for the first time, constrain NARS' authorities in accessioning new records under Sections 2103 and 2104. Thus, if this proposed amendment were adopted, permanently valuable records containing tax return information, from any agency, could not be disclosed to NARS. This new prohibition could require every agency to provide a document-by-document review of its records and withdraw documents containing tax return information before transferring them into the National Archives. Not only would this be a burdensome task upon all agencies but also it would result in many permanently valuable records being withheld from NARS and the American people. Obviously, this would gravely impair NARS' ability to perform its accessioning function and administer the National Archives program.

3. ACCESSIONED RECORDS CONTAINING TAX RETURN INFORMATION

We understand that NARS may already have accessioned into the National Archives records which contain tax return information. Some of these records may have been processed and now publicly available. Other records may be temporarily closed to researchers for personal privacy or other reasons. The final issue to be resolved is whether the proposed amendment to S. 905 would affect the authority of NARS to continue to make publicly available accessioned records which contain tax return information.

NARS' authority to accept, store, preserve and eventually make available to the public permanently valuable records is found in Chapter 21 of Title 44 United States Code. The proposed amendment to S. 905 does not directly negate any of NARS' authorities with respect to records already accessioned. The purpose of the proposed amendment is to prohibit the future disclosure and transfer of records containing tax return information from Federal agencies to NARS. The proposed amendment makes no attempt to require the return of accessioned records. Unless a statute specifically states that it is effect is retroactive, the statutes is presumed to be prospective. *See Union Pacific Railroad Co.* v. *Laramie Stock Yard Co.*, 231 U.S. 190 (1913); *Farmington River Power Co.* v *FPC*, 455 F.2d 86 (2nd Cir. 1972).

We therefore conclude that the proposed amendment would not require the NARS return to transferring agencies all accessioned records which contain tax return information. This conclusion, however, does not mean that IRS would not argue for the return of such records on the ground they were improperly transferred to NARS. The basis for such a position by IRS would be

Section 6103 rather than the proposed amendment.

CONCLUSION

Based upon our review of the various statutes and pertinent caselaw, we have concluded that the proposed amendment to S. 905 would affect neither the storage of IRS records in Federal records centers nor the archival processing of accessioned records in the National Archives. However, this proposed amendment would gravely impair NARS' ability to administer its continuing program of accessioning permanently valuable records into the National Archives.

GARY L. BROOKS,
Chief Counsel,
National Archives and Records Services.

GENERAL SERVICES ADMINISTRATION,
Washington, DC, June 7, 1984.

Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR MATHIAS: Attached is the information you requested concerning the costs of screening incoming archival accessions for possible tax return/tax data information.

The cost is based on an analysis of records scheduled for accessioning in fiscal year 1985 plus records located in records centers which have previously been identified for accessioning but have been deferred, i.e., the accessioning backlog. The figures do not include any costs associated with retaining in a retrievable form segregated archival records which contain tax return/tax data information, which would presumably be kept in IRS custody for future access in accordance with Department of Treasury guidelines.

We should mention also that there are approximately 600,000 cubic feet of unscheduled records in the Washington National Records Center which NARS is currently appraising for accessioning into the National Archives. Some portion of these records may also require screening for tax return/tax data information. Since the project is ongoing, we are unable to determine at this time what portion of these records may require screening and, therefore, these costs are not included in the attachment.

Sincerely,

ROBERT M. WARNER,
Archivist of the United States.

Attachment.

ACCESSIONS

20,057 cubic feet—scheduled for accessioning in FY 1985 or deferred from agencies to which IRS is authorized to disclose tax return information.

1. Approximately 13,000 cubic feet are not likely to contain tax return information.
2. Approximately 5,000 probably do not contain tax return information but would have to be checked to ensure the accuracy of our analysis.
3. 2,000 cubic feet would require page-by-page screening to identify, remove, and insert an out-card notice for tax return information.

SCREENING COSTS

2,000 cubic feet of records would require 7.5 staff years performed by GS-6 (step four) archives technicians.

FY 1985 cost for staff salaries, benefits, and supervision to screen accessions for tax return information is $162,416.

Mr. MATHIAS. Mr. President, we will recognize the importance of protecting the confidentiality of individually identifiable tax records as well as trade secrets found in personal and corporate income tax returns. There also may be a national security interest in protecting certain aspects of some trade agreements and tax treaties and the negotiations proceeding them.

On the other hand, a great deal of important demographic information can be gleaned only from tax returns. U.S. business history will suffer because so few businesses keep archives on their own growth and activities. Corporate tax returns are one such invaluable source of data. This amendment will foreclose the possibility that future generations will have an opportunity to examine, at an appropriate time, key indicators of our Nation's social and economic history. The Nation's historical record will be incomplete as a result, but the right of privacy will prevail.

The amendment proposed by IRS and offered by Senator DOLE settles the question with respect to which statute—IRS's or Archives'—prevails governing access to tax records for archival purposes by the archivist.

It goes beyond existing case law and relies in part on an internal Justice Department memorandum which does not address the issue of access for archival purposes, but rather addresses the records management access question. I ask unanimous consent to have printed in the RECORD two memos on this amendment and one on the Justice Department internal memo.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, May 17, 1984.

To: Senate Governmental Affairs, Attention: Marion Morris.
From: American Law Division.
Subject: Proposed Amendment to Bill Establishing Independent Archives Concerning Access to Tax Return Data.

The Department of the Treasury has proposed an amendment to S. 905, a bill establishing an independent National Archives, that is designed to restrict access by the Archives to tax return information. This memorandum briefly analyzes the impact of the proposed amendment and its relationship to current law.

S. 905, 98th Cong., 2d Sess., would remove the Archives from the purview of the General Services Administration, make the Archivist a presidential appointee with a fixed ten-year term, and conform existing functions and powers of the Archivist to the new administrative structure. The basic functions of the Archivist—currently delegated by the Administrator of General Services and contained at chapters 21, 29 and 33 of Title 44 of the United States Code—would remain essentially unchanged by S. 905 but would be under the exclusive administrative purview of a presidentially-appointed Archivist.

I

S. 905 would add a new 44 U.S.C. 2105 detailing various administrative provisions governing the Archivist, including the authority to issue regulations, to delegate functions, to make organizational changes, to establish advisory committees, and to seek data from other agencies pursuant to carrying out his duties. The Treasury Department proposal would add a provision proposed 44 U.S.C. 2105(j), stating: "Notwithstanding any provision of this title, no return or return information as defined in section 6103 of Title 26 of the United States Code, may be disclosed to the Archivist or to any officer or employee of the Administration by any Federal agency, except as authorized by Title 26."

The proposed amendment would govern all provisions in Title 44 and would appear to bar access to tax return information pursuant to any access provision contained in Title 44 except in accordance with 26 U.S.C. 6103. The tax return confidentiality provisions would thus apply to any proposed access to such information by the Archivist pursuant to Title 44 authorities possessed by the Archivist to seek information from federal agencies. Those records access authorities are (1) the Archivist's authority, pursuant to his archival administration function to "direct and effect" the transfer to the Archives of records that are at least 30 years old and are determined to have sufficient historical or other value to warrant preservation. 44 U.S.C. 2103(2); and (2) his authority to inspect agency records for the purpose of evaluating the records management practices of federal agencies. 44 U.S.C. 2906(a). The Archivist also is required to regulate the records disposal practices of agencies, 44 U.S.C. 3302, but these provisions only require Archivist examination to lists and schedules of records lacking preservation value submitted to him and do not explicitly authorize Archivist inspection of the underlying records themselves. 44 U.S.C. 3303a; *American Friends Service Committee* v. *Webster*, 720 F.2d 29, 60-1 (D.C. Cir. 1983).

The confidentiality provisions of 26 U.S.C. 6103 currently apply to limit the Archivist in inspecting agency records pursuant to his responsibility to oversee the records management practices of federal agencies. Agency head or presidential approval is required before inspection can be made of records governed by § 6103. 44 U.S.C. 2906(a)(2); *Webster, supra*, 720 F.2d at 71, 76-7. No such explicit limitation, however, appears in the archival administration provision authorizing the transfer of 30-year old records to the Archives. 44 U.S.C. 2103. See, *Webster, supra*, 720 F.2d at 77. The Archivist is governed, however, in his handling of such transferred records, by any restrictions or limitations imposed on the agency that transferred the records. 44 U.S.C. 2104(a).

The proposed amendment would subject both of the above access provisions to the limitations and procedures of 26 U.S.C. 6103. Its language ("Notwithstanding any provision of this title . . .") embraces all functions of the Archivist. It would thus answer the question left open in *Webster*, namely, the applicability of § 6103 to archival administration access pursuant to 44 U.S.C. 2104, by in effect prohibiting such access in the case of tax return information. The amendment's proviso "except as authorized by Title 26" would not enable Archivist access pursuant to 44 U.S.C. 2104 since access for such purposes is not provided for in 26 U.S.C. 6103.

With respect to the records management inspection authority, the proposed amendment would appear to override 44 U.S.C. 2906(a)(2) in that it would not permit inspection even with the approval of the agency head or the President, as currently allowed. The amendment thus would, given the absence of archivist access authority in 26 U.S.C. 6103, effectively bar inspection of tax return records by the Archivist pursuant to his records management functions. The court in *Webster* rejected the government's argument that 26 U.S.C. 6103 constituted an absolute restriction on archivist inspection and held instead that such records could be inspected pursuant to 44 U.S.C. 2906(a)(2) upon the approval of the agency head or the President. *Webster, supra,* 720 F.2d at 76 n. 75. In the court's view, the government's contention would "effectively nullify" 44 U.S.C. 2906(a)(2). The proposed amendment would appear to achieve that purpose by prohibiting inspection of tax records with no exception for agency head or presidentially approved inspections.

II

Webster dealt with the question of the relationship of 26 U.S.C. 6103 and the records management inspection authority of the Archivist and held that such authority with respect to § 6103 records could only be exercised if the agency head or the President approved as provided for in 44 U.S.C. 2906(a)(2). It left open the question of the applicability of 26 U.S.C. 6103 to the authority of the Archivist to direct the transfer of 30-year old historically valuable records to the Archivist pursuant to 44 U.S.C. 2103(2). *Webster, supra* 672 F.2d at 77. The Department of Justice, in 1977, concluded that 26 U.S.C. 6103 was not overridden by the archival access provisions and that the detailed and stringent provisions of § 6103 barred transfer of tax records to the Archivist. 1977 Opinions of the Office of Legal Counsel 216 (1977). The question is a close one, as recognized in the Justice Department opinion. *Id.* 218.

26 U.S.C. 6103 is a comprehensive statute generally prohibiting disclosure of tax return information then proceeding to detail those instances in which disclosure is permissible. The statute covers disclosure to the taxpayer and his representatives, other federal agencies, the President, congressional committees, state and local governments and even private persons involved in the processing, storage or maintenance of such information. 26 U.S.C. 6103(c)-(o). Disclosure to the Archives is not mentioned nor does the legislative history of the provision address the question of archival access. The Department of Justice therefore concluded in its 1977 opinion that "[t]he amount of attention that was paid to the formulation of the exceptions would allow for an inference that no exception was intended as to the Archives." OLC Opinion at 218.

An alternative interpretation is possible, however. With the exception possibly of the provision in 26 U.S.C. 6103(n) for private person access for storage or processing purposes, the various disclosure provisions in § 6103 relate to persons or agencies seeking to use the information contained in the tax return for some authorized purpose, usually investigatory. Archives access under 44 U.S.C. 2103, on the other hand, is unrelated to the contents of particular records per se but instead is for the purpose of historical preservation. Archives access is less document-specific than access by other agencies outlined in § 6103. The Archives does not seek the records in order to utilize the information contained therein for some administrative or investigatory purpose. The historical preservation and storage functions of the Archives do not entail action by the agency based on what is discovered in the records themselves; no taxpayer-related action results from the archival access and storage of the records, unlike the administrative or prosecutorial proceedings for which access is sought under the provisions of § 6103.

The 1978 amendments to the archival administration statutes (which occurred after the 1976 enactment of the tax record confidentiality law and the 1977 OLC opinion) bear this out and reinforce Congress' intent as to the breadth of the Archivist's authority under these provisions. The amendments, *inter alia*, changed from 50 years to 30 years the age of records that can be directed by the Archivist to be transferred to the Archives for historical preservation and the period during which agency-imposed restrictions on public access to transferred record can remain in place. Public Law 95-416; 92 Stat. 915. The purpose of the amendments was to enable "better and more professional protection for historical records" and to remove the unilateral authority of agency heads to impose public access restrictions on transferred records. See, H. Rept. No. 95-1522, 95th Cong., 2d Sess. 1, 2 (1978). The provisions thus strengthened the transfer authority of the Archivist.

No mention was made of the then two-year old tax return confidentiality law in the committee reports on the bills. However, the insertion of a provision governing census records is instructive as to how tax records might have been viewed if the subject had arisen and aids in reconciling 26 U.S.C. 6103 and the archival access statute. At the insistence of the Census Bureau, a provision was included that recognized the 1952 agreement that had been entered into between the Director of the Census Bureau and the Archivist (after enactment of the 1950 Federal Records Act) that personally identifiable census records transferred to the Archives be closed to public access for 72 years. H. Rept. No. 95-1522, *supra* at 3, 15. See, 44 U.S.C. 2104(b). Such census records are protected from disclosures under 13 U.S.C. 9 pursuant to which no officer or employee of the Department of Commerce may "permit anyone other than sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports." 13 U.S.C. 9(a)(3). The census data provision is thus much more unqualified and protective of census records than 26 U.S.C. 6103 is of tax records. Furthermore, the tradition of census record confidentiality runs deeper than that of tax records even though the rationale for protection of census records—to encourage cooperation with the census—also underlies the tax return data provisions. See, *Baldridge* v. *Shapiro,* 455 U.S.C. 345, 356 (1982); S. Rept. No. 94-938, Part I, 94th Cong., 2d Sess. 315 (tax data); S. Doc. No. 94-266, 94th Cong., 2d Sess. 821 (1975) (evolution of concept of tax return confidentiality).

Despite the unqualified nature of the census records confidentiality provision and the strong public expectation of secrecy with respect to such records, all parties involved in both the 1952 agreement regarding transfer and subsequent public access to census records and the 1978 amendments embodying that agreement recognized that transfer to the Archives did not pose a problem under 13 U.S.C. 9 but that eventual public access would have to be restricted. See, H. Rept. No. 1522, *supra* at 15 (1952 agreement), 8-9 (1978 letter to committee from General Counsel, Department of Commerce). The Attorney General, in a 1944 opinion to the Secretary of Commerce, also assumed that transfer to the Archives of census records did not violate the census record confidentiality provision. 40 OP. A.G. 326 (1944). The Attorney General was asked by the Census Bureau whether the Archivist was bound by the confidentiality provision with respect to subsequent public disclosure of records the Bureau was proposing to transfer to the Archives. He held that the Archivist was bound, an opinion consistent with the practice of the Archivist. *Id.*, 327. No question was raised as to the propriety of the transfer to the Archives of the records and all parties seemed to assume that the transfer was not barred by the confidentiality provision.

Thus, Congress, the Attorney General, the Archives and the Census Bureau, appear to perceive no problem under the census records nondisclosure statute with transfer of such records to the Archives. Given the unqualified language of 13 U.S.C. 9, a similar accommodation of the tax data confidentiality provision and the archival transfer provision would seem possible. Such accommodation would also not seem inconsistent with the underlying purpose of the archival access statute and 26 U.S.C. 6103. The former is designed to preserve and store records and not gain access in order to glean from them data that might be useful for some agency administrative, investigatory, or prosecutorial action. Such a distinction was seemingly recognized with respect to census records and would seem equally pertinent to tax records.

III

In conclusion, the proposed Treasury Department amendment to S. 905 would seem to effectively bar access by the Archivist to the type of tax return information described in 26 U.S.C. 6103 pursuant to both his archival and records management functions. The amendment would appear to govern access to historical records under 44 U.S.C. 2103 and override the provision for inspection of otherwise restricted data upon approval of the agency head or the President pursuant to 44 U.S.C. 2906(a)(2). Under current law, 26 U.S.C. 6103 does serve as a limitation on records management inspection authority but the restriction can be waived by agency head or presidential approval. The relationship of § 6103 and the transfer authority in 44 U.S.C. 2103 is less certain. However, a case can be made that, given the underlying motivation for archival access and analogous practices with respect to confidential census records, 26 U.S.C. 6103 should not be held to bar transfer of historically valuable tax return information to the Archives.

RICHARD EHLKE,
Specialist in American Public Law,
American Law Division.

GENERAL SERVICES ADMINISTRATION, OFFICE OF GENERAL COUNSEL,
Washington, DC, May 18, 1984 (Revised).

Subject: Status of IRS records under 44 U.S.C. 2103 and 2104.

This is in response to your inquiry about the current status of accessioned records in NARS containing tax return information. Based upon the court's opinion in *American Friends Service Committee* v. *Webster, et al.*, 720 F.2d 29 (D.C. Cir. 1983), it is our opinion that, after 30 years, permanently valuable records containing tax return information, or any other statutory restricted materials, may be transferred to NARS pursuant to 44 U.S.C. § 2103. Furthermore, once the records are transferred to NARS, NARS employees are responsible for applying all mandatory and permissive restrictions for access to these materials pursuant to 44 U.S.C. § 2104.

As you are aware, the Office of Legal Counsel (OLC) of the Department of Justice (DOJ), issued an opinion in 1977 which discussed the propriety of transferring to NARS Watergate Special Prosecution Force records which contained tax return information. In this opinion, the OLC concluded that, based upon the prohibitions in 26 U.S.C. § 6103, Congress did not intend that records containing tax return information should be transferred to NARS.

In 1978, one year after the OLC opinion and two years after the enactment of the prohibition in 26 U.S.C. § 6103, Congress amended sections 2103 and 2104 of title 44 United States Code. In general, Congress reduced the period for transferring records to NARS as well as reducing the statutory restriction period from 50 years to 30 years. In the legislative history of this amendment, Congress viewed this change as opening up records for research within an earlier period. See H. Rep. No. 95-1522 (1978). Nowhere in the statute nor its legislative history did Congress ever suggest that certain types of statutory restrictions would not only be carried on forever but also prevent NARS from receiving them. Unless Federal agencies utilize NARS authorities to preserve (44 U.S.C. Ch. 21) or dispose of these records (44 U.S.C. Ch. 33), agencies will retain with these records in perpetuity. Moreover, implementation of this OLC opinion would require breaking up records series and destroying historical accuracy. This was surely not contemplated by Congress when enacting the 1978 amendments.

In 1980, the OLC issued a second opinion regarding the non-disclosure provisions of 26 U.S.C. § 6103. In that opinion, OLC concluded that section 6103 prohibits NARS archivists from receiving tax return information in FBI files. This issue was eventually submitted to the Court of Appeals for resolution.

In 1983, in *American Friends Service Committee* v. *Webster*, 720 F.2d 29 (D.C. Cir. 1983), the Court of Appeals addressed this topic of restricted use records. First, the court determined, as had OLC, that section 6103 did not provide for access for NARS archivists to inspect tax return information in FBI records. The court similarly determined that NARS archivists were not authorized to inspect grand jury and electronic surveillance materials by those respective restrictive use statutes.

These determinations, however, did not end the court's analysis of the problem. The court reviewed carefully the authority of NARS to inspect records under 44 U.S.C. § 2906. The court concluded that under 44 U.S.C. § 2906(a)(2), NARS had no authority to review those restricted use records unless approved by the Director of the FBI or the President. Implicit in this court's holding, however, is the premise that section 6103 does not provide the only means of access to records containing tax return information. The court clearly held that 44 U.S.C. § 2906(a)(2) provided an alternative authority for access to restricted use records not contemplated by section 6103 or the other restrictive statutes.

Following its discussion of NARS' authority under 44 U.S.C. § 2906, the court stated that its holding that NARS could not inspect restricted materials in FBI files did not deal in NARS' "archival administration" function, governed by 44 U.S.C. Ch. 21. The court held:

"Nothing we decide today bears on NARS' statutory authority to 'direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist . . . to have sufficient history or other value to warrant their continued preservation.' Id. 2103(2) (Supp. V 1981).

"77 'When records, the use of which is subject to statutory limitations and restrictions, are . . . transferred (to the National Archives), permissive and restrictions statutory provisions with respect to the examination and use of records applicable to the head of an agency from which records were transferred or to employees of that agency are applicable (to NARS personnel).'" 44 U.S.C. § 2104.

These quoted provisions indicate that while NARS had no authority to inspect these restricted use records while at the FBI, NARS had additional authority to inspect these same records after they are transferred to NARS under 44 U.S.C. § 2103. Also, when these restricted use records are transferred to NARS, NARS personnel must follow the restrictive provisions that are then applicable.

The court also reviewed the authority of NARS under 44 U.S.C. Ch. 21 for purposes other than inspection. As for a NARS' general authority in this area, the court stated:

"Section 507 of the 1950 legislation (codified as amended at 44 U.S.C. 2201, 2103-2110), also reflects Congress' recognition that private parties such as some of these plaintiffs have an interest in agency records. Section 507 dealt in part with transferring records from agencies to the National Archives. It included 'a general repeal clause (for records in existence for 50 years) to statutory and other restrictions governing the use of records by scholars and the public generally.' 1950 S. Rep. at 16; 1950 H.R. Rep. at 15. If Congress did not expect the public to have access to and an interest in these records, there would be no reason for the restrictions on the use of some records and no purpose served by the general rule that restrictions should be removed after 50 years.

"This 50 year limit was reduced to 30 years in 1978, see Act of Oct. 5, 1978, Pub. L. No. 95-416, 92 Stat. 915 (amending 44 U.S.C. §§ 2103, 2104). At that time Congress reiterated the interest that researchers and the general public have in agency records. See H.R. Rep. No. 1522, 95th Cong., 2d Sess. 2, 3 (1978). In particular, the House Report explained that the change from 50 to 30 years was designed to make access by the public *easier:*

"The Archivist has no authority (under the pre-1978 law) to remove restrictions placed by agencies until the documents are 50 years old. As a result, requests for restricted documents must be made under the Freedom of Information Act, an inefficient way to deal with large numbers of historical documents.

"More careful scrutiny when restrictions are proposed should *simplify access problems for the researcher*, the agency, and the Archives.

"Id. at 2 (emphasis added). A letter from the Acting Administrator of GSA, expressing GSA's view on the bill to the House committee, also recognized the public's interest. This bill, he wrote, 'would assure a more equitable balance between protecting those records, which legitimately require greater protection for a period of time and providing greater public access to records of historical significance and interest.' Id. at 4 (appending letter of July 10, 1978, from Robert Griffin, Acting GSA Administrator, to the Hon. Jack Brooks, Chairman of the House Committee on Government Operations).

"5. CONCLUSION

"In sum, the legislative history of the records acts supports a finding that Congress intended, expected, and positively desired private researchers and private parties whose rights may have been affected by government actions to have access is subject to various restrictions, including possibly an appropriate delay of time. At this date, however, even a 30-year wait would permit access to records on World War II, the Korean War, the Rosenbergs' investigation and trial, and the McCarthy era." 720 F.2d at 50-52.

Finally, it should be noted with respect to this ongoing litigation in *AFSC* v. *Webster*, the Government, through the DOJ, filed a retention plan for FBI records. This retention plan requires the transfer of permanently valuable records to NARS after 50 years. Certain of these records, to be transferred beginning in the 1980's, will include these restrictive use records. Neither the FBI nor the DOJ have raised any objection to the expected transfer of restricted use records. If such an objection were anticipated, it would be made to the District Court in our current ligiation.

Based upon the foregoing, as well as a clear reading of 44 U.S.C. §§ 2103 and 2104, it is our opinion that restricted use records, including tax return information, should be accessioned into the National Archives. If you have any further questions, please call me at 566-1460.

GARY L. BROOKS,
Chief Counsel,
National Archives and Records Service.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, June 5, 1984.

To: Senate Governmental Affairs Committee, Attention: Marion Morris.
From: American Law Division.
Subject: Department of Justice Opinion on Application of Tax Return Confidentiality Provisions to the National Archives.

This memorandum comments on a November 7, 1980, memorandum from the Department of Justice Office of Legal Counsel to the Assistant Attorney General, Civil Division, regarding the applicability of the nondisclosure provisions of the Tax Reform Act (26 U.S.C. 6103) to National Archives processing of tax returns under various records management statutes.

Initially, the memorandum does not purport to be a formal opinion. It was written during the District Court proceedings in *American Friends Service Committee* v. *Webster*, 720 F.2d 29 (D.C. Cir. 1983), a case challenging the records management policies and practices of the FBI and the National Archives. Because of the pendency of judicial proceedings, the office, adhering to past practice, declined to issue a formal opinion. Instead, the memorandum represented "our informal views on the legal issue presented." Memo at 3.

The Office reiterated its view expressed in a 1977 formal opinion that 26 U.S.C. 6103 barred transfer of tax return records to the

Archives. See, 1977 Opinions of the Office of Legal Counsel 216 (1977); see also our May 17 memorandum, "Proposed Amendment to Bill Establishing Independent Archives Concerning Access to Tax Return Data," at 4-8 for alternative arguments. What prompted this 1980 memorandum, however, was proposed inspection by Archives officials of tax returns at FBI offices pursuant to devising records retention plans and schedules. The two functions of the Archives are the subject of separate statutory authorization. See, 44 U.S.C. 2103 (authority to direct the transfer of 30-year old historically significant records) and 44 U.S.C. 2906(a) (authority to inspect records in order to evaluate agency records management practices). Despite the different authorities involved, the memorandum concludes that, given the breadth of 26 U.S.C. 6103, a different result is not warranted. Thus, in its view, § 6103 precluded the archivists from reviewing tax return or return information in the FBI files.

The memorandum notes the distinction between the two archival functions, but fails to address the effect of the proviso in 44 U.S.C. 2906(a)(2) regarding inspection of restricted records pursuant to the records management function. That provision states that "[r]ecords, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the agency concerned, or of the President."

The Court of Appeals in *Webster* held that, while § 6103 covered "records, the use of which is restricted by law," such records could be inspects, pursuant to 44 U.S.C. 2906(a)(2), with agency head or presidential approval. *Webster, supra*, 720 F.2d at 71, 76-7. It explicitly rejected the government's contention that § 6103 constituted an absolute restriction on archivist inspection of tax return records. Id. at 76 n. 75. Thus, the court has rejected the conclusion of the 1980 Office of Legal Counsel memorandum with respect to inspection of tax return records.

While the memorandum was concerned with records inspection, it reiterated the view that § 6103 also barred archival transfer of tax records. The court in *Webster* left that question open. Id., 672 F.2d at 77. Amendments proposed by the Treasury Department to S. 905 would resolve that question by barring all access by the Archivist to § 6103 data pursuant to any of his archival or record management functions.

In conclusion, the 1980 Office of Legal Counsel memorandum reiterated the conclusion that 26 U.S.C. 6103 barred the transfer of tax records to the Archives and applied that conclusion to also prohibit archivist inspection of such records at FBI offices. The court in *Webster*, however, rejected this latter interpretation of § 6103 and held that inspection of such records was permissible with agency head or presidential approval. The question of § 6103's application to transfer of 30-year old records was not at issue in *Webster*.

RICHARD C. EHLKE,
Specialist in American Public Law.

Mr. MATHIAS. Mr. President, it is important to make the distinction between records storage and archival purposes.

The former deals with the daily storage, handling, and retrieval of Federal records by the regional records centers for parent agencies, which retain legal custody of those records for 30 years. Many of these are semiactive records which agencies have occasion to need for referral purposes.

The later—archival purposes—has to do with determining which Federal records are of permanent historical value, ensuring their protection for the 30 years they remain in the legal custody of the parent agency, and ultimate transfer of custody of that relatively small percentage of records of permanent historical value to the Archives for preservation and public access.

Let us be clear about the current situation with respect to tax return information. Personal income tax returns, which are required by the IRS statute to be kept for 6 years, are kept for the IRS by the Archives in regional records centers. Those returns for 1981 numbered approximately 95 million.

Pursuant to a mutually agreed upon disposition schedule for tax returns, the Archives destroys tax returns when they are 6 years and 9 months old. So the individual income tax return is nonexistent long before the 30-year date established in the 1978 Records Management Act for transfer to the Archives. The only individually identifiable personal income tax returns which survive are those transferred to other Federal agencies, for regulatory, civil or criminal investigatory, or audit purposes. So a miniscule percentage of tax return information survives in other agency files as part of their larger case files.

Those files are usually accessioned by the Archivist after 30 years and only if he determines they are of permanent historical value.

Corporate, gift, and estate tax returns are on a 75-year disposition schedule. No tax returns from IRS of recent vintage are being accessioned by the Archivist because IRS resists and the Archivist is reluctant to press the issue.

In addition, the Archives holds and makes available individual assessment lists for the 19th century, particularly the Civil War period, and corporate assessment lists for 1910-1915, and other lists of special returns and penalties primarily for the 1860's and 1870's

These are valuable to historians to substantiate, for example, the dynamics of change from an agrarian economy to an industrialized one; population shifts from a rural to urban society; and sex, age, and household size and composition characteristics.

It is also instructive to look at how a sampling of State archives protect the privacy of their State tax returns for guidance in this matter. I ask unanimous consent to have printed in the RECORD a review of State archives' treatment of tax return information.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE INCOME TAX INFORMATION

The following States have dealt with State income tax information as indicated.

ALABAMA: The State Department of Revenue has its own system of records retention and disposal, with no role played by the state archives.

DELAWARE: The state archives has determined that a sample of personal income tax returns is permanent. The records are restricted from public research for a period of 60 years. Since the state did not have an income tax until the 1920s, they have yet to release their first returns. As in the case of all of the states we contacted, any returns submitted as part of a court case would be open unless the court sealed them, which is quite rare. In addition to the income tax material, the archives has a large quantity of real and personal property tax data from the 18th through the 20th centuries. The archives has microfilmed these records and they remain one of the most popular series for reseachers.

FLORIDA: No state income tax.

GEORGIA: Individual state income tax records are stored in the state archives' records center, where about 40% of the reference activity of the center is on those tax returns. Personal income tax records are scheduled for destruction after 7½ years; investigative files of the attorney general are permanent records and are opened after 75 years. The state taxation department and the state archives developed the records schedule jointly, and archivists are permitted to examine the records prior to disposition.

ILLINOIS: About four years ago, the state revenue department decided not to send tax information to the state archives, and the material is still in the agency. State archivists have been permitted to examine the records for appraisal purposes and have judged them to be disposable. Personal and real property tax information in Illinois is retained as property tax information in Illinois is retained as permanent at the local level.

IOWA: The state Department of Revenue has its own records center where it keeps individual tax returns for a period before destroying them. The State Records Commission must approve disposal actions, but in fact this is merely a formality. The state archives has executive journals, which contain appeal information; however, access to these records can only be granted by the State Department of Revenue. Because of the size of the taxation collection at the records center, the state archives has not made an issue of tax materials.

KANSAS: The archives has statutory authority to inspect state records, but in fact their resources are thin. No personal or corporate returns have been accessioned, and the state archives appraisers records only when they are offered or when they are scheduled to be destroyed. Archivist Terry Harmon could not recall seeing any tax information in state law enforcement files; access to these files is subject to some restrictions. The state archives has accessioned county-level personal and property tax assessment lists.

MARYLAND: The Maryland state archives has determined that personal and corporate income tax returns are disposable. They do retain as permanent records tax information in aggregate form. This material is restricted for 75 years. As in the case of most state archives, their court records contain tax information and it is usually open to researchers, unless the court seals it. There is an abundance of 18th through 20th century personal property tax data; it is open in its entirety through to the present.

MICHIGAN: The state treasury department income tax returns are scheduled and stored in the state records center until their disposal date. The state archives has not asked to inspect these records nor for them to be accessioned as permanent records. Business tax returns from the 1940s until the mid-1970s were abstracted by the treasury department, and the archives received composite computer printouts until the practice was discontinued because of budget cutbacks. Files of the state attorney general's office, which could contain tax investigation information, are in the state archives and have no access restrictions on them.

MINNESOTA: The retention period for state income tax returns are set by state statute. The question of the authority of the state archives to appraise state finance department records has not been raised.

NEBRASKA: The state archivist does sign off on the disposal of individual state income tax returns and has the right to inspect these records, although he has not exercised this right. Records of the state attorney general's office, which could contain tax investigation information, have no access restrictions. Personal and property tax assessments and lists are scheduled as permanent, and all of these records from the mid-19th century to 1960 are open to research.

NEW YORK: The New York State Archives has not accessioned any personal or corporate income tax returns. The state law is quite rigid about letting anyone but Department of Taxation and Finance employees have access to income tax returns. The Department has construed this to include archivists trying to do appraisal work; the state archives does not feel it has the clout to take on the Department over the issue. More recently, the archives has, however, appraised statistical reports prepared by the Department that are based on tax data. The archives is awaiting the Department's response to their appraisal.

PENNSYLVANIA: The archives has not accessioned any personal income tax returns. The returns have been scheduled as disposable by the archives. The archives has, however, accessioned 331 volumes of the Bureau of Corporate Taxes, 1850-1951, which includes detailed income data on Pennsylvania businesses. These records are open to public research. As in nearly all of the eastern states, there are considerable quantities of personal and real property tax data in the archives that is frequently used by the public.

TEXAS: No state income tax.

VIRGINIA: The state Department of Finance secured special legislation to establish its own records system, with no role played by the Virginia State Library. The library has an ongoing project of microfilming personal and real estate tax records in the localities. (For more information, contact Willie Ray.)

WISCONSIN: The state archives has accessioned all corporate returns from 1911-1973. These are closed, however, except with the permission of the Commissioner of Internal Revenue. They have negotiated an agreement with the revenue department to accession a machine-readable version of all personal income tax returns, beginning in 1976. These, too, are closed except with the permission of the Commissioner of Internal Revenue. In appraising these machine-readable records, the state archives had unrestricted access.

Mr. MATHIAS. Mr. President, my own State of Maryland, which now has an independent State archives, retains aggregate data from tax information for future historical reference. Even then, the data, which is not individually identifiable, is restricted from public access for 75 years. The basic ground rule with most of the State archives is to prohibit release of individually identifiable information during the person's lifetime. Even after such records become available to the public there are restrictions on public access to prevent defamation of character or embarassment to family members.

Likewise, the treatment of census bureau records by the Archives also is instructive. Pursuant to a 1952 agreement between the two agencies, census records are kept confidential for 72 years from the enumeration date in order to protect the rights of individuals concerned. The agreement goes on to describe specifically legitimate historical, genealogical, or other worthwhile research:

(1) a searcher's reputation as, in fact, a research worker or professional genealogist;

(2) a searcher's connection with an established institution of learning or research;

(3) a searcher's connection with the person or family whose records are desired, either by immediate relationship or by authorization; and

(4) the lapse of time since the appearance of possibly detrimental information, considered in conjunction with the legitimacy of public or scholarly interest in the factual data relating to a historical personage.

So, I believe there are some workable examples available which might guide the IRS and Archives in the development of a similar type of policy with respect to tax returns and return information. I encourage these two agencies to work together to come to a meeting of the minds on this issue which will protect the privacy of living individuals while ensuring that historically valuable information which cannot be derived from any other source is made available to the public after a reasonable passage of time. I think Congress would be open to suggestions by these two agencies to address through legislation the legitimate concerns of both agencies.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Kansas [Mr. DOLE].

The amendment (No. 3321) was agreed to.

AMENDMENT NO. 3322

(Purpose: To include the Administrator of General Services and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget as additional members of the Administrative Committee of the Federal Register)

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Oregon [Mr. HATFIELD] as a substitute for the Mathias amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. HATFIELD, proposes an amendment numbered 3322.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, line 8, strike out "(m)" and insert in lieu thereof "(10)".

On page 8, between line 10 and the matter following line 9, insert the following:

(m) The first sentence of section 1506 of such title is amended by striking out "and" after "Attorney General," and by inserting before the period a comma and "the Administrator of General Services, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget".

Mr. HATFIELD. Mr. President, it is exceedingly appropriate that today the Senate should be considering legislation to create an independent National Archives and Records Administration. Yesterday marked the 50th anniversary of the creation of the National Archives and the institution could not receive a finer birthday present than passage of S. 905 by the Senate. Senator MATHIAS and Senator EAGLETON are to be congratulated for their tenacity in pursuing the important goal of giving our national documentary history proper attention.

I will not expound at length on the benefits to be derived as a result of the passage of this legislation except to point out that sometimes it happens that what appears to be a wise consolidation of functions to streamline the bureaucracy, can instead result in damage to the mission of the agencies involved. That has been the case with the inclusion of the National Archives and Records Service within the General Services Administration. The GSA, with its proper emphasis on space allocation and resource management could not give the attention necessary to care for the less tangible national heritage represented by the holdings of the National Archives.

The fact that the separation of the National Archives and Records Administration from GSA will add no new costs to the Federal budget reinforces my commitment to establish autonomy for the NARS once again. I am pleased to support the bill.

It is gratifying that the administration has understood the need for this legislation and has agreed to support it. Administration officials and I met to discuss concerns that they had over certain provisions of the bill as reported by the Governmental Affairs Committee. These discussions were fruitful and with the cooperation of Senators MATHIAS and EAGLETON a satisfactory agreement was reached on revisions that the administration felt were necessary for the GSA and NARS to carry out their respective functions as separate agencies. The managers of the bill have included most of those changes in their substitute amendment. Another change is included in the amendment proposed by Senator DOLE which I support. I would like to propose the remaining changes in the form of two amendments to the bill and request the support of the managers of the bill.

In bringing up these amendments, I ask unanimous consent that two letters which I have received from the Office of Management and Budget, clarifying the administration's position, be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, May 29, 1984.

Hon. MARK HATFIELD,
U.S. Senate, Washington, DC.

DEAR MARK: This is to confirm the substance of our discussion on May 23 regarding S. 905, a bill that would separate the National Archives and Records Services [NARS] from the General Services Administration [GSA].

The Administration will support enactment of S. 905, providing that certain changes are reflected in the final enacted version of the bill. Those revisions are outlined in the enclosure.

The Administration's proposed changes to S. 905 reflect our belief that the parameters of a bill to separate NARS from GSA should not permit changes to current archival authority, but rather, should be limited to reorganizational matters.

As you know, the Administration has serious concerns about certain provisions of H.R. 3987, the House counterpart to S. 905. The objectionable provisions of H.R. 3987 would modify or expand archival authorities. We therefore urge you to work in conference to assure that the final enacted bill conforms to the provisions of S. 905, with the technical changes we have proposed.

I believe this summary accurately reflects the major issues we discussed. I look forward to working closely with you in support of S. 905.

Sincerely,

JOSEPH R. WRIGHT,
Deputy Director.

Enclosure.

ADMINISTRATION'S PROPOSED CHANGES TO S. 905

Delete proposed Section 2105(a), which would permit the Archivist to promulgate rules and regulations and would require agency heads to issue directives to conform with these regulations.

Delete proposed Section 2105(f), which would authorize agency heads to provide information and data to the Archivist.

Add language to require that the Office of the Federal Register be retained within the General Services Administration.

No revisions are offered at this time to proposed Section 2104(a), which provides for appointment of the Archivist by the President for a 10-year term. That provision in S. 905 is currently silent on the matter of removal of the Archivist. It is our understanding, however, that if disagreement between the House and Senate persists during conference, the House language will be added to Section 2104(a) to require the President to report to both Houses of Congress the reasons for removal of an Archivist, if such removal occurs.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, June 9, 1984.

Hon. MARK O. HATFIELD,
U.S. Senate, Washington, DC.

DEAR MARK: This is in further reference to S. 905, a bill which would separate the National Archives and Records Service [NARS] from the General Services Administration [GSA]. In my letter of May 29, I indicated that the Administration would support the enactment of the bill, provided that certain changes were reflected in the final enacted version.

One of the changes proposed in the letter of May 29, was to add language to S. 905 to require that the Office of the Federal Register be placed within GSA. We now believe that our concerns can also be addressed by leaving the Federal Register with NARS if the membership of the Administrative Committee of the Federal Register is expanded to include the Administrator of General Services and the Administrator of OMB's Office of Information and Regulatory Affairs.

GSA and NARS have advised me that there are some technical revisions to S. 905 which are necessary for GSA and NARS to carry out their responsibilities as separate agencies. These technical revisions, which are in addition to those described in the letter of May 29, are noted in the enclosure. We would again urge your efforts to incorporate these changes in the final enacted version of the NARS separation legislation.

Your efforts on these issues are greatly appreciated.

Sincerely,

JOSEPH R. WRIGHT, Jr.,
Deputy Director.

Enclosure.

ADMINISTRATION'S ADDITIONAL PROPOSED CHANGES TO S. 905

1. Add language to S. 905 to amend 44 U.S.C. 1506 to include the Administrator of General Services and the Administrator of OMB's Office of Information and Regulatory Affairs as additional members of the Administrative Committee of the Federal Register. The letter of May 29 had proposed that the Office of the Federal Register remain with GSA. With the revision in committee membership, the provision in S. 905 retaining the office in NARS is acceptable to both GSA and NARS.

2. Amend S. 905 to (1) transfer to NARS only records management authorities with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition and (2) retain with GSA the authority to provide guidance and assistance to Federal agencies to ensure economical and effective records management. S. 905 would transfer to the Archives all authorities for records management, a transfer which would adversely affect GSA's ability to carry out its governmentwide information management responsibilities. The division of authority noted above is contained in paragraphs 12 through 17 in subsection 107(b) of H.R. 3987 and is acceptable to GSA and NARS.

3. Amend S. 905 to provide for the transfer to NARS of such personnel, property, records, and unexpended balances of appropriation's available in connection with any authorities and responsibilities so transferred, as the Director of the Office of Management and Budget determines are necessary to carry out the responsibilities transferred pursuant to this Act. S. 905 currently provides for the transfer to NARS of a percentage of General Management Account funds and positions proportionate to the percentage of NARS employees in GSA. By improperly relating levels of administrative support to numbers of positions, the current provision could result in a transfer of an amount in excess of that requested or appropriated for NARS employees.

Mr. HATFIELD. My first amendment adds two members to the administrative committee of the Federal Register. Those new officers will be the Administrator of General Services and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. The purpose of the amendment is to broaden the input that is provided in administration of the publication of the Federal Register. It has the approval of the National Archivist.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3322) was agreed to.

AMENDMENT NO. 3323

(Purpose: To eliminate provisions requiring the transfer of a percentage of the General Management and Administration appropriation for the General Services Administration)

Mr. BAKER. Mr. President, I now send to the desk another amendment on behalf of the distinguished Senator from Oregon [Mr. HATFIELD] and ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. HATFIELD, proposes an amendment numbered 3323.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, beginning with "A percentage" in line 26, strike out through the period in line 32.

Mr. HATFIELD. The second amendment reflects the results of conversations that were held between the Archivist, the Administrator of General Services, and representatives of the Office of Management and Budget concerning the method by which the General Services Administration and the National Archives and Records Administration will accomplish the separation of their responsibilities, personnel, budgets, property, and records. This amendment would delete from S. 905 language which calls for a proportionate transfer of these items from GSA to the Archives and permit the Administration to transfer such personnel, property, records, and unexpended appropriations connected with the authorities and responsibilities so transferred. This is consistent with past reorganization legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3323) was agreed to.

Mr. BAKER. Mr. President, I believe we are ready for third reading.

Mr. MATHIAS. Mr. President, we are prepared to accept these two amendments by Senator HATFIELD in the interests of moving this bill. I have spoken with Senator EAGLETON about these amendments and he concurs with accepting the amendments on behalf of the minority.

This legislation could not have come to the floor in a timely manner without the cooperation of several Senators and their staffs. I particularly want to applaud the efforts of my distinguished colleague, Senator EAGLETON, and his minority staff director, Mr. Ira Shapiro, for the yeoman's effort they have made in moving this bill along.

I would also like to acknowledge the courtesy and efficiency which the chairman of the Committee on Governmental Affairs, Senator ROTH, and his staff, Mr. Lincoln Hoewing, have shown in convening a meeting of representatives of the Justice and Treasury Departments with committee staff which resulted in two of our technical amendments.

In our staff negotiations with the Internal Revenue Service regarding their concerns, Senator DOLE and his Finance Committee staff director, Mr. Rod DeArment, were most cooperative and courteous in convening the parties and working toward a mutually acceptable amendment.

Senator HATFIELD has played a key intermediary role between the administration and the committee sponsors of this legislation in smoothing the path to enactment of S. 905. His executive assistant, Mr. Jim Hemphill, has worked diligently to expedite consideration of this bill on this, the 50th anniversary of the founding of the National Archives.

All of our intentions with respect to the National Archives could not come into being without the expert and expeditious legal drafting of the Senate Legislative Counsel. Susan McNally of that staff had a very difficult job to do in a bill such as this because it required a fine tooth combing of at least 10 chapters of title 44 which governs the Archives as well as related other titles. Ms. McNally was of invaluable assistance in this regard and we extend our thanks to her.

The staff of the National Archives has been most helpful to us when we requested background information on their operations and holdings. And last, I must acknowledge the untiring efforts during the past 4 years of the National Coordinating Committee for the Promotion of History, composed of over 30 professional membership organizations of historians, and the Coalition to Save our Documentary Heritage, with over 50 archival, genealogical, and scholarly research organizations. All of these organizations, as users of our National Archives, know from first-hand experience the problems which this bill addresses and have effectively brought that message here today.

Mr. MOYNIHAN. Mr. President, I rise in support of S. 905, the National Archives Administration Act of 1983. In so doing, I join the Committee on Governmental Affairs in its effort to correct a 35-year-old error. Simply stated, the National Archives does not properly belong under the aegis of the General Services Administration.

During the committee's extension deliberations, there was almost unanimous support for returning the Archives to its prior status, as an independent Federal agency. The only voice of dissent belonged to the General Service Administration.

Senator ROTH, and his distinguished colleagues on the committee compiled a most persuasive case for restoring the independence of the Archives. I commend them, and commend their report to you. The case against the current arrangements encompasses financial, managerial, as well as intellectual considerations.

Let me cite but one paragraph from this report:

> The subordination of NARS (The National Archives and Record Service) within GSA has created a situation characterized by divided authority, lack of accountability, and weak management in archival programs and record management. It has opened the door to the possibility that sensitive decisions about archival and record-keeping responsibilities will be politicized. Crucial tasks needed to insure the preservation of our priceless documentary history have been delayed or gone undone. The placement of NARS within the GSA has also handicapped *NARS budget responsibility* and control.

The conclusion is inescapable. The National Archives should and must be independent of GSA. I therefore join the committee and the cosponsors in voting for the public interest, now and in the future, served by an independent, accountable Archives, headed by a Presidentially appointed Archivist.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill (S. 905) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 905

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Archives and Records Administration Act of 1984".

AMENDMENTS TO TITLE 44, UNITED STATES CODE

SEC. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as sections 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by subsection (a)) the following new section:

"§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, to Federal agencies, and to the Congress for historical and other research purposes.".

(c) Section 2102 of such title (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"'Federal agency' means, notwithstanding section 2901(13) of this title, any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), any independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

"'Archivist' means the Archivist of the United States appointed under section 2104; and

"'Administration' means the National Archives and Records Administration established under section 2103.".

(d) Section 2103 of such title is amended to read as follows:

"§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.".

(e) Such title is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

"§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

"(b) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

"§ 2105. Administrative provisions

"(a) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorise such successive redelegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(9) The Archivist may organize the Administration as he finds necessary or appropriate.

"(c) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(d) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(e) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee who are not officers or employees of the Government shall serve without compensation but shall be entitled, when performing the duties of the committee, to travel and transportation expenses and a per diem allowance in the same manner and under the same conditions as provided for employees under section 5702 of title 5.

"(f) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

"(g) If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

"§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorised to utilize in the Administration the services of officers and employees in other executive agencies, including personnel of the Armed Forces, with the consent of the head of the agency concerned.

"(d) Notwithstanding section 1342 of title 31, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

"§ 2107. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board. The report shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds.".

(f) Chapter 21 of such title is amended by adding at the end thereof the following new section:

"§ 2120. Authorization of appropriations

"There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Archivist and the Administration under this title.".

(g)(1) The table of sections for chapter 21 of such title is amended to read as follows:

"CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

"Sec.
"2101. Purpose.
"2102. Definitions.
"2103. Establishment.
"2104. Officers.
"2105. Administrative provisions.
"2106. Personnel and services.
"2107. Reports to Congress.
"2108. Acceptances of records for historical preservation.
"2109. Responsibility for custody, use, and withdrawal of records.
"2110. Preservation, arrangement, duplication, exhibition of records.
"2111. Servicing records.
"2112. Material accepted for deposit.
"2113. Presidential archival depository.
"2114. Depository for agreements between States.
"2115. Preservation of motion-picture films, still pictures, and sound recordings.
"2116. Reports; correction of violations.
"2117. Legal status of reproductions; official seal, fees for copies and reproductions.
"2118. Limitation on liability.
"2119. Records of Congress.
"2120. Authorization of appropriations.".

(2) The item relating to chapter 21 in the table of chapters for such title is amended to read as follows:

"21. National Archives and Records Administration.................................. 2101".

(h)(1) Section 1506 of such title is amended by striking out the third sentence.

(2) Section 2301 of such title is amended by striking out the second sentence.

(3) Section 2501 of such title is amended by striking out the last sentence.

(i) Section 2504(a) of such title is amended by striking out "the Administrator" in the last sentence and inserting in lieu thereof "the President and the Congress."

(j)(1) Section 2507 of such title is repealed.

(2) The table of sections for chapter 25 of such title is amended by striking out the item relating to section 2507.

(k)(1) Section 2108(4) of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" and inserting in lieu thereof "section 2112".

(2) Section 2113 of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112".

(l)(1) Section 1501 of such title is amended:

(A) by striking out the period at the end of the last paragraph and inserting in lieu thereof a semicolon and "and"; and

(B) by adding at the end thereof the following new paragraph:

"'National Archives of the United States' has the same meaning as in section 2901(11) of this title.".

(2) Section 2109 of such title (as redesignated by section 2(a) of this Act) is amended—

(A) by striking out "Administrator, the Archivist of the United States," in the second sentence and inserting in lieu thereof "Archivist";

(B) by striking out "the Administrator shall, if he concurs, and in consultation with the Archivist of the United States," in the third sentence and inserting in lieu thereof "the Archivist shall, if the Archivist concurs,"; and

(C) by striking out "Administrator of General Services, by order, having consulted with the Archivist and" in the fifth sentence and inserting in lieu thereof "Archivist, by order, having consulted with".

(3) Section 2204(c)(1) of such title is amended by striking out "Service of the General Services".

(4) Section 2205(1) of such title is amended by striking out "Service of the General Services".

(5) Section 2110 of such title (as redesignated by section 2(a) of this Act) is amended by inserting "and Records" after "Historical Publications" in the last sentence.

(6) Section 2504(a) of such title is amended by inserting "and Records" after "Historical Publications" in the fourth sentence.

(7) Chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of such title (as amended by this section) are further amended by striking out "Administrator of General Services", "Administrator", and "General Services Admin-

istration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(8) Section 3504(e) of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

(9) Section 3513(a) of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States".

(10) The item relating to chapter 29 in the table of contents for such title is amended to read as follows:

"29. Records Management by Archivist of the United States, 2901".

(m) The first sentence of section 1506 of such title is amended by striking out "and" after "Attorney General," and by inserting before the period a comma and "the Administrator of General Services, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget".

(n) (1) Section 2901 of such title is amended by striking out paragraph (13) and inserting in lieu thereof the following:

"(13) the term 'excecutive agency' shall have the meaning given such term by section 3(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 (a)); and

"(14) the term 'Federal agency' means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;".

(2) Section 2103(1) of such title is amended by striking out "or of the Congress" and inserting in lieu thereof a comma and "the Congress, or the Supreme Court".

(o)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112";

(B) by striking out "section 2101" and inserting in lieu thereof "section 2102";

(C) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States"; and

(D) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2112"; and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(3) Section 103 of such Act is amended by striking out "Administrator" and inserting in lieu thereof "Archivist".

(4) Section 104 of such Act is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist";

(2) by striking out subsection (b);

(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively; and

(4) by striking out "under subsection (b)" in subsection (b) (as redesignated by paragraph (3) of this subsection).

(p) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"ARCHIVIST OF THE UNITED STATES.".

(q) Sections 141 through 145 of title 4, United States Code, are each amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(r) The Act of March 27, 1934 (48 Stat. 501, chapter 93; 25 U.S.C. 199a) is amended—

(1) by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States"; and

(2) by striking out "section 2112(b)" and inserting in lieu thereof "section 2117(b)".

(s)(1) Sections 106a, 106b, 112, and 113 of title 1, United States Code are each amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States."

(2) Section 106b of such title (as amended by paragraph (1) of this subsection) is further amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration".

(t)(1) Sections 6, 11, 12, and 13 of title 3, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States," and "National Archives and Records Administration," respectively.

(2)(A) The heading of section 6 of such title is amended to read as follows:

"§ 6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection"

(B) The heading of section 12 of such title is amended to read as follows:

"§ 12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate"

(C) The table of sections for chapter 1 of such title is amended by striking out "Administrator of General Services" each place it appears in the items pertaining to sections 6 and 12 and inserting in lieu thereof "Archivist of the United States".

(u) Section 552a of title 5, United States Code, is amended—

(1) by striking out subsection (b)(6) and inserting in lieu thereof the following:

"(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist to determine whether the record has such value;"; and

(2) by striking out "Administrator of General Services" each place it appears in subsection (l)(1) and inserting in lieu thereof "Archivist of the United States".

DEFINITIONS

Sec. 3. For purposes of sections 3 through 8—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2104 of title 44, United States Code (as added by section 2 of this Act); and

(2) the term "Administration" means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

TRANSFER OF FUNCTIONS

Sec. 4. (a) All functions of the Administrator of General Services under chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are transferred to the Archivist.

(b) The National Archives and Records Service of the General Services Administration is transferred to the Administration.

(c) The Office of Office Information Systems of the Office of Information Resources Management of the General Services Administration is transferred to the Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services prior to the transfer of such functions, and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

TRANSFERS

Sec. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

SAVINGS PROVISIONS

Sec. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Archivist, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

REFERENCE

SEC. 7. With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration, respectively.

RETURN OR RETURN INFORMATION

SEC. 8. Notwithstanding any provision of this title, no return or return information as defined in section 6103 of title 26 of the United States Code may be disclosed except as authorized by title 26.

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. EAGLETON. Mr. President, I am extremely gratified by the Senate's consideration and passage of S. 905, legislation to restore the independence of the National Archives and Records Service [NARS].

This is an action long overdue. It is the most fitting celebration of the golden anniversary of NARS. In passing S. 905, the Senate will be reaching the conclusion that the community of historians, archivists, and other users of the National Archives reached long ago: Independence for NARS is the best guarantee that our priceless documentary heritage will be preserved for future generations.

The fundamental incongruity of NARS' placement within GSA was described very aptly by James Rhoads, who was Archivist of the United States from 1968 to 1979:

> The central problem is that many of the objectives, priorities and motivations of GSA and NARS are simply incompatible. There is no way that an agency dedicated to encouraging scholarly research and other educational and cultural objectives can function effectively as a subordinate component of a business-oriented conglomerate whose primary responsibilities are for construction and maintenance of public buildings, procurement of supplies, and management of motor pools and stockpiles of strategic materials.

As the committee report on S. 905 documents, in exhaustive detail, the damage done to NARS by its placement within GAS has been severe.

NARS' performance has perennially been plagued by management problems: a lack of clear policy directions, confusion over lines of authority and responsibility and delays in decisionmaking. Morale has declined, and good managers have been hard to keep, understandably, in a situation where ultimate authority resides with GSA, and not NARS.

Professional judgment is the essence of the Archivist's work; it is the best guarantee that the historical record preserved and made available to the public will be full and fair. Yet because final responsibility for archival judgments rests with the GSA Administrator, not the Archivists, the dangers of politicization have been everpresent.

The NARS budget has traditionally suffered, in comparison to the other cultural agencies, because NARS has lacked an advocate for its programs and needs. GSA Administrators have understandably had other priorities; the OMB budget examiners reviewing GSA budget requests have been more sensitive to building construction, procurement, and motor vehicle pools than to documentary history. The resources of NARS—budget and personnel—have been held in tight check while the demands on the agency have expanded dramatically. The inevitable result has been marked deterioration of NARS' capacity to serve the public and the scholarly community.

By restoring independence to NARS, S. 905 provides the only realistic remedy for these chronic problems. For the first time since 1949, the Archivist of the United States will exercise ultimate responsibility for the archival programs of the Federal Government. The Archivist will have the authority—de facto and de jure—to run the agency. The Archivist will again be a Presidential appointee, confirmed by the Senate, which will enhance the attractiveness, prestige, and independence of the position. The Archivist will be able to make the strongest possible case to OMB and Congress in support of the resources needed to carry out the critical responsibilities of NARS.

In general, reorganization is not a panacea. In situations where we choose to reorganize rather than deal with substantive problems, reorganization can be positively harmful. In this case, however, the record is clear beyond dispute: the current arrangement is untenable; placement within GSA has been the major problem plaguing NARS. Substantive problems—from preserving aging documents to coping with the Archivist's function in the computer age—will all be handled more successfully by an independent NARS.

Mr. President, the Congressional Budget Office has reported its expectation that "no significant additional costs will be incurred by the Federal, State, or local governments if this legislation is enacted." The Committee on Governmental Affairs does not intend that this measure authorize any additional budget authority for fiscal year 1984 beyond that already available to the General Services Administration. The committee intends that any fiscal year 1984 costs incurred from the bill will be absorbed from existing funds.

I am extremely grateful for the efforts of Senator MATHIAS, my principal cosponsor, for his longstanding concern about the plight of NARS. Senator HATFIELD, who currently represents the Senate on the National Historical Publications and Records Commission [NHPRC], has also been a stalwart supporter of this legislation and a strong ally in my efforts within the Appropriations Committee to attain adequate funding for NARS and the NHPRC. I want to pay special tribute to Marian Morris of Senator MATHIAS' staff who has been tireless and effective in her efforts on behalf of this legislation. But the real credit for success of this legislation should go to the coalition of historians, archivists, genealogists, and other users of the Archives who took the time and made the effort to make Congress understand just what was happening to NARS because of its placement within GSA. Independence for NARS is an idea whose time has come because of their efforts.

Mr. President, S. 905 is a small piece of legislation, but its enactment will have a major impact on our history by creating an agency that will do justice to our precious historical legacy.

Mr. BAKER. Mr. President, I venture a statement that has no place in this RECORD, perhaps, but I cannot remember a more complicated unanimous-consent matter in a long time. I cannot think of a more likely candidate for that honor than the Archives of the United States, with which this deals.

AUTHORIZATION FOR CERTAIN FISHERY PROGRAMS

Mr. BAKER. Mr. President, next I say to the minority leader, I propose to go to Calendar Order No. 767, if agreeable.

Mr. BYRD. Mr. President, that has been cleared on this side.

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 767, S. 2463.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2463) to authorize appropriations of funds for certain fishery programs, and for other purposes.

AMENDMENT NO. 3324

(Purpose: Make amendment in the nature of a substitute)

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Oregon [Mr. PACKWOOD].

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for Mr. PACKWOOD, proposes an amendment numbered 3324.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following: That section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in subsection (a), by inserting ", and $28,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by striking "of 1976".

SEC. 2. Section 3 of such Act is amended—

(1) in subsection (a), by inserting ", and $35,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by inserting "Magnuson" immediately before "Fishery", and by striking "of 1976".

SEC. 3. Section 4 of such Act is amended—

(1) in subsection (a)—

(A) by inserting ", and $12,000,000 for fiscal year 1985" immediately after "1984"; and

(B) by striking "boats" and inserting in lieu thereof "vessels"; and

(2) in subsection (b), by striking "of 1976".

SEC. 4. Sections 2, 3, and 4 of such Act are amended by adding at the end thereof the following:

"(c) The duties authorized in subsection (a) of this section shall be considered separate and distinct from duties and functions performed pursuant to moneys authorized in subsection (b) of this section. The total authorization for all such duties and functions shall be the sum of amounts specified in such subsections.".

SEC. 5. (a) Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended—

(1) by striking "October 1, 1984" and inserting in lieu thereof "October 1, 1987"; and

(2) by inserting ", other than payments from fees collected or revenues accruing from deposits or investments of such fees pursuant to subsection (c) of this section," immediately after "payments".

(b) The amendment made by subsection (a)(2) of this section shall become effective on October 1, 1985.

SEC. 6. (a) Section 4(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c(c)) is amended by striking "September 30, 1984" each place it appears and inserting in lieu thereof "September 30, 1985".

(b) Section 7(c)(6) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)(6)) is amended by striking "and 1984" and inserting in lieu thereof "1984, and 1985".

SEC. 7. Section 221 of the American Fisheries Promotion Act (16 U.S.C. 742c, note) is amended—

(1) in subsection (a), by striking "September 30, 1984" and inserting in lieu thereof "September 30, 1985";

(2)(A) in subsection (b)(2)(A), by striking "and 1984," and inserting in lieu thereof "1984, and 1985,"; and

(B) in subsection (b)(2)(C), by striking "and 1984" and inserting in lieu thereof "1984, and 1985"; and

(3) in subsection (c)(1), by striking "and 1984," and inserting in lieu thereof "1984, and 1985".

SEC. 8. Section 310 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1470) is amended—

(1) by striking "and" immediately after "1983,"; and

(2) by inserting ", and $1,500,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986" immediately before the period at the end thereof.

SEC. 9. (a) Section 201(e)(1)(E)(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)(i)) is amended—

(1) by inserting "both" immediately before "United States";

(2) by striking "or fishery" and inserting in lieu thereof "and fishery"; and

(3) by inserting the following immediately before the semicolon at the end thereof: ", particularly fish and fishery products for which the foreign nation has requested an allocation".

(b) Section 201(e)(1)(E)(ii) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)(ii)) is amended to read as follows:

"(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;".

(c)(1) Section 201(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(d)(4)) is amended by striking "shall" the first time it appears and inserting in lieu thereof "may".

(2) Section 201(e)(1)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(A)) is amended by striking "shall determine the allocation among foreign nations of" and inserting in lieu thereof "may make allocations to foreign nations from".

(3) Section 301(a)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1)) is amended by inserting "for the United States fishing industry" immediately before the period at the end thereof.

SEC. 10. Section 10 of the National Aquaculture Act of 1980 (16 U.S.C. 2809) is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking "1983;" and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $2,000,000 for each of fiscal years 1984 and 1985;";

(2) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking "1983; and" and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $2,000,000 for each of fiscal years 1984 and 1985; and"; and

(3) in paragraph (3)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking "1983." and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $1,000,000 for each of fiscal years 1984 and 1985.".

Mr. PACKWOOD. Mr. President, today the Senate is acting on a bill, S. 2463, which provides a 1-year reauthorization of a number of programs carried out by the National Marine Fisheries Service.

The bill provides a total of $75,000,000 for the National Marine Fisheries Service to carry out a portion of its duties in the areas of information collection and analysis and State and industry assistance programs. Also, funding is included for

Fishery Conservation and Management Programs such as hatchery operations and habitat conservation. The balance of the funding needed by the Fisheries Service to carry out these functions is authorized under several cyclical authorizations, the primary one being the Magnuson Fishery Conservation and Management Act.

The bill also includes a 3-year reauthorization of the Fishermen's Guaranty Fund. This fund is used to make payments to fishermen who suffer losses as a result of seizure of their vessels by foreign nations which make jurisdictional claims not recognized by the United States.

Also, the bill extends several provisions of law relating to the Fisheries Loan Fund. The bill extends the authority of the Secretary of Commerce to deposit foreign fishing fees into the fisheries loan fund and allows the Secretary of Commerce to continue making loans from the Fisheries Loan Fund to fishermen to avoid default on Federal loan guarantees. The bill also authorizes funds for the Secretary of Commerce to use volunteers to assist in programs conducted by NOAA.

The Deep Seabed Hard Mineral Resources Act of 1980 is reauthorized for 2 years at $1.5 million in each fiscal year.

The bill contains several amendments to the Magnuson Fishery Conservation and Management Act [MFCMA] designed to restate U.S. policy that foreign nations fishing in the U.S. 200-mile zone are given allocation in return for their cooperation in helping to develop the U.S. fishing industry. These amendments to the MFCMA explicitly state that purchases of U.S. processed fishery products, and not just fish, are expected in return for allocations. Also, the chances clarify that there is no doubt that allocations to a foreign nation occur only when we are satisfied with that foreign nation's arrangements to purchase U.S. fish and fish products. A full allocation of the total allowable level of foreign fishing [TALFF] is not required by law. Finally, these amendments sharpen the focus of the "fish and chips" policy incorporated into the MFCMA to require an evaluation of what the foreign nation seeking an allocation is doing for U.S. industry in the specific fishery for which an allocation is being requested. To receive an allocation for a specific species, a nation must demonstrate what it is doing to open its market to U.S. industry exports of that particular species.

Finally, S. 2463 contains a 2-year authorization of the National Aquaculture Act of 1980 for fiscal years 1984 and 1985.

Mr. GORTON. Mr. President, I am delighted to support passage of S. 2463. The most significant provision in this bill is section 9 which is identical to the text of S. 2523, which I introduced with Senator PACKWOOD earlier this year. It is intended to expand foreign trade opportunities for our American fishing industry and to ensure that our fishing industry receives the maximum obtainable benefits whenever the Federal Government allocates surplus fish in our 200-mile zone to foreign nations.

The fish and chips policy embodied in the Magnuson Fishery Conservation and Management Act is a sound, fundamental promise of our fishery management process, and it has provided substantial benefits to significant sectors of our fishing industry. Strengthening of the act's provisions governing allocations, however, should bring allocation practices more into line with the act's purpose.

Allocations of fish from our fishery conservation zone [FCZ] to foreign nations is not a right on which foreign nations should expect to rely. It is a privilege—a privilege that is only conferred in return for cooperation on their part. To date, that cooperation has not been fully satisfactory.

This amendment would accomplish three principal objectives. First, it would more sharply define our "fish and chips" policy by explicitly stating that purchases of processed fishery products, particularly bottomfish, and not just purchases of fish, are expected in return for allocations. This does not mean that joint venture over-the-side purchases from U.S. fishermen are not desirable or beneficial to our industry. They are. It simply means that purchases of fish by themselves are not all we're trying to accomplish—that by themselves, they are not enough. The purpose of the allocation criteria is to stimulate purchase of American processed fish products as well as American harvested fish. The benefits to our fish processing industry are to be given importance, equivalent to that of the fish-harvesting industry.

Second, the amendment clarifies the Magnuson Act so that there is no doubt that allocations to a foreign nation occur only when we are satisfied with that foreign nation's arrangements to purchase U.S. fish and fish products—and that full allocation of the TALFF is not required by law.

Third, it sharpens the focus of "fish and chips" to require an evaluation of what the foreign nation seeking an allocation is doing for our domestic industry in the fishery for which an allocation is requested. Thus, a nation seeking an allocation of pollock must show what it is doing to open its market to the American industry for pollock and cannot merely gain "allocation credit" by purchasing other species.

These reforms to the allocation provisions of the Magnuson Act should provide a significant boost to our fishing industry's efforts to expand its utilization of our FCZ's fishery resources. These reforms should also make it even clearer to foreign nations wishing to fish in our FCZ that the privilege of access carries the responsibility of cooperation and market access.

Mr. President, finally I'd like to emphasize that we in the Congress are watching closely the progress of the industry-to-industry discussions being conducted between the U.S. fisheries coalition and their Japanese counterparts. To date, the results of such discussions have produced less in tangible gains for the American industry than we would have liked to see. Some progress has been noted, however. This legislation is intended to reinforce the efforts of our industry to increase foreign purchases of American caught and processed fish.

The most recent industry-to-industry talks were preceded by what I consider to be inappropriate conduct by members of the Japanese industry. Our industry and the Japanese industry obviously have different interests—but honest, straightfoward negotiation and cooperation are essential if we are to make satisfactory progress in allocation decisions and industry development. We hope to see more positive, fruitful discussions in the future. We also hope to see immediate progress by Japan on the implementation of the recently agreed-to import quota for surimi.

Mr. President, this bill signals a new stage in ensuring increased American utilization of America's fishery resources—and a renovation of the "fish and chips" policy. We will be monitoring the progress made under it closely, and further legislative steps may be appropriate if sufficient gains are not forthcoming.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3324) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 2463), as amended, was passed, as follows:

S. 2463

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in subsection (a), by inserting ", and $28,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by striking "of 1976".

Sec. 2. Section 3 of such Act is amended—

(1) in subsection (a), by inserting ", and $35,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by inserting "Magnuson" immediately before "Fishery", and by striking "of 1976".

Sec. 3. Section 4 of such Act is amended—

(1) in subsection (a)—

(A) by inserting ", and $12,000,000 for fiscal year 1985" immediately after "1984"; and

(B) by striking "boats" and inserting in lieu thereof "vessels"; and

(2) in subsection (b), by striking "of 1976".

Sec. 4. Sections 2, 3, and 4 of such Act are amended by adding at the end thereof the following:

"(c) The duties authorized in subsection (a) of this section shall be considered separate and distinct from duties and functions performed pursuant to moneys authorized in subsection (b) of this section. The total authorization for all such duties and functions shall be the sum of amounts specified in such subsections.".

Sec. 5. (a) Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended—

(1) by striking "October 1, 1984" and inserting in lieu thereof "October 1, 1987"; and

(2) by inserting ", other than payments from fees collected or revenues accruing from deposits or investments of such fees pursuant to subsection (c) of this section," immediately after "payments".

(b) The amendment made by subsection (a)(2) of this section shall become effective on October 1, 1985.

Sec. 6. (a) Section 4(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c(c)) is amended by striking "September 30, 1984" each place it appears and inserting in lieu thereof "September 30, 1985".

(b) Section 7(c)(6) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)(6)) is amended by striking "and 1984" and inserting in lieu thereof "1984, and 1985".

Sec. 7. Section 221 of the American Fisheries Promotion Act (16 U.S.C. 742c, note) is amended—

(1) in subsection (a), by striking "September 30, 1984" and inserting in lieu thereof "September 30, 1984";

(2)(A) in subsection (b)(2)(A), by striking "and 1984," and inserting in lieu thereof "1984, and 1985,"; and

(B) in subsection (b)(2)(C), by striking "and 1984" and inserting in lieu thereof "1984, and 1985"; and

(3) in subsection (C)(1), by striking "and 1984," and inserting in lieu thereof "1984, and 1985".

Sec. 8. Section 310 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1470) is amended—

(1) by striking "and" immediately after "1983,"; and

(2) by inserting ", and $1,500,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986" immediately before the period at the end thereof.

Sec. 9. (a) Section 201(e)(1)(E)(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)(i)) is amended—

(1) by inserting "both" immediately before "United States";

(2) by striking "or fishery" and inserting in lieu thereof "and fishery"; and

(3) by inserting the following immediately before the semicolon at the end thereof: ", particularly fish and fishery products for which the foreign nation has requested an allocation".

(b) Section 201(e)(1)(E)(ii) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)(ii)) is amended to read as follows:

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;".

(c)(1) Section 201(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(d)(4)) is amended by striking "shall" the first time it appears and inserting in lieu thereof "may".

(2) Section 201(e)(1)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(A)) is amended by striking "shall determine the allocation among foreign nations of" and inserting in lieu thereof "may make allocations to foreign nations from".

(3) Section 301(a)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1)) is amended by inserting "for the United States fishing industry" immediately before the period at the end thereof.

Sec. 10. Section 10 of the National Aquaculture Act of 1980 (16 U.S.C. 2809) is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking out "1983;" and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $2,000,000 for each of fiscal years 1984 and 1985;";

(2) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking out "1983; and" and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $2,000,000 for each of fiscal years 1984 and 1985; and"; and

(3) in paragraph (3)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking out "1983." and inserting in lieu thereof "1983, and"; and

(C) by adding at the end thereof the following:

"(D) $1,000,000 for each of fiscal years 1984 and 1985".

The title was amended so as to read: "A bill to establish the National Archives and Records Administration as an independent agency.".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LIBRARY SERVICES AND CONSTRUCTION ACT AMENDMENTS OF 1984

Mr. BAKER. Mr. President, would the minority leader be prepared to go to Calendar Order No. 915, S. 2490, at this time?

Mr. BYRD. Mr. President, I am pleased to say to the distinguished majority leader that this side is cleared on that measure.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 915.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2490) to amend and extend the Library Services and Construction Act.

The PRESIDING OFFICER. The Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike all after the enacting clause and insert:

TITLE I—LIBRARY SERVICES AND CONSTRUCTION

SHORT TITLE; FINDINGS

Sec. 101. (a) This title may be cited as the "Library Services and Construction Act Amendments of 1984".

(b) The Congress finds that—

(1) the role of libraries has expanded to include (A) providing programs to meet the needs of special segments of the population, including librarian training and outreach programs, and (B) sharing resources and materials among a wide variety of libraries;

(2) it has become necessary to expand the role of libraries as information centers for their communities, utilizing improved and new technologies and resources to meet the increasing need for information services and educational resources of Americans in a rapidly changing economy;

(3) funding for construction of new libraries and renovation of existing libraries is essential to ensure continuation of library services for the public;

(4) attention should be paid to the needs of small and rural community libraries and information centers because these facilities are often underfunded and understaffed and as a consequence cannot adequately serve the needs of the community; and

(5) the scope and purpose of the Library Services and Construction Act should therefore be revised to include a more comprehensive range of programs which may receive funds thereafter and to ensure the extension of services to minorities and other populations that would otherwise be unable to use regular library facilities.

DECLARATION OF PURPOSE

Sec. 102. (a) Section 2(a) of the Library Services and Construction Act (hereafter in this title referred to as "the Act") is amended to read as follows:

Sec. 2. (a) It is the purpose of this Act to assist the States in the extension and improvement of public library services to areas and populations of the States which are without such services or to which such services are inadequate. It is the further purpose of this Act to assist with (1) public library construction and renovation; (2) improving State and local public library services for older Americans and Indian tribes, handicapped, institutionalized, and other disadvantaged individuals; (3) strengthening State library administrative agencies; (4) promoting interlibrary cooperation and resource sharing among all types of libraries; (5) strengthening major urban resource libraries; and (6) increasing the capacity of libraries to keep up with rapidly changing information technology.".

(b) Section 2(b) of the Act is amended by inserting "and Indian tribes" before the period at the end of the second sentence.

DEFINITIONS; ADMINISTRATIVE AMENDMENT

Sec. 103. (a) Section 3 of the Act is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'Secretary' means the Secretary of Education.";

(2) by inserting after the first sentence in paragraph (2) the following new sentence: "Such term includes remodeling to meet standards under the Act of August 12, 1968, commonly known as the 'Architectural Barriers Act of 1968', remodeling designed to conserve energy and renovation or remodeling to accommodate new technologies.";

(3) by inserting "the Northern Mariana Islands," after "the Virgin Islands," in paragraph (7);

(4) by striking out the parenthetical in paragraph (9) and inserting in lieu thereof the following: "(including mentally retarded, hearing impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired persons who by reason thereof require special education)"; and

(5) by adding at the end thereof the following new paragraphs:

"(15) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as determined by the Secretary after consultation with the Secretary of the Interior. The term 'Indian tribe' includes the Office of Hawaiian Affairs for the purpose of furnishing library services under title IV to Hawaiian natives.

"(16) 'Hawaiian native' means any individual any of whose ancestors were natives prior to 1778 in the area which now comprises the State of Hawaii.".

(b) The Act is amended—

(1) by striking out "Commissioner" each place it appears and inserting in lieu thereof "Secretary"; and

(2) by striking out "Commissioner's" each place it appears and inserting in lieu thereof "Secretary's".

AUTHORIZATION OF APPROPRIATIONS

Sec. 104. (a) Section 4(a) of the Act is amended to read as follows:

"Sec. 4. (a) There are authorized to be appropriated—

"(1) for the purpose of making grants as provided in title I, $75,000,000 for fiscal year 1985, $80,000,000 for fiscal year 1986, $85,000,000 for fiscal year 1987, $90,000,000 for fiscal year 1988, and $95,000,000 for fiscal year 1989;

"(2) for the purpose of making grants as provided in title II, $50,000,000 for each of the fiscal years 1985, 1986, 1987, 1988, and 1989; and

"(3) for the purpose of making grants as provided in title III, $18,000,000 for fiscal year 1985, $21,000,000 for fiscal year 1986, $24,000,000 for fiscal year 1987, $27,000,000 for fiscal year 1988, and $30,000,000 for fiscal year 1989.

There shall be available for the purpose of making grants under title IV for each of the fiscal years 1985, 1986, 1987, 1988 and 1989, 1 per centum of the amount appropriated pursuant to each of paragraphs (1), (2), and (3) for each such fiscal year.".

(b) Section 4 of the Act is further amended by adding at the end thereof the following new subsection:

"(d)(1) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are first available for obligation.

"(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.".

ALLOTMENTS TO STATES AND INDIAN TRIBES

Sec. 105. Section 5 of the Act is amended—

(1) by inserting "AND INDIAN TRIBES" after "STATES" in the heading of such section;

(2) by striking out "paragraph (1), (2), (3), or (4)" each place it appears in subsection (a) and inserting in lieu thereof "paragraph (1), (2), or (3)";

(3) by inserting "the Northern Mariana Islands," after "the Virgin Islands," each place it appears in subsection (a)(3);

(4) in subsection (a)(3), by inserting "and" at the end of subparagraph (B), by striking out "; and" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D); and

(5) by adding at the end thereof the following new subsection:

"(c)(1) From the sums available pursuant to the last sentence of section 4(a) for any fiscal year, the Secretary shall allot an equal amount to each Indian tribe. Grants from such allotted amounts shall be made to Indian tribes which have submitted approved applications under section 403.

"(2) Any allotted funds for which an Indian tribe does not apply, or applies but does not qualify, shall be reallocated by the Secretary among Indian tribes which have submitted approved plans under section 404. In making such allocations (A) no funds shall be allocated to an Indian tribe unless such funds will be administered by a librarian, and (B) the Secretary shall take into account the needs of Indian tribes for such allocations to carry out the activities described in section 402(b).".

PLANS AND PROGRAMS

Sec. 106. Section 6 of the Act is amended—

(1) by striking out "STATE" in the heading of such section;

(2) by striking out "titles I, II, III, and IV" in subsection (a) and inserting in lieu thereof "titles I, II, and III";

(3) by striking out clause (4) of subsection (b) and inserting in lieu thereof the following:

"(4) provide that priority will be given to programs and projects—

"(A) that improve access to public library resources and services for the least served populations in the State, including programs for individuals with limited English-speaking proficiency, handicapping conditions and programs and projects in urban and rural areas;

"(B) that serve the elderly;

"(C) that are designed to combat illiteracy; and

"(D) that increase services and access to services through effective use of technology.";

(4) by adding at the end thereof the following new subsection:

"(g)(1) Any Indian tribe desiring to receive its allotment under section 5(c)(1) shall submit an application to the Secretary in accordance with section 403.

"(2) Any Indian tribe desiring to receive an additional allocation under section 5(c)(2) shall submit a plan in accordance with section 404.".

PAYMENTS

Sec. 107. Section 7 of the Act is amended—

(1) by striking out "TO STATES" in the heading of such section;

(2) by striking out "paragrpah (1), (2), (3), or (4)" in subsection (a) and inserting in lieu thereof "paragraph (1), (2), or (3)";

(3) by striking out "and title IV" in subsection (b)(1);

(4) by inserting "and the Northern Mariana Islands" after "American Samoa," in subsection (b)(1);

(5) by inserting "the Northern Mariana Islands," after "the Virgin Islands," in subsection (b)(2); and

(6) by adding at the end thereof the following new subsection:

"(c) From the sums available pursuant to the first sentence of section 4(a), the Secretary shall pay to each Indian tribe which has an approved application under section 403 an amount equal to such tribe's allotment under section 5(c)(1) and shall pay to each Indian tribe which has an approved plan under section 404 an amount equal to such tribe's additional allocation under section 6(g)(2), except that such additional allocation shall not exceed 80 percent of the cost of carrying out such plan.".

GRANTS FOR LIBRARY SERVICES

Sec. 108. Section 101 of the Act is amended to read as follows:

"GRANTS TO STATES FOR LIBRARY SERVICES

"Sec. 101. The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 4(a)(1) to States which have had approved basic State plans under section 6 and have submitted annual programs under section 103—

"(1) for the extension of public library services to areas and populations without such services and the improvement of such services to areas and populations to ensure that such services are adequate to meet user needs and to make library services accessible to individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage, are unable to receive the benefits of public library services regularly made available to the public;

"(2) for adapting public library services to meet particular needs of individuals within the States;

"(3) for assisting libraries to serve as community information referral centers;

"(4) for assisting libraries in providing literacy programs for adults and school dropouts in cooperation with other agencies and organizations, if appropriate;

"(5) for strengthening State library administrative agencies; and

"(6) for strengthening major urban resource libraries.".

USES OF FEDERAL FUNDS

Sec. 109. Section 102(a)(1) of the Act is amended by inserting "assist libraries to serve as community information referral centers and to" after "designed to".

STATE LIBRARY SERVICE PROGRAM

Sec. 110. Section 103 of the Act is amended—

(1) by inserting after "handicapped" in clause (3) the following: "and institutionalized individuals";

(2) by redesignating clauses (4) and (5) as clauses (6) and (7), respectively, and inserting after clause (3) the following:

"(4) describe the uses of funds for programs for the elderly, which may include (A) the training of librarians to work with the elderly; (B) the conduct of special library programs for the elderly particularly for the elderly who are handicapped; (C) the purchase of special library materials for use by the elderly; (D) the payment of salaries for elderly persons who wish to work in libraries as assistants on programs for the elderly, (E) the provision of in-home visits by librarians and other library personnel to the elderly; (F) the establishment of outreach programs to notify the elderly of library services available to them; and (G) the furnishing of transportation to enable the elderly to have access to library services;

"(5) describe the matter in which funds for programs for handicapped individuals will be used to make library services more accessible to such individuals;"; and

(3) by adding at the end thereof the following new flush sentence: "The amount which a State is required to expend pursuant to clause (3) of this section shall be ratably reduced to the extent that Federal allocations to the State are reduced.".

CONSTRUCTION: USE OF FUNDS

Sec. 111. (a) Section 202 of the Act is amended by striking out the second sentence and inserting in lieu thereof the following: "Such grants shall be used for the construction (as defined in section 3(2)) of public libraries.".

(b)(1) Section 202 of the Act is further amended by inserting "(a)" after "Sec. 202." and by adding at the end thereof the following new subsections:

"(b) For the purposes of subsection (a), the Federal share of the cost of construction of any project assisted under this title shall not exceed one-third of the total cost of such project.

"(c) If, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under this title—

"(1) the recipient (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or

"(2) the facility ceases to be used as a library facility, unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such recipient (or successor) an amount which bears the same ratio to the value of the facility at that time (or part thereof constituting an approved project or projects) as the amount of the Federal grant bore to the cost of such facility (or part thereof). The value shall be determined by the parties or by action brought in the United States district court for the district in which the facility is located.".

(2) Subsection (c) of section 202 of the Act as added by the amendment made by paragraph (1) of this subsection shall apply to any facility constructed prior to or after the date of enactment of this Act with funds made available under title II of the Act.

INTERLIBRARY COOPERATION AND RESOURCE SHARING

Sec. 112. (a) The heading of title III of the Act is amended by inserting "AND RESOURCE SHARING" after "INTERLIBRARY COOPERATION."

(b) Section 301 of the Act is amended—

(1) by striking out "section 6 and" and inserting in lieu thereof "section 6,"; and

(2) by inserting before the period at the end thereof a comma and the following: "and have submitted long-range and annual programs which are directed toward eventual compliance with the requirements of section 304".

(c) Section 303 of the Act is amended by inserting "shall comply with the requirements of section 304," after "by regulation and" in the second sentence.

(d) Title III of the Act is further amended by adding at the end thereof the following new section:

"RESOURCE SHARING

"Sec. 304. (a) The long-range program and annual program of each State shall include a statewide resource sharing plan.

"(b) In developing the State basic and long-range programs, the State library agency with the assistance of the State advisory council on libraries shall consider recommendations from current and potential participating institutions in the interlibrary and resource sharing programs authorized by this title.

"(c) The State's long-range program shall identify interlibrary and resource sharing objectives to be achieved during the period covered by the basic and long-range plans required by section 6. The long-range program may include—

"(1) criteria for participation in statewide resource sharing to ensure equitable participation by libraries of all types that agree to meet requirements for resource sharing;

"(2) an analysis of the needs for development and maintenance of bibliographic access, including data bases for monographs, serials, and audiovisual materials;

"(3) an analysis of the needs for development and maintenance of communications systems for information exchange among participating libraries;

"(4) an analysis of the needs for development and maintenance of delivery systems for exchanging library materials among participating libraries;

"(5) a projection of the computer and other technological needs for resource sharing;

"(6) an identification of means which will be required to provide users access to library resources, including collection development and maintenance in major public, academic, school, and private libraries serving as resource centers;

"(7) a proposal, where appropriate, for the development, establishment, demonstration, and maintenance of intrastate multitype library systems;

"(8) an analysis of the State's needs for development and maintenance of links with State and national resource sharing systems; and

"(9) a description of how the evaluations required by section 6(d) will be conducted.

"(d) Libraries participating in resource sharing activities under this section may be reimbursed for their expenses in loaning materials to public libraries.".

LIBRARY SERVICES FOR INDIAN TRIBES

Sec. 113. Title IV of the Act is amended to read as follows:

"TITLE IV—LIBRARY SERVICES FOR INDIAN TRIBES

"FINDINGS AND PURPOSE; AUTHORIZATION OF GRANTS

"Sec. 401. (a) The Congress finds that—

"(1) most Indian tribes receive little or no funds under titles I, II, and III of this Act;

"(2) Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States;

"(3) the vast majority of Indians living on or near reservations do not have access to adequate libraries or have access to no libraries at all; and

"(4) this title is therefore required specifically to promote special efforts to provide Indian tribes with library services.

"(b) It is therefore the purpose of this title (1) to promote the extension of public library services to Indian people living on or near reservations; (2) to provide incentives for the establishment and expansion of tribal library programs; and (3) to improve the administration and implementation of library services for Indians by providing funds to establish and support ongoing library programs.

"(c) The Secretary shall carry out a program of making grants from allotments under section 5(c)(1) to Indian tribes that have submitted an approved application under section 403 for library services to Indians living on or near reservations.

"(d) The Secretary shall carry out a program of making special project grants from funds available under section 5(c)(2) to Indian tribes that have submitted approved plans for the provision of library services as described in section 404.

"USE OF FUNDS

"Sec. 402. (a) Funds made available by grant under subsection (c) or (d) of section 401 may be used for—

"(1) inservice or preservice training of Indians as library personnel;

"(2) purchase of library materials;

"(3) conduct of special library programs for Indians;

"(4) salaries of library personnel;

"(5) construction, purchase, renovation, or remodeling of library buildings and facilities;

"(6) transportation to enable Indians to have access to library services;

"(7) dissemination of information about library services;

"(8) assessment of tribal library needs; and

"(9) contracts to provide public library services to Indians living on or near reservations or to accomplish any of the activities described in paragraphs (1) through (8).

"(b) Any tribe that supports a public library system, shall continue to expend from Federal, State, and local sources an amount not less than the amount expended by the tribe from such sources for public library services during the second fiscal year preceding the fiscal year for which the determination is made.

"(c) Nothing in this Act shall be construed to prohibit restricted collections of tribal cultural materials with funds made available under this Act.

"APPLICATIONS FOR LIBRARY SERVICES TO INDIANS

"SEC. 403. Any Indian tribe which desires to receive its allotment under section 5(c)(1) shall submit an application which contains such information as the Secretary may require by regulation.

"PLANS FOR LIBRARY SERVICES TO INDIANS

"SEC. 404. Any Indian tribe which desires to receive a special project grant from funds available under section 5(c)(2) shall submit a plan for library services on or near an Indian reservation. Such plans shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation and shall set forth a program for the year under which funds paid to the Indian tribe will be used, consistent with—

"(1) a long-range program, and

"(2) the purposes set forth in section 402(a).

"COORDINATION WITH PROGRAMS FOR INDIANS

"SEC. 405. The Secretary shall coordinate with the Secretary of the Interior programs under this title with the programs assisted under the various Acts and programs administered by the Department of the Interior that pertains to Indians.".

TITLE II—HOWARD UNIVERSITY ENDOWMENT

SHORT TITLE

SEC. 201. This title may be cited as the "Howard University Endowment Act".

DEFINITIONS

SEC. 202. For purposes of this title—

(1) the term "endowment fund" means a fund, or a tax exempt foundation, established and maintained by Howard University for the purpose of generating income for its support, but which shall not include real estate;

(2) the term "endowment fund corpus" means an amount equal to the grants awarded under this title plus an amount equal to such grants provided by Howard University;

(3) the term "endowment fund income" means an amount equal to the total value of the endowment fund established under this title minus the endowment fund corpus;

(4) the term "Secretary" means the Secretary of Education; and

(5) the term "University" means the Howard University established by the Act of March 2, 1867.

PROGRAM AUTHORIZED

SEC. 203. (a) The Secretary is authorized to establish an endowment program in accordance with the provisions of this title, for the purpose of establishing or increasing endowment funds, providing additional incentives to promote fund-raising activities, and encouraging independence and self-sufficiency at the University.

(b)(1) From the funds appropriated pursuant to this title for endowments in any fiscal year for the University, the Secretary is authorized to make grants to Howard University. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions deemed necessary by the Secretary to assure that the purposes of this title will be achieved.

(2) The University may receive a grant under this section only if it has deposited in the endowment fund established under this title an amount equal to such grant and has adequately assured the Secretary that it will administer the endowment fund in accordance with the requirements of this title. The source of funds for this institutional match shall not include Federal funds or funds derived from an existing endowment fund.

(3) The period of any grant under this section shall not exceed twenty years, and during such period the University shall not withdraw or expend any of its endowment fund corpus. Upon the expiration of any grant period, the University may use the endowment fund corpus plus any endowment fund income for any educational purpose.

INVESTMENTS

SEC. 204. (a) The University shall invest its endowment fund corpus and endowment fund income in those low-risk instruments and securities in which a regulated insurance company may invest under the law of the District of Columbia, such as federally insured bank savings account or comparable interest bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

(b) The University, in investing its endowment fund corpus and income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his own business affairs.

WITHDRAWALS AND EXPENDITURES

SEC. 205. (a) The University may withdraw and expend its endowment fund income to defray any expenses necessary to its operation, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No Endowment fund income or corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor entered into after January 1, 1981. Except as provided in subsection (b), the University shall not withdraw or expend more than 50 per centum of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b)(1) The Secretary is authorized to permit the University to withdraw or expend more than 50 per centum of its total aggregate endowment income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(A) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(B) a life-threatening situation occasioned by a natural disaster or arson; or

(C) another unusual occurrence or exigent circumstance.

(c)(1) If the University withdraws or expends more than the endowment fund income authorised by this section, the University shall repay the Secretary an amount equal to 50 per centum of the amount improperly expended (representing the Federal share thereof).

(2) The University shall not withdraw or expend any endowment fund corpus. If the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to 50 per centum of the amount withdrawn or expended (representing the Federal share thereof) plus any income earned thereon.

ENFORCEMENT

SEC. 206. (a) After notice and an opportunity for a hearing, the Secretary is authorized to terminate and recover any grant awarded under this title if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 205;

(2) fails to invest its endowment fund corpus or income in accordance with the investment standards set forth in section 204;

(3) fails to account properly to the Secretary concerning investments and expenditures of its endowment fund corpus or income.

(b) If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this Act plus any income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

AUTHORIZATION OF APPROPRIATIONS

SEC. 207. There is authorized to be appropriated $2,000,000 for the purposes authorized under section 203. Funds appropriated under this section shall remain available until expended.

CONFORMING AMENDMENTS

SEC. 208. Section 8 of the Act of March 2, 1867, entitled "An Act to incorporate the Howard University in the District of Columbia" (ch. 162, 14 Stat. 439, 20 U.S.C. 123, as amended by Public Law 70-634, 45 Stat. 1021 and by Public Law 79-615, 60 Stat. 871) is further amended by inserting "endowment," after "improvement,".

EFFECTIVE DATE

SEC. 209. This title shall take effect on October 1, 1984.

TITLE III—ASSESSMENT AND STATISTICS AUTHORIZATIONS

NATIONAL ASSESSMENT PROGRAMS

SEC. 301. Section 405(k)(7) of the General Education Provisions Act is amended to read as follows:

"(7) There are authorized to be appropriated $4,600,000 for the fiscal year 1985 and such sums as may be necessary for each of the succeeding fiscal years ending prior to October 1, 1989, to carry out the provisions of this subsection.".

NATIONAL CENTER FOR EDUCATION STATISTICS

SEC. 302. (a) Section 406(g) of the General Education Provisions Act is amended to read as follows:

"(g) There are authorized to be appropriated $9,300,000 for the fiscal year 1985 and such sums as may be necessary for each of the succeeding fiscal years ending prior to October 1, 1989 to carry out the provisions of this section (other than subsection (h)).".

(b) Subsection (i) of section 406 of the General Education Provisions Act is redesignated as subsection (h).

Amend the title so as to read: "A bill to amend and extend the Library Services and Construction Act, and for other purposes.".

Mr. PELL. Mr. President, as one of the original sponsors of S. 2490, legislation to amend and extend the Library Services and Construction Act, I am very pleased to speak on behalf of its passage today. This measure will extend the important grant programs that serve our Nation's libraries for another 5 years through fiscal year 1989.

I would first like to recognize the fine work done by Senator STAFFORD, chairman of the Subcommittee on Education, Arts and Humanities, in developing this bill and in forging a consensus on it.

The Library Services and Construction Act, which I have been proud to support throughout four Senate terms, is the single most important source of Federal assistance for our Nation's public libraries. It provides this support to the States by as system of formula grants which have been targeted toward particularly critical areas. These areas have traditionally included underserved groups such as the handicapped, the disadvantaged and those people who speak English as a second language.

As more and more of these targeted populations have been reached with library services, the LSCA has been broadened to include support for urban libraries, construction of library buildings and interlibrary cooperation. The Federal share represents only a modest portion of the total expenditure on all of these essential library programs but it is important that we continue the Federal role because local jurisdictions alone cannot finance programs that will adequately meet the needs of our library community.

Major urban libraries can now benefit in very useful ways from LSCA funds. Inflation has hit these urban institutions particularly hard and has caused open hours to be cut back as well as curtailing the ability to purchase new books. Urban library services have also been reduced by municipalities as residents have moved to the suburbs which in turn erodes the local tax base.

I am pleased that this measure authorizes funds for the construction and renovation of library buildings where the need is especially serious. The moneys appropriated in 1983 as part of the emergency jobs bill were a helpful beginning but only a fraction of the potential projects could be carried out with those funds. I understand that a figure close to $400 million is the investment currently needed to alleviate overcrowding with new facilities and bring deteriorating library facilities up to date.

In short this piece of legislation renews our Government's commitment to a healthy, vital and accessible public library system across the country. Libraries have been described as our most important educational resource—second only to the classroom. For this reason alone, this bill deserves our support. I urge my colleagues to join with Senator STAFFORD and myself in approving the Library Services and Construction Act Amendments of 1984.

AMENDMENT NO. 3325

(Purpose: To authorize appropriations for the construction of an addition to the William H. Mortensen Library to house the Presidential Americana collection, to provide finanical assistance to the University of Kansas to provide for a human development center facility at the University, to provide financial assistance for the renovation of facilities for the Carl Vinson Institute of Government at the University of Georgia, and for other purposes)

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of Mr. STAFFORD, for himself and Senators WEICKER, DOLE, and MATTINGLY.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Senator STAFFORD, Senator WEICKER, Senator DOLE, and Senator MATTINGLY, proposes an amendment numbered 3325.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 24, line 21, strike out "(d)" and insert in lieu thereof "(c)".

On page 45, between lines 20 and 21, insert the following new title:

TITLE IV—HIGHER EDUCATION AND CONSTRUCTION PROJECTS

LIBRARY PROJECT AUTHORIZED

SEC. 401. (a) The Secretary of Education (hereafter in this title referred to as the "Secretary") is authorized to provide financial assistance, in accordance with the provisions of this section, to pay all of the cost of construction, and related expenses, for an addition to the William H. Mortensen Library at the University of Hartford located at Hartford, Connecticut, to enable the University of Hartford to house a collection of materials relating to Presidential campaigns and to American political history, known as the Presidential Americana, together with other collections.

(b) No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) There are authorized to be appropriated such sums, not to exceed $6,500,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

HUMAN DEVELOPMENT CENTER FACILITY AUTHORIZED

SEC. 402. (a) The Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to the University of Kansas located in Lawrence, Kansas, to pay the Federal share of the cost of construction and related costs for a human development center facility at the University of Kansas, to be used as a national research and training resource for individuals acquiring expertise in the rehabilitation, education, parent training, employment, independent living, and public policy concerns of handicapped individuals and their families, and as a treatment resource for handicapped persons and their families.

(b)(1) No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) There are authorized to be appropriated such sums, not to exceed $9,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

CARL VINSON INSTITUTE OF GOVERNMENT AUTHORIZED

SEC. 403. (a) In recognition of the public service of representative Carl Vinson, in order to enhance the program of service to state and local governments in Georgia and in other States provided by the Carl Vinson Institute of Government of the University of Georgia, and in order to preserve a historic landmark that provided special education opportunities for young women in Georgia and in other States at a time when such opportunities were limited or nonexistent, the Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to the State of Georgia to renovate the physical facilities of the former Lucy Cobb Institute for Girls in Athens, Georgia, for the purpose of providing a center for the Carl Vinson Institute of Government of the University of Georgia.

(b) No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) There are authorized to be appropriated $3,500,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

Mr. STAFFORD. Mr. President, on behalf of Senator PELL and myself, I am pleased the Senate has taken up S. 2490, the Library Services and Construction Act Amendments of 1984, a bill which enjoyed bipartisan support in our committee. Particularly I would like to thank Senator QUAYLE and Senator WEICKER for their efforts.

Mr. President, the Library Services and Construction Act, S. 2490, provides Federal funding for public library programs and construction. This act represents a successful Federal, State, and local partnership. Though the Federal share is small—between 5 and 7 percent of the total dollars spent—it has made the critical difference. It has provided the seed money for new initiatives and incentives for States and local communities to develop library programs.

In 1956, when President Eisenhower signed the original legislation, 1 in 6 Americans lacked any access to public library services. Now, close to 96 percent of our citizens are able to use local community libraries. The number of public libraries nationwide has grown to over 100,000. The number of counties without public library services has been reduced to fewer than 300. Congress intended Title I of this act to enable librarians to reach out to the disadvantaged, to handicapped people, to persons with limited ability to speak English, and to older and retired people. The results have been laudable.

Library services now reach residents of hospitals, long-term care facilities, nursing homes, and residential schools. More than 100 metropolitan public libraries were strengthened with funds authorized by Title I. This allowed these urban libraries to serve as national or regional resource centers for smaller local library programs.

Title I of LSCA provides for basic State grants that assist the States in improving and extending library services to hard to reach populations. Under title I, States are required to match the Federal share on a sliding scale basis. S. 2490 authorizes $75 million to be appropriated in fiscal year 1985. This authorization increases by $5 million annually in the out years. In order to receive funds, States must submit plans to insure statewide coordination of programs with other funding sources. This provides assurances that Federal, State and local dollars are carefully and appropriately used.

Title II, the construction of libraries, has been restricted by limited authorization ceilings established under the Omnibus Reconciliation Act of 1981. The $50 million appropriated under the emergency jobs bill last year for this purpose was quickly distributed to local communities by the States.

S. 2490 authorizes title II at $50 million annually over the next 5 years, and increases the State and local share to 66 percent of costs. Libraries around the country are in great need of repair—the estimate exceeded $2.4 billion for the past 5 years—and other Federal funding sources have virtually dried up. Requiring the States to match Federal dollars 2 to 1 will allow this money to support an increased number of deserving projects.

Title III of the act, interlibrary cooperation and resource sharing, is strengthened and expanded. This title is authorized at $18 million for fiscal year 1985. The bill requires that the States develop plans to examine their long range needs in the area of expensive technologies, and describe how they will address these needs on a statewide basis.

Title IV, library services for Indian tribes, allows tribes to apply directly for LSCA funding. Historically, Indians living on reservations have received an inadequate share of Federal funds for library services. There is a shortage of facilities and materials. Under S. 2490, title IV moneys will be available to all recognized tribes who choose to apply for them. Additionally, funding is available for discretionary grants for long-range library programs.

In conclusion, S. 2490 represents a fine tuning of a piece of legislation that has worked efficiently and effectively. Given the revolution in learning technologies, libraries must be assisted in keeping pace with the changes in the way we store and transmit information. S. 2490 does that by emphasizing the sharing of expensive resources among participating libraries. In that manner, the Federal dollar creates a ripple effect that aids all participants. Furthermore, this legislation is aimed at improving access to library services for the handicapped, the elderly, and citizens in low-income areas. In this way, all Americans can be assured that the doors of learning are open.

Mr. President, along with the basic text of S. 2490, I have offered an amendment to S. 2490, on behalf of Senators WEICKER, DOLE, and MATTINGLY. This amendment would set up three special projects at higher education institutions in the States of Connecticut, Kansas, and Georgia.

In conclusion, I would urge my colleagues to support this important reauthorization bill for our library programs.

Mr. WEICKER. Mr. President, reauthorization of the Library Services and Construction Act through enactment of S. 2490 represents a solid reaffirmation that Federal encouragement of library sciences is necessary and must be continued. I commend my colleague Senator STAFFORD, chairman of the Subcommittee on Education, Arts and the Humanities for his diligent efforts to bring this legislation before us today. Indeed, as he has so many times in the past, the senior Senator from Vermont again demonstrates his commitment to that resource which is truly America's greatness, the human resource of intelligence and rational thought.

The amendment I offer today to S. 2490 complements, I believe, the intent of Chairman STAFFORD's bill. It provides that the sum of $6.5 million be made available to the University of Hartford in Hartford, CT, for construction and related expenses for a 33,670-square-foot addition to the university's William H. Mortensen Library. This addition will centralize various and significant university collections, among them materials from the Hartford Art School and the world renowned Hartt School of Music. But the premiere collection to be made available to the public and that which constitutes a true national treasure is the university's collection of Presidential Americana.

This collection, various aspects of which have been exhibited nationally and internationally, constitutes according to the Smithsonian Institute one of the most important of its kind in existence.

It contains rare and unique materials representing every Presidential campaign and administration from George Washington in 1789 to Ronald Reagan today. The collection's 30,000 pieces are a historical treasure not only for research scholars, public scientists, and students, but also for those thousands of Americans who wish to see first hand the stuff of Presidential campaigns, past and present, and to come to know the great national issues which were debated during these campaigns.

Mr. President, I have prepared a more complete discussion of the significance of the collection of Presidential Americana. I ask unanimous consent that it be included in the RECORD at the conclusion of my remarks. It will explain further what a truly priceless collection will be made available through acceptance of my amendment.

I urge my colleagues to support this amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COLLECTION OF PRESIDENTIAL AMERICANA

A study of the Collection of Presidential Americana from the viewpoint of emerging themes illustrates the Collection's impressive size and scope. Five themes have been identified which, when taken together, involve the major portion of the Collection. Described here, with suggestions for possible related exhibitions, are these five themes: critical periods in American political history; image and reality in American politics; the democratization of American politics (immigrants, Blacks, women); recurring political themes and counterthemes; and political campaign art.

THEMES

Critical periods in American political history

The seemingly unchanging nature of the American two-party system since the New Deal belies a history of periodic and fundamental electoral upheaval. These periods of electoral change have been watersheds in the history of the United States. Characterized by dramatic realignments of groups supporting the major political parties, watershed periods have resulted in new coalitions in which pivotal issues were dramatized by new political symbols. Four such periods have captured the attention of scholars:

Late 1820s and 1830s—the participation of the common man in American politics with the election of Andrew Jackson and the establishment of the two-party system with a Democratic majority.

Late 1850s and 1860s—economic competition of the North and South, slavery, the emergence of the Republican Party, and Civil War.

1890s—industrialization, a new economic order, and Republican dominance.

Late 1920s and 1930s—the Great Depression and the New Deal Democratic coalition.

Clearly, these periods have involved major social and economic changes as well as electoral upheaval. The realignment of political parties has included not only a reshuffling of the allegiances of active groups but also has created the circumstances and conditions whereby previously uninvolved segments of American society have entered politics. In such critical periods, politics is fundamentally transformed, often with new participants, changed economic circumstances, and new social relationships.

The Presidential Collection chronicles these events. The rise in the common man, for example, can be demonstrated with a fascinating variety of artifacts associated with the 1940 log cabin and hard cider campaign. The disaffection of some Whigs and John Fremont's candidacy—signifying the beginning of the Republican Party—can be portrayed with posters, broadsides, and lapel ribbons. Slavery and abolition-related material could include bills of sale, metal slave identification tags, and newspapers such as the Liberator.

The great economic issues such as the question of tariffs on foreign imports, bimetallism, and full employment can be explained by featuring Bryan "dollars," red bandanas picturing the various presidential condidates, and an infinite variety of broadsides, pamphlets and posters addressing these concerns from the viewpoint of either major party. The era between World Wars I and II can be portrayed with material associated with "Army," the Townshend Plan, Huey Long's "share our wealth" scheme, broadsides and similar ephemera—especially from the 1936 campaign and anti-Franklin Roosevelt material.

Image and reality in American politics

The casual reader of a popular book like Joe McGinniss' "The Selling of the President 1968" might be tempted to think that political image-mongering is a relatively recent development. It is not. The manipulation of candidates' images has long been a dominant fact of American political life, traceable to the nature of American government itself. In a mass democracy only a handful of the electorate can ever meet the candidates in person. Thus we have been (and will continue to be) reduced to voting for mere images, images which have been carefully designed to appeal to the largest possible number of voters.

Images have been manipulated in any number of ways: through dress (e.g., Jefferson's studied dishevelment), through ballyhooed military feats (Teddy Roosevelt the Rough Rider); and even through careful control of the media (the tacit injunction against photographing FDR's crippled legs). Another popular tactic has been the association of a candidate with a particular symbol, especially a symbol which evokes emotion or strengthens the identification of voter with candidate. William Henry Harrison's Whig managers, for example, chose the log cabin as the symbol of their 1980 campaign. For the average antebellum American, a log cabin symbolized humble origins, independence, the frontier spirit, and agrarian virtues. Few who voted for Harrison in 1840 knew the real truth, that he was a man of some means who lived in a stately white mansion on the banks of the Ohio River.

The Presidential Collection can be used to show how such images have been created, and to contrast the candidate's image with the man himself. This could be accomplished, for instance, by displaying selected campaign materials alongside realistic portraits and objective biographical sketches, e.g., the various "rail splitter" Lincoln cartoons together with an account of Lincoln the corporation lawyer. The object is not to mock or belittle, but merely to make the public aware of the inevitability and long history of the subtle art of political image-making.

Since American political history is so rich in campaign symbols, we can expect to exhibit an interesting and perhaps lighthearted selection to dramatize this theme: PT boat pins; a representation promoting Lincoln the rail splitter; red bandanas and dinner pails, symbolic of the working man; the merging of candidates with produce advertisements ("Teddy Roosevelt Smokes Hartford Cigars"); the many hats associated with candidates such as coonskins, Quaker broad brims, cowboy, farmer, kepis, and beavers; and history poles (for Jackson and Polk)—are merely a few examples.

The democratization of American politics: Immigrants, blacks and women

In colonial America, the right to vote was restricted to a small percentage of the population, free white adult males possessed of some property. An important aspect of the history of American politics since that time has been the enfranchisement of other groups until, today, the Constitution quarantees the right to vote to all citizens eighteen years of age or older. In some respects this change has been evolutionary, for example, the gradual but steady elimination of property qualifications, during the early 19th century. At other times there has been vigorous debate over which groups should be included in (or excluded from) the electorate. The Presidential Collection has a wealth of materials to illustrate controversies developed around three of these groups: immigrants, Blacks and women.

Immigrant voters have been an issue since at least 1798, when the Federalists passed the Naturalization Act, designed to delay citizenship and hence the right to vote. (Recent arrivals had the disconcerting habit of voting for Mr. Jefferson's Republicans.) The question arose again in the 1840s and 1850s, with the influx of large numbers of German and especially Irish Catholic immigrants. Nativist elements coalesced into the Know-Nothing Party, which had as its aims the exclusion of Catholics and foreigners from public office and a twenty-one year residence for immigrants as a requirement for citizenship. Although the Know-Nothing Party disintegrated in the late 1840s, the nativist impulse has periodically reasserted itself, most spectacularly in the KKK agitation of the early 1920s. On the other hand, some political groups, notably the Democrats, have made repeated and successful attempts to bring immigrants into the political mainstream, the urban political machines being the outstanding example.

As a result of the 13th, 14th, and 15th Amendments, Blacks were enfranchised after the Civil War. Many Blacks continued to vote after Reconstruction, as both Southern Populists and Conservatives courted their support. But with political realignment in the 1890s, Southern whites joined forces to disenfranchise Southern Blacks, through the white primary, literacy test, grandfather clause, poll tax, and other indirect means. This trend was not reversed until the 1940s and 1950s, when a coalition of Blacks and white liberals began pushing for election reform. In 1940 only two percent of Blacks were registered to vote; by 1952 the percentage had risen to twenty-four. The reassertion of the Black right to vote culminated in the 1960s with the passage of the 24th Amendment and other Federal Civil Rights legislation.

Demands for the vote for women date from the mid-19th century, most notably the famous 1848 Seneca Falls Declaration. During the Progressive Era, feminists argued that the vote was both an essential symbol of civic equality as well as a practical tool through which they could reform urban-industrial society. The movement reached its peak during the decade 1910-1919. At first the focus was on the states: Washington granted women the right to vote in 1910, Arizona, Kansas, and Oregon in 1912. Wilson and the Congress were reluctant to go along, however, and it took seven more years of constant pressure before the 19th Amendment was passed (June 1919). Contrary to the expectations of some feminists, women did not thereafter constitute a reform bloc, but instead divided their votes among a variety of predominantly male political candidates.

Nativist cartoons and broadsides, civil rights tracts, Dixie-crat buttons, suffragette literature concerning Belva Lockwood, Victoria Woodhull, and Alice Paul can be displayed with appropriate labels and commentary to tell the story of the vote for immigrants, Blacks and women. One might, for example, recreate the atmosphere of a restrictive primary, by displaying literacy tests and poll tax forms together with segregationist pamphlets. Nearby might be pictures of Freedom Riders, a copy of the 1948 Democratic platform, and other memorabilia of the early Civil Rights movement.

Recurring themes and counterthemes

There are no final answers in democratic politics. Issues arise, dominate the scene for a time and subside, but rarely die. Themes and counterthemes coexist. The solutions devised to respond to the pressing needs of one epoch become part of the problem of the next. The successful democracy must continually relearn to endure the constancy of change.

Materials in the Presidential Collection lend themselves to a vivid depiction of some of these themes and counterthemes, for example, the military hero/man of peace which can be illustrated with such artifacts as Ulysses Grant pieces bearing the slogan "Let Us Have Peace." The military hero has appeared prominently in at least eight Presidential campaigns from 1790 to 1960, from George Washington to John Kennedy. Jackson, Harrison, Taylor, Grant, Theodore Roosevelt, Eisenhower, and Nixon all promised to deliver the nation from war or the threats of war. Perhaps ironically, the nation has been led into its greatest wars by civilians while our military heroes have presided in times of peace, and General Eisenhower might well have been the only candidate who did not disappoint on his promise to bring peace to a war-weary land.

Another theme-countertheme that has recurred is the hard-money/soft-money controversy. From the time of Jackson's campaigns against the tariff in 1828 and the Bank in 1932, this debtor-creditor, mass-elite contest has surfaced in a number of campaigns. The Van Buren campaign, Harrison's and Cleveland's campaign in 1892, and the two face-offs between McKinley and Bryan are characterized by this dispute which in reality has implications far beyond technical monetary policy.

There recurring conflicts lend themselves to provocative displays which can encourage the viewing public to reach beneath the surface of current events and begin to grapple with the paradox implicit in the notion of "government by the people."

Political campaign art

Although not generally thought of as such, the ephemera associated with presidential campaigns has mirrored aesthetic fashions and social tastes. Political campaign art ranges from "kitsch" to superb examples of regional folk art traditions. Nearly all examples have a utilitarian value that has enabled them to long outlive their original campaign purpose. The most interesting campaign artifacts, in terms of aesthetic appearance and artistic worth, appeared in the first half of the nineteenth century. In the decades following the Civil War, the relatively uncomplicated designs of earlier campaigns gave way to elaborately designed artifacts such as trinket boxes, satin parade banners, frosted glassware and smartly detailed marching uniforms, and lighting devices. Despite the bland sameness that characterizes much of contemporary American mass culture, an uncommon artifact or two does surface occasionally in current campaigns.

Different campaign artifacts demonstrate the relationship between taste and social class, i.e., the democratization of the political process and the changing aesthetic fashions and social taste that democratization helped to bring about. French-made porcelain rose jars and cameo brooches and English Liverpoolware and Staffordshire dinner sets are typical examples of campaign items during the 1789-1840 period that were aimed at the educated urban upper class, the only citizens who could vote. The extension of the franchise, the fervent nationalism that dominated the country during the first half of the nineteenth century, regional art traditions, and the ascendency of American potteries and glassworks combined to produce a deluge of inspired and frequently unique campaign art of a quite different nature from the European imports. The Collection includes handmade "primitive" banners with name slogans "O.K./Tippecanoe and Tyler, Too!", Colonial-type tin lanterns, a fascinating variety of tin torchlights, handblown whiskey flasks depicting George Washington and Zachary Taylor, children's alphabet plates picturing Abraham Lincoln, silk and cotton textiles, papier mache snuff boxes, and the beautiful Sandwich cup plates. Most such examples were created by or intended for rural and other small town Americans and the newly emerging urban working class.

A history of political illustrations could be included in the exhibition. Currier and Ives posters; cartoons by David Johnston, Thomas Nast, Joseph Keppler and their twentieth century descendants; paintings on glass by the itinerant New Hampshire portraitist Benjamin Prior, and miniatures of Abraham Lincoln and Andrew Jackson, are among the examples which could be exhibited.

Our outstanding collection of campaign music should be of equal interest to visitors. Many kinds of music are represented—quadrilles, waltzes, schottisches are typical 19th century examples. Folk songs with modern lyrics are also represented. Taped selections of campaign songs could provide background music for the exhibition and musical scores in the Collection could be performed.

EDUCATIONAL AND OUTREACH ACTIVITIES

A range of educational and outreach activities will make the exhibition come alive and the themes understandable to the general public. These run the gamut from dramatic re-enactments of events to the staging of debates and the presentation of campaign speeches.

In addition, a selection of the Collection's films, voice recordings, and campaign music can be used to plan media presentations to orient the public to the Collection and its themes. Concert and art exhibits can be planned around the art history theme, drawing upon the University's Hartt School of Music and Hartford Art School, and the expertise of local museum staff and art groups. Curriculum guides can be outlined for elementary and secondary school teachers who will be encouraged to bring their students to the exhibition.

The possibilities for bringing this national treasure to life are endless. The realization of these possibilities, however, is dependent upon its being housed and displayed appropriately, with the means provided to preserve the articles for future generations. The William H. Mortensen Library offers a setting for the Collection in a milieu which guarantees accessibility to the public, protection from harm, and freedom from biased interests.

Mr. DOLE. Mr. President, this amendment would authorize $9 million toward the construction of a model human development center at the University of Kansas. When augmented by an additional $9 million in non-Federal funds, this human development center, which will be the only one of its type in the country, will encompass programs and activities addressing the lifespan needs of handicapped individuals: children, youth, middle aged, and elderly.

The University of Kansas is currently recognized as one of the foremost institutions in the world for its achievements in research and training of handicapped children and their families. The university has been a pioneer in early childhood education, and in the deinstitutionalization and mainstreaming of handicapped individuals. Due to work performed at the University of Kansas, a much greater proportion of our handicapped and retarded population can now live outside of institutions and achieve considerable economic self-sufficiency. Because of this great reservoir of expertise at the university, the Federal Government has invested millions of dollars in research and training programs of national significance at the university over the last few decades. The construction of the human development center will enhance the efficiency of that investment many times over.

In short, Mr. President, the authorization of this project would provide Congress a much needed resource on lifespan issues related to persons with disabilities. This project will clearly have unique national and international benefits, and I urge the adoption of this amendment.

Mr. MATTINGLY. Mr. President, this amendment would authorize $3.5 million for the renovation of the Lucy Cobb Institute property at the University of Georgia. The renovation of this historic structure will allow the Carl Vinson Institute of Government to improve substantially its facilities and programs.

There have been many fine Georgians who have represented the State in the U.S. House of Representatives and in the U.S. Senate but there is none that deserve more honor and tribute than the great Georgian, Carl Vinson. Mr. Vinson, who served in the House of Representatives for 50 years, 2 months, and 2 days, was the longstanding chairman of the House Committee on Armed Services. By the end of his career, Vinson, whose Georgia district included no body of water bigger than the Oconee River and who upon entering Congress in 1914 at 30 years of age had never even seen a battleship, was proclaimed the "Father of the Two-Ocean Navy." I could stand here for hours and tout the service and contributions of Mr. Vinson. The tribute that the university has paid to him by naming its Institute of Government for him is fitting. I think, however, that it is far more fitting that our Nation honor him by establishing this permanent memorial.

The funds authorized in this amendment and supplemented by an extensive private fund-raising campaign will be important to the State of Georgia and to the Nation. The Carl Vinson Institute of Government enjoys a national reputation as a leader in the area of service to government, and its faculty continues to be recognized for its academic excellence and dedication to public service. Its publications, training programs, educational materials, and other products have been disseminated throughout the country. Within Georgia, the Vinson Institute continues to be called upon to assist State and local elected and appointed officials in a variety of programs. The service program of the Vinson Institute is often cited as an ideal model for providing a university-based linkage with State and local government, since it serves as a vital bridge between the academic resources of the university and the practical needs of State and local governments.

The demand for the services of the Vinson Institute continues to grow. One major impetus for this increased demand is the fundamental change being brought about in the relationships among levels of government in the United States. A dramatic reduction in Federal grants-in-aid and a change in the philosophy about the role the Federal Government should play in the resolution of societal problems has occurred.

In order to meet their new responsibilities, State and local officials will need increased understanding of the nature of governmental problems, knowledge of new and improved techniques for achieving governmental effectiveness and efficiencies, and assistance in the evaluation of new approaches for the management of public resources. At the national level, these services have traditionally been provided by a battery of private, nonprofit research organizations. In Georgia, the Carl Vinson Institute of Government is charged with this responsibility.

Unfortunately, the present facilities of the Vinson Institute are inadequate to meet even the present demand for services, much less the expected increase in this demand. The current staff of 56 full-time and 23 part-time personnel is housed in five separate locations on the university campus.

The separation of Vinson Institute faculty into five distinct locations creates obvious managerial and communication problems. In total, the inefficiencies caused by the lack and inadequacy of facilities seriously inhibits the productivity of the Vinson Institute and its ability to respond to the pressing needs of the people and public bodies of Georgia—at a time, as mentioned, when such needs are increasing exponentially.

In addition, the dispersal of Vinson Institute staff in separate locations creates major difficulties for clients needing to obtain a comprehensive and unified reaction to their problems and needs from more than one division. Because these divisions are located on separate parts of the university's campus, the client is often never exposed to the possibilities of assistance from a division with whom he or she is not working.

A new building will help to overcome these problems. It will also put the Vinson Institute in a better position to meet the expected increase in demand for its services.

Finally, one of the results derived from the implementation of this project will be the renovation of a significant historic structure in Athens, GA.

The Lucy Cobb Institute, a college for girls opened its doors on Monday, January 10, 1858. From the date until its closing in 1931, the institute provided a unique and meaningful educational opportunity for young women from many of the leading families of Georgia and elsewhere. Its notable alumnae include Mary Lyndon, first dean of women at the University of Georgia; Caroline Patterson, first woman graduate of Mercer University; and other women prominent throughout Georgia and the South. The institute was established in 1858 through the efforts of Thomas R.R. Cobb and named for his daughter, Lucy, who died of scarlet fever at a young age. Thomas R.R. Cobb himself was a distinguished jurist and an author of the Georgia constitution of 1861.

The Lucy Cobb Institute takes up an entire city block and is composed of seven separate structures: A main building, that once provided classrooms and residence facilities for students; the Seney-Stovall Chapel, which has been partially renovated; an administration building; a gymnasium building; a classroom connector; a washhouse; and a carriage house. Preservation of these structures, especially the main building and the Seney-Stovall Chapel, would save a set of buildings of great architectural merit and substantial symbolic and emotional value. The main building is a beautiful example of Greek revival architecture. The Seney-Stovall Chapel is an unusual octagonal building with an exquisite Victorian interior. Both deserve to be preserved for their architectural significance alone.

I appreciate the efforts of the distinguished subcommittee chairman, Senator STAFFORD. It is my belief that few, if any, more worthwhile projects will require the attention of the Senate during the remainder of the 98th Congress. I urge the support of my colleagues on both sides of the aisle on this most deserving project.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3325) was agreed to.

The PRESIDING OFFICER. Without objection, the committee amendments in the nature of a substitute, as amended, is agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2490), as amended, was passed.

Mr. BAKER. Mr. President, I ask unanimous consent that the action of passing the bill be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, we are at third reading at this point, is that correct?

The PRESIDING OFFICER. The Senator is correct.

LIBRARY SERVICE AND CONSTRUCTION ACT AMENDMENTS OF 1983

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed to consider Calendar Order No. 1,003, H.R. 2878, the companion to the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2878) to amend and extend the Library Services and Construction Act.

Mr. BAKER. Mr. President, I move to strike all after the enacting clause and insert in lieu thereof the text of S. 2490 as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which this action was taken.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 2878) was read the third time and passed.

Mr. BAKER. Mr. President, I ask that the Senate indefinitely postpone consideration of Calendar Order No. 915, S. 2490.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STATE JUSTICE INSTITUTE ACT OF 1984

Mr. BAKER. Mr. President, the next item I have in the folder is Calendar Order No. 923, S. 384. Is the minority leader prepared to clear that item at this time?

Mr. BYRD. Mr. President, that item has been cleared on this side.

Mr. BAKER. I ask the Chair to lay before the Senate Calendar Order No. 923, S. 384.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 384) to aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments as follows:

On page 1, line 4, strike "1982" and insert "1984".

On page 27, line 6, strike "1984" and insert "1985".

On page 27, line 6, strike "1985" and insert "1986".

On page 27, line 7, strike "1986" and insert "1987".

So as to make the bill read:

S. 384

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this

Act may be cited as the "State Justice Institute Act of 1984".

DEFINITIONS

Sec. 2. As used in this Act, the term—

(1) "Board" means the Board of Directors of the Institute;

(2) "Director" means the Executive Director of the Institute;

(3) "Governor" means the Chief Executive Officer of a State;

(4) "Institute" means the State Justice Institute;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this Act;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this Act, a constitutionally or legislatively established judicial council acts in place of that court.

ESTABLISHMENT OF INSTITUTE; DUTIES

Sec. 3. (a) There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in the District of Columbia or in any other State. To the extent consistent with the provisions of this Act, the Institute shall exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this Act;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) make recommendations concerning the proper allocation of responsibility between the State and Federal court systems;

(4) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(5) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 (26 U.S.C. 170(c)(2)(B)) and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) which is exempt from taxation under section 501(a) of such Code (26 U.S.C. 501(a)). If such treatments are conferred in accordance with the provisions of such Code, the Institute, and programs assisted by the Institute, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

(f) The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this Act, and it shall publish in the Federal Register, at least thirty days prior to their effective date, all rules, regulations, guidelines, and instructions.

BOARD OF DIRECTORS

Sec. 4. (a)(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four public members, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the conference considers best qualified to serve on the Board. The President may reject such list and request another list of individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this Act.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall appoint the members under this subsection within sixty days after the date of enactment of this Act.

(6) The members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b)(1) Except as provided in paragraph (2), the term office of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) All meetings of the Board, any executive committee of the Board, and any council established in connection with this Act, shall be open and subject to the requirements and provisions of section 552b of title 5, United States Code, relating to open meetings.

(k) In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish such policies and develop such programs for the Institute as will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 156(a).

OFFICERS AND EMPLOYEES

Sec. 5. (a)(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this Act.

(b) Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code.

(c)(1) Except as otherwise specifically provided in this Act, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This Act does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d)(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5, United States Code: Subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code, relating to freedom of information.

GRANTS AND CONTRACTS

SEC. 6. (a) The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b), in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this Act, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this Act;

(4) evaluate, when appropriate, the programs and projects carried out under this Act to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this Act;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give priority to grants, cooperative agreements, or contracts with—

(A) State and local courts and their agencies,

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.

(4) Each application for funding by a State or local court shall be approved by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve their functioning;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with their operation, to devise alternative approaches to better reconcile the requirements of due process with the needs for swift and certain justice, and to test their utility;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this Act, as may be deemed appropriate by the Institute.

(d) The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local judicial system is the recipient, the requirement that the recipient provide a match, from private or public sources, equal to 25 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this Act to insure that the provisions of this Act, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this Act, are carried out.

(f) The Institute shall provide for an independent study of the financial and technical assistance programs under this Act.

LIMITATIONS ON GRANTS AND CONTRACTS

SEC. 7. (a) With respect to grants or contracts made under this Act, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this Act of the recipient or the Institute;

(2) ensure all personnel engaged in grant or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity; and

(3) ensure that every grantee, contractor, person, or entity receiving financial assistance under this Act which files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

(A) the application for refunding has been approved and funds pursuant thereto received; or

(B) the application for refunding has been finally denied in accordance with section 9 of this Act.

(b) No funds made available by the Institute under this Act, either by grant or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) The authorization to enter into contracts or any other obligation under this Act shall be effective only to the extent, and in such amounts, as are provided in appropriation Acts.

(d) To ensure that funds made available under this Act are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

RESTRICTIONS ON ACTIVITIES OF THE INSTITUTE

Sec. 8. (a) The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system nor allow sums to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this Act; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this Act.

(b)(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum, except those dealing with improvement of the State judiciary, consistent with the purposes of this Act.

(c) Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

SPECIAL PROCEDURES

Sec. 9. The Institute shall prescribe procedures to insure that—

(1) financial assistance under this Act shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this Act has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this Act shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, person, or entity receiving financial assistance under this has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Institute to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Institute in accordance with procedures established in regulations promulgated by the Institute.

PRESIDENTIAL COORDINATION

Sec. 10. The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this Act.

RECORDS AND REPORTS

Sec. 11. (a) The Institute is authorized to require such reports as it deems necessary from any grantee, contractor, person, or entity receiving financial assistance under this Act regarding activities carried out pursuant to this Act.

(b) The Institute is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, person, or entity receiving financial assistance under this Act shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

AUDITS

Sec. 12. (a)(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b)(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial

records, reports, files, and other papers or property for a longer period under section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b)).

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c)(1) The Institute shall conduct, or require each grantee, contractor, person, or entity receiving financial assistance under this Act to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

AMENDMENTS TO OTHER LAWS

Sec. 13. Section 620(b) of title 28, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (3);

(2) striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) inserting the following new paragraph (5) at the end thereof:

"(5) Insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.".

AUTHORIZATIONS

Sec. 14. There are authorized to be appropriated to carry out the purposes of this Act, $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986, and $25,000,000 for fiscal year 1987.

EFFECTIVE DATE

Sec. 15. The provisions of this Act shall take effect upon the date of enactment of such Act.

Mr. BAKER. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to en bloc.

The PRESIDING OFFICER. Are there further amendments?

AMENDMENT NO. 3326

(Purpose: To make a technical amendment)

Mr. BAKER. Mr. President, I send to the desk an amendment in behalf of the distinguished Senator from Utah [Mr. Hatch] and ask that it be immediately considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. Baker], for Mr. Hatch, proposes an amendment numbered 3326

On page 21, line 16, beginning with ", except" strike out all through "Act" on line 17.

Mr. HEFLIN. Mr. President, I am pleased to accept the amendment offered by the distinguished Senator from Utah, Senator Hatch.

The purpose of the State Justice Institute is to further the development and adoption of improved judicial administration in State courts in the United States. The Institute is an independent federally chartered corporation charged with the responsibility of developing programs to maintain and improve the quality of justice administered by our State courts.

Under S. 384, the Institute is prohibited from contributing, or making available Institute funds, or program personnel, or equipment for use in advocating, or opposing any ballot measure, initiative, or referendum except those dealing with improvement of the State judiciary.

The amendment offered by Senator Hatch will delete this exception pertaining to efforts to improve the State judiciary and make the bar against political activity unequivocal.

The amendment is consistent with the purpose, duties, and restrictions placed upon the Institute.

Thank you, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3326) was agreed to.

AMENDMENT NO. 3327

(Purpose: To make technical and conforming amendments)

Mr. BAKER. Mr. President, there is a second amendment, which is a technical amendment, on behalf of Senator Heflin.

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Mr. Heflin and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for Mr. Heflin, proposes an amendment numbered 3327.

On page 3, strike out line 3 after "in" the first place it appears and insert in lieu thereof "any State, pursuant to section 4(a)(6) of this Act.".

On page 3, line 5, strike out "shall" and insert in lieu thereof "may".

On page 3, strike out lines 19 through 21.

On page 3, line 22, strike out "(4)" and insert in lieu thereof "(3)".

On page 4, line 1, strike out "(5)" and insert in lieu thereof "(4)".

On page 5, line 21, strike out "public members" and insert in lieu thereof "members from the public sector".

On page 5, line 25, after "submitted" insert "to the President".

On page 6, line 4, beginning with "The" strike out through the period on line 6 and insert in lieu thereof "Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so ordered, the President shall request the Conference to submit to him another list of qualified individuals.".

On page 6, strike out lines 14 through 16 and insert in lieu thereof the following:

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after the date of the enactment of this Act. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

On page 6, line 17, after "The" insert "initial".

On page 6, line 21, strike out "office".

On page 9, line 16, strike out "156(a)" and insert in lieu thereof "6(a)".

On page 13, line 22, after "approved" insert "consistent with State law,".

On page 15, line 22, strike out "their functioning" and insert in lieu thereof "the functioning of such judges and courts".

On page 15, line 25, strike out "their operation" and insert in lieu thereof "the operation of such rules, procedures, devices, and standards".

On page 16, line 3, strike out "their utility" and insert in lieu thereof "the utility of those alternative approaches".

On page 17, line 5, strike out "equal to" and insert in lieu thereof "not less than".

On page 17, line 21, strike out "or contracts made" and insert in lieu thereof "made and contracts or cooperative agreements entered into".

On page 18, line 4, strike out "by the Congress" insert "or constitutional amendment".

On page 18, line 6, after "petition" insert "or of any referendum,".

On page 18, line 15, after "grant" insert ", cooperative agreement,".

On page 18, line 19, beginning with "every" strike out through "which" on line 21 and insert in lieu thereof "each recipient that".

On page 19, line 5, after "grant" insert ", cooperative agreement,".

On page 19, line 9, after "into " insert "cooperative agreements,".

On page 19, line 11, after "provided" insert "in advance".

On page 20, line 7, strike out "nor allow sums" and insert in lieu thereof "or allow financial assistance".

On page 22, line 11, strike out "under this".

On page 23, line 3, after "any", strike out all through "regarding" on line 5 and insert in lieu thereof "recipient with respect to".

On page 23, line 7, strike out "grant or contract" and insert in lieu thereof "any grant, cooperative agreement, or contract under this Act".

On page 23, line 9, strike out "insuring" and insert in lieu thereof "ensuring".

On page 23, line 9, strike out "the grant" and insert in lieu thereof "such grant, cooperative agreement,".

On page 23, line 13, after "any" strike out through "entity" on line 16 and insert in lieu thereof "recipient shall be submitted on a timely basis to such recipient".

On page 25, line 20, after "section", strike out all through line 21 and insert in lieu thereof "3523 (c) of title 31, United States Code.".

On page 26, line 2, beginning with "grantee" strike out through "Act" on line 3 and insert in lieu thereof "recipient".

Mr. HEFLIN. Mr. President, this amendment makes technical changes to the bill and provides conciseness and clarity to the language of the bill.

There are also substantive changes made by the bill based on suggestions received from witnesses testifying before the Senate and House Judiciary Committees.

First, the amendment limits the place of incorporation of the Institute to "any State" and deletes the provision allowing the Institute to be incorporated in the District of Columbia.

Second, the amendment deletes the provision in S. 384 requiring the Institute to "make recommendations concerning the proper allocation of responsibility between the State and Federal court systems."

Third, the amendment provides a mechanism for filling vacancies of positions of the Board of Directors of the Institute.

The fourth substantive change requires the President to make initial apointments of members of the Board of Directors within 90 days after the date of enactment of this act. S. 384 provided a 60-day time period.

There is also a provision requiring the Conference of Chief Justices to submit their list of qualified candidates for members of the Board in a timely manner.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3327) was agreed to.

Mr. HEFLIN. Mr. President, I rise in support of Senate bill 384 which would establish a State Justice Institute—a private nonprofit corporation to aid State and local governments in strengthening and improving their judicial systems.

The framers of our Constitution realized the important position that State courts would assume in the evolution of our judicial process. In fact, the only Federal court mandated by the Constitution is the Supreme Court of the United States. Therefore, it is evident that our forefathers placed substantial confidence in the abilities of our State judicial systems. The foresight of these men proved prophetic.

Today, State courts handle over 96 percent of all the cases tried in the United States. They are charged, along with the Federal courts, with the awesome responsibility of protecting and enforcing the rights granted by the Constitution and the laws of this land.

There is little doubt that a compelling Federal interest exists in ensuring that our State courts have the necessary resources available to meet the demands of their increasing dockets.

State courts not only consider State issues, but they are bound by the supremacy clause of the Constitution to consider Federal law as well.

In addition, the Federal Government is dependent upon State courts for the implementation and enforcement of Federal legislation on a statewide basis. Such legislation includes: The 55-mile per hour speed limit, aid to dependent children, and school lunch programs.

There is also an increasing number of Federal criminal cases being diverted to State courts because of the Speedy Trial Act.

It is inequitable to allow the Federal Government to continually burden State courts with Federal issues without providing corresponding financial assistance to meet these additional responsibilities.

But there is an even more compelling reason for passage of this legislation. Under our federal system of government, the judiciary of this country is bifurcated into both State and Federal systems. However, it is in the State courts that many private citizens are first touched by the hands of justice. If our State courts lack the capacity to deal competently and fairly with litigants, witnesses, and spectators, there is a danger that the public's perception of justice will be irrevocably tainted.

This point was eloquently stated by the Chief Justice of the U.S. Supreme Court, Warren E. Burger:

> Should our people ever lose confidence in their State courts, not only will our Federal courts become more and more overburdened, but a pervasive lack of confidence in all courts will develop. All courts, Federal and State, rely upon public trust and public confidence. Their integrity is the key to their validity.

This legislation authorizes the creation of a State Justice Institute to administer a national program for the improvement of State court systems. In keeping with the doctrines of federalism and separation of powers, the Institute would be an independent, federally chartered corporation—accountable to Congress for its general authority, but under the direction of State judicial officials as to specific programs, priorities, and operating policies.

The functions of courts on both the Federal and State levels have changed dramatically over the past few decades. A judge can no longer simply dispense justice and consider his responsibility fulfilled. Today, our judges are faced with enormous administrative responsibilities and it is imperative that our judicial officers balance both their judicial and administrative duties.

Our State courts cannot accomplish this alone. To maintain qualified judges and other court personnel it will be necessary to provide: First, educational and training programs; second, budgeting, planning, and accounting and; third, effective procedures for managing and monitoring caseloads.

It would be the function of the State Justice Institute to carry out these programs and to serve as a coordinating agency which assimilates information and then develops programs which will benefit numerous, if not all, State judical programs.

The Senate has passed similar legislation establishing a State Justice Institute during the past two Congresses and it has done so by a unanimous vote. This legislation has also been unanimously endorsed by the Conference of Chief Justices, which is composed of the highest judicial officers of the 55 States, and territories, and the District of Columbia.

It is apparent that the quality of justice in this country is largely determined by the quality of justice dispensed by State courts. While Federal assistance to State courts should never replace the basic financial support provided by State legislatures, Federal financial contribution administered in a manner that respects the independent nature of the judiciary can provide a "margin of excellence" that will not only improve the quality of justice, but will guarantee that the justice administered is of the highest caliber and that our courts provide the greatest accessibility for the citizens of this great land.

I thank the distinguished chairman of the Senate Judiciary Committee, Senator STROM THURMOND, and Senator BOB DOLE, chairman of the Subcommittee on Courts, for their assistance and support in our efforts to see this legislation become a reality.

I firmly believe that this legislation will be an important initial step in our overall attempts to improve our judicial system on all levels of government and I urge my colleagues to support this long-awaited and much-needed legislation.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 384

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State Justice Institute Act of 1984".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "Board" means the Board of Directors of the Institute;

(2) "Director" means the Executive Director of the Institute;

(3) "Governor" means the Chief Executive Officer of a State;

(4) "Institute" means the State Justice Institute;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this Act;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this Act, a constitutionally or legislatively established judicial council acts in place of that court.

ESTABLISHMENT OF INSTITUTE; DUTIES

SEC. 3. (a) There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State, pursuant to section 4(a)(b) of this Act. To the extent consistent with the provisions of this Act, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this Act;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 (26 U.S.C. 170(c)(2)(B)) and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) which is exempt from taxation under section 501(a) of such Code (26 U.S.C. 501(a)). If such treatments are conferred in accordance with the provisions of such Code, the Institute, and programs assisted by the Institute, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

(f) The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this Act, and it shall publish in the Federal Register, at least thirty days prior to their effective date, all rules, regulations, guidelines, and instructions.

BOARD OF DIRECTORS

SEC. 4. (a)(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members of be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates to be submitted by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the Conference considers best qualified to serve on the Board. Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this Act.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after the date of the enactment of this Act. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b)(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting as his own discretion or pursuant to the petition of any seven members.

(j) All meetings of the Board, any executive committee of the Board, and any council established in connection with this Act, shall be open and subject to the requirements and provisions of section 552b of title 5, United States Code, relating to open meetings.

(k) In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish such policies and develop such programs for the Institute as will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorites;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall

serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities, whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 6(a).

OFFICERS AND EMPLOYEES

Sec. 5. (a)(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this Act.

(b) Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code.

(c)(1) Except as otherwise specifically provided in this Act, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This Act does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d)(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5, United States Code: Subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement), chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code, relating to freedom of information.

GRANTS AND CONTRACTS

Sec. 6. (a) The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b), in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this Act, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this Act;

(4) evaluate, when appropriate, the programs and projects carried out under this Act to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this Act;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give priority to grants, cooperative agreements, or contracts with—

(A) State and local courts and their agencies,

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.

(4) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experiemental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts,

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the rquirements of due process with the needs for swift and certain justice, and to test the utility of those alternative approaches;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this Act, as may be deemed appropriate by the Institute.

(d) The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local judicial system is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 25 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this Act to insure that the provisions of this Act, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this Act, are carried out.

(f) The Institute shall provide for an independent study of the financial and technical assistance programs under this Act.

LIMITATIONS ON GRANTS AND CONTRACTS

Sec. 7. (a) With respect to grants made and contracts or cooperative agreements entered into under this Act, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this Act of the recipient or the Institute;

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity; and

(3) ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

(A) the application for refunding has been approved and funds pursuant thereto received; or

(B) the application for refunding has been finally denied in accordance with section 9 of this Act.

(b) No funds made available by the Institute under this Act, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) The authorization to enter into cooperative agreements, contracts or any other obligation under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) To ensure that funds made available under this Act are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

RESTRICTIONS ON ACTIVITIES OF THE INSTITUTE

Sec. 8. (a) The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this Act; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this Act.

(b)(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

SPECIAL PROCEDURES

Sec. 9. The Institute shall prescribe procedures to insure that—

(1) financial assistance under this Act shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this Act has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this Act shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, person, or entity receiving financial assistance has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Institute to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Institute in accordance with procedures established in regulations promulgated by the Institute.

PRESIDENTIAL COORDINATION

Sec. 10. The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this Act.

RECORDS AND REPORTS

Sec. 11. (a) The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this Act.

(b) The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this Act and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

AUDITS

Sec. 12. (a)(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b)(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General

Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31, United States Code.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c)(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

AMENDMENTS TO OTHER LAWS

SEC. 13. Section 620(b) of title 28, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (3);

(2) striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) inserting the following new paragraph (5) at the end thereof:

"(5) Insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.".

AUTHORIZATIONS

SEC. 14. There are authorized to be appropriated to carry out the purposes of this Act, $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986, $25,000,000 for fiscal year 1987.

EFFECTIVE DATE

SEC. 15. The provisions of this Act shall take effect upon the date of enactment of such Act.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended to 7:30 p.m. under the same terms and conditions.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. The Chair is in doubt, I am sure, at the wisdom of the motion rather than the form and content.

The PRESIDING OFFICER. Without objection, it is so ordered.

OFFICE OF ENVIRONMENTAL QUALITY AND COUNCIL ON ENVIRONMENTAL QUALITY AUTHORIZATION, 1985

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 1002 if the minority leader does not object.

Mr. BYRD. Mr. President, the minority leader does not object.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4585) to authorize appropriations for the Office of Environmental Quality and the Council on Environmental Quality for fiscal years 1985, 1986, 1987, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3328

Mr. BAKER. Mr. President, I send an amendment in the nature of a substitute to the desk on behalf of the distinguished Senator from Minnesota [Mr. DURENBERGER], and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER] for Mr. DURENBERGER, proposes an amendment numbered 3328.

Strike all after the enacting clause and insert the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 205 of the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4374(c)) is amended by adding at the end thereof the following new paragraph:

"(d) $480,000 for the fiscal year ending September 30, 1985".

SEC. 2. The Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371-4374) is further amended by adding at the end thereof the following new section:

"OFFICE MANAGEMENT FUND

"SEC. 206. (a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the 'Fund') to receive advance payments from other agencies or accounts that may be used solely to finance—

"(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

"(2) Federal interagency environmental projects (including task forces) in which the Office participates.

"(b) Any study contract or project that is to be financed under subsection (a) may be initiated only with the approval of the Director.

"(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.".

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The bill (H.R. 4585) was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BAKER. I move to reconsider the vote, Mr. President.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. I ask unanimous consent that the Senate indefinitely postpone consideration of calendar order No. 911, S. 2703.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONVEYANCE OF CERTAIN REAL PROPERTY

Mr. BAKER. Mr. President, I propose that the Senate proceed to the consideration of H.R. 5565 now being held at the desk. I ask unanimous consent that the Senate turn to consideration of that measure at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5565) to direct the Architect of the Capitol and the District of Columbia to enter into an agreement for the conveyance of certain real property, to direct the Secretary of the Interior to permit the District of Columbia and the Washington Metropolitan Area Transit Authority to construct, maintain, and operate certain transportation improvements on Federal property, and to direct the Architect of the Capitol to provide the Washington Metropolitan Area Transit Authority access to certain real property.

The Senate proceeded to consider the bill.

U.S. BOTANIC GARDEN RELOCATION AND WMATA METRORAIL CONSTRUCTION

Mr. MATHIAS. Mr. President, this bill has been a long time in the making, and I am pleased to report, that all the parties involved—five agencies—have been accommodated.

SUMMARY: PURPOSES OF THE BILL

The bill has several purposes:

First, to facilitate construction of the Washington Metrorail Green Line, or "F Route," from Southwest Washington and the Navy Yard, under the Anacostia River, to the Anacostia Metrorail Station in far Southeast Washington. This construction marks the first subway service to far Southeast Washington, the most transit-dependent area of the Washington region. The Green Line to be constructed is part of the 101-mile adopted Washington Regional Rail System.

Second, to relocate the U.S. Botanic Garden operated by the Architect of the Capitol under direction of the Joint Committee on the Library from the site of the Anacostia Metrorail Station, known as Poplar Point, to a new site located at D.C. Village in far Southwest Washington. This new location at D.C. Village and the preliminary site and building plans for the U.S. Botanic Garden replacement greenhouses, head houses, storage, and related facilities were approved by the National Capital Planning Commission on March 29 of this year. So planning for this relocation is proceeding apace to assure that the Botanic Garden, which serves the landscaping needs of the Capitol Grounds, will be suitably relocated in a timely fashion.

Third, to authorize access by WMATA for survey, planning, and construction to the Botanic Garden site.

Fourth, to transfer jurisdiction of the Poplar Point Botanic Garden site from the Joint Committee on the Library to the National Park Service and to authorize a reuse plan for any residual property not needed for Metrorail. The bill also directs the transfer of the D.C. Lanham Tree Nursery, adjacent to the Botanic Garden, to the Park Service. The purpose of this provision is to return land to the National Park Service which it originally held prior to Congress transferring it to the Botanic Garden and the D.C. Tree Nursery. The use of these properties for the improvement of the transportation system in the Washington, DC, area has been discussed in detail in the final environmental impact statement [EIS], for the Anacostia segment of the Washington Metrorail System. That EIS, which includes appropriate determinations under section 4(f) of the Department of Transportation Act, was issued by the Urban Mass Transportation Administration on August 18, 1981. See pages 5-21 through 5-45 of the EIS. The EIS contemplated that jurisdiction over the Poplar Point property would be formally transferred to WMATA, with the excess land not needed for transportation improvements to be returned to the Park Service after it is no longer needed. The interested parties have now agreed that such a transfer to WMATA is neither necessary nor appropriate. Rather, the Park Service will obtain jurisdiction over both properties, with construction, maintenance, and operation of the transportation improvements accomplished by WMATA and the District under standard Park Service permitting procedures. In all other respects, the Congress expects that the future development of these properties, including mitigation efforts to reduce the impact of this project on Anacostia Park, will be undertaken in a manner consistent with the EIS.

So this land will again revert to park status as part of Anacostia Park, the linear waterfront park along the river administered by the National Park Service. In addition, the bill provides flexibility in planning other reuses for a 400-car temporary surface parking lot which will be constructed by WMATA to serve the Anacostia Metro station while it remains the terminus of the Green Line. When the line is continued to its ultimate terminus—either Branch Avenue or Rosecroft—the surface parking lot will no longer be needed by WMATA.

The D.C. Government has had a longstanding interest in economic development of the area adjacent of the Anacostia Metro Station. This parking lot could become a part of that ultimate use through cooperative planning between the Park Service and the D.C. Government.

NEED FOR LEGISLATION

The need for this legislation has been pressing since all of the parties affected—WMATA, the D.C. Government, the Architect of the Capitol, the National Park Service, and the Federal Highway Administration—agreed on their respective roles with respect to this project. That agreement was reached last fall and legislation was quickly introduced in the House by Representative FAUNTROY to accomplish this project.

It should be noted that the sense of urgency surrounding this legislation springs in large part from the fact that from March 16, 1982, to March 12, 1984, WMATA was under a court order to refrain from taking any action regarding the construction of the Green Line. While litigation over the ultimate terminus of the Green Line is ongoing, WMATA has been allowed by the court to proceed with surveys, planning, and engineering as far as the Anacostia Station since this will not prejudice the ultimate determination of the Green Line terminus.

WMATA currently hopes to be on site for preliminary surveys and soil borings by July 2.

Mr. President, I ask unanimous consent that letters to me from WMATA and from the Mayor of the District of Columbia explaining the urgency of this legislation appear following my remarks in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

HISTORY OF THE PROJECT

Mr. MATHIAS. As long ago as September 1978, WMATA, in conjunction with the Architect of the Capitol, had been investigating alternative relocation sites for the Botanic Garden and had sought several underused Federal sites owned by the General Services Administration. Among these were two different locations at the Suitland Federal Center in Suitland, MD; one of three temporary office building sites in Southwest Washington adjacent to Fort McNair; and Camp Simms on Alabama Avenue SE., in the District. For a variety of reasons none of these sites were made available by GSA.

During all of this time, the Architect of the Capitol, in his capacity as Acting Director of the Botanic Garden, was most cooperative in working with local and Federal authorities to find an alternate site. The Architect has consistently repeated the parameters needed for a suitable replacement Botanic Garden nursery: 25 acres in reasonable proximity to the Capitol suitable for construction of greenhouse facilities. The Botanic Garden currently comprises 25 acres at Poplar Point and includes 98,624 square feet of greenhouses, head houses, a garage, shed, quonset, general storage shed, lath house, and cold frames.

The site also houses the U.S. Capitol Police canine training facility which will be relocated to the D.C. Village site as well. The relocation will be carried out to provide replacement facilities for the Botanic Garden pursuant to the Uniform Relocation Assistance and Land Use Policies Act of 1970.

The Anacostia Metrorail station will be a major transfer point for commuters from bus and car to rail. The District Government, in conjunction with WMATA construction of the subway station, will construct a 900-car parking garage for shared-ride autos adjacent to Interstate 295, the Anacostia Freeway. In addition, a 400-car surface parking lot and a Metrobus transfer facility will also be constructed to serve more than 1,100 buses and 22,000 riders each day. These facilities will serve a regional transportation need by freeing up a bottleneck at I-295 and the 11th Street Bridge.

HISTORY OF THE LEGISLATION

H.R. 4153 was introduced in the House on October 19, 1983 by Representative FAUNTROY. Two hearings were held on this legislation by the Subcommittee on Fiscal Affairs and Health of the House District Committee on October 25, 1983, and on May 10, 1984.

Witnesses at the October hearing were the Mayor of the District of Columbia; the chairman of the D.C. City Council; and the Architect of the Capitol. The second hearing was devoted to a review of position statements solicited by the committee from each of the affected parties: The U.S. Department of Transportation; the Department of the Interior; the Washington Metropolitan Area Transit Authority; and the Architect of the Capitol. Copies of that correspondence are contained in the House report on this legislation, House Report 98-810. A revised bill H.R. 5565 was introduced in the House on May 2, 1984 by Representatives FAUNTROY and PARRIS. The Committee on the District of Columbia marked up and reported H.R. 5565 on May 3, 1984. This bill passed the House Monday, June 11, with one amendment, a deletion of section 1(b)(1)(B) which restated existing law with respect to coverage and cost sharing under the Uniform Relocation Act.

REASONS TO EXPEDITE SENATE CONSIDERATION

The reason to expedite consideration of this measure is to permit WMATA to begin preliminary surveys and engineering at Poplar Point and to advertise for bids by July 2, of this year.

Mr. President, I chair three committees which, I am advised by the Parliamentarian, would have jurisdiction over this legislation.

In my role as chairman of the Senate Rules Committee and chairman of the Joint Committee on the Library, I have oversight responsibility for the activities of the Architect of the Capitol and the U.S. Botanic Garden.

I believe that the concerns expressed to me and to the House Committee on Administration by the Architect have been addressed in this legislation and will continue to be addressed by the D.C. Government and WMATA. I have discussed this with the ranking minority member of the Rules Committee, Senator FORD, and he agrees on this course of action. I am also persuaded of this course by the willingness of my House counterpart and vice chairman of the Joint Committee on the Library, Representative AUGUSTUS HAWKINS, to let this bill proceed on the House side.

There are two concerns which the Architect of the Capitol has with respect to the relocation of the Botanic Garden: First, that WMATA construction not interfere with outdoor plantings, storage, and the Capitol Police canine training facility while the Botanic Garden is still on site; and second, that additional buildings beyond these existing on the Poplar Point site be constructed at D.C. Village and paid for as a relocation expense.

Mr. President, I ask unanimous consent that a letter to me from the Architect raising these points appear following my remarks in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 2.)

Mr. MATHIAS. Mr. President, I have been assured by WMATA that relocation of the activities and facilities at Poplar Point will be staged or "checker-boarded" to avoid disruption to the outdoor plantings, the canine facility, and the storage sheds. In the alternative, WMATA has offered to contract with a private nursery to assure that trees and plantings needed for the Capitol Grounds will be available to a timely basis. I ask unanimous consent that a letter from WMATA to me to this effect appear following my remarks in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 3.)

Mr. MATHIAS. Mr. President, the second point raised by the Architect, that additional buildings will be provided beyond those currently in use at Poplar Point, is apparently based on a misunderstanding.

The Camp Simms site, a Federal surplus property containing several storage sheds, was never transferred to the Architect. And in any event, those storage sheds were incidental to the site. The Uniform Relocation Act is quite clear that replacement costs are just that. Under the act, the Botanic Garden, like any other public displacee, is entitled to a replacement of existing facilities at current levels of quality. As most of the current facilities at Poplar Point are 30 years old, the Botanic Garden's replacement facilities will, indeed, be a significant improvement in quality. The act does not permit, nor did Congress intend, that an expansion of current facilities would be an eligible project cost.

I would note also for the record, that the D.C. Village replacement site contains a 3-year-old, 12,500 square foot maintenance building which will be made available to the Botanic Garden. It also contains a D.C. Police canine kennel and training ground which will be vacated and which, one would hope, would be suitable as a replacement facility for the Capitol Police canine training ground now at Poplar Point.

In addition, concerns expressed by the National Park Service and the Federal Highway Administration to the House District Committee have been addressed in this bill. Those agencies and their respective authorizing committees have been advised about this bill and have expressed no objection.

In my role as chairman of the Subcommittee on Governmental Efficiency and the District of Columbia, I have oversight responsibility for the operations of the Government of the District of Columbia and for the regional transit system constructed, maintained, and operated by WMATA. Both have been in continuous contact with me and the ranking minority member, Senator EAGLETON, about the need to expedite construction of the Green Line. I have consulted with Senator EAGLETON about expediting this bill and he has concurred with this course of action.

In addition, in my role as an ex-officio member of the National Capital Planning Commission, I have voted with a majority of my fellow Commissioners to approve the preliminary site and building plans for the replacement Botanic Garden at D.C. Village at the Commission's March 29, 1984, meeting.

COST ESTIMATE

Mr. President, I ask unanimous consent that a cost estimate on this measure appear following my remarks in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 4.)

REGULATORY IMPACT

Mr. MATHIAS. Mr. President, paragraph 11(b)(1) of rule XXVI of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be imposed in carrying out the bill."

H.R. 5565 will not have an additional regulatory impact.

CHANGES IN EXISTING LAW

There are no changes in existing law made by H.R. 5565.

Mr. President, I urge expeditious consideration and passage of this measure by the Senate.

EXHIBIT 1

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,
Washington, DC, June 11, 1984.

Hon. CHARLES MCC. MATHIAS, Jr.,
Chairman, Subcommittee on Governmental Efficiency and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The House of Representatives today approved H.R. 5565, legislation to authorize the relocation of nursery and greenhouse facilities operated by the Architect of the Capitol at Poplar Point. The measure would further grant a right-of-entry permit to the Washington Metropolitan Area Transit Authority (WMATA) in order to allow the Authority to begin construction of section F-4 of the Metrorail Green line.

As you are aware, the Green line has been delayed for some time due to a Court injunction. That injunction has now been modified to allow WMATA to undertake actions preliminary to construction of section F-4, the tunnel under the Anacostia River. It is anticipated that later this month, that injunction will be lifted to permit construction through the Anacostia Metrorail Station. When the injunction is lifted, the Authority plans to proceed as quickly as possible with the advertising for bids for construction of the Anacostia River tunnel section.

In order for the Authority to proceed, however, it must have a right-of-entry permit onto a portion of the Poplar Point site. That permit would be authorized by H.R. 5565. In order to avoid unnecessary delays on the Anacostia Metrorail line, it is therefore essential that H.R. 5565 be approved by the Congress as expeditiously as possible. Your kind assistance in obtaining swift action in the Senate on this measure will be of great value to Metro and the region.

Thank you for your consideration of this matter. If we can provide any further information, please let me know.

Sincerely,

CARMEN E. TURNER,
General Manager.

THE DISTRICT OF COLUMBIA,
Washington, DC, June 11, 1984.
Senator CHARLES MATHIAS,
Chairman, Subcommittee on Governmental Efficiency and the District of Columbia, U.S. Senate, Washington, DC.

DEAR SENATOR MATHIAS: The House of Representative is scheduled to consider, and pass, H.R. 5565, a bill to authorize the relocation of facilities operated by the Architect of the Capitol at Poplar Point in Washington, D.C. to an equivalent site in the District and to provide the Washington Metropolitan Transit Authority with access to Poplar Point. This legislation is needed to enable construction of the long-awaited Metrorail green line.

H.R. 5565 is the culmination of more than five years of planning and negotiation involving the community, the National Park Service, the U.S. Department of Transportation, the Architect of the Capitol, the District and the Washington Metropolitan Transit Authority. The legislation addresses the concerns of all the various parties, is non-controversial and should be enacted into law. For your information I have enclosed a copy of the House report on H.R. 5565.

I respectfully elicit your support for this legislation and urge the Senate to take prompt and favorable action on H.R. 5565.

Sincerely,

MARION BARRY, Jr.,
Mayor.

EXHIBIT 2

THE ARCHITECT OF THE CAPITOL,
Washington, DC, May 16, 1984.
Hon. CHARLES McC. MATHIAS, Jr.,
Chairman, Joint Committee on the Library, Washington, DC.

DEAR MR. CHAIRMAN: The recent action of the House Committee on the District of Columbia ordering reported H.R. 5565, a bill to direct the architect of the Capitol, as Acting Director of the Botanic Garden, and the District of Columbia to enter into an agreement for the transfer of certain properties in the District of Columbia in order to permit the construction by the Washington Metropolitan Area Transit Authority (WMATA) of the Anacostia station of the so-called "Green Line" on what is now the Poplar Point Nursery of the United States Botanic Garden, has prompted me to provide you with the following report concerning the status of this matter.

As you know, WMATA's plans for construction of the so-called "Green Line" to Prince George's County will require the relocation of the U.S. Botanic Garden Poplar Point Nursery from its present site in Anacostia. This proposal will entail "cut and cover" construction of the rail-line through the Nursery grounds, as well as construction of a subway station and parking facility. These operations will necessitate the eventual demolition of the Nursery's greenhouses and other structures, and will intefere with outdoor plantings, the operation of the Capitol Police canine facility and various storage and other activities carried on at the site.

In approximately 1976 when I became aware that there would be an eventual need to relocate the Poplar Point Nursery to make way for the Green Line, I established the policy that my office would cooperate with WMATA, the District of Columbia Government, the National Park Service and other interested agencies to the fullest extent practicable, consistent with the interests of the Congress and the U.S. Botanic Garden. At first orally, and then in May 1978, in writing, I communicated to WMATA the minimum requirements that any proposed relocation site would have to meet, namely, such a site must:

(1) Be located within a 12-mile radius of the Capitol;

(2) Be accessible from a main highway or road that is easily traversible by large trucks and equipment;

(3) Be served by readily available electricity, water, and sanitary sewer systems; and

(4) Consist of a minimum of 25 acres (the size of the present facility).

Over the ensuing years, a number of potential sites located on federal property were identified by WMATA and recommended to us as suitable relocation sites. A number of these, after careful investigation by my staff, were found to be acceptable but for various reasons, including delays in commencing construction on the line, were eventually diverted to other uses.

Most recently, during 1980 and 1981, a 25-acre site, known as Camp Simms, located in Southeast Washington, was identified as a potentially acceptable relocation site and considerable effort was expended by WMATA in performing studies to support that conclusion, including feasibility studies involving drainages, usage of existing buildings, transportation, and other master planning features. I found Camp Simms to be a particularly attractive alternative because of the many existing structures on the site that could be utilized for storage and other purposes beneficial to the Congress. However, before any positive action to effect the transfer of Camp Simms could be taken, the District of Columbia Government expressed a strong interest in acquiring Camp Simms for local, community uses and offered to provide suitable acreage elsewhere to accommodate our Nursery operation. Inasmuch as the public benefit to be derived from utilization of Camp Simms for the purposes intended by the District Government were obvious, we cooperated with the District by relinquishing any claim to Camp Simms in return for an acceptable site that was identified at D.C. Village and is now the subject of H.R. 5565. I might add that feasibility studies similar to those performed for Camp Simms are now virtually complete for the D.C. Village site.

While we are quite comfortable with the Poplar Point Nursery at its present location, it is obvious that the overriding public interest in mass transportation is a vital consideration. Therefore, when it becomes necessary for WMATA to commence construction of the Green Line on property under the jurisdiction of the U.S. Botanic Garden, I am pleased to report to you that, subject to the approval of your Committee, the proposed relocation site at D.C. Village will be suitable to our purposes.

H.R. 5565, particularly if it is amended to include the minor changes suggested in my letter dated May 10, 1984, to the Honorable Ronald V. Dellums, Chairman of the Committee on the District of Columbia, U.S. House of Representatives, a copy of which has been approved to you under separate cover, will enable the Poplar Point Nursery to be relocated with all of its existing buildings, structures and equipment replaced with facilities designed and built to currently acceptable standards. It will also provide an opportunity to acquire some additional structures to compensate, at least in part, for those lost to the District of Columbia when we relinquished the Camp Simms site.

I intend in the future to provide you with periodic reports as events occur that impact on the Poplar Point Nursery. In the meantime, I shall, of course, be pleased to provide any additional information or assistance you may deem desirable.

I have sent a similar letter to Vice Chairman Augustus F. Hawkins for his information.

Cordially,

GEORGE M. WHITE, FAIA,
Architect of the Capitol.

EXHIBIT 3

WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY,
Washington, DC, June 13, 1984.
Hon. CHARLES McC. MATHIAS, Jr.,
Chairman, Subcommittee on Governmental Efficiency and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in reference to H.R. 5565, legislation to authorize the relocation of nursery and greenhouse facilities operated by the Architect of the Capitol at Poplar Point to a site at D.C. Village and to grant the Washington Metropolitan Area Transit Authority a right-of-entry permit onto a portion of the Poplar Point site.

Specifically, concerns have been raised by the Architect as to his requirements with regard to a portion of his outdoor nursery area, storage area, and a K-9 facility during the period the Authority is working on the F-4 segment of the Green Line. This segment is a tunnel project under the Anacostia River and a portion of the Poplar Point nursery site. As WMATA staff has explained to the Architect's staff, it is the Authority's intention to hold any disruption to the Architect's operation at Poplar Point to an absolute minimum, so as to allow the Architect to continue his routine operation.

Specifically, construction of section F-4 will entail removal of plant material from a portion of the Poplar Point site closest to the river. WMATA has assured the Architect that we will contract with a private nursery to supply the Architect with the plant material he needs for routine operations. The staff of our Office of Engineering has met with the Architect's staff and is currently awaiting a list of plant materials that the Architect will require over the next two years.

With regard to the K-9 facility and storage area, the Authority will arrange to temporarily relocate both facilities to an area or areas acceptable to the Architect. One possibility would be on property immediately adjacent to the Poplar Point nursery known as the D.C. Tree Nursery. Of course, both the stored materials and K-9 facility will be removed to the permanent, new nursery site at D.C. Village. In no event will any construction activity commence until an acceptable, temporary site is found for these activities.

I trust that this provides you with the information you need with regard to these items. Please let us know if we can be of any further assistance.

Sincerely,

J. DENT FARR,
Director, Office of Government Relations.

EXHIBIT 4

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 24, 1984.

Hon. RONALD V. DELLUMS,
Chairman, Committee on the District of Columbia, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5565, as ordered reported by the House Committee on the District of Columbia, May 1, 1984. We estimate that enactment of this legislation will not result in additional costs to the federal government, though federal grant funds would be used to cover certain relocation costs resulting from the bill.

H.R. 5565 would require the Architect of the Capitol and the District of Columbia to agree on an appropriate spot to relocate the Botanic Garden and Greenhouse at Poplar Point. The replacement site would be conveyed to the United States without consideration by the District, and the District would be responsible for relocation expenses. However, this project would be an eligible project for reimbursement under the Federal-Aid Highway program, and funds would be derived from the District's normal allocation under this program. When the facilities are relocated, the Secretary of the Interior would enter into an agreement with the Washington Metropolitan Area Transit Authority (Metro) to authorize the District and Metro to construct, maintain, and operate transit facilities on the property. The bill also requires the District to convey without consideration to the Secretary of the Interior the Lanham Tree Nursery.

Enactment of this legislation will not affect the budget of the District of Columbia, or of any other state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANNSHEK
(For Rudolph G. Penner, Director).

The **PRESIDING OFFICER**. The question is on the third reading of the bill.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. **BAKER**. I move to reconsider the vote.

Mr. **BYRD**. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SOIL CONSERVATION ACT OF 1984

Mr. **BAKER**. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 663.

The **PRESIDING OFFICER** laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 663) entitled "An Act to make persons who produce agricultural commodities on highly erodible land ineligible for certain agricultural-related programs, and for other purposes", do pass with the following amendments: Strike out all after the enacting clause and insert:

That this Act may be cited as the "Soil Conservation Act of 1984".

TITLE I

DEFINITIONS

SEC. 101. As used in this Act—

(1) the term "agricultural commodity" means any agricultural commodity planted and produced by annual tilling of the soil, or on an annual basis by one-trip planters;

(2) the term "conservation district" means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such districts or units of State or local government may be called "conservation districts", "soil conservation districts", "soil and water conservation districts", "resource conservation districts", "natural resource districts", "land conservation committees", or a similar name;

(3) the term "erosion-prone cropland" means land that is classified by the Soil Conservation Service of the Department of Agriculture as class IIIe, IVe, VI, VII, or VIII land under the land capability classification system in effect on the date of enactment of this Act and that has been devoted to the production of an agricultural commodity in three out of the past five years, or any other land in a State that the Soil Conservation Service determines has an erosion rate, in the production of an agricultural commodity, that is equal to or greater than the average erosion rate in the same State on any of the foregoing classes of land;

(4) the term "field" means that term as defined in section 718.2 of title 7 of the Code of Federal Regulations, except that any highly erodible land on which an agricultural commodity is produced after the date of enactment of this Act and which is not exempt under section 202 shall be considered as part of the field in which such land was included on such date of enactment;

(5) the term "highly erodible land" means land classified by the Soil Conservation Service of the Department of Agriculture as class IVe, VIe, VII, or VIII land under the land capability classification system in effect on the date of enactment of this Act, or any other land in a State that the Soil Conservation Service determines would have an erosion rate, if that land is used to produce an agricultural commodity, that is equal to or greater than the average erosion rate in the same State on any of the foregoing classes of land; and

(6) the term "Secretary" means the Secretary of Agriculture.

TITLE II

PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND

SEC. 201. Except as provided in sections 202 and 407(c) and notwithstanding any other provision of law, following the date of enactment of this Act any person who during any crop year produces an agricultural commodity on highly erodible land on a field on which such highly erodible land is the predominant class shall be ineligible, as to any commodity produced during that crop year by such person, for—

(1) any type of price support or payments made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(2) a farm storage facility loan under section 4 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(3) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(4) a disaster payment under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.); or

(5) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that such loan will be used for a purpose that will contribute to excessive erosion on such field.

EXEMPTIONS

SEC. 202. (a) Section 201 shall not apply to any person who, during any crop year, produces an agricultural commodity on highly erodible land on a field on which such highly erodible land is the predominant class if all the commodities so produced by such person during that crop year were—

(1) produced on any land that was cultivated to produce any of the 1973 through 1984 crops of agricultural commodities;

(2) planted before the date of enactment of this Act;

(3) planted during any crop year beginning before the date of enactment of this Act; or

(4) produced (A) in an area within a conservation district under a conservation system that has been approved by a conservation district after it has been determined that the conservation system is in conformity with technical standards set forth in the Soil Conservation Service technical guide for that conservation district, or (B) in an area, not within a conservation district, under a conservation system determined by the Secretary to be adequate for the production of such agricultural commodity on highly erodible land.

(b) Section 201 shall not apply to any highly erodible land during any crop year if such land was planted in reliance on the determination by the Soil Conservation Service that such land was not highly erodible land. The exemption allowed by the subsection shall not apply to any crop which was planted on any land after the Soil Conservation Service determines such land to be highly erodible land.

(c) Section 201 shall not apply to any loan made before the date of enactment of this Act.

COMPLETION OF LAND CAPABILITY CLASSIFICATION SURVEYS

SEC. 203. The Secretary shall, as soon as practicable, complete soil surveys on those private lands that have not been classified as to land capability, and, insofar as possible, concentrate on those localities where significant amounts of highly erodible land are being converted to the production of agricultural commodities. In addition to other sums authorized to be appropriated by this Act, such sums as may be necessary are authorized to be appropriated to carry out this section.

TITLE III

CROPLAND BASE PROTECTION STUDY

Sec. 301. On or before February 15, 1985, the Secretary shall submit to the chairman of the Committee on Agriculture of the House of Representatives and the chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report containing a detailed study and analysis, including legislative recommendations where appropriate, of various voluntary set-aside programs, including those recommended by farm or conservation groups. Such study shall include an analysis of a program under which persons who set aside cropland to approved perennial grasses or legumes as part of a crop rotation pattern to reduce soil erosion or build soil productivity (1) may qualify under future commodity stabilization programs to have such lands designated as cropland in rotation for the purpose of establishing a normal acreage base for the farm, or (2) may designate such cropland as set-aside or conserving-use acreage under such programs. Such study shall also include an analysis of the impact of any voluntary set-aside program on water quality.

ANALYSIS OF USDA CONSERVATION PROGRAMS

Sec. 302. (a) The Secretary shall conduct an economic study of the costs and benefits of all current soil conservation programs, including research and extension efforts. This study shall be led by the Economic Research Service of the United States Department of Agriculture (USDA). Agencies responsible for administering USDA's soil conservation programs will be responsible for providing necessary data and assistance as required to complete the study.

(b) The study will emphasize an economic analysis of current USDA soil conservation programs. The cost-benefit, both direct and indirect, analyses of these programs should be measured and compared to a situation in which no such programs were in effect. The benefits measured should include, but not necessarily be limited to, increases in, or maintenance of, onsite program benefits, such as topsoil maintenance and soil productivity, and offsite program benefits, such as improved water quality and reduced dredging. Program costs should include, but not necessarily be limited to, State and local matching funds and direct or indirect costs imposed on those outside Federal, State and local governments, who assist with, or take part in, USDA conservation programs.

(c) The Secretary shall submit to the chairman of the Committee on Agriculture of the House of Representatives and the chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of this study within nine months after the date of enactment of this Act.

TITLE IV

CONSERVATION RESERVE PROGRAM

Sec. 401. Notwithstanding any other provision of law, the Secretary shall formulate and carry out a program with owners and operators of erosion-prone cropland to assist them in conserving and improving the soil and water resources of their farms or ranches. In any such program, the Secretary shall include other than erosion-prone cropland upon a demonstration by the conservation district that a serious soil erosion problem exists on such land, or in an area not within a conservation district if the Secretary determines that such a serious soil erosion problem exists.

CONTRACTS

Sec. 402. (a) The Secretary shall enter into contracts during the period beginning October 1, 1984, and ending September 30, 1987, of not less than seven nor more than fifteen years for the purpose of carrying out this title. In such contract, the owner or operator shall agree to—

(1) effectuate during the agreement period a plan approved by a conservation district (or in an area not within a conservation district, a plan approved by the Secretary) for converting erosion-prone cropland normally devoted to the production of an agricultural commodity on a farm or ranch into a less intensive use, such as pasture, permanent grass or legumes, or trees substantially in accordance with the schedule outlined therein, except to the extent that any requirements thereof are waived or modified by the Secretary;

(2) forfeit all rights to further payments under the contract and refund to the United States all payments, with interest, received thereunder upon the violation of the contract at any stage during the time the owner or operator has control of the land if the Secretary, after considering the recommendations of the soil conservation district and the Chief of the Soil Conservation Service, determines that such violation is of such a nature as to warrant termination of the contract, or make refunds or accept such payment adjustments as the Secretary may deem appropriate if the Secretary determines that the violation by the owner or operator does not warrant termination of the contract;

(3) upon transfer of the owner or operator's right and interest in the farm or ranch during the contract period, forfeit all rights to further payments under the contract and refund to the United States all payments received thereunder, or accept such payment adjustments or make such refunds as the Secretary may deem appropriate and consistent with the objectives of this title, unless the transferee of any such land agrees with the Secretary to assume all obligations under the contract;

(4) not conduct any harvesting or grazing or otherwise make commercial use of the forage or trees on land that is subject to the contract unless it is expressly permitted in the contract, or adopt any practice specified in the contract by the Secretary as a practice that would tend to defeat the purposes of the contract; and

(5) such additional provisions as the Secretary determines are desirable and are included in the contract to effectuate the purposes of the program or to facilitate the practical administration thereof.

(b) The plan, as described in subsection (a)(1), for converting erosion-prone cropland normally devoted to the production of agricultural commodities on a farm or ranch into a less-intensive use shall set forth the conservation measures and practices to be installed by the owner or operator during the agreement period and the commercial use, if any, to be made of the land during such period and may provide for the permanent retirement of cropland base and allotment history for such land.

RESPONSIBILITIES OF THE SECRETARY

Sec. 403. In return for such agreement by the owner or operator, the Secretary shall agree to (1) provide technical assistance, (2) share the cost of carrying out the conservation measures and practices set forth in the contract for which the Secretary determines that cost sharing is appropriate and in the public interest, and (3) pay an annual land rental fee, for a period not in excess of the duration of the contract, on those acres of erosion-prone cropland that are placed in a conservation use and for any cropland base and allotment history that the owner or operator agrees to retire permanently.

COST-SHARING

Sec. 404. The Secretary shall base the amount of cost sharing for conservation measures and practices under this title on that part of the total cost thereof that the Secretary determines is necessary and appropriate to effectuate the installation and maintenance of the conservation plantings and practices for the normally expected life of such a planting or practice.

LAND RENTAL

Sec. 405. The Secretary shall determine on the basis of bids received from owners and operators the amount of land rental to be paid for converting erosion-prone cropland to less intensive uses and for any cropland base or allotment history that the owner or operator agrees to retire permanently. In awarding contracts the Secretary shall give priority to those bids that will result in the lowest cost to the Government when calculated on the basis of all relevant factors, including the following—

(1) tons of soil saved on the diverted land, as calculated by the difference between the estimated soil loss on the precontract cropping system employed by the owner or operator and the system that will be installed as a result of the contract;

(2) the acres per year of erosion-prone cropland diverted;

(3) the units of agricultural commodity that would be diverted from production under the terms of the contract;

(4) the number of acres of cropland base and allotment history that the owner or operator agree to retire permanently as a condition of the contract; and

(5) the value of the cost sharing to be provided for installation of conservation measures and practices.

PAYMENTS

Sec. 406. (a) Notwithstanding any other provision of law, payments under this title shall be made in cash or in commodities in such amount and on such time schedule as agreed upon and specified in the contract. Such payments may be made in advance of determination of performance.

(b) If a producer who is entitled to any such payment or compensation dies, becomes incompetent, or disappears before receiving such payment or compensation, or is succeeded by another who renders or completes the required performance, the Secretary shall make or provide such payment or compensation, in accordance with regulations and without regard to any other provisions of law, in such manner as the Secretary determines to be fair and reasonable in light of all of the circumstances.

(c) In carrying out the conservation reserve program, the Secretary may not enter into contracts with producers that would require payments to producers under this title in excess of $50,000,000 for contracts entered into during the fiscal year ending September 30, 1985, in excess of $75,000,000 for contracts entered into during the fiscal year ending September 30, 1986, and in excess of $100,000,000 for contracts entered into during the fiscal year ending September 30, 1987. The Secretary may enter into contracts in any fiscal year that require payments to producers only to such extent or in such amounts as provided in appropriation Acts.

ADMINISTRATIVE PROVISIONS

SEC. 407. (a) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments under the program.

(b) The Secretary may terminate any contract by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification or contracts as the Secretary may determine to be desirable to carry out the purposes of this title or facilitate its administration.

(c) Notwithstanding the provisions of title II of this Act, the Secretary shall provide by appropriate regulations for preservation of cropland base and allotment history, applicable to acreage diverted from the production of crops under this title, for the purpose of any Federal program under which such history is used as a basis for participation in such program or for an allotment or other limitation in such program, unless the owner or operator agrees under the contract to retire permanently such cropland base and allotment history.

(d) In carrying out his title, the Secretary may utilize the facilities, services, authorities, and funds of the Commodity Credit Corporation, except that the Secretary may not use funds of the Corporation to carry out this title unless the Corporation has received funds to cover such expenditures from appropriations made to carry out this title.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 408. Effective during the period beginning October 1, 1984, and ending September 30, 1987, there are hereby authorized to be appropriated such sums as are necessary for the administration of this title, including such amounts as may be required to make payments to the Commodity Credit Corporation for its costs to be incurred under this title.

TITLE V

RULES AND REGULATIONS

SEC. 501. The Secretary shall, within one hundred and eighty days after the date of enactment of this Act, publish in the Federal Register such regulations as the Secretary determines desirable to implement this Act. In carrying out this Act, the Secretary shall use the services of local, county, and State committees established under section 8 of the Soil Conservation and Domestic Allotment Act.

APPEAL PROCEDURES

SEC. 502. The Secretary shall establish, by regulation, an appeal procedure under which a person who is adversely affected by any determination made under this Act may seek review of such determination.

ADDITIONAL AUTHORITY

SEC. 503. The authority provided by this Act shall be in addition to and not in place of other authorities available to the Secretary and the Commodity Credit Corporation for carrying out soil and water conservation programs.

Amend the title so as to read: "An Act to promote soil conservation in the United States.".

Mr. BAKER. Mr. President, I move that the Senate disagree to the amendments of the House and request a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. HELMS, Mr. DOLE, Mr. LUGAR, Mr. COCHRAN, Mr. BOSCHWITZ, Mr. HUDDLESTON, Mr. ZORINSKY, Mr. MELCHER, and Mr. HEFLIN conferees on the part of the Senate.

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1492.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 1492) entitled "An Act to establish the Christopher Columbus Quincentenary Jubilee Commission", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Ford of Michigan, Mr. Garcia, Mrs. Hall of Indiana, Mr. Taylor, and Mr. Courter be the managers of the conference on the part of the House.

Mr. BAKER. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer [Mr. KASTEN] appointed Mr. THURMOND, Mr. MATHIAS, Mr. BIDEN conferees on the part of the Senate.

COMPREHENSIVE POLICY IN DEALING WITH THE ARCTIC

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 373.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 373) entitled "An Act to provide comprehensive national policy dealing with national needs and objectives in the Arctic", do pass with the following amendments: Strike out all after the enacting clause and insert:

TITLE I—ARCTIC RESEARCH AND POLICY

SHORT TITLE

SEC. 101. This title may be cited as the "Arctic Research and Policy Act of 1984".

FINDINGS AND PURPOSES

SEC. 102. (a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2) as the Nation's only common border with the Soviet Union, the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries, particularly the Soviet Union, possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this title are—

(1) to establish national policy, priorities, and goals and to provide a Federal program plan for basic and applied scientific research with respect to the Arctic, including

natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five year plan to implement that policy.

ARCTIC RESEARCH COMMISSION

Sec. 103. (a) The President shall establish an Arctic Research Commission (hereafter referred to as the "Commission").

(b)(1) The Commission shall be composed of five members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting, ex officio member. The members appointed by the President shall include—

(A) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(B) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resource development; and

(C) one member appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c)(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1)—

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d)(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 107(b) may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

DUTIES OF COMMISSION

Sec. 104. (a) The Commission shall—

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 107, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this title;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 107 as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall—

(1) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 107 in the performance of its duties; and

(2) submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

COOPERATION WITH THE COMMISSION

Sec. 105. (a)(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the possession of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5, United States Code.

(b) With the consent of the appropriate agency head, the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

ADMINISTRATION OF THE COMMISSION

Sec. 106. The Commission may—

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, United States Code, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5, United States Code;

(3) enter into contracts and procure supplies, services, and personal property; and

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration.

LEAD AGENCY AND INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE

Sec. 107. (a) The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 108 are fulfilled.

(b)(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;

(B) the Department of Commerce;

(C) the Department of Defense;

(D) the Department of Energy;

(E) the Department of the Interior;

(F) the Department of State;

(G) the Department of Transportation;

(H) the National Aeronautics and Space Administration;

(I) the Environmental Protection Agency; and

(J) any other agency or office deemed appropriate.

(3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

DUTIES OF THE INTERAGENCY COMMITTEE

Sec. 108. (a) The Interagency Committee shall—

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on—

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided for in section 109;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 110;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of

research in accordance with the findings and purposes of this title;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this title;

(9) promote Federal interagency coordination of all Arctic research activities, including—

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code; and

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing—

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2) a description of the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

5-YEAR ARCTIC RESEARCH PLAN

SEC. 109. (a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after the enactment of this Act and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

(1) an assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all existing Federal programs relating to Arctic research, including the existing goals, funding levels for each of the 5 following fiscal years, and the funds currently being expended to conduct the programs;

(4) recommendations for necessary program changes and other proposals to meet the requirements of the policy and goals as set forth by the Commission and in the Plan as currently in effect; and

(5) a description of the actions taken by the Interagency Committee to coordinate the budget review process in order to ensure interagency coordination and cooperation in (A) carrying out Federal Arctic research programs, and (B) eliminating unnecessary duplication of effort among these programs.

COORDINATION AND REVIEW OF BUDGET REQUESTS

SEC. 110. (a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 108(a)(5), in accordance with the national Arctic research policy and the 5-year program under section 108(a)(2) and section 109, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

AUTHORIZATION OF APPROPRIATIONS; NEW SPENDING AUTHORITY

SEC. 111. (a) There are authorized to be appropriated such sums as may be necessary for carrying out this title.

(b) Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to such extent or in such amounts as may be provided in appropriation Acts.

DEFINITION

SEC. 112. As used in this title, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

TITLE II—NATIONAL CRITICAL MATERIALS ACT OF 1984

SHORT TITLE

SEC. 201. This title may be cited as the "National Critical Materials Act of 1984".

FINDINGS AND PURPOSES

SEC. 202. (a) The Congress finds that—

(1) the availability of adequate supplies of strategic and critical industrial minerals and materials continues to be essential for national security, economic well-being, and industrial production;

(2) the United States is increasingly dependent on foreign sources of materials and vulnerable to supply interruption in the case of many of those minerals and materials essential to the Nation's defense and economic well-being;

(3) together with increasing import dependence, the Nation's industrial base, including the capacity to process minerals and materials, is deteriorating—both in terms of facilities and in terms of a trained labor force;

(4) research, development, and technological innovation, especially related to improved materials and new processing technologies, are important factors which affect our long-term capability for economic competitiveness, as well as for adjustment to interruptions in supply of critical minerals and materials;

(5) while other nations have developed and implemented specific long-term research and technology programs to develop high-performance materials, no such policy and program evolution has occurred in the United States;

(6) establishing critical materials reserves, by both the public and private sectors and with proper organization and management, represents one means of responding to the genuine risks to our economy and national defense from dependency on foreign sources;

(7) there exists no single Federal entity with the authority and responsibility for establishing critical materials policy and for coordinating and implementing that policy; and

(8) the importance of materials to national goals requires an organizational means for establishing responsibilities for materials programs and for the coordination, within and at a suitably high level of the Executive Office of the President, with other existing policies within the Federal Government.

(b) It is the purpose of this title—

(1) to establish a National Critical Materials Council under and reporting to the Executive Office of the President which shall—

(A) establish responsibilities for and provide for necessary coordination of critical materials policies, including all facets of research and technology, among the various agencies and departments of the Federal Government, and provide for the implementation of such policies;

(B) bring to the attention of the President, the Congress, and the general public such materials issues and concerns, including research and development, as are deemed critical to the economic and strategic health of the Nation; and

(C) ensure adequate and continuing consultation with the private sector concerning critical materials, materials research and development, use of materials, Federal materials policies, and related matters;

(2) to establish a national Federal program for advanced materials research and technology, including basic phenomena through processing and manufacturing technology; and

(3) to stimulate innovation and technology utilization in basic as well as advanced materials industries.

ESTABLISHMENT OF THE NATIONAL CRITICAL MATERIALS COUNCIL

SEC. 203. There is hereby established a National Critical Materials Council (hereinafter referred to as the "Council") under and reporting to the Executive Office of the President. The Council shall be composed of three members who shall be appointed by the President and who shall serve at the pleasure of the President. Members so appointed who are not already Senate-confirmed officers of the Government shall be appointed by and with the advice and consent of the Senate. The President shall designate one of the members to serve as Chairman. Each member shall be a person who, as a result of training, experience, and achievement, is qualified to carry out the duties and functions of the Council, with particular emphasis placed on fields relating to materials policy or materials science and engineering. In addition, at least one of the members shall have a background in and understanding of environmentally related issues.

RESPONSIBILITIES AND AUTHORITIES OF THE COUNCIL

SEC. 204. (a) It shall be the primary responsibility of the Council—

(1) to assist and advise the President in establishing coherent national materials policies consistent with other Federal policies,

and in carrying out activities necessary to implement such policies;

(2) to assist in establishing responsibilities for, and to coordinate, Federal materials-related policies, programs, and research and technology activities, as well as recommending to the Office of Management and Budget budget priorities for materials activities in each of the Federal departments and agencies;

(3) to review and appraise the various programs and activities of the Federal Government in accordance with the policy and directions given in the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601), and to determine the extent to which such programs and activities are contributing to the achievement of such policy and directions;

(4) to monitor and evaluate the critical materials needs of basic and advanced technology industries and the Government, including the critical materials research and development needs of the private and public sectors;

(5) to advise the President of mineral and material trends, both domestic and foreign, the implications thereof for the United States and world economies and the national security, and the probable effects of such trends on domestic industries;

(6) to assess through consultation with the materials academic community the adequacy and quality of materials-related educational institutions and the supply of materials scientists and engineers;

(7) to make or furnish such studies, analyses, reports, and recommendations with respect to matters of materials-related policy and legislation as the President may request;

(8)(A) to prepare a report providing a domestic inventory of critical materials with projections on the prospective needs of Government and industry for these materials, including a long-range assessment, prepared in conjunction with the Office of Science and Technology Policy in accordance with the National Materials and Minerals Policy, Research and Development Act of 1980, and in conjunction with such other Government departments or agencies as may be considered necessary, of the prospective major critical materials problems which the United States is likely to confront in the immediate years ahead and providing advice as to how these problems may best be addressed, with the first such report being due on April 1, 1985, and (B) review and update such report and assessment as appropriate and report thereon to the Congress at least biennially; and

(9) to recommend to the Congress such changes in current policies, activities, and regulations of the Federal Government, and such legislation, as may be considered necessary to carry out the intent of this title and the National Materials and Minerals Policy, Research and Development Act of 1980.

(b) In carrying out its responsibilities under this section the Council shall have the authority—

(1) to establish such special advisory panels as it considers necessary, with each such panel consisting of representatives of industry, academia, and other members of the private sector, not to exceed ten members, and being limited in scope of subject and duration; and

(2) to establish and convene such Federal interagency committees as it considers necessary in carrying out the intent of this title.

(c) In seeking to achieve the goals of this title and related Acts, the Council and other Federal departments and agencies with responsibilities or jurisdiction related to materials or materials policy, including the National Security Council, the Council on Environmental Quality, the Office of Management and Budget, and the Office of Science and Technology Policy, shall work collaboratively and in close cooperation.

PROGRAM AND POLICY FOR ADVANCED MATERIALS RESEARCH AND TECHNOLOGY

SEC. 205. (a) In addition to the responsibilities described in section 204, the Council shall have specific responsibility for overseeing and collaborating with appropriate agencies and departments of the Federal Government relative to Federal materials research and development policies and programs. Such policies and programs shall be consistent with the policies and goals described in the National Materials and Minerals Policy, Research and Development Act of 1980. In carrying out this responsibility the Council shall—

(1)(A) establish a national Federal program plan for advanced materials research and development, designating the key responsibilities for carrying out such research and providing for coordination with the Office of Science and Technology Policy, the Office of Management and Budget, and such other Federal offices and agencies as may be deemed appropriate, and (B) annually review such plan and report thereon to the Congress;

(2) review annually the materials research, development, and technology authorization requests and budgets of all Federal agencies and departments; and in this activity the Council shall, in cooperation with the Office of Science and Technology Policy, the Office of Management and Budget, and all other Federal offices and agencies deemed appropriate, ensure close coordination of the goals and directions of such programs with the policies determined by the Council; and

(3) assist the Office of Science and Technology Policy in the preparation of such long-range materials assessments and reports as may be required by the National Materials and Minerals Policy, Research and Development Act of 1980, and assist other Federal entities in the preparation of analyses and reporting relating to critical and advanced materials.

(b) The Office of Management and Budget, in reviewing the materials research, development, and technology authorization requests of the various Federal departments and agencies for any fiscal year, shall consider all of such requests as an integrated, coherent, multiagency request which shall be reviewed by the Council and the Office of Management and Budget for its adherence to the national Federal materials program plan in effect for such fiscal year under subsection (a).

INNOVATION IN BASIC AND ADVANCED MATERIALS INDUSTRIES

SEC. 206. (a)(1) In order to promote the use of more cost-effective, advanced technology and other means of providing for innovation and increased productivity within the basic and advanced materials industries, the Council shall evaluate and make recommendations regarding the establishment of Centers for Industrial Technology as provided in Public Law 96-480 (15 U.S.C. 3705).

(2) The activities of such Centers shall focus on, but not be limited to, the following generic materials areas: corrosion; welding and joining of materials; advanced processing and fabrication technologies; microfabrication; and fracture and fatigue.

(b) In order to promote better use and innovation of materials in design for improved safety or efficiency, the Council shall establish in cooperation with the appropriate Federal agencies and private industry, an effective mechanism for disseminating materials property data in an efficient and timely manner. In carrying out this responsibility, the Council shall consider, where appropriate, the establishment of a computerized system taking into account, to the maximum extent practicable, existing available resources.

COMPENSATION OF MEMBERS AND REIMBURSEMENTS

SEC. 207. (a) The Chairman of the Council, if not otherwise a paid officer or employee of the Federal Government, shall be paid at the rate not to exceed the rate of basic pay provided for level II of the Executive Schedule. The other members of the Council, if not otherwise paid officers or employees of the Federal Government, shall be paid at a per diem rate comparable to the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

(b) The Council may accept reimbursement from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, or from any State or local government, for reasonable travel expenses incurred by any member or employee of the Council in connection with such member's or employee's attendance at any conference, seminar, or similar meeting.

POSITION AND AUTHORITIES OF EXECUTIVE DIRECTOR

SEC. 208. (a) There shall be an Executive Director (hereinafter referred to as the "Director"), who shall be chief administrator of the Council. The Director shall be appointed by the Council full time and shall be paid at the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

(b) The Director is authorized—

(1) to employ such personnel as may be necessary for the Council to carry out its duties and functions under this title, but not to exceed twelve compensated employees;

(2) to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code; and

(3) to develop, subject to approval by the Council, rules and regulations necessary to carry out the purposes of this title.

(c) In exercising his responsibilities and duties under this title, the Director—

(1) may consult with representatives of academia, industry, labor, State and local governments, and other groups; and

(2) shall utilize to the fullest extent possible the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals.

(d) Notwithstanding section 367(b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may utilize voluntary and uncompensated labor and services in carrying out its duties and functions.

RESPONSIBILITIES AND DUTIES OF THE DIRECTOR

SEC. 209. In carrying out his functions the Director shall assist and advise the Council on policies and programs of the Federal Government affecting critical and advanced materials by—

(1) providing the professional and administrative staff and support for the Council;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, including research and develop-

ment, which affect critical materials availability and needs;

(3) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions; and

(4) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the Council, designed to advance knowledge of critical or advanced materials issues and develop alternative proposals, including research and development, to resolve national critical materials problems.

AUTHORITY

Sec. 210. The Council is authorized—

(1) to establish such internal rules and regulations as may be necessary for its operation;

(2) to enter into contracts and acquire property necessary for its operation to such extent or in such amounts as are provided for in appropriation Acts;

(3) to publish or arrange to publish critical materials information that it deems to be useful to the public and private industry to the extent that such publication is consistent with the national defense and economic interest; and

(4) to exercise such authorities as may be necessary and incidental to carrying out its responsibilities and duties under this title.

AUTHORIZATION OF APPROPRIATIONS

Sec. 211. There are hereby authorized to be appropriated to carry out the provisions of this title a sum not to exceed $500,000 for the fiscal year ending September 30, 1985, and such sums as may be necessary thereafter.

DEFINITION

Sec. 212. As used in this title, the term "materials" has the meaning given it by section 2(b) of the National Materials and Minerals Policy, Research and Development Act of 1980.

Amend the title so as to read: "An Act to provide for a comprehensive national policy dealing with national research needs and objectives in the Arctic, for a National Critical Materials Council, for development of a continuing and comprehensive national materials policy, for programs necessary to carry out that policy, including Federal programs of advanced materials research and technology, and for innovation in basic materials industries, and for other purposes.".

AMENDMENT NO. 3329

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the distinguished junior Senator from Alaska, and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. Baker], for Mr. Murkowski, proposes an amendment numbered 3329.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, in section 102(b)(1), strike the words "physical and biological sciences," and insert in lieu thereof "physical, biological and health sciences,".

On page 11, in section 107(b)(2), insert a new subparagraph (H) as follows:

"(H) the Department of Health and Human Services;" Reletter the existing subsequent subparagraphs accordingly as subparagraphs (I), (J), and (K).

AMENDMENT NO. 3330 TO AMENDMENT NO. 3329

Mr. BAKER. Mr. President, I send a second amendment to the desk on behalf of the Senator from Alaska [Mr. Murkowski] and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. Baker] for Mr. Murkowski, proposes an amendment numbered 3330.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, amend section 103(d)(1) to read as follows:

"(d)(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS-16 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of Chapter 81 of title 5 (relating to compensation for work injuries) and Chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose."

Mr. MURKOWSKI. Mr. President, the purpose of the amendments to title I are as follows: The effect of the first amendment is to stress health research along with Arctic research related to natural resources, physical sciences, biological sciences, and social sciences already stressed in this bill. I believe the partial omission of Arctic health research by the House was a simple oversight which this amendment corrects.

The second amendment, Mr. President, addresses the compensation of the members of the Arctic Research Commission established by this act. The bill as currently written would reimburse the Commissioners for travel and expenses incurred in the performance of their duties as a Commissioner. I believe this is adequate for the members of the Arctic Research Commission who are otherwise employed by the Federal Government, a university, private industry, or the State of Alaska. I believe, however, that we should go further and provide some limited compensation to members who may be retired or not otherwise employed. In those cases, I believe there should be some modest financial incentive to participate as an Arctic Research Commissioner. The effect of this amendment is to compensate such an individual at a rate equal to the daily equivalent for civil service grade GS-16 for each day that individual is engaged in the actual performance of his or her duties as an Arctic Research Commissioner, not to exceed 90 days per year.

I urge the adoption of the amendments.

The amendment (No. 3329) was agreed to.

The amendment (No. 3330) was agreed to.

AMENDMENT NO. 3331

Mr. BAKER. Mr. President, I move that the Senate concur in the House amendments as amended by the Senate amendments, with a further Senate amendment which I now send to the desk on behalf of the Senator from Idaho [Mr. McClure] and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. Baker], for Mr. McClure, proposes an amendment numbered 3331.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 19, in section 202(b)(1)(A), strike the words "Federal Government, and provide for" and insert in lieu thereof "Federal Government, and make recommendations for".

On page 21, in section 204(a)(1), strike the words "in carrying out activities" and insert in lieu thereof "making recommendations".

On page 24, in section 205(a), strike the words "have specific responsibilities for overseeing and collaborating" and insert in lieu thereof "be responsible for coordination".

On page 25, in section 205(a)(1)(A), strike the words "designating the key responsibilities for carrying out such research and providing for coordination with the Office" and insert in lieu thereof "recommend the designation of the key responsibilities for carrying out such research, and to provide for coordination of this plan with the Office".

On page 25, in section 205(a)(2), strike the words "shall, in cooperation with" and insert in lieu thereof "shall make recommendations, in cooperation with".

On page 25 in section 205(a)(2), strike the words "deemed appropriate ensure" and insert in lieu thereof "deemed appropriate, to ensure".

On page 26, in section 205(b), strike the words "shall consider all of such requests as" and insert in lieu thereof "and the recommendations of the Council, shall consider all of such requests and recommendations as".

On page 26, in section 205(b), strike the words "reviewed by the Council and" and insert in lieu thereof "reviewed by".

On page 27, in section 207(b), strike the word "The" at the beginning thereof and insert "Subject to existing law and regulations governing conflicts of interest, the".

On page 30, in section 210(2), strike the word "property" and insert in lieu thereof the words "materials and supplies".

On page 30, in section 210(4), after the word "publish" insert the words ", consistent with Title 44 of the United States Code,".

On page 30, in section 210, strike the "and" at the end of subsection (3) and add the following new subsection (4):

"(4) to utilize such services or personnel as may be provided to the Council on a reimbursable basis by any agency of the United States; and".

Renumber existing subsection (4) as subsection (5).

On page 31, at the end of section 211 strike the word "thereafter." and insert in lieu thereof "thereafter: *Provided*, That the authority provided for in this title shall expire on September 30, 1990, unless otherwise authorised by Congress."

Mr. McCLURE. Mr. President, I am offering a series of amendments to title II of S. 373 as passed by the House which relate to the authorities and responsibilities of the National Critical Materials Council. My amendments, taken together accomplish several objectives.

First, they ensure that the Council does not have any line authority to direct other agencies of the Federal Government in the execution of their authorities and programs as they relate to critical material. The Council's function is thereby limited to the much needed role of coordinator and adviser on critical materials programs and policies. While the Council is given ample authority to review, appraise, monitor, evaluate, assess, study, assist, coordinate, recommend, and advice on critical materials and materials-related policies, programs, and activities, the basic statutory responsibilities and authorities of the several Federal agencies, the role of the Office of Management and Budget, the Cabinet Council, and Executive Office of the President remain unchanged.

Second, my amendments provide for a sunset provision on the Council after 6 years.

Third, my amendments include several technical changes which ensure applicability of conflict of interest rules, which clarify the Council's authorities to acquire materials and supplies, to publish information, and to utilize the services or personnel of other Federal agencies on a reimbursable basis.

Mr. President, I am pleased to say that these amendments have been worked out with the other body and are believed to be acceptable. I know of no objections on this side. I also thank Senators STEVENS, ROTH, JOHNSTON, EAGLETON, and MURKOWSKI for their assistance and cooperation in this matter. I believe we now have an improved bill which contains important new initiatives in the areas of Arctic research and policy and critical materials policy, which I strongly support.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3331) was agreed to.

The motion was agreed to.

Mr. STEVENS. Mr. President, I am pleased that through passage of the Arctic Research and Policy Act we are finally taking an important step toward recognizing the importance of developing a comprehensive Arctic research policy. For years, other Arctic rim countries have sought a better understanding of the Arctic through extensive and coordinated research programs. For instance, the Soviet Union has an active Arctic research program involving 20,000 scientists. Other countries have acknowledged the need to better understand their Arctic regions in order to enhance energy development in their northern areas. Among nations with Arctic regions, we are the last to develop a comprehensive Arctic research effort.

Passage of this bill by the Congress marks the start of a commitment to the needs of our Arctic regions that will help us understand a great deal not only about the Arctic, but about how development there affects the rest of the world's climatic patterns. In the long run, a well thought out Arctic science policy will ensure the best management and use of the Arctic's vast resources—natural, human, and strategic. Gathering data on ice characteristics and flow patterns will help improve offshore mineral exploration and production designs to maximize safety and minimize environmental impacts. We have an obligation to the residents of our northern regions to insure that the development of our natural resources there does not unduly infringe upon subsistence resources or traditional Native cultures.

Again, I commend the Senate for taking up this bill. Senator MURKOWSKI deserves a great deal of credit for pursuing this issue through two Congresses. Without his dedication the development of a national Arctic science policy would probably still be an unrealized goal. The late Senator Henry Jackson, as well, was instrumental in the formulation of this legislation. He long recognized the importance of a comprehensive Arctic science policy, and worked with Senator MURKOWSKI, Senator GORTON, and me for Senate passage of similar legislation last summer. Finally, Congressman DON YOUNG deserves recognition for his efforts in steering the bill through the House of Representatives.

PRINTING OF H.R. 5174

Mr. BAKER. Mr. President, I believe the request I am about to put has been cleared. I ask unanimous consent that H.R. 5174, as passed by the Senate, be printed in the CONGRESSIONAL RECORD since the subject matter of the bill is of a time-sensitive nature due to the fact that the bill has 1 week only to be in conference.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the bill follows:

Resolved, That the bill from the House of Representatives (H.R. 5174) entitled "An Act to provide for the appointment of United States bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes", do pass with the following amendments: Strike out all after the enacting clause and insert:

That this Act may be cited as the "Bankruptcy Court and Federal Judgeship Act of 1984".

TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

"§ 1334. Bankruptcy cases and proceedings

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such decision to abstain or to not abstain is not reviewable by appeal or otherwise.

"(2) In a proceeding involving the debtor which is based upon a State law claim or cause of action neither arising under title 11 nor arising in a case under title 11, which could not otherwise have been brought in Federal court absent jurisdiction under this section, the court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be timely instituted and prosecuted in a State forum of appropriate jurisdiction: Provided, That this paragraph shall be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, only to the extent necessary to permit adjudication but not the execution of such claim by the State forum. Such abstention is not reviewable by appeal or otherwise.

"(3) A motion to abstain pursuant to this subsection shall be filed with the initial pleading.

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case, and of the estate.".

(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

"1334. Bankruptcy cases and proceedings.".

Sec. 102. (a) Chapter 87 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1408. Venue of cases under title 11

"Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

"(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

"(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

"§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

"(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

"(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the district court for the district in which the defendant resides.

"(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

"(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

"(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

"§ 1410. Venue of cases ancillary to foreign proceedings

"(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

"(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

"(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

"§ 1411. Jury trials

"(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury.

"(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

"§ 1412. Change of venue

"A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.".

(b) The table of sections of chapter 87 of title 28, United States Code, is amended by adding at the end thereof the following new items:

"1408. Venue of cases under title 11.
"1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.
"1410. Venue of cases ancillary to foreign proceedings.
"1411. Jury trials.
"1412. Change of venue.".

Sec. 103. (a) Chapter 89 of title 28, United States Code, is amended by inserting at the end thereof the following new section:

"§ 1452. Removal of claims related to bankruptcy cases

"(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

"(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise.".

(b) The table of sections of chapter 89 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1452. Removal of claims related to bankruptcy cases.".

Sec. 104. (a) Title 28 of the United States Code is amended by inserting after chapter 5 the following new chapter:

"CHAPTER 6—BANKRUPTCY JUDGES

"Sec.
"151. Designation of bankruptcy courts.
"152. Appointment of bankruptcy judges.
"153. Salaries; character of service.
"154. Division of business; chief judge.
"155. Temporary transfer of bankruptcy judges.
"156. Staff; expenses.
"157. Procedures.
"158. Appeals.

"§ 151. Designation of bankruptcy courts

"In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge is a judicial officer of the district court, and except as otherwise provided by law, rule, or order of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court.

"§ 152. Appointment of bankruptcy judges

"(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

"(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

"Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	1
Arizona	4
Arkansas:	
Eastern and Western	2
California:	
Northern	7
Eastern	4
Central	12
Southern	3
Colorado	4
Connecticut	2
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	2
Southern	3
Georgia:	
Northern	4
Middle	2
Southern	1
Hawaii	1
Idaho	1
Illinois:	
Northern	8
Central	2
Southern	1
Indiana:	
Northern	2
Southern	4
Iowa:	
Northern	1
Southern	1
Kansas	3
Kentucky:	
Eastern	1
Western	2
Louisiana:	
Eastern	2
Middle	1
Western	2

Maine	2
Maryland	2
Massachusetts	4
Michigan:	
Eastern	4
Western	2
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	1
Nevada	2
New Hampshire	1
New Jersey	5
New Mexico	2
New York:	
Northern	2
Southern	7
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	1
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	1
Eastern	1
Western	2
Oregon	4
Pennsylvania:	
Eastern	3
Middle	2
Western	3
Puerto Rico	2
Rhode Island	1
South Carolina	1
South Dakota	1
Tennessee:	
Eastern	2
Middle	2
Western	2
Texas:	
Northern	4
Eastern	1
Southern	3
Western	2
Utah	2
Vermont	1
Virginia:	
Eastern	3
Western	3
Washington:	
Eastern	1
Western	4
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	3
Western	2
Wyoming	1.".

"(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

"(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

"(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

"(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

"(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

"(d) With the approval of the Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

"(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

"§ 153. Salaries; character of service

"(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate of $66,100. Notwithstanding any other provision of law, such salaries shall remain at such rate unless a higher rate is authorized by a law specifically increasing the rate of pay for bankruptcy judges.

"(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

"(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

"§ 154. Division of business; chief judge

"(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

"(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

"§ 155. Temporary transfer of bankruptcy judges

"(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

"(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in subchapter III of chapter 83 of title 5.

"§ 156. Staff; expenses

"(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary.

"(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

"(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

"§ 157. Procedures

"(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

"(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

"(2) Core proceedings include, but are not limited to—

"(A) matters concerning the administration of the estate;

"(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, but not the liquidation or estimation of contingent or unliquidated claims against the estate;

"(C) counterclaims by the estate against persons filing claims against the estate;

"(D) orders in respect to obtaining credit;

"(E) orders to turn over property of the estate;

"(F) proceedings to determine, avoid, or recover preferences;

"(G) motions to terminate, annul or modify the automatic stay;

"(H) proceedings to determine, avoid, or recover fraudulent conveyances;

"(I) determinations as to the dischargeability of particular debts;

"(J) objections to discharges;

"(K) determinations of the validity, extent, or priority of liens;

"(L) confirmations of plans;

"(M) orders approving the use or lease of property, including the use of cash collateral; and

"(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate.

"(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

"(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

"(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

"§ 158. Appeals

"(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

"(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

"(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

"(3) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

"(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

"(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.".

(b) The table of chapters of part I of title 28, United States Code, is amended by inserting after the item relating to chapter 5, the following new item:

"**6. Bankruptcy judges** .... 151.".

SEC. 105. The salary of a bankruptcy judge in effect immediately before the date of enactment of this Act shall remain in effect until changed as a result of an adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act.

SEC. 106. (a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act is extended to and expires on October 1, 1985, or when his successor takes office, whichever is earlier.

(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act may continue to serve on such basis until October 1, 1985.

(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph.

SEC. 107. Section 372(c)(6)(B)(vii) of title 28, United States Code, is amended by striking out "section 153" and inserting in lieu thereof "section 152".

SEC. 108. (a) Section 634(a) of title 28, United States Code, is amended by striking out "the rates now or hereafter provided for full-time or part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended," and inserting in lieu thereof "$66,100".

(b) Notwithstanding any other provision of law, a magistrate's annual rate of pay shall not exceed $66,100 unless a higher rate is authorized by a law specifically increasing the rates of pay of such magistrates.

(c) Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356(c)) is amended by striking out "and magistrates", and inserting in lieu thereof ", except bankruptcy judges".

(d) Section 548 of title 28, United States Code, is amended to read as follows:

"§ 548. Salaries

"Subject to sections 5315 through 5317 of title 5, the Attorney General of the United States shall fix the annual salaries of United States Attorneys, Assistant United States Attorneys General, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5.".

SEC. 109. Section 957 of title 28, United States Code, is amended by striking out "district".

SEC. 110. Section 1360 of title 28, United States Code, is amended—

(1) by striking out "or Territories";

(2) by striking out "or Territory" each place it appears; and

(3) by striking out "within the Territory" and inserting in lieu thereof "within the State".

SEC. 111. (a) Section 1930 of title 28, United States Code, is amended by striking out "clerk of the bankruptcy court" each place it appears and inserting in lieu thereof "clerk of the court".

(b) The heading for section 1930 of title 28, United States Code, is amended to read as follows:

"§ 1930. Bankruptcy fees.".

(c) The table of sections for chapter 125 of title 28, United States Code, is amended by striking out "Bankruptcy courts" and inserting in lieu thereof "Bankruptcy fees".

SEC. 112. Subsections (f), (j), (k), (l), and (m) of section 8339, subsections (b)(1) and (d) of section 8341, and section 8344(a)(A) of title 5, United States Code, are each amended by striking out "and (o)" and inserting in lieu thereof "and (n)".

SEC. 113. Section 402(b) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682), is amended by striking out "shall take effect on April 1, 1984" and inserting in lieu thereof "shall not take effect".

SEC. 114. Sections 404, 405(a), 405(b), 405(c), 406, 407, and 409 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2683), are repealed.

SEC. 115. (a) On the date of the enactment of this Act the appropriate district court of the United States shall have jurisdiction of—

(1) cases, and matters and proceedings in cases, under the Bankruptcy Act that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687), and

(2) cases under title 11 of the United States Code, and proceedings arising under title 11 of the United States Code or arising in or related to cases under title 11 of the United States Code, that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687).

(b) On the date of the enactment of this Act, there shall be transferred to the appropriate district court of the United States appeals from final judgments, orders, and decrees of the bankruptcy courts pending immediately before such date in the bankruptcy appellate panels appointed under section 405(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2685).

SEC. 116. (a) Section 8331(22) of title 5, United States Code, is amended—

(1) by striking out "adding this paragraph" and inserting in lieu thereof "of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)";

(2) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) who is serving as a United States bankruptcy judge on the date of the enactment of the Bankruptcy Court and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1985, whichever date is earlier, and who has agreed by filing a notice of such agreement with the Court of Appeals and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of the United States bankruptcy court established by the Bankruptcy Court and Federal Judgeship Act of 1984, but who is not appointed as a judge of such court".;

(3) in subparagraph (B)—

(A) by striking out "transition period" and inserting in lieu thereof "period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Court and Federal Judgeship Act of 1984";

(B) by striking out the period at the end thereof and inserting in lieu thereof "; or", and

(C) by adding at the end thereof the following new subparagraph:

"(C) who is appointed as a bankruptcy judge under section 152 of title 28.".

(b)(1) The first sentence of section 8334(a)(1) of title 5, United States Code, is amended by inserting "and a bankruptcy judge" before the period.

(2) The matter relating to bankruptcy judges in the table set out in section 8334(c) of title 5, United States Code, is amended—

(A) by striking out the following item:

"7.......... After January 1, 1970.".

and

(B) by inserting in lieu of the item stricken by subparagraph (A) the following new items:

"7.......... January 1, 1970, to December 31, 1983.
"8.......... After December 31, 1983.".

(c) Section 8336 of title 5, United States Code, is amended—

(1) by redesignating subsection (k) as subsection (l), and

(2) by inserting after subsection (j) the following new subsection:

"(k) A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity.".

(d) Section 8339 of title 5, United States Code, is amended by—

(1) inserting "or (n)" after "(c)" in subsection (g)(2);

(2) striking out "or (c)" each place it appears in subsection (g) and inserting in lieu thereof "(c), or (n)"; and

(3) striking out "March 31, 1979, and before May 25, 1984," in subsection (n) and inserting in lieu thereof "as a referee in bankruptcy and".

(e) The amendments made by this section shall take effect on the date of enactment and shall apply to bankruptcy judges who retire on or after such date.

SEC. 117. The adjustments in the retirement provisions made by this Act shall not be construed to be a "new government retirement system" for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168).

SEC. 118. Section 105 of title 11, United States Code, is amended—

(1) by deleting the word "bankruptcy" wherever it appears therein; and

(2) by adding at the end thereof the following new subsection:

"(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.".

SEC. 119. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

SEC. 120. (a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States.

(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

(2) such persons are members in good standing of at least one State bar, or the District of Columbia bar, and members in good standing of every other bar of which they are members,

(3) such persons possess, and have a reputation for, integrity and good character,

(4) such persons are of sound physical and mental health,

(5) such persons possess and have demonstrated commitment to equal justice under law,

(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.

SEC. 121. Section 636 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(h)(1) In any case or proceeding brought under section 1334 of this title, a magistrate may be designated to exercise the powers granted magistrates pursuant to this section over any such case or proceeding.

"(2) Any bankruptcy judge appointed pursuant to section 152 of this title may act as a magistrate with all of the powers granted to a magistrate pursuant to paragraph (1) of this subsection if such designation will not adversely affect the administration of cases in the district in which such judge was appointed.".

SEC. 122. This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE II—JUDGESHIPS

SEC. 201. (a) The President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the first circuit court of appeals, two additional circuit judges for the second circuit court of appeals, two additional circuit judges for the third circuit court of appeals, one additional circuit judge for the fourth circuit court of appeals, two additional circuit judges for the fifth circuit court of appeals, four additional circuit judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

(b) In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of judges
District of Columbia	12
First	6
Second	13
Third	12
Fourth	11
Fifth	16
Sixth	15
Seventh	11
Eighth	10
Ninth	28
Tenth	10
Eleventh	12
Federal	12.".

SEC. 202. (a) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the southern district of Alabama, one additional district judge for the district of Alaska, five additional district judges for the central district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the district of Delaware, three additional district judges for the southern district of Florida, one additional district judge for the middle district of Georgia, one additional district judge for the district of Hawaii, four additional district judges for the northern district of Illinois, one additional district judge for the southern district of Illinois, one additional district judge for the western district of Kentucky, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the eastern district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Mississippi, two additional district judges for the southern district of Mississippi, one additional district judge for the eastern district of Missouri, one additional district

judge for the district of Montana, one additional district judge for the district of Nevada, three additional district judges for the district of New Jersey, one additional district judge for the northern district of New York, two additional district judges for the eastern district of New York, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the district of Rhode Island, one additional district judge for the eastern district of Tennessee, one additional district judge for the western district of Tennessee, one additional district judge for the northern district of Texas, two additional district judges for the eastern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, one additional district judge for the eastern district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, and one additional district judge for the district of Wyoming.

(b) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the western district of Arkansas, one additional district judge for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the district of Massachusetts, one additional district judge for the western district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the northern district of Ohio, and one additional district judge for the western district of Washington. The first vacancy in each of the offices of district judge authorized by this subsection, occurring five years or more after the effective date of this Act, shall not be filled.

(c) The existing district judgeship for the district of Minnesota and the existing district judgeship for the northern district of Ohio, heretofore authorized by section 2 of the Act of October 20, 1978 (Public Law 95-486, 92 Stat. 1631), shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents of those offices shall henceforth hold their offices under section 133, as amended by this Act.

(d) In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (c) of this section, such table is amended to read as follows:

"Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	3
Western	1
Eastern and Western	2
California:	
Northern	12
Eastern	6
Central	22
Southern	7
Colorado	7
Connecticut	6
Delaware	4
District of Columbia	15
Florida:	
Northern	3
Middle	9
Southern	15
Georgia:	
Northern	11
Middle	3
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	20
Central	3
Southern	3
Indiana:	
Northern	4
Southern	5
Iowa:	
Northern	1
Southern	2
Northern and Southern	1
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	6
Maine	2
Maryland	10
Massachusetts	11
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	5
Missouri:	
Eastern	5
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	2
New Jersey	14
New Mexico	4
New York:	
Northern	4
Southern	27
Eastern	12
Western	3
North Carolina:	
Eastern	3
Middle	3
Western	3
North Dakota	2
Ohio:	
Northern	10
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	4
Northern, Eastern, and Western	2
Oregon	5
Pennsylvania:	
Eastern	19
Middle	5
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	8
South Dakota	3
Tennessee:	
Eastern	4
Middle	3
Western	4
Texas:	
Northern	10
Eastern	6
Southern	13
Western	7
Utah	4
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	3
Western	6
West Virginia:	
Northern	2
Southern	4
Wisconsin:	
Eastern	4
Western	2
Wyoming	2.".

SEC. 203. (a) Section 131 of title 28, United States Code, is amended in the second paragraph thereof by inserting "Jackson," after "Lander,".

(b) Section 98(a) of title 28, United States Code, is amended by inserting ", and Houma" after "New Orleans".

SEC. 204. (a) Section 371 of title 28, United States Code, is amended to read as follows:

"§ 371. Retirement on salary; retirement in senior status

"(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

"(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

"(c) The age and service requirements for retirement under this section are as follows:

"Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

"(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.".

(b) The item relating to section 371 in the table of sections of chapter 17 of title 28 is amended to read as follows:

"371. Retirement on salary; retirement in senior status.".

(c) The amendments made by this section shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act.

SEC. 205. Section 8701(a) of title 5, United States Code, is amended by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and by adding a new paragraph (5) as follows:

"(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section

371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;".

Sec. 206. Section 8714a(c) of title 5, United States Code, is amended by adding a new paragraph (3) as follows:

"(3) Notwithstanding paragraph (c)(1) of this section, a justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.".

Sec. 207. Section 8714b(c) of title 5, United States Code, is amended by adding to paragraph (1) at the end thereof the following: "A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.".

Sec. 208. (a) Section 8706 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Under regulations prescribed by the Office, each policy purchase under this chapter shall provide that an insured Federal judge may make an irrevocable assignment of the judge's incidents of ownership in the policy.".

(b) The heading for section 8706 of title 5, United States Code, and the item relating to section 8706 in the analysis for chapter 87 of such title are each amended by inserting "; assignment of ownership" after "insurance".

Sec. 209. (a) Except as provided in subsection (b), the amendments made by this Act to section 8706 of title 5, United States Code, shall apply to policies purchased by judges after the date of enactment of this Act.

(b) If a company which issued a policy which is in effect on the date of the enactment of this Act agrees, the amendments made by this Act shall apply to such policy.

Sec. 210. Section 634(c) of title 28, United States Code, is amended by striking out "subsection III" and inserting in lieu thereof "subchapter III".

Sec. 211. It is the sense of the Congress that the President, in selecting individuals for nomination to the Federal judgeships created by this Act, shall give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin.

TITLE III—AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE

Sec. 300. This title may be cited as the "Omnibus Bankruptcy Improvements Act of 1984".

Subtitle A—Consumer Credit Amendments

Sec. 301. Section 109 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this section, no individual may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

"(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

"(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.".

Sec. 302. Section 342 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "There shall be given", and

(2) by adding at the end thereof the following new subsection:

"(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.".

Sec. 303. Section 349(a) of title 11, United States Code, is amended by inserting before the period at the end thereof "; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title".

Sec. 304. Section 362 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.".

Sec. 305. Section 521 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively,

(2) in paragraph (1) by inserting "a schedule of current income and current expenditures," after "liabilities,", and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate—

"(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

"(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

"(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title;".

Sec. 306. (a) Section 522(b) of title 11, United States Code, is amended by striking out "Notwithstanding" and all that follows through "either—" and inserting in lieu thereof the following: "Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—".

(b) Section 522(d)(3) of title 11, United States Code, is amended by inserting "or $4,000 in aggregate value" after "item".

(c) Section 522(d)(5) of title 11, United States Code, is amended to read as follows:

"(5) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.".

(d) Section 522(m) of title 11, United States Code, is amended to read as follows:

"(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.".

Sec. 307. (a) Section 523(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking out "or" at the end thereof,

(2) in subparagraph (B) by inserting "or" at the end thereof, and

(3) by adding at the end thereof the following new subparagraph:

"(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $500 for 'luxury goods or services' incurred by an individual debtor on or within forty days before the order for relief under this title, or cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order for relief under this title, are presumed to be nondischargeable; 'luxury goods or services' do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);".

(b) Section 523(d) of title 11, United States Code, is amended to read as follows:

"(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.".

Sec. 308. (a) Section 524(a)(2) of title 11, United States Code, is amended by striking out "or from property of the debtor,".

(b) Section 524(c) of title 11, United States Code, is amended—

(1) by striking out paragraph (2),

(2) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively, and

(3) by inserting after paragraph (1) the following new paragraphs:

"(2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

"(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement—

"(A) represents a fully informed and voluntary agreement by the debtor; and

"(B) does not impose an undue hardship on the debtor or a dependent of the debtor;

"(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;" and

(4) by amending paragraph (6), as so redesignated, to read as follows:

"(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

"(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

"(ii) in the best interest of the debtor.

"(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.".

(c) Section 524(d)(2) of title 11, United States Code, is amended by striking out "subsection (c)(4)" and inserting in lieu thereof "subsection (c)(6)".

(d) Section 524 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.".

SEC. 309. Section 525 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "Except",

(2) by inserting "the" before "Perishable", and

(3) by adding at the end thereof the following new subsection:

"(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

"(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

"(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

"(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.".

SEC. 310. Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (5) by striking out "or" at the end thereof,

(2) in paragraph (6) by striking out the period at the end thereof and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(7) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600.".

SEC. 311. (a) Section 704 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), (7), and (8) as paragraphs (4), (5), (6), (7), (8), and (9), respectively, and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;".

(b)(1) Section 1106(a)(1) of title 11, United States Code, is amended by striking out "704(4), 704(6), 704(7), and 704(8)" and inserting in lieu thereof "704(5), 704(7), 704(8), and 704(9)".

(2) Section 1304(c) of title 11, United States Code, is amended by striking out "section 704(7)" and inserting in lieu thereof "section 704(8)".

(3) Section 15103(f) of title 11, United States Code, is amended by striking out "704(8)," and inserting in lieu thereof "704(9),".

(4) Section 151301(b)(1) of title 11, United States Code, is amended by striking out "and 704(8)" and inserting in lieu thereof ", 704(7), and 704(9)".

SEC. 312. Section 707 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The court may" and

(2) by adding at the end thereof the following new subsection:

"(b) After notice and a hearing, the court, on its own motion and not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.".

SEC. 313. Section 1301 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.".

SEC. 314. Section 1302(b) of title 11, United States Code, is amended—

(1) by amending paragraph (1) to read as follows:

"(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9) of this title;";

(2) in paragraph (2) by striking out "and" at the end thereof,

(3) in paragraph (3) by striking out the period and inserting in lieu thereof "; and", and

(4) by adding at the end thereof the following new paragraph:

"(4) ensure that the debtor commences making timely payments under section 1326 of this title.".

SEC. 315. Section 1307(c) of title 11, United States Code, is amended—

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and

(2) by inserting after paragraph (3) the following new paragraph:

"(4) failure to commence making timely payments under section 1326 of this title;".

SEC. 316. Section 1322(b)(1) of title 11, United States Code, is amended to read as follows:

"(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;".

SEC. 317. Section 1325 of title 11, United States Code, is amended—

(1) in subsection (a) by striking out "The" and inserting in lieu thereof "Except as provided in subsection (b), the",

(2) by redesignating subsection (b) as subsection (c), and

(3) by inserting after subsection (a) the following new subsection:

"(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

"(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

"(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

"(2) For purposes of this subsection, 'disposable income' means income which is received by the debtor and which is not reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor; or

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.".

SEC. 318. (a) Section 1326 of title 11, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively, and

(2) by inserting before such subsections the following new subsection:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

"(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.".

(b) Section 15103(f) of title 11, United States Code, is amended by striking out "1326(a)," and inserting in lieu thereof "1326(b),".

SEC. 319. Section 1329(a) of title 11, United States Code, is amended by striking out "At" and all that follows through "modified to—", and inserting in lieu thereof the following: "At any time after confirmation but before the completion of payments under a plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—".

SEC. 320. The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section.

SEC. 321. Rule 2002 of the Bankruptcy Rules is amended by adding at the end thereof the following new subdivision:

"(n) In a voluntary case commenced under the Code by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief not more than 20 days after the entry of such order.".

SEC. 322. Official Bankruptcy Form No. 1, referred to in Rule 1002 of the Bankruptcy Rules, is amended—

(1) by inserting after paragraph (5) the following:

"(6) If petitioner is an individual whose debts are primarily consumer debts. Petitioner is aware that [he or she] may proceed under chapter 7 or 13 of title 11, United States Code, understands the relief available under each such chapter, and chooses to proceed under chapter 7 of such title.

"(7) If petitioner is an individual whose debts are primarily consumer debts and such petitioner is represented by an attorney. A declaration or an affidavit in the form of Exhibit 'B' is attached to and made a part of this petition.", and

(2) by inserting after Exhibit "A" at the end thereof the following new exhibit:

"EXHIBIT 'B'

"If petitioner is an individual whose debts are primarily consumer debts, this Exhibit 'B' shall be completed and attached to the petition pursuant to paragraph (7) thereof.

"CAPTION AS IN FORM NO. 1

"FOR COURT USE ONLY

"..

"Date Petition Filed

"..

"Case Number

"..

"Bankruptcy Judge

"I, ———————————, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7 or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

"Executed on ....

"Signature.............. ....

Attorney for Petitioner".

SEC. 323. Section 406(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687(c)), as amended by the Act of November 28, 1983 (Public Law 98-166; 97 Stat. 1071), is amended by striking out "September 30, 1984" and inserting in lieu thereof "September 30, 1986".

SEC. 324. Section 1103(b) of title 11, United States Code, is amended by striking out "A person" and inserting in lieu thereof "An attorney or accountant".

SUBTITLE B—AMENDMENTS RELATING TO GRAIN STORAGE FACILITY BANKRUPTCY

SEC. 350. Section 507(a) of title 11, United States Code, is amended—

(1) by striking out "(5) Fifth" and inserting in lieu thereof "(6) Sixth"

(2) by striking out "(6) Sixth" and inserting in lieu thereof "(7) Seventh"; and

(3) by adding after paragraph (4) the following:

"(5) Fifth, allowed unsecured claims of persons—

"(A) engaged in the production or raising of grain, as defined in section 557(b)(1) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b)(2) of this title, for grain or the proceeds of grain, or

"(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of $2,000 for each such individual.".

SEC. 351. Section 546 of title 11, United States Code, is amended—

(1) in the first sentence of subsection (c) thereof, by striking out "The" and inserting in lieu thereof "Except as provided in subsection (d) of this section, the"; and

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

"(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in section 557 of this title) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but—

"(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing. reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

"(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien.".

SEC. 352. (a) Chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"**§ 557. Expedited determination of interests in, and abandonment or other disposition of grain assets**

"(a) This section applies only in a case concerning a debtor that owns or operates a grain storage facility and only with respect to grain and the proceeds of grain. This section does not affect the application of any other section of this title to property other than grain and proceeds of grain.

"(b) In this section—

"(1) 'grain' means wheat, corn, flaxseed, grain sorghum, barley, oats, rye, soybeans, other dry edible beans, or rice;

"(2) 'grain storage facility' means a site or physical structure regularly used to store grain for producers, or to store grain acquired from producers for resale; and

"(3) 'producer' means an entity which engages in the growing of grain.

"(c)(1) Notwithstanding sections 362, 363, 365, and 554 of this title, on the court's own motion the court may, and on the request of the trustee or an entity that claims an interest in grain or the proceeds of grain the court shall, expedite the procedures for the determination of interests in and the disposition of grain and the proceeds of grain, by shortening to the greatest extent feasible such time periods as are otherwise applicable for such procedures and by establishing, by order, a timetable having a duration of not to exceed 120 days for the completion of the applicable procedure specified in subsection (d) of this section. Such time periods and such timetable may be modified by the court, for cause, in accordance with subsection (f) of this section.

"(2) The court shall determine the extent to which such time periods shall be shortened, based upon—

"(A) any need of an entity claiming an interest in such grain or the proceeds of grain for a prompt determination of such interest;

"(B) any need of such entity for a prompt disposition of such grain;

"(C) the market for such grain;

"(D) the conditions under which such grain is stored;

"(E) the costs of continued storage or disposition of such grain;

"(F) the orderly administration of the estate;

"(G) the appropriate opportunity for an entity to assert an interest in such grain; and

"(H) such other considerations as are relevant to the need to expedite such procedures in the case.

"(d) The procedures that may be expedited under subsection (c) of this section include—

"(1) the filing of and response to—

"(A) a claim of ownership;

"(B) a proof of claim;

"(C) a request for abandonment;

"(D) a request for relief from the stay of action against property under section 362(a) of this title;

"(E) a request for determination of secured status;

"(F) a request for determination of whether such grain or the proceeds of grain—

"(i) is property of the estate;

"(ii) must be turned over to the estate; or

"(iii) may be used, sold, or leased; and

"(G) any other request for determination of an interest in such grain or the proceeds of grain;

"(2) the disposition of such grain or the proceeds of grain, before or after determination of interests in such grain or the proceeds of grain, by way of—

"(A) sale of such grain;

"(B) abandonment;

"(C) distribution; or

"(D) such other method as is equitable in the case;

"(3) subject to sections 701, 702, 703, 1104, and 1302 of this title, the appointment of a trustee or examiner and the retention and compensation of any professional person required to assist with respect to matters relevant to the determination of interests in or disposition of such grain or the proceeds of grain; and

"(4) the determination of any dispute concerning a matter specified in paragraph (1), (2), or (3) of this subsection.

"(e)(1) Any governmental unit that has regulatory jurisdiction over the operation or liquidation of the debtor or the debtor's business shall be given notice of any request made or order entered under subsection (c) of this section.

"(2) Any such governmental unit may raise, and may appear and be heard on, any issue relating to grain or the proceeds of grain in a case in which a request is made, or an order is entered, under subsection (c) of this section.

"(3) The trustee shall consult with such governmental unit before taking any action relating to the disposition of grain in the *possession, custody, or control of the debtor or the estate.*

"(f) The court may extend the period for final disposition of grain or the proceeds of grain under this section beyond 120 days if the court finds that—

"(1) the interests of justice so require in light of the complexity of the case; and

"(2) the interests of those claimants entitled to distribution of grain or the proceeds of grain will not be materially injured by such additional delay.

"(g) Unless an order establishing an expedited procedure under subsection (c) of this section, or determining any interest in or approving any disposition of grain or the proceeds of grain, is stayed pending appeal—

"(1) the reversal or modification of such order on appeal does not affect the validity of any procedure, determination, or disposition that occurs before such reversal or modification, whether or not any entity knew of the pendency of the appeal; and

"(2) neither the court nor the trustee may delay, due to the appeal of such order, any proceeding in the case in which such order is issued.

"(h)(1) The trustee may recover from grain and the proceeds of grain the reasonable and necessary costs and expenses allowable under section 503(b) of this title attributable to preserving or disposing of grain or the proceeds of grain, but may not recover from such grain or the proceeds of grain any other costs or expenses.

"(2) Notwithstanding section 326(a) of this title, the dollar amounts of money specified in such section include the value, as of the date of disposition, of any grain that the trustee distributes in kind.

"(i) In all cases where the quantity of a specific type of grain held by a debtor operating a grain storage facility exceeds ten thousand bushels, such grain shall be sold by the trustee and the assets thereof distributed in accordance with the provisions of this section.".

(b) The table of sections of chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new item:

"557. Expedited determination of interests in and disposition of grain.".

SEC. 353. Section 901(a) of title 11, United States Code, is amended by inserting "557," after "553,".

SEC. 354. Rule 3001 of the Bankruptcy Rules is amended by adding at the end thereof the following new subdivision:

"(g) To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.".

SUBTITLE C—LEASEHOLD MANAGEMENT AMENDMENTS

SEC. 361. This subtitle may be cited as the "Leasehold Management Bankruptcy Amendments Act of 1983".

SEC. 362. (a) Section 365 of title 11, United States Code, is amended by amending subsections (a), (b), (c), and (d) to read as follows:

"(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

"(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

"(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

"(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

"(C) provides adequate assurance of future performance under such contract or lease.

"(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

"(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

"(B) the commencement of a case under this title; or

"(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

"(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

"(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

"(B) that any percentage rent due under such lease will not decline substantially;

"(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

"(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

"(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

"(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

"(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

"(B) such party does not consent to such assumption or assignment; or

"(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or

"(3) such lease of nonresidential real property has been terminated under applicable nonbankruptcy law prior to the order for relief.

"(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

"(2) In a case under chapter 9, 11, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

"(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

"(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.".

(b) Section 365 is further amended by adding at the end thereof the following new subsection:

"(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

"(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(9), leases of real property shall include any rental agreement to use real property.".

SEC. 363. (a) Section 541(b) of title 11, United States Code, is amended to read as follows:

"(b) Property of the estate does not include—

"(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor; or

"(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the

stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.".

(b) Section 362(b) of title 11 of the United States Code is amended by—

(1) striking out "or" at the end of paragraph (7),

(2) replacing the period after paragraph (8) with "; or", and

(3) adding the following after paragraph (8):

"(9) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property.".

Subtitle D—Amendments to Title 11, Section 523 Relating to the Discharge of Debts Incurred by Persons Driving While Intoxicated

Sec. 371. Section 523(a) of title 11, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (8); and

(2) by adding the following new paragraph after such paragraph:

"(9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred; or".

Subtitle E—Referees Salary and Expense Fund

Sec. 381. This subtitle may be cited as the "Referees Salary and Expense Fund Act of 1984".

Sec. 382. Section 403(e) of the Act of November 6, 1978 (92 Stat. 2683; Public Law 95-598), is amended to read as follows:

"(e) Notwithstanding subsection (a) of this section—

"(1) a fee may not be charged under section 40c(2)(a) of the Bankruptcy Act in a case pending under such Act after September 30, 1979, to the extent that such fee exceeds $200,000;

"(2) a fee may not be charged under section 40c(2)(b) of the Bankruptcy Act in a case in which the plan is confirmed after September 30, 1978, or in which the final determination as to the amount of such fee is made after September 30, 1979, notwithstanding an earlier confirmation date, to the extent that such fee exceeds $100,000;

"(3) after September 30, 1979, all moneys collected for payment into the referees' salary and expense fund in cases filed under the Bankruptcy Act shall be collected and paid into the general fund of the Treasury; and

"(4) any balance in the referees' salary and expense fund in the Treasury on October 1, 1979, shall be transferred to the general fund of the Treasury and the referees' salary and expense fund account shall be closed.".

Subtitle F—Amendments Regarding Repurchase Agreements

Sec. 391. Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (35), (36), (37), (38), (39), (40), and (41), as paragraphs (37), (38), (39), (40), (41), (42), and (43), respectively, and

(2) by inserting after paragraph (34) the following new paragraphs:

"(35) 'repo participant' means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor;

"(36) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;".

Sec. 392. Section 362(b) of title 11, United States Code, is amended—

(a) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively, and

(b) by inserting after paragraph (6) the following new paragraph:

"(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;".

Sec. 393. Section 546 of title 11, United States Code, is amended by inserting after subsection (e), as redesignated by section 251, the following:

"(f) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, made by or to a repo participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1) of this title.".

Sec. 394. Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking out "and" at the end thereof;

(2) in subparagraph (B) by striking out the period at the end thereof and inserting in lieu thereof "; and"; and by inserting after paragraph (B) the following new subparagraph:

"(C) a repo participant that receives a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, in connection with a repurchase agreement, takes for value to the extent of such payment.".

Sec. 395. Section 553(b)(1) of title 11, United States Code, is amended by inserting ", 362(b)(7)," after "362(b)(6)".

Sec. 396. (a) Chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 559. Contractual right to liquidate a repurchase agreement

"The exercise of a contractual right of a repo participant to cause the liquidation of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.".

(b) The analysis of sections for chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new item:

"559. Contractual right to liquidate a repurchase agreement.".

Subtitle G—Amendments to Title 11, Section 365 of the United States Code To Provide Adequate Protection for Timeshare Consumers

Sec. 401. Title 11, United States Code, section 101 is hereby amended by—

(1) redesignating paragraph (43), as redesignated by section 391, as paragraph (44); and

(2) adding the following paragraph after paragraph (42), as redesignated in section 391:

"(43) 'timeshare plan' means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A 'timeshare interest' is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recre-

ational sites, whether improved or unimproved, pursuant to a timeshare plan.".

SEC. 402. Section 365(h)(1) of title 11, United States Code, is amended to read as follows:

"(h)(1) If the trustee rejects an unexpired lease of real property of the debtor under which the debtor is the lessor, or a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller, the lessee or timeshare interest purchaser under such lease or timeshare plan may treat such lease or timeshare plan as terminated by such rejection, where the disaffirmance by the trustee amounts to such a breach as would entitle the lessee or timeshare interest purchaser to treat such lease as terminated by virtue of its own terms, applicable nonbankruptcy law, or other agreements the lessee or timeshare interest purchaser has made with other parties; or, in the alternative, the lessee or timeshare interest purchaser may remain in possession of the leasehold or timeshare interest under any lease or timeshare plan the term of which has commenced for the balance of such term and for any renewal or extension of such term that is enforceable by such lessee or timeshare interest purchaser under applicable nonbankruptcy law.".

SEC. 403. Section 365(h)(2) of title 11, United States Code, is amended to read as follows:

"(2) If such lessee or timeshare interest purchaser remains in possession as provided in paragraph (1) of this subsection, such lessee or timeshare interest purchaser may offset against the rent reserved under such lease or moneys due for such timeshare interest for the balance of the term after the date of the rejection of such lease or timeshare interest, and any such renewal or extension thereof, any damages occurring after such date caused by the nonperformance of any obligation of the debtor under such lease or timeshare plan after such date, but such lessee or timeshare interest purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset.".

SEC. 404. Section 365(i)(1) of title 11, United States Code, is amended to read as follows:

"(i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.".

SUBTITLE H—MISCELLANEOUS AMENDMENTS TO TITLE 11

SEC. 421. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" after "business".

(b) Section 101(8)(B) of title 11 of the United States Code is amended by striking out the colon at the end thereof and inserting in lieu thereof a semicolon.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d)," after "section".

(d) Section 101(14) of title 11 of the United States Code is amended by inserting "and" after "trust,".

(e) Section 101(24) of title 11 of the United States Code is amended by striking out "stock broker" and inserting in lieu thereof "stockbroker".

(f) Section 101(26)(B)(ii) of title 11 of the United States Code is amended by—

(1) striking out "separate" each place it appears and inserting in lieu thereof "nonpartnership"; and

(2) striking out "(A)(ii)" and inserting in lieu thereof "(A)".

(g) Section 101(30) of title 11 of the United States Code is amended to read as follows:

(30) "person" includes individual, partnership, and corporation, but does not include governmental unit, Provided, however, That any governmental unit that acquires an asset from a person as a result of operation of a loan guarantee agreement, or as receiver or liquidating agent of a person, will be considered a person for purposes of section 1102 of this title.

(h) Section 101(38)(B)(vi) of title 11 of the United States Code, as redesignated by section 391 of this Act, is amended by—

(1) striking out "certificate specified in clause (xii) of subparagraph (A)" and inserting in lieu thereof "certificate of a kind specified in subparagraph (A)(xii)"; and

(2) striking out "the subject of such a registration statement" and inserting in lieu thereof "required to be the subject of a registration statement".

(i) Section 101(44) of title 11 of the United States Code, as so redesignated, is amended by striking out the period and inserting in lieu thereof "and foreclosure of the debtor's equity of redemption; and".

(j) Section 101 of title 11 of the United States Code is amended—

(1) by redesignating paragraphs (41) through (44), as previously redesignated, as paragraphs (45) through (48);

(2) by redesignating paragraphs (21) through (40) as paragraphs (24) through (43), respectively;

(3) by redesignating paragraphs (19) and (20) as paragraphs (20) and (21), respectively;

(4) by inserting after paragraph (18) the following:

"(19) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741(7) of this title, such customer;";

(5) by inserting after paragraph (21) as redesignated herein the following:

"(22) 'forward contract' means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;

"(23) 'forward contract merchant' means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in commodities;";

(6) by inserting after paragraph (43) the following:

"(44) 'State' includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title;"; and

(7) by inserting after paragraph (48) the following:

"(49) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States;".

SEC. 422. Section 102 of title 11 of the United States Code is amended by striking out "continued" and inserting in lieu thereof "contained" in paragraph (8).

SEC. 423. Section 103(c) of title 11 of the United States Code is amended by striking out "stockholder" and inserting in lieu thereof "stockbroker".

SEC. 424. Section 106 of title 11, United States Code, is amended to read as follows:

"§ 106. Waiver of sovereign immunity

"(a) The filing of a proof of claim against the estate by a governmental unit is a waiver by that governmental unit of sovereign immunity with respect to claims arising out of the same transaction or occurrence out of which such governmental unit's filed claim arose.

"(b) Where a governmental unit files a proof of claim and where such claim is allowed, the estate may offset against such allowed claim or interest any claim against such governmental unit that is property of the estate.

"(c) A provision of this title that contains 'creditor,' 'entity,' or 'governmental unit' applies to governmental units, and a determination by the court of an issue arising under such a provision binds governmental units without regard to sovereign immunity.".

SEC. 425. (a) Subsections (a)(1), (b)(1), and (c)(1) of section 108 of title 11 of the United States Code are each amended by striking out "and" each place it appears and inserting in lieu thereof "or".

(b) Subsections (a), (b), and (c) of section 108 of title 11 of the United States Code are each amended by inserting "nonbankruptcy" after "applicable" and after "entered in a" each place such terms appear.

(c) Section 108(a) of title 11 of the United States Code is amended by inserting ", or any person to whose rights the trustee succeeds," after "debtor".

(d) Section 108 of title 11 of the United States Code is amended—

(1) in subsection (c) by inserting after "bankruptcy court" the following: "or for taking other collection action, including levy,".

(2) by adding after subsection (c) the following:

"(d) If applicable nonbankruptcy law or an agreement suspends the period of limitation for assessing a tax liability of the debtor as of the commencement of a case under this title, such suspension does not expire before 90 days following the earlier of—

"(1) termination or expiration of the stay under section 362 of this title, or

"(2) the date, determined under sections 362(b)(9) and 505(c) of this title, after which assessment of such tax liability is permitted.

"(e) If applicable nonbankruptcy law fixes a period for filing a petition or otherwise commencing an action in the United States Tax Court, or in a similar judicial or administrative forum under State or local law, and if any such act is stayed under section 362 of this title, such period does not expire before 60 days after termination or expiration of the stay with respect to any such petition or action.".

SEC. 426. (a) Section 109 of title 11 of the United States Code, is amended by striking out "in the United States," the first place it appears.

(b) Section 109(c)(5)(D) of title 11 of the United States Code of this Act is amended by striking out "preference" and inserting in lieu thereof "transfer that is avoidable under section 547 of this title".

(c) Section 109(d) of title 11 of the United States Code is amended by striking out "stockholder" and inserting in lieu thereof "stockbroker".

SEC. 427. (a) Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" after "involuntary case".

(b) Section 303 of title 11 of the United States Code, is amended—

(1) in subsection (b)(1) by inserting "or the subject of a bona fide dispute," after "liability";

(2) in subsection (h)(1) by inserting "Provided, however, That such order may not be based solely upon debts that are the subject of a bona fide dispute" after "due".

SEC. 428. Section 303(j)(2) of title 11 of the United States Code is amended by striking out "debtors" and inserting in lieu thereof "debtor".

SEC. 429. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting in lieu thereof "the case".

SEC. 430. Section 322(b)(1) of title 11 of the United States Code is amended by inserting "required to be" after "bond".

SEC. 431. (a) Section 326(a) of title 11 of the United States Code is amended by striking out all the language beginning with "three percent" through "$50,000" the second place the latter appears and inserting in lieu thereof "and three percent on any amount in excess of $3,000".

(b) Section 326(d) of title 11 of the United States Code is amended to read as follows:

"(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.".

(c) Section 327(c) of title 11 of the United States Code is amended to read as follows:

"(c) In a case under chapter 7 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor, in which case the court shall disapprove such employment if there is an actual conflict of interest.".

SEC. 432. Section 328(a) of title 11 of the United States Code is amended by striking out "unanticipatable" and inserting in lieu thereof "not capable of being anticipated".

SEC. 433. (a) Section 329(a) of title 11 of the United States Code is amended by striking out "and" the first place it appears and inserting in lieu thereof "or".

(b) Section 329(b)(1) of title 11 of the United States Code is amended by striking out "trustee" and inserting in lieu thereof "estate".

SEC. 434. Section 330(a) of title 11 of the United States Code is amended—

(1) by striking out "to any parties in interest and to the United States trustee"; and

(2) in paragraph (1), by striking out "time, the nature, the extent, and the value of such services" and inserting in lieu thereof "nature, the extent, and the value of such services, the time spent on such services".

SEC. 435. (a) Section 330(b) of title 11 of the United States Code is amended by striking out "$20" and inserting in lieu thereof "$45".

(b) Section 330 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Unless the court orders otherwise, in a case under chapter 13 of this title the compensation paid to the trustee serving in the case shall not be less than $10 per month from any distribution under the plan during the administration of the plan.".

SEC. 436. (a) Section 341(b) of title 11 of the United States Code is amended to read as follows:

"(b)(1) In a case under chapter 13 of this title, the court may order a meeting of creditors.

"(2) The court may order a meeting of any equity security holders.".

(b) Section 341(a) of title 11, United States Code, is amended by inserting "chapter 7 or chapter 11 of" after "under".

SEC. 437. Section 342 of title 11 of the United States Code as amended by section 302 is further amended by amending subsection (a) to read as follows:

"(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title.".

SEC. 438. Section 343 of title 11 of the United States Code is amended by striking out "examiner" the last place it appears and inserting in lieu thereof "examine".

SEC. 439. Section 344 of title 11 of the United States Code is amended by inserting before the period "or in accordance with such regulations as may be promulgated by the Attorney General".

SEC. 440. Section 345 of title 11 of the United States Code is amended by adding at the end thereof a new subsection (c) as follows:

"(c) An entity with which such moneys are deposited or invested is authorized to deposit or invest such moneys as may be required under this section.".

SEC. 441. (a) Section 346(c)(2) of title 11 of the United States Code is amended by striking out "operation" and inserting in lieu thereof "corporation".

(b) Section 346(f) of title 11 of the United States Code is amended by striking out "State or local".

(c) Section 346(g)(2) of title 11 of the United States Code is amended by striking out "as adjusted under subsection (j)(5) of this section,".

(d) Section 346(j) of title 11 of the United States Code is amended by striking out paragraphs (3), (4), (5), (6), and (7).

SEC. 442. Section 350(b) of title 11 of the United States Code is amended by striking out "a" and inserting in lieu thereof "A".

SEC. 443. Section 361(1) of title 11 of the United States Code is amended by inserting "a cash payment or" after "make".

SEC. 444. (a) Section 362(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "action or" after "other";

(2) in paragraph (3), by inserting "or to exercise control over property of the estate" after "estate" the second place it appears; and

(3) in paragraph (8) by striking out "Court concerning the debtor" and inserting in lieu thereof "Court or similar administrative or judicial forum under State or local law, concerning the debtor".

(b) Section 362(b) of title 11 of the United States Code is amended—

(1) in paragraph (3), by inserting "or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title" after "title";

(2) in paragraph (6), by—

(A) inserting "or due from" after "held by"; and

(B) striking out "or secure commodity contracts" and inserting in lieu thereof "secure, or settle commodity contracts", and by inserting "financial institution," after "stockbroker" each time it appears.

(3) in paragraph (8) as redesignated by section 392, by—

(A) striking out "said" and inserting in lieu thereof "the"; and

(B) striking out "or" the last place it appears;

(4) in paragraph (9) as redesignated by section 392, by striking out the period and inserting in lieu thereof a semicolon; and

(5) by adding after paragraph (9) the following new paragraphs:

"(10) under subsection (a) of this section, of the filing of any continuation statement or the refiling of any notice of a Federal tax lien required by nonbankruptcy law properly filed under such law before the date of the filing of the petition; or

"(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument.".

(c) Section 362(c)(2)(B) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

(d) Section 362(d)(2) of title 11 of the United States Code is amended—

(1) by inserting "under subsection (a) of this section" after "property" the first place it appears; and

(2) in subparagraph (B), by inserting "in a case under chapter 11 of this title or to an effective plan in a case under chapter 13 of this title, as the case may be" after "reorganization".

(e) Section 362(e) of title 11 of the United States Code is amended—

(1) in the first sentence by inserting "the conclusion of" after "pending"; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing.".

(f) Section 362(f) of title 11 of the United States Code is amended by—

(1) striking out "The" and inserting in lieu thereof "Upon request of a party in interest, the"; and

(2) inserting "with or" after "court,".

SEC. 445. (a) Section 363(a) of title 11 of the United States Code is amended by—

(1) inserting "whenever acquired" after "equivalents"; and

(2) inserting "and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title" after "interest".

(b) Section 363(b) of title 11 of the United States Code is amended by—

(1) striking out "(b)" and inserting in lieu thereof "(b)(1)"; and

(2) adding at the end thereof the following new paragraph:

"(2) If notification is required under subsection (a) of section 7A of the Clayton Act (15 U.S.C. 18a) in the case of a transaction under this subsection, then—

"(A) notwithstanding subsection (a) of such section, such notification shall be given by the trustee; and

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of the receipt of such notification, unless the court, after notice and hearing, orders otherwise.".

(c) Section 363(e) of title 11 of the United States Code is amended by—

(1) inserting ", with or without a hearing," after "court"; and

(2) striking out the last sentence.

(d) Section 363(f)(3) of title 11 of the United States Code is amended by striking out "such interest" the second place it appears and inserting in lieu thereof "all liens on such property".

(e) Section 363(h) of title 11 of the United States Code is amended by striking out "immediately before" and inserting in lieu thereof "at the time of".

(f) Section 363(j) of title 11 of the United States Code is amended by striking out "compenation" and inserting in lieu thereof "compensation".

(g) Section 363(k) of title 11 of the United States Code is amended by striking out "if the holder" and inserting in lieu thereof "unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder".

(h) Section 363(l) of title 11 of the United States Code is amended by—

(1) striking out "The trustee" and inserting in lieu thereof "Subject to the provisions of section 365, the trustee";

(2) striking out "conditions" and inserting in lieu thereof "condition";

(3) striking out "a taking" and inserting in lieu thereof "or the taking"; and

(4) striking out "interests" and inserting in lieu thereof "interest".

(i) Section 363(n) of title 11 of the United States Code is amended by—

(1) striking out "void" and inserting in lieu thereof "avoid";

(2) striking out "voiding" and inserting in lieu thereof "avoiding"; and

(3) amending the last sentence to read as follows: "In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.".

(j) Section 363 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(o) In any hearing under this section—

"(1) the trustee has the burden of proof on the issue of adequate protection; and

"(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.".

SEC. 446. (a) Section 365(e) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "or lease" each place it appears and inserting in lieu thereof ", lease, or applicable law"; and

(2) in paragraph (2), by striking out "the trustee" and inserting in lieu thereof "an entity other than the debtor or the debtor in possession".

(b) Section 365(f)(3) of title 11 of the United States Code is amended by—

(1) striking out the comma after "debtor" the first place it appears, and

(2) striking out "applicable law" and inserting in lieu thereof "applicable nonbankruptcy law,".

(c) Section 365(h) of the United States Code is amended by adding at the end thereof the following new paragraph:

"(3) In the event that the lessee or timeshare interest holder shall elect to treat the lease under this subsection as terminated, any sublessee, leasehold mortgagee, or similarly situated entity may elect to succeed to the right of the lessee to remain in possession.".

(d) Section 365(i)(2)(A) of title 11 of the United States Code is amended by—

(1) striking out the comma after "may";

(2) inserting "under such contract" after "debtor"; and

(3) adding the following new paragraph:

"(3) In the event that the purchaser shall elect to treat such contract under this subsection as terminated, any holder of a security interest in such purchaser's interest may elect to succeed to the right of such purchaser to remain in possession as set forth in paragraph (1) of this subsection.".

(e) Section 365(j) of title 11 of the United States Code is amended by inserting "to or for the benefit of the debtor" before the period at the end thereof.

SEC. 447. Section 366(a) of title 11 of the United States Code is amended by inserting "of the commencement of a case under this title or" after "basis".

SEC. 448. Section 501(d) of title 11 of the United States Code is amended by inserting "502(e)(2)," before "502(f)".

SEC. 449. (a) Section 502(a) of title 11 of the United States Code is amended by inserting "general" before "partner".

(b) Section 502(b) of title 11 of the United States Code is amended—

(1) by inserting "(e)(2)," after "subsections";

(2) by inserting "in lawful currency of the United States" after "claim" the second place it appears;

(3) in paragraph (1), by striking out ", and unenforceable against" and inserting in lieu thereof "and";

(4) in paragraph (2), by inserting "other than unmatured interest due to an original issue discount of less than one-half of 1 percent of the stated redemption price at maturity multiplied by the number of full years from the date of original issue to maturity" after "interest";

(5) by striking out paragraph (3) and redesignating paragraphs (4), (5), (6), (7), (8), and (9) as paragraphs (3), (4), (5), (6), (7), and (8), respectively;

(6) in paragraph (3), as redesignated by paragraph (5), by inserting "the" after "exceeds";

(7) in paragraph (5), as redesignated by paragraph (5), by—

(A) striking out "the claim" and inserting in lieu thereof "such claim", and

(B) striking out the comma after "petition"

(8) by amending paragraph (6), as redesignated by paragraph (5), to read as follows:

"(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

"(A) the greater of—

"(i) the rent reserved for the rental year in which the petition was filed; or

"(ii) 15 percent of the rent reserved for the remaining term of such lease, not to exceed the rent reserved for the three years commencing with the rental year in which the petition was filed; plus

"(B) any unpaid rent due under such lease, without acceleration, on the earlier of—

"(i) the date of the filing of the petition; or

"(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property;"; and

(9) in paragraph (7), as redesignated by paragraph (5), by—

(A) inserting "the claim of an employee" before "for damages";

(B) striking out "and" in subparagraph (A)(i) and inserting in lieu thereof "or";

(C) striking out "the" the first place it appears in subparagraph (B) and inserting in lieu thereof "any"; and

(D) inserting a comma after "such contract" in subparagraph (B).

(c) Section 502(c) of title 11 of the United States Code is amended—

(1) in paragraph (1) by—

(A) inserting "the" before "fixing"; and

(B) striking out "closing" and inserting in lieu thereof "administration"; and

(2) in paragraph (2), by—

(A) inserting "right to payment arising from a" after "any"; and

(B) striking out "if such breach gives rise to a right to payment".

(d) Section 502(e)(1) of title 11, United States Code, is amended—

(1) by striking out "and (b)" and inserting in lieu thereof ", (b), and (c)"; and

(2) by striking out the commas before and after "or has secured";

(3) in subparagraph (B), by inserting "or disallowance" after "allowance"; and

(4) in subparagraph (C), by—

(A) striking out "requests subrogation" and inserting in lieu thereof "asserts a right of subrogation to the rights of such creditor"; and

(B) striking out "to the rights of such creditor".

(e) Section 502(h) of title 11 of the United States Code is amended by striking out "522(i)" and inserting in lieu thereof "522".

(f)(1) Section 502(i) of title 11 of the United States Code is amended to read as follows:

"(i)(1) There shall be allowed a claim for any tax liability arising from payment from the estate of a claim for wages, salaries, or commissions, including vacation, severance, or sick leave pay, whether or not a proof of such claim is filed.

"(2) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(6) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.".

(g) Section 502(j) of title 11 of the United States Code is amended to read as follows:

"(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.".

SEC. 450. Section 503(b) of title 11 of the United States Code is amended—

(1) by striking out the comma after "be allowed";

(2) in paragraph (1)(B)(i), by inserting "or required to be collected or withheld from another with respect to any payment made by or to the estate" after "estate";

(3) in paragraph (1)(C), by—

(A) striking out the comma after "credit"; and

(B) inserting "incurred by the estate" after "paragraph";

(4) in paragraph (2), by inserting "(a)" after "330";

(5) in paragraph (3), by inserting a comma after "paragraph (4) of this subsection";

(6) in paragraph (3)(C), by striking out the comma after "case";

(7) in paragraph (5), by striking out "and" after the semicolon;

(8) in paragraph (6), by striking out the period and inserting in lieu thereof "; and"; and

(9) by adding at the end thereof the following new paragraph:

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (2) of this subsection, incurred by a committee appointed under section 1102 of this title.".

SEC. 451. Section 505(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or liability of an entity for" after "or legality of";

(2) in paragraph (2)(A), by—

(A) inserting "or liability of the debtor for" after "or legality of"; and

(B) striking out "or legality" the second place it appears and inserting in lieu thereof ", legality, or liability";

(3) in paragraph (2)(B)(i), by striking out "and" and inserting in lieu thereof "or"; and

(4) by adding at the end thereof a new paragraph (3) to read as follows:

"(3) Notwithstanding subparagraph (B) of paragraph (2) of this subsection, the court may offset against a claim for, or request for payment of, a tax liability any counterclaim with respect to such tax liability for the same taxable period, event, act, or failure to act, to which the claim or request for payment relates, and may, where appropriate, order a net credit or refund to be made to the estate. The preceding sentence shall not apply if, at the commencement of the case under this title, the debtor had filed suit for refund relating to such taxable period, event, act, or failure to act, and if the stay on continuation of such suit is terminated under section 362 of this title.".

SEC. 452. (a) Section 506(a) of title 11 of the United States Code is amended to read as follows:

"(a) An allowed claim of a creditor that is secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such lien or to the extent of the amount subject to setoff, as the case may be, and, except to the extent that such creditor does not have recourse under any agreement or applicable nonbankruptcy law against the debtor on account of such claim, is an unsecured claim to the extent that the value of such lien or the amount so subject to setoff is less than the amount of such allowed claim.".

(b) Section 506(b) of title 11 of the United States Code is amended by inserting "for" after "provided".

(c) Paragraphs (1) and (2) of section 506(d) of title 11 of the United States Code are amended to read as follows:

"(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

"(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.".

SEC. 453. (a) Section 507(a) of title 11 of the United States Code is amended—

(1) in paragraph (3), by inserting a comma after "severance";

(2) in paragraph (4), by striking out "employee benefit plans" and inserting in lieu thereof "an employee benefit plan";

(3) in paragraph (4)(B)(i), by inserting "each" after "covered by";

(4) in paragraph (7) as redesignated by section 350 by inserting "only" after "units,";

(5) in paragraph (6)(A) as redesignated by section 350 by amending clauses (ii) and (iii) to read as follows:

"(ii) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before commencement of the case, unless at such time the liability remained assessable under the applicable statute of limitations, solely because of an act or failure to act described in section 523(a)(1)(B) or 523(a)(1)(C) of this title.".

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee, after notice and a hearing, provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate, or if the court finds that there is adequate protection of such interest and if, notwithstanding such protection, the holder of an interest suffers a decrease in the value of such interest, such holder shall have a claim allowable under subsection (a)(1) of this section, and such holder's allowable claim shall have priority over every other claim allowable under such subsection except similar claims under this subsection.".

(c) Section 507(c) of title 11 of the United States Code is amended by striking out "shall be treated the same" and inserting in lieu thereof "has the same priority".

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in paragraph (3), (4), (5), (6), or (7) of subsection (a) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such paragraph, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder.

SEC. 454. (a) Section 509(a) of title 11 of the United States Code is amended by—

(1) striking out "subsections (b) and" and inserting in lieu thereof "subsection (b) or"; and

(2) inserting "against the debtor" after "a creditor".

(b) Section 509(b)(1) of title 11 of the United States Code is amended by striking out "of a" and inserting in lieu thereof "of such".

(c) Section 509(c) of title 11 of the United States Code is amended by striking out "section 509 of this title" and inserting in lieu thereof "this section".

SEC. 455. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.".

SEC. 456. Section 521(3) of title 11 of the United States Code, as redesignated in section 305, is amended by inserting ", whether or not immunity is granted under section 344 of this title" after "estate" the second place it appears.

SEC. 457. (a) Section 522(a)(2) of title 11 of the United States Code is amended by inserting "or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate" after "petition".

(b) Section 522(c) of title 11 of the United States Code is amended to read as follows:

"(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title; or

"(2) a debt secured by a lien that is—

"(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

"(ii) not void under section 506(d) of this title; or

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title.".

(c) Section 522(e) of title 11 of the United States Code is amended by striking out "exemptions" and inserting in lieu thereof "an exemption".

(d) Section 522(l) of title 11 of the United States Code is amended by—

(1) striking out ", or may claim property as exempt from property of the estate"; and

(2) inserting after the second sentence thereof the following new sentence: "In the event of the debtor's death, a dependent of the debtor may claim property as exempt from property of the estate.".

(e) Section 522 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(n) For purposes of this section the State or local law applicable under subsection (b) of this section is the State or local law in effect upon the date of the filing of the petition.".

SEC. 458. (a) Section 523(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by—

(A) striking out "obtaining" each place it appears; and

(B) striking out "refinance of credit," and inserting in lieu thereof "refinancing of credit, to the extent obtained"; and

(2) by striking out "of higher education" in paragraph (8).

(b) Section 523(a)(5) of title 11, United States Code, is amended by—

(1) amending the first paragraph thereof by inserting the words "or other order of a court of record" after the words "divorce decree,"; and

(2) inserting ", or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State" after "Social Security Act".

(c) Section 523(c) of title 11 of the United States Code is amended by inserting "of a kind" after "debt" the first time it appears.

SEC. 459. Section 524(a) of title 11 of the United States Code is amended by striking out "any act" each place it appears and inserting in lieu thereof "an act".

SEC. 460. (a) Section 541(a) of title 11 of the United States Code is amended—

(1) by striking out "under" the second time it appears;

(2) by inserting "and by whomever held" after "located";

(3) in paragraph (3), by inserting "329(b), 363(n)," after "section";

(4) in paragraph (5), by striking out "An" and inserting in lieu thereof "Any"; and

(5) in paragraph (6), by striking out "and" and inserting in lieu thereof "or".

(b) Section 541(c) of title 11 of the United States Code is amended—

(1) by inserting "in an agreement, transfer instrument, or applicable nonbankruptcy law" after "provision"; and

(2) in paragraph (1)(B), by—

(A) striking out "the taking" and inserting in lieu thereof "taking"; and

(B) inserting "before such commencement" after "custodian".

(c) Section 541(d) of title 11 of the United States Code is amended by inserting "(1) or (2)" after "(a)".

(d) Section 541(e) of title 11 of the United States Code is repealed.

SEC. 461. Section 542(e) of title 11 of the United States Code is amended by inserting "to turn over or" before "disclose".

SEC. 462. (a) Section 543(a) of title 11 of the United States Code is amended by inserting ", product, offspring, rents, or profits" after "proceeds".

(b) Section 543(b) of title 11 of the United States Code is amended—

(1) in paragraph (1), by—

(A) inserting "held by or" after "debtor"; and

(B) inserting ", product, offspring, rents, or profits" after "proceeds"; and

(2) in paragraph (2), by inserting ", product, offspring, rents, or profits" after "proceeds".

(c) Section 543(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or proceeds, product, offspring, rents, or profits of such property" after "property"; and

(2) in paragraph (3), by inserting "that has been" before "approved".

(d) Section 543(d) of title 11 of the United States Code is amended to read as follows:

"(d) After notice and hearing, the bankruptcy court—

"(1) may excuse compliance with subsection (a), (b), or (c) of this section, if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and

"(2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.".

SEC. 463. Section 544(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "such" after "obtained";

(2) in paragraph (2), by striking out "; and" and inserting in lieu thereof "; or"; and

(3) in paragraph (3), by—

(A) inserting ", other than fixtures," after "property"; and

(B) inserting "and has perfected such transfer" after "purchaser" the second place it appears.

SEC. 464. Section 545 of title 11 of the United States Code is amended—

(1) in paragraph (1)(A), by striking out "is" the first time it appears;

(2) in paragraph (1)(C), by striking out "appointed" and inserting in lieu thereof "appointed or authorized to take"; and

(3) in paragraph (2), by striking out "on the date of the filing of the petition" each place it appears and inserting in lieu thereof "at the time of the commencement of the case".

SEC. 465. (a) Section 546(a) of title 11 of the United States Code is amended in paragraph (1) by striking out "and" and inserting in lieu thereof "or".

(b) Section 546(b) of title 11 of the United States Code is amended by striking out "the trustee under section 544, 545, or" and inserting in lieu thereof "a trustee under sections 544, 545, and".

(c) Section 546(c) of title 11 of the United States Code is amended—

(1) by striking out "the trustee" and inserting in lieu thereof "a trustee";

(2) by striking out "right" the first place it appears;

(3) by inserting "of goods that has sold goods to the debtor" after "seller" the first place it appears;

(4) by striking out "of goods to the debtor" after "business,"; and

(5) in paragraph (2), by—

(A) inserting "the" after "if"; and

(B) striking out "an administrative expense" and inserting in lieu thereof "a claim of a kind specified in section 503(b) of this title".

(d) Section 546(e) of title 11 of the United States Code, as redesignated by section 351, is amended by inserting "financial institution" after "stockbroker".

SEC. 466. (a) Section 547(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting "including proceeds of such property," after "law,"; and

(2) in paragraph (4), by—

(A) striking out ", without penalty"; and

(B) inserting "without penalty" after "payable".

(b) Section 547(b) of title 11 of the United States Code is amended—

(1) by striking out "of property of the debtor" and inserting in lieu thereof "of an interest of the debtor in property"; and

(2) in paragraph (4) by amending subparagraph (B) to read as follows:

"(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider;".

(c) Section 547 of title 11 of the United States Code is amended in subsection (c)(2) thereof by striking out subparagraph (B) of such paragraph, and by redesignating subparagraphs (C) and (D) thereof as subparagraphs (B) and (C), respectively.

(d) Section 547(c) of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by inserting "by the debtor" after "incurred";

(2) in paragraph (3), by striking out "of" the first place it appears and inserting in lieu thereof "that creates";

(3) in paragraph (3)(B), by—

(A) inserting "on or" after "perfected"; and

(B) striking out "such security interest attaches" and inserting in lieu thereof "the debtor receives possession of such property";

(4) in paragraph (5), by—

(A) striking out "of" the first place it appears and inserting in lieu thereof "that creates"; and

(B) striking out "all security interest" and inserting in lieu thereof "all security interests"; and

(5) in paragraph (5)(A)(ii), by striking out "and" and inserting in lieu thereof "or".

(e) Section 547(d) of title 11 of the United States Code is amended by—

(1) striking out "A" and inserting in lieu thereof "The";

(2) inserting "an interest in" after "transfer of";

(3) inserting "to or for the benefit of a surety" after "transferred"; and

(4) inserting "such" after "reimbursement of".

(f) Section 547(e) of title 11 of the United States Code is amended in paragraph (2)(C)(i), by striking out "and" and inserting in lieu thereof "or".

(g) Section 547 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.".

SEC. 467. (a) Section 548(a) of title 11 of the United States Code is amended—

(1) by striking out "if the debtor" and inserting in lieu thereof "if the debtor voluntarily or involuntarily";

(2) in paragraph (1), by striking out "occurred" and inserting in lieu thereof "was made"; and

(3) in paragraph (2)(B)(ii), by inserting "or a transaction" after "engaged in business".

(b) Section 548(c) of title 11 of the United States Code is amended by—

(1) inserting "or may retain" after "lien on"; and

(2) striking out ", may retain any lien transferred,".

(c)(1) Section 548(d)(1) of title 11 of the United States Code is amended by—

(A) striking out "becomes so far" and inserting in lieu thereof "is so";

(B) striking out "such transfer could have been" and inserting in lieu thereof "applicable law permits such transfer to be"; and

(C) striking out "occurs" and inserting in lieu thereof "is made".

(2) Section 548(d)(2)(B) of title 11 is amended by inserting "financial institution," after "stockbroker".

SEC. 468. (a) Section 549(a) of title 11 of the United States Code is amended—

(1) by striking out "(b) and (c)" and inserting in lieu thereof "(b) or (c)";

(2) in paragraph (2)(A), by inserting "only" after "authorized";

(3) striking out "that occurs" and inserting in lieu thereof "made";

(4) striking out "is valid against the trustee to the extent of" and inserting in lieu thereof "to the extent"; and

(5) inserting "is" before "given".

(c) Section 549(c) of title 11 of the United States Code is amended to read as follows:

"(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.".

(d) Section 549(d)(1) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

Sec. 469. (a) Section 550(a) of title 11 of the United States Code is amended by striking out "549, or 724(a) of this title" and inserting in lieu thereof "549, 553(b), or 724(a) of this title".

(b) Section 550(d) of title 11 of the United States Code is amended—

(1) in paragraph (1)(A), by inserting "or accruing to" after "by";

(2) in paragraph (1)(B), by striking out "value" and inserting in lieu thereof "the value of such property";

(3) in paragraph (2), by striking out subparagraphs (D) and (E) and inserting in lieu thereof the following:

"(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and"; and

(4) in paragraph (2), by redesignating subparagraph (F) as subparagraph (E).

(d) Section 550(e)(1) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

Sec. 470. Section 551 of title 11 of the United States Code is amended by striking out "but only with respect to property of the estate".

Sec. 471. Section 552(b) of title 11 of the United States Code is amended by—

(1) inserting "522," after "506(c),";

(2) striking out "a secured party enter" and inserting in lieu thereof "an entity entered"; and

(3) striking out "except to the extent" and inserting in lieu thereof "except to any extent".

Sec. 472. Section 553(b)(1) of title 11 of the United States Code is amended by striking out "or 365(h)(1)" and inserting in lieu thereof ", 365(h)(2), or 365(i)(2)".

Sec. 473. (a) Subsections (a) and (b) of section 554 of title 11 of the United States Code are each amended by inserting "and benefit" after "value".

(b) Section 554(c) of title 11 of the United States Code is amended to read as follows:

"(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.".

(c) Section 554(d) of title 11 of the United States Code is amended by striking out "section (a) or (b) of".

Sec. 474. Section 555 of title 11 of the United States Code is amended by inserting ", financial institution," after "stockbroker".

Sec. 475. (a) Chapter 5 of title 11 of the United States Code as amended by section 352 is amended by adding at the end thereof the following new section:

"§ 558. Defenses of the estate

"The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.".

(b) The table of sections for chapter 5 of title 11 of the United States Code is amended by adding at the end thereof the following new item:

"558. Defenses of the estate.".

Sec. 476. The table of sections for chapter 7 of title 11 of the United States Code is amended by striking out "Succesor" in the item relating to section 703 and inserting in lieu thereof "Successor".

Sec. 477. (a) Section 702(b) of title 11 of the United States Code is amended by inserting "held" after "meeting of creditors".

(b) Section 702(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "of a kind" after "claims"; and

(2) in paragraph (2), by inserting "a" after "for".

(c) Section 702(d) of title 11 of the United States Code is amended by striking out "subsection (c) of".

Sec. 478. Section 703(b) of title 11 of the United States Code is amended by striking out "specified in section 701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee" and inserting in lieu thereof "and subject to the provisions of section 701 of this title".

Sec. 479. Section 704 of title 11 of the United States Code as amended by section 311 is amended—

(1) in paragraph (1), by striking out "up";

(2) in paragraph (8), by striking out "with the court and"; and

(3) by amending paragraph (9) to read as follows:

"(9) file interim reports, as circumstances justify, of the condition of the estate and make and file a final report and account of the administration of the estate.".

Sec. 480. Paragraphs (1) and (2) of section 707 of title 11 of the United States Code are each amended by striking out "and" and inserting in lieu thereof "or".

Sec. 481. (a) Section 723(a) of title 11 of the United States Code is amended by striking out all after "claims" and inserting in lieu thereof "which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner for the full amount of the deficiency".

(b) Section 723(c) of title 11 of the United States Code is amended by—

(1) striking out "such case" each place it appears and inserting in lieu thereof "such partner's case";

(2) striking out "be property" and inserting in lieu thereof "by property";

(3) striking out "726(a)" and inserting in lieu thereof "726"; and

(4) striking out "the kind" and inserting in lieu thereof "a kind".

Sec. 482. (a) Section 724(b) of title 11 of the United States Code is amended—

(1) by striking out "taxes" and inserting in lieu thereof "a tax";

(2) in paragraph (2), by—

(A) striking out "claims" and inserting in lieu thereof "any holder of a claim of a kind";

(B) striking out "sections" and inserting in lieu thereof "section"; and

(C) striking out "and" and inserting in lieu thereof "or";

(3) in paragraph (3), by inserting "tax" after "allowed"; and

(4) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) fifth, to any holder of a claim of a kind specified in section 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(4), or 507(a)(5) of this title, to the extent that such claim is not paid under paragraph (2) of this subsection;";

(5) in paragraph (6), as redesignated by paragraph (5), by—

(A) striking out "fifth" and inserting in lieu thereof "sixth";

(B) inserting "tax" after "allowed"; and

(C) striking out "tax" after "such" the third place it appears; and

(6) in paragraph (7), as redesignated by paragraph (5), by striking out "sixth" and inserting in lieu thereof "seventh".

(b) Section 724(c) of title 11 of the United States Code is amended by—

(1) striking out "creditor" and inserting in lieu thereof "holder of a claim"; and

(2) striking out "creditors" each place it appears and inserting in lieu thereof "holders".

(c) Section 724(d) of title 11 of the United States Code is amended by—

(1) striking out "whose priority" and inserting in lieu thereof "the priority of which"; and

(2) inserting "if such lien were" after "the same as".

Sec. 483. Section 725 of title 11 of the United States Code is amended by inserting "of property of the estate" after "distribution".

Sec. 484. (a) Section 726(a) of title 11 of the United States Code is amended in paragraph (5), by inserting "and, after all claims have been paid interest at the legal rate, then interest at the contract rate" after "legal rate".

(b) Section 726(b) of title 11 of the United States Code is amended by—

(1) striking out "a particular paragraph" and inserting in lieu thereof "each such particular paragraph";

(2) striking out "administrative expenses" each place it appears and inserting in lieu thereof "a claim allowed under section 503(b) of this title"; and

(3) striking out "have" and inserting in lieu thereof "has".

(c) Section 726(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "Administrative expenses" and inserting in lieu thereof "Claims allowed under section 503 of this title"; and

(2) in paragraph (2), by striking out "Claims other than for administrative expenses" and inserting in lieu thereof "Allowed claims, other than claims allowed under section 503 of this title,".

Sec. 485. (a) Section 727(a) of title 11 of the United States Code is amended—

(1) in paragraph (6)(C), by striking out "property" and inserting in lieu thereof "properly";

(2) in paragraph (7), by inserting ", under this title or under the Bankruptcy Act," after "another case"; and

(3) in paragraph (8), by inserting a comma after "371".

(b) Section 727(c)(1) of title 11 of the United States Code is amended by inserting "the granting of a" after "to".

(c) Section 727(e)(2)(A) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

Sec. 486. (a) Section 728(c) of title 11 of the United States Code is amended by striking out the comma after "taxable income".

(b) Section 728(d)(2) of title 11 of the United States Code is amended by inserting "otherwise" after "is", and by striking out "otherwise" after "partner".

SEC. 487. Section 741 of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by—

(A) striking out "the debtor" the first time it appears and inserting in lieu thereof "a person";

(B) striking out "holds" and inserting in lieu thereof "has";

(C) striking out "the debtor" the second and third time it appears and inserting in lieu thereof "such person"; and

(D) striking out "business as a stockbroker" and inserting in lieu thereof "such person's business as a stockbroker,";

(2) in paragraph (2)(B), by—

(A) striking out "holds" and inserting in lieu thereof "has";

(B) striking out "the debtor" the first place it appears and inserting in lieu thereof "a person"; and

(C) by striking out "the debtor" and inserting in lieu thereof "such person" in clause (ii);

(3) in paragraph (4)(A)(i), by striking out "and that is" and inserting in lieu thereof "from and that is the lawful";

(4) in paragraph (6)(A)(i), by—

(A) inserting a comma after "petition"; and

(B) inserting "any" after "except"; and

(5) in paragraph (7), by amending such paragraph to read as follows:

"(7) 'securities contract' means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;"; and

(6) in paragraph (8) by inserting "a final settlement payment," after "settlement payment on account,".

SEC. 488. Section 745(a) of title 11 of the United States Code is amended by inserting "the debtor for" after "by".

SEC. 489. (a) Section 752(a) of title 11 of the United States Code is amended by—

(1) striking out "customers allowed" and in lieu thereof "customers' allowed";

(2) inserting "of the kind" after "except claims"; and

(3) inserting "such" before "customer property".

(b) Section 752(b)(2) of title 11 of the United States Code is amended by striking out "726(a)" and inserting in lieu thereof "726".

SEC. 490. Section 761 of title 11 of the United States Code is amended in paragraph (10), by striking out "and that is" in subparagraph (A)(viii) and inserting in lieu thereof "from and that is the lawful".

SEC. 491. Section 763(a) of title 11 of the United States Code is amended by—

(1) inserting "the debtor for" after "by"; and

(2) striking out "deemed to be" and inserting in lieu thereof "treated as".

SEC. 492. Section 764(a) of title 11 of the United States Code is amended by inserting "by the debtor" after "any transfer".

SEC. 493. Section 765(a) of title 11 of the United States Code is amended by striking out "notice under", and inserting in lieu thereof "notice required by".

SEC. 494. Section 766(j)(2) of title 11 of the United States Code is amended by striking out "726(a)" and inserting in lieu thereof "726".

SEC. 495. Section 901(a) of title 11 of the United States Code is amended by inserting a comma after "1111(b)".

SEC. 496. Section 902(2) of title 11 of the United States Code is amended by striking out "title, legal or equitable, to real property against which has been levied a special assessment or special tax" and by inserting in lieu thereof "legal or equitable title to real property against which a special assessment or special tax has been levied".

SEC. 497. Section 903(2) of title 11 of the United States Code is amended by striking out "to" the first place it appears.

SEC. 498. Chapter 9 of title 11 of the United States Code is amended by striking out "SUBCHAPER II" and inserting in lieu thereof "SUBCHAPTER II".

SEC. 499. (a) Section 921(c) of title 11 of the United States Code is amended by—

(1) striking out "an" and inserting in lieu thereof "any"; and

(2) striking out the comma after "petition" the second place it appears, and after "faith".

(b) Section 921 of title 11 of the United States Code is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) Section 921(a) is amended by striking out "109(c)" and inserting in lieu thereof "109(d)".

(d) Section 921(d) of title 11 of the United States Code, as so redesignated, is amended by striking out "subsection (d)" and inserting in lieu thereof "subsection (c)".

SEC. 500. Section 922(a)(1) of title 11 of the United States Code is amended by—

(1) inserting "a" before "judicial"; and

(2) inserting "action or" before "proceeding".

SEC. 501. Section 927(b) of title 11 of the United States Code is amended by inserting "of a plan under this chapter" after "confirmation".

SEC. 502. Section 943(b) of title 11 of the United States Code is amended—

(1) in paragraph (4), by striking out "to be taken"; and

(2) by amending paragraph (5) to read as follows:

"(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(1) of this title will receive on account of such claim cash equal to the allowed amount of such claim; and".

SEC. 503. Section 945(a) of title 11 of the United States Code is amended by striking out "execution" and inserting in lieu thereof "implementation".

SEC. 504. Section 1102(b)(1) of title 11 of the United States Code is amended by striking out "order for relief" and inserting in lieu thereof "commencement of the case".

SEC. 505. (a) Section 1103(b) is amended by—

(1) inserting "having an adverse interest" after "entity"; and

(2) adding at the end thereof the following: "Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.".

(b) Section 1103(c) of title 11 of the United States Code is amended—

(1) in paragraph (3), by—

(A) striking out "recommendations" and inserting in lieu thereof "determinations"; and

(B) inserting "or rejections" after "acceptances"; and

(2) in paragraph (4), by striking out ", if a trustee or examiner, as the case may be, has not previously been appointed under this chapter in the case".

SEC. 506. Section 1105 of title 11 of the United States Code is amended by striking out "estate, and" and inserting in lieu thereof "estate and of the".

SEC. 507. Section 1106(b) of title 11 of the United States Code is amended by inserting ", except to the extent that the court orders otherwise," before "any other".

SEC. 508. Section 1107(a) of title 11 of the United States Code is amended by inserting "serving in a case" after "on a trustee".

SEC. 509. Section 1108 of title 11 of the United States Code is amended by inserting ", on request of a party in interest and after notice and a hearing," after "court".

SEC. 510. Section 1111(b) of title 11 of the United States Code is amended to read as follows:

"(b)(1) Except where property of the estate that secures a claim is sold subject to section 363(k) of this title, abandoned under section 554 or 557 of this title, exempted under section 522(b) of this title, or surrendered to the holders of such claims, or is to be sold, abandoned, exempted, or surrendered under the plan—

"(A) a claim secured by such property shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder had such recourse, unless the class of which such claim is a part elects, by at least two-thirds in amount and more than one-half in number of allowed claims of such class, to be governed by subparagraph (B) of this paragraph; and

"(B) unless the aggregate value of the interests in such property of the holders of such claims is inconsequential, the class may elect, as provided under subparagraph (A) of this paragraph, that such claims of such class, whether or not the holders of such claims had recourse against the debtor and notwithstanding section 506(a) of this title, shall be secured claims to the full extent that such claims are allowed.

"(2) The provisions of paragraph (1) of this subsection are limited to the purposes of this chapter and such paragraph shall not in any other way alter, affect, or create any right or liability of or in any other entity who may be liable with the debtor on a debt to which the provisions of such paragraph apply.".

SEC. 511. (a) Section 1112(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by striking out "is an involuntary case originally commenced under this chapter" and inserting in lieu thereof "originally was commenced as an involuntary case under this chapter"; and

(2) in paragraph (3), by striking out "on other than" and inserting in lieu thereof "other than on".

(b) Section 1112(b) of title 11 of the United States Code is amended—

(1) in paragraph (5), by inserting "a request made for" before "additional"; and

(2) in paragraph (8), by striking out "and" and inserting in lieu thereof "or".

SEC. 512. (a) Section 1121(c)(3) of title 11 of the United States Code is amended by striking out "the claims or interests of which are" and inserting in lieu thereof "of claims or interests that is".

(b) Section 1121(d) of title 11 of the United States Code is amended by inserting "made within the respective periods specified in subsection (c) of this section" after "interest".

SEC. 513. (a) Section 1123(a) of title 11 of the United States Code is amended—

(1) by striking out "A" and inserting in lieu thereof "Notwithstanding any otherwise applicable nonbankruptcy law, a";

(2) in paragraph (1), by—

(A) inserting a comma after "classes of claims"; and

(B) by striking out "507(a)(6) of this title" and inserting in lieu thereof "507(a)(7) of this title,";

(3) in paragraph (3), by striking out "shall";

(4) in paragraph (5), by striking out "execution" and inserting in lieu thereof "implementation"; and

(5) in paragraph (5)(G), by inserting "of" after "waiving".

(b) Section 1123(b)(2) of title 11 of the United States Code is amended by—

(1) striking out "or rejection" and inserting in lieu thereof ", rejection, or assignment"; and

(2) striking out "under section 365 of this title" and inserting in lieu thereof "under such section".

SEC. 514. Section 1124 of title 11 of the United States Code is amended—

(1) by amending paragraph (2)(A) to read as follows:

"(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title;"; and

(2) in paragraph (3)(B)(i), by striking out "and" and inserting in lieu thereof "or".

SEC. 515. (a) Section 1125(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting ", but adequate information need not include such information about any other possible or proposed plan" after "plan";

(2) in paragraph (2)(B), by inserting "the" after "with"; and

(3) in paragraph (2)(C), by inserting "of" after "holders".

(b) Section 1125(d) of title 11 of the United States Code is amended by—

(1) inserting "required under subsection (b) of this section" after "statement" the first place it appears; and

(2) inserting ", or otherwise seek review of," after "appeal from".

(c) Section 1125(e) of title 11 of the United States Code is amended by—

(1) inserting "acceptance or rejection of a plan" after "solicits"; and

(2) inserting "solicitation of acceptance or rejection of a plan or" after "governing".

SEC. 516. (a) Section 1126(b)(2) of title 11 of the United States Code is amended by striking out "1125(a)(1)" and inserting in lieu thereof "1125(a)".

(b) Section 1126(d) of title 11 of the United States Code is amended by inserting a comma after "such interests" the first place it appears.

(c) Section 1126(f) of title 11 of the United States Code is amended by—

(1) striking out "is deemed" and inserting in lieu thereof ", and each holder of a claim or interest of such class, are conclusively presumed";

(2) striking out "solicititation" and inserting in lieu thereof "solicitation"; and

(3) striking out "interest" and inserting in lieu thereof "interests".

(d) Section 1126(g) of title 11 of the United States Code is amended by striking out "any payment or compensation" and inserting in lieu thereof "receive or retain any property".

SEC. 517. (a) Section 1127(a) of title 11 of the United States Code is amended by—

(1) inserting "of a plan" after "After the proponent"; and

(2) inserting "of such plan" after "modification".

(b) Section 1127(b) of title 11 of the United States Code is amended by striking out "the court, after notice and a hearing, confirms such plan, as modified, under section 1129 of this title, and circumstances warrant such modification" and inserting in lieu thereof "circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title".

SEC. 518. (a) Section 1129(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "chapter." and inserting in lieu thereof "title.";

(2) in paragraph (2), by striking out "chapter." and inserting in lieu thereof "title.";

(3) by amending paragraph (4) to read as follows:

"(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable;";

(4) in paragraph (5)(A)(ii), by striking out the period and inserting in lieu thereof "; and";

(5) in paragraph (5)(B), by striking out "The" and inserting in lieu thereof "the";

(6) in paragraph (6), by inserting "governmental" after "Any";

(7) in paragraph (7), by—

(A) inserting "of each impaired class of claims or interests" in lieu of "each class"; and

(B) striking out "creditor's" in subparagraph (B) and inserting in lieu thereof "holder's";

(8) in paragraph (8), by inserting "of claims or interests" after "each class";

(9) in paragraph (9)(C), by inserting "507(a)(1) that results from the sale of a capital asset, recapture of an investment tax credit, recapture of depreciation, or similar event or section" after "section"; and

(10) by amending paragraph (10) to read as follows:

"(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.".

(b) Section 1129(b) of title 11 of the United States Code is amended—

(1) by striking out "Notwithstanding section 510(a) of this title, if" and inserting in lieu thereof "If";

(2) in paragraph (2)(A), by striking out "lien" each place it appears and inserting in lieu thereof "liens";

(3) in paragraph (2)(B)(ii), by inserting "under the plan" after "retain"; and

(4) in paragraph (2)(C)(i), by—

(A) striking out "claim" and inserting in lieu thereof "interest"; and

(B) striking out "and the value" and inserting in lieu thereof "or the value".

(c) Section 1129(d) of title 11 of the United States Code is amended by—

(1) striking out "a party in interest that is";

(2) inserting "the application of" after "avoidance of" the second place it appears; and

(3) adding at the end thereof the following new sentence: "In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.".

SEC. 519. (a) Section 1141(a) of title 11 of the United States Code is amended by—

(1) striking out "Except" and inserting in lieu thereof "Notwithstanding section 510(a) of this title and except"; and

(2) striking out "any creditor or equity security holder of, or general partner in," and inserting in lieu thereof "any creditor, equity security holder, or general partner in".

(b) Section 1141(c) of title 11 of the United States Code is amended to read as follows:

"(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.".

SEC. 520. (a) The heading for section 1142 of title 11 of the United States Code is amended to read as follows:

"§ 1142. Implementation of plan".

(b) The item relating to section 1142 in the table of sections for chapter 11 of title 11 of the United States Code is amended by striking out "Execution" and inserting in lieu thereof "Implementation".

(c) Section 1142(a) of title 11 of the United States Code is amended by striking out the comma after "plan" the second place it appears.

(d) Section 1142(b) of title 11 of the United States Code is amended by inserting "a" after "by".

SEC. 521. Section 1144 of title 11 of the United States Code is amended by inserting "if and only" after "revoke such order".

SEC. 522. (a) Section 1145(a) of title 11 of the United States Code is amended—

(1) by striking out "Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section" and inserting in lieu thereof "Section";

(2) in paragraph (3), by striking out "or an affiliate";

(3) in paragraph (3)(B)(i), by inserting "or 15(d)" after "13" and by inserting "or 78o(d)" after "78m";

(4) by amending paragraph (3)(B)(ii) to read as follows:

"(ii) in compliance with the disclosure and reporting provision of such applicable section; and";

(5) in paragraph (3)(C), by striking out "two" each place it appears and inserting in lieu thereof "one";

(6) in paragraph (3)(C)(ii), by striking out "180" each place it appears and inserting in lieu thereof "90"; and

(7) in paragraph (4), by striking out "stockholder" each place it appears and inserting in lieu thereof "stockbroker".

(b) Section 1145(b) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "and except with respect to ordinary trading transactions of an entity that is not an issuer" after "subsection";

(2) in paragraph (1)(C), by striking out "for" and inserting in lieu thereof "from";

(3) in paragraph (2)(A)(i), by striking out "combination" and inserting in lieu thereof "or combining"; and

(4) in paragraph (2)(A)(ii), by striking out "among" and inserting in lieu thereof "from or to".

(c) Section 1145(d) of title 11 of the United States Code is amended by striking out "commercial".

Sec. 523. (a) Section 1146(c) of title 11 of the United States Code is amended by striking out "State or local".

(b) Section 1146(d)(1) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

Sec. 524. Section 1163 of title 11 of the United States Code is amended by striking out "qualified" and inserting in lieu thereof "eligible, qualified,".

Sec. 525. Section 1166 of title 11 of the United States Code is amended by striking out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and inserting in lieu thereof "subtitle IV of title 49".

Sec. 526. Section 1168(b) of title 11 of the United States Code is amended by inserting a comma after "approval".

Sec. 527. Section 1169(c) of title 11 of the United States Code is amended by striking out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and inserting in lieu thereof "subtitle IV of title 49".

Sec. 528. (a) Section 1170(a) of title 11 of the United States Code is amended by inserting "of all or a portion" after "the abandonment".

(b) Section 1170(c) of title 11 of the United States Code is amended by inserting a comma after "abandonment".

(c) Section 1170(d)(2) of title 11 of the United States Code is amended by—

(1) striking out "the abandonment of a railroad line" and inserting in lieu thereof "such abandonment"; and

(2) striking out "termination" each place it appears and inserting in lieu thereof "suspension".

Sec. 529. Section 1171(b) of title 11 of the United States Code is amended by striking out "such" and inserting in lieu thereof "the same".

Sec. 530. Section 1173(a)(4) of title 11 of the United States Code is amended by striking out "compatible" and inserting in lieu thereof "consistent".

Sec. 531. (a) Section 1301(b) of title 11 of the United States Code is amended by inserting "and may protest" after "of" the first place it appears.

(b) Section 1301(c)(3) of title 11 of the United States Code is amended by inserting "continuation of" after "by".

(c) Section 1301 of title 11 of the United States Code as amended in title III is further amended by adding at the end thereof the following new subsection:

"(e) The confirmation of a plan shall automatically grant relief from the stay as to any particular claim to the extent that the plan does not propose to pay any amount of that allowed claim.".

Sec. 532. (a) Section 1302(b) of title 11 of the United States Code as amended by section 314 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively and by inserting after paragraph (2) the following new paragraph:

"(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act; and".

(b) Section 1302(e) of title 11 of the United States Code is amended—

(1) in paragraph (4), by striking out "fix" and inserting in lieu thereof "set for such individual";

(2) in paragraph (1)(A), by striking out "for such individual"; and

(3) in paragraph (2)(A), by—

(A) striking out "of" and inserting in lieu thereof "received by"; and

(B) striking out "upon all payments" and inserting in lieu thereof "of all such payments made".

Sec. 533. Section 1304(b) of title 11 of the United States Code is amended by striking out the comma after "of the debtor".

Sec. 534. (a) Section 1307(b) of title 11 of the United States Code is amended by inserting a comma after "time".

(b) Section 1307(c) of title 11 of the United States Code as amended by section 315 is amended—

(1) in paragraph (5), as redesignated by inserting "a request made for" before "additional";

(2) in paragraph (7), as redesignated by striking out "and" after the semicolon and inserting in lieu thereof "or"; and

(3) in paragraph (8), as redesignated by inserting "other than completion of payments under the plan" after "in the plan".

Sec. 535. (a) Section 1322(a)(2) of title 11 of the United States Code is amended by inserting a comma after "payments".

(b) Section 1322(b) of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting ", or leave unaffected the rights of holders of any class of claims" before the semicolon;

(2) in paragraph (4), by inserting "other" after "claim or any";

(3) in paragraph (7), by—

(A) inserting "subject to section 365 of this title," before "provide";

(B) striking out "or rejection" and inserting in lieu thereof ", rejection, or assignment"; and

(C) striking out "under section 365 of this title" and inserting in lieu thereof "under such section"; and

(4) in paragraph (8), by striking out "any".

Sec. 536. Section 1323(c) of title 11 of the United States Code is amended by striking out "the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and" and inserting in lieu thereof "such plan as modified, unless".

Sec. 537. Section 1324 of title 11 of the United States Code is amended by striking out "the" the second place it appears.

Sec. 538. Section 1325(a)(1) of title 11 of the United States Code is amended by inserting "the" before "other".

Sec. 539. Section 1326(b)(2) of title 11 of the United States Code as amended by section 318 is amended by inserting "of this title" after "1302(d)".

Sec. 540. (a) Section 1328(a)(2) of title 11 of the United States Code is amended to read as follows:

"(2) of a kind specified in paragraph (5) or (8) of section 523(a) of this title.".

(b) Section 1328(e) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "by the debtor" after "obtained"; and

(2) in paragraph (2), by striking out "knowledge of such fraud came to the requesting party" and inserting in lieu thereof "the requesting party did not know of such fraud until".

Sec. 541. Section 1329(a) of title 11 of the United States Code is amended—

(1) by inserting "of the plan" after "confirmation";

(2) by striking out "a plan" and inserting in lieu thereof "such plan"; and

(3) in paragraph (3), by striking out the comma.

Sec. 542. Section 15102 of title 11 of the United States Code is amended by striking out "chapter" the first place it appears and inserting in lieu thereof "title".

Sec. 543. Section 15103(f) of title 11 of the United States Code is amended by—

(1) striking out "704 (8),";

(2) inserting "1106(a)(1), 1108," after "1105"; and

(3) inserting "1302(b)(1), 1302(b)(3)," after "1302(a),".

Sec. 544. Section 15322(b)(1) of title 11 of the United States Code is amended by—

(1) inserting "required to be" after "bond" the first place it appears;

(2) striking out "(2)"; and

(3) inserting "of this title" before the semicolon.

Sec. 545. Section 15324 of title 11 of the United States Code is amended by inserting a comma after "a trustee".

Sec. 546. Section 15330 of title 11 of the United States Code is amended by adding at the end thereof the following: "The notice required under section 330 of this title shall be given to the United States trustee.".

Sec. 547. (a) Section 15701(a) of title 11 of the United States Code is amended by striking out "trustee established" and inserting in lieu thereof "trustees established".

(b) Section 15701(b) of title 11 of the United States Code is amended by striking out "such persons" and inserting in lieu thereof "the members of such panel".

Sec. 548. (a) Section 15703(a) of title 11 of the United States Code is amended by striking out "specified in section 15701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee." and by inserting in lieu thereof "and subject to the provisions of sections 701 and 15701 of this title.".

(b) Section 15703(b) of title 11 of the United States Code is amended by striking out "truste" and inserting in lieu thereof "trustee".

Sec. 549. Section 15704 of title 11 of the United States Code is amended to read as follows:

"§ 15704. Duties of trustee

"The trustee shall—

"(1) if the business of the debtor is authorized to be operated, file with the United States trustee periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements; and

"(2) make and file interim reports, as circumstances justify, on the condition of the estate with the United States trustee and make and file a final report and account of the administration of the estate with the United States trustee and the court.".

Sec. 550. Section 151102(b) of title 11 of the United States Code is amended by striking out "interest of" and inserting in lieu thereof "interest,".

Sec. 551. (a) Chapter 15 of title 11 of the United States Code is amended by inserting after section 151105 the following new sections:

"§ 151106. Duties of trustee and examiner

"(a) A trustee shall perform the duties specified in sections 704(2), 704(4), 704(6), and 15704 of this title.

"(b) A trustee shall transmit a copy or a summary of any statement filed under section 1106(a)(4)(A) of this title to any creditors' committee, to any indenture trustee, to the United States trustee, and to any other entity as the court designates.

"§ 151108. Authorization to operate business

"Unless the court, upon the request of a party in interest or the United States trustee

and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business.".

(b) The table of sections for chapter 15 of title 11 of the United States Code is amended by inserting after the item relating to section 151105 the following new items:

"151106. Duties of trustee and examiner.
"151108. Authorization to operate business.".

Sec. 552. (a) Section 151302(a) of title 11 of the United States Code is amended by inserting ", or shall appoint a disinterested person to serve," after "The United States trustee shall serve".

(b) Section 151302(b) of title 11 of the United States Code is amended to read as follows:

"(b) The trustee shall—

"(1) perform the duties specified in sections 704(2), 704(4), 704(6), and 15704 of this title; and

"(2) dispose of, pursuant to regulations issued by the Attorney General, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act.".

Subtitle I—Miscellaneous

Sec. 561. If any provision of this title or any amendment made by this title, or the application thereof to any person or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby.

Sec. 562. Notwithstanding the provisions of section 8331(22) of title 5, United States Code, or any other provision of law, for purposes of section 8339(n) of title 5, United States Code, any individual appointed under section 34 of the Bankruptcy Act who served as a United States bankruptcy judge for the district of Oregon or for the Central district of California until March 31, 1984, shall receive an annuity computed with respect to his service as a referee in bankruptcy and as a bankruptcy judge, and his military service (not exceeding five years) creditable under section 8332 of title 5, United States Code, by multiplying 2½ per centum of his average annual pay by the years of that service.

Sec. 563. The amendments made by this title shall become effective upon the date of enactment of this title.

Amend the title so as to read: "An Act to amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes.".

ORDER FOR STAR PRINT—S. 2620

Mr. BAKER. Mr. President, I ask unanimous consent that S. 2620 be star printed to reflect the changes which I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

H.R. 4997 PLACED ON CALENDAR

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be discharged from further consideration of H.R. 4997, marine mammal, and that that item be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

VITIATION OF SENATE RESOLUTION 397

Mr. BAKER. Mr. President, next I say to the minority leader that my folder indicates need to vitiate action on Senate Resolution 397 and to proceed further on that matter, if he is agreeable.

Mr. BYRD. Mr. President, the matter has been cleared on this side.

Mr. BAKER. I thank the minority leader.

Mr. President, then I ask unanimous consent that passage and the motion to table and the motion to reconsider Senate Resolution 397, an original resolution to pay a gratuity to Mattie Washington, be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVATE RELIEF

Mr. BAKER. Now, Mr. President, I ask unanimous consent that Senate Resolution 397 be made the pending business before the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 397) to pay a gratuity to Mattie Washington.

The Senate proceeded to consider the resolution.

AMENDMENT NO. 3332

(Purpose: Technical amendment to S. Res. 397)

Mr. BAKER. Mr. President, I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. Baker] proposes an amendment numbered 3332:

On page 1, line 4, strike out "Senate" and insert in lieu thereof "Architect of the Capitol assigned to duty on the Senate side of the Capitol grounds".

The amendment (No. 3332) was agreed to.

The question is on agreeing to the resolution, as amended.

The resolution (S. Res. 397) was agreed to.

The resolution is as follows:

S. Res. 397

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Architect of the Capitol assigned to duty on the Senate side of the Capitol grounds to Mattie Washington, mother of Robert A. Hunter, an employee of the Senate at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. BAKER. Mr. President, I now send to the desk a resolution for myself and the distinguished minority leader in respect to representation by the Senate Legal Counsel, and I ask the Senate turn to its consideration.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

A resolution (S. Res. 413) to direct the Senate Legal Counsel to represent Patrick J. Griffin in Lyndon H. LaRouche, Jr., and The LaRouche Campaign versus Donald T. Regan, Secretary of the Treasury.

Mr. BAKER. Mr. President, in 1968, the Congress enacted Public Law 90-331 to authorize the Secret Service to provide protection to major Presidential and Vice Presidential candidates. This protection is to be extended, in the words of the statute, "to persons who are determined from time to time by the Secretary of the Treasury, after consultation with the advisory committee, as being major presidential or vice presidential candidates who should receive such protection. * * *"

The law provides that the advisory committee shall consist of the Speaker and the minority leader of the House, the majority and minority leaders of the Senate, and an additional member chosen by them. Former Attorney General and Secretary of State William P. Rogers is presently the fifth member. The members of the advisory committee approach their statutory assignment with considerable care and responsibility. It should be clear, nonetheless, from the language of the statute, that the law vests in the Secretary of the Treasury, not in the advisory committee, the legal responsibility for determining who should receive Secret Service protection. The role of the advisory committee is to offer advice to the Secretary, who must then exercise his discretion under the statute.

Lyndon H. LaRouche, Jr., who has campaigned this year for the Democratic Presidential nomination, has brought an action against the Secretary of the Treasury to challenge the Secretary's determination that Mr. LaRouche is not a major Presidential candidate who should receive protection. In pursuing his lawsuit, Mr. LaRouche's counsel has served a deposition subpoena on Patrick J. Griffin, the secretary for the minority, who is Senator Byrd's representative on the advisory committee. Similar deposition subpoenas have been served on the representatives for Speaker O'Neill and House Minority Leader Michel.

The following resolution authorizes the Senate Legal Counsel to represent Mr. Griffin in these discovery proceedings.

The **PRESIDING OFFICER.** The question is on agreeing to the resolution.

The resolution (S. Res. 413) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 413

Whereas, in the case of *Lyndon H. La Rouche, Jr. and The LaRouche Campaign* v. *Donald T. Regan, Secretary of the Treasury,* Case No. 84-0190-A, pending in the United States District Court for the Eastern District of Virginia, the plaintiffs are challenging the determination of the Secretary of the Treasury, pursuant to Public Law 90-331, as amended, not to provide Secret Service protection to Lyndon H. LaRouche, Jr.;

Whereas, the plaintiffs in that action have caused the United States District Court for the District of Columbia to issue a deposition subpoena, No. F.S. 84-0355, to Patrick J. Griffin, the Secretary for the Minority, for testimony and documents;

Whereas, pursuant to section 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to defend an officer of the Senate with respect to any subpoena directed to him in his official capacity: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Patrick J. Griffin in *Lyndon H. LaRouche, Jr., and The LaRouche Campaign* v. *Donald T. Regan, Secretary of the Treasury.*

Mr. **BAKER.** Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. **BYRD.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

H.R. 5404 PLACED ON THE CALENDAR

Mr. **BAKER.** Mr. President, the requests I have now, I believe, have all been cleared, according to the notations that appear on their face. Let me run through them.

I ask unanimous consent that the Armed Services Committee be discharged from further consideration of H.R. 5404, the Panama Canal Commission, and that that item be placed on the calendar.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. **BAKER.** Mr. President, I thank the minority leader for his cooperation in clearing this collection of things that we have now dealt with by unanimous consent.

EXECUTIVE CALENDAR

Mr. **BAKER.** Mr. President, there are nominations on the Executive Calendar which are cleared on this side. May I inquire of the minority leader if he is prepared to clear any of the nominations on his side at this time?

Mr. **BYRD.** Mr. President, this side has cleared the following calendar orders numbered 660, 661, and 663, all of which appear on page 7 of the Executive Calendar.

Mr. **BAKER.** I thank the minority leader.

EXECUTIVE SESSION

Mr. **BAKER.** Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering those three nominations.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

There being no objection, the Senate proceeded to the consideration of executive business.

The **PRESIDING OFFICER.** The nominations will be stated.

DEPARTMENT OF STATE

The legislative clerk read the nomination of Edward E. Wolfe, of Virginia, to be Deputy Assistant Secretary of State for Oceans and Fisheries Affairs.

Mr. **MURKOWSKI.** Mr. President, I am pleased today to support the confirmation of Mr. Edward Wolfe for the rank of U.S. Ambassador. Mr. Wolfe is the primary person in the State Department responsible for international fishery affairs. As such, Mr. Wolfe will be intimately involved on a day-to-day basis in dealing with controversial fishery problems of great significance to U.S. fishery interests. For example, he has been instrumental in working with Japanese and Republic of Korea officials to increase trade in fishery products and to reduce barriers to U.S. fish exports. Mr. Wolfe personally led a U.S. mission to Japan and Korea to raise important U.S. concerns on this matter in late May of this year.

Mr. Wolfe is the person in the State Department also responsible for renegotiating Governing International Fishery Agreements (GIFA's). He has renegotiated GIFA agreements with Romania, Denmark, and the Faroe Islands, and is currently leading U.S. efforts in a very sensitive GIFA renegotiation with the European Economic Community. Mr. Wolfe was the primary Federal official responsible for the proposed extension of GIFA agreements with the Soviet Union and Poland.

Mr. Wolfe has been instrumental in urging Latin American nations to ratify the Eastern Pacific Ocean Tuna Fishing Agreement, signed by the United States and four other nations in 1983. Once the treaty enters into force, it will establish a regional licensing system for tuna fishing in the eastern Pacific, providing U.S. vessels with access to this important fishing ground. Mr. Wolfe has led several other delegations to Central America in recent months to urge the remaining three nations—Costa Rica, Honduras, and Guatemala—to ratify the agreement and allow it to take effect.

Another important aspect of Mr. Wolfe's responsibilities will center on his role in overseeing the allocation of about 1.6 million metric tons of surplus U.S. fishery resources to foreign countries. Such allocations require effective and continual coordination with various affected U.S. fishery interests. Mr. Wolfe has, in all of his endeavors on behalf of the American fishing industry, been highly supportive of and sensitive to the goals of Congress and the industry in using U.S. surplus fishery resources in ways which will maximize benefits to our domestic fishing industry.

I take this opportunity to congratulate Mr. Wolfe for a job well done and do wish him success in his future work as a U.S. Ambassador.

The **PRESIDING OFFICER.** The nomination is considered and confirmed.

Mr. **BAKER.** Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. **BYRD.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

The legislative clerk read the nomination of Frances Todd Stewart, of Pennsylvania, to be a member of the Board of Directors of the Overseas Private Investment Corporation.

The **PRESIDING OFFICER.** The nomination is considered and confirmed.

Mr. **BAKER.** Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. **BYRD.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF ENERGY

The legislative clerk read the nomination of Charles G. Stalon, of Illinois, to be a member of the Federal Energy Regulatory Commission.

Mr. **McCLURE.** Mr. President, I rise in strong support of the nomination of Charles G. Stalon to be a member of the Federal Energy Regulatory Commission. On June 20 the Committee on Energy and Natural Resources favorably reported Dr. Stalon's nomination by a vote of 19 to 0. A hearing was held to consider the nomination on June 7.

Dr. Stalon is well qualified to effectively carry out the responsibilities of a FERC Commissioner. He has served as a commissioner on the Illinois Commerce Commission since 1977. Prior to that appointment, he was an associate professor of economics at Southern Illinois University. He also worked as a research economist for the Federal Power Commission from 1969 to 1970.

Mr. President, on behalf of the Committee on Energy and Natural Resources, I am pleased to recommend Senate confirmation of Charles G. Stalon to be a member of the Federal Energy Regulatory Commission.

The **PRESIDING OFFICER.** Without objection, the nomination is considered and confirmed.

Mr. **BAKER.** Mr. President, I ask unanimous consent that it may be in order to reconsider the vote by which each nomination was confirmed with a single motion.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. **BAKER.** Mr. President, I make that motion.

Mr. **BYRD.** Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. **BAKER.** Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. **BAKER.** Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

PROGRAM

Mr. **BAKER.** Mr. President, on Monday next, the Senate will convene at 11 a.m. After the recognition of the two leaders under the standing order, two Senators will be recognized on special orders, after the execution of which, there will be a time for the transaction of routine morning business.

It has been announced that the leadership will ask the Senate to turn to the consideration of the so-called Public Law 480 conference report at that time. It is also hoped that the Senate can reach and dispose of two other items on Monday, to wit, the child restraint bill and the math-science bill.

Mr. President, I expect votes throughout the day on Monday. At this time I do not anticipate a late day on Monday, but Senators should be aware that late evenings are possible at any time next week in view of the fact that this is the last week before our scheduled recess prior to the Fourth of July.

ORDERS FOR MONDAY, JUNE 25, 1984

UNANIMOUS-CONSENT AGREEMENT

Mr. **BAKER.** Mr. President, I shall propose a unanimous-consent agreement with respect to an adjournment of the Senate for the consideration of the minority leader at this time. I believe it is in the usual form, what has become the usual form for this language, and I hope there is no objection.

Mr. President, I ask unanimous consent that if the Senate adjourns today, when it next convenes it do so on Monday, June 25, 1984, at the hour of 12 noon, and that at that time the reading of the Journal be dispensed with, that no resolutions come over under the rule, and that the call of the calendar be dispensed with; and that following the recognition of the two leaders under the standing order, there be special orders in favor of the Senator from Wisconsin [Mr. PROXMIRE] and the Senator from Arizona [Mr. DECONCINI] for not to exceed 15 minutes each, to be followed by a period for the transaction of routine morning business of not longer than 30 minutes in length in which Senators may speak for not more than 5 minutes each; and provided further that the morning hour be deemed to have expired.

Mr. **BYRD.** Mr. President, reserving the right to object, I shall not object.

Mr. **BAKER.** Mr. President, I amend the request that states 12 o'clock to 11 a.m.

The **PRESIDING OFFICER.** Is there objection to the request of the majority leader?

Mr. **BYRD.** There is no objection. I withdraw my reservation.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. MONDAY, JUNE 25, 1984

Mr. **BAKER.** Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 11 a.m. Monday next.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

SCHEDULE FOR MONDAY

Mr. **BAKER.** Mr. President, let me say before we get into the routine business that on Monday, after the two leaders are recognized and the special orders are executed and morning business is closed, it is the intention of the leadership to ask the Senate to turn to the consideration of the so-called Public Law 480 conference report, which is the conference report to accompany House Joint Resolution 492 making urgent supplemental appropriations.

Mr. **BYRD.** Mr. President, will the distinguished majority leader yield?

Mr. **BAKER.** I yield.

Mr. **BYRD.** I appreciate the majority leader's intention to proceed to that conference report. Would it be possible to get that consent today and now?

Mr. **BAKER.** Mr. President, I had earlier indicated to the minority leader that I would like to do that, but on checking, I find that I have one notation on my calendar and I cannot reach the Senator who made that notation. I do not believe that it is going to pose any problem because it is simply a "to notify" notation. But in fidelity to the requirements of the calendar, I prefer to do it this way, if the minority leader will understand.

Mr. **BYRD.** I certainly understand. In any event the distinguished majority leader could move to take up that privileged matter so Senators can be assured, can they not, that the Senate will be, one way or another, on that measure on Monday?

Mr. **BAKER.** Yes. Mr. President, the minority leader is absolutely right. I would prefer to do it by unanimous consent so that we preserve the status of the math-science bill but if necessary it would be the intention of the leadership on this side to move to the conference report which, as the minority leader pointed out, is a privileged matter and could be dealt with, I believe, very promptly.

Mr. **BYRD.** I thank the distinguished majority leader.

Mr. **BAKER.** Mr. President, in addition to the Public Law 480 conference report, it would be the hope of the leadership on this side that we could also do the math-science bill on Monday, which is Calendar Order No. 107, S. 1285, and the child restraint bill which carries the drunk driving legislation as an amendment, and that is Calendar Order 832, H.R. 4616. Both those other matters are still in negotiation, but I think there is a fair chance that we might be able to work them in as well.

In any event, Senators should be on notice that we will go to the Public Law 480 conference report, and it is the intention of the leadership to attempt to reach the other two items on Monday as well.

SCHEDULE FOR TUESDAY

Mr. **BAKER.** Mr. President, let me say a word about Tuesday. If we cannot get to the child restraint bill on Monday, it would be the intention of the leadership on this side to try to reach that bill on Tuesday.

I have indicated to a number of Senators, some on both sides of the aisle, that I would forgo trying to do that this week but that Tuesday is as far as I am willing to postpone action on that measure next week.

So I do anticipate that late Monday if possible or in any event on Tuesday the leadership on this side will ask the Senate to turn to the consideration of that bill.

Mr. LEVIN. Mr. President, will the majority leader yield for a question?

Mr. BAKER. I yield.

Mr. LEVIN. Mr. President, is it the majority leader's intention to go late on Monday night; does he know at this time?

Mr. BAKER. Mr. President, it depends. Let me say to the distinguished Senator from Michigan that I prefer not to go late on Monday, but I will consult with the minority leader and we will sort of try to figure out the week when we return and see what we need to do. But I would not now predict a late session on Monday.

Mr. LEVIN. I thank the majority leader.

Mr. BAKER. Mr. President, I have nothing further.

ADJOURNMENT UNTIL MONDAY, JUNE 25, 1984, AT 11 A.M.

Mr. BAKER. Mr. President, if the minority leader does not seek recognition, and he appears not to be, and no other Senator does, I move, in accordance with the order previously entered, that the Senate now stand in adjournment until Monday next at the hour of 11 a.m.

The motion was agreed to; and at 7:36 p.m., the Senate adjourned until Monday, June 25, 1984, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 21, 1984:

DEPARTMENT OF STATE

Edward E. Wolfe, of Virginia, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs, for the rank of Ambassador.

DEPARTMENT OF ENERGY

Charles G. Stalon, of Illinois, to be a member of the Federal Energy Regulatory Commission for a term expiring October 20, 1987.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Frances Todd Stewart, of Pennsylvania, to be a member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1986.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

EXTENSIONS OF REMARKS

A REPORT ON A TRIP TO POLAND, CZECHOSLOVAKIA, AND HUNGARY

HON. GILLIS W. LONG

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● **Mr. LONG** of Louisiana. Mr. Speaker, recently the Honorable Arnold A. Saltzman led a delegation representing the Business Council of the United Nations on a 10-day diplomatic mission to Poland, Czechoslovakia, and Hungary. While in these three Eastern bloc countries, Mr. Saltzman met with economic policymakers from various ministries, banks, and bureaus and with top political people within each country. They discussed trade, economic reform, defense, and bilateral political relationships in a frank and productive manner.

Mr. Saltzman, who is the chairman of the board and chief executive officer of Vista Resources, Inc., has carried out high-level diplomatic and economic assignments for four Presidents. His report of this recent trip to Eastern Europe takes on added significance in view of our tenuous relationship with the Soviet Union and general tensions with the Eastern bloc European countries.

I commend Mr. Saltzman's report and recommendations to the attention of my colleagues:

TRIP TO POLAND, CZECHOSLOVAKIA, AND HUNGARY: A REPORT AND RECOMMENDATIONS

This report concerns ten days that I spent with high-level officials in three communist countries, Poland, Czechoslovakia, and Hungary. These governments invited me to bring a delegation representing the Business Council of the United Nations to discuss political and economic issues that affect their relations with the United States. Our meetings involved policymakers in the Ministries of Foreign Affairs, Finance, and Commerce as well as the central banks and planning bureaus.

I was received with great courtesy by these officials, and our own ambassadors to the three countries received us graciously. The conversations were direct and marked by tough, frank exchanges that would not have been possible if I still represented our country. Although no Soviet diplomat attended the meetings, the Soviet Union was a crucial factor in these discussions.

My analysis of the trip is based on a consideration of the fact that we will spend almost a trillion dollars in the next three years arming ourselves. The substantial increases in the defense budget and the corresponding increase in the budget deficit are primarily reflections of how this administration perceives our situations vis a vis the Warsaw Pact countries in Eastern Europe.

It is essential for Americans to understand that there is no monolithic communist bloc contesting against the United States. There are differences resulting from national heritage and aspirations: Communist Poland is not the Soviet Unions' broker nor is Hungary Romania's and all have different perceptions of how their socialist economic systems should function. Hungary is developing a substantial degree of economic decentralization, leaving room for profit incentive, and individual decision making. Czechoslovakia is far less decentralized and the Soviet Union is committed to the rigidities of almost total central state planning. Poland had begun a policy of economic decentralization in the industrial area. It is continuing despite labor problems, shortages of supplies, materials, and capital. Agriculture is much less rigidly contolled. Decentralization or economic reform as they call it, is bringing political, social, and economic change. It is reducing the power of the central bureaucracy because the managers of the cooperatives are chosen by all the workers instead of appointed by the government. It is reducing government control over people's lives and is spawning an entrepreneurial attitude. In Hungary half the economy is decentralized, and in Poland 82 percent of agricultural production is "private", and not collectivized.

But none of this means that any of these countries intends to give up its form of government. One can debate whether the people of these countries would prefer to abandon socialism. But even if they so desired, their governments do not, nor would the Soviet Union allow such defections. Unless the United States is prepared to send troops to support a people's rebellion, which we proved in 1956 in Hungary we were not, then our present policies in many of these countries are stupid because they are counterproductive.

There is a general affection tinged with envy for the American people. Conversely, there is an active dislike and fear of our present government. Our leaders are perceived as militants who wish to impose their will on other countries, whether in Eastern Europe or Central America. This applies not only to President Reagan but to Vice President Bush, and even more to Secretary of Defense Weinberger, it applies less to Secretary of State Schultz only because he does not speak intemperately.

There has always been mistrust, and there have always been problems between the communist and capitalist countries and especially with the United States as leader of the democratic capitalist nations. Why then this recent burst of superantagonism and fear? It is not only a product of our military buildup and the development of Cruise and Pershing missiles in Germany, Italy, and Britain. There exists the perception of a fundamental change in U.S. policy that is directed toward pressuring these communist countries to distance themselves from the Soviet Union and also to liberalize and decentralize their economies and provide greater freedom of expression for their people. Our State Department has told the governments of Czechoslovakia and Poland that they must improve human rights and liberalize their economies if they want to get M.F.N. (most favored nation) treatment for their exports and lift the embargo on nonstrategic industrial shipments to Poland. Those countries find our position on human rights hypocritical because Romania has been accorded M.F.N. despite a brutally repressive system toward its people, which makes Poland and Czechoslovakia look good by comparison. Romania has been accorded M.F.N. status, these officials believe, because it sometimes deviates from the Soviet Union's international strategies. These officials consider our pressure intrusions in their internal affairs. How they handle dissenters and how they elect to run their economies are outcomes of their political and judicial systems and not subjects for U.S. economic and political pressures.

One can debate what U.S. pressure beyond moral suasion is appropriate when a nation is dealing with its own citizens. What is more pertinent and less debatable is whether such pressures achieve the administration's objectives of moving Poland and Czechoslovakia away from the Soviet Union.

Item 1: In the case of Czechoslovakia, our policy of impeding trade has (a) reduced such trade to a trickle and (b) kept Czechoslovakia a firm ally of the Soviet Union.

Item 2: Poland has just signed a long-term pact with the Soviet Union covering trade, technology, scientific investigation and so on. This will bring Poland more firmly into the Soviet orbit, precisely the opposite of what we want. Poland's officials have complained bitterly that in the seventies they produced goods designed for Western markets, bought and installed machinery to improve their industrial output and marketing arrangements with U.S. companies. U.S. economic strictures have reduced American trade to one third of what it was, have prevented Poles from getting spare parts to run their factories, have interrupted commercial relationships built over years and have had a severe effect on their G.N.P. Some of their problems, Polish officials say, result from their own inefficiencies, which they are trying to address, but much of their trouble is U.S. inspired (about 10 billion dollars, they assert). "It was a mistake to rely on the good will of the United States and we won't get trapped like that again", say Polish leaders.

There was, of course, the expected complaint about the introduction of Pershing and Cruise missiles in Western Europe and the real fears that these engender. Obviously the Poles are not frightened by the Soviet SS 20s poised at Western Europe, but I made clear that the Germans, Italians, Danes, English, and Benelux countries are. For the record, I remarked that the United States delivered Cruise and Pershing missiles after requests by our European allies and then only after the Soviet Union refused to remove its SS 20s. Thus a discussion of missiles and Voice of America broadcasts, which distrub them, occasioned no apology from our side. I stated that it would be more productive to discuss bilateral issues that apply to their countries individ-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

ually with the U.S. and leave the Soviet-United States problems aside.

In summary Czech and Polish officials believe that we have "hit" them instead of the Soviet Union because it is relatively easier to do and because they are part of the Warsaw Pact. The Czechs added that the West abandoned them in Munich in 1937 and questioned if they left the Soviet orbit, what true friends they could rely on?

The messages that we bring to our State Department are (1) nations that talk, don't fight; (2) our policies toward Czechoslovakia and Poland should not be the same as those toward the Soviets because we are solidifying instead of dividing them; (3) rigid communist central planning is not working, which will increasingly make these countries decentralize and liberalize—not because we have forced it but because they find it necessary to change. They will come closer to our economic system with correspondingly greater internal freedoms because ours works better, and they know it. The United States did not create the "Solidarity" movement in Poland; their own inefficient system did.

A number of positions taken by our host governments are important to recount. Leaders in Hungary, the most liberal of the three communist countries visited, remarked that (a) Hungary is and will remain, a faithful member of the Warsaw Pact; (b) Hungary relies substantially on imports for most materials, including energy; thus world dislocations (i.e., Iran and Iraq) or world tensions disturb it greatly; (c) although relations with the United States are "normal" U.S. rigidities in financing exports to Hungary are tougher than those of other Western nations. As a result, they are now buying soy beans from Brazil instead of the United States and altering long established commercial relationships; (d) they believe that the United States pushed Poland more deeply into the Soviet orbit and can not understand our behavior; (e) their new reforms apply to judicial and legislative areas as well as economic. For example, an individual or a company can now sue the state with impunity; (f) under the new economic system, state planning will be macroeconomic, and there will be general targets. The marketplace, world prices and profit objectives of individual companies will increasingly determine what is made, exported, imported, invested, and so on. This system will take Hungary farther away from the rigidities of doctrinaire socialism under which the individuals' satisfaction derives from being part of a state that owns everything. Now the individual has personal incentives. His needs and desires are more self-fulfilling: his satisfaction is greater; (g) there are tensions between Warsaw Pact members: For example, the Hungarian minority problem in Romania upsets Hungary, and trade negotiations with Russia are frequently though; (h) new "economic reform" weakens communist authority. A company is now managed by someone chosen by the workers who own the company. Mangers are either elected from within or recruited but are no longer appointed by the party minister. This process weakens the authority of the bureaucracy, which means the state. A confrontation may be looming between the cooperatives and the party in response to the momentum of the entrepreneurial society. The government intends to remain communist but needs the accomplishment of a market oriented economy. So far a delicate accommodation exists.

Czechoslovakia is experimenting with some degree of economic decentralization but far less than Hungry. The Czechs have advantages because they have more raw materials, a longer tradition of industrialization and thus less dependence on agriculture, and a more advanced technology. The Czechs were particularly gracious in making available technology. The Czechs were particularly gracious in making available to us their deputy foreign minister, foreign trade minister, chairman of the central bank, chairman of the State Planning Commission, secretary general of the Chamber of Commerce and Industry, among others, for two days of deliberations, questions, and comments. Among their comments were (a) they have very little trade with the United States because U.S. policies discourage it; although they do about four billion dollars annually with Western European; (b) Czechoslovakia is a staunch ally of the Soviet Union and will remain so. Minister Murin pointed out that the West had thrown his country to Hitler in 1937 and Russia was the only country the Czechs felt was a loyal friend; (c) the United States would not gain if Czechoslovakia left the Soviet orbit because it would disturb the "balance of forces" and could cause heightened tensions between the United States and the Soviet Union; (d) Czechoslovakia is credit worthy; it has not contracted large debts to the West. Its economy grew at a modest rate of about 3 percent (slightly less in the last years of world recession). Agriculture is growing moderately at 1 to 2 percent. By not overexpanding, Czechoslovakia achieved a surplus in foreign trade in 1982 and 1983; (e) Czechoslovakia would prefer better relations with the United States but not at the expense of changing socialist policies or internal security; (f) Czechoslovakia has continued to experience rebuffs from the United States, including a series of demands relating to settling old debts (which are settled) and cultural exchanges. After the Czechs have complied with the U.S. requests for changes, the United States has failed to conclude agreements or delayed them; (g) few U.S. business leaders visit Czechoslovakia. Because U.S. custom duties exclude a 30% premium for Czech goods, normal trade is not practical. They would welcome deals in such fields as science and technology in which they believe they can contribute as much as they receive.

Polish leaders in foreign affairs, economics and foreign trade engaged us in tough conversations. Although personally courteous, these leaders seemed frustrated and expressed hostility for the policies of the United States. They said that (a) the U.S. government—Reagan, Bush, Weinberger and the U.S. media maintain a barrage of anti-Polish propaganda, (b) the real U.S. purpose is to destroy socialism, and the "Solidarity propaganda" is an example. They released Walesa and many other Solidarity members except eleven and offered to release those eleven in return for their promise not to try to subvert the government. The eleven have refused, preferring to stay in jail to maintain a rallying point for social unrest; (c) they are attempting to decentralize and liberalize their economy not to placate the United States but because they need an infusion of entrepreneurial and market related expertise; (d) the denial of most favored nation status and the imposition of trade sanctions cut American trade by two thirds and made it more difficult to repay their Western debts which they are determined to do; (e) their economy foundered in the late seventies and has continued to do so in the eighties because of the greatly increased oil prices, the worldwide recession, the large increase in U.S. interest rates on their debts plus their own overexpansion and inefficiencies of production and management; (f) these problems and corresponding decreases in the standard of living created the "Solidarity" movement, which they tolerated and endeavored to deal with on economic terms. When this movement became political, threatening revolutionary political changes, the government could not permit its continuation. U.S. economic sanctions in support of internal social unrest constituted an intrusion in Poland's internal affairs and dealt a further blow to Poland's already troubled economy (g) deprived of trade and spare parts for machinery sold by the United States on credit; pressed to repay debts and claiming that U.S. actions hurt by more than ten billion dollars, Poland is orienting itself more closely to the Soviet Union. Polish leaders have recently concluded a major long-range treaty with the Soviet Union extending through 1995 and beyond. It constitutes a general framework for trade, technological assistance, scientific exchange, and so on and it provides for a series of individual agreements between Polish and Soviet entities. Poland will, as a result, be pulled deeper into the Soviet Union's orbit; (h) Polish leaders intend to pursue economic reform (decentralization) despite the hardships of their staggering economy and despite their new close ties being developed with the Soviet Union.

My conclusions are (a) the United States will not succeed in forcing any of these three countries to weaken its adherence to the Warsaw Pact; (b) the bellicose language used by this administration is counterproductive. The more pressure we use, the easier it is for communist governments to propagandize their people, picturing the United States as a militaristic bully; (c) the greatest weapon we have is the failure of the communist economic system which is not working and which they need to shore up through the use of market forces and individual profit incentives. Without U.S. pressure they will be forced to liberalize and in so doing will weaken the doctrinaire state controlled system; (d) we should talk and trade. We should not threaten, pressure, nor provide unusual help. We should take moral positions without imposing sanctions regarding human rights. We should certainly keep transmitting Voice of America and Radio Free Europe broadcasts. We should seek accords on arms control. In summary we should walk softly and carry an adequate big stick.●

LETTER CRITICIZING ACID RAIN DAMAGE

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. SIKORSKI. Mr. Speaker, several weeks ago the National Coal Association and the Edison Electric Institute distributed a letter to Members of Congress criticizing a new report by the National Wildlife Federation on the damage acid rain is causing in non-New England States. I believe the

letter misrepresents both the problem of acid rain and the report.

Given the importance of this issue to our environment, I am submitting for the RECORD a response sent to me from the National Wildlife Federation. As the letter points out, the evidence on this issue is clear. The acidity of precipitation in many areas is increasing because of manmade pollutants, particularly coal-fired utility plants.

It is time to stop raising bogus issues and address the serious problem of acid rain.

The letter follows:

NATIONAL WILDLIFE FEDERATION,
Washington, DC, June 7, 1984.

Hon. GERRY SIKORSKI,
U.S. Representative, Washington, DC.

DEAR CONGRESSMAN SIKORSKI: As you are aware, the National Wildlife Federation recently released a report documenting the impacts of acid rain on 21 non-New England states. The report provided dramatic evidence that acid rain isn't just New England's problem anymore, and attracted nationwide media attention. This, in turn, elicited a reaction from the National Coal Association and Edison Electric Institute—in the form of a joint, May 4th, letter distributed to members of Congress. While I have received no inquiries regarding the letter, it does raise several questions—a few of which merit brief response.

(1) EEI/NCA contend that "NWP's assertion of abnormally acidic precipitation . . . is . . . misleading" because it assumes natural rainfall has a pH of 5.6. In actuality, they claim, natural rainfall may have a pH value ranging "from pH 4.9 to 6.5"

Neutral precipitation has a pH of 7.0. When rainfall mixes with the carbon dioxide naturally present in the atmosphere, the carbonic acid causes most rainfall to be slightly acidic with a pH of 5.6. Based upon climatological conditions, the pH of unpolluted rainfall may vary slightly from this level. If one chooses to accept the contention that normal rainfall has a pH as low as 4.9, the fact remains that precipitation hundreds (instead of thousands) of time more acidic than normal—more acid than lemon juice—has fallen in States as geographically distant as West Virginia, California, and Pennsylvania.[1]

(2) EEI/NCA dispute the "NWF assertion . . . 'that SO_2 emissions have tripled since 1950'". They contend that SO_2 emissions have actually increased from "22.5 million short tons in 1950 . . . to 23.6 million tons in 1982."

The National Wildlife Federation press release which accompanied the report states that "SO_2 emissions *from eastern power plants* have tripled since 1950" (emphasis added). This statement is correct. SO_2 emissions from power plants located in the eastern 31 states have increased from 4.3 million tons in 1950 to 15.2 million tons in 1980."[2] Some copies of the report were released with a statement in the introduction that: "SO_2 emissions have tripled since 1950" (the qualifier: "from eastern power plants", was inadvertently omitted.) This error was quickly corrected in subsequently released copies of the report.

(3) EEI/NCA contend they ". . . can see no basis for NWF's assertion that SO_2 emissions 'are projected to increase another 2-3 million tons annually by the year 2000' ".

This NWF projection was taken directly from the U.S.-Canada Memorandum of Intent on Transboundary Pollution (Final Report, June 1982). The data presented in the report were compiled as a joint project of the U.S. Environmental Protection Agency and Environmental Canada. These projections clearly show that SO_2 emissions are projected to increase from 24.1 million tons in 1980, to 26.6 million tons in the year 2000. In addition, NO_x emissions (which are the primary cause of acid rain in the far west), are projected to increase from 19.3 to 24.1 million tons. (Copies of these projections, extracted from the report, are attached.) It is useful to note that in both cases, the primary source of this pollution is the electric utility industry.

In their joint letter to Members of Congress, the Edison Electric Institute and the National Coal Association are again attempting to divert attention from the real issue at hand: Over 24 million tons of sulfur dioxide is emitted each year in the U.S. Given the broad, documented impacts this pollution is having on natural and human resources—that is millions of tons too much.

Sincerely,

STEVEN HOWARDS,
Legislative Representative, Pollution and Toxic Substances Division.●

ECONOMIC SUCCESS DOESN'T DEPEND ON MANAGEMENT FADS

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. CARR. Mr. Speaker, much has been written about how America can achieve economic success by using one management scheme or another. I would like to present a success story which has nothing to do with the latest fad in management theory. Judy Cameron of White Lake Township in Michigan has built a business through hard work and determination. She has made a new life for herself and her family, and employs 14 other people as well.

The following article from the June 4, 1984, Detroit Free Press tells Judy Cameron's story:

PROFILE: JUDY CAMERON, SUCCESS IN THE GRAPHICS BUSINESS

(By Alan Abrams)

When Judy Cameron set up a typesetting business in her Milford home in 1975, she was afraid the two heavy typesetting machines in her living room might go crashing through the floor.

Instead, Cameron's company, IT Unlimited Inc., soared through the roof, financially.

Today, Cameron has six computerized typesetting machines in a Lathrup Village suite of offices, home to her fast-growing typesetting, keylining and graphic arts production firm.

Cameron, 40, divorced mother of three (son John, 20, is IT's bookkeeper and daughter Jody, 18, is a company account executive), was one of the first women in the Detroit area to invade the male domain of typesetting. Of IT's 14 employes, 11 are women.

Beginning with $45,715 in sales in 1975, IT's first year in operation, the corporation has grown steadily: Sales in 1983 totaled $430,812.

Cameron is the oldest of four children of an assembly line worker at the Ford plant in Livonia. She grew up in the Seven Mile and Southfield area of Detroit's northwest side and attended public and Catholic schools. While a student at Benedictine High, Cameron edited The Raven, one of the few school newspapers typeset and printed by journalism students. Although she went on to Marygrove College to study chemistry, that first smudge of printer's ink was to leave an indelible mark on her future.

To help pay her tuition, Cameron took a part-time job at Detroit's Oak Offset printers, owned and operated by Virginia DeBerry. When Cameron's fiance was sent with the army to Germany during the Berlin Wall crisis, she followed him. They were married in Basel, Switzerland, and lived in Germany. John was born in Heidelberg in 1964, and Jody followed a year and a half later while the Camerons were stationed in Williamsburg, Va.

When the family moved to the Washington suburb of Arlington, Va., Judy Cameron took a job with a printer. The Camerons returned to Detroit, where her husband started a trucking company and she continued to work for printing companies.

After they moved to Milford in 1974, she gave birth to Jessica, who contracted meningitis; a few months later, the marriage broke down when her husband left.

Stunned by the turn of events and worried about Jessica's illness, Cameron found herself unable to work. One day, a notice was nailed to her front door: Her house was to be foreclosed and sold at a sheriff's auction. And Cameron had fallen behind on her utility bills. She believes that "the only reason our electricity and heat weren't cut off was because (the utilities had policies not) to do so while there was an infant under 18 months in the house."

She applied for emergency welfare and was receiving $33 a month on which to feed her family.

A few months later, Cameron had marshaled her strength and was able to work for another typesetting company. Even with her salary, she still needed an additional $250 a month just to pay bills.

Cameron took inventory and realized she had few marketable skills other than printing and typesetting.

Virginia DeBerry at Oak Offset advised Cameron to go into business for herself. But how was a divorced mother of three with no credit record, unpaid utility bills and a barely averted house foreclosure going to find financing? Cameron determined that she would buy a typesetting machine and set up her own business at home while continuing to work at her full-time job.

But there was no way a commercial bank would lend her the money. And trying to get a loan from the Small Business Administration was just as hopeless.

Cameron borrowed $800 from her father. Using the loan as down payment, she bought a new $8,500 IBM typesetter in

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[1] According to the NWF report, West Virginia has received rainfall with a pH of 1.5; California has monitored fog with a pH of 1.5; and Pennsylvania has received rainfall with pH 2.3. All 21 non-New England states analyzed in the report, have received rainfall with a pH of less than 4.9.

[2] Gschwandtner, Gerhard; Gschwandtner, K.C.; Eldridge, K. "Historic Emissions of Sulfur and Nitrogen Oxides in the U.S. from 1900 to 1980" (November, 1983). EPA contract No. 68-02-3511.

March 1975 and set it up in her living room. IBM did not send her an operator's manual, so she taught herself how to use the machine.

The business did so well that a month later there were two typesetting machines in the living room. "I was always worried about having all of that heavy equipment in the house," Cameron remembers, "I was afraid that it would all go through the floor."

By Thanksgiving, Cameron had quit her job and was devoting her attention to IT Unlimited, which had two full-time employees. She repaid her father and moved her equipment to an office building.

What made her company such a success? In addition to Cameron's personalized service and eye for detail, there was her sense of timing.

Cameron's decision to set up her own typesetting business dovetailed with the paper explosion of the mid-1970s. Suddenly, every organization with more members than could meet in a telephone booth decided to issue a newsletter or monthly newspaper. And because of new technology, typesetting was cheaper; no longer was it a specialized service that only advertising agencies could afford.

Cameron incorporated IT Unlimited in 1977. By 1979, she began to take herself out of production work and started devoting some time to management. "I saw that we were more than just a group of people coming to an office and working together," says Cameron, "and I realized that somebody has to take charge and somebody has to manage."

IT Unlimited has an impressive list of clients, including a long list of non-profit service agencies, large printers who farm out assignments to IT for clients, and many of the area's Jewish oganizations. "Pioneer Women was one of our first accounts, and we still do their work today," says Cameron. She also does work for the Jewish Community Center, Hillel Day School, Akiva Hebrew Day School, the Holocaust Memorial Center, and some Orthodox Lubavitcher rabbis.

Cameron's clients praise her lavishly. Scott Brown, assistant executive director of the Jewish Community Center, says Cameron "runs an on-time business." Dr. Morton Plotnick, Brown's boss, puts it this way: "From a consumer perspective, she runs a quality operation."

Recently IT created packaging designs for new products ranging from incense boxes to automotive brushes. IT even produces ads.

Cameron would like to expand into design work. She would like to see IT "get away from being a typesetting company and become more of a graphics company. I have some excellent artists who do some really good work, but I just haven't pushed that aspect of the company. I'd like to take a job from start to finish—to take your rough ideas and present you with a finished product and say IT did all of this."

Cameron worked 16-hour days until recently and still takes work home every night. "I have guilt feelings about being a parent," she says. "And I try to spend time with my youngest daughter. My two older children are more like my friends now. My son has worked with me since he was 12 and started doing my bookkeeping. But I want all my kids to have some sort of trade. Jessica wants to become a veterinarian and not follow me into my business like the other two. She's going to have to learn how to do something in case she doesn't make it through all those years in college. Who knows what I would have done if I had not known a trade?"

In late April, Cameron signed the partnership papers for a new venture, the Quorum, "a business guidance group." Cameron explains. "We see our market as either those just beginning a business or those threshold businesses that would benefit from outside trouble-shooting analysis." Her partners are attorney Nina Dodge Abrams, a partner in Schwartz, Knauer, Meisner and Abrams; CPA Judith Trepeck of Grey, Trepeck & Cohen; and cash flow consultant Tamara Van Wormer, owner of Services-on-Site. Cameron's responsibility is in graphics.

Cameron's involvement in helping others solve business problems is a logical extension of what she sees as her greatest skill: An ability to trouble-shoot.

"It's more of a skill than a technique," she says. "You just have to sit back and analyze. I zero in on the problem and see what I can offer as a solution."

What does Cameron see in her future? "I want to increase my sales," she replies, "and I can do so without increasing our fixed overhead. We're working two shifts now, so there's no reason why we can't fill them out a little bit. I think we've got nowhere to go but up. If we're going to make a move forward, now is the time to do it."

"I guess I have to feel proud when I look back and see how far my business had come," Cameron said. "Sometimes you can get hung up on the everyday dealings in business and the everyday problems and you neglect to see how far you've come.

"I've come a long way in 10 years," Cameron said. ●

A TRIBUTE TO DON BIALON

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. LIPINSKI. Mr. Speaker, I would like to pay tribute to a respected citizen of Illinois' Fifth Congressional District, which I am privileged to represent, and he is Don Bialon. Don has consistently shown a deep concern and unselfish willingness to help his neighbors on the southwest side.

Don Bialon has been a long time resident of the Garfield Ridge area and his participation in causes and campaigns to improve the community have long been his trademark.

I join with the residents of the Fifth Congressional District in paying tribute to Don Bialon for his work in our behalf, and I would like to introduce into today's Congressional Record a newspaper article honoring Don Bialon upon his receipt of the Ray McDonald Community Achievement Award.

The article follows:

[From the Midway Sentinel]

McDonald Award to Bialon

For many years Don Bialon has been involved in various community programs and has demonstrated a deep concern and unselfish willingness to help his neighbors on the southwest side. His goals have always centered around improving the quality of life in the 23rd Ward. The Midway Sentinel is extremely honored to name Don Bialon as our monthly recipient of the Raymond McDonald Community Achievement Award.

Donald Bialon has been a long time resident of the Garfield Ridge Area. Mr. Bialon was born in this area and attended the Mark Twain Grammer School, the Central Y.M.C.A. Hgh School of which he graduated in 1939. He attended DePaul University for two years before being drafted into the U.S. Army where he spent the next three years serving as a Army Medic.

Mr. Bialon married Helen Dzialowy, a local girl and has raised a family of three sons and one daughter. Mr. Bialon's daughter is deceased but his sons are active in the present business which was started by Mr. Bialon's parents Mr. and Mrs. Felix Bialon. Originally a General Store it has grown and developed into the present day Midwest Department Store.

The Bialon Family as a long time resident and pioneer in the Garfield business community has seen the many changes that have taken place in this area. Don took an interest in the family business at about the age of 15 and has helped it grow along with the community.

He has taken an active role in several area organizations including the Garfield Ridge Chamber of Commerce which he served as Treasurer, Past President and Director of the Midway Kiwanis, Director in the Century Savings and Loan located in Garfield Ridge, Member of the Knights of Columbus, and the Chicago Chamber of Commerce to name a few.

Mr. Bialon has enjoyed living in the family atmosphere of the Garfield Ridge Area for several years. He has seen many residents come and go but the area has never lost its friendly and neighborly attitude. "The people of Garfield are proud of the Garfield Ridge area and try to make it an exceptional place to live and raise a family."

The efforts and unlimited involvement in causes or campaigns to improve the community have long been the trademarks of Don Bialon and it is with that sense of dedication that we honor him this month. ●

THE 24TH MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GILMAN. Mr. Speaker, the 24th Mexico-United States Interparliamentary Conference, which was held in our Nation's Capitol on May 17-19, 1984, was led by the distinguished gentleman from Texas [Mr. de la Garza] and the Senator from Kansas [Mrs. Kassebaum]. Through their cooperative efforts, I presented a paper on our bilateral efforts to combat drug trafficking and drug abuse before the Conference's Political Committee, which was chaired by Senator Kassebaum and Senator Antonio Riva Placio Lopez of Mexico.

On three occasions in the 24-year history of this bilateral conference, legislators have adopted resolutions relating to complex issues governing the relations between our two nations, and in all three instances these resolutions pertained to drug-related issues. In those three instances, I am pleased that my papers on drug trafficking and drug abuse were the catalytic force that helped formulate those resolutions. In 1977, the parliamentarians adopted the Hermosillo Declaration on Combating the Traffic in Drugs at the International Level; in 1982, the Interparliamentary Conference adopted the Santa Barbara accord committing both nations to elevate to the highest priority the problems emanating from narcotics production, trafficking and abuse and pledging both nations to develop a comprehensive, coordinated regional drug strategy; and at the recent 24th bilateral Interparliamentary Conference, the parliamentarians adopted a resolution establishing a working group to assist the conference in its efforts to combat drug trafficking and drug abuse.

The objectives of the working group, which is to report annually to our bilateral conference, are:

First, to follow up on tasks necessary to achieve in both nations campaigns against the illicit production of narcotics;

Second, to analyze existing agreements for the purpose of bringing them up to date;

Third, to use the findings of the working group to formulate recommendations to the executives responsible for their implementation;

Fourth, to recommend measures, including drug education campaigns designed to warn about the dangers of drug abuse; and

Fifth, to ensure that modern instruments and technological advances are provided to improve the efforts in each nation to effectively combat the trafficking of illicit drugs.

The time to implement these well-intentioned resolutions is upon us. Nations throughout the world must recognize that it is their national interest to join in a collective manner to pool their resources, personnel, equipment, and funds to formulate global and regional drug strategies that would effectively prevent and control the menace of drug trafficking and the debilitating effects of drug abuse.

Mr. Speaker, in an effort to inform my colleagues of the details of the Interparliamentary conference's newly created working group, I am at this point in the Record inserting the complete text of my statement before the conference's political committee and the complete text of the resolution that was adopted by the delegations of both nations at the 24th Mexico-United States Interparliamentary Conference:

Statement of Hon. Benjamin A. Gilman

Mr. Chairman, distinguished legislators from Mexico and the United States, I am pleased to participate again with our Mexican colleagues in the 24th Mexico-United States Interparliamentary Conference and would also like to join my colleagues in welcoming the distinguished President of Mexico, Miguel de la Madrid, to our Nation's Capital. His visit, which ended yesterday, represents a commitment between the presidents of our two nations, like our annual Interparliamentary Conference, to meet once a year. Our annual interparliamentary conference which has been in existence for nearly a quarter of century provides a unique forum and opportunity for us, as friends and neighbors, and as elected officials, to discuss candidly how we can best resolve the intricate political, economic and social issues confronting our two nations.

Narcotics trafficking and drug abuse is creating havoc not only for our two nations but also for nations throughout the world. As the Ranking Minority Member of the House Select Committee on Narcotics Abuse and Control, which is chaired by my distinguished colleague from New York (Mr. Charles B. Rangel), and as a Member of the House Foreign Affairs Committee, I wish that I could report that the drug problem has diminished since we met last year in Puebla, Mexico. Instead of getting better, the problems of narcotics trafficking and drug abuse have grown worse.

Drug traffic and abuse is adversely affecting the political, economic and social institutions of nations throughout the world. Just in the United States alone, narcotics trafficking has reached a staggering $90 billion activity . . . and this estimated $90 billion illicit, untaxed, drug trafficking activity is a conservative figure. These narcodollars exceed the sales of our largest industrial corporation, Exxon, whose sales last year reached $88.5 billion and whose assets of nearly $63 billion rank number one among the 500 largest United States industrial corporations.

Narcotics trafficking and drug abuse is not a Mexican problem or a United States problem; rather, it is a global problem. It is growing by leaps and bounds, adversely affecting the health of citizens throughout the world and undermining the political, economic and social institutions of nations in every region of the world.

The international criminal syndicates and the drug traffickers are becoming more ruthless and daring. For example, last month . . . on April 30th, 1984 . . . the Columbian Minister of Justice, Rodrigo Lara Bonilla, was gunned down by the drug traffickers while on his way home from work. the Justice Minister was instrumental in helping his nation conduct a world record-breaking seizure of 12.5 tons of cocaine worth an estimated $1.8 billion. He was also a leader in promoting Colombia's recent decision to conduct experimental testing of herbicidal eradication methods to eliminate the cultivation of marihuana and coca. Under the leadership of Colombian President Belisano Betancur, that nation has declared a state of seige and has launched a massive drive against the narcotics traffickers. In the two weeks since Lara Bonilla was murdered, more than 100 suspects have been arrested and several drug traffickers have been extradited. President Betancur has requested a world pact to wage war against these international traffickers, a proposal that the United States and Venezuela have joined.

Furthermore, the devastating effect that narcotics trafficking is having on our institutions is clearly reflected by President Betancur's statement that was made shortly before the assassination of the Colombian Minister of Justice. He stated:

"I insist that we are faced with a new, more lethal menace, because it does not manifest itself solely in a classic revolt against legitimate authority, but rather with its startling strategy and plan of action attempts to overpower the state practically as a secondary objective because it first accomplishes the stage of demoralization by means of money; with a society's core destroyed in this manner, the state falls almost on its own."

Under the leadership of Chairman Rangel, last August our Narcotics Select Committee visited Mexico as part of its fact-finding misson to Latin America. We had the opportunity to meet with your distinguished Attorney General Garcia Ramirez and to fly over the rugged mountainous region of Michoacan/Guerrero to see and to learn at first-hand how your drug law enforcement officials conduct their marihuana eradication projects. We are deeply impressed by their dedicated efforts, and we admire their expertise in conducting their herbicidal spray operations. As our Narcotics Select Committee stated in its forthcoming report on its misson to Mexico:

"The Mexican Government has built the world's finest aerial crop eradication program. Its size, professionalism, competence, performance and experience make it the world leader in this technique, which the Select Committee regards as an absolute essential to destroying illicit opium poppy, coca, and marihuana cultivation. The work of the Mexican Government has been an enormous benefit to the people to the United States. As always, Mexico has been our 'Good Neighbor.'"

Mexico is the only nation in the Western Hemisphere that has been able to develop a plan to eradicate the illicit producton of opium and marihuana. This can be a model for all nations to emulate, and we would hope that you would invite other nations to learn from your expertise.

By working together. . . by pooling our resources, funds, personnel and skills. . . we can win the "war" on drug traffickers and drug abuse. In 1983, Mexican law enforcement officials seized 50 kilos of opium gum; by working together and sharing information, Mexican law enforcement agents seized an additional 35 kilos of opium gum. During that same year, Mexican officials seized 330 kilos of cocaine; by pooling our resources, Mexican officials seized 802 kilos of cocaine, or an increase of 234 percent.

Waging war against the drug traffickers is a never-ending battle. In 1975, approximately 75 percent of the heroin available in the United States originated from Mexico. By 1982 that figure was reduced to approximately 34 percent. Unfortunately, we are receiving reports that the international drug traffickers are once again looking to Mexico to become a major producer of heroin and we can only urge you to join with us to help combat this deadly drug from infecting all mankind. We also would urge an intensification of the Joint Mexico-United States Prosecutorial Program to more effectively prosecute drug traffickers from both our nations.

With respect to the United Nations Fund for Drug Abuse Control (UNFDAS), last year only 28 nations, or less than 18 percent of the 157 member nations comprising the United Nations, contributed or pledged a meager $3,710,259; private contributions amounted to only $255,957 or a grand total of $3,966,212 for a global effort to combat the deadly menace of drug trafficking and drug abuse.

We commend the Government of Mexico for its contributions to the UN Drug Fund and would like to urge your government to take the lead in encouraging other Latin American nations to participate in this important UN effort. According to UNFDAC's 1983 report, only five Latin American and Caribbean nations contributed to the UN Drug Fund: Argentina ($17,300); Bahamas ($1,000); Guyana ($1,997); Mexico ($2,000); and Venezuela ($2,000) for a total of only $24,297—hardly enough to underwrite the cost of operating a drug treatment center.

To combat the hundreds of billions of dollars of illicit drugs that are infecting citizens throughout the world, nations of the international community annually scrape together a meager $5 million—$7 million to help UNFDAC conduct a global "war" on drug trafficking and drug abuse—hardly enough to provide a single high-speed coastal patrol boat.

Mexico and the United States continue to be allies and friends, especially on problems pertaining to narcotics cultivation, trafficking and abuse—problems that have not driven us apart but have brought us closer together. In 1977 and 1982 the delegates from both our nations attending our bilateral interparliamentary conferences adopted the Hermosillo Declaration on Narcotics Trafficking and the Santa Barbara Narcotics Accord, committing our nations to waging war on drug abuse and to elevating this issue to the highest priority level on our national agenda. We must now do more than adopt well-intended resolutions. We should develop a narcotics consultative mechanism between our two legislative bodies to help implement these two historic documents. The time for action is upon us. The citizens of both our nations expect this from us.

Your problems are our problems. Not only do we share a common border but we are inextricably bound to one another through our political, economic and social ties. Through mutual understanding, respect, and cooperation, we can solve the problems of drug trafficking, drug abuse and the other thorny issues confronting both our nations.

RESOLUTION ADOPTED IN THE POLITICAL COMMITTEE OF THE MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE HELD IN WASHINGTON, DC, ON MAY 19, 1984

Taking into account that it is necessary to maintain the efforts being carried out by both countries in the campaign against the trafficking of illicit drugs, because of the harm it causes and the need to maintain human and social solidarity on this problem, in addition to recognizing the efforts made by Mexico and the United States, it is considered convenient to establish a working group as part of the Mexico-United States Interparliamentary Conference, whose fundamental objective would be:

(1) to carry out all follow-up tasks that are necessary to achieve in both countries campaigns for the eradication of the illicit production of narcotics and the fight against narcotics, so that these would be more effective;

(2) to analyze, as appropriate, existing agreements in order to update them and to place the problem in the context they have established;

(3) to use the findings by the working group to be carried out by both countries, in order to formulate recommendations at the appropriate time, to the agencies of the respective Executives that have the operative ability to implement these recommendations;

(4) to recommend the necessary measures, including, in a major way, education campaigns designed to warn about the dangers of drug abuse; and

(5) to ensure that modern instruments and technological advances are provided in order to improve the efforts each country is carrying out in its jurisdiction to increase the effectiveness of the campaign to combat the trafficking of illicit drugs.

This working group will report annually to the Mexico-United States Interparliamentary Conference, so that the Conference will reach the necessary agreements based on the information provided.●

WRONG, REYNOLDS

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GARCIA. Mr. Speaker, by now, we are all familiar with the recent Supreme Court ruling in the case of the Memphis Firefighters, which favored seniority over affirmative action in layoffs. William Bradford Reynolds, Assistant Attorney General for Civil Rights, interpreted the recent Supreme Court decision as a mandate to instruct Federal agencies to challenge the validity of affirmative action decisions and agreements as they apply to hiring and promotions.

As I read the decision, it only applies to layoffs and only layoffs. The following editorial by columnist William Raspberry which appeared in the June 15, 1984, Washington Post, accurately reflects my views on this volatile issue.

WRONG, REYNOLDS

(By William Raspberry)

Maybe William Bradford Reynolds knows something I don't. The man who has been called the assistant attorney general against civil rights claims to see in Tuesday's Supreme Court ruling a vindication of his own anti-affirmative action views. It may be that that is where the court is headed. But as this layman reads the majority opinion, it isn't there yet. What the ruling does, at least as I read it, is to resolve a long-troublesome conflict between two worthy principles: affirmative action and seniority.

What is the right thing to do when an employer who has recently hired minority workers pursuant to an affirmative action decree is subsequently forced by economic considerations to lay off some workers? Seniority, the normal (and frequently the contractual) basis for determining who gets laid off, seems a reasonable enough approach under ordinary circumstances. But seniority-based layoffs can result in wiping out the affirmative action gains. The minority workers hired to remedy the earlier discrimination naturally have less time on the job and are among the first to be laid off. The court resolved the conflict between the two principles in favor of seniority.

So where does Brad Reynolds find his vindication? Probably in the words of Justice Byron White, writing for the majority, who said Title VII of the 1964 Civil Rights Act provided "make-whole relief only to those who have been actual victims of illegal discrimination"—in other words, not to members of discriminated-against minority groups, but only to those who can show that they are themselves victims of discrimination. But White was talking not about affirmative action hiring but only about awards of competitive seniority. His reference was to an earlier case, in which blacks who had unlawfully been refused when they applied for jobs as over-the-road drivers and who were later hired under a court order were awarded seniority dating back to the time of their original application. Newly hired blacks who could not prove that they had individually been discriminated against got no such award.

That distinction does not strike me as unreasonable. Reynolds, however, managed to read it as an "unequivocal" bar against racial quotas. "I said some time ago," he exulted, "that civil rights was at a crossroads; that we would either take the path of race-conscious remedies . . . or the high road of race neutrality. The court has moved us off the crossroads and propelled us down the road we have been urging. It is an exhilarating decision."

If Reynolds' statement involved nothing more than an over-broad reading of the court's ruling, then it might not be so bad. But he has taken his misreading of the decision as a mandate to reexamine all antidiscrimination settlements involving the government and to urge other government agencies to do the same. The result could be a reopening of 50 or more affirmative action agreements and a needless stalling of negotiations now in process.

The real problem with Tuesday's opinion is not what it said but what Brad Reynolds thinks it said. Reynolds is in position to do a good deal of harm before the court tells him he read it wrong.●

TRIBUTE TO BASIL PATERSON OF NEW YORK

HON. WILLIAM H. GRAY III

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GRAY. Mr. Speaker, on June 13, 1984, our distinguished colleague in the other body, Senator EDWARD M. KENNEDY, delivered a most poignant message honoring Basil Paterson of New York. The occasion was a testimonial dinner for Mr. Paterson, who has held the offices of State senator, deputy mayor, secretary of state, and vice chairman of the Democratic National Committee. Basil Paterson's outstanding career of public service has been dedicated to building bridges among all people, and the ending of discrimination against his own community. He truly deserves to be recognized in the public arena as a model of excellence.

Senator KENNEDY summarized Basil Paterson's accomplishments and achievements most eloquently and I commend this speech of tribute to you, Mr. Speaker, and all of my colleagues.

Address of Senator Edward M. Kennedy: Tribute to Basil Paterson, New York City, June 13, 1984

I am honored to be part of this tribute to Basil Paterson.

In every arena of public service, he has set the highest standard. He has been called "a man for all reasons"—and Basil Paterson proves the power of reason to overcome ignorance and anger. He matches that reason to principle—and Basil Paterson has never turned aside, in a time when the temptation seemed irresistible to many, from the poor, from those who work with their hands, from the victims of injustice and discrimination.

He was the first black man to be nominated for statewide office in New York—and Basil Paterson led the ticket in the primary, because his capacity and his character had a powerful appeal to people of every race.

State senator, deputy mayor, secretary of state in New York, and vice chairman of the Democratic National Committee—these are the milestones of a distinguished career—and I believe that for Basil Paterson, the greatest measure of public service is yet to come.

And this occasion is not only a tribute to him personally, but to the things for which he stands. In this country, now as much as ever before, we need to hear and to heed the meaning which is the message of his success—that we can prevail by speaking to the best instincts of people, to their hopes and not their fears; that there is a fundamental difference between the healthy democratic tradition of dividing the electorate on the basis of issues—and the dangerous, corrosive tactic of dividing Americans on the basis of race or religion, where they were born or how they live their private lives. The challenge for all of us in politics is greater than winning votes for ourselves or even for our programs. We are, most of all, custodians of the civility which alone permits us to live together in a society that is both pluralistic and free. Where there is suspicion, we must stand for tolerance. Where there is division, we must seek to heal. Where group is set against group, we must search out the common ground.

We must resist polarization politics—wherever it is practiced—whether it is in the present administration or in the present campaign.

At the center of power in Washington, we have now witnessed the rise of a new hostility toward racial justice; a new indifference toward the minority of our people who are not white; a new paternalism toward the majority who are women.

The President's political strategist write off the black vote—and his policymakers write black citizens out of their agenda of concern. But something more is at stake here than political calculus. Even if it was politically convenient, it was also morally wrong to give tax breaks to segregated schools. It was morally wrong to oppose the passage of a stronger Voting Rights Act. It was morally wrong to support Federal aid for colleges that discriminate against blacks and browns and women. It was morally wrong to take the most in budget cuts from the defenseless millions of Americans who have the least, while lavishing needless billions of dollars on the defense budget. It is indefensible for this administration to give aid and comfort to the apartheid regime in South Africa. And it is indefensible for the President of the United States to libel the memory of the Reverend Martin Luther King.

These policies are part of a pattern of dangerous dealing in group slander, ignorance and stereotypes. Why is the official who suggested that many Hispanics live in overcrowded conditions because of their culture still employed in this administration? Why is the official who said that children not be "compelled" to have an integrated education still employed in this administration? How could this administration possibly nominate to the Legal Services Corporation a man who could criticize an Hispanic judge as a "professional Mexican" and then offer the incredible defense—and I quote: "There are such things as professional blacks, professional Greeks, professional Dagos, professional Jews . . ." Those words are a disgrace; they are the badge of a professional bigot who should never serve in public office.

Perhaps such intolerance is tolerated because at the pinnacle of this administration, there is a President who himself has said that the people who sleep in the streets are "homeless by choice."

There is no place in America for a form of spiritual segregation in which a political coalition is so plainly labelled: "For whites only."

Polarization politics deprives people of their dignity—and denies opponents the integrity of their views. Increasingly, among the New Right allies of the President and within the administration itself, name-calling has become a substitute for rational debate. Advocates of the nuclear freeze are not "soft on communism." Those who oppose outlawing abortion are not "murderers." And a nominee for Attorney General should not be confirmed after he refers to the American Civil Liberties Union as "a criminals' lobby."

James Watt was not dismissed from office because he mis-stated the administration's attitude, but because he revealed it with a devastating clarity. That attitude is both plain and painful: People are thought of and treated as stereotypes—and the stereotypes can then be manipulated for political advantage.

But to be credible in confronting the present administration on the fundamental issue of civility, we must also be prepared to face and oppose incivility not just among our political opponents, but wherever we may find it.

We cannot pretend that we do not see or hear when Louis Farrakhan predicts race war by 1986—or implies that "Jewish editors and Jewish writers" distort the news—or threatens the life of a black reporter for doing his job—or refers to Hitler as "a very great man"—or shakes the hand of Colonel Qaddafi. Such conduct can never be condoned—and it must be unequivocally condemned.

My grandparents grew up in Boston with signs that said: "No Irish need apply." One of the most profound commitments of my life, and of my brothers' lives, has been to the cause of civil rights. President Kennedy was ready to risk his reelection for that cause. And now, as a matter of the most basic civil rights, we must clearly state that whatever the source or the excuse, anti-semitic stereotypes are as wrong as anti-black stereotypes.

Nor can we pretend that we do not see or hear when Meir Kahane forms "Jews Against Jackson"—or when opposition to official Israeli decision is equated with the shame of anti-Semitism. I strongly disagree with the Reverend Jackson on the issue of the Middle East—and I have always been and always will be among the strongest supporters of Israel. But his position on the Middle East is wrong in terms of policy—and it certainly is not a proof of prejudice.

How sad it is to have to state the obvious—that Jews are not anti-black—and blacks are not anti-semites. Indeed, for many generations, in many difficult days, they have been the closest of allies in the great struggle for racial justice.

Now, in this moment of tension, perhaps we should remember that terrible moment, on a sweltering summer night 20 years ago this month, when two Jewish students and one black student from this city were murdered in Mississippi because they were working side by side as brothers for the right to vote. Their names were James Chaney, Andrew Goodman, and Michael Schwerner—and their killers drew no distinctions between them. They were there to oppose hatred and intolerance, and they were killed because across the boundaries of race and religion, they were pushing back the walls of racism and repression. They were young men of different belief and different color, but they were united by a common bond of conscience.

For their sake and for our own, for the sake of all of us who have stood together for equality, we must now stand together against any attempt to sow new seeds of fear. Once again, we must overcome. In the words of Martin Luther King, we must judge one another as Americans by the content of our character and not the color of our skin." And if he were here today, I am certain he would add—And not by the way we worship God."

Every American must be part of the political process—not only in theory, but in reality. We must make room for the voiceless for whom Jesse Jackson has raised his voice. We can be proud that the first two black candidates for President—Jesse Jackson and Shirley Chisholm—both have run in the Democratic Party. And we must reaffirm as strongly as possible that there can be no barrier to a black citizen, a Jewish citizen, a woman or any other citizen becoming President or Vice-President of the United States.

In short, we must not permit polarization politics to set Jewish Americans against black Americans—and to deflect two great peoples from their historic dream of freedom from bondage and persecution. Both alike have sacrificed and suffered. Many Jewish voters and progressives—not out of self-interest, but out of conviction and idealism. Many blacks were beaten and too many were killed when they answered the call to fight for their rights not with bullets and bombs, but with faith and without violence. They gave of themselves to save others, even their oppressors.

Now we must learn from that history—so that we may live together—and, even more, so that we may restore the sense of hope, the call to challenge and to sacrifice. That call summons not only Jewish and black Americans but all Americans

As a country, we are—we must be—more than a collection of groups or a combination of competing regions. We cannot grasp new possibilities by continuing the petty practice of always calculating every decision on the basis of who will get what. The whole of

America is greater than the sum of all its parts and interests. We are one Nation with one history and one destiny—and I am certain that Americans will respond, if we are asked to raise our sights from narrow and separate views to a broader vision of our future.

And the challenge before us requires more than waiting for that future to rescue us from the present and the past. If we demand new ideas, and we should, we do it in order to fulfill abiding ideals of liberty, or caring and compassion. A program may become obsolete; but we must not throw out the principle with the program.

As we seek to break the shackles of the past, we must also continue to draw upon its legacy; we must not free ourselves in order to run from responsibility for the poor and the neglected, the children who must be taught and the sick who must be treated. The failure of a policy must never be misused as an excuse for turning our back on injustice and pain—and looking out only for ourselves, our own constituency, our own race or ethnic group. There is nothing outmoded about the belief that the strong owe a duty to the weak; the privileged have an obligation to the powerless; and all of us must strive not only for ourselves, but for each other and for our country.

We know there are those waiting, even eager, to nurture antagonisms and shatter our unity. In the decisive struggle for the soul of America, we will be conquered only if we are divided.

In 1980, the Senator from this State, my brother Robert Kennedy, was a candidate for President. During that campaign, he once told a student group of the stark poverty of the inner cities, and a questioner asked who would have to sacrifice to change all this. And Robert Kennedy answered in two words: "You will."

No one was more open to the future than he was, more ready to brave its dangers, more committed to the quest. As his friend, Jack Newfield, said of him, he was born into a privileged world of affluence, patriotism and power—but he was loved most by America's dispossessed. For no one was more willing than he was to ask us as a people to give something back in return for what has been given to us.

We must answer that challenge now, each of us in our own hearts and all of us for our country. In the months and years ahead, in the fact of all the tensions and any temptation to turn against one another, let us recall the words of Robert Kennedy on the night when Martin Luther King was shot:

"We can move . . . as a country in great polarization or we can make an effort to comprehend and understand. What we need in the United States is not division; what we need is not hated; but love and wisdom and compassion toward one another, and a feeling of justice toward those who still suffer within our country, whether they be white or whether they be black."

Let us, as he finally said, standing in the cold wind of that bitter night, seek in our own time "to tame the savageness of man and make gentle the life of the world."

Let us in our time, in this city and this country, "dedicate ourselves to that"—so that we shall march forward again, as we have before, hand in hand, a land indivisible, with liberty and justice for all.●

WASHINGTON REPORT

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. PEASE. Mr. Speaker, when temperatures here in Washington soared into the nineties last week, Members of Congress knew that summer had arrived.

Relatively few citizens are aware of how the congressional calendar reckons the passing of time, and I took advantage of last week's heat wave as a hook upon which to hang an explanation of the calendar in my weekly newspaper column. It follows:

WASHINGTON REPORT

With Washington, DC temperatures in the 90s last week and humidity levels to match, U.S. congressmen knew that summer had arrived.

Even without the hot, muggy weather for which Washington is famous, the arrival of summer would have been obvious to members of Congress. For the second week in a row, we were putting in a succession of 12- to 14-hour workdays.

As surely as the weather, legislative activity marks the seasons in the nation's capital.

The first six weeks of the year are slow-paced, as Congress gets itself organized and receives messages outlining the president's legislative and budgetary agendas.

By mid-February, action on the floor of the House of Representatives is still slow, but committee hearings—which generate later floor activity—are in full swing.

February also signals the start of a four-month round of visits to Washington by organizations seeking to inform Congress of their views on pending legislation.

This is the essence of the representative nature of our form of government. Each organization brings its members from around the nation, briefs them on issues important to the membership, and sends them off for appointments with their own congressmen. Invariably, each organization also holds a "congressional" breakfast, luncheon, reception or dinner to which congressmen are invited.

So, while the House does not sit for long hours in formal session, congressmen run all day from breakfast (often two or three in one day) to committee meetings to luncheons to constituent appointments to receptions (four in an evening would not be unusual) to dinners.

With March come the first flowers and the start of a three-month period of Washington tours by school children. Photographs with congressmen on the steps of the Capitol are a popular feature of those tours.

Once Memorial Day has passed, the school groups taper off and so do the citizen lobbying visits and the breakfasts, luncheons, receptions and dinners. In their place, congressmen begin to see casually dressed vacationing families who just stop by the office to say hello and pick up tickets to the House and Senate galleries.

June also brings out of committees a flood of "bills" ready for House floor consideration along with the realization that not much time remains in the legislative year.

That means late night sessions for the rest of the summer (except for recess periods) and into September.

Summer also means conference committees. When legislation passes the House and Senate in different forms, the task of ironing out (i.e., compromising) the differences falls to joint House-Senate conference committees. For major bills, the job can be arduous, time-consuming, frustrating and sometimes contentious.

Fall produces early adjournment in election years (so congressmen can turn their attention to campaigning) and, in non-election years, slogging away at unfinished legislative business. There isn't much joy in Washington, DC if Congress is in session during November and December.

And that's how the congressional calendar reckons the passing of time. If the weather has turned hot and the sessions have turned long, this must be June.●

NEW POLICY ON ARMS CONTROL

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. COURTER. Mr. Speaker, the congressional arms control debate has reached the point where it is necessary to restate the obvious: that arms control only serves the interest of American and world security when it induces bilateral restraint and compliance with agreements.

The sad facts of recent arms control history are that U.S. reductions have not been met by Soviet restraint, and U.S. compliance with negotiated agreements has not been reciprocated by Soviet compliance.

A consistent pattern of Soviet violations has been revealed by the President's January 23, 1984, report to Congress, and by the secret November 1983 report of the President's General Advisory Committee on Arms Control and Disarmament, which gives a detailed description of the Soviet compliance record over the 1958-83 period.

Perhaps the most serious of these violations, because of its destabilizing potential, is the development of an incipient Soviet ABM system, which is indicated by Soviet missile and radar capabilities, including the Krasnoyarsk radar cited in the President's January 23 report. Also of grave concern are Soviet actions which thwart the verification process. This includes the encryption of missile telemetry and a newly revealed violation: jamming of our electronic intelligence monitoring satellites, which denies us the ability to receive even the highly encoded flight test data that are transmitted during Soviet missile tests. This fact was confirmed by Assistant Secretary of Defense Perle before the House Foreign Affairs Committee yesterday.

These violations are in addition to known violations of agreements on the use, development and deployment of weapons, including the cases of the SS-16 missile, the SS-X-25 missile, and biological weapons, to name three items described in the January report of the President.

The American people have a strong desire for peace and international stability, and they support arms control as a means of achieving these goals. However, this attitude does not imply approval of a unilateral arms control process in which the Soviets break their commitments with impunity.

Congress needs to acknowledge the fact of Soviet violations of arms control agreements, deplore their grave implications, and begin to develop an appropriate policy response.

The resolution I introduce today is an attempt to begin that process. Its central purpose is to state the principle that arms control can only serve American security when both sides comply with agreements, and that the defense of the United States should not be constrained by agreements which are not observed by the Soviet Union.

To acknowledge Soviet violations and reinforce the principle of reciprocity does not signal the end of arms control. Rather, it points to the need to deny the Soviet Union the ability to use arms control as an instrument of unilateral advantage. Any military advantage acquired by the Soviet Union through violations of agreements should be removed, either through negotiated Soviet corrective actions or through U.S. defense efforts.

If any development will bring the demise of arms control, it will be the Soviet pattern of treaty violations and an American reluctance to respond. For this reason, I introduce this resolution today—a resolution which I believe contains the elements of an appropriate policy response.

It is my hope that this resolution will further the arms control debate and earn the support of my colleagues.

H. Con. Res. —

Whereas the principal task of the United States Government is the defense of the Nation;

Whereas national security can be provided by military defense and arms control agreements which limit the development, numbers, capability, or use of weapons;

Whereas arms control agreements serve United States security interests only to the extent to which their terms are properly observed by all parties to these agreements;

Whereas the President reported to the Congress on January 23, 1984, that the Soviet Union has committed seven violations or probable violations of arms control agreements;

Whereas the President is reviewing, and the public press has reported, reports of numerous additional Soviet violations of arms control agreements;

Whereas the Soviet Union's violations of arms control agreements display a lack of the good faith required for effective arms control;

Whereas certain actions of the Soviet Union which violate arms control agreements have a military significance and an adverse impact on United States security interests;

Whereas the Soviet radar at Krasnoyarsk, by its type, size, location, and orientation, is capable of ballistic missile defense functions, and appears to be part of an incipient anti-ballistic missile system including Soviet missiles and other radars;

Whereas the Krasnoyarsk radar has been cited by the President as "almost certainly" in violation of the 1972 Treaty on the Limitation of Anti-Ballistic Missile Systems;

Whereas the activation of a Soviet anti-ballistic missile system would alter the strategic balance by reducing the ability of United States nuclear missiles to reach targets in the Soviet Union;

Whereas a Soviet anti-ballistic missile system, when coupled with the Soviet Union's offensive nuclear arsenal, would have a destabilizing effect by giving the Soviet Union reason to believe that it could successfully mount a "first strike" nuclear attack against the United States; and

Whereas Soviet actions which violate the Treaty on the Limitation of Anti-Ballistic Missile Systems and other agreements are destructive of stable relations and trust between the United States and the Soviet Union: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That—

(1) the Congress deplores the Soviet Union's violations of arms control agreements concerning nuclear, conventional, chemical, and biological weapons;

(2) the Congress urges that correction of Soviet violations of arms control agreements be accorded the highest priority in negotiations between the United States and the Soviet Union;

(3) it is the sense of the Congress that where Soviet violations of arms control agreements are not corrected, the United States should assess the military significance of such violations, and take such actions as may be necessary to deny the Soviet Union any military advantage it may have derived from its violations of arms control agreements;

(4) it is the sense of the Congress that the defense of the United States should not be constrained by adherence to arms control agreements or portions of arms control agreements which are violated by the Soviet Union; and

(5) the Congress supports the negotiation of new arms control agreements with the Soviet Union, provided compliance with these agreements may be verified with an extremely high degree of confidence and provided the United States is satisfied that any military imbalance resulting from Soviet violations of arms control agreements has been removed, through Soviet or United States actions.●

THIRD CONGRESSIONAL ART EXHIBIT

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● **Mr. DOWNEY of New York. Mr. Speaker, on Wednesday, June 27, the Arts Caucus will be proud to open the third congressional art exhibition in the Cannon Tunnel. This major exhibit, with more than 200 works by high school students from across the country, is the largest ever since the competition began in 1981. I would like to congratulate my 215 colleagues who conducted local competitions.**

This annual event proves to be a rewarding experience for every Member who participates. It has given them the opportunity to bring together their local business, cultural, and educational communities in this special effort to encourage the creative spirit of today's youth.

Mr. Speaker, the following article captures much of the excitement and interest generated by the many district contests held during the past year:

[From the Miami Herald, June 3, 1984]

LEHMAN CAPITALIZES ON STUDENTS' ARTWORK

(By Ellen Livingston)

Last year, when the first U.S. Congressional Art Competition for high school students was announced, Rep. William Lehman, D-North Dade, didn't get involved. "It seemed like a lot of trouble," he said.

But when the winning entries began to arrive in Washington and Lehman saw the halls of the Capitol transformed into an art gallery, he was inspired.

"I said, 'Next year, by golly, we're going to have North Dade up here, because this is very impressive,' " he said.

Lehman was so impressed, in fact, that he was scheduled to fly to North Miami Saturday to announce the district's winner in this year's competition. He's even throwing in a round-trip ticket to the nation's capital so the budding artist may see her work on display.

The only problem is that the winner, North Miami Beach High senior Sandra Cifuentes, couldn't attend Saturday's ceremony at the North Miami Museum and Art Center because she was out of town. A Lehman spokesman said Cifuentes and other North Miami Beach art students were on a school trip—to Washington.

Cifuentes' winning entry, a pencil drawing titled *Fort Lauderdale Weekend* will hang in the U.S. Capital for the next year. Three honorable mentions will have their works on display in Lehman's Washington, North Dade and Miami offices.

Those winners are American High sophomore Marva Williams for a pen line drawing titled *Fantasy Tree;* Carol City High senior Israel Martinez for an acrylic on canvas titled *School Daze;* and North Miami Beach student Marcos Sinconegul for a watercolor called *On Location*. All were selected by a four-member panel from 25 entries.

Lehman said he was throwing in the winner's free trip to Washington as an encouragement to other artists.

"I think it might stimulate more interest next year," he said. "Artists have to live, too. You have to give them some kind of material recognition of their accomplishment. For that person to see what their contemporaries are doing throughout the country would broaden their perspective."●

EARLY PROJECTIONS: FACTS WITH SOURCES MORE BELIEVABLE

HON. AL SWIFT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. SWIFT. Mr. Speaker, throughout the course of the lengthy public debate on the subject of early projections of election results by the television networks, the networks have pointed proudly to the high level of accuracy of their projections.

Although the accuracy of the projections is, at best, irrelevant to the debate over early projections, it is generally the case that they are highly accurate. One way that level of accuracy is achieved, however, is that the networks simply keep adjusting their projections until they get them right.

At this point in the Record, Mr. Speaker, I would like to insert an editorial from the Port Angeles Daily News, which describes one instance of how this process worked during the caucuses in Washington State.

[From the Port Angeles (WA) Daily News, Mar. 22, 1984]

Reporting a breaking news story quickly and accurately is one of the tough assignments in the news business. That is because getting a clear grasp of the facts is essential in putting together an accurate story, and time pressure makes that a much tougher job.

There is also the lurking terror of making a mistake. Mistakes raise questions in readers' minds about the accuracy of the rest of the story. A serious mistake is usually enough to keep a reporter tossing and turning through a good part of the night.

So we are hoping that there might be a few folks at NBC News who had some trouble getting to sleep after the recent state caucuses.

It was newscaster Tom Brokaw who came on about 10 p.m. that night to declare that Walter Mondale would be racking up a win in Washington.

Later he took it back, saying there had been a surge of delegates for Hart.

Never did Brokaw nor anyone else explain how the network had come up with either the first or second explanation of what was going on in the great state of Washington. That was the most troubling aspect of the whole thing.

When Brokaw made his first announcement that Mondale was winning, some caucuses were still meeting. Few results had been phoned in. Both Hart and Mondale volunteers were undoubtedly calling the networks to say their candidates were clearly ahead.

So what information did the network use to come up with a story on deadline?

We do not know.

With all of the hullabaloo about the impact of projections and estimates on election results, NBC should be more careful in double-checking its facts on deadline.

The network should also let viewers know where those facts come from.●

CUBAN AND HAITIAN REFUGEES FINALLY RECEIVE JUSTICE

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. TOWNS. Mr. Speaker, while I was one of those who voted against the immigration bill yesterday on final passage, I must acknowledge that amendment 62, which granted permanent residence to Cuban and Haitian nationals, is a great victory for thousands of these refugees who have remained in limbo for several years. The adoption of this amendment to the immigration bill by voice vote indicates the strong bipartisan support which exists for resolving this issue. Credit must of course be given to the tremendous efforts of the National Coalition for Haitian Refugees and its executive director, Michael S. Hopper. Certainly without his tremendous commitment to the issue, the status of these refugees might still be unresolved.

The religious community has also played a key role in calling for a solution to the plight of Cubans from the Mariel exodus and Haitians who arrived during the same period of time. Church World Service, of the National Council of Churches, outlined their support for the bill in a letter to the House last week. Because of their longstanding support for Haitian refugees, I would like to include this letter in the Record for my colleagues' review. The letter follows:

Dear Representative: An important piece of legislation before the House of Representatives this session is the Cuban-Haitian Adjustment Act of 1984 (H.R. 4853), introduced earlier this year by Judiciary Committee Chairman Peter W. Rodino, Jr. and now being offered as an amendment to H.R. 1510. The bill represents a humane and just approach to the plight of Cuban and Haitian refugees in this country. We, as national religious leaders, request your support of this measure.

The measure would provide permanent resident status to a restricted class of Cuban and Haitian boat people who arrived in the United States between early 1980 and January 1, 1982. This group encompasses some 125,000 Cubans and 31,000 Haitians. It is composed of most of the Cubans and Haitians who arrived in the 1980 boatlift, individuals who were given an ad hoc "entrant" status, as well as a small group of Cubans and Haitians arriving after that program.

Our various denominations have a demonstrated history of concern for the protection and care of refugees needing haven from the conditions in their homelands. Many of us have ministered to the Cubans since the late 1950s and the Haitians since the early 1970s, attempting to meet not only their physical and emotional needs, but also endeavoring to ensure fairness and due process in their efforts to gain status in this country.

The story of our government's treatment of Cubans and Haitians in the past few years is a sad one, one which religious organizations have criticized. Not only have these refugees been left in an undefined status for the past four years, but also many who arrived subsequent to the 1980 "entrant" program, particularly the Haitians, were incarcerated for up to eighteen months while seeking status. Their release was gained only by federal court order.

Chairman Rodino's amendment is a thoughtful and appropriate response to the Cuban and Haitian plight. Again, we request your support of it.

Thank you for your consideration of our views.

Sincerely,

Bishop Philip R. Cousin, President, National Council of Churches of Christ in the U.S.A., Bishop of the Ninth Episcopal District, African Methodist Episcopal Church.

The Most Reverend John M. Allin, Presiding Bishop, The Episcopal Church, USA, The Presiding Bishops Fund for World Relief.

Reverend Dr. Charles W. Butler, President, Progressive National Baptist Convention.

Reverend Dr. Robert C. Campbell, General Secretary, American Baptist Churches USA.

Reverend Dr. James R. Crumley, Jr., Bishop, Lutheran Church in America.

Reverend Dr. William H. Kohn, President, The Association of Evangelical Lutheran Churches.

Robert W. Neff, General Secretary, Church of the Brethren.

H.A. Penner, Director, U.S. Mennonite Central Committee.

Reverend Avery D. Post, President, United Church of Christ.

Dr. David W. Preus, Bishop, American Lutheran Church.

Reverend J. Randolph Taylor, Moderator of the 195th General Assembly, Presbyterian Church USA.

Kenneth Teegarden, General Minister and President, Christian Church (Disciples of Christ).●

HOUSE OF REPRESENTATIVES—*Friday, June 22, 1984*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. WRIGHT].

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Teach us, O gracious God, among all the other values that we ought to know, the gift of listening. May we hear more clearly Your still small voice beckoning us to the high road of truth, honesty, and justice. Teach us also to listen more compassionately to each other, hearing not only the words spoken, but the feelings and emotions that touch the human soul. Always, O God, may we listen, not only with our ears and minds, but also with our hearts, that we will truly be the people You would have us be. Amen.

THE JOURNAL

The **SPEAKER** pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. **HUBBARD**. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Chair's approval of the Journal.

The **SPEAKER** pro tempore. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. **HUBBARD**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 286, nays 34, answered "present" 4, not voting 109, as follows:

[Roll No. 261]

YEAS—286

Akaka
Albosta
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Archer
Barnard
Barnes
Bartlett
Bateman
Bates
Beilenson
Bennett
Bevill
Bilirakis
Bliley
Boehlert
Boland
Boner
Bonior
Borski
Boucher
Boxer
Breaux
Britt
Broomfield
Brown (CA)
Brown (CO)
Burton (CA)
Burton (IN)
Byron
Carney
Carper
Carr
Chandler
Clarke
Clinger
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Courter
Coyne
Crane, Daniel
Crane, Philip
Daniel
Dannemeyer
de la Garza
Dellums
Derrick
DeWine
Dicks
Donnelly
Dowdy
Downey
Dreier
Duncan
Dwyer
Dyson
Eckart
Edwards (CA)
Edwards (OK)
English
Erdreich
Erlenborn
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fields
Fish
Flippo
Foglietta
Frank
Franklin
Fuqua
Gaydos
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Gore
Gradison
Gregg
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Hansen (UT)
Hartnett
Hatcher
Hefner
Hertel
Hightower
Hiler
Hillis
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kennelly
Kildee
Kindness
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach
Leath
Lehman (FL)
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Loeffler
Long (LA)
Lott
Lowery (CA)
Lujan
Luken
Mack
MacKay
Madigan
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
McCandless
McCloskey
McCollum
McCurdy
McEwen
McHugh
McKernan
McKinney
McNulty
Mica
Michel
Mikulski
Miller (CA)
Mineta
Minish
Moakley
Molinari
Mollohan
Montgomery
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Myers
Natcher
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Obey
Olin
Ortiz
Oxley
Packard
Panetta
Parris
Patman
Patterson
Pease
Perkins
Petri
Pickle
Price
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Robinson
Roe
Roukema
Rowland
Roybal
Rudd
Russo
Savage
Sawyer
Scheuer
Schneider
Schulze
Seiberling
Shaw
Shumway
Shuster
Sisisky
Skeen
Skelton
Smith (FL)
Smith (NE)
Smith (NJ)
Snowe
Snyder
Spence
Spratt
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Traxler
Valentine
Vandergriff
Vento
Volkmer
Vucanovich
Watkins
Weaver
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Wilson
Winn
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wylie
Yates
Yatron
Young (MO)
Zschau

NAYS—34

Chappie
Clay
Coats
Coughlin
Daub
Dickinson
Durbin
Emerson
Evans (IA)
Fiedler
Frenzel
Goodling
Harkin
Hawkins
Holt
Jacobs
Lowry (WA)
Markey
Miller (OH)
Mitchell
Penny
Roberts
Roemer
Rogers
Sabo
Schroeder
Sikorski
Siljander
Smith, Denny
Solomon
Sundquist
Walker
Weber
Young (AK)

ANSWERED "PRESENT"—4

Dymally
Gejdenson
Kleczka
St Germain

NOT VOTING—109

Ackerman
Addabbo
Alexander
Anthony
Applegate
Aspin
AuCoin
Badham
Bedell
Bereuter
Berman
Bethune
Biaggi
Boggs
Bonker
Bosco
Brooks
Broyhill
Bryant
Campbell
Chappell
Cheney
Conyers
Cooper
Corcoran
Craig
Crockett
D'Amours
Darden
Daschle
Davis
Dingell
Dixon
Dorgan
Early
Edgar
Edwards (AL)
Florio
Foley
Ford (MI)
Ford (TN)
Fowler
Frost
Garcia
Gramm
Gray
Green
Hansen (ID)
Harrison
Hayes
Heftel
Hopkins
Ireland
Jones (OK)
Kemp
Kogovsek
Lantos
Latta
Lehman (CA)
Leland
Lent
Lloyd
Long (MD)
Lundine
Lungren
Marriott
Martin (NC)
Mazzoli
McCain
McDade
McGrath
Moody
Murtha
Neal
Oberstar
Ottinger
Owens
Pashayan
Paul
Pepper
Porter
Pritchard
Rodino
Rose
Rostenkowski
Roth
Schaefer
Schumer
Sensenbrenner
Shannon
Sharp
Shelby
Simon
Slattery
Smith (IA)
Smith, Robert
Solarz
Stump
Thomas (CA)
Torricelli
Towns
Udall
Vander Jagt
Walgren
Waxman
Weiss
Williams (OH)
Wyden
Young (FL)

☐ 1010

Mr. **DANNEMEYER** changed his vote from "present" to "yea."

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 4921. An act to provide for the selection of additional lands for inclusion within the Bon Secour National Wildlife Refuge, and for other purposes; and

H.R. 5565. An act to direct the Architect of the Capitol and the District of Columbia to enter into an agreement for the conveyance of certain real property, to direct the Secretary of the Interior to permit the District of Columbia and the Washington Metropolitan Area Transit Authority to construct, maintain, and operate certain transportation improvements on Federal property, and to direct the Architect of the Capitol to provide the Washington Metropolitan Area Transit Authority access to certain real property.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5653. An act making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes;

H.R. 5713. An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1985, and for other purposes; and

H.R. 5753. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1985, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5653) entitled "An act making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Hatfield, Mr. McClure, Mr. Garn, Mr. Cochran, Mr. Abdnor, Mr. Kasten, Mr. Mattingly, Mr. Domenici, Mr. Johnston, Mr. Stennis, Mr. Byrd, Mr. Hollings, Mr. Huddleston, Mr. Burdick, and Mr. Sasser to be the conferees on the part of the Senate.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 5713) entitled "An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1985, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Hatfield, Mr. Garn, Mr. Weicker, Mr. Laxalt, Mr. D'Amato, Mr. Abdnor, Mr. Domenici, Mr. Huddleston, Mr. Stennis, Mr. Leahy, and Mr. Sasser to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5753) entitled "An act making appropriations for the legislative branch for the fiscal year ending September 30, 1985, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. D'Amato, Mr. Hatfield, Mr. Stevens, Mr. Bumpers, and Mr. Hollings, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1492) entitled "An act to establish the Christopher Columbus Quincentenary Jubilee Commission," disagreed to by the House, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Thurmond, Mr. Mathias, and Mr. Biden to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 663) entitled "An act to make persons who produce agricultural commodities on highly erodible land ineligible for certain agricultural related programs, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Helms, Mr. Dole, Mr. Lugar, Mr. Cochran, Mr. Boschwitz, Mr. Huddleston, Mr. Zorinsky, Mr. Melcher, and Mr. Heflin to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a joint resolution of the following title, in which the concurrence of the House is requested:

S.J. Res. 278. Joint resolution to commemorate the 100th anniversary of the Bureau of Labor Statistics.

☐ 1020

PERMISSION TO HAVE UNTIL MIDNIGHT TUESDAY, JUNE 26, 1984, TO FILE CONFERENCE REPORT ON H.R. 5653, ENERGY AND WATER DEVELOPMENT APPROPRIATION, 1985

Mr. BEVILL. Mr. Speaker, I ask unanimous consent that the managers may have until midnight Tuesday, June 26, 1984, to file a conference report on the bill (H.R. 5653) making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 5653, ENERGY AND WATER DEVELOPMENT APPROPRIATION, 1985

Mr. BEVILL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5653) making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama? The Chair hears none, and appoints the following conferees: Mr. Bevill, Mrs. Boggs, Messrs. Chappell, Fazio, Watkins, Boner of Tennessee, Whitten, and Myers, Mrs. Smith of Nebraska, Mr. Rudd, and Mr. Conte.

MAKING IN ORDER CONSIDERATION ON JUNE 27, 1984, OR ANY DAY THEREAFTER, OF CONFERENCE REPORTS ON H.R. 5653, ENERGY AND WATER DEVELOPMENT APPROPRIATION, 1985, H.R. 5713, HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATION, 1985, AND H.R. 5753, LEGISLATIVE BRANCH APPROPRIATION, 1985

Mr. BEVILL. Mr. Speaker, I ask unanimous consent that it shall be in order on Wednesday, June 27, 1984, or any day thereafter, to consider the conference reports and amendments in disagreement and motions to dispose of said amendments on H.R. 5653, H.R. 5713, and H.R. 5753, the provisions of section 303(a) of Public Law 93-344 and clause 2 of rule XXVIII to the contrary notwithstanding.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 5753, LEGISLATIVE BRANCH APPROPRIATION, 1985

Mr. FAZIO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5753) making appropriations for the legislative branch for the fiscal year ending September 30, 1985, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California? The Chair hears none, and appoints the following conferees: Messrs. Fazio, Obey, Murtha, and Traxler, Mrs. Boggs, and Messrs. Hightower, Whitten, Lewis of California, Conte, Myers, and Porter.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED BILL AND REPORT ON DEPARTMENT OF TRANSPORTATION APPROPRIATIONS, 1985

Mr. FAZIO. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight, June 22, 1984, to file a privileged bill and accompanying report making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1985, for the fiscal year 1985 and for other purposes.

Mr. **MYERS** reserved all points of order on the bill.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 5713, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATION, 1985

Mr. **BOLAND.** Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5713) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1985, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Massachusetts? The Chair hears none, and appoints the following conferees: Messrs. BOLAND, TRAXLER, and STOKES, Mrs. BOGGS, and Messrs. SABO, BONER of Tennessee, WHITTEN, GREEN, COUGHLIN, LEWIS of California, and CONTE.

COMPUTER CRIME BILL IS NECESSARY

(Mr. **HUGHES** asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. **HUGHES.** Mr. Speaker, there was a disturbing news report last night that a group of computer buffs, using home terminals, improperly gained access to one of the world's largest confidential data files—the TRW Information Services credit bureau.

According to the report, any number of computer hackers obtained the password needed to enter the system, and routinely gained access to highly confidential and sensitive credit information affecting some 90 million people.

As dramatic as this incident appears, it is hardly an isolated incident. Computer crime is now one of the fastest growing crime epidemics in our country. Since 1980 alone, the number of such incidents has risen by 500 percent, and the average cost of these break-ins is one-half million dollars.

Mr. Speaker, it's time we recognized that computer hackers who intrude into data banks are not just mischievous kids looking for fun. They are engaging in illegal activities which pose potentially serious threats to society.

Can you imagine the harm that could be done to our national security if they gained access to our classified files at the Pentagon?

The House Subcommittee on Crime has recently approved legislation which would establish stiff criminal penalties for those persons who gain illegal access to computer banks.

I believe that, this is one of the most important crimefighting bills now under consideration in the Congress. It is my hope that the House and Senate will move rapidly to enact this legislation, so that our law enforcement community will have additional tools to respond to this high-technology crime problem.

FEDERAL LAW NEEDED TO PROTECT AGAINST COMPUTER CRIMES

(Mr. **NELSON** of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. **NELSON** of Florida. Well, here we have another example of computer crime on the front page of the morning's paper: "Computer Raiders Hit Big Credit File." By using home computers, those culprits invaded the privacy of 90 million Americans by getting the access codes, the passwords, and obtaining confidential information.

Crimes committed with the use of computers are occurring every day. Just imagine, as the chairman of the Crime Subcommittee [Mr. HUGHES] of New Jersey has said, what wound happen if criminals accessed Federal computers? You don't have to imagine because it happened a year ago in the Langevin case when a former employee of the Federal Reserve Board accessed the Federal Reserve's computer information on the money supply—information worth millions.

Imagine also what would happen, since we transfer billions of dollars in our financial system daily by computer, both nationally and internationally, if someone used their computer for criminal purposes?

Clearly the Federal Government should set the national standard. We need a Federal law protecting against computer crime.

I urge the House and the Senate to support such legislation that will be soon forthcoming from the Subcommittee on Crime chaired by the gentleman from New Jersey.

DOD AUTHORIZATION BILL FOR FISCAL YEAR 1985

(Mr. **LEVINE** of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. **LEVINE** of California. Mr. Speaker, earlier this week the other body passed its version of the fiscal year 1985 DOD authorization bill. It contains language on the important new warranty law with holes big enough to drive an M-1 tank through.

First, the new language exempts weapons costing less than $100,000 or whose total procurement cost is less than $10 million.

Second, that language would exempt from the warranty requirement the first year, or the first 10 percent, of the production run of the weapons system, whichever is less.

Third, the bill and the report language which accompanies it gives the Defense Department sweeping authority to exempt from the warranty requirement any aspect of a weapons performance the Pentagon labels "nonessential." There was never any intent on the part of Congress to give the Pentagon such power when the warranty law was written.

Since the warranty law was enacted last year, Mr. Speaker, the administration has sought on all fronts to repeal it or weaken it. The Secretary of Defense has already exempted what could amount to as much as 30 percent of the contracts signed by the Department of Defense from the warranty law.

Mr. Speaker, the integrity of the warranty law is now at stake. I urge the House conferees to ensure a strong and meaningful defense warranty law by rejecting the other body's amendments.

□ 1030

SECRETARY OF LABOR NEEDS TO COOPERATE WITH HOUSE ON YOUTH UNEMPLOYMENT

(Mr. **HAWKINS** asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. **HAWKINS.** Mr. Speaker, with a crisis in youth unemployment exploding this summer, the Subcommittee on Employment Opportunities has invited Secretary of Labor Donovan to testify on the development of a bipartisan solution. Regretfully, although scheduled, he has refused to appear.

Instead, while ignoring mandates under current law, he has devoted his time to calling for a subminimum wage, 85¢ less than a minimum wage, whose real value today is worth less than the 1963 minimum of $1.25 and which would substitute youth employment for adults: a scheme, untargeted, unmanageable, and discredited by numerous objective studies, including those of the Labor Department.

If the Secretary is sincere, he already has some roads which remain unused. For example, the targeted Jobs Tax Credit and the regular summer jobs program under JTPA. Also, there remains the $100 million supplemental now buried in the other body that would—if the administra-

tion would remove its opposition—provide 100,000 jobs immediately and show good faith. Other legislation to create youth incentive jobs tied to education and training is also available and awaiting the administration's assurance of support.

Therefore, if the Department of Labor is sincere in wanting to help our youth this summer and beyond instead of providing windfall profits to the fast food chains who stand to make millions on his subminimum wage—the Secretary should at least be willing to open dialog with both Houses of Congress openly and in good faith.

IN TRIBUTE TO "THE LAWMAKERS"

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, for several years now the Congress and the legislative process has been the subject of a PBS weekly television program, "The Lawmakers."

This fine program has provided excellent coverage of our debates and decisions, coverage which is vital if the American public is to understand and participate in the workings of their Government.

As some Members have heard, this fine show will soon be going off the air. I regret that we will no longer have the benefit of "The Lawmaker's" wit and its wisdom.

Paul Duke, Linda Wertheimer, and Cokie Roberts, the three principal reporters on the show, along with the other staff, have made a great contribution to expanding public knowledge and interest in what we do here, and they shall be missed.

CONSTITUTIONAL AMENDMENT TO BALANCE THE FEDERAL BUDGET

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, just a few moments ago, we heard two colleagues on the Democratic side talk about the necessity of adopting a law today at the Federal level that will, hopefully, preclude computer crime. I think that is sound; we should do that. The reason is that the computer technology should not be used by those who seek to steal from those who are alive today.

I would like to ask my colleagues, however, to also address the same concern to the next generation, from whom we are stealing right now, in our refusal to adopt a balanced budget amendment to the Federal Constitution. The conduit for that theft is the Congress of the United States and we can restrain that interrelationship between Congress and the next generation, who are not here to speak for themselves, by signing Discharge Petition 10 at the desk so that we will at least have a chance to vote on that proposed constitutional amendment which will bring some fiscal discipline to the Congress of the United States.

EFFORT TO CUT FEDERAL SPENDING

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, yesterday, my colleague from California [Mr. Coelho] lambasted Republicans for talking about the need to cut spending. He said that in typical Republican fashion, they used distorted information to demand a bogus amendment to balance the budget they have bloated. He indicated that many Republicans have Federal spending in their areas, and he ended his statement by saying, "I trust these gentleman will soon have a special order calling for cuts in this spending as well, unless their motto is 'Do not cut mine, but cut someone else's.'"

Well, Mr. Speaker, yesterday I offered an amendment on the floor to cut something in my district. I was trying to bring to the attention of my colleagues $20 million in the bill that was then before us being put into the construction phase of a building in my district which I have been informed by GSA cannot be spent because they will never get into construction phase.

I pleaded with my colleagues on both sides of the aisle to support me in saving $20 million of the Federal deficit by not spending it in my district. I was astonished yesterday to find out so many Democrats, unfortunately, would not assist me in that.

Mr. Coelho, who yesterday lambasted Republicans for not taking out special orders saying, "Cut something in my district, cut something in someone else's district," could not support me in this worthy effort.

Mr. Speaker, I hope that some people can remember from the beginning of the day to the end of the day what it is they said, so that they might vote in accordance with what they said. Particularly when they use it to attack Members of my side of the aisle.

Mr. COELHO. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I will be happy to yield to my friend from California.

Mr. COELHO. I would just like to know when the gentleman said that Democrats did not support your amendment. As I remember on the amendment, that there were quite a few Republicans who did not support it.

Is that true?

Mr. LUNGREN. That is true. A majority of Republicans supported it.

Mr. COELHO. That might tell you something.

Mr. LUNGREN. A majority of Republicans supported it. The gentleman, yesterday, asked Republicans to show where they could cut spending in their district; I took the gentleman's statement to heart, and I offered the gentleman an opportunity, and the gentleman could not support me.

There is nothing more I can do to help the gentleman.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1985

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 529 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 529

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5604) to authorize certain construction at military installations for fiscal year 1985, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived, and all points of order against the bill for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be considered for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. Hall] is recognized for 1 hour.

☐ 1040

Mr. HALL of Ohio. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. Quillen] for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 529 is an open rule providing for the consideration of H.R. 5604, the Military

Construction Authorization Act for Fiscal 1985.

The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services.

In order to expedite consideration of H.R. 5604, the rule provides that the bill shall be read for amendment under the 5-minute rule by titles instead of by sections, with each title considered as read. The rule also provides for one motion to recommit.

It should be noted that the rule waives a point of order against the bill under section 402(a) of the Congressional Budget Act. Section 402(a) provides that it shall not be in order to consider any bill which authorizes the enactment of new budget authority for a fiscal year unless that bill has been reported on or before May 15 preceding the beginning of such fiscal year.

Section 610 of H.R. 5604 authorizes the enactment of new budget authority for fiscal year 1984 in the amount of $30,000 to carry out a military construction project outside the United States at the Naval Station in Keflavik, Iceland. Since the bill was not reported by May 15, 1983, it violates section 402(a) of the Budget Act. It should be noted, however, that this project was included in the House-passed military construction authorization for fiscal year 1984. Nevertheless, the item was dropped in conference and now has been inserted in H.R. 5604. The overall authorization for fiscal year 1985 was in fact reported by the required deadline of May 15, 1984.

The rule further waives all points of order against the bill for failure to comply with the provisions of clause 5(a) of rule XXI. Clause 5(a) of rule XXI prohibits appropriations in a legislative bill. This waiver is necessary because certain sections of the bill contain provisions which might be considered to involve appropriations.

Mr. Speaker, H.R. 5604 authorizes about $9.3 billion for fiscal year 1985 for construction activities at military facilities both in the United States and overseas. This amount is $1.2 billion below the requested level.

I am especially pleased that the measure authorizes $36.4 million in military construction projects at Wright-Patterson Air Force Base. Included in this total is an authorization of $5.4 million toward the construction costs of a $10.8 million addition to the U.S. Air Force Museum. The balance of the costs will be raised through private contributions in my district. The addition is needed to protect historic aircraft, now stored outside, which are deteriorating.

Mr. Speaker, I am not aware of any opposition to this open rule on H.R. 5604, and I would urge my colleagues to adopt it.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, the able gentleman from Ohio has explained the provisions of the rule, and I would like to remind the Members of the House that this is an open rule.

I know of no controversy whatsoever on the rule. The bill made in order by the rule provides a reduction of $1.2 billion from the $10.5 billion requested by the Department of Defense. I believe that even though the bill represents a 21-percent increase over last year that it is within the framework of the request of the administration, which supports the bill. There are certain provisions which can be worked out in conference after it passes the House.

This bill does provide funds for projects in my district. The Holston Ordnance Works in Kingsport, TN, receives funds, and next year the Department of the Army and the committee will be working on a major reconstruction project for Holston Ordnance.

The bill also contains authorization for a project in Elizabethton, TN, for a 200-person National Guard Armory.

Mr. Speaker, I urge adoption of the rule and the bill when it comes to the floor of the House.

Mr. McEWEN. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. I yield to the gentleman from Ohio.

Mr. McEWEN. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the rule.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. HOYER). Pursuant to House Resolution 529 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5604.

□ 1045

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5604) to authorize certain construction at military installations for fiscal year 1985, and for other purposes, with Mr. GLICKMAN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Purusant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. DELLUMS] will be recognized for 30 minutes, and the gentleman from Colorado [Mr. KRAMER] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today the Committee on Armed Services brings to the floor of the House, H.R. 5604, as amended, the fiscal year 1985 military construction authorization bill.

In presenting this legislation, I want to express my appreciation to the distinguished gentleman from Colorado [Mr. KRAMER], the ranking Republican member of the Subcommittee on Military Installations and Facilities, for his leadership and assistance during extensive hearings on this bill. Also, I take this time to thank each of the members of the subcommittee for their diligent work on this bill, particularly at a time when we face severe budgetary constraints.

Overall, the committee believes that H.R. 5604, as amended, is a good bill. It represents a balanced effort to meet both the fiscal constraints that face us and to respond to the most pressing construction requirements of the military services.

For the Members' benefit, I want to briefly review the development of this legislation, Mr. Chairman.

The purpose of the bill is to provide new military construction authorization and related authority in support of the military departments, defense agencies, and Guard and Reserve Forces. Its enactment is necessary before appropriations can be provided to finance these activities.

The Department of Defense [DOD] originally requested new authority in the amount of $10.5 billion for fiscal year 1985. On May 8, by a 40 to 0 vote, the Committee on Armed Services approved H.R. 5604, as amended, providing for $9.3 billion in authorization for the new fiscal year. This amount is approximately $1.2 billion below the administration's budget request.

The committee also considered a fiscal year 1984 supplemental request submitted by the Department of Defense in the amount of $30 million to provide for construction of a fueling pier in Keflavik, Iceland. This project was previously approved by the House in the fiscal year 1984 military construction authorization bill but was lost in conference. Rather than reporting the supplemental request as a separate bill, the committee included a provision in H.R. 5604 amending the Fiscal Year 1984 Military Construction Authorization Act by $30 million. A waiver of section 402(a) of the Congressional Budget and Impoundment Control Act was granted by the Rules Committee for the late reporting of this authorization.

Mr. Chairman, the full committee's action on H.R. 5604 followed extensive hearings and review by the Subcommittee on Military Installations and Facilities. Because of budgetary constraints dictated by House action on the first concurrent budget resolution, the committee adopted certain procedures, as outlined in the committee report, for reducing the budget request. These procedures resulted in a number of reductions being made and some projects being deferred that may otherwise have been considered valid requirements.

As a result of these actions, the committee was able to reduce the $10.5 billion request by $1.5 billion. At the same time, because of their relative priority in terms of contributing to readiness, morale, and operational capabilities, projects totaling approximately $253 million were added back to the bill. In taking this action, the committee also took into consideration the current favorable bidding climate, lower inflation rates, and the serious unemployment conditions that continue to exist in the construction industry. Thus, with the projects added back, the final reduction in the administration's request totals $1.2 billion, the figure that I previously alluded to.

In the interest of time, I will not detail the individual actions taken by the committee. For your convenience, However, I have included in my statement a summary of those actions which are more fully explained in the committee report.

ADMINISTRATION REQUEST AND COMMITTEE ACTION AS REFLECTED IN H.R. 5604, AS AMENDED

[In thousands of dollars]

	DOD fiscal year 1985 request	Changes by committee	Total amount approved by committee
Army	$3,687,174	$553,700	$3,133,474
Navy	2,509,086	194,528	2,314,558
Air Force	3,136,742	358,929	2,777,813
Defense agencies	478,300	115,252	363,048
NATO infrastructure	296,700	46,700	250,000
Guard and Reserve Forces	389,800	-37,492	427,292
Total	10,499,802	1,231,117	9,268,685

Briefly, I will highlight some of the major adjustments made by the committee:

A $96.2 million reduction in the ground launched cruise missile [GLCM] program. The decrease reflects the committee's action to defer $44 million for supporting facilities in The Netherlands until the country-to-country agreement has been finalized. In addition, it was determined that $52.2 million for facilities in support of accompanied tours at Florennes, Belgium could be deferred for 1 year.

In view of the recent decision by the Dutch Parliament to defer a final decision on deployment of GLCM until November 1985, I intend to offer an amendment at the appropriate time to defer the $35 million included in the bill for GLCM construction in the The Netherlands.

A $77-million reduction in the request for Rapid Deployment Force facilities. The committee deferred projects totaling $62 million at a classified location until negotiations regarding implementing agreements have been finalized. In addition, the committee deleted $15.1 million for six hardened aircraft shelters in Oman because of questions concerning the requirement.

An $8.7-million reduction for facilities in Honduras. The committee deferred these projects pending receipt of a congressionally mandated report on the regional master plan for construction in Central America.

A $142 million reduction for the Navy's share of the Santa Margarita water project at Camp Pendleton, CA. The committee deferred the Navy's share of the proposed $263 million water reclamation project pending independent action by the Interior Committee on legislation to authorize the two-dam project.

A $46.7 million reduction in the NATO infrastructure program. The committee action reflects the present strength of the dollar against NATO currencies. And,

A general reduction of approximately $374 million which reflects savings in the fiscal year 1984 and prior year military construction programs. These savings resulted from lower inflation rates and the excellent bidding climate.

In the general provisions, the committee approved the following major items:

A provision prohibiting the use of Department of Defense installations for the storage or disposal of nondefense toxic and hazardous materials;

A provision extending the family housing leasing and rental guarantee program to authorize the secretaries of each of the military departments to enter into one additional leasing and rental guarantee agreement at one location to accommodate a major restationing action; and

Three fair and equal market value land conveyances and one land exchange.

In conclusion, Mr. Chairman, the committee believes this is a good bill that deserves favorable consideration by the House.

□ 1050

Mr. Chairman, I wish to announce to my colleagues that at the appropriate time I intend to make a unanimous consent request that the bill be considered as read and open to amendment at any point. As presented, the rule states that the bill will be read by titles, and my thought is that is we opened the bill to amendment at any point, it would expedite the proceedings this morning, and my purpose is also to make it as convenient as possible for Members to offer their amendments, particularly those amendments that require the simultaneous amending of two titles.

Now that I have made the statement reporting the bill to the Committee, Mr. Chairman, I would like to beg the indulgence of the Chair and the Members of the Committee to make one final comment. As I said last year in the debate, for nearly 14 years now I have marched into the well of the House to stand in diametric opposition to the priorities established in our military budget. Last year my colleagues saw fit to bestow upon this gentleman the institutional responsibility to serve as the subcommittee chairperson of the Subcommittee on Military Installations and Facilities having the jurisdiction to report this military construction budget to the floor of Congress.

A number of my colleagues have said, "Now that the gentleman from California is the Chair of the subcommittee, does that mean now that the military construction budget [illegible] a good enough budget for all of us to support?"

Well, I would like to make a comment, particularly to those Members who have followed this gentleman's leadership with respect to views on the military budget and to my colleagues who do not necessarily agree with this bill and who would like to hear the gentleman's arguments on the military budget. First, the reason why I think this particular bill is not necessarily very constroversial is because the fights have already been made by the time the military construction budget comes to the floor of Congress. This budget is driven by decisions that are made outside of the military construction budget.

Mr. Chairman, for example, if you choose to deploy the Pershing and cruise missiles in Europe, an action that this gentleman opposes, then you would necessarily take the appropriate action to provide the resources for the bed-down of that weapons system. If you choose to go forward with the procurement of the B-1 bomber, an action this gentleman opposes, then the military construction budget must by necessity reflect the resouces to bed-down the B-1 bomber. If you choose to deploy the MX missile, a decision this gentleman opposes, you must take the necessary action in the context of this legislation for it to go forward.

The point this gentleman is making is that the military construction budget reflects policy decisions that have been made prior to the time we act upon this legislation. The reason why I think this particular bill is not necessarily controversial, as I said, is because all of the fights have been made prior to the time that this bill comes to the floor.

So I think that I can say without fear of contradiction that this bill does indeed reflect the consensus of this body. I think that this bill reflects the consensus of this body in the most favorable light. All of the fights have been rendered.

How, then, does this gentleman respond to the bill? There are items in this bill that I think are very important, very beneficial, and very good. Irrespective of the debate, I think there are a number of items that will continue to go forward because of their humane, humanitarian qualities. There are indeed quality-of-life issues. But the fact remains that even though this legislation does indeed reflect the consensus of this body, this gentleman must at certain points step outside of his institutional responsibilities as the subcommittee Chair of this legislation required to dutifully report this bill to the floor and also be a participant in the debate that shapes the priorities. So in that context, I continue to stand outside the consensus.

I still believe we have a long way to go, Mr. Chairman, in order to shape the priorities in a much different fashion. I continue to believe that we place too great a premium and reliance on preparing for peace by preparing for war. This military construction budget in many ways is very benign, but if you couple this military construction budget with the overall Department of Defense authorization, it would simply be one facet of a much larger bill that reflects a priority that places much too great a premium on a rising military budget and a rising military capability rather than moving us in the direction of peaceful settlement, political solution, and negotiations that move us away from the brink of war and thermonuclear disaster and move in the direction of peace in the 21st century.

So in that regard, as subcommittee Chair, with my institutional responsibilities, I report a bill that I believe is a good piece of legislation because I believe it reflects the consensus of this body in very fair and equitable terms, but as a Member of his body and as a Representative of my constituency in the Eighth Congressional District in California, I continue to stand outside that consensus because I think we must continue to challenge. So for my colleagues who follow this gentleman's thoughts on this bill, I still must oppose it because there are still items in this bill that reflect the larger decisions that have been made outside this bill.

□ 1100

As I said, this bill is driven by other policy decisions. We cannot fight all these policy decisions on the military construction budget, as I said, because many of them are reflective, but it continues to reflect those items, and in that context I must continue to maintain the integrity of my responsibility to represent my constituency.

Mr. Chairman, I thank the Members and beg the indulgence of the committee to allow me to step outside my institutional responsibility to make that statement.

Mr. Chairman, I reserve the balance of my time.

Mr. KRAMER. Mr. Chairman, I yield myself so much time as I may require.

Mr. Chairman, I rise in support of the fiscal year 1985 military construction authorization bill that is before the House today.

As the gentleman from California [Mr. DELLUMS] has explained, H.R. 5604 represents an effort by the Armed Services Committee to respond to the military services' most pressing construction needs and at the same time do it within the fiscal constraints that face us. This task was a difficult one and the gentleman from California is to be commended for his evenhandedness in chairing the hearings on this legislation.

Earlier the gentleman from California explained some of the major adjustments to the bill made by the committee. The Department of Defense [DOD] requested nearly $10.5 billion for fiscal year 1985 for military construction. When examining the request, we found that nearly half of the growth in the new request was due to the need for facilities to field major weapon systems procured by Congress in previous years. All of these systems require substantial facilities to be made operational. So, finding ways to reduce the request to a smaller rate of growth was complicated by the fact that previous procurements were driving the requirement for future facilities.

After a very careful review of the military construction request, the committee was able to reduce the request by $1.2 billion. The bill recommended by the committee provides the facilities needed for new weapon systems and allows many substandard structures built during World War II to be replaced, modern barracks and working spaces to be provided for our forces at home and overseas, and programs to comply with environmental laws and for conserving energy to be continued at an uninterrupted pace.

Although the committee has brought to the House a bill that entails a smaller total program than that requested by the administration, it preserves our defense readiness and in many instances improves our fighting capabilities. I urge that this bill be passed by the House.

Let me extend my compliments again to not only the chairman but to the staff for what I consider to be a job well done.

Mr. Chairman, I yield such time as he may require to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of H.R. 5604, the military construction authorization for fiscal year 1985, and to compliment the chairman, the ranking member, and the members of the committee and staff for their work in putting together this bill, which I regard as a responsible, needed and essential component of our defense policy.

The committee has done a good job of balancing the needs of our national defense and the concerns of the taxpayers. They have proposed savings where appropriate, and outlays where they are needed, coming in $1.2 billion dollars under the President's request.

I think we sometimes overlook the fact that the dollars authorized under this bill represent projects which contribute, not just to our national defense—although that is the essential point—but also to employment and the economic well-being of local communities throughout the Nation. There are perhaps 20,000 families in my own congressional district, for example, who depend for their livelihood directly on military installations in Ventura and Santa Barbara Counties. Tens of thousands more derive their livelihood indirectly from that same activity. These activities are vital not just to our national defense and space efforts, but to our local economy. In 1985, for example, the first launch of the space shuttle will occur from Vandenburg Air Force Base—at a facility which has been funded and built over the past 6 years from authorizations in previous military construction bills. I was honored to participate just last month in ceremonies marking the dedication of the shuttle launch pad. Two other bases, Navy bases, in the area will also contribute to the shuttle launches and recoveries. The residents of my district are proud to play a role in this important space program, which holds such great promise for the Nation and for the world.

I'm also greatful to the committee for including authorization in this bill for the donation of land to the city of Lompoc for the proposed Western Spaceport Museum and Science Center, which will document this momentous undertaking.

Mr. Chairman, I urge an aye vote for the bill.

Mr. KRAMER. Mr. Chairman, I reserve the balance of my time.

Mr. DELLUMS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Mississippi [Mr. Montgomery].

Mr. MONTGOMERY. Mr. Chairman, I rise in support of this legislation, the military construction authorization bill.

It has been mentioned that while the dollar figure of $9.3 billion reflects an increase of nearly $2 billion from last year, it also reflects a reduction of $1.2 billion in the amount requested by the administration.

I believe this bill provides an appropriate level of growth for the Nation's military construction and family housing requirements. It reflects fiscal responsibility on the part of my colleagues that serve on the Armed Services Committee. At the same time, the bill meets the pressing needs of both the Active and Reserve components of the All Volunteer Force.

Mr. Chairman, the National Guard and Reserve forces continue to play an integral part in military operations around the world. Congress places a great deal of emphasis on these forces because they represent a very cost-effective means of insuring our country's security.

I am pleased to note that in this bill there is an increase for the Guard and Reserve of $37 million over the amount requested by the administration.

I would like to say in conclusion, Mr. Chairman, that I want to thank my chairman, as I am the ranking majority member on the Subcommittee on Installations and Facilities, to thank my chairman, the gentleman from California [Mr. Dellums] for the fine job that he has done in this bill and also to the ranking minority member, the gentleman from Colorado, Mr. Ken Kramer, and the rest of the subcommittee members.

We feel we have a good bill. It should be supported by the great majority of the Members of this House.

Mr. DELLUMS. Mr. Chairman, I yield 7 minutes to the distinguished gentleman from Texas [Mr. Stenholm].

Mr. STENHOLM. Mr. Chairman, I rise in strong support of this bill this morning.

I would like to take a moment to congratulate Chairman Dellums on the very fine work he and the members of his committee have put into this bill. Whenever I have expressed an interest in the area of military construction, I have always found the chairman to be open, accessible, and extremely fair and I commend his handling of this subcommittee's legislation.

During consideration of amendments to this bill, I had planned to offer an amendment on behalf of Congressman Arlan Stangeland and myself that would have exempted military construction authorized by this bill for fiscal year 1985 from the provisions of the Davis-Bacon Act. To put in the budget-cutting teeth, such an amendment should have, we also had included a provision to cut the funds authorized in H.R. 5604 by $100 million.

As we all know, Mr. Chairman, everyone is in favor of reducing the monstrous Federal deficits that threaten our entire economy. And everyone wants to stop wasteful and unnecessary government spending. This amendment would help accomplish these goals by:

Reducing military spending authorized for fiscal year 1985 by $100 million;

Producing construction contracts that accurately reflect locally competitive, market-determined costs;

Specifically and exclusively tying these spending reductions to the cost savings realized from the Davis-Bacon exemption; and

Not cutting back any actual military programs or activities or reducing the amount or quality of goods and services procured by the military.

The Congresssional Budget Office estimates that the Davis-Bacon Act increases the costs of Federal construction by 3.7 percent. In a statement presented to the House Military Installations and Facilities Subcommitee last October, the Department of Defense estimated that Davis-Bacon adds 5 percent to Federal construction costs.

The General Accounting Office, the Department of Labor, a Carter administration interagency task force, the Grace Commission, and others have all estimated a similar or greater Davis-Bacon cost premium.

Clearly, the Davis-Bacon Act is a costly depression-era relic that has operated in recent years counter to most of its original purposes. It has applied since 1935 to all Federal construction contracts over $2,000, even to those for painting, decorating, and repairs.

□ 1110

Ostensibly, Davis-Bacon requires payment of a locally prevailing wage. In practice, it often mandates the highest ages in a given area. These artificially imposed costs are further compounded by additional administrative, compliance, and paperwork costs.

Davis-Bacon applies to the domestic construction included in H.R. 5604, as well as roughly 40 percent of military family housing support costs, or about 60 percent of the bill's total $9.3 billion. Applying CBO's more conservative 3.7 percent estimate of Davis-Bacon cost inflation, and assuming, as do DOL and DOD, that recently enacted DOL regulations will save about half that amount, there is still over $100 million to be saved by exempting military construction from Davis-Bacon. There is widespread evidence that more would actually be saved, but our amendment ensures that DOD's spending will be trimmed by at least $100 million in fiscal year 1985. Because savings would be highly varied from site to site, the allocation of these savings would be made administratively.

The time is far past for Congress to get serious about the deficit and about wasteful spending. There are no simple, easy answers to the deficit problem. Instead, we will face a long series of difficult decisions, many of them painful, some of them involving seemingly small amounts. But for those who are willing to face up to this challenge, and to begin grappling with these difficult decisions, as well as for those who are concerned about the rate of growth of defense spending, this amendment offers one significant step forward.

Mr. Chairman, I want to pause for one moment and reiterate that I commend Chairman Dellums for his work in handling this bill. He has been very hardworking and very receptive, and extremely fair, to input from all sides in the area of military construction.

Mr. Chairman, I had felt compelled to offer this amendment today but I will not. The Parliamentarian has expressed a concern in regard to whether it would be germane. We could have made an argument as to the germaneness, which we will not do today, and I believe the major reason that I will use for not making a fight today is the fact that I believe in the legislative process of the Congress. And I believe that this particular issue should be handled during the process or as a part of our legislative process.

Last year Congressman Arlan Stangeland and I introduced H.R. 3846 which now has 96 cosponsors. H.R. 3846 would significantly reform, notice I am saying reform, not repeal, the Davis-Bacon Act. This bill would have saved up to $100 billion a year Governmentwide and about $100 million in military construction alone.

We introduced this bill last August. We have asked for hearings but what has the response been? Zero. No hearings.

The Education and Labor Committee has had ample opportunity to examine legislation in this area so that it should not be necessary to look for possible amendments to bills like the one before us today. But that committee has refused to do so.

It is one thing to be given your day in court and to be told that the committee has held hearings, looked at the testimony, and voted down your legislation; it is another thing entirely to be told that you will get no hearings, no day in court, that the legislative process does not really work the way we teach our children in school that it should. And it does not work when some Members simply refuse to consider some bills.

Unfortunately, that even happens, as in this case, when a bill would make a constructive reform, would save the taxpayers money, would cut waste in the Government and would even create new job opportunities for many of our unemployed.

I think more and more of the American people are finding it hard to fathom why Congress acts the way it does. I sincerely hope, and can say to you today I have received some faint flicker of optimism and hope that hearings will be held so that before this particular bill is on the floor next year that I will not have to come back to the floor of the House and say that we have not received our due legislative process.

Many of us, national TV, magazines, Members of Congress have focused on cost overcharges in the military in regard to bolts, tool boxes, hammers, et cetera. It is my belief that savings by reforming Davis-Bacon will make those cost overruns, that we have had so much public attention drawn to, look like peanuts compared to the effect of this particular reform legislation.

Again I thank the chairman for his indulgence and say I will not offer my amendment today but I would hope that other Members of this body and the people back home will begin to ask those questions of us in the Congress as to why we do not do some of those things that people like the Grace Commission and others have suggested that we do.

Mr. DELLUMS. Mr. Chairman, I now yield 2 minutes to the distinguished gentleman from Washington [Mr. DICKS].

Mr. DICKS. Mr. Chairman, I would like to congratulate the Armed Services' Committee for their outstanding work on the military construction bill. In particular, I would like to commend Chairman DELLUMS and Congressman KRAMER and all of the other members of the Military Installations and Facilities Subcommittee for bringing this bill to the floor in such a timely manner.

I applaud the committee's decision to authorize funding for the new Madigan Army Medical Center at Fort Lewis, WA. The authorization for funding to build a new hospital will allow the Army to replace the existing facility that was originally constructed in 1943. Madigan, the last of the Army's cantonment design hospitals, consists of over 100 one-story buildings, which are spread over 75 acres. These buildings, that are connected by more than 1½ miles of corridors and ramps, make the treatment of patients a logistical nightmare.

Unfortunately, the current facility cannot provide adequate medical care that our servicemen deserve. Madigan Hospital has been cited for having numerous fire, safety, and health violations and stands to loose its accreditation if new construction isn't begun soon.

The new Madigan Hospital contained in this authorization bill will serve as a five-State regional medical center and will provide care in a number of specialities for military populations in Washington, Oregon, Idaho, Montana, and Alaska. Also, Madigan has been designed to serve as a major medical evacuation center for almost all Army operational plans. The hospital will provide the first-stop treatment center for numerous patients arriving in the continental United States.

I salute the committee's action that will allow the Army to construct a facility that will provide the medical care that our servicemen deserve.

Thank you.

Again I want to thank the distinguished chairman and the staff of this committee. This is a committee that works hard for the Congress and I want to applaud Chairman DELLUMS for the outstanding job he does, and Congressman KRAMER, who is one of the most knowledgeable men in the House on military construction matters.

Mr. DELLUMS. Mr. Chairman, I would like to ask how much time is remaining to the gentleman.

The CHAIRMAN. The gentleman from California [Mr. DELLUMS] has 4 minutes remaining and the gentleman from Colorado [Mr. KRAMER] has 26 minutes remaining.

Does the gentleman from Colorado [Mr. KRAMER] have any additional requests for time?

Mr. KRAMER. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. I thank the gentleman very much, and I appreciate his yielding 5 additional minutes to me.

Mr. Chairman, I now would like to first apologize to my distinguished colleague, a member of the Armed Services Committee, for not recognizing the gentleman prior to recognizing the distinguished gentleman from Washington [Mr. DICKS].

I would like to yield to the gentleman at this time for the purpose of entering into a colloquy with the chairman.

Mr. SKELTON. Will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman from Missouri.

Mr. SKELTON. I thank the chairman, I wish to engage in a colloquy with the gentleman from California, the chairman of the very important subcommittee on Military Installations and Facilities, Mr. DELLUMS, and I wish to discuss the amendment that I proposed and that you adopted in the subcommittee which is designed to prevent our military installations from becoming dumping grounds for hazardous and toxic wastes.

Mr. DELLUMS. I thank the gentleman very much.

Mr. Chairman, I am pleased to enter into a colloquy with my distinguished colleague from Missouri. The purpose of entering into this colloquy is to establish legislative history.

During the markup of the fiscal year 1985 military construction authorization bill the committee did indeed approve the amendment sponsored by my colleague from Missouri, Mr. SKELTON, that deals with the question of storing hazardous and toxic waste materials on military installations that are neither owned nor generated by the Department of Defense. At this time I would like to ask my distinguished colleague would he explain the implications of the legislation for the purposes of establishing a legislative history here on the floor of the Congress, and I yield to the gentleman for that purpose.

Mr. SKELTON. I thank the gentleman for the opportunity to explain this legislative history.

As the gentleman from California is aware, the citizens of my home State of Missouri have been involved in an ongoing crisis involving the proposed cleanup of dioxin sites, the most famous being that of Times Beach, MO.

Because of this serious dioxin problem several cleanup proposals have been made by various people to use our Nation's military installations as temporary and also as permanent disposal sites for non-Department of Defense hazardous and toxic wastes.

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Should the military be forced to become our Nation's hazardous waste dump-site managers, eventually our defense installations will become Government operated and funded storage facilities for private industries' hazardous and toxic wastes. In my congressional district, Fort Leonard Wood Army Base was recently mentioned and as a possible site for the storage of dioxin contaminated soil.

Our military installations were designed and constructed to train soldiers to protect our Nation. Proposals such as storing non-Defense hazardous waste takes away from this mission. We need to provide our military personnel with secure and safe conditions under which to train and work. This amendment merely reiterates this point.

The Department of Defense concurs with me that these proposals to harbor non-Department of Defense toxic and hazardous wastes on defense facilities is contrary to the explicit purpose of our Nation's defense. Proponents of this disposal plan have little evidence to argue their position other than the fact that Department of Defense lands are fenced and secured. Key questions on the appropriateness of the use of this land has been overlooked. Not normally addressed in the hazardous waste proposals are: Consideration of alternative disposal; preemption of competition with private sector sites; appropriateness of the environmental conditions of the Department of Defense installation; and indirect Federal subsidization of private sector generators hazardous waste disposal costs.

Although this amendment is already covered by a Department of Defense directive, by enacting it into law, the Defense Department's ability to deny inappropriate requests will be greatly strengthened. The Secretary of Defense would be given discretionary authority under emergency situations to make exception, under strict conditions, to protect the health and safety of the public from imminent danger. This amendment would send a clear signal that Department of Defense installations are not available as a last resort for non-Department of Defense hazardous waste generators. It may also cause hazardous waste generators to act more responsibly in handling their hazardous and toxic materials.

Mr. DELLUMS. So the gentleman from Missouri's amendment merely protects our installations from becoming Government-operated and supported toxic waste storage sites for industry except in certain situations where the Secretary of Defense would grant the appropriate exceptions; is that correct?

Mr. SKELTON. Yes, Mr. Chairman; that is correct. And I would also at this time wish to thank the gentleman from Florida [Mr. Hutto] for his excellent assistance with this amendment in subcommittee and a special commendation to the gentleman from California, the chairman of the Subcommittee, Mr. Dellums and to Mr. Kramer, the ranking minority member from Colorado, and to your subcommittee for the attention paid to this very important subject. It is important not just to Missouri, but to all of us in the Nation.

Mr. DELLUMS. I would like to thank the gentleman first, and second thank the gentleman for offering the amendment.

Mr. Chairman, I too agree that we must protect our military trainees from unnecessary hazards when possible and I believe the gentleman's amendment will clearly signal to the industry that our military installations were not intended to be used for commercially generated hazardous waste disposal.

And my hope is that this colloquy is significant and important and will establish the appropriate legislative history in this respect.

I thank my distinguished colleague.

Mr. SKELTON. And I thank the chairman again for his excellent assistance in this regard.

Mr. DELLUMS. Mr. Chairman, how much time do we have remaining?

The CHAIRMAN. The gentleman from California [Mr. Dellums] has 3 minutes remaining.

Mr. DELLUMS. Mr. Chairman, I now yield 1 minute to the distinguished gentleman from Maryland [Mr. Dyson].

Mr. DYSON. Mr. Chairman, I rise in support of the bill and like all the other Members who spoke on the floor today, I salute my two colleagues on the Armed Services Committee, the chairman of the subcommittee, Mr. Dellums of California, ranking minority member, Mr. Kramer of Colorado.

I know we have given them a number of requests over the years; probably this year they were saturated with them. They did a good job in addition to meeting the required cuts, established by the full committee.

I salute each and every one of them and also the subcommittee's extraordinary staff.

Mr. Chairman, when I first came to the Congress in 1981, I was very fortunate to have been selected to serve on the House Armed Services Committee. As the Representative from Maryland's First Congressional District, I was very optimistic about the opportunity to voice the concerns of my constituents on one of our country's most important subjects—the national defense.

During the first few months in office, I would come to know something very important about this subject. Providing for the national defense meant much more than investing in modern weapons systems, such as Abrams M-1 tank, which is tested at the Aberdeen Proving Grounds, or the F-18 Navy fighter which is tested at Patuxent Naval Air Test Center. These weapons systems are critical to our national security, but, as many of us in both the House and Senate have learned over the last 4 years, taking care of our military personnel is equally important. This point became abundantly clear to me after visiting the military bases in the First District.

At the Aberdeen Proving Grounds, Gen. John J. Koehler, would frequently pull me to the side to say "we've got to do something about the housing problems at this base, Roy."

At APG very little had been done to replace, much less improve, the barracks or family housing throughout the 1970's. Some of these facilities dated back to the early part of the century when the installation was first established.

I heard the same concerns expressed to me at Patuxent Naval Air Test Center, where the able commanding officer, Capt. Thomas Flannery, gave me a tour of the family housing at this major installation. In both cases, I couldn't believe we really expected our officers and enlisted personnel to fulfill their obligations to the national defense, if we failed to fulfill our own obligations to them.

I soon viewed one of the most important responsibilities of my position on the House Armed Services Committee was to make improvements in the quality of life for the personnel at both APG and Pax River. In the long run, these improvements would add substantially to the readiness and morale at both facilities.

The bill before us today, Mr. Chairman, fulfills many of the goals I set out to achieve nearly 4 years ago.

Included in this bill are funds to complete the third phase of a three part program to replace the existing barracks at APG. Also included in this bill is more than $30 million to complete the family housing improvements program at this same facility. Each of these ambitious projects were initiated when I first came to the Congress nearly 4 years ago.

At Pax River, groundbreaking for 250 units of new family housing will commence this summer. And this year's authorization compliments this earlier effort by providing funds for a family service center at this installation.

Mr. Chairman, I owe a great deal of gratitude to all the members of your subcommittee and, again, to your excellent staff. I urge all of our colleagues to support this important legislation.

Mr. COLEMAN of Texas. Mr. Chairman, I rise in support of H.R. 5604 and ask unanimous consent to revise and extend my remarks.

Mr. Chairman, I want to commend my colleague, the gentleman from California, for his diligence in crafting this bill as the chairman of the House Armed Services Subcommittee on Military Installations and Facilities. The subcommittee held 17 hearings to consider nearly 1,500 projects at approximately 700 military installations across the country and around the world.

I took the opportunity to testify before the subcommittee on a matter of great importance to my congressional district and our Nation's military preparedness. H.R. 5604 authorizes $24.5 million in military construction moneys for Fort Bliss, TX, in fiscal year 1985.

Fort Bliss is the center for air defense artillery and training in the free world and serves as the hub for modernization of the U.S. Air Defense Force. It is one of the largest military installations in the United States with over 1.1 million acres. It supports a population of nearly 94,000 persons including military and civilian personnel, dependents, and retirees—representing approximately 21 percent of El Paso's population with a dollar impact of nearly $650 million.

The modernization of Fort Bliss will cause a significant number of new soldiers and their families to be stationed in El Paso to undergo training and eventual deployment. In addition, training of our allied troops will continue under this program. I want to express my support for these construction projects and emphasize their importance.

The construction requests include $16 million for a general instruction building to house a modern, permanent academic facility for the U.S. Army Senior Noncommissioned Officers Academy; $4.8 million for a tactical equipment shop; and $3.7 million for modernization of three enlisted personnel dining facilities. These requests are consistent with the Department of Defense recommendations and do not include any add-on items.

● Mr. FRENZEL. Mr. Chairman, the Stenholm amendment was an excellent proposal, and I regret that we did not have an opportunity to debate it fully and vote on it.

The evidence against Davis-Bacon is clear, and reform of the act was needed years ago. Newsweek magazine, in a major proposed agenda on "How to Get America Back to Work" stated:

> Repeal of the 50-year-old Davis-Bacon is long overdue: by requiring employers on federally funded construction projects to pay workers the "prevailing" wage, Davis-Bacon tends to inflate all construction wages (the prevailing wage is usually defined as the highest in the region) and as a result, ratchets up prices.

Newsweek is correct in assuming that repealing Davis-Bacon would help put more Americans to work.

Reforming Davis-Bacon would also help small business. In my district, most small construction companies refuse to even bid on Government projects because they cannot afford the cost of administrating Davis-Bacon. Small businesses simply don't have the time or the employees to maintain the mountain of paperwork required by the act. As a result, most projects go to larger companies.

Finally, Davis-Bacon's worst fault is its tremendous cost to the taxpayer and its inflationary impact on the construction industry. The Stenholm amendment alone, which only would have applied to military construction in the United States, could have saved at least $100 million. Not a bad savings, considering at the same time it would create jobs and help small business.

The Stenholm amendment was one of fiscal responsibilities. It was pro-jobs. It was anti-inflation. It was for small business. While I regret we were not able to vote for it, it is my hope that the debate on Davis-Bacon will continue. I urge the Committee on Education and Labor to hold hearings on reforming Davis-Bacon, so that we can examine the total impact of the act on both the taxpayer's purse and our Nation's economy.●

Mr. DELLUMS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. KRAMER. Mr. Chairman, I yield back the balance of in time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the bill will be considered under the 5-minute rule by title, and each title shall be considered as having been read.

The Clerk will designate section 1.

The text of title I is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Military Construction Authorization Act, 1985".

Mr. DELLUMS. Mr. Chairman, I ask unanimous consent that the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The text of the remainder of the bill is as follows:

TITLE I—ARMY

AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS

SEC. 101. The Secretary of the Army may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations:

INSIDE THE UNITED STATES

UNITED STATES ARMY FORCES COMMAND

Fort Bragg, North Carolina, $59,160,000
Fort Campbell, Kentucky, $18,840,000.
Fort Carson, Colorado, $34,300,000.
Fort Devens, Massachusetts, $4,450,000.
Fort Drum, New York, $17,740,000.
Fort Hood, Texas, $70,190,000.
Fort Indiantown Gap, Pennsylvania, $2,500,000.
Fort Irwin, California, $19,770,000
Fort Lewis, Washington, $344,730,000.
Fort Meade, Maryland, $5,900,000.
Fort Ord, California, $14,960,000.
Fort Polk, Louisiana, $39,250,000.
Fort Richardson, Alaska, $7,250,000.
Fort Riley, Kansas, $33,800,000.
Fort Stewart, Georgia, $66,130,000.
Presidio of San Francisco, California, $20,980,000.

UNITED STATES ARMY WESTERN COMMAND

Hawaii, Various, $2,980,000.
Helemano Military Reservation, Hawaii, $4,650,000.
Schofield Barracks, Hawaii, $37,070,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Fort Belvoir, Virginia, $48,600,000.
Fort Benning, Georgia, $37,650,000.
Fort Bliss, Texas, $24,550,000.
Fort Dix, New Jersey, $17,650,000.
Fort Eustis, Virginia, $3,300,000.
Fort Gordon, Georgia, $12,200,000.
Fort Jackson, South Carolina, $24,960,000.
Fort Knox, Kentucky, $14,400,000.
Fort Leavenworth, Kansas, $11,000,000.
Fort Lee, Virginia, $1,150,000.
Fort Leonard Wood, Missouri, $6,450,000.
Fort McClellan, Alabama, $6,300,000.
Fort Pickett, Virginia, $2,400,000.
Fort Rucker, Alabama, $2,600,000.
Fort Sill, Oklahoma, $27,400,000.
Fort Story, Virginia, $6,100,000.

MILITARY DISTRICT OF WASHINGTON

Fort Myer, Virginia, $700,000.

UNITED STATES ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND

Aberdeen Proving Ground, Maryland, $65,400,000.
Anniston Army Depot, Alabama, $4,500,000.
Corpus Christi Army Depot, Texas, $2,200,000.
Crane Army Ammunition Activity, Indiana, $3,600,000.
Fort Monmouth, New Jersey, $15,650,000.
New Cumberland Army Depot, Pennsylvania, $7,800,000.
Picatinny Arsenal, New Jersey, $9,780,000.
Pine Bluff Arsenal, Arkansas, $2,550,000.
Radford Army Ammunition Plant, Virginia, $26,000,000.
Red River Army Depot, Texas, $830,000.
Redstone Arsenal, Alabama, $1,900,000.
Rock Island Arsenal, Illinois, $50,900,000.
Seneca Army Depot, New York, $6,900,000.
Sharpe Army Depot, California, $49,000,000.
Sierra Army Depot, California, $4,150,000.
Tobyhanna Army Depot, Pennsylvania, $810,000.
White Sands Missile Range, New Mexico, $2,250,000.
Yuma Proving Ground, Arizona, $1,300,000.

AMMUNITION FACILITIES

Holston Army Ammunition Plant, Tennessee, $230,000.
Indiana Army Ammunition Plant, Indiana, $1,900,000.
Iowa Army Ammunition Plant, Iowa, $1,790,000.
Louisiana Army Ammunition Plant, Louisiana, $1,600,000.
Radford Army Ammunition Plant, Virginia, $2,940,000.
Scranton Army Ammunition Plant, Pennsylvania, $2,050,000.

UNITED STATES ARMY COMMUNICATIONS COMMAND

Fort Huachuca, Arizona, $5,670,000.

UNITED STATES MILITARY ACADEMY

United States Military Academy, New York, $950,000.

UNITED STATES ARMY HEALTH SERVICES COMMAND

Fitzsimons Army Medical Center, Colorado, $650,000.
Fort Detrick, Maryland, $21,500,000.
Tripler Army Medical Center, Hawaii, $115,000,000.
Walter Reed Army Medical Center, Washington, District of Columbia, $4,800,000.

MILITARY TRAFFIC MANAGEMENT COMMAND

Bayonne Military Ocean Terminal, New Jersey, $570,000.
Oakland Army Base, California, $2,667,000.

UNITED STATES ARMY CORPS OF ENGINEERS

Cold Regions Laboratory, New Hampshire, $3,600,000.

BALLISTIC MISSILE DEFENSE SYSTEM COMMAND

Various locations, $12,800,000.

CLASSIFIED PROJECTS

Various locations, $3,800,000.

OUTSIDE THE UNITED STATES

UNITED STATES ARMY, JAPAN

Japan, $1,900,000.

EIGHTH UNITED STATES ARMY

Korea, $115,840,000.

UNITED STATES ARMY, EUROPE

Germany, $314,600,000.

Greece, $9,730,000.

UNITED STATES ARMY WESTERN COMMAND

Johnston Island, $21,000,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND OVERSEAS

Korea, $2,400,000.

FAMILY HOUSING

SEC. 102. (a) The Secretary of the Army may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Sierra Army Depot, California, one hundred and twenty-five units, $1,253,000.

Sierra Army Depot, California, eighty units, $5,721,000.

Aberdeen Proving Ground, Maryland, four hundred and thirty-nine units, $30,792,000.

Fort Hood, Texas, twenty units, $3,253,000.

Babenhausen, Federal Republic of Germany, one hundred and six units, $8,856,000.

Mainz, Federal Republic of Germany, one hundred and eighty-six units, $18,233,000.

(b)(1) Of the family housing units authorized by subsection (a) to be constructed at Fort Hood, Texas—

(A) three of those units shall be constructed for assignment to general officers who hold positions as commanders or who hold special command positions (as designated by the Secretary of Defense) and (notwithstanding section 2826 of title 10, United States Code) each such unit may be constructed with a maximum net floor area of 3,000 square feet; and

(B) seventeen of those units shall be constructed for assignment to colonels who hold positions as commanders and (notwithstanding section 2826 of title 10, United States Code) each such unit may be constructed with a maximum net floor area of 2,100 square feet.

(2) For the purposes of this subsection, the term "net floor area" has the meaning given that term by section 2826(f) of title 10, United States Code.

(c) Of the amount specified for the family housing project at Aberdeen Proving Ground, Maryland, authorized in subsection (a), $23,046,000 shall be derived from the amount of funds available from savings from the execution of family housing post-acquisition construction projects authorized for the Army by section 104 of the Military Construction Authorization Act, 1984 (Public Law 98-115).

IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

SEC. 103. (a) Subject to section 2825 of title 10, United States Code, the Secretary of the Army may make expenditures to improve existing military family housing units in an amount not to exceed $101,076,000, of which $19,842,000 is available only for energy conservation projects.

(b) The Secretary of the Army may, notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, carry out a project to improve one hundred and eight existing military family housing units at Fort Hamilton, New York, in the amount of $3,996,000.

DESIGN FOR REPLACEMENT FACILITIES, BROOKE ARMY MEDICAL CENTER, SAN ANTONIO, TEXAS

SEC. 104. (a) Not later than 30 days after the date of the enactment of this Act, the Secretary of the Army shall enter into a contract for the design of replacement facilities for the Brooke Army Medical Center in San Antonio, Texas. The contract shall require that the design for such replacement facilities include a hospital facility with a capacity of not less than 695 beds. At the same time the Secretary enters into such contract, the Secretary shall submit a report to Congress stating the initial number of hospital beds with which such replacement facility should be equipped.

(b) This section does not authorize the enactment of new budget authority for any fiscal year.

TITLE II—NAVY

AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS

SEC. 201. The Secretary of the Navy may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations:

INSIDE THE UNITED STATES

UNITED STATES MARINE CORPS

Marine Corps Logistics Base, Barstow, California, $5,670,000.

Marine Corps Air Station, Beaufort, South Carolina, $3,490,000.

Camp H. M. Smith, Oahu, Hawaii, $1,910,000.

Marine Corps Base, Camp Lejeune, North Carolina, $36,370,000.

Marine Corps Base, Camp Pendleton, California, $54,332,000.

Marine Corps Air Station, Cherry Point, North Carolina, $14,810,000.

Marine Corps Air Station, El Toro, California, $17,610,000.

Marine Corps Air Station, Kaneohe Bay, Hawaii, $16,540,000.

Marine Corps Air Station, New River, North Carolina, $340,000.

Marine Corps Recruit Depot, Parris Island, South Carolina, $11,220,000.

Marine Corps Development and Education Command, Quantico, Virginia, $3,710,000.

Marine Corps Recruit Depot, San Diego, California, $18,570,000.

Marine Corps Air Station, Tustin, California, $15,050,000.

Marine Corps Air-Ground Combat Center, Twentynine Palms, California, $7,830,000.

Marine Barracks, Washington, District of Columbia, $2,540,000.

Marine Corps Air Station, Yuma, Arizona, $14,090,000.

CHIEF OF NAVAL RESEARCH

Naval Research Laboratory, Washington, District of Columbia, $31,650,000.

CHIEF OF NAVAL OPERATIONS

Naval Academy, Annapolis, Maryland, $1,960,000.

Naval Safety Center, Norfolk, Virginia, $3,640,000.

Naval Regional Data Automation Center, San Diego, California, $15,700,000.

Personnel Support Activity, Washington, District of Columbia, $250,000.

Commandant Naval District Washington, District of Columbia, $19,750,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $2,510,000.

Naval Station, Charleston, South Carolina, $5,630,000.

Naval Air Station, Jacksonville, Florida, $7,400,000.

Naval Amphibious Base, Little Creek, Virginia, $27,920,000.

Naval Station, Mayport, Florida, $9,940,000.

Naval Submarine Base, New London, Connecticut, $23,000,000.

Atlantic Fleet Headquarters Support Activity, Norfolk, Virginia, $24,700,000.

Naval Air Station, Norfolk, Virginia, $3,600,000.

Naval Station, Norfolk, Virginia, $30,615,000.

Personnel Support Activity, Norfolk, Virginia, $3,470,000.

Naval Air Station, Oceana, Virginia, $11,285,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Facility, Adak, Alaska, $3,900,000.

Naval Station, Adak, Alaska, $5,140,000.

Naval Air Station, Alameda, California, $5,810,000.

Naval Submarine Base, Bangor, Washington, $440,000.

Naval Air Station, Barbers Point, Hawaii, $6,630,000.

Naval Amphibious Base, Coronado, California, $8,740,000.

Naval Air Facility, El Centro, California, $1,700,000.

Naval Air Station, Fallon, Nevada, $4,740,000.

Naval Air Station, Lemoore, California, $580,000.

Naval Station, Long Beach, California, $990,000.

Shore Intermediate Maintenance Activity, Long Beach, California, $11,700,000.

Naval Magazine, Lualualei, Hawaii, $3,130,000.

Naval Station, Mare Island, Vallejo, California, $7,690,000.

Naval Air Station, Miramar, California, $3,460,000.

Naval Air Station, Moffett Field, California, $6,370,000.

Naval Air Station, North Island, California, $6,380,000.

Commander, Oceanographic System Pacific, Pearl Harbor, Hawaii, $17,000,000.

Naval Station, Pearl Harbor, Hawaii, $545,000.

Naval Submarine Base, Pearl Harbor, Hawaii, $18,815,000.

Naval Station, San Diego, California, $17,300,000.

Naval Submarine Base, San Diego, California, $28,850,000.

Personnel Support Activity, San Diego, California, $2,270,000.

Naval Station, Treasure Island, San Francisco, California, $13,600,000.

Naval Air Station, Whidbey Island, Washington, $27,880,000.

NAVAL EDUCATION AND TRAINING COMMAND

Fleet Ballistic Missile Submarine Training Center, Charleston, South Carolina, $710,000.

Naval Air Station, Chase Field, Texas, $3,315,000.

Naval Air Station, Corpus Christi, Texas, $4,615,000.

Personnel Support Activity, Corpus Christi, Texas, $710,000.

Naval Training Center, Great Lakes, Illinois, $11,950,000.

Naval Air Station, Kingsville, Texas, $1,470,000.

Naval Amphibious School, Little Creek, Virginia, $725,000.

Fleet Training Center, Mayport, Florida, $6,510,000.

Naval Air Station, Memphis, Tennessee, $10,360,000.

Naval Air Station, Meridian, Mississippi, $2,870,000.

Naval Submarine School, New London, Connecticut, $11,050,000.

Naval Education and Training Center, Newport, Rhode Island, $5,360,000.

Fleet Training Center, Norfolk, Virginia, $4,450,000.

Naval Training Center, Orlando, Florida, $3,720,000.

Naval Diving and Salvage Training Center, Panama City, Florida, $1,250,000.

Naval Air Station, Pensacola, Florida, $1,270,000.

Personnel Support Activity, Pensacola, Florida, $2,510,000.

Naval Construction Training Center, Port Hueneme, California, $4,580,000.

Fleet Anti-Submarine Warfare Training Center, Pacific, San Diego, California, $6,470,000.

Fleet Training Center, San Diego, California, $5,250,000.

Naval Training Center, San Diego, California, $8,300,000.

Naval Air Station, Whiting Field, Florida, $3,950,000.

NAVAL MEDICAL COMMAND

Naval Hospital, Bremerton, Washington, $6,220,000.

Naval Hospital, Camp Lejeune, North Carolina, $970,000.

Naval Hospital, Camp Pendleton, California, $1,410,000.

Naval Hospital, Groton, Connecticut, $8,900,000.

Naval Hospital, Millington, Tennessee, $410,000.

Naval Hospital, Oakland, California, $29,140,000.

Naval Hospital, Orlando, Florida, $1,760,000.

Naval Hospital, Portsmouth, Virginia, $410,000.

NAVAL MATERIAL COMMAND

Naval Air Rework Facility, Alameda, California, $3,820,000.

Naval Supply Center, Bremerton, Washington, $6 160,000.

Naval Supply Center, Charleston, South Carolina, $5,630,000.

Charleston Naval Shipyard, Charleston, South Carolina, $570,000.

Naval Weapons Station, Charleston, South Carolina, $1,630,000.

Naval Air Rework Facility, Cherry Point, North Carolina, $9,700,000.

Naval Weapons Center, China Lake, California, $630,000.

Naval Surface Weapons Center, Dahlgren, Virginia, $4,980,000.

Navy Public Works Center, Great Lakes, Illinois, $1,850,000.

Naval Construction Battalion Center, Gulfport, Mississippi, $20,815,000.

Naval Air Rework Facility, Jacksonville, Florida, $1,410,000.

Supervisor of Shipbuilding, Jacksonville, Florida, $1,270,000.

Naval Submarine Base, Kings Bay, Georgia, $231,960,000.

Long Beach Naval Shipyard, Long Beach, California, $3,010,000.

Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, $16,270,000.

Naval Underwater Systems Center, Newport, Rhode Island, $24,840,000.

Naval Air Rework Facility, Norfolk, Virginia, $10,000,000.

Naval Supply Center, Norfolk, Virginia, $1,420,000.

Norfolk Naval Shipyard, Portsmouth, Virginia, $11,330,000.

Navy Public Works Center, Norfolk, Virginia, $4,050,000.

Naval Air Rework Facility, North Island, California, $560,000.

Naval Supply Center, Oakland, California, $9,510,000.

Naval Training Equipment Center, Orlando, Florida, $23,500,000.

Naval Air Test Center, Patuxent River, Maryland, $4,620,000.

Naval Supply Center, Pearl Harbor, Hawaii, $6,680,000.

Navy Public Works Center, Pearl Harbor, Hawaii, $5,270,000.

Naval Air Rework Facility, Pensacola, Florida, $5,190,000.

Navy Public Works Center, Pensacola, Florida, $7,830,000.

Philadelphia Naval Shipyard, Philadelphia, Pennsylvania, $16,490,000.

Pacific Missile Test Center, Point Mugu, California, $21,030,000.

Fleet Combat Direction Systems Support Activity, San Diego, California, $11,250,000.

Naval Supply Center, San Diego, California, $4,150,000.

Navy Public Works Center, San Diego California, $4,870,000.

Navy Public Works Center, San Francisco, California, $13,420,000.

Naval Electronic Systems Engineering Activity, St. Inigoes, Maryland, $2,110,000.

Naval Air Development Center, Warminster, Pennsylvania, $2,290,000.

Naval Weapons Station, Yorktown, Virginia, $1,140,000.

NAVAL OCEANOGRAPHY COMMAND

Naval Oceanographic Office, Bay St. Louis, Mississippi, $1,570,000.

Naval Oceanographic Command, Bay St. Louis, Mississippi, $375,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communication Area Master Station, Atlantic, Norfolk, Virginia, $1,160,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Adak, Alaska, $320,000.

Naval Security Group Activity, Northwest Chesapeake, Virginia, $2,500,000.

Naval Security Group Activity, Skaggs Island, California, $560,000.

Naval Security Group Activity, Winter Harbor, Maine, $220,000.

Outside the United States

MARINE CORPS

Marine Corps Air Station, Iwakuni, Japan, $6,820,000.

Marine Corps Base, Camp Butler, Okinawa, Japan, $2,330,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

Naval Station, Guantanamo Bay, Cuba, $6,480,000.

Naval Station, Keflavik, Iceland, $36,720,000.

Naval Facility, Keflavik, Iceland, $2,620,000.

Naval Station, Panama Canal, Panama, $1,580,000.

Naval Station, Roosevelt Roads, Puerto Rico, $2,550,000.

Atlantic Fleet Weapons Training Facility, Roosevelt Roads, Puerto Rico, $600,000.

COMMANDER IN CHIEF, PACIFIC FLEET

Naval Air Station, Cubi Point, Republic of the Philippines, $24,260,000.

Naval Support Facility, Diego Garcia, Indian Ocean, $6,425,000.

Naval Air Station, Guam, Mariana Islands, $300,000.

Naval Ship Repair Facility, Guam, Mariana Islands, $2,340,000.

Naval Air Facility, Misawa, Japan, $9,300,000.

Naval Station, Subic Bay, Republic of the Philippines, $6,520,000.

Naval Ship Repair Facility, Subic Bay, Republic of the Philippines, $710,000.

Fleet Activities, Yokosuka, Japan, $990,000.

COMMANDER IN CHIEF, NAVAL FORCES, EUROPE

Fleet Operations Control Center Europe, London, England, $2,620,000.

Naval Station, Rota, Spain, $25,020,000.

Naval Air Station, Sigonella, Italy, $11,820,000.

NAVAL MATERIAL COMMAND

Navy Public Works Center, Guam, Mariana Islands, $230,000.

NAVAL MEDICAL COMMAND

Naval Hospital, Rota, Spain, $18,400,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communication Area Master Station Western Pacific, Guam, Mariana Islands, $3,210,000.

Naval Communication Station, San Miguel, Republic of the Philippines, $300,000.

Naval Communication Station, Yokosuka, Japan, $980,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Detachment, Diego Garcia, Indian Ocean, $380,000.

Naval Security Group Activity, Edzell, Scotland, $340,000.

Naval Security Group Detachment, Guam, Mariana Islands, $320,000.

HOST NATION INFRASTRUCTURE SUPPORT

Various locations, $2,790,000.

FAMILY HOUSING

SEC. 202. (a) The Secretary of the Navy may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Naval Station, Adak, Alaska, four hundred and five units, $61,107,000.

Marine Corps Base, Camp Pendleton, California, three hundred and sixty units, $26,004,000.

AEGIS Communications Systems Center, Wallops Island, Virginia, twenty-eight units, $2,400,000.

Naval Station, Guantanamo Bay, Cuba, one hundred and twenty-five units, $12,430,000.

(b) Of the housing units authorized by subsection (a) to be constructed at Guantanamo Bay, Cuba, twenty-five of such units shall be constructed from savings realized from the construction of other family housing units. The provisions of section 803 of the Military Construction Authorization Act, 1984 (Public Law 98-115), shall not apply to the construction of such units, but performance standards for the construction of such units shall be used that permit factory-built housing or manufactured housing to compete with conventional, onsite construction methods.

IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

SEC. 203. (a) Subject to section 2825 of title 10, United States Code, the Secretary of the Navy may make expenditures to improve existing military family housing units in an amount not to exceed $9,000,000.

(b) The Secretary of the Navy may, notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, carry out a project to improve two hundred and sixty-eight existing military family housing units at the Naval Air Station, Whidbey Island, Washington, in the amount of $13,300,000.

REPLACEMENT OF SUBSTANDARD HOUSING, CAMP PENDLETON, CALIFORNIA

SEC. 204. (a) The Secretary of the Navy is authorized to carry out a project in accordance with this section to accomplish the replacement of the existing Government-owned substandard housing units in Oceanside, California, known as the Sterling Homes Project, that are occupied by married enlisted personnel who are in pay grade E-1, E-2, or E-3 or in pay grade E-4 with less than two years' of service and who are stationed at Camp Pendleton, California.

(b)(1) The Secretary is authorized to contract for the construction or installation on the Camp Pendleton military reservation of not more than 647 family housing units at a total cost of not more than the amount determined under paragraph (4). Such a contract may not obligate the United States to make payments in excess of amounts available to the Secretary for such purpose at the time the contract is made.

(2) Housing units constructed or installed under this section shall be available for assignment as family housing to married enlisted personnel in pay grade E-1, E-2, or E-3 or in pay grade E-4 with less than two years' of service and who are stationed at Camp Pendleton, California.

(3) The number of housing units to be constructed or installed under this section is the number of units which may be constructed or installed by the contractor within the amount determined under paragraph (4), except that if such amount would allow the construction or installation of more than 647 units, only 647 units may be constructed or installed and the remainder of such amount shall be available to the Secretary for other authorized family housing projects for the Navy.

(4) The amount available for housing units under this subsection is the sum of—

(A) $15,000,000; and

(B) the fair market value, as determined by the Secretary, of the property in Oceanside, California, owned by the United States and under the jurisdiction of the Secretary known as the Sterling Homes Project.

(c)(1) As partial payment for the contract under subsection (b), the Secretary is authorized to convey to the contractor under such contract all right, title, and interest of the United States in and to the parcel of land, together with improvements thereon, constituting the Sterling Homes Project in Oceanside, California, consisting of 56 acres, more or less. The amount attributable as payment under the contract by reason of such conveyance shall be the fair market value referred to in subsection (b)(4)(B).

(2) The exact acreage and legal description of the property to be conveyed shall be in accordance with surveys that are satisfactory to the Secretary. The cost of any such survey shall be borne by the contractor.

(d) The Secretary may require such additional terms and conditions in connection with the project authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

NAME OF NEW SAN DIEGO NAVAL HOSPITAL

SEC. 205. The naval hospital currently under construction in San Diego, California, shall after the date of the enactment of this Act be known and designated as the "Bob Wilson Naval Hospital". Any reference to such hospital in any law, regulation, map, document, or other record of the United States shall after such date be deemed to be a reference to such hospital as the Bob Wilson Naval Hospital.

TITLE III—AIR FORCE

AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS

SEC. 301. The Secretary of the Air Force may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations:

INSIDE THE UNITED STATES

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $47,833,000.

McClellan Air Force Base, California, $34,601,000.

Newark Air Force Station, Ohio, $240,000.

Robins Air Force Base, Georgia, $18,390,000.

Tinker Air Force Base, Oklahoma, $27,199,000.

Wright-Patterson Air Force Base, Ohio, $36,350,000.

AIR FORCE SYSTEMS COMMAND

Arnold Engineering Development Center, Tennessee, $7,700,000.

Brooks Air Force Base, Texas, $4,450,000.

Cape Canaveral Air Force Station, Florida, $2,750,000.

Edwards Air Force Base, California, $16,780,000.

Eglin Air Force Base, Florida, $7,180,000.

Various locations, Florida, $6,300,000.

Goddard Space Flight Center, Maryland, $3,500,000.

Hanscom Air Force Base, Massachusetts, $5,200,000.

Patrick Air Force Base, Florida, $910,000.

Various locations, $1,200,000.

AIR NATIONAL GUARD

Base 10, classified location, $2,150,000.

Otis Air National Guard Base, Massachusetts, $810,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $11,350,000.

Columbus Air Force Base, Mississippi, $5,000,000.

Goodfellow Air Force Base, Texas, $15,600,000.

Keesler Air Force Base, Mississippi, $13,555,000.

Lackland Air Force Base, Texas, $9,290,000.

Laughlin Air Force Base, Texas, $7,400,000.

Lowry Air Force Base, Colorado, $1,220,000.

Mather Air Force Base, California, $9,300,000.

Randolph Air Force Base, Texas, $9,740,000.

Reese Air Force Base, Texas, $4,900,000.

Sheppard Air Force Base, Texas, $6,300,000.

Williams Air Force Base, Arizona, $2,500,000.

AIR UNIVERSITY

Gunter Air Force Station, Alabama, $9,500,000.

Maxwell Air Force Base, Alabama, $2,280,000.

ALASKAN AIR COMMAND

Burnt Mountain Air Force Station, Alaska, $1,400,000.

Eielson Air Force Base, Alaska, $24,850,000.

Elmendorf Air Force Base, Alaska, $12,313,000.

Galena Airport, Alaska, $11,800,000.

MILITARY AIRLIFT COMMAND

Charleston Air Force Base, South Carolina, $15,540,000.

Eglin Auxiliary Field 9, Florida, $7,830,000.

Kirtland Air Force Base, New Mexico, $1,500,000.

Little Rock Air Force Base, Arkansas, $1,890,000.

McChord Air Force Base, Washington, $3,065,000.

McGuire Air Force Base, New Jersey, $440,000.

Norton Air Force Base, California, $6,530,000.

Pope Air Force Base, North Carolina, $710,000.

Scott Air Force Base, Illinois, $19,400,000.

Travis Air Force Base, California, $204,720,000.

NATIONAL MILITARY COMMAND CENTER

Pentagon, Virginia, $4,750,000.

PACIFIC AIR FORCES

Hickam Air Force Base, Hawaii, $3,800,000.

SPACE COMMAND

Falcon Air Force Station, Colorado, $3,000,000.

Peterson Air Force Base, Colorado, $25,000,000.

SPECIAL PROJECT

Various locations, $53,700,000.

STRATEGIC AIR COMMAND

Barksdale Air Force Base, Louisiana, $26,995,000.

Beale Air Force Base, California, $2,675,000.

Blytheville Air Force Base, Arkansas, $1,500,000.

Carswell Air Force Base, Texas, $24,650,000.

Castle Air Force Base, California, $4,100,000.

Conrad Air Station, Montana, $4,260,000.

Dickinson Air Station, North Dakota, $3,710,000.

Dyess Air Force Base, Texas, $58,610,000.

Ellsworth Air Force Base, South Dakota, $55,840,000.

F. E. Warren Air Force Base, Wyoming, $49,220,000.

Fairchild Air Force Base, Washington, $23,000,000.

Grand Forks Air Force Base, North Dakota, $4,420,000.

Griffiss Air Force Base, New York, $4,150,000.

Grissom Air Force Base, Indiana, $6,820,000.

K. I. Sawyer Air Force Base, Michigan, $17,250,000.

Loring Air Force Base, Maine, $31,370,000.

Malmstrom Air Force Base, Montana, $1,500,000.

March Air Force Base, California, $9,150,000.

McConnell Air Force Base, Kansas, $4,000,000.

Minot Air Force Base, North Dakota, $11,210,000.

Offutt Air Force Base, Nebraska, $45,700,000.

Pease Air Force Base, New Hampshire, $5,950,000.

Plattsburgh Air Force Base, New York, $3,650,000.

Vandenberg Air Force Base, California, $34,910,000.

Whiteman Air Force Base, Missouri, $4,320,000.

Wurtsmith Air Force Base, Michigan, $1,125,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Texas, $10,900,000.

Cannon Air Force Base, New Mexico, $1,100,000.

Davis-Monthan Air Force Base, Arizona, $12,400,000.

England Air Force Base, Louisiana, $5,250,000.

George Air Force Base, California, $17,930,000.

Holloman Air Force Base, New Mexico, $8,810,000.

Homestead Air Force Base, Florida, $2,950,000.

Langley Air Force Base, Virginia, $29,030,000.

Luke Air Force Base, Arizona, $13,660,000.

MacDill Air Force Base, Florida, $6,120,000.

Moody Air Force Base, Georgia, $2,030,000.

Mountain Home Air Force Base, Idaho, $1,490,000.

Myrtle Beach Air Force Base, South Carolina, $2,795,000.

Nellis Air Force Base, Nevada, $7,590,000.

Seymour-Johnson Air Force Base, North Carolina, $20,490,000.

Shaw Air Force Base, South Carolina, $4,970,000.

Tyndall Air Force Base, Florida, $4,330,000.

UNITED STATES AIR FORCE ACADEMY

United States Air Force Academy, Colorado, $23,765,000.

OUTSIDE THE UNITED STATES

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $4,550,000.

Sidi Slimane, Morocco, $2,050,000.

Rhein-Main Air Base, Germany, $2,940,000.

PACIFIC AIR FORCES

Kadena Air Base, Japan, $19,750,000.

Misawa Air Base, Japan, $20,000,000.

Yokota Air Base, Japan, $3,000,000.

Kimhae Air Base, Korea, $253,000.

Kunsan Air Base, Korea, $12,300,000.

Kwang-Ju Air Base, Korea, $4,460,000.

Osan Air Base, Korea, $35,690,000.

Sachon Air Base, Korea, $1,100,000.

Suwon Air Base, Korea, $4,090,000.

Taegu Air Base, Korea, $5,950,000.

Diego Garcia Air Base, Indian Ocean, $16,100,000.

Clark Air Base, Republic of the Philippines, $42,425,000.

Base 11, classified location, $6,100,000.

Base 14, classified location, $1,700,000.

Wake Island Airfield, Wake Island, $1,235,000.

SPACE COMMAND

Thule Air Base, Greenland, $25,000,000.

STRATEGIC AIR COMMAND

Andersen Air Force Base, Guam, $13,342,000.

TACTICAL AIR COMMAND

Howard Air Force Base, Panama, $360,000.

Oman, various locations, $26,900,000.

UNITED STATES AIR FORCES IN EUROPE

Camp New Amsterdam, The Netherlands, $5,310,000.

Woensdrecht Air Base, The Netherlands, $37,650,000.

Alzey Radar Site, Germany, $3,150,000.

Bitburg Air Base, Germany, $5,760,000.

Classified location, Germany, $600,000.

Various locations, Germany, $14,600,000.

Hahn Air Base, Germany, $200,000.

Ramstein Air Base, Germany, $8,650,000.

Spangdahlem Air Base, Germany, $620,000.

Wenigerath Air Base, Germany, $2,475,000.

Wiesbaden Air Base, Germany, $650,000.

Zweibrucken Air Base, Germany, $3,995,000.

Aviano Air Base, Italy, $1,600,000.

Comiso Air Station, Italy, $6,075,000.

San Vito Air Station, Italy, $2,250,000.

Torrejon Air Base, Spain, $9,750,000.

Zaragoza Air Base, Spain, $1,100,000.

Ankara Air Station, Turkey, $1,100,000.

Incirlik Air Base, Turkey, $8,200,000.

RAF Alconbury, United Kingdom, $5,395,000.

RAF Chicksands, United Kingdom, $3,550,000.

RAF Greenham Common, United Kingdom, $12,000,000.

RAF Lakenheath, United Kingdom, $2,100,000.

RAF Mildenhall, United Kingdom, $14,100,000.

RAF Upper Heyford, United Kingdom, $5,210,000.

RAF Welford, United Kingdom, $740,000.

RAF Wethersfield, United Kingdom, $4,300,000.

RAF Woodbridge, United Kingdom, $2,050,000.

RAF Molesworth, United Kingdom, $15,004,000.

Base 13, classified location, $2,050,000.

Base 19, classified location, $2,850,000.

Classified locations, $9,950,000.

Various locations, Europe, $16,400,000.

FAMILY HOUSING

SEC. 302. The Secretary of the Air Force may construct or acquire family housing units (including land acquisition) at the following installations in the number of units shown, and in the amount shown, for each installation:

Fort MacArthur, California, one hundred and forty units, $15,100,000.

Hanscom Air Force Base, Massachusetts, Trailer Park Expansion, $500,000.

Conrad Air Force Station, Montana, forty units, $3,705,000.

F. E. Warren Air Force Base, Wyoming, two hundred and sixty-five units, $17,343,000.

Comiso, Italy, five hundred and seventy-six units, $50,070,000.

Osan Air Base, Korea, Utilities Expansion, $2,700,000.

RAF Greenham Common, United Kingdom, two hundred and fifty units, $22,441,000.

RAF Alconbury, United Kingdom, three hundred units, $27,410,000.

RAF Bentwaters, United Kingdom, two hundred units, $20,163,000.

Classified location, Federal Republic of Germany, two hundred and fifty units, $17,386,000.

IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

SEC. 303. (a) Subject to section 2825 of title 10, United States Code, the Secretary of the Air Force may make expenditures to improve existing military family housing units in an amount not to exceed $62,173,000, of which $23,751,000 is available only for energy conservation projects.

(b) The Secretary of the Air Force may, notwithstanding the maximum amount per unit for an improvement project under section 2825(b) of title 10, United States Code, carry out projects to improve existing military family housing units at the following installations in the number of units shown, and in the amount shown, for each installation:

Bergstrom Air Force Base, Texas, one hundred and fifty-six units, $4,642,000.

Moody Air Force Base, Georgia, one hundred and six units, $2,772,000.

Scott Air Force Base, Illinois, two hundred and fifty units, $8,820,000.

TITLE IV—DEFENSE AGENCIES

AUTHORIZED CONSTRUCTION PROJECTS AND LAND ACQUISITION FOR THE DEFENSE AGENCIES

SEC. 401. The Secretary of Defense may acquire real property and may carry out military construction projects in the amounts shown for each of the following installations and locations:

INSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Adak, Alaska, $6,730,000.

Defense Fuel Support Point, Whittier, Alaska, $12,170,000.

Defense Property Disposal Office, Fairbanks, Alaska, $1,800,000.

Defense Property Disposal Office, San Diego, Imperial Beach, California, $900,000.

Defense Property Disposal Office, Pearl Harbor Naval Shipyard, Hawaii, $1,950,000.

Defense Fuel Support Point, Grand Forks, North Dakota, $475,000.

Defense Fuel Support Point, Cincinnati, Ohio, $2,300,000.

Defense Depot, Mechanicsburg, Pennsylvania, $18,000,000.

Defense Fuel Support Point, Mukilteo, Washington, $500,000.

DEFENSE MAPPING AGENCY

Hydrographic/Topographic Center, Brookmont, Maryland, $20,100,000.

NATIONAL SECURITY AGENCY

Fort Meade, Maryland, $16,920,000.

Rosman, North Carolina, $500,000.

Classified location, $500,000.

OFFICE OF THE SECRETARY OF DEFENSE

Presidio of Monterey, California, $22,475,000.

White Sands Missile Range, New Mexico, $9,000,000.

Classified activity, Fort Belvoir, Virginia, $28,400,000.

Classified location, $5,900,000.

DEFENSE INVESTIGATIVE SERVICE

Fort Holabird, Maryland, $220,000.

DEFENSE NUCLEAR AGENCY

Fort McClellan, Alabama, $1,000,000.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Maxwell Air Force Base, Alabama, $1,700,000.

Fort Benning, Georgia, $5,600,000.

Fort Campbell, Kentucky, $7,500,000.

Fort Knox, Kentucky, $21,961,000.

United States Military Academy, West Point, New York, $3,650,000.

Fort Bragg, North Carolina, $5,600,000.
Fort Jackson, South Carolina, $7,372,000.

OUTSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Pohang, Korea, $15,800,000.
Defense Fuel Support Point, Roosevelt Roads, Puerto Rico, $10,675,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified location, $12,900,000.

NATIONAL SECURITY AGENCY

Classified locations, $5,200,000.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Amberg, Germany, $1,860,000.
Bad Kreuznach, Germany, $3,660,000.
Bad Nauheim, Germany, $1,200,000.
Bindlach, Germany, $1,750,000.
Crailsheim, Germany, $1,660,000.
Frankfurt, Germany, $11,620,000.
Germersheim, Germany, $1,680,000.
Goeppingen, Germany, $2,060,000.
Hahn Air Base, Germany, $2,840,000.
Katterbach, Germany, $3,780,000.
Ludwigsburg, Germany, $2,110,000.
Mannheim, Germany, $3.780,000.
Neubruecke, Germany, $2,700,000.
Osterholz-Scharmbeck, Germany, $940,000.
Rhein-Main Air Base, Germany, $2,120,000.
Ulm, Germany, $2,970,000.
Wiesbaden, Germany, $830,000.
Wertheim, Germany, $2,080,000.
Worms, Germany, $2,230,000.
Wuerzberg, Germany, $2,650,000.
Naval Station, Keflavik, Iceland, $3,440,000.
Comiso, Italy, $13,600,000.
Camp Kinser, Japan, $5,410,000.
Camp McTureous, Japan, $6,520,000.
Zukeran, Japan, $2,820,000.
Seoul, Korea, $1,410,000.
Brunssum, Netherlands, $2,650,000.
Subic Bay, Republic of the Philippines, $3,500,000.
Clark Air Base, Republic of the Philippines, $5,920,000.
RAF Chicksands, United Kingdom, $1,010,000.
RAF Greenham Common, United Kingdom, $13,600,000.
RAF High Wycombe, United Kingdom, $6,270,000.
RAF Woodbridge, United Kingdom, $1,730,000.

FAMILY HOUSING

SEC. 402. The Secretary of Defense may construct or acquire six family housing units (including land acquisition) at classified locations in the total amount of $693,000.

IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS

SEC. 403. Subject to section 2825 of title 10, United States Code, the Secretary of Defense may make expenditures to improve existing military family housing units in an amount not to exceed $107,000.

DEFICIENCY AUTHORIZATION FOR EXISTING APPROPRIATIONS

SEC. 404. Section 604(a) of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 779), is amended by striking out "$306,386,000" and "$90,572,000" and inserting in lieu thereof "$321,386,000" and "$105,572,000", respectively.

TITLE V—NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

AUTHORITY OF THE SECRETARY OF DEFENSE TO MAKE CONTRIBUTIONS

SEC. 501. The Secretary of Defense may make contributions for the North Atlantic Treaty Organization infrastructure program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the amount authorized to be appropriated in section 605.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS AND RECURRING ADMINISTRATIVE PROVISIONS

AUTHORIZATION OF APPROPRIATIONS, ARMY

SEC. 601. (a) Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1984, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $3,133,974,000 as follows:

(1) For projects authorized by section 101 that are to be carried out inside the United States, $1,073,297,000.

(2) For projects authorized by section 101 that are to be carried out outside the United States, $410,470,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $33,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $190,000,000.

(5) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $160,053,000; and

(B) for support of military family housing, $1,267,154,000, of which not more than $129,000 may be obligated or expended for the leasing of military family housing units in the United States, the Commonwealth of Puerto Rico, and Guam, and not more than $107,249,000 may be obligated or expended for the leasing of military family housing units in foreign countries.

(b) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1985 for military construction functions of the Army that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for military construction projects authorized in section 101 in the amount of $145,000,000.

(c) Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 101 may not exceed the sum of the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a) and the amount specified in subsection (b).

AUTHORIZATION OF APPROPRIATIONS, NAVY

SEC. 602. (a) Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1984, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $2,314,558,000 as follows:

(1) For projects authorized by section 201 that are to be carried out inside the United States, $1,229,317,000.

(2) For projects authorized by section 201 that are to be carried out outside the United States, $178,955,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $19,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $157,900,000.

(5) For advances to the Secretary of Transportation for construction of defense access roads under section 210 of title 23, United States Code, $3,500,000.

(6) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $134,500,000; and

(B) for support of military family housing, $593,386,000, of which not more than $28,000 may be obligated or expended for the leasing of military family housing units in the United States, the Commonwealth of Puerto Rico, and Guam, and not more than $20,052,000 may be obligated or expended for the leasing of military family housing units in foreign countries.

(b) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1985 for military construction functions of the Navy that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for military construction projects authorized in section 201 in the amount of $80,000,000.

(c) Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 201 may not exceed the sum of the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a) and the amount specified in subsection (b).

AUTHORIZATION OF APPROPRIATIONS, AIR FORCE

SEC. 603. (a) Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1984, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,777,813,000 as follows:

(1) For projects authorized by section 301 that are to be carried out inside the United States, $1,108,911,000.

(2) For projects authorized by section 301 that are to be carried out outside the United States, $458,729,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $21,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $163,900,000.

(5) For advances to the Secretary of Transportation for construction of defense access roads under section 210 of title 23, United States Code, $24,550,000.

(6) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $239,991,000; and

(B) for support of military family housing, $760,732,000, of which not more than $53,739,000 may be obligated or expended for the leasing of military family housing units in foreign countries.

(b)(1) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1985 for military construction functions of the Air Force that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for military construction projects authorized in section 301 in the amount of $70,000,000.

(2) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1985 for military family housing construction functions of the Air Force that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for military family housing construction projects authorized in section 302 in the amount of $5,000,000.

(c) Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 301 may not exceed the sum of the total amount authorized to be appropriated under subsections (1) and (2) of subsection (a) and the amount specified in subsection (b)(1).

AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES

SEC. 604. (a) Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1984, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments), in the total amount of $364,048,000 as follows:

(1) For projects authorized by section 401 that are to be carried out inside the United States, $140,773,000.

(2) For projects authorized by section 401 that are to be carried out outside the United States, $165,475,000.

(3) For unspecified minor construction projects under section 2805 of title 10, United States Code, $3,000,000.

(4) For construction projects under the contingency construction authority of the Secretary of Defense under section 2804 of title 10, United States Code, $5,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $30,000,000.

(6) For military family housing functions—

(A) for construction and acquisition of military family housing and facilities, $800,000; and

(B) for support of military family housing, $19,000,000, of which not more than $15,773,000 may be obligated or expended for the leasing of military family housing units in foreign countries.

(b) Funds appropriated to the Department of Defense for fiscal years before fiscal year 1985 for military construction functions of the Defense Agencies that remain available for obligation are hereby authorized to be made available, to the extent provided in appropriation Acts, for military construction projects authorized in section 401 in the amount of $64,250,000.

(c) Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variations authorized by law, the total cost of all projects carried out under section 401 may not exceed the sum of the total amount authorized to be appropriated under subsections (1) and (2) of subsection (a) and the amount specified in subsection (b).

AUTHORIZATION OF APPROPRIATIONS, NATO

SEC. 605. Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1984, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of construction projects for the North Atlantic Treaty Organization Infrastructure program, as authorized by section 501, $250,000,000.

ACTIVITIES INCLUDED WITHIN AUTHORIZATIONS FOR MILITARY FAMILY HOUSING

SEC. 606. (a) Amounts authorized under sections 601 through 604 for construction and acquisition of military family housing and facilities include amounts for minor construction, improvements to existing military family housing units and facilities, relocation of military family housing units under section 2827 of title 10, United States Code, and architectural and engineering services and construction design.

(b) Amounts authorized under sections 601 through 604 for support of military family housing include amounts for operating expenses, leasing expenses, maintenance of real property expenses, payments of principal and interest on mortgage debts incurred, and payments of mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715m).

EXPIRATION OF AUTHORIZATIONS; EXTENSION OF CERTAIN PREVIOUS AUTHORIZATIONS

SEC. 607. (a)(1) Except as provided in paragraph (2), all authorizations contained in titles I, II, III, IV, and V for military construction projects, land acquisition, family housing projects, and contributions to the NATO Infrastructure program (and authorizations of appropriations therefor contained in sections 601 through 605) shall expire on October 1, 1986, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1987, whichever is later.

(2) The provisions of paragraph (1) do not apply to authorizations for military construction projects, land acquisition, family housing projects, and contributions to the NATO Infrastructure program, (and authorizations of appropriations therefore), for which appropriated funds have been obligated before October 1, 1986, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1987, whichever is later, for construction contracts, land acquisition, family housing projects, or contributions to the NATO Infrastructure program.

(b) Notwithstanding the provisions of section 606(a) of the Military Construction Authorization Act, 1983 (Public Law 97-321; 96 Stat. 1567), authorizations for the following projects authorized in sections 101, 201, and 301 of that Act shall remain in effect until October 1, 1985, or the date of enactment of the Military Construction Authorization Act for fiscal year 1986, whichever is later:

(1) Consolidated heating facility in the amount of $1,300,000 at Giessen, Germany.

(2) Barracks in the amount of $9,300,000 at Vilseck, Germany.

(3) Battalion headquarters and classroom in the amount of $3,000,000 at Vilseck, Germany.

(4) Dining facility in the amount of $3,600,000 at Vilseck, Germany.

(5) Barracks in the amount of $10,600,000 at Vilseck, Germany.

(6) Standby generator plant in the amount of $4,500,000 at the Naval Communications Area Master Station Eastern Pacific, Honolulu, Hawaii.

(7) Rapid Deployment Force facilities in the amount of $55,000,000 at Ras Banas, Egypt.

(8) Ammunition Wharf in the amount of $24,000,000 at the Naval Magazine, Guam, Mariana Islands.

ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

SEC. 608. For projects or contracts initiated during the period beginning on the date of the enactment of this Act or October 1, 1984, whichever is later, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1986 or October 1, 1985, whichever is later, the following amounts apply:

(1) The maximum amount for an unspecified minor military construction project under section 2805 of title 10, United States Code, is $1,000,000.

(2) The amount of a contract for architectural and engineering services or construction design that makes such a contract subject to the reporting requirement under section 2807 of title 10, United States Code, is $300,000.

(3) The maximum amount per unit for an improvement project for family housing units under section 2825 of title 10, United States Code, is $30,000.

(4) The maximum annual rental for a family housing unit leased in the United States, Puerto Rico, or Guam under section 2828(b) of title 10, United States Code, is $6,000.

(5)(A) The maximum annual rental for a family housing unit leased in a foreign country under section 2828(c) of title 10, United States Code, is $16,800.

(B) The maximum number of family housing units that may be leased at any one time in foreign countries under section 2828(c) of title 10, United States Code, is 31,000.

(6) The maximum rental per year for family housing facilities, or for real property related to family housing facilities, leased in a foreign country under section 2828(f) of title 10, United States Code, is $250,000.

EFFECTIVE DATE FOR PROJECT AUTHORIZATIONS

SEC. 609. Titles I, II, III, IV, and V of this Act (other than section 104) take effect on October 1, 1984.

SUPPLEMENTAL AUTHORIZATION FOR FISCAL YEAR 1984

SEC. 610. (a) In addition to the military construction projects authorized by section 201 of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 762), the Secretary of the Navy may carry out a military construction project outside the United States at the Naval Station, Keflavik, Iceland, in the amount of $30,000,000.

(b) The project authorized in subsection (a) is subject to the authorizations and limitations applicable to projects authorized in the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 757), in the same manner as if such project had been authorized in that Act. The limit prescribed by section 602(b) of that Act on the total cost of all projects carried out under section 201 of that Act is hereby increased by the additional amount authorized to be appropriated by subsection (c).

(c) There is hereby authorized to be appropriated for fiscal year 1984 for the Department of the Navy for the military construction project authorized by subsection (a), in addition to the amounts authorized to be appropriated by section 602(a)(2) of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 778), the amount of $30,000,000.

TITLE VII—GUARD AND RESERVE FORCES FACILITIES

AUTHORIZATION FOR FACILITIES

SEC. 701. There are authorized to be appropriated for fiscal years beginning after September 30, 1984, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 133 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States $104,192,000, and

(B) for the Army Reserve, $70,400,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserves, $63,800,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States $121,200,000, and

(B) for the Air Force Reserve, $67,800,000.

MODIFICATION OF GUARD AND RESERVE MINOR CONSTRUCTION AUTHORITY

SEC. 702. Effective on October 1, 1984, section 2233a(b) of title 10, United States Code, is amended by striking out "$50,000" and inserting in lieu thereof "$100,000".

FEDERAL CONTRIBUTION FOR CONSTRUCTION TO UPGRADE CRITICAL PORTIONS OF ARMORIES

SEC. 703. (a) Section 2233(a)(6) of title 10, United States Code, is amended—

(1) by striking out "arms storage rooms" and inserting in lieu thereof "critical portions of facilities"; and

(2) by striking out "standards related to the safekeeping of arms" and inserting in lieu thereof "construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility".

(b) The amendments made by subsection (a) shall take effect on October 1, 1984.

TITLE VIII—GENERAL PROVISIONS

LIABILITY OF OCCUPANTS OF MILITARY HOUSING

SEC. 801. (a)(1) Section 2775 of title 10, United States Code, is amended to read as follows:

"§ 2775. Liability of members for damage to housing and related equipment and furnishings

"(a) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personnel housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if it is determined, under regulations prescribed by the Secretary of Defense, that the damage or loss was caused by the abuse or negligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

"(b) The Secretary of Defense may establish limitations on liability under this section, including different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

"(c)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of any repair or replacement made necessary as the result of any abuse or negligence referred to in subsection (a) for which the member is liable. Regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means.

"(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations prescribed under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

"(d) Amounts received under this section shall be credited to the family housing operations and maintenance account, in the case of damage to a family housing unit (or the equipment or furnishings of a family housing unit), or to the operations and maintenance account, in the case of damage to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit), of the military department or defense agency concerned. Amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in those accounts.

"(e) The Secretary of Defense shall prescribe regulations to carry out the provisions of this section, including (1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence referred to in subsection (a), and (2) regulations providing for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.".

(2) The item relating to section 2775 in the table of sections at the beginning of chapter 165 of such title is amended to read as follows:

"2775. Liability of members for damage to housing and related equipment and furnishings.".

(b)(1) Regulations shall be prescribed under subsection (e) of section 2775 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act. That section shall apply with respect to the liability of a member under such section for damage or loss to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit) or for damage or loss caused by a guest of the member or of a dependent of the member to a family housing unit (or the equipment or furnishings of a family housing unit) only in the case of damage or loss caused on or after the date that such regulations take effect.

(2) The authority of the Secretary of Defense under subsection (b) of such section is applicable to any claim of the United States under such section, whether such claim arose before, on, or after the date of the enactment of this Act.

COST VARIATIONS FOR ACQUISITION OF REAL PROPERTY BY CONDEMNATION

SEC. 802. Section 2676 of title 10, United States Code, is amended—

(1) by inserting "or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land" in subsection (c)(2) after "upon the agreed price for the land";

(2) by inserting "or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land," in subsection (c)(2)(B) after "the agreed price for the land,"; and

(3) by adding at the end thereof the following new subsection:

"(e) The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for land acquisition projects and without regard to the limitations of subsections (c) and (d).".

MAXIMUM AMOUNT FOR ACQUISITION OF OPTION ON REAL PROPERTY

SEC. 803. Section 2677(b) of title 10, United States Code, is amended by striking out "5 percent" and inserting in lieu thereof "12 percent".

AUTHORITY TO RESTORE LAND OF OTHER AGENCIES USED TEMPORARILY BY DEPARTMENT OF DEFENSE

SEC. 804. (a) Chapter 159 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2691. Restoration of land used by permit or lease from other agencies

"(a) The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit or lease from another military department or Federal agency if the restoration is required by the permit or lease making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

"(b) Unless otherwise prohibited by law or the terms of the permit or lease, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2691. Restoration of land used by permit or lease from other agencies.".

AUTHORIZED COST VARIATIONS

SEC. 805. Section 2853(e) of title 10, United States Code, is amended by inserting "is more than the amount specified by law as the maximum amount for a minor military construction project and" after "under the contract".

STORAGE AND DISPOSAL OF NONDEFENSE TOXIC AND HAZARDOUS MATERIALS

SEC. 806. (a) Chapter 159 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2691. Storage and disposal of nondefense toxic and hazardous materials

"(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage or disposal of any material that is a toxic or hazardous material and that is not owned by the Department of Defense.

"(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section, including definition of what quantity of a material serves to make it hazardous or toxic for the purposes of this section. That definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

"(b) Subsection (a) does not apply to—

"(1) the storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services;

"(2) the temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal agency concerned;

"(3) the temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

"(4) the disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible mean of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

"(5) the temporary storage of nuclear materials or non-nuclear classified materials in accordance with an agreement with the Secretary of Energy;

"(6) the storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations; and

"(7) the temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

"(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

"(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

"(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2691. Storage and disposal of nondefense toxic and hazardous materials.".

LEASING AND RENTAL GUARANTEE PROGRAM EXTENSION

SEC. 807. (a) Section 2828(g) of title 10, United States Code, is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph (8):

"(8) In addition to the contracts authorized by paragraph (7), the Secretary of each military department may enter into one contract under this subsection for not more than 600 family housing units at one location if the contract is necessary in order to provide sufficient family housing to accommodate a major restationing action by that military department. The Secretary of a military department may not enter into a contract under this paragraph and an agreement under section 802(g) of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 783).".

(b) Section 802 of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 783), is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection (g):

"(g) In addition to the agreements authorized by subsection (f), the Secretary of each military department may enter into one agreement under this section for not more than 600 family housing units at one location if the agreement is necessary in order to provide sufficient family housing to accommodate a major restationing action by that military department. The Secretary of a military department may not enter into an agreement under this subsection and a contract under section 2828(g)(8) of title 10, United States Code.".

(c) The amendments made by this section shall take effect on October 1, 1984.

TECHNICAL AMENDMENT

SEC. 808. Section 807(b) of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 788), is amended by striking out "section 2809" and inserting in lieu thereof "section 2667a". The amendment made by this section shall apply as if included in the enactment of the Military Construction Authorization Act, 1984.

LAND EXCHANGE, FALCON AIR FORCE STATION, COLORADO

SEC. 809. (a)(1) The Secretary of the Air Force is authorized to acquire from the State of Colorado easements restricting the use of, and giving the United States rights-of-way over, certain parcels of land owned by the State of Colorado adjacent to the Consolidated Space Operations Center, Falcon Air Force Station, Colorado.

"(2) As consideration for the interests in land acquired under paragraph (1), the United States shall convey to the State of Colorado Board of Land Commissioners all right, title, and interest of the United States in and to suitable Federal lands in Colorado.

(b) The Secretary shall adjust the amount of land conveyed and the nature of the interests acquired under subsection (a) so that the fair market value (as determined by the Secretary) of the interests in land acquired under subsection (a)(1) is not less than the fair market value (as determined by the Secretary) of the land conveyed under subsection (a)(2).

(c) The transaction authorized by subsection (a) may be not carried out until the Secretary has reported to the Committees on Armed Services of the Senate and House of Representative on the details of the transaction, including specification of the lands to be conveyed by the United States under subsection (a)(2), and a period of 21 days has passed from the date of the receipt of the report by those committees.

(d) The exact acreages of the lands to be acquired and conveyed under this section shall be determined by surveys which are satisfactory to the Secretary. The cost of any such survey shall be borne by the United States.

(e) The Secretary may require such additional terms and conditions in connection with the transaction authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

LAND CONVEYANCE, ANNAPOLIS, MARYLAND

SEC. 810. (a) Subject to subsection (b), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey to the Naval Academy Athletic Association, a nonprofit organization located in the State of Maryland (hereinafter in this section referred to as the "Association"), all right, title, and interest of the United States in and to approximately 4.3 acres of unimproved land comprising a portion of the United States Naval Academy, Annapolis, Maryland.

(b) In consideration for the conveyance under subsection (a), the Association shall pay to the United States an amount equal to the appraised fair market value of the property to be conveyed (as determined by the Secretary).

(c) The exact acreage and legal description of the land to be conveyed shall be determined by surveys that are satisfactory to the Secretary. The cost of any such survey shall be borne by the Association.

(d) The Secretary may require such additional terms and conditions under this section as he considers appropriate to protect the interests of the United States.

LAND CONVEYANCE, TUSTIN, CALIFORNIA

SEC. 811. (a)(1) Subject to subsections (b) and (c), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey to the Irvine Company, a Michigan corporation, or to either or both of the cities of Tustin and Irvine, municipal corporations of the State of California, the interest of the United States described in paragraph (2) in a tract of approximately 11 acres of land located on the Marine Corps Air Station (Helicopter), Tustin, California (hereinafter in this section referred to as the "Air Facility") for the development and extension of a public thoroughfare through the Air Facility from Barranca Parkway on the south of the Air Facility to Irvine Center Drive on the north of the Air Facility.

(2) The interest of the United States that may be conveyed under this subsection is (A) a public right-of-way easement in perpetuity over, across, and under the land described in paragraph (1) for roadway purposes, installation and maintenance of such underground utilities as are customarily located in rights-of-way, and related purposes, or (B) all right, title, and interest of the United States in such land.

(b)(1) The conveyance authorized by subsection (a) may not be made unless—

(A) the Irvine Company conveys to the United States, for a term not to exceed the period of the use of the Air Facility as an active military air station, interests or rights acceptable to the Secretary within or over certain land commonly known as the "Browning Corridor" and certain other undeveloped land traversed by military aircraft and used by the Air Facility as its Ground Control Approach; and

(B) the Irvine Company or the cities of Tustin and Irvine pay to the United States all costs of the United States related to replacing, in a manner satisfactory to the Secretary, the helicopter heavy-lift training facility displaced by reason of the conveyance under subsection (a) and any other improvement displaced by reason of that conveyance.

(2) The value of the interests or rights in real property conveyed to the United States under paragraph (1)(A) must be at least equivalent in value, as determined by the Secretary, to the value of the interest of the United States to be conveyed under subsection (a)

(c) Before the conveyance authorized by subsection (a) may be made, the Secretary and the cities of Tustin and Irvine shall enter into written agreements, satisfactory to the Secretary, under which the cities—

(1) agree that in exercising land use planning and zoning authority, the cities shall consider limiting the extent and location of residential development of the lands commonly known as the "Browning Corridor" as appropriate to air operations in that corridor; and

(2) provide a process for the United States to participate in the initial and continued planning of land uses within the Browning Corridor.

(d) The exact acreages and legal descriptions of the interests in land to be conveyed under subsections (a) and (b) shall be determined by surveys that are satisfactory to the Secretary. The Irvine Company or the cities of Tustin and Irvine shall pay all survey and title evidence costs involved in those conveyances.

(e) The Secretary may require such additional terms and conditions in connection with the transaction authorized by this section as the Secretary consider appropriate to protect the interests of the United States.

LAND CONVEYANCE, RIVERSIDE COUNTY, CALIFORNIA

SEC. 812. (a) Subject to subsection (b), the Secretary of the Air Force (hereinafter in this section referred to as the "Secretary") is authorized to convey to the Village West Foundation, Incorporated (hereinafter in this section referred to as the "Foundation"), of San Bernardino, California, all right, title, and interest of the United States in and to the land described in subsection (c).

(b) In consideration for the conveyance by the Secretary under subsection (a), the Foundation shall—

(1) convey interests in land to the United States with a fair market value (as determined by the Secretary) not less than the fair market value (as determined by the Secretary) of the land authorized to be conveyed under subsection (a);

(2) pay to the United States an amount of money equal to such fair market value; or

(3) convey interests in land and pay an amount of money to the United States which in total equals an amount which is not less than such fair market value.

(c) The land referred to in subsection (a) is a portion of March Air Force Base, California, composed of one parcel containing approximately 150 acres. The tract of land is on west March Air Force Base bounded on the east by Clark Street, on the west by Allen Street, on the south by 5th Street, and the north is an extension of 11th Street between Allen and Clark Streets.

(d) A conveyance by the Secretary under subsection (a) shall provide that—

(1) if the land conveyed is not used as a permanent location for facilities of the Foundation before the end of the 10-year period beginning on the date on which the land is conveyed—

(A) title to the land shall revert to the United States; and

(B) upon such reversion, the Secretary shall pay to the Foundation, from amounts available for that purpose, an amount equal to 50 percent of the fair market value of the land reverting to the United States, determined as of the date on which the land was conveyed to the Foundation by the Secretary;

(2) if all or any portion of the land conveyed ceases to be used for Foundation purposes during the 40-year period beginning on the date on which the 10-year period stated in paragraph (1) ends, title to all of such land which has ceased to be used for Foundation purposes shall revert to the United States;

(3) during the 50-year period beginning on the date of the conveyance, a construction project may be begun on such land only after the plans for such construction are approved by the Secretary; and

(4) during the 50-year period beginning on the date of the conveyance, the Foundation may not sell, lease, or otherwise dispose of the land conveyed;

(d) Notwithstanding section 2733 of title 10, United States Code, sections 1346 and 2672 of title 28, United States Code, and section 715 of title 32, United States Code, and any other provision of law enacted before, on, or after the date of the enactment of this Act (except a law that specifically refers to the Foundation or to this section), the United States shall not be liable to the Foundation for any damage to, or diminution in value of, any land conveyed under this section (or any improvement on such land) if such damage or diminution in value is caused by an activity of the United States at March Air Force Base, California.

(e) The transaction authorized by this section shall be made subject to such additional terms and conditions as the Secretary considers appropriate to carry out the provisions of this section and to protect the interests of the United States.

(f) The exact acreage and legal description of any land conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

LAND CONVEYANCE, LOMPOC, CALIFORNIA

SEC. 813. (a) Subject to subsection (b), the Secretary of the Army (hereinafter in this section referred to as the "Secretary") is authorized to convey, without monetary consideration, to the city of Lompoc, California (hereinafter in this section referred to as the "City"), all right, title, and interest of the United States in and to the real property described in subsection (c).

(b)(1) The conveyance authorized by subsection (a) shall be subject to the condition that the real property conveyed shall be used by the City—

(A) for the Lompoc, California, Western Spaceport Museum and Science Center as a permanent site for a space science museum;

(B) for educational and recreational purposes related to the purpose described in subparagraph (A); or

(C) for the purposes described in subparagraphs (A) and (B).

(2) If the property conveyed pursuant to subsection (a) is not used for one or more of the purposes described in paragraph (1), all right, title, and interest in and to such property shall revert to the United States, which shall have the right of immediate entry thereon.

(3) The Secretary may require such other terms and conditions with respect to the conveyance as the Secretary considers appropriate to protect the interests of the United States.

(c) The real property referred to in subsection (a) is a tract of land containing 148.84 acres, more or less, located within the City and bounded on the north by Santa Barbara County Highway S-20, on the east by California State Highway Numbered 1, and on the south and west by property controlled by the Department of the Army.

(d) The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by surveys that are satisfactory to the Secretary. The cost of any such survey shall be borne by the City.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 34, line 2, strike out "two hundred and fifty" and insert in lieu thereof "one hundred and eighty".

The CHAIRMAN. The question is on the first committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk proceeded to read the committee amendments.

Mr. DELLUMS (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc, and that they be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The text of the remaining committee amendments is as follows:

Committee amendments: Page 44, line 22, strike out "53,739,000" and insert in lieu thereof "$53,339,000".

Page 53, line 13, strike out "$104,192,000" and insert in lieu thereof "$105,092,000".

Page 60, line 4, strike out "at the end thereof" and insert in lieu thereof "after section 2691 (as added by section 804)".

Page 60, line 6, strike out "2691" and insert in lieu thereof "2692".

Page 62, line 22, strike out "at the end thereof" and insert in lieu thereof "after the item relating to section 2691 (as added by section 804)".

Page 62, in the matter after line 24, strike out "2691" and insert in lieu thereof "2692".

Page 65, beginning on line 7, strike out "be not" and insert in lieu thereof "not be".

Page 71, line 11, strike out "(d)" and insert in lieu thereof "(e)".

Page 71, line 22, strike out "(e)" and insert in lieu thereof "(f)".

Page 72, line 1, strike out "(f)" and insert in lieu thereof "(g)".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

COMMITTEE AMENDMENT OFFERED BY MR. DELLUMS

Mr. DELLUMS. Mr. Chairman, I have one additional amendment.

Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The text of the committee amendment offered by Mr. DELLUMS is as follows:

Page 53, line 13, strike out "$104,192,000" and insert in lieu thereof "$105,092,000".

Mr. DELLUMS. Mr. Chairman, this is another committee amendment. It is a substantive amendment. I therefore did not include it in the unanimous consent request to offer all of the technical amendments en bloc. I did so because it is a substantive amendment that would add some $900,000 in lump sum authorization to the Army National Guard construction program to permit construction of a much needed armory in Holdenville, OK.

This amendment, Mr. Chairman, was not included in the subcommittee report to the full committee but it was indeed adopted in the full Armed Services Committee without a dissenting vote, and I urge my colleagues to support this amendment.

The CHAIRMAN. Without objection, the amendment offered by the gentleman was acted upon and agreed to as part of the committee amendments considered en bloc.

AMENDMENTS OFFERED BY MR. DELLUMS

Mr. DELLUMS. Mr. Chairman, I have one additional amendment, the amendment on ground launched cruise missiles.

This is the amendment that would reduce the ground launched cruise missile authorization by some $35 million.

The CHAIRMAN. Will the gentleman indicate what page and line he is talking about?

Mr. DELLUMS. Page 31, line 17.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. DELLUMS: Page 31, line 17, strike out "$37,650,000" and insert in lieu thereof "$2,550,000".

Mr. DELLUMS. Mr. Chairman, as I understand it, this amendment also simultaneously amends another section of the bill, page 3, line 25, and page 44, line 6, and I would ask unanimous consent that these amendments be considered en bloc and printed in the RECORD.

The CHAIRMAN. The Chair is under the impression that the amendment the gentleman is now describing is the one that he previously offered.

Mr. DELLUMS. It has already been covered under the amendments en bloc? This is the Dellums amendment on the ground launched cruise missile. It is not a technical amendment.

The CHAIRMAN. The only floor amendment to be offered by the gentleman that the Clerk had was a two-page floor amendment, the reading of which was waived.

□ 1130

The Clerk will re-report the two amendments offered by the gentleman from California [Mr. DELLUMS].

The Clerk read as follows:

Amendments offered by Mr. DELLUMS. Page 31, line 17, strike out "$37,650,000" and insert in lieu thereof "$2,650,000".

Page 43, line 25, strike out "$2,777,813,000" and insert in lieu thereof "$2,742,813,000".

Page 44, line 6, strike out "$458,729,000" and insert in lieu thereof "$423,729,000".

Mr. DELLUMS. Mr. Chairman, H.R. 5604 authorizes $35 million for construction of basing facilities for the ground launched cruise missile in the Netherlands, but directs that none of the funds can be obligated until a final agreement has been ratified by the Dutch Parliament.

On June 7, 1984, the Dutch Parliament agreed to delay a final decision on base construction and deployment of the ground-launched cruise missile in the Netherlands until November 1, 1985, thereby making it impossible to obligate construction funds in fiscal year 1985.

The Air Force has subsequently advised the committee that start of permanent construction cannot begin until after November 1, 1985.

Mr. Chairman, my amendment would strike the $35 million authorized in H.R. 5604 since the earliest construction could start would be in fiscal year 1986. I urge my colleagues to support this amendment.

Mr. KRAMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from California.

I would just point out to the Members that this amendment really has nothing to do whatsoever with any policy decisions about the desirability or nondesirability of deploying the GLCM system in Europe. It is simply a decision based upon the impossibility of obligating the construction funds in 1985 fiscal year as a consequence of the Dutch Government's decision to delay their own internal decision about whether or not they want to deploy these systems until after the expiration of the 1985 fiscal year in which we are operating.

I support the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California [Mr. DELLUMS].

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer amendments, and I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. HUNTER: Page 46, line 4, strike out "$364,048,000" and insert in lieu thereof "$363,148,000".

Page 46, line 7, strike out "$140,773,000" and inert in lieu thereof "$139,873,000".

Page 35, strike out lines 16 and 17.

Mr. HUNTER. Mr. Chairman, I would like to commend the gentleman from California [Mr. DELLUMS] and the gentleman from Colorado [Mr. KRAMER] and all the members of the committee and the staff for doing an excellent job on this bill.

This amendment, Mr. Chairman, strikes $900,000 that would be utilized for the construction of a new hazardous waste site in Imperial Beach in my district. The site is unnecessary, Mr. Chairman. We presently have a system that works in all the military facilities in San Diego County, in which their hazardous waste is stored. It would be an unnecessary expenditure to the taxpayers and an unnecessary burden to the people of Imperial Beach.

I might just add, Mr. Chairman, that the people of Imperial Beach have just suffered a deluge of wastewater from Mexico over the last 1½ years and have suffered a quarantine of their beaches for almost the entire year of 1983.

They do not need this additional burden and especially in light of the fact that it is not necessary.

I would ask the committee to accept the amendment.

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from California.

Mr. DELLUMS. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has discussed the amendment with this gentleman and we have discussed it on this side of the aisle.

The gentleman certainly is very familiar with this project as it resides in his congressional district. We have been convinced by his wisdom and judgment that this amendment ought to be accepted and we have no problems with it on this side of the aisle and we accept the gentleman's amendment.

Mr. HUNTER. I thank the gentleman.

Mr. KRAMER. Mr. Chairman, if the gentleman will yield, we have examined the amendment and we believe that it is a good amendment and ought to be adopted.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California [Mr. HUNTER].

The amendments were agreed to.

AMENDMENT OFFERED BY MR. RAY

Mr. RAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RAY: At the end of the bill add the following new section:

ADMINISTRATION OF FOREST PRODUCTS PROGRAM

SEC. . (a) Section 2365 of title 10, United States Code, is amended—

(1) by striking out "lumber and timber products" in subsection (d) and inserting in lieu thereof "forest products";

(2) in subsection (e)(1)—

(A) by striking out "timber and timber products" each place it appears and inserting in lieu thereof "forest products"; and

(B) by striking out "25 percent" and inserting in lieu thereof "40 percent"; and

(3) by adding at the end thereof the following new subsection:

"(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense for the purposes of this section. Balances in the account may be used for expenses of the military departments—

"(A) for improvements of forest lands;

"(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

"(C) for expenses to enable operations of forest lands and the production of forest products to continue from the end of one fiscal year through the beginning of the next fiscal year without disruption.

"(2) Subject to paragraph (3), there shall be deposited into the reserve account not later than December 31 of each year, for credit to the preceding fiscal year, an amount equal to one-half of the amount (if any) remaining of the total amount received by the United States during that fiscal year as proceeds from the sale of forest products after (A) the reimbursement of appropriations of the Department of Defense under subsection (d) for expenses of production of forest products during that fiscal year, and (B) the payment to States under subsection (e) for that fiscal year.

"(3) The balance in the reserve account may not exceed $4,000,000. If a deposit under paragraph (2) would cause the balance in the account to exceed that amount, the deposit shall be made only to the extent the amount of the deposit would not cause the balance in the account to exceed $4,000,000.".

(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect on October 1, 1984.

(2) The amendment made by subsection (a)(2)(B) shall apply with respect to payments to States for fiscal years beginning after September 30, 1984.

Mr. RAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. RAY. Mr. Chairman, this amendment is a fairness issue and corrects an inequity. It does not cost the Government any new money and instead distributes it in a more fair and equitable way.

Let me explain. Presently military bases do not pay taxes to counties and municipalities. Instead they pay 25 percent of the gross timber sales in lieu of taxes.

This amendment simply increases the percentage of money from 25 to 40 percent and DOD has no objection. It does not alter the military construction budget.

Mr. Chairman, this amendment which I offer today has special meaning for me and to others in the same predicament. I represent a county which is dominated by a military reservation. In fact, Fort Benning, GA, takes up 81 percent of the land area available to provide a tax base in Chattahoochee County.

Mr. Chairman, Chattahoochee County is struggling. It has only one small town, Cusseta, with one manufacturing plant. Chattahoochee is the sixth poorest county in the State. The primary reason for this is not geographical or lack or resources but because it has no tax base from which to draw funds for quality schools and roads.

There is little land on which to farm, no private land on which to obtain timber products, and no space to search for minerals which are most certainly present in the Chattahoochee River Valley. The river, which used to flow swiftly creating beautiful canyons and cliffs that tourists could have appreciated, has now been harnessed upstream for larger cities such as Atlanta and Columbus.

This pretty little town—like it or not—is being sapped by Fort Benning. The people there are proud and self-reliant. They know that a strong defense is necessary to protect our freedom, and they stand behind Fort Benning. But these people are hurting—through no fault of their own, and it is time that something was done for them.

The 1983 Georgia Guide calls Chattahoochee a "metropolitan county." This assumes it operates almost totally as a satellite of the metro area, receiving support in areas such as transportation and education. In this case, it is not true. Chattahoochee County or Cusseta, GA, is separated from Columbus by miles of military base. Consequently, they have to support, in total, their own school system and all other necessary services normally provided to citizens.

One might think that because there are fewer citizens it would cost less. Nothing could be farther from the truth. The old saying "cheaper by the dozen" applies to county management. Chattahoochee has one of the highest costs per student to educate in the State. Why? If there were more students with parents paying into the tax base, they would not have this problem.

But Chattahoochee County is far from unique. This sad story is reflected time and time again across this Nation. My proposal will not solve this problem entirely. But it is a constructive and responsible first step.

From time to time, Fort Benning cuts and sells timber which is located on the reservation. After deducting the operating costs, they give Chattahoochee County 25 percent of what is left. The rest goes into the Treasury.

If Chattahoochee County contained a national forest, its share would be 25 percent of the gross. No one has ever been able to explain to me the reason for this inequity. So I am proposing that we take the first step toward fairness.

If the military timber harvesting programs could afford to pay 25 percent of gross this year, I would be standing here advocating just that increase. But, because several of the services are operating with only a thin margin of profits, 25 percent of gross is out of range now.

But, my amendment would increase the State share to 40 percent of the net with Department of Defense approval. It would also maintain a reserve account from which each service could improve its timber program and thus move toward making a greater profit. This translates into a fairer share for Chattahoochee County and others around the country in the years to come.

Let me take a moment to explain the reserve account. In past years, the Department of Defense has cut the timber, sold it, and deducted its operating costs. What was left was divided with 75 percent going to the Treasury and 25 percent to the county.

Then, the account would be broke until more timber was sold. Contingencies such as fires or insects could not be dealt with unless money was borrowed from other funds. This reserve account would allow the timber management to flow smoothly and more efficiently. It will end up saving money.

Under my proposal, the timber would be cut and sold, and the operating costs deducted—just as before. Then 40 percent of what is left would be paid to the counties. The remainder would be divided 50-50 between the reserve account and the Treasury. When the reserve account has been built up to $4 million, the remainder would all go back to the Treasury.

In conclusion, I urge support for my amendment for two reasons. It would mandate greater efficiency within the Department of Defense. It would also return a larger share of money to counties—like Chattahoochee—which struggle with a limited tax base because Federal land limits the amount of taxable property.

Chattahoochee County and others like it should pay only its fair share for a free America. That share does not include inadequate educational facilities and second-rate roads. This amendment costs the American taxpayers nothing. In the name of plain and simple fairness, I urge its adoption.

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. RAY. I yield to the gentleman from California.

Mr. DELLUMS. I thank the gentleman for yielding.

Mr. Chairman, this again is an amendment which the gentleman has discussed with this gentleman and members of the subcommittee. It is a fairly complex amendment, but as the gentleman describes it it is a fairness issue.

We have been convinced by the gentleman's argument that it is a meritorious amendment. We would accept it on this side of the aisle.

Mr. RAY. I thank the gentleman.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. RAY. I yield to the gentleman from Colorado.

Mr. KRAMER. I thank the gentleman for yielding.

Mr. Chairman, I have had an opportunity to examine this amendment. I have expressed to the gentleman that I had some reservations about it, not because of the desirability amendment, simply because of the financial factors involved.

However, the gentleman has, I think, much to his credit convinced the Department of Defense that this is an excellent amendment. In that light, and in light of the point the gentleman makes about the services that the country governments have to provide without the taxpayers to do so, many of which are provided for the military, I have no objection to the amendment.

Mr. RAY. Mr. Chairman, I am pleased that my colleagues, the gentlemen from Georgia, Mr. Doug Barnard and Mr. Lindsay Thomas, have joined me in sponsoring this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. Ray].

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. HOWARD

Mr. HOWARD. Mr. Chairman, I offer two amendments and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. Howard: Page 8, line 15, strike out "$101,076,000" and insert in lieu thereof "$105,876,000".

Page 40, line 9, strike out "$3,133,974,000" and insert in lieu thereof "$3,138,774,000".

Page 44, line 6, strike out "$160,053,000" and insert in lieu thereof "$164,853,000".

Mr. HOWARD (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

□ 1140

Mr. HOWARD. Mr. Chairman, I have two amendments to offer today to the fiscal year 1985 military construction bill. The two amendments—one to title I and one to title VI—will have the single effect of providing $4.8 million in additional funds for desperately needed rehabilitation work on the Wherry family housing units at Fort Monmouth, NJ.

The condition of these units is an embarrassment to the Army and a source of tremendous frustration and discomfort to the Army, Navy, and Marine families who live in them. Last August, the conditions precipitated complaints of unprecedented proportions. Articles in local papers related horror stories of the dilapidated condition of the structures, including caved in ceilings, rusty water, leaky roofs, roach infestation, and inoperative heating and plumbing systems.

The Commanding General at Fort Monmouth attempted to have the units declared substandard so that residents would not have to pay the same quarters allowance as residents living in more modern accommodations. But because of restraints on such a designation imposed by Congress in 1983, his request was denied.

The Army has prepared a three-phase, $15.3 million rehabilitation plan to correct the housing problem. The $4.8 million I am requesting today will be in addition to the $1.67 million already in the bill. Together, the funds will pay phase I and most of phase II, rehabilitating a total of 212 of the fort's 511 units.

Fort Monmouth is the center of the Army's electronics and communications research and development. In view of the serious health and safety problems associated with the dilapidated housing on the base, I urge my colleagues to accept my amendments.

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from California.

Mr. DELLUMS. I thank the gentleman for yielding.

In order to expedite the proceedings, the Chair would like to indicate to my distinguished colleague that we have discussed this item fully, and we feel that this is a meritorious amendment. It addresses a clearly important need. We would accept the amendment on this side of the aisle.

Mr. HOWARD. I thank the gentleman.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from Colorado.

Mr. KRAMER. Mr. Chairman, I have had an opportunity to examine the amendment. I believe that the expeditious action to in fact increase the remedial schedule with respect to this problem is warranted. The cost is not particularly extensive. It is work that has to be done anyway. Certainly we accept the amendment.

Mr. HOWARD. I thank the gentleman.

The CHAIRMAN. Without objection, the designation of the page and line will be changed to page 40, line 24, instead of page 44, line 6.

There was no objection.

The CHAIRMAN. The question is on the amendments, as modified, offered by the gentleman from New Jersey [Mr. Howard].

The amendments, as modified, were agreed to.

AMENDMENT OFFERED BY MR. LOEFFLER

Mr. LOEFFLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Loeffler:

Page 9, after line 10, add the following new subsection:

(c)(1) The Secretary of the Army shall name a suitable wing or other portion of replacement facilities constructed after the date of the enactment of this Act at the Brooke Army Medical Center, San Antonio, Texas, for Senator John Goodwin Tower and shall name a suitable wing or other portion of those facilities for Representative Abraham "Chick" Kazen, Junior.

(2) Paragraph (1) shall take effect at noon on January 3, 1985.

Mr. LOEFFLER. Mr. Chairman, the bill before us contains language that requires the Army to proceed with the design on a replacement facility at Brooke Army Medical Center in San Antonio, TX. This is a facility that is desperately needed and has been unjustifiably delayed. Brooke is a hospital which serves over 100,000 people in the immediate San Antonio area as well as being the major medical center for the Army in the south central part of the country. In addition, Brooke provides an invaluable function as a major teaching hospital and as the home for the world famous burn center.

My amendment would add a provision which requires two separate portions of the new medical center to be named in honor of our friend and colleague, Congressman Abraham "Chick" Kazen, Jr., and for the chairman of the Senate Armed Services Committee, Senator John Tower.

The purpose of this amendment is simply to recognize in a small way the contributions that John Tower and Chick Kazen, who will be leaving the Congress after this year, have made to enhancing our overall military posture and to improving the quality of life for both our active and retired military. Congressman Kazen and Senator Tower have long recognized that proper medical care is essential both to providing the necessary quality of life and also for meeting the contingency needs of our Armed Forces.

As the months progress and their retirement from the Congress grows closer, many of us will have much more to say about the distinguished gentleman from Texas and the senior Senator from Texas in recognition of the outstanding service which they have rendered to my State, our Nation, and indeed to all in the world who care deeply about peace and freedom.

As all of us know, the distinguished gentleman from Texas, Mr. Kazen, has made a tremendous contribution to the Congress and to the Nation on issues involving the Armed Forces of the United States. His service to the people of the 23d District of Texas and to the military installations in both the San Antonio area and the entire State represent the finest of our bipartisan tradition in national security affairs. In this small way, we recognize the dedication which Chick Kazen has shown during his many years of public service. I salute him as a respected colleague whose friendship I shall always cherish.

With this amendment, I also offer an initial tribute to the man who first brought me into the legislative political arena and who has consistently been my mentor and my friend. Additionally, on a broader scale, I offer this amendment to thank John Tower for his outstanding leadership in defense matters across the entire spectrum of our national security and for his leadership in behalf of our Texas installations, which are among the finest in our land. I salute the chairman of the Senate Armed Services Committee with admiration and affection.

I ask my colleagues to join me in supporting this amendment honoring two distinguished and outstanding Americans.

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to the distinguished chairman of the subcommittee.

Mr. DELLUMS. I thank the gentleman for yielding.

Mr. Chairman, it certainly goes without saying that this is a bipartisan amendment.

The Chair feels that this is a meritorious amendment. We certainly have not had an opportunity to serve with the distinguished gentleman from the other body, but over the years we have served with our distinguished colleague, the gentleman from Texas [Mr. Kazen]. We have come out many times on opposite sides of the issues, but I cherish his friendship. He has been a marvelous person and a diligent worker. He is a member of this subcommittee that brings this bill to the body at this time. I am sure that there will be a number of statements, feelings and emotions generated and expressed over the next several weeks, prior to the leaving, the retiring, of our distinguished colleague from this body, but suffice to say at this moment this is a small token, a small gesture, to make a very powerful statement of friendship and affection, and we certainly stand in unity with our distinguished colleague from Texas who offered this amendment.

We accept the amendment with joy and with admiration, particularly for our distinguished colleague from Texas [Mr. Kazen].

Mr. LOEFFLER. I thank the gentleman.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to the ranking Republican Member on the subcommittee.

Mr. KRAMER. I appreciate the gentleman yielding.

First, let me thank the gentleman for bringing to this body this very appropriate amendment and recommendation.

I think anything I could say beyond that would be repetitive of the remarks that the gentleman from Texas and the gentleman from California have already made about the service of our two distinguished colleagues.

The CHAIRMAN. The time of the gentleman from Texas [Mr. Loeffler] has expired.

(On request of Mr. Kramer and by unanimous consent, Mr. Loeffler was allowed to proceed for 1 additional minute.)

Mr. KRAMER. To "Chick" Kazen, just let me say: Congratulations on a job well done.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. I do not want to delay the passage of this worthwhile amendment. I do want to say, though, I had the privilege of coming to the Congress with Chick Kazen 18 years ago in the 90th Congress. He is an outstanding person, he will be missed. We all love you, Chick.

Mr. LOEFFLER. Mr. Chairman, I might conclude this very worthy debate by saying: Chick, we love you, and we salute you.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. Loeffler].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DICKS

Mr. DICKS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dicks: At the end of the bill add the following new section:

FISH HATCHERY, FORT LEWIS, WASHINGTON

Sec.   . (a) The Secretary of the Army shall transfer, or otherwise make available, to the Secretary of the Interior, without reimbursement, a portion of Fort Lewis, Washington, adjacent to Clear Creek, Washington, consisting of 135 acres, more or less, that has been identified by feasibility report dated May, 1982, as suitable as a site for a fish hatchery.

(b)(1) Land transferred or otherwise made available to the Secretary of the Interior under subsection (a) may be used only for a fish hatchery and for related purposes.

(2) The Secretary of the Army may require such additional terms and conditions with respect to the administration of this section as the Secretary considers appropriate.

Mr. DICKS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. DICKS. Mr. Chairman, my amendment directs the Secretary of the Army to make available certain property on Ft. Lewis Army Base for use as a fish hatchery. The need for the amendment is quite clear to anyone familiar with the fishing industry in the Pacific Northwest.

Washington State is very dependent upon fishing and its related activities both for the commercial value of the fish and the tourism value of the sports fishery. The various Indian tribes in the State are also dependent upon for their livelihood.

During the last few years the fishing industry in the State has declined dramatically, both because of previous overfishing and because of the effects of El Nino. The Washington Department of Fisheries, the commercial and sports fishermen and the Indian tribes are working together to rebuild the industry, imposing season closures and restricting catches to allow more fish to escape and spawn. Hatcheries are operating at full capacity to increase the overall numbers of fish, and rivers that once contained fish runs are being cleared and replanted.

South Puget Sound, the area I represent, has particular problems because its main feeder, the Nisqually River, has few areas which are acceptable for use as hatcheries. For a hatchery to be effective, it must have water which is relatively bacteria-free, and which moves at a brisk velocity. In order to compensate for not having these elements, expensive pumping systems must be maintained constantly, and the hatcheries are no longer cost-effective. Only one location with the maximum combination of favorable elements has been located on the Nisqually River. It is located on Clear Creek, on acreage that once belonged to the Nisqually Tribe but now is part of Fort Lewis Army Base.

The Army has always been a good neighbor to the Nisqually and surrounding residents. Constructing a hatchery on the Nisqually River is a high priority for these people, and would be a boost to the local economy. My amendment allows the Army to determine the most acceptable method for making the land available. It is only to be used for the purpose of operating a fish hatchery, and it does not impact the important military operations at Fort Lewis. I would therefore urge my colleagues to accept it as part of the military construction authorization bill, to allow the project to go forward.

Mr. Chairman, at this point I would be prepared to yield to my colleague from California [Mr. **Dellums**], the distinguished chairman. I have had a chance to discuss this amendment with him.

Mr. DELLUMS. I thank the gentleman for yielding.

Again, the gentleman from Washington has discussed this amendment with the gentleman from California and other members of the subcommittee. This is clearly a meritorious amendment. It is vital. It is important. It seems to me that it does a great deal of good. It is logical, it is rational, it serves a terribly important service to our native American brothers and sisters in this part of the country, and we certainly, without equivocation, stand in support of the gentleman's amendment and we accept it on this side of the aisle.

□ 1150

Mr. DICKS. I want to say how much I appreciate the chairman's help; he is truly one of the outstanding leaders in this Congress, and his concern and interest in the affairs of the people of Washington State, and particularly the Nisqually Tribe will be deeply appreciated by all of the people of our State, because this amendment will provide a substantial increase in the fishing resources of our State which will benefit all of our citizens.

I appreciate the chairman's leadership and willingness to work with me on this important amendment.

Mr. DELLUMS. I thank the gentleman.

Mr. KRAMER. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman.

Mr. KRAMER. First let me thank the gentleman for his most gracious remarks that he made about me before, and let me also rise in support of this amendment, and compliment the gentleman for bringing it to the attention of the body.

The gentleman may not know this, but more years ago than I would care to recall, I had the pleasure of living in the gentleman's district, and was stationed at Fort Lewis, where I was a Judge Advocate General officer, and we use to have a yearly event there with the Nisqually Tribe that created great media coverage, but was disruptive, I think, to good community relations in the Fort Lewis area.

I think the gentleman has, through hard work and diligence, found a way to resolve a most difficult situation there on a very favorable basis. I think he is to be commended for his efforts, and certainly speaking on behalf of the minority and future JAG officers, who have to serve at Fort Lewis, we will allow them to do other work, because I think that we will be able to put this problem behind us.

Mr. DICKS. I certainly appreciate the gentleman's comments.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Washington.

The amendment was agreed to.

Mr. DELLUMS. Mr. Chairman, I move to strike the last word.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to my colleague, the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding to me.

Mr. Chairman, I want to commend the gentleman on the progress of this bill, and particularly the amendment in which the deployment of the cruise missiles in the Netherlands has been postponed.

Mr. Chairman, I want to congratulate this committee for a very fine job that it has done in this respect.

Mr. Chairman, I rise in support of the Dellums amendment.

I have previously made clear my opposition to deployment of cruise and Pershings to Western Europe. I believe they are destabilizing, antagonistic—both to the Soviets and many in the Nato Alliance—and are far too costly. There is no need to revisit those particular arguments here.

The Dellums amendment goes even beyond these arguments. What my distinguished colleague is proposing is that we delay our decision on deployment to the Netherlands until the people of that country, and the Government, decide for themselves whether or not they want to be participants in accepting the cruise and Pershing. This is an entirely reasonable proposal.

The Dutch have experienced much turmoil and dissension regarding the decision to accept the cruise and pershing. Had the present Government decided to accept the missiles they surely would have not survived politically—this is how strong the sentiment is against deployment.

Would it be intelligent foreign policy for us to decide nonetheless that we are going to go ahead with our deployment plans in spite of the reservations of both the people and the Government of the Netherlands? What kind of message will this send to those people? What kind of message will it send to the Soviets, who just in the last week have shown signs that they are willing to talk and negotiate with us? What possible benefit could we derive from authorizing the funds for a project on which the Dutch will not decide for at least 1½ years?

I think that we have too many domestic problems to be appropriating moneys for projects the recipients of which will not decide if they even want it for more than 1 year. I think that there are more important ways to spend the taxpayers money. For every $1 billion spent for guided missile production an estimated 20,715 jobs are created, as contrasted to $71,550 created in civilian industries such as education. This money is far more needed in our inner cities.

Additionally, deployment of cruise and pershing missiles has not met its purported objective of enticing the Soviets to negotiate on arms control. Quite to the contrary, deployment has nearly closed the doors of communication, the United States has still not ratified the Threshold Test Ban Treaty, the Peaceful Nuclear Explosions Treaty and SALT II.

Part of this cruise and pershing system is already deployed. The political statement has been made to the Soviets. What I am saying, in effect, is let us save ourselves some money. If the ultimate objective is negotiation to dismantle all of these weapons and if what we want to do is negotiate back from the SS-20, back from the pershing, back from the cruise, let us not pursue deployment so vigorously particularly in the face of unreadiness of our allies. Let us not antagonize even our allies. Let us exercise some fiscal responsibility at a time of unprecedented budget deficits and let us exercise some measure of prudence at a time of an unprecedented communication breakdown with the Soviet Union.

Mr. DELLUMS. I thank the gentleman.

Mr. ROEMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to enter into a brief colloquy with the chairman of the subcommittee, my friend from California [Mr. **Dellums**] if I could.

First of all, I want to congratulate the gentleman and his committee for a job well done. I represent a district in

North Louisiana in which there are two large military bases; Barksdale Air Force Base and Fort Polk. Both had, I thought, legitimate requests; both have been taken care of in this bill, and I thank the gentleman for that.

There is a question still in my mind about a physical fitness training center at Fort Polk. As the chairman knows, the fort has grown quite large in the last few years with redeployment of troops and the need now is for a large facility than the bill contains. Your bill has about $2 million for a training center that frankly, the fort now believes, could be eliminated if a larger facility were substituted with some design planning.

We are in the process now, working with the other body and hopefully, by the time this bill goes to conference, the other body will have arrangements for the larger physical fitness center.

I just wanted to thank the chairman for his conversations with me, and ask him to consider if in fact the other body does have this amendment, to consider if favorably in the conference, if possible.

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. ROEMER. I yield to the gentleman.

Mr. DELLUMS. I thank the gentleman for yielding.

We would assume that the gentleman will be working with the representatives from his State in the other body in trying to bring this matter into the bill on the other side. We certainly would see no problem with that, and if it is included in the bill, as we go to conference, we would be prepared to look favorably on the gentleman's request.

Mr. ROEMER. I thank the gentleman, and in return I assure him that we will work toward saving money and improving the physical fitness at the fort. If we can accomplish both things, I would appreciate his support.

Mr. DELLUMS. I thank the gentleman very much.

Mr. THOMAS of Georgia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment by my friend and colleague and commend him for his careful and thoughtful work on this subject. I am a cosponsor.

I think it is important to remember that this amendment is not going to cost the taxpayers a single dime. In fact, it is ultimately going to mean more money going into the Federal Treasury and to local governments. That will come because the amendment provides an increased allocation of timber proceeds to be used to make the forestry management program more efficient and productive.

I should add that before I was elected to the Congress, I was actively involved in forestry management. I probably hold the record in Congress as the Member who has planted the most pine trees with his own hands.

So I speak with some experience when I say that the timber management program of the Defense Department is going to benefit from this amendment. And I am delighted to see that the local governments will be getting fairer treatment under the allocation formula.

AMENDMENT OFFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL: On page 73, after line 14, add the following new section:

"SEC. 814. Notwithstanding any other provision of this Act, the Secretary of Defense shall reduce (either by across-the-board reductions or by such selective reductions of individual authorizations as he considers appropriate) the total amount of authorizations provided for in this Act (computed without regard to this section) by not less than five percent.".

Mr. FRENZEL. Mr. Chairman, I apologize to the chairman of the subcommittee and to all of the Members for not giving advance notice of this amendment. Unfortunately, there is an important tax conference, and various reconciliation and budget conferences, which did not permit my giving earlier notice on this amendment.

I can understand the consternation of the committee, and I can understand that they will probably want to vote against it simply because they have not had enough time to consider it.

However, I think Members of this committee will understand that I have been exceedingly concerned about our willingness to overshoot the budget limitations which we ourselves set when we passed our House budget resolution.

To refresh memories, I would restate that we said that for ordinary Government programs, we would increase 3.5 percent. For military security, we would increase 3.5 percent plus cost-of-living, and for means-tested programs that affected the needy there would be a standard of cost of living plus 3½ percent.

I have attempted, as the House has gone about its business, to reduce authorizations and appropriations to the standard that we set for ourselves. Unfortunately, very few of the committees seem to want to bide by those standards. I am doing my best simply to try to remind the Members of the body that there is such a thing as fiscal discipline.

Mr. Chairman, as I look at the committee report, I note that the authorizations for last year were about $7.3 billion. The President, this year asks for $10.5 billion. This House committee is presenting at this time about $9.3 billion in authorizations.

□ 1200

That is 26.2 percent over fiscal year 1984, which is an increase of about three times the amount which the House said should be its limitation.

In addition, Mr. Chairman, in reviewing the report further, one finds that there are many projects for which only the first year's need has been authorized in terms of dollars. But those projects are authorized and going forward.

An example is the Madigan Army Medical Center project of a third of a billion dollars, with only $11 million authorized in this bill. There are many such examples of projects which will cost hundreds of million of dollars in the future.

So in this way this bill is creating an entitlement program for the future. We are creating expenses for the future which are building deficits that are not contemplated in our budget.

I cannot speak for or against any of the programs in this bill. I already apologized for being a little late and a little short in being able to look the program over. I cannot tell my colleagues which are good projects. I assume they are all good because I think the committee normally does a workmanlike job.

What I am saying, however, in my amendment is that no matter how good all of the items are, the total far exceeds the standard the House set for itself. As long as we approve, there will be no discipline among us.

So in offering this amendment, I am simply asking, pleading, begging, for a little discipline. I might say that my amendment will reduce less than half a billion dollars. It will still leave this authorization bill about 20 percent over last year, which will mean that that is about double the standard, twice as much, as we set for ourselves. I dare not try to cut more because I do not believe the amendment will pass even as it is, but I wanted to give some Members a chance to vote for fiscal sobriety in a House in which that attribute is seldom seen.

Mr. DELLUMS. Mr. Chairman, I move to strike that last word.

Mr. Chairman, first of all, I would like to say to the gentleman that 5 minutes ago we received this amendment. I do not think that is a reasonable, rational or logical way to proceed. I think we have to move forward thoughtfully. We certainly would have been prepared to address the gentleman's amendment in a very serious context.

I think any time amendments are offered on the floor of Congress, they ought to be offered seriously, not symbolically.

I would now like to make a few substantive arguments. The administration, on the gentleman's side of the aisle, requested $10.5 billion. The subcommittee and full committee of the Committee on Armed Services, in its wisdon, chose to reduce that figure by some $1.5 billion. With Members' add-ons of projects in their various districts, we were then able to reduce that figure totally, with adjustments for those add-ons, to $1.2 billion, an almost 10-percent cut from that requested by the administration.

The second point the gentleman chooses to make is if my distinguished colleagues, the author of the amendment, would look at the military construction function, he would understand what we understand: that the military construction budget, unfortunately, is driven by other decisions, decisions that the gentleman who offered this amendment saw fit to support. If you support the build-down of the B-1 bomber, the military construction budget reflects that. If you support the deployment of the MX missile, the military construction budget reflects that. If you suport the Rapid Deployment Force, this budget reflects that.

This gentleman has opposed all of those efforts, and if my colleague who offered this amendment had joined this gentleman in opposition to the deployment and the going forward with these weapons systems, this military construction budget would not be at the figure that it is at this particular point.

The third point the gentleman chooses to make is that the military construction budget does not stand outside of the 0500 budget function. This budget is brought to the floor separately, but it is an inherent part of the 0500 defense function; therefore, the figure that is included in this budget cannot be taken out of context with that total figure.

If my distinguished colleague is joining this gentleman in some substantial cuts in the overall military budget, then that makes sense. This 5-percent across-the-board cut would perhaps make better sense on the larger authorization bill. I am not sure that my colleague will support a 5-percent overall cut in the overall military authorization budget, which would then make this budget consistent with that. The larger budget drives the decisions that are inherent in this particular budget.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I will yield in just a moment. I will be very pleased to enter into a colloquy with the gentleman.

Finally, Mr. Chairman, this is just this gentleman's belief: While I chair the subcommittee, that does not preclude my responsibility as an individual Member of Congress. As an individual Member of Congress, I would assert to my colleague that across-the-board amendments are really not very courageous amendments because it allows Members to have it both ways. You can be for the MX, for the deployment of the Pershing cruise missile, for the B-1 bomber, for all the weapons systems, and then say, "But I am for fiscal austerity." But when it comes to saying how do you express that fiscal austerity in some tangible and specific way, are you really and truly prepared to bite the bullet and challenge the madness of this escalating nuclear arms race, I find many of my colleagues falling away from making those kinds of decisions, but they are prepared to make an across-the-board effort because it does not require you to stand in diametric opposition to the insanity of some of these weapons systems that threaten our lives and threaten our children and threaten our children's children.

It would seem to me that if we begin to address policy on the floor of this Congress, start to ask significant questions about whether we need these moneys not for a Madigan Hospital, that is a benign part of this budget, but whether we need MX missiles and Trident missiles and D-5A missiles, and B-1 bombers, then we can begin to make some rational and intelligent and courageous decisions.

Across-the-board cuts take no courage. It does not require anyone to bite the bullet; it just says, "I am for fiscal austerity but I am for the escalation of our arms race right across the board." I think there are some contradictions in that respect. I would rather see us be quite courageous.

The CHAIRMAN. The time of the gentleman from California [Mr. DELLUMS] has expired.

(By unanimous consent, Mr. DELLUMS was allowed to proceed for 5 additional minutes.)

Mr. DELLUMS. Mr. Chairman, I will now yield to my distinguished colleague for the purpose of entering into a colloquy, but before doing that, what I am trying to assert is that over the years this gentleman has felt very strongly about cutting our military budget, and this gentleman has been prepared to try to rationalize those cuts not on the basis of some across-the-board, nebulous budget austerity, but to say to the American people, we do not need certain weapons system, we do not need the embracing of certain policies, so whatever cuts we make in the military budget are made on the basis of rational policy decisions and a statement before the American people that we cut *x* amount of dollars because we cut a weapons system.

Finally, it was very interesting and very curious to this gentleman, who happens to be on the Democratic side of the aisle, that our Republican Secretary of Defense said that the smoke and mirror cuts that we often make in the Congress really, finally, in the long run cost the American taxpayers more money because we lack the courage to cut weapons systems. We in many instances defer, delay, push back, and all we do is delay the cost. But when it come to really grappling with the serious, courageous decisions of stopping weapons systems, how many weapons systems have we stopped in the 14 years that this gentleman has been in Congress?

We have not even stopped the MX missile, but we did bracket those weapons systems with certain language that gives the illusion that we stopped them, but we have stopped no system. It would seem to me if you want to talk about major cuts, then we ought to talk about major cuts and use significant debate on policy questions as a backdrop for those cuts and moving against weapons systems that threaten our lives and threaten the lives of our children as an important one.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to the gentleman from Minnesota for the purpose of enthusiastic debate.

Mr. FRENZEL. I thank the gentleman for yielding.

Mr. Chairman, I probably have less enthusiasm for this than the gentleman, for which I apologize, as I apologized for my amendment.

I will say this, however. I give the gentleman A-plus for bravery and heroism and courage if he wants it.

Mr. DELLUMS. I do not need it. I will give myself a rating.

Mr. FRENZEL. May I say I have not voted for any authorizations for the military this year. I have not voted for any appropriations. I did not vote for them last year. I voted against a number of the systems. Some of them I supported. I am not challenging madness or insanity. What I am trying to do is to restore some fiscal discipline in this House.

□ 1210

My principal objection to the military budget is a little different from that of the gentleman from California. I think it is one the country cannot afford, and I do the best I can. I will say to the gentleman that his courageous attacks on systems have not been terribly successful. I have been here for 14 years with the gentleman. He is right, we have never eliminated a system. Occasionally, however, we have passed the kind of amendment I am talking about.

I do not blame the gentleman for finding it distasteful. If I were in the gentleman's shoes and worked hard on putting a bill together, I would be opposed to it, too. I hope the gentleman understands that it is the only way I have to attack the bill.

With respect to the Madigan hospital, I was not questioning its wisdom or its value. I was merely suggesting that it is one of the items in the bill—and there are many others like it—on which we are incurring deferred liabilities for the future, the dollars for which are not totally authorized in this bill, and so we will have enormous expenses for the future.

I applaud the gentleman's speech, but I do not take the same attitude on the military budget that he does. I want us to be secure, but I do not want to throw money around foolishly.

Mr. Chairman, I thank the gentleman for yielding, and I understand his position in this matter.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. FRENZEL].

The amendment was rejected.

The CHAIRMAN. If there are no further amendments to this bill, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. DURBIN] having assumed the chair, Mr. GLICKMAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5604) to authorize certain construction at military installations for fiscal year 1985, and for other purposes, pursuant to House Resolution 529, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 312, nays 49, not voting 72, as follows:

[Roll No. 262]

YEAS—312

Akaka
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
Barnard
Barnes
Bateman
Bates
Bennett
Bevill
Bilirakis
Bliley
Boehlert
Boland
Boner
Bonior
Bonker
Borski
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CA)
Broyhill
Burton (CA)
Burton (IN)
Byron
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chappie
Coats
Coelho
Coleman (MO)
Coleman (TX)
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Crane, Daniel
Crane, Philip
Crockett
D'Amours
Daniel
Dannemeyer
Daub
Davis
de la Garza
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Fish
Flippo
Foglietta
Ford (TN)
Frank
Franklin
Fuqua
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Hansen (UT)
Harkin
Harrison
Hatcher
Hawkins
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Jeffords
Jenkins
Jones (NC)
Jones (TN)
Kaptur
Kasich
Kazen
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Leath
Lehman (CA)
Lehman (FL)
Lent
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lungren
Mack
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
McCandless
McCloskey
McCollum
McCurdy
McEwen
McHugh
McKernan
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Moakley
Molinari
Mollohan
Montgomery
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Olin
Ortiz
Oxley
Packard
Panetta
Parris
Patman
Patterson
Pease
Pepper
Perkins
Pickle
Porter
Price
Pritchard
Quillen
Rahall
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rostenkowski
Roth
Rowland
Rudd
Russo
Sawyer
Schaefer
Schneider
Schroeder
Schulze
Shaw
Shumway
Shuster
Siljander
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (NJ)
Smith, Denny
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stenholm
Stratton
Sundquist
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (GA)
Torres
Traxler
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walker
Watkins
Weber
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Wilson
Winn
Wise
Wolf
Wolpe
Wortley
Wright
Wylie
Yatron
Young (AK)
Young (FL)
Young (MO)

NAYS—49

Bartlett
Beilenson
Bereuter
Brown (CO)
Clay
Collins
Conable
Dellums
Downey
Edwards (CA)
Evans (IA)
Frenzel
Jacobs
Johnson
Kastenmeier
Leach
Leland
MacKay
Markey
McKinney
Mitchell
Moody
Mrazek
Oberstar
Obey
Ottinger
Penny
Petri
Pursell
Rangel
Roukema
Roybal
Sabo
Savage
Scheuer
Seiberling
Sikorski
Smith (NE)
Stangeland
Stark
Stokes
Studds
Tauke
Weaver
Weiss
Williams (MT)
Wirth
Yates
Zschau

NOT VOTING—72

Ackerman
Addabbo
Albosta
Alexander
AuCoin
Badham
Bedell
Berman
Bethune
Biaggi
Boggs
Bosco
Bryant
Cheney
Clarke
Clinger
Craig
Darden
Daschle
Edgar
Edwards (AL)
Florio
Foley
Ford (MI)
Fowler
Frost
Garcia
Gramm
Gray
Hall (IN)
Hansen (ID)
Hartnett
Hayes
Hopkins
Ireland
Jones (OK)
Kemp
Kogovsek
Lantos
Latta
Lloyd
Lundine
Madigan
Marlenee
Marriott
Martin (NC)
Mazzoli
McCain
McDade
McGrath
Owens
Pashayan
Paul
Rose
Schumer
Sensenbrenner
Shannon
Sharp
Shelby
Simon
Smith (IA)
Smith, Robert
Snowe
Stump
Thomas (CA)
Torricelli
Towns
Udall
Walgren
Waxman
Williams (OH)
Wyden

□ 1230

The Clerk announced the following pairs:

On this vote:

Mr. Darden for, with Mr. Addabbo against.

Mrs. Lloyd for, with Mr. AuCoin against.

Mr. Ford of Michigan for, with Mr. Gray against.

Mr. Torricelli for, with Mr. Owens against.

Mrs. Boggs for, with Mr. Hayes against.

Mr. Shelby for, with Mr. Garcia against.

Messrs. STOKES, SCHEUER, MACKAY, BEILENSON, and JACOBS changed their votes from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5604, MILITARY CONSTRUCTION AUTHORIZATION ACT, 1985

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill, H.R. 5604, the Clerk be authorized to correct section numbers, punctuation, and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter therein, on the bill just passed, H.R. 5604.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION TO HAVE UNTIL 12 NOON SATURDAY, JUNE 23, 1984, TO FILE CONFERENCE REPORT ON H.R. 4170, THE DEFICIT REDUCTION AND TAX REFORM ACT OF 1984

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that the conferees on the bill, H.R. 4170, the Deficit Reduction and Tax Reform Act of 1984, have until 12 noon on Saturday, June 23, 1984, to file a conference report to accompany the bill, and that there be an additional part of today's CONGRESSIONAL RECORD printed to contain the conference report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I would like to ask the gentleman from Florida if he is not being somewhat optimistic about noon tomorrow on this. We seem to be moving rather slowly in the conference. It is the instruction of the chairman that we seek that time; is it?

Mr. GIBBONS. Will the gentleman yield?

Mr. CONABLE. I yield to the gentleman.

Mr. GIBBONS. Yes; it is.

It may be necessary, I would say to the gentleman from New York, that we have to get an additional extension. But right now we hope we can meet the 12 noon deadline tomorrow.

Mr. CONABLE. Mr. Speaker, I have no real objection to the proposal. But under my reservation I just wanted to express some doubt. We are working very hard in the conference and I believe we should preserve the right to file the report so that we can bring it up next week.

So, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5(b) of rule I, the Chair announces that he will postpone further proceedings today on each question of adopting resolutions or on ordering the previous question on resolutions reported from the Committee on Rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule 15.

Such rollcall votes, if postponed, will be taken after debate has been concluded on both resolutions, and after each question to be determined by a "nonrecord" vote has been disposed of, the Chair will then put the question on each resolution or on the previous question thereon, on which further proceedings were postponed.

PROVIDING FOR CONSIDERATION OF H.R. 5680, FEDERAL PAY EQUITY AND MANAGEMENT IMPROVEMENT ACT OF 1984

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 526 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 526

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5680) to promote pay equity and to eliminate certain discriminatory wage-setting practices within the Federal civil service; to establish a performance management and recognition system; to improve the Senior Executive Service; and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be considered for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After the passage of H.R. 5680, the Committee on Post Office and Civil Service shall be discharged from the further consideration of the bill S. 958, and it shall be in order, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, to consider said bill in the House, and it shall then be in order in the House to move to strike out all after the enacting clause of the said bill and to insert in lieu thereof the provisions contained in H.R. 5680 as passed by the House.

The SPEAKER pro tempore [Mr. DANIEL]. The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi [Mr. LOTT] for the purposes of debate only, and, pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 526 is an open rule providing for the consideration of H.R. 5680. The Federal Pay Equity and Management Improvement Act of 1984. The rule waives section 402(a) of the Budget Act, which requires legislation authorizing appropriations to be reported by May 15 prior to the start of the fiscal year in which the authorizations are first effective. This waiver is necessary to allow the House to consider H.R. 5680 since it contains provisions which technically constitute authorizations of appropriations for fiscal year 1985 but the bill was not reported until June 11, 1984.

In addition, the rule provides for consideration of the bill by titles, instead of by sections, with each title considered as read. The rule also provides for one motion to recommit.

Finally, the rule provides for a "Senate hookup." It provides that, after the passage of H.R. 5680, it shall be in order to consider the Senate-passed companion bill, S. 958, in the House and to move to strike all after the enacting clause of that bill and insert in lieu thereof the provisions of H.R. 5680 as passed by the House. The rule also waives section 402(a) of the Budget Act against the consideration of S. 958, so that the Senate hookup can be achieved in an orderly fashion and any differences between House and Senate versions of this legislation can be promptly resolved.

This is a simple and straightforward open rule. The only waivers provided are to allow consideration of the House and Senate bills despite their technical violation of the May 15 reporting deadline contained in section 402(a) of the budget act. The rule will allow full and open consideration of this important legislation dealing with sex discrimination and employee performance in the Federal Civil Service.

I urge adoption of this rule.

□ 1240

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 526 is an open rule providing for the consideration of H.R. 5680, the Federal Pay Equity and Management Improvement Act. The rule waives section 402(a) of the Budget Act against consideration of the bill because the bill was reported on June 11, and section 402(a) requires that authorizations be reported by May 15.

Mr. Speaker, the rule provides for 1 hour of general debate to be divided between the chairman and ranking minority member of the Committee on Post Office and Civil Service. The bill will be read for amendment under the 5-minute rule by title instead of by section, and each title shall be considered as read. So this is an open rule, permitting the consideration of any germane amendment.

The other feature of this rule that I would call to the attention of my colleagues is the provision for considering the Senate companion bill after the House bill has been passed. The rule provides that the Committee on Post Office and Civil Service will be discharged from S. 958, and that bill will be considered in the House, and it will be in order to move to strike the Senate language and insert the language of the House-passed measure. Section 402(a) is waived against the consideration of the Senate bill. This provision of the rule is not unusual and is done to facilitate going to conference with the other body.

Mr. Speaker, H.R. 5680 consists of three titles. The first title calls for the Office of Personnel Management to conduct a 7-month study into discriminatory wage setting practices and wage differentials in the executive branch, and is confined to discrimination and wage differentials between male and female employees holding comparable positions.

Title II of the bill abolishes the present merit pay system for supervisors and managers in GS-13 to GS-15 positions—approximately 110,000 employees—and replaces it with a new performance management and recognition system under which five ratings would be established for determining whether employees shall be eligible for comparability, merit, and performance award pay increases.

Finally, title III makes certain adjustments in laws governing the Senior Executive Service, including elimination of the 50-percent limit on the number of senior executives in an agency eligible for performance awards, establishing in its place a dollar limit of from 2 to 10 percent of total payroll, and establishing a 5 percent of base pay minimum award for individuals, while retaining the current 20 percent maximum award. The bill also revises the current limit on SES political appointees from 10 percent of the SES positions Governmentwide, to 10 percent of the number of filled SES positions in the preceding fiscal year. In addition, the current limit of 25 percent of SES positions in an agency is changed to 25 percent of the filled SES slots in that agency in the preceding year.

Mr. Speaker, H.R. 5680 was reported from the Committee on Post Office and Civil Service by voice vote on May 31. However, minority views were filed by seven of the committee Republicans. Moreover, the administration has expressed opposition to the bill on several grounds, including the unrealistic timetable for completing the title I study; the new appeal right for managers and supervisors in title II who receive a less than successful rating; the costly new merit pay awards; the reduction in SES political appointees in title III; and the Executive Level I cap for senior executive bonuses.

Mr. Speaker, another issue was raised at the Rules Committee hearing in the testimony and request of our colleague from Illinois [Mrs. MARTIN]. She had drafted an amendment to apply the new pay equity study to the Congress as well as to the executive branch. Because that amendment expands the scope of the bill, it would require a germaneness waiver to be offered. I offered an amendment to the rule in committee to permit Mrs. MARTIN to offer her amendment on the floor. But unfortunately my attempt went down on a voice vote.

Mr. Speaker, we are notorious in this Congress for exempting ourselves from every law we apply to the rest of the Government and the rest of the country—be it job safety, environmental, age, race, sex, or disability discrimination, freedom of information, or whatever. The old bugaboo is raised that we can't subject ourselves to the laws we enact because this would bring the Justice Department down on the Congress and therefore breach the separation of powers doctrine.

Well, that's a rather interesting and neat legalistic argument, but I don't think it will wash with out constituents who must put up with the various laws and regulations we subject them to.

Nor was this novel justification for exempting ourselves from the laws we passed one which was contemplated by the framers of our Constitution. James Madison, who is considered the father of our Constitution and the genius who created our system of checks and balances and separation of powers certainly did not think this would require that Congress should be a unique class—above the laws it enacts. On the contrary, in Federalist Paper No. 57, he said just the opposite. In his words, one of the circumstances which would restrain the House of Representatives from oppressive measures was that the Congress, and I quote, "can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society." Madison went on, and I quote:

> This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny.

Madison then posed the question: "What is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of society." And he answered that question as follows:

> The genius of the whole system; the nature of just and constitutional laws; and, above all, the vigilant and manly spirit which actuates the people of America—a spirit which nourishes freedom, and in return is nourished by it.

And Madison concluded this discussion as follows:

> If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty.

Mr. Speaker, I think it is clear that or forefathers never intended for us to exempt ourselves from the laws we impose upon the people. On the contrary, they thought our system was dependent on the fact that the laws we enacted would be just as applicable to the Congress as to the people.

And yet, we are told we cannot even study sex discrimination in this body by even considering such an amendment to this bill. Instead we are given vague promises of how this is being handled by another committee which may report something at a later date. On that same day in the Rules Committee that the Martin amendment was rejected out of hand, our committee rejected my attempt to make in order an amendment to the Civil Rights Act of 1984, the Grove City College response bill, that would have applied the antidiscrimination provisions of various laws to the Congress.

Our colleague from Illinois is to be commended on keeping before us our own hypocrisy in evading and avoiding the very laws and requirements we impose on others. I think it is high time we faced up to this double standard and did something about it. We have heard too many appeals for patience. We have had too many promises of action tomorrow, and tomorrow, and tomorrow. The time to act was yesterday. I urge my colleagues to heed well the words of our colleague from Illinois as well as the warnings of Madison. The longer we wait, the more we debase ourselves and threaten our system of government.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Illinois [Mrs. MARTIN].

Mrs. MARTIN of Illinois. Mr. Speaker, the gentleman has spoken well on problems that many of us have with what we see as an incredibly two-faced look at how Americans should be treated and what Americans come under what law.

There was a lesson in Watergate that said not even a President is above the law, and yet somehow in this Congress we argue we are. I do not understand it, but because I was raised in an environment so that I still believed in the tooth fairy until I was 18 years old, I am giving, in effect, in my own heart, one more chance.

And in that light, I wish to engage the gentlewoman from Ohio in a colloquy.

Ms. OAKAR. If the gentlewoman would yield, I thank the gentlewoman. I believe in the tooth fairy, too.

Mrs. MARTIN of Illinois. I had hoped as you know to offer an amendment to the Federal pay equity bill before us which would have broadened the scope to include Federal employees, not just the executive branch, but those who work for us in the legislative branch.

The Committee on Rules did not grant such a waiver and now we have a resolution introduced by the gentlewoman from Maine [Ms. Snowe] which proposes a study of the legislative branch of government.

May I inquire of the gentlewoman what her attitude on this resolution is?

Ms. OAKAR. Like my friend from Illinois, I am a cosponsor of House Concurrent Resolution 239. I have publicly stated on many occasions that I fully support a study of the legislative branch. I urge Members who are not cosponsors of that bill to get on board on that bill and next week, as you know, hearings will be held by the Committee on House Administration on this resolution and I am a member of the committee, as my friend from Illinois was a member of the committee.

And like the gentlewoman I will be testifying in favor of the resolution.

Mrs. MARTIN of Illinois. Is it your understanding, so there be no confusion on this issue, that that hearing will make sure that such a final product will include the Congress of the United States and its employees under the study?

□ 1250

Ms. OAKAR. Absolutely. That is not only the thrust of the resolution, but that resolution relates to the jurisdiction of that committee. They would not have jurisdiction to do otherwise other than other legislative areas. But definitely Congress would be covered.

Mrs. MARTIN of Illinois. Is it also the gentlewoman's understanding that such a bill would come before the Congress before the end of this legislation session rather than in decades to come?

Ms. OAKAR. Well, based on my conversations and my own commitment as a member of the committee and my conversation with the senior majority members of the committee, I know there is a commitment to bring this issue to the floor of the House for a vote this session.

Mrs. MARTIN of Illinois. So the gentlewoman is saying that both the chairman of the committee, Hon. Gus Hawkins, who has done a great deal in areas of civil rights, is both aware of this and other senior members and the Congress of the United States will have a chance before the end of this session to remove, not a scarlet letter, but an "H" for hypocrisy from its forehead?

Ms. OAKAR. I do not know if I would talk about hypocrisy at this point, but I would say that that is my understanding that the gentleman who is the chair of the committee, as the gentlewoman knows, I have spoken to the gentleman and he is fully supportive of exactly what the gentlewoman has said.

Mrs. MARTIN of Illinois. I thank the gentlewoman.

Mr. Chairman, I will take very little more time.

I will tell my colleagues that other Members from both sides feel that this is just one more sham. I would prefer that we had had an amendment on this bill to show not just the good will, but intent.

But, frankly, we probably could have lost such a vote. It is very hard to pillory someone on a vote on a rule. It is very difficult to understand.

So with an equal mixture of hope and heart, I will withdraw what was going to be my request for a negative vote on the rule from Members who truly supported the idea that if we are so good at making laws for everyone, and if, indeed, sexual discrimination is a problem, that the leadership should be coming from here and, indeed, should have had the first, not the last, look.

I look forward to voting on such a bill before the end of the session.

Mr. BEILENSON. Mr. Speaker, I yield 7 minutes to the gentlewoman from Ohio [Ms. Oakar].

Ms. OAKAR. Mr. Speaker, I want to compliment the Rules Committee on its expeditious consideration of the legislation and the rule that has been fashioned to bring the bill to the floor.

I believe the rule is eminently fair, will allow for a full and considered debate of the provisions of H.R. 5680.

I also want to say that the name of the bill is the Federal Pay Equity and Management Improvement Act of 1984. This was introduced by myself as the lead sponsor and my original cosponsors, Congresswoman Schroeder and Congressman Steny Hoyer, both of whom have done fine work in the drafting of the entire bill.

Briefly, this legislation would, one, require that the Office of Personnel Management, OPM, conduct a study of the Federal Government's job grading systems to determine compliance with pay equity principles and eliminate discriminatory pay setting practices within the Federal civil service.

I want to stress that one of the reasons that we were not able to include other legislative branches like Members of Congress is because our committee does not have jurisdiction over that. We have jurisdiction over the administrative branch which is the largest number of Federal civil servants.

Mr. Speaker, I would urge those Members who want to include Members of Congress to get on board Olympia Snowe's bill. A lot of Members talk about how they feel, but they are not cosponsors of the bill.

The other thing that Members can do is sign on, right now, today, on the House fair employment practices agreement, which is not a substitute, but at least it shows the thrust.

But the second thing the bill would do is establish a performance management and recognition system for GS-13 to 15, Federal supervisors and managers to replace the current merit pay program.

And, three, make several improvements in the senior executive service.

Title I of H.R. 5680 does mandate the Office of OPM, in consultation with congressional committees and a pay equity study council, consisting of representatives of Federal employees' unions and women's organizations, to conduct a study of the Federal job-grading systems to determine whether they are marred by discriminatory wage-setting practices and wage differentials.

The OPM's final report to Congress and the President must include its finding and recommendations for eliminating discriminatory pay practices as well as the views of the council representatives.

This is a key factor in our legislation. The OPM is also prohibited from reducing pay for any position as a result of the study. We are not into lowering anybody's salary. We want to take a look comprehensively at how there salaries were determined.

Mr. Speaker, it is time for the largest employer in the Nation, the Federal Government, to examine its own job grading structure for sex-based wage discrimination. The current system for determining classification is tied to a standard developed in 1923 that has never been looked at since 1923 to determine whether it is affected by sex discrimination.

Nineteen States have already enacted comparable worth laws or have initiated studies of their pay and classification systems to determine their compliance with pay equity principles.

It is time for the Federal Government to begin to fulfill its responsibilities on these very important issues which are vital to the interests of every working woman and man in this country.

Twenty years have elapsed since the Civil Rights Act of 1964 and the Equal Pay Act were enacted. And yet, women still lag behind men in compensation.

In 1950 the wage differential between men and women workers was approximately 38 percent. Today despite the passage of more than three decades, women still average 40-percent less in earnings than men. We do not want to lessen men's salaries. That is not the bill and we prohibit doing that.

Forty percent of the 2.8 million Federal workers are women. The majority of whom are clustered in low-paying occupations, grades 1 through 7, paying an average annual salary of $17,000. And yet, the male workers are concentrated in the midlevel and upper grades and they earn an average salary of $28,000.

Is it not interesting to note that only 12 percent of those positions are occupied by women.

On its face, the data seems to suggest that women are paid less than men because the Federal classification and pay systems are biased against women. The study set forth in title I is necessary to either confirm or dispel that suggestion. We might be wrong. But without a study we will never know. There will always be the feeling that there exists discrimination.

The Congress, the administration, most importantly the Federal work force will have to continue making assumptions, unfounded or real, without the necessary supporting data.

Title II of the bill address the myriad of problems with the current merit pay system for midlevel Federal managers and supervisors, which was established by the Civil Service Reform Act of 1978.

In a recent report conducted by, at my request, the GAO, it found substantial employee dissatisfaction with the merit pay system. Virtually every phase of the current program was criticized.

□ 1300

The GAO found that approximately 80 percent of all employees studied believed that the merit pay system did not increase their motivation. This is why we need reform. That is in the bill also. We try to reform the merit pay program. And there is another title, title III, that places Congress on record in favor of the continuation of the senior executive service.

Now, Mr. Speaker, let me just say this: A vote for this rule is a vote for an open rule that deals with problems that the Committee on House Post Office and Civil Service has jurisdiction over.

I urge my colleagues not to be afraid of a study that relates to Government employees. It is time we did that in the spirit of fairness.

And so I ask my colleagues to be openminded about this rule. Vote "yes" on this open rule.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to address some questions to the gentlewoman from Ohio, following up on the colloquy she just had with the gentleman from Illinois.

Is it true that the study required by House Resolution 239 would only apply to one legislative branch agency which is subject to section 717 of the 1964 Civil Rights Act?

As I read it, the resolution says: The Commission shall choose an agency for this study, which I assume you are talking about, when we say really taking a look at the legislative branch, we could be talking about the Library of Congress, not really what we traditionally think of as the legislative branch. Is that accurate? Or has that been changed?

Ms. OAKAR. Of course, the original sponsor is not here. I wish she were. But the thrust of the bill, and my testimony relative to the bill, House Concurrent Resolution 239, is to include those legislative branches, including Members of Congress, relative to pay equity. I support that concept. I believe very strongly that that is what Congresswoman SNOWE means about her legislation. I know that members of that committee have a commitment to having that hearing and dealing specifically with that issue.

Mr. LOTT. I thank the gentlewoman for that, but I do want to express my concern that that may not be the way this resolution reads, because it sounds like you are saying "an agency," which could be GAO or the Library of Congress, and not necessarily involve the House of Representatives itself. So I hope you will take a look at that particular point, and I will discuss it with the gentlewoman from Maine also.

Ms. OAKAR. If the gentleman will yield on that point, Congresswoman MARTIN asked me specifically, beyond the resolution, whether or not I had a commitment to assure that Members of Congress be included, and she specifically asked that question, and I said yes.

Mr. LOTT. You do intend for it to be applicable then to House and Senate committe staffs?

Ms. OAKAR. I am on the committee, and I think the gentlewoman from Illinois knows that nobody has raised that issue more than I have and, of course, she has, when she was a member of that committee, so I think that is absolutely right.

Mr. LOTT. Does the gentlewoman feel that she has an ironclad commitment from the chairman of House Administration that this resolution will be reported for consideration of the House this session?

Ms. OAKAR. I believe that the chairman of the committee, who I talked to this morning, gave me that commitment that he would make that effort. He also would like to take a look, and I am sure you agree with this, at the manner in which the minorities are treated, as well, and I think it is time we do that, as well.

Mr. LOTT. Certainly, I do Does the gentlewoman have any idea what the cost of this commission might be?

Ms. OAKAR. This is Congresswoman SNOWE's bill, so I do not feel that I am qualified to give an answer on that.

Mr. LOTT. As I understand it, it would cost, according to CBO, $2 million. The reason why I am pressing this is because the gentlewoman from Illinois agreed not to press her objection to the rule, which did not allow her amendment to be in order, and I think we need to be sure we understand what is in this resolution and whether or not it is really going to come up or whether this could just possibly be shunted aside in the natural rush that we will have at the end of the year.

The point I am really driving at is, why do we go through this process?

Ms. OAKAR. If the gentleman will yield, I think it would be helpful if the gentleman were a cosponsor of the bill for the gentlewoman from Maine [Ms. SNOWE], and I think the gentleman could make sure that all of the things he wanted are there. I do not mean to embarrass the gentleman, but I do think—I agree with everything the gentleman has said, by the way, and I wanted to get order so that the Members could hear what the gentleman had to say, because I agree with it. But I think we need more cosponsors on Congresswoman SNOWE's bill. We have 81. They are bipartisan cosponsors. The gentleman's leadership would really be helpful on this bill.

Mr. LOTT. Well, I think I just may very well do that, because I sincerely believe that if we are going to pass this legislation and other similar legislation, it should apply to us.

Ms. OAKAR. I agree.

Mr. LOTT. I think we might have a little different attitude or we might realize what some of this means to people, and I think, frankly, it would be fairer if we did it that way. But I do not understand why we do not just go ahead and make it applicable to this bill instead of going through the study process, which would cost $2 million and could be applicable only to an agency of Congress and not Congress itself.

Ms. OAKAR. If the gentleman will yield on that point, as the gentleman knows, when we are talking about civil service, which is the committee that I have jurisdiction over as a member of the Post Office Committee—we do not have jurisdiction over the manner in which Members of Congress treat their staffs or how the committees treat their staffs, et cetera. House Administration does. But as the gentleman knows, what we are dealing with when we are talking about civil service is a classification system. Members of Congress do not have that classification system. It is like really and truly comparing apples and oranges. That is why in my judgment Congresswoman Snowe's bill deserves a full hearing in a markup to include exactly what you want to include, but it really is not under the jurisdiction of our committee, and the classification is in one setting and not in another. We have a very formal structure under civil service that has been in place since 1923. There is no structure when you are talking about committees and Members of Congress.

Mr. LOTT. With that comment, that is my objection. Nothing is applicable to us. We do not have the traditional structured system.

Ms. OAKAR. That is why I think the gentleman ought to get onboard Congresswoman Snowe's bill and let us get it passed out of House Administration.

But let us not diminish, if I could just say this to my friend, who I often agree with on many subjects, let us not diminish because of our discussion of Members of Congress the need to study the bulk of Federal employees and how they are treated under civil service. This issue hasn't been studied since 1923. I do not think we can avoid that issue. We are trying to do both, but there are two committees that have jurisdiction. I for one pressed for a hearing on Congresswoman Snowe's bill, which is this coming Wednesday, and I think the gentleman's leadership is needed, and I hope he will come to testify so that we can get a speedy markup of that bill.

Mr. LOTT. Well, I will just make one final point: This is a House resolution to set up a commission, and in and of itself will not be able to do a thing. Sooner or later we are going to have to address this issue in the law.

Ms. OAKAR. I agree.

Mr. LOTT. And for years now, whether it is environmental law or occupational safety, or whatever else, we say, "Oh, not us." I just think that our credibility with the people out there in the country who are living under our laws continues to deteriorate because we say, "Oh, hey, wait a minute, we cannot live with that," yet they have to live with so many things. A resolution is fine. But some day we have got to make it apply to ourselves.

Mr. Speaker, I reserve the balance of my time.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Maryland [Mr. Hoyer].

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to take this opportunity to first congratulate the chairman of the Post Office and Civil Service Committee, the gentlewoman from Ohio and the gentlewoman from Colorado, for their hard work on this legislation and their determination to bring this legislation to the floor and into conference for timely enactment of the very important provisions within this legislation.

Let me also congratulate the Rules Committee for the very fair rule granted on this bill. While some of the amendments to be offered are opposed by the leadership of the committee and will be opposed by me, the rule nonetheless offers the House the opportunity to discuss in full the many aspects of this legislation.

H.R. 5680 contains three major areas of Federal personnel changes. Title I contains the extremely important and timely study of pay equity in the Federal Government. Title II contains changes in the existing merit pay system and establishes a new Performance Management and Recognition System. And title III contains various changes in the senior executive service.

This bill is the product of strong bipartisan input and, by and large, bipartisan consensus. I would be remiss, therefore, if I did not mention the very hard work and tenacity of my friend from Virginia, Frank Wolf, who spent a substantial amount of time and effort in order to reach the point where we are today.

I am especially proud, Mr. Speaker, that title II of the bill dealing with pay-for-performance, represents many of the changes in the merit pay structure that I have been recommending for the past 3 years.

The Performance Management and Recognition System establishes a new, governmentwide five-tiered system of performance appraisal where an individual's performance on the job determines his or her level of compensation. Unsatisfactory performers will be penalized for their less-than-expected performance while those individuals who perform outstanding work on the job will be rewarded with bonuses. The existing merit pay system was supposed to operate in just this manner. However, due to inadequate funding and a host of other problems, outstanding performers are actually making less than the people they supervise and less than they would make under the GS system. This bill remedies existing inequities while preserving the concept that the Federal Government ought to experiment with an effective and workable system that enhances the regular pay-for-performance aspects of the GS system.

The rule provides that Members who have a different approach to pay equity, to merit pay, or to the Senior Executive Service, will have an opportunity to discuss their approach during consideration of the bill. While I feel that by and large this bill is an excellent bill that does not need amending, the Rules Committee has offered the House the opportunity to work its will with this legislation.

Again, I commend the gentleman from Michigan and the gentleladies from Ohio and Colorado for their fine work and I look forward to consideration of H.R. 5680.

☐ 1310

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentlewoman from Colorado [Mrs. Schroeder].

Mrs. SCHROEDER. I thank the gentleman for yielding to me.

Mr. Speaker, I want to thank Congressman Hoyer, and Congresswoman Oakar, and so many other people who have worked so hard to bring it here. I think we just have to reiterate one more time, that this is a totally open rule; anything that is germane can be added here. How terribly important it is to proceed and move forward.

I, too, wanted to add an amendment that was not germane, and I, too, got told no. I was trying to deal with the subsidies in the DOD dining room and other little numbers like that; the Proxmire amendment, but it was not allowed. So I do not think that the Rules Committee was picking on one side of the aisle; they were saying that look, we are giving you an open rule, and we are giving you an open rule in the area that is germane, now come on, this is it. So they are right, and that is what we should be doing around here.

I also want to point out that many people are standing up talking about the fact that we are not under the same laws that everybody else is. Well, there is a group of about 100 of us who are, and we did it voluntarily. We have a group called the House Fair Employment Practices Committee, and it would be interesting to note how many people have really signed up for that. But many of us said we will agree to be bound by title VII and the titles that deal with equal pay, and subject it to a subjective group and look at that.

A group of us have really tried, when we have been thwarted by legislation and not been able to move it. I think all these things are important. Yes, yes, yes; we need to do whatever we can for equality anywhere. But you do not try and defeat what you are doing for equality for the largest number of Federal employees by saying it is not quite big enough; we missed another group. We will get that group too. It is not anything extraordinary that the Rules Committee did here at all; it is just within the jurisdiction of the House. A totally open rule on a bill that comes out of Post Office and Civil Service over the jurisdiction that we have.

I thank everybody for their patience and their time, and I thank the gentleman from California again for yielding, and I hope the rule goes right through.

Mr. BEILENSON. Mr. Speaker, before calling for the vote, I want to respond very briefly to the gentleman from Mississippi, and I yield myself such time as I may consume.

The Rules Committee received two requests to waive clause 7, rule XVI, germaneness, against amendments to H.R. 5680. Congresswoman SCHROEDER of Colorado asked that we waive germaneness in order to allow her to offer an amendment to prohibit taxpayer subsidies for executive dining rooms in Federal agencies or for congressional restaurants. Congresswoman MARTIN of Illinois asked that we waive germaneness in order to allow her to offer an amendment to expand the scope of the Pay Equity Study Council's mandate to include an investigation of sex discrimination in congressional, as well as Federal agency, hiring and pay practices.

The Rules Committee declined to waive the rule on germaneness for either amendment. The Rules Committee is always cautious about waiving germaneness; but, when the chairman of the reporting committee opposes such waivers and committee jurisdictions are at stake, the committee is extremely reluctant to make nongermane amendments in order. In this case, both the committee chairman, Mr. FORD, and the subcommittee chairwoman, Ms. OAKAR, specifically testified before the Rules Committee in opposition to any waiver of germaneness.

In addition, granting the waivers would have intruded on the jurisdiction of committees other than the Committee on Post Office and Civil Service.

Mrs. SCHROEDER's amendment restricting subsidies for Federal agency and congressional restaurants deals with subject matter within the jurisdiction of the Committee on Government Operations and the Committee on House Administration.

Mrs. MARTIN's amendment to study sex discrimination in congressional hiring and pay practices deals with subject matter within the jurisdiction of the Committee on House Administration.

The Rules Committee believes that only extraordinary circumstances justify shortcutting the normal committee process. We feel that no such extraordinary circumstances exist in this instance. We believe we were correct in not waiving the rules that were designed to protect procedures of the House.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CARNEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and I make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 276, nays 58, not voting 99, as follows:

[Roll No. 263]

YEAS—276

Ackerman
Akaka
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Applegate
Aspin
Barnes
Bates
Beilenson
Bennett
Bevill
Bilirakis
Boehlert
Boland
Boner
Bonior
Bonker
Borski
Boucher
Boxer
Breaux
Britt
Brooks
Broomfield
Brown (CA)
Burton (CA)
Byron
Campbell
Carper
Carr
Chandler
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Crockett
D'Amours
Daniel
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Duncan
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Feighan
Ferraro
Fish
Flippo
Foglietta
Ford (TN)
Frank
Franklin
Frenzel
Fuqua
Gaydos
Gekas
Gephardt
Gilman
Glickman
Gonzalez
Goodling
Green
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hance
Harkin
Harrison
Hawkins
Heftel
Hertel
Hightower
Hillis
Horton
Howard
Hoyer
Hubbard
Hughes
Hunter
Hutto
Hyde
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach
Leath
Lehman (CA)
Leland
Lent
Levin
Levine
Levitas
Lewis (FL)
Lipinski
Long (LA)
Long (MD)
Lowry (WA)
Lujan
Luken
Mack
MacKay
Markey
Martin (NY)
Martinez
Matsui
McCloskey
McCurdy
McEwen
McHugh
McNulty
Mica
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Panetta
Parris
Patman
Patterson
Pease
Penny
Pepper
Perkins
Petri
Pickle
Price
Pritchard
Pursell
Rahall
Rangel
Ratchford
Regula
Reid
Richardson
Rinaldo
Ritter
Roberts
Rodino
Roe
Roemer
Rogers
Rostenkowski
Roth
Roukema
Rowland
Rudd
Russo
Sabo
Savage
Sawyer
Scheuer
Schneider
Schroeder
Schulze
Seiberling
Shuster
Sikorski
Siljander
Sisisky
Skelton
Slattery
Smith (FL)
Smith (NJ)
Snyder
Solarz
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Swift
Tallon
Tauke
Tauzin
Thomas (GA)
Torres
Valentine
Vander Jagt
Vandergriff
Vento
Weiss
Wheat
Whitley
Whittaker
Whitten
Williams (MT)
Winn
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wylie
Yates
Yatron
Young (AK)
Zschau

NAYS—58

Archer
Bateman
Bereuter
Bliley
Brown (CO)
Broyhill
Burton (IN)
Carney
Chappie
Coats
Conable
Corcoran
Crane, Daniel
Crane, Philip
Dannemeyer
Daub
Dreier
Emerson
Fiedler
Fields
Gingrich
Gradison
Gregg
Hammerschmidt
Hansen (UT)
Hiler
Holt
Livingston
Loeffler
Lott
Lowery (CA)
Lungren
Madigan
McCandless
McCollum
McKernan
Michel
Nielson
O'Brien
Packard
Porter
Ray
Ridge
Robinson
Schaefer
Shaw
Shumway
Skeen
Smith (NE)
Smith, Denny
Solomon
Spence
Sundquist
Taylor
Vucanovich
Walker
Weber
Young (FL)

NOT VOTING—99

Addabbo
Albosta
Alexander
Anthony
AuCoin
Badham
Barnard
Bartlett
Bedell
Berman
Bethune
Biaggi
Boggs
Bosco
Bryant
Chappell
Cheney
Clarke
Clay
Clinger
Craig
Darden
Daschle
Downey
Durbin
Edgar
Edwards (AL)
Fazio
Florio
Foley
Ford (MI)
Fowler
Frost
Garcia
Gejdenson
Gibbons
Gore
Gramm
Gray
Hansen (ID)
Hartnett
Hatcher
Hayes
Hefner
Hopkins
Huckaby
Ireland
Jones (OK)
Kemp
Kogovsek
Lantos
Latta
Lehman (FL)
Lewis (CA)
Lloyd
Lundine
Marlenee
Marriott
Martin (IL)
Martin (NC)
Mavroules
Mazzoli
McCain
McDade
McGrath
McKinney
Murphy
Pashayan
Paul
Quillen
Rose
Roybal
Schumer
Sensenbrenner
Shannon
Sharp
Shelby
Simon
Smith (IA)
Smith, Robert
Snowe
Studds
Stump
Synar
Thomas (CA)
Torricelli
Towns
Traxler
Udall
Volkmer
Walgren
Watkins
Waxman
Weaver
Whitehurst
Williams (OH)
Wilson
Wyden
Young (MO)

□ 1330

Mr. DANIEL B. CRANE changed his vote from "yea" to "nay."

Messrs. TAUKE, RINALDO, EVANS of Iowa, and ZSCHAU changed their votes from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO SIT ON TUESDAY, JUNE 26, 1984 DURING THE 5-MINUTE RULE

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent that on Tuesday next, June 26, 1984, the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation be permitted to sit while the House is sitting for amendments under the 5-minute rule.

I have discussed this matter with the ranking minority member of the subcommittee, and he is in full accord with this unanimous consent request.

The SPEAKER pro tempore (Mr. HOYER). Is there objection to the request of the gentleman from Georgia?

Mr. LOTT. Mr. Speaker, reserving the right to object, I do not wish to object, but for the purpose of receiving information, do I understand the gentleman is talking about the Oversight Subcommittee of the Committee on Public Works and Transportation? Is that correct?

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I am glad to yield to the gentleman form Georgia.

Mr. LEVITAS. Mr. Speaker, the gentleman is correct. It is the Investigations and Oversight Subcommittee. I have discussed the matter with the ranking Republican, the gentleman from New York [Mr. MOLINARI]. We have been doing a lot of oversight over the air control system and have been warning of safety problems beginning to emerge. Now we have received some new information which confirms our concerns, and that prompted us to schedule this hearing. It is an important meeting dealing with the problems we are increasingly finding creating potentially dangerous situations in the air traffic control system especially in light of recent disclosures, and that is the reason we are having such an early hearing on the subject. I have discussed this matter with the gentleman from New York within the last 2 hours, and he concurs in this request.

Mr. LOTT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 663, HIGHLY ERODIBLE LAND CONSERVATION ACT OF 1983

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 663) to make persons who produce agricultural commodities on highly erodible land ineligible for certain agricultural-related programs, and for other purposes, with the House amendment thereto, and agree to a conference on the disagreeing votes of the two Houses.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas? The Chair hears none and, without objection, appoints the following conferees: Messrs. DE LA GARZA, JONES of Tennessee, WEAVER, BEDELL, ENGLISH, GLICKMAN, DASCHLE, STENHOLM, TALLON, DURBIN, EVANS of Illinois, MADIGAN, COLEMAN of Missouri, JEFFORDS, SKEEN, MORRISON of Washington, and GUNDERSON.

There was no objection.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I have asked for permission to proceed for 1 minute for the purpose of inquiring of the distinguished majority leader as to the program for next week, since I assume we are finished for this week.

Mr. WRIGHT. Mr. Speaker, will the minority leader yield?

Mr. MICHEL. I am happy to yield to the majority leader.

Mr. WRIGHT. Mr. Speaker, we are finished with the legislative program for today and for this week, and when we adjourn today, we will adjourn to meet at noon on Monday, at which time we will have nine motions to suspend the rules on the following pieces of legislation:

H.R. 5313, Pipeline Safety Act authorizations;

S. 2375, Secondary Market Improvements Act;

H.R. 5655, Panama Canal Act amendments re interest payment;

H.R. 5584, management of Presidential records;

H.R. 5183, to convey certain National Forest System lands;

H.R. 1250, voting accessibility for the elderly and handicapped;

H. Con. Res. 321, early projections of election results;

H.R. 5686, American folklife bill; and

H.R. 4694, VA physicians military retirement pay waiver bill.

If votes are required on those motions, those votes will be postponed until Tuesday.

Following discussion of those bills, we will have general debate only on H.R. 5490, clarifying the application of title IX of the Civil Rights Act, and on H.R. 5680, the Federal Pay Equity Act.

On Tuesday, we have one suspension scheduled, H.R. 3979, the Comprehensive Smoking Education Act. Then we will take recorded votes on this and any other suspensions from the previous day that may have been requested.

Following that, we will go the H.R. 3282, the Water Quality Renewal Act, and H.R. 5798, Treasury-Postal appropriations, and complete consideration on those two bills.

After that we want to take up H.R. 5898, military construction appropriations; H.R. 5899, District of Columbia appropriations, and H.R. 5813, Transportation appropriations, and complete consideration of H.R. 3678, water resources authorizations; H.R. 5490, the title IX of the Civil Rights Act clarification; H.R. 5660 the Federal Pay Equity Act; and H.R. 4784, Trade Remedies Reform Act.

If it is possible to complete all these, we will have fulfilled a very productive schedule for these first 6 months of the year. I am sure the gentleman would realize, of course, that there are some conference committee reports that will have to be taken up during that time. We expect to get a conference committee report on the budget resolution, on the reconciliation bill, and on the tax bill, which have been rolled into one.

☐ 1340

Mr. MICHEL. And the debt ceiling will also have to come up?

Mr. WRIGHT. Yes; and the debt ceiling.

Mr. MICHEL. So it is quite obvious that we are going to be here Friday, is it not?

Mr. WRIGHT. I think that is abundantly clear. I do not know how we can do otherwise.

• Mr. MICHEL. Well, there were some Members who inquired, knowing that when we break away for an extended recess as we are going to, well, there is the Thursday night getaway night, but I think Members ought to be well advised that with all this on the platter, they had better plan on being here Friday.

Mr. WRIGHT. That is indeed a wise admonition.

Mr. MICHEL. One other item, if I might, that is the case having to do with our colleague, the gentleman from Idaho [Mr. HANSEN] and the Ethics Committee. Is there any possibility of that coming before the House next week?

Mr. WRIGHT. Well, the chairman has not asked for a hearing, nor discussed with the leadership any timing of that motion. Of course, it is a privileged motion.

Mr. MICHEL. Yes.

Mr. WRIGHT. I would assume that the chairman of the committee would come and discuss it with those of us in the leadership on our side. If that happens, we surely will advise and discuss it with the gentleman from Illinois and any others whom the gentleman wants us to talk to.

Mr. MICHEL. Well, I would appreciate that. Of course, the gentleman involved would surely want to be apprised sufficiently in advance.

Mr. SNYDER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to my colleague.

Mr. SNYDER. Mr. Speaker, I appreciate the gentleman yielding.

I notice on the program, if I might address this to the majority leader, the Transportation appropriations bill. That bill was reported some time ago and a rule was obtained on it waiving certain points of order. I understand it went back perhaps this morning to the committee and a new bill or revised bill has been reported.

Does the gentleman know if they are going to get another rule on that waiving those points of order or what the situation is in regard to it?

Mr. WRIGHT. If the gentleman from Illinois would yield.

Mr. MICHEL. I am happy to yield.

Mr. WRIGHT. It is my understanding that the Rules Committee expects on Tuesday to take up consideration of a revised rule. Obviously, the rule that earlier was reported, having been found deficient, it would be necessary for the Rules Committee to present some kind of a rule or else the bill would just come before us under the regular open rule procedure.

Mr. SNYDER. Well, if the gentleman will yield further, that is what I was trying to determine, if they were going to try to get a rule, if it was going to come up under the open rule procedure. It is the gentleman's understanding there will be another rule?

Mr. WRIGHT. It is my understanding that they will consider a new rule on Tuesday.

Mr. SNYDER. Mr. Speaker, I thank the gentleman.

Mr. MICHEL. Mr. Speaker, I thank the gentleman, and I yield back the balance of my time.

ADJOURNMENT TO MONDAY, JUNE 25, 1984

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at noon on Monday next.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REQUEST TO DISPENSE WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent to dispense with the business in order under the Calendar Wednesday rule on Wednesday next.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. LOWERY of California. Mr. Speaker, I object.

The **SPEAKER** pro tempore. Objection is heard.

GENERAL LEAVE

Mr. RUSSO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include therein extraneous material, on the subject of the special order today of the gentleman from Mississippi [Mr. MONTGOMERY].

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AMENDED REQUEST ALLOWING CONFEREES TO HAVE UNTIL MIDNIGHT SATURDAY, JUNE 23, 1984, TO FILE CONFERENCE REPORT ON H.R. 4170, DEFICIT REDUCTION AND TAX REFORM ACT OF 1984

Mr. ROSTENKOWSKI. Mr. Speaker, earlier this afternoon we had gotten permission to file a conference report by noon tomorrow on H.R. 4170, the Deficit Reduction and Tax Reform Act of 1984.

Mr. Speaker, I ask unanimous consent to revise that request to midnight tomorrow.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MICHEL. Reserving the right to object, Mr. Speaker, and I do not intend to; but does the gentleman want to volunteer a little information on how he is proceeding over there? Can we reasonably expect that there is going to be an agreement?

Mr. ROSTENKOWSKI. Well, I am looking at this very optimistically, I must say to the minority leader. We are about seven items away from having a successful conclusion to the conference report.

I must admit that when you are seven items away, having included 1,000 items, the items that are remaining are quite controversial and have Members' commitments, so the possibility of even having the conference report ready to file by noon is there, but I just wanted the option to go to midnight.

Mr. MICHEL. Well, I hope the gentleman has success. I know he has a very important personal engagement to attend to maybe a week hence or so.

Having talked to the gentleman from California [Mr. PANETTA] about the budget resolution, reconciliation, and the tax bill, it could be a very momentous week next week. If we could consider them next week hoping the progress the gentleman has thus had would continue through the balance of the day.

Mr. ROSTENKOWSKI. Mr. Speaker, if the gentleman will yield further, I would like to add that I am going to try to hit for noon, because I would like to have the Government Printing Office print the document, so the option to go to midnight is just that, an option.

Mr. MICHEL. Mr. Speaker, I thank the gentleman for his comments, and I withdraw my reservation of objection.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Illinois [Mr. ROSTENKOWSKI]?

There was no objection.

THE GI BILL: AN INVESTMENT WITH WINDFALL PROFITS

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 10 minutes.

● **Mr. MONTGOMERY.** Mr. Speaker, we witnessed in this Chamber yesterday, during a series of speeches on the GI bill, the enthusiasm and overwhelming support for this program and its concepts.

The GI bill is a product of need, the need to provide our armed services personnel with the opportunity to readjust to civilian life, the need to keep our military at maximum strength, and the need to attract and hold on to personnel of high quality.

The GI bill is a product of concern, the concern of a nation in making certain its defenders are afforded the chance to improve their lives and the concern for national security.

The GI bill is a product of extraordinary foresight and strategic planning by the Members of the 78th Congress. Future generations in retrospect, will say that the House of Representatives in the 98th Congress displayed the same ability for wise planning when it passed the new GI bill on June 1, 1984.

The GI bill is a program of small investment and tremendous profits.

On this, the 40th anniversary of the signing of the GI bill of rights, I would like to share with my colleagues a letter from 1 of the over 18 million veterans who have benefited from this far-reaching legislation. No words could more succinctly state its impact on our society and the necessity to sustain that impact. The letter follows:

WASHINGTON, DC,
June 20, 1984.

Hon. G.V. MONTGOMERY,
U.S. Congress, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN MONTGOMERY: I am writing in support of the position you have taken regarding a new GI bill. The educational benefits program you advocate would return many times its costs, both to the individuals who have volunteered to defend our country and to American society as a whole.

Upon graduation from college in 1976, I enlisted in the United States Army. As you know, 1976 was the last year for the most recent nonparticipatory grants program.

This program was abolished in 1977, and I knew then that a voluntary program, particularly for enlisted members, was doomed.

Any GI bill returns its greatest benefits to the youngest, least-schooled servicemember. Apart from the paycheck sacrifice demanded of lower-ranked troops, the prime reason why this latest of noble experiments had to fail is that these individuals, at age 17 or 18, simply had no appreciation for the value of advanced education or training. Their usual response: "The Army's teaching me a skill, and I don't need any more education even if I don't reenlist." Unfortunately for these people, there is not much call for Hawk missile repairmen in civilian life, and the realization of this comes too late.

I was honorably discharged from the Army in 1979, having achieved the rank of Staff Sergeant. I then enrolled in law school, received my J.D., and entered private practice. the GI bill enabled me to make it through school on my own (supplemented, of course, by $16,000 in student loans). Without the $407 per month I received from the Veterans Administration, I would not have been able to start school when I did, nor could I have attended full time. I most certainly would not yet be a member of the bar, and would not be returning to the government, via taxes, the large chunk it now calls for.

I am proud of the service I rendered my country, and I do not feel that my country owes me anything for what I have done. Nevertheless, I also feel that I am returning more to my country now because of the shortterm, limited benefits I received under the GI bill. Some of this nation's greatest and most productive citizens, particularly those who served in the 1940s and 1950s, owe their education and training to the GI bill. These people have given far more to our society than Congress gave them. The investment certainly has returned windfall profits.

I urge you to continue your efforts in supporting new legislation. We shouldn't throw our veteran "babies" out with the deficit reduction "bathwater".

Best regards,

Sincerely,

William E. Hawkhurst.●

● **Mr. FLORIO.** Mr. Speaker, the Serviceman's Readjustment Act of 1944 was signed by President Franklin D. Roosevelt on June 22, 1944. That stroke of the pen marked the culmination of years of hard work and effort by far-seeing men and women who, if they could see today the realization of their labor, would be astounded by the scope of the success of their work.

In the 40 years which have passed since President Roosevelt signed the GI bill over 18 million American veterans have received education and training under the auspices of the GI bill. Soldiers in both times of war and in peace could be assured that a grateful Nation would provide the tools of learning and knowledge which would allow the veteran to prosper in the Nation which he had sacrificed so much to defend. Mr. Speaker, I am one of those 18 million veterans and I remain as grateful and proud of the efforts of those far-seeing visionaries of the past as I was years ago.

Mr. Speaker, we have the opportunity to uphold the dreams of those who have benefited from the GI bill throughout the past 40 years. The House of Representatives has overwhelmingly passed a new and even more comprehensive GI bill and it will be our task to ensure its success. Mr. Speaker, there is no one man among the membership of this House who has done more for veterans than the esteemed chairman of the House Veterans' Affairs Committee, Sonny Montgomery. His leadership and vision rank among those leaders of a generation ago who perceived the need for a Serviceman's Readjustment Act.

Mr. Speaker, I would like to submit for the Record an article which appeared in yesterday's Washington Post which was authored by my friend and colleague, Mr. Montgomery. I can think of no more eloquent and effective statement concerning the plight and potential of today's GI bill than the reasons set forth by the distinguished chairman.

Mr. Speaker, the article follows:

A New GI Bill: "Essential"

(By G.V. Montgomery)

If anyone should know firsthand the consequences of eliminating the proper education incentives for military recruitment, it is Robert B. Pirie Jr. ["How Much for the New GI Bill?" op-ed, June 18]. During the time he served as assistant secretary of defense for manpower, reserve affairs and logistics, from 1979 to 1981, the military suffered one of its worst recruiting periods ever, resulting in a serious shortage of middle-level commissioned and noncommissioned personnel.

Pirie says that in 1976, when Congress discontinued the GI Bill, the armed forces "experienced some rocky times . . . in meeting recruiting goals." This is a major understatement. It was a turbulent time. We simply cannot allow our manpower ranks, which are filled through volunteer service, to fall short again. The GI Bill is a proven safeguard against such shortages.

In addressing his concerns about a new GI Bill, Pirie failed to mention that those most affected by such a program, the men and women in service, are solidly behind its implementation. Indicative of this support is a letter I recently received from a young serviceman in which he commented specifically on the proven ineffectiveness of alternative education programs and the need for a supplemental program to allow him to support his family and finish college.

In reference to the Veterans Educational Assistance Program (VEAP), a contributory program now in effect, he said: "On a PFC's salary/income, it's impossible to simultaneously support a family and adequately invest in this current educational program. VEAP . . . is unfair to the lower enlisted military family."

VEAP requires a participant to contribute $25 to $100 in order to receive a 2-to-1 match from the federal government. The Senate-passed bill, which Pirie proclaims will create "fewer problems," requires that $250 be deducted from active duty pay for education benefits. How many active duty personnel can afford to give up $250 monthly? Are Pirie and the Senate really listening to our service personnel?

The Senate-approved program is not a GI Bill. It is just another limited test, an unattractive cousin of a failing federal program. There is no retention provision included in the Senate bill. However, the proposed new GI Bill contains a supplemental benefit tier and transferability provision that will assist the military in its efforts to hold on to quality personnel. In addition, service members may use their benefits while on active duty or may take advantage of a "leave of absence" provision. Furthermore, the Senate bill does not address the needs of the National Guard and Reserve, while the new GI Bill offers both a basic entitlement.

Pirie's statement that "later GI benefits tended to pay for correspondence courses of various kinds" is absolutely incorrect. As of May 1984, almost 6 million Vietnam-era veterans had trained under the latest GI Bill, 64.2 percent of whom were trained at institutions of higher learning. It is obvious that the civilian defense personnel who have consistently opposed the new GI Bill do not understand its benefits, nor do they cite correct statistics to back their arguments.

This new GI Bill, which was passed overwhelmingly by the House, is cost-effective. According to estimated budget outlays, its cost would be less in the year 2001, $761 million, than the military will be spending on bonus incentives in 1988, $805 million.

In response to the claim that military recruitment has improved dramatically, I say, "for how long?" The economy is improving and the unemployment rate is going down. Add to that a decreasing manpower pool and there is most certainly a recruitment problem.

By the early 1990s, the military will need to recruit one out of every two non-college males in order to maintain the necessary force level. According to a recent Army study, if the aggregate unemployment rate should fall to 7 percent in 1984, Army enlistments of male non-prior-service high school graduates would be falling by more than 14,000 a year. Obviously a drop in unemployment will reduce sharply the total supply of high school graduate enlistees.

While we do have many outstanding military personnel, overall quality can be improved. In 1982, according to a study by the General Accounting Office, 50 percent of our Army recruits were category III, which is a reading level of 7th to 10th grade. Only 19.4 percent of our Army enlisted personnel were categories I and II, which covers a 10th grade or above reading level. In the first quarter of 1982, 76 percent of our Army recruits were high school graduates, but 54 percent of these recruits scored below the 9th-grade level in reading and mathematics on screening tests. A high school diploma does not necessarily mean the basic skills are there.

I submit that we can not only afford a new GI Bill, we can actually cut costs by eliminating many ineffective recruiting devices now being practiced. The Senate-approved bill is an extension of those devices, offering nothing to our armed services, which is exactly what the return would be.

The new GI Bill is absolutely essential if we are to maintain quality in our armed services in the quantity needed for a strong and sound national defense.●

FINANCIAL INSTITUTIONS EQUITY ACT OF 1984

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Rhode Island [Mr. St Germain] is recognized for 5 minutes.

● **Mr. ST GERMAIN.** Mr. Speaker, I am introducing today, with my colleague CHALMERS WYLIE, a revised version of the Financial Institutions Equity Act of 1984, H.R. 5916. Since the introduction of the earlier version, H.R. 5734, on May 24, 1984, the Banking Committee has held hearings and heard testimony from the regulators, trade associations, consumer groups, and entities affected by the legislation. Based on this testimony and on discussions with my colleagues on the Banking Committee, I have prepared a bill, with the assistance of Mr. WYLIE, that I believe answers many of the questions and concerns that were raised about the earlier version. The Banking Committee will meet to mark up H.R. 5916 next Tuesday, June 26, at 10 a.m. So that Members may better understand this legislation, I am including a section-by-section analysis of the bill:

SECTION BY SECTION ANALYSIS OF THE FINANCIAL INSTITUTIONS EQUITY ACT OF 1984, H.R. 5916

SECTION 1. SHORT TITLE: "FINANCIAL INSTITUTIONS EQUITY ACT OF 1984."

SECTION 2. BANK HOLDING COMPANY ACT AMENDMENTS

This section closes the "nonbank bank" loophole in the Bank Holding Company Act (BHCA) by redefining the term "bank" as used in that Act. Under present law, "bank" is narrowly defined, so that companies may avoid the restrictions of the BHCA by limiting the activities of their subsidiary depository institutions. Thus, for example, nonbanking firms have organized "consumer banks" which do not make commercial loans, and thereby are not considered banks under the BHCA.

This loophole is closed by redefining a "bank" as any institution which is FDIC insured, eligible to apply for FDIC insurance, or that accepts transaction accounts (such as NOW accounts or checking accounts) and also is engaged in the business of making commercial loans.

Excepted from the definition of a "bank", and thus from the restrictions of the BHCA, are federally chartered or insured thrift institutions, State chartered savings banks (including those insured by the FDIC), credit unions, limited purpose trust companies, certain foreign banks, and financial institutions primarily engaged in foreign operations. The exemption for trust companies requires that the company not engage in the cross marketing of products or services with the parent holding company or affiliates thereof.

A bank holding company may not provide insurance services (other than those permitted under the Garn-St Germain Act) through a subsidiary or affiliated company.

Nonbank banks, which become banks due to the enactment of this Act, are not required to become FDIC insured if they are insured under a State insurance system (including State sponsored private insurance programs) on the date of enactment and continuously thereafter.

Any company which is not in compliance with the BHCA due to the enactment of this Act, is given a two year period to come into compliance. Such companies wishing to retain their bank subsidiaries, must apply to the Federal Reserve Board for approval, and the Board is to treat the applicant as if it was applying to become a bank holding company. However, this requirement does not apply to "grandfathered" nonbank banks.

"Grandfathered" nonbank banks are banking institutions for which an application to charter the institution, or an application to acquire the institution (whichever was later) was accepted for filing by the appropriate State or Federal regulatory agency on or before January 1, 1983, and which are only engaging in activities which the institution engaged in on May 24, 1984.

SECTION 3. AFFILIATIONS AND OFFICER, DIRECTOR, AND EMPLOYEE RELATIONSHIPS BETWEEN NONMEMBER BANKS AND ORGANIZATIONS ENGAGED IN CERTAIN SECURITIES ACTIVITIES

Under current law, the Glass-Steagall Act restricts affiliations between Federal Reserve System member banks and firms engaged principally in certain securities activities. Interlocking directorates and other employee relationships between member institutions and such securities firms are also restricted. This section extends these restrictions to nonmember insured and noninsured banks, which are given two years to comply.

Excepted from the restrictions of this section are certain foreign banks and limited purpose trust companies. However, trust companies may not cross market services or products with affiliated companies if it is part of a holding company.

SECTION 4. EXTENSION OF SECTION 21 OF THE GLASS-STEAGALL ACT TO AFFILIATES

Section 21 of the Glass-Steagall Act presently restricts the securities activities of deposit taking institutions. However, it does not apply to affiliates of these institutions. This bill broadens the scope of section 21 so that it applies both to direct activities of deposit taking institutions and to their affiliates. Further, it specifically applies to affiliates of "depository institutions" as defined in the Federal Reserve Act, thus including all types of thrift institutions. Institutions are given a two year period to comply with these restrictions.

Excluded from the operation of this section are certain foreign banks and limited purpose trust companies. However, trust companies may not cross market services or products with affiliated companies if it is part of a holding company.

SECTION 5. DISCOUNT BROKERAGE

This section provides that if a depository institution provides discount brokerage services, it may not also provide investment advice which is available to customers of the brokerage service or which relate to securities which may be traded through the brokerage service.

Depository institutions that provide brokerage services, must do so either through a contractual arrangement with a separate company, or through a separately incorporated brokerage subsidiary. In either case, employees providing brokerage services must be paid on a noncommission basis, and certain other consumer safeguards must be complied with.

SECTION 6. SAVINGS AND LOAN ASSOCIATIONS

The Savings and Loan Holding Company Act (SLHCA) defines two types of holding companies—"unitary," which control only one thrift institution, and "multiple," which control two or more institutions. Restrictions are placed on the permissible activities of multiple holding companies only.

This section extends the coverage of the SLHCA to companies which control uninsured thrift institutions, including State chartered savings banks (whether or not insured by the FDIC), and institutions insured under State law.

Unitary holding companies are required to conform their activities to those permitted multiple holding companies, unless the thrift institution meets the test for a "qualified institution."

A "qualified institution" is a thrift which has at least 65 percent of its assets in residential mortgages and related assets for three out of every four calendar quarters. Related assets include securities backed by residential mortgages, cash and obligations of the United States or a State, the business premises directly used by the institution, stock of any Federal Home Loan Bank, as well as other enumerated assets. Thrift institutions would be given a two year period to meet the qualified institution test, except for savings banks, which would be given up to 15 years depending upon its asset composition at the date of enactment. In any case, the Federal Savings and Loan Insurance Corporation may grant temporary exceptions to the 65 percent investment requirement due to extraordinary circumstances.

This section specifies that an institution which becomes covered by the SLHCA due to the enactment of this Act, and which is insured under State law (or through a private insurance organization established under State law) does not have to obtain Federal insurance so long as the State insurance remains continuously in effect.

Nonqualified institutions may not engage in commercial lending activities, and Federally insured nonqualified institutions may not engage in any activity not permissible for a federally chartered thrift association.

The provisions of the Glass-Steagall Act relating to affiliations between member banks and firms engaged in certain securities activities, and relating to interlocking directorates and other employee relationships between member banks and firms engaged in certain securities activities, are extended to apply to federally insured and uninsured thrift institutions, including State chartered savings banks.

Finally, the prohibitions on tying of services which are applicable to federally chartered thrift institutions are also made applicable to state chartered thrift institutions, including savings banks. In addition, the Federal Savings and Loan Insurance Corporation is given the authority to regulate the cross marketing of products and services between a unitary thrift holding company and its controlled thrift institution.

SECTION 7. RESTRICTIONS ON STATE CHARTERED DEPOSITORY INSTITUTIONS

State chartered banks and thrifts may only engage in activities outside the scope of section 4(c)(8) of the Bank Holding Company Act (for banks), or section 408 of the National Housing Act (for thrifts), if these activities are conducted in-State for State residents. With respect to existing relationships which do not comply with these restrictions, a 10 year compliance period is provided. For example, existing checking accounts with out-of-State residents or existing loan participations across State borders may continue, but no new noncomplying relationships may be created. State chartered thrifts are allowed to do what federally chartered thrifts can do under the Garn-St Germain Act.

SECTION 8. IMMEDIATE DIVESTITURE

Entities that begin activities prohibited by this Act between May 24, 1984 and the date of enactment must cease these activities as of the date of enactment.

SECTION 9. EXEMPTION OF CERTAIN INSTITUTIONS

Existing State chartered, State insured thrifts (including those insured by a private corporation established under State law), and State chartered FDIC insured savings banks, are exempted for compliance with this Act so long as the institution undergoes no change in control, in corporate status, or in the method of insurance of accounts.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. PEPPER (at the request of Mr. WRIGHT), for today, on account of necessary absence.

Mr. HAYES (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. RUSSO) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. MONTGOMERY, for 10 minutes, today.

Mr. ST GERMAIN, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, today.

Mr. FORD of Michigan, for 5 minutes, on June 25.

Mr. PEASE, for 60 minutes on July 26.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. COLEMAN of Texas, at the end of general debate on H.R. 5604 in the Committee of the Whole today.

(The following Members (at the request of Mr. LOWERY of California) and to include extraneous matter:)

Mr. CONTE.
Mr. ROTH.
Ms. SNOWE.
Mr. ROGERS.
Mr. FIELDS.
Mr. PHILIP M. CRANE.

(The following Members (at the request of Mr. RUSSO) and to include extraneous matter:)

Mr. LIPINSKI.
Mr. OBEY in five instances.
Mr. MONTGOMERY.
Mr. STARK.
Mr. FLORIO.
Mr. WISE.
Mrs. LLOYD in two instances.
Mr. SAM B. HALL, Jr.

ENROLLED BILL SIGNED

Mr. HAWKINS, from the Committee on House Administration, reported that the committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker pro tempore.

H.R. 4921. An act to provide for the selection of additional lands for inclusion within the Bon Secour National Wildlife Refuge, and for other purposes.

ADJOURNMENT

Ms. OAKAR. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 48 minutes p.m.), under its previous order, the House adjourned until Monday, June 25, 1984, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

3618. Under clause 2 of rule XXIV, a letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Army's proposed Letter of Offer to Canada for defense articles and services estimated to cost $27 million, pursuant to AECA, Section 36(b) (90 Stat. 741; 93 Stat. 708, 709, 710; 94 Stat. 3134; 95 Stat. 1520), was referred to the Committee on Foreign Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 5655. A bill to amend the Panama Canal Act of 1979 with respect to the payment of interest on the investment of the United States; with amendments (Rept. No. 98-858). Referred to the Committee on the Whole House on the State of the Union.

Mr. LEHMAN of Florida: Committee on Appropriations. H.R. 5921. A bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1985, and for other purposes (Rept. No. 98-859). Referred to the Committee of the Whole House on the State of the Union.

Mr. DE LA GARZA: Committee on Agriculture H.R. 5183. A bill to direct the Secretary of Agriculture to convey certain National Forest System lands to Craig County, Virginia, with an amendment (Rept. No. 98-860). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ST GERMAIN (for himself and Mr. WYLIE):

H.R. 5916. A bill to impose limitations on the activities of depository institutions; to the Committee on Banking, Finance and Urban Affairs.

By Mr. ALBOSTA (for himself, Mr. DYMALLY, and Mr. YATRON):

H.R. 5917. A bill to amend the Ethics in Government Act of 1978 to provide for programs designed to inform Federal employees of applicable standards of conduct, to improve the administration of ethics programs in the Federal Government, and for other purposes; jointly, to the Committees on Post Office and Civil Service and the Judiciary.

By Mr. CONTE:

H.R. 5918. A bill to amend the Internal Revenue Code of 1954 with respect to the unemployment tax and agricultural labor; to the Committee on Ways and Means.

By Mr. CONYERS (for himself, Mr. EDWARDS of California, Mr. SEIBERLING, Mr. BOUCHER, Mr. GEKAS, Mr. MCCOLLUM, and Mr. DEWINE):

H.R. 5919. A bill to amend title 18 of the United States Code with regard to the admissibility of business records located in foreign nations and for other purposes; to the Committee on the Judiciary.

By Ms. SNOWE (for herself, Mr. LOWERY of California, Mr. BIAGGI, Mr. FRANK, and Mr. PEPPER):

H.R. 5920. A bill to amend title 38, United States Code, to direct the Administrator of Veterans' Affairs to designate 10 percent of the intermediate-care hospital beds of the Veterans' Administration for the care of veterans suffering from Alzheimer's disease and related disorders; to the Committee on Veterans' Affairs.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

422. By the SPEAKER: Memorial of the General Court of the Commonwealth of Massachusetts, relative to establishing a Reserve Officers Training Corps for students in high schools; to the Committee on Armed Services.

423. Also, memorial of the General Court of the Commonwealth of Massachusetts, relative to establishing a National Academy of Peace and Conflict; to the Committee on Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 389: Mr. MCHUGH.

H.R. 1797: Mr. FOGLIETTA, Mr. MACKAY, Mr. RINALDO, Mr. TORRES, and Mr. FAZIO.

H.R. 5267: Mr. FISH.

H.R. 5446: Mr. MAVROULES and Mr. BOLAND.

H.R. 5835: Mr. RODINO, Mr. DWYER of New Jersey, Mr. ANDERSON, Mr. HERTEL of Michigan, Mr. BREAUX, Mr. ANNUNZIO, Mr. CARNEY, Mr. D'AMOURS, Mr. LAGOMARSINO, Mr. MRAZEK, Mr. MURTHA, Mr. STRATTON, Mr. RUSSO, Mr. WEISS, Mrs. KENNELLY, and Mr. BARNES.

H.R. 5884: Mr. WALKER.

H.J. Res. 243: Mr. ENGLISH.

H.J. Res. 340: Mr. Barnard, Mr. Carper, Mr. Gramm, Mr. Hatcher, Mr. Lagomarsino, Mr. McCollum, and Mr. Stenholm.

H.J. Res. 475: Mr. Gore and Mr. Wise.

H.J. Res. 476: Mr. Weiss, Mr. Archer, Mr. McCain, Mr. Ratchford, Mr. Mavroules, Mr. Coats, Mrs. Johnson, Ms. Oakar, Mr. McEwen, and Ms. Ferraro.

H.J. Res. 497: Mr. Chappell, Mr. McCain, Mr. Slattery, Mr. Tallon, Mr. Whitten, Mr. Barnard, Mr. Darden, Mr. Ridge, Mr. Valentine, Mr. Hightower, Mr. Ray, Mr. Campbell, Mr. Coelho, Mr. Durbin, Mr. Moorhead, Mr. Vandergriff, Mr. Kemp, Mr. Pepper, Mr. Philip M. Crane, Mr. Jones of Tennessee, Mr. Brooks, Mr. Brown of California, and Mr. Thomas of Georgia.

H.J. Res. 528: Mr. Levin of Michigan.

H.J. Res. 544: Mr. Shannon and Mr. Gekas.

H.J. Res. 546: Mr. Hansen of Idaho, Mr. Gray, Mr. Gunderson, Mr. Hayes, Mr. Roberts, Mr. Nowak, Mr. Oberstar, Mr. O'Brien, Mr. Oxley, Mr. Pepper, Mr. Chappie, Mr. Corcoran, Mr. Darden, Mr. Dixon, Mr. Dorgan, Mr. Dowdy of Mississippi, Mr. Beilenson, Mr. Broomfield, Mr. Daschle, Mrs. Lloyd, Mr. Skeen, Mr. Skelton, Mr. Lehman of California, Mr. Matsui, Mr. Vandergriff, Mr. Kasich, Mr. Myers, Mr. McHugh, Mr. Roybal, Mr. Traxler, and Mr. Wright.

H.J. Res. 547: Mr. Gephardt, Mr. Alexander, Mr. Durbin, and Mr. Hatcher.

H.J. Res. 555: Mr. Morrison of Connecticut, Mr. Kasich, Mr. Morrison of Washington, Mr. Vandergriff, Mr. Pritchard, Mr. Winn, Mr. Kogovsek, Mr. Emerson, Mr. Philip M. Crane, Mr. Britt, Mr. Murphy, and Mr. Patterson.

H.J. Res. 577: Mr. Alexander, Mr. Bates, Mr. Bennett, Mr. Brown of California, Mr. Brown of Colorado, Mr. Carr, Mr. Coats, Mr. Coelho, Mrs. Collins, Mr. Cooper, Mr. Coughlin, Mr. Dickinson, Mr. Downey of New York, Mr. Edwards of Oklahoma, Mr. Erdreich, Mr. Ford of Michigan, Mr. Gekas, Mr. Gilman, Mrs. Hall of Indiana, Mr. Hance, Mr. Heftel of Hawaii, Mr. Jones of Tennessee, Mr. Kildee, Mr. Lowry of Washington, Mr. McCain, Mr. McHugh, Mr. MacKay, Mr. Moody, Mr. Moorhead, Mr. Ortiz, Mr. Ottinger, Mr. Porter, Mr. Pritchard, Mr. Scheuer, Mr. Siljander, Mr. Stratton, Mr. Sunia, Mr. Towns, Mr. Williams of Ohio, Mr. Winn, Mr. Wolf, and Mr. Young of Alaska.

H.J. Res. 591: Mr. Fuqua, Mr. Edgar, Mr. Smith of Florida, Mr. Early, Mr. LaFalce, Mr. Dwyer of New Jersey, Mr. Hughes, Mr. Kostmayer, Mr. Hertel of Michigan, Mr. Bates, Mr. Florio, Mr. Fazio, and Mr. McGrath.

H.J. Res. 593: Mr. Walker.

H.J. Res. 594: Mr. Erdreich, Mr. Bateman, Mr. Ottinger, Mr. Kostmayer, Mr. Tauke, Mr. Stump, Mr. Dymally, Mr. Wyden, Mr. Young of Alaska, Mr. Archer, Mr. Olin, Mr. Panetta, Mr. Chappie, Mr. Hopkins, Mr. Torricelli, Mr. Oxley, Mr. Marlenee, Mr. Wolpe, Mr. Anderson, Mr. Moorhead, Mr. Dwyer of New Jersey, Mr. Bevill, Mr. Lantos, Mr. Mollohan, Mr. Fazio, Mr. Minish, Mr. Solarz, Mr. Horton, Mr. Levin of Michigan, Mr. Sam B. Hall, Jr., Mr. Goodling, Mr. Mrazek, Mr. Davis, Mr. Smith of New Jersey, Mr. Edgar, Mr. Green, Mrs. Boxer, Mr. Moore, Mr. Rudd, Mr. Evans of Iowa, Mr. Bosco, Mr. Harkin, Mr. Martin of New York, Mr. Hightower, Mr. Cheney, Mr. Smith of Iowa, Mr. Applegate, Mr. DeWine, Mr. Stratton, Mr. Hansen of Utah, Mr. Shannon, Mr. Boland, Mr. Boner of Tennessee, Mr. Ford of Tennessee, Mr. Rodino, Mr. Kemp, Mr. Vandergriff, Mr. Ackerman, Mr. Bethune, Mr. Albosta, Mr. Montgomery, Mr. Bennett, Mr. Bedell, Mr. Akaka, Mr. Cooper, Mr. Guarini, Mr. Leland, Mr. Rangel, Mr. Rahall, Mr. Rose, Mr. Kasich, Mr. Biaggi, Mr. Towns, Mr. Dowdy of Mississippi, Mr. Campbell, Mr. Madigan, Mr. Slattery, Mr. Won Pat, Mr. Martinez, Mr. Reid, Mr. Burton of Indiana, Mr. Wolf, Mr. Hiler, Mr. Beilenson, Mr. Wortley, Mr. Foglietta, Mr. Sunia, Mr. Smith of Florida, Mr. Sharp, Mr. Durbin, Mr. Waxman, Mr. Frank, Mr. Vento, Mr. Lagomarsino, Mr. Fish, Mr. Addabbo, Mr. Morrison of Connecticut, Mr. Hyde, Mr. Matsui, Ms. Kaptur, Mr. Weiss, Mr. Howard, Mr. Mazzoli, Mr. Barnes, Mr. Richardson, Mr. Roe, Mr. Luken, Mr. Brown of California, Mr. Donnelly, Mr. Wylie, Mr. Berman, Mr. Frost, Mr. Fuqua, Mr. Gore, Mr. Jones of Tennessee, Mr. Feighan, Mr. Mineta, Mr. Duncan, Mr. Hughes, Mr. Lewis of Florida, Mr. Quillen, Mrs. Byron, Mr. Winn, Mr. Gunderson, Mr. Wirth, Mr. Bliley, Mr. Wheat, Mr. Chappell, Mrs. Hall of Indiana, Ms. Mikulski, Mr. Scheuer, Mr. Bartlett, Mr. Gekas, Mr. Markey, Mr. Ratchford, Mr. McNulty, Mr. Wilson, Mr. Murphy, Mr. Whittaker, Mr. Marriott, Mr. Kindness, Mr. Hayes, Mr. Daub, Mr. Moody, Mr. Andrews of Texas, Mr. McGrath, Mr. Frenzel, Mr. Gray, and Mr. McCain.

H. Con. Res. 312: Mr. Kogovsek.

H. Con. Res. 320: Mr. Downey of New York, Mr. Stenholm, Mr. Addabbo, Mr. Frank, and Mr. Foglietta.

H. Res. 518: Mr. Shumway and Mr. Cheney.

PETITIONS, ETC.

Under clause 1 of rule XXII,

394. The SPEAKER presented a petition of the Southern Baptist Convention, relative to the Civil Rights Act of 1984; which was referred jointly, to the Committees on Education and Labor and the Judiciary.

AMENDMENTS

Under clause 6 or rule XXIII, proposed amendments were submitted as follows:

H.R. 3282

By Mr. ROE:

Amendment in the nature of a substitute. —Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

Section 1. This Act may be cited as the "Water Quality Renewal Act of 1984".

AUTHORIZATIONS OF APPROPRIATIONS

Sec. 2. (a) Section 104(u) of the Federal Water Pollution Control Act is amended—

(1) in clause (1), by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,";

(2) in clause (2), by striking out "and $3,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988"; and

(3) in clause (3), by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(b) Section 106(a)(2) of the Federal Water Pollution Control Act is amended by inserting after "1982" a comma and the following: "and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".

(c) Section 112(c) of the Federal Water Pollution Control Act is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".

(d) Section 208(f)(3) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1982" and inserting in lieu thereof "September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(e) Section 208(j)(9) of the Federal Water Pollution Control Act is amended by inserting after "1982," the following: "and $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1085, September 30, 1986, September 30, 1987, and September 30, 1988,".

(f) Section 304(k)(3) of the Federal Water Pollution Control Act is amended by striking out "1983" and inserting in lieu thereof "1988".

(g) Section 314(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and $30,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".

(h) Section 517 of the Federal Water Pollution Control Act is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 38, 1982, and $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

AUTHORIZATIONS FOR CONSTRUCTION GRANTS

Sec. 3. Section 207 of the Federal Water Pollution Control Act is amended by striking out "and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year" and inserting in lieu thereof "for the fiscal year ending September 30, 1982, and September 30, 1983, not to exceed $2,400,000,000 per fiscal year; for the fiscal year ending September 30, 1984, not to exceed $2,400,000,000; for the fiscal year ending September 30, 1985, not to exceed $2,900,000,000; and for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $3,400,000,000 per fiscal year".

COMPLIANCE DEADLINES

SEC. 4. (a) Section 301(b)(2)(C) of the Federal Water Pollution Control Act is amended to read as follows:

"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(b) Section 301(b)(2)(D) of the Federal Water Pollution Control Act is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".

(c) Section 301(b)(2)(E) of the Federal Water Pollution Control Act is amended by striking out "1984" and inserting in lieu thereof "1987".

(d) Section 301(b)(2)(F) of the Federal Water Pollution Control Act is amended to read as follows:

"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".

(e) The Administrator of the Environmental Protection Agency shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	Date by which the final regulation shall be promulgated
Foundries	June 30, 1984
Inorganic chemicals (phase II).	June 30, 1984.
Nonferrous metals forming.	October 31, 1984.
Organic chemicals and plastics and synthetic fibers.	February 28, 1985.
Pesticides	November 30, 1984.
Plastics molding and forming	September 30, 1984.
Nonferrous metals (phase II).	November 30, 1984.

INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS

SEC. 5. (a) Section 304 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(l)(1) Not later than one year after the date of enactment of this subsection, the Administrator, in cooperation with the States and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of this subsection.

"(2) Not later than one year after the date of publication of the list required by paragraph (1) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each listed segment of the navigable waters, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (1) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

"(3) The Administrator shall implement each individual control strategy promulgated under paragraph (2) by modifying or requiring the modification of permits under section 402 of this Act.".

(b) Section 509(b)(1) of the Federal Water Pollution Control Act is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

CIVIL PENALTIES

SEC. 6. (a) Section 309(d) of the Federal Water Pollution Control Act is amended by striking out "$10,000" and inserting in lieu thereof "$20,000".

(b) The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which have the same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.

STUDY OF EFFECTS OF DAMS ON WATER QUALITY

SEC. 7. Section 516 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1985.".

CONTROL OF NONPOINT SOURCES OF POLLUTION

SEC. 8. (a) Title III of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

"NONPOINT SOURCE CONTROL IMPLEMENTATION PROGRAMS

"SEC. 319. (a)(1) The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

"(2) Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

"(b)(1) The Governor of each State shall prepare and submit to the Administrator for his approval—

"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

"(2) Each plan proposed for implementation under this subsection shall specify—

"(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

"(E) the methods, by category and subcategory of such sources of pollution, (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs) which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(3) Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

"(4) The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

"(5) In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(6) A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

"(c)(1) Any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

"(2) If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

"(d) The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

"(e)(1) Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

"(2) If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

"(f) If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

"(g) Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

"(h)(1) If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the quality of such portion.

"(2) Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

"(i)(1) Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

"(2) An application for a grant under this subsection in any fiscal year shall be in such form and shall contain—

"(A) an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant; and

"(B) such other information as the Administrator may require.

"(3)(A) The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan; except that the Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent.

"(B) For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(4) No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(5)(A) Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

"(B) No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

"(6) Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(7) For each fiscal year beginning after September 30, 1986, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

"(8) There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated to carry out this subsection shall remain available until expended.

"(j)(1) Not later than January 1, 1985, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) Not later than January 1, 1988, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

"(B) an analysis of the level of State participation in implementing such plans; and

"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

"(k) Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".

POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION

Sec. 9. Section 101(a) of the Federal Water Pollution Control Act is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this act to be met through the control of both point and nonpoint sources of pollution.".

LAKE RESTORATION GUIDANCE MANUAL

Sec. 10. Section 104(h) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:

"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".

ELIGIBLE CATEGORIES OF PROJECTS

Sec. 11. (a) The second sentence of section 201(g)(1) of the Federal Water Pollution Control Act is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances," and by striking out the period and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.".

(b) Section 201(n)(2) of the Federal Water Pollution Control Act is amended by striking out "$200,000,000" and inserting in lieu thereof "$500,000,000". The amendment made by this subsection shall apply to fiscal years beginning after September 30, 1984.

FEDERAL SHARE

Sec. 12. (a) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by striking out "55 per centum" and inserting in lieu thereof "65 per centum".

(b) The last sentence of section 202(a)(1) of the Federal Water Pollution Control Act is amended—

(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and

(2) by inserting after "correction" the third place it appears the following: "and project to address such problems".

(c) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 per centum of the cost of construction thereof.".

(d) The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 per centum of the cost thereof.

(e) Section 202(a)(3) of the Federal Water Pollution Control Act is amended by inserting at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has not met design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

AGREEMENT ON ELIGIBLE COSTS

Sec. 13. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following new sentences: "Before taking final action on such plans, specifications, and estimates, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not refuse to make payments for the Federal share of those costs of any item specified in such an agreement which are incurred on such project.".

GRANT CONDITIONS

Sec. 14. (a) Section 204(a)(1) of the Federal Water Pollution Control Act is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) Section 204(a)(2) of the Federal Water Pollution Control Act is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) The amendments made by subsections (a) and (b) of this section shall take effect two years after the date of enactment of this Act.

USER CHARGES ON LOW-INCOME RESIDENTIAL USERS

SEC. 15. Section 204(b)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph, if the Administrator determines that such system was adopted after public notice and hearing.".

ALLOTMENT OF CONSTRUCTION GRANT FUNDS

SEC. 16. (a)(1) Section 205(c)(2) of the Federal Water Pollution Control Act is amended by adding after the first sentence the following: "Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Water Quality Renewal Act of 1984.".

(2) The third sentence of section 205(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".

(b) Section 205(e) of the Federal Water Pollution Control Act is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, and 1988" and by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of 1 per centum".

(c)(1) Section 205(g)(1) of the Federal Water Pollution Control Act is amended by striking out "1985" and inserting in lieu thereof "1988".

(2) Section 205(g) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(3) The Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.".

(d) Section 205(i) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985" and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(e) Section 205(j)(3) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator and the Governor of such State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.".

(f) Section 205 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(1) One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1984, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title.".

(g)(1) The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") shall make a grant from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1985 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(2) The Administrator shall make a grant of $2,337,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Ohio for fiscal year 1985 to the owners of the Rocky River Wastewater Treatment Plant in Rocky River, Ohio, for reimbursement of such owners for the cost of construction of such plant.

(3) The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1985 to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(4)(A) The Administrator shall make a grant to the Elk Pinch Public Service District, Kanawha County, West Virginia, from funds allotted to the State of West Virginia under section 205 of the Federal Water Pollution Control Act for fiscal years beginning after September 30, 1984. Such grant shall be in such amount, not exceeding $3,000,000, as is necessary to allow such district to maintain the approved user charge of $4.26 per thousand gallons and shall be in addition to the Federal share of eligible costs of such project otherwise allowable.

(B) As a condition to receiving a grant under this paragraph, the Elk Pinch Public Service District shall agree to take necessary steps, including litigation, to recover funds from parties against whom such district has claims for damages relating to the planning, designing, constructing, and financing of such wastewater treatment works. Amounts recovered under the preceding sentence, to the extent such amounts do not exceed the amount of grants made under this paragraph, shall be paid to the Administrator and shall be added to the allotment of the State of West Virginia under section 205 of the Federal Water Pollution Control Act for the first fiscal year following such payment.

(5) Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Kentucky for fiscal year 1985 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(6) The Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1984, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 17. (a) Title II of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

"GRANTS TO STATES FOR REVOLVING FUNDS

"SEC. 220. (a) The Administrator shall make a grant to each State of the funds allotted to such State under this section for any fiscal year for deposit in a Water Pollution Control Revolving Fund established by such State under subsection (b)(2) of this section, for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

"(b)(1) A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the fund established by such State under this section an amount equal to 20 percent of the amount allotted to such State for such fiscal year.

"(2) Each State shall submit to the Administrator annually a certification—

"(A) that upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

"(B) that such State will comply with all provisions of this section.

"(3) Each State shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. Such State shall deposit in such fund any Federal funds allotted to such State under this section, any amounts received by such State for repayment of loans made by such State with amounts in such fund, any amounts required to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which such State wishes to deposit in such fund.

"(c)(1) A State may use amounts in the fund established by such State under this section only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermuncipal and interstate agencies.

"(2) In addition, to the extent provided by state law, any State may issue revenue or general obligation bonds using amounts in the fund established by such State under this section as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund. No municipality or intermunicipal or interstate agency shall receive a loan from the fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of such loan.

"(3) A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

"(4) A State may provide financial assistance from the fund established by such State under this section for any project which is on the State's priority list under section 216 of this Act.

"(d) Notwithstanding any other provision of this section, a State may make assistance available under this section from the fund established by such State under this section to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works. If the recipient of a grant under section 201(g) of this Act for construction of treatment works receives an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation and such recipient has received a loan under this first sentence of this subsection, such recipient shall promptly repay such loan to the extent of such allowance.

"(e)(1) Each State shall annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe.

"(2) The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

"(f) The provisions of this title shall not apply to financial assistance under this section, except to the extent provided in this section.

"(g)(1) There is authorized to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

"(2) Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as if such funds were authorized to be appropriated under section 207 of this Act for such fiscal year. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.".

(b) Section 207 of the Federal Water Pollution Control Act is amended by striking out "and 209" and inserting in lieu thereof ", 209, and 220".

INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS

SEC. 18. Section 301(k) of the Federal Water Pollution Control Act is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which is otherwise applicable under such subsection,".

COAL REMINING OPERATIONS

SEC. 19. Section 301 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(n)(1) Subject to paragraphs (2) and (3) of this subsection, the Administrator, or the State in any case in which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any discharge, and with respect to discharges of iron and manganese, from the remined area of any coal remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment. In no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins.

"(2) The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation provides a potential for improvement to water quality.

"(3) For purposes of this subsection—

"(A) the term 'coal remining operation' means a coal mining operation which begins after the date of enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977; and

"(B) the term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(4) Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

WATER QUALITY CRITERIA

SEC. 20. (a) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) biouptake.".

(b) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and signficant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".

PRETREATMENT STANDARDS

SEC. 21. (a) Section 307(b) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) Upon the request of any source which is subject to two or more pretreatment standards which are promulgated under this subsection before the date of enactment of this paragraph and for which more than one compliance date is prescribed, the Administrator may establish a single compliance date for all such standards in accordance with this paragraph. Such a single compliance date shall be not later than one year after the first of such compliance dates, whichever first occurs. The Administrator shall not establish a single compliance date under this paragraph unless the applicant demonstrates to the satisfaction of the Administrator that—

"(i) the establishment of a single compliance date will result in compliance by the applicant with all such standards earlier than would be the case in the absence of such single date; and

"(ii) the technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the basis for another of the applicable pretreatment standards, or the pretreatment standard with the later compliance date requires sufficient additional technology to justify such single compliance data.

"(B) Any application by a source under this paragraph for a single compliance date shall be made not later than 30 days after the date of enactment of this subparagraph. The Administrator shall provide public notice of such application not later than two weeks after its receipt and shall either approve or deny such application within 60 days after the last day of such two-week period.".

(b) Notwithstanding any other provision of law or rule or regulation to the contrary, the date for compliance with pretreatment standards under section 307(b) of the Federal Water Pollution Control Act for the electroplating point source category, as that category is described at page 9404 of volume 46 of the Federal Register (January 28, 1981), shall be December 31, 1984.

(c) The Administrator of the Environmental Protection Agency shall take such actions as may be necessary to increase the number of employees of such agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

(d) Section 307 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(e) In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may establish a date for compliance with the applicable pretreatment standard not later than two years after the date for compliance with such applicable standard (1) if the Administrator determines that (A) the innovative system has the potential for industrywide application, and (B) the action will not cause the publicly owned treatment works to be in violation of its permit under section 402, and (2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator) concurs with the proposed action of the owner or operator of such treatment works under this subsection.".

CRIMINAL PENALTIES

SEC. 22. Section 309(c) of the Federal Water Pollution Control Act is amended to read as follows:

"(c)(1) Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

"(2) Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(3) It shall be an affirmative defense under paragraph (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer of publicly owned treatment works.

"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(5) For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(6) For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

ADMINISTRATIVE PENALTIES

SEC. 23. Section 309 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(g)(1) Whenever on the basis of any information available to him—

"(A) the Administrator finds that any person is in violation of sections 301, 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or

"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary') finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by a State,

he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $75,000.

"(2)(A) A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

"(B) In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

"(C) The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

"(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(5) The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

"(6) Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

"(7) When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this subsection, the Administrator and the Secretary are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.".

CLEAN LAKES

Sec. 24. (a) Section 314(a)(1) of the Federal Water Pollution Control Act is amended by striking out "fresh water".

(b) Section 314 of the Federal Water Pollution Control Act is amended—

(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

(c) Section 314 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(d)(1) The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

"(2) The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

"(3) There is authorized to be appropriated to carry out this subsection not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated shall remain available until expended.

"(e)(1) Any State may prepare, and submit to the Administrator for his approval—

"(A) a survey of water quality deterioration in lakes and others waters in such State which has resulted from high acidity which may be due to acid deposition, and

"(B) methods and procedures which may be applied to lakes and other waters in such State to restore water quality, insofar as such quality has deteriorated as a result of high acidity which may be due to acid deposition.

"(2)(A) The Administrator shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection. Such methods may include, but are not limited to, (i) innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and (ii) methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilised by high acidity.

"(B) The amount granted under this section to any State for any fiscal year shall not exceed 80 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.

"(C) The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of high acidity which may be due to acid deposition. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.

"(3) There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Amounts appropriated under this subsection shall remain available until expended.

"(f) The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

"(g) The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed. The Administrator shall submit a report of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this subsection. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $10,000,000 to carry out this subsection, to remain available until expended.

"(h) The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Upon completion of the study the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users. Upon completion of the demonstration project the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. Funds appropriated under subsections (c), (d) and (e) of this section and section 52 of the Water Quality Renewal Act of 1984 shall be available to carry out this subsection.

"(i) The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $10,000,000 to carry out this subsection.

"(j) The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $8,000,000 to carry out this subsection.

"(k) The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations of further measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $3,500,000 to carry out this subsection.".

NPDES PERMITS

Sec. 25. (a)(1) Section 402(b)(1)(B) of the Federal Water Pollution Control Act is amended to read as follows:

"(B) are for fixed terms not exceeding ten years, except in the case of a permit which modifies any requirement of this Act under section 301(c), (g), (h), or (m) of this Act and except in any case in which the State determines that the applicant has not consistently complied with any permit held by such applicant under this section, in which cases such permits shall be issued for fixed terms not exceeding five years;".

(2) Section 402(b)(1) of the Federal Water Pollution Control Act is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:

"(D) must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and".

(b) Section 402(l) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following new paragraph:

"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.".

(c) Section 402 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(m) To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a discharger of conventional pollutants identified pursuant to section 304(a)(4) of this Act which are introduced into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

"(n)(1) The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(d)(1) Section 402(c)(1) of the Federal Water Pollution Control Act is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

(2) Section 402(c) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection (A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be, or (B) in the case of any approval under subsection (n)(4), any phased component approved at the time of such return or withdrawal, as the case may be.".

AGRICULTURAL STORMWATER DISCHARGES

SEC. 26. Section 502(14) of the Federal Water Pollution Control Act is amended by inserting after "include" in the last sentence thereof the following: "agricultural stormwater discharges and".

NEWTOWN CREEK, NEW YORK

SEC. 27. The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modifications. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SAN DIEGO, CALIFORNIA

SEC. 28. (a) For purposes of protecting the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico, upon application of the city of San Diego, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such city for construction of a project consisting of—

(1) a publicly owned treatment works in such city to provide primary or more advanced treatment of not less than 60,000,000 gallons of municipal sewage and industrial waste per day for the city of Tijuana, Mexico; and

(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the city of San Diego and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the city of San Diego.

(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(f) Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

(g) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(h) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(i) There is authorized to be appropriated to the Administrator to make grants under this section for fiscal years beginning after September 30, 1984, such sums as may be necessary.

NACO, ARIZONA

SEC. 29. (a) For purposes of protecting the economy, public health, environment, and surface water and groundwater of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the city of Naco, Sonora, Mexico, upon application of the county of Cochise, Arizona, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such county for construction of a project consisting of—

(1) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico; and

(2) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such community of Naco, Arizona, as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the County of Cochise, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico and the community of Naco, Arizona.

(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(f) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

(g) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(h) There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1984.

LIMITATION ON DISCHARGE OF RAW SEWAGE

SEC. 30. (a) After March 15, 1986, the city of New York shall not discharge raw sewage into navigable waters in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily discharge of raw sewage by the city of New York during the 12-month period preceding March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b) of this section.

(b) In the event of any significant interruption in the operation of a wastewater treatment plant which is operated by the city of New York, the Administrator of the Environmental Protection Agency may waive the limitations of subsection (a), but only to such extent and for such limited period of time as may be reasonably necessary for such city to resume such operation.

(c) The Administrator of the Environmental Protection Agency shall undertake measures, including modifications of schedules of compliance, to reduce and eliminate at the earliest practicable date, the discharge of raw sewage by the city of New York taking into account any increase in the authorization for grants for construction of treatment works made by this Act and standards and practices which are necessary for the attainment of that water quality which assures protection of public water supplies, protection of the public health, and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water.

JEFFERSON COUNTY, KENTUCKY

SEC. 31. The Okolona Sewer Construction District, Jefferson County, Kentucky, shall be permitted to operate the Okolona Sewer Construction District Treatment Works and shall not be required to use any other facility for wastewater treatment, until such time as the West County Wastewater Treatment Plant, Jefferson County, Kentucky, is completed. The Administrator shall issue a permit under section 402 of the Federal Water Pollution Control Act to carry out this section.

BOSTON, MASSACHUSETTS

SEC. 32. The Administrator of the Environmental Protection Agency is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK

SEC. 33. Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, not to exceed $9,000,000 to carry out this section.

CHIPPEWA TOWNSHIP, PENNSYLVANIA

SEC. 34. In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run and the Beaver River, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove such raw sewage.

STUDY OF REGULATION OF DE MINIMIS DISCHARGES

SEC. 35. The Administrator of the Environmental Protection Agency shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. The Administrator shall submit a report of such study along with recommendations to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this Act.

STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES

SEC. 36. The Administrator of the Environmental Protection Agency shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons of each such State's failure to make such obligations. The Administrator shall submit a report of such study to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the date of enactment of this Act, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

WATER QUALITY IMPROVEMENT STUDY

SEC. 37. (a) The Administrator of the Environmental Protection Agency shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act in a cost-effective manner.

(b) Not later than two years after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

STUDY OF TESTING PROCEDURES

SEC. 38. (a)(1) The Administrator of the Environmental Protection Agency shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(2) Not later than one year after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in paragraph (1) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) Biennially after the date of submission of the report under subsection (a), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants established under subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit to the committees referred to in subsection (a)(2) recommendations for modifying such procedures to improve their effectiveness.

STUDY OF PRETREATMENT OF TOXIC POLLUTANTS

SEC. 39. (a) The Administrator of the Environmental Protection Agency shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatments works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of the extent to which each such strategy identified may be expected to achieve the goals of this Act; and

(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each alternative strategy identified in paragraph (4).

(b) The Administrator shall, not later than two years after the date of enactment of this Act, submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SULFIDE CORROSION STUDY

SEC. 40. (a) In order to protect the Federal and other investment in treatment works, the Administrator of the Environmental Protection Agency shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

(b) The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within one year of the date of enactment of this Act. There is authorized to be appropriated $2,000,000 to carry out this subsection for fiscal years beginning after September 30, 1984.

GRANTS FOR ALTERNATIVE WATER SUPPLY TO REPLACE CONTAMINATED GROUNDWATER

SEC. 41. (a) The Administrator of the Environmental Protection Agency is authorized to make grants to (1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and (2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination. Such grants shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

(b) An application under this section shall be in such form and shall contain such information as the Administrator may require. Each such application shall include—

(1) a description of the source and extent of groundwater contamination;

(2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undertake with the assistance to be provided under this section.

(c) The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 50 percent.

(d) The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

(e) The Administrator shall report annually to Congress on grants made under this section. Each such report shall include—

(1) infomation on applicants for such grants, including the number of such applicants;

(2) information on the sources and extent of groundwater contamination with respect to which applications are made under this section, including the average number of people affected by each source of groundwater contamination; and

(3) the average amount of such grants and the types of measures undertaken with such grants.

(f) For purposes of this section—

(1) the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State;

(2) the term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals; and

(3) the term 'State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(g) There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

DES MOINES, IOWA

SEC. 42. The Administrator of the Environmental Protection Agency is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction. There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

WASTEWATER RECLAMATION DEMONSTRATION

SEC. 43. The Administrator of the Environmental Protection Agency is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater. There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1984.

DISCHARGES INTO MARINE WATERS

SEC. 44. (a) Section 301(h)(2) of the Federal Water Pollution Control Act is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) Section 301(h)(3) of the Federal Water Pollution Control Act is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge".

(c) Section 301(h) of the Federal Water Pollution Control Act is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) Section 301(h) of the Federal Water Pollution Control Act is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (b) of this section) and inserting in lieu thereof a semicolon and by adding after paragraph (8) (as so redesignated) the following new paragraphs:

"(9) no effluent will be discharged from such works which does not receive primary treatment by screening, sedimentation, and skimming, and treatment for disinfection where necessary, and which does not meet the criteria established under section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged; and

"(10) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is an applicable pretreatment requirement in effect, the Administrator shall grant to the applicant removal credits to reflect the consistent removal of that pollutant achieved by the treatment works, provided that the following criteria are met:

"(A) there exists an effluent limitation on the treatment works for the pollutant and the revised requirement will not result in the effluent violating such effluent limitations;

"(B) the revised requirement will not result in interference with the method of disposal or reuse of sludge from the treatment works;

"(C) the revised requirements will not result in a pollutant interfering with the operation of such treatment works; and

"(D) all other criteria of this subsection are met.".

(e) Section 301(h) of the Federal Water Pollution Control Act is amended by striking out the second sentence and inserting in lieu thereof the following: "For the purposes of this subsection, the phrase 'the discharge of any pollutant into marine waters' refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone.".

(f) The amendments made by this section shall not apply to any person whose application for a permit under section 301(h) of the Federal Water Pollution Control Act has been tentatively or finally approved by the Administrator of the Environmental Protection Agency on or before the date of enactment of this Act.

MAINTENANCE OF WATER QUALITY IN ESTUARIES

SEC. 45. (a)(1) In any case where the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") determines, on his own initiative or upon request of one or more States any portion of which is located within the estuarine zone of an estuary, that the attainment or maintenance of that water quality in such estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution in more than one State, the Administrator shall convene a management conference. The members of such conference shall include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located, in whole or in part, within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of local governments within the estuarine zone as deemed appropriate by the Administrator. In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, such agency shall be the lead agency for purposes of carrying out this section. The Administrator shall give priority consideration under this section to Long Island Sound; Buzzards Bay, Massachusetts; Delaware Bay, Delaware and New Jersey; and Albemarle Sound, North Carolina.

(2) In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(3) Notwithstanding any other provision of this section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purposes of this section.

(b) The purposes of any management conference convened with respect to an estuary under subsection (a) shall be—

(1) to develop a comprehensive master plan for such estuary;

(2) to coordinate the implementation of the master plan by the States participating in the conferences;

(3) to recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems; and

(4) to monitor the estuary to determine the effectiveness of actions taken pursuant to the master plan.

(c) The master plan developed pursuant to paragraph (1) of subsection (b) may include, but need not be limited to any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water:

(1) development of water quality standards for waters within the estuarine zone;

(2) development of toxicity-based standards for toxic pollutants;

(3) development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution.

In developing a master plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

(d) A management conference convened under this section shall be convened for at least five years. Such conference may be extended by the Administrator, and if terminated after the initial five-year period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(e) For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the term "estuarine zone" shall also include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher. For purposes of this section, the term "State" has the meaning such term has in section 502(3) of such Act.

(f) The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which has adopted a comprehensive master plan pursuant to this section for the estuary which is the subject of such conference. The amount of the grants to any State or interstate agency for a fiscal year shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 per centum of that State's or agency's cost of implementing the master plan for such fiscal year. There is authorized to be appropriated to carry out this subsection not to exceed $10,000,000 for the fiscal year ending September 30, 1984; not to exceed $30,000,000 for the fiscal year ending September 30, 1985; not to exceed $50,000,000 for the fiscal year ending September 30, 1986; not to exceed $75,000,000 for the fiscal year ending September 30, 1987; and not to exceed $75,000,000 for the fiscal year ending September 30, 1988. Amounts appropriated under this subsection shall remain available until expended.

(g) There is authorized to be appropriated to the Administrator not to exceed $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988, for—

(1) expenses related to the administration of management conferences under this section;

(2) grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals for research, surveys, studies, and modeling and other technical work necessary for the development of comprehensive master plan under this section; and

(3) monitoring the implementation of a comprehensive master plan by the management conference or by the Administrator in any case in which the conference has been terminated.

CHESAPEAKE AND NARRAGANSETT BAYS

SEC. 46. (a)(1) The Administrator of the Environmental Protection Agency (hereinafter in this section and sections 47 and 48 referred to as the "Administrator") shall continue the Chesapeake Bay program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the "Bay");

(B) coordinate Federal and State efforts to improve the quality of the Bay;

(C) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(D) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

(2)(A) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(B) A State or combination of States, may elect to avail itself of the benefits of this paragraph by submitting to the Administrator a plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(C) Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this paragraph.

(3) Any State or combination of States that receives a grant under paragraph (2) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b)(1) The Administrator shall, at the request of the Governor of an affected State and after consultation with the Administrator of the National Oceanic and Atmospheric Administration and other appropriate Federal and State agencies and interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay (hereinafter in this subsection referred to as the "Bay"), as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve the Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate. Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(2) A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within three months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—

(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and concerned groups and individuals on the Bay to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Bay's water quality;

(B) review and coordinate Federal and State water pollution abatement efforts that will most efficiently address those principal factors having an adverse effect on the Bay's water quality; and

(C) undertake, subsequent to an analysis of all environmental sampling data presently being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing, and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; and develop and, as soon as practicable but not later than three years after the date of enactment of this section, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

(3) Any State that avails itself to the benefits of this subsection shall, not later than two years after receipt of a Federal grant under this subsection and annually thereafter, report to the Administrator on progress made in implementing a management program to improve the water quality of Narragansett Bay.

(c) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a)(1);

(2) $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 for grants to States under subsection (a)(2); and

(3) $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (b).

NEW YORK AND NEW JERSEY HARBOR AREA

SEC. 47. (a)(1) The Administrator shall—

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the New York and New Jersey Harbor area (hereinafter in this subsection referred to as the "Harbor");

(B) coordinate Federal and State efforts to improve the water quality of the Harbor; and

(C) determine the impact of natural and man-induced environmental changes on the living resources of the Harbor and on adjacent coastal areas and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of sewage, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals.

(2)(A) The Administrator shall, at the request of the Governor of a State affected by any interstate management plan relating to the Harbor developed pursuant to section 45 of this Act (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan in accordance with such section.

(B) An affected State or combination of States may, in addition, submit to the Administrator a plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(C) Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this paragraph.

(3) Any State or combination of States that receives a grant under section 45 of this Act or subparagraph (B) of paragraph (2) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the plan developed pursuant to such section 45 or subparagraph (B) of paragraph (2). The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b) There is authorized to be appropriated $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (a) of this section.

GREAT LAKES CONSUMPTIVE USES STUDY

SEC. 48. (a) In recognition of the serious impacts that are expected to occur to the Great Lakes environment as a result of a projected fivefold increase in consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Administrator, in cooperation with other interested departments, agencies, and instrumentalities of the United States and the eight Great Lakes States and their political subdivisions, is authorized to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumed without adversely affecting projected economic growth of the Great Lakes region.

(b) The study authorized by this section shall include an analysis of both existing and new technology which is likely to be feasible in the foreseeable future and shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, in-

cluding an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the affect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the affect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the economic affects on a consuming industry and other Great Lakes interests associated with a particular consumptive use control strategy;

(5) an analysis of associated environmental impacts, both singularly and in combination with other consumptive use control strategies; and

(6) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $4,500,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

(d) For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

APPLICATION FOR OCEAN DISCHARGE MODIFICATIONS

SEC. 49. Section 301(j)(1)(A) of the Federal Water Pollution Control Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which before December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (h) in its own right not later than thirty days after the date of enactment of the Water Quality Renewal Act of 1984".

GREAT LAKES INTERNATIONAL COORDINATION OFFICE

SEC. 50. (a)(1) The Congress finds that—

(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

(C) the Environmental Protection Agency (hereinafter in this section referred to as the "Agency") should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

(2) It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the agency, funding of State grants for pollution control in the great Lakes area, and improved accountability for implementation of such agreement.

(b)(1) The Great Lakes National Program Office of the Agency is hereby designated as the Great Lakes International Coordination Office (hereinafter in this section referred to as the "Office"). The head of the Office shall also serve as principal liaison person on Great Lakes matters to the International Joint Commission, United States and Canada (hereinafter in this section referred to as the "Commission").

(2) The Office shall—

(A) develop and implement specific action plans to carry out the responsibility of the United States under the Great Lakes Water Quality Agreement of 1978;

(B) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality;

(C) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to insure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement;

(D) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(E) serve as the liaison with, and provide information to, the Canadian members of the Commission and the Canadian counterpart to the Agency.

(3) The Administrator of the Agency shall ensure that the office should enter into agreements with the various organizational elements of the Agency involved in Great Lakes activities in the appropriate State agencies specifically delineating—

(A) the duties and responsibilities of each such element with respect to the Great Lakes;

(B) the time periods for carrying out such duties and responsibilities; and

(C) the resources to be committed to such duties and responsibilities.

(4) The Administrator of the Agency shall, in the Agency's annual budget submission to Congress, include a funding request for the Office as a separate budget line item.

(c)(1) There are authorized to be appropriated for the purposes of carrying out subsection (b) and for the purpose of carrying out the functions, powers, and duties of the Office not to exceed—

(A) $8,000,000 for fiscal year 1986;

(B) $9,000,000 for fiscal year 1987;

(C) $10,000,000 for fiscal year 1988;

(D) $11,000,000 for fiscal year 1989; and

(E) $12,000,000 for fiscal year 1990.

(2) For the purpose of carrying out section 104(f) of the Federal Water Pollution Control Act there is authorized to be appropriated $10,000,000 for fiscal year 1985. Such funds shall be in addition to and not in lieu of any funds authorized to be appropriated under section 104(u) of such Act.

(d)(1) Within 120 days after the date of enactment of this Act, and at the beginning of each fiscal year thereafter, the Administrator of the Agency shall submit to Congress a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to Great Lakes water quality efforts.

(2) Within 150 days after the end of each fiscal year, the Administrator of the Agency shall submit to Congress a comprehensive report which—

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality of the Great Lakes, with particular reference to toxic pollutants; and

(C) describes the long-term prospects for improving the water quality of the Great Lakes.

RESEARCH ON EFFECTS OF POLLUTANTS

SEC. 51. (a) In carrying out the provisions of subsection (a) of section 104 of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commerical and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

(b) There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,500,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

DEMONSTRATION PROGRAMS ON ACIDIFIED LAKES

SEC. 52. (a) The Administrator of the Environmental Protection Agency, in conjunction with the United States Fish and Wildlife Service, shall carry out a demonstration program to restore the biological integrity of acidified lakes and watersheds through liming. The Administrator shall select sites to carry out such program which will enable the Administrator to demonstrate and determine the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds.

(b) The Administrator of the Environmental Protection Agency shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate reports on the results of the demonstration program carried out under this section not later than 90 days after completion of the demonstration program and not later than three and six years after completion of the program. Such reports shall include, but not be limited to, an analysis of the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds in the long-term and the short-term.

(c) There is authorized to be appropriated to carry out this section not to exceed $25,000,000 for fiscal years beginning after September 30, 1984, to remain available until expended.

SEATTLE, WASHINGTON

SEC. 53. The Administrator of the Environmental Protection Agency is authorized to make a grant to the municipality of metropolitan Seattle, Washington, to construct necessary treatment works for providing secondary treatment for the area served by such agency. The Federal share of such project shall be 75 percent of the cost of construction thereof. There is authorized to be appropriated $250,000,000 to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

GRANTS FOR CARRYING OUT GROUNDWATER QUALITY PROTECTION ACTIVITIES

SEC. 54. (a) Upon application of a State for which a report submitted under subsection (a) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, and a plan submitted under subsection (b) of such section is approved under such section, the Administrator of the Environmental Protection Agency shall make grants under this section to such State for the purpose of assisting such State in carrying out groundwater water quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

(b) An application for a grant under this section shall be in such form and shall contain such information as the Administrator of the Environmental Protection Agency may require.

(c) The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this section shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this section in any fiscal year shall not exceed $150,000.

(d) The Administrator of the Environmental Protection Agency shall include in each report transmitted under subsection (k) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, a report on the activities and programs implemented under this section during the preceding fiscal year.

(e) There is authorized to be appropriated to carry out this section not to exceed $7,500,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

PULP MILL STUDY-REPORT

SEC. 55. The Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, shall conduct and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to—

(1) the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1); and

(2) the Louisian-Pacific Corporation, located at Ketchikan, Alaska (NPDES permit numbered AK000092-2).

The Administrator shall submit such study-report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than three months after the date of enactment of this Act.

NATIONAL GROUND WATER COMMISSION

SEC. 56. (a) There is established a commission to be known as the National Ground Water Commission (hereinafter in this section referred to as the "Commission").

(b) The duties of the Commission are to:

(1) Assess generally the amount, location, and quality of the Nation's ground water resources.

(2) Identify generally the sources, extent, and types of ground water contamination.

(3) Assess the scope and nature of the relationship between ground water contamination and ground water withdrawal and develop projections of available, usable ground water in future years on a nationwide basis.

(4) Assess the relationship between surface water pollution and ground water pollution.

(5) Assess the need for a policy to protect ground water from degradation caused by contamination.

(6) Assess generally the extent of overdrafting of ground water resources, and the adequacy of existing mechanisms for preventing such overdrafting.

(7) Assess generally the engineering and technological capability to recharge aquifers.

(8) Assess the adequacy of the present understanding of ground water recharge zones and sole source aquifers and assess the adequacy of knowledge regarding the interrelationship of designated aquifers and recharge zones.

(9) Assess the role of land-use patterns as these relate to protecting ground water from contamination.

(10) Assess methods for remedial abatement of ground water contamination as well as the costs and benefits of cleaning up polluted ground water and compare cleanup costs to the costs of substitute water supply methods.

(11) Investigate policies and actions taken by foreign governments to protect ground water from contamination.

(12) Assess the use and effectiveness of existing interstate compacts to address ground water protection from contamination.

(13) Analyze existing legal rights and remedies regarding contamination of ground water.

(14) Assess the adequacy of existing standards for ground water quality under State and Federal law.

(15) Assess monitoring methodologies of the States and the Federal Government to achieve the level of protection of the resource as required by State and Federal law.

(16) Assess the relationship between ground water flow systems (and associated recharge areas) and the control of sources of contamination.

(17) Assess the role of underground injection practices as a means of disposing of waste fluids while protecting ground water from contamination.

(18) Assess methods for abatement and containment of ground water contamination and for aquifer restoration including the costs and benefits of alternatives to abatement and containment.

(19) Assess State and Federal ground water law and mechanisms with which to manage the quality and quantity of the ground water resource.

(20) Assess the adequacy of existing ground water research and determine future ground water research needs.

(21) Assess the roles of State, local, and Federal Governments in managing ground water quality and quantity.

(c)(1) The Commission shall be composed of nineteen members as follows:

(A) six appointed by the Speaker of the United State House of Representatives from among the Members of the House of Representatives, two of whom shall be members of the Committee on Energy and Commerce, two of whom shall be members of the Committee on Public Works and Transportation, and two of whom shall be members of the Committee on Interior and Insular Affairs;

(B) four appointed by the majority leader of the United States Senate from among the Members of the United States Senate;

(C) eight appointed by the President as follows:

(i) four from among a list of nominations submitted to the President by the National Governors Association, two of whom shall be representatives of ground water appropriation States and two of whom shall be representatives of ground water riparian States;

(ii) one from among a list of nominations submitted to the President by the National League of Cities and the United States Conference of Mayors;

(iii) one from among a list of nominations submitted to the President by the National Academy of Sciences;

(iv) one from among a list of nominations submitted to the President by groups, organizations, or associations of industries the activities of which may affect ground water; and

(v) one from among a list of nominations submitted to the President from groups, organizations, or asociations of citizens which are representative of persons concerned with pollution and environmental issues and which have participated, at the State or Federal level, in studies, administrative proceedings, or litigation (or any combination thereof) relating to ground water; and

(D) the Director of the Office of Technology Assessment.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Appointments may be made under this subsection without regard to section 5311(b) of title 5, United States Code. Not more than three of the six members appointed under subparagraph (A) and not more than two of the four members appointed under subparagraph (B) may be of the same political party. No member appointed under paragraph (C) may be an officer or employee of the Federal Government.

(2) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for not longer than the ninety-

day period beginning on the date he leaves that office or becomes such an officer or employee, as the case may be.

(3) Members shall be appointed for the life of the Commission.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be entitled (subject to appropriations provided in advance) to receive the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission. While away from their homes or regular places of business in the peformance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(B) Members of the Commission who are Members of Congress shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(5) Five members of the Commission shall constitute a quorum but two may hold hearings.

(6) The Chairman of the Commission shall be appointed by the Speaker of the House of Representatives from among members appointed under paragraph (1)(A) of this subsection and the Vice Chairman of the Commission shall be appointed by the majority leader of the Senate from among members appointed under paragraph (1)(B) of this subsection. The Chairman and the Vice Chairman of the Commission shall serve for the life of the Commission unless they cease to be members of the Commission before the termination of the Commission.

(7) The Commission shall meet at the call of the Chairman or a majority of its members.

(d) (1) The Commission shall have a Director who shall be appointed by the Chairman, without regard to section 5311(b) of title 5, United States Code.

(2) The Chairman may appoint and fix the pay of such additional personnel as the Chairman considers appropriate.

(3) With the approval of the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code.

(4) The Commission shall request, and the Chief of Engineers and the Director of the Geological Survey are each authorized to detail, on a reimbursable basis, any of the personnel of their respective agencies to the Commission to assist it in carrying out its duties under this section. Upon request of the Commission, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this section.

(e) (1) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(5) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(f) (1) The Commission shall transmit to the President and to each House of the Congress a report not later than October 30, 1986. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to each item listed in subsection (b), together with its recommendations for such legislation and administrative actions, as it considers appropriate.

(2) Not later than one year after the date of enactment of this Act, the Commission shall complete a preliminary study concerning ground water contamination from hazardous and other solid waste and submit to the President and to the Congress a report containing the findings and conclusions of such preliminary study. The study shall be continued thereafter, and final findings and conclusions shall be incorporated as a separate chapter in the report required under paragraph (1). The preliminary study shall include an analysis of the extent of ground water contamination caused by hazardous and other solid waste, the regions and major water supplies most significantly affected by such contamination, and any recommendations of the Commission for preventive or remedial measures to protect human health and the environment from the effects of such contamination.

(g) The Commission shall cease to exist on January 1, 1987.

(h) There is authorized to be appropriated for the fiscal years 1985 through 1987 not to exceed $7,000,000 to carry out this section.

LIMITATION ON PAYMENTS

SEC. 57. No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

By Mrs. JOHNSON:

—Page 75, after line 9, insert the following:

GRANTS FOR ALTERNATIVE WATER SUPPLY TO REPLACE CONTAMINATED GROUNDWATER

SEC. 41. (a) The Administrator of the Environmental Protection Agency is authorized to make grants to (1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and (2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination. Such grants shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

(b) An application for a grant under this section shall be in such form and shall contain such information as the Administration may require. Each such applications shall include—

(1) a description of the source and extent of groundwater contamination;

(2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undetake with the assistance to be provided under this section.

(c) The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 50 percent.

(d) The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

(e) The Administrator shall report annually to Congress on grants made under this section. Each such report shall include—

(1) information on applicants for such grants, including the number of such applicants;

(2) information on the sources and extent of groundwater contamination with respect to which applications are made under this section, including the average number of people affected by each source of groundwater contamination; and

(3) the average amount of such grants and the types of measures undertaken with such grants.

(f) for purposes of this section—

(1) the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State;

(2) the term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals; and

(3) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(g) There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

H.R. 3678

By Mr. DOWDY of Mississippi:

(Amendments to the amendment in the nature of a substitute.)

—Page 79, after line 9, insert the following:

(j) (1) The Secretary is authorized and directed, at an estimated cost of $69,225,000, to design and construct, for the purpose of providing flood control for the Pearl River Basin in Mississippi, including, but not limited to, Carthage, Jackson, Monticello, and Columbia, Mississippi—

(A) a flood retarding dam on the Pearl River, upstream of the Ross Barnett Dam, in the vicinity of Shoccoe, Mississippi;

(B) a combination roadway crossing of the Pearl River and floodwater detention and storage facility in east central Leake County, Mississippi;

(C) a levee system in the south part of Carthage, Mississippi, which will upgrade, extend, and improve the protective levee system on the south side of Highway 16 in Leake County and the city of Carthage; and

(D) appropriate drainage structure and bridge modifications to expand and improve the stormwater conduits under Mississippi Highway 35, south of Carthage, Mississippi, for the purpose of reducing backwater influence for areas upstream of such highway. (2) Prior to initiation of construction of the projects authorized by paragraph (1), non-Federal interests shall agree (A) to hold and save the United States free from damages due to the construction and operation of such projects, and (B) to operate and maintain such projects in accordance with regulations prescribed by the Secretary. The provisions of section 302 of this title shall apply to such projects.

Page 79, line 10, strike out "(j)" and insert in lieu thereof "(k)'.

H.R. 5680

By Ms. OAKAR:

—Page 2, strike out line 6 and all that follows thereafter through page 9, line 17, and insert in lieu thereof the following:

TITLE I—PAY EQUITY

DEFINITIONS

SEC. 101. For purposes of this title—

(1) the term "agency" means an Executive agency within the meaning of section 105 of title 5, United States Code (other than the General Accounting Office);

(2) the term "employee" means an individual employed in or under an agency;

(3) the term "position" means the work, consisting of the duties and responsibilities, assignable to an employee;

(4) the term "discriminatory wage-setting practices" means practices resulting in a situation in which the rates of pay payable for positions held predominantly by female employees are lower than the rates of pay payable for positions held predominantly by male employees although the work performed in each instance involves comparable duties, responsibilities, and qualification requirements and is performed under comparable working conditions (and, in the case of prevailing rate employees, within the same wage area or within areas subject to the same wage schedules and rates);

(5) the term "discriminatory wage differentials" means differences in rates of pay resulting from the use of discriminatory wage-setting practices;

(6) the term "equitable job-evaluation technique" means an objective method of determining the comparative value of different positions using a system which rates numerically the basic features and requirements of a position, including such factors as the duties, responsibilities, qualification requirements, and working conditions involved, and which does not take into consideration race, color, religion, sex, or national origin;

(7) the term "labor organization" has the meaning given such term by section 7103(a)(4) of title 5, United States Code; and

(8) the term "consultant" includes an organization which provides consultant services.

PURPOSE

SEC. 102. It is the purpose of this title to identify any discriminatory wage-setting practices and discriminatory wage differentials within the Federal Government's position-classification system under chapter 51 of title 5, United States Code, and job grading system under subchapter IV of chapter 53 of such title.

STUDY AND REPORTING REQUIREMENTS

SEC. 103. (a) In order to carry out the purpose of this title, the Office of Personnel Management—

(1) shall provide, by contract with the consultant selected under section 104(c), for the conduct of a study and the preparation of a report—

(A) containing the findings of such consultant pursuant to such study with respect to discriminatory wage-setting practices and discriminatory wage differentials within the systems referred to in section 102 (including a list of any positions determined as being subject to discriminatory wage-setting practices and the extent of any discriminatory wage differentials attributable to such practices);

(B) identifying appropriate measures for eliminating such practices and differentials (other than any measure which would result in a reduction in the rate of pay payable for any position), including proposals relating to the development and use of equitable job-evaluation techniques and training programs for individuals who would be responsible for implementing those measures; and

(C) specifying any measures identified under subparagraph (B) which are authorized under current law and making recommendations for any legislative or other action (other than any action which would result in a reduction in the rate of pay payable for any position) which may be necessary in order to carry out the other measures identified under such subparagraph; and

(2) one month after receiving the consultant's report, shall transmit to the President and the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a copy of such report, together with any written comments submitted to the Office by the Pay Equity Study Council under section 104(e), and any written comments of the Office.

(b) The contract shall require that the consultant's report shall be submitted to the Office of Personnel Management and the Pay Equity Study Council within six months after the date on which the contract is entered into.

PROCEDURES RELATING TO SELECTION OF CONSULTANT AND CONDUCT OF THE STUDY

SEC. 104. (a)(1) Within 10 days after the effective date of this title, the Office of Personnel Management shall establish a Pay Equity Study Council, which shall consist of—

(A) five or more members who shall represent labor organizations representing substantial numbers of female employees occupying positions subject to either of the systems referred to in section 102 (including individuals representing each of the three labor organizations under this subparagraph representing the greatest number of employees); and

(B) one or more members who shall represent one or more employee organizations composed primarily of female employees occupying such positions and having as a purpose promoting the interests of women in Government.

(2) Members of the Council shall not be considered to be employees by reason of appointment to the Council, and shall not receive pay by reason of service as such members.

(b) During the 30-day period beginning on the date of the establishment of the Pay Equity Study Council—

(1) the Office of Personnel Management and the Council shall meet in order to discuss the proposed design and methodology of the study and any other matter concerning the conduct of the study which the Office and the Council may consider appropriate; and

(2) the Council shall prepare and submit to the Office a list of at least five consultants which, on the basis of their impartiality, expertise, and experience, and taking into consideration the matters discussed with the Office under paragraph (1), the Council determines would be appropriate to conduct the study under this title.

(c) The selection of a consultant to conduct the study under this title shall be made by the Office from among the consultants included on the list prepared under subsection (b)(2).

(d) Under the contract, the consultant shall be required to meet jointly with the Office of Personnel Management and the Pay Equity Study Council, on at least a monthly basis, in order to keep the Office and the Council informed of any progress or other developments in the performance of the study, and to obtain any views or recommendations of the Office, the Council, and individual members of the Council.

(e) The Council shall submit its written comments (and any written comments of individual members of the Council) on the consultant's report to the Office in time for their transmission to the President and Congress under section 103(a)(2).

(f) The Council shall cease to exist after submitting the comments referred to in subsection (e).

AGENCY COOPERATION

SEC. 105. (a) Each agency—

(1) shall cooperate with the consultant selected under section 104(c) in the conduct of the study under this title; and

(2) shall provide any data, reports, or other information which such consultant may request in the course of the study.

(b) The Office of Personnel Management shall provide the Pay Equity Study Council with any information which the Council considers necessary in order to carry out its responsibilities under this title.

(c) Nothing in this section authorizes or requires the disclosure of any information if, or to the extent that, such disclosure would otherwise be prohibited by law.

CONSTRUCTION

SEC. 106. Nothing in this title shall be construed to limit any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, or national origin.

RESTRICTION ON CONTRACTING AUTHORITY

SEC. 107. The authority of the Office of Personnel Management to enter into a contract under this title is effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

EFFECTIVE DATE

SEC. 108. This title shall take effect 30 days after the date of the enactment of this Act.

H.R. 5899

By Mr. PARRIS:

—(In section 114) in line 8 of page 21, insert the following after the word "Appropriations" and before the word "and ": ", the House District of Columbia Committee, the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs".

—On page 4, strike lines 1 through 13, and on page 22 strike lines 8 through 19 (Sections 119 and 120); and renumerate subsequent lines, sections and pages accordingly.

CONFERENCE REPORT ON H.R. 4170

Mr. ROSTENKOWSKI submitted the following conference report and statement on the bill (H.R. 4170) to provide for tax reform, and for other purposes;

CONFERENCE REPORT (H. REPT. No. 98-861)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendments of the Senate to the bill (H.R. 4170) to provide for tax reform, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Deficit Reduction Act of 1984".

(b) ACT DIVIDED INTO 2 DIVISIONS.—This Act consists of 2 divisions as follows:

(1) DIVISION A.—Tax Reform Act of 1984.

(2) DIVISION B.—Spending Reduction Act of 1984.

DIVISION A—TAX REFORM ACT OF 1984

SEC. 5. SHORT TITLE, ETC.

(a) SHORT TITLE.—THIS DIVISION MAY BE CITED AS THE "TAX REFORM ACT OF 1984".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

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Sec. 5. Short title, etc.

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PART I—INCOME TAX PROVISIONS

SEC. 11. AMOUNT OF USED PROPERTY ELIGIBLE FOR INVESTMENT TAX CREDIT.

(a) GENERAL RULE.—Subparagraph (A) of section 48(c)(2) (relating to dollar limitation on amount of used section 38 property) is amended—

(1) by striking out "$150,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)" and inserting in lieu thereof "$125,000 ($150,000 for taxable years beginning after 1987)", and

(2) by striking out "$150,000 (or $125,000" each place it appears and inserting in lieu thereof "$125,000 (or $150,000".

(b) TECHNICAL AMENDMENT.—Subparagraph (B) of section 48(c)(2) is amended by striking out "$75,000 ($62,500 for taxable years beginning in 1981, 1982, 1983, or 1984)" and inserting in lieu thereof "$62,500 ($75,000 for taxable years beginning after 1987)".

SEC. 12. FINANCE LEASE PROVISIONS.

(a) FOUR-YEAR DEFERRAL OF FINANCE LEASE PROVISIONS.—

(1) IN GENERAL.—Subparagraph (A) of section 209(d)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by striking out "December 31, 1983" and inserting in lieu thereof "December 31, 1987".

(2) FINANCE LEASE PROVISIONS CONTINUE TO APPLY TO FARM PROPERTY.—Clause (i) of section 209(d)(1)(B) of such Act is amended by striking out "January 1, 1984" and inserting in lieu thereof "January 1, 1988".

(3) TECHNICAL AMENDMENTS.—

(A) Subclause (I) of section 16[illegible](8)(B)(ii) (relating to requirement that only 40 percent of lessee's property may be treated as qualified), as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "1986" and inserting in lieu thereof "1990".

(B) Paragraph (4) of section 168(i) (relating to limitations), as so amended, is amended by striking out "1985" each place it appears and inserting in lieu thereof "1989".

(b) TERMINATION OF SAFE HARBOR LEASING RULES.—Paragraph (8) of section 168(f) of the Internal Revenue Code of 1954 (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act.

(c) TRANSITIONAL RULES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall not apply with respect to any property if—

(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

(2) SPECIAL RULE FOR CERTAIN AUTOMOTIVE PROPERTY.—

(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to property which is placed in service before January 1, 1988—

(i) which is automotive manufacturing property, and

(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982).

(B) $150,000,000 LIMITATION.—The provisions of subparagraph (A) shall not apply to any agreement if the sum of—

(i) the cost basis of the property subject to the agreement, plus

(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of 1954),

exceeds $150,000,000.

(C) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this paragraph, the term "automotive manufacturing property" means—

(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

(3) SPECIAL RULE FOR CERTAIN CONGENERATION FACILITIES.—The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility—

(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

(C) which is placed in service before January 1, 1988.

SEC. 13. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

Paragraph (1) of section 179(b) (relating to dollar limitation) is amended by striking out the table contained therein and inserting in lieu thereof the following:

"If the taxable year begins in:	*The applicable amount is:*
1983, 1984, 1985, 1986, or 1987	*$5,000*
1988 or 1989	*7,500*
1990 or thereafter	*10,000."*

SEC. 14. EMPLOYEE STOCK OWNERSHIP CREDIT.

Subparagraph (B) of section 44G(a)(2) (relating to employee stock ownership credit), as in effect before the amendments made by title IV of this Act, is amended by striking out the table contained therein and inserting in lieu thereof the following:

"For aggregate compensation paid or accrued during a portion of the taxable year occurring in calendar year:	*The applicable percentage is:*
1983, 1984, 1985, 1986, or 1987	*0.5*
1988 or thereafter	*0."*

SEC. 15. COST-OF-LIVING ADJUSTMENTS IN PENSION PLAN LIMITATIONS.

(a) GENERAL RULE.—Paragraph (3) of section 415(d) (relating to freeze on adjustment to defined contribution and benefit plan limits) is amended by striking out "January 1, 1986" and inserting in lieu thereof "January 1, 1988".

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 415(d)(2) (defining base periods), as amended by section 235(b)(2)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "October 1, 1984" and inserting in lieu thereof "October 1, 1986".

SEC. 16. REPEAL OF PARTIAL INTEREST EXCLUSION.

(a) GENERAL RULE.—Subsections (a) and (c) of section 302 of the Economic Recovery Tax Act of 1981 are hereby repealed, and the Internal Revenue Code of 1954 shall be applied and administered as if such subsections (and the amendments made by such subsections) had not been enacted.

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 57(a) is amended to read as follows:

"(1) EXCLUSION OF DIVIDENDS.—Any amount excluded from gross income for the taxable year under section 116."

SEC. 17. FOREIGN EARNED INCOME OF INDIVIDUALS.

Subparagraph (A) of section 911(b)(2) (relating to limitation on foreign earned income) is amended by striking out the table contained therein and inserting in lieu thereof the following:

"In the case of taxable years beginning in:	*The annual rate is:*
1983, 1984, 1985, 1986 or 1987	*$80,000*
1988	*85,000*
1989	*90,000*
1990 and thereafter	*95,000."*

SEC. 18. EFFECTIVE DATE.

(a) GENERAL RULE.—The amendments made by this part shall apply to taxable years ending after December 31, 1983.

(b) SPECIAL RULE FOR SECTION 14.—The amendment made by section 14 shall not apply in the case of a tax credit employee stock ownership plan if—

(1) such plan was favorably approved on September 23, 1983, by employees, and

(2) not later than January 11, 1984, the employer of such employees was 100 percent by such plan.

PART II—ESTATE AND GIFT RATES

SEC. 21. MAXIMUM RATE.

(a) GENERAL RULE.—Paragraph (2) of section 2001(c) (relating to phase-in of 50 percent maximum rate) is amended—

(1) by striking out "1985", in subparagraph (A) and inserting in lieu thereof "1988", and

(2) by striking out "1984" each place it appears in subparagraph (D) and inserting in lieu thereof "1984, 1985, 1986, or 1987."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983.

PART III—EXCISE TAXES

SEC. 25. TAX RATE ON NEWLY DISCOVERED OIL.

(a) GENERAL RULE.—Subparagraph (B) of section 4987(b)(3) (relating to rate of tax on newly discovered oil) is amended by striking out the table contained therein and inserting in lieu thereof the following:

"For taxable periods beginning in:	*The applicable percentage is:*
1984, 1985, 1986, or 1987	*22½*
1988	*20*
1989 and thereafter	*15."*

(b) CONTINUATION OF PERCENTAGE DEPLETION FOR OIL AND GAS FROM SECONDARY OR TERTIARY PROCESS.—

(1) Paragraph (2) of section 613A(c) (relating to exemption for independent producers and royalty owners) is amended by striking out the last sentence.

(2) Subparagraph (A) of section 613(c)(3) (defining depletable oil quantity) is amended by adding at the end thereof the following new sentence:

"Clause (ii) shall not apply after December 31, 1983."

(3) Subparagraph (E) of section 613A(c)(7) is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply after December 31, 1983."

(4) Subparagraph (A) of section 613A(c)(9) (relating to transfer of oil or gas property) is amended by striking out "paragraph (1)" and inserting in lieu thereof "this subsection".

(c) Effective Dates.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable periods beginning after December 31, 1983.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect on January 1, 1984.

SEC. 26. EXCISE TAX ON COMMUNICATIONS SERVICES.

Paragraph (2) of section 4251(b) (relating to rate of tax on communications services) is amended by striking out the table contained therein and inserting in lieu thereof the following:

"With respect to amount paid pursuant to bills first rendered:	*The applicable percentage is:*
During 1983, 1984, 1986, or 1987	*3*
During 1988 or thereafter	*0."*

SEC. 27. EXCISE TAX ON DISTILLED SPIRITS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Paragraphs (1) and (3) of section 5001(a) (relating to rate of tax on distilled spirits) are each amended by strik-

ing out "$10.50" and inserting in lieu thereof "$12.50".

(2) TECHNICAL AMENDMENT.—Paragraphs (1) and (2) of section 5010(a) (relating to credit for wine content and for flavors content) are each amended by striking out "$10.50" and inserting in lieu thereof "$12.50".

(b) FLOOR STOCKS TAXES ON DISTILLED SPIRITS.—

(1) IMPOSITION OF TAX.—On distilled spirits on which tax was imposed under section 5001 or 7652 of the Internal Revenue Code of 1954 before October 1, 1985, and which were held on such date for sale by any person, there shall be imposed a tax at the rate of $2.00 for each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(2) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on distilled spirits held on October 1, 1985, by any dealer if—

(A) the aggregate liquid volume of distilled spirits held by such dealer on such date does not exceed 500 wine gallons, and

(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(3) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $800. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which the dealer is liable.

(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding distilled spirits on October 1, 1985, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall by regulations prescribe.

(C) TIME FOR PAYMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), the tax imposed by paragraph (1) shall be paid on or before April 1, 1986.

(ii) INSTALLMENT PAYMENT OF TAX IN CASE OF SMALL OR MIDDLE-SIZED DEALERS.—In the case of any small or middle-sized dealer, the tax imposed by paragraph (1) may be paid in 3 equal installments due as follows:

(I) The first installment shall be paid on or before April 1, 1986.

(II) The second installment shall be paid on or before July 1, 1986.

(III) The third installment shall be paid on or before October 1, 1986.

If the taxpayer does not pay any installment under this clause on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary.

(iii) SMALL OR MIDDLE-SIZED DEALER.—For purposes of clause (ii), the term "small or middle-sized dealer" means any dealer if the aggregate gross sales receipts of such dealer for its most recent taxable year ending before October 1, 1985, does not exceed $500,000.

(5) CONTROLLED GROUPS.—

(A) CONTROLLED GROUPS OF CORPORATIONS.—In the case of a controlled group—

(i) the 500 wine gallon amount specified in paragraph (2),

(ii) the $800 amount specified in paragraph (3), and

(iii) the $500,000 amount specified in paragraph (4)(C)(iii),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1954; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5001 of the Internal Revenue Code of 1954 shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply in respect of the taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 5001.

(7) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) DEALER.—The term "dealer" means—

(i) any wholesale dealer in liquors (as defined in section 5112(b) of the Internal Revenue Code of 1954), and

(ii) any retail dealer in liquors (as defined in section 5122(a) of such Code).

(B) DISTILLED SPIRITS.—The term "distilled spirits" has the meaning given such term by section 5002(a)(8) of the Internal Revenue Code of 1954.

(C) PERSON.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(D) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(E) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—Any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on October 1, 1985, on the premises of a retail establishment.

(c) REQUIREMENT OF ELECTRONIC FUNDS TRANSFER FOR ALCOHOL AND TOBACCO EXCISE TAXES.—

(1) ALCOHOL TAXES.—Section 5061 (relating to method of collecting tax on distilled spirits) is amended by adding at the end thereof the following new subsection:

"(e) PAYMENT BY ELECTRONIC FUND TRANSFER.—

"(1) IN GENERAL.—Any person who in any 12-month period ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on distilled spirits, wines, or beer by sections 5001, 5041, and 5051 (or 7652), respectively, shall pay such taxes during the succeeding calendar year by electronic fund transfer to a Federal Reserve Bank.

"(2) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account."

(2) TOBACCO TAXES.—Subsection (b) of section 5703 (relating to method of payment of tobacco taxes) is amended by adding at the end thereof the following new paragraph:

"(3) PAYMENT BY ELECTRONIC FUND TRANSFER.—Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on tobacco products and cigarette papers and tubes by section 5701 (or 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 1985.

(2) ELECTRONIC TRANSFER PROVISIONS.—The amendments made by subsection (c) shall apply to taxes required to be paid on or after September 30, 1984.

Subtitle B—Tax-Exempt Entity Leasing

SEC. 31. DENIAL OF TAX INCENTIVES FOR PROPERTY LEASED TO GOVERNMENTS AND OTHER TAX-EXEMPT ENTITITES.

(a) GENERAL RULE.—Section 168 (relating to accelerated cost recovery system) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) PROPERTY LEASED TO GOVERNMENTS AND OTHER TAX-EXEMPT ENTITIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, the deduction allowed under subsection (a) (and any other deduction allowable for depreciation or amortization) for any taxable year with respect to tax-exempt use property shall be determined—

"(A) by using the straight-line method (without regard to salvage value), and

"(B) by using a recovery period determined under the following table:

"In the case of:	*The recovery period shall be:*
(I) Property not described in subclause (II) or subclause (III).	*The present class life*
(II) Personal property with no present class life.	*12 years*
(III) 15-year real property.	*40 years*

"(2) OPERATING RULES.—

"(A) RECOVERY PERIOD MUST AT LEAST EQUAL 125 PERCENT OF LEASE TERM.—In the case of any tax-exempt use property, the recovery period used for purposes of paragraph (1) shall not be less than 125 percent of the lease term.

"(B) CONVENTIONS.—

"(i) PROPERTY OTHER THAN 15-YEAR REAL PROPERTY.—In the case of property other than 15-year real property, the half-year convention shall apply for purposes of paragraph (1).

"(ii) 15-YEAR REAL PROPERTY.—In the case of 15-year real property, the amount determined under paragraph (1) shall be determined on the basis of the number of months in the year in which the property is in service.

"(C) EXCEPTION WHERE LONGER RECOVERY PERIOD APPLIES.—Paragraph (1) shall not apply to any recovery property if the recovery period which applies to such property (without regard to this subsection) exceeds the recovery period for such property determined under this subsection.

"(D) DETERMINATION OF CLASS FOR REAL PROPERTY WHICH IS NOT RECOVERY PROPERTY.—In the case of any real property which is not recovery property, for purposes of this

subsection, the determination of whether such property is 15-year real property shall be made as if such property were recovery property.

"(E) Coordination with subsection (f)(12).—Paragraph (12) of subsection (f) shall not apply to any tax-exempt use property to which this subsection applies.

"(F) 18-year real property.—For purposes of this section, the term '15-year real property' includes '18-year real property'.

"(3) Tax-exempt use property.—For purposes of this subsection—

"(A) Property other than 15-year real property.—Except as otherwise provided in this subsection, the term 'tax-exempt use property' means that portion of any tangible property (other than 15-year real property) leased to a tax-exempt entity.

"(B) 15-year real property.—

"(i) In general.—In the case of 15-year real property, the term 'tax-exempt use property' means that portion of the property leased to a tax-exempt entity in a disqualified lease.

"(ii) Disqualified lease.—For purposes of this subparagraph, the term 'disqualified lease' means any lease of the property to a tax-exempt entity, but only if—

"(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103 and such entity (or a related entity) participated in such financing,

"(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

"(III) such lease has a lease term in excess of 20 years, or

"(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

"(iii) 35-percent threshold test.—Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

"(iv) Treatment of improvements.—For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

"(v) Leasebacks during 1st 3 months of use not taken into account.—Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

"(C) Exception for short-term leases.—

"(i) In general.—Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

"(ii) Short-term lease.—For purposes of clause (i), the term 'short-term lease' means any lease the term of which is—

"(I) less than 3 years, and

"(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of 15-year real property and property with no present class life, subclause (II) shall not apply.

"(D) Exception where property used in unrelated trade or business.—The term 'tax-exempt use property' shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511.

"(4) Tax-exempt entity.—

"(A) In general.—For purposes of this subsection, the term 'tax-exempt entity' means—

"(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

"(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, and

"(iii) any foreign person or entity.

"(B) Exceptions for certain property used by foreign person or entity.—

"(i) Income from property subject to United States tax.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

"(I) subject to tax under this chapter, or

"(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

"(ii) Movies and sound recordings.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)).

"(C) Foreign person or entity.—For purposes of this paragraph, the term 'foreign person or entity' means—

"(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

"(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

"(D) Treatment of certain taxable instrumentalities.—For purposes of this subsection and paragraph (5) of section 48(a), a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

"(i) all of the activities of such corporation are subject to tax under this chapter, and

"(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

"(E) Certain previously tax-exempt organizations.—

"(i) In general.—For purposes of this subsection and paragraph (4) of section 48(a), an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property of which such organization is the lessee if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first leased to such organization. The preceding sentence shall not apply to the Federal Home Loan Mortgage Corporation.

"(ii) Election not to have clause (i) apply.—

"(I) In general.—In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property of which such organization is the lessee if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

"(II) Tax-exempt use period.—For purposes of subclause (I), the term 'tax-exempt use period' means the period beginning with the taxable year in which the property described in subclause (I) is placed in service and ending with the close of the 15th taxable year following the last taxable year of the recovery period of such property.

"(III) Election.—Any election under subclause (I), once made, shall be irrevocable.

"(iii) Treatment of successor organizations.—Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

"(5) Special rules for certain high technology equipment.—

"(A) Exemption where lease term is 5 years or less.—For purposes of this subsection, the term 'tax-exempt use property' shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less.

"(B) Recovery period where lease term is greater than 5 years.—In the case of any qualified technological equipment not described in subparagraph (A) and which is not property to which subsection (f)(2) applies, the recovery period used for purposes of paragraph (1) shall be 5 years.

"(C) Qualified technological equipment.—For purposes of this paragraph—

"(i) In general.—Except as otherwise provided in this subparagraph, the term 'qualified technological equipment' means—

"(I) any computer or peripheral equipment,

"(II) any high technology telephone station equipment installed on the customer's premises, and

"(III) any high technology medical equipment,

"(ii) Exception for certain property.—The term 'qualified technological equipment' shall not include any property leased to a tax-exempt entity if—

"(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103,

"(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

"(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

"(iii) Leasebacks during 1st 3 months of use not taken into account.—Subclause (II) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

"(iv) Property not subject to rapid obsolescence may be excluded.—The term 'qualified technological equipment' shall not include any equipment described in subclause (II) or (III) of clause (i)—

"(I) which the Secretary determines by regulations is not subject to rapid obsolescence, and

"(II) which is placed in service after the date on which final regulations implement-

ing such determination are published in the Federal Register.

"(D) COMPUTER OR PERIPHERAL EQUIPMENT DEFINED.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'computer or peripheral equipment' means—

"(I) any computer, and

"(II) any related peripheral equipment.

"(ii) COMPUTER.—The term 'computer' means a programmable electronically activated device which—

"(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

"(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

"(iii) RELATED PERIPHERAL EQUIPMENT.—The term 'related peripheral equipment' means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

"(iv) EXCEPTIONS.—The term 'computer or peripheral equipment' shall not include—

"(I) any equipment which is an integral part of other property which is not a computer,

"(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

"(III) equipment of a kind used primarily for amusement or entertainment of the user.

"(E) HIGH TECHNOLOGY MEDICAL EQUIPMENT.—For purposes of this paragraph, the term 'high technology medical equipment' means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

"(6) OTHER SPECIAL RULES.—For purposes of this subsection—

"(A) LEASE.—The term 'lease' includes any grant of a right to use property.

"(B) LEASE TERM.—In determining a lease term—

"(i) there shall be taken into account options to renew, and

"(ii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

"(C) SPECIAL RULE FOR FAIR RENTAL OPTIONS ON 15-YEAR REAL PROPERTY.—For purposes of clause (i) of subparagraph (B), in the case of 15-year real peoperty, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

"(7) RELATED ENTITIES.—For purposes of this subsection—

"(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

"(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

"(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

"(i) significant common purposes and substantial common membership, or

"(ii) directly or indirectly substantial common direction or control.

"(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

"(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

"(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection, section 46(e), paragraph (4) or (5) of section 48(a), or clause (vi) of section 48(g)(2)(B).

"(8) TAX-EXEMPT USE OF PROPERTY LEASED TO PARTNERSHIPS, ETC., DETERMINED AT PARTNER LEVEL.—For purposes of this subsection and paragraphs (4) and (5) of section 48(a)—

"(A) IN GENERAL.—In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (9)(C)) of such property as being leased to such partner.

"(B) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

"(C) PRESUMPTION WITH RESPECT TO FOREIGN ENTITIES.—Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

"(9) TREATMENT OF PROPERTY OWNED BY PARTNERSHIPS, ETC.—

"(A) IN GENERAL.—For purposes of this subsection and paragraphs (4) and (5) of section 48(a), if—

"(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

"(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (3)(D)) be treated as tax-exempt use property.

"(B) QUALIFIED ALLOCATION.—For purposes of subparagraph (A), the term 'qualified allocation' means any allocation to a tax-exempt entity which—

"(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

"(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

"(C) DETERMINATION OF PROPORTIONATE SHARE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

"(ii) DETERMINATION WHERE ALLOCATIONS VARY.—For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

"(D) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraphs (A), (B), and (C) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

"(E) REGULATIONS.—For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (10) for purposes of this paragraph—

"(i) shall set forth the proper treatment for partnership guaranteed payments, and

"(ii) may provide for the exclusion or segregation of items.

"(10) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection."

(b) DENIAL OF INVESTMENT TAX CREDIT FOR PROPERTY USED BY FOREIGN GOVERNMENTS AND OTHER FOREIGN PERSONS.—Paragraph (5) of section 48(a) (relating to property used by governmental units) is amended to read as follows:

"(5) PROPERTY USED BY GOVERNMENTAL UNITS OR FOREIGN PERSONS OR ENTITIES.—

"(A) IN GENERAL.—Property used—

"(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

"(ii) by any foreign person or entity (as defined in section 168(j)(4)(C)), but only with respect to property to which section 168(j)(4)(A)(iii) applies (determined after the application of section 168 (j) (4) (B)),

shall not be treated as section 38 property.

"(B) EXCEPTION FOR SHORT-TERM LEASES.—

"(i) IN GENERAL.—This paragraph and paragraph (4) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(j)(6)).

"(ii) EXCEPTION FOR CERTAIN OIL DRILLING PROPERTY AND CERTAIN CONTAINERS.—For purposes of this paragraph and paragraph (4), clause (i) shall be applied by substituting the lease term limitation in section 168(j)(3)(C)(ii) for the lease term limitation in clause (i) in the case of property which is leased to a foreign person or entity and—

"(I) which is used in offshore drilling for oil and gas (including drilling vessels, barges, platforms, and drilling equipment) and support vessels with respect to such property, and

"(II) which is a container described in section 48(a)(2)(B)(vi) (without regard to whether such container is used outside the United States) or container chassis or trailer but only if such container, chassis, or trailer has a present class life of not more than 6 years.

"(iii) EXCEPTION FOR CERTAIN AIRCRAFT.—

"(I) IN GENERAL.—In the case of any aircraft to which section 47(a)(7) applies and which is leased to a foreign person or entity before January 1, 1990, clause (i) shall be applied by substituting '3 years' for '6 months'.

"(II) RECAPTURE PERIOD EXTENDED.—For purposes of applying subparagraph (B) of section 47(a)(5) and paragraph (1) of section 47(a), there shall not be taken into account any period of the lease to which subclause (I) applies.

"(C) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO GOVERNMENTS, ETC.—If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity), this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

"(D) CROSS REFERENCE.—

"For provisions providing special rules for the application of this paragraph and paragraph (4), see section 168(j)."

(c) REHABILITATION CREDIT NOT TO APPLY WHERE PROPERTY USED BY TAX-EXEMPT ENTITY.—

(1) IN GENERAL.—Subparagraph (B) of section 48(g)(2) (relating to certain expenditures not treated as qualified rehabilitation expenditures) is amended by adding at the end thereof the following new clause:

"(vi) TAX-EXEMPT USE PROPERTY.—

"(I) IN GENERAL.—Any expenditure in connection with the rehabilitation of a building which is allocable to that portion of such building which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(j)(3)).

"(II) CLAUSE NOT TO APPLY FOR PURPOSES OF PARAGRAPH (1)(C).—This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated."

(2) TECHNICAL AMENDMENT.—Clause (i) of section 48(g)(2)(B) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure."

(d) AUTHORITY TO PRESCRIBE PRESENT CLASS LIFE FOR CERTAIN PROPERTY.—Paragraph (2) of section 168(g) (defining present class life) is amended by adding at the end thereof the following new sentence: "If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group."

(e) TREATMENT OF CERTAIN CONTRACTS FOR PROVIDING SERVICES, ETC.—Section 7701 (relating to definitions), as amended by this Act, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TREATMENT OF CERTAIN CONTRACTS FOR PROVIDING SERVICES, ETC.—For purposes of chapter 1—

"(1) IN GENERAL.—A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

"(A) the service recipient is in physical possession of the property,

"(B) the service recipient controls the property,

"(C) the service recipient has a significant economic or possessory interest in the property,

"(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

"(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

"(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

"(2) OTHER ARRANGEMENTS.—An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

"(3) SPECIAL RULES FOR CONTRACTS OR ARRANGEMENTS INVOLVING SOLID WASTE DISPOSAL, ENERGY, AND CLEAN WATER FACILITIES.—

"(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

"(i) with respect to—

"(I) the operation of a qualified solid waste disposal facility,

"(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

"(III) the operation of a water treatment works facility, and

"(ii) which purports to be a service contract, shall be treated as a service contract.

"(B) QUALIFIED SOLID WASTE DISPOSAL FACILITY.—For purposes of subparagraph (A), the term 'qualified solid waste disposal facility' means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

"(5) DEFINITIONS.—For purposes of paragraph (3)—

"(A) QUALIFIED SOLID WASTE DISPOSAL FACILITY.—The term 'qualified solid waste disposal facility' means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

"(C) COGENERATION FACILITY.—The term 'cogeneration facility' means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

"(D) ALTERNATIVE ENERGY FACILITY.—The term 'alternative energy facility' means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

"(E) WATER TREATMENT WORKS FACILITY.—The term 'water treatment works facility' means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

"(4) PARAGRAPH (3) NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (3) shall not apply to any qualified solid waste disposal facility used under a contract or arrangement if—

"(i) the service recipient (or a related entity) operates such facility,

"(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

"(iii) the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

"(iv) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

"(B) SPECIAL RULES FOR APPLICATION OF SUBPARAGRAPH (A) WITH RESPECT TO CERTAIN RIGHTS AND ALLOCATIONS UNDER THE CONTRACT.—For purposes of subparagraph (A), there shall not be taken into account—

"(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

"(ii) any allocation of any financial burden or benefits in the event of any change in any law.

"(C) SPECIAL RULES FOR APPLICATION OF SUBPARAGRAPH (A) IN THE CASE OF CERTAIN EVENTS.—

"(i) TEMPORARY SHUT-DOWNS, ETC.—For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

"(ii) REDUCED COSTS.—For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

"(5) EXCEPTION FOR CERTAIN LOW-INCOME HOUSING.—This subsection shall not apply to any low-income housing (within the meaning of section 168) if—

"(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

"(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)).

"(6) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriated to carry out the provisions of this subsection."

(f) INVESTMENT TAX CREDIT FOR PROPERTY LEASED BY CERTAIN PERSONS NOT TO EXCEED CREDIT ALLOWED IF SUCH PERSONS OWNED PROPERTY.—Section 46(e) (relating to limitations with respect to certain persons) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES WHERE SECTION 593 ORGANIZATION IS LESSEE.—

"(A) IN GENERAL.—For purposes of paragraph (1)(A), if an organization described in section 593 is the lessee of any section 38 property, the lessor of such property shall be treated as an organization described in section 593 with respect to such property.

"(B) EXCEPTION FOR SHORT-TERM LEASES.—This paragraph shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(j)(6)).

"(C) ELECTION NOT TO HAVE SUBPARAGRAPH (A) APPLY.—Subparagraph (A) shall not apply for any taxable year to an organization described in section 593 if such organization elects to compute for such year and all subsequent taxable years the amount of the deduction for a reasonable addition to a reserve for bad debts on the basis of actual experience. Any such election shall apply to any successor organization engaged in substantially similar activities and, once made, shall be irrevocable."

(g) EFFECTIVE DATES.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall apply—

(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

(2) Leases entered into on or before May 23, 1983.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased pursuant to—

(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

(3) Binding contracts, etc.—

(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required—

(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

(B) The amendments made by this section shall not apply with respect to any property owned by a partnership if—

(i) such property was acquired by such partnership on or before October 21, 1983, or

(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

(C) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than any foreign person or entity)—

(i) if—

(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982 and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

(4) Official governmental action on or before November 1, 1983.—

(A) In general.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if—

(i) on or before November 1, 1983—

there was significant official governmental action with respect to the project or its design, and

(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of the property.

(B) Significant official governmental action.—For purposes of subparagraph (A), the term "significant official governmental action" does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

(5) Mass commuting vehicles.—The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1954) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if—

(A) such vehicle is placed in service before January 1, 1988, or

(B) such vehicle is placed in service on or after such date—

(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

(6) Certain turbines and boilers.—The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982.

(7) Certain facilities for which ruling requests filed on or before May 23, 1983.—The amendments made by this section shall not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act, if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

(8) Recovery period for certain qualified sewage facilities.—

(A) In general.—In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1954 (as added by this section) shall be 12 years.

(B) Qualified sewage facility.—For purposes of subparagraph (A), the term "qualified sewage facility" means any facility which is part of the sewer system of a city, if—

(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

(9) Property used by the Postal Service.—In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting "October 31" for "May 23".

(10) Existing appropriations.—The amendments made by this section shall not apply to personal property leased to or used by the United States if—

(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

(11) Special rule for certain partnerships.—

(A) Partnerships for which qualifying action existed before October 21, 1983.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1954 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

(B) Application filed before October 21, 1983.—A partnership is described in this subparagraph if—

(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum of units in the partnership that would be offered had been circulated,

(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

(iii) the marketing of partnership units in such partnership is completed not later than two years after the later of the date of the enactment of this Act or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

(C) Partnerships for which qualifying action existed before March 6, 1984.--Paragraph (9) of section 168(j) of the internal Revenue Code of 1954 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

(D) Partnership organized before March 6, 1984.—A partnership is described in this subparagraph if—

(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act and the aggregate amount of interest in such partnership sold does not exceed the maximum amount described in clause (i).

(12) Special rule for amendment made by subsection (c)(2).—The amendment made by subsection (c)(2) to the extent it relates to subsection (f)(12) of section 168 of the Internal Revenue Code of 1954 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982.

(13) Special rule for service contracts not involving tax-exempt entities.—In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1954 (as added by this section) with respect to which no party

is a tax-exempt entity, such section 7701(e) shall not apply to—

(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

(14) Property leased to section 593 organizations.—For purposes of the amendment made by subsection (f), paragraphs (1), (2), and (4) shall be applied by substituting—

(A) "November 5, 1983" for "May 23, 1983" and "November 1, 1983", as the case may be, and

(B) "organization described in section 593 of the Internal Revenue Code of 1954" for "tax-exempt entity".

(15) Special rules relating to foreign persons or entities—

(A) In general.—In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which—

(i) is placed in service before January 1, 1984, and

(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

(B) Special rule for subleases.—If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

(C) Binding contracts, etc.—The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity—

(i) if—

(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982 and on or before May 23, 1983, and

(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

(D) Certain aircraft.—The amendments made by this section shall not apply with respect to any wide-body, four-engine, commercial passenger aircraft used by a foreign person or entity if—

(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

(ii) such aircraft is placed in service before January 1, 1986.

(E) Use after 1983.—Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1954, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term "qualified container equipment" means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

(16) Organizations electing exemption from rules relating to previously tax-exempt organizations must elect taxation of exempt arbitrage profits.—

(A) In general.—An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1954 (relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

(B) Taxation of exempt arbitrage profits.—

(i) In general.—In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

(ii) Rate of tax, etc.—The tax imposed by clause (i)—

(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

(C) Exempt arbitrage profits.—

(i) In general.—For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations—

(I) associated with property described in section 168(j)(4)(E)(i)(I), and

(II) issued before January 1, 1985.

(ii) Application of section 103(b)(6).—For purposes of this paragraph, section 103(b)(6) of such Code shall apply to obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

(D) Other laws applicable.—

(i) In general.—Except as provided in clause (ii), all provisions of law, including penalties, applicable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

(ii) No credits against tax, etc.—The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of—

(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

(E) Election.—Any election under subparagraph (A)—

(i) shall be made at such time and in such manner as the Secretary may prescribe,

(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

(iii) once made, shall be irrevocable.

(17) Certain transitional leased property.—The amendments made by this section shall not apply to property described in section 168(c)(1)(D) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of this Act, and which is described in any of the following subparagraphs:

(A) Property is described in this subparagraph if such property is leased to a university, and—

(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

(ii) the property houses a basketball arena and university offices.

(B) Property is described in this subparagraph if such property is leased to a charitable organization, and—

(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1954 (relating to organizations exempt from tax) pursuant to a contract—

(i) which was entered into on August 3, 1983; and

(ii) under which the corporation first occupied the property on December 22, 1983.

(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which—

(i) in November 1982, an architect was engaged to design a planned renovation;

(ii) in January 1983, the architectural plans were completed;

(iii) in December 1983, a demolition contract was entered into; and

(iv) in March 1984, a renovation contract was entered into.

(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and—

(i) in October 1981, the college purchased the property with a view towards renovating the property;

(ii) renovation plans were delayed because of a zoning dispute; and

(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which—

(i) In August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

(iii) On January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

(iv) On February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

(g) Property is described in this subparagraph if such property is leased to a retirement community with respect to which—

(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the State in which the retirement community is located; and

(ii) On November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

(H) Property is described in this subparagraph if such property is used by a university, and—

(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property.

(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

(i) prior to 1982, an environmental impact study for such property was completed;

(ii) on June 24, 1981, a developer made a commitment to provide one-third of the financing for the development of such property; and

(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and—

(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code) in existence; and

(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

(M) property is described in this subparagraph if such property is used as a convention center, on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the project.

(18) Special rule for amendment made by subsection (c) (1).—

(A) In general.—The amendment made by subsection (c)(1) shall not apply to property—

(i) leased by the taxpayer on or before November 1, 1983, or

(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

(B) Limitation.—Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1954 (as added by this section).

(19) Special rule for certain energy management contracts.—

(A) In general.—The amendments made by subsection (e) shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

(B) Definition of energy management contract.—For purposes of subparagraph (A), the term "energy management contract" means a contract for the providing of energy conservation or energy management services.

(20) Definitions.—For purposes of this subsection—

(A) Tax-exempt entity.—The term "tax-exempt entity" has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1954 (as added by this section), except that such term shall include any related entity (within the meaning of such section).

(B) Treatment of improvements.—

(i) In general.—For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

(ii) Substantial improvement.—For purposes of clause (i), the term "substantial improvement" has the meaning given such term by section 168(f)(1)(C) of such Code determined—

(I) by substituting "20 percent" for "25 percent" in clause (ii) thereof, and

(II) without regard to clause (iii) thereof.

(C) Foreign person or entity.—The term "foreign person or entity" has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

(D) Leases and subleases.—The determination of whether there is a lease or sublease shall take into account sections 168(j)(6)(A) and 7701(e) of the Internal Revenue Code of 1954 (as added by this section).

SEC. 32. MOTOR VEHICLES OPERATING LEASES.

(a) In General.—Section 168(f) (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(13) Motor vehicle operating leases.—

"(A) In general.—For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

"(i) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

"(ii) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

"(B) Qualified motor vehicle operating agreement.—For purposes of this paragraph—

"(i) In general.—The term 'qualified motor vehicle operating agreement' means any agreeement with respect to a motor vehicle (including a trailer) which meets the requirements of clauses (ii), (iii), and (iv) of this subparagraph.

"(ii) Minimum liability of lessor.—An agreement meets the requirements of this clause if under such agreement the sum of—

"(I) the amount the lessor is personally liable to repay, and

"(II) the net fair market value of the lessor's interest in any property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under subclause (II) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

"(iii) Certification by lessee; notice of tax ownership.—An agreement meets the requirements of this clause if such agreement contains a separate written statement separately signed by the lessee—

"(I) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

"(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

"(iv) Lessor must have no knowledge that certification is false.—An agreement meets the requirements of this clause if the lessor does not know that the certification described in clause (iii)(I) is false.

"(C) Terminal rental adjustment clause defined.—

"(i) In general.—For purposes of this paragraph, the term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

"(ii) Special rule for lessee dealers.—The term 'terminal rental adjustment clause' also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provison achieves substantially the same results as a provision described in clause (i)."

(b) Termination of Section 210.—Section 210(a) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by inserting "entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984" after "agreement" the first place it appears.

(c) Effective Date.—The amendment made by subsection (a) shall apply to agreements described in section 168(f)(13) of the Internal Revenue Code of 1954 (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act.

Subtitle C—Treatment of Bonds and Other Debt Instruments

SEC. 41. TREATMENT OF BONDS AND OTHER DEBT INSTRUMENTS.

(a) General Rule.—Subchapter P of chapter 1 (relating to special rules for capital gains and losses) is amended by adding at the end thereof the following new part:

"PART V—SPECIAL RULES FOR BONDS AND OTHER DEBT INSTRUMENTS

"Subpart A. Original issue discount.
"Subpart B. Market discount.
"Subpart C. Discount on short-term obligations.
"Subpart D. Miscellaneous provisions.

"Subpart A—Original Issue Discount

"Sec. 1271. Treatment of amounts received on retirement or sale or exchange of debt instruments.
"Sec. 1272. Current inclusion in income of original issue discount.
"Sec. 1273. Determination of amount of original issue discount.
"Sec. 1274. Determination of issue price in the case of certain debt instruments issued for property.
"Sec. 1275. Other definitions and special rules.

"SEC. 1271. TREATMENT OF AMOUNTS RECEIVED ON RETIREMENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.

"(a) General Rule.—For purposes of this title—

"(1) RETIREMENT.—Amounts received by the holder on retirement of any debt instrument shall be considered as amounts received in exchange therefor.

"(2) ORDINARY INCOME ON SALE OR EXCHANGE WHERE INTENTION TO CALL BEFORE MATURITY.—

"(A) IN GENERAL.—If at the time of original issue there was an intention to call a debt instrument before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to—

"(i) the original issue discount, reduced by

"(ii) the portion of original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(6) or (b)(4) of section 1272 (or the corresponding provisions of prior law)),

shall be treated as ordinary income.

"(B) EXCEPTIONS.—This paragraph (and paragraph (2) of subsection (c)) shall not apply to—

"(i) any tax-exempt obligation, or

"(ii) any holder who has purchased the debt instrument at a premium.

"(3) CERTAIN SHORT-TERM GOVERNMENT OBLIGATIONS.—

"(A) IN GENERAL.—On the sale or exchange of any short-term Government obligation, any gain realized which does not exceed an amount equal to the ratable share of the acquisition discount shall be treated as ordinary income.

"(B) SHORT-TERM GOVERNMENT OBLIGATION.—For purposes of this paragraph, the term 'short-term Government obligation' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia which is—

"(i) issued on a discount basis, and

"(ii) payable without interest at a fixed maturity date not more than 1 year from the date of issue.

Such term does not include any tax-exempt obligation.

"(C) ACQUISITION DISCOUNT.—For purposes of this paragraph, the term 'acquisition discount' means the excess of the stated redemption price at maturity over the taxpayer's basis for the obligation.

"(D) RATABLE SHARE.—For purposes of this paragraph, the ratable share of the acquisition discount is an amount which bears the same ratio to such discount as—

"(i) the number of days which the taxpayer held the obligation, bears to

"(ii) the number of days after the date the taxpayer acquired the obligation and up to (and including) the date of its maturity.

"(b) EXCEPTIONS.—This section shall not apply to—

"(1) NATURAL PERSONS.—Any obligation issued by a natural person.

"(2) OBLIGATIONS ISSUED BEFORE JULY 2, 1982, BY CERTAIN ISSUERS.—Any obligation issued before July 2, 1982, by an issuer which—

"(A) is not a corporation, and

"(B) is not a government or political subdivision thereof.

"(c) TRANSITION RULES.—

"(1) SPECIAL RULE FOR CERTAIN OBLIGATIONS ISSUED BEFORE JANUARY 1, 1955.—Paragraph (1) of subsection (a) shall apply to a debt instrument issued before January 1, 1955, only if such instrument was issued with interest coupons or in registered form, or was in such form on March 1, 1954.

"(2) SPECIAL RULE FOR CERTAIN OBLIGATIONS WITH RESPECT TO WHICH ORIGINAL ISSUE DISCOUNT NOT CURRENTLY INCLUDIBLE.—

"(A) IN GENERAL.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

"(i) an amount equal to the original issue discount, or

"(ii) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

"(B) SUBSECTION (a)(2)(A) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

"(C) CROSS REFERENCE.—

"For current inclusion of original issue discount, see section 1272.

"(d) DOUBLE INCLUSION IN INCOME NOT REQUIRED.—This section and sections 1272 and 1286 shall not require the inclusion of any amount previously includible in gross income.

"SEC. 1272. CURRENT INCLUSION IN INCOME OF ORIGINAL ISSUE DISCOUNT.

"(a) ORIGINAL ISSUE DISCOUNT ON DEBT INSTRUMENTS ISSUED AFTER JULY 1, 1982, INCLUDED IN INCOME ON BASIS OF CONSTANT INTEREST RATE.—

"(1) GENERAL RULE.—For purposes of this title, there shall be included in the gross income of the holder of any debt instrument having original issue discount issued after July 1, 1982, an amount equal to the sum of the daily portions of the original issue discount for each day during the taxable year on which such holder held such debt instrument.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) TAX-EXEMPT OBLIGATIONS.—Any tax-exempt obligation.

"(B) UNITED STATES SAVINGS BONDS.—Any United States savings bond.

"(C) SHORT-TERM OBLIGATIONS.—Any debt instrument which has a fixed maturity date not more than 1 year from the date of issue.

"(D) OBLIGATIONS ISSUED BY NATURAL PERSONS BEFORE MARCH 2, 1984.—Any obligation issued by a natural person before March 2, 1984.

"(E) LOANS BETWEEN NATURAL PERSONS.—

"(i) IN GENERAL.—Any loan made by a natural person to another natural person if—

"(I) such loan is not made in the course of a trade or business of the lender, and

"(II) the amount of such loan (when increased by the outstanding amount of prior loans by such natural person to such other natural person) does not exceed $10,000.

"(ii) CLAUSE (i) NOT TO APPLY WHERE TAX AVOIDANCE A PRINCIPAL PURPOSE.—Clause (i) shall not apply if the loan has as 1 of its principal purposes the avoidance of any Federal tax.

"(iii) TREATMENT OF HUSBAND AND WIFE.—For purposes of this subparagraph, a husband and wife shall be treated as 1 person. The preceding sentence shall not apply where the spouses lived apart at all times during the taxable year in which the loan is made.

"(3) DETERMINATION OF DAILY PORTIONS.—For purposes of paragraph (1), the daily portion of the original issue discount on any debt instrument shall be determined by allocating to each day in any accrual period its ratable portion of the increase during such accrual period in the adjusted issue price of the debt instrument. For purposes of the preceding sentence, the increase in the adjusted issue price for any accrual period shall be an amount equal to the excess (if any) of—

"(A) the product of—

"(i) the adjusted issue price of the debt instrument at the beginning of such accrual period, and

"(ii) the yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), over

"(B) the sum of the amounts payable as interest on such debt instrument during such accrual period.

"(4) ADJUSTED ISSUE PRICE.—For purposes of this subsection, the adjusted issue price of any debt instrument at the beginning of any accrual period is the sum of—

"(A) the issue price of such debt instrument, plus

"(B) the adjustments under this subsection to such issue price for all periods before the first day of such accrual period.

"(5) ACCRUAL PERIOD.—Except as otherwise provided in regulations prescribed by the Secretary, the term 'accrual period' means a 6-month period (or shorter period from the date of original issue of the debt instrument) which ends on a day in the calendar year corresponding to the maturity date of the debt instrument or the date 6 months before such maturity date.

"(6) REDUCTION WHERE SUBSEQUENT HOLDER PAYS ACQUISITION PREMIUM.—

"(A) REDUCTION.—For purposes of this subsection, in the case of any purchase after its original issue of a debt instrument to which this subsection applies, the daily portion for any day shall be reduced by an amount equal to the amount which would be the daily portion for such day (without regard to this paragraph) multiplied by the fraction determined under subparagraph (B).

"(B) DETERMINATION OF FRACTION.—For purposes of subparagraph (A), the fraction determined under this subparagraph is a fraction—

"(i) the numerator of which is the excess (if any) of—

"(I) the cost of such debt instrument incurred by the purchaser, over

"(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph), and

"(ii) the denominator of which is the sum of the daily portions for such debt instrument for all days after the date of such purchase and ending on the stated maturity date (computed without regard to this paragraph).

"(b) RATABLE INCLUSION RETAINED FOR CORPORATE DEBT INSTRUMENTS ISSUED BEFORE JULY 2, 1982.—

"(1) GENERAL RULE.—There shall be included in the gross income of the holder of any debt instrument issued by a corporation after May 27, 1969, and before July 2, 1982—

"(A) the ratable monthly portion of original issue discount, multiplied by

"(B) the number of complete months (plus any fractional part of a month determined under paragraph (3)) such holder held such debt instrument during the taxable year.

"(2) DETERMINATION OF RATABLE MONTHLY PORTION.—Except as provided in paragraph (4), the ratable monthly portion of original issue discount shall equal—

"(A) the original issue discount, divided by

"(B) the number of complete months from the date of original issue to the stated maturity date of the debt instrument.

"(3) MONTH DEFINED.—For purposes of this subsection—

"(A) COMPLETE MONTH.—A complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day).

"(B) TRANSFERS DURING MONTH.—In any case where a debt instrument is acquired on any day other than a day determined under subparagraph (A), the ratable monthly portion of original issue discount for the complete month (or partial month) in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete (or partial) month each held the debt instrument.

"(4) REDUCTION WHERE SUBSEQUENT HOLDER PAYS ACQUISITION PREMIUM.—

"(A) REDUCTION.—For purposes of this subsection, the ratable monthly portion of original issue discount shall not include its share of the acquisition premium.

"(B) SHARE OF ACQUISITION PREMIUM.—For purposes of subparagraph (A), any month's share of the acquisition premium is an amount (determined at the time of the purchase) equal to—

"(i) the excess of—

"(I) the cost of such debt instrument incurred by the holder, over

"(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph),

"(ii) divided by the number of complete months (plus any fractional part of a month) from the date of such purchase to the stated maturity date of such debt instrument.

"(c) EXCEPTIONS.—This section shall not apply to any holder—

"(1) who has purchased the debt instrument at a premium, or

"(2) which is a life insurance company to which section 811(b) applies.

"(d) DEFINITION AND SPECIAL RULE.—

"(1) PURCHASE DEFINED.—For purposes of this section, the term 'purchase' means—

"(A) any acquisition of a debt instrument, where

"(B) the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of such debt instrument in the hands of the person from whom acquired.

"(2) BASIS ADJUSTMENT.—The basis of any debt instrument in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to this section.

"SEC. 1273. DETERMINATION OF AMOUNT OF ORIGINAL ISSUE DISCOUNT.

"(a) GENERAL RULE.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'original issue discount' means the excess (if any) of—

"(A) the stated redemption price at maturity, over

"(B) the issue price.

"(2) STATED REDEMPTION PRICE AT MATURITY.—The term 'stated redemption price at maturity' means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate, and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

"(3) ¼ OF 1 PERCENT DE MINIMIS RULE.—If the original issue discount determined under paragraph (1) is less than—

"(A) ¼ of 1 percent of the stated redemption price at maturity, multiplied by

"(B) the number of complete years to maturity,

then the original issue discount shall be treated as zero.

"(b) ISSUE PRICE.—For purposes of this subpart—

"(1) PUBLICLY OFFERED DEBT INSTRUMENTS NOT ISSUED FOR PROPERTY.—In the case of any issue of debt instruments—

"(A) publicly offered, and

"(B) not issued for property,

the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instruments was sold.

"(2) OTHER DEBT INSTRUMENTS NOT ISSUED FOR PROPERTY.—In the case of any issue of debt instruments not issued for property and not publicly offered, the issue price of each such instrument is the price paid by the first buyer of such debt instrument.

"(3) DEBT INSTRUMENTS ISSUED FOR PROPERTY WHERE THERE IS PUBLIC TRADING.—In the case of a debt instrument which is issued for property and which—

"(A) is part of an issue a portion of which is traded on an established securities market, or

"(B) is issued for stock or securities which are traded on an established securities market,

the issue price of such debt instrument shall be the fair market value of such property.

"(4) OTHER CASES.—Except in any case—

"(A) to which paragraph (1), (2), or (3) of this subsection applies, or

"(B) to which section 1274 applies,

the issue price of a debt instrument which is issued for property shall be the stated redemption price at maturity.

"(5) PROPERTY.—In applying this subsection, the term 'property' includes services and the right to use property, but such term does not include money.

"(c) SPECIAL RULES FOR APPLYING SUBSECTION (b).—For purposes of subsection (b)—

"(1) INITIAL OFFERING PRICE; PRICE PAID BY THE FIRST BUYER.—The terms 'initial offering price' and 'price paid by the first buyer' include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

"(2) TREATMENT OF INVESTMENT UNITS.—In the case of any debt instrument and an option, security, or other property issued together as an investment unit—

"(A) the issue price for such unit shall be determined in accordance with the rules of this subsection and subsection (b) as if it were a debt instrument,

"(B) the issue price determined for such unit shall be allocated to each element of such unit on the basis of the relationship of the fair market value of such element to the fair market value of all elements in such unit, and

"(C) the issue price of any debt instrument included in such unit shall be the portion of the issue price of the unit allocated to the debt instrument under subparagraph (B).

"SEC. 1274. DETERMINATION OF ISSUE PRICE IN THE CASE OF CERTAIN DEBT INSTRUMENTS ISSUED FOR PROPERTY.

"(a) IN GENERAL.—In the case of any debt instrument to which this section applies, for purposes of this subpart, the issue price shall be—

"(1) where there is adequate stated interest, the stated principal amount, or

"(2) in any other case, the imputed principal amount.

"(b) IMPUTED PRINCIPAL AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (3), the imputed principal amount of any debt instrument shall be equal to the sum of the present values of all payments due under such debt instrument.

"(2) DETERMINATION OF PRESENT VALUE.—For purposes of paragraph (1), the present value of a payment shall be determined in the manner provided by regulations prescribed by the Secretary—

"(A) as of the date of the sale or exchange, and

"(B) by using a discount rate equal to 120 percent of the applicable Federal rate, compounded semiannually.

"(3) FAIR MARKET VALUE RULE IN POTENTIALLY ABUSIVE SITUATIONS.—

"(A) IN GENERAL.—In the case of any potentially abusive situation, the imputed principal amount of any debt instrument received in exchange for property shall be the fair market value of such property adjusted to take into account other consideration involved in the transaction.

"(B) POTENTIALLY ABUSIVE SITUATION DEFINED.—For purposes of subparagraph (A), the term 'potentially abusive situation' means—

"(i) a tax shelter (as defined in section 6661(b)(2)(C)(ii)), and

"(ii) any other situation which, by reason of—

"(I) recent sales transactions,

"(II) nonrecourse financing,

"(III) financing with a term in excess of the economic life of the property, or

"(IV) other circumstances,

is of a type which the Secretary specifies by regulations as having potential for tax avoidance.

"(c) DEBT INSTRUMENTS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall apply to any debt instrument given in consideration for the sale or exchange of property if—

"(A) the stated redemption price at maturity for such debt instrument exceeds—

"(i) where there is adequate stated interest, the stated principal amount, or

"(ii) in any other case, the testing amount, and

"(B) some or all of the payments due under such debt instrument are due more than 6 months after the date of such sale or exchange.

"(2) ADEQUATE STATED INTEREST.—For purposes of this section, there is adequate stated interest with respect to any debt instrument if the stated principal amount for such debt instrument is less than the testing amount.

"(3) TESTING AMOUNT.—For purposes of this section, the term 'testing amount' means, with respect to any debt instrument, the imputed principal amount of such debt instrument which would be determined under subsection (b) (including paragraph (3) thereof) if a discount rate equal to 110 percent of the applicable Federal rate were used.

"(2) EXCEPTIONS.—This section shall not apply to—

"(A) SALES FOR LESS THAN $1,000,000 OF FARMS BY INDIVIDUALS OR SMALL BUSINESSES.—

"(i) IN GENERAL.—Any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2))—

"(I) by an individual, estate, or testamentary trust,

"(II) by a corporation which as of the date of the sale or exchange is a small business corporation (as defined in section 1244(c)(3)), or

"(III) by a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

"(ii) $1,000,000 LIMITATION.—Clause (i) shall apply only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $1,000,000. For purposes of the preceding sentence, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

"(B) SALES OF PRINCIPAL RESIDENCES.—Any debt instrument arising from the sale or exchange by an individual of his principal residence (within the meaning of section 1034).

"(C) SALES INVOLVING TOTAL PAYMENTS OF $250,000 OR LESS.—

"(i) IN GENERAL.—Any debt instrument arising from the sale or exchange of property if the sum of the following amounts does not exceed $250,000:

"(I) the aggregate amount of the payments due under such debt instrument and all other debt instruments received as consideration for the sale or exchange, and

"(II) the aggregate amount of any other consideration to be received for the sale or exchange.

"(ii) CONSIDERATION OTHER THAN DEBT INSTRUMENT TAKEN INTO ACCOUNT AT FAIR MARKET VALUE.—For purposes of clause (i), any consideration (other than a debt instrument) shall be taken into account at its fair market value.

"(iii) AGGREGATION OF TRANSACTIONS.—For purposes of this subparagraph, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

"(D) DEBT INSTRUMENTS WHICH ARE PUBLICLY TRADED OR ISSUED FOR PUBLICLY TRADED PROPERTY.—Any debt instrument to which section 1273(b)(3) applies.

"(E) CERTAIN SALES OF PATENTS.—In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), any amount contingent on the productivity, use, or disposition of the property transferred.

"(F) SALES OR EXCHANGES TO WHICH SECTION 483(e) APPLIES.—Any debt instrument to the extent section 483(e) (relating to certain land transfers between related persons) applies to such instrument.

"(d) DETERMINATION OF APPLICABLE FEDERAL RATE.—For purposes of this section—

"(1) APPLICABLE FEDERAL RATE.—

"(A) IN GENERAL.—

"In the case of a debt instrument with a term of:	The applicable Federal rate is:
Not over 3 years	The Federal short-term rate.
Over 3 years but not over 9 years.	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

"(B) DETERMINATION OF RATES.—Within 15 days after the close of—

"(i) the 6-month period ending on September 30 of any calendar year, or

"(ii) the 6-month period ending on March 31 of any calendar year,

the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate for such 6-month period.

"(C) EFFECTIVE DATE OF DETERMINATION.—Any Federal rate determined under subparagraph (A) shall—

"(i) apply during the 6-month period beginning on January 1 of the succeeding calendar year in the case of a determination made under subparagraph (B)(i), and

"(ii) apply during the 6-month period beginning on July 1 of the calendar year in the case of a determination made under subparagraph (B)(ii).

"(D) FEDERAL RATE FOR ANY 6-MONTH PERIOD.—For purposes of this paragraph—

"(i) FEDERAL SHORT-TERM RATE.—The Federal short-term rate for any 6-month period shall be the rate determined by the Secretary based on the average market yield (during such 6-month period) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

"(ii) FEDERAL MID-TERM AND LONG-TERM RATES.—The Federal mid-term rate and long-term rate shall be determined in accordance with the principles of clause (i).

"(2) RATE APPLICABLE TO ANY SALE OR EXCHANGE.—In the case of any sale or exchange, the determination of the applicable Federal rate shall be made as of the first day on which there is a binding contract in writing for the sale or exchange.

"(3) TERM OF DEBT INSTRUMENT.—In determining the term of a debt instrument for purposes of this subsection, under regulations prescribed by the Secretary, there shall be taken into account options to renew or extend.

"SEC. 1275. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subpart—

"(1) DEBT INSTRUMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'debt instrument' means a bond, debenture, note, or certificate or other evidence of indebtedness.

"(B) EXCEPTION FOR CERTAIN ANNUITY CONTRACTS.—The term 'debt instrument' shall not include any annuity contract to which section 72 applies and which—

"(i) depends (in whole or in substantial part) on the life expectancy of 1 or more individuals, or

"(ii) is issued by an insurance company subject to tax under subchapter L—

"(I) in a transaction in which there is no consideration other than cash or another annuity contract meeting the requirements of this clause,

"(II) pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party under such contract, or

"(III) in a transaction involving a qualified pension or employee benefit plan.

"(2) ISSUE DATE.—

"(A) PUBLICLY OFFERED DEBT INSTRUMENTS.—In the case of any debt instrument which is publicly offered, the term 'date of original issue' means the date on which the issue was first issued to the public.

"(B) ISSUES NOT PUBLICLY OFFERED AND NOT ISSUED FOR PROPERTY.—In the case of any debt instrument to which section 1273(b)(2) applies, the term 'date of original issue' means the date on which the debt instrument was sold by the issuer.

"(C) OTHER DEBT INSTRUMENTS.—In the case of any debt instrument not described in subparagraph (A) or (B), the term 'date of original issue' means the date on which the debt instrument was issued in a sale or exchange.

"(3) TAX-EXEMPT OBLIGATION.—The term 'tax-exempt obligation' means any obligation if—

"(A) the interest on such obligation is not includible in gross income under section 103, or

"(B) the interest on such obligation is exempt from tax (without regard to the identity of the holder) under any other provision of law.

"(4) SPECIAL RULE FOR DETERMINATION OF ISSUE PRICE IN CASE OF EXCHANGE OF DEBT INSTRUMENTS IN REORGANIZATIONS.—

"(A) IN GENERAL.—If—

"(i) any debt instrument is issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) for another debt instrument (hereinafter in this paragraph referred to as the 'old debt instrument'), and

"(ii) the amount which (but for this paragraph) would be the issue price of the debt instrument so issued is less than the adjusted issue price of the old debt instrument,

then the issue price of the debt instrument so issued shall be treated as equal to the adjusted issue price of the old debt instrument.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) DEBT INSTRUMENT.—The term 'debt instrument' includes an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—

"(I) IN GENERAL.—The adjusted issue price of the old debt instrument is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(6) or (b)(4) of section 1272 (or the corresponding provisions of prior law)).

"(II) SPECIAL RULE FOR APPLYING SECTION 163(e).—For purposes of section 163(e), the adjusted issue price of the old debt instrument is its issue price, increased by any original issue discount previously allowed as a deduction.

"(b) TREATMENT OF BORROWER IN THE CASE OF CERTAIN LOANS FOR PERSONAL USE.—

"(1) SECTIONS 1274 AND 483 NOT TO APPLY.—In the case of the obligor under any debt instrument given in consideration for the sale or exchange of property, sections 1274 and 483 shall not apply if such property is personal use property.

"(2) ORIGINAL ISSUE DISCOUNT DEDUCTED ON CASH BASIS IN CERTAIN CASES.—In the case of any debt instrument, if—

"(A) such instrument—

"(i) is incurred in connection with the acquisition or carrying of personal use property, and

"(ii) has original issue discount (determined after the application of paragraph (1)), and

"(B) the obligor under such instrument uses the cash receipts and disbursements method of accounting,

notwithstanding section 163(e), the original issue discount on such instrument shall be deductible only when paid.

"(3) PERSONAL USE PROPERTY.—For purposes of this subsection, the term 'personal use property' means any property substantially all of the use of which by the taxpayer is not in connection with a trade or business of the taxpayer or an activity described in section 212. The determination of whether property is described in the preceding sentence shall be made as of the time of issuance of the debt instrument.

"(c) INFORMATION REQUIREMENTS.—

"(1) INFORMATION REQUIRED TO BE SET FORTH ON INSTRUMENT.—

"(A) IN GENERAL.—In the case of any debt instrument having original issue discount, the Secretary may by regulations require that—

"(i) the amount of the original issue discount, and

"(ii) the issue date,

be set forth on such instrument.

"(B) SPECIAL RULE FOR INSTRUMENTS NOT PUBLICLY OFFERED.—In the case of any issue of debt instruments not publicly offered, the regulations prescribed under subparagraph (A) shall not require the information to be set forth on the debt instrument before any disposition of such instrument by the first buyer.

"(2) INFORMATION REQUIRED TO BE SUBMITTED TO SECRETARY.—In the case of any issue of publicly offered debt instruments having original issue discount, the issuer shall (at such time and in such manner as the Secretary shall by regulation prescribe) furnish the Secretary the following information:

"(A) The amount of the original issue discount.

"(B) The issue date.

"(C) Such other information with respect to the issue as the Secretary may by regulations require.

For purposes of the preceding sentence, any person who makes a public offering of stripped bonds (or stripped coupons) shall be treated as the issuer of a publicly offered debt instrument having original issue discount.

"(3) EXCEPTIONS.—This subsection shall not apply to any obligation referred to in section 1272(a)(2) (relating to exceptions from current inclusion of original issue discount).

"(4) CROSS REFERENCE.—

"For civil penalty for failure to meet requirements of this subsection, see section 6706.

"(d) REGULATION AUTHORITY.—The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, or other circumstances, the tax treatment under this subpart (or section 163(e)) does not carry out the purposes of this subpart (or section 163(e)), such treatment shall be modified to the extent appropriate to carry out the purposes of this subpart (or section 163(e)).

"Subpart B—Market Discount on Bonds

"Sec. 1276. Disposition gain representing accrued market discount treated as ordinary income.

"Sec. 1277. Deferral of interest deduction allocable to accrued market discount.

"Sec. 1278. Definitions and special rules.

"SEC. 1276. DISPOSITION GAIN REPRESENTING ACCRUED MARKET DISCOUNT TREATED AS ORDINARY INCOME.

"(a) ORDINARY INCOME.—

"(1) IN GENERAL.—Except as otherwise provided in this section, gain on the disposition of any market discount bond shall be treated as ordinary income to the extent it does not exceed the accrued market discount on such bond. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(2) DISPOSITIONS OTHER THAN SALES, ETC.—For purposes of paragraph (1), a person disposing of any market discount bond in any transaction other than a sale, exchange, or involuntary conversion shall be treated as realizing an amount equal to the fair market value of the bond.

"(3) GAIN TREATED AS INTEREST FOR CERTAIN PURPOSES.—Except for purposes of sections 871(a), 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount treated as ordinary income under paragraph (1) shall be treated as interest for purposes of this title.

"(b) ACCRUED MARKET DISCOUNT.—For purposes of this section—

"(1) RATABLE ACCRUAL.—Except as otherwise provided in this subsection or subsection (c), the accrued market discount on any bond shall be an amount which bears the same ratio to the market discount on such bond as—

"(A) the number of days which the taxpayer held the bond, bears to

"(B) the number of days after the date the taxpayer acquired the bond and up to (and including) the date of its maturity.

"(2) ELECTION OF ACCRUAL ON BASIS OF CONSTANT INTEREST RATE (IN LIEU OF RATABLE ACCRUAL).—

"(A) IN GENERAL.—At the election of the taxpayer with respect to any bond, the accrued market discount on such bond shall be the aggregate amount which would have been includible in the gross income of the taxpayer under section 1272(a) with respect to such bond for all periods during which the bond was held by the taxpayer if such bond had been—

"(i) originally issued on the date on which such bond was acquired by the taxpayer,

"(ii) for an issue price equal to the basis of the taxpayer in such bond immediately after its acquisition.

"(B) COORDINATION WHERE BOND HAS ORIGINAL ISSUE DISCOUNT.—In the case of any bond having original issue discount, for purposes of applying subparagraph (A)—

"(i) the stated redemption price at maturity of such bond shall be treated as equal to its revised issue price, and

"(ii) the determination of the portion of the original issue discount which would have been includible in the gross income of the taxpayer under section 1272(a) shall be made under regulations prescribed by the Secretary.

"(C) ELECTION IRREVOCABLE.—An election under subparagraph (A), once made with respect to any bond, shall be irrevocable.

"(c) TREATMENT OF NONRECOGNITION TRANSACTIONS.—Under regulations prescribed by the Secretary—

"(1) TRANSFERRED BASIS PROPERTY.—If a market discount bond is transferred in a nonrecognition transaction and such bond is transferred basis property in the hands of the transferee, for purposes of determining the amount of the accrued market discount with respect to the transferee—

"(A) the transferee shall be treated as having acquired the bond on the date on which it was acquired by the transferor for an amount equal to the basis of the transferor, and

"(B) proper adjustments shall be made for gain recognized by the transferor on such transfer (and for any original issue discount or market discount included in the gross income of the transferor).

"(2) EXCHANGED BASIS PROPERTY.—If any market discount bond is disposed of by the taxpayer in a nonrecognition transaction and paragraph (1) does not apply to such transaction, any accrued market discount determined with respect to the property disposed of to the extent not theretofore treated as ordinary income under subsection (a)—

"(A) shall be treated as accrued market discount with respect to the exchanged basis property received by the taxpayer in such transaction if such property is a market discount bond, and

"(B) shall be treated as ordinary income on the disposition of the exchanged basis property received by the taxpayer in such exchange if such property is not a market discount bond.

"(3) PARAGRAPH (1) TO APPLY TO CERTAIN DISTRIBUTIONS BY CORPORATIONS OR PARTNERSHIPS.—For purposes of paragraph (1), if the basis of any market discount bond in the hands of a transferee is determined under section 334(c), 732(a), or 732(b), such property shall be treated as transferred basis property in the hands of such transferee.

"(d) SPECIAL RULES.—Under regulations prescribed by the Secretary—

"(1) rules similar to the rules of subsection (b) of section 1245 shall apply for purposes of this section; except that—

"(A) paragraph (1) of such subsection shall not apply, and

"(B) an exchange qualifying under section 354(a), 355(a), or 356(a) (determined without regard to subsection (a) of this section) shall be treated as an exchange described in paragraph (3) of such subsection, and

"(2) appropriate adjustments shall be made to the basis of any property to reflect gain recognized under subsection (a).

"(e) SECTION NOT TO APPLY TO MARKET DISCOUNT BONDS ISSUED ON OR BEFORE DATE OF ENACTMENT OF SECTION.—This section shall not apply to any market discount bond issued on or before the date of the enactment of this section.

"SEC. 1277. DEFERRAL OF INTEREST DEDUCTION ALLOCABLE TO ACCRUED MARKET DISCOUNT.

"(a) GENERAL RULE.—Except as otherwise provided in this section, the net direct interest expense with respect to any market discount bond shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the portion of the market discount allocable to the days during the taxable year on which such bond was held by the taxpayer (as determined under the rules of section 1276(b)).

"(b) DISALLOWED DEDUCTION ALLOWED FOR LATER YEARS.—

"(1) ELECTION TO TAKE INTO ACCOUNT IN LATER YEAR WHERE NET INTEREST INCOME FROM BOND.—

"(A) IN GENERAL.—If—

"(i) there is net interest income for any taxable year with respect to any market discount bond, and

"(ii) the taxpayer makes an election under this subparagraph with respect to such bond,

any disallowed interest expense with respect to such bond shall be treated as interest paid or accrued by the taxpayer during such taxable year to the extent such disallowed interest expense does not exceed the net interest income with respect to such bond.

"(B) DETERMINATION OF DISALLOWED INTEREST EXPENSE.—For purposes of subparagraph (A), the amount of the disallowed interest expense—

"(i) shall be determined as of the close of the preceding taxable year, and

"(ii) shall not include any amount previously taken into account under subparagraph (A).

"(C) NET INTEREST INCOME.—For purposes of this paragaph, the term 'net interest income' means the excess of the amount determined under paragraph (2) of subsection (c) over the amount determined under paragraph (1) of subsection (c).

"(2) REMAINDER OF DISALLOWED INTEREST EXPENSE ALLOWED FOR YEAR OF DISPOSITION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amount of the disallowed interest expense with respect to any market discount bond shall be treated as interest paid or accrued by the taxpayer

in the taxable year in which such bond is disposed of.

"(B) NONRECOGNITION TRANSACTIONS.—If any market discount bond is disposed of in a nonrecognition transaction—

"(i) the disallowed interest expense with respect to such bond shall be treated as interest paid or accrued in the year of disposition only to the extent of the amount of gain recognized on such disposition, and

"(ii) the disallowed interest expense with respect to such property (to the extent not so treated) shall be treated as disallowed interest expense—

"(I) in the case of a transaction described in section 1276(c)(1), of the transferee with respect to the transferred basis property, or

"(II) in the case of a transaction described in section 1276(c)(2), with respect to the exchanged basis property.

"(C) DISALLOWED INTEREST EXPENSE REDUCED FOR AMOUNTS PREVIOUSLY TAKEN INTO ACCOUNT UNDER PARAGRAPH 1.—For purposes of this paragraph, the amount of the disallowed interest expense shall not include any amount previously taken into account under paragraph (1).

"(3) DISALLOWED INTEREST EXPENSE.—For purposes of this subsection, the term 'disallowed interest expense' means the aggregate amount disallowed under subsection (a) with respect to the market discount bond.

"(c) NET DIRECT INTEREST EXPENSE.—For purposes of this section, the term 'net direct interest expense' means, with respect to any market discount bond, the excess (if any) of—

"(1) the amount of interest paid or accrued during the taxable year on indebtedness which is incurred or continued to purchase or carry such bond, over

"(2) the aggregate amount of interest (including original issue discount) includible in gross income for the taxable year with respect to such bond.

In the case of any financial institution to which section 585 or 593 applies, the determination of whether interest is described in paragraph (1) shall be made under principles similar to the principles of section 291(e)(1)(B)(ii). Under rules similar to the rules of section 265(5), short sales expenses shall be treated as interest for purposes of determining net direct interest expense.

"(d) SPECIAL RULE FOR GAIN RECOGNIZED ON DISPOSITION OF MARKET DISCOUNT BONDS ISSUED ON OR BEFORE DATE OF ENACTMENT OF SECTION.—In the case of a market discount bond issued on or before the date of the enactment of this section, any gain recognized by the taxpayer on any disposition of such bond shall be treated as ordinary income to the extent the amount of such gain does not exceed the amount allowable with respect to such bond under subsection (b)(2) for the taxable year in which such bond is disposed of.

"SEC. 1278. DEFINITIONS AND SPECIAL RULES.

"(a) IN GENERAL.—For purposes of this part—

"(1) MARKET DISCOUNT BOND.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'market discount bond' means any bond having market discount.

"(B) EXCEPTIONS.—The term 'market discount bond' shall not include—

"(i) SHORT-TERM OBLIGATIONS.—Any obligation with a fixed maturity date not exceeding 1 year from the date of issue.

"(ii) TAX-EXEMPT OBLIGATIONS.—Any tax-exempt obligation (as defined in section 1275(a)(3)).

"(iii) UNITED STATES SAVINGS BONDS.—Any United States savings bond.

"(iv) INSTALLMENT OBLIGATIONS.—Any installment obligation to which section 453B applies.

"(2) MARKET DISCOUNT.—

"(A) IN GENERAL.—The term 'market discount' means the excess (if any) of—

"(i) the stated redemption price of the bond at maturity, over

"(ii) the basis of such bond immediately after its acquisition by the taxpayer.

"(B) COORDINATION WHERE BOND HAS ORIGINAL ISSUE DISCOUNT.—In the case of any bond having original issue discount, for purposes of subparagraph (A), the stated redemption price of such bond at maturity shall be treated as equal to its revised issue price.

"(C) DE MINIMIS RULE.—If the market discount is less than ¼ of 1 percent of the stated redemption price of the bond at maturity multiplied by the number of complete years to maturity (after the taxpayer acquired the bond), then the market discount shall be considered to be zero.

"(3) BOND.—The term 'bond' means any bond, debenture, note, certificate, or other evidence of indebtedness.

"(4) REVISED ISSUE PRICE.—The term 'revised issue price' means of the sum of—

"(A) the issue price of the bond, and

"(B) the aggregate amount of the original issue discount includible in the gross income of all holders for periods before the acquisition of the bond by the taxpayer (determined without regard to section 1272 (a)(6) or (b)(4)).

"(5) ORIGINAL ISSUE DISCOUNT, ETC.—The terms 'original issue discount', 'stated redemption price at maturity', and 'issue price' have the respective meanings given such terms by subpart A of this part.

"(b) ELECTION TO INCLUDE MARKET DISCOUNT CURRENTLY.—

"(1) IN GENERAL.—If the taxpayer makes an election under this subsection—

"(A) sections 1276 and 1277 shall not apply, and

"(B) market discount on any market discount bond shall be included in the gross income of the taxpayer for the taxable years to which it is attributable (as determined under the rules of subsection (b) of section 1276).

Except for purposes of sections 871(a), 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount included in gross income under subparagraph (B) shall be treated as interest for purposes of this title.

"(2) SCOPE OF ELECTION.—An election under this subsection shall apply to all market discount bonds acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

"(3) PERIOD TO WHICH ELECTION APPLIES.—An election under this subsection shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subpart.

"Subpart C—Discount on Short-Term Obligations

"Sec. 1281. Current inclusion in income of discount on certain short-term obligations.
"Sec. 1282. Deferral of interest deduction allocable to accrued discount.
"Sec. 1283. Definitions and special rules.

"SEC. 1281. CURRENT INCLUSION IN INCOME OF DISCOUNT ON CERTAIN SHORT-TERM OBLIGATIONS.

"(a) IN GENERAL.—In the case of any short-term obligation to which this section applies, for purposes of this title, there shall be included in the gross income of the holder an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year on which such holder held such obligation.

"(b) SHORT-TERM OBLIGATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to any short-term obligation which—

"(A) is held by a taxpayer using an accrual method of accounting,

"(B) is held primarily for sale to customers in the ordinary course of the taxpayer's trade or business,

"(C) is held by a bank (as defined in section 581),

"(D) is held by a regulated investment company or a common trust fund, or

"(E) is identified by the taxpayer under section 1256(e)(2) as being part of a hedging transaction.

"(2) TREATMENT OF OBLIGATIONS HELD BY PASS-THRU ENTITIES.—

"(A) IN GENERAL.—This section shall apply also to—

"(i) any short-term obligation which is held by a pass-thru entity which is formed or availed of for purposes of avoiding the provisions of this section, and

"(ii) any short-term obligation which is acquired by a pass-thru entity (not described in clause (i)) during the required accrual period.

"(B) REQUIRED ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'required accrual period' means the period—

"(i) which begins with the first taxable year for which the ownership test of subparagraph (C) is met with respect to the pass-thru entity (or a predecessor), and

"(ii) which ends with the first taxable year after the taxable year referred to in clause (i) for which the ownership test of subparagraph (C) is not met and with respect to which the Secretary consents to the termination of the required accrual period.

"(C) OWNERSHIP TEST.—The ownership test of this subparagraph is met for any taxable year if, on at least 90 days during the taxable year, 20 percent or more of the value of the interests in the pass-thru entity are held by persons described in paragraph (1) or by other pass-thru entities to which subparagraph (A) applies.

"(D) PASS-THRU ENTITY.—The term 'pass-thru entity' means any partnership, S corporation, trust, or other pass-thru entity.

"(c) CROSS REFERENCE.—

"For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 128[illegible](c).

"SEC. 1282. DEFERRAL OF INTEREST DEDUCTION ALLOCABLE TO ACCRUED DISCOUNT.

"(a) GENERAL RULE.—Except as otherwise provided in this section, the net direct interest expense with respect to any short-term obligation shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the sum of the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation.

"(b) SECTION NOT TO APPLY TO OBLIGATIONS TO WHICH SECTION 1281 APPLIES.—

"(1) IN GENERAL.—This section shall not apply to any short-term obligation to which section 1281 applies.

"(2) ELECTION TO HAVE SECTION 1281 APPLY TO ALL OBLIGATIONS.—

"(A) IN GENERAL.—A taxpayer may make an election under this paragraph to have section 1281 apply to all short-term obligations acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

"(B) PERIOD TO WHICH ELECTION APPLIES.—An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

"(c) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subsections (b) and (c) of section 1277 shall apply for purposes of this section.

"(d) CROSS REFERENCE.—

"For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

"SEC. 1282. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subpart—

"(1) SHORT-TERM OBLIGATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'short-term obligation' means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not more than 1 year from the date of issue.

"(B) EXCEPTIONS FOR TAX-EXEMPT OBLIGATIONS.—The term 'short-term obligation' shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

"(2) ACQUISITION DISCOUNT.—The term 'acquisition discount' means the excess of—

"(A) the stated redemption price at maturity (as defined in section 1273), over

"(B) the taxpayer's basis for the obligation.

"(b) DAILY PORTION.—For purposes of this subpart—

"(1) RATABLE ACCRUAL.—Except as otherwise provided in this subsection, the daily portion of the acquisition discount is an amount equal to—

"(A) the amount of such discount, divided by

"(B) the number of days after the day on which the taxpayer acquired the obligation and up to (and including) the day of its maturity.

"(2) ELECTION OF ACCRUAL ON BASIS OF CONSTANT INTEREST RATE (IN LIEU OF RATABLE ACCRUAL).—

"(A) IN GENERAL.—At the election of the taxpayer with respect to any obligation, the daily portion of the acquisition discount for any day is the portion of the acquisition discount accruing on such day determined (under regulations prescribed by the Secretary) on the basis of—

"(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

"(ii) compounding daily.

"(B) ELECTION IRREVOCABLE.—An election under subparagraph (A), once made with respect to any obligation, shall be irrevocable.

"(c) SPECIAL RULES FOR NONGOVERNMENTAL OBLIGATIONS.—

"(1) IN GENERAL.—In the case of any short-term obligation which is not a short-term Government obligation (as defined in section 1271(a)(3)(B))—

"(A) sections 1281 and 1282 shall be applied by taking into account original issue discount in lieu of acquisition discount, and

"(B) appropriate adjustments shall be made in the application of subsection (b) of this section.

"(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—

"(A) IN GENERAL.—A taxpayer may make an election under this paragraph to have paragraph (1) not apply to all obligations acquired by the taxpayer on or after the first day of the first taxable year to which such election applies.

"(B) PERIOD TO WHICH ELECTION APPLIES.—An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

"(d) OTHER SPECIAL RULES.—

"(1) BASIS ADJUSTMENTS.—The basis of any short-term obligation in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to section 1281.

"(2) DOUBLE INCLUSION IN INCOME NOT REQUIRED.—Section 1281 shall not require the inclusion of any amount previously includible in gross income.

"(3) COORDINATION WITH OTHER PROVISIONS.—Section 454(b) and section 1271(a)(3) shall not apply to any short-term obligation to which section 1281 applies.

"Subpart D—Miscellaneous Provisions

"Sec. 1286. Tax treatment of stripped bonds.
"Sec. 1287. Denial of capital gain treatment for gains on certain obligations not in registered form.
"Sec. 1288. Treatment of original issue discount on tax-exempt obligations.

"SEC. 1286. TAX TREATMENT OF STRIPPED BONDS.

"(a) INCLUSION IN INCOME AS IF BOND AND COUPONS WERE ORIGINAL ISSUE DISCOUNT BONDS.—If any person purchases after July 1, 1982, a stripped bond or a stripped coupon, then such bond or coupon while held by such purchaser (or by any other person whose basis is determined by reference to the basis in the hands of such purchaser) shall be treated for purposes of this part as a bond originally issued on the purchase date and having an original issue discount equal to the excess (if any) of—

"(1) the stated redemption price at maturity (or, in the case of coupon, the amount payable on the due date of such coupon), over

"(2) such bond's or coupon's ratable share of the purchase price.

For purposes of paragraph (2), ratable shares shall be determined on the basis of their respective fair market values on the date of purchase.

"(b) TAX TREATMENT OF PERSON STRIPPING BOND.—For purposes of this subtitle, if any person strips 1 or more coupons from a bond and after July 1, 1982, disposes of the bond or such coupon—

"(1) such person shall include in gross income an amount equal to the interest accrued on such bond while held by such person and before the time that such coupon or bond was disposed of (to the extent such interest has not theretofore been included in such person's gross income),

"(2) the basis of the bond and coupons shall be increased by the amount of the accrued interest described in paragraph (1),

"(3) the basis of the bond and coupons immediately before the disposition (as adjusted pursuant to paragraph (2)) shall be allocated among the items retained by such person and the items disposed of by such person on the basis of their respective fair market values, and

"(4) for purposes of subsection (a), such person shall be treated as having purchased on the date of such disposition each such item which he retains for an amount equal to the basis allocated to such item under paragraph (3).

A rule similar to the rule of paragraph (4) shall apply in the case of any person whose basis in any bond or coupon is determined by reference to the basis of the person described in the preceding sentence.

"(c) RETENTION OF EXISTING LAW FOR STRIPPED BONDS PURCHASED BEFORE JULY 2, 1982.—If a bond issued at any time with interest coupons—

"(1) is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

"(2) is purchased after December 31, 1957, and before July 2, 1982, and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such bond by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as ordinary income to the extent that the fair market value (determined as of the time of the purchase) of the bond with coupons attached exceeds the purchase price. If this subsection and section 1271(a)(2)(A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then section 1271(a)(2)(A) shall apply with respect to that part of the gain to which this subsection does not apply.

"(d) SPECIAL RULES FOR TAX-EXEMPT OBLIGATIONS.—In the case of any tax-exempt obligation (as defined in section 1275(a)(3))—

"(1) subsections (a) and (b)(1) shall not apply,

"(2) the rules of subsection (b)(4) shall apply for purposes of subsection (c), and

"(3) subsection (c) shall be applied without regard to the requirement that the bond be purchased before July 2, 1982.

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BOND.—The term 'bond' means a bond, debenture, note, or certificate or other evidence of indebtedness.

"(2) STRIPPED BOND.—The term 'stripped bond' means a bond issued at any time with interest coupons where there is a separation in ownership between the bond and any coupon which has not yet become payable.

"(3) STRIPPED COUPON.—The term 'stripped coupon' means any coupon relating to a stripped bond.

"(4) STATED REDEMPTION PRICE AT MATURITY.—The term 'stated redemption price at maturity' has the meaning given such term by section 1273(a)(2).

"(5) COUPON.—The term 'coupon' includes any right to receive interest on a bond (whether or not evidenced by a coupon). This paragraph shall apply for purposes of subsection (c) only in the case of purchases after July 1, 1982.

"(6) PURCHASE.—The term 'purchase' has the meaning given such term by section 1272(d)(1).

"(f) REGULATION AUTHORITY.—The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, or other circumstances, the tax treatment under this section does not accurately reflect the income of the holder of a stripped coupon or stripped bond, or of the person disposing of such bond or coupon, as the case may be, for any period, such treatment shall be modified to require that the proper amount of income be included for such period.

"SEC. 1287. DENIAL OF CAPITAL GAIN TREATMENT FOR GAINS ON CERTAIN OBLIGATIONS NOT IN REGISTERED FORM.

"(a) IN GENERAL.—If any registration-required obligation is not in registered form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income (unless the issuance of such obligation was subject to tax under section 4701).

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) REGISTRATION-REQUIRED OBLIGATION.—The term 'registration-required obligation' has the meaning given to such term by section 163(f)(2) except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply.

"(2) REGISTERED FORM.—The term 'registered form' has the same meaning as when used in section 163(f).

"SEC. 1288. TREATMENT OF ORIGINAL ISSUE DISCOUNT ON TAX-EXEMPT OBLIGATIONS.

"(a) GENERAL RULE.—Original issue discount on any tax-exempt obligation shall be treated as accruing—

"(1) for purposes of section 163, in the manner provided by section 1272(a) (determined without regard to paragraph (6) thereof), and

"(2) for purposes of determining the adjusted basis of the holder, in the manner provided by section 1272(a) (determined with regard to paragraph (6) thereof).

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ORIGINAL ISSUE DISCOUNT.—The term 'original issue discount' has the meaning given to such term by section 1273(a) without regard to paragraph (3) thereof. In applying section 483 or 1274, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the applicable Federal rate to take into account the tax exemption for interest on the obligation.

"(2) TAX-EXEMPT OBLIGATION.—The term 'tax-exempt obligation' has the meaning given to such term by section 1275(a)(3).

"(3) SHORT-TERM OBLIGATIONS.—In applying this section to obligations with maturity of 1 year or less, rules similar to the rules of section 1283(b) shall apply."

(b) AMENDMENT OF SECTION 483.—Section 483 (relating to interest on certain deferred payments) is amended to read as follows:

"SEC. 483. INTEREST ON CERTAIN DEFERRED PAYMENTS.

"(a) AMOUNT CONSTITUTING INTEREST.—For purposes of this title, in the case of any payment—

"(1) under any contract for the sale or exchange of any property, and

"(2) to which this section applies,

there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment.

"(b) TOTAL UNSTATED INTEREST.—For purposes of this section, the term 'total unstated interest' means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of—

"(1) the sum of the payments to which this section applies which are due under the contract, over

"(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of the preceding sentence, the present value of a payment shall be determined under the rules of section 1274(b)(2) using a discount rate equal to 120 percent of the applicable Federal rate determined under section 1274(d).

"(c) PAYMENTS TO WHICH SUBSECTION (a) APPLIES.—

"(1) IN GENERAL.—Except as provided in subsection (d), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract—

"(A) under which some or all of the payments are due more than 1 year after the date of such sale or exchange, and

"(B) under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest.

"(2) TREATMENT OF OTHER DEBT INSTRUMENTS.—For purposes of this section, a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument shall be treated as due under the contract for the sale or exchange.

"(3) DEBT INSTRUMENT DEFINED.—For purposes of this subsection, the term 'debt instrument' has the meaning given such term by section 1275(a)(1).

"(d) EXCEPTIONS AND LIMITATIONS.—

"(1) COORDINATION WITH ORIGINAL ISSUE DISCOUNT RULES.—This section shall not apply to any debt instrument to which section 1272 applies.

"(2) SALES PRICES OF $3,000 OR LESS.—This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

"(3) CARRYING CHARGES.—In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

"(4) CERTAIN SALES OF PATENTS.—In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), this section shall not apply to any amount contingent on the productivity, use, or disposition of the property transferred.

"(e) MAXIMUM RATE OF INTEREST ON CERTAIN TRANSFERS OF LAND BETWEEN RELATED PARTIES.—

"(1) IN GENERAL.—In the case of any qualified sale, the discount rate used in determining the total unstated interest rate under subsection (b) shall not exceed 7 percent, compounded semiannually.

"(2) QUALIFIED SALE.—For purposes of this subsection, the term 'qualified sale' means any sale or exchange of land by an individual to a member of such individual's family (within the meaning of section 267(c)(4)).

"(3) $500,000 LIMITATION.—Paragraph (1) shall not apply to any qualified sale between individuals made during any calendar year to the extent that the sales price for such sale (when added to the aggregate sales price for prior qualified sales between such individuals during the calendar year) exceeds $500,000.

"(4) NONRESIDENT ALIEN INDIVIDUALS.—Paragraph (1) shall not apply to any sale or exchange if any party to such sale or exchange is a nonresident alien individual.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section including regulations providing for the application of this section in the case of—

"(1) any contract for the sale or exchange of property under which the liability for, or the amount or due date of, a payment cannot be determined at the time of the sale or exchange, or

"(2) any change in the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property.

"(g) CROSS REFERENCE.—

"For special rules in the case of the borrower under certain loans for personal use, see section 1275(b)."

(c) PENALTY FOR FAILURE TO MEET INFORMATION REQUIREMENTS.—

(1) IN GENERAL.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6706. ORIGINAL ISSUE DISCOUNT INFORMATION REQUIREMENTS.

"(a) FAILURE TO SHOW INFORMATION ON DEBT INSTRUMENT.—In the case of a failure to set forth on a debt instrument the information required to be set forth on such instrument under section 1275(c)(1), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the issuer shall pay a penalty of $50 for each instrument with respect to which such a failure exists.

"(b) FAILURE TO FURNISH INFORMATION TO SECRETARY.—Any issuer who fails to furnish information required under section 1275(c)(2) with respect to any issue of debt instruments on the date prescribed therefor (determined with regard to any extension of time for filing) shall pay a penalty equal to 1 percent of the aggregate issue price of such issue, unless it is shown that such failure is due to reasonable cause and not willful neglect. The amount of the penalty imposed under the preceding sentence with respect to any issue of debt instruments shall not exceed $50,000 for such issue.

"(c) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6706. Original issue discount information requirements."

SEC. 42. TECHNICAL AND CONFORMING AMENDMENTS RELATED TO ORIGINAL ISSUE DISCOUNT CHANGES.

(a) IN GENERAL.—

(1) Sections 1232, 1232A, and 1232B are hereby repealed.

(2) Clause (i) of section 103A(i)(2)(C) (defining yield on the issue) is amended by striking out "section 1232(b)(2)" and inserting in lieu thereof "sections 1273(b) and 1274".

(3) Subsection (e) of section 163 (relating to original issue discount) is amended to read as follows:

"(e) ORIGINAL ISSUE DISCOUNT.—

"(1) IN GENERAL.—In the case of any debt instrument issued after July 1, 1982, the portion of the original issue discount with respect to such debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) DEBT INSTRUMENT.—The term 'debt instrument' has the meaning given such term by section 1275(a)(1).

"(B) DAILY PORTIONS.—The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (6) thereof and without regard to section 1273(a)(3)).

"(C) SHORT-TERM OBLIGATIONS.—In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount on such obligation shall be deductible only when paid.

"(3) EXCEPTIONS.—This subsection shall not apply to any debt instrument described in—

"(A) subparagraph (D) of section 1272(a)(2) (relating to obligations issued by natural persons before March 2, 1984), and

"(B) subparagraph (E) of section 1272(a)(2) (relating to loans between natural persons).

"(4) CROSS REFERENCES.—

"For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

"For special rules in the case of the borrower under certain loans for personal use, see section 1275(b)."

(4) Paragraph (3) of section 165(j) (relating to denial of deductions for losses on certain obligations not in registered form) is amended by striking out "subsection (d) of section 1232" and inserting in lieu thereof "section 1287".

(5) Paragraph (1) of section 249(b) (relating to limitation on deduction of bond premium on repurchase) is amended by striking out "section 1232(b)" and inserting in lieu thereof "sections 1273(b) and 1274".

(6) Paragraph (1) of section 405(d) (relating to taxability of beneficiary of qualified bond purchase plan) is amended by striking out "section 1232 (relating to bonds and other evidences of indebtedness)" and inserting in lieu thereof "section 1271 (relating to treatment of amounts received on retirement or sale or exchange of debt instruments)".

(7) Paragraph (1) of section 409(b) (relating to income tax treatment of bonds) is amended by striking out "section 1232 (relating to bonds and other evidences of indebtedness)" and inserting in lieu thereof "section 1271 (relating to treatment of amounts received on retirement or sale or exchange of debt instruments)".

(8) Paragraph (3) of section 811(b) (relating to amortization of premium and accrual of discount), as amended by this Act, is amended by striking out "section 1232(b)" and inserting in lieu thereof "section 1273".

(9) Subparagraph (A) of section 871(a)(1) (relating to income other than capital gains) is amended by striking out "section 1232(b)" and inserting in lieu thereof "section 1273".

(10) Paragraph (1) of section 881(a) (relating to imposition of tax) is amended by striking out "section 1232(b)" and inserting in lieu thereof "section 1273".

(11) Subsection (b) of section 1037 (relating to application of section 1232) is amended—

(A) by striking out "section 1232(a)(2)(B)" in paragraph (1) and inserting in lieu thereof "section 1271(c)(2)",

(B) by striking out "section 1232" in paragraphs (1) and (2) and inserting in lieu thereof "subpart A of part V of subchapter P", and

(C) by striking out "SECTION 1232" in the subsection heading and inserting in lieu thereof "ORIGINAL ISSUE DISCOUNT RULES".

(12) Subsection (h) of section 1351 (relating to special rule for evidences of indebtedness) is amended by striking out "section 1232(a)(2)" and inserting in lieu thereof "section 1273(a)".

(13) Subsection (b) of section 1441 (relating to withholding of tax on nonresident alien) is amended by striking out "section 1232(b)" and inserting in lieu thereof "section 1273".

(14) Paragraph (6) of section 6049(d) (relating to treatment of original issue discount) is amended—

(A) by striking out "section 1232A" each place it appears in subparagraph (A) and inserting in lieu thereof "section 1272", and

(B) by striking out "section 1232(b)(1)" and inserting in lieu thereof "section 1273(a)".

(b) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"PART V. Special rules for bonds and other debt instruments."

(2) The table of sections for part IV of subchapter P of chapter 1 is amended by striking out the items relating to sections 1232, 1232A, and 1232B.

SEC. 43. TECHNICAL AND CONFORMING AMENDMENTS RELATED TO TREATMENT OF MARKET DISCOUNT AND ACQUISITION DISCOUNT.

(a) DEFINITION OF SUBSTITUTED BASIS PROPERTY; ETC.—

(1) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end thereof the following new paragraphs:

"(42) SUBSTITUTED BASIS PROPERTY.—The term 'substituted basis property' means property which is—

"(A) transferred basis property, or

"(B) exchanged basis property.

"(43) TRANSFERRED BASIS PROPERTY.—The term 'transferred basis property' means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

"(44) EXCHANGED BASIS PROPERTY.—The term 'exchanged basis property' means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

"(45) NONRECOGNITION TRANSACTION.—The term 'nonrecognition transaction' means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A."

(2) TECHNICAL AMENDMENT.—Subsection (b) of section 1016 is amended by striking out the last sentence.

(b) ELECTIONS MADE IN MANNER PRESCRIBED BY SECRETARY.—Section 7805 (relating to rules and regulations) is amended by adding at the end thereof the following new subsection:

"(d) MANNER OF MAKING ELECTIONS PRESCRIBED BY SECRETARY.—Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall by regulations or forms prescribe."

(c) OTHER TECHNICAL AMENDMENTS.—

(1) Paragraph (12) of section 341(e) (related to nonapplication of section 1254(a)) is amended by striking out "and 1254(a)" and inserting in lieu thereof "1254(a), and 1276(a)".

(2) Paragraph (2) of section 453B(d) (relating to liquidations to which section 337 applies) is amended by striking out "or 1254(a)" and inserting in lieu thereof "1254(a), or 1276(a)".

(3) Subsection (c) of section 751 (defining unrealized receivables) is amended by adding at the end thereof the following new sentence: "For purposes of this section and sections 731, 736, and 741, such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership."

SEC. 44. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle shall apply to taxable years ending after the date of the enactment of this Act.

(b) TREATMENT OF DEBT INSTRUMENTS RECEIVED IN EXCHANGE FOR PROPERTY.—

(1) IN GENERAL.—

(A) Except as otherwise provided in this subsection, section 1274 of the Internal Revenue Code of 1954 (as added by section 41) and the amendment made by section 41(b) (relating to amendment of section 483) shall apply to sales or exchanges after December 31, 1984.

(B) Section 1274 of such Code and the amendment made by section 41(b) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

(2) REVISION OF SECTION 482 REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall modify the safe harbor interest rates applicable under the regulations prescribed under section 482 of the Internal Revenue Code of 1954 so that such rates are consistent with the rates applicable under section 483 of such Code by reason of the amendments made by section 41.

(3) CLARIFICATION OF INTEREST ACCRUAL; FAIR MARKET VALUE RULE IN CASE OF POTENTIALLY ABUSIVE SITUATIONS.—

(A) IN GENERAL.—

(i) CLARIFICATION OF INTEREST ACCRUAL.—In the case of any sale or exchange—

(I) after March 1, 1984, and before January 1, 1985, nothing in section 483 of the Internal Revenue Code of 1954 shall permit any interest to be deductible before the period to which such interest is properly allocable, or

(II) after June 8, 1984, and before January 1, 1985, notwithstanding section 483 of the Internal Revenue Code of 1954 or any other provision of law, no interest shall be deductible before the period to which such interest is properly allocable.

(ii) FAIR MARKET RULE.—In the case of any sale or exchange after March 1, 1984, and before January 1, 1985, such section 483 shall be treated as including provisions similar to the provisions of section 1274(b)(3) of such Code (as added by section 41).

(B) Exception for binding contracts.—Subparagraph (A) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

(C) Interest accrual rule not to apply where substantially equal annual payments.—Clause (i) of subparagraph (A) shall not apply to any debt instrument with substantially equal annual payments.

(c) Market Discount Rules.—

(1) Ordinary income treatment.—Section 1276 of the Internal Revenue Code of 1954 (as added by section 41) shall apply to obligations issued after the date of the enactment of this Act in taxable years ending after such date.

(2) Interest deferral rules.—Section 1277 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act in taxable years ending after such date.

(d) Rules Relating to Discount on Short-Term Obligations.—Subpart C of part V of subchapter P of chapter 1 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act.

(e) 5-Year Spread of Adjustments Required by Reason of Accrual of Discount on Certain Short-Term Obligations.—

(1) Election to have section 1281 apply to all obligations held during taxable year.—A taxpayer may elect for his first taxable year ending after the date of the enactment of this Act to have section 1281 of the Internal Revenue Code of 1954 apply to all short-term obligations described in subsection (b) of such section which were held by the taxpayer at any time during such first taxable year.

(2) 5-year spread.—

(A) In general.—In the case of any taxpayer who makes an election under paragraph (1)—

(i) the provisions of section 1281 of the Internal Revenue Code of 1954 (as added by section 41) shall be treated as a change in the method of accounting of the taxpayer,

(ii) such change shall be treated as having been made with the consent of the Secretary, and

(iii) the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income (hereinafter in this paragraph referred to as the "net adjustments") shall be taken into account during the spread period with the amount taken into account in each taxable year in such period determined under subparagraph (B).

(B) Amount taken into account during each year of spread period.—

(i) First year.—The amount taken into account for the first taxable year in the spread period shall be the sum of—

(I) one-fifth of the net adjustments, and

(II) the excess (if any) of—

(a) the cash basis income over the accrual basis income, over

(b) one-fifth of the net adjustments.

(ii) For subsequent years in spread period.—The amount taken into account in the second or any succeeding taxable year in the spread period shall be the sum of—

(I) the portion of the net adjustments not taken into account in the preceding taxable year of the spread period divided by the number of remaining taxable years in the spread period (including the year for which the determination is being made), and

(II) the excess (if any) of—

(a) the excess of the cash basis income over the accrual basis income, over

(b) One-fifth of the net adjustments, multiplied by 5 minus the number of years remaining in the spread period (not including the current year).

The excess described in subparagraph (B)(ii)(II)(a) shall be reduced by any amount taken into account under this subclause or clause (i)(II) in any prior year.

(C) Spread period.—For purposes of this paragraph, the term "spread period" means the period consisting of the 5 taxable years beginning with the year for which the election is made under paragraph (1).

(D) Cash basis income.—For purposes of this paragraph, the term "cash basis income" means for any taxable year the aggregate amount which would be includible in the gross income of the taxpayer with respect to short-term obligations described in subsection (b) of section 1281 of such Code if the provisions of section 1281 of such Code did not apply to such taxable year and all prior taxable years within the spread period.

(E) Accrual basis income.—For purposes of this paragraph, the term "accrual basis income" means for any taxable year the aggregate amount includible in gross income under section 1281(a) of such Code for such a taxable year and all prior taxable years within the spread period.

(f) Treatment of Original Issue Discount on Tax-Exempt Obligations.—Section 1288 of such Code (as added by section 41) shall apply to obligations issued after September 3, 1982, and acquired after March 1, 1984.

(g) Repeal of Capital Asset Requirement.—Section 1272 of such Code (as added by section 41) shall not apply to any obligation issued before December 31, 1984, which is not a capital asset in the hands of the taxpayer.

(h) Reporting Requirements.—Section 1275(c) of such Code (as added by section 41) and the amendments made by section 41(c) shall take effect on the day 30 days after the date of the enactment of this Act.

(i) Other Miscellaneous Changes.—

(1) Accrual period.—In the case of any obligation issued after July 1, 1982, and before January 1, 1985, the accrual period, for purposes of section 1272(a) of the Internal Revenue Code of 1954 (as amended by section 41(a)), shall be a 1-year period (or shorter period to maturity) beginning on the day in the calendar year which corresponds to the date of original issue of the obligation.

(2) Change in reduction for purchase after original issue.—Section 1272(a)(6) of such Code (as so amended) shall not apply to any purchase on or before the date of the enactment of this Act, and the rules of section 1232A(a)(6) of such Code (as in effect on the day before the date of the enactment of this Act) shall continue to apply to such purchase.

(j) Clarification That Prior Effective Date Rules Not Affected.—Nothing in the amendment made by section 41(a) shall affect the application of any effective date provision (including any transitional rule) for any provision which was a predecessor to any provision contained in part V of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (as added by section 41).

Subtitle D—Corporate Provisions

Part I—Limitations on Dividends Received Deduction

SEC. 51. DIVIDENDS RECEIVED DEDUCTION REDUCED WHERE PORTFOLIO STOCK IS DEBT FINANCED.

(a) General Rule.—Part VIII of subchapter B of chapter 1 (relating to special deductions for corporations) is amended by inserting after section 246 the following new section:

"SEC. 246A. DIVIDENDS RECEIVED DEDUCTION REDUCED WHERE PORTFOLIO STOCK IS DEBT FINANCED.

"(a) General Rule.—In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243, 244, or 245 a percentage equal to the product of—

"(1) 85 percent, and

"(2) 100 percent minus the average indebtedness percentage.

"(b) Section Not To Apply to Dividends for Which 100 Percent Dividends Received Deduction Allowable.—Subsection (a) shall not apply to—

"(1) qualifying dividends (as defined in section 243(b) without regard to section 243(c)(4)), and

"(2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

"(c) Debt Financed Portfolio Stock.—For purposes of this section—

"(1) In general.—The term 'debt financed portfolio stock' means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

"(2) Portfolio stock.—The term 'portfolio stock' means any stock of a corporation unless—

"(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

"(i) possessing at least 50 percent of the total voting power of the stock of such corporation, and

"(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

"(B) as of the beginning of the ex-dividend date—

"(i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if '20 percent' were substituted for '50 percent' each place it appears in such subparagraph, and

"(ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

"(3) Special rule for stock in a bank or bank holding company.—

"(A) In general.—If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

"(B) Definitions.—For purposes of subparagraph (A)—

"(i) Bank.—The term 'bank' has the meaning given such term by section 581.

"(ii) Bank holding company.—The term 'bank holding company' means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

"(4) Treatment of certain preferred stock.—For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

"(d) Average Indebtedness Percentage.—For purposes of this section—

"(1) In general.—Except as provided in paragraph (2), the term 'average indebted-

ness percentage' means the percentage obtained by dividing—

"(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

"(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

"(2) Special rule where stock not held throughout base period.—In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

"(3) Portfolio indebtedness.—

"(A) In general.—The term 'portfolio indebtedness' means any indebtedness directly attributable to investment in the portfolio stock.

"(B) Certain amounts received from short sale treated as indebtedness.—For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

"(4) Base period.—The term 'base period' means, with respect to any dividend, the shorter of—

"(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

"(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

"(e) Reduction in Dividends Received Deduction Not To Exceed Allocable Interest.—Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243, 244, or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

"(f) Regulations.—The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend."

(b) Clerical Amendment.—The table of sections for part VIII of subchapter B of chapter 1 is amended by inserting after the item relating to section 246 the following new item:

"Sec. 246A. Dividends received deduction reduced where portfolio stock is debt financed."

(c) Effective Date.—The amendments made by this section shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act in taxable years ending after such date.

SEC. 52. TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES.

(a) Increase in Required Amount of Dividends.—Paragraph (1) of section 854(b) (relating to other dividends) is amended to read as follows:

"(1) Amount treated as dividend.—

"(A) Deduction under section 243.—In any case in which—

"(i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and

"(ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend,

then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend designated under this subparagraph by the regulated investment company.

"(B) Exclusion under section 116.—If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, rules similar to the rules of subparagraph (A) shall apply.

"(C) Limitation.—The aggregate amount which may be designated as dividends under subparagraph (A) or (B) shall not exceed the aggregate dividends received by the company for the taxable year."

(b) Certain Dividends Not Taken Into Account for Purposes of Computing Deduction Under Section 243.—Subsection (b) of section 854 is amended by adding at the end thereof the following new paragraph:

"(4) Special rule for computing deduction under section 243.—For purposes of subparagraph (A) of paragraph (1), an amount shall be treated as a dividend for the purpose of paragraph (1) only if a deduction would have been allowable under section 243 to the regulated investment company determined—

"(A) as if section 243 applied to dividends received by a regulated investment company,

"(B) after the application of section 246 (but without regard to subsection (b) thereof), and

"(C) after the application of section 246A."

(c) Gross Income Includes Net Short-Term Capital Gain.—Paragraph (3)(A) of section 854(b) is amended to read as follows:

"(A) In the case of 1 or more sales or other dispositions of stock and securities, the term 'gross income' includes only the excess of—

"(i) the net short-term capital gain from such sales or dispositions, over

"(ii) the net long-term capital loss from such sales or dispositions."

(d) Effective Date.—The amendments made by this section shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act.

PART II—TREATMENT OF CERTAIN DISTRIBUTIONS

SEC. 52. CORPORATE SHAREHOLDER'S BASIS IN STOCK REDUCED BY NONTAXED PORTION OF EXTRAORDINARY DIVIDENDS.

(a) General Rule.—Part IV of subchapter O of chapter 1 (relating to special rules for gain or loss on disposition of property) is amended by redesignating section 1059 as section 1060 and by inserting after section 1058 the following new section:

"SEC. 1059. CORPORATE SHAREHOLDER'S BASIS IN STOCK REDUCED BY NONTAXED PORTION OF EXTRAORDINARY DIVIDENDS.

"(a) General Rule.—If any corporation—

"(1) receives an extraordinary dividend with respect to any share of stock, and

"(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year,

the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock.

"(b) Nontaxed Portion.—For purposes of this section—

"(1) In general.—The nontaxed portion of any dividend is the excess (if any) of—

"(A) the amount of such dividend, over

"(B) the taxable portion of such dividend.

"(2) Taxable portion.—The taxable portion of any dividend is—

"(A) the portion of such dividend includible in gross income, reduced by

"(B) the amount of any deduction allowable with respect to such dividend under section 243, 244, or 245.

"(c) Extraordinary Dividend Defined.—For purposes of this section—

"(1) In general.—The term 'extraordinary dividend' means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such share of stock (determined without regard to this section).

"(2) Threshold percentage.—The term 'threshold percentage' means—

"(A) 5 percent in the case of stock which is preferred as to dividends, and

"(B) 10 percent in the case of any other stock.

"(3) Aggregation of dividends.—

"(A) Aggregation within 85-day period.—All dividends—

"(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

"(ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

"(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis.—All dividends—

"(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

"(ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer's adjusted basis in such stock (determined without regard to this section).

"(C) Substituted basis transactions.—In the case of any stock, a person is described in this subparagraph if—

"(i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or

"(ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

"(d) Special Rules.—For purposes of this section—

"(1) Time for reduction.—Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution.

"(2) Distributions in kind.—To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

"(3) Determination of holding period.—For purposes of determining the holding period of stock under subsection (a)(2), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that '1 year' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

"(4) Ex-dividend date.—The term 'ex-dividend date' means the date on which the share of stock becomes ex-dividend.

"(5) Extension to certain property distributions.—In the case of any distribution of property (other than cash) to which section 301 applies—

"(A) such distribution shall be treated as a dividend without regard to whether the corporation has earnings and profits, and

"(B) the amount so treated shall be reduced by the amount of any reduction in basis under section 301(c)(2) by reason of such distribution.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions."

(b) Holding Periods.—

(1) 45-day holding period.—Subsection (c) of section 246(c) (relating to the exclusion of certain dividends) is amended by striking out "15" each place it appears and inserting in lieu thereof "45".

(2) Rules for computing holding periods.—Subsection (c) of section 246 (relating to the exclusion of certain dividends) is amended by adding at the end thereof the following new paragraphs:

"(4) Holding period reduced for periods where risk of loss diminished.—The holding periods determined under paragraph (3) shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such periods) in which—

"(A) the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities,

"(B) the taxpayer is the grantor of an option to buy substantially identical stock or securities, or

"(C) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

The preceding sentence shall not apply in the case of any qualified covered call (as defined in section 1092(c)(4) but without regard to the requirement that gain or loss with respect to the option not be ordinary income or loss)."

(3) Subparagraph (B) of section 246(c)(1) is amended to read as follows:

"(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property."

(4) Paragraph (3) of section 246(c) is amended by striking out the last sentence.

(c) Application of Related Person Rules to Section 246(c) and Certain Other Provisions.—Section 7701, is amended by redesignating subsection (f) as (g) and by inserting after subsection (e) the following new subsection:

"(f) Use of Related Persons or Pass-Thru Entities.—(The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

"(1) the linking of borrowing to investment, or

"(2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries."

(d) Conforming Amendments.—

(1) The table of sections for part IV of subchapter O of chapter 1 is amended by striking out the item relating to section 1059 and inserting in lieu thereof the following new items:

"Sec. 1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends.

"Sec. 1060. Cross references."

(2) Paragraph (1) of section 246(b) (relating to limitation on aggregate amount of deduction) is amended by striking out "and without regard" and inserting in lieu thereof "without regard to any adjustment under section 1059, and without regard".

(3) Section 1016(a) (relating to adjustments to basis) is amended by striking out "and" at the end of paragraph (24), by striking out the period at the end of paragraph (25) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(26) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends)."

(e) Effective Date.—

(1) In general.—Except as provided in this subsection, the amendments made by this section shall apply to distributions after March 1, 1984, in taxable years ending after such date.

(2) Subsection (b).—The amendments made by subsection (b) shall apply to stock acquired after the date of the enactment of this Act in taxable years ending after such date.

(3) Related person provisions.—The amendment made by subsection (c) shall take effect on the date of the enactment of this Act.

SEC. 34. DISTRIBUTIONS OF APPRECIATED PROPERTY BY CORPORATIONS.

(a) Gain Recognized on Distributions of Appreciated Property.—

(1) In general.—Paragraph (1) of section 311(d) (relating to appreciated property used to redeem stock) is amended to read as follows:

"(1) In general.—If—

"(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

"(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. This subsection shall be applied after the application of subsections (b) and (c)."

(2) Exceptions.—

(A) Paragraph (2) of section 311(d) is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) a distribution which is made with respect to qualified stock if—

"(i) section 302(b)(4) applies to such distribution, or

"(ii) such distribution is a qualified dividend;".

(B) Paragraph (2) of section 311(d) is amended by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively.

(C) Subsection (e) of section 311 is amended by adding at the end thereof the following new paragraph:

"(3) Qualified dividend.—The term 'qualified dividend' means any distribution of property to a shareholder other than a corporation if—

"(A) such distribution is a dividend,

"(B) such property was used by the distributing corporation in the active conduct of a qualified business (as defined in paragraph (2)), and

"(C) such property is not property described in paragraph (1) or (4) of section 1221."

(3) Clerical amendment.—The subsection heading of subsection (d) of section 311 is amended to read as follows:

"(d) Distributions of Appreciated Property.—".

(b) Holding Period of Corporate Distributee of Appreciated Property.—Section 301 (relating to distributions of property) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Special Rule for Holding Period of Appreciated Property Distributed to Corporation.—For purposes of this subtitle—

"(1) Where gain recognized under section 311(d).—If—

"(A) property is distributed to a corporation, and

"(B) gain is recognized on such distribution under paragraph (1) of section 311(d),

then such corporation's holding period in the distributed property shall begin on the date of such distribution.

"(2) Where gain not recognized under section 311(d).—If—

"(A) property is distributed to a corporation,

"(B) gain is not recognized on such distribution under paragraph (1) of section 311(d), and

"(C) the basis of such property in the hands of such corporation is determined under subsection (d)(2)(B),

then (except for purposes of section 1248(f)(2)) such corporation shall not be treated as holding the distributed property during any period before the date on which such corporation's holding period in the stock began."

(c) Cross Reference.—Paragraph (13) of section 1223 (relating to holding period of property) is amended to read as follows:

"(13) Cross references.—

"(A) For special holding period provision relating to certain partnership distributions, see section 735(b).

"(B) For special holding period provision relating to distributions of appreciated property to corporations, see section 301(e)."

(d) Effective Dates.—

(1) Subsection (a).—Except as otherwise provided in this subsection, the amendments made by subsection (a) shall apply to distributions declared on or after June 14, 1984, in taxable years ending after such date.

(2) Subsection (b).—The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act in taxable years ending after such date.

(3) Exception for distributions before January 1, 1985, to 80-percent corporate shareholders.—

(A) In general.—The amendments made by subsection (a) shall not apply to any distribution before January 1, 1985, to an 80-percent corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) of the Internal Revenue Code of 1954.

(B) 80-PERCENT CORPORATE SHAREHOLDER.—The term "80-percent corporate shareholder" means, with respect to any distribution, any corporation which owns—

(i) stock in the corporation making the distribution possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and

(ii) at least 80 percent of the total number of shares of all other classes of stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends).

(C) SPECIAL RULE FOR AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph and paragraph (4), all members of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1954) which file a consolidated return for the taxable year which includes the date of the distribution shall be treated as 1 corporation.

(4) EXCEPTION FOR CERTAIN DISTRIBUTIONS WHERE TENDER OFFER COMMENCED ON MAY 23, 1984.—

(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution made before September 1, 1986, if—

(i) such distribution consists of qualified stock held (directly or indirectly) on June 15, 1984, by the distributing corporation,

(ii) control of the distributing corporation (as defined in section 368(c) of the Internal Revenue Code of 1954) is acquired other than in a tax-free transaction after January 1, 1984, but before January 1, 1985,

(iii) a tender offer for the shares of the distributing corporation was commenced on May 23, 1984, and was amended on May 24, 1984, and

(iv) the distributing corporation and the distributee corporation are members of the same affiliated group (as defined in section 1504 of such Code) which filed a consolidated return for the taxable year which includes the date of the distribution.

If the common parent of any affiliated group filing a consolidated return meets the requirements of clauses (ii) and (iii), each other member of such group shall be treated as meeting such requirements.

(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term "qualified stock" means any stock in a corporation which on June 15, 1984, was a member of the same affiliated group as the distributing corporation and which filed a consolidated return with the distributing corporation for the taxable year which included June 15, 1984.

(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to distributions before February 1, 1986, if—

(i) the distribution consists of property held on March 7, 1984 (or property acquired thereafter in the ordinary course of a trade or business) by—

(I) the controlled corporation, or

(II) any subsidiary controlled corporation,

(ii) a group of 1 or more shareholders (acting in concert)—

(I) acquired, during the 1-year period ending on February 1, 1984, at least 10 percent of the outstanding stock of the controlled corporation,

(II) held at least 10 percent of the outstanding stock of the common parent on February 1, 1984, and

(III) submitted a proposal for distributions of interests in a royalty trust from the common parent or the controlled corporation, and

(iii) the common parent acquired control of the controlled corporation during the 1-year period ending on February 1, 1984.

(B) DEFINITIONS.—For purposes of this paragraph—

(i) The term "common parent" has the meaning given such term by section 1504(a) of the Internal Revenue Code of 1954.

(ii) The term "controlled corporation" means a corporation with respect to which 50 percent or more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

(iii) The term "subsidiary controlled corporation" means any corporation with respect to which the controlled corporation has control (within the meaning of section 368(c) of such Code) on March 7, 1984.

(6) EXCEPTION FOR CERTAIN DISTRIBUTION OF PARTNERSHIP INTERESTS.—The amendments made by this section shall not apply to any distribution before February 1, 1986, of an interest in a partnership the interests of which were being traded on a national securities exchange on March 7, 1984, if—

(A) such interest was owned by the distributing corporation (or any member of an affiliated group within the meaning of section 1504(a) of such Code of which the distributing corporation was a member) on March 7, 1984,

(B) the distributing corporation (or any such affiliated member) owned more than 80 percent of the interests in such partnership on March 7, 1984, and

(C) more than 10 percent of the interests in such partnership was offered for sale to the public during the 1-year period ending on March 7, 1984.

SEC. 55. EXTENSION OF HOLDING PERIOD FOR LOSSES ATTRIBUTABLE TO CAPITAL GAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES OR REAL ESTATE INVESTMENT TRUSTS.

(a) REGULATED INVESTMENT COMPANIES.—

(1) IN GENERAL.—Subparagraph (A) of section 852(b)(4) (relating to loss attributable to capital gain dividend) is amended to read as follows:

"(A) LOSS ATTRIBUTABLE TO CAPITAL GAIN DIVIDEND.—If—

"(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain, and

"(ii) such share is held by the taxpayer for 6 months or less,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss."

(2) DETERMINATION OF HOLDING PERIODS.—Subparagraph (C) of section 852(b)(4) is amended to read as follows:

"(C) DETERMINATION OF HOLDING PERIODS.—For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock; except that for the number of days specified in subparagraph (B) of section 246(c)(3) there shall be substituted—

"(i) '6 months' for purposes of subparagraph (A), and

"(ii) '30 days' for purposes of subparagraph (B)."

(3) EXCEPTION FOR LOSSES INCURRED UNDER PERIODIC LIQUIDATION PLANS.—Paragraph (4) of section 852(b) is amended by adding at the end thereof the following new subparagraph:

"(D) LOSSES INCURRED UNDER A PERIODIC LIQUIDATION PLAN.—To the extent provided in regulations, subparagraph (A) shall not apply to losses incurred on the sale or exchange of shares of stock in a regulated investment company pursuant to a plan which provides for the periodic liquidation of such shares."

(b) REAL ESTATE INVESTMENT TRUST.—Paragraph (7) of section 857(b) (relating to loss on sale or exchange of stock in real estate investment trust) is amended to read as follows:

"(7) LOSS ON SALE OR EXCHANGE OF STOCK HELD 6 MONTHS OR LESS.—

"(A) IN GENERAL.—If—

"(i) subparagraph (B) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

"(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

"(B) DETERMINATION OF HOLDING PERIOD.—For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that '6 months' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

"(C) EXCEPTION FOR LOSSES INCURRED UNDER PERIODIC LIQUIDATION PLANS.—To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses incurred with respect to shares of stock and beneficial interests with respect to which the taxpayer's holding period begins after the date of the enactment of this Act.

PART III—MISCELLANEOUS PROVISIONS

SEC. 56. DENIAL OF DEDUCTIONS FOR CERTAIN EXPENSES INCURRED IN CONNECTION WITH SHORT SALES.

(a) SHORT SALE PAYMENTS ATTRIBUTABLE TO DIVIDENDS.—Section 263 (relating to capital expenditures) is amended by adding at the end thereof the following new subsection:

"(h) PAYMENTS IN LIEU OF DIVIDENDS IN CONNECTION WITH SHORT SALES.—

"(1) IN GENERAL.—If—

"(A) a taxpayer makes any payment with respect to any stock used by such taxpayer in a short sale and such payment is in lieu of a dividend payment on such stock, and

"(B) the closing of such short sale occurs on or before the 45th day after the date of such short sale,

then no deduction shall be allowed for such payment. The basis of the stock used to close the short sale shall be increased by the amount not allowed as a deduction by reason of the preceding sentence.

"(2) LONGER PERIOD IN CASE OF EXTRAORDINARY DIVIDENDS.—If the payment described in paragraph (1)(A) is in respect of an extraordinary dividend, paragraph (1)(B) shall be applied by substituting 'the day 1 year after the date of such short sale' for 'the 45th day after the date of such short sale'.

"(3) EXTRAORDINARY DIVIDEND.—For purposes of this subsection, the term 'extraordinary dividend' has the meaning given to such term by section 1059(c); except that such section shall be applied by treating the amount realized by the taxpayer in the short sale as his adjusted basis in the stock.

"(4) Special rule where risk of loss diminished.—The running of any period of time applicable under paragraph (1)(B) (as modified by paragraph (2)) shall be suspended during any period in which—

"(A) the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or

"(B) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

"(5) Deduction allowable to extent of ordinary income from amounts paid by lending broker for use of collateral.—

"(A) In general.—Paragraph (1) shall apply only to the extent that the payments or distributions with respect to any short sale exceed the amount which—

"(i) is treated as ordinary income by the taxpayer, and

"(ii) is received by the taxpayer as compensation for the use of any collateral with respect to any stock used in such short sale.

"(B) Exception not to apply to extraordinary dividends.—Subparagraph (A) shall not apply if one or more payments or distributions is in respect of an extraordinary dividend.

"(6) Application of this subsection with subsection (g).—In the case of any short sale, this subsection shall be applied before subsection (g)."

(b) Investment Interest To Include Certain Expenses Involving Short Sales.—Subparagraph (D) of section 163(d)(3) (defining investment interest) is amended to read as follows:

"(D) Investment interest.—

"(i) In general.—The term 'investment interest' means interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.

"(ii) Certain expenses incurred in connection with short sales.—For purposes of clause (i), the term 'interest' includes any amount allowable as a deduction in connection with personal property used in a short sale."

(c) Application of Section 265(2) to Short Sales.—Section 265 (relating to denial of deduction of interest relating to tax-exempt income) is amended by adding at the end thereof the following new paragraph:

"(5) Special rules for application of paragraph (2) in the case of short sales.—For purposes of paragraph (2)—

"(A) In general.—The term 'interest' includes any amount paid or incurred—

"(i) by any person making a short sale in connection with personal property used in such short sale, or

"(ii) by any other person for the use of any collateral with respect to such short sale.

"(B) Exception where no return on cash collateral.—If—

"(i) the taxpayer provides cash as collateral for any short sale, and

"(ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale."

(d) Effective Date.—The amendments made by this section shall apply to short sales after the date of the enactment of this Act in taxable years ending after such date.

SEC. 57. NONRECOGNITION OF GAIN OR LOSS BY CORPORATION ON OPTIONS WITH RESPECT TO ITS STOCK.

(a) General Rule.—Subsection (a) of section 1032 (relating to exchange of stock of property) is amended by adding at the end thereof the following new sentence: "No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to options acquired or lapsed after the date of the enactment of this Act in taxable years ending after such date.

SEC. 58. AMENDMENTS TO ACCUMULATED EARNINGS TAX.

(a) Clarification That Tax Applies to Corporations Which Are Not Closely Held.—Section 532 (relating to corporations subject to accumulated earnings tax) is amended by adding at the end thereof the following new subsection:

"(c) Application Determined Without Regard to Number of Shareholders.—The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation."

(b) Treatment of Capital Gains and Losses.—Subsection (b) of section 535 (defining accumulated taxable income) is amended by striking out paragraphs (5), (6), and (7) and inserting in lieu thereof the following:

"(5) Capital losses.—

"(A) In general.—Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)).

"(B) Recapture of previous deductions for capital gains.—The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of—

"(i) the nonrecaptured capital gains deductions, or

"(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

"(C) Nonrecaptured capital gains deductions.—For purposes of subparagraph (B), the term 'nonrecaptured capital gains deductions' means the excess of—

"(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after the date of the enactment of the Tax Reform Act of 1984, over

"(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

"(6) Net capital gains.—

"(A) In general.—There shall be allowed as a deduction—

"(i) the net capital gain for the taxable year (determined with the application of paragraph (7)), reduced by

"(ii) the taxes attributable to such net capital gain.

"(B) Attributable taxes.—For purposes of subparagraph (A), the taxes attributable to the net capital gain shall be an amount equal to the difference between—

"(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

"(ii) such taxes computed for such year without including in taxable income the net capital gain for the taxable year (determined without the application of paragraph (7)).

"(7) Capital loss carryovers.—

"(A) Unlimited carryforward.—The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

"(B) Section 1212 inapplicable.—No allowance shall be made for the capital loss carryback or carryforward provided in section 1212.

"(8) Special rules for mere holding or investment companies.—In the case of a mere holding or investment company—

"(A) Capital loss deduction, etc., not allowed.—Paragraphs (5) and (7)(A) shall not apply.

"(B) Deduction for certain offsets.—There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B)).

"(C) Earnings and profits.—For purposes of subchapter C, the accumulated earnings and profits at any time shall not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after the date of the enactment of the Tax Reform Act of 1984."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 59. REPEAL OF STOCK FOR DEBT EXCEPTIONS FOR PURPOSES OF DETERMINING INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) General Rule.—Subsection (e) of section 108 (relating to income from discharge of indebtedness) is amended by adding at the end thereof the following new paragraph:

"(10) Indebtedness satisfied by corporation's stock.—

"(A) In general.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.

"(B) Exception for title 11 cases and insolvent debtors.—Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent."

(b) Exception for Certain Workouts.—

(1) In general.—Paragraph (10) of section 108(e) (as added by subsection (a)) is amended by adding at the end thereof the following new subparagraph:

"(C) Exception for transfers in certain workouts.—

"(i) In general.—Subparagraph (A) shall not apply to any transfer of stock in a qualified workout.

"(ii) Qualified workout.—For purposes of clause (i), the term 'qualified workout' means any plan under which stock is transferred to creditors in satisfaction of indebtedness if—

"(I) because of cash flow and credit problems, the corporation making such transfer will have trouble in meeting liabilities coming due during the next 12 months to such an extent that there is a substantial threat of involuntary proceedings relating to insolvency or bankruptcy,

"(II) such corporation in any report to its shareholders for the period during which such transfer occurs includes a statement that such corporation believes it meets the requirement of subclause (I) and that it is availing itself of the workout provisions of this subparagraph,

"(III) the holders of more than 50 percent of the total indebtedness of the corporation approve such plan, and

"(IV) at least 25 percent of the total indebtedness of the corporation is extinguished by transfers pursuant to such plan."

(2) Effective date.—The amendment made by paragraph (1) shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976.

(b) Effective Date.—

(1) In general.—Except as otherwise provided in this subsection, the amendment made by subsection (a) shall apply to transfers after the date of the enactment of this Act in taxable years ending after such date.

(2) Transitional rule.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

(3) Certain transfers to controlling shareholder.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

(4) Certain transfers pursuant to debt restructure agreement.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984.

SEC. 60. AFFILIATED GROUP DEFINED.

(a) In General.—Subsection (a) of section 1504 (defining affiliated group) is amended to read as follows:

"(a) Affiliated Group Defined.—For purposes of this subtitle—

"(1) In general.—The term 'affiliated group' means—

"(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

"(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

"(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

"(2) 80-percent voting and value test.—The ownership of stock of any corporation meets the requirements of this paragraph if it—

"(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

"(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

"(3) 5 years must elapse before reconsolidation.—

"(A) In general.—If—

"(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and

"(ii) such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

"(B) Secretary may waive application of subparagraph (A).—The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

"(4) Stock not to include certain preferred stock.—For purposes of this subsection, the term 'stock' does not include any stock which—

"(A) is not entitled to vote,

"(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

"(C) has redemption and liquidation rights which do not exceed the paid-in capital or par value represented by such stock (except for a reasonable redemption premium in excess of such paid-in capital or par value), and

"(D) is not convertible into another class of stock.

"(5) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

"(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

"(B) which treat options to acquire or sell stock as having been exercised,

"(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

"(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

"(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

"(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value."

(b) Effective Date.—

(1) In general.—Except as otherwise provided in this subsection, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

(2) Special rule for corporations affiliated on June 22, 1984.—In the case of a corporation which on June 22, 1984, is a member of an affiliated group which files a consolidated return for such corporation's taxable year which includes June 22, 1984, for purposes of determining whether such corporation continues to be a member of such group for taxable years beginning before January 1, 1988, the amendment made by subsection (a) shall not apply.

(3) Special rule not to apply to sell-downs after June 22, 1984. If—

(A) the requirements of subsection (b)(2) are satisfied with respect to a corporation,

(B) more than a de minimis amount of the stock of such corporation is sold or exchanged (including in a redemption), or issued (other than in the ordinary course of business) after June 22, 1984, and

(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance, then the amendments made by subsection (a) shall apply for purposes of determining whether such corporation continues to be a member of such group.

(4) Exception for certain sell-downs.—Subsection (b)(2) (and not subsection (b)(3)) will apply to a corporation if such corporation issues or sells stock after June 22, 1984, pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984, but only if the requirements of the amendment made by subsection (a) (substituting "more than 50 percent" for "at least 80 percent" in paragraph (2)(B) of section 1504(a) of the Internal Revenue Code of 1954) are satisfied immediately after such issuance or sale and at all times thereafter until the first day of the first taxable year beginning after December 31, 1987.

(5) Native corporations.—The amendments made by subsection (a) shall not apply to any Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) during any taxable year beginning before 1992 or any part thereof in which such Corporation is subject to the provisions of section 7 (h)(1) of such Act (43 U.S.C. 1606 (h)(1)).

SEC. 61. PROVISIONS RELATING TO EARNINGS AND PROFITS.

(a) Adjustments to Earnings and Profits.—

(1) In general.—Section 312 (relating to effect on earnings and profits) is amended by adding at the end thereof the following new subsection:

"(n) Adjustments to Earnings and Profits To More Accurately Reflect Economic Gain and Loss.—For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

"(1) Construction period carrying charges.—

"(A) In general.—In the case of any amount paid or incurred for construction period carrying charges—

"(i) no deduction shall be allowed with respect to such amount, and

"(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

"(B) Construction period carrying charges defined.—For purposes of this paragraph, the term 'construction period carrying charges' means all—

"(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

"(ii) property taxes, and

"(iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred (determined without regard to section 189).

"(C) Construction period.—The term 'construction period' has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation).

"(2) Intangible drilling costs and mineral exploration and development costs.—

"(A) Intangible drilling costs.—Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

"(i) shall be capitalized, and

"(ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which the production from the well begins.

"(B) Mineral exploration and development costs.—Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

"(i) shall be capitalized, and

"(ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

"(I) the month in which production from the deposit begins, or

"(II) the month in which such amount was paid or incurred.

"(3) Certain amortization provisions not to apply.—Sections 173, 177, and 248 shall not apply.

"(4) Certain untaxed appreciation of distributed property.—In the case of any distribution of property by a corporation described in section 311(d), earnings and profits shall be increased by the amount of any gain which would be includible in gross income for any taxable year if section 311(d)(2) did not apply.

"(5) LIFO inventory adjustments.—Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

"(6) Installment sales.—In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

"(7) Completed contract method of accounting.—In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

"(8) Redemptions.—If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

"(9) Special rule for certain foreign corporations.—In the case of a foreign corporation described in subsection (k)(4), paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985."

(2) Conforming amendments.—

(A) Section 312(j) (relating to earnings and profits of foreign investment companies) is amended by striking out paragraph (3).

(B) Subsection (e) of section 312 is hereby repealed.

(b) Adjustment to Effect of Depreciation on Earnings and Profits.—The table contained in section 312(k)(3)(A) (relating to recovery property), as amended by this Act, is amended by striking out "35 years" in the item relating to 15-year real property and 20-year real property and inserting in lieu thereof "40 years".

(c) Distributions of Obligations Having Original Issue Discount.—

(1) Effect on earnings and profits.—

(A) Paragraph (2) of section 312(a) (relating to effect of earnings and profits) is amended to read as follows:

"(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and".

(B) Section 312, as amended by subsection (a), is amended by adding at the end thereof the following new subsection:

"(o) Definition of Original Issue Discount and Issue Price for Purposes of Subsection (a)(2).—For purposes of subsection (a)(2), the terms 'original issue discount' and 'issue price' have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter."

(2) Treatment under original issue discount rules.—Subsection (a) of section 1275 (relating to other definitions and special rules), as added by this Act, is amended by adding at the end thereof the following new paragraph:

"(4) Treatment of obligations distributed to corporations.—Any debt obligation of a corporation distributed by such corporation with respect to its stock shall be treated as if it had been issued by such corporation for property."

(d) Special Rule in Case of Distributions Received by 20 Percent Corporate Shareholder.—Section 301 (relating to distributions of property) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Special Rule for Certain Distributions Received by 20 Percent Corporate Shareholder.—

"(1) In general.—Except to the extent otherwise provided in regulations, solely for purposes of determining the taxable income of any 20 percent corporate shareholder (and its adjusted basis in the stock of the distributing corporation), section 312 shall be applied with respect to the distributing corporation as if it did not contain subsection (n) thereof.

"(2) 20 percent corporate shareholder.—For purposes of this subsection, the term '20 percent corporate shareholder' means, with respect to any distribution, any corporation which owns (directly or through the application of section 318)—

"(A) stock in the corporation making the distribution possessing at least 20 percent of the total combined voting power of all classes of stock entitled to vote, or

"(B) at least 20 percent of the total value of all stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends),

but only if, but for this subsection, the distributee corporation would be entitled to a deduction under section 243, 244, or 245 with respect to such distribution.

"(3) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(e) Effective Dates.—

(1) Adjustments to earnings and profits.—

(A) Paragraphs (1), (2), and (3) of section 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

(B) Paragraph (4) of section 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act do not apply.

(C) LIFO inventory.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

(D) Installment sales.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

(E) Completed contract method.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

(2) Subsection (b).—The amendments made by subsection (b) shall apply to property placed in service in taxable years beginning after September 30, 1984.

(3) Subsection (c).—The amendments made by subsection (c) shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date.

(4) Subsection (d).—The amendment made by subsection (d) shall apply to distributions after the date of the enactment of this Act in taxable years ending after such date.

SEC. 62. 2-YEAR DELAY IN APPLICATION OF THE NET OPERATING LOSS RULES ADDED BY THE TAX REFORM ACT OF 1976.

(a) In General.—Subsection (g) of section 806 of the Tax Reform Act of 1976 (26 U.S.C. 382 note) (relating to effective dates for the amendments to sections 382 and 383 of the Internal Revenue Code of 1954) is amended—

(1) by striking out "June 30, 1984" in paragraph (2) and inserting in lieu thereof "December 31, 1985";

(2) by striking out "January 1, 1984" in paragraph (2)(B) and inserting in lieu thereof "January 1, 1986"; and

(3) by striking out "January 1, 1984" in paragraph (3) and inserting in lieu thereof "January 1, 1986".

(b) Technical Amendment.—

(1) Paragraph (1) of section 382(b) (as amended by the Tax Reform Act of 1976) is amended by striking out "section 368(a)(1)(A), (B), (C), (D) (but only if the requirements of section 354(b)(1) are met), or (F)" and inserting in lieu thereof "subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met)".

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980.

SEC. 63. TARGET CORPORATION MUST DISTRIBUTE ASSETS AFTER REORGANIZATION DESCRIBED IN SECTION 368(a)(1)(C).

(a) In General.—Paragraph (2) of section 368(a) (relating to special rules for paragraph (1)) is amended by adding at the end thereof the following new subparagraph:

"(G) Distribution requirement for paragraph (1)(C).—

"(i) In general.—A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization.

"(ii) Exception.—The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe."

(b) Allocation in Certain Corporate Separations and Reorganizations.—Subsection (h) of section 312 (relating to allocation in certain corporate separations) is amended to read as follows:

"(h) Allocation in Certain Corporate Separations and Reorganizations.—

"(1) Section 355.—In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

"(2) Section 368 (a)(1)(C) or (D).—In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization)."

(c) Effective Date.—The amendment made by this section shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act.

SEC. 64. DEFINITION OF CONTROL FOR PURPOSES OF NONDIVISIVE REORGANIZATIONS UNDER SECTION 368(a)(1)(D).

(a) In General.—Subsection (c) of section 368 (defining control) is amended to read as follows:

"(c) Control Defined.—

"(1) In general.—For purposes of part I (other than section 304), part II, this part, and part V, the term 'control' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

"(2) Special rule for determining whether certain transactions are described in subsection (a)(1)(D).—In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subparagraph (D) of subsection (a)(1), the term 'control' has the meaning given to such term by section 304(c)."

(b) Effective Date.—The amendment made by this section shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act.

SEC. 65. COLLAPSIBLE CORPORATIONS.

(a) Definition.—Subparagraph (A) of section 341(b)(1) (relating to collapsible corporations) is amended by striking out "a substantial part" and inserting in lieu thereof "⅔".

(b) Limitations.—Subsection (d) of section 341 (relating to limitations on application of section) is amended by adding at the end thereof the following sentence: "In determining whether property is described in subsection (b)(1) for purposes of applying paragraph (2), all property described in section 1221(1) shall, to the extent provided in regulations prescribed by the Secretary, be treated as one item of property."

(c) Conforming Amendment.—Paragraph (2) of section 341(d) is amended by striking out "so manufactured, constructed, produced, or purchased" and inserting in lieu thereof "described in subsection (b)(1)".

(d) Effective Date.—The amendments made by this section shall apply with respect to sales, exchanges, and distributions made after the date of the enactment of this Act.

SEC. 66. PHASE-OUT OF GRADUATED RATES FOR LARGE CORPORATIONS.

(a) In General.—Subsection (b) of section 11 (relating to amount of tax imposed on corporations) is amended by adding at the end thereof the following new flush sentence: "In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250."

(b) Conforming Amendment.—Section 1561(a) (relating to limitations on certain multiple tax benefits in the case of certain control corporations) is amended by adding at the end thereof the following new sentence: "Notwithstanding paragraph (1), in applying the last sentence of section 11(b) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under such last sentence shall be divided among such component members in the same manner as amounts under paragraph (1)."

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

(2) Amendments not treated as changed in rate of tax.—The amendments made by this subsection shall not be treated as a change in a rate of tax for purposes of section 21 of the Internal Revenue Code of 1954.

SEC. 67. RESTRICTIONS ON GOLDEN PARACHUTE PAYMENTS.

(a) Denial of Deduction.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding after section 280F the following new section:

"SEC. 280G. GOLDEN PARACHUTE PAYMENTS.

"(a) General Rule.—No deduction shall be allowed under this chapter for any excess parachute payment.

"(b) Excess Parachute Payment.—For purposes of this section—

"(1) In general.—The term 'excess parachute payment' means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

"(2) Parachute payment defined.—

"(A) In general.—The term 'parachute payment' means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

"(i) such payment is contingent on a change—

"(I) in the ownership or effective control of the corporation, or

"(II) in the ownership of a substantial portion of the assets of the corporation, and

"(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.

"(B) Agreements.—The term 'parachute payment' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is pursuant to an agreement which violates any securities laws or regulations.

"(C) Treatment of certain agreements entered into within 1 year before change of ownership.—For purposes of subparagraph (A)(i), any payment pursuant to—

"(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or

"(ii) an amendment made within such 1-year period of a previous agreement,

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

"(3) Base amount.—

"(A) In general.—The term 'base amount' means the individual's annualized includible compensation for the base period.

"(B) Allocation.—The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

"(i) the present value of such payment, bears to

"(ii) the aggregate present value of all such payments.

"(4) Excess parachute payments reduced to extent taxpayer establishes reasonable compensation.—In the case of any parachute payment described in paragraph (2)(A), the amount of any excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered. For purposes of the preceding sentence, reasonable compensation shall be first offset against the base amount.

"(c) Disqualified Individuals.—For purposes of this section, the term 'disqualified individual' means any individual who is—

"(1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corportion, and

"(2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section, a personal service corporation (or similar entity) shall be treated as an individual.

"(d) Other Definitions and Special Rules.—For purposes of this section—

"(1) Annualized includible compensation for base period.—The term 'annualized includible compensation for the base period' means the average annual compensation which—

"(A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and

"(B) was includible in the gross income of the disqualified individual for taxable years in the base period.

"(2) Base period.—The term 'base period' means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual was an employee of the corporation).

"(3) PROPERTY TRANSFERS.—Any transfer of property—

"(A) shall be treated as a payment, and

"(B) shall be taken into account as its fair market value.

"(4) PRESENT VALUE.—Present value shall be determined in accordance with section 1274(b)(2).

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations)."

(b) EXCISE TAX ON AMOUNTS RECEIVED.—

(1) IN GENERAL.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 46—GOLDEN PARACHUTE PAYMENTS

"Sec. 4999. Golden parachute payments.

"SEC. 4999. GOLDEN PARACHUTE PAYMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any person who receives an excess parachute payment a tax equal to 20 percent of the amount of such payment.

"(b) EXCESS PARACHUTE PAYMENT DEFINED.—For purposes of this section, the term 'excess parachute payment' has the meaning given to such term by section 280G(b).

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) WITHHOLDING.—In the case of any excess parachute payment which is wages (within the meaning of section 3401) the amount deducted and withheld under section 3402 shall be increased by the amount of the tax imposed by this section on such payment.

"(2) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A."

(2) DENIAL OF DEDUCTION.—Paragraph (6) of section 275(a) (relating to denial of deduction for certain taxes) is amended by striking out "and 44" and inserting in lieu thereof "44, and 46".

(c) FICA TAXES.—Subparagraph (A) of section 3121(v)(2) (relating to treatment of certain nonqualified deferred compensation plans) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b))."

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for part IX of subchapter B of chapter 1 is amended by adding after the item relating to section 280F the following new item:

"Sec. 280G. Golden parachute payments."

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER 46. Golden parachute payments."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date.

(2) SPECIAL RULE FOR CONTRACT AMENDMENTS.—In the case of any contract entered into before June 15, 1984, any amendment to such contract after June 14, 1984, which amends such contract in any significant relevant aspect shall be treated as a new contract.

SEC. 68. INCREASE IN REDUCTION IN CERTAIN CORPORATE PREFERENCE ITEMS FROM 15 PERCENT TO 20 PERCENT.

(a) IN GENERAL.—Each subsection (other than subsection (a)(2)) of section 291 (relating to special rules for corporate preference items) is amended by striking out "15 percent" each place it appears and inserting in lieu thereof "20 percent".

(b) DEFERRED FSC INCOME.—Paragraph (4) of section 291(a) (relating to certain deferred DISC income) is amended to read as follows:

"(4) CERTAIN DEFERRED FSC INCOME.—If a corporation is a shareholder of the FSC, in the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to such corporation by substituting—

"(A) '32 percent' for '34 percent' in paragraph (2), and

"(B) '16/23' for '17/23' in paragraph (3).".

(c) MINIMUM TAX.—

(1) IN GENERAL.—Paragraph (1) of section 57(b) is amended to read as follows:

"(1) IN GENERAL.—

"(A) POLLUTION CONTROL FACILITIES; BAD DEBT RESERVES.—In the case of any item of tax preference of a corporation described in paragraph (4) or (7) of section (a), only 59⅚ percent of the amount of such item of tax preference (determined without regard to this subsection) shall be taken into account as an item of tax preference.

"(B) IRON ORE AND COAL.—In the case of any item of tax preference of a corporation described in paragraph (8) of subsection (a) (but only to the extent such item is allocable to a deduction for depletion for iron ore and coal (including legnite)),

only 71.6 percent of the amount of such item of tax preference (determined without regard to this subsection) shall be taken into account as an item of tax preference.".

(2) CERTAIN CAPITAL GAINS.—Paragraph (2) of section 57(h) (relating to capital gains) is amended by striking out "71.6 percent" and inserting in lieu thereof "59⅚ percent".

(d) DEFERRED DISC INCOME.—Section 995(b)(1)(F)(i) (relating to deemed distributions) is amended by striking out "one/half" and inserting in lieu thereof "one-seventeenth".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1984.

(2) 1250 GAIN.—The amendments made by this section to section 291(a)(1) of the Internal Revenue Code of 1954 shall apply to sales or other dispositions after December 31, 1984, in taxable years ending after such date.

(3) POLLUTION CONTROL FACILITIES.—The amendments made by this section to section 291(a)(5) of such Code shall apply to property placed in service after December 31, 1984, in taxable years ending after such date.

(4) DRILLING AND MINING COSTS.—The amendments made by this section to section 291(b) of such Code shall apply to expenditures after December 31, 1984, in taxable years ending after such date.

Subtitle E—Partnership Provisions

SEC. 71. PARTNERSHIP ALLOCATIONS WITH RESPECT TO CONTRIBUTED PROPERTY.

(a) GENERAL RULE.—Subsection (c) of section 704 (relating to contributed property) is amended to read as follows:

"(c) CONTRIBUTED PROPERTY.—Under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items."

(b) CONFORMING AMENDMENTS.—The fourth sentence of section 613A(c)(7)(D) and the third sentence of section 743(b) are each amended by striking out "an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account" and inserting in lieu thereof "property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to property contributed to the partnership after March 31, 1984, in taxable years ending after such date.

SEC. 72. DETERMINATION OF DISTRIBUTIVE SHARES WHEN PARTNER'S INTEREST CHANGES.

(a) GENERAL RULE.—Section 706 (relating to taxable years of partner and partnership) is amended by adding at the end thereof the following new subsection:

"(d) DETERMINATION OF DISTRIBUTIVE SHARE WHEN PARTNER'S INTEREST CHANGES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

"(2) CERTAIN CASH BASIS ITEMS PRORATED OVER PERIOD TO WHICH ATTRIBUTABLE.—

"(A) IN GENERAL.—If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined—

"(i) by assigning the appropriate portion of each such item to each day in the period to which it is attributable, and

"(ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

"(B) ALLOCABLE CASH BASIS ITEM.—For purposes of this paragraph, the term 'allocable cash basis item' means any of the following items which are described in paragraph (1) and with respect to which the partnership uses the cash receipts and disbursements method of accounting:

"(i) Interest.

"(ii) Taxes.

"(iii) Payments for services or for the use of property.

"(iv) Any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.

"(C) ITEMS ATTRIBUTABLE TO PERIODS NOT WITHIN TAXABLE YEAR.—If any portion of any allocable cash basis item is attributable to—

"(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of such taxable year and allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, or

"(ii) periods after the close of the taxable year, such item shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

"(D) TREATMENT OF ITEMS ALLOCATED TO PERSONS WHO ARE NO LONGER PARTNERS.—Any deduction allocated to a person under clause (i) of subparagraph (C) who is not a partner in the partnership on the first day referred to in such clause shall be capitalized by the partnership and treated in the manner provided for in section 755.

"(3) ITEMS ATTRIBUTABLE TO INTEREST IN LOWER TIER PARTNERSHIP PRORATED OVER ENTIRE TAXABLE YEAR.—If—

"(A) during any taxable year of the partnership there is a change in any partner's interest in the partnership (hereinafter in this paragraph referred to as the 'upper tier partnership'), and

"(B) such partnership is a partner in another partnership (hereinafter in this paragraph referred to as the 'lower tier partnership'),

then (except to the extent provided in regulations) each partner's distributive share of any item of the upper tier partnership attributable to the lower tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of subparagraphs (C) and (D) of paragraph (2)) of each such item to the appropriate days during which the upper tier partnership is a partner in the lower tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper tier partnership at the close of such day.

"(4) TAXABLE YEAR DETERMINED WITHOUT REGARD TO SUBSECTION (C)(2)(A).—For purposes of this subsection, the taxable year of a partnership shall be determined without regard to subsection (c)(2)(A)."

(b) CONFORMING AMENDMENTS.—Paragraph (2) of section 706(c) is amended—

(1) by striking out the last sentence of subparagraph (A), and

(2) by striking out ", but such partner's distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year" in subparagraph (B).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1954 (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984.

SEC. 73. PAYMENTS TO PARTNERS FOR PROPERTY OR CERTAIN SERVICES.

(a) GENERAL RULE.—Subsection (a) of section 707 (relating to transactions between partner and partnership) is amended to read as follows:

"(a) PARTNER NOT ACTING IN CAPACITY AS PARTNER.—

"(1) IN GENERAL.—If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

"(2) TREATMENT OF PAYMENTS TO PARTNERS FOR PROPERTY OR SERVICES.—Under regulations prescribed by the Secretary—

"(A) TREATMENT OF CERTAIN SERVICES AND TRANSFERS OF PROPERTY.—If —

"(i) a partner performs services for a partnership or transfers property to a partnership,

"(ii) there is a related direct or indirect allocation and distribution to such partner, and

"(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

"(B) TREATMENT OF CERTAIN PROPERTY TRANSFERS.—If—

"(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

"(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

"(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply—

(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1954 (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

(B) the out-of-pocket costs incurred with respect to such offering exceeded $250,000 as of February 28, 1984;

(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

(D) the transferor of such property is the sole general partner of the partnership.

SEC. 74. CONTRIBUTIONS TO A PARTNERSHIP OF UNREALIZED RECEIVABLES, INVENTORY ITEMS, OR CAPITAL LOSS PROPERTY.

(a) GENERAL RULE.—Subpart A of part II of subchapter K of chapter 1 (relating to contributions to a partnership) is amended by adding at the end thereof the following new section:

"SEC. 724. CHARACTER OF GAIN OR LOSS ON CONTRIBUTED UNREALIZED RECEIVABLES, INVENTORY ITEMS, AND CAPITAL LOSS PROPERTY.

"(a) CONTRIBUTIONS OF UNREALIZED RECEIVABLES.—In the case of any property which—

"(1) was contributed to the partnership by a partner, and

"(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

"(b) CONTRIBUTIONS OF INVENTORY ITEMS.—In the case of any property which—

"(1) was contributed to the partnership by a partner, and

"(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

"(c) CONTRIBUTIONS OF CAPITAL LOSS PROPERTY.—In the case of any property which—

"(1) was contributed by a partner to the partnership, and

"(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

"(d) DEFINITIONS.—For purposes of this section—

"(1) UNREALIZED RECEIVABLE.—The term 'unrealized receivable' has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

"(2) INVENTORY ITEM.—The term 'inventory item' has the meaning given such term by section 751(d)(2) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

"(3) SUBSTITUTED BASIS PROPERTY.—

"(A) IN GENERAL.—If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

"(B) EXCEPTION FOR STOCK IN C CORPORATION.—Subparagaph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351."

(b) AMENDMENT OF SECTION 735.—Section 735 (relating to character of gain or loss on disposition of distributed property) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULES.—

"(1) WAIVER OF HOLDING PERIODS CONTAINED IN SECTION 1231.—For purposes of this section, section 751(d)(2) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

"(2) SUBSTITUTED BASIS PROPERTY.—

"(A) IN GENERAL.—If any property described in subsection (a) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of nonrecognition transactions.

"(B) EXCEPTION FOR STOCK IN C CORPORATION.—Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351."

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter K of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property."

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to property distributed after March 31, 1984, in taxable years ending after such date.

SEC. 75. TRANSFERS OF PARTNERSHIP AND TRUST INTERESTS BY CORPORATIONS.

(a) GENERAL RULE.—Subchapter C of chapter 1 (relating to corporate distributions and adjustments) is amended by adding at the end thereof the following new part:

"PART VII—MISCELLANEOUS CORPORATE PROVISIONS

"Sec. 386. Transfers of partnership and trust interests by corporations.

"SEC. 386. TRANSFERS OF PARTNERSHIP AND TRUST INTERESTS BY CORPORATIONS.

"(a) CORPORATE DISTRIBUTIONS.—For purposes of determining the amount (and character) of gain recognized by a corporation on any distribution of an interest in a partnership, the distribution shall be treated in the same manner as if it included a property distribution consisting of the corporation's proportionate share of the recognition property of such partnership.

"(b) SALES OR EXCHANGE TO WHICH SECTION 337 APPLIES.—For purposes of determining the amount (and character) of gain recognized on a sale or exchange described in section 337, any sale or exchange by a corporation of an interest in a partnership shall be treated as a sale or exchange of the corporation's proportionate share of the recognition property of such partnership.

"(c) RECOGNITION PROPERTY.—For purposes of this section, the term 'recognition property' means any property with respect to which gain would be recognized to the corporation if such property—

"(1) were distributed by the corporation in a distribution described in section 311 or 336, or

"(2) were sold in a sale described in section 337,

whichever is appropriate. In determining whether property of a partnership is recognition property, such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner.

"(d) EXTENSION TO TRUSTS.—Under regulations, rules similar to the rules of this section shall also apply in the case of the distribution or sale or exchange by a corporation of an interest in a trust."

(b) DISTRIBUTIONS TREATED AS EXCHANGES FOR PURPOSES OF SUBCHAPTER K.—Section 761 (relating to definitions) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) DISTRIBUTIONS TREATED AS EXCHANGES.—For purposes of—

"(1) section 708 (relating to continuation of partnership),

"(2) section 743 (relating to optional adjustment to basis of partnership property), and

"(3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution (not otherwise treated as an exchange) shall be treated as an exchange."

(c) CLARIFICATION OF FAIR MARKET VALUE IN THE CASE OF NONRECOURSE INDEBTEDNESS.—Section 7701 (relating to definitions), as amended by this Act, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) CLARIFICATION OF FAIR MARKET VALUE IN THE CASE OF NONRECOURSE INDEBTEDNESS.—For purposes of subtitle A, in determining the amount of gain or loss or deemed gain or loss with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject."

(d) CLERICAL AMENDMENT.—The table of parts for subchapter C of chapter 1 is amended by adding at the end thereof the following new item:

"Part VII. Miscellaneous corporate provisions."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions, sales, and exchanges made after March 31, 1984 in taxable years ending after such date.

SEC. 76. APPLICATION OF SECTION 751 IN THE CASE OF TIERED PARTNERSHIPS.

(a) GENERAL RULE.—Section 751 (relating to unrealized receivables and inventory items) is amended by adding at the end thereof the following new subsection:

"(f) SPECIAL RULES IN THE CASE OF TIERED PARTNERSHIPS, ETC.—In determining whether property of a partnership is—

"(1) an unrealized receivable, or

"(2) an inventory item

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date.

SEC. 77. SECTION 1031 NOT APPLICABLE TO PARTNERSHIP INTERESTS; LIMITATION ON THE PERIOD DURING WHICH LIKE KIND EXCHANGES MAY BE MADE.

(a) IN GENERAL.—Subsection (a) of section 1031 (relating to nonrecognition of gain or loss from exchanges solely in kind) is amended to read as follows:

"(a) NONRECOGNITION OF GAIN OR LOSS FROM EXCHANGES SOLELY IN KIND.—

"(1) IN GENERAL.—No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

"(2) EXCEPTION.—This subsection shall not apply to any exchange of—

"(A) stock in trade or other property held primarily for sale,

"(B) stocks, bonds, or notes,

"(C) other securities or evidences of indebtedness or interest,

"(D) interests in a partnership,

"(E) certificates of trust or beneficial interests, or

"(F) choses in action.

"(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED AND THAT EXCHANGE BE COMPLETED NOT MORE THAN 180 DAYS AFTER TRANSFER OF EXCHANGED PROPERTY.—For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

"(A) such property is not identified as property to be received in the exchange before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

"(B) such property is received after the earlier of—

"(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

"(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) shall apply to transfers made after the date of the enactment of this Act in taxable years ending after such date.

(2) BINDING CONTRACT EXCEPTION FOR TRANSFER OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED WITHIN 180 DAYS.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall apply—

(A) to transfers after the date of the enactment of this Act, and

(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) shall not expire before January 1, 1988.

(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984,

and at all times thereafter before the transfer, paragraph (3) shall be applied—

(A) by substituting "January 1, 1989" for "January 1, 1987", and

(B) by substituting "January 1, 1990" for "January 1, 1988".

(5) Special rule for like kind exchange of partnership interests.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on, or before December 31, 1984.

SEC. 78. ELIMINATION OF BASIS STRIPS UNDER SECTION 734(b).

(a) General Rule.—Subsection (b) of section 734 is amended by adding at the end thereof the following new sentence: "Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect."

(b) Effective Date.—The amendment made by subsection (a) shall apply to distributions after March 1, 1984, in taxable years ending after such date.

SEC. 79. OVERRULING OF RAPHAN CASE.

(a) General Rule.—Section 752 of the Internal Revenue Code of 1954 (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of Raphan vs the United States, 3 Cl. Ct. 457 (1983).

(b) Regulations.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements.

Subtitle F—Trust Provisions

SEC. 81. TREATMENT OF PROPERTY DISTRIBUTED IN KIND.

(a) General Rule.—Section 643 (relating to definitions applicable to subchapters A, B, C, and D) is amended by adding at the end thereof the following new subsection:

"(d) Treatment of Property Distributed in Kind.—

"(1) Basis of beneficiary.—The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

"(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

"(B) any gain or loss recognized to the estate or trust on the distribution.

"(2) Amount of distribution.—In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

"(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

"(B) the fair market value of such property.

"(3) Election to recognize gain.—

"(A) In general.—In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

"(i) paragraph (2) shall not apply,

"(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

"(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

"(B) Election.—Any election under this paragraph shall be made by the estate or trust on its return for the taxable year for which the distribution was made.

Any such election, once made, may be revoked only with the consent of the Secretary.

"(4) Exception for distributions described in section 663 (a).—This subsection shall not apply to any distribution described in section 663(a)."

(b) Effective Date.—

(1) In general.—The amendment made by subsection (a) shall apply to distributions after June 1, 1984, in taxable years ending after such date.

(2) Time for making election.—In the case of any distribution before the date of the enactment of this Act—

(A) the time for making an election under section 643(d)(3) of the Internal Revenue Code of 1954 (as added by this section) shall not expire before January 1, 1985, and

(B) the requirement that such election be made on the return of the estate or trust shall not apply.

SEC. 82. TREATMENT OF MULTIPLE TRUSTS.

(a) General Rule.—Section 643 (relating to definitions applicable to subparts A, B, C, and D) is amended by adding at the end thereof the following new subsection:

"(e) Treatment of Multiple Trusts.—For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

"(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

"(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after March 1, 1984.

Subtitle G—Accounting Changes

SEC. 91. CERTAIN AMOUNTS NOT TREATED AS INCURRED BEFORE ECONOMIC PERFORMANCE.

(a) In General.—Section 461 (relating to general rule for taxable year of deduction) is amended by adding at the end thereof the following new subsections:

"(h) Certain Liabilities Not Incurred Before Economic Performance.—

"(1) In general.—For purposes of this title, in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

"(2) Time when economic performance occurs.—Except as provided in regulations prescribed by the Secretary, the time when economic performance occurs shall be determined under the following principles:

"(A) Services and property provided to the taxpayer.—If the liability of the taxpayer arises out of—

"(i) the providing of services to the taxpayer by another person, economic performance occurs as such person provides such services,

"(ii) the providing of property to the taxpayer by another person, economic performance occurs as the person provides such property, or

"(iii) the use of property by the taxpayer, economic performance occurs as the taxpayer uses such property.

"(B) Services and property provided by the taxpayer.—If the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services.

"(C) Workers compensation and tort liabilities of the taxpayer.—If the liability of the taxpayer requires a payment to another person and—

"(i) arises under any workers compensation act, or

"(ii) arises out of any tort,

economic performance occurs as the payments to such person are made. Subparagraphs (A) and (B) shall not apply to any liability described in the preceding sentence.

"(D) Other items.—In the case of any other liability of the taxpayer, economic performance occurs at the time determined under regulations prescribed by the Secretary.

"(3) Exception for certain recurring items.—

"(A) In general.—Notwithstanding paragraph (1) an item shall be treated as incurred during any taxable year if—

"(i) the all events test with respect to such item is met during such taxable year (determined without regard to paragraph (1)),

"(ii) economic performance with respect to such item occurs within the shorter of—

"(I) a reasonable period after the close of such taxable year, or

"(II) 8½ months after the close of such taxable year,

"(iii) such item is recurring in nature and the taxpayer consistently treats items of such kind as incurred in the taxable year in which the requirements of clause (i) are met, and

"(iv) either—

"(I) such item is not a material item, or

"(II) the accrual of such item in the taxable year in which the requirements of clause (i) are met results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs.

"(B) Financial statements considered under subparagraph (A)(iv).—In making a determination under subparagraph (A)(iv), the treatment of such item on financial statements shall be taken into account.

"(C) Paragraph not to apply to workers compensation and tort liabilities.—This paragraph shall not apply to any item described in subparagraph (C) of paragraph (2).

"(4) All events test.—For purposes of this subsection, the all events test is met with respect to any item if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy.

"(5) Subsection not to apply to certain cases to which other provisions of this title specifically apply.—This subsection shall not apply to any item to which any of the following provisions apply:

"(A) Subsection (e) or (f) of section 166 (relating to reserves for bad debts).

"(B) Section 463 (relating to vacation pay).

"(C) Section 466 (relating to discount coupons).

"(D) Any other provisions of this title which specifically provides for a deduction for a reserve for estimated expenses.

"(i) Tax Shelters May Not Deduct Items Earlier Than When Economic Performance Occurs.—

"(1) In general.—In the case of a tax shelter computing taxable income under the cash receipts and disbursements method of accounting, such tax shelter shall not be allowed a deduction under this chapter with respect to any item any earlier than the time when such item would be treated as incurred under subsection (h) (determined without regard to paragraph (3) thereof).

"(2) Exception (to extent of cash basis) when economic performance occurs within 90 days after the close of the taxable year.—

"(A) In general.—Paragraph (1) shall not apply to any item if economic performance with respect to such item occurs within 90 days after the close of the taxable year.

"(B) Deduction limited to cash basis.—

"(i) Tax shelter partnerships.—In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term 'cash basis' shall be substituted for the term 'adjusted basis'.

"(ii) Other tax shelters.—Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

"(C) Cash basis defined.—For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

"(i) any liability of the partnership, and

"(ii) any amount borrowed by the partner with respect to such partnership which—

"(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 168(e)(4)), or

"(II) was secured by any assets of the partnership.

"(D) Special cash basis rule for spudding of oil or gas wells.—Solely for purposes of applying subparagraph (A), economic performance with respect to the act of drilling of an oil or gas well shall be treated as occurring when the drilling of the well is commenced.

"(3) Tax shelter defined.—For purposes of this subsection, the term 'tax shelter' means—

"(A) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale,

"(B) any syndicate (within the meaning of section 1256(e)(3)(B)), and

"(C) any tax shelter (within the meaning of section 6661(b)(2)(C)(ii)).

"(4) Special rules for farming.—In the case of the trade or business of farming (as defined in section 464(e))—

"(A) section 464 shall be applied to any tax shelter described in paragraph (3)(C),

"(B) section 464 shall be applied before this subsection, and

"(C) in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).

"(5) Economic performance.—For purposes of this subsection, the term 'economic performance' has the meaning given such term by subsection (h)."

(b) Special Rules for Mining and Solid Waste Reclamation and Closing Costs.—

(1) In general.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deduction taken), as amended by section 92, is amended by adding at the end thereof the following new section:

"SEC. 468. SPECIAL RULES FOR MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.

"(a) Establishment of Reserves for Reclamation and Closing Costs.—

"(1) Allowance of deduction.—If a taxpayer elects the application of this subsection with respect to any mining or solid waste disposal property, the amount of any deduction for qualified reclamation or closing costs for any taxable year to which such election applies shall be equal to the current reclamation or closing costs allocable to—

"(A) in the case of qualified reclamation costs, the portion of the reserve property which was disturbed during such taxable year, and

"(B) in the case of qualified closing costs, the production from the reserve property during such taxable year.

"(2) Opening balance and adjustments to reserve.—

"(A) Opening balance.—The opening balance of any reserve for its first taxable year shall be zero.

"(B) Increase for interest.—

"(i) In general.—A reserve shall be increased each taxable year by an amount equal to the amount of interest which would be earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

"(I) at the Federal short-term rate or rates (determined under section 1274) in effect, and

"(II) by compounding semiannually.

"(ii) Phase-in of interest rate.—In the case of taxable years ending before 1987, the rate determined under clause (i)(I) shall be equal to the following percentage of such rate (determined without regard to this clause):

"In the case of taxable years ending in:	The percentage is:
1984 or 1985	70
1986	85.

"(C) Reserve to be charged for amounts paid.— Any amount paid by the taxpayer during any taxable year for qualified reclamation or closing costs allocable to portions of the reserve property for which the election under paragraph (1) was in effect shall be charged to the appropriate reserve as of the close of the taxable year.

"(3) Allowance of deduction for excess amounts paid.—There shall be allowed as a deduction for any taxable year the excess of—

"(A) the amounts described in paragraph (2)(C) paid during such taxable year, over

"(B) the closing balance of the reserve for such taxable year (determined without regard to paragraph (2)(C)).

"(4) Limitation on balance as of the close of any taxable year.—

"(A) Reclamation reserves.—In the case of any reserve for qualified reclamation costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

"(i) the closing balance of the reserve for such taxable year, over

"(ii) the current reclamation costs of the taxpayer for all portions of the reserve property disturbed during any taxable year to which the election under paragraph (1) applies.

"(B) Closing costs reserves.—In the case of any reserve for qualified closing costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

"(i) the closing balance of the reserve for such taxable year, over

"(ii) the current closing cost of the taxpayer with respect to the reserve property, determined as if all production with respect to the reserve property for any taxable year to which the election under paragraph (1) applies had occurred in such taxable year.

"(c) Order of application.—This paragraph shall be applied after all adjustments to the reserve have been made for the taxable year.

"(5) Income inclusions on completion or disposition.—Proper inclusion in income shall be made upon—

"(A) the revocation of an election under paragraph (1), or

"(B) completion of the closing, or disposition of any portion, of a reserve property.

"(b) Allocation for Property Where Election Not In Effect for All Taxable Years.—If the election under subsection (a)(1) is not in effect for 1 or more taxable years in which the reserved property is disturbed (or production occurs), items with respect to the reserve property shall be allocated to the reserve in such manner as the Secretary may prescribe by regulations.

"(c) Revocation of Election; Separate Reserves.—

"(1) Revocation of election.—

"(A) In general.—The taxpayer may revoke an election under subsection (a)(1) with respect to any property. Such revocation, once made, shall be irrevocable.

"(B) Time and manner of revocation.—Any revocation under subparagraph (A) shall be made at such time and in such manner as the Secretary may prescribe.

"(2) Separate reserves required.—If a taxpayer makes an election under subsection (a)(1), the taxpayer shall establish with respect to the property for which the election was made—

"(A) a separate reserve for qualified reclamation costs, and

"(B) a separate reserve for qualified closing costs.

"(d) Definitions and Special Rules Relating to Reclamation and Closing Costs.—For purposes of this section—

"(1) Current reclamation and closing costs.—

"(A) Current reclamation costs.—The term 'current reclamation costs' means the amount which the taxpayer would be required to pay for qualified reclamation costs if the reclamation activities were performed currently.

"(B) Current closing costs.—

"(i) In general.—The term 'current closing costs' means the amount which the taxpayer would be required to pay for qualified closing costs if the closing activities were performed currently.

"(ii) Costs computed on unit-of-production or capacity method.—Estimated closing costs shall—

"(I) in the case of the closing of any mine site, be computed on the unit-of-production method of accounting, and

"(II) in the case of the closing of any solid waste disposal site, be computed on the unit-of-capacity method.

"(2) Qualified reclamation or closing costs.—The term 'qualified reclamation or closing costs' means any of the following expenses:

"(A) MINING RECLAMATION AND CLOSING COSTS.—Any expenses incurred for any land reclamation or closing activity which is conducted in accordance with a reclamation plan (including an amendment or modification thereof)—

"(i) which—

"(I) is submitted pursuant to the provisions of section 511 or 528 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1984), and

"(II) is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

"(ii) which is submitted pursuant to any other Federal or State law which imposes surface mining reclamation and permit requirements substantially similar to the requirements imposed by title V of such Act (as so in effect).

"(B) SOLID WASTE DISPOSAL AND CLOSING COSTS.—

"(i) IN GENERAL.—Any expenses incurred for any land reclamation or closing activity in connection with any solid waste disposal site which is conducted in accordance with any permit issued pursuant to—

"(I) any provision of the Solid Waste Disposal Act (as in effect on January 1, 1984) requiring such activity, or

"(II) any other Federal, State, or local law which imposes requirements substantially similar to the requirements imposed by the Solid Waste Disposal Act (as so in effect).

"(ii) EXCEPTION FOR CERTAIN HAZARDOUS WASTE SITES.—Clause (i) shall not apply to that portion of any property which is disturbed after the property is listed in the national contingency plan established under section 105 of the Comprehensive Environmental, Compensation, and Liability Act of 1980.

"(3) PROPERTY.—The term 'property' has the meaning given such term by section 614.

"(4) RESERVE PROPERTY.—The term 'reserve property' means any property with respect to which a reserve is established under subsection (a)(1)."

(2) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of Chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 468. Special rules for mining and solid waste reclamation and closing costs."

(c) SPECIAL RULE FOR LIABILITIES IN CONNECTION WITH THE DECOMMISSIONING OF A NUCLEAR POWERPLANT.—

(1) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deduction taken), as amended by subsection (b), is amended by adding at the end thereof the following new section:

"SEC. 468A. SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

"(a) IN GENERAL.—If the taxpayer elects the application of this subsection, there shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a Nuclear Decommissioning Reserve Fund (hereinafter referred to as the 'Fund') during such taxable year.

"(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

"(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

"(2) the ruling amount applicable to such taxable year.

"(c) INCOME AND DEDUCTIONS OF THE TAXPAYER.—

"(1) INCLUSION OF AMOUNTS DISTRIBUTED.—There shall be includible in the gross income of the taxpayer for any taxable year—

"(A) any amount distributed from the Fund during such taxable year, other than any amount distributed to pay costs described in subsection (e)(2)(B), and

"(B) except to the extent provided in regulations, amounts properly includible in gross income in the case of any deemed distribution under subsection (e)(6), any termination under subsection (e)(7), or the disposition of any interest in the nuclear powerplant.

"(2) DEDUCTION WHEN ECONOMIC PERFORMANCE OCCURS.—In addition to any deduction under subsection (a), there shall be allowable as a deduction for any taxable year the amount of the nuclear decommissioning costs with respect to which economic performance (within the meaning of section 461(h)(2)) occurs during such taxable year.

"(d) RULING AMOUNT.—For purposes of this subsection—

"(1) REQUEST REQUIRED.—No deduction shall be allowed for any payment to the Fund unless the taxpayer requests, and receives, from the Secretary a schedule of ruling amounts.

"(2) RULING AMOUNT.—The term 'ruling amount' means, with respect to any taxable year, the amount which the Secretary determines under paragraph (1) to be necessary to—

"(A) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear powerplant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear powerplant as the period for which the Fund is in effect bears to the estimated life of such nuclear powerplant, and useful

"(B) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

"(3) REVIEW OF AMOUNT.—The Secretary shall at least once during the useful life of the nuclear powerplant (or, more frequently, upon the request of the taxpayer) review, and revise if necessary, the schedule of ruling amounts determined under paragraph (1).

"(e) NUCLEAR DECOMMISSIONING TRUST FUND.—

"(1) IN GENERAL.—Each taxpayer who elects the application of this subsection shall establish a Nuclear Decommissioning Trust Fund with respect to each nuclear powerplant to which such election applies.

"(2) TAXATION OF FUND.—There is imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the maximum rate in effect under section 11(b), except that—

"(A) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

"(B) there shall be allowed as a deduction any amount paid by the Fund described in paragraph (4)(B) (other than to the taxpayer).

"(3) CONTRIBUTIONS TO FUND.—The Fund shall not accept any payments (or other amounts) other than payments with respect to which a deduction is allowable under subsection (a).

"(4) USE OF FUND.—The Fund shall be used exclusively for—

"(A) satisfying, in whole or in part, any liability of any person contributing to the Fund for the decommissioning of a nuclear powerplant (or unit thereof), and

"(B) to pay administrative costs (including taxes) and other incidental expenses of the Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund.

"(5) PROHIBITIONS AGAINST SELF-DEALING.—Under regulations prescribed by the Secretary, for purposes of section 4951 (and so much of this title as relates to such section), the Fund shall be treated in the same manner as a trust described in section 501(c)(21).

"(6) DISQUALIFICATION OF FUND.—In any case in which the Fund violates any provision of this subsection or section 4951, the Secretary may disqualify such Fund from the application of this subsection. In any case to which this subparagraph applies, the Fund shall be treated as having distributed all of its funds on the date such determination takes effect.

"(7) TERMINATION UPON COMPLETION.—Upon substantial completion of the nuclear decommissioning of the nuclear powerplant with respect to which a Fund relates, the taxpayer shall terminate such Fund.

"(f) NUCLEAR POWERPLANT.—The term 'nuclear powerplant' includes any unit thereof."

(2) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 468A. Special rules for nuclear decommissioning costs."

(d) 10-YEAR NET OPERATING LOSS CARRYBACK PERIOD FOR DEFERRED STATUTORY OR TORT LIABILITY DEDUCTIONS.—

(1) IN GENERAL.—Paragraph (1) of section 172(b) (relating to years to which loss may be carried) is amended by adding at the end thereof the following new subparagraph:

"(K) SPECIAL RULE FOR DEFERRED STATUTORY OR TORT LIABILITY LOSSES.—In the case of a taxpayer which has a deferred statutory or tort liability loss (as defined in subsection (k)) for any taxable year beginning after December 31, 1983, the deferred statutory or tort liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss."

(2) DEFERRED STATUTORY OR TORT LIABILITY LOSSES.—Section 172 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) DEFINITIONS AND SPECIAL RULES RELATING TO DEFERRED STATUTORY OR TORT LIABILITY LOSSES.—For purposes of this section—

"(1) DEFERRED STATUTORY OR TORT LIABILITY LOSS.—The term 'deferred statutory or tort liability loss' means, for any taxable year, the lesser of—

"(A) the net operating loss for such taxable year, reduced by any portion thereof attributable to—

"(i) a foreign expropriation loss, or

"(ii) a product liability loss, or

"(B) the sum of the amounts allowable as a deduction under this chapter (other than any deduction described in subsection (j)(1)(B)) which—

"(i) is taken into account in computing the net operating loss for such taxable year, and

"(ii) is for an amount incurred with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer and—

"(I) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of such taxable year, or

"(II) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of such taxable year.

A liability shall not be taken into account under the preceding sentence unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.

"(2) SPECIAL RULE FOR NUCLEAR POWERPLANTS.—Except as provided in regulations prescribed by the Secretary, that portion of a deferred statutory or tort liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(K), be carried back to each of the taxable years during the period—

"(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

"(B) ending with the taxable year preceding the loss year.

"(3) COORDINATION WITH SUBSECTION (b)(2).—In applying paragraph (2) of subsection (b), a deferred statutory or tort liability loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.

"(4) NO CARRYBACK TO TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1984.—No deferred statutory or tort liability loss may be carried back to a taxable year beginning before January 1, 1984, unless such loss may be carried back to such year without regard to subsection (b)(1)(K)."

(3) CONFORMING AMENDMENTS.—

(A) Clause (i) of section 172(b)(1)(A) is amended by striking out "and (J)" and inserting in lieu thereof "(J), and (K)".

(B) Subsections (h) and (j) of section 172 are each amended by striking out "subsection (b)" in the matter preceding paragraph (1) and inserting in lieu thereof "this section".

(e) CONFORMING AMENDMENT.—Paragraph (4) of section 461(f) (relating to contested liabilities) is amended by inserting "determined after application of subsection (h)" after "taxable year)".

(f) INCLUSION IN INCOME OF NUCLEAR DECOMMISSIONING COSTS INCLUDED IN THE TAXPAYER'S RATE BASE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end thereof the following new section:

"SEC. 88. CERTAIN AMOUNTS WITH RESPECT TO NUCLEAR DECOMMISSIONING COSTS.

"In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service of ratemaking purposes, there shall be includible in the gross income of such taxpayer the amount so included for any taxable year."

(2) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 88. Certain amounts with respect to nuclear decommissioning costs."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section shall apply to amounts—

(A) incurred after the date of the enactment of this Act (determined without regard to such amendments), or

(B) which—

(i) are incurred before the date of the enactment of this Act (determined without regard to such amendments), and

(ii) are incurred after the date of the enactment of this Act (determined with regard to such amendments).

(2) ELECTION TREATED AS CHANGE IN METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1954, if paragraph (1)(B) applies to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

(A) initiated by the taxpayer, and

(B) made with the consent of the Secretary of the Treasury.

(3) SECTION 461(h) TO APPLY IN CERTAIN CASES.—Notwithstanding paragraph (1), section 461(h) of the Internal Revenue Code of 1954 (as added by this section) shall be treated as being in effect to the extent necessary to carry out any amendments made by this section which take effect before section 461(h).

(h) EXCEPTION FOR CERTAIN EXISTING ACTIVITIES AND CONTRACTS.—If—

(1) EXISTING ACCOUNTING PRACTICES.—If, on March 1, 1984, any taxpayer was regularly computing his deduction for mining reclamation activities under a current cost method of accounting (as determined by the Secretary of the Treasury or his delegate), the liability for reclamation activities—

(A) for land disturbed before the date of the enactment of this Act, or

(B) to which paragraph (2) applies,

shall be treated as having been incurred when the land was disturbed.

(2) FIXED PRICE SUPPLY CONTRACT.—

(A) IN GENERAL.—In the case of any fixed price supply contract entered into before March 1, 1984, the amendments made by subsection (b) shall not apply to any minerals extracted from such property which are sold pursuant to such contract.

(B) NO EXTENSION OR RENEGOTIATION.—Subparagraph (A) shall not apply—

(i) to any extension of any contract beyond the period such contract was in effect on March 1, 1984, or

(ii) to any renegotiation of, or other change in, the terms and conditions of such contract in effect on March 1, 1984.

(i) TRANSITIONAL RULE FOR ACCRUED VACATION PAY.—

(1) IN GENERAL.—In the case of any taxpayer—

(A) with respect to whom a deduction was allowable (other than under section 463 of the Internal Revenue Code of 1954) for vested accrued vacation pay for the last taxable year ending before the date of the enactment of this Act, and

(B) who elects the application of section 463 of such Code for the first taxable year ending after the date of the enactment of this Act,

then, for purposes of section 463(b) of such Code, the opening balance of the taxpayer with respect to any vested accrued vacation pay shall be determined under section 463(b)(1) of such Code.

(2) VESTED ACCRUED VACATION PAY.—For purposes of this subsection, the term "vested accrued vacation pay" means any amount allowable under section 162(a) of such Code with respect to vacation pay of employees of the taxpayer (determined without regard to section 463 of such Code).

SEC. 92. TREATMENT OF CERTAIN DEFERRED PAYMENTS FOR USE OF PROPERTY OR SERVICES.

(a) GENERAL RULE.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deduction is taken) is amended by adding at the end thereof the following new section:

"SEC. 467. CERTAIN PAYMENTS FOR THE USE OF PROPERTY OR SERVICES.

"(a) ACCRUAL METHOD ON PRESENT VALUE BASIS.—In the case of the lessor or lessee under any section 467 rental agreement, there shall be taken into account for purposes of this title for any taxable year the sum of—

"(1) the amount of the rent which accrues during such taxable year as determined under subsection (b), and

"(2) interest for the year on the amounts which were taken into account under this subsection for prior taxable years and which are unpaid.

"(b) ACCRUAL OF RENTAL PAYMENTS.—

"(1) ALLOCATION FOLLOWS AGREEMENT.—Except as provided in paragraph (2), the determination of the amount of the rent under any section 467 rental agreement which accrues during any taxable year shall be made—

"(A) by allocating rents in accordance with the agreement, and

"(B) by taking into account any rent to be paid after the close of the period in an amount determined under regulations which shall be based on present value concepts.

"(2) CONSTANT RENTAL ACCRUAL IN CASE OF CERTAIN TAX AVOIDANCE TRANSACTIONS, ETC.—In the case of any section 467 rental agreement to which this paragraph applies, the portion of the rent which accrues during any taxable year shall be that portion of the constant rental amount with respect to such agreement which is allocable to such taxable year.

"(3) AGREEMENTS TO WHICH PARAGRAPH (2) APPLIES.—Paragraph (2) applies to any rental payment agreement if—

"(A) such agreement is a disqualified leaseback or long-term agreement, or

"(B) such agreement does not provide for the allocation referred to in paragraph (1)(A).

"(4) DISQUALIFIED LEASEBACK OR LONG-TERM AGREEMENT.—For purposes of this subsection, the term 'disqualified leaseback or long-term agreement' means any section 467 rental agreement if—

"(A) such agreement is part of a leaseback transaction or such agreement is for a term in excess of 75 percent of the statutory recover period for the property, and

"(B) a principal purpose for providing increasing rents under the agreement is the avoidance of tax imposed by this subtitle.

"(5) EXCEPTIONS TO DISQUALIFICATION IN CERTAIN CASES.—The Secretary shall prescribe regulations setting forth circumstances under which agreements will not be treated as disqualified leaseback or long-term agreements, including circumstances relating to—

"(A) changes in amounts paid determined by reference to price indices,

"(B) rents based on a fixed percentage of lessee receipts or similar amounts,

"(C) reasonable rent holidays, or

"(D) changes in amounts paid to unrelated 3rd parties.

"(c) Recapture of Prior Understated Inclusions Under Leaseback or Long-Term Agreements.—

"(1) In general.—If—

"(A) the lessor under any section 467 rental agreement disposes of any property subject to such agreement during the term of such agreement, and

"(B) such agreement is a leaseback or long-term agreement to which paragraph (2) of subsection (b) did not apply,

the recapture amount shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(2) Recapture amount. —For purposes of paragraph (1), the term 'recapture amount' means the lesser of—

"(A) the prior understated inclusions, or

"(B) the excess of the amount realized (or in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of the property) over the adjusted basis of such property.

The amount determined under subparagraph (B) shall be reduced by the amount of any gain treated as ordinary income on the disposition under any other provision of this subtitle.

"(3) Prior understated inclusions.—For purposes of this subsection, the term 'prior understated inclusion' means the excess (if any) of—

"(A) the amount which would have been taken into account by the lessor under subsection (a) for periods before the disposition if subsection (b)(2) had applied to the agreement, over

"(B) the amount taken into account under subsection (a) by the lessor for periods before the disposition.

"(4) Leaseback or long-term agreement.—For purposes of this subsection, the term 'leaseback or long-term agreement' means any agreement described in subsection (b)(3)(A).

"(5) Special rules.—Under regulations prescribed by the Secretary—

"(A) exceptions similar to the exceptions applicable under section 1245 or 1250 (whichever is appropriate) shall apply for purposes of this subsection,

"(B) any transferee in a disposition excepted by reason of subparagraph (A) who has a transferred basis in the property shall be treated in the same manner as the transferor, and

"(C) for purposes of sections 163(d), 170(e), 341(e)(12), 453B(d)(2), and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

"(d) Section 467 Rental Agreements.—

"(1) In general.—Except as otherwise provided in this subsection, the term 'section 467 rental agreements' means any rental agreement for the use of tangible property under which—

"(A) there is at least one amount allocable to the use of property during a calendar year which is to be paid after the close of the calendar year following the calendar year in which such use occurs, or

"(B) there are increases in the amount to be paid as rent under the agreement.

"(2) Section not to apply to agreements involving payments of $250,000 or less.—This section shall not apply to any amount to be paid for the use of property if the sum of the following amounts does not exceed $250,000—

"(A) the aggregate amount of payments received as consideration for such use of property, and

"(B) the aggregate value of any other consideration to be received for such use of property.

For purposes of the preceding sentence, rules similar to the rules of clauses (ii) and (iii) of section 1274(c)(2)(C) shall apply.

"(e) Definitions.—For purposes of this section—

"(1) Constant rental amount.—The term 'constant rental amount' means, with respect to any section 467 rental agreement, the amount which, if paid as of the close of each lease period under the agreement, would result in an aggregate present value equal to the present value of the aggregate payments required under the agreement.

"(2) Leaseback transaction.—A transaction is a leaseback transaction if it involves a leaseback to any person who had an interest in such property at any time within 2 years before such leaseback (or to a related person).

"(3) Statutory recovery period.—

"(A) In general.—

"In the case of property which is:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
10-year property	10 years
15-year public utility property	15 years
18-year real property	18 years.

"(B) Special rule for property which is not recovery property.—In the case of any property which is not recovery property, subparagraph (A) shall be applied as if such property were recovery property.

"(4) Discount and interest rate.—For purposes of computing present value and interest under subsection (a)(2) the rate used shall be equal to 110 percent of the applicable Federal rate determined under section 1274(d) (compounded semiannually) which is in effect at the time the agreement is entered into with respect to debt instruments having a maturity equal to the term of the agreement.

"(5) Related person.—The term 'related person' has the meaning given to such term by section 168(d)(4)(D).

"(6) Certain options of lessee to renew not taken into account.—Except as provided in regulations prescribed by the Secretary, there shall not be taken into account in computing the term of any agreement for purposes of this section any extension which is solely at the option of the lessee.

"(f) Comparable Rules Where Agreement for Decreasing Payments.—Under regulations prescribed by the Secretary, rules comparable to the rules of this section shall also apply in the case of any agreement where the amount paid under the agreement for the use of property decreases during the term of the agreement.

"(g) Comparable Rules for Services.—Under regulations prescribed by the Secretary, rules comparable to the rules of subsection (a)(2) shall also apply in the case of payments for services which meet requirements comparable to the requirements of subsection (d).

"(h) Regulations.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of contingent payments."

(b) Clerical Amendment.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 467. Certain payments for use of property or services."

(c) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to agreements entered into after June 8, 1984.

(2) Exceptions.—The amendments made by this section shall not apply—

(A) to any agreement entered into pursuant to a written agreement which was binding on June 8, 1984, and at all times thereafter,

(B) subject to the provisions of paragraph (3), to any agreement to lease property if—

(i) there was in effect a firm plan, evidenced by a board of directors' resolution, memorandum of agreement, or letter of intent on March 15, 1984, to enter into such an agreement, and

(ii) construction of the property was commenced (but such property was not placed in service) on or before March 15, 1984, and

(C) to any agreement to lease property if—

(i) the lessee of such property adopted a firm plan to lease the property, evidenced by a resolution of the Finance Committee of the Board of Directors of such lessee, on February 10, 1984,

(ii) the sum of the present values of the rents payable by the lessee under the lease at the inception thereof equals at least $91,223,034, assuming—

(I) the annual discount rate is 12.6 percent,

(II) the initial payment of rent occurs 12 months after the commencement of the lease, and

(III) subsequent payments of rents occur on the anniversary date of the initial payment, and

(iii) during—

(I) the first 5 years of the lease, at least 9 percent of the rents payable by the lessee under the agreement are paid, and

(II) the second 5 years of the lease, at least 16.25 percent of the rents payable by the lessee under the agreement are paid.

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), except that each separate agreement shall be treated as relating to all property placed in service before the property to which the agreement relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and contains essentially the same terms as, such agreement.

(3) Schedule of deemed rental payments.—

(A) In general.—In any case to which paragraph (2)(B) applies, for purposes of the Internal Revenue Code of 1954, the lessor shall be treated as having received or accrued (and the lessee shall be treated as having paid or incurred) rents equal to the greater of—

(i) the amount of rents actually paid under the agreement during the taxable year, or

(ii) the amount of rents determined in accordance with the schedule under subparagraph (B) for such taxable year.

(B) Schedule.—

(i) In general.—The schedule under this subparagraph is as follows:

Portion of lease term:	Cumulative percentage of total rent deemed paid:
1st ⅕	10
2nd ⅕	25
3rd ⅕	45
4th ⅕	70
Last ⅕	100.

(ii) OPERATING RULES.—For purposes of this schedule—

(I) the rent allocable to each taxable year within any portion of a lease term described in such schedule shall be a level pro rata amount properly allocable to such taxable year, and

(II) any agreement relating to property which is to be placed in service in 2 or more stages shall be treated as 2 or more separate agreements.

(C) PARAGRAPH NOT TO APPLY.—This paragraph shall not apply to any agreement if the sum of the present values of all payments under the agreement is greater than the sum of the present value of all the payments deemed to be paid or received under the schedule under subparagraph (B). For purposes of computing any present value under this subparagraph, the annual discount rate shall be equal to 12 percent, compounded semiannually.

SEC. 93. AMORTIZATION OF CONSTRUCTION PERIOD INTEREST AND TAXES FOR RESIDENTIAL REAL PROPERTY HELD BY CORPORATIONS.

(a) IN GENERAL.—Subsection (d) of section 189 (relating to amortization of real property construction period interest and taxes) is amended—

(1) by striking out paragraph (2), and

(2) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1984, with respect to construction beginning after March 15, 1984.

SEC. 94. CAPITALIZATION OF START-UP EXPENDITURES.

(a) IN GENERAL.—Section 195 (relating to start-up expenditures) is amended to read as follows:

"SEC. 195. START-UP EXPENDITURES.

"(a) CAPITALIZATION OF EXPENDITURES.—Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

"(b) ELECTION TO AMORTIZE.—

"(1) IN GENERAL.—Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins).

"(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

"(c) DEFINITIONS.—For purposes of this section—

"(1) START-UP EXPENDITURES.—The term 'start-up expenditure' means any amount—

"(A) paid or incurred in connection with—

"(i) investigating the creation or acquisition of an active trade or business, or

"(ii) creating an active trade or business, or

"(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

"(B) which, if paid or incurred in connection with the operation of an existing active trade or business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term 'start-up expenditure' does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

"(2) BEGINNING OF TRADE OR BUSINESS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

"(B) ACQUIRED TRADE OR BUSINESS.—An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

"(d) ELECTION.—

"(1) TIME FOR MAKING ELECTION.—An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

"(2) SCOPE OF ELECTION.—The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years."

(b) CONFORMING AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 195 and inserting in lieu thereof the following:

"Sec. 195. Start-up expenditures."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after June 30, 1984.

SEC. 96. LIFO CONFORMITY RULES APPLIED ON CONTROLLED GROUP BASIS.

(a) GENERAL RULE.—Section 472 (relating to last-in, first-out inventories) is amended by adding at the end thereof the following new subsection:

"(g) CONFORMITY RULES APPLIED ON CONTROLLED GROUP BASIS.——

"(1) IN GENERAL.—Except as otherwise provided in regulations, all members of the same group of financially related corporations shall be treated as 1 taxpayer for purposes of subsections (c) and (e)(2).

"(2) GROUP OF FINANCIALLY RELATED CORPORATIONS.—For purposes of paragraph (1), the term 'group of financially related corporations' means——

"(A) any affiliated group as defined in section 1504 determined by substituting '50 percent' for '80 percent' each place it appears in section 1504(a) and without regard to section 1504(b), and

"(B) any other group of corporations which consolidate or combine for purposes of financial statements."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle H—Provisions Relating to Tax Straddles

SEC. 101. REPEAL OF EXCEPTION FROM STRADDLE RULES FOR STOCK OPTIONS AND CERTAIN STOCK.

(a) REPEAL OF EXCEPTION FOR STOCK OPTIONS.—

(1) IN GENERAL.—Paragraph (2) of section 1092(d) (defining position) is amended to read as follows:

"(2) POSITION.—The term 'position' means an interest (including a futures or forward contract or option) in personal property."

(2) SECTIONS 1092 AND 263(g) NOT TO APPLY TO STRADDLES CONSISTING OF QUALIFIED COVERED CALL OPTIONS AND THE OPTIONED STOCK.—Subsection (c) of section 1092 (defining straddle) is amended by adding at the end thereof the following new paragraph:

"(4) EXCEPTION FOR CERTAIN STRADDLES CONSISTING OF QUALIFIED COVERED CALL OPTIONS AND THE OPTIONED STOCK.—

"(A) IN GENERAL.—If—

"(i) all the offsetting positions making up any straddle consist of 1 or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

"(ii) such straddle is not part of a larger straddle,

such straddle shall not be treated as a straddle for purposes of this section and section 263(g).

"(B) QUALIFIED COVERED CALL OPTION DEFINED.—For purposes of subparagraph (A), the term 'qualified covered call option' means any option granted by the taxpayer to purchase stock held by the taxpayer (or stock acquired by the taxpayer in connection with the granting of the option) but only if—

"(i) such option is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph,

"(ii) such option is granted more than 30 days before the day on which the option expires,

"(iii) such option is not a deep-in-the-money option,

"(iv) such option is not granted by an options dealer (within the meaning of section 1256(g)(8)) in connection with his activity of dealing in options, and

"(v) gain or loss with respect to such option is not ordinary income or loss.

"(C) DEEP-IN-THE-MONEY OPTION.—For purposes of subparagraph (B), the term 'deep-in-the-money option' means an option having a strike price lower than the lowest qualified bench mark.

"(D) LOWEST QUALIFIED BENCH MARK.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, for purposes of subparagraph (C), the term 'lowest qualified bench mark' means the highest available strike price which is less than the applicable stock price.

"(ii) SPECIAL RULE WHERE OPTION IS FOR PERIOD MORE THAN 90 DAYS AND STRIKE PRICE EXCEEDS $50.—In the case of an option—

"(I) which is granted more than 90 days before the date on which such option expires, and

"(II) with respect to which the strike price is more than $50,

the lowest qualified bench mark is the second highest available strike price which is less than the applicable stock price.

"(iii) 85 PERCENT RULE WHERE APPLICABLE STOCK PRICE $25 OR LESS.—If—

"(I) the applicable stock price is $25 or less, and

"(II) but for this clause, the lowest qualified bench mark would be less than 85 percent of the applicable stock price,

the lowest qualified bench mark shall be treated as equal to 85 percent of the applicable stock price.

"(iv) LIMITATION WHERE APPLICABLE STOCK PRICE $150 OR LESS.—If—

"(I) the applicable stock price is $150 or less, and

"(II) but for this clause, the lowest qualified bench mark would be less than the applicable stock price reduced by $10,
the lowest qualified bench mark shall be treated as equal to the applicable stock price reduced by $10.

"(E) SPECIAL YEAR-END RULE.—Subparagraph (A) shall not apply to any straddle for purposes of section 1092(a) if—

"(i) the qualified covered call options referred to in such subparagraph are closed during any taxable year,

"(ii) gain on disposition of the stock to be purchased from the tapayer under such options is includible in gross income for a later taxable year, and

"(iii) such stock was not held by the taxpayer for 30 days or more after the closing of such options.
For purposes of the preceding sentence, the rules of paragraphs (3) (other than subparagraph (B) thereof) and (4) of section 246(c) shall apply in determining the period for which the taxpayer holds the stock.

"(F) STRIKE PRICE.—For purposes of this paragraph, the term 'strike price' means the price at which the option is exercisable.

"(G) APPLICABLE STOCK PRICE.—For purposes of subparagraph (D), the term 'applicable stock price' means, with respect to any stock for which an option has been granted—

"(i) the closing price of such stock on the most recent day on which such stock was traded before the date on which such option was granted, or

"(ii) the opening price of such stock on the day on which such option was granted, but only if such price is greater than 110 percent of the price determined under clause (i).

"(H) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations may include modifications to the provisions of this paragraph which are appropriate to take account of changes in the practices of option exchanges or to prevent the use of options for tax avoidance purposes."

(b) REPEAL OF EXCEPTION FOR STOCK.—

(1) IN GENERAL.—Paragraph (1) of section 1092(d) (defining personal property) is amended by striking out "(other than stock)".

(2) EXCEPTION WHERE STRADDLE CONSISTS OF HOLDING STOCK.—Subsection (d) of section 1092 is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'personal property' does not include stock.

"(B) EXCEPTIONS.—The term 'personal property' includes—

"(i) any stock which is part of a straddle at least 1 of the offsetting positions of which is—

"(I) an option with respect to such stock or substantially identical stock or securities, or

"(II) under regulations, a position with respect to substantially similar or related property (other than stock), and

"(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

"(C) SPECIAL RULES.—

"(i) For purposes of subparagraph (B), subsection (c) and paragraph (4) shall be applied as if stock described in clause (i) or (ii) of subparagraph (B) were personal property.

"(ii) For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in clause (ii) of subparagraph (B), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer."

(c) TREATMENT OF GAIN OR LOSS AND SUSPENSION OF HOLDING PERIOD WHERE TAXPAYER GRANTOR OF OPTION TO BUY STOCK.—Section 1092 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) TREATMENT OF GAIN OR LOSS AND SUSPENSION OF HOLDING PERIOD WHERE TAXPAYER GRANTOR OF QUALIFIED COVERED CALL OPTION.—If a taxpayer holds any stock and grants a qualified covered call option to purchase such stock with a strike price less than the applicable stock price—

"(1) Treatment of loss.—Any loss with respect to such option shall be treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of such stock would be treated as long-term capital gain.

"(2) Suspension of holding period.—The holding period of such stock shall not include any period during which the taxpayer is the grantor of such option."

(d) TREATMENT OF IDENTIFIED STRADDLES INVOLVING SECTION 1256 CONTRACTS.—Paragraph (4) of subsection (d) of section 1092 is amended to read as follows:

"(4) SPECIAL RULE FOR SECTION 1256 CONTRACTS.—

"(A) GENERAL RULE.—In the case of a straddle at least 1 (but not all) of the positions of which are section 1256 contracts, the provisions of this section shall apply to any section 1256 contract and any other position making up such straddle.

"(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of subsection (a)(2) (relating to identified straddles), subparagraph (A) and section 1256 (a)(4) shall not apply to a straddle all of the offsetting positions of which consist of section 1256 contracts."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to positions established after December 31, 1983, in taxable years ending after such date.

(2) SPECIAL RULE FOR OFFSETTING POSITION STOCK.—In the case of any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder, the amendments made by this section shall apply to positions established on or after May 23, 1983, in taxable years ending on or after such date.

(3) SUBSECTION (c).—The amendment made by subsection (c) shall apply to positions established after June 30, 1984, in taxable years ending after such date.

(4) SUBSECTION (d).—The amendment made by subsection (d) shall apply to positions established after the date of the enactment of this Act in taxable years ending after such date.

SEC. 102. SECTION 1256 EXTENDED TO CERTAIN OPTIONS.

(a) GENERAL RULE.—

(1) Section 1256 (relating to regulated futures contracts marked to market) is amended—

(A) by striking out "regulated futures contract" each place in appears and inserting in lieu thereof "section 1256 contract", and

(B) by striking out "regulated futures contracts" each place in appears and inserting in lieu thereof "section 1256 contracts".

(2) Subsection (b) of section 1256 is amended to read as follows:

"(b) SECTION 1256 CONTRACT DEFINED.—For purposes of this section, the term 'section 1256 contract' means—

"(1) any regulated futures contract,

"(2) any foreign currency contract,

"(3) any nonequity option, and

"(4) any dealer equity option."

(3) Subsection (g) of section 1256 is amended to read as follows:

"(g) DEFINITIONS.—For purposes of this section—

"(1) REGULATED FUTURES CONTRACTS DEFINED.—The term 'regulated futures contract' means a contract—

"(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

"(B) which is traded on or subject to the rules of a qualified board or exchange.

"(2) FOREIGN CURRENCY CONTRACT DEFINED.—

"(A) FOREIGN CURRENCY CONTRACT.—The term 'foreign currency contract' means a contract—

"(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

"(ii) which is traded in the interbank market, and

"(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

"(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

"(3) NONEQUITY OPTION.—The term 'nonequity option' means any listed option which is not an equity option.

"(4) DEALER EQUITY OPTION.—The term 'dealer equity option' means, with respect to an options dealer, any listed option which—

"(A) is an equity option,

"(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

"(C) is listed on the national securities exchange on which such options dealer is registered.

"(5) LISTED OPTION.—The term 'listed option' means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

"(6) EQUITY OPTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'equity option' means any option—

"(i) to buy or sell stock, or

"(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

"(B) EXCEPTION FOR CERTAIN OPTIONS REGULATED BY COMMODITIES FUTURES TRADING COMMISSION.—The term 'equity option' does not include any option with respect to any group of stocks or stock index if—

"(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or "(ii) the Secretary determines that such option meets the requirements of law for such a designation.

"(7) QUALIFIED BOARD OR EXCHANGE.—The term 'qualified board or exchange' means—

"(A) a national securities exchange which is registered with the Securities and Exchange Commission,

"(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

"(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

"(8) OPTIONS DEALER.—

"(A) IN GENERAL.—The term 'options dealer' means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

"(B) PERSONS TRADING IN OTHER MARKETS.—In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term 'options dealer' also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.

(b) CAPITAL GAIN TREATMENT FOR TRADERS IN SECTION 1256 CONTRACTS.—Subsection (f) of section 1256 (relating to special rules) is amended by adding at the end thereof the following new paragraphs:

"(4) CAPITAL GAIN TREATMENT FOR TRADERS IN SECTION 1256 CONTRACTS.—

"(A) IN GENERAL.—For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

"(B) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

"(C) TREATMENT OF UNDERLYING PROPERTY.—For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.

"(5) SPECIAL RULE FOR DEALER EQUITY OPTIONS OF LIMITED PARTNERS OR LIMITED ENTREPRENEURS.—In the case of any gain or loss with respect to dealer equity options which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

"(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

"(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be."

(c) APPLICATION OF SELF-EMPLOYMENT INCOME TAX TO OPTIONS AND COMMODITIES DEALERS.—

(1) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1954.—Section 1402 (relating to definitions for tax on self-employment income) is amended by adding at the end thereof the following new subsection:

"(i) SPECIAL RULES FOR OPTIONS AND COMMODITIES DEALERS.—

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) OPTIONS DEALER.—The term 'options dealer' has the meaning given such term by section 1256(g)(8).

"(B) COMMODITIES DEALER.—The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(C) SECTION 1256 CONTRACTS.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b)."

(2) AMENDMENT TO THE SOCIAL SECURITY ACT.—Section 211 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h)(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 of the Internal Revenue Code of 1954 shall not apply.

"(2) For purposes of this subsection—

"(A) The term 'options dealer' has the meaning given such term by section 1256(g)(8) of such Code.

"(B) The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(C) The term 'section 1256 contracts' has the meaning given to such term by section 1256(b) of such Code."

(d) TREATMENT UNDER SUBCHAPTER S OF OPTIONS AND COMMODITIES DEALERS.—

(1) TAX IMPOSED ON CERTAIN CAPITAL GAINS NOT TO APPLY.—Subsection (c) of section 1374 (relating to tax imposed on certain capital gains) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF CERTAIN GAINS OF OPTIONS AND COMMODITIES DEALERS.—

"(A) EXCLUSION OF CERTAIN CAPITAL GAINS.—For purposes of this section, the net capital gain of any options dealer or commodities dealer shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) OPTIONS DEALER.—The term 'options dealer' has the meaning given to such term by section 1256(g)(8).

"(ii) COMMODITIES DEALER.—The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(iii) SECTION 1256 CONTRACTS.—The term 'section 1256 contracts' has the meaning given to such term by section 1256(b)."

(2) CERTAIN GAINS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Subparagraph (D) of section 1362(d)(3) (defining passive investment income) is amended by adding at the end thereof the following new clause:

"(v) SPECIAL RULE FOR OPTIONS AND COMMODITIES DEALERS.—In the case of any options or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss described in section 1374(c)(4)(A)."

(3) SUBCHAPTER S ELECTION.—Notwithstanding section 1362(b), an election under section 1362(a) made by a commodities dealer or an options dealer within 75 days following the date of the enactment of this Act will be treated as made for the taxable year which includes such data of enactment.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1256 (relating to terminations, etc.) is amended—

(A) by striking out "by taking or making delivery," in paragraph (1) and inserting in lieu thereof "by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse,",

(B) by striking out "takes delivery under" in paragraph (2) and inserting in lieu thereof "takes delivery under or exercises", and

(C) by striking out "TAKES DELIVERY ON" in the heading of paragraph (2) and inserting in lieu thereof "TAKES DELIVERY ON OR EXERCISES".

(2) Paragraph (5) of section 1092(d) is amended to read as follows:

"(5) SECTION 1256 CONTRACT.—The term 'section 1256 contract' has the meaning given such term by section 1256(b)."

(3) Subsection (c) of section 1212 (relating to carryback of losses from regulated futures contracts to offset prior gains from such contracts) is amended—

(A) by striking out "net commodity futures loss" each place it appears (including in any headings) and inserting in lieu thereof "net section 1256 contracts loss",

(B) by striking out "regulated futures contracts" each place it appears (including in any headings) and inserting in lieu thereof "section 1256 contracts",

(C) by striking out "regulated futures contract" each place it appears in paragraph (7)(A) (including the heading) and inserting in lieu thereof "section 1256 contract", and

(D) by striking out "net commodity futures gain" each place it appears (including in any headings) and inserting in lieu thereof "net section 1256 contract gain".

(4) Paragraph (2) of section 1234A (relating to gains or losses from certain terminations) is amended by striking out "a regulated futures contract" and inserting in lieu thereof "a section 1256 contract".

(5) The section heading for section 1256 is amended by striking out "REGULATED FUTURES CONTRACTS" and inserting in lieu thereof "SECTION 1256 CONTRACTS".

(6) The table of sections for part IV of subchapter P of chapter 1 is amended by striking out "Regulated futures contracts" in the item relating to section 1256 and inserting in lieu thereof "Section 1256 contracts".

(7) Paragraph (2) of section 263(g) (defining interest and carrying charges) is amended to read as follows:

"(2) INTEREST AND CARRYING CHARGES DEFINED.—For purposes of paragraph (1), the term 'interest and carrying charges' means the excess of—

"(A) the sum of—

"(i) interest on indebtedness incurred or continued to purchase or carry the personal property, and

"(ii) all other amounts (including charges to insure, store, or transport the personal *property) paid or incurred to carry the personal property, over*

"(B) the sum of—

"(i) the amount of interest (including original issue discount) includible in gross income for the taxable year with respect to the property described in subparagraph (A),

"(ii) any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such property for the taxable year, and

"(iii) the excess of any dividends includible in gross income with respect to such property for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245.

For purposes of subparagraph (A), the term 'interest' includes any amount paid or incurred in connection with personal property used in a short sale."

(8) Subsection (g) of section 263 (relating to certain interest and carrying charges in the case of straddles) is amended by adding at the end thereof the following new paragraph:

"(4) Application with other provisions.—

"(A) Subsection (c).—In the case of any short sale, this subsection shall be applied after subsection (h).

"(B) Section 1277 or 1282.—In the case of any obligation to which section 1277 or 1282 applies, this subsection shall be applied after section 1277 or 1282."

(9) Section 1234A (relating to gains or losses from certain terminations) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement)."

(f) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection or subsection (g), the amendments made by this section shall apply to positions established after the date of the enactment of this Act, in taxable years ending after such date.

(2) Special rule for options on regulated futures contracts.—In the case of any option with respect to a regulated futures contract (within the meaning of section 1256 of the Internal Revenue Code of 1954), the amendments made by this section shall apply to positions established after October 31, 1983, in taxable years ending after such date.

(3) Special rule for self-employment tax.—Except as provided in subsection (g)(2), the amendments made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

(4) Gains or losses from certain terminations.—The amendment made by subsection (d)(9) shall apply as if included in the amendment made by section 505(a) of the Economic Recovery Tax Act of 1981, as amended by section 105(e) of the Technical Corrections Act of 1982.

(g) Elections With Respect to Property Held on or Before the Date of the Enactment of This Act.—At the election of the taxpayer—

(1) the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer on the date of the enactment of this Act, effective for periods after such date in taxable years ending after such date, or

(2) in lieu of an election under paragraph (1), the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer which includes the date of the enactment of this Act.

(h) Elections for Installment Payment of Tax Attributable to Stock Options.—

(1) In general.—If the taxpayer makes an election under subsection (g)(2) and under this subsection—

(A) the taxpayer may pay part or all the tax for the taxable year referred to in subsection (g)(2) in 2 or more (but not exceeding 5) equal installments, and

(B) the maximum amount of tax which may be paid in installments under this subsection shall be the excess of—

(i) the tax for such taxable year determined by taking into account subsection (g)(2), over

(ii) the tax for such taxable year determined by taking into account subsection (g)(2) and by treating—

(I) all section 1256 contracts which are stock options, and

(II) any stock which was a part of a straddle including any such stock options,

as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year. Stock options and stock shall be taken into account under subparagraph (B)(ii) only if such options or stock were held on the last day of the preceding taxable year and only if income on such options or stock would have been ordinary income if such options or stock were sold at a gain on such last day.

(2) Date for payment of installment.—

(A) If an election is made under this subsection, the first installment under paragraph (1) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed for payment of the preceding installment.

(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

(3) Interest imposed.—For purposes of section 6601 of the Internal Revenue Code of 1954, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

(4) Form of election.—An election under this subsection shall be made not later than the time for filing the return for the taxable year described in paragraph (1) and shall be made in the manner and form required by regulations prescribed by Secretary of the Treasury or his delegate. The election shall set forth—

(A) the amount determined under paragraph (1)(B) and the number of installments elected by the taxpayer,

(B) the property described in paragraph (1)(B)(ii), and the date on which such property was acquired,

(C) the fair market value of the property described in paragraph (1)(B)(ii) on the last business day of the taxable year preceding the taxable year described in paragraph (1), and

(D) such other information for purposes of carrying out the provisions of this subsection as may be required by such regulations.

(5) Delay of Identification Requirement.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1954 shall not apply to any stock option or stock acquired on or before the 60th day after the date of the enactment of this Act.

(i) Definitions.—For purposes of subsections (g) and (h)—

(1) Section 1256 contract.—The term "section 1256 contract" has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1954 (as amended by this section).

(2) Stock option.—The term "stock option" means any option to buy or sell stock.

SEC. 103. REGULATIONS UNDER SECTION 1092(b).

(a) General Rule.—Subsection (b) of section 1092 (relating to character of gain or loss; wash sales) is amended to read as follows:

"(b) Regulations.—

"(1) In general.—The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233.

"(2) Regulations relating to mixed straddles.—

"(A) Elective provisions in lieu of section 1233(d) principles.—The regulations prescribed under paragraph (1) shall provide that—

"(i) the taxpayer may offset gains and losses from positions which are part of mixed straddles—

"(I) by straddle-by-straddle identification, or

"(II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis,

"(ii) such offsetting will occur before the application of section 1256, and section 1256(a)(3) will only apply to net gain or net loss attributable to section 1256 contracts, and

"(iii) the principles of section 1233(d) shall not apply with respect to any straddle identified under clause (i)(I) or part of an account established under clause (i)(II).

"(B) Limitation on net gain or net loss from mixed straddle account.—In the case of any mixed straddle account referred to in subparagraph (A)(i)(II)—

"(i) Not more than 50 percent of net gain may be treated as long-term capital gain.—In no event shall more than 50 percent of the net gain from such account for any taxable year be treated as long-term capital gain.

"(ii) Not more than 40 percent of net loss may be treated as short-term capital loss.—In no event shall more than 40 percent of the net loss from such account for any taxable year be treated as short-term capital loss.

"(C) Authority to treat certain positions as mixed straddles.—The regulations prescribed under paragraph (1) may treat as a mixed straddle positions not described in section 1256(d)(4)."

(b) Requirement That Regulations Be Issued Within 6 Months After the Date of Enactment.—The Secretary of the Treasury or his delegate shall prescribe initial regulations under section 1092(b) of the Internal Revenue Code of 1954 (including regulations relating to mixed straddles) not later than the date 6 months after the date of the enactment of this Act.

(c) Effective Date of Regulations With Respect to Mixed Straddles.—The regulations described in subsection (b) with respect to the application of section 1233 of the Internal Revenue Code of 1954 to mixed straddles shall not apply to mixed straddles

all of the positions of which were established before January 1, 1984.

SEC. 104. LIMITATION ON LOSSES FROM HEDGING TRANSACTIONS.

(a) GENERAL RULE.—Subsection (e) of section 1256 (relating to mark to market not to apply to hedging transactions) is amended by adding at the end thereof the following new paragraph:

"(5) LIMITATION ON LOSSES FROM HEDGING TRANSACTIONS.—

"(A) IN GENERAL.—

"(i) LIMITATION.—Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

"(ii) CARRYOVER OF DISALLOWED LOSS.—Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

"(B) EXCEPTION WHERE ECONOMIC LOSS.—Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

"(C) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

"(D) HEDGING LOSS.—The term 'hedging loss' means the excess of—

"(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

"(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

"(E) UNRECOGNIZED GAIN.—The term 'unrecognized gain' has the meaning given to such term by section 1092(a)(3)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

SEC. 105. CLARIFICATION THAT SECTION 1234 APPLIES TO OPTIONS ON REGULATED FUTURES CONTRACTS AND CASH SETTLEMENT OPTIONS.

(a) GENERAL RULE.—Section 1234 (relating to options to buy or sell) is amended by adding at the end thereof the following new subsection:

"(c) TREATMENT OF OPTIONS ON SECTION 1256 CONTRACTS AND CASH SETTLEMENT OPTIONS.—

"(1) SECTION 1256 CONTRACTS.—Gain or loss shall be recognized on the exercise of an option on a section 1256 contract (within the meaning of section 1256(b)).

"(2) TREATMENT OF CASH SETTLEMENT OPTIONS.—

"(A) IN GENERAL.—For purposes of subsections (a) and (b), a cash settlement option shall be treated as an option to buy or sell property.

"(B) CASH SETTLEMENT OPTION.—For purposes of subparagraph (A), the term 'cash settlement option' means any option which on exercise settles in (or could be settled in) cash or property other than the underlying property."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date.

SEC. 106. WASH SALE RULES TO APPLY TO LOSSES ON CERTAIN SHORT SALES.

(a) IN GENERAL.—Section 1091 (relating to losses from wash sales of stock or securities) is amended by adding at the end thereof the following new subsection:

"(e) CERTAIN SHORT SALES OF STOCK OR SECURITIES.—Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

"(1) substantially identical stock or securities were sold, or

"(2) another short sale of substantially identical stock or securities was entered into."

(b) LOSSES FROM WASH SALES ONLY IN CASE OF BUSINESS LOSSES.—Section 1091(a) (relating to disallowance of loss deduction for wash sales) is amended by striking out all that follows "then" and inserting in lieu thereof "no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business."

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to short sales of stock or securities after the date of the enactment of this Act in taxable years ending after such date.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to sales after December 31, 1984, in taxable years ending after such date.

SEC. 107. TIME FOR IDENTIFICATION BY TAXPAYER OF CERTAIN TRANSACTIONS.

(a) IDENTIFIED STRADDLES.—Clause (i) of section 1092(a)(2)(B) (defining identified straddles) is amended to read as follows:

"(i) which is clearly identified on the taxpayer's records as an identified straddle before the earlier of—

"(I) the close of the day on which the straddle is acquired, or

"(II) such time as the Secretary may prescribe by regulations."

(b) DEALERS IN SECURITIES.—

(1) Paragraph (1) of section 1236(a) (relating to capital gain of dealers in securities) is amended to read as follows:

"(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and".

(2) Paragraph (2) of section 1236(a) is amended by inserting "(or such earlier time)" after "such day".

(c) MIXED STRADDLES.—Subparagraph (B) of section 1256(d)(4) (defining mixed straddles) is amended by inserting "(or such earlier time as the Secretary may prescribe by regulations)" after "acquired".

(d) HEDGING TRANSACTIONS.—Subparagraph (C) of section 1256(e)(2) (defining hedging transactions) is amended by inserting "(or such earlier time as the Secretary may prescribe by regulations)" after "entered into".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions entered into after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 108. TREATMENT OF CERTAIN LOSSES ON STRADDLES ENTERED INTO BEFORE EFFECTIVE DATE OF ECONOMIC RECOVERY TAX ACT OF 1981.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1954, in the case of any disposition of 1 or more positions—

(1) which were entered into before 1982 and form part of a straddle, and

(2) to which the amendments made by title V of such Act do not apply,

any loss from such disposition shall be allowed for the taxable year of the disposition if such position is part of a transaction entered into for profit.

(b) PRESUMPTION THAT TRANSACTION ENTERED INTO FOR PROFIT.—For purposes of subsection (a), any position held by a commodities dealer or any person regularly engaged in investing in regulated futures contracts shall be rebuttably presumed to be part of a transaction entered into for profit.

(c) NET LOSS ALLOWED WHETHER OR NOT TRANSACTION ENTERED INTO FOR PROFIT.—If any loss with respect to a position described in paragraphs (1) and (2) of subsection (a) is not allowable as a deduction (after applying subsections (a) and (b)), such loss shall be allowed in determining the gain or loss from dispositions of other positions in the straddle to the extent required to accurately reflect the taxpayer's net gain or loss from all positions in such straddle.

(d) OTHER RULES.—Except as otherwise provided in subsections (a) and (c) and in sections 1233 and 1234 of such Code, the determination of whether there is recognized gain or loss with respect to a position, and the amount and timing of such gain or loss, and the treatment of such gain or loss as long-term or short-term shall be made without regard to whether such position constitutes part of a straddle.

(e) STRADDLE.—For purposes of this section, the term "straddle" has the meaning given to such term by section 1092(c) of the Internal Revenue Code of 1954 as in effect on the day after the date of the enactment of the Economic Recovery Tax Act of 1981, and shall include a straddle all the positions of which are regulated futures contracts.

(f) COMMODITIES DEALER.—For purposes of this section, the term "commodities dealer" has the meaning given to such term by section 1402(i)(2)(B) of the Internal Revenue Code of 1954 (as added by this subtitle).

(g) REGULATED FUTURES CONTRACTS.—For purposes of this section, the term "regulated futures contracts" has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1954 (as in effect before the date of enactment of this Act).

(h) SYNDICATES.—Subsection (b) shall not apply to any syndicate (as defined in section 1256(e)(3)(B) of the Internal Revenue Code of 1954).

Subtitle I—Depreciation

SEC. 111. RECOVERY PERIOD FOR CERTAIN REAL PROPERTY EXTENDED TO 18 YEARS.

(a) IN GENERAL.—Paragraph (2) of section 168(b) (relating to 15-year real property) is amended—

(1) by striking out "15-year real property" each place it appears in the text and heading thereof and inserting in lieu thereof "18-year real property",

(2) by striking out "15-year recovery period" in subparagraph (A)(i) and inserting in lieu thereof "18-year recovery period", and

(3) by striking out "(200 percent declining balance method in the case of low-income housing)".

(b) LOW-INCOME HOUSING.—

(1) DETERMINATION OF RECOVERY PERCENTAGE.—Subsection (b) of section 168 (relating to the amount of deduction) is amended by adding at the end thereof the following new paragraph:

"(4) LOW-INCOME HOUSING.—

"(A) IN GENERAL.—In the case of low-income housing, the applicable percentage shall be determined in accordance with the table prescribed in paragraph (2), except that in prescribing such table, the Secretary shall—

"(i) assign to the property a 15-year recovery period, and

"(ii) assign percentages generally determined in accordance with use of the 200 percent declining balance method, switching to the method described in section 167(b)(1) at a time to maximize the deduction allowable under subsection (a).

"(B) SPECIAL RULE FOR YEAR OF DISPOSITION.—In the case of a disposition of low-income housing, the deduction allowable under subsection (a) for the taxable year in which the disposition occurs shall reflect only the months during such year the property was placed in service."

(2) LOW-INCOME HOUSING DEFINED.—Paragraph (2) of section 168(c) (defining recovery property) is amended by redesignating subparagraph (F) as subparagraph (G) and by inserting after subparagraph (E) the following new subparagraph:

"(F) LOW-INCOME HOUSING.—The term 'low-income housing' means property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)."

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 168(b)(2) is amended by striking out the last sentence thereof.

(B) Subparagraph (D) of section 168(c)(2) is amended to read as follows:

"(D) 18-YEAR REAL PROPERTY.—The term '18-year real property' means section 1250 class property which—

"(i) does not have a present class life of 12.5 years or less, and

"(ii) is not low-income housing."

(c) TRANSITIONAL RULE FOR COMPONENTS.—Subparagraph (B) of section 168(f)(1) is amended to read as follows:

"(B) TRANSITIONAL RULES.—

"(i) BUILDING PLACED IN SERVICE BEFORE 1981.—In the case of any building placed in service by the taxpayer before January 1, 1981, for purposes of applying subparagraph (A) to components of such buildings placed in service after December 31, 1980, and before March 16, 1984, the deduction allowable under subsection (a) with respect to such components shall be computed in the same manner as the deduction allowable with respect to the first such component placed in service after December 31, 1980.

"(ii) Buildings placed in service before March 16, 1984.—In the case of any building placed in service by the taxpayer before March 16, 1984, for purposes of applying subparagraph (A) to components of such buildings placed in service after March 15, 1984, the deduction allowable under subsection (a) with respect to such components shall be computed in the same manner as the deduction allowable with respect to the first such component placed in service after March 15, 1984.

"(iii) First component treated as separate building.—For purposes of clause (i) or (ii), the method of computing the deduction allowable with respect to the first component described in such clause shall be determined as if it were a separate building."

(d) USE OF MID-MONTH CONVENTION.—The second last sentence of subparagraph (A), and subparagraph (B), of section 168(b)(2) (relating to 15-year real property) are each amended by inserting "(using a mid-month convention)" after "months".

(e) CONFORMING AMENDMENTS.—

(1) Subsections (b)(3)(B)(iii), (f)(2)(B), (f)(2)(C)(ii)(II), (f)(2)(E), and (f)(5) of section 168 are each amended by striking out "15-year real property" each place it appears and inserting in lieu thereof "18-year real property or low-income housing".

(2) Clause (ii) of section 168(b)(3)(B) is amended by striking out "15-year real property" and inserting in lieu thereof "18-year real property or low-income housing,".

(3) Subparagraph (B) of section 168(d)(2) is amended by striking out "15-year real property" and inserting in lieu thereof "18-year real property or low-income housing".

(4) Clause (i) of section 168(f)(2)(C) (relating to recovery period for property used outside United States) is amended by striking out the item relating to 15-year real property in the table and inserting in lieu thereof the following new item:

"18-year real property or low-income housing.	35 or 45 years.".

(5) Sections 57(a)(12)(A) and 312(k)(3)(A) and subparagraphs (A), (B), and (C) of section 1245(A)(5) are each amended by striking out "15-year real property" each place it appears in the text and headings and inserting in lieu thereof "18-year real property and low-income housing".

(6) Subparagraph (B) of section 57(a)(12) (relating to items of tax preference) is amended to read as follows:

"(B) 18-YEAR REAL PROPERTY AND LOW-INCOME HOUSING.—With respect to each recovery property which is 18-year real property or low-income housing, the amount (if any) by which the deduction allowed under section 168(a) for the taxable year exceeds the deduction which would have been allowable for a taxable year had the property been depreciated using the straight-line method (without regard to salvage value) over a recovery period of—

"(i) 18 years in the case of 18-year real property, and

"(ii) 15 years in the case of low-income housing property."

(7) Subparagraph (E) of section 57(a)(12) is amended by striking out "'15-year real property'," and inserting in lieu thereof "'18-year real property', 'low-income housing',".

(8) Paragraph (2) of section 48(g) (relating to qualified rehabilitation expenditure) is amended—

(A) by striking out "property" each place it appears in subparagraph (A)(i) and inserting in lieu thereof "real property".

(B) by striking out "15" in subparagraph (A)(i) and inserting in lieu thereof "18 (15 years in the case of low-income housing),

(C) by striking out "15 years" in subparagraph (B)(v) and inserting in lieu thereof "18 years (15 years in the case of low-income housing)", and

(D) by adding at the end thereof the following new subparagraph:

"(D) LOW-INCOME HOUSING.—For purposes of subparagraph (B), the term 'low-income housing' has the meaning given such term by section 168(c)(2)(F)."

(9) Subparagraph (A) of section 168(b)(3) (relating to election of different recovery percentage) is amended—

(A) by striking out "under paragraphs (1) and (2)" and inserting in lieu thereof "under paragraph (1), (2), or (4)", and

(B) by striking out the item in the table relating to 15-year real property and inserting in lieu thereof the following new item:

"18-year real property and low-income housing.	18, 35, or 45."

(10) Section 1245(a)(5)(D) is amended to read as follows:

"(D) low-income housing (within the meaning of section 168(c)(2)(F))."

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to property placed in service by the taxpayer after March 15, 1984.

(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term "qualified person" means any person who transfers his rights in such a contract or such property to the taxpayer, but only if property is not placed in service by such person before such rights are tansferred to the taxpayer.

(3) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—

(A) CERTAIN INVENTORY.—In the case of any property which—

(i) is held by a person as property described in section 1221(1), and

(ii) is disposed of by such person before January 1, 1985,

such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property.

(B) CERTAIN PROPERTY FINANCED BY BONDS.—In the case of any property with respect to which—

(i) bonds were issued to finance such property before 1984, and

(ii) an architectural contract was entered into before March 1984,

paragraph (2) shall be applied by substituting "May 2" for "March 16".

(4) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168 (f)(1)(B) of the Internal Revenue Code of 1954 (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

SEC. 112. RECAPTURE IN CASE OF INSTALLMENT SALES.

(a) GENERAL RULE.—Subsection (i) of section 453 (relating to installment method) is amended to read as follows:

"(i) RECOGNITION OF RECAPTURE INCOME IN YEAR OF DISPOSITION.—

"(1) IN GENERAL.—In the case of any installment sale of property to which subsection (a) applies—

"(A) notwithstanding subsection (a), any recapture income shall be recognized in the year of the disposition and

"(B) any gain in excess of the recapture income shall be taken into account under the installment method.

"(2) RECAPTURE INCOME.—For purposes of paragraph (1), the term 'recapture income' means, with respect to any installment sale, the aggregate amount which would be treated as ordinary income under section 1245 or 1250 for the taxable year of the disposition if all payments to be received were received in the taxable year of disposition."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to dispositions made after June 6, 1984.

(2) EXCEPTION.—The amendments made by this act shall not apply with respect to any disposition conducted pursuant to a contract which was binding on March 22, 1984, and at all times thereafter.

SEC. 113. PROVISIONS RELATING TO SOUND RECORDINGS AND FILMS.

(a) SOUND RECORDINGS.—

(1) IN GENERAL.—Section 48 (defining section 38 property) is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following new subsection:

"(r) SPECIAL RULES RELATING TO SOUND RECORDINGS.—

"(1) IN GENERAL.—For purposes of this title, in the case of any sound recording, the original use of which commences with taxpayer, the taxpayer may elect to treat such recording as recovery property which is 3-year property to the extent that the taxpayer has an ownership interest in such recording.

"(2) FAILURE TO MAKE ELECTION.—If a taxpayer does not make an election under paragraph (1) with respect to any sound recording—

"(A) no credit shall be allowed under section 38 with respect to such recording, and

"(B) such recording shall not be treated as recovery property.

"(3) PREDOMINANT USE TEST AND AT RISK RULES NOT TO APPLY; QUALIFIED INVESTMENT.—In the case of any sound recording—

"(A) sections 46(c)(8), 46(c)(9), and 48(a)(2) shall not apply, and

"(B) in determining the qualified investment under section 46(c)(1), there shall be used (in lieu of the basis of the property) an amount equal to the production costs which are allocable to the United States (as determined under rules similar to the rules of section 48(k)(5)(D)).

"(4) OWNERSHIP INTEREST.—For purposes of determining the credit allowable under section 38 the ownership interest of any person in a sound recording shall be determined on the basis of his proportionate share of any loss which may be incurred with respect to the production costs of such sound recording.

"(5) SOUND RECORDING.—For purposes of this subsection, the term 'sound recording' means any sound recording described in section 280(c)(2).

"(6) PRODUCTION COSTS—

"(A) IN GENERAL.—For purposes of this subsection, the term 'production costs' includes—

"(i) a reasonable allocation of general overhead costs,

"(ii) compensation for services performed by song writers, artists, production personnel, directors, producers, and similar personnel,

"(iii) costs of 'first' distribution of records or tapes, and

"(iv) the cost of the material being recorded.

"(B) CERTAIN COSTS NOT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C), the term 'production costs' shall not include—

"(i) 'residuals' payable under contracts with labor organizations, or

"(ii) participations or royalties payable as compensation to song writers, artists, production personnel, directors, producers, and similar personnel, or

"(iii) any other contingent amounts.

"(C) CERTAIN CONTINGENT AMOUNTS TAKEN INTO ACCOUNT.—In the case of any amount which is described in subparagraph (B) and which is incurred in the taxable year in which the sound recording is placed in service or the next taxable year—

"(i) subparagraph (B) shall not apply, and

"(ii) for purposes of sections 38 and 168, the taxpayer shall be treated as having placed in service in each such taxable year 3-year recovery property with a basis equal to the amount so incurred in such taxable year.

"(7) ELECTION MADE SEPARATELY.—An election under paragraph (1) shall be made separately with respect to each sound recording and must be made by all persons having an ownership interest in such recording.

"(8) UNITED STATES.—For purposes of this subsection, the term 'United States' includes the possessions of the United States."

(2) CONFORMING AMENDMENTS.—Section 168(f) (relating to special rules), as amended by this Act, is amended by adding at the end thereof the following new paragraph:

"(14) SPECIAL RULES FOR SOUND RECORDINGS.—In the case of a sound recording (within the meaning of section 48(r)), the unadjusted basis of such property shall be equal to the production costs (within the meaning of section 48(r)(6))."

(b) FILMS AND OTHER PROPERTY.—

(1) FILM AND VIDEO TAPES NOT TREATED AS RECOVERY PROPERTY.—Section 168(e) (relating to property excluded from application of this section) is amended by adding at the end thereof the following new paragraph:

"(5) FILMS AND VIDEO TAPES NOT RECOVERY PROPERTY.—The term 'recovery property' shall not include any motion picture film or video tape."

(2) APPLICATION OF RECOVERY PROPERTY EXCEPTIONS.—

(A) Section 168(e) is amended by striking out "section" and inserting in lieu thereof "title" in the matter preceding paragraph (1).

(B) Subparagraph (A) of section 46(c)(7) is amended by inserting "recovery" before "property" the first place it appears.

(3) FILMS NOT SUBJECT TO INVESTMENT CREDIT AT-RISK RULES.—Paragraph (4) of section 48(k) is amended—

(A) by inserting ", section 46(c)(8), or section 46(c)(9)" after "section 48(a)(2)" in subparagraph (A),

(B) by inserting "or at-risk rules" after "test" in the heading thereof, and

(C) by striking out "issued" and inserting in lieu thereof "used".

(4) BASIS ADJUSTMENT FOR FILMS.—Section 48(q) (relating to basis adjustment) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR QUALIFIED FILMS.—If a credit is allowed under section 38 with respect to any qualified film (within the meaning of subsection (k)(1)(B)) then, in lieu of any reduction under paragraph (1)—

"(A) to the extent that the credit is determined with respect to any amount described in clause (v) or (vi) of subsection (k)(5)(B), any deduction allowable under this chapter with respect to such amount shall be reduced by 50 percent of the amount of the credit so determined, and

"(B) the basis of the taxpayer's ownership interest (within the meaning of subsection (k)(1)(C)) shall be reduced by the excess of—

"(i) 50 percent of the amount of the credit determined under subsection (k), over

"(ii) the amount of the reduction under subparagraph (A)."

(c) EFFECTIVE DATES.—

(1) SOUND RECORDINGS.—The amendments made by subsection (a) shall apply to property placed in service after March 15, 1984, in taxable years ending after such date.

(2) FILMS AND OTHER PROPERTY.—

(B) The amendments made by paragraphs (2) and (3) shall apply as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981.

(C) The amendment made by paragraph (4) of subsection (b) shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

(A) The amendment made by paragraph (1) shall apply to any films placed in service before, on, or after the date of the enactment of this Act, except that such amendment shall not apply to—

(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section 168 of the Internal Revenue Code of 1954 on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

SEC. 114. DEFINITION OF SECTION 38 PROPERTY IN SALE-LEASE-BACK TRANSACTIONS.

(a) IN GENERAL.—Subsection (b) of section 48 (defining new section 38 property) is amended to read as follows:

"(b) NEW SECTION 38 PROPERTY.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'new section 38 property' means section 38 property the original use of which commences with the taxpayer.

"(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of paragraph (1), in the case of any section 38 property which—

"(A) is originally placed in service by a person, and

"(B) is sold and leased back by such person, or is leased to such person, within 3 months of the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the lease.

"(3) SPECIAL RULE FOR ENERGY PROPERTY.—The principles of paragraph (2) shall be applicable in determining whether the original use of property commences with the taxpayer for purposes of section 48(l)(2)(B)(ii)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment).

Subtitle J—Foreign Provisions

PART I—CHANGES IN SOURCE AND CHARACTER RULES

SEC. 121. CERTAIN AMOUNTS TREATED AS DERIVED FROM UNITED STATES SOURCES FOR PURPOSES OF LIMITATION ON FOREIGN TAX CREDIT.

(a) GENERAL RULE.—Section 904 (relating to limitation on foreign tax credit) is amended by redesignating subsections (g) and (h) as subsections (h) and (i), respectively, and by inserting after subsection (f) the following new subsection:

"(g) SOURCE RULES IN CASE OF UNITED STATES-OWNED FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

"(A) Any amount included in gross income under—

"(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

"(ii) section 551 (relating to foreign personal holding company income taxed to United States shareholders).

"(B) Interest.

"(C) Dividends.

"(2) SUBPART F AND FOREIGN PERSONAL HOLDING COMPANY INCLUSIONS.—Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

"(3) CERTAIN INTEREST ALLOCABLE TO UNITED STATES SOURCE INCOME.—Any interest which—

"(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

"(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

"(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

"(4) DIVIDENDS.—

"(A) IN GENERAL.—The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

"(B) UNITED STATES SOURCE RATIO.—For purposes of subparagraph (A), the term 'United States source ratio' means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

"(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

"(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

"(5) EXCEPTION WHERE UNITED STATES-OWNED FOREIGN CORPORATION HAS SMALL AMOUNT OF UNITED STATES SOURCE INCOME.—Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

"(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

"(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

"(6) UNITED STATES-OWNED FOREIGN CORPORATION.—For purposes of this subsection, the term 'United States-owned foreign corporation' means any foreign corporation if 50 percent or more of—

"(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

"(7) DIVIDEND.—For purposes of this subsection, the term 'dividend' includes any gain treated as ordinary income under section 1246 or as a dividend under section 1248.

"(8) COORDINATION WITH SUBSECTION (f).—This subsection shall be applied before subsection (f).

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

"(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

"(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) shall take effect on the date of the enactment of this Act. In the case of the taxable year of any United States-owned foreign corporation in which occurs the date of the enactment of this Act—

(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 (as added by subsection (a)); except that

(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

(2) SPECIAL RULE FOR APPLICABLE CFC.—

(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1954 (as added by subsection (a)), except that

(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term "qualified interest" means—

(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

(ii) a fraction (not in excess of 1)—

(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii) (I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

(C) ADJUSTMENT FOR RETIREMENT OF CFC OBLIGATIONS.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

(D) APPLICABLE CFC.—For purposes of this paragraph, the term "applicable CFC" means any controlled foreign corporation (within the meaning of section 957)—

(i) which was in existence on March 31, 1984, and

(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations and the holding of short-term obligations and lending the proceeds of such obligations to affiliates.

(E) AFFILIATES; UNITED STATES AFFILIATES.—For purposes of this paragraph—

(i) AFFILIATE.—The term "affiliate" means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1954) to the applicable CFC.

(ii) UNITED STATES AFFILIATE.—The term "United States affiliate" means any United States person which is an affiliate of the applicable CFC.

(F) UNITED STATES AFFILIATE OBLIGATIONS.—For purposes of this paragraph, the term "United States affiliate obligations" means any obligation of (and payable by) a United States affiliate.

(G) CFC OBLIGATION.—For purposes of this paragraph, the term "CFC obligation" means any obligation of (and issued by) a CFC if—

(i) the requirements of clause (i) of section 163(f)(2)(B) of the Internal Revenue Code of 1954 are met with respect to such obligation, and

(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such section 163(f)(2)(B) are met with respect to such obligation.

(H) TREATMENT OF OBLIGATIONS WITH ORIGINAL ISSUE DISCOUNT.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1954).

(I) APPLICABLE LIMIT.—For purposes of subparagraph (B)(ii)(I), the term "applicable limit" means the sum of—

(i) the equity of the applicable CFC on March 31, 1984, and

(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

(I) before March 8, 1984, or

(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

(3) EXCEPTION FOR CERTAIN TERM OBLIGATIONS.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)D)).

(4) DEFINITIONS.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

(5) SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1954 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraphs (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

(6) APPLICATION OF PARAGRAPH (5) DELAYED IN CERTAIN CASES.—In the case of a foreign corporation—

(A) which is a subsidary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

(B) which issued obligations on—

(i) September 24, 1979, denominated in French francs,

(ii) September 10, 1981, denominated in Swiss francs,

(iii) July 14, 1982, denominated in Swiss francs, and

(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars,

then paragraph (5) shall not apply to income received or accrued on such obligations before January 1, 1986.

SEC. 122. CERTAIN AMOUNTS TREATED AS INTEREST FOR PURPOSES OF THE LIMITATION ON THE FOREIGN TAX CREDIT.

(a) GENERAL RULE.—Subsection (d) of section 904 (relating to limitation on foreign tax credit) is amended by adding at the end thereof the following new paragraph:

"(3) CERTAIN AMOUNTS ATTRIBUTABLE TO UNITED STATES-OWNED FOREIGN CORPORATIONS, ETC., TREATED AS INTEREST.—

"(A) IN GENERAL.—For purposes of this subsection, dividends and interest—

"(i) paid or accrued by a designated payor corporation, and

"(ii) attributable to any taxable year of such corporation,

shall be treated as interest income described in paragraph (2) to the extent that the aggregate amount of such dividends and interest does not exceed the separate limitation interest of the designated payor corporation for such taxable year.

"(B) SEPARATE LIMITATION INTEREST.—For purposes of this subsection, the term 'separate limitation interest' means, with respect to any taxable year—

"(i) the aggregate amount of the interest income described in paragraph (2) (including amounts treated as so described by reason of this paragraph) which is received or accrued by the designated payor corporation during the taxable year, reduced by

"(ii) the deductions properly allocable (under regulations prescribed by the Secretary) to such income.

"(C) EXCEPTION WHERE DESIGNATED CORPORATION HAS SMALL AMOUNT OF SEPARATE LIMITATION INTEREST.—Subparagraph (A) shall not apply to any amount attributable to the taxable year of a designated payor corporation, if—

"(i) such corporation has earnings and profits for such taxable year, and

"(ii) less than 10 percent of such earnings and profits is attributable to separate limitation interest.

"(D) TREATMENT OF CERTAIN INTEREST.—For purposes of this paragraph, the amount of the separate limitation interest and the earnings and profits of any designated payor corporation shall be determined without any reduction for interest paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 237(b)) to such a shareholder.

"(E) DESIGNATED PAYOR CORPORATION.—For purposes of this paragraph, the term 'designated payor corporation' means—

"(i) any United States-owned foreign corporation (within the meaning of subsection (g)(6)),

"(ii) any other foreign corporation in which the taxpayer is a United States shareholder (as defined in section 951(b)) at any time during the taxable year of such foreign corporation, and

"(iii) any regulated investment company.

"(F) DETERMINATION OF YEAR TO WHICH AMOUNT IS ATTRIBUTABLE.—For purposes of determining whether an amount is attributable to a taxable year of a designated payor corporation—

"(i) any amount includible in gross income under section 551 or 951 in respect of such taxable year,

"(ii) any interest paid or accrued by such corporation during such taxable year, and

"(iii) any dividend paid out of the earnings and profits of such corporation for such taxable year,

shall be treated as attributable to such taxable year.

"(G) ORDERING RULES.—Subparagraph (A) shall be applied to amounts described therein in the order in which such amounts are described in subparagraph (F).

"(H) DIVIDEND.—For purposes of this paragraph, the term 'dividend' includes—

"(i) any amount includible in gross income under section 551 or 951, and

"(ii) any gain treated as ordinary income under section 1246 or as a dividend under section 1248.

"(I) DISTRIBUTIONS THROUGH OTHER ENTITIES.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph in the case of distributions or payments through 1 or more entities.

"(J) INTEREST FROM MEMBERS OF SAME AFFILIATED GROUP.—For purposes of this paragraph, interest received or accrued by the designated payor corporation from another memer of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, under such interest is attributable directly or indirectly to separate limitation interest of such other member."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) SPECIAL RULES FOR INTEREST INCOME.—

(A) IN GENERAL.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

(B) EXCEPTION FOR INVESTMENT AFTER JUNE 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor after the date of enactment of this Act if it is attributable to investment in the designated payor after June 22, 1984.

(3) TERM OBLIGATIONS OF DESIGNATED PAYOR CORPORATIONS WHICH ARE NOT APPLICABLE CFC.—In the case of any designated payor corporation which is not an applicable CFC (as defined in section 131(b)(2)(D)), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account.

SEC. 123. TREATMENT OF RELATED PERSON FACTORING INCOME.

(a) GENERAL RULE.—Section 864 (relating to source definitions) is amended by adding at the end thereof the following new subsection:

"(d) TREATMENT OF RELATED PERSON FACTORING INCOME.—

"(1) IN GENERAL.—For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

"(2) PROVISIONS TO WHICH PARAGRAPH (1) APPLIES.—The provisions set forth in this paragraph are as follows:

"(A) Part III of subchapter G of this chapter (relating to foreign personal holding companies).

"(B) Section 904 (relating to limitation on foreign tax credit).

"(C) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

"(3) TRADE OR SERVICE RECEIVABLE.—For purposes of this subsection, the term 'trade or service receivable' means any account receivable or evidence of indebtedness arising out of—

"(A) the disposition by a related person of property described in section 1221(1), or

"(B) the performance of services by a related person.

"(4) RELATED PERSON.—For purposes of this subsection, the term 'related person' means—

"(A) any person who is a related person (within the meaning of section 267(b)), and

"(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

"(5) CERTAIN PROVISIONS NOT TO APPLY.—

"(A) CERTAIN EXCEPTIONS.—The following provisions shall not apply to any amount treated as interest under paragraph (1) or (6):

"(i) Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies).

"(ii) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 10 percent).

"(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

"(iv) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).

"(B) SPECIAL RULES FOR POSSESSIONS.—

"(i) PUERTO RICO AND POSSESSIONS TAX CREDIT.—Any amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1)).

"(ii) VIRGIN ISLANDS CORPORATIONS.—Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1)).

"(6) SPECIAL RULE FOR CERTAIN INCOME FROM LOANS OF A CONTROLLED FOREIGN CORPORATION.—Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person other than a related person for the purpose of financing—

"(A) the purchase of property described in section 1221(1) of such related person, or

"(B) the payment for the performance of services by such related person,

shall be treated as interest described in paragraph (1).

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(b)(3)."

(b) TREATMENT AS UNITED STATES PROPERTY.—Subsection (b) of section 956 (defining United States property) is amended by adding at the end thereof the following new paragraph:

"(3) CERTAIN TRADE OR SERVICE RECEIVABLES ACQUIRED FROM RELATED UNITED STATES PERSONS.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), the term 'United States property' includes any trade or service receivable if—

"(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

"(ii) the obligor under such receivable is a United States person.

"(B) DEFINITIONS.—For purposes of this paragraph, the term 'trade or service receivable' and 'related person' have the respective meanings given to such terms by section 864(d)."

(c) EFFECTIVE DATE.—(1) In general.—Except as provided in paraagraph (2), the amendments made by this section shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1984, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the investment in United States property of such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

(A) $15,000,000 or

(B) the amount of the Belgian corporation's investment on or before March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public.

SEC. 124. TREATMENT OF CERTAIN TRANSPORTATION INCOME.

(a) GENERAL RULE.—Section 863 (relating to items not specified in section 861 or 862) is amended by adding at the end thereof the following new subsection:

"(c) SOURCE RULE FOR CERTAIN TRANSPORTATION INCOME.—

"(1) TRANSPORTATION BEGINNING AND ENDING IN THE UNITED STATES.—All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

"(2) TRANSPORTATION BETWEEN UNITED STATES AND ANY POSSESSION.—

"(A) IN GENERAL.—50 percent of all transportation income attributable to transportation which—

"(i) begins in the United States and ends in a possession of the United States, or

"(ii) begins in a possession of the United States and ends in the United States,

shall be treated as derived from sources within the United States.

"(B) SPECIAL RULE FOR CERTAIN LESSORS OF AIRCRAFT.—If—

"(i) the taxpayer owns an aircraft which is section 38 property and leases such aircraft to a United States person (other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer), and

"(ii) such United States person is a regularly scheduled air carrier,

subparagraph (A) shall be applied by substituting '100 percent' for '50 percent'.

"(3) TRANSPORTATION INCOME.—For purposes of this subsection, the term 'transportation income' means any income derived from, or in connection with—

"(A) the use (or hiring or leasing for use) of a vessel or aircraft, or

"(B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term 'vessel or aircraft' includes any container used in connection with a vessel or circraft."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to transportation beginning after the date of the enactment of this Act in taxable years ending after such date.

SEC. 125. TREATMENT OF CERTAIN DISTRIBUTIONS RECEIVED BY UNITED STATES-OWNED FOREIGN CORPORATIONS.

(a) GENERAL RULE.—Section 535 (defining accumulated taxable income) is amended by adding at the end thereof the following new subsection:

"(d) INCOME DISTRIBUTED TO UNITED STATES-OWNED FOREIGN CORPORATION RETAINS UNITED STATES CONNECTION.—

"(1) IN GENERAL.—For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year—

"(A) is derived from sources within the United States, or

"(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated as derived by such corporation from sources within the United States.

"(2) UNITED STATES-OWNED FOREIGN CORPORATION.—The term 'United States-owned foreign corporation' has the meaning given to such term by section 904(g)(6)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to distributions and interest payments received by a United States-owned foreign corporation (within the meaning of section 535(d) of the Internal Revenue Code of 1954) on or after May 23, 1983, in taxable years ending on or after such date.

(2) CORPORATIONS IN EXISTENCE ON MAY 23, 1983.—In the case of a United States-owned foreign corporation (as so defined) in existence on May 23, 1983, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

SEC. 126. ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954, all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

(1) IN GENERAL.—The term "qualified research and experimental expenditures" means amounts—

(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

(B) which are attributable to activities conducted in the United States.

(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of subsection (c) of section 174 of such Code shall apply.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1985.

(2) SPECIAL RULE.—If the taxpayer's 3rd taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 3rd taxable year.

PART II—WITHHOLDING PROVISIONS

SEC. 127. REPEAL OF THE 30 PERCENT TAX ON INTEREST RECEIVED BY FOREIGNERS ON CERTAIN PORTFOLIO INVESTMENTS.

(a) Repeal of Tax on Nonresident Individuals.—

(1) IN GENERAL.—Section 871 (relating to 30 percent tax on income not connected with United States business), as amended by this Act, is amended by redesignating subsection (i) as subsection (j) and by adding at the end thereof the following new subsection:

"(i) REPEAL OF TAX ON INTEREST OF NONRESIDENT ALIEN INDIVIDUALS RECEIVED FROM CERTAIN PORTFOLIO DEBT INVESTMENTS.—

"(1) IN GENERAL.—In the case of any portfolio interest received by a nonresident individual from sources within the United States no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

"(2) PORTFOLIO INTEREST.—For purposes of this subsection, the term 'portfolio interest' means any interest (including original issue discount) which is described in any of the following subparagraphs:

"(A) CERTAIN OBLIGATIONS WHICH ARE NOT REGISTERED.—Interest which is paid on any obligation which—

"(i) is not in registered form, and

"(ii) is described insection 163(f)(2)(B).

"(B) CERTAIN REGISTERED OBLIGATIONS.—Interest which is paid on an obligation—

"(i) which is in registered form, and

"(ii) with respect to which the United States person who is, or would otherwise be, required to deduct and withhold tax from such interest under section 1441(a) has received a statement (which meets the requirements of paragraph (4)) that the beneficial owner of the obligation is not a United States person.

"(3) PORTFOLIO INTEREST NOT TO INCLUDE INTEREST RECEIVED BY 10-PERCENT SHAREHOLDERS.— For purposes of this subsection—

"(A) IN GENERAL.—The term 'portfolio' interest' shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

"(B) 10-PERCENT SHAREHOLDER.—The term '10-percent shareholder' means—

"(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

"(C) ATTRIBUTION RULES.—For purposes of determining ownership of stock under subparagraph (B) (i) the rules of section 318(a) shall apply, except that—

"(i) Section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein, and

"(ii) any stock which a person is treated as owner after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) CERTAIN STATEMENTS.—A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by—

"(A) the beneficial owner of such obligation, or

"(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

"(5) SECRETARY MAY PROVIDE SUBSECTION NOT TO APPLY IN CASES OF INADEQUATE INFORMATION EXCHANGE.—

"(A) IN GENERAL.—If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period—

"(i) beginning on the date specified by the Secretary, and

"(ii) ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

"(B) EXCEPTION FOR CERTAIN OBLIGATIONS.—Subparagraph (A) shall not apply to the payment of interest on any obligation which is isued on or before the date of the publication of the Secretary's determination under such subparagraph.

"(6) REGISTERED FORM.—For purposes of this subsection, the term 'registered form' has the same meaning given such term by section 163(f).".

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 871(a) (relating to tax on income other than capital gains) is amended by striking out "There" and inserting in lieu thereof "Except as provided in subsection (i), there".

(b) FOREIGN CORPORATIONS.—

(1) IN GENERAL.—Section 881 (relating to tax on income of foreign corporations not connected with United States business), as amended by this Act, is amended by redesignating subsection (c) as subsection (d) and by adding after subsection (b) the following new subsection:

"(c) REPEAL OF TAX ON INTEREST OF FOREIGN CORPORATIONS RECEIVED FROM CERTAIN PORTFOLIO DEBT INVESTMENTS.—

"(1) IN GENERAL.—In the case of any portfolio interest received by a foreign corporation from sources within the United States, no tax shall be imposed under paragraph (1) of subsection (a).

"(2) PORTFOLIO INTEREST.—For purposes of this subsection, the term 'portfolio interest' means any interest (including orginal issue discount) which is described in any of the following subparagraphs:

"(A) CERTAIN OBLIGATIONS WHICH ARE NOT REGISTERED.—Interest which is paid on any obligation which is described in section 871(i)(2)(A).

"(B) CERTAIN REGISTERED OBLIGATIONS.—Interest which is paid on an obligation—

"(i) which is in registered form, and

"(ii) with respect to which the person who is, or would otherwise be, required to deduct and withhold tax from such interest under section 1442(a) has received a statement which meets the requirements of section 871(i)(4) that the beneficial owner of the obligation is not a United States person.

"(3) PORTFOLIO INTEREST SHALL NOT INCLUDE INTEREST RECEIVED BY CERTAIN PERSONS.—For purposes of this subsection, the term 'portfolio interest' shall not include any portfolio interest which—

"(A) except in the case of interest paid on an obligation of the United States, is received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business, or

"(B) is received by a 10-percent shareholder (within the meaning of section 871(i)(3)(B)).

"(4) SPECIAL RULES FOR CONTROLLED FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—In the case of any portfolio interest received by a controlled foreign corporation, the following provisions shall not apply:

"(i) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 10 percent).

"(ii) Paragraph (4) of section 954(b) (relating to corporations not found or avoided of to avoid tax).

"(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

"(iv) Subparagraph (C) of section 954(c)(3) (relating to certain income derived by an insurance company).

"(v). Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).

"(B) INTEREST RECEIVED FROM RELATED PERSONS.—This subsection shall not apply to any portfolio interest received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4)).

"(C) CONTROLLED FOREIGN CORPORATION.—The term 'controlled foreign corporation' has the meaning given such term by section 957(a).

"(5) SECRETARY MAY CEASE APPLICATION OF THIS SUBSECTION.—Under rules similar to the rules of section 871(i)(5), the Secretary may provide that this subsection shall not apply to payments of interest described in section 871(i)(5).

"(6) REGISTERED FORM.—For purposes of this subsection, the term "registered form' has the meaning given such term by section 163(f)."

(2) CONFORMING AMENDMENT.—Subsection (a) of section 881 (relating to imposition of tax) is amended by striking out "There" and inserting in lieu thereof "Except as provided in subsection (c), there".

(c) AMENDMENT OF SECTION 864(c)(2).—Paragraph (2) of section 864(c) (relating to effectively connected income, etc.) is amended by striking out "section 871(a)(1) or section 881(a)" and inserting in lieu thereof "section 871(a)(1), section 871(i) section 881(a), or section 881(c)".

(d) AMENDMENT OF SECTION 2105.—Subsection (b) of section 2105 (relating to property without the United States) is amended to read as follows:

"(b) BANK DEPOSITS AND CERTAIN OTHER DEBT OBLIGATIONS.—For purposes of this subchapter—

"(1) amounts described in section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death,

"(2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business, and

"(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(i)(4) has been received, any interest thereon would be eligible for the exemption from tax under section 871(i)(1) were such interest received by the decedent at the time of his death,

shall not be deemed property within the United States.".

(e) WITHHOLDING.—

(1) NONRESIDENT ALIENS.—Subsection (c) of section 1441 (relating to withholding of tax on nonresident aliens) is amended by adding at the end thereof the following new paragraph:

"(9) INTEREST INCOME FROM CERTAIN PORTFOLIO DEBT INVESTMENTS.—In the case of portfo-

lio interest (within the meaning of 871(i)(2)) no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(i)(3).".

(2) Foreign corporations.—The last sentence of section 1442(a) is amended—

(A) by striking out "and" after "section 881(a)(4),", and

(B) by inserting ", and the references in section 1441(c)(9) to section 871(l)(1) and 871(i)(3) shall be treated as referring to sections 881(c)(1) and 881(c)(3)".

(f) Register Obligations.—Subparagraph (C)(i) of section 163(f)(2) (relating to authority to include other obligations) is amended to read as follows:

"(i) in the case of—

"(I) subparagraph (A), such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, or

"(II) subparagraph (B), such obligation is of a type specified by the Secretary in regulations and".

(g) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to interest received after the date of the enactment of this Act with respect to obligations issued after such date, in taxable years ending after such date.

(2) Subsection (d).—The amendment made by subsection (d) shall apply to obligations issued after the date of the enactment of this Act with respect to the estates of decedents dying after such date.

Special rule for certain United States affiliatf obligations.—

(A) In general.—For purposes of the Internal Revenue Code of 1954, payments of interest on a United States affiliate obligation to an application CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

(B) Exception.—Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69-501, 69-377, 70-645, and 73-110.

(C) Definitions.—

(i) The term "applicable CFC" has the meaning given such term by section 131(b)(2)(D) of this Act, except that such section shall be applied by substituting "the date of interest payment" for "March 31, 1984," in clause (i) thereof.

(ii) The term "United States affiliate obligation" means an obligation described in section 131(b)(2)(F) of this Act which was issued before June 22, 1984.

SEC. 128. TREATMENT OF UNITED STATES SOURCE ORIGINAL ISSUE DISCOUNT IN CASE OF FOREIGN PERSONS.

(a) Nonresident Alien Individuals.—

"(1) In general.—Subparagraph (C) of section 871(a)(1) (relating to income not connected with United States business) is amended to read as follows:

"(C) in the case of—

"(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

"(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and".

(2) Definitions and special rules.—Section 871 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Special Rules for Original Issue Discount.—For purposes of this section and section 881—

"(1) Original issue discount obligation.—

"(A) In general.—Except as provided in subparagraph (B), the term 'original issue discount obligation' means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

"(B) Exceptions.—The term 'original issue discount obligation' shall not include—

"(i) Certain short-term obligations.—Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

"(ii) Tax-exempt obligations.—Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

"(2) Determination of portion of original issue discount accruing during any period.—The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

"(3) Source of original issue discount.—Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

"(4) Stripped bonds.—The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section."

(b) Foreign Corporations.—

(1) In general.—Paragraph (3) of section 881(a) (relating to tax on income of foreign corporations not connected with United States business) is amended to read as follows:

"(3) in the case of—

"(A) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretore taken into account under subparagraph (B)), and

"(B) the payment of interest on an original issue discount obligation, an amount equal to the originel issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and".

(2) Cross reference.—Subsection (c) of section 881 (relating to doubling of tax) is amended to read as follows:

"(c) Cross Reference.—

"For doubling of tax on corporations of certain foreign countries, see section 891.

"For special rules for original issue discount, see section 871(g)."

(c) Deduction for Original Issue Discount Held by Related Foreign Person.—Subsection (e) of section 163 (relating to original issue discount), as amended by this Act, is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) Special rule for original issue discount on obligation held by related foreign person.—

"(A) In general.—If any debt instrument having original issue discount is held by a related foreign person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid.

"(B) Related foreign person.—For purposes of subparagraph (A), the term 'related foreign person' means any person—

"(i) who is not a United States person, and

"(ii) who is related (within the meaning of section 267(b)) to the issuer."

(d) Effective Date.—

(1) In general.—Except as provided in paragraph (2) the amendments made by this section shall apply to payments made on or after the 60th day after the date of the enactment of this Act with respect to obligations issued after March 31, 1972.

(2) Subsection (c).—The amendment made by subsection

(c) shall apply to obligations issued after June 9, 1984.

SEC. 129. WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.

(a) Withholding of Tax.—

(1) In general.—Subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 1445. WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.

"(a) General Rule.—Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

"(b) Exemptions.—

"(1) In general.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

"(2) Transferor furnishes nonforeign affidavit.—Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty or perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

"(3) Nonpublicly traded domestic corporation furnishes affidavit that it is not a United States real property holding corporation.—Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation, if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty or perjury, that the domestic corporation is not and has not been a United States real property holding corporation (as defined in *section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii).*

"(4) Transferee receives qualifying statement.—

"(A) In general.—This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

"(B) Qualifying statement.—For purposes of subparagraph (A), the term 'qualifying statement' means a statement by the Secretary that—

"(i) the transferor either—

"(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

"(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

"(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

"(5) Residence where amount realized does not exceed $300,000.—This paragraph applies to the disposition if—

"(A) the property is acquired by the transferee for use by him as a residence, and

"(B) the amount realized for the property does not exceed $300,000.

"(6) Stock regularly traded on established securities market.—This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

"(7) Special rules for paragraphs (2) and (3).—Paragraph (2) or (3) (as the case may be) shall not apply to any disposition—

"(A) if—

"(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

"(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

"(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.

"(c) Limitations on Amount Required To Be Withheld.—

"(1) Cannot exceed transferor's maximum tax liability.—

"(A) In general.—The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

"(B) Request.—At the request of the transferor or transferee the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

"(C) Refund of excess amounts withheld.—Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

"(2) Authority of Secretary to prescribe reduced amount.—At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(c)(1).

"(3) Procedural rules.—

"(A) Regulations.—Requests for—

"(i) qualifying statements under subsection (b)(4),

"(ii) determinations of transferor's maximum tax liability under paragraph (1), and

"(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

"(B) Requests to be handled within 90 days.—The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

"(d) Liability of Transferor's Agents or Transferee's Agents.—

"(1) Notice of false affidavit; foreign corporations.—If—

"(A) the transferor furnishes the transferee an affidavit described in paragraph (2)(A) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

"(B) any transferor's agent or transferee's agent has actual knowledge that such affidavit is false or the transferor is a foreign corporation,

such agent shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

"(2) Failure to furnish notice.—

"(A) In general.—If any transferor's agent or transferee's agent is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent shall have the same duty to deduct and withhold that the transferee would have had if such agent had complied with paragraph (1).

"(B) Liability limited to amount of compensation.—An agent's liability under subparagraph (A) shall be limited to the amount of compensation the agent derives from the transaction.

"(3) Transferor's agent.—For purposes of this subsection, the term 'transferor's agent' means any person who represents the transferor—

"(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

"(B) in settling the transaction.

"(4) Transferee's agent.—For purposes of this subsection, the term 'transferee's agent' means any person who represents the transferee—

"(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

"(B) in settling the transaction.

"(5) Settlement officer not treated as transferor's agent.—For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

"(A) The receipt and the disbursement of any portion of the consideration for the transaction.

"(B) The recording of any document in connection with the transaction.

"(e) Special Rules Relating to Distributions, Etc., by Corporations, Partnerships, Trusts, or Estates.—

"(1) Certain domestic partnerships, trusts, and estates.—A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

"(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

"(B) either—

"(i) includible in the distributive share of a partner of the partnership who is a foreign person,

"(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

"(iii) includible in the income of a foreign person under the provisions of section 671.

"(2) Certain distributions by foreign corporations.—In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to 28 percent of the amount of gain recognized on such distribution under such subsection.

"(3) Distributions by certain domestic corporations to foreign shareholders.—If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized by the foreign shareholder.

"(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates.—A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897(g).

"(5) Rules relating to dispositions of interest in partnerships, trusts, or estates.—To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized on the disposition.

"(6) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection.

"(f) Definitions.—For purposes of this section—

"(1) Transferor.—The term 'transferor' means the person disposing of the United States real property interest.

"(2) Transferee.—The term 'transferee' means the person acquiring the United States real property interest.

"(3) FOREIGN PERSON.—The term 'foreign person' means any person other than a United States person.

"(4) TRANSFEROR'S MAXIMUM TAX LIABILITY.—The term 'transferor's maximum tax liability' means, with respect to the disposition of any interest, the sum of—

"(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

"(B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

"(5) TRANSFEROR'S UNSATISFIED WITHHOLDING LIABILITY.—The term 'transferor's unsatisfied withholding liability' means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 3 is amended by adding at the end thereof the following new item:

"Sec. 1445. Withholding of tax on dispositions of United States real property interests."

(b) REPORTING REQUIREMENTS LIMITED TO FOREIGN PERSONS HOLDING DIRECT INVESTMENTS IN UNITED STATES REAL PROPERTY.—

(1) IN GENERAL.—Section 6039C (relating to returns with respect to United States real property interests) is amended to read as follows:

"SEC. 6039C. RETURNS WITH RESPECT TO FOREIGN PERSONS HOLDING DIRECT INVESTMENTS IN UNITED STATES REAL PROPERTY INTERESTS.

"(a) GENERAL RULE.—To the extent provided in regulations, any foreign person holding direct investments in United States real property interests for the calendar year shall make a return setting forth—

"(1) the name and address of such person,

"(2) a description of all United States real property interests held by such person at any time during the calendar year, and

"(3) such other information as the Secretary may by regulations prescribe.

"(b) DEFINITION OF FOREIGN PERSONS HOLDING DIRECT INVESTMENTS IN UNITED STATES REAL PROPERTY INTERESTS.—For purposes of this section, a foreign person shall be treated as holding direct investments in United States real property interests during any calendar year if—

"(1) such person did not engage in a trade or business in the United States at any time during such calendar year, and

"(2) the fair market value of the United States real property interests held directly by such person at any time during such year equals or exceeds $50,000.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) UNITED STATES REAL PROPERTY INTEREST.—The term 'United States real property interest' has the meaning given to such term by section 897(c).

"(2) FOREIGN PERSON.—The term 'foreign person' means any person who is not a United States person.

"(3) ATTRIBUTION OF OWNERSHIP.—For purposes of subsection (b)(2)—

"(A) INTERESTS HELD BY PARTNERSHIPS, ETC.—United States real property interests held by a partnership, trust, or estate shall be treated as owned proportionately by its partners or beneficiaries.

"(B) INTERESTS HELD BY FAMILY MEMBERS.—United States real property interests held by the spouse or any minor child of an individual shall be treated as owned by such individual.

"(4) TIME AND MANNER OF FILING RETURN.—All returns required to be made under this section shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

"(d) SPECIAL RULE FOR UNITED STATES INTEREST AND VIRGIN ISLANDS INTEREST.—A nonresident alien individual or foreign corporation subject to tax under section 897(a) shall pay any tax and file any return required by this title—

"(1) to the United States, in the case of any interest in real property located in the United States and an interest (other than an interest solely as a creditor) in a domestic corporation (with respect to the United States) described in section 897(c)(1)(A)(ii), and

"(2) to the Virgin Islands, in the case of any interest in real property located in the Virgin Islands and an interest (other than an interest solely as a creditor) in a domestic corporation (with respect to the Virgin Islands) described in section 897(c)(1)(A)(ii)."

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking out the item relating to section 6039C and inserting in lieu thereof the following:

"Sec. 6039C. Returns with respect to foreign persons holding direct investments in United States real property interests."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to any disposition on or after January 1, 1985.

(2) REPORTING REQUIREMENTS.—The amendments made by subsection (b) shall apply to calendar year 1980 and subsequent calendar years.

SEC. 130. TREATMENT OF PAYMENTS TO GUAM AND VIRGIN ISLANDS CORPORATIONS.

(a) GENERAL RULE.—Subsection (b) of section 881 (relating to exception for Guam corporations) is amended to read as follows:

"(b) EXCEPTION FOR CERTAIN GUAM AND VIRGIN ISLANDS CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this section, a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands shall not be treated as a foreign corporation for any taxable year if—

"(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons, and

"(B) at least 20 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to have been derived from sources within Guam or the Virgin Islands (as the case may be) for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence).

"(2) PARAGRAPH (1) NOT TO APPLY TO TAX IMPOSED IN GUAM.—For purposes of applying this subsection with respect to income tax liability incurred to Guam—

"(A) Paragraph (1) shall not apply, and

"(B) for purposes of this section, the term 'foreign corporation' does not include a corporation created or organized in Guam or under the law of Guam.

"(3) DEFINITIONS.—

"(A) FOREIGN PERSON.—For purposes of paragraph (1), the term 'foreign person' means any person other than—

"(i) a United States person, or

"(ii) a person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

"(B) INDIRECT OWNERSHIP RULES.—For purposes of paragraph (1), the rules of section 318(a)(2) shall apply except that '5 percent' shall be substituted for '50 percent' in subparagraph (C) thereof.

"(4) CROSS REFERENCE.—

"For tax imposed in the Virgin Islands, see sections 934 and 934A."

(b) WITHHOLDING OF TAX.—Subsection (c) of section 1442 (relating to exception for Guam corporations) is amended to read as follows:

"(c) EXCEPTION FOR CERTAIN GUAM AND VIRGIN ISLANDS CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this section, the term 'foreign corporation' does not include a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands if the requirements of subparagraphs (A) and (B) of section 881(b)(1) are met with respect to such corporation.

"(2) PARAGRAPH (1) NOT TO APPLY TO TAX IMPOSED IN GUAM.—For purposes of applying this subsection with respect to income tax liability incurred to Guam—

"(A) paragraph (1) shall not apply, and

"(B) for purposes of this section, the term 'foreign corporation' does not include a corporation created or organized in Guam or under the law of Guam.

"(3) CROSS REFERENCE.—

"For tax imposed in the Virgin Islands, see sections 934 and 934A."

(c) TECHNICAL AMENDMENT.—Subparagraph (B) of section 7651(5) is amended by inserting "(other than section 881(b)(1))" after "For purposes of this title".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after March 1, 1984, in taxable years ending after such date.

PART III—TAXATION OF CERTAIN TRANSFERS OF PROPERTY OUTSIDE THE UNITED STATES

SEC. 131. TAXATION OF CERTAIN TRANSFERS OF PROPERTY OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—Subsection (a) of section 367 (relating to transfers of property from the United States) is amended to read as follows:

"(a) TRANSFERS OF PROPERTY FROM THE UNITED STATES.—

"(1) GENERAL RULE.—If, in connection with any exchange described in section 332, 351, 354, 355, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

"(2) EXCEPTION FOR CERTAIN STOCK OR SECURITIES.—Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

"(3) EXCEPTION FOR TRANSFERS OF CERTAIN PROPERTY USED IN THE ACTIVE CONDUCT OF A TRADE OR BUSINESS.—

"(A) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, paragraph (1) shall not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States.

"(B) PARAGRAPH NOT TO APPLY TO CERTAIN PROPERTY.—Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to any—

"(i) property described in paragraph (1) or (3) of section 1221 (relating to inventory and copyrights, etc.),

"(ii) installment obligation, accounts receivable, or similar property,

"(iii) foreign currency or other property denominated in foreign currency,

"(iv) intangible property (within the meaning of section 936(h)(3)(B)), or

"(v) property with respect to which the transferor is a lessor at the time of the transfer, except that this clause shall not apply if the transferee was the lessee.

"(C) TRANSFER OF FOREIGN BRANCH WITH PREVIOUSLY DEDUCTED LOSSES.—Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to gain realized on the transfer of the assets of a foreign branch of a United States person to a foreign corporation in an exchange described in paragraph (1) to the extent that—

"(i) the sum of losses—

"(I) which were incurred by the foreign branch before the transfer, and

"(II) with respect to which a deduction was allowed to the taxpayer, exceeds

"(ii) the sum of—

"(I) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

"(II) the amount which is recognized under section 904(f)(3) on account of the transfer.

Any gain recognized by reason of the preceding sentence shall be treated for purposes of this chapter as income from sources outside the United States having the same character as such losses had.

"(4) SPECIAL RULE FOR TRANSFER OF PARTNERSHIP INTERESTS.—Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

"(5) SECRETARY MAY EXEMPT CERTAIN TRANSACTIONS FROM APPLICATION OF THIS SUBSECTION.—Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation."

(b) SPECIAL RULES FOR TRANSFERS OF INTANGIBLES.—Subsection (d) of section 367 (relating to special rule for transfer of intangibles by possession corporations) is amended to read as follows:

"(d) SPECIAL RULES RELATING TO TRANSFERS OF INTANGIBLES.—

"(1) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

"(A) subsection (a) shall not apply to the transfer of such property, and

"(B) the provisions of this subsection shall apply to such transfer.

"(2) TRANSFER OF INTANGIBLES TREATED AS TRANSFER PURSUANT TO SALE OF CONTINGENT PAYMENTS.—

"(A) IN GENERAL.—If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as—

"(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

"(ii) receiving amounts which reasonably reflect the amounts which would have been received—

"(I) annually in the form of such payments over the useful life of such property, or

"(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

"(B) EFFECT ON EARNINGS AND PROFITS.—For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

"(C) AMOUNTS RECEIVED TREATED AS UNITED STATES SOURCE ORDINARY INCOME.—For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States."

(c) TREATMENT OF LIQUIDATIONS UNDER SECTION 336.—Section 367 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TREATMENT OF LIQUIDATIONS UNDER SECTION 336.—In the case of any distribution described in section 336 by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section."

(d) SECRETARY MUST BE NOTIFIED OF TRANSACTIONS DESCRIBED IN SECTION 367.—

"(1) NOTIFICATION REQUIREMENT.—Subpart A of part III of subchapter A of chapter 61 is amended by adding after section 6038A the following new section:

"SEC. 6038B. NOTICE OF CERTAIN TRANSFERS TO
FOREIGN PERSONS.

"(a) IN GENERAL.—Each United States person who—

"(1) transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or

"(2) makes a distribution described in section 336 to a person who is not a United States person,

shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulations prescribe, such information with respect to such exchange or distribution as the Secretary may require in such regulations.

"(b) PENALTY FOR FAILURE TO FURNISH INFORMATION.—

"(1) IN GENERAL.—If any United States person fails to furnish the information described in subsection (a) at the time and in the manner required by regulations, such person shall pay a penalty equal to 25 percent of the amount of the gain realized on the exchange.

"(2) REASONABLE CAUSE EXCEPTION.—Paragraph (1) shall not apply to any failure if the United States person shows such failure is due to reasonable cause and not to willful neglect."

(2) EXTENSION OF PERIOD FOR ASSESSMENT AND COLLECTION WHERE SECRETARY NOT NOTIFIED.—Subsection (c) of section 6501 (relating to exceptions to limitations on assessment and collection) is amended by adding at the end thereof the following new paragraph:

"(8) FAILURE TO NOTIFY SECRETARY UNDER SECTION 6038B.—In the case of any tax imposed on any exchange by reason of subsection (a) or (d) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange under section 6038B(a)."

(3) CONFORMING AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by adding after the item relating to section 6038A the following new item:

"Sec. 6038B. Notice of certain transfers to
foreign persons."

(e) REPEAL OF DECLARATORY JUDGMENT PROVISIONS INVOLVING TRANSFERS OF PROPERTY FROM THE UNITED STATES.—

(1) IN GENERAL.—Section 7477 is hereby repealed.

(2) CONFORMING AMENDMENTS.—

(A) Section 7482(b)(1) (relating to venue for review of Tax Court decisions) is amended by striking out subparagraph (D) and by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively.

(B) The table of sections for part IV of subchapter C of chapter 76 is amended by striking out the item relating to section 7477.

(f) TRANSFERS TO AVOID INCOME TAX.—

(1) IN GENERAL.—Section 1492 (relating to nontaxable transfers) is amended—

(A) by striking out paragraphs (2) and (3) and by inserting in lieu thereof—

"(2) To a transfer—

"(A) described in section 367, or

"(B) not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367, or", and

(B) by redesignating paragraph (4) as paragraph (3).

(2) CONFORMING AMENDMENT.—Subsection (b) of section 1494 (relating to abatement or refund) is amended to read as follows:

"(b) ABATEMENT OR REFUND.—Under regulations prescribed by the Secretary, the tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

(2) SPECIAL RULE FOR CERTAIN TRANFERS OF INTANGIBLES.—

(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1954) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax.

(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal

Revenue Code of 1954 (as in effect before such amendments).

PART IV—MISCELLANEOUS FOREIGN CORPORATE PROVISIONS

SEC. 132. AMENDMENTS RELATED TO FOREIGN PERSONAL HOLDING COMPANIES.

(a) ATTRIBUTION FROM FAMILY MEMBERS AND PARTNERSHIPS.—Section 554 (relating to stock ownership) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULES FOR APPLICATION OF SUBSECTION (a)(2).—For purposes of the stock ownership requirement provided in section 552(a)(2)—

"(1) stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered by reason of so much of subsection (a)(2) as relates to attribution through family membership as owned by a citizen or by a resident alien individual who is not the spouse of the nonresident individual and who does not otherwise own stock in such corporation (determined after the application of subsection (a), other than attribution through family membership), and

"(2) stock of a corporation owned by any foreign person shall not be considered by reason of so much of subsection (a)(2) as relates to attribution through partners as owned by a citizen or resident of the United States who does not otherwise own stock in such corporation (determined after application of subsection (a) and paragraph (1), other than attribution through partners)."

(b) INCLUSION IN INCOME OF UNITED STATES PERSONS HOLDING INTEREST THROUGH FOREIGN ENTITY.—Section 551 (relating to foreign personal holding company income taxed to United States shareholders) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) STOCK HELD THROUGH FOREIGN ENTITY.—For purposes of this section, stock of a foreign personal holding company owned (directly or through the application of this subsection) by—

"(1) a partnership, estate, or trust which is not a United States shareholder, or

"(2) a foreign corporation which is not a foreign personal holding company,

shall be considered as being owned proportionately by its partners, beneficiaries, or shareholders. In any case to which the preceding sentence applies, the Secretary may by regulations provide for such adjustments in the application of this part as may be necessary to carry out the purposes of the preceding sentence."

(c) COORDINATION OF SUBPART F WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—

(1) IN GENERAL.—Subsection (d) of section 951 (relating to coordination with foreign personal holding company provisions) is amended to read as follows:

"(d) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholder), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A)."

(2) CERTAIN DIVIDENDS AND INTEREST NOT TAKEN INTO ACCOUNT FOR PERSONAL HOLDING COMPANY DETERMINATION.—Section 552 (defining foreign personal holding company) is amended by adding at the end thereof the following new subsection:

"(c) CERTAIN DIVIDENDS AND INTEREST NOT TAKEN INTO ACCOUNT.—For purposes of subsection (a)(1) and section 553(a)(1), gross income and foreign personal holding company income shall not include any dividends and interest which—

"(1) are described in subparagraph (A) of section 954(c)(4), and

"(2) are received from a related person which is not a foreign personal holding company (determined without regard to this subsection)."

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) and (b).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) shall apply to taxable years of foreign corporations beginning after December 31, 1983.

(B) 1-YEAR EXTENSION FOR CERTAIN TRUSTS CREATED BEFORE JUNE 30, 1953.—

(i) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years of a foreign corporation beginning after December 31, 1984, with respect to stock of such corporation which is held (directly or indirectly, within the meaning of section 554 of the Internal Revenue Code of 1954) by a trust created before June 30, 1953, if—

(I) none of the beneficiaries of such trust was a citizen or resident of the United States at the time of its creation or within 5 years thereafter, and

(II) such trust does not, after July 1, 1983, acquire (directly or indirectly) stock of any foreign personal holding company other than a company described in clause (ii).

(ii) DESCRIPTION OF COMPANY.—A company is described in this clause if—

(I) substantially all of the assets of such company are stock or assets previously held by such trust, or

(II) such company ceases to be a foreign personal holding company before January 1, 1985.

(2) SUBSECTION (c).—

(A) The amendment made by paragraph (1) of subsection (c) shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) of subsection (c) shall apply to taxable years of foreign corporations beginning after March 15, 1984.

SEC. 133. AMENDMENTS RELATED TO SECTION 1248.

(a) SECTION 1248 TO APPLY TO CERTAIN INDIRECT TRANSFERS OF STOCK IN A FOREIGN CORPORATION.—Section 1248 (relating to gain from certain sales or exchanges of stock in foreign corporations) is amended by adding at the end thereof the following new subsection:

"(i) TREATMENT OF CERTAIN INDIRECT TRANSFERS.—

"(1) IN GENERAL.—If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, for purposes of this section, the stock of the foreign corporation received in such exchange shall be treated as if it had been—

"(A) issued to the 10-percent corporate shareholder, and

"(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption of his stock.

"(2) 10-PERCENT CORPORATE SHAREHOLDER DEFINED.—For purposes of this subsection, the term '10-percent corporate shareholder' means any domestic corporation which, as of the day before the exchange referred to in paragraph (1), satisfies the stock ownership requirements of subsection (a)(2) with respect to the foreign corporation."

(b) ELIMINATION OF DOUBLE TAXATION OF EARNINGS AND PROFITS OF CERTAIN FOREIGN CORPORATIONS.—

(1) Section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding at the end thereof the following new subsection:

"(e) COORDINATION WITH AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248.—For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person under section 951(a)(1)(A)."

(2) Section 1248 is amended by adding at the end thereof the following new subsection:

"(j) CROSS REFERENCE.—

"For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e)."

(c) CLARIFICATION OF SECTION 1248(c)(2)(D).—Subparagraph (D) of section 1248(c)(2) (relating to earnings and profits of subsidiaries of foreign corporations) is amended by striking out "section 958(a)(2)" and inserting in lieu thereof "section 958(a)".

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to exchanges after the date of the enactment of this Act in taxable years ending after such date.

(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1954 applies occurring after the date of the enactment of this Act.

(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

(A) IN GENERAL.—If the appropriate election is made under subparagraph (B) the amendments made by subsection (b) shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

(B) ELECTION.—

(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

(iii) Any election under clause (i) or (ii) shall be made not later than 180 days after the date of the enactment of this Act and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

SEC. 134. DEFINITION OF FOREIGN INVESTMENT COMPANY.

(a) GENERAL RULE.—Paragraph (2) of section 1246(b) (defining foreign investment company) is amended to read as follows:

"(2) engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in—

"(A) securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

"(B) commodities, or

"(C) any interest (including a futures or forward contract or option) in property described in subparagraph (A) or (B),

at a time when 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or the total value of all classes of stock, was held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30))."

(b) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to sales and exchanges (and distributions) on or after September 29, 1983, in taxable years ending on or after such date.

(2) Stock held on September 29, 1983.—In the case of a sale or exchange (or distribution) not later than the date which is 1 year after the date of the enactment of this Act, the amendment made by subsection (a) shall not apply with respect to stock held by the taxpayer continuously from September 29, 1983, to the date of such sale or exchange (or distribution).

SEC. 135. APPLICATION OF COLLAPSIBLE CORPORATION RULES TO FOREIGN CORPORATIONS.

(a) In General.—Subsection (f) of section 341 (relating to collapsible corporations) is amended by adding at the end thereof the following new paragraph:

"(8) Special rule for foreign corporations.—Except to the extent provided in regulations prescribed by the Secretary—

"(A) any consent given by a foreign corporation under paragraph (1) shall not be effective, and

"(B) paragraph (3) shall not apply if the transferee is a foreign corporation."

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 136. STAPLED STOCK; STAPLED ENTITIES.

(a) General Rule.—Part IX of subchapter B of chapter 1 is amended by inserting after section 269A the following new section:

"SEC. 269B. STAPLED ENTITIES.

"(a) General Rule.—Except as otherwise provided by regulations, for purposes of this title—

"(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

"(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

"(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

"(b) Secretary To Prescribe Regulations.—The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest).

"(c) Definitions.—For purposes of this section—

"(1) Entity.—The term 'entity' means any corporation, partnership, trust, association, estate, or other form of carrying on a business or activity.

"(2) Stapled entities.—The term 'stapled entities' means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

"(3) Stapled interests.—Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

"(d) Special Rule for Treaties.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section."

(b) Clerical Amendment.—The table of sections for part IX of subchapter B of chapter 1 is amended by inserting after the item relating to section 269A the following new item:

"Sec. 269B. Stapled entities."

(c) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Interests stapled as of June 30, 1983.—Except as otherwise provided in this subsection, in the case of any interests which on June 30, 1983, were stapled interests (as defined in section 269B(c)(3) of the Internal Revenue Code of 1954 (as added by this section)), the amendments made by this section shall take effect on January 1, 1985 (January 1, 1987, in the case of stapled interests in a foreign corporation).

(3) Certain stapled entities which include real estate investment trust.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any real estate investment trust which is part of a group of stapled entities if—

(A) all members of such group were stapled entities as of June 30, 1983, and

(B) as of June 30, 1983, such group included one or more real estate investment trusts.

(4) Certain stapled entities which include Puerto Rican corporations.—

(A) Paragraph (1) of section 269B(a) of such Code shall not apply to a domestic corporation and a qualified Puerto Rican corporation which, on June 30, 1983, were stapled entities.

(B) For purposes of subparagraph (A), the term "qualified Puerto Rican corporation" means any corporation organized in Puerto Rico—

(i) which is described in section 957(c) of such Code or would be so described if any dividends it received from any other corporation described in such section 957(c) were treated as gross income of the type described in such section 957(c), and

(ii) does not, at any time during the taxable year, own (within the meaning of section 958 of such Code but before applying paragraph (2) of section 269B(a) of such Code) any stock of any corporation which is not described in such section 957(c).

(5) Treaty rule not to apply to stapled entities entitled to treaty benefits as of June 30, 1983.—In the case of any entity which was a stapled entity as of June 30, 1983, subsection (d) of section 269B of such Code shall not apply to any treaty benefit to which such entity was entitled as of June 30, 1983.

(6) Elections to treat stapled foreign entities as subsidiaries.—

(A) In general.—In the case of any foreign corporation and domestic corporation which as of June 30, 1983, were stapled entities, such domestic corporation may elect (in lieu of applying paragraph (1) of section 269B(a) of such Code) to be treated as owning all interests in the foreign corporation which consititute stapled interests with respect to stock of the domestic corporation.

(B) Election.—Any election under subparagraph (A) shall be made not later than 180 days after the date of the enactment of this Act and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

(C) Election irrevocable.—Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary of the Treasury or his delegate.

(7) Other stapled entitles which include real estate investment trust.—

(A) In general.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any qualified real estate investment trust which is a part of a group of stapled entities—

(i) which was created pursuant to a written board of directors resolution adopted before April 15, 1984, and

(ii) all members of such group were stapled entities as of June 16, 1985.

(B) Qualified real estate investment trust.—The term "qualified real estate investment trust" means any real estate trust—

(i) at least 75 percent of the gross income of which is derived from interest on obligations secured by mortgages on real property (as defined in section 856 of such Code),

(ii) with respect to which the interest on the obligations described in clause (i) made or acquired by such trust (other than to persons who are independent contractors, as defined in section 856(d)(3) of such Code) is at an arm's length rate or a rate not more than 1 percentage point greater than the associated borrowing costs of the trust, and

(iii) with respect to which any real property held by the trust is not used in the trade or business of any other member of the group of stapled entities.

SEC. 137. SERVICES RELATING TO INSURANCE POLICIES ARE TREATED AS PERFORMED IN COUNTRY OF RISK.

(a) In General.—Subsection (e) of section 954 (defining foreign base company services income) is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (2), any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4)) shall be treated as having been performed in the country within which the insured hazards, risks, losses, or liabilities occur, and except as provided in regulations prescribed by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services."

(b) Effective Date.—The amendments made by subsection (a) shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act.

PART V—TREATMENT OF ALIEN INDIVIDUALS

SEC. 138. DEFINITION OF RESIDENT ALIEN AND NONRESIDENT ALIEN.

(a) General Rule.—Section 7701 (relating to definitions) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting after subsection (a) the following new subsection:

"(b) Definition of Resident Alien and Nonresident Alien.—

"(1) In general.—For purposes of this title (other than subtitle B)—

"(A) Resident alien.—An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i) or (ii):

"(i) Lawfully admitted for permanent residence.—Such individual is a lawful permanent resident of the United States at any time during such calendar year.

"(ii) Substantial presence test.—Such individual meets the substantial presence test of paragraph (3).

"(B) Nonresident alien.—An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

"(2) Special rules for first and last year of residency.—

"(A) First year of residency.—

"(i) In general.—If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

"(ii) Residency starting date for individuals lawfully admitted for permanent residence.—In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

"(iii) Residency starting date for individuals meeting substantial presence test.—In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

"(B) Last year of residency.—An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

"(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

"(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

"(iii) the individual is not a resident of the United States at any time during the next calendar year.

"(C) Certain nominal presence disregarded.—

"(i) In general.—For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

"(ii) Not more than 10 days disregarded.—Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

"(3) Substantial presence test.—

"(A) In general.—Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the 'current year') if—

"(i) such individual was present in the United States on at least 31 days during the calendar year, and

"(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

"In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	⅓
2nd preceding year	⅙

"(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established.—An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

"(i) such individual is present in the United States on fewer than 183 days during the current year, and

"(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

"(C) Subparagraph (B) not to apply in certain cases.—Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

"(i) such individual had an application for adjustment of status pending, or

"(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

"(D) Exception for exempt individuals or for certain medical conditions.—An individual shall not be treated as being present in the United States on any day if—

"(i) such individual is an exempt individual for such day, or

"(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

"(4) Exempt individual defined.—For purposes of this subsection—

"(A) In general.—An individual is an exempt individual for any day if, for such day, such individual is—

"(i) a foreign government-related individual,

"(ii) a teacher or trainee, or

"(iii) a student.

"(B) Foreign government-related individual.—The term 'foreign government-related individual' means any individual temporarily present in the United States by reason of—

"(i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

"(ii) being a full-time employee of an international organization, or

"(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

"(C) Teacher or trainee.—The term 'teacher or trainee' means any individual—

"(i) who is temporarily present in the United States under subparagraph (J) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

"(ii) who substantially complies with the requirements for being so present.

"(D) Student.—The term 'student' means any individual—

"(i) who is temporarily present in the United States—

"(I) under subparagraph (F) of section 101(15) of the Immigration and Nationality Act, or

"(II) as a student under subparagraph (J) of such section 101(15), and

"(ii) who substantially complies with the requirements for being so present.

"(E) Special rules for teachers, trainees, and students.—

"(i) Limitation on teachers and trainees.—An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A).

"(ii) Limitation on students.—For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

"(5) Lawful permanent resident.—For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

"(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

"(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

"(6) Presence in the United States.—For purposes of this subsection—

"(A) In general.—Except as provided in subparagraph (B) or (C), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

"(B) Commuters from Canada or Mexico.—If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

"(C) Transit between 2 foreign points.—If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

"(7) Annual statements.—The Secretary may prescribe regulations under which an *individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.*

"(8) TAXABLE YEAR.—

"(A) IN GENERAL.—For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

"(B) FISCAL YEAR TAXPAYER.—If—

"(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

"(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

"(9) COORDINATION WITH SECTION 877.—If—

"(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the 'initial residency period'), and

"(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

"(10) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

(2) TRANSITIONAL RULE FOR APPLYING SUBSTANTIAL PRESENCE TEST.—

(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code of 1954 (as added by this section) shall be made by only taking into account presence after 1984.

(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

(3) TRANSITIONAL RULE FOR APPLYING LAWFUL RESIDENCE TEST.—In the case of any individual who—

"(A) was a lawful permanent resident of the United States (within the meaning of section 7701(b)(5) of the Internal Revenue Code of 1954, as added by this section) throughout calendar year 1984, or

(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)),

for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984.

SEC. 138. TREATMENT OF COMMUNITY INCOME.

(a) GENERAL RULE.—Subsection (a) of section 879 (relating to tax treatment of certain community income in the case of a resident or citizen of the United States who is married to a nonresident alien individual) is amended by striking out so much of such subsection as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) GENERAL RULE.—In the case of a married couple 1 or both of whom are nonresident alien individuals and who have community income for the taxable year, such community shall be treated as follows:".

(b) CLERICAL AMENDMENTS.—

(1) The heading of section 879 is amended to read as follows:

"SEC. 879. TAX TREATMENT OF CERTAIN COMMUNITY INCOME IN THE CASE OF NONRESIDENT ALIEN INDIVIDUALS."

(2) The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by striking out the item relating to section 879 and inserting in lieu thereof the following:

"Sec. 879. Tax treatment of certain community income in the case of nonresident alien individuals."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1984.

Subtitle K—Reporting, Penalty, and Other Provisions

PART I—PROVISIONS RELATING TO TAX SHELTERS

SEC. 141. REGISTRATION OF TAX SHELTERS.

(a) IN GENERAL.—Subchapter B of chapter 61 (relating to miscellaneous provisions involving information and returns) is amended by redesignating section 6111 as section 6112 and by inserting after section 6110 the following new section:

"SEC. 6111. REGISTRATION OF TAX SHELTERS.

"(a) REGISTRATION.—

"(1) IN GENERAL.—Any tax shelter organizer shall register the tax shelter with the Secretary (in such form and in such manner as the Secretary may prescribe) not later than the day on which the first offering for sale of interests in such tax shelter occurs.

"(2) INFORMATION INCLUDED IN REGISTRATION.—Any registration under paragraph (1) shall include—

"(A) information identifying and describing the tax shelter,

"(B) information describing the tax benefits of the tax shelter represented (or to be represented) to investors, and

"(C) such other information as the Secretary may prescribe.

"(b) FURNISHING OF TAX SHELTER IDENTIFICATION NUMBER; INCLUSION ON RETURN.

"(1) SELLERS, ETC.—Any person who sells (or otherwise transfers) an interest in a tax shelter shall (at such times and in such manner as the Secretary shall prescribe) furnish to each investor who purchases (or otherwise acquires) an interest in such tax shelter from such person the identification number assigned by the Secretary to such tax shelter.

"(2) INCLUSION OF NUMBER ON RETURN.—Any person claiming any deduction, credit, or other tax benefit by reason of a tax shelter shall include (in such manner as the Secretary may prescribe) on the return of tax on which such deduction, credit, or other benefit is claimed the identification number assigned by the Secretary to such tax shelter.

"(c) TAX SHELTER.—For purposes of this section—

"(1) IN GENERAL.—The term 'tax shelter' means any investment—

"(A) with respect to which any person could reasonably infer from the representations made, or to be made, in connection with the offering for sale of interests in the investment that the tax shelter ratio for any investor as of the close of any of the first 5 years ending after the date on which such investment is offered for sale may be greater than 2 to 1, and

"(B) which is—

"(i) required to be registered under a Federal or State law regulating securities,

"(ii) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities, or

"(iii) a substantial investment.

"(2) TAX SHELTER RATIO DEFINED.—For purposes of this subsection, the term 'tax shelter ratio' means, with respect to any year, the ratio which—

"(A) the aggregate amount of the deductions and 200 percent of the credits which are represented to be potentially allowable to any investor under subtitle A for all periods up to (and including) the close of such year, bears to

"(B) the investment base as of the close of such year.

"(3) INVESTMENT BASE.—

"(A) IN GENERAL.—Except as provided in this paragraph, the term 'investment base' means, with respect to any year, the amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) contributed by the investor as of the close of such year.

"(B) CERTAIN BORROWED AMOUNTS EXCLUDED.—For purposes of subparagraph (A), there shall not be taken into account any amount borrowed from any person—

"(i) who participated in the organization, sale, or management of the investment, or

"(ii) who is a related person (as defined in section 168(e)(4)) to any person described in clause (i),

unless such amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made.

"(C) CERTAIN OTHER AMOUNTS INCLUDED OR EXCLUDED.—

"(i) AMOUNTS HELD IN CASH EQUIVALENTS, ETC.—No amount shall be taken into account under subparagraph (A) which is to be held in cash equivalent or marketable securities.

"(ii) AMOUNTS INCLUDED OR EXCLUDED BY SECRETARY.—The Secretary may by regulation—

"(I) exclude from the investment base any amount described in subparagraph (A), or

"(II) include in the investment base any amount not described in subparagraph (A),

if the Secretary determines that such exclusion or inclusion is necessary to carry out the purposes of this section.

"(4) SUBSTANTIAL INVESTMENT.—An investment is a substantial investment if—

"(A) the aggregate amount which may be offered for sale exceeds $250,000, and

"(B) there are expected to be 5 or more investors.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) TAX SHELTER ORGANIZER.—The term 'tax shelter organizer' means—

"(A) the person principally responsible for organizing the tax shelter,

"(B) if the requirements of subsection (a) are not met by a person described in subparagraph (A) at the time prescribed therefor, any other person who participated in the organization of the tax shelter, and

"(C) if the requirements of subsection (a) are not met by a person described in subparagraph (A) or (B) at the time prescribed therefor, any person participating in the sale or management of the investment at a time when the tax shelter was not registered under subsection (a).

"(2) YEAR.—The term 'year' means—

"(A) the taxable year of the tax shelter, or

"(B) if the tax shelter has no taxable year, the calendar year.

"(e) REGULATIONS.—The Secretary may prescribe regulations which provide—

"(1) rules for the aggregation of similar investments offered by the same person or persons for purposes of applying subsection (c)(4),

"(2) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements.

"(3) exemptions from the requirements of this section, and

"(4) such rules as may be necessary or appropriate to carry out the purposes of this section in the case of foreign tax shelters."

(b) PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING TAX SHELTERS.

"(a) FAILURE TO REGISTER TAX SHELTER.—

"(1) IMPOSITION OF PENALTY.—If a person who is required to register a tax shelter under section 6111(a)—

"(A) fails to register such tax shelter on or before the date described in section 6111(a)(1), or

"(B) files false or incomplete information with the Secretary with respect to such registration,

such person shall pay a penalty with respect to such registration in the amount determined under paragraph (2). No penalty shall be imposed under the preceding sentence with respect to any failure which is due to reasonable cause.

"(2) AMOUNT OF PENALTY.—The penalty imposed under paragraph (1) with respect to any tax shelter shall be an amount equal to the greater of—

"(A) $500, or

"(B) the lesser of (i) 1 percent of the aggregate amount invested in such tax shelter, or (ii) $10,000.

The $10,000 limitation in subparagraph (B) shall not apply where there is an intentional disregard of the requirements of section 6111(a).

"(b) FAILURE TO FURNISH TAX SHELTER IDENTIFICATION NUMBER.—

"(1) SELLERS, ETC.—Any person who fails to furnish the identification number of a tax shelter which such person is required to furnish under section 6111(b)(1) shall pay a penalty of $100 for each such failure.

"(2) FAILURE TO INCLUDE NUMBER ON RETURN.—Any person who fails to include an identification number on a return on which such number is required to be included under section 6111(b)(2) shall pay a penalty of $50 for each such failure, unless such failure is due to reasonable cause."

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6111 and inserting in lieu thereof the following new items:

"Sec. 6111. Registration of tax shelters.
"Sec. 6112. Cross references."

(2) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6707. Failure to furnish information regarding tax shelters."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1954, as added by this section) any interest in which is first sold to any investor after August 31, 1984.

(2) SUBSTANTIAL INVESTMENT TEST.—For purposes of determining whether any investment is a tax shelter by reason of section 6111(c)(1)(B)(iii) of such Code (as added by this section), only offers for sale after August 31, 1984, shall be taken into account.

(3) FURNISHING OF SHELTER IDENTIFICATION NUMBER FOR INTERESTS SOLD BEFORE SEPTEMBER 1, 1984.—With respect to interests sold before September 1, 1984, any liability to act under paragraph (1) of section 6111(b) of such Code (as added by this section) which would (but for this sentence) arise before such date shall be deemed to arise on December 31, 1984.

SEC. 112. ORGANIZERS AND SELLERS OF POTENTIALLY ABUSIVE TAX SHELTERS MUST KEEP LISTS OF INVESTORS.

(a) IN GENERAL.—Subchapter B of chapter 61 (relating to miscellaneous provisions involving information and returns) is amended by redesignating section 6112 as section 6113 and by inserting after section 6111 the following new section:

"SEC. 6112. ORGANIZERS AND SELLERS OF POTENTIALLY ABUSIVE TAX SHELTERS MUST KEEP LISTS OF INVESTORS.

"(a) IN GENERAL.—Any person who—

"(1) organizes any potentially abusive tax shelter, or

"(2) sells any interest in such a shelter,

shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person who was sold an interest in such shelter and containing such other information as the Secretary may be regulations require.

"(b) POTENTIALLY ABUSIVE TAX SHELTER.—For purposes of this section, the term 'potentially abusive tax shelter' means—

"(1) any tax shelter (as defined in section 6111) with respect to which registration is required under section 6111, and

"(2) any entity, investment plan or arrangement, or other plan or arrangement which is of a type which the Secretary determines by regulations as having a potential for tax avoidance or evasion.

"(c) SPECIAL RULES.—

"(1) AVAILABILITY FOR INSPECTION; RETENTION OF INFORMATION ON LIST.—Any person who is required to maintain a list under subsection (a)—

"(A) shall make such list available to the Secretary for inspection upon request by the Secretary, and

"(B) except as otherwise provided under regulations prescribed by the Secretary, shall retain any information which is required to be included on such list for 7 years.

"(2) LISTS WHICH WOULD BE REQUIRED TO BE MAINTAINED BY 2 OR MORE PERSONS.—The Secretary shall prescribe regulations which provide that, in cases in which 2 or more persons are required under subsection (a) to maintain the same list (or portion thereof), only 1 person shall be required to maintain such list (or portion)."

(b) PENALTY FOR FAILURE TO MAINTAIN LIST.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF INVESTORS IN POTENTIALLY ABUSIVE TAX SHELTERS.

"(a) IN GENERAL.—Any person who fails to meet any requirement imposed by section 6112 shall pay a penalty of $50 for each person with respect to whom there is such a failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection for any calendar year shall not exceed $50,000.

"(b) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty provided by law."

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6112 and inserting in lieu thereof the following new items:

"Sec. 6112. Organizers and sellers of potentially abusive tax shelters must keep lists of investors.
"Sec. 6113. Cross reference."

(2) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6708. Failure to maintain lists of investors in potentially abusive tax shelters."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any interest which is first sold to any investor after August 31, 1984.

SEC. 113. INCREASE IN PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS; INJUNCTION AGAINST AIDING OR ABETTING UNDERSTATEMENT OF TAX LIABILITY.

(a) INCREASE IN PROMOTER PENALTY.—Subsection (a) of section 6700 (relating to promotion of abusive tax shelters) is amended by striking out "10 percent" and inserting in lieu thereof "20 percent".

(b) INJUNCTION AGAINST AIDING OR ABETTING UNDERSTATEMENTS OF TAX LIABILITY.—

(1) Subsections (a) and (b) of section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) are each amended by inserting "or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)" after "etc.)".

(2) Subsection (a) of section 7408 is amended by inserting "or section 6701" before the period at the end of the second sentence.

(3) Subsection (b) of section 7408 is amended by inserting before the period "or section 6701".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 114. INCREASED RATE OF INTEREST ON SUBSTANTIAL UNDERPAYMENTS ATTRIBUTABLE TO CERTAIN TAX MOTIVATED TRANSACTIONS.

(a) GENERAL RULE.—Section 6621 (relating to determination of rate of interest) is *amended by adding at the end thereof the following new subsection:*

"(d) Interest on Substantial Underpayments Attributable to Tax Motivated Transactions.—

"(1) In general.—In the case of interest payable under section 6601 with respect to any substantial underpayment attributable to tax motivated transactions, the annual rate of interest established under this section shall be 120 percent of the adjusted rate established under subsection (b).

"(2) Substantial underpayment attributable to tax motivated transactions.—For purposes of this subsection, the term 'substantial underpayment attributable to tax motivated transactions' means any underpayment of taxes imposed by subtitle A for any taxable year which is attributable to 1 or more tax motivated transactions if the amount of the underpayment for such year so attributable exceeds $1,000.

"(3) Tax motivated transactions.—

"(A) In general.—For purposes of this subsection, the term 'tax motivated transaction' means—

"(i) any valuation overstatement (within the meaning of section 6659(c)),

"(ii) any loss disallowed by reason of section 465(a) and any credit disallowed under section 46(c)(8),

"(iii) any straddle (as defined in section 1092(c) without regard to subsections (d) and (e) of section 1092), and

"(iv) any use of an accounting method specified in regulations prescribed by the Secretary as a use which may result in a substantial distortion of income for any period.

"(B) Regulatory authority.—The Secretary may by regulations specify other types of transactions which will be treated as tax motivated for purposes of this subsection and may by regulations provide that specified transactions being treated as tax motivated will no longer be so treated. In prescribing regulations under the preceding sentence, the Secretary shall take into account—

"(i) the ratio of tax benefits to cash invested,

"(ii) the methods of promoting the use of this type of transaction, and

"(iii) other relevant considerations.

"(C) Effective date for regulations.—Any regulations prescribed under subparagraph (A)(iv) or (B) shall apply only to interest accruing after a date (specified in such regulations) which is after the date on which such regulations are prescribed.

"(4) Jurisdiction of tax court.—In the case of any proceeding in the Tax Court for a redetermination of a deficiency, the Tax Court shall also have jurisdiction to determine the portion (if any) of such deficiency which is a substantial underpayment attributable to tax motivated transactions."

(b) Cross Reference.—Section 6214 (relating to determinations by Tax Court) is amended by adding at the end thereof the following new subsection:

"(e) Cross Reference.—

"For provision giving Tax Court jurisdiction to determine whether any portion of deficiency is a substantial underpayment attributable to tax motivated transactions, see section 6621(d)(4)."

(c) Effective Date.—The amendments made by this section shall apply with respect to interest accruing after December 31, 1984.

PART II—INFORMATION REPORTING PROVISIONS

SEC. 115. RETURNS RELATING TO MORTGAGE INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

(a) In General.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050H. RETURNS RELATING TO MORTGAGE INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

"(a) Mortgage Interest of $600 or More.—Any person—

"(1) who is engaged in a trade or business, and

"(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on any mortgage,

shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

"(b) Form and Manner or Returns.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name and address of the individual from whom the interest described in subsection (a)(2) was received,

"(B) the amount of such interest received for the calendar year, and

"(C) such other information as the Secretary may prescribe.

"(c) Application to Governmental Units.—For purposes of subsection (a)—

"(1) Treated as persons.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) Special rules.—In the case of a governmental unit or any agency or instrumentality thereof—

"(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

"(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) Statements To Be Furnished to Individuals With Respect to Whom Information Is Furnished.—Every person making a return under subsection (a) shall furnish to each individual whose name is set forth in such return a written statement showing—

"(1) the name and address of the person making such return, and

"(2) the aggregate amount of interest described in subsection (a)(2) received by the person making such return from the individual to whom the statement is furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

"(e) Mortgage Defined.—For purposes of this section, except as provided in regulations prescribed by the Secretary, the term 'mortgage' means any obligation secured by real property.

"(f) Returns Which Would Be Required To Be Made by 2 or More Persons.—Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a)."

(b) Penalties—

(1) Subparagraph (B) of section 6652(a)(1) (relating to failure to file certain information returns, etc.) is amended—

(A) by striking out "or" at the end of clause (iii),

(B) by inserting "or" at the end of clause (iv), and

(C) by inserting after clause (iv) the following new clause:

"(v) section 6050H(a) (relating to mortgage interest received in trade or business from individuals),".

(2) Clause (iii) of section 6652(a)(3)(A) (relating to penalty in case of intentional disregard) is amended by inserting "or section 6050H" after "section 6041A(b)".

(3) Paragraph (1) of section 6678(a) (relating to failure to furnish certain statements) is amended—

(A) by striking out "or 6052(b)" and inserting in lieu thereof "6052(b), or 6050H(d)", and

(B) by striking out "or 6052(a)" and inserting in lieu thereof "6052(a), or 6050H(a)".

(c) Conforming Amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050H. Returns relating to mortgage interest received in trade or business from individuals."

(d) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after December 31, 1984.

(2) Special rule for obligations in existence on December 31, 1984.—In the case of any obligation in existence on December 31, 1984, no penalty shall be imposed under section 6652 of the Internal Revenue Code of 1954 by reason of the amendments made by this section on any failure to supply a taxpayer identification number with respect to amounts received before January 1, 1986.

SEC. 116. RETURNS RELATING TO CASH RECEIVED IN TRADE OR BUSINESS.

(a) In General.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050I. RETURNS RELATING TO CASH RECEIVED IN TRADE OR BUSINESS.

"(a) Cash Receipts of More Than $10,000.—Any person—

"(1) who is engaged in a trade or business, and

"(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

"(b) Form and Manner of Returns.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name, address, and TIN of the person from whom the cash was received,

"(B) the amount of cash received,

"(C) the date and nature of the transaction, and

"(D) such other information as the Secretary may prescribe.

"(c) EXCEPTIONS.—

"(1) CASH RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to—

"(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, or

"(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

"(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

"(d) CASH INCLUDES FOREIGN CURRENCY.—For purposes of this section, the term 'cash' includes foreign currency.

"(e) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS FURNISHED.—Every person making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement showing—

"(1) the name and address of the person making such return, and

"(2) the aggregate amount of cash described in subsection (a) received by the person making such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made."

(b) PENALTIES—

(1) Subparagraph (B) of section 6652(a)(1) (relating to failure to file certain information returns, etc.) is amended—

(A) by striking out "or" at the end of clause (iv),

(B) by inserting "or" at the end of clause (v), and

(C) by inserting after clause (v) the following new clause:

"(vi) section 6050I(a) (relating to cash received in trade or business),".

(2) Clause (iii) of section 6652(a)(3)(A) (relating to penalty in case of intentional disregard) is amended by striking out "or section 6050H" and inserting in lieu thereof ", 6050H or 6050I".

(3) Paragraph (1) of section 6678(a) (relating to failure to furnish certain statements) is amended—

(A) by striking out "or 6050H(d)" and inserting in lieu thereof "6050H(d), or 6050I(e)", and

(B) by striking out "or 6050H(a)" and inserting in lieu thereof "6050H(a), or 6050I(a)".

(c) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050I. Returns relating to cash received in trade or business."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after December 31, 1984.

SEC. 147. PROVISIONS RELATING TO INDIVIDUAL RETIREMENT ACCOUNTS.

(a) CLARIFICATION THAT REGULATIONS MAY REQUIRE REPORTS TO IDENTIFY YEARS TO WHICH CONTRIBUTIONS RELATE.—Subsection (i) of section 408 (relating to individual retirement accounts) is amended by inserting "(and the years to which they relate)" after "contributions".

(b) INCREASE IN PENALTY FOR FAILURE TO FILE REPORTS.—Subsection (a) of section 6693 (relating to failure to provide reports on individual retirement accounts and annuities) is amended by striking out "$10" and inserting in lieu thereof "$50".

(c) CONTRIBUTIONS REQUIRED TO BE MADE ON OR BEFORE UNEXTENDED RETURN FILING DATE.—Subparagraph (A) of section 219(f)(3) (relating to time when contributions deemed made) is amended by striking out "including" and inserting in lieu thereof "not including".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions made after December 31, 1984.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to failures occurring after the date of the enactment of this Act.

SEC. 118. RETURNS RELATING TO FORECLOSURES AND ABANDONMENTS OF SECURITY.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050J. RETURNS RELATING TO FORECLOSURES AND ABANDONMENTS OF SECURITY.

"(a) IN GENERAL.—Any person who, in connection with a trade or business conducted by such person, lends money secured by property and who—

"(1) in full or partial satisfaction of any indebtedness, acquires an interest in any property which is security for such indebtedness, or

"(2) has reason to know that the property in which such person has a security interest has been abandoned,

shall make a return described in subsection (c) with respect to each of such acquisitions or abandonments, at such time as the Secretary may by regulations prescribe.

"(b) EXCEPTION.—Subsection (a) shall not apply to any loan to an individual secured by an interest in tangible personal property which is not held for investment and which is not used in a trade or business.

"(c) FORM AND MANNER OF RETURN.—The return required under subsection (a) with respect to any acquisition or abandonment of property—

"(1) shall be in such form as the Secretary may prescribe,

"(2) shall contain—

"(A) the name and address of each person who is a borrower with respect to the indebtedness which is secured,

"(B) a general description of the nature of such property and such indebtedness,

"(C) in the case of a return required under subsection (a)(1)—

"(i) the amount of such indebtedness at the time of such acquisition, and

"(ii) the amount of indebtedness satisfied in such acquisition,

"(D) in the case of a return required under subsection (a)(2), the amount of such indebtedness at the time of such abandonment, and

"(E) such other information as the Secretary may prescribe.

"(d) APPLICATIONS TO GOVERNMENTAL UNITS.—For purposes of this section—

"(1) TREATED AS PERSONS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) SPECIAL RULES.—In the case of a governmental unit or any agency or instrumentality thereof—

"(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

"(B) any return under this section shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(e) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE FURNISHED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing the name and address of the person required to make such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

"(f) TREATMENT OF OTHER DISPOSITIONS.—To the extent provided by regulations prescribed by the Secretary, any transfer of the property which secures the indebtedness to a person other than the lender shall be treated as an abandonment of such property."

(b) PENALTIES.—

(1) Subparagraph (B) of section 6652(a)(1) (relating to failure to file certain information returns, etc.) is amended—

(A) by striking out "or" at the end of clause (v),

(B) by adding "or" at the end of clause (vi), and

(C) by inserting after clause (vi) the following new clause:

"(vii) section 6050J(c) (relating to foreclosures and abandonments of security),".

(2) Clause (iii) of section 6652(a)(3)(A) (relating to penalty in case of intentional disregard) is amended by striking out "or 6050I" and inserting in lieu thereof ", 6050I, or 6050J".

(3) Paragraph (1) of section 6678(a) (relating to failure to furnish certain statements) is amended—

(A) by striking out "or 6050I(e)" and inserting in lieu thereof "6050I(e), or 6050J(e)", and

(B) by striking out "or 6050I(a)" and inserting in lieu thereof "6050I(a), or 6050J(a)".

(c) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050J. Returns relating to foreclosures and abandonments of security."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to acquisitions of property and abandonments of property after December 31, 1984.

SEC. 119. RETURNS RELATING TO EXCHANGES OF PARTNERSHIP INTERESTS WHERE UNREALIZED RECEIVABLES, ETC., INVOLVED.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information and returns) is amended by adding at the end thereof the following new section.

"SEC. 6050K. RETURNS RELATING TO EXCHANGES OF CERTAIN PARTNERSHIP INTERESTS.

"(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, if there is an exchange described in section 751(a) of any interest in a partnership during any calendar year, such partnership shall make a return for such calendar year stating—

"(1) the name and address of the transferee and transferor in such exchange, and

"(2) such other information as the Secretary may by regulations prescribe.

Such return shall be made at such time and in such manner as the Secretary may require by regulations.

"(b) Statement To Be Furnished to Transferor and Transferee.—Every partnership making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement showing—

"(1) the name and address of the partnership making the return, and

"(2) the information shown on the return with respect to such person.

The statement required under the preceding sentence shall be furnished to the person on or before January 31 following the calendar year for which the return under subsection (a) was made.

"(c) Requirement That Transferor Notify Partnership.—

"(1) In general.—In the case of any exchange described in subsection (a), the transferor of the partnership interest shall promptly notify the partnership of such exchange.

"(2) Partnership not required to make return until notice.—A partnership shall not be required to make a return under this subsection with respect to any exchange until the partnership is notified of such exchange."

(b) Penalties.—

(1) Subparagraph (B) of section 6652(a)(1) (relating to failure to file certain information returns, etc.) is amended by striking out "or" at the end of clause (vi), by adding "or" at the end of clause (vii), and by inserting after clause (vii) the following new clause:

"(viii) section 6050K (relating to exchanges of certain partnership interests),".

(2) Paragraph (1) of section 6678(a) (relating to failure to furnish certain statements) is amended—

(A) by striking out "or 6050J(e)" and inserting in lieu thereof "6050J(e), or 6050K(b)", and

(B) by striking out "or 6050J(a)" and inserting in lieu thereof "6050J(a), or 6050K(a)".

(3) Section 6678 (relating to failure to furnish certain statements) is amended by adding at the end thereof the following new subsection:

"(c) Failure To Notify Partnership of Exchange of Partnership Interest.—In the case of any person who fails to furnish the notice required by section 6050K(c)(1) on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, such person shall pay a penalty of $50 for each such failure."

(c) Conforming Amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050K. Returns relating to exchanges of certain partnership interests."

(d) Effective Date.—The amendments made by this section shall apply with respect to exchanges after December 31, 1984.

SEC. 150. STATEMENTS REQUIRED IN CASE OF CERTAIN SUBSTITUTE PAYMENTS.

(a) In General.—Section 6045 (relating to returns of brokers) is amended by adding at the end thereof the following new subsection:

"(d) Statements Required in Case of Certain Substitute Payments.—If any broker—

"(1) transfers securities of a customer for use in a short sale or similar transaction, and

"(2) receives (on behalf of the customer) a payment in lieu of—

"(A) a dividend,

"(B) tax-exempt interest, or

"(C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open,

the broker shall furnish such customer a written statement (at such time and in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement."

(b) Effective Date.—The amendment made by this section shall apply to payments received after December 31, 1984.

SEC. 151. REPORTING OF STATE AND LOCAL REFUNDS NOT REQUIRED WITH RESPECT TO NON-ITEMIZERS.

(a) In General.—Subsection (b) of section 6050E (relating to State and local income tax refunds) is amended by adding at the end thereof the following: "No statement shall be required under this subsection with respect to any individual if it is determined (in the manner provided by regulations) that such individual did not claim itemized deductions under chapter 1 for the taxable year giving rise to the refund, credit, or offset."

(b) Effective Date.—The amendment made by subsection (a) shall apply to payments of refunds, and credits and offsets made, after December 31, 1982.

SEC. 152. FURNISHING OF TIN UNDER BACKUP WITHHOLDING.

(a) In General.—Section 3406(e)(1) (relating to backup withholding) is amended by inserting at the end thereof the following new sentence: "The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting."

(b) Effective Date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART III—OTHER COMPLIANCE PROVISIONS

SEC. 155. SUBSTANTIATION OF CHARITABLE CONTRIBUTIONS; MODIFICATIONS OF INCORRECT VALUATION PENALTY.

(a) Substantiation of Contributions of Property.—

(1) In general.—Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1954, which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)—

(A) to obtain a qualified appraisal for the property contributed,

(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations.

Such regulations shall require the taxpayer to retain any qualified appraisal.

(2) Contributions to which paragraph (1) applies.—For purposes of paragraph (1), a contribution is described in this paragraph—

"(A) if such contribution is of property (other than publicly traded securities), and

"(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds $5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting "$10,000" for "$5,000".

"(3) Appraisal summary.—For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

"(4) Qualified appraisal.—The term "qualified appraisal" means an appraisal prepared by a qualified appraiser which includes—

"(A) a description of the property appraised,

"(B) the fair market value of such property on the date of contribution and the specific basis for the valuation,

"(C) a statement that such appraisal was prepared for income tax purposes,

"(D) the qualifications of the qualified appraiser,

"(E) the signature and TIN of such appaiser, and

"(F) such additional information as the Secretary prescribes in such regulations.

"(5) Qualified appraiser.—

"(A) In General.—For purposes of this subsection, the term "qualified appraiser" means an appraiser qualified to make appraisals of the type of property donated, who is not—

"(i) the taxpayer,

"(ii) a party to the transaction in which the taxpayer acquired the property,

"(iii) the donee,

"(iv) any person employed by any of the foregoing persons or related to any of the foregoing persons under section 267(b) of the Internal Revenue Code of 1954, or

"(v) to the extent provided in such regulations, any person whose relationship to the taxpayer would cause a reasonable person to question the independence of such appraiser.

"(B) Appraisal fees.—For purpose of this subsection, an appraisal shall not be treated as a qualified appraisal if all or part of the fee paid for such appraisal is based on a percentage of the appraised value of the property. The preceding sentence shall not apply to fees based on a sliding scale that are paid to a generally recognized association regulating appraisers.

(6) Other definitions.—For purposes of this subsection—

(A) Closely held corporation.—The term "closely held corporation" means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of such Code is met.

(B) Personal service corporation.—The term "personal service corporation" means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of such Code).

(C) Publicly traded securities.—The term "publicly traded securities" means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(D) Nonpublicly traded stock.—The term "nonpublicly traded stock" means any stock of a corporation which is not a publicly traded security.

(E) The secretary.—The term "Secretary" means the Secretary of the Treasury or is delegate.

(b) Information Report Required on Disposition by Donee.—

(1) In general.—Subpart B of part III of subchapter A of chapter 61 (relating to information and returns) is amended by adding at the end thereof the following new section:

"SEC. 6050L. RETURNS RELATING TO CERTAIN DISPOSITIONS OF DONATED PROPERTY.

"(a) General Rule.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

"(1) the name, address, and TIN of the donor,

"(2) a description of the property,

"(3) the date of the contribution,

"(4) the amount received on the disposition, and

"(5) the date of such disposition.

"(b) Charitable Deduction Property.—For purposes of this section, the term 'charitable deduction property' means any property (other than publicly traded securities) conributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

"(c) Statement To Be Furnished to Donors.—Every person making a return under subsection (a) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.

"(d) Definition of Publicly Traded Securities.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market."

(2) Penalties.—

(A) Subparagraph (B) of section 6652(a)(1) (relating to failure to file certain information returns, etc.) is amended—

(i) by striking out "or" at the end of clause (vii),

(ii) By adding "or" at the end of clause (viii), and

(iii) by inserting after clause (viii) the following new clause:

"(ix) section 6050L (relating to returns relating to certain dispositions of donated property),"

(B) Paragraph (1) of section 6678(a) (relating to failure to furnish certain statements) is amended—

(i) by striking out "or 6050K(b)" and inserting in lieu thereof "6050K(b), or 6050L(c)", and

(ii) by striking out "or 6050K(a)" and inserting in lieu thereof "6050K(a), or 6050L(a)".

(3) Clerical amendment.—The table of sections of subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050L. Returns relating to certain dispositions of donated property."

(c) Modifications of Incorrect Valuation Penalty.—

(1) Modifications of section 6659.—

(A) Elimination of requirement that property be acquired within the last 5 years.—Subsection (c) of section 6659 is amended to read as follows:

"(c) Valuation Overstatement Defined.—For purposes of this section, there is a valuation overstatement if the value of any property, or the adjusted basis of any property, claimed on any return is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be)."

(B) Special rules for overstatement of charitable deduction.—Section 6659 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Special Rules for Overstatement of Charitable Deduction.—

"(1) Amount of applicable percentage.—In the case of any underpayment attributable to a valuation overstatement with respect to charitable deduction property, the applicable percentage for purposes of subsection (a) shall be 30 percent.

"(2) Limitation on authority to waive.—In the case of any underpayment attributable to a valuation overstatement with respect to charitable deduction property, the Secretary may not waive any portion of the addition to tax provided by this section unless the Secretary determines that—

"(A) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and

"(B) in addition to obtaining such appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

"(3) Definitions.—For purposes of this subsection—

"(A) Charitable deduction property.—The term 'charitable deduction property' means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of paragraph (2), such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

"(B) Qualified appraiser.—The term 'qualified appraiser' means any appraiser meeting the requirements of the regulations prescribed under section 170(a)(1).

"(C) Qualified appraisal.—The term 'qualified appraisal' means any appraisal meeting the requirements of the regulations prescribed under section 170(a)(1).".

(2) Extension of incorrect valuation penalty to estate and gift tax.—

(A) Subchapter A of chapter 68 (relating to additions to the tax and additional amounts) is amended by inserting after section 6659 the following new section:

"SEC. 6660. ADDITION TO TAX IN THE CASE OF VALUATION UNDERSTATEMENT FOR PURPOSES OF THE ESTATE OR GIFT TAXES.

"(a) Addition to the Tax.—In the case of any underpayment of a tax imposed by subtitle B (relating to estate and gift taxes) which is attributable to a valuation understatement, there shall be added to the tax an amount equal to the applicable percentage of the underpayment so attributed.

"(b) Applicable Percentage.—For purposes of subsection (a), the applicable percentage shall be determined under the following table:

"If the valuation claimed is the following percent of the correct valuation—	The applicable percentage is:
50 percent or more but not more than 66⅔ percent.	10
40 percent or more but less than 50 percent.	20
Less than 40 percent	30.

"(c) Valuation Understatement Defined.—For purposes of this section, there is a valuation understatement if the value of any property claimed on any return is 66⅔ percent or less of the amount determined to be the correct amount of such valuation.

"(d) Underpayment Must Be At Least $1,000.—This section shall not apply if the underpayment is less than $1,000 for any taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent).

"(e) Authority to Waive.—The Secretary may waive all or any part of the addition to the tax provided by this section on a showing by the taxpayer that there was a reasonable basis for the valuation claimed on the return and that such claim was made in good faith."

(B) Clerical amendment.—The table of sections for subchapter A of chapter 68 is amended by inserting after the item relating to section 6659 the following new item:

"Sec. 6660. Addition to tax in the case of valuation understatement for purposes of estate or gift taxes."

(d) Effective Dates.—

(1) Subsections (a) and (b).—The amendments made by subsections (a) and (b) shall apply to contributions made after December 31, 1984, in taxable years ending after such date.

(2) Subsection (c).—The amendments made by subsection (c) shall apply to returns filed after December 31, 1984.

SEC. 156. AUTHORIZATION TO DISREGARD APPRAISALS OF PERSONS PENALIZED FOR AIDING IN UNDERSTATEMENTS OF TAX LIABILITY.

(a) In General.—Section 330 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) After notice and opportunity for a hearing to any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code of 1954, the Secretary may—

"(1) provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, and

"(2) bar such appraiser from presenting evidence or testimony in any such proceeding."

(b) Effective Date.—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 157. LIMITATION ON MAILING OF DEPOSITS OF TAXES.

(a) In General.—Subsection (e) of section 7502 (relating to mailing of deposits) is amended by adding at the end thereof the following new paragraph:

"(3) No application to certain deposits.—Paragraph (1) shall not apply with respect to any deposit of $20,000 or more by any person who is required to deposit the tax more than once a month."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to deposits required to be made after July 31, 1984.

SEC. 158. INTEREST ON CERTAIN ADDITIONS TO TAX.

(a) IN GENERAL.—Paragraph (2) of section 6601(e) (relating to interest on penalties and additions to tax) is amended to read as follows:

"(2) INTEREST ON PENALTIES, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX.—

"(A) IN GENERAL.—Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1), 6659, 6660, or 6661) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

"(B) INTEREST ON CERTAIN ADDITIONS TO TAX.—Interest shall be imposed under this section with respect to any addition to tax imposed by section 6651(a)(1), 6659, 6660, or 6661 for the period which—

"(i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and

"(ii) ends on the date of payment of such addition to tax."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest accrued after the date of the enactment of this Act, except with respect to additions to tax for which notice and demand is made before such date.

SEC. 159. PENALTY FOR FRAUDULENT WITHHOLDING EXEMPTION CERTIFICATE OR FAILURE TO SUPPLY INFORMATION.

(a) IN GENERAL.—Section 7205 (relating to penalty for fraudulent withholding exemption certificate) is amended—

"(1) by striking out "in lieu of" each place it appears and inserting in lieu thereof "in addition to", and

"(2) by striking out "(except the penalty provided by section 6682)" each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to actions and failures to act occurring after the date of the enactment of this Act.

SEC. 160. APPLICATION OF PENALTY FOR FRIVOLOUS PROCEEDINGS TO PENDING TAX COURT PROCEEDINGS.

Paragraph (2) of section 292(e) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended to read as follows:

"(2) PENALTY.—The amendments made by subsections (b) and (d)(2) shall apply to any action or proceeding in the United States Tax Court which—

"(A) is commenced after December 31, 1982, or

"(B) is pending in the United States Tax Court on the day which is 120 days after the date of the enactment of the Tax Reform Act of 1984."

SEC. 161. FAILURE TO REQUEST CHANGE OF METHOD OF ACCOUNTING.

(a) IN GENERAL.—Section 446 (relating to general rule for methods of accounting) is amended by adding at the end thereof the following new subsection:

"(f) FAILURE TO REQUEST CHANGE OF METHOD OF ACCOUNTING.—If the taxpayer does not file with the Secretary a request to change the method of accounting, the absence of the consent of the Secretary to a change in the method of accounting shall not be taken into account—

"(1) to prevent the imposition of any penalty, or the addition of any amount to tax, under this title, or

"(2) to diminish the amount of such penalty or addition to tax."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 162. CLARIFICATION OF CHANGE OF VENUE FOR CERTAIN TAX OFFENSES.

Section 3237(b) of title 18 of the United States Code is amended to read as follows:

"(b) Notwithstanding subsection (a), where an offense is described in section 7203 of the Internal Revenue Code of 1954, or where venue for prosecution of an offense described in section 7201 or 7206 (1), (2), or (5) of such Code (whether or not the offense is also described in another provision of law) is based solely on a mailing to the Internal Revenue Service, and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed: Provided, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information."

SEC. 163. EXTENSION OF STATUTE OF LIMITATIONS WITH RESPECT TO CERTAIN EXPENDITURES RELATING TO CONTRIBUTIONS IN AID OF CONSTRUCTION.

(a) IN GENERAL.—Section 118 (relating to contributions to the capital of a corporation) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) STATUTE OF LIMITATIONS.—If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

"(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

"(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

"(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

(b) TECHNICAL AMENDMENTS.—

(1) Section 6501 is amended by striking out subsections (l) and (o) and by redesignating subsection (m), (n), and (p) as subsections (k), (l), and (m), respectively, and by inserting after subsection (m) (as so redesignated) the following new subsection:

"(n) CROSS REFERENCES.—

"(1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b) (3) and (4).

"(2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

"(3) For extension of period in the case of certain contributions in aid of construction, see section 118(c)."

(2) Subsection (f) of section 6511 is amended by striking out "section 6501(n)(1)" and inserting in lieu thereof "section 6501(l)(1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1954 ends after December 31, 1984.

Subtitle L—Miscellaneous Provisions

SEC. 171. INCLUSION OF TAX BENEFIT ITEMS IN INCOME.

(a) IN GENERAL.—Section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts) is amended to read as follows:

"SEC. 111. RECOVERY OF TAX BENEFIT ITEMS.

"(a) DEDUCTIONS.—Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce income subject to tax.

"(b) CREDITS.—

"(1) IN GENERAL.—If—

"(A) a credit was allowable with respect to any amount for any prior taxable year, and

"(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

"(2) EXCEPTION WHERE CREDIT DID NOT REDUCE TAX.—Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

"(3) EXCEPTION FOR INVESTMENT TAX CREDIT AND FOREIGN TAX CREDIT.—This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

"(c) TREATMENT OF CARRYOVERS.—For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery takes place shall be treated as reducing income subject to tax or reducing tax imposed by this chapter, as the case may be.

"(d) SPECIAL RULES FOR ACCUMULATED EARNINGS TAX AND FOR PERSONAL HOLDING COMPANY TAX.—In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

"(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

"(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by striking out the item relating to section 111 and inserting in lieu thereof:

"Sec. 111. Recovery of tax benefit items."

(c) Effective Date.—The amendments made by this section shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date.

SEC. 172. LOANS WITH BELOW-MARKET INTEREST RATES.

(a) General Rule.—Subchapter C of chapter 80 (relating to provisions affecting more than 1 subtitle) is amended by adding at the end thereof the following new section:

"SEC. 7872. TREATMENT OF LOANS WITH BELOW-MARKET INTEREST RATES.

"(a) Treatment of Gift Loans and Demand Loans.—

"(1) In general.—For purposes of this title, in the case of any below-market loan to which this section applies and which is a gift loan or a demand loan, the foregone interest shall be treated as—

"(A) transferred from the lender to the borrower, and

"(B) retransferred by the borrower to the lender as interest.

"(2) Time when transfers made.—Except as otherwise provided in regulations prescribed by the Secretary, any foregone interest attributable to periods during any calendar year shall be treated as transferred (and retransferred) under paragraph (1) on the last day of such calendar year.

"(b) Treatment of Other Below-Market Loans.—

"(1) In general.—For purposes of this title, in the case of any below-market loan to which this section applies and to which subsection (a)(1) does not apply, the lender shall be treated as having transferred on the date the loan was made (or, if later, on the first day on which this section applies to such loan), and the borrower shall be treated as having received on such date, cash in an amount equal to the excess of—

"(A) the amount loaned, over

"(B) the present value of all payments which are required to be made under the terms of the loan.

"(2) Obligation treated as having original issue discount.—For purposes of this title—

"(A) In general.—Any below-market loan to which paragraph (1) applies shall be treated as having original issue discount in an amount equal to the excess described in paragraph (1).

"(B) Amount in addition to other original issue discount.—Any original issue discount which a loan is treated as having by reason of subparagraph (A) shall be in addition to any other original issue discount on such loan (determined without regard to subparagraph (A)).

"(c) Below-Market Loans to Which Section Applies.—

"(1) In general.—Except as otherwise provided in this subsection, this section shall apply to—

"(A) Gifts.—Any below-market loan which is a gift loan.

"(B) Compensation-related loans.—Any below-market loan directly or indirectly between—

"(i) an employer and an employee, or

"(ii) an independent contractor and a person for whom such independent contractor provides services.

"(C) Corporation-shareholder loans.—Any below-market loan directly or indirectly between a corporation and any shareholder of such corporation.

"(D) Tax avoidance loans.—Any below-market loan 1 of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

"(E) Other below-market loans.—To the extent provided in regulations, any below-market loan which is not described in subparagraph (A), (B), or (C) if the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower.

"(2) $10,000 de minimis exception for gift loans between individuals.—

"(A) In general.—In the case of any gift loan directly between individuals, this section shall not apply to any day on which the aggregate outstanding amount of loans between such individuals does not exceed $10,000.

"(B) De minimis exception not to apply to loans attributable to acquisition of income-producing assets.—Subparagraph (A) shall not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets.

"(C) Cross reference.—

"For limitation on amount treated as interest where loans do not exceed $100,000, see subsection (d)(1).

"(3) $10,000 de minimis exception for compensation-related and corporate-shareholder loans.—

"(A) In general.—In the case of any loan described in subparagraph (B) or (C) of paragraph (1), this section shall not apply to any day on which the aggregate outstanding amount of loans between the borrower and lender does not exceed $10,000.

"(B) Exception not to apply where 1 of principal purposes is tax avoidance.—Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

"(d) Special Rules for Gift Loans.—

"(1) Limitation on interest accrual for purposes of income taxes where loans do not exceed $100,000.—

"(A) In general.—For purposes of subtitle A, in the case of a gift loan directly between individuals, the amount treated as retransferred by the borrower to the lender as of the close of any year shall not exceed the borrower's net investment income for such year.

"(B) Limitation not to apply where 1 of principal purposes is tax avoidance.—Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

"(C) Special rule where more than 1 gift loan outstanding.—For purposes of subparagraph (A), in any case in which a borrower has outstanding more than 1 gift loan, the net investment income of such borrower shall be allocated among such loans in proportion to the respective amounts which would be treated as retransferred by the borrower without regard to this paragraph.

"(D) Limitation not to apply where aggregate amount of loans exceed $100,000.—This paragraph shall not apply to any loan made by a lender to a borrower for any day on which the aggregate outstanding amount of loans between the borrower and lender exceeds $100,000.

"(E) Net investment income.—For purposes of this paragraph—

"(i) In general.—The term 'net investment income' has the meaning given such term by section 163(d)(3).

"(ii) De minimis rule.—If the net investment income of any borrower for any year does not exceed $1,000, the net investment income of such borrower for such year shall be treated as zero.

"(iii) Additional amounts treated as interest.—In determining the net investment income of a person for any year, any amount which would be included in the gross income of such person for such year by reason of section 1272 if such section applied to all deferred payment obligations shall be treated as interest received by such person for such year.

"(iv) Deferred payment obligations.—The term 'deferred payment obligation' includes any market discount bond, short-term obligation, United States savings bond, annuity, or similar obligation.

"(2) Special rule for gift tax.—In the case of any gift loan which is a term loan, subsection (b)(1) (and not subsection (a)) shall apply for purposes of chapter 12.

"(e) Definitions of Below-Market Loan and Foregone Interest.—For purposes of this section—

"(1) Below-market loan.—The term 'below-market loan' means any loan if—

"(A) in the case of a demand loan, interest is payable on the loan at a rate less than the applicable Federal rate, or

"(B) in the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan.

"(2) Foregone interest.—The term 'foregone interest' means, with respect to any period during which the loan is outstanding, the excess of—

"(A) the amount of interest which would have been payable on the loan for the period if interest accrued on the loan at the applicable Federal rate and were payable annually on the day referred to in subsection (a)(2), over

"(B) any interest payable on the loan properly allocable to such period.

"(f) Other Definitions and Special Rules.—For purposes of this section—

"(1) Present value.—The present value of any payment shall be determined in the manner provided by regulations prescribed by the Secretary—

"(A) as of the date of the loan, and

"(B) by using a discount rate equal to the applicable Federal rate.

"(2) Applicable federal rate.—

"(A) Term loans.—In the case of any term loan, the applicable Federal rate shall be the applicable Federal rate in effect under section 1274(d) (as of the day on which the loan was made), compounded semiannually.

"(B) Demand loans.—In the case of a demand loan, the applicable Federal rate shall be the Federal short-term rate in effect under section 1274(d) for the period for which the amount of foregone interest is being determined.

"(3) Gift loan.—The term 'gift loan' means any below-market loan when the foregoing of interest is in the nature of a gift.

"(4) Amount loaned.—The term 'amount loaned' means the amount received by the borrower.

"(5) Demand loan.—The term 'demand loan' means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan which is not transferrable and the benefits of the interest arrangements of which is conditioned on the future performance of substantial services by an individual.

"(6) Term loan.—The term 'term loan' means any loan which is not a demand loan.

"(7) Husband and wife treated as 1 person.—A husband and wife shall be treated as 1 person.

"(8) Loans to which section 483 or 1274 applies.—This section shall not apply to any loan to which section 483 or 1274 applies.

"(9) No withholding.—No amount shall be withheld under chapter 24 with respect to any amount treated as transferred or retransferred under subsection (a).

"(10) Special rule for term loans.—If this section applies to any term loan on any day, this section shall continue to apply to such loan notwithstanding paragraphs (2) and (3) of subsection (c). In the case of a gift loan, the preceding sentence shall only apply for purposes of chapter 12.

"(g) Regulations.—

"(1) In general.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(A) regulations providing that where, by reason of varying rates of interest, conditional interest payments, waivers of interest, disposition of the lender's or borrower's interest in the loan, or other circumstances, the provisions of this section do not carry out the purposes of this section, adjustments to the provisions of this section will be made to the extent necessary to carry out the purposes of this section,

"(B) regulations for the purpose of assuring that the positions of the borrower and lender are consistent as to the application (or nonapplication) of this section, and

"(C) regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower.

"(2) Estate tax coordination.—Under regulations prescribed by the Secretary, any loan which is made with donative intent and which is a term loan shall be taken into account for purposes of chapter 11 in a manner consistent with the provisions of subsection (b)."

(b) Clerical Amendment.—The table of sections for subchapter C of chapter 80 is amended by adding at the end thereof the following new item:

"Sec. 7872. Treatment of loans with below-market interest rates."

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to—

(A) term loans made after June 6, 1984, and

(B) demand loans outstanding after June 6, 1984.

(2) Exception for demand loans outstanding on June 6, 1984, and repaid within 60 days after date of enactment.—The amendments made by this section shall not apply to any demand loan which—

(A) was outstanding on June 6, 1984, and

(B) was repaid before the date 60 days after the date of the enactment of this Act.

(3) Exception for certain existing loans to continuing care facilities.—Nothing in this subsection shall be construed to apply the amendments made by this section to any loan made before June 6, 1984, to a continuing care facility by a resident of such facility which is contingent on continued residence at such facility.

(4) Applicable federal rate for periods before January 1, 1985.—For periods before January 1, 1985, the applicable Federal rate under paragraph (2) of section 7872(f) of the Internal Revenue Code of 1954, as added by this section, shall be 10 percent, compounded semiannually.

(5) Treatment of renegotiations, etc.—For purposes of this subsection, any loan renegotiated, extended, or revised after June 6, 1984, shall be treated as a loan made after such date.

(6) Definition of term and demand loans.—For purposes of this subsection, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1954, as added by this section, but the second sentence of such paragraph (5) shall not apply.

SEC. 173. ELIGIBILITY FOR INCOME AVERAGING.

(a) Base Period Shortened to 3 Years.—Paragraph (2) of section 1302(c) (relating to definition of averagable income; related definitions) is amended by striking out "4 taxable years" and inserting in lieu thereof "3 taxable years".

(b) Increase in Percentage of Average Base Income Taken Into Account.—Section 1301 (relating to limitation on tax) is amended by striking out "120 percent" and inserting in lieu thereof "140 percent".

(c) Technical and Conforming Amendments.—

(1) Section 1301 (relating to limitation on tax) is amended—

(A) by striking out "5 times" and inserting in lieu thereof "4 times", and

(B) by striking out "20 percent" and inserting in lieu thereof "25 percent".

(2) Paragraph (1) of section 1302(a) (defining averagable income) is amended by striking out "120 percent" and inserting in lieu thereof "140 percent".

(3) Paragraph (1) of section 1302(b) (defining average base period income) is amended by striking out "one-fourth" and inserting in lieu thereof "⅓".

(4) Paragraph (3) of section 1302(c) is amended by striking out "4 taxable years" and inserting in lieu thereof "3 taxable years".

(d) Effective Date.—The amendments made by this section shall apply to computation years beginning after December 31, 1983, and to base period years applicable to such computation years.

SEC. 174. AMENDMENTS TO SECTION 267.

(a) Allowance of Deduction Where Expenses and Interest Are Paid to Related Cash-Basis Taxpayers After 2½-Month Period.—

(1) In general.—Subsection (a) of section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended to read as follows:

"(a) In General.—

"(1) Deduction for losses disallowed.—No deduction shall be allowed in respect of any loss from the sale or exchange of property (other than a loss in case of a distribution in corporate liquidation), directly or indirectly, between persons specified in any of the paragraphs of subsection (b).

"(2) Matching of deduction and payee income item in the case of expenses and interest.—If—

"(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

"(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)."

(2) Conforming amendment.—Subsection (e) of section 267 (relating to rule where last day of 2½-month period falls on Sunday, etc.) is hereby repealed.

(b) Extension of Section 267 to Certain Related Entries.—

(1) Pass-thru entities.—Section 267 is amended by striking out subsection (f) and inserting in lieu thereof the following:

"(e) Special Rules for Pass-Thru Entities.—

"(1) In general.—In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)—

"(A) such entity,

"(B) in the case of—

"(i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or

"(ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

"(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

"(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b). Subparagraph (C) shall apply to a transaction only if such transaction is related either to the operations of the partnership described in such subparagraph or to an interest in such partnership.

"(2) Pass-thru entity.—For purposes of this section, the term 'pass-thru entity' means—

"(A) a partnership, and

"(B) an S corporation.

"(3) Constructive ownership in the case of partnerships.—For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) shall apply, except that—

"(A) paragraph (3) of subsection (c) shall not apply, and

"(B) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

"(4) Subsection (a)(2) not to apply to certain guaranteed payments of partnerships.—In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

"(5) Exception for certain expenses and interest of partnerships owning low-income housing.—

"(A) In general.—This subsection shall not apply with respect to qualified expenses and interest paid or incurred by a partnership owning low-income housing to—

"(i) any qualified 5-percent or less partner of such partnership, or

"(ii) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to any qualified 5-percent or less partner of such partnership.

"(B) Qualified 5-percent or less partner.—For purposes of this paragraph, the term 'qualified 5-percent or less partner' means any partner who has (directly or indirectly) an interest of 5 percent or less in the aggregate capital and profits interests of the partnership but only if—

"(i) such partner owned the low-income housing at all times during the 2-year period ending on the date such housing was transferred to the partnership, or

"(ii) such partnership acquired the low-income housing pursuant to a purchase, assignment, or other transfer from the Department of Housing and Urban Development or any State or local housing authority.

For purposes of the preceding sentence, a partner shall be treated as holding any interest in the partnership which is held (directly or indirectly) by any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to such partner.

"(C) QUALIFIED EXPENSES AND INTEREST.—For purpose of this paragraph, the term 'qualified expenses and interest' means any expense or interest incurred by the partnership with respect to low-income housing held by the partnership but—

"(i) only if the amount of such expense or interest (as the case may be) is unconditionally required to be paid by the partnership not later than 10 years after the date such amount was incurred, and

"(ii) in the case of such interest, only if such interest is incurred at an annual rate not in excess of 12 percent.

"(D) LOW-INCOME HOUSING.—For purposes of this paragraph, the term 'low-income housing' means—

"(i) any interest in low-income housing (as defined in paragraph (5) of section 189(e)), and

"(ii) any interest in a partnership owning low-income housing (as so defined)."

(2) CERTAIN CONTROLLED GROUPS.—

(A) Paragraph (3) of section 267(b) is amended to read as follows:

"(3) Two corporations which are members of the same controlled group (as defined in subsection (f));".

(B) Section 267 is amended by adding at the end thereof the following new subsection:

"(f) CONTROLLED GROUP DEFINED; SPECIAL RULES APPLICABLE TO CONTROLLED GROUPS.—

"(1) CONTROLLED GROUP DEFINED.—For purposes of this section, the term 'controlled group' has the meaning given to such term by section 1563(a), except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a), and

"(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(2) DEFERRAL (RATHER THAN DENIAL) OF LOSS FROM SALE OR EXCHANGE BETWEEN MEMBERS.—In the case of any loss from the sale or exchange of property which is between members of the same controlled group and to which subsection (a)(1) applies (determined without regard to this paragraph but with regard to paragraph (3))—

"(A) subsections (a)(1) and (d) shall not apply to such loss, but

"(B) such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

"(3) LOSS DEFERRAL RULES NOT TO APPLY IN CERTAIN CASES.—

"(A) TRANSFER TO DISC.—For purposes of applying subsection (a)(1), the term 'controlled group' shall not include a DISC.

"(B) CERTAIN SALES OF INVENTORY.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to the sale or exchange of property between members of the same controlled group if—

"(i) such property in the hands of the transferor is property described in section 1221(1),

"(ii) such sale or exchange is in the ordinary course of the transferor's trade or business,

"(iii) such property in the hands of the transferee is property described in section 1221(1), and

"(iv) the transferee or the transferor is a foreign corporation.

"(C) CERTAIN FOREIGN CURRENCY LOSSES.—To the extent provided in regulations, subsection (a)(1) shall not apply to any loss sustained by a member of a controlled group on the repayment of a loan made to another member of such group if such loan is payable in a foreign currency or is denominated in such a currency and such loss is attributable to a reduction in value of such foreign currency."

(3) CORPORATION AND PARTNERSHIP OWNED BY SAME PERSONS.—Paragraph (10) of section 267(b) is amended—

(A) by striking out "An S corporation" and inserting in lieu thereof "A corporation", and

(B) by striking out "the S corporation" and inserting in lieu thereof "the corporation".

(4) S CORPORATION AND C CORPORATION OWNED BY SAME PERSONS.—Paragraph (12) of section 267(b) is amending by striking out "the same individual" and inserting in lieu thereof "the same persons".

(5) TECHNICAL AMENDMENTS.—

(A) Paragraph (3) of section 170(a) is amended by striking out "section 267(b)" and inserting in lieu thereof "section 267(b) or 707(b)".

(B) Clause (iii) of section 514(c)(9)(B) is amended by striking out "section 267(b)" and inserting in lieu thereof "section 267(b) or 707(b)".

(C) Subsection (d) of section 1235 is amended—

(i) by striking out "section 267(b)" in the matter preceding paragraph (1) and inserting in lieu thereof "section 267(b) or persons described in section 707(b)",

(ii) by striking out "section 267 (b) and (c)" and inserting in lieu thereof "section 267 (b) and (c) and section 707(b)", and

(iii) by striking out "section 267(b)" in paragraph (1) and inserting in lieu thereof "section 267(b) or 707(b)".

(D) Subparagraph (F) of section 368(a)(2) is amended by striking out clause (viii).

(c) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b)(1).—The amendments made by subsections (a) and (b)(1) shall apply to amounts allowable as deductions under chapter 1 of the Internal Revenue Code of 1954 for taxable years beginning after December 31, 1983. For purposes of the preceding sentence, the allowability of a deduction shall be determined without regard to any disallowance or postponement of deductions under section 267 of such Code.

(2) SUBSECTION (b) (OTHER THAN PARAGRAPH (1)).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) (other than paragraph (1) thereof) shall apply to transactions after December 31, 1983, in taxable years ending after such date.

(B) EXCEPTION FOR TRANSFERS TO FOREIGN CORPORATIONS ON OR BEFORE MARCH 1, 1984.—The amendments made by subsection (b)(2) shall not apply to property transferred to a foreign corporation on or before March 1, 1984.

(3) EXCEPTION FOR EXISTING INDEBTEDNESS, ETC.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any amount paid or incurred—

(i) on indebtedness incurred on or before September 29, 1983, or

(ii) pursuant to a contract which was binding on September 29, 1983, and at all times thereafter before the amount is paid or incurred.

(B) TREATMENT OF RENEGOTIATIONS, EXTENSIONS, ETC.—If any indebtedness (or contract described in subparagraph (A)) is renegotiated, extended, renewed, or revised after September 29, 1983, subparagraph (A) shall not apply to any amount paid or incurred on such indebtedness (or pursuant to such contract) after the date of such renegotiation, extension, renewal, or revision.

SEC. 175. AMENDMENTS TO SECTION 1239.

(a) PATENT APPLICATIONS TREATED AS DEPRECIABLE PROPERTY.—Section 1239 (relating to gain from sale of depreciable property between certain related taxpayers) is amended by adding at the end thereof the following new subsection:

"(e) PATENT APPLICATIONS TREATED AS DEPRECIABLE PROPERTY.—For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167."

(b) TAXPAYER AND CERTAIN TRUSTS TREATED AS RELATED PERSONS.—Subsection (b) of section 1239 is amended to read as follows:

"(b) RELATED PERSONS.—For purposes of subsection (a), the term 'related person' means—

"(1) a husband and wife,

"(2) a person and all entities which are 80-percent owned entities with respect to such person,

"(3) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after March 1, 1984, in taxable years ending after such date.

SEC. 176. RECAPTURE OF NET ORDINARY LOSSES UNDER SECTION 1231.

(a) GENERAL RULE.—Section 1231 (relating to property used in the trade or business and involuntary conversions) is amended by adding at the end thereof the following new subsection:

"(c) RECAPTURE OF NET ORDINARY LOSSES.—

"(1) IN GENERAL.—The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

"(2) NON-RECAPTURED NET SECTION 1231 LOSSES.—For purposes of this subsection, the term 'non-recaptured net section 1231 losses' means the excess of—

"(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

"(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

"(3) NET SECTION 1231 GAIN.—For purposes of this subsection, the term 'net section 1231 gain' means the excess of—

"(A) the section 1231 gains, over

"(B) the section 1231 losses.

"(4) NET SECTION 1231 LOSS.—For purposes of this subsection, the term 'net section 1231 loss' means the excess of—

"(A) the section 1231 losses, over

"(B) the section 1231 gains.

"(5) SPECIAL RULES.—For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to net section 1231 gains for taxable years beginning after December 31, 1984.

SEC. 177. REPEAL OF EXEMPTION FROM FEDERAL TAX OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION.

(a) REPEAL OF EXEMPTION.—Subsection (d) of section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(d)) is amended—

(1) by striking out "by the United States,",

(2) by striking out "possession thereof," and inserting in lieu thereof "possession of the United States", and

(3) by striking out the last sentence.

(b) TREATMENT OF DIVIDENDS PAID BY FEDERAL HOME LOAN BANK WHICH ARE ALLOCABLE TO DIVIDENDS FROM THE FEDERAL HOME LOAN MORTGAGE CORPORATION.—Subsection (a) of section 246 (relating to denial of dividends received deduction for dividends from certain corporations) is amended to read as follows:

"(a) DEDUCTION NOT ALLOWED FOR DIVIDENDS FROM CERTAIN CORPORATIONS.—

"(1) IN GENERAL.—The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

"(2) SUBSECTION NOT TO APPLY TO CERTAIN DIVIDENDS OF FEDERAL HOME LOAN BANKS.—

"(A) DIVIDENDS OUT OF CURRENT EARNINGS AND PROFITS.—In the case of any dividend paid by any FHLB out of earnings and profits of the FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

"(i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to

"(ii) the total earnings and profits of the FHLB for such taxable year.

"(B) DIVIDENDS OUT OF ACCUMULATED EARNINGS AND PROFITS.—For purposes of subparagraph (A), in the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

"(i) the amount of dividends received by such FHLB from the FHLMC which are out of earnings and profits of the FHLMC—

"(I) for taxable years ending after December 31, 1984, and

"(II) which were not taken into account under subparagraph (A), bears to

"(ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of January 1, 1985, shall be treated as equal to its retained earnings as of such date.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) FHLB.—The term 'FHLB' means any Federal Home Loan Bank.

"(ii) FHLMC.—The term 'FHLMC' means the Federal Home Loan Mortgage Corporation.

"(iii) TAXABLE YEAR OF FHLB.—The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year."

(c) TREATMENT OF NET OPERATING LOSSES OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION.—

(1) IN GENERAL.—Subparagraph (H) of section 172(b)(1) (relating to years to which net operating losses may be carried) is amended—

(A) by inserting ", or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984" after "1981",

(B) by striking out "the FNMA mortgage disposition loss (within the meaning of subsection (i))" in clause (i) and inserting in lieu thereof "the mortgage disposition loss (within the meaning of subsection (i))", and

(C) by striking out "FNMA mortgage disposition loss" in clause (ii) and inserting in lieu thereof "mortgage disposition loss".

(2) CONFORMING AMENDMENT.—Subsection (i) of section 172 is amended—

(A) by striking out "FNMA mortgage disposition loss" each place it appears in paragraphs (1) and (2) (including in headings) and inserting in lieu thereof "mortgage disposition loss", and

(B) by striking out "FNMA MORTGAGE DISPOSITION LOSS" in the subsection heading and inserting in lieu thereof "MORTGAGE DISPOSITION LOSS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1985.

(2) ADJUSTED BASIS OF ASSETS.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, shall—

(i) for purposes of determining any loss, be equal to the lesser of the adjusted basis of such asset or the fair market value of such asset as of such date, and

(ii) for purposes of determining any gain, be equal to the higher of the adjusted basis of such asset or the fair market value of such asset as of such date.

(B) SPECIAL RULE FOR TANGIBLE DEPRECIABLE PROPERTY.—In the case of any tangible property which—

(i) is of a character subject to the allowance for depreciation provided by section 167 of the Internal Revenue Code of 1954, and

(ii) is held by the Federal Home Loan Mortgage Corporation on January 1, 1985,

the adjusted basis of such property shall be equal to the lesser of the basis of such property or the fair market value of such property as of such date.

(3) TREATMENT OF PARTICIPATION CERTIFICATES.—

(A) IN GENERAL.—Paragraph (2) shall not apply to any right to receive income with respect to any mortgage pool participation certificate or other similar interest in any mortgage (not including any mortgage).

(B) TREATMENT OF CERTAIN SALES AFTER MARCH 15, 1984, AND BEFORE JANUARY 1, 1985.—If any gain is realized on the sale or exchange of any right described in subparagraph (A) after March 15, 1984, and before January 1, 1985, the gain shall not be recognized when realized but shall be recognized on January 1, 1985.

(4) NO ACCUMULATED EARNINGS AND PROFITS ON JANUARY 1, 1985.—For purposes of the Internal Revenue Code of 1954, the accumulated profits of the Federal Home Loan Mortgage Corporation as of January 1, 1985, shall be treated as zero.

(5) ADJUSTED BASIS.—For purposes of this subsection, the adjusted basis of any asset shall be determined under part II of subchapter O of the Internal Revenue Code of 1954.

(6) NO CARRYBACKS FOR YEARS BEFORE 1985.—No net operating loss, capital loss, or excess credit of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985.

(7) NO DEDUCTION ALLOWED FOR INTEREST ON REPLACEMENT OBLIGATIONS.—

(A) IN GENERAL.—The Federal Home Loan Mortgage Corporation shall not be allowed any deduction for interest accruing after December 31, 1984, on any replacement obligation.

(B) REPLACEMENT OBLIGATION DEFINED.—For purposes of subparagraph (A), the term "replacement obligation" means any obligation to any person created after March 15, 1984, which the Secretary of the Treasury or his delegate determines replaces any equity or debt interest of a Federal Home Loan Bank or any other person in the Federal Home Loan Mortgage Corporation existing on such date. The preceding sentence shall not apply to any obligation with respect to which the Federal Home Loan Mortgage Corporation establishes that there is no tax avoidance effect.

SEC. 178. SPECIAL RULE RELATING TO SALES OR EXCHANGES OF CERTAIN ECONOMIC INTERESTS IN COAL BETWEEN RELATED PARTIES.

(a) IN GENERAL.—The last sentence of section 631(c) (relating to disposal of coal or domestic iron ore with a retained economic interest) is amended by inserting "or coal" after "iron ore" each place it appears.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to dispositions after September 30, 1985.

(2) SPECIAL RULE FOR FIXED CONTRACTS.—

(A) IN GENERAL.—The amendment made by subsection (a) shall not apply to any disposition of an interest in coal by a person to a related person if such coal is subsequently sold before January 1, 1990, by either such person—

(i) to a person who is not a related person with respect to either such person, and

(ii) pursuant to a qualified fixed contract.

(B) ALLOCATION WHERE MORE THAN 1 CONTRACT.—If, for any taxable year, there is a disposition described in subparagraph (A) which is not specifically allocable to a qualified fixed contract or to a contract which is not a qualified fixed contract, such disposition shall be treated as first allocable to the qualified fixed contract.

(C) QUALIFIED FIXED CONTRACT DEFINED.—The term "qualified fixed contract" means any contract for the sale of coal which—

(i) was entered into before June 12, 1984,

(ii) is binding at all times thereafter, and

(iii) cannot be adjusted to reflect to any extent the increase in liabilities of the person disposing of the coal for tax under chapter 1 of the Internal Revenue Code of

1954 by reason of the amendment made by subsection (a).

(D) RELATED PERSON.—For purposes of this paragraph, the term "related person" means a person who bears a relationship to another person described in the last sentence of section 631(c).

SEC. 179. LIMITATION ON AMOUNT OF DEPRECIATION AND INVESTMENT TAX CREDIT FOR LUXURY AUTOMOBILES; LIMITATION WHERE CERTAIN PROPERTY USED FOR PERSONAL PURPOSES.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding after section 280E the following new section:

"SEC. 280F. LIMITATION ON INVESTMENT TAX CREDIT AND DEPRECIATION FOR LUXURY AUTOMOBILES; LIMITATION WHERE CERTAIN PROPERTY USED FOR PERSONAL PURPOSES.

"(a) LIMITATION ON AMOUNT OF INVESTMENT TAX CREDIT AND DEPRECIATION FOR LUXURY AUTOMOBILES.—

"(1) INVESTMENT TAX CREDIT.—The amount of the credit determined under section 46(a) for any passenger automobile shall not exceed $1,000.

"(2) DEPRECIATION.—

"(A) LIMITATION.—The amount of the recovery deduction for any taxable year for any passenger automobile shall not exceed—

"(i) $4,000 for the first taxable year in the recovery period, and

"(ii) $6,000 for each succeeding taxable year in the recovery period.

"(B) DISALLOWED DEDUCTIONS ALLOWED FOR YEARS AFTER RECOVERY PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), the unrecovered basis of any passenger automobile shall be treated as an expense for the 1st taxable year after the recovery period. Any excess of the unrecovered basis over the limitation of clause (ii) shall be treated as an expense in the succeeding taxable year.

"(ii) $6,000 LIMITATION.—The amount treated as an expense under clause (i) for any taxable year shall not exceed $6,000.

"(iii) PROPERTY MUST BE DEPRECIABLE.—No amount shall be allowable as a deduction by reason of this subparagraph with respect to any property for any taxable year unless a depreciation deduction would be allowable with respect to such property for such taxable year.

"(iv) AMOUNT TREATED AS RECOVERY DEDUCTION.—For purposes of this subtitle, any amount allowable as a deduction by reason of this subparagraph shall be treated as a recovery deduction allowable under section 168.

"(3) COORDINATION WITH REDUCTIONS IN AMOUNT ALLOWABLE BY REASON OF PERSONAL USE, ETC.—This subsection shall be applied before—

"(A) the application of subsection (b), and

"(B) the application of any other reduction in the amount of the credit determined under section 46(a) or any recovery deduction allowable under section 168 by reason of any use not qualifying the property for such credit or recovery deduction.

"(4) SPECIAL RULE WHERE ELECTION OF REDUCED CREDIT IN LIEU OF THE BASIS ADJUSTMENT.—In the case of any election under section 48(q)(4) with respect to any passenger automobile, the limitation of paragraph (1) applicable to such passenger automobile shall be ⅔ of the amount which would be so applicable but for this paragraph.

"(b) LIMITATION WHERE BUSINESS USE OF LISTED PROPERTY NOT GREATER THAN 50 PERCENT.—

"(1) INVESTMENT TAX CREDIT.—For purposes of this subtitle, any listed property shall not be treated as section 38 property for any taxable year unless such property is predominantly used in a qualified business use for such taxable year.

"(2) DEPRECIATION.—If any listed property is not predominantly used in a qualified business use for any taxable year, the deduction allowed under section 168 with respect to such property for such taxable year and any subsequent taxable year shall be determined under the straightline method over the earnings and profits life for such property.

"(3) RECAPTURE.—

"(A) WHERE BUSINESS USE PERCENTAGE DOES NOT EXCEED 50 PERCENT.—If—

"(i) property is predominantly used in a qualified business use in a taxable year in which it is placed in service, and

"(ii) such property is not predominantly used in a qualified business use for any subsequent taxable year,

then any excess depreciation shall be included in gross income for the taxable year referred to in clause (ii), and the recovery deduction for the taxable year referred to in clause (ii) and any subsequent taxable years shall be determined under the straightline method over the earnings and profits life.

"(B) EXCESS DEPRECIATION.—For purposes of subparagraph (A), the term 'excess depreciation' means the excess (if any) of—

"(i) the amount of the recovery deductions allowable with respect to the property for taxable years before the 1st taxable year in which the property was not predominantly used in a qualified business use, over

"(ii) the amount which would have been so allowable if the property had not been predominantly used in a qualified business use for the taxable year in which it was placed in service.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) PROPERTY PREDOMINANTLY USED IN QUALIFIED BUSINESS USE.—Property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50 percent.

"(B) STRAIGHT-LINE METHOD OVER EARNINGS AND PROFITS LIFE.—The amount determined under the straightline method over the earnings and profits life with respect to any property shall be the amount which would be determined with respect to such property under the principles of section 312(k)(3). If the recovery period applicable to any property under section 168 is longer than the recovery period applicable to such property under section 312(k)(3), such longer recovery period shall be used for purposes of the preceding sentence.

"(c) TREATMENT OF LEASES.—

"(1) LESSOR'S CREDITS AND DEDUCTIONS NOT AFFECTED.—This section shall not apply to any listed property leased or held for leasing by any person regularly engaged in the business of leasing such property.

"(2) LESSEE'S DEDUCTIONS REDUCED.—For purposes of determining the amount allowable as a deduction under this chapter for rentals or other payments under a lease for a period of 30 days or more of listed property, only the allowable percentage of such payments shall be taken into account.

"(3) ALLOWABLE PERCENTAGE.—For purposes of paragraph (2), the allowable percentage shall be determined under tables prescribed by the Secretary. Such tables shall be prescribed so that the reduction in the deduction under paragraph (2) is substantially equivalent to the applicable restrictions contained in subsections (a) and (b).

"(4) LEASE TERM.—In determining the term of any lease for purposes of paragraph (2), the rules of section 168(j)(6)(B) shall apply.

"(5) LESSEE RECAPTURE.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (b)(3) shall apply to any lessee to which paragraph (2) applies.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) COORDINATION WITH SECTION 179.—Any deduction allowable under section 179 with respect to any listed property shall be subject to the limitations of subsections (a) and (b) in the same manner as if it were a recovery deduction allowable under section 168.

"(2) SUBSEQUENT DEPRECIATION DEDUCTIONS REDUCED FOR DEDUCTIONS ALLOCABLE TO PERSONAL USE.—Solely for purposes of determining the amount of the recovery deduction for subsequent taxable years, if less than 100 percent of the use of any listed property during any taxable year is not use described in section 168(c)(1) (defining recovery property), all of the use of such property during such taxable year shall be treated as use so described.

"(3) DEDUCTIONS OF EMPLOYEE.—

"(A) IN GENERAL.—Any employee use of listed property shall not be treated as use in a trade or business for purposes of determining the amount of any credit allowable under section 38 to the employee or the amount of any recovery deduction allowable to the employee unless such use is for the convenience of the employer and required as a condition of employment.

"(B) EMPLOYEE USE.—For purposes of subparagraph (A), the term 'employee use' means any use in connection with the performance of services as an employee.

"(4) LISTED PROPERTY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'listed property' means—

"(i) any passenger automobile,

"(ii) any other property used as a means of transportation,

"(iii) any property of a type generally used for purposes of entertainment, recreation, or amusement,

"(iv) any computer or peripheral equipment (as defined in section 168(j)(5)(D)), and

"(v) any other property of a type specified by the Secretary by regulations.

"(B) EXCEPTION FOR CERTAIN COMPUTERS.—The term 'listed property' shall not include any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment. For purposes of the preceding sentence, any portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) are met with respect to such portion.

"(5) PASSENGER AUTOMOBILE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'passenger automobile' means any 4-wheeled vehicle—

"(i) which is manufactured primarily for use on public streets, roads, and highways, and

"(ii) which is rated at 6,000 pounds gross vehicle weight or less.

"(B) EXCEPTION FOR CERTAIN VEHICLES.—The term 'passenger automobile' shall not include—

"(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

"(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

"(iii) under regulations, any truck or van.

"(6) Business use percentage.—

"(A) In general.—The term 'business use percentage' means the percentage of the use of any listed property during any taxable year which is a qualified business use.

"(B) Qualified business use.—Except as provided in subparagraph (C), the term 'qualified business use' means any use in a trade or business of the taxpayer.

"(C) Exception for certain use by 5-percent owners and related persons.—

"(i) In general. The term 'qualified business use' shall not include—

"(I) leasing property to any 5-percent owner or related person,

"(II) use of property provided as compensation for the performance of service by a 5-percent owner or related person, or

"(III) use of property provided as compensation for the performance of services by any person not described in subclause (II) unless an amount is included in the gross income of such person with respect to such use, and, where required, there was withholding under chapter 24.

"(ii) Special rule for aircraft.—Clause (i) shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in clause (i).

"(D) Definitions.—For purposes of this paragraph—

"(i) 5-percent owner.—The term '5-percent owner' means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416(i)(1)(B)(i)).

"(ii) Related person.—The term 'related person' means any person related to the taxpayer (within the meaning of section 267(b)).

"(7) Automobile price inflation adjustment.—

"(A) In general.—In the case of any passenger automobile, subsection (a) shall be applied by increasing each dollar amount contained in such subsection by the automobile price inflation adjustment for the calendar year in which such automobile is placed in service. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or if the increase is a multiple of $50, such increase shall be increased to the next higher multiple of $100).

"(B) Automobile price inflation adjustment.—For purposes of this paragraph—

"(i) In general.—The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

"(I) the CPI automobile component for October of the preceding calendar year, exceeds

"(II) the CPI automobile component for October of 1983.

In the case of calendar year 1984, the automobile price inflation adjustment shall be zero.

"(ii) CPI automobile component.—The term 'CPI automobile component' means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

"(8) Unrecovered basis.—For purposes of subsection (a)(2), the term 'unrecovered basis' means the excess (if any) of—

"(A) the unadjusted basis (as defined in section 168(d)(1)(A)) of the passenger automobile, over

"(B) the amount of the recovery deductions which would have been allowable for taxable years in the recovery period determined after the application of subsection (a) and as if all use during the recovery period were use described in section 168(c)(1).

"(9) All taxpayers holding interests in passenger automobile treated as 1 taxpayer.—All taxpayers holding interests in any passenger automobile shall be treated as 1 taxpayer for purposes of applying subsection (a) to such automobile, and the limitations of subsection (a) shall be allocated among such taxpayers in proportion to their interests in such automobile.

"(10) Special rule for property acquired in nonrecognition transactions.—For purposes of subsection (a)(2), notwithstanding any regulations prescribed under section 168(f)(7), any property acquired in a nonrecognition transaction shall be treated as a single property originally placed in service in the taxable year in which it was placed in service after being so acquired.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations with respect to items properly included in, or excluded from, the adjusted basis of any listed property."

(b) Compliance Provisions.—

(1) Amendment of section 274(d).—Subsection (d) of section 274 (relating to substantiation requirements) is amended—

(A) by striking out "No deduction" and inserting in lieu thereof "No deduction or credit",

(B) by striking out "or" at the end of paragraph (2), by inserting "or" at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(4) with respect to any listed property (as defined in section 280F(d)(4)),",

(C) by striking out "adequate records or by sufficient evidence corroborating his own statement" and inserting in lieu thereof "adequate contemporaneous records", and

(D) by striking out "the facility" each place it appears following paragraph (4) (as added by subparagraph (B)) and inserting in lieu thereof "the facility or property".

(2) Duties of return preparers.—Subsection (b) of section 6695 (relating to failure to sign return) is amended to read as follows:

"(b) Failure To Inform Taxpayer of Certain Recordkeeping Requirements or To Sign Return.—Any person who is an income tax return preparer with respect to any return or claim for refund and who is required by regulations to sign such return or claim—

"(1) shall advise the taxpayer of the substantiation requirements of section 274(d) and obtain written confirmation from the taxpayer that such requirements were met with respect to any deduction or credit claimed on such return or claim for refund, and

"(2) shall sign such return or claim for refund.

Any person who fails to comply with the requirements of the preceding sentence with respect to any return or claim shall pay a penalty of $25 for such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect."

(3) Underpayment attributable to failure to meet substantiation requirements treated as due to negligence.—Section 6653 (relating to failure to pay tax) is amended by adding at the end thereof the following new subsection:

"(h) Special Rule in the Case of Underpayment Attributable to Failure To Meet Certain Substantiation Requirements.—

"(1) In general.—Any portion of an underpayment attributable to a failure to comply with the requirements of section 274(d) shall be treated, for purposes of subsection (a), as due to negligence in the absence of clear and convincing evidence to the contrary.

"(2) Penalty to apply only to portion of underpayment due to failure to meet substantiation requirements.—If any penalty is imposed under subsection (a) by reason of paragraph (1), the amount of the penalty imposed by paragraph (1) of subsection (a) shall be 5 percent of the portion of the underpayment which is attributable to the failure described in paragraph (1)."

(c) Clerical Amendment.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding after the item relating to section 280E the following new item:

"Sec. 280F. Limitation on investment tax credit and depreciation for luxury automobiles; limitation where certain property used for personal purposes."

(d) Effective Dates.—

(1) In general.—

(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (c) shall apply to—

(i) property placed in service after June 18, 1984, in taxable years ending after such date, and

(ii) property leased after June 18, 1984, in taxable years ending after such date.

(B) The amendments made by subsections (a) and (c) shall not apply to any property—

(i) acquired by the taxpayer pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter (or under construction on such date) but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

(ii) of which the taxpayer is the lessee but only if the lease is pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter and only if the taxpayer first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

(2) Compliance provisions.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1984.

TITLE II—LIFE INSURANCE PROVISIONS

SEC. 201. TABLE OF SECTIONS FOR PART I OF SUBCHAPTER L.

Under the amendment to part I of subchapter L made by section 211(a), the subparts and sections of such part I will be as follows:

Part I—Life Insurance Companies

Subpart A—Tax Imposed

Sec. 801. Tax imposed.

Subpart B—Life Insurance Gross Income

Sec. 803. Life insurance gross income.

Subpart C—Life Insurance Deductions

Sec. 804. Life insurance deductions.
Sec. 805. General deductions.
Sec. 806. Special deductions.
Sec. 807. Rules for certain reserves.
Sec. 808. Policyholder dividends deduction.
Sec. 809. Reduction in certain deductions of mutual life insurance companies.
Sec. 810. Operations loss deduction.

Subpart D—Accounting, Allocation, and Foreign Provisions

Sec. 811. Accounting provisions.
Sec. 812. Definition of company's share and policyholders' share.
Sec. 813. Foreign life insurance companies.

Sec. 814. Contiguous country branches of domestic life insurance companies.
Sec. 815. Distributions to shareholders from pre-1984 policyholders surplus account.

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec. 816. Life insurance company defined.
Sec. 817. Treatment of variable contracts.
Sec. 818. Other definitions and special rules.

Subtitle A—Taxation of Life Insurance Companies

PART I—AMENDMENT OF SUBCHAPTER L

SEC. 211. AMENDMENT OF SUBCHAPTER L.

(a) General Rule.—Part I of subchapter L of chapter 1 is amended to read as follows:

"PART I—LIFE INSURANCE COMPANIES

"Subpart A. Tax imposed.
"Subpart B. Life insurance gross income.
"Subpart C. Life insurance deductions.
"Subpart D. Accounting, allocation, and foreign provisions.
"Subpart E. Definitions and special rules.

"Subpart A—Tax Imposed

"Sec. 801. Tax imposed.

"SEC. 801. TAX IMPOSED.

"(a) Tax Imposed.—

"(1) In general.—A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

"(2) Alternative tax in case of capital gains.—

"(A) In general.—If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

"(B) Amount of tax.—The amount of the tax imposed by this paragraph shall be the sum of—

"(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of the net capital gain, and

"(ii) an amount determined as provided in section 1201(a) on such net capital gain.

"(C) Net capital gain not taken into account in determining special life insurance company deduction and small life insurance company deduction.—For purposes of subparagraph (B)(i), the amounts allowable as deductions under paragraphs (2) and (3) of section 804 shall be determined by reducing the tentative LICTI by the amount of the net capital gain (determined without regard to items attributable to noninsurance businesses).

"(b) Life Insurance Company Taxable Income.—For purposes of this part, the term 'life insurance company taxable income' means—

"(1) life insurance gross income, reduced by

"(2) life insurance deductions.

"(c) Taxation of Distributions From Pre-1984 Policyholders Surplus Account.—

"For provision taxing distributions to shareholders from pre-1984 policyholders surplus account, see section 815.

"Subpart B—Life Insurance Gross Income

"Sec. 803. Life insurance gross income.

"SEC. 803. LIFE INSURANCE GROSS INCOME.

"(a) In General.—For purposes of this part, the term 'life insurance gross income' means the sum of the following amounts:

"(1) Premiums.—

"(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

"(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

"(2) Decreases in certain reserves.—Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

"(3) Other amounts.—All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

"(b) Special Rules for Premiums.—

"(1) Certain items included.—For purposes of subsection (a)(1)(A), the term 'gross amount of premiums and other consideration' includes—

"(A) advance premiums,

"(B) deposits,

"(C) fees,

"(D) assessments,

"(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

"(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts.

"(2) Policyholder dividends excluded from return premiums.—For purposes of subsection (a)(1)(B)—

"(A) In general.—Except as provided in subparagraph (B), the term 'return premiums' does not include any policyholder dividends.

"(B) Exception for indemnity reinsurance.—Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

"Subpart C—Life Insurance Deductions

"Sec. 804. Life insurance deductions.
"Sec. 805. General deductions.
"Sec. 806. Special deductions.
"Sec. 807. Rules for certain reserves.
"Sec. 808. Policyholder dividends deduction.
"Sec. 809. Reduction in certain deductions of mutual life insurance companies.
"Sec. 810. Operations loss deduction.

"SEC. 804. LIFE INSURANCE DEDUCTIONS.

"For purposes of this part, the term 'life insurance deductions' means—

"(1) the general deductions provided in section 805,

"(2) the special life insurance company deduction determined under section 806(a), and

"(3) the small life insurance company deduction (if any) determined under section 806(b).

"SEC. 805. GENERAL DEDUCTIONS.

"(a) General Rule.—For purposes of this part, there shall be allowed the following deductions:

"(1) Death benefits, etc.—All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

"(2) Increases in certain reserves.—The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

"(3) Policyholder dividends.—The deduction for policyholder dividends (determined under section 808(c)).

"(4) Dividends received by company.—

"(A) In general.—The deductions provided by sections 243, 244, and 245 (as modified by subparagraph (B))—

"(i) for 100 percent dividends received, and

"(ii) for the life insurance company's share of the dividends (other than 100 percent dividends) received.

"(B) Application of section 246(b).—In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the life insurance company taxable income, computed without regard to—

"(i) the special life insurance company deduction and the small life insurance company deduction,

"(ii) the operations loss deduction provided by section 810,

"(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, and

"(iv) any capital loss carryback to the taxable year under section 1212(a)(1),

but such limit shall not apply for any taxable year for which there is a loss from operations.

"(C) 100 percent dividend.—For purposes of subparagraph (A), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence).

"(D) Certain dividends received by foreign corporations.—Subparagraph (A)(i) (and not subparagraph (A)(ii)) shall apply to any dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(5).

"(5) Operations loss deduction.—The operations loss deduction (determined under section 810).

"(6) Assumption by another person of liabilities under insurance, etc., contracts.—The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

"(7) Reimbursable dividends.—The amount of policyholder dividends which—

"(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

"(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

"(8) Other deductions.—Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

"(b) Modifications.—The modifications referred to in subsection (a)(8) are as follows:

"(1) Interest.—In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

"(2) Bad debts.—Section 166(c) (relating to reserve for bad debts) shall not apply.

"(3) Charitable, etc., contributions and gifts.—In applying section 170—

"(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

"(i) the deduction provided by section 170,

"(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

"(iii) the special life insurance company deduction and the small life insurance company deduction,

"(iv) any operations loss carryback to the taxable year under section 810, and

"(v) any capital loss carryback to the taxable year under section 1212(a)(1), and

"(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

"(4) AMORTIZABLE BOND PREMIUM.—

"(A) IN GENERAL.—Section 171 shall not apply.

"(B) CROSS REFERENCE.—

"For rules relating to amortizable bond premium, see section 811(b).

"(5) NET OPERATING LOSS DEDUCTION.—Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

"(6) DIVIDENDS RECEIVED DEDUCTION.—Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

"SEC. 806. SPECIAL DEDUCTIONS.

"(a) SPECIAL LIFE INSURANCE COMPANY DEDUCTION.—For purposes of section 804, the special life insurance company deduction for any taxable year is 20 percent of the excess of the tentative LICTI for such taxable year over the small life insurance company deduction (if any).

"(b) SMALL LIFE INSURANCE COMPANY DEDUCTION.—

"(1) IN GENERAL.—For purposes of section 804, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative LICTI for such taxable year as does not exceed $3,000,000.

"(2) PHASEOUT BETWEEN $3,000,000 AND $15,000,000.—The amount of the small life insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by 15 percent of so much of the tentative LICTI for such taxable year as exceeds $3,000,000.

"(3) SMALL LIFE INSURANCE COMPANY DEDUCTION NOT ALLOWABLE TO COMPANY WITH ASSETS OF $500,000,000 OR MORE.—

"(A) IN GENERAL.—The small life insurance company deduction shall not be allowed for any taxable year to any life insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

"(B) ASSETS.—For purposes of this paragraph, the term 'assets' means all assets of the company.

"(C) VALUATION OF ASSETS.—For purposes of this paragraph, the amount attributable to—

"(i) real property and stock shall be the fair market value thereof, and

"(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

"(D) SPECIAL RULE FOR INTERESTS IN PARTNERSHIPS AND TRUSTS.—For purposes of this paragraph—

"(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

"(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

"(c) TENTATIVE LICTI.—For purposes of this part—

"(1) IN GENERAL.—The term 'tentative LICTI' means life insurance company taxable income determined without regard to—

"(A) the special life insurance company deduction, and

"(B) the small life insurance company deduction.

"(2) EXCLUSION OF ITEMS ATTRIBUTABLE TO NONINSURANCE BUSINESSES.—The amount of the tentative LICTI for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

"(3) NONINSURANCE BUSINESS.—

"(A) IN GENERAL.—The term 'noninsurance business' means any activity which is not an insurance business.

"(B) CERTAIN ACTIVITIES TREATED AS INSURANCE BUSINESSES.—For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

"(i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

"(ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

"(C) LIMITATION ON AMOUNT OF LOSS FROM NONINSURANCE BUSINESS WHICH MAY OFFSET INCOME FROM INSURANCE BUSINESS.—In computing the life insurance company taxable income of any life insurance company, any loss from a noninsurance business shall be limited under the principles of section 1503(c).

"(d) SPECIAL RULE FOR CONTROLLED GROUPS.—

"(1) SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND SMALL LIFE INSURANCE COMPANY DEDUCTION DETERMINED ON CONTROLLED GROUP BASIS.—For purposes of subsections (a) and (b)—

"(A) all life insurance companies which are members of the same controlled group shall be treated as 1 life insurance company, and

"(B) any special life insurance company deduction and any small life insurance company deduction determined with respect to such group shall be allocated among the life insurance companies which are members of such group in proportion to their respective tentative LICTI's.

"(2) NONLIFE INSURANCE MEMBERS INCLUDED FOR ASSET TEST.—For purposes of subsection (b)(3), all members of the same controlled group (whether or not life insurance companies) shall be treated as 1 company.

"(3) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means any controlled group of corporations (as defined in section 1563(a)); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

"(4) ELECTION WITH RESPECT TO LOSS FROM OPERATIONS OF MEMBER OF GROUP.—

"(A) IN GENERAL.—Any life insurance company which is a member of a controlled group may elect to have its loss from operations for any taxable year not taken into account for purposes of determining the amount of the special life insurance company deduction for the life insurance companies which are members of such group and which do not file a consolidated return with such life insurance company for the taxable year.

"(B) LIMITATION ON AMOUNT OF LOSS WHICH MAY OFFSET NONLIFE INCOME.—In the case of that portion of any loss from operations for any taxable year of a life insurance company which (but for subparagraph (A)) would have reduced tentative LICTI of other life insurance companies for such taxable year—

"(i) only 80 percent of such portion may be used to offset nonlife income, and

"(ii) to the extent such portion is used to offset nonlife income, the loss shall be treated as used at a rate of $1 for each 80 cents of income so offset.

For purposes of the preceding sentence, any such portion shall be used before the remaining portion of the loss from the same year and shall be treated as first being offset against income which is not nonlife income.

"(C) NONLIFE INCOME.—

"(i) IN GENERAL.—The term 'nonlife income' means the portion of the life insurance company's taxable income for which the special life insurance company deduction was not allowable and any income of a corporation not subject to tax under this part.

"(ii) SPECIAL RULE FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1984.—In the case of a taxable year beginning before January 1, 1984, all life insurance company taxable income shall be treated as nonlife income.

"(5) ADJUSTMENTS TO PREVENT EXCESS DETRIMENT OR BENEFIT.—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection.

"SEC. 807. RULES FOR CERTAIN RESERVES.

"(a) DECREASE TREATED AS GROSS INCOME.—If for any taxable year—

"(1) the opening balance for the items described in subsection (c), exceeds

"(2)(A) the closing balance for such items, reduced by

"(B) the sum of (i) the amount of the policyholders' share of tax-exempt interest, plus (ii) any excess described in section 809(a)(2) for the taxable year,

such excess shall be included in gross income under section 803(a)(2).

"(b) INCREASE TREATED AS DEDUCTION.—If for any taxable year—

"(1)(A) the closing balance for the items described in subsection (c), reduced by

"(B) the sum of (i) the amount of the policyholders' share of tax-exempt interest, plus (ii) any excess described in section 809(a)(2) for the taxable year, exceeds

"(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

"(c) ITEMS TAKEN INTO ACCOUNT.—The items referred to in subsections (a) and (b) are as follows:

"(1) The life insurance reserves (as defined in section 816(b)).

"(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

"(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

"(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

"(5) Premiums received in advance, and liabilities for premium deposit funds.

"(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest for any obligation is the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.

"(d) Method of Computing Reserves for Purposes of Determining Income.—

"(1) In general.—For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

"(A) the net surrender value of such contract, or

"(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in section 809(b)(4)(B)).

"(2) Amount of reserve.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

"(A) the tax reserve method applicable to such contract,

"(B) the prevailing State assumed interest rate, and

"(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

"(3) Tax reserve method.—For purposes of this subsection—

"(A) In general.—The term 'tax reserve method' means—

"(i) Life insurance contracts.—The CRVM in the case of a contract covered by the CRVM.

"(ii) Annuity contracts.—The CARVM in the case of a contract covered by the CARVM.

"(iii) Noncancellable accident and health insurance contracts.—In the case of any noncancellable accident and health insurance contract, a 2-year full preliminary term method.

"(iv) Other contracts.—In the case of any contract not described in clause (i), (ii), or (iii)—

"(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date of issuance), or

"(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date of the issuance of such contract (whichever is most appropriate).

"(B) Definition of CRVM and CARVM.—For purposes of this paragraph—

"(i) CRVM.—The term 'CRVM' means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

"(ii) CARVM.—The term 'CARVM' means the Commissoners' Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

"(C) No additional reserve deduction allowed for deficiency reserves.—Nothing in any reserve method described under this paragraph shall permit any increase in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

"(4) Prevailing State assumed interest rate.—For purposes of this subsection—

"(A) In general.—The term 'prevailing State assumed interest rate' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of the nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

"(B) When rate determined.—Except as provided in subparagraph (C), the prevailing State assumed rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued.

"(C) Election for nonannuity contracts.—In the case of a contract other than an annuity contract, the issuer may elect (at such time and in such manner as the Secretary shall by regulations prescribe) to determine the prevailing State assumed rate as of the beginning of the calendar year preceding the calendar year in which the contract was issued.

"(D) Rate for noncancellable accident and health insurance contracts.—If there is no prevailing State assumed interest rate applicable under subparagraph (A) to any noncancellable accident and health insurance contract when it is issued, the prevailing State assumed interest rate for such contract shall be the prevailing State assumed interest rate which would be determined under subparagraph (A) for a whole life insurance contract issued on the date on which the noncancellable accident and health insurance contract is issued.

"(5) Prevailing commissioners' standard tables.—For purposes of this subsection—

"(A) In general.—The term 'prevailing commissioners' standard tables' means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued.

"(B) Insurer may use old tables for 3 years when tables change.—If the prevailing commissioners' standard tables as of the beginning of any calendar year (hereinafter in this subparagraph referred to as the 'year of change') is different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the issuer may use the prevailing commissioners' standard tables as of the beginning of the preceding calendar year with respect to any contract issued after the change and before the close of the 3-year period beginning on the first day of the year of change.

"(C) Special rule for contracts for which there are no commissioners' standard tables.—If there are no commissioners' standard tables applicable to any contract when it is issued, the mortality and morbidity tables used for purposes of paragraph (2)(C) shall be determined under regulations prescribed by the Secretary.

"(D) Special rule for contracts issued before 1948.—If—

"(i) a contract was issued before 1948, and

"(ii) there were no commissioners' standard tables applicable to such contract when it was issued,

the mortality and morbidity tables used in computing statutory reserves for such contracts shall be used for purposes of paragraph (2)(C).

"(E) Special rule where more than 1 table or option applicable.—If, with respect to any category of risks, there are 2 or more tables (or options under 1 or more tables) which meet the requirements of subparagraph (A) (or, where applicable, subparagraph (B) or (C)), the table (and option thereunder) which generally yields the lowest reserves shall be used for purposes of paragraph (2)(C).

"(e) Special Rules for Computing Reserves.—

"(1) Net surrender value.—For purposes of this section—

"(A) In general.—The net surrender value of any contract shall be determined—

"(i) with regard to any penalty or charge which would be imposed on surrender, but

"(ii) without regard to any market value adjustment on surrender.

"(B) Special rule for pension plan contracts.—In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

"(2) Issuance date in case of group contracts.—For purposes of this section, in the case of a group contract, the date on which such contract is issued shall be the date as of which the master plan is issued (or, with respect to a benefit guaranteed to a participant after such date, the date as of which such benefit is guaranteed).

"(3) Supplemental benefits.—

"(A) Qualified supplemental benefits treated separately.—For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit—

"(i) shall be computed separately as though such benefit were under a separate contract, and

"(ii) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

"(B) Supplemental benefits which are not qualified supplemental benefits.—In the case of any supplemental benefit described in subparagraph (D) which is not a qualified supplemental benefit, the amount of the reserve determined under paragraph (2) of subsection (d) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

"(C) QUALIFIED SUPPLEMENTAL BENEFIT.—For purposes of this paragraph, the term 'qualified supplemental benefit' means any supplemental benefit described in subparagraph (D) if—

"(i) there is a separately identified premium or charge for such benefit, and

"(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

"(D) SUPPLEMENTAL BENEFITS.—For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

"(i) guaranteed insurability,

"(ii) accidental death or disability benefit,

"(iii) convertibility,

"(iv) disability waiver benefit, or

"(v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

"(4) CERTAIN CONTRACTS ISSUED BY FOREIGN BRANCHES OF DOMESTIC LIFE INSURANCE COMPANIES.—

"(A) IN GENERAL.—In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

"(B) QUALIFIED FOREIGN CONTRACT.—For purposes of subparagraph (A), the term 'qualified foreign contract' means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

"(i) such contract is issued on the life or health of a resident of such country,

"(ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and

"(iii) such foreign country is not contiguous to the United States.

"(5) TREATMENT OF SUBSTANDARD RISKS.—

"(A) SEPARATE COMPUTATION.—Except to the extent provided in regulations, the amount of the life insurance reserve for any qualified substandard risk shall be computed separately under subsection (d)(1) from any other reserve under the contract.

"(B) QUALIFIED SUBSTANDARD RISK.—For purposes of subparagraph (A), the term 'qualified substandard risk' means any substandard risk if—

"(i) the insurance company maintains a separate reserve for such risk,

"(ii) there is a separately identified premium or charge for such risk,

"(iii) the amount of the net surrender value under the contract is not increased or decreased by reason of such risk, and

"(iv) the net surrender value under the contract is not regularly used to pay premium charges for such risk.

"(C) LIMITATION ON AMOUNT OF LIFE INSURANCE RESERVE.—The amount of the life insurance reserve determined for any qualified substandard risk shall in no event exceed the sum of the separately identified premiums charged for such risk plus interest less mortality charges for such risk.

"(D) LIMITATION ON AMOUNT OF CONTRACTS TO WHICH PARAGRAPH APPLIES.—The aggregate amount of insurance in force under contracts to which this paragraph applies shall not exceed 10 percent of the insurance in force (other than term insurance) under life insurance contracts of the company.

"(6) SPECIAL RULES FOR CONTRACTS ISSUED BEFORE JANUARY 1, 1989, UNDER EXISTING PLANS OF INSURANCE, WITH TERM INSURANCE OR ANNUITY BENEFITS.—For purposes of this part—

"(A) IN GENERAL.—In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

"(B) BENEFITS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

"(C) EXISTING PLAN OF INSURANCE.—For purposes of this paragraph, the term 'existing plan of insurance' means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

"(f) ADJUSTMENT FOR CHANGE IN COMPUTING RESERVES.—

"(1) 10-YEAR SPREAD.—

"(A) IN GENERAL.—For purposes of this part, if the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

"(i) the amount of the item at the close of the taxable year, computed on the new basis, and

"(ii) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under the method provided in subparagraph (B).

"(B) METHOD.—The method provided in this subparagraph is as follows:

"(i) if the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), $\frac{1}{10}$ of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a deduction under section 805(a)(2); or

"(ii) if the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), $\frac{1}{10}$ of such excess shall be included in gross income, for each of the 10 succeeding taxable years, under section 803(a)(2).

"(2) TERMINATION AS LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

"SEC. 808. POLICYHOLDER DIVIDENDS DEDUCTION.

"(a) POLICYHOLDER DIVIDEND DEFINED.—For purposes of this part, the term 'policyholder dividend' means any dividend or similar distribution to policyholders in their capacity as such.

"(b) CERTAIN AMOUNTS INCLUDED.—For purposes of this part, the term 'policyholder dividend' includes—

"(1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management,

"(2) excess interest,

"(3) premium adjustments, and

"(4) experience-rated refunds.

"(c) AMOUNT OF DEDUCTION.—

"(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

"(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.

"(d) DEFINITIONS.—For purposes of this section—

"(1) EXCESS INTEREST.—The term 'excess interest' means any amount in the nature of interest—

"(A) paid or credited to a policyholder in his capacity as such, and

"(B) determined at a rate in excess of the prevailing State assumed interest rate for such contract.

"(2) PREMIUM ADJUSTMENT.—The term 'premium adjustment' means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

"(3) EXPERIENCE-RATED REFUND.—The term 'experience-rated refund' means any refund or credit based on the experience of the contract or group involved.

"(e) TREATMENT OF POLICYHOLDER DIVIDENDS.—For purposes of this part, any policyholder dividend which—

"(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

"(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

"SEC. 809. REDUCTION IN CERTAIN DEDUCTIONS OF MUTUAL LIFE INSURANCE COMPANIES.

"(a) GENERAL RULE.—

"(1) POLICYHOLDER DIVIDENDS.—In the case of any mutual life insurance company, the amount of the deduction allowed under section 808 shall be reduced (but not below zero) by the differential earnings amount.

"(2) REDUCTION IN RESERVE DEDUCTION IN CERTAIN CASES.—In the case of any mutual life insurance company, if the differential earnings amount exceeds the amount allowable as a deduction under section 808 for the taxable year (determined without regard to this section), such excess shall be taken into account under subsections (a) and (b) of section 807.

"(3) DIFFERENTIAL EARNINGS AMOUNT.—For purposes of this section, the term 'differential earnings amount' means, with respect to any taxable year, an amount equal to the product of—

"(A) the life insurance company's average equity base for the taxable year, multiplied by

"(B) the differential earnings rate for such taxable year.

"(b) AVERAGE EQUITY BASE.—For purposes of this section—

"(1) IN GENERAL.—The term 'average equity base' means, with respect to any taxable year, the average of—

"(A) the equity base determined as of the close of the taxable year, and

"(B) the equity base determined as of the close of the preceding taxable year.

"(2) EQUITY BASE.—The term 'equity base' means an amount determined in the manner prescribed by regulations equal to—

"(A) the surplus and capital,

"(B) adjusted as provided in paragraphs (3), (4), (5), and (6) of this subsection.

"(3) Increase for nonadmitted financial assets.—

"(A) In general.—The amount of the surplus and capital shall be increased by the amount of the nonadmitted financial assets.

"(B) Nonadmitted financial assets.—For purposes of subparagraph (A), the term 'nonadmitted financial asset' means any nonadmitted asset of the company which is—

"(i) a bond,

"(ii) stock,

"(iii) real estate,

"(iv) a mortgage loan on real estate, or

"(v) any other invested asset.

"(4) Increase where statutory reserves exceed tax reserves.—

"(A) In general.—If—

"(i) the aggregate amount of statutory reserves, exceeds

"(ii) the aggregate amount of tax reserves, the amount of the surplus and capital shall be increased by the amount of such excess.

"(B) Definitions.—For purposes of this paragraph—

"(i) Statutory reserves.—The term 'statutory reserves' means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

"(ii) Tax reserves.—The term 'tax reserves' means the aggregate of the items described in section 807(c) as determined for purposes of section 807.

"(5) Increase by amount of certain other reserves.—The amount of the surplus and capital shall be increased by the sum of—

"(A) the amount of any mandatory securities valuation reserve,

"(B) the amount of any deficiency reserve, and

"(C) the amount of any voluntary reserve or similar liability not described in subparagraph (A) or (B).

"(6) Adjustment for next year's policyholder dividends.—The amount of the surplus and capital shall be increased by 50 percent of the amount of any provision for policyholder dividends (or other similar liability) payable in the following taxable year.

"(c) Differential Earnings Rate.—

"(1) In general.—For purposes of this section, the differential earnings rate for any taxable year is the excess of—

"(A) the imputed earnings rate for the taxable year, over

"(B) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins.

"(2) Transitional rule.—The differential earnings rate—

"(A) for any taxable year beginning in 1984, or

"(B) for purposes of computing the amount of underpayment under section 6655 (including the application of section 6655(d)(3)) for any taxable year beginning in 1985,

shall be equal to 7.8 percent.

"(d) Imputed Earnings Rate.—

"(1) In general.—For purposes of this section, the imputed earnings rate for any taxable year is—

"(A) 16.5 percent in the case of taxable years beginning in 1984, and

"(B) in the case of taxable years beginning after 1984, an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

"(2) Current stock earnings rate.—For purposes of this subsection, the term 'current stock earnings rate' means, with respect to any taxable year, the average of the stock earnings rates determined under paragraph (4) for the 3 calendar years preceding the calendar year in which the taxable year begins.

"(3) Base period stock earnings rate.—For purposes of this subsection, the base period stock earnings rate is the average of the stock earnings rates determined under paragraph (4) for calendar years 1981, 1982, and 1983.

"(4) Stock earnings rate.—

"(A) In general.—For purposes of this subsection, the stock earnings rate for any calendar year is the numerical average of the earnings rates of the 50 largest stock companies.

"(B) Earnings rate.—For purposes of subparagraph (A), the earnings rate of any stock company is the percentage (determined by the Secretary) which—

"(i) the statement gain or loss from operations for the calendar year of such company, is of

"(ii) such company's average equity base for such year.

"(C) 50 largest stock companies.—For purposes of this paragraph, the term '50 largest stock companies' means a group (as determined by the Secretary) of stock life insurance companies which consists of the 50 largest stock life insurance companies which are subject to tax under this part. The Secretary may by regulations provide for exclusion from the group determined under the preceding sentence of any stock life insurance company if (i) the equity of such company is not great enough for such company to be 1 of the 50 largest stock life insurance companies if the determination were made on the basis of equity, and (ii) by reason of the small equity base of such company, it has an earnings rate which would seriously distort the stock earnings rate.

"(D) Treatment of affiliated groups.—For purposes of this paragraph, all stock life insurance companies which are members of the same affiliated group shall be treated as one stock life insurance company.

"(e) Average Mutual Earnings Rate.—For purposes of this section, the average mutual earnings rate for any calendar year is the percentage (determined by the Secretary) which—

"(1) the aggregate statement gain or loss from operations for such year of mutual life insurance companies, is of

"(2) their aggregate average equity bases for such year.

"(f) Recomputation in Subsequent Year.—

"(1) Inclusion in income where recomputed amount greater.—In the case of any mutual life insurance company, if—

"(A) the recomputed differential earnings amount for any taxable year, exceeds

"(B) the differential earnings amount determined under this section for such taxable year,

such excess shall be included in life insurance gross income for the succeeding taxable year.

"(2) Deduction where recomputed amount smaller.—In the case of any mutual life insurance company, if—

"(A) the differential earnings amount determined under this section for any taxable year, exceeds

"(B) the recomputed differential earnings amount for such taxable year,

such excess shall be allowed as a life insurance deduction for the succeeding taxable year.

"(3) Recomputed differential earnings amount.—For purposes of this subsection, the term 'recomputed differential earnings amount' means, with respect to any taxable year, the amount which would be the differential earnings amount for such taxable year if the average mutual earnings rate taken into account under subsection (c)(2) were the average mutual earnings rate for the calendar year in which the taxable year begins.

"(4) Special rule where company ceases to be mutual life insurance company.—Except as provided in section 381(c)(22), if—

"(A) a life insurance company is a mutual life insurance company for any taxable year, but

"(B) such life insurance company is not a mutual life insurance company for the succeeding taxable year,

any adjustment under paragraph (1) or (2) by reason of the recomputed differential earnings amount for the first of such taxable years shall be taken into account for the first of such taxable years.

"(g) Definitions and Special Rules.—For purposes of this section—

"(1) Statement gain or loss from operations.—The term 'statement gain or loss from operations' means the net gain or loss from operations required to be set forth in the annual statement—

"(A) determined with regard to policyholder dividends (as defined in section 808) but without regard to Federal income taxes,

"(B) determined on the basis of the tax reserves rather than statutory reserves, and

"(C) properly adjusted for realized capital gains and losses and other relevant items.

"(2) Other terms.—Except as otherwise provided in this section, the terms used in this section shall have the same respective meanings as when used in the annual statement.

"(3) Determinations based on amount set forth in annual statement.—Except as otherwise provided in this section or in regulations, all determinations under this section shall be made on the basis of the amounts required to be set forth on the annual statement.

"(4) Annual statement.—The term 'annual statement' means the annual statement for life insurance companies approved by the National Association of Insurance Commissioners.

"(5) Reduction in equity base for portion of equity allocable to life insurance business in noncontiguous Western Hemisphere countries.—The equity base of any mutual life insurance company shall be reduced by an amount equal to the portion of the equity base attributable to the life insurance business multiplied by a fraction—

"(A) the numerator of which is the portion of the tax reserves which is allocable to life insurance contracts issued on the life of residents of countries in the Western Hemisphere which are not contiguous to the United States, and

"(B) the denominator of which is the amount of the tax reserves allocable to life insurance contracts.

The preceding sentence shall not apply unless the fraction determined under the preceding sentence exceeds ⅒.

"(6) Special rule for certain contracts issued before January 1, 1985.—In determining the amount of tax reserves of a mutual insurance company for purposes of subsection (b)(4), section 811(d) shall not apply with respect to any life insurance contract issued before January 1, 1985, under a plan of life insurance in existence on July 1, 1983.

"(h) TREATMENT OF STOCK COMPANIES OWNED BY MUTUAL LIFE INSURANCE COMPANIES.—

"(1) TREATMENT AS MUTUAL LIFE INSURANCE COMPANIES FOR PURPOSES OF DETERMINING STOCK EARNINGS RATES AND MUTUAL EARNINGS RATES.—Solely for purposes of subsections (d) and (e), a stock life insurance company shall be treated as a mutual life insurance company if stock possessing—

"(A) at least 80 percent of the total combined voting power of all classes of stock of such stock life insurance company entitled to vote, or

"(B) at least 80 percent of the total value of shares of all classes of stock of such stock life insurance company,

is owned at any time during the calendar year directly (or through the application of section 318) by one or more mutual life insurance companies.

"(2) TREATMENT OF AFFILIATED GROUP WHICH INCLUDES MUTUAL PARENT AND STOCK SUBSIDIARY.—In the case of an affiliated group of corporations which includes a common parent which is a mutual life insurance company and one or more stock life insurance companies, for purposes of determining the average equity base of such common parent (and the statement gain or loss from operations)—

"(A) stock in such stock life insurance companies held by such common parent (and dividends on such stock) shall not be taken into account, and

"(B) such common parent and such stock life insurance companies shall be treated as though they were one mutual life insurance company.

"(3) ADJUSTMENT WHERE STOCK COMPANY NOT MEMBER OF AFFILIATED GROUP.—In the case of any stock life insurance company which is described in paragraph (1) but is not a member of an affiliated group described in paragraph (2), under regulations, proper adjustments shall be made in the average equity bases (and statement gains or losses from operations) of mutual life insurance companies owning stock in such company as may be necessary or appropriate to carry out the purposes of this section.

"(i) TRANSITIONAL RULE FOR CERTAIN HIGH SURPLUS MUTUAL LIFE INSURANCE COMPANIES.—

"(1) IN GENERAL.—For purposes of subsection (a)(3), the average equity base of a high surplus mutual life insurance company for any taxable year shall not include the applicable percentage of the excess equity base of such company for such taxable year.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) EXCESS EQUITY BASE.—The term 'excess equity base' means the excess of—

"(i) the average equity base of the company for the taxable year, over

"(ii) the amount which would be its average equity base if its equity percentage equaled the following percentage:

For taxable years beginning in:	The percentage is:
1984	14.5
1985 or 1986	14
1987 or 1988	13.5

In no case shall the excess equity base for any taxable year be greater than the excess equity base for the company's first taxable year beginning in 1984.

"(B) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means the percentage determined in accordance with the following table:

"For taxable years beginning in:	The applicable percentage is:
1984	100
1985	80
1986	60
1987	40
1988	20
1989 or thereafter	0.

"(C) HIGH SURPLUS MUTUAL LIFE INSURANCE COMPANY.—The term 'high surplus mutual life insurance company' means any mutual life insurance company if, for the taxable year beginning in 1984, its equity percentage exceeded 14.5 percent.

"(D) EQUITY PERCENTAGE.—The term 'equity percentage' means, with respect to any mutual life insurance company, the percentage which—

"(i) the average equity base of such company (determined under this section without regard to this subsection) for a taxable year bears to

"(ii) the average of—

"(I) the assets of such company as of the close of the preceding taxable year, and

"(II) the assets of such company as of the close of the taxable year.

For purposes of the preceding sentence, the assets of a company shall include all assets taken into account under this section in determining its equity base (after applying the principles of subsection (h)).

"SEC. 810. OPERATIONS LOSS DEDUCTION.

"(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

"(1) the operations loss carryovers to such year, plus

"(2) the operations loss carrybacks to such year.

For purposes of this part, the term 'operations loss deduction' means the deduction allowed by this subsection.

"(b) OPERATIONS LOSS CARRYBACKS AND CARRYOVERS.—

"(1) YEARS TO WHICH LOSS MAY BE CARRIED.—The loss from operations for any taxable year (hereinafter in this section referred to as the 'loss year') shall be—

"(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

"(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

"(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

"(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

"(3) ELECTION FOR OPERATIONS LOSS CARRYBACKS.—In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.

"(c) COMPUTATION OF LOSS FROM OPERATIONS.—For purposes of this section—

"(1) IN GENERAL.—The term 'loss from operations' means the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

"(2) MODIFICATIONS.—For purposes of paragraph (1)—

"(A) the operations loss deduction shall not be allowed, and

"(B) the deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 805(a)(4).

"(d) OFFSET DEFINED.—

"(1) IN GENERAL.—For purposes of subsection (b)(2), the term 'offset' means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to paragraphs (2) and (3) of section 804) for such year to zero.

"(2) OPERATIONS LOSS DEDUCTION.—For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

"(e) NEW COMPANY DEFINED.—For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies) was authorized to do business as an insurance company.

"(f) APPLICATION OF SUBTITLES A AND F IN RESPECT OF OPERATION LOSSES.—Except as provided in section 805(b)(5), subtitles A and F shall apply in respect of operation loss carrybacks, operation loss carryovers, and the operations loss deduction under this part, in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

"(g) TRANSITIONAL RULE.—For purposes of this section and section 812 (as in effect before the enactment of the Life Insurance Tax Act of 1984), this section shall be treated as a continuation of such section 812.

"Subpart D—Accounting, Allocation, and Foreign Provisions

"Sec. 811. Accounting provisions.
"Sec. 812. Definition of company's share and policyholders' share.
"Sec. 813. Foreign life insurance companies.
"Sec. 814. Contiguous country branches of domestic life insurance companies.
"Sec. 815. Distributions to shareholders from pre-1984 policyholders surplus account.

"SEC. 811. ACCOUNTING PROVISIONS.

"(a) METHOD OF ACCOUNTING.—All computations entering into the determination of the taxes imposed by this part shall be made—

"(1) under an accrual method of accounting, or

"(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

"(b) Amortization of Premium and Accrual of Discount.—

"(1) In general.—The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

"(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

"(B) in all other cases, in accordance with regulations prescribed by the Secretary.

"(2) Special rules.—

"(A) Amortization of bond premium.—In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

"(B) Convertible evidence of indebtedness.—In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

"(3) Exception.—No accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

"(A) interest to which section 103 applies, or

"(B) original issue discount (as defined in section 1232(b)).

"(c) No Double Counting.—Nothing in this part shall permit—

"(1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,

"(2) the same item to be counted more than once for reserve purposes, or

"(3) any item to be deducted (either directly or as an increase in reserves) more than once.

"(d) Method of Computing Reserves on Contract Where Interest Is Guaranteed Beyond End of Taxable Year.—For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

"(1) exceeds the prevailing State assumed interest rate for the contract for such period, and

"(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

"(e) Short Taxable Years.—If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as 'short period'), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

"SEC. 812. DEFINITION OF COMPANY'S SHARE AND POLICYHOLDERS' SHARE.

"(a) General Rule.—

"(1) Company's share.—For purposes of section 805(a)(4), the term 'company's share' means, with respect to any taxable year, the percentage obtained by dividing—

"(A) the company's share of the net investment income for the taxable year, by

"(B) the net investment income for the taxable year.

"(2) Policyholders' share.—For purposes of section 807, the term 'policyholders' share' means, with respect to any taxable year, the excess of 100 percent over the percentage determined under paragraph (1).

"(b) Company's Share of Net Investment Income.—

"(1) In general.—For purposes of this section, the company's share of net investment income is the excess (if any) of—

"(A) the net investment income for the taxable year, over

"(B) the sum of—

"(i) the policy interest, for the taxable year, plus

"(ii) the gross investment income's proportionate share of policyholder dividends for the taxable year.

"(2) Policy interest.—For purposes of this subsection, the term 'policy interest' means—

"(A) required interest (at the prevailing State assumed rate) on reserves under section 807(c) (other than paragraph (2) thereof),

"(B) the deductible portion of excess interest, and

"(C) the deductible portion of any amount (whether or not a policyholder dividend), and not taken into account under subparagraph (A) or (B), credited to—

"(i) a policyholder's fund under a pension plan contract for employees (other than retired employees), or

"(ii) a deferred annuity contract before the annuity starting date.

"(3) Gross investment income's proportionate share of policyholder dividends.—For purposes of paragraph (1), the gross investment income's proportionate share of policyholder dividends is—

"(A) the deduction for policyholders' dividends determined under sections 808 and 809 for the taxable year, but not including—

"(i) the deductible portion of excess interest,

"(ii) the deductible portion of policyholder dividends on contracts referred to in clauses (i) and (ii) of paragraph (2)(C), and

"(iii) the deductible portion of the premium and mortality charge adjustments with respect to contracts paying excess interest for such year,

multiplied by

"(B) the fraction—

"(i) the numerator of which is gross investment income for the taxable year (reduced by the policy interest for such year), and

"(ii) the denominator of which is life insurance gross income (including tax-exempt interest) reduced by the excess (if any) of the closing balance for the items described in section 807(c) over the opening balance for such items for the taxable year.

"(c) Net Investment Income.—For purposes of this section, the term 'net investment income' means 90 percent of gross investment income.

"(d) Gross Investment Income.—For purposes of this section, the term 'gross investment income' means the sum of the following:

"(1) Interest, etc.—The gross amount of income from—

"(A) interest (including tax-exempt interest), dividends, rents, and royalties,

"(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

"(C) the alteration or termination of any instrument or agreement described in subparagraph (B).

"(2) Short-term capital gain.—The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

"(3) Trade or business income.—The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

"(e) Dividends From Certain Subsidiaries Not Included in Gross Investment Income.—For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C)). Such term also shall not include any dividend described in section 805(a)(4)(D) (relating to certain dividends in the case of foreign corporations).

"(f) No Double Counting.—Under regulations, proper adjustments shall be made in the application of this section to prevent an item from being counted more than once.

"SEC. 813. FOREIGN LIFE INSURANCE COMPANIES.

"(a) Adjustment Where Surplus Held in the United States Is Less Than Specified Minimum.—

"(1) In general.—In the case of any foreign company taxable under this part, if—

"(A) the required surplus determined under paragraph (2), exceeds

"(B) the surplus held in the United States,

then its income effectively connected with the conduct of an insurance business within the United States shall be increased by an amount determined by multiplying such excess by such company's current investment yield.

"(2) Required surplus.—For purposes of this subsection—

"(A) In general.—The term 'required surplus' means the amount determined by multiplying the taxpayer's total insurance liabilities on United States business by a percentage for the taxable year determined and proclaimed by the Secretary under subparagraph (B).

"(B) Determination of percentage.—The percentage determined and proclaimed by the Secretary under this subparagraph shall be based on such data with respect to domestic life insurance companies for the preceding taxable year as the Secretary considers representative. Such percentage shall be computed on the basis of a ratio the numerator of which is the excess of the assets over the total insurance liabilities, and the denominator of which is the total insurance liabilities.

"(3) Current investment yield.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current investment yield' means the percent obtained by dividing—

"(i) the net investment income on assets held in the United States, by

"(ii) the mean of the assets held in the United States during the taxable year.

"(B) DETERMINATIONS BASED ON AMOUNT SET FORTH IN THE ANNUAL STATEMENT.—Except as otherwise provided in regulations, determinations under subparagraph (A) shall be made on the basis of the amounts required to be set forth on the annual statement approved by the National Association of Insurance Commissioners.

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) SURPLUS HELD IN THE UNITED STATES.—The surplus held in the United States is the excess of the assets (determined under section 806(b)(3)(C)) held in the United States over the total insurance liabilities on United States business.

"(B) TOTAL INSURANCE LIABILITIES.—For purposes of this subsection, the term 'total insurance liabilities' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

"(5) REDUCTION OF SECTION 881 TAXES.—In the case of any foreign company taxable under this part, there shall be determined—

"(A) the amount which would be subject to taxes under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894, and

"(B) the amount of the increase provided by paragraph (1).

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which is the same proportion of such tax as the amount referred to in subparagraph (B) is of the amount referred to in subparagraph (A); but such reduction in taxes shall not exceed the increase in taxes under this part by reason of the increase provided by paragraph (1).

"(b) ADJUSTMENT TO LIMITATION ON DEDUCTION FOR POLICYHOLDER DIVIDENDS IN THE CASE OF FOREIGN MUTUAL LIFE INSURANCE COMPANIES.—For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the amount of any excess determined under paragraph (1) of subsection (a) with respect to such taxable year.

"(c) CROSS REFERENCE.—

"For taxation of foreign corporations carrying on life insurance business within the United States, see section 842.

"SEC. 814. CONTIGUOUS COUNTRY BRANCHES OF DOMESTIC LIFE INSURANCE COMPANIES.

"(a) EXCLUSION OF ITEMS.—In the case of a domestic mutual insurance company which—

"(1) is a life insurance company,

"(2) has a contiguous country life insurance branch, and

"(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

"(b) CONTIGUOUS COUNTRY LIFE INSURANCE BRANCH.—For purposes of this section, the term contiguous country life insurance branch means a branch which—

"(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

"(2) has its principal place of business in such contiguous country, and

"(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term 'insurance contract' means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

"(c) SEPARATE ACCOUNTING REQUIRED.—Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

"(1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

"(2) in all other cases, in accordance with regulations prescribed by the Secretary.

"(d) RECOGNITION OF GAIN ON ASSETS IN BRANCH ACCOUNT.—If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

"(e) TRANSACTIONS BETWEEN CONTIGUOUS COUNTRY BRANCH AND DOMESTIC LIFE INSURANCE COMPANY.—

"(1) REIMBURSEMENT FOR HOME OFFICE SERVICES, ETC.—Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

"(2) REPATRIATION OF INCOME.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

"(B) LIMITATION.—The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

"(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

"(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

"(C) TRANSITIONAL RULE.—For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term 'tentative LICTI' means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

"(f) OTHER RULES.—

"(1) TREATMENT OF FOREIGN TAXES.—

"(A) IN GENERAL.—No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

"(B) TREATMENT OF REPATRIATED AMOUNTS.—For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

"(2) UNITED STATES SOURCE INCOME ALLOCABLE TO CONTIGUOUS COUNTRY BRANCH.—For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

"(g) ELECTION.—A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

"(h) SPECIAL RULE FOR DOMESTIC STOCK LIFE INSURANCE COMPANIES.—At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367 or 1491. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

"SEC. 815. DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.

"(a) GENERAL RULE.—In the case of a stock life insurance company which has an existing policyholders surplus account, the tax imposed by section 801 for any taxable year shall be the amount which would be imposed by such section for such year on the sum of—

"(1) life insurance company taxable income for such year (but not less than zero), plus

"(2) the amount of direct and indirect distributions during such year to shareholders from such account.

"(b) ORDERING RULE.—For purposes of this section, any distribution to shareholders shall be treated as made—

"(1) first out of the shareholders surplus account, to the extent thereof,

"(2) then out of the policyholders surplus account, to the extent thereof, and

"(3) finally, out of other accounts.

"(c) SHAREHOLDERS SURPLUS ACCOUNT.—

"(1) IN GENERAL.—Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

"(2) ADDITIONS TO ACCOUNT.—The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

"(A) the sum of—

"(i) the life insurance company's taxable income (but not below zero),

"(ii) the special deductions provided by section 806, and

"(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 805(a)(4)) and the amount of interest excluded from gross income under section 103, over

"(B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

"(3) SUBTRACTIONS FROM ACCOUNT.—There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

"(d) POLICYHOLDERS SURPLUS ACCOUNT.—

"(1) IN GENERAL.—Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

"(2) NO ADDITIONS TO ACCOUNT.—No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

"(3) SUBTRACTIONS FROM ACCOUNT.—There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

"(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

"(B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

"(e) EXISTING POLICYHOLDERS SURPLUS ACCOUNT.—For purposes of this section, the term 'existing policyholders surplus account' means any policyholders surplus account which has a balance as of the close of December 31, 1983.

"(f) OTHER RULES APPLICABLE TO POLICYHOLDERS SURPLUS ACCOUNT CONTINUED.—Except to the extent inconsistent with the provisions of this part, the provisions of subsections (d), (e), (f), and (g) of section 815 (and of sections 6501(c)(6), 6501(k), 6511(d)(6), 6601(d)(3), and 6611(f)(4)) as in effect before the enactment of the Life Insurance Tax Act of 1984 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

"SUBPART E—DEFINITIONS AND SPECIAL RULES

"Sec. 816. Life insurance company defined.
"Sec. 817. Treatment of variable contracts.
"Sec. 818. Other definitions and special rules.

"SEC. 816. LIFE INSURANCE COMPANY DEFINED.

"(a) LIFE INSURANCE COMPANY DEFINED.—For purposes of this subtitle, the term 'life insurance company' means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

"(1) its life insurance reserves (as defined in subsection (b)), plus

"(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term 'insurance company' means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

"(b) LIFE INSURANCE RESERVES DEFINED.—

"(1) IN GENERAL.—For purposes of this part, the term 'life insurance reserves' means amounts—

"(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

"(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

"(2) RESERVES MUST BE REQUIRED BY LAW.—Except—

"(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

"(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

"(3) ASSESSMENT COMPANIES.—In the case of an assessment life insurance company or association, the term 'life insurance reserves' includes—

"(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

"(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

"(4) AMOUNT OF RESERVES.—For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

"(c) TOTAL RESERVES DEFINED.—For purposes of subsection (a), the term 'total reserves' means—

"(1) life insurance reserves,

"(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

"(3) all other insurance reserves required by law.

"(d) ADJUSTMENTS IN RESERVES FOR POLICY LOANS.—For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

"(e) GUARANTEED RENEWABLE CONTRACTS.—For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

"(f) AMOUNTS NOT INVOLVING LIFE, ACCIDENT, OR HEALTH CONTINGENCIES.—For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

"(g) BURIAL AND FUNERAL BENEFIT INSURANCE COMPANIES.—A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

"SEC. 817. TREATMENT OF VARIABLE CONTRACTS.

"(a) INCREASES AND DECREASES IN RESERVES.—For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

"(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

"(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

"(b) Adjustment to Basis of Assets Held in Segregated Asset Account.—In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

"(1) increased by the amount of any appreciation in value, and

"(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

"(c) Separate Accounting.—For purposes of this part (other than section 809), a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

"(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

"(2) in all other cases, in accordance with regulations prescribed by the Secretary.

"(d) Variable Contract Defined.—For purposes of this part, the term 'variable contract' means a contract—

"(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

"(2) which—

"(A) provides for the payment of annuities, or

"(B) is a life insurance contract, and

"(3) under which—

"(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account, or

"(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation.

"(e) Pension Plan Contracts Treated as Paying Annuity.—A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

"(f) Other Special Rules.—

"(1) Life insurance reserves.—For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

"(2) Additional separate computations.—Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

"(g) Variable Annuity Contracts Treated as Annuity Contracts.—For purposes of this part, the term 'annuity contract' includes a contract which provides for the payment of a variable annuity computed on the basis of—

"(1) recognized mortality tables, and

"(2)(A) the investment experience of a segregated asset account, or

"(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

"(h) Treatment of Certain Nondiversified Contracts.—

"(1) In general.—For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified. For purposes of the preceding sentence, beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies.

"(2) Safe harbor for diversification.—A segregated asset account shall be treated as meeting the requirements of paragraph (1) for any quarter of a taxable year if as of the close of such quarter—

"(A) it meets the requirements of section 851(b)(4), and

"(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(4)(A)(i).

"(3) Special rule for variable life insurance contracts investing in United States obligations.—In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests in which are held by 1 or more segregated asset accounts of the company issuing the contract.

"(4) Independent investment advisors permitted.—Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

"SEC. 818. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) Pension Plan Contracts.—For purposes of this part, the term 'pension plan contract' means any contract—

"(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a), (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

"(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

"(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (19), (20), and (22) of section 401(a);

"(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

"(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

"(6) purchased by—

"(A) a governmental plan (within the meaning of section 414(d)), or

"(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, for use in satisfying an obligation of such government, political subdivision, or agency or instrumentality to provide a benefit under a plan described in subparagraph (A).

"(b) Treatment of Capital Gains and Losses, Etc.—In the case of a life insurance company—

"(1) in applying section 1231(a), the term 'property used in the trade or business' shall be treated as including only—

"(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1) (A), (B), or (C), and

"(B) property described in section 1231(b)(2), and

"(2) in applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

"(c) Gain on Property Held on December 31, 1958 and Certain Substituted Property Acquired After 1958.—

"(1) Property held on December 31, 1958.—In the case of property held by the taxpayer on December 31, 1958, if—

"(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

"(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

"(2) CERTAIN PROPERTY ACQUIRED AFTER DECEMBER 31, 1958.—In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

"(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

"(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

"(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

"(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

"(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

"(3) PROPERTY DEFINED.—For purposes of paragraphs (1) and (2), the term 'property' does not include insurance and annuity contracts and property described in paragraph (1) of section 1221.

"(d) INSURANCE OR ANNUITY CONTRACT INCLUDES CONTRACTS SUPPLEMENTARY THERETO.—For purposes of this part, the term 'insurance or annuity contract' includes any contract supplementary thereto.

"(e) SPECIAL RULE FOR CONSOLIDATED RETURNS.—If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

"(f) ALLOCATION OF CERTAIN ITEMS FOR PURPOSES OF FOREIGN TAX CREDIT, ETC.—

"(1) IN GENERAL.—Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

"(2) ELECTION OF ALTERNATIVE ALLOCATION.—

"(A) IN GENERAL.—On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

"(B) ELECTION IRREVOCABLE.—Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subclause (IV) of section 72(e)(5)(D)(i) is amended by striking out "section 805(d)(3)" and inserting in lieu thereof "section 818(a)(3)".

(2) Subsection (a) of section 80 (relating to restoration of value of certain securities) is amended by striking out "802" and inserting in lieu thereof "801".

(3)(A) Subparagraph (C) of section 243(b)(3) (relating to effect of election) is amended by striking out clause (iii), by adding "and" at the end of clause (ii), and by redesignating clause (iv) as clause (iii).

(B) Paragraph (6) of section 243(b) (relating to special rules for insurance companies) is amended by striking out "section 802" and inserting in lieu thereof "section 801".

(4) Subsection (d) of section 381 (relating to carryover in certain corporate acquisitions) is amended by striking out "section 812(f)" and inserting in lieu thereof "section 810".

(5) Paragraph (24) of section 401(a) (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by striking out "section 805(d)(6)" and inserting in lieu thereof "section 818(a)(6)".

(6)(A) Paragraph (1) of section 453B(e) (relating to life insurance companies) is amended by striking out "section 801(a)" and inserting in lieu thereof "section 816(a)".

(B) Paragraph (2) of section 453B(e) is amended to read as follows:

"(2) SPECIAL RULE WHERE LIFE INSURANCE COMPANY ELECTS TO TREAT INCOME AS NOT RELATED TO INSURANCE BUSINESS.—Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

"(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

"(B) as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3))."

(7) Paragraph (5) of section 542(b) (relating to certain dividend income received from a nonincludible life insurance company) is amended by striking out "section 802" and inserting in lieu thereof "section 801".

(8) Subsection (b) of section 594 (relating to alternative tax for mutual savings banks conducting life insurance business) is amended by striking out "section 801" and inserting in lieu thereof "section 816".

(9) Paragraph (4) of section 832(b) (defining premiums earned) is amended by striking out "section 801(b)" and inserting in lieu thereof "section 816(b) but determined as provided in section 807" and by striking out "section 801" and inserting in lieu thereof "section 816".

(10) Section 841 (relating to credit for foreign taxes) is amended—

(A) by striking out "section 802," each place it appears and inserting in lieu thereof "section 801,", and

(B) by striking out "section 802(b)" and inserting in lieu thereof "section 801(b)".

(11)(A) Subsection (a) of section 844 (relating to special loss carryover rules) is amended—

(i) by striking out "section 812," and inserting in lieu thereof "section 810 (or the corresponding provisions of prior law),", and

(ii) by striking out "section 812(a)" and inserting in lieu thereof "section 810(a)".

(B) Subsection (b) of section 844 is amended—

(i) by striking out "section 812(a)" and inserting in lieu thereof "section 810(a)", and

(ii) by striking out "section 812(b)(1)(C)" in paragraph (2) and inserting in lieu thereof "section 810(b)(1)(C)".

(12) Section 891 (relating to doubling of rates of tax on citizens and corporations of certain foreign countries) is amended by striking out "802" and inserting in lieu thereof "801".

(13)(A) Subsection (b) of section 953 (relating to income from insurance of United States risks) is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Paragraph (2) of section 953(b), as redesignated by subparagraph (A), is amended to read as follows:

"(2) The following provisions of subchapter L shall not apply:

"(A) The special life insurance company deduction and the small life insurance company deduction.

"(B) Section 805(a)(5) (relating to operations loss deduction).

"(C) Section 832(c)(5) (relating to certain capital losses)."

(C) Paragraph (3) of section 953(b), as redesignated by subparagraph (A), is amended by—

(i) striking out "section 809(c)(1)" and inserting in lieu thereof "section 803(a)(1)", and

(ii) by striking out "section 809(c)(2)" and inserting in lieu thereof "section 803(a)(2)", and

(iii) by striking out "section 809(d)(2)" and inserting in lieu thereof "section 805(a)(2)".

(D) Paragraph (2) of section 953(a) is amended by striking out ", (2), and (3)" and inserting in lieu thereof "and (2)".

(E) Paragraph (4) of section 953(b), as redesignated by subparagraph (A), is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (3)".

(14) Paragraph (17) of section 1016(a) is amended by striking out "section 818(b)" each place it appears and inserting in lieu thereof "section 811(b)".

(15) Paragraph (1) of section 1035(b) (defining endowment contract) is amended by striking out "section 801" and inserting in lieu thereof "section 816".

(16) Paragraph (1) of section 1201(b) (relating to cross references) is amended by striking out "section 802(a)(2)" and inserting in lieu thereof "section 801(a)(2)".

(17) Subparagraph (B) of section 1232A(c)(4) (relating to original issue discount) is amended by striking out "section 818(b)" and inserting in lieu thereof "section 811(b)".

(18)(A) Paragraph (1) of section 1351(a) (relating to treatment of recoveries of foreign expropriation losses) is amended by striking out "802" each place it appears and inserting in lieu thereof "801".

(B) Paragraph (2) of section 1351(c) (relating to amount of recovery) is amended by striking out "section 810(c)" and inserting in lieu thereof "section 807(c)".

(C) Paragraph (3) of section 1351(i) (relating to adjustments for succeeding years) is amended by striking out "section 812" and inserting in lieu thereof "section 810".

(19)(A) Subsection (c) of section 1503 (relating to special rules for application of certain losses against income of insurance companies taxed under section 802) is amended by striking out "section 802" each place it appears and inserting in lieu thereof "section 801".

(B) Paragraph (1) of section 1503(c) is amended by striking out the third sentence.

(C) The subsection heading of section 1503(c) is amended by striking out "Section 802" and inserting in lieu thereof "Section 801".

(20) Subsections (b)(2), (c)(1), and (c)(2)(A) of section 1504 (defining affiliated group) are each amended by striking out "section 802" and inserting in lieu thereof "section 801".

(21)(A) Subsection (a) of section 1561 (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) is amended—

(i) by striking out paragraphs (3) and (4), by adding "and" at the end of paragraph (1), and by striking out the comma at the end of paragraph (2) and inserting in lieu thereof a period, and

(ii) by striking out "paragraphs (2), (3), and (4)" in the last sentence and inserting in lieu thereof "paragraph (2)".

(B) Subsection (b) of section 1561 is amended—

(i) by striking out paragraphs (3) and (4) and by adding "and" at the end of paragraph (1), and

(ii) by striking out ", (2), (3), or (4)" and inserting in lieu thereof "or (2)".

(22) Subsections (a)(4) and (b)(2)(D) of section 1563 (defining controlled group of corporations) are each amended by striking out "section 802" and inserting in lieu thereof "section 801".

(23) Paragraph (2) of section 4371 (relating to imposition of tax on policies issued by foreign insurers) is amended by striking out "section 819" and inserting in lieu thereof "section 813".

(24)(A) Subsection (c) of section 6501 (relating to limitations on assessment and collection) is amended by striking out paragraph (6) and by redesignating paragraph (7) as paragraph (6).

(B) Subsection (k) of section 6501 (relating to reductions of policyholders surplus account of life insurance companies) is hereby repealed.

(25) Subsection (d) of section 6511 (relating to limitations on credit or refund) is amended by striking out paragraph (6) and by redesignating paragraph (7) as paragraph (6).

(26) Subsection (d) of section 6601 (relating to interest on underpayments, etc.) is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(27) Subsection (f) of section 6611 (relating to interest on overpayments) is amended by striking out paragraph (4).

SEC. 212. CERTAIN REINSURANCE AGREEMENTS.

(a) In General.—Part IV of subchapter L of chapter 1 (relating to provisions of general application) is amended by adding at the end thereof the following new section:

"SEC. 845. CERTAIN REINSURANCE AGREEMENTS.

"(a) Allocation in Case of Reinsurance Agreement Involving Tax Avoidance or Evasion.—In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

"(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,

"(2) recharacterize any such items, or

"(3) make any other adjustment, if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper source and character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

"(b) Reinsurance Contract Having Significant Tax Avoidance Effect.—If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year)."

(b) Clerical Amendment.—The table of sections for such part IV is amended by adding at the end thereof the following new item:

"Sec. 845. Certain reinsurance agreements."

PART II—EFFECTIVE DATE; TRANSITIONAL RULES

Subpart A—Effective Date

SEC. 215. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after December 31, 1983.

Subpart B—Transitional Rules

SEC. 216. RESERVES COMPUTED ON NEW BASIS; FRESH START.

(a) Recomputation of Reserves.—

(1) In general.—As of the beginning of the first taxable year beginning after December 31, 1983, for purposes of subchapter L of the Internal Revenue Code of 1954 (other than section 816 thereof), the reserve for any contract shall be recomputed as if the amendments made by this subtitle had applied to such contract when it was issued.

(2) Premiums earned.—For the first taxable year beginning after December 31, 1983, in determining "premiums earned on insurance contracts during the taxable year" as provided in section 832(b)(4) of the Internal Revenue Code of 1954, life insurance reserves which are included in unearned premiums on outstanding business at the end of the preceding taxable year shall be determined as provided in section 807 of the Internal Revenue Code of 1954, as amended by this subtitle, as though section 807 was applicable to such reserves in such preceding taxable year.

(3) Issuance date for group contracts.—For purposes of this subsection, the issuance date of any group contract shall be determined under section 807(e)(2) of the Internal Revenue Code of 1954 (as added by this subtitle), except that if such issuance date cannot be determined, the issuance date shall be determined on the basis by the Secretary of the Treasury or his delegate for pusrposes of this subsection.

(b) Fresh Start.—

(1) In general.—Except as provided in paragraph (2), in the case of any insurance company, any change in the method of accounting (and any change in the method of computing reserves) between such company's first taxable year beginning after December 31, 1983, and the preceding taxable year which is required solely by the amendments made by this subtitle shall be treated as not being a change in the method of accounting (or change in the method of computing reserves) for purposes of the Internal Revenue Code of 1954.

(2) Treatment of adjustments from years before 1984.—

(A) Adjustments attributable to decreases in reserves.—No adjustment under section 810(d) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) attributable to any decrease in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in any taxable year beginning after 1983.

(B) Adjustments attributable to increases in reserves.—

(i) In general.—Any adjustment under section 810(d) of the Internal Revenue Code of 1954 (as so in effect) attributable to an increase in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in taxable years beginning after 1983 to the extent that—

(I) the amount of the adjustments which would be taken into account under such section in taxable years beginning after 1983 without regard to this subparagraph, exceeds

(II) the amount of any fresh start adjustment attributable to contracts for which there was such an increase in reserves as a result of such change.

(ii) Fresh start adjustment.—For purposes of clause (i), the fresh start adjustment with respect to any contract is the excess (if any) of—

(I) the reserve attributable to such contract as of the close of the taxpayer's last taxable year beginning before January 1, 1984, over

(II) the reserve for such contract as of the beginning of the taxpayer's first taxable year beginning after 1983 as recomputed under subsection (a) of this section.

(C) Related income inclusions not taken into account to the extent deduction disallowed under subparagraph (b).—No premium shall be included in income to the extent such premium is directly related to an increase in a reserve for which a deduction is disallowed by subparagraph (B).

(3) Reinsurance transactions, and reserve strengthening, after September 27, 1983.—

(A) In general.—Paragraph (1) shall not apply (and section 807(f) of the Internal Revenue Code of 1954 as amended by this subtitle shall apply)—

(i) to any reserve transferred pursuant to—

(I) a reinsurance agreement entered into after September 27, 1983, and before January 1, 1984, or

(II) a modification of a reinsurance agreement made after September 27, 1983, and before January 1, 1984, and

(ii) to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Clause (ii) shall not apply to the computation of reserves on any contact issued if such computation employs the reserve practice used for purposes of the most recent annual statement filed before September 27, 1983, for the type of contract with respect to which such reserves are set up.

(B) Treatment of reserve attributable to section 818(c) election.—In the case of any reserve described in subparagraph (A), for purposes of section 807(f) of the Internal Revenue Code of 1954, any change in the treatment of any contract to which an election under section 818(c) of such Code (as in effect on the day before the date of the enactment of this Act) applied shall be treated as a change in the basis for determining the amount of any reserve.

(C) 10-year spread inapplicable where no 10-year spread under prior law.—In the case of any item to which section 807(f) of such Code applies by reason of subparagraph (A)

or (B), such item shall be taken into account for the first taxable year beginning after December 31, 1983 (in lieu of over the 10-year period otherwise provided in such section) unless the item was required to have been taken into account over a period of 10 taxable years under section 810(d) of such Code (as in effect on the day before the date of the enactment of this Act).

(D) Disallowance of special life insurance company deduction and small life insurance company deduction.—Any amount included in income under section 807(f) of such Code by reason of subparagraph (A) or (B) (and any income attributable to expenses transferred in connection with the transfer of reserves described in subparagraph (A)) shall not be taken into account for purposes of determining the amount of special life insurance company deduction and the small life insurance company deduction.

(E) Disallowance of deductions under section 809(d).—No deduction shall be allowed under paragraph (5) or (6) of section 809(d) of such Code (as in effect before the amendments made by this subtitle) with respect to any amount described in either such paragraph which is transferred in connection with the transfer of reserves described in subparagraph (A).

(4) Elections under section 818(c) after September 27, 1983, not to take effect.—

(A) In general.—Except as provided in subparagraph (B), any election after September 27, 1983, under section 818(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall not take effect.

(B) Exception for certain contracts issued under plan of insurance first filed after March 1, 1982, and before September 28, 1983.—Subparagraph (A) shall not apply to any election under such section 818(c) if more than 95 percent of the reserves computed in accordance with such election are attributable to risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

(5) Recapture of reinsurance after December 31, 1983.—If (A) insurance or annuity contracts in force on December 31, 1983, are subject to a conventional coinsurance agreement entered into after December 31, 1981, and before January 1, 1984, and (B) such contracts are recaptured by the reinsured in any taxable year beginning after December 31, 1983, then—

(i) if the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, that the reinsurer would have taken into account under section 810(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) exceeds the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, taken into account by the reinsurer under section 807(c) of the Internal Revenue Code of 1954 (as amended by this subtitle), such excess (but not greater than the amount of such excess if computed on January 1, 1984) shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(ii) of the Internal Revenue Code of 1954 (as amended by this subtitle) commencing with the taxable year of recapture, and

(ii) the amount, if any, taken into account by the reinsurer under clause (i) for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954 shall be taken into account by the reinsured under the method described in section 807(f)(1)(B)(i) of the Internal Revenue Code of 1954 (as amended by this subtitle) commencing with the taxable year of recapture. The excess described in clause (i) shall be reduced by any portion of such excess to which section 807(f) of the Internal Revenue Code of 1954 applies by reason of paragraph (3) of this subsection. For purposes of this paragraph, the term "reinsurer" refers to the taxpayer that held reserves with respect to the recaptured contracts as of the end of the taxable year preceding the first taxable year beginning after December 31, 1983, and the term "reinsured" refers to the taxpayer to which such reserves are ultimately transferred upon termination.

(c) Election Not To Have Reserves Recomputed.—

(1) In general.—If a qualified life insurance company makes an election under this paragraph—

(A) subsection (a) shall not apply to such company, and

(B) as of the beginning of the first taxable year beginning after December 31, 1983, and thereafter, the reserve for any contract issued before the first day of such taxable year by such company shall be the statutory reserve for such contract (within the meaning of section 809(b)(4)(B)(i) of the Internal Revenue Code of 1954).

(2) Election with respect to contracts issued after 1983 and before 1989.—

(A) In general.—If—

(i) a qualified life insurance company makes an election under paragraph (1), and

(ii) the tentative LICTI (within the meaning of section 806(c) of such Code) of such company for its first taxable year beginning after December 31, 1983, does not exceed $3,000,000,

such company may elect under this paragraph to have the reserve for any contract issued on or after the first day of such first taxable year and before January 1, 1989, be equal to the statutory reserve for such contract, adjusted as provided in subparagraph (B).

(B) Adjustment to reserves.—If this paragraph applies to any contract, the statutory reserves for such contract shall be adjusted as provided under section 805(c)(1) of such Code (as in effect for taxable years beginning in 1982 and 1983), except that section 805(c)(1)(B)(ii) of such Code (as so in effect) shall be applied by substituting—

(i) the prevailing State assumed interest rate (within the meaning of section 807(c)(4) of such Code), for

(ii) the adjusted reserves rate.

(3) Qualified life insurance company.—For purposes of this subsection, the term "qualified life insurance company" means any life insurance company which, as of December 31, 1983, had assets of less than $100,000,000 (determined in the same manner as under section 806(b)(3) of such Code).

(4) Special rules for controlled groups.—For purposes of applying the dollar limitations of paragraphs (2) and (3), rules similar to the rules of section 806(d) of such Code shall apply.

(5) Elections.—Any election under paragraph (1) or (2)—

(A) shall be made at such time and in such manner as the Secretary of the Treasury may prescribe, and

(B) once made, shall be irrevocable.

SEC. 217. OTHER SPECIAL RULES.

(a) New Section 814 Treated as Continuation of Section 819A.—For purposes of section 814 of the Internal Revenue Code of 1954 (relating to contiguous country branches of domestic life insurance companies)—

(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act) shall be treated as an election under such section 814, and

(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A.

(b) Treatment of Elections Under Section 453B(e)(2).—If an election is made under section 453B(e)(2) before January 1, 1984, with respect to any installment obligation, any income from such obligation shall be treated as attributable to a noninsurance business (as defined in section 806(c)(3) of the Internal Revenue Code of 1954).

(c) Determination of Tentative LICTI Where Corporation Made Certain Acquisitions in 1980, 1981, 1982, and 1983.—If—

(1) a corporation domiciled or having its principal place of business in Alabama, Arkansas, Oklahoma, or Texas acquired the assets of 1 or more insurance companies after 1979 and before April 1, 1983, and

(2) the bases of such assets in the hands of the corporation were determined under section 334(b)(2) of the Internal Revenue Code of 1954 or such corporation made an election under section 338 of such Code with respect to such assets,

then the tentative LICTI of the corporation holding such assets for taxable years beginning after December 31, 1983, shall, for purposes of determining the amount of the special deductions under section 806 of such Code, be increased by the deduction allowable under chapter 1 of such Code for the amortization of the cost of insurance contracts acquired in such asset acquisition (and any portion of any operations loss deduction attributable to such amortization).

(d) Effective Date for New Section 845.—

(1) Subsection (a) of section 845 of the Internal Revenue Code of 1954 (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

(2) Subsection (d) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984.

(e) Treatment of Certain Companies Operating Both as Stock and Mutual Company.—If, during the 10-year period ending on December 31, 1983, a company has, as authorized by the law of the State in which the company is domiciled, been operating as a mutual life insurance company with shareholders, such company shall be treated as a stock life insurance company.

(f) Treatment of Certain Assessment Life Insurance Companies.—

(1) Mortality and morbidity tables.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the International Revenue Code of 1954 (as amended by this subtitle) if such tables were—

(A) in use since 1965, and

(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

Treatment of certain mutual assessment life insurance companies.—In the case of any contract issued by a mutual assessment life insurance company which—

(A) has been in existence since 1965, and

(B) operates under chapter 13 or 14 of the Texas Insurance Code, *for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.*

(3) Statutory reserves.—For purposes of this subsection, the term "statutory reserves" has the meaning given to such term by section 809(b)(4)(B) of such Code.

(g) Treatment of Reinsurance Agreements Required by NAIC.—Effective for taxable years beginning after December 31, 1981, and before January 1, 1984, subsections (c)(1)(F) and (d)(12) of section 809 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall not apply to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile. For purposes of subchapter L of chapter 1 of such Code (as in effect on the day before the date of the enactment of this Act) any such dividends shall be treated as dividends of the reinsurer and not the taxpayer.

(h) Determination of Assets of Controlled Group for Purposes of Small Life Insurance Company Deduction for 1984.—

(1) In general.—For purposes of applying paragraph (2) of section 806(d) of the Internal Revenue Code of 1954 (relating to nonlife insurance members included for asset test) for the first taxable year beginning after December 31, 1983, the members of the controlled group referred to in such paragraph shall be treated as including only those members of such group which are described in paragraph (2) of this subsection if—

(A) an election under section 1504(c)(2) of such Code is not in effect for the controlled group for such taxable year,

(B) during such taxable year, the controlled group does not include a member which is taxable under part I of subchapter L of chapter 1 of such Code and which became a member of such group after September 27, 1983, and

(C) the sum of the contributions to capital received by members of the controlled group which are taxable under such part I during such taxable year from the members of the controlled group which are not taxable under such part does not exceed the aggregate dividends paid during such taxable year by the members of such group which are taxable under such part I.

(2) Members of group taken into account.—For purposes of paragraph (1), the members of the controlled group which are described in this paragraph are—

(A) any financial institution to which section 585 or 593 of such Code applies,

(B) any lending or finance business (as defined by section 542(d)),

(C) any insurance company subject to tax imposed by subchapter L of chapter 1 of such Code, and

(D) any securities broker.

(i) Special Election To Treat Individual Noncancellable Accident and Health Contracts as Cancellable.—

(1) In general.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1954.

(2) Effect of election on subsidiaries of electing parent.—

(A) Treated as mutual life insurance company.—Any stock life insurance company which is a member of an affiliated group which has a common parent which made an election under paragraph (1), for purposes of part I of subchapter L of the Internal Revenue Code of 1954, such stock life insurance company shall be treated as though it were a mutual life insurance company.

(B) Income of electing parent taken into account in determining small life insurance company deduction of any subsidiary.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1954 (relating to phaseout of small life insurance company deduction).

(3) Election.—An election under paragraph (1) shall apply to the company's first taxable year beginning after December 31, 1983, and all taxable years thereafter.

(4) Time and manner.—An election under paragraph (1) shall be made—

(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

(B) in such manner as the Secretary of the Treasury or his delegate may prescribe.

(j) Reduction in Equity Base for Mutual Successor of Fraternal Benefit Society.—In the case of any mutual life insurance company which—

(1) is the successor to a fraternal benefit society, and

(2) which assumed the surplus of such fraternal benefit society in 1950 or in March of 1961,

for purposes of section 809 of the Internal Revenue Code of 1954 (as amended by this subtitle), the equity base of such mutual life insurance company shall be reduced by the amount of the surplus so assumed plus earnings thereon, (i) for taxable years before 1984, at a 7 percent interest rate, and (ii) for taxable years 1984 and following, at the average mutual earnings rate for such year.

(k) Special Rule for Certain Debt-Financed Acquisition of Stock.—If—

(1) a life insurance company owns the stock of another corporation through a partnership of which it is a partner,

(2) the stock of the corporation was acquired on January 14, 1981, and

(3) such stock was acquired by debt financing,

then, for purposes of determining the special deductions under section 806 of the Internal Revenue Code of 1954 (as amended by this subtitle), the amount of tentative LICTI of such life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to the ownership of such stock.

(l) Treatment of Losses From Certain Guaranteed Interest Contracts.—

(1) In general.—For purposes of determining the amount of the special deductions under section 806 of the Internal Revenue Code of 1954 (as amended by this subtitle), for any taxable year beginning before January 1, 1988, the amount of tentative LICTI of any qualified life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to a qualified GIC.

(2) Qualified life insurance company.—For purposes of this subsection, the term "qualified life insurance company" means any life insurance company if—

(A) the accrual of discount less amortization of premium for bonds and short-term investments (as shown in the first footnote to Exhibit 3 of its 1983 annual statement for life insurance companies approved by the National Association of Insurance Commissioners (but excluding separate accounts) filed in its state of domicile) exceeds $72,000,000 but does not exceed $73,000,000, and

(B) such life insurance company makes an election under this subsection on its return for its first taxable year beginning after December 31, 1983.

(3) Qualified GIC.—The term "qualified GIC" means any group contract—

(A) which is issued before January 1, 1984,

(B) which specifies the contract maturity or renewal date,

(C) under which funds deposited by the contract holder plus interest guaranteed at the inception of the contract for the term of the contract and net of any specified expenses are paid as directed by the contract holder, and

(D) which is a pension plan contract (as defined in section 818(a) of the Internal Revenue Code of 1954).

(4) Scope of election.—An election under this subsection shall apply to all qualified GIC's of a qualified life insurance company. Any such election, once made, shall be irrevocable.

(5) Income on underlying assets taken into account.—In determining the amount of any income attributable to a qualified GIC, income on any asset attributable to such contract (as determined in the manner provided by the Secretary of the Treasury or his delegate) shall be taken into account.

(6) Limitation on tax benefit.—The amount of any reduction in tax for any taxable year by reason of this subsection for any qualified life insurance company (or controlled group within the meaning of section 806(d)(3) of the Internal Revenue Code of 1954) shall not exceed the applicable amount set forth in the following table:

In the case of taxable years beginning in:	*The reduction may not exceed:*
1984	*$4,500,000*
1985	*$4,500,000*
1986	*$3,000,000*
1987	*$2,000,000*

(m) Special Rule for Certain Interests in Oil and Gas Properties.—

(1) In general.—For purposes of section 806 of the Internal Revenue Code of 1954, the ownership by a qualified life insurance company of any undivided interest in operating mineral interests with respect to any oil or gas properties held on December 31, 1983, shall be treated as an insurance business.

(2) Qualified life insurance company.—For purposes of paragraph (1), the term "qualified life insurance company" means a mutual life insurance company which—

(A) was originally incorporated in March of 1857, and

(B) has a cost to such company (as of December 31, 1983) in the operating mineral interests described in paragraph (1) in excess of $250,000,000.

SEC. 218. UNDERPAYMENTS OF ESTIMATED TAX FOR 1984.

No addition to the tax shall be made under section 6655 of the Internal Revenue Code of

1954 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid before the date of the enactment of this Act to the extent—

(1) such underpayment was created or increased by any provision of this subtitle, and

(2) such underpayment is paid in full on or before the last date prescribed for payment of the first installment of estimated tax required to be paid after the date of the enactment of this Act.

SEC. 219. CLARIFICATION OF APPLICATION OF SECTION 6001.

Nothing in any provision of law shall be construed to prevent the Secretary of the Treasury or his delegate from exercising his authority under section 6001 of the Internal Revenue Code of 1954 to require (from time to time) life insurance companies to provide such data with respect to taxable years beginning before January 1, 1984, as may be necessary to carry out the provisions of section 809 of such Code (as added by this title).

Subtitle B—Taxation of Life Insurance Products

SEC. 221. DEFINITION OF LIFE INSURANCE CONTRACT.

(a) GENERAL RULE.—Chapter 79 (relating to definitions) is amended by adding at the end thereof the following new section:

"SEC. 7702. LIFE INSURANCE CONTRACT DEFINED.

"(a) GENERAL RULE.—For purposes of this title, the term 'life insurance contract' means any contract which is a life insurance contract under the applicable law, but only if such contract—

"(1) meets the cash value accumulation test of subsection (b), or

"(2)(A) meets the guideline premium requirements of subsection (c), and

"(B) falls within the cash value corridor of subsection (d).

"(b) CASH VALUE ACCUMULATION TEST FOR SUBSECTION (a)(1).—

"(1) IN GENERAL.—A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

"(2) RULES FOR APPLYING PARAGRAPH (1).—Determinations under paragraph (1) shall be made—

"(A) on the basis of interest at the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on issuance of the contract,

"(B) on the basis of the rules of subparagraph (B)(i) (and, in the case of qualified additional benefits, subparagraph (B)(ii)) of subsection (c)(3), and

"(C) by taking into account under subparagraphs (A) and (C) of subsection (e)(1) only current and future death benefits and qualified additional benefits.

"(c) GUIDELINE PREMIUM REQUIREMENTS.—For purposes of this section—

"(1) IN GENERAL.—A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time.

"(2) GUIDELINE PREMIUM LIMITATION.—The term 'guideline premium limitation' means, as of any date, the greater of—

"(A) the guideline single premium, or

"(B) the sum of the guideline level premiums to such date.

"(3) GUIDELINE SINGLE PREMIUM.—

"(A) IN GENERAL.—The term 'guideline single premium' means the premium at issue with respect to future benefits under the contract.

"(B) BASIS ON WHICH DETERMINATION IS MADE.—The determination under subparagraph (A) shall be based on—

"(i) the mortality charges specified in the contract (or, if none is specified, the mortality charges used in determining the statutory reserves for such contract),

"(ii) any charges (not taken into account under clause (i)) specified in the contract (the amount of any charge not so specified shall be treated as zero), and

"(iii) interest at the greater of an annual effective rate of 6 percent or the rate or rates guaranteed on issuance of the contract.

"(C) WHEN DETERMINATION MADE.—Except as provided in subsection (f)(7), the determination under subparagraph (A) shall be made as of the time the contract is issued.

"(4) GUIDELINE LEVEL PREMIUM.—The term 'guideline level premium' means the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis as the guideline single premium, except that paragraph (3)(B)(iii) shall be applied by substituting '4 percent' for '6 percent'.

"(d) CASH VALUE CORRIDOR FOR PURPOSES OF SUBSECTION (a)(2)(B).—For purposes of this section—

"(1) IN GENERAL.—A contract falls within the cash value corridor of this subsection if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value.

"(2) APPLICABLE PERCENTAGE.—

"In the case of an insured with an attained age as of the beginning of the contract year of:		The applicable percentage shall decrease by a ratable portion for each full year:	
More than:	But not more than:	From:	to:
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100.

"(e) COMPUTATIONAL RULES.—

"(1) IN GENERAL.—For purposes of this section—

"(A) the death benefit (and any qualified additional benefit) shall be deemed not to increase,

"(B) the maturity date, including the date on which any benefit described in subparagraph (C) is payable, shall be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100, and

"(C) the amount of any endowment benefit (or sum of endowment benefits, including any cash surrender value on the maturity date described in subparagraph (B)) shall be deemed not to exceed the least amount payable as a death benefit at any time under the contract.

"(2) LIMITED INCREASES IN DEATH BENEFIT PERMITTED.—Notwithstanding paragraph (1)(A)—

"(A) for purposes of computing the guideline level premium, an increase in the death benefit which is provided in the contract may be taken into account but only to the extent necessary to prevent a decrease in the excess of the death benefit over the cash surrender value of the contract, and

"(B) for purposes of the cash value accumulation test, the increase described in subparagraph (A) may be taken into account if the contract will meet such test at all times assuming that the net level reserve (determined as if level annual premiums were paid for the contract over a period not ending before the insured attains age 95) is substituted for the net single premium.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PREMIUMS PAID.—

"(A) IN GENERAL.—The term 'premiums paid' means the premiums paid under the contract less amounts (other than amounts includible in gross income) to which section 72(e) applies and less any other amounts received with respect to the contract which are specified in regulations.

"(B) TREATMENT OF CERTAIN PREMIUMS RETURNED TO POLICYHOLDER.—If, in order to comply with the requirements of subsection (a)(2)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year.

"(C) INTEREST RETURNED INCLUDIBLE IN GROSS INCOME.—Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

"(2) CASH VALUES.—

"(A) CASH SURRENDER VALUE.—The cash surrender value of any contract shall be its cash value determined without regard to any surrender charge, policy loan, or reasonable termination dividends.

"(B) NET SURRENDER VALUE.—The net surrender value of any contract shall be determined with regard to surrender charges but without regard to any policy loan.

"(3) DEATH BENEFIT.—The term 'death benefit' means the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefits).

"(4) FUTURE BENEFITS.—The term 'future benefits' means death benefits and endowment benefits.

"(5) QUALIFIED ADDITIONAL BENEFITS.—

"(A) IN GENERAL.—The term 'qualified additional benefits' means any—

"(i) guaranteed insurability,

"(ii) accidental death or disability benefit,

"(iii) family term coverage,

"(iv) disability waiver benefit, or

"(v) other benefit prescribed under regulations.

"(B) TREATMENT OF QUALIFIED ADDITIONAL BENEFITS.—For purposes of this section, qualified additional benefits shall not be treated as future benefits under the contract, but the charges for such benefits shall be treated as future benefits.

"(C) TREATMENT OF OTHER ADDITIONAL BENEFITS.—In the case of any additional benefit which is not a qualified additional benefit—

"(i) such benefit shall not be treated as a future benefit, and

"(ii) any charge for such benefit which is not prefunded shall not be treated as a premium.

"(6) PREMIUM PAYMENTS NOT DISQUALIFYING CONTRACT.—The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of subsection (a)(2) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract on or before the end of the contract year (but only if the contract will have no cash surrender value at the end of such extension period).

"(7) ADJUSTMENTS.—

"(A) IN GENERAL.—In the event of a change in the future benefits or any qualified additional benefit (or in any other terms) under the contract which was not reflected in any previous determination made under this section, under regulations prescribed by the Secretary, there shall be proper adjustments in future determinations made under this section.

"(B) CERTAIN CHANGES TREATED AS EXCHANGE.—In the case of any change which reduces the future benefits under the contract, such change shall be treated as an exchange of the contract for another contract.

"(8) CORRECTION OF ERRORS.—If the taxpayer establishes to the satisfaction of the Secretary that—

"(A) the requirements described in subsection (a) for any contract year were not satisfied due to reasonable error, and

"(B) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

"(9) SPECIAL RULE FOR VARIABLE LIFE INSURANCE CONTRACTS.—In the case of any contract which is a variable contract (as defined in section 817), the determination of whether such contract meets the requirements of subsection (a) shall be made whenever the death benefits under such contract change but not less frequently than once during each 12-month period.

"(g) TREATMENT OF CONTRACTS WHICH DO NOT MEET SUBSECTION (a) TEST.—

"(1) INCOME INCLUSION.—

"(A) IN GENERAL.—If at any time any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year.

"(B) INCOME ON THE CONTRACT.—For purposes of this paragraph, the term 'income on the contract' means, with respect to any taxable year of the policyholder, the excess of—

"(i) the sum of—

"(I) the increase in the net surrender value of the contract during the taxable year, and

"(II) the cost of life insurance protection provided under the contract during the taxable year, over

"(ii) the amount of premiums paid under the contract during the taxable year reduced by any policyholder dividends received during such taxable year.

"(C) CONTRACTS WHICH CEASE TO MEET DEFINITION.—If, during any taxable year of the policyholder, a contract which is a life insurance contract under the applicable law ceases to meet the definition of life insurance contract under subsection (a), the income on the contract for all prior taxable years shall be treated as received or accrued during the taxable year in which such cessation occurs.

"(D) COST OF LIFE INSURANCE PROTECTION.—For purposes of this paragraph, the cost of life insurance protection provided under the contract shall be the lesser of—

"(i) the cost of individual insurance on the life of the insured as determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by the Secretary by regulations, or

"(ii) the mortality charge (if any) stated in the contract.

"(2) TREATMENT OF AMOUNT PAID ON DEATH OF INSURED.—If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the excess of the amount paid by the reason of the death of the insured over the net surrender value of the contract shall be deemed to be paid under a life insurance contract for purposes of section 101 and subtitle B.

"(3) CONTRACT CONTINUES TO BE TREATED AS INSURANCE CONTRACT.—If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), such contract shall, notwithstanding such failure, be treated as an insurance contract for purposes of this title.

"(h) ENDOWMENT CONTRACTS RECEIVE SAME TREATMENT.—

"(1) IN GENERAL.—References in subsections (a) and (g) to a life insurance contract shall be treated as including references to a contract which is an endowment contract under the applicable law.

"(2) DEFINITION OF ENDOWMENT CONTRACT.—For purposes of this title (other than paragraph (1)), the term 'endowment contract' means a contract which is an endowment contract under the applicable law and which meets the requirements of subsection (a).

"(i) TRANSITIONAL RULE FOR CERTAIN 20-PAY CONTRACTS.—

"(1) IN GENERAL.—In the case of a qualified 20-pay contract, this section shall be applied by substituting '3 percent' for '4 percent' in subsection (b)(2).

"(2) QUALIFIED 20-PAY CONTRACT.—For purposes of paragraph (1), the term 'qualified 20-pay contract' means any contract which—

"(A) requires at least 20 nondecreasing annual premium payments, and

"(B) is issued pursuant to an existing plan of insurance.

"(3) EXISTING PLAN OF INSURANCE.—For purposes of this subsection, the term 'existing plan of insurance' means, with respect to any contract, any plan of insurance which was filed by the company issuing such contract in 1 or more States before September 28, 1983, and is on file in the appropriate State for such contract.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) 1-YEAR EXTENSION OF FLEXIBLE PREMIUM CONTRACT PROVISIONS.—

(1) IN GENERAL.—Paragraph (1) of section 266(c) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by striking out "January 1, 1984" and inserting in lieu thereof "January 1, 1985".

(2) TECHNICAL AMENDMENTS.—

(A) Paragraph (1) of section 101(f) is amended by striking out "flexible premium life insurance contract" and inserting in lieu thereof "flexible premium life insurance contract issued before January 1, 1985".

(B) The subsection heading of subsection (f) of section 101 is amended by striking out "FLEXIBLE PREMIUM CONTRACTS" and inserting in lieu thereof "FLEXIBLE PREMIUM CONTRACTS ISSUED BEFORE JANUARY 1, 1985".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 79 is amended by adding at the end thereof the following new item:

"Sec. 7702. Life insurance contract defined.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to contracts issued after December 31, 1984, in taxable years ending after such date.

(2) SPECIAL RULE FOR CERTAIN CONTRACTS ISSUED AFTER JUNE 30, 1984.—

(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by this section shall apply also to any contract issued after June 30, 1984, which provides an increasing death benefit and has premium funding more rapid that 10-year level premium payments.

(B) EXCEPTION FOR CERTAIN CONTRACTS.—Subparagraph (A) shall not apply to any contract if—

(i) such contract (whether or not a flexible premium contract) would meet the requirements of section 101(f) of the Internal Revenue Code of 1954,

(ii) such contract is not a flexible premium life insurance contract (within the meaning of section 101(f) of such Code) and would meet the requirements of section 7702 of such Code determined by—

(I) substituting "3 percent" for "4 percent" in section 7702(b)(2) of such Code, and

(II) treating subparagraph (B) of section 7702(e)(1) of such Code as if it read as follows: "the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95", or

(iii) under such contract—

(I) the premiums (including any policy fees) will be adjusted from time-to-time to reflect the level amount necessary (but not less than zero) at the time of such adjustment to provide a level death benefit assuming interest crediting and an annual effective interest rate of not less than 3 percent, or

(II) at the option of the insured, in lieu of an adjustment under subclause (I) there will be a comparable adjustment in the amount of the death benefit.

(C) CERTAIN CONTRACTS ISSUED BEFORE OCTOBER 1, 1984.—

(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting "September 30, 1984" for "June 30, 1984" in clause (i) thereof in the case of a contract—

(I) which would meet the requirements of section 7702 of such Code if "3 percent" were substituted for "4 percent" in section 7702(b)(2) of such Code, and the rate or rates guaranteed on issuance of the contract were determined without regard to any mortality charges, and

(II) the cash surrender value of which does not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

(ii) DEFINITIONS.—For purposes of clause (i)—

(I) IN GENERAL.—Except as provided in subclause (II), terms used in clause (i) shall have the same meanings as when used in section 7702 of such Code.

(II) NET SINGLE PREMIUM.—The term "net single premium" shall be determined by substituting "3 percent" for "4 percent" in section 7702(b)(2) of such Code, by using the 1958 standard ordinary mortality and morbidity tables of the National Association of Insurance Commissioners, and by assuming a level death benefit.

(3) TRANSITIONAL RULE FOR CERTAIN EXISTING PLANS OF INSURANCE.—A plan of insurance on file in 1 or more States before September 28, 1983, shall be treated for purposes of section 7702(i)(3) of such Code as a plan of insur-

ance on file in 1 or more States before September 28, 1983, without regard to whether such plan of insurance is modified after September 28, 1983, to permit the crediting of excess interest or similar amounts annually and not monthly under contracts issued pursuant to such plan of insurance.

(4) EXTENSION OF FLEXIBLE PREMIUM CONTRACT PROVISIONS.—The amendments made by subsection (b) shall take effect on January 1, 1984.

(5) SPECIAL RULE FOR MASTER CONTRACT.—For purposes of this subsection, in the case of a master contract, the date taken into account with respect to any insured shall be the first date on which such insured is covered under such contract.

SEC. 222. TREATMENT OF CERTAIN ANNUITY CONTRACTS.

(a) PENALTY ON PREMATURE DISTRIBUTIONS.—Paragraph (1) of section 72(q) (relating to 5-percent penalty for premature distributions from annuity contracts) is amended to read as follows:

"(1) IMPOSITION OF PENALTY.—If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 5 percent of the portion of such amount which is includible in gross income."

(b) REQUIRED DISTRIBUTIONS WHERE HOLDER DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—Section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (s) and subsection (t) and by inserting after subsection (r) the following new subsection:

"(s) REQUIRED DISTRIBUTIONS WHERE HOLDER DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

"(1) IN GENERAL.—A contract shall not be treated as an annuity contract for purposes of this title unless it provides that—

"(A) if the holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

"(B) if the holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

"(2) EXCEPTION FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

"(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

"(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

"(C) such distributions begin not later than 1 year after the date of the holder's death or such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

"(3) SPECIAL RULE WHERE SURVIVING SPOUSE BENEFICIARY.—If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

"(4) DESIGNATED BENEFICIARY.—For purposes of this subsection, the term 'designated beneficiary' means any individual designated a beneficiary by the holder of the contract."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to contracts issued after the day which is 6 months after the date of the enactment of this Act in taxable years ending after such date.

(2) TRANSITIONAL RULES FOR CONTRACTS ISSUED BEFORE EFFECTIVE DATE.—In the case of any contract (other than a single premium contract) which is issued on or before the day which is 6 months after the date of the enactment of this Act, for purposes of section 72(q)(1)(A) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act), any investment in such contract which is made during any calendar year shall be treated as having been made on January 1 of such calendar year.

SEC. 223. GROUP-TERM LIFE INSURANCE PURCHASED FOR EMPLOYEES.

(a) SECTION 79 EXTENDED TO FORMER EMPLOYEES.—

(1) Section 79 (relating to group-term insurance purchased for employees) is amended by adding at the end thereof the following new subsection:

"(e) EMPLOYEE INCLUDES FORMER EMPLOYEE.—For purposes of this section, the term 'employee' includes a former employee."

(2) Paragraph (1) of section 79(b) is amended to read as follows:

"(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and is disabled (within the meaning of section 72(m)(7)),".

(b) AMOUNT OF INCLUSION IN CASE OF DISCRIMINATORY PLANS.—Paragraph (1) of section 79(d) (relating to nondiscrimination requirements) is amended to read as follows:

"(1) IN GENERAL.—In the case of a discriminatory group-term life insurance plan—

"(A) subsection (a)(1) shall not apply with respect to any key employee, and

"(B) the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection (c)."

(c) CLARIFICATION OF COORDINATION WITH SECTION 83.—Subsection (e) of section 83 (relating to application of section) is amended by striking out "or" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", or", and by adding at the end thereof the following new paragraph:

"(5) the cost of group-term life insurance to which section 79 applies.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1983.

(2) INCLUSION OF FORMER EMPLOYEES IN THE CASE OF EXISTING GROUP-TERM INSURANCE PLANS.—

(A) IN GENERAL.—The amendments made by subsection (a) shall not apply—

(i) to any group-term life insurance plan of the employer in existence on January 1, 1984, or

(ii) to any group-term life insurance plan of the employer (or a successor employer) which is a comparable successor to a plan described in clause (i),

but only with respect to an individual who attained age 55 on or before January 1, 1984 and either was employed by such employer at any time during 1983 or retired from employment with such employer on or before January 1, 1984.

(B) SPECIAL RULE IN THE CASE OF DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLAN.—In the case of any plan which, after December 31, 1986, is a discriminatory group-term life insurance plan (as defined in section 79(d) of the Internal Revenue Code of 1954), subparagraph (A) shall not apply in the case of any individual retiring under such plan after December 31, 1986.

(C) BENEFITS TO CERTAIN RETIRED INDIVIDUALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER PLAN IS DISCRIMINATORY.—For purposes of determining whether after December 31, 1986, a plan described in subparagraph (A) meets the requirements of section 79(d) of the Internal Revenue Code of 1954 with respect to group-term life insurance for former employees, coverage provided to employees who retired on or before December 31, 1986, shall not be taken into account.

SEC. 224. TREATMENT OF CERTAIN EXCHANGES OF INSURANCE POLICIES.

(a) GENERAL RULE.—Paragraph (1) of section 1035(b) (defining endowment contract) is amended by striking out "a life insurance company as defined in section 801" and inserting in lieu thereof "an insurance company subject to tax under subchapter L".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to all exchanges whether before, on, or after the date of the enactment of this Act.

Subtitle C—Studies

SEC. 231. STUDIES.

(a) REVENUE REPORTS.—Not later than July 1, 1985, and July 1 of each calendar year thereafter, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

(1) the aggregate amount of revenue received under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954 for the most recent taxable years for which data are available,

(2) a comparison between the amount of such revenue and the amount anticipated by reason of changes made by the Tax Equity and Fiscal Responsibility Act of 1982 or the Life Insurance Tax Act of 1984, and

(3) the reasons for any difference between such aggregate revenues and anticipated revenues.

(b) REPORT WITH RESPECT TO SEGMENT BALANCE, ETC.—

(1) IN GENERAL.—The Secretary of the Treasury (in consultation with the Joint Committee on Taxation, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate) shall conduct a full and complete study of the operation of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954 during 1984, 1985, and 1986. Such study shall also include an analysis of life insurance products and the taxation thereof. Such study shall also include an analysis of whether part I of such subchapter L operates as a disincentive to growing companies.

(2) ITEMS TO BE INCLUDED.—The study conducted under paragraph (1) shall include—

(A) an analysis of the portion of the taxes paid by mutual life insurance companies and stock life insurance companies, and

(B) any other data considered relevant by either stock life insurance companies or mutual life insurance companies in determining appropriate segment balance, such as the respective amounts of the following items held by each segment of the industry—

(i) equity,

(ii) life insurance reserves,

(iii) other types of reserves,

(iv) dividends paid to policyholders and shareholders,

(v) pension business,

(vi) total assets, and

(vii) gross receipts.

Such report shall also include an analysis of the extent to which taxes paid by stockholders of life insurance companies shall be included in analyzing segment balance.

(3) REPORTS.—

(A) INTERIM REPORTS.—The Secretary of the Treasury shall submit interim reports on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986, 1987, and 1988.

(B) FINAL REPORT.—Not later than January 1, 1989, the Secretary of the Treasury shall submit a final report on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(c) AUTHORITY TO REQUIRE DATA.—The Secretary of the Treasury shall have authority to require reporting of such data with respect to life insurance companies and their products as may be necessary to carry out the purposes of this section.

TITLE III—REVISION OF PRIVATE FOUNDATION PROVISIONS

SEC. 301. LIMITATIONS ON DEDUCTION FOR CONTRIBUTIONS TO PRIVATE FOUNDATIONS.

(a) INCREASE IN PERCENTAGE LIMITATION FOR INDIVIDUALS.—

(1) IN GENERAL.—Clause (i) of section 170(b)(1)(B) (relating to percentage limitations for individuals) is amended by striking out "20 percent" and inserting in lieu thereof "30 percent".

(2) CARRYOVER OF EXCESS CONTRIBUTIONS.—Subparagraph (B) of section 170(b)(1) is amended by adding at the end thereof the following new sentence: "If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time."

(b) DEDUCTION ALLOWED FOR FULL FAIR MARKET VALUE OF CERTAIN STOCK CONTRIBUTED TO PRIVATE FOUNDATIONS.—Subsection (e) of section 170 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR CONTRIBUTIONS OF STOCK FOR WHICH MARKET QUOTATIONS ARE READILY AVAILABLE.—

"(A) IN GENERAL.—Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

"(B) QUALIFIED APPRECIATED STOCK.—Except as provided in subparagraph (C), for purposes of this paragraph, the term 'qualified appreciated stock' means any stock of a corporation—

"(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

"(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

"(C) DONOR MAY NOT CONTRIBUTE MORE THAN 10 PERCENT OF STOCK OF CORPORATION.—

"(i) IN GENERAL.—In the case of any donor, the term 'qualified appreciated stock' shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

"(ii) SPECIAL RULE.—For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

"(D) TERMINATION.—This paragraph shall not apply to contributions made after December 31, 1994."

(c) 20-PERCENT LIMITATION RETAINED FOR CONTRIBUTIONS OF CAPITAL GAIN PROPERTY.—

(1) IN GENERAL.—Paragraph (1) of section 170(b) (relating to percentage limitations for individuals) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS OF CAPITAL GAIN PROPERTY TO ORGANIZATIONS NOT DESCRIBED IN SUBPARAGRAPH (A).—

"(i) IN GENERAL.—In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

"(I) 20 percent of the taxpayer's contribution base for the taxable year, or

"(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

"(ii) CARRYOVER.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time."

(2) TECHNICAL AMENDMENTS.—

(A) Clause (vii) of section 170(b)(1)(A) is amended by striking out "subparagraph (D)" and inserting in lieu thereof "subparagraph (E)".

(B) The subparagraph heading and clause (i) of subparagraph (C) of section 170(b)(1) are amended to read as follows:

"(C) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS DESCRIBED IN SUBPARAGRAPH (A) OF CERTAIN CAPITAL GAIN PROPERTY.—

"(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)."

(C) Subparagraph (B) of section 170(e)(1) is amended by striking out "subsection (b)(1)(D)" and inserting in lieu thereof "subsection (b)(1)(E)".

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (c).—The amendments made by subsections (a) and (c) shall apply to contributions made in taxable years ending after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to contributions made after the date of the enactment of this Act in taxable years ending after such date.

SEC. 302. EXEMPTION FOR CERTAIN OPERATING FOUNDATIONS FROM EXCISE TAX ON INVESTMENT INCOME.

(a) GENERAL RULE.—Section 4940 (relating to excise tax based on investment income) is amended by adding at the end thereof the following new subsection:

"(d) EXEMPTION FOR CERTAIN OPERATING FOUNDATIONS.—

"(1) IN GENERAL.—No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

"(2) EXEMPT OPERATING FOUNDATION.—For purposes of this subsection, the term 'exempt operating foundation' means, with respect to any taxable year, any private foundation if—

"(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

"(B) such foundation has been publicly supported for at least 10 taxable years,

"(C) at all times during the taxable year, the governing body of such foundation—

"(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

"(ii) is broadly representative of the general public, and

"(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) PUBLICLY SUPPORTED.—A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

"(B) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to any private foundation, an individual who is—

"(i) a substantial contributor to the foundation,

"(ii) an owner of more than 20 percent of—

"(I) the total combined voting power of a corporation,

"(II) the profits interest of a partnership, or

"(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

"(iii) a member of the family of any individual described in clause (i) or (ii).

"(C) SUBSTANTIAL CONTRIBUTOR.—The term 'substantial contributor' means a person who is described in section 507(d)(2).

"(D) FAMILY.—The term 'family' has the meaning given to such term by section 4946(d).

"(E) CONSTRUCTIVE OWNERSHIP.—The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii)."

(b) REQUIREMENT OF EXPENDITURE RESPONSIBILITY NOT TO APPLY TO CERTAIN OPERATING

FOUNDATIONS.—Paragraph (4) of section 4945(d) (defining taxable expenditure) is amended to read as follows:

"(4) as a grant to an organization unless—

"(A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or

"(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or".

(c) EFFECTIVE DATE.—

(1) FOR SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

(2) FOR SUBSECTION (b).—The amendment made by subsection (b) shall apply to grants made after December 31, 1984, in taxable years ending after such date.

(3) CERTAIN EXISTING FOUNDATIONS.—A foundation which was an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1954) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B) of such Code (as added by subsection (a)).

SEC. 303. REDUCTION IN EXCISE TAX ON INVESTMENT INCOME WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.

(a) GENERAL RULE.—Section 4940 (relating to excise tax based on investment income) is amended by adding at the end thereof the following new subsection:

"(e) REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—

"(1) IN GENERAL.—In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting '1 percent' for '2 percent'.

"(2) REQUIREMENTS.—A private foundation meets the requirements of this paragraph for any taxable year if—

"(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

"(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

"(ii) 1 percent of the net investment income of such foundation for such taxable year, and

"(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting '3⅓ percent' for '5 percent'.

"(3) AVERAGE PERCENTAGE PAYOUT FOR BASE PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

"(B) PERCENTAGE PAYOUT.—The term 'percentage payout' means, with respect to any taxable year, the percentage determined by dividing—

"(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

"(ii) the assets of the private foundation for the taxable year.

"(C) SPECIAL RULE WHERE TAX REDUCED UNDER THIS SUBSECTION.—For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

"(4) BASE PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'base period' means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

"(B) NEW PRIVATE FOUNDATIONS, ETC.—If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

"(5) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFYING DISTRIBUTION.—The term 'qualifying distribution' has the meaning given such term by section 4942(g).

"(B) ASSETS.—The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

"(6) TREATMENT OF SUCCESSOR ORGANIZATIONS, ETC.—In the case of—

"(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

"(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

SEC. 304. AMENDMENT TO TAXES ON FAILURE TO DISTRIBUTE INCOME.

(a) LIMIT ON AMOUNT OF CERTAIN ADMINISTRATIVE EXPENSES TAKEN INTO ACCOUNT AS QUALIFYING DISTRIBUTIONS.—

(1) Subsection (g) of section 4942 (defining qualified distributions) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATION ON ADMINISTRATIVE EXPENSES ALLOCABLE TO MAKING OF CONTRIBUTIONS, GIFTS, AND GRANTS.—

"(A) IN GENERAL.—The amount of the grant administrative expenses paid during any taxable year which may be taken into account as qualifying distributions shall not exceed the excess (if any) of—

"(i) .65 percent of the sum of the net assets of the private foundation for such taxable year and the immediately preceding 2 taxable years, over

"(ii) the aggregate amount of grant administrative expenses paid during the 2 preceding taxable years which were taken into account as qualifying distributions.

"(B) GRANT ADMINISTRATIVE EXPENSES.—For purposes of this paragraph, the term 'grant administrative expenses' means any administrative expenses which are allocable to the making of qualified grants.

"(C) QUALIFIED GRANTS.—For purposes of this paragraph, the term 'qualified grant' means any contribution, gift, or grant which is a qualifying distribution.

"(D) NET ASSET.—For purposes of this paragraph, the term 'net assets' means, with respect to any taxable year, the excess determined under subsection (e)(1) for such taxable year.

"(E) TRANSITIONAL RULE.—In the case of any preceding taxable year which begins before January 1, 1985, the amount of the grant administrative expenses taken into account under subparagraph (A)(ii) shall not exceed .65 percent of the net assets of the private foundation for such taxable year.

"(F) TERMINATION.—This paragraph shall not apply to taxable years beginning after December 31, 1990."

(2) Subparagraph (A) of section 4942(g)(1) (defining qualifying distribution) is amended by striking out "including administrative expenses" and inserting in lieu thereof "including that portion of reasonable and necessary administrative expenses".

(b) REQUIRED DISTRIBUTION INCREASED BY AMOUNT OF CERTAIN REPAYMENTS, ETC.—Paragraph (1) of section 4942(d) (defining distributable amount) is amended to read as follows:

"(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1984.

SEC. 305. ABATEMENT OF FIRST TIER TAXES IN CERTAIN CASES.

(a) GENERAL RULE.—Subchapter C of chapter 42 (relating to abatement of second tier taxes) is amended by redesignating section 4962 as section 4963 and by inserting after section 4961 the following new section:

"SEC. 4962. ABATEMENT OF PRIVATE FOUNDATION FIRST TIER TAXES IN CERTAIN CASES.

"(a) GENERAL RULE.—If it is established to the satisfaction of the Secretary that—

"(1) a taxable event was due to reasonable cause and not to willful neglect, and

"(2) such event was corrected within the correction period for such event,

then any private foundation first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

"(b) PRIVATE FOUNDATION FIRST TIER TAX.—For purposes of this section, the term 'private foundation first tier tax' means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing)."

(b) CONFORMING AMENDMENTS.—

(1) The heading of subchapter C of chapter 42 is amended to read as follows:

"Subchapter C—Abatement of First and Second Tier Taxes in Certain Cases".

(2) The table of sections for subchapter C of chapter 42 is amended by striking out the item relating to section 4962 and inserting in lieu thereof the following:

"Sec. 4962. Abatement of private foundation first tier taxes in certain cases.
"Sec. 4963. Definitions."

(3) The table of subchapters for chapter 42 is amended by striking out the item relating to subchapter C and inserting in lieu thereof the following:

"SUBCHAPTER C. Abatement of first and second tier taxes in certain cases."

(4) Sections 4942(g)(2)(C), 6213(e), and 6503(g) are each amended by striking out "section 4962(e)" and inserting in lieu thereof "section 4963(e)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events occurring after December 31, 1984.

SEC. 306. MISCELLANEOUS AMENDMENTS.

(a) DEFINITION OF FAMILY MEMBER.—Subsection (d) of section 4946 (defining members of family) is amended to read as follows:

"(d) MEMBERS OF FAMILY.—For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren."

(b) Requirement That Annual Notice Include Telephone Number of the Private Foundation.—Subsection (d) of section 6104 (relating to public inspection of private foundations' annual returns) is amended by striking out "shall state the address of the private foundation's principal office" and inserting in lieu thereof "shall state the address and the telephone number of the private foundation's principal office".

(c) Effective Dates.—The amendments made by this subsection shall take effect on January 1, 1985.

SEC. 307. 5-YEAR EXTENSION OF REQUIREMENT TO DISPOSE OF CERTAIN EXCESS HOLDINGS ATTRIBUTABLE TO LARGE GIFTS AND BEQUESTS.

(a) General Rule.—Subsection (c) of section 4943 (relating to taxes on excess business holdings) is amended by adding at the end thereof the following new paragraph:

"(7) 5-year extension of period to dispose of certain large gifts and bequests.—The Secretary may extend for an additional 5-year period the period under paragraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if—

"(A) the foundation establishes that—

"(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

"(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

"(B) before the close of the initial 5-year period—

"(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

"(ii) the private foundation submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

"(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period."

(b) Effective Date.—

(1) In general.—The amendment made by subsection (a) shall apply to business holdings with respect to which the 5-year period described in section 4943(c)(6) of the Internal Revenue Code of 1954 ends on or after November 1, 1983.

(2) Transitional rule.—Any plan submitted to the Secretary of the Treasury or his delegate on or before the 60th day after the date of the enactment of this Act shall be treated as submitted before the close of the initial 5-year period referred to in section 4943(c)(7)(B) of the Internal Revenue Code of 1954 (as added by subsection (a)).

SEC. 308. DECREASES ATTRIBUTABLE TO STOCK ISSUANCES NOT TO REDUCE PERMITTED PERCENTAGE OF HOLDINGS WHERE DECREASE IS 2 PERCENT OR LESS.

(a) General Rule.—The second sentence of clause (ii) of section 4943(c)(4)(A) (relating to present holdings) is amended to read as follows: "For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

"(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

"(II) the number of shares held by the foundation is not affected by any such issuance or redemption."

(b) Effective Date.—The amendment made by subsection (a) shall apply to increases and decreases occurring after the date of the enactment of this Act.

SEC. 309. AGGREGATION OF STOCK HOLDINGS OF PRIVATE FOUNDATION AND DISQUALIFIED PERSONS IN APPLYING 95 PERCENT OWNERSHIP TEST.

(a) General Rule.—Clause (i) of section 4943(c)(4)(B) (relating to present holdings) is amended by striking out "the private foundation has" and inserting in lieu thereof "the private foundation and all disqualified persons have".

(b) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 101(b) of the Tax Reform Act of 1969.

SEC. 310. 5-YEAR PERIOD TO DISPOSE OF EXCESS HOLDINGS RESULTING FROM CERTAIN ACQUISITIONS BY DISQUALIFIED PERSONS.

(a) General Rule.—Paragraph (6) of section 4943(c) (relating to 5-year period to dispose of gifts, bequests, etc.) is amended by adding at the end thereof the following new sentence: "In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase 'or by a disqualified person' in the material preceding subparagraph (A)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to acquisitions after the date of the enactment of this Act.

SEC. 311. THE CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

(a) General Rule.—For purposes of section 513 of the Internal Revenue Code of 1954 (defining unrelated trade or business), the term "unrelated trade or business" does not include any trade or business which consists of conducting any game of chance if—

(1) such game of chance is conducted by a nonprofit organization,

(2) the conducting of such game by such organization does not violate any State or local law, and

(3) as of October 5, 1983—

(A) there was a State law in effect which permitted the conducting of such game of chance by such nonprofit organization, but

(B) the conducting of such game of chance by organizations which were not nonprofit organizations would have violated such law.

(b) Effective Date.—Subsection (a) shall apply to games of chance conducted after June 30, 1981, in taxable years ending after such date.

SEC. 312. TAX ON SELF-DEALING NOT TO APPLY TO CERTAIN STOCK PURCHASES.

(a) General Rule.—Section 4941 of the Internal Revenue Code of 1954 (relating to taxes on self-dealing) shall not apply to the purchase during 1978 of stock from a private foundation (and to any note issued in connection with such purchase) if—

(1) consideration for such purchase equaled or exceeded the fair market value of such stock,

(2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,

(3) the aggregate contributions to such foundation by the purchaser before such date were less than $10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and

(4) such purchase was pursuant to the settlement of litigation involving the purchaser.

(b) Statute of Limitations.—If credit or refund of any overpayment of tax resulting from subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 313. PERSON CEASES TO BE SUBSTANTIAL CONTRIBUTOR AFTER 10 YEARS WITH NO CONNECTION TO FOUNDATION.

(a) General Rule.—Paragraph (2) of section 507(d) (defining substantial contributor) is amended by adding at the end thereof the following new subparagraph:

"(C) Person ceases to be substantial contributor in certain cases.—

"(i) In general.—A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

"(I) during the 10-year period ending at the close of such taxable year such person (and all related persons) have not made any contribution to such private foundation,

"(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

"(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such foundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

"(ii) Related person.—For purposes of clause (i), the term 'related person' means, with respect to any person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

SEC. 314. TECHNICAL AMENDMENTS.

(a) Amendments of Internal Revenue Code of 1954.—

(1) Subparagraph (B) of section 4942(a)(2) (relating to taxes on failure to distribute income) is amended by striking out "subsection (j)(4)" and inserting in lieu thereof "subsection (j)(2)".

(2) Paragraph (1) of section 4942(f) (defining adjusted net income) is amended by striking out "subsection (d)" and inserting in lieu thereof "subsection (j)".

(3) Paragraph (3) of section 6501(n) (relating to special rule for chapter 42 and simi-

lar taxes) is amended by striking out "section 4942(g)(2)(B)(i)(II)" and inserting in lieu thereof "section 4942(g)(2)(B)(ii)".

(4) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(b) AMENDMENT OF 1969 TAX REFORM ACT.—

(1) Subparagraph (A) of section 101(l)(4) of the Tax Reform Act of 1969 is amended by striking out "by substituting '51 percent' for '50 percent' " and inserting in lieu thereof "as if it did not contain the phrase ', but in no event shall the percentage so substituted be more than 50 percent' ".

(2) The amendment made by paragraph (1) shall apply as if included in section 101(l)(4) of the Tax Reform Act of 1969.

(c) EXCEPTION TO DEFINITION OF DISQUALIFIED PERSONS.—

(1) Subsection (d) of section 4943 (relating to definitions and special rules with respect to taxes on excess business holdings) is amended by adding at the end thereof the following new paragraph:

"(4) DISQUALIFIED PERSON.—The term 'disqualified person' (as defined in section 4946(a)) does not include a plan described in section 4975(e)(7) with respect to the holdings of a private foundation described in paragraph (4) and (5) of subsection (c).".

(2) The amendment made by paragraph (1) shall apply with respect to taxable years beginning after the date of the enactment of this Act.

TITLE IV—TAX SIMPLIFICATION

Subtitle A—Revision and Simplification of Estimated Income Tax for Individuals

SEC. 411. REVISION OF PENALTY FOR FAILURE TO PAY ESTIMATED INCOME TAX.

Section 6654 (relating to addition to the tax for failure by individual to pay estimated income tax) is amended to read as follows:

"SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

"(a) ADDITION TO THE TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying—

"(1) the applicable annual rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 4th month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year.

"(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) AMOUNT.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 80 percent of the tax shown on the return for the taxable year (or, if no return is filed, 80 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months or if the individual did not file a return for such preceding taxable year.

"(2) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER PARAGRAPH (1).—

"(A) IN GENERAL.—In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under paragraph (1)—

"(i) the amount of such required installment shall be the annualized income installment, and

"(ii) any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this clause).

"(B) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(C) SPECIAL RULES.—For purposes of this paragraph—

"(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and adjusted self-employment income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) APPLICABLE PERCENTAGE.—

"In the case of the following required installments	The applicable percentage is:
1st	20
2nd	40
3rd	60
4th	80.

"(iii) ADJUSTED SELF-EMPLOYMENT INCOME.—The term 'adjusted self-employment income' means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

"(e) EXCEPTIONS.—

"(1) WHERE TAX IS SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $500.

"(2) WHERE NO TAX LIABILITY FOR PRECEDING TAXABLE YEAR.—No addition to tax shall be imposed under subsection (a) for any taxable year if—

"(A) the preceding taxable year was a taxable year of 12 months,

"(B) the individual did not have any liability for tax for the preceding taxable year, and

"(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

"(3) WAIVER IN CERTAIN CASES.—

"(A) IN GENERAL.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

"(B) NEWLY RETIRED OR DISABLED INDIVIDUALS.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment if the Secretary determines that—

"(i) the taxpayer—

"(I) retired after having attained age 62, or

"(II) became disabled,

in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and

"(ii) such underpayment was due to reasonable cause and not to willful neglect.

"(f) TAX COMPUTED AFTER APPLICATION OF CREDITS AGAINST TAX.—For purposes of this section, the term 'tax' means—

"(1) the tax imposed by chapter 1, plus

"(2) the tax imposed by chapter 2, minus

"(3) the sum of—

"(A) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages), plus

"(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

"(g) APPLICATION OF SECTION IN CASE OF TAX WITHHELD ON WAGES.—

"(1) IN GENERAL.—For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

"(2) SEPARATE APPLICATION.—The taxpayer may apply paragraph (1) separately with respect to—

"(A) wage withholding, and

"(B) all other amounts withheld for which credit is allowed under section 31.

"(h) Special Rule Where Return Filed on or Before January 31.—If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

"(i) Special Rules for Farmers and Fishermen.—For purposes of this section—

"(1) In general.—If an individual is a farmer or fisherman for any taxable year—

"(A) there shall be only 1 required installment for the taxable year,

"(B) the due date for such installment shall be January 15 of the following taxable year,

"(C) the amount of such installment shall be equal to the required annual payment (determined under subsection (d)(1)(B) by substituting '66⅔ percent' for '80 percent', and

"(D) subsection (h) shall be applied—

"(i) by substituting 'March 1' for 'January 31', and

"(ii) by treating the required installment described in subparagraph (A) of this paragraph as the 4th required installment.

"(2) Farmer or fisherman defined.—An individual is a farmer or fisherman for any taxable year if—

"(A) the individual's gross income from farming or fishing (including oyster farming) for the taxable year is at least 66⅔ percent of the total gross income from all sources for the taxable year, or

"(B) such individual's gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66⅔ percent of the total gross income from all sources shown on such return.

"(j) Fiscal Years and Short Years.—

"(1) Fiscal years.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

"(2) Short taxable year.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(k) Estates and Trusts.—This section shall not apply to any estate or trust.

"(l) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

SEC. 412. REPEAL OF REQUIREMENT OF DECLARATIONS, ETC.

(a) General Rule.—The following provisions are hereby repealed:

(1) Section 6015 (relating to declaration of estimated income tax by individuals).

(2) Section 6073 (relating to time for filing declarations of estimated income tax by individuals).

(3) Section 6153 (relating to installment payments of estimated income tax by individuals).

(b) Technical and Conforming Amendments.—

(1) Subsection (g) of section 871 is amended by striking out paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(2) Subsection (b) of section 1403 is amended by striking out paragraph (3).

(3) Paragraph (2) of section 6012(b) is amended by striking out "or section 6015(a)".

(4) Paragraph (1) of section 6020(b) is amended by striking out "(other than a declaration of estimated tax required under section 6015)".

(5) Paragraph (1) of section 6201(b) is amended to read as follows:

"(1) Estimated income tax.—No unpaid amount of estimated income tax required to be paid under section 6154 or 6654 shall be assessed."

(6) Paragraph (5) of section 6362(e) is amended by striking out "and section 6015 and other provisions relating to declarations of estimated income" and inserting in lieu thereof "and provisions relating to estimated income tax".

(7) Subsection (h) of section 6601 is amended to read as follows:

"(h) Exception as to Estimated Tax.—This section shall not apply to any failure to pay any estimated tax required to be paid by section 6154 or 6654."

(8) Subsection (d) of section 6651 is amended to read as follows:

"(d) Exception for Estimated Tax.—This section shall not apply to any failure to pay any estimated tax required to be paid by section 6154 or 6654."

(9) Section 7203 is amended by striking out "(other than a return required under the authority of section 6015)".

(10) Subsection (a) of section 7216 is amended—

(A) by striking out "or declarations or amended declarations of estimated tax under section 6015,", and

(B) by striking out "return or declaration" each place it appears and inserting in lieu thereof "return".

(11) Paragraph (34) of section 7701(a) is hereby repealed.

(c) Clerical Amendments.—

(1) The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by striking out the item relating to section 6015.

(2) The table of sections for part V of subchapter A of chapter 61 is amended by striking out the item relating to section 6073.

(3) The table of sections for subchapter A of chapter 62 is amended by striking out the item relating to section 6153.

SEC. 413. CREDITING OF INCOME TAX OVERPAYMENT AGAINST ESTIMATED TAX LIABILITY.

The application of the Internal Revenue Code of 1954 with respect to the crediting of a prior year overpayment of income tax against the estimated tax shall be determined—

(1) without regard to Revenue Ruling 83-111 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue Ruling); and

(2) with full regard to the rules (including Revenue Ruling 77-475) before Revenue Ruling 83-111.

SEC. 414. EFFECTIVE DATES.

(a) Sections 411 and 412.—

(1) In general.—The amendments made by sections 411 and 412 shall apply with respect to taxable years beginning after December 31, 1984.

(2) Waiver authority.—The provisions of paragraph (3) of section 6654(e) of the Internal Revenue Code of 1954 (as amended by section 411) shall also apply with respect to underpayments for taxable years beginning in 1984.

(b) Section 413.—The provisions of section 413 shall take effect on January 1, 1984.

Subtitle B—Domestic Relations

SEC. 421. TREATMENT OF TRANSFERS OF PROPERTY BETWEEN SPOUSES OR INCIDENT TO DIVORCE.

(a) General Rule.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1041. TRANSFERS OF PROPERTY BETWEEN SPOUSES OR INCIDENT TO DIVORCE.

"(a) General Rule.—No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

"(1) a spouse, or

"(2) a former spouse, but only if the transfer is incident to the divorce.

"(b) Transfer Treated as Gift; Transferee Has Transferor's Basis.—In the case of any transfer of property described in subsection (a)—

"(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

"(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

"(c) Incident to Divorce.—For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

"(1) occurs within 1 year after the date on which the marriage ceases, or

"(2) is related to the cessation of the marriage.

"(d) Special Rule Where Spouse Is Nonresident Alien.—Paragraph (1) of subsection (a) shall not apply if the spouse of the individual making the transfer is a nonresident alien."

(b) Technical Amendments.—

(1) Repeal of section 72(k).—Subsection (k) of section 72 (relating to payments in discharge of alimony) is hereby repealed.

(2) Repeal of section 101(e).—Subsection (e) of section 101 (relating to alimony, etc., payments) is hereby repealed.

(3) Coordination with section 453B.—Section 453B (relating to gain or loss on disposition of installment obligations) is amended by adding at the end thereof the following new subsection:

"(g) Transfers Between Spouses or Incident to Divorce.—In the case of any transfer described in subsection (a) of section 1041—

"(1) subsection (a) of this section shall not apply, and

"(2) the same tax treatment with respect to the transferred installment obligation shall apply to the transferee as would have applied to the transferor."

(4) Term interests.—Paragraph (1) of section 1001(e) (relating to certain term interest) is amended by striking out "section 1014 or 1015" and inserting in lieu thereof "section 1014, 1015, or 1041".

(5) Coordination with section 1015.—Section 1015 (relating to basis of property acquired by gifts and transfers in trust) is amended by adding at the end thereof the following new subsection:

"(e) Gifts Between Spouses.—In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b)(2) and not this section."

(6) Coordination with section 1239.—

(A) Subsection (b) of section 1239, as amended by this Act, is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Subparagraph (C) of section 453(h)(1) (relating to special rule where obligor and shareholder are related persons) is amended by striking out "the obligor of any installment obligation and the shareholder are related persons" and inserting in lieu thereof "the obligor of any installment obligation and the shareholder are married to each other or are related persons".

(C) The subsection heading for section 453(g) is amended by striking out "SPOUSE OR".

(7) COORDINATION WITH SECTION 47.—Section 47 (relating to certain dispositions, etc., of section 38 property) is amended by adding at the end thereof the following new subsection:

"(e) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

"(1) subsection (a) of this section shall not apply, and

"(2) the same tax treatment under this section with respect to the transferred property shall apply to the transferee as would have applied to the transferor."

(c) CLERICAL AMENDMENT.—The table of sections for such part III is amended by adding at the end thereof the following:

"Sec. 1041. Transfers of property between spouses or incident to divorce."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to transfers after the date of the enactment of this Act in taxable years ending after such date.

(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe.

SEC. 422. TAX TREATMENT OF ALIMONY AND SEPARATE MAINTENANCE PAYMENTS.

(a) GENERAL RULE.—Section 71 (relating to alimony and separate maintenance payments) is amended to read as follows:

"SEC. 71. ALIMONY AND SEPARATE MAINTENANCE PAYMENTS.

"(a) GENERAL RULE.—Gross income includes amounts received as alimony or separate maintenance payments.

"(b) ALIMONY OR SEPARATE MAINTENANCE PAYMENTS DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'alimony or separate maintenance payment' means any payment in cash if—

"(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

"(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

"(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

"(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse (and the divorce or separation instrument states that there is no such liability).

"(2) DIVORCE OR SEPARATION INSTRUMENT.—The term 'divorce or separation instrument' means—

"(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

"(B) a written separation agreement, or

"(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

"(c) PAYMENTS TO SUPPORT CHILDREN.—

"(1) IN GENERAL.—Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

"(2) TREATMENT OF CERTAIN REDUCTIONS RELATED TO CONTINGENCIES INVOLVING CHILD.—For purposes of paragraph (1), if any amount specified in the instrument will be reduced—

"(A) on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

"(B) at a time which can clearly be associated with a contingency of a kind specified in paragraph (1),

an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

"(3) SPECIAL RULE WHERE PAYMENT IS LESS THAN AMOUNT SPECIFIED IN INSTRUMENT.—For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

"(d) SPOUSE.—For purposes of this section, the term 'spouse' includes a former spouse.

"(e) EXCEPTION FOR JOINT RETURNS.—This section and section 215 shall not apply if the spouses make a joint return with each other.

"(f) SPECIAL RULES TO PREVENT EXCESS FRONT-LOADING OF ALIMONY PAYMENTS.—

"(1) REQUIREMENT THAT PAYMENTS BE FOR MORE THAN 6 YEARS.—Alimony or separate maintenance payments (in excess of $10,000 during any calendar year) paid by the payor spouse to the payee spouse shall not be treated as alimony or separate maintenance payments unless such payments are to be made by the payor spouse to the payee spouse in each of the 6 post-separation years (not taking into account any termination contingent on the death of either spouse or the remarriage of the payee spouse).

"(2) RECOMPUTATION WHERE PAYMENTS DECREASE BY MORE THAN $10,000.—If there is an excess amount determined under paragraph (3) for any computation year—

"(A) the payor spouse shall include such excess amount in gross income for the payor spouse's taxable year beginning in the computation year, and

"(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for such excess amount for the payee spouse's taxable year beginning in the computation year.

"(3) DETERMINATION OF EXCESS AMOUNT.—The excess amount determined under this paragraph for any computation year is the sum of—

"(A) the excess (if any) of—

"(i) the amount of alimony or separate maintenance payments paid by the payor spouse during the immediately preceding post-separation year, over

"(ii) the amount of the alimony or separate maintenance payments paid by the payor spouse during the computation year increased by $10,000, plus

"(B) a like excess for each of the other preceding post-separation years.

In determining the amount of the alimony or separate maintenance payments paid by the payor spouse during any preceding post-separation year, the amount paid during such year shall be reduced by any excess previously determined in respect of such year under this paragraph.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) POST-SEPARATION YEAR.—The term 'post-separation year' means any calendar year in the 6 calendar year period beginning with the first calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies.

"(B) COMPUTATION YEAR.—The term 'computation year' means the post-separation year for which the excess under paragraph (3) is being determined.

"(5) EXCEPTIONS.—

"(A) WHERE PAYMENTS CEASE BY REASON OF DEATH OR REMARRIAGE.—Paragraph (2) shall not apply to any post-separation year (and subsequent post-separation years) if—

"(i) either spouse dies before the close of such post-separation year or the payee spouse remarries before the close of such post-separation year, and

"(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

"(B) SUPPORT PAYMENTS.—For purposes of this subsection, the term 'alimony or separate maintenance payment' shall not include any payment received under a decree described in subsection (b)(2)(C).

"(C) FLUCTUATING PAYMENTS NOT WITHIN CONTROL OF PAYOR SPOUSE.—For purposes of this subsection, the term 'alimony or separate maintenance payment' shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 6 years) to pay a fixed portion of the income from a business or property or from compensation for employment or self-employment.

(b) AMENDMENT OF SECTION 215.—Section 215 (relating to deduction for alimony, etc., payments) is amended to read as follows:

"SEC. 215. ALIMONY, ETC., PAYMENTS.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

"(b) ALIMONY OR SEPARATE MAINTENANCE PAYMENTS DEFINED.—For purposes of this section, the term 'alimony or separate maintenance payment' means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the

gross income of the recipient under section 71.

"(c) Requirement of Identification Number.—The Secretary may prescribe regulations under which—

"(1) any individual receiving alimony or separate maintenance payments is required to furnish such individual's taxpayer identification number to the individual making such payments, and

"(2) the individual making such payments is required to include such taxpayer identification number on such individual's return for the taxable year in which such payments are made.

"(d) Coordination With Section 682.—No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual's gross income."

(c) Penalty for Failure To Supply Identifying Number.—Section 6676 (relating to failure to supply identifying number) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Penalty for Failure To Supply Identifying Number Under Section 215.—If any person who is required by regulations prescribed under section 215—

"(1) to furnish his taxpayer identification number to another person, or

"(2) to include on his return the taxpayer identification number of another person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of $50 for each such failure."

(d) Technical Amendments.—

(1) Subparagraph (B) of section 219(b)(4) (relating to certain divorced individuals) is amended by striking out all that follows "gross income" and inserting in lieu thereof "under section 71 (relating to alimony and separate maintenance payments) by reason of a payment under a decree of divorce or separate maintenance or a written instrument incident to such a decree."

(2) Subsection (b) of section 682 (relating to income of an estate or trust in case of divorce, etc.) is amended—

(A) by striking out "or section 71", and

(B) by striking out the last sentence.

(3) Paragraph (17) of section 7701(a) (defining husband and wife) is amended by striking out "71, 152(b)(4), 215, and 682" and inserting in lieu thereof "152(b)(4) and 682".

(e) Effective Date.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1954, as amended by this section) executed after December 31, 1984.

(2) Modifications of instruments executed before January 1, 1985.—The amendments made by this section shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1985, but modified on or after such date if the modification expressly provides that the amendments made by this section shall apply to such modification.

(3) Requirement of identification number.—Section 215(c) of the Internal Revenue Code of 1954 (as amended by subsection (b)) and the amendments made by subsection (c) shall apply to payments made after December 31, 1984.

SEC. 423. DEPENDENCY EXEMPTION IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.

(a) General Rule.—Subsection (e) of section 152 (relating to support test in case of child of divorced parents, etc.) is amended to read as follows:

"(e) Support Test in Case of Child of Divorced Parents, Etc.—

"(1) Custodial parent gets exemption.—Except as otherwise provided in this subsection, if—

"(A) a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents—

"(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

"(ii) who are separated under a written separation agreement, or

"(iii) who live apart at all times during the last 6 months of the calendar year, and

"(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the 'custodial parent').

"(2) Exception where custodial parent releases claim to exemption for the year.—A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if—

"(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

"(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term 'noncustodial parent' means the parent who is not the custodial parent.

"(3) Exception for multiple-support agreement.—This subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

"(4) Exception for certain pre-1985 instruments.—

"(A) In general.—A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if—

"(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

"(ii) the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

"(B) Qualified pre-1985 instrument.—For purposes of this paragraph, the term 'qualified pre-1985 instrument' means any decree of divorce or separate maintenance or written agreement—

"(i) which is executed before January 1, 1985,

"(ii) which on such date contains the provision described in subparagraph (A)(i), and

"(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

"(5) Special rule for support received from new spouse of parent.—For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

"(6) Cross reference.—

"For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(4)."

(b) Treatment as Dependent of Both Parents for Medical Expense Deduction.—

(1) Subsection (d) of section 213 (relating to definitions) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) Special rule in the case of child of divorced parents, etc.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section."

(2) Subsection (b) of section 105 is amended by adding at the end thereof the following new sentence: "Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection."

(3) Paragraph (6) of section 213(d) (as redesignated by paragraph (1)) is amended by striking out "the limitations of paragraph (4)" and inserting in lieu thereof "the limitations of paragraph (5)".

(c) Treatment of Certain Married Individuals Living Apart.—

(1) Subsection (b) of section 143 (relating to certain married individuals living apart) is amended to read as follows:

"(b) Certain Married Individuals Living Apart.—For purposes of those provisions of this title which refer to this subsection, if—

"(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(e)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),

"(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

"(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married."

(2) Subparagraph (A) of section 2(b)(1) (defining head of household) is amended—

(A) by striking out "which constitutes for such taxable year" and inserting in lieu thereof "which constitutes for more than one-half of such taxable year", and

(B) by striking out "under section 151" in clause (i) and inserting in lieu thereof "under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e))".

(3) Paragraph (1) of section 43(c) (defining eligible individual) is amended—

(A) by inserting after "section 151(e)(3))" in subparagraph (A)(i) the following: "or would be so entitled but for paragraph (2) or (4) of section 152(e)", and

(B) by striking out "the child has the same principal place of abode as the individual" in subparagraph (B) and inserting in lieu thereof "the child has the same principal place of abode as the individual for more than one-half of the taxable year".

(4) Paragraph (5) of section 44A(f) (relating to special dependency test in case of divorced parents, etc.) is amended to read as follows:

"(5) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If—

"(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

"(B) such child is under the age of 15 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (c)(1) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1984.

SEC. 424. INNOCENT SPOUSE RELIEVED OF LIABILITY IN CERTAIN CASES.

(a) GENERAL RULE.—Subsection (e) of section 6013 (relating to spouse relieved of liability in certain cases) is amended to read as follows:

"(e) SPOUSE RELIEVED OF LIABILITY IN CERTAIN CASES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a joint return has been made under this section for a taxable year,

"(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

"(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

"(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

"(2) GROSSLY ERRONEOUS ITEMS.—For purposes of this subsection, the term 'grossly erroneous items' means, with respect to any spouse—

"(A) any item of gross income attributable to such spouse which is omitted from gross income, and

"(B) any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

"(3) SUBSTANTIAL UNDERSTATEMENT.—For purposes of this subsection, the term 'substantial understatement' means any understatement (as defined in section 6661(b)(2)(A)) which exceeds $500.

"(4) UNDERSTATEMENT MUST EXCEED SPECIFIED PERCENTAGE OF SPOUSE'S INCOME.—

"(A) ADJUSTED GROSS INCOME OF $20,000 OR LESS.—If the spouse's adjusted gross income for the preadjustment year is $20,000 or less, this subsection shall apply only if the liability described in paragraph (1) is greater than 10 percent of such adjusted gross income.

"(B) ADJUSTED GROSS INCOME OF MORE THAN $20,000.—If the spouse's adjusted gross income for the preadjustment year is more than $20,000, subparagraph (A) shall be applied by substituting '25 percent' for '10 percent'.

"(C) PREADJUSTMENT YEAR.—For purposes of this paragraph, the term 'preadjustment year' means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

"(D) COMPUTATION OF SPOUSE'S ADJUSTED GROSS INCOME.—If the spouse is married to another spouse at the close of the preadjustment year, the spouse's adjusted gross income shall include the income of the new spouse (whether or not they file a joint return).

"(E) EXCEPTION FOR OMISSIONS FROM GROSS INCOME.—This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

"(5) SPECIAL RULE FOR COMMUNITY PROPERTY INCOME.—For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws."

(b) TREATMENT OF COMMUNITY INCOME.—

(1) IN GENERAL.—Section 66 (relating to treatment of community income where spouses live apart) is amended by redesignating subsection (b) as subsection (d) and by inserting after subsection (a) the following new subsections:

"(b) SECRETARY MAY DISREGARD COMMUNITY PROPERTY LAWS WHERE SPOUSE NOT NOTIFIED OF COMMUNITY INCOME.— The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

"(c) SPOUSE RELIEVED OF LIABILITY IN CERTAIN OTHER CASES.—Under regulations prescribed by the Secretary, if—

"(1) an individual does not file a joint return for any taxable year,

"(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

"(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

"(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual)."

(2) CLERICAL AMENDMENTS.—

(A) The section heading of section 66 is amended by striking out "WHERE SPOUSES LIVE APART".

(B) The subsection heading of subsection (a) of section 66 is amended by striking out "GENERAL RULE" and inserting in lieu thereof "TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART".

(C) The table of sections for part I of subchapter B of chapter 1 is amended by striking out "where spouses live apart" in the item relating to section 66.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall apply to all taxable years to which the Internal Revenue Code of 1954 applies. Corresponding provisions shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to all taxable years to which such Code applies.

(2) AUTHORITY TO DISREGARD COMMUNITY PROPERTY LAWS.—Subsection (b) of section 66 of the Internal Revenue Code of 1954, as added by subsection (b), shall apply to taxable years beginning after December 31, 1984.

SEC. 425. TREATMENT OF CERTAIN PROPERTY SETTLEMENTS FOR PURPOSES OF ESTATE AND GIFT TAXES.

(a) DEDUCTION ALLOWED AGAINST ESTATE TAX FOR TRANSFERS SATISFYING SECTION 2516.—

(1) IN GENERAL.—Subsection (b) of section 2043 (relating to transfers for insufficient consideration) is amended to read as follows:

"(b) MARITAL RIGHTS NOT TREATED AS CONSIDERATION.—

"(1) IN GENERAL.—For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'.

"(2) EXCEPTION.—For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money's worth."

(2) CROSS REFERENCE.—Subsection (e) of section 2053 (relating to deduction for expenses, indebtedness, and taxes) is amended to read as follows:

"(e) MARITAL RIGHTS.—

"For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2)."

(b) SECTION 2516 EXTENDED TO AGREEMENTS ENTERED INTO WITHIN 1 YEAR AFTER DIVORCE.—Section 2516 (relating to certain property settlements) is amended by striking out so much of such section as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to estates of decedents dying after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

SEC. 426. INCOME FROM SHELTERED WORKSHOPS NOT TAKEN INTO ACCOUNT IN DETERMINING DEPENDENCY EXEMPTION.

(a) IN GENERAL.—Subsection (e) of section 151 (relating to additional personal exemption for dependents) is amended by adding at the end thereof the following new paragraph:

"(5) CERTAIN INCOME OF HANDICAPPED DEPENDENTS NOT TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—For purposes of paragraph (1)(A), the gross income of an individual who is permanently and totally disabled shall not include income attributable to services performed by the individual at a sheltered workshop if—

"(i) the availability of medical care at such workshop is the principal reason for his presence there, and

"(ii) the income arises solely from activities at such workshop which are incident to such medical care.

"(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term 'sheltered workshop' means a school—

"(i) which provides special instruction or training designed to alleviate the disability of the individual, and

"(ii) which is operated by—

"(I) an organization described in section 501(c)(3) and exempt from tax under section 501(a), or

"(II) a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

"(C) PERMANENT AND TOTAL DISABILITY DEFINED.—An individual shall be treated as permanently and totally disabled for purposes of this paragraph if such individual would be so treated under paragraph (3) of section 37(e)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

Subtitle C—Revision of At-Risk Rules

SEC. 431. REVISION OF INVESTMENT CREDIT AT-RISK RULES.

(a) IN GENERAL.—So much of paragraph (8) of section 46(c) (relating to limitation to amount at risk) as precedes subparagraph (F) thereof is amended to read as follows:

"(8) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

"(A) LIMITATION.—The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such property (as of the close of the taxable year in which placed in service).

"(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any property which—

"(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

"(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

"(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term 'credit base' means—

"(i) in the case of new section 38 property, the basis of the property, or

"(ii) in the case of used section 38 property, the cost of such property.

"(D) NONQUALIFIED NONRECOURSE FINANCING.—

"(i) IN GENERAL.—For purposes of this paragraph and paragraph (9), the term 'nonqualified nonrecourse financing' means any nonrecourse financing which is not qualified commercial financing.

"(ii) QUALIFIED COMMERCIAL FINANCING.—For purposes of this paragraph, the term 'qualified commercial financing' means any financing with respect to any property if—

"(I) such property is acquired by the taxpayer from a person who is not a related person,

"(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

"(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

"(iii) NONRECOURSE FINANCING.—For purposes of this subparagraph, the term 'nonrecourse financing' includes—

"(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

"(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.

"(iv) QUALIFIED PERSON.—For purposes of this paragraph, the term 'qualified person' means any person which is actively and regularly engaged in the business of lending money and which is not—

"(I) a related person with respect to the taxpayer,

"(II) a person from which the taxpayer acquired the property (or a related person to such person), or

"(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

"(v) RELATED PERSON.—For purposes of clause (i), the term 'related person' has the meaning given such term by section 168(e)(4). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

"(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (9)—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

"(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.—A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

"(I) such financing is recourse financing (determined at the corporate level), and

"(II) such financing is provided with respect to qualified business property of such corporation.

"(iii) QUALIFIED BUSINESS PROPERTY.—For purposes of clause (ii), the term 'qualified business property' means any property if—

"(I) such property is used by the corporation in the active conduct of a trade or business,

"(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

"(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

Such term shall not include any master sound recording or other tangible or intangible asset associated with literary, artistic, or musical properties.

"(iv) DETERMINATION OF ALLOCABLE SHARE.—The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property."

(b) TREATMENT OF SUBSEQUENT INCREASES AND DECREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

(1) SUBSEQUENT DECREASES.—Paragraph (9) of section 46(c) (relating to subsequent increases in the taxpayer's amount at risk with respect to the property) is amended to read as follows:

"(9) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.—

"(A) IN GENERAL.—If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as additional qualified investment in such property in accordance with subparagraph (C).

"(B) CERTAIN TRANSACTIONS NOT TAKEN INTO ACCOUNT.—For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

"(C) MANNER IN WHICH TAKEN INTO ACCOUNT.—

"(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.—For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 47, any increase in a taxpayer's qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service.

"(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.—Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing."

(2) SUBSEQUENT INCREASES.—So much of subsection (d) of section 47 (relating to property ceasing to be at risk) as precedes paragraph (3) thereof is amended to read as follows:

"(d) INCREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

"(1) IN GENERAL.—If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)) with respect to any property to which section 46(c)(8) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the qualified investment

taken into account with respect to such property by the amount of such net increase.

"(2) TRANSFERS OF DEBT MORE THAN 1 YEAR AFTER INITIAL BORROWING NOT TREATED AS INCREASING NONQUALIFIED NONRECOURSE FINANCING.—For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred."

(c) CLARIFICATION OF COORDINATION OF SECTION 48(d) WITH AT-RISK RULES.—Subsection (d) of section 48 (relating to certain leased property) is amended by adding at the end thereof the following new paragraph:

"(6) COORDINATION WITH AT-RISK RULES.—

"(A) EXTENSION OF AT-RISK RULES TO CERTAIN LESSORS.—

"(i) IN GENERAL.—If—

"(I) a lessor makes an election under this subsection with respect to any at-risk property leased to an at-risk lessee, and

"(II) but for this clause, section 46(c)(8) would not apply to such property in the hands of the lessor,

section 46(c)(8) shall apply to the lessor with respect to such property.

"(ii) EXCEPTIONS.—Clause (i) shall not apply—

"(I) if the lessor manufactured or produced the property,

"(II) if the property has a readily ascertainable fair market value, or

"(III) in circumstances which the Secretary determines by regulations to be circumstances where the application of clause (i) is not necessary to carry out the purposes of section 46(c)(8).

"(B) REQUIREMENT THAT LESSOR BE AT RISK.—In the case of any property which, in the hands of the lessor, is property to which section 46(c)(8) applies, the amount of the credit allowable to the lessee under section 38 with respect to such property by reason of an election under this subsection shall at no time exceed the credit which would have been allowable to the lessor with respect to such property (determined without regard to section 46(e)(3)) if—

"(i) the lessor's basis in such property were equal to the lessee acquisition amount, and

"(ii) no election had been made under this subsection.

"(C) LESSEE SUBJECT TO AT-RISK LIMITATIONS.—

"(i) IN GENERAL.—In the case of any lease where—

"(I) the lessee is an at-risk lessee,

"(II) the property is at-risk property, and

"(III) the at-risk percentage is less than the required percentage,

any credit allowable under section 38 to the lessee by reason of an election under this subsection (hereinafter in this paragraph referred to as the 'total credit') shall be allowable only as provided in subparagraph (D).

"(ii) AT-RISK PERCENTAGE.—For purposes of this paragraph, the term 'at-risk percentage' means the percentage obtained by dividing—

"(I) the present value (as of the time the lease is entered into) of the aggregate lease at-risk payments, by

"(II) the lessee acquisition amount.

For purposes of subclause (I), the present value shall be determined by using a discount rate equal to the rate in effect under section 6621 as of the time the lease is entered into.

"(iii) REQUIRED PERCENTAGE.—For purposes of clause (i)(III), the term 'required percentage' means the sum of—

"(I) 2 times the sum of the percentages applicable to the property under section 46(a), plus

"(II) 10 percent.

In the case of 3-year property, such term means 60 percent of the required percentage determined under the preceding sentence.

"(iv) LESSEE ACQUISITION AMOUNT.—For purposes of this paragraph, the term 'lessee acquisition amount' means the amount for which the lessee is treated as having acquired the property by reason of an election under this subsection.

"(v) LEASE AT-RISK PAYMENT.—For purposes of this paragraph, the term 'lease at-risk payment' means any rental payment—

"(I) which the lessee is required to make under the lease in all events, and

"(II) with respect to which the lessee is not protected against loss through nonrecourse financing, guarantees, stop-loss agreements, or other similar arrangements.

"(D) YEAR FOR WHICH CREDIT ALLOWABLE.—

"(i) IN GENERAL.—Except as provided in clause (ii), in any case to which subparagraph (C)(i) applies, the portion of the total credit allowable for any taxable year shall be an amount which bears the same ratio to such total credit as—

"(I) the aggregate rental payments made by the lessee under the lease during such taxable year, bears to

"(II) the lessee acquisition amount.

"(ii) REMAINING AMOUNT ALLOWABLE FOR YEAR IN WHICH AGGREGATE RENTAL PAYMENTS EXCEED REQUIRED PERCENTAGE OF ACQUISITION AMOUNT.—The total credit (to the extent not allowable for a preceding taxable year) shall be allowable for the first taxable year as of the close of which the aggregate rental payments made by the lessee under the lease equal or exceed the required percentage (as defined in subparagraph (C)(iii)) of the lessee acquisition amount.

"(E) DEFINITION OF AT-RISK LESSEE AND AT-RISK PROPERTY.—For purposes of this paragraph—

"(i) AT-RISK LESSEE.—The term 'at-risk lessee' means any lessee who is a taxpayer described in section 465(a)(1).

"(ii) AT-RISK PROPERTY.—The term 'at-risk property' means any property used by an at-risk lessee in connection with an activity with respect to which any loss is subject to limitation under section 465.

"(F) SPECIAL RULES FOR SUBPARAGRAPHS (C) AND (D).—

"(i) SUBPARAGRAPHS (C) AND (D) APPLY IN LIEU OF OTHER AT-RISK RULES.—In the case of any election under this subsection, paragraphs (8) and (9) of section 46(c) and subsection (d) of section 47 shall only apply with respect to the lessor.

"(ii) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of subparagraphs (C) and (D), rules similar to the rules of subparagraph (E) of section 46(c)(8) shall apply.

"(iii) SUBSEQUENT REDUCTIONS IN AT-RISK AMOUNT.—Under regulations prescribed by the Secretary, the principles of subsection (d) of section 47 shall apply for purposes of subparagraphs (C) and (D).

"(G) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations—

"(i) providing for such adjustments as may be appropriate where expenses connected with the lease are borne by the lessor, and

"(ii) providing the extent to which contingencies in the lease will be disregarded."

(d) TECHNICAL AMENDMENTS.—

(1) Clause (i) of section 46(c)(8)(F) (relating to special rule for certain energy property) is amended to read as follows:

"(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to qualified energy property."

(2) Subclause (III) of section 46(c)(8)(F)(ii) (defining qualified energy property) is amended to read as follows:

"(III) as of the close of the taxable year in which the property is placed in service, not more than 75 percent of the basis of such property is attributable to nonqualified nonrecourse financing, and".

(3) Subclause (IV) of section 46(c)(8)(F)(ii) is amended by striking out "nonrecourse financing (other than financing described in section 46(c)(8)(B)(ii))" and inserting in lieu thereof "nonqualified nonrecourse financing".

(4) Subparagraph (A) of section 47(d)(3) is amended by striking out "ceasing to be at risk" and inserting in lieu thereof "increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))".

(5) Clause (i) of section 47(d)(3)(B) is amended by striking out "other than a loan described in section 46(c)(8)(B)(ii)".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act in taxable years ending after such date; except that such amendments shall not apply to any property to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 do not apply.

(2) AMENDMENTS MAY BE ELECTED RETROACTIVELY.—At the election of the taxpayer, the amendments made by this section shall apply as if included in the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981. Any election made under the preceding sentence shall apply to all property of the taxpayer to which the amendments made by such section 211(f) apply and shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.

SEC. 432. EXCLUSION OF ACTIVE BUSINESSES OF QUALIFIED C CORPORATIONS FROM AT-RISK RULES, ETC.

(a) EXCLUSION OF ACTIVE BUSINESSES OF QUALIFIED C CORPORATIONS FROM AT-RISK RULES.—Subsection (c) of section 465 (relating to deductions limited to amount at risk) is amended by adding at the end thereof the following new paragraph:

"(7) EXCLUSION OF ACTIVE BUSINESSES OF QUALIFIED C CORPORATIONS.—

"(A) IN GENERAL.—In the case of a taxpayer which is a qualified C corporation—

"(i) each qualifying business carried on by such taxpayer shall be treated as a separate activity, and

"(ii) subsection (a) shall not apply to losses from such business.

"(B) QUALIFIED C CORPORATION.—For purposes of subparagraph (A), the term 'qualified C corporation' means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

"(i) a personal holding company (as defined in section 542(a)),

"(ii) a foreign personal holding company (as defined in section 552(a)), or

"(iii) a personal service corporation (as defined in section 269A(b) but determined by substituting '5 percent' for '10 percent' in section 269A(b)(2)).

"(C) QUALIFYING BUSINESS.—For purposes of this paragraph, the term 'qualifying business' means any active business if—

"(i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all the services of whom were in the active management of such business,

"(ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time, nonowner employees substantially all of the services of whom were services directly related to such business,

"(iii) the amount of the deductions attributable to such business which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 percent of the gross income from such business for such year, and

"(iv) such business is not an excluded business.

"(D) SPECIAL RULES FOR APPLICATION OF SUBPARAGRAPH (C).—

"(i) PARTNERSHIPS IN WHICH TAXPAYER IS A QUALIFIED CORPORATE PARTNER.—In the case of an active business of a partnership, if—

"(I) the taxpayer is a qualified corporate partner in the partnership, and

"(II) during the entire 12-month period ending on the last day of the partnership's taxable year, there was at least 1 full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom were in the active management of such business,

then the taxpayer's proportionate share (determined on the basis of its profits interest) of the activities of the partnership in such business shall be treated as activities of the taxpayer (and clause (i) of subparagraph (C) shall not apply in determining whether such business is a qualifying business of the taxpayer).

"(ii) QUALIFIED CORPORATE PARTNER.—For purposes of clause (i), the term 'qualified corporate partner' means any corporation if—

"(I) such corporation is a general partner in the partnership,

"(II) such corporation has an interest of 20 percent or more in the profits and losses of the partnership, and

"(III) such corporation has contributed property to the partnership in an amount not less than the lesser of $500,000 or 10 percent of the net worth of the corporation.

For purposes of subclause (III), any contribution of property other than money shall be taken into account at its fair market value.

"(iii) DEDUCTION FOR OWNER EMPLOYEE COMPENSATION NOT TAKEN INTO ACCOUNT.—For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

"(iv) SPECIAL RULE FOR BANKS.—For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined in section 581) or a financial institution to which section 591 applies—

"(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

"(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts under section 163 or 591.

"(v) SPECIAL RULE FOR LIFE INSURANCE COMPANIES.—

"(I) IN GENERAL.—Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

"(II) INSURANCE BUSINESS.—For purposes of subclause (I), the term 'insurance business' means any business which is not a noninsurance business (within the meaning of section 806(c)(3)).

"(III) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of subclause (I), the term 'qualified life insurance company' means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c)(2) of section 816.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) NON-OWNER EMPLOYEE.—The term 'non-owner employee' means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that '5 percent' shall be substituted for '50 percent' in section 318(a)(2)(C).

"(ii) EXCLUDED BUSINESS.—The term 'excluded business' means—

"(I) equipment leasing (as defined in paragraph (6)), and

"(II) any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

"(iii) SPECIAL RULES RELATING TO COMMUNICATIONS INDUSTRY, ETC.—

"(I) BUSINESS NOT EXCLUDED WHERE TAXPAYER NOT COMPLETELY AT RISK.—A business involving the use, exploitation, sale, lease, or other disposition of property described in subclause (II) of clause (ii) shall not constitute an excluded business by reason of such subclause if the taxpayer is at risk with respect to all amounts paid or incurred (or chargeable to capital account) in such business.

"(II) CERTAIN LICENSED BUSINESSES NOT EXCLUDED.—For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Commission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

"(F) AFFILIATED GROUP TREATED AS 1 TAXPAYER.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (iii), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

"(ii) AFFILIATED GROUP OF CORPORATIONS.—The term 'affiliated group of corporations' means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

"(iii) COMPONENT MEMBER.—The term 'component member' means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

"(G) LOSS OF 1 MEMBER OF AFFILIATED GROUP MAY NOT OFFSET INCOME OF PERSONAL HOLDING COMPANY OR PERSONAL SERVICE CORPORATION.—Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal holding company (as defined in section 542(a)) or a personal service corporation (as defined in section 269A(b) but determined by substituting '5 percent' for '10 percent' in section 269A(b)(2))."

(b) ACTIVITIES TREATED AS SEPARATE ACTIVITIES BY STATUTE MAY BE AGGREGATED WHERE TAXPAYER ACTIVELY PARTICIPATES IN THE MANAGEMENT OF EACH ACTIVITY.—Paragraph (2) of section 465(c) (relating to activities to which risk applies) is amended to read as follows:

"(2) SEPARATE ACTIVITIES.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

"(i) film or video tape,

"(ii) section 1245 property which is leased or held for leasing,

"(iii) farm,

"(iv) oil and gas property (as defined under section 614), or

"(v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

"(B) AGGREGATION RULES.—

"(i) SPECIAL RULE FOR LEASES OF SECTION 1245 PROPERTY BY PARTNERSHIPS OR S CORPORATIONS.—In the case of any partnership or S corporation, all activities with respect to section 1245 properties which—

"(I) are leased or held for lease, and

"(II) are placed in service in any taxable year of the partnership or S corporation,

shall be treated as a single activity.

"(ii) OTHER AGGREGATION RULES.—Rules similar to the rules of subparagraphs (B) and (C) of paragraph (3) shall apply for purposes of this paragraph."

(c) CORPORATIONS CONSIDERED AT RISK WITH RESPECT TO AMOUNTS BORROWED FROM SHAREHOLDERS, ETC.—Paragraph (3) of section 465(b) (relating to certain borrowed amounts excluded) is amended to read as follows:

"(3) CERTAIN BORROWED AMOUNTS EXCLUDED.—

"(A) IN GENERAL.—Except to the extent provided in regulations, for purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.

"(B) EXCEPTIONS.—

"(i) INTEREST AS CREDITOR.—Subparagraph (A) shall not apply to an interest as a creditor in the activity.

"(ii) INTEREST AS SHAREHOLDER WITH RESPECT TO AMOUNTS BORROWED BY CORPORATION.—In the case of amounts borrowed by a corporation from a shareholder, subparagraph (A) shall not apply to an interest as a shareholder.

"(C) RELATED PERSON DEFINED.—For purposes of subparagraph (A), the term 'related person' has the meaning given such term by section 168(e)(4)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983; except that any loss from an activity described in section 465(c)(7)(A) of the Internal Revenue Code of 1954 (as amended by this section) which (but for the amendments made by this section) would have been treated as a deduction for the taxpayer's first taxable year beginning after December 31, 1983, under section 465(a)(2) of such Code shall be allowed as a deduction for such first taxable year notwithstanding such amendments.

Subtitle D—Miscellaneous Treasury Administrative Provisions

PART I—PROVISIONS NOT RELATING TO DISTILLED SPIRITS TAX

SEC. 441. SIMPLIFICATION OF CERTAIN REPORTING REQUIREMENTS.

(a) Report on Possessions Corporations.—The Secretary of the Treasury shall, for the calendar year 1981 and each second calendar year thereafter, submit a report to the Congress within 24 months following the close of such calendar year setting forth an analysis of the operation and effect of sections 936 and 934(b) of the Internal Revenue Code of 1954.

(b) High Income Taxpayer Report.—

(1) Section 2123 of the Tax Reform Act of 1976 is amended to read as follows:

"SEC. 2123. HIGH INCOME TAXPAYER REPORT.

"The Secretary of the Treasury shall publish annually information on the amount of tax paid by individual taxpayers with high total incomes. Total income for this purpose is to be calculated and set forth by adding to adjusted gross income any items of tax preference excluded from, or deducted in arriving at, adjusted gross income, and by subtracting any investment expenses incurred in the production of such income to the extent of the investment income. These data are to include the number of such individuals with total income over $200,000 who owe no Federal income tax (after credits) and the deductions, exclusions, or credits used by them to avoid tax."

(2) The amendment made by paragraph (1) shall apply to information published after the date of the enactment of this Act.

(c) International Boycott Reports.—

(1) Section 1067 of the Tax Reform Act of 1976 is amended to read as follows:

"SEC. 1067. REPORTS BY THE SECRETARY.

"(a) General Rule.—As soon after the close of each 4-year period as the data become available, the Secretary shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate setting forth for such 4-year period—

"(1) the number of reports filed under section 999(a) of the Internal Revenue Code of 1954 for taxable years ending with or within each calendar year in such 4-year period,

"(2) the number of such reports with respect to each such calendar year on which the taxpayer indicated international boycott participation or cooperation (within the meaning of section 999(b)(3) of such Code), and

"(3) a detailed description of the manner in which the provisions of such Code relating to international boycott activity have been administered during such 4-year period.

"(b) 4-Year Period.—For purposes of subsection (a), the term '4-year period' means the period consisting of 4 calendar years beginning with calendar year 1982 and each subsequent fourth calendar year."

(2) The amendment made by paragraph (1) shall apply to reports for periods after December 31, 1981.

SEC. 442. REMOVAL OF $1,000,000 LIMITATION ON WORKING CAPITAL FUND.

The last sentence of section 322(a) of title 31, United States Code (placing a $1,000,000 limitation on the working capital fund for the Department of the Treasury), is hereby repealed.

SEC. 443. INCREASE IN LIMITATION ON REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

Subsection (a) of section 7810 (relating to revolving fund for redemption of real property) is amended by striking out "$1,000,000" and inserting in lieu thereof "$10,000,000".

SEC. 444. REMOVAL OF $1,000,000 LIMITATION ON SPECIAL AUTHORITY TO DISPOSE OF OBLIGATIONS.

Subsection (b) of section 324 of title 31, United States Code (relating to disposing and extending the maturity of obligations), is amended by striking out the last sentence.

SEC. 445. SECRETARY OF THE TREASURY AUTHORIZED TO ACCEPT GIFTS AND BEQUESTS.

Section 321 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary of the Treasury may accept, hold, administer, and use gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of the Treasury. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed on order of the Secretary of the Treasury. Property accepted under this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

"(2) For purposes of the Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for the use of the United States.

"(3) The Secretary of the Treasury may invest and reinvest the fund in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Income accruing from the securities, and from any other property accepted under paragraph (1), shall be deposited to the credit of the fund, and shall be disbursed on order of the Secretary of the Treasury for purposes as nearly as possible in accordance with the terms of the gifts or bequests.

"(4) The Secretary of the Treasury shall, not less frequently than annually, make a public disclosure of the amount (and sources) of the gifts and bequests received under this subsection, and the purposes for which amounts in the separate fund established under this subsection are expended."

SEC. 446. EXTENSION OF PERIOD FOR COURT REVIEW OF JEOPARDY ASSESSMENT WHERE PROMPT SERVICE NOT MADE ON THE UNITED STATES.

(a) General Rule.—Paragraph (2) of section 7429(b) (relating to judicial review) is amended by adding at the end thereof the following new sentence:

"If the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States."

(b) Effective Date.—The amendment made by subsection (a) shall apply to actions commenced after the date of the enactment of this Act.

SEC. 447. EXTENSION OF PERIOD DURING WHICH ADDITIONAL TAX SHOWN ON AMENDED RETURN MAY BE ASSESSED.

(a) General Rule.—Subsection (c) of section 6501 (relating to exceptions) is amended by adding at the end thereof the following new paragraph:

"(7) Special rule for certain amended returns.—Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document."

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to documents received by the Secretary of the Treasury (or his delegate) after the date of the enactment of this Act.

SEC. 448. TREATMENT OF CERTAIN GUARANTEED DRAFTS ISSUED BY FINANCIAL INSTITUTIONS.

(a) General Rule.—Paragraph (2) of section 6311(b) (relating to liability of banks and others) is amended—

(1) by striking out "or cashier's check" and inserting in lieu thereof "or cashier's check (or other guaranteed draft)",

(2) by striking out "the amount of such check" and inserting in lieu thereof "the amount of such check (or draft)",

(3) by striking out "the bank or trust company" and inserting in lieu thereof "the financial institution", and

(4) by striking out "such bank" each place it appears and inserting in lieu thereof "such financial institution".

(b) Effective Date.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 449. DISCLOSURE OF WINDFALL PROFIT TAX INFORMATION TO STATE TAX OFFICIALS.

(a) General Rule.—Paragraph (1) of section 6103(d) (relating to disclosure to State tax officials) is amended by striking out "44, 51" and inserting in lieu thereof "44, 45, 51".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 450. FINANCIAL REPORTING OF INVESTMENT TAX CREDITS.

(a) In General—Paragraph (1) of section 101(c) of the Revenue Act of 1971 (85 Stat. 499) (relating to accounting for investment credit in certain financial reports and reports to Federal agencies) is amended—

(1) by inserting "and" at the end of subparagraph (A),

(2) by striking out ", and" at the end of subparagraph (B) and inserting in lieu thereof a period, and

(3) by striking out subparagraph (C).

(b) Effective Date.—The amendments made by this section shall take effect as if included in the Revenue Act of 1971.

PART II—PROVISIONS RELATING TO DISTILLED SPIRITS

SEC. 451. REPEAL OF OCCUPATIONAL TAX ON MANUFACTURERS OF STILLS AND CONDENSERS; NOTICES OF MANUFACTURE AND SET UP OF STILLS.

(a) In General.—Subpart C of part II of subchapter A of chapter 51 (relating to manufacturers of stills) is amended to read as follows:

"Subpart C—Manufacturers of Stills

"Sec. 5101. Notice of manufacture of still; notice of set up of still.
"Sec. 5102. Definition of manufacturer of stills.

"SEC. 5101. NOTICE OF MANUFACTURE OF STILL; NOTICE OF SET UP OF STILL.

"(a) NOTICE REQUIREMENTS.—

"(1) NOTICE OF MANUFACTURE OF STILL.—The Secretary may, pursuant to regulations, require any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, to give written notice, before the still, boiler, or other vessel is removed from the place of manufacture, setting forth by whom it is to be used, its capacity, and the time of removal from the place of manufacture.

"(2) NOTICE OF SET UP OF STILL.—The Secretary may, pursuant to regulations, require that no still, boiler, or other vessel be set up without the manufacturer of the still, boiler, or other vessel first giving written notice to the Secretary of that purpose.

"(b) PENALTIES, ETC.—

"(1) For penalty and forfeiture for failure to give notice of manufacture, or for setting up a still without first giving notice, when required by the Secretary, see sections 5615(2) and 5687.

"(2) For penalty and forfeiture for failure to register still or distilling apparatus when set up, see section 5601(a)(1) and 5615(1).

"SEC. 5102. DEFINITION OF MANUFACTURER OF STILLS.

"Any person who manufactures any still or condenser to be used in distilling shall be deemed a manufacturer of stills."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (2) of section 5179(b) (relating to registration of stills) is amended to read as follows:

"(2) For provisions requiring notification to set up a still, boiler, or other vessel for distilling, see section 5101(a)(2)."

(2) Paragraph (2) of section 5615 (relating to property subject to forfeiture) is amended to read as follows:

"(2) DISTILLING APPARATUS REMOVED WITHOUT NOTICE OR SET UP WITHOUT NOTICE.—Any still, boiler, or other vessel to be used for the purpose of distilling—

"(A) which is removed without notice having been given when required by section 5101(a)(1), or

"(B) which is set up without notice having been given when required by section 5101(a)(2); and".

(3) Subsection (a) of section 5691 (relating to penalties for nonpayment of special taxes relating to liquors) is amended by striking out "limited retail dealer, or manufacturer of stills" and inserting in lieu thereof "or limited retail dealer".

SEC. 452. ALLOWANCE OF DRAWBACK CLAIMS EVEN WHERE CERTAIN REQUIREMENTS NOT MET.

Section 5134 (relating to drawback) is amended by adding at the end thereof the following new subsection:

"(c) ALLOWANCE OF DRAWBACK EVEN WHERE CERTAIN REQUIREMENTS NOT MET.—

"(1) IN GENERAL.—No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant's establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for beverage purposes.

"(2) PENALTY.—

"(A) IN GENERAL.—In the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder, the claimant shall be liable for a penalty of $1,000 for each failure to comply unless it is shown that the failure to comply was due to reasonable cause.

"(B) PENALTY MAY NOT EXCEED AMOUNT OF CLAIM.—The aggregate amount of the penalties imposed under subparagraph (A) for failures described in paragraph (1) in respect of any claim shall not exceed the amount of such claim (determined without regard to subparagraph (A)).

"(3) PENALTY TREATED AS TAX.—The penalty imposed by paragraph (2) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6662(a)."

SEC. 453. DISCLOSURE OF ALCOHOL FUEL PRODUCERS TO ADMINISTRATORS OF STATE ALCOHOL LAWS.

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end thereof the following new paragraph:

"(9) DISCLOSURE OF ALCOHOL FUEL PRODUCERS TO ADMINISTRATORS OF STATE ALCOHOL LAWS.—Notwithstanding any other provision of this section, the Secretary may disclose—

"(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

"(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws."

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 6103(p)(3) (relating to records of inspection and disclosure) is amended by striking out "(5), or (7)" and inserting in lieu thereof "(5), (7), (8), or (9)".

(2) The material preceding subparagraph (A) of paragraph (4) of section 6103(p) is amended by striking out "or (7)" and inserting in lieu thereof "(7), (8), or (9)".

(3) Clause (i) of section 6103(p)(4)(F) is amended by striking out "(l) (6) or (7)" and inserting in lieu thereof "(l) (6), (7), (8), or (9)".

(4) Paragraph (2) of section 7213(a) (relating to unauthorized disclosure of information) is amended by striking out "or (8)" and inserting in lieu thereof "(8), or (9)".

(5) Section 127(a)(1) of Public Law 96-249 is amended by striking out "Subsection (i)" and inserting in lieu thereof "Subsection (l)".

(6) The paragraph (7) of section 6103(l) added by Public Law 96-265 is hereby redesignated as paragraph (8).

SEC. 454. REPEAL OF STAMP REQUIREMENT FOR DISTILLED SPIRITS.

(a) IN GENERAL.—Section 5205 (relating to stamps) is hereby repealed.

(b) BOTTLES MUST HAVE OTHER ANTITAMPERING CLOSURE.—Section 5301 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CLOSURES.—The immediate container of distilled spirits withdrawn from bonded premises, or from customs custody, on determination of tax shall bear a closure or other device which is designed so as to require breaking in order to gain access to the contents of such container. The preceding sentence shall not apply to containers of bulk distilled spirits."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The second sentence of section 5062(b) (relating to drawback in case of exportation) is amended by striking out "stamped or restamped, and".

(2) Paragraph (2) of section 5066(a) (relating to bottled distilled spirits eligible for export with benefit of drawback) is amended by striking out "stamped or restamped, and marked," and inserting in lieu thereof "marked".

(3) Subsection (b) of section 5116 (relating to cross references) is amended to read as follows:

"(b) CROSS REFERENCE.—

"For provisions relating to containers of distilled spirits, see section 5206."

(4) Subsection (c) of section 5204 (relating to gauging) is amended—

(A) by striking out "STAMPING," in the heading, and

(B) by striking out "stamping," in the text.

(5)(A) Section 5206 (relating to containers) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) EFFACEMENT OF MARKS AND BRANDS ON EMPTIED CONTAINERS.—Every person who empties, or causes to be emptied, any container of distilled spirits bearing any mark or brand required by law (or regulations pursuant thereto) shall at the time of emptying such container efface and obliterate such mark or brand; except that the Secretary may, by regulations, waive any requirement of this subsection where he determines that no jeopardy to the revenue will be involved."

(B) Subsection (f) of section 5206, as redesignated by subparagraph (A), is amended by adding at the end thereof the following new paragraphs:

"(3) For provisions relating to the marking and branding of containers of distilled spirits by proprietors, see section 5204(c).

"(4) For penalties and forfeitures relating to marks and brands, see sections 5604 and 5613."

(6) Paragraph (4) of section 5207(a) (relating to records and reports) is amended by striking out subparagraph (D), by adding "and" at the end of subparagraph (B), and by striking out ", and" at the end of subparagraph (C) and inserting in lieu thereof a period.

(7) Subsection (c) of section 5215 (relating to return of tax determined distilled spirits to bonded premises) is amended—

(A) by striking out "RESTAMPING" in the heading and inserting in lieu thereof "RECLOSING", and

(B) by striking out "restamping" in the text and inserting in lieu thereof "reclosing".

(8) Section 5235 (relating to bottling of alcohol for industrial purposes) is amended by striking out "stamped," in the first sentence and by striking out the second sentence.

(9) Subsection (c) of section 5301 (relating to regulation of traffic in containers of distilled spirits) is amended—

(A) by striking out "stamping" in paragraphs (1) and (3) and inserting in lieu thereof "tax determination", and

(B) by striking out ", if the liquor bottles are to be again stamped under the provisions of this chapter".

(10) Subsection (a) of section 5555 (relating to records, statements, and returns) is amended by striking out "or for the affixing of any stamp required to be affixed by this chapter,".

(11)(A) Section 5604 (relating to penalties relating to stamps, marks, brands, and containers) is amended to read as follows:

"SEC. 5604. PENALTIES RELATING TO MARKS, BRANDS, AND CONTAINERS.

"(a) IN GENERAL.—Any person who shall—

"(1) transport, possess, buy, sell, or transfer any distilled spirits unless the immediate container bears the type of closure or other device required by section 5301(d);

"(2) with intent to defraud the United States, empty a container bearing the closure or other device required by section 5301(d) without breaking such closure or other device,

"(3) empty, or cause to be emptied, any distilled spirits from an immediate container bearing any mark or brand required by law without effacing and obliterating such mark or brand as required by section 5206(d),

"(4) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once been filled and fitted with a closure or other device under the provisions of this chapter, without removing and destroying such closure or other device,

"(5) willfully and unlawfully remove, change, or deface any mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein,

"(6) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any mark or brand required by law to be affixed to any cask or package containing distilled spirits, or

"(7) change or alter any mark or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength than is indicated by the inspection mark thereon, or fraudulently use any cask or package having any inspection mark thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected,

shall be fined not more than $10,000 or imprisoned not more than 5 years, or both, for each such offense.

"(b) CROSS REFERENCES.—

"For provisions relating to the authority of internal revenue officers to enforce provisions of this section, see sections 5203, 5557, and 7608."

(B) The table of sections for part I of subchapter J of chapter 51 is amended by striking out the item relating to section 5604 and inserting in lieu thereof the following:

"Sec. 5604. Penalties relating to marks, brands, and containers."

(12)(A) Subsection (b) of section 5613 (relating to forfeiture of distilled spirits not stamped, marked, or branded as required by law) is amended to read as follows:

"(b) CONTAINERS WITHOUT CLOSURES.—All distilled spirits found in any container which is required by this chapter to bear a closure or other device and which does not bear a closure or other device in compliance with this chapter shall be forfeited to the United States."

(B) The section heading of section 5613 is amended by striking out "STAMPED" and inserting in lieu thereof "CLOSED".

(C) The item relating to section 5613 in the table of sections for part I of subchapter J of chapter 51 is amended by striking out "stamped" and inserting in lieu thereof "closed".

(13) Subsection (b) of section 6801 (relating to authority for establishment, alteration, and distribution) is amended by striking out "several stamp taxes;" and all that follows and inserting in lieu thereof "several stamp taxes."

(14) The table of sections for part I of subchapter C of chapter 51 is amended by striking out the item relating to section 5205.

SEC. 455. COOKING WINE MAY BE FORTIFIED USING DISTILLED SPIRITS.

(a) IN GENERAL.—Subsection (a) of section 5214 (relating to withdrawal of distilled spirits from bonded premises free of tax or without payment of tax) is amended by striking out the period at the end of paragraph (12) and inserting in lieu thereof "; or", and by adding at the end thereof the following new paragraph:

"(13) without payment of tax for use on bonded wine cellar premises in the production of wine or wine products which will be rendered unfit for beverage use and removed pursuant to section 5362(d)."

(b) LIABILITY FOR TAX.—

(1) Paragraph (1) of section 5005(e) (relating to withdrawals without payment of tax) is amended by striking out "or (10)" and inserting in lieu thereof "(10), or (13)".

(2) Paragraph (2) of section 5005(e) is amended by inserting "used in the production of nonbeverage wine or wine products," after "used in the production of wine,".

(c) TECHNICAL AMENDMENT.—Section 5354 (relating to bonds for bonded wine cellars) is amended by striking out "wine spirits" each place it appears and inseting in lieu thereof "distilled spirits".

SEC. 456. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section the amendments made by this part shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

(b) REPEAL OF STAMP REQUIREMENT.—The amendments made by section 454 shall take effect on July 1, 1985.

(c) FORTIFICATION OF COOKING WINE.—The amendments made by section 455 shall take effect on the date of the enactment of this Act.

Subtitle E—Tax Court Provisions

SEC. 461. INCREASE IN JURISDICTIONAL LIMIT FOR SMALL CASES.

(a) INCREASE IN JURISDICTIONAL LIMIT FOR SMALL TAX CASES.—

(1) IN GENERAL.—Subsection (a) of section 7463 (relating to disputes involving $5,000 or less) is amended by striking out "$5,000" each place it appears and inserting in lieu thereof "$10,000".

(2) CLERICAL AMENDMENTS.—

(A) The section heading for section 7463 is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(B) The table of sections for part II of subchapter C of chapter 76 is amended by striking out "$5,000" in the item relating to section 7463 and inserting in lieu thereof "$10,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 462. ANNUITIES TO SURVIVORS OF TAX COURT JUDGES.

(a) ENTITLEMENT TO ANNUITY.—Subsection (h) of section 7448 (relating to entitlement to annuity) is amended—

(1) by striking out "$900 per year divided by the number of such children or $360 per year," in paragraph (2) and inserting in lieu thereof "$4,644 per year divided by the number of such children or $1,548 per year,"; and

(2) by striking out "$480 per year" in paragraph (3) and inserting in lieu thereof "$5,580 per year divided by the number of such children or $1,860 per year, whichever is lesser".

. (b) EFFECTIVE DATE.—The amendments made by this subsection (a) shall apply to annuities payable with respect to months beginning after the date of the enactment of this Act.

SEC. 463. PROCEEDINGS WHICH MAY BE ASSIGNED TO COMMISSIONERS.

(a) IN GENERAL.—Subsection (d) of section 7456 (relating to proceedings which may be assigned to commissioners) is amended to read as follows:

"(d) PROCEEDINGS WHICH MAY BE ASSIGNED TO COMMISSIONERS.—The chief judge may assign—

"(1) any declaratory judgment proceeding,

"(2) any proceeding under section 7463,

"(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $10,000; and

"(4) any other proceeding which the chief judge may designate,

to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any proceeding described in paragraph (1), (2), or (3), subject to such conditions and review as the court may provide."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted as part of the Miscellaneous Revenue Act of 1982.

SEC. 464. SPECIAL TRIAL JUDGES.

(a) IN GENERAL.—Subsection (a) of section 7456 (relating to administration of oaths and procurement of testimony) is amended by striking out "commissioner" each place it appears and inserting in lieu thereof "special trial judge".

(b) APPOINTMENT AND COMPENSATION.—Subsection (c) of section 7456 (relating to commissioners) is amended—

(1) by striking out "COMMISSIONERS" in the heading and inserting in lieu thereof "SPECIAL TRIAL JUDGES";

(2) by striking out "commissioners" and inserting in lieu thereof "special trial judges"; and

(3) by striking out "commissioner" and inserting in lieu thereof "special trial judge".

(c) PROCEEDINGS WHICH MAY BE ASSIGNED TO SPECIAL TRIAL JUDGES.—Subsection (d) of section 7456 (relating to proceedings which may be assigned to commissioners), as amended by section 463, is amended—

(1) by striking out "COMMISSIONERS" in the heading and inserting in lieu thereof "SPECIAL TRIAL JUDGES";

(2) by striking out "commissioners" and inserting in lieu thereof "special trial judges"; and

(3) by striking out "commissioner" and inserting in lieu thereof "special trial judge".

(d) CONFORMING AMENDMENT.—Subsection (c) of section 7471 (cross reference relating to compensation and travel and subsistence allowances of commissioners) is amended by striking out "COMMISSIONERS" in the heading and inserting in lieu thereof "SPECIAL TRIAL JUDGES", and by striking out "commissioners" and inserting in lieu thereof "special trial judges".

(e) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Any reference in any law to a commissioner of the Tax Court shall be treated as a

reference to a special trial judge of the Tax Court.

SEC. 465. PUBLICITY OF TAX COURT PROCEEDINGS.

(a) IN GENERAL.—Section 7461 (relating to publicity of proceedings) is amended to read as follows:

"SEC. 7461. PUBLICITY OF PROCEEDINGS.

"(a) GENERAL RULE.—Except as provided in subsection (b), all reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.

"(b) EXCEPTIONS.—

"(1) TRADE SECRETS OR OTHER CONFIDENTIAL INFORMATION.—The Tax Court may make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court.

"(2) EVIDENCE, ETC.—After the decision of the Tax Court in any proceeding has become final, the Tax Court may, upon motion of the taxpayer or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle F—Simplification of Income Tax Credits

SEC. 471. CREDITS GROUPED TOGETHER IN MORE LOGICAL ORDER.

(a) CREDITS DIVIDED INTO 4 CATEGORIES.—The table of subparts for part IV of subchapter A of chapter 1 (relating to credits against tax) is amended to read as follows:

"Subpart A. Nonrefundable personal credits.
"Subpart B. Foreign tax credit, etc.
"Subpart C. Refundable credits.
"Subpart D. Business-related credits."

(b) EXISTING CREDITS ASSIGNED TO APPROPRIATE CATEGORY.—Part IV of subchapter A of chapter 1 is amended by striking out the heading and table of sections for subpart A and inserting in lieu thereof the following:

"Subpart A—Nonrefundable Personal Credits

"Sec. 21. Expenses for household and dependent care services necessary for gainful employment.
"Sec. 22. Credit for the elderly and the permanently and totally disabled.
"Sec. 23. Residential energy credit.
"Sec. 24. Contributions to candidates for public office.
"Sec. 25. Limitation based on tax liability; definition of tax liability.

"Subpart B—Foreign Tax Credit, Etc.

"Sec. 27. Taxes of foreign countries and possessions of the United States; possession tax credit.
"Sec. 28. Clinical testing expenses for certain drugs for rare diseases or conditions.
"Sec. 29. Credit for producing fuel from a nonconventional source.
"Sec. 30. Credit for increasing research activities.

"Subpart C—Refundable Credits

"Sec. 31. Tax withheld on wages.
"Sec. 32. Earned income.
"Sec. 33. Tax withheld at source on nonresident aliens and foreign corporations.
"Sec. 34. Certain uses of gasoline and special fuels.
"Sec. 35. Overpayments of tax.

"Subpart D—Business Related Credits

"Sec. 38. General business credit.
"Sec. 39. Carryback and carryforward of unused credits.
"Sec. 40. Alcohol used as fuel.
"Sec. 41. Employee stock ownership credit."

(c) SECTIONS MOVED TO APPROPRIATE PLACE IN PART IV.—

(1) DESIGNATION.—The following sections of such part IV are henceforth to be designated in accordance with the following table:

Old section number:	New section number:	New subpart designation:
44A	21	A
37	22	A
44C	23	A
41	24	A
33	27	B
44H	28	B
44D	29	B
44F	30	B
31	31	C
43	32	C
32	33	C
39	34	C
45	35	C
44E	40	D
44G	41	D

(2) PLACED IN APPROPRIATE SUBPARTS.—Each section for which paragraph (1) provides a new section number is hereby moved to the appropriate place in the appropriate subpart of such part IV.

SEC. 472. UNIFORM LIMITATION ON PERSONAL NONREFUNDABLE CREDITS.

Subpart A of part IV of subchapter A of chapter 1 is amended by adding after section 24 the following new section:

"SEC. 25. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

"(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's tax liability for such taxable year.

"(b) TAX LIABILITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'tax liability' means the tax imposed by this chapter for the taxable year.

"(2) EXCEPTION FOR CERTAIN TAXES.—For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

"(A) section 56 (relating to corporate minimum tax),

"(B) subsection (m)(5)(B), (o)(2), or (q) of section 72 (relating to additional tax on certain distributions),

"(C) section 408(f) (relating to additional tax on income from certain retirement accounts),

"(D) section 531 (relating to accumulated earnings tax),

"(E) section 541 (relating to personal holding company tax),

"(F) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

"(G) section 1374 (relating to tax on certain capital gains of S corporations), and

"(H) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts).

"(c) SIMILAR RULE FOR ALTERNATIVE MINIMUM TAX FOR TAXPAYERS OTHER THAN CORPORATIONS.—

"For treatment of tax imposed by section 55 as not imposed by this chapter, see section 55(c)."

SEC. 473. UNIFORM CARRYOVER PROVISIONS FOR BUSINESS-RELATED CREDITS.

Subpart D of part IV of subchapter A of chapter 1 is amended by inserting before section 40 the following new sections:

"SEC. 38. GENERAL BUSINESS CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the business credit carryforwards carried to such taxable year,

"(2) the amount of the current year business credit, plus

"(3) the business credit carrybacks carried to such taxable year.

"(b) CURRENT YEAR BUSINESS CREDIT.—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

"(1) the investment credit determined under section 46(a),

"(2) the targeted jobs credit determined under section 51(a),

"(3) the alcohol fuels credit determined under section 40(a), plus

"(4) the employee stock ownership credit determined under section 41(a).

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the sum of—

"(A) so much of the taxpayer's net tax liability for the taxable year as does not exceed $25,000, plus

"(B) 85 percent of so much of the taxpayer's net tax liability for the taxable year as exceeds $25,000.

"(2) NET TAX LIABILITY.—For purposes of paragraph (1), the term 'net tax liability' means the tax liability (as defined in section 25(b)), reduced by the sum of the credits allowable under subparts A and B of this part.

"(3) SPECIAL RULES.—

"(A) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

"(B) CONTROLLED GROUPS.—In the case of a controlled group, the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term 'controlled group' has the meaning given to such term by section 1563(a).

"(C) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.—In the case of a person described in subparagraph (A) or (B) of section

46(e)(1), the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2)) of such amount.

"(D) ESTATES AND TRUSTS.—In the case of an estate or trust, the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

"(d) SPECIAL RULES FOR CERTAIN REGULATED COMPANIES.—In the case of any taxpayer to which section 46(f) applies, for purposes of sections 46(f), 47(a), 196(a), and 404(i) and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under section 40(a), 41(a), 46(a), or 51(a) are used in a taxable year or as a carryback or carryforward, the order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b).

"SEC. 39. CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.

"(a) IN GENERAL.—

"(1) 3 YEAR CARRYBACK AND 15 YEAR CARRYFORWARD.—If the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the 'unused credit year'), such excess (to the extent attributable to the amount of the current year business credit) shall be—

"(A) a business credit carryback to each of the 3 taxable years preceding the unused credit year, and

"(B) a business credit carryforward to each of the 15 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

"(2) AMOUNT CARRIED TO EACH YEAR.—

"(A) ENTIRE AMOUNT CARRIED TO FIRST YEAR.—The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of paragraph (1)) such credit may be carried.

"(B) AMOUNT CARRIED TO OTHER 17 YEARS.—The amount of the unused credit for the unused credit year shall be carried to each of the other 17 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

"(b) LIMITATION ON CARRYBACKS.—The amount of the unused credit which may be taken into account under section 38(a)(3) for any preceding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of—

"(1) the amounts determined under paragraphs (1) and (2) of section 38(a) for such taxable year, plus

"(2) the amounts which (by reason of this section) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

"(c) LIMITATION ON CARRYFORWARDS.—The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

"(d) TRANSITIONAL RULES.—

"(1) CARRYFORWARDS.—

"(A) IN GENERAL.—Any carryforward from an unused credit year under section 46, 50A, 53, 44E, or 44G which has not expired before the beginning of the first taxable year beginning after December 31, 1983, shall be aggregated with other such carryforwards from such unused credit year and shall be a business credit carryforward to each taxable year beginning after December 31, 1983, which is 1 of the first 15 taxable years after such unused credit year.

"(B) AMOUNT CARRIED FORWARD.—The amount carried forward under subparagraph (A) to any taxable year shall be properly reduced for any amount allowable as a credit with respect to such carryforward for any taxable year before the year to which it is being carried.

"(2) CARRYBACKS.—In determining the amount allowable as a credit for any taxable year beginning before January 1, 1984, as the result of the carryback of a general business tax credit from a taxable year beginning after December 31, 1983—

"(A) paragraph (1) of subsection (b) shall be applied as if it read as follows:

" '(1) the sum of the credits allowable for such taxable year under sections 38, 40, 44B, 44E, and 44G (as in effect before enactment of the Tax Reform Act of 1984), plus', and

"(B) for purposes of section 38(c) the net tax liability for such taxable year shall be the tax liability (as so defined in section 25(b)) reduced by the sum of the credits allowable for such taxable year under sections 33, 37, 41, 44A, 44C, 44D, 44F, and 44H (as so in effect)."

SEC. 474. TECHNICAL AND CONFORMING AMENDMENTS

(a) REFERENCES TO OLD AND NEW PROVISIONS.—Whenever in this section reference is made to an old or new section or other provision, the reference is to the provision before (in the case of "old") or after (in the case of "new") the changes made by section 471 of this Act.

(b) OLD SECTION 21.—

(1) REDESIGNATION.—Old section 21 (relating to effect of changes) is redesignated as section 15.

(2) CONFORMING AMENDMENTS.—Sections 441(f)(2)(A) and 6013(c) are each amended by striking out "21" and inserting in lieu thereof "15".

(3) TABLE OF SECTIONS.—The table of sections for part III of subchapter A of chapter 1 is amended by striking out the item relating to section 21 and inserting in lieu thereof the following:

"Sec. 15. Effect of changes."

(c) NEW SECTION 21.—New section 21 (relating to expenses for household and dependent care services necessary for gainful employment) is amended—

(1) by striking out subsection (b) and by redesignating subsections (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), and (f), respectively,

(2) by striking out "subsection (c)(1)" in subsection (a) and inserting in lieu thereof "subsection (b)(1)",

(3) by striking out "subsection (c)(2)" in subsection (a) and inserting in lieu thereof "subsection (b)(2)",

(4) by striking out "subsection (c)(1)(C)" in paragraph (2) of subsection (d) (as redesignated by paragraph (1)) and inserting in lieu thereof "subsection (b)(1)(C)",

(5) by striking out "subsection (d)(1)" in subparagraph (A) of subsection (d)(2) (as redesignated by paragraph (1)) and inserting in lieu thereof, "subsection (c)(1)",

(6) by striking out "subsection (d)(2)" in subparagraph (B) of subsection (d)(2) (as redesignated by paragraph (1)) and inserting in lieu thereof "subsection (c)(2)", and

(7) by striking out "subsection (c)(1)" in subsection (e)(5) (as redesignated by paragraph (1)) and inserting in lieu thereof "subsection (b)(1)".

(d) NEW SECTION 22.—New Section 22 (relating to the credit for the elderly and the permanently and totally disabled) is amended—

(1) by striking out "Section 37 amount" each place it appears in the text and inserting in lieu thereof "section 22 amount",

(2) by striking out the heading of subsection (c) and inserting in lieu thereof "(c) SECTION 22 AMOUNT.—", and

(3) by amending subsection (d) to read as follows:

"(d) ADJUSTED GROSS INCOME LIMITATION.—If the adjusted gross income of the taxpayer exceeds—

"(1) $7,500 in the case of a single individual,

"(2) $10,000 in the case of a joint return, or

"(3) $5,000 in the case of a married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be."

(e) NEW SECTION 23.—Subsection (b) of new section 23 (relating to residential energy credit) is amended by striking out paragraphs (5) and (6) and inserting in lieu thereof the following:

"(5) CARRYFORWARD OF UNUSED CREDIT.—

"(A) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 25(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(B) NO CARRYFORWARD TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1987.—No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987."

(f) NEW SECTION 24.—Subsection (b) of new section 24 (relating to contributions to candidates for political office) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(g) NEW SECTION 28.—

(1) New section 28 is amended—

(A) by striking out "section 44F" each place it appears and inserting in lieu thereof "section 30", and

(B) by striking out "section 44F(b)" in subsection (c)(2) and inserting in lieu thereof "section 30(b)," and

(C) by striking out "section 44F(f)" in subsection (d)(4) and inserting in lieu thereof "section 30(f)".

(2) Paragraph (2) of new section 28(d) is amended to read as follows:

"(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and section 27."

(h) NEW SECTION 29.—Paragraph (5) of new section 29(b) (relating to credit for producing fuel from a nonconventional source) is amended to read as follows:

"(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for a taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28."

(i) NEW SECTION 30.—

(1) New section 30 (relating to credit for increasing research activities) is amended—

(A) by striking out "in computing the credit under section 40 or 44B" in subsection (b)(2)(D)(iii) and inserting in lieu thereof "in determining the targeted jobs credit under section 51(a)", and

(B) by amending subparagraph (A) of subsection (g)(1) to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the credit allowed by subsection (a) for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29."

(2) NEW SECTION 30 TREATED AS CONTINUATION OF OLD SECTION 44F.—For purposes of determining—

(A) whether any excess credit under old section 44F for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30, and

(B) the period during which new section 30 is in effect,

new section 30 shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied).

(j) NEW SECTION 33.—New section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds) is amended to read as follows:

"SEC. 33. TAX WITHHELD AT SOURCE ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.

"There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations)."

(k) NEW SECTION 40.—New section 40 (relating to alcohol used as fuel) is amended—

(1) by amending subsection (a) to read as follows:

"(a) GENERAL RULE.—For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the alcohol mixture credit, plus

"(2) the alcohol credit.",

(2) by striking out "the credit allowable under this section" in subsection (c) and inserting in lieu thereof "the credit determined under this section",

(3) by striking out "credit was allowable" each place it appears in paragraph (3) of subsection (d) and inserting in lieu thereof "credit was determined",

(4) by striking out subsection (e) and redesignating subsection (f) as subsection (e),

(5) by amending paragraph (2) of subsection (e) (as redesignated by paragraph (4)) to read as follows:

"(2) NO CARRYOVERS TO YEARS AFTER 1994.—No amount may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after December 31, 1994.", and

(6) by adding at the end thereof the following new subsection:

"(f) ELECTION TO HAVE ALCOHOL FUELS CREDIT NOT APPLY.—

"(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

"(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe."

(l) NEW SECTION 41.—New section 41 (relating to employee stock ownership plan) is amended—

(1) by amending paragraph (1) of subsection (a) to read as follows:

"(1) AMOUNT OF CREDIT.—In the case of a corporation which elects to have this section apply for the taxable year and which meets the requirements of subsection (c)(1), for purposes of section 38, the amount of the employee stock ownership credit determined under this section for the taxable year is an amount equal to the amount of the credit determined under paragraph (2) for such taxable year.",

(2) by amending subsection (b) to read as follows:

"(b) CERTAIN REGULATED COMPANIES.—No credit attributable to compensation taken into account for the ratemaking purposes involved shall be determined under this section with respect to a taxpayer if—

"(1) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employee stock ownership plan which meets the requirements of section 409;

"(2) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in paragraph (1) to such employee stock ownership plan; or

"(3) any portion of the amount of such credit which results from a transfer described in paragraph (1) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

Under regulations prescribed by the Secretary, rules similar to the rules of paragraphs (4) and (7) of section 46(f) shall apply for purposes of the preceding sentence.", and

(3) by striking out "the credit allowed under this section" in subsection (c)(3) and inserting in lieu thereof "the credit determined under this section".

(m) REPEAL OF CERTAIN OLD PROVISIONS.—

(1) Old sections 38, 40, 44, and 44B are hereby repealed.

(2) Old subpart C of part IV of subchapter A of chapter 1 is hereby repealed.

(n) REDESIGNATION OF OLD SUBPARTS.—

(1) Old subparts B and D of part IV of subchapter A of chapter 1 are redesignated as subparts E and F, respectively.

(2) The subpart heading for subpart F of part IV of subchapter A of chapter 1 (as so redesignated) is amended to read as follows:

"Subpart F—Rules for Computing Targeted Jobs Credit".

(3) The table of subparts for such part IV (as amended by subsection (a) of section 471) is amended by adding at the end thereof the following:

"Subpart E. Rules for computing credit for investment in certain depreciable property.

"Subpart F. Rules for computing targeted jobs credit."

(o) INVESTMENT TAX CREDIT.—

(1) Section 46 (relating to amount of investment tax credit) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) AMOUNT OF INVESTMENT CREDIT.—For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

"(1) the regular percentage,

"(2) in the case of energy property, the energy percentage, and

"(3) in the case of that portion of the basis of any property which is attributable to qualified rehabilitation expenditures, the rehabilitation percentage.

"(b) DETERMINATION OF PERCENTAGES.—For purposes of subsection (a)—

"(1) REGULAR PERCENTAGE.—The regular percentage is 10 percent.

"(2) ENERGY PERCENTAGE.—

"(A) IN GENERAL.—The energy percentage shall be determined in accordance with the following table:

"Column A—Description	Column B—Percentage	Column C—Period	
		For the period:	
In the case of:	The energy percentage is:	Beginning on:	And ending on:
(i) GENERAL RULE.—Property not described in any of the following provisions of this column.	10 percent	Oct. 1, 1978	Dec. 31, 1982.
(ii) SOLAR WIND, OR GEOTHERMAL PROPERTY.—Property described in section 48(l)(2)(A)(ii) or 48(l)(3)(A)(viii).	A. 10 percent	Oct. 1, 1978	Dec. 31, 1979.
	B. 15 percent	Jan. 1, 1980	Dec. 31, 1985.
(iii) OCEAN THERMAL PROPERTY.—Property described in section 48(l)(3)(A)(ix)	15 percent	Jan. 1, 1980	Dec. 31, 1985.
(iv) QUALIFIED HYDROELECTRIC GENERATING PROPERTY.—Property described in section 48(l)(2)(A)(vii).	11 percent	Jan. 1, 1980	Dec. 31, 1985.

Table Continues

"Column A—Description	Column B—Percentage	Column C—Period	
In the case of:	The energy percentage is:	For the period:	
		Beginning on:	And ending on:
(v) Qualified Intercity Buses.—Property described in section 48(l)(2)(A)(ix).	*10 percent*	*Jan. 1, 1980*	*Dec. 31, 1985.*
(vi) Biomass Property.—Property described in section 48(l)(15).	*10 percent*	*Oct. 1, 1978*	*Dec. 31, 1985.*
(vii) Chlor-Alkali Electrolytic Cells.—Property described in section 48(l)(5)(M).	*10 percent*	*Jan. 1, 1980*	*Dec. 31, 1982.*

"(B) Periods for which percentage not specified.—In the case of any energy property, the energy percentage shall be zero for any period for which an energy percentage is not specified for such property under subparagraph (A) (as modified by subparagraphs (C) and (D)).

"(C) Longer period for certain long-term projects.—For the purpose of applying the energy percentage contained in clause (i) of subparagraph (A) with respect to property which is part of a project with a normal construction period of 2 years or more (within the meaning of subsection (d)(2)(A)(i)), 'December 31, 1990' shall be substituted for 'December 31, 1982' if—

"(i) before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and

"(ii) before January 1, 1986, the taxpayer has entered into binding contracts for the acquisition, construction, reconstruction, or erection of equipment specially designed for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service as part of the project upon its completion.

"(D) Longer period for certain hydroelectric generating property.—If an application has been docketed by the Federal Energy Regulatory Commission before January 1, 1986, with respect to the installation of any qualified hydroelectric generating property, for purposes of applying the energy percentage contained in clause (iv) of subparagraph (A) with respect to such property, 'December 31, 1988' shall be substituted for 'December 31, 1985'.

"(3) Special rule for certain energy property.—The regular percentage shall not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. In the case of any qualified hydroelectric generating property which is a fish passageway, the preceding sentence shall not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

"(4) Rehabilitation percentage.—

"(A) In general.—

"In the case of qualified rehabilitation expenditures with respect to a:	The rehabilitation percentage is:
30-year building	15
40-year building	20
Certified historic structure	25.

"(B) Regular and energy percentages not to apply.—The regular percentages and the energy percentages shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

"(C) Definitions.—For purpose of this paragraph—

"(i) 30-year building.—The term '30-year building' means a qualified rehabilitated building other than a 40-year building and other than a certified historic structure.

"(ii) 40-year building.—The term '40-year building' means a qualified rehabilitated building (other than a certified historic structure) which would meet the requirements of section 48(g)(1)(B) if '40' were substituted for '30' each place it appears in subparagraph (B) thereof.

"(iii) Certified historic structure.—The term 'certified historic structure' means a qualified rehabilitated building which meets the requirements of section 48(g)(3)."

(2) Subclause (II) of section 46(c)(8)(F)(ii) is amended by striking out "section 46(a)(2)(C)" and inserting in lieu thereof "subsection (b)(2)".

(3)(A) Paragraph (1) of section 46(e) is amended—

(i) by striking out "and the $25,000 amount specified under subparagraphs (A) and (B) of subsection (a)(3)", and

(ii) by striking out "such items" and inserting in lieu thereof "such qualified investment".

(B) Paragraph (2) of section 46(e) is amended by striking out "the items described therein" and inserting in lieu thereof "qualified investment".

(4)(A) Paragraphs (1) and (2) of section 46(f) are each amended by striking out "no credit shall be allowed by section 38" and inserting in lieu thereof "no credit determined under subsection (a) shall be allowed by section 38".

(B) Paragraphs (1) and (2) of section 46(f) are each amended by striking out "the credit allowable by section 38" each place it appears and inserting in lieu thereof "the credit determined under subsection (a) and allowable by section 38".

(C) Subparagraph (B) of section 46(f)(4) is amended by striking out "the credit allowed by section 38" and inserting in lieu thereof "the credit determined under subsection (a) and allowed by section 38".

(5) Paragraph (8) of section 46(f) is amended—

(A) by striking out "the credit allowable under section 38" each place it appears and inserting in lieu thereof "the credit determined under subsection (a) and allowable under section 38", and

(B) by striking out "(within the meaning of subsection (a)(7)(C))" and inserting in lieu thereof "(within the meaning of the first sentence of subsection (c)(3)(B))".

(6) Paragraph (2) of section 46(g) is amended by striking out "the limitation of subsection (a)(3)" and inserting in lieu thereof "the limitation of section 38(c)".

(7) Paragraph (1) of section 46(h) is amended—

(A) by striking out "the credit allowable to the organization under section 38" and inserting in lieu thereof "the credit determined under subsection (a) and allowable to the organization under section 38", and

(B) by striking out "the limitation contained in subsection (a)(3)" and inserting in lieu thereof "the limitation contained in section 38(c)".

(8) Paragraphs (5) and (6) of section 47(a) are each amended by striking out "under section 46(b)" and inserting in lieu thereof "under section 39".

(9) Subsection (c) of section 47 is amended by striking out "subpart A" and inserting in lieu thereof "subpart A, B, or D".

(10) Subparagraph (B) of section 48(c)(3) is amended by striking out "section 46(b)" and inserting in lieu thereof "section 39".

(11) Subparagraph (B) of section 48(d)(1) is amended by striking out "section 46(a)(6)" and inserting in lieu thereof "section 38(c)(3)(B)".

(12) Subsection (f) of section 48 is amended—

(A) by adding "and" at the end of paragraph (1),

(B) striking out ", and" at the end of paragraph (2) and inserting in lieu thereof a period, and

(C) by striking out paragraph (3).

(13) Paragraph (1) of section 48(l) is amended by striking out "section 46(a)(2)(C)" and inserting in lieu thereof "section 46(b)(2)".

(14) Subsection (m) of section 48 is amended by striking out "subsection (a)(2)" and inserting in lieu thereof "subsection (b)".

(15) Subsection (n) of section 48 (relating to requirements for allowance of employee plan percentage) is hereby repealed; except that paragraph (4) of section 48(n) of the Internal Revenue Code of 1954 (as in effect before its repeal by this paragraph) shall continue to apply in the case of any recapture under section 47(f) of such Code of a credit allowable for a taxable year beginning before January 1, 1984.

(16) Subsection (o) of section 48 (defining certain credits) is amended by striking out paragraphs (3), (4), (5), (6), and (7) and by redesignating paragraph (8) as paragraph (3).

(17) Subsection (q) of section 48 is amended—

(A) by striking out "section 46(a)(2)" each place it appears and inserting in lieu thereof "section 46(a)", and

(B) by striking out "section 46(a)(2)(B)" each place it appears and inserting in lieu therof "section 46(b)(1)".

(18) Subsection (r) of section 48 is amended by striking out "section 381(c)(23)" and inserting in lieu thereof "section 381(c)(26)".

(p) Targeted Jobs Credit.—

(1) Subsection (a) of section 51 (relating to amount of targeted jobs credit) is amended to read as follows:

"(a) Determination of Amount.—For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be the sum of—

"(1) 50 percent of the qualified first-year wages for such year, and

"(2) 25 percent of the qualified second-year wages for such year."

(2) Subsection (g) of section 51 is amended by striking out "the credit provided by section 44B" and inserting in lieu thereof "the targeted jobs credit determined under this subpart".

(3) Section 51 is amended by adding at the end thereof the following new subsection:

"(j) ELECTION TO HAVE TARGETED JOBS CREDIT NOT APPLY.—

"(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

"(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe."

(4) Subsection (a) of section 52 is amended by striking out "the credit (if any) allowable by section 44B to each such member" and inserting in lieu thereof "the credit (if any) determined under section 51(a) with respect to each such member".

(5) Subsection (b) of section 52 is amended by striking out "the credit (if any) allowable by section 44B" and inserting in lieu thereof "the credit (if any) determined under section 51(a)".

(6) Subsection (c) of section 52 is amended by striking out "credit shall be allowed under section 44B" and inserting in lieu thereof "credit shall be allowed under section 38 for any targeted jobs credit determined under this subpart".

(7) Paragraph (2) of section 52(d) is amended by striking out ", subject to section 53, a credit under section 44B" and inserting in lieu thereof ", subject to section 38(c), a credit under section 38(a)".

(8) Section 53 (relating to limitation based on amount of tax) is hereby repealed.

(9) The table of sections for old subpart D of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 53.

(q) SECTION 55.—

(1) Paragraph (1) of section 55(c) (relating to credits) is amended—

(A) by striking out "subpart A of part IV" and inserting in lieu thereof "subpart A, B, or D of part IV", and

(B) by striking out "section 33(a)" each place it appears and inserting in lieu thereof "section 27(a)".

(2) Clause (i) of section 55(c)(2)(B) is amended by striking out "section 33(a)" and inserting in lieu thereof "section 27(a)".

(3) Paragraph (3) of section 55(c) is amended to read as follows:

"(3) CARRYOVER AND CARRYBACK OF CERTAIN CREDITS.—In the case of any taxable year for which a tax is imposed by this section, for purposes of determining the amount of any carryover or carryback to any other taxable year of any credit allowable under section 23, 30 or 38, the amount of the limitation under section 25, 30(g), or 38(c) (as the case may be) shall be deemed to be—

"(A) the amount of such limitation for such taxable year (determined without regard to this paragraph), reduced (but not below zero) by

"(B) the amount of the tax imposed by this section for the taxable year, reduced by—

"(i) the amount of the credit allowable under section 27(a),

"(ii) in the case of the limitation under section 30(g), the amount of such tax taken into account under this subparagraph with respect to the limitation under section 25, and

"(iii) in the case of the limitation under section 38(c), the amount of such tax taken into account under this subparagraph with respect to limitations under sections 25 and 30(g)."

(4) Paragraph (2) of section 55(f) is amended by striking out "allowable under subpart A of part IV of this subchapter (other than under sections 31, 39, and 43)" and inserting in lieu thereof "allowable under subparts A, B, and D of part IV of this subchapter".

(r) TECHNICAL AND CONFORMING AMENDMENTS TO OTHER PROVISIONS.—

(1) SECTION 56.—

(A) Subsection (c) of section 56 (defining regular tax deduction) is amended—

(i) by striking out "subpart A of part IV other than sections 39 and 44G" and inserting in lieu thereof "subparts A, B, and D of part IV", and

(ii) by amending the last sentence to read as follows: "For purposes of the preceding sentence, the amount of the credit determined under section 38 for any taxable year shall be determined without regard to the employee stock ownership credit determined under section 41."

(B) Subparagraph (A) of section 56(e)(1) is amended by striking out clauses (i), (ii), (iii), and (iv) and inserting in lieu thereof the following:

"(i) section 27 (relating to foreign tax credit), and

"(ii) section 38 (relating to general business credit), exceed".

(2) SECTION 86.—Paragraph (1) of section 86(f) (relating to treatment as pension or annuity for certain purposes) is amended by striking out "section 43(c)(2)" and inserting in lieu thereof "section 32(c)(2)".

(3) SECTION 87.—Section 87 (relating to alcohol fuel credit included in income) is amended to read as follows:

"SEC. 87. ALCOHOL FUEL CREDIT.

"Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)."

(4) SECTION 103.—Clause (iv) of section 103(b)(6)(F) (relating to certain capital expenditures not taken into account) is amended by striking out "section 44F(b)(2)(A)" and inserting in lieu thereof "section 30(b)(2)(A)".

(5) SECTION 108.—Subparagraph (B) of section 108(b)(2) (relating to reduction of tax attributes in title 11 case or insolvency) is amended to read as follows:

"(B) RESEARCH CREDIT AND GENERAL BUSINESS CREDIT.—Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

"(i) section 30 (relating to credit for increasing research activities), or

"(ii) section 38 (relating to general business credit).

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41."

(6) SECTION 129.—

(A) Paragraph (2) of section 129(b) (relating to earned income limitation) is amended by striking out "section 44A(e)(2)" and inserting in lieu thereof "section 21(d)(2)".

(B) Paragraph (1) of section 129(e) (defining dependent care assistance) is amended by striking out "section 44A(c)(2)" and inserting in lieu thereof "section 21(b)(2)".

(C) Paragraph (2) of section 129(e) (defining earned income) is amended by striking out "section 43(c)(2)" and inserting in lieu thereof "section 32(c)(2)".

(7) SECTION 168.—

(A) Clause (i) of section 168(i)(1)(D), as added by section 208(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "subpart A of part IV" and inserting in lieu thereof "subparts A, B, and D of part IV".

(B) Clause (iii) of section 168(i)(1)(D), as added by section 208(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "under the last sentence of section 53(a)" and inserting in lieu thereof "under section 25(b)(2)".

(C) Subparagraph (A) of section 168(i)(4), as added section 208(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "subpart A of part IV of subchapter A of this chapter" and inserting in lieu thereof "section 38".

(D) Clause (i) of section 168(i)(1)(D), as added by section 209(b) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "subpart A of part IV" and inserting in lieu thereof "subparts A, B, and D of part IV".

(E) Clause (iii) of section 168(i)(1)(D), as added by section 209(b) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "under the last sentence of section 53(a)" and inserting in lieu thereof "under section 25(b)(2)".

(8) SECTION 196.—

(A) Section 196 (relating to deduction for certain unused investment credits) is umended to read as follows:

"SEC. 196. DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.

"(a) ALLOWANCE OF DEDUCTION.—If any portion of the qualified business credits determined for any taxable year has not, after the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

"(b) TAXPAYER'S DYING OR CEASING TO EXIST.—If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

"(c) QUALIFIED BUSINESS CREDITS.—For purposes of this section, the term 'qualified business credits' means—

"(1) the investment credit determined under section 46(a) (but only to the extent attributable to property the basis of which is reduced by section 48(q)),

"(2) the targeted jobs credit determined under section 51(a), and

"(3) the alcohol fuels credit determined under section 40(a).

"(d) SPECIAL RULE FOR INVESTMENT TAX CREDIT.—In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting "an amount equal to 50 percent of" for "an amount equal to".

(B) The table of sections for part VI of subchapter B of chapter 1 is amended by striking out the item relating to section 196 and inserting in lieu thereof:

"Sec. 196. Deduction for certain unused business credits."

(9) SECTION 213.—Subsection (e) of section 213 (relating to exclusion of amounts allowed for care of certain dependents) is amended by striking out "section 44A" and inserting in lieu thereof "section 21".

(10) SECTION 280C.—

(A) Section 280C (relating to certain expenses for which credits are allowable) is amended by striking out subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(B) Subsection (a) of section 280C (as so redesignated) is amended—

(i) by striking out the first sentence and inserting in lieu thereof the following: "No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit determined for the taxable year under section 51(a).", and

(ii) by striking out "SECTION 44B CREDIT" in the subsection heading and inserting in lieu thereof "TARGETED JOBS CREDIT".

(C) Subsection (b) of section 280C (as so redesignated) is amended by striking out "44H" each place it appears and inserting in lieu thereof "29".

(D) Paragraph (3) of section 280C(b) (as so redesignated) is amended—

(i) by striking out "section 44F(f)(5)" and inserting in lieu thereof "section 30(f)(5)".

(ii) by striking out "section 44F(f)(1)(B)" and inserting in lieu thereof "section 30(f)(1)(B)",

(iii) by striking out "section 44F(f)(1)" and inserting in lieu thereof "section 30(f)(1)".

(11) SECTION 381.—Subsection (c) of section 381 is amended—

(A) by striking out paragraphs (23), (24), (26), (27), and (30),

(B) by redesignating paragraphs (25), (28), and (29) as paragraphs (23), (24), and (25), respectively,

(C) by striking out "44F" each place it appears in paragraph (25) (as so redesignated) and inserting in lieu thereof "30", and

(D) by adding at the end thereof the following new paragraph:

"(26) CREDIT UNDER SECTION 38.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation."

(12) SECTION 383.—

(A) Section 383 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1976) is amended—

(i) by striking out "with respect to any unused investment credit" and all that follows and inserting in lieu thereof the following: "with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.", and

(ii) by striking out the section heading and inserting in lieu thereof the following:

"SEC. 383. SPECIAL LIMITATIONS ON UNUSED BUSINESS CREDITS, RESEARCH CREDITS, FOREIGN TAXES, AND CAPITAL LOSSES."

(B) Section 383 (as amended by the Tax Reform Act of 1976) is amended—

(i) by striking out "with respect to any unused investment credit" and all that follows and inserting in lieu thereof the following: "with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212.", and

(ii) by striking out the section heading and inserting in lieu thereof the following:

"SEC. 383. SPECIAL LIMITATIONS ON UNUSED BUSINESS CREDITS, RESEARCH CREDITS, FOREIGN TAXES, AND CAPITAL LOSSES."

(C) The table of sections for part V of subchapter C of chapter 1 is amended by striking out the item relating to section 383 and inserting in lieu thereof the following:

"Sec. 383. Special limitations on unused business credits, research credits, foreign taxes, and capital losses."

(13) Paragraph (21) of section 401(a) is amended by striking out "allowable—" and all that follows and inserting in lieu thereof "allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B)."

(14) SECTION 404.—Subsection (i) of section 404 (relating to deductibility of unused portions of employee stock ownership credit) is amended to read as follows:

"(i) DEDUCTIBILITY OF UNUSED PORTIONS OF EMPLOYEE STOCK OWNERSHIP CREDIT.—

"(1) UNUSED CREDIT CARRYOVERS.—If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39.

"(2) REDUCTIONS IN CREDIT.—There shall be allowed as a deduction (subject to the limitations provided under this section) an amount equal to any reduction of the credit allowed under section 41 resulting from a final determination of such credit to the extent such reduction is not taken into account under section 41(c)(3)."

(15) SECTION 409.—

(A) Section 409 (relating to qualifications for tax credit employee stock ownership plans), as redesignated by section 491 of this Act, is amended by striking out "44G" each place it appears in subsections (b), (g), (i), (m), and (n) and inserting in lieu thereof "41".

(B) Paragraph (1) of section 409(b), as so redesignated, is amended by striking out "48(n)(1)(A) or".

(C) Subsection (g) of section 409, as so redesignated, is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984."

(D) Subparagraph (A) of section 409(i)(1), as so redesignated, is amended by striking out "48(n)(1) or".

(E) Subsection (k) of section 409, as so redesignated, is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984."

(16) SECTION 527(g)(1).—Paragraph (1) of section 527(g) (relating to treatment of newsletter funds) is amended by striking out "section 41(c)(2)" and inserting in lieu thereof "section 24(c)(2)".

(17) SECTION 642(a)(2).—Paragraph (2) of section 642(a) (relating to credit for political contributions) is amended by striking out "section 41" and inserting in lieu thereof "section 24".

(18) SECTION 691(b).—Subsection (b) of section 691 (relating to allowance of deductions and credit) is amended by striking out "section 33" each place it appears and inserting in lieu thereof "section 27".

(19) SECTIONS 874(a) AND 882(c)(2).—Sections 874(a) and 882(c)(2) are each amended—

(A) by striking out "32" and inserting in lieu thereof "33", and

(B) by striking out "section 39" and inserting in lieu thereof "section 34".

(20) SECTION 901(a).—Subsection (a) of section 901 (relating to allowance of foreign tax credit) is amended by striking out the last sentence and inserting in lieu thereof the following: "The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b)."

(21) SECTION 904(g).—Subsection (g) of section 904 (relating to limitation on foreign tax credit) is amended to read as follows:

"(g) COORDINATION WITH NONREFUNDABLE PERSONAL CREDITS.—In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter."

(22) SECTION 936.—

(A) Clause (i)(I)(a) of section 936(h)(5)(C) is amended by striking out "section 44F(b)" and inserting in lieu thereof "section 30(b)".

(B) Clause (i)(IV)(c) of section 936(h)(5)(C) is amended—

(i) by striking out "section 44F" and inserting in lieu thereof "section 30", and

(ii) by striking out "section 44F(f)" and inserting in lieu thereof "section 30(f)".

(23) SECTION 1016(a)(21).—Paragraph (21) of section 1016(a) (relating to adjustments to basis) is amended—

(A) by striking out "section 44C(e)" and inserting in lieu thereof "section 23(e)", and

(B) by striking out "section 44C" and inserting in lieu thereof "section 23".

(24) SECTION 1033(g)(3)(A).—Subparagraph (A) of section 1033(g)(3) (relating to election to treat outdoor advertising displays as real property) is amended by striking out "the credit allowed by section 38 (relating to investment in certain depreciable property)" and inserting in lieu thereof "the investment credit determined under section 46(a)".

(25) SECTION 1351(i).—Subsection (i) of section 1351 (relating to adjustments for succeeding years) is amended—

(A) by striking out "section 33" and inserting in lieu thereof "section 27", and

(B) by striking out "section 38 (relating to investment credit)" and inserting in lieu thereof "section 38 (relating to general business credit)".

(26) SECTION 1366(f).—Paragraph (1) of section 1366(f) (relating to special rules) is amended by striking out "section 39" each

place it appears and inserting in lieu thereof "section 34".

(27) Section 1374(b).—Subsection (b) of section 1374 (relating to amount of tax imposed on certain capital gains) is amended by striking out "section 39" and inserting in lieu thereof "section 34".

(28) Section 1375(c).—Paragraph (1) of section 1375(c) (relating to disallowance of credit) is amended by striking out "section 39" and inserting in lieu thereof "section 34".

(29) Section 1451.—

(A) Chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds) is amended by striking out subchapter B and by redesignating subchapter C as subchapter B.

(B) The table of subchapters for chapter 3 is amended by striking out the items relating to subchapters B and C and inserting in lieu thereof the following:

"Subchapter B. Application of withholding provisions."

(C) The heading of chapter 3 is amended by striking out "AND TAX-FREE COVENANT BONDS".

(D) The table of chapters for subtitle A is amended by striking out "and tax-free covenant bonds" in the item relating to chapter 3.

(E) Section 12 is amended by striking out paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(F) Subsection (f) of section 164 (as in effect before its redesignation by the Social Security Amendments of 1983) is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(G) Subsection (a) of section 1441 is amended by striking out "except in the cases provided for in section 1451 and".

(H) Paragraph (3) of section 1441(c) is amended by striking out "section 1451" and inserting in lieu thereof "section 1451 (as in effect before its repeal by the Tax Reform Act of 1984)".

(I) Subsection (a) of section 1442 is amended—

(i) by striking out "or section 1451", and

(ii) by striking out "; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein".

(J) Paragraph (2) of section 6049(b) (relating to amounts not treated as interest) is amended—

(i) by adding "and" at the end of subparagraph (C),

(ii) by striking out ", and" at the end of subparagraph (D) and inserting in lieu thereof a period, and

(iii) by striking out subparagraph (E).

(K) Paragraph (16) of section 7701(a) is amended by striking out "1451,".

(30) Section 3507.—Subsections (b), (c), and (e) of section 3507 (relating to advanced payment of earned income credit) are each amended by striking out "section 43" each place it appears and inserting in lieu thereof "section 32".

(31) Section 6096(b).—Subsection (b) of section 6096 (defining income tax liability) is amended by striking out "allowable under sections 33, 37, 38, 40, 41, 42, 44, 44A, 44B, 44C, 44D, 44E, 44F, 44G, and 44H" and inserting in lieu thereof "allowable under part IV of subchapter A of chapter 1 (other than subpart C thereof)".

(32) Section 6201(a)(4).—Paragraph (4) of section 6201(a) (relating to erroneous credit under section 39 or 43) is amended—

(A) by striking out "section 39" and inserting in lieu thereof "section 34",

(B) by striking out "section 43" and inserting in lieu thereof "section 32", and

(C) by striking out "SECTION 39 OR 43" in the paragraph heading and inserting in lieu thereof "SECTION 32 OR 34".

(33) Section 6211(b).—

(A) Paragraph (1) of section 6211(b) is amended by striking out "without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451" and inserting in lieu thereof "without regard to the credit under section 33".

(B) Paragraph (4) of section 6211(b) is amended by striking out "section 39" and inserting in lieu thereof "section 34".

(34) Section 6213(h)(3).—Paragraph (3) of section 6213(h) is amended by striking out "section 39" and inserting in lieu thereof "section 32 or 34".

(35) Section 6362(c)(1).—Paragraph (1) of section 6362(c) (relating to qualified resident tax which is a percentage of the Federal tax) is amended by striking out "sections 31 and 39" and inserting in lieu thereof "sections 31 and 34".

(36) Section 6401(b).—Subsection (b) of section 6401 (relating to excessive credits treated as overpayments) is amended to read as follows:

"(b) Excessive Credits.—

"(1) In general.—If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, and D of such part IV), the amount of such excess shall be considered an overpayment.

"(2) Special rule for credit under section 33.—For purposes of paragraph (1), any credit allowed under section 33 (relating to withholding of tax on nonresident aliens and on foreign corporations) for any taxable year shall be treated as a credit allowable under subpart C of part IV of subchapter A of chapter 1 only if an election under subsection (g) or (h) of section 6013 is in effect for such taxable year."

(37) Section 6411.—

(A) So much of subsection (a) of section 6411 as precedes paragraph (2) thereof (relating to tentative carryback and refund adjustments) is amended to read as follows:

"(a) Application for Adjustment.—A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by a business credit carryback provided in section 39, by a research credit carryback provided in section 30(g)(2) or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer and shall be filed, on or after the date of filing for the return for the taxable year of the net operating loss, net capital loss, or unused business credit from which the carryback results and within a period of 12 months after such taxable year or, with respect to any portion of a research credit carryback or a business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year (or, with respect to any portion of a business credit carryback attributable to a research credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The applications shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

"(1) The amount of the net operating loss, net capital loss, unused research credit, or unused business credit;".

(B) Subsections (b) and (c) of section 6411 are each amended by striking out "unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit" each place it appears and inserting in lieu thereof "unused research credit, or unused business credit".

(38) Sections 6420(g)(2), etc.—Sections 6420(g)(2), 6421(i)(3), and 6427(i)(3) are each amended by striking out "section 39" and inserting in lieu thereof "section 34".

(39) Section 6501(p).—Section 6501 is amended by striking out subsection (p) and by redesignating subsection (q) as subsection (p).

(40) Section 6511(d)(4)(C).—Subparagraph (C) of section 6511(d)(4) (defining credit carryback) is amended to read as follows:

"(C) Credit carryback defined.—For purposes of this paragraph, the term 'credit carryback' means any business carryback under section 39 and any research credit carryback under section 30(g)(2)."

(41) Section 7871.—Subparagraph (A) of section 7871(a)(6) is amended by striking out "section 41(c)(4)" and inserting in lieu thereof "section 24(c)(4)".

(42) Section 9502(d).—Paragraph (3) of section 9502(d) (relating to transfers from the Airport and Airway Trust Fund on account of certain section 39 credits) is amended—

(A) by striking out "section 39" and inserting in lieu thereof "section 34", and

(B) by striking out "SECTION 39 CREDITS" in the heading and inserting in lieu thereof "SECTION 34 CREDITS".

(43) Section 9503(c).—Clause (ii) of section 9503(c)(2)(A) (relating to transfers from the Highway Trust Fund for certain repayments and credits) is amended by striking out "section 39" and inserting in lieu thereof "section 34".

SEC. 475. EFFECTIVE DATES.

(a) General Rule.—The amendments made by this title shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.

(b) Tax-Free Covenant Bonds.—The amendments made by subsections (j) and (r)(29) of section 474 shall not apply with respect to obligations issued before January 1, 1984.

(c) Clarification of Effect of Amendments on Investment Tax Credit.—Nothing in the amendments made by section 474(o) shall be construed as reducing the amount of any credit allowable for qualified investment in taxable years beginning before January 1, 1984.

Subtitle G—Miscellaneous Simplification Provisions

SEC. 481. PREFERRED STOCK ELIGIBLE UNDER SECTION 1244.

(a) General Rule.—Subsections (c)(1) and (d)(2) of section 1244 (relating to losses on small business stock) are each amended by striking out "common stock" and inserting in lieu thereof "stock".

(b) Effective Date.—The amendment made by subsection (a) shall apply to stock issued after the date of the enactment of this Act in taxable years ending after such date.

SEC. 482. MEDICAL CARE DEDUCTION ALLOWED FOR LODGING AWAY FROM HOME IN CERTAIN CASES.

(a) In General.—Subsection (d) of section 213 (relating to definitions for purposes of the deduction for medical, dental, etc., expenses), as amended by section 423(b), is amended by redesignating paragraphs (2), (3), (4), (5), (6), and (7) as paragraphs (3), (4), (5), (6), (7), and (8), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) Amounts paid for certain lodging away from home treated as paid for medical care.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

"(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

"(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual."

(b) Technical Amendment.—

(1) Paragraph (7) of section 213(d), as redesignated by subsection (a), is amended by striking out "paragraph (5)" and inserting in lieu thereof "paragraph (6)".

(2) Paragraph (6) of section 152(e), as amended by section 423 of this Act, is amended by striking out "section 213(d)(4)" and inserting in lieu thereof "section 213(d)(5)".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

Subtitle H—Repeal of Certain Obsolete Provisions

SEC. 491. TERMINATION OF RULES RELATING TO QUALIFIED BOND PURCHASE PLANS AND RETIREMENT BONDS WITH RESPECT TO BONDS ISSUED AFTER DECEMBER 31, 1983.

(a) Qualified Bond Purchase Plans.—Section 405 (relating to qualified bond purchase plans) is hereby repealed.

(b) Retirement Bonds.—Section 409 (relating to retirement bonds) is hereby repealed.

(c) Existing Bonds May Be Rolled Over Into Qualified Employer Plans.—

(1) Subparagraph (A) of section 405(d)(3) (as in effect before its repeal by subsection (a)) is amended to read as follows:

"(A) In general.—If—

"(i) any qualified bond is redeemed,

"(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

"(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3)."

(2) Subsection (e) of section 402 (relating to tax on lump-sum distributions) is amended by adding at the end thereof the following new paragraph:

"(5) Special rule where portion of lump-sum distribution attributable to rollover of bond purchased under qualified bond purchase plan.—If any portion of a lump-sum distribution is attributable to a transfer described in section 405(d)(3)(A)(ii) (as in effect before its repeal by the Tax Reform Act of 1984), paragraphs (1) and (3) of this subsection and paragraph (2) of subsection (a) shall not apply to such portion."

(d) Technical and Conforming Amendments.—

(1) Paragraph (2) of section 55(f) (defining regular tax) is amended by striking "409(c),".

(2) Paragraph (7) of section 62 (defining adjusted gross income) is amended—

(A) by striking out "the deductions allowed by section 404 and section 405(c)" and inserting in lieu thereof "the deduction allowed by section 404", and

(B) by striking out "ANNUITY, AND BOND PURCHASE" in the heading and inserting in lieu thereof "AND ANNUITY".

(3) Paragraph (1) of section 72(o) is amended by striking out "402, 403, and 405" and inserting in lieu thereof "402 and 403".

(4) Paragraph (4) of section 72(o) is amended by striking out "408(d)(3), and 409(b)(3)(C)" and inserting in lieu thereof "and 408(d)(3)".

(5) Subparagraph (D) of section 172(d)(4) is amended by striking out "or section 405(c)".

(6) Paragraph (2) of section 219(d) is amended by striking out "405(d)(3), 408(d)(3), or 409(b)(3)(C)" and inserting in lieu thereof "or 408(d)(3)".

(7) Paragraph (1) of section 219(e) is amended by striking out the last sentence.

(8) Paragraph (3) of section 219(e) is amended by striking out subparagraph (C), by adding "and" at the end of subparagraph (B) and by redesignating subparagraph (D) as subparagraph (C).

(9) Clause (iv) of section 402(a)(5)(D) is amended by striking out subclause (III) and by redesignating subclauses (IV) and (V) as subclauses (III) and (IV), respectively.

(10) Clause (i) of section 402(a)(5)(F), as amended by this Act, is amended by striking out ", (II), or (III)" and inserting in lieu thereof "or (II)".

(11) Clause (ii) of section 402(a)(5)(F), as amended by this Act, is amended by striking out "(IV) or (V)" and inserting in lieu thereof "(III) or (IV)".

(12) The last sentence of section 403(b)(1) is amended by striking out "or 409(b)(3)(C)".

(13) Subsection (a) of section 406 is amended by striking out ", an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)" and inserting in lieu thereof "or an annuity plan described in section 403(a)".

(14) Paragraph (3) of section 406(a) is amended by striking out ", 403(a), or 405(a)" and inserting in lieu thereof "or 403(a)".

(15) Subsection (d) of section 406 is amended—

(A) by striking out "sections 404 and 405(c)" and inserting in lieu thereof "section 404",

(B) by striking out "annuity, or bond purchase" and inserting in lieu thereof "or annuity", and

(C) by striking out "(or section 405(c))" in paragraph (2) thereof.

(16) Paragraph (1) of section 407(a) is amended by striking out ", an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)" and inserting in lieu thereof "or an annuity plan described in section 403(a)".

(17) Subparagraph (B) of section 407(a)(1) is amended by striking out ", 403(a), or 405(a)" and inserting in lieu thereof "or 403(a)".

(18) Subsection (d) of section 407 is amended—

(A) by striking out "sections 404 and 405(c)" and inserting in lieu thereof "section 404",

(B) by striking out "annuity, or bond purchase" and inserting in lieu thereof "or annuity", and

(C) by striking out "(or section 405(c))" in paragraph (2) thereof.

(19) Paragraph (1) of section 408(a) is amended by striking out "403(b)(8), 405(d)(3), or 409(b)(3)(C)" and inserting in lieu thereof "or 403(b)(8)".

(20) Clause (i) of section 408(d)(3)(A) is amended by striking out "or retirement bond".

(21) Subparagraph (B) of section 408(d)(3) is amended by striking out ", individual retirement annuity, or a retirement bond" and inserting in lieu thereof "or an individual retirement annuity".

(22) Clause (ii) of section 408(d)(3)(D) (relating to partial rollovers) is amended by striking out "bond,".

(23) Paragraph (6) of section 408(d) is amended—

(A) by striking out ", individual retirement annuity, or retirement bond" and inserting in lieu thereof "or an individual retirement annuity", and

(B) by striking out ", annuity, or bond" and inserting in lieu thereof "or annuity".

(24) Subparagraph (E) of section 408(k)(3) is amended by striking out ", 403(a), or 405(a)" and inserting in lieu thereof "or 403(a)".

(25) Paragraph (2) of section 412(a) is amended by striking out "or 405(a)".

(26) Subsection (h) of section 414 is amended by striking out "or 405(a)".

(27) Subsection (l) of section 414 is amended by striking out "or 405".

(28) Paragraph (2) of section 415(a) is amended by striking out subparagraph (D), by striking out "or" at the end of subparagraph (C), by adding "or" at the end of subparagraph (B), and by striking out "405(a),".

(29) Subparagraph (A) of section 415(b)(2) is amended by striking out "408(d)(3), and 409(b)(3)(C)" and inserting in lieu thereof "and 408(d)(3)".

(30) Subparagraph (B) of section 415(b)(2) is amended by striking out "408(d)(3) and 409(b)(3)(C)" and inserting in lieu thereof "and 408(d)(3)".

(31) Paragraph (2) of section 415(c) is amended by striking out "405(d)(3), 408(d)(3), and 409(b)(3)(C)" and inserting in lieu thereof "and 408(d)(3)".

(32) Paragraph (1) of section 415(k) is amended by striking out subparagraphs (C) and (H), by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively, by striking out ", or" at the end of subparagraph (F) (as so redesignated) and inserting in lieu thereof a period, and by adding "or" at the end of subparagraph (E) (as so redesignated).

(33) Paragraph (2) of section 457(e) is amended by striking out subparagraph (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(34) Subsection (e) of section 2039 is amended—

(A) by striking out paragraph (3),

(B) by striking out ", or" at the end of paragraph (2) and inserting in lieu thereof a period,

(C) by adding "or" at the end of paragraph (1),

(D) by striking out "405(d)(3), 408(d)(3), or 409(b)(3)(C)" and inserting in lieu thereof "or 408(d)(3)", and

(E) by striking out ", annuity, or bond" each place it appears and inserting in lieu thereof "or annuity".

(35) Paragraph (5) of section 2517(a) is amended by striking out ", an individual retirement annuity described in section 408(b), or a retirement bond described in section 409(a)" and inserting in lieu thereof "or an individual retirement annuity described in section 408(b)".

(36) Paragraph (5) of section 3121(a) is amended by striking out subparagraph (C) and by redesignating subparagraphs (D) through (G) as subparagraphs (C) through (F), respectively.

(37) Paragraph (5) of section 3306(b) is amended by striking out subparagraph (C) and by redesignating subparagraphs (D) through (G) as subparagraphs (C) through (F), respectively.

(38) Paragraph (12) of section 3401(a) is amended by striking out subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(39) Subsection (e) of section 209 of the Social Security Act is amended by inserting "(as in effect before the enactment of the Tax Reform Act of 1984)" after "Internal Revenue Code of 1954" in paragraph (4) thereof.

(40) Subsection (a) of section 4972 is amended by striking out the last sentence and inserting in lieu thereof "This section applies only to plans which include a trust described in section 401(a) or which are described in section 403(a)."

(41) Subsection (a) of section 4973 is amended—

(A) by striking out paragraph (3),

(B) by striking out "or" at the end of paragraph (2),

(C) by adding "or" at the end of paragraph (1),

(D) by striking out ", annuities, or bonds" and inserting in lieu thereof "or annuities", and

(E) by striking out ", annuity, or bond" and inserting in lieu thereof "or annuity".

(42) Subparagraph (A) of section 4973(b)(1) is amended by striking out "408(d)(3), and 409(b)(3)(C)" and inserting in lieu thereof "and 408(d)(3)".

(43) The last sentence of section 4973(b) is amended by striking out ", individual retirement annuity, or bond" and inserting in lieu thereof "or the individual retirement annuity".

(44) Paragraph (1) of section 4973(c) is amended by striking out ", 408(d)(3)(A)(iii), or 409(b)(3)(C)" and inserting in lieu thereof "or 408(d)(3)(A)(iii)".

(45) The last sentence of section 4975(d) is amended by striking out ", individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)" and inserting in lieu thereof "or an individual retirement annuity (as defined in section 408)".

(46) Paragraph (1) of section 4975(e) is amended—

(A) by striking out "or 405(a)",

(B) by striking out "or a retirement bond described in section 409",

(C) by striking out "annuity, or bond" and inserting in lieu thereof "or annuity", and

(D) by striking out "account, or bond" and inserting in lieu thereof "or account".

(47) Section 6047 is amended by striking out subsection (c) and by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(48) Subsection (e) of section 6058 is amended by striking out paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(49) Clause (i) of section 6104(a)(1)(B) is amended by striking out ", 403(a), or 405(a)" and inserting in lieu thereof "or 403(a)".

(50) Subsection (f) of section 6652 is amended by striking out "and bond purchase".

(51) Section 7207 is amended by striking out "or (c)".

(52) Subsection (c) of section 7476 is amended by striking out paragraph (3), by striking out ", or" at the end of paragraph (2) and inserting in lieu thereof a period, and by adding ", or" at the end of paragraph (1).

(53) Paragraph (37) of section 7701(a) is amended by striking out subparagraph (C), by striking out ", and" at the end of subparagraph (B) and inserting in lieu thereof a period, and by adding "and" at the end of subparagraph (A).

(54) The table of sections of subpart A of part I of subchapter D of chapter 1 is amended by striking out the items relating to sections 405 and 409.

(55) The section heading for section 4973 is amended by striking out "CERTAIN INDIVIDUAL RETIREMENT ANNUITIES, AND CERTAIN RETIREMENT BONDS" and inserting in lieu thereof "AND CERTAIN INDIVIDUAL RETIREMENT ANNUITIES".

(56) The table of sections for chapter 43 is amended by striking out "certain individual retirement annuities, and certain retirement bonds" in the item relating to section 4973 and inserting in lieu thereof "and certain individual retirement annuities".

(57) The section heading for section 6047 is amended by striking out "AND BOND PURCHASE".

(58) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking out "and bond purchase" in the item relating to section 6047.

(59) The first sentence of section 3107 of title 31, United States Code, is amended by inserting before the period ", as in effect before the enactment of the Tax Reform Act of 1984".

(e) SECTION 409A REDESIGNATED AS SECTION 409.—

(1) The section heading for section 409A is amended by striking out "SEC. 409a." and inserting in lieu thereof "SEC. 409.".

(2) Subsection (c)(1)(A)(i) of old section 44G is amended by striking out "section 409A" and inserting in lieu thereof "section 409".

(3) Paragraph (6) of old section 44G(c) is amended by striking out "section 409A(l)" and inserting in lieu thereof "section 409(l)".

(4) Paragraph (22) of section 401(a) is amended by striking out "section 409A" and inserting in lieu thereof "section 409".

(5) Paragraph (23) of section 401(a) is amended by striking out "section 409A(h)" each place it appears and inserting in lieu thereof "section 409(h)".

(6) Clause (ii) of section 415(c)(6)(B) is amended by striking out "section 409A" and inserting in lieu thereof "section 409".

(7) Paragraph (7) of section 4975(e) is amended—

(A) by striking out "section 409A(h)" and inserting in lieu thereof "section 409(h)",

(B) by striking out "section 409A(e)(4)" and inserting in lieu thereof "section 409(e)(4)", and

(C) by striking out "section 409A(e)" and inserting in lieu thereof "section 409(e)".

(8) Paragraph (8) of section 4975(e) is amended by striking out "section 409A(l)" and inserting in lieu thereof "section 409(l)".

(9) Paragraphs (1) and (3) of section 6699(a) are each amended by striking out "section 409A" and inserting in lieu thereof "section 409".

(10) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by striking out "Sec. 409A" and inserting in lieu thereof "Sec. 409".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments and repeals made by subsections (a), (b), and (d) shall apply to obligations issued after December 31, 1983.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to redemptions after the date of the enactment of this Act in taxable years ending after such date.

(3) SUBSECTION (e).—The amendments made by subsection (e) shall take effect on January 1, 1984.

(4) BONDS UNDER QUALIFIED BOND PURCHASE PLANS MAY BE REDEEMED AT ANY TIME.—Notwithstanding—

(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section), and

(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act in the same manner as if the individual redeeming the bond had attained age 59½.

(5) TREATMENT OF TAX IMPOSED UNDER SECTION 409(c).—For purposes of section 26(b) of the Internal Revenue Code of 1954 (as amended by this Act), any tax imposed by section 409(c) of such Code (as in effect before its repeal by this section) shall be treated as a tax imposed by section 408(f) of such Code.

SEC. 492. REPEAL OF RULES RELATING TO GAINS FROM DISPOSITION OF PROPERTY USED IN FARMING WHERE FARM LOSSES OFFSET NONFARM INCOME.

(a) IN GENERAL.—Section 1251 (relating to gain from disposition of property used in farming where farm losses offset nonfarm income) is hereby repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 170.—

(A) The second sentence of section 170(e)(1) (relating to certain contributions of ordinary income and capital gain property) is amended by striking out "1251(c),".

(B) Subparagraph (C) of section 170(e)(3) (relating to special rule for certain contributions of inventory and other property) is amended by striking out "1251,".

(2) SECTION 341.—Paragraph (12) of section 341(e) (relating to nonapplication of section 1245(a)) is amended by striking out "1251(c),".

(3) SECTION 453b.—The second sentence of section 453B(d)(2) (relating to liquidations to which section 337 applies) is amended by striking out "1251(c),".

(4) SECTION 751.—The second sentence of subsection (c) of section 751 (defining unrealized receivables) is amended—

(A) by striking out "farm recapture property (as defined in section 1251(e)(1)),", and

(B) by striking out "1251(c),".

(5) SECTION 1252.—The second sentence of section 1252(a)(1) (relating to gains from

disposition of farm land) is amended by striking out ", except that this section shall not apply to the extent section 1251 applies to such gain".

(c) Clerical Amendment.—The table of sections for part IV of subchapter P of chapter 1 is amended by striking out the item relating to section 1251.

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

TITLE V—EMPLOYEE BENEFIT PROVISIONS

Subtitle A—Welfare Benefit Plans

SEC. 511. TREATMENT OF FUNDED WELFARE BENEFIT PLANS.

(a) General Rule.—Part I of subchapter D of chapter 1 (relating to pension, profit sharing, stock bonus plans, etc.) is amended by adding at the end thereof the following new subpart:

"Subpart D—Treatment of Welfare Benefit Funds

"Sec. 419. Treatment of funded welfare benefit plans.

"Sec. 419A. Qualified asset account; limitation on additions to account.

"SEC. 419. TREATMENT OF FUNDED WELFARE BENEFIT PLANS.

"(a) General Rule.—Contributions paid or accrued by an employer to a welfare benefit fund—

"(1) shall not be deductible under section 162 or 212, but

"(2) if they testify the requirements of either of such sections, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

"(b) Limitation.—The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

"(c) Qualified Cost.—For purposes of this section—

"(1) In general.—Except as otherwise provided in this subsection, the term 'qualified cost' means, with respect to any taxable year, the sum of—

"(A) the qualified direct cost for such taxable year, and

"(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

"(2) Reduction for funds after-tax income.—In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

"(3) Qualified direct cost.—

"(A) In general.—The term 'qualified direct cost' means, with respect to any taxable year, the aggregate amount which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

"(i) such benefits were provided directly by the employer, and

"(ii) the employer used the cash receipts and disbursements method of accounting.

"(B) Time when benefits provided.—For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

"(C) 60-month amortization of child care facilities.—

"(i) In general.—In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

"(ii) Child care facility.—The term 'child care facility' means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

"(I) not of a character subject to depreciation; or

"(II) located outside the United States.

"(4) After-tax income.—

"(A) In general.—The term 'after-tax income' means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

"(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

"(ii) the tax imposed by this chapter on the fund for the taxable year.

"(B) Treatment of certain amounts.—In determining the gross income of any welfare benefit fund—

"(i) contributions and other amounts received from employees shall be taken into account, but

"(ii) contributions from the employer shall not be taken into account.

"(5) Item only taken into account once.—No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

"(d) Carryover of Excess Contributions.—If—

"(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds.

"(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

"(e) Welfare Benefit Fund.—For purposes of this section—

"(1) In general.—The term 'welfare benefit fund' means any fund—

"(A) which is part of a plan of an employer, and

"(B) through which the employer provides welfare benefits to employees or their beneficiaries.

"(2) Welfare benefit.—The term 'welfare benefit' means any benefit other than a benefit with respect to which—

"(A) section 83(h) applies,

"(B) section 404 applies (determined without regard to section 404(b)(2)),

"(C) section 404A applies, or

"(D) an election under section 463 applies.

"(3) Fund.—The term 'fund' means—

"(A) any organization described in paragraph (7), (9), (17), or (20) of section 501(c),

"(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

"(C) to the extent provided in regulations, any account held for an employer by any person.

"(f) Method of Contributions, Etc., Having the Effect of a Plan.—If—

"(1) there is no plan, but

"(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

"(g) Extension to Plans for Independent Contractors.—If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

"(1) this section shall apply as if there were such a plan, and

"(2) any reference in this section to the employer shall be treated as a reference to the person for whom services are provided, and any reference in this section to an employee shall be treated as a reference to the person providing the services.

"Sec. 419A. QUALIFIED ASSET ACCOUNT; LIMITATION ON ADDITIONS TO ACCOUNT.

"(a) General Rule.—For purposes of this subpart, the term 'qualified asset account' means any account consisting of assets set aside to provide for the payment of—

"(1) disability benefits,

"(2) medical benefits,

"(3) SUB or severance pay benefits, or

"(4) life insurance benefit.

"(b) Limitation on Additions to Account.—No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

"(c) Account Limit.—For purposes of this section—

"(1) In general.—Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

"(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

"(B) administrative costs with respect to such claims.

"(2) Additional reserve for post-retirement medical and life insurance benefits.—The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate necessary for—

"(A) medical benefits provided for retired employees (determined on the basis of current medical costs), or

"(B) life insurance benefits provided to retired employees

"(3) Amount taken into account for SUB or severence pay benefits.—

"(A) In general.—The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the sum of—

"(i) the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund), and

"(ii) the average annual administrative costs during such 2 preceding taxable years allocable to SUB or severance pay benefits.

"(B) Special rule for certain new plans.—In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

"(4) Limitation on amounts to be taken into account.—

"(A) Disability benefits.—For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

"(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

"(ii) the limitation in effect under section 415(b)(1)(A).

"(B) Limitation on SUB or severance pay benefits.—For purposes of paragraph (3), any SUB or severance pay benefit payable to any individual shall not be taken into account to the extent such benefit is payable at an annual rate in excess of 150 percent of the limitation in effect under section 415(c)(1)(A).

"(5) Special limitation where no actuarial certification.—

"(A) In general.—Unless there is an actuarial certification of the account limit determined under paragraph (1) for any taxable year, the account limit for such taxable year shall not exceed the sum of the safe harbor limits for such taxable year.

"(B) Safe harbor limits.—

"(i) Short-term disability benefits.—In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the sum of—

"(I) the qualified direct costs for the immediately preceding taxable year with respect to such benefits, and

"(II) the administrative costs for such preceding taxable year allocable to such benefits.

"(ii) Medical benefits.—In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the sum of—

"(I) the qualified direct costs for the immediately preceding taxable year with respect to medical benefits, and

"(II) the administrative costs for such preceding taxable year allocable to medical benefits.

"(iii) SUB or severance pay benefits.—In the case of SUB or severance pay benefits, the safe harbor limit for any taxable year is the amount determined under paragraph (3).

"(iv) Long-term disability or life insurance benefits.—In the case of any long-term disability benefit or life insurance benefit, the safe harbor limit for any taxable year shall be the amount prescribed by regulations.

"(d) Requirement of Separate Accounts for Post-Retirement Medical or Life Insurance Benefits Provided to Key Employees.—

"(1) In general.—In the case of any employee who is a key employee—

"(A) a separate account shall be established for any medical benefits or life insurance benefits provided with respect to such employee after retirement, and

"(B) medical benefits and life insurance benefits provided with respect to such employee after retirement may only be paid from such separate account.

"(2) Coordination with section 415.—For purposes of section 415, any amount attributable to medical benefits allocated to an account established under paragraph (1) shall be treated as an annual addition to a defined contribution plan for purposes of section 415(c).

"(3) Key employee.—For purposes of this section, the term 'key employee' means any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i).

"(e) Special Limitations on Reserves for Medical Benefits or Life Insurance Benefits Provided to Retired Employees.—

"(1) Benefits must be nondiscriminatory.—No reserve may be taken into account under subsection (c)(2) for medical benefits or life insurance benefits provided to retired employees unless the plan meets the requirements of section 505(b)(1) with respect to such benefits.

"(2) Taxable life insurance benefits not taken into account.—No life insurance benefit may be taken into account under subsection (c)(2) to the extent—

"(A) such benefit is includible in gross income under section 79, or

"(B) such benefit would be includible in gross income under section 101(b) (determined by substituting '$50,000' for '$5,000').

"(f) Definitions and Other Special Rules.—For purposes of this section—

"(1) SUB or severance pay benefit.—The term 'SUB or severance pay benefit' means—

"(A) any supplemental unemployment compensation benefit (as defined in section 501(c)(17)(D)), and

"(B) any severance pay benefit.

"(2) Medical benefit.—The term 'medical benefit' means a benefit which consists of the providing (directly or through insurance) of medical care (as defined in section 213(d)).

"(3) Life insurance benefit.—The term 'life insurance benefit' includes any other death benefit.

"(4) Valuation.—For purposes of this section, the amount of the qualified asset account shall be the value of the assets in such account (as determined under regulations).

"(5) Higher limit in case of collectively bargained plans.—Not later than July 1, 1985, the Secretary shall by regulations provide for special account limits in the case of any qualified asset account under a welfare benefit fund established under a collective bargaining agreement.

"(6) Exception for 10-or-more employer plans.—

"(A) In general.—This subpart shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan. The preceding sentence shall not apply to any plan which maintains experience-rating arrangements with respect to individual employers.

"(B) 10 or more employer plan.—For purposes of subparagraph (A), the term '10 or more employer plan' means a plan—

"(i) to which more than 1 employer contributes, and

"(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

"(7) Adjustments for existing excess reserves.—

"(A) Increase in account limit.—The account limit for any of the first 4 taxable years to which this section applies shall be increased by the applicable percentage of any existing excess reserves.

"(B) Applicable percentage.—For purposes of subparagraph (A)—

"In the case of:	The applicable percentage is:
The first taxable year to which this section applies.	80
The second taxable year to which this section applies.	60
The third taxable year to which this section applies.	40
The fourth taxable year to which this section applies.	20.

"(C) Existing excess reserve.—For purposes of this paragraph, the term 'existing excess reserve' means the excess (if any) of—

"(i) the amount of assets set aside for purposes described in subsection (a) as of the close of the first taxable year ending after the date of the enactment of the Tax Reform Act of 1984, over

"(ii) the account limit which would have applied under this section to such taxable year if this section had applied to such taxable year.

"(g) Employer Taxed on Income of Welfare Benefit Fund in Certain Cases.—

"(1) In general.—In the case of any welfare benefit fund which is not an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the employer shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year ending within the employer's taxable year.

"(2) Deemed unrelated income.—For purposes of paragraph (1), the deemed unrelated income of any welfare benefit fund referred to in paragraph (1) shall be the amount which would have been its unrelated business taxable income under section 512(a)(3) if such fund were an organization described in paragraph (7), (9), (17), or (20) of section 501(c).

"(h) Aggregation Rules.—For purposes of this subpart—

"(1) Aggregation of funds.—At the election of the employer, 2 or more welfare benefit funds of such employer may be treated as 1 fund.

"(2) Treatment of related employers.—Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply.

"(i) Regulations.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subpart. Such regulations may provide that the plan administrator of any welfare benefit fund which is part of a plan to which more than 1 employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of this section."

(b) Amendments to Tax on Unrelated Business Income.—

(1) Extension of section 512(a)(3) to supplemental unemployment benefit and group legal trusts.—

(A) Paragraph (3) of section 512(a) (relating to special rules applicable to organizations described in section 501(c) (7) or (9)) is amended by striking out "section 501(c) (7) or (9)" each place it appears (including in the paragraph heading) and inserting in lieu thereof "paragraph (7), (9), (17), or (20) of section 501(c)".

(B) Clause (ii) of section 512(a)(3)(B) is amended by striking out "section 501(c)(9)" and inserting lieu thereof "paragraph (9), (17), or (20) of section 501(c)".

(2) Limitation on deduction for set-aside.—Paragraph (3) of section 512(a) is amended by adding at the end thereof the following new subparagraph:

"(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c).—

"(i) In general.—In the case of any organization described in paragraph (9), (17), or (20) of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A(c) for the taxable year (not taking into account any reserve for medical benefits provided to retired employees).

"(ii) No set aside for facilities.—No set aside for assets used in the provision of benefits described in clause (ii) of subparagraph (B) shall be taken into account.

"(iii) Treatment of existing reserves for medical benefits or life insurance benefits provided to retired employees.—

"(I) Clause (i) shall not apply to any income attributable to an existing reserve for medical or life insurance benefits for retired employees.

"(II) For purposes of subclause (I), the term 'existing reserve for medical benefits or life insurance benefits for retired employees' means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of providing medical benefits or life insurance benefits to retired employees.

"(III) All payments during taxable years to which this subparagraph applies of medical benefits or life insurance benefits to retired employees shall be charged against the reserve referred to in subclause (II).

"(iv) TREATMENT OF TAX EXEMPT ORGANIZATIONS.—This paragraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made."

(c) TAX ON CERTAIN FUNDED WELFARE BENEFIT PLANS.—

(1) IN GENERAL.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 4976. TAXES WITH RESPECT TO FUNDED WELFARE BENEFIT PLANS.

"(a) GENERAL RULE.—If—

"(1) an employer maintains a welfare benefit fund, and

"(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

"(b) DISQUALIFIED BENEFIT.—For purposes of subsection (a), the term 'disqualified benefit' means—

"(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

"(2) any medical or life insurance benefit provided with respect to a retired employee unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

"(3) any portion of such fund reverting to the benefit of the employer.

"(c) DEFINITIONS.—For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1."

(2) CONFORMING AMENDMENT.—The table of sections for chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new item:

"Sec. 4977. Taxes with respect to funded welfare benefit plans."

(d) CLERICAL AMENDMENT.—The table of subparts for part I of subchapter D of chapter 1 is amended by adding at the end thereof the following new item:

"Subpart D. Treatment of welfare benefit funds."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

(A) between employee representatives and 1 or more employers, and

(B) in effect on July 1, 1985 (or ratified on or before such date),

the amendments made by this section and section 514 shall not apply to years beginning before the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after July 1, 1985).

(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire a facility.

(5) BINDING CONTRACT EXCEPTION TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility—

(A) which is acquired pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

(B) any facility the construction of which began before June 22, 1984.

SEC. 512. TREATMENT OF UNFUNDED DEFERRED BENEFITS.

(a) GENERAL RULE.—Subsection (b) of section 404 (relating to method of contributions, etc., having the effect of a plan) is amended to read as follows:

"(b) METHOD OF CONTRIBUTIONS, ETC., HAVING THE EFFECT OF A PLAN; UNFUNDED DEFERRED BENEFITS.—

"(1) METHOD OF CONTRIBUTIONS, ETC., HAVING THE EFFECT OF A PLAN.—If—

"(A) there is no plan, but

"(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply if there were such a plan.

"(2) PLANS PROVIDING UNFUNDED DEFERRED BENEFITS.—

"(A) IN GENERAL.—For purposes of this section, any plan providing for deferred benefits (other than compensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

"(B) EXCEPTION FOR CERTAIN BENEFITS.—Subparagraph (A) shall not apply to—

"(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

"(ii) to any benefit with respect to which an election under section 463 applies."

(b) CROSS REFERENCE.—Subsection (j) of section 162 (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(3) For special rules relating to—

"(A) funded welfare benefit plans, see section 419, and

"(B) deferred compensation and other deferred benefits, see section 404."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act in taxable years ending after such date.

(2) EXCEPTION FOR CERTAIN EXTENDED VACATION PAY PLANS.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

(A) between employee representatives and 1 or more employers, and

(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 513. ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT STATUS OF CERTAIN ORGANIZATIONS.

(a) GENERAL RULE.—Part I of subchapter F of chapter 1 (relating to exempt organizations) is amended by adding at the end thereof the following new section:

"SEC. 505. ADDITIONAL REQUIREMENTS FOR ORGANIZATIONS DESCRIBED IN PARAGRAPH (9), (17), OR (20) OF SECTION 501(c).

"(a) CERTAIN REQUIREMENTS MUST BE MET IN THE CASE OF ORGANIZATIONS DESCRIBED IN PARAGRAPH (9), (17), OR (20) OF SECTION 501(c).—

"(1) VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATIONS, ETC.—An organization described in paragraph (9) or (20) of subsection (c) of section 501 which is part of a plan of an employer shall not be exempt from tax under section 501(a) unless such plan meets the requirements of subsection (b) of this section.

"(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to 1 or more collective bargaining agreements between 1 or more employee organizations and 1 or more employers.

"(b) NONDISCRIMINATION REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a plan meets the requirements of this subsection only if—

"(A) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and

"(B) in the case of each class of benefits, such benefits for not discriminate in favor of employees who are highly compensated employees.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

"(2) Exclusion of certain employees.—For purposes of paragraph (1), there may be excluded from consideration—

"(A) employees who have not completed 3 years of service, "(B) employees who have not attained age 21,

"(C) seasonal employees or less than half-time employees,

"(D) Employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

"(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

"(3) Application of subsection where other nondiscrimination rules provided.—In the case of any benefit for which a provision of this chapter other than this subsection provides nondiscrimination rules, paragraph (1) shall not apply but the requirements of this subsection shall be met only if the nondiscrimination rules so provided are satisfied with respect to such benefit.

"(4) Aggregation rules.—For purposes of this subsection—

"(A) Aggregation of plans.—At the election of the employer, 2 or more plans of such employer may be treated as 1 plan.

"(B) Treatment of related employers.—Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply. For purposes of the preceding sentence, section 414(n) shall be applied without regard to paragraph (5).

"(5) Highly compensated individual.—For purposes of this subsection, the term 'highly compensated individual' has the meaning given such term by section 105(h)(5). For purposes of the preceding sentence, section 105(h)(5) shall be applied by substituting '10 percent' for '25 percent'.

"(c) Requirement That Organization Notify Secretary That it is Applying for Tax-Exempt Status.—

"(1) In general.—An organization shall not be treated as an organization described in paragraph (9), (17), or (20) of section 501(c)—

"(A) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

"(B) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

"(2) Special rule for existing organizations.—In the case of any organization in existence on the date of the enactment of the Tax Reform Act of 1984, the time for giving notice under paragraph (1) shall not expire before the date 1 year after such date of the enactment."

(b) Clerical Amendment.—The table of sections for part I of subchapter F of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c)."

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to years beginning after December 31, 1984.

(2) Treatment of certain benefits in pay status as of January 1, 1985.—For purposes of determining whether a plan meets the requirements of section 505(b) of the Internal Revenue Code of 1954 (as added by subsection (a)), there may (at the election of the employer) be excluded from consideration all disability or severance payments payable to individuals who are in pay status as of January 1, 1985. The preceding sentence shall not apply to any payment to the extent such payment is increased by any plan amendment adopted after June 22, 1984.

Subtitle B—Provisions Relating to Pension Plans

SEC. 521. REQUIRED DISTRIBUTIONS.

(a) Qualified Pension Plans.—

(1) In general.—Paragraph (9) of section 401(a) (relating to required distributions), as in effect before the amendments made by section 242 of the Tax Equity and Fiscal Responsibility Act of 1982, is amended to read as follows:

"(9) Required distributions.—

"(A) In general.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

"(i) will be distributed to such employee not later than the required beginning date, or

"(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

"(B) Required distribution where employee dies before entire interest is distributed.—

"(i) Where distributions have begun under subparagraph (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

"(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

"(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

"(ii) 5-year rule for other cases.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

"(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary.—If—

"(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

"(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

"(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

"(iv) Special rule for surviving spouse of employee.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

"(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70½, and

"(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

"(C) Required beginning date.—For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the later of—

"(i) the calendar year in which the employee attains age 70½, or

"(ii) the calendar year in which the employee retires.

Except as provided in section 409(A)d), clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains 70½.

"(D) Life expectancy.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

"(E) Designated beneficiary.—For purposes of this paragraph, the term 'designated beneficiary' means any individual designated as a beneficiary by the employee.

"(F) Treatment of payments to children.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations)."

(2) Repeal of section 242.—Section 242 of the Tax Equity and Fiscal Responsibility Act of 1982 is hereby repealed.

(b) Individual Retirement Accounts and Annuities.—

(1) Individual retirement accounts.—Section 408(a) (relating to individual retirement accounts) is amended by striking out paragraphs (6) and (7) and inserting in lieu thereof the following new paragraph:

"(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) (relating to required distributions) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained."

(2) Individual retirement annuities.—Section 408(b) (relating to individual retirement annuities) is amended by striking out paragraphs (3) and (4), by redesignating paragraph (5) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) (relating to required distributions) shall apply to the distribution of the entire interest of the owner."

(c) Special Rule for Custodial Accounts.—Paragraph (7) of section 403(b) (relating to custodial accounts for regulated investment company stock) is amended by adding at the end thereof the following new subparagraph:

"(D) Distribution requirements.—For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract."

(d) Effective Dates.—

(1) In general.—The amendments made by this section shall apply to years beginning after December 31, 1984.

(2) Repeal of section 242 of TEFRA..—The amendment made by subsection (a)(2) shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982.

(3) Transition rule.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1954, as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect before the amendments made by this Act).

(4) Special rule for governmental plans.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1954), paragraph (1) shall be applied by substituting "1986" for "1984".

(5) Special rule for collective bargaining agreements.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 522. ROLLOVER OF CERTAIN PARTIAL DISTRIBUTIONS PERMITTED.

(a) General Rule.—

(1) Qualified trusts.—Clause (i) of section 402(a)(5)(A) (relating to rollover amounts) is amended to read as follows—

"(i) any portion of the balance to the credit of an employee in a qualified trust is paid to him,".

(2) Qualified annuities.—Clause (i) of section 403(a)(4)(A) (relating to rollover amounts) is amended to read as follows:

"(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,".

(3) Section 403(b) annuities.—Clause (i) of section 403(b)(8)(A) (relating to rollover amounts) is amended to read as follows:

"(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him,".

(b) Special Rules for Rollovers of Partial Distributions.—Paragraph (5) of section 402(a) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

"(D) Special rules for partial distributions.—

"(i) Requirements.—Subparagraph (A) shall apply to a partial distribution only if—

"(I) such distribution is of an amount equal to at least 50 percent of the balance to the credit of the employee in a qualified trust (determined immediately before such distribution and without regard to subsection (e)(4)(C)),

"(II) such distribution is not one of a series of periodic payments, and

"(III) the employee elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have subparagraph (A) apply to such partial distribution.

"(ii) Partial distributions may be transferred only to individual retirement plans.—In the case of a partial distribution, a plan described in subclause (IV) or (V) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan.

"(iii) Denial of 10-year averaging and capital gains treatment for subsequent distributions.—If an election under clause (i) is made with respect to any partial distribution paid to any employee—

"(I) paragraph (2) of this subsection,

"(II) paragraphs (1) and (3) of subsection (e), and

"(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).

"(iv) Special rule for unrealized appreciation.—If an election under clause (i) is made with respect to any partial distribution, the second and third sentences of paragraph (1) shall not apply to such distribution."

(c) Partial Distributions Paid to Spouse of Employee After Employee's Death Eligible for Rollover.—Paragraph (7) of section 402(a) (relating to rollover where spouse receives lump-sum distribution at death of employee) is amended to read as follows:

"(7) Rollover where spouse receives distributions after death of employee.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, paragraph (5) shall apply to such distribution in the same manner as if the spouse were the employee.".

(d) Technical and Conforming Amendments.—

(1) The following provisions are each amended by striking out "qualifying rollover distribution" each place it appears and inserting in lieu thereof "qualified total distribution"—

(A) section 402(a)(5)(B),

(B) section 402(a)(5)(E)(i) (as redesignated by subsection (b)), and

(C) section 402(a)(6)(E)(i).

(2) Subparagraph (B) of section 402(a)(5) is amended by adding at the end thereof the following new sentence: "In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A))."

(3) Clause (ii) of section 402(a)(5)(E) (as redesignated by subsection (b)) is amended by striking out "gross income" and inserting in lieu thereof "gross income (determined without regard to this paragraph)".

(4) Clause (v) of subparagraph (E) of section 402(a)(5) (as redesignated by subsection (b)) is amended to read as follows:

"(v) Partial distribution.—The term 'partial distribution' means any distribution to an employee of any portion of the balance to the credit of such employee in a qualified trust; except that such term shall not include any distribution which is a qualified total distribution."

(5) Subparagraph (F) of section 402(a)(5) (as redesignated by subsection (b)) is amended by striking out "subparagraph (D)(iv)" each place it appears and inserting in lieu thereof "subparagraph (E)(iv)".

(6) Paragraph (6) of section 402(a) is amended by striking out "paragraph (5)(D)(i)" each place it appears and inserting in lieu thereof "paragraph (5)(E)(i)".

(7) Clauses (iii) and (iv) of section 402(a)(6)(D) are each amended by striking out "employee contributions" and inserting in lieu thereof "employee contributions" (or, in the case of a partial distribution, the amount not includible in gross income)".

(8) Clause (i) of section 402(a)(6)(E) is amended by striking out "paragraph (5)(D)(i)(II)" and inserting in lieu thereof "paragraph (5)(D) or (5)(E)(i)(II)".

(9) Subparagraph (B) of section 403(a)(4) is amended by striking out "(B) through (E)" and inserting in lieu thereof "(B) through (F)".

(10) Subparagraph (B) of section 403(b)(8) is amended to read as follows:

"(B) Special rules for partial distributions.—

"(i) In general.—In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

"(ii) Total distribution.—For purposes of subparagraph (A), the term 'total distribution' means one or more distributions from an annuity contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

"(iii) Aggregation of annuity contracts.—For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply."

(11) Subparagraph (C) of section 403(b)(8) is amended by striking out "(D)(v), and (E)(i)" and inserting in lieu thereof "(F)(i)".

(12) Clause (ii) of section 408(d)(3)(A) is amended by striking out "rollover contribution from an employee's trust" and inserting in lieu thereof "rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust".

(13) Subparagraph (C) of section 409(b)(3) is amended by striking out the second sentence and inserting in lieu thereof the following new sentences: "This subparagraph does not apply in the case of a transfer to such an employee's trust or such an annuity unless no part of the value of such proceeds is attributable to any source other than a qualified rollover contribution. For purposes of the preceding sentence, the term 'qualified rollover contribution' means any rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) which is from such an employee's trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under such plan), and which did not qualify as a rollover contribution by reason of section 402(a)(7)."

(e) Effective Date.—The amendments made by this section shall apply to distributions made after the date of the amendment of this Act, in taxable years ending after such date.

SEC. 523. TREATMENT OF DISTRIBUTIONS WHERE SUBSTANTIALLY ALL CONTRIBUTIONS ARE EMPLOYEE CONTRIBUTIONS.

(a) In General.—Subsection (e) of section 72 (relating to amounts not received as annuities) is amended by adding at the end thereof the following new paragraph:

"(7) Special rules for plans where substantially all contributions are employee contributions.—

"(A) In general.—In the case of any plan or contract to which this paragraph applies, subparagraph (D) of paragraph (5) shall not apply to any amount received from such plan or contract.

"(B) Plans or contracts to which this paragraph applies.—This paragraph shall apply to any trust or contract—

"(i) which is described in clause (i) or subclause (I), (II), or (III) of clause (ii) of paragraph (5)(D), and

"(ii) with respect to which 85 percent of the total contributions during a representative period are derived from employee contributions.

"(C) Special rule for certain federal plans.—If the Federal Government or an instrumentality thereof maintains more than 1 plan, subparagraph (B) shall be applied by aggregating all such plans which are actively administered by the Federal Government or such instrumentality.

(b) Conforming Amendments.—

(1) Subparagraph (D) of section 72(e)(5) (relating to contracts under qualified plans) is amended by striking out "This" and inserting in lieu thereof "Except as provided in paragraph (7), this".

(2) Paragraph (3) of section 72(p) (defining qualified employer plan) is amended by inserting "other than a plan described in subsection (e)(7)" after "section 219(e)(3)".

(c) Effective Date.—The amendments made by this section shall apply to any amount received or loan made after the 90th day after the date of the enactment of this Act.

SEC. 524. PROVISIONS RELATING TO TOP-HEAVY PLANS.

(a) Definition of Key Employee.—

(1) In general.—Clause (i) of section 416(i)(1)(A) (defining key employee) is amended by inserting "having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any such plan year" after "employer".

(2) Effective date.—The amendment made by this subsection shall apply to plan years beginning after December 31, 1983.

(b) Accrued Benefit of Individual Not Employed Within Last 5 Years Disregarded.—

(1) In general.—Paragraph (4) of section 416(g) (relating to other special rules) is amended by adding at the end thereof the following new subparagraph:

"(E) Benefits not taken into account if employee not employed for last 5 years.—If any individual has not received any compensation from any employer maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account."

(2) Effective date.—The amendment made by this subsection shall apply to plan years beginning after December 31, 1984.

(c) Salary Reduction Arrangements May Be Taken Into Account.—

(1) In general.—Paragraph (2) of section 416(c) (relating to minimum benefits for defined contribution plans) is amended by striking out subparagraph (C).

(2) Effective date.—The amendment made by this subsection shall apply to plan years beginning after December 31, 1984.

(d) Certain Governmental Plans Exempt From Top-Heavy Plan Rules.—

(1) In general.—Paragraph (10)(B) of section 401(a) (relating to plan requirements regarding top-heavy plans) is amended by adding at the end thereof the following new clause:

"(iii) Exemption for governmental plans.—This subparagraph shall not apply to any governmental plan."

(2) Effective date.—The amendment made by this subsection shall apply to plan years beginning after December 31, 1983.

(e) Qualification Requirements Modified if Regulations not Issued.—

(1) In general.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

(2) Effect of incorporation.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1954 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

(3) Failure by secretary to publish.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1954 if—

(A) such plan is amended to incorporate such requirements by reference, except that

(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee.

SEC. 525. REPEAL OF ESTATE TAX EXCLUSION FOR QUALIFIED PENSION PLAN BENEFITS.

(a) In General.—Section 2039 (relating to inclusion in the gross estate of annuities) is amended by striking out subsections (c), (d), (e), (f), and (g) and inserting in lieu thereof the following new subsection:

"(c) Exception of Certain Annuity Interests Created by Community Property Laws.—

"(1) In general.—In the case of an employee on whose behalf contributions or payments were made by his employer or former employer under a trust, plan, or contract to which this subsection applies, if the spouse of such employee predeceases such employee, then notwithstanding any provision of law, there shall be excluded from the gross estate of such spouse the value of any interest of such spouse in such trust, plan, or contract, to the extent such interest—

"(A) is attributable to such contributions or payments, and

"(B) arises solely by reason of such spouse's interest in community income under the community property laws of a State.

"(2) Trusts, plans, and contracts to which subsection applies.—This subsection shall apply to—

"(A) any trust, plan, or contract which at the time of the decedent's separation from employment (by death or otherwise), or if earlier, at the time of termination of the plan—

"(i) formed part of a plan which met the requirements of section 401(a), or

"(ii) was purchased pursuant to a plan described in section 403(a), or

"(B) a retirement annuity contract purchased for an employee by an employer which is—

"(i) an organization referred to in clause (ii) or (vi) of section 170(b)(1)(A), or

"(ii) a religious organization (other than a trust) exempt from taxation under section 501(a).

"(3) Amount contributed by employee.—For purposes of this subsection—

"(A) contributions or payments made by the decedent's employer or former employer under a trust, plan, or contract described in paragraph (2)(A) shall not be considered to be contributed by the decedent, and

"(B) contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (2)(B) shall not be considered to be contributed by the decedent to the extent excludable from gross income under section 403(b)."

(b) Effective Dates.—

(1) In general.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1984.

(2) Exception for participants in pay status.—The amendments made by this section shall not apply to the estate of any decedent who—

(A) was a participant in any plan who was in pay status on December 31, 1984, and

(B) irrevocably elected the form of the benefit before the date of the enactment of this Act.

(3) Pay status rule extended to $100,000 limitation.—Subsection (c) of section 245 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by inserting ", except that such amendments shall not apply to the estate of any decedent who was a participant in any plan who was in pay status on December 31, 1982, and irrevocably elected before January 1, 1983, the form of benefit".

SEC. 526. AFFILIATED SERVICE GROUPS, EMPLOYEE LEASING ARRANGEMENTS, AND COLLECTIVE BARGAINING AGREEMENTS.

(a) Attribution Rules For Affiliated Service Groups.—

(1) In general.—Subparagraph (B) of section 414(m)(6), as in effect for taxable years beginning after December 31, 1983, is amended by striking out "section 267(c)" and inserting in lieu thereof "section 318(a)".

(2) Effective date.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1984.

(b) Employee Leasing Exception Only Applies to Non-Employees.—

(1) In general.—Paragraph (2) of section 414(n) (defining leased employee) is amended by striking out "any person" in the material preceding subparagraph (A) and inserting in lieu thereof "any person who is not an employee of the recipient and".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1983.

(c) DETERMINATION OF WHETHER THERE IS A COLLECTIVE BARGAINING AGREEMENT.—

(1) IN GENERAL.—Subsection (a) of section 7701 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(46) DETERMINATION OF WHETHER THERE IS A COLLECTIVE BARGAINING AGREEMENT.—In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term 'employee representatives' shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on April 1, 1984.

(d) ADDITIONAL REGULATIONS.—

(1) IN GENERAL.—Section 414 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(o) REGULATIONS.—The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) through the use of—

"(1) separate organizations,

"(2) employee leasing, or

"(3) other arrangements."

(2) CONFORMING AMENDMENT.—Subsection (m) of section 414 is amended by striking out paragraph (6).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 527. PROVISIONS RELATING TO CASH OR DEFERRED ARRANGEMENTS.

(a) PARTICIPATION AND DISCRIMINATION STANDARDS.—Subparagraph (A) of section 401(k)(3) is amended to read as follows:

"(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

"(i) those employees eligible to benefit under the arrangement satisfy the provisions of subparagraph (A) or (B) of section 410(b)(1), and

"(ii) the actual deferral percentage for highly compensated employees (as defined in paragraph (4)) for such year bears a relationship to the actual deferral percentage for all other eligible employees for such plan year which meets either of the following tests:

"(I) The actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.5.

"(II) The excess of the actual deferral percentage for the group of highly compensated employees over that of all other eligible employees is not more than 3 percentage points, and the actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.5.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2 or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements."

(b) APPLICATION TO PRE-ERISA MONEY PURCHASE PLAN.—

(1) GENERAL RULE.—Paragraphs (1) and (2) of section 401(k) (relating to cash or deferred arrangements) are each amended by inserting "(or a pre-ERISA money purchase plan)" after "stock bonus plan".

(2) DEFINITION OF PRE-ERISA MONEY PURCHASE PLAN.—Subsection (k) of section 401 is amended by adding at the end thereof the following new paragraph:

"(5) PRE-ERISA MONEY PURCHASE PLAN.—For purposes of this subsection, the term 'pre-ERISA money purchase plan' means a pension plan—

"(A) which is a defined contribution plan (as defined in section 414(i)),

"(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

"(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date."

(3) TECHNICAL AMENDMENT.—Subparagraph (B) of section 401(k)(2) is amended by striking out ", hardship or the attainment of age 59½," and inserting in lieu thereof "(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply to plan years beginning after December 31, 1984.

(B) EXCEPTION FOR CERTAIN EXISTING PLANS.—The amendment made by subsection (a) shall not apply to any plan—

(i) which was maintained by a State on June 8, 1984, and

(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning after the date of the enactment of this Act.

(B) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1954) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act.

SEC. 528. TREATMENT OF CERTAIN MEDICAL, ETC., BENEFITS UNDER SECTION 415.

(a) GENERAL RULE.—Section 415 (relating to limitations on benefits and contributions under qualified plan) is amended by adding at the end thereof the following new subsection:

"(l) TREATMENT OF CERTAIN MEDICAL BENEFITS.—

"(1) IN GENERAL.—For purposes of this section, contributions allocated to any individual medical account which is part of a defined benefit plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c).

"(2) INDIVIDUAL MEDICAL BENEFIT ACCOUNT.—For purposes of paragraph (1), the term 'individual medical benefit account' means any separate account—

"(A) which is established for a participant under a defined benefit plan, and

"(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents."

(b) REQUIREMENT THAT SEPARATE ACCOUNT BE MAINTAINED FOR 5-PERCENT OWNER.—Subsection (h) of section 401 (relating to medical, etc., benefits for retired employees and their spouses and dependents) is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(6) in the case of an employee who is a 5-percent owner, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a 5-percent owner) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term '5-percent owner' means any employee who, at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a 5-percent owner (as defined in section 416(i)(1)(B))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after March 31, 1984.

SEC. 529. CERTAIN ALIMONY TREATED AS COMPENSATION.

(a) IN GENERAL.—Paragraph (1) of section 219(f) (defining compensation) is amended by adding at the end thereof the following new sentence: "The term 'compensation' shall include any amount includible in the individual's gross income under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance)."

(b) CONFORMING AMENDMENT.—Subsection (b) of section 219 is amended by striking out paragraph (4).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1984.

Subtitle C—Tax Treatment of Fringe Benefits

SEC. 531. EXCLUSION OF CERTAIN FRINGE BENEFITS FROM GROSS INCOME.

(a) EXCLUSION OF CERTAIN FRINGES BENEFITS.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 132 as section 133 and by inserting after section 131 the following new section:

"SEC. 132. CERTAIN FRINGE BENEFITS.

"(a) EXCLUSION FROM GROSS INCOME.—Gross income shall not include any fringe benefit which qualifies as a—

"(1) no-additional-cost service,

"(2) qualified employee discount,

"(3) working condition fringe, or

"(4) de minimis fringe.

"(b) NO-ADDITIONAL-COST SERVICE DEFINED.—For purposes of this section, the term 'no-additional-cost service' means any service provided by an employer to an employee for use by such employee if—

"(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

"(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service)."

"(c) Qualified Employee Discount Defined.—For purposes of this section—

"(1) Qualified employee discount.—The term 'qualified employee discount' means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

"(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

"(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

"(2) Gross profit percentage.—

"(A) In general.—The term 'gross profit percentage' means the percent which—

"(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

"(ii) the aggregate sale price of such property.

"(B) Determination of gross profit percentage.—Gross profit percentage shall be determined on the basis of—

"(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

"(ii) the employer's experience during a representative period.

"(3) Employee discount defined.—The term 'employee discount' means the amount by which—

"(A) the price at which the property or services are provided to the employee by the employer, is less than

"(B) the price at which such property or services are being offered by the employer to customers.

"(4) Qualified property or services.—The term 'qualified property or services' means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming services.

"(d) Working Condition Fringe Defined.—For purposes of this section, the term 'working condition fringe' means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

"(e) De Minimis Fringe Defined.—For purposes of this section—

"(1) In general.—The term 'de minimis fringe' means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

"(2) Treatment of certain eating facilities.—The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

"(A) such facility is located on or near the business premises of the employer, and

"(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any officer, owner, or highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

"(f) Certain Individuals Treated as Employees for Purposes of Subsections (a)(1) and (2).—For purposes of paragraphs (1) and (2) of subsection (a)—

"(1) Retired and disabled employees and surviving spouse of employee treated as employee.—With respect to a line of business of an employer, the term 'employee' includes—

"(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

"(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

"(2) Spouse and dependent children.—

"(A) In general.—Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

"(B) Dependent child.—For purposes of subparagraph (A), the term 'dependent child' means any child (as defined in section 151(e)(3)) of the employee—

"(i) who is a dependent of the employee, or

"(ii) both of whose parents are deceased.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

"(g) Special Rules Relating to Employer.—For purposes of this section—

"(1) Controlled groups, etc.—All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

"(2) Reciprocal agreements.—For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

"(A) such service is provided pursuant to a written agreement between such employers, and

"(B) neither of such employers incurs any substantial additional cost (including forgone revenue) in providing such service or pursuant to such agreement.

"(h) Special Rules.—

"(1) Exclusions under subsection (a) (1) and (2) apply to officers, etc., only if no discrimination.—Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any officer, owner, or highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

"(2) Special rule for leased sections of department stores.—

"(A) In general.—For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

"(i) such section shall be treated as part of the line of business of the person operating the department store, and

"(ii) employees in the leased section shall be treated as employees of the person operating the department store.

"(B) Leased section of department store.—For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

"(3) Auto salesmen.—

"(A) In general.—For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

"(B) Qualified automobile demonstration use.—For purposes of subparagraph (A), the term 'qualified automobile demonstration use' means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

"(i) such use in provided primarily to facilitate the salesman's performance of services for the employer, and

"(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

"(4) Parking.—The term 'working condition fringe' includes parking provided to an employee on or near the business premises of the employer.

"(5) On-premises gyms and other athletic facilities.—

"(A) In general.—Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

"(B) On-premises athletic facility.—For purposes of this paragraph, the term 'on-premises athletic facility' means any gym or other athletic facility—

"(i) which is located on the premises of the employer,

"(ii) which is operated by the employer, and

"(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (f)).

"(i) Customers Not To Include Employees.—For purposes of this section (other than subsection (c)(2)(B)), the term 'customers' shall only include customers who are not employees.

"(j) Section Not To Apply to Fringe Benefits Expressly Provided for Elsewhere.—This section (other than subsection (e)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

"(k) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(2) Clerical amendment.—The table of sections for such part III is amended by striking out the item relating to section 132 and inserting in lieu thereof the following:

"Sec. 132. Certain fringe benefits.

"Sec. 133. Cross references to other Acts."

(b) Cafeteria Plan.—

(1) Definition of cafeteria plan.—Paragraph (1) of section 125(d) (defining cafeteria plan) is amended to read as follows:

"(1) In general.—The term 'cafeteria plan' means a written plan under which—

"(A) all participants are employees, and

"(B) the participants may choose among 2 or more benefits consisting of cash and statutory nontaxable benefits."

(2) Definition of statutory nontaxable benefit.—

(A) In general subsection (f) of section 125 is amended to read as follows:

"(f) Statutory Nontaxable Benefits Defined.—For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79."

(B) Conforming amendment.—Subsection (c) of section 125 is amended by striking out "nontaxable benefits" each place it appears and inserting in lieu thereof "statutory nontaxable benefits".

(3) Exception for key employees.—Subsection (b) of section 125 (relating to exception for highly compensated participants) is amended to read as follows:

(b) Exception for Highly Compensated Participants and Key Employees.—

(1) Highly compensated participants.—In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees.—In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the last sentence of subsection (f).

(3) Year of inclusion.—For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(4) Reporting requirements.—

(A) Section 125 (relating to cafeteria plans) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(n) Reporting Requirements.—

"(1) In general.—Each employer maintaining a cafeteria plan during any taxable year which begins after December 31, 1984, and to which this section applies shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

"(A) the number of employees of the employer,

"(B) the number of employees participating under the plan,

"(C) the total cost of the plan during the taxable year, and

"(D) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

"(2) Recordkeeping requirement.—Each employer maintaining a cafeteria plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of this section are met.

"(3) Additional information when required by the secretary.—Any employer—

"(A) who maintains a cafeteria plan during any year for which a return is required under paragraph (1), and

"(B) who is required by the Secretary to file an additional return for such year,
shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.".

(B) Subsection (f) of section 6652 is amended—

(i) by striking out "or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans)" and inserting in lieu thereof ", 6047 (relating to information relating to certain trusts and annuity and bond purchases plans), or 125 (h) (relating to information with respect to cafeteria plans)", and

(ii) by striking out "Deferred Compensation.—" in the subsection heading and inserting in lieu thereof "Deferred Compensation; Etc.—".

(5) Exception for certain cafeteria plans and benefits.—

(A) General transitional rule.—Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of—

(i) January 1, 1985, or

(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

(B) Special transition rule for advance election benefit banks.—Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of—

(i) July 1, 1985, or

(ii) the effective date of any modification to provide additional benefits after February 10, 1984.
Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

(C) Plans for which substantial implementation costs were incurred.—For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

(6) Study of effects of cafeteria plans on health care costs.—

(A) Study.—The Secretary of Health and Human Services, in cooperation with the Secretary of the Treasury, shall conduct a study of the effects of cafeteria plans (within the meaning of section 125 of the Internal Revenue Code of 1954) on the containment of health care costs.

(B) Report.—The Secretary of Health and Human Services, in cooperation with the Secretary of the Treasury, shall submit a report on the study conducted under subparagraph (A) to the Committee on Ways and Means of the House of Representatives and the Committee in Finance of the Senate by no later than April 1, 1985.

(c) Clarification That Fringe Benefits Not Covered by Statutory Exclusion Included in Gross Income.—Paragraph (1) of section 61(a) (defining gross income) is amended by striking out "commissions, and similar items" and inserting in lieu thereof "commissions, fringe benefits, and similar items".

(d) Conforming Amendments to Employment Taxes.—

(1) Social security taxes.—

(A) Subsection (a) of section 3121 (defining wages) is amended—

(i) by striking out "all remuneration paid in any medium" in the material preceding paragraph (1) and inserting in lieu thereof "all remuneration (including benefits) paid in any medium", and

(ii) by striking out "or" at the end of paragraph (18), by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or", and by inserting after paragraph (19) the following new paragraph:

"(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132."

(B) Section 209 of the Social Security Act is amended—

(i) by striking out "all remuneration paid in any medium" in the material preceding subsection (a) and inserting in lieu thereof "all remuneration (including benefits) paid in any medium", and

(ii) by striking out "or" at the end of subsection (q), by striking out the period at the end of subsection (r) and inserting in lieu thereof "; or", and by inserting after subsection (r) the following new subsection:

"(s) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132 of the Internal Revenue Code of 1954."

(2) Railroad retirement tax.—Subsection (e) of section 3231 (defining compensation) is amended by adding at the end thereof the following new paragraph:

"(5) The term 'compensation' shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132."

(3) Unemployment tax.—Subsection (b) of section 3306 (defining wages) is amended—

(A) by striking out "all remuneration paid in any medium" in the material preceding paragraph (1) and inserting in lieu thereof "all remuneration (including benefits) paid in any medium", and

(B) by striking out "or" at the end of paragraph (14), by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; or", and by inserting after paragraph (15) the following new paragraph:

"(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the

employee will be able to exclude such benefit from income under section 117 or 132."

(4) Withholding.—Subsection (a) of section 3401 (defining wages) is amended—

(A) by striking out "all remuneration paid in any medium" in the material preceding paragraph (1) and inserting in lieu thereof "all remuneration (including benefits) paid in any medium", and

(B) by striking out "or" at the end of paragraph (18), by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or", and by adding at the end thereof the following new paragraph:

"(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132."

(5) Method of collecting tax from non-cash fringe benefits.—Section 3501 (relating to collection and payment of taxes) is amended—

(A) by striking out "The taxes" and inserting in lieu thereof the following:

"(a) General Rule.—The taxes", and

(B) by adding at the end thereof the following new subsection:

"(b) Taxes With Respect to Non-Cash Fringe Benefits.—The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be collected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations."

(e) Election With Respect to Certain Existing Lines of Business.—

(1) In general.—Chapter 43 (relating to qualified pension, etc., plans), as amended by this Act, is amended by adding at the end thereof the following new section:

"SEC. 4977. TAX ON CERTAIN FRINGE BENEFITS PROVIDED BY AN EMPLOYER.

"(a) Imposition of Tax.—In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

"(b) Excess Fringe Benefits.—For purposes of subsection (a), the term 'excess fringe benefits' means, with respect to any calendar year—

"(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

"(2) 1 percent of the aggregate amount of compensation—

"(A) which was paid by the employer during such calendar year to employees, and

"(B) was includible in gross income for purposes of chapter 1.

"(c) Effect of Election on Section 132(a).—If—

"(1) an election under this section is in effect with respect to an employer for any calendar year, and

"(2) as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business, for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(g)(2)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

"(d) Period of Election.—An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

"(e) Treatment of Affiliated Groups.—For purposes of this section, all members of the same affiliated group of corporations (as defined in section 1504) shall be treated as 1 corporation."

(2) Clerical amendment.—The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4977. Tax on certain fringe benefits provided by an employer."

(f) Determination of Line of Business in Case of Affiliated Group Operating Retail Department Stores.—If—

(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1954 without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

(2) the primary business of the affiliated group is the operation of retail department stores,

then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1954, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member.

(g) Moratorium on Issuance of Regulations Relating to Faculty Housing.—

(1) In general.—Any regulation providing for the inclusion in gross income under section 61 of the Internal Revenue Code of 1954 of the excess (if any) of the fair market value of qualified campus lodging over the greater of—

(A) the operating costs paid or incurred in furnishing such lodging, or

(B) the rent received for such lodging,
shall not be issued before January 1, 1986.

(2) Qualified campus lodging.—For purposes of this subsection, the term "qualified campus lodging" means lodging which is—

(A) located on (or in close proximity to) a campus of an educational institution (described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954), and

(B) provide by such institution to an employee of such institution, or to a spouse or dependent (within the meaning of section 152 of such Code) of such employee.

(3) Application of subsection.—This subsection shall apply with respect to lodging furnished after December 31, 1983, and before January 1, 1986.

(h) Effective Date.—The amendments made by this section shall take effect on January 1, 1985.

SEC. 532. EXCLUSION OF CERTAIN REDUCTIONS IN TUITION FROM GROSS INCOME.

(a) In General.—Section 117 (relating to scholarships and fellowship grants) is amended by adding at the end thereof the following new subsection:

"(d) Qualified Tuition Reductions.—

"(1) In general.—Gross income shall not include any qualified tuition reduction.

"(2) Qualified tuition reduction.—For purposes of this subsection, the term 'qualified tuition reduction' means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

"(A) such employee, or

"(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(f).

"(3) Reduction must not discriminate in favor of highly compensated, etc.—Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any officer, owner, or highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees."

(b) Effective Date.—The amendment made by this section shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal Revenue Code of 1954) for education furnished after June 30, 1985, in taxable years ending after such date.

Subtitle D—Employee Stock Ownership Plans

SEC. 541. NONRECOGNITION OF GAIN ON STOCK SOLD TO EMPLOYEE STOCK OWNERSHIP PLANS OR CERTAIN COOPERATIVES IF QUALIFIED REPLACEMENTS PROPERTY ACQUIRED.

(a) In General.—Part III of subchapter 0 of chapter 1 (relating to nontaxable exchanges), as amended by this Act, is amended by adding at the end thereof the following new section:

"SEC. 1042. SALES OF STOCK TO STOCK OWNERSHIP PLANS OR CERTAIN COOPERATIVES.

"(a) Nonrecognition of Gain.—If—

"(1) the taxpayer elects the application of this section with respect to any sale of qualified securities,

"(2) the taxpayer purchases qualified replacement property within the replacement period, and

"(3) the requirements of subsection (b) are met with respect to such sale,
then the gain (if any) on such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such qualified replacement property.

"(b) Requirements to Qualify for Nonrecognition.—A sale of qualified securities meets the requirements of this subsection if—

"(1) Sale of employee organizations.—The qualified securities are sold to—

"(A) an employee stock ownership plan (as defined in section 4975(e)(7)), or

"(B) an eligible worker-owned cooperative.

"(2) Employees must own 30 percent of stock after sale.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the qualified securities outstanding as of such time.

"(3) Plan maintained for benefit of employees.—No portion of the assets of the plan or cooperative attributable to qualified securities acquired by the plan or cooperative described in paragraph (1) accure under such plan, or are allocated by such cooperative, for the benefit of—

"(A) the taxpayer,

"(B) any person who is a member of the family of the taxpayer (within the meaning of section 267(c)(4)), or

"(C) any other person who owns (after application of section 318(a)) more than 25 percent in value of any class of outstanding qualified securities.

"(4) Written statement required.—

"(A) In general.—The taxpayer files with the Secretary the written statement described in subparagraph (B).

"(B) Statement.—A statement is described in this subparagraph if it is a verified written statement of—

"(i) the employer whose employees are covered by the plan described in paragraph (1), or

"(ii) any authorized officer of the cooperative described in paragraph (1),

consenting to the application of section 4978(a) with respect to such employer or cooperative.

"(c) Definitions; Special Rules.—For purposes of this section.—

"(1) Qualified securities.—The term 'qualified securities' means employer securities (as defined in section 409A(1)) which—

"(A) are issued by a domestic corporation that has no securities outstanding that are readily tradable on an established securities market,

"(B) at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and

"(C) were not received by the taxpayer in—

"(i) a distribution from a plan described in section 401(a), or

"(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

"(2) Eligible worker-owned cooperative.—The term 'eligible worker-owned cooperative' means any organiztion—

"(A) to which part I of subchapter T applies,

"(B) a majority of the membership of which is composed of employees of such organization,

"(C) a majority of the voting stock of which is owned by members,

"(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

"(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

"(i) patronage,

"(ii) capital contributions, or

"(iii) some combination of clauses (i) and (ii).

"(3) Replacement peroid.—The term 'replacement period' means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

"(4) Qualified replacment property.—The term 'qualified replacement property' means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year.

"(5) Securities acquired by underwriter.—No acquisition of securities by an underwriter in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

"(6) Time for filing election.—An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

"(d) Basic of Qualified Replacement Property.—The basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by the amount of gain not recognized by reason such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basic of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by reason of such purchase and the application of subsection (a) by a fraction—

"(1) the numerator of which is the cost of such item of property, and

"(2) the denominator of which is the total cost of all such items of property.

"(e) Statute of Limitations.—If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

"(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

"(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

"(C) a failure to make such purchase within the replacement period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

(b) Conforming Amendments.—

(1) Section 1223 (relating to holding period of property) is amended by redesignating paragraph (13) as paragraph (14) and by inserting after paragraph (12) the following:

"(13) In determining the period for which the taxpayer has held qualified replacement property (within the meaning of section 1042(b)) the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale of qualified securities (within the meaning of section 1042(b)), there shall be included the period for which such qualified securities had been held by the taxpayer."

(2) Subsection (a) of section 1016 (relating to adjustments to basis), as amended by this Act, is amended—

(A) by striking out "and" at the end of paragraph (25),

(B) by striking out the period at the end of paragraph (26) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new paragraph:

"(27) in the case of qualified replacement property, the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(c)."

(3) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1042. Sales of stock to employees."

(c) Effective Date.—The amendments made by this section shall apply to sales of securities in taxable years beginning after the date of enactment of this Act.

SEC. 342. DEDUCTIBILITY OF CERTAIN DIVIDEND DISTRIBUTIONS FROM EMPLOYEE STOCK OWNERSHIP PLANS.

(a) Deduction.—Section 404 (relating to deductions for employer contributions to an employees' trust) is amended by adding at the end thereof the following new subsection:

"(k) Dividends Paid Deductions.—In addition to the deductions provided under subsection (a), there shall be allowed as a deduction to a corporation the amount of any dividend paid in cash by such corporation during the taxable year with respect to the stock of such corporation if—

"(1) such stock is held on the record date for the dividend by a tax credit employee stock ownership plan (as defined in section 409A) or an employee stock ownership plan (as defined in section 4975(e)(7)) which is maintained by such corporation or by any other corporation that is a member of a controlled group of corporations (within the meaning of section 409A(1)(4)) that includes such corporation, and

"(2) in accordance with the plan provisions—

"(A) the dividend is paid in cash to the participants in the plan, or

"(B) the dividend is paid to the plan and is distributed in cash to participants in the plan not later than 90 days after the close of the plan year in which paid."

(b) Denial of Partial Exclusion.—Section 116 (relating to partial exclusion of dividends) is amended by adding at the end thereof the following new subsection:

"(e) Dividends From Employee Stock Ownership Plans.—Subsection (a) shall not apply to any dividend described in section 404(k)."

(c) No Withholding on Dividend Distribution.—Subparagraph (B) of section 3405(d)(1) (relating to designated distributions) is amended—

(1) by striking out "and" at the end of clause (i),

(2) by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new clause:

"(iii) any distribution described in section 404(k)(2)."

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of enactment of this Act.

SEC. 343. EXCLUSION OF INTEREST ON LOANS USED TO FINANCE ACQUISITION OF EMPLOYER SECURITIES BY AN ESOP

(a) In General.—Part III of subchapter B of chapter 1 (relating to items excluded from gross income), as amended by this Act, is amended by redesignating section 133 as section 134 and by inserting after section 131 the following new section:

"SEC. 133. INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.

"(a) In General.—Gross income does not include 50 percent of the interest received by—

"(1) a bank (within the meaning of section 581),

"(2) an insurance company to which subchapter L applies, or

"(3) a corporation actively engaged in the business of lending money,

with respect to a securities acquisition loan.

"(b) Securities Acquisition Loan.—

"(1) In general.—For purposes of this section, the term 'securities acquisition loan' means any loan to a corporation, or to an employee stock ownership plan, to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409A(1)) for the plan.

"(2) Loans between related persons.—The term 'securities acquisition loan' shall not include—

"(A) any loan made between corporations which are members of the same controlled group of corporations, or

"(B) any loan made between an employee stock ownership plan and any person that is—

"(i) the employer of any employees who are covered by the plan; or

"(ii) a member of a controlled group of corporations which includes such employer.

"(3) CONTROLLED GROUP OF CORPORATIONS.—For purposes of this paragraph, the term 'controlled group of corporations' has the meaning given such term by section 409A(l)(4).

"(c) EMPLOYEE STOCK OWNERSHIP PLAN.—For purposes of this section, the term 'employee stock ownership plan' has the meaning given to such term by section 4975(e)(7)."

(b) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter I is amended by striking out the item relating to section 133 and inserting in lieu thereof the following:

"Sec. 133. Interest on certain loans used to acquire employer securities.
"Sec. 134. Cross references to other Act."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to loans used to acquire employer securities after the date of the enactment of this Act.

SEC. 344. ASSUMPTION OF ESTATE TAX LIABILITY BY EMPLOYER STOCK OWNERSHIP PLAN OR COOPERATIVE RECEIVING EMPLOYER SECURITIES

(a) IN GENERAL.—Subchapter C of chapter 11 (relating to miscellaneous estate tax provisions) is amended by adding at the end thereof the following new section:

"SEC. 2210. LIABILITY FOR PAYMENT IN CASE OF TRANSFER OF EMPLOYER SECURITIES TO AN EMPLOYEE STOCK OWNERSHIP PLAN OR A WORKER-OWNED COOPERATIVE.

"(a) IN GENERAL.—If—

"(1) employer securities—

"(A) are acquired from the decedent by an employee stock ownership plan or by an eligible worker-owned cooperative from any decedent,

"(B) pass from the decedent to such a plan or cooperative, or

"(C) are transferred by the executor to such a plan or coopertive, and

"(2) the executor elects the application of this section and files the agreements described in subsection (e) before the due date (including extensions) for filing the return of tax imposed by section 2001,

then the executor is relieved of liability for payment of that portion of the tax imposed by section 2001 which such employee stock ownership plan or cooperative is required to pay under subsection (b).

"(b) PAYMENT OF TAX BY EMPLOYEE STOCK OWNERSHIP PLAN OR COOPERATIVE.—

"(1) IN GENERAL.—An employee stock ownership plan or eligible worker-owned cooperative—

"(A) which has acquired employer securities from the decedent, or to which such securities have passed from the decedent or been transferred by the executor, and

"(B) with respect to which an agreement described in subsection (e)(1) is in effect,

shall pay that portion of the tax imposed by section 2001 with respect to the taxable estate of the decedent which is described in paragraph (2).

"(2) AMOUNT OF TAX TO BE PAID.—The portion of the tax imposed by section 2001 with respect to the taxable estate of the decedent that is referred to in paragraph (1) is equal to the lesser of—

"(A) the value of the employer securities described in subsection (a)(1) which is included in the gross estate of the decedent, or

"(B) the tax imposed by section 2001 with respect to such taxable estate reduced by the sum of the credits allowable against such tax.

"(c) INSTALLMENT PAYMENTS.—

"(1) IN GENERAL.—If—

"(A) the executor of the estate of the decedent (without regard to this section) elects to have the provisions of section 6166 (relating to extensions of time for payment of estate tax where estate consists largely of interest in closely held business) apply to payment of that portion of the tax imposed by section 2001 with respect to such estate which is attributable to employer securities, and

"(B) the plan administrator or the cooperative provides to the executor the agreement described in subsection (e)(1),

then the plan administrator or the cooperative may elect, before the due date (including extensions) for filing the return of such tax, to pay all or part of the tax described in subsection (b)(2) in installments under the provisions of section 6166.

"(2) INTEREST ON INSTALLMENTS.—In determining the 4-percent portion for purposes of section 6601(j)—

"(A) the portion of the tax imposed by section 2001 with respect to an estate for which the executor is liable, and

"(B) the portion of such tax for which an employee stock ownership plan or an eligible worker-owned cooperative is liable,

shall be aggregated.

"(d) GUARANTEE OF PAYMENTS.—Any employer—

"(1) whose employees are covered by an employee stock ownership plan, and

"(2) who has entered into an agreement described in subsection (e)(2) which is in effect,

shall guarantee (in such manner as the Secretary may prescibe) the payment of any amount such plan is required to pay under subsection (b), including any interest payable under section 6601 which is attributable to such amount.

"(e) AGREEMENTS.—The agreements described in this subsection are as follows:

"(1) A written agreement signed by the plan administrator, or by any authorized officer of the eligible worker-owned cooperative, consenting to the application of subsection (b) to such plan or cooperative.

"(2) A written agreement signed by the employer whose employees are covered by the plan described in subsection (b) consenting to the application of subsection (d).

"(f) EXEMPTION FROM TAX ON PROHIBITED TRANSACTIONS.—The assumption under this section by an employee stock onwership plan of any portion of the liability for the tax imposed by section 2001 shall be treated as a loan described in section 4975(d)(3).

"(g) DEFINITIONS.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409A(1).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given to such term by section 1041(b)(2).

"(4) PLAN ADMINISTRATOR.—The term 'plan administrator' has the meaning given such term by section 414(g)."

(b) CONFORMING AMENDMENTS.—

(1) Section 2002 (relating to liability for payment of estate tax) is amended to read as follows:

"SEC. 2002. LIABILITY FOR PAYMENT.

"Except as provided in section 2210, the tax imposed by this chapter shall be paid by the executor."

(2) The table of sections for subchapter C of chapter 11 is amended by adding at the end thereof the following:

"Sec. 2210. Liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative."

(3) Section 6018 (relating to estate tax returns) is amended by adding at the end thereof the following new subsection:

"(c) ELECTION UNDER SECTION 2210.—In all cases in which subsection (a) requires the filing of a return, if an executor elects the applications of section 2210—

"(1) RETURN BY EXECUTOR.—The return which the executor is required to file under the provisions of subsection (a) shall be made with respect to that portion of estate tax imposed by subtitle B which the executor is required to pay.

"(2) RETURN BY PLAN ADMINISTRATOR.—The plan administrator of an employee stock ownership plan or the eligible worker-owned cooperative, as the case may be, shall make a return with respect to that portion of the tax imposed by section 2001 which such plan or cooperative is required to pay under section 2210(b)."

(4) Subsection (j) of section 6166 (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(6) PAYMENT OF ESTATE TAX BY EMPLOYEE STOCK OWNERSHIP PLAN OR ELIGIBLE WORKER-OWNED COOPERATIVE.—For provision allowing plan administrator or eligible worker-owned cooperative to elect to pay a certain portion of the estate tax in installments under the provisions of this section, see section 2210(c)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to those estates of decedents which are required to file returns on a date (including any extensions) after the date of enactment of this Act.

SEC. 345. EXCISE TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES BY EMPLOYEE STOCK OWNERSHIP PLANS AND CERTAIN COOPERATIVES.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension plans), as amended by this Act, is amended by adding at the end thereof the following new section:

"SEC. 4978. TAX ON CERTAIN DISPOSITIONS BY EMPLOYEE STOCK OWNERSHIP PLANS AND CERTAIN COOPERATIVES.

"(a) TAX ON DISPOSITIONS OF SECURITIES TO WHICH SECTION 1042 APPLIES BEFORE CLOSE OF MINIMUM HOLDING PERIOD.—If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied, such plan or cooperative disposes of any qualified securities and—

"(1) the total number of shares held by such plan or cooperative after such disposition is less then the total number of qualified securities held immediately after such sale, or

"(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30 percent of the total value of all qualified securities as of such disposition, *there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).*

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by paragraph (1) shall be equal to 10 percent of the amount realized on the disposition.

"(2) LIMITATION.—The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied (determined as if such securities were disposed of before any other securities).

"(3) DISTRIBUTIONS TO EMPLOYEES.—The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

"(c) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this subsection shall be paid by—

"(1) the employer, or

"(2) the eligible worker-owned cooperative, that made the written statement described in section 1042(a)(2)(B).

"(d) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) CERTAIN DISTRIBUTIONS TO EMPLOYEES.—This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

"(A) the death of the employee,

"(B) the retirement of the employee after the employee has attained 59½ years of age,

"(C) the disability of the employee (within the meaning of section 72(m)(5)), or

"(D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

"(2) CERTAIN REORGANIZATIONS.—In the case of any exchange of qualified securities in any reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYEE STOCK OWNERSHIP PLAN.—

"(A) IN GENERAL.—The term 'employee stock ownership plan' has the meaning given to such term by section 4975(e)(7).

"(B) TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.—The term 'employee stock ownership plan' includes any tax credit employee stock ownership plan (within the meaning of section 409A).

"(2) QUALIFIED SECURITIES.—The term 'qualified securities' has the meaning given to such term by section 1042(b)(1).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given to such term by section 1042(b)(1).

"(4) DISPOSITION.—The term 'disposition' includes any distribution."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4978. Tax on certain dispositions and allocations by employee stock ownership plans and certain cooperatives."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of enactment of this Act.

Subtitle E—Miscellaneous

SEC. 551. TREATMENT OF CERTAIN DISTRIBUTIONS FROM A QUALIFIED TERMINATED PLAN.

(a) IN GENERAL.—For purposes of the Internal Revenue Code 1954, if—

(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term "qualified terminated plan" means a pension plan—

(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

(2) which was terminated by corporate action on February 20, 1976.

(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1954 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.

SEC. 552. PARTIAL TERMINATION FOR CERTAIN PENSION PLANS.

For purposes of section 411(d)(3) of the Internal Revenue Code of 1954 (relating to minimum vesting standards in the case of partial terminations), a partial termination shall not be treated as occurring if—

(1) the partial termination is a result of a decline in plan participation which—

(A) occurs by reason of the completion of the Trans-Alaska Oil Pipeline construction project, and

(B) occurred after December 31, 1975, and before January 1, 1980, with respect to participants employed in Alaska,

(2) no discrimination prohibited by section 401(a)(4) of such Code occurred with respect to such partial termination, and

(3) the plan administrator establishes to the satisfaction of the Secretary of the Treasury or his delegate that the benefits of this section will not accrue to the employers under the plan.

SEC. 553. DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING.

(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a) (6) and (7), and 408(b) (3) and (4) of the Internal Revenue Code of 1954—

(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding.

SEC. 554. EXTENSION OF TIME FOR REPAYMENT OF QUALIFIED REFUNDING LOANS.

Paragraph (2) of section 236(c) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end thereof the following new subparagraph:

"(D) SPECIAL RULE FOR NON-KEY EMPLOYEES.—In the case of a non-key employee (within the meaning of section 416(i)(2) of the Internal Revenue Code of 1954), this paragraph shall be applied by substituting 'January 1, 1985' for 'August 14, 1983' each place it appears."

SEC. 555. TECHNICAL AMENDMENTS TO THE INCENTIVE STOCK OPTION PROVISIONS.

(a) DETERMINATION OF FAIR MARKET VALUE.—

(1) IN GENERAL.—Subsection (c) of section 422A (relating to special rules) is amended by adding at the end thereof of the following new paragraph:

"(10) FAIR MARKET VALUE.—For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.".

(2) INCENTIVE STOCK OPTION AS AN ITEM OF TAX PREFERENCE.—Paragraph (10) of section 57(a) (relating to items of tax preference) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, the fair market value of a share of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse."

(b) MODIFICATION OF INCENTIVE STOCK OPTIONS.—Subparagraph (B) of section 425(h)(3) (relating to modifications) is amended by striking out "422A(b)(5),".

(c) EFFECTIVE DATES.—

(1) FAIR MARKET VALUE.—The amendment made by subsection (a) shall apply to options granted after March 20, 1984, except that such subsection shall not apply to any incentive stock option granted before September 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984.

(2) ITEMS OF TAX PREFERENCE.—The amendment made by subsection (b) shall apply to options exercised after March 20, 1984. In the case of an option issued after March 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984, the preceding sentence shall be applied by substituting "December 31, 1984" for "March 20, 1984".

(3) MODIFICATIONS.—The amendment made by subsection (c) shall apply with respect to modifications of options after March 20, 1984.

SEC. 556. TIME FOR MAKING CERTAIN SECTION 83(b) ELECTIONS.

In the case of any transfer of property in connection with the performance of services after June 30, 1976, and on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1954 may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for the first taxable year ending after the date of the enactment of this Act, if—

(1) the amount paid for such property was not less than its fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), and

(2) the election is consented to by the person transferring such property.

The election shall contain that information required by the Secretary of the Treasury or his delegate for elections permitted by such section 83(b). The period for assessing any tax attributable to a transfer of property which is the subject of an election made pursuant to this section shall not expire before the date which is 3 years after the date such election was made.

SEC. 557. EMPLOYER AND EMPLOYEE BENEFIT ASSOCIATION TREATED AS RELATED PERSONS UNDER SECTION 1239.

(a) General Rule.—Section 1239 (relating to gain from sale of depreciable property between certain related taxpayers) is amended by adding at the end thereof the following new subsection:

"(d) Employer and Related Employee Association.—For purposes of subsection (a), the term 'related person' also includes—

"(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

"(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to sales or exchanges after the date of the enactment of this Act in taxable years ending after such date.

SEC. 558. ELIMINATION OF RETROACTIVE APPLICATION OF AMENDMENTS MADE BY MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980.

(a) In General.—

(1) Liability.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

(2) Refunds.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2)), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

(b) Conforming Amendments.—

(1) Employee retirement income security act of 1974.—

(A) Sections 4211 (b) and (c), 4217(a), and 4235(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1391 (b) and (c), 1397(a), and 1415(a)) are amended by striking out "April 28, 1980" each place it appears and inserting in lieu thereof "September 25, 1980".

(B) Sections 4211 (b) and (c), 4217(a), 4219(c)(1)(C)(iii), and 4402(e) of such Act (29 U.S.C. 1391 (b) and (c), 1397(a), 1399(c)(1)(C)(iii), and 1461(e)) are amended by striking out "April 29, 1980" each place it appears and inserting in lieu thereof "September 26, 1980".

"(C) Section 4402(f)(1) of such Act (29 U.S.C. 1461(f)(1)) is amended by striking out "April 29, 1985" and inserting in lieu thereof "September 26, 1985".

(2) Multiemployer pension plan amendments act of 1980.—Section 108(d) of the Multiemployer Pension Plan Amendments Act of 1980 (29 U.S.C. 1385 note) is amended—

(A) by striking out "April 29, 1982" in paragraph (1) and inserting in lieu thereof "September 26, 1982"; and

(B) by striking out "April 29, 1980" each place it appears in paragraphs (2) and (3) and inserting in lieu thereof "September 26, 1980".

(c) No Increase in Liability.—The amendments made by this section shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b), as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

(d) Special Rule for Certain Binding Agreements.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting "December 31, 1980" for "September 26, 1980".

SEC. 559. TELECOMMUNICATION EMPLOYEES.

(a) Employee Protection.—Notwithstanding any provisions of the divestiture interchange agreement to the contrary, in the case of any change in employment on or after January 1, 1985, by a covered employee, the recognition of service credit, and enforcement of such recognition, shall be governed in the same manner and to same extent as provided under the divestiture interchange agreement for a change in employment by a covered employee during calendar year 1984.

(b) Employees Covered.—For purposes of this section, a covered employee is an individual—

(1) who is an employee of an entity subject to the modified final judgment,

(2) who is serving in an eligible position, and

(3) who—

(A) on December 31, 1983, was an employee of any such entity serving in an eligible position, or

(B) was a former employee with rehire or recall rights on such date and is rehired during the period of the employee's rehire or recall rights.

(c) Definitions.—For purposes of this section—

(1) The term "service credit" means service credit for benefit accrual, vesting, and eligibility for benefits under any pension plan, or any other employee benefits, including the interchange and treatment of associated benefit obligations and assets.

(2) The term "change in employment" means the commencement of employment of a covered employee by an entity subject to the modified final judgment after the termination of employment (with or without break in service) of such individual from an eligible position within another entity subject to the modified final judgment.

(3) The term "eligible position" means any position (A) which is not a supervisory position, within the meaning of section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)) or (B) the annual base pay rate for which is not more than $50,000, adjusted by the percentage increase in the consumer price index since December 31, 1983.

(4) The term "modified final judgment" means the judgment of the United States District Court for the District of Columbia in the case, United States against Western Electric, et alia, No. 82-0192, as modified.

(5) The term "entity subject to the modified final judgment" means—

(A) any carrier divested as a result of the modified final judgment,

(B) the corporation owning such carrier before divestiture,

(C) any other communications common carrier owned, in whole or in part, by such corporation on December 31, 1983, or

(D) any Interchange Company (as defined in the divestiture interchange agreement) excluding any subsidiary of such company other than any such subsidiary—

(i) which was established as of December 31, 1983, and

(ii) which participates in a defined benefit pension plan maintained by such Interchange Company.

(6) The term "divestiture interchange agreement" refers to the agreement between entities subject to the modified final judgment which was executed as of November 1, 1983, and which provides for mutual reciprocal recognition of service credit.

(7) The term "consumer price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(d) Coordination With Other Benefit-Related Provisions.—Nothing in this section shall be construed to limit benefits which would otherwise be available to any individual, whether provided under the modified final judgment, under applicable law, or otherwise.

SEC. 560. STUDY OF EMPLOYEE WELFARE BENEFIT PLANS.

(a) In General.—The Secretary of the Treasury shall make a study of the problems relating to the use of employee welfare benefit plans for the provision of benefits to current and retired employees. Such study shall include a study of the need for participation, vesting, and funding standards.

(b) Report.—A report of the study conducted under subsection (a), together with such recommendations for legislation as the Secretary deems appropriate, shall be made to the Congress by not later than February 1, 1985.

TITLE VI—TAX-EXEMPT BOND PROVISIONS

Subtitle A—Mortgage Subsidy Bonds

SEC. 611. 4-YEAR EXTENSION OF MORTGAGE SUBSIDY BOND AUTHORITY.

(a) General Rule.—Subparagraph (B) of section 103A(c)(1) (defining qualified mortgage bond) is amended by striking out "December 31, 1983" each place it appears and inserting in lieu thereof "December 31, 1987".

(b) Reporting, Etc., Requirements for Mortgage Subsidy Bonds.—

(1) In general.—Subsection (j) of section 103A (relating to other requirements) is amended by adding at the end thereof the following new paragraphs:

"(3) Information reporting requirement.—

"(A) In general.—An issue meets the requirements of this subsection only if the *issuer submits to the Secretary, not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the issue is issued, a statement concerning the issue which contains—*

"(i) the name and address of the issuer,

"(ii) the date of the issue, the amount of the lendable proceeds of the issue, and the stated interest rate, term, and face amount of each obligation which is part of the issue,

"(iii) such information as the Secretary may require in order to determine whether such issue meets the requirements of this section and the extent to which proceeds of such issue have been made available to low-income individuals, and

"(iv) such other information as the Secretary may require.

"(B) EXTENSION OF TIME.—The Secretary may grant an extension of time for the filing of any statement under subparagraph (A) if there is reasonable cause for the failure to file such statement in a timely fashion.

"(4) STATE CERTIFICATION REQUIREMENTS.—

"(A) IN GENERAL.—An issue meets the requirements of this subsection only if, before the issue, a State official designated by State law (or, where there is no such State official, the governor) certifies that the issue meets the requirements of subsection (g).

"(B) CERTIFICATION FURNISHED TO SECRETARY.—Any certification under subparagraph (A) shall be submitted to the Secretary at the same time as the statement with respect to such issue is submitted under paragraph (3).

"(C) SPECIAL RULE FOR CONSTITUTIONAL HOME RULE CITIES.—In the case of constitutional home rule cities (as defined in subsection (g)(5)(C)), the certification under subparagraph (A) shall be made by the chief executive officer of such city.

"(5) POLICY STATEMENT.—

"(A) IN GENERAL.—An issue meets the requirements of this subsection only if the applicable elected representative of the governmental unit—

"(i) which is the issuer, or

"(ii) on whose behalf such issue was issued,

has published (after a public hearing following reasonable public notice) a report described in subparagraph (B) by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Secretary on or before such last day.

"(B) REPORT.—The report referred to in subparagraph (A) which is published by the applicable elected representative of the governmental unit shall include—

"(i) a statement of the housing, development, and income distribution policies which such governmental unit is to follow in issuing mortgage subsidy bonds and mortgage credit certificates, and

"(ii) an assessment of the compliance of such governmental unit during the preceding 1-year period preceding the date of the report with—

"(I) the statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of an applicable elected representative of such governmental unit, and

"(II) the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the great extent feasible (taking into account pervailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families."

(c) TREATMENT OF QUALIFIED VETERANS' MORTGAGE BONDS.—

(1) Subparagraph (C) of section 103A(c)(3) (defining qualified veterans' mortgage bond) is amended by striking out "subsection (j)(1)" and inserting in lieu thereof "subsection (d), paragraphs (1) and (3) of subsection (j), and subsection (o)".

(2) Section 103A is amended by adding at the end thereof the following new subsection:

"(o) ADDITIONAL REQUIREMENTS FOR QUALIFIED VETERANS' MORTGAGE BONDS.—

"(1) VETERANS TO WHOM FINANCING MAY BE PROVIDED.—An obligation meets the requirements of this subsection only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

"(2) REQUIREMENT THAT STATE PROGRAM BE IN EFFECT BEFORE JUNE 22, 1984.—An issue meets the requirements of this subsection only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

"(3) VOLUME LIMITATION.—

"(A) IN GENERAL.—An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the state during the calendar year) does not exceed the State veterans limit for such calendar year.

"(B) STATE VETERANS LIMIT.—A State's veterans limit for any calendar year is one-fifth of the aggregate amount of qualified veterans' bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984.

"(4) QUALIFIED VETERAN.—For purposes of this subsection, the term 'qualified veteran' means any veteran—

(A) who served on active duty at some time before January 1, 1977, and

"(B) who applied for the financing before the later of—

"(i) the date 30 years after the last date on which such veteran left active service, or

"(ii) January 1, 1985.

"(5) GOOD FAITH EFFORT RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) and (C) of subsection (c)(2) shall apply to the requirements of this subsection.

"(6) SPECIAL RULE FOR CERTAIN SHORT-TERM OBLIGATIONS.—In the case of any obligation which has a term of 1 year or less and which was issued to provide financing for property taxes, the amount taken into account under this subsection with respect to such obligation shall be $\frac{1}{11}$ of its principal amount."

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply with respect to obligations issued after December 31, 1983.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to obligations issued after December 31, 1984.

(3) SUBSECTION (c).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (c) shall apply to obligations issued after the date of the enactment of this Act.

(B) VOLUME LIMITATION.—The requirements of paragraph (3) of section 103A(o) of the Internal Revenue Code of 1954 (as added by this section) shall apply to obligations issued after June 22, 1984. In applying such requirements to obligations issued after such date, obligations issued on or before such date shall not be taken into account under such paragraph (3).

(C) QUALIFIED VETERANS' MORTGAGE BONDS AUTHORIZED BEFORE OCTOBER 18, 1983, NOT TAKEN INTO ACCOUNT.—The requirements of section 103(o)(3) of the Internal Revenue Code of 1954 shall not apply to any qualified veterans' mortgage bond if—

(i) the issuance of such bond was authorized by a State referendum before October 18, 1983, or

(ii) the issuance of such bond is authorized pursuant to a State referendum before December 1, 1983, where such referendum was authorized by action of the State legislature before October 18, 1983.

(4) TRANSITIONAL RULE WHERE STATE FORMULA FOR ALLOCATING STATE CEILING EXPIRES.—

(A) IN GENERAL.—If a State law which provided a formula for allocating the State ceiling under section 103A(g) of the Internal Revenue Code of 1954 for calendar year 1983 expires as of the close of calendar year 1983, for purposes of section 103A(g) of such Code, such State law shall be treated as remaining in effect after 1983. In any case to which the preceding sentence applies, where the State's expiring allocation formula requires action by a State official to allocate the State ceiling among issuers, actions of such State official in allocating such ceiling shall be effective.

(B) TERMINATION.—Subparagraph (A) shall not apply on or after the effective date of any State legislation enacted after the date of the enactment of this Act with respect to the allocation of the State ceiling.

(C) SPECIAL RULE FOR TEXAS.—In the case of Texas, the Governor of such State may take the action described in subparagraph (A) pursuant to procedures established by the Governor consistent with the State laws of Texas.

(5) SPECIAL RULE FOR DETERMINATIONS OF STATISTICAL AREA.—For purposes of applying section 103A of the Internal Revenue Code of 1954 and any other provision of Federal law—

(A) RESCISSION.—The Director of the Office of Management and Budget shall rescind the designation of the Kansas City, Missouri primary metropolitan statistical area (KCMO PMSA) and the designation of the Kansas City, Kansas primary metropolitan statistical area (Kansas City, KS PMSA), and shall not take any action to designate such two primary metropolitan statistical areas as a consolidated metropolitan statistical area.

(B) DESIGNATION.—The Director of the Office of Management and Budget shall designate a single metropolitan statistical area which includes the following:

(i) Kansas City, Kansas.

(ii) Kansas City, Missouri.

(iii) The counties of Johnson, Wyandotte, Leavenworth, and Miami in Kansas.

(iv) The counties of Cass, Clay, Jackson, Platte, Ray, and Lafayette in Missouri.

The metropolitan statistical area designation pursuant to this subsection shall be known as the "Kansas City Missouri-Kansas Metropolitan Statistical Area".

(6) TRANSITIONAL RULE FOR KENTUCKY AND NEVADA.—For purposes of section 103A(g) of the Internal Revenue Code of 1954, in the case of Kentucky and Nevada, subclause (I) of section 103A(g)(6)(B)(ii) of such Code shall be applied as if the first day referred to in such subclause were January 1, 1987.

(7) ANNUAL REPORT TO CONGRESS.—The Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the per-

formance of issuers of qualified mortgage bonds and mortgage credit certificates relative to the intent of Congress described in section 103A(j) of the Internal Code of 1954.

SEC. 612. MORTGAGE CREDIT CERTIFICATES.

(a) In General.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by redesignating section 25 as section 26 and by inserting after section 24 the following new section:

"SEC. 25. INTEREST ON CERTAIN HOME MORTGAGES.

"(a) Allowance of Credit.—

"(1) In general.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of—

"(A) the certificate credit rate, and

"(B) the interest paid or incurred by the taxpayer during the taxable year on the remaining principal of the certificated indebtedness amount.

"(2) Limitation where credit rate exceeds 20 percent.—

"(A) In general.—If the certificate credit rate exceeds 20 percent, the amount of the credit allowed to the taxpayer under paragraph (1) for any taxable year shall not exceed $2,000.

"(B) Special rule where 2 or more persons hold interests in residence.—If 2 or more persons hold interests in any residence, the limitation of subparagraph (A) shall be allocated among such persons in proportion to their respective interests in the residence.

"(b) Certificate Credit Rate; Certified Indebtedness Amount.—For purposes of this section—

"(1) Certificate credit rate.—The term 'certificate credit rate' means the rate of the credit allowable by this section which is specified in the mortgage credit certificate.

"(2) Certified indebtedness amount.—The term 'certified indebtedness amount' means the amount of indebtedness which is—

"(A) incurred by the taxpayer—

"(i) to acquire the principal residence of the taxpayer,

"(ii) as a qualified home improvement loan (as defined in section 103A(l)(6)) with respect to such residence, or

"(iii) as a qualified rehabilitation loan (as defined in section 103A(l)(7)) with respect to such residence, and

"(B) specified in the mortgage credit certificate.

"(c) Mortgage Credit Certificate; Qualified Mortgage Credit Certificate Program.—For purposes of this section—

"(1) Mortgage credit certificate.—The term 'mortgage credit certificate' means any certificate which—

"(A) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer,

"(B) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence,

"(C) specifies—

"(i) the certificate credit rate, and

"(ii) the certified indebtedness amount, and

"(D) is in such form as the Secretary may prescribe.

"(2) Qualified mortgage credit certificate program.—

"(A) In general.—The term 'qualified mortgage credit certificate program' means any program—

"(i) which is established by a State or political subdivision thereof for any calendar year for which it is authorized to issue qualified mortgage bonds,

"(ii) under which the issuing authority elects (in such manner and form as the Secretary may prescribe) not to issue an amount of qualified mortgage bonds which it may otherwise issue during such calendar year under section 103A,

"(iii) under which the indebtedness certified by mortgage credit certificates meets the requirements of the following subsections of section 103A (as modified by subparagraph (B) of this paragraph):

"(I) subsection (d) (relating to residence requirements),

"(II) subsection (e) (relating to 3-year requirement),

"(III) subsection (f) (relating to purchase price requirement),

"(IV) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

"(V) paragraph (1) of subsection (j) (relating to other requirements),

"(iv) under which no mortgage credit certificate may be issued with respect to any residence any of the financing of which is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond,

"(v) except to the extent provided in regulations, which is not limited to indebtedness incurred from particular lenders,

"(vi) except to the extent provided in regulations, which provides that a mortgage credit certificate is not transferrable, and

"(vii) if the issuing authority allocates a block of mortgage credit certificates for use in connection with a particular development, which requires the developer to furnish to the issuing authority and the homebuyer a certificate that the price for the residence is no higher than it would be withou the use of a mortgage credit certificate.

"(B) Modifications of section 103A.—Under regulations prescribed by the Secretary, in applying section 103A for purposes of subclauses (II) and (IV) of subparagraph (A)(iii)—

"(i) each qualified mortgage certificate credit program shall be treated as a separate issue,

"(ii) the product determined by multiplying—

"(I) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

"(II) the certificate credit rate specified in such certificate,

shall be treated as proceeds of such issue and the sum of such products shall be treated as the total proceeds of such issue, and

"(iii) paragraph (1) of section 103A(e) shall be applied by substituting '100 percent' for '90 percent or more'.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 90-percent requirement of section 103A(e)(1) and the Secretary is satisfied that such requirement will be met under such plan.

"(d) Determination of Certificate Credit Rate.—For purposes of this section—

"(1) In general.—The certificate credit rate specified in any mortgage credit certificate shall not be less than 10 percent or more than 50 percent.

"(2) Aggregate limit on certificate credit rates.—

"(A) In general.—In the case of each qualified mortgage credit certificate program, the sum of the products determined by multiplying—

"(i) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

"(ii) the certificate credit rate with respect to such certificate,

shall not exceed 20 percent of the nonissued bond amount or, if lesser, the aggregate amount of certified indebtedness referred to in clause (i).

"(B) Nonissued bond amount.—For purposes of subparagraph (A), the term 'nonissued bond amount' means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds which the issuing authority is otherwise authorized to issue and elects not to issue under subsection (c)(2)(A)(ii).

"(e) Special Rules and Definitions.—For purposes of this section——

"(1) Carryforward of unused credit.—

"(A) In general.—If the credit allowable under subsection (a) for any taxable year exceeds the applicable tax limit for such taxable year, such excess shall be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of subparagraph (B), shall be added to the credit allowable by subsection (a) for such succeeding taxable year.

"(B) Limitation.—The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount by which the applicable tax limit for such taxable year exceeds the sum of the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year.

"(C) Applicable tax limit.—For purposes of this paragraph, the term 'applicable tax limit' means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section).

"(2) Indebtedness not treated as certified where certain requirments not in fact met.—Subsection (a) shall not apply to any indebtedness if all the requirements of subsection (d)(1), (e), (f), (g), and (j) of section 103A were not in fact met with respect to such indebtedness. Except to the extent provided in regulations, the requirements described in the preceding sentence shall be treated as met if there is a certification, under penalty of perjury, that such requirements are met.

"(3) Period for which certificate in effect.—

"(A) In general.—Except as provided in subparagraph (B), a mortgage credit certificate shall be treated as in effect with respect to interest attributable to the period—

"(i) beginning on the date such certificate is issued, and

"(ii) ending on the earlier of the date on which—

"(I) the certificate is revoked by the issuing authority, or

"(II) the residence to which such certificate relates ceases to be the principal residence of the individual to whom the certificate relates.

"(B) Certificate invalid unless indebtedness incurred within certain period.—A certificate shall not apply to any indebtedness which is incurred after the close of the second calendar year following the calend year for which the issuing authority ma the applicable election under subsectio (c)(2)(A)(ii).

"(C) Notice to Secretary when certificate revoked.—An issuing authority which revokes any mortgage credit certificate shall notify the Secretary of such revocation at such time and in such manner as the Secretary shall prescribe by regulations.

(4) Certain refinancing permitted.—In applying subsection (c)(2)(A)(iii), under regulations, the requirements of section 103A(j)(1) may be treated as met if a mortgage credit certificate is issued with respect to a mortgage which is used to replace an existing mortgage for which such a certificate has already been issued if such replacement mortgage does not extend the term, alter the amortization schedule, or increase the principal amount, of the original mortgage.

"(5) Public notice that certificates will be issued.—At least 90 days before any mortgage crdit certificate is to be issued after a qualified mortgage credit certificate program, the issuing authority shall provide reasonable public notice of—

"(A) the eligibility requirements for such certificate,

"(B) the methods by which such certificates are to be issued, and

"(C) such other information as the Secretary may require.

"(6) Interest paid or accrued to related persons.—No credit shall be allowed under subsection (a) for any interest paid or accrued to a person who is a related person to the taxpayer (within the meaning of section 103(b)(6)(C)(i)).

(7) Principal residence.—The term 'principal residence' has the same meaning as when used in section 1034.

"(8) Qualified rehabilitation and home improvement.—

"(A) Qualified rehabilitation.—The term 'qualified rehabilitation' has the meaning given such term by section 103A(l)(7)(B).

"(B) Qualified home improvement.—The term 'qualified home improvement' means an alteration, repair, or improvement described in section 103A(l)(6).

(9) Qualified mortgage bond.—The term 'qualified mortgage bond' has the meaning given such term by section 103A(c)(1).

"(10) Manufactured housing.—For purposes of this section, the term 'single family residence' includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. Nothing in the preceding sentence shall be construed as providing that such a home will be taken into account in making determinations under section 103A.

"(f) Reduction in Aggregate Amount of Qualified Mortgage Bonds Which May Be Issued Where Certain Requirements Not Met.—

"(1) In general.—If for any calendar year any mortgage credit certificate program fails to meet the requirements of—

"(A) clause (iv), (v), or (vi) of subsection (c)(2)(A), or

"(B) paragraph (2) of subsection (d),

the applicable State ceiling under paragraph (4) of section 103A(g) for the State in which such program operates shall be reduced by 1.25 times the correction amount with respect to such failure. Such reduction shall be applied to such State ceiling for the calendar year following the calendar year in which the Secretary determines the correction amount with respect to such failure.

"(2) Correction amount.—

"(A) In general.—For purposes of paragraph (1), the term 'correction amount' means, in the case of a failure to meet a requirement referred to in—

"(i) paragraph (1)(A), the amount of indebtedness involved, or

"(ii) paragraph (1)(B), the amount equal to the excess credit amount divided by 0.20.

"(B) Excess credit amount.—

"(I) In general.—For purposes of subparagraph (A)(ii), the term 'excess credit amount' means the excess of—

"(I) the credit amount for any mortgage credit certificate program, over

"(II) the amount which would have been the credit amount for such program had such program met the requirements of paragraph (2) of subsection (d).

"(ii) Credit amount.—For purposes of clause (i), the term 'credit amount' means the sum of the products determined under clauses (i) and (ii) of subsection (d)(2)(A).

"(3) Special rule for states having constitutional home rule cities.—In the case of a State having one or more constitutional home rule cities (within the meaning of section 103A(g)(5)(C)), the reduction in the State ceiling by reason of paragraph (1) shall be allocated to the constitutional home rule city, or to the portion of the State not within such city, or to the portion of the State not within such city, whichever caused the reduction.

"(4) Exception where certification program.—The provisions of this subsection shall not apply in any case in which there is a certification program which is designed to insure that the requirements of this section are met and which meets such requirements as the Secretary may be regulations prescribe.

"(5) Waiver.—The Secretary may waive the application of paragraph (1) in any case in which he determines that the failure is due to reasonable cause.

"(g) Reporting Requirements.—Each person who makes a loan which is a certified indebtedness amount under any mortgage credit certificate shall file a report with the Secretary containing—

"(1) the name, address, and social security account number of the individual to which the certificate was issued,

"(2) the certificate's issuer, date of issue, certified indebtedness amount, and certificate credit rate, an

"(3) such other information as the Secretary may require by regulations.

Each person who issues a mortgage credit certificate shall file a report showing such information as the Secretary shall by regulations prescribe. Any such report shall be filed at such time and in such manner as the Secretary may require by regulations.

"(h) Termination.—No election may be made under subsection (c)(2)(A)(ii) for any calendar year after 1978.

(i) Regulations; Contracts.—

"(1) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations which may require recipients of mortgage credit certificates to pay a reasonable processing fee to defray the expenses incurred in administering the program.

"(2) Contracts.—The Secretary is authorized to enter into contracts with any person to provide services in connection with the administration of this section."

(b) Application With Section 103A.—Subsection (g) of section 103A (relating to limitation on aggregate amount of qualified mortgage bonds issued during any calendar year) is amended by adding at the end thereof the following new paragraph:

"(8) Reduction for mortgage credit certificates.—The applicable limit of any issuing authority for any calendar year shall be reduced by the sum of—

"(A) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

"(B) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year."

(c) Disallowance of Portion of Deduction for Interest Where Credit Taken.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Reduction of Deduction Where Section 25 Credit Taken.—The amount of the deduction under this section for interest paid or accured during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to seciton 26)."

(d) Civil Penalties.—

(1) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6708. PENALTIES WITH RESPECT TO MORTGAGE CREDIT CERTIFICATES.

"(a) Negligence.—If—

"(1) any person makes a misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate, and

"(2) such misstatement is due to the negligence of such person,

such person shall pay a penalty of $1,000 for each mortgage credit certificate with respect to which such a misstatement was made.

"(b) Fraud.—If a misstatement described in subsection (a)(1) is due to fraud on the part of the person making such misstatement, in addition to any criminal penalty, such person shall pay a penalty of $10,000 for each mortgage credit certificate with respect to which such a misstatement is made.

"(c) Reports.—Any person required by section 25(g) to file a report with the Secretary who fails to file to the report with respect to any mortgage credit certificate at the time and in the manner required by the Secretary shall pay a penalty of $200 for such failure unless it is shown that such failure is due to reasonable cause and not to willful neglect.

"(d) Mortgage Credit Certificate.—The term 'mortgage credit certificate' has the meaning given to such term by section 25(c)."

(2) The table of sections for subchapters B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6708. Penalties with respect to mortgage credit certificates."

(e) Technical Amendments.—

(1) Sections 28(d)(2), 29(b)(5), 30(g)(1)(A), 38(c)(2), and 901(a), as amended by this Act, are each amended by striking out "section 25(b)" and inserting in lieu thereof "section 26(b)".

(2) Section 23(b)(5), as amended by this Act, is amended by striking out "section 25(a)" and inserting in lieu thereof "section 26(a)" and by striking out "(other than this section)" and inserting in lieu thereof "(other than this section and section 25)".

(3) Paragraph (3) of section 55(c) is amended—

(A) by striking out "25" each place it appears and inserting in lieu thereof "26", and

(B) by striking out "section 23, 30, or 38" and inserting in lieu thereof "section 23, 25, 30, or 38".

(4) Clause (iii) of section 168(i)(1)(D), as added by section 208(a) of the Tax Equity and Fiscal Responsibility Act of 1982 and amended by this Act, is amended by striking out "section 25(b)(2)" and inserting in lieu thereof "section 26(b)(2)".

(5) Clause (iii) of section 168(i)(1)(D), as added by section 209(b) of the Tax Equity and Fiscal Responsibility Act of 1982 and amended by this Act, is amended by striking out "section 25(b)(2)" and inserting in lieu thereof "section 26(b)(2)".

(g) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 25 and inserting in lieu thereof the following:

"Sec. 25. Interest on certain home mortgages.

"Sec. 26. Limitation based on tax liability; definition of tax liability."

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984.

(2) ELECTIONS.—The amendments made by this section shall apply to elections under section 25(c)(2)(A)(ii) of the Internal Revenue Code of 1954 (as added by this section) for calendar years after 1983.

SEC. 612. AUTHORITY TO BORROW FROM FEDERAL FINANCING BANK.

(a) GENERAL RULE.—Upon application by the appropriate State Housing Agency of Oregon, the Federal Financing Bank shall make qualified cash flow loans to such Agency. Such loans shall bear interest at a rate equal to the average rate on the applicable mortgage bonds with respect to which such loans were made.

(b) QUALIFIED CASH FLOW LOANS.—For purposes of this section, the term "qualified cash flow loan" means any loan with respect to an applicable mortgage bond reasonably necessary to cover any excess determined under subsection (c)(2) on the basis of actual payments. The aggregate amount of such loans which may be outstanding at any 1 time shall not exceed $300,000,000.

(c) APPLICABLE MORTGAGE BONDS.—For purposes of this section, the term "applicable mortgage bond" means any qualified veterans' mortgage bond issued as part of an issue—

(1) which was outstanding on December 5, 1980,

(2) with respect to which the excess of—

(A) the projected aggregate payments of principal on the applicable mortgage bonds during the 15-fiscal year period beginning with fiscal year 1984, over

(B) the projected aggregate payments during such period of principal on mortgages financed by the applicable mortgage bonds,

exceeds 12 percent of the aggregate principal amount of such bonds outstanding on July 1, 1983,

(3) with respect to which the amount of the average annual prepayments during fiscal years 1981, 1982, and 1983 was less than 2 percent of the average of the loan balances as of the beginning of each of such fiscal years, and

(4) which, for fiscal year 1983, had a prepayment experience rate that did not exceed 20 percent of the prepayment experience rate of the Federal Housing Administration in the State or region in which the issuer is located.

(d) DEFINITIONS.—

(1) ASSUMPTIONS USED IN MAKING PROJECTION.—The computation under subsection (c)(2) shall be made by using the following percentage of the prepayment experience of the Federal Housing Administration in the State or region in which the issuer of the applicable mortgage bonds is located:

Fiscal Year:	Percentage:
1984	15
1985	20
1986	25
1987 and thereafter	30.

(2) QUALIFIED VETERANS' MORTGAGE BONDS.—The term "qualified veterans' mortgage bonds" has the meaning given to such term by section 103A(c)(3) of the Internal Revenue Code of 1954.

SEC. 614. ELIMINATION OF CERTAIN EXCEPTIONS TO THE APPLICATION OF THE MORTGAGE SUBSIDY BOND TAX ACT OF 1980.

Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 is amended by adding at the end thereof the following new subsections:

"(p) MOST EXCEPTIONS NOT TO APPLY TO BONDS ISSUED AFTER DECEMBER 31, 1984.—In addition to any obligations to which the amendments made by section 1102 apply by reason of the provisions of this section, the amendments made by section 1102 shall apply, notwithstanding any other provision of this section (other than subsection (n)), to obligations issued after December 31, 1984, all or a major portion of the proceeds of which are used to finance new mortgages on single-family residences that are owner occupied.

"(q) REDUCTION OF STATE CEILING BY AMOUNT OF SPECIAL MORTGAGE BONDS ISSUED BEFORE 1985.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section (other than subsections (n) and (r)), any obligation—

"(A) which is part of an issue all or a major portion of the proceeds of which are used to finance new mortgages in single-family residences that are owner occupied.

"(B) which were issued by issuing authorities in such State after June 15, 1984, and before January 1, 1985, and

"(C) to which the amendments made by section 1102 do not apply by reason of any provision of this section other than subsection (n),

shall, for purposes of applying the Internal Revenue Code of 1954, be treated as an obligation which is not described in section 103(a) of such Code if the aggregate face amount of such issue exceeds the portion of the State ceiling that is allocated by the State to such issue prior to the date of issuance of such issue.

"(2) APPLICATION OF SECTION 103A(g).—For purposes of applying section 103A(g) of such Code, the State ceiling for calendar year 1984 shall be reduced by the aggregate amount allocated by the State to any issues described in paragraph (1).

"(3) STATE CEILING.—For purposes of this subsection, the term 'State ceiling' has the meaning given to such term by section 103A(g)(4) of the Internal Revenue Code of 1954.

"(r) EXCEPTIONS TO SUBSECTION (q).—Subsection (q) shall not apply with respect to—

"(1) obligations—

"(A) the proceeds of which are used to finance the River Place Project located in Minneapolis, Minnesota, and

"(B) the aggregate face amount of which does not exceed $55,000,000, or

"(2) obligations—

"(A) the proceeds of which are used to finance the Waseca, Minnesota project, and

"(B) the aggregate face amount of which does not exceed $7,800,000.".

Subtitle B—Private Activity Bonds

PART I—GENERAL RESTRICTIONS

SEC. 621 LIMITATION ON AGGREGATE AMOUNT OF PRIVATE ACTIVITY BONDS.

Section 103 (relating to interest on certain governmental obligations) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) LIMITATION ON AGGREGATE AMOUNT OF PRIVATE ACTIVITY BONDS ISSUED DURING ANY CALENDAR YEAR.—

"(1) IN GENERAL.—A private activity bond issued as part of an issue shall be treated as an obligation not described in subsection (a) if the aggregate amount of private activity bonds issued pursuant to such issue, when added to the aggregate amount of private activity bonds previously issued by the issuing authority during the calendar year, exceeds such authority's private activity bond limit for such calendar year.

"(2) PRIVATE ACTIVITY BOND LIMIT FOR STATE AGENCIES.—For purposes of this subsection—

"(A) IN GENERAL.—The private activity bond limit for any agency of the State authorized to issue private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

"(B) SPECIAL RULE WHERE STATE HAS MORE THAN 1 AGENCY.—If more than 1 agency of the State is authorized to issue private activity bonds, all such agencies shall be treated as a single agency.

"(3) PRIVATE ACTIVITY BOND LIMIT FOR OTHER ISSUERS.—For purposes of this subsection—

"(A) IN GENERAL.—The private activity bond limit for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

"(i) the population of the jurisdiction of such issuing authority, bears to

"(ii) the population for the entire State.

"(B) OVERLAPPING JURISDICTIONS.—For purposes of subparagraph (A)(i), the rules of section 103A(g)(3)(B) shall apply.

"(4) STATE CEILING.—For purposes of this subsection—

"(A) IN GENERAL.—The State ceiling applicable to any State for any calendar year shall be the greater of

"(i) an amount equal to $150 multiplied by the State's population, or

"(ii) $200,000,000.

"(B) PHASEIN OF LIMITATION WHERE AMOUNT OF 1983 PRIVATE ACTIVITY BONDS EXCEEDS THE CEILING.—

"(i) IN GENERAL.—In the case of any State which has an excess bond amount for 1983, the State ceiling for calendar year 1984 shall be the sum of the State ceiling determined under subparagraph (A) plus 50 percent of the excess bond amount for 1983.

"(ii) EXCESS BOND AMOUNT FOR 1983.—For purposes of clause (i), the excess bond amount for 1983 in any State is the excess (if any) of—

"(I) the aggregate amount of private activity bonds issued by issuing authorities in such State during the first 9 months of calendar year 1983 multiplied by $\frac{4}{3}$, over

"(II) the State ceiling determined under subparagraph (A) for calendar year 1984.

"(C) ADJUSTMENT OF CEILING TO REFLECT TERMINATION OF SMALL ISSUE EXEMPTION.—In the case of calendar year after 1986, subparagraph (A) shall be applied by substituting '$100' for '$150'.

"(5) SPECIAL RULE FOR STATES WITH CONSTITUTIONAL HOME RULE CITIES.—In the case of any State with 1 or more constitutional home rule cities (as defined in section 103A(g)(5)(C)), the rules of paragraph (5) of section 103A(g) shall apply for purposes of this subsection.

"(6) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—

"(A) IN GENERAL.—A State may, by law provide a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds.

"(B) INTERIM AUTHORITY FOR GOVERNOR.—

"(i) IN GENERAL.—The Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds.

"(ii) TERMINATION OF AUTHORITY.—The authority provided in clause (i) shall not apply after the earlier of—

"(I) the first day of the first calendar year beginning after the legislature has met in regular session for more than 60 days after the date of the enactment of this paragraph, or

"(II) the effective date of any State legislation with respect to the allocation of the State ceiling.

"(C) STATE MAY NOT ALTER ALLOCATION TO CONSTITUTIONAL HOME RULE CITIES.—The rules of paragraph (6)(C) of section 103A(g) shall apply for purposes of this paragraph.

"(7) PRIVATE ACTIVITY BOND.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in the paragraph, the term 'private activity bond' means any obligation the interest on which is exempt from tax under subsection (a) and which is—

"(i) an industrial development bond, or

"(ii) a student loan bond.

"(B) EXCEPTION FOR MULTIFAMILY HOUSING.—The term 'private activity bond' shall not include any obligation described in subsection (b)(4)(A) nor any housing program obligation under section 11(b) of the United States Housing Act of 1937.

"(C) EXCEPTION FOR CERTAIN FACILITIES DESCRIBED IN SECTION 103(b)(4) (C) OR (D).—

"(i) IN GENERAL.—The term 'private activity bond' shall not include any obligation described in subparagraph (C) or (D) of section 103(b)(4), but only if the property described in such subparagraph is owned by or on behalf of a governmental unit.

"(ii) EXCEPTION NOT TO APPLY TO CERTAIN PARKING FACILITIES.—This subparagraph shall not apply to any obligation described in subparagraph (D) of section 103(b)(4) (determined by not taking into account any parking facilities unless such facilities are related to another facility described in such subparagraph (D)).

"(iii) DETERMINATION OF WHETHER PROPERTY OWNED BY GOVERNMENTAL UNIT.—For purposes of clause (i), property shall not be treated as not owned by a governmental unit solely by reason of the length of the lease to which it is subject if the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property.

"(iv) Restriction where significant front end loading.—Under regulations prescribed by the Secretary, clause (i) shall not apply in any case where the property is leased under a lease which has significant front end loading of rental accruals or payments.

"(D) REFUNDING ISSUES.—The term 'private activity bond' shall not include any obligation which is issued to refund another obligation to the extent that the amount of such obligation does not exceed the amount of the refunded obligation. In the case of any student loan bond, the preceding sentence shall apply only if the maturity date of the refunding obligation is not later than the later of—

"(i) the maturity of the obligation to be refunded, or

"(ii) the date 17 years after the date on which the refunded obligation was issued (or in the case of a series of refunding, the date on which the original obligation was issued).

"(8) STUDENT LOAN BONDS.—For purposes of this subsection, the term 'student loan bond' means an obligation which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly to finance loans to individuals for educational expenses.

"(9) POPULATION.—For purposes of this subsection, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) published by the Bureau of the Census before the beginning of such calendar year.

"(10) ELECTIVE CARRYFORWARD OF UNUSED LIMITATION FOR SPECIFIED PROJECT.—

"(A) IN GENERAL.—If—

"(i) an issuing authority's private activity bond limit for any calendar year after 1983, exceeds

"(ii) the aggregate amount of private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward projects.

"(B) ELECTION MUST SPECIFY PROJECT.—In any election under subparagraph (A), the issuing authority shall—

"(i) specify the project (or projects) for which the carryforward is elected, and

"(ii) specify the portion of the excess described in subparagraph (A) which is to be a carryforward for each such project.

"(C) USE OF CARRYFORWARD.—

"(i) IN GENERAL.—If any issuing authority elects a carryforward under subparagraph (A) with respect to any carryforward project, any private activity bonds issued by such authority with respect to such project during the 3 calendar years (or, in the case of a project described in subsection (b)(4)(F), 6 calendar years) following the calendar year in which the carryforward arose shall not be taken into account under paragraph (1) to the extent the amount of such bonds do not exceed the amount of the carryforward elected for such project.

"(ii) ORDER IN WHICH CARRYFORWARD USED.—Carryforwards elected with respect to any project shall be used in the order of the calendar years in which they arose.

"(D) ELECTION.—Any election made under this paragraph shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Any such election (and any specification contained therein), once made, shall be irrevocable.

"(E) CARRYFORWARD PROJECT.—For purposes of this paragraph, the term 'carryforward project' means—

"(any project described in paragraph (4) or (5) of subsection (b), and

"(ii) the purpose of issuing student loan bonds.

"(11) TREATMENT OF QUALIFIED SCHOLARSHIP FUNDING BONDS.—In the case of a qualified scholarship funding bond (as defined in subsection (e)), such bond shall be treated for purposes of this subsection as issued by a State or local issuing authority (whichever is appropriate).

"(12) Certification of no consideration for allocation.

"(A) IN GENERAL.—Any private activity bond allocated any portion of the State limit shall not be exempt from tax under subsection (a) unless the public official if any responsible for such allocation certifies under penalty of perjury that the allocation was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

"(B) ANY CRIMINAL PENALTY MADE APPLICABLE.—Any person willfully making an allocation described in subparagraph (A) in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign shall be subject to criminal penalty to the same extent as if such allocation were a willful attempt to evade tax imposed by this title."

SEC. 622. TAX EXEMPTION DENIED WHERE OBLIGATION DIRECTLY OR INDIRECTLY GUARANTEED BY FEDERAL GOVERNMENT.

Subsection (h) of section 103 (relating to certain obligations must not be guaranteed or subsidized under a energy program) is amended to read as follows:

"(h) OBLIGATION MUST NOT BE GUARANTEED, ETC.—

"(1) IN GENERAL.—An obligation shall not be treated as an obligation described in subsection (a) if such obligation is federally guaranteed.

"(2) FEDERALLY GUARANTEED DEFINED.—For purposes of paragraph (1), an obligation is federally guaranteed if—

"(A) the payment of principal or interest with respect to such obligation is guaranted (in whole or in part) by the United States (or any agency or instrumentality thereof),

"(B) such obligation is issued as part of an issue and a significant portion of the proceeds of such issue are to be—

"(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or

"(ii) invested (directly or indirectly) in federally insured deposits or accounts, or

"(C) the payment of principal or interest on such obligation is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

"(3) EXCEPTIONS.—

"(A) CERTAIN INSURANCE PROGRAMS.—An obligation shall not be treated as federally guaranteed by reason of—

"(i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,

"(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans,

"(iii) any guarantee by the Small Business Administration with respect to qualified contracts for pollution control facilities (within the meaning of section 404(a) of the Small Business Investment Act of 1958, as in effect on the date of the enactment of the Tax Reform Act of 1984) if—

"(I) the Administrator of the Small Business Administration charges a fee for making such guarantee, and

"(II) the amount of such fee equals or exceeds 1 percent of the amount guaranteed, or

"(iv) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984.

"(B) DEBT SERVICE, ETC.—Paragraph (1) shall not apply to—

"(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

"(ii) investments of a bona fide debt service fund,

"(iii) investments of a reserve which meet the requirements of subsection (c)(4)(B),

"(iv) investments in obligations issued by the United States Treasury, or

"(v) other investments permitted under regulations.

"(C) EXCEPTION FOR HOUSING PROGRAMS.—

"(i) IN GENERAL.—Except as provided in clause (ii), paragraph (1) shall not apply to—

"(I) an obligation described in subsection (b)(4)(A) or a housing program obligation under section 11(b) of the United States Housing Act of 1937,

"(II) a qualified mortgage bond (as defined in section 103A(c)(1)), or

"(III) a qualified veterans' mortgage bond (as defined in section 103A(c)(3)).

"(ii) EXCEPTION NOT TO APPLY WHERE OBLIGATION INVESTED IN FEDERALLY INSURED DEPOSITS OR ACCOUNTS.—Clause (i) shall not apply to any obligation which is federally guaranteed within the meaning of paragraph (2)(B(ii).

"(D) LOANS TO, OR GUARANTEES BY, FINANCIAL INSTITUTIONS.—Except as provided in paragraph (2)(B)(ii), an obligation which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) TREATMENT OF CERTAIN ENTITIES WITH AUTHORITY TO BORROW FROM UNITED STATES.—To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of a private activity bond (as defined in subsection (n)(7)), nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

"(B) FEDERALLY INSURED DEPOSIT OR ACCOUNT.—The term 'federally insured deposit or account' means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

"(5) CERTAIN OBLIGATIONS SUBSIDIZED UNDER ENERGY PROGRAM.—

"(A) IN GENERAL.—An obligation to which this paragraph applies shall be treated as an obligation not described in subsection (a) if the payment of the principal or interest with respect to such obligation is to be made (in whole or in part) under a program of the United States, a State, or a political subdivision of a State the principal purpose of which is to encourage the production or conservation of energy.

"(B) OBLIGATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any obligations to which paragraph (1) of subsection (b) does not apply by reason of—

"(i) subsection (b)(4)(H) (relating to qualified hydroelectric generating facilities), or

"(ii) subsection (g) (relating to qualified steam-generating or alcohol-producing facilities)."

SEC. 623. AGGREGATE LIMIT PER TAXPAYER FOR SMALL ISSUE EXCEPTION.

Subsection (b) of section 103 (relating to industrial development bonds) is amended by adding at the end thereof the following new paragraph:

"(15) AGGREGATE LIMIT PER TAXPAYER FOR SMALL ISSUE EXCEPTION.—

"(A) IN GENERAL.—Paragraph (6) of this subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt IDB's of such beneficiary) exceeds $40,000,000.

"(B) OUTSTANDING TAX-EXEMPT IDB'S OF ANY PERSON.—For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt IDB's of any person who is a test-period beneficiary with respect to such issue is the aggregate face amount of all industrial development bonds the interest on which is exempt from tax under subsection (a)—

"(i) which are allocated to such beneficiary, and

"(ii) which are outstanding at the time of such later issue (not including as outstanding any obligation which is to be redeemed from the proceeds for the later issue).

"(C) ALLOCATIONS.—The amount of any issue shall be allocated—

"(i) in the case of any test-period beneficiary who is the owner of any facilities being financed, on the basis of ownership, and

"(ii) in the case of any test-period beneficiary who is a principal user of the facilities, on the basis of the use.

"(D) TEST-PERIOD BENEFICIARY.—For purposes of this paragraph, except as provided in regulations, the term 'test-period beneficiary' means any person who was an owner or principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

"(i) the date such facilities were placed in service, or

"(ii) the date of the issue.

"(E) TREATMENT OF RELATED PERSONS.—For purposes of this paragraph, all persons who are related (within the meaning of paragraph (6)(C)) to each other shall be treated as one person."

PART II—ARBITRAGE LIMITATIONS

SEC. 624. ARBITRAGE ON NONPURPOSE OBLIGATIONS.

(a) IN GENERAL.—Subsection (c) of section 103 (relating to arbitrage bonds) is amended by redesignating paragraph (6) as paragraph (7) and inserting after paragraph (5) the following new paragraph:

"(6) INVESTMENTS IN NONPURPOSE OBLIGATIONS.—

"(A) IN GENERAL.—For purposes of this title, any obligation which is part of an issue of industrial development bonds which does not meet the requirements of subparagraphs (C) and (D) shall be treated as an obligation which is not described in subsection (a).

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to any obligation described in subsection (b)(4)(A) or to any housing program obligation under section 11(b) of the Housing Act of 1937.

"(C) LIMITATION ON INVESTMENT IN NONPURPOSE OBLIGATIONS.—

"(i) IN GENERAL.—An issue meets the requirements of this subparagraph only if—

"(I) at no time during any bond year, the amount invested in nonpurpose obligations with a yield higher than the yield on the issue exceeds 150 percent of the debt service on the issue for the bond year, and

"(II) the aggregate amount invested as provided in subclause (I) is promptly and appropriately reduced as the amount of outstanding obligations of the issue is reduced.

"(ii) EXCEPTION FOR TEMPORARY PERIODS.—Clause (i) shall not apply to—

"(I) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the governmental purpose of the issue, and

"(II) temporary investment periods related to debt service.

"(iii) DEBT SERVICE DEFINED.—For purposes of this subparagraph, the debt service on the issue for any bond year is the scheduled amount of interest and amortization of principal payable for such year with respect to such issue. For purposes of the preceding sentence, there shall not be taken into account amounts scheduled with respect to any bond which has been retired before the beginning of the bond year.

"(iv) NO DISPOSITION IN CASE OF LOSS.—This subparagraph shall not require the sale or disposition of any investment if such sale or disposition would result in a loss which exceeds the amount which would be paid to the United States (but for such sale or disposition) at the time of such sale or disposition.

"(D) REBATE TO UNITED STATES.—An issue shall be treated as meeting the requirements of this subparagraph only if an amount equal to the sum of—

"(i) the excess of—

"(I) the aggregate amount earned on all nonpurpose obligations (other than investments attributable to an excess described in this clause), over

"(II) the amount which would have been earned if all nonpurpose obligations were invested at a rate equal to the yield on the issue, plus

"(ii) any income attributable to the excess described in clause (i),

is paid to the United States by the issuer in accordance with the requirements of subparagraph (E).

"(E) DUE DATE OF PAYMENTS UNDER SUBPARAGRAPH (D).—The amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which insures that 90 percent of the amount described in subparagraph (D) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 30 days after the day on which the last obligation of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in subparagraph (D) with respect to such issue.

"(F) SPECIAL RULES FOR APPLYING SUBPARAGRAPH (D).—

"(i) IN GENERAL.—In determining the aggregate amount earned on nonpurpose obligations for purposes of subparagraph (D)—

"(I) any gain or loss on the disposition of a nonpurpose obligation shall be taken into account, and

"(II) unless the issuer otherwise elects, any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000.

"(ii) Temporary investments.—Notwithstanding subparagraph (D), an issue shall, for purposes of this paragraph, be treated as meeting the requirements of subparagraph (D) if the gross proceeds of such issue are expended for the governmental purpose for which the bond was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this paragraph only.

"(G) Exemption from gross income of sum rebated.—Gross income does not include the sum described in subparagraph (D). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under subparagraph (D).

"(H) Definitions.—For purposes of this paragraph—

"(i) Nonpurpose obligations.—The term 'nonpurpose obligation' means any security (within the meaning of subparagraph (A) or (B) of section 165(g)(2)) or any obligation not described in subsection (a) which—

"(I) is acquired with the gross proceeds of an issue, and

"(II) is not acquired in order to carry out the governmental purpose of the issue.

"(ii) Gross proceeds.—The gross proceeds of an issue include—

"(I) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and

"(II) amounts used to pay debt service on the issue.

"(iii) Yield.—The yield on the issue shall be determined on the basis of the issue price (within the meaning of section 1273 or 1274."

(b) Conforming Amendments.—

(1) Paragraph (1) of section 103A(i) (relating to arbitrage) is amended by striking out "section 103(c)" and inserting in lieu thereof "section 103(c) (other than section 103(c)(6))".

(2) Subsection (c) of section 103 is amended by striking out "Bonds" in the heading.

(3) Paragraph (1) of section 103(c) is amended by inserting "to arbitrage bonds" in the heading.

(c) Effective Date.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to bonds issued after December 31, 1984.

(2) Exception.—The amendments made by this section shall not apply to obligations issued by the Essex County Port Authority of New York and New Jersey as part of an issue approved by Essex County, New Jersey, on July 7, 1981, and approved by the State of New Jersey on December 31, 1981. The aggregate face amount of bonds to which this paragraph applies shall not exceed $350,000,000.

SEC. 625. STUDENT LOAN BOND.

(a) Arbitrage Regulations.—

(1) In general.—The Secretary shall prescribe regulations which specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond for purposes of section 103 of the Internal Revenue Code of 1954. Such regulations may provide that—

(A) paragraphs (4) and (5) of section 103(c) of such Code shall not apply, and

(B) rules similar to section 103(c)(6) shall apply,

to qualified student loan bonds.

(2) Definitions.—For purposes of this subsection—

(A) Qualified student loan bond.—The term 'qualified student loan bond' has the meaning given to such term by section 103(o)(3) of the Internal Revenue Code of 1954 (as amended by this Act).

(B) Arbitrage bond.—The term "arbitrage bond" has the meaning given to such term by section 103(c)(2).

(3) Effective date.—

(A) In general.—Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

(B) Qualified date.—

(i) In general.—For purposes of this paragraph, the term "qualified date" means the earlier of—

(I) the date on which the Higher Education Act of 1965 expires, or

(II) the date, after the date of enactment of this Act, on which the Higher Education Act of 1965 is reauthorized.

(ii) Publication of regulations.—Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

(C) Refunding obligations.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligation issued exclusively to refund any qualified student loan bond which was issued before the qualified date, except that the requirements of subparagraphs (A) and (B) of section 625(c)(5) of this Act must be met with respect to such refunding.

(D) Fulfillment of commitments.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligations which are needed to fulfill written commitments to acquire or finance student loans which are originated after June 30, 1984, and before the qualified date, but only if—

(i) such commitments are binding on the qualified date, and

(ii) the amount of such commitments is consistent with practices of the issuer which were in effect on March 15, 1984, with respect to establishing secondary markets for student loans.

(b) Arbitrage Limitation on Student Loan Bonds Which Are Not Qualified Student Loan Bonds.—Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a) (1) or (2) of section 103 of the Internal Revenue Code of 1954 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

(c) Issuance of Student Loan Bonds Which Are Not Tax-Exempt.—Any issuer who may issue obligations described in section 103(a) of the Internal Revenue Code of 1954 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to—

(1) the status of any other obligations issued, or to be issued, by such issuer as obligations described in section 103(a) of such Code, or

(2) the status of the issuer as an organization exempt from taxation under such Code.

(d) Federal Executive Branch Jurisdiction Over Tax-Exempt Status.—For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1954 shall be exclusively within the jurisdiction of the Department of the Treasury.

(e) Study on Tax Exempt Student Loan Bonds.—

(1) In general.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of—

(A) the appropriate role of tax-exempt bonds which are issued in connection with the guaranteed student loan program and the PLUS program established under the Higher Education Act of 1965, and

(B) the appropriate arbitrage rules for such bonds.

(2) Report.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall submit to the Committee on Finance and the Committee on Labor and Human Resources of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives reports on the studies conducted under paragraph (1) by no later than 9 months after the date of enactment of this Act.

PART III—OTHER RESTRICTIONS

SEC. 626. DENIAL OF TAX EXEMPTION TO CONSUMER LOAN BONDS.

(a) In General.—Section 103 (relating to interest on certain governmental obligations) is amended by adding at the end thereof the following new subsection:

"(o) Consumer Loan Bonds.—

"(1) Denial of tax exemption.—For purposes of this title, any consumer loan bond shall be treated as an obligation which is not described in subsection (a).

"(2) Consumer loan bonds.—For purposes of this subsection—

"(A) In general.—The term 'consumer loan bond' means any obligation which is issued as part of an issue all or a significant portion of the proceeds of which are reasonably expected to be used directly or indirectly to make or finance loans (other than loans described in subparagraph (C)) to persons who are not exempt persons (within the meaning of subsection (b)(3)).

"(B) Excluded obligations.—The term 'consumer loan bond' shall not include any—

"(i) qualified student loan bond,

"(ii) industrial development bond, or

"(iii) qualified mortgage bond or qualified veterans' mortgage bond.

"(C) Excluded loans.—A loan is described in this subparagraph if the loan—

"(i) enables the borrower to finance any governmental tax or assessment of general application for an essential governmental function, or

"(ii) is used to acquire or carry nonpurpose obligations (within the meaning of subsection (c)(6)(G)(i)).

"(3) Qualified student loans.—For purposes of this subsection, the term 'qualified student loan bond' means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly to make or finance student loans under a program of general application to which the Higher Education Act of 1965 applies if—

"(A) limitations are imposed under the program on—

"(i) the maximum amount of loans outstanding to any student, and

"(ii) the maximum rate of interest payable on any loan,

"(B) the loans are directly or indirectly guaranteed by the Federal Government,

"(C) the financing of loans under the program is not limited by Federal law to the proceeds of obligations the interest on which is exempt from taxation under this title, and

"(D) special allowance payments under section 438 of the Higher Education Act of 1965—

"(i) are authorized to be paid with respect to loans made under the program, or

"(ii) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of obligations the interest on which is exempt from taxation under this title.

Such term shall not include any obligation issued under a State program which discriminates on the basis of the location (in the United States) at which the educational institution is located.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection the amendment made by subsection (a) shall apply to obligations issued after the date of enactment of this Act.

(2) EXCEPTIONS FOR CERTAIN STUDENT LOAN PROGRAMS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to obligations issued by a program described in the following table to the extent the aggregate face amount of such obligations does not exceed the amount of allowable obligations specified in the following table with respect to such program:

Program	Amount of Allowable Obligations
Colorado Student Obligation Bond Authority.	$60 million
Connecticut Higher Education Supplementary Loan Authority.	$15.5 million
District of Columbia	$50 million
Illinois Higher Education Authority.	$11 million
State of Iowa	$16 million
Louisiana Public Facilities Authority.	$75 million
Maine Health and Higher Education Facilities Authority.	$5 million
Maryland Higher Education Supplemental Loan Program.	$24 million
Massachusetts College Student Loan Authority.	$90 million
Minnesota Higher Education Coordinating Board.	$60 million
New Hampshire Higher Education and Health Facilities Authority.	$39 million
New York Dormitory Authority	$120 million
Pennsylvania Higher Education Assistance Agency.	$300 million
Georgia Private Colleges and University Authority.	$31 million
Wisconsin State Building Commission.	$60 million
South Dakota Health and Educational Facilities Authority.	$6 million

(B) PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY.—Subparagraph (A) shall apply to obligations issued by the Pennsylvania Higher Education Assistance Agency only as such obligations are issued solely for the purpose of refunding student loan bonds outstanding on March 15, 1984.

(4) CERTAIN TAX-EXEMPT MORTGAGE SUBSIDY BONDS.—For purposes of applying section 103(o) of the Internal Revenue Code of 1954, the term "consumer loan bond" shall not include any mortgage subsidy bond (within the meaning of section 103A(b) of such Code) to which the amendments made by section 1102 of the Mortgage Subsidy Bond Tax Act of 1980 do not apply.

(5) REFUNDING EXCEPTION.—The amendments made by this section shall not apply to any obligation or series of obligations the proceeds of which are used exclusively to refund obligations issued before March 15, 1984, except that—

(A) the amount of the refunding obligations may not exceed 101 percent of the aggregate face amount of the refunded obligations, and

(B) the maturity date of any refunding obligation may not be later than the date which is 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

(6) EXCEPTION FOR CERTAIN ESTABLISHED PROGRAMS.—The amounts made by this section shall not apply to any obligation substantially all of the proceeds of which are used to carry out a program established under State law which has been in effect in substantially the same form during the 30-year period ending on the date of enactment of this Act, but only if such proceeds are used to make loans or to fund similar obligations—

(A) in the same manner in which,

(B) in the same (or lesser) amount per participant, and

(C) for the same purposes for which,

such program was operated on March 15, 1984. This subparagraph shall not apply to obligations issued on or after March 15, 1987.

(7) CERTAIN BONDS FOR RENEWABLE ENERGY PROPERTY.—The amendments made by this section shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980.

SEC. 627. LIMITATIONS ON ACQUISITIONS OF LAND, EXISTING FACILITIES, ETC.

(a) LIMITATION ON USE FOR LAND ACQUISITION.—Subsection (b) of section 103 is amended by adding at the end thereof the following new paragraph:

"(16) LIMITATION ON USE FOR LAND ACQUISITION.—

"(A) IN GENERAL.—Paragraphs (4), (5), and (6) shall not apply with respect to any obligation issued as part of an issue if—

"(i) any portion of the proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, or

"(ii) 25 percent or more of the proceeds of such issue are to be used (directly or indirectly) for the acquisition of land not described in clause (i) (or an interest therein). In the case of an obligation described in paragraph (5) (relating to industrial parks), clause (i) shall be applied by substituting '50 percent' for '25 percent'.

"(B) EXCEPTION FOR FIRST-TIME FARMERS.—

"(i) IN GENERAL.—If the requirements of clause (ii) are met with respect to any land, subparagraph (A) shall not apply to such land, and paragraph (17) shall not apply to property located thereon or to property to be acquired within 1 year to be used in farming, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $250,000.

"(ii) ACQUISITION BY FIRST-TIME FARMERS.—The requirements of this clause are met with respect to any land if—

"(I) such land is to be used for farming purposes, and

"(II) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

"(iii) FIRST-TIME FARMER.—For purposes of this subparagraph, the term 'first-time farmer' means any individual if such individual has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated. For purposes of this subparagraph, any ownership or material participation by an individual's spouse or minor child shall be treated as ownership and material participation by the individual.

"(iv) FARM.—For purposes of this subparagraph, the term 'farm' has the meaning given such term by section 6420(c)(2).

"(v) SUBSTANTIAL FARMLAND.—The term 'substantial farmland' means any parcel of land unless—

"(I) such parcel is smaller than 15 percent of the median size of a farm in the county in which such parcel is located, and

(II) the fair market value of the land does not at any time while held by the individual exceed $125,000.

"(C) EXCEPTION FOR CERTAIN LAND ACQUIRED FOR ENVIRONMENTAL PURPOSES.—Any land acquired by a public agency in connection with an airport, mass transit, or port development project shall not be taken into account under subparagraph (A) if—

"(i) such land is acquired for a noise abatement, wetland preservation, future use, or other public purpose, and

"(ii) there is not other significant use of such land."

(b) ACQUISITION OF EXISTING PROPERTY NOT PERMITTED.—Subsection (b) of section 103 (relating to industrial development bonds) is amended by adding at the end thereof the following new paragraph:

"(17) ACQUISITION OF EXISTING PROPERTY NOT PERMITTED.—

"(A) IN GENERAL.—Paragraphs (4), (5), (6), and (7) shall not apply to any obligation issued as part of an issue if any portion of the proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the first use of such property is pursuant to such acquisition.

"(B) EXCEPTION FOR CERTAIN REHABILITATIONS.—Subparagraphs. (A) shall not apply with respect to any building (and the equipment therefor) if—

"(i) the rehabilitation expenditures with respect to such building equals or exceeds

"(ii) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of facilities other than an building except that clause (ii) shall be applied by substituting '100 percent' for '15 percent'.

"(C) REHABILITATION EXPENDITURES.—

"For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in this subparagraph, the term 'rehabilitation expenditures' means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this clause, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

"(ii) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'rehabilitation expenditures' does not include any expenditure described in section 48(g)(2)(B) (other than clause (i) thereof).

"(iii) PERIOD DURING WHICH EXPENDITURES MUST BE INCURRED.—The term 'rehabilitation expenditures' shall not include any amount which is incurred after the date 2 years after the later of—

"(I) the date on which the building was acquired, or

"(II) the date on which the obligation was issued."

(c) USE OF TAX-EXEMPT BONDS PROHIBITED FOR SKYBOXES, AIRPLANES, GAMBLING ESTABLISHMENTS, ETC.—Subsection (b) of section 103 (relating to industrial development bonds) is amended by adding at the end thereof the following new paragraph:

"(18) NO PORTION OF BONDS MAY BE ISSUED FOR SKYBOXES, AIRPLANES, GAMBLING ESTABLISHMENTS, ETC.—Paragraphs (4), (5), and (6) shall not apply to any obligation issued as part of an issue if any portion of the proceeds of such issue is to be used to provide any airplane, skybox, or other private luxury box, any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises."

SEC. 628. MISCELLANEOUS INDUSTRIAL DEVELOPMENT BOND PROVISIONS.

(a) CERTAIN RESTRICTIONS APPLY TO EXEMPTIONS NOT CONTAINED IN INTERNAL REVENUE CODE OF 1954.—

(1) Paragraph (1) of section 103(m) (relating to obligations exempt other than under this title) is amended by adding at the end thereof the following new sentence: "In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (l), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (o)(4)(A) shall not apply."

(2) Subparagraph (B) of section 103(m)(2) is amended to read as follows:

"(B) is exempt from tax under this title without regrd to any provision of law not contained in this title."

(3) Subsection (m) of section 103 is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTIONS.—The following obligations shall be treated as obligations described in paragraph (1) (without regard to the second sentence thereof):

"(A) Any obligation issued pursuant to the Northwest Power Act.

"(B) Any obligation issued pursuant to section 608(6)(A) of Public Law 97-468.

"(C) Any obligation described in section 243 of the Crude Oil Windfall Profits Tax Act of 1980.

(b) EXPANSION OF TAX-EXEMPT BOND FINANCED PROPERTY REQUIRED TO BE DEPRECIATED ON STRAIGHT-LINE BASIS.—

(1) IN GENERAL.—Subparagraph (C) of section 168(f)(12) (relating to limitations on property financed with tax-exempt bonds) is amended to read as follows:

"(C) EXCEPTION FOR PROJECTS FOR RESIDENTIAL RENTAL PROPERTY.—Subparagraph (A) shall not apply to any recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A)."

(2) CONFORMING AMENDMENT.—Paragraph (12) of section 168(f) is amended by striking out subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

(c) AGGREGATION OF ISSUES FOR SINGLE PROJECT.—Paragraph (6) of section 103(b) (relating to exemption for small issues) is amended by adding at the end thereof the following new subparagraph:

"(P) AGGREGATION OF ISSUES WITH RESPECT TO SINGLE PROJECT.—For purposes of this paragraph, 2 or more issues part or all of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantiol common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue)."

(d) DEFINITION OF RELATED PERSONS IN THE CASE OF PARTNERSHIPS.—Paragraph (13) of section 103(b) (relating to exception where bond held by substantial user) is amended by adding at the end thereof the following new sentences: "For purposes of this paragraph—

"(A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and

"(B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons.".

(e) RESIDENTIAL RENTAL PROPERTY MAY BE IN MIXED USE STRUCTURE.—Paragraph (4) of section 103(b) (relating to certain exempt activities) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes."

(f) PUBLIC APPROVAL REQUIREMENT IN THE CASE OF PUBLIC AIRPORT.—If—

(1) the proceeds of any issue are to be used to finance a facility or facilities located on a public airport, and

(2) the governmental unit issuing such obligations is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of subsection (k) of section 103 of the Internal Revenue Code of 1954 (relating to public approval for industrial development bonds).

(g) REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—Paragraph (7) of section 103(b) (relating to advance refunding of qualified public facilities) is hereby repealed.

SEC. 629. CERTAIN PUBLIC UTILITIES TREATED AS EXEMPTED PERSONS UNDER SECTION 103(B); SPECIAL RULES FOR CERTAIN RAILROADS.

(a) CERTAIN PUBLIC UTILITIES.—For purposes of applying section 103(b)(3) of the Internal Revenue Code with respect to—

(1) any obligations issued after the date of enactment of this Act, and

(2) any obligations issued after December 31, 1969, which were treated as obligations described in section 103(a) of such Code on the day on which such obligations were issued,

the term "exempt person" shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90-364) to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use.

(b) CERTAIN RAILROADS.—Section 103(b)(1) of the Internal Revenue Code of 1954 shall not apply to any obligation which is described in section 103(b)(6)(A) of such Code if—

(1) substantially all of the proceeds of such obligation are used to acquire railroad track and right-of-way from a railroad involved in a title 11 or similar proceeding (within the meaning of section 368(a)(3)(A) of such Code), and

(2) the Federal Railroad Administration provides joint financing for such acquisitions.

(c) SPECIAL RULES FOR SUBSECTION (A).—

(1) OBLIGATIONS SUBJECT TO CAP.—Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1954.

(2)(b) LIMITATION ON AMOUNT OF OBLIGATIONS TO WHICH SUBSECTION (A)(1) APPLIES.—The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed $625,000,000.

(3) LIMITATION ON PURPOSES.—Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

(A) Cable facilities.

(B) Small hydroelectric facilities.

(C) The acquisition of an interest in an electrical generating facility.

SEC. 630. EXTENSION OF SMALL ISSUE INDUSTRIAL DEVELOPMENT BOND EXCEPTION.

Subparagraph (N) of section 103(D)(6) (relating to termination date) is amended to read as follows:

"(N) TERMINATION DATES.—

"(i) IN GENERAL.—This paragraph shall not apply to any obligation issued after December 31, 1986 (including any obligations issued to refund an obligation issued on or before such date).

"(ii) OBLIGATIONS USED TO FINANCE MANUFACTURING FACILITIES.—In the case of any obligation which is part of an issue substantially all of the proceeds of which are to be used to provide a manufacturing facility, clause (i) shall be applied by substituting '1988' for '1986'.

"(iii) MANUFACTURING FACILITY.—For purposes of this subparagraph, the term 'manufacturing facility' means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property).

SEC. 631. EFFECTIVE DATES.

(a) PRIVATE ACTIVITY BOND CAP.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by section 621 shall apply to obligations issued after December 31, 1983.

(2) INDUCEMENT RESOLUTION BEFORE JUNE 19, 1984.—The amendment made by section 621 shall not apply to any issue of obligations if—

(A) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984, and

(B) the issue is issued before January 1, 1985.

(3) CERTAIN PROJECTS PRELIMINARILY APPROVED BEFORE OCTOBER 19, 1983, GIVEN APPROVAL.—If—

(A) there was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by any issuing authority,

(B) a substantial user of such project notifies the issuing authority within 30 days after the date of the enactment of this Act that it intends to claim its rights under this paragraph, and

(C) construction of such project began before October 19, 1983, or the substantial user was under a binding contract on such date to incur significant expenditures with respect to such project,

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exeeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of the paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

(3) EXCEPTION FOR CERTAIN BONDS FOR A CONVENTION CENTER AND RESOURCE RECOVERY PROJECT.—In the case of any city, if—

(A) the city council of such city authorized a feasibility study for a convention center on June 10, 1982, and

(B) on November 4, 1983, a municipal authority acting for such city accepted a proposal for the construction of a facility that is capable of generating steam and electricity through the combustion of municipal waste,

the amendment made by section 621 shall not apply to any issue, issued during 1984, 1985, 1986, or 1987 and substantially all of the proceeds of which are to be used to finance the convention center (or access ramps and parking facilities therefor) described in subparagraph (A) or the facility described in subparagraph (B).

(b) PROPERTY FINANCED WITH TAX-EXEMPT BONDS REQUIRED TO BE DEPRECIATED ON STRAIGHT-LINE BASIS.—

(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by section 628(b) shall apply to property placed in service after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

(2) EXCEPTIONS.—

(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by section 628(b) shall not apply with respect to facilities—

(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

(B) REFUNDING.—

(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1983, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before October 19, 1983, the amendments made by section 628(b) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before October 19, 1983, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term "facilities" means the facilities described in such resolution.

(c) OTHER PROVISIONS RELATING TO TAX-EXEMPT BONDS.—

(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle shall apply to obligations issued after December 31, 1983.

(2) OBLIGATIONS INVESTED IN FEDERALLY INSURED DEPOSITS.—Notwithstanding any other provision of this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1954 (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

(3) EXCEPTIONS.—

(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by this subtitle (other than section 621) shall not apply to obligations with respect to facilities—

(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

(ii) with respect to which a binding contract to incur significant expenditure was entered into before October 19, 1983.

(B) FACILITIES.—Subparagraph (C) of subsection (b)(2)(A) shall apply for purposes of subparagraph (A) of this paragraph.

(4) REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—The amendment made by section 628(j) shall apply to refunding obligations issued after the date of the enactment of this Act; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case of any refunding obligation with respect to the Alabama State Docks Department or the Dade County Florida Airport, the preceding sentence shall be applied by substituting "December 31, 1985" for "December 31, 1984".

(d) PROVISIONS OF THIS SUBTITLE NOT TO APPLY TO CERTAIN PROPERTY.—The amendments made by this subtitle shall not apply to any property (and shall not apply to obligations issued to finance such property) if such property is described in any of the following paragraphs:

(1) Any property described in paragraph (5), (6), or (7) of section 32(g) of this Act.

(2) any property described in paragraph (4) of section 32(g) of such Act but only if the obligation is issued before January 1, 1985.

(3) Any property described in paragraph (3) of section 216(b) of the Tax Equity and Fiscal Responsibility Act of 1982.

(4) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1954 if—

(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal action before October 19, 1983, to commit development funds for such facility,

(B) such authority issues obligations for any such facility before January 1, 1987, and

(C) expenditures have been made for the development of any such facility before October 19, 1983.

(e) DETERMINATION OF SIGNIFICANT EXPENDITURE.—

(1) IN GENERAL.-For purposes of this section, the term "significant expenditures" means expenditures which equal or exceed the lesser of—

(A) $15,000,000, or

(B) 20 percent of the estimated cost of the facilities.

(A) CERTAIN GRANTS TREATED AS EXPENDITURES.—For purposes of paragraph (1), amount of any UDAG grant preliminary approved on May 5, 1981, or April 4, 1983, shall be treated as an expenditure with respect to the facility for which such grant was so approved.

(f) EXCEPTION FOR CERTAIN OTHER AMENDMENTS.—If—

(1) there was an inducement resolution (or other comparable preliminary approval) for an issue before June 1, 1984, by any issuing authority, and

(2) such issue is issued before January 1, 1985, the following amendments shall not apply:

(A) the amendments made by section 623,

(B) the amendments made by subsections (a) and (b) of section 627 (except to the extent such amendments relate to farm land),

(C) in the case of a race track, the amendment made by section 627(c), and

(D) the amendments made by section 628(c).

SEC. 632. MISCELLANEOUS EXCEPTIONS AND SPECIAL RULES.

(a) EXCEPTION FROM PROVISIONS OTHER THAN ARBITRAGE AND FEDERAL GUARANTEES.—Notwithstanding any other provision of this title, the amendments made by this title (other than by section 622 (relating to Federal guarantees) and section 623 (relating to arbitrage)) shall not apply to the following obligations:

(1) Obligations issued with respect to any waste-to-energy facility authorized by official action on April 10, 1980 and with respect to which a subsequent agreement was signed between a city government and the Department of the Army on December 27,

1982, to jointly pursue construction and operation of such facility.

(2) Obligations issued to finance a redevelopment program on 9 city blocks adjacent to a transit station but only if such program was approved on October 25, 1983.

(3) Obligations issued pursuant to an inducement resolution adopted on August 8, 1978, for a redevelopment plan for which a redevelopment trust fund was established on September 7, 1977.

(4) Obligations issued to finance a UDAG project which was preliminarily approved on December 29, 1982, and which received final approval on May 3, 1984.

(5) Obligations issued to finance a parking garage pursuant to an inducement resolution adopted on March 9, 1984, in connection with a project for which a UDAG grant application was made on January 31, 1984.

(6) Obligations which—

(A) are issued to finance a downtown development project with respect to which an urban development action grant is made but only if such grant—

(i) was preliminarily approved on November 23, 1983, and

(ii) received final approval before June 1, 1984, and

(B) are issued pursuant to inducement resolutions that were adopted on December 21, 1982, July 5, 1983, and March 1, 1983.

But only to the extent the aggregate face amount of such obligations does not exceed $34,000,000.

(7) Obligations with respect to which an inducement resolution was adopted on March 5, 1984, for the purpose of acquiring existing airport facilities at more than 12 locations in 1 State but—

(A) only if the Civil Aeronautics Board certifies that such transaction would reduce the amount of Federal subsidies provided under section 419 of the Airline Deregulation Act of 1978, and

(B) only to the extent the aggregate face amount of such obligations does not exceed $25,000,000.

(8) Obligations described in subsection (b).

(b) CERTAIN PARKING FACILITY BONDS.—For purposes of the Internal Revenue Code of 1954, any obligation issued with respect to a parking facility approved by an agency of a county government on December 1, 1982, as part of an urban revitalization plan shall be treated as an obligation described in section 103(b)(4)(D) of such Code.

(c) EXCEPTION TO CERTAIN BOND LIMITATIONS.—The amendments made by section 621 (relating to the limitations on amount of private activity bonds) and section 626(a) (relating to the prohibition on acquiring existing facilities) shall not apply to obligations issued before January 1, 1987, in connection with the Claymont, Delaware regeneration plant of the Delaware Economic Development Authority, but only to the extent the aggregate face amount of such obligation does not exceed $30,000,000.

(d) CERTAIN OBLIGATIONS TREATED AS NOT FEDERALLY GUARANTEED.—For purposes of section 103(h) of the Internal Revenue Code of 1954, obligations (including refunding obligations) shall not be treated as federally guaranteed if—

(A) such obligations were issued with respect to any facility, and

(B) any obligation was issued on June 3, 1982 in the principal amount of $11,312,125 for the purpose of financing the development, study, or related costs incurred with respect to such facility or any facility related to such facility.

(e) CERTAIN EXPENDITURES TREATED AS SIGNIFICANT EXPENDITURES.—For purposes of this title, expenditures of $850,000 incurred with respect to any project involving $15,000,000 shall be treated as significant expenditures if such expenditures were incurred pursuant to an agreement entered into on July 13, 1982, relating to the discharge of industrial waste after January 1, 1986.

(f) CERTAIN ORDINANCES TREATED AS INDUCEMENT RESOLUTIONS.—For purposes of this title, any ordinance passed on May 3, 1982, with respect to a planned development district shall be treated as an inducement resolution with respect to obligations issued in 1984 in connection with a mall project for such district.

(g) DELAYED EFFECTIVE DATE WITH RESPECT TO CERTAIN IDBS.—

(1) FERC PROJECTS.—Notwithstanding any other provision of this title, any amendments made by this title (other than the amendments to section 103(c) of the Internal Revenue Code of 1954) which, but for this paragraph, would apply to industrial development bonds issued after December 31, 1984, shall not apply to any of the following obligations issued before January 1, 1986:

(A) obligations issued with respect to Federal Energy Regulatory Commission project 4657, but only to the extent the aggregate face amount of such obligations does not exceed $12,900,000;

(B) obligations issued with respect to Federal Energy Regulatory Commission project 2853, but only to the extent the aggregate face amount of such obligations does not exceed $28,600,000; or

(C) obligations issued with respect to Federal Energy Regulatory Commission project 4700, but only to the extent the aggregate face amount of such obligations does not exceed $3,850,000.

(2) PARK CENTRAL NEW TOWN IN TOWN PROJECT.—Notwithstanding any other provision of this title, any amendments made by this title (other than the amendments to section 103(c) of the Internal Revenue Code of 1954) which, but for this paragraph, would apply to industrial development bonds issued after December 31, 1984, shall not apply to any obligation issued before January 1, 1988, with respect to Park Central New Town In Town Project located in Port Arthur, Texas, but only to the extent the aggregate face amount of such obligations does not exceed $80,000,000.

Subtitle C—Miscellaneous Provisions

SEC. 641. CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF THE FEDERAL ESTATE AND GIFT TAXES.

(a) GENERAL RULE.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act, such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1954.

(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

"(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

"(3) NO INFERENCE.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes.

SEC. 642. REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS.

(a) GENERAL RULE.—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

(b) PENALTY FOR FAILURE TO REPORT.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.

SEC. 643. TAX-EXEMPT STATUS OF OBLIGATIONS OF CERTAIN EDUCATIONAL ORGANIZATIONS.

(a) IN GENERAL.—For purposes of section 103 of the Internal Revenue Code of 1954, a qualified educational organization shall be treated as a State governmental unit, but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business (determined by applying section 513(a) of such Code to such organization).

(b) QUALIFIED EDUCATIONAL ORGANIZATION.—For purposes of subsection (a), the term "qualified educational organization" means a college or university created on February 22, 1855, by specific act of the legislature of the State within which such college or university is located.

(c) EFFECTIVE DATE.—This section shall apply to obligations issued after December 31, 1953.

SEC. 644. LOCAL FURNISHING OF ELECTRICITY OR GAS.

(a) GENERAL RULE.—For the purposes of section 103(b)(4)(E), facilities for the local furnishing of electric energy also shall include a facility that is part of a sysem providing service to the general populace (i) if at least 97 percent (measured both by total number of metered customers and by their annual consumption on a kilowatt hour basis) of the retail customers of such system are located in two contiguous counties, and (ii) if the remainder of such customers are located in a portion of a third contiguous county which portion is located on a peninsula not directly connected by land to the rest of the county of which it is a part.

(b) ELECTION TO ALLOCATE TO 1984 ONE-HALF OF STATE LIMIT FOR 1985, 1986, AND 1987.—Solely for purposes of issuing obligations described in subsection (a), the issuing authorities of a State may elect (at such time and in such manner as the Secretary of the Treasury shall by regulations prescribe) to take into account in 1984 one-half of the amount which would have been the State limit for the calendar years 1985, 1986, and 1987.

SEC. 645. LOCAL FURNISHING WHERE FACILITY INITIALLY AUTHORIZED BY FEDERAL GOVERNMENT.

For the purpose of section 103(b)(4)(E), facilities for the local furnishing of electric energy also shall include a facility that is part of a system providing service to the general populace—

(i) if the facility was initially authorized by the Federal Government in 1962;

(ii) if the facility receives financing of at least 25 percent by an exempt person;

(iii) if the electric energy generated by the facility is purchased by an electric cooperative qualified as a rural electric borrower under 7 U.S.C. section 901 et seq.; and

(iv) if the facility is located in a noncontiguous State.

SEC. 646. TREASURY DEPARTMENT DECISIONS AFFECTING TAX-EXEMPT BONDS.

(a) The Secretary of Education and the Secretary of the Treasury shall within 90 days of the date of enactment of this provision, establish procedures under which issuers affected by any decision of the Secretary of Education or his delegate under section 7 of the Student Loan Consolidation and Technical Amendments Act of 1983 may request and obtain a hearing and a review of such decision by the Secretary of the Treasury or his delegate followed by a written report to the Secretary of Education and to such person with respect to such review to be filed no later than 60 days of the request for review (unless the person requesting such review consents to an extension of time).

(b) Nothing in this section shall affect the exemption from income taxation of interest on any student loan bond or any issuer of such bonds.

SEC. 647. SPECIAL RULE FOR POSSESSIONS AND DISTRICT OF COLUMBIA.

Notwithstanding any other provision of law—

(1) the Virgin Islands and American Samoa shall have authority to issue industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954), and

(2) the District of Columbia housing finance agency shall have the authority to issue obligations described in section 103(b)(4)(A) of such Code and to issue mortgage subsidy bonds (as defined in section 103A of such Code).

SEC. 648. SPECIAL ARBITRAGE RULE.

Securities or obligations are not described in section 103(c)(2)(A) or (B) of the Internal Revenue Code of 1954 and are not subject to yield restrictions to the extent that on the date of issue of a bond issue which is payable from the investment earnings on such securities or obligations—

(1) such securities or obligations are held in a fund which, except to the extent of the investment earnings on such securities or obligations, cannot be used, under State constitutional or statutory restrictions continuously in effect since October 9, 1969, to pay debt service on the bond issue or to finance the facilities that are to be financed with the proceeds of the bonds,

(2) the fund has received no substantial discretionary contributions after October 9, 1969,

(3) the issuer (A) had a practice of issuing bonds secured by the investment earnings of the fund during the period commencing January 1, 1960, and ending on October 9, 1969, and (B) has had a continuous practice of issuing bonds secured by the investment earnings of the fund at least once during each 5-year period beginning on October 9, 1969, and

(4) the amount of securities or obligations benefitting from this rule cannot exceed the principal amount of bonds (to which such securities or other obligations would, but for this rule, be allocated) which could be issued under applicable laws restricting the amount of bonds that can be issued (but not restrictions on the purposes for which bonds can be issued) in effect on October 9, 1969, as applied to the facts on the day of issue.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. COORDINATION WITH OTHER TITLES.

For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

Subtitle A—Amendments Related to the Tax Equity and Fiscal Responsibility Act of 1982

SEC. 711. TECHNICAL CORRECTIONS OF PROVISIONS RELATING TO INDIVIDUALS.

(a) Amendments Related to Section 201.—

(1) Definition of regular tax.—Paragraph (2) of section 55(f) (defining regular tax) is amended by striking out "sections 72(m)(5)(B)" and inserting in lieu thereof "sections 47(a), 72(m)(5)(B)".

(2) Special election for intangible drilling and development costs limited to wells located in the United States.—Subparagraph (A) of section 58(i)(4) (relating to special election for intangible drilling and development cost not allocable to interest as limited partner) is amended by inserting "(with respect to wells located in the United States)" after "intangible drilling costs".

(3) 3-year amortization for circulation expenses.—

(A) Subparagraph (B) of section 57(a)(6) (relating to circulation and research and experimental expenditures) is amended to read as follows:

"(B) the amount which would have been allowable for the taxable year with respect to expenditures paid or incurred during such taxable year if—

"(i) the circulation expenditures described in section 173 had been capitalized and amortized ratably over the 3-year period beginning with the taxable year in which such expenditures were made, or

"(ii) the research and experimental expenditures described in section 174 had been capitalized and amortized ratably over the 10-year period beginning with the taxable year in which such expenditures were made."

(B) Paragraph (1) of section 58(i) (relating to optional 10-year writeoff of certain tax preferences) is amended by striking out "10-year period" and inserting in lieu thereof "10-year period (3-year period in the case of circulation expenditures described in section 173)".

(C) Subsection (b) of section 173 is amended by striking out "10-year" and inserting in lieu thereof "3-year".

(4) Losses treated as investment losses.—Subparagraph (B) of section 55(e)(8) is amended to read as follows:

"(B) Income and losses taken into account in computing qualified net investment income.—Any income or loss derived from a limited business interest shall be taken into account in computing qualified net investment income."

(5) Treatment of alcohol fuels credit.—Subparagraph (c) of section 55(b)(1) (defining alternative minimum taxable income) is amended by striking out "section 667" and inserting in lieu thereof "section 87 or 667".

(b) Amendment Related to Section 202.—Paragraph (5) of section 213(d) (relating to definitions) is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (4)".

(c) Amendments Related to Section 203.—

(1) Clarification of adjusted gross income in the case of estates and trusts.—Paragraph (2) of section 165(h) (relating to casualty and theft losses) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) Determination of adjusted gross income in case of estates and trusts.—For purposes of paragraph (1), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income."

(2) Coordination of section 165(h) with section 1231.—

(A) Coordination for 1984 and subsequent years.—

(i) Clarification of losses to which section 165(c)(3) applies.—Paragraph (3) of section 165(c) (relating to limitation on loss of individuals) is amended by striking out "trade or business" and inserting in lieu thereof "trade or business or a transaction entered into for profit".

(ii) Amendment of section 165(h).—Subsection (h) of section 165 (relating to casualty and theft losses) is amended to read as follows:

"(h) Treatment of Casualty Gains and Losses.—

"(1) $100 limitation per casualty.—Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $100.

"(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income.—

"(A) In general.—If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of—

"(i) the amount of the personal casualty gains for the taxable year, plus

"(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

"(B) Special rule where personal casualty gains exceed personal casualty losses.—If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

"(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

"(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

"(3) Definitions of personal casualty gain and personal casualty loss.—For purposes of this subsection—

"(A) Personal casualty gain.—The term 'personal casualty gain' means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

"(B) Personal casualty loss.—The term 'personal casualty loss' means any loss described in subsection (c)(3). For purposes of paragraph (2), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

"(4) Special rules.—

"(A) PERSONAL CASUALTY LOSSES ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME TO THE EXTENT OF PERSONAL CASUALTY GAINS.—In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

"(B) JOINT RETURNS.—For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

"(C) DETERMINATION OF ADJUSTED GROSS INCOME IN CASE OF ESTATES AND TRUSTS.—For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

"(D) COORDINATION WITH ESTATE TAX.—No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return."

(iii) SECTION 1231 NOT TO APPLY TO PERSONAL CASUALTY GAINS OR LOSSES.—Subsection (a) of section 1231 (relating to property used in the trade or business and involuntary conversions) is amended to read as follows:

"(a) GENERAL RULE.—

"(1) GAINS EXCEED LOSSES.—If—

"(A) the section 1231 gains for any taxable year, exceed

"(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

"(2) GAINS DO NOT EXCEED LOSSES.—If—

"(A) the section 1231 gains for any taxable year, do not exceed

"(B) the section 1231 losses for such taxable year,

such gains and losses shall not not be treated as gains and losses from sales or exchanges of capital assets.

"(3) SECTION 1231 GAINS AND LOSSES.—For purposes of this subsection—

"(A) SECTION 1231 GAIN.—The term 'section 1231 gain' means—

"(i) any recognized gain on the sale or exchange of property used in the trade or business, and

"(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

"(I) property used in the trade or business, or

"(II) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit.

"(B) SECTION 1231 LOSS.—The term 'section 1231 loss' means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

"(4) SPECIAL RULES.—For purposes of this subsection—

"(A) In determining under this subsection whether gains exceed losses—

"(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

"(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

"(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

"(i) property used in the trade or business, or

"(ii) capital assets which are held for more than 1 year and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

"(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

"(i) property used in the trade or business, or

"(ii) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions."

(iv) Sections 873(b)(1) and 931(d)(2)(B) are each amended by striking out ", for losses of property not connected with the trade or business if arising from certain casualties or theft," and inserting in lieu thereof "for losses".

(v) EFFECTIVE DATE.—The amendments made by this subparagraph shall apply to taxable years beginning after December 31, 1983.

(B) TRANSITIONAL RULE.—In the case of taxable years beginning before January 1, 1984—

(i) For purposes of paragraph (1)(B) of section 165(h) of the Internal Revenue Code of 1954, adjusted gross income shall be determined without regard to the application of section 1231 of such Code to any gain or loss from an involuntary conversion of property described in subsection (c)(3) of section 165 of such Code arising from fire, storm, shipwreck, or other casualty or from theft.

(ii) Section 1231 of such Code shall be applied after the application of paragraph (1) of section 165(h) of such Code.

(3) CLERICAL AMENDMENT.—Subsection (d) of section 6405 (relating to refunds attributable to certain disaster losses) is amended by striking out "section 165(h)" and inserting in lieu thereof "section 165(i)".

SEC. 712. TECHNICAL CORRECTIONS OF PROVISIONS PRIMARILY RELATING TO BUSINESSES.

(a) AMENDMENTS RELATED TO SECTION 204.—

(1) CLARIFICATION OF ADDITIONAL AMOUNT TREATED AS ORDINARY INCOME UNDER SECTION 1250.—

(A) Paragraph (1) of section 291(a) (relating to section 1250 capital gain treatment) is amended—

(i) by striking out "under section 1250" in subparagraph (B) and inserting in lieu thereof "under section 1250 (determined without regard to this paragraph)", and

(ii) by striking out "which is ordinary income" and inserting in lieu thereof "which is ordinary income under section 1250".

(B) Subsection (a) of section 1250 is amended by adding at the end thereof the following new paragraph:

"(4) CROSS REFERENCE.—

"For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1)."

(2) INVESTMENT TAX CREDIT ALLOWED ONLY FOR MINERAL EXPLORATION AND DEVELOPMENT COSTS FOR DEPOSITS LOCATED IN THE UNITED STATES.—Clause (ii) of section 291(b)(2)(B) is amended by inserting "in the case of a deposit located in the United States," after "(ii)".

(3) CLARIFICATION OF COORDINATION WITH COST DEPLETION.—Paragraph (6) of section 291(b) (relating to coordination with cost depletion) is amended to read as follows:

"(6) COORDINATION WITH COST DEPLETION.—The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611."

(4) CLARIFICATION OF DEFINITION OF INTEREST.—Subparagraph (B) of section 291(e)(1) (relating to interest on debt to carry tax-exempt obligations acquired after December 31, 1982) is amended by adding at the end thereof the following new clause:

"(iii) INTEREST.—For purposes of this subparagraph, the term 'interest' includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares."

(b) AMENDMENT RELATED TO SECTION 205.—Subsection (q) of section 48 (relating to basis adjustment to section 38 property) is amended by adding at the end thereof the following new paragraph:

"(6) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION.—The adjusted basis of—

"(A) a partner's interest in a partnership, and

"(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be)."

(c) AMENDMENT RELATED TO SECTION 207.—Paragraph (4) of section 189(e) (defining residential real property) is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(C) real property held by a cooperative housing corporation (as defined in section 216(b)) and used for dwelling purposes."

(d) AMENDMENTS RELATED TO SECTION 210.—

(1) SPECIAL RULE WHERE DEALER-LESSEE REQUIRED TO PURCHASE VEHICLE.—Paragraph (2) of section 210(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (defining terminal rental adjustment clause) is amended by adding at the end thereof the following new sentence: "Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence."

(2) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN THAT HE WAS OWNER.—Section 210 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN.—Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the In-

ternal Revenue Code of 1954 which was filed before the date of the enactment of this Act or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit."

(e) AMENDMENT RELATED TO SECTION 211.—Subparagraph (A) of section 211(e)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to retention of old sections 907(b) and 904(f)(4) where taxpayer had separate basket foreign loss) is amended by striking out "the 8-year period" and inserting in lieu thereof "the 8-year period (or such shorter period as the taxpayer may select)".

(f) AMENDMENT RELATED TO SECTION 212.—Paragraph (1) of section 954(h) (defining foreign base company oil-related income) is amended by striking out "section 907(c)(2)" and inserting in lieu thereof "paragraphs (2) and (3) of section 907(c)".

(g) AMENDMENT RELATED TO SECTION 213.—The table contained in subparagraph (C) of section 936(a)(2) is amended by striking out "The percentage tax is:" and inserting in lieu thereof "The percentage is:".

(h) AMENDMENT RELATED TO SECTION 217.—Subsection (e) of section 217 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date) is amended by adding at the end thereof the following new sentence: "For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1954, the amendments made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act."

(i) AMENDMENTS RELATED TO SECTION 222.—

(1) Sections 301(e)(2) and 302(f)(3) are each amended by striking out "partial or complete liquidation" and inserting in lieu thereof "complete liquidation".

(2) The paragraph heading of paragraph (1) of section 306(b) (relating to exceptions) is amended by striking out "INTEREST." and inserting in lieu thereof "INTEREST, ETC.".

(3) Paragraph (1) of section 543(a) (defining personal holding company income) is amended by striking out subparagraph (C), by adding "and" at the end of subparagraph (A), and by striking out ", and" at the end of subparagraph (B) and inserting in lieu thereof a period.

(j) AMENDMENT RELATED TO SECTION 223.—Paragraph (1) of section 311(e) (defining qualified stock) is amended by adding at the end thereof the following new subparagraph:

"(C) RULES FOR PASSTHRU ENTITIES.—In the case of an S corporation, partnership, trust, or estate—

"(i) the determination of whether subparagraph (A) is satisfied shall be made at the shareholder, partner, or beneficiary level (rather than at the entity level), and

"(ii) the distribution shall be treated as made directly to the shareholders, partners, or beneficiaries in proportion to their respective interests in the entity."

(k) AMENDMENTS RELATED TO SECTION 224.—

(1) ASSETS TREATED AS SOLD AT FAIR MARKET VALUE.—

(A) IN GENERAL.—Paragraph (1) of section 338(a) (relating to general rule) is amended by inserting "at fair market value" after "acquisition date".

(B) BASIS OF ASSETS AFTER DEEMED PURCHASE.—Subsection (b) of section 338 (relating to price at which deemed sale made) is amended to read as follows:

"(b) BASIS OF ASSETS AFTER DEEMED PURCHASE.—

"(1) IN GENERAL.—For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

"(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

"(B) the basis of the purchasing corporation's nonrecently purchased stock.

"(2) ADJUSTMENT FOR LIABILITIES AND OTHER RELEVANT ITEMS.—The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

"(3) ELECTION TO STEP-UP THE BASIS OF CERTAIN TARGET STOCK.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

"(B) DETERMINATION OF BASIS AMOUNT.—For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

"(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

"(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

"(4) GROSSED-UP BASIS.—For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

"(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

"(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

"(5) ALLOCATION AMONG ASSETS.—The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

"(6) DEFINITIONS OF RECENTLY PURCHASED STOCK AND NONRECENTLY PURCHASED STOCK.—For purposes of this subsection—

"(A) RECENTLY PURCHASED STOCK.—The term 'recently purchased stock' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

"(B) NONRECENTLY PURCHASED STOCK.—The term 'nonrecently purchased stock' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock."

(2) COORDINATION WITH SECTION 333.—The last sentence of paragraph (1) of section 338(c) (relating to coordination with section 337 where purchasing corporation holds less than 100 percent of stock) is amended by striking out "such 1-year period" and inserting in lieu thereof "such 1-year period and section 333 does not apply to such liquidation".

(3) EXCEPTIONS TO DEEMED ELECTION RULE.—Paragraph (2) of section 338(e) (relating to exceptions) is amended—

(A) by striking out "(in whole or in part)" in subparagraph (B) and inserting in lieu thereof "wholly",

(B) by inserting "and" at the end of subparagraph (C), and

(C) by striking out subparagraphs (D) and (E) and inserting in lieu thereof the following:

"(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide."

(4) TIME FOR MAKING ELECTION.—Paragraph (1) of section 338(g) (relating to election) is amended to read as follows:

"(1) WHEN MADE.—Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs."

(5) DEFINITION OF PURCHASE.—

(A) Subparagraph (B) of section 338(h)(3) (defining purchase) is amended to read as follows:

"(B) DEEMED PURCHASE UNDER SUBSECTION (a).—The term 'purchase' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary."

(B) Paragraph (3) of section 338(h) is amended by adding at the end thereof the following new subparagraph:

"(C) CERTAIN STOCK ACQUISITIONS FROM RELATED CORPORATIONS.—

"(i) IN GENERAL.—Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

"(ii) CERTAIN DISTRIBUTIONS.—Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

"(I) made a qualified stock purchase of stock of the related corporation, and

"(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

"(iii) RELATED CORPORATION DEFINED.—For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock."

(C) Paragraph (1) of section 338(h) (defining 12-month acquisition period) is amended by inserting before the period at the end thereof the following: "(or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made)."

(D) clause (ii) of section 338(h)(3)(A) (defining purchase) is amended to read as follows:

"(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and".

(E) Paragraph (4) of section 318(b) (relating to cross references) is amended to read as follows: "(4) section 338(h)(3) (defining purchase);".

(6) SPECIAL RULES FOR APPLYING SECTION 338.—

(A) Subsection (h) of section 338 (relating to definitions and special rules) is amended by striking out paragraph (7), by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively, and by inserting after paragraph (6) the following new paragraphs:

"(7) ADDITIONAL PERCENTAGE MUST BE ATTRIBUTABLE TO PURCHASE, ETC.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

"(A) purchase, or

"(B) a redemption of stock of the target corporation—

"(i) to which section 302(a) applies, or

"(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.

"(8) ACQUISITIONS BY AFFILIATED GROUP TREATED AS MADE BY 1 CORPORATION.—Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation."

(B) Paragraph (9) of section 338(h), as redesignated by subparagraph (A), is amended by striking out "paragraph (9)" and inserting in lieu thereof "paragraph (10)".

(C) Subsection (h) of section 338 is amended by adding at the end thereof the following new paragraphs:

"(11) ELECTIVE FORMULA FOR DETERMINING FAIR MARKET VALUE.—For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

"(12) SECTION 337 TO APPLY WHERE TARGET HAD ADOPTED PLAN FOR COMPLETE LIQUIDATION.—If—

"(A) during the 12-month period ending on the acquisition date the target corporation adopted a plan of complete liquidation,

"(B) such plan was not rescinded before the close of the acquisition date, and

"(C) the purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election) with respect to the target corporation,

then, subject to rules similar to the rules of subsection (c)(1), for purposes of section 337 (and other provisions which relate to section 337), the target corporation shall be treated as having distributed all of its assets as of the close of the acquisition date.

"(13) TAX ON DEEMED SALE NOT TAKEN INTO ACCOUNT FOR ESTIMATED TAX PURPOSES.—For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account.

"(14) COORDINATION WITH SECTION 341.—For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.

"(15) COMBINED DEEMED SALE RETURN.—Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10))."

(7) Subsection (i) of section 338 (relating to regulations) is amended to read as follows:

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

"(2) regulations providing for the coordination of the provisions of this section with the provision of this title relating to foreign corporations and their shareholders."

(8) TREATMENT OF CERTAIN LIQUIDATIONS.—

(A) IN GENERAL.— Section 269 (relating to acquisitions made to evade or avoid income tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) CERTAIN LIQUIDATIONS AFTER QUALIFIED STOCK PURCHASES.—

"(1) IN GENERAL.—If—

"(A) there is a qualified stock purchase by a corporation of another corporation,

"(B) an election is not made under section 338 with respect to such purchase,

"(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more than 2 years after the acquisition date, and

"(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

"(2) MEANING OF TERMS.—For purposes of paragraph (1), the terms 'qualified stock purchase' and 'acquisition date' have the same respective meanings as when used in section 338."

(B) CONFORMING AMENDMENT.—Subsection (c) of section 269 (as redesignated by subparagraph (A)) is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) or (b)".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to liquidations after October 20, 1983, in taxable years ending after such date.

(9) AMENDMENTS NOT TO APPLY TO ACQUISITIONS BEFORE SEPTEMBER 1, 1982.—

(A) IN GENERAL.—The amendments made by this subsection shall not apply to any qualified stock purchase (as defined in section 338(a)(3) of the Internal Revenue Code of 1954) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act.

(10) SPECIAL RULES FOR DEEMED PURCHASES UNDER PRIOR LAW.—If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1954), but would not be so treated under the amendments made by paragraphs (5) and (6) of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply.

(l) AMENDMENTS RELATED TO SECTION 226.—

(1) AMOUNT CONSTITUTING DIVIDEND.—Paragraph (2) of section 304(b) (relating to amount constituting dividend) is amended to read as follows:

"(2) AMOUNT CONSTITUTING DIVIDEND.—In the case of any acquisition of stock to which subsection (a) applies, the determination of the amount which is a dividend (and the source thereof) shall be made as if the property were distributed—

"(A) by the acquiring corporation to the extent of its earnings and profits, and

"(B) then by the issuing corporation to the extent of its earnings and profits."

(2) COORDINATION WITH SECTION 351.—Subparagraph (A) of section 304(b)(3) (relating to coordination with section 351) is amended by striking out "(and not part III)" and inserting in lieu thereof "(and not section 351 and not so much of sections 357 and 358 as relates to section 351)".

(3) CERTAIN ASSUMPTIONS OF LIABILITY.—

(A) The first sentence of clause (i) of section 304(b)(3)(B) (relating to certain assumptions of liability, etc.) is amended by striking out "Subsection (a)" and inserting in lieu thereof "In the case of an acquisition described in section 351, subsection (a)".

(B) Subparagraph (B) of section 304(b)(3) (relating to coordination with section 351) is amended by adding at the end thereof the following new clause:

"(iii) CLAUSE (i) DOES NOT APPLY TO STOCK ACQUIRED FROM RELATED PERSON EXCEPT WHERE COMPLETE TERMINATION.—Clause (i) shall apply only to stock acquired by the transferor from a person—

"(I) none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof), or

"(II) who satisfies rules similar to the rules of section 302(c)(2) with respect to both the acquiring and the issuing corporations (determined as if such person were a distributee of each such corporation)."

(4) DISTRIBUTIONS INCIDENT TO FORMATION OF BANK HOLDING COMPANIES.—Subparagraph (C) of section 304(b)(3) (relating to distributions incident to formation of bank holding companies) is amended by adding at the end thereof the following new sentence: "For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property."

(5) CONSTRUCTIVE OWNERSHIP.—

(A) Paragraph (3) of section 304(c) (relating to constructive ownership) is amended to read as follows:

"(3) CONSTRUCTIVE OWNERSHIP.—

"(A) IN GENERAL.—Section 318(a) (relating to constructive ownership of stock) shall apply for purposes of determining control under this section.

"(B) MODIFICATION OF 50-PERCENT LIMITATIONS IN SECTION 318.—For purposes of subparagraph (A)—

"(i) paragraph (2)(C) of section 318(a) shall be applied by substituting '5 percent' for '50 percent', and

"(ii) paragraph (3)(C) of section 318(a) shall be applied—

"(I) by substituting '5 percent' for '50 percent', and

"(II) in any case where such paragraph would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation."

(B) Paragraph (4) of section 306(c) is amended by striking out the last sentence and inserting in lieu thereof the following: "For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply."

(6) CERTAIN STOCK ACQUIRED IN SECTION 351 EXCHANGE.—Paragraph (3) of section 306(c) (relating to certain stock acquired in section 351 exchange) is amended by striking out the last sentence and inserting in lieu thereof the following: "Rules similar to the rules of section 304(b)(2) shall apply—

"(A) for purposes of the preceding sentence, and

"(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence."

(7) EFFECTIVE DATES FOR AMENDMENTS MADE BY PARAGRAPHS (1) AND (3).—

(A) IN GENERAL.—Except as otherwise provided in this paragraph the amendments made by paragraphs (1) and (3) shall apply to stock acquired after June 18, 1984, in taxable years ending after such date.

(B) ELECTION BY TAXPAYER TO HAVE AMENDMENTS APPLY EARLIER.—Any taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by paragraphs (1) and (3) apply as if included in section 226 of the Tax Equity and Fiscal Responsibility Act of 1982.

(C) SPECIAL RULE FOR CERTAIN TRANSFERS TO FORM BANK HOLDING COMPANY.—Except as provided in subparagraph (D), the amendments made by paragraphs (1) and (3) shall not apply to transfers pursuant to an application to form a BHC (as defined in section 304(b)(3)(D)(ii) of the Internal Revenue Code of 1954) filed with the Federal Reserve Board before June 18, 1984, if—

(i) such BHC was formed not later than the 90th day after the date of the last required approval of any regulatory authority to form such BHC, and

(ii) such BHC did not elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) not to have the provisions of this subparagraph apply.

(D) AMENDMENTS TO APPLY TO CERTAIN LIABILITIES INCURRED BEFORE OCTOBER 20, 1983.—The amendment made by paragraph (3)(A) shall apply to the acquisition of any stock to the extent the liability assumed, or to which such stock is subject, was incurred by the transferor after October 20, 1983.

(m) AMENDMENT RELATED TO SECTION 229.—Subsection (c) of section 229 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to modification of regulations on the completed contract method of accounting) is amended by adding at the end thereof the following new paragraph:

"(4) UNDERPAYMENTS OF ESTIMATED TAX FOR 1982.—To the extent provided in regulations, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1982, by reason of a long-term contract, but only with respect to installments required to be paid before April 13, 1983."

(n) AMENDMENT RELATED TO SECTION 233.—Paragraph (11) of section 51(d) (defining members of economically disadvantaged families) is amended by adding at the end thereof the following new sentence: "Any such determination with respect to an individual who is a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to any employer shall also apply for purposes of determining whether such individual is a member of another targeted group with respect to such employer."

SEC. 712. TECHNICAL CORRECTIONS OF PENSION PROVISIONS.

(a) AMENDMENTS RELATED TO SECTION 235.—

(1) ACTUARIAL ADJUSTMENTS MADE TO BENEFIT LIMIT RATHER THAN TO BENEFIT.—

(A) Subparagraph (C) of section 415(b)(2) (relating to adjustment to $90,000 limit where benefit begins before age 62) is amended by striking out the first sentence and inserting in lieu thereof the following: "If the retirement income benefit under the plan begins before age 62, the determination as to whether the $90,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62."

(B) Subparagraph (D) of section 415(b)(2) (relating to adjustment to $90,000 limitation where benefit begins after age 65) is amended to read as follows:

"(D) ADJUSTMENT TO $90,000 LIMIT WHERE BENEFIT BEGINS AFTER AGE 65.—If the retirement income benefit under the plan begins after age 65, the determination as to whether the $90,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65."

(C)(i) Clauses (i) and (iii) of section 415(b)(2)(E) are each amended by striking out "any benefit" and inserting in lieu thereof "any benefit or limitation".

(ii) Clause (ii) of section 415(b)(2)(E) is amended by striking out "any benefit" and inserting in lieu thereof "any limitation".

(2) DEFINITION OF CURRENT ACCRUED BENEFIT IN THE CASE OF COLLECTIVELY BARGAINED PLANS.—Clause (i) of section 235(g)(4)(B) of the Tax Equity and Fiscal Responsibility Act of 1982 (defining current accrued benefit) is amended by adding at the end thereof the following new sentence: "In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for 'January 1, 1983' the applicable date determined under paragraph (5)."

(3) TRANSITION FRACTION ONLY APPLIES TO PLANS IN EXISTENCE BEFORE JULY 1, 1982.—Paragraph (6) of section 415(e) (relating to special transition rule for defined contribution fraction for years ending after December 31, 1982) is amended by adding at the end thereof the following new subparagraph:

"(C) PLAN MUST HAVE BEEN IN EXISTENCE ON OR BEFORE JULY 1, 1982.—This paragraph shall apply only to plans which were in existence on or before July 1, 1982."

(4) TREATMENT OF CERTAIN COLLECTIVE BARGAINING AGREEMENTS ENTERED INTO BEFORE JULY 1, 1982.—Clause (ii) of section 235(g)(4)(B) of the Tax Equity and Fiscal Responsibility Act of 1982 (defining current accrued benefit) is amended by adding at the end thereof the following new sentence: "For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982."

(b) AMENDMENTS RELATED TO SECTION 236.—

(1) EXCEPTION FOR CERTAIN LOANS NOT TO APPLY TO LOANS FROM DEDUCTIBLE EMPLOYEE CONTRIBUTIONS.—

(A) Subparagraph (A) of section 72(o)(3) (relating to amounts constructively received) is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (p) (other than the exception contained in paragraph (2) thereof)".

(B) Subparagraph (A) of section 72(p)(2) (relating to exception for certain loans) is amended by adding at the end thereof the following new sentence:

"For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B))."

(2) DEFINITION OF REQUIRED PRINCIPAL PAYMENT.—Subparagraph (C) of section 236(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by inserting before the period at the end thereof the following: "or if such loan was payable on demand".

(3) REPEAL OF PROVISION TREATING CERTAIN LOAN REPAYMENTS AS CONTRIBUTIONS.—Subsection (f) of section 404 (relating to certain loan repayments considered as contributions) is hereby repealed.

(4) CLARIFICATION OF EXCEPTION FOR SMALL LOANS.—Clause (ii) of section 72(p)(2)(A) (relating to exception for certain loans) is amended to read as follows:

"(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000."

(c) AMENDMENTS RELATED TO SECTION 237.—

(1) AMENDMENTS CONFORMING TO LIMITING TO KEY EMPLOYEES THE PENALTY FOR PREMATURE DISTRIBUTIONS.—

(A) Clause (i) of section 72(m)(5)(A) is amended by striking out "as an owner-employee" and inserting in lieu thereof "as a key employee".

(B) The paragraph heading of section 72(m)(5) is amended by striking out "OWNER-EMPLOYEES" and inserting in lieu thereof "KEY EMPLOYEES".

(C) Sections 46(a)(4), 53(a), and 901(a) are each amended by striking out "tax on premature distributions to owner-employees" and inserting in lieu thereof "tax on premature distributions to key employees".

(2) CORRECTION OF CROSS REFERENCE TO DEFINITION OF BANK.—

(A) Subsection (f) of section 401 is amended by striking out "(as defined in subsection (d)(1))" and inserting in lieu thereof "(as defined in section 408(n))".

(B) Subsection (h) of section 408 is amended by striking out "(as defined in section 401(d)(1))" and inserting in lieu thereof "(as defined in subsection (n))".

(3) LIMITATION ON ROLLOVERS TO APPLY ONLY TO KEY EMPLOYEES.—Clause (ii) of section 402(a)(5)(E) (relating to self-employed indi-

viduals and owner-employees) is amended to read as follows:

"(ii) Key employees.—An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416."

(d) Amendments Related to Section 238.—

(1) Repeal of section 72(m)(9).—Paragraph (9) of section 72(m) (relating to return of excess contributions before due date of return) is hereby repealed.

(2) Increase in amount of deduction for simplified employee pensions.—Clause (ii) of section 219(b)(2)(A) (relating to special rules for employer contributions under simplified employee pensions) is amended by striking out "but not in excess of $15,000" and inserting in lieu thereof "but not in excess of the limitation in effect under section 415(c)(1)(A)".

(3) Repeal of section 401(e).—Subsection (e) of section 401 (relating to contributions for premiums on annuity, etc., contracts) is hereby repealed.

(4) Repeal of section 404(a)(9).—

(A) Subsection (a) of section 404 is amended by striking out paragraph (9) and by redesignating paragraph (10) as paragraph (9).

(B) Subparagraph (C) of section 415(c)(6) is amended—

(i) by striking out "paragraph (10) of section 404(a)" and inserting in lieu thereof "paragraph (9) of section 404(a)",

(ii) by striking out "section 404(a)(10)(A)" and inserting in lieu thereof "section 404(a)(9)(A)", and

(iii) by striking out "section 404(a)(10)(B)" and inserting in lieu thereof "section 404(a)(9)(B)".

(5) Repeal of section 404(h)(4).—Paragraph (4) of section 404(h) (relating to effect on self-employed individuals or shareholder employees) is hereby repealed.

(6) Determination of earned income of self-employed for purposes of section 404(a)(8)(D).—Subparagraph (D) of section 404(a)(8) is amended by striking out "the earned income of such individual" and inserting in lieu thereof "the earned income of such individual (determined without regard to the deductions allowed by this section and section 405(c))".

(7) Repeal of section 415(c)(7).—

(A) Subsection (c) of section 415 is amended by striking out paragraph (7) and by redesignating paragraph (8) as paragraph (7).

(B) Subclause (II) of section 415(e)(3)(B)(ii) is amended by striking out "subsection (c)(7) or (8)" and inserting in lieu thereof "subsection (c)(7)".

(8) Coordination of repeals of certain sections.—Sections 404(e) and 1379(b) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal).

(9) Amendment of section 404(e).—Subsection (e) of section 404 is amended by striking out "under this section" and inserting in lieu thereof "under paragraph (1), (2), or (3) of subsection (a)".

(e) Amendment Related to Section 239.—Subparagraph (B) of section 101(b)(3) (relating to treatment of self-employed individuals for exclusion of employees' death benefits) is amended to read as follows:

"(B) Special rule for certain distributions.—In the case of any amount paid or distributed—

"(i) by a trust described in section 401(a) which is exempt from tax under section 501(a), or

"(ii) under a plan described in section 403(a),

the term 'employee' includes a self-employed individual described in section 401(c)(1)."

(f) Amendments Related to Section 240.—

(1) Definition of key employee.—

(A) Subparagraph (A) of section 416(i)(1) (defining key employee) is amended by striking out "any participant in an employer plan" and inserting in lieu thereof "an employee".

(B) Clause (ii) of section 416(i)(1)(A) is amended to read as follows:

"(ii) 1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,".

(C) Subparagraph (A) of section 416(i)(1) (defining key employee) is amended by adding at the end thereof the following new sentence: "For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest."

(D) Subparagraph (C) of section 416(i)(1) is amended by striking out "DETERMINING 5-PERCENT OR 1-PERCENT OWNERS" in the subparagraph heading and inserting in lieu thereof "DETERMINING OWNERSHIP IN THE EMPLOYER".

(2) Treatment of simplified employee pensions.—Paragraph (1) of section 408(k) (defining simplified employee pension) is amended to read as follows:

"(1) In general.—For purposes of this title, the term 'simplified employee pension' means an individual retirement account or individual retirement annuity—

"(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

"(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met."

(3) Clarification of transitional rule.—Paragraph (3) of section 235(g) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end thereof the following new sentence: "A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1954."

(4) Treatment of distributions from terminated plans.—Paragraph (3) of section 416(g) (relating to distributions during last 5 years taken into account) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group."

(5) Clarification of cost-of-living adjustments.—

(A) In general.—Paragraph (2) of section 416(d) (relating to cost-of-living adjustments) is amended by striking out "in the same manner" and inserting in lieu thereof "at the same time and in the same manner".

(B) Simplified employee pensions.—Subparagraph (C) of section 408(k)(3) (relating to contributions must bear uniform relationship to total compensation) is amended by adding at the end thereof the following new sentence: "The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A)."

(6) Clerical amendments.—

(A) Subsection (f) of section 416 is amended by striking out "require" and inserting in lieu thereof "required".

(B) Clause (iii) of section 416(i)(1)(B) is amended by striking out "subparagraph (A)(ii)(II)" and inserting in lieu thereof "subparagraph (A)(ii)".

(g) Amendments Related to Section 243.—

(1) Effective date for provisions related to inherited individual retirement plans.—Subsection (c) of section 243 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended to read as follows:

"(c) Effective Date.—The amendments made by this section shall apply with respect to individuals dying after December 31, 1983."

(2) Clerical amendment.—The subparagraph (C) of section 408(d)(3) which was added by section 335(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 is redesignated as subparagraph (D).

(h) Amendment Related to Section 247.—Subsection (a) of section 247 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to existing personal service corporations may liquidate under section 333 during 1983 and 1984) is amended by inserting "which is in existence on September 3, 1982," after "section 535(c)(2)(B) of the Internal Revenue Code of 1954)".

(i) Amendment Related to Section 248.—Paragraph (2) of section 414(n) (defining leased employee) is amended by striking out "any person" in the material preceding subparagraph (A) and inserting in lieu thereof "any person who is not an employee of the recipient and".

(j) Amendment Related to Section 249.—Subparagraph (D) of section 408(k)(3) (relating to treatment of certain contributions and taxes) is amended by striking out the second and third sentences and inserting in lieu thereof the following: "If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(l)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension."

(k) Amendments Related to Section 253.—

(1) Limitation of profit-sharing and stock bonus plans.—Subparagraph (C) of section 415(c)(3) is amended by striking out "In the case of a participant" and inserting in lieu thereof "In the case of a participant in a profit-sharing or stock bonus plan".

(2) Clarification of rule that contributions be nonforfeitable.—Subparagraph (C) of section 415(c)(3) (relating to special rules for permanent and total disability) is amended by striking out the last sentence and inserting in lieu thereof the following: "This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made."

SEC. 714. MISCELLANEOUS PROVISIONS.

(a) Amendment Related to Section 255.—Subsection (c) of section 811 (relating to special rule for dividends to policyholders under reinsurance contracts) is amended by striking out "conventional coinsurance contract" and inserting in lieu thereof "reinsurance contract".

(b) AMENDMENT RELATED TO SECTION 281A.—Paragraph (2) of section 281A(b) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by striking out "subsection (a)" and inserting in lieu thereof "paragraph (1)".

(c) AMENDMENT RELATED TO SECTION 292.—Paragraph (2) of section 7430(a) (relating to awarding of court costs and certain fees) is amended by striking out "including the Tax Court" and inserting in lieu thereof "including the Tax Court and the United States Claims Court".

(d) AMENDMENT RELATED TO SECTION 309.—Paragraph (2) of section 6042(b) (relating to exceptions from dividend reporting requirements) is amended to read as follows:

"(2) EXCEPTIONS.—For purposes of this section, the term 'dividend' does not include any distribution or payment—

"(A) to the extent provided in regulations prescribed by the Secretary—

"(i) by a foreign corporation, or

"(ii) to a foreign corporation, a nonresident alien, or a partnership not engaged in a trade or business in the United States and composed in whole or in part of nonresident aliens, or

"(B) except to the extent otherwise provided in regulations prescribed by the Secretary, to any person described in section 6049(b)(4)."

(e) AMENDMENTS RELATED TO SECTION 311.—

(1) IN GENERAL.—Section 6045(c) (relating to returns of brokers) is amended by adding at the end thereof the following new paragraph:

"(4) PERSON.—The term 'person' includes any governmental unit and any agency or instrumentality thereof."

(2) NO PENALTY FOR PAYMENTS BEFORE JANUARY 1, 1985.—No penalty shall be imposed under the Internal Revenue Code of 1954 with respect to any person required (by reason of the amendment made by paragraph (1)) to file a return under section 6045 of such Code with respect to any payment before January 1, 1985.

(f) AMENDMENT RELATED TO SECTION 314.—Subparagraph (E) of section 6678(a)(3) is amended by striking out "section 6053(c)" and inserting in lieu thereof "section 6053".

(g) AMENDMENTS RELATED TO SECTION 320.—

(1) PERMITTING THE JOINDER OF REFUND AND INJUNCTIVE ACTIONS WITH RESPECT TO CERTAIN PENALTIES.—Section 7422 (relating to civil actions for refund) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) SPECIAL RULE FOR ACTIONS WITH RESPECT TO TAX SHELTER PROMOTER AND UNDERSTATEMENT PENALTIES.—No action or proceeding may be brought in the United States Claims Court for any refund or credit of a penalty imposed by section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)."

(2) AMENDMENT TO TITLE 28.—Chapter 91 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties

"The United States Claims Court shall not have jurisdiction to hear any action or proceeding for any refund or credit of any penalty imposed under section 6700 of the Internal Revenue Code of 1954 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 of such Code (relating to penalties for aiding and abetting understatement of tax liability)."

(3) CONFORMING AMENDMENT.—The table of sections for chapter 91 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any claim for refund or credit filed after the date of the enactment of this Act.

(h) AMENDMENTS RELATED TO SECTION 323.—

(1) Subsection (b) of section 5684 is amended—

(A) by striking out "SECTION 6660" in the heading and inserting in lieu thereof "SECTION 6662", and

(B) by striking out "section 6660(a)" in the text and inserting in lieu thereof "section 6662(a)".

(2) Subsection (c) of section 5761 is amended—

(A) by striking out "SECTION 6660" in the heading and inserting in lieu thereof "SECTION 6662", and

(B) by striking out "section 6660(a)" in the text and inserting in lieu thereof "section 6662(a)".

(3) Clause (ii) of section 6661(b)(2)(A) (defining understatement) is amended by inserting ", reduced by any rebate (within the meaning of section 6211(b)(2))" after "return".

(i) AMENDMENT RELATED TO SECTION 333.—Section 7609(c)(1) (relating to summons to which section applies) is amended by striking out "section 7602" and inserting in lieu thereof "section 7602(a)".

(j) AMENDMENTS RELATED TO SECTION 334.—

(1) CLARIFICATION THAT DEATH BENEFIT EXCLUSION APPLIES TO DISTRIBUTIONS UNDER SECTION 403(b).—Subparagraph (C) of section 3405(b)(2) (relating to special rule for distributions by reason of death) is amended to read as follows:

"(C) SPECIAL RULE FOR DISTRIBUTIONS BY REASON OF DEATH.—In the case of any nonperiodic distribution from or under any plan or contract described in section 401(a), 403(a), or 403(b)—

"(i) which is made by reason of a participant's death, and

"(ii) with respect to which the requirements of clauses (ii) and (iv) of subsection (d)(4)(A) are met,

subparagraph (A) or (B) (as the case may be) shall be applied by taking into account the exclusion from gross income provided by section 101(b) (whether or not allowable)."

(2) CLARIFICATION OF CREDIT FOR WITHHELD AMOUNTS.—Paragraph (1) of section 31(a) is amended by striking out "under section 3402 as tax on the wages of any individual" and inserting in lieu thereof "as tax under chapter 24".

(3) PENALTY FOR FAILURE TO GIVE NOTICE.—Section 6652 (relating to penalty for failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) FAILURE TO GIVE NOTICE TO RECIPIENTS OF CERTAIN PENSION, ETC., DISTRIBUTIONS.—In the case of each failure to provide notice as required by section 3405(d)(10)(B), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $10 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000."

(4) EXCEPTION FOR AMOUNTS PAID TO NONRESIDENT ALIENS.—Subparagraph (B) of section 3405(d)(1) (relating to exceptions) is amended by striking out "and" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", and", and by adding at the end thereof the following new clause:

"(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty."

(5) CLARIFICATION OF AMOUNT WITHHELD WHERE EMPLOYER SECURITY DISTRIBUTED.—Paragraph (8) of section 3405(d) (relating to maximum amount withheld) is amended by adding at the end thereof the following new sentence: "No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares."

(k) AMENDMENT RELATED TO SECTION 337.—Subsection (d) of section 982 (relating to admissibility of documentation maintained in foreign countries) is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(l) AMENDMENT RELATED TO SECTION 339.—Paragraph (1) of section 6038A(c) (defining control) is amended by striking out "section 6038(d)(1)" and inserting in lieu thereof "section 6038(e)(1)".

(m) AMENDMENT RELATED TO SECTION 345.—Subsection (b) of section 345 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date) is amended by striking out "taking effect on" and inserting in lieu thereof "taking effect on or after".

(n) AMENDMENTS RELATED TO SECTION 346.—

(1) CLERICAL AMENDMENT.—Subparagraph (B) of section 346(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended to read as follows:

"(B) Subparagraph (A) of section 6601(d)(2) is amended by striking out 'the last day of' each place it appears and inserting in lieu thereof 'the filing date for'."

(2) INTEREST ON REFUNDS CAUSED BY CARRYBACKS.—

(A) Paragraph (3) of section 6611(f) (relating to refund of tax caused by carryback, etc.) is amended by adding at the end thereof the following new subparagraph:

"(C) APPLICATION OF SUBPARAGRAPH (B) WHERE SECTION 6411(a) CLAIM FILED.—For purposes of subparagraph (B)(i)(II), if a taxpayer—

"(i) files a claim for refund of any overpayment described in paragraph (1) or (2) with respect to the taxable year to which a loss or credit is carried back, and

"(ii) subsequently files an application under section 6411(a) with respect to such overpayment,

then the claim for overpayment shall be treated as having been filed on the date the application under section 6411(a) was filed."

(B) The last sentence of section 6411(a) is amended by striking out "An" and inserting in lieu thereof "Except for purposes of applying section 6611(f)(3)(B), an".

(o) AMENDMENT RELATED TO SECTION 349.—Subsection (b) of section 6331 is amended by striking out "subsection (d)(3)" and inserting in lieu thereof "subsection (e)".

(p) AMENDMENTS RELATED TO TITLE IV.—

(1) EXTENSION OF PARTNERSHIP AUDIT PROVISIONS TO ENTITIES FILING PARTNERSHIP RETURNS, ETC.—Subchapter C of chapter 63 (relating to tax treatment of partnership items) is amended by adding at the end thereof the following new section:

"SEC. 6233. EXTENSION TO ENTITIES FILING PARTNERSHIP RETURNS, ETC.

"(a) GENERAL RULE.—If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership for such year, then, to the extent provided in regulations, the provisions of this subchapter are hereby extended in respect of such year to such entity and its items and to persons holding an interest in such entity.

"(b) SIMILAR RULES IN CERTAIN CASES.—If for any taxable year—

"(1) an entity files a return as an S corporation but it is determined that the entity was not an S corporation for such year, or

"(2) a partnership return or S corporation return is filed but it is determined that there is no entity for such taxable year,

then, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

(2) TECHNICAL AND CLERICAL AMENDMENTS.—

(A) Subparagraph (B) of section 6230(c)(1) is amended by striking out "(or erroneously computed the amount of any such credit or refund)".

(B) Paragraph (9) of section 6231(a) is amended by striking out "electing small business corporation" and inserting in lieu thereof "S corporation".

(C) Subparagraph (A) of section 6231(d)(1) is amended to read as follows:

"(A) in the case of a partner whose entire interest in the partnership is disposed of during such partnership taxable year, as of the moment immediately before such disposition, or".

(D) Subsection (f) of section 6231 is amended by striking out "such deduction or credit" and inserting in lieu thereof "such loss or credit".

(E) The table of sections for subpart C of chapter 63 is amended by adding at the end thereof the following new item:

"Sec. 6233. Extension to entities filing partnership returns, etc."

(F) Paragraph (3) of section 6501(q) is amended to read as follows:

"(3) CROSS REFERENCE.—

"For extension of period for windfall profit tax items of partnerships, see section 6229 as made applicable by section 6232."

(G) Paragraph (3) of section 6511(h) is amended to read as follows:

"(3) CROSS REFERENCE.—

"For period of limitation for windfall profit tax items of partnerships, see section 6227(a) and subsections (c) and (d) of section 6230 as made applicable by section 6232."

(H) Subsection (h) of section 7422 is amended by striking out "section 6131(a)(3)" and inserting in lieu thereof "section 6231(a)(3)".

(I) Subparagraph (F) of section 6231(b)(2) (relating to items cease to be partnership items in certain cases) is amended by striking out "section 6227(b)" and inserting in lieu thereof "section 6227(c)".

(q) ESTATES AND TRUSTS AND S CORPORATIONS REQUIRED TO PROVIDE INFORMATION TO CERTAIN BENEFICIARIES AND SHAREHOLDERS.—

(1) ESTATES AND TRUSTS.—Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by adding after section 6034 the following new section:

"SEC. 6034A. INFORMATION TO BENEFICIARIES OF ESTATES AND TRUSTS.

"The fiduciary of any estate or trust making the return required to be filed under section 6012(a) for any taxable year shall, on or before the date on which such return was filed, furnish to each beneficiary—

"(1) who receives a distribution from such estate or trust with respect to such taxable year, or

"(2) to whom any item with respect to such taxable year is allocated,

a statement containing such information shown on such return as the Secretary may prescribe."

(2) S CORPORATIONS.—Section 6037 (relating to return of S corporation) is amended—

(A) by striking out "Every" and inserting in lieu thereof "(a) In General.—Every", and

(B) by adding at the end thereof the following new subsection:

"(b) COPIES TO SHAREHOLDERS.—Each S corporation required to file a return under subsection (a) for any taxable year shall (on or before the day on which the return for such taxable year was filed) furnish to each person who is a shareholder at any time during such taxable year a copy of such information shown on such return as may be required by regulations."

(3) PENALTY FOR FAILURE TO PROVIDE INFORMATION.—Section 6678(a)(3) (relating to failure to furnish certain statements) is amended by striking out "or" at the end of subparagraph (D), by inserting "or" at the end of subparagraph (E), and by adding after subparagraph (E) the following new subparagraph:

"(F) section 6031(b), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities).".

(4) CONFORMING AMENDMENT.—The table of sections for subpart A of III of subchapter A of chapter 61 is amended by adding after the item relating to section 6034 the following new item:

"Sec. 6034A. Information to beneficiaries of estates and trusts."

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1984.

SEC. 715. EFFECTIVE DATE.

Any amendment made by this subtitle shall take effect as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982 to which such amendment relates.

Subtitle B—Amendments Related to Subchapter S Revision Act of 1982; Etc.

SEC. 721. TECHNICAL CORRECTIONS OF SUBCHAPTER S REVISION ACT OF 1982.

(a) LIMITATION ON RECOGNITION OF GAIN IN THE CASE OF CERTAIN DISTRIBUTIONS.—

(1) Section 1363 (relating to effect of election on corporation) is amended by adding at the end thereof the following new subsection:

"(e) SUBSECTION (d) NOT TO APPLY TO COMPLETE LIQUIDATIONS AND REORGANIZATIONS.—Subsection (d) shall not apply to any distribution—

"(1) of property in complete liquidation of the corporation, or

"(2) to the extent it consists of property permitted by section 354, 355, or 356 to be received without the recognition of gain."

(2) Subsection (d) of section 1363 is amended by striking out "If" and inserting in lieu thereof "Except as provided in subsection (e), if".

(b) COORDINATION WITH RULES RELATING TO INCOME FROM DISCHARGE OF INDEBTEDNESS.—

(1) Paragraph (2) of section 1363(c) (relating to elections of the S corporation) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Subsection (d) of section 108 (relating to income from discharge of indebtedness) is amended by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively, by striking out paragraph (6), and by inserting after paragraph (5) the following new paragraphs:

"(6) SUBSECTIONS (a), (b), AND (c) TO BE APPLIED AT PARTNER LEVEL.—In the case of a partnership, subsections (a), (b), and (c) shall be applied at the partner level.

"(7) SPECIAL RULES FOR S CORPORATION.—

"(A) SUBSECTIONS (a), (b), AND (c) TO BE APPLIED AT CORPORATE LEVEL.—In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the corporate level.

"(B) REDUCTION IN CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge.

"(C) COORDINATION WITH BASIS ADJUSTMENTS UNDER SECTION 1367(b)(2).—For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2)."

(c) TREATMENT OF INACTIVE SUBSIDIARIES.—Paragraph (6) of section 1361(c) (relating to ownership of stock in certain inactive corporations) is amended to read as follows:

"(6) OWNERSHIP OF STOCK IN CERTAIN INACTIVE CORPORATIONS.—For purposes of subsection (b)(2)(A), a corporation shall not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation if such other corporation—

"(A) has not begun business at any time on or before the close of such period, and

"(B) does not have gross income for such period."

(d) TREATMENT OF WORTHLESS DEBT.—Paragraph (3) of section 1367(b) (relating to coordination with section 165(g)) is amended to read as follows:

"(3) COORDINATION WITH SECTIONS 165(g) AND 166(d).—This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless."

(e) ADJUSTMENT TO EARNINGS AND PROFITS FOR RECAPTURE UNDER SECTION 47.—

(1) Subsection (d) of section 1371 (relating to coordination with investment credit recapture) is amended by adding at the end thereof the following new paragraph:

"(3) ADJUSTMENT TO EARNINGS AND PROFITS FOR AMOUNT OF RECAPTURE.—Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 47 for which the S corporation is liable."

(2) Paragraph (1) of section 1371(c) is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraphs (2) and (3) and subsection (d)(3)".

(f) QUALIFIED SUBCHAPTER S TRUSTS.—

(1) GRACE PERIOD.—Subparagraph (D) of section 1361(d)(2) (relating to grade period) is amended by striking out "60 days" and inserting in lieu thereof "15 days and 2 months".

(2) DEFINITION OF QUALIFIED SUBCHAPTER S TRUST.—Subsection (d) of section 1361 (relating to special rule for qualified subchapter S trust) is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) QUALIFIED SUBCHAPTER S TRUST.—For purposes of this subsection, the term 'qualified subchapter S trust' means a trust—

"(A) the terms of which require that—

"(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

"(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

"(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

"(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

"(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

"(4) TRUST CEASING TO BE QUALIFIED.—

"(A) FAILURE TO MEET REQUIREMENTS OF PARAGRAPH (3)(A).—If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

"(B) FAILURE TO MEET REQUIREMENTS OF PARAGRAPH (3)(B).—If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B)."

(3) TECHNICAL AMENDMENT.—Clause (i) of section 1361(d)(2)(B) (relating to separate election with respect to each S corporation) is amended by striking out "S corporation" each place it appears and inserting in lieu thereof "corporation".

(g) COORDINATION WITH SECTION 338.—

(1) Paragraph (6) of section 1362(e) (relating to treatment of S termination year) is amended by adding at the end thereof the following new subparagraph:

"(C) PARAGRAPH (2) NOT TO APPLY TO ITEMS RESULTING FROM SECTION 338.—Paragraph (2) shall not apply with respect to any item resulting from the application of section 338."

(2) Paragraph (2) of section 1362(e) is amended by striking out "as provided in paragraph (3)" and inserting in lieu thereof "as provided in paragraphs (3) and (6)(C)".

(h) ELECTION TO HAVE ITEMS ASSIGNED TO SHORT TAXABLE YEAR UNDER NORMAL ACCOUNTING RULES.—Subparagraph (B) of section 1362(e)(3) (relating to election to have items assigned to each short taxable year under normal accounting rules) is amended to read as follows:

"(B) SHAREHOLDERS MUST CONSENT TO ELECTION.—An election under this subsection shall be valid only if all persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election."

(i) ELECTION TO HAVE NEW PASSIVE INCOME RULES NOT APPLY DURING 1982.—Paragraph (3) of section 6(b) of the Subchapter S Revision Act of 1982 (relating to new passive income rules apply to taxable years beginning during 1982) is amended by adding at the end thereof the following new sentences: "The preceding sentence shall not apply in the case of any corporation which elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to have such sentence not apply. Subsection (e) shall not apply to any termination resulting from an election under the preceding sentence."

(j) S CORPORATION TREATED AS PARTNERSHIP FOR PURPOSES OF SECTION 318.—Paragraph (5) of section 318(a) (relating to constructive ownership of stock) is amended by adding at the end thereof the following new subparagraphs:

"(E) S CORPORATION TREATED AS PARTNERSHIP.—For purposes of this subsection—

"(i) an S corporation shall be treated as a partnership, and

"(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person."

(k) CLARIFICATION OF TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—Subsection (e) of section 6 of the Subchapter S Revision Act of 1982 (relating to treatment of certain elections under prior law) is amended by striking out "any termination" and inserting in lieu thereof "any termination or revocation".

(l) ELECTION FOR CERTAIN SHORT TAXABLE YEARS.—

(1) Subsection (b) of section 1362 (relating to when subchapter S election made) is amended by adding at the end thereof the following new paragraph:

"(4) TAXABLE YEARS OF $2\frac{1}{2}$ MONTHS OR LESS.—For purposes of this subsection, an election for a taxable year made not later than 2 months and 15 days after the first day of the taxable year shall be treated as timely made during such year."

(2) Paragraph (3) of section 1362(b) is amended by striking out "on or before the last day of such taxable year" and inserting in lieu thereof "on or before the 15th day of the 3rd month of the following taxable year".

(m) TAXABLE YEAR OF EXISTING S CORPORATIONS.—Paragraph (1) of section 1378(c) (relating to existing S corporations required to use permitted year after 50-percent shift in ownership) is amended by striking out "which includes December 31, 1982" and inserting in lieu thereof "which includes December 31, 1982 (or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982)".

(n) REFERENCES TO PRIOR LAW.—Subsection (b) of section 1379 (relating to references to prior law included) is amended to read as follows:

"(b) REFERENCES TO PRIOR LAW INCLUDED.—Any references in this title to a provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982."

(o) ELECTION TO TREAT DISTRIBUTIONS AS DIVIDENDS DURING CERTAIN POST-TERMINATION TRANSITION PERIODS.—Subsection (e) of section 1371 (relating to coordination with subchapter C) is amended to read as follows:

"(e) CASH DISTRIBUTIONS DURING POST-TERMINATION TRANSITION PERIOD.—

"(1) IN GENERAL.—Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account.

"(2) ELECTION TO DISTRIBUTE EARNINGS FIRST.—An S corporation may elect to have paragraph (1) not apply to all distributions made during a post-termination transition period described in section 1377(b)(1)(A). Such election shall not be effective unless all shareholders of the S corporation to whom distributions are made by the S corporation during such post-termination transition period consent to such election."

(p) CORPORATE PREFERENCE RULES APPLIED TO S CORPORATIONS WHICH WERE RECENT C CORPORATIONS.—Subsection (b) of section 1363 (relating to computation of corporation's taxable income) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(4) section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years."

(q) TREATMENT OF STOCK HELD BY ESTATE OF QUALIFIED TRANSFEROR.—Clause (i) of section 1378(c)(3)(B) (relating to existing S corporations required to use permitted year after 50-percent shift in ownership) is amended by striking out "who held" and inserting in lieu thereof "who (or whose estate) held".

(r) AMENDMENTS RELATED TO ACCUMULATED ADJUSTMENTS ACCOUNT.—

(1) Subparagraph (A) of section 1368(e)(1) (defining accumulated adjustments account) is amended by striking out "(except that" and all that follows through the end thereof and inserting in lieu thereof the following: "(except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase '(but not below zero)' shall be disregarded in section 1367(b)(2)(A))".

(2) Subsection (c) of section 1368 (relating to S corporation having earnings and profits) is amended by adding at the end thereof the following new sentence: "Except to the [illegible] provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes."

(s) SPECIAL RULES FOR CERTAIN EXPENSES OF S CORPORATIONS.—Paragraph (1) of section 267(f) (as in effect on the day before the date of the enactment of this Act) is amended by striking out all that follows subparagraph (B) and inserting in lieu thereof the following: "then any deduction allowable under such sections in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)."

(t) Pro Rata Allocation for S Termination Year Not To Apply if 50-Percent Change in Ownership.—Paragraph (6) of section 1362(e) (relating to special rules) is amended by adding at the end thereof the following new subparagraph:

"(D) Pro rata allocation for s termination year not to apply if 50-percent change in ownership.—Paragraph (2) shall not apply to an S termination year if there is a sale or exchange of 50 percent or more of the stock in such corporation during such year."

(u) Treatment of Predecessor Corporation Under Section 1374.—Paragraph (2) of section 1374(c) (relating to exception for new corporations) is amended—

(1) by striking out "(and any predecessor corporation)" in subparagraph (A), and

(2) by adding at the end thereof the following new sentence:

"To the extent provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of this paragraph and paragraph (1)."

(v) Authority To Waive Tax on Passive Investment Income.—Section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts) is amended by adding at the end thereof the following new subsection:

"(d) Waiver of Tax in Certain Cases.—If the S corporation establishes to the satisfaction of the Secretary that—

"(1) it determined in good faith that it had no subchapter C earnings and profits at the close of a taxable year, and

"(2) during a reasonable period of time after it was determined that it did have subchapter C earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Secretary may waive the tax imposed by subsection (a) for such taxable year."

(w) Application of Debt Restoration Rules.—Subparagraph (B) of section 1367(b)(2) (relating to adjustments in basis of indebtedness) is amended by striking out "for any taxable year there is" and inserting in lieu thereof "for any taxable year beginning after December 31, 1982, there is".

(x) Clerical Amendments.—

(1) Clause (i) of section 48(k)(5)(D) is amended by striking out "electing small business corporation" and inserting in lieu thereof "S corporation".

(2) Subparagraph (B) of section 465(a)(1) (relating to limitation to amount at risk) is amended by striking out "a corporation" and inserting in lieu thereof "a C corporation".

(3) Subsection (e) of section 1371 (relating to cash distributions during post-termination transition period) is amended by inserting before the period at the end thereof the following: "(within the meaning of section 1368(e))".

(4) Paragraph (2) of section 6659(f) is amended by striking out "section 465(a)(1)(C)" and inserting in lieu thereof "section 465(a)(1)(B)".

(5) Subparagraph (C) of section 6362(d)(2) is amended by striking out "electing small business corporation (within the meaning of section 1371(a))" and inserting in lieu thereof "an S corporation".

(y) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection, any amendment made by this section shall take effect as if included in the Subchapter S Revision Act of 1982.

(2) Amendment made by subsection (b)(2).—Subparagraph (C) of section 108(d)(7) of the Internal Revenue Code of 1954 (as amended by subsection (b)(2)) shall apply to contributions to capital after December 31, 1980, in taxable years ending after such date.

(3) Amendment made by subsection (g)(1).—If—

(A) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after October 19, 1982, and before the date of the enactment of this Act, and

(B) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1954, paragraph (2) of section 1362(e) of such Code would apply,

then the amendment made by paragraph (1) of subsection (g) shall not apply to such qualified stock purchase.

(4) Amendments made by subsection (l).—The amendments made by subsection (l) shall apply to any election under section 1362 of the Internal Revenue Code of 1954 (or any corresponding provision of prior law) made after October 19, 1982.

(5) Amendment made by subsection (t).—If—

(A) on or before the date of the enactment of this Act 50 percent or more of the stock of an S corporation has been sold or exchanged in 1 or more transactions, and

(B) the person (or persons) acquiring such stock establish by clear and convincing evidence that such acquisitions were negotiated on the contemplation that paragraph (2) of section 1362(e) of the Internal Revenue Code of 1954 would apply to the S termination year in which such sales or exchanges occur,

then the amendment made by subsection (t) shall not apply to such S termination year.

SEC. 722. MISCELLANEOUS PROVISIONS.

(a) Amendments Related to Technical Corrections Act of 1982.—

(1) Paragraph (12) of section 57(a) (relating to accelerated cost recovery deduction) is amended—

(A) by striking out "(or, in the case of property described in section 167(k), under section 167)" in subparagraph (A), and

(B) by inserting "(or, in the case of property described in section 167(k), under section 167)" after "section 168(a)" in subparagraph (B).

(2) Subparagraph (A) of section 1256(g)(1) (defining foreign currency contract) is amended by inserting after "delivery of" the following: ", or the settlement of which depends on the value of,".

(3) Subclause (I) of section 306(a)(8)(A)(ii) of the Technical Corrections Act of 1982 is amended by striking out "the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982" and inserting in lieu thereof "September 1, 1982".

(4)(A) Subparagraph (A) of section 172(b)(2) (relating to amount of carrybacks and carryovers) is amended by striking out "and (6)" and inserting in lieu thereof "and (5)".

(B) Subsection (d) of section 172 (relating to modifications) is amended by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(5) Subsection (b) of section 5684 is amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsection (a)".

(6) Any amendment made by this subsection shall take effect as if included in the provisions of the Technical Corrections Act of 1982 to which such amendment relates.

(7)(A) If—

(i) there is an overpayment of tax imposed by section 4986 of the Internal Revenue Code of 1954 for any period before January 1, 1983, by reason of section 201(h)(1)(E) of the Technical Corrections Act of 1982,

(ii) refund of such overpayment is payable to the partners of a partnership, and

(iii) such partners are obligated to pay over any such refund to 1 or more organizations referred to in such section 201(h)(1)(E),

such partnership shall be treated as authorized to act for each person who was a partner at any time in such partnership in claiming and paying over such refund.

(B) Notwithstanding section 6511 of the Internal Revenue Code of 1954, the time for filing a claim for credit or refund of the overpayment referred to in subparagraph (A)(i) shall not expire before the date 1 year after the date of the enactment of this Act.

(b) Coordination of Certain Amendments Made by Highway Revenue Act of 1982 and Public Law 97-473.—For purposes of applying the amendments made by section 547 of the Highway Revenue Act of 1982 and the amendment made by section 202(b)(2) of Public Law 97-473, Public Law 97-473 shall be deemed to have been enacted immediately before the Highway Revenue Act of 1982.

(c) No Designation of Principal Campaign Committee Required Where Only One Political Committee.—Effective for taxable years beginning after December 31, 1981, subparagraph (B) of section 527(h)(2) (relating to special rule for principal campaign committees) is amended by adding at the end thereof the following new sentence: "Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate."

(d) Amount of Credit for Producing Fuel From a Nonconventional Source in Case of Fiscal Year Taxpayer.—

(1) Subparagraph (A) of section 44D(b)(1) (relating to credit for producing fuel from a nonconventional source) is amended by striking out "in which the taxable year begins" and inserting in lieu thereof "in which the sale occurs".

(2) Paragraph (2) of section 44D(b) is amended by striking out "in which a taxable year begins" and inserting in lieu thereof "in which the sale occurs".

(3) The amendments made by this subsection shall apply to taxable years ending after December 31, 1979.

(e) Basis Adjustments in Partnership Interests and Subchapter S Stock for Percentage Depletion.—

(1) Partnership interests.—Paragraph (3) of section 705(a) (relating to determination of basis of partner's interest) is amended to read as follows:

"(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D)."

(2) Subchapter S stock.—Subparagraph (E) of section 1367(a)(2) (relating to adjustments to basis of stock of shareholders, etc.) is amended to read as follows:

"(E) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the *extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B)."*

(3) EFFECTIVE DATE.—

(A) The amendment made by paragraph (1) shall take effect on January 1, 1975.

(B) The amendment made by paragraph (2) shall apply to taxable years beginning after December 31, 1982.

(f) CLARIFICATION OF INCREASE IN BASIS FOR GAIN RECOGNIZED ON TRANSFER TO PARTNERSHIP.—

(1) IN GENERAL.—Sections 722 and 723 are each amended by striking out "gain recognized" and inserting in lieu thereof "gain recognized under section 721(b)".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976.

(g) AMENDMENTS RELATED TO INCOME TAXES OF CERTAIN MILITARY AND CIVILIAN EMPLOYEES OF THE UNITED STATES DYING AS A RESULT OF INJURIES SUSTAINED OVERSEAS.—

(1) EFFECTIVE DATE.—Paragraph (1) of section 1(b) of Public Law 98-259 is amended by striking out "December 31, 1979" and inserting in lieu thereof "November 17, 1978".

(2) REQUIREMENT THAT EMPLOYMENT RELATIONSHIP EXIST AT TIME OF INJURY.—Paragraph (1) of section 692 (relating to certain military and civilian employees of the United States dying as a result of injuries sustained overseas) is amended by striking out "as a result of wounds or injury incurred" and inserting in lieu thereof "as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred".

(3) CLARIFICATION OF DEFINITION OF TERRORISTIC ACTIVITY AGAINST THE UNITED STATES.—Subparagraph (A) of section 692(c)(2) (defining terroristic or military action) is amended to read as follows:

"(A) any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and".

(4) TREATMENT OF DIRECTOR GENERAL OF MULTINATIONAL FORCE IN SINAI.—For purposes of section 692(c) of the Internal Revenue Code of 1954, the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General.

(5) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall take effect as if they were included in the amendments made by section 1 of Public Law 98-259.

(B) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1954, the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act.

(h) AMENDMENTS TO THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983.—

(1) BROKER NOTIFICATION OF PAYOR.—

(A) Subparagraph (A) of section 3406(d)(2) (relating to special rules for readily tradable instruments) is amended—

(i) by inserting "the payor was notified by a broker under subparagraph (B) or" after "if (and only if)", and

(ii) by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(B) Subparagraph (B) of section 3406(d)(2) is amended to read as follows:

"(B) BROKER NOTIFIES PAYOR.—If—

"(i) a payee acquires any readily tradable instrument through a broker, and

"(ii) with respect to such acquisition—

"(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

"(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

"(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

"(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively."

(2) NOTIFIED PAYEE UNDERREPORTING.—Paragraph (1) of section 3406(c) (relating to notified payee underreporting) is amended by striking out "(but not the reasons therefor)" and inserting in lieu thereof "(but not the reasons for the withholding under subsection (a)(1)(C))".

(3) APPLICATION WITH TRUSTS.—Section 643 (relating to definitions applicable to trusts) is amended by adding at the end thereof the following new subsection:

"(d) COORDINATION WITH BACK-UP WITHHOLDING.—Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

"(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

"(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

"(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries."

(4) COORDINATION OF PENSION AND BACK-UP WITHHOLDING.—

(A) Section 3405(d) (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(12) FAILURE TO PROVIDE CORRECT TIN.—If—

"(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

"(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(3) shall be treated as in effect and subsection (a)(4) shall not apply to such payee."

(B) Section 6041(a) (relating to information at source) is amended by inserting "6047(e)," after "6044(a)(1),".

(5) EFFECTIVE DATES.—

(A) Except as provided in this paragraph, the amendments made by this subsection shall apply as if included in the amendments made by the Interest and Dividend Tax Compliance Act of 1983.

(B) The amendments made by paragraph (4) shall apply to payments or distributions after December 31, 1984, unless the payor elects to have such amendments apply to payments or distributions before January 1, 1985.

Subtitle C—Amendments Relating to Highway Revenue Act of 1982

SEC. 731. VALUE OF USED COMPONENTS FURNISHED BY FIRST USER NOT TAKEN INTO ACCOUNT IN DETERMINING PRICE.

Subparagraph (B) of section 4052(b)(1) (relating to determination of price) is amended by striking out "and" at the end of clause (ii) and by inserting after clause (iii) the following new clause:

"(iv) the value of any component of such article if—

"(I) such component is furnished by the first user of such article, and

"(II) such component has been used before such furnishing, and".

SEC. 732. CLARIFICATION OF APPLICATION OF GASOLINE EXCISE TAX TO GASOHOL, ETC.

(a) GASOLINE EXCISE TAX TO APPLY TO GALLON OF GASOHOL.—

(1) IN GENERAL.—Paragraph (1) of section 4081(c) (relating to gasoline mixed with alcohol) is amended to read as follows:

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, subsection (a) shall be applied—

"(A) by substituting '4 cents' for '9 cents' in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and

"(B) by substituting '4$\frac{4}{9}$ cents' for '9 cents' in the case of the sale of any gasoline for use in producing gasohol.

For purposes of this paragraph, the term 'gasohol' means any mixture of gasoline if at least 10 percent of such mixture is alcohol."

(2) LATER SEPARATION OF GASOLINE.—Paragraph (2) of section 4081(c) is amended—

(A) by striking out "at the rate of 4 cents a gallon" and inserting in lieu thereof "at a rate equivalent to 4 cents a gallon", and

(B) by striking out "5 cents a gallon" and inserting in lieu thereof "4$\frac{4}{9}$ cents a gallon".

(3) CREDIT OR REFUND.—Paragraph (1) of section 6427(f) (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "5 cents" and inserting in lieu thereof "4$\frac{4}{9}$ cents".

(b) LOWER FLOOR STOCKS TAX ON GASOHOL.—Subsection (a) of section 521 of the Highway Revenue Act of 1982 is amended by inserting "(4 cents a gallon in the case of a gallon of gasohol, as defined in section 4081(c))" after "5 cents a gallon".

SEC. 733. CERTAIN CHAIN OPERATORS OF RETAIL GASOLINE STATIONS TREATED AS PRODUCERS.

(a) IN GENERAL.—Subsection (d) of section 4082 (defining wholesale distributor) is amended to read as follows:

"(d) WHOLESALE DISTRIBUTOR.—As used in subsection (a), the term 'wholesale distributor' includes—

"(1) any person who—

"(A) sells gasoline to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks, or

"(B) purchases gasoline from a producer and distributes such gasoline to 10 or more retail gasoline stations under common management with such person,

"(2) but only if such person elects to register with respect to the tax imposed by section 4081.

Such term does not include any person who (excluding the term 'wholesale distributor' from subsection (a)) is a producer or importer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first calendar quarter be-

ginning after the date of the enactment of this Act.

SEC. 734. OTHER TECHNICAL AMENDMENTS.

(a) FLOOR STOCKS REFUNDS FOR TIRES TAXED AT LOWER RATE AFTER JANUARY 1, 1984.—

(1) IN GENERAL.—Paragraph (1) of section 523(b) of the Highway Revenue Act of 1982 (relating to floor stocks refunds for tires) is amended by inserting "(or will be subject to a lower rate of tax under such section)" after "and which will not be subject to tax under such section".

(2) AMOUNT OF REFUND LIMITED TO REDUCTION IN TAX, ETC.—

(A) IN GENERAL.—Subsection (b) of section 523 of the Highway Revenue Act of 1982 (relating to floor stocks refunds for tires) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULES FOR TIRES TAXED AT LOWER RATE AFTER JANUARY 1, 1984.—In the case of any tire which is a tax-repealed article solely by reason of the parenthetical matter in paragraph (1)—

"(A) the amount of the credit or refund under subsection (a) shall not exceed the excess of—

"(i) the tax imposed with respect to such tire by section 4071(a) as in effect on December 31, 1983, over

"(ii) the tax which would have been imposed with respect to such tire by section 4071(a) on January 1, 1984, and

"(B) paragraph (1) of section 522(a) shall be applied—

"(i) by substituting 'January 1, 1985' for 'July 1, 1983', and

"(ii) by substituting 'April 1, 1985' for 'October 1, 1983' each place it appears."

(B) CONFORMING AMENDMENT.—Paragraph (2) of section 523(b) of such Act is amended by striking out "In the case of" and inserting in lieu thereof "Except as provided in paragraph (3), in the case of".

(b) OVERPAYMENTS OF TAX ON TRUCKS, ETC., AND TIRES.—

(1) TRUCKS, ETC.—

(A) IN GENERAL.—Subsection (b) of section 6416 (relating to special cases in which tax payments considered overpayments) is amended by inserting after paragraph (5) the following new paragraph:

"(6) TRUCK CHASSIS, BODIES, AND SEMITRAILERS USED FOR FURTHER MANUFACTURE.—If—

"(A) the tax imposed by section 4051 has been paid with respect to the sale of any article, and

"(B) before any other use, such article is by any person used as a component part of another article taxable under section 4051 manufactured or produced by him,

such tax shall be deemed to be an overpayment by such person. For purposes of the preceding sentence, an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used."

(B) TECHNICAL AMENDMENT.—Subparagraph (B) of section 6416(a)(2) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (6)".

(2) TIRES.—

(A) IN GENERAL.—Paragraph (4) of section 6416(b) (relating to tires) is amended to read as follows:

"(4) TIRES.—If—

"(A) the tax imposed by section 4071 has been paid with respect to the sale of any tire by the manufacturer, producer, or importer thereof, and

"(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall be deemed to be an overpayment by such person if such other article is—

"(i) an automobile bus chassis or an automobile bus body, or

"(ii) by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft."

(B) TECHNICAL AMENDMENTS.—

(i) Paragraph (2) of section 6416(b) is amended by striking out subparagraph (E).

(ii) Paragraph (3) of section 6416(b) (relating to tax-paid articles used for further manufacture, etc.) is amended by striking out subparagraph (C).

(iii) Subparagraph (C) of section 6416(a)(1) is amended by striking out ", (b)(3) (C) or (D), or (b)(4)".

(iv) Subparagraph (B) of section 6416(a)(2), as amended by paragraph (1)(B), is amended by inserting "(4)," before "(5)".

(v) Paragraph (3) of section 6416(a) is amended to read as follows:

"(3) SPECIAL RULE.—For purposes of this subsection, in any case in which the Secretary determines that an article is not taxable, the term 'ultimate purchaser' (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this paragraph is filed on or before the date for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date on such determination."

(c) ALLOWANCE OF TAX-FREE SALES OF GASOLINE FOR USE IN NONCOMMERCIAL AVIATION.—

(1) IN GENERAL.—Section 4082 (relating to definitions with respect to the tax on gasoline) is amended by adding at the end thereof the following new subsection:

"(e) CERTAIN SELLERS OF GASOLINE FOR USE IN NONCOMMERCIAL AVIATION TREATED AS PRODUCERS.—For purposes of this subpart, the term 'producer' includes any person who regularly sells gasoline to owners, lessees, or operators of aircraft for use as fuel in such aircraft in noncommercial aviation (as defined in section 4041(c)(4))."

(2) REFUNDS.—Section 6427 (relating to fuels not used for taxable purposes) is amended by redesignating subsections (j), (k), and (l) as subsections (k), (l), and (m), respectively, and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULES WITH RESPECT TO NONCOMMERCIAL AVIATION.—For purposes of subsection (a), in the case of gasoline—

"(1) on which tax was imposed under section 4041(c)(2),

"(2) on which tax was not imposed under section 4081, and

"(3) which was not used as an off-highway business use (within the meaning of section 6421(d)(2)),

the amount of the payment under subsection (a) shall be an amount equal to the amount of gasoline used as described in subsection (a) or resold multiplied by the rate equal to the excess of the rate of tax imposed by section 4041(c)(2) over the rate of tax imposed by section 4081."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act.

(d) FLOOR STOCKS REFUNDS FOR TREAD RUBBER.—Paragraph (1) of section 523(b) of the Highway Revenue Act of 1982 (relating to floor stocks refunds for tires) is amended by adding at the end thereof the following new sentence: "Any tread rubber which was subject to tax under section 4071(a)(4) as in effect on December 31, 1983, and which on January 1, 1984, is part of a retread tire which is held by a dealer and has not been used and is intended for sale shall be treated as a tax-repealed article for purposes of subsection (a) of section 522."

(e) PENALTIES, ETC., TO APPLY TO FLOOR STOCKS TAXES.—Subsection (c) of section 521 of the Highway Revenue Act of 1982 is amended by adding at the end thereof the following: "All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4071(a) (whichever is appropriate) shall apply to the floor stocks taxes imposed by this section."

(f) NO 1984 SHORT TAXABLE PERIOD FOR OWNER-OPERATORS.—Subsection (a) of section 4481 (relating to tax on use of certain vehicles), as in effect before the amendments made by the Highway Revenue Act of 1982, is amended by striking out the last sentence.

(g) CLARIFICATION OF SECONDARY LIABILITY OF INSTALLERS OF PARTS AND ACCESSORIES PURCHASED SEPARATELY.—The text of section 4051(b)(3) is amended to read as follows: "The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1)."

(h) NO INFERENCE FOR PAST PERIODS TO BE DRAWN FROM AMENDMENT RELATING TO CUSTOMARY USE OF TRAILERS.—The subsection heading of subsection (c) of section 513 of the Highway Revenue Act of 1982 is amended by striking out "Clarification of".

(i) WIRE TRANSFER TO FEDERAL RESERVE BANK REQUIRED WHERE EXTENSION OF PAYMENT DUE DATE FOR CERTAIN FUEL TAXES.—Subsection (a) of section 518 of the Highway Revenue Act of 1982 (relating to extension of payment due date for certain fuel taxes) is amended by striking out "any government depository authorized under section 6302 of such Code" and inserting in lieu thereof "any Federal Reserve Bank".

(j) CREDIT OR REFUND OF RETAIL TAX ON TRUCKS AND TRAILERS WHERE PRICE READJUSTMENTS.—Subparagraph (A) of section 6416(b)(1) (relating to price readjustments) is amended by inserting "or by section 4051" after "by chapter 32".

SEC. 735. REPEAL OF CERTAIN PROVISIONS MADE OBSOLETE BY HIGHWAY REVENUE ACT OF 1982.

(a) DELETION OF TERMINATED MANUFACTURERS EXCISE TAX ON MOTOR VEHICLES.—

(1) Part I of subchapter A of chapter 32 is amended by striking out sections 4061, 4062, and 4063.

(2) The part heading and the table of sections for such part I are amended to read as follows:

"PART I—GAS GUZZLERS

"Sec. 4064. Gas guzzlers tax."

(3) The table of parts for subchapter A of chapter 32 is amended by striking out the item relating to part I and inserting in lieu thereof the following:

"Part I. Gas guzzlers."

(b) CROSS-REFERENCES TO TERMINATED MANUFACTURERS EXCISE TAX ON MOTOR VEHICLES STATED AS PART OF RETAIL TAX.—

(1) EXEMPTIONS.—Section 4053 (relating to exemptions from retail tax on heavy trucks, etc.) is amended to read as follows:

"SEC. 4053. EXEMPTIONS.

"No tax shall be imposed by section 4051 on any of the following articles:

"(1) CAMPER COACHES BODIES FOR SELF-PROPELLED MOBILE HOMES.—Any article designed—

"(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

"(B) to be used primarily as living quarters or camping accommodations.

"(2) FEED, SEED, AND FERTILIZER EQUIPMENT.—Any body primarily designed—

"(A) to process or prepare seed, feed, or fertilizer for use on farms,

"(B) to haul feed, seed, or fertilizer to and on farms,

"(C) to spread feed, seed, or fertilizer on farms,

"(D) to load or unload feed, seed, or fertilizer on farms, or

"(E) for any combination of the foregoing.

"(3) HOUSE TRAILERS.—Any house trailer.

"(4) AMBULANCES, HEARSES, ETC.—Any ambulance, hearse, or combination ambulance-hearse.

"(5) CONCRETE MIXERS.—Any article designed—

"(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

"(B) to be used to process or prepare concrete.

"(6) TRASH CONTAINERS, ETC.—Any box, container, receptacle, bin or other similar article—

"(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

"(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

"(7) RAIL TRAILERS AND RAIL VANS.—Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car."

(2) CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE.—Subsection (c) of section 4052 (relating to definitions and special rules) is amended to read as follows:

"(c) CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE.—

"(1) IN GENERAL.—For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

"(2) ITEMS.—The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor."

(c) OTHER TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Clause (i) of section 48(l)(16)(B) (defining qualified intercity bus) is amended to read as follows:

"(i) the chassis of which is an automobile bus chassis and the body of which is an automobile bus body,".

(2)(A) The first sentence of section 4071(b) is amended by striking out "or inner tube" and by striking out "or tube" each place it appears.

(B) The first sentence of section 4071(c) is amended by striking out "on total weight," and all that follows and inserting in lieu thereof "on total weight exclusive of metal rims or rim bases."

(C) Subsection (e) of section 4071 is amended—

(i) by striking out "or inner tubes (other than bicycle tires and inner tubes)",

(ii) by striking out "and inner tubes" in paragraphs (1) and (2), and

(iii) by striking out the last sentence and inserting in lieu thereof the following: "This subsection shall not apply with respect to the sale of an automobile bus chassis or an automobile bus body."

(D) Subsection (f) of section 4071 (relating to imported recapped or retreaded United States tires) is hereby repealed.

(3) Section 4072 (relating to definitions) is amended by striking out subsection (b) and by redesignating subsection (c) as subsection (b).

(4) Section 4073 (relating to exemptions) is amended to read as follows:

"SEC. 4073. EXEMPTION FOR TIRES WITH INTERNAL WIRE FASTENING.

"The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent."

(5)(A) The heading for part II of subchapter A of chapter 32 is amended by striking out "AND TUBES".

(B) The table of parts for subchapter A of chapter 32 is amended by striking out "and tubes" in the item relating to part II.

(C) The item relating to section 4073 in the table of sections for part II of subchapter A of chapter 32 is amended to read as follows:

"Sec. 4073. Exemption for tires with internal wire fastening."

(6)(A) Paragraph (1) of section 4216(b) (defining constructive sale price) is amended—

(i) by striking out "(other than an article the sale of which is taxable under section 4061(a))" in the second sentence, and

(ii) by striking out the third sentence.

(B) Paragraph (2) of section 4216(b) is amended by striking out subparagraph (C), by adding "and" at the end of subparagraph (B), and by redesignating subparagraph (D) as subparagraph (C).

(C) Subsection (b) of section 4216 is amended by striking out paragraph (5).

(D) Paragraph (3) of section 4216(b) is amended by striking out "paragraphs (4) and (5)" and inserting in lieu thereof "paragraph (4)".

(E) Paragraph (6) of section 4216(b) is redesignated as paragraph (5) and is amended by striking out "(1), (3), and (5)" and inserting in lieu thereof "(1) and (3)".

(F) Subsection (f) of section 4216 (relating to certain trucks incorporating used components) is hereby repealed.

(7)(A) Subsection (b) of section 4218 (relating to use by manufacturer or importer considered as sale) is amended—

(i) by striking out "or inner tube", and

(ii) by striking out "Except as provided in subsection (d), if" and inserting in lieu thereof "If".

(B) The heading for subsection (b) of section 4218 is amended by striking out "and Tubes".

(C) Section 4218 is amended by striking out subsections (c) and (d) and by redesignating subsection (e) as subsection (c).

(D) Subsection (a) of section 4218 is amended by striking out "(other than an article specified in subsection (b), (c), or (d))" and inserting in lieu thereof "(other than a tire taxable under section 4071)".

(8)(A) Subsection (a) of section 4221 (relating to tax-free sales) is amended by inserting "(or under section 4051 on the first retail sale)" after "manufacturer".

(B) Subsection (c) of section 4221 is amended by striking out "section 4063(a) (6) or (7), 4063(b), 4063(e)," and inserting in lieu thereof "section 4053(a)(6)".

(C) Paragraph (1) of section 4221(d) (defining manufacturer) is amended by inserting before the period ", and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale".

(D) Paragraph (6) of section 4221(d) (relating to use in further manufacture) is amended—

(i) by striking out subparagraph (B) and the last sentence,

(ii) by striking out "(other than an article referred to in subparagraph (B))" in subparagraph (A),

(iii) by redesignating subparagraph (C) as subparagraph (B), and

(iv) by adding "or" at the end of subparagraph (A).

(E) Paragraph (2) of section 4221(e) is amended—

(i) by striking out "or inner tube" each place it appears; and

(ii) by striking out "or tube" each place it appears.

(F) The heading for paragraph (2) of section 4221(e) is amended by striking out "AND TUBES".

(G) Subsection (e) of section 4221 is amended by striking out paragraphs (4), (5), and (6) and inserting in lieu thereof the following:

"(3) TIRES USED ON INTERCITY, LOCAL, AND SCHOOL BUSES.—Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus."

(9) Subsection (d) of section 4222 is amended by striking out "4063(a)(7), 4063(b), 4063(e)," and inserting in lieu thereof "4053(a)(6),".

(10) Paragraph (1) of section 4223(b) is amended by striking out "section 4218(e)" and inserting in lieu thereof "4218(c)".

(11) Paragraph (2) of section 4227 is amended by striking out "and tubes".

(12)(A) So much of paragraph (1) of section 6412(a) (relating to floor stock refunds) as precedes "there shall be credited or refunded" is amended to read as follows:

"(1) TIRES AND GASOLINE.—Where before October 1, 1988, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale,".

(B) Paragraph (1) of section 6412(a) is amended by striking out the last sentence.

(C) Subparagraph (A) of section 6412(a)(2) is amended to read as follows:

"(A) The term 'dealer' includes a wholesaler, jobber, distributor, or retailer."

(D) Subsection (c) of section 6412 is amended by striking out "4061, 4071," and inserting in lieu thereof "4071".

(13)(A) Subparagraph (C) of section 6416(b)(1) (relating to adjustment of tire price) is amended by striking out "section 4071(a) (1) or (2) or section 4071(b)" and inserting in lieu thereof "subsection (a) or (b) of section 4071".

(B) Paragraph (2) of section 6416(b) is amended by striking out subparagraph (F) and all that follows to the end thereof and inserting in lieu thereof the following:

"(E) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or

"(F) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064."

(C) Paragraph (3) of section 6416(b) is amended by striking out all subparagraphs and the last sentence thereof and inserting in lieu thereof the following:

"(A) in the case of any article other than gasoline taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

"(i) another article taxable under chapter 32, or

"(ii) an automobile bus chassis or an automobile bus body,

manufactured or produced by him; or

"(B) in the case of gasoline taxable under section 4081, such gasoline is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him."

(D) Subparagraph (B) of section 6416(a)(2) is amended by striking out "or (B)".

(E) Section 6416 is amended by striking out subsections (c) and (g) and by redesignating subsections (e), (f), (h), and (i) as subsections (c), (d), (e), and (f), respectively.

(F) Subparagraph (A) of section 6416(b)(2) is amended by striking out "(except in any case to which subsection (g) applies)".

(14) Section 6511 is amended by striking out subsection (i) and by redesignating subsection (j) as subsection (i).

(15) Paragraph (3) of section 9502(b) is amended by striking out "under paragraphs (2) and (3) of section 4071(a), with respect to tires and tubes of types used on aircraft" and inserting in lieu thereof "under section 4071 with respect to tires of the types used on aircraft".

(16) Sections 1366(f)(1) and 6401(b) are each amended by striking out ", special fuels, and lubricating oil" and inserting in lieu thereof "and special fuels".

SEC. 736. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, any amendment made by this subtitle shall take effect as if included in the provisions of the Highway Revenue Act of 1982 to which such amendment relates.

TITLE VIII—FOREIGN SALES CORPORATIONS

SEC. 801. FOREIGN SALES CORPORATIONS.

(a) IN GENERAL.—Part III of subchapter N of chapter 1 (relating to income from sources outside the United States) is amended by inserting after subpart B the following new subpart:

"Subpart C—Taxation of Foreign Sale Corporations

"Sec. 921. Exempt foreign trade income excluded from gross income.
"Sec. 922. FSC defined.
"Sec. 923. Exempt foreign trade income.
"Sec. 924. Foreign trading gross receipts.
"Sec. 925. Transfer pricing rules.
"Sec. 926. Distributions to shareholders.
"Sec. 927. Other definitions and special rules.

"SEC. 921. EXEMPT FOREIGN TRADE INCOME EXCLUDED FROM GROSS INCOME.

"(a) EXCLUSION.—Exempt foreign trade income of a FSC shall be treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States.

"(b) PROPORTIONATE ALLOCATION OF DEDUCTIONS TO EXEMPT FOREIGN TRADE INCOME.—Any deductions of the FSC properly apportioned and allocated to the foreign trade income derived by a FSC from any transaction shall be allocated between—

"(1) the exempt foreign trade income derived from such transaction, and

"(2) the foreign trade income (other than exempt foreign trade income) derived from such transaction, on a proportionate basis.

"(c) DENIAL OF CREDITS.—Notwithstanding any other provision of this chapter, no credit (other than a credit allowable under section 27(a), 33, or 34) shall be allowed under this chapter to any FSC.

"(d) FOREIGN TRADE INCOME, INVESTMENT INCOME, AND CARRYING CHARGES TREATED AS EFFECTIVELY CONNECTED WITH UNITED STATES BUSINESS.—For purposes of this chapter—

"(1) all foreign trade income of a FSC other than—

"(A) exempt foreign trade income, and

"(B) section 923(a)(2) non-exempt income,

"(2) all interest, dividends, royalties, and other investment income received by a FSC, and

"(3) all carrying charges received by a FSC,

shall be treated as income effectively connected with the conduct of a trade of business conducted through a permanent establishment of such corporation within the United States. Income described in paragraph (1) shall be treated as derived from sources within the United States.

"SEC. 922. FSC DEFINED.

"(a) FSC DEFINED.—For purposes of this title, the term 'FSC' means any corporation—

"(1) which—

"(A) was created or organized—

"(i) under the laws of any foreign country which meets the requirements of section 927(e)(3), or

"(ii) under the laws applicable to any possession of the United States,

"(B) has no more than 25 shareholders at any time during the taxable year,

"(C) does not have any preferred stock outstanding at any time during the taxable year,

"(D) during the taxable year—

"(i) maintains an office located outside the United States in a foreign country which meets the requirements of section 927(e)(3),

"(ii) maintains a set of the permanent books of account (including invoices) of such corporation at such office, and

"(iii) maintains at a location within the United States the records which such corporation is required to keep under section 6001,

"(E) at all times during the taxable year, has a board of directors which includes at least one individual who is not a resident of the United States, and

"(F) is not a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member, and

"(2) which has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a FSC.

"(b) SMALL FSC DEFINED.—For purposes of this title, a FSC is a small FSC with respect to any taxable year if—

"(1) such corporation has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a small FSC, and

"(2) such corporation is not a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such other FSC has also made an election under paragraph (1) which is in effect for such year.

"SEC. 923. EXEMPT FOREIGN TRADE INCOME.

"(a) EXEMPT FOREIGN TRADE INCOME.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'exempt foreign trade income' means the aggregate amount of all foreign trade income of a FSC for the taxable year which is described in paragraph (2) or (3).

"(2) INCOME DETERMINED WITHOUT REGARD TO ADMINISTRATIVE PRICING RULES.—In the case of any transaction to which paragraph (3) does not apply, 32 percent of the foreign trade income derived from such transaction shall be treated as described in this paragraph. For purposes of the preceding sentence, foreign trade income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 927(a)(2) (relating to intangibles).

"(3) INCOME DETERMINED WITH REGARD TO ADMINISTRATIVE PRICING RULES.—In the case of any transaction with respect to which paragraph (1) or (2) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) applies, 16/23 of the foreign trade income derived from such transaction shall be treated as described in this paragraph.

"(4) SPECIAL RULE FOR FOREIGN TRADE INCOME ALLOCABLE TO A COOPERATIVE.—

"(A) IN GENERAL.—In any case in which a qualified cooperative is a shareholder of a FSC, paragraph (3) shall be applied with respect to that portion of the foreign trade income of such FSC for any taxable year which is properly allocable to the marketing of agricultural or horticultural products (or the providing of related services) by such cooperative by substituting '100 percent' for '16/23'.

"(B) PARAGRAPH ONLY TO APPLY TO AMOUNTS FSC DISTRIBUTES.—Subparagraph (A) shall not apply for any taxable year unless the FSC distributes to the qualified cooperative the amount which (but for such subparagraph) would not be treated as exempt foreign trade income. Any distribution under this subparagraph for any taxable year—

"(i) shall be made before the due date for filing the return of tax for such taxable year, but

"(ii) shall be treated as made on the last day of such taxable year.

"(5) SPECIAL RULE FOR MILITARY PROPERTY.—Under regulations prescribed by the Secretary, that portion of the foreign trading gross receipts of the FSC for the taxable year attributable to the disposition of, or services relating to, military property (within the meaning of section 995(b)(3)(B)) which may be treated as exempt foreign trade income shall equal 50 percent of the amount which (but for this paragraph) would be treated as exempt foreign trade income.

"(b) Foreign Trade Income Defined.—For purposes of this subpart, the term 'foreign trade income' means the gross income of a FSC attributable to foreign trading gross receipts.

"SEC. 924. FOREIGN TRADING GROSS RECEIPTS.

"(a) IN GENERAL.—Except as otherwise provided in this section, for purposes of this subpart, the term 'foreign trading gross receipts' means the gross receipts of any FSC which are—

"(1) from the sale, exchange, or other disposition of export property,

"(2) from the lease or rental of export property for use by the lessee outside the United States,

"(3) for services which are related and subsidiary to—

"(A) any sale, exchange, or other disposition of export property by such corporation, or

"(B) any lease or rental of export property described in paragraph (2) by such corporation,

"(4) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

"(5) for the performance of managerial services for an unrelated FSC or DISC in furtherance of the production of foreign trading gross receipts described in paragraph (1), (2), or (3).

Paragraph (5) shall not apply to a FSC for any taxable year unless at least 50 percent of its gross receipts for such taxable year is from activities described in paragraph (1), (2), or (3).

"(b) Foreign Management and Foreign Ecomomic Process Requirements.—

"(1) In general.—Except as provided in paragraph (2)—

"(A) a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of such corporation during such taxable year takes place outside the United States as required by subsection (c), and

"(B) a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by subsection (d).

"(2) Exception for small FSC.—

"(A) In general.—Paragraph (1) shall not apply with respect to any small FSC.

"(B) Limitation on amount of foreign trading gross receipts of small FSC taken into account.—

"(i) In general.—Any foreign trading gross receipts of a small FSC for the taxable year which exceed $5,000,000 shall not be taken into account in determining the exempt foreign trade income of such corporation and shall not be taken into account under any other provision of this subpart.

"(ii) Allocation of limitation.—If the foreign trading gross receipts of a small FSC exceed the limitation of clause (i), the corporation may allocate such limitation among such gross receipts in such manner as it may select (at such time and in such manner as may be prescribed in regulations).

"(iii) Receipts of controlled group aggregated.—For purposes of applying clauses (i) and (ii), all small FSC's which are members of the same controlled group of corporations shall be treated as a single corporation.

"(iv) Allocation of limitation among members of controlled group.—The limitation under clause (i) shall be allocated among the foreign trading gross receipts of small FSC's which are members of the same controlled group of corporations in a manner provided in regulations prescribed by the Secretary.

"(c) Requirement That FSC Be Managed Outside the United States.—The management of a FSC meets the requirements of this subsection for the taxable year if—

"(1) all meetings of the board of directors of the corporation, and all meetings of the shareholders of the corporation, are outside the United States,

"(2) the principal bank account of the corporation is maintained outside the United States at all times during the taxable year, and

"(3) all dividends, legal and accounting fees, and salaries of officers and members of the board of directors of the corporation disbursed during the taxable year are disbursed out of bank accounts of the corporation maintained outside the United States.

"(d) Requirement That Economic Processes Take Place Outside the United States.—

"(1) In general.—The requirements of this subsection are met with respect to the gross receipts of a FSC derived from any transaction if—

"(A) such corporation (or any person acting under a contract with such corporation) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

"(B) the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

"(2) Alternative 85-percent test.—A corporation shall be treated as satisfying the requirements of paragraph (1)(B) with respect to any transaction if, with respect to each of at least 2 paragraphs of subsection (e), the foreign direct costs incurred by such corporation attributable to activities described in such paragraph equal or exceed 85 percent of the total direct costs attributable to activities described in such paragraph.

"(3) Definitions.—For purpose of this subsection—

"(A) Total direct costs.—The term 'total direct costs' means, with respect to any transaction, the total direct costs incurred by the FSC attributable to activities described in subsection (e) performed at any location by the FSC or any person acting under a contract with such FSC.

"(B) Foreign direct costs.—The term 'foreign direct costs' means with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

"(4) Rules for commissions, etc.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (e) in the case of commissions, rentals, and furnishing of services.

"(e) Activities Relating to Disposition of Export Property.—The activities referred to in subsection (d) are—

"(1) advertising and sales promotion,

"(2) the processing of customer orders and the arranging for delivery of the export property,

"(3) transportation from the time of acquisition by the FSC (or, in the case of a commission relationship, from the beginning of such relationship for such transaction) to the delivery to the customer,

"(4) the determination and transmittal of a final invoice or statement of account and the receipt of payment, and

"(5) the assumption of credit risk.

"(f) Certain Receipts Not Included in Foreign Trading Gross Receipts.—

"(1) Certain receipts excluded on basis of use; subsidized receipts and receipts from related parties excluded.—The term 'foreign trading gross receipts' shall not include receipts of a FSC from a transaction if—

"(A) the export property or services—

"(i) are for ultimate use in the United States, or

"(ii) are for use by the United States or any instrumentality thereof and such use of export property or services is required by law or regulation,

"(B) such transaction is accomplished by a subsidy granted by the United States or any instrumentality thereof, or

"(C) such receipts are from another FSC which is a member of the same controlled group of corporations of which such corporation is a member.

"(2) Investment income; carrying charges.—The term 'foreign trading gross receipts' shall not include any investment income or carrying charges.

"SEC. 925. TRANSFER PRICING RULES.

"(a) In General.—In the case of a sale of export property to a FSC by a person described in section 482, the taxable income of such FSC and such person shall be based upon a transfer price which would allow such FSC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

"(1) 1.83 percent of the foreign trading gross receipts derived from the sale of such property by such FSC,

"(2) 23 percent of the combined taxable income of such FSC and such person which is attributable to the foreign trading gross receipts derived from the sale of such property by such FSC, or

"(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

Paragraphs (1) and (2) shall apply only if the FSC meets the requirements of subsection (c) with respect to the sale.

"(b) Rules for Commissions, Rentals, and Marginal Costing.—The Secretary shall prescribe regulations setting forth—

"(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

"(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a FSC is seeking to establish or maintain a market for export property.

"(c) Requirements for Use of Administrative Pricing Rules.—A sale by a FSC meets the requirements of this subsection if—

"(1) all of the activities described in section 924(e) attributable to such sale, and

"(2) all of the activities relating to the solicitation (other than advertising), negotiation, and making of the contract for such sale,

have been performed by such FSC (or by another person acting under a contract with such FSC).

"(d) Limitation on Gross Receipts Pricing Rule.—The amount determined under subsection (a)(1) with respect to any transaction shall not exceed 2 times the amount which would be determined under subsection (a)(2) with respect to such transaction.

"(e) Taxable Income.—For purposes of this section, the taxable income of a FSC shall be determined without regard to section 921.

"(f) Special Rule for Cooperatives.—In any case in which a qualified cooperative sells export property to a FSC, in computing the combined taxable income of such FSC and such organization for purposes of subsection (a)(2), there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

"SEC. 926. DISTRIBUTIONS TO SHAREHOLDERS.

"(a) Distributions Made First Out of Foreign Trade Income.—For purposes of

this title, any distribution to a shareholder of a FSC by such FSC which is made out of earnings and profits shall be treated as made—

"(1) first, out of earnings and profits attributable to foreign trade income, to the extent thereof, and

"(2) then, out of any other earnings and profits.

"(b) DISTRIBUTIONS BY FSC TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS TREATED AS UNITED STATES CONNECTED.—For purposes of this title, any distribution by a FSC which is made out of earnings and profits attributable to foreign trade income to any shareholder of such corporation which is a foreign corporation or a nonresident alien individual shall be treated as a distribution—

"(1) which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States, and

"(2) of income which is derived from sources within the United States.

"(c) FSC INCLUDES FORMER FSC.—For purposes of this section, the term 'FSC' includes a former FSC.

"SEC. 927. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) EXPORT PROPERTY.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'export property' means property—

"(A) manufactured, produced, grown, or extracted in the United States by a person other than a FSC,

"(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and

"(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

"(2) EXCLUDED PROPERTY.—The term 'export property' shall not include—

"(A) property leased or rented by a FSC for use by any member of a controlled group of corporations of which such FSC is a member,

"(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,

"(C) oil or gas (or any primary product thereof), or

"(D) products the export of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979 (relating to the protection of the domestic economy).

"(3) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall not be treated as export property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

"(4) QUALIFIED COOPERATIVE.—The term 'qualified cooperative' means any organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products.

"(b) GROSS RECEIPTS.—

"(1) IN GENERAL.—For purposes of this subpart, the term 'gross receipts' means—

"(A) the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and

"(B) gross income from all other sources.

"(2) GROSS RECEIPTS TAKEN INTO ACCOUNT IN CASE OF COMMISSION.—In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this subpart as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

"(c) INVESTMENT INCOME.—For purposes of this subpart, the term 'investment income' means—

"(1) dividends,

"(2) interest,

"(3) royalties,

"(4) annuities,

"(5) rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States),

"(6) gains from the sale or exchange of stock or securities,

"(7) gains from futures transactions in any commodity on, or subject to the rules of, a board of trade or commodity exchange (other than gains which arise out of a bona fide hedging transaction reasonably necessary to conduct business of the FSC in the manner in which such business is customarily conducted by others),

"(8) amounts includible in computing the taxable income of the corporation under part I of subchapter J, and

"(9) gains from the sale or other disposition of any interest in an estate or trust.

"(d) OTHER DEFINITIONS.—For purposes of this subpart—

"(1) CARRYING CHARGES.—The term 'carrying charges' means—

"(A) carrying charges, and

"(B) under regulations prescribed by the Secretary, any amount in excess of the price for an immediate cash sale and any other unstated interest.

"(2) TRANSACTION.—

"(A) IN GENERAL.—The term 'transaction' means—

"(i) any sale, exchange, or other disposition,

"(ii) any lease or rental, and

"(iii) any furnishing of services.

"(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

"(3) UNITED STATES DEFINED.—The term 'United States' includes the Commonwealth of Puerto Rico.

"(4) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

"(B) section 1563(b) shall not apply.

"(5) POSSESSIONS.—The term 'possession of the United States' means Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

"(6) SECTION 923(A)(2) NON-EXEMPT INCOME.—The term 'section 923(a)(2) non-exempt income' means any foreign trade income from a transaction with respect to which paragraph (1) or (2) of section 925(a) does not apply and which is not exempt foreign trade income.

"(e) SPECIAL RULES.—

"(1) SOURCE RULES FOR RELATED PERSONS.—Under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.

"(2) PARTICIPATION IN INTERNATIONAL BOYCOTTS, ETC.—Under regulations prescribed by the Secretary, the exempt foreign trade income of a FSC for any taxable year shall be limited under rules similar to the rules of clauses (i) and (ii) of section 995(b)(1)(F).

"(3) EXCHANGE OF INFORMATION REQUIREMENTS.—For purposes of this title, the term 'FSC' shall not include any corporation which was credited or organized under the laws of any foreign country unless, at the time such corporation was created or organized, there was in effect between such country and the United States—

"(A) a bilateral or multilateral agreement described in section 274(h)(6)(C), or

"(B) an income tax treaty with respect to which the Secretary certifies that the exchange of information program with such country under such treaty carries out the purposes of this paragraph.

"(4) DISALLOWANCE OF TREATY BENEFITS.—Any corporation electing to be treated as a FSC under subsection (f)(1) may not claim any benefits under any income tax treaty between the United States and any foreign country.

"(5) EXEMPTION FROM CERTAIN OTHER TAXES.—

"(A) IN GENERAL.—No tax shall be imposed on any foreign trade income derived before January 1, 1987, by any jurisdiction described in subsection (d)(5).

"(B) EXCEPTION FOR TAX LIABILITY INCURRED TO POSSESSION.—Subparagraph (A) shall not apply with respect to any income tax liability which is incurred to any jurisdiction described in subsection (d)(5).

"(f) ELECTION OF STATUS AS FSC (AND AS SMALL FSC).—

"(1) ELECTION.—

"(A) TIME FOR MAKING.—An election by a corporation under section 922(A)(2) to be treated as a FSC, and an election under section 922(b)(1) to be a small FSC, shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

"(B) MANNER OF ELECTION.—An election under subparagraph (A) shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

"(2) EFFECT OF ELECTION.—If a corporation makes an election under paragraph (1), then

the provisions of this subpart shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years.

"(3) TERMINATION OF ELECTION.—

"(A) REVOCATION.—An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

"(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

"(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days, and

for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

"(B) CONTINUED FAILURE TO BE A FSC.—If a corporation is not a FSC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election to be a FSC shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.".

(b) DIVIDEND RECEIVED DEDUCTION FOR DOMESTIC CORPORATIONS.—

(1) IN GENERAL.—Section 245 (relating to dividends received from certain foreign corporations) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CERTAIN DIVIDENDS RECEIVED FROM FSC.—

"(1) IN GENERAL.—In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to 100 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC. The deduction allowable under the preceding sentence with respect to any dividend shall be in lieu of any deduction allowable under subsection (a) or (b) with respect to such dividend.

"(2) EXCEPTION FOR CERTAIN DIVIDENDS.—Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

"(A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or

"(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'foreign trade income' and 'exempt foreign trade income' have the meaning given such terms by section 923.".

"(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 246(b) (relating to limitation on aggregate amount of deduction) is amended by striking out "245" each place it appears and inserting in lieu thereof "subsection (a) or (b) of section 245".

(B) Subsection (d) of section 245 (relating to property distributions), as redesignated by paragraph (1), is amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "this section".

(c) CLARIFICATION OF INFORMATION EXCHANGE AGREEMENTS.—Subparagraph (D) of section 274(h)(6) (relating to coordination with section 6103) is amended—

(1) by adding at the end thereof the following new sentence: "The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).", and

(2) by striking out the heading thereof and inserting in lieu thereof "COORDINATION WITH OTHER PROVISIONS.—".

(d) CONFORMING AMENDMENTS.—

(1) Section 901 (relating to foreign tax credit) is amended by redesignating subsection (h) as subsection (i) and inserting after subsection (g) the following new subsection:

"(h) TAXES PAID WITH RESPECT TO FOREIGN TRADE INCOME.—No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC, other than section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6).".

(2) Paragraph (1) of section 904(d) (relating to application of section in case of certain interest income and dividends from a DISC) as amended—

(A) by striking out "and" at the end of subparagraph (B),

(B) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) taxable income attributable to foreign trade income (within the meaning of section 923(b)),

"(D) distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)), and

"(E) income other than income described in subparagraph (A), (B), (C), or (D).", and

(C) by striking out the heading and inserting in lieu thereof:

"(d) SEPARATE APPLICATION OF SECTION WITH RESPECT TO CERTAIN INTEREST INCOME AND INCOME FROM DISC, FORMER DISC, FSC, OR FORMER FSC.—".

(3) Subsection (b) of section 906 (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(5) No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC.".

(4) Section 951 (relating to amounts included in gross income of shareholders) is amended by adding at the end thereof the following new subsection:

"(e) FOREIGN TRADE INCOME NOT TAKEN INTO ACCOUNT.—

"(1) IN GENERAL.—The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart. For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.

"(2) FOREIGN TRADE INCOME.—For purposes of this subsection, the term 'foreign trade income' has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).".

(5) Paragraph (4) of section 275(a) (relating to disallowance of deduction for certain taxes) is amended to read as follows:

"(4) Income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States if—

"(A) the taxpayer chooses to take to any extent the benefits of section 901, or

"(B) such taxes are paid or accrued with respect to foreign trade income (within the meaning of section 923(b)) of a FSC.".

(6) Subsection (d) of section 1248 (relating to exclusions from earnings and profits) is amended by adding at the end thereof the following new paragraph:

"(6) FOREIGN TRADE INCOME.—Earnings and profits of the foreign corporation attributable to foreign trade income (within the meaning of section 923(b)) of a FSC.".

(7) Section 934 (relating to limitation on reduction in income tax liability incurred to the Virgin Islands) is amended by adding at the end thereof the following new subsection:

"(f) FSC.—Subsection (a) shall not apply in the case of a Virgin Islands corporation which is a FSC.".

(8) Paragraph (2) of section 956(b) (defining United States property) is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof a semicolon and "and", and by adding at the end thereof the following new subparagraph:

"(I) to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC.".

(9) Subparagraph (B) of section 7651(5), as amended by this Act, is amended by inserting "or subpart C of part III of subchapter N of chapter 1" after "881(b)(1)".

(10) Section 996(g) (relating to effectively connected income) is amended by inserting "and which are derived from sources within the United States" after "United States".

SEC. 802. INTEREST CHARGE DISC.

(a) INTEREST CHARGE ON DEFERRED TAX.—Section 995 (relating to taxation of DISC income to shareholders) is amended—

(1) by striking out subsections (e) and (f),

(2) by redesignating subsection (g) as subsection (e), and

(3) by adding at the end thereof the following new subsection:

"(f) INTEREST ON DISC-RELATED DEFERRED TAX LIABILITY.—

"(1) IN GENERAL.—A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

"(A) the shareholder's DISC-related deferred tax liability for such year, and

"(B) the base period T-bill rate.

"(2) SHAREHOLDER'S DISC-RELATED DEFERRED TAX LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'shareholder's DISC-related deferred tax liability' means, with respect to any taxable year of a shareholder of a DISC, the excess of—

"(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

"(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

"(B) ADJUSTMENTS FOR LOSSES, CREDITS, AND OTHER ITEMS.—The Secretary shall prescribe regulations which provide such adjustments—

"(i) to the accounts of the DISC, and

"(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers and carrybacks of losses, credits, *and carryovers and carrybacks of losses and credits.*

"(C) Tax liability.—The term 'tax liability' means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

"(3) Deferred DISC income.—For purposes of this subsection—

"(A) In general.—The term 'deferred DISC income' means, with respect to any taxable year of a shareholder, the excess of—

"(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

"(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

"(B) Computation year.—For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

"(C) Distributions-in-excess-of-income.—For purposes of subparagraph (A), the term 'distributions-in-excess-of-income' means, with respect to any taxable year of a DISC, the excess (if any) of—

"(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

"(ii) the shareholder's pro rata share of the DISC income for such taxable year.

"(3) Base period T-bill rate.—For purposes of this subsection, the term 'base period T-bill rate' means the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

"(4) Short years.—The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

"(5) Payment and assessment and collection of interest.—The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.".

(b) Taxable Income in Excess of $10,000,000 Deemed Distributed.—

(1) In general.—Subparagraph (E) of section 995(b)(1) (relating to base period export gross receipts) is amended to read as follows:

"(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000.".

(2) Aggregation of receipts.—Subsection (b) of section 995 (relating to deemed distributions) is amended by adding at the end thereof the following new paragraph:

"(4) Aggregation of qualified export receipts.—

"(A) In general.—For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

"(B) Allocation.—The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.".

(c) Conforming Amendments.—

(1) Subsection (a)(1) of section 992 (relating to definition of DISC) is amended—

(A) by striking out "and" at the end of subparagraph (C),

(B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new subparagraph:

"(E) such corporation is not a member of any controlled group of which a FSC is a member.".

(2) Paragraph (3) of section 993(a) (relating to controlled groups) is amended by striking out "such term by" and inserting in lieu thereof "the term 'controlled group of corporations' by".

(3) Subsection (c) of section 999 (relating to international boycott factor) is amended by striking out "995(b)(1)(F)(ii)" each place it appears and inserting in lieu thereof "995(b)(1)(F)(i)".

(4) The table of subparts of part III of subchapter N of chapter 1 is amended by inserting after the item relating to subpart B the following new item:

"Subpart C. Taxation of foreign sales corporations."

SEC. 803. TAXABLE YEAR OF DISC AND FSC REQUIRED TO CONFORM TO TAXABLE YEAR OF MAJORITY SHAREHOLDER.

(a) In General.—Subsection (b) of section 441 (relating to period for computation of taxable income) is amended

(1) by striking out "or" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(4) in the case of a FSC or DISC filing a return for a period of at least 12 months, the period determined under subsection (h).".

(b) Determination of Taxable Year.—Section 441 is amended by adding at the end thereof the following new subsection:

"(h) Taxable Year of FSC's and DISC's.—

"(1) In general.—For purposes of this subtitle, the taxable year of any FSC or DISC shall be the taxable year of that shareholder (or group of shareholders with the same 12-month taxable year) who has the highest percentage of voting power.

"(2) Special rule where more than one shareholder (or group) has highest percentage.—If 2 or more shareholders (or groups) have the highest percentage of voting power under paragraph (1), the taxable year of the FSC or DISC shall be the same 12-month period as that of any such shareholder (or group).

"(3) Subsequent changes of ownership.—The Secretary shall prescribe regulations under which paragraphs (1) and (2) shall apply to a change of ownership of a corporation after the taxable year of the corporation has been determined under paragraph (1) or (2) only if such change is a substantial change of ownership.

"(4) Voting power determined.—For purposes of this subsection, voting power shall be determined on the basis of total combined voting power of all classes of stock of the corporation entitled to vote.".

SEC. 804. REPORTING REQUIREMENTS.

(a) In General.—The Secretary of the Treasury shall, for calendar year 1985 and each second calendar year thereafter, submit a report to the Congress within 27½ months following the close of such calendar year setting forth an analysis of the operation and effect of the provisions of this title.

(b) Repeal of DISC Reporting Requirements.—

(1) In general.—Section 806 of the Revenue Act of 1971 (relating to submission of annual reports to Congress) is hereby repealed.

(2) Effective date.—The amendment made by paragraph (1) shall apply to reports for calendar years after 1984.

SEC. 805. EFFECTIVE DATE; TRANSITION RULES.

(a) Effective Dates.—

(1) In general.—Except as provided in this subsection, the amendments made by this title shall apply to transactions after December 31, 1984, in taxable years ending after such date.

(2) Special rule for certain contracts.—To the extent provided in regulations prescribed by the Secretary, subsections (c) and (d) of section 924 of the Internal Revenue Code of 1954 (as added by this title shall not apply to—

(A) any contract with respect to which the taxpayer uses the completed contract method of accounting and which—

(i) was entered into before March 16, 1984, or

(ii) was entered into after March 15, 1984, and before January 1, 1985, pursuant to a written plan to enter into such contract which was in effect on March 15, 1984.

(B) any contract which was entered into before March 16, 1984, except that this subparagraph shall only apply to the first 2 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury may designate, or

(C) any contract which was entered into after March 15, 1984, and before January 1, 1985, except that this subparagraph shall only apply to the first taxable year of the FSC ending after January 1, 1985, or such later taxable year as the Secretary of the Treasury may designate.

(3) Section 801(d)(10).—The amendment made by section 801(d)(10) shall apply to distributions on or after June 22, 1984.

(4) Section 803.—The amendments made by section 803 shall apply to any DISC established after March 21, 1984.

(b) Transition Rules for DISC's.—

(1) Close of 1984 taxable years of DISC's.—

(A) In General.—For purposes of applying the Internal Revenue Code of 1954, the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

(B) Underpayments of estimated tax.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

(2) Exemption of accumulated DISC income from tax.—

(A) In general.—For purposes of applying the Internal Revenue Code of 1954 with re-

spect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code).

(B) EXCEPTION FOR DISTRIBUTION OF AMOUNTS PREVIOUSLY DISQUALIFIED.—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title.

(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

(B) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

(i) in 1984, and

(ii) after the date in 1984 on which the taxable year of such shareholder begins.

(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

(6) DEFINITIONS.—For purposes of this subsection, the terms "DISC" and "former DISC" have the respective meanings given to such terms by section 992 of such Code.

(c) SPECIAL RULE FOR EXPORT TRADE CORPORATIONS.—

(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

(A) makes an election under section 927(f)(1) of the Internal Revenue Code of 1954 to be treated as a FSC, or

(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) shall apply to such export trade corporation.

(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

(A) makes an election described in paragraph (1), and

(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505 (a) and (b) of the Revenue Act of 1971, no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term "export trade corporation" has the meaning given such term by section 971 of the Internal Revenue Code of 1954.

TITLE IX—HIGHWAY REVENUE PROVISIONS

Subtitle A—Provisions Relating to Heavy Vehicle Use Tax

SEC. 901. REDUCTION OF HEAVY VEHICLE USE TAX.

(a) GENERAL RULE.—Subsection (a) of section 4481 (as amended by section 513(a) of the Highway Revenue Act of 1982) is amended to read as follows:

"(a) IMPOSITION OF TAX.—A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the following table:

"Taxable gross weight:	Rate of tax:
"At least 55,000 pounds, but not over 75,000 pounds.	$100 per year plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550."

(b) SPECIAL RULES IN THE CASE OF CERTAIN OWNER-OPERATORS.—

(1) SPECIAL RULE FOR TAXABLE PERIOD BEGINNING ON JULY 1, 1984.—In the case of a small owner-operator, the amount of the tax imposed by section 4481 of the Internal Revenue Code of 1954 on the use of any highway motor vehicle subject to tax under section 4481(a) of such Code (as amended by subsection (a)) for the taxable period which begins on July 1, 1984, shall be the lesser of—

(A) $3 for each 1,000 pounds of taxable gross weight (or fraction thereof), or

(B) the amount of the tax which would be imposed under such section 4481(a) without regard to this paragraph.

(2) EXEMPTION FOR VEHICLES USED FOR LESS THAN 5,000 MILES (AND CERTAIN OTHER AMENDMENTS) TO TAKE EFFECT ON JULY 1, 1984.—In the case of a small owner-operator, notwithstanding subsection (f)(2) of section 513 of the Highway Revenue Act of 1982, the amendments made by subsections (b), (c), and (d) of such section shall take effect on July 1, 1984.

(3) SMALL OWNER-OPERATOR DEFINED.—For purposes of this subsection, the term "small owner-operator" has the meaning given such term by section 513(f)(2) of the Highway Revenue Act of 1982.

(4) TAXABLE GROSS WEIGHT.—For purposes of this subsection, the term 'taxable gross weight' has the same meaning as when used in section 4481 of the Internal Revenue Code of 1954.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) (and the provisions of subsection (b)) shall take effect on July 1, 1984.

SEC. 902. SPECIAL RULE FOR TRUCKS USED IN LOGGING.

(a) IN GENERAL.—Section 4483 (relating to exemptions from highway use tax) is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following new subsection:

"(e) REDUCTION IN TAX FOR TRUCKS USED IN LOGGING.—The tax imposed by section 4481 shall be reduced by 25 percent with respect to any highway motor vehicle if—

"(1) the exclusive use of such vehicle during any taxable period is the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

"(2) such vehicle is registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on July 1, 1984.

SEC. 903. SPECIAL RULE FOR CERTAIN AGRICULTURAL VEHICLES.

(a) IN GENERAL.—Subsection (d) of section 4483 (relating to exemptions from highway use tax) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) 7,500-MILES EXEMPTION FOR AGRICULTURAL VEHICLES.—

"(A) IN GENERAL.—In the case of an agricultural vehicle, paragraphs (1) and (2) shall be applied by substituting '7,500' for '5,000' each place it appears.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) AGRICULTURAL VEHICLE.—The term 'agricultural vehicle' means any highway motor vehicle—

"(I) used primarily for farming purposes, and

"(II) registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

"(ii) FARMING PURPOSES.—The term 'farming purposes' means the transporting of any farm commodity to or from a farm or the use directly in agricultural production.

"(iii) FARM COMMODITY.—The term 'farm commodity' means any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 513 of the Highway Revenue Act of 1982.

Subtitle B—Provisions Relating to Fuel Taxes

SEC. 911. INCREASE IN DIESEL FUEL TAX.

(a) GENERAL RULE.—Paragraph (1) of section 4041(a) (relating to diesel fuel) is amended by striking out "9 cents" and inserting in lieu thereof "15 cents".

(b) INCOME TAX CREDIT FOR PURCHASE OF DIESEL-POWERED AUTOMOBILE OR LIGHT TRUCK.—Section 6427 (relating to fuels not used for taxable purposes), as amended by this Act, is amended by redesignating sub-

sections (g), (h), (i), (j), (k), (l), and (m) as subsections (h), (i), (j), (k), (l), (m), and (n), respectively, and by inserting after subsection (f) the following new subsection:

"(g) ADVANCE REPAYMENT OF INCREASED DIESEL FUEL TAX TO ORIGINAL PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.—

"(1) IN GENERAL.—Except as provided in subsection (j), the Secretary shall pay (without interest) to the original purchaser of any qualified diesel-powered highway vehicle an anount equal to the diesel fuel differential amount.

"(2) QUALIFIED DIESEL-POWERED HIGHWAY VEHICLE.—For purposes of this subsection, the term 'qualified diesel-powered highway vehicle' means any diesel-powered highway vehicle which—

"(A) has at least 4 wheels,

"(B) has a gross vehicle weight rating of 10,000 pounds or less, and

"(C) is registered for highway use in the United States under the laws of any State.

"(3) DIESEL FUEL DIFFERENTIAL AMOUNT.—For purposes of this subsection, the term 'diesel fuel differential amount' means—

"(A) except as provided in subparagraph (B), $102, or

"(B) in the case of a truck or van, $198.

"(4) ORIGINAL PURCHASER.—For purposes of this subsection—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'original purchaser' means the first person to purchase the qualified diesel-powered vehicle for use other than resale.

"(B) EXCEPTION FOR CERTAIN PERSONS NOT SUBJECT TO FUELS TAX.—The term 'original purchaser' shall not include any State or local government (as defined in section 4221(d)(4)) or any nonprofit educational organization (as defined in section 4221(d)(5)).

"(C) TREATMENT OF DEMONSTRATION USE BY DEALER.—For purposes of subparagraph (A), use as a demonstrator by a dealer shall not be taken into account.

"(5) VEHICLES TO WHICH SUBSECTION APPLIES.—Except as provided in paragraph (6), this subsection shall only apply to qualified diesel-powered highway vehicles originally purchased after January 1, 1985, and before January 1, 1988.

"(6) SPECIAL RULE FOR CERTAIN VEHICLES HELD ON JANUARY 1, 1985.—

"(A) IN GENERAL.—In the case of any person holding a qualified diesel-powered highway vehicle on January 1, 1985—

"(i) such person shall be treated as if he originally purchased such vehicle on December 31, 1984, but

"(ii) the amount payable under paragraph (1) to such person for such vehicle shall be the applicable fraction of the diesel fuel differential amount.

"(B) APPLICABLE FRACTION.—For purposes of subparagraph (A), the applicable fraction is the fraction determined in accordance with the following table:

"If the model year of the vehicle is:	The applicable fraction is:
1984 or 1985	1
1983	$\frac{5}{6}$
1982	$\frac{4}{6}$
1981	$\frac{3}{6}$
1980	$\frac{2}{6}$
1979	$\frac{1}{6}$

In the case of a 1978 or earlier model year vehicle, the applicable fraction shall be zero.

"(7) BASIS REDUCTION.—For the purposes of subtitle A, the basis of any qualified diesel-powered highway vehicle shall be reduced by the amount payable under this subsection with respect to such vehicle."

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO HIGHWAY TRUST FUND.—

(A) TRANSFERS TO MASS TRANSIT ACCOUNT.—Paragraph(2) of section 9503(e) (relating to transfers to Mass Transit Account) is amended to read as follows:

"(2) TRANSFERS TO MASS TRANSIT ACCOUNT.—The Secretary of the Treasury shall transfer to the Mass Transit Account the mass transit portion of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983. For purposes of the preceding sentence, the term 'mass transit portion' means an amount determined at the rate of 1 cent for each gallon with respect to which tax was imposed under section 4041 or 4081."

(B) INCOME TAX CREDITS PAYABLE OUT OF HIGHWAY TRUST FUND.—Clause (ii) of section 9503(c)(2)(A) is amended by striking out "used before October 1, 1988" and inserting in lieu thereof "used before October 1, 1988 (or with respect to qualified diesel-powered highway vehicles purchased before January 1, 1988)".

(2) CONFORMING AMENDMENTS TO INCOME TAX CREDIT.—

(A) Subsections (a)(4) and (b) of section 39 (as in effect before the enactment made by title IV of this Act) are each amended by striking out "6427(i)" and inserting in lieu thereof "6427(j)".

(B) Subsections (a), (b)(1), (c), (d), (e)(1), and (f)(1) of section 6427 are each amended by striking out "(i)" and inserting in lieu thereof "(j)".

(C) Subsection (h)(1) of section 6427 (as redesignated by subsection (c)) is amended—

(i) by striking out "or (f)" and inserting in lieu thereof "(f), or (g)", and

(ii) by striking out "fuel used" each place it appears and inserting in lieu thereof "fuel used (or a qualified diesel powered highway vehicle purchased)".

(D) Subsection (h)(2)(A) of section 6427 (as so redesignated) is amended—

(i) by striking out "and (e)" in clause (i) and inserting in lieu thereof "(e), and (g)", and

(ii) by striking out "fuel used" each place it appears and inserting in lieu thereof "fuel used (or a qualified diesel powered highway vehicle purchased)".

(E) Subsection (k)(2) of section 6427 (as so redesignated) is amended by striking out "(g)(2)" and inserting in lieu thereof "(h)(2)".

(F) Subsection (m) of section 6427 (as so redesignated) is amended by striking out "and (d)" each place it appears and inserting in lieu thereof "(d), and (g)".

(G) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) are each amended by striking out "6427(h)(2)" each place it appears and inserting in lieu thereof "6427(i)(2)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 1984.

SEC. 912. DECREASE IN TAX IMPOSED ON GASOHOL.

(a) AMENDMENT OF SECTION 4041.—Paragraph (1) of section 4041(k) (relating to fuels containing alcohol) is amended to read as follows:

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3))—

"(A) subsection (a)(1) shall be applied by substituting '9 cents' for '15 cents', and

"(B) subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and

"(C) no tax shall be imposed by subsection (c).".

(b) AMENDMENTS OF SECTION 4081.—Subsection (c) of section 4081 (relating to imposition of tax on petroleum products), as amended by title VII of this Act, is amended—

(A) by striking out "4 cents" each place it appears and inserting in lieu thereof "3 cents",

(B) by striking out "$4\frac{4}{9}$ cent" and inserting in lieu thereof "$3\frac{1}{3}$ cents", and

(C) by striking out "$4\frac{4}{9}$ cent" and inserting in lieu thereof "$5\frac{5}{9}$ cents".

(c) CREDIT FOR ALCOHOL USED AS A FUEL.—Section 40 (relating to alcohol used as a fuel) (as amended by title IV of this Act) is amended

(1) by striking out "50 cents" each place it appears and inserting in lieu thereof "60 cents", and

(2) by striking out "37.5 cents" each place it appears and inserting in lieu thereof "45 cents".

(d) AMENDMENT OF SECTION 6427.—Paragraph (1) of section 6427(f) (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "$4\frac{4}{9}$ cents" and inserting in lieu thereof "$5\frac{5}{9}$ cents".

(e) TARIFF IMPORTED FOR USE AS A FUEL.—Item 901.50 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "50 cents per gal." each place it appears and inserting in lieu thereof "60 cents per gal.".

(f) DEFINITION OF ALCOHOL.—Sections 40(d)(1)(A)(i) (as amended by title IV of this Act) and 4081 (c)(3) (defining alcohol) are each amended by striking out "coal" and inserting in lieu thereof "coal (including peat)".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1985.

SEC. 913. MODIFICATION OF TAX IMPOSED ON METHANOL AND ETHANOL.

(a) IN GENERAL.—Section 4041 (relating to imposition of tax on special fuels) is amended by adding at the end thereof the following new subsection.

"(m) CERTAIN ALCOHOL FUELS.—

"(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel—

"(A) subsection (a)(2) shall be applied by substituting "$4\frac{1}{2}$ cents" for "9 cents", and

"(B) no tax shall be imposed by subsection (c).

"(2) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—The term 'partially exempt methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.".

(b) CONFORMING AMENDMENT.—Subsection (c) of section 40 (relating to coordination of credit for alcohol used as a fuel with exemption from excise tax) (as redesignated by title IV of this Act) is amended by striking out "(b)(2) or (k)" and inserting in lieu thereof "(b)(2), (k), or (m)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 1984.

SEC. 914. EXTENSION OF REDUCTION IN TAX FOR FUEL USED BY TAXICABS.

Paragraph (3) of section 6427(e) (relating to termination of use in certain taxicabs) is amended by striking out "September 30, 1984" and inserting in lieu thereof "September 30, 1985".

SEC. 915. 3 CENT TAX ON DIESEL FUEL, ETC., USED IN CERTAIN BUSES.

(a) IN GENERAL.—Subsection (b) of section 6427 (relating to fuels not used for taxable purposes) is amended by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following new paragraph:

"(2) 3-cent reduction in refund in certain cases.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the rate of tax taken into account under paragraph (1) shall not exceed 12 cents.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

"(i) which is available to the general public, and

"(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

"(C) QUALIFIED LOCAL BUS.—For purposes of this paragraph, the term 'qualified local bus' means any local bus—

"(i) which has a seating capacity of at least 20 adults (not including the driver), and

"(ii) which is under contract (or is receiving more than a nominal subsidy) from any State or local government (as defined in section 4221(d)) to furnish such transportation."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 1, 1984.

Subtitle C—Temporary Reduction in Retail Tax on Certain Piggyback Trailers

SEC. 921. TEMPORARY REDUCTION IN TAX.

Section 4051 (relating to retail tax on heavy trucks and trailers) is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

"(d) TEMPORARY REDUCTION IN TAX ON CERTAIN PIGGYBACK TRAILERS.—

"(1) IN GENERAL.—In the case of piggybank trailers or semitrailers sold within the 1-year period beginning on the date of the enactment of the Tax Reform Act of 1984, subsection (a) shall be applied by substituting '6 percent' for '12 percent'.

"(2) PIGGYBANK TRAILERS OR SEMITRAILERS.—For purposes of this subsection, the term 'piggybank trailers or semitrailers' means any trailer or semitrailer—

"(A) which is designed for use principally in connection with trailer-on-flatcar service by rail, and

"(B) with respect to which the seller certifies, in such manner and form and at such time as the Secretary prescribes by regulations, that such trailers or semitrailer—

"(i) will be used, or resold for use, principally in connection with such service, or

"(ii) will be incorporated into an article which will be so used or resold.

"(3) ADDITIONAL TAX WHERE NONQUALIFIED USE.—If any piggybank trailer or semitrailer was subject to tax under subsection (a) at the 6 percent rate and such trailer or semitrailer is used or resold for use other than for a use described in paragraph (2)—

"(A) such use or resale shall be treated as a sale to which subsection (a) applies,

"(B) the amount of the tax imposed under subsection (a) on such sale shall be equal to the amount of the tax which was imposed on the first retail sale, and

"(C) the person so using or reselling such trailer or semitrailer shall be liable for the tax imposed by subsection (a)."

Subtitle D—Studies

PART I—STUDIES RELATING TO HEAVY VEHICLE USE TAX

SEC. 931. WHETHER HEAVY VEHICLES BEAR FAIR SHARE OF HIGHWAY COSTS.

The Secretary of Transportation shall conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the costs of the highway system.

SEC. 932. TRANS-BORDER TRUCKING.

The Secretary of Transportation shall conduct a study to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1954 (relating to tax on use of certain vehicles) on trans-border trucking operations.

SEC. 933. WEIGHT-DISTANCE TAXES.

The Secretary shall conduct a study to evaluate the feasibility and ability of weight-distance truck taxes to provide the greatest degree of equity among highway users, to ease the costs of compliance of such taxes, and to improve the efficiency by which such taxes might be administered. Such study shall also include an evaluation of the evasion potential for weight-distance taxes and an assessment of the benefits to interstate commerce of replacing all Federal truck taxes (other than fuel taxes) with a weight-distance tax.

SEC. 934. REPORTS, ETC.

(a) CONSULTATION WITH TREASURY.—Studies conducted under this part shall be conducted in consultation with the Secretary of the Treasury.

(b) REPORT.—Not later than October 1, 1987, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each study conducted under this part together with such recommendations as the Secretary may deem advisable.

PART II—OTHER STUDIES

SEC. 935. STUDY OF REDUCED FUEL TAXES FOR TAXICABS.

The Secretary of the Treasury or his delegate shall conduct a study of the reduced rate of fuel taxes provided by section 6427(e) of the Internal Revenue Code of 1954. Not later than January 1, 1985, such Secretary shall submit a report on such study to the Congress, together with such recommendations as the Secretary may deem advisable.

SEC. 936. STUDY OF PIGGYBACK TRAILERS.

(a) IN GENERAL.—The Secretary of Transportation (in consultation with the Secretary of the Treasury) shall conduct a study of the appropriate application and level of the tax imposed by section 4051 of the Internal Revenue Code of 1954 (relating to tax on trucks and trailers sold at retail) on piggyback trailers and semi-trailers.

(b) REPORT.—Not later than May 1, 1985, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a) together with such recommendations as the Secretary may deem advisable.

TITLE X—MISCELLANEOUS REVENUE PROVISIONS

Subtitle A—Capital Gains and Losses

SEC. 1001. DECREASE IN HOLDING PERIOD REQUIRED FOR LONG-TERM CAPITAL GAIN TREATMENT.

(a) IN GENERAL.—

(1) CAPITAL GAINS.—Paragraphs (1) and (3) of section 1222 (relating to other terms relating to capital gains and losses) are each amended by striking out "1 year" and inserting in lieu thereof "6 months".

(2) CAPITAL LOSSES.—Paragraphs (2) and (4) of section 1222 are each amended by striking out "1 year" and inserting in lieu thereof "6 months".

(b) CONFORMING AMENDMENTS.—The following provisions are each amended by striking out "1 year" each place it appears and inserting in lieu thereof "6 months".

(1) Paragraph (1)(B) of section 166(d) (relating to nonbusiness debts).

(2) Subsection (a) of section 341 (relating to treatment of gain to shareholders in the case of collapsible corporations).

(3) Paragraph (2) of subsection (a) and subparagraph (L) of subsection (e)(4) of section 402 (relating to capital gains treatment for certain distributions in the case of a beneficiary of an exempt employees' trust).

(4) Subparagraph (A) of section 403(a)(2) (relating to capital gains treatment for certain distributions in the case of a beneficiary under a qualified annuity plan).

(5) Paragraph (1) of section 423(a) (relating to employee stock purchase plans).

(6) Paragraph (2) of section 582(c) (relating to capital gains of banks).

(7) Subparagraphs (A) and (B) of section 584(c)(1) (relating to inclusions in taxable income of participants in common trust funds).

(8) Paragraphs (3) and (4) of section 642(c) (relating to charitable deductions for certain trusts).

(9) Paragraphs (1) and (2) of section 702(a) (relating to income and credits of partner).

(10) Subparagraph (A) of section 817(a)(1) (relating to certain gains and losses in the case of life insurance companies).

(11) Subparagraph (B) of section 852(b)(3) (relating to taxation of shareholders of regulated investment companies).

(12) Subparagraph (A) of section 856(c)(4) (relating to definiton of real estate investment trust).

(13) Paragraphs (3)(B) and (7) of section 857(b) (relating to taxation of shareholders of real estate investment trust).

(14) Paragraphs (11) and (12) of section 1223 (relating to holding period of property).

(15) Section 1231 (relating to property used in the trade or business and involuntary conversions).

(16) Paragraph (2) of section 1232(a) (relating to sale or exchange in the case of bonds and other evidences of indebtedness).

(17) Subsections (b), (d), and subparagraph (A) of subsection (e)(4) of section 1233 (relating to gains and losses from short sales).

(18) Paragraph (1) of section 1234(b) (relating to treatment of the grantor of an option in the case of stock, securities, or commodities).

(19) Subsection (a) of section 1235 (relating to sale or exchange of patents).

(20) Paragraph (4) of section 1246(a) (relating to holding period in the case of gain on foreign investment company stock).

(21) Subsection (i) of section 1247 (relating to loss on sale or exchange of certain stock in the case of foreign investment companies electing to distribute income currently).

(22) Subsections (b) and (g)(3)(C) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(23) Subparagraph (A) of section 1251(e)(1) (defining farm recapture property).

(c) Technical Amendment Relating to Timber, Coal, and Domestic Iron Ore.—Section 631 (relating to gain or loss in the case of timber, coal, or domestic iron ore) is amended—

(1) by striking out "for a period of more than 1 year" in the first sentence of subsection (a) and inserting in lieu thereof "on the first day of such year and for a period of more than 6 months before such cutting", and

(2) by striking out "1 year" in subsections (b) and (c) and inserting in lieu thereof "6 months".

(d) Technical Amendment Relating to Certain Short-Term Government Obligations.—Section 1232(a)(3)(A) (relating to certain short-term government obligations) is amended by striking out "held less than 1 year".

(e) Effective Date.—The amendments made by this section shall apply to property acquired after June 22, 1984, and before January 1, 1988.

SEC. 1002. REPEAL OF SPECIAL RULE FOR PRE-1970 LOSSES.

(c) In General.—Paragraph (3) of section 1212(b) (relating to transitional rule for taxpayers other than corporations) is repealed.

(d) Effective Date.—The repeal made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

Subtitle B—Excise Tax Provisions

PART I—BOATING SAFETY AND SPORT FISH RESTORATION

Subpart A—Boating Safety Amendments

SEC. 1010. POLICY.

It is declared to be the policy of Congress and the purpose of this part to improve recreational boating safety and to foster greater development, use, and enjoyment of all waters of the United States by encouraging and assisting participation by the States, the boating industry, and the boating public in activities related to increasing boating safety; by authorizing the establishment of national construction and performance standards for boats and associated equipment; by creating more flexible authority governing the use of boats and equipment; and by facilitating the provision of services by the United States Coast Guard on behalf of boating safety. It is further declared to be the policy of Congress to encourage greater and continuing uniformity of boating laws and regulations among the States and the Federal Government, to encourage and assist the States in exercising their authorities in boating safety, to foster greater cooperation and assistance between the Federal Government and the States in administering and enforcing Federal and State laws and regulations pertaining to boating safety, and to equitably utilize taxes paid on fuel use in motor boats in a manner which enhances boating safety.

SEC. 1011. GENERAL AMENDMENTS TO TITLE 46.

(a) Section 2102 of title 46, United States Code, is amended—

(1) by striking out "and facilities improvement" in paragraph (1);

(2) by striking out paragraphs (3) and (4); and

(3) by redesignating paragraph (5) as paragraph (3).

(b)(1) Section 13101 of such title is amended—

(A) by striking out "and facility improvement" in subsection (a); and

(B) by striking out "and facilities improvement" each place it appears.

(2) Subsection (a) of section 13101 of such title is amended by striking out "may" in the second sentence and inserting in lieu thereof "shall".

(c)(1) Section 13102 of such title is amended by striking out "and facilities improvement" each place it appears.

(2) Subsection (a) of section 13102 of such title is amended by striking out "may" and inserting in lieu thereof "shall".

(3) Paragraph (2) of section 13102(a) of such title is amended by striking out ", (d), or (f)".

(4) Subsections (d) and (f) of section 13102 of such title are repealed, and subsection (e) of such section (and any reference thereto) is redesignated as subsection (d).

(d)(1) Subsections (b), (d), and (f) of section 13103 of such title are repealed, and subsections (c) and (e) of such section (and all references thereto) are redesignated as subsections (b) and (c), respectively.

(2) Subsections (b) and (c) of section 13103 of such title (as redesignated by paragraph (1) of this subsection) are amended by striking out "and facilities improvement" each place it appears.

(e) Section 13105 of such title is amended by striking out "and facilities improvement".

(f) Subsection (c) of section 13108 of such title is amended by striking out "and facilities improvement" each place it appears.

(g) Section 13109 of such title is amended by striking out "and facilities improvement" each place it appears.

SEC. 1012. AUTHORIZATION OF FUNDS FOR BOATING SAFETY.

Section 13106 of title 46, United States Code, is amended to read as follows:

"(a) The Secretary may expend in each of the fiscal years 1985, 1986, 1987, and 1988, subject to amounts as are provided in appropriations laws for liquidation of contract authority, an amount equal to two-thirds of the amount transferred for such fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 9503(c)(4)). The amount shall be allocated as provided under section 13103 of this title and shall be available for State recreational boating safety programs as provided under the guidelines established under subsection (b) of this section. Amounts authorized to be expended for State recreational boating safety programs shall remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated amounts and are immediately available for expenditure.

"(b) The Secretary shall establish guidelines prescribing the purposes for which amounts available under this chapter for State recreational boating safety programs may be used. Those purposes may include—

"(1) providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

"(2) training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

"(3) providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

"(4) acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

"(5) conducting boating safety inspections and marine casualty investigations;

"(6) establishing and maintaining emergency or search and rescue facilities, and providing emergency or search and rescue assistance;

"(7) establishing and maintaining waterway markers and other appropriate aids to navigation; and

"(8) providing State recreational vessel numbering or titling programs.

"(c) An amount equal to one-third of the amount transferred for each fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 9503(c)(4)) is available to the Secretary for expenditures out of the operating expenses account of the Coast Guard for services provided by the Coast Guard for recreational boating safety, including services provided by the Coast Guard Auxiliary. Amounts made available by this subsection shall remain available until expended."

SEC. 1013. EFFECTIVE DATE.

The amendments made by this subpart shall take effect on October 1, 1984, and shall apply with respect to fiscal years beginning after September 30, 1984.

Subpart B—Sport Fish Restoration Program

SEC. 1014. AMENDMENTS TO THE SPORT FISH RESTORATION PROGRAM.

(a) The Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes", approved August 9, 1950 (16 U.S.C. 777 et seq.), is amended as follows:

(1) The first section is amended—

(A) by inserting "(a)" after "That"; and

(B) by adding at the end thereof the following new subsection:

"(b) Each coastal State, to the extent practicable, shall equitably allocate the following sums between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State:

"(1) The additional sums apportioned to such State under this Act as a result of the taxes imposed by the amendments made by section 1015 of the Tax Reform Act of 1984 on items not taxed under section 4161(a) of the Internal Revenue Code of 1954 before October 1, 1984.

"(2) The sums apportioned to such State under this Act that are not attributable to any tax imposed by such section 4161(a).

As used in this subsection, the term 'coastal State' means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas."

(2) The first sentence of section 3 is amended to read as follows: "To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1954

the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section."

(3) The first sentence of section 4 is amended to read as follows: "So much, not to exceed 6 per centum, of each annual appropriation made in accordance with the provisions of section 3 of this Act as the Secretary of the Interior may estimate to be necessary for his expenses in the conduct of necessary investigations, administration, and the execution of this Act and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters shall be deducted for that purpose, and such sum is axthorized to be made available therefor until the expiration of the next succeeding fiscal year."

(4) Section 5 is amended by striking all after the first sentence.

(5) Section 6 is amended by adding at the end thereof the following new subsection:

"(d) The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or facilities for appropriations currently available for the purposes of this Act; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this Act."

(6) Section 8 is amended by inserting "(a)" before the first sentence, and by adding at the end thereof the following new subsections:

"(b)(1) Each State shall allocate 10 per centum of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes.

"(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding fiscal year, but any portion of such funds that remain unexpended or unobligated at the close of such succeeding fiscal year are authorized to be made available for expenditure by the Secretary of the Interior in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

"(c) Each State may use not to exceed 10 per centum of the funds apportioned to it under section 4 of this Act to pay up to 75 per centum of the costs of an aquatic resource education program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs."

(7) Section 12 is amended—

(A) inserting "the Mayor of the District of Columbia," immediately after "the Secretary of Agriculture of Puerto Rico,";

(B) by inserting "for the District of Columbia one-third of 1 per centum," immediately after "for Puerto Rico 1 per centum,"; and

(C) by inserting "the District of Columbia," after "Puerto Rico," each place it appears therein.

(b) The amendments made by subsection (a) shall take effect on October 1, 1984, and shall apply with respect to fiscal years beginning after September 30, 1984.

Subpart C—Taxes on Sales of Sport Fishing Equipment, Etc.

SEC. 1015. TAX ON SALE OF SPORT FISHING EQUIPMENT.

(a) General Rule.—Subsection (a) of section 4161 (relating to imposition of tax on the sale of rods, reels, etc.) is amended to read as follows:

"(a) Sport Fishing Equipment.—

"(1) Imposition of tax.—There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

"(2) 3 percent rate of tax for electric outboard motors and sonar devices suitable for finding fish.—

"(A) In general.—In the case of an electric outboard motor or a sonar device suitable for finding fish, paragraph (1) shall be applied by substituting '3 percent' for '10 percent'.

"(B) $30 limitation on tax imposed on sonar devices suitable for finding fish.—The tax imposed by paragraph (1) on any sonar device suitable for finding fish shall not exceed $30.

"(3) Parts or accessories sold in connection with taxable sale.—In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof."

(b) Definition of Sport Fishing Equipment, Etc.—Part I of subchapter D of chapter 32 is amended by adding at the end thereof the following new section:

"SEC. 4162. DEFINITIONS; TREATMENT OF CERTAIN RESALES.

"(a) Sport Fishing Equipment Defined.—For purposes of this part, the term 'sport fishing equipment' means—

"(1) fishing rods and poles (and component parts therefor),

"(2) fishing reels,

"(3) fly fishing lines, and other fishing lines not over 130 pounds test,

"(4) fishing spears, spear guns, and spear tips,

"(5) items of terminal tackle, including—

"(A) leaders,
"(B) artificial lures,
"(C) artificial baits,
"(D) artificial flies,
"(E) fishing hooks,
"(F) bobbers,
"(G) sinkers,
"(H) snaps,
"(I) drayles, and
"(J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and

"(6) the following items of fishing supplies and accessories—

"(A) fish stringers,
"(B) creels,
"(C) tackle boxes,
"(D) bags, baskets, and other containers designed to hold fish,
"(E) portable bait containers,
"(F) fishing vests,
"(G) landing nets,
"(H) gaff hooks,
"(I) fishing hood disgorgers, and
"(J) dressing for fishing lines and artificial flies,

"(7) fishing tip-ups and tilts,

"(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers,

"(9) electric outboard boat motors, and

"(10) sonar devices suitable for finding fish.

"(b) Sonar Device Suitable for Finding Fish.—For purposes of this part, the term 'sonar device suitable for finding fish' shall not include any sonar device which is—

"(1) a graph recorder,
"(2) a digital type,
"(3) a meter readout, or
"(4) a combination graph recorder meter readout.

"(c) Treatment of Certain Resales.—

"(1) In general.—If—

"(A) the manufacturer, producer, or importer sells any article taxable under section 4161(a) to any person,

"(B) the constructive sale price rules of section 4216(b) do not apply to such sale, and

"(C) such person (or any other person) sells such article to a related person with respect to the manufacturer, producer, or importer,

then such related person shall be liable for tax under section 4161 in the same manner as if such related person were the manufacturer of the article.

"(2) Credit for tax previously paid.—If—

"(A) tax is imposed on the sale of any article by reason of paragraph (1), and

"(B) the related person establishes the amount of the tax which was paid on the sale described in paragraph (1)(A),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

"(3) Related person.—For purposes of this subsection, the term 'related person' has the meaning given such term by section 168(e)(4)(D).

"(4) Regulations.—Except to the extent provided in regulations, rules similar to the rules of this subsection shall also apply in cases (not described in paragraph (1)) in which intermediaries or other devices are used for purposes of reducing the amount of the tax imposed by section 4161(a)."

(c) Time for Payment of Tax.—Section 6302 (relating to mode or time of collecting tax) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Time for Payment of Manufacturers Excise Tax on Sport Fishing Equipment.—The tax imposed by section 4161(a) (relating to manufacturers excise tax on sport fishing equipment) shall be due and payable on the date for filing the return for such tax."

(d) Clerical Amendment.—The table of sections for part I of subchapter D of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4162. Definitions; treatment of certain resales."

(e) Effective Date.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.

(2) TREATMENT OF CERTAIN RESALES.—Subsection (c) of section 4162 of the Internal Revenue Code of 1954 (relating to treatment of certain resales), as added by this section, shall apply to sales by related persons (as defined in such subsection) after the date of the enactment of this Act.

SEC. 1016. ESTABLISHMENT OF AQUATIC RESOURCES TRUST FUND.

(a) GENERAL RULE.—Subchapter A of chapter 98 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9504. AQUATIC RESOURCES TRUST FUND.

"(a) CREATION OF TRUST FUND.—

"(1) IN GENERAL.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Aquatic Resources Trust Fund'.

"(2) ACCOUNTS IN TRUST FUND.—The Aquatic Resources Trust Fund shall consist of—

"(A) a Sport Fish Restoration Account, and

"(B) a Boat Safety Account.

Each such Account shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), or section 9602(b).

"(b) SPORT FISH RESTORATION ACCOUNT.—

"(1) TRANSFER OF CERTAIN TAXES TO ACCOUNT.—There is hereby appropriated to the Sport Fish Restoration Account amounts equivalent to the following amounts received in the Treasury on or after October 1, 1984—

"(A) the taxes imposed by section 4161(a) (relating to sport fishing equipment), and

"(B) the import duties imposed on fishing tackle under subpart B of part 5 of schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) and on yachts and pleasure craft under subpart D of part 6 of schedule 6 of such Schedules.

"(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, to carry out the purposes of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (as in effect on June 1, 1984).

"(c) EXPENDITURES FROM BOAT SAFETY ACCOUNT.—Amounts in the Boat Safety Account shall be available, as provided by appropriation Acts, for making expenditures before April 1, 1989, to carry out the purposes of section 13106 of title 46, United States Code (as in effect on June 1, 1984).

"(d) CROSS REFERENCE.—

"For provision transferring motorboat fuels taxes to Boat Safety Account and Sport Fish Restoration Account, see section 9503(c)(4)."

(b) TRANSFERS FROM HIGHWAY TRUST FUND.—

(1) Subparagraph (A) of section 9503(c)(4) of such Code is amended—

(A) by striking out "the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act" in clause (i) and inserting in lieu thereof "the Boat Safety Account in the Aquatic Resources Trust Fund",

(B) by striking out "the amount in the National Recreational Boating Safety and Facilities Improvement Fund" in clause (ii) and inserting in lieu thereof "the amount in the Boat Safety Account", and

(C) by striking out "NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND" in the subparagraph heading and inserting in lieu thereof "BOAT SAFETY ACCOUNT".

(2) Paragraph (4) of section 9503(c) is amended by redesignating subparagraph (C) as subparagraph (D) and by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs:

"(B) $1,000,000 PER YEAR OF EXCESS TRANSFERRED TO LAND AND WATER CONSERVATION FUND.—

"(i) IN GENERAL.—Any amount received in the Highway Trust Fund—

"(I) which is attributable to motorboat fuel taxes, and

"(II) which is not transferred from the Highway Trust Fund under subparagraph (A),

shall be transferred (subject to the limitation of clause (ii)) by the Secretary from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

"(ii) LIMITATION.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

"(C) EXCESS FUNDS TRANSFERRED TO SPORT FISH RESTORATION ACCOUNT.—Any amount received in the Highway Trust Fund—

"(i) which is attributable to motorboat fuel taxes, and

"(ii) which is not transferred from the Highway Trust Fund under subparagraph (A) or (B),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund."

(c) CONFORMING AMENDMENTS.

(1) Section 13107 of title 46, United States Code, is hereby repealed.

(2) The table of sections for chapter 131 of title 46, United States Code, is amended by striking out the item relating to section 13107.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding at the end thereof the following new item:

"Sec. 9504. Aquatic Resources Trust Fund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1984.

(2) BOAT SAFETY ACCOUNT TREATED AS CONTINUATION OF NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.—The Boat Safety Account in the Aquatic Resources Trust Fund established by the amendments made by this section shall be treated for all purposes of law as the continuation of the National Recreational Boating Safety and Facilities Improvement Fund established by section 13107 of title 46, United States Code. Any reference in any law to the National Recreational Boating Safety and Facilities Improvement Fund established by such section shall be deemed to include (wherever appropriate) a reference to such Boat Safety Account.

SEC. 1017. TAX ON CERTAIN ARROWS.

(a) GENERAL RULE.—Paragraph (1) of section 4161(b) (relating to bows and arrows) is amended to read as follows:

"(1) BOWS AND ARROWS.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

"(A) of any bow which has a draw weight of 10 pounds or more, and

"(B) of any arrow which—

"(i) measures 18 inches overall or more in length, or

"(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in subparagraph (A).

a tax equal to 11 percent of the price for which so sold."

(b) COORDINATION WITH TAX ON SPORT FISHING EQUIPMENT.—

(1) Subsection (b) of section 4161 is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH SUBSECTION (a).—No tax shall be imposed under this subsection with respect to any article taxable under subsection (a)."

(2) Paragraph (2) of section 4161(b) is amended by striking out "(other than a fishing reel)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.

PART II—OTHER EXCISE TAXES

SEC. 1018. EXEMPTION FROM AVIATION EXCISE TAX FOR CERTAIN HELICOPTER OPERATIONS.

(a) EXEMPTION FROM FUEL TAX.—Paragraph (1) of section 4041(l) (relating to exemption for certain helicopter uses) is amended to read as follows:

"(1) transporting individuals, equipment, or supplies in—

"(A) the exploration for, or the development or removal of, hard minerals, or

"(B) the exploration for oil or gas, or".

(b) EXEMPTION FROM TAX ON TRANSPORTATION BY AIR.—Paragraph (1) of section 4261(e) (relating to exemption for certain helicopter uses) is amended to read as follows:

"(1) transporting individuals, equipment, or supplies in—

"(A) the exploration for, or the development or removal of, hard minerals, or

"(B) the exploration for oil or gas, or".

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on April 1, 1984.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to transportation beginning after March 31, 1984, but shall not apply to any amount paid on or before such date.

SEC. 1019. TECHNICAL AMENDMENTS TO THE HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980.

(a) CLARIFICATION OF EXCEPTED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 (relating to definitions and special rules with respect to tax on certain chemicals) is amended by adding at the end thereof the following new paragraphs:

"(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

"(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term 'qualified fuel substance' means any substance—

"(i) used in a qualified fuel use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified fuel use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

"(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term 'qualified fuel use' means—

"(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

"(ii) any use as such a fuel.

"(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

"(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

"(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

"(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

"(ii) any solution or mixture containing any chemical described in clause (i).

"(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process."

(2) CREDIT OR REFUND FOR USE AS QUALIFIED FUEL, ETC.—Subsection (d) of section 4662 (relating to refund or credit for certain uses) is amended by adding at the end thereof the following new paragraph:

"(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

"(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(3) METHANE AND BUTANE USED IN PRODUCTION OF SUCH FUEL, ETC.—Paragraph (1) of section 4602(b) is amended by inserting "or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel" after "than as a fuel".

(b) CLARIFICATION OF USE AS FERTILIZER.—

(1) IN GENERAL.—Paragraph (2) of section 4662(b) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) QUALIFIED FERTILIZER SUBSTANCE.—For purposes of this section, the term 'qualified fertilizer substance' means any substance—

"(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified fertilizer use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

"(C) QUALIFIED FERTILIZER USE.—The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) TECHNICAL AMENDMENTS.—

(A) Subparagraph (A) of section 4662(b)(2) is amended by striking out "qualified substance" and inserting in lieu thereof "qualified fertilizer substance".

(B) Subparagraph (B) of section 4662(d)(2) is amended to read as follows:

"(B) any person uses such substance as a qualified fertilizer substance,".

(c) CONFORMING AMENDMENT.—Subsection (c) of section 4662 (relating to use by manufacturer, etc., considered sale) is amended by striking out "If" and inserting in lieu thereof "Except as provided in subsection (b), if".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in the amendments made by section 211(a) of the Hazardous Substance Response Revenue Act of 1980.

(2) WAIVER OF LIMITATION.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the date which for one year after the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendments) may, nevertheless, be made or allowed if claim therefor is filed on or before the date which for one year after the date of the enactment of this Act.

SEC. 1020. FLOOR STOCK REFUND FOR CIGARETTES.

(a) IN GENERAL.—Where, before October 1, 1985, any article subject to tax under section 5701(b) of the Internal Revenue Code of 1954 has been sold by the manufacturer, producer, or importer and on such day is held for sale by any person (hereinafter in this section referred to as the "dealer"), there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the excess of the tax paid by such manufacturer, producer, or importer on such article over the tax which would have been paid if such article were taxed at the rate in effect on October 1, 1985, if—

(1) claim for such credit or refund is filed with the Secretary before July 1, 1986, based on a request submitted to the manufacturer, producer, or importer before April 1, 1986, by the dealer who held the article in respect of which the credit or refund is claimed, and

(2) on or before July 1, 1986, reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to such excess or written consent has been obtained from the dealer to the allowance of the credit or refund.

(b) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to a credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary.

(c) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if the credits or refunds constituted overpayments of the tax.

(d) DEFINITIONS.—For purposes of this section—

(1) PERSON.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

Subtitle C—Estate and Gift Tax Provisions

SEC. 1021. DEFERRAL OF ESTATE TAXES FOR INTEREST IN HOLDING COMPANY WHICH OWNS STOCK IN CLOSELY HELD OPERATING COMPANY.

(a) GENERAL RULE.—Subsection (b) of section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interests in closely held business) is amended by adding at the end thereof the following new paragraph:

"(8) STOCK IN HOLDING COMPANY TREATED AS BUSINESS COMPANY STOCK IN CERTAIN CASES.—

"(A) IN GENERAL.—If the executor elects the benefits of this paragraph, then—

"(i) HOLDING COMPANY STOCK TREATED AS BUSINESS COMPANY STOCK.—For purposes of this section, the portion of the stock of any holding company which represents direct ownership (or indirect ownership through 1 or more other holding companies) by such company in a business company shall be deemed to be stock in such business company.

"(ii) 5-YEAR DEFERRAL FOR PRINCIPAL NOT TO APPLY.—The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

"(iii) 4-PERCENT INTEREST RATE NOT TO APPLY.—Section 6601(j) (relating to 4-percent rate of interest) shall not apply.

"(B) ALL STOCK MUST BE NON-READILY-TRADABLE STOCK.—No stock shall be taken into account for purposes of applying this paragraph unless it is non-readily-tradable stock (within the meaning of paragraph (7)(B)).

"(C) APPLICATION OF VOTING STOCK REQUIREMENT OF PARAGRAPH (1)(C)(i).—For purposes of clause (i) of paragraph (1)(C), the deemed stock resulting from the application of subparagraph (A) shall be treated as voting stock to the extent that voting stock in the holding company owns directly (or through the voting stock of 1 or more other holding companies) voting stock in the business company.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) HOLDING COMPANY.—The term 'holding company' means any corporation holding stock in another corporation.

"(ii) BUSINESS COMPANY.—The term 'business company' means any corporation carrying on a trade or business."

(b) DEFERRAL OF ESTATE TAXES NOT AVAILABLE FOR PASSIVE ASSETS.—Subsection (b) of section 6166 is amended by adding at the end thereof the following new paragraph:

"(9) DEFERRAL NOT AVAILABLE FOR PASSIVE ASSETS.—

"(A) IN GENERAL.—For purposes of subsection (a)(1) and determining the closely held business amount (but not for purposes of subsection (g)), the value of any interest in a closely held business shall not include the value of that portion of such interest which *is attributable to passive assets held by the business.*

"(B) Passive asset defined.—For purposes of this paragraph—

"(i) In general.—The term 'passive asset' means any asset other than an asset used in carrying on a trade or business.

"(ii) Stock treated as passive asset.—The term 'passive asset' includes any stock in another corporation unless—

"(I) such stock is treated as held by the decedent by reason of an election under paragraph (8), and

"(II) such stock qualified under subsection (a)(1).

"(iii) Exception for active corporations.—If—

"(I) a corporation owns 20 percent or more in value of the voting stock of another corporation, or such other corporation has 15 or fewer shareholders, and

"(II) 80 percent or more of the value of the assets of each such corporation is attributal to assets used in carrying on a trade or business,

then such corporations shall be treated as 1 corporation. For purposes of applying subclause (II) to the corporation holding the stock of the other corporation, such stock shall not be taken into account.

(b) Acceleration of Payment.—Paragraph (1) of section 6166(g) (relating to disposition of interest; withdrawal of funds from business) is amended by adding at the end thereof the following new subparagraphs:

"(E) Changes in interest in holding company.—If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)—

"(i) any disposition of any interest in such stock in such holding company which was included in determining the gross estate of the decedent, or

"(ii) any withdrawal of any money or other property from such holding company attributable to any interest included in determining the gross estate of the decedent,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

"(F) Changes in interest in business company.—If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)—

"(i) any disposition of any interest in such stock in the business company by such holding company, or

"(ii) any withdrawal of any money or other property from such business company attributable to such stock by such holding company owning such stock,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1)."

(c) Undistributed Income of Estate.—Paragraph (2) of section 6166(g) (relating to undistributed income of estate) is amended by adding at the end thereof the following new subparagraph:

"(C) For purposes of this paragraph, if any stock in a corporation is treated as stock in another corporation by reason of subsection (b)(8)(A), any dividends paid by such other corporation to the corporation shall be treated as paid to the estate of the decedent to the extent attributable to the stock qualifying under subsection (a)(1)."

(d) Effective Date.—

(1) In general.—The amendments made by this section shall apply with respect to estates of decedents dying after the date of the enactment of this Act.

(2) Special rule.—

(A) In general.—At the election of the executor, if—

(i) a corporation has 15 or fewer shareholders on June 22, 1984, and at all times thereafter before the date of the decedent's death, and

(ii) stock of such corporation is included in the gross estate of the decedent,

then all other corporations all of the stock of which is owned directly or indirectly by the corporation described in clauses (i) and (ii) shall be treated as one corporation for purposes of section 6166 of the Internal Revenue Code of 1954.

(B) Effect of election.—Any executor who elects the application of this paragraph shall be treated as having made the election under paragraph (8) of section 6166(b) of such Code.

SEC. 1022. PERMANENT RULES FOR REFORMING GOVERNING INSTRUMENTS CREATING CHARITABLE REMAINDER TRUSTS AND OTHER CHARITABLE INTERESTS.

(a) General Rule.—Paragraph (3) of section 2055(e) (relating to disallowance of deductions in certain cases) is amended to read as follows:

"(3) Reformations to comply with paragraph (2).—

"(A) In general.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

"(B) Qualified reformation.—For purposes of this paragraph, the term 'qualified reformation' means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if—

"(i) any difference between—

"(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

"(II) the actuarial value (as so determined) of the reformable interest,

does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

"(ii) in the case of—

"(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

"(II) any other interest, the reformable interest and the qualified interest are for the same period, and

"(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

"(C) Reformable interest.—For purposes of this paragraph—

"(i) In general.—The term 'reformable interest' means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).

"(ii) Beneficiary's interest must be fixed.—The term 'reformable interest' does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

"(iii) Special rule where timely commencement of reformation.—Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after—

"(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

"(II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.

"(iv) Special rule for will executed before January 1, 1979, etc.—In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

"(D) Qualified interest.—For purposes of this paragraph, the term 'qualified interest' means an interest for which a deduction is allowable under subsection (a).

"(E) Limitation.—The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

"(F) Special rule where income beneficiary dies.—If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term 'wholly charitable trust' means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

"(G) Statute of limitations.—The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation has occurred.

"(H) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

"(I) Reformations permitted in case of remainder interests in residence or farm, pooled income funds, etc.—The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure—

"(i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or

"(ii) to meet the requirements of section 642(c)(5)."

(b) Income Tax Deduction.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding at the end thereof the following new paragraph:

"(7) Reformations to comply with paragraph (2).—

"(A) In general.—A deduction shall be allowed under subsection (a) in respect of any

qualified reformation (within the meaning of section 2055(e)(3)(B)).

"(B) Rules similar to section 2055(e)(3) to apply.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply."

(c) Gift Tax Deduction.—Subsection (c) of section 2522 is amended by adding at the end thereof the following new paragraph:

"(4) Reformations to comply with paragraph (2).—

"(A) In general.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

"(B) Rules similar to section 2055(e)(3) to apply.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply."

(d) Treatment of Certain Contingencies Under Section 664.—Section 664 (relating to charitable remainder trusts) is amended by adding at the end thereof the following subsection:

"(f) Certain Contingencies Permitted.—

"(1) General rule.—If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

"(2) Value determined without regard to qualified contingency.—For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

"(3) Qualified contingency.—For purposes of this subsection, the term 'qualified contingency' means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust."

(e) Effective Date.—

(1) Subsections (a), (b), and (c).—The amendments made by subsections (a), (b), and (c) shall apply to reformations after December 31, 1978; except that such amendments shall not apply to any reformation to which section 2055(e)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) applies. For purposes of applying clause (iii) of section 2055(e)(C) of such Code (as amended by this section), the 90th day described in such clause shall be treated as not occurring before the 90th day after the date of the enactment of this Act.

(2) Subsection (d).—The amendment made by subsection (d) shall apply to transfers after December 31, 1978.

(3) Statute of limitations.—

(A) In general.—If on the date of the enactment of this Act (or at any time before the date 1 year after such date of enactment), credit or refund of any overpayment of tax attributable to the amendments made by this section is barred by any law or rule of law, such credit or refund of such overpayment may nevertheless be made if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(B) No interest where statute closed on date of enactment.—In any case where the making of the credit or refund of the overpayment described in subparagraph (A) is barred on the date of the enactment of this Act, no interest shall be allowed with respect to such overpayment (or any related adjustment) for the period before the date 180 days after the date on which the Secretary of the Treasury (or his delegate) is notified that the reformation has occurred.

SEC. 1023. ALTERNATE VALUATION ELECTION AVAILABLE ONLY WHERE IT RESULTS IN REDUCTION OF GROSS ESTATE AND ESTATE TAX.

(a) General Rule.—Section 2032 (relating to alternate valuation) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Election Must Decrease Gross Estate and Estate Tax.—No election may be made under this section with respect to an estate unless such election will decrease—

"(1) the value of the gross estate, and

"(2) the amount of the tax imposed by this chapter (reduced by credits allowable against such tax)."

(b) Effective Date.—The amendments made by subsection (a) shall apply with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 1024. ALTERNATE VALUATION ELECTION AVAILABLE ON CERTAIN LATE RETURNS.

(a) General Rule.—Subsection (d) of section 2032 (relating to time of election), as amended by section 1023, is amended to read as follows:

"(d) Election.—

"(1) In general.—The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such election, once made, shall be irrevocable.

"(2) Exception.—No election may be made under this section if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return."

(b) Effective Date.—

(1) In general.—The amendment made by subsection (a) shall apply to estates of decedents dying after the date of the enactment of this Act.

(2) Transitional rule.—In the case of an estate of a decedent dying before the date of the enactment of this Act if—

(A) a credit or refund of the tax imposed by chapter 11 of the Internal Revenue Code of 1954 is not prevented on the date of the enactment of this Act by the operation of any law or rule of law,

(B) the election under section 2032 of the Internal Revenue Code of 1954 would have met the requirements of such section (as amended by this section and section 1023) had the decedent died after the date of enactment of this Act, and

(C) a claim for credit or refund of such tax with respect to such estate is filed not later than the 90th day after the date of the enactment of this Act,

then such election shall be treated as a valid election under such section 2032. The statutory period for the assessment of any deficiency which is attributable to an election under this paragraph shall not expire before the close of the 2-year period beginning on the date of the enactment of this Act.

SEC. 1025. MODIFICATION OF ELECTION OR AGREEMENT UNDER SECTION 2032A.

(a) In General.—Section 2032A(d) (relating to election and agreement) is amended by adding at the end thereof the following new paragraph:

"(3) Modification of election and agreement to be permitted.—The Secretary shall prescribe procedures which provide that in any case in which—

"(A) the executor makes an election under paragraph (1) within the time prescribed for filing such election, and

"(B) substantially complies with the regulations prescribed by the Secretary with respect to such election, but—

"(i) the notice of election, as filed, does not contain all required information, or

"(ii) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements."

(b) Effective Date.—

(1) In general.—The amendment made by this section shall apply to estates of decedents dying after December 31, 1976.

(2) Refund or credit of overpayment barred by statute of limitations.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1954 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of the enactment of this Act. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.

SEC. 1026. NO GAIN RECOGNIZED FROM NET GIFTS MADE BEFORE MARCH 4, 1981.

"(a) In General.—In the case of any transfer of property subject to gift tax made before March 4, 1981, for purposes of subtitle A of the Internal Revenue Code of 1954, gross income of the donor shall not include any amount attributable to the donee's payment of (or agreement to pay) any gift tax imposed with respect to such gift.

(b) Gift Tax Defined.—For purposes of subsection (a), the term "gift tax" means—

(1) the tax imposed by chapter 12 of such Code, and

(2) any tax imposed by a State (or the District of Columbia) on transfers by gifts.

(c) Statute of Limitations.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented on the date of the enactment of this Act (or at any time within 1 year after such date) by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to subsection (a)) may nevertheless be made or allowed if claim therefor is filed within 1 year after the date of the enactment of this Act.

SEC. 1027. MARITAL DEDUCTION FOR A USUFRUCT.

(a) In General.—Subclause (I) of section 2056(b)(7)(B)(ii) (relating to qualifying income interest for life) is amended by inserting ", or has a usufruct interest for life in the property" after "intervals".

(b) Limitation on Deductions From Gross Estate.—Paragraph (1) of section 2053(c) (relating to limitations on deductions for expenses, indebtedness, and taxes) is amended by adding at the end thereof the following new subparagraph:

"(C) Certain claims by remaindermen.—No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044."

(c) Effective Date.—The amendments made by this section shall take effect as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981.

SEC. 1028. CREDIT AGAINST ESTATE TAX FOR TRANSFERS TO TOIYABE NATIONAL FOREST.

(a) Credit Allowed.—Subject to the provisions of this section, and notwithstanding any period of limitation or lapse of time, the

Secretary of the Treasury or his delegate shall allow credit against the tax imposed by chapter 11 of the Internal Revenue Code of 1954 (relating to the imposition of estate tax)—

(1) upon the estate of Nell J. Redfield for the conveyance by the estate of the United States of real property included in the gross estate and located within and adjacent to the boundaries of the Toiyabe National Forest; and

(2) upon the estate of Elizabeth Schultz Rabe for the conveyance by the estate to the United States of real property included in the gross estate and known as Parcel No. 4 containing 97.60 acres, more or less, located in the County of Douglas, State of Nevada, and described as follows:

The NE¼ of the SW¼, the NW¼ of the SE¼, and a portion of the SE¼ of the NW¼ of Section 23, Township 13 North, Range 18 East, M.D.B.&M., more particularly described as follows:

All that portion of the SE¼ of the NW¼ excepting therefrom the following:

Beginning at a United States Forest Service Brass Cap, being the C-N 1/16 corner of Section 23; thence South 0°45'24" West 500.00 feet to an iron pipe; thence South 44°50'02" West 945.42 feet to an iron pipe; thence North 89°46'12" West 301.78 to a point; thence tangent North 20°28'20" East on the arc of a circular curve to the left with a radius of 800 feet through a central angle of 40°44'50" an arc distance of 568.94 feet to a point; thence North 20°02'42" West 683.17 feet to a point; thence South 88°35'38" East 1206.29 feet to the Point of Beginning, containing 22.40 acres, more or less.

(b) Amount of Credit.—The amount allowed as a credit under subsection (a) shall be equal to the lesser of—

(1) the fair market value of the real property transferred by each estate as of the valuation date used for purposes of the tax imposed by chapter 11 of such Code, or

(2) the Federal estate tax liability (and interest thereon) of each estate.

(c) Limitations.—

(1) The provisions of this section shall apply only if the executor of each estate executes a deed (in accordance with the laws of the State in which such real property is situated) transferring title to the United States before the date which is 90 days after the date of the enactment of this Act, but only if such title is satisfactory to the Attorney General or his delegate.

(2) The provisions of this section shall apply only if the real property transferred is accepted by the Secretary of Agriculture and added to the Toiyabe National Forest. The lands shall be transferred to the Secretary of Agriculture without reimbursement or payment from the Department of Agriculture.

(3) Unless the Secretary of Agriculture determines and certifies to the Secretary of the Treasury that there has been an expeditious transfer of the real property under this section, no interest payable with respect to the tax imposed by chapter 11 of the Internal Revenue Code of 1954 shall be deemed to be waived by reasons of the provisions of this section.

Subtitle D—Charitable Contributions and Exempt Organizations

SEC. 1031. INCREASE IN CHARITABLE VOLUNTEER MILEAGE.

(a) In General.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsections (j) and (k) as subsections (k) and (l), respectively, and by inserting after subsection (i) the following new subsection:

"(j) Standard Mileage Rate for Use of Passenger Automobile.—For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile."

(b) Effective Date.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1984.

SEC. 1032. CERTAIN ORGANIZATIONS PROVIDING CHILD CARE INCLUDED WITHIN THE DEFINITION OF TAX-EXEMPT ORGANIZATIONS.

(a) In General.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

"(k) Treatment of Certain Organizations Providing Child Care.—For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term 'educational purposes' includes the providing care of children away from their homes if—

"(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

"(2) the services provided by the organization are available to the general public."

(b) Cross References.—

"(1) Subsection (k) of section 170, as redesignated by section 1031 of this Act, is amended by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively, and by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) For treatment of certain organizations providing child care, see section 501(k)."

(2) Subsection (f) of section 2055 is amended by redesignating paragraphs (2) through (11) as paragraphs (3) through (12), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) For treatment of certain organizations providing child care, see section 501(k)."

(3) Subsection (d) of section 2522 is amended by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) For treatment of certain organizations providing child care, see section 501(k)."

(c) Effective Dates.—The amendments made by subsections (a) and (b) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 1033. RESTRICTIONS ON CHURCH TAX INQUIRIES AND EXAMINATIONS.

(a) In General.—Subchapter A of chapter 78 (relating to discovery of liability and enforcement of title) is amended by redesignating section 7611 as section 7612 and inserting after section 7610 the following new section:

"SEC. 7611. RESTRICTIONS ON CHURCH TAX INQUIRIES AND EXAMINATIONS.

"(a) Restrictions on Inquiries.—

"(1) In general.—The Secretary may begin a church tax inquiry only if—

"(A) the reasonable belief requirements of paragraph (2), and

"(B) the notice requirements of paragraph (3), have been met.

"(2) Reasonable belief requirements.—The requirements of this paragraph are met with respect to any church tax inquiry if an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church—

"(A) may not be exempt, by reason of its status as a church, from tax under section 501(a), or

"(B) may be carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities subject to taxation under this title.

"(3) Inquiry notice requirements.—

"(A) In general.—The requirements of this paragraph are met with respect to any church tax inquiry if, before beginning such inquiry, the Secretary provides written notice to the church of the beginning of such inquiry.

"(B) Contents of inquiry notice.—The notice required by this paragraph shall include—

"(i) an explanation of—

"(I) the concerns which gave rise to such inquiry, and

"(II) the general subject matter of such inquiry, and

"(ii) a general explanation of the applicable—

"(I) administrative and constitutional provisions with respect to such inquiry (including the right to a conference with the Secretary before any examination of church records), and

"(II) provisions of this title which authorize such inquiry or which may be otherwise involved in such inquiry.

"(b) Restrictions on Examinations.—

"(1) In general.—The Secretary may begin a church tax examination only if the requirements of paragraph (2) have been met and such examination may be made only—

"(A) in the case of church records, to the extent necessary to determine the liability for, and the amount of, any tax imposed by this title, and

"(B) in the case of religious activities, to the extent necessary to determine whether an organization claiming to be a church is a church for any period.

"(2) Notice of examination; opportunity for conference.—The requirements of this paragraph are met with respect to any church tax examination if—

"(A) at least 15 days before the beginning of such examination, the Secretary provides the notice described in paragraph (3) to both the church and the appropriate regional counsel of the Internal Revenue Service, and

"(B) the church has a reasonable time to participate in a conference described in paragraph (3)(A)(iii), but only if the church requests such a conference before the beginning of the examination.

"(3) Contents of examination notice, et cetera.—

"(A) In general.—The notice described in this paragraph is a written notice which includes—

"(i) a copy of the church tax inquiry notice provided to the church under subsection (a),

"(ii) a description of the church records and activities which the Secretary seeks to examine,

"(iii) an offer to have a conference between the church and the Secretary in order to discuss, and attempt to resolve, concerns relating to such examination, and

"(iv) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in such examination and the disclosure of which is required by the Freedom of Information Act (5 U.S.C. 552).

"(B) EARLIEST DAY EXAMINATION NOTICE MAY BE PROVIDED.—The examination notice described in subparagraph (A) shall not be provided to the church before the 15th day after the date on which the church tax inquiry notice was provided to the church under subsection (a).

"(C) OPINION OF REGIONAL COUNSEL WITH RESPECT TO EXAMINATION.—Any regional counsel of the Internal Revenue Service who receives an examination notice under paragraph (1) may, within 15 days after such notice is provided, submit to the regional commissioner for the region an advisory objection to the examination.

"(4) EXAMINATION OF RECORDS AND ACTIVITIES NOT SPECIFIED IN NOTICE.—Within the course of a church tax examination which (at the time the examination begins) meets the requirements of paragraphs (1) and (2), the Secretary may examine any church records or religious activities which were not specified in the examination notice to the extent such examination meets the requirement of subparagraph (A) or (B) of paragraph (1) (whichever applies).

"(c) LIMITATION ON PERIOD OF INQUIRIES AND EXAMINATIONS.—

"(1) INQUIRIES AND EXAMINATIONS MUST BE COMPLETED WITHIN 2 YEARS.—

"(A) IN GENERAL.—The Secretary shall complete any church tax status inquiry or examination (and make a final determination with respect thereto) not later than the date which is 2 years after the examination notice date.

"(B) INQUIRIES NOT FOLLOWED BY EXAMINATIONS.—In the case of a church tax inquiry with respect to which there is no examination notice under subsection (b), the Secretary shall complete such inquiry (and make a final determination with respect thereto) not later than the date which is 90 days after the inquiry notice date.

"(2) SUSPENSION OF 2-YEAR PERIOD.—The running of the 2-year period described in paragraph (1)(A) and the 90-day period in paragraph (1)(B) shall be suspended—

"(A) for any period during which—

"(i) a judicial proceeding brought by the church against the Secretary with respect to the church tax inquiry of examination is pending or being appealed,

"(ii) a judicial proceeding brought by the Secretary against the church (or any official thereof) to compel compliance with any reasonable request of the Secretary in a church tax examination for examination of church records or religious activities is pending or being appealed, or

"(iii) the Secretary is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in any judicial proceeding brought under section 7609,

"(B) for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request of the Secretary for church records or other information, or

"(C) for any period mutually agreed upon by the Secretary and the church.

"(d) LIMITATIONS ON REVOCATION OF TAX-EXEMPT STATUS, ET CETERA.—

"(1) IN GENERAL.—The Secretary may—

"(A) determine that an organization is not a church which—

"(i) is exempt from taxation by reason of section 501(a), or

"(ii) is described in section 170(c), or

"(B)(i) send a notice of deficiency of any tax involved in a church tax examination, or

"(ii) in the case of any tax with respect to which subchapter B of chapter 63 (relating to deficiency procedures) does not apply, assess any underpayment of such tax involved in a church examination,

only if the appropriate regional counsel of the Internal Revenue Service determines in writing that there has been substantial compliance with the requirements of this section and approves in writing of such revocation, notice of deficiency, or assessment.

"(2) LIMITATIONS ON PERIOD OF ASSESSMENT.—

"(A) REVOCATION OF TAX-EXEMPT STATUS.—

"(i) 3-YEAR STATUTE OF LIMITATIONS GENERALLY.—In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the 3 most recent taxable years ending before the examination notice date.

"(ii) 6-YEAR STATUTE OF LIMITATIONS WHERE TAX-EXEMPT STATUS REVOKED.—If an organization is not a church exempt from tax under section 501(a) for any of the 3 taxable years described in clause (i), clause (i) shall be applied by substituting '6 most recent taxable years' for '3 most recent taxable years'.

"(B) UNRELATED BUSINESS TAX.—In the case of any church tax examination with respect to the tax imposed by section 511 (relating to unrelated business income), such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, only with respect to the 6 most recent taxable years ending before the examination notice date.

"(C) EXCEPTION WHERE SHORTER STATUTE OF LIMITATIONS OTHERWISE APPLICABLE.—Subparagraphs (A) and (B) shall not be construed to increase the period otherwise applicable under subchapter A of chapter 66 (relating to limitations on assessment and collection).

"(e) INFORMATION NOT COLLECTED IN SUBSTANTIAL COMPLIANCE WITH PROCEDURES TO STAY SUMMONS PRECEEDING.—

"(1) IN GENERAL.—If there has not been substantial compliance with—

"(A) the notice requirements of subsection (a) or (b),

"(B) the conference requirement described in subsection (b)(3)(A)(iii), or

"(C) the approval requirement of subsection (d)(1) (if applicable),

with respect to any church tax inquiry or examination, any proceeding to compel compliance with any summons with respect to such inquiry or examination shall be stayed until the court finds that all practicable steps to correct the noncompliance have been taken. The period applicable under paragraph (1) or subsection (c) shall not be suspended during the period of any stay under the preceding sentence.

"(2) REMEDY TO BE EXCLUSIVE.—No suit may be maintained, and no defense may be raised in any proceeding (other than as provided in paragraph (1)), by reason of any noncompliance by the Secretary with the requirements of this section.

"(f) LIMITATIONS ON ADDITIONAL INQUIRIES AND EXAMINATIONS.—

"(1) IN GENERAL.—If any church tax inquiry or examination with respect to any church is completed and does not result in—

"(A) a revocation, notice of deficiency, or assessment described in subsection (d)(1), or

"(B) a request by the Secretary for any significant change in the operational practices of the church (including the adequacy of accounting practices),

no other church tax inquiry or examination may begin with respect to such church during the applicable 5-year period unless such inquiry or examination is approved in writing by the Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service or does not involve the same or similar issues involved in the preceding inquiry or examination. For purposes of the preceding sentence, an inquiry or examination shall be treated as completed not later than the expiration of the applicable period under paragraph (1) of subsection (c).

"(2) APPLICABLE 5-YEAR PERIOD.—For purposes of paragraph (1), the term 'applicable 5-year period' means the 5-year period beginning on the date the notice taken into account for purposes of subsection (c)(1) was provided. For purposes of the preceding sentence, the rules of subsection (c)(2) shall apply.

"(g) TREATMENT OF FINAL REPORT OF REVENUE AGENT.—Any final report of an agent of the Internal Revenue Service shall be treated as a determination of the Secretary under paragraph (1) of subsection 7428(a) and any church receiving such a report shall be treated for purposes of sections 7428 and 7430 as having exhausted the administrative remedies available to it.

"(h) DEFINITIONS.—For purposes of this section—

"(1) CHURCH.—The term 'church' includes—

"(A) any organization claiming to be a church, and

"(B) any convention or association of churches.

"(2) CHURCH TAX INQUIRY.—The term 'church tax inquiry' means any inquiry to a church (other than an examination) to serve as a basis for determining whether a church—

"(A) is exempt from tax under section 501(a) by reason of its status as a church, or

"(B) is carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities which may be subject to taxation under this title.

"(3) CHURCH TAX EXAMINATION.—The term 'church tax examination' means any examination for purposes of making a determination described in paragraph (2) of—

"(A) church records at the request of the Internal Revenue Service, or

"(B) the religious activities of any church.

"(4) CHURCH RECORDS.—

"(A) IN GENERAL.—The term 'church records' means all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors.

"(B) EXCEPTION.—Such term shall not include records acquired—

"(i) pursuant to a summons to which section 7609 applies, or

"(ii) from any governmental agency.

"(5) INQUIRY NOTICE DATE.—The term 'inquiry notice date' means the date the notice with respect to a church tax inquiry is provided under subsection (a).

"(6) EXAMINATION NOTICE DATE.—The term 'examination notice date' means the date the notice with respect to a church tax examination is provided under subsection (b) to the church.

"(7) APPROPRIATE HIGH-LEVEL TREASURY OFFICIAL.—The term 'approporiate high-level Treasury official' means the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.

"(i) SECTION NOT TO APPLY TO CRIMINAL INVESTIGATIONS, ETC.—This section shall not apply to—

"(A) any criminal investigation,

"(B) any inquiry or examination relating to the tax liability of any person other than a church,

"(C) any assessment under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income taxes, etc),

"(D) any willful attempt to defeat or evade any tax imposed by this title, or

"(E) any knowing failure to file a return of tax imposed by the title."

(b) TECHNICAL AMENDMENT RELATING TO SUBPOENA POWER OF THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.—Section 7428 (relating to declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.) is amended by adding at the end thereof the following new subsection:

"(d) SUBPOENA POWER FOR DISTRICT COURT FOR DISTRICT OF COLUMBIA.—In any action brought under this section in the district court of the United States for the District of Columbia, a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 7605 (relating to time and place of examination) is amended to read as follows: "(C) Cross Reference.—

"For provisions restricting church tax inquiries and examinations, see section 7611."

(2) The table of sections for subchapter A of chapter 78 is amended by striking out the item relating to section 7611 and inserting in lieu thereof the following:

"Sec. 7611. Restrictions on church tax inquiries and examinations.
"Sec. 7612. Cross reference."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to inquiries and examinations beginning after December 31, 1984.

SEC. 1034. ACQUISITION INDEBTEDNESS OF CERTAIN EDUCATIONAL INSTITUTIONS.

"(A) GENERAL RULE.—Paragraph (9) of section 514(c) (relating to unrelated debt-financed income) is amended to read as follows:

"(9) REAL PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'acquisition indebtedness' does not, for purposes of this section, include indebtedness incurred by a qualified organization in acquiring or improving any real property.

"(B) EXCEPTIONS.—The provision of subparagraph (A) shall not apply in any case in which—

"(i) the price for the acquisition or improvement is not a fixed amount determined as of the date of the acquisition or the completion of the improvement;

"(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

"(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) or 707(b) to such person;

"(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

"(I) bears a relationship which is described in subparagraph (C), (E), or (G) of section 4975(e)(2) to any plan with respect to which such trust was formed, or

"(II) bears a relationship which is described in subparagraph (F) or (H) of section 4975(e)(2) to any person described in subclause (I);

"(v) any person described in clause (iii) or (iv) provides the qualified organization with financing in connection with the acquisition or improvement; or

"(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

"(I) all of the partners of the partnership are qualified organizations, or

"(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(j)(9)).

For purposes of clause (vi)(I), an organization shall not be treated as a qualified organization if any income of such organization would be unrelated business taxable income (determined without regard to this paragraph).

"(C) QUALIFIED ORGANIZATION.—For purposes of this paragraph, the term 'qualified organization' means—

"(i) an organization described in section 170(b)(1)(A) (ii) and its affiliated support organizations described in section 509(a); or

"(ii) any trust which constitutes a qualified trust under section 401.

"(D) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraph (B)(vi) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities."

(b) TREATMENT OF SEGREGATED ASSET ACCOUNTS.—Section 514 (relating to unrelated debt-financed income) is amended by adding at the end thereof the following new subsection:

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the circumvention of any provision of this section through the use of segregated asset accounts."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to indebtedness incurred after the date of the enactment of this Act.

(2) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1985.—

(A) The amendment made by subsection (a) shall not apply to any indebtedness incurred before January 1, 1985, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

(B) A partnership is described in this subparagraph if—

(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum account of interest in the partnership that would be offered had been circulated,

(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

(iii) the marketing of partnership interests in such partnership is completed not later than 2 years after the later of the date of enactment of this Act or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate amount of interests in such partnership sold does not exceed the amount described in clause (i).

(3) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1986.—

(A) The amendment made by subsection (a) shall not apply to any indebtedness incurred before January 1, 1986, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

(B) A partnership is described in this paragraph if—

(i) before March 6, 1984, the partnership was organized and publicly announced, the maximum amount of interests which would be sold in such partnership, and

(ii) the marketing of partnership interests in such partnership is completed not later than the 90th day after the date of the enactment of this Act and the aggregate amount of interests in such partnership sold does not exceed the maximum amount described in clause (i).

For purposes of clause (i), the maximum amount taken into account shall be the greatest of the amounts shown in the registration statement, prospectus, or partnership agreement.

(C) BINDING CONTRACTS.—For purposes of this paragraph, property shall be deemed to have been acquired before January 1, 1986, if such property is acquired pursuant to a written contract which, on January 1, 1986, and at all times thereafter, required the acquisition of such property and such property is placed in service not later than 6 months after the date such contract was entered into.

SEC. 1035. TRANSITIONAL RULE RELATING TO THE DEFINITION OF QUALIFIED CONSERVATION CONTRIBUTIONS.

(a) IN GENERAL.—Subparagraph (B) of section 170(h)(5) (defining exclusively for conservation purposes) is amended to read as follows:

"(B) NO SURFACE MINING PERMITTED.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

"(ii) SPECIAL RULE.—With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

Subtitle E—Income Tax Credits

SEC. 1041. 1-YEAR EXTENSION OF TARGETED JOBS CREDIT.

(a) IN GENERAL.—Paragraph (3) of section 51(c) (defining wages qualifying for targeted jobs credit) is amended by striking out "December 31, 1984" and inserting in lieu thereof "December 31, 1985".

(b) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out "fiscal years 1983 and 1984" and inserting in lieu thereof "fiscal years 1983, 1984, and 1985".

(c) TARGETED JOBS CREDIT TECHNICAL AMENDMENTS.—

(1) TREATMENT OF SUCCESSOR EMPLOYERS; TREATMENT OF EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—Section 51 (relating to amount of targeted jobs credit) is amended by adding at the end thereof the following new subsection:

"(j) TREATMENT OF SUCCESSOR EMPLOYERS; TREATMENT OF EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—

"(1) TREATMENT OF SUCCESSOR EMPLOYERS.—Under regulations prescribed by the Secretary, in the case of a successor employer referred to in section 3306(b)(1), the determination of the amount of the credit allowable under section 44B with respect to wages paid by such successor employer shall be made in the same manner as if such wages were paid by the predecessor employer referred to in such section.

"(2) TREATMENT OF EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—No credit shall be allowed under section 44B with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services."

(2) SPECIAL RULE FOR CERTIFICATION.—Subparagraph (A) of section 51(d)(16) (relating to special rules for certifications) is amended by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, if on or before the day on which such individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary determination that such individual is a member of a targeted group, then 'the fifth day' shall be substituted for 'the day' in such sentence."

(3) AGE REQUIREMENT FOR QUALIFIED SUMMER YOUTH EMPLOYEE.—Clause (ii) of section 51(d)(12)(A) (defining qualified summer youth employee) is amended by striking out "(as defined in paragraph (14))" and inserting in lieu thereof "(or if later, on May 1 of the calendar year involved)".

(4) TECHNICAL AMENDMENT.—Paragraph (2) of section 51(b) is amended by striking out "(or, in the case of a vocational rehabilitation referral, the day the individual begins work for the employer on or after the beginning of such individual's rehabilitation plan)".

(5) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

(B) SPECIAL RULE FOR EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—Paragraph (2) of section 51(j) of the Internal Revenue Code of 1954 (as added by this subsection) and the amendment made by paragraph (3) of this subsection shall apply to individuals who begin work for the employer after December 31, 1984.

SEC. 1042. INCREASE IN EARNED INCOME CREDIT.

(a) INCREASE IN RATE OF CREDIT.—Subsection (a) of section 32 (relating to earned income credit), as redesignated by title IV of this Act, is amended by striking out "10 percent" and inserting in lieu thereof "11 percent".

(b) ADJUSTMENT OF CREDIT PHASE-OUT.—Paragraph (2) of section 32(b) (as so redesignated) is amended to read as follows:

"(2) 12½ percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,500."

(c) CREDIT NOT ALLOWABLE TO TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX.—Section 32 (as so redesignated) is amended by adding at the end thereof the following new subsection:

"(h) REDUCTION OF CREDIT TO TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax for taxpayers other than corporations) with respect to such taxpayer for such taxable year."

(d) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 32(b) (as so redesignated is amended by striking out "$500" and inserting in lieu thereof "$550".

(2) Subparagraphs (A) and (B) of section 32(f)(2) (as so redesignated) are amended to read as follows:

"(A) for earned income between $0 and $11,000, and

"(B) for adjusted gross income between $6,500 and $11,000."

(3) Clauses (i) and (ii) of section 3507(c)(2)(B) are amended to read as follows:

"(i) of not more than 11 percent of the first $5,000 of earned income, which

"(ii) phases out between $6,500 and $11,000 of earned income, or",

(4) Clauses (i) and (ii) of section 3507(c)(2)(C) are amended to read as follows:

"(i) of not more than 11 percent of the first $2,500 of earned income, which

"(ii) phases out between $3,250 and $5,500 of earned income."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1984.

SEC. 1043. ALTERNATIVE TEST FOR DEFINITION OF QUALIFIED REHABILITATION BUILDING.

(a) IN GENERAL.—Paragraph (1) of section 48(g) (relating to qualified rehabilitated buildings) is amended by adding at the end thereof the following new subparagraph:

"(E) ALTERNATIVE TEST FOR DEFINITION OF QUALIFIED REHABILITATED BUILDING.—The requirement in clause (iii) of subparagraph (A) shall be deemed to be satisfied if in the rehabilitation process—

"(i) 50 percent or more of the existing external walls of the building are retained in place as external walls,

"(ii) 75 percent or more of the existing external walls of such buildings are retained in place as internal or external walls, and

"(iii) 75 percent or more of the existing internal structural framework of such building is retained in place."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 1983, in taxable years ending such date.

Subtitle F—Miscellaneous Housing Provisions

SEC. 1051. DISASTER LOSS DEDUCTION WHERE TAXPAYER ORDERED TO DEMOLISH OR RELOCATE RESIDENCE IN DISASTER AREA BECAUSE OF DISASTER.

(a) GENERAL RULE.—Section 165 (relating to losses) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) TREATMENT AS DISASTER LOSS WHERE TAXPAYER ORDERED TO DEMOLISH OR RELOCATE RESIDENCE IN DISASTER AREA BECAUSE OF DISASTER.—In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1974, if—

"(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

"(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after December 31, 1981, with respect to residences in areas determined by the President of the United States, after such date, to warrant assistance by the Federal Government under the Disaster Relief Act of 1974.

SEC. 1052. ALLOCATION OF EXPENSES TO PARSONAGE ALLOWANCES.

With respect to any mortgage interest or real property tax costs paid or incurred before January 1, 1986, by any minister of the gospel who owned and occupied a home before January 3, 1983 (or had a contract to purchase a home before such date and subsequently owned and occupied such home), the application of section 265(1) of the Internal Revenue Code of 1954 to such costs shall be determined without regard to Revenue Ruling 83-3 (and without regard to any other regulation, ruling, or decision reaching the same result, or a result similar to the result, set forth in such Revenue Ruling).

SEC. 1053. ARMED FORCES OVERSEAS QUARTERS.

(a) IN GENERAL.—Subsection (h) of section 1034 (relating to rollover of gain on sale of principal residence) is amended to read as follows:

"(h) MEMBERS OF ARMED FORCES.—

"(1) IN GENERAL.—The running of any period of time specified in subsection (a) or (c) (other than the 2 years referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence, except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence.

"(2) MEMBERS STATIONED OUTSIDE THE UNITED STATES OR REQUIRED TO RESIDE IN GOVERNMENT QUARTERS.—In the case of any taxpayer who, during any period of time the running of which is suspended by paragraph (1)—

"(A) is stationed outside of the United States, or

"(B) after returning from a tour of duty outside of the United States and pursuant to a determination by the Secretary of Defense that adequate off-base housing is not available at a remote base site, is required to reside in on-base Government quarters, any such period of time as so suspended shall not expire before the last day described in subparagraph (A) or (B), as the case may be, except that any such period of time as so suspended shall not extend beyond the date which is 8 years after the date of the sale of the old residence.

"(3) EXTENDED ACTIVE DUTY DEFINED.—For purposes of this subsection, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1954) after the date of the enactment of this Act.

SEC. 1054. TREATMENT OF HOME WON IN LOCAL RADIO CONTEST AND SPECIALLY DESIGNED FOR HANDICAPPED FOSTER CHILD.

(a) IN GENERAL.—If the Federal income tax attributable to the receipt of the prize described in subsection (b) is paid no later than one year after the date of the enactment of this Act, such payment shall be treated for purposes of the Internal Revenue Code of 1954 as being in full satisfaction of such tax and all interest, additions to the tax, additional amounts, and penalties in respect of liability for such Federal income tax.

(b) DESCRIPTION OF PRIZE.—For purposes of subsection (a), the prize described in this subsection is a residence which—

(1) was won by the taxpayer in a local radio contest,

(2) was specially designated to meet the needs of a handicapped foster child of the taxpayer,

(3) is the principal residence (within the meaning of section 1034 of such Code) of the taxpayer, and

(4) had a lien placed on it by the Internal Revenue Service on May 24, 1983, after an Internal Revenue Service supervisor had overruled two payment schedules negotiated with the taxpayer for the payment of taxes, interest, and penalties on income attributable to such residence for the taxpayer's 1980 taxable year.

(c) TAX DETERMINED WITHOUT REGARD TO INTEREST, ETC.—For purposes of subsection (a), the Federal income tax attributable to the prize described in subsection (b) shall be determined without regard to interest, additions to the tax, additional amounts, and penalties.

Subtitle G—Extension of Existing Provisions and Transition Rules

SEC. 1061. EXTENSION OF PAYMENT-IN-KIND TAX TREATMENT ACT OF 1983 TO WHEAT FOR 1984 CROP YEAR.

(a) EXTENSION.—

(1) IN GENERAL.—Section 5 of the Payment-in-Kind Tax Treatment Act of 1983 (relating to definitions and special rules) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) EXTENSION TO WHEAT PLANTED AND HARVESTED IN 1984.—In the case of wheat—

"(1) any reference in this Act to the 1983 crop year shall include a reference to the 1984 crop year, and

"(2) any reference to the 1983 payment-in-kind program shall include a reference to any program for the 1984 year for wheat which meets the requirements of subparagraphs (A) and (B) of subsection (a)(1)."

(2) DEFINITION OF CROP YEAR.—Paragraph (2) of section 5(a) of such Act is amended to read as follows:

"(2) CROP YEAR.—The term '1983 crop year' means the crop year for any crop the planting or harvesting period for which occurs during 1983. The term '1984 crop year' means the crop year for wheat the planting and harvesting period for which occurs during 1984."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to commodities received for the 1984 crop year (as defined in section 5(a)(2) of the Payment-in-Kind Tax Treatment Act of 1983 as amended by subsection (a)).

SEC. 1062. EXTENSION OF INCREASED DEDUCTION FOR ELIMINATING ARCHITECTURAL AND TRANSPORTATION BARRIERS TO THE HANDICAPPED.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (d) of section 190 (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended to read as follows:

"(d) APPLICATION OF SECTION.—This section shall apply to—

"(1) taxable years beginning after December 31, 1976, and before January 1, 1983, and

"(2) taxable years beginning after December 31, 1983, and before January 1, 1986."

(2) CONFORMING AMENDMENT.—Subsection (c) of section 2122 of the Tax Reform Act of 1976 (26 U.S.C. 190 note) (relating to effective date for allowance of deduction for eliminating architectural and transportation barriers for the handicapped) is amended by striking out "and before January 1, 1983".

(b) INCREASE IN DEDUCTION.—Subsection (c) of section 190 (relating to limitation of deduction) is amended by striking out "$25,000" and inserting in lieu thereof "$35,000".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1983.

SEC. 1063. PERMANENT DISALLOWANCE OF DEDUCTION FOR EXPENSES OF DEMOLITION OF CERTAIN STRUCTURES

(a) EXTENSION TO ALL STRUCTURES; DISALLOWANCE MADE PERMANENT.—Section 280B (relating to demolition of certain historic structures) is amended—

(1) by striking out all of subsection (a) which precedes paragraph (1) thereof and inserting in lieu thereof the following: "In the case of the demolition of any structure—"; and

(2) by striking out subsections (b) and (c).

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 280B is amended by striking out "CERTAIN HISTORIC".

(2) The item relating to section 280B in the table of sections for part IX of subchapter B of chapter 1 is amended by striking out "certain historic".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

SEC. 1064. AMORTIZATION OF EXPENDITURES TO REHABILITATE LOW-INCOME RENTAL HOUSING.

Subsection (k) of section 167 (relating to depreciation of expenditures to rehabilitate low-income rental housing) is amended by striking out "January 1, 1984" each place it appears and inserting in lieu thereof "January 1, 1987".

SEC. 1065. RULES TREATING INDIAN TRIBAL GOVERNMENTS AS STATES MADE PERMANENT.

(a) IN GENERAL.—Section 203 of the Indian Tribal Governmental Tax Status Act of 1982 is amended—

(1) by striking out "and before January 1, 1985," each place it appears, and

(2) by striking out ", and shall cease to apply at the close of December 31, 1984" in paragraph (5) thereof.

(b) TREATMENT AS STATE EXPANDED FOR CERTAIN PURPOSES.—Paragraph (6) of section 7871 (relating to Indian tribal governments treated as States for certain purposes) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) section 105(e) (relating to accident and health plans),

"(C) section 117(b)(2)(A) (relating to scholarships and fellowship grants),

"(D) section 162(e) (relating to appearances, etc., with respect to legislation),

"(E) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and

"(F) section 454(b)(2) (relating to discount obligations).

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1984.

SEC. 1066. TRANSITIONAL RULE FOR TREATMENT OF CERTAIN INCOME FROM S CORPORATIONS.

(a) IN GENERAL.—If—

(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1954 for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

(2) a shareholder of such corporation makes an election to have this section apply, then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1954 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982.

(b) QUALIFIED INCOME.—For purposes of subsection (a), the term "qualified income" means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

(c) ELECTION.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.

SEC. 1067. SPECIAL LEASING RULES FOR CERTAIN COAL GASIFICATION FACILITIES.

(a) IN GENERAL.—Paragraph (3) of section 208(d) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end thereof the following new subparagraph:

"(G) COAL GASIFICATION FACILITIES.—

"(i) IN GENERAL.—Property is described in this subparagraph if such property—

"(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

"(II) would be described in subparagraph (A) if 'July 1, 1984' were substituted for 'January 1, 1983'.

"(ii) SPECIAL RULE.—For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

"(iii) LIMITATION ON AMOUNT.—Clause (i) shall only apply to the lease of an undivided *interest in the property in an amount which does not exceed the lesser of—*

"(I) 50 percent of the cost basis of such property, or

"(II) $67,500,000.

"(iv) Placed in service.—In the case of property to which this subparagraph applies—

"(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

"(II) the term of the lease with respect to such property shall be treated as being 5 years."

(b) Special Rule for Subsection (a).—The amount of any recapture under section 47 of the Internal Revenue Code of 1954 with respect to the credit allowed under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) applies.

(c) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

Subtitle H—Additional Precisions

SEC. 1071. TAX TREATMENT OF REGULATED INVESTMENT COMPANIES.

(a) Personal Holding Companies Permitted To Be Regulated Investment Companies.—

(1) In general.—Subsection (a) of section 851 (defining regulated investment company) is amended by striking out "(other than a personal holding company as defined in section 542)".

(2) Special rule for rate of tax.—Paragraph (1) of section 852(b) (relating to imposition of tax on regulated investment companies) is amended by adding at the end thereof the following new sentence: "In the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11(b)."

(3) Requirement that investment company have no earnings and profits accumulated in year for which it was not a regulated investment company.—Subsection (a) of section 852 (relating to requirements applicable to regulated investment companies) is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) either—

"(A) the provisions of this part applied to the investment company for all taxable years ending on or after November 8, 1983, or

"(B) as of the close of the taxable year, the investment company has no earnings and profits accumulated in any taxable year to which the provisions of this part (or the corresponding provisions of prior law) did not apply to it."

(4) Procedures similar to deficiency dividend procedures made applicable.—Section 852 is amended by adding at the end thereof the following new subsection:

"(e) Procedures Similar to Deficiency Dividend Procedures Made Applicable.—

"(1) In general.—If—

"(A) there is a determination that the provisions of this part do not apply to an investment company for any taxable year (hereinafter in this subsection referred to as the 'non-RIC year'), and

"(B) such investment company meets the distribution requirements of paragraph (2) with respect to the non-RIC year,

for purposes of applying subsection (a)(3) to subsequent taxable years, the provisions of this part shall be treated as applying to such investment company for the non-RIC year.

"(2) Distribution requirements.—

"(A) In general.—The distribution requirements of this paragraph are met with respect to any non-RIC year if, within the 90-day period beginning on the date of the determination (or within such longer period as the Secretary may permit), the investment company makes 1 or more qualified designated distributions and the amount of such distributions is not less than the excess of—

"(i) the portion of the accumulated earnings and profits of the investment company (as of the date of the determination) which are attributable to the non-RIC year, over

"(ii) any interest payable under paragraph (3).

"(B) Qualified designated distribution.—For purposes of this paragraph, the term 'qualified designated distribution' means any distribution made by the investment company if—

"(i) section 301 applies to such distribution, and

"(ii) such distribution is designated (at such time and in such manner as the Secretary shall by regulations prescribe) as being taken into account under this paragraph with respect to the non-RIC year.

"(C) Effect on dividends paid deduction.—Any qualified designated distribution shall not be included in the amount of dividends paid for purposes of computing the dividends paid deduction for any taxable year.

"(3) Interest charge.—

"(A) In general.—If paragraph (1) applies to any non-RIC year of an investment company, such investment company shall pay interest at the annual rate established under section 6621—

"(i) on an amount equal to 50 percent of the amount referred to in paragraph (2)(A)(i),

"(ii) for the period—

"(I) which begins on the last day prescribed for payment of the tax imposed for the non-RIC year (determined without regard to extensions), and

"(II) which ends on the date the determination is made.

"(B) Coordination with subtitle F.—Any interest payable under subparagraph (A) may be assessed and collected at any time during the period during which any tax imposed for the taxable year in which the determination is made may be assessed and collected.

"(4) Provision not to apply in the case of fraud.—The provisions of this subsection shall not apply if the determination contains a finding that the failure to meet any requirement of this part was due to fraud with intent to evade tax.

"(5) Determination.—For purposes of this subsection, the term 'determination' has the meaning given to such term by section 860(e). Such term also includes a determination by the investment company filed with the Secretary that the provisions of this part do not apply to the investment company for a taxable year."

(5) Effective dates.—

(A) In general.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to taxable years beginning after December 31, 1982.

(B) Investment companies which were regulated investment companies for years ending before November 8, 1983.—In the case of any investment company to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1954 applied for any taxable year ending before November 8, 1983, for purposes of section 852(a)(3)(B) of the Internal Revenue Code of 1954 (as amended by this subsection), no earnings and profits accumulated in any taxable year ending before January 1, 1984, shall be taken into account.

(C) Investment companies beginning business in 1983.—In the case of an investment company which began business in 1983 (and was not a successor corporation), earnings and profits accumulated during its first taxable year shall not be taken into account for purposes of section 852(a)(3)(B) of such Code (as so amended).

(D) Investment companies registering before November 8, 1983.—In the case of any investment company—

(i) which, during the period after December 31, 1981, and before November 8, 1983—

(I) was engaged in the active conduct of a trade or business,

(II) sold substantially all of its operating assets, and

(III) registered under the Investment Company Act of 1940 as either a management company or a unit investment trust, and

(ii) to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1954 applied for its first taxable year beginning after November 8, 1983,

for purposes of section 852(a)(3)(A) of such Code (as amended by paragraph (3)), the provisions of part I of subchapter M of chapter 1 of such Code shall be treated as applying to such investment company for its first taxable year ending after November 8, 1983. For purposes of the preceding sentence, all members of an affiliated group (as defined in section 1504(a) of such Code) filing a consolidated return shall be treated as 1 taxpayer.

(b) Short-Term Obligations Issued on a Discount Basis.—

(1) In general.—Paragraph (2) of section 852(b) (defining investment company taxable income) is amended by adding at the end thereof the following new subparagraph—

"(F) The taxable income shall be computed without regard to section 454(b) (relating to short-term obligations issued on a discount basis) if the company so elects in a manner prescribed by the Secretary."

(2) Effective date.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1978.

SEC. 1072. TECHNICAL MODIFICATIONS TO TIP REPORTING REQUIREMENTS.

(a) Lower Allocation of Gross Receipts.—Subparagraph (C) of section 6053(c)(3) (relating to employee allocation of 8 percent of gross receipts) is amended—

(1) by striking out "The Secretary" and inserting in lieu thereof "Upon the petition of the employer or the majority of employees of such employer, the Secretary", and

(2) by striking out "5 percent" and inserting in lieu thereof "2 percent".

(b) Recordkeeping by Tipped Employees.—The Secretary of the Treasury shall prescribe by regulations within 1 year after the date of the enactment of this Act the ap-

plicable recordkeeping requirements for tipped employees.

(c) 50 PERCENT OWNERS NOT TREATED AS EMPLOYEES FOR CERTAIN PURPOSES.—

(1) IN GENERAL.—Paragraph (4) of section 6056(c) (defining large food or beverage establishment) is amended by inserting before the period at the end of the last sentence the following: ", and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to calendar years beginning after December 31, 1982.

SEC. 1073. TIPS TREATED AS WAGES FOR PURPOSES OF FEDERAL UNEMPLOYMENT TAX.

(a) GENERAL RULE.—Section 3306 (relating to definitions for purposes of Federal unemployment tax) is amended by adding at the end thereof the following new subsection:

"(s) TIPS TREATED AS WAGES.—For purposes of this chapter, the term 'wages' includes tips which are—

"(1) received while performing services which constitute employment, and

"(2) included in a written statement furnished to the employer pursuant to section 6053(a)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect on January 1, 1986.

(2) EXCEPTION FOR CERTAIN STATES.—In the case of any State the legislature of which—

(A) did not meet in a regular session which begins during 1984 and after the date of the enactment of this Act, and

(B) did not meet in a session which began before the date of the enactment of this Act and remained in session for at least 25 calendar days after such date of enactment,

the amendment made by subsection (a) shall take effect on January 1, 1987.

SEC. 1074. EXCLUSION OF CERTAIN SERVICES FROM THE FEDERAL UNEMPLOYMENT TAX ACT.

Subsection (b) of section 822 of the Economic Recovery Tax Act of 1981 (26 U.S.C. 3306 note) is amended by striking out "and before January 1, 1983" and inserting in lieu thereof "and before January 1, 1985".

SEC. 1075. TAXATION OF UNEMPLOYMENT COMPENSATION NOT TO APPLY TO COMPENSATION PAID FOR WEEKS OF UNEMPLOYMENT ENDING BEFORE DECEMBER 1, 1978.

(a) GENERAL RULE.—Subsection (d) of section 112 of the Revenue Act of 1978 (relating to taxation of unemployment compensation benefits at certain income levels) is amended to read as follows:

"(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date; except that such amendments shall not apply to payments made for weeks of unemployment ending before December 1, 1978.".

(b) WAIVER OF STATUTE OF LIMITATIONS.—If credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) is barred on the date of the enactment of this Act or at any time during the 1-year period beginning on the date of enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim thereor is filed before the close of such 1-year period.

SEC. 1076. EXCLUSION FROM GROSS INCOME OF CANCELLATIONS OF CERTAIN STUDENT LOANS.

(a) IN GENERAL.—Section 108 (relating to income from discharge of indebtedness) is amended by adding at the end thereof the following new subsection:

"(f) STUDENT LOANS.—

"(1) IN GENERAL.—In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

"(2) STUDENT LOAN.—For purposes of this subsection, the term 'student loan' means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

"(A) the United States, or an instrumentality or agency thereof,

"(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

"(C) a public benefit corporation—

"(i) which is exempt from taxation under section 501(c)(3),

"(ii) which has assumed control over a State, county, or municipal hospital, and

"(iii) whose employees have been deemed to be public employees under State law, or

"(D) any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness made on or after January 1, 1983.

SEC. 1977. MIGRATORY BIRD HUNTING STAMPS.

(a) IN GENERAL.—Section 5 of the Act of March 16, 1934 (48 Stat. 451, Chapter 71; 16 U.S.C. 718e) is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding the provisions of subsection (b), or the prohibition in section 474 of title 18, United States Code, or other provisions of law, the Secretary of the Interior may authorize, with the concurrence of the Secretary of the Treasury,

"(1) the color reproduction, or

"(2) the black and white reproduction, of migratory bird hunting stamps authorized by sections 1 through 4 and 6 through 9 of this Act, which otherwise satisfies the requirements of clauses (ii) and (iii) of section 504(1) of title 18, United States Code. Any such reproduction shall be subject to those terms and conditions deemed necessary by the Secretary of the Interior by regulation or otherwise and any proceeds received by the Federal Government as a result of such reproduction shall be paid into the migratory bird conservation fund established under section 4 of this Act."

(b) TECHNICAL AMENDMENTS.—

(1) Clause (i) of section 504(1)(D) of title 18, United States Code, is amended by inserting "and stamps issued under the Migratory Bird Hunting Stamp Act of 1934" after "foreign government".

(2) Clause (ii) of such section is amended by inserting "and illustrations of stamps issued under the "Migratory Bird Hunting Stamp Act of 1934 in color" after "postage stamps in color".

(3) Subsection (b) of section 5 of the Act referred to in subsection (a) is amended by striking out "No person" and inserting in lieu thereof "Except as provided in clauses (i) and (ii) of section 504(1)(D) of title 18, United States Code, no person".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1078. EXCLUSION FROM GROSS INCOME OF PAYMENTS FROM THE UNITED STATES FOREST SERVICE AS A RESULT OF RESTRICTING MOTORIZED TRAFFIC IN THE BOUNDARY WATERS CANOE AREA.

(a) GENERAL RULE.—At the election of the taxpayer, for purposes of the Internal Revenue Code of 1954, gross income does not include the excludable portion of payments received from the United States Forest Service as a result of restricting motorized traffic in the Boundary Waters Canoe Area, pursuant to section 19(a) of "An Act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes", approved October 21, 1978 (Public Law 95-495; 92 Stat. 1649).

(b) EXCLUDABLE PORTION.—For purposes of this section, the term "excludable portion" means that portion (or all) of a payment made to any taxpayer during the period after December 31, 1979, and before the later of the date which is 2 years after—

(1) the date of the enactment of this Act, or

(2) the date of such payment,

which payment is reinvested within such period in depreciable property used in a trade or business of such taxpayer as authorized by the Act referred to in subsection (a). In determining whether reinvestment has occurred, no direct tracing is required.

(c) ELECTION.—An election under subsection (a) shall identify such property for which such payment has been allocated. An election may be made at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by chapter 1 of such Code for the taxable year in which the reinvestment occurred, and shall be made in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

(d) BASIS OF PROPERTY.—

(1) IN GENERAL.—The basis of any property, with respect to which an allocation of any payment has been elected, shall be reduced by the amount of such payment.

(2) INCREASE DUE TO REPAYMENT.—The basis of any property described in paragraph (1) shall be increased by the amount of any repayments made to the United States Forest Service upon the sale of such property.

(e) DENIAL OF DOUBLE BENEFIT.—No deduction or credit shall be allowed under such Code with respect to any expenditure which is properly associated with any amount excluded from gross income under subsection (a).

(f) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 1979.

(2) ELECTIONS FOR PRIOR YEARS.—In the case of any taxable year ending before the date of the enactment of this Act—

(A) the period for making the election under subsection (c) shall not expire before the date which is 1 year after the date of the enactment of this Act, and

(B) if, after the application of subparagraph (A), refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time before the close of such 1-year period by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable the application of this section) may, nevertheless, be made or allowed if claim therefore is filed before the close of such 1-year period.

SEC. 1079. TAX EXEMPTION OF CORPORATIONS ORGANIZED UNDER ACTS OF CONGRESS.

Paragraph (1) of section 501(c) (relating to list of exempt organizations) is amended by striking out ", under such Act, as amended and supplemented," and inserting in lieu thereof "it is specifically provided in this title (or under such Act as amended and supplemented before the date of the enactment of the Tax Reform Act of 1984) that".

Subtitle I—Studies

SEC. 1081. STUDY OF ALTERNATIVE INCOME TAX SYSTEMS.

(a) In General.—The Secretary of the Treasury or his delegate shall conduct a study covering the advisability of—

(1) replacing only the Federal individual income tax, or

(2) replacing both the Federal individual income tax and the Federal corporate income tax,

with an alternative tax system.

(b) Contents of Study.—Such study shall take into account the administrative complexity of the existing Federal income tax system and address the ramifications of replacing that system with an alternative tax system. Such study shall focus on (but not be limited to) the following factors:

(1) protecting the economically disadvantaged,

(2) increasing economic efficiency in both the private and public sectors of the economy,

(3) reducing paperwork and auditing requirements, reducing taxpayer fraud and evasion, and expediting resolution of tax disputes between taxpayers and the Federal Government,

(4) increasing economic incentives for capital formation and productivity,

(5) removing economic disincentives to employment,

(6) excluding certain items, such as social security benefits, from gross income,

(7) equalizing the tax burden on taxpayers with equal ability to pay taxes, and

(8) achieving the appropriate burden of taxes for each income class of taxpayers.

Such study shall also identify the strengths and potential weaknesses of an alternative tax system and propose possible solutions for any such potential weakness.

(c) Alternative Tax System.—For purposes of this section, the term "alternative tax system" means a system based on—

(1) a simplified income tax based on gross income;

(2) a consumption tax;

(3) a consumption-based tax; or

(4) the broadening of the base and lowering of the rates of the current income tax.

(d) Study of Tax Shelters to be Included.—The study conducted under subsection (a) shall include a study of the entire area of tax shelters and how they impact on the equity of the tax system.

(e) Reporting Date.—The report of the study required by subsection (a) shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1984.

SEC. 1082. STUDY OF TAXATION BY FOREIGN COUNTRIES ON SERVICES PERFORMED IN THE UNITED STATES.

(a) Study.—The Secretary of the Treasury or his delegate shall conduct a study of the practices of foreign countries of taxing income on services performed within the United States, including, but not limited to—

(1) the status of treaty negotiations with such foreign countries with respect to such practices, and

(2) any options to alleviate the taxation of such income by more than 1 country without appropriate credit for taxes paid.

(b) Report.—The Secretary of the Treasury or his delegate shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted under subsection (a) no later than December 31, 1984.

DIVISION B—SPENDING REDUCTION ACT OF 1984

Sec. 2001. This division may be cited as the "Spending Reduction Act of 1984".

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TITLE I—GENERAL PROVISIONS

SENSE OF SENATE STATEMENT

Sec. 2101. It is the sense of the Senate that ceilings on fiscal year 1985 appropriation bills shall not exceed, in the aggregate, $139.8 billion for non-defense, discretionary accounts, and shall not exceed $299 billion for defense accounts. Further, it is the sense of the Senate that the allocations of these sums, normally done through the section 302(b) process under the Congressional Budget and Impoundment Control Act of 1974, in the absence of a first concurrent budget resolution for fiscal year 1985 will be done by the Senate Appropriations Committee to guide its subcommittees in their separate deliberations on individual appropriation bills for fiscal year 1985.

SENSE OF HOUSE STATEMENT

Sec. 2102. (a) It is the sense of the House that in fiscal years 1985, 1986, and 1987, Federal deficits be reduced by $182 billion as a result of the first concurrent resolution on the budget for fiscal year 1985 and the Deficit Reduction Act of 1984. Further, it is the sense of the House that these deficit reductions shall be divided among revenue increases, domestic spending reductions, and limits on the growth in military spending.

(b) It is the sense of the House that in the absence of agreement on a first concurrent resolution on the budget for fiscal year 1985 that the House will continue to abide by House Concurrent Resolution 280, as passed the House.

(c) It is the sense of the House that the Congress shall immediately adopt a conference report on the first concurrent resolution on the budget for fiscal year 1985 and that the Congress shall enforce the aggregate levels of revenue and spending provided in such resolution.

RESCISSION

Sec. 2103. Of the amounts provided in Public Law 96-126, the Department of the Interior and Related Agencies Appropriation Act, 1980, for the "Energy Security Reserve", $2,000,000,000 are rescinded, of which $1,154,950,000 is to be derived from the unused portion of the commitment of financial assistance previously awarded to The Oil Shale Company (Colony Shale Oil Project).

TITLE II—CIVIL SERVICE AND MILITARY RETIREMENT PROGRAMS

COST-OF-LIVING ADJUSTMENTS UNDER GOVERNMENT RETIREMENT SYSTEMS

Sec. 2201. (a) Notwithstanding any other provision of law, beginning with the monthly rate payable for December 1984, any annuity or retired or retirement pay payable under any retirement system for Government officers or employees which the President adjusts pursuant to section 8340(b) of title 5, United States Code, shall be paid no earlier than the first business day of the succeeding month.

(b) Section 8340(c)(1) of title 5, United States Code, is amended—

(1) in subparagraph (A), by striking out "computer" and inserting in lieu thereof "computed"; and

(2) in subparagraph (B), by striking out "counting" and inserting in lieu thereof "not to exceed 12 months, counting".

TECHNICAL AMENDMENT RELATING TO PREVAILING RATE EMPLOYEES

Sec. 2202. (a) Notwithstanding any other provision of law, effective as of October 1, 1983, any adjustment in a wage schedule or rate—

(1) that applies—

(A) to a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code;

(B) to an employee covered by section 5348 of such title; or

(C) to any other employee subject to section 202(b)(1) of the Omnibus Budget Reconciliation Act of 1983 (Public Law 98-270; 98 Stat. 158);

(2) that results from a wage survey; and

(3) that first becomes effective during the fiscal year ending September 30, 1984;

shall not take effect until the first day of the first applicable pay period beginning after the expiration of the 90-day period beginning on the date on which such adjustment would otherwise have taken effect.

(b) The Office of Personnel Management shall take such actions as may be necessary to carry out the provisions of this section.

DEDUCTION FROM CIVILIAN PAY FOR COST-OF-LIVING ADJUSTMENT OF RETIRED OR RETAINER PAY

Sec. 2203. Subsection (d) of section 301 of the Omnibus Budget Reconciliation Act of 1982 (96 Stat. 791; 5 U.S.C. 5532 note) is repealed, effective with respect to pay periods beginning after the date of enactment of this Act.

LEAVE FOR CERTAIN OVERSEAS EMPLOYEES

Sec. 2204. Subsection (a) of section 6 of the Defense Department Overseas Teachers Pay and Personnel Practices Act (73 Stat. 214; 20 U.S.C. 904(a)) is amended by striking out "except that—" and all that follows through the end of such subsection and inserting in lieu thereof "except that if the school year includes more than eight months, any such teacher who shall have served for the entire school year shall be entitled to ten days of cumulative leave with pay.".

CIVIL SERVICE RETIREMENT DEPOSITS COVERING MILITARY SERVICE

SEC. 2205. The first sentence of section 208(g) of the Omnibus Budget Reconciliation Act of 1982 (5 U.S.C. 8331 note) is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 1, 1985".

ELECTION OF RETIREMENT PLAN

SEC. 2206. (a) For the purposes of this section, the term "covered retirement system" shall have the same meaning as provided in section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168; 97 Stat. 1107).

(b)(1) Any individual who was entitled to make an election under section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111), but who did not make such an election, may make an election under such section not later than September 15, 1984.

(2)(A) Not later than September 15, 1984, any such individual who made an election under paragraph (1) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 may—

(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

(ii) elect to become a participant in a covered retirement system (if such individual is otherwise eligible to participate in such system), subject to sections 201 through 207 of such Act.

(B) Not later than September 15, 1984, any such individual who made an election under paragraph (2) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 may—

(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

(ii) elect to terminate participation in the covered retirement system with respect to which such individual made the election under such paragraph (2).

(3) An election under this subsection shall be made by a written application submitted to the official by whom the electing individual is paid.

(4) An election made as provided in this subsection shall take effect with respect to service performed on or after the first day of the first applicable pay period commencing after September 15, 1984.

(c)(1) Section 8342(a)(4) of title 5, United States Code, does not apply for the purpose of determining an entitlement to a refund under section 208(c) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111).

(2) Paragraph (1) shall take effect with respect to any election made under section 208(a) of such Act or this Act before, on, or after January 1, 1984.

(d) Nothing in this section or the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 affects any entitlement to benefits accrued under a covered retirement system before January 1, 1984, except to the extent that any amount refunded under section 208(c) of such Act is not redeposited in the applicable retirement fund.

SALARY ADJUSTMENTS FOR JUDGES

SEC. 2207. Effective on the first day of the first applicable pay period commencing on or after January 1, 1984, each rate of pay subject to adjustment by section 461 of title 28, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1984.

RETIREMENT BENEFITS FOR NATIVES OF THE PRIBILOF ISLANDS

SEC. 2208. (a) Section 8332(b) of title 5, United States Code, is amended by striking out the period at the end of the second paragraph (13) and inserting in lieu thereof the following: ", and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph.".

(b) Title II of Public Law 89-702, as amended by section 2 of Public Law 98-129, is amended by adding at the end thereof the following new section:

"SEC. 212. (a)(1) An annuity or survivor annuity based on the service of an employee or Member who performed service described in the second paragraph (13) of subsection (b) or subsection (l)(1)(C) of section 8332 of title 5, United States Code, as added by subsections (b) and (e), respectively, of section 209 of this Act, shall, upon application to the Office of Personnel Management, be recomputed in accordance with the second paragraph (13) of subsection (b) and subsection (l), respectively, of such section 8332, regardless of whether the employee or Member retires before, on, or after the effective date of this paragraph.

"(2) Any recomputation of annuity under paragraph (1) of this subsection shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Office.".

(c) The amendments made by this section shall take effect as of October 14, 1983.

AMENDMENT TO OMNIBUS BUDGET RECONCILIATION ACT OF 1981

SEC. 2209. Section 1722 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 759) is amended by striking out "1984" and inserting in lieu thereof "1987".

TITLE III—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH AMENDMENTS

SHORT TITLE OF TITLE

SEC. 2300. This title may be cited as the "Medicare and Medicaid Budget Reconciliation Amendments of 1984".

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SUBTITLE A—MEDICARE AMENDMENTS

PART I—REIMBURSEMENT AND BENEFIT CHANGES

MODIFICATION OF WORKING AGED PROVISION

Sec. 2301. (a) Section 1862(b)(3)(A)(i) of the Social Security Act is amended by striking out "over 64 but" each place is appears.

(b) Section 4(g)(1) of the Age Discrimination in Employment Act of 1967 is amended—

(1) by inserting ", and any employee's spouse aged 65 through 69," after "aged 65 through 69"; and

(2) by inserting ", and the spouse of such employee," after "same conditions as any employee".

(c)(1) The amendment made by subsection (a) shall be effective with respect to items and services furnished on or after January 1, 1985.

(2) The amendment made by subsection (b) shall become effective on January 1, 1985.

PART B PREMIUM

Sec. 2302. (a) Section 1839(e) of the Social Security Act is amended by striking out "1986" each place it appears and inserting in lieu thereof in each instance "1988".

(b) Section 1839 of such Act is amended by adding at the end thereof the following new subsection:

"(f)(1) If no cost-of-living increase becomes effective under section 215(i) in December of 1985 or 1986, the monthly premium of each individual enrolled under this part for each month in the succeeding year shall (except as otherwise provided in subsection (b)) be the same as the monthly premium (disregarding subsection (b)) of the individual for such December.

"(2) If paragraph (1) does not apply to the monthly premiums for 1986 or 1987, if an individual is entitled to monthly benefits under section 202 or 223 for November and for December in the preceding year, and if the monthly premium for that December and for the following January is deducted from those benefits under section 1840(a)(1), the monthly premium for that individual for that January and for each of the succeeding 11 months for which he is entitled to benefits under section 202 or 223 shall (except as otherwise provided in subsection (b)) be the greater of—

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) necessary to make the monthly benefits under section 202 or 223 for that January after the deduction of the monthly premium (disregarding subsection (b)) for that January at least equal to the monthly benefits under section 202 or 203 for the preceding November after the deduction of the premium (disregarding subsection (b)) for that individual for that November, or

"(B) the monthly premium (disregarding subsection (b)) for that individual for that December.

For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 202 or 223.".

(6) The amendments made by this section shall apply to premiums for months beginning with January 1986.

PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

SEC. 2303. (a) Section 1833(a)(1)(D) of the Social Security Act is amended to read as follows: "(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1), the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) or under the procedure described in section 1870(f)(1)) of the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6), the amount paid shall be equal to 100 percent of such negotiated rate;".

(b) Section 1833(a)(2) of such Act is amended—

(1) in subparagraph (B), by inserting "or (D)" after "subparagraph (c)";

(2) by striking out "and" at the end of subparagraph (B);

(3) by adding "and" at the end of subparagraph (C); and

(4) by adding at the end thereof the following new subparagraph:

"(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1), the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or to a provider having an agreement under section 1866) of the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6), the amount paid shall be equal to 100 percent of such negotiated rate for such tests;".

(c) Section 1833(b) of the Social Security Act is amended by striking out "and" at the end of clause (2) and by inserting before the period at the end of clause (3) the following: ", and (4) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or to a provider having an agreement under section 1866, or (B) on the basis of a negotiated rate determined under subsection (h)(6)".

(d) Section 1833(h) of such Act is amended to read as follows:

"(h)(1)(A) The Secretary shall establish fee schedules for clinical diagnostic laboratory tests for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

"(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a hospital laboratory for outpatients of such hospital), the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984, and ending on June 30, 1987. For such tests furnished on or after July 1, 1987, the fee schedule shall be established on a nationwide basis.

"(C) In the case of clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984, and ending on June 30, 1987. For such tests furnished on or after July 1, 1987, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital.

"(2) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a hospital laboratory for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1842(b)(3) for similar clinical diagnostic laboratory tests for the applicable region, State, or area (or, effective July 1, 1987, for the United States) for the 12-month period beginning July 1, 1984, adjusted annually by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (A) emergency laboratory tests needed for the provision of bona fide emergency serv-

ices, and (B) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

"(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter.

"(4) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

"(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or under a provider agreement under section 1866, payment may be made only to the person or entity which performed or supervised the performance of such test; except that—

"(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice, and

"(ii) in the case a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory.

"(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

"(C) Payment for a clinical diagnostic laboratory test performed by a laboratory which is independent of a physician's office or a rural health clinic may only be made on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or to a provider of services with an agreement in effect under section 1866.

"(6) In the case of any diagnostic laboratory test which is not paid on the basis of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.".

(e) Section 1842 of such Act is amended by striking out subsection (h) thereof.

(f) The last sentence of section 1866(a)(2)(A) of such Act is amended by inserting "and with respect to clinical diagnostic laboratory tests" after "section 1861(s)(10)".

(g)(1) Section 1902(a) of such Act is amended—

(A) by inserting "and" at the end of paragraph (42);

(B) by striking out paragraph (43); and

(C) by redesignating paragraph (44) as paragraph (43).

(2) Section 1903(i) of such Act is amended—

(A) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; or ", and

(B) by adding after paragraph (6) the following new paragraph:

"(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1833(h) for such tests performed for an individual enrolled under part B of title XVIII.".

(h) The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.

(i)(1) The Comptroller General shall report to the Congress on—

(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act and their impact on the volume and quality of clinical diagnostic laboratory services;

(B) the potential impact of the adoption of a national fee schedule; and

(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987.

(j)(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

(2) The amendments made by subsection (g)(2) shall apply to payments for calendar quarters beginning on or after October 1, 1984.

(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983. Payment for such services shall be made under part B of title XVIII of the Social Security Act at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act or under the procedure described in section 1870(f)(1) of such Act) of the reasonable charge for such service. The deductible under section 1833(b) of such Act shall not apply to such tests if payment is made on the basis of such an assignment or procedure.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

SEC. 2304. (a)(1) The Secretary shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

(i) weekly during the first month after implantation,

(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

(iii) monthly thereafter.

(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.

(b)(1) The Secretary shall review, and report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, regarding the appropriateness of the amounts recognized as reasonable under part B of title XVIII of the Social Security Act for physicians' services associated with implantation or replacement of pacemaker devices and pacemaker leads. Such review shall take into account the amounts recognized as reasonable with respect to such procedures and the time and difficulty of such procedures at the current time in comparison with such amounts and the time and difficulty of such procedures at the time the amounts for such procedures were first established under such part.

(2) The Prospective Payment Assessment Commission, established under section 1886(e) of the Social Security Act, shall review and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the appropriateness of the payment amounts provided under section 1886(d) of such Act for inpatient hospital services associated with implantation or replacement of pacemaker devices and pacemaker leads. Such review shall take into account the time, difficulty, and costs associated with such procedures at the current time in comparison with the time, difficulty, and costs associated with such procedures upon which the payment rates for such procedures under part A of title XVIII of such Act are based.

(3) The Secretary and the Commission shall each complete the review described in paragraph (1) or (2), respectively, of this subsection and report on such review not later than March 1, 1985.

(c) Section 1862 of the Social Security Act is amended by adding at the end the following new subsection:

"(h)(1)(A) The Secretary shall, through the Commissioner of the Food and Drug Administration, provide for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this title.

"(B) Such registry shall include the manufacturer, model, and serial number of each such device or lead, the name of the recipient of such device or lead, the date and location of the implantation or removal of the device or lead, the name of the physician implanting or removing such device or lead, the name of the hospital or other provider billing for such procedure, any express or

implied warranties associated with such device or lead under contract or State law, and such other information as the Secretary deems to be appropriate.

"(C) Each physician and provider of services performing the implantation or replacement of pacemaker devices and leads for which payment is made or requested to be made under this title shall, in accordance with regulations of the Secretary, submit information respecting such implantation or replacement for the registry.

"(D) Such registry shall be for the purposes of assisting the Secretary in determining when payments may properly be made under this title, in tracing the performance of cardiac pacemaker devices and leads, in determining when inspection by the manufacturer of such a device or lead may be necessary under paragraph (3), and in carrying out studies with respect to the use of such devices and leads. In carrying out any such study, the Secretary may not reveal any specific information which identifies any pacemaker device or lead recipient by name (or which would otherwise identify a specific recipient).

"(E) Any person or organization may provide information to the registry with respect to cardiac pacemaker devices and leads other than those for which payment is made under this title.

"(2) The Secretary may, by regulation, require each provider of services—

"(A) to return, to the manufacturer of the device or lead for testing under paragraph (3), any cardiac pacemaker device or lead which is removed from a patient and payment for the implantation or replacement of which was made or requested by such provider under this title, and

"(B) not to charge any beneficiary for replacement of such a device or lead if the device or lead has not been returned in accordance with subparagraph (A).

"(3) The Secretary may, by regulation, require the manufacturer of a cardiac pacemaker device or lead (A) to test or analyze each pacemaker device or lead for which payment is made or requested under this title and which is returned to the manufacturer by a provider of services under paragraph (2), and (B) to provide the results of such test or analysis to that provider, together with information and documentation with respect to any warranties covering such device or lead. In any case where the Secretary has reason to believe, based upon information in the pacemaker registry or otherwise available to him, that replacement of a cardiac pacemaker device or lead for which payment is or may be requested under this title is related to the malfunction of a device or lead, the Secretary may require that personnel of the Food and Drug Administration be present at the testing of such device by the manufacturer, to determine whether such device was functioning properly.

"(4) The Secretary may deny payment under this title, in whole or in part and for such period of time as the Secretary determines to be appropriate, with respect to the implantation or replacement of a pacemaker device or lead of a manufacturer performed by a physician and provider of services after the Secretary determines (in accordance with the procedures established under subsection (d)) that—

"(A) the physician or provider of services has failed to submit information to the registry as required under paragraph (1)(C),

"(B) the provider of services has failed to return devices and leads as required under paragraph (2)(A) or has improperly charged beneficiaries as prohibited under paragraph (2)(B), or

"(C) the manufacturer of the device or lead has failed to perform and to report on the testing of devices and leads returned to it as required under paragraph (3).".

(d) The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section prior to January 1, 1985, and the amendment made by subsection (c) shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations.

ELIMINATION OF SPECIAL PAYMENT PROVISIONS FOR PREADMISSION DIAGNOSTIC TESTING

SEC. 2305. (a) Section 1833(a)(1) of the Social Security Act is amended by striking out "(F) with respect to" and all that follows through "(G)" and inserting in lieu thereof "and (F)".

(b) Section 1833(a) of such Act is amended—

(1) by adding "and" at the end of paragraph (3);

(2) by striking out "; and" at the end of paragraph (4) and inserting in lieu thereof a period; and

(3) by striking out paragraph (5).

(c) Section 1833(a)(2) of such Act is amended by striking out "and in paragraph (5) of this subsection".

(d) Section 1833(b) and section 1833(i)(3) of such Act are each amended by striking out "subsection (a)(1)(G)" and inserting in lieu thereof "subsection (a)(1)(F)".

(e) The amendments made by this section shall apply to services performed after the date of the enactment of this Act.

(f) The amendments made by this section shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary.

LIMITATION ON PHYSICIAN FEE PREVAILING AND CUSTOMARY CHARGE LEVELS; PARTICIPATING PHYSICIAN INCENTIVES

SEC. 2306. (a) Section 1842(b) of the Social Security Act is amended by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4)(A) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

"(B) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983.

"(C) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A).

"(D) In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who is not a participating physician (as defined in subsection (j)(1)) for all of the 12-month period beginning October 1, 1984, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.".

(b)(1) Section 1842(b)(3) of such Act is amended—

(A) in subparagraph (F), by striking out "June 30" and inserting in lieu thereof "September 30";

(B) by striking out "July 1" each place it appears in the third and eighth sentences and inserting in lieu thereof in each instance "October 1"; and

(C) in the third sentence thereof, by striking out "during the last preceding calendar year elapsing prior to" and inserting in lieu thereof "during the 12-month period ending on the March 31 last preceding".

(2) The amendments made by paragraph (1) shall apply to items and services furnished on or after October 1, 1985.

(c) Section 1842 of such Act is amended by adding at the end thereof the following new subsections:

"(j)(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term 'participating physician or supplier' means a physician or supplier (excluding any provider of services) who, before October 1 of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on the basis of an assignment described in subsection (b)(3)(B)(ii), in accordance with subsection (b)(6)(B), or under the procedure described in section 1870(f)(1) for all items and services furnished to individuals enrolled under this part during the 12-month period beginning on October 1 of such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after October 1 of a year, for items and services furnished during the remainder of the 12-month period beginning on such October 1.

"(2) Each carrier having an agreement with the Secretary under subsection (a) shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names, addresses, specialty, and telephone numbers of participating physicians and suppliers.

"(3) In any case in which a carrier having an agreement with the Secretary under subsection (a) is able to develop a system for the electronic transmission to such carrier of bills for services, such carrier shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

"(k)(1) Each year the Secretary shall publish a list containing the name, address, specialty, and percent of claims submitted with respect to each physician and supplier during the preceding year that were paid on the basis of an assignment described in subsection (b)(3)(B)(ii), in accordance with subsection (b)(6)(B), or under the procedure described in section 1870(f)(1). The Secretary may limit such list to those physicians

and suppliers who accepted such an assignment in a certain percentage of such physician's or supplier's billings or who provide at least a certain volume of services, as the Secretary may determine to be appropriate. Such list shall be organized by such geographical area as the Secretary determines, after consultation with carriers, would facilitate the use of such list by individuals enrolled under this part.

"(2) At the beginning of each fiscal year the Secretary shall publish a directory containing the name, address, and specialty of all participating physicians and suppliers (as defined in subsection (j)(1)) for that fiscal year. The directory shall be organized to make the most useful presentation of the information (as determined by the Secretary) for individuals enrolled under this part.

"(3) The Secretary shall promptly notify individuals enrolled under this part of the publication of such directory and shall make such directory available in each district and branch office of the Social Security Administration, in the offices of carriers, and to senior citizen organizations.

"(4) The Secretary shall provide that the directory shall be available for purchase by the public.

"(l)(1) In the case of a physician who is not a participating physician, the Secretary shall monitor each such physician's actual charges to individuals enrolled under this part for physicians' services furnished during the 15-month period beginning July 1, 1984. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(2) Subject to paragraph (3), the sanctions which the Secretary may apply under paragraph (1) are—

"(A) barring a physician from participation under the program under this title for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1862(d), or

"(B) the imposition of civil monetary penalties and assessments, in the same manner as such penalties are authorized under section 1128A(a),

or both. No payment may be made under this title with respect to any item or service furnished by a physician during the period when he is barred from participation in the program under this title pursuant to this subsection.

"(3)(A) The Secretary may not bar a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

"(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

"(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).".

(d)(1) During the 15-month period beginning July 1, 1984, the Secretary of Health and Human Services shall monitor physicians' services in order to determine any changes in the per capita volume and mix of physicians' services provided to beneficiaries under part B of title XVIII of the Social Security Act, classified by participating and nonparticipating physicians, by assigned and nonassigned claims, by specialty, and by geographic area.

(2) A report on changes monitored pursuant to paragraph (1) shall be provided to Congress prior to July 1, 1985.

(3) Such report shall include recommendations in sufficient detail to serve as the basis for legislative action which Congress can take to assure that any burden of effectively constraining the growth of costs in the medicare part B program, which Congress intends to be borne by providers and physicians, is not transferred (in whole or in part) so as to become an additional burden on part B beneficiaries in the form of increased out-of-pocket costs, reduced services, or reduced access to needed physician care.

(e) In addition to any funds otherwise provided for fiscal years 1984 and 1985 for payment to carriers under contracts entered into under section 1842 of the Social Security Act, there are transferred from the Federal Supplementary Medical Insurance Trust Fund, for payments to such carriers under such contracts to implement the amendments made by this section, not less than $8,000,000 for fiscal year 1984, and not less than $15,000,000 for fiscal year 1985.

(f)(1) Section 1128A(a)(2) of the Social Security Act is amended by inserting before the comma at the end thereof the following: ", or (C) an agreement to be a participating physician or supplier under section 1842(j)(1)".

(2) Section 1877(d) of such Act is amended—

(A) by inserting "or agrees to be a participating physician or supplier under section 1842(j)(1)" after "1842(b)(3)(B)(ii)", and

(B) by striking out "specified in subclause (I) of such section" and inserting in lieu thereof "or agreement".

PAYMENT FOR SERVICES OF TEACHING PHYSICIANS

SEC. 2307. (a)(1) Subparagraph (A) of section 1842(b)(7)(A) of the Social Security Act (as redesignated by section 2306 of this title) is amended by adding at the end the following sentence: "If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1870(f)(1), notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.".

(2) Section 1842(b)(7)(B) of such Act is amended—

(A) by striking out "physician who has a substantial practice outside the teaching setting" in clause (i) and inserting in lieu thereof "physician who is not a teaching physician (as defined by the Secretary)";

(B) by striking out "outside practice" in clause (i) and inserting in lieu thereof "practice outside the teaching setting";

(C) by striking out "In the case of a physician who does not have a practice described in clause (i)" in clause (ii) and inserting in lieu thereof "In the case of a teaching physician";

(D) by striking out "greater" in clause (ii) and inserting in lieu thereof "greatest";

(E) by striking out "or" at the end of subclause (I) of clause (ii);

(F) by striking out the period at the end of subclause (II) of clause (ii) and inserting in lieu thereof ", or"; and

(G) by adding at the end of clause (ii) the following new subclause:

"(III) 85 percent of the prevailing charges paid for similar services in the same locality.".

(3) The amendments made by this subsection shall apply to services furnished on or after July 1, 1984.

(b)(1) Section 1886(d)(5)(B) of the Social Security Act is amended by adding at the end thereof the following new sentence: "In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.".

(2) The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1984.

(c) The Comptroller General shall conduct a study of the amounts billed for physician services and paid by carriers under section 1842(b)(7) of the Social Security Act to determine whether such payments have been made only where the physician satisfies the requirements of section 1842(b)(7)(A)(i) of such Act. The Comptroller General shall submit to the Committees on Ways and Means and on Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate a report on the results of such study not later than 18 months after the date of enactment of this Act.

LESSER OF COST OR CHARGES

SEC. 2308. (a) The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act, that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984.

(b)(1) For purposes of applying the nominality test under sections 1814(b)(2) and 1833(a)(2)(B)(ii) of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.

(2)(A) Section 1814(b)(2) of such Act is amended by inserting after "public provider of services" the following: ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph,".

(B) Section 1833(a)(2)(B)(ii) of such Act is amended by inserting after "public provider of services" the following: ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause),".

STUDY OF MEDICARE PART B PAYMENTS

SEC. 2309. (a)(1) The Director of the Office of Technology Assessment shall conduct a study of physician reimbursement under the medicare program and report to Congress on such study not later than December 31, 1985. The report shall include specific findings and recommendations on methods by which payment amounts and other program policies under part B of title XVIII of the Social Security Act may be modified—

(A) to eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures; and

(B) to increase incentives for physicians and other suppliers under such part to accept assignment for services covered under title XVIII of the Social Security Act. The study shall also examine the influence of payment methodology and payment levels on the utilization of services.

(2) In carrying out the study under paragraph (1)(A), the Director shall take into account the relative time, complexity, investment in professional training, and overhead expenses necessary to the provision of various medical services and procedures, as well as the influence of the changes in technology.

(3) The report under paragraph (1)(A) shall include information on methodologies which could be applied in the development of fee schedules on a national or regional basis for payments under part B of title XVIII of the Social Security Act in a manner consistent with the findings of the study under this subsection.

(4) In preparing the report and recommendations, the Director shall consult with the Secretary of Health and Human Services and, as appropriate, with national organizations of physicians and other interested associations and individuals.

(b) In order to assist the Director in completing the study and to facilitate Congressional review, the Secretary of Health and Human Services shall compile a centralized medicare part B charge data base, utilizing information gathered by the medicare carriers and used by them in making the 1984 reasonable charge updates. Such data shall include information, by procedure, on—

(1) utilization,

(2) assignment rates of physicians and suppliers,

(3) actual, customary, and prevailing charges, and

(4) the differences in charges by physician specialty and locality.

Such information shall be provided to the Director of the Office of Technology Assessment.

(c) The Secretary shall review the report submitted under subsection (a)(1) and shall report to the Congress his comments on the report and recommendations for legislative amendments.

LIMITATION ON INCREASE IN HOSPITAL COSTS PER CASE

SEC. 2310. (a) Section 1886(b)(3)(B) of the Social Security Act is amended—

(1) by striking out "1 percentage point", and by inserting in lieu thereof "one-quarter of 1 percentage point", and

(2) by adding at the end thereof the following: "In determining a percentage change under subsection (e)(4) with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.".

(b) The amendments made by this section shall apply to cost reporting periods beginning in, and discharges occurring in, fiscal year 1985 and thereafter.

CLASSIFICATION OF CERTAIN RURAL HOSPITALS

SEC. 2311. (a) Section 1886(d)(5)(C)(i) of the Social Security Act is amended by adding at the end thereof the following: "A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region. Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than 30 days after the date of the enactment of this Act, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.".

(b) Section 1886(d)(2)(D) of such Act is amended by adding at the end thereof the following: "A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the majority of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this title) from hospitals in the same Metropolitan Statistical Area are made.".

(c) Section 1886(d) of such Act is amended by adding at the end thereof the following new paragraph:

"(8) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

"(A) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to two-thirds of the amount (if any) by which—

"(i) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

"(ii) the amount payable to such hospital for such reporting period on the basis of the rural classification.

"(B) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

"(i) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

"(ii) the amount payable to such hospital for such reporting period on the basis of the rural classification.".

(d)(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

(2) The amendment made by subsection (o) shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act to a hospital reclassified under such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984.

(e) The Secretary of Health and Human Services shall conduct a study of the distinction between urban and rural hospitals for purposes of the DRG payment provisions under section 1886(d) of the Social Security Act, and the effect which such distinction may have on rural hospitals in the case of those DRG's which have high fixed nonlabor components which do not vary significantly between urban and rural areas (such as those DRG's which involve expensive medical devices). The Secretary also shall conduct a study of the advisability and feasibility of varying by DRG the proportions of the labor and nonlabor components of the Federal payment amount instead of applying the average proportion of those components to all DRG's. The Secretary shall report the results of such studies to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives within six months after the date of the enactment of this Act.

(f) The Secretary of Health and Human Services shall conduct a study of further refinements which may be appropriate in the inpatient hospital prospective payment provisions of title XVIII of the Social Security Act, in order to address the problems of differences in payment amounts to specific hospitals. The study shall include (but shall not be limited to) the degree of variation in inpatient hospital costs per discharge within each diagnosis-related group. The Secretary shall also present alternative methods of computing the amount of such payments. The study shall include a discussion of the relative merits of a method of payment under which a percentage of the payment amount (for discharges classified within a diagnosis-related group) could be determined on a regional basis. The Secretary shall report the result of the study, and any recommended changes in the prospective payment system, to the Congress prior to September 1, 1984.

PAYMENT FOR SERVICES OF A NURSE ANESTHETIST

SEC. 2312. (a) Section 1886(d)(5) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(E) The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthe-

sia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services.".

(b) The second sentence of section 1886(a)(4) of such Act is amended by inserting ", anesthesia services provided by a certified registered nurse anesthetist" after "approved education activities".

(c) The amendments made by subsections (a) and (b) shall apply to cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

(d) The Secretary of Health and Human Services shall conduct a study of possible methods of reimbursement under title XVIII of the Social Security Act which would not discourage the use of certified registered nurse anesthetists by hospitals. The Secretary shall report the results of such study to the Congress as soon as is practicable.

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

SEC. 2313. (a) Section 1886(e)(2) of the Social Security Act is amended by inserting "(without regard to the provisions of title 5, United States Code, governing appointments in the competitive service)" after "appointed by the Director".

(b)(1) Section 1886(e)(6)(C)(i) of such Act is amended to read as follows:

"(i) employ and fix the compensation of an Executive Director (subject to the approval of the Director of the Office) and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);".

(2) Section 1886(e)(6)(C)(iii) of such Act is amended by inserting "(without regard to section 3709 of the Revised Statutes (41 U.S.C 5))" after "Commission".

(3) Section 1886(e)(6)(C) of such Act is amended by adding at the end the following: "Section 10(a)(1) of the Federal Advisory Committee Act shall not apply to any portion of a Commission meeting if the Commission, by majority vote, determines that such portion of the such meeting should be closed.".

(4) Section 1886(e)(6)(D) of such Act is amended by adding at the end thereof the following sentence: "Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.".

(c) Section 1862 of such Act is amended by adding at the end the following new subsection:

"(i) In order to supplement the activities of the Prospective Payment Assessment Commission under section 1886(e) in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1886(e)(6)(E) with respect to such a procedure if the Secretary finds that—

"(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

"(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

"(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.".

(d) Section 1886(e)(6) of such Act is amended by adding at the end the following new subparagraph:

"(J) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.".

(e) The amendments made by this section shall become effective on the date of the enactment of this Act.

REVALUATION OF ASSETS

SEC. 2314. (a) Section 1861(v)(1) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(O)(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the first owner of record on or after the date of the enactment of this subparagraph, or the acquisition cost of such asset to the new owner.

"(ii) Such regulations shall provide for recapture of depreciation in effect on June 1, 1984.

"(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasiblity studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title.".

(b) Section 1902(a)(13) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (A),

(2) by redesignating subparagraph (B) as subparagraph (C), and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) that the state shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1861(v)(1)(O); and".

(c)(1) Clause (1) of section 1861(v)(1)(O) of the Social Security Act shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act.

(2) Clause (iii) of section 1861(v)(1)(O) of such Act shall apply to costs incurred on or after the date of the enactment of this Act.

(3)(A) Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to medical assistance furnished on or after October 1, 1984.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the aendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

TECHNICAL AMENDMENTS RELATING TO THE DRG PAYMENT SYSTEM

SEC. 2315. (a) Section 1886(c)(4)(A) of the Social Security Act is amended by striking out "and (D)" and inserting in lieu thereof "(D) and (E)".

(b) Section 1886(d)(D) of such Act is amended by striking out "Standard".

(c) Section 1886(e)(5) of such Act is amended—

(1) by striking out "for public comment" in the matter before subparagraph (A), and

(2) by inserting "for public comment" in subparagraph (A) after "that fiscal year,".

(d) Section 1866(a)(1)(F) of such Act (as added by section 602(f)(1)(C) of the Social Security Amendments of 1983) is amended by striking out "(c) or (d)" and inserting in lieu thereof "(b), (c), or (d)".

(e) Section 1818(c) of such Act is amended by striking out "subsection (a) of section 1839" and inserting in lieu thereof "subsection (b) of section 1839".

(f)(1) Section 604(c)(3) of the Social Security Amendments of 1983 (Public Law 98-21) is amended by striking out "to implement subsection (d) of section 1886 of the Social Security Act (as so amended)" and inserting in lieu thereof "to implement the amendments made by this title".

(2) Notwithstanding section 604(c) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984.

(f) The amendments made by this section shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21).

(h) The Secretary of Health and Human Services shall, prior to December 31, 1984—

(1) develop and publish a definition of a "hospital that serves a significantly disproportionate number of patients who have low income or are entitled to benefits under part A" of title XVIII of the Social Security Act for purposes of section 1886(d)(5)(C)(i) of that Act, and

(2) identify those hospitals which meet such definition, and make such identity available to the committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PROSPECTIVE PAYMENT WAGE INDEX

SEC. 2316. (a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section, taking into account wage differences of full time *and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act, including any changes which the Secretary determines to be necessary to provide for an appropriate index.*

(b) The Secretary shall adjust the payment amounts for hospitals for cost reporting periods beginning on or after October 1, 1983, to reflect any changes made in the wage index pursuant to subsection (a). Any adjustment in such payments to take account of overpayments or underpayments for the first cost reporting period of a hospital to which section 1886(d) of the Social Security Act applies, shall be made by decreasing or increasing payments in the succeeding cost reporting period.

(c) The Secretary shall conduct a study and report to the Congress proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.

DEADLINE FOR REPORT ON INCLUDING PAYMENT FOR PHYSICIANS' SERVICES TO HOSPITAL INPATIENTS IN DRG PAYMENT AMOUNTS

SEC. 2317. The second sentence of section 603(a)(2)(B) of the Social Security Amendments of 1983 (Public Law 98-21) is amended by striking out "include, in a report to Congress in 1985," and inserting in lieu thereof "submit to Congress, not later than July 1, 1985, a report to Congress which includes".

EMERGENCY ROOM SERVICES

SEC. 2318. (a) Section 1861(v)(1)(K) of the Social Security Act is amended by inserting "(i)" after "(K)" and by adding at the end thereof the following new clause:

"(ii) For purposes of clause (i), the term 'bona fide emergency services' means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(I) placing the patient's health in serious jeopardy;

"(II) serious impairment to bodily functions; or

"(III) serious dysfunction of any bodily organ or part.".

(b) Section 1861(v)(1)(K)(i) of such Act as so designated is amended by striking out "provided in an emergency room" and inserting in lieu thereof "as defined in clause (ii)".

(c) The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

SKILLED NURSING FACILITY REIMBURSEMENT

SEC. 2319. (a)(1) Section 1861(v)(1)(E) of the Social Security Act is amended by striking out clause (i) thereof, and by striking out "(ii)".

(2) Section 1861(v)(7) of such Act is amended by adding at the end thereof the following new subparagraph:

"(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see section 1888.".

(b) Title XVIII of the Social Security Act is amended by adding at the end thereof the the following new section:

"PAYMENT TO SKILLED NURSING FACILITIES FOR ROUTINE SERVICE COSTS

"SEC. 1888. (a) The Secretary, in determining the amount of the payments which may be made under this title with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

"(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

"(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

"(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

"(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index.

"(b) With respect to a hospital-based skilled nursing facility, the Secretary shall recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations (as determined by the Secretary) resulting from the reimbursement principles under this title, nothwithstanding the limits set forth in paragraph (3) or (4) of subsection (a).

"(c) The Secretary may make adjustments in the limits set forth in subsection (a) with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility.".

(c) The amendments made by subsections (a) and (b) shall apply to cost reporting periods beginning on or after July 1, 1984.

(d) Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act prior to the date of the enactment of this Act, in the case reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities.

(e) The Secretary of Health and Human Services shall submit to the Congress, prior to December 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983.

(f)(1) The Secretary of Health and Human Services shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, prior to August 1, 1984, the proposals developed, as required under section 1135(c) of the Social Security Act, for prospective reimbursement of skilled nursing facilities.

(2) The Secretary of Health and Human Services shall submit to the Congress, prior to December 1, 1984, a report on the range of options for prospective payment of skilled nursing facilities under title XVIII of the Social Security Act. The report shall take into account case mix differences among skilled nursing facilities. The report shall analyze the feasibility of permitting inclusion of payments to hospital-based facilities within the DRG payment system under section 1886(d) of such Act.

PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

SEC. 2320. (a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section, that the State does not want paragraph (1) to apply to that project.

(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act are published.

(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92-603), which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act.

COST SHARING FOR DURABLE MEDICAL EQUIPMENT FURNISHED AS A HOME HEALTH BENEFIT

SEC. 2321. (a)(1) The matter in section 1814(b) of the Social Security Act preceding paragraph (1) is amended by inserting "and *other than a home health agency with respect to durable medical equipment" after "hospice care".*

(2) Section 1814 of such Act is amended by adding at the end thereof the following new subsection:

"Payments to Home Health Agencies for Durable Medical Equipment

"(k) The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be—

"(1) the lesser of—

"(A) the reasonable cost of such equipment, as determined under section 1861(v), or

"(B) the customary charges with respect to such equipment,

less the amount the home health agency may charge as described in section 1866(a)(2)(A)(ii), but in no case may the payment for such equipment exceed 80 percent of such reasonable cost, or

"(2) if such equipment is furnished by a public home health agency free of charge or at nominal charge to the public, the amount which the Secretary finds will provide fair compensation to the home health agency.".

(b)(1) The matter in section 1833(a)(2)(A) of such Act preceding clause (i) is amended by inserting "(other than durable medical equipment)" after "home health services".

(2) The matter in section 1833(a)(2)(B) of such Act preceding clause (i) is amended by inserting "items and" after "other".

(c) Section 1866(a)(2)(A)(ii) of such Act is amended by inserting "or which are durable medical equipment furnished as home health services" after "part B".

(d)(1) The first sentence of section 1833(f)(1) of such Act is amended by striking out "as described in section 1861(s)(6)".

(2) Section 1833(f)(2) of such Act is amended—

(A) by striking out "the 20 percent" and inserting in lieu thereof "any", and

(B) by striking out "under subsection (a)".

(3) Section 1833(f)(3) of such Act is amended by striking out "paragraph (1)" and inserting in lieu thereof "subsection (a)".

(4)(A) Subsection (f) of section 1833 of such Act is redesignated as section 1889, is assigned the heading "PURCHASE OF DURABLE MEDICAL EQUIPMENT", and is moved to and inserted at the end of part C after the section added by section 2319 of this title.

(B) Paragraphs (1) through (4) of such section 1888 are redesignated as subsections (a) through (d), respectively.

(e)(1) Section 1861(m)(5) of such Act is amended by striking out ", and the use of medical appliances" and inserting in lieu thereof "and durable medical equipment".

(2) Section 1861(s)(6) of such Act is amended by striking out everything after "durable medical equipment" up to the semicolon.

(3) Section 1861 of such Act is amended by inserting after subsection (m) the following:

"DURABLE MEDICAL EQUIPMENT

"(n) The term 'durable medical equipment' includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased.".

(4) Section 1861(cc)(1)(G) of such Act is amended by striking out ", appliances, and equipment, including the purchase of rental of equipment" and inserting in lieu thereof "and durable medical equipment".

(f) Section 1814(j)(2) of such Act is amended—

(1) by redesignating subparagraphs (B) and (C) as (C) and (D), respectively, and

(2) by inserting the following after subparagraph (A):

"(B) Subsection (k)(1)(B).".

(g) The amendments made by this section shall apply to items and services furnished on or after the date of the enactment of this Act.

SERVICES OF A CLINICAL PSYCHOLOGIST PROVIDED TO MEMBERS OF AN HMO

SEC. 2322. (a) Section 1861(s)(2)(H) of the Social Security Act is amended by inserting "(i)" after "(H)", by adding "and" at the end of clause (i) as so designated, and by adding at the end thereof the following new clause:

"(ii) services furnished pursuant to a risk-sharing contract under section 1876(g) to a member of an eligible organization by a clinical psychologist (as defined by the Secretary), and such services and supplies furnished as an incident to his services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and".

(b) The amendments made by subsection (a) shall be effective with respect to services furnished on or after the date of the enactment of this Act.

COVERAGE OF ADMINISTRATION OF HEPATITIS B VACCINE

SEC. 2323. (a) Section 1861(s)(10) of the Social Security Act is amended—

(1) by inserting "(A)" after "(10)";

(2) by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new subparagraph:

"(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations).".

(b)(1) Paragraphs (1)(B), (2)(A), and (3) of section 1833(a) of such Act are each amended by striking out "1861(s)(10)" and inserting in lieu thereof "1861(s)(10)(A)".

(2) Section 1833(b)(1) of such Act is amended by striking out "1861(s)(10)" and inserting in lieu thereof "1861(s)(10)(A)".

(3) Section 1861(aa)(1)(A) of such Act is amended by striking out "section 1861(s)(10)" and inserting in lieu thereof "subsection (s)(10)(A)".

(4) The last sentence of section 1866(a)(2)(A) of such Act is amended by striking out "1861(s)(10)" and inserting in lieu thereof "1861(s)(10)(A)".

(b) Section 1833 of such Act is amended by adding at the end thereof the following new subsection:

"(k) With respect to services described in section 1861(s)(10)(B), the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.".

(c) Section 1881(b) of such Act is amended by adding at the end thereof the following new paragraph:

"(11) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1833.".

(d) The amendments made by this section apply to services furnished on or after September 1, 1984.

(e) The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act, and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.

COVERAGE OF HEMOPHILIA CLOTTING FACTOR

SEC. 2324. (a) Section 1861(s)(2) of the Social Security Act is amended by striking out "and" at the end of subparagraph (G) and by adding at the end thereof the following new subparagraph:

"(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;".

(b) The amendments made by subsection (a) shall be effective with respect to items and services purchased on or after the date of the enactment of this Act.

PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

SEC. 2325. The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act, that payment will not be made under part B of title XVIII of such Act for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.

CONTRACTS FOR MEDICARE CLAIMS PROCESSING

SEC. 2326. (a) During each of the fiscal years 1984 and 1985, the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act, and not more than two contracts under section 1842 of such Act, on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a)(1) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).

(b) Section 1816(e)(4) of such Act is amended by adding at the end thereof the following new sentence: "By not later than July 1, 1987, the Secretary shall limit the number of such regional agencies or organizations to not more than ten.".

(c)(1) Section 1816(f) of such Act is amended by striking out ", by regulation," in clause (2), and by adding at the end thereof

the following: "Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation.".

(2) Section 1842(b)(2) of such Act is amended by adding at the end thereof the following new sentence: "The Secretary shall publish in the Federal Register standards and criteria for the efficient and effective performance of contract obligations under this section, and opportunity shall be provided for public comment prior to implementation.".

(d)(1) Section 1816(c) of such Act is amended by adding at the end the following new sentence: "The Secretary shall provide that in determining the necessary and proper cost of administration, the Secretary shall, with respect to each agreement, take into account the amount that is reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.".

(2) Section 1842(c) of such Act is amended by adding at the end the following new sentence: "The Secretary shall provide that in determining a carrier's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.".

(3) The amendments made by this subsection shall apply to agreements and contracts entered into or renewed after September 30, 1984.

(e)(1) The Comptroller General shall conduct a study on—

(A) the ability of the Health Care Financing Administrator to manage competitive bidding for agreements and contracts under sections 1816 and 1842 of the Social Security Act, and on the relative costs and efficiency of such competitive agreements and contracts as compared to current reimbursement for such agreements and contracts;

(B) the need (if any) for eliminating the provider nomination procedure under section 1816(a) of such Act;

(C) the disparities (if any) in costs and quality of claims processing among the various entities performing claims processing pursuant to sections 1816 and 1842 of such Act;

(D) whether the standards of the Secretary of Health and Human Services for evaluating costs and performance of intermediaries and carriers are adequate and properly applied; and

(E) whether the Secretary's statutory authority is sufficient to deal with inefficient intermediaries and carriers either through the contract negotiation and budget review process or through the process for termination or nonrenewal of contracts.

(2) The Comptroller General shall submit a report on the results of such study to the Congress not later than 12 months after the date of the enactment of this Act.

PART II—ADMINISTRATIVE AND MISCELLANEOUS CHANGES

REPEAL OF EXCLUSION OF FOR-PROFIT ORGANIZATIONS FROM RESEARCH AND DEMONSTRATION GRANTS

SEC. 2331. (a) Section 1110(a)(1) of the Social Security Act is amended by striking out "nonprofit".

(b) The first sentence of section 402(a)(1) of the Social Security Amendments of 1967 (Public Law 90-248) is amended by striking out "nonprofit".

(c) The amendments made by this section shall become effective on the date of the enactment of this Act.

PRESIDENTIAL APPOINTMENT OF AND PAY LEVEL FOR THE ADMINISTRATOR OF THE HEALTH CARE FINANCING ADMINISTRATION

SEC. 2332. (a) Title XI of the Social Security Act is amended by inserting after section 1116 the following new section:

"APPOINTMENT OF THE ADMINISTRATOR OF THE HEALTH CARE FINANCING ADMINISTRATION

"SEC. 1117. The Administrator of the Health Care Financing Administration shall be appointed by the President by and with the advice and consent of the Senate.".

(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Administrator of the Health Care Financing Administration.".

(c) The amendments made by this section shall apply to appointments made after the date of the enactment of this Act.

EXCLUSION OF CERTAIN ENTITIES OWNED OR CONTROLLED BY INDIVIDUALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES

SEC. 2333. (a) Section 1128 of the Social Security Act is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and

(2) by inserting after subsection (a) the following new subsection:

"(b) Whenever the Secretary determines, with respect to an entity, that a person who has a direct or indirect ownership or control interest of 5 percent or more in the entity, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of such entity, is a person described in section 1126(a), the Secretary—

"(1) may bar from participation in the program under title XVIII, for such period as he may deem appropriate, each such entity otherwise eligible to participate in such program;

"(2) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under title XIX of the fact and circumstances of the determination, and may require each such agency to bar the entity from participation under the State plan for such period as he specifies, which may not exceed the period established pursuant to paragraph (1); and

"(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such entity of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.".

(b) Section 1128(e) of such Act (as redesignated by subsection (a)(1)) is amended—

(1) by inserting "or entity" after "Any person", and

(2) by striking out "(a) or (b)" and inserting in lieu thereof "(a), (b), or (c)".

(c) The amendments made by this section become effective on the date of the enactment of this Act and shall apply to convictions of persons occurring after such date.

PROVIDER REPRESENTATION IN PEER REVIEW ORGANIZATIONS

SEC. 2334. (a) Section 1153(b)(3) of the Social Security Act is amended by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility or association of facilities by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities or associations.".

(b) Section 1153(b)(2)(A) of such Act is amended—

(1) by striking out "an entity which directly" and inserting in lieu thereof "an entity (other than a self-insured employer) which directly"; and

(2) by adding at the end thereof the following new sentence: "For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an 'eligible organization' as defined in section 1876(b).".

(c) The amendments made by this section shall become effective on the date of the enactment of this Act.

REPEAL OF SPECIAL TUBERCULOSIS TREATMENT REQUIREMENTS UNDER MEDICARE AND MEDICAID

SEC. 2335. (a) Section 1814(a) of the Social Security Act is amended—

(1) in paragraph (2), by striking out subparagraph (B) and redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively;

(2) in paragraph (3), by striking out "and inpatient tuberculosis hospital services";

(3) by striking out paragraph (5) and redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively; and

(4) in the matter following paragraph (7) (as so redesignated) by striking out "(D), or (E)" and inserting in lieu thereof "or (D)".

(b)(1) Subsections (d) and (g) of section 1861 of such Act are repealed.

(2) The fifth sentence of section 1861(3) of such Act is amended by striking out "or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g)) or".

(3) Section 1861(j) of such Act is amended in the matter following paragraph (15) by striking out "or tuberculosis".

(c) Section 1863 of such Act is amended by striking out "(g)(4),".

(d) Section 1866 of such Act is amended—

(1) in subsection (b)(3), by striking out "tuberculosis hospital services and"; and

(2) in subsection (d), by striking out "inpatient tuberculosis hospital services and".

(e) Section 1902(a)(28) of such Act is amended by striking out "and tuberculosis".

(f) Section 1905(a) of such Act is amended by striking out "tuberculosis or" each place it appears in paragraphs (1), (4)(A), (14), and (15) and in the subdivision (B) after paragraph (18).

(g) The amendments made by this section shall become effective on the date of the enactment of this Act.

ACCESS TO HOME HEALTH SERVICES

Sec. 2336. (a) Sections 1814(a) and 1835(a) of the Social Security Act are each amended by adding at the end the following new sentence: "For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.".

(b) The third sentence of section 1814(a) of the Social Security Act and the fourth sentence of section 1835(a) of such Act are each amended by inserting before the period at the end the following: ", except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)".

(c)(1) The amendments made by subsection (a) shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act.

(2) The Secretary shall provide, not later than 90 days after the date of the enactment of this Act, for such revision of regulations as may be required to reflect the amendments made by subsection (b).

NORMALIZATION OF TRUST FUND TRANSFERS

Sec. 2337. (a) Section 1817(a) of the Social Security Act is amended—

(1) by striking out "monthly on the first day of each calendar month" in the next to last sentence and inserting in lieu thereof "from time to time",

(2) by striking out "to be paid to or deposited into the Treasury during such month" in such sentence and inserting in lieu thereof "paid to or deposited into the Treasury", and

(3) by striking out the last sentence.

(b) The amendments made by subsection (a) shall become effective on the first day of the month following the month in which this Act is enacted.

ENROLLMENT AND PREMIUM PENALTY WITH RESPECT TO WORKING AGED PROVISION

Sec. 2338 (a) The second sentence of section 1839(b) of the Social Security Act is amended by adding before the period at the end the following: ", but there shall not be taken into account months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1862(b)(3)(A) and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment".

(b) Section 1837 of such Act is amended by adding at the end the following new subsection:

"(i)(1) In the case of an individual who—

"(A) meets the conditions described in clauses (i) and (iii) of section 1862(b)(3)(A),

"(B) at the time the individual first satisfies paragraph (1) or (2) of section 1836, is enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or the individual's spouse's) current employment, and

"(C) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3).

"(2) In the case of an individual who—

"(A) meets the conditions described in clauses (i) and (iii) of section 1862(b)(3)(A),

"(B) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or individual's spouse's) current employment, and

"(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment,

there shall be a special enrollment period described in paragraph (3).

"(3) The special enrollment period referred to in paragraphs (1) and (2) is the period—

"(A) beginning with the first day of the third month before the month in which the individual attains the age of 70 and ending seven months later, or

"(B) beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of current employment and ending seven months later,

whichever period results in earlier coverage.".

(c) Section 1838 of such Act is amended by adding at the end the following new subsection:

"(e) Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to—

"(1) subparagraph (A) of section 1837(i)(3)—

"(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70, or

"(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

"(2) subparagraph (B) of section 1837(i)(3)—

"(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

"(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.".

(d)(1) The amendment made by subsection (a) shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act.

(2)(A) The amendments made by subsections (b) and (c) shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

(B) For purposes of subparagraph (A), the term "first effective month" means the first month which begins more than 90 days after the date of the enactment of this Act.

INDIRECT PAYMENT OF SUPPLEMENTARY MEDICAL INSURANCE BENEFITS

Sec. 2339. (a) The first sentence of section 1842(b)(6) of the Social Security Act, as redesignated by section 2306 of this title, is amended—

(1) by inserting "(i)" after "(A)",

(2) by striking out "(B)" and inserting in lieu thereof "(ii)", and

(3) by inserting before the period the following: ", or (B) to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part".

(b) The second sentence of such section is amended by striking out "or (B)".

CERTIFICATION OF PSYCHIATRIC HOSPITALS

Sec. 2340. (a) Section 1861(f) of the Social Security Act is amended—

(1) by adding "and" at the end of paragraph (3);

(2) by striking out "; and" at the end of paragraph (4) and inserting in lieu thereof a period;

(3) by striking out paragraph (5); and

(4) in the second sentence, by striking out "if the institution is accredited" and all that follows through "Secretary".

(b) Section 1905(h)(1)(A) of such Act is amended to read as follows:

"(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1861(f);".

(c) The amendments made by this section shall become effective on the date of the enactment of this Act.

INCLUDING PODIATRISTS IN DEFINITION OF "PHYSICIAN" FOR OUTPATIENT PHYSICAL THERAPY SERVICES AND INCLUDING PODIATRISTS AND DENTISTS IN DEFINITION OF "PHYSICIAN" FOR OUTPATIENT AMBULATORY SURGERY

Sec. 2341. (a) Section 1861(p)(1) of the Social Security Act is amended by striking out "section 1861(r)(1)" and inserting in lieu thereof "paragraph (1) or (3) of section 1861(r)".

(b) Section 1832(a)(2)(F)(ii) of such Act is amended by striking out "section 1861(r)(1)" and inserting in lieu thereof "paragraph (1), (2), or (3) of section 1861(r)".

(c) Section 1861(r)(3) of such Act is amended—

(1) by striking out "and (m)" the first place it appears and inserting in lieu thereof ", (m), and (p)(1)", and

(2) by inserting ", 1832(a)(2)(F)(ii)," after "1814(a)" the first place it appears.

(d) The amendments made by this section apply to services furnished on or after the date of the enactment of this Act.

ESTABLISHMENT BY PHYSICAL THERAPISTS OF PLANS FOR PHYSICAL THERAPY

Sec. 2342. (a) Section 1861(p)(2) of the Social Security Act is amended by striking out ", and is periodically reviewed, by a physician (as so defined)" and inserting in lieu thereof "by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)".

(b) Section 1835(a)(2)(C)(ii) of such Act is amended by striking out ", and is periodically reviewed, by a physician" and inserting in lieu thereof "by a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician".

(c) The amendments made by this section apply to plans of care established on or after the date of the enactment of this Act.

HOSPICE CONTRACTING FOR CORE SERVICES

SEC. 2343. (a) Section 1861(dd)(2)(A)(ii)(I) of the Social Security Act is amended by inserting "except as otherwise provided in paragraph (5)," before "and" at the end thereof.

(b) Section 1861(dd) of such Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

"(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

"(ii) was in operation on or before January 1, 1983; and

"(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

"(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after such request is received by the Secretary. The granting of a waiver under subparagraph (A) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.".

(c) The amendments made by subsections (a) and (b) shall become effective on the date of the enactment of this Act.

(d) The Secretary of Health and Human Services shall conduct a study of the necessity and appropriateness of the requirements that certain "core" services be furnished directly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I) of the Social Security Act. The Secretary shall report the results of such study to the Congress with the report required under section 122(i)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

MEDICARE RECOVERY AGAINST CERTAIN THIRD PARTIES

SEC. 2344. (a) Section 1862(b)(1) of the Social Security Act is amended—

(1) in the first sentence, by inserting "promptly" after "to be made";

(2) in the second sentence, by inserting "or could be" after "has been"; and

(3) by inserting after the second sentence the following new sentences: "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance.".

(b) Section 1862(b)(2)(B) of such Act is amended—

(1) in the first sentence, by inserting "or could be" after "has been"; and

(2) by inserting after the first sentence the following new sentences: "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.".

(c) Section 1862(b)(3)(A)(ii) of such Act is amended—

(1) in the first sentence, by inserting "or could be" after "has been"; and

(2) by inserting after the first sentence the following new sentences: "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.".

(d) The amendments made by this section shall apply to items and services furnished on or after the date of the enactment of this Act.

CONFIDENTIALITY OF ACCREDITATION SURVEYS

SEC. 2345. (a) Section 1865(a) of the Social Security Act is amended—

(1) in paragraph (2), by striking out "(on a confidential basis)"; and

(2) by adding at the end thereof the following new sentence: "The Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body.".

(b) The amendments made by this section shall become effective on the date of the enactment of this Act, and shall apply with respect to surveys released to the Secretary on, before, or after such date.

USE OF ADDITIONAL ACCREDITING ORGANIZATIONS UNDER MEDICARE

SEC. 2346. (a) The third sentence of section 1865(a) of the Social Security Act is amended—

(1) by striking out "section 1861(e), (j), (o), or (dd)" and inserting in lieu thereof "section 1832(a)(2)(F)(i), 1861(e), 1861(f), 1861(j), 1861(o), 1861(p)(4)(A) or (B), paragraphs (11) and (12) of section 1861(s), section 1861(aa)(2), 1861(cc)(2), or 1861(dd)(2)"; and

(2) by striking out "institution or agency" each place it appears and inserting in lieu thereof in each instance "entity".

(b) The amendments made by this section shall become effective on the date of the enactment of this Act.

FUNDING FOR PSRO REVIEW

SEC. 2347. (a)(1) Section 1866(a)(1)(F) of the Social Security Act is amended by striking out "maintain an agreement" and all that follows through "under which the organization", and inserting in lieu thereof "maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of title XI for the area in which the hospital is located, under which the organization".

(2) Section 602(l)(1) of the Social Security Amendments of 1983 is repealed.

(b) Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983, the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act, shall become effective on November 15, 1984.

(c)(1) Section 1153(b)(2)(A) of the Social Security Act is amended by striking out "During the first twelve months in which the Secretary is entering into contracts under this section" and inserting in lieu thereof "Prior to November 15, 1984".

(2) Section 1153(b)(2)(B) of such Act is amended by striking out "after the expiration of the twelve-month period referred to in subparagraph (A)" and inserting in lieu thereof "after November 14, 1984".

(3) Section 1153(b)(2) of such Act is amended by striking out subparagraph (C).

(d) The provisions of, and amendments made by, this section shall become effective on the date of the enactment of this Act.

PAYMENT FOR SERVICES FOLLOWING TERMINATION OF PARTICIPATION AGREEMENTS WITH HOME HEALTH AGENCIES OR HOSPICE PROGRAMS

SEC. 2348. (a) Section 1866(b)(4)(B) of the Social Security Act is amended by striking out "after the calendar year in which such termination is effective" and inserting in lieu thereof "more than 30 days after such effective date".

(b) The amendment made by this section shall apply to terminations issued on or after the date of the enactment of this Act.

ELIMINATION OF HEALTH INSURANCE BENEFITS ADVISORY COUNCIL

SEC. 2349. (a) Section 1867 of the Social Security Act is repealed.

(b)(1) The first sentence of section 1863 of such Act is amended by striking out "the Health Insurance Benefits Advisory Council established by section 1867, appropriate State agencies," and inserting in lieu thereof "appropriate State agencies".

(2) The first sentence of section 7(d)(4) of the Railroad Retirement Act of 1974 is amended by striking out "1867,".

(3) Section 361 of the Social Security Amendments of 1977 (Public Law 95-216) is amended by striking out subsection (i).

(c) The amendments made by this section shall become effective on the date of the enactment of this Act.

HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

SEC. 2350. (a)(1) Section 1876(c)(3)(A) of the Social Security Act is amended—

(A) by inserting "(i)" after "(3)(A)",

(B) by inserting "and including the 30-day period specified under clause (ii)" after "30 days duration every year", and

(C) by adding at the end thereof the following new clause:

"(ii) For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-

day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section.".

(2) The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.

(b)(1) The first sentence of section 1876(g)(2) of such Act is amended by inserting before the period at the end thereof the following: "and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)".

(2) Section 1876(g) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary and during a period of not longer than four years) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.".

(3) The Secretary of Health and Human Services may not approve the use of a stabilization fund by an eligible organization under section 1876(g)(5) of the Social Security Act for any period beginning later than four years after the date of the enactment of this Act.

(4) The Secretary of Health and Human Services shall report to the Congress with respect to the use of stabilization funds by eligible organizations under section 1876(g)(5) of the Social Security Act, and shall assess the need for such funds. The report shall be submitted not later than 54 months after the month in which this Act is enacted.

(c) Section 1876(g)(4)(A) of such Act is amended—

(1) by inserting "and skilled nursing facilities" after "hospitals";

(2) by inserting "another appropriate basis for payment established under this title" after "section 1861(v))"; and

(3) by striking out "hospital".

(d) The amendments made by this section shall become effective on the date of the enactment of this Act.

JUDICIAL REVIEW OF PROVIDER REIMBURSEMENT REVIEW BOARD DECISIONS

SEC. 2351. (a)(1) The third sentence of section 1878(f)(1) of the Social Security Act is amended by striking out "such determination is rendered" and inserting in lieu thereof "notification of such determination is received".

(2) The amendment made by paragraph (1) shall be effective with respect to any civil action commenced on or after the date of the enactment of this Act.

(b)(1) The last sentence of section 1878(f)(1) of such Act is amended by inserting "or which have obtained a hearing under subsection (b)" after "common ownership or control".

(2) The amendment made by paragraph (1) shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act.

(c) Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98-21)—

(1) the amendments made by section 602(h)(2)(A) of that Act shall be effective with respect to any appeal or action brought on or after April 20, 1983; and

(2) the amendments made by section 602(h)(2)(B) of that Act shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act.

FLEXIBLE SANCTIONS FOR NONCOMPLIANCE WITH REQUIREMENTS FOR END STAGE RENAL DISEASE FACILITIES

SEC. 2352. (a) Section 1881(c)(3) of the Social Security Act is amended by adding at the end thereof the following new sentence: "If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.".

(b) The amendment made by this section shall apply to determinations made by the Secretary on or after the date of the enactment of this Act.

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

SEC. 2353. (a) The Secretary of Health and Human Services shall carry out a study and report to the Congress on the modifications required in section 1884 of the Social Security Act in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1886(d) of such Act, so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof). The report shall include recommendations as to how, and whether, implementation of section 1884 as modified may result in reductions in total hospital inpatient costs and total expenditures under title XVIII of the Social Security Act. The Secretary shall submit the report prior to March 31, 1985.

(b) During the period prior to March 31, 1985, and notwithstanding section 2101(c) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the Secretary shall not implement section 1884 of the Social Security Act.

MISCELLANEOUS TECHNICAL CORRECTIONS RELATING TO MEDICARE

SEC. 2354. (a)(1) Section 1122(b) of the Social Security Act is amended—

(A) by striking out the period at the end of paragraph (1) and inserting in lieu thereof a comma, and

(B) by striking out "(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)".

(2) Section 1122(i)(3) of such Act is amended by striking out "5703(b)" and inserting in lieu thereof "5703".

(3) Section 1128A(g) of such Act is amended by striking out "Professional Standards Review Organization" and inserting in lieu thereof "utilization and quality control peer review organization".

(4) Section 1129(a) of such Act is amended by striking out "Sate" and inserting in lieu thereof "State".

(5) The heading of title XI of such Act is amended by striking out "PROFESSIONAL STANDARDS REVIEW" and inserting in lieu thereof "PEER REVIEW".

(b)(1) The last sentence of sections 1814(a) of such Act and the last sentence of section 1835(a) of such Act are each amended by striking out "contractural" and inserting in lieu thereof "contractual".

(2) Sections 1817(c) and 1841(c) of such Act are each amended by striking out "under the Second Liberty Bond Act, as amended" and inserting in lieu thereof "under chapter 31 of title 31, United States Code".

(3) Section 1818(c)(1) of such Act is amended by striking out "Act" and inserting in lieu thereof "section".

(4) Section 1818(d)(2) of such Act is amended by striking out "if midway between multiples of $1" and inserting in lieu thereof ", if a multiple of 50 cents but not a multiple of $1,".

(5) Section 1833(a)(2) of such Act is amended by indenting subparagraphs (A) and (B) two additional ems so as to align their left margins with the left margin of subparagraph (C) and by appropriately further indenting the clauses and subclauses of such subparagraphs.

(6) Section 1832(a)(2)(F)(ii)(II) of such Act is amended by striking out "Organization" and inserting in lieu thereof "organization".

(7) Section 1833(a)(1) of such Act is amended by striking out "and" at the end thereof.

(8) Section 1835(a)(2) of such Act is amended—

(A) by striking out "and" at the end of subparagraphs (B) and (C), and

(B) by indenting subparagraph (D) two additional ems so as to align its left margin with the left margin of subparagraph (C).

(9) Section 1835(e) of such Act is amended—

(A) by inserting "(i)" in paragraph (2) after "written assurances that",

(B) by striking out "(B)" in paragraph (2) and inserting in lieu thereof "(ii)",

(C) by striking out "return for" in paragraph (2) and inserting in lieu thereof "return of", and

(D) by striking out "(1) such hospital" and "(2) the Secretary" and inserting in lieu thereof "(A) such hospital" and "(B) the Secretary", respectively.

(10) Section 1837(g)(1) of such Act is amended by striking out "section 226(a)(2)(B)" and "section 1839(e)" and in-

serting in lieu thereof "section 226(b)" and "section 1839(d)", respectively.

(11) Sections 1840(d)(1), 1840(d)(2), and 1841(h) of such Act are each amended by striking out "Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management" each place it appears.

(12) Section 1841(h) of such Act is amended by striking out "it" and inserting in lieu thereof "the Director".

(13) Section 1842(b)(3)(B)(ii)(II) of such Act is amended by striking out the period following "title".

(14) The ninth sentence of section 1842(b)(3) of such Act is amended by striking out "(i)" and "(ii)" and inserting in lieu thereof "(I)" and "(II)", respectively.

(15) Section 1843(d)(3)(B) of such Act is amended by striking out "1937" and inserting in lieu thereof "1974".

(16) Section 1844(a)(1)(B)(ii) of such Act is amended by striking out the period and inserting in lieu thereof "; plus".

(17) Sections 1864(c) and 1875(b) of such Act are each amended by striking out "the" after "Joint Commission on".

(18) Section 1861(j)(2) of such Act is amended by striking out "provision of" and inserting in lieu thereof "provision for".

(19) Section 1861(j)(13) of such Act is amended by striking out "a nursing home" and inserting in lieu thereof "an institution".

(20) Section 1861(u) of such Act is amended by striking out "or" before "home health agency".

(21) Section 1861(v)(1) of such Act is amended—

(A) by redesignating the clause (B) in subparagraph (A) as subparagraph (B) and by indenting the first line of such subparagraph 2 spaces;

(B) by aligning subparagraphs (C) and (D) flush with the left margin (but with appropriate indentation in the case of the clauses and subclauses of subparagraph (C)); and

(C) by inserting a comma after "section 1832(a)(2)(B)(i)" in subparagraph (D).

(22) Section 1861(v)(1)(C)(i) of such Act is amended by inserting a dash after "but only if".

(23) Section 1861(v)(1)(E)(ii) of such Act is amended by striking out "uses" and inserting in lieu thereof "use".

(24) Section 1861(v)(1)(I) of such Act is amended by striking out "to the Secretary, or upon request to the Comptroller General" in clauses (i) and (ii) and inserting in lieu thereof "by the Secretary, or upon request by the Comptroller General".

(25) Section 1861(v)(3) of such Act is amended by striking out "semiprivate" and inserting in lieu thereof "semi-private".

(26) Section 1861(z)(2) of such Act is amended by striking out "subparagraph (1)" and inserting in lieu thereof "paragraph (1)".

(27) Section 1861(aa)(2)(I) of such Act is amended by striking out "ultilization" and inserting in lieu thereof "utilization".

(28) Section 1861(cc)(1)(F) of such Act is amended by striking out "self administered" and inserting in lieu thereof "self-administered".

(29) Section 1861(cc)(2)(F) of such Act is amended by striking out "standard establishment" and inserting in lieu thereof "standards established".

(30) Section 1862(a)(12) of such Act is amended by striking out the second comma after "dental procedure".

(31) Section 1862(b)(3)(A)(iii) of such Act is amended by inserting "before the month" after "ending with the month".

(32) Section 1863 of such Act is amended by striking out "(j)(11)" and inserting in lieu thereof "(j)(15)".

(33) Section 1866(a)(1)(E) of such Act is amended by adding at the end a comma.

(34) Section 1866(b) of such Act is amended by moving the alignment of paragraph (3) two ems to the left so as to align its left margin with the left margin of paragraph (4).

(35) Section 1869(b)(1)(B) of such Act is amended by striking out ", or section 1818, or section 1819" and inserting in lieu thereof "or section 1818".

(36) Section 1872 of such Act is amended—

(A) by striking out the comma after "206", and

(B) by striking out "(f),".

(37) Section 1876(b)(2)(D) of such Act is amended by striking out "paragraph (1)" and inserting in lieu thereof "subparagraph (A)".

(38) Section 1876(c)(4)(A)(i) of such Act is amended by striking out "promptly as appropriate" and inserting in lieu thereof "with reasonable prompiness".

(39) Section 1878(c) of such Act is amended by striking out "inadmissable" and inserting in lieu thereof "inadmissible".

(40) Section 1878(e) of such Act is amended by striking out ", (e), and (f)" and inserting in lieu thereof "and (e)".

(41) Section 1881 of such Act is amended by striking out "end-stage" and inserting in lieu thereof "end stage" each place it appears.

(42) Section 1886(a)(2)(B) of such Act is amended by striking out "disportionate" and inserting in lieu thereof "disproportionate".

(43) Section 1886(b)(3)(A)(ii) of such Act is amended by inserting "of" after "in the case".

(44) Section 1886(d)(3)(D)(i)(I) of such Act is amended by striking out "(C)," and inserting in lieu thereof "(C))".

(c)(1)(A) Section 903(a)(4) of Public Law 96-499 is amended by striking out "new paragraph".

(B) Section 937(c) of Public Law 96-499 is amended by striking out "on on" and inserting in lieu thereof "on or".

(2) Section 2353(h)(1) of Public Law 97-35 is amended by striking out the comma after "XIX".

(3)(A) Section 114(c)(2)(C)(ii) of Public Law 97-248 is amended by inserting "and enrolled under part B" after "part A".

(B) Section 114(c)(3)(E) of Public Law 97-248 is amended—

(i) by striking out "section 1833(a)(1) of the Social Security Act or", and

(ii) by adding before the period at the end the following: ", or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act".

(C) Section 149 of Public Law 97-248 is amended by striking out "part" and inserting in lieu thereof "subtitle".

(d) Section 162(i)(2) of the Internal Revenue Code of 1954 is amended by striking out "213(e)" and inserting in lieu thereof "213(d)".

(e)(1) Except as provided in paragraph (2), the amendments made by this section shall be effective on the date of the enactment of this Act; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

(2) The amendments made by paragraphs (1), (2), and (3) of subsection (c) shall be effective as if they had been originally included in Public Laws 96-499, 97-35, and 97-248, respectively.

WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS

SEC. 2355. (a) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall approve, with appropriate terms and conditions as defined by the Secretary, applications or protocols submitted for waivers described in subsection (c), and the evaluation of such protocols, in order to carry out such project. Such approval shall be effected not later than 30 days after the date on which the application or protocol for a waiver is submitted or not later than 30 days after the date of the enactment of this Act in the case of an application or protocol submitted before the date of the enactment of this Act.

(b) A project referred to in subsection (a) is a project—

(1) to demonstrate the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1—04 of the University Health Policy Consortium of Brandeis University;

(2) which provides for the integration of health and social services under the direct financial management of a provider of services;

(3) under which all medicare services will be provided by or under arrangements made by the organization at a fixed annual prepaid capitation rate for medicare of 100 percent of the adjusted average per capita cost;

(4) under which medicaid services will be provided at a rate approved by the Secretary;

(5) under which all payors will share risk for no more than two years, with the organization being at full risk in the third year;

(6) which is being provided funds under a grant provided by the Secretary of Health and Human Services; and

(7) with respect to which substantial private funds are being provided other than under the grant referred to in paragraph (5).

(c) The waivers referred to in subsection (a) are appropriate waivers of—

(1) certain requirements of title XVIII of the Social Security Act, pursuant to section 402(a) of the Social Security Amendments of 1967 (as amended by section 222 of the Social Security Amendments of 1972); and

(2) certain requirements of title XIX of the Social Security Act, pursuant to section 1115 of such Act.

(d)(1) The Secretary of Health and Human Services shall submit a preliminary report to the Congress on the status of the projects and waivers referred to in subsection (a) 45 days after the date of the enactment of this Act.

(2) The Secretary shall submit a final report to the Congress on the projects referred to in subsection (a) not later than 42 months after the date of the enactment of this Act.

Subtitle B—Medicaid and Maternal and Child Health Amendments

MEDICAID COVERAGE FOR PREGNANT WOMEN AND CHILDREN

SEC. 2361. (a) Clause (i) of section 1902(a)(10)(A)(i) of the Social Security Act is amended to read as follows:

"(i) all individuals—

"(I) who are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A or part E of title IV (including individuals eligible under this title by reason of section 402(a)(37), or considered by the State to be receiving such aid as authorized under sections 414(g)),

(II) with respect to whom supplemental security income benefits are being paid under title XVI, or

"(III) who are qualified pregnant women or children as defined in section 1905(n);".

(b) Section 1905 of such Act is amended by adding at the end thereof the following new subsection:

"(n) The term 'qualified pregnant woman or child' means—

"(1) a pregnant woman who—

"(A) would be eligible for aid to families with dependent children under part A of title IV (or would be eligible for such aid if coverage under the State plan under part A of title IV included aid to families with dependent children of unemployed parents pursuant to section 407) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified; or

"(B) is a member of a family which would be eligible for aid under the State plan under part A of title IV pursuant to section 407 if the plan required the payment of aid pursuant to such section; and

"(2) a child who is under 5 years of age, who was born after September 30, 1983, and who meets the income and resources requirements of the State plan under part A of title IV.".

(c) Section 406(g) of such Act is amended by striking out "(1)" after "(g)", by striking out paragraph (2), and by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2).

(d)(1) Except as provided in paragraph (2), the amendments made by this section shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

CLARIFICATION OF MEDICAID ENTITLEMENT FOR CERTAIN NEWBORNS

SEC. 2362. (a) Section 1902(e) of the Social Security Act is amended by adding at the end the following new paragraph:

"(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains eligible for such assistance.".

(b) The amendment made by subsection (a) shall apply to children born on or after October 1, 1984.

RECERTIFICATION OF SNF AND ICF PATIENTS

SEC. 2363. (a)(1) Section 1902(a) of the Social Security Act, as amended by section 2303(g) of this title, is amended—

(A) in paragraph (30)—

(i) by inserting "(A)" after "(30)", and

(ii) by adding at the end the following new subparagraph:

"(B) provide, under the program described in subparagraph (A), that—

"(i) each admission to a hospital, skilled nursing facility, intermediate care facility, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

"(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, skilled nursing facility, intermediate care facility, or hospital for mental diseases;"; and

(B) by striking out "and" at the end of paragraph (42), by striking out the period at the end of paragraph (43) and inserting in lieu thereof "; and", and by inserting after paragraph (43) the following new paragraph:

"(44) in each case for which payment for inpatient hospital services, skilled nursing facility services, intermediate care facility services, or inpatient mental hospital services is made under the State plan—

"(A) a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and the physician, or a physician assistant or nurse practitioner under the supervision of a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1903(g)(6) (or, in the case of services that are intermediate care facility services provided in an institution for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

"(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician.".

(2) Section 1903(g)(1) of such Act is amended—

(A) in the matter preceding subparagraph (A), by striking out "care as an inpatient" and all that follows through "hospital for mental diseases on" and inserting in lieu thereof "inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for",

(B) in the matter before subparagraph (A), by striking out "which for purposes of this section means the four calendar quarters ending with June 30," and by striking out "in the same fiscal year", and

(C) by striking out "(including tuberculosis hospitals)" and all that follows through the end of subparagraph (D) and inserting in lieu thereof ", skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1902(a) whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams.".

(4) Section 1903(g) of such Act is further amended by striking out paragraph (6) and inserting in lieu thereof the following:

"(6)(A) Recertifications required under section 1902(a)(44) shall be conducted at least every 60 days in the case of inpatient hospital services.

"(B) Such recertifications in the case of skilled nursing facility services shall be conducted at least—

"(i) 30 days after the date of the initial certification,

"(ii) 60 days after the date of the initial certification,

"(iii) 90 days after the date of the initial certification, and

"(iv) every 60 days thereafter.

"(C) Such recertifications in the case of intermediate care facility services shall be conducted at least—

"(i) 60 days after the date of the initial certification,

"(ii) 180 days after the date of the initial certification,

"(iii) 12 months after the date of the initial certification,

"(iv) 18 months after the date of the initial certification,

"(v) 24 months after the date of the initial certification, and

"(vi) every 12 months thereafter.

"(D) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required and the State establishes good cause why the physician or other person making such recertification did not meet such schedule.".

(b) Such section is further amended by adding at the end the following new paragraph:

"(7) It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this title, and the enforcement of such standards, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public moneys.".

(c) The amendments made by subsection (a) apply to calendar quarters beginning on or after the date of the enactment of this Act, except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by this section shall not require recertifications sooner or more frequently than were required under the law in effect before such date.

WAIVER OF CERTAIN MEMBERSHIP REQUIREMENTS FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS

SEC. 2364. Section 1903(m)(2) of the Social Security Act is amended—

(1) by inserting "except as provided under subparagraph (F)," in subparagraph (A)(vi) after "(I)", and

(2) by adding at the end the following new subparagraphs:

"(E) In the case of a health maintenance organization that—

"(i) is a nonprofit organization with at least 25,000 members,

"(ii) is and has been a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) for a period of at least four years,

"(iii) provides basic health services through members of the staff of the organization,

"(iv) is located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act, and

"(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1115,

the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this title or under title XVIII.

"(F)(i) In the case of a contract with a health maintenance organization described in clause (ii), a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.

"(ii) A health maintenance organization referred to in clause (i) is an organization which—

"(I) is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) or a health maintenance organization which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act or has received at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, and

"(II) meets the requirement of subparagraph (A)(ii).".

INCREASE IN MEDICAID CEILING AMOUNT FOR PUERTO RICO, THE VIRGIN ISLANDS, GUAM, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

SEC. 2365. (a) Section 1108(c) of the Social Security Act is amended to read as follows:

"(c) The total amount certified by the Secretary under title XIX with respect to a fiscal year for payment to—

"(1) Puerto Rico shall not exceed $63,400,000;

"(2) the Virgin Islands shall not exceed $2,100,000;

"(3) Guam shall not exceed $2,000,000;

"(4) the Northern Mariana Islands shall not exceed $550,000; and

"(5) American Samoa shall not exceed $1,150,000.".

(b) The amendment made by subsection (a) shall be effective for fiscal years beginning on or after October 1, 1983.

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

SEC. 2366. The provisions of section 1902(a)(13) of the Social Security Act, in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section.

MANDATORY ASSIGNMENT OF RIGHTS OF PAYMENT BY MEDICAID RECIPIENTS

SEC. 2367. (a) Section 1902(a) of the Social Security Act (as amended by section 2303 and 2363 of this title) is amended—

(1) by striking out "and" at the end of paragraph (43);

(2) by striking out the period at the end of paragraph (44) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (44) the following new paragraph:

"(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1912.".

(b) Section 1912(a) of such Act is amended by striking out "State plan for medical assistance may" and inserting in lieu thereof "State plan for medical assistance shall".

(c)(1) Except as provided in paragraph (2), the amendments made by this section shall become effective on October 1, 1984.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

REQUIREMENTS FOR MEDICAL REVIEW AND INDEPENDENT PROFESSIONAL REVIEW UNDER MEDICAID

SEC. 2368. (a) Section 1902(a)(31) of the Social Security Act is amended to read as follows:

"(31) with respect to skilled nursing facility services (and with respect to intermediate care facility services, where the State plan includes medical assistance for such services) provide—

"(A) with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services;

"(B) with respect to each skilled nursing or intermediate care facility within the State, for periodic onsite inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the facility, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

"(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;".

(b) Section 1902(a)(26) of such Act is amended to read as follows:

"(26) if the State plan includes medical assistance for inpatient mental hospital services provide—

"(A) with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

"(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance, including (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

"(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;".

(c) The amendments made by this section shall become effective on the date of the enactment of this Act.

FLEXIBILITY IN SETTING PAYMENT RATES FOR HOSPITALS FURNISHING LONG-TERM CARE SERVICES UNDER MEDICAID

SEC. 2369. (a)(1) Section 1913(b)(1) of the Social Security Act is amended by striking out "Payment" and inserting in lieu thereof "Except as provided in paragraph (3), payment".

(2) Section 1913(b) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) Payment to all such hospitals, for any skilled nursing or intermediate care facility services furnished pursuant to subsection (a), may be made at a payment rate established by the State in accordance with the requirements of section 1902(a)(13)(A).".

(b) The amendments made by this section shall apply to payments for services furnished after the date of the enactment of this Act.

AUTHORITY OF THE SECRETARY TO ISSUE AND ENFORCE SUBPOENAS UNDER MEDICAID

SEC. 2370. (a) Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"APPLICATION OF PROVISIONS OF TITLE II RELATING TO SUBPOENAS

"SEC. 1918. The provisions of subsections (d) and (e) of section 205 of this Act shall apply with respect to this title to the same extent as they are applicable with respect to title II.".

(b) The amendment made by this section shall become effective on the date of the enactment of this Act.

MEDICAID CLINIC ADMINISTRATION

SEC. 2371. (a) Section 1905(a)(9) of the Social Security Act is amended to read as follows:

"(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is be administered by a physician;".

(b) The amendment made by subsection (a) shall apply to services furnished on or after the date of the enactment of this Act.

INCREASE IN AUTHORIZATION FOR MATERNAL AND CHILD HEALTH BLOCK GRANT

SEC. 2372. (a) Section 501(a) of the Social Security Act is amended by striking out "$373,000,000 for fiscal year 1982 and for each fiscal year thereafter" and inserting in lieu thereof "$478,000,000 for fiscal year 1984 and each fiscal year thereafter".

(b) The amendment made by subsection (a) shall be effective for fiscal years beginning on or after October 1, 1983.

MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 2373. (a)(1) Section 503(a) of the Social Security Act is amended by striking out "section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)" and inserting in lieu thereof "section 6503(a) of title 31, United States Code".

(2) Section 506(d)(3) of such Act is amended by striking out "section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)" and inserting in lieu thereof "section 6503(b) of title 31, United States Code".

(b)(1) Section 1902(a)(9) of such Act is amended by indenting subparagraph (C) two additional ems so as to align its left margin with the left margin of subparagraph (B).

(2) Section 1902(a)(10) of such Act is amended by indenting subparagraph (A) (and each of its clauses and subclauses) two additional ems so as to align its left margin (before clause (i)) with the left margin of subparagraph (B).

(3) Section 1902(a)(13)(A) of such Act is amended by striking out "(A)" and all that follows through "hospital" the first place it appears and inserting in lieu thereof "(A) for payment (except where the State agency is subject to an order under section 1914) of the hospital".

(4) Section 1902(a)(20)(B) of such Act is amended by striking out "periodical" and inserting in lieu thereof "periodic".

(5) Section 1902(a)(20)(C) of such Act is amended by striking out ", section 603(a)(1)(A) (i) and (ii),".

(6) Section 1902(a)(26)(B)(ii) of such Act is amended by striking out "homes" and inserting in lieu thereof "facilities".

(7) Section 1902(a)(33)(A) of such Act is amended by striking out "penultimate sentence" and inserting in lieu thereof "second sentence".

(8) Section 1902(a)(42)(B) of such Act is amended by striking out "part" and inserting in lieu thereof "title".

(9) Section 1902(a) of such Act is amended by striking out "For purposes of paragraphs (9)(A)" and all that follows through "do not include" in the last sentence of the third to last paragraph and inserting in lieu thereof "The provisions of paragraphs (9)(A), (31), and (33) and of section 1903(i)(4) shall not apply to".

(10) Section 1902(f) of such Act is amended by striking out "clause (10)(A)" and "clause (10)(C)" and inserting in lieu thereof "paragraph (10)(A)" and "paragraph (10)(C)", respectively, each place each appears.

(11) Section 1903(g)(4)(B) of such Act is amended—

(A) by striking out "paragraph (26)" and inserting in lieu thereof "paragraphs (26)", and

(B) by striking out "deligence" and inserting in lieu thereof "diligence".

(12) Section 1903(m)(2)(B)(i) of such Act is amended—

(A) by striking out "(II)" before "for the period",

(B) by striking out "of such section" in subclause (II) and inserting in lieu thereof "of section 1905(a)", and

(C) by striking out "peroid" and inserting in lieu thereof "period".

(13) Section 1903(m)(2) of such Act is amended by aligning subparagraph (C) flush with the left margin.

(14) Section 1903(s)(3)(B) of such Act is amended by striking out "nonfederal" and inserting in lieu thereof "non-Federal".

(15) Section 1905(a)(4) of such Act is amended by inserting a semicolon before "(B)".

(16) Section 1905(a)(17) of such Act is amended by striking out "he" and inserting in lieu thereof "the nurse-midwife" each place it appears.

(17) The last sentence of section 1905(a) of such Act is amended by striking out "clauses (vi)" and inserting in lieu thereof "clause (vi)", and by striking out "well being" and inserting in lieu thereof "well-being".

(18) The second sentence of section 1905(b) of such Act is amended by striking out everything that follows "the provisions of" and inserting in lieu thereof "section 1101(a)(8)(B).".

(19) Section 1905(d)(1) of such Act is amended by striking out "which meet" and inserting in lieu thereof "the institution meets".

(20) Section 1905(m) of such Act is amended by striking out "he" each place it appears and inserting in lieu thereof "the nurse".

(21) Section 1915(c)(1) of such Act is amended by striking out "under this part" and inserting in lieu thereof "under this title".

(c)(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State during the moratorium period described in paragraph (2) by reason of such State's plan under title XIX of the Social Security Act being determined to be in violation of section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section.

(2) The moratorium period is the period beginning on the date of the enactment of this Act and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

Subtitle C—Recovery of Hill-Burton Funds

RECOVERY OF HILL-BURTON FUNDS

SEC. 2381. (a) Section 609 of the Public Health Service Act is amended to read as follows:

"RECOVERY

SEC. 609. (a) If any facility with respect to which funds have been paid under section 606 shall, at any time within 20 years after the completion of construction or modernization—

"(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 605, or (B) which is not approved as a transferee by the State agency designated pursuant to section 604, or its successor, or

"(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c).

"(b) The transferor of a facility which is sold or transferred as described in subsection (a)(1), or the owner of a facility the use of which is changed as described in subsection (c)(2), shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

"(c)(1) Except as provided in paragraph (2), the amount of United States shall be entitled to recover under subsection (a) is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

"(2)(A) After the expiration of—

"(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b), in the case of a facility which is sold or transferred or the use of which changes after the date of the enactment of this subsection, or

"(ii) thirty days after the date of the enactment of this subsection or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b), in the case of a facility which was sold or transferred or the use of which changed before the date of the enactment of this subsection.

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly ninety-day Treasury bill auction rate.

"(B) The period referred to in subparagraph (A) is the period beginning—

"(i) in the case of a facility which was sold or transferred or the use of which changed before the date of the enactment of this subsection, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b),

"(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b), upon the expiration of 180 days after the receipt of such notice, or

"(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b), on the date of the sale, transfer, or change of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

"(d)(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

"(A) has established an irrevocable trust—

"(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (2) of section 603(e) or the amount, determined under subsection (c), that the amount, determined under subsection (c), that the United States is entitled to recover, and

"(ii) which will only be used by the entity to provide the care required by clause (2) of section 603(e); and

"(B) will meet the obligation of the facility under clause (1) of section 603(e).

"(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

"(e) The right of recovery of the United States under subsection (a) shall not constitute a lien on any facility with respect to which funds have been paid under section 606.".

(b) Section 1622 of such Act is amended to read as follows:

"RECOVERY

"Sec. 1622. (a) If any facility with respect to which funds have been paid under this title shall, at any time within 20 years after the completion of construction or modernization—

"(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 1621 or 1642 or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor, or

"(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c).

"(b) The transferor of a facility which is sold or transferred as described in subsection (a)(1), or the owner of a facility the use of which is changed as described in subsection (a)(2), shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

"(c)(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

"(2)(A) After the expiration of—

"(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) in the case of a facility which is sold or transferred or the use of which changes after the date of the enactment of this subsection, or

"(ii) thirty days after the date of enactment of this subsection or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b), in the case of a facility which was sold or transferred or the use of which changed before the date of the enactment of this subsection,

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rate.

"(B) The period referred to in subparagraph (A) is the period beginning—

"(i) in the case of a facility which was sold or transferred or the use of which changed before the date of the enactment of this subsection, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b).

"(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b), upon the expiration of 180 days after the receipt of such notice, or

"(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b), on the date of the sale, transfer, or changessation for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

"(d)(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

"(A) has established an irrevocable trust—

"(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (ii) of section 1621(b)(1)(K) or the amount, determined under subsection (c), that the United States is entitled to recover, and

"(ii) which will only be used by the entity to provide the care required by clause (ii) of section 1621(b)(1)(K); and

"(B) will meet the obligation of the facility under clause (i) of section 1621(b)(1)(K).

"(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

"(e) The right of recovery of the United States under subsection (a) shall not constitute a lien on any facility with respect to which funds have been paid under this title.".

(c) Not later than the expiration of the one-hundred-and-eighty-day period beginning on the date of the enactment of this section, the Secretary shall have in effect regulations and personnel to place in effect the amendments made by this section.

Subtitle D—Uncompensated Services Provided by Skilled Nursing Facilities and Intermediate Care Facilities

STUDY

Sec. 2391. (a) The Secretary of Health and Human Services shall conduct a study relating to compliance with sections 603(e)(2) and 1621(b)(1)(K)(ii) of the Public Health Service Act (as such sections were in effect on September 30, 1979) to determine whether the regulations implementing such sections should distinguish between hospitals and long-term care facilities assisted under titles VI and XVI of such Act. Not later than January 1, 1985, the Secretary shall transmit to the Congress a report of the results of the study.

(b) Subsection (a) shall take effect October 1, 1984.

TITLE IV—SMALL BUSINESS PROGRAMS

SBA DISASTER LOANS

Sec. 2401. Section 18(a) of the Small Business Act is amended by striking out "October 1, 1986" and by inserting in lieu thereof "October 1, 1987".

TITLE V—VETERANS' PROGRAMS

PART A—COST SAVINGS UNDER THE VETERANS' ADMINISTRATION PENSION PROGRAM

EFFECTIVE DATE FOR AWARD OF PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH

Sec. 2501. (a)(1) Subsection (b)(3) of section 3010 of title 38, United States Code, is amended—

(A) by inserting "(A)" after "(3)";

(B) by inserting "described in subparagraph (B) of this paragraph" after "to a veteran";

(C) by striking out "an application therefor is received" and inserting in lieu thereof "the veteran applies for a retroactive award"; and

(D) by adding at the end the following new subparagraph:

"(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.".

(2) Subsection (d) of such section is amended to read as follows:

"(d)(1) The effective date of an award of death compensation or dependency and indemnity compensation for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

"(2) The effective date of an award of death pension for which application is received within 45 days from the date of death shall be the first day of the month in which the death occurred.".

(b) The amendments made by subsection (a)(1) and the provisions of paragraph (2) of section 3010(d) of title 38, United States Code, as added by subsection (a)(2), shall take effect with respect to applications that are first received after September 30, 1984, for benefits under chapter 15 of title 38, United States Code.

PART B—ACTIONS TO INCREASE RECEIPTS AND REDUCE COSTS UNDER THE VETERANS' ADMINISTRATION HOME-LOAN GUARANTY PROGRAM

INCREASE IN FEE FOR HOME LOANS GUARANTEED BY THE VETERANS' ADMINISTRATION AND EXTENSION OF FEE TO VENDEE LOANS

Sec. 2511. (a) Section 1829 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "and from each person obtaining a loan from the Administrator to finance the purchase of real property from the Administrator," after "under this chapter,";

(B) by striking out "one-half of"; and

(C) by striking out "to the veteran" after "in the loan";

(2) by striking out subsection (c); and

(3) by redesignating subsection (d) as subsection (c) and striking out "September 30, 1985" in such subsection and inserting in lieu thereof "September 30, 1987".

(b) Section 1824(c) of such title is amended by striking out "and (2)" and inserting in lieu thereof "(2) amounts received by the Administrator as fees collected under section 1829 of this title, and (3)".

(c)(1) The amendments made by subsection (a)(1) shall apply with respect to loans closed after the end of the 30-day period beginning on the date of the enactment of this Act.

(2) The amendments made by subsections (a)(2) and (b) shall apply with respect to loans closed on or after the date of the enactment of this Act.

(3) The amendment made by subsection (a)(3) shall take effect on the date of the enactment of this Act.

ACTIONS TO REDUCE COSTS UNDER HOME-LOAN PROGRAM

SEC. 2512. (a) Section 1816 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by designating the first sentence as paragraph (1), the second and third sentences as paragraph (2), and the fourth sentence as paragraph (3);

(B) by striking out "Administrator who shall thereupon" in paragraph (1) (as so designated) and inserting in lieu thereof "Administrator of such default. Upon receipt of such notice, the Administrator may, subject to subsection (c) of this section,"; and

(C) by striking out "guaranteed, and shall" in paragraph (1) (as so designated) and inserting in lieu thereof "guaranteed. If the Administrator makes such a payment, the Administrator shall"; and

(2) by adding at the end the following new subsections:

"(c)(1) For purposes of this subsection—

"(A) The term 'defaulted loan' means a loan that is guaranteed under this chapter, that was made for a purpose described in section 1810(a) of this title, and that is in default.

"(B) The term 'liquidation sale' means a judicial sale or other disposition of real property to liquidate a defaulted loan that is secured by such property.

"(C) The term 'net value', with respect to real property, means the amount equal to (i) the fair market value of the property, minus (ii) the total of the amounts which the Administrator estimates the Administrator would incur (if the Administrator were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, resale, and other costs resulting from the acquisition and disposition of the property.

"(D) The term 'total indebtedness', with respect to a defaulted loan, means the amount equal to the total of (i) the unpaid principal of the loan, (ii) the interest on the loan as of the date of the liquidation sale of the property securing the loan (or such earlier date following the expiration of a reasonable period of time for such sale to occur as the Administrator may specify pursuant to regulations prescribed by the Administrator to implement this subsection), and (iii) such reasonably necessary and proper charges (as specified in the loan instrument and permitted by such regulations) associated with liquidation of the loan, including advances for taxes, insurance, and maintenance or repair of the real property securing the loan.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, this subsection applies to any case in which the holder of a defaulted loan undertakes to liquidate the loan by means of a liquidation sale.

"(B) This subsection does not apply to a case in which the Administrator proceeds under subsection (a)(2) of this section.

"(3)(A) Before carrying out a liquidation sale of real property securing a defaulted loan, the holder of the loan shall notify the Administrator of the proposed sale. Such notice shall be provided in accordance with regulations prescribed by the Administrator to implement this subsection.

"(B) After receiving a notice described in subparagraph (A) of this paragraph, the Administrator shall determine the net value of the property securing the loan and the amount of the total indebtedness under the loan and shall notify the holder of the loan of the determination of such net value.

"(4) A case referred to in paragraphs (5), (6), and (7) of this subsection as being described in this paragraph is a case in which the net value of the property securing a defaulted loan exceeds the amount of the total indebtedness under the loan minus the amount guaranteed under this chapter.

"(5) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan acquires the property securing the loan at a liquidation sale for an amount that does not exceed the lesser of the net value of the property or the total indebtedness under the loan—

"(A) the holder shall have the option to convey the property to the United States in return for payment by the Administrator of an amount equal to the lesser of such net value or total indebtedness; and

"(B) the liability of the United States under the loan guaranty under this chapter shall be limited to the amount of such total indebtedness minus the net value of the property.

"(6) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan either does not acquire the property securing the loan at the liquidation sale or acquires the property at such sale for an amount that exceeds the lesser of the net value of the property or the total indebtedness under the loan—

"(A) the Administrator may not accept conveyance of the property except as provided in paragraph (7) of this subsection; and

"(B) the liability of the United States under the loan guaranty under this chapter shall be limited to the amount equal to (i) the amount of such total indebtedness, minus (ii) the amount realized by the holder incident to the sale or the net value of the property, whichever is greater.

"(7) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan acquires the property securing the loan at the liquidation sale for an amount that exceeds the lesser of the total indebtedness under the loan or the net value and that was the minimum amount for which, under applicable State law, the property was permitted to be sold at the liquidation sale—

"(A) the Administrator may accept conveyance of the property to the United States for a price not exceeding the lesser of the amount for which the holder acquired the property or the total indebtedness under the loan; and

"(B) the liability of the United States under the loan guaranty under this chapter is as provided in paragraph (6)(B) of this subsection.

"(8) If the net value of the property securing a defaulted loan is not greater than the amount of the total indebtedness under the loan minus the amount guaranteed under this chapter—

"(A) the Administrator may not accept conveyance of the property from the holder of the loan; and

"(B) the liability of the United States under the loan guaranty shall be limited to the amount of the total indebtedness under the loan minus the amount realized by the holder of the loan incident to the sale at a liquidation sale of the property.

"(9) In no event may the liability of the United States under a guaranteed loan exceed the amount guaranteed with respect to that loan under section 1803(b) of this title. All determinations under this subsection of net value and total indebtedness shall be made by the Administrator.

"(d)(1) Of the number of purchases made during any fiscal year of real property acquired by the Administrator as the result of a default on a loan guaranteed under this chapter for a purpose described in section 1810(a) of this title, not more than 75 percent, nor less than 60 percent, of such purchases may be financed by a loan made by the Administrator. The maximum percentage stated in the preceding sentence may be increased to 80 percent for any fiscal year if the Administrator determines that such an increase is necessary in order to maintain the effective functioning of the loan guaranty program.

"(2) In carrying out paragraph (1) of this subsection, the Administrator, to the maximum extent consistent with that paragraph and with maintaining the effective functioning of the loan guaranty program under this chapter, shall minimize the number of loans made by the Administrator to finance purchases of real property from the Administrator described in that paragraph.

"(3) Notes securing such loans may be sold with recourse only to the extent that the Administrator determines that selling such notes with recourse is necessary in order to maintain the effective functioning of the loan guaranty program under this chapter.".

(b)(1) Subchapter III of chapter 37 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 1830. Use of attorneys in court

"(a) Within 180 days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right of the United States to bring suit in court to foreclose a loan made or acquired by the Administrator under this chapter and to recover possession of any property acquired by the Administrator under this chapter. With the concurrence of the Attorney General of the United States, the Administrator may acquire the services of attorneys, other than those who are employees of the Veterans' Administration, to exercise that right. The activities of attorneys in bringing suit under this section shall be subject to the direction and supervision of the Attorney General and to such terms and conditions as the Attorney General may prescribe.

"(b) Nothing in this section derogates from the authority of the Attorney General under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party."

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1829 the following new item:

"1830. Use of attorneys in court.".

(c)(1) The amendments made by subsection (a) shall take effect on October 1, 1984.

(2) Subsections (c) and (d) of section 1816 of title 38, United States Code (as added by subsection (a) of this section), shall cease to have effect on October 1, 1987.

(3) The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

(d) Not later than 180 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs and the Attorney General of the United States shall submit to the appropriate committees of the Congress a joint report that—

(1) describes and explains the actions taken by the Administrator and the Attorney General to implement section 1830 of title 38, United States Code, as added by subsection (b); and

(2) sets forth their views with respect to the advisability of actions, pursuant to the second sentence of subsection (a) of such section, to employ private attorneys to bring actions described in that section.

(e)(1) Not later than December 1, 1986, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the administration and functioning of the loan guaranty program conducted by the Veterans' Administration under chapter 37 of title 38, United States Code, and the status of the Veterans' Administration Loan Guaranty Revolving Fund established under section 1824(a) of such title.

(2) The report shall include—

(A) a description of the actions taken by the Administrator during the period beginning on June 1, 1984, and ending on September 30, 1986, and the actions planned as of September 30, 1986 (together with a schedule for completing any actions planned), to maintain the effective functioning of that program and to ensure the solvency of the Fund, including actions with respect to the acquisition of properties following liquidation sales, the making of loans (known as "vendee loans") to finance the sale of properties so acquired, the quality of property appraisals by the Veterans' Administration, and assessments of home-buyer credit worthiness;

(B) the Administrator's evaluation of the effects of the amendments made by subsection (a) (relating to acquisition of properties after liquidation sales and to vendee loans), including the Administrator's evaluation of the effects of subsection (d) of section 1816 of title 38, United States Code (as added by subsection (a)(2)) (relating to vendee loans), on the operation and effective functioning of such program; and

(C) the recommendations of the Administrator regarding any need for administrative or legislative action with respect to such program, including the Administrator's recommendations as to whether or not subsection (c)(2) (providing for the termination of provisions relating to the acquisition of properties and to vendee loans) should be amended.

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Subtitle A—Improvements in OASDI Program

SOCIAL SECURITY COVERAGE FOR FEDERAL EMPLOYEES; TREATMENT OF LEGISLATIVE BRANCH EMPLOYEES NOT COVERED BY CIVIL SERVICE RETIREMENT SYSTEM

SEC. 2601. (a)(1) Section 210(a)(5)(B) of the Social Security Act is amended to read as follows:

"(B) is performed by an individual who—

"(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

"(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

"(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

"(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code,

then the service performed for that Institute shall be considered service described in subparagraph (A), and

"(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A); or

"(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);".

(2) Section 210(a)(5) of such Act is further amended (in the matter which follows "except that this paragraph shall not apply with respect to—")—

(A) by striking out "(i)", "(ii)", "(iii)", "(iv)", and "(v)" and inserting in lieu thereof "(C)", "(D)", "(E)", "(F)", and "(G)", respectively;

(B) by striking out "(I)", "(II)", and "(III)" and inserting in lieu thereof "(i)", "(ii)", and "(iii)", respectively; and

(C) by striking out subparagraph (G) (as redesignated by subparagraph (A) of this paragraph) and inserting in lieu thereof the following:

"(G) Any other service in the legislative branch of the Federal Government if such service—

"(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

"(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

"(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);".

(b)(1) Section 3121(b)(5)(B) of the Internal Revenue Code of 1954 is amended to read as follows:

"(B) is performed by an individual who—

"(i) has been continuously performing service described in paragraph (A) since December 31, 1983, and for purposes of this clause—

"(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

"(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

"(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute in Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code, then the service performed for that Institute shall be considered service described in subparagraph (A), and

"(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A); or

"(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);".

(2) Section 3121(b)(5) of such Code is further amended (in the matter which follows "except that this paragraph shall not apply with respect to—")—

(A) by striking out "(i)", "(ii)", "(iii)", "(iv)", and "(v)" and inserting in lieu thereof "(C)", "(D)", "(E)", "(F)", and (G)", respectively;

(B) by striking out "(I)", "(II)", and "(III)", and inserting in lieu thereof "(i)", "(ii)", "(iii)", respectively; and

(C) by striking out subparagraph (G) (as redesignated by subparagraph (A) of this paragraph) and inserting in lieu thereof the following:

"(G) any other service in the legislative branch of the Federal Government if such service—

"(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

"(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

"(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);".

(c) For purposes of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954, an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, if he is contributing a reduced amount by reason of the Federal Empoyees' Retirement Contribution Temporary Adjustment Act of 1983.

(d)(1) Any individual who—

(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act), and

(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(iii) of the Social Security Act applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act, requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1954 as if the cessation of coverage under title 5 had not occurred.

(2) An individual meeting the requirements of subpargraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code.

(e)(1) For purposes of section 210(a)(5) of the Social Security Act (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1954 (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1954 by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, service described in paragraph (1) which is also "employment" for purposes of title II of the Social Security Act, shall be considered to be "covered service".

(f) Except as provided in subsection (d), the amendments made by subsections (a) and (b) (and the provisions of subsection (3)) shall be effective with respect to service performed after December 31, 1983.

PROCEDURES TO PREVENT OVERPAYMENTS DUE TO FAILURE TO REPORT EARNINGS

Sec. 2602. (a) Section 203(h) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this title as a result of such individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.".

(b) The amendment made by subsection (a) shall be effective upon the date of the enactment of this Act.

SPECIAL SOCIAL SECURITY TREATMENT FOR CHURCH EMPLOYEES

Sec. 2603. (a)(1) Section 210(a)(8) of the Social Security Act is amended by inserting "(A)" after "(8)" by striking out "this paragraph" and inserting in lieu thereof "this subparagraph", and by adding at the end thereof the following new subparagraph:

"(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1954, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);".

(2) Section 3121(b)(8) of the Internal Revenue Code of 1954 is amended by inserting "(A)" after "(8)", by striking out "this paragraph" and inserting in lieu thereof "this subparagraph", and by adding at the end thereof the following new subparagraph:

"(B) service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under subsection (w), other than service in an unrelated trade or business (within the meaning of section 513(a));".

(b) Section 3121 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(w) Exemption of Churches and Qualified Church-Controlled Organizations.—

"(1) General rule.—Any church or qualified church-controlled organization (as defined in paragraph (3)) may make an election within the time period described in paragraph (2), in accordance with such procedures as the Secretary determines to be appropriate, that services performed in the employ of such church or organization shall be excluded from employment for purposes of title II of the Social Security Act and chapter 21 of this Code. An election may be made under this subsection only if the church or qualified church-controlled organization states that such church or organization is opposed for religious reasons to the payment of the tax imposed under section 3111.

"(2) Timing and duration of election.—An election under this subsection must be made prior to the first date, more than 90 days after the date of the enactment of this subsection, on which a quarterly employment tax return for the tax imposed under section 3111 is due, or would be due but for the election, from such church or organization. An election under this subsection shall apply to current and future employees, and shall apply to service performed after December 31, 1983. The election may not be revoked by the church or organization, but shall be permanently revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Such revocation shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.

"(3) Definitions—

"(A) For purposes of this subsection, the term 'church' means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

"(B) For purposes of this subsection, the term 'qualified church-controlled organization' means any church-controlled tax-exempt organization described in section 501(c)(3), other than an organization which—

"(i) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

"(ii) normally receives more than 25 percent of its support from either (I) governmental sources, or (II) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.".

(c)(1) Section 211(c)(2) of the Social Security Act is amended—

(A) by striking out "and" at the end of subparagraph (E);

(B) by striking out the semicolon at the end of subparagraph (F) and inserting in lieu thereof ", and"; and

(C) by adding at the end thereof the following new subparagraph:

"(G) service described in section 210(a)(8)(B);". (2) Section 1402(c)(2) of the Internal Revenue Code of 1954 is amended—

(A) by striking out "and" at the end of subparagraph (E);

(B) by striking out the semicolon at the end of subparagraph (F) and inserting in lieu thereof ", and"; and

(C) by adding at the end thereof the following new subparagraph:

"(G) service described in section 3121(b)(8)(B);".

(d)(1) Section 211(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (11);

(B) by striking out the period at the end of paragraph (12) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (12) the following new paragraph:

"(13) With respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G)—

"(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

"(B) the provisions of subsection (b)(2) shall not apply; and

"(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.".

(2) Section 1402(a) of the Internal Revenue Code of 1954 is amended—

(A) by striking out "and" at the end of paragraph (12);

(B) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (13) the following new paragraph:

"(14) with respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G)—

"(A) no deduction for trade or business expenses provided under this Code (other than the deduction under paragraph (12)) shall apply;

"(B) the provisions of subsection (b)(2) shall not apply; and

"(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.".

(e) The amendments made by this section shall apply to service performed after December 31, 1983.

(f) In any case where a church or qualified church-controlled organization makes an election under section 3121(w) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes.

Subtitle B—Improvements in SSI and AFDC Programs

Part I—Improvements in SSI Program

INCREASE IN DOLLAR LIMITATION UNDER ASSETS TEST

SEC. 2611. (a) Section 2611(a)(1)(B) of the Social Security Act is amended—

(1) by striking out "$2,250" and inserting in lieu thereof "the applicable amount determined under paragraph (3)(A)"; and

(2) by striking out "$1,500" and inserting in lieu thereof "the applicable amount determined under paragraph (3)(B)".

(b) Section 1611(a)(2)(B) of such Act is amended by striking out "$2,250" and inserting in lieu therof "the applicable amount determined under paragraph (3)(A)".

(c) Section 1611(a) of such act is further amended by adding at the end thereof the following new paragraph:

"(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,550 on January 1, 1986, to $2,700 on January 1, 1987, to $2,850 on January 1, 1988, and to $3,000 on January 1, 1989.

"(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $1,900 on January 1, 1988, and to $2,000 on January 1, 1989.".

(d) Section 1621(b)(2)(B) of such Act is amended—

(1) by striking out "$1,500" and inserting in lieu thereof "the applicable amount determined under section 1611(a)(3)(B)"; and

(2) by striking out "$1,250" and inserting in lieu thereof "the applicable amount determined under section 1611(a)(3)(A)".

LIMITATION OF RECOUPMENT RATE IN CASE OF OVERPAYMENTS

SEC. 2612. (a) Section 1631(b)(1) of the Social Security Act is amended—

(1) by inserting "(A)" after "The Secretary" in the second sentence; and

(2) by striking out the period at the end of the second sentence and inserting in lieu thereof the following: ", and (B) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving benefit payments under this title (including supplementary payments of the type described in section 1616(a) and payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), in amounts which in the aggregate do not exceed (for any month) the lesser of (i) the amount of his or their benefit under this title for that month or (ii) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding any other income excluded pursuant to section 1612(b)), unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Secretary determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (B) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (A) of such sentence.".

(b) If an adjustment referred to in section 1631(b)(1) of the Social Security Act is in effect with respect to an individual or eligible spouse on the date of the enactment of this Act, and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act, as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii).

TREATMENT OF OVERPAYMENTS WHEN RECIPIENT'S COUNTABLE ASSETS EXCEED LIMITS IN CERTAIN CASES

SEC. 2613. Section 1631(b) of the Social Security Act is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) If any government with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1611(a) by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Secretary finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.".

EXCLUSION OF UNDERPAYMENTS FROM RESOURCES

SEC. 2614. Section 1613(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (6) the following new paragraph:

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this title or title II, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 6 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount.".

ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT OF RETROACTIVE BENEFITS UNDER TITLE II

SE. 2615. (a) Section 1127 of the Social Security Act is amended to read as follows:

"ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT OF RETROACTIVE BENEFITS UNDER TITLE II

"SEC. 1127. (a) Notwithstanding any other provision of this Act, in any case where an individual—

"(1) is entitled to benefits under title II that were not paid in the months in which they were regularly due; and

"(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under title II that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under title II in the month or months in which they were regularly due.

"(b) For purposes of this section, the term 'supplemental security income benefits' means benefits paid or payable by the Secretary under title XVI, including State supplementary payments under an agreement pursuant to section 1616(a) or an administration agreement under section 212(b) of Public Law 93-66.

"(c) From the amount of the reduction made under subsection (a), the Secretary shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under title II at the times they were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.".

(b) The amendment made by this section shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.

EXCLUSION FROM INCOME OF CERTAIN ALASKA BONUS PAYMENTS

SEC. 2616. Section 1612(b)(2)(B) of the Social Security Act is amended to read as follows:

"(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983.".

Part 2—Improvements in AFDC Program

GROSS INCOME LIMITATION

SEC. 2621. Section 402(a)(18) of the Social Security Act is amended by striking out "150 percent of the State's standard of need" and inserting in lieu thereof "185 percent of the State's standard of need".

WORK EXPENSE DEDUCTION

SEC. 2622. Section 402(a)(8)(A)(ii) of the Social Security Act is amended by striking out all that follows "the first $75 of the total of such earned income for such month" and inserting in lieu thereof a semicolon.

CONTINUATION OF $30 DISREGARD FROM EARNED INCOME

SEC. 2623. (a) Section 402(a)(8)(A)(iv) of the Social Security Act is amended by inserting "(I)" after "equal to", and by inserting "(II)" after "plus".

(b) Section 402(a)(8)(B)(ii)(I) of such Act is amended—

"(1) by striking out all that precedes "specified in subparagraph (A)(ii)" and inserting in lieu thereof the following:

"(I) shall not disregard—

"(a) under subclause (II) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for four consecutive months while they were receiving aid under the plan, or

"(b) under subclause (I) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for twelve consecutive months while they were receiving aid under the plan, any earned income of any of the persons"; and

"(2) by striking out "and subparagraph (A)(iv) has not already been applied to their income for four consecutive months while they were receiving aid under the plan".

(c) Section 402(a)(8)(B)(ii)(II) of such Act is amended by striking out "shall not apply" where it first appears and all that follows down through "any month thereafter" and inserting in lieu thereof the following: "shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter".

WORK TRANSITION IN THE CASE OF CERTAIN FAMILIES WHO LOSE AFDC BENEFITS BECAUSE OF EARNED INCOME

SEC. 2624. (a) Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (35);

(2) by striking out the period at the end of paragraph (36) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (36) the following new paragraph:

"(37) provide that, in any case where a family has ceased to receive aid under the plan because (by reason of paragraph (8)(B)(ii)(II)) the provisions of paragraph (8)(A)(iv) no longer apply, such family shall be considered for purposes of title XIX to be receiving aid to families with dependent children under such plan for a period of 9 months after the last month for which the family actually received such aid; and the State may at its option extend such period by an additional period of up to 6 months in the case of a family that would be eligible during such additional period to receive aid under the plan (without regard to this paragraph) if such paragraph (8)(A)(iv) applied.".

(b)(1) The amendments made by this section shall apply with respect to months beginning on or after October 1, 1984.

(2) Such amendments shall apply with respect to families which ceased to receive aid under the applicable State plan (for the reason stated in section 402(a)(37) of the Social Security Act as added by subsection (a) of this section) before October 1, 1984, as well as with respect to families which cease to receive aid (for that reason) on or after that date; but any family which ceased to receive such aid before that date, in order to be eligible to be treated as receiving aid under the plan for any period after ceasing to receive such aid (as provided for in such section 402(a)(37))—

(A) must make its application for such treatment no later than the end of the sixth month after the month in which final regulations governing the application of such section 402(a)(37) are promulgated by the Secretary of Health and Human Services (and in the case of any such family the term "last month for which the family actually received such aid" as used in such section 402(a)(37) means the month before the month in which the family makes such application);

(B) must be a family that would have been continuously eligible for aid under the State plan (without regard to the amendments made by this section), from the time it ceased to receive such aid to the time of its application under subparagraph (A), if section 402(a)(8)(A)(iv) of such Act applied; and

(C) must fully disclose, in its application under subparagraph (A), any health insurance coverage which its members may have in effect.

CLARIFICATION OF EARNED INCOME PROVISION

SEC. 2625. (a) Section 402(a)(8) of the Social Security Act is amended by striking out "and" at the end of subparagraph (A), by adding "and" at the end of subparagraph (B), and by adding at the end thereof the following new subparagraph:

"(C) provide that in implementing this paragraph the term 'earned income' shall mean gross earned income, prior to any deductions for taxes or for any other purposes;".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

EXCLUSION FROM LIMITATION ON FAMILY RESOURCES

SEC. 2626. Section 402(a)(7)(B) of the Social Security Act is amended by inserting "(i)" after "for purposes of this subparagraph", and by inserting before the semicolon at the end thereof the following: ", (ii) under regulations prescribed by the Secretary, burial plots (one for each such child, relative, and other individual), and funeral agreements or (iii) for such period or periods of time as the Secretary may prescribe, real property which the family is making a good-faith effort to dispose of, but any aid payable to the family for any such period shall be conditioned upon such disposal, and any payments of such aid for that period shall (at the time of the disposal) be considered overpayments to the extent that they would not have been made had the disposal occurred at the beginning of the period for which the payments of such aid were made".

FEDERAL MATCHING FOR EXPENSES INCURRED BY STATES IN REIMBURSING AFDC RECIPIENTS FOR TRANSPORTATION AND DAY CARE COSTS ATTRIBUTABLE TO PARTICIPATION IN CWEP

SEC. 2627. Section 409(a)(1)(F) of the Social Security Act is amended—

(1) by inserting "(i) except as provided in clause (ii)" after "that"; and

(2) by inserting before the period at the end thereof the following: ", and (ii) to the extent that the State is unable to provide for the costs involved through the furnishing of services directly to the individuals participating in the program, participants who are recipients of aid under the State's plan approved under section 402 will instead be reimbursed for transportation costs directly related to their participation in the program (in amounts equal to the cost of transportation by the most appropriate means as determined by the State agency), and for day care expenses directly attributable to such participation (in amounts determined by the State agency to be reasonable, necessary, and cost-effective but not in excess of the comparable maximum day care deduction allowed under section 402(a)(8)(A)(iii) for recipients of aid under the plan generally); and amounts paid as reimbursement to participants under clause (i) or (ii) shall be considered, for purposes of section 403(a), to be expenditures made for the proper and efficient administration of the State's plan approved under section 402".

MONTHLY REPORTING AND RETROSPECTIVE BUDGETING

SEC. 2628. (a) Section 402(a)(13) of the Social Security Act is amended—

(1) by striking out "provide that—" and inserting in lieu thereof "with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—"; and

(2) by striking out "but only where the Secretary determines it to be appropriate" in subparagraphs (A) and (B) and inserting in lieu thereof "(but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14))".

(b) Section 402(a)(14) of such Act is amended—

(1) by striking out "(A) provide that" and inserting in lieu thereof "with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A) that";

(2) by striking out "with the prior approval of the Secretary" and inserting in lieu thereof "(with the prior approval of the Secretary in recent work history and earned income cases)"; and

(3) by striking out "upon the State's showing to the satisfaction of the Secretary that" and inserting in lieu thereof "upon a determination that".

(c) Section 402(a) of such Act is further amended by adding at the end thereof (after and below paragraph (37), as added by section 2624(a) of this Act) the following new sentence: "The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977.".

TREATMENT OF EARNED INCOME TAX CREDIT IN DETERMINING COUNTABLE INCOME

SEC. 2629. Section 402(d)(1) of the Social Security Act is amended to read as follows:

"(1) For purposes of paragraphs (7) and (8) of subsection (a), any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income.".

FEDERALLY ASSISTED PILOT PROJECTS TO DEMONSTRATE ONE-STOP SERVICE DELIVERY SYSTEMS

SEC. 2630. Part A of title XI of the Social Security Act is amended by adding at the end thereof the following new section:

"PILOT PROJECTS TO DEMONSTRATE THE USE OF INTEGRATED SERVICE DELIVERY SYSTEMS FOR HUMAN SERVICES PROGRAMS

"SEC. 1136. (a) In order to develop and demonstrate ways of improving the delivery of services to individuals and families who need them under the various human services programs, by eliminating programmatic fragmentation and thereby assuring that an applicant for services under any one such program will be informed of and have access to all of the services which may be available to him or his family under the other human services programs being carried out in the community involved, any State having an approved plan under part A of title IV may, subject to the provisions of this section, establish and conduct one or more pilot projects to demonstrate the use of integrated service delivery systems for human services programs in that State or in one or more political subdivisions thereof.

"(b) The integration of service delivery systems for human services programs in any State or locality under a pilot project established under this section shall involve or include—

"(1) the development of a common set of terms for use in all of the human services programs involved;

"(2) the development for each applicant of a single comprehensive family profile which is suitable for use under all of the human services programs involved;

"(3) the establishment and maintenance of a single resources directory by which the citizens of the community involved may be informed of an gain access to the services which are available under all such programs;

"(4) the development of a unified budget and budgeting process, and a unified accounting system, with standardized audit procedures;

"(5) the implementation of unified planning, needs assessment, and evaluation;

"(6) the consolidation of agency locations and related transportation services;

"(7) the standardization of procedures for purchasing services from nongovermental sources;

"(8) the creation of communications linkages among agencies to permit the serving of individual and family needs across program and agency lines;

"(9) the development, to the maximum extent possible, of uniform application and eligibility determination procedures; and

"(10) any other methods, arrangements, and procedures which the Secretary determines are necessary or desirable for, and consistent with, the establishment and operation of an integrated service delivery system.

"(c)(1) Any State which desires to establish and conduct a pilot project under this section, after having published a description of the proposed project and invited comments thereon from interested persons in the community or communities which would be affected, shall submit an application to the Secretary (in such form and containing such information as the Secretary may require) within 6 months after the date of the enactment of this section. The proposed project may be statewide in operation or may be limited to one or more political subdivisions of the State; and the application shall in any event include or be accompanied by satisfactory assurances that the project as proposed would be permitted under applicable State and local law.

"(2) The Secretary shall consider all applications and accompanying comments and materials which are submitted under paragraph (1), and, no later than 9 months after the date of the enactment of this section, shall approve no fewer than 3 nor more than 5 of the proposed projects (including one such project to be operated on a statewide basis). In considering and approving such applications the Secretary shall take into account the size and characteristics of the population that would be served by each proposed project, the desirability of wide geographic distribution among the projects, the number and nature of the human services programs which are in active operation in the various communities involved, and such other factors as may tend to indicate whether or not a particular proposed project would provide a useful and effective demonstration of the value of an integrated service delivery system. Each project approved under this paragraph shall be deemed for purposes of this section to begin on the first day of the month following the month in which the application with respect to such project is approved.

"(3) The Secretary shall approve any application for a project under this section only after determining that the conduct of such project will not lower or restrict the levels of aid, assistance, benefits, or services, or the income or resource standards, deductions, or exclusions, under any of the human services programs involved, and will not delay the provision of aid, assistance, benefits, or services under any of such programs.

"(d)(1) Any State whose application is approved under subsection (c) may submit to the Secretary a request for the waiver of any requirement which would otherwise apply with respect to the proposed project under any of the laws governing the human services programs to be included in the project; and—

"(A) if the law involved is within the jurisdiction of the Secretary and authority to grant the waiver involved is otherwise available to the Secretary under this title, title IV, or any other provision of law, the Secretary shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system; and

"(B) if the law involved is within the jurisdiction of a Federal agency other than the Department of Health and Human Services and authority to grant the waiver involved is available to the head of such other agency under that law or any other provision of law, the Secretary shall transmit such request (on behalf of the requesting State) to the head of such other agency, who shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system and who shall certify such approval to the Secretary.

"(2) If under the law governing any of the human services programs included within a project there are provisions establishing safeguards which limit or restrict the use or disclosure of information (concerning applicants for or recipients of benefits or services) which has been obtained or developed by the agency involved in the conduct of that program, and a waiver of such provisions is granted under paragraph (1) in order to make such information available for purposes of the project—

"(A) the State shall provide each applicant for and recipient of aid, assistance, benefits, or services under the proposed integrated service delivery system with a clear and readily comprehensible notice that such information may be disclosed to and used by project personnel, or exchanged with the other agencies having responsibility for human services programs included within the project;

"(B) the State shall take such steps as may be necessary to ensure that the information disclosed will be used only for purposes of, and by persons directly connected with, such project; and

"(C) the State's application with respect to the project under subsection (c) shall contain or be accompanied by satisfactory assurances that the preceding requirements of this paragraph will be fully complied with.

"(e) The Secretary shall from time to time pay to each State which has an approved pilot project under this section, in such manner and according to such schedule as may be agreed upon by the Secretary and such State, amounts equal in the aggregate to—

"(1) 90 percent of the costs incurred by such State and its political subdivisions in *carrying out such project during the first 18 months after the date on which the project begins,*

"(2) 80 percent of any such costs incurred during the 12-month period beginning with the nineteenth month after such date, and

"(3) 70 percent of any such costs incurred during the 12-month period beginning with the thirty-first month after such date.

"(f)(1) For purposes of this section, the term 'human services program' includes the program of aid to families with dependent children under part A of title IV, the supplemental security income benefits program under title XVI, the Federal food stamp program, and any other Federal or federally assisted program (other than a program under the Rehabilitation Act of 1973) which provides aid, assistance, or benefits based wholly or partly on need or on income related qualifications to specified classes or types of individuals or families or which is designed to help in crisis or emergency situations by meeting the basic human needs of individuals or families whose own resources are insufficient for that purpose.

"(2) In carrying out this section the Secretary shall regularly consult with the Secretary of Labor, the Secretary of Agriculture, the Secretary of Housing and Urban Development, and the head of any other Federal agency having jurisdiction over or responsibility for one or more human services programs, in order to ensure that the administrative efforts of the various agencies involved are coordinated with respect to all of the pilot projects being carried out under this section.

"(g) The Secretary shall require each State which is carrying out a pilot project under this section to submit periodic reports on the progress of such project, giving particular attention to the cost-effectiveness of the integrated service delivery system involved and the extent to which such system is improving the delivery of services. No pilot project under this section shall be conducted for a period of longer than 42 months. The first such report shall be submitted no later than 3 months after the date on which the project begins.

"(h) The Secretary shall from time to time submit to the Congress a report on the progress and current status of each of the approved pilot projects under this section. Each such report shall reflect the periodic reports theretofore submitted to the Secretary by the States involved under subsection (g), and shall contain such additional comments, findings, and recommendations with respect to the operation of the program under this section as the Secretary may determine to be appropriate.

"(i) The Comptroller General shall, at such time or times as he determines to be appropriate, review and evaluate any or all of the pilot projects undertaken pursuant to this section, and shall from time to time report to the Congress on the results of such reviews and evaluations together with his findings and recommendations with respect thereto.

"(j) There are authorized to be appropriated, for the four-fiscal-year period beginning with the fiscal year 1985, such sums, not to exceed $8,000,000 in the aggregate, as may be necessary to carry out this section.".

EXEMPTION OF CERTAIN PREGNANT WOMEN FROM REGISTRATION FOR WORK OR TRAINING

SEC. 2631. Section 402(a)(19)(A) of the Social Security Act is amended—

(1) by striking out "or" at the end of clause (vii);

(2) by adding "or" after the semicolon at the end of clause (viii); and

(3) by inserting immediately after clause (viii) the following new clause:

"(ix) a woman who is pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the 3-month period immediately following such month;".

TREATMENT OF NONRECURRING LUMP SUM INCOME

SEC. 2632. (a) Section 402(a)(17) of the Social Security Act is amended by adding at the end thereof (after and below subparagraph (B)) the following: "except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);".

(b) Section 402(a)(17) of such Act is further amended—

(1) by striking out "a person specified in paragraph (8)(A) (i) or (ii)" in the matter preceding subparagraph (A) and inserting in lieu thereof "a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family,"; and

(2) effective on the date of the enactment of this Act, by striking out "an amount of income" in the matter preceding subparagraph (A) and inserting in lieu thereof "an amount of earned or unearned income".

WAIVER OF OVERPAYMENT RECOUPMENT WHEN COST OF COLLECTION WOULD EXCEED AMOUNT DUE

SEC. 2633. (a) Section 402(a)(22) of the Social Security Act is amended by adding at the end thereof (after and below subparagraph (C)) the following: "except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;".

(b) Section 402(a)(22)(A) of such Act is amended by inserting after "current recipient of such aid" the following: "(including a current recipient whose overpayment occurred during a prior period of eligibility)".

EXCEPTIONS TO REQUIREMENTS FOR PROTECTIVE PAYMENTS

SEC. 2634. (a) Section 402(a)(19)(F)(i) of the Social Security Act is amended by striking out "will be made" and inserting in lieu thereof "will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made".

(b) Section 402(a)(26)(B) of such Act is amended by inserting before the semicolon at the end thereof the following: "unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made".

ELIGIBILITY REQUIREMENTS FOR ALIENS

SEC. 2635. Section 415(c)(1) of the Social Security Act is amended by striking out "Any individual" and all that follows down through "be required to provide" where it first appears and inserting in lieu thereof the following: "Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determinations shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide".

PROVISION BY STATE AGENCIES OF INFORMATION REGARDING FUGITIVE FELONS

SEC. 2636. Section 402(a)(9) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: "; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties".

PAYMENT SCHEDULE FOR REIMBURSEMENT OF CERTAIN BACK CLAIMS DUE THE STATES

SEC. 2637. The payment schedule contemplated by section 136 of Public Law 97-276 for reimbursement of expenditures described in that section is hereby established as follows:

(1) For expenditures identified in the decree entered by the United States District Court for the District of Columbia on July 21, 1983, in the case of State of Connecticut v. Heckler, No. 81-2237, and allowed by the Secretary of Health and Human Services prior to the date of the enactment of this Act, payment shall be made, by supplemental grant award or otherwise, within 30 days after the date of the enactment of this Act; and

(2) for any other expenditure described in such section 136 which was identified in such decree or in any other decree entered by a Federal court in a suit (with respect to such an expenditure) filed prior to September 30, 1982, payment shall be made, by supplemental grant award or otherwise, as soon as the expenditure or portion thereof involved is finally determined by the Secretary to be an allowable claim under the substantive provisions of the applicable title of the Social Security Act.

MODIFICATION OF REQUIREMENTS FOR WORK SUPPLEMENTATION PROGRAM

Sec. 2638. (a)(1) Section 414 (b)(6) of the Social Security Act is amended—

(A) by inserting "(A)" before "may"; and

(B) by inserting ", and (B) during one or more of the first nine months of an individual's employment pursuant to a program under this section, may apply to the wages of the individual the provisions of section 402 (a)(8)(A)(iv) without regard to the provisions of (B)(ii)(II) of such section" before the period.

(2) Section 414 (c)(3) of such Act is amended—

(A) by inserting "or" after the semicolon in subparagraph (A);

(B) by striking out "a public or nonprofit entity" in subparagraph (B) and inserting in lieu thereof "any other employer";

(C) by striking out "; or" in subparagraph (B) and inserting in lieu thereof a period; and

(D) by striking out subparagraph (C).

(3) Section 414 (d) of such Act is amended—

(A) by striking out "for any quarter for expenditure incurred in operating" and inserting in lieu thereof "for expenditures incurred in making payments to individuals and employers under"; and

(B) by striking out all after "equal to the" and inserting in lieu thereof: "amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this section had received the maximum amount of aid payable under the State plan to such a family with no income (without regard to adjustments under subsection (b) of this section) for a period of months equal to the lesser of (1) nine months, or (2) the number of months in which such individual was employed in such program.".

(4) Section 414 (h) of such Act is amended by inserting "(except during any period in which such individual is employed under such work supplementation program)" before the period.

(b) Section 51(c)(2) of the Internal Revenue Code of 1954 is amended to read as follows:

"(2) On-the-job training and work supplementation payments.—

"(A) Exclusion for employers receiving on-the-job training payments.—The term 'wages' shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

"(B) Reduction for work supplementation payments to employers.—The amount of wages which would (but for this subparagraph) be qualified wages under this section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 414 of the Social Security Act.".

(c)(1) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply with respect to payments made on or after the date of the enactment of this Act.

3-YEAR EXTENSION OF PROVISIONS FOR DISREGARDING IN-KIND ASSISTANCE

Sec. 2639. (a) Section 402(a)(36) of the Social Security Act is amended to read as follows:

"(36) provide, at the option of the State, that in making the determination for any month under paragraph (7), the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.".

(b) Section 1612(b)(13) of such Act is amended to read as follows:

"(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.".

(c)(1) Section 545 of the Surface Transportation Assistance Act of 1982 is amended by striking out subsections (a), (b), and (c).

(2) Section 404 of the Social Security Amendments of 1983 is repealed.

(d) The amendments made by this section shall be effective with respect to months which begin after September 30, 1984; but sections 402(a)(36) and 1612(b)(13) of the Social Security Act (as amended by subsections (a) and (b) of this section) shall be effective only with respect to months which end before October 1, 1987.

PARENTS AND SIBLINGS OF DEPENDENT CHILD INCLUDED IN AFDC FAMILY; DISREGARD OF CHILD SUPPORT PAYMENTS

Sec. 2640. (a) Section 402(a) of the Social Security Act (as amended by section 2624 of this Act) is further amended—

(1) by striking out "and" at the end of paragraph (36);

(2) by striking out the period at the end of paragraph (37) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (37) the following new paragraphs:

"(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—

"(A) any parent of such child, and

"(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 406(a), if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 205(j), in the case of benefits provided under title II); and

"(39) provide that in making the determination under paragraph (7) with respect to a dependent child whose parent or legal guardian is under the age selected by the State pursuant to section 406(a)(2), the State agency shall (except as otherwise provided in this part) include any income of such minor's own parents or legal guardians who are living in the same home as such minor and dependent child, to the same extent that income of a stepparent is included under paragraph (31).".

(b)(1) Section 457(b) of such Act is amended by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively, and by inserting immediately before the paragraph redesignated as paragraph (2) the following new paragraph:

"(1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;".

(2) Section 457(b) of such Act, as amended by paragraph (1) of this subsection, is further amended—

(A) by inserting "which are in excess of any amount paid to the family under paragraph (1) and" after "periodically" in paragraph (2);

(B) by striking out "paragraph (1)" in paragraph (3) and inserting in lieu thereof "paragraph (2)"; and

(C) by striking out "paragraphs (1) and (2)" in paragraph (4) and inserting in lieu thereof "paragraphs (1), (2), and (3)".

(c) Section 402(a)(8)(A) of such Act is amended by striking out "and" after the semicolon at the end of clause (iv), and by adding after clause (v) the following new clause:

"(vi) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 457(b)); and".

CWEP WORK FOR FEDERAL AGENCIES

Sec. 2641. (a) Section 409(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4)(A) Participants in community work experience programs under this section may, subject to subparagraph (B), perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding section 1342 of title 31, United States Code, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

"(B) The State agency shall provide appropriate workers' compensation and tort claims protection to each participant performing work for a Federal office or agency pursuant to subparagraph (A) on the same basis as such compensation and protection are provided to other participants in community work experience programs in the State.".

(b) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

EARNED INCOME OF FULL-TIME STUDENTS

Sec. 2642. (a) Section 402(c)(18) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: ", except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine".

(b) Section 402(a)(8)(A) of such Act (as amended by section 2640(c) of this Act) is further amended by striking out "and" after the semicolon at the end of clause (v), and by adding after clause (vi) the following new clause:

"(vii) may disregard all or any part of the earned income of a dependent child who is a full-time student and who is applying for aid to families with dependent children, but only if the earned income of such child is excluded for such month in determining the family's total income under paragraph (18); and".

(c) The amendments made by this section shall become effective June 1, 1984.

PART 3—GENERAL EFFECTIVE DATE

GENERAL EFFECTIVE DATE

Sec. 2646. Except as otherwise specifically provided in this subtitle, the provisions of parts 1 and 2 and the amendments made thereby shall take effect on October 1, 1984.

Subtitle C—Implementation of Grace Commission Recommendations

INCOME AND ELIGIBILITY VERIFICATION PROCEDURES

Sec. 2651. (a) Part A of title XI of the Social Security Act (as amended by section 2630 of this Act) is further amended by adding at the end thereof the following new section:

"INCOME AND ELIGIBILITY VERIFICATION SYSTEM

"Sec. 1136. (a) In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system under which—

"(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b), that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

"(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1954, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(l)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b), as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

"(3) employers in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2);

"(4) the State agencies administering the programs listed in subsection (b) adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

"(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

"(B) such information shall be made available to assist in the child support program under part D of title IV of this Act, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under titles II and XVI of this Act, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(l) of the Internal Revenue Code of 1954; and

"(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments;

"(5) adequate safeguards are in effect so as to assure that—

"(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(l) of the Internal Revenue Code of 1954 is only exchanged with agencies authorized to receive such information under such section 6103(l); and

"(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or in the case of information released pursuant to section 6103(l) of the Internal Revenue Code of 1954, the Secretary of the Treasury;

"(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

"(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

"(b) The programs which must participate in the income verification system are—

"(1) the aid to families with dependent children program under part A of title IV of this Act;

"(2) the medicaid program under title XIX of this Act;

"(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1954;

"(4) the food stamp program under the Food Stamp Act of 1977; and

"(5) any State program under a plan approved under title I, X, XIV, or XVI of this Act.

"(c)(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b), or under the supplemental security income program under title XVI, from the improper use of information obtained from the Secretary of the Treasury under section 6103(1)(7)(B) of the Internal Revenue Code of 1954, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

"(A) the amount of the asset or income involved,

"(B) whether such individual actually has (or had) access to such asset or income for his own use, and

"(C) the period or periods when the individual actually had such asset or income.

"(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.".

(b)(1) Section 402(a)(25) of the Social Security Act is amended to read as follows:

"(25) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act;".

(2) Section 402(a)(29) of such Act is repealed.

(3) Section 411 of such Act is repealed.

(c) Section 1902(a) of the Social Security Act (as amended by section 2367 of this Act) is further amended—

(1) by striking out "and" at the end of paragraph (44);

(2) by striking out the period at the end of paragraph (45) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (45) the following new paragraph:

"(46) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act.".

(d) Section 303 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f) The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act.".

(e) Section 2(a) of the Social Security Act is amended—

(1) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(2) by adding at the end thereof the following new paragraph:

"(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act.".

(f) Section 1002(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (12); and

(2) by inserting before the period at the end thereof the following: "; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act".

(g) Section 1402(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (11); and

(2) by inserting before the period at the end thereof the following: "; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with the State system which meets the requirements of section 1137 of this Act".

(h) Section 1602(a) of the Social Security Act (as in effect with respect to Puerto Rico, Guam, and the Virgin Islands) is amended—

(1) by striking out "and" at the end of paragraph (13);

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (14) the following new paragraph:

"(15) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act.".

(i) Section 11(e)(19) of the Food Stamp Act of 1977 is amended to read as follows:

"(19) that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act and that any additional information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act shall be requested and utilized by the State agency (described in section 3(n)(1) of this Act) to the extent permitted under the provisions of section 303(d) of the Social Security Act;".

Section 1631(e)(1)(B) of the Social Security Act is amended by adding at the end thereof the following: "For this purpose and for purposes of federally administered supplementary payments of the type described in section 1616(a) of this Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(l)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1137 of this Act, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(l)(7)(B) of such Code) under subsections (a) (6) and (c) of such section 1137.".

(k)(1) Section 6103(l)(7) of the Internal Revenue Code of 1954 is amended to read as follows:

"(7) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL AGENCIES ADMINISTERING CERTAIN PROGRAMS UNDER THE SOCIAL SECURITY ACT OR THE FOOD STAMP ACT OF 1977.—

"(A) RETURN INFORMATION FROM SOCIAL SECURITY ADMINISTRATION.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

"(B) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

"(C) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

"(D) PROGRAMS TO WHICH RULE APPLIES.—The programs to which this paragraph applies are:

"(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

"(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

"(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

"(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

"(v) unemployment compensation provided under a State law described in section 3304 of this Code;

"(vi) assistance provided under the Food Stamp Act of 1977; and

"(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66).".

(2) Section 6103(a)(2) of such Code is amended by striking out "or of any local child support enforcement agency" and inserting in lieu thereof ", any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D)".

(l)(1) The amendments made by subsections (j) and (k) shall become effective on the date of the enactment of this Act.

(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986.

COLLECTION AND DEPOSIT OF PAYMENTS TO EXECUTIVE AGENCIES

SEC. 2652. (a)(1) Subchapter II of chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 3720. Collection of payments

"(a) Each head of an executive agency (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely deposit of money by officials and agents of such agency in accordance with section 3302, and for the collection and timely deposit of sums owed to such agency by the use of such procedures as withdrawals and deposits by electronic transfer of funds automatic withdrawals from accounts at financial institutions, and a system under which financial institutions receive and deposit, on behalf of the executive agency, payments transmitted to post office lockboxes. The Secretary is authorized to collect from any agency not complying with the requirements imposed pursuant to the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund caused by such noncompliance.

"(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a). Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the collections relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvement Fund established by subsection (c).

"(c) There is established in the Treasury of the United States a revolving fund to be known as the 'Cash Management Improvements Fund'. Sums in the fund shall be available without fiscal year limitation for the payment of expenses incurred in developing the methods of collection and deposit described in subsection (a) of this section and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.".

(2) The analysis of subchapter II of chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"3720. Collection of payments.".

(3) The Secretary of the Treasury shall prescribe regulations, including regulations under section 3720 of title 31, United States Code, designed to achieve by October 1, 1986, full implementation of the purposes of this subsection.

(b)(1) Subsection (c) of section 3302 of title 31, United States Code, is amended—

(A) by inserting "(1)" after the subsection designation;

(B) by striking out ", but not later than the 30th day after the custodian receives the money,";

(C) by inserting after the first sentence the following new sentence: "Except as provided in paragraph (2), money required to be deposited pursuant to this subsection shall be

deposited not later than the third day after the custodian receives the money,"; and

(D) by adding at the end thereof the following new paragraph:

"(2) The Secretary of the Treasury may by regulation prescribe that a person having custody or possession of money required by this subsection to be deposited shall deposit such money during a period of time that is greater or lesser than the period of time specified by the second sentence of paragraph (1).".

(2) The amendments made by this subsection shall become effective January 1, 1985.

COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES

Sec. 2653. (a)(1) Subchapter II of chapter 37 of title 31, United States Code, as amended by section 2652(a)(1) of this Act, is further amended by adding at the end thereof the following new section:

"§ 3721. Reduction of tax refund by amount of debt

"(a) Any Federal agency that is owed a past-due legally enforceable debt (other than any OASDI overpayment and past-due support) by a named person shall, in accordance with regulations issued pursuant to subsection (d), notify the Secretary of the Treasury of the amount of such debt.

"(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency—

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

"(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

"(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable; and

"(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts to obtain payment of such debt.

"(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

"(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

"(e) Any Federal agency receiving notice from the Secretary of the Treasury that an erroneous payment has been made to such agency under subsection (c) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such agency under such subsection have been paid to such agency).

"(f) For purposes of this section—

"(1) the term 'Federal agency' means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code);

"(2) the term 'past-due support' means any delinquency subject to section 464 of the Social Security Act; and

"(3) the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act".

(2) The analysis of subchapter II of chapter 37 of title 31, United States Code, as amended by section 2652(a)(2) of this Act, is further amended by adding at the end thereof the following new item:

"3721. Reduction of tax refund by amount of debt".

(b)(1) Section 6402 of the Internal Revenue Code of 1954 (relating to authority to make credits or refunds) is amended by adding at the end thereof the following new subsections:

"(d) Collection of Debts Owed to Federal Agencies.—

"(1) In general.—Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than any OASDI overpayment and past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall—

"(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

"(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

"(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

"(2) Priorities for offset.—Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts in the order in which such debts accrued.

"(3) Definitions.—For purposes of this subsection the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act.

"(e) Review of Reductions.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administratve action against the Federal agency to which the amount of such reduction was paid.

"(f) Federal Agency.—For purposes of this section the term 'Federal agency' means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

"(g) Cross Reference.—For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.".

(2) Subsection (a) of section 6402 of such Code is amended by striking out "subsection (c)" and inserting in lieu thereof "subsections (c) and (d)".

(3)(A) Subsection (l) of section 6103 of such Code (relating to confidentiality and disclosure of returns and information), as amended by section 453 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(10) DISCLOSURE OF CERTAIN INFORMATION TO AGENCIES REQUESTING A REDUCTION UNDER SECTION 6402(C) OR 6402(D).—

"(A) Return information from Internal Revenue Service.—The Secretary may, upon receiving a written request, disclose to officers and employees of an agency seeking a reduction under section 6402(c) or 6402(d)—

"(i) the fact that a reduction has been made or has not been made under such subsection with respect to any person;

"(ii) the amount of such reduction; and

"(iii) taxpayer identifying information of the person against whom a reduction was made or not made.

"(B) Restriction on use of disclosed information.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from reduction made under section 6402(c) or section 6402(d).".

(B)(i) Section 6103(p)(3)(A) of such Code (relating to procedure and recordkeeping), as so amended, is amended by striking out "or (9)" and inserting in lieu thereof "(9), or (10)".

(ii) Section 6103(p)(4) of such Code, as so amended, is amended by striking out "(l)(1), (2), (3), or (5)" and inserting in lieu thereof "(l) (1), (2), (3), (5), or (10)".

(iii) Section 6103(p)(4)(F)(ii) of such Code, as so amended, is amended by striking out "(l) (1), (2), (3), or (5)" and inserting in lieu thereof "(l) (1), (2), (3), (5), or (10)".

(4) Section 7213(a)(2) of such Code (relating to unauthorized disclosure of information), as so amended, is amended by striking out "(l) (6), (7), (8), or (9)" and inserting in lieu thereof "(l) (6), (7), (8), (9), or (10)".

(c) The amendments made by this section shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1988.

Subtitle D—Technical Corrections

CHANGES IN OASDI PROVISIONS NECESSITATED BY THE 1983 AMENDMENTS

Sec. 2661. (a) Section 201(l)(3)(B)(i) of the Social Security Act is amended by inserting "Insurance" after "Survivors".

(b)(1) Section 202(c)(1) of such Act is amended (in the matter appearing between subparagraphs (D) and (E) of such section)—

(A) by striking out all that follows "has attained" and precedes ", the first month" in clause (i) and inserting in lieu thereof "retirement age (as defined in section 216(l))";

(B) by striking out all that follows "has not attained" and precedes ", or" in clause (ii)(I) and inserting in lieu thereof "retirement age (as defined in section 216(l))"; and

(C) by striking out "to which" in the matter following clause (ii) and inserting in lieu thereof "in which".

(2) Section 202(c)(5)(A) of such Act is amended by striking out "classes (i) and (ii)" and inserting in lieu thereof "clauses (i) and (ii)".

(c)(1) Section 202(e)(2)(A) of such Act is amended by striking out all that follows "subsection (q)," and precedes "subparagraph (D) of this paragraph" and inserting in lieu thereof "paragraph (7) of this subsection, and".

(2) Section 202(e)(2)(C) of such Act is amended—

(A) by striking out the period immediately after "deceased individual"; and

(B) by inserting a closing parenthesis after "paragraph (3) of such subsection (w)".

(3) Paragraph (7) of section 202(e) of such Act is amended by striking out "paragraph (2)(B)," and inserting in lieu thereof "paragraph (2)(D),".

(d)(1) Section 202(f)(1)(C)(ii) of such Act is amended by striking out all that follows "attained" and precedes ", and" and inserting in lieu thereof "retirement age (as defined in section 216(l))".

(2) Section 202(f)(2)(A) of such Act is amended by striking out "paragraph (3)(B)," and inserting in lieu thereof "paragraph (3)(D),".

(3) Section 202(f)(3)(C) of such Act is amended by striking out the period immediately after "deceased individual".

(e) Section 202(q)(9)(B)(i) of such Act is amended by striking out "section 216(a)" and inserting in lieu thereof "section 216(l)".

(f) Section 202(x) of such Act is amended by adding at the beginning thereof the following heading:

"Limitation on Payments to Prisoners".

(g)(1)(A) Section 203(d) of such Act is amended—

(i) by striking out "on seven or more different calendar days of which he engaged" in paragraph (1)(A) and inserting in lieu thereof "for more than forty-five hours of which such individual engaged"; and

(ii) by striking out "on seven or more different calendar days" in paragraph (2) and inserting in lieu thereof "for more than forty-five hours".

(B) The amendments made by subparagraph (A) shall apply only with respect to months beginning with the second month after the month in which this Act is enacted.

(2)(A) Section 203(f) of such Act is amended by adding at the end thereof the following new paragraph:

"(9) For purposes of paragraphs (3), (5)(D)(i), and (8)(D), the term 'retirement age (as defined in section 216(l))', with respect to any individual entitled to monthly insurance benefits under section 202, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.".

(B) The amendment made by subparagraph (A) shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983.

(h) Section 205(r) of such Act is amended—

(1) by striking out "(r)(3)(A) and (r)(3)(B)" in paragraph (4) and inserting in lieu thereof "subparagraphs (A) and (B) of paragraph (3)";

(2) by striking out "the Act" in paragraph (7) and inserting in lieu thereof "this Act"; and

(3) by striking out the heading and inserting in lieu thereof the following:

"USE OF DEATH CERTIFICATES TO CORRECT PROGRAM INFORMATION".

(i)(1) Section 209(e) of such Act is amended by striking out the semicolon after "Act of 1974".

(2) The next to last unnumbered paragraph of section 209 of such Act is amended by striking out "section 414(h)(2) of such Code" in subdivision (2) and inserting in lieu thereof "section 414(h)(2) of such Code where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)".

(j) Section 210(a) of such Act in the matter preceding paragraph (1), is amended by striking out the matter which follows "such affiliate" and precedes "or (C)" and the matter which follows "section 233" and precedes "except", and by inserting in lieu thereof a comma and a semicolon, respectively.

(k)(1) Section 215(a)(7)(B)(ii)(I) of such Act is amended by striking out "who initially become eligible for old-age or disability insurance benefits" and inserting in lieu thereof "who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)".

(2) Section 215(a)(7)(C)(ii) of such Act is amended by striking out "survivors" and inserting in lieu thereof "survivor's".

(3) Section 215(f)(9)(B)(i) of such Act is amended by striking out "as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)" and inserting in lieu thereof "as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)".

(4) Section 215(i)(5)(A) of such Act is amended by adding at the end thereof the following new sentence: "Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.".

(5) Section 215(i)(5)(B) of such Act is amended—

(A) by striking out clause (iii) and inserting in lieu thereof the following:

"(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),";

(B) by striking out "ending with such subsequent calendar year" in clauses (iv) and (v) and inserting in lieu thereof "ending with the year before such subsequent calendar year"; and

(C) by striking out "initially became eligible for an old-age or disability insurance benefit" in clause (v) and inserting in lieu thereof "became eligible (as defined in subsection (a)(3)(B)) for the old-age or disability insurance benefit that is being increased under this subsection".

(l)(1) Section 216(f) of such Act is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (C) of section 202(c)(1), a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.".

(l)(1) Section 216(h)(3)(A)(i) of such Act (as in effect after the application of section 2662(c)(1) of this Act) is amended by striking out "(as defined in section 216(l))" and inserting in lieu thereof "(as defined in subsection (l))".

(3) Section 216(i)(2) of such Act (as amended by section 2662(c)(1) of this Act)) is amended by striking out "(as defined in section 216(l))" in subparagraphs (B) and (D) and inserting in lieu thereof "(as defined in subsection (l))".

(m) Subparagraph (B) of section 223(c)(1) of such Act is amended by moving clause (iii) two ems to the left, and by moving the preceding provisions of such subparagraph two ems to the right, so that the left margin of such subparagraph and its clauses is indented four ems and is aligned with the margin of subparagraph (A) of such section.

(n) Section 229(b) of such Act is amended by adding at the end thereof the following new sentence: "Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the secretary, on the basis of appropriate data, determines should have been so transferred.".

(o)(1) Subsection (f) of section 86 of the Internal Revenue Code of 1954 is amended by redesignating paragraphs (1), (2), (3),and (4) as paragraphs (2), (3), (4), and (5), respectively, and by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) section 37(c)(30(A) (relating to reduction for amounts received as pension or annuity),"

(2) Subsection (a) of section 132 of such Code is amended by striking out paragraphs (6) and (7) and by redesignating paragraph (8) as paragraph (6).

(3) Effective January 1, 1984, subparagraph (b) of section 3121(v)(1) of such Code is amended to read as follows:

"(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).".

(4) Effective January 1, 1985, subparagraph (B) of section 3306(r)(1) of such Code is amended to read as follows:

"(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).".

(5) Section 6334(c) of such Code is amended by inserting "(including section 207 of the Social Security Act)" immediately after "any other law of the United States".

CHANGES IN TEXT OF THE 1983 AMENDMENTS

SEC. 2662. (a) Section 101(d) of the Social Security Amendments of 1983 (Public Law 98-21) is amended by striking out "remuneration paid" and inserting in lieu thereof "service performed".

(b) Section 112(f) of such Amendments is amended by inserting "of such Act" after "section 201(a)".

(c) Section 201(c) of such Amendments is amended—

(1) by inserting "the" immediately before "age of 65" in paragraph (1); and

(2) by inserting "the" immediately before "age of sixty-five" in paragraph (3).

(d) Section 301(a)(5) of such Amendments is amended by striking out "Section 202(c)" and inserting in lieu thereof "Effective with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985), section 202(c)".

(e) Section 305(d)(2) of such Amendments is amended by inserting "each place it appears" immediately before "in subsection (c)(4)(C)".

(f)(1) Section 422A(c)(9) of the Internal Revenue Code of 1954 (relating to special rule when disabled) is amended by striking out "section 105(d)(4)" and inserting in lieu thereof "section 37(e)(3)".

(2)(A) Section 324(d)(1) of the Social Security Amendments of 1983 is amended by adding at the end thereof the following new sentence: "For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).".

(B) Section 324(d)(2) of such Amendments is amended by adding at the end thereof the following new sentence: "For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).".

(C) Section 324(d)(4) of such Amendments is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or (13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act) shall be treated as a nonqualified deferred compensation plan.".

(g) Section 327(d) of such Amendments (relating to codification of Rowan decision with respect to meals and lodging) is amended to read as follows:

"(d)(1) The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1983.

"(2) The amendments made by subsection (b) and subsection (c)(4) shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1954) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

"(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) shall apply to remuneration paid after December 31, 1984.".

(h) Section 338(b) of such Amendments is further amended by adding at the end thereof the following new paragraph:

"(6) The provisions of section 8344 of title 5, United States Code, shall not apply to service by an individual as a member of the Panel.".

(2) The amendments made by this subsection shall take effect on January 1, 1984.

(i) Section 339(b) of such Amendments is amended to read as follows:

"(b) Section 223 of such Act is amended by adding at the end thereof the following new subsection:

"(h) For provisions relating to limitation on payments to prisoners, see section 202(x).'.".

(j) Section 111(e) of such Amendments is amended by inserting "Budget" before "Reconciliation".

OTHER TECHNICAL CORRECTIONS IN THE SOCIAL SECURITY ACT AND RELATED PROVISIONS

SEC. 2663. *(a)(1)(A) The fourth sentence of section 201(d) of the Social Security Act is amended—*

(i) by striking out "the Second Liberty Bond Act, as amended," and inserting in lieu thereof "chapter 31 of title 31, United States Code,'"; and

(ii) by striking out "public-debt obligation" and inserting in lieu thereof "public-debt obligations".

(B) Section 201(g)(1)(B) of such Act is amended by striking out "clauses" in the first sentence and inserting in lieu thereof "clause".

(2)(A)(i) Section 202(d)(1) of such Act, in clause (ii) in the matter which follows subparagraph (C) and precedes subparagraph (D), is amended by striking out "paragraphs" and "paragraph" and inserting in lieu thereof "subparagraphs" and "subparagraph", respectively.

(ii) Section 202(d)(1)(G) of such Act is amended—

(I) by striking out the comma after "age of 18";

(II) by striking out "the age of 22," and inserting in lieu thereof "the age of 22—";

(III) by striking out ", or, subject to section 223(e), the termination month (and for purposes" and inserting in lieu thereof the following:

"(i) the termination month, subject to section 223(e) (and for purposes";

(IV) by striking out "after the 15 months" and all that follows down through "such earlier month." and inserting in lieu thereof the following:

"after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

"(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

"(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month."; and

(V) by indenting all of clause (i) (as designated and amended by the preceding provisions of this subparagraph) four ems, so as to align its left margin with the margins of clauses (ii) and (iii) (as so designated).

(iii) The second sentence of section 202(d)(7)(A) of such Act is amended by striking out "the date of the enactment of this paragraph" and inserting in lieu thereof "the effective date of this sentence".

(B) Section 202(e)(1) of such Act is amended—

(i) by striking out the first comma after "age 60" in the matter following subparagraph (F)(ii); and

(ii) by striking out "he engages" in the last sentence and inserting in lieu thereof "she engages".

(C) Section 202(f)(1) of such Act is amended by striking out the first comma after "age 60" in the matter following subparagraph (F)(ii).

(D) Section 202(f)(3)(D)(i) of such Act is amended by striking out the semicolon after "applicable,".

(E) Section 2202(a)(1)(B) of Public Law 97-35 is amended by striking out "as".

(F)(i) Section 202(q)(3)(G) of the Social Security Act is amended by striking out "as if the period" and inserting in lieu thereof "if the period".

(ii) Section 202(q)(7)(E) of such Act is amended by striking out "he attained retirement age" and inserting in lieu thereof "she or he attained retirement age".

(G) Section 202(t)(4)(E) of such Act is amended—

(i) by inserting "of 1937 or 1974" after "Railroad Retirement Act" where it first appears; and

(ii) by inserting before the semicolon at the end thereof the following: "of 1937 or section 18(2) of the Railroad Retirement Act of 1974".

(H) Section 202(u)(1)(B) of such Act is amended by striking out ", 112, or 113".

(3)(A) Section 2034(a)(8) of such Act is amended by adding a period at the end thereof.

(B) Section 203(d)(2) of such Act is amended by striking out "an individual who is entitled" and inserting in lieu thereof "an individual under the age of seventy who is entitled".

(C) Section 203(f)(5)(B)(ii) of such Act is amended by striking out "702(a)(9)" and inserting in lieu thereof "702(a)(8)".

(D) Section 203(f)(8) of such Act is amended by indenting subparagraphs (B) and (C) two additional ems (for a total indentation of four ems) so as to align their left margins with the margins of subparagraphs (A) and (D).

(4)(A) Section 205(c)(5)(D) of such Act is amended by inserting "of 1937 or 1974" after "Railroad Retirement Act" each place it appears.

(B) Section 205(c)(5)(I) of such Act is amended by inserting before the simicolon at the end thereof the following: "or section 7(b)(7) of the Railroad Retirement Act of 1974".

(C) Section 205(e) of such Act is amended by striking out "on order" and inserting in lieu thereof "an order".

(D) Section 205(h) of such Act is amended by striking out "section 24 of the Judicial Code of the United States" and inserting in lieu thereof "section 1331 or 1346 of title 28, United States Code,".

(E) Section 205(i) of such Act is amended by striking out all that follows "through" and precedes "and prior" and inserting in lieu thereof "the Fiscal Service of the Department of the Treasury,".

(F) Section 205(p)(1) of such Act is amended by striking out "section 1420(e) of the Internal Revenue Code" and inserting in lieu thereof "section 3122 of the Internal Revenue Code of 1954".

(5) Section 208 of such Act is amended by indenting paragraphs (f) through (h) two ems so as to align their left margins with the margins of paragraphs (a) through (e) and by appropriately further indenting subdivisions (1), (2), and (3) of paragraphs (g)).

(6)(A) Section 209 of such Act is amended—

(i) by indenting paragraphs (5) through (9) of subsection (a) two ems so as to align their left margins with the margins of the preceding paragraphs of such subsection;

(ii) by striking out "(p) Remuneration" and inserting in lieu thereof "(p)(1) Remuneration";

(iii) by striking out the period at the end of paragraph (p)(1) as redesignated by clause (ii) of this subparagraph and inserting in lieu thereof a semicolon;

(iv) by striking out "(p) Any contribution" and inserting in lieu thereof "(2) Any contribution"; and

(v) by indenting subsections (e), (f), and (k) through (r) two ems so as to align their left margins with the margins of subsections (a) through (d) and subsections (g), (h), and (j) (appropriately further indenting paragraphs (1) and (2) of subsection (f) and paragraphs (1) and (2) of subsection (m)).

(B) The seventh unnumbered paragraph from the end of section 209 of such Act (relating to remuneration for service performed as a member of a uniformed service) is amended by striking out "section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act" and inserting in lieu thereof "chapter 3 and section 1009 of title 37, United States Code".

(7)(A) Section 210(a)(1) of such Act is amended by striking out "(A)" and all that follows down through "or (B)".

(B) Section 210(a)(7) of such Act is amended by indenting subparagraph (D) two additional ems (for a total indentation of four ems) so as to align its left margin with the margins of subparagraphs (A) through (C).

(C) Section 210(a)(9) of such Act is amended by striking out "section 1532 of the Internal Revenue Code" and inserting in lieu thereof "section 3231 of the Internal Revenue Code of 1954".

(D) Section 210(a)(19) of such Act is amended by striking out the comma after "; or".

(E) Section 210(l)(2) of such Act is amended—

(i) by striking out "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and inserting in lieu thereof "paragraph (21) of section 101 of title 38, United States Code"; and

(ii) by striking out "such section" and inserting in lieu thereof "paragraph (22) of such section".

(F) Section 210(l)(3) of such Act is amended by striking out "such section 102" and inserting in lieu thereof "paragraph (23) of such section 101".

(G) Section 210(m) of such Act is amended—

(i) by striking out "a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act" in the first sentence and inserting in lieu thereof "a reserve component as defined in section 101(27) of title 38, United States Code";

(ii) by inserting ", the National Oceanic and Atmospheric Administration Corps," after "Coast and Geodetic Survey" in the first sentence;

(iii) by striking out "military or naval" each place it appears in paragraph (5) and inserting in lieu thereof "military, naval, or air"; and

(iv) by striking out "Universal Military Training and Service Act" in paragraph (5)(B) and inserting in lieu thereof "Military Selective Service Act".

(8)(A) Section 211(a) of such Act is amended by striking out "chapter 1 of the Internal Revenue Code", "such chapter", and "section 183 of such code" in the matter preceding paragraph (1) and inserting in lieu thereof "subtitle A of the Internal Revenue Code of 1954", "such subtitle", and "section 702(a)(8) of such Code", respectively.

(B) Section 211(a)(3) of such Act is amended—

(i) by striking out "chapter 1 of the Internal Revenue Code" and inserting in lieu thereof "subtitle A of the Internal Revenue Code of 1954"; and

(ii) by inserting "or" before "(C)".

(C) Section 211(a)(4) of such Act is amended by striking out "section 23(s) of such code" and inserting in lieu thereof "section 172 of the Internal Revenue Code of 1954".

(D) Section 211(a) of such Act is further amended by striking out "702(a)(9)" in clauses (iii) and (iv) (in the matter following paragraph (12)) and inserting in lieu thereof in each instance "702(a)(8)".

(E) Section 211(b)(1) of such Act is amended by indenting subparagraphs (D), (G), (H), and (I) an additional two ems (for a total indentation of four ems) so as to align their left margins with the margins of the other subparagraphs of such section.

(F) Section 211(c) of such Act is amended by striking out "section 23 of the Internal Revenue Code" and inserting in lieu thereof "section 162 of the Internal Revenue Code of 1954".

(G) Section 211(c)(3) of such Act is amended by striking out "section 1532 of the Internal Revenue Code" and inserting in lieu thereof "section 3231 of the Internal Revenue Code of 1954".

(H) Section 211(d) of such Act is amended by striking out "supplement F of chapter 1 of the Internal Revenue Code" and inserting in lieu thereof "subchapter K of chapter 1 of the Internal Revenue Code of 1954".

(I) Section 211(e) of such Act is amended by striking out "chapter 1 of the Internal Revenue Code", "chapter 1 of such code", and "such chapter 1" and inserting in lieu thereof "subtitle A of the Internal Revenue Code of 1954", "subtitle A of such Code", and "such subtitle A", respectively.

(9)(A) Section 213(a)(1) of such Act is amended by striking out "means" and inserting in lieu thereof "mean".

(B) Section 213(a)(2)(B)(ii) of such Act is amended by striking out "equal to $3,000" and inserting in lieu thereof "equal $3,000".

(10)(A) Section 215(a)(1) of such Act is amended—

(i) by striking out "of such benefits" in subparagraph (B)(i) and inserting in lieu thereof "for such benefits";

(ii) by striking out "amounts" in subparagraph (B)(iii) and inserting in lieu thereof "amount"; and

(iii) by striking out "scetion 217" in subparagraph (C)(ii) and inserting in lieu thereof "section 217".

(B) Section 215(a)(4) of such Act is amended by indenting subparagraph (B) two ems so as to align its left margin with the margin of subparagraph (A) (and by appropriately further indenting clauses (i) and (ii) of such subparagraph (B)).

(C) Section 215(f)(2)(A) of such Act is amended by striking out "primary insurance account" and inserting in lieu thereof "primary insurance amount".

(D) Section 215(h) of such Act is amended—

(i) by adding at the beginning thereof the following heading:

"Service of Certain Public Health Service Officers"; and

(ii) by striking out "Civil Service Commission" in paragraph (1) and inserting in lieu thereof "Director of the Office of Personnel Management".

(11)(A) Section 2203(d)(4) of Public Law 97-35 is amended by inserting after "at the end of paragraph (3)" the following: "(after and below subparagraph (C)(ii))".

(B) Section 216(i)(2)(F)(ii) of the Social Security Act is amended by striking out "enacted," in the matter immediately preceding subdivision (I) and inserting in lieu thereof "enacted—".

(12)(A) Section 217(d) of such Act is amended by indenting paragraphs (1) and (2) two ems.

(B) Section 217(e)(1) of such Act is amended by inserting ", National Oceanic and Atmospheric Administration Corps," after "Coast and Geodetic Survey" in the last sentence.

(C) Section 217(f)(1) of such Act is amended by striking out "Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management".

(13) Section 218(i) of such Act is amended by striking out "subchapter A or E of chapter 9 of the Internal Revenue Code" and inserting in lieu thereof "chapter 21 and subtitle F of the Internal Revenue Code of 1954".

(14) Section 221(e) of such Act is amended by striking out "Federal Disability Trust Fund is charged" and inserting in lieu thereof "Federal Disability Insurance Trust Fund is charged".

(15)(A) Subsections (a) and (b)(1) of section 222 of such Act are amended by striking out "the Vocational Rehabilitiation Act" each place it appears and inserting in lieu thereof "title I of the Rehabilitation Act of 1973".

(B) Section 222(b)(3) of such Act is amended by striking out "equal" and inserting in lieu thereof "equals".

(C) Section 222(b)(4) of such Act is amended by striking out "full-time student" and inserting in lieu thereof "full-time elementary or secondary school student".

(16) Section 223(d)(2)(A) of such Act is amended by striking out "an individual" and inserting in lieu thereof "An individual".

(17) Section 226(b) of such Act is amended (in the matter following paragraph (2)(C)) by striking out "part (A)" and inserting in lieu thereof "part A".

(18) The last sentence of section 230(c) of such Act is amended by striking out "(3)(f)(3)" and inserting in lieu thereof "3(f)(3)".

(b)(1) Section 302(b) of such Act is amended by striking out all that follows "through" and precedes "and prior" and inserting in lieu thereof "the Fiscal Service of the Department of the Treasury".

(2) Section 303(a)(4) of such Act is amended by striking out "1606(b)" and inserting in lieu thereof "3305(b)".

(3) Section 303(a)(5) of such Act (as amended by the 1983 Amendments) is amended—

(A) by striking out "1606(b)" and inserting in lieu thereof "3305(b)"; and

(B) by striking out the punctuation mark immediately before the last proviso and inserting in lieu thereof a colon.

(4) Section 303(c) of such Act is amended by striking out "That" in paragraphs (1) and (2) and inserting in lieu thereof "that".

(5) Section 303(e)(2)(A)(i) of such Act is amended by striking out "child support obligatons" and inserting in lieu thereof "child support obligations".

(c)(1)(A) Section 402(a)(9) of such Act is amended by striking out "use of disclosure" and inserting in lieu thereof "use of disclosure".

(B) Section 402(a)(14) of such Act is amended by striking out "(A) provide that" and inserting in lieu thereof "provide (A) that".

(C) Section 402(a)(19)(F)(i) of such Act is amended by striking out "or section 408"

and inserting in lieu thereof "or section 472".

(D) Section 402(a)(19)(G) of such Act is amended by striking out the comma before "that" in clause (iv).

(E) Section 401(a) of such Act is further amended—

(i) by striking out "must" immediately before the first of its 36 numbered subdivisions and inserting n lieu thereof "must—";

(ii) by indenting and aligning such numbered subdivisions (without altering any of the numbering, language, or punctuation) to the extent necessary to make each of such subdivisions a numbered paragraph with its left margin indented two ems (and with any designated internal subdivisions within such paragraphs (including the numbered subdivisions in subparagraph (A) and (B) of Paragraph (8) and in subparagraph (A) of paragraph (14) but not including such subparagraphs themselves, and not including any of the subdivisions in paragraphs (9), (10), (15), (19)(G), (25), (30), (31), (33), and (36)) being appropriately further indented and aligned as subparagraphs or clauses);

(iii) by striking out "and" after the semicolon at the end of paragraph (5);

(iv) by striking out "clause" each place it appears in paragraphs (15)(A), (15)(B), and (19)(F) and inserting in lieu thereof "paragraph"; and

(v) by striking out "section 402(a)(7)" in paragraph (19)(D) and inserting in lieu thereof "paragraph (7)".

(F) Section 402(c) of such Act is amended by striking out "clause" each place it appears and inserting in lieu thereof "paragraph".

(G) Section 402(d)(2) of such Act is amended by striking out "section 43" and "section 43(g)" and inserting in lieu thereof "section 32" and "section 32(g)", respectively.

(2)(A) Section 403(b)(3) of such Act is amended by striking out all that follows "through" and precedes "and prior" and insertig in lieu thereof "the Fiscal Service of the Department of the Treasury".

(B) Clause (ii) in the last sentence of section 403(j) of such Act is amended by striking out the comma after "excess payments".

(3)(A) Section 406(b)(2) of such Act is amended by adding "and" after the semicolon at the end of clause (C), by striking out clause (D), and by redesignating clause (E) as clause (D).

(B)(i) The last sentence of section 406(b) of such Act, and section 402(a)(19)(F)(i) of such Act, are each amended by striking out "clauses (A) through (E)" and inserting in lieu thereof "clauses (A) through (D)".

(ii) Section 402(a)(26)(B) of such Act is amended by striking out "subparagraphs (A) through (E)" and inserting in lieu thereof "clauses (A) through (D)".

(4)(A) Section 407(b)(1)(C) of such Act is amended by striking out "such father", and "he" each place it appears, and by inserting in lieu thereof in each instance "such parent".

(B) Section 407(b)(2)(A) of such Act is amended by striking out "thirty days" and inserting in lieu thereof "30 days".

(5) Section 409(a) of such Act is amended—

(A) by striking out "vacanies" in paragraph (1)(B) and inserting in lieu thereof "vacancies"; and

(B) by striking out "part (C)" in paragraph (3) and inserting in lieu thereof "part C".

(6) Section 410 of such Act is amended by striking out "Food Stamp Act of 1964" in subsections (a) and (c) and inserting in lieu thereof "Food Stamp Act of 1977".

(7)(A) Section 414(b)(5) of such Act is amended by striking out "receipients" and inserting in lieu thereof "recipients".

(B) Section 415(b)(1)(B)(ii) of such Act is amended by striking out "determinig" and inserting in lieu thereof "determining".

(8) Section 420(b) of such Act is amended by striking out the comma immediately after "preceding sentence".

(9) Section 441 of such Act is amended by striking out "(a)".

(10) Section 444(d) of such Act is amended by striking out "rereferred" and inserting in lieu thereof "referred".

(11) Section 445(b)(1)(E) of such Act is amended by striking out "Comprehensive Employment and Training Act of 1973" and inserting in lieu thereof "Job Training Partnership Act".

(12) The second sentence of section 452(c)(2) of such Act is amended by striking out "preceding section" and inserting in lieu thereof "preceding sentence".

(13) Section 453(b)(2) of such Act is amended by striking out ", or the United States" and inserting in lieu thereof "of the United States".

(14) Section 454 of such Act is amended—

(A) by striking out "of such parent" in paragraph (9)(C);

(B) by striking out "collection and distribution," in clause (A)(ii) of paragraph (16) and inserting in lieu thereof "collection, and distribution"; and

(C) by indenting paragraph (17) two ems so as to align its left margin with the margins of the preceding paragraphs, and amending such paragraph (as so indented)—

(i) by striking out "to accept" and inserting in lieu thereof "provide that the State will accept",

(ii) by striking out "and to impose" and inserting in lieu thereof "will impose",

(iii) by striking out "to transmit" and inserting in lieu thereof "will transmit", and

(iv) by striking out ", otherwise to comply" and inserting in lieu thereof "will otherwise comply".

(15) Section 456 of such Act is amended—

(A) by inserting "(1)" after "SEC. 456. (a)";

(B) by striking out "(1) The amount" and inserting in lieu thereof "(2) The amount";

(C) by striking out "(2) Any" and inserting in lieu thereof "(3) Any"; and

(D) by striking out "paragraphs (1)(A) and (B)" and inserting in lieu thereof "subparagraphs (A) and (B) of paragraph (2)".

(16) The heading of section 458 of such Act is amended by striking out "STATES" and inserting in lieu thereof "states".

(17) Section 462(f)(2) of such Act is amended by striking out "dependents" and inserting in lieu thereof "dependents' ".

(18)(A) Section 474(b)(4)(A) of such Act is amended by striking out "subparagraph (c)" and inserting in lieu thereof "subparagraph (C)".

(B) Section 474(c)(2) of such Act is amended by striking out "relvant" and inserting in lieu thereof "relevant".

(C) Section 474(d)(1) of such Act is amended—

(i) by striking out "and (c)" the second place it appears and inserting in lieu thereof "and (C)"; and

(iii) by striking out "secretary" and inserting in lieu thereof "Secretary".

(d)(1) Section 901(c) of such Act is amended by aligning paragraphs (1) through (4) (including the subparagraphs in paragraph (3)) flush with the left margin (but with appropriate indentation in the case of the subparagraphs and clauses in paragraph (1)).

(2) Section 901(f) of such Act is amended by moving paragraph (3) two ems to the left, so that its left margin is in flush alignment with the margins of the other paragraphs in such section.

(3) Section 904(b) of such Act is amended by striking out "the Second Liberty Bond Act, as amended," and inserting in lieu thereof "chapter 31 of title 31, United States Code,".

(4) Section 908(d) of such Act is amended by striking out "5703(b)" and inserting in lieu thereof "5703".

(e)(1)(A) Subparagraphs (C) and (D) of section 1101(a)((8) of such Act are amended by indenting them 2 ems so as to align their left margin with the left margin of subparagraphs (A) and (B) of such section.

(B) Paragraph (9) of section 1101(a) of such Act is amended by indenting it (including subparagraphs (A) through (D) and clauses (i) and (ii) of subparagraph (C)) 2 ems so as to align the left margin at the beginning of such paragraph with the left margin of pargaraph (8)(A) of such section.

(2)(A) Section 1107(a) of such Act is amended by striking out "subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code," and inserting in lieu thereof "of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939,".

(B) The amendment made by subparagraph (A) shall not apply to returns filed or representations made on or before the date of the enactment of this Act.

(3) Section 1107(b) of such Act is amended by striking out "former wife divorced," each place it appears and inserting in lieu thereof "divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,"

(4)(A) Section 1114(g) of such Act is amended by striking out the period after "Code" and inserting in lieu thereof a comma.

(B) Section 1114(h)(1) of such Act is amended by striking out "sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99)" and inserting in lieu thereof "sections 203, 205, and 209 of title 18, United States Code".

(5) Section 1115(a) of such Act is amended by striking out "VI,", "602,", and "603,".

(6) Section 1116 of such Act is amended—

(A) by striking out "VI," in subsections (a)(1), (b), and (d);

(B) by striking out "604," in subsection (a)(3); and

(C) by striking out "XVI," and all that follows through "part A" in subsection (d) and inserting in lieu thereof "XVI, or XIX, or part A".

(7) Section 1131(a) of such Act is amended—

(A) by striking out the period after "section 204(d) of this Act" in paragraph (2)(B) and inserting in lieu thereof a comma; and

(B) by moving the matter following paragraph (2)(B) two ems to the left so that it is flush with the left margin.

(f) Title XIII of such Act is repealed.

(g)(1) Section 1611(c) of such Act is amended by adding at the beginning thereof the following heading:

"Period for Determination of Benefits".

(2) Section 1611(g) of such Act is amended by striking out "or individuals" and inserting in lieu thereof "or such individual".

(3) Section 1612(b)(2) of such Act is amended by indenting subparagraph (B) two ems so as to align its left margin with the margin of subparagraph (A).

(4) Section 1612(b)(9) of such Act is amended by inserting a comma after "child".

(5) The heading of section 1613(c) of such Act is amended to read as follows:

"Disposal of Resources For Less Than Fair Market Value".

(6) Section 1614(a)(3) of such Act is amended by moving subparagraph (E) two ems to the left, so that its left margin is in flush alignment with the margins of the other subparagraphs in such section.

(7) Section 1614(d)(1) of such Act is amended by striking out "man and women" and inserting in lieu thereof "man and woman".

(8) Section 1615 of such Act is amended by striking out "the Vocational Rehabilitation Act" in subsections (a), (c), and (d) and inserting in lieu thereof "title I of the Rehabilitation Act of 1973".

(9) Section 1618 of such Act is amended—

(A) by moving subsection (d) two ems to the left, so that its left margin is in flush alignment with the margins of the other subsections in such section;

(B) by striking out the comma after "levels of its" in such subsection (d); and

(C) by inserting a comma after "1980", and after "1976" each place it appears, in such subsection.

(10) Section 1621(e) of such Act is amended by striking out "severably" and inserting in lieu thereof "severally".

(11)(A) Section 1631(d)(1) of such Act is amended by striking out "equity or" and inserting in lieu thereof "equity and".

(B) Section 1631(b)(2) of such Act is amended by striking out "section 43" and "section 43(g)" and inserting in lieu thereof "section 32" and "section 32(g)", respectively.

(12) Section 1631(d)(1) of such Act is amended by striking out "(e), and (f)" and inserting in lieu thereof "and (e)".

(h)(1) Section 2002(b) of such Act is amended by striking out "section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)" and inserting in lieu thereof "section 6503 of title 31, United States Code,".

(2) Section 2006(c) of such Act is amended by striking out "section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)" and inserting in lieu thereof "section 6503 of title 31, United States Code".

(i)(1) Section 312(b)(1) of the Internal Revenue Code of 1954 is amended by striking out "(A)" and all that follows down through "or (B)".

(2) Section 3121(i)(2) of such Code is amended by striking out "section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act" and inserting in lieu thereof "chapter 3 and section 1009 of title 37, United States Code".

(3) Section 3121(m)(2) of such Code is amended—

(A) by striking out "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and inserting in lieu thereof "paragraph (21) of section 101 of title 38, United States Code"; and

(B) by striking out "such section" and inserting in lieu thereof "paragraph (22) of such section".

(4) Section 3121(m)(3) of such Code is amended by striking out "such section 102" and inserting in lieu thereof "paragraph (23) of such section 101".

(5) Section 3121(n) of such Code is amended—

(A) by striking out "a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act" in the first sentence and inserting in lieu thereof "a reserve component as defined in section 101(27) of title 38, United States Code";

(B) by inserting ", the National Oceanic and Atmospheric Administration Corps," after "Coast and Geodetic Survey" in the first sentence;

(C) by striking out "military or naval" each place it appears in paragraph (5) and inserting in lieu thereof "military, naval, or air"; and

(D) by striking out "Universal Military Training and Service Act" in paragraph (5)(B) and inserting in lieu thereof "Military Selective Service Act".

(j)(1) Section 1101(a)(6) of the Social Security Act is amended by striking out "means" and all that follows and inserting in lieu thereof "means the Secretary of Health and Human Services.".

(2) The following provisions of such Act are amended by striking out "Health, Education, and Welfare" wherever it appears and inserting in lieu thereof "Health and Human Services":

(A) In title II—

(i) subsections (a)(3), (a)(4), (b)(1), (b)(2), (g)(1), (g)(2), (g)(4), and (i)(1) of section 201;

(ii) subsections (q)(4)(B), (q)(6)(B), and (r)(1) of section 218; and

(iii) subsections (b)(3) and (b)(4) of section 231;

(B) in title IV—

(i) subsections (b)(2) and (b)(3) of section 403;

(ii) subsection (a) of section 431;

(iii) subsection (b) of section 436;

(iv) section 439;

(v) section 441;

(vi) section 443;

(vii) subsection (a) of section 444;

(viii) subsection (a) of section 452;

(ix) subsection (b)(1) of section 453;

(x) paragraph (8)(B) of section 454; and

(xi) section 460;

(C) in title VII—

(i) section 702; and

(ii) subsection (c)(1) of section 706;

(D) in title XI—

(i) section 1102;

(ii) subsection (b) of section 1106;

(iii) subsection (b) of section 1107;

(iv) subsection (c) of section 1114;

(v) section 1120; and

(vi) subsection (a) of section 1126;

(E) in title XVI, section 1602; and

(F) in title XVIII—

(i) subsections (a), (f)(1), (g), and (h) of section 1817;

(ii) subsections (a)(2) and (d)(1) of section 1840;

(iii) subsections (f), (g), (h), and (i) of section 1841; and

(iv) subsection (b)(3) of section 1842.

(3) The following provisions of such Act are amended by striking out "of Health, Education, and Welfare" wherever it appears:

(A) In title II—

(i) subsections (a)(10)(B) and (l)(4)(A) of section 210;

(ii) subsections (a)(2), (a)(3), (b)(2), (e)(2), (e)(3), and (f)(1) of section 217;

(iii) subsections (a)(1), (c)(4), (d)(3), (d)(7), (h)(2), (h)(3), (i), (j), (k)(1), (l), and (p)(2) of section 218;

(iv) subsection (g) of section 228; and

(v) subsection (d) of section 233;

(B) in title IV—

(i) subsection (a)(3) of section 403; and

(ii) subsection (e) of section 407; and

(C) in title XIX, section 1901.

(4) Section 205(l) of such Act is amended by striking out "employee" and all that follows down through "designated" and inserting in lieu thereof "employee of the Department of Health and Human Services designated".

(5) The following provisions of the Internal Revenue Code of 1954 are amended by striking out "Health, Education, and Welfare" each place it appears and inserting in lieu thereof "Health and Human Services":

(A) Subsection (d)(6)(B)(ii) of section 51;

(B) subsections (c)(1), (c)(2)(E), (g)(1), (g)(3)(A), and (g)(3)(B) of section 1402;

(C) subsection (b)(10)(B) of section 3121;

(D) subsections (d) and (f) of section 6057;

(E) subsection (l)(5) of section 6103; and

(F) paragraph (5) of section 6511(d).

(k) Sections 432(d), 432(f)(1), 433(g), and 434(b) of the Social Security Act are each amended by striking out "of Labor" wherever it appears.

(l) Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act (other than section 1101(a)(6) of such Act) is amended—

(1) by substituting "Secretary" or "Secretary's" for the term "Administrator" or "Administrator's", where the reference is to that term alone;

(2) by substituting "Secretary of Health, Education, and Welfare" for the term "Federal Security Administrator", where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) (in which case the amendment of such provision under this paragraph shall be deemed to have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

(3) by substituting "Secretary of Health and Human Services" for the term "Federal Security Administrator" in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting "Department of Health and Human Services" for the term "Federal Security Agency"; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91-648.

EFFECTIVE DATES

SEC. 2664. (a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21).

(b) Except to the extent otherwise specifically provided in this subtitle, the amendments made by section 2663 shall be effective on the date of the enactment of this Act; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

Subtitle E—Trade Adjustment Assistance

LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

SEC. 2671. The first sentence of section 233(a)(3) of the Trade Act of 1974 (19 U.S.C. 2293(a)(3)) is amended to read as follows: "Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

"(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

"(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).".

JOB SEARCH AND RELOCATION ALLOWANCES

SEC. 2672. (a) Section 237(a)(1) of the Trade Act of 1974 (19 U.S.C. 2297(a)(1)) is amended by striking out "$600" and inserting in lieu thereof "$800".

(b) Section 238(d)(2) of the Trade Act of 1974 (19 U.S.C. 2298(d)(2)) is amended by striking out "$600" and inserting in lieu thereof "$800".

ASSISTANCE TO INDUSTRY

SEC. 2673. Section 265 of the Trade Act of 1974 (19 U.S.C. 2355) is amended—

(1) by amending subsection (a)—

(A) by inserting "or workers" immediately after "substantial number of firms", and

(B) by inserting "223 or" immediately before "251"; and

(2) by striking out "$2,000,000" in subsection (b) and inserting in lieu thereof "$10,000,000".

Subtitle F—Certain Provisions Relating to Puerto Rico and the Virgin Islands

SEC. 2681. CLARIFICATION OF DEFINITION OF ARTICLES PRODUCED IN PUERTO RICO OR THE VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7652 of the Internal Revenue Code of 1954 (relating to shipments to the United States) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) ARTICLES CONTAINING DISTILLED SPIRITS.—For purposes of subsection (a)((3) and (b)(3), any article containing distilled spirits shall in no event be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such article is attributable to rum.

"(d) ARTICLES OTHER THAN ARTICLES CONTAINING DISTILLED SPIRITS.—For purposes of subsections (a)(3) and (b)(3)—

"(1) VALUE ADDED REQUIREMENT FOR PUERTO RICO.—Any article, other than an article containing distilled spirits, shall in no event be treated as produced in Puerto Rico unless the sum of—

"(A) the cost or value of the materials produced in Puerto Rico, plus

"(B) the direct costs of processing operations performed in Puerto Rico,

equals or exceeds 50 percent of the value of such article as of the time it is brought into the United States.

"(2) PROHIBITION OF FEDERAL EXCISE TAX SUBSIDIES.—

"(A) IN GENERAL.—No amount shall be transferred under subsection (a)(3) or (b)(3) in respect of taxes imposed on any article, other than an article containing distilled spirits, if the Secretary determines that a Federal excise tax subsidy was provided by Puerto Rico or the Virgin Islands (as the case may be) with respect to such article.

"(B) FEDERAL EXCISE TAX SUBSIDY.—For purposes of this paragraph, the term 'Federal excise tax subsidy' means any subsidy—

"(i) of a kind different from, or

"(ii) in an amount per value or volume of production greater than,

the subsidy which Puerto Rico or the Virgin Islands offers generally to industries producing articles not subject to Federal excise taxes.

" (3) DIRECT COSTS OF PROCESSING OPERATIONS.—For purposes of this subsection, the term 'direct cost of processing operations' has the same meaning as when used in section 213 of the Caribbean Basin Economic Recovery Act.".

(b) EFFECTIVE DATES AND SPECIAL RULES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall apply with respect to articles brought into the United States on or after March 1, 1984.

(2) EXCEPTION FOR PUERTO RICO FOR PERIODS BEFORE JANUARY 1, 1985.—

(A) IN GENERAL.—Subject to the limitations of subparagraphs (B) and (C), the amendments made by subsection (a) shall not apply with respect to articles containing distilled spirits brought into the United States from Puerto Rico after February 29, 1984, and before January 1, 1985.

(B) $130,000,000 LIMITATION.—In the case of such articles brought into the United States after February 29, 1984, and before July 1, 1984, the aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed the excess of—

(i) $130,000,000, over

(ii) the aggregate amount payable to Puerto Rico under section 7652(a) of the Internal Revenue Code of 1954 with respect to such articles which were brought into the United States after June 30, 1983, and before March 1, 1984.

(C) $75,000,000 LIMITATION.—In the case of such articles brought into the United States after June 30, 1984, and before January 1, 1985, the aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed $75,000,000.

(3) LIMITATION ON PAYMENTS OTHER THAN TRANSPORTATION COSTS TO UNITED STATES DISTILLERS AFTER JUNE 30, 1984, AND BEFORE JANUARY 1, 1985.—

(A) IN GENERAL.—Incentive payments paid after June 30, 1984, and before January 1, 1985, to each United States distiller with respect to articles containing distilled spirits which fail to satisfy the requirements of section 7652(c) of the Internal Revenue Code of 1954, as added by this section, may not exceed $1,500,000.

(B) PAYMENTS IN EXCESS OF LIMITATION.—If any United States distiller receives, with respect to such articles brought into the United States—

(i) any incentive payment in excess of $1,500,000, or

(ii) any other payment (other than for transportation costs),

such distiller shall pay to the United States the total amount of all incentive payments and other payments (other than for transportation costs) received after June 30, 1984, and before January 1, 1985.

(C) INCENTIVE PAYMENT.—For purposes of this paragraph, the term "incentive payment" means any payment, in a form and manner determined as of March 1, 1984 (other than a payment for transportation costs) made directly or indirectly by Puerto Rico to any United States distiller as an incentive to engage in redistillation operations.

(D) TRANSPORTATION COSTS.—For purposes of this paragraph, the term "transportation costs" means direct costs of transportation to and from Puerto Rico with respect to any article containing distilled spirits.

SEC. 2682. LIMITATIONS ON TRANSFERS OF EXCISE TAX REVENUES TO PUERTO RICO AND THE VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7652 of the Internal Revenue Code of 1954 (relating to shipments to the United States) is amended by adding at the end thereof the following new subsection:

"(f) LIMITATION ON COVER OVER OF TAX ON DISTILLED SPIRITS.—For purposes of this section, with respect to taxes imposed under section 5001 or this section on distilled spirits, the amount covered into the treasuries of Puerto Rico and the Virgin Islands shall not exceed the lesser of the rate of—

"(1) $10.50, or

"(2) the tax imposed under section 5001(a)(1), on each proof gallon.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to articles containing distilled spirits brought into the United States after September 30, 1985.

TITLE VII—COMPETITION IN CONTRACTING

SHORT TITLE

SEC. 2701. This title may be cited as the "Competition in Contracting Act of 1984".

Subtitle A—Amendments to the Federal Property and Administrative Services Act of 1949

PROCUREMENT PROCEDURES

SEC. 2711. (a)(1) Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended to read as follows:

"COMPETITION REQUIREMENTS

"SEC. 303. (a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

"(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this title and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984; and

"(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

"(2) In determining the competitive procedures appropriate under the circumstance, an executive agency—

"(A) shall solicit sealed bids if—

"(i) time permits the solicitation, submission, and evaluation of sealed bids;

"(ii) the award will be made on the basis of price and other price-related factors;

"(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

"(iv) there is a reasonable expectation of receiving more than one sealed bid; and

"(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

"(b)(1) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures but excluding a particular source in order to establish or maintain any alternative source or sources of supply for *that property or service if the agency head determines that to do so—*

"(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;

"(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or

"(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

"(2) In fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, an executive agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

"(c) An executive agency may use procedures other than competitive procedures only when—

"(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

"(2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

"(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, or (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

"(4) the terms of an international agreement or treaty between the United States Government and a foreign government or international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

"(5) a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

"(6) the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

"(7) the head of the executive agency—

"(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

"(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

"(d)(1) For the purposes of applying subsection (c)(1)—

"(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

"(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the Government which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the executive agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

"(2) The authority of the head of an executive agency under subsection (c)(7) may not be delegated.

"(e) An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

"(f)(1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless—

"(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

"(B) the justification is approved—

"(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the competition advocate for the procuring activity (without further delegation);

"(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

"(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

"(C) Any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act and all bids or proposals received in response to such notice have been considered by such executive agency.

"(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act.

"(3) The justification required by paragraph (1)(A) shall include—

"(A) a description of the agency's needs;

"(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

"(C) a determination that the anticipated cost will be fair and reasonable;

"(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

"(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

"(F) a statement of the actions, if any, the agency may take to remove or overcome a barrier to competition before a subsequent procurement for such needs.

"(4) The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5, United States Code.

"(5) In no case may an executive agency—

"(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

"(B) procure property or services from another executive agency unless such other executive agency complies fully with the requirements of this title in its procurement of such property or services.

The restriction set out in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

"(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the regulations modified, in accordance with section 2752 of the Competition in Contracting Act of 1984 shall provide for special simplified procedures for small purchases of property and services.

"(2) For the purposes of this title, a small purchase is a purchase or contract for an amount which does not exceed $25,000.

"(3) A proposed purchase or contract for an amount above $25,000 may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures required by paragraph (1).

"(4) In using small purchase procedures, an executive agency shall promote competition to the maximum extent practicable.".

(2) Title III of such Act is further amended by inserting after section 303 the following new sections:

"PLANNING AND SOLICITATION REQUIREMENTS

"SEC. 303A. (a)(1) In preparing for the procurement of property or services, an executive agency shall—

"(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

"(B) use advance procurement planning and market research; and

"(C) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

"(2) Each solicitation under this title shall include specifications which—

"(A) consistent with the provisions of this title, permit full and open competition;

"(B) include restrictive provisions or conditions only to the extent necessary to satis-

fy the needs of the executive agency or as authorized by law.

"(3) For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

"(A) function, so that a variety of products or services may qualify;

"(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

"(C) design requirements.

"(b) In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for small purchases) shall at a minimum include—

"(1) a statement of—

"(A) all significant factors (including price) which the executive agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and

"(B) the relative importance assigned to each of those factors; and

"(2)(A) in the case of sealed bids—

"(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

"(ii) the time and place for the opening of the sealed bids; or

"(B) in the case of competitive proposals—

"(i) a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

"(ii) the time and place for submission of proposals.

"EVALUATION AND AWARD

"Sec. 303B. (a) An executive agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

"(b) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that such action is in the public interest.

"(c) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The executive agency shall evaluate the bids without discussions with the bidders and, except as provided in subsection (b), shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting written notice of the award to the successful bidder.

"(d)(1) The executive agency shall evaluate competitive proposals and may award a contract—

"(A) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

"(B) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the Government.

"(2) In the case of award of a contract under paragraph (1)(A), the executive agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and the other factors included in the solicitation.

"(3) In the case of award of a contract under paragraph (1)(B), the executive agency shall award the contract based on the proposals as received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

"(4) Except as otherwise provided in subsection (b), the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The executive agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

"(e) If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, such agency head shall refer the bid or proposal to the Attorney General for appropriate action.".

(3) Section 309 of such Act (41 U.S.C. 259) is amended by adding at the end thereof the following new subsections:

"(b) The term 'competitive procedures' means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such term also includes—

"(1) procurement of architectural or engineering services conducted in accordance with title IX of this Act (40 U.S.C. 541 et seq.);

"(2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals; and

"(3) the procedures established by the Administrator for the multiple awards schedule program of the General Services Administration if—

"(A) participation in the program has been open to all responsible sources; and

"(B) orders and contracts under such procedures result in the lowest overall cost alternative to meet the needs of the Government.

"(c) The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).".

(b) The table of contents of such Act is amended by striking out the item relating to section 303 and inserting in lieu thereof the following:

"Sec. 303. Competition requirements.
"Sec. 303A. Planning and solicitation requirements.
"Sec. 303B. Evaluation and award.".

(c) The amendments made by this section do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

COST OR PRICING DATA

Sec. 2712. Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended by adding at the end thereof the following new subsection:

"(d)(1) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of such contractor's or subcontractor's knowledge and belief, the cost or pricing data submitted were accurate, complete, and current—

"(A) before the award of any prime contract under this title using procedures other than sealed-bid procedures, if the contract price is expected to exceed $100,000;

"(B) before the pricing of any contract change or modification, if the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the agency head;

"(C) before the award of a subcontract at any tier, when the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed $100,000; or

"(D) before the pricing of any contract change or modification to a subcontract covered by clause (C), if the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the agency head.

"(2) Any prime contract or change or modification thereto under which a certificate is required under paragraph (1) shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the agency head that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the price as is practicable), were inaccurate, incomplete, or noncurrent.

"(3) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this subsection, any authorized representative of the agency who is an employee of the United States Government shall have the right, until the expiration of three years after final payment under the contract or subcontract, to examine all books, records, documents, and other data of the contractor or subcontractor related to the proposal for the contract, the discussions conducted on the proposal, pricing, or performance of the contract or subcontract.

"(4) When cost or pricing data are not required to be submitted by this subsection, such data may nevertheless be required by the agency if the agency head determines that such data are necessary for the evaluation by the executive agency of the reasonableness of the price of the contract or subcontract.

"(5) The requirements of this subsection need not be applied to contracts or subcontracts—

"(A) where the price is based on—

"(i) adequate price competition,

"(ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or

"(iii) prices set by law or regulation, or

"(B) in exceptional cases, where the agency head determines that the requirements of this subsection may be waived and states in writing the reasons for such determination.".

AUTOMATED DATA PROCESSING DISPUTE RESOLUTION

Sec. 2713. (a) Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is amended by adding at the end thereof the following new subsection:

"(h)(1) Upon request of an interested party in connection with any procurement conducted under the authority of this section (including procurements conducted under delegations of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the 'board'), shall review any decision by a contracting officer alleged to violate a statute or regulation. Such review shall be conducted under the standard applicable to review of contracting officer final decisions by boards of contract appeals. An interested party who has filed a protest under subchapter V of chapter 35 of title 31, United States Code, with respect to a procurement or proposed procurement may not file a protest with respect to that procurement or proposed procurement under this subsection.

"(2)(A) When a protest under this subsection is filed before the award of a contract in a protested procurement, the board, at the request of an interested party and within 10 days of the filing of the protest, shall hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the board can decide the protest.

"(B) The board shall suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority unless the Federal agency concerned establishes that—

"(i) absent action by the board, contract award is likely to occur within 30 days of the hearing; and

"(ii) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the board.

"(3)(A) If the Board receives notice of a protest under this subsection after the contract has been awarded but within 10 days after the contract award, the board shall, at the request of an interested party and within 10 days after the date of the filing of the protest, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the challenged procurement on an interim basis until the board can decide the protest.

"(B) The board shall suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority to acquire any goods or services under the contract which are not previously delivered and accepted unless the Federal agency concerned establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the board.

"(4)(A) The board shall conduct such proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest.

"(B) Subject to any deadlines imposed by section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)), the board shall give priority to protests filed under this subsection. The board shall issue its final decision within 45 working days after the date of the filing of the protest, unless the board's chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the board shall issue such decision within the longer period determined by the chairman.

"(C) The board may dismiss a protest the board determines is frivolous or which, on its face, does not state a valid basis for protest.

"(5)(A) In making a decision on the merits of protests brought under this section, the board shall accord due weight to the policies of this section and the goals of economic and efficient procurement set forth in this section.

"(B) If the board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority issued pursuant to this section, the board may suspend, revoke, or revise the procurement authority of the Administrator or the Administrator's delegation of procurement authority applicable to the challenged procurement.

"(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate interested party to be entitled to the costs of—

"(i) filing and pursuing the protest, including reasonable attorney's fees, and

"(ii) bid and proposal preparation.

"(6)(A) The final decision of the board may be appealed by the head of the Federal agency concerned and by any interested party, including interested parties who intervene in any protest filed under this subsection, as set forth in the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(B) If the board revokes, suspends, or revises the procurement authority of the Administrator or the Administrator's delegation of procurement authority after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the suspension, revocation, or revision of such procurement authority or delegation.

"(C) Nothing contained in this subsection shall affect the board's power to order any additional relief which it is authorized to provide under any statute or regulation. However, the procedures set forth in this subsection shall only apply to procurements conducted under the authority contained in this section. In addition, nothing contained in this subsection shall affect the right of any interested party to file a protest with the contracting agency or to file an action in a district court of the United States or the United States Claims Court.

"(8) Not later than January 15, 1985, the board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.

"(9) For purposes of this subsection—

"(A) the term 'protest' means a written objection by an interested party to a solicitation by a Federal agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection to a proposed award or the award of such a contract; and

"(B) the term 'interested party' means, with respect to a contract or proposed contract described in subparagraph (A), an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.".

(b) The amendment made by this section shall cease to be effective on January 15, 1988.

CONFORMING AMENDMENTS

SEC. 2714. (a)(1) Section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252) is amended—

(A) by striking out the second sentence in subsection (b); and

(B) by striking out subsections (c), (d), (e), and (f) and inserting in lieu thereof the following:

"(c)(1) This title does not (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items using procedures other than sealed-bid procedures under section 303(a)(2)(A), if the conditions set forth in section 303(a)(2)(A) apply or the contract is to be performed outside the United States.

"(2) Section 303(a)(2)(A) does not require the use of sealed-bid procedures in cases in which section 204(e) of title 23, United States Code, applies.".

(2) The heading of section 304 of such Act (41 U.S.C. 254) is amended to read as follows:

"CONTRACT REQUIREMENTS".

(3) Section 304 of such Act (41 U.S.C. 254) is amended—

(A) by striking out "negotiated pursuant to section 302(c)" in the first sentence of subsection (a) and inserting in lieu thereof "awarded after using procedures other than sealed-bid procedures";

(B) by striking out "negotiated pursuant to section 302(c)" in the second sentence of subsection (a) and inserting in lieu thereof "awarded after using procedures other than sealed-bid procedures"; and

(C) by striking out "negotiated without advertising pursuant to authority contained in this Act" in the first sentence of subsection (c) and inserting in lieu thereof "awarded after using procedures other than sealed-bid procedures".

(4) Section 307 of such Act (41 U.S.C. 257) is amended—

(A) by striking out the first sentence of subsection (a) and inserting in lieu thereof the following: "Determinations and decisions provided in this Act to be made by the Administrator or other agency head shall be final. Such determinations or decisions may be made with respect to individual purchases or contracts or, except for determinations or decisions under sections 303, 303A, and 303B, with respect to classes of purchases or contracts.";

(B) by striking out "Except as provided in subsection (b)," in the second sentence of subsection (a) and inserting in lieu thereof "Except as provided in section 303(d)(2),";

(C) by striking out "this chapter" in such sentence and inserting in lieu thereof "this Act";

(D) by striking out subsection (b);

(E) by striking out "by paragraphs (11), (12), (13), or (14) of section 302(c)," in subsection (c);

(F) by redesignating subsection (c) as subsection (b); and

(G) by striking out subsection (d).

(5) Section 308 of such Act (41 U.S.C. 258) is amended by striking out "entered into pursuant to section 302(c) without advertising," and inserting in lieu thereof "made or awarded after using procedures other than sealed-bid procedures".

(6) Section 310 of such Act (41 U.S.C. 260) is amended by striking out "section 302(c)(15) of this title without regard to the advertising requirements of sections 302(c) and 303" and inserting in lieu thereof "the provisions of this title relating to procedures other than sealed-bid procedures".

(b) The table of contents of such Act is amended by striking out the item relating to

section 304 and inserting in lieu thereof the following:

"Sec. 304. Contract requirements.".

Subtitle B—Amendments To Title 10, United States Code

DECLARATION OF POLICY

SEC. 2721. Section 2301 of title 10, United States Code, is amended to read as follows:

"§ 2301. Congressional defense procurement policy

"(a) The Congress finds that in order to ensure national defense preparedness, conserve fiscal resources, and enhance defense production capability, it is in the interest of the United States that property and services be acquired for the Department of Defense in the most timely, economic, and efficient manner. It is therefore the policy of Congress that—

"(1) full and open competitive procedures shall be used by the Department of Defense in accordance with the requirements of this chapter;

"(2) services and property (including weapon systems and associated items) for the Department of Defense be acquired by any kind of contract, other than cost-plus-a-percentage-of-cost contracts, but including multiyear contracts, that will promote the interest of the United States;

"(3) contracts, when appropriate, provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology;

"(4) contracts for advance procurement of components, parts, and materials necessary for manufacture or for logistics support of a weapon system should, if feasible and practicable, be entered into in a manner to achieve economic-lot purchases and more efficient production rates;

"(5) the head of an agency use advance procurement planning and market research and prepare contract specifications in such a manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired; and

"(6) the head of an agency encourage the development and maintenance of a procurement career management program to ensure a professional procurement work force.

"(b) Further, it is the policy of Congress that procurement policies and procedures for the agencies named in section 2303 of this title shall in accordance with the requirements of this chapter—

"(1) promote full and open competition;

"(2) be implemented to support the requirements of such agencies in time of war or national emergency as well as in peacetime;

"(3) promote responsiveness of the procurement system to agency needs by simplifying and streamlining procurement processes;

"(4) promote the attainment and maintenance of essential capability in the defense industrial base and the capability of the United States for industrial mobilization;

"(5) provide incentives to encourage contractors to take actions and make recommendations that would reduce the costs to the United States relating to the purchase or use of property or services to be acquired under contracts;

"(6) promote the use of commercial products whenever practicable; and

"(7) require descriptions of agency requirements, whenever practicable, in terms of functions to be performed or performance required.

"(c) Further, it is the policy of Congress that a fair proportion of the purchases and contracts entered into under this chapter be placed with small business concerns.".

CLARIFICATION OF APPLICABILITY OF CHAPTER 137 OF TITLE 10 TO THE SECRETARY OF DEFENSE; DEFINITIONS

SEC. 2722. (a) Section 2302 of title 10, United States Code, is amended to read as follows:

"§ 2302. Definitions

"In this chapter:

"(1) 'Head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

"(2) 'Competitive procedures' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

"(A) procurement of architectural or engineering services conducted in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 541 et seq.);

"(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals; and

"(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

"(i) participation in the program has been open to all responsible sources; and

"(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States.

"(3) The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).".

(b) Section 2303 of such title is amended—

(1) in subsection (a)—

(A) by striking out "purchase, and contract to purchase," and inserting in lieu thereof "procurement";

(B) by striking out "named in subsection (b), and all services," and inserting in lieu thereof "(other than land) and all services";

(C) by redesignating clauses (1) through (5) as clauses (2) through (6), respectively; and

(D) by inserting before clause (2) (as so redesignated) the following new clause:

"(1) The Department of Defense.";

(2) by striking out subsection (b); and

(3) by redesignating subsection (c) as subsection (b).

PROCUREMENT PROCEDURES

SEC. 2723. (a)(1) Section 2304 of title 10, United States Code, is amended—

(A) by striking out subsections (a) through (e) and (g), (h), and (i);

(B) by redesignating subsection (f) as subsection (h); and

(C) by inserting after the section heading the following:

"(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

"(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984; and

"(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

"(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

"(A) shall solicit sealed bids if—

"(i) time permits the solicitation, submission, and evaluation of sealed bids;

"(ii) the award will be made on the basis of price and other price-related factors;

"(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

"(iv) there is a reasonable expectation of receiving more than one sealed bid; and

"(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

"(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

"(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

"(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or

"(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

"(2) In fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, the head of an agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

"(c) The head of an agency may use procedures other than competitive procedures only when—

"(1) the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency;

"(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

"(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, or (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

"(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the proper-

ty or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

"(5) a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

"(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

"(7) the head of the agency—

"(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

"(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

"(d)(1) For the purposes of applying subsection (c)(1)—

"(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

"(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the United States which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

"(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

"(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

"(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

"(B) the justification is approved—

"(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the competition advocate for the procuring activity (without further delegation);

"(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

"(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

"(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act and all bids or proposals received in response to that notice have been considered by the head of the agency.

"(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act.

"(3) The justification required by paragraph (1)(A) shall include—

"(A) a description of the agency's needs;

"(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

"(C) a determination that the anticipated cost will be fair and reasonable;

"(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

"(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

"(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

"(4) The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.

"(5) In no case may the head of an agency—

"(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

"(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

"(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 shall provide for special simplified procedures for small purchases of property and services.

"(2) For the purposes of this chapter, a small purchase is a purchase or contract for an amount which does not exceed $25,000.

"(3) A proposed purchase or contract for an amount above $25,000 may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures required by paragraph (1).

"(4) In using small purchase procedures, the head of an agency shall promote competition to the maximum extent practicable.".

(2) The heading of such section is amended to read as follows:

"**§ 2304. Contracts: competition requirements**".

(b) Section 2305 of such title is amended to read as follows:

"**§ 2305. Contracts: planning, solicitation, evaluation, and award procedures**

"(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

"(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

"(ii) use advance procurement planning and market research; and

"(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

"(B) Each solicitation under this chapter shall include specifications which—

"(i) consistent with the provisions of this chapter, permit full and open competition; and

"(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

"(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

"(i) function, so that a variety of products or services may qualify;

"(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

"(iii) design requirements.

"(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for small purchases) shall at a minimum include—

"(A) a statement of—

"(i) all significant factors (including price) which the head of the agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and

"(ii) the relative importance assigned to each of those factors; and

"(B)(i) in the case of sealed bids—

"(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

"(II) the time and place for the opening of the sealed bids; or

"(ii) in the case of competitive proposals—

"(I) a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

"(II) the time and place for submission of proposals.

"(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

"(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

"(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids without discussions with the bidders and, except as provided in paragraph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting written notice of the award to the successful bidder.

"(4)(A) The head of an agency shall evaluate competitive proposals and may award a contract—

"(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

"(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.

"(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and the other factors included in the solicitation.

"(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

"(D) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

"(5) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.".

(c) The amendments made by this section do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

COST OR PRICING DATA; CONFORMING AMENDMENTS

SEC. 2724. (a) The second sentence of subsection (a) of section 2306 of title 10, United States Code, is amended to read as follows: "Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States".

(b) Subsection (b) of such section is amended by striking out "negotiated under section 2304" in the first sentence of subsection (b) and inserting in lieu thereof "awarded under this chapter after using procedures other than sealed-bid procedures".

(c) Subsection (c) of such section is amended by striking out "section 2304 of this title," and inserting in lieu thereof "this chapter".

(d) Subsection (e) of such section is amended by striking out "$25,000 or" in clause (2) and inserting in lieu thereof "the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)".

(e) Subsection (f) of such section is amended—

(A) in paragraph (1)—

(i) by striking out "his" in the matter preceding clause (A) and inserting in lieu thereof "such contractor's or subcontractor's"

(ii) by striking out "he" in the matter preceding clause (A)

(iii) by striking out "negotiated prime contract under this title where" in clause (A) and inserting in lieu thereof "prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if";

(iv) by striking out "for which" in clauses (B) and (D) and inserting in lieu thereof "if";

(v) by striking out "where" in clause (C) and inserting in lieu thereof "when";

(vi) by striking out "$500,000" each place it appears and inserting in lieu thereof "$100,000"; and

(vii) by striking out "prior to" each place it appears and inserting in lieu thereof "before";

(B) in paragraph (2), by striking out "negotiated" both places it appears;

(C) by redesignating paragraph (3) as paragraph (5) and striking out "negotiation," in such paragraph and inserting in lieu thereof "proposal for the contract, the discussions conducted on the proposal,";

(D) by inserting a period after "noncurrent" in paragraph (2);

(E) by striking out ": Provided, That the requirements" in paragraph (2) and inserting in lieu thereof the following:

"(3) The requirements"; and

(F) by inserting after paragraph (3) (as designated by clause (E)) the following new paragraph:

"(4) When cost or pricing data is not required to be submitted by this subsection, such data may nevertheless be required by the head of the agency if the head of the agency determines that such data is necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract.".

(f) The heading of such section is amended to read as follows:

"§ 2306. Kinds of contracts; cost or pricing data: truth in negotiation".

DETERMINATIONS AND DECISIONS

SEC. 2725. Section 2310 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ", except for determinations and decisions under section 2304 or 2305 of title," in the first sentence after "contract or"; and

(B) by inserting ", including a determination or decision under section 2304 or 2305 of this title," in the second sentence after "decision"; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

"(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

"(2) support the findings required by section 2306(g)(1) of this title;

"(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

"(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.".

LIMITATION ON AUTHORITY TO DELEGATE CERTAIN FUNCTIONS

SEC. 2726. Section 2311 of title 10, United States Code, is amended—

(1) by striking out "The head" and inserting in lieu thereof "Except as provided in section 2304(d)(2) of this title, the head"; and

(2) by striking out "chapter" and all that follows and inserting in lieu thereof "chapter.".

CONFORMING AMENDMENTS

SEC. 2727. (a) The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended—

(1) by striking out the item relating to section 2301 and inserting in lieu thereof the following:

"2301. Congressional defense procurement policy."; and

(2) by striking out the items relating to sections 2304, 2305, and 2306 and inserting in lieu thereof the following:

"2304. Contracts: competition requirements.
"2305. Contracts: planning, solicitation, evaluation, and award procedures.
"2306. Kinds of contracts; cost or pricing data: truth in negotiation.".

(b) Subsection (h) of section 2304 of such title (as redesignated by section 2723(a)(1)(B)) is amended—

(1) by striking out "negotiated under this section" and inserting in lieu thereof "awarded after using procedures other than sealed-bid procedures"; and

(2) by striking out "formal advertising" and inserting in lieu thereof "sealed-bid procedures".

(c) Section 2313(b) of such title is amended by striking out "negotiated under this chapter" and inserting in lieu thereof "awarded after using procedures other than sealed-bid procedures".

(d) Section 2356 of such title is amended by striking out "the formal advertising prescribed by section 2305 of this title" and inserting in lieu thereof "a solicitation for sealed bids under chapter 137 of this title".

Subtitle C—Amendments to the Office of Federal Procurement Policy Act

DEFINITIONS

SEC. 2731. The section of the Office of Federal Procurement Policy Act relating to definitions (41 U.S.C. 403) is redesignated as section 4 and is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraphs:

"(6) the term 'competitive procedures' means procedures under which an agency enters into a contract pursuant to full and open competition;

"(7) the term 'full and open competition', when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement; and

"(8) the term 'responsible source' means a prospective contractor who—

"(A) has adequate financial resources to perform the contract or the ability to obtain such resources;

"(B) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

"(C) has a satisfactory performance record;

"(D) has a satisfactory record of integrity and business ethics;

"(E) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

"(F) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

"(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations.".

PROCUREMENT NOTICE AND RECORDS; ADVOCATES FOR COMPETITION

SEC. 2732. (a) The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following new sections:

"PROCUREMENT NOTICE

"SEC. 18. (a)(1) Except as provided in subsection (c)—

"(A) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000 shall furnish for publication by the Secretary of Commerce a notice described in subsection (b); and

"(B) an executive agency awarding a contract for property or services for a price exceeding $25,000 shall furnish for publication by the Secretary of Commerce a notice announcing such award if there is likely to be any subcontract under such contract.

"(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

"(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice of a solicitation to the Secretary of Commerce, such executive agency may not—

"(A) issue such solicitation earlier than 15 days after the date on which such notice is published by the Secretary of Commerce; or

"(B) establish a deadline for the submission of all bids or proposals in response to such solicitation that is earlier than 30 days after the date on which such solicitation is issued.

"(b) Each notice required by subsection (a)(1)(A) shall include—

"(1) an accurate description of the property or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(2) the name, business address, and telephone number of the officer or employee of the executive agency who may be contacted for the purpose of obtaining a copy of the solicitation;

"(3) the name, business address, and telephone number of the contracting officer;

"(4) a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the executive agency; and

"(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

"(c)(1) A notice is not required under subsection (a)(1) if—

"(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

"(B) the proposed procurement would result from acceptance of any unsolicited proposal that demonstrates a unique and innovative research concept, and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal;

"(C) the procurement is made against an order placed under a requirements contract, or

"(D) the procurement is made for perishable subsistence supplies.

"(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in clause (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or clause (2), (3), (4), (5), or (7) of section 2304(c) of title 10, United States Code.

"(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, with the concurrence of the Administrator, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

"RECORD REQUIREMENTS

"SEC. 19. (a) Each executive agency shall establish and maintain for a period of five years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases, in such fiscal year.

"(b) The record established under subsection (a) shall include—

"(1) with respect to each procurement carried out using competitive procedures—

"(A) the date of contract award;

"(B) information identifying the source to whom the contract was awarded;

"(C) the property or services obtained by the Government under the procurement; and

"(D) the total cost of the procurement;

"(2) with respect to each procurement carried out using procedures other than competitive procedures—

"(A) the information described in clauses (1)(A), (1)(B), (1)(C), and (1)(D);

"(B) the reason under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or section 2304(c) of title 10, United States Code, as the case may be, for the use of such procedures; and

"(C) the identity of the organization or activity which conducted the procurement.

"(c) The information that is included in such record pursuant to subsection (b)(1) and relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in such record. The record of such information shall be designated 'noncompetitive procurements using competitive procedures'.

"(d) The information included in the record established and maintained under subsection (a) shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 6(d)(4).

"ADVOCATES FOR COMPETITION

"SEC. 20. (a)(1) There is established in each executive agency an advocate for competition.

"(2) The head of each executive agency shall—

"(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984 (other than the senior procurement executive designated pursuant to section 16(3)) to serve as the advocate for competition;

"(B) not assign such officers or employees any duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

"(C) provide such officers or employees with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

"(b) The advocate for competition of an executive agency shall—

"(1) be responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency;

"(2) review the procurement activities of the executive agency;

"(3) identify and report to the senior procurement executive of the executive agency designated pursuant to section 16(3)—

"(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

"(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

"(4) prepare and transmit to such senior procurement executive an annual report describing—

"(A) such advocate's activities under this section;

"(B) new initiatives required to increase competition; and

"(C) barriers to full and open competition that remain;

"(5) recommend to the senior procurement executive of the executive agency goals and the plans for increasing competition on a fiscal year basis;

"(6) recommend to the senior procurement executive of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

"(7) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

"(c) The advocate for competition for each procuring activity shall be responsible for challenging barriers to and promoting full and open competition in the procuring activity, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

"ANNUAL REPORT ON COMPETITION

"SEC. 21. (a) Not later than January 31 of each of 1986, 1987, 1988, 1989, and 1990, the head of each executive agency shall transmit to each House of Congress a report including the information specified in subsection (b).

"(b) Each report under subsection (a) shall include—

"(1) a specific description of all actions that the head of the executive agency intends to take during the current fiscal year to—

"(A) increase competition for contracts with the executive agency on the basis of cost and other significant factors; and

"(B) reduce the number and dollar value of noncompetitive contracts entered into by the executive agency; and

"(2) a summary of the activities and accomplishments of the advocate for competition of the executive agency during the preceding fiscal year.".

(b)(1) Section 6(e) of such Act (41 U.S.C. 405(e)) is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)".

(2) Section 16(1) of such Act (41 U.S.C. 414(1)) is amended to read as follows:

"(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;".

Subtitle D—Procurement Protest System

PROCUREMENT PROTEST SYSTEM

SEC. 2741. (a) Chapter 35 of title 31, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

"§ 3551. Definitions

"In this subchapter—

"(1) 'protest' means a written objection by an interested party to a solicitation by an executive agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract;

"(2) 'interested party', with respect to a contract or proposed contract described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

"(3) 'Federal agency' has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

"§ 3552. Protests by interested parties concerning procurement actions

"A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter. An interested party who has filed a protest under section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) with respect to a procurement or proposed procurement may not file a protest with respect to that procurement under this subchapter.

"§ 3553. Review of protests; effect on contracts pending decision

"(a) Under procedures prescribed under section 3555 of this title, the Comptroller General shall decide a protest submitted to the Comptroller General by an interested party.

"(b)(1) Within one working day of the receipt of a protest, the Comptroller General shall notify the Federal agency involved of the protest.

"(2) Except as provided in paragraph (3) of this subsection, a Federal agency receiving a notice of a protested procurement under paragraph (1) of this subsection shall submit to the Comptroller General a complete report (including all relevant documents) on the protested procurement—

"(A) within 25 working days from the date of the agency's receipt of that notice;

"(B) if the Comptroller General, upon a showing by the Federal agency, determines (and states the reasons in writing) that the specific circumstances of the protest require a longer period, within the longer period determined by the Comptroller General; or

"(C) in a case determined by the Comptroller General to be suitable for the express option under section 3554(a)(2) of this title, within 10 working days from the date of the Federal agency's receipt of that determination.

"(3) A Federal agency need not submit a report to the Comptroller General pursuant to paragraph (2) of this subsection if the agency is sooner notified by the Comptroller General that the protest concerned has been dismissed under section 3554(a)(3) of this title.

"(c)(1) Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending.

"(2) The head of the procuring activity responsible for award of a contract may authorize the award of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

"(A) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General under this subchapter; and

"(B) after the Comptroller General is advised of that finding.

"(3) A finding may not be made under paragraph (2)(A) of this subsection unless the award of the contract is otherwise likely to occur within 30 days thereafter.

"(d)(1) If a Federal agency receives notice of a protest under this section after the contract has been awarded but within 10 days of the date of the contract award, the Federal agency (except as provided under paragraph (2)) shall, upon receipt of that notice, immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract. Performance of the contract may not be resumed while the protest is pending.

"(2) The head of the procuring activity responsible for award of a contract may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

"(A) upon a written finding—

"(i) that performance of the contract is in the best interests of the United States; or

"(ii) that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

"(B) after the Comptroller General is notified of that finding.

"(e) The authority of the head of the procuring activity to make findings and to authorize the award and performance of contracts under subsections (c) and (d) of this section may not be delegated.

"(f) Within such deadlines as the Comptroller General prescribes, upon request each Federal agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this section) that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive.

"§ 3554. Decisions on protests

"(a)(1) To the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this subchapter. Except as provided under paragraph (2) of this subsection, the Comptroller General shall issue a final decision concerning a protest within 90 working days from the date the protest is submitted to the Comptroller General unless the Comptroller General determines and states in writing the reasons that the specific circumstances of the protest require a longer period.

"(2) The Comptroller General shall, by regulation prescribed pursuant to section 3555 of this title, establish an express option for deciding those protests which the Comptroller General determines suitable for resolution within 45 calendar days from the date the protest is submitted.

"(3) The Comptroller General may dismiss a protest that the Comptroller General determines is frivolous or which, on its face, does not state a valid basis for protest.

"(b)(1) With respect to a solicitation for a contract, or a proposed award or the award of a contract, protested under this subchapter, the Comptroller General may determine whether the solicitation, proposed award, or award complies with statute and regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General shall recommend that the Federal agency—

"(A) refrain from exercising any of its options under the contract;

"(B) recompete the contract immediately;

"(C) issue a new solicitation;

"(D) terminate the contract;

"(E) award a contract consistent with the requirements of such statute and regulation;

"(F) implement any combination of recommendations under clauses (A), (B), (C), (D), and (E); or

"(G) implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

"(2) If the head of the procuring activity responsible for a contract makes a finding under section 3553(d)(2)(A)(i) of this title, the Comptroller General shall make recommendations under this subsection without regard to any cost or disruption from terminating, recompeting, or rewarding the contract.

"(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of—

"(A) filing and pursuing the protest, including reasonable attorneys' fees; and

"(B) bid and proposal preparation.

"(2) Monetary awards to which a party is declared to be entitled under paragraph (1) of this subsection shall be paid promptly by the Federal agency concerned out of funds available to or for the use of the Federal agency for the procurement of property and services.

"(d) Each decision of the Comptroller General under this subchapter shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to the interested parties, the head of the procuring activity responsible for the solicitation, proposed award, or award of the contract, and the senior procurement executive of the Federal agency involved.

"(e)(1) The head of the procuring activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General, if the Federal agency has not fully implemented those recommendations within 60 days of receipt of the Comptroller General's recommendations under subsection (b) of this section.

"(2) Not later than January 31 of each year, the Comptroller General shall transmit to Congress a report describing each instance in which a Federal agency did not fully implement the Comptroller General's recommendations during the preceding fiscal year.

"§ 3555. Regulations; authority of Comptroller General to verify assertions

"(a) Not later than January 15, 1985, the Comptroller General shall prescribe such procedures as may be necessary to the expeditious decision of protests under this subchapter, including procedures for accelerated resolution of protests under the express option authorized by section 3554(a)(2) of this title. Such procedures shall provide that the protest process may not be delayed by the failure of a party to make a filing within the time provided for The filing.

"(b) The Comptroller General may use any authority available under chapter 7 of this title and this chapter to verify assertions made by parties in protests under this subchapter.

"§ 3556. Nonexclusivity of remedies; matters included in agency record

"This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in a district court of the United States or the United States Claims Court. In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.".

(b) The analysis for such chapter is amended by adding at the end thereof the following:

"SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

"3551. Definitions.
"3552. Protests by interested parties concerning procurement actions.
"3553. Review of protests; effect on contracts pending decision.
"3554. Decisions on protests.
"3555. Regulations; authority of Comptroller General to verify assertions.
"3556. Nonexclusivity of remedies; matters included in agency record.".

Subtitle E—Effective Date; Regulations; Study

EFFECTIVE DATES

SEC. 2751. (a) Except as provided in subsection (b), the amendments made by this title shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

(b) The amendments made by section 2713 and subtitle D shall apply with respect to any protest filed after January 14, 1985.

MODIFICATION OF FEDERAL ACQUISITION REGULATIONS

SEC. 2752. Not later than March 31, 1985, the single Government-wide procurement regulation referred to in section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)) shall be modified to conform to the requirements of this title and the amendments made by this title.

STUDY OF ALTERNATIVES

SEC. 2753. (a) Not later than January 31, 1985, the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration, shall complete a study of alternatives and recommend to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a plan to increase the opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, technical, and managerial services.

(b) Such plan shall provide for testing the recommended alternative and be developed in accordance with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413), and be consistent with the policies set forth in section 2 of such Act (41 U.S.C. 401).

TITLE VIII—FEDERAL CREDIT UNION ACT AMENDMENTS

SEC. 2801. Section 201(b)(8) of the Federal Credit Union Act (12 U.S.C. 1781(b)(8)) is amended to read as follows:

"(8) to pay and maintain its deposit and to pay the premium charges for insurance imposed by this title; and".

SEC. 2802. Section 202(b) of the Federal Credit Union Act (12 U.S.C. 1782(b)) is amended to read as follows:

"(b)(1) For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.

"(2) The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

"(3) Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief that statement is true, correct, and complete and in accordance with this title and regulations issued thereunder.".

SEC. 2803. Section 202(c) of the Federal Credit Union Act (12 U.S.C. 1782(c)) is amended—

(1) by striking out paragraph (2);

(2) by redesignating paragraph (1) as paragraph (2);

(3) by striking out "Except as provided in paragraph (2) of this subsection, each" in paragraph (2), as redesignated, and inserting in lieu thereof "Each";

(4) by striking out "on or before January 31 of each insurance year" in paragraph (2), as redesignated, and inserting in lieu thereof "at such time as the Board prescribes";

(5) by striking out "member accounts" in paragraph (2), as redesignated, and inserting in lieu thereof "insured shares"; and

(6) by inserting before paragraph (2) the following:

"(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

"(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

"(iii) The amount of each insured credit union's deposit shall be adjusted annually, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares.

"(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

"(ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

"(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

"(iv) The deposit funds may be used by the fund if necessary to meets its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.".

SEC. 2804. Section 202(c)(3) of the Federal Credit Union Act (12 U.S.C. 1782(c)(3)) is amended to read as follows:

"(3) When, at the end of a given insurance year, any loans to the fund from the Federal Government and the interest thereon have been repaid and the equity of the fund exceeds the normal operating level, the Board shall effect for that insurance year a pro rata distribution to insured credit unions of an amount sufficient to reduce the equity in the fund to its normal operating level.".

SEC. 2805. Section 202(c)(4) of the Federal Credit Union Act (12 U.S.C. 1782(c)(4)) is repealed.

SEC. 2806. (a) Subsections (d) through (f) of section 202 of the Federal Credit Union Act (12 U.S.C. 1782(d) through (f)) are amended—

(1) by inserting "its deposit or" before the words "the premium charge" and "any pre-

mium charge" each time they appear, other than in the second sentence of subsection (e) of section 202; and

(2) by striking out "member accounts" and inserting in lieu thereof "insured shares".

(b) Section 202 of the Federal Credit Union Act (12 U.S.C. 1782) is amended—

(1) in the first sentence of subsection (e), by inserting "deposit or" after "the amount of any unpaid";

(2) in the second sentence of subsection (e), by inserting "deposit or" before "premium charge due"; and

(3) in the first sentence of subsection (f), by inserting "deposit or" after "statement or pay any such".

Sec. 2807. Section 202(g) of the Federal Credit Union Act (12 U.S.C. 1782(g)) is amended—

(1) by striking out "statements, and premium charges" and inserting in lieu thereof "statements, and deposit and premium charges";

(2) by striking out "payment of any premium charge" and inserting in lieu thereof "payment of any deposit or adjustment thereof or any premium charge"; and

(3) by striking out "any premium charge for insurance" and inserting in lieu thereof "any deposit or adjustment thereof or any premium charge for insurance".

Sec. 2808. Section 202(h)(1) of the Federal Credit Union Act (12 U.S.C. 1782(h)(1)) is amended by inserting before the semicolon at the end thereof the following: ", unless otherwise prescribed by the Board".

Sec. 2809. Section 202(h)(2) of the Federal Credit Union Act (12 U.S.C. 1782(h)(2)) is amended to read as follows:

"(2) the term 'normal operating level', when applied to the fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine; and".

Sec. 2810. Section 202(h)(3) of the Federal Credit Union Act (12 U.S.C. 1782(h)(3)) is amended to read as follows:

"(3) the term 'insured shares' when applied to this section includes share, share draft, share certificate and other similar accounts as determined by the Board, but does not include amounts in excess of the insured account limit set forth in section 207(c)(1).".

Sec. 2811. Section 203(b) of the Federal Credit Union Act (12 U.S.C. 1783(b)) is amended—

(1) by inserting "deposits and" before "premium charges"; and

(2) by adding at the end thereof the following: "The Board shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives with respect to the operating level of the fund. Such report shall also include the results of an independent audit of the fund.".

Sec. 2812. Section 206(d)(1) of the Federal Credit Union Act (12 U.S.C. 1786(d)(1)) is amended—

(1) by inserting "(1)" after "subsection (a)";

(2) by inserting "maintain its deposit with and" before "pay premiums to the Board"; and

(3) by adding at the end thereof the following sentence: "Notwithstanding the above, when an insured credit union's insured status is terminated and the credit union subsequently obtains comparable insurance coverage from another source, insurance of its accounts by the fund may cease immediately upon the effective date of such comparable coverage by mutual consent of the credit union and the Board.".

Sec. 2813. (a) Title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.) is amended—

(1) in section 303 by inserting ", an instrumentality of the United States," after "Central Liquidity Facility" in the second sentence; and

(2) by adding at the end thereof the following:

"STATE AND LOCAL TAX EXEMPTION

"Sec. 312. (a) The Central Liquidity Facility, and its franchise, activities, capital reserves, surplus, and income, shall be exempt from all State and local taxation now or hereafter imposed, other than taxes on real property held by the Facility (to the same extent, according to its value, as other similar property held by other persons is taxed).

"(b)(1) Except as provided in paragraph (2), the notes, bonds, debentures, and other obligations issued on behalf of the Central Liquidity Facility and the income therefrom shall be exempt from all State and local taxation now or hereafter imposed.

"(2) Any obligation described in paragraph (1) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

"(c) For purposes of this section—

"(1) the term 'State' includes the District of Columbia; and

"(2) taxes imposed by counties or municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.".

(b)(1) Section 501 of the Internal Revenue Code of 1954 (relating to organizations exempt from tax) is amended by redesignating subsection (k) as subsection (l) and by adding subsection (j) the following new subsection:

"(k) Government Corporations Exempt Under Subsection (c)(1).—The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).".

(2) Paragraph (1) of section 501(c) of such Code (listing exempt organizations) is amended to read as follows:

"(1) any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

"(A) is exempt from Federal income taxes under such Act, as amended and supplemented, or

"(B) is described in subsection (k).".

(c) The amendments made by this section shall take effect on October 1, 1979.

ELIMINATION OF PAYROLL DEDUCTION FEES ON FINANCIAL ORGANIZATIONS; ADMINISTRATION OF DISBURSING FUNCTIONS

Sec. 2814. (a) Section 3332(b) of title 31, United States Code, is amended by inserting "without charge" after "shall be sent".

(b) Section 3332 of title 31, United States Code, is amended by striking out subsection (c) and redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

TITLE IX—MISCELLANEOUS PROVISIONS

COST SAVINGS BY ADMINISTRATIVE ACTION

Sec. 2901. (a) It is the sense of the Congress that—

(1) departments, agencies, and instrumentalities of the executive branch of government can continue to make significant management improvements in—

(A) the travel and transportation of personnel and transportation of things for personnel;

(B) the use of consultant services;

(C) public affairs, public relations, and advertising activities;

(D) publishing, printing, reproduction, and audio visual activities;

(E) identification, recovery, and collection of Federal overpayments, delinquencies, and indebtedness; and

(F) the operation, maintenance, management, leasing, acquisition, and disposal of motor vehicles; and

(2) such improvements can result in better use of funds and reductions in expenditures for such activities.

(b) Within six months after the date of enactment of this Act, the Director of the Office of Management and Budget shall prepare and transmit to the Committees on Appropriations and Budget of the Senate and House of Representatives and the Senate Governmental Affairs and House Government Operations Committees a report describing for each of the categories specified in subparagraphs (A) through (F) of subsection (a)(1)—

(1) the baseline cost (or best estimate thereof) for fiscal year 1984;

(2) the savings (below such baseline cost or estimate) that can reasonably be expected to be achieved for fiscal year 1985 by improved management;

(3) an explanation of how such savings will be achieved; and

(4) if necessary, draft legislation to achieve such savings.

(c) If the expected savings described pursuant to subsection (b)(2) are—

(1) less than $750,000,000 for the category specified in subparagraph (A) of subsection (a)(1),

(2) less than $1,000,000,000 for the category specified in subparagraph (B) of such subsection,

(3) less than $100,000,000 for the category specified in subparagraph (C) of such subsection,

(4) less than $250,000,000 for the category specified in subparagraph (D) of such subsection,

(5) less than $2,100,000,000 for the category specified in subparagraph (E) of such subsection, or

(6) less than $160,000,000 for the category specified in subparagraph (F) of such subsection,

the report shall state the reasons why the amount specified in paragraph (1), (2), (3), (4), (5), or (6) is not achievable.

DISPOSAL OF CERTAIN LANDS AT MONTAUK AIR FORCE BASE

Sec. 2902. (a) The Congress finds that—

(1) the highest and best use of the lands described in subsection (b)(1) of this section is use as a park or recreational area;

(2) the State of New York has indicated a willingness to convey by donation to the United States the fee interest to the lands described in subsection (b)(2);

(3) therefore the Administrator of General Services should assign to the Secretary of the Interior the lands described in subsection (b)(1) for use as a public park or recreational area; and

(4) the Secretary of the Interior should, simultaneous with acceptance of the lands described in subsection (b)(2), convey the property described in subsection (b)(1) to the State of New York for use as a public park or recreational area through a public discount conveyance under section 203(k)(2)

of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(2)).

(b)(1) The lands described in this subsection are those portions of the Montauk Air Force Station in East Hampton Township, Suffolk County, New York, totaling approximately 278 acres, that were declared surplus to the needs of the United States Government on December 31, 1981.

(2) The lands described in this subsection are approximately 125 acres of real property owned by the State of New York within the boundaries of the Fire Island National Seashore.

COST SAVINGS REPORT BY THE PRESIDENT

Sec. 2903. The President shall review recent recommendations for management improvement and cost control opportunities including those made by congressional committees, executive and legislative branch agencies, educational and research organizations, and public and private boards, task forces, councils, panels, and study groups, which require administrative or Presidential action. A report on such review shall be submitted with the Budget of the United States Government transmitted in January 1985 under section 1105(a) of title 31, United States Code, and shall contain a list of the recommendations the President has reviewed, the source of those recommendations, the actions which the President proposes to take or has taken, and the amount of cost savings expected to result therefrom in fiscal years 1985, 1986, and 1987.

COST SAVINGS BY COMMITTEE

Sec. 2904. Each authorizing committee of the Senate and House of Representatives shall review the report required under section 1609 and make recommendations from that report to the Budget Committees including any necessary changes in laws to allow for or facilitate the achievement of savings as identified in that report. The resulting recommendations shall be transmitted to the Budget Committee as part of each committee's report submitted pursuant to section 301(c) of Public Law 93-344, on March 15, 1985.

ANALYSES OF BUDGET ASSUMPTIONS

Sec. 2905. (a) The director of the Congressional Budget Office shall conduct a study of the nature and reliability of the assumptions upon which budget estimates are based for concurrent resolutions on the budget adopted by the Congress and make a report to the Committee on the Budget of the House of Representatives and the Committee on the Budget of the Senate by June 1, 1985. Such study shall identify—

(1) the reasons for the differences between actual revenues and outlays and the revenue and outlay estimates used for concurrent resolutions on the budget;

(2) the extent to which any systematic biases exist in the assumptions or methods used for making revenue and outlay estimates for the concurrent resolutions on the budget; and

(3) the extent to which the use of alternative assumptions or estimating methods. This would include time-series analyses of historical budget patterns and economic trends.

(b) On a trial basis, the Congressional Budget Office shall conduct in consultation with the General Accounting Office a review of the budget estimates prepared by the Department of Defense and one civilian agency to determine whether:

(1) there is a systematic underestimation of the costs required to carry out the policies, programs and projects proposed; and

(2) what effects any systematic costing errors may have upon the long-run costs of programs, the mix of programs implemented and the effectiveness of programs in meeting agency missions and goals.

The General Accounting Office component of this review shall look at all phases of budget preparation and program evaluation in the agencies selected, and shall examine historical patterns of funding to determine the effect of cost estimation biases.

FORMULA APPROACH TO FEDERAL BUDGETING

Sec. 2906. The Director of the Congressional Budget Office and the Director of the Office of Management and Budget shall each, in consultation with the Chairman and ranking member of the Committee on the Budget of the House of Representatives and the Committee on the Budget of the Senate, conduct a study of the administrative feasibility and potential impact in terms of effectiveness and equitability of applying alternative formula approaches to the entire Federal budget. These studies may include, but need not be limited to, the following formulas:

(1) a fraction (not necessarily limited to less than 1.0) of historical trends in spending within functions or categories of the budget;

(2) an equal percentage growth rate, or an equal percentage reduction in the growth rate of, each function or category of the budget;

(3) a set of percentage growth rates, whereby the budget is divided into major categories and a different percentage growth rate is then applied to each category;

(4) a fraction (not necessarily limited to less than 1.0) of the growth in the Gross National Product (as calculated by the Congressional Budget Office or the Office of Management and Budget) applied to each function or category of the budget.

The Congressional Budget Office and the Office of Management and Budget shall each report the findings of such study to the Congress no later than December 31, 1984.

MINING OF NICARAGUAN PORTS

Sec. 2907. It is the sense of the Congress that no funds heretofore or hereafter appropriated in any Act of Congress shall be obligated or expended for the purpose of planning, directing, executing, or supporting the mining of the ports or territorial waters of Nicaragua.

Solely for consideration of titles I through VIII, section 1002, and title XI of the Senate amendment, and division A of the House amendment to the Senate amendment:

From the Committee on Ways and Means:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
C.B. Rangel,
Pete Stark,
Barber B. Conable, Jr.,
John J. Duncan,
Bill Archer,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth, Jr.,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of sections 921 through 926, 943, 944, 952, and 958 of the Senate amendment and title III, parts B and C of division B of the House amendment to the Senate amendment:

From the Committee on Energy and Commerce:

John D. Dingell,
Henry A. Waxman,
James H. Scheuer,
Tom Luken,
Doug Walgren,
Barbara A. Mikulski,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth, Jr.,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of sections 905, 909, 917, 919, 951, 955, 956, 957, subsections (a), (b), and (c) of section 965, 966, 971 through 976, 981 through 985, and 992 through 997 of title IX of the Senate amendment and title III, sections 308 (2308), 339 (2339), 340 (2340), 342 (2342), and title VI (except for sections 650 (2650) and 661 (2661)) of division B of the House amendment to the Senate amendment:

From the Committee on Ways and Means:

Dan Rostenkowski,
Andrew Jacobs, Jr.,
C.B. Rangel,
Marty Russo,
Harold Ford,
Pete Stark,
Donald J. Pease,
Barber B. Conable,
John J. Duncan,
W. Henson Moore,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth, Jr.,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of title IX (except for sections 905, 909, 917, 919, 921 through 926, 943, 944, 951, 952, 955 through 958, subsections (a), (b), and (c) of section 965, 966, 971 through 976, 981 through 985, and 992 through 997)) and section 1611 of the Senate amendment and title III (except for sections 308 (2308), 339 (2339), 340 (2340), and 342 (2342)) of division B of the House amendment to the Senate amendment and sections 650 (2650) and 661 (2661) of division B of the House amendment to the Senate amendment:

From the Committee on Energy and Commerce:

John D. Dingell,
Henry A. Waxman,
James H. Scheuer,
Tom Luken,
Doug Walgren,
Barbara A. Mikulski,

From the Committee on Ways and Means:
Dan Rostenkowski,
Andrew Jacobs, Jr.,
C.B. Rangel,
Marty Russo,
Harold Ford,
Pete Stark,
Donald J. Pease,
Barber B. Conable,
John J. Duncan,
W. Henson Moore,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:
Bob Dole,
Bob Packwood,
W.V. Roth,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of title XIV and section 1606 of the Senate amendment:
From the Committee on Appropriations:
Jamie L. Whitten,
Edward P. Boland,
Silvio O. Conte,
Joseph M. McDade,

Solely for consideration of title XIV except for section 1401(f) of the Senate amendment:
From the Committee on Rules:
Claude Pepper,
Gillis Long,
Anthony C. Beilenson,
Martin Frost,
Managers on the Part of the House.

From the Committee on Appropriations, to consider those matters within its jurisdiction:
Mark O. Hatfield,
Ted Stevens,

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:
W.V. Roth, Jr.,
Bill Cohen,
Tom Eagleton,

From the Committee on the Budget:
Pete V. Domenici,
William L. Armstrong,
Nancy Landon Kassebaum,
Rudy Boschwitz,
John Tower,
Managers on the Part of the Senate.

Solely for Consideration of title XII and Sections 1604 and 1607 of the Senate amendment, and title II of Division B of the House amendment to the Senate Amendment:
From the Committee on Post Office and Civil Service:
William D. Ford,
William Clay,
Robert Garcia,
Mickey Leland,
Dan Albosta,
Mary Rose Oakar,
Gene Taylor,
Benjamin A. Gilman,
Tom Corcoran,
Jim Courter,

Solely for consideration of such portions of section 1201 of the Senate amendment and section 201 of division B of the House amendment to the Senate amendment as related to cost-of-living adjustments for military retirees:
From the Committee on Armed Services:
Melvin Price,
Bill Nichols,
Wm. L. Dickinson,
Elwood Hillis,

Solely for consideration of section 1604 of the Senate amendment:
From the Committee on the Judiciary:
Peter W. Rodino, Jr.,
Jack Brooks,
Hamilton Fish, Jr.,
Managers on the Part of the House.

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:
W.V. Roth, Jr.,
Charles McC. Mathias, Jr.,
Bill Cohen,
Tom Eagleton,
Jeff Bingaman,
Managers on the Part of the Senate.

Solely for consideration of title XV of the House amendment:
From the Committee on Government Operations:
Jack Brooks,
Don Fuqua,
Cardiss Collins,
Glenn English,
Elliott H. Levitas,
Frank Horton,
John N. Erlenborn,
W. Clinger,
Managers on the Part of the House.

From the Committee on Armed Services, to consider those matters within its jurisdiction:
Bill Cohen,
Dan Quayle,
Jeff Bingaman,
Carl Levin,

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:
W.V. Roth, Jr.,
Bill Cohen,
Tom Eagleton,
Carl Levin,
Managers on the Part of the Senate.

Solely for consideration of sections 1301 through 1314 of the Senate amendment:
From the Committee on Banking, Finance and Urban Affairs:
Fernand J. St Germain,
Frank Annunzio,
Carroll Hubbard,
Doug Barnard, Jr.,
Mary Rose Oakar,
Chalmers P. Wylie,
Stewart B. McKinney,
Managers on the Part of the House.

From the Committee on Banking, Housing, and Urban Affairs, to consider those matters within its jurisdiction:
Jake Garn,
John Tower,
Bill Proxmire,
Managers on the Part of the Senate.

Solely for consideration of title IV of division B of the House amendment to the Senate amendment:
From the Committee on Small Business:
Parren J. Mitchell,
Joseph P. Addabbo,
Joseph M. McDade,
Managers on the Part of the House.

From the Committee on Small Business, solely for consideration of title IV of division B of the House amendment to the Senate amendment:
Lowell P. Weicker, Jr.,
Slade Gorton,
Dale Bumpers,
Managers on the Part of the Senate.

Solely for consideration of title V of division B of the House amendment to the Senate amendment:
From the Committee on Veterans' Affairs:
G.V. Montgomery,
Don Edwards,
Bob Edgar,
Douglas Applegate,
Marvin Leath,
Richard Shelby,
John Paul Hammerschmidt,
Chalmers P. Wylie,
Elwood Hillis,
Managers on the Part of the House.

From the Committee on Veterans' Affairs, solely for consideration of title V of division B of the House amendment to the Senate amendment:
Alan K. Simpson,
Strom Thurmond,
Alan Cranston,
Managers on the Part of the Senate.

Solely for consideration of sections 1603, 1605, 1609, and subsection (b) of section 1610 of the Senate amendment:
From the Committee on Government Operations:
Jack Brooks,
Don Fuqua,
Cardiss Collins,
Glenn English,
Elliott H. Levitas,
Frank Horton,
John N. Erlenborn,
W. Clinger,
Managers on the Part of the House.

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:
W.V. Roth, Jr.,
Bill Cohen,
Tom Eagleton,
Carl Levin,

From the Committee on the Budget:
Pete V. Domenici,
William L. Armstrong,
Nancy Landon Kassebaum,
Rudy Boschwitz,
John Tower,
Managers on the Part of the Senate.

Solely for consideration of title IX, section 1001, and titles XII through XVI of the Senate amendment, and division B of the House amendment to the Senate amendment:
From the Committee on the Budget:
James Jones,
Leon E. Panetta,
Richard Gephardt,
Bill Nelson,
Brian Donnelly,
Butler Derrick,
Pat Williams,
Managers on the Part of the House.

For consideration of the entire bill:
From the Committee on the Budget:
Pete V. Domenici,
Willliam L. Armstrong,
Nancy Landon Kassebaum,
Rudy Boschwitz,
John Tower,
Managers on the Part of the Senate.

Joint Explanatory Statement of the Committee of Conference

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendments of the Senate to the bill (H.R. 4170) to provide for tax reform, and for other purposes, submit the following joint statements to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The joint statement of managers which follows was prepared by the committee of jurisdiction and is arranged by title of the conference agreement.

I. TAX FREEZE; TAX REFORMS GENERALLY

A. TAX FREEZE AND RELATED PROVISIONS

1. Postponement of finance lease provisions

Present law

Overview

The law contains rules (pre-safe harbor lease rules) to determine who owns an item of property for tax purposes when the property is subject to an agreement which the parties characterize as a lease. Such rules are important because the owner of the property is entitled to claim tax benefits including cost recovery deductions and investment tax credits with respect to the property. The pre-safe harbor rules attempt to distinguish between true leases, in which the lessor owns the property for tax purposes, and conditional sales or financing arrangements, in which the user of the property owns the property for tax purposes. These rules generally are not written in the Internal Revenue Code. Instead they evolved over the years through a series of court cases and revenue rulings and revenue procedures issued by the Internal Revenue Service. Essentially, the law is that the economic substance of a transaction, not its form, determines who is the owner of property for tax purposes. Thus, if a transaction is, in substance, simply a financing arrangement, it is treated that way for tax purposes, regardless of how the parties choose to characterize it. Under the pre-safe harbor lease rules, lease transactions cannot be used solely for the purpose of transferring tax benefits. They have to have nontax economic substance.

The Economic Recovery Tax Act of 1981 (ERTA) provided a new set of rules which represented a major departure from the pre-safe harbor rules. These provisions were intended to be a means of transferring tax benefits rather than a means of determining which person is in substance the owner of the property. Under these rules (safe-harbor lease rules), certain transactions involving tangible personal property were treated as leases for Federal income tax purposes regardless of their nontax economic substance. The pre-safe harbor leasing rules continued to apply for transactions not qualifying under the safe-harbor lease rules or when the safe harbor was not elected.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) generally repealed safe-harbor leasing. In its place, TEFRA substituted a liberalized form of pre-safe harbor leasing called finance leasing. The finance lease rules essentially provide that certain parts of the pre-safe harbor rules are not taken into account in determining whether an agreement with respect to a limited class of property is a lease for tax purposes. Thus, the pre-safe harbor rules apply when finance lease rules are unavailable, and, except to the extent not taken into account under the finance lease rules, they apply when the finance lease rules are available.

Pre-safe harbor leasing rules

Underlying principles

In general, the determination of lease treatment under the pre-safe harbor leasing rules requires a case-by-case analysis based on all the facts and circumstances. Although the determination of whether a transaction is a lease is inherently factual, a series of general principles is embodied in court cases, revenue rulings, and revenue procedures. These principles are used in determining the character of transactions not eligible for the safe-harbor lease rules.

For a transaction to be a lease under these rules, the lessee generally cannot hold title to or have a significant equity interest in the property. However, the fact that the lessor has title does not guarantee that the lessor is the owner for Federal income tax purposes. Both the courts and the IRS look to additional criteria in determining whether a transaction is a lease. These criteria focus on the substance of the transaction rather than its form. The courts do not disregard the form of a transaction simply because tax considerations are a significant motive so long as the transaction also has a bona fide business purpose and the lessor retains sufficient burdens and benefits of ownership.[1]

To be entitled to depreciation deductions as the owner of the property, the lessor has to show that the property is being used by it for a business or other income-producing purpose. To have a business purpose, the person claiming ownership (i.e., the lessor) at least has to have a reasonable expectation that he will derive a profit from the transaction independent of tax benefits.[2] This requirement precludes lease treatment for a transaction intended merely to reduce the user's costs by utilizing the lessor's tax base. For a sale-leaseback, other nontax business motives have been considered in determining the substance of the transaction.

The fact that the lessor in a lease financing transaction can show a profit or business purpose, however, does not automatically result in lease treatment under pre-safe harbor lease rules, since a profit or business motive could also exist in a financing arrangement. In addition, the lessor has to retain meaningful benefits and burdens of ownership.[3] Thus, lease treatment has been denied under pre-safe harbor lease rules if the user has the option to acquire the property at the end of the lease for a price that either is nominal in relation to the value of the property at the time when the option can be exercised (as determined at the time the parties entered into the agreement) or which is relatively small when compared with the total payments required to be made.[4]

Where the residual value of the property to the lessor is nominal, the lessor has been viewed as having transferred full ownership of the property for the rental fee. Where the purchase option is more than nominal but relatively small in comparison with fair market value, the lessor may still be viewed as having transferred full ownership if the likelihood that the lessee will exercise the bargain purchase option is great.[5] Furthermore, if the lessor can force the lessee to purchase the property at the end of the lease (a put), the transaction might also be denied lease treatment under pre-safe harbor lease rules if the put eliminates the risk borne by owners of property that there may be no market for the property at the end of the lease.

Objective guidelines used in structuring transactions

The question of exactly what burdens and benefits of ownership have to be retained by the lessor under pre-safe harbor lease rules created some confusion and difficulty for people trying to structure leases that, at least in part, were motivated by tax considerations. To give taxpayers guidance in structuring leveraged leases (i.e., where the property is financed by a loan from a third party), the Internal Revenue Service in 1975 issued Revenue Procedure 75-21, 1975-1 C.B. 715, and a companion document, Revenue Procedure 75-28, 1975-1 C.B. 752 (the guidelines). If the requirements of the guidelines are met and if the facts and circumstances do not indicate a contrary result, the Service will issue an advance letter ruling that the transaction is a lease and that the lessor is the owner for Federal income tax purposes.

The guidelines generally apply only to leveraged leases of equipment. The general principles described above continue to govern nonleveraged leases and leases of real property. The guidelines are not a definitive statement of legal principles and are not intended for audit purposes. If less than all requirements of the guidelines are met, a transaction might still be considered a lease if, under all the facts and circumstances, the transaction is a lease under the general principles discussed previously. However, in practice, many taxpayers have taken into account the guidelines' requirements in structuring transactions. The guidelines may be viewed as a type of safe harbor.

The specific requirements for obtaining a ruling under the guidelines are as follows:

1. *Minimum investment.*—The lessor must have a minimum 20 percent unconditional at-risk investment in the property. This rule represents an attempt to ensure that the lessor experiences some significant loss if the property declines in value. By limiting the degree of nonrecourse leverage, this guideline also limits the pool of potentially transferable tax benefits from such transactions.

2. *Purchase options.*—In general, the lessee may not have an option to purchase the property at the end of the lease term unless, under the lease agreement, the option can be exercised only at fair market value (determined at the time of exercise). This rule precludes fixed price purchase options, even at a bona fide estimate of the projected fair market value of the property at the option date. In addition, when the property is first placed in service by the lessee, the lessor cannot have a contractual

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[1] See, *Hilton* v. *Commissioner*, 74 T.C. 305 (1980), *aff'd*, 671 F.2d 316 (9th Cir. 1982); *Frank Lyon Co.* v. *United States*, 435 U.S. 561 (1978), *rev'g*, 536 F.2d 746 (8th Cir. 1976); and Rev. Rul. 55-540, 1955-2 C.B. 39 (and cases cited therein). See generally, *Gregory* v. *Helvering*, 293 U.S. 465 (1935).

[2] See, *Hilton* v. *Commissioner*, 74 T.C. 305 (1980), *aff'd*, 671 F.2d 316 (9th Cir. 1982).

[3] See, *Frank Lyon Co.* v. *United States*, 435 (U.S. 561 (1978), rev'g 536 F.2d 746 (8th Cir. 1976); and Rev. Rul. 55-540, 1955-2 C.B. 39 (and cases cited therein).

[4] See, Rev. Rul. 55-540, 1955-2 C.B. 39 (and cases cited therein).

[5] See, *M&W Gear Co.* v. *Commissioner*, 446 F.2d 841 (7th Cir. 1971).

right to require the lessee or any other party to purchase the property, even at fair market value.

The fair market value purchase option requirement fulfills three purposes related to the determination of the economic substance of the transaction. First, it ensures that the lessor bears the risk implicit in ownership that no market or an unfavorable market will exist at the end of the lease. Second, it ensures that the lessor has retained an equity interest in the property. Any fixed price option represents a limitation on the lessor's right of full enjoyment of the property's value. Third, it limits the ability of the parties to establish an artificial rent structure to avoid the cash flow test (described below). However, several courts have held that the mere existence of a fixed price purchase option does not prevent lease treatment so long as the lessor retains other significant burdens and benefits of ownership.[6]

Safe harbor leasing rules

The safe-harbor leasing provisions of ERTA were intended to permit owners of property who were unable to use depreciation deductions and investment credits to transfer those benefits to persons who were able to use them, without having to meet the pre-safe harbor lease requirements for characterizing the transaction as a lease. The safe-harbor leasing provisions operated by guaranteeing that, for Federal income tax purposes, qualifying transactions were treated as leases and that the nominal lessor was treated as the owner of the property, even though the lessee was in substance the owner of the property and the transaction otherwise would not have been considered a lease.[7]

3. *Lessee investment precluded.*—Neither the lessee nor a party related to the lessee may furnish any part of the cost of the property. The rationale is that a lessee investment may suggest that the lessee is in substance a co-owner of the property.

4. *No lessee loans or guarantees.*—As a corollary to the prior rule, the lessee must not loan to the lessor any of the funds necessary to acquire the property. In addition, the lessee must not guarantee any lessor loan.

5. *Profit and cash flow requirements.*—The lessor must expect to receive a profit from the transaction and have a positive cash flow from the transaction independent of tax benefits. These guidelines are based on the requirement, as previously mentioned, that lease transactions must have a business purpose independent of tax benefits.

6. *Limited use property.*—Under Revenue Procedure 76-30, 1976-2 C.B. 647, property that can be used only by the lessee (limited use property) is not eligible for lease treatment. The rationale is that if the lessee is the only person who could realistically use the property, the lessor has not retained any significant ownership interest.

The Tax Equity and Fiscal Responsibility Act of 1982 generally repealed safe-harbor leasing.

Finance lease provisions

TEFRA provided rules (finance leasing rules) which in two respects liberalized the pre-safe harbor leasing rules with respect to certain property. Under the finance leasing rules, the fact that (1) the lessee has an option to purchase the property at a fixed price of 10 percent or more of its original cost to the lessor or (2) the property is readily usable only by the lessee (limited use property) is not taken into account in determining whether the agreement is a lease.

A qualified agreement must be a lease determined without taking into account the fact that it contains a 10-percent fixed price purchase option or that the property is limited use property. Thus, the transaction must have economic substance independent of tax benefits. The lessor must reasonably expect to derive a profit independent of tax benefits. In addition, the transaction, without taking into account the fact the agreement contains a fixed price purchase option or that the property is limited use property, must not otherwise be considered a financing arrangement or conditional sale.

The finance lease rules generally apply to agreements entered into after December 31, 1983, but three restrictions apply in 1984 and 1985. First, no more than 40 percent of property placed in service by a lessee during any calendar year beginning before 1986 may qualify for finance lease treatment. Second, a lessor may not use finance lease rules to reduce its tax liability for any taxable year by more than 50 percent. This 50-percent lessor cap does not apply to property placed in service after September 30, 1985 (in taxable years beginning after that date). Third, the investment tax credit for property subject to a finance lease and placed in service on or before September 30, 1985, is only allowable ratably over 5 years, rather than entirely in the year the property is placed in service.

An exception to the general rule is provided for agreements relating to farm property. Finance lease rules are available for up to $150,000 of a lessee's farm property, for agreements entered into after July 1, 1982, and before 1984. Furthermore, the 40-percent lessee cap, 50-percent lessor cap, and 5-year spread of investment credit are inapplicable to this farm property.

No regulations have been issued under the finance lease provisions.

House bill

The House bill postpones for four years the effective dates of the finance lease rules. Thus, these rules generally apply only to agreements entered into after December 31, 1987, and the three restrictions currently scheduled to apply in 1984 and 1985 apply in 1988 and 1989. First, the 40-percent lessee cap is extended to cover property placed in service by a lessee during any calendar year beginning before 1990. Second, the 50-percent lessor cap is extended through September 30, 1989. Third, the 5-year spread of investment credit for property subject to a finance lease is extended to cover property placed in service on or before September 30, 1989. Present law rules relating to the availability of finance leasing for up to $150,000 of a lessee's farm property are extended to cover agreements entered into before 1988.

The House bill provides transitional rules which exempt certain property from the 4-year postponement described above. Under these rules, the postponement does not apply to property if, before March 2, 1984, (1) a binding contract to acquire or construct the property was entered into by the lessee, (2) the property was acquired by the lessee, or (3) construction of the property was begun by or for the lessee.

The House bill prohibits the Treasury from issuing, before 1988, regulations relating to the determination of whether a transaction is a lease. The prohibition does not apply to regulations which carry out the purposes of the bill with respect to tax-exempt entity leasing or of section 210 of TEFRA (relating to agreements covering certain motor vehicles).

Senate amendment

The Senate amendment is generally the same as the House bill. However, the Senate amendment substitutes March 7, 1984, for March 2, 1984, in the transitional rules, and does not include a provision prohibiting the Treasury from issuing leasing regulations. In addition, the Senate amendment exempts the following property from the 4-year postponement of finance leasing rules: (1) up to $150 million of a qualified lessee's automotive manufacturing property and (2) property that is part of a coal-fired cogeneration facility for which certification and construction permit applications were filed on specified dates.

Conference agreement

The conference agreement generally follows the Senate amendment.

In the Tax Equity and Fiscal Responsibility Act of 1982, Congress permitted lease treatment, beginning in 1984, for agreements which would be appropriately treated as leases under current administrative rules and practices were it not for the fact that the agreement contained a fixed price purchase option or pertained to limited use property. The conference agreement postpones these relaxations of current administrative guidelines, and the conferees intend that those guidelines should not be relaxed by administrative action.

The conference agreement does not include the provision of the House bill which generally would have prohibited the Treasury Department from issuing leasing regulations before 1988. The conferees reached this decision on the basis of an understanding that the Treasury Department does not intend to liberalize significantly current administrative rules and practices for determining whether an agreement is a lease or a financing arrangement. The conferees also took into account the fact that a prohibition could have precluded perfecting modifications that may be shown to be necessary but that would not operate to liberalize current administrative guidelines in this area.

The conferees are concerned that agreements represented as leases are being used to transfer the tax benefits of ownership from persons who cannot utilize them to nominal lessors who can, when in substance the nominal lessor does not have a significant at-risk investment in the property itself. Current administrative rules and procedures are designed to check such tax benefit transfers. Therefore, the primary objective of the conferees is that there be no relaxation of administrative rules and practices that would result in lease treatment for financing transactions in which the purported lessor does not have a significant ownership interest in the property. While recognizing that in some cases special factors may need to be taken into account, the conferees believe that current administrative rules and practices, when applied to the broad range of conventional lease financing transactions, produce a satisfactory and appropriate differentiation between leases and financing arrangements.

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[6] See, e.g., *Northwest Acceptance Corp.* v. *Commissioner*, 58 T.C. 836 (1972), *aff'd*, 500 F.2d 1222 (9th Cir. 1974).

[7] For a discussion of the safe-harbor lease eligibility requirements, see the General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, prepared by the Staff of the Joint Committee on Taxation (December 31, 1982).

2. Postponement of increase in amount of used property eligible for investment tax credit

Present law

The maximum amount of a taxpayer's investment in used property that is eligible for the regular investment tax credit in a taxable year is $125,000. In the case of a married individual who files a separate return, the limit is $62,500. These limits are scheduled to increase to $150,000 and $75,000, respectively, for taxable years beginning after 1984.

House bill

The House bill maintains the maximum amount of used property eligible for the investment credit at its current level of $125,000 per year until taxable years beginning after 1987, when this limit is increased to $150,000.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

3. Postponement of increases in amount of property eligible for expensing

PRESENT LAW

A taxpayer (other than a trust or estate) may elect, in lieu of capital cost recovery under the Accelerated Cost Recovery System, to deduct the cost of qualifying property in the taxable year it is placed in service. In general, qualifying property must be acquired by purchase for use in a trade or business and must otherwise be eligible for the investment tax credit. No investment credit is allowable for the portion of the cost of property expensed under this rule.

For taxable years beginning in 1983, the dollar limitation on the amount that can be expensed is $5,000 a year. This limitation is scheduled to increase to $7,500 for taxable years beginning in 1984 and 1985, and to $10,000 for taxable years beginning after 1985. In each case, the limitation that applies to a married individual who files a separate return is one-half the dollar limitation described above.

House bill

The House bill postpones for four years the scheduled increases in the maximum amount of property that can be expensed. Thus, the dollar limitation on the amount that can be expensed will remain at $5,000 for taxable years beginning before 1988, increase to $7,500 for taxable years beginning in 1988 or 1989, and increase to $10,000 for taxable years beginning after 1989.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

4. Net interest exclusion

Present law

The Economic Recovery Tax Act of 1981 provides for an exclusion of 15 percent of net interest received, for up to $3,000 of net interest ($6,000 on a joint return). Net interest is generally interest received by the taxpayer in excess of interest paid (other than mortgage interest or business interest) by the taxpayer for which an income tax deduction is allowed.

The net interest exclusion is scheduled to take effect for taxable years beginning after 1984.

House bill

The House bill repeals the net interest exclusion.

Senate amendment

The Senate amendment postpones the effective date of the net interest exclusion to taxable years beginning after 1987.

Conference agreement

The conference agreement follows the House bill.

5. Postponement of increase in foreign earned income exclusion

Present law

The maximum amount of income earned abroad that is excludible from an individual's taxable income is $80,000 for 1983. This amount is scheduled to increase in $5,000 annual increments to a permanent level of $95,000 in 1986.

House bill

The House bill freezes the maximum amount of the foreign earned income exclusion at $80,000 until 1988 and increases it in $5,000 increments to $95,000 in 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

6. Defer scheduled reductions in maximum gift and estate tax rates

Present law

The Economic Recovery Tax Act of 1981 (ERTA) enacted reductions in the maximum gift and estate tax rates, to take effect over a four-year period. The maximum rates before ERTA were 70 percent. Under ERTA, the maximum rates are 60 percent for gifts made and individuals dying in 1983; 55 percent in 1984, and 50 percent thereafter.

House bill

The House bill retains the 60-percent maximum gift and estate tax rates through 1987. The rate will be reduced to 55 percent in 1988 and 50 percent in 1989 and thereafter.

The provision applies to gifts made, and estates of individuals dying, after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification that the maximum tax rate is 55 percent through 1987. The rate will decline to 50 percent for estates of individuals dying, and gifts made, after December 31, 1987.

7. Windfall profit tax rate on newly discovered oil

Present law

Present law imposes an excise tax on the production of domestic crude oil. Differing tax rates and base prices apply to oil, generally depending upon its classification on one of three tiers.

Tier 1 oil (previously controlled oil) generally is taxed at a 70-percent rate; tier 2 oil (stripper oil and naval petroleum oil) generally is taxed at a 60-percent rate. A 50-percent rate applies to up to 1,000 barrels a day of tier 1 oil production by independent producers. In the case of tier 2 stripper oil, production by independent producers generally is exempt from tax.

Tier 3 oil is newly discovered oil, heavy oil, and incremental tertiary oil. Prior to 1982, all tier 3 oil was subject to tax at a 30-percent rate. Starting in 1982, the rate on newly discovered oil was reduced to 27-1/2 percent and to 25 percent in 1983. Under present law, the rate of windfall profit tax on newly discovered oil is 22.5 percent for 1984, 20 percent for 1985, and 15 percent for 1986 and later years.

House bill

Under the House bill, the rate of windfall profit tax on newly discovered oil would not be reduced to 22-1/2 percent in 1984. Instead, the tax rate would remain at 25 percent through 1987 and then be reduced to 22-1/2 percent for 1988, 20 percent for 1989, and 15 percent for 1990 and later years.

The provision applies with respect to domestic crude oil removed from the premises on which it was produced after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment providing that the windfall profit tax rate applicable to newly discovered oil will be 22.5 percent for 1984 through 1987, 20 percent for 1988, and 15 percent for 1989 and subsequent years.

8. Percentage depletion for secondary and tertiary production after 1983

Present law

In the Tax Reduction Act of 1975, Congress retained the percentage depletion allowance for limited quantities of oil and gas production. For oil production, effective January 1, 1984, the rate has declined to a permanent level of 15 percent and is limited to 1,000 barrels per day.

The 1975 amendment continued this percentage depletion allowance for secondary and tertiary production at a 22-percent rate but (because of an error) only through 1983.

Under the 1975 amendments, if an interest in any proven oil or gas property is transferred to another owner after 1974, no percentage depletion allowance applies to the property after the transfer unless one of the exceptions provided for in section 613(c)(9) or (10) applies. The proposed Treasury regulations, published in 1977, stated that the transfer restrictions would not apply to percentage depletion for secondary and tertiary production. This exception to the transfer rule resulted from the same 1975 drafting error that caused termination of that percentage depletion after 1983.

House bill

The House bill corrects the technical errors that occurred in the Tax Reform Act of 1975 with respect to depletion on secondary and tertiary depletion. The bill eliminates the distinction between primary and secondary or tertiary production after 1983. Thus, independent producers may claim percentage depletion in 1984 at a rate of 15 percent on up to 1,000 barrels of all their production. In addition, starting in 1984, percentage depletion on secondary and tertiary production will not be available after 1983 for production from proven properties transferred since 1974 unless one of the exceptions provided for in section 613A(c)(9) applies to the transfer.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

9. Modification of excise tax rates on cigarettes and distilled spirits

a. Cigarette excise tax

Present law

Present law imposes an excise tax on cigarettes manufactured in or imported into the United States. The rate of tax on small cigarettes is 16 cents per pack of 20 cigarettes. Higher rates apply to so-called "large" cigarettes, which are cigarettes weighing more than 3 pounds per thousand. Nearly all taxable cigarettes are small cigarettes. On October 1, 1985, the present tax rates are scheduled to decline by one-half.

House bill

The House bill provides an excise tax equal to 12 cents per pack of 20 cigarettes after September 30, 1985, and before January 1, 1988. A corresponding adjustment to the tax rate for large cigarettes is made.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

b. Distilled spirits excise tax

Present law

Present law imposes an excise tax at a rate of $10.50 per proof gallon on distilled spirits produced in or imported into the United States. A proof gallon is a U.S. gallon of liquid one-half of the volume of which consists of ethyl alcohol of a specified gravity.

House bill

The House bill increases the excise tax on distilled spirits by $3.75, to $14.25 per proof gallon, after September 30, 1985, and before January 1, 1988.

Senate amendment

The Senate amendment increases the excise tax on distilled spirits by $2.00, to $12.50 per proof gallon, effective after December 31, 1984.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with modifications. Under the agreement, the increase in the tax rate is $2.00 per proof gallon as under the Senate amendment, and the increase is effective on October 1, 1985, as under the House bill.

The conference agreement clarifies and expands the Treasury Department regulatory authority to prescribe the time for payment of the special imposed on certain floor stocks held for sale on October 1, 1985, and to exempt certain small businesses from that tax. Under the agreement, the floor stocks tax generally will be due on April 1, 1986. Additionally, certain special de minimis provisions are included for small and middle sized wholesale and retail dealers. The de minimis exception provides the following:

(1) All persons holding distilled spirits for sale on October 1, 1985, are required to conduct a wine gallon inventory.

(2) Dealers whose wine gallon volume inventory is less than 500 gallons are exempt from the floor stocks tax.

(3) Dealers with an inventory of 500 liquid gallons or more are required to conduct a proof gallon inventory and to pay floor stocks tax on that inventory, but these dealers will receive a credit against the tax equal to $800 (the approximate tax on 500 wine gallons).

(4) All dealers whose gross sales from all products in the preceding taxable year did not exceed $500,000 are allowed to pay the floor stocks tax in three installments, one-third on each of April 1, 1986, July 1, 1986, and October 1, 1986.

10. Modification of time and manner of paying excise taxes on cigarettes and alcohol products

Present law

Time of payment

Cigarette and alcohol excise taxes generally are paid with respect to semimonthly periods; the taxes are due the following number of days after the last day of the semimonthly period when the taxable product is removed from bonded premises:

Cigarettes	25 days
Domestically produced and bulk imported distilled spirits	30 days
Bottled imported distilled spirits	15 days
Wine and beer	15 days

Method of payment

Present law generally requires payment of the cigarette and alcohol product excise taxes to accompany a return for each semimonthly period. There is no requirement of payment by electronic funds transfer.

House bill

No provision.

Senate amendment

Time of payment

The Senate amendment requires payment of the excise taxes on cigarettes and all alcohol products 14 days after the close of each semimonthly period. If the 14th day is a Saturday, Sunday, or Federal holiday, payment is required on the last preceding business day. This provision is effective with respect to semimonthly periods ending on and after June 30, 1984.

Method of payment

The Senate amendment requires payment of the excise taxes on cigarettes and all alcohol products by means of electronic funds transfer to a Federal reserve bank in the case of taxpayers whose gross tax liability with respect to the product involved was $5 million or more during the preceding calendar year. This provision is effective with respect to payments due on and after June 30, 1984.

Conference agreement

The conference agreement follows the House bill as to the time of payment and the Senate amendment as to the method of payment. The Senate amendment is modified, however, to delay the effective date of the electronic funds transfer provision until September 30, 1984.

11. Extension of excise tax on communications services

Present law

A 3-percent excise tax is imposed on amounts paid for local telephone service, toll (long-distance) telephone service, and teletypewriter exchange service. The tax is scheduled to terminate on January 1, 1986.

House bill

The House bill extends the 3-percent tax on communications services for two years, or through December 31, 1987.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. Leasing Provisions

1. Tax-exempt entity leasing

a. General rule

Present law

The rules for determining who is entitled to the tax benefits associated with the ownership of property generally are not written in the Internal Revenue Code. Rather, they are embodied in a series of court cases and in revenue rulings and revenue procedures issued by the IRS. Essentially, these rules focus on the economic substance of a transaction, not its form, for determining who is entitled to the tax benefits of the ownership of property. Thus, in a purported lease or similar arrangement, the person claiming ownership for Federal income tax purposes must show that he has sufficient economic indicia of ownership. The applicable rules are discussed at length in the committee reports.

In general, the tax benefits of ownership of property include depreciation or accelerated cost recovery deductions and investment tax credits. Generally, ACRS or other depreciation deductions and investment credits are allowed only for property used for a business or income-producing purpose. The accelerated cost recovery system generally permits taxpayers to depreciate qualifying property on an accelerated basis over relatively short periods. For most property, the ACRS recovery period is shorter than the actual useful life of the property. Investment credits permit taxpayers to reduce their tax liability by a percentage of their investments in eligible property. Eligible property includes certain depreciable personal property. Special rules apply to certain energy property and to certain rehabilitations of older buildings or certified historic structures.

As a general rule, ACRS or other depreciation deductions and investment credits are not available for property owned by governmental units and tax-exempt organizations since they are not generally taxable. Moreover, no investment credit is allowed for property leased to or otherwise used (though not owned) by a tax-exempt organization in its exempt function or by a governmental unit (nontaxable use restriction). The nontaxable use restriction does not affect the allowance of ACRS deductions and certain other tax benefits. As a result, tax-exempt entities, by leasing property, may indirectly enjoy tax benefits that they could not have enjoyed had they owned the property instead.

Property used by a foreign government or person is not subject to the nontaxable use restriction. However, if the property is used predominantly outside the United States, in general, ACRS deductions are reduced and no investment credit is allowed. There are a number of exceptions to this rule (sec. 48(a)(2)(B) and sec. 168(f)(2)(D)).

House bill

Numerous changes are made in the tax treatment of property leased to or otherwise used by a tax-exempt entity, as defined in the bill. The bill provides rules for determining cases in which property is to be treated as used by a tax-exempt entity for certain purposes, including cases in which property subject to a so-called service contract or other arrangement with or on behalf of a tax-exempt entity is to be treated as leased to that entity. The bill also provides rules for determining the tax treatment of property which is not tax-exempt use property under the general rules of the bill but which is owned by a partnership or other pass-through entity which has a tax-exempt entity as a partner or other beneficiary.

The provision is generally effective with respect to property placed in service by the taxpayer after May 23, 1983, and to property placed in service by the taxpayer before May 24, 1983, and used by a tax-exempt entity pursuant to a lease entered into or renewed after May 23, 1983. Numerous transition rules are provided.

Senate amendment

The Senate amendment generally follows the House bill with several exceptions. In addition, the Senate amendment provides that the rules for distinguishing service contracts and other arrangements from leases are applicable for all income tax purposes. The Senate amendment also provides rules for determining the tax treatment of property leased to thrift institutions.

The provision generally has the same effective date as the provision in the House bill. However, the Senate amendment provides different transition rules.

Conference agreement

The conference agreement is discussed below.

b. Definition of tax-exempt entity

Present law

For purposes of the nontaxable use restriction applicable with respect to the investment credit, tax-exempt entities generally include organizations (other than farmers' cooperatives) exempt from income taxes (other than with respect to property used predominantly in an unrelated trade or business the income from which is subject to tax under sec. 511). Tax-exempt entities also include the United States, any State or political subdivision thereof, most international organizations, and any agency or instrumentality of any of the foregoing.

House bill

For all purposes of the bill, the term "tax-exempt entity" includes, in addition, U.S. possessions. The term also includes foreign governments, international organizations, any agency or instrumentality of any of the foregoing, and any person who is not a U.S. person (collectively, "foreign persons or entities"), but only with respect to property 50 percent or less of the gross income from the use of which for the taxable year is subject to U.S. income tax. The term also includes organizations which were tax-exempt at any time during the 5-year period ending on the date such organization first used the property involved.

The House bill also provides that a fully taxable corporate instrumentality of the United States or any State or political subdivision thereof is not to be treated as a tax-exempt entity only if a majority of its board of directors is not selected by the United States or any State or political subdivision thereof.

Senate amendment

The Senate amendment follows the House bill with certain exceptions. First, no foreign person or entity is treated as a tax-exempt entity with respect to property more than 20 percent of the gross income from the use of which is subject to U.S. income tax. For this purpose, income currently included under Subpart F in the income of a U.S. shareholder of a controlled foreign corporation is to be treated as subject to U.S. income tax.

Second, certain organizations (e.g., rural electric cooperatives) formerly exempt from tax under section 501(c)(12) at any time during the 5-year period preceding their first use of the property involved are not treated as tax-exempt entities if they agree to be fully taxable for the period beginning with the taxable year the property involved is placed in service and ending with the close of the 15th taxable year following the last taxable year of the recovery period for the property involved.

And third, fully taxable corporate instrumentalities of the United States or any State or political subdivision thereof are not treated as tax-exempt entities.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the conference agreement follows the House bill with respect to the (1) 50 percent threshold in the case of property used by a foreign person or entity, and (2) the treatment as tax-exempt entities of corporate instrumentalities of the United States or any State or political subdivision thereof. In addition, property leased to the Federal Home Loan Mortgage Corporation (which is made a taxable entity by the bill) is not to be treated as leased to a tax-exempt entity under the 5-year lookback rule.

Finally, under the conference agreement, certain former section 501(c)(12) organizations (e.g., rural electric cooperatives) are not subject to the 5-year lookback rule only if, in addition to complying with the Senate amendment, they comply with a transitional requirement added by the conference agreement. Under that requirement, the organization must elect to pay taxes on the exempt arbitrage profits it earns or has earned on that portion of the proceeds of any tax-exempt obligations associated with financing (e.g., acquisition or construction financing) by the organization of the property ultimately leased. The requirement is imposed because, in general, the conferees do not believe it appropriate that an organization should, as a tax-exempt entity, be able to earn arbitrage profits on tax-exempt obligations issued to finance property and then, after becoming a taxable entity, be entitled to benefit from tax provisions, through leasing property, available to the owner of the property. This is especially true in the case of cooperatives, which tend to have substantial tax planning flexibility.

This requirement applies with respect to all such exempt arbitrage profits, regardless of when earned, but only to the extent they are attributable to a period during which the organization was exempt from taxation. Under the conference agreement, those profits are taxed to the organization for the first taxable year in which it uses the property under the lease. They are treated as a separate basket of taxable income and taxed as such under section 11. No deductions are allowed against that separate basket of income. Neither are any credits allowed with respect to resulting tax liability.

"Exempt arbitrage profits" are the aggregate amount determined under the principles of sections 103(c)(6)(D)(i) and (ii) (relating to certain arbitrage profits), as amended by the bill, except that for this purpose, sections 103(c)(6)(F)(i)(II) (relating to certain earnings on a bona fide debt service fund) and 103(c)(6)(F)(ii) (relating to earnings on certain temporary investments) are disregarded. Furthermore, the principles of section 103(c)(6)(D)(i) are applicable for this purpose regardless of that section's general effective date. (Generally, that section applies to bonds issued after December 31, 1984.)

If new section 103(c)(6)(D)(i) in fact is applicable to the tax-exempt obligations there are, for purposes of this requirement, no exempt arbitrage profits. In general, if new section 103(c)(6)(D)(i) is applicable, certain arbitrage profits must be rebated to the United States. In such a case, taxation of "exempt arbitrage profits" is inappropriate.

c. Tax-exempt use property

Present law

For purposes of the investment credit (other than the rehabilitation credit), property used by a tax-exempt entity is treated as tax-exempt use property.

House bill

Personal property leased to or otherwise used by a tax-exempt entity is treated as tax-exempt use property. This rule applies for all credit purposes and for purposes of the depreciation provisions of the bill. Qualified films (as defined in sec. 48(k)(1)(B)) distributed to foreign persons or entities are not to be treated as used by such persons or entities.

Real property is treated as tax-exempt use property to the extent of disqualified uses, but only if the disqualified uses of the property exceed 20 percent of all uses of the property. A disqualified use is a lease to a tax-exempt entity if (1) the tax-exempt entity participates in financing the property through the issuance of tax-exempt obligations, (2) the use is pursuant to a lease containing a fixed or determinable purchase or sale option or the equivalent thereof, (3) the use is pursuant to a lease having a term exceeding 80 percent of the property's useful life, or (4) the use occurs after a sale by, lease from, or other transfer by the tax-exempt entity of property used by the tax-exempt entity prior to the transfer.

Senate amendment

The Senate amendment follows the House bill with four exceptions. First, real property is not treated as tax-exempt use property unless disqualified uses exceed 50 percent (35 percent in the case of disqualified use by a single tax-exempt entity). Second, the amendment treats real property used by a tax-exempt entity pursuant to a lease as a disqualified use if the lease term exceeds 20 years. Third, property leased by a tax-exempt entity within 3 months of the date it is placed in service by such tax-exempt entity (or a related party) is not treated as used in a disqualified use under the use after transfer rule. And fourth, sound recordings, as well as qualified films, distributed to foreign persons or entities are not treated as leased to them.

Conference agreement

The conference agreement generally follows the Senate amendment. However, under the conference agreement, real property is treated as tax-exempt use property to the extent of disqualified uses, but only if the disqualified uses of the property exceed 35 percent of all uses of the property. Furthermore, under the conference agreement, in the case of personal property, tax-exempt use property generally is only that portion of any tangible property leased to a tax-exempt entity. However, the 35-percent rule is not applicable with respect to personal property.

The conference agreement clarifies that, for purposes of the provision's depreciation rules, property owned by a tax-exempt entity is not to be treated as tax-exempt use property. Rather, only property leased to a tax-exempt entity is to be treated as used by that entity. For this purpose, the term "lease" includes any grant of a right to use property by one person to another. However, the conferees do not intend by this rule to preclude from treatment as tax-exempt use property any property not otherwise tax-exempt use property which is owned by a partnership or other pass-through entity which has a tax-exempt partner or other beneficiary. See the discussion of partnerships and other pass-through entities. Furthermore, property owned and used by a tax-exempt entity (or a related entity) for more than 3 months prior to a transfer of it by the tax-exempt entity (or a related entity) is to be treated as used by that entity before the transfer. (The general rule that only property "leased" to a tax-exempt entity is "used" by that entity for purposes of the bill's depreciation rules is not intended to change the rule of present law that a tax-exempt owner-lessor of property is not able to pass on any credit to a lessee. See Treas. Reg. sec. 1.48-4(a)(1)(i).)

The conference agreement also clarifies that tax-exempt use property does not include any portion of a property if such portion is predominantly used by a tax-exempt entity directly, or for purposes of the bill's partnership rules, through a partnership of which the tax-exempt entity is a partner in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of this rule, the conferees intend that property will not be treated as predominantly used by the tax-exempt entity in an unrelated trade or business the income of which is subject to tax under section 511 merely because the property is debt-financed property under section 514.

The conferees wish to clarify an example in the committee reports. Assume that a U.S. corporation leases equipment to a foreign corporation not subject to U.S. tax and the foreign corporation subleases the equipment to a branch of a U.S. corporation. The property is tax-exempt use property even though all income earned by the U.S. branch with respect to the use of the property is subject to U.S. tax. This result occurs without regard to the business reasons for the initial lease between the U.S. corporation and the foreign corporation. However, this result would not occur if, in view of the economic substance of the overall arrangement, the transaction is properly treated for U.S. tax purposes as a lease directly from the U.S. corporation to the U.S. branch, and not as a lease to and sublease from the foreign corporation.

d. Tax treatment of tax-exempt use personal property

Present law

No investment credit is allowed with respect to personal property leased to or otherwise used by a tax-exempt entity. Furthermore, in general, no investment tax credit is allowed with respect to personal property used predominantly outside the U.S. However, in general no restrictions are imposed with respect to the depreciation of personal property used by a tax-exempt entity, although restrictions are generally imposed on the depreciation of property used predominantly outside the U.S.

House bill

No investment credit is allowed with respect to personal property used by a tax-exempt entity. In addition, tax-exempt use personal property is to be depreciated on the straight-line method over the greater of (1) the property's ADR midpoint life (12 years if the property has no ADR midpoint life), or (2) the lease term. Under the House bill, investment credit may be recaptured with respect to property which becomes tax-exempt use sometime after having been placed in service. In addition, under the House bill, regulations are to be prescribed for the depreciation of property that either becomes or ceases being tax-exempt use property sometime after having been placed in service by the taxpayer.

Under the House bill, the Treasury is authorized to prescribe midpoint lives for personal property presently having no midpoint lives.

Senate amendment

The Senate amendment follows the House bill except that tax-exempt use personal property is to be depreciated on the straight-line method over the greater of (1) its ADR midpoint life (12 years in the absence of such a life), or (2) 125 percent of the lease term. In addition, no general authority is granted the Treasury to prescribe midpoint lives for property presently having none. Finally, the Senate amendment provides special rules for property used by foreign persons or entities. Under those rules: property placed in service before January 1, 1984, and used by a foreign person or entity under a lease entered into before January 1, 1984, is generally exempt from the provision; property placed in service in 1984, and used by a foreign person or entity under a lease entered into in 1984, is entitled to 50 percent of any investment credit otherwise allowable and may be depreciated under the 175-percent declining balance method over the longer of (1) its ADR midpoint life (12 years in the absence of such a life), or (2) 125 percent of the lease term; and other property used by a foreign person or entity is entitled to no investment credit but may be depreciated under the 150-percent declining balance method over its ADR midpoint life (12 years in the absence of such a life).

Conference agreement

The conference agreement generally follows the House bill except that tax-exempt use personal property cannot be depreciated over a period shorter than 125 percent of the lease term. Furthermore, under the conference agreement, the bill generally does not apply to property placed in service before January 1, 1984, and used by a foreign person or entity under a lease entered into before January 1, 1984, merely because of that lease.

The conferees wish to make it clear that if personal property is used by a tax-exempt entity (and the use is not pursuant to a short-term lease, as defined by the bill), investment credits are not available. This result follows even if the investment credit would be available under present law by virtue of section 48(a)(2)(B) (relating to exceptions from the denial of investment credit for certain property used predominantly outside the U.S.). For example, an aircraft leased to a foreign person or entity does not give rise to any investment credit even if it is operated to and from the U.S., if not more than 50 percent of the income derived by the foreign person or entity from the use of the aircraft is taxable in the U.S. Similarly, the bill's rules with respect to tax-exempt use property override section 168(f)(2) (relating to recovery deductions with respect to property used predominantly outside the U.S.). However, for a special rule for certain leases of aircraft to foreign persons or entities, see below under the discussion of the short-term lease exception.

e. Tax treatment of tax-exempt use real property

Present law

There are no restrictions on the depreciation of real property merely because it may be used by a tax-exempt entity. In addition, no rehabilitation credits are lost merely because such property may be used by a tax-exempt entity.

House bill

To the extent real property is tax-exempt use property, it must be depreciated on the straight-line method over the greater of (1) 40 years, or (2) 125 percent of the lease term. In addition, the rehabilitation credit is denied for tax-exempt use real property, but only to the extent the property is financed with tax-exempt obligations.

Senate amendment

The Senate amendment follows the House bill except that the rehabilitation credit is denied for all tax-exempt use property. For purposes of the rehabilitation credit, property which is reasonably expected to become tax-exempt use property is treated as tax-exempt use property. In addition, the Senate amendment's special rules for personal property used by foreign persons or entities apply to real property used by foreign persons or entities as well, treating the property's ADR midpoint life as 40 years.

Conference agreement

The conference agreement generally follows the House bill, with two exceptions. First, the rehabilitation credit is denied for all tax-exempt use real property (but only such property) subject to the bill's general depreciation provisions. For this purpose, property which is reasonably expected to become tax-exempt use property is treated as tax-exempt use property, as under the Senate amendment. And second, the bill does not apply to real property placed in service before January 1, 1984, and used by a foreign person or entity under a lease entered into before January 1, 1984.

f. Depreciation of certain short-lived property

Present law

No special provision.

House bill

The House bill's depreciation provisions do not apply to certain high-technology property (i.e., computers and peripherals, high-technology telephone station equipment, and high-technology medical equipment) (1) leased to a tax-exempt entity for 5 years or less (if the lease term exceeds 5 years, the property must be depreciated under the straight-line method over 5 years), or (2) used predominantly outside the United States. These rules are not applicable if the property was previously used by the tax-exempt entity (or a related entity), was financed with tax-exempt obligations, or is used by the United States or any agency or instrumentality thereof.

The Treasury is directed to determine whether the present ADR midpoint lives for such property are appropriate and to report its conclusions to Congress by July 1, 1984.

Senate amendment

The Senate amendment's depreciation provisions do not apply to property having an ADR midpoint life of 6 years or less so long as the lease term does not exceed 75 percent of the property's ADR midpoint life (5 years in the case of property having an ADR midpoint life of 6 years). While high-technology medical equipment is treated as having an ADR midpoint life of 6 years for purposes of this provision, the Treasury, prospectively only, may prescribe by regulations that it has a midpoint life of more than 6 years.

Conference agreement

The conference agreement generally follows the House bill except that the provision requiring the Treasury to report regarding ADR midpoint lives is eliminated. Furthermore, under the conference agreement, only property owned and used by a tax-exempt entity (or a related entity) for more than 3 months prior to a transfer of it by the tax-exempt entity (or a related entity) is to be treated as having been used by the tax-exempt entity before the transfer. Finally, in the case of property used predominantly outside the U.S. under a lease with a term of more than 5 years, the bill's general depreciation rules apply. That is, such property is depreciable on a straight-line basis over the longer of its ADR midpoint life or 125 percent of the lease term.

In addition, the conference agreement authorizes the Treasury to provide, by prospective regulations only, that any high-technology telephone station equipment or medical equipment (both as generally defined in the bill) is to be depreciated under the bill's general depreciation rules rather than the special rules for short-lived property. The conferees intend that the Treasury so provide only if it determines that such property cannot reasonably be expected to become technologically obsolete substantially before the expiration of its physical useful life.

g. Short-term lease exception

Present law

Property leased to a tax-exempt entity pursuant to a casual or short-term lease (determined under all the facts and circumstances) is not subject to investment credit denial.

House bill

The House bill makes no change in the regular investment credit rule of present law. However, it provides that no rehabilitation credit is to be denied for property leased to a tax-exempt entity under a lease with a term of less than 1 year.

In addition, the bill's depreciation provision does not apply to personal property when the lease term is less than (1) 1 year, or (2) 30 percent of the property's ADR midpoint life. However, in no case will this exception apply if the lease has a term exceeding three years. For real property, the bill's depreciation provision does not apply if the lease term is less than 3 years.

Senate amendment

The regular investment credit provision of the Senate amendment generally does not apply if the lease term is less than 6 months. However, in the case of certain offshore oil and gas drilling equipment leased for a term not in excess of 2.25 years (1.8 years in the case of certain containers and related equipment), the regular investment credit provision of the amendment does not apply. No rehabilitation credit is to be denied for property used pursuant to a lease having a term not exceeding 3 years.

The depreciation provision does not apply to personal property leased pursuant to a lease having a term not exceeding one year or, if longer, 30 percent of the property's midpoint life. However, in no case will this exception apply if the lease has a term exceeding 3 years. For real property, the depreciation provision does not apply if the use is pursuant to a lease having a term not in excess of 3 years.

Conference agreement

The conference agreement generally follows the House bill except that for purposes of the rehabilitation credit, a lease is a short-term lease only if its term is less than 3 years. Furthermore, the conference agreement generally follows the Senate amendment with respect to investment credits (other than the rehabilitation credit). In addition, the conference agreement adopts the special investment credit rules in the Senate amendment regarding certain offshore oil and gas drilling equipment and containers and related equipment.

The conference agreement provides a special investment credit rule for certain aircraft leased to a foreign person or entity before January 1, 1990. Under section 47(a)(7), use under certain leases predominantly outside the U.S. of certain aircraft will not trigger investment credit recapture until the aircraft has been so used for more than 3½ years. Absent a special rule, under the bill, leases of such aircraft to a foreign person or entity for 6 months or more would generally trigger investment credit recapture. Under the conference agreement, leases described in section 47(a)(7) to a foreign person or entity of aircraft described in section 47(a)(7) will not trigger investment credit recapture if those leases do not exceed three years. However, if such aircraft is thereafter disposed of or otherwise ceases to be section 38 property, investment credit recapture will be determined by disregarding the term of the lease to the foreign person or entity.

h. Lease term

Present law

No special Code provision.

House bill

For purposes of the House bill, the term of a lease includes all options to renew as well as certain successive leases.

Senate amendment

The Senate amendment generally follows the House bill. However, in the case of real property, the lease term does not include renewal options at fair rental values.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the committee report indicates that the length of a lease term is also to be determined under all the facts and circumstances. See, e.g., *Hokanson v. Commissioner*, 84-1 USTC Par. 9217 (9th Cir. 1984). The conferees intend that the *Hokanson* rule and similar rules take precedence over the rule regarding fair rental renewal options with respect to real property so that, under all the facts and circumstances, the term of a fair rental value renewal option may be treated as a part of the original lease term.

The conference agreement also clarifies that successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property are to be treated as one lease.

i. Thrift institutions

Present law

Property owned by a thrift institution is limited to one-half of any investment tax credit (including any rehabilitation credit) otherwise available because special bad debt deductions available to such an institution effectively reduce the rate of tax applicable to its income. There is no special provision regarding credits with respect to property leased to a thrift institution.

House bill

No provision.

Senate amendment

The lessor of property to a thrift institution is entitled to no greater a credit with respect to such property than the thrift institution would have been entitled to had it owned the property.

Conference agreement

The conference agreement generally follows the Senate amendment. (For this purpose, property used by a thrift institution under a short-term lease (as defined in the bill) is not subject to the rule.) However, the conference agreement permits a thrift institution to avoid this rule by electing to waive its rights to claim deductions for additions to bad debt reserves under any method other than the experience method. Any such election would be irrevocable and would apply for all taxable years of the electing thrift institution (and any successor engaged in substantially similar activities) beginning with the taxable year for which made.

j. Service contracts

Present law

No special Code provision. However, case law (*Xerox Corp.* v. *U.S.*, 656 F. 2d 659 (Ct. Cl. 1981)), revenue rulings, and private letter rulings (which are not to be cited as precedent) provide guidance in distinguishing leases and other arrangements from service contracts. In general, property subject to a service contract with a tax-exempt entity is not treated as used by that entity in determining eligibility for the investment credit.

House bill

For all purposes of the provision, property subject to a so-called service contract or other arrangement with a tax-exempt entity is treated as leased to that entity if the arrangement more nearly resembles a lease of the property. In determining whether a so-called service contract or other arrangement with a tax-exempt entity more nearly resembles a lease of the property involved, all relevant factors are to be taken into account, including whether (1) the service recipient is in physical possession of the property, (2) the service recipient controls the property, (3) the service recipient has a significant economic or possessory interest in the property, (4) the service provider bears any significant economic risk if there is nonperformance, (5) there is concurrent use of the property by the service provider to provide significant service to others, and (6) the contract price under the service contract or other arrangement substantially exceeds the rental value of the property.

Special rules are provided with respect to certain waste-to-energy property.

Senate amendment

The Senate amendment generally follows the House bill. However, the Senate amendment provides a different set of special rules applicable to contracts for the provision of solid waste, energy, energy conservation or energy management, and clean water facilities. In general, such contracts are not to be treated as leases unless the service recipient (1) bears significant financial burdens if there is nonperformance, (2) operates the facility, (3) receives significant financial benefits if operating costs are less than projected, or (4) has a fixed or determinable purchase price option (other than at fair market value) or may be required to purchase the facilities.

The factors used to distinguish service contracts and other arrangements from leases are applicable for all income tax purposes.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the conference agreement makes it clear that a contract which purports to be a service contract is to be treated as a lease (rather than a conditional sale or similar arrangement) only if such contract is more properly to be treated as a lease under all the facts and circumstances, including those enumerated in the bill. The Senate committee report contains an example regarding applicability of the general service contract rules (i.e., those not applicable with respect to certain facilities) in the case of certain school buses (Example (6)). The conferees agree with that example. Under the conference agreement, the special rules under the Senate amendment relating to certain facilities are not applicable to any contract or arrangement for the provision of energy conservation or energy management services. However in the case of a binding contract with respect to any such services entered into before May 1, 1984, present law (rather than the bill's general services contract rules) applies.

Under the conference agreement, low-income residential property operated by or for an organization described in section 501(c)(3) or section 501(c)(4) is not subject to the service contract or other arrangement rules of the bill. Thus, for example, the leasing of units in such property to occupants is not treated as use by or on behalf of such an organization. For purposes of this rule, low-income residential property means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv), but only if 80 percent or more of the units are leased to low-income tenants, determined in a manner consistent with section 167(k)(3)(B).

k. Partnerships and other pass-through entities

Present law

No special Code provision.

House bill

Property which is not used by a tax-exempt entity may be owned by a partnership or other pass-through entity having both taxable and tax-exempt entities as partners or other beneficiaries. Unless all allocations to each tax-exempt entity partner or other beneficiary are qualified allocations, such partner's proportionate share of the pass-through entity's property is treated as tax-exempt use property for all purposes of the provision.

For purposes of this rule, a qualified allocation means any allocation to a tax-exempt entity which is consistent with such entity's being allocated the same percentage share of each item of income, gain, loss, deduction, credit, and basis of the partnership during the period such entity is a partner or beneficiary. Furthermore, no allocation is qualified unless it meets the substantial economic effect test of section 704(b). However, items allocated under section 704(c) (relating to contributed property) are not taken into account.

A tax-exempt entity partner's or other beneficiary's proportionate share of property of a pass-through entity equals such partner's or other beneficiary's share of the pass-through entity's distributions or items of income or gain (excluding gain allocated under section 704(c)), whichever produces the highest result. If the tax-exempt entity partner's or other beneficiary's share of distribution or items of income or gain (excluding gain allocated under section 704(c)) varies during the period it is a partner or other beneficiary, its share of any such item shall be the highest share it may receive.

Senate amendment

The Senate amendment generally follows the House bill.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment but makes certain clarifications and additions. For example, the conference agreement amends the rule regarding the determination of a tax-exempt entity partner's proportionate share of partnership property to exclude references to such entity's share of partnership distributions.

The conferees wish to clarify that this rule applies notwithstanding any other provision of the bill. For example, assume that a partnership owns a building which is leased to a taxable entity. The partnership has one tax-exempt entity as a partner, and its proportionate share is 10 percent. Unless the partnership's allocations to the tax-exempt entity are qualified, 10 percent of the building is tax-exempt use property, notwithstanding the 35-percent threshold otherwise applicable in the case of real property. However, this rule does not apply to the extent the property is predominantly used by the tax-exempt entity, through the partnership, in an unrelated trade or business the income of which is subject to tax under section 511 (determined without regard to the debt-financed income rules of section 514).

The conferees also wish to clarify the consequences of property being treated as tax-exempt use property under this rule. If a portion of a partnership's depreciable property is tax-exempt use property, allowable depreciation deductions with respect to that property will be reduced. The partnership's total depreciation deductions will be allocated under the partnership agreement among one or more of the partners in accordance with the provisions of section 704(b).

In addition, the conferees wish to clarify that property may be tax-exempt use property under both the general provisions of the bill and the special partnership provision. For example, a tax-exempt entity may be a partner in a partnership owning a building 60 percent of which is leased to a tax-exempt entity under a long-term lease. Sixty percent of the building is tax-exempt use property under the general provisions. The status of the other 40 percent would depend on whether the allocations with respect to it are qualified.

The conferees also wish to clarify that the reference to allocations of basis in determining whether an allocation is a qualified allocation pertains to allocations of basis of oil and gas properties under section 613A(c)(7)(D) and "section 38 property" under the investment credit rules.

The conference agreement authorizes the Treasury to prescribe regulations dealing with the effect of guaranteed payments (as defined in sec. 707(c)) under this rule. Under those regulations, priority cash distributions to partners that constitute guaranteed payments should not disqualify an otherwise qualified allocation so long as the priority cash distributions are reasonable in amount (e.g., equal to the most appropriate Federal rate) and are made to all partners in proportion to their capital in the partnership. On the other hand, the conferees expect that the regulations will prevent partnerships from avoiding the qualified allocation rules by making disproportionately large guaranteed payments to its tax-exempt partners for the use of their capital.

The conference agreement also authorizes the Treasury to prescribe regulations pursuant to which, in appropriate cases, particular items may be excluded or segregated in determining whether there is a qualified allocation. One example that has come to the conferees' attention involves a U.S. corporation and a foreign country are equal partners in a partnership created under the laws of that foreign country. Under those laws, the U.S. corporation's share of the partnership's profits are taxed, but not the foreign government's share. However, the tax is imposed on and paid by the partnership rather than the U.S. corporation partner directly. Under the partnership agreement, all partnership items are allocated equally between the two partners except that the tax expense is allocated to the U.S. corporation, and cash distributions to the partners reflect that allocation. Assuming those allocations possess substantial economic effect, the conferees do not intend that the partnership agreement be treated as containing an unqualified allocation.

Another situation those regulations might address involves a partnership which, in substance, consists of several partnerships formed to explore for, develop, and produce oil and gas. Typically, a partner in such a partnership may select to what extent he wishes to participate in a particular well, and his interest in the income, gain, loss, deduction, credit, and basis may differ from well-to-well. For example, a partner, consistent with the partnership agreement, may contribute 75 percent of the cost of one well and 50 percent of the cost of a second well and be allocated 75 percent of all tax items from the first well and 50 percent of all tax items from the second. If instead of using one partnership to invest in several wells, a separate partnership were used for each well, the allocation formula used for each well could be different from the others and yet each could satisfy the qualified allocation rules. The conferees anticipate that the regulations will grant relief in this and similar non-abusive situations.

Similarly, the conferees expect that the regulations will provide that an allocation will not disqualify an otherwise qualified allocation on the basis that it does not have substantial economic effect in cases where such allocation is not governed by the substantial economic effect rules (e.g., an allocation of basis of an oil and gas property; or cannot, by its nature, satisfy those rules (e.g., an allocation of credits, deductions attributable to nonrecourse debt, and percentage depletion in excess of basis), provided such allocation complies with the relevant section of the Code or the regulations (e.g., section 613A(c)(7)(D) and proposed regulations section 1.704-1(b)(4)).

Furthermore, the regulations might provide a procedure for taxpayers to seek rulings that an allocation will be treated as qualified in cases not specifically addressed by the regulations.

The conference agreement also provides other special rules for partnerships and other pass-through entities. First, property leased to a foreign partnership or other foreign pass-through entity is not, solely by reason of that lease, to be treated as tax-exempt use property. Second, property leased to any partnership or other pass-through entity, domestic or foreign, having as a partner or other beneficiary a tax-exempt entity is to be treated as leased to each such partner or other beneficiary in an amount equal to its proportionate share of such property (as determined under the conference agreement). Unless the taxpayer establishes otherwise, it is to be presumed for purposes of this rule that all partners of a foreign partnership (and all beneficiaries of any other foreign pass-through entity) are foreign persons or entities.

Finally, rules similar to the foregoing are to apply in the case of tiered partnerships and other tiered pass-through entities.

l. International Maritime Organization and International Satellite Communications Organization

Present law

Intelsat and Inmarsat, which, as foreign partnerships, are international organizations, are not treated as international organizations for purposes of the investment credit nontaxable use restriction under section 48(a)(5).

House bill

The House bill contains special rules applicable to Intelsat and Inmarsat.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement eliminates the special rules for Intelsat and Inmarsat. They are unnecessary in view of the general rules regarding partnerships and other pass-through entities described above, which apply to Intelsat and Inmarsat as well as other partnerships or pass-through entities.

The conferees request the Treasury to conduct a study of the satellite industry and to report the findings to Congress by no later than April 1, 1985. The conferees request that the study focus on the following issues. First, whether and to what extent domestic satellite companies are now able to, and in the future may be expected to be able to, compete successfully with foreign satellite operations for both domestic and foreign business. Second, whether domestic satellite companies are now able to, and in the future may be expected to be able to, compete with each other on fair and equitable terms. Third, what role do tax benefits play in permitting satellite companies to compete with each other on fair and equitable terms. And fourth, whether Federal tax laws should be changed, and, if so, in what respect, to assure fair and open competition among all satellite companies.

m. Related parties

Present law

No special Code provision.

House bill

The House bill contains numerous rules relating to the treatment of tax-exempt entities and related parties as one entity for various purposes. The bill also defines related parties.

Senate amendment

The Senate amendment generally is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

n. General effective date

House bill

The bill is generally effective with respect to property placed in service by the taxpayer after May 23, 1983, and to property placed in service by the taxpayer before that date which is leased to a tax-exempt entity pursuant to a lease entered into after that date.

Senate amendment

The Senate amendment follows the House bill except that for property used by the U.S. Postal Service, May 23, 1983, is changed to October 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment. In addition, the conference agreement provides that certain improvements to property are not to be treated as separate property for purposes of the general effective date rules or the transitional rules. Under this provision, if the bill does not apply to the property improved, it will not apply to the improvements either. Improvements covered are those which would not be substantial improvements under section 168(f)(1)(C)(ii) if 20 percent were substituted for 25 percent.

o. Transition rules

(1) Leases, subleases, and renewals

House bill

The provision does not apply if the tax-exempt use is pursuant to (a) a lease entered on or before May 23, 1983 (or a sublease under such a lease), or (b) any renewal or extension of a lease entered into on or before May 23, 1983 pursuant to an option in such a lease exercisable by the tax-exempt entity.

Senate amendment

The Senate amendment is the same as the House bill except that for property used by the U.S. Postal Service, May 23, 1983, is changed to October 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

(2) Binding contracts

House bill

The provision does not apply to property leased to a tax-exempt entity if such lease is pursuant to certain binding contracts which, on May 23, 1983, required acquisition, construction, reconstruction, or rehabilitation of the property involved and its use by the tax-exempt entity.

Senate amendment

The Senate amendment follows the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. The conferees wish to clarify that, for purposes of this rule, a written contract award made by the United States or an agency or instrumentality thereof on or before May 23, 1983, is to be treated as a binding contract.

(3) Binding contracts and firm plans, etc.

House bill

The provision does not apply to certain property acquired or constructed (or subject to a binding contract to acquire or construct) if (a) a contract entered into before January 1, 1984, requires the tax-exempt entity to use the property, or (b) on May 23, 1983, there was a firm written plan for the tax-exempt entity to enter into a contract for its use.

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the House bill with modifications.

Under the conference agreement, for property used by a tax-exempt entity (other than a foreign person or entity), the provision does not apply to property that (1) the taxpayer (or a predecessor in interest in or under the contract) or the tax-exempt entity was required to acquire, construct, reconstruct, or rehabilitate pursuant to a contract that was binding on May 23, 1983 (or has commenced, but not completed, construction, reconstruction, or rehabilitation by that date), (2) the taxpayer or the tax-exempt entity acquired after June 30, 1982, and before May 24, 1983, or (3) the taxpayer or the tax-exempt entity completed construction, reconstruction, or rehabilitation of which after December 31, 1982, and before May 24, 1983, but only if, in any such case, such tax-exempt entity enters into a binding contract to use the property before January 1, 1985. Requirement (1), above, is not satisfied if the tax-exempt entity used the property before May 24, 1983.

(4) Governmental action, etc.

House bill

The provision does not apply in certain cases where there was certain governmental action with respect to the project involved on or before May 23, 1984, specified sums were spent on the project involved on or before that date, and a contract requiring the tax-exempt entity to use the property was entered into before January 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with modifications.

The provision does not apply in certain cases where there was governmental action with respect to the property involved on or before November 1, 1983, and a contract requiring the tax-exempt entity to use the property is entered into before January 1, 1985.

In determining whether sufficient governmental action occurred on or before November 1, 1983, the conferees intend that this provision be interpreted in a manner consistent with the similar provision in the House bill. However, in addition to the actions that are described in the report of the Committee on Ways and Means, the following actions constitute significant governmental action: the enactment of a State law authorizing the sale, lease, or construction of the property; the appropriation of funds for the property or authorization of a feasibility study or a development services contract with respect to it; the approval of financing arrangements by a regulatory agency; the enactment of a State law designed to provide funding for a project; or the endorsement of the application for a certification of need with respect to a medical facility by a regulatory agency other than the agency empowered to issue such a certificate.

(5) Certain property

House bill

The provision does not apply to certain mass commuting vehicles, certain boilers and turbines of rural electric cooperatives, and certain sewage or solid waste facilities with respect to which a ruling request was filed on or before May 23, 1983.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

(6) Specified projects

House bill

No provision.

Senate amendment

The Senate amendment specifies certain projects with respect to which the provision is not to apply.

Conference agreement

The conference agreement generally follows the House bill with modifications.

Under the conference agreement, transitional rules are provided for specific projects involving (1) substantial rehabilitations or new construction of buildings where a qualifying action occurred before November 1, 1983, and (2) the rehabilitations of certain educational facilities with respect to which there was substantial reliance on present law.

Under the conference agreement, the provision does not apply to property described in section 168(c)(1)(D) (relating to 15-year real property) if:

(a) the property is leased to a university and houses a basketball arena and university offices, and, on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program,

(b) the property is leased to a charitable organization, the organization acquired the property on August 21, 1981, and, on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation,

(c) the property is leased to a corporation described in section 501(c)(3) (relating to certain organizations exempt from tax), pursuant to a contract that was entered into on August 2, 1983, and under which the corporation first occupied the property on December [illegible], 1983,

(d) the property is leased to an educational institution and used as an arts and humanities center, an architect was engaged to design a planned renovation in November of 1982, a demolition contract was entered into in December of 1983, and a renovation contract was entered into in March of 1984,

(e) the property was acquired by a college in October of 1981 for use as a dormitory, renovation plans were delayed because of a zoning dispute, and, in May of 1982, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college,

(f) the property is a fraternity house; in August of 1982, the related university retained attorneys to advise the university regarding the rehabilitation of the property; on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans; on January 10, 1984, the governor of the State in which the university is located approved historic district designation for an area that includes the property; and on February 2, 1984, historic preservation certification applications for the property were filed with an historic landmarks commission,

(g) the property is leased to a retirement community with respect to which, on January 5, 1977, a certificate of incorporation was filed, and on November 22, 1983, the board of trustees of the retirement community adopted a resolution evidencing an intention to begin immediate construction of the property,

(h) the property is used by a university, in July of 1982, the board of trustees of the university adopted a master plan for the financing of the property, and, as of August 1, 1983, at least $60,000 in private expenditures had been expended in respect of the project,

(i) the property is leased by a university for use as a fine arts center, and the board of trustees of such university authorized a sale-leaseback agreement with respect to such property on March 7, 1984,

(j) the property is used as an international trade center and, prior to January 1, 1982, an environmental impact study for such property was completed; on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and on October 20, 1983, such developer was approved by the board of directors of the tax-exempt entity,

(k) the property is leased to a university of osteopathic medicine and health sciences and, on or before December 31, 1983, the board of trustees of such university approved the construction of such property,

(l) with respect to the property, there existed on May 23, 1983, architectural plans and specifications (within the meaning of section 48(g)(1)(C)(ii)); the property is leased to a tax-exempt entity after substantial improvements are made; and prior to May 23, 1983, at least ten percent of the total estimated cost of such improvements was paid or incurred, or

(m) the property is used as a convention center and, on June 2, 1983, the city in which the property is located provided for over $6 million for the project.

(7) Express appropriations

House bill

No provision.

Senate amendment

The provision is not to apply to certain property leased to or used by the United States if, among other things, an express appropriation for rentals was made for the 1983 fiscal year before May 23, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

(8) Containers

House bill

No provision.

Senate amendment

Containers and certain related equipment placed in service before 1984, and used by foreign persons or entities before 1984, are exempted from investment credit recapture by reason of use by foreign persons or entities until 1985.

Conference agreement

The conference agreement follows the Senate amendment.

(9) Partnerships

House bill

Certain partnerships organized before October 21, 1983, are exempted, with respect to certain property, from the rules regarding the treatment of property owned or to be acquired by partnerships having taxable and tax-exempt entities as partners.

Senate amendment

The Senate amendment exempts, with respect to certain property, additional partnerships.

Conference agreement

The conference agreement generally follows the Senate amendment but expands the transitional rules applicable with respect to property owned by a partnership. Thus, for example, the provisions do not apply to property placed in service by a partnership before October 21, 1983.

(10) Service contracts for all income tax purposes; thrift institutions; rehabilitation credits

House bill

No special provision.

Senate amendment

The provision's service contract rules, insofar as they relate to persons other than tax-exempt entities, are generally not effective for arrangements entered into before November 5, 1983.

Conference agreement

The conference agreement generally follows the Senate amendment. In addition, the rule regarding thrift institutions is made generally effective with respect to leases entered into after November 5, 1983. A special transitional rule is also provided with respect to the rehabilitation credit.

(11) Certain sewage facilities

House bill

A special transition rule applies to certain sewage facilities.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill provision.

(12) Property used by foreign persons or entities

House bill

No special provision.

Senate amendment

No special provision.

Conference agreement

For property used by foreign persons or entities (other than certain aircraft for which a special rule is provided), the provision does not apply to property that (1) the taxpayer or the tax-exempt entity was required to acquire, construct, reconstruct, or rehabilitate pursuant to a contract that was binding on May 23, 1983 (or has commenced but not completed the activity by that date), (2) the taxpayer or the tax-exempt entity acquired after December 31, 1982, and before May 23, 1983, or (3) construction, reconstruction, or rehabilitation of which was completed after December 31, 1982, and before May 24, 1983, but only if in any such case, such foreign person or entity entered into a binding contract to use the property before January 1, 1984. Requirement (1), above, is not satisfied if the foreign person or entity used the property before May 24, 1983.

Under a special rule for wide-body, four-engine, commercial passenger aircraft, the provisions do not apply to aircraft with respect to which the foreign person or entity entered into a written binding contract to acquire the aircraft on or before November 1, 1983, and which is placed in service prior to January 1, 1986.

2. Treatment of certain motor vehicle operating agreements as leases

Present law

Nominal lease agreements covering motor vehicles often contain terminal rental adjustment clauses. A terminal rental adjustment clause generally permits or requires an upward or downward adjustment in rent to make up for any difference between the value of the vehicle at the end of the lease term as projected when the lease was entered into and its actual value at the end of the lease term.

The Internal Revenue Service has taken the position, and one court has agreed, that the presence of a terminal rental adjustment clause in a nominal motor vehicle lease causes the transaction to be treated as a conditional sale, rather than a lease, for tax purposes. If the transaction is a conditional sale, the nominal lessor is entitled to no depreciation deductions or investment tax credits with respect to the vehicle. Nor is the nominal lessee entitled to any rent deductions.

TEFRA prohibits the IRS from denying, with respect to nominal leases entered into before the issuance of regulations, lease treatment for certain nominal motor vehicle leases merely by reason of the fact that those nominal leases contain terminal rental adjustment clauses. In November, 1982, proposed regulations were issued to the effect that nominal leases of motor vehicles would be treated as conditional sales rather than leases if they contained terminal rental adjustment clauses.

House bill

No provision.

Senate amendment

The presence of a terminal rental adjustment clause in a nominal motor vehicle lease shall not be taken into account in determining whether the transaction is to be characterized as a lease for tax purposes. The provision applies whether the lessee uses the motor vehicle for business or personal purposes. However, the provision does not apply if the nominal lessor finances its ownership of the vehicle with nonrecourse debt.

The provision is effective for agreements entered into before, on, or after the date of enactment.

Conference agreement

Under the conference agreement, a qualified motor vehicle operating agreement containing a terminal rental adjustment clause is treated as a lease if, but for that clause, it would be treated as a lease. The provision applies only to qualified agreements with respect to a motor vehicle (including a trailer). No lessee under a qualified agreement is, under the agreement, to be treated as the tax owner of any property for any period during which such agreement is in effect.

To be a qualified agreement, the nominal lessor must be personally liable for the repayment of all amounts borrowed to finance the acquisition of the motor vehicle involved or must pledge property, other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for all amounts borrowed to finance the acquisition of the motor vehicle involved. In addition, the nominal lessee must certify, in a separate written statement separately signed, under the penalties of perjury, that it intends that more than 50 percent of the use of the property involved will be in a trade or business of the nominal lessee. That signed certification must also state, clearly and legibly, that the nominal lessee has been advised that it will not be treated as owner of the property for Federal income tax purposes. Furthermore, the nominal lessor must not know that the nominal lessee's certification is inaccurate in any material respect.

The nominal lessor is treated as the tax owner of the property involved under a qualified agreement so long as the agreement, but for the terminal rental adjustment clause, is properly characterized as a lease for tax purposes, regardless of the actual use of the motor vehicle by the nominal lessee. The nominal lessee is not to be treated as the tax owner of the property involved under a qualified agreement even if under the agreement, but for the terminal rental adjustment clause, the nominal lessee would be treated as the tax owner. As a result, the nominal lessee is not entitled to depreciation or interest deductions under the agreement which might be available to it if it were treated as the tax owner of the property. Any rent deductions for the nominal lessee are determined under general Code provisions, including provisions added by the bill.

A special rule is provided for lessee-dealers.

The provision is effective for leases entered into after 90 days after the date of enactment. The TEFRA provision is made inapplicable to agreements entered into 90 days after the date of enactment. The Treasury is not to issue regulations under the TEFRA provision with respect to leases entered into before 90 days after the date of enactment.

No inference is intended that a motor vehicle operating agreement containing a terminal rental adjustment clause is, merely by reason of the presence of that clause, to be treated as a lease for tax purposes. Nor is any inference intended that any nominal lease agreement, involving property other than a motor vehicle, which contains a provision similar to a terminal rental adjustment clause is to be treated as a lease for tax purposes.

C. Treatment of Bonds and Other Debt Instruments

1. Definitions and technical amendments

Present law

Under present law, the retirement of a debt obligation that is issued by a corporation or governmental unit and is a capital asset is treated as a sale or exchange.

Present law also provides rules requiring the annual inclusion and deduction of original issue discount (OID). OID is defined as the difference between the issue price of an obligation and its stated redemption price at maturity. OID is allocated over the term of an obligation through a series of adjustments to the issue price for each "bond period" (defined below). The adjustment to the issue price for each bond period is determined by multiplying the adjusted issue price (*i.e.*, the issue price as increased by adjustments prior to the beginning of the bond period) by the obligation's yield to maturity, and then subtracting the interest payable during the bond period.

Exception for short-term government obligations

An exception to the rule requiring annual inclusion is provided for acquisition discount with respect to government obligations with a maturity of one year or less. Acquisition discount is defined as the excess of the stated redemption price at maturity over the taxpayer's basis for the obligation. Treasury regulations provide a similar exception for OID with respect to obligations other than government obligations.

Definition of "bond period"

Except as otherwise provided by regulations, the accrual period for determining the amount of OID that is allocable to a period is an annual period ending on each anniversary of the date on which the bond was issued. Thus, the yield to maturity of a bond is determined on the basis of annual compounding.

Acquisition premium

When a taxpayer purchases a bond for a price that exceeds the adjusted issue price, the excess (or premium) is allowed as an offset to the remaining OID on a straight-line basis over the remaining term of the bond. Under this rule, the amount of premium allowable as an offset may exceed the OID accrued in some years.

Definition of "purchase"

The term "purchase" is defined to exclude the purchase of a bond the basis of which is determined by reference to the basis of the bond in the hands of the transferor or under section 1014(a) (relating to property acquired from a decedent).

Definition of "issue price"

The issue price of bonds registered with the Securities and Exchange Commission ("SEC") is the initial price to the public at which a substantial amount of the debt instruments were sold.

Stripped bonds

For purposes of the rules that require the annual inclusion of OID, a stripped bond (*i.e.*, a bond issued with interest coupons where there is a separation in ownership between the bond and any unpaid coupon) or a stripped coupon (any coupon related to a stripped bond) is treated as a bond originally issued by a corporation on the purchase date, and as having OID equal to (i) the stated redemption price at maturity or the amount payable on the due date of such coupon, respectively, over (ii) such bond's or coupon's ratable share of the purchase price (determined by reference to their respective fair market values on the purchase date).

House bill

Various technical amendments are made to the OID provisions. In addition, clarifying amendments are made to specific provisions of present law.

Retirement of a debt obligation

The retirement of a debt obligation is treated as a sale or exchange without regard to whether the instrument is a capital asset.

Short-term obligations

The statutory exception from the periodic inclusion rules for government short-term obligations is extended to nongovernment obligations.

Definition of bond period

The accrual period with respect to which OID is computed and compounded is defined as each six-month period determined by reference to the maturity date of the bond and the date six months before such maturity date (or the shorter period from the date of issue). This treatment corresponds to the prevalent method of calculating yield to maturity in the financial community (based on semiannual compounding).

Acquisition premium

Acquisition premium is amortized by reducing the OID that would otherwise accrue by a constant fraction determined at the time of purchase. The numerator of the fraction is the total amount of premium to be amortized and the denominator is the aggregate amount of unaccrued OID at the time of purchase. This rule is intended to prevent situations in which the amortization of the acquisition premium exceeds accrual of OID and to provide better matching between the two.

Definition of purchase

The acquisition of a bond from a decedent is treated as a purchase for purposes of the OID provisions, including the rules applicable to stripped bonds and stripped coupons.

Definition of issue price

The issue price rule applicable to bonds registered with the SEC is extended to all publicly traded issues (other than bonds issued for property). The bill authorizes the issuance of regulations to require the furnishing of the amount of OID, the issue date, and other appropriate information. A penalty of one percent of the issue price is imposed for failures to comply without reasonable cause; the maximum penalty with respect to any one issue of bonds is not to exceed $50,000.

Stripped bonds

Under a technical amendment, a stripped bond or stripped coupon is treated as originally issued on the purchase date; the statutory reference to issuance by a corporation is deleted.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill, with a technical amendment relating to stripped bonds.

STRIPPED BONDS

The provision that creates OID with respect to stripped bonds applies for all purposes of part V of subchapter P of chapter 1 of the Code (relating to special rules for bonds and other debt instruments, as added by the bill).

2. Market discount

Present law

Capital gain treatment is accorded to the appreciation in value attributable to market discount on an obligation issued by a corporation or governmental unit and held for more than one year. In many cases, interest on indebtedness incurred to purchase or carry a market discount bond is deductible currently against ordinary income, even though the income eventually generated by the investment is taxed on a deferred basis at capital gain rates.

House bill

Accrued market discount characterized as ordinary income

The House bill provides that, generally, gain on disposition of a market discount bond is recognized as interest income. The term "market discount bond" is defined to mean any bond having market discount, subject to exceptions for (1) certain short-term bonds with fixed maturities, (2) bonds the interest on which is exempt from tax without regard to the identity of the holder, and (3) U.S. savings bonds. Market discount is defined as the excess of the stated redemption price of a bond over the adjusted basis immediately after its acquisition by the taxpayer. The interest-characterization provision applies to obligations issued after the date of enactment.

Deferral of interest deductions

The House bill limits a taxpayer's ability to take current deductions for interest on indebtedness incurred or continued to purchase or carry a market discount bond. The taxpayer's net direct interest expense is allowed as a deduction only to the extent that the expense exceeds the amount of market discount allocable to the days during the taxable year on which the taxpayer held the bond. The term "net direct interest expense" is defined as the excess of the interest paid or accrued by the taxpayer over the interest (including OID) included in gross income for the taxable year with respect to a market discount bond. Deferred interest expense is allowed as a deduction for the taxable year in which the taxpayer disposes of the market discount bond. The interest-deferral provision applies to obligations acquired after the date of enactment.

Senate amendment

The Senate amendment includes the same provisions as the House bill, with two modifications.

Accrued market discount characterized as ordinary income

For market discount bonds that are subject to the interest-deferral rule but not the interest-characterization rule (because the bond was issued before the date of enactment but acquired after such date), gain on disposition is recognized as interest income to the extent of the disallowed interest expense that is allowed as a deduction at that time.

Deferral of interest deductions

Under a special rule for financial institutions, the interest-deferral rule is applied by treating a portion of all interest paid or accrued as being attributable to market discount bonds, allocated by reference to the ratio of the basis of market discount bonds to the basis of all assets held by the financial institution.

Conference agreement

The conference agreement follows the Senate amendment with two modifications.

Accrued market discount characterized as ordinary income

Definition of market discount bond.—The conferees intend that regulations to be prescribed by the Secretary will clarify that the term "market discount bond" does not include an obligation that was demand debt when issued.

Deferral of interest deductions

The conferees intend that interest the deduction for which is deferred as interest on indebtedness incurred or continued to purchase or carry market discount bonds will not be taken into account for purposes of computing the disallowance of interest under section 265(2) (relating to interest on indebtedness incurred or continued to purchase or carry tax-exempt securities).

Short sales.—Under the conference agreement, the deduction of short sale expense is deferred where short sales of property are used to generate funds for the purchase of market discount bonds. This rule will apply in the same manner as the new rule that treats short sale expense as interest for purposes of section 265(2).

Election with respect to deferred interest expense.—The conference agreement provides an election under which deferred interest expense with respect to a market discount bond can be deducted in a taxable year prior to the year in which such bond is disposed of in cases where, subsequently, there is net interest income from the bond. If the election is made, any deferred interest expense with respect to a market discount bond is treated as paid or accrued to the extent that interest included in gross income exceeds interest that was actually paid or accrued with respect to the bond for a taxable year. Any deferred interest expense that remains after application of the elective provision is deductible on disposition of the market discount bond. The election is to be made on a bond-by-bond basis.

3. Discount on short-term obligations

Present law

There is a statutory exception to the rule requiring the periodic inclusion of acquisition discount on short-term government obligations payable without interest at a fixed maturity not exceeding one year. A similar exception is provided by Treasury regulations for OID on short-term obligations other than government obligations. In many cases, interest on indebtedness incurred to purchase or carry obligations eligible for an exception can be deducted currently against ordinary income to generate a one-year tax deferral.

House bill

Definition of short-term obligation

The term "short-term obligation" is defined as any bond, debenture, note, certificate, or other evidence of indebtedness that has a fixed maturity date not more than one year from the date of issue.

Mandatory accrual of OID or acquisition discount

Under the House bill, taxpayers are required to accrue OID or acquisition discount currently with respect to short-term obligations that (i) are held by a taxpayer using an accrual method of accounting, (ii) held by a bank, (iii) held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, or (iv) identified by the taxpayer as being part of a hedging transaction. This provision is effective for obligations acquired after the date of enactment.

Short-term obligations other than government obligations

Taxpayers who acquire short-term obligations other than government obligations can elect to apply the rules described above to acquisition discount on such obligations rather than OID.

Deferral of interest deductions

The House bill also limits a taxpayer's ability to take current interest deductions on indebtedness incurred to purchase or carry obligations that are not subject to the rule for mandatory accrual. The interest-deferral rule does not apply if the taxpayer elects to accrue discount currently. The provision is effective for obligations acquired after the date of enactment.

Election

The House bill provides an election to accrue acquisition discount or OID currently for all short-term obligations held during the taxable year that includes the date of enactment. If this election is made, the application of the accrual rule is treated as a change in the taxpayer's method of accounting, subject to the rules of section 481 (relating to adjustments required by changes in method of accounting). Adjustments required by section 481 are to be taken into account over a ten-year period.

Senate amendment

The Senate amendment includes the provision in the House bill that limits the ability to take interest deductions on indebtedness attributable to obligations eligible for an exception. The Senate amendment does not, however, include the provision that requires certain taxpayers to accrue discount currently.

Special rule for certain financial institutions

The Senate amendment also contains a special rule for certain financial institutions, under which a portion of all interest paid or incurred is treated as being attributable to the purchase or carrying of obligations eligible for the exceptions; the portion treated under the special rule is determined by reference to the ratio of the basis of short-term obligations eligible for the exceptions to the basis of all assets held by the financial institution.

Election

The Senate amendment provides an election to apply the interest-deferral rule to all short-term obligations held during the taxable year that includes the date of enactment. If this election is made, taxpayers obtain a five-year pay-in period for additional tax liability attributable to income that was deferred from taxable years prior to the year that includes the date of enactment. Interest is charged on any unpaid installments.

Conference agreement

The conference agreement follows the House bill with several modifications.

Definition of short-term obligation

The conference agreement contemplates that a stripped coupon or a stripped bond may be treated as an evidence of indebtedness within the meaning of the definition of short-term obligation. Thus, because a stripped coupon or stripped bond is treated as originally issued on the purchase date, the mandatory accrual and interest-deferral rules will apply to a stripped coupon or stripped bond that is payable not more than one year from the date of purchase.

Mandatory accrual of OID or acquisition discount

The conference agreement expands the scope of the provision requiring current inclusion of OID or acquisition discount to any short-term obligation held by (i) a regulated investment company ("RIC"), (ii) a common trust fund maintained by a bank, (iii) a partnership, S corporation, trust, or other pass-through entity more than 20 percent of the value of which is owned—for 90 days or more of the entity's taxable year—by taxpayers who are subject to the rule for mandatory accrual, and (iv) any pass-through entity that is formed or availed of to avoid the application of the rule for mandatory accrual. If the more-than-20-percent test is satisfied during any 90-day period of a pass-through entity's taxable year, then the rule for mandatory accrual is applied with respect to obligations acquired on or after the first day of the entity's taxable year.

Taxpayers using a hybrid method of accounting.—The conferees intend that the rule for mandatory accrual will apply to short-term obligations held by any taxpayer who uses an accrual method of accounting in combination with any other method of accounting.

Optional accrual for RICs.—Under a provision of the House bill, RICs are permitted to elect to currently accrue discount with respect to short-term government obligations. This election is available for taxable years beginning after December 31, 1978. Because the conference agreement applies the rule for mandatory accrual to all short-term obligations acquired by RICs after the date of enactment, the optional accrual rules will only apply for taxable years beginning after December 31, 1978, and ending prior to the taxable year that includes the effective date of the rule for mandatory accrual.

Deferral of interest deductions

The conferees intend that interest on indebtedness incurred or continued to purchase or carry short-term obligations subject to the interest deferral rule not be taken into account for purposes of computing the disallowance of interest under section 265(2).

Short-term obligations other than government obligations

The conferees intend that the election to apply the rules described above to acquisition discount rather than OID apply regardless of whether the obligation was acquired after original issue.

Election

The conference agreement provides an election to accrue discount for all short-term obligations held during the taxable year that includes the date of enactment. The election is available only to taxpayers subject to the rule for mandatory accrual of discount on short-term obligations. The conference agreement clarifies that this election is available only with respect to the taxpayer's first taxable year ending after the date of enactment. If the election is made, the application of the accrual rule is treated as a change in the taxpayer's method of accounting. The net adjustments to income required by section 481 are to be made over a five-year period beginning with the year for which the election is made (the "spread period"). The net adjustments will normally be the income that would be included in the taxable year including the date of enactment under cash basis accounting but that is not included under accrual basis accounting.

The amount of the adjustment to be taken into account in the first year of the spread period (the taxable year including the date of enactment) is the sum of (1) one-fifth of the net adjustments, and (2) the excess (if any) of (a) the cash basis income over the accrual basis income over (b) one-fifth of the net adjustments. The term "cash basis income" means the cumulative amount of acquisition discount or OID with respect to short-term obligations that would be includible in gross income for the current taxable year and the preceding taxable years in the spread period if the rule for mandatory accrual were not applicable. "Accrual basis income" is defined as the cumulative amount of acquisition discount or OID includible in gross income for the current taxable year and the preceding taxable years in the spread period under the rule for mandatory accrual. The requirement that the first year income inclusion be no less than the excess of cash basis over accrual basis income prevents the transition rule from producing a tax reduction relative to present law (which would arise where the excess of cash basis income over accrual basis income exceeds one-fifth of the net adjustments). The conferees intend that the 5-year spread be a mitigation of the tax increase provided by the bill, not a tax reduction.

For each year after the first year of the spread period, the amount of the adjustment to be taken into account is the sum of (1) the balance of the net adjustments divided by the number of taxable years remaining in the spread period (including the year for which the determination is being made), and (2) the excess (if any) of (a) the cash basis income over the accrual basis income over (b) one-fifth of the net adjustments, multiplied by five and minus the number of years remaining in the spread period (not including the year for which the determination is being made). In computing the excess of cash basis income over accrual basis income for a year subsequent to the first year of the spread period, such excess is reduced by any amount that gave rise to an income inclusion in excess of the amount of the net adjustment allocable to a prior year of the spread period. This formula is also intended to ensure that the five-year spread does not permit taxpayers to receive a tax reduction relative to present law.

The conferees intend that, in determining the net adjustments required under section 481 to prevent the omission of amounts, the cash basis income (as defined above) is computed as if such income had accrued in the preceding taxable year and, thereby, resulted in an increase in the basis of the related short-term obligations. Absent this treatment, there would be no omission from income to which section 481 could apply.

4. Original issue discount on tax-exempt obligations

Present law

Under Internal Revenue Service rulings, tax-exempt OID is apportioned among the original holder and subsequent holders of an instrument on a straight-line basis over the term of the obligation.

House bill

Tax-exempt OID is accrued in the same manner as that provided for OID on obligations issued by corporations and other juridical entities, under the economic constant interest method.

The provision is effective for obligations issued after September 3, 1982, and acquired after March 1, 1984.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. In the case of tax-exempt obligations with a maturity of less than one year, interest will be computed in the same manner as for short-term taxable obligations.

D. Corporate Tax Provisions

1. Dividends received deductions for debt-financed portfolio stock

Present law

A corporate shareholder generally can deduct 85 percent of dividends received from other corporations. If the corporate shareholder is financing an investment in stock with borrowed funds, interest on the indebtedness is generally also deductible. Together, these rules permit corporations to deduct amounts paid or incurred to earn tax-favored dividend income.

House bill

The House bill reduces tax benefits with respect to certain dividend-paying stock the ownership of which is financed by debt.

Generally, under the House bill, the corporate taxpayer must determine the percentage of the cost of an investment in stock which is financed with borrowed money. The amount of any dividends received deduction with respect to any dividends received on that stock which would otherwise be available is then reduced by that percentage. The rules are intended to determine what portion of the investment is debt-financed and to limit the availability of double deductions accordingly.

Under the House bill, the dividends received deduction is limited to a percentage determined by computing the product of 85 percent, and 100 percent minus the average portfolio indebtedness. Under regulations, the average portfolio indebtedness is the percentage obtained by dividing the average amount of the portfolio indebtedness with respect to the stock by the taxpayer's average adjusted basis in the stock during the base period. A special rule is provided for cases in which the taxpayer does not hold the portfolio stock for the entire base period. Under regulations, any reduction in the amount of the dividends received deduction is not to exceed the amount of any interest deduction (including any deductible short sale expenses) allocable to the dividend involved.

The term "debt-financed portfolio stock" means any stock of a corporation if (a) as of the beginning of the ex-dividend date for the dividend involved, the taxpayer does not own (1) stock of such corporation possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and (2) at least 50 percent of the total number of shares of all other classes of stock of such corporation, and (b) at some time during the "base period" there is portfolio indebtedness with respect to such stock.

The term "base period" means, with respect to any dividend, the shorter of (1) the period between the ex-dividend date for the dividend involved and the ex-dividend date for the immediately preceding dividend, or (2) the one-year period ending on the day before the ex-dividend date for the dividend in question.

The term "portfolio indebtedness" means indebtedness directly attributable to investment in the portfolio stock. For this purpose, proceeds of any short sale are treated as indebtedness for the period between the short sale and the closing of the short sale.

To illustrate these rules, assume that Corporation A pays a dividend of $1 per share each quarter. The ex-dividend dates are January 15, April 15, July 15, and October 15. On January 16, 1985, Corporation B buys 1,000 shares of Corporation A for a total cost of $100,000. Assume further that Corporation B borrows 60 percent, or $60,000, of the purchase price, that the interest rate on the loan is 14 percent per year, and that the stock is portfolio stock. On April 15, 1985, when the $60,000 debt is still outstanding, Corporation B receives dividends on the stock totalling $1,000. Corporation B then sells the stock on April 16, 1985, for $100,000. Under present law, Corporation B would generally be entitled to a dividends received deduction of 85 percent of $1,000, or $850. Under the House bill, since 60 percent of the cost of the stock was debt-financed, 60 percent of the dividends received deduction is disallowed. As a result, Corporation B is entitled to a dividends received deduction of only 40 percent of $850, or $340. Since interest expense allocable to the dividend is $2,100 ($60,000 times 14 percent times 1/4), the special rule limiting the reduction to the amount of interest expense allocable to the dividend is not applicable.

The provision does not apply with respect to dividends eligible for the 100-percent dividends received deduction (generally determined under section 243(b)), or to dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

The provision generally applies to stock the holding period for which commences after the date of enactment.

Senate amendment

The Senate amendment generally follows the House bill. However, proceeds of a short sale are not treated as indebtedness if no deduction is allowed to the party effecting the short sale for payments in lieu of dividends under section 263(h) (as added by the bill).

The provision generally applies to stock the holding period for which commences after the date of enactment. The conference agreement generally follows the House bill, except as noted below. The rule in the Senate amendment regarding proceeds of a short sale is viewed as no different from the rule in the House bill.

Conference agreement

The conference agreement generally follows the House bill, except as noted below. The rule in the Senate amendment regarding proceeds of a short sale is viewed as not different from the rule in the House bill.

Portfolio stock

Under the conference agreement, the term "portfolio stock" is redefined. Stock of a corporation is portfolio stock unless specifically excluded. Under the conference agreement, stock of a corporation is not portfolio stock if, as of the beginning of the ex-dividend date for the dividend involved, the taxpayer owns stock (1) possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation, and (2) having a value equal to at least 50 percent of the value of all the stock (disregarding certain preferred stock) of such corporation.

In addition, stock of a corporation is not portfolio stock if, as of the beginning of the ex-dividend date for the dividend involved, (1) the taxpayer owns stock of such corporation possessing at least 20 percent of the voting power and value of all the stock (disregarding certain preferred stook) of such corporation, and (2) five or fewer corporate shareholders own, directly, stock of such corporation possessing at least 50 percent of the voting power and value of all the stock (disregarding certain preferred stock) of such corporation. This rule exempts certain corporate joint ventures from the provision.

Finally, stock of a bank or a bank holding company is not portfolio stock if, as of the beginning of the ex-dividend date for the dividend involved, the taxpayer (1) owns stock having a value equal to at least 80 percent of the value of all the stock (disregarding certain preferred stock) of the corporation, and (2) holds options to acquire stock possessing at least 50 percent of voting power of all classes of stock of such corporation.

Directly attributable

The reports of the House and Senate committees contain examples, which the conferees endorse, of indebtedness which is treated as directly attributable to investment in stock and of indebtedness which is generally not so treated. However, the conferees wish to clarify that indebtedness of a taxpayer is not directly attributable to portfolio stock held by a corporation all or substantially all of the stock of which is acquired by the taxpayer if the portfolio stock is held by the acquired company in the active conduct of a trade or business. This rule applies only in cases in which the practice of making portfolio stock investments is an integral part of the acquired corporation's trade or business. Thus, for example, if the taxpayer makes a 100 percent debt-financed acquisition of all of the stock of a life insurance company, and such company uses its capital and surplus to make investments in portfolio stock of other corporations, the provision is not to apply because the taxpayer is really acquiring an active business, not portfolio stock. In contrast, however, if the taxpayer makes a debt-financed acquisition of 100 percent of the stock of a mere investment company, the provision is applicable.

Also, the conferees wish to clarify that the provision may be applied where indebtedness is directly attributable to the carrying of portfolio stock as well as where the indebtedness is directly attributable to the acquisition of portfolio stock. Thus, assume that an acquisition of stock is entirely equity-financed. Assume also that the purchaser, at a later date, obtains funds through a borrowing secured by the portfolio stock in a case in which the purchaser could reasonably have been expected to sell the portfolio stock rather than incur the indebtedness. The provision is applicable.

Portfolio indebtedness

The conferees wish to clarify that purchase money indebtedness is treated as portfolio indebtedness for purposes of the provision. Thus, if a corporation buys stock, issuing its own debt obligation to the seller, that obligation is portfolio indebtedness.

The provision operates on the dividends received deduction instead of the interest deduction. However, under the conference agreement, the Treasury is granted authority to issue regulations providing, in lieu of reducing the dividends received deduction, for the disallowance of the interest deduction, or other appropriate treatment, where the obligor is a person other than the person receiving the dividend. The conferees anticipate that these regulations, for example, would apply in a case in which two corporations, A and B, acquire all of the stock of a third corporation, C, with A using debt to acquire 30 percent of the C stock and B using equity funds to acquire the remaining 70 percent. If the money borrowed by A is directly attributable to investment in dividend-paying portfolio stock by C, under such regulations, there would be no reduction in C's dividends received deduction. Rather, interest expense paid or accrued by A on the debt incurred to acquire the C stock would be disallowed, or other appropriate treatment (e.g., the equivalent of a recapture of interest deductions) provided. This result is more appropriate than a reduction in C's dividends received deduction because such a reduction would, in effect, penalize both A and B even though B's investment was not debt-financed.

2. Certain dividends from regulated investment companies

Present law

Domestic corporations are generally entitled to an 85-percent dividends received deduction with respect to dividends from other corporations. No similar deduction is available with respect to their interest income. Individuals are generally entitled to exclude from gross income up to $100 of dividend income. No similar rule applies with respect to their interest income.

Mutual funds, or regulated investment companies ("RICs"), are generally not subject to tax if they distribute their income to their shareholders. That income is generally taxed to the shareholders directly. If less than 75 percent of a RIC's gross income for a taxable year consists of dividends from domestic corporations, then its taxable distributions (other than capital gain distributions) to its shareholders are treated as dividend income in an amount based on the ratio of the RIC's gross income constituting dividend income to all its gross income for the year. However, if 75 percent or more of the RIC's gross income for a taxable year consists of dividends from domestic corporations, then all the RIC's such distributions for the year are treated as dividend income to its shareholders.

For purposes of the foregoing rules, it is not clear whether a dividend received by a RIC is treated as a dividend if the RIC, had it been a regular corporation, would not have been entitled to a dividends received deduction with respect to it. Furthermore, it may be unclear whether a RIC's short-term capital gain income from the sale of stock or securities is treated as gross income for this purpose. See Rev. Rul. 80-345, 1980-2 C.B. 204 (holding that it is to be treated as a part of gross income for this purpose).

House bill

With respect to corporate shareholders of a RIC, 100 percent, rather than 75 percent, of the RIC's gross income must constitute dividend income before all its distributions (other than capital gain distributions) are to be treated as dividend income eligible for the dividends received deduction in the hands of domestic corporate shareholders. Furthermore, for this purpose, no dividend received by a RIC is treated as a dividend unless, had the RIC been a regular corporation, it would have been entitled to a dividends received deduction with respect to it. If less than 100 percent of the RIC's gross income constitutes dividend income, the proration rule of present law applies.

The provision is effective for RIC taxable years beginning after the date of enactment.

Senate amendment

The Senate amendment follows the House bill with certain exceptions. First a 95-percent, rather than a 100-percent, threshold applies. Second, except for the rule requiring that the RIC be entitled to a dividends received deduction, the provision applies for purposes of the dividend exclusion for individuals as well as the dividends received deduction for corporations. Third, the amendment makes it clear that short-term capital gain from the sale of stock or securities is treated as gross income for purposes of the provision. Fourth, if the 95-percent threshold is not met, the amount of the RIC's distributions to be treated as dividends to its corporate shareholders is to be as designated by the RIC. However, the RIC cannot designate as dividends an amount in excess of its aggregate dividends for the taxable year involved which would have been eligible for a dividends received deduction had the RIC been an ordinary corporation.

The provision is effective for RIC taxable years beginning after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment with three exceptions. First, the conference agreement adopts the 100-percent threshold of the House bill for purposes of the dividends-received deduction for corporate shareholders (but accepts the 95-percent threshold of the Senate amendment for purposes of the dividend exclusion for individual shareholders). Second, the conference agreement provides that net short-term capital gains from dispositions of stock or securities in excess of long-term capital losses from dispositions of stock or securities are treated as gross income for purposes of the provision. Third, the basic designation requirement is extended to the dividend exclusion in cases in which less than 95 percent of the RIC's income consists of dividend income. The conferees intend that each share of stock of the RIC outstanding for the entire taxable year (or any portion thereof) have the same designation of income made with respect to it. That is, for example, the RIC cannot designate the same quarterly dividend as being from dividend income for some shareholders and from tax-exempt interest for others.

3. Corporate shareholder's basis in stock reduced by reason of extraordinary dividends

a. Basis

Present law

A corporation owning stock of another corporation generally is allowed a deduction equal to 85 percent of the amount of any distribution received with respect to that stock which qualifies as a dividend. Receipt of the dividend generally has no effect on the shareholder's basis in the stock. Under section 301(c)(2), if the distribution is not a dividend, the shareholder's basis in the stock generally is reduced by the amount of the distribution. To the extent such amount exceeds the shareholder's basis in the stock, the excess is treated as gain from a sale of the stock. For these purposes, if the distribution is of property rather than cash, the amount of the distribution, in the case of certain corporate shareholders, is the lesser of (1) the property's fair market value, or (2) the property's adjusted basis in the hands of the distributing corporation, increased by any gain recognized to it on the distribution.

House bill

A corporate shareholder's basis in any share of stock which is held for one year or less is reduced by the non-taxed portion of any extraordinary dividend received with respect to that stock. Extraordinary dividends which, in amount, equal or exceed 10 percent (5 percent in the case of a share of stock preferred as to dividends) of the corporate shareholder's basis (determined without regard to the provision) in the share of stock with respect to which the dividend is received. All dividends received with respect to a share of stock which have ex-dividend dates within a period of 85 days are treated as one dividend. Furthermore, all dividends received with respect to a share of stock which have ex-dividend dates within a period of 365 days are treated as extraordinary if their amounts exceed 20 percent of the corporate shareholder's basis (determined without regard to the provision) in such share.

Solely for purposes of the provision, the amount of a dividend is, in the case of a distribution of property other than cash, its net fair market value. The non-taxed portion of the dividend is the amount of the dividend, as so determined, less any portion thereof includable in income which is not offset by a dividends received deduction.

A distribution which, had it qualified as a dividend, would have been treated as an extraordinary dividend, is to be treated as an extraordinary dividend even though the distributing corporation has no earnings and profits (or an amount of earnings and profits that is less than the amount of the distribution). In such a case, the amount of the distribution (as determined under the provision) is reduced by the amount of any reduction in stock basis resulting from the application of section 301(c)(2) of present law.

In determining whether the more than one-year holding period requirement has been satisfied, the general holding period suspension rules applicable to the dividends received deduction, as amended by the House bill, are applicable.

The Treasury is authorized to prescribe regulations applying the provision in the case of stock dividends, stock splits, reorganizations, and other similar transactions.

The provision is effective with respect to distributions after March 1, 1984.

Senate amendment

The Senate amendment follows the House bill except that the Senate amendment applies to distributions after the date of enactment.

Conference agreement

The conference agreement follows the House bill. In addition, the conference agreement clarifies that if the amount of the extraordinary dividend (as determined under the provision) exceeds the corporate shareholder's basis in the stock with respect to which the distribution was made, the excess will be taxed to the corporate shareholder under section 301(c)(3)(A). Furthermore, in determining whether the more than one-year holding period is satisfied, the bill makes provision for tolling the running of the holding period in certain instances. Finally, the conferees wish to make clear their intention that if a redemption distribution is treated as a distribution under section 301 rather than a sale or exchange of the redeemed shares under section 302(a), the distribution is treated as made, pro rata, with respect to stock of the shareholder which is not redeemed.

b. Suspension of holding period for dividends-received deduction

Present law

The 85-percent dividends received deduction is disallowed unless the taxpayer satisfies a 16-day holding period with respect to the dividend-paying stock (91 days in the case of dividends on certain preferred stock). The 16-day and 91-day holding periods do not include periods during which the taxpayer reduces or eliminates the risk of loss on the underlying stock by entering into a short sale of, acquiring an option to sell, or entering into a binding contract to sell substantially identical stock or securities.

House bill

The House bill expands the scope of the provision that suspends the holding period of stock to include (1) any period during which the taxpayer is the grantor of an option to buy substantially identical stock or securities, subject to an exception for a qualified covered call (as defined for purposes of the provisions relating to tax straddles and (2) any period during which the taxpayer holds one or more other positions that substantially diminish the risk of loss from holding the stock.

Senate amendment

The Senate amendment generally is the same as the House bill except that (1) in lieu of the "substantial diminution" standard in the House bill, the holding period of stock is suspended during any period when the taxpayer has reduced the risk of loss from holding the stock by reason of holding one or more positions in substantially similar property, prospectively only, as regulations may provide, and (2) an exception is provided for broker dealers with respect to ordinary income or loss property.

Conference agreement

The conference agreement follows the House bill with several modifications.

Substantially similar or related standard

Under the conference agreement, the 85-percent dividends received deduction is disallowed unless the taxpayer satisfies a 46-day holding period requirement. The 46-day holding period does not include any period when the taxpayer reduces the risk of loss by reason of holding one or more other positions in substantially similar or related property. The conference agreement does not provide an exception for broker dealers.

The following transactions are examples of the types of transactions that are within the scope of the rule for substantially similar or related property: (1) a short sale of common stock when the taxpayer holds convertible preferred stock of the same issuer and the price changes of the convertible preferred stock and the common stock are related (the same result would obtain in the case of a short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible or common stock, or a short sale of convertible preferred stock while holding common stock); and (2) the acquisition of a short position in a regulated futures contract ("RFC") on a stock index (or the acquisition of an option to sell the RFC or the stock index itself, or the grant of a deep-in-the-money option to buy the RFC or the stock index) while holding the stock of an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or, alternatively, while holding a portfolio composed of stocks that mimic the performance of the stocks included in the stock index). The conference agreement contemplates that regulations setting forth the application of the rule for substantially similar or related property to the transactions identified above will be generally effective as of the date of enactment of the bill, but that such regulations will be applied to other transactions on a prospective basis. The conferees intend no inference regarding the circumstances under which the dividends received deduction would be disallowed under present law where taxpayers write in-the-money calls with respect to stock they hold. In addition, no inference is intended regarding what situations are covered under the present-law rule applicable to substantially identical stock or securities.

Ordinarily, common stock in one corporation would not be viewed as substantially similar or related to common stock of another corporation. Where stocks of similar companies are involved, however, a short sale of preferred stock of one corporation while holding preferred stock of the other corporation may result in application of the risk reduction rule.

The substantially similar standard is not satisfied merely because the taxpayer (1) holds a single instrument that is designed to insulate the holder from market risks (*e.g.*, adjustable rate preferred stock that is indexed to the Treasury bill rate), or (2) is an investor with diversified holdings and acquires an RFC or option on a stock index to hedge general market risks. The conferees intend that an investment in preferred stock coupled with an option to sell the stock will not be treated as a single instrument, for purposes of applying the substantially similar standard, without regard to whether the option trades separately from the stock.

4. Non-liquidating distributions by corporations of appreciated property

a. Recognition

Present law

A corporation generally does not recognize income on the distribution, with respect to its stock, of appreciated property. There are exceptions to this rule. First, such a distribution will generally trigger recapture income, as under section 1245 (relating to depreciable personal property). Second, the distribution of LIFO inventory generally will generate income in an amount equal to the LIFO reserve with respect to such inventory. Third, if a corporation distributes property which is subject to a liability, or the shareholder assumes a liability in connection with the distribution, gain is generally recognized to the distributing corporation to the extent the liability exceeds the adjusted basis of the distributed property in the hands of the distributing corporation. Fourth, if a corporation distributes property in a redemption to which sections 301 through 307 apply, gain is generally recognized in an amount equal to the excess of the distributed property's value over its adjusted basis in the hands of the distributing corporation. If gain is recognized to a distributing corporation in a redemption distribution, neither the LIFO inventory rule nor the liability rule applies.

However, gain is not always recognized to the distributing corporation with respect to redemption distributions to which sections 301 through 307 apply. For example, gain is not recognized with respect to redemption distributions to certain corporate shareholders. Furthermore, gain is not recognized with respect to redemption distributions to certain noncorporate shareholders if the distribution qualifies as a partial liquidation. Finally, sections 311(d)(2)(C) through (F) provide additional exceptions to the general rule that gain is recognized to the distributing corporation in a redemption distribution.

House bill

Under the House bill, gain (but not loss) is generally recognized to the distributing corporation on any non-liquidating distribution of appreciated property to which sections 301 through 307 apply as if such property had been sold by the corporation for its fair market value rather than distributed. The general rule applies whether or not the distribution qualifies as a dividend.

The general rule also applies whether or not the distribution is a redemption distribution. However, if the distribution is a redemption distribution, the present-law exceptions to gain recognition remain, with two exceptions. First, gain is recognized if the distribution in redemption is to a corporate shareholder unless such shareholder owns, at the time of the distribution, stock possessing at least 80 percent of the total combined voting power and at least 80 percent of the total number of all other classes of stock (disregarding certain preferred stock) of the distributing corporation. However, the corporate shareholder is not to be treated as an 80-percent or more shareholder for this purpose unless its basis in the distributed property is determined with reference to the property's adjusted basis in such property under section 301(d)(2). Second, gain is not recognized if the distribution (1) qualifies as a partial liquidation under section 302(b)(4) and is made to certain noncorporate shareholders, or (2) is a qualified dividend (described below).

If the distribution is not a redemption distribution, gain is recognized in full unless (1) the distribution is to an 80-percent or more corporate shareholder (as determined above), or (2) section 311(d)(2)(C) of present law (relating to certain distributions of stock or obligations of certain controlled corporations) applies.

In the case of a distribution which is not a redemption distribution, gain is not recognized to the distributing corporation with respect to property distributed to certain noncorporate shareholders to the extent the distribution is a qualified dividend. A qualified dividend is a distribution of property which is (1) a dividend, (2) of property used by the distributing corporation immediately before the distribution in the active conduct of a trade or business, and (3) not property described in section 1221(1) (relating to inventory and certain order property) or section 1221(4) (relating to certain accounts and notes receivable). Furthermore, the distribution must be with respect to qualified stock, as defined in section 311(e).

The rules relating to LIFO inventory and liabilities in excess of basis are to be applied before any of the other recognition provisions.

The provision is effective with respect to distributions declared after the date of enactment. A transitional rule is provided for distributions before February 1, 1986, by certain corporations of royalty trust property with respect to which a royalty trust proposal was submitted by certain groups.

Senate amendment

The Senate amendment generally is the same as the House bill. However, it is effective with respect to distributions declared after March 15, 1984. The provision does not apply to any distributions before February 1, 1986, by corporations referred to in the transitional rule under the House bill. Nor does it apply to certain distributions of partnership interests traded on a national securities exchange on March 7, 1984, by certain corporations owning more than 80 percent of such interests on March 7, 1984. Finally, it does not apply to certain distributions declared before the date of enactment of not more than 51 percent of the stock of corporations controlled by certain corporations pursuant to proposals considered before February 15, 1982.

Conference agreement

The conference agreement follows the Senate amendment with some exceptions.

Eighty-percent corporate shareholders

Under the conference agreement, the rule exempting the distributing corporation with respect to distributions to 80-percent corporate shareholders that take a basis in the distributed property determined under section 301(d)(2) is eliminated. Thus, an ordinary, non-liquidating distribution of appreciated property by a 100-percent subsidiary to its corporate parent is a taxable event to the distributing corporation. Generally, the corporate parent takes a fair market value basis in the distributed property (sec. 301(d)(2)).

Under present law, such a distribution would generally not be taxable to the distributing corporation, and the corporate parent would inherit the distributing corporation's adjusted basis in (and holding period for) the property. As a result, when the parent sells the property, gain "accruing" during the period of time the property was held by the subsidiary would be taxed to the parent, rather than the subsidiary, and the character of that gain (as capital or ordinary) would likely be determined with reference to the character of the property in the parent's, rather than the subsidiary's hands. In general, the conferees think that such a shifting of tax liability is inappropriate in the case of ordinary, non-liquidating distributions. Furthermore, the conferees do not believe that such a distribution should permit corporate taxpayers to be able to change the character of the income involved, as present law may permit. Furthermore, the theory of section 311 and the provision is that the distribution of appreciated property to a shareholder is a realization event and, therefore, an appropriate time to impose tax liability. The conferees are not persuaded that a different rule is appropriate merely because the shareholder may be an 80-percent corporate shareholder. If the two corporations are not filing a consolidated return, they should be treated as separate taxpayers, just as they are when one sells property to, or performs services for, the other. The conferees are also aware of cases under present law in which an acquiring corporation can sell, indirectly, built-in-loss assets of an acquired corporation and recognize the loss while selling, indirectly, built-in-gain assets of the acquired corporation without having to take any of that gain into income. Finally, the conferees are aware of transactions in which one corporation buys all the stock of another, has the acquired corporation distribute appreciated property to it, and then sells the stock and recognizes a tax loss. The conference agreement addresses these concerns.

The conferees anticipate that the Treasury will promptly consider what changes, if any, are necessary or appropriate under the consolidated return regulations by reason of this rule.

Effective dates

Under the conference agreement, the provision is generally effective for distributions declared on or after June 14, 1984. However, the rule applying the provision with respect to a distribution to an 80-percent corporate shareholder that takes a basis in the distributed property determined under section 301(d)(2) generally applies only to distributions after December 31, 1984. In addition, the rule applying the provision to such an 80-percent corporate shareholder does not apply to certain distributions before September 1, 1986. The September 1, 1986, rule applies only in the case of distributions by a corporation (or by any member of a group of corporations, of which such corporation was the common parent, which files a consolidated return for the period which includes June 14, 1986) (1) control of which, as defined in sec. 368(c), is acquired other than in a tax-free reorganization after January 1, 1984, but before January 1, 1985, and (2) a tender offer for the shares of which was commenced on May 23, 1984, and amended on May 24, 1984. Furthermore, the September 1, 1986, rule applies only if the distributing corporation and the distributee corporation are members of the same group filing consolidated returns for the period which includes the date of the distribution. Finally, the September 1, 1986, rule applies only if the distributed property consists of stock of a corporation which on June 14, 1984, was a member of the affiliated group of which the corporation referred to in (1) above was the common parent.

Under the conference agreement, if the distributing corporation and the distributee corporate shareholder are part of the same affiliated group of corporations filing a consolidated return for the period which includes the date of distribution, the aggregation rules of Treas. reg. section 1.1502-34 are applicable in determining whether the 80-percent corporate shareholder exception applies.

The conferees intend that in the case of a redemption distribution to a corporate shareholder, that shareholder is not to be treated as an 80-percent corporate shareholder unless it is an 80-percent corporate shareholder after the distribution, as well as before (applying the rule of Treas. reg. sec. 1.1502-34).

The conference agreement also retains two of the three transitional rules contained in the Senate amendment.

b. Holding period for property distributed by one corporation to another

Present law

Section 301(d)(2) provides rules to determine the basis in the hands of certain corporate shareholders of property distributed to them by a distributing corporation with respect to their stock. That basis is the lesser of (1) the distributed property's fair market value, under section 301(d)(2)(A), or (2) the distributed property's adjusted basis in the hands of the distributing corporation, increased by any gain recognized to the distributing corporation on the distribution, under section 301(d)(2)(B). If section 301(d)(2)(B) applies, then, under section 1223(2), the corporate shareholder's holding period for the property includes the period during which it was held by the distributing corporation. If section 301(d)(2)(A) applies, the corporate shareholder's holding period in the distributed property begins on the date of the distribution.

Under section 1248(f)(1), if certain domestic corporations distribute the stock of certain foreign corporations in a transaction to which section 311 applies, the distributing corporation will have included in its gross income as a dividend an amount equal to certain earnings and profits of the foreign corporation. Under section 1248(f)(2), the rule of section 1248(f)(1) does not apply if, among other things, the distribution is to a domestic corporate shareholder which includes in its holding period for the distributed stock the period such stock was held by the distributing corporation.

House bill

If section 301(d)(2)(B) applies, the House bill provides that the corporate shareholder's holding period for the distributed property begins not earlier than the date the stock with respect to which the distribution was made was acquired.

The provision applies to distributions declared after the date of enactment.

Senate amendment

The Senate amendment generally is the same as the provision in the House bill except that the Senate amendment applies to distributions after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the conference agreement explicitly clarifies that if the distributing corporation recognizes gain on the distribution under section 311, as amended by the bill, the corporate shareholder's basis in the distributed property is determined under section 301(d)(2)(A) (and not section 301(d)(2)(B)) so that its holding period in the property begins on the date of the distribution. The conferees are aware that under this rule after section 311, as amended by the bill, becomes fully effective, a corporate shareholder's holding period for property distributed to it by another corporation will generally begin on the date of the distribution.

Under the conference agreement, the provision does not apply for purposes of section 1248(f)(2). However, the amendments to section 311 do apply. Thus, the distribution of appreciated stock of a foreign corporation by one domestic corporation to another may trigger gain recognition (some of which may be dividend income under section 1248(a)) to the distributing corporation. On the other hand, the distribution may not trigger gain recognition to the distributing corporation if the distributee shareholder is an 80-percent corporate shareholder and if the distribution occurs before January 1, 1985. If gain recognition is not triggered, and if the conditions of section 1248(f)(2)(B) are satisfied, then section 1248(f)(1) does not apply, and the distributing corporation has no dividend income by reason of the distribution. The conferees are aware that after section 311, as amended by the bill, becomes fully effective, such a distribution will trigger gain recognition (and dividend income under section 1248(a)) to the distributing corporation.

5. Capital gains distributions from regulated investment companies and real estate investment trusts

Present law

Generally, regulated investment companies ("RICs") that distribute their income are not subject to tax. Rather, that income is taxed directly to their shareholders.

RICs frequently realize long-term capital gain income. That income is generally treated as long-term capital gain to the shareholders. If the stock with respect to which a long-term capital gain distribution is made (or treated as having been made) is held by a shareholder for less than 31 days, any loss on the sale or exchange of that stock is treated as a long-term capital loss to the extent of any long-term capital gain distribution by the RIC with respect to such stock.

Similar rules apply with respect to real estate investment trusts ("REITs").

House bill

If stock with respect to which a long-term capital gain distribution is made by a RIC or a REIT is held by a shareholder for 6 months or less, any loss on the sale or exchange of the stock is treated as a long-term capital loss to the extent of the long-term capital gain distribution. An exception is provided for dispositions of stock pursuant to a periodic redemption plan.

The provision is applicable to losses incurred on stock acquired after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. In determining whether stock has been held for 6 months or less, the bill amends provisions tolling the running of the holding period in certain instances.

6. Certain expenses incurred in connection with short sales

Present law

Treatment of short sales of stock

In a "short sale", the taxpayer sells borrowed property (such as stock or securities) and later closes the short sale by returning identical property to the lender. Gain or loss on the closing of a short sale is considered gain or loss from the sale or exchange of a capital asset if the property used to close the short sale is a capital asset in the hands of the taxpayer. Where the property sold short is stock, and a dividend is distributed with respect to the stock, the taxpayer is required to pay an amount equal to the value of the distribution to the lender of the stock. The Internal Revenue Service has ruled that this payment in lieu of a dividend is deductible currently against ordinary income.

When a dividend is paid with respect to stock, the stock can be expected to decline in value by an amount that approximates the value of the dividend distribution. Taxpayers can effectively convert ordinary income to capital gain by entering into a short sale of stock just before the ex-dividend date, deducting the dividend-substitute payment against ordinary income, and realizing an offsetting capital gain upon closing the short sale.

When a taxpayer borrows property for use in a short sale, the taxpayer may receive a rebate fee—taxable as ordinary income—with respect to short sale proceeds deposited with the lender as collateral. This rebate fee compensates the taxpayer for the lender's use of the short sale proceeds during the period before the short sale is closed and property is returned.

Investment interest limitation

Section 163(d) limits deductions for interest by an individual or other noncorporate taxpayer on indebtedness to purchase or carry an investment. The deduction for investment interest is limited to the taxpayer's net investment income plus $10,000. Disallowed interest deductions are carried over and may be allowed in future years.

Interest related to tax-exempt income

In general, section 265(2) provides that no deduction is allowed for interest on indebtedness incurred or continued to purchase or carry tax-exempt obligations.

In the case of a securities dealer who borrows money for the purpose of conducting a business that includes the holding of tax-exempt obligations, but whose borrowings cannot be traced to the purchase or continued holding of such obligations, section 265(2) is applied on the basis of an allocation. (See Rev. Proc. 72-18, 1971-1 C.B. 1; and *Leslie v. Commissioner*, 413 F.2d 636 (2d Cir. 1969), *cert. denied*, 396 U.S. 1007 (1970).) The amount of interest allocated to tax-exempt obligations is determined by multiplying the taxpayer's total interest expense by a fraction, the numerator of which is the average adjusted basis of the tax-exempt obligations held during the taxable year and the denominator of which is the average adjusted basis of the total assets held during the year. Interest on debt that is traceable entirely to tax-exempt obligations and interest which is not subject to disallowance under section 265(2) is excluded from this computation. The Internal Revenue Service has ruled that section 265(2) does not apply to disallow interest deductions with respect to indebtedness that is collateralized by tax-exempt securities held for the accounts of customers, and that the securities dealer is required to segregate pursuant to rules promulgated under the Securities and Exchange Act of 1934. Rev. Rul. 74-294, 1974-1 C.B. 71.

House bill

Treatment of short sales of stock

Payments in lieu of dividends are not deductible unless the short sale is held open for at least 16 days (more than one year in the case of payments in lieu of extraordinary dividends). The amount disallowed as a deduction is required to be capitalized (*i.e.*, added to the basis of the stock used to close the short sale).

In determining whether the short sale is held open for the required 16-day (or more-than-one-year) holding period, there is not to be included any period during which the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or there is otherwise a substantial diminution of the taxpayer's risk of loss from the short sale by reason of holding one or more other positions.

Investment interest

For purposes of the restriction on the deductibility of investment interest, the definition of interest is expanded to include any amount allowable as a deduction in connection with personal property used in a short sale.

Interest related to tax-exempt income

For purposes of the provision that disallows interest deductions related to tax-exempt income, the definition of interest is expanded to include any amount paid or incurred in connection with personal property used in a short sale.

The provisions of the House bill are effective for short sales entered into after the date of enactment.

Senate amendment

Treatment of short sales of stock

The Senate amendment is similar to the House bill. In applying the risk reduction rule for purposes of determining whether a short sale is held open for the required period, under regulations, there is not to be included any period during which the taxpayer diminishes the risk of loss from the short sale by reason of holding one or more other positions with respect to substantially similar property.

In addition, except with respect to extraordinary dividends, the Senate amendment permits the deduction of dividend-substitute payments to the extent of ordinary income that is received from the person providing the stock used in the short sale as compensation for the use of collateral. Earnings on the collateral establish an appropriate measure of the portion of the dividend-substitute payment that represents a current charge for the use of the property sold short, as distinguished from dividends that had accrued economically prior to the short sale.

Interest related to tax-exempt income

The Senate amendment also includes additional rules for the application of the provision extending the rule that disallows interest deductions related to tax-exempt income. First, section 265(2) does not apply to disallow a deduction for short sale expenses incurred by a taxpayer who acts as a conduit in a short sale transaction executed in a customer's account.

Second, the Senate amendment makes clear that section 265(2) applies to amounts paid by the person providing the personal property used in a short sale as compensation for use of collateral with respect to the property (*e.g.*, a rebate fee).

Third, in applying section 265(2) to a taxpayer whose business includes buying and selling tax-exempt obligations, short sale expenses (and the short sale proceeds) are treated separately, in a manner analogous to the treatment accorded broker loans collateralized with customer securities under present law (the situation covered by Rev. Rul. 74-294, 1974-1 C.B. 71), unless the short sale proceeds can be directly traced to the purchase or carrying of tax-exempt obligations. Thus, section 265(2) would not apply to disallow a deduction for short sale expenses incurred in a transaction in which the short seller did not receive the short sale proceeds (*e.g.*, because the funds were deposited as collateral).

Conference agreement

The conference agreement follows the House bill with several modifications.

Treatment of short sales of stock

Under the conference agreement, payments in lieu of dividends are not deductible unless the short sale is held open for at least 46 days (more than one year in the case of payments in lieu of extraordinary dividends). In applying the risk reduction rule for purposes of determining whether a short sale is held open for the required period, under regulations, there is not to be included any period during which the taxpayer diminishes the risk of loss from the short sale by reason of holding one or more other positions with respect to "substantially similar or related property" (as that term is defined for purposes of the holding period requirements for the dividends-received deduction).

The conference agreement clarifies that, in the case of any short sale, the provision relating to short sale expenses applies before section 263(g) (relating to interest and carrying costs in the case of straddles).

Interest related to tax-exempt income

The conference agreement does not include the provision of the Senate amendment relating to brokers who act as conduits in short sales executed for customers. This result occurs under present law without a statutory provision. Thus, the conference agreement contemplates that the provision expanding the scope of section 265(2) to apply to short sale expense will not apply to a broker who acts as a conduit. The conference agreement does not provide for the separate treatment of short sale expenses and short sale proceeds. Under the conference agreement, section 265(2) will not apply to disallow a deduction for short sale expense if the taxpayer (1) deposits cash as collateral for the property used in the short sale, and (2) does not earn a material return on the cash so deposited.

7. Nonrecognition of gain or loss by corporations on options with respect to their stock (warrants)

Present law

Corporations frequently issue for a consideration options to third parties to acquire from it shares of its own stock (warrants). Sometimes those warrants expire unexercised, or lapse. On other occasions, they may be repurchased by the issuing corporation for more or less than they were originally issued for. The tax consequences to the issuing corporation of a lapse of warrants or of a repurchase of warrants it has issued is unclear.

House bill

Under the House bill, a corporation does not recognise gain or loss on any lapse or repurchase of a warrant it issued to acquire from it shares of its own stock.

The provision applies to warrants repurchased or lapsing after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

8. Accumulated earnings tax

Present law

An accumulated earnings tax is imposed on corporations that are formed or availed of for the purpose of avoiding the income tax with respect to shareholders by permitting earnings and profits of the corporation to accumulate instead of being distributed. Where applicable, the tax is imposed at a rate of 27½ percent of the first $100,000 of accumulated taxable income for the taxable year and at a rate of 38½ percent on accumulated taxable income in excess of $100,000.

The term "accumulated taxable income" means taxable income, with certain adjustments, reduced by a deduction for dividends paid. In determining accumulated taxable income, a corporation is permitted a deduction for net capital losses during the year in question. A corporation is also permitted a deduction for net capital gains during the year, determined without regard to capital loss carryovers or carrybacks, less certain taxes.

The Internal Revenue Service takes the position that the accumulated earnings tax can be imposed on widely-held corporations, even one not controlled by a few shareholders or groups of shareholders. The issue has not been resolved definitely by the courts.

House bill

Under the House bill, the mere fact that a corporation is widely held does not exempt it from the accumulated earnings tax. This rule applies to operating companies, as well as mere holding or investment companies, regardless of how concentrated the ownership of their stock may be.

Changes are also made in the determination of accumulated taxable income. In general, the deduction from accumulated taxable income for net capital gains, less certain taxes, remains. However, in determining net capital gains for this purpose, net capital losses for any taxable year are treated as short-term capital losses during the next taxable year. The deduction for net capital losses also generally remains. However, that deduction is reduced by any deduction from accumulated taxable income for net capital gains, less certain taxes, for preceding years beginning after the date of enactment. No such net capital gains, less certain taxes, are to be used to reduce the deduction for net capital losses more than once.

Certain different rules apply to mere holding or investment companies. For example, they are allowed no deduction from accumulated taxable income for net capital losses. On the other hand, net capital losses are not to be treated as a carryover in determining accumulated taxable income.

The provision applies to all taxable years beginning after the date of enactment.

Senate amendment

The Senate amendment is the same as House bill.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment.

The conferees agree with the statement in the Senate committee report to the effect that while a section 531 tax avoidance purpose may be inferred in an appropriate case, as a practical matter it may be difficult to establish such a purpose in the case of a widely-held operating company when no individual or small group of individuals has legal or effective control of the company.

The conference agreement clarifies that, in the case of corporations other than mere holding or investment companies, net capital loss carryovers are to be used only once in determining accumulated taxable income. In addition, mere holding or investment companies are allowed a deduction from accumulated taxable income for net short-term capital gains, but only to the extent of any previously unused capital loss carryovers to the year in question.

9. Repeal of stock for debt exception for purposes of determining income from discharge of indebtedness

Present law

Generally, income from discharge of indebtedness is realized when the taxpayer's debts are satisfied at less than their face amount (sec. 61(a)(12)). However, cases have held that a corporation does not realize income from discharge of indebtedness when its debts are satisfied with its own stock, notwithstanding that the value of the stock is less than the amount of the debt. This stock-for-debt rule is subject to two statutory exceptions (sec. 108(e)(8)).

House bill

The House bill provides that a debtor corporation realizes income from discharge of indebtedness when it satisfies its debt with stock having a fair market value less than the principal of the debt. This rule applies where the principal amount of a corporate debt is discharged, including by reason of the exercise of a conversion right by the holder of the debt. It does not apply where payments are simply deferred. (Section 1032 does not prevent the recognition of this income from the discharge of indebtedness.)

The repeal of the stock-for-debt exception does not apply if the discharge occurs pursuant to a title 11 (bankruptcy) case or to the extent the debtor is insolvent; in these cases, present law continues to apply.

The provision applies to transfers after date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the House bill, but provides transitional rule exceptions to the general effective date (transfers after the date of enactment) and also makes the provision inapplicable (as of January 1, 1986) to certain "workouts".

Under the first transitional rule, the provision in the bill will not apply to any transfer pursuant to a written binding contract or option (including a convertible debenture) which was in effect at all times on the day of June 7, 1984, and which remains in effect at all times thereafter. Thus, the provision applies to transfers pursuant to contracts or options entered into on or after June 7, 1984, since in such a case, the contract or option will not have been in effect at all times on June 7, 1984. This exception will apply only if the holder of the debt on June 7, 1984, also was the party to the contract or held the option on that date. A transfer pursuant to a written contract must be completed before January 1, 1985. The conversion of debt pursuant to an option or conversion right outstanding at all times on June 7, 1984, and thereafter will be covered by the transitional rule regardless of whether conversion is after 1984. Under the second transitional rule, the provision in the bill will not apply to a transfer of stock before January 1, 1985, to a corporation which owned at least 75 percent of the stock of the debtor corporation on June 7, 1984, and which owns more than 80 percent of the stock of that corporation after the transfer. Finally, a transfer before January 1, 1985, pursuant to a debt restructuring agreement entered into in November, 1983, for which a registration statement was filed with the Securities and Exchange Commission in March, 1984, will not be subject to these new rules.

A stock-for-debt transaction does not give rise to debt discharge income under the "workout" exception if (1) the transfer of stock is made (pursuant to a plan) because of cash flow and credit problems which will cause the debtor corporation difficulty in meeting its liabilities during the next 12 months to such an extent that there is a substantial threat of an involuntary bankruptcy or insolvency proceeding, (2) the corporation notifies its stockholders of this financial difficulty and that it is engaged in a workout, (3) at least 25 percent of the total debt of the corporation is extinguished by transfers of stock pursuant to the plan, and (4) holders of more than 50 percent of the total indebtedness of the debtor corporation outstanding on the date of transfer approve the plan. The workout definition will be satisfied only if it is reasonably related to the objective of avoiding a likely insolvency or bankruptcy proceeding.

The "workout" exception will become effective on the date on which the amendments made to section 382 by the Tax Reform Act of 1976 become effective. Under the bill, this will occur on January 1, 1986. This delayed effective date is adopted to allow the Congress to consider the appropriate treatment of stock-for-debt exchanges in the case of financially troubled corporations while the Congress is reexamining generally the treatment of net operating loss limitations. A stock-for-debt exchange in the case of a financially troubled corporation is a change of ownership event which the Congress may decide is an appropriate occasion for the reduction of net operating losses either under rules of a revised section 382 or by reason of the creation of income from the discharge of indebtedness. It is anticipated that any reconsideration of the exceptions to stock-for-debt rules will include consideration of the rules relating to the use of preferred or limited stock, stock of a parent corporation, and stock of a party to a reorganization, and related technical issues.

10. Affiliated groups

Present law

Includable corporations which are members of an affiliated group of corporations are generally entitled (or required) to file consolidated Federal income tax returns. Section 1504(b) defines the term "includible corporation" to mean any corporation, with several exceptions (e.g., exempt organizations, certain insurance companies, foreign corporations, and regulated investment companies). Certain other tax consequences also depend on whether two corporations are members of the same affiliated group (e.g., the 100-percent dividends received deduction under sec. 243(b)).

Under section 1504, an affiliated group means one or more chains of includible corporations connected through stock ownership with a common parent which is an includible corporation if (1) stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each includible corporation (except the common parent) is owned directly by one or more other includible corporation, and (2) the common parent owns directly at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations. For purposes of the definition, nonvoting stock which is limited and preferred as to dividends is disregarded, as is certain stock held under tax credit employee stock ownership plans or employee stock ownership plans.

Once the above stock ownership requirements cease to be met with respect to any one corporation, it can no longer be included in the consolidated return of its former affiliated group. However, there are generally no restrictions on its rejoining that group or joining any other group.

House bill

Under the House bill, two includible corporations are not eligible to begin filing a consolidated return with respect to any taxable year unless at the beginning of that year one owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of the fair market value of all outstanding stock of the other. For purposes of this definition, certain preferred stock is ignored, as is stock held under certain employee stock ownership plans. A similar rule applies in determining whether another corporation may begin being included in the consolidated return of that group.

Once two corporations are properly included in a valid consolidated return, they will continue being an affiliated group for consolidated return purposes unless one ceases to own stock, determined as above, (1) possessing at least 80 percent of the voting power of all classes of stock, or (2) having more than 50 percent of the fair market value of all outstanding stock, of the other. A similar rule applies in determining whether any other corporation continues to be a member of that group. Once a corporation has ceased being a member of an affiliated group filing consolidated returns, restrictions are imposed on its ability to reconsolidate with that group or to consolidate with certain other groups.

The Treasury is granted broad regulatory authority to carry out the purposes of the provision to prevent abuses.

The provision is effective for taxable years beginning after December 31, 1984. A permanent transition rule is provided for corporations which are members of an affiliated group under present law on March 1, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill. However, stock held under tax credit employee stock ownership plans or other employee stock ownership plans is not ignored. In addition, the Treasury, by regulations, is authorized to provide relief in appropriate cases from the rule requiring ownership by one corporation of at least 80 percent of the fair market value of all outstanding stock of another corporation before the two may commence filing a consolidated return. The Senate amendment also clarifies the rule regarding consolidation or reconsolidation after deconsolidation.

The provision is effective for taxable years beginning after December 31, 1984. However, for taxable years beginning before January 1, 1988, the provision is not applicable to corporations filing a valid consolidated return under present law for the taxable year which includes April 11, 1984.

Conference agreement

The conference agreement follows the Senate provision with several exceptions.

All income tax purposes

Under the conference agreement, the definition of affiliated group is to be applied in determining whether an affiliated group exists for all purposes of subtitle A. The conferees see no reason to have a unique definition of affiliated group for consolidated return purposes. Under the definition, one corporation is not part of an affiliated group with another corporation unless one owns stock (1) possessing at least 80 percent of the total combined voting power, and (2) having a value equal to at least 80 percent of the total fair market value of the stock (disregarding certain preferred stock) of the other. Similar rules apply in determining whether any other corporation is also a member of the group.

No inference regarding present law is intended.

Continuation of status

The conference agreement drops the provision in the House bill and the Senate amendment to the effect that once a consolidated return is validly filed by two corporations, affiliated group status is to be treated as continuing so long as one corporation owns stock (1) possessing at least 80 percent of the total voting power, and (2) having a value equal to more than 50 percent of the total fair market value of the stock (disregarding certain preferred stock) of the other. The conferees believe that such a rule would permit the common parent to dispose of too much of the value of the stock of the other without requiring deconsolidation. As a result, the conference agreement generally treats affiliated group status as continuing only if one corporation continues to own 80 percent of the total voting power and 80 percent of the value of the other. However, nothing in the bill is intended to overturn the position set forth in Rev. Rul. 78-119, 1978-1 C.B. 277 (holding that a corporation which has been a member of a group filing consolidated returns is not deconsolidated merely because its parent has temporarily lost its power to vote such corporation's stock by virtue of a court order issued during the pendency of litigation).

The conferees are also aware that, absent a special rule, the provision would cause affiliated group status to terminate if, merely by reason of changes in relative values of different classes of stock of a corporation, one corporation ceased to own 80 percent in value of the stock of the other corporation. Where the changes in relative value are not large and not intentionally generated, the conferees believe disaffiliation to be inappropriate. Accordingly, under the conference agreement, the Treasury is authorized to prescribe regulations pursuant to which inadvertent changes in relative values of different classes of stock are to be disregarded in determining whether affiliated group status continues.

Preferred stock

The conference agreement also specifies the kind of stock to be ignored in testing for affiliated group status and the continuation thereof. The stock to be ignored is stock which (1) is not entitled to vote, (2) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, (3) has redemption and liquidation rights that do not exceed the stock's paid-in capital or par value (except for a reasonable redemption premium), and (4) is not convertible into any other class of stock. Thus, for example, preferred stock carrying a dividend rate materially in excess of a market rate when issued would not be ignored.

Consolidation after deconsolidation

The conference agreement amends the rules of the Senate amendment regarding consolidation after deconsolidation. In general, if a corporation is included in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and such corporation ceases under the bill to be a member of such group for a taxable year beginning after December 31, 1984, then such corporation (and any successor) may not be included in any consolidated return filed by that group or any other group having the same common parent (or a successor) before the 61st month after the cessation.

The Treasury is authorized to waive the rule prohibiting consolidation after deconsolidation for any period subject to such conditions as the Treasury may prescribe. The rule is an anti-abuse rule, and the conferees expect the Treasury to so apply it. For example, assume that operating corporation A owns all the stock of operating corporation X and that the two file a consolidated return. On July 1, 1986, A merges into unrelated operating corporation B in a transaction qualifying under section 368(a)(1)(A). Assume that the transaction is not a reverse acquisition. Absent other factors, X should be able to join in filing a consolidated return with the group of which B is the common parent for the period beginning July 1, 1986, and regulations should so provide.

Regulations

Regulatory authority is granted to the Treasury to disregard transfers of stock within an affiliated group in determining whether affiliated group status is broken. For example, assume that corporation A owns 100 percent of the only class of stock of corporation B, and corporation B owns 100 percent of the only class of stock of corporation C. It is contemplated that a transfer by A of 30 percent of the stock of B to C will not break the status of A, B, and C as an affiliated group. Furthermore, the authority of the Treasury to prescribe regulations permitting affiliated group status to be treated as commencing or continuing if there was reliance on a good faith but erroneous determination of value is clarified.

The conference agreement contains rules similar to those in the House bill and the Senate amendment authorizing the Treasury to prescribe anti-abuse regulations to carry out the purposes of the provision. For example, the Treasury is authorized to prescribe regulations pursuant to which warrants to acquire stock are to be treated as stock and options to acquire stock are to be treated as having been exercised. Thus, assume that corporation A's common stock is worth $40 a share. Assume further that corporation B, the owner of all of A's common stock, grants corporation C an option to acquire that stock for $20 a share at a date beginning 3 years from the date of the grant. The facts indicate that A and C are likely to be loss corporations but that B is profitable. If it can reasonably be expected that C will exercise the option, the regulations may treat the option as having been exercised, for purposes of the new provision.

The Treasury is also authorized to prescribe regulations under which obligations convertible into stock (and similar interests) are treated as stock and stock (like "puttable" stock) is not treated as stock. Finally, the Treasury, by regulations is authorized to disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

Effective date

Except as noted below, the provision is effective for taxable years beginning after December 31, 1984. The provision does not apply to a corporation validly included in a consolidated return of an affiliated group under present law for the taxable year which includes June 22, 1984, until the taxable year beginning after December 31, 1987. However, if (1) at any time after June 22, 1984, more than a de minimis amount of stock of any such corporation is sold or exchanged (including by redemption), or such corporation issues more than a de minimis amount of stock other than in the ordinary course of its business, and (2) thereafter the bill's provision as to ownership of stock of such corporation is not satisfied (even though before December 31, 1984), then the provision will apply to such corporation for its taxable year beginning after December 31, 1984, or if later, the date such stock is sold, exchanged, or issued, as the case may be. For purposes of this rule, generally stock issued to employee stock ownership plans, stock issued upon the exercise of employee stock options, and similar issuances of stock are to be treated as issuance in the ordinary course of the corporation's business.

For example, assume that Corporation B has only 300 shares of class A common stock and 100 shares of class B common stock outstanding. Shares of each class are identical except that each share of class A common stock has three votes whereas each share of class B common stock has one vote. Corporation A owns all the class A common stock, which represents 90 percent of the voting stock and 75 percent of the value of all the stock of Corporation B, at all times during 1984. A and B file a valid consolidated return for calendar year 1984. On June 30, 1985, A sells 20 shares of the class A common stock of B to a third party. After the sale, A owns 84 percent of B's voting stock and 70 percent of the value of all B's stock. B would be disaffiliated under the provision as a result of the sale.

Special and transitional rules are also provided.

11. Earnings and profits

a. General

Present law

Under present law, distributions by corporations to shareholders are included in income by the shareholders as dividends (and taxed at ordinary income rates) only to the extent such distributions are out of current or accumulated earnings and profits. In general, a corporation's earnings and profits are intended to be a measure of the economic income of the corporation available for distribution to its shareholders. However, in many instances earnings and profits are substantially less than the corporation's economic income.

The effect on the earnings and profits of a corporation of a distribution by the corporation in redemption of shares of its own stock is determined by reference to section 312(e). That section provides that the part of a distribution that is "properly chargeable" to capital account does not reduce earnings and profits. Some cases have held, and the IRS has now ruled, that a corporation's capital account is an amount equal to the par value of its stock plus the amount, if any, of paid-in surplus, and that this amount is reduced in proportion to the amount of the corporation's stock that is redeemed. Under this approach, earnings and profits are reduced by an amount equal to the amount of the distribution over the amount charged against capital account. See, e.g., *Jarvis* v. *Commissioner*, 43 B.T.A. 439, *aff'd*, 123 F.2d 742 (4th Cir. 1941); and Rev. Rul. 79-376, 1979-2 C.B. 133.

House bill

No provision.

Senate amendment

The Senate amendment requires that a number of changes be made in the way in which a corporation's earnings and profits are calculated.

Construction period interest, taxes, and carrying charges

For purposes of computing a corporation's earnings and profits, construction period interest, taxes, and carrying charges are required to be capitalized as a part of the asset to which they relate and written off as is the asset itself. This rule applies to all corporations. Further, it applies with respect to both residential and nonresidential real property, and to personal property.

Construction period interest and taxes include property taxes (real and personal), interest paid or accrued on debt incurred or continued to acquire, construct, or carry property, and other carrying charges, but only to the extent such taxes, interest, and other carrying charges are attributable to the construction period for such property.

This provision is applicable to the effect on earnings and profits of amounts paid or accrued in taxable years beginning after date of enactment.

Intangible drilling costs and mine development costs

Intangible drilling costs allowable as a deduction under section 263(c), and mineral exploration and development costs allowable as a deduction under sections 616(a) or 617, are required to be capitalized for purposes of computing earnings and profits, but only if the expenditures give rise to the creation of an asset having an anticipated economic life of more than one year. Intangible drilling costs capitalized under the provision are to be amortized on a straight-line basis over 5 years. The amortization period for mineral exploration and development expenses is 10 years. No amortization is to occur, however, prior to the date the asset is placed in service.

Unamortized intangible drilling expenses incurred in connection with the drilling of a well (or a group of related wells) are to be deducted in computing earnings and profits when it has been determined that the well (or a group of related wells) is dry. For this purpose, a group of wells is to be considered related if they are drilled from a common drilling rig. Unamortized mineral exploration and development expenses incurred in connection with a mineral property are to be deducted in computing earnings and profits when the property is abandoned.

This provision is applicable to the effect on earnings and profits of amounts paid or accrued in taxable years beginning after the date of enactment.

Certain trademark, trade name, and other expenditures

Amounts amortized under sections 173 (relating to circulation expenditures), 177 (relating to trademark and trade name expenditures), and 248 (relating to organizational expenditures) are to be capitalized and treated as part of the basis of the asset to which they relate. Expenditures made in connection with property having a reasonably determinable useful life are to be recovered for earnings and profits purposes over such useful life. Under the Senate amendment, there is no amortization for expenditures made in connection with property which does not have a reasonably determinable limited useful life.

This provision is applicable to the effect on earnings and profits of amounts paid or accrued in taxable years beginning after the date of enactment.

Certain distributions of appreciated property

In the case of a distribution of appreciated property by a corporation to a shareholder with respect to stock, earnings and profits of the distributing corporation are to be increased by the amount of gain on the distributed property that is realized by the distributing corporation on the distribution whether or not such gain is recognized. The provision does not apply to certain distributions.

With certain exceptions, the provision is applicable to the effect on earnings and profits of distributions after the date of enactment.

Changes in LIFO reserves

A corporation's earnings and profits are to be increased by the amount of any increase in the corporation's LIFO reserve for a taxable year. In addition, earnings and profits are to be decreased by the amount of any decrease in the corporation's LIFO reserve for a taxable year. However, decreases in reserve amounts below the LIFO reserve as of the beginning of the taxable year beginning after the date of enactment will not, except as provided by regulations, reduce earnings and profits. For purposes of this provision, the term "LIFO reserve" has the same meaning as that given to the term "LIFO recapture amount" under section 336.

The provision is applicable to the effect on earnings and profits of changes in reserve amounts in taxable years beginning after the date of enactment.

Deferred gain from installment sales

A corporation's earnings and profits for a year in which the corporation sells property on the installment basis are to be increased by the amount of any deferred gain on the installment sale. This is accomplished by treating all principal payments as having been received in the year of the sale.

The provision is applicable to the effect on earnings and profits of sales occurring after March 15, 1984, other than sales pursuant to binding contracts entered into on or prior to such date.

Completed contract method of accounting

A corporation that accounts for income and expenses attributable to a long-term contract on the completed contract method of accounting generally recognizes income and expense in the year in which the contract is completed. Under the Senate amendment, a corporation that accounts for income and expense on this method is required to compute earnings and profits as if it were accounting for income and expense attributable to long-term contracts on a percentage of completion basis.

This provision is applicable to the effect on earnings and profits of contracts entered into after March 15, 1984, other than contracts entered into pursuant to binding contracts entered into on or prior to such date.

ACRS deductions for real property

The amount by which a corporation's earnings and profits are reduced for ACRS deductions with respect to 15-year and 20-year real property is the amount of the deduction that would be allowable if the straight-line method of depreciation had been used and the property had a 40 year recovery period.

This provision is applicable to the effect on earnings and profits of property placed in service in taxable years beginning after the date of enactment.

Redemptions

In the case of a distribution by a corporation in redemption of its own stock, earnings and profits are to be reduced in proportion to the amount of the corporation's outstanding stock that is redeemed. However, the Senate does not intend that earnings and profits be reduced by more than the amount of the redemption.

This provision is applicable with respect to the effect on earnings and profits of distributions in taxable years beginning after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment with several modifications.

Construction period carrying charges

The conference agreement is generally the same as the Senate amendment, with several technical clarifications.

The provision is effective for amounts paid or incurred in taxable years beginning after September 30, 1984.

Intangible drilling costs and mineral exploration and development costs

The conference agreement clarifies the Senate amendment by providing that for purposes of computing a corporation's earnings and profits intangible drilling costs are capitalized and allowed as a deduction ratably over a 60-month period beginning with the month in which the production from the well begins. Also, the conference agreement makes it clear that for this purpose mineral exploration and development costs are capitalized and deducted ratably over a 120-month period beginning with the later of (1) the month in which the production from the deposit begins, or (2) the month in which the amount is paid or accrued.

The provision is generally effective for amounts paid or incurred in taxable years beginning after September 30, 1984.

Certain trademark, trade name, and other expenditures

The conference agreement generally follows the Senate amendment.

The provision is effective for amounts paid or incurred in taxable years beginning after September 30, 1984.

Certain distributions of appreciated property

The conference agreement generally follows the Senate amendment. Certain exceptions to the rule are provided.

The provision is generally effective for distributions after September 30, 1984.

LIFO inventory adjustments

The conference agreement generally follows the Senate amendment with certain technical and clarifying modifications.

In general, earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount. The conferees wish to clarify that this provision is designed to eliminate the impact of LIFO on earnings and profits. Thus, under present law, if a corporation's LIFO reserve increases by $10, taxable income and earnings and profits are lower than they would have been had LIFO not been used. Under the new rules, $10 would be added back to earnings and profits.

An exception is to be provided, under regulations, for decreases below the amount of the reserve as of the close of the taxable year of the taxpayer preceding the first taxable year to which the provision applies. Since the cumulative effect of the LIFO reserve has been to keep earnings and profits lower than they otherwise would have been, it is contemplated that the regulations will provide that in the event of a reduction in the LIFO reserve below its level as of the close of such taxable year (the pre-enactment reserve), earnings and profits will be increased as under present law without any offsetting reduction under the new rules. However, because a reduction in the reserve below the pre-enactment reserve results in an increase in taxable income and earnings and profits, any subsequent restoration of the reserve up to the level of the pre-enactment reserve should result in an adjustment under the new rules.

The following example is illustrative.

Assume that a calendar year taxpayer has a LIFO reserve of $100 at the end of 1984. Assume further that the reserve decreases to $95 at the end of 1985 and increases to $105 at the end of 1986. Finally, assume that the reserve decreases to $90 at the end of 1987. The change in the reserve for 1985 results in an increase in taxable income and earnings and profits under present law, with no offsetting adjustment under the new rules. Under present law, the increase in the reserve in 1986 would reduce taxable income and earnings and profits. This reduction is offset by a $10 adjustment to earnings and profits under the new rules.

The $15 reduction in the reserve for 1987 increases taxable income and related earnings and profits by $15. This increase is offset, in part, by a $10 reduction in earnings and profits under the new rules.

The adjustment for 1987 is $10 and not $15 because the provision does not require an adjustment to offset the inclusion in earnings and profits of reserve amounts not previously included in earnings and profits. By the end of 1986, $10 (not $15) of the $100 pre-enactment reserve had been taken into account in determining earnings and profits.

The provision applies to taxable years beginning after September 30, 1984.

Installment sales

The conference agreement generally follows the Senate amendment. The conference agreement makes it clear that a corporation's earnings and profits are computed as if the corporation did not use the installment method to account for the installment sale. Thus, for purposes of computing a corporation's earnings and profits, all principal payments, as determined under general Code principles, are treated as received in the year of the sale. This provision applies to all installment sales, including installment sales of inventory.

The provision applies to sales after September 30, 1984.

Completed contract method of accounting

The conference agreement is generally the same as the Senate amendment except that it applies to contracts entered into after September 30, 1984.

ACRS deductions for real property

The conference agreement is generally the same as the Senate amendment except that the provision applies to property placed in service in taxable years beginning after September 30, 1984.

Redemptions

The conference agreement is generally the same as the Senate amendment.

The conferees wish to clarify that when a corporation has more than one class of stock, its earnings and profits generally should be allocated among the different classes in determining the amount by which a redemption of all or a part of one class of stock reduces the earnings and profits account. However, no earnings and profits generally should be allocable to preferred stock which is not convertible or participating to any significant extent in corporate growth. Therefore, a redemption of such preferred stock should result in a reduction of the capital account only, unless the distribution includes dividend arrearages, which will reduce earnings and profits.

Similarly, priorities legally required as between different classes of stock may be taken into account in allocating earnings and profits between classes. For example, assume that corporation X has 1,000 shares of class A common stock and 1,000 shares of class B common stock. Both classes are $10 par value stock and were issued at the same time at a price of $20. The class A common has a preference as to dividend and liquidating distributions in a 2:1 ratio to the class B common, and only the class B common has voting rights. Assume further that Corporation X holds net assets worth $210,000 and has current and accumulated earnings and profits of $120,000. If X distributes $140,000 in cash in redemption of all of the class A common, earnings and profits should be reduced by $80,000 and the capital account by $60,000.

Special rule for foreign corporations

The amendments made by the conference agreement may affect the earnings and profits of foreign corporations as well as domestic corporations. Application of these amendments to foreign corporations could have an impact on U.S. persons in at least three situations.

First, under section 951, a U.S. person owning 10 percent or more of the stock of a controlled foreign corporation must include in gross income a pro rata share of the corporation's subpart F income for the shareholder's year in which or with which the corporation's taxable year ends. Subpart F income is limited to the earnings and profits, computed according to U.S. tax concepts, of the controlled foreign corporation. Thus, to the extent the conference agreement may require that the earnings and profits of a controlled foreign corporation be computed, for example, by capitalizing and amortizing rather than deducting an item, it could result in an increase in a U.S. shareholder's income.

Second, under section 902, a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends is deemed to have paid a proportionate share of any income taxes paid or deemed paid by such corporation to any foreign country or to any possession of the United States on the "accumulated profits" of such foreign corporation from which the dividends were paid. The so-called "deemed paid" credit to which a qualifying U.S. shareholder is entitled equals the foreign taxes paid by the foreign corporation multiplied by the ratio of the dividends to the foreign corporation's accumulated profits. For this purpose, accumulated profits are essentially equivalent to earnings and profits. Because the conference agreement could have the effect of changing the ratio of dividends to accumulated profits, it could change the section 902 deemed paid credit of the corporation's U.S. shareholders.

Third, section 1248 generally treats certain domestic corporations as recognizing dividend income on the sale or exchange, or other disposition, of the stock of certain foreign corporations. That dividend income is measured by certain earnings and profits of the foreign corporation.

Although the conference agreement extends the changes in the earnings and profits provisions to foreign corporations, as well as domestic corporations, the application of the amendments pertaining to LIFO inventory adjustments, installment sales, and the use of the completed contract method of accounting is delayed for certain foreign corporations until taxable years beginning after December 31, 1985. This special effective date applies to foreign corporations deriving less than 20 percent of their gross income from sources within the United States. It is anticipated that this delayed effective date will provide both the Treasury and affected foreign corporations and their shareholders opportunity to consider how those provisions should apply to such foreign corporations.

Distributions to 20-percent corporate shareholders

Under the proposed new earnings and profits rules, a corporation's earnings and profits can exceed its taxable income if its income is deferred for purposes of determining gross income but not for purposes of computing earnings and profits. The conferees are concerned that, without a special rule, if a corporation with earnings and profits in excess of taxable income makes a distribution to a corporate shareholder and the distribution is treated as a dividend qualifying for a dividends received deduction, it may be possible for earnings to be distributed to the corporate shareholder without ever being subject to tax in the hands of the corporate shareholder.

For example, assume that P Corporation owns 100 percent of the stock of X Corporation, that P's basis in such stock is $200, that P and X file separate income tax returns, and that X has no current or accumulated earnings and profits. Assume further that X sells an asset for a $1,000 installment note, realizing an $800 gain. Finally, assume that X borrows $500 secured by the installment note and distributes the $500 to P. In such event, under the provision, absent a special rule, P would include the $500 distribution in income but would likely qualify for a 100-percent dividends received deduction. If P later sells its X stock for $200 (the value of that stock if it is assumed that X will ultimately have a $300 tax liability, in present value terms, on account of the installment sale), it would not recognize gain or loss on the sale. As a result, P would have realized an overall profit of $500.

Under the conference agreement, except as regulations may otherwise provide, the taxable income of a corporate shareholder with a 20-percent or greater interest in the distributing corporation, and such shareholder's basis in the stock of the distributing corporation, are determined as if section 312(n) (as added by the bill) did not apply to the distributing corporation. As a result, in the above example, $200 of the distribution by X to P would be a return of capital, and $300 would be taxed to P under section 301(c)(3). P's basis in the X stock would be reduced to zero, and P would recognize a $200 gain on the sale of the stock. This special rule does not affect the computation of resulting earnings and profits of either the distributing corporation or the corporate shareholder. Thus, for purposes of computing earnings and profits of X and P, $500 of earnings and profits would be treated as having been transferred from X to P. Furthermore, the special rule applies only if the corporate shareholder would, but for the special 20-percent corporate shareholder rule, be entitled to a dividends received deduction with respect to the distribution involved.

Under the rule, a 20-percent corporate shareholder is any corporation owning, directly or indirectly, stock possessing at least 20 percent of the total combined voting power of all classes of stock entitled to vote or at least 20 percent of the total value of all classes of stock (excluding certain preferred stock) of the distributing corporation. Attribution rules apply for purposes of determining stock ownership.

This rule applies to distributions after the date of enactment.

b. Distributions by a corporation of discount obligations

Present law

A corporation may distribute as a dividend its own discount obligations to its shareholders. Only the fair market value of the obligations is includible in the gross income of such shareholders. However, some taxpayers have taken the position that the corporation's earnings and profits are reduced by the entire principal amount of such obligations (sec. 312(a)(2)).

It is unclear whether the original issue discount rules apply to such a discount obligation upon its distribution.

House bill

In the case of a dividend distribution by a corporation of its own discount obligation, the corporation's earnings and profits are reduced only by the issue price of the obligation at the time of the distribution. The issue price is to be determined under the original issue discount rules. Furthermore, the original issue discount rules apply to the holder and the issuer of the obligation upon its distribution.

The provision is effective for distributions after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill except that it applies to distributions declared after March 15, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

12. Net operating loss, etc. carryover rules

Present law

The Tax Reform Act of 1976 substantially revised sections 382 and 383, which relate to the carryover of corporate net operating losses and other corporate tax attributes following acquisitions, including reorganizations. The 1976 Act revisions relating to acquisitions other than reorganizations are generally effective with respect to taxable years beginning after June 30, 1984. Those relating to reorganizations are effective with respect to a reorganization pursuant to a plan of reorganization adopted on or after January 1, 1984. The 1976 Act revisions are not explicitly made applicable to "G" reorganizations (relating to reorganizations of corporations in a title 11 or similar case).

House bill

The 1976 Act revisions relating to acquisitions other than reorganizations are generally effective for taxable years beginning after October 31, 1984. Those relating to reorganizations are effective only with respect to a reorganization pursuant to a plan adopted on or after November 1, 1984.

Senate amendment

The 1976 amendments relating to acquisitions other than reorganizations are generally effective for taxable years beginning after December 31, 1985. Those relating to reorganizations are effective only with respect to a reorganization pursuant to a plan of reorganization adopted on or after January 1, 1986.

Conference agreement

The conference agreement generally follows the Senate amendment. Thus, for example, the revisions of the 1976 Act are not applicable to any reorganization pursuant to a plan of reorganization not adopted on or after January 1, 1986. In addition, the 1976 Act revisions, insofar as they relate to reorganizations, are amended to clarify that, when they become effective, they will apply to "G" reorganizations. This latter amendment is effective as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980.

13. Distribution requirement in the case of a "C" reorganization

Present law

A "C" reorganization, as defined by section 368(a)(1)(C), is an acquisition by one corporation (the "acquiring corporation") of substantially all of the properties of another corporation (the "transferor corporation") in exchange solely for voting stock of the acquiring corporation or its parent corporation, or in exchange for such voting stock and a limited amount of money or other property. In determining whether an exchange is solely for voting stock, the assumption by the acquiring corporation of a liability of the transferor corporation, or the fact that the property acquired is subject to a liability, generally is disregarded.

A transaction can qualify as a C reorganization even if the transferor corporation does not distribute to its shareholders the consideration received from the acquiring corporation or assets not transferred by it to the acquiring corporation. Furthermore, the Service has ruled that a transaction can qualify as a C reorganization where the transferor corporation distributes a 25-percent stock interest in the acquiring corporation but retains liquid assets which it intends to use to engage in an active trade or business. (Rev. Rul. 73-552, 1973-2 C.B. 116.)

Under present law, the acquiring corporation in a C reorganization succeeds to, and takes into account, the tax attributes of the transferor corporation described in section 381, subject to limitations contained in that section and section 382. For example, the acquiring corporation generally succeeds to the earnings and profits of the transferor corporation.

Any distribution pursuant to the plan of reorganization by the transferor corporation to its shareholders in exchange for their stock in the transferor corporation is subject to section 354 (or so much of section 356 as it relates to section 354). Thus, no gain or loss is recognized to the shareholders of the transferor corporation on the receipt of qualifying consideration. Gain may be recognized under section 356, however, on the receipt of other property, but not in an amount in excess of the sum of any money and the fair market value of any other property received. If the receipt of such property has the effect of a distribution of a dividend to a shareholder, the shareholder is treated as receiving dividend income in an amount equal to the amount of the gain realized on the exchange but not in excess of the shareholder's ratable share of undistributed earnings and profits of the corporation. The principles of section 302 are applicable in testing for dividend equivalency under section 356. Any gain recognized which is not treated as dividend income is treated as gain from the sale or exchange of property.

For purposes of determining the extent to which a shareholder is to be treated as having received a dividend, the relevant earnings and profits are the accumulated earnings and profits of the transferor corporation. For this purpose, the exchange is generally deemed to occur prior to the time the transferor corporation's earnings and profits are inherited by the acquiring corporation under section 381. Furthermore, the earnings and profits of the transferor corporation inherited by the acquiring corporation under section 381 are reduced by amounts treated as a dividend under section 356.

House bill

No provision.

Senate amendment

Under the Senate amendment, a transaction can qualify as a C reorganization only if the transferor corporation distributes all of its assets (less those retained to meet claims), including consideration received from the acquiring corporation and any retained assets, within 12 months of the acquisition. Authority is provided for the Secretary to prescribe regulations providing exceptions to the distribution requirement.

The Secretary is also directed to prescribe regulations under section 312 providing for the allocation of earnings and profits between the acquiring corporation and the transferor corporation in situations in which, prior to the transaction, 80 percent or more of the stock of the transferor corporation was held by one corporate shareholder and in any other situation described in regulations.

The provision is applicable to transactions pursuant to a plan adopted after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment. However, under the conference agreement, the required distribution must be pursuant to the plan of reorganization rather than within a 12-month period beginning on the date of the acquisition. In addition, the conference agreement makes technical modifications to the Senate amendment.

The provision contained in the Senate amendment that provides that the Secretary may be regulations waive the application of the distribution requirement, subject to any conditions imposed in the regulations, is also retained under the conference agreement. The report of the Senate committee, which the conferees endorse, states that the Senate anticipated that waivers may be granted if a distribution would result in substantial hardship. The conferees also wish to make it clear that as a general rule a waiver is to be granted only on the condition that the transferor corporation and its shareholders be treated as if the retained assests are distributed and then contributed to the capital of a new corporation.

The conference agreement expands a provision contained in the Senate amendment by providing the Secretary with authority to issue regulations allocating the earnings and profits of the transferor corporation between or among such corporation, any corporation in control of the transferor corporation immediately before the reorganization, and the acquiring corporation in the case of a C reorganization. Such authority is extended to D reorganizations as well. The conferees anticipate that under those regulations, generally the consequences of an "A" reorganization (e.g., a merger) preceded by a distribution, on the one hand, and a C (or non-divisive D) reorganization followed by a distribution, on the other hand, will be consistent. In this regard, the Treasury might reconsider its regulations relating to allocations of earnings and profits in transactions under section 355.

The conferees wish to clarify that the provision applies to transactions pursuant to a plan adopted after the date of enactment by any corporation which would be a party to the reorganization if the transaction qualifies as a reorganization.

11. Control requirement in a "D" reorganization

Present law

"D" reorganizations

Under section 368(a)(1)(D), a transfer by a corporation of all or a part of its assets to a corporation controlled immediately after the transfer by the transferor or one or more of its shareholders is generally treated as a "D" reorganization if, among other things, stock or securities of the controlled corporation are distributed in a transaction qualifying under sections 354, 355, or 356. For the transaction to qualify under section 354 (or so much of section 356 as relates to section 354), the acquiring corporation must acquire substantially all the assets of the transferor corporation (a non-divisive D reorganization). For purposes of determining whether a transaction qualifies as a D reorganization, the term "control" is defined in section 368(c) as the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation. No attribution rules are explicitly made applicable.

Liquidation and contribution to a related corporation

In general, under section 331, amounts distributed to a shareholder in complete liquidation of a corporation are treated as in full payment in exchange for the shareholder's stock. If the stock is a capital asset in the hands of the shareholder, a complete liquidation will result in capital gain or loss. The shareholder's basis in the property received in a taxable liquidation is the fair market value of the property at the time of the distribution. With several exceptions, no gain or loss is recognized to the distributing corporation on a distribution in complete liquidation of such corporation or a liquidating sale by the corporation.

Under section 351, generally no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and, immediately after the exchange, such person or persons are in control of the corporation. As a general rule, a transferor takes a substitute basis in stock or securities received in the exchange. The corporation's basis in property received from the transferor is generally determined with reference to the basis of such property in the transferor's hands.

House bill

No provision.

Senate amendment

Under the Senate amendment, for purposes of determining whether a non-divisive transaction qualifies as a D reorganization, "control" is defined as ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote and at least 50 percent of the total number of shares of all other classes of stock of the corporation. Further, the constructive ownership of stock rules contained in section 318(a), as modified, are applicable for purposes of determining whether the transferor corporation or its shareholders are in control of the acquiring corporation. The provision is applicable to transactions pursuant to a plan adopted after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment in that under the conference agreement the general definition of "control" contained in section 368(c) does not apply for purposes of determining whether a non-divisive transaction qualifies as a D reorganization. However, the definition substituted for the section 368(c) definition by the Senate amendment is modified under the conference agreement.

Under the conference agreement, control means the ownership, directly or indirectly, of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of all shares of all classes of stock. The conferees believe that by taking value into account this definition increases the utility to the Internal Revenue Service of the D reorganization provisions as a means of preventing taxpayers from bailing out earnings and profits at capital gains rates in liquidation-reincorporation transactions.

In addition, the conferees wish to clarify that they do not intend that recharacterization as a D reorganization under this provision be the exclusive means for the Service to challenge liquidation-reincorporation and similar transactions. For example, it is not intended that this provision supercede or otherwise replace the various doctrines that have been developed by the Service and the courts to deal with such transactions. See, e.g., Rev. Rul. 61-156, 1961-2 C.B. 62; *Telephone Answering Service Co.* v. *Commissioner*, 62 T.C. 423 (1974), *aff'd.*, 546 F.2d 423 (4th Cir. 1976), *cert. denied*, 431 U.S. 914 (1977); and *J.E. Smothers* v. *U.S.*, 642 F.2d 894 (5th Cir. 1981).

The conferees wish to clarify that the provision applies to transactions pursuant to a plan adopted after the date of enactment by any corporation which would be a party to the reorganization if the transaction qualifies as a reorganization.

15. Collapsible corporations

Present law

The collapsible corporation rules are designed to prevent the use of a corporation to convert what would be ordinary income in the hands of a shareholder to capital gain. A shareholder's gain on the sale or exchange of stock in a collapsible corporation is generally required to be reported as ordinary income. However, the collapsible corporation rules are inapplicable if the collapsible corporation realizes a "substantial part" of the income to be derived from its collapsible assets. In *Commissioner* v. *Kelley*, 293 F.2d 904 (5th Cir. 1961), the court held that the "substantial part" test is satisfied if the corporation has realized one-third of the income to be derived from its collapsible assets.

Under a second exception, the collapsible corporation rules are inapplicable if 70 percent or less of a shareholder's gain on the disposition of his stock in the corporation is attributable to the collapsible assets (the "70/30" rule).

House bill

The House bill provides that the "substantial part" test requires the realization of at least two-thirds of the income from collapsible assets. In addition, the Secretary is authorized to promulgate regulations to make conforming changes to the 70/30 rule, treating all property described in section 1221(a) as one item of property.

The provision is effective for sales and exchanges made after the date of enactment.

Senate amendment

The Senate amendment is generally the same as the House bill except that the provision is applicable to sales and exchanges made after December 31, 1984. Under a transition rule, the provisions of the bill are inapplicable if, prior to January 1, 1985, a corporation realized a "substantial part" of the income to be derived from any property.

Conference agreement

The conference agreement follows the House bill.

16. Phaseout of graduated rates for large corporations

Present law

Present law provides graduated corporate rates on the first $100,000 of taxable income. These rates provide a maximum tax reduction of $20,250 in tax below the tax which would be imposed if the tax rate on that income were 46 percent.

House bill

No provision.

Senate amendment

The Senate amendment phases out the benefits of the graduated rates on corporations with taxable income in excess of $1 million, by imposing an additional 5 percent tax on the first $400,000 of taxable income over $1 million. This recaptures $20,000 of the graduated rate benefits for corporations with taxable income in excess of $1.4 million.

The provision applies to taxable years beginning after December 31, 1983. (Under Code section 21, the provision will apply on a pro-rata basis to 1983-1984 fiscal years.)

Conference agreement

The conference agreement generally follows the Senate amendment. However, the full $20,250 of tax benefit from the graduated rates is recaptured. Also, the conference agreement provides that this provision will not apply to any 1983-1984 fiscal years. Thus, the provision applies only to taxable years beginning after December 31, 1984.

17. Golden parachute contracts

Present law

A corporation is allowed a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. Reasonable allowances for salaries or other compensation for personal services actually rendered generally qualify as ordinary and necessary trade or business expenses.

House bill

No provision.

Senate amendment

Under the Senate amendment, all payments under a "golden parachute" contract are presumed to be excessive. The presumption is rebuttable, but only by a showing that the payments are a reasonable allowance for salaries or other compensation for personal services actually rendered. It may not be rebutted by a showing that the payments otherwise qualify as an ordinary and necessary trade or business expense.

If any payments under a golden parachute contract are excessive, none of the payments under that contract are deductible, and a nondeductible excise tax of 20 percent is imposed on the recipient with respect to all of the payments.

A golden parachute contract generally is any contract entered into by a corporation with any officer, shareholder, or highly-compensated individual (including any independent contractor) providing, at the time of execution, for contingent payments of cash (or property) which are to be made in the event of a change (or threatened change) in ownership or control of the corporation (or of a significant portion of its assets). Furthermore, the present value of the payments (determined as of the time the contingency occurs) must exceed 200 percent of the highest compensation income of the individual from the corporation includible in his gross income during any of the five taxable years ending with the taxable year preceding the taxable year in which the contract is executed. Present value is determined under section 1274, as added by the bill.

Payments under golden parachute contracts, like any termination pay, are subject to FICA taxes when paid.

To the extent provided by regulations, any contract which the Securities and Exchange Commission classifies as unreasonable in situations involving a threatened takeover will also constitute a golden parachute contract.

The provision is applicable to payments under contracts entered into after March 15, 1984.

Conference agreement

General rule

Under the conference agreement, no deduction is allowed for "excess parachute payments" paid or accrued. Furthermore, a nondeductible 20 percent excise tax is imposed on the recipient of any excess parachute payments.

Parachute payment

A "parachute payment" is any payment in the nature of compensation to (or for the benefit of) a "disqualified individual" if such payment is contingent on a change in the ownership or effective control of a corporation, or in the ownership of a substantial portion of its assets, if the aggregate present value of all such payments made or to be made to (or for the benefit of) the disqualified individual equals or exceeds three times the "base amount". The "base amount" is the average annualized compensation income (including, for example, ordinary income with respect to stock options) from the corporation includible in the disqualified individual's gross income over the five-taxable-year period (or if the individual did not perform services throughout such five-taxable year period for such corporation, the portion of such period during which the individual did perform services for the corporation) preceding the taxable year in which the change of ownership or control occurs.

A "disqualified individual" means any individual who is an employee, independent contractor, or other person specified in regulations who performs personal services for the corporation and who is an officer, shareholder, or highly compensated individual of such corporation. Personal service corporations and similar entities are treated as individuals for this purpose. Thus, for example, if an individual performs services for a corporation through a personal service corporation, parachute payments to the personal service corporation are treated as made to the individual. Similarly, any office held by the individual is treated as held by his personal service corporation.

To be a parachute payment, the payment must be contingent on a change in ownership or effective control. In general a payment is to be treated as contingent on a change of ownership or control under the provision if such payment would not in fact have been made to the disqualified individual had no change in ownership or control occurred. Furthermore, a payment is to be treated as contingent on a change of ownership or control if the change determines the time such payment in fact is to be made. Finally, a payment may be a parachute payment even if the employment of the individual involved is not voluntarily or involuntarily terminated.

The following examples illustrate the "contingent on a change in ownership or control" concept.

Example (1). Assume that a contract provides for payments to a disqualified individual if control of the corporate employer changes. Assume that control does change and payments under the contract are made. The payments are contingent on the change in control, even if the individual continues in the employ of the corporation.

Example (2). Assume that a contract provides for payments to a disqualified individual contingent upon termination of his employment. A change of control occurs, and thereafter, as a result of the change, the employment of the individual is terminated. Payments under the contract are to be treated as contingent on the change in control.

Example (3).—Assume that a contract provides for the acceleration of vesting or a payment of any deferred incentive compensation, for the acceleration of the time for the exercise of stock options, or for payments in cancellation of stock options, contingent on a change in control. Payments resulting from such a contract are treated as contingent on a change in control.

Parachute payment presumption

Under the conference agreement, payments under a contract entered into (or amended in significant relevant respect) within one year before a change in ownership or control are presumed contingent on such a change, even if such payments are not contingent on a change in ownership or control, unless the contrary is established by clear and convincing evidence.

Property transfers

Under the conference agreement, transfers of property (e.g., stock options) are treated as payments for purposes of the provision. Any such property is taken into account at its fair market value, and all such property is to be valued for purposes of the provisions. Under the conference agreement, present values are determined in accordance with the principles of section 1274(b)(2), as added by the bill.

Change in ownership or control

Whether a particular transaction involves a change in the ownership or effective control of a corporation or in the ownership of a substantial portion of its assets is to be determined under all the facts and circumstances.

Excess parachute payments

"Excess parachute payments" are any parachute payments in excess of the base amount which are not reasonable compensation for personal services actually rendered by the disqualified individual. Under the conference agreement, it is presumed that no parachute payment is reasonable compensation for personal services actually rendered. Such presumption may be rebutted, but only by clear and convincing evidence. To the extent that the presumption is rebutted, the provision does not apply. To the extent the taxpayer establishes the amount that is reasonable compensation for services actually rendered, it is first applied against the base amount. The conferees do not intend that services adequately compensated for by payments that are not parachute payments be taken into account in determining whether parachute payments are payments of reasonable compensation.

For example, assume that the disqualified individual's base amount is $100,000. Assume further that a payment totalling $400,000, which is contingent on a change in control, is made on the date of the change. Under the provision, parachute payments total $400,000, and the provision applies because $400,000 exceeds $300,000 (three times the base amount). Excess parachute payments total as much as $300,000 ($400,000 less $100,000, the base amount). Assume that the taxpayer establishes by clear and convincing evidence that reasonable compensation for services compensated for by the parachute payments totals $150,000. Under the conference agreement, excess parachute payments equal $250,000 ($300,000 less ($150,000 less $100,000)).

If, in the above example, parachute payments totalled only $290,000, the provision would not apply. In that case, the parachute payments would not equal or exceed three times the base amount.

Reasonable compensation

The conferees believe that in most large corporations, executives are not under-compensated. As a result, the conferees contemplate that only in rare cases, if any, will any portion of a parachute payment be treated as reasonable compensation in response to an argument that the executive was under-compensated in earlier years. On the other hand, payments of compensation previously earned which are in fact made by reason of a change in ownership or control are generally to be treated as reasonable compensation under the provision. For example, payments under the following agreements are generally to be treated as reasonable compensation under the provision if such payments would have been made in the future in any event, even though the timing of such payments is in fact be triggered by a change in control: (1) payments in cancellation of a normal stock option, or normal stock appreciation right, granted more than one year before the change; (2) exercises after termination of stock options or stock appreciation rights issued as part of a normal compensation package granted more than one year before the change; (3) compensation previously earned and deferred pursuant to a plan of the employer, such as a staggered bonus plan, or at the election of the employee; and (4) amounts paid under a retirement plan that supplements a tax-qualified plan to the extent such amounts are designed to compensate a newly-hired key employee for the loss of retirement benefits attributable to services performed for a prior employer.

Violation of securities laws or regulations

Under the conference agreement, the term "parachute payment" also includes any payments under a contract similar to a contract providing for parachute payments which violates securities law or regulations. However, the rules relating to reasonable compensation are not applicable in determining how much of such parachute payments are excessive.

Withholding

Rules regarding withholding taxes and FICA taxes are also provided.

Application

The provision is to be applied on a pro rata basis with respect to each excess parachute payment paid or accrued by the corporation or received by the disqualified individual in excess of the portion of the base amount allocated to such payment. The conferees intend that any reasonable compensation in excess of the base amount be allocated to the first parachute payments made.

Other

The conference agreement authorizes the Treasury to prescribe regulations necessary to carry out the purposes of the provision (including regulations for the application of the provision in the case of related corporations and personal service corporations). Those regulations are to prescribe rules for the case in which the disqualified individual commences working for the corporation in the year the change in ownership or control occurs.

No inference is intended as to the deductibility under present law of amounts paid or accrued under so-called golden parachute agreements. Nor is any inference intended as to the deductibility of any parachute payments which are not excess parachute payments under the provision.

Effective date

The conference agreement is effective for payments made under contracts entered into or renewed after June 14, 1984. For this purpose, a contract cancellable at will by either party is to be treated as a new contract entered into on the date any such cancellation, if made, would be effective. Payments under agreements in effect on June 14, 1984, are not affected by the provision unless the terms of such agreements are amended in significant relevant respect after that date. The conferees intend that an agreement will be treated as so amended if it is amended (or supplemented) either to add or modify a change in ownership or control trigger (or similar trigger), to increase amounts payable (or, where payment is under a formula, to modify the formula) in the event of such a trigger, or to accelerate the payment of amounts otherwise payable at a later date in the event of such a trigger. Where a golden parachute agreement in effect on June 14, 1984, is so amended or supplemented after that date, all amounts payable under the contract (and any supplement) are subject to the provision.

18. Increase in reduction of certain corporate tax preference items from 15 percent to 20 percent

Present law

TEFRA reduced certain corporate tax preferences by 15 percent. These preferences include real estate, capital gains, percentage depletion for coal and iron ore, bad debt reserves and interest to carry tax-exempt obligations of financial institutions, amortization of pollution control facilities, DISC, intangible drilling expenses of integrated oil companies, and mining exploration and development costs.

The corporate minimum tax was adjusted to prevent a double impact of the two provisions.

House bill

No provision.

Senate amendment

The Senate amendment generally increases the preference cutback from 15 to 20 percent, including a similar adjustment to the new Foreign Sales Corporation provision. The Senate amendment makes a corresponding adjustment to the corporate minimum tax. The cutback in the depletion allowance for coal and iron ore remains unchanged.

The provision applies to taxable years beginning after, and transactions after, December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

E. Partnership Provisions

1. Shifting of income, gain, loss, and deduction when partnership interests change

Present law

Contributions

Under present law (sec. 704(c)), when property is contributed to a partnership, depreciation, depletion, or gain or loss with respect to the contributed property may be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution (i.e., the built-in gain or loss on the property). If the partnership does not make allocations on this basis, the allocations are made as if the property had been purchased by the partnership. It generally is thought that a portion of the built-in gain or loss that would have been realized by the contributing partner if he had sold the property may be shifted to the other partners.

Retroactive allocations

The Tax Reform Act of 1976 amended the partnership provisions to preclude a partner who acquires his interest late in the taxable year from taking into account partnership items incurred prior to his entry into the partnership ("retroactive allocations" of partnership losses). The 1976 Act provided that when partners' interests change during the taxable year, each partner's share of various items of partnership income gain, loss, deduction, and credit is to be determined by taking into account each partner's varying interest in the partnership during the taxable year.

Some taxpayers argue that the 1976 Act rule may be avoided in the case of tiered partnership arrangements on the theory that losses sustained by the lower-tier partnership are allocable to the day in the upper-tier partnership's taxable year on which the lower-tier partnership's taxable year closes. Similarly, partnerships using the cash receipts and disbursements method of accounting have avoided the retroactive allocation rules by deferring actual payment of accrued deductions until near the end of the partnership's taxable year.

House bill

Contributions

Under the House bill, depreciation, depletion, and gain or loss with respect to contributed property are to be shared among the partners, pursuant to Treasury regulations, so as to take account of the difference between the partnership's basis for the property and the fair market value of the property at the time of contribution. The report of the House committee anticipates that the regulations under this provision generally will provide for the same result that is achieved under present law when a partnership elects to provide for sharing of depreciation, depletion, and gain or loss among the partners so as to take into account fully the difference between the basis and fair market value of the property contributed to the partnership (at the time of the contribution). Thus, it will not be possible to shift built-in gain or loss from the contributing partner to the other partners.

The provision is effective with respect to property contributed to a partnership after March 31, 1984.

Retroactive allocations

The House bill provides that if any partner's interest in a partnership changes at any time during the partnership's taxable year, each partner's share of each item of partnership income, gain, loss, deduction, and credit is to be determined by using any method prescribed by Treasury regulations which takes into account the varying interests of the partners in the partnership during the taxable year. Unless these regulations provide otherwise, the House bill requires, in the case of cash-method partnerships, that interest, taxes, payments for services or use of property, and any other item specified in regulations be assigned to each day in the period to which it is attributable (i.e., to the day or days in such period to which such item would accrue if such partnership were on the accrual method) and allocated among the partners in proportion to their interests in the partnership at the close of each day.

In the case of tiered partnerships, the bill provides that the upper-tier partnership's share of any item of income, gain, loss, deduction, or credit of the lower-tier partnership will, except as otherwise provided in regulations, be prorated equally over the portion of the taxable year during which the upper-tier partnership had an interest in the subsidiary.

The provision applies to items attributable to periods after, or amounts paid or accrued after, March 31, 1984.

Senate amendment

Contributions

The Senate amendment is the same as the House bill with respect to the partner's share of depreciation, depletion, and gain or loss on property contributed to a partnership.

Retroactive allocations

The Senate amendment generally is the same as the House bill with respect to retroactive allocations of partnership items, except that the amendment explicitly provides that when there is a disposition of less than an entire interest in a partnership by a partner (including entry of a new partner), the partnership may elect (on an annual basis) to determine the varying interests of the partners by using a monthly convention that treats any changes in any partner's interest as occurring on the first day of the month.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with modifications to eliminate gaps in the provisions identified by the conference committee.

Contributions

Under the conference agreement, the Secretary is provided with authority to require items of income, gain, loss, and deduction with respect to contributed property to be shared among the partners to take account of the variation between the basis and fair market value of such property at the time of contribution. By making reference to items of income and deduction, the conferees do not intend for the Treasury to require such variations to be eliminated by allocations of operating income and loss attributable to the contributed property (other than depreciation, depletion, and similar items). Rather, the conference agreement intends to address situations in which a partner on the cash receipts and disbursements method of accounting contributes accounts receivable, accounts payable, or other accrued but unpaid items to a partnership that uses the same method of accounting. Thus, for example, if a cash-method taxpayer contributes accounts payable to a cash-method partnership, the deductions attributable to those items generally will be allocated to the contributing partner if possible, and if not, capitalized (see the discussion of retroactive allocations below). The committee intends that, similar to the amendments recently made to section 357(c) (and contrary to Rev. Rul. 60-345, 1960-2 C.B. 211), these accrued but unpaid items should not be treated as partnership liabilities for purposes of section 752. The conferees expect that the Treasury will provide regulations to cover situations in which the partnership is on the accrual method of accounting. These changes, and the changes contained in new section 724, are not intended to override the anticipatory assignment of income doctrine in those situations in which such doctrine would apply to a cash-method partner's contribution of accrued but unpaid items to a partnership. *See*, e.g., Rev. Rul. 80-198, 1980-2 C.B. 113 and Rev. Rul. 80-199, 1982-2 C.B. 122, and the cases cited therein. These changes compliment, and are consistent with, the modifications to the retroactive allocation provisions adopted by the conferees which prevent a cash-method partnership from shifting its accrued deductions to partners who are admitted to the partnership after such deductions are accrued.

The conferees are concerned with complexities that may arise in applying this new rule to allocations of depreciation and depletion. In this regard, the conferees note that the report of the Senate committee suggests ways in which the Treasury might provide for flexibility in applying the new rule (for example, in the case of small operating partnerships) when no tax avoidance potential exists. The conferees intend that this language be read as illustrative of, rather than as a limitation on, the Secretary's authority to provide reasonable rules as long as no abuse potential is present. For example, the conferees recognize that the Secretary may decide to require taxpayers to allocate only the built-in gain or loss on contributed property under new section 704(c) and permit allocations of depreciation, depletion, or similar items with respect to such property, to be governed by section 704(b), provided this flexibility is not likely to result in the contributing partner avoiding the effect of the allocation of built-in gain or loss (such as when the property is expected to be held by the partnership until it has little, if any fair market value). Although partnerships may continue to rely on the regulations issued under present section 704(c)(2) until new regulations are proposed, the conference agreement provides authority for the Secretary to significantly modify or expand those rules. Those modified regulations may take into account situations not addressed by the current rules, including those involving contributions of (1) more than one item of property with built-in gain or loss by a single partner, (2) property with built-in gain or loss by more than one partner, (3) property with built-in gain that would constitute ordinary income under the various recapture provisions, (4) property which is disposed of by the partnership for "substituted basis" transaction as defined in new section 7701(a)(42), (5) property when there are disproportionate profit and loss sharing arrangements contained in the partnership agreement, and (6) property which is not disposed of prior to the contributing partner's disposition of his partnership interest.

Finally, the conferees wish to clarify the intended effect of this new rule on the allowance for depletion. Under present law, a partnership allocates the adjusted basis of an oil or gas property among those who are partners as of the time the property is acquired and also allocates the amount realized from the taxable disposition of such property among the partners. Each partner uses these items to separately compute his depletion deductions and gain or loss with respect to the property. Thus, the partnership does not actually allocate depletion or gain or loss with respect to such property depletion to its partners. The conferees intend that the Treasury regulations will provide for allocations of adjusted basis and amount realized to account for any built-in gain or loss on the contributed oil and gas properties, but may permit flexibility in allocating adjusted basis in non-abusive cases consistent with the discussion above.

Retroactive allocations

The conference agreement follows the House bill and the Senate amendment, except that (1) the treatment of items attributable to more than one year is modified, (2) the monthly convention rule of the Senate bill is not included, and (3) the treatment of tiered partnerships is clarified.

Under the conference agreement, a technical defect of the House bill and Senate amendment which would have permitted taxpayers to avoid the retroactive allocation rules by delaying payment of deductible cash-method items until the first day of the year following the year of a change in partnership interests is modified. Thus, if any portion of such an item is properly attributable to periods before the beginning of the taxable year, the agreement requires that such portion be allocated to the persons who were partners on the days to which such portion is attributable in proportion to their varying interests in the partnership on those days (determined in a manner consistent with section 704). This determination will require allocation of such items in the manner in which the partners would have borne the corresponding economic cost, even though the cost is actually borne by another partner (typically, a later-admitted partner) in connection with a change in the partners' interests in the partnership (other than a change governed by section 761 rather than section 706). If the persons to whom all or part of such items are allocable are not partners in the partnership on the first day of the partnership taxable year in which the item is taken into account, then their portion must be capitalized by the partnership and allocated to the basis of partnership assets in the manner required by section 755.

With respect to the monthly convention, the conferees understand that the Secretary will provide for a monthly convention by regulation; thus, the statutory provision adopted by the Senate is unnecessary. Under this convention, partners entering after the 15th day of a month will be treated as entering on the first day of the following month and partners entering during the first 15 days of a month will be treated as entering on the first day of the month. Further, the conferees note that the Secretary may provide for other conventions and may deny the use of any convention when the occurrence of significant, discrete events (e.g., a large, unusual gain or loss) would mean that use of a convention could result in significant tax avoidance.

With respect to the treatment of tiered partnerships, the conference agreement provides that when there is a change in the interests of the partners of the upper-tier partnership, items of the subsidiary are (except as otherwise provided by regulations) to be allocated among the partners of the upper-tier partnership (1) by assigning the appropriate portion of each item to the appropriate day in the upper-tier partnership's taxable year on which the upper-tier partnership is a partner in the lower-tier partnership, and (2) by allocating the portion assigned to a day among the partners in proportion to their interests in the upper-tier partnership as of the close of the day (determined in a manner consistent with section 704). For this purpose, items allocable to periods before or after the upper-tier partnership's taxable year will be assigned to the first or last day of that year, respectively. If the persons to whom items are properly allocated are no longer partners in the upper-tier partnership on the firstday of the upper-tier partnership taxable year in which the item is taken into account, then that such persons' portion of such items are capitalized and allocated to the basis of partnership assets in the manner required by section 755.

Effective dates

The provisions of the conference agreement relating to contributions apply to contributions made after March 31, 1984. In the case of allocations with respect to items other than depreciation, depletion, and gain or loss, the conferees expect that the regulations requiring allocation and describing the method of allocation will take effect no earlier than the date those regulations are proposed.

The provisions of the conference agreement relating to retroactive allocations of partnership items apply to amounts attributable to periods before or after March 31, 1984, and in the case of tiered partnerships, amounts paid or accrued by the lower tier partnership after March 31, 1984.

2. Uses of partnerships to change the character and timing of income, gain, loss, or deduction

a. Payments to partners for property or certain services

Present law

The contribution of property to a partnership in return for a partnership interest is generally a tax-free transaction (sec. 721). If, instead of contributing property to a partnership, the taxpayer sells property to the partnership, the taxpayer recognizes gain or loss on the sale and the partnership is generally required to capitalize the amount of the purchase price, which may be deductible over the useful life of the property (or any applicable recovery period). When services are provided to a partnership, the partnership may be permitted to deduct amounts paid or incurred for such services (subject to the rules generally applicable to other taxpayers), and the party providing services must include an equivalent amount in income. However, a partnership, like any taxpayer, is generally required to capitalize (rather than currently deduct) expenditures which relate to the improvement of property or which create an asset the useful life of which extends substantially beyond the end of the taxable year. Present law (sec. 709) also provides specifically that a partnership may not currently deduct amounts paid or incurred to organize the partnership. Instead, the partnership may elect to deduct these amounts ratably over a 5-year period, or, alternatively, may capitalize these expenses. In addition, neither the partnership nor any partner may even deduct syndication fees. These rules are equally applicable to services provided by third parties and services provided by a partner acting in a capacity other than that of a member of the partnership.

When a partnership allocates income from partnership operations among its partners, the partners generally include these amounts in income for the taxable year of the partner in which the partnership taxable year ends. This is distinct from a distribution of partnership assets, which generally is tax-free to the extent that the amount distributed does not exceed the recipient-partner's basis for his partnership interest. This tax-free treatment is based, in part, on the theory that a partner is entitled to withdraw the adjusted basis of his investment in a partnership (including the constructive investment retained by the partnership that corresponds to the partnership income on which the partner has paid tax) before recognizing gain on the investment.

Although amounts allocated to a partner are not deductible by the partnership, an allocation of taxable income to one partner may have the effect of a deduction for the remaining partners by reducing the amount of taxable income allocated to them.

Under case law, partnerships have been used to circumvent the requirement to capitalize certain expenses and other rules and restrictions concerning various expenses by making allocations of income and corresponding distributions in place of direct payments for property or services. Similarly, taxpayers have deferred or avoided tax on sales of property (including partnership interests) by characterizing sales as contributions of property (including money) followed (or preceded) by a related distribution of partnership property (including money). Although Treasury regulations provide that the substance of the transaction should govern in these latter cases, court decisions have allowed tax-free treatment in cases which are economically indistinguishable from sales of property by the partner to a partnership or to another partner.

House bill

Recharacterization of payments for capital expenses

Under the House bill, if a partner performs services for, or transfers property to, a partnership and receives a related allocation (direct or indirect) of partnership income or gain, the transaction will be treated as a transaction between the partnership and a person who is not a partner. This rule applies only if a direct payment for the property or services would have been a capital expenditure by the partnership. Thus, the amount paid to the partner in consideration for the property or services will be treated as a fee for services or purchase price of property provided to the partnership (as the case may be) and the partnership will be required to capitalize these amounts. The partnership will disregard the purported allocation to the partner performing services or transferring property to the partnership in determining the partners' shares taxable income or loss.

This provision applies to services performed, or property transferred, after March 1, 1984.

Disguised sales

The House bill provides that, when a partner transfers money or other property to a partnership and there is a related direct or indirect transfer of money or other property to that partner or other partner, the transaction is to be treated (as appropriate) as a sale between the partners of property (including partnership interests) or as a partial sale and partial contribution of the property to the partnerships. The selling partner will be required to recognize gain (or loss) on all or part of the amount received in the transaction. This rule is intended to prevent the parties from characterizing a sale or exchange of property as a contribution to the partnership followed by a distribution from the partnership thereby deferring or avoiding tax on the transaction.

This provision applies to property transferred after March 1, 1984.

Definition of partner

For purposes of the preceding rules, the House bill treats partners joining at the end of a series of transactions as partners for the entire series.

Senate amendment

Payments for services or property

The Senate amendment generally is consistent with the House bill with three modifications. First, clarifying amendments explicitly limit the application of the rule to cases in which the performance of services or transfer of property and a related allocation or distribution to a partner are, when viewed together, properly characterized as occurring between the partnership and a partner acting in his nonpartner capacity. Second, the rule is not limited to transactions in which direct partnership payments would have to be capitalized. Third, the provision applies to services performed or property transferred after February 29, 1984.

Disguised sales

The Senate amendment generally is consistent with the House bill with two modifications. First, clarifying amendments explicitly limit the provision to cases in which a transfer of money or property to a partnership and a related transfer of money or property by the partnership are, when viewed together, properly characterized as a sale of property. Second, the provision applies to property transferred after March 31, 1984, except for property transferred before December 31, 1984, if (1) there was a written private placement offering memorandum in existence on February 29, 1984, (2) the partner had expended $250,000 in connection with the offering of February 29, 1984, (3) the partner contributing encumbered property is the sole general partner, and (4) all of the encumbrances incurred in anticipation of the contribution are without recourse.

Definition of partner

The Senate amendment contains no provision relating to the definition of a partner, since Treasury's general regulatory authority will permit it to prescribe rules to prevent abuses.

Conference agreement

The conference agreement follows the Senate amendment.

The conferees wish to note that when a partner of a partnership contributes property to the partnership and that property is borrowed against, pledged as collateral for a loan, or otherwise refinanced, and the proceeds of the loan are distributed to the contributing partner, there will be no disguised sale under the provision to the extent the contributing partner, in substance, retains liability for repayment of the borrowed amounts (i.e., to the extent the other partners have no direct or indirect risk of loss with respect to such amounts) since, in effect, the partner has simply borrowed through the partnership. However, to the extent the other partners directly or indirectly bear the risk of loss with respect to the borrowed amounts, this may constitute a payment to the contributing partner.

Effective dates.—The provision of the conference agreement relating to disguised payments for services or property apply to services performed or property transferred after February 29, 1984. The provision relating to disguised sales of property apply to property transferred after March 31, 1984, with two exceptions. First, the conference agreement includes the transitional rule of the Senate amendment for certain transfers for which there was a written private placement offering in existence on February 29, 1984. Second, the agreement provides a transitional rule, for any transfer of property pursuant to a contract which was a binding contract on March 31, 1984, and at all times thereafter.

b. Character of gain or loss on contributed property

Present law

The character of income or loss from the disposition of property by a partnership is generally determined at the partnership level. Under present law, a contribution of property to a partnership by a partner, followed by a sale of the property, may result in a character of gain or loss different from that which would have resulted from a direct sale by the partner. Thus, taxpayers have contended that ordinary income may be converted into capital gain when dealer status exists at the partner but not at the partnership level and that capital loss may be converted into ordinary loss when dealer status exists at the partnership but not the partner level.

This result can be contrasted with the treatment of certain ordinary income property distributed by a partnership and subsequently sold by the recipient. The character of gain or loss on property in such a case generally is determined by the character of the property in the hands of the distributee with two exceptions. First, in the case of certain inventory items, the ordinary income character of an asset in the hands of the partnership carries over to the partner for a 5-year period. Second, the ordinary income character of certain unrealized trade or business receivables also carries over to the partner on an indefinite basis (sec. 735).

House bill

Under the House bill, if a partnership disposes of property which was inventory property in the hands of a partner immediately before its contribution, then any gain or loss recognized by the partnership on the disposition of the property during a period of 5 years after the date of the contribution will be treated as ordinary income or loss. Gain or loss on a disposition of unrealized receivables contributed by a partner will be treated as ordinary income or loss regardless of the date of disposition. The House bill also provides that built-in losses on capital assets will retain their character as capital losses for a period of 5 years after the date of contribution, but only to the extent of pre-contribution unrealized losses.

The bill further provides that, for purposes of the rules regarding contributed and distributed property (i.e., the new rules and section 735 of present law but not section 751), certain trade or business property which would qualify as a capital asset under section 1231 if held for one year or more by the partner or partnership prior to contribution or distribution (as the case may be) will not be treated as ordinary income property. Also, if property subject to section 724 or section 735 is disposed of in a nonrecognition transaction, the treatment of the transferred property will carry over to any substituted basis property resulting from the transaction (other than stock of a Subchapter C corporation received in a section 351 transfer).

The provisions apply to property contributed (or distributed in the case of section 735) after March 31, 1984.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

c. Transfers of partnership interests by corporations

Present law

The gain or loss on the sale or exchange of a partnership interest is generally a capital gain or loss. However, money or property received by a transferor partner in exchange for all or part of his partnership interest is subject to ordinary income treatment to the extent it is attributable to certain ordinary income assets of the partnership (sec. 751). For purposes of this provision, ordinary income items include the recapture of depreciation deductions previously taken on partnership property.

Also under present law, when a corporation distributes property (or sells property in the course of certain complete liquidations), income attributable to recapture property (and certain installment obligations) is taxed to the corporation, while other gain attributable to appreciation in value of the transferred property generally goes unrecognized.

Some taxpayers have taken the position that the present law recapture provisions can be avoided by the distribution or liquidating sale by a corporation of an interest in a partnership that holds recapture property. The United States Claims Court rejected this position in *Holiday Village v. United States*, No. 87-82T (June 6, 1984).

Basis adjustment.—Under present law (secs. 743 and 754), on a sale or exchange of interests in the partnership (or a transfer by reason of death) a partnership may elect to adjust the basis of partnership assets to reflect differences between the basis of partner's interest in the partnership and the partner's share of the basis of the partnership property. The election must apply to all sales or exchanges of partnership interests and may be revoked only for sufficient reason (Treas. Reg. sec. 1.754-1(c)).

House bill

For purposes of determining the amount of gain recognized by a corporation on any distribution, the House bill treats the distribution of a partnership interest as a distribution of the corporation's proportionate share of the recognition property of the partnership. Recognition property is defined as any property with respect to which the corporation would recognize gain if it distributed the property in a distribution (sec. 311 or 336) or sold the property in a liquidation sale (sec. 337).

Basis adjustments.—Under the House bill, when a partnership has an appropriate election in effect, the basis of partnership property may be adjusted following the distribution of an interest in a partnership to reflect differences between the basis of the distributee partner's interest in the partnership and the distributee partner's share of the basis of the partnership property (secs. 743 and 754).

These provisions apply to distributions, sales, and exchanges made after March 1, 1984, in taxable years ending after that date.

Senate amendment

The Senate amendment generally is the same as the House bill, except that the provision applies to distributions, sales, or exchanges made after March 31, 1984, in taxable years ending after that date.

Conference agreement

The conference agreement follows the Senate amendment with technical changes affecting the placement of the new provision within the Internal Revenue Code and providing that for purposes of section 708, section 743, or any other provision of subchapter K specified in regulations (not just section 743 as in the House bill and Senate amendment) a distribution of a partnership interest by a partnership or corporation will be treated as a sale or exchange of the interest. The conference agreement also replaces a specific technical amendment to section 751 in the Senate amendment with a general provision under which, in determining the amount of gain or loss with respect to property, for income tax purposes, fair market value with respect to property shall not be treated as less than the amount of any nonrecourse liability to which the property is subject. Of course, this provision would, have no application to transactions covered by section 751(c). The conferees stress that no inference is intended as to whether or not the results obtained by the provisions of this section differ from those obtained under current law.

These provisions apply to distributions, sales, and exchanges made after March 31, 1984.

d. Use of tiered partnerships to alter character of income on exchanges of partnership interest

Present law

Under present law, some taxpayers have argued that ordinary income treatment of unrealized receivables and substantially appreciated inventory may be avoided when the assets are held in a lower-tier partnership. Thus, if all of the assets held in a lower-tier partnership are section 751 assets, it is not entirely clear whether the ordinary income rules of section 751 should be applied by regarding an exchange of interests in the upper-tier partnership as an exchange of a capital asset (the interest in the lower-tier partnership) or of ordinary income assets (the section 751 assets held by the lower-tier partnership).

House bill

Under the House bill, it is made clear that the ordinary income rules of section 751 require fragmentation of the partnership's section 751 items from the partnership interest. Under this approach, a partner will be treated as disposing of such items independently of the rest of his partnership interest. The rule will apply regardless of how many tiers of partnerships exist between the transferor partner and the ordinary income assets.

The bill also provides that this approach regarding the fragmentation of section 751 items is to apply to interests in trusts in the manner provided for in regulations.

The provision is effective for distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after that date.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Exchanges of like-kind property

Present law

An exchange, like a sale of property, is generally a taxable transaction. However, present law provides that no gain or loss is to be recognized if property held for productive use in the taxpayer's trade or business, or property held for investment purposes, is exchanged solely for property of a like-kind that is also to be held for productive use in a trade or business or for investment. This provision (sec. 1031) specifically does not apply to exchanges of stock in trade or other property held primarily for sale, or to stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest.

Present law does not require specifically that a like-kind exchange be completed within a specified period in order to qualify for tax-free treatment. In *Starker v. United States*, 602 F.2d 1341 (9th Cir. 1979) the United States Court of Appeals for the Ninth Circuit held that an exchange qualified for like-kind treatment even though the property to be exchanged could be designated by the transferor for up to 5 years after the transaction and even though the transferor could have ultimately received cash rather than like-kind property.

Present law does not state specifically whether an interest in one partnership may be exchanged for an interest in another partnership as a tax-free exchange of like-kind property.

House bill

The House bill provides that, for purposes of the like-kind exchange provision, any property received by the taxpayer more than 180 days after the date on which the taxpayer relinquishes property (or after the due date of the taxpayer's tax return) is not to be treated as like-kind property.

Also, the like-kind exchange rules will not apply to any exchange of interests in different partnerships.

The provision relating to deferred like-kind exchanges is effective for transfers after the date of enactment. For transfers on or before date of enactment, any property received after December 31, 1986, will not be treated as like-kind property. The provision relating to partnership exchanges is effective for transfers of property after March 31, 1984, other than exchanges made pursuant to binding contracts entered into on or before March 1, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill, with two modifications. First, property which was not identified as the property to be received by the taxpayer on the date the transferred property was relinquished will not qualify as like-kind property. Second, the provisions apply to transfers after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment except that transferors are permitted 45 days after the transfer to designate the property to be received and that a modified form of the effective date provisions of the House bill are adopted. The conferees note that the designation requirement in the conference agreement may be met by designating the property to be received in the contract between the parties. It is anticipated that the designation requirement will be satisfied if the contract between the parties specifies a limited number of properties that may be transferred and the particular property to be transferred will be determined by contingencies beyond the control of both parties. For example, if A transferred real estate in exchange for a promise by B to transfer property 1 to A if zoning changes are approved and property 2 if they are not, the exchange would qualify for like-kind treatment. As under present law, these new rules would not permit a taxpayer who receives cash and later purchases the designated property to claim like-kind exchange treatment.

Effective dates.—The provision relating to deferred like-kind exchanges is effective for transfers after the date of enactment. For transfers on or before date of enactment, any property received after December 31, 1986, will not be treated as like-kind property, except if the property to be received was designated in a written binding contract entered into before June 14, 1984, then the property must be received on or before December 31, 1988. The provision relating to partnership exchanges is effective for transfers of property after the date of enactment other than exchanges made pursuant to binding contracts entered into on or before March 1, 1984. In the case of any transfer on or before the date of enactment which the taxpayer treated as part of a like-kind exchange and which is liable as a result of this provision, the period for assessing any deficiency of tax shall not expire prior to January 1, 1988.

The conference agreement also provides that the prohibition on like-kind exchange treatment for transfers of partnership interests is not to apply when general partnerships interests are exchanged pursuant to a plan of reorganization of ownership interests which took effect on March 29, 1984, provided that all of the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984.

f. Use of tiered partnership to achieve step-up in basis of partnership assets

Present law

Under present law, a distribution of property by a partnership to a partner may result in an increase or decrease to the adjusted basis of such property in the hands of the distributee partner. In such cases, present law permits (but does not require) the partnership to adjust the basis of remaining partnership assets to take account of the change in the basis of the distributed property. In addition, when a partnership interest is sold or exchanged, present law permits (but does not require) the basis of partnership assets to be adjusted to reflect the difference between the transferee's adjusted basis in his interest and his share of the basis of all partnership assets. These basis adjustments are permitted only if the partnership makes a valid election which, once made, may be revoked only upon a showing of sufficient reason and applies to al distributions by a partnership and to all transfers of interests in the partnership.

Under present law, it may be possible in a tiered partnership arrangement to manipulate the basis adjustment provisions to inflate artificially the adjusted basis of property held by the partnership, as illustrated by the example contained in the report of the House committee.

House bill

The House bill prohibits an upper-tier partnership from adjusting the basis of its property following a distribution of an interest in a lower-tier partnership if the lower-tier partnership does not have a section 754 election in effect. This provision will prevent taxpayers from achieving a step-up in the basis of assets by means of inconsistent elections under section 754.

This provision is effective for distributions after March 1, 1983, in taxable years ending after that date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. Allocation of liabilities to partners

Present law

A partner may deduct his allocable share of partnership losses to the extent of the adjusted basis of his partnership interest. A partner's basis includes both the amount of any partnership debt for which the partner assumes liability and the amount of the partner's share of partnership liabilities. In the case of partnership debt for which neither the partnership nor any partner has any personal liability (i.e. nonrecourse debt), all partners (including limited partners) increase their basis by a share of the nonrecourse debt (determined in accordance with their respective interests in partnership profits).

In *Raphan* v. *United States* (United States Claims Court, No. 452-78, September 26, 1983) the court held that a general partner who guaranteed repayment of what was otherwise a nonrecourse debt of the partnership was not to be treated as personally liable for such debt. Thus, the debt retained its nonrecourse status, and the limited partners were entitled to take into account a portion of such debt in computing the basis of their partnership interests.

House bill

The House bill directs the Treasury to prescribe regulations concerning the inclusion of partnership liabilities in the basis of the partners' partnership interests, and to take into account, where possible, the manner in which the partners share the economic risk of loss with respect to the borrowed amounts. The report of the House committee anticipates that these regulations will, among other things, reflect the position taken in Rev. Rul. 83-151, 1983-43 I.R.B. 6, and will reject the holding in *Raphan* v. *United States*. Thus, the regulations will specify that a partnership debt for which a partner is primarily or secondarily personally liable, whether in his capacity as a partner or otherwise, is not a nonrecourse debt, and thus generally does not provide limited partners with additional basis for their partnership interests. Similarly, when a limited partner guarantees what is otherwise a nonrecourse debt of the partnership, the regulations will not shift the basis attributable to that debt away from the limited partner as a result of the guarantee.

This grant of regulatory authority will take effect upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill in substance with certain modifications. Under the agreement, the decision in the *Raphan* case is not to be followed for purposes of applying section 752 or the regulations thereunder. In addition, the Treasury is to revise and update its regulations under section 752 (as soon as practicable) to take account of current commercial practices and arrangements, such as assumptions, guarantees, indemnities, etc. The conferees intend that the new regulations will reject the holding of the *Raphan* decision effective March 1, 1984, and that other changes in the regulations will apply prospectively from the date new regulations are proposed or some later date specified by the Treasury. The conferees do not intend that any inference should be drawn regarding the validity of the *Raphan* decision for transactions prior to March 1, 1984, and the conferees do to intend to affect in any way the rights of the various parties to that case. Finally, the conferees intend that the revisions to the section 752 regulations will be based largely on the manner in which the partners, and persons related to the partners, share the economic risk of loss with respect to partnership debt (other than bona fide nonrecourse debt, as defined by such regulations). With respect to bona fide nonrecourse debt, the conferees do not expect that such regulations will make major changes to the manner in which the partners' shares are determined, but may attempt to provide more certainty than presently exists.

F. Trust Provisions

1. Trust distributions

Present law

Under present law, beneficiaries are taxed on amounts distributed from a trust or estate to the extent of the trust's or estate's distributable net income. The trust or estate is allowed a deduction for amounts taxed to its beneficiaries. Present Treasury regulations provide that distributions of property are deemed to carry out distributable net income to the extent of the property's value at the time of distribution. In such a case, there is no gain or loss realized by the trust or estate, and the basis of the property in the hands of the beneficiary generally is its value to the extent it carries out distributable net income. (Treas. Reg. sec. 1.66-1(a)-2(f)).

House bill

Under the House bill, the distribution of property by a trust or estate results in the recognition of gain or loss on the distribution as if the property had been sold to the beneficiary. Alternatively, the bill allows the trustee or executor to elect to treat distributions of property as carrying out distributable net income only to the extent of the lesser of the property's basis or its fair market value at the time of distribution. If the election is made, the basis of the property in the hands of the beneficiary will be the same as the trust's or estate's basis.

The provision is effective with respect to distributions made after March 1, 1984, in taxable years ending after that date.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with a technical modification providing that distributions of appreciated property result in gain to the trust only if the trustee elects. If no election is made, such a distribution is treated as carrying out distributable net income only to the extent of the lesser of the property's basis or its fair market value at the time of the distribution. In such a case, the basis of the property in the hands of the beneficiary will be the same as the trust's or estate's basis.

The conference agreement clarifies that this provision does not affect the uniform basis rules of the Code (such as the rule providing a basis adjustment for property received in satisfaction of a pecuniary bequest).

Additionally, the conferees do not intend that this provision will change the present law tax effects of charitable contributions. For example, if a trust beneficiary makes a gift to a charitable organization property received in an in-kind distribution, that transfer is not to be considered a taxable disposition within the meaning of the Code. The present law rules governing gifts of appreciated property will continue to apply to such gifts.

Finally, the conference agreement provides that the provision applies to trust distributions after June 1, 1984, in taxable years ending after that date.

2. Taxation of multiple trusts

Present law

Treasury regulations promulgated following the Tax Reform Act of 1969 provided that multiple trusts are treated as one trust if the trusts had (1) the same grantor and substantially the same beneficiaries, (2) no substantially independent purposes, and (3) as their principal purpose, the avoidance or mitigation of progressive rates of tax or of the alternative minimum tax.

In *Edward L. Stephenson Trust* v. *Commissioner*, 81 T.C. 283 (1983), the Tax Court held that the Treasury regulations were invalid because the regulations were inconsistent with the intent of Congress regarding the tax treatment of multiple trusts.

House bill

The House bill provides that, under Treasury regulations, two or more trusts will be treated as one trust if (1) the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose for the existence of the trusts is the avoidance of Federal income tax.

This provision is effective for taxable years beginning after March 1, 1984.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

G. Accounting Changes

1. Premature accruals

Present law

Under the accrual method of accounting, an expense is generally deductible in the taxable year in which (1) all the events have occurred that determine the fact of the liability and (2) the amount of the liability can be determined with reasonable accuracy (the so-called "all events test"). Whether an expense involving a future obligation can satisfy the all events test in a year significantly earlier than the year in which the taxpayer must fulfill the obligation has been the subject of controversy under present law. Neither the Internal Revenue Code nor case law requires a taxpayer to account for future expenses on a present value basis.

The Code allows a deduction for contested liabilities if (1) the taxpayer contests the asserted liability, (2) the taxpayer transfers money to provide for the satisfaction of the asserted liability, (3) the contest with respect to the asserted liability exists after the time of the transfer, and (4) but for the fact that the liability is contested, a deduction would be allowed for the taxable year of transfer or for an earlier taxable year (sec. 461(f)).

House bill

In general, the House bill provides that in determining whether an accrual method taxpayer has incurred an amount during the taxable year, all the events which establish the taxpayer's liability for such amount will not be deemed to have occurred any earlier than the time when economic performance occurs. If economic performance has occurred, the amount will be treated as incurred for all purposes of the Code. Amounts incurred are deductible currently only if they are not properly chargeable to a capital account and are not subject to any other provision of the Code that requires the deduction to be taken in a taxable year later than the year when economic performance occurs.

Economic performance

The House bill provides principles for determining when economic performance occurs in the case of two categories of liabilities: (1) liabilities arising from another person's providing of goods or services or the use of property to the taxpayer; and (2) liabilities of the taxpayer to provide property or services. Economic performance occurs with respect to the first category as the property or services are provided to the taxpayer. Economic performance occurs with respect to the second category as the taxpayer provides the property or services.

A special rule is also provided for tort liabilities, liabilities arising under a worker's compensation act, and or employee benefit liabilities. In these situations, economic performance occurs as payments are made in satisfaction of the liability.

In the case of any type of liability not specifically described by the bill, economic performance will occur at the time determined under Treasury regulations.

Exceptions.—The economic performance standard will not apply to a liability of the taxpayer to provide benefits to employees of the taxpayer through a qualified pension, profit-sharing, or stock bonus plan described in section 404 or 404A, to contributions to a funded welfare benefit plan to which section 419 (as added by the bill) applies; or to items the time for deduction of which is determined under other sections of the Code, including additions to a bad debt reserve (sec. 166), vacation pay (sec. 463), qualified discount coupons (sec. 466), and additions to reserves by insurance companies subject to tax under subchapter L.

Net operating loss carrybacks

The House bill provides a 10-year carryback for net operating losses attributable to certain liabilities deferred under these provisions. The bill also provides a special carryback rule for losses incurred in connection with the decommissioning of a nuclear power plants. Such losses may be carried back to each of the taxable years during the period beginning with the taxable year in which the plant was placed in service. No loss, however, may be carried back to a taxable year beginning before January 1, 1984, unless it may be carried back without regard to these rules.

The provisions of the bill apply generally to expenses incurred (without regard to the economic performance requirement) after the date of enactment.

Senate amendment

The Senate amendment is generally the same as the House bill with the following exceptions.

First, if a taxpayer has a liability to provide benefits to employees (other than through a plan to which section 404 or 404A applies), and if payments with respect to such liabilities are made within 2½ months after the end of the taxable year, economic performance is treated as occurring in such taxable year. For contributions to certain trusts, including funded welfare benefit plans, economic performance occurs as payments are made to the plan.

Second, the Senate amendment clarifies that the economic performance standard must be satisfied before a deduction is allowable under section 461(f) (relating to contested liabilities).

The Senate amendment also includes provisions relating to current deductions for certain nuclear power plant decommissioning expenses and mine reclamation and similar costs (see items 2 and 3, infra). A special NOL carryback rule, under which carrybacks would not be limited to taxable years beginning on or after January 1, 1984, is also provided.

The amendment applies to expenses incurred under current law after the date of enactment and to expenses incurred under current law prior to the date of enactment with respect to which economic performance occurs after the date of enactment. The rules of section 481 would apply to require any adjustments necessary to prevent double deductions.

Conference agreement

The conference agreement generally follows the House bill, with modifications. However, the agreement adopts the Senate amendment's provisions relating to nuclear power plant decommissioning costs and to costs associated with the reclamation and closing of mine and solid waste disposal sites, with certain modifications (see Items 2 and 3, infra).

Exception from economic performance requirement for certain recurring items

In many ordinary business transactions economic performance may not be met until the year following the year in which the all events test is otherwise satisfied. To avoid disrupting normal business and accounting practices and imposing undue burdens on taxpayers, the conference agreement provides an exception under which certain expenses may be treated as incurred in the taxable year in which the all events test is otherwise met even though economic performance has not occurred. This exception applies if four conditions are met: (1) the all events test, without regard to economic performance, is satisfied with respect to the item during the taxable year; (2) economic performance occurs within a reasonable period (but in no event more than 8½ months) after the close of the taxable year; (3) the item is recurring in nature and the taxpayer consistently treats items of that type as incurred in the taxable year in which the all events test is met; and (4) either (a) the item is not material or (b) the accrual of the item in the year in which the all events test is met results in a better matching of the item with the income to which it relates than would result from accruing the item in the year in which economic performance occurs.

This exception does not apply to workers' compensation liabilities, tort liabilities, or deferred compensation that is subject to the rules of section 404 as amended by the conference agreement.

Recurrency and consistency.—In determining whether an item is recurring in nature and is consistently reported by the taxpayer, consideration should be given to the frequency with which the item and similar items are incurred (or expected to be incurred) and the manner in which these items have been reported for Federal income tax purposes. The conferees intend for this exception to be available to taxpayers starting up a trade or business as well as to taxpayers already in a trade or business. In addition, a new type of expense or expense that does not recur every year should not necessarily be excluded from this exception.

Materiality.—The factors taken into account in determining the materiality of an item will include the size of the item, both in absolute terms and in relation to the taxpayer's income and other expenses, and the treatment of the item on the taxpayer's financial statements. If an item is considered material for financial statement purposes, it will also be considered material for tax purposes.

For example, assume that a calendar-year taxpayer enters into a one-year maintenance contract on July 1, 1985. If the amount of the expense is prorated between 1985 and 1986 for financial statement purposes, it also should be prorated for tax purposes. If, however, the full amount is deducted in 1985 for financial statement purposes because it is not material under generally accepted accounting principles, it may (or may not) be considered an immaterial item for purposes of this exception.

In some circumstances, items that are not material for financial accounting purposes will be treated as material items under this provision. For example, an item of expense which is immaterial for purposes of consolidated financial statements that combine a corporate taxpayer's financial data with those of affiliated companies may be material if the taxpayer is viewed separately. The conferees intend that where the item is directly related to an activity, the materiality of the item will be separately determined with respect to that activity. The materiality of overhead expenses that relate to several activities of the taxpayer will be measured against those collective activities.

In the case of any partnership or other pass-through entity, the conferees intend that in appropriate circumstances and to the extent provided in regulations, an item will be considered immaterial only if it is not material when analyzed at both the entity and at the partner (or, in the case of a trust or estate, beneficiary) level. Thus, an item that may not be material at the partnership level may be material at the partner level. Application of this rule may be appropriate, for example, when a partner invests in an accrual method partnership that makes a special allocation to the partner of an item that is not material to the partnership but is material to the partner. The conferees intend this rule to be applied in such a manner that no significant additional reporting requirements be imposed on partnerships and other flow-through entities in nonabusive situations.

Finally, the conferees intend that the above standards for determining whether an item is a material item apply only for purposes of the recurring item exception to the economic performance test. No inference is implied with respect to whether an item is material for purposes of any other Code provision. For example, an item that may not be considered material for purposes of the economic performance test may nevertheless be material for purposes of the fraud and false statement provisions of the Code (sec. 7206(1)). Likewise, an item that is not material under the economic performance exception may be material under the provisions relating to changes in methods of accounting (see Treas. reg. sec. 1.446-1(e)(2)(ii)(a)).

Matching.—In determining whether the accrual of an item in a particular year results in a better matching of the item with the income to which it relates, generally accepted accounting principles will be an important factor, although not necessarily dispositive. Costs directly associated with the revenue of a period are properly allocable to that period.[1] For example, a sales commission agreement may require certain collection activities to be performed in a year subsequent to the year in which sales income is reported. In such a case, economic performance with respect to some portion of the liablity to pay the commission may not occur until the following year. Nevertheless, deducting the commission expense in the year in which the sales income is reported results in a better matching of the commission expense with the sales income. Likewise, if income from the sale of goods is recognized in one year, but the goods are not shipped until the following year, the shipping costs are more properly matched to income in the year the goods are sold rather than in the year the goods are shipped.

Expenses such as insurance or rent generally can be allocated to a period. Thus, a calendar year taxpayer with a twelve-month insurance contract entered into on July 1, 1984, generally should allocate one-half the expense to 1984 and one-half to 1985. In appropriate circumstances, however, the expense may be an immaterial item and accruable in its entirety in 1984. Expenses such as advertising costs that cannot practically be associated with income of a particular period may under generally accepted accounting principles be assigned to the period in which the costs are incurred. The conferees intend that, in general, the matching requirement will be satisfied with respect to advertising expenses if the period to which the expenses are assigned for tax and financial reporting purposes is the same.

Modifications and clarifications with respect to economic performance standard

Interest.—In the case of interest, economic performance occurs with the passage of time (that is, as the borrower uses, and the lender foregoes use of, the lender's money) rather than as payments are made. Interest incurred by accrual method taxpayers with respect to debts incurred in transactions occurring after June 8, 1984, the date of conference action, will be deductible only on a constant interest basis. (See sec. 44 of the conference agreement relating to the effective date of the OID and unstated interest rules). Interest on obligations issued on or prior to that date are not subject to the statutory prohibition against noneconomic accruals of interest. However, the conferees intend no inference regarding the propriety of interest accruals with respect such obligations that are inconsistent with the principles stated in Rev. Rul. 83-84.

Payments for nuclear waste disposal.—The conferees anticipate that the Treasury Department will issue regulations providing that economic performance with respect to amounts paid under the Nuclear Waste Disposal Act of 1982 occurs as payments are made to the Federal government.

Natural gas refunds.—Regulated natural gas utilities may receive refunds from their suppliers for amounts they have been overcharged. Generally, these refunds are made to the utilities pursuant to regulatory commission orders and must be passed through to customers, usually within 8 to 12 months after receipt. Rev. Rul. 63-182, 1963-2 C.B. 194, which interpreted the all events test under existing law, permits a utility to deduct the amount refunded to customers in the year the refunds are received by the utility rather than in the year the refunds are passed through to customers.

The conferees intend that the Treasury Department have authority under the conference agreement to provide that, in the case of natural gas supplier refunds, a utility may deduct such refunds in the year the refund is included in the income of the utility, provided that the refunds are passed through to consumers within a reasonable period of time in the following taxable year and that adequate interest is paid over to and includible in the income of the consumers.

Reliance on other existing rulings and regulations.—The conferees expect that the Treasury Department will review existing regulations and rulings to determine whether they are consistent with the policies and principles set forth herein. Until new regulations are issued under these provisions or the existing rulings are revoked or clarified, taxpayers may continue to rely on these rulings to the extent they are not inconsistent with the general principles of economic performance or the generic exception for recurring items. Likewise, the conferees expect that taxpayers may rely on present law with respect to agreements entered into with the Internal Revenue Service (for example, under section 446 or 7121 of the Code or Rev. Proc. 80-51, 1980-2 C.B. 818), until new regulations are issued.

Contested liabilities.—The conference agreement adopts the Senate amendment's provision requiring economic performance before an amount transferred to a section 461(f) trust may be deducted. In the case of workers' compensation or tort liabilities of the taxpayer requiring payments to another person, economic performance occurs as payments are made to that person. Since payment to a section 461(f) trust is not a payment to the claimant and does not discharge the taxpayer's liability to the claimant, such payment does not satisfy the economic performance test.

Proof of compliance with economic performance standard.—The conferees intend that enforcement of compliance with the economic performance standard be carried out in a manner that does not impose substantial additional recordkeeping burdens on taxpayers. In the absence of unusual circumstances, the existence of a valid contract requiring another person to provide property or services to the taxpayer prior to the end of the taxable year (or 8½ months thereafter in the case of recurring items) would be sufficient to establish compliance with the economic performance standard with respect to the taxpayer's liability for an expense reflected in such contract.

More lenient standards may be warranted where an item is incurred by a foreign corporation.[2] The conferees recognize that information regarding economic performance, which in some cases must be obtained from third parties, may be especially difficult to obtain in this situation, particularly if the U.S. taxpayer owns only a minority interest in the foreign corporation. The conferees expect that regulations to be prescribed by the Treasury Department will provide that economic performance will be treated as having occurred by a particular date if the best available evidence indicates that it has so occurred.

Compensation for services.—The conference agreement provides that economic performance with respect to a liability to an employee generally occurs as the employee renders his or her services. However, an employer's deduction for compensation or other benefits paid to an an employee in a year subsequent to economic performance is subject to the rules in the Code (as amended elsewhere in the conference agreement) governing deferred compensation, deferred benefits, and funded welfare benefit plans.

Carrybacks of net operating losses

The conference agreement adopts the provision of the House bill that no net operating loss carrybacks resulting from nuclear decommissioning may be carried back to a taxable year before January 1, 1984, unless such loss may be carried back to such year without regard to these rules.

Effective date

The conference agreement follows the House bill with the following modification: Taxpayers may elect (with respect to each type of deductible item) the provisions of the bill to apply (1) to expenses incurred under current law after the date of enactment (as in the House bill), or (2) to expenses incurred under current law prior to after the date of enactment as to which economic performance occurs after the date of enactment (as in the Senate amendment) with the spread of any section 481 adjustment limited to 3 years.

2. Nuclear power plant decommissioning expenses

Present law

An accrual-basis taxpayer may deduct an anticipated expense no sooner than the tax year in which (1) all events necessary for determining the existence of the liability have occurred, and (2) the amount of the liability can be determined with reasonable accuracy.

Generally, under Federal and State laws, utilities that operate nuclear power plants are obligated to decommission the plants at the end of their useful lives.

It is unclear under present law when decommissioning expenses are properly accrued.

House bill

The House bill does not except nuclear decommissioning costs from the general rule, adopted in the bill, of allowing accrual basis taxpayers to deduct future liabilities only when economic performance occurs.

Senate amendment

A taxpayer responsible for nuclear power plant decommissioning (the "taxpayer") may elect to deduct contributions to a qualified decommissioning fund, subject to certain limitations.

A qualified nuclear decommissioning fund (a "fund") is a segregated reserve dedicated exclusively for the payment of nuclear decommissioning costs, taxes on fund income, and management costs of the fund. A fund is a separate taxable entity and is taxed at the maximum corporate income tax rate (46 percent). A fund is also subject to rules which (1) limit its investments to the same assets which may be purchased by a Black Lung Disability Trust Fund, (2) prohibit the purchase of a related party's assets, and (3) prohibit self-dealing.

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[1] "Basic Features and Basic Elements of Financial Accounting," *AICPA Professional Standards*, AC sec. 1025.19.

[2] Even if a corporation is not subject to U.S. tax jurisdiction, its taxable income may be relevant in determining the taxable income of a U.S. shareholder. Taxable income, and thus earnings and profits, of a foreign corporation must be determined according to U.S. tax principles, including the all events and economic performance tests.

The taxpayer must obtain a ruling from the Secretary to establish the maximum annual deduction that may be claimed for contributions to the fund. The ruling has two purposes: (1) to prevent accumulation of funds in excess of those required to pay future decommissioning costs (attributable to remaining plant life at the date the fund is established), and (2) to ensure that contributions to the fund are not accelerated (i.e., more rapid than level funding). For example, if two-thirds of a plant's useful life remains when a fund is established, then the taxpayer's deduction would be limited to contributions necessary to pay two-thirds of the estimated future decommissioning cost, on a level funding basis. The Secretary shall review this limit at least once during plant life, or more frequently by petition of the taxpayer.

Contributions to a qualified decommissioning fund are deductible, in the year made, but only to the extent these amounts are added to the cost of service charged to customers and included in the taxpayer's taxable income. Withdrawals from a decommissioning fund, for whatever purpose, except payment of taxes imposed on the fund and fund management costs, are included in the taxpayer's taxable income, in the year withdrawn. Amounts paid for decommissioning expenses are deductible from the taxpayer's gross income, as permitted by the Code, in the year paid.

If a decommissioning fund fails to comply with the qualification requirements, it may be disqualified by determination of the Secretary. In the event of disqualification, the Secretary may require that some or all of the fund balance (i.e., principal plus accumulated interest) be included in the taxpayer's taxable income. No deduction is allowed for contributions to a disqualified fund. In the year that plant decommissioning is substantially completed, the balance of the fund must be included in the taxpayer's taxable income. The Secretary will provide rules for determining when decommissioning is substantially complete.

The Senate amendment also provides that all customer charges for decommissioning expense, whether or not contributed to a qualified fund, must be included in the taxpayer's taxable income in that year.

These provisions are effective for decommissioning fund contributions made after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with several clarifications.

The conferees intend that where responsibility for decommissioning a nuclear power plant is divided between taxpayers, each taxpayer may establish a fund for their share of the liability.

In the event that a nuclear power plant, or interest therein, is sold or otherwise disposed of prior to completion of decommissioning, the seller's decommissioning fund will be treated as disqualified. A buyer may at the discretion of the Secretary make a one-time deductible deposit, in excess of the annual ruling amount, into a new decommissioning fund. However, the buyer's start-up deposit is limited to the balance of the seller's qualified decommissioning fund.

The conferees recognize the importance of ensuring that utilities comply with nuclear power plant decommissioning requirements. In view of this concern, the conferees believe that it may be appropriate for the taxwriting committees to study further the tax treatment of decommissioning costs, and the merits of providing tax incentives for establishing decommissioning funds.

3. Mine reclamation and similar costs

Present law

An accrual-basis taxpayer may deduct an anticipated expense no sooner than the tax year in which (1) all events necessary for determining the existence of the liability have occurred, and (2) the amount of the liability can be determined with reasonable accuracy.

Federal and State laws (and certain municipal permits and ordinances) require reclamation of surface mines and waste disposal sites. The Internal Revenue Service takes the position that reclamation expenses cannot be accrued until reclamation occurs. Notwithstanding the Service position, the Tax Court in *Ohio River Collieries v. Commissioner* held that surface mining reclamation costs that could be estimated with reasonable accuracy were properly accrued when the overburden was removed.

House bill

The House bill does not except mine reclamation and similar costs from the general rule, adopted in the bill, of allowing accrual basis taxpayers to deduct future liabilities only when economic performance occurs.

Senate amendment

Taxpayers may elect to deduct mine and waste disposal site reclamation and closing costs, required by certain Federal and State statutes, prior to economic performance under a uniform method. Hazardous waste disposal sites, to which the Comprehensive Environmental Compensation and Liability Act of 1980 applies, are excluded from this provision.

Site reclamation costs

Electing taxpayers may deduct certain estimated reclamation costs, in current dollars, for land that is disturbed during the tax year, discounted at a compound rate of 2 percent per annum.

Site closing costs

Electing taxpayers may deduct certain estimated site closing costs, in current dollars, attributable to minerals mined (waste deposited) during the tax year, based on the units of production (capacity) method, discounted at a compound rate of 2 percent per annum.

Sinking funds

All amounts deducted for the cost of reclaiming a parcel of land are deemed deposited in a parcel-specific, tax-exempt sinking fund that is deemed to earn interest at 50 percent of the short-term rate provided in Code section 1274 (i.e., 110 percent of the short-term Federal rate). All amounts deducted for site closing costs are deemed deposited in a tax-exempt sinking fund, on a site by site basis, which earns interest at 50 percent of the long-term section 1274 rate. The balance of each sinking fund includes all deemed deposits and associated interest.

Amounts expended for qualified reclamation and site closing activities, allocable to land disturbed or units of production (capacity) subsequent to the date of election, are deductible in the year paid. Such amounts are deemed withdrawn from the applicable sinking fund, to the extent of its remaining balance, and the withdrawal is included in taxable income in that year.

The balance of each reclamation sinking fund is recaptured (i.e., included in taxable income) when reclamation of the parcel (with respect to which deductions were claimed) is substantially completed, but no later than the end of the third taxable year subsequent to creation of the sinking fund. Similarly, the balance of the site closing sinking fund is recaptured when site closing is substantially completed.

Effective date

The Senate amendment is effective after the date of enactment subject to two transition rules: (1) with respect to fixed price mineral supply contracts, entered into prior to March 1, 1984, taxpayers may continue existing accounting practices provided that deductions are taken on a current dollar cost basis, and (2) the Service may not challenge a taxpayer's entitlement to deductions, taken prior to March 1, 1984, for land disturbed or units produced prior to March 1, 1984, on the basis that the liability has not been incurred, if the deductions were based on current dollar cost estimates. (However, the deductions could be challenged on the basis that costs were not estimated with reasonable accuracy.)

Conference agreement

The conference agreement generally follows the Senate amendment with several clarifications and modifications.

In the case of mining, a site is defined as a "property" within the meaning of Code section 614. The conferees intend that the election to deduct reclamation and closing costs under this provision must be made for a site in its entirety. Where an election is made and responsibility for site reclamation and closing is divided between taxpayers with an interest in the site, each taxpayer may claim deductions (subject to the recapture rules) for their share of the liability. For each site, the election may be revoked by the taxpayer; however, the balance of the site reclamation and closing funds must be included in income in that tax year, and the election may not be reinstated.

Hazardous waste site reclamation and closing costs, incurred pursuant to the requirements of certain Federal and State statutes, are included in the conference agreement, except for sites listed in the National Contingency Plan (established under section 105 of the Comprehensive Environmental Compensation and Liability Act of 1980). Waste disposal site reclamation and closing expenses that arise from compliance with a municipal permit or ordinance, rather than a Federal or State statute, are included in the conference agreement.

The conference agreement simplifies the Senate amendment in several respects. The requirement to discount (at 2 percent per annum) deductions for future reclamation and site closing costs is eliminated. The requirement to account for reclamation sinking fund deductions on a parcel by parcel basis is eliminated. A single reclamation sinking fund is required with respect to each site. The requirement to recapture the balance of a reclamation sinking fund no later than three years after the end of the tax year in which the fund was created is also eliminated.

Amounts expended for qualified reclamation and site closing activities, allocable to land disturbed or units of production (capacity) subsequent to the date of election are deemed withdrawn from the applicable sinking fund in the year paid. Unlike the Senate bill, such withdrawals are not included in taxable income. However, only the excess of the amount paid for reclamation and closing activities over the year-end sinking fund balance (after deemed deposits and interest) is deductible in the year paid.

The deemed interest rate on the site reclamation and closing sinking funds is determined according to the following schedule: 70 percent of the short-term rate provided in Code section 1274 (compounded semiannually) in tax years ending in 1984 and 1985, 85 percent in 1986, and 100 percent in tax years ending on or after January 1, 1987.

The conferees agreed that the balance of the site reclamation and closing sinking funds should be subject to a reasonable limitation in order to prevent abuse of this provision. Amounts in the site reclamation and closing sinking funds in excess of these limits, at the end of each tax year (after deemed deposits, interest, and other withdrawals) are deemed withdrawn and are included in that year's taxable income.

The balance of the site reclamation sinking fund, at the end of each tax year, is limited to the current cost of reclaiming land that has been disturbed, subsequent to the date of election, but not previously reclaimed. For example, if at the end of the first tax year after site opening 20 acres have been disturbed and the per acre cost of reclamation is $10, then $200 (10 x $10) may be deducted in that year and the sinking fund balance is limited to the same amount. If at the end of the second tax year 20 additional acres are disturbed, the per acre cost of reclamation has risen to $11, and no reclamation work has been paid for, then $220 (20 x $11) may be deducted in that year and the sinking fund balance is limited to $440 (40 x $11).

The balance of the site closing sinking fund, at the end of each tax year, is limited to the current cost of closing the portion of the site which has been utilized (based on a units of production or capacity method), subsequent to the date of election. For example, suppose that site capacity is 500 units, 100 units are produced (or utilized) at the end of the first year, and the current cost of closing the entire site is $1,000. In this case, $200 ($1,000 x 100/500) may be deducted in that year and the sinking fund balance is limited to the same amount. If at the end of the second tax year an additional 100 units are produced and the current cost of site closing has risen to $1,100, then $225 may be deducted (i.e., the unrecovered cost of current site closing ($1,100-$200) times the proportion of remaining units produced during the tax year 100/(500-100)) and the fund balance is limited to $440 ($1,100 x 200/500).

In the event that a mine or waste disposal site is sold or otherwise disposed of prior to completion of site reclamation and closing, the conferees intend that the seller will recognize the outstanding balance of site reclamation and closing sinking funds in income. If any portion of the site is disposed of, then this portion of the site's reclamation and closing funds are subject to recapture. Recapture of sinking fund balances is also required at the end of the tax year in which a waste disposal site is listed on the National Contingency Plan.

The conference agreement clarifies that reclamation activities, for purposes of this provision, are limited to those activities performed prior to site closing and in connection with reclaiming land disturbed on the mine (or waste disposal) site.

Effective date

Minerals are considered sold subject to a fixed price agreement if their price is determined strictly in accordance with a formula which was fixed as of March 1, 1984 and does not permit, either directly or indirectly, adjustment for changes in tax liability.

The conference agreement clarifies that the fixed price mineral supply contract transition rule applies on a pro rata basis according to units of production. For example, if site production is 100 tons in a tax year, of which 40 tons is sold pursuant to a fixed price supply contract, then only 40 percent of the site reclamation and closing costs allocable to that year (based on current dollar cost estimates) are deductible in that year. If an election were made, then 60 percent of site reclamation and closing costs would be deductible, under the general rules of this provision.

If deductions are claimed pursuant to the fixed price supply contract transition rule, in connection with a site where the taxpayer has made an election, then amounts expended for qualified site reclamation and closing activities, allocable to land disturbed or units produced subsequent to the date of election, are deemed withdrawn from the applicable sinking fund on a cumulative units of production basis. For example, suppose that as of the end of tax year 1990, 500 tons have been produced from a site subsequent to the date of election, of which 300 tons were sold pursuant to fixed price supply contracts, and deductions were claimed in accordance with the transition rule. If the taxpayer paid $1,000 for site reclamation in 1990, then only $400 (200/500 x $1000) would be deemed withdrawn from the site reclamation sinking fund. Similarly, the limitation applicable to the site reclamation (closing) fund would be equal to 40 percent of the current cost of reclaiming (closing) the site attributable to land disturbed (units produced) subsequent to the date of election.

4. Prepaid expenses

Present law

Except with respect to prepaid interest and prepayments by farm syndicates, the Internal Revenue Code contains no provisions expressly prescribing the proper timing of deductions for prepaid items in the case of cash-method taxpayers. Under the weight of judicial authority and Internal Revenue Service rulings, a prepaid expense is deductible when paid only if (1) the expenditure is a payment and not merely a deposit, (2) there is a business purpose for the prepayment, and (3) deduction of the expense in the year of prepayment does not result in a material distortion of the taxpayer's income.

In the case of interest, deductions are allowed only for the year to which the interest relates. Deductions of certain farm syndicates are also limited to certain periods to which the expenses relate.

Expenditures that result in the creation of an asset having a useful life extending substantially beyond the close of the taxable year may not be deducted in full currently, but must be capitalized.

House bill

A tax shelter computing taxable income under the cash receipts and disbursements method will not be allowed a deduction with respect to any amount earlier than the time at which such amount is treated as incurred (i.e., properly deductible under the accrual method of accounting). An amount will not be treated as incurred at any time earlier than the time at which economic performance occurs. Thus, a cash basis tax shelter may not deduct an amount until both economic performance has occurred and the amount has been paid.

Under the House bill, a tax shelter means (1) a partnership or other enterprise (other than a corporation which is not an S corporation) in which interests have been offered for sale, at any time, in any offering required to be registered with a Federal or State agency; (2) a partnership or other enterprise if more than 35 percent of the losses are allocable to limited partners or limited entrepreneurs (generally investors who do not actively participate in the management of the enterprise); or (3) any partnership, entity, plan, or arrangement which is a tax shelter within the meaning of section 6661(b) (i.e., the principal purpose of which is the avoidance or evasion of Federal income tax.)

Senate amendment

Certain taxpayers engaged in the trade or business of farming who compute taxable income under the cash receipts and disbursements method are not allowed a deduction with respect to any amount paid for feed, seed, fertilizer, and other similar farm supplies earlier than the time when the feed, seed, fertilizer, or other supplies are actually used or consumed.

This provision generally applies to any person engaged in the trade or business of farming if more than 50 percent of such person's farming expenses paid during the taxable year are prepaid expenses.

The Senate amendment provides two exceptions to the 50-percent test. If either of these two exceptions are met, prepaid expenses continue to be deductible as allowed by present law, even though those prepaid expenses are greater than 50 percent of farming expenses for that year. The first exception applies if an eligible farmer fails to satisfy the 50-percent test due to a change in business operations directly attributable to extraordinary circumstances. The second exception applies if over the preceding 3-year period an eligible farmer satisfies the 50-percent test on the basis of the three preceding taxable years. The term "eligible farmer" will include (1) any person whose principal residence is on a farm, (2) any person with a principal occupation of farming, and (3) any family member of persons describe in (1) or (2). The exception applies only to an eligible person's farming activities attributable to the farm on which the residence is located, or to farms included in the "principal occupation" of farming activities.

Conference agreement

The conference agreement generally follows the House bill, precluding a tax shelter computing income using the cash receipts and disbursements method from deducting prepaid expenses any earlier than when economic performance occurs. For this purpose, the recurring item exception to the economic performance requirement (see item 1, supra) will not apply.

Certain exceptions are provided under which prepaid expenses of a tax shelter will be deductible if economic performance occurs within 90 days after the end of the taxable year in which the prepayment is made. However, the maximum deduction that is allowable for any prepaid expenses under this exception is limited to the cash investment by the taxpayer in the tax shelter. For this purpose, the cash investment in a tax shelter which is a partnership is the taxpayer's basis in the partnership determined without regard to any liabilities of the partnership (with or without recourse) and without regard to any borrowings of the partner that are arranged by the tax shelter. In the case of tax shelters that are not partnerships, similar rules will apply. Thus, in the case of individual tax shelters, cash investment would not include any amounts borrowed by the individual which are arranged by the organizer or promoter or are secured by the investment.

For the purposes of this exception only, in the case of oil and gas activities, economic performance is deemed to occur with respect to all intangible drilling expenses of a well when the well is "spudded." For example, if a taxpayer contributed cash (not out of borrowings arranged by the tax shelter) to an oil drilling tax shelter in late December of a taxable year and the spudding of the well commenced within 90 days after the close of the taxable year, the entire amount of the prepaid intangible drilling expense would be deductible, subject to the limitations of present law requiring that the prepayment not be a deposit, that it be made for a business purpose, and that it not result in a material distortion of income.

To the extent that oil and gas prepayments do not meet the requirements of the 90-day exception, they are subject to the general principle provided in new section 461(h); thus, economic performance will occur as the drilling services are provided to the taxpayer. If drilling is commenced in the year of prepayment, only that portion of the intangible drilling costs attributable to drilling prior to the end of the year will be deductible in that year. Such portion of the costs will be deductible without regard to cash investment limitation.

With respect to expenses incurred in the trade or business of farming, the conference agreement clarifies that section 464 will be applied before the prepaid expense provisions, and that accrual method tax shelters will be subject to the timing rules of section 464. The change with respect to accrual method tax shelters is intended to equalize the treatment of cash and accrual farming tax shelters.

The prepaid expense provisions will apply to individual taxpayers engaged in farming activities with the principal purpose of tax avoidance. The conferees intend that marketed arrangements in which individuals carry on farming activities utiliizing the assistance of a common managerial or administrative service may be presumed under certain circumstances to have the principal purpose of tax avoidance. If under such arrangements, taxpayers prepay a substantial portion of their farming expenses with borrowed funds, they should generally be presumed to have a principal purpose of tax avoidance. This presumption may also be appropriate outside the context of farming.

Neither the general rule requiring economic performance to occur before a deduction is allowable nor the 90-day exception overrides any limitations of present law on the deductibility of prepaid expenses, including the requirement of a payment rather than a deposit, a business purpose for the prepayment, and no material distortion of income.

Effective date.—The conference agreement is effective with respect to prepayments made after March 15, 1984.

5. Deferred payment transactions

Present law

Time for inclusion or deduction of deferred interest

Original issue discount ("OID", or interest not paid currently) on a debt obligation issued for property generally is not taken into income by a cash method lender or deducted by a cash method borrower until received or paid, unless the debt instrument is publicly traded or the property for which it is issued is publicly traded stock or securities. If the lender is not an individual and the instrument is publicly traded or the property is publicly traded stock or securities, the OID provisions of the Code require the lender to recognize a portion of the deferred interest as income annually during the loan period and allow the borrower to deduct a corresponding amount, irrespective of whether the parties report income on the cash method or on the accrual method. The OID provisions also apply to debt instruments issued for cash.

For evidences of indebtedness issued after July 1, 1982, the amount of interest annually includible and deductible uner the OID provisions is determined on a constant interest basis, reflecting the compounding of accrued interest over the term of the instrument.

The OID rules do not apply to (1) obligations issued by individuals; (2) obligations having a maturity of one year or less; (3) as to holders, obligations not held as a capital asset; or (4) obligations the interest on which is exempt from tax under section 103 or any other provision of law.

Measurement of interest and principal

If the parties to a sale or exchange providing for deferred payment fail to state interest at least at a safe-harbor simple interest rate fixed by regulation, interest is imputed at a higher compound rate (sec. 483). Interest imputed under this provision ("the unstated interest rules") is allocated among deferred payments in proportion to the amount of the payments. Exceptions to these rules are provided for transactions in which all payments are due no more than one year after the sale, transactions in which the sales price does not exceed $3,000, certain annuity payments, certain sales of patents, and (as to the seller) sales of ordinary income property. The maximum imputed interest rate applicable to real estate transactions between related parties involving $500,000 or less is 7 percent.

House bill

The House bill extends the OID rules to obligations issued for nontraded property, deferred payments for services and use of property (whether or not evidenced by a formal debt obligation), obligations issued by individuals, and obligations not held as capital assets. The bill incorporates requirements similar to section 483 relating to the adequacy of the stated interest element of a deferred payment transaction involving the sale of nontraded property, the use of property, or the performance of services. The interest element in such transactions is compared to a compound safe-harbor rate that approximates a market rate. If inadequate interest is stated in the obligation, or if adequate interest is stated but is not unconditionally payable on a current basis, interest will be imputed annually at a higher rate (or at the stated rate, if higher than the imputed rate).

Exceptions to these rules are provided for sales of principal residences, certain sales of farms, sales involving total payments of $250,000 or less, certain annuity transactions, and certain sales of patents.

Section 483 will continue to apply only in the case of deferred payment transactions involving sales or exchanges of property that are within one of the exceptions to the OID rules. Where section 483 applies, unstated interest income or expense computed on an economic accrual basis (in accordance with the principles set forth in new section 1272 and Rev. Rul. 83-84, 1983-1 C.B. 9) will be reported and deducted as under present law—when payment is made in the case of a cash method taxpayer, when payment is due in the case of an accrual method taxpayer. The bill retains the exceptions of present law except the exception relating to sellers of ordinary income property. The bill also continues the 7 percent maximum imputed interest rate for certain real estate transactions between related parties.

These provisions generally apply to transactions entered into after December 31, 1984. The provisions relating to the current inclusions of OID income do not apply to obligations of individuals issued before March 2, 1984. The provisions relating to debt-for-nontraded property exchanges do not apply to sales or exchanges occurring after December 31, 1984, if made pursuant to a written contract (including an option contract) on March 1, 1984. Certain limitations relating to the manner in which interest may properly be accrued and the principal amount of debt instruments issued for nontraded property are effective for transactions occurring after March 1, 1984, and before January 1, 1985.

Senate amendment

The Senate amendment generally is the same as the House bill, except that it exempts from the OID and unstated interest rules cash method borrowers who issue discount obligations in connection with the purchase of property substantially all of the use of which will be for purposes other than business or investment. In addition, the Senate amendment exempts from the OID rules loans of $10,000 or less between members of the same family, unless tax avoidance is one of the principal purposes of the loan.

The interest element of deferred payment obligations involving services or use of property is dealt with in a separate Code provision (see new sec. 467, as added by this bill). The special transitional rules relating to the accrual of interest and the principal amount of debt obligations issued for nontraded property apply to transactions occurring after February 28, 1984, and before January 1, 1985.

Conference agreement

The conference agreement follows the Senate amendment, with several modifications, technical amendments, and clarifications.

Exceptions to the OID and unstated interest rules

The exception from the OID rules for loans of $10,000 or less is expanded to include loans between any individuals (not just family members) where the lender is not engaged in the trade or business of lending money. An additional exception is provided in the case of debt-for-nontraded property transactions where all payments under the obligation are due no more than six months after the date of sale.

The periodic deduction rule of section 163(e) will not apply to issuers of short-term obligations reporting income on the cash method.

Under the conference agreement, the OID and unstated interest rules do not apply to any amount which constitutes an annuity to which section 72 applies and the liability for which depends in whole or in substantial part on the life expectancy of any individual. It is not intended that this exception apply if the possibility that the life contingency will determine the amount of the payments is remote; that is, the contingency must be real and significant. In addition, the OID rules do not apply to any annuity (whether or not dependent upon life expectancy) issued by an insurance company subject to tax under subchapter L provided the annuity is issued (1) in a transaction in which only cash or another annuity contract meeting these requirements is involved, (2) upon exercise of an election under a life insurance policy by a beneficiary thereof, or (3) in a transaction involving a qualified pension or employee benefit plan.

The general exception for transactions to which section 267 applies is deleted. Thus, the interest element of a deferred payment sale between related parties will be subject to the OID rules.

The conference agreement clarifies that the exceptions to the OID rules for sales of principal residences, certain sales of farms and sales involving total payments of $250,000 or less apply to both the lender and the borrower in such transactions, not just to the lender.

Other modifications

The agreement modifies both bills to provide that if the stated interest rate in an obligation is 110 percent or more of the applicable Federal rate, but is not paid currently at that rate, interest will be imputed at the stated rate rather than at 120 percent of the applicable Federal rate.

As a corollary to the fair market value rule applicable in potentially abusive situations, the conference agreement makes it clear that the Internal Revenue Service retains the right to challenge a transaction in which the principal amount of an obligation is *less* than the fair market value of the property received in exchange for the obligation. Thus, taxpayers may not intentionally overstate original issue discount in deferred payment sales transactions. Taxpayers might be inclined to overstate the interest element of a transaction where, for example, the property involved in the sale is nondepreciable or the seller-lender is not subject to U.S. tax on its discount interest income.

Finally, the requirement in the effective date provisions that interest must be accrued on a constant interest basis applies to transactions occurring after June 8, 1984, the date of conference action. The conferees intend no inference regarding the propriety of interest accruals with respect to transactions occurring prior to that date that do not comply with the concepts stated in Rev. Rul. 83-84.

Clarifications of intent

The conferees agreed to certain clarifications as to the scope and application of the OID provisions.

First, the conferees do not intend that taxpayers be able to circumvent the 110 percent imputed rate contained in the OID provisions simply by coupling a low-interest loan with a sale of property. Thus, if Seller agrees to lend money to Buyer at an interest rate equal to 100 percent of the applicable Federal rate (thereby complying with the low-interest loan provisions of the bill), and Buyer uses the proceeds of the loan to purchase nontraded property from Seller, the loan will be treated as a purchase money loan subject to the 110 percent test and 120 percent imputed interest rate of the OID rules rather than the 100 percent rate applicable to low-interest loans.

Second, no OID will be deemed to exist in situations where a debt instrument issued for nontraded property bears interest, unconditionally payable at least annually, at a variable rate, provided the stated rate is a floating rate, adjusted at no more than six-month intervals, at least equal to 110 percent of the Federal short-term rate (or other appropriate indices provided under regulations).

Finally, the conferees anticipate that the Commissioner will issue regulations, similar to the regulations under existing section 483, dealing with the tax consequences of debt obligations which are assumed or taken subject to, that is, the transfer of obligations to make or rights to receive deferred payments subject to the OID rules. The conferees intend that such rules apply not only to the assumption of deferred payment obligations, but also to assumptions of obligations to third-party lenders. These rules will apply to sales and exchanges after December 31, 1984, and therefore will apply to debt obligations that are assumed or taken subject to after that date even though such obligations were first issued prior to that date.

6. Deferred payments for use of property and services

Present law

A cash method lessor includes rent in income only when payment is received, while an accrual method lessee deducts a portion of the rent in each year of the lease, irrespective of when rent is paid. Thus, a mismatching of income and deductions may occur in the case of a deferred payment lease involving a cash method lessor and an accrual method lessee.

Where a lease provides for current payments of rents, but at disproportionately higher levels in the later years of the lease term (i.e., the rents are "backloaded" or "stepped"), portions of the true rent allocable to the earlier years are in substance being deferred until later years, when the deferred amounts are repaid with interest. The result is deferral of income by the lessor.

It is unclear under present law under what circumstances uneven rent payments will be treated as resulting in deferral or prepayment of rent. The Internal Revenue Service has issued a revenue procedure stating that the payment of uneven rents in a so-called "leveraged lease" will not be regarded as involving a deferral or prepayment of rent provided the rent payable for any year does not exceed 110 percent of the average annual rent payable over the term of the lease and is not less than 90 percent of this average. Rev. Proc. 75-21, 1975-1 C.B. 715.[3]

House bill

The House bill contains no provision relating to the "principal" element of deferred payment transactions involving the use of property or services. It does, however, provide for annual inclusion and deduction of interest with respect to such transactions in certain circumstances (see item 5, supra).

Senate amendment

The Senate amendment requires that both the rent element and the interest element of a deferred rent transaction be included in the income of the lessor and deducted by the lessee annually, unless rent is paid before the end of the year following the calendar year in which the property is used. A transaction involving stepped rents is treated as a deferred rent transaction if any periodic increase is not commercially reasonable. In general, whether an increase is commercially reasonable is determined on the basis of all the facts and circumstances.

In the case of a sale-leaseback transaction involving payment of stepped rents, an annual increase will be considered as not commercially reasonable if it exceeds the greatest of (1) the percentage increase in the Consumer Price Index (or other index specified by regulations) during the immediately preceding lease period, (2) the Federal short-term rate in effect at the time the lease is entered into, or (3) the increase in specified costs with respect to the property payable by the lessor to unrelated parties during the period between the payments. Leases providing for even "steps" of up to 5 years, with cumulation and compounding of the permissible increases during the period, will qualify as commercially reasonable.

Similar rules are to be provided by regulations for the interest element in deferred payment transactions involving services and for "front-loaded" payment transactions.

The provisions are generally applicable to agreements entered into after March 15, 1984, other than agreements entered into pursuant to a written binding commitment if effect on March 15, 1984. Under a transitional rule, in the case of leases where there was written evidence of a firm plan on March 15, 1984, to lease property which had not been placed in service before that date, the parties will not be subject to the permanent rules; however, such persons will be required to report rental income and deductions in amounts at least as great as those in a specified schedule, regardless of the actual payments made under the agreement. In addition, an exception is provided for a particular lease that was being negotiated on March 15, 1984.

Conference agreement

The conference agreement adopts the House bill and the Senate amendment with modifications.

Overview

The conference committee believes that the deferred rent provision of the Senate amendment is deficient in two respects. First, commercial reasonableness is too vague a standard by which to determine the tax consequences of a lease agreement. The conferees feel that this standard is unworkable and injects an unacceptable degree of uncertainty into legitimate business transactions. Second, the Federal rate safe harbor provided in the Senate amendment would permit rent increases over the term of a lease that would, in general, significantly exceed the increases that could be justified as an economic matter.

Accordingly, the conference agreement adopts a tax avoidance purpose test, makes this test applicable to a narrower range of lease agreements, and eliminates the safe harbor based on the Federal rate. (As under the Senate amendment, only leases involving total payments in excess of $250,000 and either deferred payments or stepped rents are affected by the conference agreement.) The tax avoidance purpose test will be applied only in the case of certain leasebacks and long-term leases. If this test is satisfied, the rents payable under the lease will be "leveled" for purposes of the tax treatment of the parties to the lease, that is, the parties will take into account annually the constant rental amount and interest on unpaid rental amounts from prior years. The conference agreement provides certain safe harbors under which leases will not be deemed to be motivated by tax avoidance.

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[3] The revenue procedure also provides an alternative test based on rents payable over the first two-thirds of the lease term.

In cases not involving leasebacks or long-term leases or in which it has been established that there is no tax avoidance purpose for the backloading, the rents specified in the lease agreement will be recognized for tax purposes. However, the parties will be required to report the rent allocable to the period (and interest on unpaid rents) on an accrual basis, regardless of their method of accounting. Thus, the general rule will be "matching" on an accrual basis by both lessors and lessees.

Finally, lessors who, by virtue of having demonstrated no tax avoidance purpose, are not subject to rent leveling during the term of the lease will be subject to a recapture provision on disposition of the leased property. Under this provision, any gain realized on such a disposition will be treated as ordinary to the extent of the excess of the accruals that would have been taken into account had the lessor been subject to the rent leveling provision over the actual accruals of rents up to the date of transfer. The conferees believe that even in situations where the parties can demonstrate that tax avoidance is not a principal purpose of the stepping of rents, and rents are reported on a consistent basis, there is an opportunity to convert ordinary income into capital gain by selling property subject to an agreement providing for increasing rents. The recapture provision prevents such a conversion.

The conferees emphasize that no inference is intended as to the ability of the Internal Revenue Service to challenge the form of an agreement involving deferred or stepped rents under general accrual or clear reflection of income principles, on the basis that a purported lease constitutes a mere financing transaction, or on other grounds.

Matching requirement in case of "section 467 rental agreements"

The conference agreement affects only those leases that would have been subject to the provision contained in the Senate amendment, that is, leases involving total payments in excess of $250,000 and either (1) increasing (or decreasing) rents, or (2) rents payable beyond the close of the calendar year following the year in which the associated use occurs. Such leases are referred to as section 467 rental agreements.

The parties to a section 467 rental agreement not involving a leaseback or a lease of property for a term in excess of 75 percent of the property's ACRS life will not be subject to the tax avoidance purpose test or the rent leveling provision. Both the lessor and the lessee under such agreements, however, will be required to accrue annually the rent allocable to the taxable year where actual payment of the rent is deferred.[4] The rent allocable to a taxable year will be determined from the terms of the lease. If the lease specifies amounts that are allocable to particular periods but these amounts are not paid until more than one year after the year to which they relate, the amount of rent to be accrued for each period will be an amount determined in accordance with Treasury regulations based on present value concepts. It is anticipated that these regulations could provide different methods for determining the appropriate amount, depending upon the particular type of lease involved. Present values will be determined, and interest will accrue on any accrued but unpaid rent (and any unpaid interest on such interest), at a rate of 110 percent of the applicable Federal rate, compounded semiannually.

Constant rental accrual in certain situations

Rents will be deemed to accrue on a level present value basis in two situations. First, level rents will be imputed if a section 467 rental agreement is silent as to the allocation of rents over the lease period. Second, level rents will be imputed if (1) a section 467 rental agreement provides for increasing rents, (2) one of the principal purposes of providing for increasing rents is the avoidance of taxes, and (3) the lease is either part of a leaseback transaction or for a term in excess of 75 percent of the "statutory recovery period" for the property subject to the lease. A leaseback transaction for this purpose is one that involves a lease of property to any person who had any interest in such property within the two-year period such lease goes into effect (or to a person related person to such person). The conferees do not intend that a de minimis ownership interest be deemed an interest for this purpose.

The statutory recovery period for purposes of the 75 percent test is essentially the period provided under the ACRS provisions of the Code. Property that is not recovery property will be treated as if it were recovery property for purposes of this test.

Regulatory safe harbors.—The Treasury Department is directed to prescribe regulations setting forth circumstances under which rents will not be treated as being stepped for tax avoidance purposes. Among the circumstances for which safe harbors are to be provided are (1) increases in amounts determined by reference to price indices such as the Consumer Price Index, (2) rents based on a percentage of the lessee's receipts or similar amounts, (3) reasonable periods during which rents are forgiven or abated, and (4) changes in amounts paid to unrelated third parties.

Thus, the conferees intend that the regulations will provide that a lease calling for rents that increase at a variable rate equal to the rate of the increase in the CPI (or other appropriate price index) during the lease period does not have tax avoidance as a principal purpose. Such a lease may limit the increase to a specified maximum percentage and still come within the CPI safe harbor, and increases based on such a formula may be aggregated and made in intervals of five years or less.

Similarly, increases that are based on a fixed percentage of the lessee's gross receipts or similar amounts, or that reflect the lessee's obligation under the lease to bear specified costs (such as real estate taxes, insurance, maintenance, and similar costs) of the lessor will not be considered to be motivated by tax avoidance. Because the amount of increases in the CPI or in third party costs generally is not subject to manipulation by the parties, and it is a common commercial practice to pass such increases on to lessees, such increases should not generally be considered in determining whether rents are stepped to avoid taxes.[5]

In addition, the conferees intend that the regulations will provide a safe harbor for leases under which no rent is payable (or is payable at a reduced rate) for a reasonable period of time after the inception of the lease. Whether the length of a "rent holiday" is reasonable will be determined by commercial practice in the locality where the use of the property will occur at the time the lease is entered into. The conferees expect that, in general, this rent holiday will not exceed twelve months, and in no event shall exceed twenty-four months.

The conferees anticipate that the Treasury Department will issue regulations adopting standards under which leases providing for fluctuations in rents paid by no more than a reasonable percentage above or below the average rent payable over the term of the lease will be deemed not motivated by tax avoidance. The conferees understand that the Internal Revenue Service has taken the position that a 10 percent fluctuation above or below the average rent is permissible in the case of leases involving personal property. Rev. Proc. 75-21, 1975-1 C.B. 715, sec. 5. The conferees note that the standards of Rev. Proc. 75-21 may not be appropriate for real estate leases, and that it may be appropriate in the regulations to provide less restrictive standards for such leases.

Tax avoidance standard.—A section 467 rental agreement involving a leaseback or a term in excess of 75 percent of the property's statutory recovery period will be subject to the rent leveling provision only if a principal purpose of the stepping of rents is tax avoidance. The determination of the existence of a tax avoidance purpose will be made on the basis of all the relevant facts and circumstances. A major factor in this determination will be whether and to what extent the tax brackets of the lessor and the lessee differ at the time the lease is entered into, and the parties' reasonable expectations as to their relative tax brackets over the term of the lease. Where their tax brackets are roughly equal, a natural tension will normally exist between the lessor and lessee since the lessor will defer recognition of income at the cost to the lessee of a deduction to which it would otherwise be entitled.

On the other hand, where a lessor is in a higher marginal tax bracket than a lessee (e.g., where the lessee is a tax-exempt entity or has substantial NOLs or is otherwise in a low marginal bracket), the motives of the parties in stepping the rents will be closely scrutinized, and taxpayers should be held to a higher standard of proof. They should be required to show that market conditions or other substantial business reasons justify the specified increases. In particular, the conferees believe that so-called "sandwich" lease transactions, whereby a tax-exempt entity is interposed between two taxable parties as a lessee-sublessor to achieve deferral of income for the ultimate lessor without sacrificing the deductions of the sublessee, should generally be suspect.[6] The conferees emphasize that they intend no inference as to the ability of the Internal Revenue Service to challenge these sandwich lease transactions under existing law.

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[4] The conferees intend that any rent or interest accrued by the lessor under this provision as well as under the rent leveling provision will be treated in the same manner as a receivable or other debt owed to an accrual basis taxpayer. Thus, if the lessee due to bankruptcy or other circumstance ultimately fails to pay rent or interest imputed under this provision when due, the lessor will be able to claim a bad debt deduction, at the time and to the extent a bad debt deduction is permitted under present law to accrual basis taxpayers. Similarly, a lessee under a section 467 rental agreement will have income under discharge of indebtedness or tax benefit principles to the extent a rental or interest amount previously accrued pursuant to this provision is forgiven or otherwise goes unpaid.

[5] The conferees intend no inference as to the effect of a lease clause requiring the lessee to assume the burden of any increases in the lessor's debt service on the property, however, including the effect of such a clause on the status of the lease as a true lease.

The involvement of tax-exempt organizations or taxpayers in an NOL position or low marginal tax bracket will not, however, create a conclusive presumption of a tax avoidance purpose, even where such person serves as a sublessor. Rather, all the facts and circumstances must be considered in determining the purpose of the transaction. If those facts and circumstances suggest substantial nontax reasons for a particular rent structure, the terms of the lease should be respected for tax purposes, even if a tax-exempt or NOL taxpayer is simultaneously a lessor and lessee.

For example, if a tax-exempt trade association negotiated a long-term lease for office space in excess of its current needs in order to assure the availability of additional space in the future, and temporarily sublets a portion of the space to a taxable third party, the transaction need not be viewed as per se motivated by tax avoidance. Increases in rents under the primary lease and sublease would be respected if it could be demonstrated that tax avoidance was not a principal purpose of the increases. The absence of such a purpose might be shown by the existence of leases containing similar terms between the primary lessor and taxable third parties. The burden of proving the absence of a tax avoidance purpose would, however, be on the taxpayer.

Another factor in determining whether a tax avoidance purpose exists is whether under the lease the lessee has an option to renew at a rental amount significantly less than rental amounts payable during the later years of the lease, particularly where the option rental amount is roughly equal to what the constant rental amount would have been for the primary term of the lease had the rent leveling provision been in effect.

The Treasury Department in regulations may prescribe other factors that are indicative of a tax avoidance purpose.

Recapture on disposition of leased property in certain situations

If property subject to a leaseback or a long-term lease is not subject to the rent leveling provision, any gain realized by the lessor on disposition of the property during the term of the agreement will be treated as ordinary income to the extent of the "recapture amount." For this purpose, the gain realized is reduced by the amount of gain treated as ordinary income under other provisions of the Code (e.g., sec. 1245 or 1250).

The recapture amount is the excess of the amount which would have been taken into account by the lessor if the rents had been reported on a constant rental basis over the amount actually taken into income by the lessor under the general matching provision. Only amounts that are fixed and determinable will be taken into account in making this computation. The Treasury Department is to provide regulations under which exceptions similar to the exceptions provided under sections 1245 and 1250 shall apply for purposes of the rent recapture provision, and under which the ordinary income taint on the property will be preserved in cases where the property is transferred and the transferor's basis in the property carries over to the transferee.

Other regulations

The conference agreement provides that the Treasury Department is to issue regulations requiring reporting of the interest elements only of deferred payment transactions involving services, in a manner consistent with the treatment of interst in deferred payment rental transactions. Regulations will also deal with the treatment of front-loaded (i.e., prepaid) agreements. The conferees intend that the provisions relating to deferred payment services agreements and front-loaded agreements and the regulations thereunder be applied prospectively from the date of issuance of regulations.

Effective date and transitional rules

These provisions are effective for agreements entered into after June 8 1984, subject to the transitional rules provided in the Senate amendment.

7. Capitalization of construction period interest and taxes

Present law

In general, no immediate deduction is allowed for real property construction period interest and taxes (Code sec. 189).

This rule does not apply to (1) low-income housing, (2) residential real property (other than low-income housing) acquired, constructed, or carried by a corporation (excluding certain corporations) or (3) real property if the property is not, and cannot reasonably be expected to be, held generally in a trade or business, or in an activity conducted for profit.

The capitalized interest and taxes are amortized generally over a 10-year period.

House bill

No provision.

Senate amendment

The rules under section 189 are extended under the Senate amendment to require corporations (other than corporations currently subject to sec. 189) to capitalize construction period interest and taxes for residential real property (other than low income housing). The definition of construction period is the same as under present law.

This provision will apply to interest or taxes paid or incurred in taxable years beginning after December 31, 1984, for the construction of residential real property begun after March 15, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

8. Start-up expenses

Present law

Generally, expenses incurred prior to the establishment of business are not deductible currently since they are not incurred in carrying on a trade or business or while engaging in a profit-seeking activity. However, some expenses such as interest or taxes are allowed as deductions for nonbusiness purposes, and the Supreme Court held in *Snow v. Commissioner*, 416 U.S. 500 (1974) that research and experimental expenses are deductible under section 174 notwithstanding the trade or business requirement.

A taxpayer may elect to treat start-up expenses as deferred expenses that may be deducted ratably over a period of not less than 60 months (sec. 195).

Present law is unclear whether, in the absence of an election under section 195, a specific item should be capitalized or expensed.

House bill

No provision.

Senate amendment

Under the Senate amendment, taxpayers will be required to treat start-up expenditures as deferred expenses. Taxpayers will be allowed to amortize such expenditures over a period of not less than 60 months as may be selected by the taxpayer. The definition of start-up expenditures is intended to be generally the same as under present law but also covers certain pre-opening costs.

The Senate amendment applies to taxable years beginning after June 30, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment with the following modification. Under the conference agreement, start-up expenditures that are allowed as deductions under sections 163, 164, and 174 shall not be treated as deferred expenses.

The conference agreement also clarifies that the definition in the Senate amendment of start-up expenditures covers certain pre-opening costs, but only for periods after the effective date of the provision.

9. LIFO conformity

Present law

The "Last-In-First-Out" (LIFO) method of inventory accounting may not be used for tax purposes unless it is also used in reporting to shareholders, partners, other proprietors, beneficiaries, and for credit purposes. An exception to the conformity requirement is provided for certain differences, including differences that arise because the taxpayer adopts the LIFO method for financial statement purposes beginning with an accounting period other than the taxable year for which the taxpayer first used the LIFO method for tax purposes. (Treas. Reg. sec. 1.472-(2)(1)(viii)(A).) Furthermore, the Internal Revenue Service has issued several rulings which provide limited exceptions to the LIFO conformity rule in other factual situations.

In *Insilco Corp. v. Commissioner*, 73 T.C. 589 (1980), *aff'd. in an unreported decision* (2nd Cir. 1980), the Tax Court held that the LIFO conformity rules were met by a subsidiary using the LIFO method to compute its income in its financial reports issued to its parent company, even though the parent company converted the subsidiary's earnings to a non-LIFO basis in the parent's consolidated financial statements.

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[6] A variation of the sandwich lease is an arrangement whereby a cash basis taxpayer simultaneously serves as lessee and sublessor under a master lease with an accrual basis lessor and a sublease with an accrual basis sublessee. Although the sublease calls for stepped rental payments, the sublessee may take the position it is entitled to accrue annually a level amount of rent that reflects the average rent payable over the term of the lease. The lessor will accrue annually only the amount of rent actually paid on the ground that it is entitled only to that amount.

House bill

The House bill treats all members of the same group of financially related corporations as a single taxpayer for purposes of the LIFO conformity requirement. The term "group of financially related corporations" means (1) any affiliated group as defined in section 1504 determined without regard to the exceptions in sec. 1504(b) and by substituting a 50-percent stock ownership test for an 80-percent stock ownership test, and (2) any other group of corporations which issue consolidated financial statements or reports generally to shareholders and others.

The House bill does not affect the exceptions to the conformity requirements already provided under current law, or Treasury's authority to provide other such exceptions in the future.

The House bill applies to taxable years beginning after the date of enactment.

Senate amendment

The Senate amendment generally is the same as the House bill, except the provision also applies to a group of corporations that issue financial statements on a combined basis.

Conference agreement

The conference agreement follows the Senate amendment with certain clarifications and modifications.

First, the conference agreement clarifies that the conformity requirement applies to the financial statements of a corporation that include under the equity method of accounting the results of operations of a corporation that uses the LIFO method of accounting for tax purposes, but only if that corporation is a member of the affiliated group by applying the 50-percent stock ownership test (described under the House bill).

Second, the conference agreement clarifies the transition rules for taxpayers who accounted for inventories on methods similar to those involved in the *Insilco* decision. The conference agreement provides that a taxpayer who relied on *Insilco* (or a similar interpretation of the law) in prior years may elect to remain on the LIFO method for tax purposes and conform its financial statements to the LIFO method. In such a case, the LIFO cost for financial statement purposes may be different than the LIFO cost for tax purposes because the LIFO method is first used for financial reporting purposes in a different year than it was first used for tax purposes. The conference agreement clarifies that such differences in the LIFO cost are not a violation of the conformity requirement (i.e., Treas. Reg. sec. 1.472-2(e)(1)(viii)(A) would apply).

Under the conference agreement, no inference is implied with respect to the taxpayer's compliance with the conformity requirement under present law. Thus, even a taxpayer who complies with the provisions of this bill may nevertheless be subject to challenge by the Internal Revenue Service for violation of the conformity requirement in prior years. However, in order to prevent unwarranted exposure to subsequent decisions contrary to *Insilco*, the conference agreement provides that for this purpose only the IRS may provide a special procedure for taxpayers who want to continue to use the LIFO method to make a protective LIFO election (consistent in all respects with their existing LIFO election) so that taxable years beginning after the date of enactment are protected. No inference is created as to whether a conditional LIFO election may be valid in other contexts.

Taxpayers who elect to change to the LIFO method for tax purposes will be allowed a spread of any adjustment required under section 481 not to exceed 4 years. (The LIFO method as used prior to the effective date would not be treated as a category A method under Rev. Proc. 80-51, 1980-1 C.B. 816).

Effective date.—The provision applies to taxable years beginning after the date of enactment.

H. Tax straddles

Present Law

Exemption of stock and stock options from straddle rules

Losses incurred in positions in actively traded personal property are deferred to the extent that the taxpayer has unrecognized gain on offsetting positions in a straddle. Positions are offsetting generally if there is a substantial diminution in the risk of loss from holding one position by reason of holding the other position. In addition, interest and carrying costs allocable to personal property which is part of a straddle are required to be capitalized, and present law provides authority for regulations to impose rules as to straddles that are comparable to present law wash sale and short sale rules. Present law excludes from the straddle rules stock and stock options that are traded on domestic exchanges.

Mark-to-market rules

Gains and losses from regulated futures contracts (RFCs) are determined by marking such contracts to market and, if they are capital assets, by treating all resulting gain or loss as 60 percent long-term and 40 percent short-term capital gain or loss (60/40 treatment). This formula results in a maximum tax rate of 32 percent for noncorporate taxpayers. This treatment applies to contracts traded on a domestic board of trade or exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) and to certain foreign currency contracts.

Hedging exemption

Neither the straddle rules nor the mark-to-market and 60/40 treatment apply to gains and losses from properly identified hedging transactions entered into in the normal course of the taxpayer's trade or business and resulting in ordinary income or loss. The hedging exemption is not applicable to certain syndicates with limited partners or limited entrepreneurs.

Treatment of options

Historically, options market makers on securities exchanges have reported ordinary income or loss from their options transactions as well as from transactions in the property subject to the option. Commodity traders derive capital gain or loss from their RFC transactions and are subject to mark-to-market and 60/40 treatment.

Gain or loss from the sale, exchange or lapse of an option held by an investor is capital gain or loss generally, long-term or short-term depending on the period the option is held by the investor, and short-term in any case to an option grantor. If an option is exercised, the premium paid by the holder or received by the grantor results in additional gain or loss with respect to, or an adjustment to the basis of, the underlying property. Questions have been raised about the applicability of these rules to certain cash settlement options and options on RFCs (commodity options).

Mixed straddles

Mixed straddles are straddles composed in part of RFCs subject to a 32 percent maximum tax rate and in part of other positions subject to a maximum 50 percent tax rate. Taxpayers may elect, if the straddle is properly identified, to exclude the RFC portion of a mixed straddle from the mark-to-market and 60/40 rules. Treasury may prescribe regulations similar to the short sales rules with respect to straddle positions. Present regulatory authority to prescribe rules for mixed straddles may be inadequate to insure effective rules.

Wash sale rule

Under the wash sale rule of present law, losses from the disposition of stock and securities are deferred if substantially identical property is acquired within 30 days before or after such disposition. The wash sale rule does not apply to certain short sales against the box which provide taxpayers with an opportunity to defer income. For taxpayers other than corporations, the wash sale rule does not apply if the loss is in connection with the taxpayer's trade or business, while it is inapplicable to corporate taxpayers only if the loss is incurred in the ordinary course of the corporation's business as a securities dealer.

Identification requirement

The hedging exemption, the mixed straddle election, the present law election of securities dealers to identify securities as held for investment, and the identified straddle rule (which limits the applicability of the loss deferral rule), all require identification by the close of the day during which a position is established. Substantial price movements may occur within the course of a day which give taxpayers an opportunity for unwarranted tax benefits through the use of these provisions.

House bill

Overview

The House bill repeals the blanket exceptions from the straddle rules for stock and exchange-traded stock options. More limited exceptions are provided. In addition, the mark-to-market rule and the 32-percent maximum rate of tax are extended to certain exchange-traded options held by investors and to all listed options held by options market makers. Commodity options are also made subject to the mark-to-market rule and accorded the 32-percent maximum rate of tax.

Repeal of exception for certain stock and stock options

Stock

The House bill repeals the exception from the tax straddle rules for direct positions in stock. A more limited exception is provided for a straddle all of the positions of which consist of the holding of stock or the short sale of stock. However, the exception for positions in stock is inapplicable to stock of a corporation formed or availed of to take positions in personal property that offset positions taken by any shareholder.

Exchange-traded stock options

In general, the straddle rules, including the loss-deferral rule, are extended to straddles involving exchange-traded stock options. An exception is provided for qualified covered call writing transactions.

Qualified covered call options

A covered call option is one that is written with respect to stock that is held by the taxpayer (or acquired by the taxpayer in connection with the granting of the option). The granting of a covered call option substantially reduces a taxpayer's risk of loss with respect to the underlying stock to the extent that the option is deep-in-the-money. The House bill contemplates that taxpayers can continue to write at-the-money and non-deep-in-the-money covered calls (i.e. qualified covered calls), without running afoul of the straddle rules.

In general, a qualified covered call option is an exchange-traded option (1) the gain or loss with respect to which is not ordinary income or loss, (2) the term of which is more than 30 days, and (3) which is not deep-in-the-money. The term "deep-in-the-money option" is defined as an option that has a strike price lower than the "lowest qualified benchmark." Generally, the "lowest qualified benchmark" is the highest available strike price that is less than the "applicable stock price" (defined below). In the case of an option with a term of more than 90 days and a strike price exceeding $50, the lowest qualified benchmark is the second highest available strike price that is less than the applicable stock price. However, in any case, the lowest qualified benchmark will not be treated as being less than 85 percent of the applicable stock price.

Exchange rules currently provide for strike prices on options at five-dollar intervals (or "benchmarks") for options on stock trading at prices under $100. For stock trading at prices over $100, there are $10 benchmarks. The lowest strike price currently authorized is $10. Thus, for example, with respect to stock trading at $50, an exchange-traded call option with a strike price of $45 or more and a term exceeding 30 days would qualify for the exception.

The term "applicable stock price" is generally defined as the closing price of the optioned stock on the most recent date on which such stock was traded before the date on which the option was granted. However, if the opening price of the optioned stock on the day the option is granted is greater than 110 percent of the closing price on the last previous trading date, then the opening price of the stock is treated as the applicable stock price.

In general, a qualified covered call option must be written on a national securities exchange registered with the Securities and Exchange Commission (SEC). The Secretary may designate other exchanges as qualifying for this treatment if the exchange has rules adequate to carry out the purposes of the exception to the straddle rules for qualified covered calls. The House bill contemplates that, as a condition of designating an exchange, the Secretary could require that trades on the exchange be subject to information reporting under section 6045 (relating to reports by brokers).

The Secretary is granted broad regulatory authority to modify the provisions of the bill (e.g., to take account of changes in the practices of options exchanges or to prevent tax avoidance). The bill contemplates that the Secretary will prescribe rules for the determination of the applicable strike price if the options exchanges modify their benchmarks.

Treatment of gain or loss where the taxpayer is the grantor of a call option

The House bill provides that, if at any time a taxpayer holds stock and is the grantor of an outstanding option to buy such stock, which option has a strike price that is less than the applicable stock price, then any amount that would otherwise be treated as a long-term capital gain with respect to the stock is treated as a short-term capital gain to the extent of any short-term capital loss recognized on the option. This short-term capital gain character would be preserved where the stock is transferred in a nonrecognition transaction (including a gift).

Extension of mark-to-market rule

The House bill extends the mark-to-market rule (including the 60/40 treatment that results in a 32-percent maximum tax rate) to nonequity listed options and dealers' equity options. Rules are provided to prevent limited partners (or entrepreneurs) of an options dealer from recognizing gain or loss from equity options as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss.

Definition of listed option contract

The House bill defines a listed option as any option (other than a right to acquire stock from the issuer) that is traded on (or subject to the rules of) a qualified board of trade or exchange. A qualified board of exchange is a national securities exchange registered with the SEC, a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or any other exchange or board of trade that the Secretary determines has rules adequate to carry out the purposes of the relevant statutory provisions. The bill contemplates that, as a condition of designating an exchange or board of trade, the Secretary may require information reporting consistent with the rules of section 6045 (relating to returns of brokers).

Equity listed options

An equity option is defined to mean any option to buy or sell stock, and any other option the value of which is determined by reference to an index of stocks of the type that is ineligible to be traded on a commodity futures exchange (e.g., an option contract on a sub-index based on the price of nine hotel-casino stocks). The definition of equity option excludes options on broad-based stock indexes (such as the Standard & Poor's 500 index) and options on stock index futures; thus, these options fall within the definition of nonequity options (discussed below). Holders of equity options (other than dealers) remain subject to the general rules for the taxation of options, including the loss-deferral rule.

Nonequity listed options

A nonequity option is defined as any listed option that is not an equity option. Under the bill, any holder of a nonequity option (whether an options dealer or an investor) is treated as if the option were disposed of at year-end for a price equal to its fair market value, and any gain or loss is taxed as if it were 60-percent long-term and 40-percent short-term (just as the holders of RFCs are treated). All options on RFCs are, by definition, nonequity options under the bill.

Treatment of dealer options

The House bill changes the claimed present-law treatment of options market makers and codifies present law with respect to professional commodity traders by providing that both categories of traders are treated as buying and selling capital assets, except to the extent that an option or future is acquired to hedge property that would generate ordinary income or loss. An options dealer is defined as any person who is registered with the SEC and an appropriate national securities exchange as a market maker or specialist in listed options. Under the bill, an options dealer would not recognize ordinary income or loss with respect to his stock and securities transactions, unless the taxpayer is a dealer in stock and securities under general Federal income tax rules (determined without regard to whether options in such property produce ordinary income or loss).

In addition to nonequity options, which are marked-to-market in the hands of all holders, equity options held by options dealers are also subject to the mark-to-market rule and 60/40 treatment. To prevent dealers from passing through 60/40 treatment of equity options to limited investors, the bill provides that 60/40 treatment does not apply to gain or loss on dealer equity options that is allocable to limited partners or limited entrepreneurs (regardless of the percentage of such gain or loss that is so allocated).

Hedging exemption

In general, the hedging exemption under present law remains available. However, the House bill limits the ability of certain taxpayers to deduct losses from hedging transactions where the hedging exemption is claimed.

Under the House bill, an options dealer who is a dealer in the underlying property is treated the same as a commodity trader who is a dealer in the cash commodity. Thus neither the loss-deferral rule nor the mark-to-market rule applies to an option or an RFC that is identified as a hedging transaction where gain or loss on both the option or the RFC and the underlying property would be ordinary income or loss (as determined under the bill).

For certain taxpayers, the House bill limits the deductibility of any loss on a hedging transaction to the taxable income (determined without regard to such loss) derived from the conduct of the trade or business to which the hedging transaction relates. This provision is intended to prevent the passthrough of ordinary losses to limited investors from transactions engaged in by traders who qualify as dealers in the underlying property.

The limitations on the deductibility of hedging losses apply to the following taxpayers: (1) any taxpayer who enters into a hedging transaction relating to stock or securities, (2) any individual, and (3) any corporation if at any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned by five or fewer individuals. The term "hedging loss" is generally defined as the excess of (1) the allowable deductions for the taxable year attributable to hedging transactions (determined without regard to the rule limiting hedging losses), over (2) income received or accrued by the taxpayer during such taxable year from such transactions. However, an exception to the limitations on losses is provided for economic losses. The bill provides that the limitations do not apply to a hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions (including gains from hedged property) as of the close of the taxable year. The "aggregate unrecognized gain" is defined as that term is used for purposes of the straddle rules: (1) the amount of gain that would be taken into account with respect to property if such property were sold on the last business day of such taxable year at fair market value, plus (2) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

Cash-settlement options

For cash-settlement options that are not subject to the mark-to-market rule (e.g., narrow-based options on stock indices), the House bill amends section 1234 to clarify that gain or loss on the sale, exchange, lapse, or exercise of the option is capital gain or loss with respect to grantors or holders. For purposes of the bill, a cash-settlement option is defined as any option which on exercise settles in (or could be settled in) cash or property other than the underlying property. As under present law, the receipt of cash on exercise of a cash-settlement option is a taxable event.

Regulatory authority relating to mixed straddles

The House bill broadens the scope of Treasury's regulatory authority to prescribe rules for mixed straddles. The bill requires the Secretary to prescribe such regulations with respect to gain or loss on straddle positions as may be necessary to carry out the purposes of the loss-deferral rule, within six months from the date of enactment. To the extent consistent with this purpose, the regulations should include rules applying the principles of the wash sale rule and the short-sale rule.

Effective dates

General rules

In general, the provision repealing the exemption from the straddle rules for stock options and stock applies to positions established after October 31, 1983. However, the application of the straddle rules to offsetting position stock is effective for positions established on or after May 23, 1983.

The special rule for the treatment of gain where the taxpayer is the grantor of an option to buy stock applies to positions established after March 1, 1984.

The provisions extending the mark-to-market rule to nonequity options and dealer equity options generally apply to positions established after the date of enactment. However, with respect to commodity options, the amendments made by the bill apply to positions established after October 31, 1983.

The provision clarifying the treatment of cash-settlement options applies to options purchased or acquired after October 31, 1983. The amendments to the hedging exemption apply to taxable years beginning after December 31, 1984.

Elections

The mark-to-market rules may be applied to nonequity options and dealer equity options on or before the general effective dates under either of two elections provided by the bill.

Positions held on the date of enactment.—Taxpayers can elect to apply the mark-to-market rule to nonequity listed options or dealer options that they held on the date of enactment. The election must cover all such positions held by the taxpayer on the date of enactment.

Positions held before the date of enactment.—In lieu of the election described above, taxpayers can elect to apply the mark-to-market rule to all positions held by the taxpayer during the taxable year that includes the date of enactment (the "transition year"). If the taxpayer makes this full-year election, all nonequity listed options and dealer options held at any time during the transition year must be marked-to-market.

With respect to stock options, any tax liability for the transition year which is attributable to appreciation in such options can be paid in two to five equal annual installments. Interest is charged on any unpaid installments of tax that are still outstanding after the due date for the first installment.

Senate amendment

Repeal of exception for certain stock and stock options

Under the Senate amendment, an interest in stock is included within the straddle rules only if (1) it is offset by an option to buy or sell actively traded stock, or (2) it is stock in a corporation formed or availed of to take positions in personal property offsetting positions held by any shareholder. The hedging exemption is applicable, under the Senate amendment, to such offsetting position stock held by a member of the same affiliated group (as defined in sec. 1504(a)) as the taxpayer.

Under the Senate amendment, the two benchmark standard applicable to certain qualified covered calls applies where the strike price is exactly $50 (as distinguished from over $50 in the House bill). The Senate amendment also eliminates the limitation of a qualified covered call to one with a strike price not less than 85 percent of the applicable stock price. The Senate amendment reduces the amount of costs of carrying a position that is part of a straddle that is required to be capitalized by dividends on stock included in a straddle, with respect to positions established after the date of enactment.

The repeal of the exception from the straddle rules for stock (other than offsetting position stock) and exchange traded stock options applies to positions established on or after January 1, 1984, under the Senate amendment. The Senate amendment also defers the application of the identification requirement for hedging transactions applicable to stock and stock options until 60 days after the date of enactment.

Extension of the mark-to-market rule

The Senate amendment defines equity options more broadly than the House bill, to include all options on stock indexes. Thus, investors in options on stock index RFCs do not receive mark-to-market and 60/40 treatment under the Senate amendment.

The Senate amendment extends the election to pay in 2 to 5 annual installments the additional tax for the taxable year including the date of enactment derived from prior year appreciation in stock options. Under the Senate amendment, tax attributable to appreciation in stock offset by a stock option and which under present law would result in ordinary income is subject to the election. Under the Senate amendment, regulations as applied to a position in a mixed straddle are not to be effective with respect to a position established before January 1, 1984.

Limitation on hedging losses

Under the Senate amendment, the limitation of net hedging losses to income from the trade or business in which the hedge was entered into applies only to limited partners or limited entrepreneurs.

Exercise of options on regulated futures contracts

Under the Senate amendment, it is explicitly provided that gain or loss is recognized on the exercise of an option on an RFC. This rule is applicable with respect to options purchased or granted after October 31, 1983.

Short sale against the box

The Senate amendment provides that rules similar to those requiring the deferral of losses from disposing of stock in wash sales (sec. 1091) will apply to require the deferral of losses incurred on closing short sale transactions where the taxpayer sells the stock or enters into a second short sale within the period beginning 30 days before and ending 30 days after the closing of the short sale.

Regulatory authority with respect to identification requirement

The Treasury is authorized under the Senate amendment to impose earlier identification deadlines under certain provisions requiring identification of a position by the close of the day on which the position is acquired. This requirement would be imposed by regulation and would apply to the hedging exemption, the mixed straddle election, identified straddles, and, in the case of securities dealers, the identification of securities held by investment. The Treasury could also provide by regulation for a method of identification other than on the taxpayer's records. It is contemplated that any additional identification requirements for the hedging exemption that may be imposed under the regulations will be consistent with the intended application of the identification rule for the hedging exemption expressed in the report of the Senate Finance Committee in 1981 as follows:

> Taxpayers, such as banks or securities dealers, who may conduct thousands of hedging transactions to hedge property held or to be held in their accounts, may identify such accounts as hedged accounts without marking individual items as hedges or hedged property, provided such accounts deal only with ordinary income (or loss) items. S. Rep. No. 97-144, 97th Cong., 1st Sess. 151 (1981).

Treasury would have the authority to require earlier identification only for particular classes of taxpayers, like tax shelters, or to exempt particular classes of taxpayers, like bona fide government securities dealers.

Conference agreement

The conference agreement follows the House bill with several modifications.

1. Repeal of exception for certain stock and stock options

The conference agreement modifies the definition of a qualified covered call option with respect to the restriction that limits the lowest qualified benchmark to 85 percent of the applicable stock price by making it applicable only to stock with an applicable stock price of $25 or less. With respect to stock with an applicable stock price of $150 or less, the conference agreement adopts an overall limitation restricting the lowest qualified benchmark otherwise determined to the amount which is $10 below the applicable stock price. For purposes of the loss-deferral rule, but not for purposes of the limitations on interest and carrying costs (sec. 263(g)) and the short sale and wash sale rules in section 1092, under the conference agreement a covered call option will not be treated as qualified, if gain from the disposition of the stock to be purchased under such option is included in gross income in a taxable year subsequent to the year in which the option is closed and the stock is not held for more than 30 days following the date on which the option is closed. In determining whether this holding period requirement is satisfied, rules similar to those applicable in determining whether a taxpayer is eligible for the dividend received deduction under section 246(c)(3) and (4) will apply (without regard to the exception to those rules for a qualified covered call option).

The conference agreement modifies the House bill and Senate amendment by excluding options written by options dealers in the ordinary course of their activity of writing options from the definition of a qualified covered call option. The conference agreement also makes a technical amendment pursuant to which a qualified covered call option constitutes a position within the meaning of sec. 1092(d)(2) but a straddle consisting only of stock and a qualified covered call is not treated as a straddle for purposes of sec. 1092 and sec. 263(g).

Offsetting positions, one of which is actively traded stock or an interest in such stock and one of which is a position in substantially similar or related property (other than stock) as determined under regulations. constitute a straddle subject to the loss deferral rule and other straddle rules, under the conference agreement. This rule is in lieu of the House bill's more expansive application of the straddle rules to stock and is in addition to the Senate bill's rule that eliminates the exemption only for a straddle consisting of stock and an option. Application of the straddle rules to actively traded stock and exchange traded stock options applies, as under the Senate amendment, to positions established after December 31, 1983. However, the conferees intend that the regulations defining positions that are substantially similar or related to stock held by the taxpayer will apply to straddles described in the following paragraph only for positions established on or after March 1, 1984, and for positions not described in the following paragraph only on a prospective basis.

A straddle consisting of stock and substantially similar or related property includes offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related. It also includes a short position in a stock index RFC (or alternatively an option on such an RFC or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the index). Identical results will be applicable under the provision reducing the holding period of stock held by a corporation for purposes of the dividend received deduction where the taxpayer has diminished its risk of loss by holding another position in substantially similar or related property. However, stock offset by another position (other than an option) in substantially similar or related stock, which may result in a reduction in a corporate taxpayer's holding period for purposes of the dividend received deduction, does not constitute a straddle.

The conference agreement adopts the Senate amendment's extension of the hedging exemption to offsetting position stock of a member of the same affiliated group (as defined in section 1504(a)) as the taxpayer.

Under the conference agreement, any loss realized from a qualified covered call option granted by the taxpayer which has a strike price below the applicable stock price will be long-term capital loss if gain from a sale or exchange of the stock at the time such loss is realized would be long-term. In addition, the holding period for the stock subject to such option shall not include any period during which the taxpayer is the grantor of the option. It is anticipated that stock option losses and the holding period of stock will also be subject under regulations to sec. 1233(b) and (d) principles as applied to straddles consisting of stock and stock options. However, straddles consisting of stock and qualified covered call options to which the straddle rules are inapplicable will be affected only by the statutory rules under discussion. These rules are in lieu of the provision in the House bill and Senate amendment which would convert long-term gain from the sale or exchange of stock to short-term, to the extent of short-term losses realized on such options. The conferees believe that these rules reduce record-keeping requirements for taxpayers relative to a provision recharacterizing gain on sale of the stock. These rules are applicable to positions established after June 30, 1984.

The conference agreement extends the identified straddle rules of sec. 1092(a)(2) to straddles consisting entirely of section 1256 contracts. Thus, such a straddle which satisfies the definition of an identified straddle under section 1092 as amended by the bill will not cause sec. 263(g) or sec. 1092(a) to apply to any position by treatment of part or all of such straddle as also including positions not part of the identified straddle.

The identification requirement applicable to the hedging exemption, as under the Senate amendment, will not apply to transactions in stock or stock options until 60 days after the date of enactment.

2. Mark-to-market and 60/40

The conference agreement clarifies the provision disqualifying from capital gain or loss status options and RFCs of options dealers and commodity traders held to hedge ordinary income or loss property, by limiting disqualification to cases where a loss from the property would be an ordinary loss to the taxpayer. Thus, for example, ordinary income resulting solely from application of the new market discount rules added by the bill, will not affect the capital gain or loss status of an offsetting option.

The conference agreement eliminates the reference to registration with the SEC in the definition of "options dealer" as contained in the House bill and Senate amendment since there is no such registration requirement for options dealers. Further, the conferees intend that the capital gain or loss status of options traded in the normal course of an options dealer's activity in trading options is to be determined without regard to the identification requirement of sec. 1236.

The conferees wish to clarify that the hedging exception to the capital asset status of section 1256 contracts in sec. 1256(f)(4)(B), as added by the bill, is not intended to limit the scope of the hedging exemption of present law, so that, a section 1256 contract may hedge property to be acquired or obligations to be incurred to the extent those results are obtained under section 1256(e).

Several stock index options are currently traded for which there has been no designation by the CFTC for futures trading in the same index. These options held by investors are not subject to mark-to-market and 60/40 treatment until the Secretary of the Treasury determines that they meet the requirements of law for such a CFTC designation. The conferees expect such designations will have prospective effect only. Thus, the conferees urge the Treasury Department to take prompt action to determine the status of these options. The conference agreement provides for the extension of mark-to-market and 60/40 treatment, as well as the covered call exception, to options traded on a market other than a board of trade or exchange if the Secretary of the Treasury determines that such market has rules adequate to carry out the purposes of the provisions governing the treatment of section 1256 contracts. The Secretary is also to determine whether persons trading in such market qualify as options dealers.

Under the conference agreement, the rule that makes 60/40 treatment inapplicable to gains and losses with respect to dealer equity options applicable to limited partners and limited entrepreneurs is clarified by providing that such gains and losses are treated as short-term capital gains and losses.

Clarifying and technical corrections are made to the definition of "equity option" under the conference agreement.

For stock option market makers electing mark-to-market and 60/40 treatment for all positions held during the taxable year which includes the date of enactment, the conference agreement adopts the Senate amendment's extension of the election to pay the tax resulting from prior years' appreciation in stock options in 2 to 5 annual installments to the tax resulting from unrealized appreciation in stock, and limits the election to gain from stock and options which would be ordinary income to the taxpayer if the stock and options were disposed of by the taxpayer on the last day of the taxable year preceding the taxable year which includes the date of enactment.

3. Treatment of gains and losses of options and commodities dealers as earned income and for certain subchapter S purposes

Under the conference agreement, gains and losses derived in the ordinary course of trading in section 1256 contracts and property related to such contracts (e.g., stock used to hedge options) are defined as earnings from self-employment for purposes of applying the tax on self-employment income and the rules relating to contributions to self-employment plans. This treatment is extended only to options dealers, and commodity dealers, as defined in the bill. A commodity dealer is any person registered with a domestic board of trade designated as a contract market by the CFTC who buys or sells options or RFCs subject to the rules of such board. This treatment applies to taxable years beginning after the date of enactment except that for options dealers electing 60/40 and mark-to-market rules for the taxable year which includes the date of enactment, it applies for such taxable year. The conferees intend that no inference be made as to whether options dealers and commodity dealers be viewed as engaged in a trade or business in connection with their transactions in section 1256 contracts as a result of the application of self-employment taxes to such persons.

Under present law, a tax is imposed on corporations making a subchapter S election in certain cases where net capital gain exceeds 50 percent of the corporation's taxable income. Further, when an election is made by a corporation which has subchapter C earnings and profits, it may be taxable on a portion of its passive investment income and, in certain cases, the election may be terminated. To facilitate subchapter S elections by options and commodities dealers, the conference agreement excepts gains and losses with respect to section 1256 contracts and related property derived in the normal course of an options or commodities dealer's transactions in options or commodities from net capital gain subject to tax under section 1374 and from passive investment income as defined in section 1362(d)(3).

The conference agreement provides that an election to be an S corporation made by a commodities dealer or options dealer made within 75 days after the date of enactment of the bill will be effective for the taxable year which includes the date of enactment without regard to the requirement in sec. 1362(b) requiring the election to be made by the 15th day of the third month of the year.

4. Capitalization of interest and carrying costs and other rules

Interest and carrying costs of a straddle position that are required to be capitalized are reduced, as under the Senate amendment, by dividends on stock included in a straddle. The conference agreement provides that this reduction is limited to the portion of the dividend included in income after allowance of the dividends received deduction. The conference agreement also provides for additional reductions with respect to market discount and acquisition discount included in income under secs. 1276 and 1281 as added by the bill. New sec. 263(h) added by the bill, which disallows the deduction of short sale expenses in certain cases, section 1277 added by the bill, which requires the deferral of net direct interest on indebtedness with respect to market discount bonds, and section 1282 as added by the bill, which requires the deferral of interest on indebtedness with respect to short-term obligations, are to be applied before the application of the rule requiring the capitalization of costs with respect to straddle positions. The conference agreement amends the provision of present law prescribing capital gain or loss treatment with respect to certain contract terminations to exclude from its application (effective as if such exclusion had been included as part of such provision as adopted in ERTA) the retirement of any debt instrument (whether or not through a trust or other participation arrangement, such as a mortgage pass-through certificate).

5. Mixed straddle regulations

The conference agreement extends the regulatory authority, with respect to mixed straddles, to include as a mixed straddle positions not described as such in present law section 1256(d)(4). In addition the regulatory authority is extended to provide rules governing the application of sec. 263(g).

In addition, the conference agreement prescribes that the regulations will provide rules that will apply in lieu of the application of section 1233(d) principles to mixed straddles if the taxpayer so elects. Under these rules, a taxpayer may either (i) offset gains and losses from positions which are part of mixed straddles by separately identifying each mixed straddle to which such treatment applies or (ii) establish a mixed straddle account with respect to a class of activities for which gains and losses will be recognized and offset on a periodic basis. These two new elections will be in addition to the mixed straddle election of present law. Under either of the new alternatives, 60/40 treatment will apply only to net gain or loss from the straddle transactions and only to the extent attributable to section 1256 contracts. Under the rules applicable to a mixed straddle account, not more than 50 percent of any net gain from the account may be treated as long-term capital gain and not more than 40 percent of any net loss from the account may be treated as short-term capital loss.

It is intended that regulations adopting the principles of section 1233(d), authorized under present law for straddles, will result in recharacterizing short-term losses realized from mixed straddle positions not subject to section 1256 as 60/40 losses in the case of mixed straddles that are not either identified or subject to the account described in the preceding paragraph. Under present law, a mixed straddle may also produce 60/40 losses on the section 1256 contracts and short-term gain on the other positions included in the mixed straddle, effectively converting long-term gain realized from transactions unrelated to the straddle to short-term. Taxpayers can avoid this result under present law by making a mixed straddle election foregoing marking-to-market and 60/40 treatment for their section 1256 contracts included in a mixed straddle.

The regulations prescribed by the conference agreement will permit taxpayers to avoid the loss recharacterization rule that results from applying sec. 1233(d) principles while retaining favorable treatment for mixed straddle net gains derived from section 1256 contracts.

Straddle-by-straddle identification

It is intended that, in applying the regulations to separately identified mixed straddles, the determination by the taxpayer of what constitutes a mixed straddle generally will be accepted by the Internal Revenue Service if the taxpayer has adopted a reasonable and consistently applied method of identifying straddle positions which clearly reflects income in the absence of circumstances indicating that the taxpayer has not properly identified straddles pursuant to such method.

The present law election to exclude section 1256 contracts from 60/40 and mark-to-market treatment may be exercised only if all positions included in a mixed straddle are identified not later than the day on which the first section 1256 contract so included is acquired. It is intended that the offset for gains and losses from mixed straddles under the regulations prescribed under the conference agreement may apply in cases where the taxpayer holds either section 1256 contracts or other positions before a mixed straddle is established. In such cases it is intended that the regulations will require the pre-straddle gains and losses accrued at the time the mixed straddle is created to be recognized at such time. Such gain or loss from positions not subject to sec. 1256 will be short-term or long-term, depending on the taxpayer's holding period when the mixed straddle is created, and gain or loss from pre-existing section 1256 contracts will receive 60/40 treatment. In all such cases, appropriate basis adjustments will be made to exclude such pre-existing gains and losses from the mixed straddle offsetting rules.

If a mixed straddle is terminated without disposing of all positions, it is contemplated that the regulations will require recharacterization of gains and losses from some closed positions. For example, if the taxpayer closes a section 1256 contract at a loss of $10 which is offset by an unrealized gain of $10 on an offsetting position not subject to section 1256, the loss will be recharacterized as short-term and will be deferred under sec. 1092 to the extent there continues to be unrecognized gain on the offsetting position at year-end. Under the offsetting position rules, if the loss on the section 1256 contract in this example were $12, the additional $2 that is not offset by unrealized gain would receive 60/40 treatment and would be recognized, assuming it is not offset by unrecognized gain in the offsetting position at year-end. Similarly, if the taxpayer realized a $12 gain on closing a section 1256 contract offset by an unrealized $10 loss on an open offsetting position not subject to section 1256, the rule would recharacterize $10 of such gain as short-term, which would be recognized currently since section 1092 does not defer gains. The remaining gain of $2 would also be recognized and receive 60/40 treatment. The taxpayer could avoid tax on the $10 gain converted to short-term by closing out the offsetting position at a $10 loss before year-end.

If a mixed straddle is terminated by closing out positions other than the section 1256 contracts, it is contemplated that the gain or loss will be offset by the loss or gain with respect to the section 1256 contracts as of the time such positions are closed and any net gain or loss attributable to the positions other than section 1256 contracts will be short-term. Losses from closing positions other than section 1256 contracts generally will not be deferred by sec. 1092 but instead will be netted against any offsetting gain on the section 1256 contracts included in the mixed straddle to the extent of such gain at the time the loss position is terminated. Adjustments to subsequent gain or loss with respect to section 1256 contracts included in a mixed straddle and retained following its termination will be made as under sec. 1256(a)(2) to reflect the portion of such gain or loss absorbed under the offsetting position rules. For example, if the taxpayer closes a position other than a section 1256 contract at a $12 gain and, on the date of disposition, there is a $10 loss determined by marking-to-market the offsetting section 1256 contract, the taxpayer will have a $2 short-term gain. If the taxpayer retains the section 1256 contract at year-end and it is marked-to-market at the same price that resulted in the offsetting $10 loss, no further gain or loss is recognized.

The holding period of positions other than section 1256 contracts included in a mixed straddle will not commence until the mixed straddle is terminated. In this regard, all post-straddle period gain or loss, as to amount and treatment as short-term or long term, is to be determined without regard to gain and loss attributable to the straddle period.

For mixed straddles with respect to which both section 1256 contracts and offsetting positions remain open at year-end, gain and loss attributable to positions that are not section 1256 contracts are not recognized currently. However, gains on section 1256 contracts are recognized under section 1256 and, to the extent offset by unrecognized losses on positions that are not section 1256 contracts, will be recharacterized as short-term gains under the regulations. Similarly, year-end losses on open section 1256 contracts, to the extent offset by unrecognized gains on positions that are not section 1256 contracts, will be recharacterized as short-term losses and will be deferred under section 1092.

Mixed straddle account election

The mixed straddle account rules will accommodate taxpayers who, with respect to a class of trading activities, have such a large volume of transactions that identification of specific mixed straddles is impractical. The account rules will accommodate, for example, market makers in options on XYZ company stock who also have long and short non-option positions in XYZ company stock in substantial volume. If the taxpayer is also a market maker in options on ABC company stock, it is intended that a second account be established with respect to such options and the underlying stock. The conferees intend that the Treasury have considerable flexibility in determining the nature of these accounts, and in specifying the classes of activities for which separate accounts must be established.

All gains and losses on positions in the account are to be determined and offset on a periodic basis which may be a daily or less frequent basis. Those positions not closed during the period are to be marked to market as of the close of the period. In determining how frequently positions in the account are to be marked-to-market and gains and losses are to be netted, the Secretary is to take account of recordkeeping and other administrative burdens that would be imposed on taxpayers.

Gains and losses from positions that are not section 1256 contracts are to be netted for the period and gains and losses from section 1256 contracts for the period are separately netted. The gain or loss from the positions that are not section 1256 contracts are then offset against the loss or gain from the section 1256 contracts. Overall net gain or loss for the period attributable to positions not subject to section 1256 constitutes short-term gain or loss. Overall net gain or loss for the period attributable to section 1256 contracts constitutes 60/40 gain or loss. Net short-term gain and net long-term loss resulting from applying the rules to any period retain their character without regard to the results derived from applying the rules to other periods within the taxable year. If, as a result of applying these rules, over 50 percent of the aggregate net gain for the taxable year from the account is long-term, the excess over 50 percent will be converted to short-term gain. Similarly, if over 40 percent of the aggregate net loss for the taxable year from the account is short-term, the excess over 40 percent will be recharacterized as long-term loss.

Gains and losses with respect to positions entering the account that have accrued as of the date the account is established will be recognized at that time and treated as long-term or short-term depending on the taxpayer's holding period as of that date, or as 60/40 gain or loss for section 1256 contracts. Appropriate basis adjustments will be made to reflect such gains and losses. Similar rules will apply where positions are transferred to and from the account.

It is intended that, under the regulatory rules prescribed in accordance with the conference agreement, the Treasury will have broad authority to place positions held by the taxpayer in the account and to exclude positions from the account, and otherwise to prescribe standards with respect to the account to insure that income is clearly reflected, and the purpose of the mixed straddle rules is carried out.

Effective date of regulations

The conference agreement adopts with a technical modification the Senate amendment's prohibition against applying the regulations under section 1092(b) to mixed straddles established prior to January 1, 1984. Under the House bill and Senate amendment, regulations under section 1092(b) (including regulations relating to mixed straddles) are to be prescribed within 6 months after the date of enactment of the bill. The conference agreement modifies this requirement so as to apply to the initial regulations. The conferees also intend that the regulations providing for netting of identified mixed straddles and for a mixed straddle account will apply to any taxable year, if the taxpayer elects, to the extent that the amendments applicable to section 1256 contracts under the bill apply for such taxable year under the effective date provisions of section 102 (f) and (g) of the bill.

6. Limitation on losses from hedging transactions

The conference agreement adopts the Senate amendment's restriction on the application of the rule limiting net hedging losses to income from the trade or business in which the hedging transaction was entered into to losses allocable to limited partners and limited entrepreneurs. The taxable income determined without regard to hedging transactions is to be separately computed for partners and S corporation shareholders with such limited interests. The conference agreement adopts a clarifying amendment limiting unrecognized hedging gains resulting in a disallowance of hedging losses to those relating to the trade or business in which the hedging losses were incurred.

7. Options on section 1256 contracts

The conference agreement adopts the Senate amendment providing that gain or loss is recognized on the exercise of an option on a section 1256 contract. Under this provision, if an option on a section 1256 contract is excluded from mark-to-market and 60/40 treatment as a result of a mixed straddle election, the treatment of gain or loss resulting from exercise of the option will be determined under the rules of section 1234(a) and (b). In cases in which an option on a section 1256 contract is not accorded 60/40 treatment (because, for example, a mixed straddle election was made with respect to the option), gain or loss will not be accorded 60/40 treatment to either holders or grantors of the options. Thus, the conferees reject the assertion that the "character" of property underlying an option on a section 1256 contract includes the deemed holding period provided to section 1256 contracts. Similarly, the grantor's obligation under an option on a section 1256 contract will not be treated as a section 1256 contract if the option is not directly accorded section 1256 contract treatment.

8. Wash sale rules to apply to losses on certain short sales and other transactions

The conference agreement adopts the Senate amendment extending the wash sale rule to a loss realized on the closing of a short sale if, within 30 days before or after such closing, the taxpayer sells, or enters into another short sale of, substantially identical stock or securities.

Under present law, the wash sale rule does not apply, in the case of taxpayers other than corporations, if the loss is incurred in a trade or business while, in the case of a corporation, it is inapplicable only if the taxpayer is a dealer in stocks or securities and the loss is sustained in a transaction made in the ordinary course of such business. Under the conference agreement the corporate exclusion is made applicable to all taxpayers so that the wash sale rule is inapplicable only if the taxpayer is a dealer in stocks or securities and the loss is sustained in a transaction made in the ordinary course of the taxpayer's business of dealing in stocks and securities.

These amendments apply to losses sustained on short sales occurring after the date of enactment. The limitation of the exemption to dealers in stocks and securities applies to sales after December 31, 1984.

9. Time for identification by taxpayers of certain transactions

The conference agreement adopts the Senate amendment providing regulatory authority to require identification earlier than the close of the day on which an acquisition is made with respect to identified straddles, mixed straddles, the hedging exemption, and securities held for investment by a dealer. The conference agreement restores the present law requirement applicable to identified straddles that the straddle must be identified on the taxpayer's records. This provision applies to positions entered into after the date of enactment.

10. Treatment of losses from pre-1981 straddles

Present law

Prior to the adoption of rules relating to straddles and marking RFCs to market by the Economic Recovery Tax Act of 1981 (ERTA), it was unclear whether a claimed loss was allowable on the disposition of a position in a straddle where offsetting unrecognized gain on another position or positions included in the straddle was deferred. In Revenue Ruling 77-185, 1977-1 C.B. 48, the Internal Revenue Service ruled that a loss claimed on disposing of legs of a silver futures straddle where the straddle was continued was not deductible because there was no closed and completed transaction and the disposition represented no real economic change. Similar arguments were rejected by the Tax Court in *Smith* v. *Commissioner of Internal Revenue*, 78 T.C. 350 (1982) although the loss found to have been incurred in that case was disallowed because, under the facts of the case, it was not incurred in a transaction entered into for profit. The Internal Revenue Service is continuing to litigate the allowability of pre-1981 straddle losses in accordance with the position adopted in Rev. Ru. 77-185 and is challenging such losses where claimed by commodity dealers as well as by investors with isolated transactions such as those involved in the *Smith* case.

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary of the Treasury to report to the Committee on Finance and the Ways and Means Committee before October 1, 1984, with respect to progress made in reducing the backlog of cases involving the treatment, prior to ERTA, of regulated futures contracts.

Conference agreement

The conferees believe it is inappropriate to prolong the uncertainty with respect to the treatment of losses claimed with respect to straddle positions for periods prior to 1981. Accordingly, in lieu of the Senate amendment's requirement of a report with respect to pre-1981 cases, the conference agreement provides that a loss on the disposition of a position entered into before 1982 will be allowed, except to the extent nonrecognition is required under any applicable provision, if the position is part of a transaction entered into for profit. This treatment applies where the position is part of a straddle as defined in section 1092 as in effect on the day after the date of enactment of

ERTA (as well as a straddle consisting entirely of RFCs), and is one to which the provisions of Title V of ERTA did not apply. The loss generally will be allowed for the taxable years in which the position is disposed of. Rules affecting the period within which the loss is recognized, and its treatment as long-term or short-term, such as sec. 1233 or sec. 1234, are to be applied without regard to the fact that the position is part of a straddle.

The provision does not apply to syndicates, as defined in sec. 1256(e)(3)(B). In determining whether the position is part of a transaction entered into for profit, it is intended that the provision be applied by treating the condition as satisfied if there is a reasonable prospect of any profit from the transaction.

In the case of commodity dealers and persons actively engaged in investing in RFCs, the provision is to be applied by presuming that the position is held as part of a transaction entered into for profit unless the Internal Revenue Service establishes to the contrary. In determining whether a taxpayer is actively engaged in trading in RFCs with an intent to make a profit, a significant factor will be the extent of transaction costs. If they are sufficiently high relatively to the scope of the taxpayer's activities that there is no reasonable possibility of a profit, the presumption will be unavailable. RFCs for purposes of applying the presumption are regulated futures contracts as defined in section 1256(b) before its amendment by the bill.

For purposes of the provision, the term "commodities dealer" has the same meaning as such term in the amendments by the bill providing for application the self-employment income tax to such persons.

I. Foreign Provisions

1. Maintaining the source of U.S. source income

Present law

All U.S. source income of U.S. persons is subject to U.S. tax. The United States also subjects foreign source income of U.S. persons to U.S. tax, but allows a credit for foreign taxes paid on foreign source income. U.S. taxpayers can convert the source of some U.S. source income by paying interest, insurance premiums, or other amounts to a foreign corporation. When the foreign corporation distributes dividends or pays interest to its U.S. owners, generally the dividends or interest are foreign source income. The U.S. owners may pay no U.S. tax and no foreign tax on this artificially converted foreign source income. The same conversion of U.S. to foreign source income can occur when a controlled foreign corporation earns tax-haven-type income that causes an inclusion in the income of its U.S. shareholders (under subpart F).

House bill

For purposes of the foreign tax credit limitation, when 50-percent U.S.-owned corporations whose U.S. source income (including U.S. business income) is 10 percent or more of gross income over a 3-year period pay interest or dividends to a U.S. taxpayer, the portion of the payment attributable to U.S. source income will be treated as U.S. source income. The same result will apply to inclusions under subpart F. The House bill applies to income earned by paying corporations after the date of enactment, but generally does not apply to interest earned on term obligations held on March 1, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill, but it specifies a pro rata method of calculating amounts attributable to U.S. source income. Its effective date is generally the same as the House bill. However, two transitional rules are provided. First, the amendment exempts interest earned by foreign finance subsidiaries until 1992 if the interest arises from loans whose source of funds is (1) debt outstanding on March 7, 1984 (or outstanding on March 31, 1984, pursuant to a binding commitment on March 7) or (2) its equity on March 31, 1984. Second, for corporations other than foreign finance subsidiaries, the amendment does not apply to interest earned on term obligations held on March 7, 1984.

Conference agreement

The conference agreement generally follows the House bill, with substantial technical modifications. The effective date rules follow the Senate amendment, with technical modifications.

Explanation of rules

The conference agreement expressly extends the provision to foreign personal holding company inclusions (Code sec. 551). The conferees saw no reason to allow conversion of U.S. source income to foreign source income through the use of this class of incorporated pocketbooks.

The conference agreement eliminates the 3-year base period provided in the House bill and the Senate amendment; the provision operates on a year-by-year basis under the conference agreement. The agreement makes this change because the 3-year base period could result in too little or too much U.S. source income.

The conference agreement provides separate rules for application of the provision to (1) subpart F and foreign personal holding company income inclusions, (2) interest, and (3) dividends. The conference agreement provides that subpart F inclusions (Code sec. 951(a)) and foreign personal holding company inclusions will be treated as derived from U.S. sources to the extent attributable to U.S. source income of the U.S.-owned foreign corporation with respect to which the inclusions are required.

In general, interest paid or accrued by a U.S.-owned foreign corporation during a taxable year will be treated as derived from U.S. sources to the extent properly allocable (under regulations prescribed by the Secretary) to U.S. source income of the foreign corporation for that taxable year. Interest is to be allocated for this purpose using the same method used (pursuant to Code section 954(b)(5)) to compute the amount of any subpart F or foreign personal holding company inclusion made with respect to the foreign corporation. The conference agreement applies this rule to interest paid or accrued to a (10-percent) U.S. shareholder of the foreign corporation (Code section 951(b)) or to a person related to such a shareholder (Code section 267(b)). In addition, the Secretary may prescribe regulations providing that interest paid or accrued to any person, whether or not the person is a U.S. shareholder, will be subject to the provision. Such regulations might be necessary in the case of U.S.-owned foreign corporations only some of whose U.S. owners are 10-percent U.S. shareholders.

A portion of any dividend paid or accrued by a U.S.-owned foreign corporation will be treated as derived from U.S. sources on the basis of a U.S. source ratio. The "U.S. source ratio" of a dividend equals the earnings and profits from U.S. sources for the taxable year out of whose earnings and profits the dividend was paid or accrued, divided by the total earnings and profits for that taxable year. Thus, while the conference agreement eliminates the 3-year base period, in determining whether a dividend will be treated as derived from U.S. sources the source of a prior year's earnings and profits will control to the extent that the dividend is paid out of that prior year's earnings and profits.

The provision applies for purposes of the foreign tax credit limitation only. In addition, the conference agreement makes clear that the provision applies only to subpart F and foreign personal holding company inclusions, dividends, and interest that would otherwise be treated as derived from foreign sources.

The conference agreement modifies the exception provided in the House bill for inclusions with respect to, and payments received from, U.S.-owned foreign corporations with small amounts of U.S. source income. Under the conference agreement, the exception will apply to dividends and interest only. It will not apply to subpart F and foreign personal holding company inclusions since these provisions do not operate absent threshold amounts of tax-haven type or passive income. Under the conference agreement, the exception will apply when a U.S.-owned foreign corporation has earnings and profits and less than 10 percent of the earnings and profits are attributable to U.S. sources; under the House bill, by contrast, the exception would have applied when less than 10 percent of a U.S.-owned foreign corporation's gross income was from U.S. sources. The agreement adopts this change because of the possibility that taxpayers could defeat the purpose of the provision if it contained a gross income test by earning U.S. source gross income (such as interest) offset by few expenses and sheltering that income with foreign source gross income fully or nearly offset by expenses. In addition, under the conference agreement, the 10-percent test will be applied to earnings and profits on a year-by-year basis rather than, as under the House bill, to income in a 3-year base period. To prevent manipulation of the 10-percent exception, the conference agreement provides that, for purposes of the exception, earnings and profits will be determined without any reduction for interest paid or accrued by a U.S.-owned foreign corporation to a U.S. shareholder of the foreign corporation or to a related party, whether U.S. or foreign.

The term "U.S.-owned foreign corporation" is defined as in the Senate amendment, with minor technical modifications. The conference agreement specifies that, for purposes of the provision, the term "dividend" includes any gain treated as ordinary income under Code section 1246 or as a dividend under Code section 1248. The conference agreement provides that the provision will apply before the Code's foreign loss recapture rules.

The conference agreement requires the Secretary to prescribe such regulations as may be necessary or appropriate for application of the provision in the case of interest or dividend payments through one or more entities. For example, a U.S.-owned foreign corporation that earns gross U.S. source income but that pays interest to a related foreign party might thereby reduce the amount of income that would otherwise be resourced. The Secretary is to prescribe rules so that an inclusion in income of a U.S. taxpayer on account of the related foreign corporation *will* be subject to resourcing. Such an inclusion could occur, for example, under the rules of subpart F, on a dividend or interest payment by the related foreign corporation, or on an investment by the related foreign corporation in U.S. property. The following example provides a more detailed illustration.

Example 1

A foreign corporation wholly owned by a U.S corporation ("CFC-1") earns $100 of gross U.S. source dividends (that is foreign personal holding company income subject to subpart F) but reduces its current year earnings and profits to zero by a $100 interest payment to another foreign corporation wholly owned by the same U.S. corporation ("CFC-2"). Because of the interest payment, there is no subpart F inclusion by the U.S. parent corporation on account of CFC-1 and no dividend payable for the year by CFC-1. Thus, the U.S. parent has no current income with respect to CFC-1 that could be subjected to resourcing. Absent the special rule under discussion, the $100 of U.S. source dividends received by CFC-1 would not give rise to any resourcing of income from CFC-1 or CFC-2 that is included in the U.S. parent's gross income. To prevent this result, the regulations to be prescribed by the Secretary will, for example, subject to resourcing a subpart F inclusion on account of CFC-2 determined with respect to its current year earnings and profits regardless of whether the 10-percent exception from resourcing would otherwise apply. The regulations will treat as U.S. source income CFC-1's $100 interest payment to CFC-2. The U.S. parent's subpart F inclusion on account of CFC-2 consequently will be resourced to the extent of the $100 interest payment (and any other U.S. source subpart F income of CFC-2).

The application of the resourcing provision is illustrated generally in the following examples:

Example 2

A foreign corporation wholly-owned by a U.S. corporation earns $100 of net income and pays a $20 dividend. Nincty dollars of the net income is attributable to the insurance of U.S. risks and $10 is attributable to the insurance of foreign risks of related parties located in other foreign countries. All of the income is subpart F income to the U.S. parent corporation (under Code section 953, and Code section 954(e) as amended by the conference agreement). Since $90 of this $100 subpart F inclusion is attributable to U.S. source income of the foreign corporation (the $90 of net income attributable to the insurance of U.S. risks), $90 of the inclusion will be treated as U.S. source income of the parent corporation under the provision.

As a result of the $100 subpart F inclusion, the $20 dividend is considered to be paid from previously taxed earnings and profits and is excluded from the parent corporation's gross income under Code section 959. The provision, therefore, has no application to the tax-free $30 dividend.

Example 3

A foreign corporation, 90 percent of the total combined voting power in which is held by a U.S. corporation, earns net income of $95 from the sale of personal property in a second foreign country. The foreign corporation also earns net dividend income (after allocation of expenses) of $5 from a U.S. money market account. All of the foreign corporation's $100 of net income is foreign base company income.

Among the foreign corporation's expenses (deductions from net income) is a $20 interest payment to its U.S. parent. The foreign corporation's $95 of net sales income is from foreign sources. Its $5 of net dividend income is from U.S. sources. Assume, for purposes of this example only, that earnings and profits equal net income and that $19 of the $20 interest payment was allocated to gross foreign sales income and the remaining $1 to gross U.S. dividend income in computing the respective amounts of net income from foreign and U.S. sources.

Under subpart F, the U.S. parent corporation must include its pro rata share of the foreign corporation's $100 of foreign base company income in its gross income for the taxable year. Assume, because the U.S. parent controls 90 percent of the voting power in the foreign corporation, that its pro rata subpart F inclusion is $90.

To determine whether the 10-percent exception from resourcing may apply (i.e., whether less than 10 percent of the foreign corporation's earnings and profits for the year are attributable to U.S. sources), the foreign corporation's earnings and profits are first recomputed without any reduction for the $20 interest payment to its U.S. parent. Earnings and profits recomputed in this manner equal $120. Of this amount, $6, or five percent, is attributable to U.S. sources (the $5 of net U.S. dividend income plus the $1 of the $20 interest payment previously allocated to gross U.S. dividend income in computing the amount of net income from U.S. sources).

While less than 10 percent of the foreign corporation's recomputed earnings and profits for the year are, thus, attributable to U.S. sources, the 10-percent exception does not apply to subpart F income. The portion of the U.S. corporation's $90 subpart F inclusion attributable to U.S. source income of the foreign corporation is 5/100ths of $90, or $4.50. Therefore, $4.50 of the subpart F inclusion will be treated as U.S. source income of the U.S. parent under the provision.

The 10-percent exception does, however, apply to interest payments. Because less than 10 percent of the foreign corporation's recomputed earnings and profits are attributable to U.S. sources, the $20 interest payment made by the foreign corporation to its U.S. parent is not subject to resourcing under the provision.

Example 4

A foreign corporation wholly owned by a U.S. corporation earns $85 of gross income, consisting of $60 of gross income from manufacturing operations in its country of incorporation, $10 of gross U.S. bank interest, and $15 of gross interest on a loan to a U.S. affiliate. The foreign corporation incurs total expenses of $115, consisting of $85 of manufacturing expenses and $30 of interest payments to its U.S. parent. The foreign corporation, thus, has a net loss of $30 for the taxable year. Assuming, for simplicity, that earnings and profits equal net income, the foreign corporation also has a deficit in earnings and profits of $30 for the taxable year. The foreign corporation pays a $20 dividend out of earnings and profits for an earlier taxable year. One hundred percent of the earlier year's earnings and profits were from foreign sources and no interest was paid to U.S. affiliates in the earlier year. The foreign corporation owns assets with a total fair market value of $500, consisting of assets used in its manufacturing operations worth $300, a $100 U.S. bank deposit, and a $100 loan to a U.S. affiliate.

To determine whether the 10-percent exception applies to the $30 of interest paid to the U.S. parent, the foreign corporation's earnings and profits for the current year must first be recomputed without any reduction for this interest paid to a U.S. shareholder. Earnings and profits recomputed in this manner equal zero ($-30 + $30). The 10-percent exception, therefore, does not apply since a requirement of the exception—that the foreign corporation have earnings and profits for the year—is not satisfied.

To determine how much of the $30 of interest payments will be treated as U.S. source income of the U.S. parent under the provision, the payments must be allocated to gross income of the foreign corporation from U.S. and foreign sources, respectively. The U.S. parent corporation uses the asset method (Treas. Reg. sec. 1.861-8(e)(2)(v)) to allocate interest under the provision.

Thus, it allocates $18 of the interest paid ($30 x ($300/$500)) against the foreign corporation's $60 of gross manufacturing income, $6 ($30 × ($100/$500)) against the foreign corporation's $10 of gross U.S. bank interest, and $6 ($30 x ($100/$500)) against the foreign corporation's $15 of gross interest on its U.S. affiliate loan. Since all of the manufacturing income is from foreign sources and of all the interest income from U.S. sources, a total of $12 ($6 + $6) of the interest paid is properly allocable under the provision to U.S. source income of the foreign corporation. Therefore, $12 of the $30 of interest paid by the foreign corporation to its U.S. parent will be treated as U.S. source income of the U.S. parent under the provision.

Because the foreign corporation has no earnings and profits for the current year, the U.S. parent corporation has no subpart F inclusion with respect to any separately computed net U.S. interest income earned by the foreign corporation. Any such income would otherwise be subpart F income and, because wholly attributable to U.S. source income of the foreign corporation in this case, would be treated as U.S. source income of the parent under the provision.

Because the $20 dividend paid to the U.S. parent corporation is paid out earnings and profits for a year for which all earnings and profits were from foreign sources, no portion of the dividend will be treated as U.S. source income of the U.S. parent under the provision.

Effective date

General rule

Under the Senate amendment, the provision generally will take effect on the date of enactment. In the case of a taxable year of a U.S.-owned foreign corporation in which the date of enactment occurs, only income received or accrued by the U.S.-owned foreign corporation during that taxable year after the date of enactment generally will be taken into account for resourcing purposes. However, the conference agreement makes clear that *all* income received or accrued by the U.S.-owned foreign corporation during that taxable year will be taken into account for purposes of applying the exception for corporations with small amounts of U.S. source income (the 10-percent exception).

Transitional rules

The two transitional rules provided in the Senate amendment are retained in the conference agreement, with some liberalizing technical modifications.

Under the first transitional rule, certain interest received or accrued by "applicable CFCs" (controlled foreign corporations) will not be taken into account for resourcing purposes if the interest is allocable to certain CFC obligations outstanding, or certain CFC equity, as of March 31, 1984. Interest received or accrued prior to 1992 on U.S. affiliate obligations held by an applicable CFC and allocable to that CFC's capitalizations on March 31, 1984 qualifies for this treatment. For this purpose, an applicable CFC's capitalization on March 31, 1984 is equal to the sum of the CFC's obligations (issued by the CFC) and equity outstanding on March 31, 1984. Obligations outstanding on March 31, 1984 are not counted for this purpose if they were not issued before March 8, 1984, unless a binding commitment by the CFC to issue them was in effect on March 7, 1984.

Qualified interest in a given taxable year is determined by multiplying the interest received or accrued in that year on an applicable CFC's loans to its U.S. affiliates by a limiting fraction. The limiting fraction is equal to (1) the aggregate principal amount of U.S. affiliate obligations held by the CFC on March 31, 1984 (but not in excess of the CFC's March 31, 1984 capitalization), divided by (2) the average daily principal amount of U.S. affiliate obligations held by the CFC during the taxable year. In no event may the limiting fraction exceed one.

The numerator of the limiting fraction is adjusted downward to reflect (1) retirements in that taxable year of any obligations issued by the CFC that are included in its March 31, 1984 capitalization, and (2) a pro rata portion of the CFC's equity allocable to these retired obligations.

The conference agreement makes technical modifications with respect to the treatment of obligations with original issue discount (OID) under the first transitional rule. It treats the principal amount of CFC and U.S. affiliate obligations with OID as including, as of any day, the aggregate amount of all OID on such obligations previously includible in gross income as of that day. It also specifies that proper adjustments are to be made in the numerator of the limiting fraction for OID accruing after March 31, 1984 on CFC obligations and U.S. affiliate obligations. The latter rule will allow an upward adjustment in the numerator, where necessary, for OID accrued after March 31, 1984 on OID-type CFC obligations. However, to the extent that the proceeds of OID-type CFC obligations included in a CFC's March 31, 1984 capitalization were used, as of March 31, 1984, to finance non-U.S. affiliate obligations, no special adjustment in the numerator will be allowed under this rule.

The conference agreement slightly expands the definition of "applicable CFC." Under the conference agreement, an applicable CFC is any CFC in existence on March 31, 1984, the principal purposes of which on that date consisted of issuing obligations (whether short-term or long-term) and lending the proceeds to affiliates. A corporation will satisfy this principal purpose test if at least half of its liabilities on March 31, 1984, were CFC obligations and if at least half of its assets on that date were loans to affiliates.

The terms "affiliate," "U.S. affiliate," and "U.S. affiliate obligation" are defined in the same manner as under the Senate amendment. The definition of "CFC obligation" is revised under the conference agreement so that otherwise qualified interest on certain obligations issued on or before December 31, 1982 will be covered by the first transitional rule.

The first transitional rule does not apply in determining whether the 10-percent exception applies. Thus, if an applicable CFC has $100 of earnings and profits for a given year, $15 of which is attributable to qualified interest, $5 of which is attributable to other U.S. source income, and $80 of which is attributable to foreign source income, the 10-percent exception will not apply for that year: For purposes of the exception, 20 percent of the applicable CFC's earnings and profits will be attributable to U.S. sources. However, because, under the transitional rule, qualified interest is not taken into account for resourcing purposes, only 5/100ths (rather 20/100ths) of a dividend paid by the applicable CFC out of that year's earnings and profits will be subject to resourcing.

Under the second transitional rule, interest earned on term obligations held on March 7, 1984 by U.S.-owned foreign corporations that are not applicable CFCs is not taken into account for resourcing purposes. The conference agreement also extends the application of the second transitional rule to certain obligations of applicable CFCs: Interest earned on term obligations of U.S. persons other than U.S. affiliates that are held by applicable CFCs on March 7, 1984 will not be taken into account for resourcing purposes under the rule. The liberalizing of the Senate amendment definition of "applicable CFC" may also alter the applicability of the second transitional rule in certain cases.

The conference agreement provides that the foreign tax credit limitation generally will be computed separately (as it is under present law for certain interest income, for example) for income derived from a U.S.-owned foreign corporation that benefits from either of the two transitional rules, i.e., is not resourced. Thus, foreign taxes paid by the recipient of such income on other income will not be creditable against the U.S. tax on the income that benefits from either transitional rule. This rule will not apply to certain income received or accrued before January 1, 1986.

2. Maintaining the character of interest income

Present law

A U.S. taxpayer's foreign source passive interest income cannot escape both U.S. and foreign tax under the United States' separate foreign tax credit limitation. This separate limitation prevents foreign taxes on non-interest income from offsetting U.S. tax on foreign source interest income. U.S. taxpayers seek to circumvent this rule by having foreign subsidiaries or regulated investment companies (RICs) earn interest income (for example, by depositing money in foreign banks). Under regulations, when the U.S. taxpayer is taxable on the earnings of the foreign subsidiary or RIC, its income may be foreign source dividend income, not interest income. Thus, artificially recharacterized "non-interest" income may escape both U.S. and foreign tax.

House bill

For purposes of applying the separate foreign tax credit limitation on interest, the House bill treats foreign dividends as interest to the extent that the paying corporation's earnings and profits arise from passive interest. This rule applies only if 10 percent or more of the paying corporation's earnings and profits for a 3-year base period arise from passive interest. It applies only to 50-percent U.S.-owned corporations. It does not affect interest paid by subsidiaries. It applies to distributions after the date of enactment except distributions attributable to interest earned on term obligations held on March 1, 1984.

Senate amendment

The Senate amendment is generally the same as the House bill. It applies to any RIC, whether or not 50-percent U.S.-owned. It applies to distributions attributable to interest earned by distributing corporations in taxable years beginning after the date of enactment. Except for foreign finance subsidiaries grandfathered under the resourcing rule, the amendment does not apply to distributions attributable to interest earned on term obligations held on March 7, 1984. All payors get a fresh start for the 3-year base-period test so that the first year that counts under that test is the first taxable year beginning on or after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, with substantial modifications. In general, the conference agreement subjects income of a U.S. person that is attributable to separate limitation interest income of a U.S. owned foreign corporation (sec. 904(d)(2)) or RIC to the separate foreign tax credit limitation for interest.

For purposes of the foreign tax credit limitation, the conference agreement treats dividends or interest that are paid or accrued by a designated payor corporation (and attributable to any taxable year of such a designated payor corporation) as interest income subject to the separate foreign tax credit limitation for interest to the extent that the aggregate amount of such dividends and interest does not exceed the separate limitation interest of the designated payor corporation for the taxable year. For these purposes, a dividend includes any subpart F (sec. 951) or foreign personal holding company inclusion (sec. 551) and any gain treated as ordinary income under section 1246 or as a dividend under section 1248. The agreement defines the term "separate limitation interest" to mean, with respect to any taxable year, the aggregate amount of the interest income of the type that is subject to the separate limitation which is received or accrued by the designated payor corporation during the taxable year, reduced by the sum of any deductions properly allocable (under regulations prescribed by the Secretary) to such income.

This rule maintaining the character of interest income will not apply to any amount attributable to the taxable year of a designated payor corporation if the designated payor corporation has earnings and profits for such taxable year, and if less than 10 percent of those earnings and profits is attributable to separate limitation interest. The conference agreement eliminates the three-year base period in order to measure interest that should be subject to the separate limitation more accurately.

Interest that a designated payor corporation pays or accrues to any of its U.S. shareholders (a U.S. person who owns or who is considered to own 10 percent or more of its voting power) or to a person related to any of its U.S. shareholders will not reduce separate limitation interest of the designated payor corporation, and will not reduce earnings and profits for the purpose of the exception that applies to designated payor corporations with earnings and profits less than 10 percent of which is attributable to separate limitation interest.

Under the agreement, a "designated payor corporation" is any of three types of corporations (the first two of which were included in the Senate amendment and are defined in the same manner in the agreement): any U.S.-owned foreign corporation, any regulated investment company (RIC), and any other foreign corporation in which the taxpayer is a U.S. shareholder (a U.S. person who owns directly, indirectly, or constructively ten percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation) at any time during the taxable year of such foreign corporation. The last category includes any foreign corporation with a U.S. shareholder whether or not the foreign corporation is a controlled foreign corporation.

The conference agreement specifies rules for treating amounts included in U.S. taxable income as attributable to the taxable year of a designated payor corporation. Foreign personal holding company and Subpart F inclusions with respect to a designated payor corporation are attributable to the year of inclusion; interest paid or accrued by a designated payor corporation is attributable to the year that the designated payor corporation pays or accrues it; and dividends from a designated payor corporation are attributable to the year out of whose earnings and profits they are paid.

The order in which the agreement treats amounts attributable to separate limitation interest as income subject to the separate foreign tax credit limitation for interest is as follows. It first treats foreign personal holding company and Subpart F inclusions on account of a designated payor corporation as income subject to the separate foreign tax credit limitation for interest up to the amount of the separate limitation interest of the designated payor corporation. If the amounts so treated are less than the separate limitation interest of the designated payor, then interest paid or accrued by the designated payor corporation is treated as income subject to the separate foreign tax credit limitation for interest. If the interest so treated plus the amounts previously so treated are less than the separate limitation interest of the designated payor corporation, then any dividend paid out of the earnings and profits of the designated payor corporation for the taxable year is treated as income subject to the separate foreign tax credit limitation for interest. The conference agreement treats amounts paid by a designated payor corporation as first attributable to passive interest under the theory that it would be as easy for the ultimate interest recipient to have received the separate limitation interest directly as to have channeled it through a designated payor corporation. In addition, this "stacking" of interest prevents avoidance of tax through the use of back to back loans.

For example, a designated payor corporation that is also a controlled foreign corporation earns $150 of gross active business income during a year and incurs $125 of expenses in connection with that active business. In that year, it also earns $15 of separate limitation interest. There is no subpart F inclusion in the income of its U.S. shareholders with respect to that year because the foreign corporation's gross base company income ($15) is less than 10 percent of its gross income ($165). The foreign corporation incurs no interest expense or foreign tax during the year. Its earnings and profits ($40) consist of $25 of active business income and the $15 of separate limitation interest. It pays a dividend with respect to the earnings and profits of the year of $16.

In this example, the conference agreement treats the dividend as coming first out of separate limitation interest, so that $15 of the dividend is income subject to the separate foreign tax credit limitation for interest income, while $1 is not subject to the separate foreign tax credit limitation. Any later dividend with respect to that year's earnings will not be subject to the separate foreign tax credit limitation, as the $16 dividend has exhausted the pool of separate limitation interest for that year.

The conference agreement retains the rule of the Senate amendment requiring the Secretary to prescribe such regulations as may be necessary to carry out the purposes of this provision in the case of distributions or payments through one or more entities. For example, a U.S. owned foreign corporation that earns separate limitation interest but that pays interest to a related foreign party would reduce the amount of income subject to characterization as separate limitation interest. The income of the related foreign corporation might not be subject to U.S. tax, so the foreign tax credit limitation would not affect the related foreign person. The Secretary is to prescribe rules so that an inclusion in income of a U.S. taxpayer on account of the related foreign corporation will be subject to recharacterization as separate limitation interest. Such an inclusion could occur, for example, under the rules of Subpart F, on a dividend or interest payment by the related foreign corporation, or on an investment by the related foreign corporation in U.S. property.

For example, if a controlled foreign corporation ("CFC-1") earns $100 of gross separate limitation interest (that is foreign personal holding company income subject to Subpart F) but reduces its current year earnings and profits to zero by a $100 interest payment to a related foreign party ("CFC-2"), there would be no Subpart F inclusion for the year on account of CFC-1. If there were no Subpart F inclusion on account of CFC-2 (for instance, because foreign base company income made up less than 10 percent of the gross income of CFC-2), later dividends from CFC-2 would be subject to recharacterization, whether or not 10 percent of the earnings and profits of CFC-2 for the year at issue were attributable to the separate limitation interest that it received from CFC-1 or to other separate limitation interest.

For purposes of determining whether any interest received or accrued by the designated payor corporation is separate limitation interest, interest from a related party described in section 1504 (whether or not a foreign person) will be treated as separate limitation interest to the extent that the related payor earns (directly or indirectly) income that is separate limitation interest or that is attributable to separate limitation interest.

The application of the conference agreement rules is illustrated in the following example:

A foreign corporation wholly owned by a U.S. corporation owns assets with a total fair market value of $500, consisting of a $150 loan to its parent, a $100 certificate of deposit with a foreign bank, and active business assets worth $250. It earns $100 of gross income, consisting of $75 of gross income from an active business, $15 of gross bank interest that is not related to its active business, and $10 of gross interest on a loan to its wholly owned (2d tier) foreign subsidiary incorporated in another foreign country and engaged solely in active business. It incurs $50 of expenses in connection with its active business. It pays $10 of interest to its U.S. parent corporation and $5 of interest to an unrelated party. Its net income is $35. It pays no dividend out of this income.

The $15 of bank interest in this example is interest described in section 904(d)(2), so that, in the hands of the foreign corporation, it is subject to the separate limitation for interest. To determine that portion of this interest that is "separate limitation interest" for purposes of the provision, the interest decreases to the extent of properly allocable expenses. In determining separate limitation interest in this example, the U.S. owner of the foreign corporation allocates the $5 of interest expense that the foreign corporation paid to an unrelated party. The allocation may occur under any proper method, but the conferees intend that the same method of allocation apply for all purposes for any particular year. The taxpayer chooses the asset method (Reg. sec. 1.861-8(f)(1)(v), Reg. sec. 1.861-8(e)(2)(v).) Thus, it allocates $1.50 ($5x($150/$500)) against its $15 of gross bank interest income. Interest paid to its U.S. shareholder does not, under the conference agreement, reduce separate limitation interest. The conference agreement therefore treats $13.50 ($15 - $1.50) of the income of this foreign corporation as separate limitation interest.

The conference agreement first treats any Subpart F inclusion on account of this designated payor corporation as income subject to the separate foreign tax credit limitation for interest. Because more than 10 percent of the gross income of the foreign corporation in this example is foreign base company income, its U.S. owner, under subpart F, must include the foreign base company income of its foreign subsidiary in its income. In determining its Subpart F income, the U.S. owner of the foreign corporation allocates the $15 of interest expense that the foreign corporation incurred under the asset method, the method it chose for this year for all purposes. Thus, it allocates $7.50 ($15x($250/$500)) against its $25 of gross interest income, and $7.50 ($15x($250/$500)) against its $75 of gross active business income. There remain after the allocation of the $15 of interest expense $17.50 of interest income that is foreign personal holding company income under the Subpart F rules, so the Subpart F income that the U.S. owner of the foreign corporation must include in income for the year is $17.50. The U.S. owner treats $13.50 of the Subpart F inclusion as income subject to the separate foreign tax credit limitation for interest income. The $10 of interest that the designated payor corporation pays to its U.S. parent is not income subject to the separate foreign tax credit limitation for interest income in this example because the full $13.50 of the designated payor corporation's separate limitation interest has already been used in recharacterizing a portion of the subpart F inclusion as separate limitation interest.

Under the conference agreement, dividends and Subpart F inclusions recharacterized as interest for the purpose of the foreign tax credit limitation will retain their character as dividends and Subpart F inclusions for the purpose of determining whether a taxpayer is entitled to a deemed-paid foreign tax credit (secs. 902 and 960). However, the deemed paid taxes attributable to income recharacterized as separate limitation interest will be treated as taxes on separate limitation interest. In addition, any taxes deemed paid on such dividends and Subpart F inclusions and treated as dividends for the purpose of the deemed-paid credit (sec. 78), will be characterized in accordance with the income with respect to which the taxes were paid.

The conference agreement will generally take effect on the date of enactment. Generally, only interest income received or accrued by a designated payor corporation in taxable years beginning after that date will be treated as separate limitation interest. However, interest income earned by a regulated investment company with respect to investments by a taxpayer after the date of conference action, June 22, 1984, will be treated as separate limitation interest. In the case of a designated payor corporation that is not an applicable CFC (as defined in section 131(b)(2)(d) of the conference agreement), the agreement will not apply to any interest that the corporation receives or accrues on a term obligation that it held on March 7, 1984.

3. Income from factoring trade receivables

Present law

A seller who sells goods for the buyer's receivable (promise to pay) may sell that receivable to a third party—a factor—at a discount. If a U.S.-owned factor is in a tax haven, it may earn income free of U.S. tax. That income may be eligible for deferral, and it may be foreign-source income that is sheltered by excess foreign tax credits.

When a foreign subsidiary of a U.S. corporation makes a loan to its U.S. parent (or otherwise invests in "U.S. property"), that investment is taxable as a dividend to the U.S. parent (to the extent of the subsidiary's previously untaxed earnings and profits). It is unclear under present law whether this rule applies to a foreign factoring subsidiary that buys receivables from its U.S. parent. Thus, the foreign factoring subsidiary could transfer untaxed cash to its U.S. parent by buying the parent's receivables.

House bill

The House bill taxes the U.S. owner of a controlled foreign corporation on income earned when the controlled foreign corporation collects a receivable that (1) it bought from a related person, and (2) the related person had taken in exchange for inventory or services. There is no tax if factoring income (and other tax-haven type income) is less than 10 percent of the controlled foreign corporation's gross income.

The House bill treats income from a related U.S. person's receivables (from domestic and foreign sales) as U.S. source income.

The House bill treats payments from a foreign subsidiary to a related U.S. person for receivables (from domestic and foreign sales) as investments in U.S. property.

The bill applies to transfers after March 1, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill. However, it taxes the U.S. owner of a controlled foreign corporation earning factoring income whether or not factoring income and other tax-haven type income are less than 10 percent of the subsidiary's gross income. It also prevents tax-free factoring by companies in U.S. possessions.

Its rule for the source of factoring income is the same as that of the House bill, except that it treats income from factoring a related U.S. person's export receivables (other than export receivables from a sale through a DISC or FSC) as 50 percent U.S. source, 50 percent foreign source.

The Senate amendment contains the investment in U.S. property provision of the House bill, but the Senate amendment does not treat investments in export receivables (other than export receivables from a sale through a DISC or FSC) as investments in U.S. property.

Conference agreement

The conference agreement generally follows the House bill. It follows the Senate amendment, however, in imposing tax on the U.S. owner of a controlled foreign corporation earning factoring income without regard to a 10-percent threshold, and in adopting with modifications the rules of the Senate amendment that prevent tax-free factoring by companies in U.S. possessions.

The agreement treats any income (whether in the form of discount, stated interest, or some other form) arising from a trade or service receivable (defined to mean any account receivable or evidence of indebtedness arising out of the disposition by a related party of inventory or out of the performance of services by a related party) acquired directly or indirectly by a foreign corporation from a related person as if it were interest on a loan to the obligor under the receivable. This rule applies only for purposes of the foreign personal holding company rules, the Subpart F rules, and the foreign tax credit limitation. In applying this rule, the conferees intend that the source rules (Code sec. 861-863) be applied as though the income from a trade or service receivable were interest on a loan to the obligor under the receivable.

The application of the rule treating related person factoring income as interest income also will apply to determine the source of that income upon eventual inclusion of the income in the gross income of a U.S. person pursuant to the provision of the conference agreement that maintains the source of U.S.-source income that flows through a foreign corporation (Code sec. 904(g)). If the obligor under a receivable is a U.S. person, the factoring income will be U.S. source income upon inclusion in the gross income of a U.S. shareholder of the foreign corporation (unless the obligor pays foreign source income under the "80/20" rule (Code sec. 861(a)(1)(B)).

A foreign corporation earning income from a trade or service receivable of a U.S. obligor will not be taxable currently on that income (under Code sec. 881). In addition, the agreement does not allow, for example, the obligor under a receivable to treat any part of the purchase price of a capital asset as deductible interest.

Income from a receivable will be subject to the rules of the conference agreement whenever the receivable or an interest in the receivable is assigned to a foreign corporation by a related party. There will be an acquisition of a receivable, for the purpose of the rule contained in the conference agreement, whether or not the person earning the income from the receivable takes title to or physical possession of the receivable, and whether the related party that transfers the rights to income from a receivable does so with or without recourse.

The agreement includes the definition of "related party" contained in the Senate amendment, but expands that definition to include 10-percent U.S. shareholders and persons related to 10-percent U.S. shareholders. This expansion prevents tax-free related-person factoring by foreign corporations owned by several U.S. persons.

Related person factoring income under the conference agreement will be treated as interest described in section 904(d)(2), and therefore subject to the separate foreign tax credit limitation for interest. The income will be ineligible for any exception to application of the separate limitation. The conferees adopted this treatment so that foreign tax credits on non-interest nonfactoring income cannot offset U.S. tax on related person factoring income. Taxpayers can generally arrange to earn factoring income, like other financial income, in tax havens, and the conferees believe that it is appropriate to collect the full U.S. tax, unreduced by foreign tax credits on unrelated income, on factoring income.

The conferees intend to subject related person factoring income to tax in the hands of any controlled foreign corporation with earnings and profits. Therefore, related person factoring income will not benefit from exceptions to the Subpart F rules. As under the Senate amendment, it does not benefit from the 10-percent of gross income exception. In addition, it will not benefit from any banking and financing exceptions (sec. 954(c)(3)(B) and sec. 954(c)(4)(B)) or from the same country interest (and dividend) exception (sec. 954(c)(4)(A)).

The agreement modifies the Senate amendment's rules governing factoring in the U.S. possessions. The possessions tax credit (sec. 936, whose prime beneficiary is Puerto Rico) and rules allowing the U.S. Virgin Islands to reduce its tax rate on certain income (sec. 934) will not apply to factoring income unless the income from the receivable arises within the possession under the rule that treats the income as income from a loan to the obligor of the receivable.

The conference agreement provides that a receivable of a U.S. person that was acquired directly or indirectly from a related person who is a U.S. person constitutes U.S. property for the investment in U.S. property rules. Not only does this transaction makes funds available for use by U.S. shareholders, it is in substance a wholly domestic transaction. The conferees believe that this combination of effective repatriation and U.S. nexus makes this transaction one that should be subject to tax to the extent of untaxed earnings and profits.

For the purpose of this provision, the conferees intend that the substitution of any party for the obligor be disregarded. For example, if a U.S. purchaser of goods pays for the goods by establishing a line of credit with a foreign bank whose note the seller of the goods takes and sells at a discount to its foreign subsidiary, the income from the bank's obligation in the hands of the foreign subsidiary will be U.S. source income, and the acquisition of the bank's obligation will constitute an investment in U.S. property.

The conferees understand that some taxpayers may contend that they will be able to circumvent the investment in U.S. property rule of the conference agreement by (1) directly or indirectly transferring earnings and profits from one foreign subsidiary to another foreign subsidiary, and (2) having the transferee invest those earnings and profits in U.S. property. The conferees recognize that current law imposes tax on the investment in U.S. property by the transferee, whether the transferee makes a direct or indirect loan to the transferor (Rev. Rul. 76-192, 1976-1 C.B. 205) or otherwise shifts earnings and profits to the transferee (such as by a contribution to the capital of a newly formed subsidiary with no earnings and profits).

The agreement requires the Secretary to prescribe regulations to prevent the avoidance of the provision's income inclusion rule and its investment in U.S. property rule. The conferees intend, for instance, that regulations treat a loan by a foreign corporation to a purchaser of goods or services of a related party like the acquisition by the foreign corporation of the purchaser's receivable, where the seller of the goods or services (or a related party) guarantees or secures payment to the foreign corporation.

The conference agreement generally applies to accounts receivable and evidences of indebtedness transferred after March 1, 1984. However, a special transitional rule applies to certain accounts receivable held by a certain type of financing entity.

4. Source of transportation income

Present law

Under present law, in general, the United States taxes all U.S. source income, but not all foreign source income, of U.S. persons. In general, the United States does not tax the foreign source income of foreign persons (such as foreign corporations). Under present law, transportation income can be treated almost entirely as foreign source income even if the transportation is between two U.S. points, if the route of transport lies primarily outside the United States' three mile territorial limit.

House bill

The House bill provides that all transportation income attributable to transportation which begins and ends in the United States (including, for this purpose, in any possession of the United States) is to be treated as U.S. source income. For these purposes, transportation income is defined as any income derived from or in connection with the use, or hiring or leasing for use, of a vessel or aircraft or the performance of services directly related to the use of such vessel or aircraft. The bill states that the term "vessel or aircraft" includes any container used in connection with a vessel or aircraft.

The new sourcing rule is to be applied in accordance with regulations prescribed by the Secretary of the Treasury.

The new sourcing rule for transportation income will apply to transportation beginning after the bill's date of enactment in taxable years ending after that date.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with certain modifications. The conferees also agreed to certain clarifications of the new sourcing rule's application.

Transportation involving U.S. possessions

The conference agreement generally treats transportation income attributable to transportation which begins in the United States and ends in a U.S. possession (or which begins in a U.S. possession and ends in the United States) as 50-percent U.S.-source income and 50-percent foreign-source income. Those U.S. possessions whose tax laws "mirror" the Internal Revenue Code will, because of the way the "mirror" Codes operate, treat this transportation income as 50-percent domestic-source and 50-percent foreign source. Thus, transportation income attributable to transportation that begins in the United States and ends in Guam, for example, will in effect be split between the United States and Guam for tax purposes. Each will subject to tax no more than half of the income.

Certain transportation income from United States-U.S. possession (and U.S. possession-United States) routes is not subject to the 50-percent sourcing rule. The agreement treats such transportation income earned from the leasing of aircraft eligible for the investment tax credit to U.S. persons (other than a member of the same controlled group of corporations) who are regularly-scheduled air carriers as wholly U.S.-source income.

Transportation income from transportation between U.S. possessions or within a possession is excluded from the scope of the new sourcing rule under the conference agreement and, thus, is not treated as either wholly U.S.-source income or as 50-percent U.S.-source income by operation of the new rule.

Regulations

The conference agreement makes clear that the new sourcing rule will become effective before regulations are issued, in the event regulations are not issued as of the new rule's effective date.

Clarifications

The conferees agreed to the following clarifications of the new sourcing rule's application: Transportation of cargo will not be considered to begin and end in the United States when it involves transportation from one U.S. point to another intermediate U.S. point before ultimate delivery of the cargo to a point in a foreign country, even where the cargo is transported to its ultimate destination on a different aircraft or vessel from the aircraft or vessel that carried the cargo to the intermediate U.S. point, if two requirements are met. The requirements are that the same taxpayer transport the cargo on both legs of the trip and that the cargo not pass through U.S. customs at the intermediate U.S. point. Similarly, if these requirements are met, transportation of cargo will not be considered to begin and end in the United States when, en route to a delivery point elsewhere in the United States, a stop at an intermediate U.S. point is made by a transporting aircraft or vessel which took on the cargo in a foreign country, even where the cargo is transported to its ultimate destination on a different aircraft or vessel from the aircraft or vessel that carried it to the intermediate U.S. point.

Like other round-trip travel from the United States, round-trip travel by a cruise ship, originating in the United States and calling only on foreign ports, is not transportation which begins and ends in the United States for purposes of the new sourcing rule.

The new source rule also does not apply to income for services performed in a foreign country that are connected indirectly with transportation beginning and ending in the United States. For example, income from the operation of the Panamanian pipeline (through which oil extracted in Alaska and bound for East Coast points may pass) will not be treated as U.S. source income under the new sourcing rule. Income from the operation of foreign storage facilities used to store cargo transported between U.S. points will not be subject to the new source rule. Income from services, such as refueling, performed outside the United States in connection with a trip beginning and ending in the United States also will not be treated as U.S. source income under the new provision.

5. Application of accumulated earnings tax to certain distributions received by U.S.-owned foreign corporations

Present law

The accumulated earnings tax may not apply to foreign corporations forming a two tier structure when the parent corporation is widely held by U.S. persons and the subsidiary corporation (wholly owned by the parent corporation) earns U.S. source income or U.S. business income.

House bill

Under the House bill, if 10 percent or more of the earnings and profits of a foreign corporation has a U.S. source or is effectively connected with a U.S. business, its interest payments and a pro rata portion of its dividends are treated as U.S. source in the hands of a U.S.-owned foreign corporation for the purpose of the accumulated earnings tax. The bill applies to distributions received by a U.S.-owned foreign corporation on or after May 23, 1983. For U.S.-owned foreign corporations in existence on May 23, 1983, the bill applies to taxable years beginning after 1984.

Senate amendment

The Senate amendment is generally the same as the House bill, with technical changes.

Conference agreement

The conference agreement follows the House bill, with technical modifications.

6. Repeal of 30-percent tax on portfolio interest paid to foreign persons

Present law

Payments of passive income (interest, dividends, royalties, etc.) to foreign persons generally are subject to a 30-percent U.S. withholding tax if the payments are not effectively connected with a U.S. trade or business conducted by the foreign person. Exemptions from the tax are provided in certain situations. Some U.S. tax treaties reduce the tax. In the case of interest, some treaties eliminate the tax.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requires registration of debt obligations unless they are sold under procedures reasonably designed to prevent sale or resale to U.S. persons, they bear interest payable outside the United States only, and they indicate that U.S. holders are subject to tax penalties.

The U.S. estate tax applies to obligations of U.S. corporations, but not to obligations of foreign corporations.

House bill

No provision.

Senate amendment

The Senate amendment phases out the 30-percent withholding tax on interest paid on portfolio indebtedness by U.S. borrowers to nonresident alien individuals and foreign corporations. The rate of tax will be reduced to five percent for interest received after the date of enactment. The rate of tax will be reduced to four percent in 1985, three percent in 1986, two percent in 1987, and one percent for the period January 1 to June 30, 1988. Effective July 1, 1988, the withholding tax on interest received by nonresident alien individuals and foreign corporations on portfolio indebtedness will be repealed.

The phase-out of tax does not apply to interest paid to banks, controlled foreign corporations, or 10-percent or greater owners of the payor.

U.S. corporations that assume debt of foreign affiliates pay interest that is eligible for the tax phase-out if they meet compliance requirements that the affiliate would have had to meet (without necessarily meeting all the TEFRA requirements that would have applied to the U.S. corporation).

The Senate amendment also repeals the U.S. estate tax on obligations eligible for the reduced withholding tax rates.

These provisions apply to portfolio interest received after the date of enactment (and to estates of decedents dying after the date of enactment).

Conference agreement

The conference agreement repeals the 30-percent withholding tax on interest paid on portfolio indebtedness by U.S. borrowers to nonresident alien individuals and foreign corporations, and otherwise follows the Senate amendment, with the following modifications.

The conference agreement generally repeals the tax, effective on the date of enactment, rather than phasing out the tax over a four-year period as the Senate amendment would have. However, unlike the Senate amendment, the conference agreement repeals the tax only with respect to interest paid on portfolio obligations issued *after* the date of enactment. Thus, the 30-percent tax will continue to apply to existing obligations currently subject to the tax.

The conference agreement does not repeal the 30-percent tax for interest paid on obligations assumed by U.S. corporations from their affiliates or other entities. Since, under the conference agreement, interest on existing obligations is not exempted from the 30-percent tax, existing obligations of foreign or U.S. affiliates that U.S. corporations might wish to assume are not eligible for the repeal in any event.

Like the Senate amendment, the conference agreement provides that interest paid on an obligation not in registered form will be exempt from the 30-percent tax when the obligation is exempt from the TEFRA registration requirements because it is sold under procedures reasonably designed to prevent sale or resale to U.S. persons, bears interest payable outside the United States only, and indicates that U.S. holders are subject to tax penalties. However, the conference agreement authorizes the Secretary to exclude future obligations from this exemption from the TEFRA registration requirements without regard to whether the obligation is determined to be used frequently in avoiding Federal taxes. Thus, the Secretary has discretion to require registration.

Interest paid on an obligation in registered form will be exempt from the 30-percent tax under the conference agreement if the obligation satisfies the requirements for registered obligations set forth in the Senate amendment.

The conference agreement differs from the Senate amendment in exempting from the 30-percent tax interest otherwise eligible for the exemption that is paid to a controlled foreign corporation (unless paid by a related person, within the meaning of new Code section 864(d)(4)). However, such interest paid to a controlled foreign corporation will be includible in the gross income of the controlled foreign corporation's U.S. shareholders under subpart F (Code section 951) without regard to the 10-percent exception or any of the other exceptions otherwise provided under the subpart F rules. The conferees also intend that such interest in the hands of a controlled foreign corporation retain its U.S. source (under Code section 904(g), as amended by the conference agreement) upon Subpart F or other income inclusion, without regard to any exception from the Code section 904(g) rule available for other income.

The conference agreement retains the Senate amendment's rule that imposes tax on interest paid to certain foreign shareholders and banks. The conferees understand that taxpayers may attempt to circumvent the foreign shareholder/bank rule of the agreement by entering into "back to back" loans, wherein a foreign affiliate of a U.S. taxpayer (or a bank) lends money to an unrelated foreign party that relends that money at discount to the U.S. taxpayer. The conferees intend that the Internal Revenue Service, when appropriate, use means at its disposal to determine whether back to back loans exist.

Like the Senate amendment, the conference agreement eliminates any potential U.S. estate tax liability of nonresident alien individuals dying after the date of enactment in the case of obligations the income of which, if received by the decedent at the time of his death, would be exempt from the 30-percent tax under the provision. However, under the conference agreement, only obligations issued after the date of enactment will be eligible for the estate tax exclusion.

In connection with the repeal of the 30-percent tax, the conference agreement provides that, if certain requirements are met, interest paid to an "applicable CFC" (within the meaning of Code section 904(g), as amended by the conference agreement but without regard to the requirement that the CFC be in existence on March 31, 1984) on a U.S. affiliate obligation will be treated for all Code purposes as paid to a resident of the country in which the applicable CFC is incorporated. The requirements are that the payee was an applicable CFC on or before June 22, 1984, the U.S. affiliate obligation on which the interest is paid was issued before June 22, 1984, and on the date the interest is paid, the payee satisfies requirements based upon the principles set forth in four revenue rulings issued in connection with the Interest Equalization Tax (Rev. Rul. 69-377, 69-2 C.B. 231; Rev. Rul. 69-501, 69-2 C.B. 233; Rev. Rul. 70-645, 70-2 C.B. 273; and Rev. Rul. 73-110, 73-1 C.B. 454). No inference should be drawn from this rule regarding the proper resolution of other tax issues. The conferees do not intend this provision to serve as precedent for the U.S. tax treatment of other transactions involving tax treaties or domestic tax law.

7. Original issue discount in the case of foreign investors

Present law

Foreign investors are subject to tax on original issue discount upon receipt of coupon interest or disposition or retirement. Calculation of accrual and treatment of partnership debt and noncapital assets are unclear.

House bill

Under the House bill, foreign investors will calculate accrual of original issue discount like U.S. persons, whoever issued the debt, and whether or not the debt is a capital asset in the foreign investor's hands. The bill generally applies to payments made on or after the 60th day after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill, with technical modifications.

Conference agreement

The conference agreement follows the Senate amendment with a substantial modification. The modification reflects a concern expressed in the reports of the House Committee on Ways and Means and the Senate Committee on Finance: the mismatching of (1) an accrual basis U.S. OID debt issuer's tax deductions and (2) a foreign investor's income inclusion.

The agreement delays the interest deduction for interest accrued, but not paid, to related foreign parties with respect to an original issue discount obligation until actual payment. The conferees believe that there is no justification for mismatching in the case of related party OID debt. Such mismatching allows an economic entity that has divided itself into more than one legal entity to contract with itself at the expense of the U.S. Government.

An example illustrates the operation of the conference agreement. The foreign parent of a U.S. corporation lends the U.S. corporation money in exchange for a noninterest bearing discount bond that the foreign parent holds until maturity. (The conference agreement's repeal of the 30-percent withholding tax on interest paid to certain foreign investors does not apply to interest paid to foreign shareholders of a U.S. corporation.) Under the conference agreement, the U.S. corporation cannot deduct interest on the bond until the foreign parent collects the cash due on the obligation at maturity.

In the case of a discount obligation bearing stated interest, the obligor may deduct in a given year only the amount that is paid to related lender in that year. For example, the foreign parent of a U.S. corporation has lent the U.S. corporation money in exchange for an interest bearing discount bond. In a given year, the stated interest on the bond is $30, while the OID accruing on the bond is $150. The amount subject to U.S. tax in the hands of the foreign parent in that year is $100 (rather than $150), the $30 of stated interest plus $70 of accrued OID, because OID (under the conference agreement) is subject to U.S. tax only to the extent that the tax on the OID does not exceed the interest payment less the 30-percent withholding tax (without reduction on account of any income tax treaty) imposed on the interest payment. The deduction of the U.S. borrower is $30, whether or not the foreign lender benefits from an income tax treaty to which the United States is a party.

The conferees understand that the anti-abuse measure in the conference agreement will not end the abuse of mismatching. For the time being, however, the conferees have limited the deferral of deductions to the case of interest accrued to related parties. The conferees believe that further examination of the deductibility of OID accrued to foreign parties is appropriate. In addition, the conferees understand that taxpayers may attempt to circumvent the related party rule of the agreement by entering into "back to back" loans, wherein a foreign affiliate of a U.S. taxpayer lends money to an unrelated foreign party that relends that money at discount to the U.S. taxpayer. The conferees intend that the Internal Revenue Service, when appropriate, investigate the capitalization of foreign-owned U.S. corporations issuing OID debt to unrelated foreign parties to attempt to determine whether back to back loans exist.

This anti-abuse measure of the conference agreement applies to obligations issued after June 9, 1984.

8. Withholding on dispositions by foreigners of U.S. real property

Present law

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), foreign investors in U.S. real property interests are taxable by the United States on the gains realized when they dispose of these interests, just as are similarly situated U.S. persons. This rule is to be enforced through information reporting. The legislation overrides certain nonrecognition provisions of the Code to insure U.S. taxation of the gain.

House bill

No provision.

Senate amendment

Under the Senate amendment, the taxation of foreign investors on gains from the disposition of U.S. real property interests generally will be enforced through withholding. Purchasers of U.S. real property interests from foreign persons, certain of the purchasers' agents, and settlement officers will have a duty to withhold, but only if they have actual knowledge or have received formal notice that the seller is foreign. U.S. partnerships, trustees, executors, and certain foreign corporate transferors will have a duty to withhold.

Agents for the transferor of a U.S. real property interest will be required to withhold if they had reason to believe, or notice, that the transferor was a foreigner, and failed to notify the transferee. Transferors' agents have a duty to make reasonable inquiry about the transferor's status, but reliance in good faith on a transferor's representation negates the duty to withhold.

Withholding will not apply to a purchaser buying a principal residence for $200,000 or less, or to a sale of stock on an established U.S. market. Withholding also will not apply to a transferor who obtains a qualifying statement from the Secretary that he is exempt from tax, has provided adequate security for payment of the tax, or has otherwise made arrangements for payment of the tax.

The amount withheld is the lesser of the capital gains rate times the amount realized (price paid) for the transferred U.S. real property interest; the maximum tax liability on the sale (after proof of basis); or the amount that the U.S. withholding agent actually controls.

The Secretary can reduce or eliminate withholding on request in certain cases. The Senate amendment removes current information reporting obligations where withholding is required unless the Secretary specifically requires continued reporting. Tax imposed under FIRPTA that is not collected by withholding remains a liability of the foreign transferor.

The Senate amendment requires withholding for amounts paid on or after 30 days after enactment.

Conference agreement

The conference agreement follows the Senate amendment with substantial modifications.

Duty to withhold generally

Following the Senate amendment, the conference agreement generally imposes a withholding obligation when a U.S. real property interest is acquired from a foreign person. The conference agreement generally imposes the obligation on the transferee. The conference agreement narrows the circumstances in which an agent of the transferor or transferee must withhold and generally eliminates any requirement that settlement officers withhold. It clarifies the withholding obligations of partnerships, trustees, and executors, and domestic U.S. real property holding corporations with respect to certain distributions by these entities.

The conference agreement differs from the Senate amendment in requiring withholding *unless* one of five exemptions applies. The Senate amendment generally would have required withholding only if the would-be withholding agent had actual knowledge or had received formal notice that the seller was foreign. The Senate amendment would have imposed a general requirement on the transferor to notify the transferee (as well as any transferee's agent or settlement officer) if the transferor was a foreign person. It also would have imposed a general requirement on any transferor's agent to make a reasonable inquiry concerning the transferor's status and to notify the transferee if the agent had reason to believe that the transferor might be a foreign person. The conference agreement eliminates these two general requirements.

Under the first of the five of exemptions from withholding provided under the conference agreement, withholding by the transferee generally will not be required if the transferor furnishes to the transferee, under penalty of perjury, an affidavit stating that the transferor is not a foreign person and stating the transferor's taxpayer identification number ("non-foreign affidavit"). The conference agreement authorizes the Internal Revenue Service to prescribe regulations requiring the transferee to furnish a copy of the non-foreign affidavit to the Internal Revenue Service. The conferees anticipate that any regulations requiring filing of the non-foreign affidavit with the Internal Revenue Service will also require filing of such other information as the Secretary deems appropriate (for example, a description of the real property interest transferred and the identity and taxpayer identification number of the buyer).

The receipt of a non-foreign affidavit will not relieve the transferee of withholding responsibility if the transferee has actual knowledge that the affidavit is false or he receives a notice from his agent or an agent of the transferor that the affidavit is false. A transferor's agent or transferee's agent with actual knowledge that the affidavit is false must give the transferee notice to that effect at such time and in such manner as the Secretary shall require by regulations. In the case of a foreign corporate transferor, an agent of the transferor will be deemed to have actual knowledge that any non-foreign affidavit is false. In moving to an actual knowledge test, the conference agreement generally imposes significantly less potential liability on agents than did the Senate amendment. The conferees believe that any agent deriving compensation from a foreign corporate principal in a real estate transaction will know that his or her principal is in fact foreign. The chances of ignorance in such a case are so remote that the conference agreement precludes a claim of ignorance. A transferor's agent or transferee's agent that does not give the required notice will be liable for withholding as if he were the transferee, up to the amount of compensation the agent receives in connection with the transaction. This liability for withholding is in addition to any penalties imposed under other provisions of the Code or other laws (both civil and criminal) in connection with the failure to give notice.

The receipt of a non-foreign affidavit also will not relieve the transferee of withholding responsibility if the Internal Revenue Service by regulations requires the transferee to furnish it with a copy of the non-foreign affidavit and the transferee fails to do so.

The conference agreement defines the term "transferor's agent" as any person who represents the transferor in any negotiation with the transferee or any transferee's agent related to the transaction, or in settling the transaction. The conference agreement defines the term "transferee's agent" as any person who represents the transferee in any negotiation with the transferor or any transferor's agent related to the transaction, or in settling the transaction. A settlement officer will not be treated as a transferor's agent or transferee's agent merely because he receives or disburses any portion of the consideration for the transaction or records any document in connection with the transaction.

As under the Senate amendment, any tax imposed on a foreign investor under FIRPTA in excess of amounts withheld will remain the liability of the foreign investor.

Amount withheld

Under the conference agreement, the amount to be withheld on the sale by a foreign investor of a U.S. real property interest generally is 10 percent of the amount realized (sales price). However, the amount withheld may not exceed the transferor's maximum tax liability, discussed below.

The 10-percent rate replaces the higher capital gains withholding rates provided in the Senate amendment. The 10-percent rate is expected to result in the withholding of an amount of tax that more closely approximates (in many cases) the net tax owed by a foreign investor on his gain (after basis is deducted) on a U.S. real property disposition.

The conference agreement eliminates the Senate amendment provision that limits a withholding agent's withholding liability to the portion of the sales proceeds within his control. Because withholding generally will be at a 10-percent rate only under the conference agreement, transferees will be more likely (than under the Senate amendment) to have sufficient sales proceeds within their control to satisfy the full withholding liability. When the initial cash consideration paid by a transferee in a U.S. real property transaction is *not* high enough to cover this withholding liability, the parties can request a "qualifying statement" from the Internal Revenue Service authorizing the transferee to withhold a lesser amount. A qualifying statement is to be issued in this situation if the requirements for such a statement are otherwise satisfied and no abuse is involved. (Qualifying statements are discussed in more detail below). Thus, on a real estate installment sale, for example, an amount equal to 10 percent of the total sales price (or the maximum tax liability, if less) is to be withheld at the time of the first cash payment unless a qualifying statement authorizing the transferee to withhold a lesser amount is obtained.

The "transferor's maximum tax liability" will be determined by the Secretary in the same manner as under the Senate amendment. The Secretary is to establish the transferor's maximum tax liability upon request. The conference agreement departs from the Senate amendment in permitting such a request to be made by the transferee as well as by the transferor. However, transferees may request a maximum tax liability determination only to cure overwithholding errors. The procedure is not intended to be utilized to relieve transferees from withholding responsibility *before* a transaction occurs. In many cases, the fact that would establish that the transferor's maximum tax liability is less than the tax otherwise required to be withheld (namely, the transferor's basis in the transferred property) will not be known by the transferee unless and until the transferor furnishes the information to the transferee.

Transferees may request a determination of maximum tax liability before or after a disposition.

The conference agreement, unlike the Senate amendment, provides that a transferor may seek and obtain an early refund of any amounts withheld in excess of the transferor's maximum tax liability (subject to such terms and conditions as the Secretary may by regulations prescribe). This provision will allow a transferor to seek a refund before the transferor might otherwise file a federal income tax return. No interest will accrue on the amount of any early refund.

The conference agreement adopts the Senate amendment provision allowing the Secretary to reduce withholding under certain circumstances. A request for reduced withholding may be made by either the transferor or the transferee under the conference agreement.

The conference agreement increases to 90 days the 30-day deadline specified in the Senate amendment for action by the Internal Revenue Service on a request for establishment of the transferor's maximum tax liability or for reduced withholding. The conferees extended the deadline to 90 days because they were informed by the Internal Revenue Service that the 30-day deadline provided in the Senate amendment was unrealistic; Service resources would not permit it to complete action on most requests within 30 days. In some cases, the Service's action in response to these requests may not establish the amount of tax due.

Other exemptions from withholding

Domestic corporation furnishes non-U.S. RPHC affidavit

Withholding is not required on the disposition of an interest (other than an interest solely as a creditor) in a domestic corporation if the corporation furnishes an affidavit to the transferee stating, under penalty of perjury, that the corporation is not and has not been a U.S. real property holding corporation ("U.S. RPHC") during the base period specified in Code section 897(c)(1)(A)(ii) (the shorter of (i) the period after FIRPTA's general effective date during which the transferor held the interest and (ii) the five-year period ending on the date of disposition of the interest) ("non-U.S. RPHC affidavit"). The conference agreement authorizes the Internal Revenue Service to prescribe regulations requiring the transferee to furnish a copy of the non-U.S. RPHC affidavit to the Internal Revenue Service.

The receipt of a non-U.S. RPHC affidavit will not relieve the transferee of withholding responsibility if the transferee has actual knowledge that the affidavit is false or the transferee receives a notice from his agent or an agent of the transferor that the affidavit is false. The rules imposing a duty on agents to give notice in the case of a false affidavit, including the rule imposing withholding liability on agents when they fail to give the notice required, are the same in connection with false non-U.S. RPHC affidavits as they are in connection with false non-foreign affidavits.

The receipt of a non-U.S. RPHC affidavit also will not relieve the transferee of withholding responsibility if the Internal Revenue Service by regulations requires the transferee to furnish it with a copy of the non-U.S. RPHC affidavit and the transferee fails to do so.

This exemption is intended to apply only to dispositions of stock that is not regularly traded on an established securities market ("non-publicly traded stock"). A separate exemption, discussed below, is provided for dispositions of publicly traded stock.

Under the conference agreement and the provisions of FIRPTA, a purchaser of non-publicly traded stock in a domestic corporation is potentially liable for withholding unless he obtains either a non-U.S. RPHC affidavit from the corporation or a non-foreign affidavit from the seller. If the purchaser obtains neither, he will be liable for withholding if the seller is in fact a foreign person, the domestic corporation was in fact a U.S. RPHC during the base period specified in Code sec. 897(c)(1)(A)(ii)), and the purchaser does not receive a qualifying statement.

Transferee receives qualifying statement

The conference agreements, with some modifications, follows the Senate amendment in exempting from withholding transferees who receive a "qualifying statement".

The conference agreement defines a qualifying statement as a statement by the Secretary that the transferor is exempt from tax, that either the transferor or the transferee has provided adequate security for payment of the tax, or that either the transferor or the transferee has made other arrangements for the payment of the tax. The conference agreement differs from the Senate amendment in providing expressly that the *transferee's*, as well as the transferor's, provision of adequate security or making of other arrangements for the payment of the tax may form the basis for issuance of a qualifying statement. The conference agreement increases to 90 days the 30-day deadline specified in the Senate amendment for action by the Internal Revenue Service on a request for a qualifying statement.

Purchase price for residence below designated amount

The conference agreement liberalizes in two respects the exemption from withholding provided in the Senate amendment for sales of certain residences. The conference agreement requires that the amount realized by the transferor from the sale of the property not exceed $300,000; the Senate amendment would have required that the amount realized not exceed $200,000. The conference agreement requires that the property sold be used by the transferee as his residence; the Senate amendment would have required that the property be used by the transferee as his *principal* residence.

Stock transferred on established securities market

Under the conference agreement, no withholding is required on a disposition of shares of a class of stock that is regularly traded on an established securities market. The conference agreement, unlike the Senate amendment, does not limit the exemption to stock regularly traded on established securities markets *located in the United States.*

Partnerships, trusts, estates and corporations

The conference agreement adopts the Senate amendment provisions requiring withholding in certain cases by U.S. partnerships, trustees, and executors, and certain foreign corporate transferors, with the following changes: First, for U.S. partnerships, trustees, and executors, the rate of withholding is reduced to 10 percent under the conference agreement. (For foreign corporate transferors, withholding is at the higher capital gains rate provided in the Senate amendment.) Second, the conference agreement makes minor technical modifications in the Senate amendment provisions.

In addition, as discussed in greater detail below, the conference agreement adds two new provisions clarifying that withholding by domestic U.S. RPHCs and domestic and foreign partnerships, trusts, and estates, respectively, is required in connection with certain distributions to foreign persons. The conference agreement also clarifies that transfers of partnership, trust, and estate interests may be subject to withholding: it specifies that, to the extent provided in regulations, transferees of partnership interests and beneficial interests in trusts and estates will be required to withhold.

As discussed in greater detail below, the conferees intend that foreign corporations be treated as foreign person for withholding purposes regardless of whether they elect to be treated as domestic corporations under Code section 897(i).

Distributions by domestic U.S. RPHCs to foreign shareholders

The conference agreement explicitly requires withholding by a domestic corporation that is (or, at any time during the base period specified in Code section 897(c)(1)(A)(ii), was) a U.S. RPHC when the corporation distributes property to a foreign shareholder in a corporate liquidation or in redemption of its stock. In general, the amount of tax to be withheld is 10 percent of the gross amount of the distribution received by the foreign shareholder. While the conference agreement's general withholding rule technically requires withholding by a domestic corporation in this case, the conferees wished to eliminate any uncertainty on this point.

Withholding by a domestic corporation is appropriate in this case because any earlier corporate-level dispositions of U.S. real property interests by the domestic corporation would have escaped tax under FIRPTA. This is because such dispositions by a *domestic* corporation are not by a "foreign person", even if all the domestic corporation's shareholders are foreign persons.

A qualifying statement granting exemption from withholding may be requested in connection with a liquidating distribution by a domestic corporation of a non-U.S. real property interest when Code section 337 nonrecognition treatment was not elected for related corporate-level dispositions of U.S. real property interests (made during the base period specified in Code section 897(c)(1)(A)(ii)) by the domestic corporation. If the section 337 election was not made, a foreign shareholder's interest in the liquidating corporation may not be a U.S. real property interest (under the FIRPTA rule excluding from the definition of a U.S. real property interest an interest in a corporation that is not currently holding U.S. real property interests and that was fully taxed on previous corporate-level dispositions of such interests during the base period). Thus, the foreign shareholder's surrender of his interest in the corporation may not be a taxable disposition under FIRPTA.

A qualifying statement granting exemption from withholding also may be requested in connection with a distribution by a domestic corporation of a U.S. real property interest where the Code accords the distributee foreign shareholder nonrecognition treatment on the distribution and this nonrecognition treatment is not overridden by FIRPTA (Code sec. 897(e)).

Taxable distributions by partnerships, trusts and estates to foreign persons

The conference agreement also explicitly requires withholding by a foreign or domestic partnership, trust, or estate when it makes a taxable distribution of a U.S. real property interest to a foreign person. In general, the amount of tax to be withheld is 10 percent of the fair market value at the time of the taxable distribution of the distributed U.S. real property interest. While the conference agreement's general withholding rule technically requires withholding in such a case, the conferees wished to eliminate any uncertainty on this point.

Under general Code rules, most distributions by partnerships, trusts, and estates are not taxable. However, FIRPTA authorizes the Secretary to prescribe regulations under which distributions of property by these entities (in exchange for the distributees' interests in these entities) *will* be taxable for FIRPTA purposes to the extent attributable to U.S. real property interests (Code sec. 897(g)).

Corporations making section 897(i) election

The conferees intend that foreign corporations electing under Code section 897(i) to be treated as domestic corporations for purposes of FIRPTA's substantive and reporting provisions continue to be treated as foreign persons for withholding purposes. This will simplify the administration of the withholding system, particularly the exemption procedure for persons who furnish non-foreign affidavits.

By treating a foreign corporation as a foreign person for withholding purposes despite its having elected to be treated as a domestic corporation for purposes of FIRPTA's substantive provisions, a liquidation-related sale of a U.S. real property interest by the foreign corporation may be subject to withholding. Because the corporation is treated as a domestic corporation for substantive FIRPTA purposes, however, it may elect tax-free treatment of the liquidation-related sale under Code section 337. The conferees intend that any tax withheld on such a qualifying section 337 liquidation-related sale be offset by means of a crediting procedure. The Internal Revenue Service is to prescribe regulations allowing foreign shareholders in a foreign corporation electing section 897(i) treatment to credit against their FIRPTA tax liability on a liquidating distribution any tax withheld on a qualifying section 337 liquidation-related sale of a U.S. real property interest.

Information reporting requirements

The conference agreement generally repeals the information reporting requirements of FIRPTA.

However, it authorizes the Secretary to require reporting by foreign persons holding direct investments in U.S. real property interests. For this purpose, a foreign person will be treated as holding direct investments in U.S. real property interests during any calendar year if the foreign person did not engage in a U.S. trade or business at any time during the calendar year and the fair market value of the U.S. real property interests held directly by the person at any time during the calendar year was $50,000 or more. A person "directly" holds a U.S. real property interest only if his disposition of the interest would be taxable under FIRPTA. Thus, persons not subject to FIRPTA may not be subjected to information reporting under the conference agreement. The Internal Revenue Service may not impose look-through or similar rules in connection with reporting, under which "deemed" or "constructive" holders of U.S. real property interests are required to report, except to the extent that those required to report would be subject to tax under FIRPTA.

The conferees do not believe that requiring reporting by foreign persons holding direct U.S. real property investments would be unduly intrusive or burdensome. U.S. law presently requires foreign investors in U.S. real property to furnish their names and countries of residence, as well as certain other information, to the U.S. Government, in certain circumstances. For example, the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. secs. 3501-08) generally requires foreign persons who acquire U.S. agricultural land (other than certain parcels of one acre or less which generate less than $1,000 in annual gross sales) to file detailed reports on such acquisitions with the Department of Agriculture within 90 days of the transaction. Completed reports are made available for public inspection. Pursuant to the International Investment Survey Act of 1976 (22 U.S.C. secs. 3101-08), the Department of Commerce imposes various reporting requirements on foreign investors in U.S. businesses. For example, on the acquisition by a foreign company of a 10-percent (or more) ownership interest in a U.S. business with 200 or more acres of U.S. land or $1 million or more of either assets, gross sales or net income, the Department generally requires that the name and country of residence of the foreign company be reported and certain information about the U.S. business be provided. Information reported pursuant to the International Investment Survey Act generally may be used for analytical or statistical purposes only.

Effective date

The withholding rules apply to dispositions of U.S. real property interests that occur on or after January 1, 1985. The date on which a foreign transferor originally acquired a U.S. real property interest is irrelevant.

The changes in the information reporting requirements are effective retroactively to calendar year 1980.

9. Excise tax on insurance premiums paid to foreign insurers and reinsurers

Present law

The United States imposes excise taxes on premiums paid to foreign insurers not doing business in the United States. The rates are (per dollar of premium): four cents for casualty contracts, one cent for life contracts, and one cent for all reinsurance. The tax is collected by return. Payments to some insurers are exempt by treaty, but reinsurance premiums paid by treaty-protected insurers are subject to the tax (unless the recipient is exempt by treaty).

House bill

No provision.

Senate amendment

The Senate amendment makes the excise tax rate on casualty reinsurance equal to that on casualty insurance (four percent). In addition, the amendment adopts a new withholding mechanism for collecting the insurance excise taxes.

These provisions will apply to premiums paid after the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment. The conferees have decided not to restructure the insurance excise tax, to increase the tax on casualty reinsurance premiums, or to establish a new withholding mechanism at this time in the belief that further study of these proposed changes is in order.

In coming to their decision the conferees were not pursuaded by the argument that the Senate amendment would violate the income tax treaty between the United States and the United Kingdom. Rather, it is the conferees' view that the Senate provision would not violate any U.S. income tax treaty. It would have only collected a tax that the United States has the power to impose and collect under any U.S. income tax treaty and thus, would have been fully consistent with all U.S. treaty obligations.

In addition, the conferees are aware of assertions that negotiators for the United States and the United Kingdom, in connection with the negotiation of the existing income tax treaty between the two countries, may have reached an unwrittten understanding that the United States would not impose its insurance excise tax on premiums for the reinsurance of U.S. risks paid by U.K. insurers to reinsurers in other foreign countries. Unwritten understandings do not bind Congress. Only open covenants normally warrant Congressional recognition. The conferees do not agree with the suggestion that understandings unknown to Congress and not part of the public record during the ratification process become law in the United States.

However, the conferees recognize that close ties exist between the United States and the United Kingdom, and the conferees believe that Congress, as a matter of comity, should allow our treaty partner and ally every opportunity to establish that internal U.S. law should remain as it is. This concern is an important reason for the conference agreement's omission of the Senate amendment provision at this time. In light of this incident and other experiences, however, the conferees express concern over waiver of U.S. taxing jurisdiction by treaty. The conferees believe that, while income tax treaties provide benefits to U.S. business and U.S. tax administration, they have also caused substantial problems for our tax system, and they sometimes create opportunities for tax avoidance that Congress—in a spirit of comity—is reluctant to close. Therefore, the conferees urge further study of changes in the insurance excise tax, and urge those who support retention of the current system to develop additional reasons—beyond comity—to support their position.

10. Use of territories to avoid U.S. tax on foreign investors

Present law

Payments of U.S. source interest, dividends, and other passive income to foreign investors are generally subject to a 30-percent U.S. withholding tax. The United States does not tax payments of passive income to corporations organized in Guam, the Northern Mariana Islands, or the U.S. Virgin Islands. Some argue that foreigners who wish to invest in the United States may avoid both U.S. and territorial tax by channeling their investments through conduit corporations in these territories. Temporary Treasury regulations subject dividends and interest paid by territorial conduit corporations to territorial withholding tax. Guam is contesting these regulations in court.

House bill

The House bill (which differs substantially from the provision that the Committee on Ways and Means reported because of a technical Committee amendment to the provision on the House floor) provides that interest, dividends, and other passive income paid from U.S. sources to a corporation organized in Guam, the Marianas, or the Virgin Islands will not be subject to U.S. tax if the recipient corporation meets two requirements: first, that at all times during the taxable year less than 25 percent in value of the stock of the corporation be owned directly or indirectly by foreign persons and second, that at least 20 percent of its gross income be shown to the satisfaction of the Secretary to have been derived from local sources for the three-year period ending with the close of the preceding taxable year of the corporation (or for such part of the three-year period as the corporation has been in existence).

For the purpose of the ownership requirement, the term foreign person means any person other than either a U.S. person or a person who would be a U.S. person if the general Internal Revenue Code definition of the United States included references to the U.S. possessions. That is, residents of the possessions will not be foreign persons for this purpose. In determining whether stock of a corporation that belongs to another corporation is owned indirectly by foreign persons, only foreign persons who own five percent or more in value of the corporate shareholder are considered as owning stock in the underlying corporation. This last rule will allow territorial subsidiaries of publicly traded U.S. corporations many of whose stockholders are nominees (but with less than 25 percent in value of their stock held by foreign persons owning 5 percent or more in value) to meet the ownership requirement for reduced withholding.

The 20-percent of gross income requirement makes it clear that a corporation formed in a possession of the United States is not eligible for reduced U.S. withholding tax on any U.S. source income if it could make payments of interest or dividends that are free of withholding tax in the possession. The purpose of this requirement is to assure collection of one tax on foreigners who invest in the United States. If 20 percent or more of the gross income of a corporation organized in Guam, the Marianas or the Virgin Islands during the applicable period were local source income, payments from its U.S. parent would not be subject to U.S. tax, but its payments to foreign investors would be subject to territorial withholding tax. On the other hand, U.S. withholding tax will apply to payments to a Virgin Islands corporation chartered in such possessions, unless its payments of interest and dividends to foreigners are subject to territorial tax. This rule will apply to payments after March 1, 1984.

The bill makes it clear that the Revised Organic Act of the Virgin Islands does not override its rules.

The House bill contains provisions that allow payment of dividends and interest from territorial corporations to U.S. persons without withholding tax whether or not the U.S. recipient of the payment meets either the ownership test or the gross income test.

The bill applies not only to Guam and to the Virgin Islands, but also to other territories (such as the Marianas) whose tax rules operate by reference to U.S. law or to territorial law.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a technical correction. The correction makes it clear that the imposition of tax on certain Guamanian corporate recipients of U.S. source income does not have any effect on the Guamanian tax liability of U.S. recipients of Guamanian source income.

The conferees do not intend that any interplay of the tax laws of the United States and the territories allow foreign investors not resident in the territories to earn, directly or indirectly, U.S. income that escapes both U.S. and territorial tax. If Congress decides to allow use of the territories as conduits for foreign investors, or to allow other tax avoidance at variance with tax policy that Congress has expressed, Congress will do so specifically, and not by indirect application of U.S. tax rules that apply automatically in the territories.

The conferees believe that the relationship between the tax systems of the United States and those U.S. territories whose tax systems depend on the U.S. tax Code has created great uncertainty and possible opportunities for taxpayers to take positions that, if sustained, would result in tax avoidance. The conferees did not address this problem in the conference report because neither House of Congress addressed the problem in the legislation that the Congress considered. Neither taxpayers nor the courts, however, should construe the action of the conferees with respect to the specific problem of territorial conduit entities as indicating that any other tax avoidance device that depends on the laws of the territories whose tax laws generally depend on U.S. tax law as it changes (from time to time) yields the result that avoidance-seeking taxpayers seek.

11. Taxation of certain transfers of property outside the United States

Present law

Certain transfers of appreciated property to a foreign corporation can be made without recognition of gain to the transferor if the transferor establishes to the satisfaction of the Internal Revenue Service ("IRS") that the transfer did not have the avoidance of Federal income taxes as one of its principal purposes.

Transfers for use in a trade or business

Under IRS ruling guidelines (the "guidelines"), ordinarily, a favorable ruling is issued if the foreign transferee devotes the property to the active conduct of a trade or business, and has need for a substantial investment in fixed assets or will be engaged in the purchase and sale abroad of manufactured goods.

Tainted assets

Transfers of certain "tainted" assets are treated as taxable exchanges, regardless of whether the transfer is made for use in an active trade or business.

Incorporation of foreign loss branches

The guidelines require the recognition of gain on the transfer of the assets of a foreign branch to a foreign corporation, to the extent of previously deducted losses. *See* Rev. Rul. 78-201, 1978-1 C.B. 91. If the losses of the foreign branch contributed to an overall foreign loss that reduced U.S.-source income, a statutory provision may require not only recognition of gain but also recharacterization of the gain as U.S.-source income (sec. 904(f)). In the case of an overall foreign loss, the amount of gain required to be recognized under the guidelines is reduced by the amount of income required to be recognized by the statutory rule.

Declaratory judgment procedure

In the case of an actual controversy involving a determination or a failure to make a determination by the IRS as to whether a transfer had tax avoidance as a principal purpose, a taxpayer can litigate the determination in the Tax Court. In addition, the Tax Court is empowered to review any terms and conditions that the IRS seeks to impose upon a taxpayer in making the determination.

Excise tax on certain transfers not subject to section 367

An excise tax is imposed on certain transfers of property to foreign transferees in transactions that are not described in section 367(a). The excise tax is not imposed if the transferor establishes, before (sec. 1492) or after (sec. 1494) the transfer, to the satisfaction of the IRS that the transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

Treatment of liquidating distributions by a domestic corporation

A liquidating distribution of appreciated property by an 80-percent owned domestic subsidiary into its foreign parent corporation (under sec. 332) is subject to the ruling requirement that is generally applicable to transfers of appreciated property to foreign corporations. The only statutory sanction for the failure to obtain the required ruling is the denial of the exception to the recapture rules (for depreciation, investment credits, and other items) that would otherwise be available.

House bill

The House bill eliminates the ruling requirement for transfers of appreciated assets abroad. Except as otherwise provided, transfers of appreciated property to foreign corporations are subject to tax.

Exception for property transferred for use in an active trade or business

Except as provided in regulations, no gain is recognized on the transfer of property to a foreign corporation for use in the active conduct of a trade or business abroad. The House bill contemplates that, prior to January 1, 1985, the Secretary will issue regulations prescribing the standards to be used in determining whether property is transferred for use in an active trade or business.

Tainted assets

Transfers of "tainted assets" (defined in a manner similar to that of the IRS guidelines) are ineligible for the trade or business exception. The House bill creates a new category of tainted assets: foreign currency or property denominated in a foreign currency.

Treatment of stock or securities

Transfers of stock or securities that fall within the active trade or business exception can be made without the recognition of gain. In the case of other transfers, the House bill contemplates that the present-law exceptions to the treatment of stock or securities as tainted assets will continue to apply.

Partnership interests

Except as provided in regulations, a transfer of an interest in a partnership is treated as a transfer of the transferor's pro rata share of the assets of the partnership.

Special rule for transfers of intangibles

Transfers of intangible assets in transactions that would otherwise qualify for nonrecognition of gain are treated as transfers for payments contingent on productivity, use, or disposition of the property. The transferor is treated as receiving payments over the useful life of the intangible property on an annual basis. Amounts included in gross income by reason of the special rule are treated as ordinary income from sources within the United States.

Incorporation of foreign loss branch

The active trade or business exception is inapplicable to certain transfers in connection with the incorporation of a foreign branch that has operated at a loss. Under the House bill, a tax is imposed on the lesser of (1) the excess of pre-incorporation losses incurred by the foreign branch with respect to which a deduction was allowed to the taxpayer over the amount of such losses recaptured under section 904(f), or (2) the gain on the transfer.

Declaratory judgment procedure

The House bill repeals the declaratory judgment procedure for Tax Court review of section 367 rulings and ruling requests.

Excise tax rules

To preserve consistency between section 367 and the excise tax rules, the House bill provides that the excise tax will not be imposed if the taxpayer establishes to the satisfaction of the IRS that gain should not be recognized on the transfer under principles similar to the principles of section 367.

Treatment of liquidating distributions

To the extent provided in regulations to be prescribed by the Secretary, a domestic corporation recognizes gain on liquidating distributions of appreciated property to foreign persons.

Notification requirement

The House bill provides a notification requirement for section 367(a) transfers and a set of penalties for failures to comply.

The bill also extends the general three-year statute of limitations on assessment and collection of tax with respect to any tax imposed under section 367 where the taxpayer fails to give the required notice.

Effective date

The provisions of the House bill apply to transfers or exchanges made after December 31, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill with technical modifications.

Special rule for transfers of intangibles

If, subsequent to a transfer of an intangible to a foreign corporation, the U.S. transferor disposes of its stock in the foreign-transferee corporation, then part of the gain on disposition of the stock is treated as being U.S.-source ordinary income attributable to the disposition of the intangible. Similarly, if the foreign-transferee corporation disposes of the intangible, the U.S. transferor is deemed to receive a U.S.-source payment of ordinary income with respect to the intangible at that time.

Incorporation of foreign loss branch

The Senate amendment clarifies that, in the case of an overall foreign loss, the amount of gain required to be recognized is reduced by the amount of income required to be recognized by section 904(f)(3) in the current taxable year, but not amounts that were simply recharacterized as U.S.-source income by section 904(f)(1).

Treatment of liquidating distributions

Under the Senate amendment, a domestic corporation recognizes gain on liquidating distributions of appreciated property to foreign persons, except as otherwise provided in regulations to be prescribed by the Secretary.

Effective date

The Senate amendment provides a transition rule for transfers with respect to which a ruling request under section 367(a) was filed with the IRS before March 1, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment with technical modifications.

Transfers for use in a trade or business

The conference agreement generally follows the Senate amendment.

Transfers of appreciated property of a domestic branch.—The conferees intend that regulations to be prescribed by the Secretary will require gain recognition on the transfer of assets that were used in the United States, to the extent of depreciation deductions previously claimed by the taxpayer with respect to the transferred property. This result is consistent with the treatment of transfers of property of a foreign branch that has operated at a loss (discussed below).

Tainted assets

The conference agreement follows the Senate amendment.

Except as provided in regulations, gain is recognized on the transfer of (1) property described in section 1221 (1) or (3) of the Code (relating to inventory, copyrights, etc.), (2) installment obligations, accounts receivable, or similar property, (3) foreign currency or other property denominated in a foreign country, (4) intangible property (as defined for purposes of the special rules relating to intangibles), and (5) property with respect to which the transferor is a lessor at the time of the transfer, except where the transferee is the lessee.

Treatment of stock or securities

The conference agreement follows the Senate amendment.

The conference agreement contemplates that certain transfers of stock or securities will fall within the exception for transfers for use in an active trade or business.

With respect to stock that is transferred to a foreign corporation in a transaction that constitutes a section 351 exchange as well as a type B reorganization, the conferees expect that, in developing regulations, the Secretary will carefully consider whether there are cases where the transfer should be treated as a section 351 exchange.

Treatment of partnership interests

The conference agreement follows the Senate amendment.

Special rules for transfers of intangibles

The conference agreement follows the Senate amendment.

The conferees intend that disposition of (1) the transferred intangible by a transferee corporation, or (2) the transferor's interest in the transferee corporation will result in recognition of U.S.-source ordinary income to the original transferor. The amount of U.S.-source ordinary income will depend on the value of the intangible at the time of the second transfer.

The conferees wish to clarify that, as under present law, gain will generally be recognized under section 367(a) on tranfers of marketing intangibles (such as trademarks or trade names) for use in connection with a U.S. trade or business, or in connection with goods to be manufactured, sold, or consumed in the United States.

Incorporation of foreign loss branch

The conference agreement follows the Senate amendment with two technical modifications. First, in applying the rule requiring gain recognition, a pre-incorporation loss is reduced by taxable income derived by the foreign branch in a taxable year after the taxable year in which the loss was incurred and before the close of the taxable year of the transfer. Second, the conference agreement provides for the characterization of the recognized gain (as ordinary income or capital gain) by reference to the character of the previously incurred losses. For example, if a branch incurred a capital loss (or a foreign oil extraction loss) in an earlier year, its later incorporation would yield capital gain (or foreign oil extraction income). The conferees intend that, on incorporation of a loss branch with appreciated intangibles, the transfer of intangibles will generally be subject to the special rule for intangibles, not the loss branch rule. In all other respects, the conferees intend that the provision for transfers of foreign loss branches be applied in a manner consistent with the IRS's published rulings under present law. Thus, for example, losses that result in gain recognition on incorporation include expenses directly related to a branch's property that was not transferred but abandoned as worthless. *See* Rev. Rul. 80-247, 1980-2 C.B. 127. Similarly, in applying the statutory provision, the profits and losses of divisions that are separate business operations cannot be combined. *See* Rev. Rul. 81-82, 1981-1 C.B. 127. As under current law, the basis of transferred assets will be the same as the basis of the assets in the hands of the transferor immediately prior to the exchange, increased by the amount of gain recognized to the transferor on the exchange. *See* Rev. Rul. 78-201, 1978-1 C.B. 91.

Declaratory judgment procedure

The conference agreement follows the Senate amendment.

Excise tax rules

The conference agreement follows the Senate amendment with modifications. First, the conference agreement clarifies that, as under present law, the taxpayer is to make the showing required under section 1492 before the transfer. Second, the conference agreement makes clear that all of the principles of section 367 (including the special rule for intangibles) are applicable for purposes of the excise tax rules.

Treatment of liquidating distributions

The conference agreement follows the House bill. Present law will continue to apply until regulations are promulgated.

Notification requirement

Under the conference agreement, the notification requirement is extended to liquidating distributions to foreign persons.

Effective date

The conference agreement follows the Senate amendment with two modifications.

Ruling requests under the excise tax rules.—The conference agreement expands the scope of the transition rule for transfers with respect to which a ruling request was filed before March 1, 1984 to cover ruling requests under sections 1492 and 1494 of the Code.

Special rule for certain transfers of intangibles.—The conference agreement provides a special rule for transfers of intangibles that occur after June 6, 1984 (the date of conference action) and before January 1, 1985 (the general effective date). Transfers of intangibles during this period will be treated as made for tax avoidance purposes. Subject to terms and conditions prescribed by the Secretary, however, the Secretary is authorized to waive the application of the special rule. The conferees anticipate that the Secretary will waive application of the rule if taxpayers agree to apply to the transfer the rules applicable to post-December 31, 1984, transfers under the bill. The Secretary may also waive application of the rule in other cases under the existing guidelines. The conferees intend, however, that the Secretary carefully examine transfers of intangibles before giving such a waiver. Transfers of intangibles that are not fully developed or that are not essential to the active conduct of a trade or business should not be given a waiver. This rule will not apply to transfers with respect to which a ruling request was filed before March 1, 1984, or with respect to which a ruling was obtained before June 6, 1984.

12. Amendments relating to foreign personal holding companies

Present law

To determine whether a foreign corporation is a foreign personal holding company, a U.S. person is considered to own the stock of his nonresident alien spouse, blood relative, or partners. Interposition of a foreign entity between a U.S. taxpayer and a foreign personal holding company arguably prevents application of the foreign personal holding company rules.

House bill

The House bill ends attribution of ownership of stock owned by a nonresident alien to the alien's U.S. brothers and sisters (whether by the whole or half blood), ancestors, and lineal descendants ("blood relatives"). It disregards the interposition of foreign partnerships and other foreign entities between U.S. taxpayers and foreign personal holding companies. It generally applies to taxable years beginning after December 31, 1983. It provides a transitional rule to allow certain existing structures until the end of 1984 to unwind.

Senate amendment

The Senate amendment includes the House family attribution provision; it also ends attribution of stock owned by a nonresident alien to the alien's U.S. partners who are not shareholders (or relatives of shareholders) in the foreign corporation. It includes the House provision that disregards the interposition of foreign entities between U.S. taxpayers and foreign personal holding companies. It generally applies to taxable years begining after March 15, 1984, and includes the same transitional rule as the House bill.

Conference agreement

The conference agreement generally follows the Senate amendment with respect to attribution of stock ownership from nonresident alien individuals, but limits the application of the provision ending attribution from nonresident aliens who are blood relatives of U.S. persons. In cases where a U.S. person is a blood relative of the nonresident alien individual who owns stock, the conference agreement will attribute the stock of the nonresident alien to his or her U.S. blood relatives. For example, under the conference agreement, as under current law, a foreign corporation 40 percent of whose shares belong to a U.S. citizen and 60 percent of whose shares belong to the nonresident alien sister of the U.S. citizen may be a foreign personal holding company. The conferees see the possibility of significant abuse in such a case, and whenever a nonresident alien's U.S. blood relative owns stock in a foreign corporation, but do not believe that such a strong possibility exists when none of the nonresident alien's blood relatives owns stock in a foreign corporation. The conference agreement follows the Senate amendment with respect to attribution from nonresident aliens who are partners of U.S. persons.

The conference agreement includes the provision in the House bill and the Senate amendment that disregards the interposition of foreign entities between U.S. taxpayers and foreign personal holding companies. The managers intend that, as under current law, to the extent that the grantor of (or a transferor to) a trust is taxable on its income, then that person (and not a beneficiary of the trust) will be treated as the owner of the trust for the purposes of the foreign personal holding company rules. For example, the grantor of a revocable trust is taxable on its income (sec. 674); the grantor will be considered its owner for the purposes of the foreign personal holding company rules.

These foreign personal holding company provisions apply to taxable years beginning after December 31, 1983, and include the transitional rule contained in the House bill and the Senate amendment.

13. Coordination of Subpart F with foreign personal holding company provisions

Present law

When the foreign personal holding company rules and the controlled foreign corporation rules (of Subpart F) overlap, the foreign personal holding company rules take priority. Taxpayers have contended that being subject to foreign personal holding company tax for a year exempts them from tax under Subpart F that year, even on an investment of (previously untaxed) earnings and profits in U.S. property. Foreign personal holding company income includes dividends and interest from a related corporation that operates a trade or business in the recipient's country, but the controlled foreign corporation rules (of subpart F) do not taint this kind of income.

House bill

The House bill repeals the rule that taxation under the foreign personal holding company rules precludes taxation under the Subpart F rules. It provides a new rule for coordination of the two sets of provisions: a controlled foreign corporation's Subpart F income is taxed under Subpart F—but not under the foreign personal holding company rules—to the extent that it would otherwise be taxable under both Subpart F and the foreign personal holding company rules. This provision of the House bill applies to taxable years of U.S. shareholders beginning after the date of enactment.

Senate amendment

The Senate amendment includes the House provision coordinating the foreign personal holding company rules and the Subpart F rules. In addition, the Senate amendment removes dividends and interest from a related corporation that operates its trade or business in the recipient's country from the foreign personal holding company income calculation. This provision of the Senate amendment applies to taxable years of foreign corporation beginning after March 15, 1984.

Conference agreement

The conference agreement includes the provision in the House bill and the Senate amendment coordinating the foreign personal holding company rules and the Subpart F rules. This provision is effective for taxable years of foreign corporation beginning after date of enactment.

The conference agreement includes the provision in the the Senate amendment that removes dividends and interest from a related corporation that operates a trade or business in the recipient's country from the foreign personal holding company income calculation, but adds a technical amendment. The technical amendment specifies that the provision will not apply to dividends or interest from a corporation that is a foreign personal holding company. This provision is effective for taxable years of foreign corporations beginning after March 15, 1984.

14. Gain from sale or exchange of stock in certain foreign corporations

Present law

Gain recognized on the sale or exchange of stock in a foreign corporation by a U.S. person owning ten percent or more of the corporation's voting stock may be treated as a dividend (sec. 1248(a)). Gain is recharacterized as dividend income to the extent of the corporation's post-1962 earnings and profits attributable to the period the stock sold was held by the shareholder while the corporation was a controlled foreign corporation. Similarly, a U.S. corporation that disposes of stock in a transaction governed by section 311, 336, or 337 (by distributing the stock as a dividend-in-kind or in the course of liquidation) is required to recognize its pro rata share of post-1962 earnings and profits as dividend income. The amount of dividend income required to be included in the U.S. corporation's income is equal to the difference between the fair market value of the stock and its basis, subject to the post-1962 earnings and profits limitation.

House bill

Under the House bill, if shareholders of a U.S. corporation exchange stock in the U.S. corporation for newly issued stock (or treasury stock) of a foreign corporation ten percent or more of the voting stock of which is owned by the U.S. corporation, the transaction is recast. For purposes of applying section 1248, the foreign corporation is viewed as having issued the stock to the U.S. corporation and the U.S. corporation is treated as having distributed that stock to its shareholders. Under the rules of section 1248 provided in present law, the U.S. corporation is thereby required to recognize dividend income. The amount of dividend income is equal to the difference between the fair market value of the stock received by the shareholders of the U.S. corporation and the U.S. corporation's basis for its stock in the foreign corporation, subject to the post-1962 earnings and profits limitation.

Under an amendment to section 959 (relating to the exclusion of gross income of a controlled foreign corporation's previously taxed earnings and profits) in a different section of the House bill, the foreign corporation's earnings and profits that are recognized by the U.S. corporation as dividend income under section 1248 are treated as previously taxed income.

The provision is effective for exchanges after the date of enactment.

Senate amendment

The Senate amendment generally is the same as the House bill, except that no provision is made for the treatment of the earnings and profits of the foreign corporation as previously taxed income.

Conference agreement

The conference agreement follows the House bill.

15. Technical amendments to section 1248 (ordinary income treatment on disposition of stock of certain foreign corporations)

Present law

When a U.S. person disposes of stock of a controlled foreign corporation, some of his gains may be taxed as ordinary income, not as a capital gain (Code section 1248). There may sometimes be double counting of ordinary income and foreign tax credits. There may be different treatment of a U.S. person's indirect ownership of a controlled foreign corporation and a U.S. person's direct ownership.

House bill

The House bill prevents double counting of ordinary income and foreign tax credits on account of the disposition of stock in a foreign corporation. This provision applies to transactions occurring after the date of enactment (or after October 9, 1975, at taxpayer's election). The bill also treats a U.S. person's indirect ownership of a controlled foreign corporation like direct ownership. This provision applies to transactions occurring after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

16. Foreign investment companies

Present law

More than fifty-percent U.S.-owned foreign companies registered under the Investment Company Act or engaged primarily in investing or trading in securities (with certain exceptions) are defined as foreign investment companies, sales of whose shares are taxed at ordinary income rates.

House bill

The bill redefines foreign investment companies as companies engaged primarily in investing or trading in securities or commodities (or interests in either), and changes the ownership test to 50-percent or more U.S. ownership. This new definition applies to sales and exchanges on or after September 29, 1983. For stock held on that date, it applies to sales and exchanges more than one year after date of enactment.

Senate amendment

The Senate amendment is the same as the House bill except that the Senate amendment has a different effective date. The redefinition of foreign investment companies in the Senate amendment applies to sales and exchanges on or after October 31, 1983. For stock held on that date, it applies to sales and exchanges more than one year after date of enactment.

Conference agreement

The conference agreement follows the House bill.

17. Foreign collapsible corporations

Present law

Overview

The collapsible corporation rules of section 341 are designed to prevent the use of a specific tax-avoidance device: the use of a corporation to convert business profits that would otherwise be taxed as ordinary income to capital gain. Under present law, Congressional intent underlying section 341 may be circumvented in some circumstances by use of a foreign corporation.

Background

The reports of the Committee on Ways and Means and the Committee on Finance that accompanied the 1950 legislation enacting section 341 describe a collapsible corporation as "a device . . . used in an attempt to convert ordinary income into long-term capital gain by use of a temporary corporation." [1]

Because U.S. persons are subject to Federal income tax on their worldwide income, there is an incentive to make use of collapsible corporations to engage in activities conducted abroad, as well as activities conducted within the United States.

Statutory rules and legislative history

General rules.—The efficacy of the collapsible corporation as a tax-avoidance device depends on the combination of two tax results: (1) avoiding a tax at the corporate level and (2) obtaining capital gain treatment at the shareholder level. In 1950, Congress acted to prevent taxpayers from obtaining the combination of tax results that underlies the utility of a collapsible corporation.

Section 341(a) generally treats a shareholder's gain on the sale or exchange of stock in a collapsible corporation as ordinary income. Section 341(b)(1) defines the term collapsible corporation to include a corporation that is formed or availed of principally for the manufacture, construction, or production of property, with a view to a sale or exchange of stock by its shareholders before the realization by the corporation of a substantial part of the taxable income to be derived from the property, and the realization by the shareholders of the gain attributable to the property. Thus, the statutory definition of collapsible corporation looks to whether a corporation can be expected to realize the gain inherent in its property in the normal course of business.

The provisions of section 341 make no distinction between domestic corporations and foreign corporations. Thus, the collapsible corporation rules are applicable to a foreign corporation that is used as the vehicle for the proscribed tax avoidance scheme. Rev. Rul. 56-104, 1956-1 C.B. 178.[2]

Section 341(e) exceptions for nonabusive situations.—In 1958, Congress refined the collapsible corporation rules to provide exceptions for situations that were not intended to be covered by the initial legislation. The report of the Senate Finance Committee acknowledges that "the purpose of [section 341] . . . is to prevent income which would otherwise be taxed at ordinary income rates from being converted into income taxable at capital gain rates merely by use of the corporate entity." [3] The statutory definition of collapsible corporation, however, by its terms and as interpreted, could result in the application of section 341 to tax a shareholder's gain as ordinary income even if the corporation's property would constitute a capital asset in the hands of the shareholder.[4] The 1958 legislation, which added section 341(e) to the Code, was designed, in part, to reverse this result.

The facts of Revenue Ruling 72-24, 1972-1 C.B. 103, disclosed that a foreign corporation was a collapsible corporation within the meaning of section 341(b). Section 341 was not applied, however, because of the application of section 341(e). In applying section 341(e), the Internal Revenue Service treated the foreign corporation as if it were a domestic corporation.

Section 341(f) consent to recognize gain at the corporate level.—Section 341(f)(1) permits capital gain treatment on disposition of stock in a collapsible corporation if the corporation consents to recognize gain on the disposition of its "subsection (f) assets" (generally, assets other than capital assets) when realized, even in a transaction that would otherwise qualify for nonrecognition of gain. Section 341(f)(3) provides an exception to the requirement of corporate-level gain recognition for certain tax-free corporate organizations, reorganizations, and liquidations, if the transferee gives a section 341(f)(1) consent.

The theory of section 341(f) is that section 341 should not apply if the corporation continues in existence and realizes the gain on its property.[5] To insure the result on which section 341(f) is premised, the statute mandates recognition of gain on dispositions that would otherwise be tax-free.

Treasury regulations provide that, in the case of a foreign corporation that gives a section 341(f) consent, any gain on the corporation's disposition of a subsection (f) asset is considered gross income that is effectively connected with a U.S. trade or business (Treas. Reg. sec. 1.341-7(e)(3)). A foreign corporation is subject to the regular corporate income tax with respect to income that is effectively connected with a U.S. trade or business. The regulatory provision may have no practical effect, however, where the foreign corporation's income is not subject to U.S. tax (because the corporation has no U.S.-source income and is not engaged in a U.S. trade or business) and the stock is sold to a foreign person.

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[1] H.R. Rept. No. 2319, 81st Cong., 2d Sess. 196 (1950); S. Rept. No. 2375, 81st Cong., 2d Sess. 88 (1950).

[2] Congress has addressed the issue of the extent to which U.S. taxpayers can use foreign corporations to defer U.S. tax on foreign-source income in sections 951-964 ("Subpart F") and 1248 of the Code. Under these provisions, the earnings and profits of certain foreign corporations are taxed as ordinary income to U.S. shareholders who own ten percent or more of the corporation's stock. Because the classic collapsible corporation has insignificant earnings and profits, neither Subpart F nor section 1248 prevents the use of a foreign corporation for the proscribed device.

[3] S. Rept. No. 1983, 85th Cong., 2d Sess., 31 (1958).

[4] *See Braunstein* v. *Commissioner*, 347 U.S. 65 (1963) (holding that there is no implied exception for this situation).

[5] H.R. Rept. No. 1308, 88th Cong., 2d Sess., 3 (1964).

House bill

Under the House bill, to the extent provided in regulations prescribed by the Secretary, a foreign corporation will be prohibited from making a section 341(f) consent.

The provision is effective on the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill, with a technical modification. Under the Senate amendment, to the extent provided in regulations prescribed by the Secretary, a section 341(f) consent will not be given effect where the consent is given by a foreign corporation.

Conference agreement

The conference agreement follows the Senate amendment with one modification. Under the conference agreement, by statute, a section 341(f) consent will not be given effect where the consent is given by a foreign corporation.

There is no policy reason to allow the use of the collapsible corporation device by U.S. taxpayers simply because the corporation is organized under the laws of a foreign country to engage in an activity abroad. This result may occur, however, where the stock of a foreign collapsible corporation is sold to a foreign person and the section 341(f) consent procedure is used. The conferees intend that a section 341(f) consent given by a foreign corporation will not be given effect if the consenting corporation is not engaged in a U.S. trade or business and stock in the corporation is sold to a foreign person. The conferees recognize that there may be cases in which a section 341(f) consent given by a foreign corporation should be given effect. Accordingly, the conference agreement authorizes the Secretary to prescribe regulations setting forth circumstances in which it would be appropriate to give effect to a section 341(f) consent given by a foreign corporation.

The conferees are informed that taxpayers have taken the position that section 341 should not apply to a foreign corporation that derives no U.S.-source income, and that section 341(f) properly provides a means to accomplish this result. This position is premised on the notion that the primary purpose of section 341 is to insure the collection of a Federal corporate income tax. To the contrary, the legislative history makes clear that section 341 is designed to prevent the conversion of ordinary income to capital gain by use of a corporation; the avoidance of tax at the corporate level is incidental to the conversion technique. Thus, the fact that the income of a foreign collapsible corporation is not subject to U.S. tax does not present a reason to permit the corporation's shareholders to circumvent section 341 by use of a section 341(f) consent.[8]

18. Stapled stock; stapled entities

Present law

Shares in one corporation may be transferable only in tandem with shares of a "sister" corporation. These shares are "stapled." A U.S. corporation owning a foreign corporation may avoid the controlled foreign corporation rules and the anti-boycott rules by spinning off the foreign corporation. Management may retain control if the stock of the two corporations is stapled. In addition, U.S. corporations may avoid restrictions on RICs and REITs by stapling their stock with stock of other U.S. entities. In addition, U.S. corporations may seek multiple surtax exemptions, accumulated earnings tax credits, etc., by stapling.

House bill

Under the House bill, new rules apply to entities 50 percent or more of which can be transferred only in tandem with interests in another entity. Generally, where a foreign and a domestic corporation are stapled entities, the foreign corporation will be treated as domestic. A foreign entity stapled on June 30, 1983, can elect to be treated as the subsidiary of its U.S. sister rather than as a U.S. corporation; stapled entities cannot claim non-U.S. status by virtue of a treaty unless they were entitled to treaty benefits on June 30, 1983. All stapled entities will be treated as one in determining whether any one is a REIT or RIC.

In determining controlled corporation status or stock ownership, one stapled corporation will be treated as owning the other. In addition, the Secretary may prescribe regulations to prevent tax avoidance or evasion through stapling. Generally, the provision is effective on the date of enactment. However, for interests stapled on June 30, 1983, the provision will not apply until January 1, 1985 (January 1, 1987, in the case of a stapled foreign corporation). This provision will not apply to certain Puerto Rican corporations or REITs whose interests were stapled on June 30, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the House bill, but adds a special effective date for certain purposes for certain stapled mortgage REITs.

19. Insurance of related parties by a controlled foreign corporation

Present law

Income of a controlled foreign corporation from the performance of services for a related person outside the country of its incorporation is currently taxable to its U.S. shareholders. Treasury Regulations may deem the place of performance of insurance services to be the location of the insurance company's office so that income from insuring related parties' risks may not be currently taxable to the insurer's U.S. shareholders.

House bill

No provision.

Senate amendment

The Senate amendment specifies that income from the performance of insurance services by a controlled foreign corporation for a primary insured who is related to the insurer arises in the country where the risk is located. This income will be taxable currently to the corporation's U.S. taxpayers.

This provision will apply to taxable years of controlled foreign corporations beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment but expands the definition of "related party" for purposes of the provision to include 10-percent U.S. shareholders (and persons related to them) of a controlled foreign corporation performing insurance services. The purpose of the expansion is to impose tax on an insurance company owned (directly or indirectly) by a relatively small number of U.S. shareholders that use it in whole or in part to insure their foreign risks or foreign risks of parties related to them.

20. Definition of resident alien

Present law

All individuals who are not U.S. citizens are either resident aliens or nonresident aliens of the United States. Residence depends on an alien's subjective intent. Resident aliens, like U.S. citizens, are subject to U.S. tax on worldwide income (although the foreign tax credit may reduce or eliminate U.S. tax on foreign source income). Nonresident aliens are generally subject to U.S. tax only on income that arises in the United States and on income from U.S. businesses.

When an individual changes his status from resident alien to nonresident alien (or vice versa), his or her taxable year consists of two separate periods. During one period, the United States will tax worldwide income; during the other period, the United States will normally tax only U.S. source income.

House bill

Under the House bill, an alien will be a resident if either (1) he is a lawful permanent resident of the United States (the "green card test"), or (2) the sum of (a) the days present during the current year, (b) one-third times the days present during the preceding year, and (c) one-sixth times the days present during the second preceding year equals or exceeds 183 (the "substantial presence test"). Presence as a commuter from Canada or Mexico will not count. Residence for fewer than 31 days in a year precludes residence under the substantial presence test for that year.

The substantial presence test will not count days of diplomats or certain other representatives of foreign governments (indefinitely), teachers or trainees (generally for 2 years only), or students (generally for 5 years only). The test will not apply to an individual who is unable to leave the United States because of a medical condition that arose while he or she was present in the United States.

There is an exception to the substantial presence test for individuals present for fewer than 183 days during the year who establish closer connections with a foreign country than with the United States and a tax home there for the year. This closer connections/tax home exception will not be available for any applicant for an immigrant visa.

Residence under the green card test will begin on the day the alien entered the United States. *De minimis* presence before start or after termination of substantial presence will generally be disregarded under the substantial presence test.

A taxpayer who has not established a taxable year for any period prior to the time he becomes taxable in the United States will be taxed on a calendar year basis.

The bill applies to taxable years beginning after December 31, 1984. For the substantial presence test, days of presence in 1983 will count only for aliens who had been residents (under existing law) in 1983 and 1984; days of presence in 1984 will count only for residents (under existing law) in 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications. First, if an individual is a resident of the United States for three consecutive years under the new statutory definition and is a resident of the United States during one of the next three years, then he or she will be subject to U.S. tax for all intermediate years on the same items of income that would be taxed to a U.S. citizen who renounced U.S. citizenship for the principal purpose of avoiding U.S. tax (sec. 877). This rule will apply regardless of the subjective intent of the alien. The conferees adopted this modification because of a concern that, under the mechanical tests for residence that the conference agreement provides, long-time U.S. residents may leave the United States for a short period, dispose of assets free of U.S. tax, and resume U.S. residence. The conferees have adopted for this purpose the rules that tax certain U.S. citizens who renounce U.S. citizenship because of the clarity of that body of law, although the conferees believe that those rules merit reexamination (especially to the extent that those rules allow disposition of foreign assets held during U.S. citizenship or residence free of U.S. tax).

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[8] The conferees acknowledge that it may be appropriate for Congress to review the relationship between the Subpart F provisions, section 1248, and section 341.

Second, days that an alien is present in transit without visa for 24 hours or less (for example, in a U.S. airport en route from Canada to South America) would not count as days of U.S. presence for the purpose of the substantial presence test.

Third, the substantial presence test will not count days of an individual who is unable to leave the United States because of a medical condition that arose while he or she was present in the United States.

The conferees do not intend that the conference agreement override treaty obligations of the United States. For example, an alien who is a resident of the United States under the new statutory definition but who is a resident of a treaty partner of the United States (and not a resident of the United States) under a United States income tax treaty will be eligible for the benefits that the treaty extends to residents of the treaty partner. However, notwithstanding the treatment of the alien as a resident of the other country for treaty purposes, the conference agreement will treat the alien as a U.S. resident for purposes of the internal tax laws of the United States. For example, if the alien owns more than 50 percent of the voting power of a foreign corporation, the foreign corporation will be a controlled foreign corporation (sec. 957).

The conferees do not intend that the definitions of resident alien and nonresident alien in the conference agreement affect the determination whether a trust or an estate is a U.S. or a foreign trust or estate (secs. 7701(a)(30) and (31)) except insofar as that determination itself turns on the residence or nonresidence of particular alien individuals.

The conference agreement allows the Secretary to prescribe regulations to carry out the purpose of this subsection. In particular, the conferees understand that regulations may be necessary to coordinate U.S. taxing jurisdiction with the taxing jurisdictions of U.S. possessions the basis of whose tax law is the Internal Revenue Code.

21. Treatment of community property income of nonresident aliens

Present law

A married couple both of whom are nonresident aliens may use foreign community property laws to split the U.S. earned income of one spouse for computing U.S. tax liability. A similar couple residing in a common law country could not split income in this way.

House bill

The House bill ends the ability of nonresident alien individuals to use foreign community property laws to split the U.S. earned income of one spouse.

The bill applies to taxable years beginning after December 31, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

22. Foreign sales corporations

Present law

In general

Present law provides tax deferral for the exporting income of Domestic International Sales Corporations (DISCs) and their shareholders. A DISC typically is a domestic subsidiary of a U.S. company engaged in exporting property produced in the United States.

The amount of the deferral is limited generally to 42.5 percent of DISC income that exceeds the average DISC income in a base period. (Most recent data show that the average DISC deferral for all DISCs is 34 percent of DISC income or 17 percent of the combined taxable income of the DISC and its parent.) Deferral is provided for both export profits and export investment income. The tax on accumulated DISC income may be deferred indefinitely until the income is actually distributed or the DISC fails to qualify as a DISC.

Deferred income

Under the DISC rules, deferral of tax is provided for income from (1) the sale or lease for use outside the United States of export property, (2) services related or subsidiary to the sale or lease of export property, (3) certain engineering and architectural services, (4) certain managerial services, including managerial services provided to unrelated DISCs to aid them in deriving export receipts, provided that at least 50 percent of the gross receipts of the DISC that provides the services are from exporting, (5) interest on any obligation that is a qualified export asset, (6) certain dividends, and (7) the sale of export assets.

Export property

DISC benefits are provided for export property, which generally includes property manufactured, produced, grown, or extracted in the United States. DISC benefits are not allowed, however, for property leased by a DISC for use by any member of a controlled group that includes the DISC, patents or intangibles, subsidized property, property in short supply, or oil, gas, coal, uranium, and other depletable minerals. The amount of the deferral on the sale of military goods is half the amount otherwise allowed.

Transfer pricing

DISC deferral is available on a percentage of income allocated to it under special transfer pricing rules. Transfer prices are based on either special rules or arm's-length pricing under Code section 482. Under the special rules, transfer prices are based on either 50 percent of combined taxable income of the DISC and its related party, or 4 percent of gross receipts from the transaction; in either case, the DISC also earns 10 percent of export promotion expenses.

Amount of benefit

The amount of the DISC benefit depends on the method used to determine transfer prices. If transfer prices are based on 50 percent of combined taxable income, deferral is no more than 21.25 percent of income earned by DISC and parent on the transaction. If transfer prices are based on 4 percent of gross receipts, total deferral is no more than 1.7 percent of gross receipts. If transfer prices are based on arm's-length rules, deferral is no more than 42.5 percent of DISC income.

Incremental rules limit the tax deferral to income attributable to export gross receipts that exceed 67 percent of the average gross receipts in a 4-year base period. The incremental rules do not apply to small DISCs with adjusted taxable income of $100,000 or less.

Qualifications

To qualify for the deferral, a DISC must be incorporated under the laws of any of the States or the District of Columbia, have only one class of stock, have outstanding capital stock with a par or stated value of at least $2,500, elect to be treated as a DISC, and satisfy the gross receipts and gross assets tests.

The gross receipts test requires that at least 95 percent of the corporation's gross receipts consist of qualified export receipts. In general, qualified export receipts are receipts, including commission receipts, derived from the sale or lease for use outside the United States of export property, or from the furnishing of services related or subsidiary to the sale or lease of export property. The gross assets test requires that at least 95 percent of the corporation's assets qualify as export assets. Qualified export assets include inventories, export property, necessary operational equipment and supplies, trade receivables from export sales (including certain commissions receivable), producers' loans, working capital, obligations of domestic corporations organized solely to finance export sales under guaranty agreements with the Export-Import Bank, and obligations issued, guaranteed, or insured by the Export-Import Bank or the Foreign Credit Insurance Association.

A DISC's taxable year need not conform to the taxable year of any of its shareholders. A wholly owned DISC will frequently have a taxable year ending one month after its parent's taxable year ends. This difference in taxable years allows an additional 11 months of deferral of income that is deemed distributed to the parent.

If a DISC fails to meet the qualifications for any reason, the DISC provisions provide for recapture of the DISC benefits received in previous years. Recapture of accumulated DISC earnings (because the DISC has become disqualified) is spread over a period equal to 2 years for each year that the DISC was in existence (up to a maximum of 10 years).

Source of income from export sales

The United States taxes U.S. taxpayers on their U.S. and foreign source income, but allows a foreign tax credit for foreign taxes on foreign source income. The foreign tax credit limitation reflects the principle that the credit cannot exceed U.S. tax on foreign source income. In general, in calculating the limitation, most foreign source income is grouped together in a general category known as the "all other" category; a separate limitation or "basket" applies to certain income from deemed DISC distributions (and, separately, to certain interest). In most cases, an export sale will not attract foreign tax so long as the U.S. seller does not maintain a fixed place of business or perform substantial activities in the country of destination. The separate limitation is designed to prevent taxpayers from reducing U.S. tax on low or untaxed distributions from DISCs by crediting foreign taxes on non-DISC income against the U.S. tax on distributions from DISCs.

Cooperatives

A cooperative is allowed to be a shareholder of a DISC. However, farmers who are members of cooperatives do not generally benefit directly or indirectly from DISC deferral. The farmers do not benefit directly because if the deferred income is distributed to the cooperative, it must be distributed currently (and taxed) to the farmer. Also, the cooperative does not benefit from the deferral because a cooperative must distribute its income to its members and patrons to benefit, under the rules for cooperatives, from the exemption from tax. Thus, deferred DISC income (or other pre-tax income) is generally not available to satisfy the particular working capital requirements of the cooperative.

Export Trade Corporations

Export trade corporations (ETCs) are controlled foreign corporations that are allowed to defer a portion of their income from exporting. In 1971, the ETC provisions were replaced by DISC. Only those ETCs in existence at that time are allowed to continue operating as ETCs.

If an ETC fails to meet the requirements to continue operating as an ETC, the previously untaxed income will continue to be deferred provided the income is invested in export assets.

House bill

No provision.

Senate amendment

In general

The Senate amendment exempts from tax a portion of the export income of a Foreign Sales Corporation (FSC) if certain foreign presence and economic process tests are met. Generally, 17 percent of export income will be exempt from tax if the optional administrative pricing rules are used to allocate income to the FSC, or 34 percent of FSC income if FSC income is based on arm's-length (sec. 482) transfer pricing rules. Exemption is provided for export profits but not for export investment income.

A FSC will generally be a foreign subsidiary (a corporation organized outside the U.S. customs area) that meets certain foreign presence tests.

Exempt income

Exemption from tax is provided on a portion of the income from (1) sale or lease of export property for use outside the United States, (2) services related or subsidiary to the sale or lease of export property, (3) certain engineering and architectural services, and (4) export management services, including services provided to unrelated FSCs or DISCs, even if the FSC providing the services is not itself engaged in exporting.

The Senate amendment does not provide exemption from tax on investment income and carrying charges. Investment income includes dividends, interest, royalties, rents, and certain other passive income. Carrying charges include any amounts in excess of the price for an immediate cash sale and any other unstated interest.

Export property

FSC benefits are provided for property manufactured, produced, grown, or extracted in the United States. Unlike DISC, FSC benefits are allowed for coal and uranium products and other depletable products (other than oil and gas). FSC benefits are not allowed for property leased by a FSC for use by any member of a controlled group of which the FSC is a member, patents or other intangibles, subsidized property, property in short supply, and oil and gas products. The exemption on the sale of military goods is half the amount otherwise allowed (same as DISC).

Transfer pricing

FSC exemption is available for income allocated to it under special transfer pricing rules. Transfer prices are based on either optional administrative rules or arms length pricing under section 482. Under the administrative pricing rules, transfer prices are based on either 23 percent of the combined taxable income of the FSC and its related supplier, or 1.83 percent of gross receipts derived from the transaction.

The administrative pricing rules may be used only if the FSC (or its agent) perform all the activities of the economic processes test.

Amount of benefit

Generally, the Senate amendment provides an exemption of tax on 17 percent of export profits with no exemption on nonexport profits or passive income. The amount of the FSC benefit depends, however, on the method used to determine transfer prices. If transfer prices are based on 23 percent of combined taxable income, the exemption is 17 percent of combined taxable income (17/23 of FSC income). If transfer prices are based on 1.83 percent of gross receipts, the exemption is 1.35 percent of gross receipts (17/23 of FSC income). If transfer prices are based on the arm's length pricing rules (sec. 482), exemption is limited to 34 percent of FSC income.

A FSC's nonexempt export income (generally 6 percent of FSC income) will be subject to U.S. tax unless it is determined without reference to an administrative pricing rule, in which case it will be taxed in the same manner and to the same extent as income earned by a foreign corporation that is not a FSC. Interest, dividends, royalties, other investment income and carrying charges will be subject to U.S. tax.

A FSC will not be allowed an investment tax credit or certain other credits. A foreign tax credit will not be allowed with respect to foreign taxes on export income (other than nonexempt export income determined without reference to an administrative pricing rule), but will be allowed with respect to other foreign taxes.

Qualifications

To qualify as a FSC, the corporation must meet the following requirements: (1) a FSC must be organized outside the U.S. customs area. If a FSC is organized in a foreign country, that country must be either a party to an exchange of information agreement with the United States, or an income tax treaty partner if the Treasury certifies that the exchange of information program under the treaty is satisfactory; (2) a FSC may have no more than 25 shareholders; (3) a FSC may not have preferred stock; (4) a FSC must maintain an office outside U.S. customs territory and maintain a set of the permanent books of account at that office; (5) a FSC must have at least one director who is not a U.S. resident; (6) a FSC may not be a member of a controlled group of which a DISC is a member; (7) a FSC must elect to be a FSC; and (8) the taxable year of a DISC or FSC must conform to the taxable year of the majority shareholder.

A FSC that elects to be a small FSC must also satisfy all these requirements.

Foreign presence and economic processes

FSC benefits are provided only if (1) the management of the corporation takes place outside the United States and (2) if the economic processes with respect to each transaction take place outside the United States.

The management of the corporation is treated as outside the United States if all meetings of the board of directors and shareholders are outside the United States, the principal bank account is outside the United States, and all dividends and certain expenses are paid out of this bank account.

Economic processes are treated as outside the United States if (1) the FSC (or its agent) participates outside the United States in the solicitation, negotiation, or making of the contract, and (2) if the foreign direct costs of the transaction incurred by the FSC equal or exceed 50 percent of the total direct costs (or 85 percent of direct costs of 2 activities). For purposes of this test, the costs of 5 activities are considered: advertising or sales promotion, processing customer orders and arranging for delivery, transportation, determination and transmittal of a final invoice or statement of account and the receipt of payment, and assumption of credit risk.

Burden of proof

The burden of proof that the foreign presence and economic processes tests are satisfied will be shifted to the Secretary of the Treasury if an officer of the corporation signs an affidavit stating that the requirements have been met (and how they have been met). The officer must be a citizen and resident of the United States, and the statement must be made under penalty of perjury.

Distributions to shareholders

A FSC will not be required or deemed to make distributions to its shareholders. Actual distributions to shareholders must be made first out of export income; the FSC may have income that is not export income, for example, investment income. Distributions will be treated as being made first out of earnings and profits attributable to export income, and then out of any other earnings and profits. Any distribution made by a FSC which is made out of earnings and profits attributable to export income to a shareholder which is a foreign corporation or a nonresident alien individual will be treated as a distribution which is effectively connected with the conduct of the trade or business conducted through a permanent establishment of the shareholder within the United States, and as U.S. source income. Thus, such distributions will be subject to Federal income tax.

Export income and investment income of a FSC will not be subject to the rules of subpart F. In addition, the Secretary of the Treasury is authorized to exclude property related to the export activities of the FSC from the subpart F rules relating to investments by controlled foreign corporations in U.S. property.

Dividends received from a FSC

A domestic corporation will generally be allowed a 100 percent dividends-received deduction for amounts distributed from a FSC out of earnings and profits attributable to export income. However, a 100 percent dividends-received deduction will not be allowed for nonexempt export income determined without reference to an administrative pricing rule (sec. 923(a)(2) nonexempt income) or a dividend received by a cooperative with respect to export income that is treated as exempt income.

Source of income from export sales

Income (other than nonexempt export income determined without reference to an administrative pricing rule) will be taken into account under a separate limitation for purposes of determining the foreign tax credit limitation of a FSC.

Foreign taxes on FSC dividends paid to the FSC's shareholders that are attributable to export income (other than nonexempt export income determined without reference to an administrative pricing rule) will be treated as noncreditable foreign taxes. In addition, such dividend income will be taken into account for purposes of the foreign tax credit limitation under a separate limitation.

The bill provides a special rule governing the source of income earned by a person related (within the meaning of sec. 482) to a FSC from transactions giving rise to export gross receipts of a FSC. That related person's foreign source income from such a transaction may not exceed the amount which would be treated as foreign source income earned by that person if the analogous DISC pricing rule applied.

Small business

Small FSC.—FSC benefits are available for the export income (up to $5 million of export gross receipts) of a corporation that elects to be a small FSC. A small FSC must be a foreign corporation that meets the requirements to be a FSC. However, a small FSC is not required to satisfy the foreign presence and economic process tests. A FSC may not elect to be a small FSC if it is a member of a controlled group that includes a FSC (unless the other FSC also elects to be a small FSC).

Small DISC.—A small DISC may continue to defer income attributable to $10 million or less of export gross receipts. The incremental rules would not apply. An interest charge that is tied to the T-bill rate is imposed on the amount of tax deferred.

Deferred DISC income

Under the Senate amendment, tax is forgiven on accumulated DISC income. This forgiveness will apply only to actual distributions made after December 31, 1984, by a DISC (or former DISC) that is a qualified DISC on December 31, 1984.

Export Trade Corporations (ETC's)

Tax is forgiven on the previously untaxed income of an export trade corporation if the company elects to discontinue operating as an ETC. Tax is not forgiven on the previously untaxed income of an ETC that does not qualify as an ETC on December 31, 1984, even though the income is invested in qualified assets.

Cooperatives

The Senate amendment provides indirect benefits to farmers who are members of cooperatives that export agricultural products. Farmers will not be taxed on exempt income until it is actually distributed. Thus, the cooperative may use the exempt income as working capital. (Normally, a cooperative must use income that has been taxed (at the farmer level), but not distributed, as working capital). Farmers will be taxed currently, however, on the non-exempt income (generally 6 percent of FSC income).

Special rules

A FSC may not claim benefits under an income tax treaty between the United States and a foreign country. No tax may be imposed on foreign trade income by a possession of the United States.

Transition rules

The taxable year of any DISC which includes January 1, 1985, will close on December 31, 1984, at which time there will be a deemed distribution of DISC income that normally would be deemed distributed at the end of the DISC's taxable year. Thus, shareholders may be including in income almost 2 years of DISC earnings in the current year. These distributions will be spread over 4 years. Special transition rules are provided for taxpayers with long-term contracts. Assets of a DISC (or ETC) generally may be transferred tax-free to a FSC.

Effective date

The provisions generally apply to transactions after December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment, with modifications. The conferees agreed to reduce the percentage of export income which will be exempt from tax and to clarify (in connection with the factoring provision) that income of a controlled foreign corporation from loans to finance the purchase of its related party's goods is Subpart F income subject to the separate foreign tax credit limitation for interest.

The conference agreement does not contain the Senate amendment's provision expanding the benefits for managerial services beyond those available under DISC. Thus, the agreement requires that a FSC or DISC have at least 50 percent of its income from exporting before income from managerial services provided to an unrelated party will be accorded beneficial treatment.

The exemption for the combined taxable income method under the conference agreement is 16 percent of combined taxable income. The exemption for the gross receipts method is 16/23ds of 1.83 percent, or approximately 1.27 percent of gross receipts (not to exceed 32 percent of FSC income). The limit on the exemption using sec. 482 rules is 32 percent of FSC income. The provision of the conference agreement that decreases the benefits for certain corporate preference items reduces the exemption by an additional 1/17th for corporate shareholders.

The conference agreement adopts the Senate amendment's special rules for small businesses which allow exporting companies with relatively small export gross receipts to elect to be a small DISC with an interest charge or a small FSC. The conferees wish to express concern that without a special effort by the Administration many small businesses which wish to export property will avoid making an election to become a FSC or a small DISC because they fear that such an election will lead to undue complexity and a large administrative burden. Consequently, the conferees hope that small business will be given special encouragement and assistance by the Commerce Department in establishing and operating small FSCs and small DISCs.

The agreement requires tax records (including invoices) to be kept in an office in a country which is either a party to an exchange of information agreement with the United States or an income tax treaty partner, which the Treasury certifies as having an acceptable exchange of information program under the treaty. The conferees intend that a foreign country, to qualify for this treatment, not be a country that has a statute (or other stated policy) which denies the IRS access to the home office of the FSC for audit purposes. Therefore, the conferees intend that the Treasury assure itself of access to the home office of a FSC before certifying a treaty partner or before entering into an exchange of information agreement.

The agreement requires any DISC established after Senate committee action to conform its taxable year to that of its majority shareholder.

The agreement deletes the rule of the Senate amendment that shifts the burden of proof to the IRS on certain issues upon a taxpayer affidavit. The conference agreement does not include the Senate provision shifting the burden of proof to the IRS in connection with enforcement of the foreign presence requirements. The conferees agree with the Senate's rationale for this provision which is to avoid uncertain application of the detailed and technical foreign presence rules thereby reducing administrative burdens on both the IRS and taxpayers. Nevertheless, the conferees believe that the Senate provision created an undesirable precedent. The conferees, however, intend for the IRS to administer the foreign presence provisions of FSC in a manner which facilitate the establishment of FSC and carry out the objectives of the statute.

The agreement modifies the rule governing benefits for sales of military property and services related to such sales to conform to the DISC rule and allow such income one-half of the benefits otherwise allowable.

The conferees agreed to ask the Treasury Department for a study on services. Neither the present DISC provisions nor the FSC benefits allowed under the conference agreement give special tax benefits for the export of services performed in the United States. The conferees think that this policy should be reviewed so that an informed decision can be made regarding the appropriate treatment of income from the export of services in the future. In particular, the conferees expect the study to consider the revenue impact of FSC benefits for services. The conferees direct the Secretary of the Treasury, in consultation with the office of the United States Trade Representative, to undertake a study of the advisability of providing the benefits allowed under the FSC election for profits from services performed in the United States and sold outside the United States. The Treasury Department is to report on the results of this study to the Senate Committee on Finance and the House Committee on Ways and Means no later than six months after enactment.

The conference deletes the present law requirement for DISC reports after 1984 and substitutes a requirement for FSC reports.

The conference agreement will allow U.S. territories to impose tax on income of FSCs that arises after January 1, 1987, and includes a technical correction that would prevent FSCs established in the U.S. Virgin Islands from arguably escaping all tax on nonexempt income. The agreement makes it clear that the so-called "mirror Code" tax rules in place in certain U.S. possessions will not apply for purposes of denying the United States taxing jurisdiction under the FSC legislation.

The agreement contains a technical amendment that insures that the provision forgiving the tax on accumulated DISC income will not allow forgiveness of tax on accumulated DISC income that was subject to tax because of a revocation or disqualification prior to requalification and prior to the earning of income that is eligible for forgiveness.

The agreement contains a technical amendment conforming the treatment of second-tier Export Trade Corporations for purposes of the transition rule to that of first-tier Export Trade Corporations.

In view of the rule that a FSC cannot be a member of a controlled group of corporations of which a DISC is a member, the agreement contains a provision that, under regulations to be prescribed by the Secretary, a FSC election will automatically terminate an inconsistent DISC election.

The agreement treats deemed distributions for taxable years of DISCs that begin in 1984 as occurring over 10 years rather than over four years as contemplated in the Senate amendment. The conferees expect that regulations will allow taxpayers to accelerate this inclusion if taxpayers elect to do so.

The provision that clarifies present law to make it clear that a resident of a treaty partner country cannot avoid tax (under sec. 996(g)) on DISC distributions is effective on June 22, 1984.

The provision allows regulatory authority to extend rules allowing waiver of foreign presence requirements in the case of certain contracts entered into before January 1, 1985.

J. Compliance Provisions

1. Provisions relating to tax shelters

a. Registration of tax shelters

Present law

There is no requirement that tax shelters register with the Internal Revenue Service. As a result, the Internal Revenue Service lacks complete and systematic information on which to base its decisions about which shelters should be audited.

House bill

No provision.

Senate amendment

The Senate amendment provides that anyone who organizes a tax shelter must register the shelter with the Internal Revenue Service by supplying information that briefly describes the investment and identifies the promoter. A tax shelter is defined as any investment with respect to which representations are made that the investment will result in deductions in excess of income, or credits in excess of half the income attributable to the investment, in any of the first 5 years. The shelter also must either be required to register with a Federal or State agency or be offered to "sophisticated investors" (i.e., when the aggregate amount invested exceeds $200,000 and there are 10 or more investors). The Secretary can prescribe regulations to provide exemptions from the registration requirement. The registration form must be filed with the Internal Revenue Service by the earlier of 15 days after the shelter is first offered for sale or December 31 of the year it is first offered for sale.

Once the tax shelter registration form is filed with the Internal Revenue Service, the Internal Revenue Service will provide a tax shelter identification number to the promoter. The promoter must furnish the number to each investor, and the investor must furnish the number on its tax return.

The penalty for failure to register is $500 plus 1 percent of the amount invested that exceeds $1 million. The penalty for each failure by the promoter to furnish the number to investors is $100. The penalty for each failure by the investor to furnish the number on its tax return is $50, unless the failure is due to reasonable cause.

The provision is generally effective on September 1, 1984, with respect to interests sold on or after that date. The Secretary may postpone the date these provisions take effect by regulations.

Conference agreement

The conference agreement follows the Senate amendment with modifications. Under the agreement, anyone who organizes a tax shelter must register the shelter by completing a registration form prescribed by the Internal Revenue Service, on which information that briefly describes the investment and identifies the promoter must be supplied. A tax shelter is considered registered when the registration form is mailed to or otherwise filed with the Internal Revenue Service in the manner required. This must be done not later than the day on which the first offering for sale of interests in the tax shelter occurs.

A tax shelter is required to be registered by the person having principal responsibility for organizing the tax shelter. In many cases, the tax shelter organizer will be the tax shelter promoter. The tax shelter organizer need not, however, be the promoter or general partner. For example, if a person structures or develops a series of related schemes from which he or a related party will benefit through service contracts or asset purchases, that person will be treated as the tax shelter organizer, even though each of the different arrangements is managed or promoted by a different individual.

If the person principally responsible for organizing the tax shelter fails to register the shelter as required, then any person who participates in the organization of the shelter must register the shelter. Such a person who is secondarily liable for registering the shelter must do so not later than the day on which the first offering for sale of any interest in the shelter is made. Requiring registration before this date will enable State securities regulators to prohibit offerings of unregistered shelters in their States. In the event that persons who are principally and secondarily liable for registering a shelter fail to do so, any person participating in the management or sale of the investment must register the shelter. Registration by the manager or seller does not relieve the organizer or promoter of liability for the penalties for failure to register.

Ordinarily, the rendition of professional advice by an unrelated attorney or accountant would not constitute the organization of a tax shelter. However, if, for example, the attorney's or accountant's fee is based, either in part or in whole, upon the number or value of units sold, the Internal Revenue Service might reasonably conclude that the attorney or accountant is an organizer, promoter, or seller of a tax shelter, since he participates in the entrepreneurial risk borne by other promoters.

A tax shelter is defined as any investment (including service contracts and leasing contracts) with respect to which a person could reasonably infer from the representations made or to be made in connection with any offer for sale of any interest that, as of the close of any of the first 5 years, the ratio with respect to any investor of (A) the aggregate of deductions and 200 percent of the credits potentially allowable to (B) the aggregate of the cash invested and the adjusted basis of other property contributed by the investor (reduced by any liability to which that property is subject) is greater than 2 to 1. For purposes of computing this ratio, amounts borrowed from a participant in the organization, sale, or management of the shelter or a related person to a participant are not considered to be cash invested. The Secretary is given authority to prescribe regulations that include or exclude amounts in the aggregate of cash invested and the adjusted basis of contributed property. In addition, for registration to be required, a tax shelter must be (1) required to register under a Federal or State law regulating the offering or sale of securities, (2) offered for sale pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating securities, or (3) a substantial investment.

An investment is a substantial investment if the aggregate nominal amount that may be offered for sale to all investors exceeds $250,000 and 5 or more investors are expected. The aggregate nominal amount offered for sale includes all cash, all contributions of property, and all loans, whether recourse or nonrecourse. The aggregate nominal amount offered for sale is not the same as the investment amount used to compute the tax shelter ratio.

For purposes of this definition, similar investments organized by the same person are aggregated. For example, assume a sponsor of tax shelters develops generally similar investment plans or arrangements involving 8 different partnerships, each investing in a different item (such as a separate master recording or film), each with a different general partner, and each with 3 limited partners. If each partner invests $1,000 cash and $10,000 in nonrecourse obligations, there will be 32 investors (1 general partner plus 3 limited partners times 8 partnerships) and an aggregate investment of $352,000 (32 partners times $11,000). Thus, each partnership will constitute part of a substantial investment. If, in this example, representations are made that $1,000 in tax credits and $3,000 in deductions are available to each limited partner in the first year, the sponsor will be required to register all of the partnerships.

The Secretary is given authority to issue regulations to provide exemptions from registration. The conferees intend that this authority be exercised to exclude only transactions with respect to which registration would not be useful to the Internal Revenue Service. The Secretary is also given authority to provide necessary and appropriate rules to carry out the purposes of this provision with respect to foreign tax shelters.

The conferees emphasize that none of the terms used in this new provision is intended necessarily to be limited to the meaning ascribed to it under Federal or State laws regulating securities. For example, the term "offered" as used in this provision refers to any representation, whether oral or written, relating to the tax shelter; it includes any advertisement relating to the tax shelter. An act may constitute an offer for sale under this provision which does not constitute an offer under Federal or State securities laws. Similarly, the term "filing of a notice" refers to any provision of a document to any Federal or State agency regulating securities in connection with offerings or sales of investments even if provision of the document is not required by the agency.

The conferees anticipate that the Internal Revenue Service will provide for registration using a form which will require that information such as the following be provided: identifying information relating to the tax shelter and the organizer, the type of business organization of the shelter and its accounting method, information concerning the business activities and principal asset of the shelter, the form and source of financing, information regarding Federal or State securities registration, the tax shelter ratio, the number and cost of investment units available, the acquisition cost per unit, and the date the first unit may be offered for sale. The conferees anticipate that the Secretary will require this form to be filed in machine-readable format under his present law authority to require that returns be filed on magnetic media or in another machine-readable format. The conferees believe that registration will become a routine task during the organization of tax shelters.

The conference agreement also provides that the Secretary may require that, when a promoter discloses to potential investors the fact of registration with the Internal Revenue Service, the promoter and seller must also indicate that this registration does not imply approval of the investment or of the claimed tax benefits by the Internal Revenue Service.

Any person who claims any deduction, credit, or other tax benefit by reason of a tax shelter that is required to register must include the tax shelter identification number on the return claiming the benefit in the manner the Secretary requires. This could be done, for example, by requiring that the number be included next to the location on the return where the benefit was claimed, or by requiring that it be included on a separate form to be attached to the return. It can also be required to be attached to an application for a tentative refund ("quickie refund").

The penalty for failure to register is the greater of $500 or 1 percent of the aggregate amount invested in the shelter, up to a maximum of $10,000 with respect to any one shelter. The maximum does not apply in cases of intentional disregard of the registration requirement. No penalty is imposed if the failure to register is due to reasonable cause. Reasonable cause for failure to register not later than the day on which the first offering for sale of interests in the shelter occurs would generally exist with respect to a person who participates in the sale of an investment and who is required to register the investment under new section 6111(d)(1)(C) if this person registered the shelter as soon as practicable after discovering that the investment had not been registered under new section 6111(d)(1)(A) or (B). Persons (such as promoters) required to furnish an identification number and who fail to do so are subject to a penalty of $100. The penalty for each failure by the investor to furnish the number on its tax return is $50, unless the failure is due to reasonable cause.

Registration is required for any tax shelter with respect to which any interest is first sold to an investor on or after September 1, 1984. Only the aggregate of interests which may be offered for sale on or after September 1, 1984, must be considered in determining whether a substantial investment would be required to register. This will occur when there are expected to be 5 or more investors on or after September 1, 1984, and the aggregate amount which may be offered for sale on or after September 1, 1984, exceeds $250,000. If a shelter is required to be registered, the tax shelter identification number must be furnished to all investors, regardless of whether they invested before, on, or after September 1, 1984. With respect to interests sold before September 1, 1984, however, the number must be furnished by December 31, 1984. The Secretary would not have authority to postpone the effective date.

b. Promoter lists

Present law

There is no specific requirement that promoters and sellers of tax shelters maintain lists of investors that are available for inspection by the Internal Revenue Service. Thus, when the Internal Revenue Service identifies an abusive tax shelter, it may be able to identify taxpayers who invested in the shelter only through enforcement of summonses or not at all.

House bill

The House bill provides that anyone who organizes or sells an interest in a tax shelter must keep a list, in the manner and to the extent provided in regulations, of each person who was sold an interest in the shelter. A tax shelter is defined as any plan or arrangement that the Secretary determines (by regulations) has the potential for tax avoidance or evasion. The organizer or seller of the shelter is subject to a penalty of $50 for each failure to include a person on a list, up to a maximum of $50,000 in any calendar year. The provision is effective on the date of enactment.

Senate amendment

The Senate amendment provides that tax shelter promoters must maintain lists of investors in each separate promotion. Exceptions are provided from the listing requirement for promotions of partnerships or S corporations. Also, the Secretary is to provide regulations to eliminate duplicative lists. A tax shelter is defined as any plan or arrangement with respect to which representations of tax benefits are made. The penalty provision is the same as that of the House bill. The provision is effective with respect to sales and organizations occurring after December 31, 1984.

Conference agreement

The conference agreement contains a modified form of the House bill and the Senate amendment. Thus, any person who organizes any potentially abusive tax shelter or who sells any interest in such a shelter must maintain lists of purchasers. The list will include the name, address, and taxpayer identification number of the purchaser, as well as any other information that the Secretary may, by regulations, require.

In particular, the conference agreement requires that any promoter or seller of a tax shelter for which registration is required must maintain lists of the persons purchasing an interest in the tax shelter and must make these lists available to the Internal Revenue Service when requested. The agreement also permits the Secretary to require (by regulations) that organizers and sellers of other tax shelter arrangements that have a tax avoidance potential maintain customer lists, regardless of whether the Secretary also extends the registration requirement. In designating these other arrangements, the Secretary may, for example, specifically identify types of investments, or he may provide that any investment falling within a modified form of the definition of tax shelter for registration purposes is subject to the listing requirement. The Secretary may exercise this authority by requiring, for example, that any plan or arrangement that would be subject to tax shelter registration if the tax shelter ratio were 1 to 1 rather than 2 to 1 must maintain lists of investors.

If a potentially abusive tax shelter is sold in a series of transactions, a list of customers must be maintained at each level in the series. For example, if a tax shelter organizer develops several types of tax shelters which he sells to several promoters, the organizer must maintain lists identifying the promoters. When the promoters sell the tax shelters to investors, the promoters must similarly maintain lists identifying the investors. If an investor sells his interest to another investor, the selling investor must maintain information identifying the purchasing investor. The Secretary may provide that the selling investor may obtain less identifying information than would otherwise be required on the buying investor or may maintain that information for a shorter period of time than 7 years, so long as those rules also prevent abuse by taxpayers attempting to avoid the purpose of this provision, which is to facilitate clear identification of all purchasers of potentially abusive tax shelters.

The provision is effective with respect to any interest sold for the first time to an investor on or after September 1, 1984. Thus, if an investor sells an interest he bought before September 1, 1984, to another investor on or after September 1, 1984, the seller is not required to maintain lists. If a promoter sells some interests to investors before September 1, 1984, and other interests on or after that date, the promoter must maintain lists of all sales occurring on or after September 1, 1984. The sale of an entity by an organizer to another organizer or promoter is not considered to be a first sale. Thus, if an organizer sells an entity before September 1, 1984, to another organizer or promoter ("the buyer"), and the buyer sells interests in the entity on or after September 1, 1984, the buyer must maintain lists of customers.

No inference should be drawn from the conference action that there is any restriction placed on the authority of the Secretary under present law to require that books and records be kept, to prescribe the form in which those books and records must be kept, or to obtain customer lists through use of administrative summonses.

c. Increase in penalty for promoting abusive tax shelters

Present law

A promoter who, in connection with the organization or sale of a tax shelter, makes false or fraudulent statements or gross valuation overstatements is liable for a penalty of the greater of $1,000 or 10 percent of the income derived or to be derived from the organization or sale.

House bill

The House bill increases the penalty from 10 percent to 20 percent of the income derived or to be derived from the organization or sale. The increase is effective on the date of enactment.

Senate amendment

The Senate amendment increases the penalty to the greater of $2,000 or 20 percent of the income derived or to be derived from the activity. It also provides that making or furnishing a statement or a gross valuation overstatement incidental to the activities of operation of an abusive tax shelter is subject to this penalty. This change will make these activities subject to injunction under section 7408. These changes are effective for actions occurring after the date of enactment.

Conference agreement

The conference agreement follows the House bill with respect to the increase in the penalty from 10 to 20 percent. With respect to statements incidental to the operation of an abusive tax shelter, the conference agreement provides that activities subject to the penalty for aiding the understatement of tax liability under section 6701 will be subject to injunction under section 7408. The conferees believe that this more directly accomplishes the intention of the Senate amendment without limiting injunctive relief solely to promoter activities. Injunctive relief can be granted with respect to activities subject to penalty under either section 6700 or section 6701, or both, as appropriate. Both amendments take effect on the day after the date of enactment.

No inference should be drawn that the general injunctive power of the district courts under section 7402(a) is, in any way, limited by the action to enjoin promoters of abusive tax shelters (sec. 7408) or the action to enjoin income tax return preparers (sec. 7407). This is in accordance with *U.S.* v. *Landsberger*, 692 F.2d 501 (8th Cir., 1982).

d. Increased rate of interest for tax shelter cases

Present law

Interest must be paid by the taxpayer on underpayments of tax and by the United States on overpayments of tax at the statutory rate (generally, the prime rate, compounded daily). There is no different interest rate for tax shelter cases.

House bill

No provision.

Senate amendment

In the case of tax shelter items, the rate of interest paid to taxpayers on refunds or due the IRS on underpayments is 150 percent of the statutory rate (generally, the prime rate, compounded daily). This rule applies to items arising from any plan or arrangement the principal purpose of which is the avoidance or evasion of tax in which more than 34 persons participate. The provision is effective for interest accruing after December 31, 1984.

Conference agreement

The conference agreement contains a modified form of the Senate amendment, which increases the interest rate on tax shelter underpayments to 120 percent of the otherwise applicable rate and modifies the definition of tax shelter in the Senate amendment.

The increased interest rate applies to an underpayment of tax attributable to one or more tax motivated transactions, if the amount of the underpayment exceeds $1,000. A tax motivated transaction is (1) any valuation overstatement of 150 percent or more, (2) any activity with respect to which a loss or an investment tax credit is disallowed by reason of the at-risk rules, (3) any tax straddle, or (4) any use of any accounting method specified in regulations as potentially resulting in a substantial distortion of income. The conferees anticipate that the following deductions and other claimed tax benefits might be considered by the Secretary to arise from accounting methods that may result in a substantial distortion of income:

(1) Deductions disallowed under section 464, relating to farming syndicates;

(2) In the case of a cash method taxpayer, interest deductions disallowed under section 461(g), relating to prepaid interest;

(3) Interest deductions disallowed because they exceed the effective rate of interest, such as under the rule of 78's;

(4) Improper deductions for syndication expenditures;

(5) Deductions disallowed under section 267(a)(2), relating to transactions between related taxpayers with different accounting methods;

(6) Failure to take into account deferred rental payments in accordance with the principles section 467, as added by this Act; and

(7) Deductions disallowed under the principles of section 461(i), as added by this Act, relating to prepayments of expenses by tax shelters.

In addition, the Secretary is given regulatory authority to specify other types of transactions that will be treated as tax motivated. He shall take into account the ratio of tax benefits to cash invested, the method of promoting this type of transaction, as well as other factors he considers relevant.

The provision is effective with respect to interest accruing after December 31, 1984, regardless of the date the return was filed.

The conferees note that a number of the provisions of recent legislation have been designed, in whole or in part, to deal with the Tax Court backlog. Examples of these provisions are the increased damages assessable for instituting or maintaining Tax Court proceedings primarily for delay or that are frivolous or groundless (sec. 6673), the adjustment of interest rates (sec. 6621), the valuation overstatement and substantial understatement penalties (secs. 6659 and 6661), and the tax straddle rules (secs. 1092 and 1256). Additionally, the conference agreement did not follow the provision of the House bill permitting certified public accountants and enrolled agents to represent a taxpayer in a small tax case because the Tax Court stated that permitting this would jeopardize the integrity of the small tax case process, which is working well.

The conferees believe that, with this amendment, the Congress has given the Tax Court sufficient tools to manage its docket, and that the responsibility for effectively managing that docket and reducing the backlog now lies with the Tax Court. The positive response that the Court has made to several recent GAO recommendations is encouraging and the conferees expect the Court to implement swiftly these and other appropriate management initiatives. The conferees also note favorably the steps the Court has begun to take in consolidating similar tax shelter cases and dispensing with lengthy opinions in routine tax protester cases. The Court should take further action in these two areas, as well as to assert, without hesitancy in appropriate instances, the penalties that the Congress has provided.

The Internal Revenue Service also has significant responsibilities in reducing the Tax Court backlog. The Service's settlement policy should be fair and flexible, and only appropriate cases should be litigated. Although in the recent past the Service has offered to settle many tax shelter cases by permitting taxpayers to deduct out of pocket expenses, the Service no longer routinely offers this as a settlement. This is a constructive change in policy, in that a taxpayer should not expect to be able to deduct out of pocket expenses regardless of the circumstances of his case. The Service should assert, without hesitancy in appropriate circumstances, the penalties that the Congress has provided. In particular, the negligence and fraud penalties are not currently being applied in a large number of cases where their application is fully justified. The conferees note with approval the steps the Service has recently taken to eliminate the backlog in the Appeals Division.

2. Information reporting provisions

a. Returns relating to mortgage interest received in a trade or business

Present law

There is no requirement that recipients of mortgage interest report interest received to the Internal Revenue Service.

House bill

A person who, in the course of his trade or business, or a governmental agency that receives interest on obligations secured by real property must report to the Internal Revenue Service payments from a payor aggregating $600 or more and provide a copy of that report to the payor. Present law penalties for other failures to file information returns and furnish statements apply (generally, $50 per failure except in cases of intentional disregard). The provision is effective with respect to amounts received after December 31, 1984, except that no penalty is imposed on persons reporting for failure to furnish identification numbers with respect to an obligation in existence on December 31, 1984, for amounts received before January 1, 1986.

Senate amendment

The Senate amendment generally is the same as the House bill, except that the reporting threshold is $2,300 and the provision is effective with respect to amounts received after December 31, 1984, and except for technical differences.

Conference agreement

The conference agreement follows the House bill, with modifications. Thus, recipients of $600 or more of mortgage interest with respect to any obligation secured by real property will be required to report that interest to the Internal Revenue Service. The conferees choose the lower reporting threshold of the House bill because more complete reporting reduces the likelihood that the Internal Revenue Service will have to contact a taxpayer concerning claimed deductions.

At the same time, the agreement seeks to eliminate any unnecessary burden to interest recipients. The agreement provides that reporting is required only on payments received from an individual. Under the agreement, the $600 aggregate annual reporting threshold will apply on an obligation by obligation basis. Interest received on two different obligations secured by the same real property does not have to be aggregated into one report; thus, interest on each obligation may be reported separately. The agreement also provides that the Secretary may provide exceptions from this reporting requirement where such exceptions are consistent with effective reporting of mortgage interest and the matching of these reports with a specific line on the tax return. Therefore, the Secretary may, if he considers it appropriate, provide for an exception from reporting for interest paid on credit cards that are secured by real property. This exception would be appropriate if the Secretary determines that such interest is most likely to show on returns as interest on credit cards rather than home mortgage interest. The conferees do not intend that the

Secretary except from reporting interest that is reported on Schedule A as home mortgage interest. The agreement also provides the Secretary with authority to issue regulations to eliminate duplicative reports.

The conferees anticipate that recipients of mortgage interest will require the payor to furnish his taxpayer identification number as part of the mortgage loan approval or closing process for mortgage loans entered into after December 31, 1984.

With respect to mortgage loans in existence on December 31, 1984, the conferees anticipate that the Secretary will require recipients of mortgage interest to request, at least once a year, from each payor the payor's taxpayer identification number, unless the recipient already has the payor's number in its accounting system. The conferees anticipate that the Secretary will permit these requests for a payor's taxpayer identification number to be included in the recipient's regular mailings of either payment coupon booklets or annual statements to the payor. Recipients will not be required to make separate mailings of these requests, unless the recipient does not otherwise contact the payor at least once each calendar year. The conferees anticipate that the first request will be made as soon as practicable, but in no event later than with the first mailing by the recipient to the payor in 1985. The conferees also anticipate that recipients will notify payors that the Internal Revenue Service requires the payor to furnish its taxpayer identification number in order to verify the payor's deduction for mortgage interest and that the payor is subject to a $50 penalty by the Internal Revenue Service if the payor fails to furnish its taxpayer identification number. If the interest recipient makes the annual requests described above, and properly and promptly processes the responses, it will not be subject to any penalty for failure to include a TIN on its information return to the Internal Revenue Service because the payor's failure to supply the requested number will constitute reasonable cause for failure to supply the number to the Internal Revenue Service.

The conferees intend that the Secretary coordinate the requirement that a statement be furnished to the payor under this provision with other requirements, such as those of Federal mortgage programs, that similar statements be furnished, so that duplicative reporting is minimized.

b. Returns relating to cash received in a trade or business

Present law

Under the Bank Secrecy Act, certain banks and other financial institutions are required to report cash transactions of more than $10,000.

House bill

No provision.

Senate amendment

A person engaged in a trade or business who receives, in the course of the trade or business, $10,000 or more in cash or foreign currency in one or more related transactions must report it to the Internal Revenue Service and provide a statement to the payor. Amounts required to be reported under the Bank Secrecy Act are excepted from this reporting requirement. Present law penalties for other failures to file information returns and statements apply (generally, $50 per failure except in cases of intentional disregard). The provision is effective for amounts received after December 31, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment. Thus, reporting is required only for payments of more than $10,000 that are received by a person in the course of his trade or business. Reporting is not required on payments (a) that are received in a transaction reported under the Bank Secrecy Act if the Secretary determines that the report under this provision would duplicate the report under Bank Secrecy, or (b) that are received by certain specified financial institutions within the meaning of the Bank Secrecy Act.

With respect to these specified financial institutions, the conferees do not intend to affect the detailed reporting rules and exceptions which Treasury has developed. The other categories of financial institutions that are not specified as exempt from reporting under this provision have generally been exempted by Treasury from Bank Secrecy reporting. Examples of these other entities are certain dealers in precious metals, stones, or jewels, pawnbrokers, loan or finance companies, insurance companies, and travel agencies. These entities are required to report under this new provision. To the extent that Treasury also requires that they report transactions under Bank Secrecy, the Secretary can provide that duplicative reports that would be made on those transactions pursuant to this provision need not be made.

The conferees understand that the Treasury is considering extending certain Bank Secrecy Act reporting to casinos and other establishments. To avoid duplicative reporting requirements, the Secretary has discretion under the conference agreement and the Bank Secrecy Act to review the obligations imposed under the Bank Secrecy Act and to eliminate any reporting required under the conference agreement if the Bank Secrecy reporting, in substance, provides for the reporting of transactions required to be reported under the conference agreement with respect to the information that must be provided to the Treasury.

Under this provision, any taxpayer required to report under this provision who is in a trade or business and who, in the course of the trade or business, receives more than $10,000 in cash in one or more related transactions must report those transactions. For example, assume that an individual purchases a $8,000 item and a $1,500 item at an auction. The auction house adds a 10% buyer's premium and the local sales tax, at a 5% rate. The taxpayer pays his $10,972.50 bill in cash. The auction house must report on that transaction. The auction house could not avoid the reporting requirement by presenting two separate bills of $9,240 and $1,732.50.

c. Provisions relating to individual retirement accounts

Present law

The trustee of an IRA is required to report to the IRS and to the owner of the IRA on contributions or withdrawals made. Each failure to provide a report on a contribution or withdrawal is subject to a $10 penalty. Contributions must be made by the due date (including extensions) of the return for the year to which the contributions relate.

House bill

The report must identify the years to which IRA contributions relate, effective for contributions made after April 15, 1984, relating to years beginning after December 31, 1983. The penalty is increased to $50 for each failure to provide a report on contributions or withdrawals, effective on the date of enactment.

Senate amendment

The report must identify the years to which IRA contributions relate effective for contributions made after 30 days after enactment for taxable years beginning after December 31, 1983. The penalty is increased to $50 for each failure to provide a report on contributions or withdrawals, effective on the date of enactment. Contributions must be made by the due date of the return (without extensions), effective for contributions made more than 30 days after the date of enactment, for taxable years beginning after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment, except that the provision is effective for contributions made after December 31, 1984. The conferees wish to clarify that the trustee may require that the owner of the IRA certify as to which year a contribution relates and that, except in unusual circumstances, the trustee may rely on that certification.

The date by which this report must be provided to the Internal Revenue Service and the periods to which the report relates are to be specified by the Secretary in regulations. The conferees intend that generally trustees will be required to report only once a year on the cumulative total of contributions relating to a particular taxable year. The Secretary may, however, provide for more frequent reporting if he determines that it is appropriate to do so. As to the date by which the report must be provided to the Internal Revenue Service, the Secretary could, for example, require reporting by the end of May on all IRA contributions relating to the taxable year with respect to which the individual's tax return was due on the preceding April 15.

d. Returns relating to foreclosures and abandonments of security

Present law

There is no specific requirement of reporting on foreclosures and abandonments of security.

House bill

Under the House bill, any person who, in connection with a trade or business, or any government agency that acquires in full or partial satisfaction of indebtedness any interest in property that is security for the indebtedness or has reason to know that the property that is security for the indebtedness is abandoned, must report the foreclosure or abandonment to the IRS and the payor. No reporting is required if the indebtedness is less than $15,000 or arises from consumer loans for personal property. Present law penalties for other failures to file information returns and statements apply (generally, $50 per failure except in cases of intentional disregard). The provision is effective for foreclosures and abandonments after December 31, 1984.

Senate amendment

The Senate amendment is generally the same as the House bill, except that there are no exceptions for consumer loans or loans of less than $15,000. Additionally, the Senate amendment requires that a taxpayer allowed a bad debt deduction or an addition to a reserve for bad debt must report the deduction or addition to the Internal Revenue Service and to the payor.

Conference agreement

The conference agreement follows the House bill, except that the exception from reporting for indebtedness of less than $15,000 is removed. The exception for consumer loans is retained.

e. Returns relating to exchanges of partnership interests

Present law

A sale or exchange of a partnership interest generally is treated as a sale or exchange of a capital asset. However, sales or exchanges of partnership interests involving unrealized receivables or appreciated inventory will result in ordinary income (to the extent of the receivables and inventory) to the transferor. There is no reporting required on exchanges of partnership interests.

House bill

The transferor partner must notify the partnership of the sale or exchange of a partnership interest involving unrealized receivables or appreciated inventory. Once the partnership has been so notified, it must report to the IRS, the transferor, and the transferee on the sale or exchange. Present law penalties for other failures to file information returns with the IRS and to furnish statements to taxpayers apply to failures by the transferor partner to report to the partnership and to failures by the partnership to report to the IRS, the transferor, and transferee. The provision is effective for exchanges after December 31, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

f. Statements required in the case of certain substitute payments

Present law

There is no reporting required on substitute payments if a broker lends securities of a customer held in street name in connection with a short sale. If in a short sale there is a payment of interest or dividends on the borrowed obligation, the borrower generally is required to make a payment to the lender of the obligation in lieu of the interest or dividends (a "substitute payment"). Absent reporting, the dividends received deduction or an interest exclusion may be claimed twice, even though only the purchaser in the short sale is entitled to the deduction or exclusion.

House bill

A broker is required to furnish a statement to the taxpayer if the broker lends securities for use in a short sale and the broker receives a dividend payment relating to the securities on behalf of the customer. The provision is effective for payments made after December 31, 1984.

Senate amendment

A broker is required to furnish a statement to the taxpayer if the broker lends securities for use in a short sale or similar transaction and the broker receives a dividend payment, tax-exempt interest, or other items that the Secretary prescribes by regulations, relating to the securities on behalf of the customer. The Secretary is given regulatory authority to require that a copy of the statement be furnished to the Secretary. The conferees expect the Secretary to exercise this authority for all types of payments with respect to which such a copy could be useful to the Secretary. The Secretary should also provide that no return regarding payments of dividends (sec. 6042(b)(1)(B)) need be made if it unnecessarily duplicates any return required to be made under this provision. This provision is effective for payments after December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

g. Reporting of State and local tax refunds

Present law

State and local governments must report to the IRS all tax refunds greater than $10. In addition, they must furnish a statement reporting the amount of the refund to the taxpayer in January of the year following the year of the refund.

House bill

The House bill codifies existing regulations by providing that no reporting to the Internal Revenue Service or the taxpayer is required if the taxpayer did not itemize deductions. Reports relating to itemizers must be furnished in January of the year following the year of the refund. The provision is effective for payments of refunds made after December 31, 1982.

Senate amendment

The Senate amendment provides that statements to taxpayers can be provided with the payment of the refund rather than in January of the year following the year of the refund and maintains the present law requirement of reporting to the Internal Revenue Service and the taxpayer of all tax refunds. It also provides penalties parallel to present law penalties for failures to furnish other statements to taxpayers (generally, $50 per failure except in cases of intentional disregard). The provision is effective for payments of refunds made after the date of enactment.

Conference agreement

The conference agreement follows the House bill, with a technical modification providing that no statement is required to be furnished to the taxpayer if the taxpayer did not itemize deductions. All refunds, whether made to itemizers or non-itemizers, however, still must be reported to the Internal Revenue Service. The conferees anticipate that reporting to the Internal Revenue Service will not be burdensome on the States since most States have entered into exchange of information agreements that already provide that this information is to be furnished to the Internal Revenue Service. The conferees emphasize their belief that reporting by the State and local governments to the taxpayer in January is a significant compliance tool. The conferees anticipate that the Secretary would seriously consider terminating any exchange of returns or return information under section 6103 with a State that does not report refunds to the taxpayer.

The provision is effective with respect to payments of refunds, and credits and offsets made, after December 31, 1982. However, the conferees expect that no punitive action will be taken against any State or local government or any officer or employee of a State or local government who failed to provide, before January 1, 1985, to taxpayers a statement required to be made under this provision.

h. Furnishing of TIN under backup withholding

Present law

Under the Interest and Dividend Tax Compliance Act of 1983, backup withholding applies unless a taxpayer's identification number is supplied "in the manner required."

House bill

No provision.

Senate amendment

The Senate amendment codifies existing regulations by providing that the Secretary's authority to require that a TIN be furnished under penalties of perjury is restricted to interest, dividends, patronage dividends, and amounts subject to broker reporting. The provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

3. Other compliance provisions

a. Modifications to charitable contribution rules and incorrect valuation penalties

Present law

Substantiation requirements

Present law provides expressly that a charitable contribution is deductible only if verified in the manner required by Treasury regulations (sec. 170(a)(1)). There are no specific statutory requirements that donors must obtain appraisals to verify the fair market value of donations of property, or that donees which resell donated property must furnish information reports to the IRS and the donor.

Overvaluation penalties

Present law imposes a graduated penalty for valuation overstatements on income tax returns (sec. 6659), including overvaluations of charitable donations, as follows—

(1) for claimed valuations of 150 percent or more, but not more than 200 percent, of the correct value, 10 percent of the tax liability understatement;

(2) for claimed valuations of 200 percent or more, but not more than 250 percent, of the correct value, 20 percent of the tax liability understatement; and

(3) for claimed valuations exceeding 250 percent of the correct value, 30 percent of the tax liability understatement.

The penalty does not apply if the tax liability underpayment is less than $1,000, or if the overvalued property had been held by the taxpayer for more than five years. (The penalty does apply in instances where a value is claimed for a charitable donation of property but in fact no property was actually contributed.) The IRS may waive the penalty for good faith valuations having a reasonable basis. The penalty does not apply to undervaluations for estate and gift tax purposes.

House bill

No provision.

Senate amendment

Substantiation requirements

Section 170 is amended to provide that individual (and certain corporate) donors must obtain an independent appraisal, and attach a summary of the appraisal to the return, where the claimed value of donated property exceeds $2,000 ($5,000 under an aggregation rule). The appraisal requirement does not apply for donations of securities for which market quotations are readily available on an established securities market.

For failure to comply with the appraisal requirements, the taxpayer's deduction is reduced under the Senate amendment by the greater of (1) the amount of appreciation or (ii) 10 percent of the deduction otherwise allowable. However, the IRS, in its discretion, could waive this disallowance if the taxpayer establishes that there was reasonable cause for failure to comply.

If the donee charity sells property for which an appraisal is required within two years after receipt, the donee must file an information report on such sale with the IRS and provide a copy to the donor.

These provisions are effective for contributions made after 1984.

Modifications to incorrect valuation penalty

The section 6659 penalty is modified by deleting the exception for property held for more than five years, and by extending the penalty to incorrect valuations for estate and gift tax purposes, effective for returns filed after 1984.

The penalty is extended to undervaluations for estate and gift tax purposes by providing that if the claimed value of any property is 66⅔ or less of the correct value, a graduated penalty applies as follows—

(1) For claimed valuations of 66⅔ or less, but not less than 50 percent, of the correct value, 10 percent of the tax liability understatement;

(2) For claimed valuations of less than 50 percent but not less than 40 percent of the correct value, 20 percent of the tax liability understatement;

(3) For claimed valuation of less than 40 percent of the correct value, 30 percent of the tax liability understatement. The penalty does not apply if the tax liability underpayment is less than $1,000. The IRS may waive the penalty for good faith valuations having a reasonable basis.

Disallowance rule for charitable deduction overvaluations

Under the Senate amendment, a sliding-scale charitable deduction disallowance rule applies (in addition to the overvaluation penalty) if the claimed value of donated property that is subject to the appraisal requirement exceeds the correct value by at least 50 percent, as follows—

(1) for claimed overvaluations of 150-175 percent of the correct value, one-half of the appreciation is disallowed;

(2) for claimed overvaluations of 175-200 percent of the correct value, all the appreciation is disallowed; and

(3) for claimed overvaluations exceeding 200 percent of the correct value, no deduction is allowed.

This provision applies to returns filed after 1984.

Conference agreement

Substantiation requirements

The conference agreement follows the Senate amendment, with the following modifications:

(1) In lieu of amending section 170 to set forth therein the substantiation requirements and to provide a special sanction for failure to comply, the conference agreement requires (by statutory provision outside the Code) that the Treasury Department must issue temporary or final regulations under section 170 before January 1, 1985 incorporating the substantiation requirements as set forth in this section of the conference agreement. Accordingly, pursuant to present law (sec. 170(a)(1)), which expressly allows a charitable deduction only if the contribution is verified in the manner specified by Treasury regulations, no deduction is allowed for a contribution of property for which an appraisal is required under the conference agreement unless the appraisal requirements are satisfied.

(2) The conference agreement increases the dollar threshold for the appraisal requirements from $2,000 to $5,000 for a single item of property ($10,000 in the case of stock), and deletes the aggregation rule in determining dollar thresholds except for similar items of property donated to one or more charities.

(3) The conference agreement limits applicability of the donee reporting requirement to dispositions of donated property where the claimed value of such property (or of all similar items of donated property) exceeds $5,000, whether donated to one or more charities.

Under the conference agreement, the substantiation requirements which must be set forth in Treasury regulations are as follows. These requirements apply to charitable contributions made after December 31, 1984.

General rule

The statute imposes appraisal and information reporting requirements where the amount claimed as a charitable deduction exceeds certain dollar amounts for a charitable contribution of property, other than contributions of securities for which (as of the date of the contribution) market quotations are readily available on an established securities market (referred to as "publicly traded securities"). These requirements apply to charitable deductions claimed under section 170 by an individual, a closely held corporation, or a personal service corporation. In the case of partnerships or S corporations, the requirements apply where a partner or S corporation shareholder includes a deduction on his or her return on account of a charitable contribution of such property by the partnership or S corporation.

The donor appraisal requirements apply if the amount claimed as a charitable deduction by the taxpayer on his or her return for a year exceeds $5,000 for any single item of such property ($10,000 in the case of a donation of stock other than publicly traded securities), or in the aggregate for similar items of property (such as a group or number of stamps or coins, lithographs, or books), whether donated to one or more donees. For example, the substantiation requirements apply if the taxpayer claims on his or her return for the year a deduction of $2,000 for rare books given to College *A*, $2,500 for rare books given to College *B*, and $900 for rare books given to College *C*. The donee information reporting requirements apply if the amount claimed as a charitable deduction by the taxpayer on his or her return for a year exceeds $5,000 for any single item of such property (with no higher amount in the case of donations of stock) or in the aggregate for similar items of property donated to one or more donees.

Deductions for cash donations or for donations of property not subject to the substantiation rules of the bill remain subject to any substantiation requirements prescribed pursuant to regulations under section 170.

Appraisal

For donations of property as to which the donor appraisal requirements apply, the donor must obtain and retain a qualified written appraisal by a qualified appraiser for the property contributed and must attach a signed appraisal summary to the return on which the deduction is first claimed (with such other information as prescribed by regulations).

The appraisal must be made by a person who is qualified to make appraisals of the type of property donated. (The conferees expect that in developing the substantiation regulations, the Treasury will consult, to the extent practicable, with charitable organizations, appraisers and appraisal associations, and others.) The appraisal cannot be made by the taxpayer, a party to the transaction in which the taxpayer acquired the property, the donee, or any person related to or regularly employed by any of the foregoing. Thus, for example, a taxpayer who acquired a painting from an art dealer could not use an appraisal from that dealer, persons regularly employed by the dealer, or related persons (within the meaning of sec. 267(b)). In appropriate circumstances, an appraiser who is regularly retained by a party could be considered, pursuant to Treasury regulations, as an employee of that party for purposes of this appraisal requirement where a longstanding relationship with the appraiser would cause a reasonable person to question the independence of the appraiser.

Appraisals for which the fee is based on a percentage of the appraised value cannot qualify. However, appraisals are not disqualified where all or a portion of the fee is based on a sliding scale if the portion of the fee based on a sliding scale is paid to a generally recognized association which regulates appraisers. This exception applies only if no persons have a beneficial interest in the association.

The appraisal must include a description of the donated property, the fair market value of the property on the date of contribution, the specific basis for the valuation (e.g., comparable sales), and the qualifications of the appraiser. Also, the appraisal must state that it is being prepared for tax purposes, and must be signed by the appraiser, whose tax identification number must be listed. Accordingly, the appraiser is a person to whom the civil tax penalty for aiding and abetting an understatement of tax liability (sec. 6701) could apply.

The appraisal must be received by the donor before the due date (including extensions) of the return on which the deduction is claimed. The donor must attach to the return on which the deduction is claimed a summary of the written appraisal, with such information and in a form prescribed by the Treasury Department. The appraisal summary must be signed by the appraiser and list the appraiser's tax identification number, and must be acknowledged by the donee (see discussion below under "Information report by donee on disposition"). The donor must retain the appraisal itself.

In addition, the donor must include in the return statements of the cost basis and the acquisition date of the donated property, and any other information to the extent required by Treasury regulations. If there is reasonable cause why the donor does not have information on the cost basis or acquisition date, the donor may substitute an explanatory statement, pursuant to Treasury regulations, with the return.

Under the conference agreement, the IRS is authorized and directed by the Congress to revise the individual income tax return for 1985 to add a separate line for claiming deductions for donations of property as to which a qualified appraisal is required. The instructions for the return are to include instructions as to the appraisal requirement. If the IRS, in processing returns as filed, finds that the taxpayer claimed deductions on the separate line relating to donations of property for which a qualified appraisal is required but failed to attach the summary appraisal, then the IRS (to the extent administratively practicable) is to so notify the taxpayer and request the filing of the summary. The deduction is not disallowed for a good faith failure to comply with the substantiation requirements if the taxpayer in fact had timely obtained a qualified appraisal and furnishes the IRS with an appraisal summary.

Information report by donee on disposition

If the donee charity sells, exchanges, or otherwise transfers within two years of the date of receipt certain donated property, the donee must furnish an information report to the IRS (with a copy to the donor) setting forth the donor's name, address, and tax identification number, a description of the property, the date of contribution, the amount received on the disposition, and the date of disposition.

The donee information reporting requirements apply if the amount for which a deduction was claimed under section 170 by the taxpayer on his or her return for a contribution of property (other than publicly traded securities) exceeds $5,000 for any single item of such property or in the aggregate for similar items of such property donated to one or more donees. (There is no higher threshold with respect to stock donations.) Penalties under section 6678 apply for failure to comply with the information reporting requirements.

To facilitate the donee's carrying out of the information reporting requirement, which is based on the amount claimed by the donor on his or her return for donations of property, the regulations are to provide that the donor (as part of the donor appraisal requirements) must (1) submit the appraisal summary to the donee for the donee's acknowledgment signature and (2) inform the donee of any donations of similar items made during the same year. The donee's acknowledgment signature on the summary appraisal solely represents acknowledgment of receipt of the items described in the summary appraisal, and in no way is to be construed as indicating the donee's agreement with or acceptance of the amount claimed for the donated property on the appraisal summary. The regulations are to provide appropriate rules for situations where the donor is unable to obtain acknowledgment by the donee.

Modifications to incorrect valuation penalty

The conference agreement follows the House bill, with two further modifications (in addition to deletion of the five-year exception, and extension of the penalty to incorrect valuations for estate and gift tax purposes). The additional modifications (unlike the general modifications adopted by the conference agreement) apply only in the case of an underpayment attributable to overvaluing any property for which a deduction is claimed under section 170 other than securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

Under the first additional modification, the section 6659 penalty is increased to a flat 30 percent of the tax liability understatement where the claimed valuation is 150 percent or more of the correct value.

Under the second additional modification, the IRS may not waive any portion of the penalty unless (1) the taxpayer shows (as required under the present-law waiver provision) that there was a reasonable basis for the claimed valuation and that the claim was made in good faith, and (2) the IRS determines both that the claimed value of the property was based on a qualified appraisal made by a qualified appraiser and that, in addition to obtaining such appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

Disallowance rule for charitable deduction overvaluations

The conference agreement does not include the special disallowance rule in section 154(b) of the Senate amendment.

The conferees understand that the Treasury Department remains concerned whether the substantiation and penalty provisions of the bill will prove sufficient to preclude taxpayers from overvaluing charitable donations of property. This concern relates both to tax shelter promotions which exploit the deductibility of appreciation in capital-gain assets, and to other situations where individuals buy items on their own initiative specifically for contribution after expiration of the capital gains holding period, or overvalue items which they have held for long periods before donating them to a charity.

The conferees expect the Treasury and IRS to monitor the effectiveness of the new provisions and to notify the tax-writing committees if there are any continuing valuation problems which should be addressed by legislation. In this connection, the conferees note that the Treasury has authority under section 170(a)(1) to specify by regulations the manner in which charitable contributions must be substantiated in order to be deductible. The conferees encourage the Treasury and IRS to utilize fully the compliance tools available under present law with respect to improper or overvalued claims of charitable deductions, such as negligence and fraud penalties, and other administrative procedures such as the findings of the Art Advisory Panel. Also, the conferees expect the Treasury and IRS to call the attention of the tax-writing committees to any other compliance problems relating to charitable deductions—for example, where the taxpayer or return preparers may claim a deduction based on records of checks drawn in the name of a charity, but where in fact the checks represented payments for goods (purchased directly from the charitable organization or at a fund-raising auction or bazaar) rather than charitable contributions—and to recommend any appropriate legislative solutions.

b. Authorization to disregard appraisals of persons penalized for aiding in understatements of tax liability

Present law

The Secretary of the Treasury may prescribe rules governing the admission of lawyers and accountants to practice before the Internal Revenue Service and may bar individuals from practice if he finds them to be incompetent, disreputable, or grossly negligent. Present law does not provide any comparable authority with respect to the appearance of professional appraisers in proceedings before the Internal Revenue Service.

House bill

The Secretary of the Treasury is authorized to bar from appearing before the Internal Revenue Service or the Treasury Department, for the purpose of offering opinion evidence on the value of property or other assets, any individual against whom a civil penalty for aiding and abetting the understatement of tax (sec. 6701) has been assessed. Thus, an appraiser who aids or assists in the preparation or presentation of an appraisal in connection with the tax laws will be subject to disciplinary action if the appraiser knows that the appraisal will be used in connection with the tax laws and will result in an understatement of the tax liability of another person. The Secretary is also given authority to provide that the appraisals of an appraiser who has been disciplined have no probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. The provision applies to appraisers with respect to whom penalties are assessed under section 6701 after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

c. Mailing of deposits of taxes

Present law

Employers are required to deposit taxes in any designated financial institution. They may treat a deposit as timely made if it is mailed as required 2 days prior to the due date. The mailing of deposits to remote depositories by certified or registered mail can result in delays in depositing of up to 2 weeks.

House bill

No provision.

Senate amendment

Deposits in excess of $20,000 by large employers must be made by the due date, regardless of the method of delivery. A large employer is any employer required to deposit tax more than once a month. The Senate amendment is effective for deposits required to be made after June 30, 1984.

Conference agreement

The conference agreement follows the Senate amendment, effective for deposits required to be made after July 31, 1984.

d. Interest on certain additions to tax

Present law

Interest on penalties and additions to tax is generally imposed only for the period from the date of notice and demand to the date of payment. An interest-like element is added to the negligence and fraud penalties for the period from the last day prescribed for payment of the tax to the date of assessment (or payment, if earlier). No comparable element is added to the failure to file, gross valuation overstatement, and substantial understatement penalties.

House bill

No provision.

Senate amendment

Interest is imposed on the amount of the following penalties as of the due date of the return:

(1) failure to file (sec. 6651(a)(1));

(2) gross valuation overstatement (sec. 6659);

(3) valuation understatement for purposes of the estate or gift taxes (sec. 6660); and

(4) substantial understatement (sec. 6661).

The Senate amendment is effective for interest accrued after the date of enactment with respect to penalties assessed after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

e. Penalty for fraudulent withholding exemption certificate or failure to supply information

Present law

An individual who supplies false or fraudulent withholding information or willfully fails to supply information is subject to a criminal penalty, which is in lieu of any other penalty (except a civil fine).

House bill

No provision.

Senate amendment

The Senate amendment provides that the criminal penalty for supplying false or fraudulent withholding information or willfully failing to supply information is in addition to any other penalty. Thus, for example, prosecution for willful evasion (sec. 7201) is not barred where prosecution for a false certificate (sec. 7205) is also possible. The Senate amendment is effective for acts and failures to act occurring after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment. No inference should be drawn with respect to the correct interpretation of prior law on this issue; however, to the extent that *United States v. Williams*, 644 F. 2d 696 (8th Cir., 1981)) might be considered authority to the contrary, the rationale of that decision no longer applies.

f. Penalty for frivolous proceedings before the Tax Court

Present law

Prior to the enactment of TEFRA, the Tax Court had discretionary authority to award damages of up to $500 for proceedings instituted merely for delay. TEFRA raised the maximum to $5,000 and expanded the basis of the award to include proceedings maintained for delay. These changes were not effective for cases pending in the Tax Court at the time of TEFRA's enactment.

House bill

No provision.

Senate amendment

The Senate amendment provides that expanded damages can also be awarded against taxpayers with proceedings pending before the Tax Court as of 120 days after the date of enactment, regardless of when instituted.

Conference agreement

The conference agreement follows the Senate amendment.

g. Failure to request change of method of accounting

Present law

A taxpayer is not permitted to change its accounting method without the consent of the Secretary. Some taxpayers using an improper method argue there is no requirement to request permission to change from an improper to a proper method. They assert the failure of the Secretary to consent to a change in method as a defense to any penalty arising from use of the improper method.

House bill

No provision.

Senate amendment

The Senate amendment provides that if the taxpayer does not request a change in accounting method, the absence of the Secretary's consent cannot be asserted as a defense to any penalty or addition to tax. The provision is effective for taxable years beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment. No inference should be drawn with respect to the validity of the defense asserted by some taxpayers under present law.

The conferees understand that the Internal Revenue Service's general practice is to permit a taxpayer who has not been notified that its return is going to be examined and who wishes to change from an improper method of accounting to a proper method for its taxable year that includes the date of enactment, but is precluded from doing so because the deadline for requesting a change in accounting method for its current taxable year has passed, is generally not subject to a penalty arising from use of the improper method in the current taxable year, provided that the taxpayer files a request for permission to change methods as soon as practicable, but in no event later than the due date (with extensions) of the taxpayer's return for its current taxable year.

h. Clarification of change of venue for certain tax offenses

Present law

There is a conflict among the United States courts of appeal regarding the availability of transfer of venue when the mails are used as part of the offense being prosecuted. Some hold that transfer is required only when the sole basis for venue in a particular district is receipt by the Internal Revenue Service of mailed materials. Others hold that transfer is permitted when the mails are used as part of the offense, even though venue is not based on the mailing.

House bill

No provision.

Senate amendment

The Senate amendment provides that transfer of venue is required only when the sole basis for venue in a particular district is receipt by the Internal Revenue Service of mailed materials. The provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment. Thus, defendants will not be able to force transfer of venue to an inconvenient forum solely because the mails were used as part of the alleged offense. The conferees note that the Internal Revenue Service and the Department of Justice generally attempt to establish venue for a criminal tax prosecution in the judicial district of the taxpayer's residence or principal place of business, because prosecution in that judicial district usually has the most significant deterrent effect. The conferees do not intend a change in that general policy. The conferees also note, however, that the Service and the Department may have valid reasons for bringing a prosecution in another district. Examples of this are multiple defendant cases or cases where venue for non-tax charges is established in a district other than the place of residence or business. The conferees do not intend to restrict the Service and the Department in instances such as these.

i. Statute of limitations relating to contributions to the capital of a corporation

Present law

A contribution in aid of construction to a regulated public utility that is not included in the utility's rate base, and that is expended before the end of the second taxable year following the year of receipt, is not included in the utility's gross income. If it is not expended by the end of the second year, it is includible in the utility's income in the year of receipt. The statute of limitations is 3 years (absent fraud) from the filing of the return.

House bill

No provision.

Senate amendment

The Senate amendment extends the statute of limitations for the year of receipt with respect to the issue of the inclusion of the contribution in income and related adjustments to 3 years from the end of the second year following the year of receipt. The provision is effective for failures to meet the expenditure rule occurring after December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment with modifications. It provides that the statute of limitations for the assessment of any deficiency (and any ancillary adjustments) attributable to any contribution to the capital of a corporation does not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer that the contribution has been expended in the required manner, that the taxpayer intends not to make the required expenditure, or that the taxpayer has failed to make the required expenditure. This provision is similar to the rule that applies in the case of rollovers of gain on the sale of a principal residence (sec. 1034(j)).

j. Disclosure of returns and return information to certain cities

Present law

Disclosure of returns and return information can be made to States for tax administration purposes provided that appropriate safeguards against disclosure are provided. Disclosures to cities are not permitted.

House bill

No provision.

Senate amendment

The Senate amendment provides that any city with a population in excess of 2,000,000 that imposes a wage or income tax may, if the Secretary in his sole discretion so provides, receive returns and return information for the same purposes for which States may obtain information under present law, subject to the same safeguards as apply to States under present law. Cities that receive information must reimburse the Internal Revenue Service for its costs in the same manner as a State must under present law. Population is determined on the basis of the most recent decennial United States census data available. The Senate amendment is effective on the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

k. Tax shelter study

Present law

There is no specific provision in present law requiring the Secretary to study various aspects of tax shelters.

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary to submit a report to Congress by December 1, 1984, on various aspects of tax shelters, including a minimum tax imposed on investments, at-risk and recapture rules, basis adjustment for tax credits, and deductibility of artificial accounting losses.

Conference agreement

The conference agreement does not include the Senate amendment. The conference agreement provides that the Secretary will include the substance of the Senate amendment's report in the Treasury study of alternative tax systems. (See also item XI.1. "Study of alternate tax systems.")

K. Depreciation and Related Provisions

1. Depreciation of real property

Present law

With certain exceptions, most real property placed in service by the taxpayer after 1980, can be depreciated under ACRS over as short as 15 years. In general, components of a building qualifying as recovery property must be depreciated in the same manner as the building itself. However, under section 168(e)(4), certain buildings placed in service by taxpayers after 1980, do not qualify as recovery property.

House bill

No provision.

Senate amendment

The minimum recovery period for real property (other than low-income housing) eligible for a 15-year recovery period under present law is increased. For recovery property placed in service by the taxpayer after March 15, 1984, and before January 1, 1985, the minimum recovery period is 20 years. For recovery property placed in service by the taxpayer after December 31, 1984, and before January 1, 1986, the minimum recovery period is 19 years. For recovery property placed in service by the taxpayer after December 31, 1985, the minimum recovery period is 18 years. Recovery allowances are to be determined in accordance with tables to be prescribed by the Treasury. Any property covered by the provision can also be recovered on the straight-line method over the minimum recovery period.

Numerous conforming changes are made. In addition, rules are provided relating to the depreciation of components added to buildings previously placed in service.

The provision is effective for property placed in service by the taxpayer after March 15, 1984. However, the provision does not apply to property the construction of which was commenced by the taxpayer on or before March 15, 1984. Nor does the provision apply to property that the taxpayer was under a binding contract, entered into before March 16, 1984, to construct or acquire. Furthermore, if the taxpayer transfers his rights in any such property under construction or such contract to construct or acquire property to another taxpayer, the provision does not apply to the property in the hands of the transferee-taxpayer so long as the property was not placed in service before the transfer by the transferor-taxpayer. None of the transitional rules applies unless the property is placed in service before January 1, 1987.

Conference agreement

The conference agreement generally follows the Senate amendment except that for all real property subject to the conference agreement, the minimum recovery period is 18 years. In addition, technical amendments are made in the rules regarding new components added to buildings previously placed in service.

Under the conference agreement, the recovery allowance tables to be prescribed by the Treasury under the provision are to adopt a mid-month convention. That is, real property placed in service by the taxpayer during a month is to be treated as placed in service in the middle of such month. A similar convention is to be applied for the month of disposition.

The conferees wish to clarify certain transitional rules of the Senate amendment. Assume, for example, that taxpayer A signed a binding contract on March 10, 1984 to have a building constructed. On December 1, 1984, A assigns the contract to B. On March 15, 1985, B assigns the contract to C. The building is originally placed in service by C, on November 1, 1985. It is the conferees' intent that, since neither A nor B placed the property in service, the provision not apply to the building in C's hands. Furthermore, the conferees intend that demolition is to be treated as commencement of construction if both the demolition and the formally approved plan of construction are consistent with the recommendations of a feasibility study evidenced by internal documents of the taxpayer in existence when demolition commenced.

A partnership may have commenced construction of, or signed a binding contract to acquire or construct, real property on or before March 15, 1984. Subsequently, but prior to the time the property is placed in service, interests in the partnership may be sold or exchanged. If, by reason of such sales or exchanges, there is a termination of the partnership and the creation of a new partnership under section 708(b)(1)(B) (relating to sales or exchanges of 50 percent or more of the total interests in a partnership's capital and profits), the partnership is to be treated as having transferred its rights in its contract or the property to the new partnership (through its partners) for purposes of the transitional rule.

In addition, the conferees anticipate that the Treasury will promulgate regulations applying the provision in the case of transfers of partnership interests after a partnership has placed property in service. It is contemplated that, in the case of a termination of the partnership under section 708(1)(B), the regulations will provide that the new 18-year recovery period applies to the property in the hands of the new partnership. If there is no such termination but the partnership has a section 754 election (relating to optional basis adjustments) in effect, it is contemplated that the regulations will provide that any increase in the basis of the partnership's real property will be subject to the new 18-year recovery period (other than in cases where the anti-churning rules of section 168(e)(4) apply).

Under the conference agreement, for purposes of the transitional rules, property will not be treated as placed in by a taxpayer holding such real property as section 1221(1) property (relating to inventory and similar property) merely because the property is held for rental or rented for a short period prior to the time it is sold. However, that rule will cease applying under the provision to any such property of the taxpayer held by it on January 1, 1985. No such taxpayer is entitled to take depreciation deductions with respect to such property. No inference is intended as to whether property held by a taxpayer as section 1221(1) property depreciated by the taxpayer.

The conferees also intend that, for purposes of the transitional rules, a contract with respect to the property is to be treated as binding only if it is enforceable under State law and does not limit damages to a specified amount that is relatively minor. A contract that limits damages to an amount equal to at least 5.0 percent of the total contract price will not be treated as limiting damages in an amount that is relatively small. A contract is binding even if subject to a condition, so long as the condition is not within the control of either party. For purposes of the transitional rule, a contract will not be treated as ceasing to be binding merely because any term is to be determined by a standard beyond the control of either party or there is a bilateral agreement to reduce the purchase price of the property by no more than 20 percent or change the financing terms.

Under the conference agreement, property contracted for by the taxpayer before May 1, 1984, will not be subject to the provision if bonds to finance the property were issued before 1984, and an architectural contract with respect to such property was executed before March 15, 1984.

2. Rehabilitation tax credits

Present law

Tax credits are allowed with respect to qualified rehabilitation expenditures incurred in the substantial rehabilitation of certain buildings. In the case of a building which is at least 30 years old, but not 40 years old (and not a certified historic structure), a 15-percent credit is allowed, and depreciable basis is reduced by the full amount of the credit. In the case of a building which is at least 40 years old (and not a certified historic structure), a 20-percent credit is allowed, and depreciable basis is reduced by the full amount of the credit. In the case of a certified historic structure, a 25-percent credit is allowed, and depreciable basis is reduced by only one-half of the credit.

House bill

No provision.

Senate amendment

In the case of a building which is at least 30 years old but not 40 years old (and not a certified historic structure), the credit is reduced to 10 percent (and a full basis adjustment continues to be required). In the case of a building which is at least 40 years old (and not a certified historic structure), the credit is reduced to 15 percent (and a full basis adjustment continues to be required). No change is made in the amount of the credit with respect to a certified historic building, but a full basis adjustment is required for depreciation purposes. It is clarified that the credit applies only in the case of expenditures for real property (or additions or improvements to real property).

The provision has the same effective date as the Senate amendment regarding depreciation of real property.

Conference agreement

The conference agreement does not include the provision in the Senate amendment.

3. Depreciation recapture and installment sales

Present law

In a disposition of depreciable real or personal property, some or all of the gain may be taxed at the time of the disposition as ordinary income under the depreciation recapture rules of sections 1245 and 1250. The ordinary income will equal all or a part of prior depreciation deductions taken with respect to the property involved. For example, in the case of a sale of personal property, all recognized gain generally is taxed as ordinary income under the depreciation recapture rules of section 1245 to the extent of all prior depreciation deductions with respect to the property.

If the disposition is an installment sale, generally no gain or depreciation recapture income is taxed currently if no principal payments are made or deemed made on the installment obligation currently. Depreciation recapture income is taxed only as principal payments are made on the installment obligation. Typically, a portion of each principal payment will be treated as a recovery of basis and not taxed. Generally, the portion of each principal payment not so taxed equals the amount of the payment times a fraction the numerator of which is the taxpayer's adjusted basis in the property sold and the denominator of which is the total purchase price.

Under section 453(i), relating to certain depreciable property with respect to which the taxpayer elected first year expensing, depreciation recapture income is recognized in the year of an installment sale.

House bill

No provision.

Senate amendment

In any disposition of depreciable real or personal property, all depreciation recapture income under sections 1245 and 1250 generally is recognized currently, even if the transaction is an installment sale. In determining how much of any principal payment constitutes a recovery of basis gain, the taxpayer's adjusted basis in the property disposed of is treated as including the amount of the depreciation recapture income.

The provision is effective with respect to dispositions made after March 15, 1984 (April 13, 1984, in the case of a disposition of personal property). However, the provision does not apply to dispositions pursuant to contracts which were binding on March 22, 1984 (April 12, 1984, in the case of personal property). Nor does the provision apply to dispositions pursuant to an agreement in principal before March 23, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment. In addition, section 453(i) is repealed, since, with the new provision, it is no longer needed. Finally, under the conference agreement, the provision is effective with respect to dispositions after June 6, 1984.

4. Movies

Present law

Present law contemplates that qualified movies (i.e., motion picture films and video tapes created primarily for use as public entertainment or for educational purposes) are generally (1) to be depreciated under the income forecast method or a similar method, and (2) entitled, with respect to certain costs, to a 6⅔ percent investment credit under section 48(k). Present law also contemplates that other movies are generally (1) to be depreciated under the income forecast method or a similar method, and (2) entitled to no investment credit.

Existing Code language may be inconsistent with the foregoing. Some taxpayers are depreciating movies under ACRS, and some, including some who are depreciating them under an income forecast method or a similar method, are claiming regular investment credits.

House bill

No provision.

Senate amendment

Movies are not recovery property and so do not qualify for either ACRS depreciation or, except as is provided in section 48(k), the regular investment credit. These rules are effective as of the effective date of section 168. However, these rules do not apply to qualified movies placed in service before December 31, 1984, for which at least 20 percent of the costs of production were incurred prior to March 16, 1984, and for which ACRS was claimed.

The Senate amendment also provides that the general basis adjustment rules of section 48(q) apply to qualified movies but that the general at-risk rules of sections 46(c) (8) and (9) do not. These rules have the same effective dates as section 48(q) and sections 46(c) (8) and (9), respectively.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the rule to the effect that movies are not recovery property does not apply to any qualified movie placed in service before March 15, 1984, if ACRS was claimed with respect to such movie on a return filed before March 16, 1984. Therefore, the provision does not itself operate to disallow investment credits with respect to any such movie. Furthermore, the rule to the effect that movies are not recovery property does not apply to any qualified movies placed in service before 1985, so long as (1) ACRS is claimed with respect to such movie, and (2) 20 percent of the production costs for such movie were incurred prior to March 16, 1984. However, investment credit with respect to any such movie is to be determined solely under the rules of section 48(k).

No inference is intended as to the proper treatment of movies under present law.

5. Sound recordings

Present law

It is unclear whether sound recordings and similar property are eligible for depreciation under the accelerated cost recovery system or for the investment tax credit. It is also unclear whether the distribution of sound recordings and similar property outside the United States causes the property to be treated as used predominantly outside the United States for depreciation or investment credit purposes.

House bill

No provision.

Senate amendment

Taxpayers are provided with two options with respect to each sound recording, generally as defined in section 280(c)(2). First, taxpayers can elect to depreciate a sound recording under the 3-year property ACRS rules and take a 6-percent investment credit (if the property is otherwise eligible for the credit), or second, they can depreciate it under the income forecast method or a similar method and take no investment credit. Unless all taxpayers with an ownership interest in the sound recording elect the first option, the second option will apply.

If the first option is elected, all capital costs, including all non-U.S. production costs, and all contingent amounts (e.g., royalties to songwriters) incurred in the year the property is placed in service or the year thereafter, are to be recovered under the rules applicable to 3-year recovery property (except that contingent amounts incurred in the second year are to be recovered over 3 years beginning with that year). Contingent amounts incurred in other years are not to be treated as 3-year property for depreciation purposes. For purposes of determining any investment credit, basis or cost includes only production costs (including contingent amounts) allocable to the United States (including possessions of the United States). However, basis or cost does not include any contingent amounts which are not eligible for treatment as 3-year property for depreciation purposes.

The rules of section 48(q) (relating to adjustments in the depreciable basis of property on account of the investment credit) apply to sound recordings, but not the general investment credit at-risk rules.

The distribution of a sound recording outside the U.S. is not to be treated as a use of the property outside the U.S.

The provision applies to sound recordings placed in service after March 15, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

No inference is intended as to the proper treatment of sound recordings under present law.

L. Miscellaneous Reform Provisions

1. Tax benefit rule

Present law

Present law excludes from income amounts recovered which previously were deducted but did not produce a tax benefit. The exclusion fails to properly reflect economic reality in certain cases.

House bill

The House bill clarifies the application of the tax benefit rule with respect to the recovery of amounts previously deducted. The bill also provides for an increase in tax when amounts relating to credits are recovered. This rule does not apply to the investment tax credit or the foreign tax credit since specific rules are applicable to those credits.

The provision applies to amounts recovered after December 31, 1983.

Senate amendment

The Senate amendment is the same as the House bill, except that it does not contain the provision relating to credits.

Conference agreement

The provision generally follows the House bill. An increase in tax with respect to credits will arise only where an amount was paid or incurred, and there is a subsequent price adjustment, or similar adjustment, with respect to that amount.

No change is made to the present law rules relating to what constitutes the recovery of an item previously deducted and no inference is intended as to the scope of those rules under present law.

2. Interest-free and below-market interest rate loans

Present law

Under present law, an interest-free or below-market interest rate loan without consideration, such as a loan to a family member, results in a gift from the lender to the borrower for Federal gift tax purposes. *Dickman* v. *Commissioner*, 465 U.S. , 52 U.S.L.W. 4222 (Feb. 22, 1984). There are no cases that have directly held that such a loan also has any income tax consequences. To date, the courts have only addressed the gift tax consequences.

The Internal Revenue Service has taken the position that, in the case of an interest-free or below-market interest rate loan to an employee or shareholder (other than a loan to which section 482 applies), the borrower derives an economic benefit that should be included in income for Federal income tax purposes. Notwithstanding the Internal Revenue Service's position, the Tax Court has consistently held that these non-family interest-free or below-market interest rate loans do not result in taxable income. *J. Simpson Dean* v. *Commissioner*, 35 T.C. 1083 (1961); *Greenspun* v. *Commissioner*, 72 T.C. 931, *aff'd*, 670 F. 2d 123 (9th Cir. 1982).

House bill

Overview

Under the House bill, an interest-free or below-market interest rate loan (referred to herein as a "below-market loan") is recharacterized as an arms-length transaction in which the lender (1) made a loan to the borrower in exchange for a note requiring the payment of interest at a statutory rate, and (2) made a payment to the borrower. The payment by the lender to the borrower is treated as a gift, dividend, contribution to capital, payment of compensation or other payment depending on the substance of the transaction. The bill is generally applicable to any below-market loan unless, under regulations, it is established to the satisfaction of the Secretary that the loan does not have as one of its principal purposes the avoidance of Federal taxes. Under the bill, a demand loan is treated as a below-market loan if no interest is payable on the loan, or interest is payable at a rate less than the applicable Federal rate. A term loan is treated as a below-market loan if the amount of the loan exceeds the present value of all payments due under the loan. A demand loan is any loan which is payable in full at any time upon the demand of the lender. A term loan is any loan that is not a demand loan.

The provision applies to family loans and other below-market loans. A family loan is any below-market loan with respect to which the deemed payment by the lender to the borrower is in the nature of a gift.

Timing and amount of transfers

Loans other than family loans and demand loans

Under the House bill, in the case of any below-market loan other than a family loan or a demand loan, the lender is treated as transferring to the borrower and the borrower is treated as receiving from the lender an amount equal to the excess of the amount of the loan over the present value of all principal and interest payments due under the loan. This transfer is treated as occurring on the date the loan is made. In addition, the excess of the amount of the loan over the present value of the payments due is treated as original issue discount. As a result, the lender is treated as receiving interest income at a constant interest rate over the life of the loan. Similarly, the borrower is treated as paying the same amount of interest. The interest which the borrower is treated as paying would be deductible to the same extent as interest actually due on the loan from the borrower. Thus, no deduction would be allowed for interest if the borrower does not itemize his or her deductions for the relevant year or his or her deductions would be disallowed under other provisions of the code (e.g., sections 163(d) or 265).

Family loans and non-family demand loans

In the case of a below-market family loan or a below-market demand loan that is not a family loan, the borrower is treated as transferring to the lender and the lender is treated as receiving from the borrower an amount equal to the foregone interest on an annual basis. This foregone interest is included in income by the lender and deductible by the borrower to the same extent as interest actually due on the loan from the borrower.

In addition, in the case of a demand loan, the lender is generally treated as transferring to the borrower, and the borrower is treated as receiving from the lender, an amount equal to the foregone interest on an annual basis. In the case of a family term loan, the lender is treated as transferring to the borrower on the date the loan is made the excess of the issue price of the loan over the present value of all principal and interest payments due under the loan. The deemed transfer by the lender to the borrower is treated as a gift, a payment of compensation, a dividend, contribution to capital, or some other payment depending on the substance of the transaction. Thus, in the case of a below-market loan from one family member to another in a transaction in which the lender does not receive any other consideration for the use of its money, the transfer from the lender to the borrower would be a taxable gift. In the case of a demand loan from a closely held corporation to a controlling shareholder, the transfer would be treated as a distribution with respect to the stock of the distributing corporation and be taxed to the shareholder as a dividend to the extent of the distributing corporation's earnings and profits under section 301.

Under the House bill, the term foregone interest means, with respect to any period during which a loan is outstanding, the excess of (1) the amount of interest which would have accrued on the loan during the period if interest accrued on the loan at the applicable Federal rate, over (2) any interest actually due on the loan properly allocable to such period.

Applicable Federal rate

Under the House bill, the applicable Federal rate is a rate determined by reference to the term of the loan, as set forth below.

Term	Applicable Federal Rate
Less than 3 years	The Federal short-term rate.
Over 3 years but not over 9 years.	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

The Federal rates are determined by the Secretary within 15 days after the close of 6-month periods ending on September 30 and March 31, respectively, and reflect the average market yield during such 6-month periods on outstanding marketable obligations of the United States with comparable maturities. The applicable Federal rate is compounded semiannually.

The determination reflecting the average yield for a 6-month period ending on September 30 is applicable during the 6-month period beginning on January 1 of the succeeding calendar year. The determination reflecting the average yield for the period ending on March 31 is applicable during the 6-month period beginning on the following July 1.

Under the House bill, the applicable Federal rate that is used to compute amounts of foregone interest is the rate for the day on which the loan is made. For purposes of computing amounts of foregone interest, a demand loan is treated as a series of one-day term loans. Thus, in the case of a demand loan, foregone interest must be computed on a daily basis. Further, in the case of a demand loan, the applicable Federal rate is always the Federal short-term rate.

Exceptions and limitations

Exceptions for non-tax motivated transactions

The House bill provides that, under regulations to be prescribed by the Treasury, the provision does not apply to a loan if it is established to the satisfaction of the Secretary that the loan does not have as one of its principal purposes the avoidance of any Federal taxes.

Special limitations for family loans

Under the House bill, in the case of a family loan, the the amount treated as transferred by the borrower to the lender is limited to the amount of income, if any, realized by the borrower which is attributable to the loan.

Other exceptions

The bill provides that the provision does not apply to any loan to which sections 483 or 1274 apply.[7]

Regulations

Under the House bill, the Treasury is directed to prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including (but not limited to) regulations providing for adjustments to the provisions for cases in which, by reason of varying rates of interest, conditional interest payments, waivers of interest, or other circumstances, the provisions of this section do not carry out its purposes.

Effective dates

In general, the provisions of this section apply to term loans made after March 1, 1984, and to amounts outstanding on demand loans after such date. However, a demand loan outstanding prior to March 1, 1984, will not be subject to the provision if it is repaid prior to the 60th day after the date of enactment. Any renegotiation, extension, revision or modification of any of the terms of a loan after March 1, 1984, is treated under the bill as the issuance of a new loan.

Senate amendment

Overview

Generally, the Senate amendment follows the approach of the House bill in that under the Senate amendment a below-market loan is recharacterized as an arms-length transaction in which the lender (1) made a loan to the borrower in exchange for a note requiring the payment of interest at a statutory rate, and (2) made a gift, distributed a dividend, made a contribution to capital, paid compensation, or made another payment to the borrower which, in turn, is used by the borrower to pay the interest. The Senate amendment, however, applies to gratuitous transactions (referred to as "gift loans"), certain specifically enumerated categories of non-gratuitous transactions,[8] and other transactions only under regulations. Further, the Senate amendment provides specific exceptions for certain loans. Under the Senate amendment any loan described in one of the enumerated categories or in regulations is subject to the provision unless one of the specific exceptions is applicable.

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[7] Below-market loans that are made in connection with transactions to which sections 483 or 1274 apply are to be governed by those sections.

[8] The enumerated non-gratuitous transactions are (1) loans by corporations to shareholders of such corporations, and loans by shareholders to their

Timing and amount of transfers

Gift loans

With respect to gift loans, the Senate amendment generally adopts the approach of the House bill to family loans and demand loans.

Non-gift loans

For non-gift loans that are term loans, the Senate amendment generally adopts the approach of the House bill for loans other than family loans and demand loans. For non-gift loans that are demand loans, the Senate amendment generally adopts the House bill approach to family loans and demand loans.

Designated market interest rate

The designated market interest rate under the Senate amendment is the same as the applicable Federal rate under the House bill.

Exceptions and limitations

Special exceptions and limitations for gift loans

Under the Senate amendment, a number of limitations and exceptions are provided for certain gift loans made directly between natural persons. For purposes of these exceptions and limitations, a husband and a wife are treated as one person.

Minimum outstanding balance.—As a general rule, under the Senate amendment, no amount is treated as transferred from the lender to the borrower, or retransferred from the borrower to the lender, for any day during which the aggregate amount owed by the borrower to the lender does not exceed $10,000 (taking into account all loans by the lender to the borrower regardless of the rate of interest).

Net investment income limitations.—As a general rule, under the Senate amendment, no amount is treated as retransferred from the borrower to the lender for any day if (1) the borrower's net investment income for the year in which the day falls does not exceed $1,000, and (2) the aggregate outstanding balance on all loans from the lender to the borrower on such day does not exceed $100,000 (taking into account all loans by the lender to the borrower regardless of the rate of interest).

In addition, if the borrower has net investment income for the year in excess of $1,000, the maximum amount that can be treated as retransferred from the borrower to the lender for any day during a year in which the aggregate of all amounts owed by the borrower to the lender does not exceed $100,000 is limited to the borrower's net investment income for the year. Except as otherwise provided in regulations, determinations made under these provisions are to be made on the basis of the borrower's taxable year.

Under the Senate amendment, net investment income is the excess of investment income over investment expenses. The term investment income is defined, in general, by reference to section 163(d). Thus, investment income is the sum of: (1) gross income from interest, dividends, rents and royalties; (2) net short-term capital gain attributable to the disposition of property held for investment; and (3) amounts treated under section 1245 (relating to dispositions of certain depreciable property), 1250 (relating to dispositions of certain depreciable realty) and 1254 (relating to dispositions of interests in oil, gas and geothermal property) as ordinary income. In addition, net investment income includes any amount included in income under the original issue discount provisions of the Code, and any amount that would be included if such provisions were applicable to all "deferred payment obligations." The term "deferred payment obligations" is defined to include bonds with market discount, short-term government obligations, annuities and any similar obligations producing a determinable investment return with economically accrues currently but is not recognized until a subsequent year. Any income, gain or other amount derived from the active conduct of a trade or business, however, is not treated as investment income. Generally, investment expenses include amounts allowable as deductions under sections 162 (relating to trade or business expenses), 164(a) (1) or (2) (relating to bad debts), 167 (relating to depreciation), 171 (relating to amortizable bond premium), 212 (relating to expenses incurred in connection with the production of income), and 611 (relating to cost depletion).

Except as otherwise provided in regulations, determinations made under these provisions are to be made on the basis of the borrower's taxable year.

Tax avoidance transactions.—The minimum balance exception and the net investment income limitations do not apply if a principal purpose of a loan is the avoidance of Federal taxes. Second, the exception and limitations do not apply to the extent that the proceeds of a loan are used to purchase or carry marketable securities other than bonds or other evidences of indebtedness. Third, the minimum balance exception and the rule that provides that no amount is treated as retransferred from the borrower to the lender in cases in which the borrower has less than $1,000 of investment income do not apply to the extent that the proceeds of a loan are used to purchase or carry passive income-producing assets, unless the Secretary determines that there is no tax avoidance purpose.

Also, the Senate amendment provides that the Secretary will prescribe regulations to prevent abuse of the net investment income limitation through the deferral or other distortion of a borrower's net investment income.

Special exception for employment-related loans

Generally, under the Senate amendment, no amounts are treated as transferred by the lender to the borrower, or retransferred by the borrower to the lender, with respect to any term loan to a person providing services (including independent contractors) if the aggregate amount of loans outstanding between the borrower and the lender on the date on which the loan is made is $10,000 or less. Further, in general, no amount is treated as transferred by the lender to the borrower, or as retransferred by the borrower to the lender, with respect to a demand loan for any day on which the aggregate amount of loans outstanding between the borrower and the lender is $10,000 or less. For this purpose, the aggregate amount of loans outstanding includes all loans by the borrower to the lender regardless of the rate of interest.

Other exceptions

The Senate amendment is the same as the House bill.

Regulations

The Senate amendment follows the House bill. The Senate amendment, however, provides authority to issue certain regulations under the Federal estate tax.

Effective date

In general, the provisions of the Senate amendment apply to term loans made after February 1, 1984, and to amounts outstanding on demand loans after the date of enactment.

Conference agreement

Overview

The conference agreement generally follows the approach of the Senate amendment. Thus, the conference agreement applies to certain enumerated categories of transactions and others under regulations. Further, specific exceptions and limitations are provided. The distinction between term loans and demand loans contained in the House bill and the Senate amendment is retained, as is the rule treating term gift loans as demand loans for income tax purposes. Payments deemed made under this provision are treated as if actually made for all purposes of the Code.

The conference agreement contains a number of technical modifications to the Senate amendment.

Loans subject to the provisions

The conference agreement generally applies to term or demand below-market loans that are gift loans, compensation-related loans, corporation-shareholder loans, and tax-avoidance loans. In addition, under regulations, the conference agreement applies to other transactions that are, in substance, below-market loans if the interest arrangements have a significant effect on the tax liability of either the borrower or the lender. It is intended that the term "loan" be interpreted broadly in light of the purposes of the provision. Thus, any transfer of money that provides the transferor with a right to repayment may be a loan. For example, advances or deposits of all kinds may be treated as loans.

Gift loans.—A gift loan is any below-market loan where the foregone interest is in the nature of a gift. In general, there is a gift if property (including foregone interest) is transferred for less than full and adequate consideration under circumstances where the transfer is a gift for gift tax purposes. A sale, exchange, or other transfer made in the ordinary course of business (i.e., a transaction which is bona fide, at arms length and free from any donative intent) generally is considered as made for and full and adequate consideration. A loan between unrelated persons can qualify as a gift loan.

The conferees wish to clarify that if a taxpayer makes a below-market demand loan to a trust and the loan is treated as a revocable transfer of property for purposes of subpart E, the provisions of subpart E govern.[9] The conferees anticipate that regulations may be issued describing the circumstances under which a loan to a trust will be treated as a revocable transfer.

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corporations, (2) loans by employers to employees, and (3) loans made to independent contractors by persons for whom such contractors perform services.

[9] This result is required because it would be anomalous to give effect for tax purposes to a loan made by a taxpayer to himself or herself.

Compensation-related loans.—A compensation-related loan is any below-market loan made in connection with the performance of services directly or indirectly between (1) an employer and an employee, or (2) an independent contractor and a person for whom such independent contractor provides services.

For purposes of determining the timing and amount of the transfers deemed made under the provision, a compensation-related term loan is treated as a demand loan if the benefit derived by the employee from the interest arrangement is (1) non-transferable and (2) conditioned on the future performance of substantial services by the employee. A benefit is treated as non-transferable and conditioned on future performance under this provision if it would be treated as non-transferable and conditioned on future performance under section 83, if that section were applicable. For example, a benefit is conditioned on the future performance of substantial services if, on the termination, for any reason, of the employee's employment, the interest rate is increased so that the rate for the remaining term of the loan equals or exceeds the applicable Federal rate.

The conferees wish to clarify that an arrangement will be treated as a compensation-related loan only if, in substance, there is a debtor-creditor relationship between the employee and the employer at the time the loan is made. For example, if an employer makes a payment to an unrelated third-party lender to buy-down a mortgage loan for an employee, and taking into account all the facts and circumstances, the transaction is, in substance, a loan by a third-party lender to the employee, and a payment by the employer to secure a valuable benefit for the employee, the payment by the employer to the lender is to be treated as compensation under generally applicable principles of tax law. To that extent, the below-market loan rules do not apply. However, if the transaction is, in substance, a loan by the employer made with the aid of services provided by the third-party lender acting as an agent of the employer, there is a compensation-related loan subject to this provision.

Also, under the conference agreement, if an employee receives payment from a customer for services rendered on behalf of an employer, and is permitted to retain the money for a period without paying interest at a rate equal to or greater than the applicable Federal rate, there is generally a compensation-related loan. For example, if an investment banker is permitted by an issuer to retain the proceeds from a public offering of stock or debt for a period without paying interest, there is a below-market loan from the issuer to the banker. To the extent the benefit is in lieu of a fee for services, the loan is a compensation-related loan.[10]

The conferees also wish to clarify that, in the case of a compensation-related loan, the deemed payment by the lender to the borrower is treated as wages for purposes of chapter 21, chapter 22 and chapter 23. Further, unless otherwise provided in regulations, a payment must be included in gross income by the borrower, even if the borrower is likely to be entitled to an offsetting deduction. Finally, even though there is no requirement that there be wage withholding for purposes of chapter 24, a payment must be reported under the appropriate information reporting provision.

Corporation-shareholder loans.—A corporation-shareholder loan is any below-market loan made directly or indirectly between a corporation and any shareholder of such corporation.

Tax avoidance loans.—A below-market loan is a tax-avoidance loan if one of the principal purposes of the interest arrangement is the avoidance of any Federal tax by either the borrower or the lender. Tax-avoidance is a principal purpose of the interest arrangement if it is a principal factor in the decision to structure the transaction as a below-market loan, rather than a loan requiring the payment of interest at a rate that equals or exceeds the applicable Federal rate and a payment by the lender to the borrower.

Other below-market loans.—A loan that is not a gift loan, compensation-related loan, corporation-shareholder loan or tax avoidance loan may be subject to these provisions under regulations if the interest arrangement has a significant effect on the tax liability of the borrower or the lender.

The interest arrangement of a below-market loan has an effect on the tax liability of the borrower or the lender if, among other things, it results in the conversion of a non-deductible expense into the equivalent of a deductible expense. For example, if a member of a club makes a non-interest bearing refundable deposit to the club in lieu of part or all of his or her membership fee, the member is paying the fee with money that has not been included in his income (i.e., the investment income from the proceeds of the deposit), and has, in effect, converted the fee into the equivalent of a deductible expense.

The conferees anticipate that in determining whether an effect is significant, the Treasury will consider all the facts and circumstances including (1) whether items of income and deduction generated by the loan offset each other, (2) the amount of such items, (3) the cost to the taxpayer of complying with the provision and (4) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

Timing and amount of transfers

Loans other than gift loans and demand loans

The conference agreement generally adopts the approach of the House bill to loans other than family loans and demand loans.

Gift loans and non-gift demand loans

The conference agreement generally adopts the approach of the House bill to family loans and non-family demand loans.

For purposes of determining the timing and amount of the deemed transfers by the borrower to the lender, term gift loans are treated as demand loans.[11] Thus, the borrower is treated as transferring to the lender, and the lender is treated as receiving from the borrower, an amount equal to the foregone interest on an annual basis. For example, assume that on January 1, P, a calendar year taxpayer, makes a $200,000 loan to S, a calendar year taxpayer, for two years at 5 percent simple interest payable annually. If the applicable Federal rate is 12 percent compounded semiannually, the amount treated as transferred by the lender to the borrower for gift tax purposes would be $24,760 (i.e., the excess of $200,000 over the present value of all payments due under the loan discounted at the applicable Federal rate). The amount treated as retransferred by the borrower to the lender on the last day of each of the two calendar years would be $14,720 (i.e., the excess of interest computed at the applicable Federal rate (compounded semiannually) over interest actually payable on the loan). This amount, which would be included in income by the lender and, subject to the rules governing the deductibility of interest, deductible by the borrower, would be in addition to the $10,000 actually due each year under the terms of the loan.

The conferees wish to clarify that a term loan with deferred interest at a rate equal to or greater than the applicable Federal rate, and a related gift to defray all or a part of the interest payable on the loan, may be the economic equivalent of an interest-free (or below-market) loan with a principal amount equal to the sum of the actual stated amount of the loan and the amount of the gift. The conferees anticipate that under regulations such a transaction will be treated in accordance with its substance.

Foregone interest

The conference agreement clarifies the meaning of the term "foregone interest." Under the conference agreement, the term means, with respect to any period during which the loan is outstanding, the excess of (1) the amount of interest which would have been payable on the loan for the period if interest accrued at the applicable Federal rate and were payable annually on the last day of the calendar year, over (2) any interest payable on the loan properly allocable to such period.

Applicable Federal rate

The conference agreement follows the House bill and the Senate amendment.

Applicable Federal rates are to be announced on or before September 30, 1984, and are to apply as of January 1, 1985. Neither the House bill nor the Senate amendment specify the rate that is to apply to days prior to January 1, 1985. The conference agreement provides that for periods prior to January 1, 1985, the applicable Federal rate is ten percent compounded semiannually.

Exceptions and limitations

The conference agreement provides specific de minimis rules. Generally, these rules are based on those contained in the Senate amendment.

De minimis exceptions

De minimis exception for gift loans between individuals.—As a general rule, no amount is treated as transferred by the lender to the borrower, or retransferred by the borrower to the lender, for any day during which the aggregate outstanding amount of loans does not exceed $10,000. For this purpose, the aggregate outstanding amount of loans includes all loans between the lender and the borrower regardless of the rate of interest.

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[10] To the extent the benefit is not in lieu of a fee for services, such an arrangement nevertheless may have a significant effect on the tax liability of the lender or the borrower. If so, the loan may be treated under regulations as a loan subject to the provision.

[11] Term gift loans are treated as demand loans for income tax purposes because, in light of the underlying familial or other personal relationship that is likely to exist between the borrower and the lender, the technical provisions of the loan, such as the maturity of the loan, may not be viewed as being binding by the parties. In addition, an original issue discount analysis is required to determine the income tax consequences of a term loan. By treating term gift loans as demand loans for income tax purposes, such analysis is avoided.

This de minimis rule does not apply, however, if the loan is directly attributable to the purchase or carrying of income producing assets. Although a "directly attributable" test requires that there be some direct link between the loan and the borrower's purchase or continued ownership of income-producing assets, the conferees wish to emphasize that this is an anti-abuse provision, and should be interpreted in light of its purpose of preventing the avoidance of the assignment of income rules and the grantor trust rules.

The conference agreement makes it clear that, because a term gift loan is treated as a demand loan for income tax purposes, generally no amount is deemed retransferred by the borrower to the lender for any day on which the aggregate amount owed is $10,000 or less. Thus, if the balance of a term gift loan fluctuates, there may be income tax consequences for some days but not for other days.

De minimis exception for compensation related loans and corporation shareholder loans.—A de minimis exception is provided for loans between (1) an employer and an employee, or an independent contractor and a person for whom such independent contractor provides services, or (2) a corporation and a shareholder of such corporation. Under these rules, no amounts are treated as transferred by the lender to the borrower and retransferred by the borrower to the lender for any day during which the aggregate outstanding amount of loans between the borrower and the lender does not exceed $10,000. This *de minimis* rule does not apply, however, if a principal purpose of the interest arrangement is the avoidance of any Federal tax.

The conference agreement makes it clear that, for purposes of applying the exceptions and limitations, all loans between the same parties are aggregated. Further, in the case of non-gift term loans, the deemed transfers from the lender to the borrower are treated as occurring on the latter of the dates on which the loans are made or the first date on which the loans are subject to the provision. Thus, for example, if there are no other outstanding loans between an employer and an employee, and the employer makes $9,000 compensation-related term loan to an employee on April 1, and a $2,000 compensation-related term loan to the same employee on April 10, the parties are treated as if the employer made a $11,000 compensation-related term loan to the employee on April 10.

Finally, the conference agreement clarifies that in the event of a reduction in the outstanding balance of a non-gift term loan below $10,000, the provision continues to apply. Thus, the borrower is treated as transferring to the lender, and the lender is treated as receiving from the borrower, foregone interest on the remaining outstanding balance.

Special rules for gift loans

The amount treated as retransferred by the borrower to the lender for any day on which the aggregate outstanding amount of loans between the lender and the borrower does not exceed $100,000 is limited to the borrower's net investment income for the year. If the borrower has outstanding two or more gift loans, net investment income is allocated among such loans in proportion to the respective amounts that would be treated as retransferred by the borrower without regard to this limitation.

In addition, the conference agreement provides that if a borrower has less than $1,000 of net investment income for the year, such borrower's net investment income for the year is deemed to be zero. Thus, if the aggregate outstanding amount of loans from the lender to the borrower does not exceed $100,000 on any day during a year, and the borrower has less than $1,000 of net investment income for the year, no amount is treated as retransferred by the borrower to the lender for such year.

The definition of net investment income in the conference agreement is generally the same as in the Senate amendment. However, the conference agreement makes it clear that United States Savings Bonds are deferred payment obligations.

It is anticipated that the Secretary will prescribe regulations to prevent the abuse of these rules through the deferral or other distortion of a borrower's net investment income. These regulations are to apply to situations in which a party can control the timing of the receipt of investment income (e.g. where the borrower can control the timing of dividends paid by a closely-held corporation) or has engaged in any activities a principal purpose of which is to defer receipt of net investment income. Further, it is anticipated that regulations will provide for determinations under these provisions in cases in which either the borrower or lender computes taxable income on the basis of a fiscal year.

These special rules for gift loans do not apply if a principal purpose of the interest arrangement is the avoidance of Federal taxes.

Other exceptions

The conference agreement is the same as the House bill and the Senate amendment.

Regulations

The conference agreement generally follows the House bill and the Senate amendment.

Under the conference agreement, authority is provided to issue regulations exempting from these provisions any class of transactions if the interest arrangements do not have a significant effect on the tax liability of the borrower or the lender. The conferees anticipate that, in appropriate circumstances, compensation-related loans, including employee-relocation loans, may be exempted by these regulations. The term "significant effect" has the same meaning for this purpose as it does for purposes of determining whether loans not otherwise covered by the provision should be subject to it under regulations.

Authority is also provided to issue regulations for the purpose of assuring that borrowers and lenders take consistent positions under this provision. In appropriate cases, these regulations may condition a deduction for imputed interest on adequate identification of the lender.

In addition, authority is provided to issue regulations concerning the tax consequences of a disposition by a lender or a borrower of his or her interest in a below-market loan, or the acquisition of an interest in such a loan.

Effective dates

In general, under the conference agreement, the provision applies to term loans made after June 6, 1984, and to amounts outstanding on demand loans after such date. Amounts outstanding on demand loans on June 6, 1984, will not be subject to the provision if repaid prior to 60 days after the date of enactment. No inference is intended with respect to the application of present law to any below-market loan outstanding prior to the effective date.

Compensation-related term loans that are otherwise treated as demand loans for purposes of determining the timing and amount of the deemed transfers under the provision are treated as term loans for purposes of this effective date provision. In addition, advances to continuing-care facilities by residents of such facilities made prior to June 6, 1984, are not subject to the provision. No inference is intended regarding the application of the provision to advances to continuing-care facilities made after that date.

3. Limitations with respect to property which is partially used for personal purposes and luxury automobiles

Present law

The portion of the cost of an asset attributable to business use is eligible for the investment tax credit (generally 6 percent on automobiles) and ACRS (automobiles are 3-year property), or, alternatively, for expensing (up to a specified dollar limit). Business use is any use in a trade or business (sec. 162) or in connection with the production of income (sec. 212).

A portion of the investment tax credit and expensing deduction may be recaptured if the portion of the asset attributable to business use declines after the first year it is placed in service. No such recapture rule applies to ACRS deductions.

a. Percentage of personal use presumption for automobiles

House bill

At least 50 percent of use is treated as personal unless the taxpayer establishes otherwise, effective for taxable years beginning after December 31, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

b. Limitation on investment tax credit and depreciation for automobiles

House bill

For purposes of tax credits, ACRS, and expensing, the basis of a passenger automobile is limited to $21,000, adjusted for inflation, effective for property placed in service after March 1, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill, except that basis is limited to $15,000 and the provision is effective for property placed in service after March 15, 1984.

Conference agreement

The conference agreement generally follows the House bill, with modifications. The maximum investment tax credit that can be claimed with respect to any passenger automobile is $1,000, indexed for automobile price inflation and rounded to the nearest $100. If the taxpayer elects a reduced investment credit in lieu of a basis adjustment for half the credit under section 48(q), then the credit is two-thirds of maximum credit that can be claimed. The maximum allowance for depreciation that can be claimed with respect to any passenger automobile is

$4,000 in the year the automobile is placed in service by the taxpayer, and $6,000 in any subsequent year. Both figures are indexed for automobile price inflation and rounded to the nearest $100. In computing the allowable credit, the general rules for the credit are applied first; the limitation is then imposed. The credit as limited is then reduced to reflect any personal use. If business use is less than 100 percent, the taxpayer is entitled to claim the portion of the maximum investment tax credit and depreciation deductions allowable which corresponds to the taxpayer's business use percentage (as described below).

The limits do not apply to an automobile leased or held for leasing by any person regularly engaged in the business of leasing automobiles. Rather, the limits are applied to the lessee by denying a deduction for the percentage of the lease payments that is substantially equivalent to the effect as if these restrictions were placed on the lessor. This percentage is to be determined under tables prescribed by the Secretary. If the lessor passes through the credit to the lessee, the limit on the investment credit allowable applies to the lessee.

The limits are effective for property placed in service or leases entered into after June 18, 1984, except that property acquired pursuant to a binding contract in effect on or before June 18, 1984, that is placed in service before January 1, 1985, is not affected by these limits.

c. Personal use property

House bill

No provision.

Senate amendment

Under the Senate amendment, at least 90 percent of the use of an automobile (based on mileage) must be for business purposes for the taxpayer to claim ITC, ACRS, or expensing. If the 90 percent test is not met, the taxpayer must use standard mileage to determine his allowable deductions in lieu of ITC, ACRS, expensing, and actual operating expenses. An automobile kept at the taxpayer's residence more than 14 nights a year is automatically on standard mileage, unless the residence is the principal place of the taxpayer's principal business or the taxpayer is an outside salesman.

With respect to property used for transportation (except automobiles), entertainment and recreation property, computers, and other property listed in regulations, at least 90 percent of the use must be for business purposes in order for the property to be eligible for ITC, ACRS, and expensing. If the 90-percent test is not met, the taxpayer must use 12-year straight-line depreciation.

The taxpayer must meet the 90-percent test for both of the first two years to claim ITC, ACRS, and expensing, and if business use falls below 90 percent after the first two years, ITC, ACRS, and expensing are recaptured. Use by another person is not counted as for a business purpose unless (1) the use is directly connected with the taxpayer's trade or business, (2) the use gives rise to income to the other person, or (3) fair rent is paid to the taxpayer for the use.

The provision is effective for property placed in service after March 15, 1984.

Conference agreement

For automobiles and other transportation equipment, entertainment, recreation, or amusement property, computers, or other property specified in regulations, the investment credit and use of the accelerated percentages under ACRS are not allowed for property not used predominantly (i.e., more than 50 percent) on an annual basis in a trade or business. Use of this specified property for the production of income, but not in a trade or business, does not count in determining whether the 50-percent test is met. If the 50-percent test is otherwise met, however, use for the production of income may be considered in determining the amount of the investment credit and ACRS that may properly be claimed. For example, if a specified asset is used 30 percent in a trade or business and 30 percent for the production of income, the taxpayer may not claim the investment credit or ACRS and must instead compute depreciation under the rules described below. If, however, an asset is used 70 percent in a trade or business and 20 percent for the production of income, the taxpayer may claim the investment credit and ACRS based on 90 percent business use. As is required under present law, the taxpayer may properly claim the credit and deduction only with respect to the portion of the use of the asset that represents business use. Moreover, as is provided under present law, a taxpayer is entitled to no depreciation deduction with respect to an entertainment, recreation, or amusement facility.

If the taxpayer's automobile is used by another person, any use of the automobile by that other person is not treated, for purposes of this provision, as business use, if that use (A) is not directly connected with the business of the taxpayer, (B) does not give rise to income to the other person (which, in the case of an employee, must also be treated as wages for withholding purposes), or (C) does not result in a payment of fair market rent.

Provision of the use of listed property merely as compensation to 5-percent owners and related taxpayers or leasing to such individuals is not treated as use in a trade or business. However, for airplanes and helicopters, such compensation or leasing to such individuals can be considered business use, provided that business use without consideration of those activities is at least 25 percent of total use.

Listed property does not include any computer exclusively located at a regular business establishment (including a qualifying home office) of the employer or proprietor and owned by the employer or proprietor. However, present law rules permitting the credit and deduction only with respect to the business use of these computers would still apply.

If the 50-percent test is not met, the portion for which depreciation deductions are allowed must be depreciated on a straight-line basis (using a half-year convention (except for 15 year real property) and without regard to salvage value) using earnings and profits lives (see sec. 312(k)(3)(A)). With respect to 3-year property (such as automobiles), this is a 5-year period. With respect to 5-year property (such as computers or transportation equipment other than automobiles), it is a 12-year period. With respect to real property, it is a 35-year period.

Listed property which an individual owns in connection with his employment is eligible for the investment credit and ACRS deductions only if such property is required for the convenience of the employer and as a condition of employment. The conferees intend the terms "convenience of the employer" and "condition of employment" to have the same meaning with respect to this provision as it does with respect to the exclusion from gross income for lodging furnished to an employee. In order to satisfy the condition of employment requirement, the property must be required in order for an employee to properly perform the duties of his employment. This requirement is not satisfied merely by an employer's statement that the property is required as a condition of employment. The conferees intend that the principles of *Dole* v. *Commissioner*, 43 T.C. 697, *aff'd.*, 351 F.2d 308, (1st Cir. 1965) apply.

With respect to recapture of the investment credit, any property (or portion thereof) which ceases to be section 38 property during a taxable year, other than because of a disposition, is considered to be disposed of on the first day of the taxable year (Treas. reg. secs. 1.47-1(c), 1.47-2(e)). These regulations accomplish the objective of the provision in the Senate amendment denying the investment credit if business use falls below 90 percent in the first two years the property is in service. Accordingly, the 2-year rule of the Senate amendment has not been adopted. The conferees expect that these regulations will be strictly enforced. The conferees note that the Secretary can provide, as has been done in other areas, a rule that a *de minimis* reduction in the portion of property that continues to be section 38 property will not trigger any recapture.

For listed property, recapture rules for depreciation will apply. A reduction in the business use portion from above 50 percent to 50 percent or below will trigger recapture of the excess depreciation. Excess depreciation is the excess of depreciation actually claimed over depreciation that would have been claimed on the basis of earnings and profits lives on the straight-line method.

Reduction or denial, due to personal use by the lessee, of the investment tax credit, ACRS, and expensing will not apply to lessors. Personal use by the lessor will, however, cause a reduction in the available investment credit and depreciation. Lessees will be denied a deduction for a percentage of the lease payment equivalent to the value of the portion of the investment tax credit and depreciation and expensing deductions which would have been denied due to personal use. This percentage is to be prescribed in tables issued by the Secretary. These tables may be coordinated with the tables to be prescribed denying a deduction for a percentage of the lease payment attributable to the effect of the caps on the investment credit and depreciation.

Under ACRS, taxpayers may elect, in lieu of the prescribed accelerated percentages, an optional recovery method. The taxpayer may elect either percentages based on the straight line method for the regular recovery period or one of the two optional longer recovery periods. Generally, an election to use an optional recovery method must be made in the year the property is placed in service by the taxpayer. Additionally, except in the case of 15-year real property, a taxpayer who elects to use an optional recovery method must elect the same recovery method for all property of that class placed in service in the year for which the election is made. The mandatory use of the straight line method under this new provision is not intended to have a binding effect on all other recovery property of that class placed in service in the same year by the taxpayer. Thus, a taxpayer who owns a car that is subject to this provision which must be recovered over a 5-year recovery period has not made a binding election with respect to all other 3-year recovery property placed in service in the same taxable year.

In lieu of any investment tax credit and any depreciation or expensing deduction, the taxpayer may elect, as under present law, to compute his deduction for the business use of his automobile at the standard mileage rate. This rate is currently 20.5 cents a mile for the first 15,000 miles of business use per year, up to a maximum of 60,000 miles. Beyond those limits, the rate is 11 cents per mile.

The conference agreement provides the Secretary with authority to prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. These regulations should, among other things, ensure that taxpayers do not attempt to evade the restrictions on the investment credit and depreciation by, for example, separating an automobile into its component parts.

The conferees also expect that the Secretary will issue regulations that provide explicit methods for allocating basis between business and personal use. With respect to automobiles, the regulations could provide that the proportion of business use is not to be greater than the proportion of total mileage which is driven for business purposes. The Secretary may also provide alternate means to determine the business use percentage for automobiles. For example, regulations could provide that if an automobile is used 5 days a week for business purposes and is available 2 days a week for personal purposes, in no event may the taxpayer consider more than five-sevenths of the use to be allocable to business purposes. An allocation based on different factors, such as time, may be more appropriate for other types of property as well.

Commuting is not business use, regardless of whether work is performed during the trip. Thus, for example, a business telephone call made on a telephone installed in an automobile while the taxpayer is commuting to work does not transform the character of the trip from commuting to business. This is also true for a business meeting held in a car while the taxpayer is commuting to work. Similarly, a business telephone call made on an otherwise personal trip does not transform the character of the trip from personal to business. In a likewise manner, the fact that an automobile is used to display material that advertises the owner's or user's trade or business does not convert an otherwise personal use into business use.

These provisions are effective for property placed in service after June 18, 1984, except that property acquired pursuant to a binding contract in effect on or before such date which is placed in service before January 1, 1985 (or January 1, 1987, in the case of real property) is not affected by these provisions.

The following examples illustrate the operation of this provision:

Example 1. On July 1, 1984, A purchases for $35,000 and places in service a passenger automobile which is 3-year recovery property under section 168. The automobile is used exclusively in A's business. The amount of A's investment tax credit is limited to $1,000. A's unadjusted basis for ACRS purposes is $34,500 (i.e., $35,000 reduced by the one-half basis adjustment). A selects the use of the accelerated recovery percentages under ACRS. A's recovery deductions for the years during his recovery period (i.e., 1984 through 1986) are limited to $4,000, $6,000, and $6,000, respectively. A continues to use his car exclusively in his business during taxable years 1987 through 1990. For those years, A is limited to a recovery deduction of $6,000 per year. In 1990, A's recovery deduction is $500 (i.e., his remaining depreciable basis).

Example 2. On August 1, 1984, B corporation purchases for $25,000 and places in service a passenger automobile which is 3-year recovery property under section 168. C owns 100 percent of B corporation. The automobile is used 25 percent in B's business and 75 percent for C's personal use for years 1984 through 1989. Because business use does not exceed 50 percent, B may not claim the investment tax credit and must use either the straight-line method over 5 years or the longer recovery period of 12 years, which B may elect under section 168(b)(3). B uses the 5-year period. In 1984, B's recovery deduction is $625 (*i.e.*, .25 (business use) x $25,000 x .10 (depreciation on a straight line basis with a half-year convention)). In 1985 through 1988, B's recovery deduction is $1,250 (*i.e.*, .25 x $25,000 x .20). In 1989, B's recovery deduction is $625 (*i.e.*, .25 x $25,000 x .10). No further recovery deductions are available to B. This is because the amount with respect to which recovery deductions are available is reduced each year by the amount that could have been deducted if business use had been 100 percent.

Example 3. On December 1, 1984, A purchases for $30,000 and places in service a passenger automobile which is 3-year recovery property under section 168. A owns 100 percent of his business. In 1984, A uses his car 40 percent in his business, 20 percent in an investment activity, and 40 percent for personal purposes. Because A does not use his car more than 50 percent in his business, A may not claim an investment tax credit with respect to the car. A's unadjusted basis is $30,000. Also, because A does not use the car more than 50 percent in his trade or business (*i.e.*, in a "qualified business use"), the deduction allowed under section 168 must be determined by use of the straight-line method over a 5-year recovery period (or, if A so elects, over a 12-year period). A's business use percentage, for purposes of determining the allowable portion of the recovery deduction, is 60 percent for 1984 (that is, 40 percent trade or business use plus 20 percent investment activity use). Thus, A's allowable deduction for 1984 is $1,800 (that is, the allowable depreciation of $3,000 ($30,000 x 10% depreciation) (which is less than the $4,000 cap) times the 60 percent business use percentage).

Example 4. On July 1, 1984, A purchases for $18,000 and placed in service a passenger automobile which is 3-year recovery property under section 168. A's 1984 business use percentage is 80 percent. A elects to take a reduced investment tax credit in lieu of a basis adjustment. The amount of A's investment tax credit is limited to $536 (*i.e.*, $1,000 x .67 (which is less than .4 x $18,000) times 80% business use). A selects the use of the accelerated recovery percentages under ACRS. A's unadjusted basis for ACRS purposes is $18,000. A's 1984 recovery deduction is $3,200 (*i.e.* $4,000 (which is less than $18,000 x .25) times 80% business use). In 1985, A's business use percentage is 80 percent. A's 1985 recovery deduction is $4,800 (*i.e.* $6,000 (which is less than $18,000 x .38) times 80% business use). In 1986, A's business use is 45 percent. As a result of the decline in business use percentage, A, for investment tax credit purposes, is treated as having disposed of the portion of the automobile converted to personal use and must recapture a portion of the investment tax credit claimed previously (pursuant to Treas. reg. secs. 1.47-1(c), 1.47-2(e)). A's investment credit recapture is $123.82 (*i.e.* $536 x .35 (which is .80 – .45) x .66 (the percentage specified in sec. 47(a)(5))). Since A's business use is not greater than 50 percent, A must recompute (for recapture purposes) his recovery deductions for the preceding recovery years using the straight line method over 5 years. A's recomputed recovery deductions for 1984 and 1985 are $1,440 (*i.e.*, .10 x $18,000 x .80), and $2,880 (*i.e.*, .20 x $18,000 x .80), respectively. A must recapture $3,680 (*i.e.*, (3,200 + 4,800) – (1,440 + 2,880)) and include that amount in gross income as ordinary income for 1986. A's recovery deduction for 1986 is $1,620 (*i.e.* $18,000 x .20 (which is less than $6,000) times 45% business use). A's business use for 1987 and 1988 is 45 percent and his recovery deduction for each year is $1,620. In 1989, A's business use is 45 percent and his recovery deduction is $810 (*i.e.*, $1,800 x .45). A may not recover any additional amounts, because had he used the automobile solely for business purposes, he would have recovered his entire unadjusted basis (*i.e.*, $18,000) by 1989.

d. Recordkeeping

Present law

The taxpayer must substantiate any travel expenses by adequate records or other evidence corroborating his own statements. These records must show the amount, time, place, and business purpose of the travel expenses.

House bill

No provision.

Senate amendment

The Senate amendment extends present law substantiation requirements to all business use of an automobile and to the other property described above (i.e., property used for transportation, entertainment and recreation property, computers, and other property listed in regulations). The Senate amendment requires the maintenance of contemporaneous records.

The Senate amendment also requires that return preparers verify that adequate contemporaneous records have been kept supporting deductions before signing returns. The provision is effective with respect to property placed in service after March 15, 1984.

Conference agreement

The conference agreement follows the Senate amendment with modifications. Thus, taxpayers are required to substantiate by adequate contemporaneous records any investment tax credit or deduction with respect to the business use of listed property, traveling expenses (including meals and lodging while away from home as well as local travel) that are trade or business expenses or expenses for the production of income, for entertainment expenses, and for gifts. If the taxpayer does not have adequate contemporaneous records, no credit or deduction is allowed with respect to that item. If, however, these records are lost due to circumstances beyond the taxpayer's control, such as in a fire, flood, or earthquake, the conferees intend that taxpayers continue to have the ability, as they do under present law, to substantiate a deduction by reasonable reconstruction of expenditures (see Treas. reg. 1.274-5(c)(5)).

The conferees expect that these records will reflect with substantial accuracy the business use of the property. The records must indicate the business purpose of the expense or use, unless the business purpose is clear from the surrounding circumstances. With respect to automobiles, logs recording the date of the trip and the mileage driven for business purposes must be kept.

The requirement of the Senate amendment that return preparers verify that adequate records supporting all of these deductions have been kept before signing the return has been deleted. In place of that requirement, a return preparer must properly and fully advise the taxpayer of these contemporaneous recordkeeping requirements and obtain written confirmation from the taxpayer certifying that adequate contemporaneous records supporting these deductions and credits exist. If the return preparer does not obtain this written certification, the preparer may not sign the return. The conferees anticipate either that the content of this certification will be specified by the Secretary or that the Secretary will prescribe a form for this certification. The conferees expect that the Secretary will amend Form 2106 or any other appropriate form to require that the taxpayer directly indicate on his return whether the required records have been kept. This could be done, for example, by providing a box to check on the return.

The conference agreement also provides that any portion of an underpayment of tax attributable to a failure to comply with these contemporaneous recordkeeping requirements is treated as due to negligence in the absence of clear and convincing evidence to the contrary. Claiming a deduction or credit without the support of the required records is also potentially fraud. This is in addition to the loss of the credit and deduction which would occur under present law.

The conferees anticipate that the Secretary will draw the attention of taxpayers to these new recordkeeping requirements in the appropriate regularly issued Internal Revenue Service publications. To accomplish this, for example, the Service could describe these new recordkeeping requirements in the section of the instructions to the 1984 Form 1040 that highlights important tax law changes.

The compliance provisions are effective with respect to taxable years beginning after 1984.

4. Transfers of depreciable property between related parties

Present law

Transfers of depreciable property between related parties are denied capital gains and installment sales treatment. Related parties include (1) husband and wife, and (2) partnerships and corporations which are 80 percent controlled by one taxpayer.

House bill

For purposes of this rule, the House bill (1) treats a patent application as depreciable property, and (2) treats a person and a trust in which the person has a beneficial interest (other than a remote contingent interest) as related.

The provision is effective for transactions after March 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. Treatment of certain related party transactions

Present law

Present law denies a deduction for business expenses and interest by an accrual basis taxpayer owed to a related cash basis taxpayer if payment is not made within 2½ months after the close of the taxable year.

Present law does not apply to transactions between a partner and a partnership, and does not apply to transactions between related corporations.

House bill

The House bill provides that a deduction for expenses of an accrual basis taxpayer owed to a related cash basis taxpayer is allowed only when the amount is paid. The bill applies the new accrual rule to amounts accrued by a partnership to its partners and persons related to its partners (and vice versa). It also applies the present law rules denying losses between related parties as well as the new accrual rules to transactions between controlled corporations (using a 50-percent control test). It does not apply to sales to a controlled DISC.

The provision applies the accrual rules to taxable years beginning after December 31, 1983, unless pursuant to a binding contract in effect on September 29, 1983.

The expansion of the related party rules will apply to transactions after September 29, 1983, unless it is pursuant to a contract binding on that date. In the case of sales to a controlled foreign corporation, the provision will apply March 1, 1984.

Senate amendment

The Senate amendment generally is the same as the House bill, except (1) the partnership provision does not apply to certain cases involving resyndications of low-income housing, and (2) losses from sales and exchanges between controlled corporations will result in deferral (rather than denial) of losses until the related corporation disposes of the property outside the group in a recognition transaction. No DISC exception is provided.

The effective date generally is the same as the House bill except (1) the expansion of the related party rules will apply to taxable years beginning after December 31, 1983, and (2) no special rule applies to controlled foreign corporations.

Conference agreement

The provision generally follows the Senate amendment with the following modifications:

(1) There will be no attribution of partnership interests held by a subchapter C corporation to any shareholder owning less than 5 percent of the stock of the corporation.

(2) Except as provided in regulations, sales of inventory in the ordinary course of business between two corporations at least one of which is a foreign corporation will not be subject to the loss deferral rule. This exception will only apply if the sales are made for bona fide business purposes. The IRS may apply the loss deferral rule where sales are made for the purpose of accelerating losses. An abnormally large volume of sales near the end of the year would be an indication of a purpose to accelerate losses, absent evidence to the contrary.

(3) The operation of the loss deferral rule is clarified to provide that any loss sustained shall be deferred until the property is transferred outside the group, or until such other time as is provided by regulations. These rules will apply to taxpayers who have elected not to apply the deferral intercompany transactions rules, except to the extent regulations provide otherwise.

The Secretary may prescribe exceptions from these principles, for example, where necessary to properly reflect the net amount of income on a transaction. For example, it is intended that where any income is properly taken into account by the controlled group with respect to the face amount of a note receivable (for example, the income is accruable in accordance with the principles set forth in Rev. Rul. 71-365) at any time prior to the transfer of the property outside the group, any loss due to the discount in the note or receivable (to the extent of such income previously recognized) shall be allowed no later than the time that both the income has been taken into account and that loss has been sustained.

(4) Any loss sustained on the repayment of a loan to another member of the controlled group will not be disallowed if the loan is payable or denominated in a foreign currency and the loss is attributable to a reduction in value of the foreign currency.

(5) The DISC provision in the House bill is contained in the conference agreement.

(6) In the case of sales to a controlled foreign corporation the effective date will be March 1, 1984.

6. Losses on sales and exchanges of property used in a trade or business

Present law

Generally, gains and losses on the sale or exchange of business property plus the gains and losses on the involuntary conversion of business property and capital assets are treated as long-term capital gains and losses if there are net gains for the taxable year and they are treated as ordinary losses if there are net losses for the taxable year.

House bill

No provision.

Senate amendment

Under the Senate amendment, net losses from the sale or exchange of business assets will be treated as capital losses to the extent of net section 1231 gains for the prior three years and will be carried back to offset these gains. Also net gains will be treated as ordinary to the extent of net section 1231 losses for the prior three years.

The provision applies to taxable years beginning after December 31, 1984.

Conference agreement

Under the conference agreement, net section 1231 gains will be treated as ordinary income to the extent of unrecaptured net section 1231 losses of the taxpayer (or predecessor taxpayer) for the 5 most recent prior years beginning after December 31, 1981. Losses will be deemed recaptured in the chronological order they arose.

The provision applies to taxable years beginning after December 31, 1984.

7. Disallowance of certain expenses where taxpayer uses property similar to property owned by taxpayer

Present law

Deductions for personal expenses are disallowed. Deductions are allowed for expenses incurred in a trade or business or in connection with the production of income. In addition, an investment tax credit is allowed for depreciable property used in a trade or business or for the production of income.

House bill

No provision.

Senate amendment

The Senate amendment clarifies the application of present law where a taxpayer uses property owned by another person for personal purposes and such person (or a third person) uses similar property owned by the taxpayer for personal purposes, or, under regulations, where the taxpayer has an interest in a partnership or other entity, the principal purpose of which is to permit its owners to obtain personal use of property while claiming tax benefits with respect to similar property. If this provision applies, the taxpayer is treated as using the property with respect to which tax benefits are claimed for personal purposes, to the extent of the expenses attributable to the similar property that is actually used by the taxpayer for personal purposes.

The provision applies to the use of property after February 22, 1984.

Conference agreement

The conference agreement follows the House bill.

The conferees concluded that present law is adequate to prevent the abuse addressed by the Senate amendment.

8. Use of multicompany structure to reduce tax on coal operations

Present law

Present law (sec. 631(c)) provides that, subject to certain special limits, royalties received on the disposition of coal or iron ore qualify for capital gain treatment. For capital gain treatment to apply, the coal or iron ore must have been held for more than one year before mining. Capital gain treatment does not apply to income realized by an owner as a co-adventurer, partner, or principal in the mining of the coal or iron ore. In the case of iron ore (but not coal), capital gain treatment is also not applicable to a disposal to a related person or to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of the ore. If capital gain treatment is allowed for coal or iron ore royalties, the royalty owner is not entitled to percentage depletion with respect to the coal or iron ore disposed of.

Under present law, it is possible to reduce the overall tax on coal mining operations by having a separate land-holding company acquire coal reserves and lease them for a retained arm's-length royalty to the company which actually conducts mining operations. Under such an arrangement, the royalties are deductible by the operating company, and the amount of the royalties received by the land company (after subtracting cost depletion and certain expenses) qualify for capital gain treatment. If the benefits of capital gain treatment exceed the loss from foregoing percentage depletion on the coal in question, the overall tax on the operation will be reduced. The Code specifically prohibits this result in the case of iron ore by denying capital gains treatment for dispositions to related persons.

House bill

No provision.

Senate amendment

Section 631(c) is amended to specify that capital gain treatment does not apply to any disposal of coal to a related person or to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of the coal.

The provision is effective for coal disposed of (i.e., mined) after September 30, 1985.

Conference agreement

The conference agreement follows the Senate amendment, except that the amendment does not apply to coal sold under a fixed contract in effect on June 15, 1984, and at all times thereafter, before for such sale, under which the price for such coal cannot be adjusted to reflect to any extent the increased liabilities of the selling royalty owner for income tax by reason of the amendment. This exception for fixed contracts terminates on January 1, 1990. For purposes of this effective date rule, if an operator sells coal under both fixed contracts and other contracts, unless the contract otherwise provide, the royalty subject to the new rules will be treated as paid first out of the proceeds from the fixed contracts.

9. Public utility dividend reinvestment plans

Present law

Under present law, shareholders may exclude from income up to $750 ($1,500 in the case of a joint return) of stock distributions from public utility corporations under qualified dividend reinvestment plans. This provision expires for distributions made after 1985.

House bill

No provision.

Senate amendment

The Senate amendment repeals this provision effective for distributions made after December 31, 1984.

Conference agreement

The conference agreement does not contain the Senate amendment.

10. Modification of income averaging

Present law

Income averaging is presently available to taxpayers with "averageable income." Averageable income is current year taxable income in excess of 120 percent of average taxable income in the four preceding years. In effect, income averaging widens the tax brackets by a factor of five with respect to averageable income.

House bill

The House bill increases the 120-percent threshold to 140 percent and provides that only the three preceding years are to be taken into account. The bill modifies income averaging so that it, in effect, widens the tax brackets by a factor of four, not five, with respect to averageable income.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The Conference agreement follows the House bill and the Senate amendment.

11. Taxation of the Federal Home Loan Mortgage Corporation

Present law

Tax exemption of the Federal Home Loan Mortgage Corporation ("Freddie Mac")

Under a non-Code provision, the Federal Home Loan Mortgage Corporation ("Freddie Mac") is exempt from all Federal, State, and local taxation. Real property held by Freddie Mac remains subject to State and local tax.

Net operating loss carrybacks

Corporations are generally allowed to carry net operating losses back 3 years and forward 15 years. Under a special rule, the Federal National Mortgage Association (Fannie Mae) is allowed to carry net operating losses arising in 1982 or later back 10 years and forward 5 years, other than losses resulting from mortgage dispositions. Losses resulting from mortgage dispositions are subject to the general corporate rules (i.e., a 3-year carryback and 15-year carryforward).

Dividends received deduction

Corporations are allowed a deducation for a portion (generally, 85 percent) of dividends received from a domestic corporation. This deduction is not allowed for dividends received from a tax-exempt entity. Thus, dividends received by savings institutions from a Federal Home Loan Bank (which is tax-exempt under a non-Code provision) do not qualify for a dividends received deduction.

For dividends received by thrift institutions (including savings and loans and mutual savings banks), present law reduces the amount of the otherwise allowable dividends received deduction by 40 percent.

House bill

No provision.

Senate amendment

Repeal of Freddie Mac tax exemption

The Senate amendment repeals the Federal tax exemption for Freddie Mac, effective January 1, 1985. The State or local tax treatment of Freddie Mac is not affected.

Net operating loss carrybacks

The Senate amendment provides Freddie Mac with treatment equivalent to that provided under present law to Fannie Mae, i.e., a 10-year carryback and 5-year carryforward of net operating losses (except losses resulting from mortgage dispositions).

Dividends received deduction

The Senate amendment allows a dividends received deduction for dividends received from a Home Loan Bank which are allocable to dividends paid by Freddie Mac out of current earnings profits or earnings and profits accumulated after December 31, 1984. For dividends paid out of current earnings and profits of a Home Loan Bank, the amount of any dividend which qualifies for a deduction is that amount which bears the same ratio to the total dividend as the ratio of (a) dividends received by the Home Loan Bank from Freddie Mac during the Home Loan Bank's current taxable year, to (b) the total earnings and profits of the Home Loan Bank for the year.

If the amount of the dividends paid by a Home Loan Bank to its shareholders exceeds the bank's earnings and profits for the current taxable year, then, under the Senate amendment, a deduction is allowed for that portion of any dividend paid out of accumulated earnings and profits of Freddie Mac which is equivalent to the ratio of (a) the amount of dividends received by the Home Loan Bank from Freddie Mac out of Freddie Mac earnings and profits for taxable years ending after December 31, 1984, which have not been accounted for under the rules described in the preceding paragraph, to (b) the sum of (i) the retained earnings of the Home Loan Bank as of January 1, 1985, and (ii) the accumulated earnings and profits of the Home Loan Bank at the time the dividend is paid which are attributable to periods after December 31, 1984. For purposes of his rule, the Home Loan Banks are permitted to treat retained earnings for financial accounting purposes as of January 1, 1985, as accumulated earnings and profits for years before 1985. No deduction is allowed for dividends paid by Home Loan Banks allocable to dividends paid by Freddie Mac out of earnings and profits it accumulated before January 1, 1985 (ie., prior to the date of taxability).

Effective date and transition rules

Under the Senate amendment, the repeal of the Freddie Mac tax exemption is effective on January 1, 1985. Additionally, Freddie Mac is to be treated as having no accumulated earnings and profits as of January 1, 1985.

The Senate amendment includes special basis rules designed to ensure that, to the extent possible, pre-1985 appreciation or decline in the value of Freddie Mac assets will not be taken into account for tax purposes. Under these rules, for purposes of determining gain, the basis of any asset held on January 1, 1985, is to be the higher of (1) the regular adjusted basis of the asset in the hands of Freddie Mac, or (2) the fair market value of the asset on January 1, 1985. For purposes of determining loss, the basis of any asset held on January 1, 1985, is to be the lower of these two figures. Where the amount realized on the disposition of an asset is greater than the lower of these figures, but less than the higher figure, no gain or loss is to be recognized by Freddie Mac on the disposition.

The Senate amendment provides specifically that, for purposes of the basis rules above, rights to income retained by Freddie Mac under participation certificates (PCs) and similar interests in mortgages (including guaranteed mortgage certificates and collateralized mortgage obligations) which Freddie Mac sold prior to January 1, 1985, are not to be considered to have a built-in income component on January 1, 1985, which could be treated as an asset held by Freddie Mac as of the date of taxability. Under a special rule, if Freddie Mac realizes gain on the sale of its interests in a PC or similar interest in mortgages between March 15, 1984, and January 1, 1985, such income is to be recognized on January 1, 1985 (and therefore subject to tax).

Conference agreement

The conference agreement follows the Senate amendment with the following modifications.

Net operating loss carrybacks

The conference agreement follows the Senate amendment in providing Freddie Mac with treatment equivalent to that provided to Fannie Mae under present law, i.e., a 10-year carryback and 5-year carryforward of net operating losses (other than losses from mortgage dispositions). However, the conference agreement provides that no net operating loss, capital loss, or excess credit of Freddie Mac for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985. This adjustment prevents Freddie Mac from being required to carry back losses or credits to years in which the corporation was not taxable (and in which the losses or credits are therefore without value to Freddie Mac), and allows such losses or credits to instead be carried forward to later taxable years.

Dividends received deduction

The conference agreement clarifies that, in determining the amount of the deduction for dividends paid out of accumulated earnings and profits of a Home Loan Bank, the total accumulated earnings and profits of the Home Loan Bank at the time the dividend is paid are to be taken into account. Thus, a deduction is to be allowed for that portion of such a dividend which bears the same ratio to the total dividend as the ratio of (a) the amount of dividends received by the Home Loan Bank from Freddie Mac which are out of Freddie Mac earnings and profits for taxable years ending after December 31, 1984, and which have not been taken into account in determining the deduction for dividends paid out of current earnings and profits of the Home Loan Bank, to (b) the total accumulated earnings and profits of the Home Loan Bank at the time the dividend is paid. For purposes of this rule, the retained earnings and profits of the Home Loan Bank as of January 1, 1985, are to be treated as its accumulated earnings and profits as of that date.

Effective date and transition rules

Basis of Freddie Mac assets

The conference agreement follows the rules of the Senate amendment regarding the basis of Freddie Mac assets held by the corporation on January 1, 1985. However, the conference agreement provides an exception to these general rules in the case of tangible depreciable property held by Freddie Mac on January 1, 1985. For such property, the adjusted basis, for purposes of both gain or loss, is to be equal to the lesser of (1) the regular adjusted basis of the property in the hands of Freddie Mac, or (2) the fair market value of the property as of January 1, 1985. This rule is primarily intended to prevent Freddie Mac from claiming deductions based on pre-1985 depreciation of tangible property (e.g., buildings or office equipment) held by the corporation as of the date of taxability.

Treatment of participation certificates (PCs)

The conference agreement follows the Senate amendment with regard to the treatment of income rights under mortgage pool participation certificates (PCs) or other similar interests in mortgages sold prior to January 1, 1985, with certain technical adjustments. Under the conference agreement, Freddie Mac is to be treated as having no basis in its income rights with respect to PCs or similar interests in mortgages, under the basis provisions of the conference agreement, where the PC, similar interest, or any related security was sold or issued by Freddie Mac prior to January 1, 1985. The conferees intend that this provision will apply in the case of collateralized mortgage obligations (CMOs) sold or issued by Freddie Mac prior to January 1, 1985. Thus, income received by Freddie Mac which is attributable to PCs, CMOs, or similar obligations sold prior to January 1, 1985, is to be taxable in the year received, regardless of whether such income is attributable to services performed by Freddie Mac prior to January 1, 1985, to guarantees provided by Freddie Mac, or to a built-in income or profit component which may be considered to exist as of January 1, 1985. Additionally, Freddie Mac is not to be entitled to a deduction for depreciation or amortization with respect to its income rights in these obligations and is to have no basis in such income rights, under the basis provisions of the conference agreement, for purposes of determining gain or loss on the sale or disposition of such income rights.

The conference agreement follows the special rule of the Senate amendment under which gain realized by Freddie Mac on the sale of its income rights in PCs or similar interests in mortgages after March 15, 1984, and before January 1, 1985, is recognized on January 1, 1985.

Treatment of certain replacement obligations

The conference agreement adds a special rule under which Freddie Mac is denied a deduction for interest accruing after December 31, 1984, on any replacement obligation. For this purpose, a replacement obligation means any obligation created after March 15, 1984, which the Treasury Department determines to replace any equity or debt interest of a Federal Home Loan Bank (or of any other person) in Freddie Mac which existed on March 15, 1984. This provision is intended to prevent any rearrangement of the existing capital structure of Freddie Mac (e.g., replacement of equity or low-interest debt with high-interest debt) from resulting in an unintended tax benefit. The provision does not apply to any obligation with respect to which Freddie Mac establishes that there is no tax avoidance effect.

12. Interest on debt used to purchase or carry tax-exempt obligations of related parties

Present law

Present law (sec. 265(2)) disallows a deduction for interest on debt used to purchase or carry tax-exempt obligations. The application of this rule to related parties is unclear.

House bill

No provision.

Senate amendment

The Senate amendment disallows a deduction under section 265(2) for interest on debt which is used to purchase or carry tax-exempt obligations owned by (1) the taxpayer's spouse or (2) an 80-percent owned entity with respect to the taxpayer.

This provision is effective for term obligations incurred after the date of enactment and demand obligations outstanding 60 days after enactment.

Conference agreement

The conference agreement provides that the Treasury Department is to prescribe such regulations as may be necessary or appropriate to prevent the avoidance of tax provisions which deal with (1) the linking of borrowing to investment, or (2) diminishing risks, through the use of related persons, pass-through entities, or other intermediaries. The conferees specifically intend that this provision will be applied (but will not be limited to) the disallowance of interest deductions under section 265(2).

The conferees intend that, for purposes of section 265(2), related persons will include related persons as defined under section 1239, i.e., (1) a husband and wife, and (2) a person and certain 80-percent entities with respect to such person. Additionally, in appropriate instances, related persons for purposes of section 265(2) will include a person and any minor children of such person.

The conferees intend that this provision will not alter the present law rule which disallows an interest deduction under section 265(2) only if the purpose of borrowing is to purchase or carry tax-exempt obligations.[12] In particular, the conferees are aware that certain corporations engaged in banking, writing insurance, or issuing travelers checks, hold large investment portfolios, including tax-exempt securities, that are required to be held to satisfy obligations to or for their customers in the ordinary course of business. Often these corporations do not have significant amounts of interest-bearing debt. In addition, these corporations are often affiliates of other corporations which have large amounts of interest-bearing debt. The conferees intend that this provision will not cause interest on borrowings by an affiliated company to be disallowed in any case where such interest would not be disallowed under present law if the operations of the corporations were carried on as separate divisions of a single corporation.

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[12] See, e.g., *Leslie v. Commissioner*, 413 F. 2d 636 (2d Cir. 1969); *Wisconsin Cheeseman, Inc. v. United States*, 388 F. 2d 420 (7th Cir. 1968); Rev. Proc. 72-18, 72-1 C.B. 740.

The Code, as amended by the conference agreement, contains certain provisions other than sec. 265(2) which apply specific rules in cases in which indebtedness is linked to certain kinds of investments. The Code, as amended by the conference agreement, also contains many provisions (e.g., sec. 243) applying specific rules in cases in which a taxpayer reduces his risk of loss with respect to certain kinds of investments. Under the conference agreement, the Treasury regulations regarding related parties, pass-through entities, or other intermediaries are to be applied to all of these provisions. No inference is intended that any other Code provision may be circumvented by the use of related parties, pass-through entities, or other intermediaries. Nor is any inference intended that any particular provision under present law or as amended by the conference agreement (e.g., sec. 265(2) or sec. 246A), by its own terms, is not applicable in the case of related parties, pass-through entities, or other intermediaries.

The provision regarding related parties, pass-through entities, and other intermediaries is generally effective on the date of enactment. However, for purposes of section 265(2) only, this provision is to be effective with respect to (1) term obligations incurred after the date of enactment, and (2) demand obligations outstanding 60 days after the date of enactment.

II. LIFE INSURANCE TAX PROVISIONS

A. Tax Treatment of Life Insurance Companies

1. Definition of a life insurance company

Present law

A company is taxed as a life insurance company if (1) it is an insurance company; (2) it is engaged in the business of issuing life insurance and annuity contracts (either separately or in combination with accident and health insurance), or noncancellable accident and health insurance contracts; and (3) more than 50 percent of its total reserves are life insurance reserves or unearned premiums and unpaid losses (whether or not ascertained) on noncancellable life, accident or health policies not included in life insurance reserves. Life insurance reserves and total reserves do not include deficiency reserves.

Under present law, there is no statutory definition of an insurance company. Treasury regulations, however, provide that an insurance company is a company "whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies." (Treas. Reg. sec. 1.801-3(a)).

House bill

The House bill generally adopts the present-law test for determining whether an insurance company is a life insurance company and, for this purpose, continues to look to properly computed statutory reserves. However, for purposes of qualifying as a life insurance company, the House bill adopts a statutory definition of an insurance company. Specifically, for purposes of qualifying as a life insurance company, a company must be one for which more than half of the business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

The House bill adopts the same definition of a life insurance reserve as under present law. In doing so, the treatment of noncancellable accident and health insurance contracts in the 1959 Act as being comparable to life insurance contracts because of their long-term rate commitments is continued. Also, generally, the bill adopts the present-law definition of total reserves.

Senate amendment

The Senate amendment is generally the same as the House bill with two modifications. First, because of a general change in State law, as well as new rules for computing tax reserves, the present-law provision that excludes deficiency reserves from the definition of life insurance reserves and total reserves is eliminated. Rather, the new rules for computing tax reserves prohibit a company from taking into account any State requirements for "deficiency reserves" caused by a premium undercharge for purposes of computing the company's increase in reserves deduction.

Second, an insurance company may make a permanent election to treat individual noncancellable (or guaranteed renewable) accident and health contracts as cancellable for purposes of determining the qualification fraction. Thus, a company with large amounts of individual noncancellable accident and health business may elect to be taxed as a property and casualty insurance company, forfeiting the special and small life insurance company deductions.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that the election to treat noncancellable accident and health contracts as cancellable must be made on the return filed for the first taxable year beginning after 1983.

2. Computation of life insurance company taxable income

Present law

A life insurance company currently is subject to a three-phase taxable income computation under Federal tax law. Under the three-phase system, a company is taxed currently on the lesser of its gain from operations or its taxable investment income (Phase I) and, if its gain from operations exceeds its taxable investment income, 50 percent of such excess (Phase II). The other 50 percent of the gain from operations is accounted for as part of a policy holders' surplus account and, subject to certain limitations, is taxed only when distributed to stockholders or upon corporate dissolution (Phase III). Thus, although life insurance companies are taxed at the normal corporate rates under present law, special accounting rules are provided for computing taxable income. Consistent with the taxation of other taxpayers, net capital gain that is taxable to the company may be subject to an alternative tax.

a. Life insurance company taxable income

House bill

Under the House bill, a life insurance company is to be taxed at corporate rates, under a single-phase system, on its life insurance company taxable income (LICTI), plus any distribution from a policyholders' surplus account. LICTI is life insurance gross income reduced by life insurance deductions which include generally available business deductions (with modifications) and special life insurance deductions. As under present law, net capital gain that is taxable to the company may be subject to an alternative tax. A stock life insurance company is to be taxed, at full corporate rates, on any distributions from a pre-1984 policyholders' surplus account.

Senate amendment

The Senate amendment is generally the same as the House bill with the exception of the specific differences described below.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with the specific differences between the two resolved as described below.

b. Deduction for intercorporate dividends

House bill

With respect to the deduction for intercorporate dividends received by a life insurance company, in general, the House bill continues a present-law rule for prorating the deduction between the company and the policyholders as the items of investment income are allocated between the company and the policyholders. However, "100-percent dividends" (i.e., dividends that would be allowed a 100-percent deduction under sections 243 or 244, and certain dividends received by foreign corporations that would be 100-percent dividends but for the foreign recipient) are not subject to proration except to the extent they are funded with tax-exempt interest or with dividends that would not qualify as 100-percent dividends in the hands of the taxpayer.

Senate amendment

The Senate amendment is the same as the House bill except for a provision that allows 100-percent dividend treatment for dividends received from life subsidiaries and certain nonlife insurance subsidiaries if certain conditions are met. One-hundred percent dividends from a life insurance subsidiary will not be prorated if all the affiliated life insurance companies apply proration on a consolidated basis. Dividends from nonlife insurance subsidiaries (e.g., property and casualty insurance companies) will not be prorated if the subsidiary's surplus does not exceed 30 percent of assets and if its tax-advantaged investments (e.g., tax-exempt bonds or common stocks) do not exceed 60 percent of assets. One-hundred percent dividends from reinsurance subsidiaries may be excluded from the general proration rule under regulations. Dividends paid out of pre-1984 earnings by subsidiaries falling under these special rules for exclusion from or application of proration will not be taken into account in computing statement gains from operations under the ownership differential provision (new sec. 809). The special rules for exclusion from proration will terminate and not apply after 1986.

Conference agreement

The conference agreement follows the House bill. Thus, 100-percent dividends received by a life insurance company are not subject to proration except to the extent they are funded either with tax-exempt interest or with dividends that would not qualify as 100-percent dividends in the hands of the taxpayer. The conferees wish to clarify that in determining how much of a dividend has been paid out of tax-exempt interest, or dividends other than 100-percent dividends, or out of other taxable income items, a comparison should be made between the amount that previously undistributed tax-exempt interest and dividends other than 100-percent dividends have contributed to a company's current and post-1983 accumulated earnings and profits and all such earnings and profits immediately prior to the distribution. The conferees believe that this interpretation of the dividends-received proration provision is consistent with the definition of a dividend as a distribution out of earnings and profits (and not out of other amounts). Any other interpretation either would require the establishment of a unique set of earnings and profits accounting provisions, or would result potentially in year-to-year distortions because of annual variations in the proration formula.

c. The special life insurance company deduction

House bill

A life insurance company is allowed a deduction for any taxable year of 25 percent of its "tentative life insurance company taxable income" (tentative LICTI) over the amount of the company's small life insurance company deduction. Generally, a company's tentative LICTI is its life insurance company taxable income determined without regard to (1) the special life insurance company and small life insurance company deductions, and (2) any items (income or loss) attributable to any noninsurance business.

Under this provision, the special life insurance company deduction applies only with respect to income resulting from a company's insurance business. For these purposes, noninsurance business means any business which is not an insurance business. Generally, insurance business refers to the business activity of issuing insurance and annuity contracts and the reinsuring of risks underwritten by insurance companies, together with investment activities and administrative services that are required to support or are substantially related to the contracts issued or reinsured by the taxpayer. Any business that is not an insurance business but is of a type traditionally carried on by life insurance companies for investment purposes is to be treated as insurance business.

The House bill limits the amount of the special life insurance company deduction by treating all life insurance companies that are members of the same controlled group as one company whether such companies join in the filing of a consolidate return or file separate returns. Thus, the gain or loss of any life insurance company member will be reflected in the computation of the affiliated group's tentative life insurance company income, even if that particular member is not allowed to join in the consolidated return because it has not been a member of the affiliated group for the required time or is a foreign corporation. The bill gives Treasury authority to prescribe proper adjustments to eliminate a double reduction of tentative LICTI under such circumstances.

Senate amendment

The Senate amendment is generally the same as the House bill, except that the special deduction is 20 percent of tentative LICTI.

The Senate amendment modifies the computation of tentative LICTI if a company has both insurance and noninsurance business. Noninsurance business means any activity that is not an insurance business; however, an activity is treated as insurance business if it has been traditionally carried on by insurance companies and is carried on for investment purposes, but only if the activity (except for investment in real estate) does not constitute the active conduct of a trade or business. In addition, the performance of administrative services in connection with any plans providing life insurance, pension, or accident and health benefits is treated as insurance business. Also, for purposes of computing LICTI, any gain or loss from the noninsurance business of a life insurance company is treated as if it were the gain or loss of a noninusrance member that joined in the filing of a consolidated return with that life insurance company. Thus, a company's noninsurance losses will be subject to the 35-percent limitation of section 1503(c).

The Senate amendment has the same general rule as the House bill for computing tentative LICTI of a controlled group. However, the Senate amendment provides broader regulatory authority for Treasury to prescribe proper adjustments to be made in the application of the general provision for computing tentative LICTI of a controlled group in order to eliminate any excessive detriment or benefit (from year to year) arising from the operation of that provision.

Also, in lieu of the general rule for computing tentative LICTI of a controlled group, the Senate amendment permits a common parent to elect to compute the special life insurance company deduction separately for each "affiliated group" (as defined by sec. 1504) within the controlled group and for companies that are not members of an affiliated group. Where this election is made, a limitation is imposed on an affiliated group's ability to utilize life company members' losses against nonlife company members' income.

Conference agreement

The conference agreement generally follows the Senate amendment.

In following the Senate amendment with regard to the distinction made between insurance business and noninsurance business, the conferees believe that the distinction drawn between passive investment activities and an active conduct of a trade or business will be more administrable and provide more guidance and certainty for the industry as it further refines the "traditional investment" standard of the House bill. The general insurance-noninsurance distinction that is made for purposes of computing the amount of the special deduction will prevent a company from obtaining a tax rate on income from noninsurance activities that is lower (through the operation of the special deduction) than would be applied if the activities were carried on in a separate nonlife insurance company. At the same time, the conferees recognize that a life insurance company should not be allowed a greater advantage by carrying on, within the company, noninsurance activities that result in losses than would result if those same activities were carried on in a separate company. Thus, the conference agreement adopts the provision that a loss from noninsurnace activities will be treated as a gain or loss of a noninsurance subsidiary of the life insurance company that joined in the filing of a consolidated return with that life insurance company. This results from the application of the general principles of life-nonlife consolidation (sec. 1503(c)) for purposes of combining income and losses from insurance and noninsurance business activities in computing the LICTI of a life insurance company.

For example, noninsurance losses taken into account for purposes of computing LICTI (after the special deduction and small life insurance company deduction) for a taxable year will be limited to 35 percent of the lesser of the noninsurance loss or LICTI (without regard to the noninsurance loss). It is anticipated that regulations under section 1503(c) will develop rules for the treatment of such noninsurance income or losses within a life-nonlife consolidated group that are consistent with the treatment of such items for purposes of computing LICTI of a single life insurance company.

Whether an activity will be treated as insurance business or noninsurance business depends on the nature of the activity itself, regardless of whether the assets and income related to the activity are financially supportive of the insurance business operation. Thus, for example, even though a company might choose to invest premium receipts in an oil or gas joint venture and use the investment return therefrom to meet policy obligations, gain or loss arising from the joint venture will be treated as a noninsurance gain or loss if the company's participation in the joint venture constitutes the conduct of a trade or business. However, the conference agreement provides that certain existing investments in oil and gas through will be treated as insurance business for purposes of computing tentative LICTI. On the other hand, participation in an oil and gas venture solely as a limited partner will ordinarily be treated as a passive investment activity, income and expenses of which will be treated as part of the insurance business. By the same token, the ownership of stock will always be treated as insurance business because it is essentially a passive investment activity, even when the stock ownership results in the life insurance company having control of another company.

This characterization of an activity as insurance or noninsurance business, based on whether it is a passive investment or an active trade or business, is to apply only with respect to the determination of the amount of the special life insurance company deduction (and small life insurance company deduction) and the computation of LICTI, and is not intended to be used for purposes of determining whether a company is a life insurance company for tax purposes. Qualification as a life insurance company will be determined under rules similar to those of present law.

d. The small life insurance company deduction

House bill

Under the House bill, small life insurance companies are allowed an additional special deduction that is not available to other taxpayers. This deduction also is based on tentative LICTI, and applies before the special life insurance company deduction. The amount of the deduction is 60 percent of so much of tentative LICTI for such taxable year as does not exceed $3 million, reduced by 15 percent of the excess of tentative LICTI over $3 million.

As in the case of the special life insurance company deduction, the small life insurance company deduction is computed by treating all life insurance companies that are members of the same controlled group as one company whether those companies join in the filing of a consolidated return or file separate returns.

The small life insurance company deduction is only allowable to companies with gross assets of less than $500 million. The asset qualification for the small company deduction is determined on the basis of a controlled group as defined in section 1563.

Senate amendment

The Senate amendment is the same as the House bill, except that for 1984, only the assets of controlled group members that can be classified as financial intermediaries (e.g., insurance companies, banks, savings and loans, finance companies, securities brokers, and similar institutions), will be aggregated for purposes of the $500 million asset test if certain requirements are met. Also, the modifications to the definition of tentative LICTI described above (item d.) apply for purposes of the small life insurance company deduction.

Conference agreement

The conference agreement follows the Senate amendment.

e. The alternative life insurance company deduction

House bill

No provision.

Senate amendment

In lieu of both the special life insurance company deduction and the small life insurance company deduction, a company can elect (subject to certain special rules), for 1984 through 1987, to claim the alternative life insurance company deduction. The amount of the alternative deduction for any year is determined in part as a percentage of the combined special and small life insurance company deductions and in part a percentage of the qualified first-year premium amount. The amount of the alternative deduction will converge over five years to the sole use of the special and small life insurance company deductions. After 1987, there will be no alternative deduction.

The qualified first-year premium amount means 20 percent of premiums for certain newly issued ordinary life and individual accident and health insurance contracts. Also, the amount of qualified premiums must be reduced by the amount of premiums for reinsurance ceded.

Conference agreement

The conference agreement follows the House bill.

3. Policyholders' surplus accounts

Present law

Present law permits stock life insurance companies to defer the tax on 50 percent of their gain from operations in excess of their taxable investment income. The deferred income is added to a policyholder's surplus account, along with amounts deducted for nonparticipating contracts and group life and accident and health insurance contracts. Amounts in the policyholders' surplus account are taxed only when distributed by the company to its shareholders. To determine whether amounts have been distributed, a company must maintain a shareholder's surplus account which generally includes the company's previously taxed income and certain nontaxable items that would be available for distribution to shareholders. Distributions to shareholders are treated as being first out of the shareholders' surplus account, then out of the policyholders' surplus account and finally out of other accounts.

House bill

In general, the House bill eliminates any further deferral with regard to income for 1984 and later years. Although companies will not be able to enlarge their policyholders' surplus account after 1983, they will not be taxed on previously deferred amounts unless they are treated as distributed to shareholders or subtracted from the policyholders' surplus account under rules comparable to those provided under the 1959 Act, but which reflect the basic changes in the tax structure under the bill.

Specifically, for each taxable year, the excess of the sum of the following amounts over the taxes paid for the year will be added to the shareholders' surplus account: (1) LICTI (determined without regard to any distributions from the policyholders' surplus account); (2) the special life insurance company deduction; (3) the small life insurance company deduction; (4) the deduction allowed the company for intercorporate dividends received; and (5) excluded tax-exempt interest.

Senate amendment

The Senate amendment is the same as the House bill, except it also contains a special provision to relieve a company from tax on a distribution from a policyholders' surplus account due to a reduction of premium volume brought about by a reinsurance transaction ordered by the Federal Reserve Board.

Conference agreement

The conference agreement follows the House bill.

The conferees understand that the rules governing distributions from the policyholders' surplus account have been altered somewhat to reflect the general structure and goals of the new bill. However, the shareholders' surplus account will continue to be maintained as an account of certain positive additions representing items that can be characterized generally as previously taxed or nontaxable amounts that would be available for distribution to shareholders before requiring a distribution from the policyholders' surplus account. Thus, for these purposes, the item of LICTI added to the shareholders' surplus account can never be less than zero. Also, the conference agreement makes it clear that when there are distributions from the policyholders' surplus account, the amount of the distribution (whether actual or deemed, or by the indirect use of amounts in the policyholders' surplus account for the benefit of shareholders) is taxed in addition to LICTI and not as part of the LICTI computation. Thus, distributions from the policyholders' surplus account cannot be offset by life insurance company losses and are not subject to the special and small life insurance company deductions.

4. Computation of reserve deductions

Present law

A life insurance company is allowed to deduct (or exclude from income) increases in its year-end reserves over those for the prior year. A life insurance company's tax reserves are based on its reserves for State regulatory purposes (i.e., statutory reserves) and, as a general rule, a company's deduction reflects an increase in its statutory reserves over its statutory reserves for the prior year. Reserves computed for statutory purposes on a preliminary term basis may be revalued to a net level premium basis using either an exact revaluation method or an approximate revaluation method.

House bill

In general, life insurance companies are allowed a deduction for a net increase in reserves and must take into income any net decrease in reserves. In computing the net increase or net decrease in reserves, the House bill specifies that six items, which are all reserves or in the nature of reserves, be taken into account. These are (1) life insurance reserves; (2) unearned premiums and unpaid losses included in total reserves; (3) amounts that are discounted at interest to satisfy obligations which are obligations under insurance and annuity contracts which do not involve life, accident, or health contingencies when the computation is made; (4) dividend accumulations and other amounts held at interest in connection with insurance and annuity contracts; (5) premiums received in advance and liabilities for premium deposit funds; and (6) reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are held for retired lives, premium stabilization, or a combination of both.

Computation of reserves.—For purposes of determining life insurance company taxable income, the House bill provides that the life insurance reserves for any contract shall be the greater of the net surrender value of the contract or the reserves determined under Federally prescribed rules. Generally, the comparison of the net surrender value of a contract and the Federally prescribed reserves for the benefits under the contract is made on an aggregate benefit basis; however, the comparison may be made on a benefit-by-benefit basis if the benefit is a qualifying supplemental benefit or qualifying substandard risk.

The House bill requires that, in computing the Federally prescribed reserve for any type of contract, the tax reserve method applicable to that contract must be used, along with the prevailing State assumed interest rate and the prevailing commissioner's standard tables for mortality or morbidity.

Reserve method.—With respect to the reserve method to be used, the House bill prescribes specific tax reserve methods for particular types of contracts. For life insurance contracts, the prescribed method is the applicable Commissioners' Reserve Valuation Method (CRVM) in effect when the contract is issued. For annuity contracts, the prescribed method is the applicable Commissioners' Annuities Reserve Valuation Method in effect when the contract is issued. For noncancellable accident and health insurance contracts, a 2-year full preliminary term method is required. Finally, for all other contracts, the reserve method prescribed by the NAIC or, if no method is so prescribed, a method consistent with whichever of the prescribed methods that would be most appropriate for the contract.

There is a special rule for any company domiciled in a State which, in determining minimum reserves for an annuity contract for State purposes, does not reduce the reserves for surrender charges. The bill provides that if a State has continuously pursued this practice since September 27, 1983, then any life insurance company domiciled in that State may adjust its Federally prescribed reserves by taking into account the reasonable surrender charge.

There is also a special rule which allows a company to use the net level premium reserve method for tax purposes for noncancellable accident and health insurance contracts, if the company was using that method for statutory reserves on such contracts as of December 31, 1982, and continues to do so for annual statement purposes for such noncancellable accident and health contracts.

Senate amendment

The Senate amendment is generally the same as the House bill, except that it does not include the special reserve rule for annuity contracts if the State of domicile requires that reserves be computed without reduction for surrender charges. It also does not include the special rule that allows companies to use the net level method for noncancellable accident and health insurance contracts under certain circumstances.

In addition, the Senate amendment specifies that the reserve methods prescribed for tax reserves do not incorporate any provisions which increase the reserve because the net premium (computed on the basis of Federally prescribed assumptions) exceeds the actual premiums or other consideration charged for the benefit. Thus, the computation of the tax reserves will not take into account any State law requirements regarding "deficiency reserves" (whether such reserves are as defined under present law or whether the NAIC prescribed method would otherwise require a company's reserves to reflect a gross premium charge that is less than the net premium based on minimum reserve standards).

Finally, the amendment differs from the House bill in that it provides a special rule for contracts issued before January 1, 1989 under plans of insurance in existence on March 15, 1984, for purposes of computing tax reserves with respect to riders for term life insurance and annuity benefits. Term life insurance and annuity benefits included in insurance contracts will be treated as qualified supplemental benefits, for purposes of allowing the tax reserve to be computed for such benefits as though each benefit were a separate contract. However, such benefits will not be treated as qualified supplemental benefits for purposes of using the statutory reserve as the tax reserve for such benefits.

Conference agreement

The conference agreement generally follows the Senate amendment, but also includes the special rule that allows a company which computed all its noncancellable accident and health contract reserves on a net level basis for State purposes to continue to do so for tax purposes also. The conferees wish to clarify that a company can use the net level reserve method for tax purposes for noncancellable accident and health contracts sold under a particular plan of insurance, if the company computed all its reserves for such contracts on that method for statutory purposes as of December 31, 1983 (as evidenced by its 1983 annual statement, as originally filed) and continues to do so for all such reserves on both new and existing business. If the company was not using a net level reserve method as of December 31, 1983, with respect to contracts sold under a particular plan of insurance, the company must use the generally prescribed reserve method (2-year full preliminary term method) for all contracts under the plan. Likewise, the generally prescribed method must be used for noncancellable accident and health insurance contracts sold under any new plans of insurance.

In adopting the Senate amendment with respect to the computation of annuity reserves, the conferees understand that the practices of the various States differ on whether surrender charges should be taken into account (and reduce the amount of the reserve) and that the matter is currently being considered by the NAIC for a recommendation. In light of these events, the conferees intend that, in the case of annuity reserves, if the NAIC in 1984 clarifies what surrender charge factors are to be disregarded (and not to reduce the amount of the reserve) under the CARVM, then this clarification is to be considered in effect on the date of issuance of such contracts. The conferees recognize that giving retroactive effect to a NAIC recommendation in this instance is an exception to the general rule that reserves must be computed for tax purposes under the method prescribed by the NAIC (or the prevailing State interpretation thereof) in effect on the date of issuance of the contract.

Also, the conference agreement adopts a special rule for purposes of identifying the prevailing interest rate with respect to life insurance reserves on noncancellable accident and health insurance contracts (e.g., the reserve in addition to the unearned premiums and unpaid losses on such contracts). Until States specifically prescribe an interest rate for these reserves, the conference agreement provides that, because of the analogous character of these reserves to reserves on ordinary life policies, the prevailing interest rate for reserves on life policies will be used.

Finally, the conference agreement adopts a transitional rule for recomputation of reserves for group contracts if the issuance date (or the date benefits were guaranteed) cannot be determined. In such a case, the issuance date must be determined on the basis prescribed by Treasury. It is anticipated that Treasury will develop some method for approximating the date of issuance that generally reflects the pattern of growth in the type of group business.

5. Variable contracts

Present law

In general, either a variable annuity [1] or a variable life insurance contract is a contract under which any amounts or premiums received are invested in a separate asset account of the insurance company, and the amounts paid in or paid out reflect the investment return and the market value of such separate account. Under a variable annuity, either the cash surrender value before the annuity starting date or annuity payments made after the annuity starting date (or both) reflects the investment activity of the separate account; under a variable life insurance contract, the cash surrender value and the amount of death benefit fluctuates with the investment activity of the separate account.

Generally, income on an annuity contract is taxed only once, at the policyholder level when the income is distributed. This is accomplished by means of a deduction at the company level for amounts credited to policyholders under annuity contracts. However, under present law, income on a nonqualified variable annuity (i.e., one that is not purchased as part of a qualified pension plan) may be taxed at the company level as well as at the policyholder level. Under separate accounting provisions of present law, amounts credited to the holder of a nonqualified variable annuity based on appreciation in the value of the separate asset account are not deductible by the company. Thus, under present law, the company pays a tax at a capital gains rate on the sale of an appreciated asset, without an offsetting deduction for the income credited to the contractholder. When the income is distributed, it is taxable as ordinary income to the contractholder. The result is that amounts credited to a variable annuity that reflect the appreciation in the value of assets in the separate account are taxed once at the company level at the capital gains rate and once to the contractholder as ordinary income. This consequence was recognized as appropriate in 1959 and again in 1962,[2] although it was eliminated for qualified pension contracts in 1962.

The special provisions described above do not cover the newer variable life insurance contracts. In the case of such accounts, there is no company level tax on amounts credited to contractholders that reflect the appreciation of the assets in the underlying separate account. Further, the company is allowed an ordinary deduction for such appreciation, whether realized or unrealized, when it is credited to the variable life insurance contract (and is reflected in reserves or the cash surrender value) and is taxed at the capital gains rate on the appreciation income when it is realized upon sale of the asset.

House bill

The House bill continues to provide special rules for variable annuities and contracts with reserves based on segregated asset accounts and extends those rules to variable life insurance contracts. Thus, with respect to any variable contract, the reserve items taken into account at the close of the taxable year for purposes of determining net increases or net decreases must be adjusted by subtracting any amount attributable to appreciation in value of assets or by adding any amount attributable to depreciation. Such adjustments for appreciation or depreciation are to be made whether or not the company has disposed of the assets during the taxable year. This adjustment in computing the annual increase or decrease in reserves for variable contracts results in the capital gain or loss being recognized and taxes at both the company level and the policyholder level, since no adjustment is made in either the company's basis or the policyholder's investment in the contract.

The House bill also continues the separate accounting requirements under present law for various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to variable contracts. Likewise, the equity base of the separate account will be determined under the separate accounting requirement and aggregated with the company's average equity base for its general account business.

Senate amendment

The Senate amendment is the same as the House bill with respect to the separate accountng requirements for segregated accounts and variable contracts. However, the company's basis in the assets underlying all variable contracts will be adjusted for appreciation or depreciation, to the extent the reserves are so adjusted. Thus, the corporate level capital gains tax is eliminated. This basis adjustment provision generally conforms the tax treatment of all variable contracts to that of variable pension plan contracts under present law.

The Senate amendment also permits the Treasury to prescribe diversification standards for investments of segregated asset accounts underlying variable contracts. If the segregated asset account does not meet the prescribed diversification standards, then a variable contract based on the account will not be treated as an annuity, endowment or life insurance contract for purposes of subchapter L (relating to taxation of insurance companies), section 72, and section 7702(a) (relating to the definition of a life insurance contract). There is an exception from the general investment diversification provisions for a segregated asset account used for variable life insurance contracts, if the account invests only in securities issued by the United States Treasury. Also, a company can use an independent investment advisor with respect to the segregated asset accounts underlying any of its variable contracts.

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[1] The term variable annuity is used generally to refer to a contract which reflects the investment activity of a company and also a contract that reflects the investment return and market value of a segregated asset account within a company, although the latter may be referred to more specifically as "a contract with reserves based on a segregated asset account." See present-law sec. 801(g).

[2] S. Rep. 291, 86th Cong., 1st Sess. 36 (1959); and S. Rep. 2109, 87th Cong., 2d Sess. 7-8 (1962).

Conference agreement

The conference agreement generally follows the Senate amendment, but further defines the range of the diversification requirement within which Treasury has authority to set standards. Specifically, the conference agreement provides that any fund that is at least as diversified as the requirements of a regulated investment company under section 851(b) will be considered to be adequately diversified without further showing, if the fund has no more than 55 percent of its assets held in cash, cash items, Government securities, or securities of other regulated investment companies. The exception that allowed variable life insurance to be based on a fund fully invested in securities issued by the Treasury continues to be provided. In addition, the conference agreement allows any diversified fund to be used as the basis of variable contracts so long as all shares of the funds are owned by one or more segregated asset accounts of insurance companies, but only if access to the fund is available exclusively through the purchase of a variable contract from an insurance company. The fact that a similar fund is available to the public will not cause the segregated asset fund to be treated as being publicly available.

In authorizing Treasury to prescribe diversification standards, the conferees intend that the standards be designed to deny annuity or life insurance treatment for investments that are publicly available to investors and investments which are made, in effect, at the direction of the investor. Thus, annuity or life insurance treatment would be denied to variable contracts (1) that are equivalent to investments in one or a relatively small number of particular assets (e.g., stocks, bonds, or certificates of deposits of a single issuer); (2) that invest in one or a relatively small number of publicly available mutual funds; (3) that invest in one or a relatively small number of specific properties (whether real or personal); or (4) that invest in a nondiversified pool of mortgage type investments. This new diversification authority is not intended to allow the imposition of any requirement that the investment fund reflect a diverse range of investment goals (e.g., short-term/long-term, or fixed income/equity securities need not be mixed in a single fund). This diversification requirement will not apply to funds underlying pension plan contracts defined under new section 818. The conference agreement also clarifies that a variable contract will cease to be treated as an annuity, endowment or life insurance contract when and if the underlying fund fails to be adequately diversified.

In addition, Treasury will have regulatory authority (under an amendment to sec. 514) to subject to tax the assets of a segregated asset account if the account is used to circumvent the acquisition indebtedness rules.

6. Policyholder dividends

Present law

In general, under present law, policyholder dividends are dividends and similar distributions to policyholders. Interest paid and return premiums are not policyholder dividends. This statutory language has been expanded in regulations so that the term policyholder dividends generally refers to amounts returned to policyholders that are not fixed in the contract and depend on the experience of the company or the discretion of management. However, taxpayers have taken the position that the term does not include excess interest even though such amounts are not fixed in the contract but depend upon the experience of the company or the discretion of management.

Under present law, policyholder dividends are accounted for on a reserve basis, and a company is allowed to deduct additions to its policyholder dividend reserves for dividends that are payable during the year following the taxable year.

House bill

The House bill adopts a broad definition of the term policyholder dividends to include any distribution to a policyholder that is the economic equivalent of a dividend. Thus, in addition to any amount paid or credited to policyholders (including an increase in benefits) when the amount is not fixed in the contract but depends on the experience of the company or the discretion of management, the term policyholder dividends specifically includes excess interest, premium adjustments, and experience-rated refunds.

As under present law, the House bill allows a deduction for dividends or similar distributions to policyholders. The bill departs from present law, however, in that the amount of the deduction for any taxable year is the amount of policyholder dividends paid or accrued during the taxable year rather than the amount of the increases in the reserves for policyholder dividends that are payable during the year following the taxable year. Under the fresh start transitional rule, this change from a reserve to an accrual method is not to be treated as a change in a method of accounting. Thus, no income or loss is to be recognized with respect to amounts in existing policyholder dividend reserves.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

7. Reduction of certain deductions of mutual companies

Present law

Under present law, policyholder dividends paid by mutual and stock life insurance companies are deductible at the company level. Special rules apply, however, to limit the amount of this deduction. Under the 1959 Act, the policyholder dividend deduction is limited to the excess of gain from operations over taxable investment income, plus $250,000. TEFRA adopted, for 1982 and 1983, a more generous limit on policyholder dividends, allowing either (1) an amount computed under the 1959 Act rule with the $250,000 statutory amount increased to $1 million, phasing down to zero as the sum of the company's policyholder dividends and other special deductions increased from more than $4 million to $8 million, or (2) an amount equal to the statutory amount (as modified), plus 100 percent of dividends on pension business, plus 77½ percent of nonpension policyholder dividends for mutual companies (85 percent for stocks).

House bill

Although the general rules and definitions relating to policyholder dividends apply to stock and mutual life insurance companies alike, the amount of the deduction for mutual companies is reduced by the "differential earnings amount." If the differential earnings amount exceeds the allowable deduction, then such excess will reduce the closing balance of the company's reserves. This reduction reflects recognition that, to some extent, policyholder dividends paid by mutual companies are distributions of the companies' earnings to the policyholders as owners. Thus, the bill recognizes an ownership differential between policyholders of mutual and stock life insurance companies.

The "differential earnings amount" is computed by multiplying the company's average equity base for the taxable year by the "differential earnings rate" for the taxable year. The differential earnings rate is the excess of the "imputed earnings rate" over the "average mutual earnings rate". The "imputed earnings rate" is set in the Code, and subsequently adjusted in accordance with future changes in the average earnings rate of the 50 largest stock life insurance companies.

The House bill provides a 5-year transition rule for high surplus mutual life insurance companies for purposes of applying the ownership differential provision. A company is a high surplus company if its equity base to asset ratio for 1984 exceeds a percentage of assets that is approximately 130 percent of the arithmetic average equity base to asset ratio of the 50 largest mutual life insurance companies, (as determined by the Secretary using the most recent data available). A high surplus company need not apply the differential earnings rate to the excess portion of its equity base. However, in no event can the amount of any excess not taken into account exceed $50 million in 1984. The amount of any excess equity not taken into account in applying the differential earnings rate, as well as the $50 million cap, will decrease ratably each year, until 1989 when the entire equity base of a high surplus company is subject to the differential earnings rate.

Senate amendment

The Senate amendment is the same as the House bill except in three instances. First, the amendment contains a special transition rule for determining the average equity base of a life subsidiary of a mutual life insurance company issuing excess interest life insurance contracts. Second, a special rule is provided for certain mutual life insurance companies that are successor companies to fraternal benefit societies. Third, the amendment has the same transition rule for high surplus mutual life insurance companies except it does not have a $50 million cap on the amount of excess surplus that can be taken into account.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with respect to the general rules for the ownership differential. In order to simplify the administration of the ownership differential provisions for the initial years covered by the bill, the conference agreement substitutes a fixed differential earnings rate of 7.8 percent to be used for purposes of filing returns for the 1984 tax year and for estimated taxes for 1985. Likewise, in order to eliminate distortions in the computation of the average earning rate of the 50 largest stock companies, the Secretary will have the authority to omit aberrational rates caused by disproportionately small equity bases (for example, when a company is close to being or is insolvent). The conference agreement also clarifies that Treasury has authority under section 6001 to require the relevant stock or mutual life insurance companies to submit information returns from which Treasury will be able to ascertain data necessary for it to implement the ownership differential provisions, even with respect to tax years ending before 1984.

In determining the average equity base to which the differential earnings rate is to apply, both the House bill and the Senate amendment provide that voluntary reserves are to be treated as part of equity. The conferees wish to clarify that this reference to voluntary reserves is not limited to reserves for potential or unaccrued liabilities relating to insurance contracts. It is anticipated that Treasury regulations will provide guidance for classifying reserves as voluntary. For example, a reserve for Federal taxes may be in whole or in part a voluntary reserve. If the reserve is for a Federal income tax liability that might arise in the future if certain items are identified on audit, such a reserve will be treated as a voluntary reserve because liability for those amounts is contingent on detection of the tax issue, assertion of a deficiency, and resolution of the issue. If the reserve is for taxes accrued and payable on the due date of the return for the year, it will not constitute a voluntary reserve. In cases that are less clearcut, such as when the reserve is for deficiencies that have been asserted after audit, the Secretary will have authority to give further guidance on whether the reserve is voluntary.

The conference agreement adopts the Senate amendment for a transitional rule for certain mutual life insurance companies with life subsidiaries issuing excess interest life insurance contracts. In doing so, the conferees wish to clarify that this special provision is limited to the sale of such contracts under plans to insurance in existence on July 1, 1983, and that for these narrow purposes any change in the contract that requires approval by the State insurance department or that changes the form and timing of amounts credited will be considered a change in the plan of insurance. Thus, a company cannot change a traditional participating policy with policyholder dividends payable on the policy anniversary to an excess interest contract with excess interest guaranteed for a period in advance in order to qualify for the special transition rule for excess interest life insurance contracts.

The conference agreement adopts the Senate amendment with respect to mutual successors to fraternal benefit societies and extends the rule to apply to mutual life insurance companies that assumed the surplus of such an organization in March 1961, as well as in 1950.

The conference agreement follows the Senate amendment with respect to the transitional rule for high surplus mutual life insurance companies. Also, it clarifies that the amount of excess equity taken into account by any mutual life insurance company for any year (before being phased down ratably over the 5-year period of the transitional rule) cannot exceed the amount of the excess equity determined for 1984. The conference agreement simplifies the administration of the high surplus transitional rule by adopting fixed percentages to be used in lieu of computing 130 percent of the average equity to asset ratio of the 50 largest mutual life insurance companies to determine the excess equity threshold. These are: 14.5 percent for taxable years beginning in 1984; 14.0 percent for taxable years beginning in 1985 and 1986; and 13.5 percent for taxable years beginning in 1987 and 1988.

For purposes of determining whether a company is a high surplus company and the amount fo excess equity, the assets taken into account in the equity to asset ratio include all assets (e.g., certain nonadmitted assets) taken into account in determining its equity base and for purposes of the rules for the treatment of stock companies owned by mutual life insurance companies. Thus, all the assets of any life insurance subsidiary whose equity is included in the equity of the parent mutual company, as well as any assets of separate asset accounts, are included in assets for purposes of applying the high surplus transitional rule. Payables and receivables between the parent and life subsidiaries should be ignored, while the same items between the parent and a nonlife subsidiary should be taken into account. Also, the rule against double counting should be observed generally in this area. Thus, for example, if a company purchases bonds at the end of the year and carries a suspense account for the amount of the consideration to be transferred, the value of the bonds should be included in assets and the amount of the suspense account should not.

8. Operations loss deduction

Present law

Generally, operations losses may be carried back to each of the 3 taxable years preceding the loss year and may be carried over to each of the 15 taxable years following the loss year. For a life insurance company that qualifies as a new company in the loss year, the 3-year carryback may be added, instead, to the 15-year carryover.

House bill

The operations loss deduction provided in the House bill is substantially the same as that in section 812 in present law and new section 810 is treated as a continuation of present-law section 812. Modifications are made that will conform the definition of an operations loss deduction to the new method for determining life insurance company taxable income. In both the bill and present-law section 812, the operations loss deduction is consistent with the general treatment for a net operating loss in section 172.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

9. Accounting provisions

Present law

Generally, under present law, all computations entering into the determination of life insurance company taxable income are to be made under an accrual method of accounting or, to the extent permitted under regulations, under a combination of an accrual method with any other recognized method other than the cash receipts and disbursements method. Except as provided in the general rule, all such computations are to be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

When two or more related parties (within the meaning of sec. 1239) are parties to a reinsurance agreement, present law gives the Secretary authority to allocate or recharacterize any items necessary to reflect the proper source and character of the taxable income of each related party.

Also, there was a temporary rule (adopted under TEFRA) for computing reserves on contracts where interest is guaranteed beyond the end of the taxable year; any interest which is computed at a rate which is in excess of the lowest rate assumed in the contract and is guaranteed beyond the end of the taxable year is taken into account in computing reserves as if such interest were guaranteed only up to the end of the taxable year.

Finally, under present law there are specific rules for the amortization of premium and accrual of discount on bonds and for life insurance companies with short taxable years.

House bill

The House bill retains the general rule in present law that life insurance companies must use an accrual method, or a method permitted under the regulations that combines an accrual method with another recognized method. However, the bill makes it clear that accounting methods required for State regulatory purposes apply only to the extent that they are not inconsistent with Federal tax accounting rules.

In the case of reinsurance agreements, the House bill expands the reallocation authority granted Treasury. As under present law, in the case of a reinsurance agreement between two or more related persons, the Treasury can allocate among the parties and recharacterize income, deductions, assets, reserves, credits, and any other items related to the reinsurance agreement in order to reflect the proper source and character of the items for each party. Under the bill, however, related parties are defined as they are in section 482. Also, Treasury can use its recharacterization authority for a reinsurance agreement between unrelated parties where one of the parties to the agreement (with respect to any contract covered by the agreement), in effect, is an agent of, or conduit for, another party to such agreement. Treasury's new allocation and recharacterization authority will apply to any contract issued before September 27, 1983, which is reinsured before such date under a reinsurance agreement entered into before such date.

Finally, the House bill includes, as a permanent provision, the accounting rule adopted as a temporary provision in TEFRA for computing reserves for contracts that guarantee excess interest beyond the end of the taxable year. Under the bill, the provision is modified to reflect the new Federally prescribed reserve rules.

With respect to the special rules for amortization of premium and accrual of discount on bonds, and short taxable years for life insurance companies, the House bill makes no change from present law.

Senate amendment

The Senate amendment is the same as the House bill except that it further clarifies

Treasury's new allocation and recharacterization authority so that it specifically applies to reinsurance agreements between unrelated parties if one of the parties to the agreement is an agent for another party to the agreement or is a conduit between related persons. The Senate amendment also has a different effective date for the new authority; it will apply to any risk reinsured after September 27, 1983, whether or not the reinsurance agreement was entered into before such date.

Conference agreement

The conference agreement generally follows the Senate amendment, but further extends Treasury's authority to examine reinsurance transactions by adopting an additional provision covering transactions between unrelated parties. Thus, under the conference agreement there are two rules which permit the Secretary to make adjustments in reinsurance transactions to prevent tax avoidance or evasion.

The first provision is a modified form of the provision in the Senate amendment permitting reallocations in related party reinsurance transactions to reflect the proper source and character of income. Under the conference agreement, if 2 or more related insurance companies enter into a reinsurance contract, the Secretary may allocate between or among such companies income, deductions, assets, reserves, credits and other items related to the agreement or may recharacterize such items. The Secretary also may make any other adjustment or recharacterization for one or both parties (if the transaction has unrelated parties acting as agents or conduits for another) necessary for these purposes. This authority is generally similar to that provided under section 482 for the Secretary to make correlative adjustments between related parties, except that the authority extends to a broader class of items and may be exercised whenever it is necessary to reflect the proper character and source of item.

Under the second provision of the conference agreement, if the Secretary determines that a reinsurance contract between unrelated insurance companies has a significant tax avoidance effect on any party to the contract, the Secretary may make an adjustment to one or both parties to eliminate the tax avoidance effect, including treating the contract as terminated on December 31 of each year and reinstated on January 1 of the next year. This unrelated party reinsurance rule differs from the general related party reallocation authority in that before making adjustments under this second rule the Secretary must determine that there is a "significant tax avoidance effect" to the reinsurance agreement as opposed to meeting the lower standard of "necessary to effect the proper source and character of the taxable income." Any transaction which would be within the scope of the unrelated party rule but for the fact that the parties are related, would be within the scope of the related party reinsurance rule. On the other hand, a transaction which would not give rise to adjustments if entered into by unrelated parties might result in adjustments as among related parties.

The operative standards for both of the reinsurance adjustment provisions are objective tests of (1) whether adjustments are necessary to more properly reflect income or (2) whether the transaction has a significant tax avoidance effect. The motivations of the parties is wholly irrelevant in making this determination. The fact that a transaction has a business purpose or was not entered into with tax avoidance or evasion as a principal purpose or is entered into at arm's length will not foreclose Treasury from examining a reinsurance transaction under either the provision dealing with related parties or the new provision in the conference agreement dealing with unrelated parties.

In the case of a reinsurance transaction between unrelated parties, the determination of a significant tax avoidance effect for one party to a reinsurance contract, for example, together with any adjustments deemed proper by the Secretary (including deemed termination of the contract), will not require that any correlative adjustments be made to the other party to the contract. Also, the adjustment authority under either reinsurance provision can be exercised with respect to any transaction characterized as reinsurance or insurance by the parties. The exercise of such authority will not preclude the Treasury from also questioning whether the transaction constitutes insurance or reinsurance for other purposes.

In general, whether a reinsurance contract has a tax avoidance effect with respect to any party should be determined by reference to the effect (with respect to one or both parties) in the current year or any other year, after taking into account the time value of money. A tax avoidance effect may arise, for example, when the reinsurance contract artificially reduces a company's equity, changes the source or character of any item, defers taxation of income items, eliminates the "SRLY taint" of a previous net operating loss, artificially transfers tax benefits between taxpayers in different tax brackets, or effectively extends a carryover period. A tax avoidance effect is significant if the transaction is designed so that the tax benefits enjoyed by one or both parties to the contract are disproportionate to the risk transferred between the parties. There is no significant tax avoidance effect for a reinsurer, however, merely because a tax reduction arises from a loss on the reinsurance contract for a particular year, if the loss experienced was no greater than if the reinsurer had written the allocable portion of the reinsured business directly.

In making the determination whether a reinsurance agreement between unrelated parties has a significant tax avoidance effect with respect to one or both of the parties, the Secretary should examine the economic substance of the transaction, taking into account factors such as those described below. These factors may suggest that a significant tax avoidance effect exists for either or both of the parties, but none alone will be determinative.

First, the duration or age of the business reinsured should be taken into account because it bears directly on the issue of whether significant economic risk is transferred between the parties. For example, the coinsurance of new contracts may carry a risk of lapse as well as the mortality risk of the underlying contracts; thus, there may be a significant economic risk that the reinsurer will not realize its share of the potential profits of the underlying contracts. On the other hand, the reinsurance of an old block of business, for which the risk of lapse is minimal, may not result in a significant economic risk being transferred between the parties in proportion to the tax benefits enjoyed.

Second, the character of the business reinsured should be taken into account in determining whether the tax benefits of any party are disproportionate to the risk transferred. For example, coinsurance of yearly renewable term life insurance will generally not have significant tax avoidance effect for the parties to the transaction because it does not involve the transfer of long-term reserves as under the coinsurance of ordinary life insurance.

Third, the structure for determining the potential profits of each of the parties and any experience rating should be considered by Treasury. If the experience rating formula results in the reinsurer receiving only an annual risk premium, plus a fixed fee, the transaction might be viewed as economically equivalent to yearly renewable term reinsurance combined with a financing arrangement between the ceding company and the reinsurer. However, if the experience rating formula results in the reinsurer assuming a risk of loss beyond the annual mortality risk, as well as enjoying a share of the profits commensurate with its loss exposure, such a factor may indicate that tax benefits arising from the assumption of reserve liabilities by the reinsurer are not disproportionate to the risk transferred between the parties.

Fourth, the duration of the reinsurance agreement between the parties should be considered. The fact that there has been a longstanding agreement for automatic reinsurance of certain types of policies would tend to indicate that there is no significant tax avoidance effect when a coincidental tax benefit is enjoyed by a ceding company because income arising from the reinsurance transaction offsets an expiring loss carryover. On the other hand, even a longstanding agreement may be ignored if the experience rating formula in effect allows the parties to tailor income, expense, and profit allocation on an individual contract basis.

Fifth, the parties' rights to terminate the reinsurance agreement and the consequences of a termination should also be taken into account. For example, a contract may contain payback provisions to protect a reinsurer against termination of the reinsurance agreement after a large upfront ceding commission has been paid, but before the reinsurer has been able to enjoy the future profit stream. Such a provision may be a reasonable business practice and should not automatically be viewed as creating a tax avoidance effect. On the other hand, a payback provision which allows a reinsurer to recover all its losses in any case, through adjustments in future premiums or specific termination provisions, would indicate that the transaction is merely a financing arrangement.

Sixth, the relative tax positions of the parties is a factor that should be considered. The essential tax benefit or avoidance effect from a reinsurance transaction arises because income and deductions will have differing economic value depending on the tax bracket of the insurance company. For example, under the new life insurance provisions, bracket shifting is possible between small and large companies, as well as between profit and loss companies or between life and nonlife insurance companies.

Seventh, the general financial situations of the parties may be relevant. For example, surplus relief insurance for an otherwise insolvent insurance company tends to indicate that the transaction may not have a significant tax avoidance effect.

Taking into account the factors described above, and until Treasury regulations can be issued, the conferees believe there are certain kinds of reinsurance transactions which generally will not require Treasury to exercise its reallocation authority. First, yearly renewable term reinsurance will not require adjustments for the parties, to the extent it requires only the payment of a premium for the annual risk and no sharing of expenses. Second, coinsurance of annual renewable term life insurance will generally not require adjustments, because it requires the transfer of an annual risk premium and a sharing of expenses, but does not involve the transfer of long-term reserves. Third, a coinsurance contract covering new business of the ceding company and which allocates expenses and income items between the ceding company and the reinsurer in the same proportion as the allocation of the risk reinsured generally will not require adjustment by Treasury. The same will be true with respect to the reinsurer for the coinsurance contract entered into to cover existing business, if the initial ceding commission is reasonable in reflecting the proper allocable share of past expenses of the ceding company and any premium that might be paid by the reinsurer to the ceding company that reflects anticipated profitability of the reinsured business. The conferees anticipate that the Treasury will provide more guidance in regulations under these provisions. To the extent that future regulations in these areas are inconsistent with the above-described specific examples of situations that will not require Treasury to exercise its adjustment authority, the conferees intend that those regulations have effect only prospectively.

The provision for related party reinsurance is effective with respect to risks reinsured on or after September 27, 1983. The provision for unrelated party reinsurance is effective with respect to risks reinsured after December 31, 1984. For these purposes, a risk is not considered reinsured prior to the time it arises under the contracts covered by the reinsurance agreement. The conference agreement also clarifies that both the reinsurance provisions will apply to reinsurance transactions between insurance companies taxable under subchapter L.

10. Definition of company's share and policyholders' share

Present law

Under present law, all items of investment yield (i.e., gross investment income, including tax-exempt interest and dividends received, less certain investment expenses) are allocated between the policyholders and the company. Amounts allocated to policyholders are not included in taxable investment income or gain from operations. Generally, this allocation is accomplished by means of a proration formula which, in general, compares amounts credited to policyholders to investment yield. The practical effect of the proration formula is to treat additions to reserves as funded in part out of tax-exempt income thus limiting the tax benefit a company can enjoy by the receipt of tax-exempt income.

House bill

The general concept that items of investment yield should be allocated between policyholders and the company has been retained from present law.

Specifically, under the House bill the policyholders' share of any item is 100 percent of the item reduced by the company's share of the item. The company's share is defined as the percentage obtained by dividing the company's share of net investment income by total net investment income. The company's share of net investment income is the excess of net investment income over the sum of (1) the deductible portion of policyholder dividends and (2) all amounts in the nature of interest paid or credited to policyholders as customers pursuant to insurance or annuity contracts (including all pension plan contracts).

Under the House bill, net investment income is defined as the excess of gross investment income over investment expenses. Gross investment income is generally the same as under present law, and includes tax-exempt interest. However, gross investment income does not include dividends received from a subsidiary which are eligible for the 100 percent dividends received deduction (or which would have been eligible for the 100 percent dividends received deduction if the recipient were not a foreign corporation) except to the extent such dividends are paid, directly or indirectly, out of tax-exempt income. Investment expenses are defined as the sum of the direct investment expenses plus an allocable share of the general expenses. General expenses of the life insurance company must be allocated to gross investment income in the same proportion as gross investment income for the taxable year bears to the gross receipts for the taxable year. For purposes of this formula, general expenses are indirect expenses not directly allocable to investment income or underwriting income.

Senate amendment

The Senate amendment is generally the same as the House bill but has a proration fraction that will be simpler to compute. Under the amendment, net investment income is defined as 90 percent of gross investment income. Also, the company's share of net investment income is the excess of net investment income over the sum of: (1) required interest for reserves; (2) any excess interest; (3) any amount in the nature of interest (whether or not a policyholder dividend) credited to a policyholder or customer fund under a pension plan contract for employees not yet retired or to a deferred annuity contract before the annuity starting date; and (4) a fraction of the deductible portion of policyholder dividends (not including any amounts previously included under (1), (2) or (3) or any premium or mortality charge adjustments associated with a contract for which excess interest was credited during the taxable year).

Conference agreement

The conference agreement follows the Senate amendment.

11. Foreign tax credit

Present law

Life insurance companies are generally subject to the same rules governing foreign income as other U.S. corporations. The United States taxes U.S. citizens and residents and U.S. corporations on their worldwide income. The United States allows U.S. taxpayers to offset the U.S. tax on their foreign income by the income taxes paid or accrued to a foreign country ("foreign tax credit").

The Code contains a limitation to ensure that the credit offsets the U.S. tax on only the taxpayer's foreign income. To calculate U.S. taxable income and foreign taxable income, which is necessary to compute the limitation, all deductions must be allocated against gross income, and apportioned against gross U.S. income or gross foreign income. Expenses that are properly allocated or apportioned to a class of U.S. (or foreign) source income reduce gross income in that category (secs. 861(b), 862(b), and 863; Reg. sec. 1.861-8). Expenses that cannot definitely be allocated to a class of gross income are generally deducted ratably from all classes of gross income.

House bill

Under a general rule, the House bill provides that in calculating U.S. source income and foreign source income, three items will be treated under regulations as items which cannot definitely be allocated to an item or class of gross income, but will be allocated ratably among all classes of gross income. These items are policyholder dividends (determined under new section 808(c)), reserve adjustments (under subsections (a) and (b) of new section 807), and death benefits and other amounts described in new section 805(a)(1).

Also, taxpayers will be able to elect to treat the expenses that are the subject of the general rule of the bill as properly apportioned or allocated among items of gross income in the manner and to the extent prescribed in regulations. The election will apply for all taxable years of the taxpayer to which the bill applies. It must be made on or before September 15, 1984. Once made, it will be irrevocable, except with the consent of the Commissioner.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, but changes the date by which the foreign tax credit election must be made to September 15, 1985, so that the election may be made on the return for the first year to which the new rules apply.

12. Foreign life insurance companies' minimum surplus

Present law

A foreign corporation carrying on an insurance business within the United States, that would qualify as a life insurance company if it were a U.S. corporation, is taxable like a U.S. life insurance company on its income effectively connected with its conduct of any U.S. trade or business. A special rule may alter the U.S. tax on foreign life insurance companies doing business in the United States when they hold a relatively small surplus attributable to the U.S. business in the United States. If the foreign insurance company's surplus held in the United States is less than a specified minimum amount, then certain deductions of the company are decreased to reflect imputed earnings on any deficiency in surplus compared to the specified minimum surplus.

House bill

The House bill generally retains the Secretary's ratio adjustment, with modifications. A foreign company taxable as a life insurance company must compare its surplus held in the United States to a required surplus computed under the new statute. If the required surplus exceeds the actual surplus, the company must increase its income by the product of that excess and its current investment yield.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

13. Contiguous country branches of U.S. life insurance companies

Present law

U.S. corporations are taxable on worldwide income, including foreign income (although the foreign tax credit may offset U.S. tax on foreign income). In general, foreign corporations (even those wholly owned by U.S. persons) are not subject to U.S. tax on foreign income. Foreign branch operations of U.S. taxpayers generally are subject to tax currently. Generally, a U.S. mutual life insurance company may elect to exempt the income of its branches that operate in Canada or Mexico so long as the foreign branch does not repatriate its income to the United States. Repatriation of contiguous country branch income results in an increase in life insurance company taxable income. In this respect, the treatment of contiguous country branches corresponds generally to the treatment of foreign subsidiaries of U.S. parent companies.

House bill

The House bill retains the contiguous country branch rule of present law, with technical modifications.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

14. Rules relating to capital gains and losses

Present law

With respect to property used in a trade or business and held for more than 12 months, present law provides, in general, that if the gains from the sale or exchange of such property exceed such losses, then the net gain is treated as not being from the sale or exchange of a long-term capital asset. If the losses exceed the gains, then the net loss is considered as not being from the sale or exchange of a capital asset, with the result that ordinary gain or loss is realized.

In the case of life insurance companies, a special rule applies which modifies the general rule by limiting the term "property used in the trade or business" to include only property used in carrying on an insurance business. Further, for purposes of section 1221(2) (excluding certain property from the term "capital assets"), the reference to property used in trade or business is treated as including only property used in carrying on an insurance business.

In both cases, the term "property used in carrying on an insurance business" means only those assets used in the operation of the insurance trade or business.

Under present law, the amount of gain that is recognized on the sale or other disposition of certain property acquired before December 31, 1958 is limited. In the case of property acquired after December 31, 1958, having a substituted basis (within the meaning of sec. 1016(b)), the limitation on the gain recognized shall apply if the property or properties were held only by life insurance companies during the relevant periods. The term "property" does not include insurance and annuity contracts (and contracts supplementary thereto) and property described in section 1221 relating to stock in trade or inventory-type property.

House bill

The House bill continues the present-law treatment relating to capital gains and losses and gains and losses on property used in the trade or business for life insurance companies and continues the current distinction between indemnity and assumption reinsurance arrangements.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

15. Technical and conforming amendments

House bill

The House bill contains 27 technical changes to the provisions of the Internal Revenue Code of 1954 outside of Part I of subchapter L to conform the existing provisions of the 1954 Code to the new single phase tax system adopted for life insurance companies under the bill.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

16. General effective date

House bill

Generally, the life insurance company taxation provisions apply to taxable years beginning after December 31, 1983.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

17. Transitional rules

a. Reserves computed on a new basis

House bill

As of the beginning of the first taxable year after December 31, 1983, the reserve for any contract shall be recomputed as if the amendments made in the House bill had applied to such contract when it was issued. This provision applies to reserves held by any company taxable under subchapter L of the Code (relating to the taxation of insurance companies).

Any change in accounting (e.g., in computing the policyholder dividends deduction) or any change in the method of computing reserves which is required by the House bill will not be treated as a change in the method of accounting or in the method of computing reserves, and will not give rise to income or loss. This "fresh start" provision will apply only to life insurance companies and solely to changes made between any company's first taxable year beginning after December 31, 1983, and the preceding taxable year.

Senate amendment

The Senate amendment is generally the same as the House bill, except it clarifies how a nonlife insurance company should recompute life insurance reserves and extends the "fresh start" benefits to any insurance company required to recompute reserves under the new provisions.

The Senate amendment provides that a company with less than $500 million in assets may elect not to recompute its reserves for existing business and may use instead statutory reserves for such business for tax purposes. If a company has made this election, and also qualifies for the full small company deduction, it may also elect to compute tax reserves for contracts issued after 1983 and before 1989 according to a formula that adjusts statutory reserves depending on the difference between the prevailing interest rate and the assumed interest rate.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that the election not to recompute life insurance reserves for existing business is limited to companies with less than $100 million in assets.

b. Allocation of the "fresh start" in certain cases

House bill

No provision.

Senate amendment

The Senate amendment allocates the "fresh start" benefit between the ceding company and the reinsurer with respect to reserves subject to a coinsurance agreement entered into during 1982 or 1983. Generally, the "fresh start" benefit is allocated by income recognition or deductions upon termination of the reinsurance agreement, making the amounts under the allocation reflect the duration of the agreement between the parties after 1983.

Conference agreement

The conference agreement follows the Senate amendment with certain technical clarifications.

c. Denial of "fresh start" in certain cases

House bill

The "fresh start" rule is not applicable to any recomputation of reserves transferred pursuant to a reinsurance agreement entered into, modified or terminated after September 27, 1983, and before January 1, 1984. The bill also provides that if expenses have been transferred between insurance companies pursuant to a reinsurance agreement that is entered into, modified, or terminated after September 27, 1983 (and before January 1, 1984), any income attributable to those expenses and taken into account in a later year cannot be taken into account for purposes of determining the amount of the special life insurance company deduction and the small life insurance company deduction. Also, the "fresh start" rule does not apply to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Senate amendment

The Senate amendment does not deny the benefits available under the "fresh start," per se, but shifts the tax effects of certain events occurring between the announcement of the "fresh start" proposal and the effective date of the bill. Specifically, the Senate amendment provides that, for purposes of computing life insurance company taxable income, a reinsurance agreement entered into or a modification to a reinsurance agreement (to the extent of the modification) made after September 27, 1983 (and before January 1, 1984), will not be taken into account until January 1, 1984. Likewise, any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984, will not be taken into account until January 1, 1984.

For these purposes, the phrase "any reserve strengthening" includes the computation of reserves on contracts issued in 1983, under plans of insurance in existence on September 27, 1983, on a more conservative basis than was the customary practice of the company for similar contracts, or to the strengthening of reserves for tax purposes, generally, on existing business. Reserve strengthening for tax purposes resulting from a proper election under section 818(c) of present law will be eligible for a fresh start if more than 95 percent of the section 818(c) amount arises from risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

Conference agreement

The conference agreement follows the House bill with respect to the denial of the "fresh start" for reserves transferred pursuant to the entering into or the modification of a reinsurance agreement entered into after September 27, 1933, and before January 1, 1984, as well as for reserve strengthening claimed after September 27, 1983, for a taxable year ending before January 1, 1984. It does not deny a "fresh start" for reserves transferred because of a termination of the reinsurance agreement during the proscribed period. The conference agreement follows the Senate amendment with respect to the statutory definition of reserve strengthening and the exception therefrom for certain proper elections under section 818(c) of present law.

For situations in which there is a denial of the "fresh start," the conference report provides specific rules for how the amount arising from the recomputation of reserves will be taken into account. Generally, the amount will be taken into account ratably over 10 years, unless a 10-year spread would not have been applicable under the 1959 Act. Thus, any decrease in reserves attributable to the section 818(c) revaluation that is not allowed under the required reserve recomputation of the bill will be taken into account in the first taxable year beginning after December 31, 1983. Also, any amount included in income as a decrease in reserves, and any income attributable to expenses transferred in connection with a proscribed transfer of reserves, will not be taken into account for purposes of determining the amount of the special and small life insurance company deductions.

Finally, the conference agreement follows the substance of the Senate amendment with respect to the denial of the deductions for nonparticipating contracts and accident and health insurance and group life insurance contracts, if those deductions arose from the entering into or the modification of a reinsurance agreement during the proscribed period. Rather than denying such deductions by treating the proscribed reinsurance activities as occurring in the 1984 tax year, the conference agreement denies the deductions for the 1983 tax year.

18. Special rules

House bill

If, prior to January 1, 1984, an election is made to treat income from an installment obligation as investment income, any income from such obligation will be treated as attributable to a noninsurance business.

The House bill provides that, in certain specific cases, involving the acquisition of one or more insurance companies (after 1979 and before April 1, 1983), if certain tests are met, then the tentative LICTI of the corporation holding the assets for taxable years 1984 and 1985 will be increased by the deduction allowable for the amortization of the cost of insurance contracts acquired in the acquisition and for any portion of any operations loss deduction attributable to such amortization.

Finally, the House bill provides that any company that has been operating for a 10-year period ending on December 31, 1983, as a hybrid company (i.e., as a mutual life insurance company with shareholders), will be treated as part stock and part mutual life insurance company.

Senate amendment

The Senate amendment is the same as the House bill with respect to the treatment of installment contracts. It is the same as the House bill with respect to the treatment of amortization of expenses for certain acquisitions of insurance companies between 1979 and April 1, 1983, but the provision is limited in its application to certain acquiring life insurance companies domiciled in Texas, Alabama and Oklahoma, and the benefit is extended to all taxable years after December 31, 1983. The Senate amendment treats a hybrid life insurance company as a stock life insurance company.

Finally, the Senate amendment has a special provision to treat the ownership of certain stock as noninsurance business for purposes of computing tentative LICTI if the stock was acquired through debt financing.

Conference agreement

The conference agreement follows the House bill and Senate amendment with respect to the treatment of installment contracts.

It follows the Senate amendment with respect to the treatment of amortization of expenses for certain life insurance company acquisitions between 1979 and April 1, 1983, but with the modification that to be eligible to use the special rule a company must be domiciled or have its principal place of business in Alabama, Arkansas, Oklahoma, or Texas.

The conference agreement adopts a similar rule for a company with certain losses on guaranteed interest contracts used in pension business by allowing a deduction of those losses after the computation of the special and small life insurance company deductions. The losses arise in situations in which a company has guaranteed a long-term interest rate and intended to meet the obligation by matching the interest rate guarantee with investments in discounted bonds, relying on both the current income of the bond and the amount of the discount to be realized at capital gain rates. To the extent the guaranteed interest rate exceeds the current income of the discounted bond, the company is allowed a deduction after the special and small life insurance company deductions at a full 46 percent tax rate in order to maintain the economics of the transactions with respect to existing guarantees. The rule is narrowly drawn because of special reliance on present-law tax rules (i.e., the pricing reflected in expected tax savings) in structuring the transaction. Moreover, the amount of tax benefit that can be enjoyed because of this rule is limited to $4.5 million in 1984, $4.5 million in 1985, $3.0 million in 1986, $2.0 million in 1987, and zero for 1988 and thereafter.

Also, the conference agreement follows the substance of the Senate amendment with respect to the treatment of certain ownership of stock acquired through debt financing, requiring that the income and deductions related to such stock ownership also be taken into account after computation of the special and small life insurance company deductions (without any loss limitations).

Finally, the conference agreement adopts the Senate amendment with respect to hybrid life insurance companies.

19. Waiver of estimated tax penalty

Present law

Corporate taxpayers are required to pay tax quarterly on an estimated basis. In the case of an underpayment of estimated tax, an additional amount is due, determined at the deficiency interest rate on the amount of the underpayment for the period of underpayment.

House bill

The House bill is the same as present law.

Senate amendment

Any penalty for underpayment of estimated tax by an insurance company, for any 1984 period, is waived to the extent the underpayment is due to changes from present-law tax provisions that are made retroactive by the effective date of the bill.

Conference agreement

The conference agreement follows the Senate amendment.

B. Taxation of Life Insurance Products

1. Definition of a life insurance contract

Present law

Generally, there is no statutory definition of life insurance under present law, except for purposes of tax-free exchanges. Income earned on the cash surrender value of a contract is not taxed currently to the policyholder, but it is taxed upon termination of the contract prior to death to the extent that the cash surrender value exceeds the policyholder's investment in the contract. Gross income does not include amounts received by a beneficiary under a life insurance contract, if the amounts are paid because of the death of the insured.

In TEFRA, Congress enacted temporary guidelines for determining whether flexible premium life insurance contracts (e.g., universal life or adjustable life) qualified as life insurance contracts for purposes of the exclusion of death benefits from income. Violation of the guidelines at any time during the contract causes the contract to be treated as providing a combination of term life insurance and an annuity or a deposit fund (depending on the terms of the contract). In the event of the death of the insured, only the term life insurance component is excluded from gross income.

House bill

The House bill adopts a definition of a life insurance contract for purposes of the Internal Revenue Code. This provision extends to all life insurance contracts rules that are similar to, but narrower than, those contained in the temporary provisions of TEFRA.

A life insurance contract is defined as any contract, which is a life insurance contract under the applicable State or foreign law, but only if the contract meets either of two alternatives: (1) a cash value accumulation test, or (2) a test consisting of a guideline premium requirement and a cash value corridor requirement. Whichever test is chosen, that test must be met for the entire life of the contract in order for the contract to be treated as life insurance for tax purposes (e.g., the cash value accumulation test must be met (at all times) by the terms of the contract). For purposes of applying the definitional tests, computational rules and adjustment rules are specifically provided.

If a contract fails to meet either of the alternative tests, the contract will be treated as a combination of term life insurance and a currently taxable fund.

The provision is effective for contracts issued after December 31, 1983. Contracts issued during 1984, will qualify (1) if they meet the present-law flexible premium contract tests (whether or not they are flexible premium contracts); (2) if not flexible premium contracts, they would meet the new definition by substituting 3 percent for 4 percent in the cash value test and treating the maturity date as the latest permitted in the contract (but not less than 20 years after date of issue or age 95, if earlier); or (3) if they meet a statutory description of irreplaceable life. The House bill also has a transition rule or grandfather for certain 20-pay contracts issued under existing plans of insurance (as of September 28, 1983), which allows "3 percent" to be substituted for "4 percent" for purposes of meeting the cash value accumulation test.

Senate amendment

The Senate amendment is generally the same as the House bill, except for certain technical clarifications in the computational rules, and for differences in the treatment of failing contracts and in the effective date provisions.

Contracts that fail are treated as a combination of term life insurance and an annuity as of the date of failure; upon failure, an excise tax of 10 percent of the net surrender value of the contract is imposed on the company.

The definition is effective for contracts issued after December 31, 1984, except increasing death benefit policies (1) issued under post-March 14, 1984, plans of insurance, or (2) having premium funding more rapid than 10-year level premiums, for which the definition is effective January 1, 1984. A special rule allows the sale of certain single premium increasing death policies until June 1, 1984, where face amount is $5,000 or less, and there is no more than 1 policy sold per customer. There is an extension of the flexible premium contracts provision for 1 year.

The Senate amendment has the same provision for grandfathered contracts under existing plans of insurance as in the House bill.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, with the technical clarifications in the computational rules of the Senate amendment. It follows the House bill with respect to the consequences of failing to meet the definition of life insurance.

With respect to the effective date, the conference agreement follows the Senate amendment, adopting a general effective date that makes the new definitional provisions applicable to contracts issued after December 31, 1984. The new provisions will be effective for a contract issued after June 30, 1984, if the contract has an increasing death benefit and premium funding more rapid than 10-year level premium payments, unless the contract meets one of the three transition rules described in the House bill. Thus, present law applies through 1984 (with sec. 101(f) extended for the same period), except in the case of the above described increasing death benefit contracts.

There is an additional transition rule for certain increasing death benefit policies, which makes the new definitional provisions applicable only for a contract issued after September 30, 1984, if the contract would meet the new definition by substituting "3 percent" for "4 percent" in the cash value accumulation test (assuming that the rate or rates guaranteed on issuance of the contract can be determined without regard to any mortality charges), and if (with the same "3 percent" for "4 percent" substitution) the cash surrender value of the contract does not at any time exceed the net single premium which would have to be paid at such time to fund future benefits at the then current level of benefits.

Finally, the conference agreement provides a transition rule for 20-pay qualified contracts that permits certain existing plans of insurance to be modified to permit the crediting of excess interest or similar amounts annually and not monthly, without forfeiting the grandfather provision.

2. Treatment of certain annuity contracts

Present law

Cash withdrawals prior to the annuity starting date are includible in gross income to the extent that the cash value of the contract (determined immediately before the amount is received and without regard to any surrender charge) exceeds the investment in the contract. A penalty tax of 5 percent is imposed on the amount of any such distribution that is includible in income, to the extent that the amount is allocable to an investment made within 10 years of the distribution. The penalty is not imposed if the distribution is made after the contractholder attains age 59½, when the contractholder becomes disabled, upon the death of the contractholder or as a payment under an annuity for life or at least 5 years. No income is recognized to the recipient of an annuity on the death of the contractholder. However, since the recipient has the same investment in the contract as the deceased contractholder, the recipient is subject to income tax on the income accumulated in the contract prior to death when it is distributed from the contract.

House bill

The House bill generally retains the present-law provisions for annuity contracts. However, the 5-percent penalty on premature distributions will apply to any amount distributed to the taxpayer, without regard to whether the distribution is allocable to an investment made within 10 years, unless the taxpayer owner has attained age 59½.

In the event that the owner of any annuity contract dies before the annuity starting date, an amount equal to the cash surrender value of such contract shall be treated as paid to the contractholder immediately before death.

These provisions apply to contracts issued after the day which is six months after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill except in the event of the annuity owner's death before the annuity starting date. Under the Senate amendment, if the owner of any annuity contract dies before the annuity starting date, specific distribution rules will apply, depending on the decedent's beneficiary with respect to the contract. First, if there is a nonspousal beneficiary, the income in the annuity contract generally will have to be distributed within 5 years after the death of the owner. Second, if the decedent's spouse is the beneficiary, the annuity contract may be continued (together with deferral of tax on the accrued and future income under the contract) until distribution to or the death of the spouse. Third, if the beneficiary is a dependent minor child, the contract can be continued until the child reaches age 26. Fourth, if the beneficiary is a dependent handicapped individual, the contract can be continued until that individual reaches age 26, and then an annuity for the beneficiary can be commenced covering any period (including the life of the handicapped individual).

Conference agreement

The conference agreement follows generally the Senate amendment, but with some modifications to the rules for the treatment of annuity contracts in the event of the contractholder's death. These modified rules generally conform to those applicable to qualified pension plans and IRAs.

To be treated as an annuity contract, the contract must provide that, if the contractholder dies on or after the annuity starting date and before the entire interest in the contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as the method of distribution in effect. If the contractholder dies before the annuity starting date, generally, the entire interest must be distributed within 5 years after the date of death of the contractholder, or must be annuitized for some period (including the life of a designated beneficiary) within 1 year after that date. If there is a spousal beneficiary upon the contractholder's death, the contract (including deferral of income tax) may be continued in the name of the spouse as the contractholder.

As under both the House bill and the Senate amendment, the new provisions will be effective for contracts issued more than 6 months after enactment. For these purposes, an annuity contract issued in exchange for another will be considered a new contract subject to the new penalty and distribution-at-death rules. The grandfather provisions granted in TEFRA for amounts invested in or credited to investments in annuity contracts prior to August 13, 1982, continue in effect for purposes of applying the distribution of income-first rules applicable to annuity contracts.

The conference agreement also adopts a technical correction to the TEFRA annuity provisions which allows any investment in a multiple premium annuity contract (issued prior to the effective date of the new penalty provisions) to be treated as having been made on January 1 of the year of investment. This technical correction is intended to simplify the accounting requirements of the 10-year-aging rule in TEFRA for the penalty on early distributions from annuity contracts.

3. Policyholder loans

Present law

Under present law, no deduction is allowed for interest on policyholder loans made pursuant to a plan which contemplates systematic borrowing, or for interest on a loan incurred to purchase or carry a single premium life insurance contract. These rules do not apply if (1) 4 out of the first 7 annual premiums due are paid without borrowing, (2) the total interest subject to limitation is less than $100, (3) borrowing is incurred because of unforeseen substantial income loss or increased financial obligations, or (4) borrowing is incurred in a trade or business.

House bill

In addition to present law, the House bill provides an overall limitation for deduction of interest on policyholder loans. The amount of the limitation is equal to the deficiency interest rate times: (1) $250,000, for individuals; (2) $500,000, for joint returns; and (3) $500,000, for each qualified individual insured in a trade or business. A qualified individual is one who has whole life coverage of at least 10 percent of the amount of coverage on the individual with the greatest coverage. Generally, unused limitations may be carried over.

The new provision applies only to policies issued after September 27, 1983.

Senate amendment

The Senate amendment does not alter present law.

Conference agreement

The conference agreement follows the Senate amendment.

4. Certain exchanges of insurance policies

Present law

Under present law, no gain or loss is recognised on the exchange of (1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract; (2) a contract of endowment insurance for another contract of endowment with the same or earlier payment date or for an annuity contract; or (3) an annuity contract for an annuity contract. For purposes of this exchange rule, an endowment contract or life insurance contract with a life insurance is defined, in part, as a contract with a life insurance company (as defined for tax purposes).

House bill

The House bill does not alter present law.

Senate amendment

The Senate amendment changes the definition of an endowment contract and a life insurance contract to include contracts issued by any insurance company taxable under subchapter L of the Code, rather than just by life insurance companies. The amendment will be effective as if included in the Internal Revenue Code of 1954.

Conference agreement

The conference agreement follows the Senate amendment.

5. Group-term life insurance purchased for employees

Present law

The cost of group term life insurance purchased by an employer for an employee for a taxable year is included in the employee's gross income to the extent that the cost is greater than the sum of the cost for $50,000 of life insurance plus any contribution made by an employee to the cost of the insurance. This rule does not apply to former employees because of retirement or disability. An employer may provide group-term life insurance for these two groups of former employees in amounts greater than $50,000 without any portion of the costs being included in their gross income.

If a group-term life insurance plan maintained by an employer discriminates in favor of any key employee, the exclusion for the cost of the first $50,000 of this insurance is not available. In that event, the full cost of the group-term life insurance for any key employee is included in the gross income of the employee (based on the uniform cost table).

House bill

The House bill effects three changes in the present-law treatment of group-term life insurance. First, the $50,000 limitation on the amount of group-term life insurance that may be provided tax-free to employees also will apply to retired as well as active employees. Second, the nondiscrimination rules will be applied to plans covering retired employees. Third, under the House bill, if a plan fails to qualify for the exclusion because it is discriminatory, then the employees and retirees will have to include in income the actual cost of their insurance benefit rather than the table cost prescribed by the Treasury.

The provisions are effective for taxable years beginning after December 31, 1983. However, the new provisions do not apply to individuals covered by plans of group-term insurance in existence on September 27, 1983 (or comparable successor plans) to the extent of their coverage guaranteed for retirement on that date.

Senate amendment

The Senate amendment is generally the same as the House bill with a specific clarification that the cost of the group-term life insurance coverage will be included in the income of a retired employee for the year in which the coverage is received, whether or not the benefit of retirement coverage vests upon retirement.

However, the Senate amendments make the provisions applicable to taxable years that begin after December 31, 1983, but not to any group-term life insurance plan in existence on January 1, 1984 or to any group-term life insurance plan of the employer (or successor employer) which is a comparable successor to an existing plan, with respect to an individual who retires under the plan and who attained age 55 on or before January 1, 1984. The provision for nonapplication of the new provisions will not itself apply to any plan which is discriminatory after March 15, 1987, with respect to any individual retiring after that date.

Conference agreement

The conference agreement generally follows the Senate amendment. By adopting the Senate amendment, including the clarification of when the group-term life insurance benefit for a retired employee is included in income, the conferees do not intend to affect in any way the determination of whether the form of the benefit received by an employee upon retirement constitutes group-term life insurance for purposes of section 79.

However, the conference agreement does modify the nonapplicability provision for existing plans. That is, the new provisions will not apply to any group-term life insurance plan in existence on January 1, 1984 (or to any comparable successor plan), but only with respect to those individuals who retire under the plan, who were employed during 1983 by the employer having the plan, and who attained age 55 on or before January 1, 1984. The new provisions do not apply to any employees who retired before January 1, 1984. Also, the nonapplication provision will not apply to any plan that is discriminatory after December 31, 1986, with respect to any individual retiring after that date.

C. Studies

Present law

No specific provision.

House bill

The bill requires that certain studies and reports be made on revenue, segment balance and other issues arising under the new life insurance tax provisions. These reports are to be made by Treasury in consultation with the House Committee on Ways and Means, the Senate Committee on Finance, and the Joint Committee on Taxation.

The final report is to be submitted by January 1, 1989, to the House Committee on Ways and Means and the Senate Committee on Finance. Interim reports are to be submitted to the committees not later than July 1, 1986, 1987, and 1988.

Senate amendment

The Senate amendment is the same as the House bill, except that consultation is not required.

Conference agreement

The conference agreement follows the House bill. The conferees wish to emphasize that in preparing this report, the Treasury should give specific attention to the revenue impact of allowing consolidated returns to be filed by life insurance companies with nonlife or noninsurance companies. Likewise, the conferees intend that the general authority granted to Treasury to gather information to study the revenue effect and assess the tax policy adopted under the insurance provisions be used to gather information on the volume and use of policyholder loans so that the committees will have useful information for future legislative work in that area.

III. CHARITABLE DEDUCTION RULES; PRIVATE FOUNDATION PROVISIONS; EXEMPT ORGANIZATIONS

A. General

Charitable Deduction Rules

1. Public charities

Present law

Contributions of cash or ordinary-income property by an individual to public charities or private operating foundations are deductible up to 50 percent of the donor's contribution base for the year (adjusted gross income, with certain modifications). Contributions in excess of this limitation, or of the 30-percent limitation applicable to gifts by individuals of capital-gain property to such charities, may be carried forward and deducted over the following five years, subject to applicable percentage limitations in those years (Code sec. 170).

House bill

No provision.

Senate amendment

The Senate amendment increases to 60 percent the present-law 50-percent limitation on the deductibility by individuals of certain charitable contributions, and extends to 15 years the present-law five-year carryover period for certain excess contributions.

This provision applies to contributions made after December 31, 1984. Carryovers of excess pre-1985 contributions to post-1984 years remain subject to the present-law carryover period and deduction limitations.

Conference agreement

The conference agreement does not include the Senate amendment.

2. Nonoperating (grant making) foundations

Present law

In general, all contributions to private nonoperating foundations are deductible up to 20 percent of the donor's contribution base for the year, with no carryover of excess contribution amounts.

The amount deductible for contributions of appreciated capital-gain property to nonoperating foundations equals the donor's basis in the property plus 60 percent of the appreciation (i.e., 60 percent of the excess of fair market value over the donor's basis). Contributions of such property to public charities or operating foundations are deductible at full fair market value (subject to a special rule for unrelated-use tangible personal property).

House bill

The House bill increases the percentage limitation on deductibility of contributions of cash or ordinary-income property to nonoperating foundations (and of certain other charitable contributions) to 30 percent of the donor's contribution base, effective for contributions made after 1984. The bill retains the 20-percent limitation for all gifts of capital-gain property except such gifts to public charities or private operating foundations. Thus, gifts of capital-gain property to private nonoperating foundations (including gifts of certain appreciated stock which are deductible under the bill at fair market value) remain subject to the 20-percent limitation. Also, excess post-1984 contributions are eligible for a five-year carryover.

The House bill generally allows a deduction at full fair market value for contributions, made after 1984 and before 1995, to nonoperating foundations of up to 10 percent of the stock of a corporation for which (as of the contribution date) market quotations for the stock are readily available on an established securities market.

Senate amendment

Under the Senate amendment, the income tax treatment of contributions by individuals to private nonoperating foundations is the same as that of contributions by individuals to public charities or operating foundations, effective for contributions made after the date of enactment.

Conference agreement

The conference agreement follows the House bill, with modifications to the effective date. The percentage limitation and carryover provisions of the bill apply to contributions in taxable years ending after the date of enactment. The provision on deductibility of contributions of certain stock applies to such contributions made after the date of enactment and before January 1, 1995.

3. Expansion of circumstances in which a deduction may be claimed for qualified conservation contributions

Present law

Subject to certain limitations as to amount and type of property interest, present law provides a deduction for contributions of property to charitable organizations, to the United States, or to a State or local government. Charitable deductions are provided for income, gift, and estate tax purposes (Code secs. 170, 2055, and 2522).

Gifts of less than the donor's entire interest in property are subject to special restrictions. An exception to these restrictions is provided in the case of qualified conservation contributions. One of the requirements for a qualified conservation contribution to be tax-deductible is that surface mining be precluded on the land with respect to which the contribution is made.

House bill

No provision.

Senate amendment

The Senate amendment provides that deductions are allowable for qualified conservation contributions of property even though surface mining is not precluded if two conditions are satisfied. First, the surface and mineral estates in the property must have been separated at all times after June 12, 1976. Second, the probability of surface mining occurring on the property must be so remote as to be negligible.

This provision is effective for contributions made after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

4. Collection of amounts for U.S. Olympic Committee

Present law

There is no procedure under present law for collecting amounts for nongovernmental organizations through Federal tax returns.

House bill

No provision.

Senate amendment

Individuals may forego $1 of their income tax refund ($2 on a joint return), or may pay an additional $1 in tax ($2 on a joint return), to be transferred, less collection costs, by the Treasury to the U.S. Olympic Committee. No charitable deduction is allowed in either situation. A U.S. Olympic Trust Fund is established to administer the funds.

This provision is effective for returns filed for 1984 through 1988.

Conference agreement

The conference agreement does not include the Senate amendment.

5. Charitable expense deduction for use of passenger automobile

Present law

In determining the amount of charitable contribution deduction attributable to use of a car in providing services to a charity, a taxpayer may deduct actual "out-of-pocket" expenses (Treas. Reg. sec. 1.170A-1(g)). Alternatively, the taxpayer may use a standard mileage rate; at present, this rate is set by the IRS at nine cents a mile (Rev. Proc. 82-61, 1982-2 C.B. 849). Under either computation method, the taxpayer may also deduct parking fees and tolls, but may not deduct general repair or maintenance expenses, depreciation, insurance, registration fees, etc.

House bill

No provision.

Senate amendment

The standard mileage rate used in determining the amount of a taxpayer's charitable contribution deduction for the use of a passenger automobile in performing donated services, if the actual expense method is not used, is increased to 12 cents a mile. (As with the present mileage rate, the taxpayer may also deduct parking fees and tolls, but may not also deduct general repair or maintenance expenses, depreciation, insurance, registration fees, etc.) The deduction is allowable, as in the case of other types of charitable contributions, only if verified pursuant to Treasury regulations (sec. 170(a)(1)).

The provision is effective for taxable years beginning after 1984.

Conference agreement

The conference agreement follows the Senate amendment.

B. Private Foundation Provisions

1. Exemption for certain operating foundations from excise tax on investment income

Present law

Private foundations are subject to a two-percent excise tax on their net investment income for the taxable year (Code sec. 4940).

House bill

The House bill provides that a private operating foundation (such as a museum or library) which previously had been publicly supported for at least 10 years (or qualified as an operating foundation on January 1, 1983), which has a governing body broadly representative of the general public (with at least 75 percent consisting of persons unrelated to the foundation), and none of whose officers otherwise are disqualified persons, is exempt from the two-percent excise tax on net investment income, effective for taxable years beginning after 1984, and that post-1984 grants to such foundation are not subject to the expenditure responsibility rules.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Reduction in excise tax on investment income if charitable payout increases

Present law

Private foundations are subject to a two-percent excise tax on their net investment income for the taxable year (Code sec. 4940).

House bill

Under the House bill, the excise tax on investment income is reduced to one percent for the year if the foundation's payout for charitable purposes (computed on a five-year average) is increased by an equivalent amount, effective for taxable years beginning after 1984.

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Limitation on grant administrative expenses as qualifying distributions

Present law

A private nonoperating foundation generally must make charitable payouts ("qualifying distributions") at least equal to five percent of the fair market value of its net investment assets (Code sec. 4942). Administrative expenses incurred in making grants to other charities or in directly carrying on charitable activities count, without limitation, toward satifying the payout requirement, and hence may reduce the amounts which the foundation actually distributes to charitable beneficiaries.

House bill

The House bill provides that the amount of administrative expenses incurred by a foundation in making qualified grants or contributions can be counted toward satisfying the charitable payout requirement only up to 15 percent of the amount of qualified grants or contributions made by the foundation, computed on the basis of a five-year average.

The limitation does not apply to administrative expenses incurred by a foundation directly for the active conduct by the foundation of exempt activities of the foundation. The term "directly for the active conduct" of exempt activities has the same meaning as in section 4942(j)(3)(A) and the Treasury regulations thereunder, but disregarding the special allocation rule in Treas. Reg. sec. 53.4942(b)-1(b)(1) which states that for purposes of the definition of operating foundations under section 4942(j), all reasonable administrative expenses necessary to conduct a foundation's exempt activities, regardless of whether incurred directly for the active conduct of such exempt activities, are treated as qualifying distributions expended directly for the active conduct of such exempt activities.

The grant administrative expense provision is effective for taxable years beginning after 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications. The conferees believe that a reasonable limitation should be placed on the extent to which grant administrative expenses may be counted in satisfaction of the payout requirement, in order to ensure that more foundation expenditures actually reach charitable beneficiaries. Under the conference agreement, foundations must actually pay out amounts equal to 4.35 percent of its payout base (net investment assets) as grants or contributions, program-related investments (sec. 4944(c)), expenditures directly for the active conduct by the foundation of exempt activities of the foundation, or qualified administrative expenses incurred directly in making such direct operating expenditures or program-related investments.

Under the conference agreement, (1) the limitation on the amount of grant administrative expenses which may be counted as qualifying distributions is expressed as 0.65 percent of net investment assets (i.e., of the minimum investment return base as computed under sec. 4942(e)), computed on the basis of a three-year average; (2) a conforming change is made in the transitional rule applicable with respect to pre-1985 base period years; (3) it is clarified that qualified administrative expenses incurred directly in making such program-related investments (within the meaning of sec. 4944(c)) are not subject to the limitation; and (4) the limitation will not apply to taxable years beginning after December 31, 1990. Also, the general definition of qualifying distributions in section 4942(g)(1)(A) is amended by substituting "(including that portion of reasonable and necessary administrative expenses)" in place of "(including administrative expenses)".

In addition, the IRS is authorized and directed by the Congress to modify the foundation information return (Form 990-PF) as soon as practicable to require additional and more detailed information on expenditures by nonoperating and operating foundations, both by categories of expenditures (such as grants, direct operating expenditures, program-related investments, other investments, administrative expenses, etc.) and by types of administrative expenses (e.g., separate line items within each of such categories for salaries, rent, legal fees, accounting fees, consulting fees, utilities, traveling expenses, etc.). The revised form is to require the foundation to attach a statement of the accounting principles and practices by which it allocates administrative expenses among those which will satisfy the definition of qualifying distributions as modified by the bill (sec. 4942(g)(1)(A)) and other categories of administrative expenses.

The Treasury is to submit a study to the tax-writing committees by January 1, 1988 concerning administrative expenses incurred by nonoperating and operating foundations, on the basis of the revised forms. To the extent practicable, the study is to examine (a) the amount of qualifying distributions which actually reach charitable beneficiaries; (2) the administrative costs of such payouts; (3) the effect of the revised general definition (sec. 4942(g)(1)(A)) of those administrative expenses which are eligible to be qualifying distributions, subject to the new limitation; and (4) the additional information provided by the revised form concerning categories and types of administrative expenses, and the basis for allocating such expenses among categories of foundation expenditures. This study is intended to provide more detailed information concerning foundation administrative expenditures than is now available.

Also, the conferees clarified that the mere fact that a State attorney general, or other State government or official, has approved the amount of director fees or other expenditures by a foundation does not establish that such amounts or expenditures are reasonable or not excessive reasonable for purposes of any of the private foundation tax provisions.

Under section 170, contributions by individuals to private nonoperating foundations receive certain favorable treatment if the foundation makes qualifying distributions (which are treated as corpus distributions) equal to 100 percent of the amount of contributions received in the year within 2½ months after the close of that year (secs. 170(b)(1)(D), 170(e)(1)(B)). For purposes solely of determining qualifying distributions under these deduction rules relating to "conduit" foundations, the Treasury is authorized to prescribe by regulations that the grant administrative expense limitation is to be expressed as 15 percent of the amount of such pass-through contributions, and to prescribe in the regulations any necessary or desirable conforming and coordinating rules with respect to the section 4942 limitation which is expressed as a percentage of the foundation's net investment assets.

4. Technical amendments to charitable payout rules

Present law

In 1981, Code section 4942 was amended to define the required minimum payout as five percent of the value of the foundation's net investment assets (rather than the higher of that figure or net income). The 1981 amendment failed to add back to the newly defined payout amount the previously applicable modifications set forth in section 4942(f)(2)(C), relating to (i) repayment to the foundation of amounts previously treated as qualifying distributions (e.g., scholarship loans); (ii) amounts received on disposition of assets previously treated as qualifying distributions; and (iii) amounts previously set aside for a charitable project but not so used.

House bill

The House bill adds to the required minimum payout the amounts specified in Code section 4942(f)(2)(C) (certain loan repayments, proceeds from assets dispositions, and unused set-asides), effective for post-1984 taxable years. Also, the bill corrects certain cross-references, effective on enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference amendment follows the House bill and the Senate amendment.

5. Abatement of first-tier taxes in certain cases

Present law

Any violation of the private foundation rules (secs. 4941-4945) generally results in automatic imposition of an initial excise tax on the foundation (or in the case of self-dealing, on the disqualified person who entered into the prohibited transaction with the foundation).

House bill

The House bill provides the IRS with discretionary authority to abate the automatic first-tier penalty taxes (other than the sec. 4941 tax on self-dealing) if the foundation establishes that the violation was due to reasonable cause and not to willful neglect, and corrects the violation. This provision applies to taxable events occurring after 1984.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

6. Modification to limitations on foundation support of voter registration drives

Present law

A foundation may support a section 501(c)(3) organization conducting a voter registration drive only if the tax-exempt organization conducting the drive meets certain support and expenditure requirements, and if the voter registration activities are nonpartisan, are not confined to one specific election period, and are conducted in at least five States (Code sec. 4945(f)).

House bill

Under the House bill, the five-State requirement is dropped, effective January 1, 1984; all other requirements of present law are retained (e.g., that the voter registration drive is nonpartisan and not confined to one election period).

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

7. Definition of disqualified persons

Present law

All lineal descendants (and their spouses) of a substantial contributor to a foundation themselves constitute "disqualified persons" (Code sec. 4946(d)). Status as a disqualified person is important because holdings of disqualified persons are aggregated with those of the foundation for purposes of the business holdings limitations, and because a disqualified person in precluded from engaging in certain business transactions with the foundation.

House bill

Under the House bill, lineal descendants more distant than great-grandchildren will not be treated as disqualified persons, effective January 1, 1985.

Senate amendment

Under the Senate amendment, lineal descendants more distant than grandchildren will not be treated as disqualified persons, effective January 1, 1985.

Conference agreement

The conference agreement follows the House bill.

8. Public disclosure requirements

Present law

A private foundation must publish annually a newspaper notice of availability of its annual return (Code sec. 6104). The notice must state the address of the foundation's principal office, but need not state its telephone number.

House bill

The House bill provides, effective January 1, 1985, that the annual newspaper notice required under Code section 6104 must contain the telephone number for the foundation's principal office.

Also, the IRS is directed to enforce fully the present-law rules relating to foundation annual information returns (Form 990-PF), including the imposition, in appropriate cases, of penalties for failure to file a (complete) return where the return as filed fails to provide all required information.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

9. Reliance on IRS classifications of donees

Present law

Treasury regulations and IRS rulings specify circumstances under which donor private foundations may rely on IRS classifications of donee organizations as public charities, so that the grantor need not exercise expenditure responsibility over grants to such donees.

House bill

There is no statutory provision in the House bill relating to reliance on IRS classifications of donees. However, the committee report directs Treasury to extend the advance ruling period during which qualifying new organizations are considered public charities to five years, and to amend its regulations to permit greater reliance on IRS classifications concerning new organizations in the first five years of their existence.

Senate amendment

The Senate amendment provides that a private foundation making a grant to a charitable organization may rely in specified circumstances on an IRS determination of the organization's public charity or operating foundation status, effective for grants made after 1984.

Conference agreement

The conference agreement follows the House directions to Treasury to extend the advance ruling period, and to amend its regulations to permit greater reliance on IRS classifications concerning new organizations in the first five years of their existence and in any other circumstances in which Treasury concludes that greater reliance is appropriate.

10. Expenditure responsibility rules

Present law

In the case of grants to organizations other than public charities, a private foundation must exercise "expenditure responsibility" over the grant (Code sec. 4945(d)). To ensure that such grants will be properly used by the recipient for charitable purposes, the grantor must make reasonable efforts, and establish adequate procedures, to see that the grant is spent solely for proper uses, to obtain full reports from the grantee, and to make full reports to the IRS on the grants. Treasury regulations set forth guidelines under which donor foundations may satisfy the section 4945 rules.

House bill

There is no statutory provision in the House bill on expenditure responsibility rules. However, the committee report directs the Treasury Department to review its expenditure responsibility regulations for purposes of modifying any requirements which are found to be unduly burdensome or unnecessary. As part of its review, Treasury is to modify the required grantor reports to the IRS.

Senate amendment

The Senate amendment is the same as the approach under the House bill.

Conference agreement

The conference committee reaffirms the central purpose of the expenditure responsibility rules—to ensure that foundation grants will be properly used by the recipient organization solely for exempt purposes. At the same time, because the committee is concerned whether implementation of the statutory requirements in Treasury regulations may have added unduly burdensome or unnecessary requirements in some respects (which may operate to deter grants by some foundations to newly formed, community-based foundations), the conference agreement follows the approach under the House bill and the Senate amendment in directing the Treasury to review its expenditure responsibility regulations for purposes of modifying any requirements which are found to be unduly burdensome or unnecessary. As part of its review, the Treasury is to modify the required grantor reports to the IRS. The Treasury is to report to the tax-writing committees on its review and modifications.

11. Divestiture of post-1969 holdings acquired by gift or bequest

Present law

If a private foundation acquires, by gift or bequest after May 26, 1969, business holdings exceeding permitted limitations (generally, 20 percent), the foundation must reduce its holdings to the permitted level within five years (Code sec. 4943(c)(6)).

House bill

The House bill authorizes the IRS to allow an additional five-year period for disposition of an unusually large gift or bequest (after 1969) of either diverse or complex business holdings, on a showing by the foundation of diligent efforts to divest during the initial period but that divestiture had not been possible because of the size and complexity or diversity of the holdings. This provision applies with respect to business holdings as to which the initial five-year divestiture period ends after October 31, 1983.

Senate amendment

The Senate amendment generally is the same as the House bill. However, the Senate amendment adds as justifications for failure to divest within the initial period a Federal or State court order, or Federal or State law, which effectively precluded divestiture; also, the additional period is extended beyond five years if such a court order is then in effect. The Senate amendment requires that the divestiture plan be submitted to the relevant State attorney general.

Conference agreement

The conference agreement follows the House bill, with a modification adding the requirement in the Senate amendment that the divestiture plan must be submitted to the relevant State attorney general.

12. Divestiture of grandfathered business holdings of foundations

Present law

The Tax Reform Act of 1969 in effect generally limited the combined ownership of a business corporation by a private foundation and disqualified persons to not more than 20 percent of the voting stock (Code sec. 4943). Under transitional rules for divestiture of then existing holdings, the 1969 Act provided that if on May 26, 1969, a foundation (together with disqualified persons) had business holdings exceeding the limitations, the existing holdings generally could be retained, subject to gradual reduction over several phases.

Under the first phase, by the deadlines shown below the combined foundation/disqualified person holdings cannot exceed 50 percent of the voting stock of the corporation—

Ownership on 5/26/69:	Deadline to reach 50% combined holdings:
More than 95% by foundation alone.	May 26, 1989.
More than 75% combined holdings.	May 26, 1984.
More than 50% combined holdings.	May 26, 1979.

After expiration of the first phase, a second set of divestiture requirements becomes operational—

(1) If disqualified persons do not own more than two percent of the corporate voting stock at any time during the second phase (the 15 years after the close of the first phase), the combined foundation/disqualified person holdings must be reduced to not more than 35 percent by the end of that period (i.e., for a foundation which itself owned 95 percent of the stock on May 26, 1969, by May 26, 2004); and if at any time after the end of the second phase the holdings of disqualified persons exceed two percent, then the foundation itself cannot hold more than 25 percent of the voting stock during the third (and final) phase.

(2) If the holdings of disqualified persons exceed two percent at any time during the second phase, then at all times thereafter the combined foundation/disqualified person holdings are limited to 50 percent, with no more than 25 percent of the voting stock being held by the foundation.

House bill

No provision.

Senate amendment

Under the Senate amendment, holdings acquired prior to May 27, 1969 in a business enterprise are exempt from the section 4943 divestiture rules if—

(1) the management of the foundation and the management of the business enterprise are sufficiently unrelated,

(2) no disqualified person who was not a foundation manager on March 12, 1984 can become a foundation manager after that date,

(3) no disqualified person receives compensation (other than reasonable director fees) from both the foundation and the business enterprise,

(4) the foundation continues to meet the charitable payout rules of present law, and

(5) the foundation and any disqualified persons comply with the section 4943 rules applicable to any holdings in the enterprise acquired after May 26, 1969.

This provision is effective on enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

13. Exception to "downward ratchet" rule

Present law

Grandfathered excess business holdings are subject to reduction by operation of the "downward ratchet" rule (Code sec. 4943(c)(4)(A)(ii)). This rule, in effect, provides that if there is any reduction in the holdings of a private foundation or in combined private foundation/disqualified person holdings, then these holdings can never go up again to the former grandfathered or otherwise permitted level over 20 percent (35 percent, if applicable).

House bill

The House bill provides an exception to the downward ratchet rule under which certain reductions of less than two percent in a foundation's holdings are disregarded when resulting from certain issuances of stock (or stock issuances coupled with subsequent redemptions). This provision is effective for decreases and subsequent increases occurring after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

14. Eligibility for 20-year first phase

Present law

The 20-year first phase divestiture period for grandfathered holdings applies where the foundation itself held more than 95 percent of the stock of the business enterprise, but not where the 95-percent requirement can be met only by aggregating foundation/disqualified person holdings.

House bill

The House bill modifies the divestiture rules of present law to provide that the 20-year first phase period to reduce grandfathered excess business holdings applies if the combined holdings of the private foundation and disqualified persons exceeded 95 percent on May 26, 1969. This provision is effective on the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill, but clarifies that the provision is effective as if included in the Tax Reform Act of 1969.

Conference agreement

The conference agreement follows the House bill and the Senate amendment (with the effective date clarification in the Senate amendment).

15. Modification of second and third divestiture phases

Present law

During the second and third phases of the divestiture rules for grandfathered excess business holdings, private foundations have a lower limit (i.e., 25 percent of voting stock) for direct holdings if disqualified persons own more than two percent of the business enterprise. If disqualified persons first acquire more than two percent during those phases, present law does not permit any time for the private foundation to reduce its holdings to the lower limit and avoid excise taxes.

House bill

The House bill provides that if a private foundation's maximum business holdings must be reduced to 25 percent of the voting stock by reason of the acquisition by disqualified persons of more than two percent of the business enterprise during either the second or third phase of the divestiture rules, the private foundation is given five years to dispose of the excess over 25 percent. This provision applies to acquisitions made after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

16. Technical correction in description of Herndon Foundation

Present law

The Tax Reform Act of 1969 permitted the Herndon Foundation to retain more than 50 percent of certain business enterprises.

House bill

The House bill makes a technical correction to clarify that the Herndon Foundation is permitted to continue to hold a majority of the stock of certain business enterprises. This provision applies as if included in section 101(*l*)(4) of the Tax Reform Act of 1969.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

17. Treatment of ESOP as disqualified person for section 4943 rules applicable to grandfathered buildings

Present law

The owner of more than 20 percent of a corporation which is a substantial contributor to a private foundation constitutes a disqualified person (Code sec. 4946(a)(1)(C)), and the stock it owns is therefore aggregated with that of the foundation for purposes of the section 4943 business holdings limitations.

House bill

No provision.

Senate amendment

An employee stock ownership plan described in Code sec. 4975(e)(7) is excepted from the definition of disqualified person, only for section 4943 purposes, with respect to grandfathered business holdings acquired pursuant to a pre-1969 will. This provision is effective for taxable years beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

18. Exception to self-dealing rules for certain stock transactions

Present law

Present law in effect prohibits certain transactions between a private foundation and substantial contributors (or other disqualified persons), including the sale of property between a private foundation and a disqualified person and the lending of money or other extension of credit between a private foundation and a disqualified person (Code sec. 4941). Excise taxes are imposed for violations of these rules.

House bill

The House bill exempts from the self-dealing taxes certain 1978 transactions. Under the bill, Code section 4941 is not to apply in the case of the 1978 sale of stock of Murphy Motor Freight Lines, Inc. by the Wasie Foundation to Murphy Motor Freight Lines, Inc. and the related financing by the Wasie Foundation if the total consideration received (i.e., the sum of the cash and the value of the notes) equaled or exceeded the fair market value of the stock to Wasie Foundation. The provision applies retroactively for 1978 and subsequent years.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

19. Termination of status as substantial contributor

Present law

The term substantial contributor means a person whose contributions to a private foundation exceeded two percent of all contributions received by the foundation before the close of the year in which the contribution is made, but only if the person's contributions exceed $5,000. Once a person becomes a substantial contributor, that person retains that status forever (Code sec. 507(d)(2)).

House bill

The House bill provides rules under which a person's status as a substantial contributor terminates in certain circumstances after 10 years with no connection to the foundation, effective for post-1984 taxable years.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. Exempt Organizations

1. Acquisition indebtedness of certain educational institutions and organizations managing property for tax-exempt organizations; tax exemption for such organizations

Present law

Under present law, tax-exempt organizations (including qualified pension trusts and IRAs) generally are subject to tax on income from a trade or business unrelated to the organization's exempt purposes. Exclusions are provided for certain types of passive income.

Income that is subject to tax includes income from debt-financed property. An exception is provided to this rule for property acquired or improved by a qualified pension trust if the acquisition satisfies certain restrictions.

Present law provides that a company that holds title to property for a tax-exempt organization is entitled to tax exemption. However, present law is unclear as to whether a title-holding company may have more than one parent.

House bill

No provision.

Senate amendment

Unrelated business income tax on debt-financed property

The special exception to the debt-financed property rules is extended to certain educational institutions (and certain affiliated support organizations) and to certain tax-exempt title-holding companies that are granted tax-exempt status by the Senate amendment. However, in order for any organization (including a qualified pension trust) to qualify for the exception, two additional restrictions must be met. First, if the real property is acquired by a partnership, the exception does not apply to any partner unless each partner is an organization eligible for the exception. Second, no part of the financing of the acquisition can be provided by the seller.

The provision is effective with respect to indebtedness incurred after the date of enactment.

Title-holding companies

The Senate amendment provides tax exemption to a title-holding corporation that has more than one parent (and to trusts established for the same purposes), only if no individual who provides investment advice to the title-holding company is an officer, member of the board of directors, etc., of the company. Organizations eligible to invest in a title-holding company include (1) a qualified pension plan, (2) a governmental pension plan, (3) the United States, or any State or political subdivision, or (4) any charitable organization described in sec. 501(c)(3).

The provision is effective for taxable years beginning after December 31, 1984.

Conference agreement

Unrelated business income tax on debt-financed property

The conference agreement generally follows the Senate amendment with one exception. Under the conference agreement, an organization that is a partner in a partnership that holds real property can qualify for the exception to the tax on unrelated business income on debt-financed real property as long as (1) all of the partners of the partnership are organizations qualifying for the exception, or (2) each allocation to a partner of the partnership that is a qualified organization is a qualified allocation. For purposes of (1), an organization is not treated as a qualified organization if any of such organization's income is unrelated business taxable income determined without regard to sec. 514(c)(9).

Under the conference agreement, an allocation generally is a qualified allocation if it meets the rules relating to partnerships under the tax-exempt leasing provisions. Thus, a qualified allocation is an allocation under which (1) the qualified organization is allocated the same percentage share of each item of partnership income, gain, loss, deduction, credit, and basis (excluding allocations with respect to contributed property), (2) such share remains the same during the entire period that the organization is a partner, and (3) such allocation has a substantial economic effect, as defined under the rules applicable to partnership allocations generally (sec. 704(b)(2)).

The conference agreement authorizes the Treasury to prescribe regulations dealing with the effect of guaranteed payments (as defined in sec. 707(c)) under this rule. Under those regulations, priority cash distributions to partners that constitute guaranteed payments should not disqualify an otherwise qualified allocation so long as the priority cash distributions are reasonable in amount (e.g., equal to the most appropriate Federal rate) and are made to all partners in proportion to their capital in the partnership. On the other hand, the conferees expect that the regulations will prevent partnerships from avoiding the qualified allocation rules by making disproportionately large guaranteed payments to its tax-exempt partners for the use of their capital.

Under the conference agreement, a qualified organization includes a qualified pension trust (sec. 401) and certain educational organizations (and their support organizations).

The conference agreement provides that the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of the unrelated debt-financed income provisions, including regulations to prevent the circumvention of these provisions through the use of segregated asset accounts. The conferees intend that such regulations shall be applied only with respect to transactions entered into after the date on which any regulations relating to this provision are issued.

The conferees intend that the rules of present law relating to the transfer of property with liabilities that exceed the transferor's basis in the property shall be applied to the transfers of property to a tax-exempt organization, particularly where such transfers are designed to avoid ordinary income recapture on the property.

Title-holding companies

The conference agreement does not contain the Senate amendment.

Effective dates

The conference agreement is generally effective with respect to indebtedness incurred after the date of enactment. Certain partnership transition rules are provided under the conference agreement.

2. Exemption for certain local organizations of police and firefighters

Present law

Under present law, certain local police and firefighter organizations in Minnesota that provide pension and other benefits to members have received IRS determinations providing exemption from Federal income tax.

House bill

No provision.

Senate amendment

The Senate amendment provides income tax exemption to an organization (other than a qualified pension plan) for police and firefighter organizations that provide benefits in lieu of government-funded benefits and that meet the requirements applicable to qualified pension plans maintained by a State or local government.

The provision is effective for taxable years beginning after August 23, 1981.

Conference agreement

The conference agreement does not include the Senate amendment. However, the conferees understand that the Internal Revenue Service will issue a revenue ruling that clarifies that the affected organizations are exempt from tax.

3. UBIT exemption for renting of membership lists by Federally chartered corporations

Present law

The U.S. Court of Claims held in a 1981 case that income received by the Disabled American Veterans from other exempt organizations and commercial businesses for the use of mailing lists is subject to the unrelated business income tax (UBIT). The court found that in renting its donor lists, the DAV operated in a competitive, commercial manner with respect to taxable firms in the direct mail industry; that these rental activities were regularly carried on; and that the rental activities were not substantially related to accomplishment of exempt purposes (apart from the organization's need for or use of funds derived from renting the mailing lists). Similarly, the IRS has ruled that amounts received by an exempt charitable organization from the regular sale of its membership or mailing lists to business firms and charities are subject to the UBIT.

House bill

No provision.

Senate amendment

The Senate amendment provides an exemption from the UBIT for amounts received by certain Federally chartered corporations (named in 36 U.S. Code sec. 1101) for renting or exchanging lists of their donors or members with organizations contributions to which are eligible for charitable deductions, effective for taxable years ending after the date of enactment. The 60 some organizations benefitting from the provision include various veterans, scouting, scientific, and literary groups.

Conference agreement

The conference agreement does not include the Senate amendment.

4. Exemption from UBIT for certain gambling income

Present law

An exemption from the unrelated business income tax (UBIT) is provided for certain bingo games conducted by tax-exempt organizations (Code sec. 513(f)).

House bill

The House bill extends the bingo exemption to certain games of chance which, under State law, can be conducted only by nonprofit organizations, effective for games of chance conducted after June 30, 1981.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. Tax treatment of certain nonprofit child care organizations

Present law

Nonprofit organizations which are organized and operated exclusively for charitable, educational, or other specified purposes, and which meet certain other requirements, are exempt from Federal income tax, and contributions to such organizations are deductible for income, gift, and estate tax purposes. The IRS has recognized that nonprofit day care centers may be eligible for tax exemption and tax-deductible contributions where enrollment is based on financial need of the family and the need of the child for the program, or where the center provides preschool age children of working parents with an educational program through a professional staff of qualified teachers.

House bill

Under the House bill, nonprofit organizations which provide care of children (away from their homes) are deemed to have a qualifying tax-exempt purpose if both (1) substantially all of the child care provided by the organization is for the purpose of enabling individuals (the parents) to be gainfully employed, and (2) the services provided by the organization are available to the general public. This provision is effective for taxable years beginning after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. The provision is not intended to affect the meaning of the terms "educational" or "charitable" for any purpose other than considering the child care organizations described in the provision as having educational purposes.

6. Church audits

a. Commencement of church tax inquiry

Present law

No special requirements are imposed before commencing an investigation or inquiry regarding church tax liabilities. Special requirements are imposed before the IRS may examine church books of account as defined under present law.

House bill

No provision.

Senate amendment

Under the Senate amendment, an investigation of church tax liabilities may be commenced only if the IRS regional commissioner reasonably believes, on the basis of facts and circumstances recorded in writing (1) that the church does not qualify for tax exemption as a church, or (2) that the church is engaged in taxable activities. Additionally, before commencing the investigation, the IRS is required to provide notice containing specified information to the church. This notice must contain (1) a list of Code provisions authorizing the investigation, (2) a general explanation of the church's administrative and constitutional rights in connection with the audit, and (3) an explanation of the concerns which gave rise to the investigation and the general subject matter of the investigation.

Conference agreement

Requirement of reasonable belief before commencing church tax inquiry

The conference agreement provides that the IRS may begin a church tax inquiry only if the IRS regional commissioner (or higher official) reasonably believes, on the basis of facts and circumstances recorded in writing, that the organization (1) may not qualify for tax exemption as a church, or (2) may be carrying on an unrelated trade or business (within the meaning of section 513 of the Code) or be otherwise engaged in taxable activities. A church tax inquiry is defined as any inquiry to a church (other than an examination) which serves as a basis for determining whether the organization qualifies for tax exemption as a church or whether it is carrying on an unrelated trade or business or otherwise engaged in taxable activities. An inquiry is considered to commence when the IRS requests information or materials from a church of a type contained in church records, other than routine requests for information or inquiries regarding matters which do not primarily concern the tax status or liability of the church itself (as specified in the conference agreement).

The conferees intend that the facts and circumstances which form the basis for a reasonable belief under this provision will be derived from information lawfully obtained by the IRS. Information obtained from informants used by the IRS for this purpose must not be known to be unreliable.

Notice requirement upon commencement of inquiry

Under the conference agreement, upon beginning a church tax inquiry, the IRS is required to provide written notice to the church of the beginning of the inquiry. This notice is to include (1) an explanation of the concerns which gave rise to the inquiry and the general subject matter of the inquiry, (2) a general explanation of the provisions of the Internal Revenue Code which authorize the inquiry or which may otherwise be involved in the inquiry, and (3) a general explanation of applicable administrative and constitutional provisions with respect to the inquiry, including the right to a conference with the IRS before an examination of church records.

The explanation of the concerns and general subject matter of the inquiry (item (1) above) should be sufficiently specific to allow the church to understand the particular area of church activities or behavior which is at issue in the inquiry. For example, for an inquiry regarding unrelated business income, the notice should indicate the general activities of the church which may result in unrelated income (e.g., use of a particular property or facility for other than tax-exempt purposes). For an inquiry regarding tax-exempt status, the notice should indicate those general aspects of the church's operations or activities which have given rise to questions regarding its tax-exempt status. The IRS is not to be precluded from expanding its inquiry beyond the concerns expressed in the notice as a result of facts and circumstances which subsequently come to its attention (including, where appropriate, an expansion of an unrelated income inquiry to include questions of tax-exempt status, or vice-versa).

The notice requirement is not to be interpreted to require the IRS to share particular items of evidence with the church, or to identify its sources of information regarding church activities, where providing such information would be damaging to the inquiry or to the sources of IRS information. For example, in an inquiry regarding unrelated business income, the IRS might indicate that its inquiry was prompted by a local newspaper advertisement regarding a church-owned business; however; the IRS would not be required to reveal the existence or identity of any so-called "informers" within a church (including present or former employees).

The general explanation of applicable administrative and constitutional provisions (item 3) should make reference to the various stages of the church audit procedures contained in the conference agreement (including the right to a pre-examination conference) and the principle of separation of church and state under the First Amendment. The explanation is not required to explain the possible legal or constitutional ramifications of any particular church audit.

For purposes of this and the remaining church audit procedures, a church includes (1) any organization claiming to be a church or (2) a convention or association of churches. For purposes of these procedures, a church does not include church-supported schools or other organizations incorporated separately from the church.

b. Notice before examining church records

Present law

Under section 7605(c) of the Code and the regulations thereunder, the IRS may examine church books of account (generally, accounting and bookkeeping records) only if (1) the IRS regional commissioner believes that an examination is necessary, and (2) the IRS notifies the church at least 30 days prior to examination.

House bill

No provision.

Senate amendment

The Senate amendment broadens the present law rule to require a pre-examination notice containing specified information to be sent to the church. This notice is in addition to the notice of commencement of an investigation and must be provided not less than 15 days after the prior notice. As part of this second notice, the IRS must offer the church a pre-examination meeting to seek to resolve outstanding issues and an opportunity to request, under the Freedom of Information Act, copies of any materials in the possession of the IRS which are relevant to the investigation of the church. The church is to have 15 days (i.e., a minimum of 30 days after the notice of commencement of investigation) in which to request a pre-examination meeting, during which period the IRS is prohibited from examining church records. The IRS is also prohibited from examining church records until a meeting (if requested by the church) is held, or until any any Freedom of Information Act request by the church is granted or a final administrative denial of the request is made.

Concurrently with the notice of examination to the church, the IRS regional counsel must be notified of the proposed examination and has 15 days in which to file a nonbinding objection to the examination.

Conference agreement

Additional notice and offer of IRS conference

Under the conference agreement, the IRS may examine church records or religious activities only if, at least 15 days prior to the examination, the IRS provides written notice to the church and to the IRS regional counsel of the proposed examination. This notice is in addition to the notice of commencement of inquiry previously provided to the church.

The notice of examination is required to include (1) a copy of the church tax inquiry notice previously provided to the church, (2) a description of the church records and activities which the IRS seeks to examine, and (3) a copy of all documents which were collected or prepared by the IRS for use in the examination, and which are required to be disclosed under the Freedom of Information Act (5 U.S.C. sec 552) as supplemented by section 6103 of the Code (relating to disclosure and confidentiality of tax return information). The conferees intend that the documents to be supplied under this provision will be limited to documents specifically concerning the church whose records are to be examined and will not include documents relating to other inquiries or examinations or to IRS practices and procedures in general. The conferees further specifically intend that disclosure to the church will be subject to the restrictions of present law regarding the disclosure of the existence or identity of informers. The description of materials to be examined in the notice of examination and the documents disclosed by the IRS to the church do not restrict the ability of the IRS to examine the church records or religious activities which are properly within the scope of the examination.

The conference agreement further requires the IRS regional commissioner, as part of the notice of examination, to offer the church an opportunity to meet with an IRS official to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry. The organization may request such a meeting at any time prior to the examination. If the church requests a meeting, the IRS is required to schedule a meeting within a reasonable time and may proceed to examine church records only following the meeting. The conferees intend that the holding of one meeting with the church will be sufficient to satisfy the requirements of this provision. The conferees further intend that churches will not be able to utilize the meeting requirement in order to unreasonably delay an examination.

The purpose of a meeting between the church and the IRS is to discuss the relevant issues that may arise as part of the inquiry, in an effort to resolve the issues of tax exemption or liability without the necessity of an examination of church records. The conferees therefore intend that the church and the IRS will make a reasonable effort to resolve outstanding issues at the meeting. To avoid misunderstandings, the conferees intend that the IRS will remind the church at the meeting, in general terms, of the stages of the church audit procedures and the church's rights under such procedures. However, the IRS will not be required to reveal information at the meeting of a type properly excludable from a written notice (including information regarding the identity of third-party witnesses or evidence provided by such witnesses).

The notice of examination may be sent to a church not less than 15 days after the notice of commencement of a church tax inquiry. Thus, at least 30 days must pass between the first notice and the actual examination of church records. For example, if notice of commencement of an inquiry is sent to a church on day 1, notice of proposed examination may be sent to the church no earlier than day 15, and no examination of church records may be made prior to day 30. If an organization does not request a meeting prior to day 30, the IRS may proceed to examine church records. However, if the IRS does not send a notice of examination within 90 days after sending the notice of inquiry, the inquiry would be terminated. The conferees intend that this 90-day period be suspended during any period for which the two-year period for duration of a church audit (item (d) below) would be suspended; however, the 90-day period is not to be suspended because of the church's failure to comply with requests for information made prior to the notice of examination. If the inquiry is terminated under this provision, any further inquiry regarding the same or similar issues within a 5-year period would then require approval of the IRS Assistant Commissioner for Employee Plans and Exempt Organizations, as specified in the conference agreement.

Notification of regional counsel

At the same time as notice of an examination is provided to a church, the IRS is required to provide a copy of the same notice to the appropriate IRS regional counsel. The regional counsel is then allowed 15 days from issuance of the notice in which to file an advisory objection to the examination. (This is concurrent with the 15-day period during which the IRS is prohibited from examining church records pending a request for a conference.) The committee intends that the regional commissioner will take any objection by the regional counsel into account when determining whether to proceed with the examination.

c. Definition of protected church records

Present law

Church books of account may be examined only to the extent necessary to determine the amount (if any) of the tax liabilities of a church or its contributors or employees. Under IRS guidelines, books of account include accounting and bookkeeping records kept in the regular course of church business. The present law notice requirements are also limited to examinations of church books of account.

Third-party records (e.g., records held by a bank) are not subject to special scope or notice requirements. However, under general third-party summons rules (sec. 7609), the church must be notified before the IRS examines such records.

Present law provides that, when an organization claims to be a church, the religious activities of the organization may be examined only to the extent necessary to determine whether the organization actually is a church.

House bill

No provision.

Senate amendment

Under the Senate amendment, all regularly kept church corporate and financial records, including (but not limited to) corporate minute books, contributor or membership lists in the possession of the church, and church books of account, may be examined only to the extent necessary to determine tax. The special notice requirements under the amendment (items (a) and (b) above) apply to examinations of any such records. The scope and notice rules do not apply to records previously filed with a public official.

As under present law, third-party records are not specially protected. However, the Senate amendment prohibits the IRS from revoking a church's tax exemption or imposing tax on a church, on the basis of third-party records, without following the proper church audit procedures.

Conference agreement

The conference agreement provides that the IRS may examine church records only to the extent necessary to determine the liability for, and the amount of, any Federal tax. The conferees intend that, as under present law, this may include examinations (1) to determine the initial or continuing qualification of the organization whose records re being examined as a tax-exempt entity under section 501(c)(3); (2) to determine whether the organization qualifies to receive tax-deductible contributions (sec. 170(c); or (3) to determine the amount of tax, if any, which is to be imposed on the organization.

Church records include all regularly kept church corporate and financial records, including (but not limited to) corporate minute books, contributor or membership lists, and any materials which qualify as church books of account under present law. The conferees further intend that church records will include private correspondence between a church and its members that is in the possession of the church. Church records protected by the conference agreement do not include records previously filed with a public official or, as under present law, newspapers or newsletters distributed generally to the church members.

Records held by third parties (e.g., cancelled checks or other records in the possession of a bank) are not considered church records for purposes of the conference agreement. Thus, subject to the general Code provisions regarding third party summonses, the IRS is permitted access to such records without regard to the requirements of the church audit procedures (sec. 7609). As under present law, either the IRS or a third party recordkeeper generally is required, however, to inform a church of any IRS requests for materials.

The conference agreement provides that the IRS may not determine that a church is not entitled to an exemption or assess tax for unrelated business income against a church solely on the basis of third party records, without complying with the church audit procedures. This limitation does not apply to assessments of tax other than for unrelated business income (e.g., for social security or other employment taxes). The conferees further intend that the IRS will be prohibited from using information obtained from third party bank records to avoid the purposes of the church audit procedures.

The conference agreement provides that, as under present law, the IRS may examine the religious activities of an organization claiming to be a church (including a convention or association of churches) only to the extent necessary to determine if the organization actually is a church. The conference agreement clarifies that this includes a determination of the organization's qualification as a church for any period.

d. Time limitation on church audit

Present law

There is no specific limitation under present law on the duration of a church audit.

House bill

No provision.

Senate amendment

The Senate amendment generally requires the IRS to complete an investigation of church tax liabilities, and to make a final determination in such an investigation, within two years after notifying the church of the commencement of the investigation. The running of this period is suspended for any period during which (1) a judicial proceeding initiated by the church or its agents challenging the IRS investigation, examination, or proceeding is pending or being appealed, (2) a judicial proceeding brought by the IRS to compel compliance with a reasonable request for an examination of church records or religious activities is pending or being appealed, or (3) the IRS is unable to take action by reason of a stay of a suit involving access to third-party records (sec. 7609). The two-year period is also suspended, under the Senate amendment, for certain periods relating to the filing of a Freedom of Information Act by the church seeking access to documents in the possession at the IRS. Additionally, the committee report provides that the two-year period is to be suspended for any period in which the IRS is unable to make a determination because of the refusal of the church or its agents to comply with reasonable and lawful requests for information or materials necessary for the conduct of the investigation.

The Senate amendment allows the two-year period to be extended by mutual agreement of the church and the IRS.

Conference agreement

The conference agreement requires the IRS to complete any church inquiry or examination, and to make a final determination with respect thereto, not later than two years after the date on which the notice of examination is supplied to the church. The running of this two-year period is suspended for any period during which (1) a judicial proceeding brought by the church or its agents against the IRS with respect to the church tax inquiry or examination is pending or being appealed, (2) a judicial proceeding brought by the IRS against the church (or any official thereof) to compel compliance with any reasonable IRS request for examination of church records or religious activities is pending or being appealed, or (3) the IRS is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in a suit involving access to third-party records under section 7609. The two-year period is also suspended for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable IRS request for church records or other information.

The conference agreement allows the two-year period to be extended by mutual agreement of the church and the IRS.

e. Period for assessment or collection of tax

Present law

The IRS is generally required to assess tax, or proceed for collection without assessment, within three years after a return is filed. No limitation period applies if no return is filed or in the case of a false or fraudulent return or willful tax evasion.

Where a limitation period is applicable, the period may be extended by mutual agreement of a taxpayer and the IRS.

House bill

No provision.

Senate amendment

The Senate amendment applies a three-year limitation period for assessment or collection of church tax liabilities whether or not a return has been filed. No limitation applies in cases of fraud, willful tax evasion, or knowing failure to file a return which should have been filed.

Under the Senate amendment, the three-year limitation period is suspended during periods for which the two-year limit on duration of a church audit (item (d) above) is suspended. As under present law, the three-year period may be extended by mutual agreement of a church and the IRS.

Conference agreement

Under the conference agreement, for examinations regarding revocation of tax-exempt status, where no return is filed, the IRS is to be limited initially to an examination of church records which are relevant to a determination of tax status or liability for the three most recent taxable years preceding the date on which the notice of examination (i.e., second notice) is sent to the church. If the church is proven not to be exempt for any of these years, the IRS may examine relevant records and assess tax (or proceed without assessment), as part of the same audit, for a total of 6 years preceding the notice of examination date.

For examinations relating to unrelated business taxable income, where no return is filed, the IRS may assess or collect tax for the 6 most recent years preceding the date on which the notice of examination is sent, with no additional limit on the period of church records which may be examined.

For examinations involving issues other than revocation of exempt status or unrelated business income (e.g., examinations relating to social security or other employment taxes), no limitation period is to apply if no return has been filed.

The special limitation periods for church tax liabilities are not to be construed to increase an otherwise applicable limitation period. Thus, as under present law, a three-year limitation period would apply where a church filed a tax return before an examination was held and did not substantially understate income. No limitation period is to apply in any case of fraud, willful tax evasion, or knowing failure to file a return which should have been filed.

As under present law, the applicable limitation period may be extended by mutual agreement of the church and the IRS.

f. Declaratory judgment actions regarding tax-exempt status

Present law

Organizations (including churches) may bring a declaratory judgment action in any case involving a determination of tax-exempt status under section 501(c)(3). The action may be brought in the Tax Court, the Claims Court, or the United States District Court for the District of Columbia. The court may generally issue a declaratory judgment only after (1) a final adverse determination by the IRS, or (2) failure by the IRS to make a determination within 270 days of a request for such.

Service of process.—Where an action is brought under section 7428 in the Tax Court or the Claims Court, trial subpoenas may be served on a nationwide basis. However, if the suit is brought in the United States District Court for the District of Columbia, a trial subpoena may generally be served only within a limited distance of the place of trial.

House bill

No provision.

Senate amendment

Under the Senate amendment, an organization is entitled to bring a declaratory judgment action under section 7428 once the IRS issues a revenue agent's final report ("30-day letter") proposing to revoke a church's tax-exempt status.

Conference agreement

The conference agreement follows the Senate amendment.

Additionally, the conference agreement further provides for nationwide service of trial subpoenas in declaratory judgment actions brought under section 7428 in the United States District Court for the District of Columbia.

g. Regional counsel approval of final IRS determinations

Present law

There is no statutory provision requiring approval of IRS determinations in church audits by a particular IRS official.

House bill

No provision.

Senate amendment

The Senate amendment requires the IRS regional counsel to approve, in writing, the issuance of an adverse determination letter or deficiency notice to a church.

Conference agreement

The conference agreement requires the IRS regional counsel to approve, in writing, (1) the determination of whether an organization has tax-exempt status as a church (sec. 501(a), (2) the determination of whether such an organization is a church which is entitled to receive tax-deductible contributions (sec. 170(c)), or (3) the issuance of a notice of tax deficiency to a church following a church tax examination (in cases where deficiency procedures are inapplicable, the assessment of any underpayment of tax by the church following a church tax examination). The conference agreement further requires the regional counsel to state in writing that the IRS has substantially complied with the church audit procedures as provided by the conference agreement.

h. Prevention of repeated examinations

Present law

There is no special provision regarding approval of a second examination of a church. However, the IRS must provide special notice before inspecting any taxpayer's records twice for the same tax year.

House bill

No provision.

Senate amendment

The Senate amendment requires the appropriate IRS assistant commissioner to approve, in writing, any second investigation or examination of a church, unless the first investigation or examination resulted in (1) revocation of tax exemption or an assessment of tax, or (2) a request by the IRS for any significant changes in church operational practices (including the adequacy or sufficiency of records maintained to reflect income). The committee report indicates that this provision is to apply only to second audits involving the same or similar issues as the prior audit.

Conference agreement

The conference agreement follows the Senate amendment, but specifies that (1) the requirement of assistant commissioner approval does not apply where the second audit (i.e., church tax inquiry or examination) does not involve the same or similar issues as the preceding inquiry or examination, and (2) the requirement applies only to second audits beginning within 5 years of the date on which the notice of examination was sent to the church during the prior audit (if no notice of examination was sent, the date of the notice of commencement of inquiry). This 5-year period is to be suspended for periods during which the two-year period for completion of an audit is suspended as described under the conference agreement (unless the prior audit was actually concluded within 2 years of the notice of examination). Finally, the conference agreement clarifies that the approval of any second audit to which the provision applies is to be made by the IRS Assistant Commissioner for Employee Plans and Exempt Organizations.

The conferees intend that, in determining whether a second audit involves similar issues to a prior audit, the substantive factual issues involved in the two audits, rather than legal classifications, will govern. Specifically, the conferees intend that unrelated business income from different sources will be considered different issues for purposes of this provision.

i. Scope of church audit procedures

Present law

The Internal Revenue Code applies special procedural requirements (described above) which are primarily intended to protect churches in examinations concerning unrelated business income. Treasury regulations generally extend these rules to examinations concerning tax-exempt status of an organization claiming to be a church.

House bill

No provision.

Senate amendment

The Senate amendment applies expanded statutory procedures (described above) to investigations of church tax status and liabilities. The committee report specifies that these procedures do not apply to investigations of individuals' tax liability (e.g., liabilities of individual contributors to a church) and do not prevent routine inquiries to a church (e.g., regarding employment taxes, income tax withholding, or similar matters). However, further legislative history indicates that the procedures are intended to apply at any point at which the tax status of a church becomes the issue in an investigation.

Conference agreement

The conference agreement specifies that the church examination procedures described above do not apply to (1) any inquiry or examination of any person other than a church, (2) any termination assessment (sec. 6851) or jeopardy assessment (sec. 6861), or (3) any case involving a knowing failure to file a return or a willful attempt to defeat or evade tax. Additionally, the conference agreement clarifies that these procedures do not apply to criminal investigations.

The conferees intend that inquires or examinations which relate primarily to the tax status or liability of persons other than the church (including the tax status or liability of a contributor or contributors to the church), rather than the tax status or liability of the church itself, will not be subject to the church audit procedures. These may include, but are not be limited to, (1) inquiries or examinations regarding the inurement of church funds to a particular individual or individuals or to another organization, which may result in the denial of all or part of such individual's or organization's deduction for charitable contributions to the church, (2) inquiries or examinations regarding the assignment of income or services or excessive contributions to a church, and (3) inquiries or examinations regarding a vow of poverty by an individual or individuals followed by a transfer of property or an assignment of income or services to the church. The IRS may inquire of a church regarding these matters without being considered to have commenced a church tax inquiry and may proceed to examine church records relating to these issues (including enforcement of a summons for access to such records) without following the requirements applicable to church tax examinations, subject to the general rules regarding examinations of taxpayer books and records.

The conferees intend that inquiries or examinations conducted outside the church audit procedures will be limited to the determination of facts and circumstances specifically relating to the tax liabilities of the individuals or other organizations in question. For example, in an inurement case, the IRS could request information or examine church records regarding amounts of money, property, or services transferred to the individual or individuals in question (including wages, loans, or non-contractual transfers), the use of church funds for personal expenses, or other similar matters, outside of the church audit procedures. In an assignment of income case, the IRS could request information or examine church records relevant to an individual's assignment of particular income, donation of property, or transfer of a business to a church. However, the IRS could not examine a contributor or membership list in the possession of the church, without following the church audit procedures, for the purpose of determining the overall financial structure of the church, merely because such structure was relevant to the church's qualification as a tax-exempt entity and therefore indirectly relevant to the validity of contributors' deductions in general. The conferees further intend that the IRS will not make use of inquiries or examinations regarding individuals' or other organizations' tax liabilities to avoid the intended purpose of the church audit procedures. The failure of a church to respond to repeated inquiries regarding individuals' or other organizations' tax liabilities will be considered a reasonable basis for commencement of a church tax inquiry.

The conferees further intend that routine IRS inquiries to a church will not be considered to commence a church tax inquiry and therefore will not trigger application of the church audit procedures. Routine questions for the purpose include (but are not limited to) questions regarding (1) the filing or failure to file any tax return or information return by the church, (2) compliance with income tax or FICA tax withholding responsibilities by the church, (3) any supplemental information needed to complete the mechanical processing of any incomplete or incorrect return filed by the church, (4) information necessary to process applications for exempt status, letter ruling requests, or employment tax exemption requests by the church, and information identifying a church that is used by the IRS to update its Cumulative List of Tax Exempt Organizations and other computer files, and (5) confirmation that a specific business is or is not owned or operated by a church. Repeated failure by a church or its agents to reply to such routine inquiries will be considered reasonable basis for commencement of a church tax inquiry under the applicable church audit procedures. The IRS may further request a church to provide information necessary to locate third-party records (e.g., bank records), including information regarding the church's chartered name, state and year of incorporation, and location of checking and savings accounts, without following the church audit procedures; failure to provide this type of information is to be a factor, but not a conclusive factor, in determining if there is reasonable cause for commencing a church tax inquiry.

The conference agreement specifies that the church audit procedures do not apply to any case involving a knowing failure to file a return or a willful attempt to defeat or evade tax. The conferees are aware that, in recent years, increasing numbers of tax protesters and other taxpayers have utilized the form of religious organizations in an effort to avoid tax. In Fiscal Year 1983, the IRS closed 6,612 examinations involving alleged church tax avoidance schemes, assessing $23,803,200 in taxes and penalties (an average assessment of $3,600 per return) and leaving a calendar year-end inventory of 15,296 church tax avoidance cases (in addition to approximately 200 criminal investigations). In the first 6 months of Fiscal 1984 alone (October 1, 1983-March 31, 1984), the IRS assessed $25,620,178 in taxes and penalties in 5,498 cases relating to church tax avoidance schemes.[1] The conferees specifically intend that nothing in the church audit procedures will inhibit IRS inquiries, examinations, or criminal investigations of tax protestor or other tax avoidance schemes posing as religious organizations, including (but not limited to) tax avoidance schemes posing as mail-order ministries or storefront churches, whether such schemes are limited to one particular taxpayer or encompass a group of taxpayers.

j. Remedy for IRS violation of audit procedures

Present law

The violation of statutory procedures may generally be raised as a defense (but not an absolute defense) in a proceeding to gain access to statutorily protected records.

House bill

No provision.

Senate amendment

The Senate amendment specifies that IRS failure to follow the proper church audit procedures is a defense (but not an absolute defense) in a proceeding to gain access to church records. The committee report states that, once this defense is raised, the IRS has the burden to prove it has followed the property statutory procedures. However, the IRS is permitted to correct any procedural violations before continuing an investigation.

Conference agreement

The conference agreement provides that the exclusive remedy for any IRS violation of the church audit procedures described above is as follows: failure of the IRS to substantially comply with (1) the requirement that two notices be sent to the church, (2) the requirement that the regional commissioner approve the commencement of a church tax inquiry, or (3) that an offer of an IRS conference with the church be made (and a conference held if requested), will result in a stay of proceedings in a summons proceeding to gain access to church records (but not in dismissal of such proceeding) until these requirements are satisfied. The two-year limitation on duration of a church audit is not to be suspended during stays of summons proceedings resulting from violations described above; however, the IRS may correct such violations without regard to the otherwise applicable time limits prescribed under the church examination procedures. The conferees intend that, in determining whether a stay is necessary, a court will consider the good faith of the IRS and the effect of any violation of the proper examination procedures.

Aside from the exclusive remedy described above, there is to be no judicial remedy for IRS violation of any of the church examination procedures provided by the conference agreement. IRS failure to comply with any of these requirements may not be raised as a defense or an affirmative ground for relief in any judicial proceeding including, but not limited to, a summons proceeding to gain access to church records; a declaratory judgment proceeding involving a determination of tax-exempt status (sec. 7428); or a proceeding to collect unpaid tax. Additionally, failure to substantially comply with the requirements that two notices be sent, that the assistant commissioner approve an inquiry, and that a conference be offered (and the conference held if requested) may not be raised as a defense or as an affirmative grounds for relief in a summons proceeding or any other judicial proceeding other than as specifically set forth above. The conferees specifically intend that a church or its representatives will not be able to litigate the issue of the reasonableness of the assistant commissioner's belief in approving the commencement of a church tax inquiry (i.e., that the church may not be tax-exempt or may be engaged in taxable activities) in a summons proceeding or any other judicial proceeding. These provisions are not, however, intended to derogate from a church's right to raise any substantive or procedural argument which would be available to taxpayers generally in the appropriate proceeding.

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[1] Information provided to Treasury Department by IRS Employee Plans/Exempt Organizations Operations Division, June 19, 1984.

k. Effective date

Present law

No provision.

House bill

No provision.

Senate amendment

Under the Senate amendment, the church audit procedures are effective for investigations, examinations, or other proceedings commencing after the date of enactment.

Conference agreement

The church audit procedures contained in the conference agreement are effective for inquiries and examinations commencing after December 31, 1984.

IV. SIMPLIFICATION

A. Individual Estimated Tax

Present law

Under present law, a penalty is imposed on the underpayment of the individual estimated tax. The amount of underpayment is based on difference between payments (including withholding) made and 80 percent of tax shown on the return. No penalty is imposed if payment equals an amount based on: (1) the tax shown on the preceding year's return; (2) 80 percent of the current year's tax computed on income to date placed on an annualized basis; (3) 90 percent of the tax on income to date; or (4) tax on the prior year's facts and current year's rates and exemptions. The penalty may not be waived by the IRS. Estimated payments of the alternative minimum tax are not required.

The IRS had ruled (Rev. Rul. 83-111, 1983-2 C.B. 245) that overpayments may not be credited to estimated tax payments earlier than the date election to credit payment is made. This ruling has been revoked by Rev. Rul. 84-58, 1984-16 I.R.B. 8.

House bill

Under the House bill, the underpayment will be based on the lesser of (1) 80 percent of tax shown on the return, (2) 100 percent of tax shown on the preceding year's return, or (3) 80 percent of the current year's tax computed on income to date placed on an annualized basis. Exceptions (3) and (4) described under present law are repealed.

The penalty may be waived as the result of casualty, disaster or circumstances where imposition of tax would be inequitable. Estimated tax payments of the alternative minimum tax will be required.

The House bill overrules Revenue Ruling 83-111.

The provision is generally effective for taxable years beginning after December 31, 1984.

Senate amendment

Under the Senate amendment, the underpayment may be waived as in the House bill. Also the penalty may be waived for reasonable cause during the first 2 years after the taxpayer retires upon reaching age 62 or becomes disabled.

Estimated tax payments of the alternative minimum tax will be required.

The provision is effective for taxable years beginning after December 31, 1984.

Conference agreement

The conference agreement follows the House bill, with the Senate amendment relating to penalty waivers. The penalty waiver provision will be effective for taxable years beginning after December 31, 1983.

If the taxpayer designates that the overpayment of tax shown on his return is to be credited against his estimated tax, but the overpayment is offset for either past-due child support or non-tax Federal debt under section 6402(c) or (d), and the taxpayer is not notified of the offset prior to the due date of the estimated tax, the conferees intend that the Secretary consider these circumstances as warranting a waiver of the estimated tax penalty.

B. Domestic Relations Tax Reform

1. Treatment of transfer of property between spouses or incident to divorce

Present law

Under present law, gain is generally recognized on transfers of property in exchange for the release of marital claims (*United States* v. *Davis*, 370 U.S. 65 (1962)).

House bill

The House bill provides that transfers of property between spouses or incident to divorce will generally be non-taxable, carryover basis transactions.

The provision applies to transfers after date of enactment (other than transfers pursuant to instruments in effect on that date where the parties do not elect to have the provisions apply). The parties may elect to have the provision apply to transfers after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Alimony

Present law

Alimony paid under divorce or separation instruments is deductible by the payor and includible in the income of the payee. Alimony must be in discharge of a legal obligation because of family or marital relationship; the payment may not discharge a principal sum, with an exception for certain payments which exceed 10 years.

There is no requirement to furnish the name or social security number of payee.

House bill

The House bill repeals the present law requirements to qualify as alimony. The bill's new requirements are as follows: (1) payment must be in cash; (2) payor and payee who are divorced or legally separated may not be members of the same household at time of payment; (3) payment must be terminable at death of payee spouse; and (4) the parties must not designate the payment as not being alimony.

The deduction for payments made during the first year which exceed average payments made during the second and third year by more than $15,000 will be recaptured. Also recapture will occur where second-year payments exceed third-year payments by more than $15,000. No recapture will occur where either party dies or where payee spouse remarries by the end of the third year. Recapture does not apply to temporary support decrees.

Payee must furnish payor with his or her social security number and the payor must furnish the name and social security number of the payee to the IRS; a $50 penalty may be imposed for failure to comply.

The provision applies generally to decrees and agreements executed after 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modifications:

(1) The divorce or separation instrument must state that there is no liability to make payments for any period after the death of the payee spouse.

(2) If any amount specified in the instrument will be reduced on the happening of a contingency relating to a child, then an equal amount will be treated as child support rather than alimony. Thus, for example, if the divorce instrument provides that payments will be reduced by $100 per month when a child reaches age 18 (or in the month the child happens to reach that age), then $100 of each monthly payment will be treated as fixed for child support.

(3) The conference agreement generally provides that deductible alimony payments must continue for at least 6 years duration and may not vary by more than $10,000 during any of those years. Specifically, the agreement provides that any payment in excess of $10,000 per year will be deductible only if the instrument provides that the payor spouse is required to make alimony payments for at least 6 consecutive calendar years beginning with the year a payment is first made (assuming neither spouse dies during that period and that the payee does not remarry).

Also, if payments are deductible for any year, but in a subsequent year (during the 6-year period) the payments decrease by more than $10,000 from that prior year, then those excess payments (i.e., those earlier year payments in excess of the sum of the later year payments plus $10,000) will be includible in the income of the payor and deductible by the payee in the subsequent year. Thus, for example, if alimony payments of $25,000 are made in year 1 and payments of $12,000 are made in year 2, then $3,000 will be recaptured in year 2. If the payments further decline to $1,000 in year 3, then, in year 3, an additional $11,000 will be recaptured from year 1 and $1,000 will be recaptured from year 2. If, prior to the end of year 6, payments further decline, additional recapture will occur. In applying these rules, years beginning with the year of death of either spouse or remarriage of the payee spouse will be ignored if payments terminate by reason thereof. Also, for purposes of applying these rules, payments pursuant to a support decree (specified in section 71(b)(2)(C)) or payments which fluctuate as a result of a continuing liability to pay, for at least 6 years, a fixed portion of income from the earnings of a business, property or services will not be taken into account.

3. Dependency exemption

Present law

A $1,000 deduction is allowed for a dependent child of the taxpayer; to qualify as a dependent of the taxpayer, the taxpayer must furnish over one-half of his or her support.

Special rules are provided for divorced or legally separated parents or parents separated under written separation agreement where the two parents provide more than one-half of the support. The custodial parent is allowed the dependency exemption except that: (1) if the decree or agreement provides that the non-custodial parent is entitled to a deduction and that the parent provides at least $600 of the support, the non-custodial parent is treated as providing over one-half the support; or (2) if the non-custodial parent furnishes at least $1200 of the support, that parent is presumed to furnish over one-half the support unless the custodial parent clearly establishes otherwise.

A medical expense itemized deduction is allowed for expenses of a dependent child.

Numerous different rules relating to status of married individuals living apart apply.

A child is not eligible as a dependent if his or her gross income exceeds $1,000 unless the child is under age 19 or is a student.

House bill

Under the House bill, the dependency special rules will be extended to parents living apart at all times during the last 6 months of the calendar year. The custodial parent will be allowed the dependency exemption unless that parent signs a declaration that he or she will not claim the exemption for the taxable year, and the non-custodial parent attaches the declaration to his or her return. Pre-1985 agreements described under (1) of present law will continue to be recognized.

The House bill treats a child as the dependent of both parents for purposes of the medical expense deduction.

The House bill provides that parents living apart for the last 6 months of the year can be treated as unmarried or head-of-household if the other eligibility tests are met. Eligibility for unmarried status, head-of-household status, earned income credit, and credit for dependent care are not lost where the custodial parent waives the right to claim the dependency exemption.

Income received by a permanently and totally disabled individual at a sheltered workshop school will be disregarded in determining the dependency exemption.

The provision applies to taxable years beginning after December 31, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. Innocent spouse relieved of liability in certain cases

Present law

Under present law, a spouse filing a joint return may be relieved of liability for tax if (1) there is a more-than-25-percent omission from gross income attributable to the other spouse, (2) the spouse establishes that he or she had no knowledge, or reason to know, of the unreported income, and (3) it would be inequitable to hold the spouse liable, taking into account whether the spouse significantly benefitted from the omission.

Community income is treated as income of both spouses. An exception applies where the spouses live apart for the entire year, file separate returns, and one spouse has earned income which is not transferred to the other spouse.

House bill

The House bill extends the innocent spouse joint return rule to substantial understatements resulting from (1) omitted income and (2) deductions, basis, and credits with no basis in law or fact. A substantial understatement will be an understatement of tax exceeding $500.

The community property rule is extended to situations where a spouse establishes that he or she did not know, or have reason to know, of an item of community income, and it is inequitable to include the item in that spouse's income.

The provision applies to all taxable years to which the Internal Revenue Codes of 1939 and 1954 apply.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following two modifications:

(1) The joint return innocent spouse relief, to the extent the understatement is not attributable to an omission from gross income, will be available only if the liability which otherwise would qualify for relief exceeds

(a) 10 percent of the spouse's adjusted gross income for the taxable year prior to which the deficiency notice is mailed if that income was $20,000 or less, or

(b) 25 percent of the spouse's adjusted gross income for the prior taxable year if that income exceeded $20,000. (Where the spouse will meet these tests, it is not necessary to actually mail the deficiency notice.)

The conferees understand that the additional relief in the bill will be available to pending court cases where the decision in the case is not final.

(2) The Secretary may disallow the benefits of any community property law to a taxpayer if the taxpayer acts as if he or she is solely entitled to the income and the taxpayer failed to notify the taxpayer's spouse of that income.

5. Gift and estate tax liability for transfers of property to spouses incident to divorce

Present law

Under present law, there is no gift tax liability for transfers of property to a spouse in settlement of marital or property rights pursuant to a written agreement where divorce occurs within 2 years of agreement.

House bill

The House bill provides an estate tax deduction for transfers pursuant to these written agreements. It also extends the period to enter into an agreement to one year after divorce.

The provision applies to gifts made, and estates of decedents dying, after date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. At-risk Provisions

Present law

Investment tax credit

Present law generally limits the amount of property on which a taxpayer (other than a non-closely held corporation) may claim the investment tax credit to the amount the taxpayer is "at risk". Real estate and certain corporate leasing activities are exempt from this rule.

There is an exception for loans from persons in the commercial lending business who are unrelated to the seller or to the taxpayer where the taxpayer is at least 20 percent at risk at all times.

Present law allows a lessor to pass the credit through to the lessee. The application of the at-risk rules to these leases is unclear.

Losses

Present law limits the losses from an activity which a taxpayer (other than a non-closely held corporation) may claim to the amount the taxpayer is at risk in the activity.

House bill

Investment tax credit

The House bill generally clarifies present law by revising the rules (including the recapture rules) so as to specifically disallow the credit with respect to property financed with nonrecourse borrowing.

The House bill generally retains the commercial lending exception. It also adds an exception for recourse loans to a subchapter S corporation where the loan is from an unrelated commercial lender and the property is used in an active trade or business with at least 3 full-time non-owner employees, including one full-time employee managing the business.

In the case of a pass-through lease, the at-risk rule will continue to apply to the lessor. For the lessee to get the full credit in the year the property is placed in service, the lessee must be liable to make non-contingent payments the present value of which at the beginning of the lease (assuming the rate of interest used in computing interest on tax underpayments) must equal or exceed 30 percent (18 percent in the case of 3-year property) of the value of the property.

These rules apply to property placed in service after date of enactment (or as if enacted by ERTA, if the taxpayer so elects).

Losses

Under the bill, an active trade or business of a closely held subchapter C corporation (other than a personal holding company or personal service corporation) will not be subject to any at-risk rules. A trade or business will be required to have three full-time, non-owner employees, one full-time employee actively managing the business, and "out-of-pocket" business expenses exceeding 15 percent of gross income. Losses from an active business may not offset income of a personal holding company or personal service company that is a member of the same affiliated group.

Certain activities will be aggregated if the taxpayer actively participates in the management of each activity.

A taxpayer can be at risk for amounts borrowed from a related party.

These rules will apply to taxable years beginning after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modifications:

(1) "Section 48(d)" leases

(a) In order to reduce the possibility that in the case of a "pass-thru" lease, a lessee subject to the "at risk" rules may claim an inflated value for the property, the agreement requires that the lessor be subject to the investment tax credit at-risk rules with respect to these leases unless the lessor would not otherwise be subject to these rules and either the lessor manufactured or produced the property, the property has a readily ascertainable fair market value, or the Secretary determines by regulation that it is unnecessary for the lessor to be subject to the "at-risk" rules.

(b) The requirement that the lessee be 30-percent at risk is modified to provide that the "at risk" percentage be an amount equal to two times the credit percentage (set forth in section 46(a)) plus 10 percent (60 percent of this amount in the case of three-year property). This change is intended to insure that the lessee have an after-tax investment in the property.

(2) Definition of qualified business

(a) The legislative language is amended to specifically require that a qualifying business be an active business. It is intended that the creation of an active business be treated as the conduct of an active business for this purpose.

(b) The application of the partnership rules are revised. Under the conference agreement, a qualified 7 corporate partner will take into account its proportionate share of the employees of a qualified partnership (or of a qualified corporate partner) substantially all the services of whom are directly related to the business of the partnership, and also will take into account its share of the income and deductions of the partnership for purposes of determining whether the corporation is engaged in a qualifying business. The corporation may aggregate its share of the partnership business with any portion of the business which it conducts directly.

A partnership is qualified if it is engaged in an active business and if there is one full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom are involved in the active management of the business.

A qualified corporate partner is a general partner that has at least a 20-percent interest in the profits and losses of the partnership that has contributed an amount equal to the lesser of $500,000 or 10 percent of its net worth to the partnership as of the end of the taxable year.

(3) Aggregation of activities

The agreement provides that all leased section 1245 properties which are placed in service in any taxable year of a partnership or S corporation shall be treated as a single activity. In addition, the authority of the Secretary to aggregate or separate activities (under section 465(c)(3)(C)) is extended to the activities (including activities conducted by partnerships or S corporations) described in section 465(c)(2).

(4) Recapture

The conferees wish to clarify that the disposition of property in a transaction described in section 47(b) (relating to changes in form of doing business) will not result in recapture (under sec. 47(d)) to the extent the taxpayer remains liable on any debt with respect to the property and does not reduce his direct or indirect at-risk investment in the property. For example, if section 38 property financed with nonrecourse financing that is qualified commercial financing is contributed to a wholly-owned corporation by an individual, the at-risk recapture rules ordinarily will not apply where the transferor is not relieved of any personal liability for recourse financing incurred with respect to the property, or the transferor's at-risk investment in the corporation increases by the transferor's at-risk investment in the contributed property (exclusive of the nonrecourse qualified commercial financing). Appropriate exceptions may be provided in regulations.

D. Administrative Provisions

1. Miscellaneous Treasury administrative provisions

House bill

The bill makes a number of minor amendments relating to Treasury administrative provisions. The bill simplifies certain requirements of the Treasury Department to make reports to the Congress, removes the $1 million limitation of the Treasury working capital fund, increases the authorization limit from $1 million to $10 million on the revolving fund for the redemption of real property, allows the Secretary of the Treasury to accept gifts and bequests for the Treasury Department, allows an extension of time for court review of a jeopardy assessment where the government is not promptly served, removes the $1 million limitation on the Secretary of the Treasury's special authority to dispose of obligations, allows the Internal Revenue Service a minimum of 60 days to assess unpaid taxes shown on an amended return, provides the government a lien on the assets of all financial institutions which issue an unpaid guaranteed draft for the payment of taxes, and allows the disclosure of windfall profit tax returns to State tax agencies.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

2. Distilled spirits administrative provision

a. Repeal of occupational tax on manufacturers of stills and condensers

Present law

An occupational tax of $55 per year is imposed on manufacturers of stills. In addition, a tax of $22 is imposed on each still (or condenser to be used in distilling) manufactured.

Present law also requires notice to the Treasury upon removal of a still from the place of its manufacture and permission from the Treasury before setting up a still for distilling operations. Further, every person having possession or control over a still is required to register with the Treasury immediately after setting up the still.

House bill

The House bill repeals the $55 per year occupational tax on manufacturers of stills and the additional $22 tax for each still. The House bill also repeals the mandatory notice requirement upon removal of a still from the place of its manufacture and the requirement of permission prior to setting up of a still. In their place, the bill allows the Treasury Department, pursuant to regulations, to require manufacturers of stills to give notice before removal of stills from the factory. The House bill retains the requirement of registration by a user after setting up the still.

These provisions are effective on the first day of the first month beginning more than 90 days after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

b. Return of taxes on spirits used for food or medicinal purposes

Present law

Present law provides for the drawback (i.e., return to the taxpayer) of distilled spirits excise taxes where the spirits are used for food, medicinal, or other nonbeverage purposes. For a drawback claim to be allowed, Treasury regulations require that extensive supporting data be maintained by the manufacturer, including quantitative formulae which must be filed with the Treasury. Failure to comply with these requirements (including any deviation from a previously filed formula) may result in denial of a drawback claim.

House bill

In lieu of denying a claim, the House bill imposes a $1,000 penalty for each failure to comply with applicable laws or regulations, where it is established that the distilled spirits were used for nonbeverage purposes. The aggregate amount of these penalties may not exceed the taxpayer's claim. Additionally, the penalty may be waived where the failure to comply was due to reasonable cause.

This provision is effective on the first day of the first calendar month beginning more than 90 days after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

c. Disclosure of information regarding alcohol fuel producers to administrators of State alcohol laws

Present law

The Treasury Department is prohibited from disclosing tax return information (including the identity of taxpayers), without the taxpayer's consent, except under certain limited circumstances. Under this prohibition, Treasury is prohibited from disclosing the names and addresses of alcohol fuel producers to State alcohol enforcement agencies.

House bill

The House bill allows the Treasury Department to disclose the names, addresses, and business locations of persons producing alcohol for fuel use to State agencies having responsibility for the administration of State alcohol laws. This disclosure is to be made solely for use in the administration of State alcohol laws and is subject to the existing confidentiality safeguards for disclosure of tax information to other Federal and State agencies.

This provision is effective on the first day of the first calendar month beginning more than 90 days after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

d. Elimination of Government-supplied strip stamps for distilled spirits containers

Present law

Distilled spirits containers transported or sold in the United States are required to bear a stamp indicating that the Federal excise tax on the spirits has been paid. Strip stamps which satisfy this requirement are printed by the Bureau of Engraving and Printing at an estimated cost of $1.7 million per year and are distributed to distillers and bottlers free of charge.

Government-supplied strip stamps must generally be broken in order to open a distilled spirits container; thus, the stamps act as closure devices.

House bill

The House bill repeals the strip stamp requirement for distilled spirits containers and associated penalty provisions. However, the bill requires that distilled spirits containers, on determination of tax, bear a closure or other device which is designed to require breaking in order to gain access to the contents of the container. This requirement does not apply to containers having a capacity in excess of one wine gallon.

These provisions are effective on July 1, 1985. Government-supplied strip stamps may be affixed only until that date.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

e. Removal of distilled spirits without payment of tax for use in production of certain nonbeverage wine

Present law

Distilled spirits (other than wine spirits) used in production of nonbeverage wine products are taxed upon removal from the distilled spirits plant where the spirits are produced or from customs custody. This tax (less a processing fee) is later returned to the taxpayer upon filing of a proper claim for refund.

House bill

The House bill permits removal from a distilled spirits plant of distilled spirits without payment of tax for use in producing nonbeverage wine products (e.g., cooking wine).

This provision is effective on the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Financial accounting for the investment tax credit

Present law

Section 101(c)(1)(A) of the Tax Reform Act of 1971 limits the ability of any Federal agency to compel with respect to any taxpayer a particular method of financial accounting for the investment tax credit. The 1971 Act also requires a taxpayer to use the same method of financial accounting for the investment tax credit in all reports subject to the jurisdiction of any Federal agency unless the Treasury approves a change to another method.

House bill

No provision.

Senate amendment

The Senate amendment repeals the provision requiring Treasury approval of a change of financial reporting method for the investment tax credit, effective as of its original effective date.

Conference agreement

The conference agreement follows the Senate amendment.

E. Tax Court Provisions

1. Certified public accountants and enrolled agents authorized to represent taxpayers

Present law

In any Tax Court proceeding, a taxpayer may appear *pro se* or be represented by any person admitted to practice before the Tax Court.

House bill

The House bill allows certified public accountants and enrolled agents to represent a taxpayer in a small tax case.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the provision of the House bill.

2. Annuities for survivors of Tax Court Judges

Present law

If a Tax Court Judge is survived by a dependent child or children, an annuity is provided. The maximum limits on these annuities have not been changed since 1961.

House bill

The maximum limits on annuities for surviving children is increased to the level provided surviving children of U.S. District Court Judges.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Tax Court Commissioners and jurisdictional limit for small tax cases

Present law

Proceedings involving less than $5,000 may be assigned to Commissioners to make a decision.

House bill

The House bill increases the jurisdictional limit for small tax cases from $5,000 to $10,000.

The House bill also provides that other proceedings may be assigned to be heard by Commissioners, but no decision with respect to these proceedings may be made by a Commissioner. The title of "Commissioner" is changed to "Special Trial Judge."

Senate amendment

The Senate amendment increases the jurisdictional limit for small tax cases from $5,000 to $10,000.

Conference agreement

The conference agreement follows the House bill.

4. Publicity of Tax Court proceedings

Present law

Reports of the Tax Court and evidence received by the Court are open to public inspection.

House bill

The House bill clarifies that the Court may prevent the disclosure of trade secrets and other confidential information.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. Elimination of mandatory retirement age for Tax Court judges

Present law

Tax Court Judges must retire upon attaining age 70. After retirement, Judges who have served at least 10 years receive retirement pay generally equal to the salary of active Judges and may continue to hear cases. Retired Judges are not considered in determining whether the authorized maximum number of Judges (currently 19) has been reached. Retirement plan payments are not considered wages for purposes of social security taxes.

House bill

The House bill provides that Tax Court Judges may retire at any time after attaining age 70.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the provision of the House bill.

F. Simplification of Income Tax Credits

Present law

Present law provides a series of income tax credits allowable to reduce a taxpayer's tax liability.

House bill

In general, the bill groups existing income tax credits into logical categories and provides uniform tax liability limitations and carryover rules. The business credits (i.e., investment tax credit, targeted jobs credit, alcohol fuels credit, and ESOP credit) are combined into one credit and allowed up to 100 percent of the first $25,000 of tax liability and 85 percent of the remainder. The research credit will continue to be allowable against 100 percent of tax liability. A 3-year carryback and 15-year carryforward period on a FIFO basis will be allowed for the business credits.

This provision applies to taxable years beginning after 1983. Unexpired credits from each pre-1984 taxable year will be combined into a business credit carryforward from that year to be carried to post-1983 years (for a period not to exceed 15 years from the year of the original credit). Thus, for example, where a taxpayer made an investment entitling it to claim the employee plan percentage, the taxpayer may continue to make an election to claim that percentage as a carryforward from the earlier year under the rules in effect for the year the investment was made.

Carrybacks of the general business credit to pre-1984 years will be allowed.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

G. Miscellaneous Simplification

1. Preferred stock eligible under section 1244

Present law

An ordinary loss deduction of up to $50,000 per year ($100,000 in the case of a joint return) is allowed for losses on certain common stock of small business corporations ("section 1244 stock").

House bill

The House bill allows preferred stock to qualify as "section 1244 stock".

The provision applies to stock issued after date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Medical expense deduction for certain lodging

Present law

Present law allows an itemized deduction for unreimbursed medical expenses in excess of five percent of the taxpayer's adjusted gross income (Code sec. 213). Expenses eligible for deduction include costs of transportation primarily for and essential to medical care, but not costs of meals or lodging (except where paid as part of a hospital bill) while away from home to obtain medical care.

House bill

Under the House bill, amounts paid for lodging while away from home, if primarily for and essential to care provided by a physician in a licensed hospital or certain equivalent medical-care facilities, are treated as medical care expenses eligible for the section 213 deduction.

The lodging amount allowable as a deduction cannot exceed $50 per night for the patient or other eligible person (such as a parent accompanying a dependent child). No deduction is allowed for lodging that is lavish or extravagant, if there is any significant element of personal pleasure, recreation, or vacation in the travel away from home, or for any expenses, such as food, other than the cost of lodging.

This provision is effective for taxable years beginning after 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. As in the case of other types of medical expenses eligible for deduction under section 213, the taxpayer must substantiate any deduction claimed for lodging expenses as prescribed by Treasury regulations (see Regs. sec. 1.213-1(h)).

H. Deadwood

1. Government retirement bonds

Present law

Present law provides for the issuance of certain government retirement bonds. Treasury has terminated the sale of these bonds.

House bill

The House bill repeals the provisions of law relating to these bonds. Current holders of the bonds will be governed by present law, but can redeem the bonds at any time.

The provision generally applies to obligations issued after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Farm loss recapture

Present law

Present law provides for the recapture of certain farm losses. These provisions were terminated for losses after 1975.

House bill

The House bill repeals the farm loss recapture provisions for taxable years beginning after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

V. PROVISIONS RELATING TO EMPLOYERS AND TO EMPLOYEES AND TO RETIREMENT

A. Pension Plan Provisions

1. Deduction limits for qualified plans

Present law

Under present law, limits are imposed on the amount of employer deductions for contributions to a qualified pension, profit-sharing, or stock bonus plan ("qualified plan"). In addition, if an employer maintains a defined benefit pension plan or a money purchase pension plan and an annuity, profit-sharing, or stock bonus plan for the same employees, then the employer's deduction for plan contributions for a year is limited to the greater of (1) 25 percent of aggregate compensation paid or accrued during the year to the beneficiaries of the plan or (2) the amount necessary to satisfy the employer's minimum funding requirement under the pension plan. This limitation does not apply if the employer maintains a defined benefit pension plan and a money purchase pension plan for the same employees.

Present law provides overall limits on the dollar amount and percentage of compensation that may be provided to participants as contributions or benefits under qualified plans. In the case of an employee participating in both a defined contribution plan and a defined benefit pension plan maintained by the same employer, the sum of the fractions of the separate limits used by each plan is subject to an overall limit. TEFRA generally reduced the combined limit with respect to dollar amounts from 1.4 to 1.25.

House bill

No provision.

Senate amendment

The Senate amendment applies the 25-percent deduction limitation to situations in which an employer maintains both a defined benefit pension plan and a money purchase pension plan for the same employees. In no event, however, will the deduction limitation for a year be less than the amount necessary to satisfy the minimum funding requirement for the defined benefit pension plan.

In addition, under the Senate amendment, the total amount deductible for a taxable year under all plans of the employer is limited to the aggregate amount of compensation paid or accrued during the taxable year to the beneficiaries of the plans. In applying this aggregate limit, benefits paid by a plan (within limits) are treated as compensation paid during the year.

Under the Senate amendment, in the case of an employee participating in both a defined contribution plan and a defined benefit pension plan maintained by the same employer, the combined limit on the sum of the fractions of the separate limits used by each plan is raised to 1.4. The increased limit applies only if, at all times after June 30, 1982, no plan of the employer is (1) a top-heavy plan or (2) integrated with social security.

The provisions of the Senate amendment are effective for years beginning after December 31, 1984.

Conference agreement

The conference agreement does not contain the Senate amendment.

2. Provisions relating to top-heavy plans

Present law

Under present law, if a qualified plan is top heavy, then certain additional minimum requirements (including minimum contributions or benefits for non-key employees) are imposed. A qualified plan is top heavy if more than 60 percent of the value of accrued benefits are allocable to key employees. The accrued benefits of employees who have separated from service generally continue to be counted until 5 years after they are distributed.

Present law defines a key employee as an individual who (1) is an officer (in the case of a corporate employer), (2) is one of the 10 employees owning the largest interests in the employer, (3) owns more than a 5-percent interest in the employer, or (4) owns more than a 1-percent interest in the employer and has compensation from the employer in excess of $150,000.

In addition, present law provides that the combined limit on contributions and benefits for a key employee participating in both a defined contribution plan and defined benefit pension plan maintained by the same employer is reduced from 1.25 to 1.0. This reduction in the combined plan limit does not apply if additional minimum benefits or contributions are provided to non-key employees. In the case of a super top-heavy plan, (i.e., a plan under which more than 90 percent of the accrued benefits are provided to key employees), the reduction in the combined plan limit applies without regard to whether additional minimum contributions or benefits are provided to non-key employees.

Under present law, in testing whether an employer has satisfied the minimum contribution or benefit requirement with respect to a non-key employee and for purposes of determining the amount that has been contributed to a plan on behalf of a key employee, amounts contributed pursuant to a salary reduction arrangement are not counted.

The present-law rules relating to top-heavy plans (including the requirement that a plan contain provisions that are operative if the plan becomes top heavy) apply to governmental plans (as defined in sec. 414(d)).

House bill

No provision.

Senate amendment

Under the Senate amendment, the special combined limit on contributions and benefits under a super top-heavy plan is repealed. The amendment also revises the definition of the term "key employee" to exclude officers who earn less than twice the dollar limit on contributions under a defined contribution plan ($60,000 for 1984).

The Senate amendment provides that if an individual has not received compensation with respect to any plan of the employer at any time during the 5-year period ending on the determination date, then any accrued benefit of the individual is disregarded for purposes of determining whether the plan is top heavy.

Under the Senate amendment, the amounts contributed to a qualified plan pursuant to a salary reduction arrangement are taken into account under the top-heavy provisions. The amendment also exempts governmental plans (as defined in sec. 414(d)) from the top heavy plan requirements.

Under the Senate amendment, if the Secretary of the Treasury fails to issue final regulations under the rules of the Code relating to top-heavy plans before January 1, 1985, then a simplified amendment procedure applies.

The provisions generally are effective for plan years beginning after December 31, 1983. The provisions relating to separated employees and salary reduction arrangements are effective for plan years beginning after December 31, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment, with two exceptions. First, the conference agreement retains the special combined limit on contributions and benefits under a super top-heavy plan. Second, the conference agreement revises the definition of the term "key employee" to exclude officers who earn less than 1½ times the dollar limit on contributions under a defined contribution plan ($45,000 for 1984).

Under the conference agreement (as under the Senate amendment), if the Secretary of the Treasury fails to issue final regulations under the Code rules relating to top-heavy plans before January 1, 1985 (as in effect on the day before the date of enactment of these provisions), the Secretary is required to publish plan amendment provisions that may be incorporated into all qualified plans of an employer. If a plan is amended to incorporate these provisions, then the plan is deemed to have met the top-heavy plan requirements and is not required to be amended further to comply with the top-heavy provisions until the date that is 6 months after the issuance of the final regulations.

Under the conference agreement, if the Secretary fails to publish the required plan amendment provisions by January 1, 1985, then a plan is treated as meeting the top-heavy plan requirements if the plan is amended to incorporate such requirements by reference. In any case in which a plan is so amended and the plan does not specify the particular provisions that apply, the conferees intend that the employer is to be considered, in those situations in which more than one provision may apply, to have elected the provision that maximizes the vested, accrued benefits for each non-key employee. For example, if a plan is amended to incorporate the top-heavy plan requirements by reference and does not specify a vesting schedule, the plan is deemed to provide a vesting schedule that maximizes the vested, accrued benefits of each non-key employee. Thus, if a particular non-key employee separates from service after two years of service, the plan is considered to have incorporated the graduated vesting schedule with respect to that employee and the employee would have a 20-percent vested accrued benefit. On the other hand, if another non-key employee under the same plan has at least three years of Service, the plan is considered to have incorporated the three-year, 100-percent vesting schedule with respect to that employee. Similarly, if an employer maintains a top-heavy group of plans and the plans are amended to incorporate the top-heavy plan requirements by reference without specifying the plan or plans under which the minimum benefits or minimum contributions are provided, then a non-key employee in any plan that is a required member of the group must be provided with the minimum contribution or benefit under each plan that is a required member in which the employee participates.

The conference agreement does not change the effective date of the top-heavy plan rules. In addition, the conferees intend that the issuance, as final regulations, of regulations similar to the proposed regulations under section 416 (published on March 15, 1983) will constitute the issuance of final regulations for purposes of this provision.

3. Distribution rules for qualified plans

Present law

Distributions prior to age 59½

Present law imposes an additional 10-percent income tax on certain distributions to employees in top-heavy plans. Amounts received under a qualified plan before a participant attains age 59½, becomes disabled, or dies are subject to this tax to the extent that (1) the amounts are includible in the participant's gross income and (2) are attributable to years in which the participant was a key employee in a top-heavy plan. The tax is designed to discourage the use of retirement funds for nonretirement purposes.

Before-death distribution rules

Present law requires that benefits provided under a qualified plan must be for the primary benefit of an employee, rather than the employee's beneficiaries. Accordingly, benefits provided for a participant's beneficiaries must be incidental. Under this incidental benefit rule, a qualified plan generally is required to provide for a form of distribution under which the present value of the payments projected to be made to the participant, while living, is more than 50 percent of the present value of the total payments projected to be made to the participant and the participant's beneficiaries. The incidental benefit rule is designed to limit the use of qualified plans for nonretirement purposes (e.g., to provide for deferral of income tax or to provide for tax-favored transfers of wealth to others). The rule is supplemented by requirements that benefits be distributed after age 70½.

Under present law, a participant's benefits under a qualified plan must be distributed by a benefit distribution date, which is the last day of the later of the taxable year in which the participant (i) attains age 70½, or (ii) retires. In the case of a key employee participating in a top-heavy plan, distributions must be made in the taxable year in which the key employee attains age 70½, without regard to whether the key employee has retired. Alternatively, distributions must begin no later than the applicable benefit distribution date and must be made over the life of the participant (or lives of the participant and the participant's spouse) or over a period not exceeding the life expectancy of the participant (or the joint life expectancy of the participant and the participant's spouse).

The distribution rules applicable to individual retirement plans (IRAs) are similar to the before-death distribution rules applicable to benefits under qualified plans except that the benefit distribution date for the owner of an IRA is the end of the taxable year in which the owner attains age 70½, without regard to whether the owner has retired.

After-death distribution rules

If a participant dies before the entire interest in a qualified plan is distributed, present law requires that amounts payable to a beneficiary (other than the participant's surviving spouse) generally must be paid to the beneficiary within 5 years after the participant's death. In addition, after the death of the participant's surviving spouse, any amounts payable to a beneficiary of the surviving spouse must be paid within 5 years after the spouse's death. The after-death distribution rules for IRAs are similar to the after-death distribution rules applicable to qualified plans.

Qualifying rollover distributions

If the balance to the credit of an employee is paid to the employee or to the surviving spouse of the employee as a qualifying rollover distribution, all or any portion of the distribution may be rolled over, tax free, within 60 days after the date of the distribution, to another qualified plan or to an IRA. Under present law, no rollover is permitted for a plan distribution that is not a total distribution. Similar rules apply to distributions from or under a tax-sheltered annuity contract.

House bill

Qualifying rollover distributions

The House bill provides for a tax-free rollover to an IRA of a distribution of at least 50 percent of the balance to the credit of an employee under a qualified plan or tax-sheltered annuity contract. As under present law, the rollover of a partial distribution is to be made within 60 days after the date of the distribution. Any subsequent distribution from the same plan (or any other plan of the employer required to be aggregated for the lump sum distribution rules) is not eligible for the special 10-year income averaging or long-term capital gain treatment accorded lump sum distributions.

Under the House bill, similar plans of the employer are aggregated for purposes of applying the 50-percent test.

The provision is effective for distributions made after the date of enactment.

Senate amendment

Distributions prior to age 59½

Under the Senate amendment, the additional 10-percent income tax on premature distributions applies to a distribution only to the extent that the distribution is attributable to years in which the participant was a 5-percent owner (sec. 416) without regard to whether the plan was top heavy for such years.

Before-death distribution rules

Under the Senate amendment, a qualified plan is required to provide that a participant's entire interest will be distributed before the end of the taxable year in which the participant (i) attains age 70½ or (ii) retires, whichever is later. If a participant is a 5-percent owner (sec. 416) with respect to the taxable year in which the participant attains age 70½, the participant's entire interest is to be distributed no later than the close of such year even though the participant has not retired. The Senate amendment continues the incidental benefit rule of present law.

The Senate amendment provides for an alternative method of distribution over the life of the participant or over the lives of the participant and the participant's spouse. Under the Senate amendment, a qualified plan may provide that a participant's entire interest will be distributed, commencing on or before the applicable benefit distribution date, over the life of the participant (or the lives of the participant and spouse) or over a term certain not exceeding the life expectancy of the participant (or the joint life expectancy of the participant and spouse).

Under the Senate amendment, a qualified plan does not fail to satisfy the before-death distribution rules if it provides for the purchase, by the applicable benefit distribution date, of an immediate annuity contract that provides for substantially nonincreasing annuity payments to be made over the lives of the participant and a nonspouse beneficiary (or over a term certain not exceeding the joint life expectancy of the participant and a nonspouse beneficiary). A defined benefit pension plan is permitted to make substantially nonincreasing payments directly from the plan, in lieu of distributing an annuity contract.

After-death distribution rules

The Senate amendment generally continues the after-death distribution rules of present law. However, the amendment provides that the 5-year payout rule is satisfied, for both qualified plans and IRAs, by the purchase of an immediate annuity contract that provides for substantially nonincreasing payments over the life of the beneficiary or over a term certain not exceeding the life expectancy of the beneficiary. A defined benefit pension plan is permitted to make such payments directly without purchasing an annuity contract.

Qualifying rollover distributions

The Senate amendment generally follows the House bill, except that similar plans of the employer are not aggregated for purposes of applying the 50-percent test.

Effective dates

The provisions generally are effective for plan years beginning after December 31, 1984. For governmental plans, the provisions are effective for plan years beginning on or after December 31, 1986. For collectively bargained plans, the provisions are effective for plan years beginning in or after the earlier of (1) January 1, 1987, or (2) the expiration of the collective bargaining agreement. The qualifying rollover distribution provision is effective for distributions after the date of enactment, in taxable years ending after that date.

Conference agreement

Distributions prior to age 59½

The conference agreement follows the Senate amendment.

Before-death distribution rules

The conference agreement generally follows the Senate amendment, with several exceptions. Under the conference agreement, a trust is not a qualified trust unless the plan of which it is a part provides that the entire interest of the employee will be distributed no later than the required commencement date. Alternatively, the entire interest is to be distributed, beginning no later than the required commencement date, over (1) the life of the employee, (2) the lives of the employee and a designated beneficiary, (3) a period not extending beyond the life expectancy of the employee, or (4) a period not extending beyond the life expectancy of the employee and a designated beneficiary.

Under the conference agreement, the required commencement date is April 1 of the calendar year following the year in which (1) the employee attains age 70½ or (2) the employee retires, whichever is later. If an employee is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, the employee's entire interest is to be distributed no later than April 1 of the calendar year following such plan year even though the employee has not retired. In the case of employer securities that may not be distributed on account of the 84-month holding period of section 409A(d), the rule applicable to 5-percent owners does not apply with respect to such securities until the applicable holding period expires.

Of course, the conferees intend that an individual who is subject to the 70½ distribution requirement on the effective date of the conference agreement will not be treated as failing to meet the 70½ distribution requirement merely because the individual would have been required to begin payments if the rules had been effective in earlier years. The distribution requirement with respect to such an individual commences on April 1 of the year following the first year for which the provision is effective, based on the individual's age in that year.

For purposes of the before-death distribution rules, the conferees intend that an employee's "entire interest" does not include ancillary benefits (such as lump sum death benefits) that are, in no event, available to the employee.

The conferees intend that, in implementing these before-death distribution rules, Treasury regulations will require that distributions over any of the permissible periods are to satisfy a minimum distribution rule similar to the rules under present law, except that the participant's life expectancy may be recalculated no more frequently than annually. Similarly, if payments are made over the joint life expectancy of the employee and the employee's spouse, such joint life expectancy may be recalculated no more frequently than annually. The conferees intend that, in the case of payments made over the joint life expectancy of the employee and a nonspouse beneficiary, Treasury regulations will provide a method of recalculation under the minimum distribution rule that takes into consideration the change in life expectancy of the employee, but not the change in life expectancy of the nonspouse beneficiary.

Distributions over any of the permissible periods from or under a defined benefit pension plan are deemed to satisfy the minimum distribution rule if the plan makes substantially nonincreasing annual payments over any of these periods. The conferees intend, however, that regulations will permit defined benefit pension plan distributions to increase under certain circumstances. For example, certain cost-of-living increases in an employee's annual payments, cash refunds of employee contributions upon an employee's death, an increase in annual benefit payments to the employee upon the death of the employee's beneficiary, and increases based on investment experience generally could be permitted. In no event, however, may increasing payments be permitted if the effect of the increase is circumvention of the minimum distribution rules.

Under a defined contribution plan, the minimum distribution rule is satisfied if the payments are subject to an irrevocable payout schedule that satisfies the minimum distribution rule. In addition, a defined benefit pension plan or a defined contribution plan may satisfy the minimum distribution rule by distributing an immediate annuity contract that provides for payments that satisfy the minimum distribution rule (e.g., provides for substantially nonincreasing annual payments).

The conferees intend that, as under present law, plan distributions, including distributions under annuity contracts distributed by a qualified plan, are required to meet the incidental benefit rule. For example, if a plan provides for a before-death distribution of an immediate annuity contract to the employee and a beneficiary, then the present value of the payments projected to be paid to the employee are to be more than 50 percent of the present value of the payments projected to be paid to the employee and the beneficiary. As under present law, distributions in accordance with the rules relating to qualified joint and survivor annuities will satisfy the incidental benefit rule.

After-death distribution rules

The conference agreement provides rules that apply in the case of an employee's death before the employee's entire interest has been distributed. In the case in which distributions have commenced to the employee before death, the conference agreement provides that the remaining portion of the employee's interest is to be distributed at least as rapidly as under the method of distribution in effect prior to death. For example, if an employee elected to receive benefits in the form of equal annual installments for a term of 20 years (which did not extend beyond the life expectancy of the employee) and the employee died after benefits had been paid for 10 years, the remaining interest of the employee could be distributed in equal annual installments over a term not exceeding 10 years. Of course, the beneficiary could elect to accelerate payments of the remaining interest.

In the case in which distributions have not commenced to the employee before the employee's death, the conference agreement provides that the entire interest of the employee is to be distributed within 5 years after the death of the employee. Under the conference agreement, two exceptions apply to this 5-year distribution rule.

The first exception provides that the 5-year rule does not apply if (1) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, (2) the portion of the employee's interest to which the beneficiary is entitled will be distributed over the life of the beneficiary (or over a period not extending beyond the life expectancy of the beneficiary), and (3) the distributions commence no later than 1 year after the date of the employee's death. The conferees intend that this exception applies only if amounts are paid to the beneficiary under rules that satisfy the minimum distribution rule applicable to before-death distributions. Recalculation of life expectancy is not permitted under this provision.

The Secretary may, under regulations, provide exceptions to the 1-year rule under appropriate circumstances (e.g., if a beneficiary cannot be located). The conferees intend, however, that the regulations could require that catch-up distributions be made with respect to amounts deferred under such exceptions.

The second exception applies if the designated beneficiary is the surviving spouse of the employee. Under this provision, the 5-year rule does not apply if (1) the portion of the employee's interest to which the surviving spouse is entitled will be distributed over the life of the surviving spouse (or over a period not extending beyond the life expectancy of the surviving spouse), and (2) the distributions commence no later than the date on which the employee would have attained age 70½. If the surviving spouse dies before payments are required to commence, then the 5-year rule is to be applied as if the surviving spouse were the employee. The conferees intend that payments to the surviving spouse will satisfy the exception to the 5-year distribution requirement if payments are made pursuant to a qualified joint and survivor annuity.

For purposes of the after-death distribution rules, the conference agreement provides that any amount paid to a child is treated as if it had been paid to the surviving spouse of an employee if the amount becomes payable to the surviving spouse when the child reaches the age of majority (or such other event as may be specified in Treasury regulations).

Under the conference agreement, similar rules are provided for after-death distributions from or under an individual retirement account or annuity. In addition, under the conference agreement, the rules applicable to after-death distributions under an annuity contract are to apply to a custodial account that is treated as a tax-sheltered annuity contract (sec. 403(b)(7)).

Qualifying rollover distributions

The conference agreement follows the Senate amendment.

Effective dates

The conference agreement generally follows the Senate amendment.

The conference agreement provides that a plan is not to be disqualified merely because it pays benefits under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in effect before the amendments made by the conference agreement).

4. Treatment of distributions of benefits substantially all of which are derived from employee contributions

Present law

Present law permits a qualified plan, a tax-sheltered annuity contract, or a governmental plan to be funded solely by employee contributions. Nondeductible employee contributions may be withdrawn from a qualified plan at any time without a tax penalty. In addition, the first withdrawals of nondeductible contributions (prior to the annuity starting date) are treated as a return of the nondeductible contributions, which are not includible in gross income. After the balance of the nondeductible contributions has been withdrawn, further withdrawals are considered to be income.

House bill

The House bill provides that a plan is not a qualified plan if substantially all of the accrued benefits under the plan are derived from employee contributions, other than deductible employee contributions.

The provision is effective for plan years beginning after March 31, 1984.

Senate amendment

Under the Senate amendment, if substantially all of the accrued benefits under a qualified plan are derived from employee contributions, then distributions under the plan will be considered to be income until all income has been withdrawn. In addition, if an employee received (directly or indirectly) any amount as a loan under the plan, the bill treats the amount of the loan as a withdrawal from the plan.

The provision is effective for amounts received or loans made on or after the 90th day after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment with two exceptions. First, the conference agreement defines a plan in which substantially all of the contributions are employee contributions as a plan with respect to which more than 85 percent of the total contributions during a representative period (such as 5 years as determined under Treasury regulations) are employee contributions. Of course, if less than 85 percent of the total contributions for all years during which the plan is in existence are employee contributions, then the plan is not a plan in which substantially all of the contributions are employee contributions.

In addition, under the conference agreement, in the case of the Federal Government or an instrumentality of the Federal Government, the 85 percent test is to be applied by aggregating all plans maintained by the Federal Government or such instrumentality. This aggregation rule applies only to those plans that are actively administered by the Federal Government or the instrumentality. For example, if a plan of the Federal Government was administered by a commercial financial institution, it would not be aggregated for purposes of applying the 85 percent test.

Of course, the conferees intend that amounts which are contributed to a qualified cash or deferred arrangement pursuant to an employee's election to defer are not treated as employee contributions to the extent that the amounts are not currently includible in gross income (sec. 402(a)(8)).

In the case of a pre-existing thrift or savings feature to an employer-funded defined benefit arrangement, the conferees intend that the 85 percent test is applied by aggregating the thrift or savings feature with the defined benefit arrangement. This aggregation rule applies only if the employer has consistently treated the 2 features as a single plan, as by consistently filing for (and receiving) one determination letter and filing one annual return covering both features. Voluntary employee contributions to a qualified defined benefit pension plan are not treated as a separate defined contribution plan merely because they are taken into account as contributions to a defined contribution plan in applying the overall limits on contributions and benefits.

5. Repeal of estate tax exclusion for qualified plan benefits

Present law

Under TEFRA, a $100,000 aggregate limit was imposed on the estate tax exclusion for certain benefits payable under qualified plans, tax-sheltered annuities, individual retirement plans (IRAs), and certain military retirement plans. The TEFRA provision was effective for decedents dying after December 31, 1982.

House bill

No provision.

Senate amendment

The Senate amendment repeals the separate $100,000 estate tax exclusion for benefits under qualified plans, tax-sheltered annuities, IRAs, and military retirement plans.

The provision is effective with respect to decedents dying after December 31, 1984. An exception is provided for the estate of any decedent whose benefits are in pay status on the date of enactment and who, prior to that date, made an irrevocable election to designate the beneficiaries who will receive the retirement benefits and the form of such benefits. In addition, the effective date of the TEFRA estate tax provision is amended to provide a similar exception with respect to the $100,000 limit imposed by TEFRA.

Conference agreement

The conference agreement generally follows the Senate amendment with two modifications. First, the conference agreement continues the rule of present law applicable to certain interests created by community property laws. Thus, under the conference agreement, if the spouse of an employee on whose behalf contributions or payments are made by an employer to a qualified plan or a tax-sheltered annuity dies, the spouse's gross estate does not include the value of any interest of the spouse in the plan or annuity. This treatment applies only if the spouse's interest is attributable to the employer's contributions or payments and arises solely by reason of the spouse's interest under the community property laws of a State.

Second, the conference agreement modifies the exception to the effective date provision of the Senate amendment. Under the conference agreement, an exception is provided for the estate of any decedent whose benefits are in pay status on the date of enactment and who, prior to that date, made an irrevocable election to designate the form of the retirement benefits (including the form of any survivor benefits). The conference agreement does not require the irrevocable designation of a beneficiary in order to qualify for the exception. In addition, the effective date of the TEFRA estate tax provision is amended to provide a similar exception with respect to the $100,000 limit imposed by TEFRA.

6. Affiliated service groups and employee leasing arrangements

Present law

Affiliated service groups

Under present law, all employees of employers that are members of an affiliated service group are treated as employed by a single employer for purposes of the requirements for qualified plans. An affiliated service group consists of certain service organizations and related organizations.

Employee leasing arrangements

Present law provides that, for purposes of certain of the tax-law rules for qualified pension plans and simplified employee pensions (SEPs), certain leased employees are treated as employees of the person who receives their services (the recipient). Present law includes a safe harbor rule under which the leased employee is not treated as the employee of the recipient for purposes of the employee leasing rules if certain requirements are met.

House bill

Affiliated service groups

No provision.

Employee leasing arrangements

The House bill clarifies the present law definition of a leased employee to include only those individuals who are not otherwise employees of the recipient.

The provision is effective for plan years beginning after December 31, 1983.

Senate amendment

Affiliated service groups

The Senate amendment provides that, in determining whether a group of employers constitutes an affiliated service group, more comprehensive attribution-of-ownership rules are provided to include "brother-sister" relationships.

The provision is effective for plan years beginning after December 31, 1984.

Employee leasing arrangements

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the Senate amendment. In addition, the conference agreement provides the Secretary of the Treasury with regulatory authority to develop any rules as may be necessary to prevent the avoidance of any employee benefit requirement to which the employee leasing provisions apply through the use of employee leasing or other arrangements. The conferees do not intend to imply that such regulations could only be applied prospectively.

For example, the conferees are aware of situations in which professionals are hired as leased employees of their own professional corporations in order to avoid the nondiscrimination rules applicable to qualified plans. The conferees intend that regulations will prevent the avoidance of the nondiscrimination rules through the use of such employee leasing arrangements.

The conferees do not intend any inference that this example is the sole situation in which employee leasing is used to avoid the qualified plan requirements. However, the conferees do not intend to imply that legitimate uses of employee leasing are necessarily abuses. For example, the conferees recognize that the historical use by businesses of temporary help company employees on temporary projects generally is not an avoidance situation subject to the Secretary's regulatory authority provided under the conference agreement if the project has an ascertainable termination date and it is not customary under the circumstances to hire permanent employees for such a project.

7. Determination of whether there is a collective bargaining agreement

Present law

Under present law, special rules relating to employee benefits apply with respect to plans covering collective bargaining units. Some of these rules provide effective dates that are more appropriate for these plans. In other cases, rules forbidding discrimination in favor of highly compensated employees are modified or waived with respect to employees included in a collective bargaining unit.

House bill

The House bill clarifies present law by providing that, in determining whether there is a collective bargaining agreement between employee representatives and one or more employers, an organization is not to be considered an employee representative if more than one-half of its members are employees (including a self-employed individual who is considered to be an employee under the rules for qualified pension plans) who are owners, officers or executives of the employer. This provision is effective on April 1, 1984.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

8. Standards for cash-or-deferred arrangements

Present law

Under present law, a cash-or-deferred arrangement is subject to special tests under which the amount that highly compensated employees can elect to defer (and exclude from current gross income) depends upon the level of deferrals by other employees. These special tests do not permit employer-provided social security benefits to be taken into account. However, proposed Treasury regulations permit a cash-or-deferred arrangement to satisfy the general nondiscrimination standards applicable to qualified plans in lieu of the special tests. The general nondiscrimination rules permit employer-provided social security benefits to be taken into account.

House bill

Under the House bill, a cash-or-deferred arrangement is not a qualified cash-or-deferred arrangement unless the special tests applicable to such an arrangement are satisfied. If an arrangement fails to satisfy the special tests, amounts deferred are not excluded from gross income, but the plan of which the arrangement is a part is not to be disqualified if it meets the usual rules for qualification, including the general nondiscrimination requirements.

All plans of an employer required to be aggregated for nondiscrimination purposes are aggregated for purposes of applying the special tests.

The provision is effective for plan years beginning after December 31, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the House bill, with two amendments. First, the conference agreement provides that the deferral percentage taken into account for purposes of applying the special deferral percentage tests is the sum of the deferral percentages for an employee under each cash or deferred arrangement in which the employee participates.

Second, under the conference agreement, the provision does not apply to a cash or deferred arrangement maintained, on June 8, 1984, by a State government and with respect to which a determination letter had been issued on December 6, 1982. The conferees intend that no inference is to be drawn from this effective date provision with respect to the issue of whether a State government may maintain a profit-sharing plan.

In addition, the conferees intend that the agreement does not change the rule contained in proposed Treasury regulations, nonelective contributions by the employer to a cash or deferred arrangement may be taken into account in applying the special deferral percentage tests. Such contributions may be taken into account only if the contributions (1) are nonforfeitable when made and (2) satisfy the withdrawal restrictions applicable to elective deferrals under a qualified cash or deferred arrangement.

9. Treatment of certain medical, etc., benefits under pension plans

Present law

Present law limits contributions and benefits under qualified pension, profit-sharing, and stock bonus plans. Medical benefits provided under a qualified plan are not taken into account in applying the limits.

House bill

Under the bill, in the case of a qualified plan, medical benefits are to be taken into account with respect to any participant who has an individual medical benefit account. A plan is required to maintain such an account for each key employee. The provision applies to years beginning after March 31, 1984.

Senate amendment

The Senate amendment is the same as the House bill, except that the provision is limited to top heavy qualified plans. The provision applies after the date of enactment.

Conference agreement

The conference agreement follows the House bill.

10. Limits on contributions and benefits under qualified plans

Present law

TEFRA reduced the overall dollar limits on contributions and benefits under qualified plans (qualified plans). In addition, TEFRA suspended all cost-of-living adjustments to these dollar limits until 1986. Beginning in 1986, the limits will be adjusted for post-1984 cost-of-living increases under the formula then in effect to provide cost-of-living increases in social security benefits.

House bill

The House bill suspends the cost-of-living adjustments to the dollar limits on benefits and contributions under qualified plans until 1988.

The provision is effective on the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

11. Application of cash-or-deferred arrangement rules to pre-ERISA money purchase pension plans

Present law

Through 1979, the tax treatment of cash-or-deferred profit-sharing and stock bonus plans and money purchase pension plans with salary reduction arrangements in existence on June 27, 1974, was grandfathered under the law before January 1, 1972. The Revenue Act of 1978 provided rules (sec. 401(k)) for all profit-sharing and stock bonus plans with cash-or-deferred arrangements. No new rules were provided by the 1978 Act for pre-ERISA money purchase pension plans with salary reduction arrangements.

House bill

The House bill applies the cash-or-deferred arrangement rules relating to profit-sharing and stock bonus plans to money purchase pension plans with salary reduction arrangements in existence on June 27, 1974. This treatment applies only if employer and employee contributions under the plan do not exceed the limits under the plan's contribution formula in effect on June 27, 1974.

The provision is effective for plan years beginning after the date of enactment. The rules in effect prior to ERISA apply for plan years beginning after December 31, 1979, and before the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

12. Dollar limits on benefits under qualified pension plans for airline pilots

Present law

Under present law, if benefits begin before age 62, the dollar limit on benefits under a defined benefit pension plan is to be actuarially reduced to reflect the value of early payment. Federal regulations require that commercial airline pilots retire after attaining age 60.

House bill

Under the House bill, the reduction of benefits on account of early retirement applies only to those commercial airline pilots whose benefits commence before age 60. The dollar limit on benefits at age 60 is increased to $90,000 for commercial airline pilots.

The provision is effective for years beginning after December 31, 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

13. Elimination of retroactive application of amendments made by Multiemployer Pension Plan Amendments Act of 1980

Present law

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) was enacted on September 26, 1980. Under ERISA, as amended by that Act, liability generally is imposed on an employer who withdraws from a multiemployer defined benefit pension plan. The withdrawal liability provisions of the MPPAA generally apply retroactively to withdrawals after April 28, 1980.

House bill

No provision.

Senate amendment

Generally, under the Senate amendment, any liability incurred by an employer under the withdrawal liability provisions of ERISA, as a result of the complete or partial withdrawal from a multiemployer plan before September 26, 1980, is void. The amendment provides for refunds of amounts paid by an employer to a plan sponsor as a result of such withdrawal liability, reduced by a reasonable amount for administrative expenses incurred by the plan sponsor in calculating, assessing, and refunding the payments.

In the case of an employer who, on September 26, 1980, had a binding agreement to withdraw from a multiemployer plan, the effective date for withdrawal liability is changed to December 31, 1980.

This provision is effective on the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment. Under the conference agreement, a plan sponsor is required to refund with interest (as determined under sec. 401(a)(2)) any amounts paid by an employer to a plan sponsor as a result of any withdrawal liability imposed by reason of a complete or partial withdrawal from a multiemployer plan before September 26, 1980. The plan sponsor may deduct a reasonable amount for administrative expenses incurred by the plan sponsor, other than legal expenses of the plan, incurred in collecting the liability.

The conferees do not intend that multiemployer plans are to be liable for any legal expenses incurred by the withdrawn employer (e.g., in opposing its withdrawal liability).

14. Treatment of certain distributions from a qualified terminated plan

Present law

If a lump sum distribution is paid to an employee (or the spouse of a deceased employee) under a qualified plan, tax is deferred on the portion of the distribution rolled over, within 60 days, to another qualified plan or to an IRA. A distribution from a qualified plan is not a lump sum distribution unless it consists of the balance to the credit of the employee under the plan and is made within one taxable year of the recipient.

House bill

No provision.

Senate amendment

The amendment provides special relief for certain pension plan distributions received during 1976 and 1977 and transferred to an IRA. Under the amendment, the transfers are treated as a qualifying rollover distributions. Thus, to the extent the payments were, in fact, rolled over to an IRA within 60 days of receipt, the distribution will not be includible in income.

The amendment is effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

15. Special rule for Trans-Alaskan Pipeline employees

Present law

Under a qualified plan, benefits are provided to participants under plan formulas that determine the amount of the benefit a participant may earn, the portion of that benefit that has been earned (accrued), and the portion of the earned benefit that is vested or nonforfeitable.

Under the Code, if an employer maintains a qualified plan and an act of the employer (e.g., dismissing employees) causes a partial termination of the plan, then the rights of all affected employees to benefits accrued to the date of the partial termination generally must be nonforfeitable to the extent those benefits are funded. Under the Code, whether a partial termination of a qualified plan has occurred (and the time of its occurrence) is determined by the Commissioner of Internal Revenue on the basis of all the facts and circumstances in a particular case.

House bill

No provision.

Senate amendment

Under the Senate amendment, a partial termination does not occur in the case of a turnover of employees under a plan in the State of Alaska occurring between December 31, 1975, and January 1, 1980, in connection with the completion of the Trans-Alaskan Oil Pipeline construction project if certain requirements are met.

The provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

16. Distribution requirements for plans, accounts, and annuities of an insurer in rehabilitation proceedings

Present law

Under present law, distributions under a qualified plan generally must commence in the later of the taxable year in which a participant (1) retires or (2) attains age 70½. Distributions under an IRA must commence no later than the year in which the owner attains age 70½. If the IRA distribution rules are not satisfied, a 50-percent excise tax is applied to the amount that should have been distributed.

House bill

No provision.

Senate amendment

The Senate amendment provides that an amount is not required to be distributed under the usual rules for qualified plans and IRAs to the extent that the amounts are held by an insurer that, on March 15, 1984, is engaged in a rehabilitation proceeding under applicable State insurance law (e.g., Baldwin-United). The provision applies only for the period during which the insurer is engaged in the proceedings.

The provision is effective on March 15, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

17. Extension of time for repayment of qualified refunding loans

Present law

TEFRA imposed limits on the extent to which an individual can borrow amounts from a qualified plan without the loan being treated as a distribution to the individual under the plan. Under TEFRA, a transition rule was provided for certain "qualified refunding loans" made on or after August 13, 1982, and repaid before August 14, 1983.

House bill

No provision.

Senate amendment

The bill extends the period for making and repaying a qualified refunding loan to January 1, 1985, with respect to individuals who are not key employees, without regard to whether the plan is top-heavy.

The provision is effective as if enacted in TEFRA.

Conference agreement

The conference agreement follows the Senate amendment.

18. Pension portability involving telecommunications divestiture

Present law

Under the rules for qualified plans, all employees of related employers are treated as employed by a single employer. Consequently, an employee's service with a predecessor employer is treated as service with a successor employer. Generally, two or more employers may agree to provide for transferability of benefit and service credits (portability) under their plans even though they were never related.

Under the modified final judgment requiring the divestiture of AT&T subsidiaries, with respect to an employee's service with AT&T or any of its subsidiaries subject to the judgment, an employee's service performed before 1985 is treated as service for each other employer subject to the judgment. Under the judgment, however, post-1984 service for one of the employers subject to the judgment is not to be taken into account as service by any of the other employers subject to the judgment.

House bill

No provision.

Senate amendment

Under the Senate amendment, the recognition after December 31, 1983, of creditable service of a transferred qualifying employee, and the treatment after that date of associated accrued benefits and assets, are to be governed by the provisions of the modified final judgment as those provisions applied during calendar year 1984 with respect to transfers to or from the divesting corporation and any subsidiary. The provision applies in the case of a qualifying employee who transfers between any entities subject to the modified final judgment. The Senate amendment does not limit benefits that would otherwise be provided under the modified final judgment or under applicable law.

The Senate amendment provides that, in computing the overall limits on contributions and benefits (sec. 415 of the Code) for any employee who, on December 31, 1983, was an employee of an entity subject to the modified final judgment, contributions and benefits under all plans of such entities shall be taken into account. Accordingly, contributions and benefits provided after December 31, 1983, for such employees, are to be taken into account together with contributions and benefits provided as of December 31, 1983. The provision clarifying the application of the overall limits in this case is not to be regarded as a precedent for the determination of how the limits apply in other cases.

The Senate amendment exempts the employees of Sandia Corporation of Albuquerque, N.M., from coverage under the provision.

Generally, the provision applies on the date of enactment. The provisions with respect to the limits on contributions and benefits apply for years ending after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment with several modifications.

Under the conference agreement, in the case of any change in employment on or after January 1, 1985, by a covered employee, the recognition of service credit and the enforcement of such recognition, shall be governed in the same manner and to the same extent as provided under the divestiture interchange agreement for a change in employment by a covered employee during calendar year 1984.

Prior to divestiture, the Bell System Pension Plan provided for the full recognition and interchange of service credit and benefit obligations between and among all participating Bell System companies, and including Cincinnati Bell and Southern New England Telephone. These provisions were formally known as "interchange" agreements.

After divestiture, however, the interchange agreements were no longer applicable. In place of those agreements, a "divestiture interchange agreement" was entered into by AT&T, the regional Bell operating companies, the BOCs' Central Services Organization, Advanced Mobile Phone Service, Inc., and Cincinnati Bell.

The divestiture interchange agreement provides continued mutual reciprocal recognition of post-divestiture service credit between and among AT&T, the divested Bell operating companies, and the other parties to that agreement. Recognition of service credit applies for all purposes, including seniority provisions under applicable collective bargaining agreements.

The applicability of the divestiture interchange agreement is limited to calendar year 1984, in the case of most Bell System employees. The vast bulk of AT&T and Bell company employees, in other words, would not be able to take their accumulated service credit with them in the event of a move from one local Bell company to another, or between a local Bell company and AT&T, after 1984. *See* Plan of Reorganization submitted on December 16, 1982, in *United States* v. *Western Electric Co., et al*, Civil Action No. 82-0192 (D.D.C.), 284-289. The Plan of Reorganization, including this limited portability of service credit, was approved by U.S. District Judge Harold H. Greene on August 5, 1983. *United States* v. *Western Electric Co., et al.*, 569 F. Supp. 1057 1091-1097 (D.D.C. 1983), aff'd *sub nom. California* v. *United States*, 104 S. Ct. 542 (1983).

Notwithstanding the time limitations in the divestiture interchange agreement, the conference agreement permanently extends beyond 1984 the provisions of the agreement that govern the recognition of service credit and the enforcement of such recognition, in the case of any change in employment by a covered employee on or after January 1, 1985. For such an employee, in other words, there would be no time limitation on the portability of service credit granted under the divestiture interchange agreement. In addition, as noted above, employees of Southern New England Telephone Company would also be covered by the legislation, even though the company did not sign the divestiture interchange agreement.

Under the conference agreement, a covered employee is an employee of an entity subject to the modified final judgment who is serving in an eligible position, and who was either (A) an employee of an entity subject to the modified final judgment, and serving in an eligible position, on December 31, 1983, or (B) a former employee who had rehire or recall rights on December 31, 1983, under applicable collective bargaining agreements, and who is rehired during the period of his or her rehire or recall rights. A covered employee can move from one entity subject to the modified final judgment to another such entity without losing service credit.

A person need not work continuously after December 31, 1983, for an entity subject to the modified final judgment (a "subject entity"), in order to be considered a covered employee. For example, suppose a person who was working for a subject entity on December 31, 1983, continues to work for that company during 1984 and 1985, but leaves in 1986 for a job with a firm that is not a subject entity. In 1987, that person returns to work at a subject entity (although not necessarily the same company he or she left in 1986). Under those circumstances, that person would be a covered employee during 1984 and 1985, and again beginning in 1987. The subject entity for which he or she is working in 1987 must recognize the service credit he or she accumulated during employment with other subject entities. The conferees do not intend that subject entities must recognize service credit earned at firms that are not subject to the modified final judgment; nor do the conferees intend this provision to require employers who are not subject to the modified final judgment to recognize service credit earned at subject entities.

The conference agreement provides that "service credit" means service credit for benefit accrual, vesting, and eligibility for any benefits under pension plan, or any other employee benefits, including seniority rights; the right to other benefits such as medical and dental care, insurance, and disability payments; the ability to bid on vacations and shifts; and any other rights which have been secured under applicable collective bargaining agreements. The term also includes the interchange and treatment of associated benefit obligations and assets.

"Change in employment" means the movement of a covered employee from one entity subject to the modified final judgment to another such entity. Even if there is a break in service—for instance, where a person moves from one entity subject to the modified final judgment to a firm not subject, and from there to another entity that is subject—the eventual movement from the first entity subject to the modified final judgment to the second such entity is a "change in employment" for purposes of this legislation. However, as noted above, only service credit earned at entities subject to the modified final judgment is required to be recognized in the event of a change in employment.

Under the conference agreement, an "eligible position" means a nonsupervisory position, or a position that pays not more than $50,000 (adjusted by the percentage increase in the consumer price index since December 31, 1983). "Modified final judgment" means the settlement of the AT&T antitrust suit, *United States* v. *Western Electric Co., et al.*, Civil Action No. 82-0192 (D.D.C.).

"Entity subject to the modified final judgment" means the 22 Bell operating companies divested under the settlement of the AT&T (except for any subsidiary that does not participate in a defined benefit pension plan, as discussed below); Southern New England Telephone Company and Cincinnati Bell Inc., which were not divested under the antitrust settlement, but in which AT&T held a minority interest on December 31, 1983; and any Interchange Company, as defined in the divestiture interchange agreement, together with any subsidiary of such company which was established as of December 31, 1983, and which participates in a defined benefit pension plan maintained by the Interchange Company.

AT&T, the seven regional Bell holding companies, the BOC's Central Services Organization (now called Bell Communications Research, Inc.), Advanced Mobile Phone Service, Inc., and Cincinnati Bell, Inc. are Interchange companies under the divestiture interchange agreement, and are therefore included in the term "entity subject to the modified final judgment." In addition, it is the conferees' understanding that all Interchange Company subsidiaries established as of December 31, 1983 (except for AT&T's Sandia Corporation, U.S. West's Beta West, Inc. and U.S. West Services, Inc., and Bell South Enterprises) currently participate, or shortly plan to participate, in a defined benefit pension plan. Consequently, they are also entities subject to the modified final judgement. These subsidiaries include, but are not limited to, Bell Labs, Western Electric, AT&T Information Systems, and the cellular radio subsidiaries of the regional Bell operating companies. The conferees do not intend to restrict the ability of any Interchange Company to extend portability of service credit to employees at any other subsidiary, under a collective bargaining agreement, for example, or by any other means.

The conferees recognize that some subsidiaries established as of December 31, 1983, did not participate in defined benefit pension plans until after that date. The conferees intend that any subsidiary which participates in such a plan, regardless of when the decision to participate is made, will be included in the term "entity subject to the modified final judgment." The conferees also intend that such term include any subsidiary which participates in a defined pension plan on the date of enactment of this legislation.

Under the conference agreement, "divestiture interchange agreement" means the agreement among the Bell System companies and AT&T, executed as of November 9, 1983, which provides for mutual reciprocal recognition of service credit. "Consumer price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

Nothing in this conference agreement is intended to limit benefits that are otherwise available to any individual under the provisions of the modified final judgment (including the divesture interchange agreement), under applicable law, or otherwise. This includes, but is not limited to, rights under the Communications Act of 1934, as amended, and the Employee Retirement Income Security Act of 1974 (ERISA), as amended. A person alleging a violation of this legislation may seek redress under the Communications Act of 1934 (which governs communications common carriers), under applicable labor and pension statutes, or at common law.

The conference agreement does not follow the Senate amendment with respect to the limits on contributions and benefits under sec. 415. It is the understanding of the conferees that present law provides for the aggregation of contributions and benefits under plans maintained by separate employers for purposes of the overall limits on contributions and benefits in situations in which prior service with another employer is recognized by the employer.

B. Welfare Benefit Plans

1. Deductions for contributions to funded benefit plans

Present law

An employer's contribution to a fund that is a part of a welfare benefit plan may be deductible in the year it is made rather than at the time the benefit is provided. Deductions for employer contributions to a nonqualified deferred compensation plan are generally not allowed until an amount is includible in the gross income of the employee.

House bill

The House bill generally limits employer deductions for a contribution to a VEBA, SUB to the amount that would be deductible by a cash-method taxpayer for a payment under an unfunded plan. An additional deduction is allowed for an addition to a funded reserve. Generally, the reserve is limited to 75 percent of insurance-type benefits provided by the plan during the current year and the preceding year. A transitional rule is provided for pre-enactment accumulations.

The House bill would generally apply to contributions paid or accrued after March 31, 1984 in taxable years ending after that date. The bill provides a delayed effective date for collectively bargained plans.

Senate amendment

No provision.

Conference agreement

a. Contributions to funded welfare benefit plans

The conference agreement generally follows the House bill, with modifications. In general, deductions for contributions to a welfare benefit fund are limited to qualified costs, which is the sum of (i) qualified direct costs, and (ii) additions, within limits, to a qualified asset account. Several changes are made to the definitions of qualified direct cost and welfare benefit and substantial modifications are made to the allowable limit on a qualified asset account.

Child care facilities.—Under the conference agreement, in determining qualified direct costs with respect to a child care facility held by a fund, the adjusted basis of the facility is treated as deductible ratably over a period of 60 months. A child care facility is tangible property of a character subject to depreciation and located in the United States, and must be a child care center primarily for children of the employees of the employer. As under the House bill, qualified direct costs with respect to other capital expenditures are those which would be allowed under the usual Code rules which would be applied if the employer owned the asset.

Definition of welfare benefit fund.—In general, this section of the bill applies to contributions to welfare benefit funds which are organizations, reserves or accounts held by organizations, through which an employer provides welfare benefits to employees or their beneficiaries. In prescribing regulations relating to the definition of the term "fund," the conferees wish to emphasize that the principal purpose of this provision of the bill is to prevent employers from taking premature deductions, for expenses which have not yet been incurred, by interposing an intermediary organization which holds assets which are used to provide benefits to the employees of the employer. Thus, a retired life reserve or premium stabilization account ordinarily is to be considered a fund or part of a fund, since such an account is maintained for an individual employer and that employer has a determinable right to have the amount in such an account applied against that employer's future costs of benefit claims or insurance premiums. A similar situation exists with respect to premium arrangements, under which an employer may, in some cases, pay an insurance company more in a year than the benefit costs incurred in that year and the employer has an unconditional right in a later year to a refund or credit of the excess of payments over benefit costs. In contrast, an ordinary disability income policy under which an employer pays a premium so that employees who become disabled in that year may collect benefit payments for the duration of disability is not a fund, since the employer has no right to recover any part of the premium payment and the future benefit payments to an employee whose disability occurs during the period for which the premium is paid is not contingent on any further payments by the employer. While in many cases welfare benefit funds are designed to function in a manner similar to insurance arrangements, the conference is concerned that there are no clear standards or limitations applicable to such funds that prevent their utilization for substantial nonqualified deferred compensation funding outside the general pension plan funding, accrual and vesting rules.

Limitations on qualified asset account.—The conference agreement includes substantial modifications to the provisions setting forth the limitation on additions to a qualified asset account. Such an account consists of assets set aside for the payment of disability benefits, medical benefits, supplemental unemployment or severance pay benefits, and life insurance or death benefits.

In general, the account limit is the amount estimated to be necessary under actuarial assumptions that are reasonable in the aggregate, to fund the liabilities of the plan for the amount of claims incurred but unpaid, for benefits described in the previous paragraph and administrative costs of such benefits, as of the close of the taxable year. Claims are incurred only when an event entitling the employee to benefits, such as a medical expense, a separation, a disability, or a death actually occurs. The allowable reserve includes amounts for claims estimated to have been incurred but which have not yet been reported, as well as those claims which have been reported but have not yet been paid. An example of an incurred but unpaid claim is the occurrence of the death of an employee during the year under a plan that provides for payments to a survivor of the employee for the survivor's remaining life. Under the conference agreement, the qualified asset account may include the estimated present value of the future stream of benefits payable to this survivor, using reasonable assumptions as to earnings of the fund and mortality experience.

With respect to disability benefits, the conferees expect that Treasury regulations will provide more specific guidance as to the time at which claims are incurred. It is the intention of the conferees that a disability is to be defined as any serious physical or mental impairment which causes an inability to perform a substantial portion of the duties of an individual's ordinary employment. The conferees intend that funding of claims with respect to an indefinite period of time is to be allowed only in connection with disabilities which are determined to be long-term disabilities. Such disabilities are those which (1) a medical evaluation determines is expected to last for more than 12 months and (2) has persisted for at least 5 months. With respect to such disabilities, current deductions are to be allowed for contributions necessary to fund the expected future stream of benefit payments using reasonable assumptions as to morbidity, mortality, and fund earnings. Other disabilities which have persisted for at least 2 weeks are to be considered short-term disabilities; no more than 5 months of benefit payments may be deemed to have been incurred with respect to short-term disabilities.

In general, in addition to requiring that actuarial assumptions are to be reasonable in the aggregate, Treasury regulations may prescribe specific interest rate and mortality assumptions to be used in all actuarial calculations. Such assumptions are to be consistent with requirements provided elsewhere in conference agreement for the computation of tax reserves held by life insurance companies.

Limitation on disability, or SUB, or severance benefits taken into account.—In the case of any disability benefit, a reserve may not be established with respect to a benefit payment in excess of the lesser of the limit for the year on an annual benefit under a qualified defined benefit pension plan ($90,000 for 1984) or 75 percent of a disabled employee's annual compensation from the employer.

With respect to supplemental unemployment compensation benefits (SUB) and severance pay benefits the portion of an annual benefit in excess of 1.5 times the limit on contributions under a qualified defined contribution plan ($45,000 for 1984) for any employee is not to be taken into account in determining the limit.

Prefunding of life insurance, death benefits, or medical benefits for retirees.—The qualified asset account limits allow amounts reasonably necessary to accumulate reserves under a welfare benefit plan so that the medical benefit or life insurance (including death benefit) payable to a retired employee during retirement is fully funded upon retirement. These amounts may be accumulated no more rapidly than on a level basis over the working life of the employee, with the employer of each employee. Each year's computation of contributions with respect to retiree medical benefits is limited to the use of assumptions that the medical benefits provided to retirees in the future will have the same cost as medical benefits currently provided to retirees (projected inflation is not to be taken into account). Of course, no advance deduction is to be allowed with regard to a plan which provided medical or life insurance benefits exclusively for retirees, since such a plan would be considered a deferred compensation plan subject to the rules of section 404 rather than the provision applicable to funded welfare benefit plans. The conferees intend that the Treasury Department prescribe rules requiring that the funding of retiree benefits be based on reasonable and consistently applied actuarial cost methods, which take into account experience gains and losses, changes in assumptions, and other similar items, and be no more rapid than on a level basis over the remaining working lifetimes of the current participants (reduced on the basis of reasonable turnover and mortality assumptions).

Further, contributions for any employee who is a key employee are required to be accounted for separately by a welfare benefit fund. The separate account is to include amounts contributed to the plan with respect to any service after the employee becomes a key employee as well as a reasonable allocation (determined under Treasury regulations) of amounts contributed to the fund on account of the employee before key employee status was attained. Medical and life insurance benefits with respect to such an employee may be only from such account. In addition, in the case of a key employee, the conference agreement provides that post-retirement medical benefits are to be taken into account in applying the limitations on contributions and benefits under qualified plans (sec. 415) under principles similar to those applicable to post-retirement medical benefits provided by qualified pension plans.

In addition, under the conference agreement, if the life insurance or medical coverage provided by a plan discriminates in favor of employees who are officers, shareholders, or highly compensated, then the limit on the qualified asset account may not take account of contributions to provide such coverage.

Finally, the amount of life insurance or death benefit that may be taken into account with respect to prefunding of retiree benefits of any employee is not to exceed the amount of the insurance that may be provided to the employee tax-free under section 79. This amount generally is limited to $50,000 but the $50,000 limit may not apply in the case of certain grandfathered employees defined by amendments to section 79 elsewhere in the conference agreement.

SUB and severance pay reserve.—The conference agreement provides an additional reserve for SUB and severance pay benefits equal to 75 percent of the sum of (a) the average annual qualified direct cost of such benefits provided and (b) the administrative costs, during any 2 of the immediately preceding 7 years. Such benefits may include medical or other benefit payable to severed or unemployed workers. The agreement also authorizes Treasury regulations under which an interim limit is to be provided in the case of a new SUB or severance pay plan. The interim reserve is not available, under the agreement, in the case of a plan that provides SUB or severance benefits for any employee who is a key employee.

Safe-harbor.—The conference agreement provides that an actuarial certification by a qualified actuary (determined under Treasury regulations) justifying the taxpayer's reserve computations is not necessary if the amount in the qualified asset account is below a prescribed safe harbor, equal to the sum of separate safe harbor amounts computed with respect to each benefit. For short-term disability benefits, the safe harbor amount is 17.5 percent of benefit costs plus administrative costs in the prior taxable year; for medical benefits, the safe harbor amount is 35 percent of prior year medical benefits and allocable administrative costs. For SUB or severance benefits, the safe harbor amount is the additional reserve described above. Safe harbor amounts for long-term disability, life insurance and retiree medical benefits may be prescribed by Treasury regulations. For any safe harbor limitation based on prior plan costs, insurance premiums may not be taken into account, because the conferees do not intend that a fund is to be used as a vehicle for prepayment of insurance premiums for current benefits. Even if the safe harbors are satisfied, the taxpayer is to show that the reserves, as allowed under the general standards provided by the bill (e.g., claims incurred but unpaid) are reasonable.

Certain collectively bargained plans.—By July 1, 1985, the Treasury Department is to publish final regulations establishing special reserve limit principles with respect to welfare benefit funds maintained pursuant to an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence of good faith bargaining over the benefits provided by the plan between the employee representatives and the employer (or employers).

In establishing these limits, the Treasury is to presume that reserves in such plans are not excessive because of the arm's length negotiations between adversary parties inherent in the collective bargaining process. Because contributions under such plans are often made on the basis of a defined contribution fixed over a multiyear period on the basis of economic assumptions which prove to be incorrect and because such contributions may be the only source of benefits to be provided during layoffs, strikes, lockouts, and economic recession, these special limits are to allow substantial flexibility in determining the application of these provisions with respect to such plans.

Transitional rule.—Under the conference agreement, in the case of a plan that was in existence on June 22, 1984, special rules are provided for the determination of the limit for each of the first four years to which the provision applies. In particular, the agreement provides that for the first year, the limit for the year is to be the sum of (1) the limit determined without regard to the transitional rule, and (2) 80 percent of the excess reserve amount. The excess reserve amount for any year is the excess of the reserve as of the end of the first plan year ending after the date of enactment over the limit determined without regard to the transitional rule. For the second, third, and fourth succeeding years, 60, 40, and 20 percent, respectively, of the excess reserve amount for such years is to be added to the limit determined under the usual rules.

Elective aggregation.—Under the conference agreement, an employer may elect to aggregate plans and funds in applying the deduction limits and the rules prohibiting discrimination in favor of certain employees. The agreement provides, however, that the election to aggregate must be consistent for deduction and discrimination purposes. For example, if an employer elects to aggregate 2 plans for deduction purposes, those 2 plans must be aggregated for discrimination purposes.

10 or more employer plans.—For a plan year in which no employer (or employers related to an employer) are required to contribute more than 10 percent of the total contributions, the conference agreement provides that the deduction limits do not apply. The exclusion is provided because under such a plan, the relationship of a participating employer to the plan often is similar to the relationship of an insured to an insurer. The agreement authorizes Treasury regulation under which the percentage may be increased in appropriate cases. For example, a higher percentage could be appropriate in the case of a plan maintained by employers in the construction industry if unusual building activity in the geographic area covered by the plan causes temporary and unusual distortions in the contribution pattern under the plan.

The agreement provides, however, that notwithstanding compliance with the 10-percent rule, and consistent with the discussion above on definition of a fund, a plan is not exempt from the deduction limits if the liability of any employer who maintains the plan is determined on the basis of experience rating because the employer's interest with respect to such a plan is more similar to the relationship of an employer to a fund than an insured to an insurer.

Effective date.—These provisions generally apply to contributions paid or accrued after December 31, 1985. However, in the case of a plan maintained under a collective bargaining contract in effect on July 1, 1985, or ratified before that date, the provisions do not apply until the termination of the contract, determined without regard to any contract extension agreed to after that date.

In addition, these provisions apply to any contribution of a facility to a welfare benefit fund after June 22, 1984, so that deductions with respect to this contribution are to be determined under usual Code rules applicable to recovery of the cost of assets (but taking account of the special rule for child care facilities described above). Further, these rules apply to other contributions, such as cash, made after that date which are to be used to acquire a facility, so that later acquisition of facility with the use of such funds will limit the deduction for the original contribution. This rule does not apply for any facility acquired under a binding contract in effect on and at all times after that date or any facility under construction on June 22, 1984.

b. Unfunded deferred benefits

The conference agreement follows the House bill, with two modifications. First, the agreement provides that any vacation benefit to which an election applies under section 463 is not to be considered a deferred benefit subject to the rules of section 404. Second, the bill provides that that provision generally is effective for amounts paid or incurred after the date of enactment. However, in the case of an extended vacation pay plan in effect on June 22, 1984 and maintained under a collective bargaining agreement, the provision is not effective until the agreement terminates (without regard to any extension agreed to after June 22, 1984). An extended vacation pay plan is one under which employees gradually over a period of years earn the right to additional vacation which cannot be taken until the end of this period. Such a plan is a deferred benefit plan, which under the conference agreement is subject to the deduction-timing rules of section 404.

However, the conferees intend that payment of bonuses or other amounts within 2½ months after the close of the taxable year in which significant services required for payment have been performed is not to be considered a deferred compensation or deferred benefit plan. The conferees also intend that the reference in the House bill to deferred compensation arrangements under section 404(b) includes all compensation, fee, and similar payments, however denominated, except those which are specifically exempted.

2. Excise taxes on funded benefit plans

Present law

No provision.

House bill

No provision.

Senate amendment

Under the Senate amendment, an excise tax is imposed on an employer who maintains a top heavy funded welfare benefit plan with an excess reserve. The tax is equal to the sum of (1) for each year in which an excess arose, the product of the addition to the excess and the highest corporate income tax rate in effect for the current year, and (2) a tax equal to interest on that amount from the time the excess arose to the current year.

The Senate amendment defines excess reserves for a year as reserves in excess of the reserve limit. The reserve limit for a year is the sum of (1) 3 times the average annual benefits paid by the fund during the current year and the preceding year for total and permanent disability, and (2) ⅓ of the average annual benefits paid by the fund during that period for medical care, severance pay, and supplemental unemployment compensation.

Under the Senate amendment, a fund is generally top heavy for a year if more than 50 percent of any class of its benefits are provided to key employees. Special rules are provided for educational benefits and in the case of a benefit that consists of the use of a facility, top heavy use of the facility would result in excise taxes on the employer and on key employees. Benefits provided by a top heavy fund to a key employee are subject to an excise tax imposed at the highest individual income tax rate for the year.

The Senate amendment defines a key employee as (a) an owner of more than 5 percent of the employer, (b) an officer of the employer, or (c) a member of the family of a key employee. Key employee status is permanent under the Senate amendment.

The Senate amendment applies to years beginning after December 31, 1984.

Conference agreement

Under the conference agreement, an excise tax is imposed with respect to disqualified benefits provided by a fund under a welfare benefit plan. The tax is equal to 100 percent of the disqualified benefits provided during a taxable year and is imposed on the employer who maintains the fund.

Under the agreement, a disqualified benefit is (1) (any medical benefit or life insurance benefit provided with respect a key employee (sec. 416(i)) other than from a separate account established for that employee under the new rules relating to deductions under funded welfare benefit plans (sec. 419(A)(d)), (2) any medical or life insurance benefit provided with respect to a retired employee unless the benefit is provided from a fund that meets the additional requirements for tax exempt status provided by the agreement (sec. 505(b)(1)), and (3) any portion of the fund reverting to the benefit of the employer.

The amount to be charged against a key employee's account is to be determined under Treasury regulations. The conferees intend that these regulations will provide for the computation of this amount on the basis of the key employee's allocable share of the cost of providing the benefit for the year to all covered employees.

This provision is effective under the same rules applicable to the provisions relating to deductions for plan contributions.

3. Tax treatment of exempt benefit organizations

Present law

The income of certain tax-exempt organizations, including a supplemental unemployment compensation benefit trust (SUB) and a group legal service organization (GLSO) generally is not subject to income tax. However, a tax applies to the unrelated business income of such an organization. In addition, the other income of a voluntary employees' beneficiary association (VEBA) is subject to the tax on unrelated business income to the extent it is not set aside for an exempt purpose. No specific limit is provided on the amount that may be set aside for an exempt purpose.

No part of the net earnings of a tax-exempt VEBA may inure to the benefit of any private shareholder or individual other than through the payment of permissible benefits. Under Treasury Regulations, a VEBA violates this standard if it does not meet rules prohibiting discrimination in favor of employees who are officers, shareholders, or highly compensated. The eligibility criteria for VEBA membership and benefits under a VEBA may not be established or administered in a manner that limits membership or benefits to officers, etc., or entitles them to benefits that are disproportionate to benefits for other employees. A tax-exempt VEBA is required to benefit at least 2 employees.

Under present law, an organization or trust created or organized exclusively to form part of a group legal services plan (within the meaning of sec. 120) may be entitled to tax exemption.

House bill

Unrelated business income tax.—The income of a VEBA, SUB, or GLSO for a year is subject to the tax on unrelated business income to the extent that benefit plan reserves for the year exceed the reserve limit.

Benefits for certain employees.—A VEBA, SUB, or GLSO is not tax exempt if more than 25 percent of any class of benefits it provides is provided to an individual who (a) is one of the 5 highest paid officers, (b) owns more than 10 percent of the value of the employer, or (c) is one of the 10 percent highest paid employees. The provision does not apply to a collectively bargained plan.

Discrimination.—A VEBA, SUB, or GLSO is not tax exempt if any class of benefits discriminates in favor of highly compensated employees. The new nondiscrimination standard does not apply to a class of benefits for which a nondiscrimination standard is otherwise provided by the Code. The provision does not apply to a collectively bargained plan.

Reporting requirements.—A VEBA, SUB, or GLSO is not tax exempt unless it notifies the IRS of its claim to tax exempt status.

Effective date.—The provision applies to taxable years beginning after December 31, 1984.

Senate amendment

Unrelated business income tax.—No provision.

Benefits for certain employees.—Similar to the House bill except that the limit is applied to benefits provided to key employees. Under the Senate amendment, the following are key employees permanently: (1) an owner of more than 5 percent of the employer, (2) an officer of the employer, or (3) a member of the family of a key employee. The provision does not apply to a multiemployer plan.

Discrimination.—Same as the House bill except that if the Code provides standards under which a class of VEBA, SUB, or GLSO benefits is excludible from gross income, then the nondiscrimination rules of the Senate amendment are met only if those standards are satisfied. The provision does not apply to a multiemployer plan.

Reporting requirements.—An employer who maintains a VEBA, SUB, or GLSO is required to report on whether the organization meets the nondiscrimination and concentration of benefits standards.

Effective date.—Same as the House bill.

Conference agreement

Unrelated Business Income.—Under the conference agreement, the special rules applicable to voluntary employees' beneficiary associations (VEBAs) and social clubs for purposes of the tax on unrelated business taxable income are extended to supplemental unemployment compensation benefit trusts (SUBs) and group legal service organizations (GLSCs). In addition, under the agreement, more specific limits are provided with respect to the amount that may be set aside for exempt purposes by such an organization.

Under the agreement, in the case of a VEBA, etc., the amount set aside for an exempt purpose is generally not to exceed the qualified asset account limit (sec. 419A(c)) for the taxable year (without taking into account any reserve for medical benefits provided to retired employees). In addition, the amount set aside for exempt purposes is not to include any facility used to provide recreational and other certain other benefits. The limit on the set-aside applies to more-than-10-employer VEBAs which are exempt from the deduction limitations.

The agreement provides a transitional rule for existing reserves to provide medical benefits and life insurance benefits to retired employees. Under the agreement, the income attributable to an existing reserve is not subject to the new rules for calculating unrelated business taxable income. The agreement provides that an existing reserve is the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the bill for purposes of providing such benefits. The transition relief applies to a reserve to provide such benefits only to the extent the reserve does not exceed the amount that could be accumulated under the principles of Rev. Ruls. 69-382, 1969 C.B. 28, and 73-599, 1973-2 C.B. 40. All future payments of medical or life insurance benefits to retirees under plans of the employer are to be charged against the reserve to which the transition rule applies.

The new rules for calculating unrelated business taxable income are not to apply to any organization if substantially all of the contributions to the organization are made by employers who were exempt from income tax throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

The agreement also provides for a tax on an employer who maintains a welfare benefit fund that is not exempt from income tax. Under the agreement, in the case of any welfare benefit fund, such as a retired life reserve account, that is not exempt from income tax as a social club, VEBA, SUB, or GLSO, the employer who maintains the fund is to include in gross income for the taxable year an amount equal to the deemed unrelated income of the fund. The agreement provides that deemed unrelated income of such a welfare benefit fund is the amount that would be unrelated business taxable income of the fund if it were a tax exempt social club, VEBA, SUB, or GLSO. In determining deemed unrelated income, at the election of the employer, 2 or more nonexempt welfare benefit funds of the employer may be treated as a single fund. Also, under the rules relating to deemed unrelated income, the aggregation rules applicable to qualified pension plans are to apply.

This provision is effective under the same rules applicable to the provisions relating to deductions for plan contributions.

Benefits for Certain Employees.—The conference agreement does not contain the provisions of the House bill on the Senate amendment.

Discrimination.—The conference agreement generally follows the provisions of the House bill establishing new nondiscrimination standards for a tax-exempt voluntary employees' beneficiary association (VEBA), or group legal services organization (GLSO). With respect to the nondiscrimination rules, certain employees who are not covered by a plan may be excluded from consideration in applying the nondiscrimination standards. These employees are employees who have not attained the age of 21, employees who have not completed 3 years of service with the employer, less than ½-time employees, employees who are included in certain collective bargaining units, and certain nonresident aliens.

The conferees wish to clarify the rules of the House bill relating to integration of benefits under a VEBA with social security. In testing whether a disability plan funded with an exempt trust violates the rules forbidding discrimination in favor of employees who are officers, shareholders, or highly compensated, a part of each employee's Social Security benefit (the part considered to be paid for by the employer) can be taken into account as if it were provided under the employer's plan. Similar integration rules are provided for qualified pension plans.

For example, a pension plan may provide a retirement benefit that is reduced by up to 83⅓ of the primary insurance amount for the employee under Social Security. This 83⅓ percent offset represents the part of the employee's Social Security benefit that the employer is considered to have provided. It includes the value of the employer's Disability Income (DI) contribution, as well as his Old-Age and Survivor's Insurance (OASI) contribution. The Disability Income benefit is considered to make up 10 percent of the value of employer-provided Social Security benefits. Thus, if the employer provides a disability benefit under the pension plan and the disability benefit is reduced by 100 percent of the Social Security benefit, then the employer may "take credit" for only 90 percent of employer-provided Social Security benefits when paying a retirement benefit. Accordingly, only 75 percent (90 percent of 83⅓) of Social Security benefits could be subtracted from the retirement benefit.

Thus, under the agreement, if an employer's pension plan is not more than 90 percent integrated—that is, it does not reduce benefits by more than 90 percent of the amount by which they could be reduced (e.g., by more than 75 percent of social security benefits)—then double integration does not occur. In this case, the agreement requires no change in either the pension plan or the disability plan.

On the other hand, if an employer's pension plan is more than 90 percent integrated, the full value of the Disability Income benefit under Social Security could not be used to reduce long-term disability benefits under the employer's plan. For example, if the pension plan is 93 percent integrated (so that 30 percent of the employer's Social Security Disability Income benefit has been used by the pension plan), then no more than 70 percent of the Disability Income benefit could be applied to reduce long-term disability benefits under the employer's plan. Of course, if the pension plan were 100 percent integrated, the long-term disability benefit under the employer's plan could not be integrated with Social Security. The rules relating to integration of long-term disability benefits apply to benefits funded by employer contributions as well as benefits funded by employee contributions.

Of course, the agreement also permits the integration of long-term disability benefits with workers' compensation benefits.

In addition, the agreement does not affect the integration of long-term disability benefits for employees who are disabled before the effective date.

Effective date.—The conference agreement follows the House bill.

Reporting Requirements.—The conference agreement follows the House bill.

Studies.—Under the conference agreement, the Secretary of the Treasury is directed to study the possible means of providing for minimum standards for employee participation, vesting, accrual, and funding under welfare benefit plans for current and retired employees (including separated employees). The study is to include a review of whether the funding of welfare benefits is adequate, inadequate, or excessive. The Secretary is to report to the Congress with respect to the study by February 1, 1985. The conferees expect that the Secretary will provide suggestions for minimum standards where appropriate.

1. Employer and welfare benefit fund treated as related persons

Present law

Under present law, the gain from the sale of depreciable property between certain related taxpayers is treated as ordinary income but an employer and a welfare benefit fund to which the employer contributes are not generally treated as related parties.

House bill

The House bill treats an employer and a welfare benefit fund as related parties if the employer controls the fund directly or indirectly.

The provision applies to sales and exchanges after the date of enactment, in taxable years ending after that date.

Senate amendment

The Senate amendment is the same as House bill except that the provision applies to a welfare benefit fund whether or not the fund is exempt from tax.

Conference agreement

The conference agreement follows the Senate amendment.

C. Employee Benefits

1. Exclusions for certain employer-provided fringe benefits; moratorium

Present law

General rule

Gross income, for income tax purposes, includes "all income from whatever source derived" (Code sec. 61(a)). This provision "is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected" (*Comm'r* v. *Smith*, 324 U.S. 177, 181 (1945)). However, certain fringe benefits, such as health benefits, are expressly excluded from gross income by specific statutory provisions.

Moratorium

A moratorium first enacted in 1978 prohibited issuance of Treasury regulations relating to the income tax treatment of nonstatutory fringe benefits. The legislative moratorium expired on December 31, 1983. The Treasury Department has announced that Treasury and the IRS "will not issue any regulations or rulings altering the tax treatment of nonstatutory fringe benefits prior to January 1, 1985," and that "present administrative practice will not be changed during this period" (Ann. 84-5, 1984-4 I.R.B. 31).

Employment taxes

The social security and unemployment insurance payroll taxes (FICA and FUTA) and income tax withholding apply to "wages," defined in the Code as all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash (secs. 3121(a), 3306(b) and 3401(a)). The railroad retirement tax (RRTA) applies to any form of money remuneration (sec. 3231(e)). Regulations applicable to these provisions specify that the value of any noncash item is to be determined by the excess of its fair market value over any amount paid by the recipient for the item (see, e.g., Reg. sec. 31.3121(a)-1(e)).

Employer-provided housing

Present law (Code sec. 119) excludes from an employee's gross income the value of lodging provided by the employer if (1) the lodging is furnished for the convenience of the employer, (2) the lodging is on the business premises of the employer, and (3) the employee is required to accept the lodging as a condition of employment. Several court decisions have held that on-campus housing furnished to faculty or other employees by an educational institution under the circumstances involved in those cases did not satisfy the section 119 requirements, and hence that the fair rental value of the housing (less any amounts paid for the housing by the employee) was includible in the employee's gross income and constituted wages for income tax withholding and employment tax purposes.

House bill

General rule

The House bill provides a statutory exclusion from income and employment taxes for: (1) no-additional-cost services, (2) qualified employee discounts, (3) working condition fringes, (4) de minimis fringes, and (5) employer-operated athletic facilities provided to employees. No fringe benefit (other than a de minimis fringe) is excluded under the bill if another section of the Code provides rules for the tax treatment of that general type of benefit.

The House bill does not extend the moratorium on regulations which expired on December 31, 1983. Under the House bill, any fringe benefit that does not qualify for a statutory exclusion is includible in gross income, and subject to employment taxes, at the excess of its fair market value over any amount paid by the employee for the benefit.

The rules of the bill do not make any change in existing statutory or regulatory exclusions for benefits for military personnel.

Exclusion provisions

No-additional-cost service

A service provided to an employee is excluded if:

(1) the employer incurs no substantial cost (including foregone revenue) in providing the service;

(2) the service is provided by the employer or another business with whom the employer has a written reciprocal agreement, and is of the same type ordinarily sold to the public in the line of business in which the employee works;

(3) the service is provided to a current or retired employee, or a spouse or dependent child of either, or a widow(er) or dependent children of a deceased employee; and

(4) for certain highly compensated employees, nondiscrimination requirements are met (see below).

Qualified employee discount

A discount on merchandise provided to an employee is excluded to the extent it does not exceed the employer's gross profit percentage (in the relevant line of business). The exclusion does not apply to discounts on real property or on personal property of a kind commonly held for investment.

A discount on services provided to an employee is excluded to the extent it does not exceed 20 percent of the selling price of the services to nonemployee customers (with no gross profit percentage restriction).

The following conditions generally must be satisfied for the exclusion to apply:

(1) the property or service is provided by the employee and is of the same type ordinarily sold to the public in the line of business in which the employee works,

(2) the property or service is provided to a current or retired employee, a spouse or dependent child of either, or to a widow(er) or dependent children of a deceased employee, and

(3) for certain highly compensated employees, nondiscrimination requirements are met (see below).

Under a special rule, the exclusion applies to discounts provided by a department store to employees of another employer (such as a cosmetic firm) who make over-the-counter sales of merchandise within the store.

A grandfather rule relaxes the line-of-business limitation for employees of members of an affiliated group which consists primarily of a retail department store business, if, as of October 5, 1983, such employees were entitled to discounts at the store.

Working condition fringe

Property or services provided to an employee are excluded to the extent that they would be deductible as ordinary and necessary business expenses (under Code secs. 162 or 167) if the employee had paid for them.

Under a special rule, all of an auto salesman's automobile use in the dealer's sales area is excluded if the use is provided primarily to facilitate the salesman's performance of services and there are substantial restrictions on personal use.

The bill excludes, as a working condition fringe, the value of free or reduced-cost parking provided to employees on or near the employer's business premises. Under the House bill, the exclusion is available to highly compensated employees only if such parking is available on a nondiscriminatory basis.

De minimis fringe

Property or services not otherwise tax-free are excluded if their value is so small, considered in the aggregate, as to make accounting for the benefits unreasonable or administratively impracticable. For example, benefits which generally are excluded as de minimis fringes include the typing of a personal letter by a company secretary, occasional personal use of the company copying machine, monthly transit passes provided at a discount not exceeding $15, occasional company cocktail parties or picnics for employees, occasional supper money or taxi fare for employees because of overtime work, and certain holiday gifts of property with a low fair market value.

Subsidized eating facilities operated by the employer also are excluded as a de minimis fringe if located on or near the employer's business premises, if revenue equals or exceeds direct operating costs, and if (for certain highly compensated employees) nondiscrimination requirements are met (see below).

Athletic facilities

An exclusion is allowed for the value of athletic facilities provided and operated by an employer for use of its employees.

Nondiscrimination requirements

The exclusions for no-additional-cost services, qualified employee discounts, free parking, subsidized eating facilities, and qualified tuition reduction (item 2 below) are available to officers, owners, or highly compensated employees only if the property or service is provided on substantially the same terms to each member of a group of employees defined under a reasonable classification, set up by the employer, which does not discriminate in favor of officers, owners, or highly compensated employees.

Effective date

The House bill generally is effective on January 1, 1984.

Senate amendment

Moratorium

The Senate amendment extends through 1985 the legislative moratorium on issuance of Treasury regulations relating to the income tax treatment of nonstatutory fringe benefits.

Faculty housing

Under the Senate amendment, the extended legislative moratorium is applied to prohibit the issuance of income tax regulations providing for the inclusion in gross income of the excess of the fair market value of qualified campus lodging over the greater of the operating costs paid in furnishing the lodging or the rent received. The application of the extended moratorium with respect to qualified campus lodging applies only with respect to lodging furnished after December 31, 1983 and before January 1, 1986.

Conference agreement

General rules

The conference agreement follows the House bill, with modifications to the effective date and certain provisions as described below. Thus, under the conference agreement, the general legislative moratorium on regulations that expired December 31, 1983 is not extended. Instead, the conference agreement sets forth statutory provisions under which (1) certain fringe benefits provided by an employer are excluded from the recipient employee's gross income for Federal income tax purposes and from the wage base (and, if applicable, the benefit base) for purposes of income tax withholding, FICA, FUTA, and RRTA, and (2) any fringe benefit that does not qualify for exclusion under the bill and that is not excluded under another statutory fringe benefit provision of the Code is includible in gross income for income tax purposes, and in wages for employment tax purposes, at the excess of its fair market value over any amount paid by the employee for the benefit. The latter rule is confirmed by clarifying amendments to Code sections 61(a), 3121(a), 3306(b), and 3401(a) and section 209 of the Social Security Act.

The conferees intend that Treasury regulations are to be issued to implement the statutory fringe benefit provisions of the bill. Such regulations are to be consistent with the language of the bill in the legislative history as reflected in House Report No. 98-432 (Pt. 2) and this Statement of Managers. Thus, for example, as stated in the report of the Ways and Means Committee, the bill does not modify the existing rules under which benefits to military personnel, such as subsistence, housing, and uniform allowances, are excludable from gross income.

The conference agreement adds a rule giving the Treasury Department regulatory authority to provide the time and manner for collection (or payment) by an employer of employment taxes on noncash fringe benefits. To the maximum extent practicable, such regulations may provide for collection (or payment) of FICA taxes under sections 3101 and 3111 with respect to noncash fringe benefits in a calendar quarter not later than the time for collection (or payment) of such taxes on cash wages paid on the last day of that quarter. The regulations may provide similar rules for other employment taxes.

Exclusions

No-additional-cost-services; qualified employee discounts

The conference agreement provides an additional, elective grandfather rule which in certain circumstances relaxes the line of business limitation requirement for the exclusion for qualified employee discounts and (to the extent described below) for the exclusion for no-additional-cost-services.

Under this grandfather rule, if all the following requirements are met, the exclusion for qualified employee discounts (if otherwise available) extends to the providing by an employer of discounts on goods or services in a particular line of business to an employee who works in a different line of business of the employer than that line of business in which such goods or services on which the discount is available are offered for sale by the employer:

(1) On and after January 1, 1984, the employer offers such discounts on goods or services in that particular line of business to substantially all its employees in all of its lines of business which existed on January 1, 1984;

(2) The employee works in a line of business of the employer which was a line of business of the employer on January 1, 1984; and

(3) The employer timely elects the applicability of this grandfather rule.

This grandfather rule also applies, if requirements of the same nature are met, with respect to no-additional-cost services which are provided by an employer to an employee notwithstanding that the service is not the same type of service sold to the public in the line of business of the employer in which the employee works, except that this grandfather rule does not apply with respect to no-additional-cost services provided to the employee by a person other than an employer of the employee (i.e., pursuant to a reciprocal agreement between employers).

Thus, where all these requirements are met, all employees of any line of business of the employer which was in existence on January 1, 1984 are treated, for purposes of new Code sections 132(a)(1) and 132(a)(2) but not for purposes of new Code section 132(g)(2), as employees of the particular line of business (which was in existence on January 1, 1984) in which such goods or services are offered for sale by the employer.

This additional grandfather rule applies on a calendar year basis. If elected, the rule applies to the first calendar year following the year of election and to all subsequent years unless revoked by the employer. A revocation must be made prior to the beginning of the calendar year to which the grandfather rule is not to apply. The election is to be made in the manner prescribed by Treasury regulations. For purposes of the grandfather rule, all members of the same affiliated group of corporations (as defined in sec. 1504) are treated as one corporation.

Under the conference agreement, an employer making the election is subject to an excess fringe benefit excise tax for any calendar year as to which the grandfather rule election is in effect if the aggregate fair market value of all excludable no-additional-cost service benefits and qualified employee discount benefits (whether or not excludable only pursuant to the grandfather rule) provided by the employer during the calendar year to all its employees exceeds one percent of the total of all taxable compensation paid to all employees of the employer for the year. This computation takes into account all employees in all lines of business of the employer, including lines of business as to which the elected grandfather rule does not apply (e.g., where the line of business did not exist on January 1, 1984). The rate of the new excise tax is 30 percent of the excess described in the preceding sentences. The amount of tax is not deductible by the employer.

In addition, the conference agreement modifies the grandfather rule in the House bill to provide a revised definition of an affiliated group for such purposes.

Working condition fringe

The following modifications are made by the conference agreement with respect to working condition fringes.

(1) The nondiscrimination requirement in the House bill for the exclusion (as a working condition fringe) of employee parking provided on or near the business premises of the employer is deleted.

(2) The availability of the exclusion of qualified auto demonstration use (as a working condition fringe) is limited to full-time auto salespersons. The exclusion is not available to any other persons, such as part-time auto salespersons, mechanics, the dealer's bookkeeper, etc., and

(3) The availability of the working condition fringe exclusion for certain consumer product testing and evaluation as described in the report of the Ways and Means Committee is clarified by providing that gross income does not include personal use of such consumer goods provided to an employee primarily for such product testing and evaluation which does not qualify under the requirements in such report to the extent that the employee pays or reimburses the employer for such personal use.

De minimis fringe

In lieu of the aggregation rule in the House bill, the conference agreement provides that the frequency with which similar fringe benefits (otherwise excludable as de minimis fringes) are provided by the employer to its employees is to be taken into account, among other relevant factors, in determining whether the fair market value of the property or service is so small that accounting for the property or service would be unreasonable or administratively impracticable. Under this rule, where an employer exercises sufficient control and imposes significant restrictions over personal use of a copying machine such that substantially all (at least 85 percent) of the use of the machine can be shown to be for business purposes, the employer may treat as a de minimis fringe any personal use of the machine by a particular employee which might occur.

Nondiscrimination requirements

As stated above, the conference agreement deletes the nondiscrimination requirement for the exclusion of employee parking as a working condition fringe.

Faculty housing

The conference agreement generally follows the Senate amendment in imposing a moratorium on the issuance of income tax regulations providing for the inclusion in gross income of the excess of the fair market value of qualified campus lodging over the greater of the operating costs paid in furnishing the lodging or the rent received. This moratorium with respect to qualified campus lodging applies only with respect to lodging furnished after December 31, 1983 and before January 1, 1986. No inference is intended by imposition of a moratorium for such period as to the proper income tax treatment of faculty housing furnished prior to 1984 or after 1985.

Effective date

Under the conference agreement, the provisions are effective beginning January 1, 1985, except that the moratorium with respect to qualified campus lodging applies only with respect to lodging furnished after December 31, 1983 and before January 1, 1986.

2. Qualified tuition reduction

Present law

Gross income does not include scholarships or fellowships, subject to certain limitations, unless such amounts are paid as compensation for services or for studies or research primarily for the benefit of the grantor (Code sec. 117). Treasury regulations provide that remission of the tuition of a child of a faculty member provided by another education institution under a tuition exchange plan is considered to be a scholarship (Reg. sec. 1.117-3(a)).

House bill

The House bill provides that a reduction in tuition provided to an employee of an educational institution is excluded for income and employment tax purposes if (1) the tuition is for education below the graduate level provided by the employer or by another educational institution, (2) the education is provided to a current or retired employee, a spouse or dependent child of either, or to a widow(er) or dependent children of a deceased employee, and (3) certain nondiscrimination requirements are met (see under item 1, above). Under a special rule in the House bill, availability of a tuition reduction benefit only to faculty members is not a discriminatory classification for purposes of the nondiscrimination requirement.

In addition, the House bill provides that a tuition reduction provided to an employee of an educational institution is excluded if the tuition is for education at the graduate level provided by the employer to a teaching or research associate or assistant at that institution.

This provision is effective with respect to education furnished after June 30, 1984.

Senate amendment

See item 1, above (relating to extension of moratorium).

Conference agreement

The conference agreement follows the House bill, with modifications (1) deleting the exclusion for graduate tuition reduction provided to teaching or research associates or assistants, (2) deleting the special nondiscrimination rule in the House bill as applicable to the exclusion for tuition reduction for education below the graduate level (which deleted rule would have provided that availability of the benefit only to faculty members is not a discriminatory classification), and (3) changing the effective date to qualified tuition reductions for education furnished after June 30, 1985. In deleting the exclusion (in the House bill) for certain graduate tuition reduction, the conference committee notes that tuition reductions for graduate education remain eligible for exclusion as scholarships under Code section 117(b) if they satisfy the requirements of that provision of present law.

3. Cafeteria plans

Present law

The cafeteria plan rules of the Code provide that a participant in a nondiscriminatory cafeteria plan will not be treated as having received a taxable benefit offered under the plan solely because the participant has the opportunity, before the benefit becomes available to the participant, to choose among the taxable and nontaxable benefits offered under the plan. The term "taxable benefit" includes cash, property, and other benefits that are currently taxable to the participant upon receipt. "Nontaxable benefit" includes any benefit that is not currently taxable to the participant upon receipt (e.g., group-term life insurance up to $50,000, coverage under an accident or health plan, and coverage under a dependent care assistance program).

Present law does not permit a cafeteria plan to offer either vanpooling or any benefit that defers the receipt of compensation, with the exception of the opportunity for participants to make elective contributions under a qualified cash or deferred arrangement.

The cafeteria plan rules generally do not affect whether any particular benefit offered under the plan is a taxable or nontaxable benefit. Thus, a benefit that is nontaxable under the Internal Revenue Code when offered separately is a nontaxable benefit under a cafeteria plan only if the rules providing for the exclusion of the benefit from gross income continue to be satisfied when the benefit is provided under the cafeteria plan.

On February 10, 1984, the Internal Revenue Service issued a news release (IR-84-22), which stated that so-called "flexible spending arrangements" offered as part of cafeteria plans do not provide employees with nontaxable benefits under the Code because, under such arrangements, employees are assured of receiving the benefit of what they would have received had no covered expenses been incurred.

In May 1984, the Internal Revenue Service issued proposed regulations with respect to the cafeteria plan rules and the statutory rules governing the exclusion of benefits from gross income. These proposed regulations state that an otherwise nontaxable benefit will be nontaxable if offered in a cafeteria plan only if it continues to satisfy the provisions governing its exclusion from gross income. Accordingly, the proposed regulations state that employer contributions with respect to an accident or health plan, a qualified group legal services plan, or a dependent care assistance program are not excluded from a participant's gross income under the Internal Revenue Code to the extent that the participant is assured of receiving benefits under the plan without regard to whether he or she incurs covered expenses.

House bill

The House bill amends the definition of "cafeteria plan" to provide that such plans may offer employees choices limited to cash and those fringe benefits (other than scholarships or fellowships, vanpooling, and those benefits excludable under the nonstatutory fringe benefit provisions of the bill) that are excludable from gross income under a specific section of the Internal Revenue Code. Thus, group-term life insurance, coverage under a qualified group legal services plan, coverage under an accident or health plan, and coverage under a dependent care assistance program are permissible nontaxable benefits in a cafeteria plan. For purposes of this rule, group-term life insurance that is includible in gross income only because the amount of the insurance exceeds $50,000 or because the insurance is on the life of the employee's spouse or children is treated as a nontaxable benefit. Similarly, vacation days offered under a cafeteria plan are treated as nontaxable benefits only if the plan precludes any participant from cashing-out or using, in a subsequent plan year, any vacation days remaining unused as of the end of any plan year.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill provisions on cafeteria plans, and adopts several additional provisions.

First, the conference agreement amends the cafeteria plan rules to provide that if, for a plan year, more than 25 percent of the total nontaxable benefits are provided to employees who are key employees with respect to the plan for such year (as determined under the rules of section 416(i)(1)), such key employees will be taxed as though they received all available taxable benefits under the plan. Generally, in determining the portion of the total nontaxable benefits that is provided to key employees, coverage under a plan (e.g., an accident or health plan) and not actual expense reimbursements under such a plan are to be counted.

Second, the conference agreement applies certain reporting requirements with respect to cafeteria plans. Under regulations prescribed by the Secretary of the Treasury, each employer that maintains a cafeteria plan during a taxable year beginning after December 31, 1984, will be required to file a return for such year showing the number of employees of the employer, the number of employees participating in the plan, the total cost of the plan for the taxable year, and specified employer identification information. Based on these general returns, the Secretary is to require a select and statistically significant group of employers to file additional information returns with respect to their cafeteria plans. These additional returns will contain such information as the Secretary may require. Examples of such information include a breakdown of the above information by salary range and type of benefit provided, as well as information which may be necessary to allow Treasury to develop a plan to insure that the requirements of the cafeteria plan rules (such as nondiscrimination and maximum percentage of benefits to key employees) are adequately enforced.

Third, the conference agreement provides both general and special transition relief, with respect to the proposed Treasury regulations on cafeteria plans, for cafeteria plans and "flexible spending arrangements" in existence on February 10, 1984. (A "flexible spending arrangement" consists of a benefit of a type to which a statutory exclusion may be applied, such as an accident or health plan under sections 105 and 106, with respect to which an employee is assured of receiving, in cash or some other benefit, amounts available for expense reimbursement without regard to whether the employee incurs the covered expenses.) The general relief rule provides that a plan will not fail to be a cafeteria plan merely because of a failure to satisfy the rules relating to cafeteria plans under the proposed Treasury regulations and that a flexible spending arrangement will not fail the requirements of the applicable statutory exclusions merely because of a failure to satisfy the rules relating to such exclusions under these regulations. This general relief is provided until the earlier of January 1, 1985, or the effective date of any modification of the plan or arrangement to provide additional benefits if such modification becomes effective after February 10, 1984. The conference agreement does not prevent the application of the proposed Treasury regulations after the earlier of such dates.

Thus, for example, if on February 10, 1984, a flexible spending arrangement failed to satisfy the rules relating to accident or health plans under the proposed Treasury regulations and thereafter continues to fail such rules because such arrangement provides for the cash-out or carryover of unused amounts at the end of the plan year, such arrangement will be treated as qualifying as an accident or health plan until the earlier of the two dates provided above.

The general transition rule is applicable to both benefit bank flexible spending arrangements and zero balance reimbursement account (ZEBRA) type flexible spending arrangements. Under a benefit bank arrangement, the employee generally allocates a specified amount of dollars to a reimbursement account for specified benefits, e.g., medical, legal, and dependent care, at the beginning of the plan year. As expenses are incurred during the year, the employee is entitled to reimbursement of these expenses from the account. For example, if an employee with $500 allocated to his account incurred medical expenses of $250, he could be reimbursed for these expenses from the account. At the end of the year, he would receive the remaining $250 in cash. In contrast, under the ZEBRA-type arrangement, amounts generally are not specifically allocated to an account before the beginning of the year, but instead amounts are allocated only after an expense in incurred.

The conference agreement also provides special transition relief with respect to the rules contained in the proposed regulations relating to the statutory nontaxable benefits. This relief provision provides that a flexible spending arrangement in existence under a cafeteria plan on February 10, 1984, will not fail to be a nontaxable benefit under the applicable exclusions merely because a participant will receive amounts available but unused for expense reimbursement. An arrangement will qualify for the special relief only if, under the arrangement, the employee must fix the amount of contributions to be made on his or her behalf before the beginning of the applicable period of coverage and taxable cash is not available before the end of such period or, if earlier, at the termination of employment. In lieu of distributing taxable cash to a participant at the end of the applicable period of coverage, it would also be permissible for the unused amounts to be carried over to the succeeding year. Further, an arrangement could permit a participant to terminate contributions during the period of coverage or to change the rate or amount of contributions during the period of coverage on account of certain changes in family status or change in employment status from full-time to part-time, or vice versa. The conferees intend that this special transition relief will be available to arrangements that, on February 10, 1984, and thereafter, failed to satisfy these restrictions if such arrangements are modified, before January 1, 1985, to comply with such restrictions. The special relief under this rule is for benefits provided before the earlier of July 1, 1985, or the effective date of any modification of the arrangement to provide additional benefits if such modification becomes effective after February 10, 1984. The conference agreement does not prevent the application of the proposed Treasury regulations after the earlier of the applicable dates.

Cafeteria plans and flexible spending arrangements that were not in existence on February 10, 1984, generally do not qualify for either the general or the special transition rules under the conference agreement. Thus, the conference agreement does not prevent the current application of the proposed Treasury regulations to such plans and arrangements. However, plans that were not actually in existence as of February 10, 1984, but with respect to which substantial implementation costs had been incurred by the employer by such date are to be treated as having been in existence on such date. The conferees intend that if an employer has incurred, as of February 10, 1984, either more than $15,000 of implementation costs or more than one-half of the total costs of implementing a cafeteria plan, the transition rules are to be available with respect to the cafeteria plan. In making this determination, total implementation costs are the costs of designing and installing computer programs for operation of the plan and the costs of printing cafeteria plan brochures for employees. Costs associated with more than one plan of the same employer are to be allocated among the plans on the basis of the number of participants in the plans.

Finally, the conference agreement provides that the Secretary of Health and Human Services, in cooperation with the Secretary of the Treasury, is to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance on the effect of cafeteria plans on the containment of health costs. This report is to be submitted by April 1, 1985. The study is to examine the impact which the use of cafeteria plans (including flexible spending arrangements) has on the containment of health care costs and to recommend what modifications might be desirable with respect to the cafeteria plan rules to optimize the potential to reduce medical costs while balancing against other health care policy goals. Included within the study should be an analysis of the advisability of establishing Federal guidelines relative to the type of medical plans that can qualify for cafeteria plan treatment in a manner similar to that applicable to qualified pension plans and the advisability of adding additional benefits to cafeteria plans. In this regard, the conferees intend to examine, before January 1, 1986, the operation of the nondiscrimination rules and the forfeitability requirements with respect to cafeteria plans, and the effect of such provisions on the Federal tax base and on health cost containment.

4. Nonqualified options

Present law

Generally, employees recognize income upon the exercise of a nonqualified employee stock option to the extent the value of the stock exceeds the price paid. Employers are allowed a corresponding deduction.

House bill

No provision.

Senate amendment

Under the Senate amendment, income and deductions with respect to certain employee options are deferred until the stock is disposed of. In order to qualify, the option must meet the following requirements: (1) the option price must at least equal the fair market value of the stock on the date of issue; (2) the option may be transferable only by reason of death; (3) the option must be exercised in sequence; and (4) certain notification procedures must be met.

The maximum value of stock for which options which may be granted in any one year is $100,000 (reduced by value of stock under incentive stock options). The option program may not discriminate in favor of 5-percent owners or highly paid officers.

The amount deferred on exercise is an item of tax preference.

The provision applies to options exercised after date of enactment.

Conference agreement

The conference agreement does not include the provision in the Senate amendment.

5. Incentive stock options

Present law

Incentive stock options allow an employee to receive capital gains on the sale of stock acquired on the exercise of an option, rather than ordinary income at the time of exercise.

The option price of an incentive stock option must equal or exceed the fair market value of the stock at the time the option is granted.

The "spread" on the exercise of an incentive stock option is an item of tax preference for purposes of the minimum tax.

House bill

No provision.

Senate amendment

The Senate amendment disregards "lapse restrictions" in determining the fair market value of the stock. It also treats the modification of an option making it nontransferable as the grant of a new option, thus requiring the fair market value to be determined on the modification date.

The provision generally applies to options granted, exercised or modified (as the case may be) after March 20, 1984. If an option granted after March 20, 1984, pursuant to corporate action taken before that date, the provision will not apply if the option is issued before September 20, 1984 (or, in the case of the minimum tax, if the option is exercised before December 31, 1984).

Conference agreement

The conference agreement generally follows the Senate amendment. The date by which corporate action must be taken under the transitional rule is changed to May 15, 1984.

6. Certain section 83(b) elections

Present law

Property transferred to an employee in connection with the performance of services is includible in income (to the extent the value of the property exceeds the amount paid) in the first taxable year the property is transferable and not subject to a substantial risk of forfeiture (sec. 83). A taxpayer may elect, within 30 days of the transfer of property, to include in gross income the excess of the value of the property (determined without regard to restrictions) over the amount paid, for the year the transfer occurs (sec. 83(b)). A recent Tax Court decision held that section 83 may apply where the employee paid fair market value for the property (determined without regard to restrictions). *Alves* v. *Commissioner*, 79 T.C. 864 (1982), aff'd by the 9th Cir. on June 5, 1984.

House bill

No provision.

Senate amendment

The Senate amendment allows a taxpayer to make the election under section 83(b) with the first tax return filed after date of enactment with respect to transfers of property made after June 30, 1976 and before the date of enactment, if the taxpayer paid fair market value for the property (determined without regard to restrictions), and the employer consents to the election.

Conference agreement

The agreement generally follows the Senate amendment. However, the provision applies only to transfers before November 18, 1982 (the date of decision of the *Alves* case).

7. Employee achievement awards

Present law

Code section 274(b) generally disallows business deductions for gifts to the extent that the total cost of all gifts of cash, tangible personal property, etc., to the same individual from the taxpayer during the taxable year exceeds $25. The statute expressly defines the term gift to mean any amount excludable from gross income under section 102 (relating to gifts and bequests) which is not excludable under another statutory provision. The U.S. Supreme Court, in a case involving payments made "in a context with business overtones," defined excludable gifts as payments made out of "detached and disinterested generosity" and not in return for past or future services or from motives of anticipated benefit (*Comm'r* v. *Duberstein*, 363 U.S. 278 (1960)).

In the case of an excludable gift of an item of tangible personalty awarded to an employee for length of service, safety achievement, or productivity, the ceiling on the deduction allowed to the employer is increased to $400 of the item's cost. In addition, the ceiling on the business gift deduction is $1,600 for such an employee award under a qualified award plan provided that the average cost of all plan awards in the year does not exceed $400.

House bill

No provision.

Senate amendment

The Senate amendment provides a new income-tax exclusion to employees for awards received from an employer for productivity, safety, or length of service, in the form of watches, clocks, certain emblematic jewelry or rings, certain personal accessories, and other traditional retirement or nonretirement awards, effective for awards made after the date of enactment.

The exclusion, and the employer's deduction, for such awards to a particular employee during the year are limited to $1,600 in each achievement category (i.e., a maximum of $4,800 in cost) for awards under a qualified award plan, or $400 in each category (maximum of $1,200) for other such awards. Other restrictions, including nondiscrimination rules, apply.

Any excess of the lesser of the employer's cost for or the value of such awards over the exclusion dollar limits is expressly includible in the employee's gross income, as is the value of nontraditional employee achievement awards or any other awards to employees.

Conference agreement

The conference agreement does not include the Senate amendment.

8. Exclusion for educational assistance benefits; deferred educational benefits

a. Educational assistance

Present law

Employer-provided educational assistance benefits were excluded from gross income for income tax purposes and from wages for FICA and FUTA purposes under a provision which expired on December 31, 1983.

House bill

No provision.

Senate amendment

The Senate amendment extends the exclusion to apply to taxable years beginning before January 1, 1986.

Conference agreement

The conference agreement does not include the Senate amendment.

b. Deferred educational benefits

Present law

Deductions for contributions to a nonqualified deferred compensation plan are not allowed until an amount is includible in the employee's income. However, contributions to a fund that is part of a welfare benefit plan generally are deductible in the year made regardless of the time a benefit is provided. In one case (*Greensboro Pathology Associates, P.A. v. U.S.*, 699 F.2d 1196 (Fed Cir. 1982)), a court held that a plan to pay future college tuition of employees' children was a welfare benefit plan, rather than a deferred compensation plan.

House bill

No provision.

Senate amendment

The Senate amendment treats a plan for providing deferred educational benefits as a plan of deferred compensation, thus generally delaying deductions for plan contributions until the benefit is includible in the employee's income (or would be includible but for provisions excluding the benefits from income). This provision applies to taxable years ending after December 31, 1983.

Conference agreement

The conference agreement does not include the Senate amendment.

D. Employee Stock Ownership Provisions

Present law

An employee stock ownership plan ("ESOP") is a qualified stock bonus plan or a combination stock bonus and money purchase pension plan under which employer stock is held for the benefit of employees. An ESOP under which an employer contributes stock or cash in order to qualify for a credit against income tax liability is referred to as a tax credit ESOP. Under present law, the income tax credit is limited to a prescribed percentage of the aggregate compensation of all employees under the plan. For compensation paid or accrued in calendar years 1983 and 1984, the tax credit is limited to one-half of one percent. With respect to compensation paid or accrued in 1985, 1986, and 1987, the limit is three-quarters of one percent. No credit is provided with respect to compensation paid or accrued after December 31, 1987.

House bill

Freeze on maximum credit

The House bill freezes the income tax credit for contributions to a tax credit ESOP at one-half of one percent with respect to compensation paid or accrued in 1985 through 1987.

The provision is effective on the date of enactment.

Senate amendment

Freeze on maximum credit

Under the bill, the income tax credit for contributions to a tax credit ESOP is limited to one-half of one percent for compensation paid or accrued in 1985. The limit for contributions in 1986 and 1987 remains at three-quarters of one percent.

Tax-free rollover on sale to employees

The Senate amendment provides for nonrecognition of gain, at the election of the seller, from the sale of "qualified securities" if (1) the securities are sold to an ESOP or to an eligible worker-owned cooperative, and (2) within a qualified period, the seller acquires securities of certain domestic corporations.

Deduction for dividends paid on ESOP stock

The Senate amendment permits a deduction for dividends paid on stock held by an ESOP (including a tax credit ESOP), provided the dividends are either paid out currently to employees or used to repay an ESOP loan. Dividends may either be paid directly to plan participants by the corporation or may be paid to the plan and distributed to participants no later than 60 days after the close of the plan year in which paid.

Alternatively, the dividends (or some portion thereof) will qualify for the deduction if applied by the plan to repay a loan incurred under the plan to acquire employer securities. Because such dividends are deductible by the employer corporation, they do not qualify for the partial exclusion from income otherwise permitted under Code sec. 117.

Partial exclusion of interest earned on ESOP loans

Under the Senate amendment, a bank, insurance company, or other commercial lender that is a corporation may exclude from income 50 percent of the interest received on loans to a leveraged ESOP, the proceeds of which are applied by the plan to acquire employer securities. For this purpose, the loan may be made directly to an ESOP or may be made to the sponsoring corporation which, in turn, lends the proceeds to an ESOP.

Reduced tax rate for sales of stock to certain corporations

In the case of a sale or exchange of securities acquired by a taxpayer as part of an original issue in a company with a specified degree of employee stock ownership by a taxpayer other than a corporation, the bill generally increases from 60 percent to 80 percent the amount of the gain (qualified corporate gain) on the sale that is allowed as a deduction from gross income. Similarly, a lower tax rate applies with respect to the qualified corporate gain on a sale of securities by a corporation.

Assumption of estate tax liability by ESOP

The Senate amendment permits an ESOP to assume the liability of a decedent's estate for estate taxes in return for a transfer from the estate to an ESOP of stock of an equal value, provided the sponsor company guarantees payment of the tax and agrees to pay such tax over a period of years.

The executor of the estate for which the ESOP agrees to assume estate tax liability must elect the application of the provision by the time prescribed for filing the estate tax return in the manner prescribed by Treasury regulations.

Estate tax exclusion for sales to employees

The Senate amendment permits an exclusion from the gross estate of 50 percent of the proceeds from the sale of employer securities to an ESOP or a worker-owned cooperative. The proceeds from such sale are disregarded for this purpose to the extent that such securities are allocated under the plan to the donor (or decedent), family members of the donor (or decedent), or shareholders owning more than 25 percent in value of any class of outstanding employer securities.

Charitable contributions to ESOPs

Under the Senate amendment, a taxpayer generally is allowed an income, gift, or estate tax deduction under the charitable contribution rules for contributions of employer securities to an ESOP.

Under the Senate amendment, if the taxpayer is permitted a charitable contribution deduction with respect to the contribution of stock to an ESOP, no deduction is permitted for the contribution under the usual rules for deductions for employer contributions to a qualified pension plan, and no portion of the amount contributed is eligible for any credit against income taxes

Effective dates

The provisions generally are effective for years beginning after December 31, 1984. The provisions relating to the assumption of estate tax liability and partial exclusion from estate tax apply with respect to those estates of decedents that are required to file returns after the date of enactment.

Conference agreement

Freeze on maximum credit

The conference agreement follows the House bill with a technical amendment.

Tax-free rollover on sale to employees

The conference agreement generally follows the Senate amendment. Nonrecognition will be available only if, after the sale, the ESOP or cooperative holds at least 30 percent of the employer securities.

Deduction for dividends paid on ESOP stock

The conference agreement generally follows the Senate amendment. The deduction for dividends paid with respect to stock held in an ESOP will be permitted only if the dividends are paid out currently to employees.

Partial exclusion of interest earned on ESOP loans

The conference agreement follows the Senate amendment.

Reduced tax rate for sales of stock to certain corporations

The conference agreement does not contain the Senate amendment.

Assumption of estate tax liability by ESOP

The conference agreement generally follows the Senate amendment. The Secretary has the authority to require the employer to post appropriate security, such as a bond, to insure payment of the estate taxes.

Estate tax exclusion for sales to employees

The conference agreement does not contain the Senate amendment.

Charitable contributions to ESOPs

The conference agreement does not contain the Senate amendment.

Effective dates

The conference agreement follows the Senate amendment.

E. Individual Retirement Account (IRA) Provisions

Present law

Under present law, an individual generally is entitled to deduct IRA contributions up to the lesser of $2,000 or 100 percent of compensation. The $2,000 deduction limit is increased to $2,250 for any year in which (1) at least $250 is contributed to an IRA for the spouse of the individual, and (2) the spouse has no compensation for the year.

Under certain circumstances, alimony may be considered compensation for purposes of the IRA deduction limits.

Present law provides that, except for tax-free rollovers, no nondeductible contributions may be made to an IRA. An annual 6-percent excise tax applies to prohibited nondeductible contributions (i.e., excess contributions) held in an IRA.

Distributions from an IRA made before age 59 1/2 (other than those distributions attributable to disability or death) are subject to an additional 10-percent income tax.

House bill

Nondeductible IRA contributions

Under the House bill, nondeductible IRA contributions of up to $1,750 annually are not treated as excess contributions subject to the 6-percent excise tax. The first withdrawals from an IRA are treated as coming out of earnings on the nondeductible contributions, second as out of the nondeductible contributions, and then out of other amounts.

The provision is effective for contributions made in taxable years beginning after December 31, 1983.

Senate amendment

Spousal individual retirement arrangements

The Senate amendment increases the IRA deduction limit for a married couple to (1) $2,750, for taxable years beginning in 1985 and 1986, (2) $3,250, for taxable years beginning in 1987 and 1988, (3) $3,750, for taxable years beginning in 1989 and 1990, and (4) $4,000, for taxable years beginning in 1991 and thereafter. The 100 percent of compensation limit of present law continues to apply.

The provision is effective for taxable years beginning after December 31, 1984.

Alimony treated as compensation

The Senate amendment treats all alimony received by a divorced spouse as compensation for purposes of the IRA deduction limit.

The provision is effective for taxable years beginning after December 31, 1984.

IRA withdrawals by dislocated workers

Under the Senate amendment, a dislocated worker is permitted to withdraw amounts from an IRA prior to age 59 1/2 without incurring the additional 10-percent income tax. A dislocated worker must (1) have at least 20 quarters of social security coverage and (2) have exhausted all rights to compensation under State law.

The provision is effective on the date of enactment.

Conference agreement

Nondeductible IRA contributions

The conference agreement does not contain the House bill.

Spousal individual retirement arrangements

The conference agreement does not contain the Senate amendment.

Alimony treated as compensation

The conference agreement contains the Senate amendment.

IRA withdrawals by dislocated workers

The conference agreement does not contain the Senate amendment.

VI. TAX-EXEMPT OBLIGATIONS

A. Mortgage Subsidy Bonds

1. Extension of authority to issue qualified mortgage bonds

Present law

Under the Mortgage Subsidy Bond Tax Act of 1980 (as amended) State and local governments were allowed to issue limited amounts of tax-exempt bonds before January 1, 1984, to finance mortgages on owner-occupied residences. Generally, at least 90 percent of the lendable proceeds of such bonds were required to be used to finance mortgage loans to individuals who had not owned a present interest in their principal residence within the 3 preceding years. The purchase price of residences was required to be less than 110 percent (120 percent in certain targeted areas) of the average area purchase price. At least 20 percent of lendable proceeds generally were required to be made available for financing in targeted areas for at least one year.

The State volume ceiling for qualified mortgage bonds was the greater of (1) 9 percent of the average area mortgage originations for single family, owner-occupied residences in the State during the preceding 3 years, or (2) $200 million.

House bill

The House bill extends the tax exemption for qualified mortgage bonds for five years, (i.e., for bonds issued through December 31, 1988).

This provision is effective for bonds issued after December 31, 1983.

Senate amendment

The Senate amendment extends the tax exemption for qualified mortgage bonds for four years, (i.e., for bonds issued through December 31, 1987).

This provision is effective for bonds issued after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with regard to extension of the qualified mortgage bond program and the House bill with regard to effective date. Thus, the tax exemption for qualified mortgage bonds is extended through December 31, 1987, effective for bonds issued after December 31, 1983.

2. Allocation of State volume ceiling

Present law

The State volume ceiling for qualified mortgage bonds is generally allocated by the State legislature. If the State legislature does not adopt an alternative method, 50 percent of the State volume ceiling is allocated among local issuers based upon the average mortgage volume in the area of the local issuer during the 3 preceding years and the remaining 50 percent is allocated to the State.

House bill

Under the House bill, if the State does not adopt an alternative method, 50 percent of the State ceiling is allocated among local issuers on the basis of the relative populations in the areas of the local issuers and the remaining 50 percent to the State.

This provision is effective for bonds issued after December 31, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

3. Interim authority to allocate State volume ceilings

Present law

The State legislature is generally required to approve an alternative allocation of the State volume ceiling for qualified mortgage bonds. As a transitional rule under the Mortgage Subsidy Bond Tax Act of 1980, the governor of any State was given authority to allocate that State's cap until the legislature met in its first regular session after 1980.

House bill

The House bill provides that, where a State had in effect a formula to allocate the State ceiling, which formula expired as of December 31, 1983, that allocation method shall remain in effect until the effective date of any State legislation which provides for a different allocation formula. If the expiring formula requires action by a State official to allocate the State ceiling, actions of such officials will continue to be effective during this period.

Senate amendment

The Senate amendment includes the provision of the House bill, but also provides that the Governor of Kentucky will have the power to allocate the State ceiling until December 31, 1986.

Conference agreement

The conference agreement follows the Senate amendment. Additionally, the conference agreement provides the Governors of Texas and Nevada with interim authority to allocate their respective State volume ceilings.

4. Reporting requirements

Present law

There is no special reporting requirement with respect to mortgage subsidy bonds. Under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), reporting requirements were imposed with respect to certain private purpose bonds.

House bill

The House bill requires issuers of mortgage subsidy bonds (including qualified mortgage bonds and qualified veterans mortgage bonds) to submit, by the fifteenth day of the second calendar month after the close of the calendar quarter during which the bonds was issued, a statement containing specified information to the Treasury. This statement is to include the name and address of the issuer, the date of the issue, the amount of lendable proceeds, the rate, term, and face amount of each obligation which is part of the issue, and such other information as the Treasury may require (including information required in order to determine whether the issue qualifies for tax-exemption and the extent to which proceeds of the issue have been made available to lower-income individuals). The Treasury is permitted to grant extensions of time for providing any information where there is reasonable cause for delay.

This provision is effective for bonds issued after December 31, 1983.

Senate amendment

The Senate amendment extends the reporting requirements of the House bill to qualified mortgage bonds but not to qualified veterans' mortgage bonds. Under the Senate amendment, this provision is effective for bonds issued after the date of enactment.

The Senate amendment further requires elected officials of governmental units issuing qualified mortgage bonds to submit to the Treasury Department an annual report which states the housing, development, and income distribution policies which the governmental unit is to follow in issuing mortgage subsidy bonds and mortgage credit certificates (discussed below). This report also is to include an assessment of (1) the compliance of the governmental unit during the preceding 1-year period with the equivalent statement of policy that was set forth in the next previous report (if any) of such unit, and (2) the performance of the issuer's program relative to the stated intent of Congress, discussed below, that bonds and credits be made available, to the greatest extent possible, to lower-income families. This provision is effective for bonds issued after December 31, 1984 (i.e., the first statement must be filed by December 31, 1984, for bonds issued in 1985).

Conference agreement

Reporting requirements

The conference agreement extends the information reporting requirements contained in the House bill and the Senate amendment to all mortgage subsidy bonds (including qualified mortgage bonds and qualified veterans' mortgage bonds). Information regarding the use of proceeds by lower-income individuals is not required to be supplied with the report for each issue, but may be consolidated with the annual policy statement to be completed by the issuer as described below.

This provision is to apply to bonds issued after December 31, 1984.

Policy statements

The conference agreement includes the requirement of an annual policy statement contained in the Senate amendment. This requirement applies only to qualified mortgage bonds.

The conferees intend that, in the case of multiple jurisdiction issuers, the requirement of an annual report will be satisfied if the issuer files a single report with the Treasury which is signed by (1) an elected official of each governmental unit on whose behalf bonds have been issued, or (2) the governor of the State in which the issuer is located.

This provision is effective for bonds issued after December 31, 1984.

5. Statement of program goals

Present law

Present law includes various rules designed to direct mortgage subsidy bond financing to individuals having the greatest need for the subsidy. There is no general statement of Congressional intent regarding the use of qualified mortgage bond proceeds.

House bill

No provision.

Senate amendment

The Senate amendment includes a statement of Congressional intent that issuers are expected to use qualified mortgage bonds and mortgage credit certificates, to the greatest extent possible, to make loans available to lower-income families who can use the loans to afford home ownership before making such loans available to higher-income families, taking into account prevailing conditions in the housing market and prevailing interest rates. Elected officials of issuing jurisdictions are required to submit an annual report to the Treasury Department which states the policy of the issuer in distributing proceeds of qualified mortgage bonds and mortgage credit certificates and evaluates the performance of the issuer's program relative to the Congressional intent. In addition, the Treasury Department, in consultation with the Department of Housing and Urban Development (HUD), is required to make an annual report to Congress on the performance of issuers relative to program goals.

Conference agreement

The conference agreement generally follows the Senate amendment. The Treasury Department is to prepare a report concerning the performance of issuers relative to Congressional policy goals at a reasonable time prior to the December 31, 1987 sunset date for qualified mortgage bonds.

This provision is effective for bonds issued after December 31, 1984.

6. Qualified veterans' mortgage bonds

Present law

Under present law, unlimited amounts of tax-exempt general obligation bonds may be issued to provide mortgages for the purpose of financing residences for veterans (qualified veterans' mortgage bonds). Unlike qualified mortgage bonds, the authority to issue these bonds did not expire on December 31, 1983.

House bill

The House bill provides that, beginning in 1985, the State ceiling for qualified mortgage bonds is to be reduced by the volume of qualified veterans' mortgage bonds issued by the State during the preceding year. In addition, the authority to issue qualified veterans' mortgage bonds is to sunset (together with the sunset for qualified mortgage bonds) on December 31, 1988.

This provision is generally effective for qualified veterans' mortgage bonds issued after December 31, 1983, except for bonds authorized by a State referendum before October 18, 1983, or pursuant to a State referendum before December 31, 1983, which referendum was authorized by action of the State legislature taken before October 18, 1983.

Senate amendment

No provision. However, the Senate amendment includes a sense of the Senate resolution (1) that qualified veterans' mortgage bonds not be considered in applying State volume ceilings for qualified mortgage bonds, and (2) that no sunset date be enacted for qualified veterans' mortgage bonds.

Conference agreement

The conference agreement does not include the volume limitations or sunset date for qualified veterans' mortgage bonds contained in the House bill. However, the conference agreement provides that (1) the authority to issue qualified veterans' mortgage bonds is limited to programs that issued such bonds before June 22, 1984; (2) loans made with the proceeds of qualified veterans' mortgage bonds issued after June 22, 1984, are to be limited to veterans who served in active duty for any period before 1977; and (3) applications for a loan made with the proceeds of qualified veterans' mortgage bonds must be made before the later of (a) the date which is 30 years from the date of discharge from military service, or (b) January 31, 1985. Additionally, under the conference agreement, qualified veterans' mortgage bonds are limited to principal residences as defined for purposes of qualified mortgage bonds.

The conference agreement further provides that State qualified veterans' mortgage bond programs may not issue bonds in excess of the average annual volume of bonds issued for the period 1979-1983.

7. Advance refunding of qualified veterans' mortgage bonds

Present law

Neither qualified mortgage subsidy bonds nor qualified veterans' mortgage bonds may be advance refunded.

House bill

No provision.

Senate amendment

The Senate amendment allows the State of Oregon, under specified conditions, to advance refund up to $300 million of qualified veterans' mortgage bonds.

This provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the House bill. Additionally, the conference agreement allows the State of Oregon, under specified conditions, the option of borrowing from the Federal Financing Bank in amounts necessary to meet the debt service on the bonds.

8. Limited equity cooperatives

Present law

Tenant-shareholders of cooperative housing corporations are allowed a deduction for rents paid to the cooperative equal to their allocable share of interest and real estate taxes paid by the cooperative. Cooperative housing corporations are eligible to use tax-exempt financing under the rules applicable to owner-occupied housing (i.e., qualified mortgage bonds).

House bill

Under the House bill, limited equity cooperative housing corporations may make an irrevocable election to be eligible for tax-exempt financing under the rules applicable to multi-family rental housing, including the requirement that 20 percent of units (15 percent in certain targeted areas) must be occupied by individuals of low or moderate income. If such an election is made, the tenant-shareholders of the cooperative will not be entitled to a deduction for interest and taxes paid by the cooperative. Additionally, the volume of such bonds will count toward the State ceiling for qualified mortgage bonds, except to the extent that the financing has previously been counted toward the State's volume cap for private activity bonds.

Limited equity housing cooperatives eligible to make an election include cooperative housing corporations (as defined under sec. 216(b)(1)) in which (1) the cost of any stock in the cooperative does not exceed the amount paid for the stock by the original stockholder (as adjusted for cost-of-living increases), increased by certain payments and contributions attributable to the stockholder, and (2) the excess assets of the cooperative are used only for public or charitable purposes or directly to benefit the cooperative and are not to be used directly to benefit any stockholder.

This provision is effective for bonds issued after December 31, 1984.

Senate amendment

There is no provision regarding the treatment of housing cooperatives for purposes of qualified mortgage bonds; however, the Senate amendment specifies that mortgage credit certificates may be issued to residents of cooperatives who otherwise qualify under the credit program.

Conference agreement

The conference agreement follows the Senate amendment.

9. Termination of transitional rules under the Mortgage Subsidy Bond Tax Act of 1980

Present law

The Mortgage Subsidy Bond Tax Act of 1980 was enacted generally to direct the subsidy provided by tax-exempt housing bonds to those individuals having the greatest need for the subsidy, to increase the efficiency of the subsidy, and to reduce the overall revenue loss to the Federal Government from the use of tax-exempt bonds for housing. The 1980 Act provided a number of transition rules designed to permit issuers who were in the process of issuing mortgage subsidy bonds during Congress' consideration of that Act to issue those bonds without regard to the rules in the 1980 Act (including State volume ceilings). In addition, the Act provided a general grandfather rule under which the limitations did not apply to bonds issued before January 1, 1981, for which loan commitments were made, or construction begun, within 1 year from the issue date.

House bill

No provision.

Senate amendment

Under the Senate amendment, most bonds issued to finance new mortgages for owner-occupied, single-family housing after June 15, 1984, and before January 1, 1985, pursuant to the transitional rules of the 1980 Act, will not be tax-exempt unless the State allocates a portion of its 1984 State volume ceiling to that issue, under the general rules for allocation of State volume ceilings, prior to the date of issuance. In addition, most of the transitional rules of the 1980 Act are to terminate after December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

10. Treatment of Kansas City, Missouri and Kansas City, Kansas as a unified metropolitan statistical area

Present law

Metropolitan statistical areas are used for various purposes under Federal law, including the determination of purchase price limitations applicable to qualified mortgage bonds. Kansas City, Missouri and Kansas City, Kansas, together with surrounding countries, currently are treated as separate metropolitan statistical areas.

House bill

No provision.

Senate amendment

The Senate amendment provides that Kansas City, Missouri and Kansas City, Kansas (and surrounding counties) are to be treated as one metropolitan statistical area for tax and all other purposes of Federal law.

This provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

B. Mortgage Credit Certificates

1. Authority to issue mortgage credit certificates (MCC's)

Present law

Before January 1, 1984, State and local governments were allowed to issue limited amounts of tax-exempt bonds to finance mortgages on owner-occupied residences (qualified mortgage bonds). There was no provision for exchanging qualified mortgage bond authority for authority to issue mortgage credits.

House bill

The House bill allows States to trade in all or part of their authority to issue qualified mortgage bonds (as extended under the bill) for authority to issue mortgage credit certificates (MCCs). Home purchasers receiving MCCs are entitled to a non-refundable income tax credit equal to a specified percentage of the interest that the home purchaser pays during the taxable year on the mortgage on his principal residence. This percentage may not exceed 50 percent, but may not be less than 10 percent, of the interest on the qualifying indebtedness. The amount of the homebuyer's interest deduction in any year is reduced by the amount of the MCC for that year. Excess unused credits may be carried forward by the recipient to later taxable years.

Senate amendment

The Senate amendment generally is the same as the House bill. However, under the Senate amendment, excess credits may not be carried forward by the recipient to later taxable years.

Conference agreement

The conference agreement adopts the House provision with a modification limiting the time during which credits may be carried forward to three years.

2. Volume of MCC Authority

Present law

No provision.

House bill

Under the House bill, the amount of MCCs that a State may issue for any year (determined by aggregating the amount of the products resulting from multiplying the principal amount of each certificate by the applicable percentage rate) is equal to 15 percent of the amount of qualified mortgage bond authority that the State trades in for that year. The maximum amount of qualified mortgage bond authority that a State may trade in for MCCs may not exceed 9 percent of the average annual amount of mortgages originated in the State during the preceding 3 years. Where a State issued less than its statutory ceiling of qualified mortgage bonds in 1983, a phase-in rule limits the amount of qualified mortgage bond authority that the State may trade in during the first 5 years (i.e., through 1988) for authority to issue MCCs.

Under the House bill, an MCC does not apply to any debt incurred after the close of the calendar year following the calendar year for which the issuing authority elects to trade in qualified mortgage bond authority. Thus, under the House bill, authority to issue MCCs may be held over for a maximum of one year before the credits are issued.

Senate amendment

Under the Senate amendment, a State may issue MCCs in an amount equal to 20 percent of the amount of qualified mortgage bond authority that the State trades in for that year. The amount of bond authority which the State may trade in for MCCs is not limited to 9 percent of average mortgage originators.

The Senate amendment applies a phase-in rule, similar to that under the House bill, for States which issued less than their statutory ceiling of qualified mortgage bonds in 1983. However, under the Senate amendment, the phase-in rule applies for a 4-year period (i.e., through 1987), and is applied at the State level, rather than at the level of each individual issuer. Additionally, the Senate amendment requires an affirmative election by issuers within the State to forego authority in excess of the phase-in level.

Under the Senate amendment, once a State has exchanged qualified mortgage bond authority for authority to issue MCCs, the State may issue the MCCs in any calendar year. Thus, the authority to issue MCCs may be held over on an indefinite basis.

Conference agreement

The conference agreement provides that a State may issue MCCs in an amount equal to 20 percent of the amount of the qualified mortgage bond authority that the State trades in for that year. However, if (1) the State volume ceiling exceeds 20 percent of the average annual amount of mortgages originated in the State during the preceding three years, or (2) the State issued less than $150 million of qualified mortgage bonds in 1983, then the average size of credits issued in the State may not exceed 20 percent. There is no special phase-in rule for States which issued less than their statutory maximum of qualified mortgage bonds in 1980.

Under the conference agreement, an MCC will not apply to any debt incurred after the close of the second calendar year following the calendar year for which the issuer elects to trade in qualified mortgage bond authority for authority to issue the MCC. Thus, authority to issue MCCs may be held over for a maximum of two years before the credits are issued.

3. Eligibility to receive MCC's

Present law

No provision.

House bill

Under the House bill, eligibility for MCCs is generally limited to the same individuals who are eligible for qualified mortgage bonds. Thus, the recipient of an MCC must generally be a first-time homebuyer, the purchase price of the residence generally may not exceed 110 percent (120 percent, in certain targeted areas) of the average area purchase price, the residence must be the principal residence of the individual, and the mortgage must be a new mortgage except in the case of certain rehabilitation and improvement loans and certain mortgage assumptions. In addition, at least 20 percent of MCCs under each program must be made available for financing in targeted areas for at least one year.

Senate amendment

The Senate amendment is similar to the House bill, except that the purchase price of residences eligible for MCCs is limited to 90 percent of the average area purchase price (including residences in targeted areas). Additionally, the Senate amendment includes an annual income limitation under which the amount of the credit is limited to 25 cents for each dollar by which the greater of (a) area median income for a family of four, or (b) $20,000, exceeds the taxpayer's income for the year in question. Adjustments to this formula are provided based on family size and in the case of adjustable rate mortgages. Finally, under the Senate amendment, there is no requirement that a specific portion of MCCs be made available in targeted areas.

The Senate amendment specifically provides that MCCs are available (1) to shareholders in housing cooperatives who otherwise meet the MCC eligibility requirements, and (2) under Treasury regulations, to finance manufactured homes which qualify as real property for depreciation purposes of (sec. 168(g)(7)).

Conference agreement

The conference agreement follows the House bill with respect to the purchase price limitations and the other general eligibility requirements for MCCS. The conference agreement further specifies that no assumptions of MCCs are to be allowed.

There is no income limitation for recipients of MCCs under the conference agreement. However, the maximum credit which a taxpayer may receive in any year is limited to the greater of (1) 20 percent of the qualifying indebtedness on the taxpayer's principal residence, or (2) $2,000. The conferees intend that this limitation will encourage States to issue higher percentage credits to individuals who purchase lower-priced residences and who can therefore benefit from a higher percentage credit despite the $2,000 limitation.

Under the conference agreement, MCCs will be available for manufactured homes that have a minimum of 102 inches in width and have a minimum of 400 square feet of living space. The conferees further intend MCCs will not be available for recreational vehicles, campers, and other similar vehicles. Manufactured homes will not be taken into account in computing the average area purchase price or statewide volume limitation formula applicable to MCCs. MCCs are additionally to be available to shareholders in housing cooperatives who are otherwise eligible to receive MCCs.

The conferees intend that, as in the case of qualified mortgage bonds, a State or locality may establish more stringent criteria for participation in an MCC program, subject to the rules against limiting MCCs to loans provided by a particular lender or to residences in a particular development (discussed below). The conferees intend that any such additional criteria will be consistent with the goal of making credits available to those individuals most in need of a subsidy.

4. Restrictions on MCC Distribution

Present law

No provision.

House bill

Under the House bill, MCCs must be issued under a plan that does not limit the credits to mortgages provided by specified lenders. MCCs may be limited to residences in a particular development if the developer certifies that the price is not increased because of the presence of the MCCs. No MCC is allowed for loans between related parties or for interest on mortgages financed with tax-exempt bonds.

Senate amendment

The Senate amendment generally is the same as the House bill, except that (1) the prohibition against limiting MCCs to specified lenders may be waived by Treasury regulations, and (2) there is no provision allowing MCCs to be limited to residences in a particular development.

Conference agreement

The conference agreement follows the Senate amendment with respect to specific lenders and the House bill with respect to particular developments.

5. Administration of MCC program

Present law

No provision.

House bill

The House bill contemplates administration of the MCC program by the State and local governments, under Treasury regulations, with certain Federal reporting requirements. The States are to be responsible for ensuring that the total amount of MCCs and qualified mortgage bonds does not exceed the applicable State ceiling. Where a State does issue excess MCCs, the State's mortgage bond ceiling for the succeeding year is to be reduced by two times the excess issuance. Individuals granted MCCs but who are not properly eligible are not entitled to the credits.

Under the House bill, lending institutions are required to certify, under penalty of perjury, that recipients meet the applicable purchase price and first-time homebuyer requirements. Lenders are further required to file regular informational reports with the IRS, with a $200 penalty for failure to file information with respect to any homebuyer.

Senate amendment

The Senate amendment contemplates central administration of the MCC program, under regulations, by the Treasury Department or its delegate, which is to maintain current accounts regarding the total amount of MCCs and qualified mortgage bonds that each State has issued. State or local issuers (alternatively, central State authorities) are to inform Treasury of each decision to exchange bond authority for authority to issue credits. Excess credits would be invalid and excess bonds would forfeit tax exemption. The Treasury is authorized to enter into contracts with a private firm or a quasi-public agency to administer the MCC program on the Treasury's behalf.

Under the Senate bill, eligibility of a particular individual for an MCC is to be based upon verified statements provided by the homebuyer (for the principal residence and first-time homebuyer requirements) and the lender (with regard to purchase price limitations). Credits issued based on erroneous certifications would remain valid, but monetary penalties would be imposed for negligent ($1,000) and fraudulent ($10,000) misstatements in connection with an MCC. The Senate amendment also permits certain fees to be charged by the central administration facility (not exceeding $200 per MCC) and the State or local issuer (not exceeding $100) to cover program costs.

Under the Senate amendment, borrowers would secure a letter of MCC entitlement from the issuer and would then be allowed to "shop" for an appropriate lending institution. The lender would verify with Treasury or its delegate that the letter was valid (including verification that the State volume ceiling had not been exceeded) and would inform Treasury of the actual amount of the loan for which the credit was being issued (to allow accurate recordkeeping).

Conference agreement

The conference agreement adopts the House bill with modifications.

To the extent permitted by regulations, the conference agreement permits issuers to charge MCC recipients a fee to cover the cost of administering the program. This provision is similar to a statement in the Senate Finance Committee Report that would permit fees to be charged to cover administrative costs.

The conference agreement requires by statute that issuers of MCCs file reports concerning the volume of MCCs issued under each election that the issuer makes to issue MCCs. The time and manner of filing the report and the information to be contained in the report is to be specified in regulations. The conferees intend that issuers will be subject to penalties for failure to file the requisite reports and for the filing of false or fraudulent reports. This requirement codifies a statement in the House report that anticipated regulations would require such a report and clarifies that penalties are to be imposed for failure to file and for the filing of false or fraudulent reports.

The conference agreement provides that Treasury shall issue regulations requiring MCC recipients to file with the lender statements, under penalties of perjury with respect to whether the MCC recipient meets the eligibility requirements for an MCC. If statements are filed, as required by the regulations, the conferees intend that the MCC will not be revoked for failure to meet the eligibility requirements unless the MCC recipient provided fraudulent statements to the lender. If an MCC recipient provides fraudulent information to the lender, it is intended that the MCC recipient's tax return will be treated as a fraudulent return and the MCC will be revoked. The government will have the burden of proving that the statements submitted to the lender were fraudulent. The conference agreement is a modification of the provision in the Senate amendment that would treat an MCC as valid under all circumstances if specified verified statements and information were filed with the lender.

Under the conference agreement, before issuing qualified mortgage bonds or MCCs, issuers are required to obtain a certification from a State official that the bond issue or MCC election does not exceed the issuer's allocation of the State's volume limitation. The fact that an issuer obtains a certification from the State does not preclude the application of penalties for overissuance if overissuance in fact occurs. This provision modifies and adds to the statute a requirement contained in the Ways and Means Committee Report.

The penalty for issuance of MCCs in excess of the volume limitations and issuance of MCCs that do not meet certain statutory requirements (i.e., prohibition against the use of MCCs with tax-exempt financing and the linkage of MCCs with indebtedness of a particular lender, and requirements where a block of MCCs is used in connection with a particular development) is reduced from twice the amount of the "correction amount" to the correction amount multiplied by 1.25.

In lieu of the system contemplated by the House bill, Treasury is authorized, under the conference agreement, to adopt a centralized system of administration similar to the system contemplated by the Senate amendment.

6. Effective date of MCC program

Present law

No provision.

House bill

Under the House bill, the authority to issue MCCs is effective for interest paid or accrued after December 31, 1983, on mortgages executed after that date, with respect to elections to trade in qualified mortgage bond authority for years after 1983.

Senate amendment

Under the Senate amendment, the MCC program is effective for credits issued after December 31, 1984, using exchanged qualified mortgage bond authority for years after 1983.

7. Termination of MCC program

Present law

No provision.

House bill

Under the House bill, the authority to trade in qualified mortgage bond authority for authority to issue MCCs expires on December 31, 1988.

Senate amendment

The Senate amendment does not contain a specific sunset provision for MCCs. However, under the Senate amendment, the authority to issue qualified mortgage bonds terminates on December 31, 1987. Thus, the ability of States to exchange qualified mortgage bond authority for MCCs would expire on that date.

Conference agreement

The conference agreement provides that the MCC program will terminate on December 31, 1987, together with the qualified mortgage bond program.

C. Private Activity Bonds

1. Volume limitation for certain IDBs and student loan bonds

Present law

Interest on State and local government obligations is exempt from Federal income tax. However, industrial development bonds (IDBs) are taxable except when issued for certain specified purposes. Industrial development bonds are obligations issued as part of an issue all or a major portion of which are to be used in any trade or business carried on by a nonexempt person and the payment of principal or interest on which is derived from, or secured by, money or property used in a trade or business.

Interest on IDBs is tax-exempt if the bonds are issued to finance the following activities ("exempt purpose" IDBs): (1) projects for low-income residential rental property; (2) sports facilities, (3) convention or trade show facilities, (4) airports, docks, wharves, mass commuting facilities, and parking facilities, (5) sewage and solid waste disposal facilities, and facilities for the local furnishing of electric energy or gas, (6) air or water pollution control facilities, (7) certain facilities for the furnishing of water, (8) qualified hydroelectric generating facilities, (9) qualified mass commuting vehicles, and (10) local district heating and cooling facilities. In addition, the interest on certain IDBs issued for the purpose of acquiring or developing land as a site for an industrial park is exempt from taxation.

Present law also permits tax-exemption for interest on certain "small issue" IDBs if the proceeds are used for the acquisition of land or depreciable property. A small issue cannot exceed $1 million ($10 million if certain capital expenditures are counted). The small issue exception is scheduled to expire on December 31, 1986.

Present law also allows tax-exempt financing for student loans and organizations that qualify for tax-exemption under section 501(c)(3)), (The small issue exception is schedule to expire on December 31, 1986. (such as private, nonprofit hospitals and private, nonprofit educational institutions).

There is no per capita limitations under present law on the face amount of private activity bonds that a State or local government may issue.

House bill

The House bill limits the maximum face amount of private activity bonds that a State and local governments within the state may issue annually to $150 per capita (reduced to $100 per capita after 1986 to reflect the scheduled expiration of the small-issue exception). Private activity bonds include (subject to the exceptions described below) and student loan bonds (defined as any bond whose proceeds are used, directly or indirectly, to finance loans to individuals for educational purposes).

Unless a State otherwise allocates its volume ceiling, 50 percent of the State ceiling is allocated to State and 50 percent to local jurisdictions within the State on the basis of population.

Under the House bill, states may elect to carry over for up to 3 years a portion of their annual ceiling for a specified project (6 years for pollution control projects).

The House bill provides a one-year phased reduction to $150 per capita for States whose 1983 volume exceeded that amount not treated as private.

Exceptions.—The following bonds are not subject to the volume limitations under the House bill:

(1) IDBs to finance multifamily residential rental property and bonds exempt under section 11(b) of the U.S. Housing Act of 1937.

(2) IDBs to finance convention or trade show facilities or airports, docks, wharves, or mass commuting facilities (including mass commuting vehicles), if the financed facility being financed is owned for tax purposes by a governmental unit.

(3) Refunding bonds (other than advance refundings) if amount of such bonds does not exceed the amount of the refunded obligations and, in the case of student loan bonds, the maturity date of the refunding bonds does not exceed the later of the maturity date of refunded bonds or 15 years after issuance of refunded bonds.

Effective date.— The volume limitation under the House bill applies generally to bonds issued after December 31, 1983 A transitional rule provides priority of allocation for certain bonds with respect to which an inducement resolution was given before October 1983, but only if the beneficiaries of those bonds notify the issuing authority within 30 days of enactment.

Senate amendment

The Senate amendment does not impose a per capita volume limitations on private activity bonds.

Conference agreement

The conference agreement limits the maximum face amount of private activity bonds which a state or local issues within the state may issue annually to the greater of (1) $150 per capita, or (2) $200 million. Private activity bonds include IDBs and student loan bonds subject to the exceptions below.[1]

The $150 per capita amount will be reduced to $100 in 1986 to reflect the scheduled expiration of the small issue exception. For purposes of the volume limitation, the District of Columbia is to be treated as a state (and therefore entitled to a $200 million volume limitation). However, U.S. territories with authority to issue tax-exempt bonds will be limited to the $150 per capita rule.

Under the conference agreement, unless a state otherwise allocates, 50 percent of the state's volume ceiling is allocated to state and 50 percent to local jurisdictions on the basis of population. State statutes and the actions of state governors to implement allocation of the volume limitation are to be effective whether occurring before or after enactment. The governor or other official designated in a state statute may retroactively allocate bond authority for bonds issued in 1984 (i.e., allocate to projects for which bonds have already been issued). However, bonds issued during 1984 but before the date of enactment or, if earlier, the date of public action to allocate the state balance ceiling, action in (3) above may not be denied allocation to the extent (of the authority which the issuer would receive based upon population) (i.e., if no alternative allocation method has been adopted).

As under the House bill, states may elect to carry over portions of their annual ceiling for up to 3 years for specified projects (6 years for pollution control projects.

States which issued private activity bonds equal to more than $150 per capita in 1983 (based on annualized volume for the first 9 months of the year) are allowed a two years phased down to the volume ceiling.

Exceptions.—The conference agreement includes the exceptions to the private activity bond volume ceiling for certain housing bonds (including IDBs for multi-family residential property and section 11(b) bonds) and refunding bonds contained in the House bill. The conference agreement also includes the exception for IDBs used to finance publicly owned airports, docks, wharves, mass facilities, and convention or trade show facilities, with the following additional provisions.

(a) Parking facilities subsidiary to qualified public facilities are exempt from volume ceiling, but only if the parking facilities satisfy the same requirements for exemption as the facility to which they are subsidiary and that facility is also exempt from the ceiling;

(b) Qualified public owned facilities owned by a governmental unit are exempt from the volume limitation only if all rents charged to tenants are not front-loaded to achieve an effect more accelerated than a straight-line rent over the life of the property.

(c) Qualified public facilities owned by corporations issuing bonds on behalf of governmental units (Rev. Proc. 63-20) are exempt from the volume ceiling if the facilities satisfy the requirements applicable to governmentally owned facilities.

Effective date.—The volume ceiling for private activity bonds is effective for bonds issued after December 31, 1983, with the following transitional rules:

Projects for which an inducement resolution was adopted before June 19, 1984, are exempt from any volume ceiling if the bonds are issued on or before December 31, 1984.

Projects for which an inducement resolution was adopted before October 19, 1983, and for which either (1) the construction of the facilities had commenced before October 19, 1983, and the user is the original user of the facilities, or (2) a binding contract existed before October 19, 1983, and at all times thereafter which committed the purchaser to incur significant expenditures for construction or acquisition of the facilities, will receive priority of allocation for 1985 and later years (in addition to being exempt from the 1984 ceiling). For purposes of this rule, significant expenditures will generally mean expenditures equal to 20 percent of the estimated cost of the facilities.

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[1] The State of Texas has a program called the Texas Veterans' Bond Program under which general obligation bonds are issued for the purchase of land. Loans under this program are limited to $20,000 per veteran. Where the proceeds of such a bond issue, other than an amount which is not a major portion of the proceeds, are used, for example, for the acquisition of land for recreational or investment purposes, the issue would not be subject to this limitation. The use of the proceeds by the veteran may be established by an affidavit of the veteran.

2. Restrictions on cost recovery deductions

Present law

Property financed with tax-exempt bonds generally is restricted to straight-line cost recovery deductions over the applicable ACRS periods.

Full ACRS deductions are allowed for low-income rental housing, municipal sewage or solid waste facilities, air or water pollution control facilities, and certain facilities with respect to which a UDAG grant is made.

House bill

The House bill requires straight-line cost recovery deductions for property, other than multifamily residential rental property, that presently is eligible for full ACRS deductions.

This provision of the House bill applies to property placed in service after December 31, 1983, to the extent financed with tax-exempt bonds issued after October 18, 1983. Transitional rule exempts facilities with respect to which (1) a binding contract to incur significant expenditures was entered into before October 19, 1983, or (2) construction began before October 19, 1983 (and original use of facility begins with taxpayer).

Senate amendment

The Senate amendment makes no change in the cost recovery rules for property presently eligible for full ACRS deductions. However, the Senate amendment extends the cost recovery period for property restricted under present law to straight-line deductions over the ACRS periods as follows:

3-year property	4 years
5-year property	7 years
10-year property	13 years
15-year public utility property	20 years
18-year residential real property	18 years
18-year nonresidential real property	22 years

This provision applies to property placed in service after June 30, 1984, to the extent financed with tax-exempt bonds issued after March 15, 1984. A transitional rule exempts facilities with respect to which (1) a binding contract to incur significant expenditures was entered into before March 15, 1984, or (2) construction began before March 15, 1984 (and original use of facility begins with taxpayer).

Conference agreement

The conference agreement follows the House bill.

3. Denial of tax-exemption to Federally guaranteed bonds

Present law

Present law imposes no general statutory restrictions on Federal guarantees of tax-exempt bonds. However, the Internal Revenue Code denies tax exemption for interest on obligations where (1) payment of principal or interest is guaranteed (in whole or in part) by the United States under a program with the principal purpose of encouraging production or conservation of energy, or (2) payment of principal or interest is to be made (in whole or in part) with funds provided under such a program of the United States, a State, or a political subdivision of a State.

House bill

The House bill denies tax-exemption to interest on bonds that are Federally guaranteed. Bonds are considered to be Federally guaranteed where the payment of principal or interest is guaranteed directly or indirectly by the United States or any agency or instrumentality thereof; where a significant portion of the bond proceeds is to be used to make Federally guaranteed loans; or where a significant portion of the bond proceeds is to be invested in Federally insured deposits (FDIC, FSLIC, NCUA, etc.) For purposes of these restrictions, an entity with statutory authority to borrow from the United States is treated as an instrumentality of the United States. Exceptions to this rule are provided for the District of Columbia and for bonds other than private activity bonds issued by U.S. possessions.

Exceptions.—The House bill provides the following exceptions to the restrictions on Federally guaranteed tax-exempt bonds:

(1) Federal Housing Authority (FHA), Veterans Administration (VA), Fannie Mae, Freddie Mac, and Ginnie Mae guarantees;

(2) Small Business Administration (SBA) guarantees under the SBA pollution control program, only if the SBA charges a fee for making the guarantee of at least 1 percent of the amount guaranteed;

(3) Bond proceeds invested for an initial temporary period or in bona fide debt service funds, qualified reserve funds, SLGs, or other investments permitted by Treasury regulations;

(4) Bond proceeds loaned to Federally insured financial institutions under a loans-to-lenders program; and

(5) IDBs for low-income residential rental property, mortgage subsidy bonds, and bonds issued under section 11(b) of the Housing Act of 1937 (except for proceeds invested in Federally insured deposits or accounts).

Effective date.—These provisions of the House bill apply generally to bonds issued after December 31, 1983. The restrictions with respect to bonds, the proceeds of which are invested in Federally insured deposits apply to bonds issued after April 14, 1983.

Senate amendment

The Senate amendment includes no general rules prohibiting Federal guarantees, but contains a provision identical to the House bill with respect to bonds the proceeds of which are invested in federally insured deposits (FDIC, FSLIC, NCUA, etc. Bond proceeds invested for an initial temporary period, in a bona fide debt service fund, or in a qualified reserve fund, are exempted from this rule.

The Senate amendment also denies tax exemption for bonds where a significant portion of proceeds is to be used for a facility also benefitting from (including indirect guarantees) under the SBA. This rule does not apply if the SBA charges a "reasonable" (as determined by the Secretary of the Treasury).

The Senate restrictions on investment of tax-exempt bond proceeds in Federally insured deposits in financial institutions apply to bonds issued after April 15, 1983, except to bonds issued pursuant to a contract binding at all times after March 3, 1983. The SBA guarantee rules apply to bonds issued after the date of enactment.

The House bill denies tax-exemption to interest on bonds that are Federally guaranteed. Bonds are considered to be Federally guaranteed where—

(1) Payment of principal or interest is guaranteed directly or indirectly by U.S. or any agency or instrumentality thereof,

(2) A significant portion of bond proceeds is to be used to make Federally guaranteed loans; or

(3) A significant portion of bond proceeds is to be invested in Federally insured deposits (FDIC, FSLIC, NCUA, etc.).

For purposes of these restrictions, an entity with statutory authority to borrow from U.S. is treated as instrumentality; exceptions are provided for D.C. and possessions bonds other than private activity bonds.

The House bill provides the following exceptions to the restrictions on Federally guaranteed tax-exempt bonds:

(1) FHA, VA, FNMA, FHLMC, GNMA guarantees;

(2) SBA guarantees under the SBA pollution control program, but only if the SBA charges a fee for making the guarantee. Fee must be at least 1 percent of the amount guaranteed;

(3) Bond proceeds invested for an initial temporary period, in bona fide debt service fund, in qualified reserve funds, in SLGs, or other investments permitted by Treasury regulations; and

(4) Bond proceeds loaned to Federally insured financial institutions under a loans-to-lenders program; and

(5) Bonds issued under section 11(b) of Housing Act of 1937 and mortgage subsidy bonds (except for proceeds invested in Federally insured deposits or accounts).

These provisions of the House bill apply generally to bonds issued after December 31, 1983. The restrictions with respect to bonds, the proceeds of which are invested in Federally insured deposits apply to bonds issued after April 14, 1983.

Senate amendment

The Senate amendment includes no general rules prohibiting Federal guarantees, but contains provision the same as the House bill with respect to bonds the proceeds of which are invested in Federally insured deposits (FDIC, FSLIC, NCUA, etc.).

The Senate amendment also restricts tax-exemption for bonds where a significant portion of proceeds is to be used for facility also benefitting from SBA guarantee (or subordination) under SBA—

(1) pollution control loan guarantee program, or

(2) certified development loan program.

Exceptions.—The Senate amendment provides exceptions for

(1) SBA guarantees under—

(i) SBA's pollution control program, or

(ii) SBA's certified development loan program,

but only if the SBA charges a fee for making the guarantee. Fee must equal at least 1 percent of the amount guaranteed, and fee must be "reasonable," as determined by the Secretary of the Treasury; and

(2) Bond proceeds invested for an initial temporary period, in a bona fide debt service fund, or in a qualified reserve fund.

The restrictions on investment of tax-exempt bond proceeds in Federally insured deposits in financial institutions apply to bonds issued after April 15, 1983, except to bonds issued pursuant to a contract binding at all times after March 3, 1983.

The SBA guarantee rules apply to bonds issued after the date of enactment.

Conference agreement

The conference agreement generally follows the House bill except for certain transitional rules with respect bonds benefitting from certain Federal insurance programs contained in the Senate amendment.

4. Arbitrage restrictions

Present law

Present law includes rules which limit the amount of arbitrage (i.e., the difference between the interest rate paid on tax-exempt bonds and the rate of income earned on investments made with the bond proceeds). Under these rules, the maximum income permitted to be earned generally cannot exceed the interest rate paid on the bonds by more than ⅛ of 1 percentage point. Unlimited amounts of income can be earned on all bond proceeds for a temporary period and on reasonably required reserves.

Where the issuer elects not to have unlimited income during a temporary period, the maximum permitted earnings are increased to ½ of 1 percentage point over the interest rate paid on the bonds.

In addition, in the case of program related investments (such as student loans), the maximum permitted earnings are increased to 1½ percentage points over the interest rate paid on the bonds.

Finally, in the case of student loan bonds, the student assistance payment (SAP) is excluded from the arbitrage computation, so that permitted arbitrage is 1½ percentage points plus the SAP.

Under these rules, certain costs also are excluded from the arbitrage limitation, so that these costs can be earned in addition to the permitted spreads.

Present rules permit issuers to retain any arbitrage earned under these rules.

Present law also provides additional arbitrage rules in the case of qualified mortgage bonds. Under these rules, the maximum permitted difference between the earnings rate on mortgages and interest rate paid on the bonds is 1⅛ percentage points. No costs, including costs related to the bond issue, are excluded from this arbitrage limitation so all costs must be covered within the 1⅛ percentage points. Subject to certain temporary period exceptions, all bond proceeds other than proceeds invested in debt service reserves not in excess of 150% of the debt service on the bonds, must be invested in mortgages. In addition, any arbitrage earned on nonmortgage investments must be either paid to the mortgagors (i.e., homebuyers) or to the Federal Government.

House bill

The House bill provides that, pursuant to Treasury regulations, arbitrage rules similar to the arbitrage rules applicable to mortgage subsidy bonds are to apply to industrial development bonds and student loan bonds. These new rules are in addition to the existing arbitrage rules of Code section 103. Also, as under the present arbitrage rules, special assistance payments are not considered for purposes of the new arbitrage rules.

Exceptions from the new arbitrage rules are provided for—

(1) Bonds for financing of multifamily residential rental property (including bonds issued under section 11(b) of the U.S. Housing Act),

(2) Bonds to refund student loan bonds issued before January 1, 1986.

Except for student loan bonds, these provisions of the House bill are effective with respect to bonds issued after December 31, 1983.

In the case of student loan bonds, the provisions are effective with respect to bonds issued after December 31, 1985.

Senate amendment

Like the House bill, the Senate amendment provides new arbitrage rules (in addition to those provided under present law) for IDBs and student loan bonds. The rules in the Senate amendment are similar to the rules of the House bill.

Industrial development bonds

The Senate amendment provides the following new arbitrage rules for IDBs:

(1) After the initial temporary period, and except for temporary periods related to debt service, all bond proceeds must be applied to the governmental purpose of the issue (except for an amount which may not exceed 150% of the annual debt service on the bonds and which may be otherwise invested; and

(2) Arbitrage earned on investments that are not acquired in order to carry out a governmental purpose (i.e., all nonpurpose obligations) must be paid to the Federal Government. At least every 5 years, 90 percent of the arbitrage earned to that date must be paid with any remaining balance paid 30 days after the bonds are retired. Exceptions are provided if arbitrage is less than $100,000 or if the loan proceeds are expended for governmental purposes within 6 months from the date of issue.

Student loan bonds

The Senate amendment directs the Treasury Department to prescribe new arbitrage regulations for student loan bonds. These new regulations may provide that (1) the exceptions for temporary period and reasonably required reserve funds and the special treatment of student assistance payments will not apply, and (2) the new arbitrage rules prescribed for IDBs apply to student loan bonds.

Exceptions are provided for

(1) Bonds for financing of multifamily residential rental property,

(2) Bonds for financing of municipal sewage and solid waste facilities.

These provisions of the Senate amendment apply generally to bonds issued after December 31, 1984.

The new arbitrage regulations for student loan bonds would be effective with respect to bonds issued after the later of

(1) the date that the Higher Education Act of 1965 expires or is extended, or

(2) six months after the date of publication of the regulations.

Conference agreement

The conference agreement follows the Senate amendment with respect to IDBs and Guaranteed Student Loan (GSL) bonds, and the House bill with respect to non-GSL student loan bonds.

In addition, the conference agreement clarifies that a certain State permanent university fund does not violate the arbitrage restrictions or present law as that fund is presently operated.

5. Limitations on acquisition of land and existing facilities

Present law

Acquisition of land and existing facilities may be financed with tax-exempt bonds to the extent the land or facilities are (1) used for an exempt purpose; or (2) the requirements of the small-issue exception are satisfied.

House bill

The House bill restricts the use of all IDBs (exempt purpose and small issue) to finance the acquisition of land or existing facilities, as follows:

(1) *Nonagricultural land.* Tax exemption is denied for bonds if 25 percent or more of proceeds of issue are used for nonagricultural land.

(2) *Agricultural land.* Tax-exempt financing for agricultural land (and facilities located on such land) is restricted to a maximum of $250,000 and is further restricted to first-time farmers.

(3) *Existing facilities.* Tax-exempt financing for existing facilities is permitted only if amount equal to at least 15 percent of cost of building (and equipment therefor) is spent for rehabilitation of building (and equipment).

These provisions apply generally to bonds issued after December 31, 1983. A transitional rule exempts property where (1) binding contract to incur significant expenditures was entered into before October 19, 1983, or (2) construction began before October 19, 1983 (and original use of facility begins with taxpayer).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with various modifications and exceptions and appropriate transition rules, including a provision that the determination of whether a substantial rehabilitation occurs is made on a project, rather than a building, basis.

6. Elimination of IDB financing for certain facilities

Present law

Present law does not include a list of facilities for which tax-exempt financing generally is prohibited. However, interest on small issue IDBs is not exempt if—

(1) more than 25 percent of the proceeds of the issue are used to provide a facility the primary purpose of which is automobile sales or service or the provision of recreation or entertainment; or

(2) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating), racquet sports facility (including handball and racquetball courts), hot tub facility, suntan facility, or racetrack.

House bill

The House bill eliminates tax-exemption for interest on all types of IDBs (exempt purpose, industrial park, and small issue), if any portion of the proceeds of an issue are used for

(1) any airplane,

(2) a skybox, or other private luxury box,

(3) any facility primarily used for gambling, or

(4) any store the principal business of which is sale of alcoholic beverages for consumption off-premises.

This provision of the House bill applies generally to bonds issued after December 31, 1983. A transitional rule exempts property where (1) binding contract to incur significant expenditures was entered into before October 19, 1983, or (2) construction began before October 19, 1983 (and original use of facility begins with taxpayer).

Senate amendment

The Senate amendment generally is the same as the House bill, but also eliminates tax-exemption for interest on all types of IDBs (exempt purpose, industrial park, and small issue), if—

(1) any portion of the proceeds of an issue is used to finance a health club facility, or

(2) more than 20 percent of the proceeds of an issue is used to finance facilities in any one of the following categories:

(a) office equipment;

(b) medical and health facilities (other than hospitals;

(c) facilities used by doctors, lawyers, accountants, or similar professions; or

(d) parking facilities.

Additional restrictions in the Senate amendment do not apply to certain projects with respect to which a UDAG grant is made.

The additional restrictions included in the Senate amendment apply to bonds issued after April 13, 1984. A transitional rule related to additional restrictions exempts property where binding contract existed or construction began before April 14, 1984.

Conference agreement

The conference agreement includes the Senate provision with respect to health clubs, but not with respect to other additional facilities. A special transition rule delays the effective date for certain race tracks with respect to which an inducement resolution was approved before June 19, 1984.

(7) Repeal of advance refunding for qualified public facilities

Present law

Advance refunding of IDBs generally is prohibited. Advance refunding issues are bonds issued more than 180 days before retirement of the original bonds.

Advance refundings are permitted for certain convention and trade show facilities, airports, docks, wharves, and mass commuting facilities.

House bill

The House bill repeals the provision of present law that permits advance refundings for certain convention and trade show facilities, airports, docks, wharves, and mass commuting facilities.

This provision applies to refunding bonds issued after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with appropriate transition rules.

8. Amendments to small-issue exception

a. Extension of small-issue exception

Present law

Present law permits tax-exemption for certain "small-issue" IDBs if the proceeds are used for acquisition of land or depreciable property. A small issue may not exceed $1 million ($10 million if certain capital expenditures are counted). The small-issue exception expires after December 31, 1986.

House bill

No provision.

Senate amendment

The Senate amendment extends the small-issue exception for 4 years, through December 31, 1990.

Conference agreement

The conference agreement extends the small issue exception only with respect to bonds used to finance manufacturing facilities.

b. Aggregate limit per taxpayer for small-issue exception

Present law

Present law imposes no overall limitation per beneficiary for small-issue IDBs.

House bill

The House bill provides that interest on small-issue IDBs is not tax-exempt if the face amount of issue allocated to any beneficiary (when increased by outstanding tax-exempt IDBs of the beneficiary) exceeds $40 million. Beneficiary means any person who is a user of the financed facilities. The bill provides the following rules for allocating IDBs to beneficiaries of a facility:

(1) Entire amount to beneficiary using more than 50 percent of facility; or

(2) If no one uses over 50 percent, equally among all beneficiaries using at least 25 percent (but no more than 50 percent to any one beneficiary); and

(3) To extent not allocated in (1) or (2), to owner/lessor of facility.

Bonds to refund outstanding issues are not allocated under the provision.

This provision applies generally to bonds issued after December 31, 1983. A transitional rule exempts property where (1) binding contract to incur significant expenditures was entered into before October 19, 1983, or (2) construction began before October 19, 1983 (and original use of facility begins with taxpayer).

Senate amendment

The Senate amendment is the same as the House bill except for allocation rules and exceptions to the restriction.

Under the Senate amendment, bonds are allocated as follows:

(1) To each user of 5 percent or more of facility, the percentage of the face amount of the issue equal to percentage of facility he uses; and

(2) To lessor, portion of face amount of issue equal to percentage of facility with respect to which he is lessor.

In addition to the exception for refunding bonds, the Senate amendment also provides exceptions for—

(1) Bonds to finance manufacturing facilities (including equipment therefore), and

(2) Bonds to finance facilities with respect to which a UDAG grant is made.

Conference agreement

The conference agreement follows the Senate amendment with modified allocation rules and a transition rule for facilities with respect to which an inducement resolution was approved before June 19, 1984. The conference agreement does not include the exceptions contained in the Senate amendment.

c. Aggregation of issues for single project

Present law

It is possible under present law to divide the ownership of a single building or project in such a manner that it is treated as multiple buildings or projects each of which qualifies for small-issue IDB financing (under the $1 million, or elective $10 million, volume limitations).

House bill

Two or more issues to be used with respect to a single project are treated as one issue in applying the small-issue volume limitations.

A project is defined as a single building, an enclosed shopping mall, or a strip of offices, stores, etc., using substantial common facilities.

A principal user of any single issue is treated as a principal user with respect to the aggregated issue.

This provision applies generally to bonds issued after December 31, 1983. A transitional rule exempts projects (1) with respect to which a binding contract to incur significant expenditures was entered before October 19, 1983, (2) on which construction began before October 19, 1983 (and the original use of the facility begins with the taxpayer).

Senate amendment

The Senate amendment is generally the same as the House bill.

Conference agreement

The conference agreement follows the Senate amendment with a transition rule for facilities with respect to which an inducement resolution was approved before June 19, 1984.

d. Clarification that residential property may be in a mixed use structure

Present law

Exempt purpose IDBs may be issued to finance low- and moderate-income residential rental property. Present law is unclear as to whether an entire building must consist of such housing for interest on the bonds to be tax-exempt.

House bill

The House bill clarifies that a part of a building qualifying as low-and moderate-income residential rental property may be used for nonresidential purposes, but limits tax-exempt financing to portion of building used for such housing.

This provision applies to bonds issued after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

e. Increase in small-issue IDB capital expenditure limitation for facilities with respect to which a UDAG grant is made

Present law

In lieu of the $1 million small-issue IDB volume limitation, an election may be made to issue up to $10 million of such bonds, if certain capital expenditures over a 6-year period are counted towards the $10 million limitation. The $10 million limitation is increased to $20 million in the case of a project with respect to which a UDAG grant is made.

House bill

The House bill increases $20 million limitation to $25 million for facilities with respect to which a UDAG grant is made.

This provision applies to bonds issued after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

(f) Extension of substantial user rules

Present law

Interest on IDBs (exempt purpose, industrial park, and small issue) is not tax-exempt if the bonds are held by a substantial user of the facilities financed by the bonds or a related party.

Related parties include family members, fiduciaries, and corporations or partnerships subject to common control.

House bill

The House bill expands the definition of related party to include all partners of a partnership and spouses and dependent children of partners.

This provision applies to bonds issued after December 31, 1983.

Senate amendment

The Senate amendment includes the same provision as the House bill, and also treats all shareholders of an S corporation and spouses and dependent children of such shareholders as related persons.

Conference agreement

The conference agreement follows the Senate amendment.

(g) Extension of certain requirements of the Internal Revenue Service Code to bonds exempt from tax pursuant to other provisions of law

Present law

Interest on bonds issued by the District of Columbia, by U.S. possessions, and under section 11(b) of the Housing Act of 1937 is exempt from tax by virtue of provisions outside of the Internal Revenue Code, and such bonds are not subject to the Code requirements for tax-exemption.

The Surface Transportation Assistance Act of 1982 provided that any tax-exemption for such bonds is deemed to exist by reason of Code section 103. This provision was repealed because of the order in which that Act and another Act were signed into law.

A court has ruled that section 11(b) bonds are exempt from Federal estate tax. Bonds with respect to which interest is exempt from tax under Code section 103 are not exempt from estate tax.

House bill

The House bill generally subjects bonds, the interest on which is tax-exempt by virtue of a provision of law outside the Code, to the Code rules governing tax-exempt bonds.

Senate amendment

The Senate amendment is the same as the House bill, except the Senate amendment also authorizes the Virgin Islands and American Samoa to issue IDBs, subject to the restrictions of the Code.

Conference agreement

The conference agreement follows the House bill with certain modifications and a special effective date in the case of bonds issued pursuant to section 11(b) of the Housing Act of 1937.

(5) Prohibition on use of tax-exempt bonds for consumer loans

Present law

Present law does not provide limitations on the use of the proceeds of tax-exempt bonds for private purposes except in the case of bonds where the proceeds are used in the taxable trades or businesses (i.e., industrial development bonds) or bonds where the proceeds are used to provide financing for owner-occupied housing (i.e., mortgage subsidy bonds).

House bill

No provision.

Senate amendment

The Senate amendment provides that tax-exempt bonds may be used to make loans or finance loans to persons which are not governmental units or tax-exempt organizations.

Exceptions are provided for:

(1) bonds issued before October 1, 1986, to finance student loans receiving special allowance payments;

(2) bonds issued after September 30, 1986, to finance any student loans;

(3) mortgage subsidy bonds;

(4) industrial development bonds;

(5) bonds whose proceeds are used to finance any governmental tax or general assessments;

(6) bonds whose proceeds are used to acquire obligations other than obligations for the governmental purpose giving rise to the issue (i.e., nonpurpose obligations) to the extent permitted under the arbitrage rules;

(7) Texas Veterans' Land Bonds (for bonds issued before January 1, 1987); and

(8) certain student loan bond refunding issues.

This provision applies generally to bonds issued after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment, with certain modifications regarding student loan bonds.

D. Miscellaneous Tax-exempt Bond Provisions

1. Tax-exempt obligations issued by Pennsylvania State University

Present law

Interest on obligations is excluded from gross income where the obligations are issued by or on behalf of a State or local government. The determination of whether an entity is a State or local government depends upon whether that entity has sovereign powers or is controlled by an entity with sovereign powers.

House bill

The House bill provides that the Pennsylvania State University is to be treated as a State governmental unit for purposes of issuing tax-exempt obligations.

This provision applies to obligations issued after December 31, 1953.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Clarification of public approval requirement in the case of certain public airports

Present law

Issuance of private activity tax-exempt bonds must be approved by a public hearing, an elected official, or by a voter referendum. Facilities located in more than one jurisdiction must satisfy the public approval requirements in all such jurisdictions.

House bill

The House bill provides that in the case of airports located in more than one jurisdiction, but owned and operated by the jurisdiction issuing the tax-exempt bonds, only the issuing jurisdiction is required to satisfy the public approval requirements of present law.

This provision applies to bonds issued after December 31, 1983.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Principal users of certain solid waste disposal facilities

Present law

Unlimited amounts of tax-exempt IDBs can be issued to finance solid waste disposal facilities. Under Treasury regulations, facilities cease being solid waste disposal facilities when the solid waste is processed to produce the first marketable product. In the case of solid waste that is burned to produce heat, the first marketable product is steam. Facilities for processing beyond the first marketable product can be financed with tax-exempt IDBs only under the small-issue exception. In determining whether the requirements of the small-issue exception are satisfied, the capital expenditures of all principal users of financed facilities must be taken into account.

House bill

No provision.

Senate amendment

The Senate amendment provides that the purchaser of all of the steam output of a specified solid waste disposal facility is not to be treated as a substantial user of the solid waste disposal facility.

This provision applies to bonds issued after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

4. Tax-exempt financing for Power Authority of the State of New York

Present law

Under present law, tax-exempt financing is available for the acquisition of facilities which are used in taxable business of an electric utility only if the service area of the utility does not exceed two contiguous counties (or a city and one contiguous county) or the bond meets the requirements of the small-issue exception.

House bill

No provision.

Senate amendment

The Senate amendment provides that tax-exempt bonds may be issued (1) to finance facilities for the Power Authority of the State of New York (PASNY) if there is no mark up by the purchasing utility of the electricity from PASNY when the purchasing utility sells the electricity to its ratepayers.

This provision applies to bonds issued after the date of enactment and to certain bonds issued after December 31, 1969, which were tax-exempt when issued.

Conference agreement

The conference agreement follows the Senate amendment with certain modifications.

5. Tax-exempt financing for acquisition of railroad track and rights-of-way of bankrupt railroads

Present law

Tax-exempt financing is available for the acquisition of facilities which are used in taxable businesses of railroads only if the requirements of the small-issue exception are satisfied.

House bill

No provision.

Senate amendment

The Senate amendment provides that tax-exempt bonds may be issued to finance the acquisition of railroad track and rights-of-way from bankrupt railroads where the Federal Railroad Administration provides joint financing for such facilities.

This provision applies to bonds issued after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

(6) Exemption from local furnishing rule for Long Island Lighting Company and Bradley Lake Hydroelectric Facility

Present law

Tax-exempt financing is available for the acquisition of facilities which are to be used in taxable business of an electric utility only if the service area of the utility does not exceed two contiguous counties (or a city and one contiguous county) or if the requirements of the small-issue exception are satisfied.

House bill

No provision.

Senate amendment

The Senate amendment provides an exception from the local furnishing rule for the Long Island Lighting Company and the Bradley Lake Hydroelectric Facility. This provision applies to bonds issued after December 31, 1983.

Conference agreement

The conference agreement allows advance usage of the State volulme cap, under specified conditions, for certain specially identified projects.

(7) Exemption from restriction on financing food and beverage facilities for certain catering facility

Present law

In 1982, TEFRA provided that interest on small-issue IDBs is not tax-exempt if more than 25 percent of the proceeds of an issue are used to finance any retail food and beverage service facility.

House bill

No provision.

Senate amendment

The Senate amendment provides that a facility the primary purpose of which is to provide catering services and meeting rooms for groups of 2,500 or more individuals is not treated as a facility the primary purpose of which is providing retail food and beverage services.

This provision applies to bonds issued after December 31, 1983.

Conference agreement

The conference agreement does not include the Senate provision.

(8) Review of Department of Education determinations on tax-exempt student loan bonds

Present law

The Student Loan Consolidation and Technical Amendments Act of 1983 eliminates tax-exemption for interest on student loan bonds unless the Department of Education approves issuance of the bonds.

House bill

No provision.

Senate amendment

The Senate amendment provides for review and filing of a report by the Department of the Treasury with respect to any adverse determinations by the Department of Education regarding issuance of tax-exempt student loan bonds.

This provision applies to bonds issued after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

(9) Issuance of taxable bonds by agencies issuing qualified scholarship funding bonds

Present law

Interest on qualified scholarship funding bonds is tax-exempt. Such bonds are bonds issued by State authorities meeting prescribed requirements, including the requirement that the authorities be organized exclusively to acquire student loan notes funded with tax-exempt bonds.

House bill

No provision.

Senate amendment

The Senate amendment permits student loan bond issuers to issue taxable bonds without prejudice to their ability to issue tax-exempt bonds.

This provision applies to bonds issued after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

10. Study of role of tax-exempt student loan bonds

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment requires the General Accounting Office and the Congressional Budget Office to conduct a study of the appropriate role of tax-exempt bonds in financing student loans and to report to Congress within 9 months after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with certain technical modifications.

VII. TECHNICAL CORRECTIONS

House bill

The bill contains technical, clerical, and conforming amendments to provisions enacted by the Tax Equity and Fiscal Responsibility Act of 1982, the Subchapter S Revision Act of 1982, the Highway Revenue Act of 1982, the Social Security Amendments of 1983, and other recently enacted tax legislation. The amendments are meant to carry out the intent of Congress in enacting the original legislation.

Senate amendment

The Senate amendment contained no separate technical corrections title.

Conference agreement

The conference agreement generally follows the House bill with the following modifications:

1. Alternative minimum tax

(a) The amount includible in gross income with respect to the alcohol fuels credit (sec. 87) will not be included in alternative minimum taxable income since that credit is not allowed against the minimum tax; (b) The House bill contains a provision clarifying the treatment of losses from limited business interests, for purposes of the investment interest limitations of the alternative minimum tax. In order to further clarify the application of that provision, the following example is given:

Assume that a taxpayer had $100,000 of dividend income and also held a limited partnership interest in a partnership all of whose income is derived from a trade or business. The taxpayer's distributive share of partnership income included $200,000 of gross income and $300,000 of deductions which are not preferences (including partnership deductions for business interest). Because any income or loss derived from the limited partnership interest is taken into account for purposes of computing net investment income, the taxpayer would have no net investment income for the taxable year and, therefore, could deduct no "below the line" interest (other than eligible housing interest), including interest on debt used to purchase or carry the limited partnership interest.[2]

2. Casualty loss deduction

The House bill provides that adjusted gross income, for purposes of computing the 10-percent floor for the casualty loss deduction, is determined without regard to the application of section 1231 to gains or losses from involuntary conversions arising from casualty or theft. The conference agreement retains this rule for taxable years beginning in 1983, but replaces this rule with a new set of rules for determining capital gains treatment and applying the 10-percent floor with respect to these gains and losses for taxable years beginning after December 31, 1983.

Under the conference agreement, gains and losses from an involuntary conversion of property described in section 165(c)(3) arising from fire, storm, shipwreck, or other casualty or from theft will no longer be subject to the application of section 1231. Section 1231 will thus be applied without regard to these gains and losses. Gains and losses from these personal casualties (without regard to the period the property was held) will be netted. If the recognized gains exceed the recognized losses from these transactions, then all such gains and losses will be treated as gains and losses from the sale or exchange of a capital asset, and the losses will not be subject to the 10-percent floor. (The amount of any recognized loss will be subject to the $100 floor before netting). If the recognized losses exceed the recognized gains, all gains and losses will be ordinary. Losses to the extent of gains will be allowed in full. Losses in excess of gains will be subject to the 10 percent adjusted gross income floor.

Thus, for example, assume a taxpayer has $100,000 of adjusted gross income (without regard to casualty gains and losses described in section 165(c)(3)), $50,000 of such casualty gains, and $40,000 of such casualty losses (after applying the $100 floor) for a taxable year. All the taxpayer's personal casualty gains and losses for that year will be treated as capital gains and losses. The 10-percent floor will not be applicable. Assume, however, that the taxpayer's losses for the year are $70,000 rather than $40,000. The gains and losses will all be treated as ordinary. $60,000 of losses will be allowed as a deduction ($50,000 plus the $10,000 excess of the remaining $20,000 over the $10,000 (10 percent of $100,000) AGI floor).

3. Amendments to section 338

(a) Deemed sales price.—The House bill provides that the deemed sales price will be the fair market value of the target corpora-

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[2] See General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, page 20, for similar example under the TEFRA provisions as enacted.

tion's assets. Under the conference agreement, the fair market value deemed sale price of the target corporation's assets may be determined in a manner to be prescribed by regulations. It is contemplated, for example, that the regulations may provide the determination of fair market value using an elective formula which takes into account liabilities (including recapture taxes) and other relevant items. The regulations may also provide that if the taxpayer chose not to use the formula approach a proper appraisal of the target corporation's assets will be considered evidence of fair market value.

(b) Deemed purchase price.—Under present law, the deemed purchase price is an amount based on the grossed-up basis of all of the purchasing corporation's stock in the target corporation. Under the conference agreement, the deemed purchase price to be used in determining the basis of the target corporation's assets is the grossed-up basis of the target corporation's stock purchased by the purchasing corporation during so much of the acquisition period as ends on the acquisition date plus its basis in other target corporation stock which it owns on the acquisition date. As under present law, adjustments are to be made under regulations for target corporation liabilities (including any recapture taxes) and other relevant items. The grossed-up basis of the purchased stock is determined by multiplying the basis (before grossing up) of such stock by a fraction, the numerator of which is the percentage by value of the target corporation's outstanding stock represented by such purchased stock plus stock not owned by the purchasing corporation, and the denominator of which is the percentage by value of such purchased stock. The total basis, as under present law, is to be allocated among the target corporation's assets under regulations.

An election is provided under the conference agreement pursuant to which the deemed purchase price of the target corporation's assets may be determined by stepping up the basis of the target corporation's stock held by the purchasing corporation that was not purchased during the acquisition period. The stepped-up basis is to be determined under regulations and is applicable if the purchasing corporation elects to recognize gain as if the stock were sold on the acquisition date. The deemed sale price and basis of such stock is the amount determined by multiplying the grossed-up basis of the stock purchased during so much of the acquisition period as ends on the acquisition date by a fraction, the numerator of which is the percentage of the value of the target corporation's stock represented by such stock held but not purchased by the purchasing corporation during so much of the acquisition period as ends on the acquisition date and the denominator of which is the percentage by value of all the remaining target corporation stock.

Thus, for example, assume that the purchasing corporation purchases 80 percent of the target corporation's stock for $8 million during the 12-month acquisition period, that it held an additional 8 percent of the stock with a basis of $200,000 on the acquisition date, and that 12 percent of the stock was not held by the acquiring corporation on the acquisition date. Assume that there are no liabilities (including recapture liabilities). Under the conference agreement, the target corporation's basis in its assets will be $9.4 million (92%/80% times $8 million (i.e., $9.2 million) plus $200,000). The purchasing corporation may elect to treat the 8 percent stock as sold for $800,000 ($9.2 million multiplied by the fraction 8 percent over 92 percent). If the election is made, the purchasing corporation will recognize gain of $600,000 and then the target corporation will have a basis in its assets of $10 million.

(c) Exceptions to the deemed election rule (sec. 338(e)(2)).—Under present law, a section 338 election is deemed made in certain cases where the purchasing corporation acquires assets directly from the target corporation or an affiliate of the target. Exceptions to this treatment are made for property the basis of which is determined in whole or in part by reference to its basis to the transferor, assets located outside the United States to the extent provided in regulations, and other acquisitions described in regulations.

The conference agreement modifies the carryover basis exception by requiring the basis of the acquired property to be determined wholly by reference to its basis to the transferor in order to qualify for this exception.

The conference agreement clarifies the scope of the present law regulatory authority under section 338(e)(2) by specifically providing that conditions may be imposed by the regulations in order to come within the scope of this exception. It is contemplated, for example, that the regulations may permit the purchasing corporation to elect, with respect to property acquired from the target corporation or a target affiliate during the consistency period, to take as its basis in the acquired property the adjusted basis of such property in the hands of the person from whom acquired. It is contemplated that such an election would not apply to any item of property if the result would be a basis to the purchasing corporation in excess of the cost of such item to the purchasing corporation. A corporation making such an election would be bound by all of the terms and conditions prescribed in the regulations, notwithstanding any other provision of the Internal Revenue Code.

(d) Miscellaneous amendments.—The acquisition date applicable in the case of a deemed purchase of stock by the target corporation is to be determined pursuant to regulations under the Conference agreement. The assets of a target corporation, including stock held in subsidiary corporations, are deemed purchased on the day following the acquisition date applicable to the target (sec. 338(a)(2)). The application of this rule may result in several acquisition dates when sec. 338 is applied to successive deemed purchases of several tiers of corporations acquired by the direct purchase of a target corporation which is the parent corporation of an affiliated group. The regulatory authority is intended to enable the Treasury Department to provide a single acquisition date when sec. 338 is applied to such a group.

Under the conference agreement, stock acquired in the course of certain reorganizations and other transactions set forth in regulations in which the transferor does not recognize the entire amount of gain shall be treated as not purchased.

Stock and asset acquisitions by 2 or more members of the same affiliated group will be treated as made by one corporation. Thus, the aggregate purchases of target corporation stock by several members of an affiliated group will be counted in determining whether there has been a qualified stock purchase. Similarly, the deemed sales price and basis of a target corporation's assets and gain recognized under section 338(c)(1) will be determined on a group basis.

A combined return may be filed, under the conference agreement, where an election applies to 2 or more target corporations purchased from a group which files a consolidated return that includes the target corporations for the taxable period in which the transaction occurs. The combined return will include the combined tax liability attributable to the deemed asset sales by the target corporations.

The regulatory authority provided in section 338(i) is amended by the conference agreement to delete the reference to the target corporation and its target affiliates and to apply such authority to certain transactions made by a purchasing group.

The conferees intend that the amendment in the House bill to the rules applicable to acquisitions made to evade or avoid income tax will not cause the disallowance of loss carryover deductions and other tax benefits of a corporation because of its qualified stock purchase and liquidation of a profitable corporation without a section 338 election, where the transaction results in no change in ownership of the purchasing corporation.

Finally, the time for making an election under section 338 with respect to pre-September, 1982, purchases is extended until 60 days after date of enactment.

4. Amendments to section 304

(a) Dividend treatment.—The conference agreement modifies the provision in the House bill amending the rules relating to redemptions through use of related corporations (sec. 304). Under the House bill, the amount to be treated as a dividend to selling shareholders when the stock sale involves two commonly controlled corporations (so-called brother-sister cases), is to be determined as if the distribution were by the acquiring corporation to the extent of its earnings and profits and then by the issuing corporation to the extent of its earnings and profits. When stock is sold to a subsidiary of the issuing corporation (so-called parent-subsidiary cases) present law provides that the amount of any dividend to the selling shareholder is determined as if the proceeds were first distributed to the issuing corporation, then to the selling shareholders.

Hypothetical distributions to the acquiring or issuing corporation for the purpose of determining the amount of a dividend to the selling shareholder have been considered not to affect the taxable status of the putative distributee corporation under present law. *Broadview Lumber Co. v. U.S.* 561 F. 2d 698 (7th Cir., 1977); TEFRA Conference Report (H. Rept. No. 97-760, 97th Cong., 2d Sess., p. 543). However, the effect of such distributions on the earnings and profits of the corporation deemed to have made the distribution is unclear. If the earnings and profits are reduced, a corporation can shift earnings and profits from one member of a controlled group to another at the cost of the tax, if any, on intercorporate dividends (at most, 6.9%) and create an opportunity for the deemed distributor to make nondividend distributions to noncorporate shareholders. If a corporation sells stock in a foreign subsidiary to a domestic subsidiary, it may be argued that the effect of these rules is to characterize the distribution as a U.S. source dividend from the domestic subsidiary whereas, under present law, gain from the sale would be treated as a dividend from the foreign corporation's earnings and profits if section 304 were inapplicable. In other cases, the application of the foreign tax credit is unclear with respect to a dividend resulting from the application of section 304 to a sale of stock in a foreign corporation to a related corporation in cases where there would be a foreign tax credit under section 902 if the issuing corporation paid a dividend directly to the U.S. selling corporation.

To address these issues, the Conference agreement revises the deemed distribution rules of section 304 to provide that in all cases, i.e., both brother-sister and parent-subsidiary transactions, the characterization of a distribution as a dividend, and the source of the dividend will be determined by treating the distribution as made by the acquiring corporation directly to the selling shareholder to the extent of the earnings and profits of the acquiring corporation and then as made by the issuing corporation directly to the selling shareholder to the extent of its earnings and profits. Thus, any dividend received deduction or foreign tax credit will be allowed to the same extent as if the distribution had been made directly by the corporation which is treated as having made the distribution. Also, the earnings and profits of the corporation which is treated as having made a distribution will be reduced.

(b) Effective dates.—The effective dates of paragraphs (1) and (3) of section 712(l), relating to earnings and profits and acquisition indebtedness, will apply to transfers after June 18, 1984, unless the taxpayer elects to have the provisions apply as if enacted in TEFRA. Transfers to a Bank Holding Company where regulatory approval was requested on or before June 18, 1984, and the transfer is made within 90 days of final regulatory approval will be treated as a transfer on or before June 18, 1984, for this purpose. Notwithstanding the above, in the case of a transfer to which section 351 does not apply, the acquisition indebtedness rule in the bill will apply if the debt was incurred after October 20, 1983.

5. Compliance

(a) The conference agreement applies the exceptions from interest reporting (sec. 6049) for payments to certain specified persons to dividend reporting (sec. 6042). Substitute dividends paid to corporations and other persons are reported under sec. 6045, as amended by this bill.

(b) The conference agreement amends the broker reporting rules (sec. 6045) to include government agencies in the definition of a person. Consequently, a government agency (such as the Bureau of Public Debt) acting as a broker is required to provide a broker report and to implement backup withholding.

(c) The conference agreement deprives the Claims Court of jurisdiction over refund cases involving the tax shelter promoter penalty (sec. 6700) and the penalty for aiding and abetting the understatement of tax liability (sec. 6701). This is done because the Claims Court lacks jurisdiction to hear the likely counterclaim of the Government for an injunction.

(d) The conference agreement provides that, for purposes of computing interest on refunds arising from net operating loss carrybacks where a "quickie refund" is filed (sec. 6411), the refund is not treated as claimed earlier than the time the "quickie refund" is claimed. If a "quickie refund" is not claimed, interest is computed under present law rules. Also, a "quickie refund" is treated as a claim for refund for interest purposes.

The conference agreement also provides that underpayments arising from claims for rebates (such as quickie refunds) are subject to the substantial understatement penalty (sec. 6661).

(e) The conference agreement corrects an incorrect reference to sec. 7602(a)(2) in sec. 7609(c)(1).

(f) The conference agreement requires that trusts or estates furnish copies of returns to their beneficiaries and that S corporations furnish copies of returns to their shareholders. The conference agreement also provides a $50 penalty on trusts, estates, partnerships, and S corporations for failures to provide copies of their returns to beneficiaries, partners, or shareholders.

(g) The conference agreement provides rules for backup withholding relating to the manner of notification from a broker to a payor with respect to readily tradeable instruments.

(h) The conference agreement amends backup withholding to permit the IRS to tell a payor enough of the reasons why a taxpayer is being placed on backup withholding to enable the taxpayer and payor to know how withholding can be stopped. Therefore, when the Secretary notifies a payor that a payee is subject to backup withholding, the Secretary will also notify the payor that backup withholding is being imposed because the TIN furnished by the payee is incorrect or because of notified payee underreporting. The prohibition on disclosure by the Secretary of the nature or details of the payee's underreporting is continued.

(i) The conference agreement restores the technical rules applicable to trusts under interest and dividend withholding to backup withholding. These rules were inadvertently repealed by the Interest and Dividend Tax Compliance Act of 1983.

(j) The conference agreement clarifies that backup withholding does not apply in the pension area. The conference agreement provides that, if a payee has not provided a proper social security number in the manner required by the Secretary or if the Secretary notifies the payor that the social security number is not correct, any election out of pension withholding is not effective. In addition, the withholding convention treating the payee as a married individual claiming three exemptions is not effective. Consequently, the payee is treated as a single individual claiming no exemptions if no withholding exemption certificate is in effect (see Treas. Reg. sec. 31.3402(f)(2)-1(a)).

The conferees anticipate that the Secretary will consider a payee's social security number to have been properly furnished so long as, before January 1, 1985, the payee provides the social security number in a manner acceptable to the payor. Therefore, if the payee has previously furnished his social security number in response to a request relating to pension withholding or backup withholding, or if the payor has otherwise obtained the number, that number is considered to have been properly furnished. The Secretary may require that, on or after January 1, 1985, the social security number must be furnished in the manner that the Secretary determines. The Secretary may, for example, require these social security numbers to be certified under penalties of perjury, if he determines that to be appropriate.

6. Energy

(a) The conference agreement amends section 44(D) (relating to the credit for producing fuel from nonconventional sources) to provide that in the case of a fiscal year taxpayer, the reference price on which the amount of the credit depends will be the reference price for the calendar year in which the fuel is sold rather than for the calendar year in which the producers fiscal year begins. This amendment ensures that producers of nonconventional fuels sold on the same day will have the same credit regardless of whether they have the same tax accounting year.

(b) The conference agreement provides for a simplified procedure under which refunds arising by reason of section 201(h)(1)(E) of the Technical Corrections Act of 1982 for periods before 1983, may be made to a partnership rather than its partners individually.

7. Subchapter S

(a) The House bill extends the grace period to make an election to be treated as a qualified subchapter S trust from 60 days to 75 days. The conference agreement changes the 75 days to 2 months and 15 days, to conform to the time for making a subchapter S election (see Treasury Temp. Reg. sec. 18.1362-(b)).

(b) The House bill provides that amounts in the accumulated adjustment account will be allocated pro-rata among all distributions made during the year. The conference agreement allows exceptions to this rule to be provided by the Treasury Department. It is anticipated that this authority would be used to provide a different rule where substantial amounts of stock in the corporation are sold or exchanged during the taxable year.

(c) The House bill provides that a corporation can make a subchapter S election within 2½ months from the beginning of a taxable year although the taxable year is less than 2½ months duration. The conference agreement clarifies that when the election for the short year is late filed but is timely for the subsequent taxable year, it will be effective for the subsequent year. This provision will apply to elections after October 19, 1982.

(d) Present law imposes a tax on subchapter S corporations with passive income and subchapter C earnings and profits. Under the conference agreement, this tax could be waived by the Internal Revenue Service if the corporation had determined, in good faith, that it had no such earnings and profits, and the earnings are distributed after their discovery.

(e) The subchapter S Act requires the basis of debt which is reduced by losses to be restored by subsequent income. The conference agreement clarifies that this applies only to the extent the basis in the debt was reduced in taxable years beginning after 1982.

(f) Present law provides that the revocation of a subchapter S election requires the consent of the shareholders holding a majority of the shares of stock. Although no statutory amendment is made, the conference agreement clarifies that this is the rule notwithstanding language in the 1982 committee reports to the contrary.

(g) The House bill provides that the basis of stock in an S corporation is to be adjusted to reflect adjustments required to the basis of corporation property when investment credits are allowed or recaptured. Corresponding adjustments are also to be made to the accumulated adjustments account.

8. Partnerships

(a) The Tax Reform Act of 1976 provided that gain is recognized when property is contributed to a partnership which is an investment company (sec. 721(b)). The conference agreement clarifies that the basis of the contributed property and the basis of the partnership interest is increased only by the gain recognized under section 721(b).

(b) Under present law, the basis of a partnership interest is generally increased by the excess of depletion deductions in excess of basis (sec. 705(a)(1)(C)). The language relating to oil and gas depletion (sec. 705(a)(3)) is amended to clarify that similar treatment applies to oil and gas depletion.

9. Highway Revenue Act

The conference agreement follows the House bill with three modifications—

(a) The period for filing floor stocks refund claims with respect to tires on which tax was reduced, but not repealed, by the Highway Revenue Act is extended for six months. Under the conference agreement, claims must be submitted to manufacturers by tire dealers before January 1, 1985; manufacturers must in turn submit claims to the Government before April 1, 1985.

(b) The provision under which taxpayers whose average daily production of crude oil is below a specified amount are permitted an additional five days in which to pay the gasoline excise tax if their payment is made by wire transfer is clarified to provide that the payment must be made by wire transfer to a Federal Reserve Bank.

(c) A clarification is made to the rules under which refunds or credits against the retail truck and trailer excise tax are available to ensure that refunds or credits for price readjustments will be available against the retail tax to the extent they were available when the tax was imposed as a manufacturers tax.

10. P.L. 98-258

The conference agreement makes the following modifications to P.L. 98-259, which forgives certain Federal income tax liabilities for U.S. military or civilian employees who die as a result of wounds or injuries sustained overseas either in certain military actions involving U.S. Armed Forces or in a terroristic activity directed against the U.S. or its allies (including a multinational force in which the U.S. participates).

(a) The effective date is changed from individuals wounded after December 31, 1979, to individuals wounded after November 17, 1978.

(b) The determination of whether terroristic action was directed against the U.S. or its allies is to be based on a preponderance of the evidence.

(c) The required relationship between the overseas wound or injury and the individual's death is clarified by providing that the individual must be a U.S. employee both at the date of incurring the wound and at the date of death.

(d) The definition of U.S. employees is modified so that the Director General of the Multinational Force and Observers in the Sinai who died February 15, 1984 is treated as a civilian employee of the United States while serving in that position.

11. Foreign currency contracts

The provision in the House bill relating to the election to treat certain foreign currency contracts as not marked-to-market is not contained in the conference agreement.

VIII. ENTERPRISE ZONES

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides for the designation of certain distressed areas as enterprise zones and provides tax incentives and regulatory relief designed to stimulate economic activity within the zones. Under these provisions, up to 75 enterprise zones are to be designated by the Secretary of the Department of Housing and Urban Development, beginning on January 1, 1985, over a period of 3 years, although no more than 25 designations may be made during each year. At least one-third of the designated zones will be in rural areas. Each enterprise zone is eligible for Federal tax and regulatory relief. The duration of each zone is 20 years, plus a 4-year phaseout period. Areas are to be nominated for enterprise zone designation by one or more local governments and the State in which the area is located. Areas nominated for such a designation have to meet certain criteria of economic distress, and designations are made through a competitive process weighing suggested plans for developing the area through tax and regulatory relief, improved services, and involvement of neighborhood and community organizations and private entities in development efforts.

Under the Senate amendment, the following Federal tax incentives are available in enterprise zones: An additional 3-percent or 5-percent investment tax credit for investments in personal property and a 10-percent credit for investments in new structures in the zone; a 10-percent credit to employers for increases in payroll to qualified zone employees and a credit for hiring disadvantaged workers for zone employment; a 5-percent credit to zone employees for wages received from zone employers; an exclusion from tax on capital gains attributable to zone property; allowance of full ACRS deductions for facilities in zones financed by industrial development bonds despite the limitation of such deductions for comparably financed facilities elsewhere, and the continued availability of the small issue exemption for industrial development bonds in zones after December 31, 1986, despite its termination on that date elsewhere.

Conference agreement

The conference agreement does not contain the Senate amendment.

IX. HIGHWAY REVENUE PROVISIONS

1. Reduction in heavy vehicle use tax and increase in diesel fuel tax

Present law

Use tax

In general, an annual excise tax is imposed on the use on the public highways of a highway motor vehicle whose taxable gross weight exceeds a prescribed minimum weight. The tax is paid by the person in whose name the vehicle is registered, and the taxable period begins on July 1. Amounts equivalent to highway use tax receipts are appropriated to the Highway Trust Fund. The tax expires on October 1, 1988.

Tax rate.—For uses occurring before July 1, 1984, the tax rate is $3 per 1,000 pounds of taxable gross weight or fraction thereof. Vehicles of 26,000 pounds or less are exempt.

The tax rate is scheduled to change to a graduated structure on July 1, 1984. Vehicles under 33,000 pounds are exempt. For vehicles between 33,000 and 55,000 pounds, the tax rate is $50, plus $25 for each 1,000 pounds or fraction thereof over 33,000 pounds. For vehicles of 55,000 pounds or more, the tax rate is $600, plus $40 (rising to $52 by 1988) for each 1,000 pounds or fraction thereof over 55,000 pounds. The maximum tax rate, applicable to vehicles over 79,000 pounds, is $1,600 (rising to $1,900 by 1988).

Operating rules.—Two rules are generally effective as of July 1, 1984. First, a vehicle that travels fewer than 5,000 miles on the public highways during a taxable period is exempt, regardless of taxable gross weight. Second, a credit or refund is allowed pro rata, if a vehicle on which use tax has been paid is retired from service because of theft, accident or other casualty.

Small owner-operators.—Special rules apply in the case of a person (a small owner-operator) who owns and operates no more than 5 taxable vehicles during a taxable period. Beginning July 1, 1984, the tax rate applicable to small owner-operators in a taxable period is the tax rate generally applicable in the immediately preceding taxable year. In addition, the 5,000-mile exemption and proration for theft or accident are not effective for small owner-operators until July 1, 1985.

Diesel fuel tax

An excise tax of 9 cents a gallon is imposed on the sale of diesel fuel for use in a highway vehicle. The tax expires on October 1, 1988.

A number of complete exemptions are provided, including an exemption for diesel fuel sold to a State or local government or nonprofit educational organization for its exclusive use and a refund or credit for tax paid for diesel fuel used in an intercity, local or school bus. Certain other diesel fuel is exempt from only a portion of the tax.

Amounts equivalent to diesel fuel tax receipts are appropriated to the Highway Trust Fund. One-ninth of these amounts (currently, 1 cent per gallon) is designated for the Mass Transit Account in the fund.

House bill

Use tax

The House bill restructures and reduces the highway use tax rate generally, and revises the operating rules for small owner-operators, effective July 1, 1984.

Tax rate.—Vehicles under 55,000 pounds are exempt. For vehicles of 55,000 pounds or more, the tax rate is $150, plus $20 for each 1,000 pounds or fraction thereof over 55,000 pounds. The maximum tax rate, applicable to vehicles over 72,000 pounds, is $500.

Small owner-operators.—For the taxable period beginning on July 1, 1984 only, the tax rate for small owner-operators is $3 per 1,000 pounds for vehicles of 55,000 pounds or more. However, if this special rule would produce a greater use tax on a small owner-operator's vehicle than does the general tax rate, then the general rate applies to that vehicle. Only the general tax rate applies to small owner-operators beginning July 1, 1985. Moreover, the 5,000-mile exemption and proration for theft or accident are made available to small owner-operators beginning July 1, 1984.

Study requirement.—The Secretary of Transportation is instructed to report to Congress within one year after the date of enactment whether trucks of 80,000 pounds or more bear their fair share of the costs of the highway system.

Diesel fuel tax

The House bill increases the excise tax on diesel fuel to 14.5 cents a gallon, effective July 1, 1984, to compensate for lower revenues from the reduced use tax provided by the bill. No modifications are made to the exemptions provided under present law: that is, complete exemptions remain complete, and partial exemptions remain at their present-law levels.

To offset the increase in fuel costs for light vehicles, the House bill provides an advanced rebate equal to the estimated extra tax to be paid over the expected life of the vehicle. A qualifying vehicle must have a gross vehicle weight of 10,000 pounds or less. The rebate is available only to (1) the original purchaser of a diesel-powered vehicle purchased after January 1, 1985, and before 1988 or (2) the holder as of January 1, 1985, of a vehicle purchased on or before that date. The rebate for a vehicle is claimed once, generally on the income tax return of (1) the original purchaser, in the taxable year of purchase, or (2) the holder, in the taxable year which includes December 31, 1984. The amount of the rebate is fixed at $96 for a new car ($180 for a new truck), and is reduced proportionally for older cars. No rebate is available if the model year is 1978 or earlier.

To maintain the currently effective designation of amounts to the Mass Transit Account, one cent per gallon (rather than one-ninth) of the diesel fuel tax is designated for that account.

Senate amendment

Use tax

Tax rate.—The Senate amendment restructures and reduces the tax rate, effective July 1, 1984. Vehicles under 55,000 pounds are exempt. For vehicles of 55,000 pounds or more, the tax rate is $75, plus $21 for each 1,000 pounds or fraction thereof over 55,000 pounds. The maximum tax rate, applicable to vehicles over 79,000 pounds, is $600.

Logging vehicles.—Under a special rule, the tax rate is reduced by one-half for logging vehicles used exclusively to haul harvested forested products from the forested site and registered for that purpose.

Agricultural vehicles.—Under a special rule, the 5,000-mile exemption is increased to 7,500 miles for State-registered agricultural vehicles which haul farm commodities to or from the farm, effective as if included in sec. 513 of the Highway Revenue Act of 1982.

Small owner-operators.—The Senate amendment is the same as the House bill with respect to rules applicable to small owner-operators.

Study requirements.—The Secretary of Transportation is required to report to Congress within one year after the date of enactment on effects of the use tax on trans-border trucking operations. In addition, the National Academy of Sciences is required to study weight-distance taxes and report to Congress within 18 months of the date of enactment.

Diesel fuel tax

The Senate amendment increases the excise tax on diesel fuel to 15 cents a gallon, effective July 1, 1984. Present law exemptions from the entire amount of tax, including the credit or refund for diesel fuel sold to a State or local government or nonprofit educational organization for its exclusive use, are generally increased to 15 cents a gallon. However, the credit or refund for diesel fuel used in intercity, local or school buses (which are not operated by or for a State or local government) is maintained at 9 cents a gallon, resulting in a 6-cents-a-gallon tax.

A rebate of the additional 6-cents-a-gallon tax is provided for taxable fuel used in vehicles which have a gross vehicle weight of 8,000 pounds or less. The rebate is generally claimed annually on the income tax form of the user who paid the additional tax.

One cent per gallon (rather than one-ninth) of the diesel fuel tax is designated for the Mass Transit Account of the Highway Trust Fund.

Conference agreement

Use tax

The conference agreement follows the Senate amendment, with the following modifications.

Tax rate.—The conference agreement restructures and reduces the tax rate, effective July 1, 1984. Vehicles under 55,000 pounds are exempt. For vehicles of 55,000 pounds or more, the tax rate is $100, plus $22 for each 1,000 pounds or fraction thereof over 55,000 pounds. The maximum tax rate, applicable to vehicles over 75,000 pounds, is $550.

Logging vehicles.—The conference agreement provides that the tax rate is reduced by 25 percent for logging vehicles that are used exclusively to haul harvested forested products to and from the forested site and are required to be registered for that purpose

Study requirements.—The conference agreement includes the study (relating to vehicles over 80,000 pounds) provided by the House bill. Also, it provides that the study relating to weight-distance taxes will be conducted by the Department of Transportation rather than the National Academy of Sciences. These studies and the study relating to trans-border trucking will be reported to Congress before October 1, 1987.

The conferees recognize that the Internal Revenue Service may need additional time to distribute use tax forms reflecting the new rate schedule, and that taxpayers should be allowed until September 30, 1984, to file the appropriate forms for the taxable period beginning July 1, 1984.

Diesel fuel tax

The conference agreement follows the House bill, with four modifications.

First, the excise tax on diesel fuel is increased by 6 cents a gallon to 15 cents a gallon.

Second, the credit or refund of tax paid on diesel fuel used in an intercity, local or school bus is generally increased to 12 cents a gallon, resulting in a 3-cents-a-gallon tax. However, this credit or refund is 15 cents a gallon in the case of a local bus while furnishing transportation, available to the general public along regularly scheduled routes, provided that the bus is operated under contract with a State or local government or that such government pays more than a nominal subsidy toward the operation of the bus.

Third, the effective date of provisions relating to the diesel fuel tax is August 1, 1984.

Fourth, the amount of the one-time rebate to purchasers and holders of qualifying vehicles is fixed (to reflect the 6-cents-a-gallon tax increase) at $102 for a new car and $198 for a new truck. As this rebate is designed to compensate the vehicle purchaser for the increase in the diesel fuel tax, the conferees intend that the rebate not be subject to those provisions of P.L. 95-355 that require separate appropriation for effecting payment of newly-enacted refundable tax credits.

2. One-year extension of refund of taxes on fuels used in qualified taxicabs

Present law

Present law provides a 4-cents-per-gallon exemption from the excise taxes on gasoline, diesel fuel, and special motor fuels when those fuels are used in certain taxicabs. The exemption is realized by means of a refund or credit rather than through exempt sales. Qualified taxicabs must be vehicles rated at above-average fuel economy and must not be precluded from offering ride-sharing. This exemption expires after September 30, 1984.

House bill

No provision.

Senate amendment

The Senate amendment extends the present 4-cents-per-gallon exemption for fuels used in qualified taxicabs through September 30, 1985.

The amendment also directs the Secretary of the Treasury to conduct a study of the effectiveness of the exemption and to report to Congress not later than January 1, 1985.

Conference agreement

The conference agreement includes the Senate amendment.

3. Increase in excise tax exemptions for alcohol fuels mixtures and alcohol fuels, income tax credit for qualified alcohol fuels, and duty on imported alcohol fuels

Present law

Excise tax exemptions

Alcohol fuels mixtures.—Present law provides a 5-cents-per-gallon exemption from the excise taxes on gasoline, diesel fuel, and special motor fuels for fuels consisting of mixtures of any of those fuels with at least 10 percent alcohol (i.e., "gasohol") (secs. 4041, 4081, and 6427). The term alcohol is defined to include only alcohol derived from a source other than petroleum, natural gas, or coal.

Alcohol fuels.—Present law provides a 9-cents-per-gallon exemption from the excise tax on special motor fuels for certain alcohol fuels comprised of at least 85 percent alcohol derived from a source other than petroleum or natural gas (sec. 4041).

Alcohol fuels credit

Present law allows a 50-cents-per-gallon income tax credit for alcohol used in mixtures with gasoline, diesel fuel, and special motor fuels where the alcohol comprises at least 10 percent of the mixture (sec. 44E). A like credit is allowed for alcohol used as a fuel, other than in a qualified fuels mixture. The term alcohol is defined to include only alcohol derived from a source other than petroleum, natural gas, or coal.

Duty on imported alcohol fuels

Present law imposes a duty equal to 50-cent-per-gallon on alcohol imported into the United States for use as a fuel (19 U.S.C. sec. 1202).

House bill

No provision.

Senate amendment

Excise tax exemptions

Alcohol fuels mixtures.—The Senate amendment increases the excise tax exemptions for gasohol to 6.75 cents per gallon.

Alcohol fuels.—The Senate amendment provides a 4.5-cents-per-gallon exemption for alcohol fuels at least 85 percent pure if the alcohol is derived from natural gas.

Alcohol fuels credit

The Senate amendment increases the alcohol fuels mixture credit and the alcohol fuels credit to 67.5 cents per gallon.

Duty on imported alcohol fuels

The Senate amendment increases the duty on alcohol imported for use as a fuel to 67.5 cents per gallon.

Definition of certain qualified alcohol

The Senate amendment clarifies that alcohol derived from peat is considered to be derived from coal.

These provisions of the Senate amendment are effective on July 1, 1984. A floor stocks refund or credit is generally allowed to a manufacturer, producer or importer of articles for which the excise tax exemption is increased. The amount of the refund or credit equals the excess tax paid on such articles sold by the manufacturer, producer or importer before July 1, 1984, and held for sale in dealers' inventory on that date.

Conference agreement

The conference agreement includes the Senate amendment, with the following modifications. The conference agreement increases the excise tax exemption for gasohol to 6 cents per gallon, the alcohol fuels mixture credit and the alcohol fuels credit to 60 cents per gallon, and the duty on imported alcohol to 60 cents per gallon.

The provisions of the conference agreement are effective on January 1, 1985. The conference agreement does not include a floor stocks refund or credit provision.

4. Exemption from excise tax for piggyback trailers

Present law

A 12-percent excise tax is imposed on the first retail sale of truck trailer and semitrailer chassis and bodies which are suitable for use with a trailer or semitrailer which has a gross vehicle weight over 26,000 pounds. The tax generally applies to retail sales made after March 31, 1983. Under prior law, a 10-percent manufacturers excise tax applied to the sale of these trailers before April 1, 1983. The changes to a retail tax and higher rate of tax were enacted in the Highway Revenue Act of 1982, which also exempted rail trailers sold after December 2, 1982, from the prior-law and present-law sales tax on heavy trailers.

House bill

No provision.

Senate amendment

The Senate amendment exempts piggyback trailers and semitrailers (including parts or accessories) from the sales tax on heavy trailers. A piggyback trailer includes any trailer which is designed for use principally in connection with trailer-on-flatcar rail service and which the seller, according to regulations prescribed by the Secretary, certifies will be so used.

The conditions for exemption of a piggyback trailer continue to apply after the first retail sale. Thus, if the purchaser of an exempt piggyback trailer subsequently ceases to satisfy the conditions for exemption, the purchaser will be liable for the 12-percent excise tax (determined as if a taxable sale had occurred at that time). Similarly, if an exempt piggyback trailer is subsequently resold, the resale will be subject to the 12-percent tax and the reseller liable to pay the tax, unless the conditions for exemption apply to the resale.

The exemption is effective as if included in that provision of the Highway Revenue Act of 1982 which exempted rail trailers. Refunds are provided for piggyback trailers sold to ultimate purchasers after December 2, 1982, and before the date of enactment.

Conference agreement

The conference agreement includes the Senate amendment, with modifications.

The conference agreement provides that the 12-percent excise tax on the sale of heavy trailers is reduced to 6 percent in the case of piggyback trailers and semitrailers. This reduced tax rate applies only to sales made during the one-year period beginning on the day of enactment, at the end of which period the tax rate returns to 12 percent. The conference agreement does not amend the treatment of piggyback trailers sold prior to the day after the date of enactment.

The conference agreement provides that the Secretary of Transportation is to report to Congress before May 1, 1985, on the appropriate application and level of the excise tax to piggyback trailers.

X. MISCELLANEOUS REVENUE PROVISIONS

A. Estate and Gift Tax Provisions

1. Qualification of certain holding company stock for installment payment of estate tax

Present law

Estate tax attributable to certain interests in closely held businesses may be paid in installments over up to 14 years (interest only for 4 years, followed by up to 10 annual installments of principal and interest). A special 4-percent interest rate is provided for certain amounts of deferred tax.

Qualifying closely held businesses may be conducted as proprietorships, partnerships, or corporations. Generally, only directly owned interests in active business operations are considered for purposes of the installment payment provision.

Present Treasury regulations take the position that the value of a trade or business carried on as a proprietorship includes only the value of those assets actually used in the trade or business. On the other hand, if the business is carried on as a partnership or a corporation, the value of the trade or business includes the value of all partnership or corporate assets, even though a portion of the partnership or corporate assets may be used for purposes other than carrying on a trade or business.

Unpaid tax (and interest thereon) is accelerated if cumulative withdrawals from or dispositions of the interest in the business exceed 50 percent of the value of the interest, if the estate has undistributed net income in certain circumstances, or if any installment is not paid within 6 months after the due date of that installment.

House bill

The House bill permits executors to elect to look through a passive holding corporation for purposes of determining whether the decedent owned an interest in a closely held business if 80 percent or more of the value of the holding corporation consists of the value of nonreadily tradeable stock in a single active business corporation.

Only the value of qualifying stock owned by the holding corporation which is attributable to the value of assets (including working capital) actually used in an active business operation is considered for purposes of the installment payment provision. If the election is made, the special 4-percent interest rate and 5-year deferral of principal payments are not available.

Conforming amendments are made to the acceleration provisions of present law providing that a disposition of an interest in or a withdrawal of property from the passive holding corporation as well as the active business may result in acceleration of unpaid tax. Likewise, dividends paid by the active business corporation to the holding corporation are treated as paid to the decedent's estate to the extent of the decedent's interest in the holding corporation.

This provision is effective for estates of individuals dying after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill except the Senate amendment also permits executors to elect to look through multiple tiers of passive holding corporations to determine whether the decedent owned an interest in a closely held business. The multiple tier look through is available only if at least 20 percent of the value of each corporation to be looked through is included (directly or indirectly) in the value of the decedent's gross estate. The Senate amendment also expands the House rule under which only the value of assets (including working capital) actually used in an active business are considered for purposes of the installment payment provision to provide that, in the case of all interests in partnerships and corporations (whether or not a passive holding corporation is present), only the value of assets directly related to the reasonable needs of the business are considered.

Conference agreement

The conference agreement follows the Senate amendment with technical modifications. Under the conference agreement, interests in active closely held corporations may be considered for purposes of the installment payment provision provided the indirectly owned interest would meet the requirements of that provision were it directly owned. Therefore, an indirectly owned interest in a single closely held corporation qualifies if the corporation has 15 or fewer shareholders or the decedent owned 20 percent or more of the corporation's voting stock. Also, the value of the business interest must exceed 35 percent of the value of the decedent's adjusted gross estate. As under present law, if a decedent owns interests in more than one closely held business, at least 20 percent of the value of each such business must be included in the decedent's estate if the businesses interests are to be aggregated for purposes of the installment payment provision.

The conference agreement retains the rules of the House bill and the Senate amendment pursuant to which the special 4-percent interest rate and the 5-year deferral of principal are not available to estates electing the special look-through provision.

Additionally, the conference agreement retains the rule that in the case of all corporations and partnerships, only active business assets are considered for purposes of the installment payment provision. The conference agreement does not apply to this rule, however, for purposes of the acceleration rules of section 6166(g).

Finally, the conference agreement includes an exception under which multiple wholly owned subsidiaries of a passive holding company may be treated as one subsidiary corporation if the holding company has fifteen or fewer shareholders on June 22, 1984, and at all times prior to the owners' death, and if at least some of the subsidiaries are carrying on a trade or business. In determining whether the subsidiary corporations are 100 percent owned, a de minimis amount of stock owned by the directors of a corporation, that under State law is treated as owned by the corporation is also treated as owned by the corporation for purposes of this rule.

2. Repeal of the generation-skipping transfer tax

Present law

A tax is imposed on generation-skipping transfers under a trust or similar arrangement upon the distribution of trust assets to a generation-skipping heir (for example, a great-grandchild of the grantor of the trust) or upon termination of an interest in or power over the trust (for example, termination of a life income interest held by the grantor's child).

Basically, a generation-skipping trust is one which provides for a splitting of benefits between two or more generations younger than the generation of the grantor of the trust. The tax imposed on generation-skipping transfers is substantially equivalent to the the tax that would have been imposed if the property had been transferred outright to each successive generation (in which case, the gift or estate tax would have applied).

House bill

No provision.

Senate amendment

The Senate amendment repeals the generation-skipping transfer tax, effective with respect to such transfers occurring after June 11, 1976 (the date on which the tax was originally effective).

Conference agreement

The conference agreement follows the House bill.

3. Tax treatment of certain disclaimers of interests transferred before November 15, 1958

Present law

A disclaimer is a refusal to accept the ownership of property or of rights with respect to property. If a qualified disclaimer is made, the Federal gift, estate, and generation-skipping transfer tax provisions apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. Thus, the transfer of property pursuant to a disclaimer is not treated as a taxable gift by the person making the disclaimer.

On November 15, 1958, the Treasury Department adopted regulations clarifying the requirement that a disclaimer, to be effective, must be made within a reasonable time after the transfer in which the property interest was created. These regulations applied to interests in property transferred before that date, as well as to such interests transferred after November 14, 1958. In 1976, Congress enacted statutory provisions similar to the 1958 regulations, applicable to disclaimers made after 1976 (Code sec. 2518).

On February 23, 1982, the Supreme Court upheld the applicability of the Treasury regulations to disclaimers of property interests transferred before November 15, 1958 (*Jewett v. Comm'r* (455 U.S. 305 (1982)).

House bill

No provision.

Senate amendment

The Senate amendment permits disclaimers of property interests created by transfers occurring before November 15, 1958, to be made within 90 days after the date of enactment in certain cases. To be qualified, these disclaimers must satisfy all requirements of the present statutory rules, except for the requirement that the disclaimer be made within nine months of the transfer creating the interest.

Conference agreement

The conference agreement follows the House bill.

4. Clarification that certain usufruct interests qualify for estate tax marital deduction

Present law

Present law generally permits an unlimited estate tax deduction for the value of interests in property passing from a decedent to his or her surviving spouse (Code sec. 2056). The election is available with respect to a "terminable interest" in property only if the executor makes a special election (i.e., makes a so-called "QTIP election"). If the election is made, the full value of the terminable interest in property is included in the estate of the surviving spouse. A terminable interest is an interest that terminates upon the lapse of time or the occurrence or failure of an event or other contingency.

Under the Louisiana Civil Code, if a surviving spouse receives a usufruct interest created by will, the interest generally is comparable to a common law life estate. Such a usufruct interest may be in consumable or nonconsumable property. It is unclear under present law whether a usufruct for life in consumable property is eligible for the QTIP election because Louisiana law does not trace the usufruct property to find if that property actually is included in the surviving spouse's estate.

House bill

No provision.

Senate amendment

The Senate amendment clarifies that a usufruct interest for life in both consumable and nonconsumable property is eligible for the QTIP election. The provision is effective for estates of individuals dying after 1981.

Conference agreement

The conference agreement follows the Senate amendment with certain clarifications as to the technical application of the provision. The conferees recognize that different results arguably might obtain in cases where a usufruct for life with respect to which a QTIP election is made is in consumable property (e.g., a certificate of deposit) as opposed to nonconsumable property. This difference could result from the fact that, unlike nonconsumable property, the consumable property is commingled with the spouse's own property and Louisiana law does not provide for tracing of the consumable property in the estate.

In the case of nonconsumable property, because the specific QTIP property can be identified, the entire value of that property is included in the estate of the second spouse to die exclusively under Code section 2044. Therefore, the value of the property is counted only one time in determining the value of the spouse's estate. Similarly, no deduction is allowed under section 2053 for any claim against a surviving spouse's estate by the naked owner of the nonconsumable usufruct property for which a QTIP election was made by the estate of the first spouse to die.

The conferees wish to reiterate that, as provided by the Senate amendment, these same results obtain in the case of a usufruct for life in consumable property with respect to which a QTIP election is made. A usufruct for life in consumable property for which a QTIP election is made is to be treated as exclusively included in the estate of the second spouse to die under section 2044 to the extent of the naked owner's claim against the spouse's estate with respect to the property, and as exclusively included under section 2033 to the extent of any excess value. Similarly, the claim of that spouse's estate for contribution from the naked owners of the property arising under section 2207A is to be limited to an amount of tax determined as if the value of the usufruct interest included in the spouse's estate were equal to the amount included in the estate under section 2044. Finally, no deduction is allowed under section 2053 for any claim against the surviving spouse's estate by the naked owners of the consumable usufruct property for which a QTIP election was made by the estate of the first spouse to die.

5. Special estate tax credits

Present law

A deduction generally is allowed for estate tax purposes for certain amounts transferred for charitable purposes (Code sec. 2055). The United States is a qualified donee of such deductible transfers. Credits against estate tax are not provided for transfers for charitable purposes.

House bill

No provision.

Senate amendment

The Senate amendment provides special estate tax credits for the estates of Neil J. Redfield and Elizabeth Schultz Rabe. The credits apply to the transfer, without reimbursement or payment, to the Secretary of Agriculture for addition to the Toiyabe National Forest of real property located within or adjacent to the boundaries of that national forest.

Conference agreement

The conference agreement follows the Senate amendment.

6. Perfection of estate tax current use valuation elections

Present law

An executor may elect to value certain real property used in farming or other closely held business operations for estate tax purposes based upon its current use rather than its full fair market value (Code sec. 2032A). The election may be made only on the first estate tax return filed. Additionally, all persons with an interest in the property to be specially valued must enter into an agreement to the election, which agreement is binding under local law. Treasury regulations require that a notice of election and the required agreement must be filed with the estate's Federal estate tax return.

House bill

No provision.

Senate amendment

The Senate amendment directs the Treasury Department to develop procedures permitting perfection of notices within 90 days of a request from the Internal Revenue Service. Under the Senate amendment, the right to perfect a notice of election or agreement applies only where those items, as originally filed, substantially comply with the requirements of the regulations.

Conference agreement

The conference agreement follows the Senate amendment. The conferees wish to reiterate that, as under the Senate amendment, perfection of notices of election and of agreements to current use valuation elections is to be permitted only in cases where the estate tax return, as filed, evidences substantial compliance with the requirements of the Treasury regulations. For example, merely checking the applicable box on the Federal estate tax return that an election is being made is not sufficient action by the estate to secure the benefits of the current use valuation provision. Both a notice of election and an agreement that themselves evidence substantial compliance with the requirements of the regulations must be included with the estate tax return, as filed, if the estate is to be permitted to perfect its election.

Illustrations of the type of information that may be supplied after the initial filing of a notice of election are omitted social security numbers and addresses of qualified heirs and copies of written appraisals of the property to be specially valued. This provision does not, however, permit such appraisals to be obtained only after the estate tax return is made. Rather, the provision simply permits the submission of previously obtained appraisals. Likewise, a notice of election which does not provide a legal description of the property to be specially valued may not be perfected unless the notice, as initially filed with the estate tax return, described the property with reasonable clarity, even though the full legal description was not provided.

As stated above, an agreement to the current use valuation election may be perfected under this provision provided the agreement, as filed with the estate tax return, evidences substantial compliance with the requirements of the regulations. To be eligible for perfection, the agreement as originally filed must at a minimum be valid under State law and must include the signatures of all parties having a present interest or a remainder interest other than an interest having a relatively small value.[1] The right to perfect agreements is intended to be limited to cases where, for example, a parent of a minor remainderman, rather than a *guardian ad litem* as required under State law, signs the agreement. Similarly, failure to designate an agent in the agreement as filed may be corrected under this provision.

7. No gain recognized from net gifts made before March 4, 1981

Present law

Gift tax is the liability of the person making a gift. Satisfaction of a person's debt or other liability generally results in income to the person relieved of the liability. The Supreme Court, in *Diedrich* v. *Comm'r* (457 U.S. 191 (1982), held that a net gift (i.e., a gift in which the gift tax is paid by the donee of the transferred property) results in income to the donor to the extent that this gift tax exceeds the donor's basis in the transferred property.

House bill

The House bill provides that payment of gift tax by a donee does not result in income to the donor in the case of net gifts made before March 4, 1981. The effect of this provision is to reverse the Supreme Court decision in *Diedrich* v. *Comm'r* with respect to net gifts made before that date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

8. Reformation of certain charitable split-interest trusts

Present law

Trusts having both charities and noncharities as beneficiaries generally must be structured as unitrusts or annuity trusts to qualify for a charitable deduction. These requirements were enacted by the Tax Reform Act of 1969.

Certain trusts created before December 31, 1978 (including trusts created in wills executed before that date) could be reformed (amended) to satisfy the unitrust, etc. requirements if (1) judicial or other proceedings were begun before January 1, 1982, and (2) the trust were amended within 30 days after completion of the proceedings (Code sec. 2055).

Present law includes no rule permitting reformation of defective charitable split-interest trusts created after December 31, 1978.

House bill

The House bill provides a permanent rule permitting reformation of charitable split-interest trusts if certain requirements are satisfied. Under this provision of the House bill, the relative values of the charity and the noncharity interests in the trust may not vary by more than 5 percent as a result of the reformation. Additionally, unless reformation proceedings are begun within 90 days after the due date of the Federal estate tax return (or the first trust income tax return if no estate tax return is due), the trust must, as executed, provide for an annuity trust or unitrust amount.

The provision is effective generally for reformations made after December 31, 1978.

Senate amendment

The Senate amendment is the same as the House bill, except the Senate amendment also provides that a reformation is deemed to occur to the extent that, pursuant to trust provisions, property passes directly to a charity before the due date of the estate tax return.

Conference agreement

The conference agreement follows the Senate amendment.

9. Alternate valuation date election

Present law

The value of property included in an individual's gross estate for Federal estate tax purposes generally is determined on the date of the individual's death. However, the executor of an estate may elect to value all property included in the gross estate as of the alternate valuation date, which generally is the date six months after the date of the decedent's death. The election to use the alternate valuation date must be made on a timely filed estate tax return (Code sec. 2032).

House bill

The House bill limits eligibility for the alternate valuation date election to estates where both the total value of the individual's gross estate and the amount of estate tax liability are reduced as a result of the election. The House bill also provides that the alternate valuation date election may be made on the first estate tax return filed (whether timely filed or late filed). Once an election is made, it is irrevocable.

The provision is effective for estates of individuals dying after the date of enactment.

Senate amendment

The Senate amendment is similar to the House bill with the following modifications:

(1) The total estate tax liability of the estate is not required to be reduced as a result of the election;

(2) The executor must determine in "good faith" that the value of assets in the gross estate for which no charitable or marital deduction is allowable is decreased (even though the value of the gross estate itself may not be decreased);

(3) A late-filed return on which a valid election is made may not be filed more than one year after the due date for the return and the principal purpose of the late filing may not be to make the election; and

(4) The provision is effective for estates of individuals who died before the date of enactment provided those estates satisfy the new requirements imposed by the amendment.

Conference agreement

The conference agreement follows the House bill with two modifications. First, as under the Senate amendment, an election may be made on a late-filed return only if the return is filed within one year of the due date. (As under the House bill, the election must be made on the first return filed, and is irrevocable, once made.)

Second, as under the Senate amendment, in addition to applying to estates of individuals dying after enactment, the conference agreement applies retroactively to estates that would qualify under the amended provision had the decedent died after the date of enactment. This retroactive effect is available, however, only if the period of limitations for assessment of estate tax remains open on the date of enactment, and if the estate makes a claim for refund within 90 days of enactment.

D. Excise Tax Provisions

1. Excise tax on sport fishing equipment

Present law

Imposition of tax.—A 10-percent excise tax is imposed on the sale by a manufacturer, producer or importer of fishing rods, creels and reels, and artificial lures, baits and flies (including parts and accessories).

Time of payment.—Treasury regulations generally require monthly or semi-monthly payment of excise taxes. If excise tax liability is more than $2,000 in any month, then tax deposits must be made semi-monthly during the following quarter.

House bill

Imposition of tax.—There is no provision in H.R. 4170. However, in H.R. 2163 as passed by the House, the 10-percent tax is expanded to various additional articles of sport fishing equipment, and supplies and accessories, including tackle boxes. A special 3-percent tax is imposed on electric outboard motors. These changes are effective for articles sold after December 31, 1983.

H.R. 2163 continues imposition of the tax at the manufacturer's level, with a Committee Report statement to indicate that the IRS is to enforce actively the present-law constructive-sales price rules to insure that the incidence of the tax be equivalent for all manufacturers, producers and importers, regardless of form of business organization.

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[1] The conferees are aware that the current use valuation provision requires that, when successive interests or concurrent interests are created in specially valued property, all parties with any interest in the property must be qualified heirs and all such parties must enter into the agreement to the election, regardless of the relative values of their interests. The de minimis rule established in this provision is intended to apply solely as a guideline in determining whether perfection of an agreement is to be permitted. The guideline is not intended to give rise to an inference that parties having an interest in specially valued property which has a relatively small value are not required to enter into the agreement or that such persons need not be qualified heirs.

Time of payment.—H.R. 2163 changes the time of payment for the excise tax on sport fishing equipment to require payment on a quarterly basis: March 31, June 30, September 24, and a date to be prescribed by Treasury regulations, for the respective prior calendar quarter's tax liability.

Senate amendment

Imposition of tax.—The Senate amendment expands the 10-percent excise tax on sport fishing equipment to include the same additional articles as under the House bill except for tackle boxes which are taxed at a 3-percent rate. The Senate amendment also applies the 3-percent tax to electric outboard boat motors (as in the House bill) and certain fish finders (sonar devices suitable for finding fish, *except* graph recorders, digital type or meter readout devices, with a maximum tax of $30 per item). These changes generally are effective for articles sold after September 30, 1984, except that the tax on tackle boxes and fish finders is effective on October 1, 1985.

The Senate amendment replaces the manufacturers tax with a tax on the *last sale before retail* (generally the wholesale level except where an article sold directly from a manufacturer/producer or importer to a retailer). Under a special rule where the last sale before retail occurs before importation, the tax is imposed on the importer at the point of entry. This change in the level of the tax is effective for articles sold after September 30, 1984.

Time of payment.—The Senate amendment excuses small manufacturers (i.e., those having gross sales receipts of $100,000 or less for the preceding calendar year) from the present-law excise tax deposit requirements, thereby enabling these manufacturers to pay the tax on a quarterly basis with their regular Federal excise tax return. Other taxpayers must pay the tax as provided under present law.

Conference agreement

Imposition of tax.—The conference agreement follows the House bill with regard to the articles subject to tax at the 10-percent rate. As provided by the House bill and the Senate amendment, electric outboard boat motors will be subject to tax at a 3-percent rate, and as provided in the Senate amendment, certain sonar devices suitable for finding fish will be subject to tax (up to a maximum tax of $30).

The conference agreement generally follows the House bill with regard to the point at which tax is imposed. Therefore, the excise tax on sport fishing equipment will continue to be imposed at the manufacturer's (or importer's) level. However, the conference agreement provides that tax will be imposed a second time, on the sale of an article subject to tax by any wholesale distributor or retailer who (1) is a related party to the manufacturer or importer of the article sold, and (2) acquires the article from an unrelated party (i.e., from a party other than the manufacturer or importer). In cases where the tax is imposed a second time on any article, a credit for prior tax paid is available, provided the wholesale distributor or retailer can document the amount of tax that actually was paid previously. This documentation requirement generally will be considered as satisfied only through submission of copies of actual records of the party that previously paid the tax. For purposes of these rules, the term related party generally includes parties described in Code section 2670.

The conferees also are concerned that certain manufacturers and importers of taxable sport fishing equipment are engaged in arrangements that are not covered under the related party rules adopted above, but that do not represent true arm's-length dealings. Rather these transactions are in substance (if not form) dealings between related parties or are transactions conducted primarily to reduce Federal excise tax. Therefore, the conference agreement provides that, except as provided in Treasury regulations, certain sales are not to be treated as taxable first sales by a manufacturer or importer. Rather, the regulations will provide that tax is to be imposed on a later sale in such cases. The conferees intend that these regulations generally will provide that a sale by a manufacturer or importer is not to be treated as a taxable first sale for purposes of this tax unless the party selling the articles (1) conducts all manufacturing or importation transactions and related documentation in its own name; (2) assumes risks of late delivery and loss and pays freight, insurance costs, and customs duties (in the case of importers); (3) has on its payroll the employees who are engaged in the manufacturing process conducted by it or who are engaged in all aspects of the importation or other distribution of articles processed by it, including dealings with manufacturers with regard to quantity, quality control, design specifications and shipping; (4) finances the manufacture or purchase of previously manufactured articles on its own account; (5) maintains inventories of the articles in its own name; and (6) earns normal profits (determined by reference to industry standards) on its sales that are to treated as taxable first sales.

Finally, the conferees wish to state that they found persuasive arguments that inadequate State fisheries budgets have necessitated reductions in staff and programs. State fishery agencies have collectively indicated a pressing need for over $162 million per year in additional revenue to manage adequately the nation's recreational fishery resources. The conferees, in establishing this expanded funding source, intend that the new revenues be added to existing State fishery program funds available from traditional sources and not as a substitute therefor.

Time of payment.—The conference agreement generally follows the Senate amendment except all manufacturers and importers are excused from making deposit requirements in the case of the excise tax on sport fishing equipment. Under the conference agreement, the sport fishing equipment excise tax will be payable in full on the date established by the Treasury Department for filing of the quarterly return of that tax. The conferees have reached this decision because of the unique seasonal nature of the market for sport fishing equipment and intend that this action not be cited as precedent for excusing payers of other Federal excise taxes from deposit requirements.

Effective date.—The conference agreement is effective for sales occurring and for payments of tax due after September 30, 1984.

2. Aquatic Resources Trust Fund and Land and Water Conservation Fund

Present law

Financing of special funds.—Under present law, there is no special trust fund for sport fish restoration or for the Federal boating safety program. However, the sport fish restoration program is funded by an appropriation of amounts equivalent to the prior fiscal year revenues from the existing 10-percent excise tax on fishing equipment. The Federal boating safety program is financed through an appropriation to a special "fund" not having the status of a trust fund (the National Recreational Boating Safety and Facilities Improvement Fund). The appropriation is equivalent to revenues attributable to the 9-cents-per-gallon excise tax on motorboat fuels, up to $45 million per fiscal year for 1983-1988 (with a maximum fund balance at any time of $45 million). Any excess motorboat fuels tax revenues go to the Land and Water Conservation Fund, along with certain other, nontax monies (including general appropriations).

Fund expenditures.—The sport fish restoration program provides matching funds (up to 75 percent) for State fish restoration and management projects. A portion (8 percent) of the annual appropriation is available to the Secretary of the Interior for Departmental administrative expenses relating to the program. The balance of the appropriation is allocated to the States pursuant to a statutory formula. The Federal boating safety program provides financing for Federal-State recreational boat safety and facilities improvements projects. Currently monies are allocated one-third for boating safety programs and two-thirds for boating facilities improvement programs, and are allocated by formula among eligible States.

House bill

Financing of funds.—H.R. 2163, as passed by the House, establishes the Aquatic Resources Trust Fund. The new Trust Fund would include two separately financed accounts.

(1) *Sport Fish Restoration Account.*—This Account is to be financed from revenues attributable to (a) the expanded excise tax on sport fishing equipment; (b) motorboat fuels taxes, to the extent these revenues exceed the amounts transferred to the Boating Safety Account and Land and Water Conservation Fund (see below); and (c) import duties on sport fishing equipment and yachts and pleasure craft.

(2) *Boating Safety Account.*—This Account is to be financed by revenues attributable to the 9-cents-per-gallon motorboat fuels taxes, up to $45 million per fiscal year for 1983-1988 (with the present $45 million balance limit).

In addition, the Land and Water Conservation Fund will be limited to $1 million per fiscal year from the motorboat fuels tax revenues; the other financing sources for that Fund remain the same as under present law.

Fund expenditures.—H.R. 2163 also expands and redefines the purposes for which the new Aquatic Resources Trust Fund monies may be spent for the sport fish restoration and Federal boating safety programs. (No changes are made in the expenditure purposes for the Land and Water Conservation Fund.)

(1) *Sport fish restoration program.*—Monies must be allocated equitably between marine and freshwater sport fishing projects. Each State is required to allocate a minimum of 10 percent of its program monies to projects that improve public access to recreational boating waters. Also, States are authorized to use up to 10 percent of their allocation for aquatic resource education programs. Department of Interior administrative expenses are limited to 6 percent per year of the Account's monies.

(2) *Federal boating safety program.*—Monies will be reallocated so that (a) two-

thirds (up to $30 million per year) are used for State boating safety programs and (b) one-third (up to $15 million per year) is made available to the U.S. Coast Guard to defray the costs of services provided by it for recreational boating safety. Amounts will no longer be available under this program for boating facilities improvements. (Amounts will be available for this purpose under the expanded sport fish restoration program.)

Effective date.—Trust fund monies may be expended for the period October 1, 1983 through March 31, 1989.

Senate amendment

Financing of funds.—The Senate amendment is generally the same as the provisions of H.R. 2163, except for the differences in tax rates on tackle boxes and fish finders (see above).

Fund expenditures.—The Senate amendment is the same as H.R. 2163 regarding the trust fund expenditure purposes.

Effective date.—Trust fund monies are available for expenditure for the period October 1, 1984 through March 31, 1989.

Conference agreement

The conference agreement follows the Senate amendment, including the provision that the popular name of the Aquatic Resources Trust Fund will be the Wallop-Breaux Fund.

3. Excise tax on certain arrows

Present law

An 11-percent manufacturers excise tax is imposed on the sale of any bow having a draw weight of 10 pounds or more and of any arrow measuring 18 inches overall or more in length. Revenues attributable to this tax are appropriated to the Federal Aid to Wildlife Program ("Pittman-Robertson" fund) for support of State wildlife programs.

House bill

The House bill contains no provision; however, H.R. 2163, as passed by the House, expands the tax on arrows to include those arrows fewer than 18 inches in length which are suitable for use with a taxable bow (i.e., crossbows). The expanded tax applies to sales of such arrows after December 31, 1983.

Senate amendment

The Senate amendment is the same as H.R. 2163, except that the expanded tax applies to sales after September 30, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

4. Exemption of certain helicopter operations from aviation excise taxes

Present law

Present law provides exemptions from the aircraft fuels and air transportation taxes for helicopters employed in hard mineral resource exploration and mining and in forestry operations provided the helicopters do not use Federally aided airports or Federal airway facilities.

House bill

No provision.

Senate amendment

The Senate amendment expands the present exemptions to include helicopters employed in the exploration and development of oil and gas. This provision is effective on April 1, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

5. Superfund excise tax corrections

Present law

Under present law, an excise tax is imposed on certain specified chemicals to fund the Hazardous Substance Response Trust Fund.

Proposed Treasury regulations would apply this tax to (1) light hydrocarbons added to motor fuels, and (2) metal compounds occurring temporarily during refining processes. Present law provides an exemption for fertilizer which is administered by using a certification procedure required by statute.

House bill

No provision.

Senate amendment

The Senate amendment makes three technical amendments to the Hazardous Substance Response Revenue Act of 1980. First, light hydrocarbons added to gasoline, diesel fuel, and aviation fuel are exempt from the tax. Second, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, zinc sulfate, and barium sulfide are exempt if they have only a transitory presence during smelting, refining, or extracting metal from ore. Third, the certification procedure for the fertilizer exemption is eliminated.

These provisions apply as if included in the Hazardous Substance Response Revenue Act of 1980.

Conference agreement

The conference agreement follows the Senate amendment with technical modifications.

C. Income Tax Credits

1. Residential renewable energy tax credits

Present law

Individuals are allowed a 40-percent energy tax credit on expenditures up to $10,000 for renewable energy property, which is defined as solar, wind or geothermal property. Qualified property must be installed in or on a taxpayer's principal residence. Expenditures may be made through 1985, and unused credits at the end of 1985 may be carried forward through 1987. The maximum amount of credits is $4,000.

House bill

No provision.

Senate amendment

Residential renewable energy credits are extended for two additional years, through 1987. Unused credits may be carried forward through 1989.

Conference agreement

The conference agreement follows the House bill.

2. Business energy tax credits

Present law

(a) *Solar, wind, geothermal and ocean thermal property.*—Qualified property is eligible for a 15-percent energy tax credit, which will expire at the end of 1985.

(b) *Rules for geothermal property.*—Qualified geothermal equipment is defined as being necessary to transmit or use energy from an underground reservoir. The energy consists of natural heat which is stored in rocks, liquid or vapor, and has a temperature exceeding 50 degrees Celsius (122 degrees Fahrenheit). This definition also applies to residential geothermal sources.

(c) *Dual purpose equipment.*—Under current regulations, equipment that serves both geothermal and nongeothermal functions does not qualify for the energy tax credit; however, emergency backup systems are not disqualified.

(d) *Biomass property.*—A 10-percent energy credit is available for qualified biomass property that is placed in service through 1985 and produces a qualified fuel from an alternate substance, i.e., neither oil, gas or one of their products.

(e) *Shale oil hydrogenation equipment.*—The 10-percent energy credit for shale oil equipment used through the retorting process and for equipment for hydrogenation or other processes subsequent to retorting in the vicinity of the extraction site expired after 1982, except for an affirmative commitment rule. Hydrogenation equipment is not eligible for the credit under the affirmative commitment rule.

(f) *Tar sands equipment.*—No provision.

(g) *Affirmative commitment.*—Energy credits which expired after 1982 remain available after their statutory expiration date for projects that require 2 or more years for completion, if (1) all engineering studies have been completed, and all necessary construction and environmental permits have been filed for, before 1983, (2) binding contracts for 50 percent of specially designed equipment have been entered into before 1986, and (3) the project is completed and placed in service before 1991.

(h) *Photovoltaics.*—Photovoltaic cells are eligible for the 15-percent solar credit through 1985.

House bill

No provision.

Senate amendment

(a) *Solar, wind, geothermal, and ocean thermal property.*—The credit is extended at the 15-percent rate for 3 years, through 1988.

(b) *Rules for geothermal property.*—The qualifying temperature threshold is reduced to 40 degrees Celsius (104 degrees Fahrenheit), as measured at the wellhead or at the intake to the distribution system. This change applies also to geothermal sources for residential renewable energy systems.

(c) *Dual purpose equipment.*—Equipment that serves dual functions will qualify for the credit in equal percentage to the geothermal use, if at least 50 percent of the use is for geothermal purposes.

Geothermal equipment also will qualify for the regular investment credit, if the equipment is used for geothermal purposes at least 50 percent of the time, and the remaining energy requirement is supplied by an alternate substance, i.e., neither oil, gas or one of their products. This rule does not change the present law rules relating to structural components.

(d) *Biomass property.*—The credit for qualified biomass property is extended for an additional 3 years, through 1988. Qualifying property also will include methane-containing gas for fuel or electricity which is produced by anaerobic digestion from nonfossil waste materials at farms or other agricultural facilities, and at facilities for the first processing of agricultural products.

The extension of the credit will not apply, however, to biomass property used in a trade or business that is included in the forest or paper products industries.

(e) *Shale oil hydrogenation equipment.*—Hydrogenation equipment that qualified for the energy credit before 1983 will continue to qualify under the extension of the affirmative commitment rules, (g) below.

(f) *Tar sands equipment.*—The 10-percent energy credit is made available for tar sands equipment, which includes mining, quarrying and extraction equipment through extraction of oil and other processing (including hydrogenation), but the credit will not be available for equipment used in refining. December 31, 1988, is the intended termination date for the credit, and the affirmative commitment rule will apply, as extended in (g) below.

(g) *Affirmative commitment rules.*—

(1) *Synthetic fuels projects.*—The rules requiring completion of certain actions by specific dates are deferred by several years for synthetic fuels projects that involve coal, shale oil and tar sands, if (1) required studies and filings for permits are completed before 1987, (2) binding contracts are entered into for 50 percent of specially designed equipment before 1990, and (3) the project is completed and placed in service before 1993.

(2) *Renewable energy sources.*—The expiration date of the energy credit for solar, wind, geothermal, and ocean thermal equipment is extended for one additional year, through 1989, if required studies and permit filings are completed before January 1, 1989, and (2) binding contracts are entered into for 50 percent of specially designed equipment before July 1, 1989.

(h) *Photovoltaic equipment.*—Photovoltaic property will become eligible for a 25-percent energy credit for 1985 and 1986, a 20-percent energy credit for 1987, and a 15-percent energy credit for 1988. These credits are available in lieu of the 15-percent renewable energy credit that is extended through 1988.

Qualified property includes equipment which is an integral part of a system that converts sunlight directly into electricity, and (2) structures that house or support eligible equipment. Photovoltaic equipment is not eligible for the solar and wind energy credits and does not include public utility property. The at-risk rules which apply to the investment credit will apply also to the energy credit for photovoltaic equipment.

The photovoltaic equipment energy credit will be available for property placed in service on or after January 1, 1985.

(i) *Effective date.*—The revisions in the provisions for business energy credits are effective on the date of enactment unless another date is specified.

Conference agreement

The conference agreement follows the House bill. The conferees understand that the House will hold hearings on the expiring credits so that informed decisions can be made in 1985 about whether to extend these credits.

3. Definition of new property for tax credit purposes

a. Energy property

Present law

Regular investment tax credits and energy property tax credits are allowed with respect to certain kinds of new property. In determining whether property is new property for purposes of the regular investment credit, property subject to a lease is treated as originally placed in service not earlier than the date the property is used under the lease, but only if the property is leased within 3 months of the date it is in fact placed in service. No similar rule applies in determining whether property is new for purposes of the energy property tax credit.

House bill

No provision.

Senate amendment

Under the Senate amendment, the 3-month rule, as amended by the bill, is applicable in determining whether property is new for regular investment credit purposes is applicable in determining whether property is new for energy property credits as well.

The provision is effective for property placed in service after April 11, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

It is clarified that the provision is effective for property in fact placed in service after April 11, 1984.

b. Investment credit property

Present law

Investment tax credits are allowed with respect to certain kinds of new property. In determining whether property is new property for this purpose, property subject to a lease is treated as originally placed in service not earlier than the date the property is used under the lease, but only if the property is leased within 3 months after such property is placed in service (sec. 48(b)).

House bill

No provision.

Senate amendment

For investment credit purposes, the 3-month rule is limited to sale-leasebacks. Thus, only in the case of property which is originally placed in service by a person and which is sold and leased back by such person within 3 months of the date such property was originally placed in service will such property be treated as originally being placed in service not earlier than the date it is used under the lease. The rule is also made applicable for purposes of the energy property tax credit.

The provision is effective for property placed in service after April 11, 1984.

Conference agreement

The conference agreement generally follows the provision in the Senate amendment.

The conferees understand that taxpayers buying property from a manufacturer often take delivery of it and place it in service before they have their financing in place. Shortly after they place it in service, the property may be sold (or the purchase order assigned) by such taxpayer to another taxpayer who then leases it to the first taxpayer. The conferees intend the 3-month rule to be applicable in that case. Therefore, the conference agreement clarifies that the 3-month rule applies if the person who originally placed the property in service leases it within 3 months of having originally placed it in service.

It is clarified that the provision is effective for property in fact placed in service after April 11, 1984.

4. Extension of targeted jobs tax credit

Present law

The targeted jobs tax credit is available for wages paid to individuals who (1) begin work for an employer before January 1, 1985, and (2) are included in one of 9 categories of individuals who are economically disadvantaged or handicapped or who receive public assistance. The credit generally is 50 percent of the first $6,000 of wages paid in the first year of employment and 25 percent in the second year of employment.

An authorization of appropriations for funds to administer the certification of eligible individuals expires after fiscal year 1984.

To claim the targeted jobs credit for wages paid to a targeted group member, an employer must receive or request a certification that a new employee is a member of a targeted group on or before the day the individual begins work for the employer.

House bill

No provision.

Senate amendment

The Senate amendment extends the targeted jobs tax credit to apply to individuals who begin work for the employer before January 1, 1988, and extends the authorization for administrative funds through fiscal year 1987.

The Senate amendment extends the deadline for requesting certification to 5 days after the individual begins work for the employer, if the individual has received a "voucher" (i.e., a preliminary determination of targeted group eligibility) on or before the day the individual begins work for the employer.

Conference agreement

The conference agreement follows the Senate amendment, with modifications. First, the credit is extended for one year, to apply to individuals who begin work for the employer before January 1, 1986, and the authorization of administrative funds is extended through fiscal year 1985. Second, the credit is amended to treat a successor employer as if it were the predecessor for purposes of computing the amount of credit. Third, the conference agreement provides that the credit is allowed with respect to the remuneration of an employee who performs services for another person only if the payment by the other person to the employer exceeds the remuneration paid by the employer to the employee. This change is intended to prevent employers from lending or donating the services of individuals on their payroll to tax-exempt or other organizations which do not have sufficient tax liability to take advantage of the credit. Fourth, the credit is amended to provide that the age requirements of a summer youth employee are tested on the basis of the employee's age on May 1, if later than the hiring date. Fifth, the conference agreement deletes an obsolete provision dealing with the beginning of the 1-year credit eligibility period for vocational rehabilitation referrals.

5. Earned income tax credit

Present law

Certain individuals or couples with children are allowed a refundable tax credit equal to 10 percent of the first $5,000 of earned income, for a maximum credit of $500. The maximum credit is phased down to zero as income increases from $6,000 to $10,000.

House bill

No provision.

Senate amendment

The Senate amendment increases the rate of the credit to 10.5 percent and, thus, the maximum credit to $525, and raises the income level at which the credit is fully phased out to $11,000. The provision is effective for taxable years beginning after December 31, 1984.

Conference agreement

The conference agreement increases the rate of the credit to 11 percent and, thus, the maximum credit to $550, and raises the income range over which the credit is phased out to $6,500 to $11,000. The provision is effective for taxable years beginning after December 31, 1984.

The conference agreement also provides that the amount of credit allowed is reduced by the amount of a taxpayer's liability for alternative minimum tax.

6. Investment tax credit for soil and water conservation expenditures; increase in cost recovery period for single purpose agricultural structures

(a) Soil and water conservation credit

Present Law

A taxpayer may elect to deduct (i.e., expense) certain expenditures for the purpose of soil or water conservation that would otherwise be added to his or her basis in the land on which the conservation activity occurs (Code sec. 175). Deductible expenditures include amounts paid for items such as grading, terracing, and contour furrowing, the construction of drainage ditches, irrigation ditches, dams and ponds, and the planting of wind breaks. Also included assessments levied by a soil or water conservation drainage district are deductible under this provision to the extent those expenditures would constitute deductible expenditures if paid directly by the taxpayer.

The cost of acquiring or constructing machinery or facilities that is depreciable may not be expensed. In the case of depreciable items such as irrigation pumps, concrete dams, or concrete ditches, the taxpayer is allowed to recover his or her cost only through cost recovery allowances and only if he or she owns the asset. Certain depreciable assets also are eligible for the regular 10-percent investment credit.

Certain costs incurred in connection with soil and water conservation are deductible as trade or business expenses without regard to section 175. For example, interest expenses and property taxes are deductible as current expenses. Similarly, the cost of repairs to a complete soil or water conservation structure are deductible as current expenses. Certain other capital expenditures made primarily to produce an agricultural crop are deductible expenses (secs. 180 and 182), but are not treated as soil or conservation expenditures under section 175, because such expenditures only incidentally may conserve soil.

The deduction for soil and water conservation expenditures under section 175 is limited in any one year to 25 percent of the gross income derived by the taxpayer from farming. Any excess amount is carried forward to succeeding taxable years.

House bill

No provision.

Senate amendment

The Senate amendment provides a nonrefundable 10 percent investment credit for certain soil and water conservation expenditures. The credit is available with respect to (1) qualified expenditures otherwise chargeable to the basis of the land on which the conservation activity occurs, and (2) certain expenditures by district conservation authorities. The credit is available only to persons engaged in the business of farming the land on which the conservation improvements are made.

Types of qualified property

Qualified soil conservation improvements

Property that is eligible for the conservation credit consists of any improvements which are certified to the Secretary of the Treasury by the Soil Conservation Service of the Department of Agriculture as (1) consistent with state-of-the-art conservation practices and (2) making a major contribution to the conservation of soil or water on qualified land. A separate certification must be made with respect to each conservation project for which a credit is claimed.

Eligible soil conservation improvements include generally diversion, floodwater retarding, and multiple-purpose dams; fencing for protection of conservation cover; field windbreaks; filter strips, grade stabilization structures; grassed waterways or outlets; livestock water pipelines; sediment control ponds and basins; terracing; tree planting for erosion control and/or conservation cover; waste management systems; and any other improvements specified under Treasury Department regulations.

District conservation property

In addition to soil and water conservation property that is acquired directly by a taxpayer, the portion of assessments levied by a soil and water conservation district authority to finance qualified expenditures made by the authority is creditable by the person paying the assessment.

Qualified land

Expenditures are eligible for a soil conservation credit only if the expenditures are for otherwise qualifying improvements to land located in the United States which was owned entirely by a United States citizen and, as stated above, is used by the owner in the business of farming.

Coordination with certain expensing provisions

No credit is allowable with respect to any expenditure for which a deduction is claimed under present Code section 175 (soil and water conservation expenditures), section 180 (fertilizer, etc. costs), or section 182 (land clearing expenses). In addition, in applying the present limitations on the maximum amount of those deductions under section 175 and section 182 (e.g., 25 percent of gross farming income under sec. 175 and the lesser of 5 percent of taxable farming income or $5,000 under sec. 182), expenditures with respect to which a credit is claimed are treated as if the expenditures have been deducted. For example, if a taxpayer claims a credit with respect to $10,000 of soil conservation expenditures, the taxpayer is treated as if the $10,000 has been deducted under section 175 in determining the taxpayer's maximum allowable deduction under that provision. The provision does not expand the types of expenditures for which a deduction presently is available under section 175, 180, or 182.

Other rules governing the credit

Certain highly erodible land

The credit is not available for expenditures made with respect to highly erodible land, as classified by the (Soil Conservation Service), if the expenditures are made in connection with conversion of that land from range land to crop land.

Maximum amount of credit

The soil conservation credit may not exceed 25 percent of a taxpayer's gross income derived from farming in any year. This limitation is in addition to the rule limiting investment credits generally to no more than 85 percent of tax liability in excess of $25,000.

Credit not allowed for expenditures financed with nontaxable grants

No credit is allowable with respect to conservation property financed with a grant from the Federal Government, or a State or local government, to the extent that the grant is not included in the taxpayer's gross income when received.

Carryover of unused credit and basis adjustment

The rules permitting carryforwards and carrybacks of investment credits generally apply to the credit for soil and water conservation expenditures. Additionally, an adjustment to the basis of the property equal to one-half of the credit amount is required.

Limitation on cost recovery deductions

Cost recovery deductions for any irrigation property with respect to which an investment credit is claimed must be computed using the straight-line method over the appropriate ACRS period rather than the accelerated method otherwise available.

Recapture of credit in certain circumstances

The soil and water conservation credit is recaptured if the taxpayer disposes of the land on which creditable improvements are made within 5 years after the conservation property is placed in service. In addition, the credit is recaptured if the taxpayer claiming the credit ceases to carry on the business of farming on the qualified land within 5 years after that date.

Effective Date

The provisions of the bill apply generally to taxable years beginning after December 31, 1984.

Conference agreement

The conference agreement follows the House bill.

(b) Single purpose agricultural and horticultural structures

Present law

Single purpose agricultural and horticultural structures qualify as 5 year property for ACRS purposes.

House bill

No provision.

Senate amendment

Single purpose agricultural and horticultural structures are treated as 15 year real property depreciable at a rate no more rapid than the 150 percent declining balance method.

This provision applies to property placed in service after date of enactment; however, a transitional rule exempts property where taxpayer had a binding contract to acquire or construct the property, or had commenced construction, before the date of enactment.

Conference agreement

The conference agreement follows the House bill.

7. Alternative test for definition of qualified rehabilitated building

Present law

A three-tier system of rehabilitation credits is provided for qualified expenditures incurred in connection with certain buildings. The credit is equal to 15 percent of qualified expenditures in the case of buildings at least 30 years old, but fewer than 40 years old. In the case of buildings at least 40 years old, the credit is equal to 20 percent of qualified expenditures, and in the case of certified historic structures, the credit is equal to 25 percent of qualified expenditures.

A building qualifies for the rehabilitation credits only if (among other requirements) at least 75 percent of the building's external walls are retained in place as external walls after completion of the rehabilitation.

House bill

No provision.

Senate amendment

The Senate amendment provides an alternative to the requirement that 75 percent of the building's external walls be retained in place as such. The alternative test requires that at least 50 percent of the building's external walls be retained in place as external walls, that at least 75 percent of the building's external walls be retained in place as either external walls or internal walls, and that at least 75 percent of the building's internal structural framework be retained in place.

The provision is effective for expenditures after December 31, 1983, in taxable years beginning after that date.

Conference agreement

The conference agreement follows the Senate amendment.

J. Provisions Relating to Research and Vocational Education

1. Incremental research tax credit

Present law

A 25-percent tax credit applies to the excess of qualified research expenditures incurred by a taxpayer during the year in carrying on a trade or business over the average of the taxpayer's research expenditures in a three-year base period (sec. 44F). The credit is scheduled to terminate after 1985.

The section 44F credit provision generally defines research by cross-reference to section 174, under which a current deduction is allowed for research and development costs in the experimental or laboratory sense. The amount of the section 174 deduction is not reduced by any amount of the section 44F credit.

Under present law, expenditures eligible for the credit consist of—

(1) "in-house" expenditures for research wages and supplies used in research, plus certain amounts paid for research use of computers, laboratory equipment, or other personal property;

(2) 65 percent of amounts paid by the taxpayer for contract research conducted on its behalf; and

(3) if the taxpayer is a corporation, 65 percent of its expenditures (including grants or contributions) for basic research to be performed by universities or certain scientific research organizations.

House bill

No provision.

Senate amendment

Under the Senate amendment, the 25-percent incremental research credit is made permanent.

The Senate amendment provides a statutory definition of credit-eligible research expenditures. The new definition is intended to target the credit to technological innovations developed through a process of experimentation relating to new or improved function or performance (rather than to style, taste, cosmetic, or seasonal design factors). The costs of computer software developed for the taxpayer's internal use are eligible for the credit only if the software is used in research or certain production processes, or in limited circumstances where meeting a high threshold of innovation as defined in Treasury regulations.

The Senate amendment also provides a new 25-percent nonincremental credit for the excess of (1) 65 percent of corporate contract expenditures or grants for basic research at universities or other qualified organizations over (2) the sum of the greater of two fixed maintenance-of-efforts floors (relating to 1981-83 research expenditures) plus an amount relating to university nonresearch contributions in a base period. Certain other modifications are made to the university basic research provision.

Under the Senate amendment, qualified research expenditures of startup corporations, of existing corporations for new trades or businesses, and of certain partnerships will become eligible for the credit in certain circumstances.

These provisions apply to taxable years beginning after 1984.

Conference agreement

The conference agreement does not include the Senate amendment.

2. Deduction for certain research equipment donations by corporations to universities

Present law

Corporations are allowed an augmented charitable deduction for donations of newly manufactured scientific equipment to universities for research use in the physical or biological sciences (sec. 170(e)(4)). This increased deduction is generally for the sum of (1) the corporation's costs of producing the donated property (basis) plus (2) one-half of the difference between the property's fair market value and the donor's cost basis in the property, but cannot exceed twice the basis of the property.

House bill

No provision.

Senate amendment

Under the Senate amendment, the augmented charitable deduction provision for corporate donations of research equipment is expanded, for taxable years beginning after 1984—

(1) to cover donations of used (as well as new) equipment, replacement parts, and new computer software, and to cover technological (as well as scientific) equipment;

(2) to allow certain educational (as well as research) uses for donated equipment;

(3) to include as eligible donees a tax-exempt association of universities, and (by floor amendment by Sen. Kennedy, agreed to by voice vote) certain State-owned instrumentalities associated with universities; and

(4) to cover equipment produced or assembled (as well as equipment manufactured) by the donor.

Used property qualifies only if donated within three years after first used by the donor corporation, and only if worth more than $250. The augmented deduction for used property will equal 150 percent of the donor's original basis, less accumulated depreciation (e.g., for fully depreciated equipment, 50 percent of the original basis), or fair market value if less.

Conference agreement

The conference agreement does not include the Senate amendment.

3. Payments and loan forgiveness received by graduate science students

Present law

Gross income generally does not include amounts received as a scholarship at a university or as a fellowship grant, other than as compensation (sec. 117). In general, income is realized when indebtedness is cancelled (sec. 61(a)(12)).

House bill

No provision.

Senate amendment

Under the Senate amendment, gross income will not include amounts received by graduate students in certain scientific fields as a scholarship, fellowship grant, or qualified student loan forgiveness, notwithstanding that the recipient is required to perform future teaching services for any of a broad class of universities, provided that such amounts are not received as compensation. This provision is effective for taxable years beginning after 1984.

Conference agreement

The conference agreement does not include the Senate amendment.

4. Deduction for vocational education equipment donations to certain donees

Present law

In general, the amount of charitable deduction for a donation of inventory property is limited to the donor's basis in the property (sec. 170(e)). The augmented deduction rule for corporation donations of newly manufactured scientific equipment to universities for research does not apply to donations of vocational education equipment.

House bill

No provision.

Senate amendment

The Senate amendment provides an augmented charitable deduction for corporate donations of newly manufactured technical and scientific equipment for certain vocational education uses, if the value of the donated item exceeds $250, and if certain other requirements are satisfied. (The augmented deduction is not available for donations of computer software, microcomputers, or certain other computers.) The eligible donees are public community colleges, public technical institutes, and certain area vocational education schools.

The augmented deduction under the Senate amendment is generally for the sum of (1) the corporation's costs of producing the donated property (basis) plus (2) one-half of the difference between the property's fair market value and the donor's cost basis in the property, but cannot exceed twice the basis of the property. This provision applies to contributions made after 1984.

Conference agreement

The conference agreement does not include the Senate amendment.

5. Vocational education instruction tax credit

Present law

There is no special tax credit relating to vocational education instruction.

House bill

No provision.

Senate amendment

Under the Senate amendment, a tax credit is allowed to a corporation for providing qualified teachers from its employees for postsecondary vocational education courses or for hiring qualified vocational education instructors on a temporary basis. The amount of the credit is $100 for each course taught by an employee (up to five courses), plus $100 for each instructor temporarily hired by the corporation, subject to an overall limitation of $20,000 per year.

This provision is effective for taxable years beginning after 1984.

Conference agreement

The conference agreement does not include the Senate amendment.

6. Extension of moratorium on application of research and experimental expense allocation regulation

Present law

The foreign tax credit is limited so that it cannot offset U.S. tax on U.S. source taxable income. In general, the Code requires allocation of all expenses between U.S. and foreign source gross income to determine U.S. and foreign source taxable income. A Treasury Regulation (sec. 1.861-8) rule generally requires taxpayers with foreign source income from products in an area in which the taxpayers do U.S. research to allocate part of their U.S. research and experimental expense against their foreign source income. In 1981, Congress suspended this rule for two years, so that research expenditures made for research conducted in the United States are allocated against U.S. source gross income only. The moratorium generally expires for taxable years following a taxpayer's second taxable year commencing after August 13, 1981.

House bill

No provision.

Senate amendment

The Senate amendment effectively extends for two years the moratorium on the application of the research and experimental expense allocation rules of Treas. Reg. sec. 1.861-8. For taxable years beginning on or before August 13, 1985, all of a taxpayer's research and experimental expenditures attributable to research activities conducted in the United States will be allocated to U.S. source gross income for purposes of computing U.S. source and foreign taxable income and taxable income from sources partly within and partly without the United States.

Conference agreement

The conference agreement follows the Senate amendment with a clarification of the effective date provision. The conference agreement provides that the extension of the moratorium on application of the Treasury's research and experimental expense allocation rule will generally apply to a taxpayer's taxable years beginning after August 13, 1983 and before August 1, 1985. However, in the event the taxpayer's third taxable year commencing after August 13, 1981 does not begin during this period, the extension of the moratorium applies to that taxable year also.

The moratorium applies only to the allocation of research expenses for the purpose of geographic sourcing of income. It does not apply for other purposes, such as the computation of combined taxable income of a DISC (or FSC) and its related supplier.

E. Capital Gains and Losses

1. Decrease in capital loss offset against ordinary income

Present law

Capital losses are deductible in full against capital gains. For individuals, the excess of capital losses over capital gains can be deducted against only $3,000 (or specially defined taxable income, if less) of ordinary income each year, with unlimited carryovers to future years.

Post-1969 long-term losses must be reduced by 50 percent when being deducted against ordinary income.

House bill

No provision.

Senate amendment

The Senate amendment decreases the amount of ordinary income against which capital losses may be deducted by individuals to $1,000. The amendment also treats pre-1970 loss carryovers under the rules for post-1969 losses.

The provision applies to taxable years beginning after December 31, 1984.

Conference agreement

The conference agreement does not reduce the $3,000 limit against which losses may be deducted. The agreement treats pre-1970 losses under the post-1969 loss rules for taxable years beginning after December 31, 1986.

2. Decrease in holding period for long-term capital gains

Present law

Gains or losses on capital assets held for more than one year are considered long-term capital gains or losses. For individuals, 60 percent of the net capital gain is excluded from income. Corporations have the option of paying an alternative tax of 28 percent on net long-term capital gain.

House bill

No provision.

Senate amendment

The Senate amendment decreases the holding period for long-term capital gains from one year to six months.

The provision applies to assets acquired after February 29, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the six-month holding period will apply to assets acquired after June 22, 1984, and before January 1, 1988.

F. Miscellaneous Housing Provisions

1. Disaster loss deduction for condemned residences

Present law

Nonbusiness casualty losses over $100 are allowed as itemized deductions to the extent the total amount of such losses exceeds 10 percent of the taxpayer's adjusted gross income. Generally, the deduction is available only when the casualty (e.g., storm, flood, or earthquake) causes actual physical damage to the taxpayer's property.

House bill

The House bill provides that certain taxpayers whose residences are located in a Federally declared disaster area, and who are ordered by a State or local government to demolish or relocate their residences, may deduct any loss attributable to the disaster as a casualty loss. The provision applies to taxpayers whose residences have been rendered unsafe for use as a residence as a proximate result of the disaster. At the taxpayer's election, these losses may be deducted for the year preceding the year in which the demolition or relocation order was made.

This provision applies to taxable years beginning after December 31, 1981, with respect to areas determined after that date to warrant Federal disaster assistance.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Cooperative housing corporations

a. Pass-through of interest and tax deductions to tenant-stockholders

Present law

Qualification for pass-through treatment

Tenant-stockholders in cooperative housing corporations may deduct their proportionate share of mortgage interest and real estate taxes paid by the cooperative. To qualify for this pass-through treatment, 80 percent of the cooperative's gross income must be derived from tenant-stockholders. In addition, a tenant-stockholder must have the right to occupy a house or apartment solely by reason of owning cooperative stock.

Generally, only individuals qualify as tenant-stockholders. However, certain original sellers of property to a cooperative (including corporations, partnerships, and other entities) may qualify as tenant-stockholders for up to three years after acquiring stock in the cooperative. This treatment applies even if the cooperative reserves the right to approve occupancy by any nominee of such entity. Additionally, a bank or other lending institution obtaining cooperative stock by foreclosure is treated as a tenant-stockholder for up to three years, even if the cooperative retains the right to approve occupancy by the bank or its nominee.

Allowance for depreciable property

A tenant-stockholder using depreciable cooperative property in a trade or business is allowed a special deduction with respect to his cooperative stock. This deduction is generally limited to that portion of the taxpayer's adjusted basis for his stock which is allocable to the depreciable property, with no carryover of excess deductions.

House bill

No provision.

Senate amendment

Extension of pass-through treatment to non-individual entities

The Senate amendment expands the definition of tenant-stockholder to include non-individual entities (including corporations, trusts, estates, partnerships, associations, or companies) which otherwise meet the requirements applicable to tenant-stockholders. These entities may therefore qualify for a pass-through of interest and tax deductions. This treatment applies even if, by agreement with the cooperative, a nominee of such entity may not occupy a house or apartment without prior approval of the cooperative.

The special rules regarding original sellers and foreclosures by lending institutions are made unnecessary by this change and are therefore repealed. However, under the Senate amendment, a cooperative's right to approve any occupant does not affect the tenant-stockholder status of certain original sellers of property (including an individual or a non-individual entity) to the cooperative. Additionally, where any person (including an individual or a non-individual entity) acquires stock in a cooperative by operation of law (e.g., by inheritance or foreclosure), the cooperative's right to approve any occupant does not affect the tenant-stockholder status of such person.

This provision is effective on the date of enactment.

Treatment of depreciable property

The Senate amendment allows deductions exceeding the taxpayer's allocable basis for his stock to be carried over to succeeding taxable years. However, the Senate amendment further provides that no deduction may be allowed for any amount paid or accrued to the cooperative (in excess of proportionate interest and real estate taxes) to the extent that, under Treasury regulations, such amount is properly allocable to amounts chargeable to the cooperative's capital account. This rule generally prevents a tenant-stockholder from obtaining deductions for the capital costs of his cooperative unit more quickly than if he had owned the unit outright.

This provision is effective on the date of enactment.

Conference agreement

The conference agreement does not include the Senate provision.

b. Allocation of certain property taxes

Present law

A tenant-stockholder's proportionate share of rent or property taxes, for deduction purposes, is equivalent to the portion of cooperative stock owned by the tenant-stockholder. This rule applies even where special property taxes (e.g., certain California property taxes) are imposed on certain tenant-stockholders out of proportion to the value of their stock.

House bill

No provision.

Senate amendment

The Senate amendment provides that where a State or locality imposes tax based on a separate appraisal for some or all of the units in a house or apartment building, each tenant-stockholder's proportionate share of such taxes is to be the amount allocated to his unit under the applicable tax law. Thus, deductions are allocated among the tenant-stockholders according to the actual amount of such taxes each tenant-stockholder is required to pay.

This provision is effective for State tax years ending in 1984 or later years.

Conference agreement

The conference agreement does not include the Senate provision.

3. Sale-leasebacks of principal residences by taxpayers 55 or older

Present law

Qualification of a transaction involving a principal residence as a valid sale-leaseback is sometimes uncertain. Recognition of a transaction as a sale-leaseback may entitle the purchaser to certain tax benefits associated with ownership of property (e.g., cost recovery allowances). The seller may be entitled to claim the one-time exclusion for gain on the sale of a residence (sec. 121) and other tax benefits.

House bill

No provision.

Senate amendment

The Senate amendment provides a safe harbor and certain tax benefits for qualified sale-leasebacks of principal residences by taxpayers 55 or older. A sale-leaseback qualifies for this special treatment if the seller has attained the age of 55 before the date of the transaction and has owned and used the property as his or her principal residence for at least three of the five immediately preceding years. Such property must never have been depreciable property in the seller's hands. The sale price must be a fair market value amount, taking into account the burden of the lease on the property. The seller-lessee must retain occupancy rights in the property pursuant to a written lease requiring the payment of a fair rental. Finally, the purchaser-lessor must be a person who is entitled to the benefits, and contractually responsible for the risks and burdens, of ownership after the date of the transaction.

A qualified sale-leaseback does not include a sale-leaseback involving related parties or in which the purchaser-lessor is a tax shelter. For this purpose, a tax shelter is any partnership or other enterprise in which interests have been publicly offered or which is described in section 6661(b) of the Code.

The seller in a qualified sale-leaseback may elect to exclude gain from the sale to the extent provided in section 121. The seller's gain will not include the excess of the fair market value of any occupancy rights retained by the seller over the rent payable under the lease. Furthermore, any discount in the purchase price attributable to the leaseback by the seller is excluded from the gross income of the purchaser.

If the purchaser-lessor in a qualified sale-leaseback purchases an annuity for the seller-lessee as part of the consideration for the property, the cost of the annuity is deemed to be received by the seller in the year of the sale. This amount is treated as an investment by the seller-lessee in the annuity contract for purposes of section 72.

Although the purchaser-lessor will be entitled to claim depreciation on the property as the sole owner, such depreciation must be computed using the straight-line method and a 40-year useful life.

Any sale-leaseback transaction covered by the bill will, for purposes of section 183, be presumed to be one engaged in for profit unless the Secretary of the Treasury establishes to the contrary.

These provisions are effective for sales or exchanges after the date of enactment but prior to December 31, 1988.

Conference agreement

The conference agreement does not include the Senate provision.

4. Deductibility of mortgage interest and taxes paid out of tax-free allowances for military personnel and ministers

Present law

Deductions are disallowed for expenses allocable to tax-exempt income (Code sec. 265(1)). In January 1983, the IRS ruled that a minister may not take deductions for mortgage interest and real estate taxes on a residence to the extent that such expenditures are allocable to tax-free housing allowances provided for ministers under section 107 (Rev. Rul. 83-3, 1983-1 C.B. 72). This disallowance rule generally applies beginning July 1, 1983. However, for a minister who owned and occupied a home before January 3, 1983 (or had a contract to purchase a home before that date), the deduction disallowance rule will not apply until January 1, 1985, with respect to such home (IRS Ann. 83-100).

In December 1983, the IRS announced that it was studying whether members of the Armed Forces are entitled to deduct interest and property taxes to the extent they receive tax-free housing allowances from the Federal Government. The IRS stated that any determination on the issue that would adversely affect military personnel would not be applied to amounts paid before 1985 (IR 83-161).

House bill

No provision.

Senate amendment

The Senate amendment precludes application of the deduction disallowance rule under Code section 265(1) to mortgage interest and real estate taxes paid or incurred before January 1, 1986, by a minister or member of the Armed Forces.

Conference agreement

The conference agreement generally follows the Senate amendment, with modifications, as applied to ministers. The conference agreement does not include the language of the Senate amendment (or any other provision) applicable to members of the Armed Forces.

In the case of ministers, the conference agreement extends until January 1, 1986 the transitional rule date applicable to certain ministers in the circumstances defined in IRS Ann. 83-100, i.e., to a minister who owned and occupied a home before January 3, 1983 (or had a contract to purchase a home before that date). In the case of mortgage interest deductions, the provision in the conference agreement only applies to a mortgage existing on that date (or in connection with a contract to purchase a home before that date). The conference agreement does not make any change in the general effective date of July 1, 1983 for Rev. Rul. 83-3, or in any aspect of that ruling not relating to ministers.

5. Rollover of gain on sale of residence for military personnel stationed overseas

Present law

No gain is recognized on sale of a personal residence to the extent that the amount of the sales price of the old residence is reinvested in a new residence within a specified period of time, generally ending two years after the sale of the old residence. Under present law, this period is extended for up to four years where the taxpayer serves on extended active duty with the Armed Forces (Code sec. 1034(h)).

House bill

No provision.

Senate amendment

The Senate amendment provides that, in the case of a member of the Armed Forces who is stationed outside the United States or who is required to reside in government quarters at a remote site, the normal nonrecognition period will not expire until the end of four years after the sale of the old principal residence or one year after the member is no longer stationed outside the United States or no longer required to reside in such government quarters, whichever is later, but not to exceed eight years. This provision applies to sales of residences after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

6. Nonimposition of interest and penalties on tax liability with respect to home won as prize and designed for handicapped foster child of the taxpayer

Present law

Under present law, gross income generally includes amounts received as prizes, such as cash or property won in a lottery, sweepstakes, or other contest (Code sec. 74(a)).

House bill

The House bill provides that no interest or penalties are payable on the Federal income tax liability attributable to receipt of a residence won as a prize, and specially designed for a handicapped foster child of the taxpayer, where certain conditions apply, but only if the tax liability is paid not later than one year after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

7. Condominium conversions

Present law

Under present law, gain on the sale of condominium units by a building owner generally does not qualify for capital gain treatment. However, an owner generally may secure capital gain treatment by selling the property to an unrelated person, who then converts the property to condominiums.

House bill

The House bill allows a property-by-property election to treat a portion of gain on the sale or exchange of condominium units by the building owner as capital gain. This election applies to residential or commercial property used by the taxpayer in a trade or business at all times during the five-year period ending on the determination date (as described below).

Under the House bill, capital gain treatment applies to the excess (if any) of the fair market value of the property on the determination date (excluding improvements made in anticipation of conversion) over the adjusted basis of the property to the owner, reduced by depreciation recapture. The determination date is the earliest of dates on which (1) the taxpayer adopts the plan to convert the building to condominiums, (2) substantial improvements are begun in anticipation of conversion, or (3) the form of ownership of the property changes into condominium units. If more than two years elapse between the sale of the first and second, the date of the second sale is substituted for (1) and (3) above. The amount eligible for capital gain treatment is allocated among individual units according to their fair market value on the determination date and realized in part on the sale of each unit (together with any ordinary income gain).

Where property is overvalued (whether or not such overvaluation is intentional), the amount eligible for capital gain treatment is reduced by 20 percent for each full percentage point by which the property is overvalued in excess of 15 percent. The amount of this reduction is treated as ordinary income.

This provision applies to property the form of ownership of which is changed into condominium units after the date of enactment, in taxable years ending after such date.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

G. Extensions of Existing Provisions and Miscellaneous Transition Rules

1. Investment income from S corporations

Present law

Investment interest deductions are generally limited to investment income plus $10,000. The treatment of income with regard to S corporations is not entirely clear under prior law. One case held that subchapter S income under prior law was investment income (*William H. Crook*, 80 T.C. 27 (1983)).

House bill

The House bill provides that for taxable years beginning in 1983 and 1984, a taxpayer may elect to treat income (other than personal service income) from an S corporation as investment income.

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the House bill. The agreement provides an election for 1983 and 1984 to characterize income from an S corporation, for purposes of section 163(d), under the law in effect prior to the enactment of the Subchapter S Revision Act of 1982. No inference is intended as to the proper interpretation of prior law.

2. Extension of the Payment-in-Kind Tax Treatment Act of 1983

Present law

The Payment-in-Kind Tax Treatment Act of 1983 generally treats commodities received under a 1983 PIK program as if they were grown on the land withdrawn from production under the PIK program; the Act also provides that estates are not disqualified from certain special estate tax provisions solely by reason of participation in a PIK program.

USDA determined that the $50,000 limit applicable to crop diversion payments did not apply to 1983 PIK payments; USDA has applied the limit to the 1984 wheat PIK program.

House bill

The House bill extends the PIK tax provisions to property withdrawn from production under the 1984 wheat PIK program. The bill also directs the Comptroller General to bring a declaratory judgment action to determine if the $50,000 payment limit applies to 1984 wheat PIK payments.

Senate amendment

The Senate amendment is the same as the House bill, except it does not mandate the Comptroller General to bring a declaratory judgment action with respect to application of the $50,000 payment limitation in the case of payments in kind (as opposed to payments in cash).

Conference agreement

The conference agreement follows the Senate amendment. The conferees wish to state, however, that their reason for not adopting the House bill's requirement that the Comptroller General bring a declaratory judgment action with respect to the application of the $50,000 payment limitation was that the Secretary of Agriculture has applied that limitation to the 1984 wheat PIK program.

3. Transitional rule for safe-harbor leasing of coal gasification facilities

Present law

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) generally reduced the tax benefits of safe-harbor leasing between July 1, 1982, and January 1, 1984, and repealed safe-harbor leasing for agreements entered into after December 31, 1983. However, these modifications do not apply to transitional safe-harbor lease property, which generally is property placed in service before January 1, 1983, provided that certain additional requirements are met.

House bill

No provision.

Senate amendment

The Senate amendment generally provides that transitional safe-harbor lease property includes certain coal gasification facilities that would meet the requirements of the general transitional rule in TEFRA if July 1, 1984, were substituted for the January 1, 1983, placed-in-service date. The provision applies only to the lease of an undivided interest in the facility in an amount which does not exceed the lesser of $67.5 million or 50 percent of the cost basis of the entire facility.

Conference agreement

The conference agreement includes the Senate amendment. The conferees intend that under the agreement, a coal gasification facility placed in service prior to July 1, 1984, may be leased in a safe harbor lease transaction within three months after it is placed in service by the lessee without losing its status as transitional safe harbor lease property.

4. Provisions of Indian Tribal Governmental Tax Status Act of 1982 made permanent

Present law

For years 1983 and 1984 only, Indian tribal governments are treated as State governments for most purposes of the Internal Revenue Code.

Special restrictions apply to this treatment in certain cases. For example, Indian tribal governments are permitted to issue tax-exempt bonds only to finance traditional public activities (e.g., schools, streets, and sewers). Additionally, the proceeds of these bonds must be used in an "essential governmental function." Tribal governments are not permitted to issue private activity bonds (i.e., industrial development bonds, student loan bonds, and mortgage subsidy bonds).

Additionally, exemptions from Federal excise taxes provided for State governments apply to articles sold to the Indian tribal governments only if the articles are sold for the tribal government's exclusive use in carrying out an essential governmental function.

House bill

No provision.

Senate amendment

The Senate amendment makes permanent the present law provisions that are scheduled to expire at the end of 1984.

Conference agreement

The conference agreement follows the Senate amendment with three modifications. These modifications permit Indian tribal governments to be treated as State governments for the following purposes in addition to the purposes for which such treatment is available under present law:

(1). Treatment of payments under certain State accident and health plans;

(2). Deductibility of certain costs associated with appearances before the State legislatures; and

(3). Rules relating to treatment of original issue discount on certain State obligations.

5. Amortization of low-income housing rehabilitation expenditures

Present law

Present law includes no special provision regarding cost recovery deductions for low-income housing rehabilitation expenditures. Before January 1, 1984, however, a taxpayer could elect (in lieu of any other cost recovery method) to amortize up to $20,000 generally of rehabilitation expenditures with respect to a unit of low-income housing over a 60-month period.

House bill

No provision.

Senate amendment

The Senate amendment reenacts the provision of prior law that permitted amortization over a 60-month period of certain expenditures for rehabilitation of low-income housing. The reenacted provision is effective for 3 years, through December 31, 1986.

Conference agreement

The conference agreement follows the Senate amendment.

6. Disallowance of deduction for costs of demolishing structures

Present law

Costs and other losses incurred in connection with the demolition of buildings generally may be claimed as a current deduction unless the building and the property on which it is located are purchased with an intent to demolish the building. If so purchased, costs and other losses are added to the basis of the land.

Before 1984, costs and other losses incurred in connection with the demolition of certified historic structures were required to be added to the basis of the land on which the structure was located in all cases. A certified historic structure is a building that is certified by the Secretary of the Interior as having historic significance and that meets certain other requirements.

House bill

No provision.

Senate amendment

The Senate amendment provides a general rule under costs and other losses incurred in connection with the demolition of all buildings, including certified historic structures, must be added to the basis of the land on which the demolished building were located, rather than claimed as a current deduction.

The provision generally is effective for demolition beginning after December 31, 1983.

Conference agreement

The conference agreement follows the Senate amendment. The conferees expect that this additional extension of the moratorium will allow the Treasury Department and the industry adequate time to resolve this issue and that no further extensions of this moratorium will be requested.

7. Reinstatement of deduction for elimination of certain barriers to the handicapped and the elderly

Prior law

Under prior law, Code section 190 provided a special tax deduction for up to $25,000 of expenses incurred during a taxable year in removing architectural or transportation barriers to the handicapped and the elderly. This provision was effective for taxable years beginning before 1983. Thus, for taxable years beginning after 1982, no special deduction for such expenses is provided.

Section 190 applied to expenses incurred to make more accessible to, and usable by, the handicapped and elderly facilities or public transportation vehicles owned or leased by the taxpayer for use in the taxpayer's trade or business. To be entitled to the deduction, the taxpayer had to establish that the barrier removal met standards set by the Treasury with the concurrence of the Architectural and Transportation Barriers Compliance Board. Under section 190, the definition of an elderly person was a person age 65 or over, and handicapped individuals included the blind and the deaf.

The maximum deduction allowed under prior law to a taxpayer (including a controlled group of corporations filing a consolidated return) for any taxable year was $25,000.

House bill

No provision.

Senate amendment

Under the Senate amendment, section 190 is reinstated and made applicable to expenses incurred in taxable years beginning after December 31, 1983, and before January 1, 1986. (Thus, the special deduction provided by section does not apply to expenses incurred in taxable years beginning in 1983.) The maximum deduction allowed to a taxpayer (including a controlled group of corporations) is increased to $35,000.

This provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

H. Additional Items

1. Employee tips

Present law

A large food or beverage establishment must allocate to employees as tips the excess of 8 percent of gross receipts over tips reported by the employees to the employer. The IRS can reduce the percentage up to which allocations must be made to as low as 5 percent.

House bill

No provision.

Senate amendment

A majority of the employees or the employer can petition the Internal Revenue Service for a reduction in the percentage of gross receipts required to be allocated. The minimum percentage required to be allocated is reduced from 5 to 2 percent. The provision is effective on the date of enactment. The Secretary is required to prescribe regulations within one year of the date of enactment that describe the applicable recordkeeping requirements for tipped employees.

Conference agreement

The conference agreement follows the Senate bill, with a modification clarifying that a person owning 50 percent or more of the value of a corporation that operates the food or beverage establishment is not considered employees, only for purposes of determining whether the establishment normally employed more than 10 employees. The conferees anticipate that an establishment will ordinarily not be able to prove down to the 2-percent rate.

2. FUTA treatment of tips

Present law

Tip income is considered wages for purposes of the Federal Unemployment Tax Act (FUTA) only to the extent paid directly to the employee by the patron, reported by the employee to the employer, and used by the employer to satisfy the minimum wage requirement of the Fair Labor Standards Act.

House bill

The House bill provides that all tip income reported by the employee to the employer is considered wages for FUTA purposes. The provision generally is effective on January 1, 1985. However, in the case of any State the legislature of which (1) did not meet in a regular session which begins during 1984 and after the date of enactment, and (2) did not meet in a session which began on the date of enactment and remained in session for at least 25 calendar days after the date of enactment, the provision is effective on January 1, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the effective dates are one year later than under the House bill.

3. FUTA treatment of certain fishing activities

Present law

Remuneration paid to fishing boat crew members is generally subject to FUTA if the services performed are related to catching halibut or salmon for commercial purposes or if the services are performed on a vessel of more than 10 net tons.

Under a provision which expired on December 31, 1982, remuneration paid to fishing boat crew members was exempt from FUTA if the remuneration depends on the boat's catch and the crew normally consists of fewer than 10 members.

House bill

No provision.

Senate amendment

The Senate amendment extends the exemption through December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

4. Taxation of unemployment compensation for pre-1978 periods

Present law

The Revenue Act of 1978 provides that the unemployment compensation taxation provisions apply to payments of unemployment compensation made after 1978, in taxable years ending after 1978. Thus, benefits paid in 1979 and later years may be subject to income tax even if attributable to periods of unemployment before 1979.

House bill

The House bill amends the Revenue Act of 1978 to provide that the provisions of that statute which make includible in income a portion of unemployment compensation benefits apply to payments of unemployment compensation made after 1978 except payments for weeks of unemployment ending before December 1, 1978. The bill also extends until one year after enactment the period for claiming any credit or refund attributable to this amendment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

5. Tax refunds relating to traveling expenses incurred in 1970-74 for employment at North Dakota ABM site

Present law

No deduction is allowed for commuting costs. However, traveling expenses (transportation, meals, and lodging) incurred by a taxpayer away from home in connection with temporary employment are deductible as business expenses (Code sec. 162). Court decisions generally hold that temporary employment means employment which can reasonably be expected to last only for a short period of time.

The U.S. Court of Appeals for the Eighth Circuit has allowed deduction of transportation expenses incurred by a carpenter while employed during 1970-73 at an antiballistic missile (ABM) site in Nekoma, North Dakota. However, other workers at the site are barred by the period of limitations from filing refund claims on the basis of that decision.

House bill

The House bill allows deductions for traveling expenses incurred between 1970 and 1974 in employment at the Nekoma, North Dakota, ABM site, if such expenses were claimed as deductions on the individual's tax returns. For a taxpayer who is precluded by the period of limitations from filing a refund claim with respect to such deductions, the bill allows a refund claim to be filed within one year after the date of enactment.

This provision applies to taxable years ending after 1969, with respect to expenses incurred after 1969 and before 1974.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

6. Shore-based fishery processing facilities

Present law

Certain tax benefits are provided U.S. taxpayers owning or leasing vessels operating in the foreign or domestic commerce of the U.S. or in U.S. fisheries. Such taxpayers are entitled to deduct from income certain amounts deposited in a capital construction fund pursuant to certain agreements. Earnings from the investment or reinvestment of amounts in such a fund are excluded from income. Furthermore, withdrawals from the fund, made in accordance with the applicable agreement, for the acquisition, construction, or reconstruction of certain vessels, or for the payment of principal on certain indebtedness, are not taxable, although the taxpayer's basis in the property involved is reduced by the amount of the withdrawal. Finally, for investment credit purposes only, the taxpayer's basis in the property is not reduced by more than 50 percent of the withdrawal.

House bill

No provision.

Senate amendment

The tax benefits available under present law are also made available to U.S. citizens (and certain other persons) owning or leasing a fishery facility in the U.S. In addition, deposits into, and withdrawals from a capital construction fund (made in accordance with the applicable agreement) which are used for the acquisition, construction, or reconstruction (not including routine minor repair and maintenance) of certain fishery facilities, are entitled to the tax treatment indicated above. For this purpose, a fishery facility includes land, structures, and equipment used for the unloading and receiving from vessels, the processing, the holding, and the distribution of fish from fisheries.

The provision is effective upon enactment.

Conference agreement

The conference agreement does not contain the provision in the Senate amendment.

7. Tax exemption for the National Credit Union Central Liquidity Facility

Present law

The National Credit Union Central Liquidity Facility ("Central Liquidity Facility") was created by Congress in 1978[2] to meet the liquidity needs of credit unions, including the need for short-term adjustment credit, seasonal credit, and protracted adjustment credit in the event of unusual or emergency circumstances. Under present law, the Central Liquidity Facility is not explicitly exempt from Federal, State or local taxes.

House bill

No provision.

Senate amendment

The Senate amendment provides that the Central Liquidity Facility is exempt from Federal income taxes under the Internal Revenue Code. Additionally, the Central Liquidity Facility is exempt from State or local taxes, other than taxes on real property (to the extent that similar property held by other persons is taxed). The Senate amendment also clarifies that the Central Liquidity Facility is to be an instrumentality of the United States for all purposes under Federal law.

Under the Senate amendment, notes, bonds, and other obligations issued on behalf of the Central Liquidity Facility, and the income from such obligations, are exempt from State and local taxation, other than gift, estate, inheritance, or other wealth transfer taxes. However, such obligations (and the income therefrom) are subject to Federal tax.

These provisions are effective on and after October 1, 1979, i.e., the effective date of the legislation creating the Central Liquidity Facility.

Conference agreement

The conference agreement follows the Senate amendment. The conference agreement further specifies that future tax exemptions for instrumentalities of the United States must be provided in the Internal Revenue Code.

8. Exclusion from gross income for cancellation of certain student loans

Present law

Gross income generally includes income from the discharge of indebtedness (Sec. 61(a)(12)).

Under a provision enacted in the 1976 Tax Reform Act, and later extended through 1982, an individual does not realize gross income from cancellation of student loans made by government agencies where the individual in return works for a certain period of time in certain professions in certain geographical areas or for certain classes of employers.

House bill

No provision.

Senate amendment

The Senate amendment provides a permanent exclusion from income for amounts realized by reason of cancellation of certain student loans where the recipient performs certain professional services for any of a broad class of employers.

This provision is effective for discharges of indebtedness on or after January 1, 1983.

Conference agreement

The conference agreement follows the Senate amendment.

9. Duck stamps

Present law

Duck stamps and postage stamps are considered a type of Federal obligation, and reproduction of them is forbidden under Federal anticounterfeiting laws. Limited reproduction in black and white is permitted for philatelic, numismatic, education, historical or newsworthy purposes, and color reproductions of postage stamps is permitted under carefully prescribed conditions.

House bill

No provision.

Senate amendment

The Secretary of the Interior, with the concurrence of the Secretary of the Treasury, is authorized to license color, as well as black and white, reproductions of duck stamps. The reproductions would have to be less than three-fourths, or more than one and one-half, of the size of the original stamp. The proceeds from such licensed reproductions would be deposited in the Migratory Bird Conservation Fund. Reproductions may be made for commercial purposes which may include facsimiles on such products as placemats and shotguns.

Conference agreement

The conference report follows the Senate amendment, with a technical amendment which specifies that any proceeds from reproductions of duck stamps will be paid into the Migratory Bird Conservation Fund and with an amendment that permits the color reproduction of duck stamps in philatelic (or stamp-collecting) advertising designed to encourage collectors to purchase duck stamps. The conferees understand that duck stamp reproductions used in philatelic advertising will not be subject to the licensing requirements of the Senate amendment, but they would have to otherwise conform to the requirements imposed under anticounterfeiting provisions.

10. Boundary Waters Canoe Act payments

Present law

Equity grants have been provided to resort and recreational activities operators in the Boundary Waters Canoe Area to assist them in converting their business operations to conform with more restrictive rules governing activities in the area since it was designated as a wilderness area.

Because of the wilderness designation, resort operators have experienced an economic effect similar to an involuntary conversion, in which event the basis of property received is reduced by the amount of funds received but not spent, as provided by law.

House bill

No provision.

Senate amendment

The Senate amendment permits resort and recreational activities operators to make tax-free investments of equity-grants in depreciated property for use in activities within the Boundary Water Canoe Wilderness Area. The property to which taxpayers allocate equity grants must be placed in service before the later of two years after the date of enactment or two years after the payment is received. The basis for each item of property will be reduced by the amount of the equity grant and will be increased by the amount repaid on sale of property. No credit or ACRS deduction may be taken for the portion of any property funded by an equity grant.

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[2] Pub. L. 95-630, 95th Cong., 2d Sess., November 10, 1978 (12 U.S.C. sec. 1795 *et seq.*).

Conference agreement

The conference agreement follows the Senate amendment.

11. Physicians' and surgeons' mutual protection associations

Present law

In general, the gross income of a mutual insurance company (other than a life insurance company) includes gross premiums and other consideration, gross investment income, and gain from the sale or other disposition of property. Gross income, generally, does not include any contribution to capital. Present law provides a specific deduction for dividends and similar distributions paid to policyholders in their capacity as such.

Under present law, premiums for liability insurance in carrying on any trade or business are deductible in the year they are paid or incurred. However, no deduction is allowed as an expense paid or incurred during the taxable year for a contribution to capital.

House bill

No provision.

Senate amendment

The Senate amendment provides special rules for the tax treatment of certain physicians' and surgeons' mutual protection and indemnity associations. The gross income of such associations will not include any payment made by a member as an initial payment (or capital contribution) upon joining the association, if the payment does not release the member from obligations to pay current or future dues, assessments or premiums, and if the initial payment is a condition precedent to receiving benefits of membership. Any repayment of an amount so excluded will not be deductible (as a policyholder dividend or otherwise) by the association.

The initial payments of capital will not be excluded from the income of the association to the extent the member makes an election to treat the initial payment as a trade or business expense. Generally, a member making the election (upon joining the association) will be able to deduct the initial payment of capital (or portion thereof) during each of the first 6 years of membership, to the extent the annual premium that would be payable to an independent insurance company for similar coverage exceeds the dues, assessments, or premiums paid during the taxable year to the association.

The provision applies only to those organizations that were operating and providing medical malpractice liability protection under State laws prior to January 1, 1984, and only with respect to payments made to, receipts of, and refunds of payments by such associations, after the date of enactment.

Conference agreement

The conference agreement follows the House bill.

12. Tax treatment of regulated investment companies

Present law

Regulated investment companies.—Under present law a regulated investment company (RIC) is treated, in essence, as a conduit for tax purposes. If a corporation qualifies as a RIC, it is allowed a deduction for dividends paid (or deemed paid) to its shareholders. Thus, no corporate level tax is payable on earnings of a RIC distributed (or deemed distributed) to its shareholders.

Accounting for certain obligations.—Issue discount on certain short-term government obligations issued at a discount and redeemable at maturity without interest is deemed to accrue at the earlier of the date the obligation is paid, or the date it is sold or otherwise disposed of.

House bill

Regulated investment companies.—The House bill repeals the prohibition of present law which denies eligibility for RIC status to a personal holding company (PHC), and provides that the undistributed investment company taxable income of any RIC which is a PHC will be subject to tax at the highest rate (presently 46 percent). In addition, the bill provides, in effect, that corporations with accumulated earnings and profits attributable to a non-RIC year will be ineligible to elect RIC status without a distribution of those earnings.

Accounting for short-term government obligations.—The House bill provides that the issue discount accruing with respect to any short-term government obligation will be taxable to the RIC as it accrues, if the company so elects in a manner prescribed by the Internal Revenue Service.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement is the same as the House bill and the Senate amendment. However, a transitional rule is added under which a corporation with earnings attributable to a non-RIC year will be eligible to elect RIC status without distributing such earnings if it completed all the economic steps required to elect RIC status during the period beginning on January 1, 1982 and ending on November 7, 1983, and elects or has elected RIC status for its first taxable year beginning after November 8, 1983.

13. Increased payments for presidential nominating conventions

Present Law

Congress has authorized the payment from the Presidential Election Campaign Fund of up to $3 million for presidential nominating conventions of major parties; lesser amounts may be made available to minor parties. The base amount is adjusted for inflation. The payments are to be used only to defray expenses incurred with respect to a presidential nominating convention.

House bill

No provision.

Senate amendment

The Senate amendment authorizes an increase in the limitation to $4 million. The additional amount is intended to defray the expenses for security arrangements at the two presidential nominating conventions.

Conference agreement

The conference agreement follows the House bill.

XI. STUDIES

1. Study of alternative tax systems

Present law

There is no specific provision.

House bill

The House bill provides that the Secretary of the Treasury is to submit to the Congress a study of a simplified gross income tax (covering both individual and corporate income taxes). The report is to be submitted within 6 months of enactment.

Senate amendment

The Senate amendment provides that the Secretary of the Treasury is to submit to the Congress a study of alternative tax systems (covering both the individual and corporate income taxes), including a simplified gross income tax, a consumption-based tax, a value-added tax, a national sales tax, and broadening of the current income tax base combined with lowering of tax rates. The report is to be submitted within 6 months of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment; except that the report is to be submitted to the Congress by December 31, 1984, and that the report is to include a study of tax shelters.

2. Treasury study on foreign taxation of certain U.S. services

Present law

The foreign tax credit cannot offset U.S. tax on U.S. source income. The United States considers income for services performed in the United States for use in foreign countries to be U.S. source income; some foreign countries consider the same income to be local income. Double taxation may arise.

House bill

No provision.

Senate amendment

The Senate amendment directs the Treasury Department to study the practices of foreign countries that impose taxes on the basis of services that are performed in the United States, including the status of treaty negotiations with such countries, and options to alleviate the resulting double tax burden on U.S. taxpayers. The Treasury Department is to report on the results of its study to the Senate Committee on Finance and the House Committee on Ways and Means no later than August 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment, except that the Treasury study will be due on December 31, 1984.

XII. MISCELLANEOUS TARIFF PROVISIONS

1. Cordage products

Present law

Cordage manufactured from a plastics material is classified in the Tariff Schedules of the United States (TSUS) as either "cordage" under the textiles part of the TSUS, or as a plastics article in a different TSUS part. The difference depends on whether the strips from which the cordage is made exceed certain dimensions. Cordage classified as a plastics article is subject to a lower tariff rate than if it is classified as a textile article.

House bill

No provision.

Senate amendment

The Senate amendment classifies cordage (twine, rope, and cables) currently classified as plastic products in TSUS schedule 7 as articles to be classified under schedule 3 (textile products).

The provision is applicable to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

2. "Like agricultural products"

Present law

A petition for relief under the antidumping or countervailing duty laws must be filed by an "interested party" which, in general, means a representative of an industry producing a "like product" to the allegedly dumped or subsidized article. Section 771(10) of the 1979 Trade Agreements Act defines "like product" to mean a product which is "like or in the absence of like, most similar in characteristics and uses with, the article" subject to an investigation.

House bill

No provision.

Senate amendment

The Senate amendment amends section 771(10) of the 1979 Act to encompass within the meaning of "like product" agricultural products at earlier stages of processing than imported articles.

The provision is applicable to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

3. Fish nets

Present law

The MFN tariff rate on fish netting and nets made of textile materials other than cotton or vegetable fibers is being reduced in stages to 17 percent ad valorem by 1989. The rate currently is 18 cents per pound plus 28.6 percent ad valorem.

House bill

No provision.

Senate amendment

The Senate amendment permits the 17-percent MFN tariff rate to apply immediately to the first 1.75 million pounds of fish nets, or 28 percent of the prior year's domestic consumption, whichever is greater.

The provision is applicable to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

4. A telescope and its apparatus

Present law

Scientific instruments and apparatus, and repair components, entered for the use of nonprofit educational institutions may enter duty-free if the Commerce Department determines domestic equipment of equivalent scientific value is unavailable.

House bill

No provision.

Senate amendment

The Senate amendment directs the Secretary of the Treasury to admit duty-free any articles provided by the Max Planck Radio Astronomy Institute in Germany for a joint project with the University of Arizona.

The provision is effective on the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

DIVISION B—SPENDING REDUCTION ACT OF 1984

TITLE I—GENERAL PROVISIONS

The conference agreement rescinds a specified amount of funds for the "Energy Security Reserve". The rescission is agreed to with the understanding that the five vacancies on the Board of the Synthetic Fuels Corporation will be filled with qualified individuals and that the Board will submit to the appropriate committees of the Congress a plan for the future operations of the Corporation.

The Comptroller General of the United States ruled on February 15, 1984, that the unused portion of a commitment of financial assistance provided to a project may be used for another project if the first project is halted. To clear any confusion over the status of funds from the Colony Shale Oil Project, the managers have agreed to include these funds in the rescission.

Senate amendment

Contains provision which would revise section 715 of the 1984 Defense Appropriation Act, Public Law 98-212. That section limits to 13,500 pounds the costs the government will cover for the movement of household goods for civilian and military personnel of the Department of Defense undergoing permanent change of station. The Senate provision would increase the limitation of 18,000 pounds for Department of Defense civilian employees, effective on the date of enactment of Public Law 98-212.

House amendment

Contains no comparable provision.

Conference agreement

The conference agreement does not retain the Senate provision. The conferees recommend that the limitation on transportation of baggage and household goods be reviewed in connection with action on the fiscal year 1985 Defense Appropriation bill.

TITLE II—CIVIL SERVICE AND MILITARY RETIREMENT PROGRAMS

SEC. 2201. COST-OF-LIVING ADJUSTMENTS UNDER GOVERNMENT RETIREMENT SYSTEMS

House Amendment—The House amendment contains no provision relating to a change in the effective date of cost-of-living adjustments.

Senate Amendment—Section 1201 of the Senate amendment requires the commencing effective date of cost-of-living adjustments to be moved to December 1 of each year, and further provides that these adjustments would be payable on January 1. These cost-of-living adjustments have already been delayed as a result of the enactment of H.R. 4169.

Conference Agreement—The conferees agreed to those provisions of the Senate amendment which provide that the monthly annuity for any month may not be paid until the first business day of the next succeeding month and to a technical amendment which perfects the manner in which initial cost-of-living adjustments are prorated. The conferees note that provisions permanently delaying the effective date of cost-of-living adjustments until December of each year were enacted as part of the Omnibus Budget Reconciliation Act of 1983.

SEC. 2202. TECHNICAL AMENDMENT RELATING TO PREVAILING RATE EMPLOYEES

House Amendment—The House amendment contains no provision relating to the pay comparability adjustment for federal employees.

Senate Amendment—Section 1202 of the Senate amendment provides a 3.5% pay raise in January 1984 for General Schedule employees and effects a permanent delay in the date of the adjustment from October 1 to January 1 for General Schedule employees and a three month delay for wage board employees.

Conference Agreement—The Senate recedes to the House with a technical amendment which clarifies that pay adjustments for prevailing rate employees scheduled during fiscal year 1984 will be delayed 90 days. This is consistent with the intent of the Omnibus Reconciliation Act of 1983 which provided, generally, for a three-month delay in Federal pay adjustments. The Conference Agreement doesn't necessarily result in precluding a delay of the fiscal year 1985 federal pay adjustment.

SEC. 2203. DEDUCTION FROM CIVILIAN PAY FOR COST-OF-LIVING ADJUSTMENT OF RETIRED OR RETAINER PAY

House Amendment—The House amendment contains no provision relating to the deduction from civilian pay for cost-of-living adjustment of retired or retainer pay.

Senate Amendment—The Senate amendment repeals the reduction in civilian pay for cost-of-living adjustments of retired or retainer pay.

Conference Agreement—The conferees agreed to the Senate amendment, and included language to establish an effective date for the repeal.

SEC. 2204. LEAVE FOR CERTAIN OVERSEAS EMPLOYEES

House Amendment—The House amendment contains no provision relating to the leave for certain overseas employees.

Senate Amendment—The Senate amendment removes the 75 day limit on leave accumulated by teachers in the Department of Defense Dependents Schools.

Conference Agreement—The House recedes to the Senate.

SEC. 2205. CIVIL SERVICE RETIREMENT DEPOSITS COVERING MILITARY SERVICE

House Amendment—The House amendment contains no provision regarding retirement deposits.

Senate Amendment—Section 1205 of the Senate amendment amends section 306(g) of the Omnibus Budget Reconciliation Act of 1982, relating to deposits by certain retirees to receive credit for post-1956 military service. The Senate amendment extends application of section 306(g) to employees who retire prior to October 1, 1985.

Conference Agreement—The conferees agreed to the Senate provision.

SEC. 2206. ELECTION OF RETIREMENT PLAN

House Amendment—The House amendment includes no provision in this area.

Senate Amendment—Section 1207 of the Senate amendment extends the period during which eligible federal employees can make retirement elections, as provided in the Federal Employee Retirement Contribution Temporary Adjustment Act of 1983.

Conference Agreement—The House recedes to the Senate with an amendment extending the election period until September 15, 1984.

SEC. 2207. SALARY ADJUSTMENTS FOR JUDGES

House Amendment—The House amendment includes no provision in this area.

Senate Amendment—Section 1604 of the Senate amendment provides a 4% pay increase to federal judges, effective retroactive to January 1, 1984.

Conference Agreement—The House recedes to the Senate.

SEC. 2208. RETIREMENT BENEFITS FOR NATIVES OF THE PRIBILOF ISLANDS

House Amendment—The House amendment includes no provision in this area.

Senate Amendment—Section 1607 of the Senate amendment revises the Fur Seal Act Amendments of 1983 (P.L. 98-129) to extend retirement credit to eligible annuitants.

Conference Agreement—The conferees agreed to the Senate

SEC. 2209. AMENDMENT TO OMNIBUS BUDGET RECONCILIATION ACT OF 1981

Section 2209 of the conference report continues in effect the provisions of section 1722 of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 759; Public Law 97-35), which prohibits the Postal Service from taking any action to reduce, or plan to reduce, the number of days each week for regular mail delivery. The current prohibition, which will expire September 30, 1984, is continued in effect until September 30, 1987.

The policy statements enacted by Congress in the Postal Reorganization Act and incorporated in section 101 of title 39, United States Code, are the principles specifically designed to guide postal management in determining service levels.

The conference intends to ensure compliance with these principles and the provisions of section 2209 as statutory requirements for effective postal services. Any proposal which would, if implemented, reduce the number of days each week for regular mail delivery, or diminish the frequency or quality of delivery service in accordance with the standards for delivery service in effect at the present time, would violate the provisions of section 2209. To consider such a proposal, in the view of the conference managers, is to "take any action," and therefore also would violate the specific language of the prohibition contained in section 2209.

RETIREMENT COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1986 AND 1987

House amendment

The House amendment contains a provision to limit cost of living adjustments for military and civilian retirees under age 62 to one-half the actual cost of living adjustment in fiscal years 1986 and 1987.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The House recedes to the Senate.

PAY INCREASES FOR CERTAIN EMPLOYEES IN PANAMA

House amendment

The House amendment includes no provision in this area.

Senate amendment

Section 1206 of the Senate amendment provides pay raises for federal employees in the Panama Canal Zone.

Conference agreement

The Senate recedes to the House.

IX. SPENDING PROVISIONS

[A. MEDICARE]

Present law

No provision.

House bill

The House bill would specify that the short title of the bill is "Medicare and Medicaid Budget Reconciliation Amendments of 1984."

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Payment for Costs of Hospital-Based Mobile Intensive Care Units (Section 2320)

Present law

Ambulance services are reimbursed under Part B of Medicare. The patient is responsible for a coinsurance payment of 20 percent.

a. Medicare payments

House bill

The House bill would provide that Medicare make payment to hospitals under Part A for the operation of mobile intensive care units if certain conditions are met.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House bill.

b. Hospital requirements

House bill

The House bill would specify that the hospital must be located in a State which has a statewide prospective payment system approved by HHS either under a demonstration waiver or under the new Section 1886(c) programmatic waiver.

Senate amendment

The Senate amendment would specify that the hospital must be located in New Jersey and operating under a demonstration project approved under Sec. 402 of the 1967 amendments.

Conference agreement

The conference agreement follows the Senate amendment.

c. Application of provision

House bill

The House bill would provide that where the State has a demonstration waiver, the provision would apply unless the State notifies the Secretary of HHS, within 30 days of the date of enactment of this bill, that the State does not want the provision to apply.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment.

d. Notification

House bill

The House bill would provide that in the case of a Section 1886(c) waiver, the State must notify the Secretary within such reasonable period as the Secretary may establish if the State does not want the provision to apply.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

e. Required assurances

House bill

The House bill would require the State to provide satisfactory assurances that total Medicare and Medicaid payments to the hospitals covered under the State system will not exceed the total payments which would have been made if the State were not under a waiver.

Senate amendment

Same as House bill.

f. Effective date

House bill

The House bill would make the provision retroactive to January 1, 1983.

Senate amendment

The Senate amendment would be effective upon enactment. Payment under Part A would only be permitted for the duration of the current waiver.

Conference agreement

The conference agreement specifies that the provision is effective on enactment and until such time as the waiver is terminated. However, the provision may not be terminated prior to 90 days after the publication of the final regulations implementing the Section 1886(c) programmatic waiver authority.

3. Removing Costs of Nurse Anesthetists From DRG-Based Payments (Section 2312)

Present law

Medicare's payments to hospitals under Part A are based on the diagnosis of the patient and are intended to cover all the services that hospitals customarily furnish in caring for patients with a specified diagnosis. All non-physician services provided to hospital inpatients can be paid for only under Part A. However, the Department of Health and Human Services (HHS), in its regulations governing hospital payments, established a temporary provision to provide for a transition with respect to payment for the services of certified registered nurse anesthetists (CRNA's) billed under Part B. The regulations provide that, if a physician employed nurse anesthetists during a designated period prior to implementation of prospective payment, then that physician may continue to receive payment from Medicare Part B for CRNA's through the hospital's cost reporting periods beginning before October 1, 1986.

a. Revision in definition of operating costs

House bill

The House bill would remove from the definition of "operating costs of inpatient hospital services" for purposes of prospective payment, costs related to employment of, or contracts for, professional services of certified registered nurse anesthetists. Thus, such costs would be reimbursed on a "pass through" basis.

Senate amendment

The Senate amendment includes a similar provision.

Conference agreement

The conference agreement follows the Senate amendment, with a modification to clarify that the provision is limited to anesthesia services furnished by certified registered nurse anesthetists.

The conferees intend that the term "anesthesia services" means those related to the preparation for, administration of, and recovery from anesthesia.

b. Payments to hospitals

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to provide an additional payment amount to hospitals which are operating under the prospective payment system for the hospital's reasonable costs incurred for anesthesia services provided by a CRNA.

Such reasonable costs could not be based on a greater number of CRNA's than were employed by a hospital in 1982, unless the Secretary determined that changes in patient volume, patient mix, or a loss of physician services required otherwise.

Conference agreement

The conference agreement follows the Senate amendment with modification. It strikes the portion of the Senate amendment which limits (with certain exceptions) reasonable cost payments to those based on the number of CRNA's employed by a hospital in 1982.

c. Study

House bill

The House bill requires the Secretary to include recommendations on the advisability and feasibility of determining payments for CRNA's on the basis of DRG's in the report to Congress on physicians' services to hospital inpatients.

Senate amendment

The Senate amendment requires the Secretary to study possible Medicare reimbursement methods which would not discourage the use of CRNA's by hospitals and to report to Congress as soon as is practicable.

Conference agreement

The conference agreement follows the Senate amendment.

d. Effective date

House bill

The House bill would be effective for hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1986.

Senate amendment

The Senate amendment would be effective for hospital cost reporting periods beginning on or after October 1, 1984.

Conference agreement

The conference agreement follows the House provision with a modification to move the termination date to October 1, 1987.

It is the understanding of the conferees that, in conjunction with this legislation, the Administration intends to continue to permit those physicians who employed nurse anesthetists, as of cost reporting periods ending before September 30, 1983, to continue to bill for CRNA services. In addition, it is the understanding of the conferees that the Administration intends to modify the regulations to permit physicians who did not employ CRNA's before the specified date to bill for the services of CRNA's whom they have subsequently employed. The conferees believe the modification with respect to physicians employing CRNA's for the first time is appropriate, on the understanding that these billing arrangements will be permitted only during the same time period the provisions of this amendment are in effect. Similarly, the conferees expect that the regulations with respect to physicians already employing CRNA's will be terminated on the same date as this amendment.

4. Determination of Hospital Area Wage Index (Section 2316)

Present law

Medicare payments to hospitals under the prospective payment system must be adjusted to reflect the hospital wage level in a hospital's geographic area relative to the national average hospital wage level.

a. Adjustment report

House bill

The House bill would require the Secretary to develop, in consultation with the Secretary of Labor and the Commissioner of the Bureau of Labor Statistics, methods of refining and improving the adequacy and equity of the area wage indices and to report to Congress on such developments not later than June 1, 1984.

Senate amendment

The Senate amendment would require the Secretary, in consultation with the Secretary of Labor, to conduct a study to develop an appropriate index to adjust the prospective payment amounts to reflect area differences in average hospital wage levels, taking into account wage differences of full-time and part-time workers. The Secretary would be required to report the results of the study to Congress prior to May 1, 1984.

Conference agreement

The conference agreement follows the Senate amendment with a modification specifying that the report is due 30 days after enactment.

b. Payment adjustments

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to adjust hospital payment amounts for cost reporting periods beginning on or after October 1, 1983, to reflect any changes made in the wage index as a result of the study. Overpayments or underpayments for the first cost reporting period of a hospital beginning on or after October 1, 1983, would be made by decreasing or increasing payments in the succeeding cost reporting period.

Conference agreement

The conference agreement includes the Senate amendment.

c. Adjustment criteria

House bill

The House bill would require the Secretary to establish criteria under which, to the extent deemed appropriate, a hospital's wage index adjustment would be modified if the hospital could demonstrate that its wage adjustment did not accurately reflect the wage levels in the labor market serving the hospital. Such adjustment would be made in a subsequent fiscal year to take into account a difference in payment amounts occurring in the current fiscal year resulting from a wage index inaccuracy.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision with a modification. The Secretary is directed to conduct a study, and include in his final report, proposed criteria by which an adjustment could be made in a hospital's wage index if such index did not accurately reflect the hospital wage levels in the labor market area serving the hospital.

5. Delay of Effective Date for Single Reimbursement Limit for Skilled Nursing Facilities. Skilled Nursing facility Reimbursement (Section 2319)

Present law

TEFRA required the Secretary to establish a single payment limit for both freestanding and hospital-based skilled nursing facilities (SNF's), effective October 1, 1982. Prior to that time, separate limits were established for these two types of facilities in recognition of the fact that the operating costs of hospital-based facilities were typically much higher than those of the freestanding facilities.

In the Social Security Amendments of 1983 (P.L. 98-21), the effective date of the single-limit requirement was postponed for one year until October 1, 1983. In addition, the Congress required the Secretary to report by December 31, 1983 on the effect of the implementation of the single-rate provision on hospital-based SNF's, given the difference (if any) in the patient populations served by such facilities and by freestanding SNF's. Further, the Secretary was required to report by the end of 1983 on the impact of hospital prospective payment on SNF's.

a. Effective date

House bill

The House bill would postpone implementation of the single reimbursement limit for SNF's until April 1, 1984.

Senate amendment

The Senate amendment would provide that for cost reporting periods beginning on or after October 1, 1982 and prior to July 1, 1984, hospital-based facilities and freestanding facilities would be paid on the same basis used to calculate reimbursement limits that had been in effect prior to the passage of TEFRA.

Conference agreement

The conference agreement follows the Senate amendment.

b. Calculation of limits

House bill

No provision.

Senate amendment

The Senate amendment would provide that for cost reporting periods beginning on or after July 1, 1984 separate limits would continue to be established for free-standing facilities in urban and rural areas at 112 percent of the mean operating costs of urban and rural freestanding facilities, respectively. Limits for urban or rural hospital-based facilities would be set at the appropriate freestanding facility limit plus 50 percent of the difference between the freestanding facility limit and 112 percent of mean operating costs for hospital-based facilities. Cost differences between hospital-based and freestanding facilities attributable to excess overhead allocations resulting from Medicare reimbursement principles would be recognized as an add-on to the limit.

Adjustments would be made to take account of differences in wage levels prevailing in a facility's area. Exceptions could be granted based upon case mix or circumstances beyond the control of the facility be it either a free standing or hospital-based facility.

Conference agreement

The conference agreement follows the Senate amendment.

c. Report

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to submit the report required by Social Security Amendments of 1983 by April 15, 1984.

Conference agreement

The conference agreement follows the Senate amendment with a modification to require submission of the report by December 1, 1984.

d. Prospective payment proposals

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to submit by December 1, 1984, a proposal for a prospective payment system for SNF's taking into account case-mix differences between providers. The proposal should be designed so as to permit inclusion of payments to hospital-based SNF's within the DRG system and to permit implementation on October 1, 1985.

Conference agreement

The Conference agreement follows the Senate amendment with a modification. The Secretary is required to submit to Congress by August 1, 1984, the results of the study required by TEFRA relating to the development of legislative proposals for prospective reimbursement of SNF's. In addition, the Secretary is required to report to the Congress by December 1, 1984 on the range of options available for prospective payment of SNF's. Included in the study should be an examination of the feasibility advisability and methods of incorporating into the hospital DRG system payments for SNF services. This examination should take into account case mix differences between providers.

The Conferees wish to express their concern over the protracted delays which have occurred in the submission of reports required by law. The Conferees expect and intend that the SNF reports required by this and previous laws shall be submitted on a timely basis.

6. Limitation on Increase in Hospital Costs Per Case (Section 2310)

Present law

TEFRA expanded previously existing limits on Medicare costs effective October 1, 1982. Among other things, it established a 3-year target rate reimbursement system which limited allowable rates of increase in Medicare payments per case over the fiscal year 1983–1985 period. The target rate is equal to the previous year's allowable operating costs per case (or after the first year, the previous year's target amount) increased by the percentage increase in the hospital wage and price index (market basket (MB)) plus 1 percentage point. Penalties and bonuses were established for hospitals, with costs above and below the target.

The "Social Security Amendments of 1983" (Public Law 98-21) provided for the establishment of a prospective payment system for certain hospitals to be phased-in over a 3-year period. During the transitional period, a portion of a hospital's payments will be based on the new Federal prospective payment rates and a portion on each hospital's own cost base. In the first year, the blend is 75 percent hospital specific and 25 percent the appropriate Federal rate; in the second year, the blend is 50/50; in the third year, the blend is 25 percent hospital specific and 75 percent the appropriate Federal rate.

The Federal rates are derived from historical Medicare cost data. For fiscal years 1984 and 1985, payment amounts from the previous fiscal years would be increased by the market basket, plus one percentage point. For fiscal years beginning on or after October 1, 1986, the rate of increase is left to the discretion of the Secretary.

Those hospitals and hospital units exempt from the prospective payment system are paid on the basis of historical costs subject to the existing rate of increase limits which provide for an annual rate of increase of MB plus 1 percentage point. For accounting years beginning on or after October 1, 1986, the rate of increase is left to the discretion of the Secretary.

a. Rate of Increase Limits

House bill

No provision.

Senate amendment

The Senate amendment would limit, for two hospital cost reporting periods beginning on or after October 1, 1984, the rate of increase in the hospital specific portion of the payment amount to the market basket minus one-half percentage point. The rate of increase in the Federal portion of the payment amounts during fiscal years 1985 and 1986 would be limited to the market basket plus one-half percentage point.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The modification specifies that the rate of increase applicable for hospitals in fiscal year 1985 shall be market basket plus one-quarter of one percentage point. However, budget neutrality would continue to apply in fiscal year 1985. In fiscal year 1986, the rate of increase may not exceed the market basket plus one-quarter percentage point. The Secretary, taking into account the recommendations of the prospective payment commission, would have authority to establish a rate of increase, as under current law, but at a rate not in excess of market basket plus one-quarter of one percentage point.

Recognizing that budget neutrality will be a primary consideration in the establishment of the fiscal year 1985 hospital payment rates, the conferees are nevertheless concerned about the perception that they may be unfair and inequitable. The conferees realize that the appropriateness of the new levels of payment will be vital to the success of the full implementation of the prospective payment system. This provision deals with but one factor which is taken into consideration when new rates are set. For the future those rates will be determined by the Secretary and the Prospective Payment Assessment Commission. Nevertheless, the conferees urge the Secretary to carefully evaluate the potential impact of the proposed rates on the long-term success of the prospective payment system.

b. Limits for Exempted Hospitals

House bill

No provision.

Senate amendment

The Senate amendment would provide that exempted hospitals and exempted hospital units would be subject to similar rate of increase limitations applicable to their costs ($MB - \frac{1}{2}$ and $MB + \frac{1}{2}$) in the same proportion as hospitals under the prospective payment system with the same accounting years. This would result in a rate of increase for exempted hospitals of MB in the first year and $MB + \frac{1}{4}$ in the second year.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The modification provides that the rate of increase for exempted hospitals and exempted hospital units shall not exceed market basket plus one-quarter percentage point in the first year and shall not exceed market basket plus one-quarter of one percentage point in the second year.

The Secretary, taking into account the recommendations of the Prospective Payment Commission, shall continue to have authority to establish a rate of increase, as under current law, but not more than market basket plus one-quarter of one percentage point during the applicable period.

7. Classification of Certain Rural Hospitals (Section 2311)

a. Redesignation of urban facilities

Present law

Public Law 98-21 provided for the establishment of a prospective payment system for hospitals based on DRG's (diagnosis-related groups). The system is to be phased-in during a three year transition period during which a declining portion of the total prospective payment will be based on the hospital's specific rate and an increasing portion on the Federal rate. Different Federal rates are calculated for hospitals located in rural areas and hospitals located in urban areas.

Urban areas are metropolitan statistical areas (currently MSA's, previously SMSA's) or New England county metropolitan areas (NECMA's) as well as five specified counties in New England. All other areas are rural areas. The determination as to whether or not an area is urban or rural is made by the Office of Management and Budget. The determinations are periodically changed. In June of 1983, a large number of statistical areas were redesignated.

House bill

No provision.

Senate amendment

The Senate amendment would provide that hospitals located in counties redesignated as rural since enactment of the prospective payment system would be allowed a two year transition to the rural rates. In the first year, the hospital would be paid the rural rate plus two-thirds of the difference between its rural and urban rate. In the second year, it would be paid the rural rate plus one-third the difference between the rural and the urban rates.

Conference agreement

The conference agreement follows the Senate amendment.

b. MSA's

Present law

Separate Federal rates are calculated for the 9 regions (census divisions). In some cases, MSA's are located in more than one region resulting in hospitals in the same MSA receiving different payment amounts based on different Federal rates.

House bill

No provision.

Senate amendment

The Senate amendment would specify that a hospital located in an MSA shall be deemed to be in the region in which a majority of the hospitals are located or, at the option of the Secretary, the region which accounts for the majority of the Medicare discharges.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The Secretary shall not recoup amounts from payments for discharges occurring in accounting years beginning prior to October

1, 1984, in those cases where a hospital is deemed to be in a lower rate region.

c. Regional and national referral centers

Present law

Public Law 98-21 authorized the Secretary to provide exceptions and adjustments appropriate to regional and national referral centers, including those hospitals of 500 or more beds located in rural areas.

House bill

No provision.

Senate amendment

The Senate amendment would permit a hospital classified as a rural hospital to appeal to the Secretary to be classified as a rural referral center, based on criteria established by the Secretary. The criteria would allow a hospital to demonstrate that it should be reclassified by reason of certain of its operating characteristics being similar (which may include wages, scope of services, service area, and mix of medical specialties) to those of a typical urban hospital in the same region. The amendment would require that criteria must be published by June 1, 1984 for implementation by October 1, 1984. An appeal would have to be submitted within the first quarter of a hospital's cost reporting period and the Secretary would have to make a final determination on the appeal within 60 days. Payments would be retroactive to the beginning of the hospital's reporting period.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The modification requires publication of the criteria within 30 days after enactment. Further, the modification provides that hospitals must appeal their current designation as a rural, non-referral hospital, in the quarter preceding the start of their accounting year except for the accounting year beginning on October 1, 1984 in which case an appeal would be allowed to be made until January 1, 1985.

d. Study

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to conduct a study on the advisability of making adjustments in the nonlabor component of those DRG's which have high fixed nonlabor costs. The report is due to Congress within 6 months after the date of enactment.

In addition the Secretary is required to study the degree of variation in inpatient costs within each DRG. The study must also present alternative means of computing payments and a discussion of the merits of a method of payment under which a percentage of the payment amount could be determined on a regional basis. The report is due to Congress prior to September 1, 1984.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The prospective payment system pays rural hospitals at a lower rate than urban hospitals because rural hospitals are generally less costly to operate. In developing DRG payment rates, it is assumed that labor accounts for 80% of the costs while non-labor items represent 20% of the costs. However, for some DRG's the current payment differential may be too large because a substantial part of the treatment involves non-labor costs (e.g., the costs of medical devices such as artificial hips) which do not vary between urban and rural areas. Therefore, the Secretary is directed to review the urban/rural payment differential with respect to such DRGs and report the findings to the Committees on Ways and Means and Finance within 6 months of the date of enactment.

Additionally, the Secretary would be required to study the advisability and feasibility of varying by DRG the proportion of the labor and non-labor components of the Federal payment amount, instead of applying the average proportion of those components to all DRGs.

It is the intent of the conferees that, in studying methods of payment made on a regional basis, the Secretary shall take into consideration regional variations in economic environment such as unemployment rates, the share of publicly funded patients, and the relationship of regional economic indicators to regional health care costs. In addition, the study shall consider scope of services, potential limitation on access to services, and service area characteristics such as market basket prices; labor market; economic base; and population growth, density and age. The study shall also address such factors as construction, utility and transportation costs.

e. Effective date

House bill

No provision.

Senate amendment

The Senate amendment would specify that the provisions (except for required reports) are effective with respect to cost reporting periods beginning on or after October 1, 1983.

Conference agreement

The conference agreement specifies that items (a) and (b) are effective for accounting years beginning on or after October 1, 1983. Item (c) is effective for accounting years beginning on or after October 1, 1984. These provisions are budget neutral for those years in which budget neutrality applies.

f. Additional considerations

Under a provision of the 1980 amendments, small rural hospitals are allowed to temporarily participate in Medicare under certain circumstances even though they are unable to meet the Medicare requirement that they provide 24-hour nursing. One of the conditions is that the hospital's lack of nursing must be due to a temporary nurse shortage and that the hospital is making a good faith effort to comply with the program's nursing standards.

The conferees believe that in assessing the hospital's effort to attract personnel, consideration should be given to the economic conditions in the area in which the hospital is located and the community's ability to attract and pay skilled hospital staff and provide employment for a spouse. Specifically, factors such as rate of unemployment, relative poverty and hardship resulting from natural disasters or economic dislocation should be identified and given weight.

In the case of a facility which functions as a sole community provider, or where a hospital is located in a geographically remote area, care shall be taken to ensure that hospital emergency services continue to be accessible to area residents.

8. Prospective Payment Assessment Commission (Section 2313)

Present law

Public Law 98-21 established the Prospective Payment Assessment Commission, which is required to assist the Department of Health and Human Services (HHS) and the Congress with issues arising from the new prospective payment system. The Commission is required to make recommendations concerning the annual percentage increase factor for diagnosis related group (DRG) payment rates and changes in the DRG's based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities.

House bill

No provision.

Senate amendment

The Senate amendment would clarify that the Commission is an independent body responsible for requesting appropriations. It would authorize an Executive Director and exempt the Commission from competitive public bidding and from open meeting requirements. In addition, it would authorize the Secretary to supplement the Commission's activities by carrying out or awarding grants or contracts for original research and experimentation, including clinical research. It would require the Secretary to provide the Commission with basic support services which are to be reimbursed from the Commission's appropriations. It would provide that physicians serving as personnel may be provided a physician comparability allowance.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The modification permits closure of meetings, or portions thereof, upon the affirmative vote of a majority of the Commission members. The modification would not require the Secretary to provide the Commission with basic support services.

9. Hospice Contracting for Core Services (Section 2343)

Present law

Public Law 97-248, the "Tax Equity and Fiscal Responsibility Act of 1982," authorized for the period November 1, 1983, to October 1, 1986, Medicare Part A coverage for hospice services provided to terminally ill Medicare beneficiaries with a life expectancy of six months or less. The law specifies that a hospice must routinely provide directly, substantially all of the following "core services": nursing care, medical social services, physician's services and counseling services. The remaining "non-core services" may be provided either directly by the hospice or under arrangements with others, in which case the hospice must maintain professional management responsibility for all such services furnished to an individual, regardless of the location of or facility in which such services are furnished.

Under existing regulations, a hospice may use contracted staff to meet the "core service" needs of its patients but only when necessary to supplement hospice employees during periods of peak patient loads or under extraordinary circumstances.

House bill

No provision.

Senate amendment

The Senate amendment would permit the Secretary to waive the nursing care "core services" requirement for hospices which are located in rural areas, which were in operation on or before January 1, 1983, and which have demonstrated a good faith effort to hire their own nurses. A waiver request would be granted automatically unless expressly denied by the Secretary within 60 days. The granting of a waiver would not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

The Secretary would be required to study the necessity and appropriateness of the "core services" requirement and report the findings to the Congress within 18 months after date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with a modification which specifies that the report on the core services requirement must be submitted to the Congress prior to January 1, 1986. This is the same date that the Secretary's report concerning the hospice program's reimbursement method and benefit structure is due.

The study to be submitted in 1986 must include not only an analysis of medicare certified hospices but also a review of non-medicare hospices. The conferees believe it is essential to have comprehensive information available to them on the characteristics of non-medicare hospices (size, affiliation, etc.) and why they are not participating in the medicare hospice benefit and if they are certified as another provider (HHA, SNF, hospital, under medicare).

10. Payment for Outpatient Diagnostic Laboratory Tests (Section 2303)

Present law

Diagnostic laboratory services for ambulatory patients are reimbursed by Medicare (subject to the Part B deductible and coinsurance) on the basis of reasonable charges when furnished by an independent laboratory or physician. Payment for such services to hospital outpatients is on the basis of the lower of charges or reasonable cost. Certain limitations are applied on the amount Medicare and Medicaid will pay a physician for laboratory services when the services are performed by an independent laboratory.

a. Fee schedule

House bill

The House bill would require establishment of a national fee schedule for all laboratory services except those provided to hospital inpatients. Payment would be based on the fee schedule unless the actual charge is lower. The fee schedule could initially be established on a statewide or regional basis; within three years the Secretary would be required to develop and implement a national fee schedule.

Senate amendment

The Senate amendment would include a similar provision except the fee schedule would be established on an area-wide basis as determined by the Secretary. The fee schedule would be established for the period May 1, 1984 to October 1, 1987.

Conference agreement

The conference agreement follows the House bill with an amendment. A fee schedule for independent clinical laboratories (including hospital laboratories furnishing services to persons who are not patients of the hospital) and for laboratory services conducted in physician's offices is to be established at 60 percent of the prevailing charge levels for the fee screen year beginning July 1, 1984. After three years, payments will be made on the basis of a national fee schedule. (The fee schedule will not apply to clinical laboratory tests furnished by ESRD facilities and included in the ESRD composite rate).

For hospital-based laboratory services serving hospital outpatients a fee schedule based on a carrier or regional area is to be established at 62 percent of the prevailing charge levels for the fee screen year beginning July 1, 1984. After the three-year period, the reimbursement for such hospital labs would revert to cost reimbursement unless the Congress acted to include them in a national fee schedule.

The agreement requires the Secretary to report on the advisability of continuing a fee schedule for hospital-based laboratories serving hospital outpatients, and if such schedule is advisable, the appropriate fee level.

b. Adjustments in fee schedule

House bill

The House bill permits the Secretary to provide for adjustments to account for wage variations.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

c. Initial payment level

i. Establishment

House bill

The House bill would establish the initial payment level for the fee schedule at 60 percent of the prevailing charge level for the fee screen year beginning July 1, 1984.

Senate amendment

The Senate amendment would establish the initial payment level at 60 percent of the prevailing charge for tests performed in independent labs and in physicians offices for the fee screen year beginning July 1, 1983. For tests performed in hospital labs the comparable percentage would be 62 percent of the prevailing charge level.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The initial payment level is set at 62% of the prevailing charge level for services provided by hospital-based laboratories serving hospital outpatients and 60% of the prevailing charge level for services provided by hospitals when acting as independent laboratories. The computation is based on the prevailing charge levels in effect for the fee screen year beginning July 1, 1984. The conferees intend that all clinical diagnostic laboratory services, including those currently subject to payment at the 25th percentile, are to be paid on the basis of the fee schedule.

The conferees intend that in those States that already require direct billing for laboratory services the Secretary will take into account the fee levels in surrounding States when establishing the fee levels in direct billing States.

ii. Adjustments

House bill

The House bill would require the Secretary to adjust the fee schedules annually to reflect changes in the Consumer Price Index for all Urban Consumers (U.S. city average).

Senate amendment

Same as the House bill.

iii. Additional adjustments

House bill

The House bill would permit the Secretary to make additional adjustments based on technological changes.

Senate amendment

The Senate amendment would permit the Secretary to make adjustments or exceptions to the fee schedule to assure adequate reimbursement for: (a) emergency laboratory tests needed for the provision of bona fide emergency services in a hospital emergency room, and (b) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

Conference agreement

The conference agreement follows the Senate amendment with a modification to allow adjustments based on technological changes and to allow the payment of bona fide emergency services in other than a hospital emergency room.

d. Payment to independent and hospital labs

Present law

Present law includes the following provisions with respect to payment to independent and hospital labs:

(i) With respect to lab services provided to outpatients by independent labs, assignment can be taken on a case-by-case basis.

(ii) Current law requires hospitals providing lab services to their hospital outpatients to accept assignment. No assignment is required in the case of non-hospital patients receiving lab services from a hospital serving as an independent lab.

(iii) Medicare is permitted to waive the coinsurance requirements for those cases where the laboratory agrees to accept a negotiated fee. (Provision never implemented.)

House bill

The House bill would make the following changes:

(i) Independent labs would be required to accept Medicare assignment;

(ii) Services conducted by hospital labs for non-hospital patients would have to be accepted on an assignment basis; and

(iii) Medicare would waive the deductible and coinsurance requirements and pay 100% of the fee screen amount or charge, which ever is lower, for those cases which are accepted on assignment.

Senate amendment

The Senate amendment would, as under current law, permit independent labs and hospital labs providing services for non-hospital patients to choose to accept assignment on a case-by-case basis. The Senate amendment includes a similar provision with respect to waiver of cost-sharing charges.

Conference agreement

The conference agreement follows the House bill with a modification. The Secretary is given flexibility to permit an independent laboratory to bill for all of the tests performed for a patient, even if some, but not all, of the tests were done by another laboratory on referral from the laboratory submitting the bill.

e. Payment for physicians' services

Present law

Under current law, physicians may bill for laboratory services regardless of whether they personally performed or supervised the test. When billing, the physician is permitted to choose on a case-by-case basis whether to accept assignment.

House bill

The House bill would permit physicians to bill for clinical laboratory services only if the physician (or another physician with whom the physician shares his practice) personally performed or supervised the performance of the test. As under current law, the physician could choose to accept or not to accept assignment. When the physician accepts assignment, Medicare reimbursement would be at 100 percent of the fee schedule amount, and the coinsurance and deductible would not apply.

Senate amendment

The Senate amendment includes a similar provision.

Conference agreement

The conference agreement follows the Senate amendment with a technical modification.

f. Specimen fee

Present law

Under current law, physicians are permitted to bill a nominal amount to cover specimen collection and handling fees in the case of those tests performed by a laboratory and billed for by the physician. Independent laboratories are also permitted to bill for a nominal specimen collection fee in limited circumstances.

House bill

The House bill would provide for the payment of a nominal fee for the collection of a patient specimen. However, the payment could be made only once per encounter to whomever draws the specimen.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment. The conferees note that the provision is meant to extend the payment of a specimen fee to labs and hospitals for such items as venipuncture and the collection of a urine sample by catheterization. The provision is not meant to disrupt current policy with respect to fees paid for the services provided in physicians' offices or to laboratories, under limited circumstances, for items such as a visit to a remote nursing home or a patient's home.

g. Simplified billing arrangements

House bill

The House bill would direct the Secretary to simplify current billing requirements for laboratory services.

Senate amendment

The Senate amendment includes a similar provision except that it would direct the Secretary to assure that information collected is sufficient to prevent fraud and abuse.

Conference agreement

The conference agreement follows the Senate amendment. The conferees note that this provision does not require patient diagnosis to appear on bills.

h. Medicaid conforming provision

House bill

The House bill provides that Federal matching funds would not be available to the extent that a State paid more for a laboratory test than would be paid for such tests under the Medicare fee schedule.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

i. Reports to Congress

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to report to the Congress prior to June 30, 1985 on recommendations with respect to direct payment of all lab fees to physicians, the basis for the formulation of a nationwide fee schedule, and any appropriate indexing mechanism for such a schedule.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The GAO is directed to report on the impact of the new fee schedule on services, the potential impact of the move to national rates and the impact such a fee schedule would have on hospital outpatient services. The GAO is also directed to report on any changes in the volume of lab tests done by physicians or labs.

The agreement modifies the language directing the Secretary to report on the advisability and feasibility of providing for a direct payment to physicians. In addition, it delays the due date of the report to January 1, 1987.

j. Effective date

House bill

The House bill specifies that the provision would apply to Medicare diagnostic laboratory tests furnished on or after July 1, 1984 and Medicaid payments for calendar quarters on or after October 1, 1984.

Senate amendment

The Senate amendment specifies that the provision would apply to diagnostic laboratory tests furnished on or after May 1, 1984 and before October 1, 1987. The requirement that only those performing or supervising the performance of the tests bill the program, would be permanent.

Conference agreement

The conference agreement follows the House bill with an amendment. A fee schedule is established on a permanent basis for independent laboratories and physicians' laboratories. The fee schedule for services provided by hospitals to outpatients is effective for three years.

11. Coverage of Administration of Hepatitis B Vaccine (Section 2323)

Present law

Current law prohibits Medicare coverage of immunizations and vaccines except in the case of pneumococcal vaccine which Congress specifically covered in 1980.

a. Coverage

House bill

The House bill would cover hepatitis B vaccine for high risk Medicare beneficiaries when it is administered in a hospital or renal dialysis facility. It would authorize the Secretary to provide payments that reasonably reflect the cost of efficiently providing and administering hepatitis B vaccine.

Senate amendment

The Senate amendment includes a similar provision but it would limit coverage to ESRD patients. It would give the Secretary flexibility in the development of payment methods for vaccine administration at or through a renal dialysis facility. Payment for vaccine administered to an individual receiving dialysis, but not at or through a dialysis facility, would be either included in the comprehensive fee paid for physician ESRD services, or on a reasonable charge or other basis.

Conference agreement

The conference agreement would follow the House bill with an amendment. Coverage is permitted for high and intermediate risk individuals. The conferees anticipate that the Secretary will develop coverage guidelines using available information to define those groups at high and intermediate risk of contracting the disease, using specifically, but not necessarily exclusively, the information developed by the Centers for Disease Control (CDC).

The conference agreement permits a separate payment for vaccines for patients receiving dialysis at or through a facility. The conference agreement specifies that, for non-ESRD patients, payments may be made to ESRD facilities, hospital outpatient departments or physicians for the vaccine and its administration. Similar payment arrangements are applicable for vaccines provided to ESRD patients not cared for by an ESRD facility.

The conference agreement gives the Secretary discretion in developing payment amounts. The conferees expect that the Secretary will give consideration to the need to avoid excessive program costs (e.g., by changing frequency guidelines for Hepatitis B testing for ESRD patients) and utilization patterns. The conferees are concerned about the potential extra billing liability of beneficiaries that might inhibit them from obtaining services, and therefore urge physicians to accept assignment. The agreement directs the Secretary to monitor the provision of the vaccine and its administration. The Secretary is further required to review any changes in technology which could potentially affect the amounts paid for services.

b. Cost-sharing

House bill

The House bill would waive the applicable Part B deductible and coinsurance amounts.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

c. Effective date

House bill

The House bill specifies the effective date is for services furnished on or after July 1, 1984.

Senate amendment

The Senate amendment applies to vaccine administered on or after July 1, 1984.

Conference agreement

The conference agreement specifies an effective date of September 1, 1984.

12. Part B Payment for Services of Teaching Physicians (Section 2307)

Present law

Present law sets forth conditions governing how Medicare should reimburse for patient care services performed by physicians in a teaching setting, including a formula for calculating the physician's customary charge.

a. Formula revision

House bill

The House bill would revise the formula for calculating physicians' customary charges. As a result, customary charges cannot be less than 75 percent of the Medicare prevailing charges paid for services in the same locality as the teaching setting.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment with a modification regarding calculation of customary charges. As a result, customary charges cannot be less than 85 percent of the Medicare prevailing charges in the same locality for the same service. The conferees also urge that the Secretary try to develop a simplified or expedited methodology by which teaching hospitals can demonstrate that they satisfy the existing formula for establishing customary charges.

b. Alternative method

House bill

The House bill would provide an alternative method for determining reasonable charges. If all the "teaching physicians" at a particular teaching hospital agree to take assignment for all Medicare patients they serve in that teaching hospital, then the physicians can have their reasonable charges determined according to the normal Medicare reasonable charge methodology.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision with an amendment.

Effective October 1, 1984, if all the "teaching physicians" at a particular teaching hospital agree to take assignment for all medicare patients they serve in that hospital, then they can receive 90 percent of the Medicare prevailing charges in the same locality.

The General Accounting Office shall conduct a study of the amounts billed for the services of teaching physicians and paid by carriers to determine whether such payments are only made when all of the conditions for payment under present law (Section 1842(b)(7)) are met.

The conference agreement also includes an amendment relating to the calculation of payments that are made to hospitals as compensation for indirect teaching costs. Regulations published in January specified that teaching hospitals that generally did not employ residents and interns could count them in calculating their indirect teaching costs only if they were employed by another organization which has a long-standing relationship with the hospital and which is the sole employer of substantially all of the interns and residents furnishing services at the hospital. The conferees believe these limitations are inappropriate because the indirect teaching costs which are being calculated result from the participation of the interns and residents in the hospitals' medical education program. Who employs them is immaterial. Therefore, the conference agreement provides that the Secretary, when calculating a hospital's indirect teaching costs, take account not only of the interns and residents it employs but also any other house staff members who participate in the hospitals teaching program but who are employed by another organization.

13. Limitation on Physician Fee Prevailing and Customary Charge Levels; Participating Physician Incentives (Section 2306)

a. Physician fees

Present law

(a) *Physician Fees.*—Medicare pays for physician services on the basis of Medicare-determined "reasonable charges." Reasonable charges are the lesser of: (1) a physician's billed charge; (2) the customary charge made by an individual physician for a specific service; or (3) the prevailing level of charges made by all physicians for services in a geographic area. The customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in the prevailing charge levels are limited by an economic index, which reflects changes in the physicians' practice costs and changes in general earnings levels.

House bill

No provision.

Senate amendment

The Senate amendment would freeze all customary and prevailing charges for the fee screen year beginning July 1, 1984. The amendment would continue the freeze for an additional year for the prevailing fees of physicians who are not "participating physicians". No catch-up would be permitted for fees which were frozen.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The provision adopted by the Conferees freezes Medicare customary and prevailing charges for all physicians services for a 15-month period beginning on July 1, 1984 and ending on September 30, 1985. Subsequent fee screen updates would occur on October 1 of future years. Because of the importance of the cooperation of physicians nationwide in the fee freeze, the Conferees intend that the Secretary make every effort to notify physicians, on a timely basis, concerning the requirements of this provision.

The provision establishes the concept of a "participating physician" contained in both the House and Senate bills. A participating physician is one who voluntarily enters into an agreement with the Secretary to prospectively accept assignment for all services furnished to all Medicare patients for a twelve-month period. Physicians would be given a specified period of time in which they could indicate their decision to participate for the twelve-month period beginning October 1, 1984. After this specified period of time elapses, only new physicians in an area or newly licensed physicians could sign participation agreements until the next designated period of time. These agreements would be similar to the "participating physician" agreements successfully used by many Blue Shield plans.

The provision contains several administrative incentives (contained in the Senate bill) to encourage physicians to voluntarily sign participation agreements. These include publication of directories, use of toll-free telephone lines to disseminate names of participating physicians and the use of direct lines for electronic receipt of claims. In addition, physicians have an incentive to become participating physicians because any normal increase in their actual billed charges during the 15-month period when Medicare's reasonable charges are frozen, will be reflected in updating their future customary charge screen updates.

Much of the success of the new "participating physician" program will depend on the involvement of the Medicare beneficiaries nationwide. In providing an increased amount of information to the beneficiary, the Conferees hope they will take this opportunity to become increasingly informed about the practice patterns of the physicians in their communities.

The current claim-by-claim assignment system would continue in its current form for physicians who choose not to sign participation agreements (i.e., non-participating physicians). To protect beneficiaries from increased charges during the 15-month period when Medicare payment levels are frozen, the legislation provides that increased charges to Medicare patients by non-participating physicians would not be recognized in their customary charge update in future years. Further, if non-participating physicians do not comply with the fee freeze and increase their actual charges billed to Medicare patients, they could be subject to civil money penalties or exclusion from the program for up to five years. However, in light of the efforts of many medical societies that have urged their members to voluntarily freeze their fees—efforts which the Conferees recognize and commend, the Conferees believe that this provision will work in concert with those efforts and that physicians who are complying with organized medicine's voluntary fee freeze would not be subject to the non-compliance provisions. The conference agreement provides the Secretary with authority to impose civil money penalties or assessments, exclusion for up to five years from the Medicare program, or both. The purpose of this authority is to protect Medicare beneficiaries from increased charges from physicians who are not participating physicians.

The conferees expect that the Secretary will exercise this authority vigorously but prudently, applying sanctions commensurate with the offense. The conference agreement provides the Secretary with necessary discretion in applying these penalties. The conferees expect that the Secretary will impose penalties on physicians who are serious violators of the program.

The Secretary will be expected to use discretion in judging whether the increased charges occurred before the physician could reasonably be expected to have known of the conditions this section imposes. Further, the Secretary would take into account other factors, such as whether a pattern of increased charges has occurred, the extent to which the patient faced increased costs as a result, and whether the amounts of the increases are significant, and so on.

In any program of this magnitude, all violations cannot be pursued. But the conferees expect the Secretary to monitor physician charges and take action in cases where willful violation is occurring so as to give public and the physician community certainty that the program is being enforced.

The conferees note that although the Secretary is provided with the ability to exclude a physician from Medicare for up to five years, it is the expectation that this step would be taken only in extreme circumstances and that the more usual enforcement will be through the civil money penalty.

Since the civil money penalty may be imposed in amounts of up to $2,000 for each violation, the Secretary has a strong tool available to ensure enforcement. The conference agreement provides that in no circumstances will the exclusion penalty be imposed in the case of the sole physician serving a community or a physician providing essential specialized services that would otherwise not be available. Further, the impact on access to care for Medicare beneficiaries should be considered by the Secretary in making the determination of the penalty to be imposed in other cases as well

The conferees expect the Secretary to consider whether there are enough other physicians in the area to serve the needs of Medicare patients. For example, rural communities may have few physicians. Some urban and rural areas are medically underserved. In some communities, barring a physician from Medicare might mean an effective loss of any physician to serve a person eligible for both Medicare and Medicaid.

In the cases where the Secretary determines exclusion from the program is appropriate, services provided by the physician would no longer qualify as a covered service under the Medicare program, and payment would no longer be made. The Secretary would be expected to take the appropriate steps to assure that the beneficiary was informed and protected.

The conference agreement gives the Secretary the authority to make restitution to a beneficiary out of amounts collected through civil penalties or assessments on the physician who provided him services. The Secretary would be expected to use this authority when the increased charges to the beneficiary were significant. It would be expected that restitution would not be made if the amounts in question were small or less than the administrative cost of making the restitution. The restitution in any case would not exceed either the excess amount the beneficiary paid or the amount collected from the offending physician.

In order to determine compliance of non-participating physicians with the fee freeze, the Secretary shall monitor the charges of individual non-participating physicians. The Secretary shall have the flexibility to perform the monitoring on a timely and cost-effective bases. The monitoring shall compare physician charges during periodic intervals following enactment (such as quarterly) with a base period of the April 1 to June 30, 1984 quarter (the quarter following the March 7, 1984 letter from the American Medical Association to all physicians urging a voluntary freezing of fees) and shall begin with charges on or after July 1, 1984.

In exercising her authority to enforce the price freeze, the conferees expect the Secretary would make use of the Office of the Inspector General in a similar manner as the current delegation of responsibility with respect to program sanctions and civil money penalties.

b. Participating Physician Arrangements

Present law

Physicians may decide, on a claim-by-claim basis, to accept assignment. That is, for each claim a physician may decide either (1) to accept the amount paid by Medicare (the reasonable charge) as payment in full (except for cost-sharing amounts) or, (2) to bill the patient for the entire bill, including any amount in excess of the Medicare reasonable charge. The patient is then responsible for paying the physician for the full amount of the bill and for submitting the claim to Medicare for payment of 80 percent of the Medicare reasonable charge.

House bill

The House bill would require the Secretary to offer physicians annually an opportunity to voluntarily sign as agreement to accept assignment for all services furnished to all Medicare patients in the following year.

The House bill would require the Secretary to publish annually a list of physicians who have voluntarily agreed to accept assignment for all services furnished to all Medicare patients in the following year. It would require the Secretary to notify Medicare beneficiaries annually about the availability of the list.

Senate amendment

The Senate amendment would include a similar provision with respect to the annual opportunity for physicians to sign an agreement except it includes suppliers, uses the term voluntary "participating physician or suppliers" arrangement and sets a date certain for implementation.

The Senate amendment would provide that for those physicians who have elected to become "participating" physicians, for the fee screen year beginning on July 1, 1985, prevailing fees will not be frozen.

The Senate amendment includes a provision, similar to that in the House bill, relating to publication of a list of physicians who have agreed to accept assignment and modification of beneficiaries of the availability of the list. The Senate amendment includes supplies and further requires the Secretary to make the list (directory) available in each district and branch office of the Social Security Administration, the offices of the carriers, and to senior citizens' organizations. The list would be available for purchase by the public.

The Senate amendment would provide additional incentives for participating physicians:

requires carriers to maintain toll-free lines to provide enrollees with names of participating physicians;

permits carriers to establish direct lines for electronic receipt and payment of claims;

permits carriers to use either or both of the following payment arrangements for beneficiaries with approved medigap coverage or with group health insurance plans which serve as medigap policies:

"Piggyback billing" under which the participating physician or supplier submits one bill to the carrier. The carrier pays the physician or supplier the Medicare determined reasonable charge and then sends the willing medigap insurers information on the amount paid. The medigap insuror would automatically pay the physician or supplier for the beneficiary's cost sharing liabilities.

"Payment to organizations" under which the participating physician or supplier submits one bill to the medigap insurer. The medigap insuror would pay the physician or supplier an amount which the physician or supplier accepts as payment in full, including cost-sharing liabilities. The medigap plan would then collect the reasonable charge from Medicare.

Conference agreement

The conference agreement establishes participation agreements for physicians and suppliers. The participation agreements would apply for 12-month periods beginning on October 1, 1984. As incentives to participate, the Conferees adopt the following incentives in the Senate bill: directories, toll-free telephone lines and direct lines for electronic receipt of claims. The conference agreement incorporates the use of the payment to organization method for participating physicians contained in the Senate bill in the definition of participating physician. The Conferees intend that the Secretary consider making certificates or other emblems available to physicians who sign participation agreements so that beneficiaries will have an easy means of identifying them.

c. Participating physician monitoring

House bill

No provision

Senate amendment

The Senate amendment would require the Secretary to monitor the proportion of physicians who do not become "participating physicians", the difference between actual and reasonable charges for those physicians, and any changes in per capita volume and mix of beneficiary services provided by those physicians. The Secretary would be required to report the results of such monitoring to the Congress on a semi-annual basis beginning January, 1985 and ending January, 1987. The final report would include recommendations for constraining part B growth so as to avoid an increased burden on program beneficiaries, and include an analysis of other payment methods for part B services.

The Senate amendment would specify that carrier payments from the part B trust fund are increased to the extent necessary to conduct the required monitoring.

Conference agreement

The conference agreement requires the Secretary to monitor charges of non-participating physicians for purposes of noncompliance with the fee freeze and application of sanctions as discussed above. The conference agreement also adopts a Senate provision with modifications regarding monitoring of changes in the per capita (user or enrollee) volume (services and expenditures), and mix of services (such as charges in billings for various types of medical visits) for all physicians. The provision requires a report on these charges by July 1, 1985, including legislative recommendations of how to restrict growth in part B program costs without these costs being transferred to beneficiaries.

The conferees recognize that the provisions contained in this section will necessarily mean increases in costs for carriers. Among the activities that will entail new costs are implementation of the participating physician system, preparation of the directors and historical assignment rate lists, toll free telephone lines, direct lines for electronic billing, monitoring physician charges, and notifying physicians of these significant statutory changes. Further, these activities will require rapid and immediate action by the carriers. In order to assure that resources are promptly available to assure effective implementation of these provisions, the conference agreement provides the Secretary with authority to draw on the trust fund for immediate funds to carry out these activities. The agreement provides for the transfer of no less than $8 million in FY 84 and $15 million in FY 85.

d. Information on physician assignment

House bill

The House bill would require the Secretary to compile annually a list of physicians serving medicare beneficiaries including a list of assignment rates, by percentile intervals not to exceed quartiles, of individual physicians for the previous year.

The House bill also requires the Secretary to make available, in each district office of the Social Security Administration (SSA), the historical assignment rate lists for the local geographic areas served by that office. The bill also specifies that the historical assignment rate lists would have to be available by mail from each carrier. It would require annual notification to beneficiaries of the lists' availability.

Senate amendment

The Senate amendment includes a similar provision with respect to compilation of the list, except it includes suppliers and permits the Secretary to limit the list to those physicians and suppliers who accepted assignment in a certain percentage of cases.

The Senate amendment does not include a provision, comparable to that in the House bill, with respect making the list available.

Conference agreement

The conference agreement follows the Senate amendment but excludes the requirement to publish volume of services and allows the Secretary to exclude low volume physicians and suppliers.

14. Study of Medicare Part B Payments (Section 2309)

Present law

Payments are made to physicians on the basis of reasonable charges for specific services.

a. Study

House bill

The House bill would require the Secretary to study and report on methods by which Medicare Part B payment amounts and program policies may be modified:

(i) To eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures.

(ii) To increase incentives for physicians and other suppliers under such part to accept assignment for Medicare services.

(iii) To provide incentives for physicians and other providers not to provide increased or otherwise excessive amounts of hospital, physician, and other health care services.

The report must also include a description of one or more national or regional fee schedules for payments which are consistent with the study carried out by the Secretary.

Senate amendment

The Senate amendment would direct the Office of Technology Assessment, in consultation with appropriate physician organizations, to conduct a study to examine any imbalances in payment to physicians for their cognitive vs. their technical skills. It would require submission of a report to Congress by December 31, 1985 containing findings and specific recommendations.

The Senate amendment contains no provisions comparable to the other items of the House bill.

Conference agreement

The conference agreement generally follows the House provision, with respect to the scope of the study, but places the entire study under the direction of OTA. With respect to item (ii) the conference agreement specifies that the study shall examine the influence of payment methodologies and payment levels on the utilization (i.e. volume and intensity) of services. In addition, the Conference agreement modifies the provision on fee schedules; the study is to include information on methodologies to be applied in the development of fee schedules and other payment mechanisms on either a national or regional basis and comments on whether such fee schedules or payment methodologies are advisable or feasible.

b. Data base

House bill

The House bill requires the Secretary to develop a centralized data base utilizing information from the Medicare carriers regarding the utilization of Part B services; the assignment rates of physicians and suppliers; actual, customary and prevailing charge distributions; and differences in charge distributions among different specialties and localities.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision, with a modification directing the Secretary to provide the information in the data base to OTA.

c. Effective date

House bill

The House bill would require the study to be completed and the report submitted to Congress not later than June 30, 1985.

Senate amendment

The Senate amendment would require submission of the report prior to December 31, 1985.

Conference agreement

The conference amendment follows the Senate amendment.

15. Pacemaker Review and Reform (Section 2304)

Present law

The costs of inpatient hospital services with respect to the implantation of pacemakers, including the costs of the device, are subject to the new diagnosis-related group (DRG) prospective payment system. However, the costs of physicians' services for implantation and post-implantation monitoring of the devices are reimbursed under Part B. Post-implantation monitoring includes transtelephonic monitoring for which frequency guidelines have been established by the Secretary.

a. Guideline revision

House bill

The House bill would require the Secretary to revise the current guidelines on the frequency of transtelephonic monitoring.

Senate amendment

The Senate amendment includes a similar provision.

Conference agreement

The conference agreement follows the House bill.

b. Frequency guidelines

House bill

The House bill would provide that, if the Secretary fails to revise the guidelines by October 1, 1984, a specified frequency schedule would go into effect with respect to single-chamber cardiac pacemakers powered by lithium batteries. The House bill would provide that payment would not be made for monitoring which is more frequent than: (1) weekly during the first month after implantation, (2) once every two months during the period representing 80 percent of the estimated life of the device, and (3) monthly thereafter. Exceptions could be made based on special medical factors.

Senate amendment

The Senate amendment would require the issuance of revisions by April 1, 1984. No statutory schedule is set forth.

Conference agreement

The conference agreement follows the House bill with an amendment which provides that the frequency guidelines established by law will expire upon publication of the revised guidelines. The conferees expect that the revised guidelines will be published promptly. They further expect that the revised frequency guidelines will provide for exceptions where medically appropriate.

c. Payment review

House bill

The House bill would require the Secretary to review and report to the Congress on the appropriateness of the current Part B payment for physician's services associated with implantation or replacement of pacemakers and pacemaker leads. Such review would take into account the time and difficulty of the procedures compared to those when such rates were first established and take into consideration a reduction of such recognized rates by 20 percent. The House bill would require completion of the review by October 1, 1984.

Senate amendment

The Senate amendment includes a similar provision except that it would: (1) also require review of reimbursement for inpatient hospital services, and (2) not require the Secretary to take into consideration a reduction in recognized rates by 20 percent. The review and report would be due by April 1, 1984.

Conference agreement

The conference agreement follows the House bill with an amendment. The amendment requires a review of payments for implantation or replacement of pacemakers under both Parts A and B of Medicare, with the review of Part A payments conducted by the Prospective Payment Assessment Commission. Both studies must be submitted to Congress by March 1, 1985.

The conferees note that improvements in pacemaker implantation, reductions in the time required for such procedure, and changes in the difficulty and costs of such procedures have occurred over the past decade. Therefore, while the agreement eliminates the directive that the Secretary take into consideration a 20 percent reduction in recognized rates, the conferees expect the Secretary to consider whether some reduction in fees may be appropriate.

d. Registry

House bill

The House bill requires the Secretary, through the Food and Drug Administration, to provide a registry of all cardiac pacemaker devices and leads for which payment was made under Medicare. The registry would include the manufacturer, model, serial number, and manufacturer's price, the name of the recipient, the date and geographic location of the implantation or removal, and the name of the physician, hospital or other provider. The registry would be required to include any express or implied warranties associated with the device and any other information which the Secretary deemed appropriate. The Secretary is prohibited from identifying any recipient of a pacemaker by name.

Senate amendment

The Senate amendment includes a similar provision. The registry information is substantially the same as that required by the House bill, except manufacturer price information is not specified. Submission of the information by the manufacturer would be a condition for any Medicare payments with respect to any devices or leads produced by that manufacturer.

Conference agreement

The conference agreement follows the House bill with an amendment. Inclusion of manufacturer price information in the registry is not required. Further, the amendment specifies that providers' and physicians' compliance with information requirements is a condition for Medicare payments with respect to implantation or removal of devices or leads.

The agreement further specifies that the purposes of the registry include tracing the performance of pacemaker devices and leads.

e. Return of device or lead

House bill

No provision.

Senate amendment

The Senate amendment would authorize the Secretary to require, as a condition of payment, that a provider furnish to the manufacturer information with respect to all patients bearing a device or lead for which Medicare payment was made or requested. The Secretary could also require that any device or lead removed from any such patient be returned to the manufacturer. Fiscal intermediaries could, pursuant to regulations, deny payment for replacements if the device or lead was not returned; beneficiaries could not be charged for replacements in such cases.

Conference agreement

The conference agreement follows the Senate amendment with a modification deleting the provision authorizing the Secretary to require that a provider furnish the manufacturer with information.

f. Testing

House bill

The House bill would provide that in any case where the Secretary had reason to believe that replacement of a pacemaker was related to its malfunction, the Secretary would be permitted to require the testing of such device by the FDA or that FDA personnel be present at testing by the manufacturer.

Senate amendment

The Senate amendment includes a similar provision. In addition, it would authorize the Secretary to require the manufacturer to test or analyze each returned cardiac pacemaker device or lead and provide the test results to the provider who returned it to the manufacturer, together with information as to any warranty coverage.

Conference agreement

The conference agreement follows the Senate amendment, except that it strikes the provision permitting the Secretary to require the FDA to do the testing.

g. Manufacturer reports

House bill

No provision.

Senate amendment

The Senate amendment would authorize the Secretary to require any manufacturer to provide to the FDA: (1) a written report with respect to any adverse reaction and any defect (within 10 days of the date on which the manufacturer is notified) and (2) an annual report summarizing clinical experiences with devices and leads including information on all removals, deaths, adverse reactions, device or lead defects, and the results of tests performed on all returned devices and leads.

Conference agreement

The conference agreement does not include the Senate amendment. The conferees understand that the Secretary is developing Mandatory Device Experience Reporting regulations, pursuant to section 519 of the Federal Food, Drug, and Cosmetic Act, which would establish requirements comparable to those set forth in the Senate amendment. The conferees did not wish to duplicate the provisions of those regulations or establish requirements inconsistent with them. The conferees expect the regulations to be issued soon and expect that they will accomplish the purposes of the Senate amendment.

h. Bonds

House bill

No provision.

Senate amendment

The Senate amendment would require manufacturers to post a bond or provide other assurances as the Secretary deems appropriate to ensure compliance.

Conference agreement

The conference agreement does not include the Senate amendment.

16. Limitation on Certain Foot-Care Services (Section 2326)

Present law

Routine foot care is not covered by the Medicare program. However, Medicare does allow reimbursement to physicians for debridement of mycotic toenails (i.e., the care of toenails with a fungal infection).

House bill

The House bill would require the Secretary to deny coverage under the Medicare program for debridement of mycotic toenails if performed more frequently than once every 60 days. Exceptions would be authorized if medical necessity were documented by the billing physician. The provision would be effective upon enactment.

Senate amendment

Similar provision. The provision would be effective with respect to services performed on or after enactment.

Conference agreement

The conference agreement follows the House provision, with the Senate effective date.

17. Presidential Appointment of and Pay Level for the Administrator of the Health Care Financing Administration (Section 2332)

Present law

The Administrator of the Health Care Financing Administration (HCFA) is in the Senior Executive Service and is appointed by the Secretary of Health and Human Services.

House bill

The House bill would provide for the appointment of the Administrator of HCFA by the President with the advice and consent of the Senate. It would increase the position and pay of the Administrator to level IV of the Executive Schedule.

Senate amendment

Same as House bill.

18. Permitting Limited Provider Representation on Peer Review Organizations (Section 2334)

a. Provider representation

Present law

The Secretary is prohibited from contracting with an entity which is, or is affiliated with (through management, ownership or common control), a health care facility. The Secretary, by regulation, has specified that the governing body of a peer review organization may not have a member who is a member, officer, or managing employee of a health care facility.

House bill

The House bill would provide for limited representation of providers on PRO's. For PRO's with a governing body of 15 or fewer members, one member could be a governing body member, officer, or managing employee of a health care facility. The number would be increased to two in the case of a PRO with more than 15 members.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment with a modification which allows up to 20% of the members of a PRO governing body to be affiliated with providers.

b. Payer organizations

Present law

Before October 1, 1984, entities which are payer organizations are barred from being a PRO. By regulation, this has been interpreted to bar organizations whose board members include a representative of a self-insured employer.

House bill

No provision.

Senate amendment

The Senate amendment would permit entities whose board members include a representative of a self-insured employer to qualify as a PRO.

Conference agreement

The conference agreement follows the Senate amendment with a modification. An organization which has no more than one member affiliated with a health maintenance organization would not be classified as a payer organization and would therefore be permitted to qualify as a PRO.

19. Access to Home Health Services (Section 2336)

a. Disqualified physicians

Present law

A physician must certify the patient's need for services and establish a plan of care before a beneficiary can qualify for home health services. A physician may not perform these functions for patients of any agency in which the physician has a significant ownership interest or a significant financial or contractual relationship.

House bill

The House bill would permit a physician who has a financial interest in an agency which is a sole community home health agency, as determined by the Secretary, to carry out certification and plan of care functions for patients served by the agency.

The amendment would require appropriate changes in regulations within 90 days of enactment.

Senate amendment

The Senate amendment includes a similar provision except that its application would be limited to an agency which is the only home health agency in a county. The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the House bill with a modification. The Secretary would be required, not later than 90 days after enactment, to revise regulations to reflect the provision. The conferees intend that the Secretary, in determining which entities meet the definition of sole community home health agencies, shall take into account the number of persons residing in the county and the size of the county. The conferees are concerned that if the determinations are made only on the basis of countyline boundaries, HHAs in counties encompassing large geographic areas or sizeable populations might not be appropriately designated.

b. Uncompensated officers or directors

Present law

Regulations specifying physicians who are disqualified from performing certification and plan of care functions for patients of a home health agency include physicians who are uncompensated officers or directors.

House bill

The House bill would delete from the list of disqualified physicians uncompensated officers or directors of agencies.

The provision would apply to certifications and plans of care made on or after date of enactment.

Senate amendment

The Senate amendment includes a similar provision which would be effective on enactment.

Conference agreement

The conference agreement follows the House bill.

20. Repeal of Special Tuberculosis Treatment Requirements and Requirement of Accreditation of Psychiatric Hospitals (Section 2395)

a. Tuberculosis treatment requirements

Present law

The law contains a number of special provisions originally intended to assure that institutional services provided to Medicare and Medicaid patients suffering from tuberculosis are not custodial in nature and can reasonably be expected to improve the patient's condition or render the condition non-communicable.

House bill

The House bill would repeal the special conditions and requirements. It would also eliminate the special provider category for tuberculosis hospitals.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment.

b. Psychiatric hospital accreditation

Present law

The law requires psychiatric hospitals, and psychiatric units of hospitals, to be accredited by the Joint Commission on the Accreditation of Hospitals (JCAH) in order to participate in Medicare and Medicaid.

House bill

The House bill would repeal the requirement that psychiatric hospitals and units be accredited by JCAH, and permit the provider to participate on the basis of accreditation by organizations approved by the Secretary. [See item 26]

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment.

21. Indirect Payment of Supplementary Medical Insurance Benefits (Section 2339)

Present law

Part B payments generally may not be made to anyone other than a beneficiary or an entity providing services.

House bill

The House bill would permit Part B payments to be made to a health benefits plan, if the beneficiary agrees and if the physician or other supplier accepts the plan's payment as payment in full.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House bill but the Conferees would like to clarify that the purpose of this provision is to enable this indirect payment procedure to be available to group, as well as non-group, employments and non-employment health benefit plans such as employers, unions, insurance companies, and other organizations.

22. Including Podiatrists in Definition of "Physician" for Outpatient Physical Therapy Services and Including Podiatrists and Dentists in the Definition of "Physician" for Outpatient Ambulatory Surgery (Section 2341.)

a. Definition of "Physician" for outpatient physical therapy services

Present law

Outpatient physical therapy services are covered only if the patient is under the care of a physician. Podiatrists are not included within the definition of a physician for this purpose.

House bill

The House bill defines a podiatrist (when acting within the scope of his practice) as a physician for the purposes of establishing a plan for the outpatient physical therapy requirement.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

b. Definition of "Physician" for outpatient ambulatory service

Present law

Podiatrists and dentists are not included within the definition of "physician" for purposes of outpatient ambulatory surgery in a physician's office.

House bill

The House bill includes dentists and podiatrists within the definition of physician for purposes of outpatient ambulatory surgery in a physician's office.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision.

23. Establishment by Physical Therapists of Plans for Physical Therapy (Section 2342.)

Present law

Medicare payment for outpatient physical therapy services furnished to a beneficiary may be made only if a plan for furnishing such services is established and periodically reviewed by a physician.

House bill

The House bill would allow either the physical therapist or the physician to establish the plan of care. The physician would still be required to review periodically all plans of care. The provision would apply with respect to plans of care established on or after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

24. Access to Records of Subcontractors

Present law

Any contract valued at $10,000 or more between a Medicare provider and a subcontractor must permit access to the records of the subcontractor by the Secretary or the Comptroller General.

House bill

The House bill increases the minimum amount to $50,000 with respect to contracts with subcontractors entered into on or after date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House Provision.

25. Medicare Recovery Against Certain Third Parties (Section 2344)

Present law

Medicare may limit benefit payments for services for which other third party insurance programs (e.g. worker's compensation, auto or liability insurance, and employer health plans) may ultimately be liable. However, the law does not make it explicit that the Secretary has the right of subrogation, or the right to become a party to claims against other liable parties or to recover directly from such parties.

House bill

The House bill would establish the statutory right of Medicare to: (1) bring an action directly against certain third parties, if the beneficiary does not do so; (2) bring an action against any party (except the beneficiary) who has already been paid or, (3) join or intervene in an action against a third party.

Senate amendment

The Senate amendment includes a similar provision, except the beneficiary would not specifically be exempt from suit where benefits had already been paid by the third party.

Conference agreement

The conference agreement follows the Senate amendment. The conferees note that the provision does not alter any existing authority nor create any new authority with respect to recoveries from beneficiaries. The provision would be effective with respect to items and services furnished on or after the date of enactment.

26. Use of Accrediting Organizations for Certain Entities Furnishing Services (Section 2346)

Present law

The Secretary has authority to rely on certain accrediting organizations in determining whether hospitals, skilled nursing facilities, home health agencies, ambulatory surgical centers, and hospice programs meet Medicare requirements.

House bill

The House bill extends the Secretary's authority to rely on such organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation agencies, including outpatient rehabilitation facilities, psychiatric hospitals, and public health agencies meet Medicare requirements (and clarifies the Secretary's authority with respect to ambulatory surgical centers).

Senate amendment

The Senate amendment includes a similar provision except that it would not apply to psychiatric hospitals. [See Item 20.]

Conference agreement

The conference agreement follows the House bill. The conferees intend that the standards of an accrediting organization chosen must be at least equivalent to those of the Secretary and it must have a satisfactory record of application of such standards. In deciding which, if any, private accrediting entities will be recognized for the purpose of certifying health care facilities for participation in the Medicare program, the conferees expect that the Secretary will examine the standards applied by such entities to assure that the adoption of such standards will not adversely affect competition in the provision of Medicare health services. Recognition by the Secretary of an accreditation program with unduly restrictive standards would preclude qualified persons from delivering services, thereby increasing Medicare costs, in contravention of Congress' purpose in adopting this provision.

27. Confidentiality of Accreditation Surveys (Section 2345)

Present law

Current law contains certain disclosure safeguards relating to survey information used by the Secretary in connection with the hospital certification process under Medicare. However, the law only specifically refers to surveys conducted by the Joint Commission on the Accreditation of Hospitals (JCAH).

House bill

The House bill extends the disclosure protections given JCAH survey information to similar survey information provided to the Secretary by the American Osteopathic Association or other national accreditation organizations.

Senate amendment

Same as House bill.

28. Thirty Day Coverage for Services Furnished by a Home Health Agency or Hospice Whose Agreement Has Been Terminated (Section 2348)

Present law

If the medicare participation agreement of a home health agency or hospice is terminated, the Secretary is required to continue to pay for services provided to a beneficiary until the end of the calendar year in which the termination took place. This requirement is only applicable to services provided under an individual plan of care established prior to the termination of the agency agreement.

House bill

The House bill would change, from the end of the calendar year to 30 days after termination, the ending of coverage for services provided under a plan of care established prior to the termination date of the participation agreement. The provision would apply to terminations whose effective date falls 60 days after the date of enactment.

Senate amendment

The Senate amendment includes a similar provision which would apply to terminations issued on or after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

29. Termination of Agreements With Institutions and Entities Where Owners or Certain Other Individuals Have Been Convicted of Certain Offenses (Section 2333)

Present law

The Secretary may bar from participation in Medicare (and may direct State agencies to bar from Medicaid) a person convicted of program-related criminal offenses. The Secretary may refuse either to enter into or renew a provider agreement with an entity in which ownership or control is held by a person so convicted.

House bill

The House bill would extend the Secretary's authority by authorizing the Secretary to terminate agreements with any entity in which ownership or controlling interest is held by a person convicted of a program-related criminal offense, or an entity in which an officer, director, agent or managing employee was convicted of such a criminal offense.

Senate amendment

Similar provision. Additionally, the Senate amendment would: (a) require the Secretary to notify State Medicaid agencies and authorizes the Secretary to require such agencies to bar the entity from participation in the program; and (b) require the Secretary to notify the appropriate State licensing or certification agency and request that appropriate investigations be made and that the State agency keep the Secretary and Inspector General informed of any actions taken.

Conference agreement

The conference agreement follows the Senate amendment. The provision would be effective on the date of enactment and shall apply to convictions of persons occurring after such date.

30. Elimination of Health Insurance Benefits Advisory Council (Section 2349)

Present law

The Social Security Act provides for a 19 member panel of health experts (the Health Insurance Benefits Advisory Council or HIBAC) appointed by the Secretary to advise on matters of general policy with respect to the Medicare and Medicaid programs.

House bill

The House bill would repeal the provision.

Senate amendment

Same as House bill.

31. Health Maintenance Organizations (Section 2350)

a. Enrollment periods

Present law

Health maintenance organizations (HMO's) and competitive medical plans (CMP's) are required to have an annual open enrollment period of at least 30 days during which time they must accept Medicare beneficiaries up to the limits of their capacity. If there is more than one HMO in an area, there is no current requirement that the open enrollment periods be coordinated.

House bill

The House bill would require the Secretary (after consultation with such organizations) to designate a single 30-day period each year in which all of the HMO's in an area participating in Medicare must have an open enrollment period. It would permit HMO's to conduct open enrollment at other times during the year.

Senate amendment

Same as House bill.

Conference agreement

The conferees recognize that an HMO will enroll non-medicare persons at other times during the year. The conferees expect the Secretary to take whatever steps are necessary to assure that an appropriate portion of capacity is retained to enroll medicare beneficiaries in the HMO, particularly during the coordinated open enrollment period.

b. Benefit stabilization fund

Present law

An HMO with a risk-sharing contract is required to provide enrollees with either additional health service benefits or reductions in their premiums or other charges, if the adjusted community rate (ACR) for its Medicare enrollees is less than the Medicare payments it receives for those enrollees.

House bill

The House bill would authorize an HMO, with the Secretary's approval, to place a portion of the funds required to be used for additional benefits in a benefit stabilization fund. The fund would be used by the HMO to stabilize additional benefits from year to year.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment. The bill would allow an HMO, with the Secretary's approval, to request that the Secretary withhold a part of the value of additional benefits for use in subsequent contract periods. These funds would be used to avoid significant premium changes or major fluctuations in benefits to beneficiaries from year to year. They are not to be used to offset losses that the HMO may sustain pursuant to its risk-based contract.

While it would be the HMO's option to request withholding, the amounts withheld would be approved and held by the Secretary. The Secretary would establish limits on the amounts withheld to assure that they do not exceed the minimum levels necessary for reasonable benefit stabilization, taking into account the requirements of individual plans. In any case, an HMO could only use such a fund for a four-year period.

The bill limits to four years the time during which the Secretary may allow an HMO to establish a fund for this purpose. The conferees are interested in having the Secretary review the use of these funds so a determination can be made as to whether or not the continuation of these stabilization funds will be in the best interests of the program and the beneficiaries. The conferees do not believe the results of the one demonstration of this concept is sufficient to warrant a permanent change in the law.

c. Direct reimbursement

Present law

Medicare restricts to hospitals (in the case of risk-sharing HMO's) and to hospitals and nursing homes (in the case of cost-based HMO's) the providers which the program will reimburse directly for services provided to an HMO's Medicare enrollees.

House bill

The House bill would expand the types of providers to whom Medicare can make payment directly for HMO services.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment limiting application of the provision to hospitals and skilled nursing facilities.

32. Deadline for Report on Including Payment for Physicians' Services to Hospital Inpatients in DRG Payment Amounts (Section 2317)

Present law

The Secretary is required to report to the Congress on the advisability and feasibility of making payments for physician services furnished to hospital inpatients based on a diagnosis-related group system and to make legislative recommendations. The report is to be part of the report made to the Congress during 1985.

House bill

The House bill would require the Secretary to report to Congress not later than July 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

33. Flexible Sanctions for Noncompliance With Requirements for End-Stage Renal Disease Facilities (Section 2352)

Present law

End-stage renal disease (ESRD) facilities that are not in complete compliance with Medicare program requirements are subject to decertification.

House bill

The House bill would authorise the Secretary to apply intermediate sanctions to such facilities, such as denial of reimbursement for some or all patients admitted after the facility is notified of its noncompliance, or graduated reduction in reimbursement for all patients.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment. The provision would be effective with respect to determinations made by the Secretary on or after the date of enactment.

34. Repeal of Requirement for End-Stage Renal Disease Networks

Present law

The Secretary is required to establish network organizations to assist in the administration of the End Stage Renal Disease Program. Such organizations are directed to perform a variety of functions, including planning, setting goals and objectives, monitoring patient care, and compiling data on ESRD patients and services that are useful to the Department in administering and evaluating the program.

House bill

The House bill would eliminate the statutory requirement for networks, as well as the various statutory responsibilities imposed on them. Under the House bill, the Secretary would continue to have authority to establish a national end-stage renal disease medical information system.

The provision would be effective on a date established and published by the Secretary, but not earlier than July 1, 1984, on which date the Secretary has in operation an alternative means of data collection to that currently performed by renal disease networks.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision. The conferees intend that the Secretary will give additional direction to the networks to facilitate their ability to perform the requisite functions. The conferees are particularly concerned that the data collection capability should be strengthened and note that the collection and maintenance of data is vital to efficient and effective program administration. The conferees further note their concern that the annual ESRD report be submitted to the Congress on a timely basis.

The conferees intend that the Secretary give consideration to consolidating existing network areas. They also intend that the Secretary examine the composition of such entities with a view toward reducing the predominance of facility representation and increasing the representation of beneficiary interests.

35. Definition of Bona Fide Emergency Services for Purposes of Limitations on Payment for Hospital Outpatient Services (Section 2318)

Present law

The Secretary is required to place reasonable limits on hospital costs and physician charges for outpatient services; bona fide emergency services provided in an emergency room are specifically exempted by statute from the limits.

House bill

The House bill would provide a statutory definition of "bona fide emergency services" which includes services provided in a hospital emergency room after the onset of a medical condition manifesting itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected, by a prudent lay person possessing an average knowledge of health and medicine, to result in: (a) placing the patient's health in jeopardy; (b) serious impairment to bodily functions; (c) serious dysfunction of any bodily organ or part; or (d) development or continuance of severe pain. The provision would be effective on enactment.

Senate amendment

The Senate amendment includes a similar provision except that the definition includes services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (a) placing the patient's health in serious jeopardy; (b) serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part. The provision would be effective with respect to services furnished on or after date of enactment.

Conference agreement

The conference agreement follows the State amendment.

36. Part B Premium (Section 2302)

Present law

The Secretary is required to calculate and announce each September the amount of the monthly premium that will be charged in the following calendar year for people enrolled in the Supplementary Medical Insurance (Part B) portion of the Medicare program. A temporary provision of law requires that for 1984 and 1985 the premium amount be calculated so as to produce premium income equal to 25 percent of program costs for enrollees aged 65 and over.

Beginning with 1986, the premium calculation will revert to an earlier method under which the premium amount is the lower of: (1) an amount sufficient to cover one-half of program costs for the aged; or (2) the current premium amount increased by the percentage by which cash benefits were most recently increased under the cost-of-living adjustment (COLA) provisions of the Social Security program.

House bill

No provision.

Senate amendment

The Senate amendment would make permanent the existing temporary provision which fixes the proportion of the Part B Medicare costs financed by enrollees at 25 percent of program costs. Should no Social Security cost-of-living adjustment take place, the monthly premium would not be increased for that year.

In the case of an individual who has his or her Part B premium deducted from his or her Social Security check, if the cost-of-living adjustment is less than the amount of the increase in the premium, the premium increase would be reduced so as to avoid a reduction in the individuals Social Security check. In certain cases, the monthly premium would not increase for that individual for that year.

	Estimated monthly premium	
	Current law	Senate amendment
1986	$17.70	$19.10
1987	18.60	21.30
1988	19.50	23.90

Conference agreement

The conference agreement follows the Senate amendment with a modification limiting the extension of the provision to two calendar years, i.e., 1986 and 1987.

37. One month delay in medicare entitlement

Present law

Eligibility for Medicare begins on the first day of the month in which an individual attains age 65.

House bill

No provision.

Senate amendment

The Senate amendment would delay eligibility for Parts A and B of Medicare until the first day of the month following the month the individual attains age 65.

Conference agreement

The conference agreement does not include the Senate amendment.

38. Revaluation of Assets Acquired by Hospitals (Section 2314)

Present law

Medicare currently reimburses hospitals and other providers for their capital-related costs, including depreciation costs and interest. Investor-owned hospitals also receive a return on equity. When hospitals and other providers are sold, their assets are often revalued, thereby increasing reimbursement for these capital-related costs.

House bill

No provision.

Senate amendment

The Senate amendment would limit the increase in capital-related cost reimbursement to a new owner that would result from the revaluation of hospital assets acquired in fiscal year 1985 and thereafter. The capital-related cost of the new owner would be based on the acquisition cost of the asset as entered on the books of the prior owner less any depreciation taken on the asset by the prior owner. In addition, the new owner's capital-related costs must be determined using the same useful life and method of depreciation as used by the prior owner for reimbursement under the Medicare program.

Conference agreement

The Conference agreement follows the Senate amendment with a modification specifying that capital-related costs to the new owner shall be based on the lesser of: (a) historical cost (the cost to the original owner), or (b) the purchase price of the asset.

The Secretary would be required to continue recapture of depreciation as under current reimbursement policy.

The Conferees intend that the Secretary, in implementing this provision will establish an appropriate policy with respect to useful life, the method of depreciation, and the treatment of sale and leaseback arrangements.

The conferees are concerned that Medicare has been paying for the same capital assets more than once. Thus, the provision is intended to limit the revaluation of an asset to the cost of acquisition to the individual or entity who is the owner, for medicare purposes, at the time of enactment of the legislation. Acquisition costs may include capital improvements or other costs which medicare recognizes as increasing the basis of the asset. The purchaser's revaluation would be limited to his own acquisition cost, as recognized by the Secretary, if that cost was less than the previous owner's acquisition cost.

The conferees note that under present law, capital-related costs which are excluded from the prospective payment system and which continue to be reimbursed on a reasonable cost basis also include leases and rentals for the use of depreciable assets. The conferees recognize that the limitation on the revaluation of assets acquired by hospitals or nursing homes could be circumvented by certain sale/lease-back sale-rental agreements. The conferees expect that the Secretary will determine the reasonableness of any lease or rental costs including a depreciable asset which has undergone a change in ownership taking into account the limitation on the revaluation of assets.

The conference agreement applies to both hospitals and skilled nursing facilities participating under Medicare.

The conference agreement excludes from the calculation of allowable capital costs those expenses (such as lawyers' fees and feasibility studies) related to acquisitions and mergers.

The conference agreement applies to capital-related costs of capital expenditures obligated on or after the date of enactment.

The conference agreement also limits State Medicaid reimbursement for the costs associated with the sale or transfer of a hospital or nursing home. States would be required to assure the Secretary that the methodologies used to establish rates paid to hospitals, SNF's, or ICF's can reasonably be expected not to increase those rates more than they would increase under Medicare policy as the result of a change of ownership of a facility. The State must demonstrate generally that the statutory standard will be met in the aggregate, although it is not the intention of the conferees that States supply a detailed accounting of how that aggregate is achieved. In evaluating the State's assurances, the Secretary may require the State to demonstrate the application of its methodology in a limited number of instances.

The conferees note that, under current law, States have broad discretion in designing reimbursement methods and standards for hospital, SNF, and ICF services, and have used that discretion to implement a wide variety of payment methodologies. The conferees do not intend to limit that discretion, and anticipate that, in many States, current or planned methodologies would not be affected. States that choose to use the Medicare capital payment methodologies may continue to do so. States which have chosen alternative methods, such as an approach under which payment is made for the fair rental value of the facility, would not be discouraged from doing so.

39. Repeal of Preadmission Diagnostic Testing Provision (Section 2305)

Present law

The Omnibus Reconciliation Act of 1980 authorised 100 percent Part B reimbursement on a reasonable cost or charge basis for preadmission diagnostic testing, either in a hospital's outpatient department or in a physician's office, within seven days prior to a hospital admission.

The final regulation implementing 100 percent reimbursement for preadmission testing was not published.

House bill

No provision.

Senate amendment

The Senate amendment would repeal the provision. It would clarify that repeal shall not be construed as prohibiting program payments (subject to cost-sharing) for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable. The section would be effective with respect to services performed after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

40. Rounding of Part B Payments

Present law

Medicare carriers compute charge-based payments to the nearest cent.

House bill

No provision.

Senate amendment

The Senate amendment would require Medicare Part B charge-based payments on claims that are not whole dollar amounts to be rounded to the next lower dollar.

Conference agreement

The conference agreement does not include the Senate amendment.

41. Agreements for Medicare Claims Processing (Section 232)

a. Provider nomination

Present law

Medicare contracts with intermediaries and carriers to perform the day-to-day operational work of the program including reviewing claims and making program payments. Providers are permitted to nominate an intermediary.

The Secretary is permitted to assign or reassign any provider if the Secretary determines that such assignment or reassignment would result in more effective administration of the program.

House bill

No provision.

Senate amendment

The Senate amendment would increase the Secretary's discretion in entering into agreements for Medicare claims processing by eliminating the right of providers of services to nominate intermediaries.

Conference agreement

The conference agreement follows the Senate amendment with a modification. The conference agreement would allow the waiver of provider nomination requirements when a contract is competitively bid and for the duration of the competitively bid contract. Further, the agreement would reduce the number of designated regional intermediaries for home health agencies to no more than 10, to be completed within 3 years.

Report language

The conferees believe that the Secretary has sufficient discretion under existing authority to assign or reassign any provider of services to any agency or organization which has entered into an agreement with the Secretary if the Secretary determines, after applying the standards, criteria and procedures set forth in the statute, that such assignment or reassignment would result in the more effective and efficient administration of the program.

The conferees understand that reassigning a provider is a significant administrative burden on the provider and therefore anticipate that this authority would be used only when it is clear that changing to another intermediary would result in the more effective and efficient administration of the program.

The General Accounting Office would be required to study and report on the appropriateness of removing the provider nomination requirements in the statute.

Public Law 96-499 required the designation of regional intermediaries for home health agencies. At that time, the conferees intended that only a few intermediaries be designated as regional intermediaries in order to provide for more consistent and effective management of the home health program. However, the Secretary has by regulation established 47 regional intermediaries. The conferees believe that in order to more effectively manage the home health benefit under the medicare program that the number of regional intermediaries be reduced to no more than 10. The conferees anticipate that the number of designated intermediaries would be reduced as quickly as possible but in no case more than three years from the date of enactment.

b. Cost reimbursement

Present law

Intermediaries and carriers are reimbursed for these activities on the basis of costs that are necessary and proper.

House bill

No provision.

Senate amendment

The Senate amendment would permit the Secretary to enter into various kinds of agreements, not solely those based on cost.

Conference agreement

The Conference agreement follows the Senate amendment with a modification. The Conference agreement would provide that in determining a carrier's or intermediary's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated organization in carrying out the terms of its agreement.

The conferees note that the medicare claims processing costs on a per claim basis have fallen considerably over the last years. However, there still appear to be significant disparities between the cost of different intermediaries and carriers (even when adjusted for factors such as difficulty of processing certain claims) which are unexplained. There seems to be little correlation between price per claim and performance as measured by HCFA standards. The conferees are interested in learning:

(1) Whether contractor costs are excessive;

(2) Whether the Secretary's standards for evaluating contractor costs and performance are adequate and properly applied; and

(3) Whether the Secretary's statutory authority, as augmented by this Act, is sufficient to deal with inefficient intermediaries and carriers either through the contract negotiation and budget review process or by replacing them.

The conferees are therefore instructing the General Accounting Office to study these issues and to report its findings to Congress within a year of enactment, together with recommendations on the appropriateness of moving from the cost-based reimbursement system to some other basis of payment for claims processing.

The conferees want to urge that any cost cutting measures be implemented in a careful manner with the understanding that the processing of medicare claims is an important function and that savings measures not undermine beneficiary services, professional relations, productivity investment or program safeguards.

It is the Committee's intent that the rates paid to contractors take account of their individual circumstances. Thus such factors as the relative complexity of the claims to be reviewed, the prevailing wages in the area, the relative need for beneficiary services, and other circumstances that may legitimately vary from contractor to contractor should be taken into account in determining each contractor's reasonable operating costs.

c. Competitive contracting

Present law

Present law permits only on an experimental basis the selection of carriers and intermediaries on the basis of competitive bidding.

House bill

No provision.

Senate amendment

The Senate amendment would broaden the Secretary's authority to experiment with different kinds of contracts by including contracts other than fixed-price or performance-incentive contracts and by permitting competitive bidding.

Conference agreements

The Conference agreement follows the Senate amendment with a modification. The Conference agreement would permit the Secretary, in each of the first three years following the year of enactment, to enter into no more than two competitively bid contracts under Part A and two such contracts under Part B. The Secretary would only be allowed to competitively compete to replace intermediaries and contractors who were poor performers, falling into the lowest 20th percentile of all performers, as measured by cost and performance criteria. The agreement requires that intermediaries must be health insurers and perform the full range of intermediary functions. Further, the agreement requires that carriers perform the full range of carrier functions. The Secretary is required to establish standards and criteria for the purpose of evaluating an individual carrier's efficiency and effectiveness and to determine whether a contract is consistent with the efficient and effective administration of the program.

The Conferees are concerned that selection of contractors shall not be based solely on price. Consideration must also be given to the ability of the carrier to perform the required functions in an efficient and effective manner. The Conferees emphasize the importance of having health insuring organizations serving as intermediaries and carriers. They further intend that the new authority for competitive contracting not be used to fragment the functions of carriers and intermediaries with respect to claims processing, quality control, and beneficiary services.

d. Publication of Standards

Present law

The Secretary is required to establish by regulation standards and criteria with respect to the efficient and effective administration of Part A of the program by intermediaries.

House bill

No provision.

Senate amendment

The Senate amendment allows the Secretary to provide for publication of the standards for contractors through normal administration issuances rather than through the regulatory process.

Conference agreement

The Conference agreement follows the Senate amendment with a modification amendment to require that the public be given notice of the standards through the *Federal Register* and that the public be given an opportunity to comment on them prior to their implementation.

42. Lesser of Costs or Charges (Section 2308)

Present law

Medicare pays providers the lesser of costs or charges (LCC). HCFA regulations allow hospitals to calculate the amount of their costs and charges in the aggregate for inpatient and outpatient services.

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to issue regulations to isolate the calculation of the lesser of cost or charges for outpatient services from the calculation for inpatient services.

Conference agreement

The conference agreement follows the Senate amendment with a modification.

The conferees are concerned that the disaggregation feature of the amendment may have an adverse effect on certain providers that are unable, due to the mix of patients they serve, to bill charges that are reasonably commensurate with their costs of furnishing outpatient services. Therefore, the conferees are directing the Secretary to modify the current rule, under which public providers determined to have no minimal charges are exempted from the lesser-of-cost, or-charge, provision and are reimbursed their reasonable costs.

The modification in the nominal charge rule would include the following features. First, the nominality test should not continue to be applied to aggregated Part A and Part B costs and charges. Instead, costs and charges should be treated separately for Part A and for Part B, or for inpatient services and for outpatient services, for purposes of applying the nominality test (except for services furnished by home health agencies, if the Secretary concludes that aggregation of Part A and Part B data is still appropriate for such services). Second, for providers that use a sliding scale of charges or a discounted schedule of charges that differentiates among patients based on their ability to pay, the nominality test should use such slidingscale or discounted schedule, rather that deeming the charges to be full customary charges as are actually billed for all patients. (For this purpose, the Secretary shall aggregate charge data for all charge-paying patients.) Third, providers should be exempted from the lesser-of-cost-or-charges provision, and paid reasonable cost, if their billed charges do not exceed 60 percent of their costs, rather than 50 percent as the rule now states.

In addition, the conferees are directing the Secretary to apply the nominal charge rule to providers, that serve a substantial number of indigent patients. The nominal charge rule should be applied to such providers on the same basis as applied to public providers.

43. Coverage of Hemophilia Clotting Factor (Section 2324)

Present law

Part B of Medicare excludes coverage for drugs and biologicals unless they are of the type that cannot be self-administered and are commonly furnished as incident to physician's services.

House bill

No provision.

Senate amendment

The Senate amendment would provide Medicare coverage, subject to utilization controls deemed necessary by the Secretary, for blood clotting factors and the supplies necessary for the self-administration of the clotting factor. The provision would apply to items and services purchased on or after enactment.

Conference agreement

The conference agreement follows the Senate amendment.

44. Indexing of Part B Deductible

Present law

Part B enrollees are subject to an annual deductible of $75 for covered expenses before any benefits are paid.

House bill

No provision.

Senate amendment

The Senate amendment would index the Part B deductible in calendar years 1985, 1986, and 1987 by the Medicare economic index. (The economic index is used to limit increases or decreases in prevailing charge levels under Part B.) It is estimated that the deductible would increase to $78 in 1985, $82 in 1986, and $86 in 1987.

Conference agreement

The conference agreement does not include the Senate amendment.

45. Cost-sharing for Durable Medical Equipment Furnished as a Home Health Benefit (Section 2321)

Present law

Medicare payment for durable medical equipment which is not provided as a covered inpatient service is based on 80 percent of reasonable charges (80 percent of reasonable costs in the case of a provider), with one exception. Payment is based on 100 percent of costs when furnished as part of a coverd home health service.

House bill

No provision.

Senate amendment

The Senate amendment would require 20 percent coinsurance on durable medical equipment provided by home health agencies. It also clarifies the definition of durable medical equipment and the coverage of such equipment when furnished by providers.

Conference agreements

The conference agreement follows the Senate amendment.

The conferees do not intend for this clarification of the definition and coverage of durable medical equipment to result in any reduction or restriction of current coverage under Medicare for medical appliances and equipment.

46. Modification of Working Aged Provision (Section 2301)

Present law

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) changed the Medicare benefits for the working aged. TEFRA amended the Age Discrimination in Employment Act (ADEA) to provide that an employer must offer to an employee age 65 through 69 the same group health plan offered to employees under age 65. As of January 1, 1983, if the employee elects the employer plan, Medicare benefits become secondary to benefits under the employer group health plan for an employed individual between the ages of 65 and 69 (and for the spouse of such employed individual if the spouse is age 65 through 69).

House bill

No provision.

Senate amendment

The Senate amendment would provide that employers must also offer group coverage to an employee who has not reached age 65 in cases where the employee has a spouse age 65 through 69 under the same circumstances as coverage is offered to employees with a spouse under the age of 65. In the case where such employee elects the employer plan, Medicare would be secondary.

Conference agreement

The conference agreement follows the Senate amendment.

The conferees note that under current law, a medicare eligible employee between the ages of 65 and 70 has the option of rejecting the employer health benefit plan with the result that Medicare remains the primary payer. Regulations issued by the Equal Employment Opportunity Commission require that employees be provided notification of their options and be provided the opportunity to make their choice known to the employer in writing. Under the provisions of this bill, there is a similar option to elect the employer plan or medicare. The conferees are concerned that the individual eligible for medicare participate in the decision whether to be covered by the employer plan or medicare. Thus, the conferees wish to make it clear that the non-working spouse between the ages of 65 and 70 should be given notice by the employer and the opportunity to verify, in writing, whether he or she will not be covered by the spousal provision of the employer plan.

47. Transfers to Federal Hospital Insurance Trust Fund

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment would specify that the Part B outlay savings, that accrue to the Federal Government as a result of this bill shall be transferred to the Part A trust fund for each of the fiscal years 1984, 1985, 1986 and 1987.

Conference Agreement

The conference agreement does not include the Senate amendment.

48. Elimination of Part B Deductible for Certain Diagnostic Laboratory Tests

Present law

Current law authorizes the Secretary to negotiate with a laboratory a payment rate that is considered the full charge for diagnostic tests. The payment, which is made directly to the laboratory, equals 100 percent of the negotiated rate subject to the annual Part B deductible. The beneficiary is not liable for coinsurance payments.

House bill

No provision.

Senate amendment

The Senate amendment would eliminate application of the annual Part B deductible in the case of diagnostic tests performed in a laboratory which has entered a negotiated rate agreement with the Secretary.

Conference agreement

The conference agreement follows the Senate amendment with a modification specifying that the current law provision providing for negotiated agreements only applies to services not paid for under the new fee schedule (see Item 10).

49. Repeal of Exclusion of For-Profit Organizations From Research and Demonstration Grants (Section 2331)

Present law

Current law limits the awarding of grants for the conduct of research and demonstrations to non-profit organizations. Contracts are permitted to be awarded to both for-profit and non-profit organizations.

House bill

No provision.

Senate amendment

The Senate amendment would extend the research and demonstration grant authority to for-profit organizations.

Conference agreement

The conference agreement follows the Senate amendment.

50. Repeal of Authority for Payments to Promote Closing and Conversion of Underutilized Hospital Facilities (Section 2353)

Present law

Section 2101 of the "Omnibus Budget Reconciliation Act of 1981" (Public Law 97-35) authorized the Secretary to make Medicare and Medicaid payments to cover capital and increased operating costs associated with the conversion or closing of underutilized hospital facilities. The provision, which has never been implemented, restricts the number of facilities which may receive these funds to no more than 50 prior to January 1, 1984.

House bill

No provision.

Senate amendment

The Senate amendment would repeal Section 2101 of the Omnibus Reconciliation Act of 1981.

Conference agreement

The conference agreement follows the Senate amendment except that Section 2101 of the Act is retained with a modification deleting its effective date. In addition, the agreement requires the Secretary to provide to the Congress an analysis of the modifications required in Section 1884 of the Social Security Act in order to conform the closure and conversion program established therein to the prospective payment system established under Section 1886 of the Act. The modifications would be for the purpose of enabling the provision of assistance to those hospitals which the Secretary determines might encounter particular problems in converting facilities or parts of facilities from acute care services to other less intensive modes of care, or in closing facilities or portions thereof.

The agreement requires the Secretary to report the findings to Congress no later than March 1985 and to include in the analysis, views as to how and whether implementation of the closure and conversion provision as modified could result in achieving reductions in the total cost of hospital inpatient services and total medicare expenditures.

The conferees expect the Secretary will not implement the provision prior to reporting his findings to the Congress.

51. Judicial Review of Provider Reimbursement Review Board Decisions (Section 2351)

Present law

The "Social Security Amendments of 1983" (Public Law 98-21) permit a group of providers to bring action in the judicial district in which the largest number of them are located. Public Law 98-21 also requires certain administrative and judicial appeals by providers which are under common ownership or control to be made as a group. Providers are entitled to a group appeal before the Provider Reimbursement Review Board if they have a common issue of fact, law or regulation.

These provisions were included in a section of Public Law 98-21 entitled "Conforming Amendments". Therefore, these provisions, together with most of the prospective payment provisions, apply to items and services furnished by a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

a. Appeals

House bill

The House bill would specify that those providers that brought an administrative appeal as a group because of a common issue of fact, law or regulation must then bring any judicial appeal as a group. The amendment applies to any administrative action or judicial appeal brought on or after enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision.

b. Civil actions

House bill

No provision.

Senate amendment

The Senate amendment would clarify that civil action may be taken within 60 days after notification is received (rather than determination is rendered) that the Board determines it does not have authority to decide the question. The amendment would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

c. P.L. 98-21 effective dates

House bill

The House bill would specify that the P.L. 98-21 provisions are effective with respect to any action or appeal brought on or after enactment of this bill.

Senate amendment

The Senate amendment would specify that the P.L. 98-21 provisions are effective with respect to actions or appeals brought on or after April 20, 1983.

Conference agreement

The conference agreement specifies that for actions brought by groups of providers in a judicial area where the largest number of them are located, the effective date would be actions brought on or after April 20, 1983. For actions brought by providers under common ownership, the effective date is the date of enactment of this bill.

d. Effective dates

House bill

The House bill would provide that items (a) and (c) apply to appeals or actions brought after enactment of this bill.

Senate amendment

The Senate amendment provides that item (b) would be effective on enactment and item (c) would apply to court actions brought on or after April 20, 1983.

Conference agreement

The conference agreement provides that items (a) and (b) are effective on enactment, and item (c) is effective as specified above.

52. Enrollment and Premium Penalty With Respect to the Working Aged Provision (Section 2338)

Present law

The "Tax Equity and Fiscal Responsibility Act" (TEFRA) required employers to offer their employees aged 65 to 69 the same health benefits plan offered to their younger workers. Medicare payments are secondary with respect to these older workers (and their spouses aged 65-69). Aged employees who elect enrollment in such employer-offered health benefit plans may wish to delay enrollment in Part B because Part B coverage may be duplicative. However, persons who enroll late are currently subject to a penalty. The monthly Part B premium is increased by 10 percent for each full 12 months that an individual delays enrollment in the program beyond his or her initial enrollment period.

a. Enrollment penalty/special enrollment

House bill

The House bill would waive the Part B enrollment penalty for workers and their spouses aged 65 through 69 who elect private coverage under the provision of TEFRA and would establish special enrollment periods for such workers. The waiver would apply for the period during which an individual continued to be covered under an employer's group health benefits plan.

Senate amendment

Same as House bill

b. Effective date: penalty relief provision

House bill

The House bill would provide that the penalty relief provision would be effective with respect to months beginning with January 1983 for premiums for months beginning July 1984.

Senate amendment

The Senate amendment would provide that the penalty relief provision would be effective with respect to months beginning with January 1983 for premiums for months beginning more than 90 days after enactment.

Conference agreement

The conference agreement follows the Senate amendment with a modification specifying that the provision is effective the first calendar month beginning at least 30 days after enactment.

c. Effective date: enrollment periods

House bill

The House bill would provide that the special enrollment provisions would be effective for months beginning with July 1, 1984 except that in the case of any individual who would have had a special period beginning earlier, the enrollment period would be deemed to begin on July 1, 1984.

Senate amendment

The Senate amendment would provide that the special enrollment provisions would be effective for months beginning more than 90 days after enactment except that in the case of any individual who would have had a special enrollment period beginning earlier, the enrollment period would be deemed to begin for the month beginning 90 days after enactment.

Conference agreement

The conference agreement follows the Senate amendment.

53. Waivers for Social Health Maintenance Organizations (Section 2355)

Present law

The Secretary has general authority to conduct experiments and demonstrations. While the Department has provided start-up funding for a social HMO project, waivers allowing the four demonstration sites to become operational have not been approved by the Office of Management and Budget.

House bill

No provision.

Senate amendment

The Senate amendment would require the Secretary to approve certain waivers for a project to demonstrate the concept of a social HMO at four sites within 30 days after submission of a waiver request or within 30 days of enactment in the case of waiver requests submitted prior to enactment.

Conference agreement

The conference agreement follows the Senate provision with a modification which requires submission to the Congress of an interim report on the status of the projects within 45 days of enactment. A final report is due to the Congress forty-two months after enactment.

The conferees are concerned that the Department has failed to implement certain Congressionally mandated demonstration projects on a timely basis. For example, the "Omnibus Reconciliation Act of 1980" (P.L. 96-499) required the Secretary to conduct two demonstration projects and submit reports on these projects to the Congress. One project was to determine both the extent to which the commencement of nutritional therapy in early renal failure could retard or arrest the progression of the disease and the implications of making such therapy generally available under the Part B program. The second study was to determine the implications of making the services of clinical social workers more generally available under the medicare program. P.L. 96-499 required the Secretary to submit reports on these demonstration projects, together with legislative recommendations, within 24 months of enactment, i.e. December 5, 1982. The Congress has not yet received the required reports.

54. Peer Review Organizations (Section 2347)

a. Payments

Present law

Payment of PRO's is made from the Part A trust fund. The Secretary is directed to fund PRO's in amounts determined to be reasonable, but not less than the 1982 funding levels (adjusted for inflation). This provision does not apply to PSRO's.

House bill

The House bill would require hospitals, as a condition of Medicare payment, to enter into an agreement with a PSRO in the area (which was in existence on July 1, 1983) and funds PSRO's out of the Medicare trust fund. The provision would be effective 60 days after enactment.

Senate amendment

The Senate amendment would include a similar provision except that it would not specify PSRO's in existence on July 1, 1983.

Conference agreement

The conference agreement follows the House provision with a modification which would eliminate the July 1, 1983 date.

b. PRO agreements

Present law

P.L. 98-21 required hospitals to enter into an agreement with a peer review organization as a condition of payment under the Medicare program. Such agreements must be entered into by October 1, 1984. Health benefit payer organizations may not qualify as a PRO until after October 1, 1984.

House bill

No provision.

Senate amendment

The Senate amendment would delay the date by which hospitals are required to have an agreement with the PRO from October 1, 1984 to January 1, 1985. The date on which health benefit payer organizations can first qualify as PRO's would be similarly changed.

Conference agreement

The conference agreement follows the Senate amendment with a modification which specifies that November 15, 1984 is the date by which hospitals are required to have an agreement with a PRO. Similarly, November 15, 1984 is the first date on which payer organizations could qualify as PRO's.

c. Effective date

House bill

The House bill would be effective 60 days after enactment.

Senate amendment

The Senate amendment would be effective May 1, 1984.

Conference agreement

The conference agreement is effective on enactment which is the date on which PSRO and PRO funding becomes available through part A. The conferees wish to make it clear that they intend that the Secretary shall continue funding PSROs in all areas where they currently exist until such time as they have been replaced by a PRO.

55. Medicare Prospective Payment (Section 2315)

a. Blend of rates

Present law

Public Law 98-21 established the new prospective payment system for paying hospitals under Medicare. The program is phased in over a three-year period (fiscal year 1984–fiscal year 1986). During the transition period, payment for a particular hospital discharge consists of a blend of the hospital specific payment rate and the Federal DRG payment rate (which is a blend of national and regional payment rates).

House bill

The House bill would clarify that the blend of the hospital-specific rate and Federal DRG rate is based on the individual hospital's cost reporting period. It would clarify that the blend of national and regional Federal DRG rates is tied to the Federal fiscal year and is therefore updated each October 1.

Senate amendment

No provision.

Conference agreement

The House bill contained a provision intended to clarify the method of paying hospitals under the new prospective payment system. The conferees concluded that the provision contained in the House bill was unnecessary.

b. State systems

Present law

Public Law 98-21 provided that hospitals in a State may be reimbursed according to the State's hospital reimbursement control system rather than under prospective payment, provided certain conditions are met.

House bill

The House bill would require approved State systems to prevent unbundling of services and inappropriate admissions practices.

Senate amendment

Same as House bill.

c. Public comment

Present law

The Secretary is required to publish in the Federal Register for public comment the proposed annual index and the final annual index of DRG's.

House bill

The House bill would clarify that public comment is required only on the proposed annual index.

Senate amendment

Same as House bill.

d. PRO agreements

Present law

Under Public Law 98-21, hospitals paid on the basis of the new prospective payment system are required to have an agreement with a peer review organization.

House bill

The House bill would require hospitals exempt from the Federal payment system to have agreements with PRO's or PSRO's.

Senate amendment

Same as House bill.

e. Effective dates

Present law

The effective date of October 1, 1983 in the prospective payment provisions was incorrectly applied only to the hospitals to which the new prospective payment system applies.

House bill

The House bill contains no clarification provision with respect to the effective date for exempt hospitals and State systems.

The House bill would require publication of proposed regulations by May 1, 1984 and (after a 45-day comment period) final regulations by August 1, 1984 with respect to requirements for State systems.

Senate amendment

The Senate amendment would clarify that the State-program and exempt-hospital provisions of Public Law 98-21 shall also be effective October 1, 1983.

The Senate amendment contains no provision with respect to State system regulations.

Conference agreement

The conference agreement follows the Senate amendment with respect to clarifying the effective date. The conferees do not intend for this amendment to be construed as requiring that the first of the 36-month periods specified in Section 1886(c)(1)(c) shall begin prior to the publication of final regulations implementing that provision.

With respect to the regulations, the conference agreement follows the House bill with an amendment. The amendment changes, to July 1, 1984 and October 1, 1984, the dates by which proposed and final regulations must be published on the rules for State rate setting systems. In addition, the amendment directs the Secretary to develop a definition of hospitals with a "significantly disproportionate number of patients who have low income or are entitled to benefits under part A" and to identify such providers by December 31, 1984, so that a better determination can be made under existing law as to whether payment exceptions or adjustments are appropriate.

The amendment reflects the conferees concern about the potentially harmful impact of the prospective payment system on public and other hospitals serving a significantly disproportionate number of patients who have low income or who are entitled to benefits under part A. As the Committee on Ways and Means and the Committee on Finance stated in their reports on the original 1983 prospective payment legislation, such hospitals may serve patients who are more severely ill than average and the DRG payment system may not take this factor into account

Additional considerations

The Medicare hospital prospective payment legislation provided an exception for rehabilitation hospitals and for rehabilitation units that are distinct parts of hospitals.

In the implementing regulations, the Department imposed a requirement that a rehabilitation unit have a full-time medical director as a condition for its exclusion from the prospective payment system. The legislation itself did not contain such a requirement. The conferees do not believe this regulatory requirement to be necessary. Alternatively, the conferees expect that professionally established standards will be relied upon—for example, those of the Joint Commission on Accreditation of Hospitals or of the Commission on Accreditation of Hospitals or of the Commission on Accreditation of rehabilitation facilities, and these do not contain a full-time medical director requirement.

The Conferees wish to reaffirm their directive, contained in the 1983 legislation, that the Secretary provide for exceptions and adjustments for such hospitals if she determines them to be appropriate. The Conferees also wish to express their concern about the adequacy of efforts that have been made to date to determine whether such exceptions or adjustments might be needed. In particular, the Conferees note that no effort has been made to develop a definition of "significantly disproportionate" for the purpose of identifying particular hospitals (or categories of hospitals) so that any special needs can be accurately and specifically assessed.

56. Normalizing Credit of Medicare Taxes in the Hospital Insurance Trust Fund (Section 2337)

Present law

The "Social Security Amendments of 1983" revised the accounting procedures of the Old Age and Survivors, Disability, and Hospital Insurance Trust Funds to provide that the Treasury would credit to the Trust Funds, at the beginning of each month, the amount of payroll taxes estimated to be received during the month. Under prior law, amounts were paid to the Trust Fund from "time to time."

House bill

The House bill would repeal the "normalization" provisions with respect to the Hospital Insurance Trust Fund. Thus, funds would be transferred from the Treasury to the HI Trust Fund as under prior law. The provision would not affect the OASDI Trust Funds.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision.

57. Services of a Clinical Psychologist Provided to Members of an HMO (Section 2322)

Present law

Services of physician assistants and nurse practitioners are recognized as "medical and other health services" if they are furnished pursuant to a risk-sharing arrangement with a health maintenance organization.

House bill

No provision.

Senate amendment

The Senate amendment would provide that the services of clinical psychologists, when furnished pursuant to a risk-sharing arrangement with a health maintenance organization, are recognized as "medical and other health services."

Conference agreement

The conference agreement follows the Senate amendment with a modification which would leave to the discretion of the Secretary the identification of the qualifications necessary to be identified as a clinical psychologist.

58. Home Health Services Provided on a Daily Basis

Present law

Home health nursing care and home health aide visits are provided, to the extent permitted in regulations, on a part-time or intermittent basis. The term "intermittent" has been subject to varying interpretations by different intermediaries. Current guidelines define "intermittent" as permitting daily visits for two to three weeks.

House Bill

No provision

Senate Amendment

The Senate amendment would specify that home health nursing care and home health aide services may be provided on a daily basis (with one or more visits per day) to an individual for up to 45 days following a hospital discharge and, may be continued on a daily basis after such period, based on a physician's certification of exceptional circumstances. The amendment would specify that it could not be construed as altering any Medicare provision as in effect prior to enactment with respect to payment for services provided on a daily basis to persons who have not been discharged from a hospital within the preceding 45 days.

The amendment would require a study of the effectiveness of home health care in preventing hospital and skilled nursing facility admissions. The report would be due to Congress January 1, 1985.

Conference Agreement

The Conference agreement does not include the Senate amendment.

The Conferees are concerned about the current lack of uniformity in the interpretation of existing law, which provides for coverage of home health nursing care and home health aide services on a part-time or intermittent basis. The term "intermittent" has been subject to varying interpretation by different intermediaries.

Current guidelines generally define "intermittent" as permitting daily visits for two to three weeks. The conferees understand current policy makes available medicare coverage for medically reasonable and necessary skilled nursing home health care and home health aide services for a short period of time after the initial two to three week period if the intermediary receives medical documentation from the provider supporting and justifying the need for such additional services. The amount of additional daily care need not be for a fixed period of time, but should be dictated by the medical need of the beneficiary.

The Conferees direct the Secretary to move quickly to identify the factors that have given rise to the lack of uniformity in the application of existing policy and to make such clarifications and take such other steps as may be necessary to remedy the problem. This should be more easily accomplished under a separate provision agreed to by the Conferees which provides for moving within three years to no more than 10 regional home health intermediaries (rather than the 47 as now provided for under current policy).

The Conferees wish to make clear their intention that the Secretary is to more uniformly apply *current policy* regarding intermittent care, and is not to respond to this directive in a way that would have the effect of cutting back on medicare home health coverage.

PART VII. MEDICAID

1. Medicaid Coverage for Pregnant Women and Young Children (Section 2361)

Present law

States must provide Medicaid to poor women and children receiving cash assistance under AFDC. They have the option of extending coverage at their current Federal matching rates to, among others, the following additional groups meeting AFDC income and resource requirements: first-time pregnant women; pregnant women in two-parent families where the principal breadwinner is unemployed; pregnant women in two-parent families; and children under age 18 or 21 in two-parent families (Ribicoff children).

a. Coverage requirements

House bill

The House bill would authorize 100 percent Federal matching assistance for services provided at State option to the following population groups meeting AFDC income and resources requirements if coverage was not available to such groups under the State's Medicaid program which was in effect on June 30, 1983: (1) single first-time pregnant women from medical verification of pregnancy; (2) pregnant women in two-parent families where the principal breadwinner is unemployed; (3) beginning in fiscal year 1988, pregnant women in all two-parent families; and (4) Ribicoff children under age 5 born after October 1, 1983.

Senate bill

Requires States to provide Medicaid coverage, beginning with medical verification of pregnancy, to first-time pregnant women meeting AFDC income and resources requirements.

Conference agreement

The conference agreement follows the Senate amendment with modifications as follows: States are required to provide categorically needy Medicaid coverage at regular Federal matching rates to the following groups meeting AFDC income and resources requirements: (1) first-time pregnant women from medical verification of pregnancy; (2) pregnant women in two-parent families where the principal breadwinner is unemployed, from medical verification of pregnancy; and (3) children born on or after October 1, 1983, up to age five, in two-parent families. Thus, coverage for Ribicoff children would proceed in one-year increments: in fiscal year 1985, States would be required to cover those up to one year of age; in fiscal year 1986, up to two years of age; and so on.

This amendment does not alter the current requirement that States may not impose coverage limitations on Ribicoff children based on age (except they must cover the children under 5, as specified). That is, for children between the ages of 5 and 18, age may not be used as a reasonable classification. Of course, States may continue to establish reasonable categories permitted under current regulations, such as children in foster care homes. However, States must cover all children under 5, as specified in this amendment.

The conference agreement provides that these requirements would take effect on October 1, 1984, or, where the Secretary determines State legislation is necessary, the first day of the first calendar quarter after the close of the first regular legislative session after enactment, whether or not the Secretary issues implementing regulations.

b. Federal matching bonus to States

House bill

The House bill provides for a one-half percentage point reduction in the four and one-half percent Federal matching penalty otherwise applicable in fiscal year 1984 for States not eligible for increased matching under the provisions described in a., above.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

c. Treatment of payments for services

House bill

The House bill provides that reductions in Federal payments and calculation of the State's target rate are to exclude payments made for services to qualified pregnant women and children.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

2. Deeming of Income and Resources With Respect to Certain Minor Pregnant Women

Present law

States, in determining Medicaid eligibility, may deem family income as available to a pregnant minor only when she is living in her parent's household. Parental deeming is allowed so long as the parent exercises responsibility for the care and control of the child, even if the child is only temporarily absent.

House bill

The House bill would allow States not to deem the income or assets of parents as available to a pregnant woman under 21 who does not have legal custody of other children. It would permit States to apply this nondeeming policy to pregnant adolescents living with parents, or in a custodial institution, or both.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

3. Clarification of Medicaid Entitlement for Certain Newborns (Section 2362)

Present law

Certain States have established Medicaid application procedures that fail to provide for the automatic addition of a newborn child to a Medicaid beneficiary's family unit for coverage purposes.

House bill

The House bill provides that a child born to a woman eligible for and receiving Medicaid at the time of birth is deemed eligible for one year as long as the woman remains eligible.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. Medically Needy Income Levels

Present law

Medically needy income levels for an SSI-related family of two adults with no income or resources, many be set at a level no higher than 133⅓ percent of the AFDC standard for a two-person family with no income or resources.

House bill

The House bill permits States to establish medically needy levels for a family of two adults up to 133⅓ percent of the three-person AFDC standard.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

5. Recertification of Need for Stays in SNFs and ICFs (Section 2363)

a. Recertifications

Present law

A State's evidence of a satisfactory program of controls over utilization must include evidence that physicians (or a physician assistant or nurse practitioner under the supervision of a physician) recertify the need for continuing skilled nursing facility (SNF) and intermediate care facility (ICF) services every 60 days.

House bill

The House bill would require recertification of SNF patients 30, 60, and 90 days after admission, and every 60 days thereafter. It would require recertification of ICF patients 60 and 180 days after admission; 12, 18, and 24 months after admission; and annually thereafter.

Senate amendment

Similar provision with respect to SNF recertifications. Similar provision with respect to ICF recertifications except requires recertification after 120 days instead of 180 days after initial certification.

Conference agreement

The conference agreement follows the Senate amendment with modifications as follows. The physician recertification requirements for both SNF and ICF patients would become State Medicaid plan requirements. In addition, with respect to ICF recertifications, recertification would be required no later than 180 days after initial certification instead of 120 days.

b. Grace period

Present law

One hundred percent compliance is required.

House bill

The House bill would permit a 10-day grace perod if the State can demonstrate that the physician had good cause for missing the deadline.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment.

c. Penalty

Present law

The Federal penalty imposed on States which fail to have an adequate utilization control program is 33⅓ percent times the ratio of the number of patients in facilities with one or more records out of compliance to the total number of patients in facilities in the State.

House bill

The House bill would provide for a penalty equal to 5 percent times the ratio of the number of patient records out of compliance to the number of patient records included in the survey. No penalty would be imposed if the ratio were 3 percent or less.

Senate amendment

The Senate amendment would provide for a penalty equal to 5 percent times the ratio of the number of patients in facilities with one or more records out of compliance to the total number of patients in the State. No penalty would be imposed if less than 3 percent of the surveyed records were out of compliance.

Conference agreement

The conference agreement follows the Senate amendment with modifications as follows. Effective July 1, 1984, the current penalty would not apply to the physician recertification requirement with respect to SNF or ICF patients. However, the current penalty would continue to apply to the requirement that States have an effective program of medical review. The Conferees intend that the Secretary ensure that the States continue to comply with the physician recertification requirements, as revised by this agreement.

It is the understanding of the conferees that the States commonly use one team of health professionals to conduct the required medical reviews, and a separate team to conduct the required survey and certification activities. The conferees would urge the States to improve the coordination of these two important functions by consolidating the two reviews. In the view of the conferees, periodic, hands-on review of nursing home patients by independent teams of health professionals is an important mechanism for assuring quality of care.

d. Secretarial duty

Present law

A U.S. district court has held that the Secretary of Health and Human Services has the authority, but lacks the duty, to assure that nursing homes participating in the Medicaid program provide care consistent with the individual needs of their Medicaid patients. *In Re estate of Smith* v. *O'Halloran*, 557 F. Supp. 289 (D. Colo. 1983).

House bill

The House bill reaffirms the Secretary's existing duty to assure that the standards governing the provision of care to Medicaid patients in SNFs and ICFs, and the enforcement of those standards, are adequate to protect the health and safety of the residents and to promote effective and efficient use of public moneys.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

6. Waiver of Certain Membership Requirements for Certain HMO's (Section 2364)

Present law

The number of Medicare/Medicaid beneficiaries enrolled in a health maintenance organization (HMO) or other prepaid plan delivering Medicaid services on a risk basis cannot exceed 75 percent of the total enrollment. The Secretary may waive the requirements in the case of public HMO's if the Secretary determines that special circumstances warrant and the entity is taking reasonable efforts to enroll non-Medicare/Medicaid beneficiaries.

House bill

The House bill would permit the Secretary to modify or waive the 75 percent enrollment limitation in the case of an HMO that: (1) is nonprofit; (2) has at least 25,000 enrollees; (3) is and has been a Federally-qualified HMO for at least 4 years; (4) provides basic health services through its staff; (5) is located in a medically underserved area; and (6) had previously received a waiver of the 75 percent limitation under section 1115 of the Act. The Secretary may exercise this wavier only if she determines that special circumstances warrant and that the organization has made, and is making, reasonable efforts to enroll non-Medicare/Medicaid beneficiaries.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with modifications as follows. Under current law, Medicaid eligibles enrolled in HMO's may disenroll, without cause, upon one month's notice. The conference agreement would permit States to require Medicaid beneficiaries who choose to enroll in HMO's meeting certain requirements to remain in the HMO for up to 6 months, unless the beneficiary had good cause to disenroll before that time. During the first month of each 6-month period, the beneficiary could disenroll without cause and receive a Medicaid card that did not restrict his or her choice of provider. For the remainder of each 6-month period, the beneficiary would have to satisfy the State that there was good cause for disenrollment, such as poor quality care or lack of access to needed specialty services. States would be expected to establish effective procedures for reviewing requests for disenrollment on a prompt and fair basis. As under current law, enrollment in HMO's would be voluntary; beneficiaries would have freedom of choice among participating HMO's, and between prepaid and free-for-service providers.

The conference agreement limits the ability of States to impose these restrictions on beneficiary freedom of choice to the following two types of entities: (1) Federally-qualified HMO's, and (2) organizations that are receiving, and have at least two years prior to contracting with the Medicaid program received, grants of at least $100,000 under the Migrant Health Center, Community Health Center, and Appalachian Regional Commission programs. In each case, at least 25 percent of the organization's prepaid patients would have to be other than Medicare or Medicaid beneficiaries. The States would be required to notify beneficiaries prior to enrollment, and at least twice a year thereafter, of their disenrollment rights. The current Federal regulatory requirements with respect to prepaid HMO contracts, including those relating to grievance procedures and quality assurance systems, would apply to these special "lock-in" arrangements as well.

7. Prohibiting Medicaid Copayments for Prescribed Drugs

Present law

States are allowed to impose nominal copayments on prescription drugs for most groups of Medicaid beneficiaries. Providers may not deny services on the grounds that a Medicaid patient cannot afford the required copayment.

House bill

The House bill would prohibit the imposition of copayments on prescribed drugs.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

8. Maximum Amount of Medicaid Payments to Puerto Rico and the Territories (Section 2365)

Present law

Current law established the following annual ceilings on the amount of Federal Medicaid matching payments which certain jurisdictions may receive; Puerto Rico, $45 million; Virgin Islands, $1.5 million; Guam, $1.4 million; Northern Mariana Islands, $350,000; and American Samoa, $750,000.

House bill

The House bill would raise the ceilings to the following levels, effective fiscal year 1984: Puerto Rico, $77.1 million; Virgin Islands, $2.6 million; Guam, $2.4 million; Northern Mariana Islands, $600,000; and American Samoa, $1.3 million.

Senate amendment

The Senate amendment would raise the ceilings to the following levels, effective fiscal year 1984: Puerto Rico, $63.4 million, Virgin Islands, $2.1 million; Guam, $2.0 million; Northern Mariana Islands, $550,000; and American Samoa, $1.15 million.

Conference agreement

The conference agreement follows the Senate amendment.

9. Payment for Psychiatric Hospital Services (Section 2366)

Present law

Special reimbursement limitations apply with respect to hospital inpatients who are awaiting nursing home placement.

House bill

The House bill would delay until July 1, 1985, the application of reimbursement limitations with respect to public psychiatric hospitals. The House bill further provides that the reductions made for the 12-month periods ending June 30, 1986, and June 30, 1987, are one-third and two-thirds, respectively, of the amounts which would otherwise have been required.

Senate amendment

Same as House bill.

10. Miscellaneous Technical Amendments (Section 2373)

Present law

Titles V and XIX of the Social Security Act contain certain technical errors.

House bill

Makes technical corrections to titles V and XIX of the Social Security Act.

Senate bill

No provision.

Conference agreement

The conference agreement follows the House bill with a modification as follows. The conference agreement directs the Secretary not to take any compliance, disallowance, penalty or other regulatory action against a State because a State, in determining eligibility for noncash Medicaid recipients, is using an income or resource standard or methodology that is less restrictive than the applicable cash assistance standard of methodology. The Secretary is further directed to report to Congress within 12 months of enactment on the impact of the application of income and resource standards and methodologies under the cash assistance programs to medically needy recipients and other noncash eligibles. The moratorium on Secretarial action is to run from the date of enactment until 18 months after the date on which the Secretary submits her report.

In the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 (OBRA), States were given certain flexibility in structuring their medically needy programs. They were allowed to limit coverage to certain categories of medically needy individuals, and to vary the services they offered to the different groups they covered. No change was made or intended with regard to financial eligibility policy. Before OBRA, States could establish income or resource standards or methodologies for their medically needy programs that were, in some cases, less restrictive than those used in the related cash assistance programs.

Effective October 1, 1981, the Secretary issued interim regulations to implement these changes. These regulations made major changes in the pre-OBRA financial eligibility rules, allowing the States to impose more restrictive standards and methodologies than under previous law.

Section 137(a)(8) of the Tax Equity and Fiscal Responsibility Act, P.L. 97-248 (TEFRA), amended the Medicaid statute to clarify that Congress did not intend to change the policies governing the income and resource standards and methodologies for determining eligibility of the medically needy from those in effect before OBRA. This amendment provided in part that the methodology to be used in determining income and resource eligibility for the medically needy must be the "same methodology" used under the relevant cash assistance program.

The Department has not revised the 1981 interim regulations or otherwise published regulations to implement the TEFRA amendment. However, it is the understanding of the conferees that the Department has implemented this provision in an overly literal fashion, without taking into account the intent of the TEFRA clarification.

For example, the Department is treating certain income and resource rules as "methodology" that must strictly follow SSI or AFDC rules, even though all States with medically needy programs have traditionally been permitted to use less restrictive rules in certain areas. Thus, the Department has taken the position that aged, blind, and disabled medically needy applicants who enter nursing homes and who have marginally excess resources on the first day of the month can not attain Medicaid eligibility during the month, even after their resources are sufficiently depleted by medical costs, because SSI rules only allow eligibility from the first of the month. The Department has also indicated that it may impose quality control sanctions against the States that are using eligibility procedures that were allowed before OBRA and which make sense in the context of the medically needy program but which happen to be less restrictive than the relevant cash assistance procedures. Similarly, the Department has taken the position that the "single standard" requirement of the TEFRA amendment prohibits States from establishing less restrictive medically needy income levels for single adults and couples because this would result in differences in medically needy income levels among groups of the same family size depending on the relative numbers of adults and children.

The Department's overly restrictive interpretation of section 137(a)(8) of TEFRA has posed grave administrative problems for the States and threatens to cause great hardship for applicants and beneficiaries. It is also clear to the conferees that the strict application of the cash assistance rules to the medically needy and other noncash groups produces unintended, and in some cases, undesirable, consequences. The conferees have therefore decided to impose a moratorium on the Department's implementation of the TEFRA amendment until the Congress has an opportunity to study and legislate on the matter.

It is the understanding of the conferees that the Department has not yet actually taken a disallowance or quality control penalty against any State. The conferees intend that, during the moratorium, the Secretary not proceed with the imposition of any sanctions, or otherwise suggest to the States that they must use more restrictive cash assistance standards and methodologies in their medically needy or other noncash recipient programs. States may use less restrictive standards and methodologies in their noncash programs, although they are still foreclosed from being more restrictive than the relevant cash assistance programs. It is the expectation of the conferees that the States will be reasonable in establishing less restrictive variations in the cash assistance methodologies and standards.

11. Extension of Medicaid Payment Reductions and Offsets

Present law

The Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, provided that the Federal matching payments to which a State is otherwise entitled were to be reduced by 3 percent in fiscal year 1982, 4 percent in fiscal year 1983, and 4.5 percent in fiscal year 1984. A State may qualify for a percentage point offset to these reductions of up to 3 percent if it has a qualified hospital cost review program, an unemployment rate which exceeds 150 percent of the national average, or fraud and abuse recoveries greater than one percent of Federal expenditures. In addition, States may earn back part or all of the reductions if expenditures remain below specific target amounts.

House bill

No provision.

Senate amendment

The Senate amendment extends the existing reduction and offset provisions for 3 years. The reduction rate would be 3 percent for fiscal years 1985, 1986, and 1987.

Conference agreement

The conference agreement does not include the Senate amendment.

12. Mandatory Assignment of Rights of Payment by Medicaid Recipients (Section 2367)

Present law

States are permitted to require Medicaid applicants to assign to the State their rights to medical support and third party payments for medical care. Approximately 25 States have taken advantage of this option.

House bill

No provision.

Senate amendment

The Senate amendment would mandate States to require Medicaid applicants to assign to the State their rights to third party payments as a condition of eligibility.

Conference agreement

The conference agreement follows the Senate amendment.

13. Requirements for Medical Review and Independent Professional Review (Section 2368)

Present law

Medical review requirements for SNF's and independent professional review requirements for ICF's under Medicaid both call for teams of physicians, registered nurses, and other appropriate personnel to conduct virtually similar kinds of review.

House bill

No provision.

Senate amendment

The Senate amendment would make State plan requirements consistent for medical review and independent professional review for both ICF's and SNF's. The Senate amendment would also correct a technical error to assure that Christian Science sanitoria are excluded from the revised review requirements.

Conference agreement

The conference agreement follows the Senate amendment.

14. Flexibility in Setting Payment Rates for Hospitals Furnishing Long-term Care Services Under Medicaid (Section 2369)

Present law

Special requirements are provided for the establishment of payment rates for small rural hospitals furnishing skilled nursing or intermediate care facility services under Medicaid.

House bill

No provision.

Senate amendment

The Senate amendment would delete the requirements applicable only to hospital-furnished long-term care services. It provides that rates must meet the same general criteria as are applicable to rates for similar services provided by other long-term care institutions, although the actual rate paid may vary.

Conference agreement

The conference agreement follows the Senate amendment with a modification. States would be permitted to pay for long-term care services at the designated hospitals either on the basis of the special payment rates provided under current law or on the basis of the same general criteria that are applicable to hospitals and nursing homes. Whatever payment method a State chose would have to be applied to all the hospitals in question.

15. Authority of Secretary To Issue and Enforce Subpoenas Under Medicaid (Section 2370)

Present law

The Secretary is authorized to issue and seek enforcement of subpoenas under Medicare to obtain information needed in connection with hearings, investigations, and other matters related to fraud and abuse.

House bill

No provision.

Senate amendment

The Senate amendment would authorize the Secretary to issue and seek enforcement of subpoenas under Medicaid to the same extent allowed under Medicare.

Conference agreement

The conference agreement follows the Senate amendment.

16. Medicaid Clinic Administration (Section 2371)

Present law

States may cover clinic services under their Medicaid programs. Regulations issued by the Department of Health and Human Services limit coverage of clinic services to situations in which services are furnished under the direction of a physician. In certain cases, this physician-direction rule has been interpreted as requiring that clinic administrators be physicians.

House bill

No provision.

Senate amendment

The Senate amendment provides that the clinic need not be administered by a physician.

Conference agreement

The Conference agreement follows the Senate amendment.

PART VIII. MATERNAL AND CHILD HEALTH

1. Increase Authorization for Maternal and Child Health Block Grant Program (Section 2372)

Present law

The permanent authorization for the Maternal and Child Health Services (MCH) Block Grant is $373 million. In fiscal year 1983, an additional $105 million was appropriated for the Block Grant, and in fiscal year 1984, an additional $26 million was appropriated.

House bill

No provision.

Senate amendment

The Senate amendment provides for an increase in the permanent authorization level for the MCH Block Grant to $478 million, effective fiscal year 1984.

Conference agreement

The conference agreement follows the Senate amendment.

Under current law, the Secretary is directed to prescribe the content of the annual reports that the States are required to submit regarding the operation of their MCH Block Grant programs. The conferees are concerned that the Secretary has not required, and many States have not submitted, basic data regarding the effectiveness of their programs, including the number of mothers and children served, and the cost of providing services to them. The conferees note that the usefulness of a recent GAO report on the MCH Block Grant (GAO/HRD-84-35) was compromised by the absence of such basic information. The conferees expect that the Secretary will begin immediately to secure and make available to the Congress the information necessary to evaluate and compare the performance of different States assisted under the MCH Block Grant authority with regard to the numbers of people served and the cost-effectiveness of those services.

PART IX. RECOVERY OF HILL-BURTON FUNDS

1. Recovery of Hill-Burton Funds (Section 2381)

a. Recovery

Present law

The Federal government is entitled to recover amounts awarded to a facility for construction, modernization, or conversion under Title VI and Title XVI of the Public Health Service Act if, within 20 years, the facility (1) is sold or transferred to a proprietary entity, or (2) undergoes a change in use from that for which the assistance was originally provided.

House bill

The House bill would require that, in the case of Hill-Burton facilities sold or transferred or subject to a change in use after enactment, the transferor or owner must give the Secretary written notice not later than 10 days from the date of the sale, transfer, or change in use, or be subject to an interest penalty. If, within 180 days after notification, the Federal Government has not collected its recovery, an interest penalty would apply.

In the case of Hill-Burton facilities that were sold or transferred or that underwent a change in use before the date of enactment, the House bill provides that an interest penalty would begin to accrue if the recovery had not been agreed to and paid by July 1, 1984. The interest penalty would run until the recovery amount, plus interest, is paid to the Federal government.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with modifications as follows. In the case of facilities that were sold or transferred or underwent a change in use before the date of enactment, the interest penalty would not begin to accrue until 30 days after enactment, but in no case earlier than 180 days from the date of sale, transfer, or change in use. The conferes expect that the Department, upon notification, will expedite recovery proceedings to avoid subjecting facilities to interest charges that might result from Departmental delay. The Secretary may in regulation provide that, where such delays are caused solely by the Department, the resulting interest charges may be waived.

The modification further authorizes the Secretary to waive recovery altogether in the case of the sale or transfer of a facility to a proprietary entity only if the following requirements are met. First, the new owner or manager must agree to assume and comply with the Hill-Burton "community service" obligation, as implemented by current regulations. Secondly, the acquiring entity must have established an irrevocable trust, the corpus and income of which are to be used exclusively for the provision of uncompensated services to persons unable to pay in accordance with current regulations. The trust must be established in an amount equal to the greater of (1) twice the cost of the remaining "uncompensated services" obligation of the Hill-Burton facility, including any deficits to be made up, as determined by the Secretary under current regulations; or (2) the amount the Federal government would be entitled to recover, as determined by the Secretary.

The purpose of this grant of authority to the Secretary to waive recovery is to assure that, in lieu of the Federal government recouping its financial interest in a Hill-Burton facility, the community served by the facility will continue to have access to needed services there. The conferees expect the Secretary to monitor and enforce compliance with the "community service" and "uncompensated service" obligations on the part of the entity receiving a waiver. In cases where these requirements are not being met, the Secretary is expected to withdraw the waiver and effect recovery.

b. Liens

Present law

The Federal recovery right does not constitute a lien upon a Hill-Burton facility prior to judgment.

House bill

The House bill would provide that the right of recovery constitutes a lien on a Hill-Burton facility prior to judgment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification. It retains current law with respect to liens, and also requires the Secretary to conduct a study to determine whether the current regulations should distinguish between hospitals and nursing homes with respect to compliance with the statutory requirement that a Hill-Burton facility provide a reasonable volume of uncompensated services to persons unable to pay. The study is to be transmitted to the Congress no later than January 1, 1986.

Under the Hill-Burton program, hospitals, nursing homes, and other facilities undertook "community service" and "uncompensated services" obligations in exchange for Hill-Burton grants and loans and loan guarantees. In 1979, the Secretary of Health and Human Services published final regulations implementing these important contractual and statutory requirements. These regulations specify the standards which Hill-Burton facilities must meet and the procedures which they must follow in order to comply with their "community service" and "uncompensated services" obligations.

It is the understanding of the conferees that, while the "uncompensated services" regulations are appropriate in a hospital context, they may not give adequate recognition to the different characteristics of nursing homes from the standpoint of determining compliance. The conferees do not intend that, in examining this question, the Secretary reconsider the issue as to whether the difference between the rates paid by Medicaid and the rates paid by private patients can be treated as Hill-Burton "uncompensated care;" Medicaid patients are not, and never have been, "persons unable to pay" for purposes of the Hill-Burton program. Instead, the conferees expect that the Secretary will identify those regulatory changes, if any, that are necessary to more appropriately define and evaluate compliance by Hill-Burton nursing homes with their "uncompensated services" obligations.

The conferees note that the Hill-Burton program is authorized by the Public Health Service Act, which is within the jurisdiction of the Senate Committee on Labor and Human Resources. Though not conferees, the committee of jurisdiction has indicated its agreement to the amendment as modified.

TITLE IV—SMALL BUSINESS PROGRAMS

House amendment

The House Amendment contained a provision relating to Small Business Act Disaster Loans.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

TITLE V—VETERANS' PROGRAMS

PART A—COST SAVINGS UNDER THE VETERANS' ADMINISTRATION PENSION PROGRAM

EFFECTIVE DATE FOR AWARD OF PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH

House amendment to the Senate amendment

The House amendment would eliminate retroactive awards of non-service-connected disability pension to veterans—currently provided where the application is received within one year from the date on which the veteran became permanently and totally disabled—for the period between the date of disability and the date the veteran filed an application for pension. The House amendment would also shorten the period for retroactive awards of death pension to survivors of war veterans by reducing, from one year to 60 days, the period during which a survivor must file an application for death pension in order to receive a retroactive award for the period between the date of the veteran's death and the date of application. These provisions would take effect with respect to applications received after September 30, 1984.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment reducing the retroactive period for survivors to 45 days and providing an exception to the provision eliminating retroactivity for veterans. The exception would be for a veteran who has a disability that, for a period of at least 30 days beginning on the date of permanent and total disability, prevents him or her from applying for pension. In order to be eligible for this exception, the veteran would be required to include in his or her application a request for a retroactive award.

PART B.—ACTIONS TO INCREASE RECEIPTS AND SAVE COSTS UNDER THE VETERANS' ADMINISTRATION HOME LOAN GUARANTY PROGRAM

INCREASE IN FEE FOR HOME LOANS GUARANTEED BY THE VETERANS' ADMINISTRATION AND EXTENSION OF FEE TO VENDEE LOANS

House amendment to the Senate amendment

The House amendment would, effective with respect to loans closed on or after the date of enactment, provide for receipts from loan orgination fees on home loans guaranteed, made, or insured by the VA to be deposited in the VA Loan Guaranty Revolving Fund. The House amendment also would extend by two years, from September 30, 1985, through September 30, 1987, the period during which such fees are imposed. Effective with respect to loans closed 30 or more days after the date of enactment, the House amendment would increase the fee from one-half of one percent to one percent and impose the fee on loans (known as "vendee loans") made by the VA to finance the purchase from the VA of properties it acquires through the operation of its home loan program.

Senate amendment

No provision. However, S. 2391, passed by the Senate on March 30, 1984, would, effective on the date of enactment, provide for loan origination fee receipts to be deposited in the Loan Guaranty Revolving Fund and, effective with respect to loans closed 14 or more days after enactment, increase the fee to one percent.

Conference agreement

The Senate recedes.

PROPERTY ACQUISITIONS

House amendment to the Senate amendment

The House amendment would, effective October 1, 1984, make certain reforms in the administration of the VA's home loan guaranty program with respect to the acquisition and disposition of properties securing loans which go into default and are liquidated through a foreclosure sale or comparable transaction (hereinafter referred to as a "liquidation sale"). Thus, the House amendment would specify the circumstances under which the VA would be required to acquire or be precluded from acquiring a property after a liquidation sale.

Although current statutory language states that when the Administrator has received notice of a default, the Administrator "shall thereupon pay" to the holder of the loan the amount payable under the guaranty, the VA, pursuant to long-standing practice and regulations, follows an administrative procedure whereby the guaranty generally is not paid until the holder of the loan has liquidated its security interest in the property. Under this procedure, it has been the VA's practice in a very high percentage of cases of liquidation sales (approximately 95 percent) to acquire the property from the lender following the sale. In some cases, however, the VA has acquired properties at prices which, when combined with the costs of owning temporarily and selling the property and any amount remaining payable under the guaranty, have resulted in total VA expenditures in connection with the property exceeding the amount for which the United States was liable under the guaranty. The House amendment was designed to ensure that acquisitions are not made where they would result in net costs to the VA (after re-sale) in excess of what the VA would pay under the guaranty if it did not acquire the property. Thus, the House amendment set forth statutory criteria under which, depending on the estimated net value, the amount of the total indebtedness, and the VA's liability under the guaranty, either the holder of the loan would have the statutory option to see the property to the VA or the VA would not be permitted to acquire it.

The House amendment would also amend the provision in current law (section 1816(a) of title 38, United States Code) requiring the Administrator, upon receiving notice of a default, to pay to the holder of the loan the pro rata portion of the guaranty (which, under section 1803(b) of title 38, decreases or increases in proportion to any decrease or increase in the amount of the unpaid portion of the obligation). That amendment would specify that, subject to the above-noted provisions specifying criteria for liquidation sales, the Administrator would have the authority, but would not be required, to pay the guaranty upon receiving notice of default.

Senate amendment

No provision.

Conference agreement

The Senate recedes with clarifying amendments and amendments adding provisions relating to the use of VA and private attorneys to bring foreclosure and eviction suits in court and requiring a report on the VA's loan guaranty program.

The provisions of the conference agreement regarding property acquisitions are as follows:

Definitions

The term "defaulted loan" would be defined (as in the House bill) so as to limit the scope of the property-acquisition provisions to VA-guaranteed home loans other than those made for manufactured homes and guaranteed under section 1819(a) of title 38.

The term "liquidation sale" would be defined broadly (as in the House bill) to include not only a judicial foreclosure sale but also such other liquidation procedures, for example, a deed in lieu of foreclosure, as may be permitted under the law of the State in which the property is located. Because loan liquidation procedures differ in the various States, and because within any particular State there may be several alternative means of foreclosing on a defaulted loan, the conferees have not attempted to set forth a comprehensive definition of a liquidation sale. It is the conferees' intention that the term would apply to any involuntary or voluntary conveyance, pursuant to applicable State law, of the property securing a defaulted loan for the purpose of liquidating the security interest of the loan holder, with the net proceeds of the conveyance being used to satisfy, at least in part, the indebtedness.

The term "net value" would be defined as fair market value minus the total estimated costs that the VA would incur (other than the purchase price) in connection with acquiring the property after a liquidation sale and thereafter disposing of it. This term is not used in the current VA regulations governing liquidation sales and VA acquisitions following those sales (primarily section 36.4320 of title 38, Code of Federal Regulations). However, the regulations refer to a roughly comparable concept—"the minimum amount which shall be credited to the indebtedness on account of the value of the security to be sold"—and use that concept in a fashion similar to the way "net value" is used in the conference agreement. Thus, the "amount . . . credited . . . on account of the net value of the security" is currently used as an indicator of the price at which the lender may purchase the property at the liquidation sale and re-sell it to the VA, that is, where that amount exceeds the total indebtedness minus the amount payable under the guaranty. In determining net value under the conference agreement, the Administrator would be required to subtract from fair market value all of the estimated costs that the VA would pay in acquiring and disposing of the property.

With respect to the costs of administration—one of the cost categories specified in the conference agreement—the conferees note their intention that this category include in-house costs to the VA that are clearly and directly related to acquiring, holding, and disposing of the property. The VA personnel costs involved would be an example.

In connection with the VA's calculation of the costs of acquiring and disposing of properties, the conferees do not intend to change the VA's current policy of not considering interest costs that the United States would incur if it were necessary for the Government to borrow the funds for a particular acquisition. If the Administrator determines that a change to this policy is warranted, notwithstanding the conferee's position as stated above, the Administrator shall, not later than the February 1 preceding the fiscal year in which a proposed change would take effect, provide the Veterans' Affairs Committees with notice of the change.

The conferees also note their understanding that, in assessing the fair market value of a property, the Administrator obtains appraisals of the property "as is" and of what the property would be worth if certain improvements were made. It is the conferees' intention, in any case in which the costs of improvements are included in the costs being deducted from fair market value to arrive at net value, that the fair market value figure include the estimated addition to the value of the property that would result from those improvements. Of course, where no improvements are planned, an "as is" appraisal would be used and no deduction would be made for estimated costs of any improvements.

The term "total indebtedness" would include (1) the unpaid principal, (2) the interest on the loan as of the liquidation sale, or such earlier date following the expiration of a reasonable period for the sale to occur as the Administrator may specify pursuant to regulations, and (3) other reasonably necessary and proper charges that are specified in the loan instrument and permitted by VA regulations.

The conferees note that, under the last sentence of present section 1816(a) of title 38, United States Code (proposed to be designated as paragraph (3) of section 1816(a) by the conference agreement), the Administrator has the authority to establish a date prior to "the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease." It is the conferees' intent that the Administrator, in implementing this authority in conjunction with the above-described definition of "total indebtedness", not impose a cut-off date in a case in which the delay in the liquidation is reasonably attributable to the holder's forbearing with the agreement of the parties to the loan (as provided for in the third sentence of present section 1816(a) (proposed to be included, with the second sentence, in a paragraph (2) of section 1816(a)). However, the conferees do intend that the authority be used when an unreasonable delay in liquidation is the result of other action or inaction on the part of the holder of the loan at the expense of either the United States Government or another party to the loan.

Circumstances for acquisitions

The operative provisions of the conference agreement would cover all cases in which the holder of a defaulted loan undertakes to liquidate the loan by means of a liquidation sale, except where the Administrator, pursuant to the second sentence of present section 1816(a) (proposed to be included with the third sentence in a paragraph (2) of section 1816(a)), elects to pay the holder of the loan the unpaid balance of the loan plus accrued interest and receive an assignment of the loan and security. Before carrying out a liquidation sale, the holder of the loan would be required, in accordance with VA regulations implementing the conference agreement, to notify the Administrator of the proposed sale. After receiving that notice, the Administrator would be required to determine the net value of the property and the total indebtedness and to notify the holder of the loan of the net value determination.

The conference agreement provisions with respect to the circumstances for VA acquisitions—which incorporate the substance of the corresponding House bill provisions with the addition of the provision described at item 1(c), below—are as follows:

1. Where net value exceeds total indebtedness minus the amount guaranteed (which would be the pro rata amount determined under section 1803(b) of title 38, as noted above):

(a) If the holder acquires the property for an amount not exceeding the lesser of net value or the total indebtedness, the holder would have the option to sell the property to the VA in return for the lesser of net value or total indebtedness and the loan-guaranty liability would be limited to total indebtedness minus net value.

(b) If the holder either does not acquire the property or acquires it for an amount exceeding the lesser of net value or total indebtedness, the Administrator would not be permitted to accept conveyance of the property, except as noted at item (c), below, and the loan-guaranty liability would be limited to total indebtedness minus the greater of net value or the amount realized by the holder incident to the sale.

(c) If the holder acquires the property for a liquidation sale price exceeding the lesser of total indebtedness or net value and that price was the minimum price for which, under applicable State law, the property was permitted to be sold at the liquidation sale, the Administrator would have discretionary authority to accept conveyance for a price not exceeding the lesser of the liquidation sale price or the total indebtedness, and the loan-guaranty liability would be limited to total indebtedness minus the greater of net value or the amount realized by the holder incident to the sale.

2. Where net value does not exceed total indebtedness minus the amount guaranteed, the Administrator would not be permitted to accept the conveyance of the property, and the loan-guaranty liability would be limited to the total indebtedness minus the amount realized by the holder incident to the liquidation sale.

The conferees note that it is their intention to make major changes with respect to current VA policies and practices with respect to acquisitions in only the following ways: requiring the VA to take its costs of administration into account in ascertaining the value of a property to the VA (net value) and prohibiting the VA from acquiring the property in certain cases.

These modifications—together with provisions codifying current policies and practices—are designed to maintain the effective functioning of the loan guaranty program and make its operation more economical and, thus, to help ensure that the program will continue to be able to fulfill its basic purpose of assisting eligible veterans to buy homes.

In addition, the conferees note the need for implementing regulations to provide a great deal of detail regarding the transactions involved. For example, the conferees expect that the regulations would specify the terms and conditions for the conveyances of property to the VA permitted in the situtations described at items 1 (a) and (c), above. As another example, the conference agreement provides no specifics regarding the method or deadlines for the provision of any notices. However, it is the conferees' understanding that such notices are provided routinely and effectively at the present time, and the conferees do not intend any undue complication of that process.

Sunset provision

The conference agreement provisions relating to property acquisitions would expire on October 1, 1987.

Use of VA and private attorneys to bring foreclosure actions

The conference agreement would require the Administrator, within 180 days after the date of enactment, to authorize VA attorneys to exercise the right of the United States to bring suit in court to foreclose loans made or acquired by the VA under chapter 37 of title 38, United States Code, relating to home loans made, guaranteed, or insured by the VA, and to recover possession of any property acquired by the Administrator. The Administrator would also be provided with the authority, subject to the concurrence of the Attorney General, to acquire the services of non-VA attorneys to bring such suits. The activities of all attorneys in bringing suit under this provision would be subject to the direction and supervision of the Attorney General and to such terms and conditions as the Attorney General may prescribe. In addition, the conference agreement contains a provision to clarify that this measure would not derogate from the Attorney General's authority to direct and supervise all litigation to which the United States or an agency or officer thereof is a party.

Not later than 180 days after enactment, the Administrator and the Attorney General would be required to submit to the appropriate Congressional committees a joint report describing and explaining the actions they have taken to implement the provision relating to the use of VA and private attorneys, as well as their views on the advisability of the VA's use of private attorneys to bring suits to foreclose on loans and recover possession of property.

The conferees are advised that delays in bringing foreclosure and eviction proceedings are resulting is estimated costs of $2 million annually that could be eliminated through prompt judicial actions. The conferees expect this provision to be implemented so as to avoid this waste of federal funds.

With respect to the use of private attorneys, the conferees note that, in cases where the property involved is a long distance from the nearest VA-employed attorney's office, it may be in the best interest of the United States to acquire the service of local, private attorneys to bring suit. Thus, the conferees urge that the Administrator and the Attorney General, working together, give every consideration to developing, at a minimum, pilot projects using private attorneys in those circumstances.

Report on administration and functioning of the loan guaranty program

Not later than December 1, 1986, the Administrator would be required to submit to the House and Senate Veterans' Affairs Committees a report on the administration and functioning of the VA's loan guaranty program, and the status of the Loan Guaranty Revolving Fund. The report would be required to include a description of actions taken and planned by the Administrator to maintain the effective functioning of the program and to ensure the solvency of the Fund; the Administrator's evaluation of the effects of the conference agreement provision relating to acquisitions of properties after liquidation sales and to vendee loans; and the Administrator's recommendations regarding any need for administrative or legislative action with respect to the loan guaranty program.

Vendee loans

House bill

The House amendment would, effective on October 1, 1984, require the Administrator to reduce to the maximum extent practicable the number of loans (known as "vendee loans") made by the VA to finance the purchase from it of acquired properties. In addition, the House amendment would prohibit the VA from providing vendee loans for more than 75 percent of such purchases in any fiscal year, except that the Administrator would have the authority to increase that limitation to 80 percent in any fiscal year if the Administrator determined that doing so was necessary in order to protect the interests of the United States.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment.

Limitation on making vendee loans

The conference agreement retains the House provision setting a ceiling on the percentage of purchases of property from the VA which may be financed be vendee loans during any fiscal year. The House provision requiring the Administrator to reduce the number of vendee loans is modified in the conference agreement so as to require the VA to minimize the number of vendee loans to the greatest extent consistent with certain specified limitations and with maintaining the effective functioning of the VA loan guaranty program. In addition, the conference agreement would require that not less than 60 percent of the purchases during any fiscal year of property acquired by the VA be financed by vendee loans. Also, the House provision that would authorize the Administrator to increase the maximum to 80 percent for any fiscal year is modified so that, before exercising the authority, the Administrator would be required to determine that the increase was necessary to maintain the effective functioning of the loan guaranty program.

It is the conferees' intention that, in carrying out this provision, the VA will analyze the properties in its inventory and encourage the procurement of private financing by sales agents and prospective purchasers in cases where the properties appear to be marketable with non-VA financing.

Sale of vendee loans with recourse

In addition, the conference agreement contains a provision, also effective October 1, 1984, relating to VA sales of vendee loans to private investors "with recourse"—that is, with the right to sell back to the VA, at no loss to the investor, a loan that is in default for a specified period of time. Under this provision, the VA would not be permitted to sell vendee loans with recourse unless the Administrator determined that doing so was necessary in order to maintain the effective functioning of the loan guaranty program.

Sunset provision

The conference agreement provisions relating to vendee loans would expire on October 1, 1987.

Subtitle A—Improvements in OASDI Program

1. Tax-Exempt Interest in Calculation of Taxable Social Security Benefits

Present law

Under the 1983 Social Security Amendments, beginning in 1984, a taxpayer adds tax-exempt interest to adjusted gross income and half of social security benefits as the first step in calculating the amount of benefits subject to tax. From this sum is subtracted a $32,000 threshold ($25,000 for single individuals). Half the excess (but never more than half of benefits) is included in adjusted gross income.

House bill

No provision.

Senate amendment

The Senate amendment deletes tax-exempt interest from the formula used to calculate the amount of taxable social security benefits, effecive for taxable years beginning after December 31, 1983.

Conference agreement

The conference agreement follows the House bill.

2. Social Security Treatment of Certain Church Employees

Present law

Under the Social Security Amendments of 1983, employees of religious and other nonprofit organizations (not including ministers or members of religious orders) are subject to mandatory social security coverage, effective January 1, 1984. Prior to these amendments, employees of nonprofit organizations were exempt from social security coverage unless the organization waived, or was deemed to waive, its exemption.

The FICA tax rate is 7 percent each for employees and employers (for a combined 14 percent rate) in 1984, increasing to a combined rate of 15.3 percent in 1990. A credit (0.3 percent of wages) is allowed in 1984 against the employee FICA tax. For employees of tax-exempt oganizations, wages of less than $100 per calendar year are not subject to social security taxes.

The tax rate applicable to self-employed individuals (SECA) equals the combined employee-employer FICA rate. For 1984 through 1989, a self-employment tax credit (2.7 percent in 1984) lowers the effective SECA rate.

House bill

No provision.

Senate amendment

Election of SECA treatment

The Senate amendment allows a one-time irrevocable election by a church or qualifying church-controlled organization to exclude from the FICA tax base remuneration for all services performed for the organization, other than in an unrelated trade or business. The employees of organizations so electing will be liable for self-employment (SECA) taxes with respect to the excluded services.

For employees of electing organizations, wages of less than $100 per calendar year are not subject to SECA taxes and the SECA tax base is generally conformed to the applicable FICA rules.

Electing organizations remain subject to income tax withholding and reporting requirements with respect to all employees. Treasury may revoke an election for continuing failure to provide required information.

This provision is effective for services performed on or after January 1, 1984.

Eligibility to make election

An election is available to: (1) churches (including conventions or associations of churches), (2) elementary or secondary schools controlled, operated, or principally supported by churches (or conventions or associations of churches), and (3) church-controlled tax-exempt organizations (sec. 501(c)(3)), except any such organization which both

(A) offers goods, services, or facilities for sale to the general public (e.g., to persons who are not church members), other than on an incidental basis and other than at a nominal charge, and also

(B) normally receives more than 25 percent of its support from the sum of (a) governmental sources, and (b) receipts from admissions, sales of merchandise, performance of services or furnishing of facilities other than in unrelated trades or businesses.

To make an election, an organization must state that it is opposed for religious reasons to payment of social security taxes.

Procedure for making election

An election must be made prior to the first date, more than 90 days after enactment, on which the electing organization's quarterly employment tax return would be due. The election would apply to services performed on or after January 1, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

The conferees agreed to the amendment in order to provide mandatory coverage under social security for employees of churches and at the same time allow the religious convictions of certain employing churches to be reflected in the choice not to be subject to the employer tax. In adopting the amendment, it is not the intention of the conferees to express an opinion on the constitutionality of the original coverage provision of the 1983 amendments.

3. Coverage of Employees Under Social Security and Federal Retirement Systems

a. Breaks in service

Present law

The Social Security Amendments of 1983 provided social security coverage for newly hired Federal civilian employees effective with remuneration paid after December 31, 1983. Persons continuously in the employ of the United States since December 31, 1983 (or with a break in such employment of 365 days or less) will not be covered. Legislative branch employees are covered by social security unless they were covered by the Civil Service Retirement System (CSRS) on December 31, 1983.

Contrary to the intent of P.L. 98-21, there are several gaps and anomalies under current law. First, a person in Federal employment that is already covered by social security, (mainly the armed services, which have been covered since 1956) can retire from military service, enter Federal civilian service, and be exempt from social security. Conversely, a person who only technically severs his Federal civilian employment connection in order to serve a term of duty with an international organization would be treated as having had a break in service upon his return to domestic service, and would be covered under social security if such break exceeded 365 days.

House bill

In order to prevent Federal employees who had been previously covered under social security from losing coverage as a result of a break in service of more than 365 days, the House bill provides that persons transferring from other government service to civilian service will be covered under social security, unless (a) the other service was in an international organization, or (b) the person is returning to civilian service after temporary military or reserve duty and is exercising reemployment rights under chapter 43 of title 38, U.S.C.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

b. Legislative branch employees

Present law

Legislative branch employees who were covered by CSRS on December 31, 1983, can withdraw from CSRS after that date and not be covered by social security of CSRS.

House bill

The House bill provides that legislative branch employees who were covered under either CSRS or another Federal civilian retirement system on December 31, 1983, but who have a break in service of less than a year after that date, will be covered by social security on their return or transfer to legislative employment unless they elect coverage under CSRS within 45 days. This provision will also allow legislative branch employees who take periods of leave without pay of less than a year to return to legislative branch employment without disturbing their participation in the Civil Service Retirement System, as long as they re-elect coverage within 45 days.

Senate amendment

The Senate amendment is similar to the House bill, except individuals who elect to receive a refund of CSRS contributions or who have legislative branch employment which is not covered under CSRS would lose their exemption from social security.

Conference agreement

The conference agreement follows the Senate amendment with a modification.

The conference agreement provides that any legislative branch or other Federal employee who withdraws from the civil service retirement system (CSRS) after June 14, 1984 and takes a refund of his contributions may not thereafter be exempt from social security coverage while employed in the legislative branch. In addition, an individual who has any legislative branch employment after June 14, 1984 which is not subject to the CSRS could not also be exempt from social security coverage (regardless of whether he has applied for a refund of his prior civil service retirement contributions). Employees in the legislative branch who take leaves of absence without taking a refund of their CSRS contributions may (according to the practice of the employing office) continue to be covered under CSRS. If they are not automatically re-covered under CSRS, they will be covered under social security unless they re-join CSRS upon resumption of their legislative branch employment.

Under the conference agreement, the exemption for social security coverage will also cease to be available to any individual who took a refund of CSRS contributions based on a separation or transfer during the period from January 1, 1984 through June 14, 1984 or who has legislative branch employment which was not covered under CSRS during that period. However, any such individual can reestablish the exemption (provided that he was covered under CSRS or another Federal retirement system on December 31, 1983) if he has reentered the CSRS after the point when he last withdrew from it and prior to the 31st day after enactment. For an individual who is not in Federal employment on the date of enactment, the 30-day period will run from the date on which he again becomes a legislative branch employee. An individual will be considered to have reentered the CSRS if he applies to do so within the appropriate time and the coverage subsequently does become effective.

c. Nonprofit organizations

Present law

Effective January 1, 1984, employees of all nonprofit organizations are covered by social security on a mandatory basis. Employees in certain nonprofit organizations (Legal Service Corporations, for example) who are covered on a mandatory basis by the Civil Service Retirement System (CSRS) will thus be covered on a mandatory basis by social security as well. These employees are not provided relief from double-taxation under Title II of the Federal Physicians Comparability Allowance Amendments of 1983 (Public Law 98-168), known as the Federal Employees' Retirement Contribution Temporary Adjustment Act.

House bill

No provision.

Senate amendment

Under the Senate amendment, employees of nonprofit organizations who are covered on a mandatory basis by CSRS would be treated like Federal employees for purposes of social security. They would therefore be covered by social security only if newly hired after January 1, 1984, or if they had a break in Federal service lasting more than 365 days. In such cases, the provisions of P.L. 98-168 would apply to them. This provision would apply to services performed on or after January 1, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

4. Increased Enforcement of Earnings Test

Present law

Social security beneficiaries are not required to file earnings reports until the close of the calendar year.

House bill

The House bill requires the Secretary to implement procedures for obtaining earnings reports earlier than under present law and to make earlier adjustments of benefit amounts on account of excess earnings.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Subtitle B—Improvements in SSI and AFDC Programs

PART 1.—IMPROVEMENTS IN SSI PROGRAM

1. Increase in Dollar Limitations Under SSI Assets Test

Present law

SSI eligibility is restricted to qualified persons who have countable assets of less than $1,500, or less than $2,250 in the case of married couples. (This amount has not been increased since the SSI program began in 1974.)

In determining assets, a number of items are not included, such as the individual's home; life insurance policies with a total face value of $1,500 or less; and, within reasonable limits set by the Secretary of Health and Human Services, household goods, personal effects and an automobile. Regulations place a limit of $2,000 in equity value on excluded household goods and personal effects and exclude the first $4,500 in current market value of an auto (100 percent of the auto's value if it is used for medical treatment or employment or has been modified for use by a handicapped person). The dollar limits on household goods and personal effects and the limit on the value of the automobile have been increased by regulation once since 1974. In 1976, SSI law was changed to eliminate limitations on the value of a home. Assets, tools and other property essential to self-support are also excluded.

In 1982, a provision was added to also exclude from counted resources the value of burial plots. In addition, to provide SSI applicants and recipients an alternative to the life insurance exclusion previously described, the 1982 amendment allows for the exclusion of up to $1,500 of separately identifiable funds set aside for burial expenses.

House bill

Increase the countable assets limit by $100 a year for an individual and $150 a year for a couple, beginning in calendar year 1985, and each year through calendar year 1989. The limit would be $2,000 for an individual and $3,000 for a couple in 1989 and thereafter. Effective January 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The conferees believe that a major purpose of allowing SSI recipients to retain a certain amount of assets is that recipients sometimes incur major costs of an urgent nature which cannot be met from the monthly grant. An example would be the need to replace a furnace or other essential appliance. The managers are concerned that an increase in the assets limit target additional Federal costs on recipients who already have accumulated the maximum allowable reserves against such contingencies rather than on those who may be without any resources to deal with such emergencies. The managers direct the Secretary to examine this problem and report to the Congress by June, 1985 with recommendations on it. If the Secretary is able to recommend a more appropriate way to deal with this problem, the managers intend that the proposed increases for years after 1985 should be replaced by a more targeted approach.

2. Limitation on Recoupment Rate in Case of Overpayments

Present law

The Secretary is authorized to recover SSI overpayments by adjusting future payments or by direct recovery from the individual. Overpayments may be waived under conditions specified in law and regulations. When an overpayment is detected, SSA sends a notice to the recipient. The notice contains information regarding relief from recovery and rights of appeal. In addition it requests a full refund, and, in those cases where the individual is still receiving benefits, it proposes full withholding of the monthly benefit. The notice also indicates that the individual should contact SSA if he disagrees with the proposed rate of recoupment.

House bill

In the case of overpayments, limits the amount of adjustment or recovery in any month to the lesser of: (1) the amount of the benefit for that month; or (2) an amount equal to 10% of the countable income (including the SSI payment) of the individual (or couple) for that month. This limitation would not apply if there is fraud in connection with the overpayment. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment which allows the recipient to request a different rate at which income may be withheld or recovered. The managers intend that the notice sent to claimants shall clearly indicate that a 10 percent rate of withholding is the norm and that the beneficiary may agree to a faster rate of repayment, but the managers direct that such information not be presented in a manner which would lead recipients to believe that faster repayment is expected or required.

To make clear that the 10 percent applies to the total Federally administered benefit rate, the conference agreement specifically states that State supplementary benefits are included. It is not intended that this reference should give rise to any inference as to whether or not such supplementary payments are intended to be included when the term "benefits under this title" is used elsewhere in the law.

3. Limit on Recovery of Overpayments When Recipient Has Excess Assets

Present law

If, in any month, a recipient's assets exceed the asset limit (currently $1,500 for an individual and $2,250 for a couple) the individual is ineligible for benefits in that month and the entire amount of the benefit paid for that month is considered an overpayment subject to recovery. These overpayments are subject to waiver.

House bill

Limits the amount that may be considered an overpayment (and therefore subject to recovery) in the case of recipients whose assets had exceeded the dollar asset limitations to the lesser of: (1) the amount of the benefit paid; or (2) the greatest amount by which the total value of the assets exceeded the dollar asset limitation for a period of one or more consecutive months during such period. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modification: instead of the provision in the House bill, in any case where there is an overpayment based on an excess of assets of $50 or less, the recipient would be deemed to be without fault for purposes of waiving the overpayment unless the Secretary finds that the failure to report the excess was knowing and willful on the part of the recipient.

The managers intend that, in cases where an individual is found for the first time to have minimal excess assets of $50 or less, the provision will ordinarily require a waiver of the resultant overpayment just as if the Department had found that the existing law requirements for waiver were fully met. The only exceptions anticipated would be cases where there is blatant evidence that the recipient was fully aware of the requirements of the law and of the existence of the excess assets and chose to conceal them. The managers further intend that where waiver is required under this provision, the Department will undertake to provide adequate instruction and monitoring to minimize the likelihood that an inadvertent overpayment would again occur. The managers recognize that there can be cases where larger amounts of excess assets can exist in circumstances where it would be inappropriate to require full repayment of SSI benefits. However, the managers believe that such situations should be adequately provided for by an existing statutory provision which directs the Secretary to avoid penalizing individuals who are without fault. The Secretary is directed to review the regulations and procedures implementing this statutory provision and to make any necessary changes to assure that a realistic assessment of the culpability of individuals is made.

4. Exclusion of Retroactive Payments From Resources

Present law

For purposes of determining SSI eligibility and benefit amounts, a retroactive SSI check is not counted as income to the recipient. By regulation, SSA has provided that a retroactive SSI check is not counted as a resource for three months beyond the month in which it is received. A title II retroactive check is considered to be unearned income in determining the applicable monthly benefit amount, and is considered a resource if it is retained in months thereafter.

House bill

Provides that SSI and title II retroactive benefit payments may not be considered as a resource for a period of 12 months from the date the payment is received. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment limiting the exclusion to six months after the month in which the SSI or title II retroactive benefit is received.

5. Adjustments in SSI and OASDI Benefits on Account of Retroactive Benefit Payments

Present law

The SSI statute contains provisions aimed at ensuring that an individual's entitlement under the Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs do not result in windfall benefits. Under present law, OASDI benefits that are paid retroactively following the initial determination of eligibility are reduced by the amount of any excess SSI benefits that have been paid because the OASDI benefits have been received in a lump sum rather than in the months when regularly payable.

House bill

No provision.

Senate amendment

Amends the present law requirement to allow the adjustment of benefits in additional situations:

(1) in the case where retroactive OASDI benefits are paid before the SSI benefits, but for the same period, the retroactive SSI

amount otherwise payable would be reduced by the amount that would not have been paid had OASDI been paid when regularly due;

(2) the provision would allow for an adjustment of SSI and OASDI benefits which result from either an initial determination of eligibility or a resumption of payments following a period of suspension or termination of those benefits. In cases where retroactive OASDI benefits result from post-eligibility events, such as earnings recomputations, the Secretary would be authorized to adjust those benefits when it is administratively feasible; and

(3) present law would be amended to coordinate the benefit adjustment provision with the SSI retrospective accounting system. Under present law, it is possible that the two-month lag in counting OASDI income for purposes of determining the SSI benefit amount can result in adjustment for less than the full retroactive period. The proposed change would make it possible to adjust benefits paid for the entire retroactive period. The provision would apply to retroactive benefits (either OASDI or SSI) payable beginning 7 months after enactment.

Conference agreement

The conference agreement follows the Senate amendment.

6. Exclusion From Income of Alaska Bonus Payment

Present law

An amendment to the SSI statute in 1975 provided for the exclusion from countable income of the Alaska "longevity bonus." This exclusion is defined in the SSI law as a monthly payment made by a State under a program established prior to July 1, 1973, if eligibility for the payment is not based on need and is based solely on attainment of age 65 and duration of residence in the State. As the result of an Alaska State Supreme Court decision, Alaska enacted a revision that reduces the residency requirement from 25 years to one year.

The bonus payment is presently $250 monthly per person.

House bill

No provision.

Senate amendment

The conference agreement provides for the continual exclusion from countable income of Alaska's longevity bonuses, even though a change was made in the bonus program to conform it with the Supreme Court decision which may disqualify the program as not having been established before July 1, 1973. Effective on enactment.

Conference agreement

The conference agreement follows the Senate amendment with the modification that continued disregard of the Alaska bonus would apply only to those individuals who, prior to October 1, 1985, meet the 25-year residency requirement of eligibility for the Alaska bonus as it was in effect prior to the recent amendments mandated by the courts. This will avoid an abrupt cut-off for those individuals who have been receiving this disregard for many years or who had, for many years, reason to expect that the disregard would be available.

PART 2—IMPROVEMENTS IN AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM

1. Gross Income Limitation

Present law

Eligibility for AFDC is limited to families with gross incomes (income before application of any disregards) at or below 150 percent of the State's standard of need.

House bill

Sets a new gross income limit of 130% of poverty, updated annually. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modification: the gross income limitation is increased to 185 percent of the State standard of need.

2. Work Expense Deduction

Present law

States are required to disregard to first $75 of monthly earnings for full-time employment (in lieu of itemized work expenses). A lower work expense deduction must be established for part-time workers.

House bill

States would be required to disregard the first $75 of monthly earnings for full- and part-time employment. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Continuation of $30 Disregard From Earned Income

Present law

States are required to disregard the following amount of a recipient's monthly earnings, in the following order: (1) the first $75 (less for part-time work); (2) child care costs up to $160 per child; and (3) plus one-third of earnings not previously disregarded. The $30 plus one-third disregard is allowed only during the first 4 consecutive months in which a recipient has earnings in excess of the standard work expense ($75) and child care disregards.

House bill

Requires the application of the $30 disregard to earnings in months after the first four months in which the $30 plus one-third disregarded is applied. The one-third disregard would continue to be limited to four months. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modification: the $30 disregard would be limited to 12 months. The one-third disregard would continue to be limited to 4 months.

4. Work Transition Allowance

Present law

In determining benefits for AFDC recipients, States must disregard $30 plus one-third of monthly earnings, after also disregarding specified amounts for work expenses and child care. The $30 plus one-third desregard may be applied only for four months.

If a family loses eligibility for AFDC because of the four-month limit on the $30 plus one-third disregard, it also simultaneously loses categorical eligibility for medicaid. Categorical medicaid eligibility is retained after the loss of AFDC eligibility only in the case of families whose earnings increase to the point that they would be ineligible even if the $30 plus one-third disregard were applied. These families are eligible for medicaid for four additional months.

House bill

Establishes an AFDC "work transition allowance" payable to recipients who lose AFDC benefits because they are no longer eligible for the $30 plus one-third disregard of earnings. The allowance is equal to $10 a month for a period of nine months after the family loses AFDC. States may continue the allowance for an additional six months in the case of a family that would be eligible for AFDC if the $30 plus one-third disregard were applied. The allowances are eligible for Federal matching on the same basis as regular AFDC benefits, and recipients of the allowances are considered recipients of AFDC for all purposes of the Social Security Act, including medicaid.

Families eligible for the allowance include those who lose eligibility for regular AFDC benefits in the months following enactment, as well as those who have previously been terminated from the AFDC rolls because of the loss of the $30 plus one-third disregard. Previously terminated families would be limited to those who would otherwise have been eligible for AFDC if the $30 plus one-third dizregard had been applied, and who make application for the allowance by October 1, 1985. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modifications: (1) the $10 monthly AFDC check is eliminated; and (2) families who have been previously terminated from AFDC due to the loss of the $30 plus one-third disregard are eligible for the work transition status and Medicaid but must disclose any private health insurance coverage at the time of application, apply within six months from the date regulations become final, and must have been continuously eligible for AFDC if the $30 and one-third disregard were applied. The work transition provision requires States to provide 9 months of Medicaid coverage to families who lose eligibility for AFDC due to the termination of the one-third disregard. States have the option of extending this coverage for an additional 6 months in the case of a family that would be eligible for AFDC if the $30 plus one-third disregard were applied.

5. Clarification of Earned Income Provisions

Present law

The AFDC statute was amended in 1981 to change the way in which earned income is counted for purposes of determining eligibility and benefit amounts. As amended by Public Law 97-35, the law currently requires the States to disregard the following amounts of a family's earned income—

Eligibility Determination: (1) the first $75 of monthly earnings for full-time employment; and (2) the cost of care for a child (or incapacitated adult), up to $160 per child per month.

Benefit Calculation: (1) the first $75 of monthly earnings for full-time employment; (2) child care cost up to $160 per child per month; and (3) one-third of earnings not previously disregarded.

The $30 plus one-third disregard is allowed only during the first 4 consecutive months in which a recipient has earnings in excess of standard work expense and child care disregards.

Courts in several States have been asked to interpret whether the term "earned income" refers to the gross amount earned by an individual before deductions are taken (for income taxes, insurance, FICA, support payments, or other items, regardless of whether the deduction is voluntary or involuntary), or whether the term refers to net earnings, after such deductions are taken. Regulations issued by the Department of Health and Human Services require that the term be interpreted as referring to gross earnings. The 3rd and 4th Circuit Courts of Appeal have ruled in the Department's favor. However, the 9th Circuit Court of Appeals has ruled that the term must be interpreted as referring to net earnings. The Supreme Court recently agreed to hear the case.

House bill

Amends the AFDC statute to make clear that the term "earned income" means the gross amount of earnings, prior to the taking of payroll or other deductions. Effective on enactment.

Senate amendment

Same provision with technical differences.

Conference agreement

The conference agreement follows the Senate amendment.

6. Exclusion of Burial Plots, Funeral Agreements, and Certain Property From Resources Test

Present law

There is no exclusion in the AFDC resource test for burial plots or funeral agreements. Real property is considered as a resource available to the family both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.

House bill

Exempt from the AFDC resource limitation, one burial plot per family member, funeral agreements, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification establishing an AFDC policy on real property that is similar to SSI policy. The managers intend that by regulation, real property which the family is making a good faith effort to sell would be exempt for six months (with State option for an additional 3 months) but only if the family agrees to use the proceeds from the sale to repay the AFDC paid. Any remaining proceeds would be considered a resource.

7. Federal Matching for CWEP Expenses

Present law

The AFDC statute permits States to operate community work experience programs (CWEP) in which AFDC recipients perform community work as a condition of eligibility. Persons who are required to register for the work incentive (WIN) program would also generally be required to participate in community work experience programs.

States must provide reimbursement to a CWEP participant for transportation and other costs that the State determines are necessary and due to participation in CWEP. For purposes of Federal matching, this amount is limited to $25 a month.

House bill

Requires States to reimburse an AFDC recipient for costs incurred by him where the State is unable to provide directly any necessary transportation and day care services. (Day care costs may be reimbursed up to a limit of $160 per month per child.) These expenditures are eligible for Federal matching as administrative costs. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill but limits reimbursement of day care expenses to those determined by the State agency to be reasonable, necessary and cost effective. In no case could the reimbursement exceed $160 per month per child.

8. Retrospective Budgeting and Monthly Reporting Made Optional

Present law

States are required to determine monthly benefits retrospectively, on the basis of the actual income of the previous month. Eligibility is determined prospectively, on the basis of the current month's circumstances. States must require each family to report monthly on income, family composition, etc. The Secretary may waive the monthly reporting requirement for specified classes of recipients, upon a showing by the State that the administrative cost of monthly reporting for such recipients is not worthwhile. Retrospective budgeting may not be waived.

House bill

Allows rather than requires the States to use a retrospective budgeting and monthly reporting system. Provides Federal matching for State supplements paid under a retrospective budgeting and monthly reporting system, if the State elects to pay such supplements when the system cannot respond promptly to changes in immediate needs. Permits the Secretary to grant waivers to promote compatibility between the AFDC and food stamp monthly reporting and retrospective budgeting systems if a State chooses to operate such a system in AFDC. Prohibits the imposition of any penalty on a State for past failure to comply with the retrospective budgeting and monthly reporting system. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modifications: (1) retrospective budgeting is mandatory for cases filing a monthly report; (2) monthly reporting is used only where cost effective, but is generally required for cases with a recent work history and earned income; (3) the Secretary of Health and Human Services is authorized to grant waivers to promote compatibility between the AFDC and food stamp monthly reporting and retrospective budgeting systems (approved waivers should result in no net cost to the Federal government); and (4) the provision authorizing Federal matching for State supplements paid under a retrospective budgeting and monthly reporting system is deleted.

9. Treatment of Earned Income Tax Credit

Present law

Present law provides an earned income tax credit (EITC) for the working poor. Eligible employees may elect to receive their EITC in the form of advance payments added to their paychecks, or may apply for a refund at the end of the year.

In determining earned income for AFDC, the State must assume that an individual is receiving on an advance monthly basis the EITC payment that he or she is eligible to receive, regardless of whether the person has applied for or received the advance payment, if it is determined that the individual will be eligible for the EITC in the tax year.

House bill

Requires States to disregard the earned income tax credit (EITC) from countable income in determining AFDC eligibility and benefit amounts. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill modified to require that the earned income tax credit is counted only when actually received.

10. Demonstration Projects Testing One-Stop Service Delivery Systems

Present law

No provision.

House bill

Authorizes the appropriation of $8 million to the Secretary of HHS to make grants to assist in the development and operation of pilot projects to demonstrate ways of improving service delivery under various human service programs.

From 3 to 5 Federally assisted demonstration projects (including not more than one statewide project) designed to test the effectiveness and efficiency of integrating the delivery of human services would be established. Periodic reports from the Secretary of HHS as to the progress of selected projects and an independent study of all projects at the end of the 3 year period would be required. The Secretary of HHS would be prohibited from conducting or approving any project that would lower or further restrict the benefit levels or income or resource standards, deductions or exclusions provided under any of the programs, or that would delay benefits. Effective October 1, 1984

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. These demonstration projects are not intended to permit participating States to assume Social Security Administration responsibilities for accepting applications, making eligibility determinations, or paying benefits under the SSI program. However, State SSI activities could include providing outreach and referrals, coordinating services, and other ancillary services that are not directly part of the SSI claims taking and adjudication process.

11. Demonstration Projects Testing Common AFDC, Medicaid and Food Stamp Rules

Present law

No provision.

House bill

Allows up to five States to establish demonstration projects where AFDC definitions and budgeting procedures are conformed with the Medicaid or Food Stamp programs, or both. The Secretary would be prohibited from conducting or approving any project that would lower or further restrict the benefit levels or income or resource standards, deductions or exclusions provided under any of the programs, or that would delay the provision of benefits. A project may last up to five years. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

12. Exempt Pregnant Women From Work Requirements

Present law

All applicants and recipients of AFDC must register for employment and training unless they are: children under age 16 or in school full time; ill, incapacitated, or elderly; too far from a project to participate; or needed at home to care for a person who is ill; a caretaker relative providing care on a substantially full-time basis for a child under age 6; employed at least 30 hours a week; or the parent of a child if the other parent is required to register. There is no special exemption from the requirement for pregnancy.

House bill

Adds to those who are exempted from the work registration requirement any individual who is the third trimester of pregnancy. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

13. Treatment of Child Support Payments for CWEP Participation

Present law

Participants in CWEP may not be required to work in excess of the number of hours which, when multiplied by the greater of the Federal or the applicable State minimum wage, equals the amount of aid payable to the family.

House bill

Excludes that portion of the AFDC payment which is offset by child support collections when computing the maximum number of hours an AFDC recipient may be required to participate in CWEP. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

14. Recalculate Lump-Sum Income in Certain Circumstances

Present law

Lump-sum income received in a month is considered available as income in the month it is received and also in future months. Thus, if such income exceeds the standard of need in the month of receipt, the family is ineligible in that month. In addition, any amount of the income that exceeds the initial month's need standard is divided by the monthly need standard, and the family is ineligible for aid for the number of months resulting from that calculation. The ineligibility period may be changed only if a life threatening circumstance occurs.

House bill

Allows States to recalculate the period of ineligibility when: (1) circumstances change in ways that increase a family's financial need; and (2) such recalculation would promote the purposes of the AFDC program. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification limiting the recalculation to one or more of the following: (1) an event occurs which, had the family been receiving aid under the State plan, would have changed the amount of aid payable; or (2) the income received has become unavailable to the family for reasons beyond their control; or (3) the family incurs, becomes responsible for and pays medical expenses (as allowed by the State) which offset the lump-sum income. The agreement also clarifies that the lump-sum provision applies to earned and unearned income.

15. Waiver of Overpayments When Cost of Collection Would Exceed Amount Due

Present Law

States are required to correct overpayments and underpayments. Recovery of overpayments is made from current assistance payments, available income and resources, and, for an individual who no longer receives assistance, through the legal process. In any month when overpayments are being recovered, the AFDC payment, together with the recipient's liquid resources and all income, (without the application of earned income disregards), must equal at least 90 percent of the payment a family without other income would receive.

House bill

Allows States not to recover an overpayment when as determined by the State agency under regulations prescribed by the Secretary, it can be reasonably assumed that the cost to collect the overpayment will exceed the amount owed. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill but permits the HHS Secretary to establish limits on the amount of an overpayment that can be waived. It is the understanding of the managers that these regulations will allow States automatically to waive recoupment of overpayments of less than $35. States would continue to be required to attempt to recover all other overpayments but could subsequently elect not to pursue the overpayment if the cost to collect it would exceed the amount owed.

16. Limit on Recovery of Overpayments When AFDC Recipient Has Excess Assets

Present law

If, in any month, a recipient's assets exceed the asset limits (currently up to $1,000), the individual is ineligible for benefits in that month and the entire amount of the benefit paid for that month is subject to recovery.

House bill

Limits the amount of the overpayment which may be recovered in the case of AFDC recipients whose assets exceed limitations to the lesser of: (1) the amount of the benefit paid; or (2) the greatest amount by which the total value of the assets exceeded the dollar asset limitation during the applicable period. Effective October 1, 1984.

Senate amendment

No provision

Conference agreement

The conference agreement follows the Senate amendment.

17. Protective Payments

Present law

States are required to make protective payments, instead of direct cash payments, on behalf of AFDC recipients under certain specified circumstances. Protective payments must be made when there is failure to cooperate in the work incentive (WIN) program or the community work experience program (CWEP) and if a parent fails to assign child support rights or refuses to cooperate with child support enforcement efforts. In these cases, the parent becomes ineligible for AFDC.

House bill

Allows, rather than requires, States to make protective payments in the following circumstances: when an individual is not in compliance with WIN or CWEP requirements, and when the parent is not in compliance with certain child support requirements. The parent would continue to be ineligible for AFDC but could receive the child's payment. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and clarifies that States are permitted to make payments to a parent who fails to comply with the above mentioned procedural requirements but only if, after all reasonable efforts have been made, the State is unable to identify a suitable protective payee, and prolonging the search may prove detrimental to the well-being of the child. The amendment does not change the requirement that individuals who do not meet the procedural requirements are subject to the penalty of being removed from the grant. However, there are circumstances in which welfare agencies, after making all reasonable efforts, have been unable to find responsible protective payees to act on behalf of the AFDC unit and receive the AFDC check.

18. Suspension of Error Rate Sanctions

Present law

Prior to TEFRA (P.L. 97-248), States were required to reduce their AFDC payment error rates from fiscal year 1980 levels, to 4 percent by September 30, 1982. Regulations require the States to achieve one-third progress toward this 4-percent payment error rate goal in fiscal year 1981 and two-thirds progress in fiscal year 1982. The 4-percent goal is the standard for fiscal year 1983. An amendment in TEFRA reduced the 4-percent error rate tolerance level to 3 percent, beginning with fiscal year 1984. States may be sanctioned by being required to repay the Federal Government the Federal cost of improperly paid benefits that exceed these goals. The Secretary may waive sanctions where he determines that a State is unable to reach the required reduction in a given year despite a good faith effort.

Twenty-eight States failed to meet their AFDC target error rates for the fiscal year 1981 quality control review period and have been notified that they are subject to sanctions totaling $73.6 million unless the Secretary grants a waiver. Sanctions for fiscal year 1981, 1982, and 1983 are estimated by CBO to total $174 million.

House bill

Provides that prior to October 1, 1985 no action shall be taken to enforce or collect any quality control penalties that may be imposed on a State because of improperly paid benefits, as determined by quality control reviews. This does not absolve States of the obligation. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

19. Eligibility Requirements for Aliens

Present law

For purposes of eligibility for benefits, legally admitted aliens who apply for benefits after September 30, 1981 are deemed to have the income and resources of their immigration sponsors available for their support for a period of 3 years after their entry into the United States. The provision does not apply to sponsors of aliens who are agencies or organizations, it applies only to individuals. It also does not apply to certain categories of aliens, including refugees.

House bill

Makes ineligible for benefits an alien with respect to whom an agency or organization has executed an affidavit of support as a sponsor for the alien's entry into the United States, unless the State agency determines that the sponsoring agency or organization is no longer in existence, or that it does not have the financial ability to meet the alien's needs. The determination would be made by the State agency based upon such criteria as it may specify and upon such documentary evidence as it may require. The same categories of aliens are excluded as provided in present law. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

20. Information With Respect to Fugitive Felons

Present law

States may disclose information concerning ADFC applicants and recipients only for purposes connected with: (1) the administration of the child welfare, WIN, child support, SSI, Medicaid, or title XX social services programs; (2) any investigation, prosecution, or criminal or civil proceedings related to the administration of the program; (3) the administration of any other Federally-assisted program which provides assistance or services based on need; or (4) any audit or similar activity conducted in connection with the administration of any such plan or program by an authorized governmental entity.

House bill

Allows the disclosure to law enforcement officers of the name and current address of any AFDE recipients who are fugitive felons if the agency is given the recipient's social security number and satisfactorily demonstrates that the recipient is a fugitive felon. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

21. Payment Schedule for Reimbursement of Back Claims Due to the States

Present law

Two laws have recently been enacted with respect to Federal reimbursement for prior-year expenditures under the AFDC, Medicaid and title XX programs.

P.L. 96-272 provided that a claim for a pre-fiscal year 1980 expenditure may not be paid unless it was filed prior to January 1, 1981. (However, the Act also provided that payment may not be denied with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs, whenever filed.)

P.L. 97-276, the 1983 continuing resolution, provided that, notwithstanding P.L. 96-272 or a specified U.S. Circuit Court of Appeals decision, no payment could be made prior to fiscal year 1984 for pre-fiscal year 1979 expenditures unless the claim was filed wtihin one year after the fiscal year in which the expenditure occurred. Beginning in fiscal year 1984, any payment required to be reimbursed by a court decision in any case filed prior to September 10, 1982, must be made in accordance with a schedule to be established under the Social Security Act.

There is disagreement as to whether the 1983 continuing resolution had the effect of permanently overriding the provision in P.L. 96-272 that requires reimbursement for any adjustments to prior year costs (and other specified payments), regardless of when they are filed, thereby extinguishing all claims for reimbursement for pre-fiscal year 1979 expenditures unless they were filed within one year after the fiscal year in which they occurred, or were asserted in a case filed prior to September 30, 1982.

House bill

Establishes the payment schedule called for in P.L. 97-276 with respect to court-ordered reimbursements as follows: for expenditures identified in the U.S. District Court decision State of Connecticut v. Heckler and allowed by the Department of HHS prior to enactment of this bill, payment must be made within 30 days after enactment. For other pre-fiscal year 1979 expenditures identified in that or any other decree in a suit filed prior to September 30, 1982, payment must be made as soon as the expenditure is determined by the Department to be an allowable claim. Effective on enactment.

Senate amendment

Identical provision. Also prohibits reimbursement for pre-fiscal year 1979 claims, whether asserted as an adjustment to prior years costs or otherwise, if not filed by May 15, 1981 (unless they are identified in the above specified court decrees). Effective on enactment.

Conference agreement

The conference agreement follows the House bill.

22. Grant Diversion Program

Present law

AFDC applicants and recipients are required to register for work or training under the work incentive (WIN) program unless they are specifically exempt. States have the option of operating a WIN demonstration program (in lieu of the regular WIN program) which gives them greater flexibility in designing their work and training activities. In addition, they may operate community work experience, employment search, and work supplementation programs. Under a work supplementation program, States may reduce the need standard and/or revise the earned income disregards and use these funds to subsidize jobs for AFDC recipients. The statute limits Federal funding for an AFDC program which includes a work supplementation component and limits the subsidized jobs to those in public or nonprofit organizations.

There is no specific authority to operate grant diversion programs (in which all or part of the AFDC grant is used to supplement wages for jobs provided by public or private employers). These may be operated only under waivers granted by the Secretary.

House bill

Allows States to operate a grant diversion program in all or part of the State. States must enter into contracts with public or private employers in the State under which the employers will provide employment (in the form of on-the-job training or otherwise) for eligible individuals for up to nine months. The payment to each employer with respect to each individual who is employed must be the lesser of: (1) the maximum amount that could have been paid directly to the individual or his family at the time of initial placement on the job, if the individual or family had no income; or (2) 50 percent of the wages paid to the individual for his employment under the program. States are given discretion to determine which employers and job positions are to be included in the program.

To be eligible for the program an individual must be eligible to recieve AFDC at the time of initial placement in a job under the program. Individuals employed in the program must be a given employee status. Wages paid under the program are considered earned income for purposes of any provision of law. For those individuals whose wages otherwise do not make them ineligible for benefits, States are allowed to apply the $30 plus one-third disregard provision to earnings for the duration of the individual's participation in the program. States would not be subject to the funding limitations that apply to a work supplementation program.

Participants in the program (and their households) are eligible for Medicaid. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with modifications. To allow States to operate grant diversion programs, the current work supplementation program would be modified in the following manner: (1) private employers could be used; (2) States would be permitted but not required to offer a $30 plus ⅓ earned income disregard for up to 9 months for participants; (3) federal funding would be limited to the aggregate of 9 months worth of unreduced welfare grants for each participant in the work supplementation program (or less if the person participates for less than 9 months); and (4) a State would be permitted to develop its own method by which AFDC grants are diverted to wages under the grant diversion program and would not be limited to the methods allowed under Section 414(b) (for example, States may choose to divert a grant on an individual case basis or pool the grants of AFDC recipients actually participating in the grant diversion program).

23. Permanent Extension of Provisions for Disregarding In-Kind Assistance

Present law

SSI

In determining income, the law provides for excluding any support or maintenance assistance furnished to or on behalf of an individual which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (both heating and cooling), and which is: (a) assistance furnished in-kind by a private nonprofit agency; or (b) assistance furnished by a supplier of home heating oil or gas, or by an entity providing home energy.

AFDC

The same income exclusions may be applied to the AFDC program at the option of the State.

These are temporary provisions of law.

House bill

Repeals the time limitations on these provisions and makes them a permanent part of the law. Effective October 1, 1984.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill but would extend the provisions until October 1, 1987.

24. Parents and Siblings of Dependent Child Included in Filing Unit

Present law

There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. In addition, a mother who is a minor may be excluded if she is supported by her parents. However, if she has no income of her own which may be attributed to her child, the child may qualify for assistance as a one-person unit. The income of the minor parent's parents is not considered in determining the eligibility of the child.

House bill

No provision.

Senate amendment

Requires States to include in the filing unit the parents and all minor siblings living with a dependent child who applies for or receives AFDC. SSI recipients and stepbrothers and stepsisters are excluded from this requirement. In addition, if a minor who is living in the same home as his parents applies for aid as the parent of a needy child, the income of the minor's parents would be counted as available to the filing unit. The rules that would be used in determining the amount of available income would be the same as are currently used in counting the income of stepparents. Effective April 1, 1984.

Conference agreement

The conference agreement follows the Senate amendment with the following modification: amonthly disregard of $50 of child support received by a family is established. The disregard is applied at eligibility determination and benefit calculation. The provision is effective October 1, 1984.

25. Households Headed by Minor Parents

Present law

A minor parent who has a child, and who leaves home, may apply for AFDC as a separate family unit. The income of the parents of the minor parent is not presumed to be available to the minor parent, because they are not sharing the household.

House bill

No provision.

Senate amendment

In the case of a minor parent who is not and has never been married, AFDC may be provided only if the minor parent resides with her parent or legal guardian, unless the State agency determines that: (1) the minor parent has no parent or legal guardian who is living and whose whereabouts are known; (2) the health and safety of the minor parent or the dependent child would be seriously jeopardized if she lived in the same residence with the parent or legal guardian; or (3) the minor parent has lived apart from the parent or legal guardian for a period of at least one year prior to the birth of the child, or before claiming aid, whichever is later.

The State agency would be given authority to make payments to a protective payee with respect to a minor parent affected by the provision, until the individual is no longer considered a minor by the State. Effective April 1, 1984.

Conference agreement

The conference agreement follows the House bill.

26. CWEP Work for Federal Agencies

Present law

States are authorized to conduct community work experience programs (CWEP). Employable recipients may be required to participate in these programs as a condition of eligibility for AFDC.

House bill

No provision.

Senate amendment

Amends the AFDC statute to make clear that participation in a CWEP program may include work performed for a Federal office or agency. Such work would not be considered to constitute Federal employment, and the State agency would be required to provide appropriate workers' compensation and tort claims protection to each participant. Effective on enactment.

Conference agreement

The conference agreement follows the Senate amendment with the following modification: worker's compensation is optional as under the current CWEP law. The agreement makes no change in existing State worker's compensation laws.

27. Earned Income of Full-Time Students

Present law

The AFDC statute provides that eligibility for benefits is limited to families with gross incomes (income before application of any disregards) at or below 150 percent of the State's standard of need. A provision was included in Public Law 97-377, the Job Training Partnership Act, which amended the gross income limitation to allow States to disregard the income of an AFDC youth which is derived from a program carried out under that Act, in such amounts and for such period of time (not to exceed six months with respect to earned income) as the Secretary of Health and Human Services may provide in regulations. The earnings of children in school who are not in a JTPA program are counted toward the 150 percent limit.

House bill

No provision.

Senate amendment

For purposes of applying the gross income limitation, States would be allowed to disregard the income of an AFDC child who is a full-time student, under the same limitation with respect to amounts and periods of time as are applied in the case of youths who participate in a program under the Job Training Partnership Act. Effective on enactment.

Conference agreement

The conference agreement follows the Senate amendment but establishes June 1, 1984 as the effective date for the provision.

28. Regulatory initiative on medical support

Present law

The Child Support Enforcement (CSE) program is a Federal-State partnership under which States are required to have a program which locates absent parents, establishes paternity and obtains and enforces support orders. There is no provision in the child support statute that requires State agencies to undertake efforts to include medial support as part of any child support order.

House bill

No provision.

Senate amendment

Requires the Secretary of HHS to issue regulations which would require State CSE agencies to petition to court to include medical support as part of the child support order whenever health care coverage is available to the absent parent at a reasonable cost. In addition, the regulation would provide for improved information exchange between the CSE and medicaid agencies on the availability of health insurance coverage. Effective on enactment.

Conference agreement

The conference agreement follows the House bill.

Subtitle C—Implementation of Grace Commission Recommendations

1. Income and Eligibility Verification Procedures

Present law

Under present law, IRS wage information furnished by employers to IRS is available to state welfare agencies for use in their AFDC and food stamp programs, and to the Social Security Administration for administering the SSI program. However, IRS unearned income information (field by a financial institution or corporation with respect to payments to individuals in the form of interest, dividends, etc.) is not available to Federal and State agencies for use in the administration of these programs. Quarterly wage information from the unemployment compensation program is available to State welfare agencies in most States.

House bill

The House bill authorizes the IRS to disclose return information with respect to unearned income to Federal, State, or local agencies administering AFDC, SSI, Medicaid, food stamps, and the cash assistance programs administered in Puerto Rico, Guam, and the Virgin Islands. Current law restrictions on unauthorized disclosure of confidential information are applied to agencies receiving the information.

Under the House bill, Federal, State or local agencies that are furnished unearned income return information by the IRS are prohibited from taking action thereon to reduce, suspend, terminate, or deny aid or benefits until the agency has taken steps to independently verify the information. The verification must include: (1) verification of the exact amount of the asset or income involved; (2) an evaluation of whether the individual has access to the asset or income involved for his or her own use; and (3) a determination regarding the time frame involved with regard to when the individual actually had the funds in question.

Senate amendment

The Senate amendment requires, rather than allows, the Secretary of Treasury to disclose unearned income return information upon request of the specified agencies. Disclosure can only be made to agencies that meet the requirements to safeguard this confidential information against disclosure. The Senate amendment contains a provision requiring verification of the unearned income information prior to taking action to reduce or terminate benefits that are similar to the House bill. In addition, the individual must be given notice of the proposed reduction or termination, and an opportunity to refute the information. Further, all applicants for and recipients of benefits under any program must be notified at the time of application, and periodically thereafter, that information verifying their assets and income will be requested and used.

The Senate amendment replaces existing statutory provisions relating to use (for purposes of AFDC) of return and other wage information and use of social security numbers, by adding a new section to the Social Security Act requiring States to have in effect an income and eligibility verification system for use in administering the AFDC, Medicaid, unemployment compensation, and food stamp programs (and the adult assistance programs in the territories). State agencies must request and make use of (1) wage and other income information available under the Internal Revenue Code; and (2) quarterly wage information. Each State is required to maintain a quarterly wage reporting system, although not necessarily through its unemployment compensation system.

The income and eligibility system requires use of standardized data formats to facilitate exchange of information, for the purpose of identifying and reducing ineligibility and incorrect payments. The requirement for standardized formats is intended to assure easy exchange of information by progress within States, and to facilitate the exchange of information among States. This requirement does not require the use by States of identical systems, but only that each State must be able to provide certain essential eligibility data in a format which can be used by the agencies and jurisdictions with which data exchanges are made. Information exchanged by state agencies is protected against unauthorized disclosure for other purposes.

Conference agreement

The conference agreement follows the Senate amendment with the following modifications: (1) the effective date of the requirement that States maintain a system of quarterly wage reporting as part of the income and eligibility verification system is delayed until September 30, 1988; (2) the provision regarding verification of IRS unearned income information is broadened to prohibit denial or suspension of benefits until the agency has taken steps to independently verify the information; (3) the amendment includes a provision describing the steps required to independently verify the information; and (4) that only unearned income from the currrent information file may be disclosed by the IRS.

Because the unemployment compensation program is part of the income verification system, the amendment requires IRS disclosure of wage and unearned income return information to this program. However, the managers expect that the data will be supplied to one agency in each State, and will be shared only with agencies which find it useful. The Conference agreement provides for the State to target the information to those uses most likely to be productive and cost-effective.

Following is a brief outline of what the conferees expect to occur under the unearned income provision.

First, an agency must establish the safeguards against unauthorized disclosure of the information that are required under section 6103 of the Code. These safeguards are also applicable to any other agency to which the information is subsequently disclosed. Once this has been done, the agency may request the unearned income return information. The agency that has requested and received the unearned income return information from the IRS may not deny, terminate, reduce or suspend benefits on the basis of that information alone. First, the agency must independently verify such information as the amount of the asset or income involved, evaluate whether the individual has or had access to the asset or income for his or her own use, and determine whether the individual actually has or had the asset or income during the relevant period of time.

The agency may use one of two approaches to verify unearned income return information that it has received from IRS. It may contact the financial institution or corporation that submitted the information to the IRS, requesting its cooperation in verifying the information. If the institution verifies the information, the agency must send the individual notice of denial, reduction, suspension, or termination of benefits (whichever is applicable), including information on the right to appeal the action. If the action is not appealed, the agency may proceed to take the appropriate action, based on the verified information.

Alternatively, the agency may contact the individual directly by letter informing him of the information that it has received, and requesting that the individual respond within a specified period. The conferees expect that the agency's letter to the recipient will be unintimidating in tone, and will clearly explain the information that the agency has, and the possible relevance of the information to the individual's eligibility for (and amount of) any past or future benefits. If the individual responds by verifying the information, the agency will take the appropriate case action. If the individual indicates that the information is not correct or in incomplete the agency must obtain evidence (from the individual or institution involved or otherwise) to substantiate any negative case action that it may take. If the individual fails to respond after reasonable efforts to contact him, the agency will take steps to close or deny the case on the basis of the individual's failure to cooperate.

In all cases involving reduction, suspension, or termination of benefits, the recipient must be sent notice of the action to be taken, including information on the right to appeal and opportunity for a hearing.

2. Collection and Deposit of Payments to Executive Agencies

Present law

Under present law, Federal agencies may collect nontax debt in a variety of ways. The Department of the Treasury collects a large proportion of nontax receipts through accelerated systems, including the Treasury Federal Communications System, automatic account withdrawals, and lockboxes. However, in 1983 $55 billion in nontax receipts was collected by means other than accelerated systems.

House bill

Authorizes the Secretary of the Treasury to prescribe the mechanisms to be employed by Federal agencies to collect nontax debts and the time frames for deposit of funds. Generally reduces from 30 days to three days the statutory period for timely deposit of funds by custodians. Requires that agencies adopt collection and deposit methods as prescribed by the Secretary.

Agencies not complying with the regulations will be assessed a charge equal to the cost of noncompliance to the general fund. Any such charges will be deposited into a Treasury Cash Management Improvements Fund to be used for developing and implementing cash management initiatives.

Senate amendment

Same provision, with technical differences.

Conference agreement

The conference agreement follows the Senate provision.

3. Collection of Nontax Debts Owed to Federal Agencies

Present law

Present law does not provide authority for the IRS to offset tax refunds against nontax debts owed to Federal agencies. However, tax refunds must be offset against past-due child and spousal support payments in the case of families receiving AFDC payments.

House bill

No provision.

Senate amendment

Provides that the amount of any IRS refund be reduced by the amount of certified nontax debt to the Federal government. Federal agencies must certify to the Secretary of the Treasury that specific attempts to notify the debtor have been made, and that the debtor does not dispute the debt, has not begun to repay the debt, and exhibits no reasonable intention to repay the debt. The agency must have entered into an agreement with the Secretary providing for the transmission of certified debt information before transmission occurs.

Authorizies the Secretary to test the offset procedures with selected programs before full implementation. Gives the Secretary authority to prescribe terms of agreements with other agencies and the format for transmitting information.

AFDC child support obligations would be subject to offset before other Federal debts. Excludes from offset beneficiary debts under the OASDI programs.

Conference agreement

The conference agreement follows the Senate amendment.

Subtitle D—Technical Corrections

Subtitle D contains a number of minor technical amendments to the Social Security Act and the Internal Revenue Code, to correct clerical and other minor errors either resulting from the Social Security Amendments of 1983, or already existing in those acts. Most were contained in the House bill, and were accepted as part of the conference agreement. Only the following two provisions require additional explanation.

1. Codification of the Rowan decision

Present law

The Social Security Amendments of 1983 provided that, with the exception of the value of certain meals and lodging provided for the convenience of the employer, the determination of whether or not amounts are includible in the social security and FUTA wage bases is to be made without regard to whether such amounts are treated in regulations as wages for income tax withholding purposes. This provisions thus prevents the application to compensation, other meals and lodging, of the Supreme Court's reasoning in *Rowan Companies, Inc.* v. *United States*, 452 U.S. 247 (1981). In this case, the Supreme Court held that, because the treatment of certain employer meals and lodging, excluded from gross income under section 119, for income tax withholding and for FICA purposes was not explicitly dealt with in the statutes governing these provisons, Treasury regulations defining wages for purposes of these two provisions had to be consistent. Thus, because one Treasury regulation excluded from wages for income tax withholding purposes the value of meals and lodging excluded from gross income under section 119, another regulation including these amounts in wages for FICA purposes was held to be invalid.

The provision in the Amendments applies to remuneration paid after December 31, 1983, for FICA and social security benefit purposes and to remuneration paid after December 31, 1984, for FUTA purposes. Thus, it is possible that this provision could be cited as demonstrating Congressional intent that the reasoning of the *Rowan* decision should generally apply before these dates to types of remuneration other than meals and lodging excluded under section 119, e.g., to contributions under a salary reduction agreement to tax-sheltered annuities (sec. 403(b)). These contributions have been held by the Treasury Department to be taxable for FICA purposes (Revenue Ruling 65-208) even though they are exempt by regulation from income tax withholding.

House bill

The effective date of the provisions overriding the *Rowan* decision is clarified so that the provision applies for all purposes, other than the treatment of certain employer-provided meals and lodging, both on or before March 4, 1983, and to remuneration paid on or before March 4, 1983, which the employer treated as wages when paid.

Senate amendment

No provisions.

Conference agreement

The conference agreement follows the House bill. The conferees intend that the determination of whether an employer treated remuneration as wages when paid will be made on the basis of the interpretations reflected in sec. 3.02 of Rev. Proc. 78-35, 1978-2 C.B. 536 (relating to section 530 of the Revenue Act of 1978). In the event that FICA taxes are withheld or employment tax returns are filed as a result of an audit of prior periods by the IRS, the employer will still be considered to have treated the remuneration as wages when paid. Thus, the conferees do not accept and do not intend to adopt the contrary holding of *Ridgewell's, Inc.* v. *United States*, 655 F. 2d 1098 (Ct. Cl., 1981).

2. Social Security Treatment of Pickups Under State and Local Retirement Plans

Present law

Prior to the Social Security Amendments of 1983, certain employer payments ("pickups) of employee contributions under a State or local retirement plan were treated as wages for social security and unemployment tax purposes only if the payments were made under a salary reduction arrangement. Under the Amendments, all such employer payments are treated as wages.

House bill

The House bill provides that employer pickups are wages, for social security and unemployment tax purposes, only if the pickup is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. The conferees intend that the term salary reduction agreement also includes any salary reduction arrangement, regardless of whether there is approval or choice of participation by individual employees or whether such approval or choice is mandated by State statute.

Subtitle E—Trade Adjustment Assistance (Trade Act of 1974) Provisions

1. Limitations on Trade Readjustment Allowances

Present law

Under section 233(a)(3) of the Trade Act of 1974, the 26 weeks of additional trade readjustment allowances (TRA) that an eligible worker may receive while in training can be collected only during the 26 weeks immediately following exhaustion of entitlement to basic TRA.

House bill

Amends section 233(a)(3) of the Trade Act upon enactment to enable workers to collect the extra 26 weeks of TRA beginning with the first week the worker enters training if that training has not been approved until after the last week of entitlement to basic TRA benefits.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Job Search and Relocation Allowances

Present law

Under sections 237 and 238 of the Trade Act of 1974, eligible workers can be reimbursed for 90 percent of necessary job search expenses up to a maximum of $600; relocation allowances consist of 90 percent of reasonable and necessary expenses, plus a lump sum payment of three times the worker's average weekly wage, up to a maximum of $600.

House bill

Amends sections 237 and 238 of the Trade Act upon enactment to increase the maximum job search allowance to $800 and the maximum lump sum relocation allowance to $800.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Assistance to Industry

Present law

Section 265 of the Trade Act of 1974 limits industry-wide technical assistance to improve competitiveness to $2 million annually per industry; only industries in which a substantial number of firms have been certified are eligible.

House bill

Amends section 265 of the Trade Act upon enactment to extend eligibility to industries in which a substantial number of workers have been certified eligible; increases the maximum amount of annual assistance per industry to $10 million.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. Cordage Products

Present law

Under the Tariff Schedules of the United States (TSUS), cordage manufactured from a plastics material is classified as either "cordage" under the textiles part of the TSUS, or as a plastics article in a different TSUS part. The difference depends on whether the strips from which the cordage is made exceed certain dimensions. Cordage classified as a plastics article is subject to a lower tariff rate than if it is classified as a textile article.

House bill

No provision.

Senate amendment

Reclassifies cordage (twine, rope, and cables) currently classified as plastics products in TSUS schedule 7 as articles to be classified under schedule 3 (textile products); applicable to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of enactment.

Conference agreement

The conference agreement follows the House bill.

5. "Like Agricultural Products"

Present law

Under section 771(10) of the 1979 Trade Agreements Act, "like product" is defined to mean a product which is "like or in the absence of like, most similar in characteristics and uses with, the article" subject to an countervailing duty or antidumping investigation. A petition for relief under the antidumping or countervailing duty laws must be filed by an "interested party" which, in general, means a representative of an industry producing a "like product" to the allegedly dumped or subsidized article.

House bill

No provision.

Senate amendment

Amends section 771(10) to encompass within the meaning of "like product" agricultural products at earlier stages of processing than imported articles; applicable to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after date of enactment.

Conference agreement

The conference agreement follows the House bill.

6. Fish Nets

Present law

Under the Tokyo round of the Multilateral Trade Negotiations (MTN), the most-favored-nation (MFN) tariff rate on fish netting and nets made of textile materials other than cotton or vegetable fibers is being reduced in stages to 17 percent ad valorem by 1989. The rate currently is 18 cents per pound plus 28.6 percent ad valorem.

House bill

No provision.

Senate amendment

Permits the 17 percent MFN tariff rate to apply immediately to the first 1.75 million pounds of fish nets, or 28 percent of the prior year's domestic consumption, whichever is greater; applicable to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after date of enactment.

Conference agreement

The conference agreement follows the House bill.

7. A Telescope and Its Apparatus

Present law

Under item 851.60 of the Tariff Schedules of the United States (TSUS), scientific instruments and apparatus, and repair components, entered for the use of nonprofit educational institutions may enter duty-free if the Department of Commerce determines domestic equipment of equivalent scientific value is unavailable.

House bill

No provision.

Senate amendment

Directs the Secretary of the Treasury upon enactment to admit duty-free any acticles provided by the Max Planck Radio Astronomy Institute in Germany for a joint project with the University of Arizona.

Conference agreement

The conference agreement follows the House bill.

Subtitle F—Certain Provisions Relating to Puerto Rico and the Virgin Islands

1. Clarification of the Definition of Articles Produced in Puerto Rico and the Virgin Islands

Present law

Federal excise tax revenues derived from articles coming into the United States from Puerto Rico or the Virgin Islands generally are paid to the Treasury of the possession from which the article is brought into the United States (Code sec. 7652). Additionally, excise tax revenues derived from rum imported into the United States from any country are paid to Puerto Rico Rico and the Virgin Islands.

Puerto Rico presently conducts a program under which grain neutral spirits, originally distilled in the United States, are transported to Puerto Rico, redistilled, and returned to the United States. As a result, a Federal excise tax payment is made to the Government of Puerto Rico. Puerto Rico provides government subsidies to participants in this program to induce their participation in the program.

House bill

The House bill provides that excise tax revenues generally will be paid to Puerto Rico or the Virgin Islands with respect to articles brought into the United States from those possessions only if three requirements are satisfied—

(1) In the case of articles containing distilled spirits, only if at least 90 percent of the spirits are originally distilled in Puerto Rico or the Virgin Islands, as the case may be;

(2) In the case of any article from Puerto Rico, only if at least 50 percent of the value of the article is attributable to Puerto Rican input; and

(3) In the case of any article from Puerto Rico or the Virgin Islands, only if no subsidy is provided for the production of the article which is of a kind different from (or in an amount per value or volume greater than) subsidies provided to industry generally.

The House bill exempts rum brought into the United States from these possessions from all three requirements. Cane neutral spirits are exempted from requirements (2) and (3), but only if these spirits are not produced under a program having an effect similar to the present redistillation program.

These provisions generally are effective with respect to articles brought into the United States after February 29, 1984. An exception permits payment of tax not in excess of $130 million with respect to redistilled spirits after June 30, 1983 and before July 1, 1984. An additional exception permits such payments not in excess of $75 million after June 30, 1984 and before July 1, 1985.

Senate amendment

The Senate amendment permits payment of excise tax revenues derived from articles containing distilled spirits brought into the United States from Puerto Rico or the Virgin Islands only if at least 92 percent of the alcoholic content of the articles is rum.

The Senate amendment generally is effective with respect to articles brought into the United States after February 28, 1984. An exception permits payment of taxes not in excess of $130 million with respect to articles containing distilled spirits that do not meet the amendment's requirements after June 30, 1983, and before July 1, 1984. The Senate amendment further provides that this exception will terminate if at any time during the phase-out period, Puerto Rico provides (directly or indirectly) a payment to a U.S. distiller of an amount other than direct costs of transporttion to and from Puerto Rico.

Conference agreement

The conference agreement follows the Senate amendment with respect to articles containing distilled spirits. Therefore, payments of excise tax with respect to such articles will be permitted only if at least 92 percent of the alcoholic content of the articles is rum.

The conference agreement adopts the restrictions of the House bill with respect to articles other than distilled spirits.

The agreement generally is effective for articles brought into the United States after February 29, 1984. As under the Senate bill, payments of tax not exceeding $130 million may be made during the period July 1, 1983–June 30, 1984, with respect to redistilled spirits and cane neutral spirits. A modification of the House bill permits such payments not exceeding $75 million during the period July 1, 1984-December 31, 1984.

The special rule in the Senate amendment regarding incentive payments to U.S. distillers is retained, but with two modifications. First, the rule only applies to articles brought into the U.S. after June 30, 1984. Second, an exception to the rule is provided under which U.S. distillers engaged in redistillation operations may continue to receive so-called "incentive payments" in addition to direct transportation costs during the remaining phase-out period after June 30, 1984. These payments may not, however, exceed $1.5 million per U.S. distiller. The conferees intend that these payments be limited to payments to the two U.S. distillers (i.e., Glenmore Distilleries and Heublien Spirits Group) which were engaged in redistillation operations before February 29, 1984, and who were entitled to such payments under contracts binding on that date.[1]

Finally, the conference agreement provides that any U.S. distiller who receives incentive payments or other disallowed payments in excess of $1.5 million between June 30, 1984, and January 1, 1985 is subject to a penalty equal to the total amount of incentive and other payments (other than direct transportation costs) received during the period. This penalty is in lieu of recapture of excise tax payments to Puerto Rico from the date on which the prohibited payments was made. In determining the amount of incentive payments, the conferees intend that the Treasury Department include the amount of price reductions on other products and other indirect payments made by Puerto Rican companies or the Government of Puerto Rico in other transactions between the parties concerned.

2. Limitation on Excise Tax Payments to Puerto Rico and the Virgin Islands With Respect to Distilled Spirits

Present law

The entire amount of excise tax imposed on distilled spirits (i.e., $10.50 per proof gallon) brought into the United States from Puerto Rico or the Virgin Islands is paid to the possession from which the article comes. Additionally, the entire amount of excise tax imposed on rum imported into the United States from all other countries is paid to those possessions.

House bill

No provision.

Senate amendment

The Senate amendment limits the amount of excise tax that may be paid to Puerto Rico or the Virgin Islands with respect to distilled spirits to a maximum of $10.50 per proof gallon (i.e., the present rate of tax). Therefore, the $2.00 per proof gallon increase in the excise tax on distilled spirits provided for by the Senate amendment will not be paid to Puerto Rico or the Virgin Islands with respect to distilled spirits brought into the United States from those possessions.

This provision is effective with respect to distilled spirits brought into the United States after December 31, 1984.

Conference agreement

The conference agreement follows the Senate amendment.

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[1] For purposes of this restriction, the PTG Corporation is not to be treated as a U.S. distiller.

TITLE VII—COMPETITION IN CONTRACTING

The Senate amendment, which is identical to S. 338, the Competition in Contracting Act of 1983, is designed to increase the use of competition in Government contracting and to impose more stringent restrictions on the awarding of noncompetitive—sole-source—contracts. Agencies are required under the Senate amendment to use competitive procedures, whether by inviting sealed bids or requesting competitive proposals, unless a statutory exception allowing the use of noncompetitive procedures is met. S. 338 had been reported unanimously by the Senate Governmental Affairs and Armed Services Committees and passed unanimously by the Senate.

The Senate amendment builds on the two primary procurement statutes—the Armed Services Procurement Act, which governs the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, and the Federal Property and Administrative Services Act, which generally applies to civil agencies—to establish a uniform framework which distinguishes between competitive and noncompetitive procedures. The amendments proposed to both statutes are largely identical.

The conferees adopted a substitute to the Senate amendment which represents a compromise between S. 338 and two House measures—H.R. 5184, the Competition in Contracting Act of 1984, which was ordered reported by the House Government Operations Committee, and H.R. 2545, the Defense Procurement Reform Act of 1983, which is under consideration by the House Armed Services Committee.

The conference substitute retains the major provisions of the Senate amendment, incorporates "full and open" as the required standard for competition, strengthens the justification, approval, and notice requirements to safeguard against unnecessary sole-source contracts, establishes competition advocates to enhance accountability, and strengthens the bid protest process.

While the conference substitute adopts the statutory framework of the Senate amendment, the conferees agree further to amend the Office of Federal Procurement Policy Act and the Budget and Accounting Act. The OFPP Act, a statute which governs all federal agencies, is amended to define certain procurement terms, such as "full and open competition" and "responsible source," to establish notice and reporting requirements, and to create competition advocates in all procuring activities. The Budget and Accounting Act is amended to provide the General Accounting Office with a statutory base for its bid protest function.

MAJOR PROVISIONS

Subtitle A—Amendments to the Federal Property and Administrative Services Act

Section 2711—Procurement Procedures

(1) Competition Requirements

Senate amendment

The Senate amendment establishes "effective" competition as the standard for awarding federal contracts for property or services. In Government contracting, effective competition is a marketplace condition which results when two or more contractors, acting independently of each other and of the Government, submit bids or proposals in an attempt to secure the Government's business.

Conference substitute

The conference substitute uses "full and open" competition as the required standard for awarding contracts in order to emphasise that all responsible sources are permitted to submit bids or proposals for a proposed procurement. The conferees strongly believe that the procurement process should be open to all capable contractors who want to do business with the Government. The conferees do not intend, however, to change the long-standing practice in which contractor responsibility is determined by the agency after offers are received.

The conference substitute retains the requirement from the Senate amendment that executive agencies shall use competitive procedures—whether by soliciting sealed bids and making award without discussions or by requesting competitive proposals and making award with discussions—when entering into a contract for property or services.

In effect, the substitute, like the Senate amendment, removes the restriction from—and the written justification required for—competitive proposal procedures and places them on par with sealed bid procedures. The substitute maintains minimum criteria for sealed bid procedures to ensure their use when appropriate. The purpose served by substituting the new terms "sealed bid" and "competitive proposal" procedures for "formal advertising" and "negotiation" is to eliminate the competitive and noncompetitive connotations associated, respectively, with past terminology.

The substitute defines the term "competitive procedures" to mean procedures under which an executive agency enters into a contract pursuant to full and open competition, thereby permitting all responsible sources to compete. This term also recognizes as competitive the procurement of architectural and engineering services conducted in accordance with title IX of the Federal Property and Administrative Services Act, the competitive selection of basic research proposals, and the General Services Administration (GSA) multiple awards schedule programs.

The selection of architectural and engineering services by the Federal Government is governed by the provisions of 40 U.S.C. 541 *et seq.*, which require the selection to be made on the basis of an evaluation of the design proposals and the qualifications of all offerors. After the selection of the most qualified offeror, the government then negotiates a contract at a fair and reasonable price not to exceed six percent of the estimated cost of the project. If an agency is unable to negotiate such a contract, then the agency is required to negotiate a contract with the next most qualified firm. The principle behind this procedure is to ensure that the government receives quality, upfront design work in its procurement of architectural and engineering services. This is particularly important since such design work has a major impact on the overall cost of the project.

The conferees also recognize the competitive selection of basic research, which is directed toward increasing knowledge of a subject apart from any clear or necessary practical application of that knowledge, to be a competitive procurement procedure. These basic research procurements are unique in that the agency's solicitations are general in nature, identifying areas of research interest, criteria for selecting proposals (including scientific merit), and the method of evaluating proposals. Proposals received are then competitively evaluated through a peer review process before contracts are awarded. By recognizing such procurement of basic research as competitive, the conferees intend to promote the participation of all individuals or companies capable of supporting the government's needs in this important area. Any agency procurement whichcannot meet this standard and, in fact, restricts participation, must be justified and approved under the requirements in this substitute for other than competitive procurement procedures.

The substitute also contains a provision that perserves the multiple wards schedule programs administered by the General Services administration. Although agency implementation of these programs has been criticized in the past, the conferees believe that schedule contracts are a worthwhile method of meeting agency needs for a broad range of commercial products, while imposing a minimum administrative burden on the using agencies. Schedule contracts should be used when GSA can negotiate quantity-discount contracts, with delivery to be made directly to the using agencies in small quantities at diverse locations. The GSA Federal Supply Schedule is an example of this program.

By providing the GSA multiple awards schedule programs with a statutory base, the conferees intend that any responsible vendor wishing to compete for this business is, in fact, allowed and encouraged to compete. As long as the schedule contracts managed by GSA maintain this objective, GSA is complying with the intent of this substitute and should be supported. The conferees believe, however, that the availability of ADP schedule contracts should not preclude the requirement for agencies to seek lower prices if there are responsible alternative sources available.

The conferees also intend that where competition is conducted among all sources that have been prequalified, in accordance with statute and regulations, and where prequalification is essential to ensure satisfaction of an agency's needs, such procedures shall be considered full and open competitive procedures, provided all responsible sources are given a reasonable opportunity to qualify.

(2) Dual-Sourcing Authority

Senate Amendment

The Senate amendment authorizes executive agencies to establish or maintain an alternative source or sources of supply for a particular property or service by using competitive procedures to allow all sources to compete while excluding the incumbent contractor from competition. Executive agencies are authorized to use this "dual-sourcing" authority only when it would (1) increase or maintain competition and likely result in reduced overall costs, (2) be in the interest of national defense in case of a national emergency or industrial mobilization, or (3) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or non-profit institution or a federally funded research and development center.

Conference substitute

The conference substitute substantially incorporates the provisions of the Senate amendment.

(3) Small Business Set-Aside Competition

Senate amendment

The Senate amendment recognizes various existing set-aside programs by authorizing an executive agency to include in its solicitations restrictive provisions which would designate only specified categories of offerors, such as small business concerns, as "authorized by law," for example, the Small Business Act (15 U.S.C. § 631, *et seq.*).

Conference substitute

The conferees seek to give more precise recognition to set-aside programs authorized by statute. For example, Congress has historically provided assistance through the Federal procurement process to small businesses. In recognition of this policy, the conferees include a provision in the conference substitute which authorizes agencies to limit competition to small business concerns or socially and economically disadvantaged small business concerns as long as all such firms within the categories are allowed to compete. The conferees specifically note the Small Business Innovation Research (SBIR) Program, established under P.L. 97-219, as an example of a statutorily authorized small business set-aside program that would be included in this provision.

Further, the set-aside procurements must be made in accordance with the competitive procedures required by the conference substitute and with the statutory requirements of the Small Business Act. Finally, procurements conducted under Section 8(a) of the Small Business Act are exempt from the procurement procedures mandated by the substitute.

(4) Exceptions to Competition Requirements

Senate amendment

The Senate amendment provides six exceptions to competitive procedures which parallel the conditions which the Comptroller General has historically recognized as legitimate conditions for awarding contracts on a sole-source basis. The Senate amendment shifts the emphasis from having to justify the use of negotiation, which can be either competitive or noncompetitive, to concentrate on those contract which are negotiated noncompetitively, thereby restricting sole-source contracting to when it is truly necessary. The award of a contract on a sole-source basis would for the first time constitute a clear violation of statute and would therefore not be authorized unless permitted by one of these exceptions.

These exceptions are considerably more restrictive than the present exceptions to formal advertising which are used inappropriately, in many cases, to justify going sole source. By using the broad exceptions to formal advertising, such as the "impracticable to obtain competition" exception, as a means to negotiate noncompetitive, agencies have avoided stating the actual justification for awarding a sole-source contract. While sole-source contracting may be necessary in certain situations, tighter control and greater visibility are needed to ensure its proper use.

Conference substitute

The conference substitute retains the restrictions imposed on sole-source contracts provided in the Senate amendment, but requires agencies to obtain competition under the second and sixth exception to the maximum extend practicable. For this reason, the term "noncompetitive procedures" used in the Senate amendment has been changed to "procedures other than competitive procedures" in the conference substitute. Agencies are not precluded from awarding a contract noncompetitively under the second or sixth exceptions (which concern urgent and national security situations) when conditions dictate that only one source is available.

In addition, the conference substitute includes a seventh exception which allows the head of an agency, on a non-delegable basis, to determine when it is necessary in the public interest to use procedures other than competitive procedures for a particular procurement. This waiver is to be exercised, if at all, on a case-by-case basis, rather than for a class of procurements. The head of an agency is required to notify both Houses of Congress in writing of his or her intention to use this exception thirty days before the contract is awarded.

The conference agreement also clarifies that sole-source awards resulting from certain unsolicited proposals or "follow-on" contracts fall under the first exception, which permits a sole-source award when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the agency's needs. In neither case, however, is this exception to be used as a "carte blanche" justification for going sole source.

The use of the first exception for unsolicited proposals and follow-on contracts is limited in both cases to certain specific conditions. In the case of unsolicited proposals. the conference substitute authorizes sole-source awards based on unsolicited research proposals when the agency can determine that the substance of the proposal is not otherwise available to the government, and the proposal does not resemble the substance of a pending competitive procurement.

The conferees do not intend, however, that this provision be used as a loophole by which agencies and contractors can circumvent the competition requirements contained in the substitute. This authorization is strictly limited to state-of-the-art proposals which represent advanced scientific knowledge. Even under these conditions, agencies should seek proposals wherever possible from competing researchers to ensure that the best proposal available is selected. The substitute, like the Senate amendment, therefore, requires that unsolicited proposals be publicized in the *Commerce Business Daily* unless such publication would result in the disclosure of the originality of thought or innovativeness of the proposed research contained in the proposal.

In the case of follow-on contracts, a sole-source award under the first exception may be made for the continued development or production of a major system or highly specialized equipment if award to other than the original source would result in substantial duplication of cost that could not be recovered through the use of competition, or unacceptable delays in fulfilling the agency's needs.

The conferees intend that follow-on contracts be awarded only to incumbent vendors who receive the original contracts following some form of price or technical competition. The conference substitute recognizes that in major systems and highly specialized equipment acquisitions, there are situations where the initial capital investment could cause substantial duplication of cost if the contract were awarded to other than the original source. However, the substitute requires the agency to determine and document that such cost cannot be offset by savings that would result from openly competing the requirement. The conferees believe that a cost/benefit analysis is necessary to make a precise determination.

The conferees further note that follow-on contracts sometimes result when an agency fails to determine its original requirements accurately. The conferees emphasize that better planning should eliminate this problem and the resultant need for a sole-source contract to the incumbent contractor. The language in the conference substitute should not be construed as legitimizing sole-source contracts that are caused by poor planning.

The conferees also do not intend this provision to be used to perpetuate any contract which involves obsolete or outmoded facilities, systems or processes, including computer systems and software.

(5) Justification and Approval Procedures

Senate amendment

The Senate amendment safeguards against unnecessary sole-source contracting by prohibiting agencies from using noncompetitive procedures unless (1) the use of such procedures has been justified in writing, and (2) the agency has provided advance notice of intent to award a sole-source contract in the *Commerce Business Daily*, inviting bids or proposals from potential competitors, and has considered all bids or proposals received in response to such notice.

Conference substitute

The conference substitute retains the pre-award notification requirements from the Senate amendment which agencies must first meet before a sole-source award can be made.

In retaining the Senate provisions, the conferees emphasize that agencies should, at a minimum, give each bid or proposal received in response to the *Commerce Business Daily* notice sufficient consideration so as to be able to make an informed judgment about the responsibility of the bidder and the responsiveness of the bid.

Agencies are not explicitly required to issue solicitation packages to all contractors who respond to a pre-award notice. This is not to be interpreted to mean that agencies are authorized to deny the distribution of such packages arbitrarily. The purpose of the pre-award notice is to open competition to all offerors who can meet the agency's needs. To serve this purpose, solicitation packages should be available upon request. In situations where competition is not anticipated and solicitation packages have not been prepared, agencies shall provide potential competitors who do respond with solicitation packages or comparable information.

The conference substitute also strengthens the justification procedures in the Senate amendment and establishes new requirements for approvals of sole-source contracts.

The justification statement required for each noncompetitive procurement must be certified as accurate and complete by the contracting officer responsible for awarding the contracts. The justification statement must then be reviewed and approved by either (1) the procuring activity's advocate for competition in the case of contracts over $100,000; (2) the head of the procuring activity in the case of contracts over $1,000,000; or (3) the agency's senior procurement executive in the case of contracts over $10,000,000. Contracting officer certification and review and approval authorities provided by this substitute cannot be delegated, except as specifically authorized under this substitute.

All determinations and decisions required for use of the exceptions to competitive procedures provided in this substitute are to be made on a case-by-case basis. Broad categories or classes of products and services cannot be exempt from competitive procedures.

In the event of an unusual and compelling urgency, the required justification and approvals may be made after the contract has been awarded. Similarly, such justifications and approvals are not required when the head of an agency determines and reports to Congress that it is in the public interest to conduct a noncompetitive procurement, or a procurement is conducted in accordance with the Wagner-O'Day Act (41 U.S.C. § 46 *et seq.*).

The justifications and related documentation are required to be made available to the public. While these disclosures should be made consistent with the provisions of the Freedom of Information Act (5 U.S.C. § 552), the conferees intend that the Act's exemption for internal memoranda not be used to shield these documents from public disclosure. The use of the term "consistent with" is designed merely to ensure that national security, law enforcement, and other sensitive information is not publicly disclosed.

The conference substitute places additional prohibitions and restrictions on the use of procedures other than competitive procedures. Noncompetitive procurements may not be justified on the basis of concerns regarding the future availability of funding. This prohibition is designed to prevent the year-end spending abuses that occur when agencies are faced with large amounts of unexpended appropriations at the end of the fiscal year. Under this situation, agencies rush to sign a contract with a vendor on a sole-source basis in order to avoid having to turn money back to the Treasury. The conferees find this practice to be unconscionable. Similarly, the substitute prohibits the use of the lack of advance planning as a justification for using noncompetitive practices. The conferees reject the assertions made by some agency procurement officials that this is a legitimate reason to curtail competition. A contrary conclusion would legitimize unacceptable management practices.

The substitute also prohibits an agency from procuring its goods and services from another agency unless that agency has complied with the requirements of the substitute. The substitute includes this prohibition to prevent one agency from acquiring its goods and services from another agency's sole-source contract without having to justify a noncompetitive procurement itself. This restriction is in addition to, not in lieu of, any other restriction provided by law, including the Economy Act of 1932 (31 U.S.C. § 686(a)).

(6) Small Purchase Procedures

Senate amendment

The Senate amendment recognizes that the competitive procedures required of large purchases may not be appropriate for small purchases. The Senate amendment therefore provides a basis in statute for regulations to establish separate small purchase procedures, allowing agencies to scale down their efforts as long as they obtain reasonable competition.

Conference substitute

The small purchase provisions of the Senate amendment are retained under the conference substitute in a separate subsection. Within this new subsection, agencies are required to promote competition to the maximum extent practicable when using small purchase procedures. The regulations issued pursuant to this subsection are to be incorporated into the government-wide Federal Acquisition Regulation consistent with current statute.

(7) Planning and Solicitation Procedures

Senate amendment

The Senate amendment requires agencies, as part of the affirmative effort to obtain competition, to use advance procurement planning, conduct market research, and develop nonrestrictive specifications.

Conference substitute

The conference substitute retains these requirements contained in the Senate amendment, but applies them as planning requirements for all procurements—competitive and noncompetitive.

The substitute also retains the broad guidelines set forth in the solicitation section of the Senate amendment for agencies to follow in defining their needs in order to maximize, rather than limit, competition. The substitute authorizes agencies to specify their needs in either functional, performance, or detailed design terms, whichever will ensure timely performance and will promote the use of full and open competition.

Wherever practical, the conferees strongly believe that contractors should be told what the Government needs in functional terms. This approach allows the Government to take advantage of the innovative ideas of the private sector.

(8) Evaluation and Award Procedures

Senate amendment

The evaluation and award procedures for sealed bids and competitive proposals set forth in the Senate amendment are largely the same as those currently required in the Armed Services Procurement Act and the Federal Property and Administrative Services Act for formal advertising and negotiation. The amendment clarifies that agencies shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

Conference substitute

The conference substitute retains the evaluation and award procedures under the Senate amendment, and modifies the language to reflect the requirement for full and open competition.

Section 2712—Truth in Negotiations

Senate amendment

The Senate amendment extends the statutory requirement in the Armed Services Procurement Act for submitting certified cost or pricing data to cover civilian procurements under the Federal Property and Administrative Services Act, and establishes a uniform threshold in both statutes at $100,000.

Contractors are presently required by statute to submit cost or pricing data and certify that the data are "accurate, complete, and current" prior to the award of any negotiated defense contract over $500,000 and are required by regulation to submit such data for any negotiated civilian contract over $100,000. The purpose of this "truth-in-negotiations" provision is to provide the basis for retroactive price adjustment in the event that data submitted prior to the award of a contract were not accurate, complete, and current, without resorting to costly and time-consuming litigation. Without certification, agencies lack the legal ammunition to deter defective pricing.

Conference Substitute

The conference substitute retains the Senate provisions and, in addition, authorizes contracting officers to request cost or pricing data for defense and civilian procurements under $100,000. Obtaining such data for small dollar contracts has proven to be a problem in purchasing spare parts, where excessive over-charges have become legendary.

Section 2713—Automated Data Processing Dispute Resolution

Senate amendment

The Senate amendment contains no provision on the automated data processing dispute resolution.

Conference substitute

The conference substitute amends Section 111 of the Federal Property and Administrative Services Act of 1949 to provide an alternate forum for resolving contractual disputes involving procurements of automated data processing (ADP) equipment and services conducted under Public Law 89-306 (the Brooks Act). This provision applies only to those automated data processing procurements conducted under the Brooks Act, and it does not apply to those ADP procurements exempted under the 1982 Department of Defense Authorization Act. ADP procurements conducted by DOD are exempt from the Brooks Act only if the equipment and services are primarily for functions involving intelligence, cryptology, command and control, weapon systems, or similar type systems. Protests over ADP procurements in those areas not covered by the Brooks Act will continue to be heard by the GAO or the courts, as under current practice.

The Brooks Act, enacted in 1965, provides the General Services Administration (GSA) with the sole authority to procure ADP equipment and services for federal agencies either by conducting the procurement on behalf of the agency, or by granting a delegation of procurement authority to the agency to conduct its own procurements. The Brooks Act has opened the federal marketplace to all responsible computer companies. However, due to the increasing number of computer procurements conducted every year, coupled with the complexity of the technology, the current informal process of resolving conflicts between the buying agency and the suppliers has become cumbersome and prolonged. Further, charges have been made by both the agencies and the contractors that GSA's current process does not provide an objective forum for dispute resolution. The conferees believe that it has become increasingly apparent that a new forum is needed to provide a fair, equitable and timely remedy in this area.

The conference substitute provides that remedy by authorizing the GSA Board of Contract Appeals to consider protest cases involving ADP procurements conducted under P.L. 89-306. The Board is well suited to hear protests of this nature. First, the Board can use already established procedures to hold hearings, compel production of documents, obtain testimony of witnesses, and conduct cross-examination under oath. Second, the Board can use the authority which GSA currently has under the Brooks Act to revoke, suspend or modify a delegation of procurement authority. Further, the Board is authorized to suspend any contract which was awarded pursuant to P.L. 89-306.

The conference substitute requires that an initial hearing be held by the Board within ten days of the filed protest, and that the Board then issue its final decision within 45 working days from the date of the protest unless its chairman determines that specific and unique circumstances require a longer period for consideration. Based upon the results of the initial hearing, the Board can suspend the delegation of procurement authority while the protest is pending. The suspension of a solicitation or contract performance shall not be ordered if the agency establishes that urgent and compelling circumstances exist. In addition, the conference substitute authorises the Board to award the costs of pursuing a protest if such protest action is sustained by the Board.

The conferees recognize that these provisions provide a unique and innovative method of handling protests of a highly technical and complex nature. The conferees believe that the Board is well equipped to provide timely resolution of conflicts between the procuring agencies and the suppliers of computer products and services. To avoid disrupting legitimate procurements, and especially to prevent protest actions taken in bad faith from interrupting contract performance, the Board is authorised to dismiss at any point in the process any protest action that it determines to be frivolous or which, on its face, does not state a valid basis for the protest.

The conference substitute establishes a three-year sunset provision which should allow Congress to make a full and objective evaluation of the Board's operations in resolving ADP contractual disputes prior to the consideration of reauthorization.

Subtitle B—Amendments to the Armed Services Procurement act

Section 2721—Defense Procurement Policy

Senate amendment

The Senate amendment contains no provisions directly amending the existing policy section in the Armed Services Procurement Act.

Conference substitute

The conference substitute amends the existing policy section in the Armed Services Procurement Act to set forth broad defense procurement policy which, first and foremost, directs the Department of Defense, the military services, the Coast Guard, and the National Aeronautics and Space Administration to use full and open competitive procedures in acquiring property and services. The other policy statements included in the conference substitute are intended to conform with the policies set out in section 2 of the Office of Federal Procurement Policy Act.

Sections 2722 and 2723

Senate amendment and conference substitute

The remaining sections under Subtitle B of the conference substitute parallel sections 2711 and 2712 of Subtitle A and the explanations of the provisions are the same and the conferees' intentions with respect to these provisions are the same.

Subtitle C—Amendments to the Office of Federal Procurement Policy Act

Section 2731—Definitions

Senate amendment

The Senate amendment did not amend the OFPP Act.

Conference substitute

The conference substitute defines the terms "full and open competition" to mean that all responsible sources are permitted to submit sealed bids or competitive proposals; "competitive procedures" to mean the procedures under which an agency enters into a contract pursuant to full and open competition; and "responsible source" to mean a prospective contractor who is capable of satisfying the agency's needs, considering resources, delivery or performance schedule, performance record, integrity and business ethics, organization and experience, equipment and facilities, and any other qualifications. These terms are used throughout the conference substitute.

Section 2732—Procurement Notice and Records; Advocate for Competition

(1) Procurement Notice Requirements

Senate amendment

The Senate amendment establishes notice provisions in the Armed Services Procurement Act and the Federal Property and Administrative Services Act which require a notice to be published in the Commerce Business Daily for (1) prospective competitive and noncompetitive contracts over $10,000, and (2) contract awards over $10,000 for those contracts which are likely to result in the award of subcontracts. The burden is placed on the procuring agency, under this provision, to furnish the information for publication to the Secretary of Commerce, who is responsible for publishing the notice promptly in the Commerce Business Daily.

The Senate amendment establishes time periods for publication, specifies the information which a proper notice should include, and provides exceptions to the notice requirement which are separate but identical in almost all cases to the exceptions for noncompetitive procedures.

Conference substitute

The conference substitute retains, with minor modifications, the notice requirements set forth in the Senate amendment, but consolidates the dual-conforming amendments to the defense and civilian procurement statutes by placing a uniform notice requirement in the Office of Federal Procurement Policy Act.

(2) Record Requirements

Senate amendment

The Senate amendment facilitates congressional oversight of contracting activities by requiring agencies to establish and maintain a record, by fiscal year, of the procurements (other than small purchases) in which noncompetitive procedures are used. The information to be included in the record, which would be transmitted on a quarterly basis to the Federal Procurement Data System, designates the contractor who received the award, the property or services which were obtained, the dollar value, the reason for using noncompetitive procedures, and the positions of the individuals in the procuring agency who required and approved the sole-source award.

Conference substitute

The conference substitute retains the record requirements of the Senate amendment, again consolidating the amendments to the defense and civilian procurement statutes into a uniform provision in the OFPP Act, but expands application of this provision to include all procurements—competitive and noncompetitive—in a computerized file. This file should be indexed in a manner to provide ready access to such information by other agencies, Congress, and the public.

(3) Advocate for Competition

Senate amendment

The Senate amendment establishes in each executive agency the position of advocate for competition with responsibilities for promoting competition in the agency's procurement process. The agency competition advocate is designed to be at a sufficiently high level to directly influence the procurement policies and procedures within the agency, while not being directly responsible for the individual procurements. The head of each agency is prohibited from assigning duties to the competition advocate which are inconsistent with the advocate's responsibility to promote competition. As such, the position of competition advocate should not be assigned to any individual who is responsible for the initiation or conduct of any specific agency procurement.

Conference substitute

The conferees recognize the importance of the position of competition advocate and the need to ensure that key Federal officials at all levels are made aware of the benefits of competition and become firmly committed to its use. To further these goals, the conference substitute expands the agency advocate's responsibilities and requires the establishment of an additional advocate for competition in each procuring activity.

The substitute requires the competition advocates to challenge barriers to, and promote full and open competition in, the procurement of property and services. Under the review and approval procedures established by the conference substitute, the procuring activities' competition advocates are responsible for approving all noncompetitive contract awards which involve expenditures exceeding $100,000 but less than $1,000,000. Further, the agency advocate is given the additional responsibilities of recommending to the agency's senior procurement executive (1) goals and plans for increasing competition on a fiscal-year basis, and (2) a system of personal and organizational accountability designed to encourage the procurement workforce to emphasize competition.

The conferees recommend that the performance ratings of procurement personnel include an appraisal of their efforts to promote competition in agency procurements.

(4) Annual Report on Competition

Senate amendment

The Senate amendment requires the head of each executive agency to issue an annual report to Congress on the agency's use of competition in contracting. Specifically, the report should provide an overview of the actions taken by the agency to increase competitive contracting and reduce the number and dollar value of noncompetitive contracts, and the activities and accomplishments of the agency's advocate for competition.

Conference substitute

The conference substitute incorporates the annual report requirement from the Senate amendment and establishes January 31 as the deadline for submission to Congress for fiscal years 1986 through 1990.

(5) Competition Requirement

Senate amendment

The Senate amendment has no comparable provision.

Conference substitute

The conference substitute amends Section 16(1) of the OFPP Act (executive agency responsibilities) to require the use of full and open competition in executive agency procurements of property and services. Language contained in this substitute requires agencies, when using competitive procedures, to establish policies, procedures, and practices necessary to ensure that a sufficient number of sealed bids or competitive proposals are received from responsible sources to fulfill the government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or services procured. This requirement applies to all agency procurements, including those made under set-aside programs.

Subtitle D—Amendments to the Budget and Accounting Act

Section 2751—Procurement Protest System

Senate amendment

The Senate amendment contains no provisions regarding the General Accounting Office bid protest system.

Conference substitute

The conferees believe that a strong enforcement mechanism is necessary to insure that the mandate for competition is enforced and that vendors wrongly excluded from competing for government contracts receive equitable relief. To accomplish this, the conference substitute adds a new subchapter to Chapter 35 of Title 31, United States Code, which codifies and strengthens the bid protest function currently in operation at the General Accounting Office (GAO). The provisions of this section become effective on January 15, 1985.

The conference substitute establishes an enforcement mechanism keyed to the procedures contained in the Senate amendment for solicitation, notice, evaluation, and award. The procurement protest system further relies on record requirements in the Senate amendment, as expanded in the conference substitute, to insure the availability of information needed not only by the Comptroller General to make determinations in procurement protests, but also by interested parties to identify, and initiate action against, solicitations and awards which they believe are unlawful.

The Comptroller General is not given exclusive authority to hear protests. The conferees do not intend, for example, that the GAO decide matters dealing with the Small Business Administration's responsibilities under the Small Business Act to establish industry size standards or to issue Certificates of Competency to small businesses. Finally, interested parties with recourse to the General Services Administration Board of Contract Appeals in disputed computer procurements may not protest the same action to both the GAO and the GSA board.

Any actual or prospective bidder or offeror whose direct economic interest would be affected by the award of or failure to award a procurement contract by an executive agency may challenge the agency's solicitation, award or proposed award by filing a protest with the Comptroller General. Final agency determinations under section 307 of the Federal Property and Administrative Services Act and section 2310 of title 10, United States Code, may be the subjects of protests to GAO, the courts, and where appropriate, the GSA board.

Once a protest has been filed with GAO, the Comptroller General shall notify the executive agency involved within one day of receipt of the protest. The executive agency then has 25 working days (10 if the Comptroller General selects the "express option") to respond. The Comptroller General must issue his opinion within 90 working days (45 calendar days under the express option). The Comptroller General may extend the deadlines when appropriate for specific protests, on a case-by-case basis; the conferees regard such extensions as exceptional, however, and to be used in unique circumstances only.

If, when a protest is filed, the contract in question has not yet been awarded, an award may not be made unless the head of procuring activity responsible finds and reports to the Comptroller General that urgent and compelling circumstances which significantly affect the interests of the United States will not permit awaiting the Comptroller General decision. (This finding may be made only if the award is likely to occur within 30 calendar days.) If a protest is filed within 10 days after award of the contract, performance shall cease and all related activities which may result in additional obligations being incurred by the United States must be suspended, unless the head of the procuring activity informs the Comptroller General that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the Comptroller General's decision, or that performance of the contract is in the best interest of the United States.

Before notifying the Comptroller General that continued performance of a disputed contract is in the government's best interest, however, the head of the procuring activity should consider potential costs to the government from carrying out relief measures as may be recommended by the Comptroller General if the protest is subsequently sustained. This is to insure that if the Comptroller General sustains a protest, such forms of relief as termination, recompetition, or re-award of the contract will be fully considered for recommendation. Agencies in the past have resisted such recommendations on the grounds that the government's best interest would not be served by relief measures of this sort because of the added expenses involved. This provision is designed to preclude that argument in the future, and thus to avoid prejudicing those relief measures in the Comptroller General's review.

If the Comptroller General determines that a protested procurement action has involved government non-compliance with statutes or regulations, the Comptroller General is required to recommend corrective action to the executive agency responsible, and the head of the procuring activity involved must notify the Comptroller General if the agency has not implemented the recommendations within 60 calender days. This provision does not preclude the Comptroller General from requesting the agencies to notify the GAO of the status of any other recommendation. An annual report of all notifications received by the Comptroller General, describing each instance of non-implementation, must be submitted to Congress.

The Comptroller General may grant to a successful protesting party reimbursement for expenses of preparing bids or proposals related to the disputed contracting action and for costs incurred in making the protest. These costs shall be paid from the procurement funds (not necessarily funds for the specified procurement which was challenged) of the executive agency involved.

The conference substitute provides that the Comptroller General may dismiss at any point in the process a filing determined to be frivolous or to lack a valid basis for protest. This provision reflects the intent of the conferees to keep proper contract awards or due performance of contracts from being interrupted by technicalities which interested parties in bad faith might otherwise attempt to exploit. Finally, the conferees expect that the Comptroller General will declare monetary awards only in cases where the agencies have unfairly excluded vendors from procurements, and not in cases involving minor technicalities.

The Comptroller General currently receives from courts and agencies requests concerning the propriety of procurements. The conferees intend that the Comptroller General have the discretion to continue to process these requests in a manner consistent with the one used for bid protests.

The conference substitute also includes a section regarding alternative remedies. The subchapter regarding bid protests does not alter the current rights of any person to seek administrative or judicial review of any alleged violation of a procurement statute or regulation. Further, documents related to a Comptroller General's decision on a procurement and the agency's response to such decision must be made a part of the agency record and be made available to the courts in the event a suit is filed against the agency involving the procurement.

Subtitle E—Effective Date: Regulations; Study

Section 2751—Effective Date

Senate amendment

The Senate amendment applies to any solicitations for bids or proposals issued on or after the date 270 days after enactment.

Conference substitute

The conference substitute establishes April 1, 1985, which is approximately 270 days from the anticipated date of enactment, as the effective date. The substitute also establishes January 15, 1985, which allows approximately 180 days for implementation, as the effective date for the bid protest provision.

Section 2752—Modification of the Federal Acquisition Regulation

Senate amendment

The Senate amendment has no comparable provision.

Conference substitute

The conference substitute requires that the Federal Acquisition Regulation (FAR) shall be modified by March 31, 1985, to conform to the requirements set forth in this substitute. Modification shall also be made to the FAR within this time period to reflect policy directives issued by the Office of Federal Procurement Policy.

The conferees note with considerable concern that the system established to maintain the FAR is not working. Presently, FAR maintenance is jointly vested in two procurement regulatory councils, the Defense Acquisition Regulatory (DAR) Council, established by the Secretary of Defense, and the Civilian Agency Acquisition Council (CAAC), established pursuant to the FAR. Under the maintenance procedures prescribed by the FAR, both councils must consider and approve each proposed modification or addition to the FAR.

Given this cumbersome maintenance system, the conferees note that, to date, the regulatory councils have failed to implement both statutory changes and OFPP policy directives. Given the currently limited role accorded to OFPP in the FAR maintenance system, the conferees are concerned that the continuing lack of leadership for the FAR maintenance system will perpetuate the untimely implementation of FAR changes required by statute or OFPP policy directives.

By statute, the OFPP Administrator is empowered to issue procurement regulations, procedures or forms when the two regulatory councils are unable to agree or fail to take action. In the event that conflict or inaction precludes the two councils from meeting the April 1, 1985, deadline for implementing the modifications to the FAR pursuant to this substitute, the OFPP Administrator must intervene to issue the regulations by this deadline. Further, the conferees believe that the OFPP Administrator should be accorded a greater role in managing the FAR maintenance process on a continuing basis.

Section 2753—Study

Senate amendment

The Senate amendment has no comparable provision.

Conference substitute

The conference substitute requires the Office of Federal Procurement Policy to recommend to Congress a plan for increasing the use of full and open competition in the procurement of professional, technical and managerial services. This category of procurements often involves the use of evaluation criteria, other than price, in the selection of the winning vendor.

The Office of Federal Procurement Policy is directed to recommend competitive selection procedures for procurements where price is not a significant factor and the agency has determined a legitimate need for the best or highest quality proposal. Such a plan should include requirements for the agencies to follow to ensure that all responsible vendors are allowed to compete for the above procurements and that fair and reasonable prices are paid for the service. OFPP should consider, as a possible alternative prior to designing a plan, a system in which all qualified persons capable of providing specified services are placed on a list maintained by the government, in which each of those persons is encouraged to submit a competitive proposal in response to each solicitation for such services, and in which the award is made to the bidder on the list who can perform the service for the lowest overall cost.

The Office of Federal Procurement Policy should also, in conducting the study, consult with experts in such fields as soil engineering, real estate appraising, surveying and mapping, and other professional services which do not fit within the traditional concept of Federal procurement procedures.

TITLE VIII—FEDERAL CREDIT UNION ACT AMENDMENTS

Recapitalization of the National Credit Union Administration

Share Insurance Fund (Sections 2801-2812)

Sections 2801-2812 authorizes the National Credit Union Administration (NCUA) to impose a capital assessment on insured credit unions equal to 1 percent of their insured share accounts, thereby raising the capital of the fund to 1.3 percent.

The recapitalization of NCUA's insurance fund restructures one of the three federal deposit insurance funds in a significant manner. The conferees agree that there is a need for thorough Congressional review of deposit insurance generally, of the deposit insurance reports submitted by the federal insuring agencies pursuant to the Garn-St Germain Act and of deposit insurance reform proposals urged by various deposit insurance experts and the federal insuring agencies. However, in view of the Senate's position on sections 2801-2812 and the need to expedite completion of the Omnibus Reduction Act Conference, the House receded to the Senate.

Tax Exemption of the NCUA Central Liquidity Facility (Section 2813)

Established in 1978 by Public Law 95-630, the Financial Institutions and Interest Rate Control Act, the CLF is the "central bank" for credit unions. The CLF is a mixed ownership corporation (stock owned by credit unions), is on-budget, and is located within and managed by the NCUA. Section 2813 corrects an oversight in the enactment of P.L. 95-630 which provided that the CLF be similar to Federal Reserve Banks and Federal Home Loan Banks but did not explicitly exempt the CLF from taxation. Section 2813 corrects this oversight and explicitly exempts the CLF from taxation. The effective date of this provision would be retroactive to October 1, 1979. Therefore, the House receded to the Senate.

Elimination of Treasury Fees on Payroll Allotment (Section 2814)

Section 2814 eliminates the fee which Treasury charges financial institutions for depositing payroll allotments of civilian federal employees. The House passed a similar bill in 1982; and a similar bill, H.R. 3879, was approved by the House under suspension on April 2, 1984. The House receded to the Senate.

Title IX—Miscellaneous Provisions

Section 2901. Cost Savings by Administrative Action

House amendment

The House amendment contains no provision relating to reduction of obligations for various types of administrative activities.

Senate amendment

Section 1603 of the Senate amendment requires that the total amount which may be obligated for various administrative purposes in FY 1985 be reduced by specified amounts below the total appropriated for such purposes for FY 1984. These purposes and amounts are:

Section 1603(a)—Certain Travel and Transportation	$750 million.
Section 1603(b)—Consultant Services	$1 billion.
Section 1603(c)—Public Affairs, Public Relations, Public Information and Advertising	$100 million.
Section 1603(d)—Publishing, Printing, Reproduction, and Audiovisual Activities	$250 million.
Section 1603(f)—Certain Motor Vehicle Operations	$160 million.

Section 1603(e) requires OMB to "effect savings of $2,100,000,000 through enhanced identification and recovery and collection of Federal overpayments, delinquencies, and indebtedness . . . most recently considered to be uncollectible." This is the amount that the President's FY 1985 budget estimated would be collected through increased efforts.

The provisions of Section 1603 of the Senate amendment were designed to reduce the costs of administrative activities by providing that total FY 1985 obligations for those activities would be reduced by certain amounts below comparable levels in FY 1984 appropriations. All reductions would be allocated by the Director of the Office of Management and Budget among the agencies, but, in some instances, certain key functions, such as law enforcement and emergency national defense activities, would be exempt from bearing a share of the allocated reductions.

Conference agreement

The conferees agreed to the Senate provision with an amendment.

The conferees agree that significant savings can be achieved in these areas of Federal expenditures. However, the conferees are concerned that there is insufficient data to implement the provision, that the amounts of the reductions may be inappropriate, and that the language of the provision would probably not result in savings to the government.

There are no firm estimates concerning the baseline costs to the government of the categories of expenditures specified in the amendment. The government accounts do not separately identify the specific costs of administrative components such as travel and transportation, consultant services, public affairs, public relations and advertising, publishing, and motor vehicle operations. Without a firm, agreed upon base from which to measure the costs of these activities, it would be nearly impossible to determine the real savings which might result from the provisions of section 1603 (a) through (f)(1) of the Senate amendment.

While monies for travel and transportation are not separately appropriated and obligated, statistics on these expenditures have been developed. These statistics suggest that the size of the reduction required in this area by the Senate amendment could severely hamper important government activities. Evidence supplied by OMB in a letter to Chairman Roth suggests that the travel and transportation activities not exempted in the Senate provision would have to be reduced by about 26 percent to carry out the requirements of the provision. OMB went on to conclude that if other important activities such as transportation of Commodity Credit Corporation commodities, coal for TVA's power plants, stockpile commodities, and travel for VA beneficiaries, FAA and other transportation safety staff, audit staff, diplomatic officials and staff, and Department of Defense staff, are also excluded from the reduction, the reduction required for remaining activities would be about two-thirds.

Furthermore, the conferees agree with OMB that the provision would not result in savings to the government. This is because the language does not reduce appropriated funds, but rather limits expenditures for specific activities such as public affairs of reproduction expenses. According to OMB, any "savings" resulting from reductions in expenditures for those administrative activities, would by law have to be made available for other purposes. Otherwise, the funds would be withheld from obligation contrary to the provisions of the Impoundment Control Act.

To solve these problems, the conferees agreed on an amendment that would require the development by OMB of baseline data, a determination of possible savings, and a plan to achieve these savings.

Section 2901(a) expresses the sense of Congress that costs for administrative activities can be reduced and that better management of such activities must remain a high priority of the Congress and the executive branch.

Subsection (b) of section 2901 includes provisions designed to provide Congress and the public with more substantial and clearly defined information on the baseline costs for administrative activities. This subsection requires the Director of the Office of Management and Budget to report to Congress baseline estimates of the costs for each of the specified administrative activities in FY 1984. In addition, OMB would be required to explain what savings can reasonably be expected in these areas in FY 1985 through management improvements and how those savings would be achieved. OMB is also directed to submit draft legislation where necessary to achieve savings in the costs of these administrative activities.

Subsection (c) requires that in the event OMB estimates of possible savings are less than that required in the Senate provision, then the report to Congress must include an explanation of why the higher figure is not achievable.

As agreed to by the conferees, section 2901(a)(1)(C) no longer refers to "public information activities" as one of the areas in which reductions are to be identified. Conferees concluded that reductions are appropriate in the areas of public relations and advertising by agencies. However, they agreed that providing information on the operations of government generally, or pursuant to the Freedom of Information Act specifically, should not be affected by this section.

Section 2902. Disposal of Certain Land at Montauk Air Force Base

House amendment

The House amendment contains no provision related to the disposal of land at Montauk Air Force Base.

Senate amendment

Section 1605 of the Senate amendment provides that the Administrator of General Services shall assign to the Secretary of the Interior for use as a public park or recreation area, 278 acres of the Montauk Air Force Station in East Hampton Township, Suffolk County, New York, that were declared surplus on December 21, 1981. This section also provides that, in exchange for the transfer of title to 125 acres of property owned by the State of New York at Fire Island, New York, to the Secretary of the Interior, the Secretary shall convey the Montauk Point property to the State of New York for public park or recreation uses in accordance with section 203(k)(2) of the Federal Property and Administrative Services Act of 1949.

Conference agreement

The conferees agreed to the Senate provision with an amendment.

In 1981, the General Services Administration determined that the designated Montauk Point property was surplus and that its highest and best use was for residential development. On October 21, 1983, the Acting Secretary of the Interior reaffirmed to GSA the high park and recreation values of the property, asking for a reconsideration of a decision not to assign the property for park and recreation use. However, on February 8, 1984, GSA proceeded to auction the property. Acceptance of the high bid and award have been held in abeyance because of a court order.

On April 27, 1984, the Secretary of the Interior advised the Acting Administrator of General Services that he had approved a revised application which the State of New York had submitted for a public benefit discount conveyance of the Montauk Point property pursuant to section 203(k)(2) of the Federal Property and Administrative Services Act. That provision authorizes such conveyances of surplus real property for public park or public recreational purposes. The Secretary urged GSA to assign the property to the Department so that it might be transferred to the State for those purposes. New York's revised application includes projected State developments to cost an estimated $2,010,000.

The Secretary stressed the property's unique natural characteristics and recreation potential. At the same time, he advised GSA that the Governor of New York had formally offered to donate to the Federal government 125 acres of State-owned land within the boundaries of the Fire Island National Seashore. This includes the unnamed unit of Robert Moses State Park that was included within the boundaries of the national seashore by Public Law 95-625 (Act of November 10, 1978, section 322(a)).

On April 23, 1984, the Secretary formally asked, through the Director of the Office of Management and Budget, that the Administration throughly explore these two mutually advantageous transfers. As yet, the Administration has disclosed no position on this matter.

The conferees believe that unique park and recreational values inhere in the Montauk Point property and that the best interest of the United States would be served through public benefit discount transfer to the State of New York, whose application for acquisition and planned park and recreational development has the Secretary of the Interior's strong endorsement.

Nevertheless, the conferees are concerned that this provision, as included in the Senate amendment, overrides the Federal Property Act's statutory structure for disposal of surplus property and would set a precedent for ad hoc disposals of surplus Federal property—a problem that the establishment of an administrative structure for the evaluation and disposal of surplus property was intended to avoid.

In order to reconcile concerns for the proper disposal of this piece of property and the need to maintain a uniform surplus property disposal structure, the conferees adopted a provision stating that the Congress finds that the highest and best use of the Montauk lands is use as a park or recreational area. The provision also recognizes the State of New York's willingness to convey the Fire Island lands. The conference agreement states that the Administrator of GSA should assign the Montauk property to the Secretary of the Interior and that the Secretary should, simultaneous with the acceptance of the Fire Island property, convey the Montauk land to the State of New York for use as a public park or recreational area through a public discount conveyance under section 203(k)(2) of the Federal Property and Administrative Services Act.

The conference agreement thus does not supplant the processes provided under section 203(k)(2). The conferees expect that the General Services Administration and the Department of the Interior will proceed expeditiously to accomplish this objective and also that the Secretary of the Interior will accept the offer by the State of New York to donate the 125 acres of State-owned lands to the United States to be administered as part of the Fire Island National Seashore.

Section 2903. Cost Savings Report by the President

House amendment

The House amendment contains no provision relating to a review of cost savings by administrative action.

Senate amendment

Section 1609 of the Senate amendment requires the Administration to review the recommendations of the President's Private Sector Survey on Cost Control (the Grace Commission) which require administrative or presidential action and commit to adopting a sufficient quantity to achieve cost savings of $4 billion in fiscal year 1985, $6 billion in FY 1986, and $10 billion in FY 1987. The provision in the Senate amendment also would require the Administration to expedite and administer provisions of the recommendations and subsequent changes in laws to implement cost savings pursuant to the provision.

Conference agreement

The conferees were concerned that the language of the Senate amendment might be construed as constituting an endorsement by the Congress of one specific group of recommendations as to cost savings in the Federal government, to the exclusion of numerous other studies in this area. For that reason, the conferees agreed to expand the coverage of the provision to require the President to review recommendations for management improvement and cost control opportunities, including those made by congressional committees, executive and legislative branch agencies, educational and research organizations, and public and private bodies, task forces, councils, panels, and study groups. A report on this review is to be submitted along with the budget in January 1985. The report is to contain a list of the recommendations the President has reviewed, the source of those recommendations, the actions which the President proposes to take or has taken, and the amount of cost savings expected to result from implementation of these recommendations in FY 1985, 1986, and 1987.

The conferees expect all the recommendations in the studies that are reviewed to be specifically addressed, either in the affirmative or the negative, in this report.

Cost savings by committee (section 2904)

Section 1608 of the Senate amendment would require all authorizing committees of the Senate and House to review savings recommendations of the President's Private Sector on Cost Control, and, based on that review, make recommendations to the Budget Committees by September 30, 1984.

The House amendment contains no comparable provision.

The Conference substitute modifies the Senate amendment to require authorizing committees to review the report required under section 2903, as agreed to by the Conference, and to submit recommendations for cost savings to the Budget Committees by March 15, 1985 as part of each committee's report submitted pursuant to section 301(c) of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Analyses of budget assumptions (section 2905)

Section 1610 requires the Director of the Congressional Budget Office to analyze executive departments and agencies, so as to determine the nature and reliability of the assumptions that are used in the preparation and submission of budget estimates for the Congress.

The House amendment contains no comparable provision.

The House recedes to the Senate with modifications. Section 2905(a) is modified to require the Director of the Congressional Budget Office to study and report on reasons for differences in projected and actual budget figures, identify systematic biases in estimates, and examine alternative forecasting methods. Section 2905(b) is modified to require CBO and GAO to review budget estimates prepared by the Department of Defense and one other civilian agency. Section 2905(c) is deleted in the Conference agreement. The report would be due June 1, 1985.

Formula approach to Federal budgeting (section 2906)

Section 1315 of the Senate amendment states Congressional findings concerning the growth in Federal deficits and the need to control such growth. Section 1316 of the Senate amendment requires the Director of the Congressional Budget Office and Director of the Office of Management and Budget to conduct a study using alternative formulas for the entire Federal budget.

The House amendment contains no comparable provisions.

The Senate recedes to the House on section 1315.

The House recedes to the Senate amendment with a modification to section 1316.

Mining of Nicaraguan ports (section 2907)

Section 1001 of the Senate amendment states it is the Sense of the Congress that no funds be appropriated in any Act of the Congress for the purpose of mining of the ports or territorial waters of Nicaragua.

The House amendment contains no comparable provision.

The House recedes to the Senate.

National Commission

Section 1602 of the Senate amendment states it is the Sense of the Senate that a National Commission on Federal Spending Reform should be established.

The House amendment contains no comparable provision.

The Senate recedes to the House.

National Commission on Deficit Reduction

Section 1601 of the Senate amendment states it is the Sense of the Congress that a bipartisan National Commission on Deficit Reduction be established.

The House amendment contains no comparable provision.

The Senate recedes to the House.

Solely for consideration of titles I through VIII, section 1002, and title XI of the Senate amendment, and division A of the House amendment to the Senate amendment:

From the Committee on Ways and Means:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
C.B. Rangel,
Pete Stark,
Barber B. Conable, Jr.,
John J. Duncan,
Bill Archer,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth, Jr.,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of sections 921 through 926, 943, 944, 952, and 958 of the Senate amendment and title III, parts B and C of division B of the House amendment to the Senate amendment:

From the Committee on Energy and Commerce:

John D. Dingell,
Henry A. Waxman,
James H. Scheuer,
Tom Luken,
Doug Walgren,
Barbara A. Mikulski,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth, Jr.,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of sections 905, 909, 917, 919, 951, 955, 956, 957, subsections (a), (b), and (c) of section 965, 966, 971 through 976, 981 through 985, and 992 through 997 of title IX of the Senate amendment and title III, sections 308 (2308), 339 (2339), 340 (2340), 342 (2342), and title VI (except for sections 650 (2650) and 661 (2661)) of division B of the House amendment to the Senate amendment:

From the Committee on Ways and Means:

Dan Rostenkowski,
Andrew Jacobs, Jr.,
C.B. Rangel,
Marty Russo,
Harold Ford,
Pete Stark,
Donald J. Pease,
Barber B. Conable,
John J. Duncan,
W. Henson Moore,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth, Jr.,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of title IX (except for sections 905, 909, 917, 919, 921 through 926, 943, 944, 951, 952, 955 through 958, subsections (a), (b), and (c) of section 965, 966, 971 through 976, 981 through 985, and 992 through 997)) and section 1611 of the Senate amendment and title III (except for sections 308 (2308), 339 (2339), 340 (2340), and 342 (2342)) of division B of the House amendment to the Senate amendment and sections 650 (2650) and 661 (2661) of division B of the House amendment to the Senate amendment:

From the Committee on Energy and Commerce:

John D. Dingell,
Henry A. Waxman,
James H. Scheuer,
Tom Luken,
Doug Walgren,
Barbara A. Mikulski,

From the Committee on Ways and Means:

Dan Rostenkowski,
Andrew Jacobs, Jr.,
C.B. Rangel,
Marty Russo,
Harold Ford,
Pete Stark,
Donald J. Pease,
Barber B. Conable,
John J. Duncan,
W. Henson Moore,
Managers on the Part of the House.

From the Committee on Finance, to consider those matters within its jurisdiction:

Bob Dole,
Bob Packwood,
W.V. Roth,
John C. Danforth,
John H. Chafee,
Russell B. Long,
Lloyd Bentsen,
Spark M. Matsunaga,
Max Baucus,
Managers on the Part of the Senate.

Solely for consideration of title XIV and section 1606 of the Senate amendment:

From the Committee on Appropriations:

Jamie L. Whitten,
Edward P. Boland,
Silvio O. Conte,
Joseph M. McDade,

Solely for consideration of title XIV except for section 1401(f) of the Senate amendment:

From the Committee on Rules:

Claude Pepper,
Gillis Long,
Anthony C. Beilenson,
Martin Frost,
Managers on the Part of the House.

From the Committee on Appropriations, to consider those matters within its jurisdiction:

Mark O. Hatfield,
Ted Stevens,

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:

W.V. Roth, Jr.,
Bill Cohen,
Tom Eagleton,

From the Committee on the Budget:

Pete V. Domenici,
William L. Armstrong,
Nancy Landon Kassebaum,
Rudy Boschwitz,
John Tower,
Managers on the Part of the Senate.

Solely for Consideration of title XII and Sections 1604 and 1607 of the Senate amendment, and title II of Division B of the House amendment to the Senate Amendment:

From the Committee on Post Office and Civil Service:

William D. Ford,
William Clay,
Robert Garcia,
Mickey Leland,
Dan Albosta,
Mary Rose Oakar,
Gene Taylor,
Benjamin A. Gilman,

Tom Corcoran,
Jim Courter,

Solely for consideration of such portions of section 1201 of the Senate amendment and section 301 of division B of the House amendment to the Senate amendment as related to cost-of-living adjustments for military retirees:

From the Committee on Armed Services:

Melvin Price,
Bill Nichols,
Wm. L. Dickinson,
Elwood Hillis,

Solely for consideration of section 1604 of the Senate amendment:

From the Committee on the Judiciary:

Peter W. Rodino, Jr.,
Jack Brooks,
Hamilton Fish, Jr.,
Managers on the Part of the House.

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:

W.V. Roth, Jr.,
Charles McC. Mathias,
Jr.,
Bill Cohen,
Tom Eagleton,
Jeff Bingaman,
Managers on the Part of the Senate.

Solely for consideration of title XV of the House amendment:

From the Committee on Government Operations:

Jack Brooks,
Don Fuqua,
Cardiss Collins,
Glenn English,
Elliott H. Levitas,
Frank Horton,
John N. Erlenborn,
W. Clinger,
Managers on the Part of the House.

From the Committee on Armed Services, to consider those matters within its jurisdiction:

Bill Cohen,
Dan Quayle,
Jeff Bingaman,
Carl Levin,

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:

W.V. Roth, Jr.,
Bill Cohen,
Tom Eagleton,
Carl Levin,
Managers on the Part of the Senate.

Solely for consideration of sections 1301 through 1314 of the Senate amendment:

From the Committee on Banking, Finance and Urban Affairs:

Fernand J. St Germain,
Frank Annunzio,
Carroll Hubbard,
Doug Barnard, Jr.,
Mary Rose Oakar,
Chalmers P. Wylie,
Stewart B. McKinney,
Managers on the Part of the House.

From the Committee on Banking, Housing, and Urban Affairs, to consider those matters within its jurisdiction:

Jake Garn,
John Tower,
Bill Proxmire,
Managers on the Part of the Senate.

Solely for consideration of title IV of division B of the House amendment to the Senate amendment:

From the Committee on Small Business:

Parren J. Mitchell,
Joseph P. Addabbo,
Joseph M. McDade,
Managers on the Part of the House.

From the Committee on Small Business, solely for consideration of title IV of division B of the House amendment to the Senate amendment:

Lowell P. Weicker, Jr.,
Slade Gorton,
Dale Bumpers,
Managers on the Part of the Senate.

Solely for consideration of title V of division B of the House amendment to the Senate amendment:

From the Committee on Veterans' Affairs:

G.V. Montgomery,
Don Edwards,
Bob Edgar,
Douglas Applegate,
Marvin Leath,
Richard Shelby,
John Paul
Hammerschmidt,
Chalmers P. Wylie,
Elwood Hillis,
Managers on the Part of the House.

From the Committee on Veterans' Affairs, solely for consideration of title V of division B of the House amendment to the Senate amendment:

Alan K. Simpson,
Strom Thurmond,
Alan Cranston,
Managers on the Part of the Senate.

Solely for consideration of sections 1603, 1605, 1609, and subsection (b) of section 1610 of the Senate amendment:

From the Committee on Government Operations:

Jack Brooks,
Don Fuqua,
Cardiss Collins,
Glenn English,
Elliott H. Levitas,
Frank Horton,
John N. Erlenborn,
W. Clinger,
Managers on the Part of the House.

From the Committee on Governmental Affairs, to consider those matters within its jurisdiction:

W.V. Roth, Jr.,
Bill Cohen,
Tom Eagleton,
Carl Levin,

From the Committee on the Budget:

Pete V. Domenici,
William L. Armstrong,
Nancy Landon
Kassebaum,
Rudy Boschwitz,
John Tower,
Managers on the Part of the Senate.

Solely for consideration of title IX, section 1001, and titles XII through XVI of the Senate amendment, and division B of the House amendment to the Senate amendment:

From the Committee on the Budget:

James Jones,
Leon E. Panetta,
Richard Gephardt,
Bill Nelson,
Brian Donnelly,
Butler Derrick,
Pat Williams,
Managers on the Part of the House.

For consideration of the entire bill:

From the Committee on the Budget:

Pete V. Domenici,
Willliam L. Armstrong,
Nancy Landon
Kassebaum,
Rudy Boschwitz,
John Tower,
Managers on the Part of the Senate.

EXTENSIONS OF REMARKS—*June 22, 1984*

DENNY GRISWOLD, APOSTLE OF PUBLIC RELATIONS

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● **Mr. GREEN.** Mr. Speaker, on May 9, 1984, the 40th anniversary of Public Relations News was celebrated at the Grand Ballroom of the Pierre Hotel in New York City. One cannot honor Public Relations News, the most widely read PR publication in the world, without honoring Denny Griswold. As cofounder and editor of the publication, and as a tireless advocate of the importance of public relations in modern society, she has been the moving force behind a virtual revolution in American life.

On this 40th anniversary of Public Relations News, leaders in the fields of business, education, government, and religion were brought together to sing the praises of this extraordinary woman. Among her outstanding accomplishments, she is credited as the person most responsible in winning management recognition for the public relations function. Furthermore; the wit and insight of her editorials, case histories, and reports have encouraged thousands of organizations to set up their own public relations departments, including the Conference Board and the U.S. Chamber of Commerce. Government, too, has been a major beneficiary of the public relations revolution. Today, Government offices in the United States and overseas employ public relations professionals to more effectively communicate U.S. policies and goals.

I would therefore like to share the following article, "Denny Griswold, Apostle of PR for 40 years," which appeared in the May issue of Communications World, with this statement and I commend it to my colleagues.

[From Communications World, May 1984]

DENNY GRISWOLD, APOSTLE OF PR FOR 40 YEARS

(By Robert A. Parker)

"She is tireless, imaginative, innovative, enthusiastic and highly motivated—a crusading pioneer for the public relations profession."—Herbert Schmertz.

"Some people smile and say only Denny could do that. But to make a sale you have to ask for the order. And after Denny does, she shows she is very appreciative."—David Finn.

"If there hadn't been a Denny Griswold, we would have had to invent one."—Kerryn King.

The number is difficult to locate in the wrought iron above the door. To be admitted to this office on New York's East 80th Street, you must next pass through three barriers created by a private security firm.

It is no less challenging to penetrate the inner character of its occupant, Denny Griswold.

Her narrow office is filled with haphazard piles of books, magazines and papers. But the impression of disorder is quickly dispelled. A conversion with this small, charming, aggressive, loquacious figure reveals the same driving style which holds together the diverse content of her weekly newsletter. Public Relations News.

Confronted by a legend, one seeks the reality. Who is the real Denny Griswold? What lies behind this elegant, smiling image in a red dress, red polka-dot tie, and reddish hair? There is a sense of style in the manners, the graciousness, as well as in the black stockings, black shoes and trim black belt.

She'll eat you alive, hint some. She'll charm you to death, suggest others. Neither seems to be an accurate view. What becomes clear during a two-hour conversation with Denny Griswold is that if knowledge is power, her attention to people is also part of the human equation.

Every so often, however, a computer seems to have programmed a missionary seal into her conversation. She will take an aggressive stance in behalf of the public relations function, or her weekly newsletter, Public Relations News, now celebrating its 40th anniversary. Otherwise, the visitor—caught up in a stimulating conversation, at times one-sided—begins to comprehend Denny Griswold's true stature in a profession of creative people.

"I got the idea for publishing PR News when I was on Business Week," she says. She was the first woman on its editorial staff, after having been the managing editor of Forbes magazine. "In talking to top industrialists, I realized they didn't recognize how important public relations was to their bottom line, nor how important it could be in helping people and even nations get along well together. In a way it was a ridiculous endeavor to undertake. To succeed, I knew I would have to help build the field."

This was 1944, during World War II, which she credits with giving a big boost to public relations. First, US industry recognized that while it had few products to sell consumers, it needed a way to keep its reputation for quality in the public eye, so when markets opened up after the war, company names would be remembered. Second, the armed services set up public information offices around the world with people who brought their new public relations skills back to civilian life and often went into business for themselves. Finally, selling a war that no one originally wanted called for an enormous public relations effort by the government.

So history was on her side. But Denny Griswold slowly began to make her own history. "About 15 years later, I spotted a trend. These first public relations executives were moving from PR into top management. So I created the *PR News* Gold Key awards to dramatize the number of executives who were moving up. So far we have honored well over 2,000 executives, and it's the project I'm proudest of." Interestingly, she says, that today "few PR executives weep in their beer and complain that management doesn't understand them, that they can't accomplish anything. They've become part of management themselves."

Many have also become part of Denny Griswold's world. Harold Burson recalls meeting Denny 31 years ago, "when there were many more important people in the field than me, but for some reason she wanted to know me and was very supportive, and I suspect many others fit that description, too."

"Denny was always interested in people," agrees David Finn, "especially people she identified as leaders." Today her home is the scene of frequent gatherings of business leaders that belong to her field or that of her husband of 33 years, investment manager J. Langdon Sullivan.

Many of those people also belong to her 35-member board that meets three or four times a year in an advisory capacity.

"Denny has done a lot for many people," says Kerryn King of Hill and Knowlton, "and that is the genesis for the commitment that so many have made to her 40th anniversary celebration. Adds David Finn, "You have to understand the kind of role she has played, like a mother to our field. She doesn't attack people. She doesn't challenge people. She is persistent, but you won't get into trouble if you don't respond to her."

What is Denny Griswold's role in the world of public relations? How much is she a participant, how much an observer? "We have been asked over the years to handle accounts," she says, "to accept fees for recommending accounts. And we have recommended millions of dollars of business to PR firms. I have built hundreds of careers in public relations. But we have never accepted one red cent for this. Our prime source of income remains subscriptions to *Public Relations News.*"

The result is many levels of involvement. "Don't forget my advice to the lovelorn. 'Denny, is it time I move to another job? Would it be extravagant, Denny, if I got a new automobile this year? Should I move from public relations to become a clergyman?' Others have named babies after me. You see, these people get a letter from me every week, and there's a rapport we've built up with our subscribers that nobody else has."

And beyond the people level is the professional level. "For 40 years, I have preached social responsibility on the part of business," she says. "Now I open the paper or listen to the radio or TV, and find that business is giving me its feedback. How can one ask for anything more? Also, I see the whole public relations field exploding now. And there is the immense satisfaction of having people say I was a little bit responsible for this growth. It's as if my epitaph had been written, and I were still around to read it."

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

In reviewing this conversation, one soon realizes that when the questions turned personal, it became evident that there was a unique drive that went beyond the "tenacity and endurance" that she herself cites as the chief contributors to her success.

For example, she gave up studying music at age 16, when a Metropolitan Opera star suggested that her voice was not strong enough for opera, although she could be an excellent concert singer. Later, she earned a master's degree in music and journalism and obtained an early job as a music critic for The New York Times. "But I decided to go into business."

At Business Week, she not only got the job, she married the editor and publisher, Glenn Griswold. "When he died, I decided I would never marry again, because I'd had such an idyllic first marriage and I didn't feel it could happen twice. But then this marvelous man came along from Boston, a descendant of General Sullivan of the American Revolution. And I've had another marvelous marriage as Mrs. J. Langdon Sullivan. My husband, I have to say, is very supportive, even though when we met he tried to get me to come into his business. But I can't even add, and it would have been a fiasco."

Then the personal moment is gone. The zealous missionary returns. "This is not a nine-to-five job," she says. "I eat and sleep public relations. When the staff goes home"—there are 13—"I am still working, selecting the items for the next issue, doing the final editing, planning the case studies that take from three months to a year to put together."

In the elevator, a final question goes up through the intercom to reestablish the human contact. Where did the name Denny come from? What does it stand for? Denny's voice comes back: "That's a long story . . . an interesting one. I'll tell you about it one day."

Out on the street, certain questions arise. What if that opera star had seen greater capabilities in Denny's voice? What if her first husband had not died? What would the public relations field be today if there had been no Denny Griswold and PR News?

The austere facade on East 80th Street fails to suggest the answers.●

THE JAMESTOWN POLES

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. COYNE. Polish Americans and the Central Council of Polish Organizations of Pittsburgh will commemorate the 365th anniversary of the enfranchisement of the Jamestown Poles on August 14, 1984 at Pittsburgh's Kennywood Park. The Polish American community, which traces its roots to 1608, has grown to be a culturally significant ethnic group in the melting pot of America.

In 1608, at the request of Capt. John Smith, a small group of Polish artisans arrived at Jamestown on the supply ship *Margaret and Mary*. As records of Captain Smith's appeal to the colony council at London indicate, the shipment of a few Poles was, in preference to bringing thousands such as we have now since the English colonists did not know what a day's work is.

In Captain Smith's progress report of 1609, he further revealed that the Polish colonists proved to be diligent workers who must be retained so that "* * * skill does not perish. * * *"

At this point, I would like to include in the RECORD a description of the Jamestown Poles prepared by the Pittsburgh Central Council of Polish Organizations.

The material follows:

CAPT. JOHN SMITH INVITES POLES

When Captain John Smith was named president of the Jamestown Colony on September 10, 1608 one of the first appeals to the Colony Council at London was his petition which in part he stated: "They send for carpenters, husbandmen, fishermen, and for glass-men, pitch and tar makers to Germany and Poland till we are able to sustain ourselves". He then further emphasized, "this is in preference of bringing thousands such as we have now." Then he also added this significant statement, "they (English) did not know what a day's work is except the Poles." (Edward Arber Works of Captain John Smith, p. 94). When there was criticism of bringing Poles, Captain John Smith defended his request by asserting this, "as for hiring of the Poles and Dutch, to make pitch and tarre, glass-miles, (glass-Grills) and soap ashes; was most necessarie and well."

THE POLES' ARRIVAL

It was aboard the second supply ship, "Margaret and Mary" under the command of Captain Newport that unknown number of Poles came to the Jamestown Colony. According to contemporary records there were, "Eight Dutchmen and Poles, and four others unnamed, making seventy in all." We learn from the narrative, that the first names of three of Dutchmen, were Adam, Francis and Samuel. They proved to be undesirable additions to the Colony. (See Conway Whittle Sam, "Conquest of Virginia" p. 823).

To determine the full names of the Poles it is almost impossible in view of the fact that records of the Virginia Company were almost completely destroyed sometime between 1623 and 1631 and 1634 by Privy Council's order. (Phillip L. Barbour. Letter to the author 9-5-75).

In the course of perusal of the Virginia Company's records, we do come across different Poles who are referred to only by their first name.

CAPT. JOHN SMITH REPORT ON PROGRESS

In his story, "The General History of Virginia etc.", Captain Smith says that he was responsible for the general development in the colony by "putting them to work" and added that, "in three months (February-April 1609) we made three or four last of Tarr, Pitch and Soap Ashes; produced a try all of Glasse."

To what extent the Poles or any other group participated in "producing trall of Glasse" is not directly mentioned and probably will remain a moot question.

However there are direct references as to what the Polish colonists did viz: "For Hemp, and Flaxe, Pot Ashes and Soap Ashes, Pitch and Tarre there is a "Thirdly, for Pitch and Tarre, we advise and require, that the Polanders be returned in part to these works, with such other assistance as shall be necessary. The like we desire for Potashes and Soap-ashes, when there shall be fit store of hands to assist them; Requiring in the meantime, that care be generally taken, that servants and apprentices be so trained in these works, as that the skill does not perish together with the masters." (Kingsbury Vol. III, page 278-279).

The commemorative services Committee consists of the following members: Joseph A. Borkowski, Chairman; Anthony Studnicki, Jean Zakrzewski, Irene Suikowski, Nattie Siwicki, Casimir Gruzewski, Henry Drak, Wallace Klonowski, Irene Adams, Eugenia Landa, Lorraine Duffola, John Alexandrowicz.●

BROKERED DEPOSITS

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GARCIA. Mr. Speaker, yesterday, the Federal District Court for the District of Columbia overruled the Federal Deposit Insurance Corporation's and the Federal Home Loan Bank Board's regulations on brokered deposits. In the opinion of the court, the regulators acted without authority and hence, the rules, imposed last March, were inconsistent with Federal statutes governing the Federal deposit insurance programs.

Ever since the regulations were proposed, I have attempted to develop an alternative to the outright band on broker funds, keeping in mind the concerns of the regulators for the safety and soundness of the banking system and the insurance funds as well as the needs and demands of today's banking consumers who have grown in sophistication in a world of deregulated banking.

On May 10, I introduced legislation to govern the use of brokered funds which placed a cap of 15 percent of total insured deposits on the amount any one institution may hold in brokered funds. Such a cap removes the concern that any one institution may become too dependent on brokered funds for its survival and in turn place a burden on the insurance fund. This legislation, H.R. 5643 also required monthly reporting by depository institutions so that the regulators would have a monitoring tool.

Our colleague, Mr. SCHUMER, also introduced legislation to address the broker funds issue. This legislation, H.R. 5681 also placed a 15-percent cap on broker funds while requiring reporting by brokers rather than the institutions. H.R. 5681 placed further restrictions on the insurance of accounts as well as limiting any individual broker to no more than 5 percent of the total deposits of the insured bank which would mature in any 12-month period.

Today, we are introducing a new bill encompassing parts of both our efforts. The new legislation becomes all the more important in light of yesterday's court decision overruling the broker deposit regulations. I believe that this legislation is a sound proposal, carefully balancing the concerns of the regulators with the dynamics of the marketplace. I have included a copy of the new legislation below:

H.R. 5913

A bill to limit the amount of short-term broker deposits which may be accepted by any insured depository institution

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Broker Deposit Limitation Act".

LIMITATIONS ON SHORT-TERM BROKER DEPOSITS

Sec. 2. (a) Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is amended by adding at the end thereof the following:

"(d)(1)(A) In any case in which a deposit broker deposits funds for the benefit of any person in one or more insured banks, a total amount of deposit insurance benefits payable to such person by the Corporation with respect to such funds shall not exceed $100,000 in any four-year period.

"(B) Except for purposes of carrying out the provisions of this subsection, in determining the total amount of insured deposits which may be made by any person, the Corporation shall not differentiate between deposits made with the assistance of a deposit broker and deposits made without such assistance.

"(2) If an insured bank's unimpaired capital and surplus—

"(A) is less than 3 percent of its total liabilities, such insured bank shall not accept any short-term broker deposits from a deposit broker, and

"(B) is equal to, or exceeds 3 percent of its total liabilities, such insured bank may accept insured short-term broker deposits from a deposit broker in an amount which does not exceed the lesser of—

"(i) 200 percent of such insured bank's unimpaired capital and surplus; or

"(ii) 15 percent of the total deposits of such insured bank.

(3)(A) The Corporation may authorize any insured bank, upon application, to maintain insured short-term broker deposits in excess of the limitation established in paragraph (2).

(B) In making any such authorization, the Corporation shall consider both competitive factors and safety and soundness.

"(4) With respect to any insured bank whose total short-term broker deposits exceed the limitations imposed by this subsection and which has not received authorization pursuant to paragraph (3) the Corporation shall work with such insured bank to develop a plan to provide for the orderly reduction, consistent with preserving the safety and soundness of the insured bank, in the amount of short-term broker deposits maintained by such insured bank to an amount which conforms with the provisions of this subsection.

"(5) The Corporation shall require, by regulation, that each insured bank transmit a monthly report to the appropriate Federal supervisory agency detailing the amount of short-term broker deposits maintained by such insured depository institution.

"(6) Each deposit broker which places deposits with any insured bank shall transmit periodic report to the Corporation. Each such report shall specify—

"(A) the name of each insured bank in which such deposit broker has deposited funds;

"(B) the total amount of funds deposited in such insured bank and the maturities of such deposits;

"(C) the rate of interest received on such funds and the dates on which such funds were deposited; and

"(D) such other information as the Corporation deems appropriate to carry out the provisions of this subsection, except that the Corporation may not request the names of a deposit broker's customers.

"(7) With respect to any one deposit broker, no insured bank shall maintain insured deposits from such deposit broker in an amount which exceed 5 percent of the total deposits of such insured bank which will mature in any twelve-month period.

"(8) Notwithstanding any other provision of law, no deposit insurance coverage shall apply to any deposit which is placed by a deposit broker on behalf of—

"(A) any department or agency of the United States or

"(B) any depository institution.

"(9) The Corporation shall prescribe regulations to carry out the provisions of this subsection. Such regulations may contain such provision as the Corporation determines are necessary or proper to effectuate the purposes of this subsection, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

"(10) For purposes of this section—

"(A) the term 'deposit broker' means any person (other than an insured bank or an affiliate thereof with respect to funds placed with such insured bank) which, for a fee, places funds or facilitates the placement of funds of third parties in accounts issued by an insured bank;

"(B) the term 'depository institution' shall have the same meaning given such term in section 19(b)(1)(A) of the Federal Reserve Act; and

"(C) the term 'short-term broker deposit' means any deposit which—

"(i) is made for a period of time—

"(I) which is not greater than 12 months; or

"(II) which is not specified; and

"(ii) is placed by deposit broker.

(b) Section 403 of the National Housing Act (12 U.S.C. 1726) is amended by adding at the end thereof the following:

"(e)(1)(A) In any case in which a deposit broker deposits funds for the benefit of any person in one or more insured institutions, the total amount of deposit insurance benefits payable to such person by the Corporation with respect to such funds shall not exceed $100,000 in any four year period.

"(B) Except for purposes of carrying out the provisions of this subsection, in determining the total amount of insured deposits which may be made by any person, the Corporation shall not differentiate between deposits made with the assistance of a deposit broker and deposits made without such assistance.

"(2) If an insured institution's unimpaired capital and surplus—

"(A) is less than 3 percent of its total liabilities, such insured institution shall not accept any short-term broker deposits from a deposit broker; and

"(B) is equal to, or exceeds, 3 percent of its total liabilities, such insured institution may accept insured short-term broker deposits from a deposit broker in an amount which does not exceed the lesser of—

"(i) 200 percent of such insured institution's unimpaired capital and surplus; or

"(ii) 15 percent of the total deposits of such insured institution.

(3)(A) The Corporation may authorize any insured institution, upon application, to maintain insured short-term broker deposits in exess of the limitation established in paragraph (2).

(B) In making any such authorization, the Corporation shall consider both competitive factors and safety and soundness.

"(4) With respect to any insured institution whose total short-term broker deposits exceed the limitations imposed by this subsection and which has not received authorization pursuant to paragraph (3), the Corporation shall work with such insured institution to develop a plan to provide for the orderly reduction, consistent with preserving the safety and soundness of the insured institution, in the amount of short-term broker deposits maintained by such institution to an amount which conforms with the provisions of this subsection.

"(5) The Corporation shall require, by regulation, that each insured institution transmit a monthly report to the appropriate Federal supervisory agency detailing the amount of short-term broker deposits maintained by such insured depository institution.

"Each deposit broker which places deposits with any insured institution shall transmit periodic reports to the Corporation. Each such report shall specify—

"(A) the name of each insured institution in which such deposit broker has deposited funds;

"(B) the total amount of funds deposited in such institution and the maturities of such deposits;

"(C) the rate of interest received on such funds and the dates on which such funds were deposited; and

"(D) such other information as the Corporation deems appropriate to carry out the provisions of this subsection, except that the Corporation may not request the names of a deposit broker's customers.

"(7) With respect to any one deposit broker, no insured institution shall maintain insured deposits from such deposit broker in an amount which exceeds 5 percent of the total deposits of such insured-institution which will mature in any twelve-month period.

"(8) Notwithstanding any other provision of law, no deposit insurance coverage shall apply to any deposit which is placed by a deposit broker on behalf of—

"(A) any department or agency of the United States; or

"(B) any depository institution.

"(9) The Corporation shall prescribe regulations to carry out the provisions of this subsection. Such regulations may contain such provisions as the Corporation determines are necessary or proper to effectuate the purposes of this subsection, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

"(10) For purposes of this section—

"(A) the term 'deposit broker' means any person (other than an insured institution or an affiliate thereof with respect to funds placed with such insured institution) which, for a fee, places funds or facilitates the placement of funds of third parties in accounts issued by an insured institution;

"(B) the term 'depository institution' shall have the same meaning given such term in section 19(b)(1)(A) of the Federal Reserve Act; and

"(C) the term 'short-term broker deposit' means any deposit which—

"(i) is made for a period of time—

"(I) which is not greater than 12 months; or

"(II) which is not specified; and

"(ii) is placed by deposit broker.●

LEGISLATION REGULATING DEPOSIT BROKERS

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. SCHUMER. Mr. Speaker, today, Mr. GARCIA and I are introducing legislation which would regulate the acceptance of insured deposits by financial institutions in a sensible and reasonable manner.

This bill, which combines elements from legislation each of us introduced last month, was originally designed to replace the drastic restrictions imposed by the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. Yesterday, however, the U.S. District Court for the District of Columbia struck down the regulators' proposal, leaving deposit brokerage completely unregulated. While we believe that the FDIC and FSLIC would have unnecessarily strangled the industry, we also believe that the potential abuses of deposit brokerage necessitates filling the void created by yesterday's court decision.

This bill is designed to permit the prudent and legitimate use of brokered deposits while preventing abuses.

The bill prohibits "troubled" institutions—those with net worth below 3 percent—from accepting any short-term brokered deposits. Institutions with net worth above 3 percent could accept insured short-term deposits in an amount equal to 200 percent of its unimpaired capital and surplus, up to maximum of 15 percent of its total deposits, except that it may, upon specific authorization by the regulators, accept more than this amount.

The bill limits the percentage of insured deposits placed in an institution by any single broker according to the maturity of the deposits. No institution may maintain insured deposits from any single broker in an amount exceeding 5 percent of the total deposits of the institution which will mature in a 12-month period.

Individual depositors could not be paid more than $100,000 in insurance benefits on all of their brokered deposits over any 4-year period.

Insured institutions would be required to submit monthly reports to the regulators containing information on the amount and source of the brokered deposits they hold.

Money brokers would be required to submit reports to the FDIC and FSLIC containing information on their activities.

Given yesterday's court decision, it is important that Congress act quickly to regulate deposit brokers, but to regulate them in a responsible manner, which will help preserve benefits for consumers, promote safety and soundness of depository institutions, and allow the regulators to spot potential problems early.

We believe that this legislation does so, and invite our colleagues to join us as cosponsors.●

THE 40TH ANNIVERSARY OF GI BILL OF RIGHTS

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. ROE. Mr. Speaker, I take great pride in rising today to join in this well deserved celebration of the 40th anniversary of the signing of the GI bill of rights.

That document, signed into law by President Franklin D. Roosevelt on June 22, 1944, 16 days after D-day, perhaps more than any other in recent history, has been responsible for the tremendous growth our Nation has experienced over the past four decades. Indeed, the GI bill of rights served as the fostering of our veterans' educational opportunities that have flowered into the leadership we have today in the fields of economics, government, entertainment, sports, medicine, and other areas of endeavor to numerous to mention.

Mr. Speaker, it has been estimated that some 18 million veterans have been trained under the three GI bills that have passed Congress since 1940. Those veterans of World War II, Korea, and Vietnam have received a total of $55 billion for their continued educational pursuits. While some may claim that is too high a figure, a closer examination will detail how their contributions to our society, both on the battlefield and in the business world, is indeed priceless.

In addition, according to Veterans' Administration statistics, participating GI bill veterans returned to the Federal Treasury several times the amount spent on their educational assistance. This is due to the additional taxes they paid on the higher income earned from job opportunities that were created by the GI bill experience.

Mr. Speaker, the GI bill has indeed been good for America. Since 1944, about 45 percent of GI bill education entitlements have been used to attend college with the remaining veterans, some 10 million, receiving technical, farm, or other training.

Prior to the signing of the GI bill, college educations were thought of in many areas of the Nation as a benefit primarily earmarked for the wealthy. In 1944, only 25 percent of all Americans had graduated from high school. Now, some 40 years later, more than half of the Nation's population are high school graduates and 25 percent have finished college.

Mr. Speaker, the GI bill has also been responsible for the greatest home construction boom in our Nation's history. By backing loans of $225 billion for homes, farms, and businesses, the GI bill has made the American dream come true for 11 million veterans.

But the full story of the GI bill's impact on America is yet to be written. The bill, in its current form runs until 1989.

Mr. Speaker, I salute our veterans who have utilized the GI bill to better their lives and that of all their fellow Americans. The 40th anniversary of the signing of this landmark legislation is indeed a day that all Americans can celebrate with great pride.●

GI BILL OF RIGHTS

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. FUQUA. Mr. Speaker, today marks the 40th anniversary of the enactment of the GI bill, certainly one of the most comprehensive and enlightened laws ever adopted by any government. In the last 40 years, we have seen the GI bill provide 18.2 million veterans with $59 billion worth of education and training in every field from aeronautics to zoology, from electrical engineering to plumbing, auto mechanics and truck driving. Before WWII, a college education was beyond the means of the great majority of Americans; today, thanks to the GI bill, a college education is by no means rare.

Better yet, since 1944, $224 billion in loans not only enabled millions of ex-GI's to purchase homes, farms, and small businesses, but also acted to spur the Nation's economy as a whole. Additionally, the bill's initial expenditures of $4.8 billion on hospital construction and renovation have added extra impact to this thrust.

In sharp contrast to the economic and social upheavals that America experienced following all its previous conflicts, the United States made the transition from a war-time economy to a peacetime society without a tremor.

All in all, the GI bill of rights and its successors have enabled millions of ex-GI's to benefit, rather than suffer, from their service to the Nation; 40

years after its birth, the GI bill stands as a model of enlightened social legislation to every other nation in the world.●

THE 40TH ANNIVERSARY OF THE GI BILL

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GEKAS. Mr. Speaker, the existence of the GI bill has been a benefit to people from every corner of the United States. A wonderful program that was established to reward the service provided to our country by those persons in the military, the GI bill has allowed millions of veterans to improve their education and job skills. This assistance was provided in return for the time they devoted to protecting our national security, when they could not attend educational institutions.

There is no need to explain the importance of this program to our Nation as a whole. The veterans who learned and improved their skills through the GI bill have increased the quality of our work force in the United States, and for that reason we are all rewarded.

Because the GI bill helps the entire country by improving our work force, because it helps veterans by repaying them for their military duty, and because it helps our national defense by serving as a recruiting incentive, we in Congress must act to preserve the GI bill. I am proud that we did so in the recent Department of Defense authorization bill, which contained a GI bill for peacetime veterans. We will certainly be thankful that the House of Representatives did include those provisions in the defense bill, and it is certainly fitting that we approved the legislation in the same month marking the 40th anniversary of the first GI bill.

After 40 years, many Government programs begin to show signs of age, and often times congressional consideration of phasing them out is long overdue. One need only look at the difficulties we have in scaling back our Federal budget to know that is true. This 40-year-old program, however, continues to be vital to our national well-being, and shows no signs of slowing down. The benefits available through the GI bill must continue, and I am certain that the House of Representatives will be celebrating the program's anniversary again 40 years from today.●

THE 40TH ANNIVERSARY OF THE GI BILL

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. SOLOMON. Mr. Speaker, the 40th anniversary of the GI bill should be a time for recognizing the invaluable contribution our colleagues 20 congresses ago made to the education and welfare of this Nation's veterans. The legislation inaugurating this series of benefits was farsighted, but I think it went even beyond the expectations of the 78th Congress.

It has proven to be a safe harbor to millions and millions of American veterans—granting them opportunity that may have otherwise been lost as a result of their time spent dedicated to serving this Nation.

These men and women sacrificed much—they put their lives on hold, while others went on to fill the classrooms, shops and offices in their place. Had it not been for the GI bill, the veterans returning from wars and duties around the world would have been out in the cold—with few options to pursue.

But, thanks to the cooperation of a grateful Congress—one that saw the need to begin to repay a great national debt—those veterans could come home with the knowledge that they could take up where they left off—that there would always be a place to work—of a job to learn.

We are still paying that debt—and yet there is still so much we should be doing. We can only hope that what our colleagues accomplished those 40 years ago we will somehow be able to continue as long as there is a veteran to serve.

Thank you.●

FORTIETH ANNIVERSARY OF THE GI BILL

HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. AuCOIN. Mr. Speaker, in 1961, when I joined the Army, the GI bill held out the promise that when I was discharged I would be eligible for educational benefits that would enable me to earn a college degree.

I was in very good company. In the 40 years the GI bill has been in effect, an estimated 18.9 million American veterans have used its benefits to enter vocational, technical and postsecondary education programs. In 1984 the GI bill will enable 642,000 American veterans, dependents and survivors to upgrade their skills.

In my State of Oregon alone, 4,696 individuals are currently receiving job training or pursuing a college degree under the GI bill. It is impossible to overestimate the positive impact that these people, along with the more than 250,000 other Oregonians who've used the bill since 1944, have had on the economic and cultural climate of the State.

For 40 years the GI bill has been offering a fair deal to those veterans who so selflessly served this country by giving them a chance to improve their economic situation.

And for 40 years, the GI bill has been increasing the number of college and vocational graduates to meet our desperate need for trained minds.

Without a doubt, the GI bill is a good deal for America.

However, legislation enacted in 1976 to restrict veterans education programs has changed the program to such an extent that military service is no longer a springboard to a degree. Restrictions on GI education benefits, coupled with skyrocketing tuition costs, have made it difficult for today's veterans to contemplate, much less complete, a college degree.

This is especially troubling at a time when the United States is facing severe shortages and deficiencies in critical skills in the armed forces and work force overall.

Mr. Speaker, I call on my colleagues to support legislation to strengthen the GI bill—an investment in long-term economic and military security of this Nation.

As President Franklin Roosevelt said when signing the original GI bill, "This bill * * * provides the special benefits which are due to the members of our Armed Forces, for they have been compelled to make greater economic and every other kind of sacrifices than the rest of us * * *"●

MARK ANDREW HANZEL IDAHO WINNER IN VOICE OF DEMOCRACY CONTEST

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. HANSEN of Idaho. Mr. Speaker, today I salute Mark Andrew Hanzel of Burley, ID, who is the State winner in the "Voice of Democracy" speech contest.

For over 20 years, the Veterans of Foreign Wars of the United States and the Ladies Auxiliary have conducted this worthwhile scholarship program. This year Mark has caught the essence of what makes America the land of promise and opportunity in expounding on "My Role in Upholding Our Constitution."

Mark's winning speech is a credit to his upbringing in a family which has been actively involved in the community, State and Nation. Mark has embodied in his speech an understanding of what the Founding Fathers intended in forming "a more perfect Union * * * [to] secure the blessings of liberty to ourselves and our posterity."

I am proud of Mark for being a first-class citizen—one who understands that individual participation is essential to protecting our constitutionally guaranteed freedoms.

The article follows:

MY ROLE IN UPHOLDING OUR CONSTITUTION

Wise men, with a vision of promise and hope for the future of a new land, and with a thirst for freedom to speak, think, believe and worship according to the dictates of their own conscience, wrote and adopted the Constitution of the United States nearly two hundred years ago. Today, I am able to enjoy those freedoms provided for in that great document. The constitution has always been and will continue to be the backbone for the American way of life.

It is my duty to play an active role in upholding our constitution. No one is guaranteed freedom. The constitution is a living document, as applicable today as when it was written, but our freedoms are promised only for as long as we are committed to preserving them, because the constitution provides that we must govern ourselves.

Dedication to making government work must be the role played by me, and I accept that challenge.

The constitution grants us the right of free expression, but of what value is that right if we find no reason nor opportunity to express ourselves.

We have the right to choose those officials who make and interpret the laws for us, but of what value is that right if we fail to exercise our voting privileges.

We are given equal opportunities for education, but if we fail to take advantage of the educational opportunities that come to us, then that freedom is also of little value.

We cannot be part-time citizens. Our role is all encompassing. We cannot fulfill part of our commitment to govern ourselves and still be self-governing. And we cannot complete the most basic requirement of our responsibilities in ignorance. Every opportunity to learn must be grasped. Our country is no longer a New Frontier, made up of small groups of settlers. Our nation is large and complex, made up of people with many diverse ideas and varied interests, and it is ever changing. We are living in a nuclear age that demands that we reach understandings undreamed of two hundred years ago. Confidence in government of many Americans has been sorely tested, and many have doubts about its effectiveness. I will play an important role in helping recapture the faith in our government of our citizens, because I stand firm in my belief that our government can work and that America will continue to be the leader of all the free world. I cannot accomplish this with good intentions and inactivity. I must be an active participant. If we are a self-governing people then certainly part of the responsibility is mine.

This is my country. It is my duty to preserve freedom—to insure Liberty and Justice for all—not just for some. I cannot delegate this duty to anyone. The part I play in shaping the future of those who come after me is just as important as the part played by the makers of the constitution, in thoughtfully shaping the future of that New Frontier some two hundred years ago. I cannot take it lightly. I must be willing to struggle—to take risks. Most importantly, I must care—care enough to do whatever may be required of me to secure the dreams of our forefathers for myself, my family, and my country. ●

SNATCHING DEFEAT FROM THE JAWS OF VICTORY

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. HYDE. Mr. Speaker, the majority of this House favors U.S. assistance to the newly elected government of Jose Napoleon Duarte, but not to the Nicaraguan resistance forces. The failure of many to comprehend the linkage between aid to the Contras and the fate of El Salvador has troubled me for some time.

In an article that appeared in the June 15 edition of the Washington Times, nationally syndicated columnist, Cord Meyer, articulately analyzes the implications of terminating aid to the resistance forces.

I am, therefore, inserting at this point in the RECORD this timely piece, and recommend it to all Members as relevant reading for our upcoming legislative debate on this issue.

The article follows:

WILL THE HILL IMPOSE DEFEAT?

The stage is set for a show down this month in Congress that could decisively influence the eventual outcome of the struggle for Central America. The Senate has voted for $21 million in new emergency military assistance to the CIA-supported Nicaraguan rebels, but the Democratic majority in the House has voted to terminate all such aid.

Although both House and Senate have agreed to give El Salvador's newly elected president, Jose Napoleon Duarte, an additional $62 million in arms aid, the House leadership so far has refused to compromise in its opposition to more assistance to the "contras." Under the press of much unfinished business in an election year, the Senate is beginning to waver in its support for the rebel cause.

While admitting that it damaged its own case by authorizing the inevitably indiscriminate mining of Nicaraguan ports, the Reagan administration finds itself remarkably united in its conviction that continuing assistance to the Nicaraguan rebel movements is an indispensable part of any solution so the Central-America dilemma.

Believing that Mr. Duarte's election victory has much improved the chances for democratic reforms and for defeat of the Marxist guerrillas, State Department, National Security Council and Pentagon officials are jointly determined to persuade Congress that now is not the time to pull the rug out from under the Nicaraguan rebels. As one Reagan official commented, "It would be like snatching defeat from the jaws of victory."

The signs of improvement in the position of the Salvadoran government are indisputable, as are indications that the Sandinista regime in Managua is losing its base of popular support. The attendance of the Mexican foreign minister at Mr. Duarte's inauguration marked an important symbolic shift by Mexico toward acceptance of the Salvadoran government as the legitimate authority in the country.

By placing the three separate Salvadoran security services under the single command of a respected officer, Mr. Duarte has moved firmly against right-wing violence. In the Salvadoran countryside, the communist guerrillas have been compelled to resort to forcible recruitment of young peasants, and more than 1,500 of those recently deserted to the government's side at the first opportunity.

Meanwhile in Nicaragua, the leaders of the American-armed rebels claim they have more new volunteers than they have weapons, while the Sandinista regime responded to the brief rebel seizure of a provincial capital by threatening "a massive mobilization of the people." In one well-authenticated case, 36 youths were tricked into signing up for the Sandinista army by an offer of free movie tickets but escaped across the Honduran border when they discovered the deception.

American labor leaders who have met recently in Europe with representatives of the noncommunist unions and political parties from inside Nicaragua report deep and growing opposition to the Sandinista regime, coupled with strong support for American arms aid to the contras. The United States was urged to give assistance to both the FDN rebels on the Honduran border and to Eden Pastora's ARDE group in the South without trying to force a merger between them.

In this generally improving situation, a decision by the Congress to cut off all assistance to the Nicaraguan rebels would be incomprehensible to American friends and allies in the region. It would have a disastrous effect not only on Salvadoran morale but on their physical ability to resist the guerrilla offensive planned for this fall with Soviet and Cuban help.

Having encouraged the Nicaraguan rebels to train and arm themselves with the promise of future support, the U.S. government in complying with a congressionally mandated cutoff would be compelling the rebel forces to disband themselves at a critical moment. The Sandinista comandantes would be able to redeploy the 20,000 troops they now are using to contain the rebels.

Instead of having to defend themselves, the Sandinistas would be freed to give maximum support to the fall offensive of the Salvadoran guerrillas against Mr. Duarte's beleaguered government. It is not by relieving the pressure on his opponents in Nicaragua that Mr. Duarte is to be helped in establishing the freedoms he has promised for El Salvador.

Moreover, Reagan officials who have talked recently to the Sandinista leaders have found them so committed to helping the Salvadoran guerrillas come to power that only the unremitting pressure of the Nicaraguan rebels is likely to change their minds. As one member of the House Intelligence Committee succinctly put it, for Congress at this time to terminate military assistance to the contras would be to hand "a legislatively engineered victory" to the Sandinista regime. ●

GI BILL OF RIGHTS ANNIVERSARY

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. HERTEL of Michigan. Mr. Speaker, on June 22, 1944, President Franklin D. Roosevelt signed into law the first GI bill of rights. Since its inception over 40 years ago, approximately 18 million veterans have benefited from education and training assistance from three GI bills. Following World War II, the first GI bill served as the most valuable readjustment benefit available to veterans. Although servicemen received benefits during colonial times, prior to Public Law 78-346, the Servicemen's Readjustment Act, veterans assistance was limited to financial support and health care.

As World War II was drawing to an end, Congress, in anticipation of a difficult transition for 15.6 million veterans, developed comprehensive social, educational, and economic readjustment programs for veterans which did not require testing or proof of disability. A compassionate nation understood the need to offer aid to returning servicemen. Most importantly, the Nation redefined its responsibility to veterans by helping make up for educational time lost during their years of service to our country. We began to recognize the need for special assistance to veterans. The first GI bill not only expressed the Nation's gratitude to its returning veterans, it addressed the special needs of the postwar economy by providing the vehicle for a more highly trained and educated society.

History has proven its worth.●

A PORTRAIT OF GOVERNMENT-SPONSORED VIOLENCE IN IRAN

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. PORTER. Mr. Speaker, on several occasions I have brought to the attention of the House the brutal persecution of the Baha'is in Iran. Under the murderous regime of the Ayatolla Khomeni these gentle and peaceful people are being systematically harassed, tortured, and executed solely for their religious beliefs.

On May 22, 1984, the House passed House Concurrent Resolution 226, a resolution I introduced, condemning this repression and calling on the U.S. President to make an appeal to the Iranian Government on behalf of the Baha'is. I am happy to report that this resolution was recently passed by the Senate.

Despite these commendable efforts, the job of the U.S. Congress is not done: We must continue to demonstrate to the Iranian Government our solidarity with these helpless and voiceless people. For this reason I submit for the RECORD an article published in the March issue of "Liberty" portraying the ruthless persecution of one Baha'is family.

This account is yet another example of the individual suffering inflicted by the repressive regime in Iran and others like it throughout the world.

The article follows:

[From Liberty, March/April 1984]

THE DAY LIGHT CAME TO OUR HOUSE

The change came suddenly: My father's corpse, black with stab wounds and floating in its stench of decomposition, was taken away early in the morning and buried without our being told. The corpse had been lying there for what had seemed to us an eternity. It had been refused burial. "This is an unclean corpse," the bearded man from the Komiteh explained to my mother, who had sought a burial license. "If we bury him in the soil of the True Faith we shall provoke the anger of Allah."

My father had been "punished," the bearded man explained, for his refusal to abandon his "filthy beliefs." The man used other Arabic-sounding words which I did not understand. He made it clear that my father's corpse could not be incinerated either as this would cause "fumes over the land of Allah."

My father had been cut down by young men playing their part in spreading the true faith. They stabbed my father 53 times, one stab for each of his years. They delivered the multilated body to our house, followed by a veritable procession of chanting men and women. I saw them through the upper-floor window. They exchanged a few words with my mother, who had to bring the corpse in with the help of Riaz, my eldest brother, who was in tears. The young men then crossed our garden into the street. They were carried on eager shoulders. Men and women tried to kiss their hands, to get blessed. These were the hands that had meted out the justice of Allah.

Mother ordered me, Riaz, and our two younger brothers, both kids really, not to cry. We were not allowed into Father's room either. When Mother caught Riaz sneaking into the ill-smelling room she rebuked him severely. She tried to fight the stench by pouring rose water on the corpse. But this didn't help much. She stayed awake most of the night, reading the green-covered book from the mantelpiece in our sitting room. We were not allowed to leave the House. Riaz was no longer asked to go on shopping errands, as he had always done during school holidays. "They would sell nothing to us," Mother told us. Not even bread. And a telephone call soon told us that we would have our electricity, water, and phone cut off in three days. Mother talked to the caller, who introduced himself as someone from the Committee to Combat Evil and Promote Good. She listened, her face pale, without uttering a word. Before putting the receiver down she had said only, "But the children."

From the upper-floor window I could see and hear people in the narrow street in front of our house. There were girls from our school. But they avoided looking in my direction as soon as they noticed me. Even Sahba, my best friend, looked away when I called her. I just wanted to tell her that Mother had forbidden us to leave the house. I heard people say that our house would be burned down in three days and that all of us would be "chopped into pieces." Neighbors came to look at our house as if it were a great curiosity. Among them I recognized many of my father's patients. Agha Hassan came, who had always said my father had given him "a second life" by ridding him of an "incurable disease." I heard him tell the crowd that our house should be razed so that a mosque could be built in its place.

And then everything changed. It was the third day. My mother had answered the door. We could see her outside talking quietly to a bearded man. She came inside for a moment while the bearded man waited. We saw her return with the green-covered book in her hand. She put it on the ground, struck a match, and set it on fire. The book burned quickly. The bearded man grinned. A crowd has gathered. A man wearing a turban shouted, "Allah is the greatest." Then he gave my mother a book with a black leather cover. The crowd shouted, "Allah is the greatest." Quickly, our house filled with activity. Bearded men delivered food. There were even flowers and candles. Neighborhood women embraced my mother and talked to her. They helped clean the house. Children came also, at first timidly. Agha Hassan brought melons and black grapes. Sahba brought her stamp collection and the book in which she kept dried butterflies. I had always loved to go through them, but now this gave me no pleasure. I felt I had been taken away from Sahba, to a distant star and forever.

My mother served tea to the women who visited us. We all listened to the man in the turban who told us stories and chanted beautiful songs in Arabic. Before leaving he caressed my hair, saying, "You are quite a lady, my child. You must wear the chador." He also talked to Riaz, telling him to "become a volunteer in the service of Allah." We had visitors until late at night. Sahba was one of the last to leave, almost dragged away by her mother. "I missed you," she told me before leaving. "I am glad you have become like us." Late into the night I could hear my mother sobbing quietly downstairs.●

PERU'S UNDERGROUND ECONOMY—AN ACCIDENTAL FREE MARKET

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. PHILIP M. CRANE. Mr. Speaker, it is public information that perhaps millions of Americans participate, knowingly and unknowingly, in the United States' underground economy. Anyone who has bought or sold anything at a garage sale, hired a teenager, or as a teenager was hired to mow the lawn or babysit, is undoubtedly part of the underground economy. On a larger scale, our underground economy includes transactions dealing with traditional criminal enterprises, such as drugs, and legally earned income which is not reported to tax authorities.

In the United States, the underground economy plays a role in, but does not control, the legal economic sector. Recently published statistics by the Congressional Research Service show that in 1979 our underground economy approximated $374 billion, or roughly over 10 percent of the reported GNP. Although our underground economy is quite active, its use is mainly limited to those Americans who wish to avoid paying large amounts of income taxes.

While underground economies only exist in capitalist nations, they thrive in Socialist nations. Consumer preferences and the inabilities of the Socialist state to provide for public necessities has led to significant growth in underground economies. While an overt existence of a free market does not appear in Socialist nations, the free market is there, beneath all the laws against capitalism, providing an income for millions of participants.

The issue of one underground economy was recently addressed in the Wall Street Journal. Discussion centered on the underground economy in Peru, one of the many Latin American countries that in recent years has rejected free market ideals. Recent statistics show that 66 percent of the urban workers are underground capitalists and, in some instances, the black market proves to be much more efficient when compared to the government regulated sector. Government committees have been formed to research the underground economy and no matter how hard the committees try to hide or make excuses for their underground economy the results of their study are quite clear. A capitalist free market does not only exist, it has a significant influence on the Peruvian economy. I encourage all of you to read this editorial and discover how capitalism continues to flourish in Latin America in spite of attempts to stifle it.

The article follows:

[From the Wall Street Journal, Jan. 27, 1984]

How Peru Got a Free Market Without Really Trying

(By Claudia Rosett)

Capitalism is something of a dirty word in Latin America. The prevailing wisdom is that it is an imported economic model that helps the rich, but holds no promise for the poor. The disappointing results of efforts by Chile and Argentina to steer toward market economies in recent years have bolstered this view.

But a Peruvian think tank called the Institute for Liberty and Democracy (ILD) has unearthed facts that could turn this picture upside down. Fifty-five ILD researchers, including economists, anthropologists, lawyers, students and off-duty policemen, have spent the past two years studying Peru's large underground economy. They have accumulated 22,000 documents chronicling the extent of this underground, or "informal," sector and have pieced together an enormous jigsaw puzzle of details to see how it works. The picture that has taken shape is one of a vast, indigenous market economy.

This economy is not the province of the upper class. Most of those who work in the underground are poor and of Indian extraction—descendants of the collectivist Incan empire. In the past 25 years, they have abandoned their villages in the Andes and moved to the cities by the millions. Due to this influx, the population of Lima—Peru's capital—has grown from one million in 1958 to 5.5 million today, almost a third of the country's total population.

When the rural poor arrive in the cities, however, they find access to the legal marketplace barred by a dense bureaucracy that favors the entrenched businessmen of the traditional private sector. After actually going through the required 310 legal steps to set up a small clothing enterprise, the ILD reported that someone without experience or political connections would have to work 40 hours a week for more than six months, and pay eight unavoidable bribes, merely to register to do business. To set a standard of comparison, the ILD also went through the equivalent process in Florida, taking four hours.

Rather than lose themselves in this legal morass, most poor immigrants to Peru's cities ignore the law and earn a living in the informal sector. Today, two out of every three urban workers are employed in the underground. They have their own factories, transportation networks, business guilds and a legal code that includes a well-developed system of property rights.

In some areas, the informal economy even seems to be more efficient than the legal sector. The market test of this efficiency is the awesome amount of underground business carried on profitably, without government planning or aid. Illegal buses provide 85% of Lima's public transportation, and illegal taxis provide 10% more. Underground activity accounts for 90% of the clothing business and 60% of housing construction, including relatively sophisticated structures up to six stories high. Underground entrepreneurs assemble cars and buses, build furniture and make high-precision tools. When underground earnings are taken into account, per capita income may be closer to $1,300 a year than to the official figure of $900.

With this large volume of informal business, an underground legal code has developed that ignores the inefficient laws that drive people into the underground in the first place. This code is so powerful and pervasive that underground businessmen can dependably make deals with each other and the legal sector that could never be enforced in a government court. In Lima, for example, street vendors command prices of up to $759 for sale of their business locations, although they hold no legal titles to the spots.

In an ironic twist, honesty and integrity are especially important factors in underground business success. Anyone who does business outside the law has nothing but his word to guarantee contracts, and will therefore tend to go to great lengths to preserve his good name. Also, an entire community can suffer a loss of credit if one member cheats on a deal. So profit incentives create community pressures that encourage fair dealings.

In fact, the underground makes honest men out of otherwise corrupt state judges. Informal contractors sometimes hire off-duty judges to arbitrate disputes. While some of these judges take bribes when working for the state, they cannot afford to do so when working for the underground. If word gets out that they are crooked, they will not be hired again.

Of course, there are some high costs to doing business in the informal sector. The average underground businessman spends 15% of his income bribing authorities to look the other way. Underground bus guilds typically have a "secretary of defense," whose job is to bribe traffic officials to let the drivers run their routes unmolested. Underground factories face similar problems, and are forced to operate in small, scattered units of no more than 15 workers, in order to escape detection. This greatly limits economies of scale.

Underground workers are also denied access to capital markets, and must pay high interest rate premiums to borrow from their own crude loan pools. They have no access to reliable insurance plans, although they do set up their own makeshift versions. Since the underground is a largely cash economy, Peru's high inflation rates effectively exact a heavy tax. And every underground worker lives with uncertainty about whether the government will decide to clamp down on his particular business. It is a sign of the determination and ingenuity of these underground capitalists that they have achieved economic growth rates equaling, and in some cases exceeding, those of the legal sector.

Clearly the wide gap between law and reality in Peru cannot be sustained indefinitely; there is massive discontent with the existing system. The natural move would seem to be a popular push to repeal the regulations that have forced millions of productive citizens into illegal activity. But it's not so simple. Such a move would likely meet with resistance from Peru's privileged, traditional private sector, which depends heavily on state favoritism and wields a lot of political clout. Also, few among the millions in the informal sector realize that what they have created is a grass-roots market economy.

Part of the confusion about the nature of the informal sector results from inverted terminology. The proverbial private sector in Peru gets so much help from the state that it scarcely deserves the name. The real private sector is the underground, where businesses compete without special privileges. As ILD President Hernando de Soto says, "Free enterprise doesn't mean freedom to enter the market. It means freedom to keep others out." And the informal sector is usually referred to as "marginal"—another misunderstanding, since a sector that employs two-thirds of the urban labor force is anything but marginal.

When the semantic confusions and long-standing myths are waved aside, it is clear that the people of Peru have already chosen a market economy, without foreign interference, and despite the hindrance of their own government. What remains to be seen is whether the Peruvian government will honor that choice. The alternative is a strange charade in which millions of the poor are outlawed for earning an honest, productive living.●

GI BILL OF RIGHTS EXEMPLIFIES U.S. PRIDE IN VETS

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. McCOLLUM. Mr. Speaker, today I am proud to honor a piece of legislation that has had more impact on the way of American life than any other passed by this body. On June 22, 1944, President Franklin D. Roosevelt signed into law the Servicemen's Readjustment Act of 1944, a bill which went far beyond just the social welfare of veterans. In addition to notifying the American people that this country will always support and applaud the efforts of our men and women in the armed services, this bill touched the lives of all Americans in one way or another. With the passage of this bill came such gains as a new commitment to the quality of higher education to an increase in the construction industry in this country. Since passage, the GI bill of rights has enabled many Americans to benefit rather than suffer for their dedication and service to this Nation—never before in the history of man had any nation made such a commitment to its veterans. ●

FORTIETH ANNIVERSARY OF THE GI BILL OF RIGHTS

HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. BEDELL. Mr. Speaker, I am pleased to have this opportunity today to commemorate the 40th anniversary of the GI bill of rights, a historic veterans' program.

On June 22, 1944, President Franklin D. Roosevelt signed the Servicemen's Readjustment Act of 1944, better known as the GI bill. This comprehensive measure contributed greatly to the readjustment of veterans from World War II, Korea, and Vietnam and society as a whole benefited from the success of the bill.

In the 40 years since the GI bill became law, approximately 18 million veterans have been trained under the three GI bills at a cost of about $55 billion. The bill's educational provisions not only made higher education available to millions of veterans, but the program contributed to the great improvement we have seen in the quality of higher education since 1944.

In addition to the educational benefits, the bill provided guaranteed and direct loans to veterans who otherwise would not have been able to purchase homes, farms, and small businesses. These purchases spurred the Nation's economy especially generating growth throughout the Nation's building industry.

The most important result of the success of the GI bill, though, is the extra assistance and sense of security it gave veterans trying to reenter an oftentimes very changed civilian life. These individuals served their country in every sense of the word and therefore deserved the best our Nation could give them. The GI bill is a high point in our Nation's history.●

THE 40TH ANNIVERSARY OF THE GI BILL

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DYSON. Mr. Speaker, on June 22, 1944, President Franklin D. Roosevelt signed into law the GI bill of rights, also known as the Servicemen's Readjustment Act of 1944. This important act of Congress may be the singlemost comprehensive piece of legislation ever passed for the veterans of America. This bill provides needed assistance to all veterans in the areas of education and training, employment, and housing. These benefits were designed to assist veterans in competing more adequately with nonveterans and to compensate for opportunities lost because of military service.

No other veterans program has contributed more to the lifelong welfare of America's veterans, their families, and this country than the veterans education and training programs provided by the GI bill. Since the end of World War II, over 18 million people have taken advantage of the programs provided by the bill. The educational benefits provided by the act have enabled many veterans to pursue higher levels of education than they might otherwise have been able to attain.

Not only has this bill provided our Nation's veterans with educational assistance, it also provided 11.3 million loans, amounting to $224 billion to help veterans purchase homes, farms, and businesses. The Nation as a whole has benefited from these loans, which allowed veterans to make substantial contributions to the Nation's economy. This investment in better educated, higher wage-earning veterans provided for a greater return in taxes to the Government. This tax return was estimated to be more than three times what the veterans received as benefits from the GI bill.

Mr. Speaker, when Harry W. Colmery, former National Commander of the American Legion, drafted the Servicemen's Readjustment Act, he envisioned improved health care and financial assistance than was provided for in the past. His goal was to strengthen existing programs aimed at aiding veterans. Forty years later, his words still remind us that we as Americans must not fail our returning veterans:

> Never again do we want to see the glory of our Nation fade to the extent that her men of arms * * * totter from door to door (dependent on) reluctant charity.

This anniversary serves as a reminder that we owe our veterans the chance to live in the comfort and dignity they so justly deserve. We in Congress must continue to see that the needs of our Nation's veterans are met.●

SOVIETS BLIND U.S. SATELLITES

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. COURTER. Mr. Speaker, this morning's newspaper contains news of official confirmation of earlier press reports that the Soviet Union has jammed, through electronic interference, our electronic intelligence satellites which are vital to the verification of arms control agreements.

This information is of vital importance to anyone interested in the future of arms control, because it means that the Soviet Union is impeding verification, which is the very basis of a nation's confidence that an arms agreement is being properly observed and is fulfilling its purpose. In other words, this Soviet action undermines the most critical element of arms control.

The development should be viewed in the context of the ongoing Soviet practice of telemetric encryption, which is the encoding of missile test flight data which we need to verify compliance with the SALT II agreement, to which the Soviet Union has pledged to adhere. President Reagan concluded on January 23, 1984 that telemetric encryption is a violation of the SALT II agreement.

The obvious question that is raised is: If the Soviets are not interested in verification, are they serious about arms control agreements?

I commend to my colleagues' attention the following articles, which point out the following Soviet actions:

Electronic interference which jams U.S. intelligence satellites;

Jamming of U.S. ground radars; and

Blinding of a U.S. photographic satellite with a laser beam.

[From the Washington Times, June 21, 1984]

DEFENSE AIDE CONFIRMS U.S. SATELLITES JAMMED

(By Walter Andrews)

The Soviet Union's jamming of American surveillance satellites used for monitoring Soviet missile tests—a "possible" violation of nuclear arms agreements—was confirmed publicly yesterday by a senior Defense Department official.

Richard Perle, assistant secretary of defense for international security policy, said in testimony before the House Foreign Affairs Committee that the Soviets have been jamming the surveillance satellites used by the United States to monitor Soviet tests and to verify their compliance with the nuclear arms agreements.

Earlier this month, government sources told The Washington Times that the Soviets, apparently using technical information provided by convicted U.S. spies, had begun jamming the satellites, which are the primary means the U.S. has for verifying Soviet compliance.

Last week, Defense Department spokesman Michael Burch did not deny the story. But Mr. Burch also declined to provide positive confirmation or details because he said secret classified material was involved.

During the foreign affairs committee hearing yesterday, Mr. Perle was asked to what extent the Soviets are jamming U.S. satellites used to monitor Soviet missile tests.

"There has been activity of the kind that you suggest. It's very worrisome," the assistant secretary replied.

"There is a pattern, a growing pattern, unhappily, of the Soviets resorting to a variety of devices that have the effect of denying us information that is critical to judging their performance under existing obligations.

"And interfering with satellites in the manner you suggested is one of the devices they've been resorting to," Mr. Perle said.

Asked if the jamming constituted a violation of the existing arms control agreements, the assistant secretary replied "there is no doubt there is a pattern of behavior that is inconsistent with those agreements, and it is possible that the activity to which you refer is also a violation."

There are problems in determining whether violations have occurred because of "some difficulties in the way the existing agreements have been drafted," Mr. Perle commented.

He said the existing agreements do not prohibit interfering with satellites "provided they do not interfere with the collection of information relevant to provisions of the agreement."

Mr. Perle said it may be difficult to prove the satellite jamming is related to arms control provisions because the Soviets have been resorting to "concealment, camouflage, and the like" to obscure their activities.

He said these attempts at concealment and deception have been increasing dramatically, and are a source of concern.

Mr. Perle declined to elaborate on his remarks following the committee hearing.

In January, President Reagan charged the Soviets with seven arms control violations, including interfering with verification by the encoding or encrypting of missile test data being telemetered to ground stations.

Among other things, the telemetry provides data on the number of warheads tested on a particular type of missile. That data is used to set warhead limits in an agreement for particular missiles.

But the Soviets now have begun jamming the telemetry-monitoring satellites so as to prevent even the gathering of the encrypted data for possible decoding later, sources said.

Sources said earlier this month the jamming has been electronically precise, and has apparently used to advantage technical data reportedly provided to the Soviets by convicted spies Andrew Daulton Lee and Christopher John Boyce in 1977 on the Rhyolite and Argus surveillance satellites.

The satellite jamming began last year after the Soviets shot down the Korean 007 airliner in September, the sources said.

U.S. intelligence also indicates the jamming is deliberate in that it has only occurred during missile flight tests, the sources said. They said they could not say why the Soviets waited until recently to utilize the Rhyolite satellite data provided by the spies.

Shortly after the KAL 007 disaster, the sources said the Soviets also began jamming three so-called "Cobra" radars used for monitoring the path taken by a Soviet missile and multiple warheads during flight tests.

The radars, using sophisticated phased-array, electronic scanning, operate out of the Aleutian islands, close to the Kamchatka peninsula where much of the Soviet monitoring of their warheads reentering the atmosphere is done.

The KAL 007 was shot down after flying off course over Kamchatka.

The Cobra Dane is a phased-array radar based on one of the Aleutian islands. Cobra Judy is based on a ship and the Cobra Ball is an aircraft specially designed for monitoring Soviet missile tests.

The jamming of the radars was previously reported in February, although it has not been confirmed by the Pentagon. The sources said the jamming of the telemetry monitoring satellites began sometime after the jamming of the radars. One source said the intelligence community has reached a consensus that Soviet willingness to jam verification monitoring satellites, as indicated in the case of the Rhyolite spacecraft, has made the arms control process "unviable."

[From the Washington Times, June 4, 1984]

Soviets Reportedly Are Jamming U.S. Satellites Used as Monitors

(By Walter Andrews)

U.S. intelligence indicates that the Soviet Union has begun jamming American satellites used for monitoring Soviet nuclear missile tests and verifying compliance with arms control agreements, government sources say. Apparently using information provided by convicted U.S. spies, the Soviets have indicated their intent to block verification when possible, the sources said. The satellites would be one of the main means of verifying the terms of any new arms control agreement.

President Reagan in January charged the Soviets with violating a previous arms control provision against interfering with verification by encoding or encrypting the missile test data being telemetered to ground stations. Among other things, the information provides data on the number of warheads tested on a particular type of missile, which is used to set missile warhead limits in an agreement.

The government sources told the Washington Times that the Soviets have now begun jamming the telemetry monitoring satellites to prevent even the gathering of the encrypted data for possible decoding later.

They said the jamming has been electronically precise, and apparently has taken advantage of the technical data reportedly provided to the Soviets by convicted spies Andrew Daulton Lee and Christopher John Boyce in 1977 on the Rhyolite and Argus statellites.

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Shortly after the KAL 007 disaster, the sources said, the Soviets also began jamming radars for monitoring the path taken by a Soviet missile and multiple warheads during flight tests.

The so-called "Cobra" radars using sophisticated phased-array, electronic scanning operate out of the Aleutian islands.

[From the Defense Daily, June 5, 1984]

Soviets Jamming U.S. Satellites and Monitoring Radars

The Soviet Union, which has refused to abide by the SALT treaty provisions prohibiting the encryption of missile flight test telemetry, is now resorting to the electronic jamming of United States satellites and radar systems established to provide U.S. national technical means of verification.

Using information apparently obtained from United States spies, the Soviets are selectively jamming the United States telemeter monitoring satellites and the Cobra Dane and other missile monitoring radars during stategic missile flight tests, in addition to continuing to encrypt the telemetry from those flights.

Defense and intelligence officials stress that the Soviet jamming is deliberate and timed to coincide with the weapons tests. In addition to the electronic intelligence monitoring (ELINT) and Defense Support Program satellites, the United States gathers missile and space test data with radars in the Aleutians, the Pacific, the People's Republic of China and Turkey.

Defense officials could not confirm for Defense Daily yesterday whether the leadership of the House and the floor managers of the defense authorization bill, and amendment leaders, such as Rep. Les Aspin (D-Wis.), were aware of the Soviet jamming, which began late last year, in their efforts to alter the authorization bill to improve the arms control environment. The officials said they definitely want to make the information available to the leadership of the Senate and other members responsible or involved in consideration of the Defense budget as the debate begins in that body.

[From the Heritage Foundation, June 8, 1984]

Violating Salt: Moscow Jams U.S. Satellites

Defense and intelligence officials have confirmed reports appearing on June 4 in the Washington Times and June 5 in Defense Daily that the Soviet Union continues to violate its arms control agreements with the U.S. The reports tell of Soviet jamming of U.S. satellites that monitor Soviet nuclear missile tests. According to the reports, electronic interference with U.S. satellites began last year after the Soviet downing of Korean Air Lines Flight 007. Intelligence experts claim the interference is electronically precise, timed to coincide with Soviet missile test flights and clearly deliberate. This interference with U.S. satellites highlights the need for the U.S. to complete the testing of its anti-satellite system that is now under development.

For years the Soviets have been encrypting much of the telemetry from their missile tests, in violation of provisions of the SALT I and anti-ballistic missile agreements, and the commitment by Breshnev to comply with the SALT II treaty. The agreements specifically prohibit interference in the national technical means of verification of the other party to the treaty. To the extent they interfere with U.S. verification efforts, both the encryption of missile test telemetry and the jamming of monitoring satellites constitutes such interference.

Last January 23, the President detailed to Congress seven Soviet violations of arms control agreements, one of which was the encryption of missile test telemetry. The main concern involved Soviet encryption of test data on the new SS-X-25 ICBM. The Soviets encrypted more than 90 percent of SS-X-25 test data to prevent the U.S. from verifying that the SS-X-25 is in fact a new missile. If it is, then it is the second new ICBM developed by Moscow since the SALT II agreement was signed in 1979. This violates the SALT II provision limiting each superpower to only one new missile.

Added to the continuing Soviet encryption of telemetry, the newly revealed electronic interference with U.S. satellites designed to gather information on Soviet missile tests presents a pattern of Soviet violations of both the letter and spirit of the arms control agreements they have signed.

Electronic interference with satellites is only one of a number of capabilities the Soviets have for anti-satellite (ASAT) activities. These include an operational orbital satellite interceptor that has been tested at least 18 times, ground-based lasers with ASAT capabilities and nuclear-armed Galosh anti-ballistic missiles that can also be used against satellites. By contrast, the U.S. ASAT, which has been under development for years, has yet to be tested in space. The first test is scheduled for November, but on May 23 the House voted to prohibit the Defense Department from conducting space tests of the U.S. ASAT.

Last year the Soviet Union announced a moratorium on further ASAT testing in space if other countries did likewise. This clearly was an attempt to prevent the U.S. from catching up in ASAT capabilities. If the U.S. halts space testing, the Soviets will continue to have a much-tested operational ASAT plus other ASAT capabilities, while the U.S. would be left with an untested ASAT. In voting to prohibit U.S. ASAT testing, most House members were unaware that the Soviets had begun interfering with U.S. satellites through electronic means.

Soviet behavior in refusing to return to the START nuclear arms negotiations, together with their deliberate interference with U.S. satellites, should not be rewarded by a concession that would lock the United States into a position of inferiority in anti-satellite capabilities. The Defense Department should be permitted to conduct the planned operational test of the U.S. ASAT this fall.

JAMES T. HACKETT,
Editor, National Security Record.

[From the Washington Post, June 12, 1984]

WHITE HOUSE TO BRIEF CLOSED SENATE ABOUT SOVIET SPACE ARMS

(By Walter Pincus)

The Reagan administration is to give the Senate a closed-session peek at Soviet space-related facilities today, while the Democratic National Committee plans to unveil a party consensus opposing President Reagan's plans for new military space weaponry.

Highly classified photographs of two Soviet facilities that, according to administration officials, could attack U.S. satellites with laser beams and missiles are scheduled to be shown at the Senate session, congressional sources said.

Sources said it will include administration intelligence reports of recent Soviet interference with U.S. satellite operations, such as "jamming" U.S. electronic-intelligence satellites by overloading them with radar beams from ground sites and "blinding" a U.S. photo satellite with a laser beam.●

THE GI BILL—40 YEARS LATER

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. RANGEL. Mr. Speaker, I rise to commemorate the signing of the GI bill of rights 40 years ago today.

The GI bill is one of the most significant codifications in our Nation's history. More than 18 million veterans have benefited from the education and training provisions of the bill, an accomplishment which has had a significant impact on society as a whole.

Mr. Speaker, as a veteran of the Korean war, I know from experience that the GI bill is a worthy investment. It is an investment in the future of service men and women. Gone are the days when veterans were given little more than a handshake, and gone are the days of the Depression-era bonus marches. The readjustment process has become an admirable institution, one that has literally shaped the lives of millions of Americans.

The return investment under the GI bill is well worth the cost. Let us be thankful, Mr. Speaker, that we had a New Deal President with a vision for the future, and let us use the GI bill as an example of how valuable our human resources are when given a chance.●

THE 40TH ANNIVERSARY OF THE GI BILL OF RIGHTS

HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. McGRATH. Mr. Speaker, today we observe the 40th anniversary of the signing of the GI bill of rights.

Initially enacted to assist WWII veterans, it has since been extended to those veterans of the Korean war and all veterans of service in the U.S. Armed Forces.

This historic legislation has provided nearly 18 million veterans the opportunity to readjust and improve their quality of life through Government aid for veterans' hospitals, home loans, and educational assistance. Currently, 8 million Vietnam era veterans have taken advantage of their educational benefits. The success of this legislation is evident in many ways. Not only has it afforded present veterans the opportunity to excel, it has also created an added incentive for future enlistees.

I was pleased to support the DOD authorization bill, title VII which will establish a GI education bill for Active Duty personnel, National Guard members, and reservists. I believe it is important that educational benefits continue in order to maintain an adequate number of quality personnel in the Armed Forces.

I applaud this and any future legislation which will continue to uphold the benefits of all veterans who have fulfilled their obligation to defend our Nation.●

THE 40TH ANNIVERSARY OF THE GI BILL OF RIGHTS

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DE LA GARZA. Mr. Speaker, today we gather to commemorate the 40th anniversary of the GI bill of rights—and I want to express how happy I am to be able to participate in this occasion. I say this because I am one of the over 18 million veterans who have benefited from this program in the more than 40 years since the GI bill became law. In fact, were it not for the GI bill I might not be here.

It is because of this educational program that America has become what it is today. This bill has not only provided education at all levels to millions of men and women, but has effected a significant improvement in the quality of education available throughout our society. Through features such as the guaranteed and direct loan programs it has enabled veterans to purchase homes which is how my wife and I purchased our first home, farms and small businesses thereby spurring the Nation's economy as a whole. Moreover, it has enabled the vast majority of Americans to pursue a college education—something that was once elusive by being beyond the means of many men and women.

To say that the money this program has cost over the past four decades has been wisely invested would be an understatement. The dividends are the men and women of this country in all walks of life who reinvest their skills and talents in our Nation thereby making it a better place to live.

I've heard it said that perhaps no law has had more of an impact on the fabric of America than the GI bill. It is definitely a piece of social legislation that has changed America by investing in its most precious natural resources—its people—and in this case it was mostly young people who had served their country in time of need.●

THE 40TH ANNIVERSARY OF THE GI BILL OF RIGHTS

HON. SAM B. HALL, JR.

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. SAM B. HALL, JR. Mr. Speaker, I commend the leadership as well as the distinguished chairman of the House Veterans' Affairs Committee for taking this special order to commemorate the 40th anniversary of enactment of the GI bill of rights.

It is interesting to note that the signing of the GI bill by President Roosevelt took place just 16 days after American fighting men hit the beaches at Normandy to begin the last great drive against aggression in Europe.

Many of the men at Normandy never returned home to take advantage of the GI bill, but their friends and comrades-in-arms who survived the struggle did benefit immensely from this historic legislation. That is why the GI bill is a monument to every man and woman who has put on the uniform and made the commitment to defend America. Simply stated: The GI bill is a symbol of a grateful Nation's thank you to those who guard it and defend it with their lives.

As a member of the Veterans' Affairs Committee, I am proud of our chairman and our ranking minority leader, Mr. HAMMERSCHMIDT, for keeping alive the spirit and contribution of the GI bill. Their contemporary fight for our veterans is no less significant than the fight of our predecessors 40 years ago to enhance the well-being of America's veterans.

You know, when we look back over the past 40 years and study the history of this legislation it is almost impossible to truly grasp the importance of the GI bill and what is has done for this country.

Certainly, in terms of economics, the education and training provisions of the GI bill has to be the best bargain the American taxpayer has ever received from a Federal program. While estimates vary, it is conservatively estimated that veterans have poured three times the amount of taxes into the Federal Treasury as a result of higher earnings due to the GI bill than the actual cost of that legislation.

A nation is just so strong as its ability to have an educated citizenry. Some 18 million Americans are better educated, better trained, and more productive as a result of the three GI bills enacted by Congress.

But education is just one phase of the overall impact of the bill. When we think of the bill's contribution to homebuilding, the creation of small businesses and improved agriculture, through the guaranteed and direct-loan provisions, then we get a picture of why it has given America the highest standard of living in the history of the human race.

Many of us in this Chamber mustered out almost 40 years ago. Others of us mustered out 30 years ago after Korea and still others within the last 15 years after Vietnam. When we hung up the uniform, we knew that the American people were willing and prepared to assist in our adjustment to civilian life through the GI bill. In a symbolic way this procedure is indicative of our democracy and our way of life. We struggle for peace and freedom and we are not a Nation committed to militarism. When the shelling has stopped, we long for civilian pursuits and not territory to be conquered by force of arms. It makes us unique. It gives us a noble and decent purpose. The GI bill assists mightily in the transition from war to peace, and we must never lose sight of that fact.●

BLACK-JEWISH RELATIONS

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GARCIA. Mr. Speaker, during the civil rights struggle, the black and Jewish communities were strong allies in their quests for justice and equality in America. Unfortunately, recent tensions between the two communities have reached an alltime high and the pillars of the bridge which linked the two communities have begun to erode. Issues such as affirmative action, the Middle East, and incidents involving Rev. Jesse Jackson have done much to destabilize relations between these allies.

Fortunately, however, there are enlightened individuals from both communities who are working diligently to maintain a constructive dialog between both communities. One such individual is the distinguished former president of the National Urban League, Vernon E. Jordan, Jr. Mr. Jordan recently addressed the New York chapter of the American Jewish Committee and the following is an excerpt from his speech, which appeared in the Washington Post on June 15, 1984:

BLACKS AND JEWS: WHAT WENT WRONG

Instead of despairing about the deterioration of black-Jewish relations or the unfairness of the perceptions many Jews and blacks have of each other, we should see the current situation as an opportunity to rebuild a relationship free of the romanticism and paternalism of the past—a healthy, equal partnership based on mutual respect and understanding.

There will be plenty of things that blacks and Jews will disagree about. That should be accepted as a given. There will also be plenty that we can agree upon, and it is upon those issues that we should reconstitute our historic alliance.

It is probably premature to lay out a blueprint for the rebirth of that alliance. At this point we should concentrate on damage-repair. And the first step in that long overdue repair job is to understand how others view crucial issues—from their perspective, not our own.

I might describe this as an act of imaginative sympathy—to step into the shoes of another group and attempt to absorb its outlook on issues, not from a critical perspective, but from a sympathetic desire to understand its reasoning and its views.

It is that imaginative sympathy that bonded blacks and Jews in alliance for so many years—the black realization of the historic suffering of the Jewish people and the Jewish realization of the present sufferings of black people.

It is that imaginative sympathy that should override differences on specific issues and enable us to rebuild an alliance that is good for Jews, good for blacks, and good for America.

Let me now turn to three volatile issues—quotas, Jesse Jackson, and Israel. They provide fertile ground for the kind of imaginative sympathy I am calling for.

Let's begin with quotas—a word I condemn for its obvious distortion of the concept of affirmative action.

Statistics speak eloquently for the need for affirmative action programs. In a race-conscious society there must be race-conscious remedies for racial wrongs. Successful affirmative action depends on using goals and timetables to achieve its ends.

I have never been among those who identify the Jewish community as an anti-affirmative action bloc. Affirmative action has been sponsored by Jewish legislators, defended in courts by Jewish lawyers, and supported by some national Jewish organizations.

But there is a perception that this leading agenda item among blacks is fought by the Jewish community, primarily because some Jewish organizations are in the forefront of opposition to affirmative action.

Our differences about affirmative action are based on our different historical experiences. Many Jews see quotas as a ceiling to their aspirations; blacks see quotas as a floor—a way, perhaps the only way, to get representations in schools and jobs.

So let us agree to disagree on this issue. But I would point to two aspects of our disagreement that serve to maintain tensions and impede reconciliation.

The first is the apparent failure of Jewish organizations that oppose affirmative action to effectively implement their own definition of appropriate affirmative action; namely, the reaching out to recruit, train and otherwise prepare disadvantaged blacks to compete on equal terms in the marketplace.

If that concept is endorsed, there should be evidence that it works. But there is insufficient evidence, even in companies owned and operated by individuals who are members and even activists in the community organizations that endorse such an approach.

I believe that in order to avoid the charge of hypocrisy, those organizations and their members must aggressively implement their definition of affirmative action—in their schools, in their businesses and in their neighborhoods. Absent that, it will continue to be court decisions and civil rights enforcement that result in black educational and economic opportunities, and not the good intentions of people who do not implement their stated beliefs.

Second, I believe Jewish organizations ought to question their leadership role in opposition to affirmative action and to other steps of importance to blacks.

How does it benefit the Jewish community to have its organizations act as the point men on an issue on which Jews themselves differ? What conceivable benefit is there for the American Jewish Committee, for example, to sponsor and be identified with Commentary, an organ of extreme conservatism that does not reflect the viewpoints of the AJC or of its members, much less of the Jewish community at large?

The pluralism of both blacks and Jews encompasses a variety of social and economic viewpoints. But the Jewish community, which is largely economically secure and self-confident, can afford to demonstrate its pluralism to a greater degree than the black community, which is economically insecure and plagued by discrimination.

That difference helps account for the apparent monolithic black support for the candidacy of Jesse Jackson.

Many Jews have been rightly disturbed by the "Hymie" remarks, the belated and inadequate apology, and the rhetoric of Minister Farrakhan. Many blacks have been just as disturbed by those incidents.

The Jackson candidacy is an example of the need for what I called "imaginative sympathy." Blacks are voting for Jackson just as Jews flocked out of their ghettos in the early years of this century to vote for the first Jewish candidates for local and statewide offices—out of justified pride and enthusiasm for participating in the politics of the nation.

Those first Jewish candidates were radicals. They were out-spoken advocates of what they and their constituents perceived to be Jewish interests. And some of them would be embarrassing to sophisticated Jewish voters in the 1980s.

But they filled a need of their times. They paved the way for others. They pioneered a trail blazed by passion and commitment. Today we have to respect them and the people who voted for them, just as we should respect the positives in the Jackson candidacy and the fundamental good will of Jackson's supporters and voters.

Despite its radical rhetoric, the Jackson campaign is a conservative movement in that it directs black energies to working within the political system, using the domocratic mechanisms provided by our Constitution to effect change.

Even so, many who would be more tolerant of the Jackson candidacy cannot bring themselves to overcome his views on Israel and the Mideast. The memory of the embrace with gun-toting Arafat is too searing.

I can respect that. I have been consistent in support of Israel and in opposition to the terrorists who would overthrow Israel, whether they are thugs like the PLO or brutal dictators such as are to be found in Libya, Syria, Iraq and similar places.

But what is at issue is the degree to which unswerving support for current Israeli government policies is seen as the litmus test for black-Jewish reconciliation. And I would argue that the litmus test has to be broader. If blacks are willing to overlook enmity to affirmative action in rebuilding our coalition, Jews should be willing to accept a broader range of opinions on Israel as well.

Perhaps most important, we—Jews and blacks—must guard against judging each other as groups on the basis of statements made by individuals. It is morally objectionable to say that Jews are against blacks because some Jews oppose affirmative action. It is just as morally objectionable to say that blacks are anti-Semitic because some black may have made an anti-Jewish or an anti-Israel statement.

Too many blacks and Jews look for excuses to disassociate ourselves from our alliance. The seal with which some Jews have fought affirmative action is an example of the search for an excuse to withdraw from concern for civil rights. And the anti-Israel sentiments expressed by some blacks strike me as a desire to wound, to satisfy rage at abandonment, to avoid the responsibilities of alliances.

Many blacks and Jews are trapped in a self-destructive loop that only provides entertainment for anti-Semites and racists.

Reasonable people can only conclude that both blacks and Jews ought to be engaged in a more constructive use of their energies to overcome the injustices in our society that threaten both our groups.

I have already spoken of the need for "imaginative sympathy" in reconstructing our relations. To this, I should add another element for my Jewish friends, and this is "imaginative memory."

For too many American Jews have forgotten the past—a past that kept Jews out of certain schools and jobs, a past that had "No Jews Allowed" signs at fashionable resorts, a past that stigmatized the masses of poor Jews as "dirty" and as "criminals."

Let me invoke that memory of the past for a moment. This is an excerpt from The New York Times of July 30, 1893:

"This neighborhood, peopled almost entirely by the people who claim to have been driven from Poland and Russia, is the eyesore of New York and perhaps the filthiest place on the eastern continent. It is impossible for a Christian to live there because he will be driven out either by blows or the dirt and stench. Cleanliness is an unknown quantity to these people, they cannot be lifted up to a higher plane because they do not want to be."

That article sounds like it was written yesterday about the black ghetto. It has all of the favorite neoconservative code words and judgments. It embodies the prevalent belief that the poor like being poor and just want to exploit the system without adopting those middle class virtues we assume to be sacrosanct.

But it is not about today's blacks, it is about yesterday's Jews. That racist Times article was about your grandparents. They struggled against poverty and discrimination. Their heirs overcame because they were white in a society that learned to tolerate religious differences—because they lived in an economy that was expanding rapidly.

Today, the black poor are black in a society that has yet to come to terms with its racism. They are poor in a society that denied them when it was expanding and rejected them when it was contracting.

But their struggle today is similar to the struggle your grandparents waged against hate and racism. And their struggle is your struggle today too, for it is a struggle to create an open, pluralistic, integrated society. And more than any other group besides blacks, Jews have a stake in that kind of society.

Together we can rebuild an alliance to help win an open, pluralistic, integrated society. There are blacks who may be too embittered to join it; there are Jews who may be too deficient in both imagination and memory to join it. But the majorities of both groups want to join again in a creative partnership for the common good.●

MISSING CHILDREN: A CONTINUING PROBLEM IN THE UNITED STATES

HON. JOSEPH G. MINISH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. MINISH. Mr. Speaker, I rise today to commend the many concerned citizens in Denville, Rockaway Borough, and Rockaway Township, NJ, who are participating in "Childfind Week," during June 24 through July 1. My special thanks are extended to the mayors of the towns for their roles in initiating the "Childfind Week." Community efforts such as these, can help alleviate the tragic problem of missing children in our country.

It is distressing to learn of the great number of children missing from their homes each year in the United States. It is estimated that as many as 1.8 million children disappear annually. Most are runaways who are eventually returned, unharmed. Unfortunately, however, as many as 20,000 to 50,000 missing children cases remain unsolved every year and 4,000 to 8,000 bodies of these children are later found dead.

In an effort to provide maximum assistance to families who encounter this tragedy, I was a cosponsor and vigorous supporter of the Missing Children's Act in the last Congress. This bill became public law and consequently today, the FBI has an increased ability to search for missing children. It was a travesty that the FBI central computer, had been used to search for stolen cars, but not for stolen children. The Missing Children's Act addressed that inequity.

In this Congress, I was also a cosponsor and supporter of the Missing Children's Assistance Act, which is designed to strengthen this recent law. This bill was passed by the House and is still pending in the Senate. It would, among other provisions, establish a toll free hotline, and a national resource center giving technical help to State and local governments. Such a center was recently opened, under a discretionary appropriation; pending Senate passage of the bill.

Mr. Speaker, it is my hope that the programs established as a result of the missing children's bills will be beneficial to the families as well as to the local and State law enforcement officials in locating missing children. The programs initiated during "Childfind Week," are a great help to local agencies and an important tool for heightening public awareness of this tragedy.●

COMPETITIVE WARRANTY ACT

HON. JIM BATES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. BATES. Mr. Speaker, most people think warranties help the consumer. They can—and sometimes do—but in the case of automobile emission parts, the mandatory warranty provision of the Clean Air Act often hurts the consumer more than it helps.

For example, I have heard from a number of consumers who have told me that when they brought their automobile to the dealer for a repair, presumably covered under the warranty, they were told when it came time to pay the bill, that the warranty did not cover the repair charges. Not only does the consumer get hurt when this occurs, but the auto-parts industry also suffers due to the warranty provision in the Clean Air Act which requires that the car be serviced by the dealer.

To help correct this problem, I am introducing the Competitive Warranty Act. This bill would make the mandatory warranty on auto-emission-parts optional. As the law stands now, the mandatory 5-year or 50,000-mile warranty on auto-emission parts deprives the owner of the freedom to choose where to get the automobile repaired.

The Competitive Warranty Act also would give the owner the option of having the automobile repaired by either a dealer or an independent auto-repair shop. Consumers most probably would take their automobiles to repair shops giving the best service.

History indicates that the consumers have had a hard time using their warranties for the automobile-emission system on new cars. In 1939, the Federal Trade Commission issued a report which criticized the automobile manufacturers because they forced their dealers to perform warranty repairs without compensation for labor or parts used in warranty work. The report also criticized the manufacturers' warranties which forced dealers to buy only the manufacturer's original auto parts and did not leave room for competition in the industry.

Then, in 1979, the Federal Trade Commission said the car companies were paying lower compensation on warranty work than dealers charged their customers. This meant that the dealers were reluctant to do warranty work because they were paid less for the warranty work than any other work they performed.

A year later in 1980, the University of Wisconsin published a National Science Foundation Study on Warranty Protection in the automotive industry. This study said dealers were paid a lower hourly rate and earned less profit on warranty work. The report also noted that new car purchasers received unsatisfactory warranty repairs and said: "there is an extremely inconsistent pattern of warranty protection, creating public distrust in the automotive industry."

Rather than compel motorists to pay several hundred dollars for a federally mandated warranty on the emission system, I encourage my colleagues to join Congressman HEFTEL and I in supporting the Competitive Warranty Act. This legislation would give the owner the option of having the automobile repaired by either a dealer or an independent auto-repair shop. Consumers most probably would take their automobiles to repair shops giving the best service.

By requiring dealers to post the price of the warranty on the new automobile—as my bill would do—consumers will be made more aware of what the warranty covers and how much it costs. By making the warranty optional, this legislation could conceivably create a market for selling various warranty policies.

I hope my colleagues will join me in supporting this legislation.●

PERSONAL EXPLANATION

HON. PAT WILLIAMS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. WILLIAMS of Montana. Mr. Speaker, because of my working schedule I was unable to vote on H.R. 1510, the immigration bill. Had I been present I would have opposed the legislation by voting "no."●

THE 20TH ANNIVERSARY OF MURDER OF THREE CIVIL RIGHTS WORKERS

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DELLUMS. Mr. Speaker, today marks the 20th anniversary of the tragic murder of three young civil rights workers in Mississippi.

On June 21, 1964, Andrew Goodman, Michael Schwerner, and James Chaney disappeared from Philadelphia, MS, where they were engaged in voter registration activities—44 days later their bodies were found under a newly constructed earthen dam.

These young men were examples of the best of America—young people committed to the principles of justice and equality for all people.

In some significant measure the shock felt around this Nation by the deaths of these courageous young workers paved the way to significant legislative achievements, such as the Civil Rights and Voting Rights Acts. As a result, the America of 1984 is a very different place from that of 1964. Equality and justice, however, are still goals to be achieved and are not the reality of our society today. Many of those hard-won advances are now threatened by an administration hostile to the aspirations of black and other minorities and one whose actions endanger civil and human rights throughout the world.

In a society of equality and justice, a society like the one for which these courageous young people gave their lives, it would be unnecessary to mention that two of these civil rights workers were Jewish and one was black. But, we do not yet live in such a society. 20 years ago, civil rights workers, of different races and religions worked together toward the common goal of equality and justice.

Unfortunately, it is now common newspaper wisdom that the relationship between blacks and Jews has been strained and exacerbated during the 1984 Presidential campaign. And to the extent that this strain is in part real, it is important on this date to remember the close alliance and coalition that has traditionally existed, and must always exist, between blacks and Jews and all people committed to the principles of justice and equality.

Today we remember Andrew Goodman, Michael Schwerner, and James Chaney, and those who struggled before them, with them, and after them. And today we must rededicate our efforts to ensure that the principles of justice and equality for which they fought are the principles which form the basis of American society.●

CIVIL RIGHTS STRUGGLE

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. OWENS. Mr. Speaker, it is 20 years ago this week that Andrew Goodman, Mickey Schwerner, and James Chaney were murdered. The three young men were traveling on a road of empowerment and inclusion for those who were disenfranchised and excluded from the political life of this country. They were met at a crossroad by those who were traveling the path of hatred and exclusion. Many gave a part of their lives in that struggle, but those three young men had their lives taken.

Twenty years later, the struggle continues. There are those who continue to follow the road of empowerment and inclusion and those who follow the road of hatred and exclusion. The methods of each side have become more sophisticated, but the essential conflict remains.

Over the past 1½ weeks, there has been much said about who is in this country, how they got here and whether or not they should have the opportunity to remain here under legal status. In the process, the purposes served by immigration have been largely lost or, in some cases, misstated.

When the Colonies were founded, there were many barriers to settlement by people who were considered to be undesirable. The primary barriers were raised against those whose religious preferences did not match that of the founders, and governors, of the colony in question. This bar was gradually lifted after a number of executions and exclusions.

After the United States became a united nation under a written constitution, a ban on the importation of African slaves was put in place. That did not stop illegal importation to meet the perceived needs of parts of the new country.

During the 1800's we needed people. We were winning the West and killing the indigenous population. Immigration from Europe was welcomed and many came fleeing oppression and seeking a better life. However, we barred immigration from the East. We may have needed the Chinese and other people from that part of the world, but we had bars on immigration and deported the Chinese who were here illegally.

The 1900's brought limits and quotas. We no longer needed the huddled masses and we began to get a bit more selective. The era of exclusion was firmly established.

Today, immigrants come from our own hemisphere and from other parts of the Third World. They don't necessarily look like us, speak like us, or follow our customs. Today, we speak with the voice of exclusion, a voice which was not raised when we needed people to build our railroads, mine our mines, or clear and plant our fields.

In contrast, the House has spoken on guest workers by defeating the Miller amendment and passing the Panetta amendment. The number of guest workers will increase dramatically. We need disposable people to tend and pick our crops. Getting them with no obligation to admit them, or provide for them if they become sick or injured, is convenient for us, so we welcome them until they have served their purpose.

I am deeply saddened by much of what I have heard here. This has been a divisive debate. It has frequently lacked the sense of justice and fair play that Americans pride themselves on.

We have the opportunity to pursue a policy to close our borders more effectively, but we have not gone that route. Instead we have turned on those who are here, those who have generally served us well in gratitude for even the underground existence that was open to them.

Each Member must decide where he or she stands. It is possible to change one's path at each step along the way. Our actions this week can serve to heal the wounds of division or lay the groundwork for continuing conflict.

I urge my colleagues to consider that our immigration policy defines us as a people who must exist in a wider world. Even as we use such a large percentage of the world's resources, we are embarking on a policy of using the world's human resources. This is wrong and we cannot hope to escape responsibility for our actions or the attitudes that have taken us to this point.

These actions in this House over the last week and a half are a sad reminder that the task taken on by the three young men whose lives were taken, and so many others, remain before us if we are to build a just society that does not value people based on the accident of ancestry. We remain at a crossroads.●

ORGAN PROCUREMENT

HON. HAL DAUB

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DAUB. Mr. Speaker, today we considered and overwhelmingly supported legislation that provides financial assistance for organ procurement agencies and supports the purchase of immunosuppressive drugs.

After extensive studies, this legislation appeared to be the best proposal and received enthusiastic support from a number of groups and individuals as a means of meeting the needs of transplant patients. One can hardly argue with the emotional appeal of this legislation as it promises to allow a transplant patient a greater opportunity for a full and healthy life.

I supported the Organ Transplant Act today because I recognize the need for available organs is great. I am well aware of the pleas from patients, parents and even the President of the United States for organ donors.

Organ transplantation is a sensitive issue and we must carefully consider the ethical issues surrounding organ procurement. Many experts will argue that the appropriate time for organ removal for transplant purposes must be more clearly defined. The chance of removing an organ prematurely from a living person would be tragic and unacceptable.

It is my hope that the 22-member task force on organ transplantation that is required through this legislation will carefully examine the medical and ethical issues that organ procurement and transplantation presents with respect to human life.●

MILTON G. HOWARD RETIREMENT

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. LUKEN. Mr. Speaker, as the Representative of the First Congressional District of Ohio, I would like to pay tribute to Milton G. Howard on his retirement from the Democratic Club of the ninth ward.

Mr. Howard has served the 9th Ward Democratic Club as the ward chairman for 29 years from the year 1955 to 1984. His leadership is of great influence upon the community.

He is an entrepreneur in the small business industry, and his involvement has inspired many others to participate in the economical development of our city and county system.

He is an established member of the Hamilton County Democratic Club.

Milton's political motivations actually began at a very early age under the guidance of his beloved father, William H. Howard, and his beloved mother, Flora E. Howard. At this time, there was only one black club and his father was one of the pioneers. Milton was not of legal age—at that time 21 years of age—when he first began working to develop and expand his horizons in the democratic process.

Leadership began so early for Milton, and a continuous friendship still exits between him and myself as well as the members of the Democratic Party in Hamilton County. Best wishes to you, Milton.●

ARGENTINA'S DEBT CRISIS

HON. DENNY SMITH

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DENNY SMITH. Mr. Speaker, today, I sent a note to Secretary Regan expressing my pleasure with the Department of the Treasury's decision to discontinue its offer of a $300 million bridge loan for Argentina. As you may recall, I opposed the transaction last March when the U.S. Treasury teamed up with some of the money-center banks and four Latin American countries, whose own loans to those banks are nonaccrual, with a "rescue package" to respond to Argentina's debt crisis.

Our $300 million loan offer was conditional upon Argentina's signing a letter of intent with the International Monetary Fund. This has yet to occur. Yet the Department of the Treasury has extended our loan offer a couple of times.

In my note today to Secretary Regan, I commended him and the Department for canceling our offer to participate in the rescue package. I reiterated my concern that the rescue package was not in the best interest of the American people. I firmly believe that there is no excuse for placing the U.S. taxpayer in the position of protecting the interest of the money-center banks.

We are not solving the foreign debt problems of the less-developed countries [LDC's]. The total debt continues to escalate. I am well aware of the ramifications to our domestic banking structure should several LDC's find themselves unable to make further payments on their outstanding loans, but I know that it is not fair for the American taxpayer to be called to the rescue. The bad loan decisions are the responsibility of the banks' management and stockholders, and it is high time for the banks with exposure in Argentina to write those loans down as nonperforming. Small banks and businesses in Oregon would not be given the time and consideration that has already been extended to the money-center banks.

My understanding is that should Argentina sign a letter of intent with the International Monetary Fund and should Argentina request again a bridge loan from the U.S. Government, that the Department of the Treasury would entertain that request. Let me just simply state that I am glad the Department canceled the previous offer of $300 million and would hope that the Department would oppose reinstating the loan.●

NEW MERGER GUIDELINES

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. FEIGHAN. Mr. Speaker, I was pleased to read the new merger guidelines published by the Department of Justice on June 14, 1984. These guidelines indicate that the Department has come a long way toward understanding the effects that the onslaught of foreign imports has had on the U.S. domestic market. Over the last 10 years, this country has witnessed the steady erosion of U.S. companies' domestic market share, in part as a result of shortsighted antitrust enforcement. This attitude was exemplified by the first Justice Department decision to prevent LTV and Republic Steel from merging.

The new Department standards will help strengthen the competitiveness of American industry. Indeed, the guidelines incorporate the proposals I have made over the past year. For example, I introduced legislation which would require consideration of the nature and effect of foreign competition on an industry before a merger could be prevented. The Justice Department has taken up this suggestion and incorporated it into the merger guidelines. Now the Department will examine both actual imports and factors like worldwide excess capacity in determining whether specific mergers would harm competition.

This standard of review is extremely important to beleagured domestic industries which have been hurt by a flood of imported goods traceable to overcapacity in foreign markets. In the past, when American companies have tried to rationalize their production facilities to meet a foreign challenge, they have been stopped by the Justice Department's threats of legal action. The new guidelines indicate that the bureaucracy is beginning to understand that there is a world market for many goods; that the United States is part of that world market; and that to compete effectively in the world market U.S. companies will have to be allowed to merge.●

TRIBUTE TO DR. EDWARD HOBERMAN

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. CLINGER. Mr. Speaker, I rise today to pay tribute to one of Lock Haven, PA's leading citizens, Dr. Edward Hoberman, who is being honored by the Clinton County Medical Society for his 50 years of exemplary services to his profession and his community. It is my pleasure to bring the accomplishments of Dr. Hoberman to the attention of my colleagues in the U.S. House of Representatives.

Dr. Hoberman received his medical degree from Jefferson Medical College and completed his graduate work in surgery at Cook County Hospital in Chicago, IL. Dr. Hoberman returned to his hometown of Lock Haven to begin a half century of medical service to the community and has extended his efforts to areas beyond his practice and into the daily lives of Lock Haven's residents. For many years Dr. Hoberman served as the team physician for the Lock Haven High School and University and served as president of the Lock Haven Board of Health. He continues to serve on the board of directors of the Community Nurses Association.

Dr. Hoberman's accomplishments reach well beyond this impressive history of medical practice. His devotion to the betterment of the Lock Haven community is evident by his long service in numerous organizations. He is member and past president of the Kiwanis Club of Lock Haven, board of trustees and the chapter of B'nai B'rith, and he is past president of the Clinton County Medical Society.

I personally have benefited from the many years I've known Dr. Hoberman and am pleased to take part in honoring him for the contributions he has made to the Lock Haven community. It is rare, indeed, to find a man in this constantly mobile society who has for 50 years dedicated his energy and skills to the betterment of his community. Dr. Hoberman, through active participation and enlightened leadership, has provided continued guidance in Lock Haven's pursuance of quality living for its citizens.

Therefore, Mr. Speaker, I call upon my colleagues in the Congress of the United States to join me in this opportunity to pay tribute to Dr. Hoberman.●

U.S. CONFERENCE OF MAYORS COMMENDS AND SUPPORTS ANNUAL CONGRESSIONAL ART COMPETITION

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DOWNEY of New York. Mr. Speaker, during this week's annual meeting of the U.S. Conference of Mayors in Philadelphia, PA, the mayors unanimously passed a resolution which pledged their support for the Congressional Art Competition for high school students.

The text of the resolution is as follows:

RESOLUTION PASSED BY THE U.S. CONFERENCE OF MAYORS

Whereas the art of the young serves as a personal reflection and vision of the country and of the human experience for both the artist and the viewer; and

Whereas the U.S. Conference of Mayors acknowledges the deep source of talent and great creative spirit of young people throughout the country and seeks to encourage young people's involvement in the arts and the demonstration of the pride of youth in their home towns and in their nation; and

Whereas for the past three years the Congressional Arts Caucus has sponsored a national competition which recognizes and promotes the artistic creativity of today's youth at a time when local cultural and arts-in-education budgets are being curtailed; and

Whereas this Congressional Art Competition is a unique expression of bipartisan Congressional support for the arts and for the creative spirit of American high school students by which members of Congress hold local competitions and present the winning entries in Washington for display; and

Whereas the Congressional Art Competition unites the local business, educational and cultural community in celebrating and encouraging the artistic talent of our nation's youth.

Now, Therefore be it Resolved, That the U.S. Conference of Mayors commends the Congressional Arts Caucus for instituting the Annual Congressional Art Competition and recognizes the contribution of the Competition to the development of young artists; and

Be it Further Resolved, That the U.S. Conference of Mayors encourages local and city governments to assist in the ongoing tradition and spirit of the Congressional Art Competition.●

GREENWOOD ARTS JUBILEE

HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. JONES of Oklahoma. Mr. Speaker, it is with a great sense of community pride that I rise to bring to my colleagues' attention the great success of the Third Annual Greenwood Arts Jubilee held last weekend in North Tulsa on Greenwood Avenue.

Greenwood Avenue was once known as the Black Wall Street of America. Business activity filled the grand street on a scale not matched anywhere else in our Nation.

I am pleased to report that Greenwood is once again becoming the hub of north Tulsa life. At the jubilee last weekend, sponsored by Theater North, the Williams Co., Budweiser, and KXOJ radio, oldtimers commented with obvious delight on the crowds and cars and happy reunions on Greenwood Avenue. It looked like the great Greenwood of the old days.

Despite the heat, 25,000 people turned out Saturday to visit the arts and crafts booths, watch break dancers perform, listen to music, and happily wander up and down the street. Another 20,000 appered on Sunday to do likewise. Friday evening alone, 10,000 attended between 6 p.m. and midnight. This year's crowd was the largest ever at the jubilee, a good omen for the future.

For the past 3 years, Theater North has put together the jubilee as one of its many annual cultural events. Members of its board change hats to run the different components of program, with great cooperation from local government, business and media leaders. Money raised from booth rental, beer, and tee-shirt sale finances future cultural events.

The success of the Third Annual Greenwood Arts Jubilee is a sure sign that the north Tulsa community has pulled together and is returning to the greatness of old.●

THE JIMMY CARTER NATIONAL HISTORIC SITE

HON. RICHARD RAY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. RAY. Mr. Speaker, today I am introducing legislation which would authorize establishment of the Jimmy Carter National Historic Site in Plains, GA. The entire Georgia delegation joins me in introducing this measure, and an identical bill is also being introduced today in the other body.

Shortly after leaving office in 1981, President and Mrs. Carter met with National Park Service officials to discuss development of a historic site in Plains to include some of the properties in the area that have a significant historical association with the life of our 39th President. The National Park Service conducted a study subsequent to this meeting and suggested four different alternative proposals for the historic site. This legislation incorporates the most comprehensive of these proposals. It would authorize the acquisition of a number of properties in the Plains area, including the present Carter home, the boyhood home west of Plains near the community of Archery, the Plains High School and surrounding grounds, and the Plains Railroad Depot which served as President Carter's campaign headquarters. It would also authorize acquisition of a small strip of land along Woodland Drive across from the present Carter home and the exterior facades of the Wise Hospital, where President Carter was born, and the Old Stewart Place, where the Carters lived for a short period before moving into their present home.

Acquisition of property through donation is encouraged by the Tax Reform Act of 1976, which provides tax incentives for owners of properties included in a historic district. However, this bill also authorizes the purchase of property through donated or appropriated funds.

I believe it is important that this legislation be enacted so that we can preserve this area that has such significance to the life of our 39th President. The homes of other prominent national figures have been saved and preserved for the benefit and education of the public, and today there are about 30 sites within the National Park Service which are dedicated to former Presidents. It is particularly significant that this former President still resides in Plains and has throughout his life regarded Plains as his home.

James Earl Carter, Jr., was born in 1923 in the Wise Hospital in Plains and grew up on a farm west of town near the small community of Archery. He attended both elementary school and high school in Plains and attended Georgia Southwestern College in nearby Americus before going on to the Georgia Institute of Technology in Atlanta and the U.S. Naval Academy.

Jimmy Carter married Rosalynn Smith in the Plains United Methodist Church shortly after his graduation from the Naval Academy and, after his father's death in 1953, returned to Plains with his family to manage the family business. The Carters were very successful in their business and, in 1961, moved into their new home on Woodland Drive. This home has been their permanent address throughout a political career in the State senate, the Governor's office, and the White House.

Although the Carters have traveled extensively since leaving Washington, they still spend a majority of their time in Plains.

President Carter has testified that he draws his strength from Plains and is quoted as saying: "I can be so tired that I don't think I can go another step. I may be depressed a little if things haven't gone too well, and when I get home * * * it's like I'm a completely new man. I sleep better, I eat better, I think better—my whole perspective on the world is improved just by being there."

Plains is probably more closely tied to a President than the hometown of any other recent President. In addition, President and Mrs. Carter are personally interested in preserving their family history and the memorabilia associated with their past. They want to maintain the character of their hometown, so that future generations can get an accurate, detailed picture of the background and roots of this President. Their active help in preserving Plains will make the town a historic site perhaps more authentic than any other like it.

We should act now before this precious history is lost in the passage of time. We should preserve this important part of our cultural heritage.●

CHARTER DAY WEEKEND WILL FEATURE A VISIT BY THE DUKE AND DUCHESS OF KENT

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DYSON. Mr. Speaker, I would like to bring to the attention of my colleagues the visit of their royal highnesses and Duke and Duchess of Kent. The Duke and Duchess, representing Britain's royal family, will be participating in the June 23-24 Charter Day weekend in St. Mary's City, MD.

The Charter Day weekend, an official State anniversary celebration, is part of Maryland's 350th anniversary festivities. This event is expected to attract more than 75,000 people to Maryland's 17th century capital. The people of St. Mary's City are honored to have such distinguished guests, and they will honor the Duke and Duchess in royal fashion.

Among Saturday's special events will be a flotilla of historic wooden vessels including the Maryland *Dove*, a replica of the 17th century pinnace which brought the first settlers to Maryland in 1634, and *Mystic Clipper*, a 125-foot windjammer fashioned after the Yankee privateer schooners. Traditional Chesapeake Bay workboats, private boats, and yachts will round out the flotilla.

Mr. Speaker, the weekend will include a reenactment of the landing of Maryland's settlers, dedication of the Margaret Brent Memorial Garden, an ecumenical service celebrating the birth of religious toleration in 17th century Maryland and numerous musical presentations. And the Maryland balloon, created especially for Maryland's 350th anniversary, will make several appearances. The hot air balloon, an airborne representation of the State flag, is truly a stunning sight.

Mr. Speaker, Saturday's festivities will end with a bang. A spectacular fireworks display over the St. Mary's River will round out the day's events. The fireworks demonstration will be staged by Zambelli Internationale, the largest manufacturer and exhibitor of fireworks in the United States. The day's events will also include, of course, plenty of the best seafood in the world from the Chesapeake Bay.●

THE CENTENNIAL OF CATHEDRAL HIGH SCHOOL

HON. EDWARD P. BOLAND

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. BOLAND. Mr. Speaker, I want to bring to the attention of my colleagues a significant event in the life of my home city, Springfield, MA.

On June 1, Springfield's Cathedral High School graduated its 100th class. Since September of 1884, the students, faculty, and administration of Cathedral have worked together to build an educational institution of the highest quality. From a two-room facility with a class of two students under the capable direction of Mother Mary Cecelia Bowen, Cathedral has been transformed into a $5 million complex with an enrollment in excess of 2,000. Drawing students from throughout western Massachusetts and northern Connecticut, Cathedral has established a proud tradition of academic excellence and commitment to principle.

Cathedral graduates have distinguished themselves in all walks of life. Whether in the Springfield area, or in other locations around the United States and throughout the world, they have been able to draw upon the values with which they were inculcated during their high school days, and make important contributions to the life of their communities. One of Cathedral's most celebrated graduates, Lawrence F. O'Brien, former Postmaster General, special assistant to President Kennedy and Johnson and commissioner of the National Basketball Association was the featured speaker at this year's graduation.

Mr. Speaker, the success which Cathedral High School has enjoyed during its first 100 years provides a sound foundation for the future. The strength of any community is to a great extent a product of its educational institutions. Cathedral High School has served the people of the Springfield area well over the last century, and I want to wish the Reverend Joseph P. Quinlan, the school's headmaster and Sister Patricia James, the school's principal continued success as they guide Cathedral into its next 100 years.●

A TRIBUTE TO FATHER E. CALLANAN

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. MATSUI. Mr. Speaker, one of my most respected and civic-minded constituents, the Reverend Edward Eugene Callanan, S.J., has accepted a position at St. Francis Xavier Parish in Phoenix, AZ. I would like to recognize Father Callanan at this time, Mr. Speaker, because we in Sacramento owe him so much. We are indebted to him for the contributions he has made to our city, and we are indebted to him for the love he has given to our citizens.

For the past 17 years, Father Callanan has been actively associated with Jesuit High School in Carmichael, CA, serving in a variety of capacities. He has been the school's principal, alumni director, fundraising coordinator and so much more. He has been an Irish storyteller, a golf coach, and even an actor, putting his considerable Thespian skills to use during the Jesuit High School spring fling musical. As one colleague noted, "Since coming to Sacramento, he has been a whirling dervish of charisma, involvement, and talent, attracting a multitude of friends and supporters for the school."

Mr. Speaker, Father Callanan's civic involvement, however, does not end at Jesuit High. He was appointed to the Sacramento Diocese Board of Education and for 2 years served as president of the Golden Empire League. He also has served on the San Joaquin CA, Inter-Scholastic Board of Managers as chairman of the energy committee and as a member of private-parochial school committees. Father Callanan has been an active member of the Rotary Club of Sacramento and is a member of the Carmichael Elks Lodge No. 103.

Father Callanan, in short, has enhanced the lives of a great many people, and nowhere is that more evident than by the way he has performed his duties as a priest. That is because Father Callanan is first and foremost a priest, and as such he has been a friend of those in need of friends. He has given faith to those in need of hope, and he has been where he has been needed.

Mr. Speaker on behalf of the people of Sacramento, I extend my thanks and best wishes to a truly deserving individual, Father Edward Callanan.●

H.R. 5490, THE CIVIL RIGHTS ACT OF 1984

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. GARCIA. Mr. Speaker, tomorrow we will be voting on the rule to accompany H.R. 5490, the Civil Rights Act of 1984. The rule is an open rule allowing 2 hours of debate. I urge my colleagues to support the rule.

This legislation offers a solution for probably the most important civil rights issue of this decade; the right of an individual to attend the college of his or her choice without regard to race, gender, age, or physical ability. We do this in part by broadening the definition of Federal financial assistance to include an entire institution so if any part of the institution discriminates, the whole institution could face fund termination. My colleagues, discrimination is evil in any form, but is made even worse with regard to educational access if used to make a difference in treatment on any basis other than individual merit. And access to education is what we are talking about in this legislation: that is, whether all people will have an equal opportunity to attend the educational institution of their choice. Like the United Negro Fund advertisement says, "A mind is a terrible thing to waste." Think of it, disallowing education simply because a student is denied access to the college of his or her choice. We have not tolerated this in the past and we will not tolerate it in the future.

Mr. Speaker, I represent a "minority district." That is, the population of my district is 42 percent black and 53 percent Hispanic. So I know quite well the problems of access and choice minorities face in obtaining an adequate education. The statistics are staggering for minorities nationally; 50 percent of blacks and 40 percent of Hispanics are dependent on student financial assistance. But access to education is not just a minority problem. It is a middle class problem: 50.8 percent of all students are dependent on Government assistance for education. The educational opportunities these figures represent are overwhelming and we should not be in the business of contributing to the loss of educational opportunity for even one individual. This legislation is a positive step in that direction.

Mr. Speaker, education is the most precious tool the lower and middle classes have of closing the gap between the rich and the poor. We should do everything we can to assist in shrinking that gap. What we are talking about in a sense are dropouts. That is, kids who may not be able to attend the college of their choice. In the worst case scenario, these dropouts would indicate an inadequacy of the educational system and not of the human individual. We should be doing everything we can to maximize this human potential.●

SAN FRANCISCO'S RETIRED SENIOR VOLUNTEER PROGRAM

HON. SALA BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mrs. BURTON of California. Mr. Speaker, on June 26, San Francisco's Retired Senior Volunteer Program will be holding its 12th annual awards presentation. This nationwide program was first established in 1972 and San Francisco's chapter has been going strong since 1973.

The program involves community service by anyone over 60 years of age, and currently 520 individuals are participating in the local chapter. No particular experience is required—simply enthusiasm and interest in participating in this program. It is an excellent way for the elderly to involve themselves in enriching and worthwhile pursuits.

Presently, people are working in such areas as tutoring, entertainment, arts and crafts, visiting shut-ins, et cetera. Actual placements are with schools, courts, libraries, museums, day care centers, and others too numerous to mention.

It is truly an extraordinary program and one I am very proud to support. Special recognition goes to Lucille Ramstetter who has been the director since the beginning. Without her dedication and exhaustive efforts the program would not be thriving as it is today. I would also like to recognize Luz Cancino who is being honored as the Volunteer of the Year as well as the many other volunteers being recognized today.

This is a very special program, and I encourage all my colleagues to similarly support RSVP.●

THE NEED TO CONTINUE THE GI BILL

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. LANTOS. Mr. Speaker, 40 years ago this week Allied troops were broadening a beachhead on the coast of Normandy after the successful invasion on D-day, which marked the beginning of the final march to free Europe from the grip of Nazi tyranny. At the same time, almost lost amid the war headlines, President Roosevelt was signing into law an unprecedented package of benefits for veterans of the conflict. The GI bill of rights was intended to ensure for the veterans a shot at the American dream they had fought to protect.

The GI bill was a well-reasoned attempt to reeducate and reintegrate the millions of men and women who selflessly gave up the prime years of their lives to the service of their country. An entire generation of Americans, wrenched from the tranquility of domestic life and thrust into combat, was at stake. As one Senator said at the time, the returning veteran "can make our country or break it. If we don't fail them, they will not fail us." During the debate to enact those benefits, one of the Members of this House at that time observed: "The war has lost several million years to this generation in their educational and personal pursuit. We must provide them with the future of rehabilitation, of reeducation, and of reemployment which they deserve for the sacrifices they are making in this awful struggle."

One look at the widespread use of the education benefits in the GI bill, and the years of progress and prosperity enjoyed by our Nation in the ensuing decade, testifies to the success of the bill in reintegrating the veteran into the fabric of American life.

Designed to address the needs of citizen-soldiers called to war, the 1944 GI bill was updated to meet the needs of veterans returning from the Korean and Vietnam conflicts. In 1976 an increasingly budget conscious nation let the GI bill pass from existence.

Now Congress finds itself considering implementation of a new peace time GI bill of rights. Much of the debate centers around the need to use education benefits as a means of attracting highly qualified recruits to man understaffed positions in the military.

While not disagreeing with the need to attract the best possible young men and women to serve the legitimate defense needs of our Nation, I believe Congress is missing an important point. The original GI bill was passed largely out of gratitude for service, and the belief that those who stepped forward to defend their Nation represented a special group of young men and women worthy of encouragement in their personal pursuits once their military tours had ended. I believe it is imperative for our Nation to reaffirm its gratitude to those who serve in the military. I also think it is completely proper to encourage, with educational incentives, those who voluntarily serve their Nation.

Congress is wrestling with several variations on the principal theme of reviving the GI bill. I am already on record in support of a version to provide educational assistance to veterans regardless of service branch, rank, or job classification. In the coming weeks there will be substantial parading of statistics and arguments for the different versions of the bill. We will do the greatest disservice to the intent and history of the bill if we fail to remember the fundamental arguments used in support of the first GI bill in 1943 and 1944.

Yes, the world has changed dramatically in the past 40 years. But this Nation errs if it turns its back on the men and women who serve in the Armed Forces. We should be thankful that our Nation has been capable of producing the selfless individual who has been willing to defend the Nation through 200 years of change and challenge. I think an excellent way to express that appreciation to the veteran, while at the same time investing in our Nation's future, is to reimplement a GI bill with educational opportunity as its foundation.●

IS U.S. SUPPORT FOR THE CONTRAS ILLEGAL?

HON. ANTHONY C. BEILENSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. BEILENSON. Mr. Speaker, the Lawyers Committee for Ethics in International Relations, a distinguished group of lawyers from the Los Angeles area, has written to Attorney General William French Smith questioning the legality of U.S. covert actions against the Government of Nicaragua. Specifically, the Lawyers Committee cites the Ethics in Government Act, the Neutrality Act, title 18 of the

United States Code, and Public Law 97-377 as the basis for its challenge.

Mr. Speaker, I believe that the Lawyers Committee has raised an important point that has disturbing implications. Many of us have long argued that the Reagan administration's policy of destabilizing Nicaragua's Sandinista government has served instead to consolidate its strength, as well as harming innocent civilians and bringing the United States and its allies in the region closer to armed conflict with Nicaragua.

However, the charge that our Government is engaging in a systematic violation of domestic and international law raises a new dimension to the situation. If the President's policy is perceived as illegal, it, like the war in Vietnam and the Watergate scandals, will eventually erode confidence and trust in the U.S. Government and will serve to obscure the real differences between our democracy and totalitarian regimes. Thus, ironically, U.S. covert actions against the Sandinistas could ultimately boomerang, and damage our interests in Central America and throughout the world.

Mr. Speaker, I urge all of my colleagues to read the Lawyers Committee's cogent and timely letter to Attorney General Smith.●

PERSONAL EXPLANATION

HON. RICHARD RAY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. RAY. Mr. Speaker, on Wednesday, May 30, 1984, the House passed H.R. 5713, making appropriations for the Department of Housing and Urban Development and for various independent agencies. I was present and voting during the consideration of this important legislation. However, the Record indicates that I did not vote on rollcall No. 188, which was the vote on final passage. I certainly intended to vote in favor of final passage. While I was somewhat concerned that the measure exceeded the President's budget request, it did contain necessary funding for a number of worthwhile programs, including the UDAG programs, NASA, revenue sharing, and the Veterans' Administration.

Mr. Speaker, I ask unanimous consent that my statement appear in the permanent Record.●

TRIBUTE TO THOMAS P. KENNY

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. MATSUI. Mr. Speaker, I would like to call your attention to the untimely passing of Thomas P. Kenny, one of the finest and most influential community leaders in the Sacramento area.

As an outspoken constituent, a faithful friend, and a dedicated servant of working men and women of the metropolitan area, Tom Kenny will be sorely missed by all of us.

First and foremost, he was the executive secretary of the Sacramento area Central Labor Council, where he served faithfully for 13 years representing the interests of 80,000 workers who belong to 90 area unions. Since 1970, he also has served as editor of the Sacramento Valley Union Labor Bulletin—the printed voice of the organized labor movement in our community. In addition, he was the current vice president of the California Labor Federation.

But Tom Kenny was more than just a labor leader in Sacramento. He had a reputation as a man of compassion who worked to better the lot of the poor through community activities. Most of all, he was a decent, honest man who was not afraid to speak his mind—no matter how controversial the topic.

Mr. Speaker, Tom Kenny also was a man of diverse talents, especially as a professional musician. As such, he served as president of the Sacramento Musicians Union for 28 years. In 1983, he was elected as national vice president for the American Federation of Musicians. He played several instruments, including the saxophone and clarinet, and for many years performed with a band at the California State Fair and Exposition.

Tom Kenny was active and influential in many other community activities and organizations. For many years he worked with the Sacramento Regional Transit District and in 1977 served as chairman of the transit district's board of directors. He also was deeply involved with the United Way, Safety Council, Urban League, and the Sacramento Symphony Association's board of directors.

Mr. Speaker, I ask that you and my colleagues join me in mourning the loss of one of Sacramento's most respected community leaders. His perseverance and integrity have won the respect and admiration of all of us.●

NATIONAL STUDY CENTER FOR TRAUMA AND EMERGENCY MEDICINE

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Ms. MIKULSKI. Mr. Speaker, I am pleased today to introduce, on behalf of the entire Maryland congressional delegation, legislation designating the Maryland Institute for Emergency Medical Services Systems as the National Study Center for Trauma and Emergency Medical Services. The National Study Center will establish a national data base and clearinghouse for emergency medical service systems, conduct research in emergency medical issues and provide technical assistance nationwide.

In the last few years, Federal support for emergency medical services systems has declined precipitously. Many States have been unable to provide support for such systems. At the same time, the Maryland institute has led the Nation in developing a regional system that serves as a model for demonstrating the most up-to-date and cost-effective methods for delivering emergency medical services.

Historically, Maryland has been the leader in the development of trauma services, trauma research, and emergency medical care. Maryland annually conducts national and international symposia with faculty and participants from this Nation and abroad and is a recognized leader in the field of emergency medical services system design and development.

The improvement of our emergency medical systems has been neglected in many parts of the country. The designation of a National Study Center for Trauma would focus attention on this vital need.

Thank you very much and I urge my colleagues to support our resolution.●

HOUSE JOINT RESOLUTION 452

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 21, 1984

● Mr. DOWNEY of New York. Mr. Speaker, on June 18, 1984, the House of Representatives passed House Joint Resolution 452, a resolution which recognizes the importance of the arts to a complete education. The following Members expressed their support of this legislation and were inadvertently omitted from the official list of cosponsors: Mr. Kastenmeier of Wisconsin, Mr. Goodling of Pennsylvania, Mr. Martinez of California, and Mr. Fish of New York.●

SILVIO O. CONTE SPELLS OUT NEEDS FOR MENTAL HEALTH SERVICES

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. OBEY. Mr. Speaker, last week a distinguished colleague was presented an award for his outstanding commit-

ment to mental health research by nine Massachusetts area mental health organizations. Representative Silvio O. Conte was recognized for his consistent leadership on the Appropriations Committee in matters related to the National Institute for Mental Health and Alcohol Drug Abuse and Mental Health Administration.

Issues concerning the community care of the mentally ill are of no small consequence. The special problems these people face are considerable: Up to half of America's homeless are thought to be chronically mentally ill. Thousands of people remain in hospitals because appropriate community housing and treatment does not exist. Over 600,000 mentally ill are currently incarcerated. The children's defense fund estimates that as many as 3 million children are in need of some level of mental health services. One out of every six persons will suffer from a mental disorder this year.

What services are available are often fragmented. Coordination between mental health, social service, criminal justice and other professionals is lacking. In addition it has been estimated that mental illness costs this Nation up to $67 billion annually.

It is with pleasure that I also wish to recognize Mr. Conte's efforts on behalf of the mentally ill. His contribution to programs of community support on the Labor, Health and Human Services, Education and Related Agencies Subcommittee on Appropriations are significant. Below is the text of the speech he gave in acceptance of the award by mental health groups in his home State:

Remarks of Hon. Silvio O. Conte

I am enormously pleased to have this opportunity to meet with you, the Western Massachusetts Alliance for Mentally Ill Citizens. This luncheon is an event I have looked forward to for a long time, and I'm thrilled that Congress let me out of Washington long enough to break bread with you here today.

Since 1979, the National Alliance for the Mentally Ill has emerged as a powerful voice among mental health support groups in Washington. For several years now, but especially since you wrote to tell me of your affiliation with the National Alliance, and you were taking an active role in issues at the federal level, we have stayed in close touch through your petitions, your correspondence, and meetings with your officers. Harold and Ruth Stein have been doing an exceptional job of making sure your concerns are heard and reflected on the national level.

I am hopeful that this luncheon will contribute to a long and productive relationship between the Alliance and myself. I have worked closely with many organizations in the field of mental health over my 26 years in Congress; for example, back in 1976, I was honored by the National Association for Mental Health for my work in helping to create and adequately fund the network of community mental health centers across the nation.

In my own opinion, the National Alliance is gaining an excellent reputation in Washington for its work, due to a number of factors. As a group, you have been consistent in expressing your concerns and interests. Your unremitting focus on major mental illness and the needs of seriously mentally ill people leaves little room for misunderstanding your goals, your intentions, or your resolve. Your advocacy is effective, because it is knowledgable and comes straight from personal experience.

I can tell you that, in my opinion, there is no more convincing way to make a case for your concerns than to speak on the basis of needs that are real and that you experience in your every day life. That, in my opinion, is what the federal government is all about, to be responsive, to provide leadership in areas where no one else has done so, and to help create a better life for the people the government is there to represent. I want you to know that from my heart I admire your efforts to find and create a better life for members of your families, your loved ones, your friends, who are chronically mentally ill, and that I do my best, as one individual, to try to make sure that the federal government is caring and responsive.

For someone like myself, who has been around for longer than I like to admit, it is not hard to remember what mental health care consisted of just a few decades ago.

In the 1950's, more than one-half million persons with various forms of mental illness were consigned to a public institutional system that was near the breaking point. More than 75 percent of all mental health care was offered only on an in-patient basis. Much of the "care" was simply custodial. Psycho-therapeutic drugs were just coming into use. There was not much in the way of research. The number of mental health professionals then in practice was relatively small, with the vast majority working in public facilities. Only a small number of people worked in the private sector, for the most part offering psycho-analytic treatments to less severely ill and economically better off patients.

By 1975, immense changes had occured in that system. The number of people seeking mental health care had increased from 1.7 to 6.4 million. Of that 6-and-a-half million, only 25 percent were treated as inpatients. Federally funded community health centers to reach the less affluent, outpatient facilities affiliated with general hospitals, and a vastly expanded private sector were treating the bulk of the patients. Therapies had been refined, and drugs were being used with increasing effectiveness. Federal programs gave support to the training of an increasing number of mental health professionals.

Of course, these developments did not take place without problems. In the mid-1970's, there was increasing recognition that, despite the progress, services for severely and persistently mentally ill persons were lacking. Certain segments of the population—children, the elderly, minorities—had little or no access to the services they required. It was clear that drug therapy was a treatment, not a cure, and that long-term use of medications had the potential for serious side effects.

As a result, the federal government established new programs to address these new problems. The Community Support Program was one. It supported demonstration projects in the states whose purpose was to coordinate community-based services, particularly for those who had been deinstitutionalized. Massachusetts was one of the original 19 pilot states to receive funding under the program.

In that case, as in so many other cases, Massachusetts was a leader. The coordination of services promoted by that Program spread beyond the bounds of the demonstration project. Here in Western Massachusetts, efforts to provide the best services possible to former residents of the Northampton State hospital have continued full scale, to the point where the New York Times last April cited the Western Massachusetts community services plan as a prototype for the rest of the country.

On the federal level, up to this point, the Community Support Program has funded projects in all but a small handful of states. Over the past three years, the Administration and the Senate have both sought to zero the program out on the belief that all service programs should be turned over to the states. The House Labor, Health and Human Services, and Education Appropriations Subcommittee, on which I serve as the Ranking Republican Member, has come to the rescue of the program year after year, and preserved and even increased the funding for the program up to $7 million despite this hostile environment.

In my opinion, the Community Support Program remains the one direct handle the federal government has on the provision of mental health services, and I for one, am not ready to give that up. Provision of services in the states is no where near satisfactory enough that the federal government can simply turn its back. In addition, the Community Support Program has the potential to reach parts of the population whose needs have not yet been addressed.

Last year, my Subcommittee expanded the CSP program to begin a new initiative for children. To everyone's surprise, 44 states applied for the initial funding of $1.5 million, and I can tell you with some confidence that my Subcommittee this year will support an expansion of that program to help meet the great demand by the states for these funds.

In the meantime, while these developments were taking place, research was more or less hidden in the background, overshadowed by these explosive and revolutionary changes in the delivery of services. But the stages was being set, as the federally supported research effort picked up steam. In 1970, Dr. Julius Axelrod, who just last week retired from the National Institute of Mental Health, was awarded the Nobel Prize for his discoveries in the physical functioning of the brain.

The development of the new imaging techniques—the PETT scan, which allows us to see the brain functioning as it burns sugar, and NMR, which allows us to see the brain in exquisite analytic detail, without ever touching a hair on the patient's head—have opened up a completely new world of research. As Murray Goldstein, Director of the Neurological Institute at the National Institutes of Health told me, we have learned more about the brain in the last 5 years than in the past 500. As a result of these new techniques and the tremendous advances in science, I truly believe the 1980's is the decade of the brain.

We are only beginning to understand what these advances will mean. At the present time, researchers using these techniques can take pictures of brain function and show you that the brain of a person with Alzheimer's disease or with schizophrenia functions differently than the brain of an average person. In Alzheimer's disease, for instance, a whole portion of the brain will be shut off and non-functional; while in schizophrenia, the wrong portion of the brain may become active under a given stimulus.

I always ask the doctors who come in to testify whether they can diagnose illnesses yet simply by looking at a PETT scan, and they say no, not yet, but that may be in the offing. For instance, PETT scans are already being used for treatment in cases of severe epilepsy that do not respond to drugs, to locate the problematic areas of the brain and devise intervention techniques.

There are those who say that these advances in imaging the brain and in understanding its chemistry will lead to better medication, designed to act on the specific areas of the brain that are misfiring, and to correct the biochemical imbalances associated with mental disorders, with a minimal risk of adverse effects, almost like insulin for diabetes.

But I guess I am even more optimistic than that. I remain hopeful that in addition to better treatment, we will come quickly to an understanding of cause and of cure. In other areas of disease, we are moving in that direction quickly. In Huntington's Disease, the disease that killed Woodie Guthrie, which strikes adults in their late 30's and 40's, and involves a progressive wasting away of the body, researchers have now located the defective gene that causes the disease. And their hope is that they will soon figure out a way to pluck out that defective gene, and in some manner replace it or make it function correctly. I do not see why that kind of development is not possible with mental illnesses, and with schizophrenia in particular.

But I feel it is possible to state what these developments have already meant for mental illness. It is now possible to say without doubt that illnesses like schizophrenia are physical illnesses with biological and biochemical causes. I believe these advances should have removed, once and for all, any stigma associated with mental illness, as well as the burden of people's suspicions that somehow the family is at fault. That is a message that needs to be repeated over and over.

I think you can tell from these remarks that I am an ardent supporter of biomedical research, and a strong believer in the promise it holds. I am proud to say that over the past decade funding has increased annually, from a base of $85 million in 1973 to $174 million this year. In 1982, large cuts were avoided because of a $10 million amendment to a supplemental appropriations bill that I offered, which was vetoed by the President, but which I convinced my Colleagues to override. That was the biggest defeat this President has had on funding issues since he took office.

For FY 1985, the President has requested a 2% increase, but I will predict to you today that when my Subcommittee marks up its bill later this month, we will go a good deal above the figure.

As one who is directly involved in these funding decisions of concern to you, I want you to know that you have a friend, and an ally. I will continue to support mental health research, and I will urge that increased emphasis be placed on serious and chronic mental illness. And until such time as we have the real breakthrough we are looking for, I will continue to support the federal government's efforts in rehabilitation, in community services, in family support, and in advances in treatment, to make the lives of those who are affected by serious mental illness and their families and friends as productive and as rewarding as is humanly possible.

Thank you very much.●

HONORING DR. E.W. SCHAEFFER

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. ROGERS. Mr. Speaker, one of my district's most outstanding physicians is retiring after nearly four decades of service.

Dr. E.W. Schaeffer is retiring from his practice at Red Bird Hospital in Clay County, KY. For the past 38 years, Dr. Schaeffer has tended to the medical needs of thousands of local residents, in an area where there has traditionally been difficulty in attracting doctors.

Throughout his tenure in Clay County, Dr. Schaeffer has been well respected by the community he served. For the first 14 years of his work in Clay County, he was the only doctor at Red Bird Hospital, indicating further his devotion to medical service for this rural area.

Even as he retires, Dr. Schaeffer is not totally getting out of serving the public. He and his wife, Roberta, will be moving to Berea, KY, where Dr. Schaeffer will work in the Student Health Center at one of Kentucky's finest colleges, Berea College.

In a recent newspaper interview, Dr. Schaeffer said it was a commitment to the Lord which motivated him to move from Peoria, IL and become Red Bird Hospital's doctor. Even now, Dr. Schaeffer continues to provide not only medical guidance to his patients, but also spiritual guidance as well.

Mr. Speaker, I ask my colleagues in the House to join me in congratulating Dr. E.W. Schaeffer for his service to Clay County, and in wishing him well in the years ahead.●

THE FOLLIES OF H.R. 4277

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. FIELDS. Mr. Speaker, I would like to bring to the attention of my colleagues in the House, a recent article in the Oil Daily written by Mr. Frank Pitts, an independent gas producer from Dallas, TX. In the article, Mr. Pitts articulately states his strong opposition to H.R. 4277, the Natural Gas Market Policy Act. I share Mr. Pitts' opposition to this legislation which was recently reported out of the Energy and Commerce Committee. I voted against this ill-conceived legislation in committee and will continue to oppose its enactment by this body. H.R. 4277 is a shortsighted proposal which bails out only certain interstate pipelines at the expense of the natural gas-producing industry in our country. I commend Mr. Pitts' comments to my colleagues and urge their opposition to this flawed legislation. The text of the article is as follows:

SHARP'S GAS BILL ADDRESSES PAST OR ILLUSORY PROBLEMS

(By L. Frank Pitts)

The problems H.R. 4277, the natural gas legislation passed by the House Energy and Commerce Committee, attempts to address have either already been solved or were never more than illusions.

It appears that the fundamental motivation for the bill is to address certain contract clauses, namely take-or-pay clauses and indefinite price escalator clauses.

Apparently, the presumption of the bill's sponsors is that contract clauses are hopelessly out-of-sync with the market and that Congress must act.

Well, the market has not been standing still during the last several months. Indeed, renegotiation has occurred at a far greater rate during recent months (when Congress was not actively considering contract abrogation legislation) than had occurred during the preceding year while Congress was actively debating market-out legislation.

As a result, the potential take-or-pay liabilities that many interstate pipelines feared have recently been successfully renegotiated away. This explains why the weighted-average cost of gas (WACOG) for all of the major interstate pipelines has declined during the last year, according to the Federal Energy Regulatory Commission.

NEW GAS STUDY

I understand that the Energy Information Administration of the Department of Energy plans a new and updated contract study involving both pipelines and producers. EIA's survey will go to the Office of Management and Budget very shortly for approval.

This study should lay to rest any questions that have been raised about the willingness of major and independent producers to renegotiate the gas contracts and the effectiveness of those renegotiations in reducing prices.

I suggest any legislative action be delayed until the results of this study are available. H.R. 4277 is based on contract data over a year old that were developed well before the bulk of renegotiations had started or become effective.

Of course, the more sucessfully managed pipelines were the first to achieve a balance between their contracts and the more competitive market that both producers and pipelines face.

A few pipelines still lag behind, apparently because they believed Congress would legislate a market-out for them. There is strong evidence that it is only a matter of time before the pressures of losing markets provides the impetus for them to act also.

It is a buyer's market and the pipelines do not need a "bail out" from Congress to encourage them to act. What they need is to be reminded, perhaps forcefully, that it is the responsibility of their managements to run their operations according to good business sense. This is not the obligation of Congress, nor should it be.

UNFOUNDED FEARS

Some pipelines fear that on Jan. 1, 1985, gas contract prices will "fly up" by 9 to 12 percent (the study of the Interstate Natural Gas Association of America). These fears are baseless.

The day of the automatic rise in gas prices is over for the simple reason that the soft market for natural gas is going to hold price increases down. A federal statute is not necessary to proclude a "fly up" because no pipeline or its customers will pay these prices.

In fact, if any pipeline attempted to pay "flown up" contract prices to some producers it would certainly hear from other producers who were shut-in or who had previously renegotiated their contracts.

At the other end of the pipeline, many distributors would likely switch to another pipeline if the delivered costs of gas exceeded a fair market price. Industrial and residential consumption would decline. And the infant spot market for natural gas would rush in to compete for that pipeline's market.

Yes, there are indeed contracts with "escalator clauses," but the reality of what gas is worth is a stronger force. For that reason, I do not believe a "fly up" is at all likely. In fact, a "fly up" would be bad for producers because we do not want to decrease the overall demand for gas.

A healthy natural gas industry requires pricing which stimulates rather than depresses demand. Producers will therefore continue to work together with their gas purchases to renegotiate contracts to prevent the much-feared "fly up."

The prices producers are receiving for natural gas have been, on average falling for over a year. These prices do not need to be frozen, capped or arbitrated. Leave producers alone and they will continue to be governed by the market.

Take-or-pay clauses have, as a practical matter, been rendered inoperative by market forces. In addition, the fact is that market forces have been working for some time and continue to work to render inoperative those pricing clauses which would increase prices to above market levels.●

OUTSTANDING HIGH SCHOOLS

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. STARK. Mr. Speaker, this week saw the nationwide recognition of 60 exemplary private schools. I am proud to note that two of those schools are in the 9th District of California.

The exemplary private schools recognition project found Moreau High School in Hayward, CA, and St. Elizabeth High School in Oakland, CA, to be schools which exemplify characteristics that promote excellence in education.

The Department of Education provided a grant to the Council for American Private Education to find and promote private schools which have outstanding educational characteristics.

I would like to congratulate the teachers and administrators of these two fine high schools, Moreau High School and St. Elizabeth High School for receiving this honor.●

THE CARE OF VETERANS SUFFERING FROM ALZHEIMER'S DISEASE

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Ms. SNOWE. Mr. Speaker, during the past year, I have been actively involved in pursuing legislative initiatives related to Alzheimer's disease. These initiatives centered on two objectives: First, providing increased funding for research to find the cause, and eventually, the cure of this devastating illness, and second, providing assistance to Alzheimer patients and their families.

Last year, in response to concern from Members such as myself, Congress appropriated millions of additional dollars to the National Institutes of Health [NIH] with the stipulation that a priority be given to Alzheimer's disease research. More money has also been directed to the Veterans' Administration for research.

Nevertheless, while these research activities are proceeding, there is another critical, more immediate problem—that of caring for the victims who are today suffering from Alzheimer's disease.

We have learned over the past year that Alzheimer's disease is the fourth leading cause of death among older persons. Presently, 3 to 4 million Americans suffer from Alzheimer's disease, including tens of thousands of veterans. The illness runs from 3 to 15 years before the victim's inevitable death, and it is characterized by progressively debilitating memory loss, personality changes, and finally, total lack of control over bodily functions.

These statistics carry a grim significance for the Veterans' Administration. Experts predict that in 40 years there will be 43 million Americans age 65 and over—almost double today's elderly population. This is the age group most vulnerable to Alzheimer's disease, although many in their forties and fifties are victims.

Of course, the veteran population contains a significant percentage of the aging American population. Today there are nearly 4 million veterans age 65 and over. By 1990, there will be almost twice that number of veterans—7.3 million, and in the year 2000 there will be over 9 million veterans. In other words, I understand that by the 2000 about 2 out of every 3 American males age 65 and over will be veterans.

The Veterans' Administration will be facing a considerable challenge in the coming year to provide care for veterans with Alzheimer's disease.

Under current law, the VA has built in eligibility limitations that hamper its capacity to provide extended care for Alzheimer patients. Veterans with non-service-connected disabilities, including those with Alzheimer's disease, are admissable; first, only to the extent that VA resources remain available; second, victims are age 65 and over; or third, they are indigent.

What is happening around the country is that when Alzheimer victims reach the point that institutional care is required, it is often difficult to place them in a VA facility because of their lower priority ranking, and because many VA facilities point to the fact that they do not have the personnel to care for these patients. This situation is complicated further because the VA is not authorized to pay for care for non-service-connected patients in community nursing homes for longer than 6 months.

I understand some veterans with Alzheimer's disease are being treated in certain VA hospitals and nursing homes. Where such care is given and in the research area, it appears the VA's Geriatric Research, Education, and Clinical Centers [GRECC's] have been very important.

The real problem lies in the fact that the VA has no consistent policy concerning the care of veterans suffering from Alzheimer's disease.

Some VA hospitals accept Alzheimer patients while others do not—and there is no obvious reason for the difference in policy. Some Alzheimer sufferers who have been admitted to VA facilities have later been asked to leave or have been transferred to nursing homes where families must bear the cost of care which often ranges from $1,500 to $2,000 per month, well beyond the budgets of most victims' families.

Spouses of veterans suffering from Alzhiemer's disease are finding themselves having to spend down, that is, sell insurance policies and otherwise liquidate meager family assets so that they can become eligible for medicaid. I do not know that the Veterans' Administration prefers its veteran population to be so impoverished before receiving needed help outside its medical system over the many years needed for Alzheimer victims. I think not.

For this reason, I introduced legislation last November to authorize the VA Administrator to ease the eligibility requirements for Alzheimer patients and those with related dementias, lower the age of eligibility to 50, and require the VA to provide screening, counseling, and information to afflicted veterans and their families. Over 60 Members have indicated their support of this bill, H.R. 4273, and the measure has since been introduced in the Senate.

Today, I introduced another bill directed at the lack of a consistent policy regarding the care of these patients. This measure, H.R. ——, requires the VA Administrator to designate 10 percent of all its intermediate care beds for the care of such patients. I request that the text of the bill be printed after my remarks.

Alzheimer patients largely need custodial care until the final stage of the illness rather than more expensive skilled nursing care. The bill I have introduced today recognizes that fact. Moreover, the bill does not attempt to set aside 10 percent of each hospital facility, but rather the VA would be allowed to determine where the greatest need is.

Before I conclude my remarks today, I would like to draw attention to another related measure I sponsored last year which has been incorporated into the Senate and the House versions of the Older Americans Act Amendments of 1984. This provision requires the Commissioner on Aging to give grant priority to those students who indicate they will study the custodial or skilled care of Alzheimer patients. The Senate has already passed its version of the act's amendments, and the House is expected to do so within the next several days.

This means that within a year or two, there will be more trained personnel to care for Alzheimer patients in nursing homes, home health agencies, adult day care centers—and veterans' hospitals. We are not requiring the VA to accept Alzheimer patients without providing the necessary trained personnel to provide the special care required by Alzheimer sufferers.

Mr. Speaker, individuals who have served their country believe that if they become ill after retiring, they will be taken care of. There are serious exceptions to this unspoken contract between service men and women and their Government. The problem of caring for Alzheimer victims who are also veterans will only get worse as our aging and veteran population increases. Therefore, I urge my colleagues' support for the bill I have introduced today and immediate committee attention to this important matter:

H.R. 5920

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5010 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(f) The Administrator shall provide that 10 percent of the number of intermediate-care hospital beds in medical facilities over which the Administrator has direct jurisdiction shall be set aside for the care of veterans suffering from Alzheimer's disease and related disorders.".●

DAVID SCOTT NOMINATED TO CHAIR THE PRESIDENT'S EXPORT COUNCIL

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. ROTH. Mr. Speaker, the President has recently announced that Mr. David C. Scott, Chairman of the Board of Allis Chalmers Corp., Milwaukee, WI, has been designated as Chairman of the President's Export Council. I would like to take this opportunity to congratulate Mr. Scott on his forthcoming appointment. This marks another accomplishment for Mr. Scott, a man who continues to exhibit superb skill and leadership in the business community. He has earned our respect and admiration not only in the State of Wisconsin but across the Nation.

Mr. Scott is involved in numerous professional organizations and associations. His expertise contributes to the successful directorship of several well-known corporations and advisory boards.

The President's Export Council serves as a national advisory body on matters relating to U.S. export trade. The Council provides a forum on current and emerging problems and issues in the field of export expansion. It encourages the business, industrial and agricultural communities to enter new foreign markets and to expand existing export programs.

The Council was established by Executive order in 1973. Its five subcommittees and executive committee provide the President with valuable information and advice for the development of our country's exporting strategies.

I am very pleased with Mr. Scott's appointment and I am happy that such a distinguished and nationally recognized individual will be a feature speaker at my Third Annual Exports Conference in Appleton, WI, this July 16.

I am most confident that Mr. Scott's leadership will continue to pave the way to new and exciting territory for business and export strategies in America.●

A TRIBUTE TO DAVID L. CZUBA

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. LIPINSKI. Mr. Speaker, I would like to recognize the efforts of a young man from Illinois' Fifth Congressional District, which I am privileged to represent, and he is David L. Czuba. David has been working with today's youth to ensure the future of our community remains bright. His tireless efforts on behalf of the community began during his high school years and have continued through the years.

David L. Czuba has been an active participant in his church parish and has served diligently as scoutmaster to troop 671. Through his involvement in these efforts, David has contributed greatly to an improved quality of life for the present and future of his southwest side community.

I join with the residents of the Fifth Congressional District in paying tribute to David L. Czuba for his work in our behalf, and I would like to introduce into today's CONGRESSIONAL RECORD a newspaper article honoring David L. Czuba upon his receipt of the Ray McDonald Community Achievement Award.

The article follows:

MCDONALD AWARD TO CZUBA

Tomorrow will be a better day to live here in the southwest side due to the efforts of men and women like David L. Czuba. Working with today's youth is how he is making this a reality. David is a Scout leader for B.S.A. troop 671, sponsored by the Midway Area Parents organization. Although he is only 25 years of age, he has held the position for almost 4 years, and plans to stay with it until he is able to pass along the abundance of his living experiences to the scouts in his troop. "This may take a long time," according to Czuba. It is with this same sense of dedication to our youth that we are proud to name Dave as our monthly recipient of the Ray McDonald Community Achievement Award.

Community involvement has been a commitment for David since his high school days. He learned about service on student governments, and clubs, and participated in service projects for the Chicago chapter of the American Red Cross. His involvement was realized when he represented the United States in the International Red Cross Conference in Belgrade, Yugoslavia, 1977.

More recently, David has centered his efforts in the community. As Scoutmaster for a troop of 15 boys, he coordinates activities that bring out the leadership qualities in these boys. His unique approach to the adult/youth relationship has given his scouts insight regarding the earth, people, themselves, and each of our responsibilities to further God's plan for the world.

He runs an active program of camping, day events, field trips, community and environmental service projects, geared toward raising the consciousness of these boys. How much time do these boys get? "I spend about 7 weeknights, part of almost every weekend, and one complete weekend each month with the scouts."

Behind the scenes he works with a core of concerned friends and parents who refine his program and finance troop activities. "These people are the real heroes of our community. They share in the dream of peace, and work as if our world depends on this dream. I believe it does."

A graduate of Columbia College in Chicago, with a degree focus in photographic art, Czuba has covered community news with camera for the Southwest New-Herald newspaper, as staff photographer for all of 1983.

His work was exhibited in the Summer art show of the Southwest Cultural Arts Council in 1983. He plans to have his next exhibit this summer. He left the newspaper to undertake a personal portrait business and to prepare to teach bookbinding to photography students at Columbia College.

Czuba is an active member of St. Camillus Parish. He serves on the lector/commentator team for Sunday liturgy and is a new recruit to the church choir. He has been selected to serve as parish coordinator for the Mission of Joseph Cardinal Bernardin that will be aired on Channel 9 for four consecutive nights beginning April 15. This historical television mission will call all Chicagoans to live and work now for the hope and promise of peace for our future society.

Troop 671 has been involved in Community service under the leadership of Czuba. During the term of Mayor Byrne then participated in the neighborhood clean up, green up campaign by helping clear the Marquette Park lagoon. Around Midway Airport, the scouts have removed unsightly litter and hazards for bike riders. Vacant lots have been part of the effort, making these eyesores more presentable.

Collecting toys for tots has given the boys a chance to share their good fortune with those with less at Christmas time. This project was a part of the Midway Kiwanis effort. Also with the Kiwanis Club the troop sold peanuts in support of community groups. They have also collected for the American Cancer Society.

The troop has marched in parades through the community to give the boys a stage to show their colors. Uniformed scouts carry the colors, and clowns mingle with the people who line the streets. Each boy in parade gives credit to our community.

"I believe in God, the future, the goodness in people, and especially the immeasureable spirit that lives in each young person in our community. I work to nurture that spirit so that each boy who I am with will someday lead others to a better way."

Dave truly epitomizes the standards set forth by our late editor.●

PERSONAL EXPLANATION

HON. ROBERT E. WISE, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. WISE. Mr. Speaker, during the proceedings of yesterday, Thursday, June 21, I was absent for rollcall Nos. 255—to reduce White House appropriations, 256—quorum call, 257—deletion of funding for the construction of a Federal building in California, 258—election of Congressman Wright as Speaker pro tempore, 259—to close the proceedings of the conferees on the Department of Defense authorization to the public at certain sensitive times, and 260—providing for the consideration of H.R. 5490.

Five representatives of industrial and governmental concerns in West Germany were touring my congressional district, and I was obliged to accompany them.

Had I been present and voting, I would have voted "aye" on rollcall 255, "present" on 256, "aye" on 257, "aye" on 258, "aye" on 259 and "aye" on 260.●

JOHN BLACK REMEMBERED

HON. SAM B. HALL, JR.

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. SAM B. HALL, JR. Mr. Speaker, I know that our colleagues who served in the House with the late Speaker, Sam Rayburn, would be interested in a recent event which took place in Bonham, TX, entitled the "Stump Speaking" party. One of the organizers of this very popular tribute to Speaker Rayburn each year was my dear friend, John Black. John passed away last year, but the stump meeting which took place a few days ago held special significance for his family and friends. A red oak tree which was planted on the Rayburn House grounds was dedicated to John Black for his tremendous efforts in perpetuating the memory of Speaker Rayburn. I want to call to the attention of my colleagues a story from the Paris News describing the ceremony as well as the copy of a resolution enacted by the Texas Senate in memory of John Black, as part of my remarks as follows:

[From the Paris News, June 15, 1984]

RED OAK WILL BE DEDICATED TO JOHN BLACK AT RAYBURN HOUSE

BONHAM.—A red oak tree will be dedicated to the memory of John Black, longtime Honey Grove insurance agent and civic leader, when the Friends of Sam Rayburn holds its Ninth Annual "Stump Speaking" Party and Barbecue Saturday, June 16, on the Rayburn House lawn.

The small tree, which will bear an engraved stone at its base telling of its dedication to the Honey Grove historian and member of a pioneer Honey Grove family, was planted several weeks ago and is thriving on the Rayburn House lawn.

Black, who died in 1983, played a key role in founding and leading the Friends of Sam Rayburn group in its early years—serving as its first president.

Mrs. Gene (Mary) Wilshire of Bonham, also one of the founders of the organization dedicated to volunteer service at the Rayburn House museum, will deliver dedicatory remarks during the ceremony.

Since its organization in 1974, the Friends of Sam Rayburn has grown to some 500 members in at least 19 states.

The annual "Stump Speaking" will begin at 4:30 p.m. Saturday with a presentation by a professional jazz band.

The keynote speaker for the occasion will be Dr. Anthony Champagne, a professor at the University of Texas at Dallas and author of the latest book concerning Rayburn, Congressman Sam Rayburn, which is now in its third printing. Copies of the book will be available at the party and the author will be present to autograph them.

Levis Hall of Sherman, a long-time friend of the former Speaker of the U.S. House of Representatives, will serve as master of ceremonies.

The "Stump Speaking" party and barbecue dinner to follow will be free to members of the group and only members will be admitted. However, organizers said, any nonmember wanting to attend may take out membership in the organization at the gate to the lawn area.

Memberships are priced at $8 for individuals and $12 for families. Dues are used to finance the organization's volunteer service work.

SENATE RESOLUTION IN MEMORY OF JOHN B. BLACK

Whereas, the citizens of Honey Grove, Texas, mourn the death of respected businessman and historian John B. Black who died October 25, 1983; and

Whereas, the son of James F. and Mabel Walcott Black, Mr. Black was born in Honey Grove on November 13, 1916; and

Whereas, after attending local public schools, Mr. Black graduated from Lon Morris College in Jacksonville and North Texas State University before attending the American Casualty Insurance School in New York City; and

Whereas, Mr. Black served his country with great distinction and honor in the Air Force during the World War II; and

Whereas, following his honorable discharge in 1945, Mr. Black returned to his beloved Honey Grove and started an insurance business with his wife, Thelma; and

Whereas, fascinated by the lores, legends, and history of Honey Grove and Fannin County, Mr. Black maintained a vast repository of records, photographs, and antiques; and

Whereas, a descendant of the original founders of Honey Grove, Mr. Black was considered an authority on the history of the area; and

Whereas, a member of The Sons of the American Revolution and The Sons of Confederate Veterans, Mr. Black researched his family history and discovered his forbears included a signer of the Mayflower Compact, a signer of the Declaration of Independence, a Governor of Kentucky, and a chief justice of Kentucky; and

Whereas, elected to the Board of Directors of the Friends of Sam Rayburn, Mr. Black was a member of the Fannin County Historical Commission, the American Historial Society, the Kentucky Historical Society, and the Newport, Rhode Island Historical Society, and served on the Fannin County and Honey Grove Bicentennial Committees; and

Whereas, an accomplished writer and photographer, Mr. Black had been working on a pictorial history of Honey Grove; and

Whereas, his ability to inspire the affection, confidence, and loyalty of all around him enabled him to live a full life with pleasure and satisfaction: Now, therefore, be it

Resolved, That the Senate of the State of Texas, 68th Legislature, 2nd Called Session, hereby express condolences to the members of his family on their grievous loss: his wife, Thelma; his son, Walcott G. Black; and his brother, O. K. Black; and, be it further

Resolved, That copies of this Resolution be prepared for the members of his family from the Texas Senate as an expression of deepest sympathy, and that when the Texas Senate adjourns this day, it do so in memory of John B. Black.●

NUCLEAR SAFEGUARDS "READER" IS WELL RECEIVED

HON. MARILYN LLOYD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mrs. LLOYD. Mr. Speaker, earlier this year the Committee on Science and Technology published a committee print entitled "Nuclear Safeguards: A Reader." As chairman of the Subcommittee on Energy Research and Production, I requested the Congressional Research Service [CRS] of the Library of Congress to compile and edit this document in order to provide a broad sampling of material from diverse sources on nuclear safeguards questions. I am particularly interested in the nonproliferation aspects of civilian nuclear power and the technical aspects of potential diversion in the context of my responsibilities on the Science and Technology Committee and my membership on the Armed Services Committee.

Mr. Speaker, I know my colleagues are aware that the technical and institutional issues surrounding the implementation of nuclear safeguards are complex and controversial. My subcommittee is particularly concerned about research and development for safeguards and has held hearings to examine, among other issues, the current efforts to develop new or improved safeguards equipment and techniques. These hearings illustrated, as have the studies undertaken by the Office of Technology Assessment and the GAO, that there are many technological, economic, and political factors which influence the course of nonproliferation initiatives in this country and abroad. It was our hope that the safeguards "reader" would provide assistance to those concerned parties interested in understanding all aspects of these issues.

"Nuclear Safeguards: A Reader" is a compendium of articles and other papers and is intended to serve as a reference document on how thinking about safeguards has evolved. Included are statements, articles, and other writings, over the period 1967-82, of those with viewpoints which range from strongly supportive of safeguards to those dubious of their reliability and effectiveness. In addition, the volume contains selections from public laws, treaties, and official reports which trace the historical evolution of international safeguards including the formation of the International Atomic Energy Agency [IAEA].

Mr. Speaker, the "Reader" has been extremely well received by the public. I have received numerous compliments regarding the timeliness of providing such a compilation of materials on this important subject as well as the quality, quantity, and objectivity of information represented in the document. I want to take this opportunity to commend Dr. Warren Donnelly, senior specialist of the Environment and Natural Resources Policy Division at the CRS, and his associates, for their excellent work on the "Reader" and for their assistance in making this important information available to so many students of this subject. Copies of the "Reader" may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.●

H.R. 1510

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. OTTINGER. Mr. Speaker, this week this body took the first step toward legalizing the many undocumented workers currently residing within the United States by passing H.R. 1510.

America's greatness derives an important part from its being a land of refugees. Many of our forefathers arrived on these shores as refugees from political and religious repression in their native lands. It is for this reason I voted for the bill—to grant legal status to the many thousands of refugees who have come here, made their lives here, raised their families here, but must undergo the daily worry of apprehension and deportation.

The decision was not easy, however, because the bill also contains provisions of great concern. The sanctions on employees creates the worry that all Hispanic-looking Americans will be discriminated against when they seek employment.

The McCollum amendment, which I fought against so hard right to the end of the bill, denies class action recourse to our judicial system for all refugees, gives unqualified border guards authority to make difficult legal decisions on asylum and jeopardizes judicial review of their actions.

Because of these odious provisions, I initially voted against the bill, but in the end supported it, feeling the legalization provisions were of paramount importance. After discussions with the chairman and ranking minority member of the subcommittee, the gentleman from Kentucky [Mr. Mazzoli], and my colleague from New York, [Mr. Fish], I am hopeful that these unduly harsh and possibly unconstitutional provisions may be ameliorated in conference.●

PAY EQUITY BILL

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Ms. OAKAR. Mr. Speaker, I rise today to announce my intention to introduce an amendment during debate on the pay equity provisions of H.R. 5680 to strike title I and insert in its place a new title requiring that an outside consultant study the Federal pay and classification systems to determine if they are marred by sex-based wage discrimination.

As originally drafted and reported out by the House Post Office and Civil Service Committee, the pay equity study would have been performed by the Office of Personnel Management [OPM]. I have decided to introduce my amendment after much thought and many hours of discussion with representatives of Federal employees, women's organizations, and other groups that would be affected by the results of the study. Considering the actions of the OPM concerning the pay equity provisions of the bill, it has become clear that this agency cannot be trusted to undertake a fair and objective analysis of the current classification and pay systems.

On May 14, 1984, Mr. James L. Byrnes, a senior official in the OPM who is paid twice that of the average male Federal worker, and three times that of the average female employee, wrote a memorandum to Dr. Donald J. Devine, Director of the OPM, stating:

> By doing job evaluation across clerical and blue collar occupations, a comparable worth study would immediately divide the white collar and blue collar unions. The blue collar craft unions would be especially concerned, since they would be the inevitable losers in such a comparable worth adjustment process. Moreover, the unions would be pitted against the radical feminist groups and would further divide this constituency of the left. Rather than allowing Oakar to manipulate the administration on the gender issue, we could create disorder within the Democratic House pitting union against union and both against radical feminist groups.

Within 48 hours after this memorandum was drafted, Dr. Devine took the first step in implementing it. He issued a telegram calling a meeting of blue-collar union leaders 1 day before the Post Office and Civil Service Committee was originally scheduled to mark up H.R. 5680. Believing that they were invited to the meeting to discuss a new classification scheme being developed by OPM, the union leaders were instead treated to a long discourse on the dire consequences for their members of the pay equity study provided in H.R. 5680.

As one witness testified at the hearing on the Byrnes memorandum by my Subcommittee on Compensation and Employee Benefits:

> Clearly, Dr. Devine hoped that with the short misleading notice period provided the unions, that these unions would be tricked by the cries of doom and gloom into lobbying against the bill in markup the following day.

Based upon the record developed at the hearing, I asked the Special Counsel of the Merit Systems Protection Board to initiate an investigation of the author of the memorandum for violations of the Hatch Act. In addition, I requested that the Justice Department investigate jointly Dr. Devine and Mr. Byrnes to determine if their activities violated Federal statutes prohibiting the use of appropriated funds to lobby Congress.

Much to my surprise and dismay, within 1 week after my request, the Office of Special Counsel issued a decision stating that Mr. Byrnes had not violated the Hatch Act prohibitions against engaging in political activities. This decision was reached without any investigation. It was an obvious whitewash designed to foreclose any legal proceedings. Certainly, my faith in the Office of Special Counsel has been destroyed.

Through their actions over the past few weeks, it has become obvious that the Reagan administration opposes a pay equity study. It has become equally clear that there are some within the administration who would seek to undermine such a study by playing politics with the entire Federal work force. Unfortunately, these are the same individuals who would be responsible for conducting the study under the current provisions of H.R. 5680.

I had hoped that in a matter as serious as sex-based wage discrimination, we could rely upon the administration to provide an objective and comprehensive analysis of an issue that affects women throughout the work force. Sad as it is to say, this is not the case. The administration seemingly has little concern for women workers and is not above using their plight for its own political gains.

For this reason, I will be introducing my amendment at the conclusion of general debate on H.R. 5680. I would ask for your support when it is being considered by the House. It is my hope that we can finally begin the process of eliminating any vestages of sex discrimination in the Federal Government by adopting the amendment and initiating a thorough and objective study of pay equity.●

CONCERNING AGRICULTURAL UNEMPLOYMENT TAXES—INTRODUCTION OF LEGISLATION, JUNE 18, 1984

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. CONTE. Mr. Speaker, today I am introducing legislation which would instill some fairness in the unemployment laws with respect to agricultural labor.

Mr. Speaker, under the present law concerning agricultural unemployment taxes, section 3306 of the Internal Revenue Code, the employer is required to pay an unemployment tax with respect to every person he/she employs. This money is distributed to the States and the Federal Government for maintaining the unemployment trust funds.

However, there are two general exceptions to this law with respect to agricultural labor. First, the tax is waived in the case of any employer who pays less than $20,000 per calendar quarter in wages. Second, the tax is waived in the case of an agricultural employer who employs a full-time student in an organized farm camp, but only if the camp does not operate more than 7 months per year, and the student worked for 13 weeks or less per year.

The reason that the present law concerning agricultural unemployment taxes must be changed is that a twofold problem now faces my constituents of the First District of Massachusetts. First, the $20,000 limit has not been increased since 1976, making it an inaccurate reflection of the size of a farm. Second, the only exception for students deals with work farms, yet the definition of the term is, I believe, inapplicable to any in existence today. The farmers argue, rightfully so, that it is unfair for them to pay the unemployment taxes for students when students are ineligible for unemployment benefits in the first place.

The bill I am introducing would update section 3306 of the Internal Revenue Code. The $20,000 threshold, which has not been increased since 1976, would be increased to $40,000 and indexed to inflation beginning January 1, 1989. Also, this bill would make full time students exempt from section 3306.

This legislation will bring about a long-overdue redefinition of the agricultural tax law, and make it more equitable to farmers all across America.

I now strongly urge the rest of my colleagues to join me in seeing enactment of this legislation by cosponsoring this bill.●

THE FALLACY OF PROTECTION

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. PHILIP M. CRANE. Mr. Speaker, as the number of Federal regulations increase, business executives complain about the cost of compliance and Government interference. Yet when foreign competition encroaches on a domestic product these same executives are on the phone to Washington with cries for protection from unfair competition. Unions stress the fact that we should buy American or face the alternative of exporting jobs. However, there is a fallacy in the idea of protection. As a result of protection, less efficient industries are not replaced by more innovative and efficient ones.

More importantly, protection causes Americans to subsidize, through higher prices, these unproductive industries. These higher prices constitute a hidden tax, which many Americans fail to realize that they pay. As long as Americans continue to be fooled by protection in the form of an import quota or limit, this trend is likely to continue. Maybe we need to reinvestigate the meaning of the word protection. If it results in higher prices and inefficient products then the consumer should be wary of protection offered by politicians.

Walter E. Williams, economics professor at George Mason University, wrote an editorial for the Washington Times on the topic of protection and its true cost of the consumer. I recommend that my colleagues take a moment to read the following.

[From the Washington Times, June 1, 1984]

SNEAKY FEDERAL EXPENSES

(By Walter Williams)

According to official numbers, government this year is going to cost us $925 billion. While that's a lot of money, there is no way that budget figures alone can measure anywhere near the true cost of government programs—and the White House and Congress know it. Politicians are slick. They exploit the fact that we economists have failed in educating the public; thus the public falls easy prey to charlatans, quacks, and demagogues.

So you won't be tricked, let me give you a simple definition of costs that'll last you for your lifetime: the cost of anything is measured by what was sacrificed in order to get it. Economists call this opportunity cost. It's plain that costs are not always measured in dollars. By reading this column you incurred a cost; you sacrificed something. You could have washed one window, or reconciled your checkbook, or been spared the agony of knowing the truth about your government. The amount of money you paid for this newspaper seriously understates the true cost of reading it.

It's the same way with government: the amount of money it spends (the budget) understates the true cost of government. An excellent example is the brewing antagonism between auto executives and United Autoworkers Union officials and U.S. Trade Representative Bill Brock over his announcement that the Reagan administration is considering dropping restrictions on Japanese imports.

In 1981, under the heavy political hand of UAW and auto company executives, the administration negotiated a limit whereby Japan would export no more than 1.68 million autos in each of the next three years. The official reason was to help the faltering domestic auto industry which led by Chrysler, was in a serious slump.

According to a report by Heritage Foundaton economist Edward Hudgins, in the wake of this protectionist policy the price of a new car rose $2,600. In 1983 alone, thanks to reduced competition, the price of a new car rose $800 and at least $400 results from limits on Japanese imports. Due to import restrictions Americans pay $5.1 billion more for their cars.

In 1981 the UAW and auto executives could have asked Congress for an annual cash handout of $5.1 billion, calling the program, "Aid to Dependent Auto Manufacturers." But if Congress had done that Americans would have been outraged. So, in effect, they told the auto people, "Let's get the handout money to you another way." What import restrictions mean is: instead of Americans giving money to the IRS to be given to the auto industry, Americans pay money directly to the auto industry.

The executives are happy with the way things worked out in increased sales. General Motors even paid $181.7 million in bonuses to its executives this year, and Ford paid $30.6 million to theirs. This doesn't sit well with the unions who haven't gotten their share of the loot, so expect to see labor strife in the auto industry, for there has never been a conspiracy free from dispute over division of the boot.

Auto manufacturing isn't the only "protected" industry; there's steel, textiles, television, sugar, dairy, and you name it. Five billion there, 1 billion there, after a while hidden handouts add up. And guess who pays?

In any case, when politicians come seeking your vote, tell them you want to know the true cost of government—above-ground government, underground government, and underhanded government.●

SOME RECENT DEVELOPMENT IN ACID RAIN RESEARCH

HON. MARILYN LLOYD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mrs. LLOYD. Mr. Speaker, I want to take this opportunity to bring to the attention of my colleagues the recent publication of the annual report of the National Acid Precipitation Assessment Program. The Acid Precipitation Act of 1980, which is title VII of the Energy Security Act, established the Interagency Task Force to develop and implement a Comprehensive National Research and Assessment Program to determine the causes and effects of acid precipitation. The act requires that an annual report be submitted to the President and the Congress and the 1983 report has just been submitted in response to this requirement.

In my opinion, this excellent report indicates that the program is moving in the proper direction to unravel the complexities of acid rain. The program accomplishments for this past year are indications of meaningful progress and provide incentives for enhancement of this research effort. Several of the 1983 accomplishments which deserve specific mention are:

Completed an inventory of existing water quality data in the United States to assess the extent and degree of sensitivity of lakes, streams, and ground waters to acid deposition.

Initiated a major survey of forest productivity in the Eastern United States. Preliminary results show patterns of growth reduction for several species, but causes are still unknown.

Installed 17 new stations in the national trends network to fill gaps in monitoring wet deposition across the country.

Conducted the cross Appalachian tracer experiment [CAPTEX] jointly with Canada to determine the movement of pollutants from the Ohio Valley and Sudbury, Canada. This will assist in ability to monitor atmospheric transport.

Expanded bilateral cooperation with Canada in acid rain research by adopting 12 new joint United States-Canadian projects.

One of the more interesting experiments performed this year was designed to test effects of simulated acid rain on seedlings of potentially sensitive species of trees such as red spruce, yellow poplar, and loblolly pine. The results of this experiment indicated that these seelings showed no effects at or above pH 3.6. These results must be assessed in the context of the monitoring of wet deposition in the Northeastern region of the United States through the global trends and the national network trends networks. Such deposition monitoring has shown that regional acidity ranged between pH values of 4.2-5.2; thus it is difficult to conclude that wet deposition is directly responsible for tree diebacks among these species in the Northeast. What these results do indicate, among other things, is that there is a large variation in the ability of soils to buffer acid deposition.

Of course, many unknowns still exist in our basic knowledge of the processes which contribute to pollutant effects on lakes and forests. However, even after only 2 years of task force-focused research, I believe that these efforts have provided us with important findings. Because our knowledge will continue to expand, I urge my colleagues to be patient and not move presumptuously to emission controls. The research effort is showing significant scientific progress and I believe that it will provide us with the answers which we need to make rational decisions on this complex issue. The assessment program has a 10-year congressional mandate and I believe that as it goes forward, we should provide additional resources in areas which can be appropriately accelerated.●

CONGRESS IS WRONG TO THREATEN STATES

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. OBEY. Mr. Speaker, I do not necessarily agree with the idea that the 21 drinking age will solve our traffic problems, but I most certainly agree with the other points made by an editorial in my hometown newspaper, the Wausau Merrill Daily Herald.

That editorial makes clear that it is not good public policy to wipe out Federal highway assistance to States in need because of a disagreement on that issue.

I commend the editorial to my colleagues for review:

[From the Wausau Merrill Daily Herald, June 20, 1984]

CONGRESS IS WRONG TO THREATEN STATES

The idea is right, but the tactic is wrong.

President Reagan has joined congressmen who believe the federal government should prod states into enacting age 21 drinking laws.

The incentive: Either fall into line or lose highway dollars.

Wisconsin legislators already have voted to raise the state legal drinking age. It will increase to 19 on July 1, largely because of the efforts of Sen. Walter John Chilsen, R-Wausau.

That wouldn't be good enough.

If Wisconsin didn't up the age to 21, the state could lose $30 million in federal aid in two years, state Transportation Secretary Lowell Jackson estimates.

The goal of a uniform drinking age is commendable. That would end the dangerous border-hopping by young adults who take advantage of a neighboring state's more lenient laws.

But if Congress and the president decide that uniformity is in the national interest, then legislators could enact a law setting a drinking age, just as the country has a voting age and a minimum age for the presidency.

They probably won't. States jealously guard their rights. Such a law would rile up the folks back home. Congress isn't likely to offend voters, governors and legislators during an election year.

Tying the drinking age to highway aid is equally offensive. When an individual uses a similar tactic, it's called blackmail.

It is proper for the federal government to encourage states to alter their drinking age. It is wrong to coerce states by issuing threats and witholding money.

If the evidence supporting age 21 drinking laws is strong enough—and Chilsen and others believe it is—then states will comply.

Wisconsin should consider during the next session of the Legislature either raising its drinking age or forbidding the sale of alcohol to border-hoppers.

But it can take those steps on its own, thank you.●

HOUSE OF REPRESENTATIVES—*Monday, June 25, 1984*

The House met at 12 o'clock noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We recognize, O bountiful God, the people about us who care for us and give us strength. May we be ever grateful for those whose love has been our support, and whose friendship has been our joy. Even as we admit our own weaknesses, we give thanks for family and friends whose devotion nurtures us every day of our lives. In Your name, we pray. Amen.

THE JOURNAL

The **SPEAKER**. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2878. An act to amend and extend the Library Services and Construction Act;

H.R. 4585. An act to authorize appropriations for the Office of Environmental Quality and the Council on Environmental Quality for fiscal years 1985, 1986, 1987, and for other purposes; and

H.R. 5154. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5154) entitled "An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control, and data communications, construction of facilities, and research and program management, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PACKWOOD, Mr. GORTON, Mr. GOLDWATER, Mr. LAUTENBERG, and Mr. HEFLIN to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendments of the House with amendments to a bill of the Senate of the following title:

S. 373. An act to provide comprehensive national policy dealing with national needs and objectives in the Arctic.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 296. An act for the relief of Ramzi Sallomy and Marie Sallomy;

S. 384. An act to aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute;

S. 516. An act for the relief of Barbara Crisp, Sean Anthony Crisp, and Andrea Leech;

S. 796. An act for the relief of Bassam S. Belmany;

S. 905. An act to establish the National Archives and Records Administration as an independent agency;

S. 1140. An act for the relief of Patrick, P.W. Tso, Ph.D.;

S. 1414. An act for the relief of Rebecca Lynn Higgins;

S. 2375. An act to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration;

S. 2459. An act to authorize appropriations for the Department of Energy for national security programs for fiscal year 1985, and for other purposes;

S. 2463. An act to authorize appropriations of funds for certain fisheries programs, and for other purposes;

S. 2547. An act authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes;

S. 2688. An act to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, and for other purposes; and

S. 2729. An act for the relief of Jean Willhelm Willrich.

THE CROSS FLORIDA BARGE CANAL

(Mr. MACK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MACK. Mr. Speaker, this week, the House is scheduled to consider the omnibus water projects bill, H.R. 3678.

While the bill deauthorizes more than 300 projects, conspicuously absent are provisions to deauthorize the unwanted, unneeded, expensive, and environmentally hazardous Cross Florida Barge Canal.

Construction was halted on this project by President Nixon in 1971 in response to anticipated environmental damage.

The uncompleted portion of the canal would threaten the supply of drinking water for central and south Florida, and would convert the beautiful Oklawaha River into a concrete ditch.

In 1977, the Army Corps of Engineers found that the project was not worth the Federal investment, and recommended termination of the canal and the half billion dollars it would cost to complete.

The canal is unanimously opposed by the Governor of Florida, the Florida Cabinet, and both houses of the legislature.

Every administration since President Nixon has opposed completion, and the other body has voted twice to deauthorize the canal.

This project is nothing more than a waste of a half billion Federal dollars on a unusable, environmentally hazardous, pork-barrel project. It is time for the House to end this waste once and for all.

I urge my colleagues to vote for the MacKay amendment to the water projects bill. Deauthorize the barge canal.

ANNOUNCEMENT BY THE SPEAKER

The **SPEAKER**. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, June 26, 1984.

PIPELINE SAFETY ACT AUTHORIZATIONS, 1985

Mr. SLATTERY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5313) to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684) is amended—

(1) in subsection (a) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $3,600,000 for the fiscal year ending September 30, 1985."; and

(2) in subsection (b) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $3,500,000 for the fiscal year ending September 30, 1985."; and

(b) Section 214 of the Hazardous Liquid Pipeline Saftey Act of 1979 (49 U.S.C. 2013) is amended—

(1) in subsection (a) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $900,000 for the fiscal year ending September 30, 1985."; and

(2) in subsection (b) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $500,000 for the fiscal year ending September 30, 1985."; and

Sec. 2. (a) The Secretary of Transportation shall study issues relating to the transportation of methanol through the interstate liquid pipeline system in the United States and shall make recommendations for the safe and efficient transportation of methanol through such pipeline system.

(b) Such study shall include an examination of —

(1) the feasibility of such transportation,

(2) the economics and engineering of such transportation, and

(3) any environmental, health, and safety problems associated with such transportation.

(c) The Secretary of Transportation shall submit a report detailing the results of such study and setting forth his or her recommendations to the Congress no later than one hundred and eighty days after the date of enactment of this Act.

Sec. 3. Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2009) is amended by adding at the end a new subsection as follows:

"(c)(1) The Secretary shall study the feasibility of and costs connected with requiring various methods of testing and inspecting hazardous liquid pipeline facilities subject to the provisions of this title. In carrying out such study the Secretary shall evaluate any new technologies available for monitoring, from the outside or the inside, the condition of such facilities.

"(2) The Secretary shall make recommendations, based on the study undertaken under this subsection and on consultations between the Secretary and the Technical Hazardous Liquid Pipeline Safety Standards Committee established under section 204 of this title, as to the frequency and type of testing and inspection of pipeline facilities which should be required, taking into account the following:

"(A) The location of the pipeline facilities.

"(B) The type, age, manufacturer, method of construction, and condition of the pipeline facilities.

"(C) The nature of the materials transported through the pipeline facilities, the sequence in which such materials are transported, and the pressure at which they are transported.

"(D) The climatic, geologic, and seismic characteristics of, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas.

"(E) The frequency of leaks, if any.

"(F) The costs of the various available methods.

"(G) Any other factors the Secretary determines to be relevant to the safety of the pipeline facilities.

"(3) The Secretary shall submit a report detailing the results of the study undertaken under this subsection and setting forth the recommendations made under paragraph (2) to the Congress no later than one year after the date of enactment of this subsection.".

Sec. 4. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) is amended by adding at the end a new section as follows:

"SURVEY OF PIPELINE FACILITIES

"Sec. 20. (a) Any person owning or operating interstate transmission facilities shall, within 180 days after the date of enactment of this section, submit a report to the Secretary which—

"(1) identifies the location and condition of all such pipeline facilities whose construction was completed before January 1, 1938; and

"(2) includes the most recent leak survey information compiled by such owner or operator with respect to such pipeline facilities.

"(b) The Secretary shall, within 90 days after receiving any report under subsection (a)—

"(1) inspect the pipeline facilities described in subsection (a)(1), except when the Secretary, based on reports submitted under subsection (a), determines that a pipeline facility is in safe condition; and

"(2) identify, on the basis of the information contained in such report and the information obtained by the Secretary through such inspections, any pipeline facilities which might pose a danger to the public health and safety.

"(c) There are authorized to be appropriated to the Secretary for the purpose of carrying out this section, not to exceed $200,000 for the fiscal year ending September 30, 1985.".

The **SPEAKER** pro tempore [Mr. Rose]. Is a second demanded?

Mr. **CORCORAN**. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from Kansas [Mr. Slattery] will be recognized for 20 minutes and the gentleman from Illinois [Mr. Corcoran] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. Slattery].

GENERAL LEAVE

Mr. **SLATTERY**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 5313.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. **SLATTERY**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us today is H.R. 5313 the authorization for pipeline safety programs in the Department of Transportation. The total authorization is $8.7 million: $3.8 million is for salaries and natural gas pipeline safety; $3.5 million is for State grants-in-aid for gas pipeline safety; $900,000 is for hazardous liquid pipeline safety, and $500,000 is for State grants-in-aid for liquid pipeline safety.

This bill was reported unanimously by the Energy and Commerce Committee. Our colleagues on the Committee on Public Works and Transportation also agree with the provisions of this bill but introduced a minor change in language in the Oxley amendment to H.R. 5313 which I find acceptable. This amendment provides for the authorization of $200,000 to the Secretary of Transportation to inspect those pipelines built before January 1, 1938, which are deemed unsafe. The owners or operators of those pipelines must submit reports on which the Secretary makes a judgment whether or not to conduct an inspection.

The authorization is only for 1 year rather than the 2 years requested by the administration to because of the problems the GAO uncovered during its 18-month investigation. GAO testified before the subcommittee that the pipeline safety program suffers from weak mangement as well as mismanagement of the program's limited and insufficient resources. During the next year our subcommittee intends to conduct regular oversight to monitor the program and its response to the management suggestions made by GAO and others.

The total authorization is $8.7 million for fiscal year 1985. That is a relatively small amount to ensure that consumers who live, work, or travel near natural gas and hazardous liquids pipelines are protected. An explosion involving a gas line destroyed a major part of downtown Richmond, IN, and took several lives not too many years ago in the district of our subcommittee chairman. The Federal Pipeline Safety Program was created in the aftermath of tragedies like that one. I believe it is important that we ensure the program's effectiveness in order to prevent future accidents, and I recommend approval of this bill.

Mr. Speaker, one of the amendments included in H.R. 5313, the pipeline safety reauthorization bill, addresses pipelines completed prior to January 1, 1938. This amendment was included in both the Energy and Commerce Committee bill and the Public Works Committee bill. My colleague, the gentleman from Ohio [Mr. Oxley], offered the amendment adopted by the Energy and Commere Committee. It requires interstate transmission pipelines to submit a report to the Secretary of Transportation indicating the location and condition of pre-1938 pipelines. The report would also include any recent leak survey information regarding the pipeline. Based on this report, the Secretary of Transportation is directed to identify any pipeline which might pose a danger to the public health and safety. In addition, the Secretary is required to inspect pipelines except when he determines, based on reports submitted, that a pipeline is in a safe condition.

□ 1210

Mr. Speaker, there has been some misunderstanding about this amendment. One of the primary questions centers on the requirement that the Secretary of Transportation inspect facilities. I am told by the amendment's sponsor, the gentleman from Ohio, that inspect does not require excavation of pipelines. Is this correct?

I yield to the gentleman from Ohio [Mr. McEwen] to respond to this question.

Mr. McEWEN. I thank the gentleman for yielding.

Yes; the gentleman is correct. The amendment by our friend and colleague from Ohio [Mr. Oxley] does require inspections in some cases, but inspection means using applicable state-of-the-art techniques. Inspection techniques include reviewing leak survey data, pipeline patrolling with leak detectors, aerial, surveys, and excavation in cases where earlier inspection indicates a need to do so.

Mr. SLATTERY. Mr. Speaker, I thank my colleague for that clarification.

Mr. Speaker, I yield 10 minutes to the gentleman from Arizona [Mr. McNulty].

Mr. McNULTY. Mr. Speaker, it is my understanding that the Public Works and Transportation Committee has cojurisdiction of this matter and that under the rules the gentleman from California, Chairman Anderson, for whom I am substituting this morning, is entitled as a matter of right on behalf of that committee, as one of the committees of original jurisdiction, to a portion of time not to exceed 10 minutes, not all of which I intend to use.

Mr. Speaker, on behalf of the Committee on Public Works and Transportation, I rise in support of H.R. 5313, to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes.

Those acts provide an overall scheme for the regulation of pipeline transportation of gas and hazardous liquid and they establish minimum Federal safety standards for these lines. That Federal safety regulation effort of the combined system of some 1.7 million miles is overseen by the Materials Transportation Bureau of the Department of Transportation, and this bill authorizes $4.5 million for the Department to carry out that mission.

The Natural Gas Pipeline Safety Act of 1968 also established a pipeline safety program designed to assist States in protecting their citizens against the perils of unsafe natural gas pipeline systems which were intrastate systems. States that participate in the program conduct inspection of the pipelines and facilities and, where appropriate, see that corrective measures are taken.

The natural gas pipeline safety grants-in-aid program has proved to be a model of Federal-State cooperation. This bill authorizes $3.5 million to carry out that mission.

A similar mechanism was established for State programs for transportation of hazardous liquids in the Hazardous Liquid Pipeline Safety Act of 1979. The difference, incidentally, between the two is that the Natural Gas Pipeline Safety Act is concerned almost exclusively with natural gas. Hazardous liquids, for the most part, are liquid petroleum products and anhydrous ammonia. But this latter program, the Hazardous Liquid Pipeline Safety Act, has not begun because the States needed time to get their own statutes in order to create State jurisdiction and to take other such statutory procedures necessary to bring them under the act. To this moment, 16 States have done what they had to do to get proper jurisdiction to become eligible for the program, and those 16 States embrace between 70 and 80 percent of all pipeline miles which this measure would address.

The committee thinks this program has been delayed long enough and, therefore, there is a half million dollars in the bill to carry it out in fiscal year 1985; $200,000 is for continuing the Department of Transportation's current level of financial support for the training activities now provided at the Oklahoma City training center.

The bill says that all owners and operators of gas interstate transmission facilities have got to provide the Secretary of Transportation a report identifying the location and condition of all pipeline facilities that were constructed before January 1, 1938, and that report ought to include the most recent leak survey completed on those facilities. The Secretary is then required to inspect those facilities unless the Secretary determines that the facilities are safe. Additionally, the Secretary has got to identify any pipelines that pose a danger to health or safety.

The bill does make two other amendments to the Hazardous Liquid Pipeline Safety Act. One directs the Secretary of Transportation to study the issues relating to transporting methanol through existing interstate liquid pipeline systems and submit the results of that study to Congress within 6 months after date of enactment. The other directs the Secretary to study the feasibility and costs of requiring various methods of testing and inspecting hazardous liquid pipeline facilities and to include an evaluation of any new technologies that are available and make recommendations as to the frequency and type of testing which should be required. The evaluation results and the recommendations have got to be submitted to Congress within a year after enactment.

So I urge the House to adopt H.R. 5313.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. Boucher). The gentleman from Kansas [Mr. Slattery] has 5 minutes remaining.

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Energy and Commerce Committee, like the Public Works and Transportation Committee, has held hearings on the pipeline safety programs authorized by the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. In this legislation, H.R. 5313, we reauthorize those programs for 1 year.

Mr. Speaker, the gentleman from Kansas and the gentleman from Arizona have already discussed in detail the provisions and the somewhat minor changes that are contained in the program before us. I am not going to belabor the consideration of the House with further discussion.

I just would like to say that there is some concern, I think, both on the part of the majority and the minority of both committees of the House that the Department of Transportation has not moved as aggressively as we would like in the regulation of these pipeline safety programs, particularly with respect to involving in a meaningful way the various States. I would hope that with the addition of the half million dollars and the prod that is contained in the Oxley-McEwen amendment that the Department would be more responsive not only to the Congress, but also to the findings in the oversight consideration by our committees and the General Accounting Office.

Mr. Speaker, I would urge my colleagues to pass this legislation. It is needed. It is useful. I recommend it to the House.

□ 1220

Mr. Speaker, I yield 6 minutes to the gentleman from Ohio [Mr. McEwen] a distinguished member of the Committee on Public Works and Transportation.

Mr. McEWEN. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the motion to suspend the rules and pass H.R. 5313, authorizing funds for natural gas and hazardous liquid pipeline safety for fiscal year 1985.

The authorizations in this bill are modest and in my opinion thoroughly justified: A total of $7.1 million for carrying out the Natural Gas Pipleine Safety Act of 1968, and $1.4 million for carrying out the Hazardous Liquid Pipeline Safety Act of 1979.

These levels are generally in accord with current levels of funding and the request of the administration. There are, however, certain exceptions which deserve mention.

The hazardous liquid pipeline safety authorization contains the sum of $500,000 in startup funds for the first year of a grant-in-aid program for State enforcement of Federal standards applicable to intrastate pipelines. The administration opposes this item chiefly on budgetary grounds.

The Committee on Public Works and Transportation has concluded, rightly in my judgment, that this is a worthwhile expenditure. This represents no departure from congressional policy. This program is based on experience under a similar and highly successful State enforcement program in the Natural Gas Safety Act, which accounts for $3.5 million of the $7.1 million authorized in this bill for natural gas pipeline safety.

During a hearing on March 21 of this year, funding for the program was strongly supported by the witness for the National Association of Regulatory Utility Commissioners. And, in response to questioning, the Deputy Administrator of the Department of Transportation's Research and Special Programs Administration acknowledged that the grant-in-aid program in the natural gas area had made an enormous contribution to safety; he said that a similar program would do likewise in the area of hazardous liquid pipelines.

The authorization level of $500,000 is the same as that provided for fiscal year 1980 in the 1979 act; no funds have been requested or appropriated for the program.

The bill also provides for carrying out training under the Natural Gas Pipeline Safety Act, so as to maintain support for such training activities as DOT's Oklahoma City Training Center.

This legislation mandates a survey of the location and condition of all natural gas pipelines completed before January 1, 1938, together with the most recent leak survey information concerning such facilities. These are to be submitted to the Secretary of Transportation, who is required to conduct inspections of those facilities which are not determined, on the basis of the information submitted to be in safe condition.

The Secretary also is required to identify any pipeline which might pose a danger to public health and safety, on the basis of information received and inspections conducted. The sum of $200,000 is authorized for this purpose.

The bill before the House has two amendments dealing with this provision, one increasing to 180 days from 120 days the period of time provided industry to make the initial survey, and the other making clear that only interstate pipelines are involved.

Regarding this particular provision, incorporated in the bill as a result of an amendment which I offered, some question has arisen as to whether the safe condition referred to is meant at least to be defined in connection with already existing standards in the Natural Gas Pipeline Safety Act.

The answer is that this is the correct interpretation. In determining whether a pipeline is in a safe condition, the Secretary will consider a number of factors including whether the pipeline operator has complied with the provisions of the Natural Gas Pipeline Safety Act. Mr. Speaker, there are regulations which are promulgated pursuant to the act and are contained in title 49, part 192 of the Code of Federal Regulations which require pipelines to do extensive testing, surveying, and reporting to assure that natural gas pipelines do not pose a hazard to life and property. In determining whether a pipeline is in a safe condition, the Secretary should consider whether the pipeline operator has complied with these existing safety requirements.

The bill also calls for a study of the feasibility and costs of methods of testing and inspections of hazardous liquid pipelines, and development of recommendations as to the appropriate frequency and type of testing and inspection of such facilities on the basis of characteristics of the pipelines, the materials transported, and the areas through which the pipelines pass.

A final study called for in the bill is to inquire into the feasibility of transporting methanol through liquid pipelines, including economics and engineering considerations and any problems affecting the environment, health, or safety.

Mr. Speaker, this is indeed a modest bill but an important one in terms of the functions authorized. The studies authorized could well make a contribution to further refinements in the two acts involved in future years. I urge its enactment.

Mr. WOLF. Mr. Speaker, will the gentleman yield?

Mr. McEWEN. I yield to the gentleman.

Mr. WOLF. I thank the gentleman for yielding to me.

Mr. Speaker, on behalf of myself and my colleague from Maryland, Mr. HOYER, I would like to clarify the intent of section 4 of the bill. That is the language offered in the Energy and Commerce Committee by the gentleman from Ohio [Mr. OXLEY] and in the Public Works and Transportation Committee by the gentleman from Ohio [Mr. McEWEN] relating to older natural gas pipelines.

It has been brought to my attention that there are a small number of gas distribution companies who, because they transport gas across State lines incident to their distribution function, are defined as natural gas companies under the Natural Gas Act and therefore are considered interstate pipelines. These companies has been granted a section 7(f) exemption under the National Gas Act precisely because their true primary function is natural gas distribution subject to State public service commission regulation and not the transport of gas for purposes of resale.

It was my understanding that the gentleman from Ohio did not intend to have section 4 apply to these natural gas companies but only to those transmission facilities that transport or sell gas in interstate commerce for ultimate resale. Would the gentleman from Ohio [Mr. McEWEN] comment on this provision?

Mr. McEWEN. The gentleman from Virginia is absolutely correct in his understanding of my intent with respect to section 4 of this bill. The section would apply only to those facilities that transport or sell gas in interstate commerce for ultimate resale. Section 4 would no apply to interstate transmission facilities that are exempt from Federal Energy Regulatory Commission jurisdiction by section 7(f) of the Natural Gas Act of 1938.

Mr. WOLF. Mr. Speaker, I thank the gentleman.

Mr. McEWEN. I thank the gentleman and Mr. Speaker, I yield back the balance of my time.

Mr. CORCORAN. Mr. Speaker, I have no additional requests for time, and I reserve the balance of my time.

Mr. SLATTERY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

● Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5313, a bill to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 and for making minor changes in both acts.

The bill authorizes $4.5 million for Federal enforcement of both of these acts. It authorizes $4 million to carry out the State program in each act. Both committees included $200,000 for the continuation of the Department of Transportation's financial support for the training activities it now provides at its Oklahoma City training center under the Natural Gas Pipeline Safety Act.

In addition the bill requires all owners and operators of gas interstate transmission facilities to provide a report to the Secretary identifying the location and condition of all pipeline facilities constructed prior to 1938. The report must include the most recent leak survey. The Secretary may then be required to inspect these facilities and identify those that might pose a threat to the public health and safety.

The bill makes two amendments to the Hazardous Liquid Pipeline Act, both of which require the Secretary to conduct studies and report back to the Congress. One study is on issues relating to the transportation of methanol through the existing interstate liquid pipeline system. The other study is on the feasibility and costs connected with requiring various methods of testing and inspecting hazardous liquid pipeline facilities.

I urge the House to adopt H.R. 5313.●

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Kansas [Mr. SLATTERY] that the House suspend the rules and pass the bill, H.R. 5313, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. **SLATTERY**. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2688) to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2688

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(a)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $3,472,000, for the fiscal year ending September 30, 1985; and

"(4) $3,698,000, for the fiscal year ending September 30, 1986.".

(b) Section 17(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(b)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking "and" at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end therof the following new paragraphs:

"(3) $3,728,000, for the fiscal year ending September 30, 1985; and

"(4) $3,970,000, for the fiscal year ending September 30, 1986.".

SEC. 2. (a) Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(a)) is amended by—

(1) striking "and" at the end of paragraph (1);

(2) striking "and" at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end therof the following new paragraphs:

"(3) $900,000, for the fiscal year ending September 30, 1985; and

"(4) $958,500, for the fiscal year ending September 30, 1986.".

(b) Section 214(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(b)) is amended by—

(1) striking out "and" at the end of paragraph (1);

(2) striking out period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $500,000, for the fiscal year ending September 30, 1985; and

"(4) $585,000, for the fiscal year ending September 30, 1986.".

SEC. 3. (a) Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1683(a))—is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

(b) Section 213(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2012(a)) is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

MOTION OFFERED BY MR. SLATTERY

Mr. **SLATTERY**. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. SLATTERY moves to strike out all after the enacting clause of the Senate bill, S. 2688, and to insert in lieu thereof the provisions contained in H.R. 5313, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5313) was laid on the table.

SMALL BUSINESS SECONDARY MARKET IMPROVEMENTS ACT OF 1984

Mr. **NOWAK**. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2375) to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

The Clerk read as follows:

S. 2375

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Small Business Secondary Market Improvements Act of 1984".

SEC. 2. Section 5 of the Small Business Act is amended by adding at the end thereof the following new subsections:

"(f)(1) The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

"(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

"(B) all fees due the Administration on a guranteed loan shall have been paid in full prior to any sale; and

"(C) each loan shall have been fully disbursed to the borrowed prior to any sale.

"(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

"(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

"(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a) of this Act, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to sections 5(e), 7(a)(6), or 7(a)(8).

"(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, except those under section 7(a)(13): *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

"(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

"(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

"(4) The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

"(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

"(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

"(h) Upon the adoption of final rules and regulations, the Administration shall—

"(1) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such investment. As used in this paragraph, if the instrument being sold is a loan, the term 'seller' does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

"(4) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.".

Sec 3. (a) Within ninety days after the date of enactment of this Act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

(b) Within nine months after the date of enactment of this Act, the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act other than as provided for in subsection (a).

(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended, until final rules and regulations become effective.

Sec. 4. Section 10 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(h) The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums, (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.".

Sec. 5. Section 4(c)(1)(B) and section 4(c)(2)(B) of the Small Business Act are each amended by inserting "5(g)," immediately after the word "sections".

Sec. 6. This act does not authorize the appropriation of any funds.

The SPEAKER pro tempore. Is a second demanded?

Mr. SMITH of New Jersey. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. Nowak] will be recognized for 20 minutes and the gentleman from New Jersey [Mr. Smith] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. Nowak].

GENERAL LEAVE

Mr. NOWAK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the Senate bill, S. 2375.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. NOWAK. Mr. Speaker, I yield myself such time as I may consume.

☐ 1230

Mr. Speaker, S. 2375 is designed to improve the secondary market for guaranteed loans of the Small Business Administration. This proposal, which was passed by the Senate on June 21, 1984, is virtually identical to H.R. 4773. The House Committee on Small Business unanimously approved H.R. 4773 on June 19, 1984.

As chairman of the Small Business Subcommittee on Tax, Access to Equity Capital and Business Opportunities for the past 5 years, I have consistently attempted to promote measures which will enhance the capital formation position of small business. In this capacity, I have become increasingly aware of the critical role of small business in the economic vitality of this country. There is no lack of statistics which indicate that small business is the Nation's greatest source of net new jobs and unquestionably the leader in innovation. In particular, statistics in recent years establish that small business creates about 80 percent of all the net new jobs in the U.S. economy.

Legislation to improve the SBA secondary market is especially important in a period of financial structural change. The primary objective of deregulation is to open competition in the financial service industry, while at the same time maintaining the soundness and integrity of the country's financial institutions. As these trends develop, it is essential that we closely monitor these changes by concentrating on achieving a balanced plan of financial deregulation to insure that small business continues to receive adequate capital at affordable prices.

At a time when small business continues to experience difficulty in obtaining needed capital, we cannot turn our backs on any vehicle which will ease the cash flow burden of small firms. The effects of the deregulation scenario is especially critical to small firms since small business has traditionally been denied access to commercial paper and bond markets, and has consistently relied on commercial bank lending as a primary source of credit.

In view of these occurrences in the financial services industry and the historical difficulties which small firms have experienced in capital information, I believe that this proposal to improve the secondary market for 7(a) guaranteed loans will help provide small business with a vital source of capital at reasonable rates.

Authorized by section 7(a) of the Small Business Act of 1953, the guaranteed loan program enables lenders to make long-term loans, to smaller firms which, in many cases, would be otherwise unavailable. The secondary market is an integral component of SBA's 7(a) Guaranteed Loan Program. Operating since 1972, the secondary market brings private and public sector interests together, by enabling lenders to sell the guaranteed portions of the SBA loan to an investor. This process provides lenders with an increase in liquidity and thereby encourages them to make larger loans for longer term periods. For example, a recent GAO survey of bankers indicated that SBA guaranteed loans tend to be larger, $118,000 on an average, as compared to an average for nonguaranteed loans of approximately $60,000. In addition, according to the GAO survey, most bank loans without SBA guarantees matured in less than 1 year, while 74 percent of SBA guaranteed loans matured in 6 years or more. Although the underlying concept behind the secondary market for these loans has been viewed by many as SBA's greatest contribution to small business capital formation, the secondary market is not greatly utilized, nor has it reached its potential. For example, one estimate indicates that less than 25 percent of 7(a) loans are presently sold through the operations of the secondary market.

Mr. Speaker, this legislation does not create a new program but rather implements a more effective utilization of an existing program by allowing the guaranteed portion of the 7(a) loan to be "pooled." The pooling concept, analogous to the operations of the secondary market for mortgages, will render these instruments more attractive to a broader range of institutional investors.

The implementation of a mechanism to improve the secondary market for guaranteed loans will ultimately result in an increase of bank participation in the Guaranteed Loan Program. This is true because banks would be provided with greater liquidity through the sale of loans in the secondary market.

In addition to giving the banks the opportunity to offer longer term loans for larger amounts, a more active secondary market will encourage lenders to make fixed rate loans, which are becoming increasingly unavailable to smaller firms.

Further, the argument that the increased utilization of the Guaranteed Loan Program will result in a significant budgetary outlay has absolutely no merit. The available funding for SBA guaranteed loans, as established by the congressional appropriations process, has not been totally expended in the last 3 years. For example, in 1982, the Congress appropriated $2.6 billion for guaranteed loans and the SBA utilized only $1.5 billion, while in 1983, the appropriations level as set by Congress was $2.5 billion and the SBA's annual guarantee utilization for that year was only $2 billion.

In summary, therefore, the bill provides the SBA with statutory authority to operate a secondary market. Further, this proposal would permit the SBA Administrator to authorize pooling of 7(a) guaranteed loans into large homogeneous trust certifcates. The legislation would facilitate a more effective oversight of the SBA secondary market operations through the requirement of central registration of the loans and trust certificates and by enhancing the disclosure process to potential investors. Finally, the proposal requires SBA to submit to Congress a detailed annual report on the operations of the secondary market.

Mr. Speaker, in conclusion, I would like to point out that this proposal had great bipartisan support. Mr. Williams of Ohio, who unfortunately was unable to be here today due to illness the distinguished ranking minority member of the subcommittee, is an original cosponsor and was instrumental in formulating this legislation. He has been a great help to the leadership of the committee, and I sincerely appreciate his cooperation. I am grateful to all the members of the subcommittee, who have worked very hard on this bill. Mr. Roemer, Mr. Vandergriff, Mr. Britt, Mr. Eckart, Mr. Olin, Mr. Smith of New Jersey, and Mr. Dreier all have put in an awful lot of time trying to bring this bill to the floor.

Also, of course, any subcommittee has to have the cooperation of its full committee chairman, and Mr. Mitchell certainly has provided that guidance in order to bring this measure here today. He has participated and brought to our attention the importance and the impact that this bill could have out in the small business community. The gentleman from Pennsylvania [Mr. McDade], the ranking minority member of the committee, of course, has been extremely cooperative in moving this legislative initiative. I would also like to thank the other cosponsors of this legislation: Mr. Bedell, Mr. Daub, Mr. Simon, Mr. D'Amours, Mr. Smith of Florida, Mr. Hughes, Mr. Wyden, Mr. Savage, Mr. Traxler, Mr. Glickman, Mr. McNulty, Mr. Tauke, Mr. Boehlert, Mr. Roth, Mr. McKernan, Mr. Frank, Mr. Davis, Mr. Morrison, Mr. Wolpe, Mr. Vander Jagt, Mr. Evans of Illinois, Ms. Kaptur, Mr. Wortley, Mr. Gore, and Mr. Bilirakis.

Mr. Speaker, I would also like to cite the following organizations who have expressed support for this proposal: the American Association of MESBICS, the National Association of Small Business Investment Companies, the National Small Business Association, the Smaller Business Association of New England, the Small Business Council of the U.S. Chamber of Commerce, the Small Business Legislative Council, the Small Business United, and the Small Business Development Center of the University of Massachusetts.

I strongly urge support for this important small business legislation.

The SPEAKER pro tempore (Mr. Boucher). The gentleman from New York [Mr. Nowak] has consumed 9 minutes, and he has 11 minutes remaining.

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 2375, the Small Business Secondary Market Improvements Act of 1984.

Mr. Speaker, I would like to commend the distinguished subcommittee chairman, the gentleman from New York [Mr. Nowak], for his leadership on this bill, as well as the distinguished gentleman from Maryland [Mr. Mitchell], and note that the gentleman from Ohio, Mr. Lyle Williams, who could not be here today because of a broken leg, would have been and he strongly supports the bill. The gentleman from Pennsylvania, Joe McDade, the ranking member, also took a good leadership position on the passage of this bill during the committee process.

Mr. Speaker, S. 2375, the bill that has been substituted for the House bill, is virtually identical to H.R. 4773. It is a measure that I was an original cosponsor of and it passed out of our subcommittee unanimously and out of the full Small Business Committee without dissent. The major provisions contained in the bill, namely the secondary market and the pooling of guaranteed loans, are ideas that have been around for some time but were given a real shot in the arm by the recent report of Administrator Sanders' committee on capital access. That report, Mr. Speaker, stressed the need that both of these ideas be implemented by appropriate legislation to assist the small businesses of this Nation.

As a small businessman myself, Mr. Speaker, I wholly concur with the conclusions of the Small Business Capital Access Committee. This bill, I believe, will be instrumental in lowering interest rates for many of our small businesses.

There are three principal advantages to this legislation, any one of which would, in and of itself, justify passage of this important measure.

First of all, this bill will provide for an increase, from the private sector, of funds available to small business. We anticipate that the private sector will respond favorably to the trust certificates and, as a result, moneys from major institutional investors will flow to small business.

Second, the strengthening of the secondary market and the availability of pooling will stabilize interest rates for small business. It is my belief that with a strong and viable secondary market, the local lending institutions will have a greater incentive to loan money to small businesses at fixed rates and for a longer period of time. This view, I would suggest, is supported by the recent GAO report entitled, "SBA's 7(a) Loan Guarantee Program: An Assessment of Its Role in the Financial Market," released last April.

Finally, Mr. Speaker, I believe that as the trust certificates gain greater acceptability and as the banks and other lending institutions become familiar with, and comfortable with, the operations of the second market, the interest rates that small businesses are currently forced to pay will be lowered. The interest rates will be lowered, of course, because of the greater availability of funds.

I would like to point out to my colleagues that this legislation does not authorize the appropriation of any new moneys. The administration has informed staff that this bill will have a minimal budget impact, and that is backed up by the report of the Congressional Budget Office.

Mr. Speaker, I am pleased to note that this legislation enjoys strong bipartisan support and has been endorsed by several leading small business organizations including:

Small Business Council of the U.S. Chamber of Commerce;

National Small Business Administration;

American Association of Mesbics;

National Association of Small Business Investment Companies;

Small Business Legislative Council; and

Small Business United.

I urge my colleagues to support S. 2375 and I reserve the balance of my time.

□ 1230

Mr. NOWAK. Mr. Speaker, I yield 3 minutes to the chairman of our full committee, the gentleman from Maryland [Mr. MITCHELL], who, as I stated before, has put in a great deal of time and provided countless hours of guidance on this matter.

Mr. MITCHELL. Mr. Speaker, I rise in support of the bill S. 2375, a bill to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration. At the outset I want to note that this bill is virtually identical to a House bill, 4773, which the House Small Business Committee considered and unanimously approved last week. There is a report available on the House measure.

As most of the Members are aware, there exists a secondary market for the sale of housing mortgages. By promoting and facilitating the sale of pools of housing loans to investors, the originating lender is then able to take the sales proceeds and use them over and over to make additional loans for homes.

Very simply, this small business bill is designed to do the same thing for small business. It permits brokers and others to buy that portion of small business loans which have an SBA guarantee, put them together in packages or pools, and then sell all or fractional parts of the pool to investors.

For the past decade SBA has been using a much less sophisticated system under which only the individual loans are sold to investors. This year we expect approximately $600 million to be sold to investors out of the more than $2 billion in SBA guarantees; with the new pooling concept, however, the amount which can be sold should increase substantially as the uncertainty as to the time of loan repayment—due to default or prepayment—is considerably reduced if the investor owns a share of a pool of a number of loans rather than all of one loan.

The only difference between the House bill and the Senate bill is a phrase inserted to prevent any possible misinterpretation of a borrower's rights. The House bill expressly provides that nothing in the bill may be interpreted to extinguish the borrower's right to prepay the loan or obtain a temporary suspension of repayments even if the loan is sold (1) to an investor or (2) to a broker who includes it in a pool. The Senate bill could be interpreted as preventing a misinterpretation only in the second instance. Clearly this is not the intent of either the House or Senate Small Business Committee and the Senate report so states, but inadvertantly the Senate did not change their bill before passage last Thursday. Rather than amend the Senate bill and necessitate further Senate action, we will accept the Senate language as I believe it really says the same thing as the House bill.

I want to congratulate and commend my colleagues and fellow committee members who worked so long and hard on this legislation, paticularly the subcommittee chairman, HENRY NOWAK, and the ranking minority member, LYLE WILLIAMS. Not only have they produced a bill deserving all of our support, but they have already worked out the language with the Senate so that we have virtually identical bills. We can accept the Senate measure, with its one technical difference, and thus this measure can be sent directly to the White House.

● Mr. DREIER of California. Mr. Speaker, I rise in support of S. 2375 and urge my colleagues to suspend the rules and pass this legislation creating a secondary market for SBA-guaranteed loans.

In the last few months, I have had the opportunity to review the President's State of Small Business Report for 1984. The one point that comes through very clearly is that the resiliency of small business has helped lead this Nation into our current economic recovery. There are currently 14 million small businesses in this country—2 million of them in my home State of California. Given the role that small business has played, I believe that it is incumbent upon us to see that this sector of our economy has the tools it needs to continue its strong performance. This legislation is just such a tool.

Both the Small Business Committee and the Subcommittee on Tax, Access to Equity Capital, and Business Opportunities have held extensive hearings on our companion bill, H.R. 4773. Testimony given by representatives of major banks across the country and various small business associations attest to the need and desirability of creating a secondary market for SBA-guaranteed loans. As currently organized, the secondary market for SBA-guaranteed loans is not widely utilized nor has it reached its potential. S. 2375 is drafted to build on the inherent strengths of the Guaranteed Loan Program by pooling smaller loans into homogeneous certificates. These pools can then be offered to institutional investors. This frees up capital allowing banks to lend and invest more. The result is increased activity by small business and an expanding economy for the Nation.

The Small Business Administration is given the authority to conduct a market for their guaranteed loans. Following normal procedures for this kind of activity, the lender remains obligated under its guarantee agreement with the administration to continue to service the loan consistent with prior terms and conditions. The SBA Administrator will guarantee the timely payment of principal and interest on loans contained in trust certificates for pools. An important part of this bill provides that there be no prepayment penalty on the loans. Both the House and Senate committees added provisions that require an initial 2-year limit on contracts between the SBA and its agency selling the secondary loans. The agent must also provide a fidelity bond or other form of insurance to protect the SBA. And finally, with regard to disclosure there is an exemption for small banks that market three or less packages a year.

This is a sound piece of legislation that will assist small business in its efforts to continue our economic upturn. Both our committee and the Senate committee passed it unanimously. I hope the House will follow suit so we can send the bill on to the White House.

Thank you.●

● Mr. WILLIAMS of Ohio. Mr. Speaker, I want to take this opportunity first of all to acknowledge and thank our subcommittee chairman, Mr. Nowak, for his fine and outstanding leadership on this bill. Second, I want to thank our chairman, Mr Mitchell, and our ranking minority member, Mr. McDade, for their help and assistance with this legislation. Next I want to acknowledge the fine help and hard work that was put into this bill by the other members of the subcommittee: Mr. Smith of New Jersey, Mr. Dreier, Mr. Vandergriff, Mr. Britt, Mr. Eckart, and Mr. Olin.

Mr. Speaker, I strongly support S. 2375 which is before us today. As has already been noted the bill is virtually identical to H.R. 4773 which was passed by the subcommittee and the full committee without opposition and it is a bill which enjoys strong bipartisan support.

This legislation will accomplish three things which are vitally important to small business in the United States. No. 1, it will increase the availability of funds from the private sector to small business, second, it will greatly encourage lenders to provide fixed-rate loans for a longer period of time to small businesses. And last, but certainly not least, it should lower interest rates to the small business person as the program gains greater acceptability in the marketplace.

For these reasons I believe that we should pass the bill before us today.●

Mr. SMITH of New Jersey. Mr. Speaker, I yield back the balance of my time.

Mr. NOWAK. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. Nowak] that the House suspend the rules and pass the Senate bill, S. 2375.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

H.R. 4773 was laid on the table.

IMPROVING THE PRESERVATION AND MANAGEMENT OF PRESIDENTIAL RECORDS

Mr. ENGLISH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5584) to improve the preservation and management of Presidential records, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) Subsection (a) of section 2108 of title 44, United States Code, is amended—

(1) by inserting "(1)" after "(a)" in the first paragraph of such subsection;

(2) by inserting "(A)" after "public interest he may" in such paragraph;

(3) by inserting "(B)" after "archives system; and" in such paragraph;

(4) by designating the second paragraph of such subsection as paragraph (2) and by designating the five indented clauses in such paragraph as clauses (A) through (E), respectively;

(5) by striking out "and" at the end of the clause so designated as clause (D), by striking out the period at the end of the clause so designated as clause (E) and inserting in lieu thereof "; and", and by inserting after such clause (E) the following:

(F) a certification that such building and equipment (whether offered as a gift or made available without transfer of title) comply with minimum standards prescribed by the Archivist relating to suitability for use for archival purposes."; and

(6) by designating the third paragraph of such subsection as paragraph (3).

(b) Subsection (g) of section 2108 of title 44, United States Code, is amended—

(1) by inserting "(1)" after "(g)";

(2) by striking out "accept gifts of bequests of money or other property" and inserting in lieu thereof "solicit and accept gifts or bequests of money or other property";

(3) by inserting "an account in" before "the National Archives Trust Fund";

(4) by striking out "including administrative and custodial expenses as the Administrator determines" and inserting in lieu therof "for the same purposes and objects, including custodial and administrative services for which appropriations for the maintaining, operating, protecting, or improving Presidential archival depositories might be expended"; and

(5) by adding at the end thereof the following new paragraphs:

"(2) The Administrator shall provide for the establishment in such Trust Fund of separate endowments for the maintenance of the land, buildings, and equipment of each Presidential archival depository, to which shall be credited any gifts or bequests received under paragraph (1) that are offered for that purpose. Income to each such endowment shall be available to cover the cost of building operations, but shall not be available for the performance of archival functions under this title.

"(3) The Administrator shall not accept or take title to any land, building, or equipment under subsection (a)(1)(A), or make any agreement to use any land, building, or equipment under subsection (a)(1)(B), for the purpose of creating a Presidential archival depository unless the Administrator determines that there is available, by gift or bequest for deposit under paragraph (2) in an endowment with respect to that depository, an amount for the purpose of maintaining such land, buildings, and equipment equal to at least 20 percent of the sum of—

"(A) the total cost of acquiring or constructing such buildings and of acquiring and installing such equipment; and

"(B)(i) if title to the land is to be vested in the United States, the cost of acquiring the land upon which such buildings are situated, or such other measure of the value of such land as is mutually agreed upon by the Administrator and the donor; or

"(ii) if title to the land is not to be vested in the United States, the cost to the donor of any improvements (other than such buildings and equipment) to the land upon which such buildings are situated.".

(c) Paragraph (3) of section 2108(g) of title 44, United States Code, as added by subsection (b)(5) of this section, shall apply with respect to any Presidential archival depository created as a depository for the papers, documents, and other historical materials and Federal records pertaining to any President who takes the oath of office as President for the first time on or after May 9, 1984.

Sec. 2. Section 2305 of title 44, United States Code, is amended by inserting "solicit," before "accept, receive, hold, and administer".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Oklahoma [Mr. English] will be recognized for 20 minutes and the gentleman from Ohio [Mr. Kindness] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oklahoma [Mr. English].

Mr. ENGLISH. Mr. Speaker, I yield myself such time as I may consume.

The cost of keeping our former Presidents has received a great deal of attention in recent years. The cost has risen from approximately $65,000 in 1955 to an estimated $28 million this year. One element of that cost, and the focus of H.R. 5584, is the operation of the Presidential library system.

Mr. Speaker, I would note at this point that Presidential libraries are not really perks in the same sense as office space and staff allowances. These libraries are a valuable link in the chain of our Nation's documentary heritage—a heritage we share and in which we all take pride. Nevertheless, the libraries do cost money to operate—some $13 million last year.

It behooves us, therefore, to do what we can to limit the burden on the taxpayer of operating future and, to the extent possible, current, Presidential libraries.

Under existing law, facilities to be used as Presidential libraries are built with private funds and are then donated to the Federal Government. The entire cost of operating such facilities is then covered by an annual appropriation. After only 29 years since enactment of the Presidential Libraries

Act, there are already seven libraries and the system is likely to expand in the near future. Moreover, actual costs of the Presidential library system during this period have far outstripped the original cost estimate of $150,000 per library. As I mentioned previously, we're up to $13 million and counting for the current system.

The bill before you would shift the burden of ongoing building operations costs for future libraries from the taxpayer to endowment funds required to be provided by the same private parties who build and donate the library buildings.

H.R. 5584 requires that the gift of a Presidential library be accompanied by an endowment equal to at least 20 percent of the cost of constructing and equipping that facility. The earnings from the endowment would then be used to offset building-related operations costs. The proposal would be effective for any President taking the oath of office for the first time on or after May 9, 1984.

The bill also authorizes the establishment of endowments for existing libraries, and it clarifies the authority of the Archives Trust Fund to solicit, as well as accept, gifts and bequests.

Based on a lengthy, indepth examination of the Presidential library system by my Government Information, Justice, and Agriculture Subcommittee, I think this approach to funding future Presidential libraries represents the best opportunity to limit the burden to the taxpayer.

□ 1250

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BROOKS], chairman of the Committee on Government Operations.

Mr. BROOKS. Mr. Speaker, let me first congratulate the gentleman on the leadership he has shown in introducing this legislation in which I have joined and congratulate the gentleman from Oklahoma on the way he has handled it and processed it and hopefully we will pass it today.

Mr. Speaker, I rise in support of H.R. 5584, to improve the preservation and management of Presidential records. H.R. 5584 would establish new guidelines for funding the operations costs of future Presidential libraries. Since their establishment on a statutory basis through the Presidential Libraries Act of 1955, the Presidential library system has made a valuable contribution to our Nation by providing a focal point for the documentary heritage of our Chief Executives. The 1955 act provided a structure for insuring that the papers of the Presidents can be organized and maintained so that they will be available for generations to come.

One unintended consequence of the establishment of a Presidential library system as part of our Nation's archives, however, has been tremendous growth in the cost of maintaining this system. Although it was estimated 20 years ago that the cost of the system would be approximately $150,000 per library per year, those costs reached an average of nearly $2 million per library in fiscal year 1983.

Nobody wants to shortchange history by putting undue restrictions on our Presidential libraries, but, at the same time, it is clear that we must get the costs of those libraries under control. H.R. 5584 serves that purpose in several ways.

It requires the establishment of an endowment equal to at least 20 percent of the cost of the library for Presidents taking office for the first time on or after May 9 of this year, and it requires the establishment of endowments within the National Archives Trust Fund for other Presidential libraries. The income from these endowments is to be applied to the building operations costs of that Presidential library.

In addition to the endowment provisions, H.R. 5584 requires the establishment of minimum standards to ensure that the building and equipment of future Presidential libraries are suitable for use for archival purposes. In addition, the bill clarifies the authority of the National Archives Trust Fund Board to solicit, as well as accept, gifts.

Mr. Speaker, H.R. 5584 is a sensible and workable bill which will help control mushrooming costs of our Presidential library system in the future.

I urge a positive vote on this measure.

Mr. KINDNESS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise, too, in support of H.R. 5584.

Mr. Speaker, almost 30 years have passed since the Congress enacted the Presidential Libraries Act authorizing the Administrator of General Services to accept the donation of land, buildings, and equipment for use for Presidential libraries or to enter into agreements with States or other institutions which would make facilities available for use as Presidential libraries.

At that time, the condition of the law was that the papers of a President were presumed to be his own personal property. Through the Presidential Libraries Act of 1955, a mechanism is provided to encourage former Presidents to donate their papers to the Federal Government for preservation in facilities located around the country. Those facilities would be provided through private donation, but the cost of their subsequent operation and maintenance would be provided through regular annual appropriations by the United States.

Well, that all seemed pretty good in 1955. This has been a beneficial arrangement for our former Presidents as well as for the citizens of the United States. The Presidents' papers are preserved in a facility dedicated to his public career, and citizens around the country have access to these facilities which gives them an opportunity to see firsthand the documents and the artifacts of those periods of our Nation's history about which they know only through news media accounts or what they have studied in recent history books; and, of course, these libraries have facilitated the research and writing of books and articles which help to more thoroughly understand the events which occurred during those Presidencies.

In 1978 then, Congress enacted the Presidential Records Act, which declared that the United States shall preserve and retain complete ownership, possession, and control of Presidential records beginning with the term of the current administration. Thus, with the advent of this administration, the U.S. Government acquired all the responsibilities of ownership of the Presidential records of this and future administrations. Those responsibilities include requiring the Archivist to the United States, upon the completion of the Presidential term, to assume responsibility for the custody, control, and preservation of and access to Presidential records of that President. The act requires the Archivist to deposit those Presidential records in a Presidential archival depository or other archival facility operated by the United States; that is what the Presidential Records Act requires. We are seeking to modify that here today.

Finally, the act imposes upon the Archivist the affirmative duty to make such records available to the public as rapidly and as completely as possible, consistent with the provisions of that act.

Accordingly, I felt that as we considered legislation to amend the Presidential Libraries Act, we had to keep in mind that the Government of the United States had assumed full responsibility for the records of the current President and all future Presidents. We also had to keep in mind that no President has ever been obliged to provide a repository for his papers, either before or since the passage of the Presidential Records Act.

We were very cognizant of the criticism that was rising and has been rising over the growth in the cost of the Presidential Library Program, as well as other costs of supporting former Presidents. But here we were dealing with something that was already established in statutory law as a responsiblity of the United States. Accordingly, we looked very carefully at the actual costs of operating and maintaining these libraries, and in a committee report 2 years ago suggested several ways of cutting the growth in the cost of these facilities.

Now, H.R. 5584 is the product of a great deal of refinement in the almost 2 years since the issuance of that committee report. H.R. 5584 would amend the Presidential Libraries Act of 1955 in essentially three substantive ways that have been described by the gentleman from Oklahoma, the chairman of the subcommittee.

First, all future Presidential libraries would have to comply with minimum standards prescribed by the Archivist of the United States relating to suitability for use for archival purposes.

Second, the Archivist would be required to establish separate endowments in the National Archives Trust Fund for each Presidential library, in which gifts and bequests and the proceeds from admission fees and sales would be deposited, and requiring that the income of the endowment would be applied to building operations costs of the respective Presidential libraries.

And third, with respect to Presidential libraries of Presidents taking office for the first time on or after May 9, 1984, an amount equal to at least 20 percent of the acquisition cost of the Presidential library would have to be donated for deposit in the endowment in the National Archives Trust Fund for the purpose of providing for basic operating costs for that library.

H.R. 5584 also amends two provisions of title 44 of the United States Code to clarify the authority of the Administrator of General Services and the National Archives Trust Fund to solicit, as well as to receive, gifts or bequests. That has been cloudy in the past.

H.R. 5584 is supported by the administration. It does not go as far as some Members, including this one, would like to have gone; but it is a pragmatic and a proper approach to the concerns that have been raised and growing, and I believe it will be successful in limiting the growth in the cost of the Presidential libraries and the Presidential Libraries System.

Before yielding back, I would like to particularly express my commendations and thanks to our subcommittee chairman, the gentleman from Oklahoma [Mr. ENGLISH] for the thoughtful, pragmatic, and cooperative approach that he and his staff have taken on this issue, which has brought us to this point here today.

I would urge prompt passage of H.R. 5584.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. ENGLISH. Mr. Speaker, I yield whatever time he may consume to the gentleman from Nevada [Mr. REID].

Mr. REID. Mr. Speaker, I rise in support of H.R. 5584, which requires, as we have learned, donors of Presidential libraries to also provide for an endowment equal to at least 20 percent of the amount spent for acquiring the land, building, and equipment for the library. These endowments would be held in trust by the Federal Government, and income from the endowments would be used to help pay for the costs of operating the library buildings. This requirement would apply to libraries of all Presidents taking office for the first time after May 9, 1984.

The need for this legislation, Mr. Speaker, is clear. Presidential libraries may present the visible, lasting expense of former Presidents, creating the impression of an imperial ex-Presidency. Over half the total amount we spend on former Presidents is associated with the operation and maintenance of Presidential libraries. Although $13 million is a relatively small amount in the world of multibillion-dollar appropriations, the costs will surely escalate out of control, if in fact they have not already. What began in 1955, as the gentleman from Oklahoma [Mr. ENGLISH] indicated as a $64,000 appropriation, has grown near 220 times that size in less than 28 years.

On February 23 of this year, the House Committee on Government Information, Justice, and Agriculture of the Government Operations Committee, chaired by my distinguished colleague, the gentleman from Oklahoma [Mr. ENGLISH], held a hearing on various proposals aimed at limiting the rising costs of the Presidential library system, including a bill I introduced to terminate the authority of the Administrator of General Services to accept land, buildings, and equipment as a gift to the United States for the purpose of creating a Presidential archival depository.

□ 1300

The subcommittee reported after hearings on all of these bills H.R. 5584 to address this area of excessive Federal spending and still allow the maintenance of these historical documents.

I would congratulate Chairman ENGLISH on the manner in which these hearings were conducted. All bills were exhaustively reviewed. I agree with Chairman ENGLISH that this vehicle now before this body is the appropriate vehicle to use to get at some of these costs.

I would mention that there are other measures that are now pending and will be pending. There is a matter that will appear in a general appropriation bill that the gentleman from Indiana [Mr. JACOBS] will offer an amendment next week that will again cut these costs considerably.

I think of all of the mail that I have received in this congressional session I have had no more fervent response than the response to the bill that I introduced, which is the matter that is now before us, in fact, as a result of the hearings that the gentleman from Oklahoma [Mr. ENGLISH] held. These bills that were introduced that have terminated in this bill I think arrive at a root problem that is facing this country today, and that is the rising costs and the excessive costs of our ex-Presidents which is certainly something that has drawn the response of those people that sought to write to me.

I would also mention, Mr. Speaker, that I believe we have reached a point where we recognize the need for a change in policy and I have joined as a cosponsor of the bill introduced by the gentleman from Oklahoma [Mr. ENGLISH]. The legislation before us today, H.R. 5584, will produce significant savings in future facilities and is one step toward curbing the skyrocketing costs associated with maintaining former Presidents.

Again I commend the committee through its chairman, the gentleman from Texas [Mr. BROOKS], and the subcommittee chairman, the gentleman from Oklahoma [Mr. ENGLISH]. I think this proposal deserves the support of all of our colleagues.

Mr. KINDNESS. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. MCEWEN].

Mr. McEWEN. Mr. Speaker, I would like to make a couple of comments before this legislation is approved.

During the most recent presentation and discussion the point was made that the costs of our ex-Presidents are growing and I think it is appropriate at this juncture, as I look into the press gallery and see no one present that it be noted that when we are speaking about libraries we are not talking about the costs of former Presidents. It has been pointed out by the gentleman from Ohio that these records were formerly personal and private property but in the interests of history they have now been made public.

It is true that libraries are expensive, but I would submit that ignorance is expensive as well. If one goes to the Presidential libraries they will observe that all of the discussions that took place at the peace conferences, at Yalta, or discussions on the SALT-I Treaty or the SALT-II negotiations, as much as they can be declassified, the correspondence and communications between not only just the President but the entire administration and heads of government are available to the American people.

I tend to be somewhat offended by periodic news reports that appear in the news media in which they somehow intimate that making this information available and public to the citizens of this country, making this information available for research and for the benefit of history is somehow or another a cost which this Nation cannot bear. Anyone who has visited a library lately and goes from shelf to shelf and from room to room observes that there is a great deal of variety that is maintained in the public domain in our various libraries. I submit that keeping the information that is in these libraries available to the people is an appropriate expenditure of the Federal Government. It should not be ridiculed and should not be demeaned, and it is an asset that this country can well afford and should maintain.

I thank the gentleman from Ohio for yielding.

Mr. ENGLISH. Will the gentleman yield?

Mr. McEWEN. I will be glad to yield.

Mr. ENGLISH. I think the gentleman makes an excellent point.

There is one further point I would like to make with regard to Presidential libraries, and I think this may be what has disturbed many of our citizens in the past. As pointed out, the cost of maintaining our former Presidents, roughly half of it is operating costs on the Presidential libraries. Certainly we all recognize and understand the importance not just to our scholars and to historians, but to all of us to understand the importance of those papers and what they mean to us.

But the real question I think that we come down to is how will those papers be stored. Will they be stored in a warehouse as one former President presently has his papers stored or will they be in the palaces that are far more than libraries for researchers, but are really displays of momentoes and other items that certainly attract and have the interest of many of our people.

So I think that between the two extremes it comes down to the question, and I think this Nation has wisely required in the past that such libraries be built by private funds. Certainly we have our citizens that are willing to contribute to that. But I think by the same token, as these libraries expand the costs also have expanded, so I think this is a good balanced approach to the point, and I think the gentleman is making an excellent point about the importance of this material to our Nation. There is no question about it.

Mr. McEWEN. I thank the gentleman for his comments and could not agree more. I think he has struck a very excellent compromise in recognition of the service that is performed by these libraries, and an understanding that it be maintained in a manner in which it is commensurate with the financial resources of this Nation.

I strongly support the bill and commend both the ranking member and the chairman for his fine legislation.

Mr. ENGLISH. Mr. Speaker, I would want to commend the gentleman from Ohio [Mr. Kindness] for the tremendous support and cooperation and the fine job he did on this legislation. Certainly he helped us overcome many very large hurdles and we deeply appreciate that.

● Mr. HORTON. Mr. Speaker, I rise in support of H.R. 5584 and ask unanimous consent to revise and extend my remarks.

Mr. Speaker, the National Archives and Record Service currently operates seven Presidential libraries, located in the communities which each of those Presidents called home at one time or another in their lives. They are vital repositories for the preservation of the documentary history of the periods in which they served their country. Not only historians but persons from all walks of life visit these libraries to see firsthand the documents and artifacts that they otherwise know about only secondhand through news media accounts and what they have learned at school.

These libraries are built entirely with privately donated funds. Once they have been built and turned over to the National Archives, regular annual appropriations pay for their operation and maintenance. It now costs the U.S. Government $13 million annually to operate these Presidential libraries and care for the papers of the Presidents for whom there is no library yet—specifically, Presidents Nixon, Carter, and Reagan.

Some concern has been raised in recent years over the growth in the cost of these libraries. Certainly there are more libraries than was estimated when the Presidential Libraries Act of 1955 was passed. But an assassination, a resignation, and a decision not to seek a second term all resulted in more Presidents during that span of time than this Nation had previously experienced. And each of these men had long careers of public service leading up to their service as President of the United States.

The Government Operations Committee has long been concerned with the preservation of the papers of our Presidents. The original Presidential Libraries Act of 1955 was proposed to this House by the Committee on Government Operations and, in the 1970's, it recommended legislation which was enacted which provided for the preservation of the papers of the Nixon administration and for the permanent U.S. Government responsibility for Presidential records, beginning with the current administration, by way of the Presidential Records Act of 1978.

As part of its regular responsibility for oversight of the National Archives and Records Service, the Subcommittee on Government Information, Justice, and Agriculture thoroughly examined the operations of the Presidential Libraries and, in 1982, prepared a report issued by the Committee on Government Operations which made several recommendations of administrative actions which might be taken with respect to the costs of operating the libraries.

One of those recommendations was that the donation of future Presidential libraries be accompanied by the donation of a sum of money, an endowment, the income to which would cover the cost of operation and maintenance of that Presidential library. While the Administrator of General Services responded that the proposal was feasible and within his authority to require, he felt the wiser course was for Congress to amend the Presidential Libraries Act to provide such a requirement.

That is what your Committee on Government Operations has recommended in this legislation. H.R. 5584 amends the Presidential Libraries Act of 1955 to require that: First, all future Presidential libraries comply with minimum standards prescribed by the Archivist of the United States relating to suitability for use for archival purposes; second, separate endowments be established in the National Archives Trust Fund for each Presidential library in which gifts and bequests and the proceeds from admission fees and sales shall be deposited and the income to which applied to the building operations costs of the Presidential libraries; and third, with respect to the Presidential libraries of Presidents taking office for the first time on or after May 9, 1984, an amount equal to at least 20 percent of the acquisition cost of the Presidential library shall be donated for deposit in the endowment in the National Archives Trust Fund for that library.

H.R. 5584 also amends two provisions of title 44 of the United States Code to clarify the authority of the Administrator of General Services and the National Archives Trust Fund to solicit, as well as receive, gifts or bequests. Based on a legal opinion rendered to former GSA Administrator Gerald Carmen, Mr. Carmen was reluctant to engage in fundraising campaigns on behalf of the National Archives and the Presidential libraries without congressional clarification of his authority to do so.

H.R. 5584 is supported by the administration. It is, so far as I know, the first and only piece of legislation pertaining to former Presidents which the administration has supported. The broad bipartisan support for this legislation within the Committee on Government Operations is a direct result of the very thorough, thoughtful, and cooperative effort put behind this bill by the members and staff of the Committee. I would especially like to commend the Subcommittee on Government Information, Justice, and Agriculture, its chairman, GLENN ENGLISH, and its ranking minority member, TOM KINDNESS, for the very thorough way in which, over the past several years, they have reviewed the Presidential libraries program and the concerns that have been raised regarding its cost, and then come up with practical and effective recommendations on how to reduce the growth in the cost of the Presidential libraries system of the National Archives.

I commend this measure to my colleagues and urge its passage.●

GENERAL LEAVE

Mr. ENGLISH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5584, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. KINDNESS. Mr. Speaker, I yield back the balance of my time.

Mr. ENGLISH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oklahoma [Mr. ENGLISH] that the House suspend the rules and pass the bill, H.R. 5584, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LANDS TO CRAIG COUNTY, VA

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5183) to direct the Secretary of Agriculture to convey certain National Forest System lands to Craig County, VA, as amended.

The clerk read as follows:

H.R. 5183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Agriculture shall, upon receipt by the Secretary of an amount equal to the fair market value of the real property described in subsection (b), convey by quitclaim deed to Craig County, Virginia, all right, title, and interest of the United States in such described real property.

(b) The National Forest System land referred to in subsection (a) is located in Craig County, Virginia, and is described as:

Tract J-26A, containing 52.00 acres, acquired from G. W. Layman and F. H. Dame by deed dated February 17, 1936, recorded in Book 2, page 35, Craig County, Virginia, the recordation date being March 9, 1936.

The SPEAKER pro tempore [Mr. KILDEE]. Is a second demanded?

Mr. COLEMAN of Missouri. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5183. The bill directs the Secretary of Agriculture to convey a 52-acre parcel of national forest land to Craig County, VA. The conveyance would be made when Craig County pays the United States the fair market value of the land.

The purpose of the bill can be very concisely stated. The county needs the land for governmental purposes. The Forest Service does not need the land. In fact, it has found the tract to be difficult to manage and uneconomical for national forest purposes. Thus, sale of the land to the county accommodates the needs of both the Forest Service and Craig County, VA.

The land that would be conveyed under the bill is part of the Jefferson National Forest and was acquired by purchase from private parties in 1936. The county has held a special-use permit from the Forest Service since 1973 to use 10.5 acres of the tract as a sanitary landfill. There has been no charge for this use. The county seeks to acquire the 52 acres to expand the sanitary landfill for possible use as a disposal site for sludge from a sewage treatment plant the county plans to construct with a grant from the Environmental Protection Agency.

This tract is isolated from other National Forest System lands. It is surrounded on all sides by private land. Because of these factors and its relatively small size, the tract is not a manageable unit for the U.S. Forest Service. Further, the Department of Agriculture has reported that this property contains no deposits of valuable minerals. There has been an application for an oil and gas lease on the tract. The application is being held without action pending completion of the proposed sale. Such leases are common in the area, but are ordinarily for speculation only because the potential for oil and gas development is low. There are no coal deposits on the property.

Craig County has been using a portion of this parcel for landfill purposes under a permit from the U.S. Forest Service. The county desires to expand the landfill. Alternative sites in the area are difficult to locate, at least in part because most of the land in the county is owned by the United States. The county has easements that provide access to this site so long as it is used for landfill purposes.

H.R. 5183, as amended by the committee, would provide that once Craig County pays fair market value and the tract is conveyed to it, the county will retain all right, title, and interest in the property that was previously held by the United States. The committee concluded, as recommended by the Department of Agriculture, that no public purpose reverter clause should be included in the sale. Customarily, reverters are retained by the United States when conveyances of Federal real property are made to State or local governments. They usually become effective if the property is put to other than public use. However, in this case, the parcel is relatively small in size and has very little mineral potential. Further, the United States will receive fair market value for the land that will take account of whatever mineral potential it has. The committee believes that in these circumstances, protection of the public interest does not require the reversion provision. The committee's action in this matter does not signal any abandonment of the general policy that public purpose reverter provisions should be included when conveyances of federally owned real property are made to State or local government units.

Mr. Speaker, I ask the Members to join in support of this modest bill that serves the purposes of units of both the Federal and State governments.

Mr. Speaker, I yield such time as he may consume to the gentleman who represents the area in question, the gentleman from Virginia [Mr. BOUCHER].

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Mr. BOUCHER. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 5183, legislation I introduced to authorize the Forest Service to convey 52 acres of Federal land to Craig County, VA.

I want to thank the gentleman from North Carolina [Mr. WHITLEY], for his expeditious handling of the bill in subcommittee and the gentleman from Texas [Mr. DE LA GARZA], for promoting passage of the bill in the full committee and for yielding this time to me today.

The parcel in question is currently being utilized by Craig County as a solid waste landfill under a special use permit from the Forest Service, Passage of H.R. 5183 will ensure that the county can continue this use of the tract and that the county can manage the land as its interests require.

Totally surrounded by private land, this parcel is not useful to the Forest Service's programs or objectives. The property has been designated as excess property by the Department of Agriculture.

The continued operation of this site by the county as a sanitary landfill is vital to the interests of the county's residents. The Forest Service owns fully 55 percent of the land area in Craig County, and this fact severely limits the county's options for locating public facilities. Clearly, it is in the county's interest to acquire title to this tract so that its continued operation as a landfill can be assured.

The bill provides that fee simple title will be conveyed to the county upon the payment by the county of fair market value for the tract. The county has budgeted a sufficient sum for purchase of the tract and is prepared to pay fair market value.

In view of the fact that the parcel is not useful to the accomplishment of the Forest Service's objectives, and in view of the clear need of the county to acquire the land, I commend this measure to my colleagues and urge its approval.

In conclusion, I again want to thank the gentlemen from Texas and North Carolina for their help with H.R. 5183. I also want to acknowledge the outstanding efforts of Mr. Zane Jones, chairman of the Craig County Board of Supervisors, and Mr. Jeffery Johnson, Craig County administrator, in developing this legislation and in testifying in support of its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I reserve the balance of my time.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5183, as reported by the Committee on Agriculture, by a voice vote in the presence of a quorum on June 22, 1984, would direct the Secretary of Agriculture to convey certain National Forest System lands—approximately 52 acres—to Craig County, VA, upon receipt by the Secretary of payment of the fair market value of such land.

The land to be conveyed is part of the Jefferson National Forest and was acquired from private parties in 1936. It is surrounded on all sides by privately held land and is isolated from other forest system lands. Craig County has held a special-use permit, at no charge, from the Forest Service since 1973 to use 10.5 acres of the tract for a sanitary landfill. The county seeks the 52 acres to expand the landfill.

The reverter clause provision normally attached to such land sale bills, if the property is put to other than public use by State or local governments, was deleted in this bill at the recommendation of the Department of Agriculture because it was stated that "no public interest" would be served by such reverter clause. The deletion of that clause from the sale documents in this instance is not to be taken as any indication of an abandonment of the general policy that public purpose reverter provisions should be included when conveyance of federally owned real property are made to State or local governments.

There being no objection to the form or content of this legislation, testimony in favor of the sale, as contained in this bill, by the Department of Agriculture, no further use of the land proposed by the U.S. Forest Service, and receipt of the fair market value for the land by the United States, it is recommended to the Members that this bill do pass as reported by the committee.

Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA], that the House suspend the rules and pass the bill, H.R. 5183, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT

Mr. SWIFT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1250) to provide that registration and polling places for Federal elections be accessible to handicapped and elderly persons, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1250

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Voting Accessibility for the Elderly and Handicapped Act".

PURPOSE

SEC. 2. It is the intention of Congress in enacting this Act to promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration and polling facilities for Federal elections.

SELECTION OF POLLING FACILITIES

SEC. 3. (a) Within each State, except as provided in subsection (b), each political subdivision responsible for conducting elections shall assure that all polling facilities for Federal elections are accessible to handicapped and elderly voters.

(b) Subsection (a) shall not apply to a facility—

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State—

(A) determines that all potential polling facilities have been surveyed and no accessible facility is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible facility will be assigned, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State), to the nearest accessible facility.

(c)(1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling facilities in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

SELECTION OF REGISTRATION FACILITIES

SEC. 4. (a) Each State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.

(b) Subsection (a) does not apply to any State that has in effect a system that provides an opportunity for each potential voter to register by mail or at the residence of such voter.

REGISTRATION AND VOTING AIDS

SEC. 5. (a) Each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including—

(1) instructions, printed in large type, conspicuously displayed at each permanent registration facility and each polling facility; and

(2) information by telecommunications devices for the deaf.

(b) No notarization or medical certification shall be required of a handicapped voter with respect to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law—

(1) to automatically receive an application or a ballot on a continuing basis; or

(2) to apply for an absentee ballot after the deadline has passed.

(c) The chief election officer of each State shall provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under this section, assistance under section 208 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-6), and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.

ENFORCEMENT

SEC. 6. (a) If a State or political subdivision does not comply with this Act, the United States Attorney General or a person who is personally aggrieved by the noncompliance may bring an action for declaratory or injunctive relief in the appropriate district court.

(b) An action may be brought under this section only if the plaintiff notifies the chief election officer of the State of the noncompliance and a period of 45 days has elapsed since the date of notification.

(c) Notwithstanding any other provision of law, no award of attorney fees may be made with respect to an action under this section, except in any action brought to enforce the original judgment of the court.

RELATIONSHIP TO VOTING RIGHTS ACT OF 1965

SEC. 7. This Act shall not be construed to impair any right guaranteed by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

DEFINITIONS

SEC. 8. As used in this Act, the term—

(1) "accessible" means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined under guidelines established by the chief election officer of the State involved;

(2) "elderly" means 65 years of age or older;

(3) "Federal election" means a general, special, primary, or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commisioner to, the Congress;

(4) "handicapped" means having a temporary or permanent physical disability; and

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

EFFECTIVE DATE

SEC. 9. This Act shall apply with respect to elections taking place after December 31, 1985.

The **SPEAKER** pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Washington [Mr. SWIFT] will be recognized for 20 minutes and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington [Mr. SWIFT].

Mr. **SWIFT**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1250 is a bill to improve access to registration and polling facilities for elderly and disabled voters.

For the last several years, a coalition of more than 50 groups, known as the Coalition for Voter Accessibility, has been working toward passage of this legislation. Members of the coalition range from the Paralyzed Veterans of America to the Leadership Conference on Civil Rights, and from the American Association of Retired Persons to the American Council of the Blind.

They argue, correctly, that the right to vote is among the most fundamental rights of citizens in this country, and that we should seek to eliminate all barriers—whether they be procedural or physical—that limit people's ability to exericise that right.

The Task Force on Elections and the Committee on House Administration have worked hard, Mr. Speaker, to reduce some of those barriers. At the same time, we have consulted extensively with State and local election officials to minimize any administrative or financial burdens that might be imposed on them by this legislation.

We believe that we developed a good, solid compromise that will accomplish both of those worthy goals. The compromise now in H.R. 1250 consists of several major parts.

First, it addresses polling places. It requires that, as of December 31, 1985, polling places used in Federal elections should generally be accessible. Many, if not most, of them can be made accessible simply by moving to accessible parts of inaccessible buildings, or by moving from inaccessible buildings to accessible ones.

For example, the chairman of the board of election commissioners in Cook County, IL, estimated recently that the county can improve its record from one-third accessibility to two-thirds, simply by relocating to existing handicapped accessible sites.

If an accessible site is not readily available, it may be possible—and it is quite acceptable under this bill—to make one temporarily accessible. Often barrier-free design features, such as ramps, can be provided relatively inexpensively.

One committee witness, Mr. Joe Johnston from Thurston County, WA, testified that:

> By getting the service clubs, the veterans organizations, [and] various [other] groups involved, we actually converted all 162 polling places in [the] county for less than $2,000, of which * * * $100 or less * * * was the only cost to the county.

The committee expects, Mr. Speaker, that the situation will be similar in other parts of the country—that it will be possible in most cases to provide polling sites that are accessible to disabled voters.

There will be those instances, however, in which that will not be possible. The committee recognizes that some local election jurisdictions will encounter serious difficulty trying to provide accessible polling sites.

In those cases, Mr. Speaker, this bill does provide for exemptions to be granted. The chief election officer of a State may grant an exemption to the accessibility requirement:

If local election officials have surveyed all potential polling facilities and are unable either to find an accessible facility that is available, or to make one temporarily accessible;

And any elderly or handicapped voter assigned to an inaccessible facility will be assigned, upon request, to the nearest accessible facility.

This very reasonable approach ensures, Mr. Speaker, that all elderly and handicapped voters who want to vote at the polls on election day will be able to. But it does so without requiring State and local election officials to make every single polling place accessible.

Second, this bill addresses registration sites. It requires a reasonable number of accessible registration facilities within each jurisdiction responsible for registration. Exempted from this requirement are those States that have either mail registration or registration in people's homes, since in those States voters need not go in person to register.

The third major portion of this bill provides registration and voting aids for elderly and handicapped voters. The aids include instructions printed in large type at each registration and polling facility, and information available by telecommunications devices for the deaf. These aids will enable particularly those who are hearing impaired to obtain registration and voting assistance.

Finally, the committee proposes to eliminate the requirement for notarization on absentee ballots for handicapped people, and for most medical certifications as well.

If a State or local election jurisdiction fails to meet its responsibilities under this legislation, enforcement is through court action. However, before a suit may be filed, a period of 45 days must have elapsed since the plaintiff notified the chief election officer of the State of the intention to file suit. The committee hopes that in that 45-day period an accommodation short of court action can be reached.

And, if it is necessary to go to court, judgments are limited to declaratory or injunctive relief. They may not include monetary damages or attorney's fees. Our primary goal in this section is to ensure compliance, not to punish or impoverish local election jurisdictions.

Two other points I should touch on just briefly, Mr. Speaker, before I finish. First, in one of many efforts to include the maximum amount of flexibility in this legislation, the definition of what constitutes accessibility, is left to the chief election officer of each State.

This is to ensure that the guidelines will not be in conflict with other accessibility guidelines in use in that particular State.

Second, the bill requires that after each general election, each chief election officer should report to the Federal Election Commission the number of accessible and inaccessible polling sites in the State. The FEC will, in turn, report the information to Congress.

This survey will indicate how much progress is being made in improving accessibility at polling places. The information will be useful, both to the States—many of which are already taking steps to improve the electoral procedures available to elderly and handicapped voters—and to the Congress.

Mr. Speaker, I would like to close by saying that I think we have a very workable piece of legislation here that will significantly improve voting accessibility for elderly and handicapped voters, but that will be possible for State and local election officials to implement smoothly.

We heard testimony and had meetings with officials from States as diverse as South Carolina, Minnesota, Utah, and Washington; from States as big as California and New York; and from States as small as Rhode Island.

We have taken their testimony and incorporated the vast majority of their suggestions.

Finally, I would like to commend the original sponsors of this bill, particularly the gentleman from New York [Mr. Fish] and the gentlemen from Pennsylvania [Mr. Coyne and Mr. Walgren]. They have been most cooperative and helpful throughout our work on this bill, which we greatly appreciate.

This is a good bill, Mr. Speaker, and I urge all my colleagues to support it.

Mr. Speaker, during committee consideration of H.R. 1250, the text of the bill, H.R. 5762, was substituted for the original text of H.R. 1250. There were a number of cosponsors on both H.R. 1250 and H.R. 5762, but only the cosponsors of H.R. 1250 are listed on the reported bill.

As a result, I would like to note for the record that additional Members who cosponsored H.R. 5762, which is now the text of H.R. 1250, include in addition to myself, Mr. Hawkins, Mr. Frenzel, Mr. Thomas of California, Mrs. Vucanovich, Mr. LaFalce, Mr. Smith of Florida, Mr. McHugh, Mrs. Johnson, Mrs. Holt, Mr. McGrath, Mr. Badham, Mr. Studds, Mr. Reid, Mr. Florio, and Mr. Durbin.

The Association of Election
Commission Officials of Illinois,
June 22, 1984.

Re handicapped voter accessibility, H.R. 5762.

Hon. Al Swift,
U.S. House of Representatives, Washington, DC.

Dear Congressman Swift: On behalf of the Association of Election Commission Officials of Illinois and the Chicago Board of Election Commissioners, I want to congratulate you and your committee on the proposed substitute for H.R. 1250 (H.R. 5762) to provide equal access to voting rights. I have heard many favorable comments on these proposals from other election authorities.

This proposal represents a realistic and effective approach to guaranteeing that our handicapped and elderly citizens be brought into the mainstream of the electoral process and that no person be denied the right to vote because of their age or disability.

I assure you that we are anxious and ready to lend any assistance that we can to assure passage of this legislation in its proposed form. If there is anything I personally or the Association can do, please do not hesitate to ask.

I also would like to thank your staff for their fine work and research involved in this legislation and the problem of providing equal voting opportunities for the elderly and handicapped. I especially want to single out Kathy Jarvis, who was so helpful and cooperative.

Certainly, all persons who are concerned about equal access to voting rights should be pleased and satisfied with the work of your committee, and you are to be commended.

The Chicago Board of Election Commissioners feels that it is a very workable bill, and we forsee minimal problems in its implementation.

Thank you for your many considerations and cooperation.

Very truly yours,
Michael E. Lavelle,
President.

□ 1320

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1250, as amended. This compromise is the result of three hearings and several meetings with representatives of the handicapped coalition and State and local election officials. The bill was unanimously reported from our committee.

There are several important changes from the original bill. The chief State election officials shall proscribe guidelines for accessibility rather than the U.S. Attorney General. Additionally, there are two provisions that permit an exemption to the accessibility requirement. The first is an emergency exemption. The committee heard testimony from Chicago election officials relating their experience during a major snow storm that required them to relocate 200 precincts at the last moment. The second exemption can be granted by the chief election official if all potential polling places are surveyed and they are unable to meet the accessibility requirement and if they allow any elderly or handicapped voter, upon advance request, to be reassigned to another polling place.

The committee also removed the requirement that paper ballots be provided in each polling place as many jurisdictions use punch cards as absentee ballots. The bill permits the voter to obtain assistance from an individual of their choice so long as the person is not either a representative of the voter's union or the voters employer. Additionally, the bill provides that there should be at least one place in the State that individuals who are hearing impaired can call for information on registration and voting.

The original bill required that all registration sites be accessible. This provision was changed to exempt those States with mail registration and to only require States to make a reasonable number of registration places accessible.

Mr. Speaker, the minority believes this is a fair compromise and should go far to improve access to registration and polling places. The bill passed unanimously in committee and I know of no objection to it. I would urge its adoption.

Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. Tauke].

Mr. TAUKE. Mr. Speaker, I thank the gentleman for giving me an opportunity to raise some questions relating to the legislation.

If I could have the attention of the gentleman from Washington. Perhaps he would be able to assist me in understanding this bill.

First of all, let me just say that in my own State of Iowa we have been quite concerned about this issue and have attempted to establish some methods to deal with the problems of accessibility to voting. On the registration side we have postcard registration, which I understand is something encouraged by this legislation.

When it comes to voting day, we have two kinds of provisions. The first, of course, in addition to the access to polling places, the first is that we have curbside voting for those who might not be able to get into the polling place. For example, an individual can drive up to the polling place and two election officials can come out from the polling place to the curbside to help that voter. We also have, in order to help voters who may, for example, have difficulty seeing the ballot, allow them to take someone into the voting booth with them.

My concerns are whether these standards that we have in Iowa are sufficient in order to meet the requirements of this act.

I wonder if the gentleman from Washington can tell me if, for example, cubside voting is sufficient in order to make a precinct qualify as accessible under this bill.

Mr. SWIFT. Mr. Speaker, will the gentleman yield?

Mr. TAUKE. I yield to the gentleman from Washington.

Mr. SWIFT. I thank the gentleman for yielding.

There is nothing that would preclude that to be used, but it would be up to the voter. Curbside voting by itself would not be adequate. The chief elections officer of the State would have to be persuaded that that polling place could in no other place be made accessible and then the voter would have the option of being, if it could not be made accessible in any way either because of cost or some other factor, then the voter would have to have the option of being reassigned to a polling place that was physically accessible.

Mr. TAUKE. Now, how do you deal with the State constitutions that require that voters vote in the precinct in which they reside?

Mr. SWIFT. If the gentleman would yield further, that is one of the reasons for the delay in the effective date. This does not go into effect until December 1985. We give 2 years for States to make those adjustments.

Mr. TAUKE. In my own State we cannot change the State constitution without having an amendment passed by two successive general assemblys and then put on the ballot. So it is impossible to amend the State constitution within 2 years.

Mr. FISH. Mr. Speaker, will the gentleman yield to me?

Mr. TAUKE. I yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding.

This problem that some State constitutions, as opposed to State laws, require that a voter vote in no place other than that to which he has been assigned came to our attention just late last week. Obviously we do not want a situation where a voter goes to an accessible polling place in a Federal election and then in the years in which there is no Federal election, but a local election, have to return to an inaccessible polling place. This issue is being dealt with in the Senate. We expect it to be taken care of in the Senate bill in an amendment. I am very sure that the House will accept the Senate amendment.

Mr. TAUKE. I thank the gentleman for his comments.

My concern generally is and I guess it is one that we ran into in the State of Iowa when we looked at this issue is that you have a balance. In a rural area you can on the one hand encourage more voting places so that people have something close to their home. So they are driving 5 miles instead of 50 miles in order to vote.

Or, if you make the restrictions on polling places severe, you will have fewer polling places and you will have them accessible to all the voters if they can drive 10 or 20 or the 30 miles in order to get there.

I just hope that in this act as it moves forward that there will be every effort made to insure that the current State laws which have been made in an effort to deal with this problem have an opportunity to be examined and will, in as many instances as possible, permit the State to comply with this act.

□ 1330

Let me ask a couple other questions, if the gentleman from Washington will give me his attention.

On page 5—and this may be clarified in the committee report which I have not had time to digest—there is a section which suggests that each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including information by telecommunication devices for the deaf.

Could the gentleman explain to me what that means and how many of these devices must be available?

Mr. SWIFT. If the gentleman will yield, yes, the devices are called TDD devices, and the use of an 800 number in a State, the purpose of this law would be complied with by having one.

Mr. TAUKE. So if a State then has one of these devices, they will be OK?

Mr. SWIFT. I did indicate that if you had an 800 number; in other words, it has to be accessible. But if someone clear across the State could call toll-free that single place, that would be sufficient to comply with this provision of the law.

Mr. TAUKE. What kinds of information must be on that? Do they have to have, for example, all of the local candidates listed on that information, or on that device, or is this more information about how you register, how you go about voting?

Mr. SWIFT. If the gentleman will yield, it is the latter type of information that we are most concerned with—how can you register, where can you register, where is my precinct, those kinds of questions.

Mr. TAUKE. Finally, could the gentleman tell me if in any instance the State official responsible for handling voting related issues can assign any of the requirements that are contained in this act to local officials? For example, in my own State, county auditors are the local election officials, and they have the responsibility for conditions in each county. Can the State chief election official or chief election officer ask the county officials to assure, for example, that handicapped or elderly voters are assigned to an accessible facility, receive that information from the local officials and have that constitute adequate information for the chief election official of the State to certify that to the Federal officials?

Mr. SWIFT. If the gentleman will yield, the answer is yes.

Mr. TAUKE. I thank the gentleman for his answers. I think that they do allay some of my concerns. I congratulate the author of the bill and the members of the committee for their effort to deal with the issue. I do hope that as this moves forward that the State constitution problem will be addressed and that an effort will be made to look more carefully at some of the State laws that have been designed to meet these needs, particularly in the rural areas, to see if the act can be structured in a way which allows those State laws to meet the requirements of the act.

Mr. ROBERTS. Mr. Speaker, I reserve the balance of my time.

Mr. SWIFT. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. COYNE].

Mr. COYNE. Mr. Speaker, the right to vote is guaranteed by the Constitution. However, the right to vote and the ability to vote are not necessarily the same. For approximately 35 million elderly and handicapped Americans, this right has been dependent on their ability to navigate physical barriers. I am proud to have been an original cosponsor of H.R. 1250, the Voting Accessibility for the Elderly and Handicapped Act, a measure which is intended to correct this situation.

To understand the importance of this legislation, imagine that you are confined to a wheelchair and arrive at your polling place on election day, only to discover that it is located on the third floor of the building and no elevator is available. In varying degrees, this scenario is repeated many, many times each election day. The ability to cast a vote should not be stymied by a flight of stairs.

H.R. 1250 is aimed at improving the accessibility to registration and polling facilities for Federal elections to handicapped and elderly individuals. This legislation provides that each State political subdivision responsible for conducting elections shall assure that all polling facilities for Federal elections are accessible to handicapped and elderly voters. If all potential polling facilities have been surveyed, and no available site is accessible, or can be made temporarily accessible, handicapped and elderly voters assigned to an inaccessible facility will be assigned, upon request, to the nearest accessible facility. Supplemental voting and registration aids, such as large-type instructions and information by telecommunication devices for the deaf, will be made available. Notarization and medical certification for absentee ballots will, in general, no longer be required of handicapped voters.

As Judge Leonard Staisey from Pittsburgh, who is himself handicapped, said when he appeared before the Task Force on Elections to testify concerning voting accessibility legislation then before the committee:

> It affords to those of us who are handicapped a real opportunity to participate in elections and to come in from the edge of

our society into the mainstream of American political life. I have no doubt that the handicapped and elderly will actively participate in this new dimension in living * * *.

The right to vote should not be contingent upon two strong legs, perfect vision, or hearing. We all lose when access to the polls is denied to any eligible voter. I urge my colleagues to vote in favor of H.R. 1250.

Mr. SWIFT. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALGREN], a cosponsor of the legislation.

Mr. WALGREN. I thank the gentleman for yielding.

Mr. Speaker, I want to add my support to this bill and urge my colleagues to be supportive of it. I am particularly pleased that the House of Representatives is considering H.R. 1250, known as the Voting Accessibility for the Elderly and Handicapped Act, and I think we ought to stop and pause, to think in our own body how this House would not be considering this bill if it were not for the special efforts of the chairman of the committee of jurisdiction, Mr. SWIFT, and the particular interest that the gentleman from New York [Mr. FISH] has brought to this legislation. Oftentimes nothing happens in the Congress of the United States, and these gentlemen are responsible for something very good happening in this area today.

It should go without saying that the right to participate in government is fundamental to a democracy. But we have found that there are subtle and not so subtle barriers that have too often discouraged many handicapped and elderly citizens from going through the process of registering and the process of voting. The bill today would require that essentially all polling places in Federal elections be accessible and in States without mail or door-to-door registration that a reasonable number of registration facilities be provided, along with the notice and the information that will be necessary to access them.

We need this bill really because it is fair. Justice in the old Indian sense of the word has something to do with asking us to walk a mile in the moccasins of another to understand their view of the world. And I think we should all remember that we are temporarily able bodied. Those of us who are temporarily able bodied are often insensitive to the obstacles faced by people with particular handicaps. We often do not stop to think how much energy, pure energy, it takes for some people with special disabilities to get out and about and how a small barrier is really an effective barrier blocking them from participating in something such as elections in our country.

Sometimes polling places are located on third and fourth floors, inaccessible to wheelchairs. The levels of information on the voting machine may be simply too high for somebody who keeps his seat in a wheelchair to read. These are things that we often do not think about because in many ways we have always done it that way in the past. And particularly the location of voting places has always historically been that way, but certainly we ought to rethink those kinds of obstacles that we are presenting to people with special handicaps.

I think, too, this is an important bill because it goes to the very heart of the standing of citizens in our society. Since coming to the Congress, I do not think I have been impressed by anything more than the fact that in many ways it is not so much who is elected to Congress but what the quality of the citizen relationship with that person, whoever it may be, is.

I remember the poem by Robert Frost, around the time of the Kennedy inauguration, had something to do with we were a nation realizing our potential, but in a sense we as citizens were withholding ourselves from our future as a nation.

In many ways the problems of this country are largely those that our public officials are not driven by our citizens in a proper way, and we do not want to put any barriers in front of our citizens that would block them from realizing the potential that citizens have on an individual basis in this democracy.

So the bill goes to the very standing of a citizen in the process, the act of voting which ties that citizen together by human nature with those who happen to be elected, and this bill takes very important steps in making that be as full as it possibly can.

The disabled and the elderly do not want to be relegated to freight elevators of disenfranchised by structures and processes that are designed only for the able bodied, and our form of government literally will be the poorer if we do not enhance the participation of everyone, and especially those who face special barriers in the day-to-day activities of life as we know it.

We should be encouraging participation and not discouraging it, and this bill goes a long way to realizing that participation by many individuals in our society. I rise in strong support of the bill, and compliment those who have been so important in enabling it to happen, and I urge my colleagues to support it.

Mr. ROBERTS. Mr. Speaker, I yield 5 minutes to the author of the bill, my friend and colleague, the gentleman from New York [Mr. FISH].

Mr. FISH. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of H.R. 1250. In my years in Congress, I have worked closely with civil rights organizations on major legislative initiatives seeking to expand and protect individual rights. In my view, the most important right anyone can express is the right to vote. The Congress has long recognized voting as one of the fundamental privileges of all Americans, and throughout our history this right has been expanded. During the debate on the Voting Rights Act extension in 1982, which continued and strengthened the guarantees of equal opportunity to vote for minority citizens, we recognized another significant segment of our population, the handicapped, had not been able to fully participate in the electoral process. We are talking about 35 million elderly and handicapped. An amendment to the Voting Rights Act permits the blind and disabled to receive assistance in voting in Federal elections. This provision was helpful, but not enough to overcome the barriers to registration and voting for the handicapped and elderly—specifically how to get to and enter polling places in order to receive the assistance permitted by the Voting Rights Act.

In 1982, I introduced the first version of the legislation we are discussing today. The Voting Accessibility Coalition and congressional supporters were able to get hearings on the version introduced in the 98th Congress, H.R. 1250, last July. Now, almost 1 year later, we are on the verge of approving this legislation. As with all civil rights bills, this is a bipartisan effort and contains compromises on all sides—from the handicapped and elderly organizations and from State and local election officials. I am particularly grateful to the Task Force on Elections, its members and staff, for working out this agreement and for keeping in mind the primary purpose of voting accessibility legislation—that all Americans have an equal chance to vote.

Chairman SWIFT of the Task Force on Elections deserves particular credit for his determination to see this legislation to fruition. Without his leadership, his skill, and patience, we would not be here today. The Voting Accessibility Coalition is likewise to be commended for their understanding of problems and costs involved in mandatory 100 percent compliance and their willingness to accommodate the concerns of State election officials.

Mr. Speaker, the need for this legislation is clear. Handicapped and elderly voters face impediments in the form of physical barriers that make it difficult and sometimes impossible for them to vote in Federal elections. Impediments as simple as a hill leading to the polling place or steps into a building often prevent people in wheelchairs from reaching the voting booth. Pathways which are poorly lit or a long distance from the street create problems for those elderly and handicapped who have difficulty walking. Oral or large-type instructions for the blind and visually impaired and written instructions for the deaf are provided in only a few jurisdictions in the United States.

Some may cite the fact that absentee ballots are available everywhere, and this provides ample opportunity for those unable to reach the polls to participate in the voting process. Voting absentee is not the answer. The elderly and handicapped want to participate fully with other citizens in casting their ballots. Absentee ballots render them invisible. They must vote before election day, without the benefit of last-minute information that may determine their choice. The application process is often complicated and time consuming. Although this process is streamlined by H.R. 1250, the testimony before the Task Force on Elections made it clear that full participation at the polls was by far preferred over the use of absentee ballots.

H.R. 1250 requires that each political subdivision within each State assure that polling places be accessible for Federal elections. The accessibility requirements do not apply under specific circumstances: In the case of an emergency, as determined by the chief election officer of the State, or for areas where all polling facilities have been surveyed, and no accessible facility is available, and any elderly or handicapped voter will be reassigned, upon the voter's request, to the nearest accessible facility. It is intended that these exceptions be a last resort.

At the end of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission the number of accessible and inaccessible polling facilities in such State. This information, when compiled, shall be transmitted to the Congress.

H.R. 1250 also permits States to establish guidelines for accessibility. The committee report notes that each State should examine its current handicapped regulations and modify them where necessary to insure compliance with the requirement of accessibility "for the purpose of voting or registration."

Since voters can register anywhere, as opposed to being assigned to a specific site to vote, States are required to provide a reasonable number of accessible registration sites. Private homes are exempted from this requirement, as are States which rely solely on mail registration.

To assist voters at registration and polling sites, supplemental aids, including large-print instructions and information by telecommunications devices for the deaf are required. Notice calculated to reach elderly and handicapped voters notifying them of these voting aids, the availability of voter assistance under the Voting Rights Act, and procedures for voting by absentee ballot are required by H.R. 1250.

The hearing record demonstrated a great deal of differences among the States regarding medical certification and notarization for absentee ballots. H.R. 1250 eliminates the need for notarization. States may still help out handicapped voters by requiring initial medical certification in order to obtain an automatic absentee ballot in future years. Medical certification may also be required when the deadline for applying for an absentee ballot has passed, as in the case of a medical emergency.

Enforcement of the Voting Accessibility for the Elderly and Handicapped Act is achieved by either the Attorney General or an individual aggrieved by noncompliance bringing a suit in Federal court for declaratory or injunctive relief. In order to permit an opportunity for compliance and to avoid unnecessary court action, plaintiffs may file suit only 45 days after notifying the chief election officer of the State of the complaint.

Finally, this bill would take effect at the end of 1985, permitting States to modify their election laws in time for the 1986 Federal election.

Mr. Speaker, H.R. 1250 does not supersede other laws—it supplements them. If other Federal laws already require a particular building or program to be accessible, the narrow scope of this legislation does nothing to diminish the existing obligation.

This measure also represents a beginning in the effort to facilitate full access to the democratic process for millions of disabled and elderly voters. It constitutes a floor, not a ceiling, on the voting rights of disabled and elderly Americans. The States can and should enact even stronger legislation that is aimed at eliminating all of the barriers which discourage and even prevent physically impaired individuals from voting.

Essentially, Congress is establishing a principle of mandatory accessibility which is to be carried out by the States. The chief election officer of each State will be responsible for establishing guidelines for accessibility, conducting the survey of polling places, and consulting with local election officials on how to implement this act. A great deal of flexibility has been built into H.R. 1250.

Mr. Speaker, I know of no opposition to this legislation. I urge my colleagues to support H.R. 1250.

□ 1340

Mr. ROBERTS. Mr. Speaker, I thank the gentleman for his contribution.

● Mr. BIAGGI. Mr. Speaker, one of the most unacceptable forms of discrimination, which continues to exist in this Nation, is the disenfranchisement of millions of elderly and handicapped citizens who are unable to vote because of inaccessibility to voting facilities.

The House has before it today an important bill, one I am proud to cosponsor, which will take some important steps in eliminating this discrimination. H.R. 1250, the Voting Accessibility for the Elderly and Handicapped Act, establishes a number of requirements designed to improve access to both registration and polling facilities for the actual process of voting.

Specifically, the bill requires all polling places for Federal elections be made accessible to handicapped and elderly voters. The only exception to this would be in those cases where all potential polling places have been surveyed and no accessible facility can be made available. However, any elderly or handicapped voter who requests can be reassigned to the nearest accessible polling place.

The measure also requires that a reasonable number of permanent registration facilities accessible to the elderly and handicapped be made available within each local jurisdiction responsible for voter registration.

Another important dimension of this bill is its requirement that special voting aids be made available for handicapped and elderly individuals, including instructions printed in large type at registration facilities and availability of information on voting and registration through telecommunication devices for the deaf. In addition, public notice about the availability of these aids must be published before election.

As a means to help ensure that these provisions are in fact enforced, the bill does allow an aggrieved party, or the Justice Department on behalf of such a party, to file a suit to obtain a court order to remedy violations or to force compliance.

The Congress has a long and proud history of enacting laws aimed at opening up the voting process for those of our citizenry who were denied on the basis of race, sex, or age. Women were afforded full voting rights through constitutional amendment. The Voting Rights Act of 1965 and its amendments have opened up new opportunities for blacks to vote. Finally, the voting age was lowered to 18 to afford these people this important right. In each case, a remedy was developed to combat a form of discrimination. So, too, do we approach our consideration of H.R. 1250 which also seeks to combat discrimination—this one caused by inaccessibility to the voting place.

H.R. 1250 should be viewed from another context as well. Just as in the case of another bill we are considering today, House Concurrent Resolution 321—dealing with early projections of elections—our purpose must continue to be to find ways to stimulate increased voter participation. I have spent a great deal of time in recent years trying to advance several proposals, all with the expressed purpose of increasing voter participation. In our last Presidential election, we saw a paltry 53.9 percent of the eligible voters actually participating—a dangerously low figure. Surveys point to a variety of reasons for those who choose not to participate, but normally one of the main ones is inaccessibility, either of a physical variety, such as what we seek to remedy today, or inaccessibility related to convenience of voting times and/or location.

I urge passage of this bill and would like to see it serve as a catalyst for additional action on other bills which would improve upon our record in this important area.●

● Mr. FORD of Michigan. Mr. Speaker, I rise today in favor of H.R. 1250, which will guarantee that the 40 million disabled and handicapped Americans will be able to exercise their constitutional rights to vote in Federal elections. For far too long these citizens have faced hardships and barriers at the polling place. They have been denied one of their most fundamental rights and responsibilities because of physical, legal, and social barriers. H.R. 1250 will ensure that these practices no longer continue.

This bill does not require any expenditure of Federal dollars and allows State and local governments broad flexibility in determining how to meet the voting needs of the handicapped and elderly. At the same time it provides maximum protection of disabled Americans who want to participate in the democratic process. Under the provisions of H.R. 1250:

All polling places in Federal elections must be accessible, unless no accessible facility is available and no available site can be made temporarily accessible;

In States without mail or door-to-door registration, a reasonable number of accessible permanent registration facilities must be provided;

The number of inaccessible polling facilities and the reasons therefor must be reported to Congress;

States must take available and give public notice about registration and voting aids, such as large print instructions and access to voting information by telecommunications devices for the deaf [TDD's]; and

Handicapped voters no longer need to obtain notarization in order to vote by absentee ballot, and there is no medical certification of such ballots under most circumstances. The bill also allows for legal action against election officials if its provisions are not followed.

I urge my colleagues to join me in supporting this long overdue legislation which extends to all elderly and disabled citizens what should be the right of every American.●

● Mr. FAUNTROY. Mr. Speaker, I rise in support of H.R. 1250, the Voting Accessibility for the Elderly and Handicapped Act. This legislation mandates that by December 31, 1985, registration and polling places for Federal elections be accessible to handicapped and elderly persons. This requirement could be waived in cases where all potential polling places have been surveyed and no accessible facility can be made available, provided that any elderly or handicapped voters who so request are reassigned to the nearest accessible polling place.

The bill also provides that absentee ballots be made available for handicapped voters with no requirement for notarization or medical certification. Medical certification may be required, however, to receive absentee ballots on a continuing basis or after an application deadline has passed.

H.R. 1250 specifies that its requirements would be enforceable through lawsuits, brought either by the aggrieved party or by the U.S. Department of Justice, provided that the plaintiff first notifies the States' chief election officer and that a period of 45 days has elapsed since the notification. The bill stipulates, however, that lawsuits may be brought only to seek a court order remedying the violations, and not to seek monetary damages or attorney's fees.

Mr. Speaker, I strongly urge my colleagues to support this important legislation which would further extend the right to vote to all citizens.●

● Mr. MURPHY. Mr. Speaker, I rise in support of H.R. 1250. This piece of legislation addresses a problem basic to the vitality of any democracy; namely maximizing the voter participation of its citizenry. Our country's track record in terms of voter turnout is disturbing. This point has been well documented in recent years and countless research papers have explored the reasons behind low voter turnout. Troubling as this phenomenon of low voter turnout may be, there is a portion of that lack of turnout which is truly tragic and that is the fact that there are elderly and handicapped persons out there who don't vote, not because they don't want to, but because for one reason or another, they are physically unable to vote. H.R. 1250 addresses this problem in a reasonable and responsible way.

Voting is the one visible act by which the individual chooses one's leadership, endows it with power, expresses one's own views on the conduct of Government, and holds those in public office accountable to the will of the populace. Voting not only links the elected official to the governed, it also serves as a gatekeeper to any number of rights that the individual may have attained. Because the right to vote in a free and unimpaired manner preserves other basic civil and political rights, it is imperative that elderly and handicapped persons who want to vote are not penalized by the physical inaccessibility of the polling place. In recent years we have gained a great deal of knowledge in the area of accessibility. Through the use of inexpensive temporary ramps and the simple common sense of locating polling places in buildings that are by necessity accessible, for example auto show rooms, H.R. 1250 can be implemented successfully and without major financial expenditures.

A measure which improves voter participation improves the quality of Government. Elderly and handicapped persons who want to vote, should be able to vote alongside their able-bodied peers. H.R. 1250 accomplishes this objective and I am proud to stand in support of it today.●

● Mr. GILMAN. Mr. Speaker, I rise in support of the measure now before us, H.R. 1250, introduced by my friend and colleague, the gentleman from New York [Mr. Fish]. I was pleased to cosponsor this bill which has been endorsed by over 55 national organizations, every one of which I am certain will continue to support the rights and privileges of all handicapped and aging Americans.

This pending legislation requires that all polling and registration facilities be accessible to handicapped and elderly voters, with certain exceptions. Furthermore, each State is required to make available registration and voting aids for these individuals and establish judicial relief for noncompliance.

Voting has heretofore been a difficult and sometimes impossible task for many elderly and handicapped citizens nationwide. Architectural barriers, such as steps or inadequate doorways, often prevent those in wheelchairs from reaching designated voting booths. Only a few jurisdictions provide oral instructions for the blind and written instructions for the deaf. Even as all States allow the physically handicapped to vote by absentee ballot, critics liken the inconvenience and expense in casting ballots to a poll tax, requiring doctor's statements, ballot notarization, and early ballot submission to verify actual handicap.

Moreover, State laws vary substantially in their respective requirements for structural accessibility. Close to 30 States do not provide special consideration and revision by the House Administration Committee and its Task Force on Elections. The compromise provisions contained in the current version of the bill will require no expenditures of Federal funds, will be workable for State and local election officials, and will meet most of the needs of physically impaired voters. Applying to Federal elections taking place after December 31, 1985, this revised compromise bill has been cosponsored by every member of the Task Force on Elections.

Essentially, it is the intent of Congress to facilitate, through this legislation, the inherent right to vote granted to all citizens. By improving access for handicapped and elderly individuals to registration and polling facilities for Federal elections, we can help in assuring this most basic of constitutional freedoms.

Accordingly, I urge my colleagues' strong support for this measure, as millions of disabled and elderly voters depend upon our actions in ensuring their unimpeded participation in the democratic process of our Nation.●

● Mrs. SCHNEIDER. Mr. Speaker, I rise today to express my strong support for H.R. 1250, legislation which will provide that registration and polling facilities for Federal elections be accessible to handicapped and elderly voters. As an original cosponsor of this bill, I believe that senior citizens and disabled individuals must be encouraged to participate in the democratic process. Clearly, without the benefit of wheelchair ramps, large type voting instructions, and readily available absentee ballots, many of these individuals are unable to exercise their right to vote. I feel strongly that we must pass H.R. 1250, and make an important step toward the voting rights for all Americans of legal age.

I am happy to say that in my own State of Rhode Island, current law already sets minimum standards for handicapped accessibility to polling places. The bill before us today will further benefit disabled and elderly Rhode Islanders by:

Requiring States to provide large type voting instructions as well as information available by telecommunications for the deaf.

Eliminating the requirement for notarization on absentee ballots for handicapped citizens, and for most medical certifications as well.

Providing for enforcement through court action.

Mr. Speaker, the need for this legislation is clear. I urge my colleagues to join me in voting for its passage.●

● Mr. LAFALCE. Mr. Speaker, on December 3, 1982, the United Nations General Assembly unanimously approved a resolution adopting a "World Program of Action for Disabled Persons." This World Program of Action calls upon governments, international and national organizations, and people everywhere to increase participation of disabled persons in national and community life.

In 1984, Congress has the opportunity to increase the participation of the handicapped as well as the elderly in a most treasured right in our national life—the right to vote—by approving the Voting Accessibility for the Elderly and Handicapped Act. Indeed, voting is a fundamental right constitutionally guaranteed to all American citizens.

However, because of inaccessible registration and polling places, many of the 35 million disabled and elderly Americans are precluded from exercising that right. They face innumerable barriers when attempting to register or vote. Granted, all States permit physically handicapped voters to vote by absentee ballot, but the inconveniences and expenses associated with casting absentee ballots often discourage the most patriotic citizens. For example, some States require the submission of doctor's statements with absentee ballots; others mandate that the ballots be notarized; still others require that the ballots be cast so early that voters are deprived of the right to make decisions based on last minute information and impressions. Often the handicapped voter is unaware that the polling place is inaccessible until Election Day, when it is too late to obtain an absentee ballot.

The Voting Rights for the Handicapped and the Elderly Act has the support of all concerned, including disability rights, senior citizen and civil rights organizations as well as State and local election officials. The legislation requires each political subdivision in the States responsible for conducting elections to provide an accessible polling and registration facility for every handicapped or elderly voter. If the registration or polling place in the handicapped or elderly voter's immediate facility is inaccessible that voter, upon request, will be assigned to the nearest accessible facility. This provision assures that the handicapped or elderly voter is accommodated without undue expense for the political subdivision.

Supplemental voting and registration aids such as instructions printed in large type, conspicuously displayed at each permanent registration and polling facility and information by telecommunications devices for the deaf, will be made available. Notarization and medical certification for absentee ballots will, with some exceptions, no longer be required of handicapped voters.

Our Nation's commitment to assist the handicapped and elderly has been one of our greatest social accomlishments—one which every American can look upon with great pride. Included in that list of accomplishments is the continual progress made in extending voting rights to all of its citizens. It is imperative that we ensure all handicapped citizens the opportunity to effectively participate in the democratic process.

As a cosponsor of H.R. 5762, the Voting Accessibility for the Elderly and Handicapped Act, I urge my colleagues to approve this important legislation.●

Mr. ROBERTS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SWIFT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington [Mr. SWIFT] that the House suspend the rules and pass the bill, H.R. 1250, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to improve access for handicapped and elderly individuals to registration and polling facilities for Federal elections.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SWIFT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

VETERANS' ADMINISTRATION PHYSICIANS' MILITARY RETIREMENT PAY WAIVER

Mr. EDGAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4694) to amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to waive mandatory reductions in military retirement pay of certain retired military officers recruited for employment by the Department of Medicine and Surgery.

The Clerk read as follows:

H.R. 4694

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4107, title 38, United States Code, is amended by adding at the end the following new subsection:

"(l) The Administrator may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to recruit a well qualified doctor of medicine or osteopathy for a position in the Department of Medicine and Surgery which otherwise cannot readily be filled.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Pennsylvania [Mr. EDGAR] will be recognized for 20 minutes and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. EDGAR].

GENERAL LEAVE

Mr. EDGAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4694.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. EDGAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4694 is legislation which would authorize the Administrator of Veterans' Affairs to waive mandatory reductions in military retirement pay of certain retired military officers recruited for employment by the Veterans' Administration's Department of Medicine and Surgery.

Prior to January 11, 1984, the Civil Service Reform Act of 1978 authorized the Office of Personnel Management to delegate to the Veterans' Administration the authority to grant exceptions to retired or retainer pay reductions when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. This authority expired on January 11, 1984.

Between July 1980 and January 1984, the VA exercised its authority prudently and approved exceptions for only 26 appointments. This number is low because exceptions were only approved when the retired military physician was in a scarce medical specialty, was being considered for a senior management position, or when there was a severe recruitment/retention problem in filling a particular position. By reinstating the authority to waive the retired or retainer pay reductions in specific cases, we would restore the VA's ability to compete with non-Federal employers for these experienced physicians. The Veterans' Administration has assured the Committee on Veterans' Affairs that it would continue to exercise this authority prudently.

I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of suspending the rules and passing H.R. 4694. This bill restores the authority of the Veterans' Administration to recruit retired military medical officers without forcing them to take a reduction in their military retirement pay. Previous authority expired in January of this year.

The VA has had this authority for a number of years. It was used sparingly and judiciously, and only in those instances where outstanding doctors could otherwise not have been recruited. I am confident that, if H.R. 4694 is passed, the VA would exercise that same caution and care in the future.

Mr. Speaker, the Congressional Budget Office and the Veterans' Administration report that this bill has no significant costs. It was unanimously reported by the House Veterans' Affairs Committee and I urge its passage.

I congratulate the gentleman from Pennsylvania, Mr. EDGAR, the chairman of the Subcommittee on Hospitals and Health Care, for his leadership on this bill. I also commend our chairman, SONNY MONTGOMERY, for his continuing efforts to improve the health-care delivery system of the Veterans' Administration.

● Mr. MONTGOMERY. Mr. Speaker, I rise in strong support of H.R. 4694. I want to thank the chairman of our Subcommittee on Hospitals and Health Care, the distinguished gentleman from Pennsylvania [Mr. EDGAR], and the very able ranking minority member of the committee, the gentleman from Arkansas [Mr. HAMMERSCHMIDT], for focusing attention on an issue that is of concern to the members of the Veterans' Affairs Committee and the Veterans' Administration.

Mr. Speaker, this bill is not costly. The few positions that would be affected in the Department of Medicine, however, are key positions and it is important that we pass the bill. As the gentleman from Pennsylvania has stated, the bill would extend authority to allow VA to bring in well qualified individuals to fill several important positions that otherwise might not be filled.

Mr. Speaker, I also want to thank my distinguished friend and colleague from Michigan Mr. [FORD], chairman of the Post Office and Civil Service Committee, for his cooperation in this matter. Although all positions covered in the bill are in the Veterans' Administration, realizing the subject matter contained in the bill could be of concern to Mr. FORD's committee, we discussed the bill with him so that should his committee desire to expand the measure to include other departments and agencies, his committee would have an opportunity to do so. I want to thank Mr. FORD and the ranking minority member of the committee, Mr. TAYLOR, and all members of the Post Office and Civil Service Committee for their cooperation.

Mr. Speaker, I urge my colleagues to support the bill.●

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDGAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I, too, would like to commend the chairman of our full committee, the gentleman from Mississippi, Mr. SONNY MONTGOMERY, who has helped to bring this bill to the floor, and also the ranking Republican member, the gentleman Arkansas, Mr. JOHN PAUL HAMMERSCHMIDT, who is both ranking on the full committee and on our subcommittee dealing with hospitals and health care.

It is a good bill; it passed our committee unanimously. I urge my colleagues to support it.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. EDGAR] that the House suspend the rules and pass the bill, H.R. 4694.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1350

PANAMA CANAL ACT OF 1979—AMENDMENTS RE INTEREST PAYMENT

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5655) to amend the Panana Canal Act of 1979 with respect to the payment of interest on the investment of the United States, as amended.

The Clerk read as follows:

H.R. 5655

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1302(b) of the Panama Canal Act of 1979 (22 U.S.C. 3712(b)) is amended by inserting immediately before the period at the end thereof the following: "; except that the part of the tolls and other receipts that covers interest on the investment of the United States in the Panama Canal pursuant to section 1602 and 1603 of this Act shall be deposited into the Treasury as miscellaneous receipts".

(b) Section 1603(b)(2)(A) of the Panama Canal Act of 1979 (22 U.S.C. 3793(b)(2)(A)) is amended by striking out "Treasury" and inserting in lieu thereof "Panama Canal Commission Fund".

SEC. 2. The amendments made by this Act shall apply only to tolls and other receipts of the Commission deposited in the Treasury on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. FIELDS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentleman from Texas [Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first I would like to say this measure comes from the Subcommittee on Panama Canal and Outer Continental Shelf chaired by the gentleman from Kentucky, Mr. CARROLL HUBBARD. He spent a great deal of time perfecting this legislation and I will now attempt to explain what it is.

Mr. Speaker, H.R. 5655 makes two small changes in the Panama Canal Act of 1979, both related to interest on the U.S. investment in the canal. The effect of these two changes is to stop the erosion of the U.S. investment base that has been occurring for the last 5 years, and to make the interest money collected after the date of enactment available to the U.S. taxpayers by depositing it with the General Treasury.

Under current law, interest on the U.S. investment in the canal has, since 1979, been deposited into the Panama Canal Commission Fund, a separate account in the Treasury, rather than into the General Treasury's miscellaneous receipts account. Money in the PCC Fund is earmarked for the Panama Canal Commission and cannot be spent for other purposes. In addition, because the act requires the U.S. investment to be reduced by the amount of tolls and other revenues taken in by the canal, the interest deposits have served to reduce the U.S. investment base. As a practical matter, the result has been that interest payments have decreased the principal. I think everyone would agree that this is an undesirable situation.

H.R. 5655 is designed to cure these defects in the current law. It does so by mandating that the part of the canal revenues attributable to interest on the U.S. investment be deposited into the General Treasury. A corresponding second amendment is necessary to make it clear that the interest so deposited into the General Treasury does not reduce the investment base, because it will no longer be counted in adjusting that base under section 1603 of the act.

Mr. Speaker, in closing let me compliment the gentleman from Texas [Mr. FIELDS] who is the new ranking minority member of our Panama Canal/Outer Continental Shelf Subcommittee, and who is the original sponsor of this legislation. He has done a good job on this bill, and I look forward to working with him in the future not only on this but on other matters. I commend H.R. 5655 to the Members of the House, and urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. FIELDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as has been pointed out by the chairman, this legislation was reported by the House Merchant Marine and Fisheries Committee, as well as by the Panama Canal/OCS Subcommittee, without a dissenting voice.

The legislation corrects a problem that has existed since the Panama Canal Act of 1979 was signed into law.

The authors of that act intended that an interest payment on the level of the U.S. investment in the canal be paid to the general fund of the Treasury, and that the rate of interest was to be established annually by the Department of the Treasury. It was intended that these funds be utilized by the general fund of the Treasury, unencumbered by any needs of the Panama Canal Commission. However, because of the final wording of the Panama Canal Act in section 1302(b), the interest on the U.S. investment has indeed been collected by the Panama Canal Commission, but has been deposited in the Panama Canal Commission fund rather than into the general fund of the Treasury. This had not only prevented the unencumbered use of these funds by the Federal Government, which totals approximately $46 million to date, but has also acted to decrease the level of the U.S. investment by that $46 million. This means, that if the annual interest on the investment continues to be deposited in the Panama Canal Commission fund instead of into the general fund of the Treasury as miscellaneous receipts, our interests payments on the investment will be decreased annually because of the continued decrease in the level of the investment. My amendment eliminates these problems.

The bill directs that the interest payment on the U.S. investment be automatically deposited into the general fund of the Treasury as miscellaneous receipts on a monthly basis. It also ensures that the automatic deposit of the interest payments into the general fund does not have any impact whatsoever on the level of the U.S. investment, ensuring that the interest payments will not further erode the level upon which the interest payment is calculated.

The broader issues concerning the interest on the U.S. investment are: First, what should be done with the $46 million in interest that is currently deposited in the Panama Canal commission fund; and second, how do we recoup the lost revenues that have resulted from the decrease in the level of the U.S. investment? These are not dealt with in H.R. 5655 because these issues are much more involved and are a part of a much broader problem.

For the past 2 fiscal years, the committee has attempted to solve problems involved in the cash flow needs of the Panama Canal Commission. Because the Commission is not allowed to borrow money, nor make a profit, they face the problem of meeting their monthly expenditures from monthly tolls and other receipts, particularly at the beginning of the fiscal year. This they have not been able to do, and have demonstrated to OMB and to the committee that not only do they need the $46 million to assist in solving their cash flow needs, but the unreimbursed balance of the amount appropriated by Congress for their expenses by Public Law 96-131.

The administration's solution to this cash flow problems was to propose legislation altering the funding process for the Panama Canal Commission and have them funded from the general fund of the Treasury. The Merchant Marine and Fisheries Committee was not able to resolve the issues involved in effecting this transition, but we do plan to reconsider the issue next year.

I would also like to point out to my colleagues that the committee intends that the passage of H.R. 5655 will have no impact whatsoever in the calculation of the so-called profit payment to Panama required under paragraph 4(c), article XIII of the Panama Canal Treaty. That profit payment can be as high as $10 million annually if the canal operating revenues exceed their operating costs.

Mr. Speaker, in considering this amendment to the Panama Canal Act, one of the key factors was would we or would we not make this interest payment subject to the authorization and appropriation process. I believe that the procedure set out in H.R. 5655 is a simple process. By eliminating the interest payment from the annual authorization and appropriation process, we ensure that the entire amount of interest that is due will be paid to the benefit of the taxpayer, and not subject to the potential whims of this process.

Mr. Speaker, while the money currently deposited in the Panama Canal Commission fund is indeed available for use by the Treasury, similar to the way the money that is in our checking accounts is available to the banks, it is on demand to the Panama Canal Commission for their use. By having the annual interest payment deposited directly into the general fund of the Treasury, it is available for expenditure by the general fund unencumbered by any other demands.

As I stated, Mr. Speaker, this bill was approved overwhelmingly in the subcommittee and the full committee without a dissenting voice, and I hope my colleagues join me in voting for its passage.

Mr. HUBBARD. Mr. Speaker, H.R. 5655, was introduced by my distinguished friend and colleague, the Honorable JACK FIELDS, ranking minority member of the Subcommittee on Panama Canal/Outer Continental Shelf. I, as chairman of the subcommittee, cosponsored this bill along with the chairman of the full Merchant Marine and Fisheries Committee, the Honorable WALTER JONES of North Carolina, the Honorable DON YOUNG of Alaska, the Honorable ROBERT DAVIS of Michigan, and the Honorable BILLY TAUZIN of Louisiana. H.R. 5655 would amend the Panama Canal Act of 1979—Public Law 96-70 with respect to the payment of interest on the investment of the United States in the Panama Canal.

On May 16, 1984, the Subcommittee on Panama Canal/Outer Continental Shelf conducted a hearing on the issue of calculation of interest on the investment of the United States in the Panama Canal. The General Accounting Office testified that the Panana Canal Commission should pay or transfer its interest collections from the Panama Canal Commission Fund into the General Treasury as miscellaneous receipts. The General Accounting Office believes that the legislative history of the Panama Canal Act of 1979 indicates that Congress intended that the interest collections be transferred into the Treasury for the taxpayer's benefit.

The Commission, also citing the act's legislative history, deposits the interest collections into the Panama Canal Commission Fund as it believes the act requires. The Commission does not believe that it has the authority to make transfers from the fund on its own volition. Nor does it have the authority to make deposits in any other fund other than the Panama Canal Commission Fund. The Commission indicates that congressional action is necessary to clearly state that the Commission has authority to deposit its collections of interest in the General Treasury as miscellaneous receipts.

In response to the concerns of the General Accounting Office and the uncertainty of the act's requirements, H.R. 5655 was introduced. The purpose of this bill is to ensure that, from the date of enactment, money owned by the Panama Canal Commission as interest on the U.S. investment in the Panama Canal will be deposited into the Treasury as miscellaneous receipts. This will stop the erosion of the U.S. investment in the Panama Canal that has been taking place since 1979 because of a lack of a clear directive in the act as to how the interest was to be handled.

Mr. Speaker, on June 12 of this year, the subcommittee reported this bill to the full committee incorporating one amendment which clarified an accounting procedure. On June 19, the full Merchant Marine and Fisheries Committee ordered H.R. 5655 reported to the House by a unanimous voice vote. This bill is necessary to correct an ambiguity in the Panama Canal Act of 1979 and has bipartisan support. I sincerely hope that such unity will prevail in consideration of this bill by my distinguished colleagues. I request that the House suspend the rules and pass H.R. 5655.

● Mr. CARNEY. Mr. Speaker, I rise in support of H.R. 5655 and urge my colleagues to vote for its passage. This bill was introduced by my good friend and colleague, the Honorable JACK FIELDS, and others, in order to stop the erosion of the U.S. investment in the Panama Canal, and assure that the U.S. taxpayers benefit from interest paid on that investment by requiring it to be deposited into the Treasury as miscellaneous receipts.

In 1982, during consideration of proposed amendments to the Panama Canal Act, the Panama Canal/OCS Subcommittee approved my amendment to assure that: First, the United States would receive a return on its total investment in the canal enterprise; and Second, the return would be paid into miscellaneous receipts of the Treasury for the benefit of the U.S. taxpayer.

In a report prepared at my request (GAO/ID-83-36, Mar. 22, 1983), GAO concluded that amendments to the Panama Canal Act of 1979 are needed to ensure that: First, interest is computed on the total amount of the U.S. investment in the canal; Second, interest is paid to the benefit of the United States; Third, amounts calculated as interest no longer erode the principal; and fourth, amounts calculated as interest since October 1, 1979, are recovered into the general fund of the Treasury for taxpayer use.

Although all tolls and Panama Canal Commission receipts are deposited in the Treasury and they belong to the U.S. Government, it is obvious from GAO's report and subsequent testimony before our subcommittee that amounts paid into the Panama Canal Commission Fund in the Treasury do not directly benefit the U.S. taxpayer. Further, GAO testified that if amounts in the Panama Canal Commission Fund, such as the $47.6 million already calculated as interest on the U.S. investment, were returned to the general fund as miscellaneous receipts, those amounts would: First, offset the Government's requirement for borrowing with the result being a saving in interest payments by the U.S. Government; and second, help reduce the Federal deficit.

I feel strongly that the U.S. taxpayer should receive a return on the U.S. investment in the Panama Canal, and H.R. 5655 provides for such return beginning on the date of enactment. However, further amounts in the Panama Canal Commission Fund could be accruing to the direct benefit of the U.S. taxpayer and help reduce the Federal deficit which is approaching $200 billion. I hope we can find a way to accomplish this. However, I urge my colleagues to support this important first step to halt the unintended erosion of the U.S. investment in Panama, and provide for a return to the taxpayers on that investment.●

● Mr. SHUMWAY. Mr. Speaker, H.R. 5655, introduced by my good friend Mr. FIELDS, amends the Panama Canal Act of 1979 to mandate that the interest on the U.S. investment in the Panama Canal be deposited by the Panama Canal Commission directly into the general fund of the Treasury as miscellaneous receipts.

This legislation clearly restores the intent of the authors of the Panama Canal Act of 1979; however, because of the wording of the act, the interest on the U.S. investment has been deposited by the Panama Canal Commission into the Panama Canal Commission Fund as if it were part of their canal receipts. This erroneous deposit has not only prevented the use of these funds by the Federal Government as we see fit, but has been applied against the original U.S. investment thereby artificially decreasing that investment by $46 million—the amount of interest that has been collected to date. This means that if the annual interest on the investment continues to be deposited into the Panama Canal Commission Fund, instead of the general fund of the Treasury as called for under this legislation, our own interest, which should be paid to us, will essentially be used by the Panama Canal Commission to help pay back our own initial investment.

Mr. Speaker, H.R. 5655 not only directs that the interest payment on the investment be automatically deposited into the general fund of the Treasury as miscellaneous receipts, but it also insures that these payments do not have any impact whatsoever on the level of the U.S. investment, nor will the interest payment be counted as income to the Panama Canal Commission since it is not deposited into the Panama Canal Commission Fund.

It has been made clear by the sponsors of H.R. 5655 that the legislation is not intended to deal with the $46 million in interest payments currently deposited into the Panama Canal Commission Fund. This is because it has been clearly demonstrated by the administration and the Commission in testimony that this money is needed to assist the Commission in its cash flow requirements.

In closing, Mr. Speaker, this bill will result in the deposit of over $9.6 million of interest payments into the general fund of the Treasury next year alone. I urge my colleagues to join me in supporting this legislation.●

Mr. FIELDS. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. Edgar]. The question is on the motion offered by the gentleman from North Carolina [Mr. Jones] that the House suspend the rules and pass the bill, H.R. 5655, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5655, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

FEDERAL PAY EQUITY AND MANAGEMENT IMPROVEMENT ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 526 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5680.

□ 1358

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5680) to promote pay equity and to eliminate certain discriminatory wage-setting practices within the Federal civil service; to establish a performance management and recognition system; to improve the senior executive service; and for other purposes, with Mr. Kildee in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentlewoman from Ohio [Ms. Oakar] will be recognized for 30 minutes and the gentleman from California [Mr. Dannemeyer] will be recognized for 30 minutes.

The Chair now recognizes the gentlewoman from Ohio [Ms. Oakar].

□ 1400

Ms. OAKAR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are debating a bill which will improve the lives and morale of thousands of Federal Employees. H.R. 5680, the Federal Pay Equity and Management Improvement Act of 1984, contains three equally important titles covering: pay equity in the Federal Government; the merit pay program for Federal managers and supervisors; and the senior executive service. The bill is not a radical departure from past policies. It merely sets in motion an attempt to refine and improve the Federal personnel system and eliminate certain glaring inequities in the current program.

Fifty years ago, when the Federal classification system was developed, its framers never imagined that some day 40 percent of the Federal work force would be comprised of women. Similarly, our predecessors could not predict that the skills, effort, and responsibilities involved in performing various tasks would change so dramatically. Not only have we entered the "technical age," but our society is vastly more complex than it was in 1923.

Since that time the role of women in our society have dramatically changed; 15½ percent of all U.S. households are headed by women; 52 percent of all women ages 20 and older work; which means that nearly one-half the work force is composed of women. Statistics also show that U.S. citizens are marrying at older ages, women are widowed earlier, and that divorce is at an all time high.

The one statistic which has remained relatively stable is the average earnings for women. Despite the passage in 1963 of the Equal Pay Act—which prohibits an employer from paying a woman less than a man if they perform the same job—and title VII of the Civil Rights Act of 1964—which prohibits an employer from paying a woman lower wages than a man even when job content differs—women lag behind men in earnings. In 1950, women earned approximately 62 percent of what men earned. After dipping to an all time low in 1974 of 59 percent, women are now averaging about 63 percent.

A study conducted by the National Academy of Sciences in 1981 found several reasons for the persistency of the male/female wage gap. The most striking finding concluded that the more an occupation is dominated by women, the less it pays. Secretaries, 90 percent of whom are women, earn approximately $4,000 less a year than truckdrivers. Private household workers, 95 percent of whom are women, earn less than one-half of what janitors are paid. The fact that women are more likely than men to be employed in low-paying firms exacerbates the problem of occupational segregation.

I was very fortunate to cochair, with Congresswoman Geraldine Ferraro and Congresswoman Patricia Schroeder, the first congressional hearings on the issue of job segregation and pay equity. The September 1982 hearings were extensive, covering private and public sector pay practices. These hearings were important in bringing to the forefront areas of the pay equity problem that needed further attention. The movement of women into nontraditional occupations, while significant, would not, in and of itself, solve the wage gap problem. Female dominated occupations serve vital functions in our society and need to be reevaluated for their worth. The Federal Government—as the largest employer in the Nation and the one charged with enforcing the body of civil rights laws—has to act responsibly, ensuring that sex bias is not a factor in determining wages. Equally important, private employers need to be educated on the sex-based wage discrimination issue.

Nearly 2 years have passed since I participated in the Post Office and Civil Service Committee oversight hearings. On April 3 and 4 of this year, my Subcommittee on Compensation and Employee Benefits conducted hearings on pending pay equity legislation, H.R. 4599 and H.R. 5092. The subcommittee's April hearings showed us that significant progress has been made in some areas but not in others. In those 20 months, over 20 States have taken the initiative to examine their own civilian work forces for sex-based wage discrimination. Private employers are also reexamining the manner in which their pay structures have been determined to identify any sex discrimination practices.

In observing the activity which has been taking place in State governments and the private sector, I have noticed a willingness to address this a critical civil rights and economic issue. I have also been struck by the lack of initiative—a void if you will—on the part of the Federal Government. I believe, as do many of my colleagues, that the Federal Government, the largest employer in the Nation, with approximately 2.8 million workers, can no longer stand mute. It must begin the process of determining whether its pay and classification systems are marred by sex-based wage discrimination.

Testimony presented by representatives of Federal employee unions and other organizations at the April 3 and 4 hearings indicated that the Federal workforce is similar to the rest of the Nation in that job segregation is pronounced. The majority of female employees are clustered in the lower paying jobs, grades 1-7. They earn an average yearly salary of $17,000. Federally employed men are found in the midlevel and upper grades and earn an average of $28,000 a year. Only 12 percent of the women employed by the Federal Government are in managerial positions.

On its face, the data seems to suggest that women are paid less than men because the Federal classification and pay systems are biased against women. But, at this point in time, no one can conclude with any certainty why these factors exist.

Based on the information at hand, however, we can conclude that an analysis of the systems is long overdue. First, the classification system has not been reviewed since its inception in 1923. Second, the rise in the number of female employees in the work force has changed the fabric of Federal employment. Similarly, job content and responsibility has developed and changed as dramatically as the labor force over the last 50 years.

The study set forth in title I of H.R. 5680 is designed to provide Congress and the administration with necessary information about the Federal labor force by identifying any sex-based wage discrimination practices in white- and blue-collar jobs through an anallysis of the content of jobs held predominately by women and by men. It will determine whether gender is a factor in determining clasification and pay in the Federal Government.

The study is also designed to incorporate labor unions and women's organizations, representing substantial numbers of federally employed women, in the study in an advisory capacity. I believe that the involvement of these organizations is essential to ensuring an objective and impartial study.

With regard to the study, I have announced my intention at an appropriate time, to introduce an amendment that would require an outside consultant rather than OPM, to perform the study. I decided to introduce my amendment after much thought and many hours of discussion with representatives of Federal employees, women's organizations, and other groups that would be affected by the results of the study. Considering the underhanded activities of the OPM concerning the pay equity provisions of the bill, it has become clear that this agency cannot be trusted to undertake a fair and objective analysis of the current classification and pay systems.

On May 14, 1984, Mr. James L. Byrnes, a senior official in the OPM who is paid twice that of the average male Federal worker, and three times that of the average female employee, wrote a memorandum to Dr. Donald J. Devine, director of the OPM, stating:

> By doing job evaluation across clerical and blue collar occupations, a comparable worth study would immediately divide the white collar and blue collar unions. The blue collar craft unions would be especially concerned, since they would be the inevitable losers in such a comparable worth adjustment process. Moreover, the unions would be pitted against the radical feminist groups and would further divide this constituency of the left. Rather than allowing Oakar to manipulate the administration on the gender issue, we could create disorder within the Democratic house pitting union against union and both against radical feminist groups.

Through their actions over the past few weeks, it has become obvious that the Reagan administration opposes a pay equity study. It has become equally clear that there are some within the administration who would seek to undermine such a study by playing politics with the entire Federal work force. Unfortunately, these are the same individuals who would be responsible for conducting the study under the current provisions of H.R. 5680.

I had hoped, that in a matter as serious as sex-based wage discrimination, we could rely upon the administration to provide an objective and comprensive analysis of an issue that affects women throughout the work force. Sad as it is to say, this is not the case.

Finally, Mr. Chairman, the intent of examining the problem of sex-based wage discrimination—either by studying a pay system or enforcing the law—is in no way an attempt to undermine the labor force or the free market as suggested in several recent articles on the subject. Reevaluating the worth of traditionally female dominated occupations does not mean that blue-collar jobs will have their pay reduced or become less important. In fact, the language contained in H.R. 5680 specifically states that no one's pay can be reduced as a consequence of findings or recommendations resulting from the study. Neither I, nor any other advocate of fair pay practices, wish to create a confrontation between workers. We are concerned with proper implementation of laws prohibiting discrimination. I believe the fact that more than 12 private- and public-sector labor unions endorse H.R. 5680 strengthens my point.

The free market is not in jeopardy either. Quite simply, people determine the worth of jobs and objects, an invisible hand does not. If employers choose to devalue work traditionally performed by women, then that work will not yield high wages in the market. If, on the other hand, employers choose to determine the worth of jobs irrespective of gender, the market will yield quite different results. The market must be free of manipulation and free of bias.

Mr. Chairman, title II of the bill addresses the myriad of problems with the current merit pay system for midlevel managers and supervisors which was enacted as part of the Civil Service Reform Act of 1978. The merit pay system covers approximately 110,000 employees in grades 13 through 15.

It has become evident that the present merit pay system does not work and is plagued by an overwhelming host of problems. Members of both sides of the aisles, as well as the administration, recognize that the system is not functioning as intended.

In a recent report conducted at my request, the General Accounting Office found a great deal of employee dissatisfaction with the current merit pay program. The GAO report reviewed the merit pay system of affected employees at the Departments of Agriculture, Housing and Urban Development, and Navy during 1981 and 1982. After the GAO study was completed, it found that half the merit pay employees surveyed wanted to return to the general schedule for their annual within-grade pay increases.

Virtually every phase of the current merit pay program was criticized. GAO's review showed that non-performance factors have influenced the size of merit increases, that management used preestablished quotas to determine rating distributions for merit pay pools, that higher graded employees tended to receive the highest ratings, and that, in at least one department, non-career appointees were more likely to receive larger average merit pay increases than career civil servants. In sum, the GAO found that approximately 80 percent of all employees believed that the merit pay system did not increase their motivation or performance.

Furthermore, I am extremely disturbed by the failure of the Federal Government to promote women into supervisory and managerial positions. While men comprise 54.4 percent of the white-collar work force, they hold 91.5 percent of the managerial slots and 76.5 percent of the supervisory positions. In addition, at grade 13 roughly 10 percent of the positions are held by women. This decreases to approximately 7.9 percent at grade 14 and to 6 percent at grade 15.

Mr. Chairman, together these factors portent a bleak future for our Government unless some action is taken to remedy the many inequities in the program. I believe that the extensive revisions of the current merit pay program as proposed in title II of H.R. 5680 would result in a fair and workable pay-for-performance system for midlevel managers in the Federal Government.

Briefly, title II abolishes the merit pay system and creates instead a performance management and recognition system. The most significant feature of this system is the establishment of a five level appraisal system under which employees would be paid on the basis of their performance. An outstanding employee, for example, would receive a full comparability pay increase, a merit increase, and performance award between 2 percent and 10 percent, while someone who is rated unsuccessful would receive no increase whatsoever. In addition, an employee rated less than successful would be allowed to appeal this determination first within the agency and then to the merit systems protection board. Furthermore, each agency would be required to establish a performance standard review board to assess the appropriateness of agency performance standards.

Also, title II provides a minimum level of .75 percent of covered payroll and a maximum limit of 1.5 percent of covered payroll for agency award programs. The minimum increases to 1.5 percent by the 5th year of the program.

Finally, in order to allow the Congress the opportunity to thoroughly review and evaluate the system after a reasonable period of time during which the system can operate as intended, the provisions of title II will terminate at the end of 5 years unless specifically reauthorized by the Congress. This period of time should provide us with sufficient data to determine the effectiveness of merit pay.

Last, title III of the bill places Congress on record in favor of the continuation of the senior executive service and makes certain adjustments in the provisions governing the SES.

Mr. Chairman, the development of this legislation required the resolution of numerous difficult and, in some instances, controversial issues. Many hours of hearings and negotiations with officials of the executive branch and concerned Members of the House were necessary to shape the final product.

Mr. Chairman, in conclusion, I am hopeful that the House will act favorably on H.R. 5680. The "Federal Pay Equity and Management Improvement Act of 1984" is a bill based on equity—equity for women and men who have devoted their careers to the Federal Government. It is also a bill that should improve governmental efficiency and employee morale, thus leading to better Government service for the citizens of our great Nation.

□ 1410

Mr. DANNEMEYER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank the gentlewoman from Ohio, the distinguished chair of the Compensation Subcommittee, for her comments.

H.R. 5680 is really three bills in one. The gentlelady from Ohio is to be especially commended for moving title II of this bill. Title II makes urgent and needed changes in the merit pay program for 115,000 midlevel Federal managers. The gentlelady from Ohio and her staff have worked diligently to move this legislation.

This legislation started several years ago as the work product of the gentleman from Virginia [Mr. Wolf], a member of the committee. He and his staff have worked tirelessly to achieve a consensus among Federal managers, the administration, and our committee on merit pay reform. The gentleman from Virginia deserves the highest recognition for this achievement. Recognition should also be given to the earnest efforts of the gentleman from Maryland [Mr. Hoyer] and his staff for their cooperation and creativity in promoting this legislation.

At this point, Mr. Chairman, I yield, for purposes of debate only, to the gentleman from Virginia for any statement he wishes to make.

Mr. WOLF. Mr. Chairman, I am pleased that the House is acting on this much-needed merit pay and SES reform legislation. I believe we have an opportunity to do something positive for Federal workers today. Since the signing of the Civil Service Reform Act, the morale of Federal employees has plummetted. This decline in employee work attitude has only been intensified for managers and executives because of the inequities inherent in the current merit pay system and the unfortunate tampering with the Senior Executive Service early on in its implementation. We can make a difference for Federal employees at the highest levels, today, and I appreciate the House Post Office and Civil Service Committee's Chairman William Ford and Subcommittee Chairwoman Mary Rose Oakar's persistence and mutually shared commitment to moving these reform initiatives.

Most of the provisions of this legislation were derived from my merit pay bill and Senator Trible's efforts in the other body (S. 958/H.R. 5066). My colleague from Maryland, Mr. Hoyer, should also be recognized for his contribution to this legislation. The merit pay provisions are supported by the employee groups covered. I have worked for over 3 years to change the merit pay system and believe that in H.R. 5680 we now have an effective vehicle for accomplishing positive reform. Because the Nation's managers and executives have patiently waited for these changes, I believe we must act quickly to ensure that these reforms are implemented before the next merit payout scheduled for October 1.

I would like to note that the Department of Defense, which has nearly half of the entire merit pay population, is scheduled to rate its employees on June 30. It is imperative that congressional action is completed soon and I urge the House to adopt these provisions to facilitate the urgency with which these changes must be made.

I believe bipartisanship is the most essential element in successfully moving this package through to final passage. Like many of my colleagues, I have reservations about certain portions of the bill, but believe the positive reforms incorporated in this legislation outweigh the negatives. Although I am disappointed with the manner in which the SES portions of H.R. 5680 were developed and am not pleased with the final provisions under title III of this legislation, I have received assurances from the chairman that these problems can be resolved in conference. With these commitments I urge my colleagues support for adoption of these vital management and pay for performance reforms.

In conclusion, I believe we have an opportunity today to approve positive legislation for the often maligned Federal work force. It is my hope that agreement on these issues of mutual concern can be reached.

Again, my sincere appreciation to the Speaker for his quick action on this legislation and my appreciation to the gentlewoman from Ohio [Ms. Oakar], and the gentleman from Michigan [Mr. Ford] for the important role they have played in facilitating this process.

In closing, Mr. Chairman, I would like to personally recognize the tremendous effort that my staff, Sara Boney, has done on this legislation. She has worked on it for better than 2 years, and without her day-in-day-out work we would not be here today.

Mr. Chairman, I thank the gentleman for yielding.

Ms. OAKAR. Mr. Chairman, I yield 5 minutes to my friend, the gentlewoman from Colorado [Mrs. Schroeder] who has done an awful lot of important work on this bill.

Mrs. SCHROEDER. Mr. Chairman, I clearly rise in strong support of H.R. 5680. As chairwoman of the Subcommittee on Civil Service, I sat through hours of oversight hearings on the Senior Executive Service. Out of those hearings emerged the Senior Executive Service provisions contained in title III of this bill. Also, as Civil Service Subcommittee chairwoman, I claim some maternity to title I of this bill because, back in the fall of 1982, the Civil Service Subcommittee, together with Mary Rose Oakar's Compensation Subcommittee and Geraldine Ferraro's Human Resources Subcommittee, held the most extensive and comprehensive hearings on pay equity which have ever been held. Title I of this legislation is a direct descendant of those hearings.

PAY EQUITY

Title I is a first step toward eliminating pay discrimination against women in the Federal Government. It is incontrovertible that workers in female-dominated occupations get paid far less than workers in male-dominated occupations both in the private sector and in the Government. This large wage gap cannot be explained by such factors as skill, experience, seniority, working conditions, education, or effort. A large part of the wage gap is due to discrimination against women. The Federal Government should serve as a model employer and should lead the Nation in identifying and eliminating that part of the wage gap which is attributable to discrimination.

I consider title I of H.R. 5680 to be the most important civil rights legislation to come out of the Committee on Post Office and Civil Service since I have been in Congress. During our 1982 hearings on pay equity, I did a little research on wage discrimination in the Federal Government. Here is what I found:

Women are concentrated in a few, low-paying occupational categories. The largest single occupational category in the Federal Government is secretary. Ninety-nine percent of all secretaries are women and the average pay is $15,800. The second largest category is clerk-typist. That job is 96 percent women and pays an average of $11,600.

The level of job segregation is higher in the Federal Government than in the private sector. Sixty-two percent of women work in jobs which are 2 to 1 female or more and 69 percent of men work in jobs which are 2 to 1 male.

Female-dominated jobs pay less—far less—than male-dominated jobs. We conducted a regression analysis which found that for each additional percentage point of men in a job, the job paid an average of $176.36 more. A typical job which is made up of all females would pay $13,350, while a typical job category made up exclusively of men would pay $31,190.

All this results in a situation where women in the Federal Government make 63 cents for every $1 earned by men.

Title I requires the Office of Personnel Management to study the wage and classification systems of the Government and locate discriminatory wage-setting practices. The bill stops there. After the study is completed, I believe it will be necessary for Congress to revisit this issue to decide how to eliminate the discrimination found. The one thing the litigation in the State of Washington stands for is the proposition that we must act when we have received the report documenting discriminatory wage-setting practices. That's the way it should be: The law forbids continuation of wage discrimination against women. How we move to clean up this discrimination is the type of public policy choice we were elected to make.

Whether we mandate a study of wage discrimination against women or not, there will be relentless pressure—through lawsuits, through labor-management negotiations, through legislation—on the Government to address the issue of pay equity. The reason we should mandate a study is to ensure that the analysis is responsible and to establish a process which will permit reasonable, yet prompt, correction of the problem. The pay equity issue is not going to go away. If we bury our heads in the sand, we are going to get kicked elsewhere. Title I of H.R. 5680 is the responsible and right way to address this problem.

SENIOR EXECUTIVE SERVICE

Title III of H.R. 5680 contains a number of technical adjustments in the law governing the Senior Executive Service [SES]. The committee report describes these changes in ample detail. I will, therefore, only focus on some of the more significant changes.

Section 301 places Congress firmly on record in support of continuation of the SES. When Congress passed the Civil Service Reform Act of 1978, it included, at the suggestion of Representative Gladys Noon Spellman, a modified sunset for the SES after 5 years. The Subcommittee on Civil Service conducted extensive oversight hearings on the SES during this past winter. Although there are problems with the program, none of the problems warrant a return to the old system. Hence, this bill will make a congressional finding that the SES should be continued indefinitely.

Section 302 attempts to reduce the controversy surrounding performance awards, by removing the cap on the percentage of employees who can get awards and replacing it with a cap on the amount of money which can be used for awards. This provides greater flexibility for agency managers, yet serves to safeguard the interest of the taxpayer. I believe that these performance awards can motivate senior executives to perform better and can increase the productivity of the Government. Hence, the bill includes both a cap of 4 percent of payroll for performance awards and a floor of 2 percent of payroll for performance awards. Performance awards cannot motivate better performance unless they are awarded. The Congressional Budget Office says this provision will, at most, cost $4 to $5 million a year, although it could save an equal amount.

Section 303 clarifies the limitation on noncareer senior executives. Before the creation of the Senior Executive Service, political appointees could only fill certain designated positions. Under the SES they can fill all but a limited number of career reserved positions. To ensure that this major change in the management of Government would not lead to abuse, the Civil Service Reform Act contained a provision to establish a mix between careerists and political appointees of at least 9 to 1. This provision was drafted to ensure that no more than 10 percent of SES positions could be filled by political appointees. However, we did not expect an average of 13 percent of SES positions to be vacant during the first 5 years of the program. This high vacancy rate has meant that the mix has shifted much too far in the direction of political appointees. During our oversight hearings on the SES, the problem of too many political appointees in jobs requiring careerists was the single biggest deficiency of the SES noted.

The bill would shift the cap on political appointees from 10 percent of SES positions to 10 percent of the average number of filled SES positions during the preceeding fiscal year. This change would require the dismissal of no one. So far in fiscal year 1984, there have been an average 6,974 filled SES positions. On March 31, 1984, there were 694 noncareer appointees, or 3 below the new limit. The bill also shifts the agency specific cap from 25 percent of SES positions to 25 percent of the average number of filled SES positions during the preceding fiscal year. I do not have all the data on average number of senior executives by agencies. Preliminary indications are that a few agencies—ACTION, State, USIA, and HUD—might be slightly over the new limit. Obviously, we will not know for sure until the end of the current fiscal year. The point is that section 303 of H.R. 5680 will not lead to a major purge of political appointees. Whether this is good news or bad news depends on your perspective.

Section 304 provides greater protection for senior executives in a reduction in force situation. It requires the Office of Personnel Management to spend 45 days attempting to place career executives in vacant SES jobs before these executives can be placed back in GS-15 positions. The Office of Personnel Management has done a dreadful job with its placement authority and so it is not surprising that they would like to be able to place career executives in GS-15 positions with no placement effort. Senior executives are a valuable resource to the Government. We should make an effort to use their talents in executive positions before we downgrade them.

H.R. 5680 is good legislation which deserves the support of all Members.

□ 1420

This is really done in the spirit of Gladys Spellman's provisions to the original Civil Service Reform Act of 1978.

I thank the gentlewoman from Ohio and all of the Members who have worked so hard on this legislation. I urge its speedy adoption so that we can get on with the study and on with the SES.

Mr. DANNEMEYER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have a chart here to my left which I think initially in this consideration of the bill will put into perspective some of the data on which the Members can utilize in order to make an informed judgment.

The column most to the left here, all women 1980 annual earnings, was 59 percent of what men earned in that year. On an hourly basis the figure for that first category would be 62 percent.

The next column is black women versus black men in 1980. The figure there is 74 percent for earnings, black women versus black men. Then all women in 1983, the middle column, it is 72 percent. That is based on hourly earnings and that is all women versus all men working in the private and public sector. The wage percentage is 72 percent of what men earned in that year.

Then to show some trends that have been taking place in our economy, the second column from the right, women age 20 to 24 against all men of that same group, 89 percent were the earnings of women versus men. On the column most on the right in the age category 25 to 64, single women versus single men in 1983, 91 percent.

So the disparity that we found as a result of Census Bureau data in 1980 is changing. It is changing in the method that these figures disclose; namely, that the gap percentagewise between men and women is closing, and that is well and good.

Mr. Chairman, the focus of my remarks is on title I, the so-called pay equity study of 2.1 million nonpostal, nonmilitary Federal employees.

Title I is legislation of good intention. However, it sets a dangerous precedent for wage-setting in and out of Government. That precedent is comparable worth. It is not equal pay for equal work. This bill gets Congress into the quicksand of comparable worth out of which we will not extract ourselves or remedies for sex-based wage discrimination.

The central question in the debate over title I is this: Will this study get at sex discrimination? I contend that this bill and this study will not get at sex discrimination in the Federal work force. Instead, this bill puts new and awesome power in the hands of a consultant who will determine for Congress what is and is not discriminatory about Federal wages. Title I sets up a new, ineffective, potentially expensive, and hopelessly subjective definition of sex-based wage discrimination.

This bill, if amended by the gentle lady from Ohio, would have a consultant comparing white and blue collar jobs, secretaries and printers, nurses, and chemists. And all on the basis of a consultant's judgment of the value of the job difficulty.

There are other questions as well: Will this study invite a costly and unfair lawsuit if Congress rejects the study as happened in Washington State last year? Will this study jeopardize the separate blue-collar pay system?

The debate over title I and Federal wage-setting comes down to just two words: Comparable and equal. Are they the same? This bill calls for equalizing the wages of work found to be comparable not equal. The entire weight of the title I study comes down to just one word: Comparable.

Now this may seem a lot of weight for what is portrayed as a little old study. But let us remember: This bill is not just about Federal workers. We are assured by the author of this legislation, the distinguished Chair of the Compensation Subcommittee, that this legislation is a model for the private sector. This bill deals with the largest single work force in the country. Having the precedent of this study sit on the private sector is rather like an elephant deciding to rest on an ant hill. We can only hope that the ants can work fast enough to relocate before being visited by the elephant.

Let me make clear though that I support a study, just not this study or its new method of comparable worth.

The real problem with title I is that it gives a consultant the power to determine what is and is not discriminatory in studying those Federal jobs held mostly by men and women.

There is no problem with looking at different ways to evaluate jobs that are held primarily by men and women. But when the legislation attaches the power of law to the findings of a subjective study of job worth or content—well, let us be very careful.

The problem with title I is that it sets forth a new definition of sex-based wage discrimination. Nevertheless, the committee report states that this definition is "the mostly widely accepted" explanation of sex-based wage discrimination. I respectfully disagree.

There are two ways to establish sex-based wage discrimination. The first is through a finding of equal—not comparable—work where there is unequal pay. The second is through a judicial finding of intent to discriminate. This is the standard under title VII of the Civil Rights Act of 1964.

H.R. 5680 proposes a third and different method of establishing a finding of sex-based wage discrimination. Title I leaves the finding of discrimination in the hands of a consultant whose job is to assign points to jobs based on his or her valuation of the skill, effort, responsibility, and working conditions of a position. Those jobs with the same points should be paid the same under this scheme of wage-setting, which is known as comparable worth.

Title I is based on the theory that there is some objective, mathematical way to evaluate existing job content. The theory may work. We do not know. But this theory carries the weight of law, carries the power to say—this is discriminatory and this is not.

Now we could debate this issue all day. But as the saying goes, when all else fails, read the bill. This is the definition that is most critical:

> The term "discriminatory wage-setting practices" means practices resulting in a situation in which the rates of pay (for mostly female positions) are lower than the rates of pay (for male positions) although the work performed in each instance involves comparable duties, responsibilities, and qualification requirements, and is performed under comparable working conditions * * *.

□ 1430

That is the definition that is in this proposed study.

We do not know if this method can reach sex discrimination. It appears to say that any wage disparity between broadly comparable job categories is discriminatory. If we want to try it, let us do so, but without the burden of legal findings of discrimination at this time. Approving this method at this time is rather like putting a Member of Congress in a space shuttle and saying, "Good luck" on the morning of the launch.

Congress should not grant this consultant this kind of power at this time. It is as simple as that. In one short title, Congress is elevating a new job evaluation method from an art to a science and then to a law. That is going too far too soon.

It is not too soon to remedy discrimination. But it is too soon to adopt a subjective comparison of different jobs for the purpose of equalizing the pay of jobs held primarily by men and women.

Let us hear what the mayor of Detroit, Coleman Young, had to say about comparable worth:

> Any time a city gets hung up on an abstract study that makes arbitrary comparisons of jobs but does not take into account the impact on society and its ability to pay, that's dealing in potential anarchy and inviting bankruptcy * * *. If a painter makes more than a secretary then let more women be painters.

Jane Bryant Quinn, a columnist for Newsweek said of comparable worth:

> While approving the end, I doubt the means. (This) approach assumes that personnel studies can satisfactorily compare different kinds of jobs. But what happens when the studies disagree?

William Raspberry, a columnist for the Washington Post said:

> I'm not convinced of the workability of * * * ranking jobs on a point system and setting equal pay scales for vastly different

jobs that rate the same number of points, clerk typists and warehouse workers, for example.

Is title I a comparable worth study? Listen to the findings of the original legislation, H.R. 4599: "The purpose of this Act is (in part) to help assure that all Federal employees * * * receive comparable pay for work of comparable worth." The findings also stated that discriminatory wage setting practices are present in the United States generally and in the Federal Government.

Those findings were dropped from the bill. But the definition of discriminatory wage-setting practices that accompanied those findings remains the same.

The title I study relies not on a finding of equality of work, nor on a finding of intent to discriminate to establish a claim of discrimination. Title I rests on the findings of a consultant.

I stated before that the entire debate over title I comes down to two words: Comparable and equal. The current standard of the law is equal or substantially equal—for this Nation and Federal employees.

The legislative history of the Equal Pay Act of 1963 explicitly rejected the notion of "comparable work." In fact, the motion to substitute "equal work" for "comparable" work was made in the House by Representative Katherine St. George, who expressed concern that the term "'comparable' opens up great vistas. It gives tremendous latitude to whoever is to be the arbitor in these disputes;" 21 years later her words still ring true.

Title VII is broader than the Equal Pay Act and has very little legislative history. But the standard of intent to discriminate still has to be observed.

In the leading case, County of Washington against Gunther, the U.S. Supreme Court in a 5-to-4 decision held that the broader provisions of title VII could be used to prohibit employers from intentionally paying female employees less because of their sex than male employees who were performing different work. But the court noted that its decision was not based on the "controversial concept of 'comparable worth.'"

For Federal employees, substantially equal, not comparable, is the pay-setting standard. This is true for both blue-collar (5 U.S.C. 5341) and white-collar (5 U.S.C. 5101) work.

Now the gentlelady from Ohio has an amendment to the bill as reported which references both the Equal Pay Act and title VII. But the language is somewhat ambiguous and appears to say that those laws are fine but this bill may go beyond those standards.

We may buy a multibillion dollar lawsuit if we buy this bill in its present form. If we decide to let a consultant determine what is or is not discriminatory, we may be stuck with a judgment similar to the Washington State case.

In the words of the Federal judge who found the State guilty:

> The purpose of the 1974 Willis study was to examine and identify salary differences that may pertain to job classes predominantly filled by men compared to * * * women, based on job worth. * * * This methodology purports to value each employment classification on the basis of four factors.

The study found in part that female librarians and nurses should be paid about twice as much as male carpenters and chemists. The State rejected the study and did not appropriate the funds to fill up those gaps. A public-sector union sued. Interestingly, this union did not have a comparable worth wage-setting policy for its own employees.

The State lost because the study had shown wage differentials based on a comparison of dissimilar jobs. The State could not even introduce a new study that showed the first study to be seriously flawed.

If the Washington State judgment of $861 million is applied to the Federal Government, we would be up against a $10 billion lawsuit—$6.7 billion in backpay and $1.8 billion each for annual pay increases and extra pension costs.

Now before someone says: "Oh, I see. You just don't want to pay for discrimination. You are just concerned about cost, not justice."

Not at all. I am very concerned about an unjust decision based upon a theory of wage setting that does not hold water.

How are blue-collar jobs jeopardized? In the Federal Government, blue-collar pay is under a separate system. If we start comparing blue- and white-collar jobs on a common basis, that will surely lead to merging the two pay systems, for good or bad.

This bill assumes that there are no overpaid jobs in the Federal Government. Indeed, this bill assumes that the higher wage is the right wage and only legal wage when making comparisons of dissimilar positions. Not one overpaid job? This study prohibits any pay cuts in order to equalize the wages of jobs found to be comparable by the consultant. Now I agree that no employee should have his pay cut if his job is found to be comparable. But that should not stop the Government from reducing the pay for that position for those entering that job later. Why should we, the taxpayer, be locked into high wages for positions where the pay may be excessive?

Indeed, the General Accounting Office did a study last year and found that some printing jobs paid higher wages than employees at other Federal agencies or in local private sector firms. Does this bill put a wage safety zone around every Federal position?

At a minimum, several changes are needed to make this title I study more acceptable. First, a consultant must not be granted the power of law in findings of the study before Congress has a chance to review the study and his methodology. The Congress is taking a large risk with the notion of comparable worth and should understand this concept before it is used unfairly against us and the taxpayers of this Nation.

In other words, if Congress wants to try comparable worth—and I think we should not—we should not bet the farm at the outset.

Second, the study should not be used in any legal proceedings in the event that Congress rejects the work products of the consultant. As the bill is now constructed, the Congress may reject the study at the peril of a lawsuit.

This study should also be based on current law which calls for substantially equal not comparable work in the grading of positions.

We should also make clear that as long as blue- and white-collar jobs are under separate pay systems, that they should be studied separately. If we are going to put them under a common evaluation system, let us do so in plain language.

In summary, H.R. 5680 is a bill of good intentions, but with a dangerous precedent.

This legislation says simply—absent a finding of equal work, or a showing of intent to discriminate, we believe a consultant can find discrimination using his or her judgment of the comparable content to worth of jobs held primarily by men and women.

Let us not put the power of new discrimination law in the hands of a consultant. Let us not take wage setting out of the hands of employees and employers. Let us approve a study of sex discrimination that will get at sex discrimination and not merely raise wages indiscriminately.

☐ 1440

Let us get at those practices that keep women in their place rather than paying some women to stay in their place.

I suppose that one of the better ways to explain how this bill would apply would be to recognize that there is a saying, I guess, that goes through life which says, "When I go to work, I want an inside job with no heavy lifting. And I want the highest pay that that job can provide."

Well, in a certain sense that maxim applies all throughout our culture. An inside job with no heavy lifting. Now, if you have an inside job with no heavy lifting, the economics of the marketplace would dictate that that type of work would pay at a certain level. But when you go outside and begin to work in the elements and increase the risk of industrial-type injuries, that job in the marketplace in our country pays more money. Why? Well, quite frankly, it is unpleasant to work outside in the elements as contrasted with inside work with no heavy lifting.

In this Member's experience, one of the jobs I had in getting through college was working in the oil fields. And I had the privilege of working different hours. The one that was particularly onerous was working from 11:30 at night to 7:30 in the morning, when at times, even though this was southern California, it may be 28 degrees. I can assure my colleagues that working at 2:30 in the morning with the wind blowing at 28 degrees in the wintertime is not my idea of an ideal job.

The reason I was working under those conditions was that it was the best paying job I could find, because I had to come home in the summertime and earn enough in order to save enough money to go back to school in the fall.

Now if I had chosen to take an inside job with no heavy lifting, I would not have made it. Perhaps I could have borrowed the money.

But the point is the marketplace in our society has determined that there is a difference in wage scales that pertain to certain types of work. Now my friends may want to know were there any women working on that oil well drilling rig. The answer is "No." It was not because they were not capable of working on that rig, because some ladies have the brawn to do it, but they chose not to. Why? I think essentially there was a great risk of harm because we injured people on that job at a rate that was sometimes unacceptable for those who thought about entering the work force.

The reason I am mentioning this experience of a personal nature is that this effort on the part of the proponents of this legislation to craft a method of getting at alleged wage discrimination is a subtle little way of getting the head of the camel into the tent. If you can get away with it, more power to you. But for people who choose to work in an inside job with no heavy lifting, our society pays a certain wage. If you want to work outside as a carpenter or a plumber, or an oil field worker, or what have you, where you have the risk of the elements, increased risk of injury, moving about, seasonal jobs, moving about from different areas from State to State, that pays a higher rate of pay. And all of those factors on to this concept of comparable worth are just out the window. I do not believe it is appropriate for us to go down this road of establishing comparable worth in the manner that the bill describes.

The study should be conducted, but by the language of it we should not dictate what the result will be so that we would then be in the position that after the study is accomplished, it is laid on the shelf and then Congress does not adopt it because we do not agree with the conclusion that where women predominate or men predominate is the result of sex discrimination.

Then what do you know, some public employee union is probably going to file a lawsuit such as happened in the State of Washington and then they will subpoena that study from the shelf, where it is gathering dust into the courtroom and then it may be argued, "Mr. Judge, you have got to enter a judgment against the Federal Government based on this study." And that is what happened in the State of Washington.

If we adopt this bill in the form that it is presented, that could happen to us here.

The politics, I think, are interesting to the proponents of the legislation because if the judge renders a judgment that causes the $8 billion cost to come into the Federal Government pay, then the Member of Congress, when the taxpayer comes in and complains to the Member of Congress, "Why have my taxes gone up to implement this cost of comparable work?", the Member of Congress will then say, "Don't look at me, it was the court that made this judgment. Go down there and talk to the judge because the judge is the one who caused this judgment to come into existence."

It is pretty clever. It is pretty subtle. But before we go that road, I think we should know precisely where we are going.

Again, I will say, I have no objection to the study, but we should not preordain its result, nor should we be placed in a position where some Federal judge somewhere is going to cause an $8 billion increase to the taxpayers of this country.

If we are going to have an increase of that magnitude, or any magnitude, based on this study of sexual discrimination, it should be a conscious act, up or down, by Members of Congress, not the indirect way that happened to the State of Washington.

Ms. OAKAR. Mr. Chairman, will the gentleman yield?

Mr. DANNEMEYER. I yield to the gentlewoman from Ohio.

Ms. OAKAR. I thank the gentleman for yielding.

Would the gentleman make the same argument about people not going to court if we were talking about a study that talked about age discrimination or race discrimination? The fact of it is I know the gentleman is talking about the Asme lawsuit that has really no bearing on what we are trying to do.

But the fact remains that I do not think we would be worried about court cases, which is in no way implied in our study, if the gentleman were talking about wage discrimination and discrimination as it relates to race or age. Just because we are talking about a study that relates to the manner in which the Government workers are paid, all of a sudden the gentleman is taking us down the route of court cases.

I say to the gentleman that is not the intent of the chair of the subcommittee. The gentleman knows that. But if a study, as in the case of the State of Washington, did show discrimination and it was a study purported by that State and then they did not do one thing to implement it, unlike the State of Minnesota and so many other States, then the laws are on the books. We have the Civil Rights Act, title VII. We have the Fair Pay Act. There is nothing right now that prohibits a Federal employee who believes that he or she is discriminated against whereby they can go to court because the laws are in place.

All we are asking for is a study that will show how we arrive at how we classify people and we have not looked at the Civil Service in 50 years, 51 years to be precise. Is it not about time we took a look at that? That is all we are doing.

But I am saying to the gentleman that any person could go to court right now without any kind of a study if they wanted to because the laws are in place. Furthermore, if we were talking about something that was a little more sensitive, let us say, like race discrimination, we would not even raise the issue of one going to court based on a study.

The other thing is, if the gentleman will yield further, I would like to ask the gentleman where he got his figures—these are real new ones to me—where you say that black women—I notice that the gentleman changed his base depending on the scheme here—the gentleman says black women make 74 cents for every black wage hourly rate—that is not annual, but hourly, which is a big difference—that a black man makes. What do black women make in comparison to white men?

Mr. DANNEMEYER. The figures that I furnished, in response to my colleague, came from Census Bureau. If the gentlewoman wants to accept them, fine; if she wants to quarrel with them, I suggest the gentlewoman contact the Census Bureau.

The CHAIRMAN. The time of the gentleman from California [Mr. DANNEMEYER] has expired.

Ms. OAKAR. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

I thought they came from the interpretation by an individual who works for something called the Urban Institute, which I understand most of her colleagues disagree with her in terms of her interpretation. But I have seen these figures before and I do not believe they are accurate and I think they are the interpretation of one individual.

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They are comparing apples with oranges. You are not comparing annual earnings. You are comparing hourly earnings. And then you are segregating who you actually compare them to. It is really a false way, it is an illogical way, I think, to promote figures. The Labor Department has figures——

Mr. DANNEMEYER. I will reclaim my time, if I may.

Ms. OAKAR. Well, I just gave the gentleman 2 minutes, but you can——

Mr. DANNEMEYER. Well, if I have the time, I will be happy to respond.

Ms. OAKAR. Sure.

Mr. DANNEMEYER. As I say, if you quarrel with the figures, talk to the Census Bureau. They are the ones from whom we receive them.

In response to your earlier comment, you know, the law says today that if a person is discriminated against in terms of employment because of race or age—clearly that is not the issue here—that person has a cause of action to redress that. Everyone in this society accepts that.

But we are witnessing here a new concept called comparable worth, and I have in my remarks attempted to define that for my colleagues so that we have before us truly what we are up against. So long as we know and make an informed judgment on what we are doing, that is what this place is about. But I have taken this time, which is rather extensive, and I apologize to my colleagues for the time I have spent on the issue, to say: Be aware of what this is. It is a significant step down the road of seeking to modify compensation of people on an interesting theory that is divorced from the realities of the marketplace in the manner that I attempted to describe.

I thank my colleague for the time.

The CHAIRMAN. The gentlewoman from Ohio [Ms. OAKAR] has 11 minutes remaining.

Ms. OAKAR. Mr. Chairman, I yield myself such time as I may consume, to respond to a few things that my friend said, and I would be glad to respond to the gentleman in the course of doing this, if he would like.

First of all, he mentioned that we ought to depend on the marketplace, whatever the market will pay, that is what we ought to pay.

You know, they said the same thing—if you read the arguments—when Congress was debating the child labor laws. The chairman here is on the Education and Labor Committee. You know very well that if you read the history of the child labor laws that were family passed, you know that these same arguments against having young children work in a very industrial age, and the same arguments that were used with respect to slavery, "We cannot afford to end slavery, the marketplace will not be able to absorb it." "We cannot afford not to hire little kids who are 8 and 9 years old because the marketplace will not be able to absorb it." It is the same argument.

The other point is, we are not just talking about women taking the so-called traditional male jobs. No one is talking about women lifting weights more, or whatever that argument is. We are talking about a very simple point, and that is that there seems to be in the marketplace that whenever you have jobs that are female dominated, they pay the least. And we are talking about jobs that are crucial to the American way of life. Where would we be without teachers, social workers, nurses, secretaries who are at the focal point?

I am saying—and I do not apologize for saying this to my friend from California, who is the ranking minority member on my subcommittee—that the value of those kinds of jobs has not been paid properly.

Our study does not presume anything. As a matter of fact, we do not even use the words "comparable worth." We talk about comparable duties. We talk about comparable duties with respect to skills, to efforts, to responsibilities involved in performing jobs. And we do not want to take 1 penny away from any male worker. You are right. I do not. That is a presumption that we say that our study should not recommend lowering anybody's salary.

And I will tell you why I put that provision in there. For several reasons. One is that whenever we talk about an issue related to economic justice for women, those who oppose it—and I am not necessarily referring to my friend from California; to be honest, others, who testified before our committee—will always try to pit men against women. That is not the issue. The average man wants his mother to make a fair and decent salary. The average and typical man wants his sister, they want their children to make the wages that they deserve. And the average man knows in this American society that the poorest person in the country is a female over 65 years old. And there are two really good reasons why she is the poorest person in the country. One is, one's insurance, one's pension is very often, and specifically, I should say, based on one's earnings, and women's earnings are very, very low in general. That is one reason. And the second reason—and this is another issue that I am very familiar with because I chair a task force related to the inequities of social security toward women—women are discriminated against when they get to the area of their own pensions, and 95 out of 100 women depend on social security. So they get a double whammy when they get older. They not only have their pension based on their wages that were already low, they are discriminated against with respect to what is for them their own life's blood. And when they do get another pension—and only 20 percent of the women get any pension other than social security—they have to go to the Supreme Court, as one woman was courageous and had the savvy to do, to show that she paid the same amount in her pension for the same number of years and, yes, even doing the same kind of work, and she got $40 a month less than the man who was her counterpart.

That is why we are sensitive about the issue of pay equity. And we do not want this to be a confrontational issue, and I will not permit this in my own debate of the subject to be a confrontational issue between men and women. You know that the Chair fights just as hard for the men of this country as for women. But we know very well that, in general, Federal employees are underpaid, to begin with. The President's own Commission shows that they are 21 percent underpaid. And when you take where women are, in terms of where they are in the classification, they are in the lowest classification, the seven lowest. And very few of them are in the upper classifications and have that opportunity for upward mobility. We are saying: Why not take a look at it? We are not reaching a conclusion. We are saying: Let us take a look at it, let us study it.

And the only reason is—and the gentleman knows, and you made a presumption regarding an amendment that I am going to introduce—the only reason I am not going to allow OPM to have an involvement in the study except a cooperative involvement is because of a memo written by an individual who is a political appointee, who makes $59,000 a year, more than twice as much as the average man who works for the Federal Government, and more than three times more than the average female. And what does his memo recommend? That they attempt to cause disorder in this House, that they attempt to pit union against union, they attempt to pit the unions against the women's groups. I mean, the absolute absurdity. Talk about a person who is not worth the value of what we are paying him to just write out these memos and get $59,000 a year, when the average Federal employee is underpaid, that is why we do not want OPM to do this study. And you better believe I am going to introduce an amendment to make sure that this study is objective, and that is the purpose of it.

I would just like to conclude by saying this: Obviously, the controversial part of the bill—and there are three titles to the bill—relates to a study relative to pay equity. It is about time we studied the issue. And we want to do it in a spirit of fairness, and let us take a look at how we treat our Government employees. Let us say to the American people that we feel the manner in which we treat our Government employees ought to be a benchmark for the way we treat the rest of the Nation and the workers of this country.

● Mr. FORD of Michigan. Mr. Chairman, I rise to support the much-needed changes in the civil service laws embodied in H.R. 5680.

At the beginning I would like to say that this bill, entitled the Federal Pay Equity and Management Improvement Act of 1984, is the product of much hard work on the part of members of the Committee on Post Office and Civil Service—especially the gentlewoman from Ohio [Ms. OAKAR], the gentlewoman from Colorado [Mrs. SCHROEDER], and the gentleman from Virginia [Mr. WOLF]—and other members, such as the gentleman from Maryland [Mr. HOYER].

The Civil Service Reform Act of 1978 created a Merit Pay System. Under this system, which applies only to mid-level managers—grades GS-13 through GS-15—pay increases are based solely on performance.

The problem that we are attempting to correct today is that this system has not worked as we intended. In fact, it has not worked at all.

Even Dr. Devine, the Director of the Office of Personnel Management, with whom I am frequently at odds, understands this. Quite candidly, it is one of the very few areas where Dr. Devine and I agree.

Among those who have studied the problem, there is a consensus that the Merit Pay System must be changed for the sake of equity and fairness.

The measure before us today would make the necessary changes. It would ensure that sufficient funds are available to reward good performance. And it would bring consistency to the performance evaluation process by mandating the establishment of five performance levels. It would, as well, guarantee that individual agencies recognize, and thereby encourage outstanding performance.

This bill also calls for important changes in the Senior Executive Service [SES]. Congressional review of the SES was required after 5 years under the Civil Service Reform Act of 1978. Such a review has been conducted by the committee and it was decided that SES should continue. Some changes, however, are necessary—in such areas as limitations on performance awards and political appointments and procedures for RIF's. H.R. 5680 spells out the required changes.

Finally, H.R. 5680 would require a pay equity study in the Federal Government. There is no question in my mind that we have an obligation to do whatever is necessary to guarantee that no sex-based wage discrimination exists in the Federal Government, which indeed should serve as a model in this area for the rest of the Nation.●

● Mr. GRAY. Mr. Chairman, on May 17, 1984, the distinguished chairwoman of the Compensation and Employee Benefits Subcommittee, Ms. OAKAR, introduced compromise legislation to promote pay equity in the Federal sector, establish a performance management and awards system, and to make improvements in the Senior Executive Service. The bill, H.R. 5680, is the culmination of months of intensive study of two separate, but wholly related, problems affecting civilian employees in the Federal sector.

First, the legislation strengthens and improves the merit pay provisions of the Civil Service Reform Act of 1978, under which pay increases for Federal managers are calculated. Under current law, all managerial and supervisory employees covered by the merit pay concept receive at least one-half of the salary increases paid to all other Federal employees. Employees in this category whose performance appraisals are "fully successful" or above were entitled, under the provisions of the enabling legislation, to bonuses above the rate of their comparability increase.

However, because the performance evaluation system is imprecise and unreliable, and because of insufficient funding allocated to the merit pay pool, coupled with the guarantee of one-half of the comparability increase to all merit employees, regardless of performance, many employees who achieve "excellent" performance evaluations have received less than they would have received had they not been under the merit pay system.

H.R. 5680 would create a new formula for determining pay increases for merit pay employees. Under the new formula, employees who rate "unsuccessful" would receive no pay increase; employees who rate "marginally successful" would receive one-half of the General Schedule comparability increase; employees who rate "fully successful" would receive full comparability increases, and an additional 2-percent bonus; employees who rate "exceptional" would receive full comparability, plus an additional 3-percent bonus.

The legislation also provides for clarification of the performance appraisal standards, and mandates that merit increase decisions be made based on the results of annual performance evaluations.

The second major component of the legislation, embodied in the substitute to title I, is the acknowledgment that the Federal Government, as the premier employer in this Nation, should set an example to all other employers and be a model for equality in wage setting.

As such, H.R. 5680 directs the Office of Personnel Management, the employment arm of the Federal Government, to establish a Pay Equity Study Council, whose purpose is to guide and direct the Government's study of its current wage-setting system to determine if discriminatory practices exist, and to identify remedial legislative activity. The Council will work under the auspices of a consultant with experience in the area of Government position classification systems.

It was the original intent of the draft of this legislation to authorize the Office of Personnel Management to perform the pay equity study. The sponsors of the legislation, including myself, believed that the Office, as the personnel arm of the Government, would have been the most logical entity to conduct the study.

Unfortunately, over the past several weeks, the Office and its Director, Donald Devine, have illustrated that they are more concerned with playing partisan politics than they are in conducting an accurate, scientific, and unbiased study of possible pay inequities in the Federal sector.

It was because of this evidence that the distinguished chairwoman of the Subcommittee on Compensation and Employee Benefits felt compelled to offer a substitute to title I, and remove the responsibility for the study from the Office of Personnel Management.

I support her actions, as I wholeheartedly support the intent of this legislation.

My own State of Pennsylvania enacted legislation in 1959 which forbids wage discrimination "in any place of employment between employees on the basis of sex * * *" when the work involved demands comparable skills and conditions. That law has worked well in my State, and we are proud of its achievement.

I believe that the time has come for the Federal Government to follow suit and establish itself as the model for equity and fairness for all the Governments of the industrialized world to emulate.●

● Ms. SNOWE. Mr. Chairman, I rise in strong support of H.R. 5680, the Federal Pay Equity and Management Improvement Act of 1984, and of the Oakar substitute to title I of this legislation.

Mr. Chairman, I believe that wage discrimination is the single most important issue facing American women today. Contrary to popular belief, however, pay equity is not a new issue for women. More than 100 years ago, Susan B. Anthony observed:

> There are many women equally well qualified with men for principals and superintendents of schools, and yet while ⅘ of the teachers are women, nearly all of them are relegated to subordinate positions on half or at most ⅔ of the salaries paid to men * * * sex alone settles the question.

Unfortunately, things have changed very little in the past 100 years. In fact, when you look at the earnings gap between the sexes, you could say that things have not changed at all. In 1984, women continue to earn less than two-thirds the wages paid to men.

The Federal Government's record with respect to pay equity offers little improvement over the national picture. Women, who comprise 40 percent of the Federal work force, are clustered in the lower pay grades and earn an average of $17,000 annually, while men occupy positions in the middle and upper grades and have an average salary of $28,000. Only 3 percent of women in the Federal civil service system earn more than $20,000 per year.

H.R. 5680, as amended by the Oakar substitute, will require an independent consultant to conduct a study of wage differentials within the Federal Civil Service System. The consultant will work with both the Office of Personnel Management and a Pay Equity Study Council composed of representatives of labor unions and employee organizations representing substantial numbers of female employees.

The concept of this legislation—a study of wage-setting practices in the Federal Government to identify and correct sex-based wage discrimination—is hardly a radical one. In fact, according to testimony presented to the U.S. Civil Rights Commission during their consultation on pay equity, 25 States have either completed or are in the process of conducting a study of this type. The Federal Government certainly should do no less.

Pay equity has been a priority issue of the Congressional Caucus on Women's Issues for a long time, and as cochair of the caucus, I have had the opportunity to work closely with my colleagues in developing legislation to address sex-based wage discrimination. I introduced legislation last January, along with Congresswomen OAKAR and SCHROEDER, to focus on sex and race-based wage discrimination within the legislative branch.

My legislation would establish a 12-member, bipartisan Commission on Pay Equity. The Commission would employ the services of private contractor to conduct a pilot study of one agency within the legislative branch to determine if people are being paid according to the work they are doing—and not according to their sex or race. Within 1 year, the Commission will report its findings along with the recommendations for a comprehensive plan to insure pay equity within the legislative branch.

The issue of including congressional staff in the study has been raised by a number of my colleagues, and I certainly agree that it is important for Congress to include itself in the laws it passes for this country. At the same time, I believe we would be well advised to begin this process with a well-constructed pilot study in one of our agencies that can later be extended to other parts of the legislative branch. It is the intent of my legislation that following completion of the pilot study, the Commission will be required to address, through recommendations, the steps that will be necessary to ensure pay equity throughout the rest of the legislative branch.

Mr. Chairman, we have made freedom from discrimination in employment the law of the land, and I believe it is our responsibility to ensure that the Nation's largest employer—the Federal Government—pay its employees the compensation that is rightfully theirs. I urge my colleagues to support the Federal Pay Equity and Management Improvement Act of 1984.●

● Mr. BARNES. Mr. Chairman, I rise to strongly support H.R. 5680 and to congratulate my colleague from Ohio [Ms. OAKAR] for enabling the House to take an historic step on the difficult road toward economic justice. I refer to title I of the bill, which provides for a 7-month study of the Federal Government's pay practices and how we have fared since the battle for equal pay for equal work began 20 years ago.

I would also like to congratulate Members on both sides of the aisle who have worked so hard to develop the reforms of the merit pay system that appear in title II. Title II puts an end to inequitable pay practices that unfairly deprive top Federal managers of the rewards that the Civil Service Reform Act of 1978 promised to deliver. It is the culmination of several years of difficult debate and negotiation. These reforms enjoy broad support on both sides of the aisle and from the White House.

On the other hand, the administration opposes the principles of pay equity incorporated in the bill because it would prefer to maintain labor markets that bear the stamp of sex discrimination. From time to time, this House has the opportunity and the responsibility to expand the frontiers of decency and opportunity. And when our body does rise to the occasion, our Nation is strengthened in the bargain. The administration has chosen to back away from this particular moment—so it is up to us to make a statement on behalf of American women. It is up to us to recognize the economic needs of women who are becoming single parents in increasing numbers. Women and children are the first victims of the heinous sex-based discrimination that we must eliminate.

Sex-based discrimination suffered by American women is not an injury of the moment; it can not be endured and forgotten. Differentials in pay that title I's study seeks to examine are only one effect of discrimination about which we are concerned. Another major result of a lifetime of pay differentials, and sex-based job classifications at the lower end of the pay scale, is that the pensions women earn provide dramatically less income than those earned by men.

Members may be surprised to learn that, according to the Office of Personnel Management, only 13.5 percent of the women who work for the Federal Government ever enjoy optional retirement. There are 747,287 Federal retirees on the rolls who have exercised optional retirement; less than 200,000 of them are women. Of this relatively small group of female retirees who receive any pension, only 14.5 percent or 28,931 receive monthly annuities that range from $1,000 or $2,999 a month—the upper range of the annuity spectrum.

Despite the popular, and factually inaccurate, view that Federal pensions are overly generous only 73,757—5 percent—of 1.3 million Federal retirees earn pensions that exceed $2,000 per month. Of retirees at the top of the scale, only 3,485 are women—4 percent. Such are the wages of lifetime discrimination. We have to turn these figures around to fit the realities of a society in which the single female parent is no longer the exception.

Later this week, the House will be asked to consider the Oakar substitute to title I of H.R. 5680. The OPM itself made this substitute necessary by engaging in conduct, with respect to the pay equity debate, of such questionable character that it disqualified the Office from undertaking what under any other circumstances would be its responsibility. I urge my colleagues to support the Oakar substitute which provides up to $500,000 to hire a consultant to accomplish this important task.

A number of Members who support the principle of pay equity have asked whether it is feasible to devise a system capable of providing a fair remedy to discrimination. The administration argues—rather disingenuously—that it would not be possible to rate jobs on a point-factor system and that the result of undertaking such an analysis would be the devaluation of men's pay, particularly for blue collar workers. Those who understand Federal classification systems as they now stand realize that the Federal Government already classifies positions on the basis of point-factor analyses. We have the means to get the job done. The Oakar bill wisely precludes the reduction of pay based upon the results of the pay equity study—a major assurance that whatever remedy is fashioned will be applied fairly.

Many States have already taken the plunge without reservation and are making important progress. My home State of Maryland, for example, enacted the Maryland Equal Pay Act 18 years ago in 1966. The act requires equal pay for work of comparable character in the same business or establishment.

H.R. 5680 is important, well-crafted legislation whose time has come. I hope that we can send a signal to the Nation by adopting it overwhelmingly later this week.●

● Ms. MIKULSKI. Mr. Chairman, I support H.R. 5680, the Federal Pay Equity and Management Act of 1984, as amended by Ms. OAKAR. This legislation will require a pay equity study within the Federal civil service. Given the opposition to this measure registered by the Office of Personnel Management, I support Ms. OAKAR's amendment to title I which would require that the study be conducted by an outside consultant.

Simply put, pay equity is a policy which calls for correcting the practice of paying women less than men for work that requires comparable skill, effort, responsibility, and working conditions. Pay equity is a method of closing the wage gap between men and women.

Given the changes in the marketplace, this wage gap is especially critical today. Each year, 2 million more women enter the workplace. The great majority of these women are in the workplace because they have to support their families. Over 22 percent of all children now live in single parent families; the vast majority of these are headed by women.

Yet these women, often traumatized by the tragedies of divorce, widowhood, desertion, or chronic nonsupport, are twice traumatized by the realities of their inadequate pay checks. Over 13 million children in this country live in poverty, yet, their mothers—often their only source of parental support—cannot earn a sufficient wage to move them out of poverty.

Despite passage of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, women still only earn about 60 cents to the dollar that men earn. The insidious persistence of this gap reflects, in large part, the occupational segregation of some into a narrow spectrum of low-paying, low-status, dead-end jobs in service industries, retail stores, factories, plants, and clerical occupations. These traditional "pink collar" jobs constitute only 20 out of the 427 occupations listed by the Census Bureau.

In the face of this reality, many opponents of pay equity argue that this policy cannot be instituted because it is too costly. To those who claim we cannot afford comparable pay for comparable work, I answer: Cost is no excuse for discrimination.

Our achievements in fair and progressive legislation have never been won without a fight. Yet we have won the fight for child labor laws, the minimum wage and health and safety laws despite those who said that these were "too expensive." And we will win this battle, too.

It is time to acknowledge that pay equity is a fundamental civil rights issue. It is time that sex-based wage discrimination must be outlawed just like race-based wage discrimination. The results are just as insidious and devastating.

The jobs performed by women are vital to the support and development of our society. It is time they were valued as such. Therefore, I urge my colleagues to support H.R. 5680, the Pay Equity Act, as amended by Ms. OAKAR. Thank you.●

● Mr. PARRIS. Mr. Chairman, it has been known for some time that the recent addition of the pay equity provision to the House version of the merit pay bill may jeopardize passage of this legislation and eliminate, at least for now, any chance for improvements in this area of much needed revision. I wholeheartedly support the concept of pay equity, but regret that this issue may unintentionally undermine the bipartisan efforts which have led to this reform.

Both the House merit pay plan and the bill already approved by the Senate would give Federal managers and supervisors full annual pay raises and within grade hikes. The administration supports this supervisory merit pay reform but now there could be the threat of veto of any bill that includes the House proposal for a pay equity study.

I intend to support the merit pay reform/pay equity bill to be voted on soon by the House. Unfortunately, I will do so with the apprehension that its chances of becoming law are increasingly slim and it may not benefit the more than 100,000 Federal supervisors and managers which deserve better treatment than they are presently receiving from their elected officials.●

● Mr. MATSUI. Mr. Chairman, it gives me great pleasure to join with my colleagues today in support of H.R. 5680, the Federal Pay Equity and Management Improvement Act of 1984. I congratulate Chairwoman OAKAR and my colleagues on the Federal Government Service Task Force for their efforts to bring long overdue reform to the Federal Government pay system.

Over 180,000 Federal managers and supervisors remain captive to a system that has failed to provide them with level of pay designed to be commensurate with the level of their performance. It is a system that has deprived them of pay received by their subordinates; has subjected them to inaccurate or often politicized evaluations and has failed to motivate them or their subordinates. Touted as an incentive pay program, merit pay has been more than a disincentive, it has undermined the managers' fundamental belief in pay for performance.

H.R. 5680 provides the relief that Federal managers have been seeking. H.R. 5680 replaces the current merit pay system with a performance management and recognition system which uses performance appraisals to determine pay and awards. Through a performance management system, Federal managers will not only be recognized for quality, they will be rewarded for their performance.

If we want Federal employees to give merit pay a second chance, the reforms we enact must restore the fundamental employee trust that has been so lacking in the current pay system. The Office of Personnel Management has done very little to encourage employee trust. In fact, the agency has inspired even less confidence here in Congress. The Office of Personnel Management's public and vocal opposition to the pay equity system is unexplainable to my constituents that make up the Federal work force in my district. The recent disclosure of an interoffice memorandum to Dr. Devine stating that this bill would give OPM the opportunity to create disorder within the Democratic House pitting union against union and both against feminist groups is reprehensible. OPM has certainly rendered itself incapable of conducting a fair and impartial study of pay equity.

Therefore, it is incumbent upon us, as conscientious and concerned Members of Congress, to make certain that the largest employer in the Nation—the Federal Government—provides its employees with fair and equitable pay and does not discriminate against any class of employee. H.R. 5680 addresses this critical issue by establishing a performance management and recognition system for midlevel Federal managers and by improving the Senior Executive Service. Furthermore, it goes one step further toward ensuring pay equity by certain discriminatory wage-setting practices within the Federal civil service.

Federal employees are highly motivated and want to contribute their best to Federal service. It is time we gave our employees a merit pay system that answers this dedication with adequate recognition and accurate feedback. I urge my colleagues to support the passage of this bill.●

● Mrs. BURTON of California. Mr. Chairman, I would like to thank my colleague and friend, Representative OAKAR, for convening this special order to commend her tireless efforts in advancing the Pay Equity Act of 1984.

Mr. Chairman, for the women of this Nation, this is a bread and butter issue. Wage discrimination is the most insidious form of bias women face. The evidence is very clear. Women wage earners begin and end other labor force participation on an unequal footing with their male counterparts. The median wage for all full-time women workers is about $11,000 compared to about $18,000 for men.

Wage discrimination prevents women from realizing the full potential of their economic vitality. It also keeps many locked into a vicious cycle of poverty that is quickly becoming the cruel domain of an increasing number of women.

I believe this is a challenge we can easily overcome. If our economic system is to be truly open and resilient we must dismantle artificial wage differentials. Only then will women become authentic partners in this Nation's economy.●

● Mrs. BOXER. Mr. Chairman, I'd like to thank my friend, the gentlewoman from Ohio [Ms. OAKAR] for authoring H.R. 5680, the Federal Employees Pay Equity Act of 1984 and I commend her leadership on this extremely important issue.

Mr. Chairman, this current administration has an almost perfect record of saying one thing and doing another and the issue of economic equity for women is no exception. Claiming to have the best interest of American women in mind, we have seen the administration time and time again undercut and undermine necessary and just legislation such as H.R. 5680.

The recent OPM memorandum from Mr. Byrnes to Mr. Devine is but one more example of the administration betraying the women of this country. In discussing pay equity for women Mr. Byrnes writes:

> The blue-collar craft union would especially be concerned, since they would be the inevitable losers in such a comparable worth adjustment process. Moreover, the unions would be pitted against the radical feminist groups and would further divide the left * * * we could create disorder in the democratic House by pitting union against union and both against radical feminist groups.

I find such a statement from a high official of the Reagan administration to be absolutely outrageous. Clearly, there is little if any space for economic justice for women in the minds of President Reagan and his staff. In fact Mr. Chairman, such statements only serve to prove how absolutely essential it is to pass legislation like the Federal Employees Pay Equity Act of 1984.

H.R. 5680 would not pit union against union and both against women. Very simply, it asks that the Federal Government take a look at its own employment system and determine whether it is operating within the law. It is good legislation, it is just legislation, and it is necessary legislation if we hope to see economic equity become a reality for women.●

● Mrs. HALL of Indiana. Mr. Chairman, economic discrimination against women is not a thing of the past. Today women earn only 62 cents for every dollar a man earns.

While pay equity is the single most important issue affecting all women in the workplace, it is even more significant to women of color who suffer economic discrimination disproportionally in today's society.

Women of color, as well as white women, are concentrated in a relatively small number of occupations with low wages. Pay equity is an idea whose time has come. As we have witnessed in the AFSCME against State of Washington case, pay equity means the elimination of discrimination in wages for jobs which are undervalued because they are held predominantly by women. When wages are based on the worth of a job rather than the gender or race of the people who have traditionally been held to those jobs, pay equity will be achieved.

Over the last two decades, the wage gap between white women and women of color has narrowed significantly. The wage gap between women and men, however, has remained essentially the same. The National Committee on Pay Equity and the National Institute for Women of Color in their study "Women of Color and Pay Equity" point out several facts:

Fact: Women of color earn less than either white men, men of color, or white women. To an even greater extent than women overall, women of color hold the lowest paying jobs.

Fact: More than one-half of black and Hispanic female-headed households live in poverty.

Fact: Women of color are concentrated in a small number of occupational categories, as are white women. 59½ percent of black women work in only 2 of 12 major occupations—clerical and service work—compared to 53.3 percent of white women who work in those two occupations.

Fact: Increasingly, women of color are moving into the same occupations as those in which white women work, so that clerical work now accounts for almost one-third of women workers in nearly every racial and ethnic group.

The concept of pay equity gets to the heart of the problem of sex discrimination—occupational segregation.

Although there are still differences in the types of jobs held by women, the single most important source of women's low earnings is their concentration in relatively few job categories with low wages. For example, one-third of all women were employed as clerical workers.

In the studies of pay scales in different States, countless numbers of examples of inequities are surfacing. The California study pointed out that a senior licensed vocational nurse at a University of California medical school is paid $1,500 per month while a senior-ranked maintenance worker at the same school makes $2,000.

The Pay Equity Act of 1984 will prompt the Federal Government to study its own activities in order that pay equity will become a reality.

In light of the information available to us, I urge my colleagues to consider favorably the Pay Equity Act of 1984.●

● Mr. WOLF. Mr. Chairman, I am pleased that the House is acting on this much-needed merit pay and SES reform legislation. I believe we have an opportunity to do something very positive for Federal workers today. Since the signing of the Civil Service Reform Act, the morale of Federal employees has plummeted. This decline in employee work attitude has only been intensified for managers and executives because of the inequities inherent in the current merit pay system and the unfortunate tampering with the senior executive service early on in its implementation. We can make a difference for Federal employees at the highest levels, today, and I appreciate the House Post Office and Civil Service Committee's Chairman WILLIAM FORD and subcommittee Chairwoman MARY ROSE OAKAR's persistence and mutually shared commitment to moving these reform initiatives.

Most of the provisions of this legislation were derived from my merit pay bill and Senator TRIBLE's efforts in the other body (S. 958/H.R. 5066). My colleague from Maryland, Mr. HOYER, should also be recognized for his contribution to this legislation. The merit pay provisions are supported by the employee groups covered. I have worked for over 3 years to change the merit pay system and believe that in H.R. 5680 we now have an effective vehicle for accomplishing positive reform. Because the Nation's managers and executives have patiently waited for these changes, I believe we must act quickly to ensure that these reforms are implemented before the next merit payout scheduled for October 1.

I would like to note that the Department of Defense, which has nearly half of the entire merit pay population, is scheduled to rate its employees on June 30. It is imperative that congressional action is completed soon and I urge the House to adopt these provisions to facilitate the urgency with which these changes must be made.

I believe bipartisanship is the most essential element in successfully moving this total package through to final passage. Like many of my colleagues, I have reservations about certain portions of the bill, but believe the positive reforms incorporated in this legislation outweigh the negatives. Although I am disappointed with the manner in which the SES portions of H.R. 5680 were developed and am not pleased with the final provisions under title III of this legislation, I have received assurances from the Chairman that these problems can be resolved in conference. With these commitments I urge my colleagues support for adoption of these vital management and pay for performance reforms.

In conclusion, I believe we have an opportunity today to approve positive legislation for the often-maligned Federal work force. It is my hope that agreement on these issues of mutual concern can be reached.

Again, my sincere appreciation, Mr. Chairman, to you for your quick action on this legislation and my appreciation to Ms. Oakar and Mr. Ford for the important role they have played in facilitating this process. I also want to acknowledge the difficult role Mr. Dannemeyer has played in this process. I recognize that initially, Mr. Dannemeyer had deep reservations on the merit pay portions of the bill, but regardless of these concerns played a vital role in each step of the negotiations process and worked diligently to bring this legislation to the fine compromise we have before us today. I believe he has been very successful and I want to mention the hard work of his staff member, Steve Ramp, whose earnest attention to detail has been particularly helpful in reaching this merit pay agreement.

There are many individuals whose contributions should be recognized. I want to publicly thank the Federal personnel directors in the agencies for their response and attention to my numerous requests for practical guidance on these new merit pay concepts. The direction provided by this input along with the assistance from Federal employee organizations has significantly influenced this bill.

I feel a personal debt of gratitude to the Federal Managers Association under the leadership of Bun Bray, Red Evans, and Mike Minahan, all of whom have kept an ear to the ground throughout the past 2 years in plugging ahead with this merit pay reform, even when the odds were frequently not in our favor. The members of FMA have been well represented by this leadership team's persistence and diligence.

I want to commend the innovative concepts introduced by the Professional Managers Association under Don Gillis and Lisa Carlson. On a special note, Don was a congressional fellow in my office and played an influential role on behalf of Government managers in shaping the complexion of this legislation. Neil Reichenberg and the International Personnel Management Association were also helpful in support and guidance on issues of paramount concern to personnelists in all levels of Government.

Member organizations of the Federal Employees Coordinating Committee and other groups whose support and help in formulating this initiative are appreciated were the diversified Social Security Managers Association, the academic and practical advice provided by the Classification & Compensation Society and the support of the well-established Organization of Professional Employees at the Department of Agriculture.

I would like to mention several civil servants who have been influential in the formulation of this legislation. Rich Liebl of the Department of Navy originally introduced many of these concepts to my office and should be commended with one of the first merit pay awards under this legislation. Earle Payne of the Office of Secretary of Defense, Bob Moffit, George Nesterczuk with the Office of Personnel Management along with his career staff—John Fossom, Barbara Fiske, and Al Levan, General Accounting Office experts Jerry Miller and Gil Fitzhugh are just some of the others who deserve to share in the credit for this positive reform legislation.

As I indicated earlier my disappointment that this legislation does not represent senior executive service changes which I would support, I would like to thank Jerry Shaw and Dave Burckman of the Senior Executive Association for the outstanding representation of senior executives' concerns they provided in my original merit pay/senior executive service legislation (H.R. 5066).

In closing, I would like to personally recognize the tremendous effort that my staff, Sara Boney, has done on this legislation. She has worked on it for better than 2 years and without her day-in-day-out work we would not be here today.●

Ms. OAKAR. Mr. Chairman, I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mrs. Schroeder] having assumed the chair, Mr. Kildee, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5680) to promote pay equity and to eliminate certain discriminatory wage-setting practices within the Federal civil service; to establish a performance management and recognition system; to improve the Senior Executive Service; and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Ms. OAKAR. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 5680.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

CIVIL RIGHTS ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 528 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5490.

□ 1500

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5490) to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabiliation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, with Mr. Swift in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. Edwards] will be recognized for 30 minutes; the gentleman from New York [Mr. Fish] will be recognized for 30 minutes; the gentleman from Illinois [Mr. Simon] will be recognized for 30 minutes; and the gentleman from Missouri [Mr. Coleman] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. Edwards].

Mr. EDWARDS of California. Mr. Chairman, I yield such time as he may consume to the chairman of the Committee on the Judiciary, the gentleman from New Jersey [Mr. Rodino].

Mr. RODINO. I thank the gentleman for yielding to me.

Mr. Chairman, I first want to commend the gentleman from California, who has been the chairman of the Subcommittee on Civil Rights, for the work that he has been doing over these many years in this very, very important area. Again, the chairman is to be commended for immediately bringing to the attention of the Congress to act in a matter that, if allowed to go unattended, would certainly work a disservice to all of the work that has been performed by this Congress over the years in the area of civil rights.

I also wish to commend the gentleman from New York [Mr. FISH], the ranking minority member of the Judiciary Committee for not only his cooperation, but his very, very diligent efforts in this area, and I think that he along with the gentleman from California have really done what is to be commended as a yeoman job in the preservation of our Civil Rights Acts.

Mr. Chairman, I rise to urge this body to act swiftly and pass H.R. 5490, the Civil Rights Act of 1984.

We must act quickly so that we can assure the Nation that the Congress will not tolerate turning back the clock on hard-won civil rights protections.

Passage of H.R. 5490 is imperative because of misunderstandings and misinterpretations of current law. I was deeply involved in the debate and passage of the 1964 Civil Rights Act and the other laws that now must be clarified by H.R. 5490 in the wake of the Supreme Court's ruling in the Grove City case. From my experience, I know well what the Congress intended with enactment of those laws: That they were meant to outlaw discrimination in all the activities of an institution or agency that receives taxpayer money. Until last year, every administration correctly read that congressional intent. Until this year, every court did the same.

But last February 28, the Grove City ruling changed all that. The Supreme Court ruled that title IX of the 1972 education amendments applies only to the particular program that gets Federal dollars, not to all activities of a recipient institution.

I do not believe that is what the law says; I know that is not what the law intends. Nevertheless, the Supreme Court has so ruled. If we do not change this ruling the Nation will face a string of serious setbacks for the cause of civil rights. The broad application of the Court's narrow interpretation will undermine enforcement not only of title IX but also section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the 1964 Civil Rights Act, the foundation on which the other laws rest.

Before enactment of title VI, Federal funds were used to build and maintain all manner of segregated institutions and programs. The historic purpose of title VI was to end all that—to put an end to using money collected from all the people for unequal, unjust, and separate treatment of some of the people. All subsequent laws designed to prevent discrimination by recipients of tax dollars were modeled after title VI.

H.R. 5490 will make clear for all time that the ban on discrimination applies to an entire entity if any part of it receives Federal aid. It is imperative that Congress act now to ensure that no private or public institution that chooses to take tax dollars can discriminate on the basis of sex, race, national origin, age, or handicap.

I know that this is what the Congress intended when we originally passed these antidiscrimination laws. That is what we meant when the House voted, 414 to 8, last November to oppose the narrow interpretation of title IX that the administration urged on the Court after reversing traditional Justice Department policy. H.R. 5490 erases any doubt about our intent.

Some administration critics have called this bill radical legislation that would bring about sweeping change—rhetoric similar to that used by those who fought unsuccessfully extension of the Voting Rights Act 2 years ago.

As with the Voting Rights Act, there is nothing radical or extreme about H.R. 5490. It merely restores the law to where it was before Grove City.

And, like the Voting Rights Act, this legislation has broad, bipartisan support, despite the critics' alarms.

I urge passage of H.R. 5490, to let the Nation know that discrimination by an agency or institution that accepts money from the Public Treasury will not be tolerated.

Mr. FISH. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984.

H.R. 5490 is a response to the U.S. Supreme Court's decision in *Grove City College* v. *Bell* (465 U.S. —, 104 S. Ct. 1211 (1984)). At issue in this case was the interpretation of the term in title IX program or activity. In Grove City, the Supreme Court held that while the receipt of BEOG's [Pell grants] does constitute Federal financial assistance to an educational institution, the receipt of Pell grants by students who subsequently give such funds to the institution in payment of tuition does not cause institution-wide coverage under title IX. Instead, coverage is limited to the institution's financial aid office. Therefore, the rest of the institution could discriminate without losing Federal funds and without being subject to action by the Justice Department. In other words, the Supreme Court read the term "program or activity" in a very narrow manner. This interpretation was contrary to the implementing regulations, and to many of us in Congress who had always believed that coverage of title IX was broad enough to prohibit the entire educational institution from discriminating, while enforcement for purposes of funds termination was limited to the specific program or activity found guilty of discrimination. A continued narrow reading of title IX will cause much of the progress that has been achieved since title IX was adopted 10 years ago to backslide. For example, since 1972, enrollment of women in the professional schools has substantially increased—over 100 percent in dental schools, 120 percent in veterinary schools, and 337 percent in law schools. Without the incentive and force of law of title IX, there is concern that these advances will not be continued.

Title IX is expressly modeled after title VI of the Civil Rights Act of 1964, and similar language regarding program or activity appears in section 504 of the Rehabilitation Act of 1973 and in the Age Discrimination Act of 1975. The narrow interpretation of such language resulting from the Grove City decision could be applied to these other critical civil rights statutes, opening up the opportunity for discrimination against minorities, the handicapped, and elderly individuals.

H.R. 5490 is intended to legislatively overrule the statutory interpretation in the Grove City case. It amends four major civil rights statutes: title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1974. In each of these statutes, the term "program or activity" is replaced with the defined term "recipient."

The definition of "recipient" is drawn from current regulations. This definition has been in existence with regard to title VI for almost 20 years. It is also basically the same definition used in the regulations implementing the three other statutes affected by H.R. 5490. It is this definition in title IX regulations that the Supreme Court utilized in finding that Grove City College was indeed a recipient of Federal financial assistance. The Court held:

> * * * we have little trouble concluding that Title IX coverage is not foreclosed because federal funds are granted to Grove City students rather than directly to one of the College's educational programs.

Specifically, H.R. 5490 makes it clear that any recipient of Federal aid would be required to conform to these Federal nondiscrimination laws in virtually all aspects of its operations. The only exception to this general rule would be with respect to employment under title IV and the Age Discrimination Act. Under title VI, employment discrimination is not included, unless the primary purpose of the Federal assistance is to provide employment. Employment discrimination based upon age is not addressed in the Age Discrimination Act but, rather, is covered in the Age Discrimination in Employment Act [29 U.S.C. § 621, et seq.].

The word "recipient" is defined so as to cover an entire educational institution as well as State and local governments, public or private agencies, institutions, organizations, or other entities—and their subunits.

It has been argued that H.R. 5490 goes beyond what the law was prior to the Supreme Court's ruling in Grove City College against Bell. This, Mr. Speaker, is not the case. The committee report accompanying H.R. 5490 specifically refutes this claim, as found on page 36 thereof, which states:

> The Committee intends that enactment of H.R. 5490 will not require revisions in the regulations defining the nature of the prohibition against discrimination and the remedies available for the discrimination which were in place prior to the Supreme Court's decision in *Grove City College* v. *Bell.*

Thus, the current definition of "recipient" in the regulations will remain basically unchanged.

H.R. 5490 comes before the House of Representatives after being subjected to careful scrutiny by both the House Committee on the Judiciary and the House Committee on Education and Labor. H.R. 5490 was subjected to 6 days of joint hearings by these two committees. In addition to 33 public witnesses, eight Members of the House, a former U.S. Senator, and a former Member of the House all testified regarding the need for enactment of H.R. 5490. Their testimony addressed H.R. 5490's potential impact on administrative compliance, pending litigation in the Federal courts, and the importance of congressional action in view of the Supreme Court's opinion in Grove City College against Bell.

On May 22, 1984, the House Judiciary Subcommittee on Civil and Constitutional Rights unanimously reported H.R. 5490 to the full committee without amendment. The following day, the full Judiciary Committee ordered H.R. 5490 favorably reported to the full House of Representatives.

H.R. 5490 is cosponsored by 179 House Members and by 63 Members of the other body. It is also supported by more than 200 educational, disability, minority, senior citizens', religious, labor, womens', and business groups. It is my sincere hope that the House will pass H.R. 5490 by a large margin. This legislation is crucial to the commitment Congress made to the people covered by the four affected civil rights statutes. Passage of H.R. 5490 will reconfirm this commitment.

Mr. Chairman, the gentleman from Wisconsin, Mr. SENSENBRENNER, the ranking member of the House Judiciary Subcommittee on Civil and Constitutional Rights, remains hospitalized as a result of injuries in a fire that occurred in his home 1 month ago. It is expected that he will be released from the hospital early this week. He deeply regrets his inability to be present for consideration of H.R. 5490 and asks that I convey to you his strong support for this legislation. Mr. SENSENBRENNER also asks that, at the appropriate time in the House, I place his statement in support of H.R. 5490 in the RECORD.

☐ 1510

Mr. EDWARDS of California. Mr. Chairman, I yield myself such time as I may utilize.

Mr. Chairman, we do appreciate the grand support the gentleman from Wisconsin [Mr. SENSENBRENNER] is providing, and we all, of course, regret his illness as a result of the unfortunate accident.

Mr. Chairman, I now yield 5 minutes to the gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. I thank the gentleman for yielding this time to me.

Mr. Chairman, today, Congress has an opportunity to make a dramatic statement. If we are serious about ending taxpayer-subsidized discrimination, we will make that statement. That statement means that we adopt this legislation before us, H.R. 5490, and reaffirm our national policy of outlawing discrimination based on age, sex, handicap, raced, or national origin.

This bill is not a major rewrite of our four major civil rights statutes: title IX of the Education Amendments of 1972, title VI of the Civil Rights Act, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973. Those of us who thought we had successfully adopted laws that would provide us with the tools to assure that discrimination of this sort does not occur were sadly disappointed by the Supreme Court's recent decision in the matter Grove City College against Bell which placed a narrow interpretation on title IX.

Despite what a number of detractors have said—this bill is not an attempt to expand civil rights coverage for any group of individuals in this country. Instead, it is a simple, but coherent attempt to assure continued enforcement interpretations and practices under these four major statutes in light of the Grove City College decision.

That decision specifically addressed the question whether student financial aid, specifically Basic Education Opportunity Grants, now called Pell Grants, constituted Federal aid for the purpose of title IX coverage prohibiting sex discrimination. The Court held that BEOG's did constitute Federal financial assistance, but stopped short of affirming the intent of Congress in making sure that the antidiscrimination provisions applied to the entire institution. Instead, the Court held that, indeed, Grove City College, in accepting students who received BEOG's was subject to title IX coverage but the only part of the institution that was covered was the Office of Student Financial Aid, which processed the BEOG's applications. As such, H.R. 5490 is needed to more clearly define that we intend to assure institution-wide coverage of discrimination provisions in all areas. Since the 1964 Civil Rights Act provided the model for the other three major laws that we are amending under this bill, it was necessary to amend each of these four statutes to assure that congressional intent is carried out in each instance.

Mr. Chairman, as a member of the Education and Labor Committee since 1969, I was priviledged to have played a role in the development of the 1972 title IX amendments, as well as section 504 of the Rehabilitation Act and the landmark Age Discrimination act. It was clear then—as it is clear now—that we intended to use Federal funds to assure nondiscrimination in all institutions and that the narrow imterpretation by the Supreme Court in the case of Grove City College demands that we act expeditiously to assure that our intent—in law and in implementation—continues to be carried out.

The Education and Labor Committee held 6 days of hearings on this bill and heard from a number of distinguished witnesses, including former Office of Civil Rights Directors under Presidents Nixon, Carter, and Ford. We heard that throughout the history of these laws, under both Republican and Democratic administrations, that these laws were carried out through broad interpretation of the statutes and that the intent of Congress in deciding what programs would be covered, was never in question until the current administration seized upon the Grove City College decision as a way of weakening our commitment to enforcement of civil rights. The growth in Federal funds since enactment of all of these laws has increased the strength of these laws in outlawing discrimination. To try and reverse this trend would be to abrogate time-honored practices as well as the intent of Congress in using Federal dollars to outlaw discrimination.

Mr. Chairman, I believe that in drafting the committee report to accompany this bill, we have taken special care to outline specifically those instances where the law would apply and what, in fact, constitutes recipient of Federal dollars. This interpretation is critical to the continued enforcement efforts or especially the Education Department—which has already begun to narrow its enforcement activities in a number of areas in response to the Grove City College decision. Under title IX these include:

Twenty-three education complaints involving large institutions have been closed in admissions, student services, and student support services;

Six compliance reviews have been narrowed;

Eighteen compliance reviews and five complaint investigations have been interrupted, and

Nine cases involving public schools and 46 involving colleges and universities are being reviewed to determine whether they can proceed;

Under section 504 these include:

Five complaint cases and one pending compliance review has been narrowed; and

Seven cases are being reviewed to determine whether they can proceed; and

Under title VI:

One complaint has been closed; and

Five cases have been modified because of the Department's perception of the Supreme Court ruling.

I believe these cases underscore the growing body of evidence that indicates that this ruling will have disastrous consequences for ongoing and future enforcement of civil rights in all areas unless we pass H.R. 5490.

As a cosponsor of this measure, I join with my colleagues to urge adoption of this bill without substantial changes. The intent is clear—and will not be changed—discrimination can and will not be subsidized with Federal dollars.

□ 1520

Mr. FISH. Mr. Chairman, I yield 10 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Chairman, H.R. 5490 is intended to provide for the institution-wide coverage of Federal aid recipients thought to have existed prior to the Grove City decision. The bill, however, appears to both provide less coverage in some cases and broader coverage in other cases than existed even under expansive interpretations of the civil rights law before Grove City. Indeed, the bill can easily be interpreted by agency civil rights enforcement officials—who have never been reluctant to provide very broad readings of their own authority—and Federal judges as creating a breathtaking expansion of Federal power.

The scope of such terms and phrases as "education recipient," "recipient," entity "which receives support from the extension of Federal financial assistance to any of its subunits"—in the definition of "recipient"—and the precise meaning of the language defining a Federal agency's termination power require careful clarification.

It is also important to bear in mind that private litigants will also be able to take advantage of the growth in coverage under the bill—thus putting in the hands of the judiciary the ability to define the scope of these laws.

QUESTIONS

First, the bill's definition of "recipient" includes States, instrumentalities of States, public agencies, including any subunit of such entities.

If a State receives a categorical health grant for its health department, is the State government itself the recipient, thereby subjecting all of its activities to these four civil rights laws? Or is the recipient only the State health department?

If the physics department of a branch of a State university system received Federal education aid, is the entire State university system subject to the civil rights laws? Would the entire State government be subject to these laws if the physics department at one branch of the State university system received Federal aid?

Broad coverage under title IX's ban against sex discrimination in education programs prior to Grove City would have subjected all of the recipient's educational activities to title IX, but the Federal agencies and the courts never seemed to go further than such educational activities. If a college receives Federal educational aid, would its commercial activities, unrelated to the educational activities of the college but providing revenue to the college; for example, commercial rental property, be covered by title IX? The bill, on its face, would seem clearly to cover these commercial activities.

Similarly, Federal education aid to a college was apparently never used to reach such commercial properties under section 504. Would a college's receipt of Federal education aid lead to section 504 coverage of its commercial property, including the need to add ramps and other accommodations? The bill, on its face, would seem clearly to cover these commercial activities.

If a State receives a social service block grant, are all of the activities of the State government covered under the bill?

Second, while H.R. 5490's definition of "recipient" is modeled on definitions in existing regulations, it contains a significant additional clause not found in those definitions. The definition of "recipient" includes entities "which receive [ ] support from the extension of Federal financial assistance to any of its subunits."

What does this portion of the definition cover?

If a municipality's fire department receives Federal funds to build a fire station, clearly the fire department is covered under the bill. Does the municipal government receive support from the fire department, which is, after all, one of its subunits? If so, are all activities of the municipal government covered under the bill?

If the federally assisted fire department performs routine checks on fire safety equipment in municipal buildings and puts out fires in municipal buildings, is that support to the municipal government from the fire department which then subjects all of the municipal government's activities to the civil rights statutes?

If the municipality was able to spend on other activities the funds it would have spent on the federally assisted fire department, would that support trigger coverage of the municipal government's other activities?

Third, H.R. 5490's definition of recipient includes "any successor, assignee, or transferee of any * * * State, subdivision, instrumentality, agency, institution, organization or entity or any * * * subunit, to which Federal financial assistance is extended (directly or through another entity or a person) * * *"

If a municipal health department which receives Federal financial assistance conducts a health inspection of a local restaurant, is the restaurant a recipient of Federal financial assistance and thereby subject to the Age Discrimination Act, section 504, and title VI?

Are local businesses which obtain their water from a municipal water system, or from a private water company, which has received a Federal waste water treatment grant recipients of Federal financial assistance?

Is an airline landing at a federally financed airport, or an airport which received some Federal aid, either a recipient or transferee of a recipient, thereby subjecting itself to these civil rights statutes, including section 504's regulatory requirements of physical accessibility?

Fourth, a number of Federal funding statutes ban religious discrimination in "programs or activities"—not entire recipients—funded under the statutes. H.R. 5490 does nothing to reverse the effects of Grove City on the scope of the ban against religious discrimination in these statutes.

The Full Employment and Balanced Growth Act of 1978 forbids religious discrimination only in programs—not entire recipients—funded under the act. Does H.R. 5490 provide for institution-wide coverage of religious discrimination under this act? The answer is clearly "No."

Fifth, the revenue sharing program, which provides unrestricted, general aid for localities, has a three-layered, antidiscrimination scheme, as follows: First, a program-specific ban, like title VI now, against discrimination on the basis of race, color, national origin and sex; second, it incorporates by reference, inter alia, the Age Discrimination Act and section 504; and third, a proviso that the prohibitions against discrimination; that is, layers 1 and 2 "do not apply when the [local] government shows, by clear and convincing evidence, that a payment under this chapter is not used to pay for any part of the program or activity." Thus, if a locality spent its revenue-sharing funds only to build a swimming pool and could show that its revenue-sharing funds were spent nowhere else, even the broad approach prior to Grove City would only have covered the recreation department, and not all of the activities of the locality. If H.R. 5490 is adopted, would a locality receiving revenue-sharing funds have all of its activities covered, or would it be able to avoid such broad coverage if it could show, as in this example, that it only used the funds to build a swimming pool?

Sixth, if a private, religious school participates in the Federal title I education program for disadvantaged children, is the entire school covered by the civil rights statutes, including section 504's accessibility requirements, if H.R. 5490 is adopted? The Department of Education's Office of Civil Rights has always tried to be minimally intrusive in the affairs of such private, religious schools receiving aid under title I. Under H.R. 5490 a Federal agency's authority—as well as the ability of a private litigant to bring a lawsuit—will be greatly broadened.

Seventh, what effect, if any, will H.R. 5490 have on traditionally black institutions, such as Lincoln University and Howard University?

Eighth, will a private undergraduate college such as Wellesley, which is now a single-sex institution, be required to admit members of the opposite sex if H.R. 5490 is adopted? The answer should be "no" because title IX currently exempts undergraduate admissions programs at private colleges.

Ninth, proponents of H.R. 5490 assert that the bill is not intended to change the scope of an agency's currently narrow fund termination power; for example, in section 602 of title VI and section 902 of title IX. That termination power is currently "limited in its effect to the particular program, or part thereof, in which noncompliance has been * * * found." H.R. 5490 changes this language in the clause limiting the fund termination power. If H.R. 5490 is not intended to change the scope of the termination power, why doesn't it retain the language currently in the statute? The likely answer to this question is: "Because we want to remove the term 'program' anywhere it appears in the statute—that was the troublesome term in Grove City." The response to this answer is—it is necessary to remove the term "program" in the fund termination part of these statutes because there, it does not affect the scope of jurisdiction in the statutes operative provision which is already going to have the phrase "program or activity" deleted.

□ 1530

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. FISH. Mr. Chairman, I yield 1 more minute to the gentleman.

Mr. DANNEMEYER. Mr. Chairman, I thank my colleague, the gentleman from New York, for this additional time.

I have raised these questions because I think they deserve to be asked when we go down the road under the flag of civil rights.

The goal that we seek, the elimination of discrimination in our society is a goal that we all share, but in pursuing that goal if we are going to expand the operations of the Federal Government in the manner that these questions seem to indicate that we perhaps will be doing, Members I think should be alert that we are doing that, so if we are going to expand vastly the power of the Federal Government in this country and its instrumentalities in the executive and the judicial branch, that we know what we are about.

I submit some of these questions raise serious doubts as to whether or not it truly is the intention of Congress that we expand the power of the Federal Government in the manner that perhaps may be intended by the language that is in this bill.

Mr. FISH. Mr. Chairman, I yield myself such time as I may use. I will be very brief.

The previous speaker raised a couple questions that I think should be put to rest at this point, although I think they will be dealt with at greater length during the 5-minute rule consideration; but the gentleman mentioned that there was new language in the definition of "recipient." I would like to read from page 30 of the committee report accompanying the measure before us:

> The term "support" is a new term in the "recipient" definition; it did not appear in that regulatory definition. "Federal financial assistance" and "support" are similar concepts. The current regulations defining "federal financial assistance" which remain unchanged are guidance for the meaning of "support." Both federal financial assistance and support should be interpreted broadly.
>
> The concepts of "federal financial assistance" and "supports," found within the "recipient" definition, are threshold questions with respect to each of the affected statutes. In *Grove City*, the Supreme Court correctly held that the Basic Educational Opportunity Grants were federal financial assistance to the college. Other forms of federal assistance will also continue to trigger coverage by these statutes. These include, but are not limited to, Medicare and Medicaid, federally Guaranteed Student Loans and grants and loans for building construction, endowments, land grants and a wide range of other resources. Agency regulations for the amended statutes should be consulted for more detailed explanation of the various forms of assistance which trigger coverage.

I think that as a general proposition, Mr. Chairman, we can say that the judicial and the executive branch interpretations and the enforcement practices subsequent to the enactment of this legislation will be the same as they were before the Grove City College decision. This legislation does not make any substantive changes in the law. It would not result in any changes in the status quo as to the type or number of recipients. It would not require any changes in the regulation.

In sum, the Civil Rights Act of 1984 will not expand the law. It will simply restore the law to its previous scope and coverage.

Mr. EDWARDS of California. Mr. Chairman, I yield myself 9 minutes.

Mr. Chairman, I join with the distinguished gentleman from New York [Mr. FISH] in bringing the title VI portion of this bill to the full House for consideration. As you know, this bill has broad bipartisan support—a total of 181 cosponsors. It has brought together a broad-based coalition both within the House and among the various constituent groups supporting this bill.

H.R. 5490 has been carefully considered by the two committees, following extensive jointly held hearings. I commend my colleagues from these committees and the various caucuses for the support they have provided in bringing this legislation to the floor. The committee report was a true bipartisan effort with staff from both sides of the aisle coming together in a spirit of full cooperation; I thank them for the fine work they have done.

Mr. Chairman, as noted throughout the committee's report, title VI served as the model for each of the other three provisions addressed by H.R. 5490. Together these four statutes prohibit Federal financial assistance to public or private entities which discriminate on the basis of race, color, national origin, handicap, age, and, in education on the basis of sex. It is necessary to enact H.R. 5490 to correct part III of the Supreme Court's Grove City ruling which, if allowed to stand would limit severely the enforcement of these statutes.

We know the Court's ruling has already changed the enforcement practices of the Department of Education because it has closed 23 title IX complaints, and 1 title VI complaint and other complaints are still under review.

The purpose of this legislation is to clarify the coverage of these four statutes. We do this by reaffirming pre-Grove City College judicial and executive branch interpretations and enforcement practices which provided for broad coverage of these antidiscrimination provisions. Such broad coverage will enable Federal funding departments and agencies to conduct civil rights investigations unimpeded without tracing funds to determine the jurisdiction over discrimination complaints. Furthermore, it will permit the Attorney General and private parties to seek institution-wide judicial relief against continued discrimination.

Mr. Chairman, H.R. 5490 makes four changes to each of the statutes:

First, it deletes the phrase "program or activity" wherever it appears, because the phrase was so narrowly construed by the Supreme Court;

Second, it substitutes the term, "recipient";

Third, it adds a definition of recipient to each statute; this definition is modeled after existing Federal regulations defining the term; and

Fourth, it modifies the fund termination provision of the enforcement section and in so doing retains the "pinpointing" concept of this enforcement mechanism.

Extant statutory limitations on the scope of these laws are not affected by the changes made in this bill. Thus, for example, the employment limitations found in title VI and the Age Discrimination Act and the gender-based associations exempted in title IX—for example, mother and daughter or father and son banquets, single-sex schools, social fraternities, and sororities—are not changed.

By enacting this bill, we do not expand or contract who or what is covered, nor do we alter what constitutes Federal financial assistance.

□ 1540

We have described in the committee reports certain concepts basic to the operation of the four statutes. We have illustrated these concepts by setting forth hypotheticals to demonstrate pre-Grove City interpretations—interpretations which this legislation will reaffirm.

Mr. Chairman, the committees stressed that we cannot anticipate and answer every likely fact situation to be raised by these statutes. It is our intent that agency and judicial interpretations of this legislation be guided by the concept of broad rather than narrow application of the coverage of these provisions. As a general rule of thumb, if a recipient of Federal funds was covered before the Grove City ruling, it will be covered following enactment of this legislation; conversely, if it was not covered pre-Grove City it will not be covered after passage of H.R. 5490.

We believe, above all, that the enforcement record to date has been guided by a commonsense approach. That is why we should look to prior agency regulations and practices for guidance in the future enforcement of these laws. It is for this reason that major changes in agency regulations will not be required. Any changes in the regulations should conform to the broad coverage clarification intended by this bill.

Mr. Chairman, let me emphasize that the concerns over the reach of these statutes, after enactment of H.R. 5490, are without basis. Claims that beneficiaries of general-purpose governmental assistance programs, such as social security, food stamps and welfare, will be covered by these statutes and that they will transfer their coverage to others engaging in transactions with them are ill founded. They can be explained thusly: First, such beneficiaries are not recipients within the meaning of these laws—they were not before and they will not be after passage of H.R. 5490, and second, such assistance to them does not constitute Federal financial assistance within the meaning of these laws. Since these beneficiaries are not covered they cannot transfer coverage to some other person or entity.

Under the Grove City ruling and existing agency regulations there is, however, a distinction between no coverage of the ultimate beneficiary and coverage of, for example, a nursing home or hospital whose patients'/clients' medical needs are paid for by Medicaid/Medicare or a college or university whose students receive veteran's education benefits and Federal student financial aid. Such indirect aid constitutes Federal financial assistance and the receiving entity is a recipient within the meaning of these laws. Coverage means those recipients must comply with the antidiscrimination provisions of title VI, title IX, section 504 and the Age Discrimination Act.

Mr. Chairman, in conclusion, I would like to extend my special appreciation and thanks to the gentleman from Illinois [Mr. SIMON], for his leadership in reviewing executive branch enforcement of these statutes. The gentleman from Illinois has long recognized that these laws have offered the best guarantee of equal opportunity for blacks, Hispanics, women, and the handicapped.

Early on Mr. SIMON recognized a shift in executive branch enforcement of these and equal educational opportunity laws. He conducted an extensive series of hearings around the country to determine Hispanics' access to higher education. In addition, our two subcommittees conducted joint oversight hearings approximately 1½ years ago on the changed enforcement practices by the Departments of Justice and Education on title VI, title IX, and section 504. Representatives from black, Hispanic, women, and handicapped groups explained the damaging impact these changes, which are now embodied in the Grove City decision, will have if not corrected.

I would also like to thank the gentlewoman from Rhode Island [Mrs. SCHNEIDER] for boldly moving forward House Resolution 190 which reaffirmed congressional intent that title IX should be applied broadly—the vote overwhelmingly supporting that resolution was 414 to 8. Her continued determination to restore pre-Grove City enforcement of these laws is evident from her dedicated support for H.R. 5490.

Mr. Chairman, throughout all of our endeavors to enact H.R. 5490, the gentleman from New Jersey, the chairman of the full committee, has been, as he always is, of invaluable help.

Last, but surely not least, I wish to extend my appreciation to my fellow Judiciary Committee members, the gentleman from New York [Mr. FISH], and the gentleman from Wisconsin [Mr. SENSENBRENNER].

The gentleman from Wisconsin [Mr. SENSENBRENNER] is ill and cannot be here today. He is the ranking minority member of the subcommittee that I chair. These two gentlemen have recognized the importance of bringing this legislation before you for your support. I deeply regret that the gentleman from Wisconsin is unable to be here. We are grateful for his support and wish him a speedy recovery.

Mr. Chairman, the gentleman from New York has a long and distinguished career in this Congress as an advocate for civil rights and as always I am proud to join with him again.

I am confident, Mr. Chairman, that H.R. 5490 succeeds in achieving its limited purpose which is to clarify the scope of coverage of these four laws. I urge my colleagues to adopt the bill and reaffirm congressional intent that these provisions be applied broadly and, thus, overturn the narrow coverage resulting from the Grove City ruling.

Mr. FISH. Mr. Chairman, I yield myself sufficient time to thank my colleague, the gentleman from California, for his very generous comments.

Mr. Chairman, I yield such time as she may consume to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

Mrs. SCHNEIDER. Mr. Chairman, in 1963, President John Kennedy in an address to students in Nashville, TN, said:

> This Nation is now engaged in a continuing debate about the rights of a portion of its citizens. That debate will go on and those rights will expand until the standard first forged by the Nation's Founders has been reached and all Americans enjoy equal opportunity and liberty under the law.

Much has happened since these words were spoken and many rights have been hard fought and won by minorities, women, senior citizens, and disabled persons. The 1964 Civil Rights Act outlawing discrimination based on race and national origin, title IX of the 1972 education amendments, section 504 of the 1973 Rehabilitation Act and the 1975 Age Discrimination Act prohibiting discrimination against older persons were all highly influential in providing the opportunities and access necessary for individual achievement.

The blatant discrimination of the fifties and sixties which required blacks to ride in the back of the bus and women to have higher SAT scores than men has since been outlawed due in large part to the effectiveness of these laws. Impressive statistics abound attesting to the marked gains that women, minorities, seniors, and disabled persons have made in the realm of education and employment and public access. For instance, there are 60 percent more black physicians today than 20 years ago while the percentage of professional degrees earned by women has quadrupled since 1972.

Despite the gains, the ideals expressed by the Founding Fathers in the Declaration of Independence have not yet been fulfilled.

Almost 20 years to the day after the Congress of the United States passed with pride the Civil Rights Act of 1964, we today are assembled in the House of Representatives to debate the merits of the Civil Rights Act of 1984. No member should underestimate the significance of this legislation since it is in fact a test of congressional commitment to the goals of equal opportunity for all Americans.

The antidiscrimination fury of the sixties has diminished. Congress has turned its attention away from civil rights to more immediate concerns such as Federal deficits, trade and defense spending arguments. While these issues are important, such issues come and go each year. Civil rights stays with us throughout the course of time a civil rights movement, while quieter than its predecessor, does exist today. It exists in our schools, our neighborhoods, our offices and factories. We observe each day the progress that women, minorities, disabled persons, and seniors have made but also stand witness still to how far we as a nation need to go before true equality is achieved.

During the past 20 years, the Nation has grown as a result of having admitted to the marketplace the minds and abilities of the millions of Americans previously prevented from competing. Surely this country is a better place today than 20 years ago because the talents and skills of all its people are being utilized. And throughout the world, the United States, in less than two decades, has given persons the hope and courage to fight for liberties that they too desire and deserve.

H.R. 5490, the Civil Rights Act of 1984, carries on the American ideal of providing an equal opportunity to all its citizens. It does not give any one population the edge in competing for jobs or educational slots, but simply restates the fundamental commitment to achieve according to the talents of the individual provided for in title VI, title IX, section 504 and the Age Discrimination Act.

I would like to digress just a moment to shed some additional light on why H.R. 5490 is a necessary and explain my own involvement in this issue.

Back in 1981 when I first arrived in Congress I learned that my distinguished colleague, Senator ORRIN HATCH, had introduced legislation designed to narrow the scope of title IX of the 1972 education amendments. As the only Federal law prohibiting sex discrimination in education, I had witnessed first hand the surge of women entering medical, engineering, and law professions. I observed the progress that women were making in the world of business and politics. Title IX obviously was working to open up doors previously closed to women.

I strenuously objected to the Hatch legislation and introduced a resolution citing the contribution that title IX has made to society and opposed any effort any effort to narrow the applicability of title IX coverage. Recognizing the legitimacy of the pro-title IX arguments, Senator HATCH graciously withdrew his legislation. In the meantime, a small private college in Pennsylvania, Grove City College, was challenging a Third Circuit Court of Appeals ruling which had ordered the college to sign a title IX compliance form since some of its students used basic educational opportunity grants [BEOG's] or Pell grants to finance part of their education. The college, with a history free from discrimination complaints, believed that Pell grants alone did not constitute Federal financial assistance and declared that they would not sign the title IX compliance form. The college brought the case to the Supreme Court which on February 28, 1984, made the following decision: First, that BEOG's did constitute Federal financial aid, and second, that Grove City need only comply with title IX in its financial aid office since only that office directly receives Federal funds. I should tell you that prior to the Supreme Court decision, I had taken several steps to clarify congressional intent of the title IX statute. I had introduced a resolution clarifying that the Congress intended title IX to apply broadly—so the entire educational institution was covered whether or not each and every program or activity directly received Federal assistance. Second, I crafted an amicus brief for the Supreme Court Grove City College against Bell case and obtained bipartisan support from 75 Senators and Representatives. In the brief, I urged the justices to review the legislative history of title IX which clearly shows that title IX was supposed to cover entire educational institutions.

Despite these efforts, the Supreme Court determined that title IX should apply only to the program or activity earmarked to receive Federal funds. Soon after the Supreme Court decision, I introduced legislation designed to clarify the title IX statute so that once and for all the law would provide broad coverage while keeping the remedy, in the event of discrimination, narrow. Thus, if a science class was federally funded but a history course was not, the federally funded science class would trigger coverage for the entire institution. Under the Grove City decision, only the science class need comply with title IX. I believe, and the 414 to 8 vote proved, that the Congress does not approve of the kind of patchwork discrimination that would evolve from the Grove City decision.

It became readily apparent to me, however, that three other civil rights statutes, title VI of the Civil Rights Act, section 504 of the Rehabilitation Act and the 1975 Age Discrimination Act, like title IX, were in jeopardy of a narrow finding by the courts unless they too were clarified. I then joined with my distinguished colleague from New York, Representative FISH and the other Members—Representatives SENSENBRENNER, EDWARDS, and SIMON who worked so hard to carefully draft legislation that would return our most important civil rights statutes to pre-Grove City standing.

The Congress of 1984 can act none too soon in passing this important legislation. Already, since the Grove City decision, there have been 28 education complaints closed and in 18 antidiscrimination complaints the scope of the investigations have been narrowed. Also, one title VI case had been closed and five others have been modified.

I believe that the Congress owes it to the Nation to restore its major civil rights statutes to what has been the existing law of the land. As a Representative of Rhode Island where more than 300 years ago Roger Williams enshrined one of the fundamental freedoms of our Nation—freedom of religion—I am proud to stand here today to remind my colleagues that equality of opportunity should be a fact of American life—not a question mark.

□ 1550

The CHAIRMAN. The time of the gentleman from New York [Mr. FISH] has expired.

Mr. EDWARDS of California. Mr. Chairman, I yield 2 additional minutes to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

Mrs. SCHNEIDER. I thank the gentleman for yielding more time to me.

Mr. Chairman, I would like, however, to express my disappointment that Representative BARTLETT's amendment failed to pass out of the Rules Committee. The Bartlett amendment would have appropriately mandated that the Congress adhere to the civil rights laws found in H.R. 5490. It is simply inexcusable that the Congress of the United States exempts itself from compliance with the very laws that it requires from the rest of the Nation.

Despite this omission, H.R. 5490 is a sound piece of legislation. It is extremely important to send to the courts and the Nation a sign that Congress will not tolerate any backpeddling in its commitment to civil rights. There simply is no room for token support or apathy when it comes to equal treatment of Americans under the law. I remind you of Abraham Lincoln's words when he said: "to sin by silence when they should protest makes cowards out of men."

Mr. EDWARDS of California. Mr. Chairman, I yield 3 minutes to the distinguished chairman of the Subcommittee on Select Education of the Committee on Education and Labor, the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. I thank the gentleman from California for yielding.

Many of us in Congress are concerned with the impositions of Federal laws and rules and regulations on our institutions, both public and private. But likewise, many of us in Congress are also concerned with the progress that we have made in educating our handicapped and special young people of this Nation.

And we fear that the ruling that was recently handed down by the Supreme Court would drastically affect the rights of our handicapped youngsters to their full and complete education, to their fullest potential.

Therefore, I endorse the contents of H.R. 5490 insofar as it does extend and continue the protection of our young people who, although they may be somewhat physically or, some, mentally handicapped, do have a place in our society, do have a task and jobs that they can perform and have relied these past 10 years under the provisions of the act of Congress in 1974 that granted them a full and complete education.

I, therefore, Mr. Chairman, strongly urge my colleagues to support the contents of this very important measure.

Mr. Chairman, I rise in support of H.R. 5490. I would like to ask my colleagues to consider the importance of H.R. 5490 to the lives of this Nation's citizens who are handicapped. The Supreme Court decision narrowing the coverage of title IX affects section 504 of the Rehabilitation Act, the law which specifically protects the civil rights of handicapped individuals. Section 504 has extended the promise of equal citizenship for some 36 million disabled Americans, and in the 10 years since its enactment, has brought us a long way toward that goal. The Supreme Court decision now puts that progress in jeopardy and places a barrier in the path of further progress.

It is ironic that on the same day the Supreme Court handed down the Grove City decision, it reached a unanimous decision on another case, Consolidated Rail against Darrone, upholding broad employment coverage under section 504. Under the Grove City decision, however, a recipient could argue that its employment practices are not covered by section 504 if its personnel office receives no Federal funds. A school district or college or university may argue they are not covered in employment practices in departments not receiving Federal funds. Such a claim has been made in a case pending before the Department of Education. The Department found in an investigation that a teacher had been discriminated against "solely on the basis of disability." The school district has claimed that after Grove City the Office of Civil Rights has no jurisdiction to pursue the case since the teacher had been hired to teach math and physical education and neither of these programs receives Federal funds.

Similar setbacks may be seen in the area of education of handicapped children if Congress fails to pass H.R. 5490. Handicapped students have, prior to the Court's decision, been able to rely on the broad reach of section 504 to ensure their access to regular education programs, materials, and resources. The Federal Government presently supports handicapped students in a number of educational programs. The most familiar is the Education of the Handicapped Act, but there are handicapped children being federally supported in vocational education, chapter I compensatory education programs, bilingual education, and other programs. The Federal support of these programs has triggered the protections of section 504. Without H.R. 5490, however, it is possible that handicapped students will not be able to access regular education resources due to the lack of direct Federal support of those regular education programs.

For example, consider the case of a high school student with cerebral palsy who uses a wheelchair, is functioning at grade level academically and who is enrolled in special education in order to receive appropriate physical therapy. The Education of the Handicapped Act assures him of a free and appropriate education. But, without the protection of section 504, the Education of the Handicapped Act assures him only a free and appropriate special education. His access to materials, resources, and programs in regular education is a function of section 504. Without the full functioning of section 504, this high school student could find himself unable to obtain access to chemistry classes held in an upstairs classroom.

Federally assisted programs for handicapped students are deeply dependent upon regular education for their ultimate success. One of the major underlying principles of the Education of the Handicapped Act is that handicapped students be educated alongside their nonhandicapped peers to the greatest extent possible. Without the full functioning of section 504, this objective will be severely hampered. Section 504 in this regard serves as a bridge to resources and, just as importantly, to nonhandicapped people. If we choose not to ensure its applicability, we are jeopardizing not only the progress that has been achieved in the past, but also the future of handicapped students.

In section 504 Congress sought to assure that recipients of Federal financial assistance would discontinue discriminatory practices and policies and would take the steps necessary to assure equal opportunity and full participation by disabled citizens. Congress recognized that discrimination on the basis of disability is often the result of the failure to consider or to accommodate special needs, or of benign neglect or misdirected or erroneous assumptions and stereotypes. Congress also recognized, however, that the result—exclusion and segregation—is unjust and in need of a Federal remedy.

While section 504 is modeled after and is virtually identical to title VI and title IX, Congress recognized that the nature of disability-based discrimination would require different protections in order to assure is equal opportunity. The Department of Health, Education and Welfare was assigned the task of developing regulations to accomplish this result. After nearly 4 years of study, drafting, and comments, as well as continual congressional oversight, HEW published the first set of section 504 regulations in May 1977. The cornerstone of the 1977 HEW regulations is equal opportunity. HEW recognized that in the case of disability, identical treatment may in fact be discriminatory, while different treatment or accommodation may be necessary to assure equality of opportunity. The regulations prohibit any practice which, in purpose or effect, results in discrimination against disabled Americans.

Congress participated extensively in the regulatory process. As the Supreme Court stated in Consolidated Rail Corporation against Darrone, a case which correctly upheld section 504's prohibition against employment discrimination:

> The regulations specifically merit deference in this case: the responsible congressional committees participated in their formulation, and both these committees and Congress itself endorsed the regulations in their final form * * * Congress incorporated the substance of the Department's regulations into the statute.

The HEW regulations correctly implement the integration and equal opportunity mandates of section 504. Section 504 requires recipients to accommodate the special needs of disabled citizens. This concept of accommodation takes place in all areas. No longer can disabled children be segregated from their peers because of architectural or communication barriers or the failure to provide specialized services. Similarly, section 504 opens the doors of higher education to qualified disabled students. In 1973, a disabled student who wished to pursue a higher education had few options. Only a handful of colleges and universities in the country were accessible to them. Today, a disabled student can make career and educational decisions on the same basis as other students. Barrier removal, accommodations, and academic adjustments have been incorporated into higher education. Since the promulgation of the section 504 regulations, the number of disabled college freshmen has more than doubled. In many instances, across the country, the number has increased tenfold or more. At the University of Pittsburgh, which has shown leadership in accommodating disabled students since 1975, the number of disabled students has increased since 1977 by 50 percent. Significantly, the university reports that, because of the effects of section 504 on attitudes and opportunities in employment, disabled students now study a broad range of subjects, including business, engineering, and the sciences. It is no longer assumed that disabled graduates will find employment in only a few occupations willing to accept them.

Section 504 has changed the national consciousness from thoughtlessness and neglect to consideration and action. Government officials can no longer ignore the needs of millions of Americans in making policy decisions. Section 504 prohibits the utilization of criteria which have the effect of discrimination against disabled Americans. Since section 504, policy decisions must be reviewed to determine the impact on this population, and alternatives must be explored.

Millions of disabled Americans can now compete for jobs from which they have historically been excluded. In every area of American life, section 504 allows disabled Americans to claim their rightful places.

Recipients of Federal financial assistance have done a commendable job in transforming the face of American life by accommodating the special needs of their disabled constituents in accordance with section 504. If one lesson has been learned in the last 10 years, it is that the short-term costs of compliance are far outweighed by the long-term gains and savings. Disabled people have entered the mainstream of American life with the opportunity to be productive, contributing members of our society.

But we are only just beginning. Our awareness as a country has changed remarkably. But there is still much that needs to be done to truly integrate our disabled citizens. Hundreds of years of neglect cannot be turned around in 10 short years. Section 504 has been the single most important tool in the long struggle of equal citizenship for disabled Americans.

Section 504 must continue as a strong law and enforcement mechanism. The failure to pass the Grove City amendment would signal a retreat from the societal commitment made to disabled citizens in 1973. All recipients of Federal funds are covered by section 504—that was our intent in 1973 and it is our intent now. This is not a burden—it is an opportunity and it is essential to the fundamental principle of equality on which this Nation is based.

I thank the chairman.

Mr. EDWARDS of California. Mr. Chairman, I have no further requests for time.

Mr. FISH. Mr. Chairman, I have no further requests for time.

Mr. EDWARDS of California. Mr. Chairman, I yield back the balance of my time.

PARLIAMENTARY INQUIRY

Mr. COLEMAN of Missouri. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COLEMAN of Missouri. Mr. Chairman, it is my understanding that there are 2 hours of general debate, 1 hour to be controlled by members of the Committee on the Judiciary and 1 hour to be controlled by the Committee on Education and Labor; is that true?

The CHAIRMAN. The gentleman is correct.

Mr. COLEMAN of Missouri. Am I to control 30 minutes from this side?

The CHAIRMAN. The gentleman is correct.

Mr. COLEMAN of Missouri. Who is to control time on the other side?

The CHAIRMAN. The gentleman from Illinois [Mr. SIMON].

Mr. COLEMAN of Missouri. Mr. Chairman, are we going to proceed to that time now, or am I to take my time?

The CHAIRMAN. The Chair would hope we may proceed during this general debate this evening, yes.

□ 1600

Mr. COLEMAN of Missouri. Mr. Chairman, I will reserve my 30 minutes.

Mr. EDWARDS of California. Mr. Chairman, the gentleman from Pennsylvania [Mr. MURPHY] will represent the Committee on Education and Labor on this side for the additional period of time.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. MURPHY] will be recognized for 30 minutes and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylania [Mr. MURPHY].

Mr. MURPHY. Mr. Chairman, we have no requests for time at this moment and would, therefore, allow the minority to proceed.

Mr. Chairman, I reserve the balance of my time.

Mr. COLEMAN of Missouri. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 5490, the Civil Rights Act of 1984.

I am an original cosponsor of this legislation which was introduced in response to the Supreme Court's decision in Grove City College against Bell. The Court's decision was in response to the refusal of Grove City College to sign an assurance of compliance form under title IX of the Education Amendments of 1972. Title IX prohibits sex discrimination in educational programs and activities which receive Federal financial assistance.

The purpose of the legislation before us today is simple: It restores and reaffirms the judicial and executive branch interpretations of our civil rights statutes prior to the Grove City College decision in February 1984.

Since title IX was enacted in 1972, the Department of Education and its predecessor, the Department of Health, Education, and Welfare, have interpreted the statute so broadly that if any part of a school or college received Federal aid, the institution as a whole would be covered by the statute.

In Grove City College against Bell, the Supreme Court dealt with the issue of whether or not basic education opportunity grands (BEOG's), now referred to as Pell grants, constitute Federal financial assistance to Grove City College for the purposes of title IX coverage. The Court held that Pell grants are considered aid to the college. This portion of the decision reflects the regulatory and judicial history of title IX. Unfortunately, the Court also held that only the financial aid office of the college was required to comply with title IX. This portion of the decision directly contradicted the regulatory and judicial history of title IX.

Grove City set a new precedent for the interpretation of title IX which could significantly undermine our efforts to eradicate sex discrimination from education. Under the decision, only the specific campus program or activity which directly receives Federal aid would be covered under title IX. This means that women may be lawfully discriminated against in all other programs or activities not receiving Federal funds.

I, for one, regret the Supreme Court's decision because it severely limits the effectiveness of title IX. Not only does the decision jeopardize the tremendous gains made for women and girls in education, but it also curtails the protections of three other key civil rights statutes: Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. All three of these statutes contain the identical language that the Supreme Court narrowly interpreted in the Grove City College case.

As introduced, H.R. 5490 makes three changes in each of the four civil rights statutes:

The words "program or activity" are replaced with the word "recipient."

A definition of "recipient" taken directly from Department of Education title IX regulations is added.

The fund termination enforcement provisions are clarified.

H.R. 5490 was carefully drafted to restore the pre-Grove City vitality of all four civil rights statutes without breaking any new ground or expanding civil rights protections.

The Committee on Education and Labor and the Committee on the Judiciary heard testimony from numerous witnesses who were involved in the enactment of title IX in 1972. These witnesses included both former and current Members of the House and Senate, former members of the Office of Civil Rights in the Department of Health, Education, and Welfare, and civil rights activists. Each of these witnesses unequivocally testified that Congress intended coverage to be broad, comprehensive, and institutionwide under title IX. They expressed support of H.R. 5490 as the most effective means of reasserting Congress intent with respect to these laws.

Before title IX became law, sex discrimination was an open, accepted practice on many campuses. Among the problems:

Female applicants were required to have higher scholastic aptitude tests than males to be admitted to many colleges and universities.

Athletic scholarships for women were virtually nonexistent.

Female students were strongly advised to pursue so-called women's fields, leaving science, math, and medical studies primarily to male students.

Many women were teaching at prestigious colleges and universities without compensation. The colleges said that either they could not afford to pay the women, or that, because their husbands were employed by the school, policies barring nepotism prohibited paying them.

Today, women are teaching in the classrooms, more women are entering medical, law, business, and dental schools, and female high school students are receiving their fair share of scholarships.

One of the best examples of women gaining equal access in education thanks to title IX has been in the area of athletics. Before Title IX was passed, practically no college or university offered scholarships to talented female athletes. For every 100 athletic scholarships awarded in 1974, an average of 1 went to a woman. Today, 22 out of every 100 athletic scholarships are awarded to women. In my home State of Missouri alone, the dollar amount of female athletic scholarships awarded at the University of Missouri at Columbia has climbed from $8,000 in 1975 to $364,000 in 1984.

I am unaware of a program of Federal financial assistance that directly supports an athletic program on a college or university campus. Yet, since the enactment of title IX, athletic programs across the country have felt its tremendous impact. During 1981, over 10,000 athletic scholarships were awarded to female high school students.

H.R. 5490 must be enacted swiftly so that the tremendous gains that we have made for women and girls in education are preserved. Since the Supreme Court decision in February, the Office of Civil Rights within the Department of Education has dropped 22 cases which deal with sex discrimination in education. Secretary Terrel Bell has publicly stated that those cases will reopened and investigations resumed should the Congress approve H.R. 5490.

There is a great deal at stake in this issue. The part of the law the Court has interpreted so narrowly is the same language found in almost every civil rights bill guaranteeing equal treatment for minorities, the elderly, and the handicapped.

The Supreme Court decision puts at risk the signficant steps that have been made toward ridding our Nation of discrimination with regard to one's age, race, national origin, physical limitations, and sex. Our civil rights laws are safeguards to ensure that our citizens have equal rights. The House should pass H.R. 5490.

Mr. Chairman, I yield 5 minutes to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. Mr. Chairman, in the Supreme Court's Grove City against Bell decision it was determined that title IX compliance applied only to programs that receive Federal assistance, not to the entire school. I have no problem if Congress wants to bring all educational activities at a recipient institution under title IX requirements. If a school makes a conscious and active effort to seek Federal moneys in any of its programs it should expect the federal strings attached to the money. We could have solved the title IX problem by simply having the words "program or activity" with "institution" as Representative SCHNEIDER's bill would have done. In my opinion that would have been preferable to House Resolution 190 which asked the Supreme Court to so rule.

CONCERNS OF PRIVATE INSTITUTIONS WHICH ARE NOT SEEKING FUNDS

Another part of the Supreme Court's decision is of much more concern and should be to all those who believe, as I do that a diverse educational system is important in our society. There are approximately twenty-seven 2- and 4-year institutions which receive no campus-based funds and which participate in the alternative distribution system (ADS) for BEOG's. Under the ADS method of BEOG distribution, the Department of Education calculates awards and makes disbursement directly to eligible students. The ADS method is used by those schools that wish to minimize their involvement in the administration of the BEOG program. As long as we are correcting the Supreme Courts oversights, I think we should exempt from Federal obligations those institutions of higher education whose only form of Federal assistance is indirect student assistance.

ANTI-CIVIL-RIGHTS AND EDUCATIONAL CHOICE BILL

Those colleges and universities that have made every effort to resist Federal money because they want to remain independent of Government control, would come under Federal requirements simply because one or more of its students received Federal assistance and then used that assistance to pay tuition at that school. Several representatives of these types of institutions have testified that they would be forced to refuse admittance to students that were receiving Federal assistance. This could seriously limit the educational choices of those students who would prefer to attend a small private college but that would be refused admission because they needed Federal assistance to afford the tuition.

NOT A CIVIL RIGHTS ISSUE—A GOVERNMENT INTERFERENCE ISSUE

Grove City was never accused of discrimination. Its only sin was the school's desire to keep the Federal Government at bay. It just wanted the

Government to mind its own business and refused to sign a certificate of compliance. Instead of discouraging institutions from remaining independent of Government control and financial largesse, we should encourage a diverse educational system and encourage those private colleges which wish to remain private.

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I might point out that even the Washington Post has worried that this bill is too far reaching and it recommends that Congress "at least understand fully what the consequences of passage may be."

I am grateful to the gentleman from New York [Mr. FISH], who insisted on a full hearing of this bill and not having it on suspension, because there are some things about which we need to be concerned. When the Washington Post is worried about what the Federal Government is doing, and the idea that it may be making too large a power grab, it is time for the rest of us, it seems to me, to take a hard look at what is going on.

I would like to also indicate that I feel that the other three acts could be amended similarly to the one I suggested. On this one, all you have to do with title IX is to change it to say "institution" rather than "program or activity." For the case of the rehab Civil Rights Act, title VI, or age discrimination, a very simple change of the words "program or activity" could simply be "to the agency," and that would solve the problem without the complicated language in this bill.

I have no quarrel with civil rights, I have no quarrel with the intent of the legislation. I agree that it is good. But while we are correcting one wrong the Supreme Court may have done, let us also correct the other wrong, which I think we go much further than any of us intend.

Mr. COLEMAN of Missouri. Mr. Chairman, I yield 7 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Chairman, I will be entering a full statement into the RECORD at the conclusion of these remarks, but I would share with the House several observations that come from having gone through the hearings, reading the materials and reading the bill and participating in the committee report.

Mr. Chairman, I approach this bill with a good deal of reluctance and a good deal of skepticism. I began the hearings with many of the same questions that I have heard some of my colleagues raise today. I believe that those questions have been answered in each and every case.

Mr. Chairman, I stand here as a long-time supporter of civil rights and of antidiscrimination laws. I am a believer that Federal funds which are supplied by all of taxpayers, those benefits should also be available to all of the taxpayers. I believe that the law should be colorblind, should be sex blind and access to benefits should not be denied based on age or handicap.

However, along with many Americans I believe that in some instances in the last 10 years in this country remedies to discrimination have been excessive or overly zealous. Schoolbusing to achieve racial quotas, for an example, or reverse discrimination associated with various affirmative action and quota plans I believe have been excessive and have hurt the people they have tried to help.

The dissatisfaction that I have with certain remedies is a legitimate complaint shared by many. But I would point out to the House that those remedies which may have been excesses in fact are not included in H.R. 5490. H.R. 5490 only goes to the pinpoint withdrawal of Federal funding.

The Civil Rights Act of 1984 is specifically limited in its remedies to the termination of Federal funds.

I would further note the statements not just here but in committee and in the hearings and elsewhere of the sponsors of the bill and in the committee report, such as the gentleman from California, who said just today in the floor debate, that if an item or if a category was covered before Grove City, it would again be covered, and if it was not covered prior to Grove City, it would not be covered by H.R. 5490.

So the termination of Federal funds to programs which discriminate I think should be a fundamental fairness concept and is the fundamental concept of this bill. It is a fairness issue. An institution which receives Federal taxpayers' dollars should not be allowed to use that funding for discriminatory purposes. Discrimination under such circumstances equals the use of taxpayers' dollars to exclude a certain segment of those taxpayers. If an institution discriminates, in short, it should not receive Federal assistance to do so.

So I rise in support of the bill, after a good deal of thought, debate and participation in the hearings.

Now, I have heard and I would note that I have heard from many friends and thoughtful persons in my own State who are concerned about the consequences of some of the questions that have been raised, and so for the record let me cite, by example almost, some of the things that this bill does not do which in fact have been raised as questions. I believe the questions are answered.

For example, the bill does not extend coverage to financial institutions whose only Federal tie is through FDIC insurance or some other sort of guarantee. It does not extend coverage to those individuals who are Social Security recipients, nor to those landlords or retailers who merely sell goods to those Social Security recipients who use the proceeds of their Social Security check. It does not make any statement about sexual preferences. H.R. 5490 addresses four civil rights statutes, none of which deal in any way with sexual preference.

H.R. 5490 does not extend coverage to local school districts merely because the State may receive Federal aid. H.R. 5490 does not expand the civil rights coverage. It merely clarifies and reaffirms the threshold and the scope of the coverage. It does not change the enforcement scheme available to Federal agencies. It does not remove the effect of the limitations that are currently in title IX, such as the permission for mother-daughter banquets and single sex schools, and so forth.

It does not alter pinpointing principle; that is, the termination of Federal financial assistance that would be limited to that assistance which supports the discrimination found.

The purpose and the effect of this legislation is to reaffirm pre-Grove City College judicial and executive branch interpretation and enforcement practices which provided for broad coverage of those antidiscrimination provisions but for pinpoint remedies for violation.

So, Mr. Chairman, I plan to support this legislation, although there are two imperfections which I believe still exist in the legislation and I would hope would be corrected. One is, the bill does not extend coverage to Congress as an institution under the four civil rights statutes. This is an issue of basic fairness, because Congress should be willing to accept for itself and abide by the same laws which it passes for the rest of the Nation. And I plan to again offer my amendment, as I did in committee, to extend civil rights coverage to Congress as an institution.

The second imperfection, it seems to me, has to do with the fund's termination. And I have prepared a circuit-breaker type of amendment which would state that the remedy or the penalty to be applied would only be applied if there has been a finding of discrimination. The remedy should be used only as a last resort, and the termination of Federal funds should occur only in cases where there is a finding of discrimination and not in cases where there is a finding of a lack of paperwork or some sort of a paperwork violation, and the funding termination would only occur if there has been a finding of discrimination.

These imperfections can and ought to be corrected by Congress. The will of Congress ought to be permitted to work its way through passing and developing and considering carefully drafted, well thought out amendments which would strengthen the legislation and not weaken it in any way.

Both of these amendments are designed to improve and strengthen the legislation. I do urge the House to perfect H.R. 5490 and to improve the Civil Rights Act of 1984 through serious and carefully crafted amendments.

Mr. Chairman, my support for H.R. 5490, the Civil Rights Act of 1984, was not immediate. It evolved rather slowly over the last 3 months. Even today I have an open mind on amendments, and hope those offered receive a fair hearing. In my tenure in public office, I have been faced with few issues more complicated or elusive than those addressed and affected by H.R. 5490—civil rights, discrimination, and enforcement of civil rights protections.

I welcome our debate on H.R. 5490 and hope that it will strengthen our understanding of the bill. My contribution will focus on two general topics—a description of how my position on H.R. 5490 evolved and the review of what I believe the bill would and would not do. My comments are targeted especially to those of my colleagues who may still have major concerns about H.R. 5490. It is my fervent hope that we can achieve a consensus—too much is at stake to do otherwise.

H.R. 5490 amends title VI of the Civil Righs Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. It is my present understanding that H.R. 5490 makes three changes in these four civil rights statutes:

First, the word "recipient" is substituted for the phrase "program or activity."

Second, a definition of "recipient" is added—it is modeled after the definition of "recipient" contained in current regulations.

Third, the concept of "pinpointing" as reflected in the fund termination provision is clarified.

These changes were construed as necessary to reaffirm the interpretation of the four statutes prior to the Supreme Court decision in Grove City College against Bell. The intent of H.R. 5490 is to reinforce two principles inherent in the current statutes:

First, coverage is to be broad. Acceptance of Federal financial assistance triggers broad coverage: It mandates that a recipient comply with prohibitions against discrimination based on race, national origin, color, sex—in educational programs—handicap, or age in any unit or subunit of the recipient whether or not the unit or subunit is supported by the Federal financial assistance.

Second, enforcement is to be narrow. Enforcement, when applied in the form of fund termination, is limited to the Federal financial assistance that supports the discrimination found.

Although the Grove City College against Bell decision confirmed that basic education opportunity grants [BEOG's] constituted Federal financial assistance to Grove City College, and thus that the college must comply with title IX assurances against sex discrimination, the Supreme Court held that compliance with title IX assurnaces would be required only in the financial aid office of the college. This interpretation was consistent with the general interpretation of the threshold of coverage, but it equated the extent of coverage with the "initial resting place" of Federal financial assistance. The decision made the scope of coverage and compliance equivalent.

The Court decision and H.R. 5490 gives us the opportunity to review the principles and process related to civil rights. By addressing several assumptions we will be able to judge individually and collectively if H.R. 5490 constitutes appropriate congressional action. In attending the 6 days of hearings I identified five assumptions which provide a context for assessing the need for H.R. 5490.

First, civil rights protections should be broad.

Second, equivalent civil rights protections should be afforded to all persons served by a recipient of Federal financial assistance.

Third, compliance with civil rights requirements does not pose an inordinate burden on recipients of Federal financial assistance.

Fourth, enforcement of civil rights statutes in the form of fund termination should be used only as a last resort.

Fifth, a legislative standard can be drafted that would protect civil rights, yet not allow remedies against discrimination to cause unintended effects.

Sixth, no entity which accepts Federal financial aid should be allowed to discriminate against the aged, the handicapped, minorities, or women.

CIVIL RIGHTS: THE NEED FOR BROAD COVERAGE

I believe that all of us would endorse the theoretical concept of civil rights if it were defined as prohibition against discrimination based on race, sex—in relation to education programs—handicap, or age. However, we may differ in practical terms about how prohibitions against discrimination can be assured. Moreover, we may differ on how to determine violations and on how to apply penalties. Even if we cannot agree on specific implementation strategies for protecting civil rights, we must make a good faith effort to make such civil rights universal. And, thus, even though each opportunity to ensure or violate an individual's civil rights presents some unique circumstances, we must err on the side of protecting those rights rather than accepting a standard which limits civil rights. The most readily available mechanism we have to promote civil rights is Federal financial assistance—that is as close as we can come to ensuring universal civil rights. Federal financial assistance permeates all facets of American life, and the risk of its loss is a most effective incentive.

If we endorse civil rights, if we believe they should be as universal as possible, if Federal financial assistance is viewed as an appropriate catalyst to ensure such civil rights, then coverage under civil rights statutes should be broad.

EQUAL PROTECTION: A BASIC PREMISE OF COVERAGE

If we support the universality of civil rights, we must attempt to set standards that ensure that individuals served by the same recipient have the opportunity for and receive comparable treatment. The availability of Federal financial assistance in any part of a recipient's operation should trigger civil rights protections to all individuals throughout the recipient's operation. Broad coverage would therefore represent an appropriate principle to apply to minimize unequal treatment of individuals served by a recipient of Federal financial assistance.

COMPLIANCE BURDEN: A LEGITIMATE BUT SEPARATE ISSUE

Receipt of Federal financial assistance brings with it the obligation to complete assurance forms, to submit to monitoring by Federal agencies, and to answer charges of discrimination. This obligation may be construed as a burden. However, it is a burden which can be relieved by streamlining of administrative policies which affect recipient burdens associated with assurance forms, monitoring visits, and discrimination charges. Such streamlining suggests procedural rather than substantive modification in the implementation of civil rights protections, and poses an issue not affected by H.R. 5490.

It would seem that the regulations promulgated for title VI, title IX, section 504, and the Age Discrimination Act have been fully tested in terms of their burden on recipients by agencies and the courts.

ENFORCEMENT INCLUDES EXTENSIVE DUE PROCESS PROTECTIONS FOR RECIPIENTS

In agency-initiated discrimination cases, extensive due process proceedings are defined in law and regulations and must precede fund termination or agency referrals to the Deparment of Justice. Although the requirements may be viewed as burdensome and instrusive, they also are a form of protection for the recipient of Federal financial assistance. The steps that must be taken are as follows:

There is a mandatory requirement that the agency seek voluntary compliance of a finding of discrimination—this is a prerequisite to any further Government action. If voluntary compliance fails, the agency may pursue an administrative hearing leading to fund termination, or the agency may refer the case to the Department of Justice for litigation.

The administrative hearing is a full evidentiary proceeding with witnesses before an administrative law judge. The administrative law judge recommends a decision to the Department. That decision is reviewed by a reviewing panel. If fund termination is recommended, the Secretary of the agency makes the final decision. A 30-day notice is sent to the congressional committees having responsibility for the laws under which the funds were authorized. The recipient may seek a judicial review of an adverse finding.

Fund termination is the last stage in the agency process, and it is a remedy of last resort. Fund termination is used infrequently but is an important recourse to have available.

There is also a private right of action available. This has been established by the courts. It is specifically authorized in title VI of the Civil Rights Act of 1964 and in title IX of the Education Amendments of 1972.

Since 1970 there have been only six fund terminations under title VI, zero under title IX, one on appeal under section 504, and zero under the Age Discrimination Act. I would suggest that the number of cases that have resulted in fund termination have been to a large measure contained by the statutory provisions and their regulations as interpreted by agencies and the courts. This containment would continue if H.R. 5490 were enacted. However, if the *Grove City College* decision goes unchallenged, it may introduce new bureaucratic complexities into the enforcement process not intended by Congress. For example, if the Grove City College decision stands, then when making a charge of discrimination against a recipient, a Federal agency will now be required to establish up front that Federal financial assistance can be traced to the specific unit or subunit in which the alleged discrimination has occurred before an investigation can be initiated. It is my understanding that prior to the Grove City College decision, if any unit or subunit of a recipient's operation received Federal financial assistance, an investigation pertaining to alleged discrimination could be initiated, thus allowing resources to be immediately targeted on factfinding related to discrimination.

Unless Congress clarifies its intent on coverage through H.R. 5490, some investigation resources will be diverted to extensive review of financial accounts rather than being expended on investigating charges of discrimination. This effect would most likely require clarification in regulations. It may also raise issues related to the threshold of coverage, such as how much Federal financial assistance constitutes "enough" to trigger an investigation? Thus, even though the Supreme Court did not address the enforcement question in the Grove City College case, its interpretation of coverage could have potentially negative effects on enforcement proceedings in the future.

A REASONABLE STANDARD CAN BE DRAFTED

A reasonable standard which balances civil rights protections and coverage and enforcement can be set in law. However, given the complex nature of such protections and forms of discrimination, such a standard cannot stand alone. It must be supported by legislative history, regulation, and court interpretations. If inconsistencies in interpretation emerge in this support system, then it is incumbent upon Congress to eliminate or reduce the likelihood of inconsistencies emerging in the future. H.R. 5490 provides the opportunity to address and clarify the relationship between coverage and enforcement as understood prior to the Grove City College ruling.

Basic to a reasonable standard is the straightforward principle that Federal dollars should not be used to subsidize those who violate its laws. Public tax dollars should never be used to support discrimination.

WHAT H.R. 5490 WOULD AND WOULD NOT DO

It is impossible to delineate with total certainty how H.R. 5490 may and may not affect civil rights protections and enforcement. One limitation, as indicated earlier, is related to the nature of civil rights protections, discrimination, and enforcement. Another limitation is tied to the personal position one adopts on the relationship between coverage and enforcement. For example, if one endorses the position that coverage under the four statutes should be broad and enforcement, in the form of fund termination, should be "pin-pointed", then H.R. 5490 would probably be viewed solely as a corrective or restorative measure. However, if one endorses the position that the scope of coverage and enforcement should be equivalent, then H.R. 5490 would likely be viewed as an expansive legislative measure. The provisions in H.R. 5490 mean one thing to those who support broad coverage and "pin-pointed" fund termination, yet mean something entirely different to those who wish to equate coverage and enforcement.

In spite of these limitations, I would like to offer evidence for why I believe H.R. 5490 is not expansive legislation:

It does not expand civil rights coverage, but rather clarifies and reaffirms the threshold and scope of coverage.

It does not change the enforcement scheme available to Federal agencies.

It does not alter the "pinpointing" principle, that is, that termination of Federal financial assistance is limited to that assistance which supports the discrimination found.

It does not establish a basis for investigation of a recipient by multiple Federal agencies.

It does not counter the Supreme Court's interpretation on exempting certain forms of Federal financial assistance from coverage under the four statutes.

It does not affect the likely use of quotas or affirmative action plans as remedies.

Before I elaborate on each of these points, I wish to acknowledge again a proposition I presented in the beginning of my remarks. I believe that civil rights statutes cannot be considered in isolation. Our understanding of them and their usefulness is dependent on agency interpretation of legislative history, through regulations and administrative actions, as well as court interpretation of legislative history through the application of the statutory standards, regulations, and case law.

COVERAGE IS NOT EXPANDED

Statutory limitations on the scope of title VI, title IX, section 504, and the Age Discrimination Act are not altered by H.R. 5490. For example, the limitations on employment discrimination in title VI and ADA are not changed by H.R. 5490. Similarly, the limitation to education of title IX, as well as the exemptions for gender-based associations in title IX, are not altered by H.R. 5490.

The regulatory language defining "recipient" for the four statutes is the basis for the definition of "recipient" in H.R. 5490. Similarly, the inclusion of the "subunit" and the "successor" clauses in the definition are drawn from the regulations. It would seem, therefore, that the codification of current regulatory language would serve to contain rather than expand agency actions related to civil rights. This proposition is reinforced in the committee report (Rept. 98-829, part I):

> . . . The addition of the definition of "recipient" to Title IX, Title VI, Section 504 and the Age Discrimination Act is not intended to result in any change . . . as to the type or number of recipients affected by the regulations before the Supreme Court decision in *Grove City College* v. *Bell*. Therefore, the Committee intends that no major changes in the regulations will be required. [p. 36]

The term "support" is a new term in the "recipient" definition. It is contained in the portion of the definition addressing direct or indirect Federal financial assistance. The provision reads, in part, "* * * or which receives support from the extension of Federal financial assistance to any of its subunits." Those with concern about expansion of coverage cite the use of the term "support" as evidence of expansion given its inherent ambiguity. The committee report offers this clarification:

> Federal financial assistance" and "support" are similar concepts. The current regulations defining "federal financial assistance" which remain unchanged are guidance for the meaning of "support." [p. 30]

The report makes no reference to the concept of expanding Federal support to include the "freeing-up" of non-Federal funds.

The committee report offers additional examples of how coverage is not expanded by H.R. 5490. One example addresses the relationship between States and political subdivisions within States. The other example describes, in part, the relationship between a city and its subunits. The theme in both cases is containment.

> Political subdivisions (such as cities) are legal entities unto themselves and should not be treated as subunits of their States. . . . A political subdivision must itself receive assistance in order to be covered. This may happen through the direct receipt of Federal funds, or through the receipt of Federal funds from a State . . . but it is not the automatic result of a State's coverage. [p. 26]

The second example establishes the same limitation:

> If a subunit . . . is the recipient, such as a . . . city fire department, coverage of the parent entity and all of its operations is not automatic. A subunit's receipt of federal financial assistance will trigger coverage of the parent entity of which it is a part, *if* [emphasis added] the assistance to the subunit supports the larger entity as well. . . . So, for example, administrative overhead from Federal assistance which a subunit gives to its parent entity will "support" the larger entity and thus lead to coverage. [p. 26]

The committee report also makes a distinction between entities covered by the "successor" clause and those it characterizes as "secondary recipients":

> This clause does not apply to Federal funds which are transferred to "secondary recipients" for the performance obligations flowing from transactions outside the purpose or character of Federal funds. [p. 32]

This means, for example, that if the city housing authority uses community development block grant funds to pay the electric company, the electric company does not become a recipient of Federal financial assistance for the purposes of the four statutes.

ENFORCEMENT PROCEDURES ARE NOT ALTERED

The enforcement mechanisms contained in the four statutes are not altered by H.R. 5490. Thus, the due process protections available to recipients prior to the Supreme Court's decision in Grove City College against Bell and those available now would still be in place if H.R. 5490 were enacted.

THE PINPOINTING PRINCIPLE IS RETAINED

The committee report makes the following statement:

> H.R. 5490 retains . . . the requirement that a nexus be established between the discrimination found and any Federal funding that is be terminated or suspended. [p. 33]

This is known as the pin-pointing principle. The committee report makes a distinction between funds subject to fund termination and other Federal financial assistance held by a recipient:

> . . . Termination is limited to those funds which sustain, benefit or assist the noncompliance rather than federal funds sustaining, benefiting or assisting other functions within the noncomplying entity. [p. 34]

This report language, as well as the previous excerpt, suggests the intent to contain and clarify rather than expand the reach of the four statutes.

The report offers a caveat on fund termination, but it, too, is offered in the spirit of containment:

> It is impossible to predict with certainty whether [all federal financial assistance being terminated if discrimination is found in a subunit not directly receiving federal funds] will . . . lead to the termination of all or only some of the funds going to a particular recipient. The answer will . . . vary with each fact situation. However, the Committee is satisfied, based on testimony about previous enforcement practices, that the due process requirements are amply met. The procedures required by law to precede the use of [fund termination] provide numerous opportunities for the relevant facts to be presented and reviewed so that funds which support discrimination are terminated and those which do not continue to flow. . . . [p. 34]

NO LIKELIHOOD OF MULTIPLE AGENCY INVESTIGATIONS OF RECIPIENTS

Executive Orders 12250 and 12067 gave a central role to the Justice Department in coordinating cooperation among agencies which may have overlapping enforcement responsibilities under title VI, title VII, title IX, and section 504. Such responsibility included involvement in the development of joint regulations. H.R. 5490 would leave the coordinating responsibilities of the Justice Department and the interagency regulations intact. If there is overlap among enforcement agencies which causes confusion among recipients of Federal financial assistance in terms of compliance obligations, corrective action may be necessary, but it is a separate issue from H.R. 5490.

GENERAL ASSISTANCE PROGRAMS APPEAR TO BE EXCLUDED

Opponents of H.R. 5490 have raised objections to the bill because they believe that it would extend civil rights compliance requirements to entities which accept food stamps, funds derived originally from welfare payments, and other forms of general-purpose governmental aid to the poor. Justice White, in a footnote in the Grove City College against Bell decision, proposed several criteria which, if applied, would not result in an unintended extension of coverage. Justice White stated the following:

> Grove City's attempt to analogize BEOGs to food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families is unavailing. First, there is no evidence that Congress intended the receipt of federal money in this manner to trigger coverage under Title IX. Second, these general assistance programs were not designed to assist colleges and universities. Third, educational institutions have no control over, and indeed perhaps no knowledge of, whether they ultimately receive federal funds made available to individuals under general assistance programs, but they remain free to opt out of federal student assistance programs. Fourth, individuals' eligibility for general assistance is not tied to attendance at an educational institution.

H.R. 5490 does not alter this section of the Court's opinion.

H.R. 5490 WOULD HAVE NO EFFECT ON AFFIRMATIVE ACTION PLANS

Some are concerned that if H.R. 5490 were enacted, it would have a dramatic impact on agency-initiated legal actions and the use of certain remedies such as quotas and affirmative action plans. Simply stated, H.R. 5490 is mute on the question of remedies. The use of various remedies will not increase or decrease because of H.R. 5490. Other factors may influence the use of such remedies. For example, the Supreme Court held in a recent decision on Firefighters Local Union No. 1784 against Stotts et al. that courts could not interfere with seniority systems in court-ordered affirmative action plans. This decision will very likely limit the use of quotas and affirmative action plans.

CONCLUSION

H.R. 5490 is most likely going to be adopted by this body. The legislative history associated with its passages is very important. Therefore, in our debate I hope we offer facts instead of rhetoric, clarifications rather than accusations, reasoned judgments in lieu of speculation, and finally seek consensus in spite of philosophical differences.

AMENDMENTS

I urge this body to exercise its responsibility and use the opportunity we will have to improve H.R. 5490 through the amendment process.

I plan to offer two amendments that will strengthen and improve the Civil Rights Act of 1984.

The first amendment would bring Congress under the authority of the act. It is timely and appropriate that the 39,300 employees of Congress be covered.

The American people will no longer tolerate that Congress continue to exempt itself from laws which it passes for the rest of the Nation. We cannot continue to operate under the principle, "Do as I say, not as I do."

I am also considering a second amendment to improve H.R. 5490. The amendment would prohibit any Federal agency from terminating funds unless there is a finding of discrimination.

Amendments such as I have described are in the best interests of the law which Congress is considering, as well as of the persons whom the law is designed to protect.

Amendment to H.R. 5490, as Reported, Offered by Mr. Bartlett

Page 10, after line 22, insert the following:

Sec. 6. With respect to matters relating to the performance of their official duties, Members of Congress shall be deemed to be recipients of Federal financial assistance for purposes of section 901 of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, section 303 of the Age Discrimination Act of 1975, and section 601 of the Civil Rights Act of 1964.

Mr. COLEMAN of Missouri. Mr. Chairman, I yield 11 minutes to the gentleman from Nebraska [Mr. Daub].

Mr. DAUB. I thank the ranking Member on my side of the aisle for the time, and I appreciate it very much, particularly not being a member of the committee.

I want to spend the few minutes that I have kind of framing for my colleagues on this Monday, of a week of a session that will be very busy, my conserns about the legislation that will be before us.

We know that essentially there were two holdings in the Grove City case. First, that student financial aid, as indirect a benefit as it is, can be considered Federal assistance to an institution and, second, that since title IX as written specifically restricts the authority of that program to "programs and activities" receiving such aid, the Court limited their decision according to the clear wording of the legislation as written by the Congress.

This dual holding by the Court points to the first area of confusion that arises when the sponsors of this legislation tell us that their intent is to overturn Grove City.

□ 1620

If I knew that what they meant was that title IX was to be given institutionwide coverage so that no part of the university would get away with sex discrimination, and that if there was reason to believe that this was the extent of the effect of H.R. 5490, I would frankly have no problem with this bill.

What I think we have to do is to shift the focus of the debate from not what the stated goals of this legislation are, and what in fact we might agree on ought to be the goals of this legislation, but actually to what the impact of this legislation is likely to be. The issue with this legislation is not whether the Federal Government believes in equal educational opportunities for women, or is the issue whether or not Grove City College ever discriminated or wanted to discriminate on the basis of gender. That, in fact, has never been an issue or even been alleged.

The issue is rather, whether a grant given directly to a student by the Federal Government should give the Government the right to tell the university how to run the other parts of that school. In other words, to what extent should the university be regulated by the Federal Government because a student is receiving Federal student loans?

In the Grove City case, Justice White was quoted as saying, and I quote him:

> We have found no pervasive evidence suggesting that Congress intended that the Department's regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity.

Now the point I hope to raise here is one of intellectual honesty and conscioncious legislative draftsmanship or, perhaps I should say, draftspersonship, where we openly discuss what this bill is likely to do or that we send it back to committee, where it is sure to undergo closer and more appropriate scrutiny. But the issue does not stop with title IX or simply educational institutions, because this legislation amends all four major civil rights statutes. We are seeking carefully to craft a piece of legislation that I think may have been put on too fast a track that might stymie some fuller consideration of all the ramifications of it as we move through this body with the discussion that may exist under the 5-minute rule.

In the words of Charles Rice, a law professor at Notre Dame, and I quote him: "The potential displacement of state authority and private autonomy by H.R. 5490 is so extensive as to justify Dr. Michael Horowitz's conclusion" who, parenthetically, is an analyst at OMB, that, "buttressed by the legislative history created to date, the bill, if passed, would largely eliminate the remaining distinction between Federal and State, or Federal and private concerns."

What the sponsors of the legislation say are fully amplified by letters that all of our colleagues have received. Letters from the ACLU; letters from the Women's Equity Action League; letters from Benjamin Hooks and Ralph Neas who attach a list of some 200 groups, among them the Gays Rights National Lobby, the NEA, the National Council of Churches, the Americans for Democratic Action, Common Cause, the AFL-CIO, NAACP, National Gay Rights Task Force, the YMCA, the YWCA, the National Easter Seal Society, the Epilepsy Foundation, the League of Women Voters, and so on, saying do not amend this bill. We are not trying to break new ground; we just want to go back to per the Court decision.

I thought that was a pretty good, worthwhile goal. As a sponsor of the resolution on title IX, as someone who believes in civil rights and civil liberties and in eliminating gender-based discrimination even in statutes, let alone regulations, until I began to read the words of the bill proposed, and until you read it and apply some of your own intuitions and legal or practical experience to this bill's working, I think we will have all agreed. Despite the sponsors claiming that they only want to return to the original scope of coverage prior to Grove City, the poorly drafted wording of this bill before us, has serious and substantial ramifications for the public and private sector alike.

Let me ask a few quick questions and I will put information into the Record later about what the Farm Bureau's concerns are; about what Hillsdale College's concerns are, who have decided, according to Dr. George Roche, its president, a college in Minnesota, that they do not want to take aid anymore if this is going to be the case.

Who is likely to be affected by the legislation? State and local governments; small business men and women? Banks, and hospitals, and universities. Grocery stores, drug stores, farmers, homeowners, franchisers, licensees, and contractors. Almost all employers, almost all employees. Common carriers, public utilities, broadcasters, the cable television industry, airports, sports arenas, and procurement contractors.

So the question is probably better framed: Who will not be affected by this legislation? The wording of the bill and the legislative history that has been established so far gives us little, if any, clues as to where we stop. Let me ask two quick questions. Essentially there are two basic ones that need much clarification, Mr. Chairman, before we pass this bill.

One, who will be deemed to be a recipient under the bill? Second, what will be deemed to be financial aid per this bill? Does the committee have any idea how many more entities will be covered than are currently covered by the four civil rights statutes that we are talking about? In terms of compliance with these four statutes, what does this actually entail for a small businessman, a farmer, a licensee, as I have said; what kind of forms, what kind of studies? What are the numbers against whom discrimination cases can be brought in private sector?

Exactly what is discrimination for the purposes of expanding title IX? Is it discrimination that a low number of whites ever make it on a professional basketball team or college basketball teams? Is it discrimination when 50 percent of the whites taking the bar exam in a particular State fail as do 75 percent of the blacks taking that same test fail?

In other words, do the sponsors intend the use of the discriminatory intent test or the use of a discriminatory effect test? It is very important that we resolve that in the debate on this legislation. I want to make it very clear that that is critical.

To what extent would the following people be affected by H.R. 5490? A company that sells materials or leases equipment to a federally funded project? How about bar examinations or medical boards? What about teacher competency tests? What about licensing and professional certification procedures? What about this bill's implication for revenue sharing? Implications for Small Business Administration loans and other Federal loans? Would a business housed in a facility financed through the use of tax-exempt bonds be covered given the implications of the tax bill that is about to be brought before this body? Would this bill require affirmative action or quotas? Will landlords whose tenants pay rent with federally funded public assistance programs or vouchers be affected? What about the grocer who takes food stamps?

In summary, on the basis of the legislative history which has been established to date, the courts could very well feel compelled to give H.R. 5490 the broadest interpretation that is consistent with its very plain language. Very plain language. I feel extremely uncomfortable knowing that some of the answers to the questions raised in this debate are supposedly answered satisfactorily in the committee report.

Frankly, since we will have the opportunity to amend this bill, let us make sure, before we move to final passage, that this bill does say what it means so that it will mean what we say.

Let us consider clarifying amendments that would, for example, reverse the part of Grove City that we find most objectionable without tampering with an otherwise effective and successful statutory scheme. Because of the importance of any modification to our civil rights statutes, I believe this body has a responsibility to consider any change to these important laws with full debate and discussion. To do a shoddy or a haphazard job of drafting and clarifying our intent in this matter will not do anybody any good. Let us not confuse the recipients, the agencies, or the courts, which is exactly what we will be doing if we pass the bill in its current form.

The fact that Congress exempts itself from the very coverage that is purported to be fair is something that is just very difficult for me to understand. It is the ultimate of ironies.

□ 1630

When we voted on the rule, I think we adopted a position that was pretty clear. The people who were opposed to the rule were opposed to it for one reason: Simply because we would not make ourselves subject to the very provisions that amount to the committee's intent on this particular piece of legislation.

Mr. Chairman, I want to conclude by reading some supplemental views in the report. I was very taken back by the language signed by Messrs. ERLENBORN, PACKARD, and NIELSON, and I commend the reading of their supplemental views to the membership of this body. I quote in part:

> We are in effect saying this new bill is too complicated to understand. We will just have to pass it to find out what it means.

● Mr. SIMON. Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984. As an original cosponsor of this legislation, I want to commend my colleagues, DON EDWARDS, the chairman of the Judiciary Subcommittee on Civil and Constitutional Rights; the chairman of the Committee on Education and Labor, my friend from Kentucky, Mr. PERKINS; along with Mr. COLEMAN of Missouri, Mr. SENSENBRENNER, Mr. BARTLETT, and my other colleagues in the House who have worked with us to bring this bill before the House today. I also want to acknowledge the role played by my friend from Illinois, our ranking Republican member, Mr. ERLENBORN. Although we have not always been in agreement on the issues in this legislation, he has played the part of the loyal opposition and done so effectively. His concerns have aided us in writing an excellent committee report, which I urge all Members to read.

H.R. 5490 is not a partisan piece of legislation. The protection and enforcement of civil rights in America should not be a matter of politics because it is our individual and constitutional responsibility to assure that equality of opportunity is not denied to any American. Since the enactment, almost 20 years ago, of the Civil Rights Act of 1964, that act and its progeny—which make up the vanguard of our civil rights arsenal—have been consistently interpreted and uniformly enforced by the Federal courts and by Democratic and Republican Presidents alike. Recently, it has been suggested by some, both in and out of Government, that we have gone too far and that the rights of the majority—assumed to be white males—are being compromised to benefit minorities and women. We have not gone too far because:

Women still earn 49 cents for every $1 that men make for comparable work;

Black Americans constitute less than 10 percent—9.8 percent—of undergraduate enrollment nationwide; 4.9 percent of law school enrollment and about 7 percent of medical school enrollment;

Approximately 50 percent of Hispanic Americans drop out of high school, only 7 percent of Hispanics finish college, and nearly 18 percent of Hispanics, 25 or older, are classified as functionally illiterate; and

Non-Indian institutions of higher education have a dropout rate approaching 90 percent for native American students, while these same students after completing a 2-year degree at tribally controlled colleges and who transfer to a 4-year non-Indian institution have an 80-percent completion rate.

We have not gone too far because we shall not be free as a nation until we are all free—when equality of educational opportunity is a reality and not just rhetoric. Frederick Douglass put it much more graphically: "You cannot put a chain on the ankles of bondmen without finding the other end of it around your neck."

The Civil Rights Act of 1984 is simple and straightforward—providing the legislative guidance the Supreme Court sought in Grove City against Bell—it overturns the limitation on coverage included in the Court's opinion and reaffirms both executive branch and judicial interpretations and enforcement practices of four major civil rights laws: First, title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance; second, title IX of the Education Amendments of 1972 prohibits sex discrimination against students and employees in all aspects of federally assisted education; third, section 504 of the 1973 Rehabilitation Act as amended in 1978 bars discrimination on the basis of disability in all federally assisted and federally connected programs or activities; and fifth, the Age Discrimination Act of 1975 bars age discrimination in federally assisted programs and activities. Each of the these laws has a simple objective, which was stated by President John F. Kennedy in his message to Congress in 1962 proposing enactment of comprehensive civil rights legislation: Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion, which encourages, subsidizes, or results in racial discrimination.

President Kennedy's view of simple justice has been logically extended to sex discrimination in education, to discrimination based on age or disability, as well as color and national origin. It is fitting and proper that 20 years after Congress' enactment of the 1964 Civil Rights Act and 30 years after the historic Brown against Board of Education decision, that the Congress should reaffirm its commitment to equality of opportunity by enacting H.R. 5490.

Since 72 Members of this House introduced H.R. 5490 on April 12, 1984, many of my colleagues have asked three basic questions: First, what does this bill do? Second, does it really take us back to where we were before the Supreme Court decided the Grove City case? And, third, will the bill cause all the mischief the opponents and administration officials say it will?

Each of the questions is reasonable and deserves an answer.

H.R. 5490 was introduced in response to the Supreme Court's February 28, 1984 decision in Grove City College against Bell. That decision narrows the application of coverage of title IX of the Education Amendments of 1972. It is anticipated that the other provisions addressed by the bill—title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975 will be similary narrowed in their application as a result of changed agency enforcement practices and subsequent judicial interpretations.

Already the Department of Education has taken the following steps to dismiss complaints or restrict compliance reviews because of the Grove City ruling:

Twenty-three education complaints involving large institutions have been closed in admissions, student services, and in student-support services;

Six compliance reviews have been narrowed;

Eighteen compliance reviews and five complaint investigations have been interpreted; and

Nine cases involving public schools and 46 involving colleges and universities are being reviewed to determine whether they can proceed.

Under section 504—

Five complaint cases and one pending compliance review have been narrowed; and

Seven cases are being reviewed to determine whether they can proceed.

Under title VI—

One complaint has been closed; and

Five cases have been modified because of the Department's perception of changes brought about by the decision in Grove City College.

It is clear then that the scope of the Grove City decision was not confined to title IX and that its impact is potentially far reaching. H.R. 5490 amends each of the four principal civil rights laws governing discrimination in education based on sex and discrimination in any federally assisted entity based on age, race, national origin, or disability. The bill makes three major changes in the four current laws: First, deletion of "program of activity"; second, addition of a definition of "recipient"; and, third, retention of the "pinpointing" concept in the fund termination section, while altering the language to delete the word "program".

The Committees on Education and Labor and the Judiciary held 6 days of hearings in order to better understand the law and regulations before the Supreme Court's decision and the potential impact of not acting immediately to legislatively cure what I believe was a fundamental error in the Court's understanding and interpretation of the law. We heard from Members of Congress, administration officials both past and present, especially those charged with interpreting and administering the laws and regulations, college and university presidents, interest groups and advocates, including those who both supported and opposed the pending bill. While some have suggested this bill "goes too far" or "leaves things up to the courts" that Congress should decide, others have developed serious questions, as well as absurd hypotheticals based on the language in H.R. 5490. The committee report addresses each of the basic coverage and termination questions—from a factual perspective—in order to answer real questions about the application of the law, as amended.

H.R. 5490 simply restores the broad coverage found in executive branch and judicial interpretations construing these law since 1964. The bill does this by making the following changes in each statute:

The operative phrase, "program or activity" is removed wherever it appears in the statute, and the word "recipient" is substituted;

A definition of recipient is added to the statute, the definition is modeled after agency regulations first promulgated in December 1964; and

The pinpointing concept, as the fund termination provision has been construed, is retained.

Existing statutory limitations on the scope of these statutes are not affected by the changes in H.R. 5490. For example, the employment limitations found in title VI and the Age Discrimination Act, and the gender-based associations in title IX, that is, mother and daughter or father and son banquets, single-sex schools, social fraternities, and sororities are not changed.

Nothing in the bill expands existing coverage with respect to employment. The Supreme Court has ruled that title IX and section 504 cover employees without restriction. Title VI covers employment if the primary purpose of the Federal funds is for employment or, in schools, when the students are affected by discrimination in employment.

The effect of these changes is that the concept of broad coverage of these statutes is reaffirmed. With respect to title IX, the limitation to education is retained. Thus, a recipient of Federal financial assistance will understand that receipt of Federal funds means it is covered throughout its operations. Likewise a subunit receiving Federal assistance will trigger coverage of its parent entity if the Federal funds benefit the parent entity; once coverage is triggered the parent entity is covered throughout its operations. The committee bill clarifies that agency and judicial interpretations of this legislation should be guided by the concept of broad rather than narrow application of these coverage provisions. This legislation also retains the pre-Grove City investigation and enforcement interpretations and posture.

Fund termination is the last stage in the agency process, and it is a remedy of last resort. Fund termination is used infrequently but is an important recourse to have available. Given the history of these statutes it is interesting to observe how few times it has been used: Never for title IX, once for section 504 and 220 times for title VI—197 school districts, 5 higher education institutions and 18 health or social service facilities.

H.R. 5490 also retains the requirement that a nexus be established between the discrimination found and any Federal funding that is to be terminated or suspended by the administrative agency enforcing the law. The nexus requirement, known as "pinpointing," applies to fund termination only.

H.R. 5490 retains this pinpointing concept so that only those funds which actually support the discrimination are subject to termination. The operative fund termination clause in H.R. 5490 is "limited in its effect to the particular assistance which supports such noncompliance so found." This language will assure, for example, that when a school discriminates, the Federal Government has the authority to terminate the Federal funds within the school district which support the discrimination at the school.

Finally, many of my colleagues have expressed concern about all of the horror stories and worst-case scenarios that have been raised about the effect of this bill. Again I hope my colleagues will read the committee report, in order to educate themselves on both the changes we have made and on their practical application.

Importantly, in my view, is the positive result likely to accrue if the Congress enacts this bill. Among those are a less burdensome, less costly administrative procedure, than would be obtained if the Court's decision were allowed to stand uncorrected. In addition, the likelihood of increased litigation—due to an unresponsive, more complex administrative process if this bill is not enacted—has not been properly emphasized. As the Congressional

Budget Office, in its official estimate on H.R. 5490, told Chairman PERKINS: The enactment of H.R. 5490 may result in savings to the Federal, State, and local governments. To monitor adherence to nondiscrimination policies under current law, the Federal, State, and local governments would have to increase their administrative efforts and accounting capabilities to trace the flow of Federal financial assistance to individual programs and activities. The Federal Government might also have incurred costs from an increase in discrimination suits pursued judicially rather than administratively. The enactment of H.R. 5490 would avoid such potential costs.

In conclusion, the dilemma of time has plagued and does plague this bill. Both committees have drafted carefully, listened attentively, and debated conscientiously this legislation. We bring it to the House assured of its accuracy and convinced of the need for its immediate enactment. We know debate will be protracted in the Senate, so much so that final congressional action is not certain before the Labor Day recess. Let the House vote now and vote overwhelmingly for equality of opportunity for all Americans.●

● Mr. SENSENBRENNER. Mr. Chairman, as a cosponsor of H.R. 5490 and the ranking Republican member of the House Judiciary Subcommittee on Civil and Constitutional Rights, I strongly urge the House of Representatives to pass this bill. I am a cosponsor of this piece of legislation because I strongly believe that the Supreme Court's decision in the Grove City College case is far too restrictive and does not enunciate the intent of Congress when title IX was passed about 10 years ago, guaranteeing nonsex discrimination in federally funded institutions of education. Because the applicable language of title IX was based on title VI, as was section 504 and the Age Discrimination Act, it is imperative that all these statutes be changed to reflect a congressional intent for a broad interpretation of their scope.

I do believe that title IX has been effective in reducing the wage gap that we hear much about, wherein women get 62 cents on the dollar of wages for comparable work as members of the male sex.

The efficacy of title IX, I think, is dramatized by the point that the last census figures indicate that for women under 30, who were the principal beneficiaries of the title IX protections during their education, the figure is 85 cents on the dollar rather than 62 cents on the dollar for comparable wages for society as a whole.

That is why I believe that the letter and the spirit of title IX should remain the law and that the decision in the Grove City College case was far too restrictive and a step backward. The same success story has been evidenced in title VI, section 504, and the Age Discrimination Act.

When the hearings started, I was concerned that H.R. 5490 might go beyond the status quo with regard to its applicability to private Christian schools who receive no direct or indirect Federal funds. The report language addresses these fears in a responsible fashion.

To illustrate my concerns in this area, consider the following scenario which appeared in the committee report on H.R. 5490:

> A private school which receives no direct Federal funds invites Officer Friendly to speak to a sixth grade class about traffic safety. Officer Friendly's salary is paid through a Safe Streets Act grant from the Department of Justice. Is the school covered under title IX or title VI as a result of Officer Friendly's appearance?
>
> No. A private school would not bring itself within coverage of the statutes merely by having a police officer who works for a department that receives Federal funds speak at the school. (Committee report, at page 30.)

The speech by Officer Friendly is not Federal financial assistance. Thus, current law is not changed.

Concerns have been raised about the analogy between coverage triggered by student Federal financial assistance and recipients of supplemental security income, food stamps, welfare, or other general-purpose governmental assistance programs. The Supreme Court adequately addressed this issue in a footnote to the Grove City College ruling:

> *Grove City's attempt to analogize BEOGs to food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families is unavailing.* First, there is no evidence that Congress intended to receipt of federal money in this manner to trigger coverage under Title IX. Second, these general assistance programs, were not designed to assist colleges and universities. Third, educational institutions have no control over, and indeed perhaps no knowledge of, whether they ultimately receive federal funds made available to individuals under general assistance programs, but they remain free to opt out of federal student assistance programs. Fourth, individuals' eligibility for general assistance is not tied to attendance at an educational institution. [Emphasis added.]

H.R. 5490 would not alter this section of the opinion. The same reasoning by which the Supreme Court did not analogize BEOG's to food stamps is applicable in not construing a grocer to be a recipient merely because he receives food stamps as a method of payment.

In the words of the committee report:

> The purpose of H.R. 5490 is simple and straightforward: to reaffirm pre-*Grove City College* judicial and executive interpretations and enforcement practices which provide for broad coverage of these [four] antidiscrimination statutes.

Former Republican executive branch officials, who were responsible for drafting and interpreting the laws and regulations dealing with title VI—race discrimination; title IX—sex discrimination; section 504—handicapped discrimination; and the Age Discrimination Act, testified as to the broad coverage that was originally intended. These witnesses included: John Rhinelander, HEW General Counsel under the Nixon-Ford administration; Stanley Pottinger, former Office of Civil Rights Director and Assistant Attorney General for Civil Rights during the Nixon and Ford administrations; and Martin Gerry, current civil rights lawyer, who served as Director of the Office of Civil Rights with the Nixon and Ford administrations. They all concluded H.R. 5490 restores the original intent of the four statutes.

Former Democratic administration officials were in agreement with the above interpretation. Drew Days, Assistant Attorney General for Civil Rights during the Carter administration, reviewed the ways that these laws have been enforced in the past. He noted that the Grove City College against Bell case "flies in the face of the last 20 years of congressional efforts to combat discrimination by those who thrive on Federal funds." Mary Frances Berry, a current member of the U.S. Commission on Civil Rights, and former Assistant Secretary of Education—HEW—reviewed the urgent need for this legislation. Her view is that H.R. 5490 would ensure that the other three statutes would not be "subjected to similar narrow interpretations * * *." She noted that title IX enforcement had already been narrowed since the Grove City case. Commissioner Berry summarized the Department of Education's actions with title VI, title IX, and section 504 complaints and compliance reviews since February of this year. Under title IX—

Twenty-three education complaints involving large institutions have been closed in admissions, student services, and student support services;

Six compliance reviews have been narrowed;

Eighteen compliance reviews and five complaint investigations have been interrupted; and

Nine cases involving public schools and 46 involving colleges and universities are being reviewed to determine whether they can proceed.

Under section 504—

Five complaint cases and one pending compliance have been narrowed; and

Seven cases are being reviewed to determine whether they can proceed.

Under title VI—

One complaint has been closed; and

Five cases have been modified because the Department's perception of changes brought about by the decision in Grove City College.

The characterizations made by opponents that H.R. 5490 goes beyond what the law was prior to the Grove City case are not true. For example, the definition of "recipient" is almost identical to the definition of "recipient" that exists in the regulations implementing the four existing antidiscrimination statutes. This definition has been in existence in our civil rights regulations for almost 20 years.

H.R. 5490 does not go beyond what the law was prior to the Grove City case. The report language makes clear that the addition of the word "recipient" is not intended to result in any change in the status quo as to the type and number of recipients. The report language reads:

> The Committee intends that enactment of H.R. 5490 will not require revisions in the regulations defining the nature of the prohibitions against discrimination and the remedies available for the discrimination which were in place prior to the Supreme Court's decision in *Grove City College* v. *Bell*. This bill is not intended to convey either the approval of disapproval of Congress concerning the validity or appropriateness of regulations issued under Title IX concerning health care insurance and/or services for employees and students with regard to abortion. Moreover, the addition of the definition of "recipient" to Title IX, Title VI, Section 504 and the Age Discrimination Act is not intended to result in any change of the status quo as to the type or number of recipients affected by the regulations before the Supreme Court decision in *Grove City College* v. *Bell*. Therefore, the Committee intends that no major changes in the regulations will be required.

Thus, the current regulations would continue to be operative. As evidenced above, H.R. 5490 is to be neutral on the title IX regulations dealing with abortion.

Retained in current law are all the procedural safeguards present in current enforcement interpretations and practices. The following report language describes the enforcement mechanism:

> H.R. 5490 retains pre-*Grove City College* investigation and enforcement interpretations and practices. As with coverage, Title VI was the enforcement model for each of these statutes and has four distinct enforcement mechanisms:
>
> A mandatory requirement that the agency seek voluntary compliance of a finding of discrimination—this is a prerequisite to any further government action. If voluntary compliance fails,
>
> The agency may pursue an administrative hearing leading to fund termination, or
>
> The agency may refer the case to the Department of Justice for litigation.
>
> There is also a private right of action.
>
> The administrative hearing is a full evidentiary proceeding with witnesses before an Administrative Law Judge. The Administrative Law Judge recommends a decision to the Department. That decision is reviewed by a reviewing panel. If fund termination is recommended, the Secretary of the agency makes the final decision. Thirty days notice is sent to the Congressional committees with responsibility for the laws under which the funds were authorized. The recipient may seek a judicial review of an adverse finding.

It should be noted that before the funds can be cut off, there must still be a nexus established between the discrimination found and any Federal funding that is to be terminated or suspended by the administrative agency enforcing the law.

H.R. 5490 is not an expansion of current law. The enforcement remedies are the same. If an institution or entity was a recipient prior to the Grove City case, it would remain a recipient if this bill is enacted into law. H.R. 5490 stands for nothing more—and nothing less.

Our country has come a long way with regard to civil rights. Please vote "aye" for H.R. 5490. It is a vote to keep the status quo in regards to our civil rights laws.●

● Mr. CORRADA. Mr. Chairman, I rise in support of H.R. 5490, to clarify the application of title IX of the Higher Education Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

The purpose of this legislation is simple: to clearly state the intention of the Congress in enacting antidiscrimination provisions and the extent to which these provisions apply to recipients of Federal funds. This bill does not impose new standards for requirements on institutions receiving Federal dollars, but rather spells out what before the Supreme Court's decision in Grove City College against Bell was understood to be the coverage of laws prohibiting discimination on the basis of sex, handicap, race, and age.

In Grove City College against Bell, the Supreme Court ruled that the recipient for purposes of coverage under title IX's nondiscrimination clause was the particular program office to which funding was awarded, rather than the institution itself. This meant that for an institution receiving only student financial aid moneys, only the financial aid office would be subject to antidiscrimination provisions.

This narrow interpretation urged by the Supreme Court would provide a perfect mechanism by which institutions could avoid their obligations to cease discrimination, simply by compartmentalizing their Federal funds. It ignores the fact that Federal student aid, once it arrives at the institution, loses its identity and is used to support all institutional programs and activities. In effect, the decision provides a blank check to an institution which may be receiving millions of Federal dollars in student financial aid moneys to unrestrainedly practice discrimination through admissions policies, athletics, faculty hiring, and all other facets of its operations.

Testimony from attorneys who had been involved with discrimination litigation through the Office of Civil Rights stated forcefully that the practical effect of the Grove City decision would be to repeal the four civil rights statutes, and to tacitly endorse activities which exclude individuals because of their race, sex, age, or handicap. Additionally, the Grove City decision would impose a need to identify and trace the source of Federal aid and to distinguish between which program or actitivy receives aid prior to instituting enforcement procedures on the institution. This promises to become an administrative nightmare for both the Government and the recipient.

Mr. Chairman, I do not believe that the time has come to back away from our enforcement of laws providing for the equal treatment of all Americans. We cannot retreat from our commitment to ensure an equal opportunity for every citizen to participate in our society, and we must continue to insist that Federal tax revenues not be spent to support discriminatory action.

H.R. 5490 is vitally needed to countermand the weakening effect of the Supreme Court decision on our fight against discrimination. It will return to the Federal Government the mechanisms by which to enforce the concept of equality embodied in title IX, section 504, the Age Discrimination Act, and title VI. I urge my colleagues to join me in defeating any weakening amendments and approve this bill.●

● Mr. ACKERMAN. Mr. Chairman, I rise in strong support of the Civil Rights Act of 1984, H.R. 5490. This measure takes a most significant step to reaffirm Congress' unequivocal committment to equal protection under the law. The act would restore broad and comprehensive scope to four basic civil rights statutes—title IX of the Education Amendments of 1972, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

H.R. 5490 enjoys bipartisan support and has been endorsed by a wide-ranging coalition of civil rights, women's, senior citizen, business, religious, education, labor, and disability organizations. As a cosponsor of this bill, I believe that it is critical to understand that this measure merely clarifies the scope of the existing legislation. H.R. 5490 would overrule the Supreme Court decision in Grove City College against Bell, which substantially narrowed the reach of title IX, and thus set a dangerous precedent for the applicability of other civil-rights statutes. The High Court held that title IX's prohibition against sex discrimination applies only to the specific program or activity within an institution which receives Federal financial assistance—not to the entire institution.

But Congress, in passing all of these laws, planned to provide wider, far-reaching coverage. That legislative intent had been enforced by previous administrations, had been upheld by prior court decisions, and was overwhelmingly reiterated by the House in a resolution last November.

During joint hearings by the House Committees on Education and Labor, and Judiciary, on H.R. 5490, I asked Assistant Attorney General William Bradford Reynolds if the Government ought to financially support institutions that discriminate. His answer was a straightforward "No." Unfortunately, the Reagan administration that Mr. Reynolds serves has not acted so unequivocally. This legislation is a congressional attempt to force the administration to fulfill its legal and moral reponsibility to investigate discriminatory policy and to enforce the different Civil Rights Acts.

The catalyst for this legislation was the Grove City decision, and its threat to educational equity throughout this Nation. Title IX has given women and men at every level of the educational ladder the opportunity to achieve their full potential. Over the past 11 years, students have been able to broaden their horizons with the help of title IX by knocking down arbitrary educational and social stereotypes that society has imposed over the decades and over the centuries. Gradually, important strides have been made in sexually integrating the traditionally segregated vocational education system. New opportunities have opened for women in traditionally male bastions, and men have had access to careers that had been limited to women only.

Although much more progress needs to be made, the Reagan administration, despite its protestations to the contrary, has been determined to widen the gender gap and other chasms and crevices that separate people because of superficial differences. Too many times, this administration has forsaken our historical ideals of civil rights and equality of opportunity. For example, under the cloak of reorganizing the Department of Education, the administration has eliminated the Women's Educational Equity Act program. The President has trampled on the independence on the Civil Rights Commission by firing three of its commissioners—an action for which the House clearly expressed its contempt earlier in this Congress. The administration has decided to enforce civil rights statutes at discriminatory schools only for those specific programs actually receiving Federal funds, and has continued to pay for other programs at these institutions. In the face of these actions, it is clear that Congress must reaffirm our dedication to educational and social equity.

Mr. Chairman, I urge my colleagues to support this crucial legislation and reaffirm this Nation's commitment to equal justice, under law, for all.●

● Mr. MARKEY. Mr. Chairman, today the House considers H.R. 5490, a bill to overturn the recent Supreme Court ruling in the Grove City College against Bell decision. I rise in strong support of this bill.

The past three administrations all enforced title IX of the Education Amendments Act the same way. If a school or educational institution practiced sexual discrimination in any of its programs, all of its programs were denied Federal funding. In this way, educational equality of the sexes was advanced over the past decade.

After 20 years of progress, the Supreme Court pulled the plug on equality 4 months ago. In its Grove City College ruling, the Court held that only those portions of an institution which receive Federal funding need to comply with title IX restrictions. Under this ruling, discrimination in countless educational, extracurricular, and social programs on college campuses would be permitted.

Furthermore, the Court's ruling threatens the similarly drafted title VI of the Civil Right Act prohibiting racial discrimination, as well as the Age Discrimination Act, which prohibits discrimination against our Nation's senior citizens.

I shudder to think how far back the clock could be turned under this ruling. Could women's sports programs be abolished? Could schools permit or even fund race segregated clubs? Would we be back in the sixties, or even the fifties, with respect to equality and integration in education?

The Supreme Court's ruling makes a mockery of equal justice under law. It would allow Federal financial support to institutions which openly and flagrantly discriminate.

Already in the months since the Supreme Court decision the Reagan administration has closed 28 title IX discrimination complaints and narrowed investigations in 18 others. Several title VI cases have been affected.

H.R. 5490 would undo this misjustice. It would return the interpretation of our civil rights laws to where they have been for the past 20 years. It would prohibit all discrimination by any institution receiving Federal funding in any of its programs. It would require that any school which received tuition assistance or student loans not practice racial or sexual discrimination.

I urge my colleagues to support this bill, without any weakening amendments. It is time to tell the Reagan administration that equality and justice are here to stay, and that they cannot reverse the progress of the past two decades.●

● Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 5490, the Civil Rights Act of 1984. This legislation enjoys broad bipartisan support and is offered in response to the Supreme Court's decision in the Grove City College against Bell case.

The decision in this case announced on February 28, 1984, in the absence of this legislation, would severely narrow the application of coverage under title IX of the Education Amendments of 1972 which provided institutionally wide remedies for redressing sexual discrimination. Supporters of this legislation also anticipated that title VI of the Civil Rights Act of 1964, section 504 of the 1973 Rehabilitation Act, and the Age Discrimination Act of 1975, would be similarly narrowed in their application and coverage as a result of the Supreme Court decision.

The Supreme Court in the Grove City College against Bell case contradicted previous judicial and executive branch interpretations and enforcement practices which provided for broad coverage in the application of these antidiscrimination laws. Prior to the Grove City College decision, the history of antidiscrimination enforcement had consistently been on the basis of institution-wide coverage. That is, if an institution such as Grove City College was found to be discriminating against a covered class, then the institution itself would be subject to a cutoff of Federal funds. The Supreme Court's decision in the Grove City College case severely narrowed the interpretation of coverage by limiting enforcement to the specific program or activity.

This interpretation flies in the face of the legislative history of title VI of the Civil Rights Act of 1964, which served as the model for successive civil rights legislation such as title IX, section 504 of the 1973 Rehabilitation Act, and the Age Discrimination Act of 1975. It also is in direct contradiction to previous judicial holdings and executive branch regulations and enforcement practices.

Specifically, H.R. 5490 deletes the phrase "program or activity" and substitutes language found in executive branch and judicial decisions construing laws, starting with the title VI regulations of the Civil Rights Act of 1964. The four civil rights laws potentially affected by the Grove City College against Bell case, are changed by this legislation in that the operative phase "program or activity" is removed wherever it appears in the statutes, and the word "recipient" is substituted. The definition of "recipient" is operationalized to mean an institution in its entirety including its subunits. Thus under this legislation if Grove City College were found to be discriminating, as it has been, Federal funding would be cut off to the entire institution and not just to a particular program or activity in which the discrimination is found to have taken place.

In the consideration of this legislation, numerous witnesses, who had participated in the drafting of the affected civil rights statutes and others who had carried out enforcement responsibilities, spoke to the need to preserve broad coverage of recipients if the civil rights protections which have served our national interest so well are to be conserved.

During consideration of this legislation held jointly by the Committee on Education and Labor and the Judiciary Subcommittee on Civil and Constitutional Rights, witnesses cited the administrative and judicial problems that would occur in the absence of legislation such as H.R. 5490. Commonsense must be the guidepost in the enforcement of civil rights statutes and the decision of the Supreme Court in Grove City College against Bell is in direct opposition to the last two decades of congressional efforts to combat discrimination by those who benefit from Federal dollars.

I urge my colleagues to support this conservative and restoring legislation. Its passage is necessary if our Nation is to live up to the principles it espouses.●

● Mr. BARNES. Mr. Chairman, the recent Supreme Court decision in the Grove City against Bell case has transformed the landscape of civil rights laws enacted in this country over the last 20 years, and given us new cause for concern for the future of antidiscrimination enforcement. The interpretation of title VI of the Civil Rights Act by HEW and other agencies over the years was based on the long-accepted constitutional principle that all levels of Government should refrain from providing public funds to institutions which discriminate. As President Johnson said: "It is simple justice that all should share in programs financed by all, and directed by the Government of all the people."

The implications of the Grove City decision, therefore, are far reaching. For the handicapped, for example, the progress that has been made in allowing disabled individuals to take their rightful place as participating members of society could come to a grinding halt. For instance, a student financial aid office could be in compliance with section 504, while library services or other academic programs remained inaccessible to the handicapped.

In addition, the decision could lead to a cumbersome and expensive enforcement process which would divert the attention of both Government and institutions from what should remain the foremost concern—the elimination of discrimination based on race, national origin, sex, age or handicap. The Grove City decision, in effect, threatens to destroy what has been, up to now, a relatively smooth and efficient process for remedying civil rights violations.

H.R. 5490 does nothing more than bring the law back to its original purpose—that is, to guarantee the full protection of the Constitution that Congress sought to accomplish by the original language of title VI of the Civil Rights Act. Yet is symbolizes nothing less than the basic rights of many Americans to live free from discrimination and to achieve equal opportunity.●

● Mr. FORD of Michigan. Mr. Chairman, today I rise in support of H.R. 5490, the Civil Rights Act of 1984. This bill is necessary to ensure that the same protections minorities have been receiving for the last 20 years continue to exist. The need for this legislation was occasioned by a Supreme Court decision, Grove City College against Bell, which seriously limited the scope of civil rights coverage under the four principal civil rights statutes—title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Although the Grove City College decision affected only one of these statutes directly—title IX of the Education Amendments of 1972—because the language in each statute is very similar and patterened after the 1964 Civil Rights Act, by implication all four statutes would be affected and subjected to the same limitations. To reinforce this implicit concept, representatives of the Department of Justice stated soon after the decision was announced that it was their intention to apply the parameters of the decision to all four laws.

I do not quarrel with the accuracy of the decision. The court had a judgement to exercise. It is a matter of "Monday morning quarterbacking" the intentions of the legislators who put the law together in the first place. What is essential now is that we have the language that expresses precisely what we mean and that firmly keeps in place enforcement procedures which have worked so well nailed down so that we do not leave open the possibility of future arguments before the Court that could lead to interpretations similar to Grove City College. That is what the Civil Rights Act of 1984 will accomplish.

The first of the major civil rights efforts, title VI of the Civil Rights Act of 1964, started to effectively change the pattern for the future of people who were literally locked into a stagnant and discriminatory code of practice for all the history of this country. The other civil rights laws recognized that there were many groups of individuals who had their potential stifled by the same types of practices which had so effectively denied equal opportunity and participation to blacks in this country. But there were those who opposed the passage of the 1964 Civil Rights Act and there were those who opposed passage of title IX of the 1972 education amendments, as well as those who thought section 504 of the 1973 Rehabilitation Act and the Age Discrimination Act were unnecessary or would lead to burdensome requirements and Federal Government intrusion into otherwise private activities.

In spite of the opposition, the four statutes did pass the Congress and were signed into law. And fortunately through the leadership of four administrations over a 16-year period, regulations and enforcement procedures were put in place which allowed these statutes to be effectively and meaningfully administered in line with the intent of the Congress. Although the Supreme Court decision in Grove City College does not recognize this intent, other courts at all levels have and H.R. 5490 perspicuously defines it.

I do not understand how those who applaud the Grove City College decision and want it to stand without the clarifications of H.R. 5490 expect that it will contribute to the strength of this country and the strength of the American people. I do not find in their discussions any advocacy or explanation of how this will make things better for us as a country and better for us as a people. Public policy that does neither, defeats the labors of thousands of people over the last 20 years who have successfully dedicated their efforts to the insurance of the rights of every citizen.

There is a great urgency about this matter, not only to pass H.R. 5490, but to once again affirm that we are living in an era where this kind of an issue is no longer a partisan one, but a matter of the public conscience and its desire to protect something which we already have and which the Congress understands and will enforce.

H.R. 5490 is an excellent piece of legislation. It was not done hurriedly or haphazardly. It involved the input of numerous Congressmen, their staffs, and wide variety of individuals from the public at large who have diverse interests on both sides of the issue. The result is a piece of legislation we can all be proud of and that deserves our support. Hundreds of hours of work, research and discussions have gone into analyzing all the possible ramifications of this bill and into crafting the precise legislative language that codifies civil rights enforcement in America before the Grove City College decision without enhancing, impeding or altering it in any way. That task has been accomplished. I urge my colleagues to support this bill as it comes to use today.●

● Mr. MATSUI. Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984. This important legislation maintains our historic commitment to assuring that the rights of all Americans; those of women, minorities, the handicapped and senior citizens are not eroded.

H.R. 5490 overturns the Supreme Court's decision in Grove City College against Bell which narrowed the application of title IX of the Education Amendments of 1972. The Court decided that title IX's prohibition against sex discrimination applies only to the specific program or activity within an institution which receives Federal funds, not the entire institution.

Title IX, in its original formulation, represents one of our most effective tools against sex discrimination in education. The Court's decision not only raised grave concerns that our efforts to end sex discrimination would be impaired, it almost guarantees a more restrictive interpretation of statutes outlawing discrimination based on race, handicap, and age. For this reason, Congress should take corrective action and reestablish the original foundation of all our antidiscrimination laws.

The House committees responsible for bringing this bill forward heard favorable testimony on H.R. 5490 by high-ranking Department of Justice officials from the Johnson, Nixon, Ford, and Carter administrations. Such bipartisan support certainly underscores the original intent of title IX and other civil rights laws—to provide broad authority to root out discriminatory practices and allow all our citizens to enjoy the privileges of being Americans as envisioned in our Constitution.

I would urge my colleagues to adopt this bill as a reaffirmation of our guiding national principle: the proposition that all people are created equally.●

● Ms. SNOWE. Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984.

On February 28, 1984, the Supreme Court broke with logic, past history, and congressional intent. It decided that within a college only those specific programs or activities actually receiving Federal dollars are covered by title IX. In other words, within a given educational institution, only those programs or activities which directly receive Federal funds are barred from discriminating on the basis of sex.

The Civil Rights Act of 1984 is neither a ground-breaking piece of legislation nor a revolutionary idea in civil rights. This is not to say, however, that this legislation is not of critical importance to American women. It is. This bill is needed to return to American women the legal rights and remedies they had prior to the Court's decision, and it will restore the broad scope of coverage to title IX which marked its enforcement during both Republican and Democratic administrations prior to the Grove City decision.

Before title IX was enacted, it was both legal and common for women to be excluded from professional schools, barred from access to vocational education programs, and denied opportunities for athletic competition and scholarships.

Since 1972, title IX has been the primary legal preventive against such discrimination, and it has dramatically expanded the opportunities for women and girls to pursue a quality education. Between 1972 and 1982, title IX helped open the floodgates into our Nation's professional schools. Women's enrollment in medical schools increased from 11 to 29 percent, in dental schools from 2 to 20 percent, and in law schools from 10 to 36 percent.

The Supreme Court's decision was a giant step backward for the progress women have made in achieving equal educational opportunity. In the wake of Grove City, there is no longer any Federal law which comprehensively prohibits sex discrimination in education.

Although the Grove City case is about title IX, its ramifications are much more far reaching. If title IX were to remain program specific, three other major civil rights statutes, similarly worded, would be likely to suffer the same fate. Section 504 of the Rehabilitation Act, the Age Discrimination Act, and title IX were all modeled on the guarantees found in title VI of the Civil Rights Act. Together these statutes ensure that discrimination by beneficiaries of Federal financial assistance is prohibited. Indeed, the Assistant Attorney General for Civil Rights has stated publicly that the Grove City holding will be applied to other civil rights laws.

Mr. Chairman, H.R. 5490 makes necessary changes in each statute that will ensure their ability to carry out the original intent of Congress. It clarifies the scope of coverage by eliminating the program or activity language which has been so narrowly interpreted by the Supreme Court, and by defining the term "recipient" in a broad manner. The effect of this change is that an entire institution—that is, the "recipient"—would be barred from discrimination when any of its parts receives Federal funds.

I urge each of my colleagues to support H.R. 5490. If we did not make clear to the Supreme Court what we meant when these four critical civil rights statutes were originally passed, we will make it perfectly clear today. Discrimination based on race, sex, national origin, age, or disability has no place in our society, and where it is practiced by recipients of Federal funds, it is clearly against the law.●

The CHAIRMAN. All time of the gentleman from Missouri [Mr. COLEMAN] has expired.

Mr. MURPHY. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. MONTGOMERY] having assumed the chair, Mr. SWIFT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5490) to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, had come to no resolution thereon.

GENERAL LEAVE

Mr. MURPHY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and insert extraneous matter, in connection with the consideration of H.R. 5490.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 5167, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the Speaker be allowed to appoint nine additional conferees to the bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes.

The SPEAKER pro tempore [Mr. MURPHY]. Is there objection to the request of the gentleman from Mississippi? The Chair hears none, and without objection, appoints the following additional conferees, solely for consideration of title VII of the House bill and section 106b of the Senate amendment: Messrs. EDWARDS of California, EDGAR, SAM B. HALL, JR., LEATH of Texas, SHELBY, APPLEGATE, HAMMERSCHMIDT, WYLIE, and SOLOMON.

There was no objection.

REAGAN'S TRAINING EXERCISES—A COVER FOR MILITARIZING HONDURAS

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, information which came to me in January of this year raised serious questions concerning the legality of the actions of the Reagan administration during its conduct of military training exercises in Honduras. Acting on that information I requested that the Comptroller General of the United States provide me with a formal legal decision on whether these actions were undertaken in compliance with American law or were in fact violations of our laws.

Mr. Speaker, I now have that decision.

The decision states that the majority of construction activities undertaken during the U.S. military training exercises in Honduras, all the military training provided to Hondurans by U.S. military personnel participating in the joint training exercises, and all of the civic and humanitarian actions conducted by U.S. military personnel participating in those exercises violate Federal law.

The decision suggests that the Reagan administration is clearly guilty of a widespread misuse of funds in Honduras. It is my opinion that such misuse was intentional on the part of the administration and that the training exercises have been used as a cover for a policy of militarization of the country of Honduras.

I have previously stated, and so state here, that I believe Americans have every reason to be proud of the conduct of our U.S. military service men and women participating in the military training exercises in Honduras. I believe that those training exercises were of substantial value to our military ability to meet the challenges which face our Defense Establishment. But, I do not believe we as a people governed by law can condone or tolerate the achievement of our objectives through the violation of our laws.

Throughout most of our Nation's history, our Presidents have used overt action to protect and further our Nation's interest in the Western Hemisphere. This is especially clear when we study the actions of our Presidents from Woodrow Wilson through Lyndon Johnson. With the advent of the 1970's and the Presidency of Richard Nixon came a profound change in Presidential policy. Covert, secretive actions were taken to enforce political preferences on our neighboring nations in the Western Hemisphere.

It is now clear that the Reagan administration has moved our Nation in yet a new direction. This new direction adds to covert and overt actions, direct violation of American law in the drive to achieve Presidential objectives in the policies of other Western Hemisphere nations.

The Reagan administration has initiated a policy that has not been approved by the Congress. It is a policy that requires the violation of law. This is a policy that has neither the support of the American people nor the support of American law.

A decision by the Comptroller General is binding. It is far reaching since it affects not just the activities undertaken in one part of the world by all such activities conducted by a Presidential administration in any part of the world. Such decisions are made after careful and intense study of current law and of the facts concerning activities on which the Comptroller General has been asked to rule. The fact that nearly 5 months lapsed before the formal legal decision I requested was provided is ample proof scrutiny which the Comptroller General gave this matter.

The Comptroller General has ruled that major parts of the activities carried out by the Reagan administration in Honduras during the U.S. military training exercises there were, in fact, conducted in violation of American law. Because incompleteness of the information thus far provided to the Congress and to the General Accounting Office, of which the Comptroller General is the chief officer, a final evaluation on all activities undertaken during these training exercises is yet to be made. The Comptroller General has formally requested the Reagan administration to provide the necessary information.

Because of the interest and concern I know that my colleagues have in these questions, I intend to make a part of the RECORD at the end of this speech both the Comptroller General's decision and the appendix to that decision. Portions of that appendix have been judged by the Department of Defense to be of a security classified nature. I have deleted from the document all such material.

Further, information available to me as well as information provided to the Comptroller General by the DOD makes clear that the Reagan administration ignored the advice of its own legal counsel in undertaking certain activities in Honduras. I believe that it will be of interest to my colleagues to know that information on the Judge Advocate General's review of the proposed activities under Big Pine II is considered by DOD to be classified for security reasons.

Such a security classification surely cannot be justified in the interests of the American people. Our Government is one of laws by the people, for the people, and of the people. Condoning selective violation of our laws undermines the traditions of our legal heritage. It erodes the security our people have in the belief that their government is one of laws, rather than the whims of their leaders.

I will now summarize the instances in which the Comptroller General found the actions of the Reagan administration under the military training exercises in Honduras to be in violation of our laws.

During Big Pine II, at Puerto Castilla extensive training in the use of 105mm artillery was provided to Honduran military forces. Prior to this training, the Hondurans did not have personnel trained in the use of such artillery. At San Lorenzo basic and/or advanced classroom and field training was provided to four Honduran battalions, on mortars, fire direction, and counterinsurgency tactics. In addition, during the same exercise, U.S. military medical personnel at Palmerola Air Force Base, Comayaqua, Honduras, provided three 5-week combat medical training courses for approximately 100 Hondurans. This training was financed from operations and maintenance funds appropriated to DOD by the Congress. The Comptroller General found that using funds for this training violated American law.

Extensive civic and humanitarian assistance activities were a integral part of the Big Pine II training exercises. Such actions occurred on an almost daily basis. During Medical Civil Action Programs medical and/or dental treatment was provided to approximately 53,000 Honduran civilian patients. A veterinary program treated more than 37,000 animals. U.S.-donated medical supplies, clothing, and food were transported to various locations in Honduras. A school was built using materials supplied by the U.S. Agency for International Development. These activities were financed with operations and maintenance funds appropriated to DOD by the Congress. The Comptroller General has determined that using such funds for these purposes violates American law.

During Big Pine II, the Reagan administration constructed four base camps, designed to house and/or support approximately 3,000 U.S. troops. These were built at Palmerola Air Force Base, Comayaqua; in the Trujillo-Puerto Castilla area; Aquacate, and San Lorenzo. In addition, airfields were built, improved, or extended at Trujillo, Aquacate, San Lorenzo, and Tiger Island. The Comptroller General's decision states that—

> It is our view that the majority of the construction activities could not be funded out of O&M (operations and maintenance funds) as ordinary operations expenses of the joint exercises. * * *

Since DOD financed these activities from O&M funds these activities were carried out in violation of American law.

Under certain limited conditions facilities construction during military training exercises using operations and maintenance funding is allowed. But, even these projects would be limited to a total funded cost of $200,000. The data on cost of construction facilities under Big Pine II which has been provided to the Congress and the General Accounting Office is incomplete since this data is generally limited only to the materials cost. It does not cover, for instance, such costs as transportation of the troops and equipment involved or the cost of operating the equipment. Both of these costs are, by DOD's own regulations, funded costs of such projects.

Even so, based only on the data thus far provided, it is clear that construction costs at some sites exceeded the $200,000 maximum. These include the base camp at Palmerola Air Force Base, Comayaqua, current reported cost, $704,000; the airstrip and base camp at San Lorenzo, $406,000; and the airstrip improvements at Trujillo, $260,000. Further, even on the basis of incomplete data provided by DOD on the base camp and airstrip improvements at Aquacate, the construction at this location cost $199,000. Thus, it is reasonable to assume when the complete cost data is available, this project will be found to have exceeded the $200,000 maximum.

The Reagan administration could not have been unaware of the requirements of Federal law and of previous decisions by the Comptroller General which, in some measure, impacted some of the activities planned, and carried out, during the military training exercises in Honduras. Further, prior to the Grenadero I training exercises in Honduras, this year, the administration was clearly on notice that the Comptroller General was examining the legality of the activities undertaken during Big Pine II. Yet, the administration willfully carries out, during Grenadero I, similar activities.

In the interest of preservation of our long tradition of government by law, the Nation would have been far better served if the Reagan administration had come to the Congress and sought to change the laws rather than behave in a manner of such doubtful legality.

The Comptroller General's decision letter and its appendix follow:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, June 22, 1984.

HON. BILL ALEXANDER,
House of Representatives.

DEAR MR. ALEXANDER: By letter dated January 25, 1984, you requested that we provide you with a formal legal decision regarding the propriety of funding methods used by the Department of Defense (DOD) in its recent joint combined exercises in Honduras. This letter responds to your request. We would emphasize that the sole concern of our legal review relates to DOD's use of appropriations in carrying out its activities in Honduras, and not to the policy implications of those activities.

On the question of DOD's use of exercise operation and maintenance (O&M) funds, we found the following:

DOD may use O&M appropriations, under authority of 10 U.S.C. § 2805(c), to finance minor military construction projects under $200,000. Thus, to the extent that DOD's construction activities in Honduras fell within this $200,000 limit, use of O&M funding was proper. Apart from this specific authority, however, DOD's construction expenses may not be charged to O&M as operational costs, but must be charged to funds available for military construction (or, in some cases, security assistance). Consequently, O&M funding of construction activities in Honduras in excess of that permitted under 10 U.S.C. § 2805(c) was improper.

Site preparation and installation costs of establishing radar facilities in Honduras, if under $200,000 per project, may also be charged to O&M as minor military construction under 10 U.S.C. § 2805(c). Again, however, O&M funding of such activities in excess of that permitted under 10 U.S.C. § 2805(c) was improper. Costs of operating these facilities were properly chargeable to O&M.

Costs pertaining to training of Honduran armed forces during, or in preparation for, the Ahuas Tara II exercise should have been financed as security assistance to Honduras. Use of O&M funds for such activities was unauthorized.

DOD has no separate authority to conduct civic action or humanitarian assistance activities, except on behalf of other Federal agencies (such as AID) through the Economy Act, 31 U.S.C. § 1535, or (for minor projects) as incidental to the provision of security assistance. Such activities conducted in Honduras during the course of Ahuas Tara II were improperly charged to DOD's O&M appropriations.

The grounds for our conclusions as to proper funding sources are set out in detail in the classified appendix.

Regarding your further questions as to possible violations of the funding purposes restrictions of 31 U.S.C. § 1301(a) and the Antideficiency Act, 31 U.S.C. § 1341(a), it is our conclusion that expenses for training Honduran forces, and for the provision of civic and humanitarian assistance, have been charged to DOD's O&M funds in violation of 31 U.S.C. § 1301(a). We canot make a similar determination with regard to DOD's use of O&M funds to finance exercise construction activities, as such funds may properly have been used under authority of 10 U.S.C. § 2805(c) (minor military construction projects under $200,000). By letter of today's date, however, we are requesting DOD to reexamine its accounting for construction expenses to verify that the conditions of 10 U.S.C. § 2805(c) have been met. To the extent that that authority was exceeded, use of O&M funds for construction activities violated 31 U.S.C. § 1301(a).[1]

Although 31 U.S.C. § 1301(a) does not specify the consequences (or remedies) for its violation, it is clear that such an expenditure is subject to disallowance by this office. *See* 32 Comp. Gen. 71 (1952). In actual practice, GAO's treatment of such violations has varied. *See* 36 Comp. Gen. 386 (1956), 17 Comp. Gen. 1020 (1938) (admonishing agency to discontinue the improper practice); 14 Comp. Gen. 103 (1934) (adjustment of accounts); 17 Comp. Gen. 748 (1938) (taking exception to applicable account). In the present case, it is our view that reimbursement should be made to the applicable O&M appropriation, where funds remain available, from the appropriations that we have identified to be the proper funding sources (i.e., security assistance funds for training of Honduran forces, foreign aid funds for civic/humanitarian assistance activities, and, to the extent that O&M funds were not available under 10 U.S.C. § 2805(c), military construction funds for exercise-related construction).

Where adjustment of accounts is not possible (i.e. because alternate funding sources are already obligated), expenditures improperly charged by DOD to O&M appropriations were made in violation of the Antideficiency Act, 31 U.S.C. § 1341(a). Not every violation of 31 U.S.C. § 1301(a) also constitutes a violation of the Antideficiency Act. *See* B-208697, September 28, 1983. Even though an expenditure may have been charged to an improper source, the Antideficiency Act's prohibition against incurring obligations in excess or in advance of available appropriations is not also violated unless no other funds were available for that expenditure. Where, however, no other funds were authorized to be used for the purpose in question (or where those authorized were already obligated), both 31 U.S.C. § 1301(a) and § 1341(a) have been violated. In addition, we would consider an Antideficiency Act violation to have occurred where an expenditure was improperly charged and the appropriate fund source, although available at the time, was subsequently obligated, making readjustment of accounts impossible.

As the above indicates, a final determination as to whether DOD's activities in Honduras violated the Antideficiency Act depends upon the availability of alternate funding sources. After-the-fact determinations as to available alternate funding, however, are more properly the responsibility of DOD. We are therefore transmitting to DOD our attached analysis of the funding of combined exercises in Honduras, with a request that DOD make funding adjustments, where feasible, and, where not feasible, report Antideficiency Act violations and take appropriate administrative action under 31 U.S.C. § 1349.

Funding adjustments made by DOD in light of our conclusions here must, of course, be consistent with the ordinary rules governing the use of appropriated funds, including fiscal year limitations. The latter requirement is particularly important with respect to adjustments in the present case because some of the exercise activities that we have addressed took place in the previous fiscal year. Unless funds remain available from that previous fiscal year (most likely, unexpended multiple-year authority), adjustment of accounts may be impossible. Security assistance funds, for example, are generally available only for one fiscal year. *See, e.g.,* Further Continuing Appropriations Resolution, 1984, Pub. L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983). Thus, new security assistance agreements, which must be funded with current-year appropriations, could not be used to "cure" funding violations with respect to obligations incurred in the previous fiscal year.

We are also recommending to DOD that it examine its funding of current activities in Honduras under the present exercises

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[1] Costs of several construction projects in Honduras have been reported elsewhere as being in excess of $200,000. *See, e.g.,* our report GAO/C-NSIAD-84-8, March 6, 1984, App. II, p. 57. The accounting method used to calculate such costs, however, may differ from that used under 10 U.S.C. § 2805(c). *See, e.g.,* DOD Directive 7040.2, January 18, 1961, *as amended* March 5, 1964, at p. 6 (funded project costs exclude military labor).

(Grenadero I) in light of this decision, and making funding adjustments as required. Finally, as we have under similar circumstances where DOD has incurred obligations in excess of its authority, we are recommending to DOD that it seek specific funding authorization from the Congress if it wishes to continue performing such a wide variety of activities under the aegis of an O&M-funded exercise. *Compare* 62 Comp. Gen. 323 (1983).

We hope that the above, and our analysis under separate cover, is of assistance to you.

Sincerely yours,

MILTON J. SOCOLAR,
Comptroller General of the United States.

APPENDIX TO COMPTROLLER GENERAL DECISION B-213137, JUNE 22, 1984—FUNDING OF JOINT COMBINED MILITARY EXERCISES IN HONDURAS

I. BACKGROUND

On August 3, 1983, the Defense Department commenced Ahuas Tara (Big Pine) II, the second in a recent series of joint combined military expercises in Honduras.[1] During the exercise, which lasted until February 8, 1984, some 12,000 American troops participated in joint maneuvers with members of the Honduran military. In addition, over the 6 month course of the exercise, participating American units constructed one 3,500-foot dirt assault (or "hasty") airstrip, expanded one 4,300-foot dirt airstrip to 8,000 feet, expanded a 3,000-foot asphalt airstrip to 3,500 feet, installed or constructed nearly 300 wooden huts to serve as barracks, dining, and administrative facilities, deployed two radar systems, provided medical assistance to nearly 50,000 Honduran civilian patients, provided veterinary services to approximately 40,000 animals, built a school, and provided artillery, infantry, and medical training to hundreds of Honduran military personnel. These numerous activities, all carried out as a part of Ahuas Tara II, have raised questions, both within DOD and in the Congress, as to the scope of the authority under which such activities take place. This decision is intended to resolve some of these questions.

In connection with our investigation of DOD's activities in Honduras, we requested, on November 28, 1983, that DOD provide us with an explanation of funding sources used for each of 7 categories of Ahuas Tara II activities, authority for such use of funds permanency of facilities, and, where appropriate, existence of reimbursement agreements. A related letter, sent on December 1, 1983, asked DOD to explain its authority to conduct humanitarian/civic activities in Central America.

DOD's detailed response, dated March 8, 1984, identified the O&M appropriations of the participating military departments as the funding source of most of the activities about which we had inquired.[2] The Department justified all "engineering work," civic action, radar installations, etc., as incidental to the exercise program. According to DOD, no formal training of Honduran troops took place, and any support services provided to Honduran soldiers would have been incurred in the absence of Honduran participation. DOD also described all exercise construction projects as temporary in nature. Finally, DOD stated that reimbursement agreements for any of its exercise activities were unnecessary as "all O&M funds usage is considered correct and proper." In its separate response to our question concerning its authority to carry out humanitarian assistance, however, DOD's General Counsel stated that "DOD has no separate statutory authority to perform humanitarian or civic action programs [except] under the authority of the Economy Act or other similar authority * * *." The apparent conflict between these statements was not explained.

In addition to DOD's formal comments to us, we have also reviewed an Army Judge Advocate General (JAG) staff analysis of exercise activities in Honduras, prepared during the planning stage of Ahuas Tara II. That analysis, transmitted to the U.S. Southern Command (SOUTHCOM, the command responsible for planning and carrying out the exercises), as the U.S. Army position, (classified material deleted).

DOD's formal comments and the Army JAG's analysis will be addressed at further length where relevant to the discussion that follows.

II. DISCUSSION

Operations and maintenance appropriations are typically provided for "expenses, not otherwise provided for, necessary for the operation and maintenance of" the applicable service or agency. *See, e.g.,* Department of Defense Appropriations Act, 1984, Pub. L. No. 98-212, 97 Stat. 1421, 1423 (1983). This particular category of appropriations has been described as a "murky world which does not easily lend itself to clearcut conclusions." Hearings on TAKX Pre-Positioning Ship Program, before the Subcommittee on Readiness, House Committee on Armed Services, 97th Cong., 2d Sess. 2 (1982) (statement of Chairman Daniel). Because they are used for such a wide variety of activities in support of the operation of each military department, and because they are not subject to the same line-item scrutiny as are other types of appropriations, DOD's O&M funds are considered by many to be more discretionary than other types of defense appropriations. *See id.* The Department of Defense, however, clearly does not have unlimited discretion in determining which activities may be financed with O&M funds.

This Office has identified three factors to be considered in determining whether a certain expense is necessary or incidental to the proper execution of the object of an appropriation (here, those expenses necessary for the operation and maintenance of the various military departments). First and foremost, the expenditure must be reasonably related to the purposes for which the appropriation was made. *See* 42 Comp. Gen. 226, 228 (1962). Second, the expenditure must not be prohibited by law. 38 Comp. Gen. 782, 785 (1959). Finally, the expenditure must not fall specifically within the scope of some other category of appropriations. *Id.* This last requirement applies even if the more appropriate funding source is exhausted and therefore unavailable. B-139510, May 13, 1959.

Case-by-case decisions as to which appropriation may be used for a particular expenditure are left to the agency involved and, so long as such determinations are made in general conformity with the above three rules, they have not been generally questioned by this Office. *See* 18 Comp. Gen. 298, 292 (1938). In certain cases, either of the two appropriations may reasonably be construed as available for an expenditure not specifically mentioned under either appropriation. In such cases, it is within the discretion of the agency to determine which appropriation is to be used for the activity in question, although once the determination has been made, it cannot later be changed. *See, e.g.,* 59 Comp. Gen. 518 (1980).

The following discussion constitutes a review, in light of the factors discussed above, of each category of O&M-funded activities carried out by DOD in Honduras under the Ahuas Tara II joint combined exercise.

A. Ahuas Tara II construction activities

1. *Facts:* As described in our February 8, 1984 briefing to Representative Alexander, Ahuas Tara II construction activities centered around the establishment of four base camps, designed to house and/or support approximately 3,000 U.S. troops. Base camps were constructed at the following locations:

Palmerola/Comayagua. Exercise O&M funds were used to construct Joint Task Force-11 (JTF) headquarters at Palmerola Air Base near the central Honduran town of Comayagua. The camp was also the site of a mobile field hospital, aviation battalion, and support group. Army engineers and line troops constructed 132 "Central American Tropical" (CAT) huts[3] (or their equivalent) to serve as barracks, offices, a post exchange, mess halls, and latrines. Part of the camp was tied into public electrical and sewage systems. Army engineers also constructed an unpaved road network, unspecified vertical security structures, and fuel storage berms.

According to DOD's March 8, 1984, comments to us, the Palmerola camp was specifically intended to be used after completion of the Ahuas Tara II exercises. It has in fact continued in use as command headquarters for later combined exercises (classified material deleted).

The exercise-constructed camp at Palmerola has become an integral part of the air base at the same location. The air base at Palmerola is a separate $13 million military construction project approved by the Congress in 1982. The completed facility, as currently proposed by DOD, will include a 8000-foot jet-capable airfield and parking apron, and (as separately-funded projects) air munitions storage facilities, and a "semi-permanent" operations facility (including living quarters for 100 men). A similar project ($8 million in military construction funds) was approved for La Cieba Air Base in northern Honduras, although in 1983 the Congress prohibited DOD from obligating funds for that project pending the provision of an overall military construction plan for the region. *See:* Pub. L. No. 98-116, 97 Stat. 795, 796 (1983).

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[1] The first exercise, Ahuas Tara I, took place during three weeks in January and February of 1983 and involved activities by some 1,600 U.S. troops. The current exercise, Grenadero I, began on April 1, 1984, will continue through the summer, and will involve the deployment of over 3,500 U.S. troops.

[2] According to DOD, it is standard practice in joint exercise programs for the costs of exercise activities for each military service to be funded from the O&M appropriation of that service (other than airlift, sealift, inland transportation and port handling costs, paid from O&M funds available to the Joint Chiefs of Staff (JCS)). Thus, airstrip construction by Seabees is charged to Navy O&M, and that by Army engineers is charged to Army O&M. DOD has stated that O&M appropriations of the Army, Air Force, Navy, and Marine Corps were each used to finance activities of Ahuas Tara II.

[3] CAT huts are 16 foot by 32 foot wooden structures with corregated tin roofs, built from locally-purchased materials.

Trujillo/Puerto Castilla: The second base camp was constructed near Trujillo, several miles south of the northern Honduran port of Puerto Castilla, and about 10 miles west of the Regional Military Training Camp (RMTC), a security assistance-funded project presently used for formal training of Honduran and Salvadoran troops. Near Trujillo, Navy Seabees constructed "Camp Sea Eagle," a complex of barracks, offices and messhalls built from 40 "South East Asia" (SEA) huts.[4] Camp Sea Eagle was used to house the 3/319 Infantry Battalion, which participated in field artillery exercises in the area. Seabees also constructed a 16-hut encampment nearby for their own use.[5]

About a mile from Camp Sea Eagle, Seabees helped to extend an existing asphalt airstrip from C-47 to C-130-capable length (from 3,000 feet to 3,500 feet). Seabee engineers performed grading and filling, and supervised paving operations performed by a Honduran firm. The paving contract cost about $120,000, charged to exercise O&M funds. According to DOD, C-130 use of the airstrip has left the surface "rutted and cracked," to an extent that it will soon be unusable. Honduras has sought compensation from DOD for repair of the damage.

In addition to camp and airstrip facilities at Trujillo, Navy Seabees constructed a "soil-cement" helicopter pad and concrete port off-loading ramp at Puerto Castilla, and built more than 3 miles of roads in the vicinity. (Classified material)

At or near the RMTC security assistance project, Seabees constructed guard towers and roads, dug wells, repaired culverts, and constructed 10 CAT huts. Additional 17 CAT huts, also financed with exercise O&M funds, were constructed at the RMTC by Honduran troops, who had received instruction from Navy Seabees. According to DOD's March 8, 1984 comments, the CAT huts at the RMTC were constructed to house members of the 3/319 Artillery Battalion moved due to flooding at Camp Sea Eagle. Our own investigation showed, however, that huts were not used by members of that battalion, but were used to house Honduran RMTC security guards immediately upon construction.

Although improvements constructed in the Trujillo/Puerto Castilla area were used extensively during Ahuas Tara II, it is clear that a more extended use was also contemplated by DOD. For example, the exercise plan for Ahuas Tara II proposed the expansion of the Trujillo airfield (classified material deleted) U.S. Southern Command, Joint Task Force-11, Ahuas Tara II Exercise Plan (draft), August 3, 1983, p.3 (emphasis added). In addition, Army officials have stated that the Trujillo airfield was extended specifically to support the nearby RMTC.

As of April 1984, the airstrip at Trujillo, although damaged, was still C-130 capable.

Aguacate: A third base camp was constructed by engineers of the 46th Army Engineering Battalion at Aguacate in eastern Honduras. The camp included an airfield facility/and 8 CAT huts (or their equivalent), used as dining, and administrative buildings. Engineers also installed a piped water system for the camp, consisting of over 13,000 feet of 3 inch pipe.

The airfield at Aguacate was 4300 feet in length prior to the commencement of Ahuas Tara II, and was thus already capable of handling the largest aircraft used in-country during the exercise, the C-130 transport (which requires a 3500-foot runway). Army engineers, however, expanded the runway to 8000-feet and upgraded it with 30,000 cubic yards of local gravel. Construction also involved installation of cement drainage culverts, which, according to DOD, have been paid for by the Honduran government. Once paved, as apparently is planned by Honduras, the facility will be able to accommodate (classified material deleted) aircraft.

The airfield at Aguacate was used as a take-off point for two exercise events during Ahuas Tara II. According to DOD's March 8, 1984 comments, expansion of the airfield was necessary to accommodate parking for "transient aircraft" during the exercise, and was done in lieu of constructing a parking apron. DOD states that the airfield expansion was thus intended to fulfill exercise requirements. In addition, DOD notes that construction activities at Aguacate corresponded to DOD-established training requirements for participating combat engineers. While its jurisdiction for airfield construction at Aguacate is founded on these exercise and training benefits, DOD does acknowledge that its construction activities contributed to a "longstanding" plan by the Honduran Armed Forces to make the Aguacate airfield usable for forward-basing of Honduran aircraft.

Ahuas Tara II planning documents show construction at Aguacate to have been conducted as part of an exercise activity to (classified material deleted). *See* Cable from JCS, Washington, to U.S. Commanders-in-Chief, July 19, 1983. According to an August 10, 1983, cable from the U.S. Southern Command, (classified material deleted).

As of April 1984, the airfield at Aguacate was still C-13 capable. Buildings were occupied by Honduran military personnel.

San Lorenzo/Choluteca: The fourth base camp constructed during Ahuas Tara II was at the southern port town of San Lorenzo. San Lorenzo was the headquarters of the 46th Army Engineering Battalion, as well as base for about 120 Special Forces personnel. The camp consisted of a C-130-capable dirt airstrip (expanded from an existing facility), and 94 CAT huts used for barracks, administrative facilities and mess halls. Other construction in the area included road-building and ammunition shelters. In addition, as part of anti-armor exercises, the 46th Engineers constructed 11 miles of earthen tank traps near Choluteca, just east of San Lorenzo. The Southern Command had initially planned to construct concrete tank traps in the Choluteca region, but amended its plans after Army JAG lawyers indicated that concrete structures would have to be military construction- or security assistance-funded.

Although facilities constructed at San Lorenzo were given substantial use during Ahuas Tara II, exercise planning documents show that the fulfillment of exercise requirements was the only purpose for such construction. The original exercise plan for Ahuas Tara II contained the following background information: (Classified material deleted) Ahuas Tara II Exercise Plan (draft), *supra*, p. 2 (emphasis added).

The exercise plan further explains that (classified material deleted) *Id.* The exercise plan specifically included, in support of an anti-armor field training exercise in the choluteca area, the construction of a 3500-foot C-130 capable airstrip at nearby San Lorenzo, thus fulfilling the need specified by the Honduran General Staff.

The airfield facility at San Lorenzo was also used by U.S. troops during post-Ahuas Tara II exercises in March and has been used to support the current Grenadero I exercises.

As of April 1984, the airfield at San Lorenzo was still C-130 capable, and had been regarded by Honduran forces. We have been informed that the camp, although unoccupied, is in good condition. According to a Defense Property Disposal Office official in Panama, huts at San Lorenzo will be sold to the Honduran government for 20 percent of cost. Some huts, in the meantime, have been used by U.S. Army Engineers during the current (Granadero I) exercise.

2. *Analysis:* Construction activities during the course of Ahuas Tara II were charged to O&M appropriations as operational expenses of the exercise. Although 10 U.S.C. § 2805(c) (1982) provides separate authority for financing a minor military construction project with up to $200,000 of O&M funds, this authority was apparently not the basis of DOD's use of O&M funds for its construction activities in Honduras. Consequently, the principal question to be addressed here is whether DOD has authority apart from 10 U.S.C. § 2805(c) to use O&M funds for its construction activities in Honduras.

It is a basic premise in appropriations law that expenses which are not necessary to carry out the purposes of a particular appropriation may not be funded from that source. As indicated previously, there are three factors to consider in applying the necessary expense rule: whether the expenditure reasonably relates to the object of the appropriation, whether it is otherwise prohibited by law, and whether it falls within the scope of another appropriation. *See* p. 3 *supra.*

Because military construction activities are generally performed in furtherance of specific operational requirements of the various military departments, we do not question whether expenditures for such activities are "reasonably related" to the purposes of O&M appropriations, the first of the three factors discussed above. Nonetheless, it is clear, based upon the two remaining factors, that O&M funds are not generally available for military construction activities, first because of a specific statutory prohibition contained in 41 U.S.C. § 12 (1982), and second because specific appropriations are made by the Congress for such purposes.

Section 3733 of the Revised Statutes, codified to 41 U.S.C. § 12, provides: "No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

This provision is applicable to all executive departments, including the Department of Defense. *Sutton v. United States*, 256 U.S. 575, 579 (1921). It has been interpreted by this Office to require that funding for DOD construction projects be specifically authorized by the Congress; other, more general, appropriations are not ordinarily available for such projects. *See* 42 Comp. Gen. 212

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[4] SEA huts are 16 foot by 48 foot wooden structures, built from pre-cut materials brought from the U.S.

[5] Camp Sea Eagle was inadvertently built in a swamp, which flooded during the exercise period, causing some huts to be damaged. At one time the Honduran government was considering purchasing the facility for 10 percent of the cost of materials; we understand AID is currently considering acquiring the structures for use in other parts of Honduras.

214-15 (1962); B-165289-O.M., October 22, 1968.

In addition to the restrictive statutory language of 41 U.S.C. § 12, such activities fall clearly within the scope of appropriations provided by the Congress for those purposes. Where construction is carried out for the use of a military department or defense agency, funding is provided under annual military construction appropriation acts, which typically provide funds to each military department or agency for: "acquisition, construction, installation and equipment of temporary or permanent public works, military installations, facilities and real property * * *." *See* Military Construction Appropriation Act, 1984, Pub. L. No. 98-116, 97 Stat. 795 (1983).

Where such activities are conducted for the benefit of a foreign nation, funding is generally provided under annual security assistance appropriations, such as those "for necessary expenses to carry out sections 23 and 24 of the Arms Export Control Act." *See* Further Continuing Appropriations Resolution, 1984, Pub. L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983). Sections 23 and 24 of the Arms Export Control Act authorize the President to finance the procurement by foreign countries of, *inter alia*, military "design and construction services." 22 U.S.C. §§ 2763-64 (1982). *See also* 22 U.S.C. § 2769 (1982), relating to Foreign Military Construction Sales.

Based, therefore, on the statutory prohibition of 41 U.S.C. § 12, as well as on the existence of other more specific appropriation categories, we conclude that military construction activities, except as specifically permitted under 10 U.S.C. § 2805(c), may not be financed from general appropriation categories such as O&M. This Office has reached the same conclusion in previous cases. For example, in a 1961 report on DOD's misuse of O&M funds for military construction activities, we stated: "Ordinarily, because of the restrictions in section 3678, Revised Statutes (31 U.S.C. § 628) [now codified to 31 U.S.C. § 1301(a)], and section 3733, Revised Statutes (41 U.S.C. § 12), use of operation and maintenance funds to finance construction or construction-type projects, constituting public improvements under section 3733, would have to be specifically authorized unless [under the predecessor to 10 U.S.C. § 2805(c)] the projects were urgently needed and did not exceed $25,000." B-133316, January 24, 1961 (airfield construction at Ft. Lee, Virginia, and other unauthorized construction).

Having stated our opinion that military construction activities, as a general rule, must be financed from funds specifically appropriated therefor, it is necessary to determine whether that rule applies to the present case. In its March 8, 1984 response to our request for comments, DOD justified its use of O&M funding of exercise construction activities on three grounds: the temporary nature of the facilities constructed, the fact that facilities constructed where used to fulfill various exercise needs, and the training benefit to engineers involved in the construction. The last two factors relate to whether the activities in question have a readiness or operational benefit, an aspect of construction that we have already acknowledged, but which does not eliminate ordinary military construction funding requirements.[*] The first factor, however, is one that may in fact be determinative in the present case. Although military construction appropriations are provided for both "temporary and permanent" facilities (see Military Construction Appropriation Act, 1984, supra, p. 10), both DOD regulations and the decisions of this Office recognize that certain types of temporary structures or facilities need not be considered to be public works for purposes of determining proper funding sources for construction activities.

Defense Department regulations define three categories of permanency of construction: "permanent" (expected to last more than 25 years), "semi-permanent" (to last from 5 to 25 years), and "temporary" (to last less than 5 years). See DOD Instruction 4164.14, December 21, 1966. Army regulations governing the conduct of joint exercises provide guidance as to which activities are properly chargeable to O&M exercise funds. See Army Regulation (AR) 350-28, App. J, December 15, 1983 (replacing AR 220-55, ¶23, July 1, 1978). These regulations provide the following example of obligations not properly chargeable to Army exercise O&M funds:

"Permanent or semipermanent construction. Costs of certain minor and temporary construction required for an exercise may be charged under special circumstances when authorized by the exercise directive. (An example is temporary latrines.)" AR 350-28, App. J-2(k), December 15, 1983.

The regulation clearly does not specify that all temporary construction may be charged to exercise O&M funds, although this appears to be the interpretation made by those officials responsible for carrying out Ahuas Tara II. The sole reference to "temporary latrines" in AR 350-28 is in sharp contrast to barracks and support structures for 3000 troops, construction or expansion of three airfields, and other miscellaneous construction activities carried out under Ahuas Tara II and funded with exercise O&M appropriations.

The decisions of this Office also indicate that the "temporary structure" exception to ordinary military construction funding requirements is extremely limited in scope. In 42 Comp. Gen. 212 (1962), the Comptroller General addressed the question of whether funds appropriated to the Department of Defense (from property-disposal proceeds) for the operation of DOD's property-disposal program could be used to pay for minor temporary construction ("transitory shelters, concrete segregation bins and other work") in connection with that program. The Comptroller General held that construction of the facilities in question could not be funded as operational expenses of the program, based upon the requirement of 41 U.S.C. § 12 that construction of public improvements be authorized by specific appropriations. 42 Comp. Gen. 215.

In interpreting 41 U.S.C. §12, the Comptroller General stated:

"The terms 'public building' and 'public improvements' as used in the foregoing statute likewise have been the subject of numerous decisions of the accounting officers over a long period of time. The decisions uniformly have been to the effect that any structure in the form of a building not *clearly of a temporary character* is such a public building or public improvement, the expenditures for which must be authorized by specific appropriations. Also, such structures as temporary sheds for the shelter of farm animals; portable houses for temporary use of employees; temporary portable buildings for use in the detention and treatment of aliens; barns, sheds, cottages, etc., of frame construction of a temporary nature with dirt floors and contemplated to be destroyed; hangars, shops and storehouses; and quonset huts, have been considered as being such public buildings or public improvements. *Minor structures clearly of a temporary nature* and intended to be used for only a temporary period have been held not to be public buildings or public improvements (26 Comp. Dec. 829), but the structrues and improvements involved generally in your disposal program are clearly not of this nature. The mere fact that the buildings are prefabricated, movable, and accounted for as personal property, in itself, is immaterial as to whether they are public buildings or public improvements within the contemplation of section 3733, Revised Statutes. It is common practice today to construct both temporary and permanent structures with prefabricated material which may be dismounted and moved, but the structures are nevertheless public buildings or public improvements." 42 Comp. Gen. at 214-215. [Citations omitted and emphasis added.]

See also 30 Comp. Gen. 487 (1951) (Quonset huts); 6 Comp. Gen. 619 (1927) (frame shed). Although these and other cases involve only the construction of vertical structures, we believe that the same principles may be considered to apply to other types of public improvements as well, including roads and airstrips. Those principles, applied to the present case, prohibit the funding of exercise-related construction not "clearly of a temporary nature" as operational expenses of the exercise program. Such expenses must be financed separately * * * construction.

DOD has stated its view that all facilities constructed during Ahuas Tara II were temporary in nature, and, as evidence of this, has cited deterioration of Camp Sea Eagle, near Trujillo. As we noted previously, however, that facility was inadvertently constructed in a swamp and we do not consider it to be at all typical of those facilities built during the exercises. On the contrary, our own investigations (as recent as late April 1984) show that the majority of these facilities remain in good condition, and in fact continue to be used, both by U.S. and Honduran personnel. Although DOD's March 8,

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[*] For example, in its March 8, 1984 comments to us, DOD justified engineer construction activities at the Aguacate airfield on grounds that the project "enabled engineers to train on 84 Army Training Evaluation Program Tasks" by undergoing "training in construction management and equipment maintenance in [a] remote area for small field engineer elements." The Army Training and Evaluation Program (ARTEP) is a battalion-specific "reference document" for trainers and training managers, specifying training objectives and guidance. As DOD stated, the Engineer Combat Battalion (Heavy) ARTEP specifically includes as an assigned battalion task (at the company level) the construction of forward tactical landing strips. Nonetheless, in our view, the fact that an engineering unit performs tasks listed in the ARTEP does not mean that the performance of such activities may automatically be charged to O&M training for exercise funds. If DOD were to use Army engineering units to construct a new Honduran port complex, including administrative and storage buildings, piers, fuel storage tanks and pipelines, together with an associated all-weather airfield (all corresponding to ARTEP tasks), it is clear that military construction or security assistance funds would have to be used, no matter how beneficial the work would be from a training viewpoint. Compare Army Regulation (AR) 415-32, June 23, 1967, which provides guidelines covering the proficiency training of Army Engineer construction units through assignment to established military construction-funded projects.

1984 comments to us state that airfields and facilities "will deteriorate if not maintained" and that "Hondurans do not have resources to maintain," U.S. Army engineers in Honduras inform GAO auditors that airfields could be used indefinitely with a minor amount of maintenance. Facilities remaining in U.S. custody continue to be maintained by the U.S. military; those under Honduran control, we have observed, are being maintained by the Hondurans. In addition, as described previously, planning documents for the exercise clearly indicate DOD's intention that [Classified material deleted.]

It is apparent to us that the majority of facilities constructed during Ahuas Tara II are substantially less "temporary" than many of those which we described in 42 Comp. Gen. 212 as requiring specific funding as public improvements. See 42 Comp. Gen. 212, 214 (1962). Consequently, it is our view that the majority of construction activities could not be furnished out of O&M as ordinary operational expenses of the joint exercises.

This conclusion does not resolve the question of what appropriation sources could properly have been used for exercising construction activities. In our view, DOD could have chosen as one of several funding sources. We stated previously that the principal categories of appropriations are specifically provided by the Congress for military construction activities. When the construction relates to facilities intended for use by a defense agency or military department, funds are ordinarily provided by the annual military construction acts; when facilities are provided for the benefit of a foreign government, construction is ordinarily provided through security assistance programs (such as the Foreign Military Construction Sales Program).

The 4 base camps and associated facilities constructed during Ahuas Tara II were used by U.S. forces during those exercises and, to a large degree, after their conclusion.

In light of the Ahuas Tara II construction, it is our conclusion that most construction activities could properly have been financed by DOD as either military construction or security assistance: this Office would not have objected to DOD's selection of either category for any particular project. See 59 Comp. Gen. 518 (1980).

As indicated earlier, our discussion here has concerned DOD's authority to charge construction costs to O&M appropriations apart from the authority provided under 10 U.S.C. § 2805(c). Where DOD has charged construction expenses in Honduras to O&M as operational costs of Ahuas Tara II, we would not object to those obligations (so long as they did not exceed $200,000 per project) because they could properly have been charged to O&M as minor military construction costs under 10 U.S.C. § 2805(c). To the extent, however, that DOD has charged its O&M appropriations with the costs of any individual construction project in Honduras in excess of $200,000, the excess charge was made in violation of the purposes-restriction of 31 U.S.C. § 1301(a). When adjusting its accounts to remedy any overcharge, O&M appropriations may be reimbursed from any military construction funds available for such readjustment (and which were available at the time of the original obligation). Alternatively, [classified material deleted] in adjusting its accounts, charge the entire construction cost component of any particular project to security assistance funds (again, subject to ordinary availability requirements).[7] If neither of these two adjustment alternatives are available, DOD should report excess charges to O&M as having been made in violation of the Antideficiency Act, 31 U.S.C. § 1341(a).

3. *Conclusion:* Apart from the specific statutory authority of 10 U.S.C. § 2805(c), DOD has no general authority to charge costs of construction activities to O&M funding appropriations. To the extent, therefore, that O&M funding was not available under 10 U.S.C. § 2805(c), exercise construction expenses charged to O&M were made in violation of 31 U.S.C. § 1301(a), which prohibits the application of appropriations to objects other than those for which they were made. In addition, to the extent that § 2805(c) funding was unavailable and alternate funding (either military construction or security assistance) was also unavailable, exercise construction projects charged to O&M were in violation of the Antideficiency Act, 31 U.S.C. § 1341(a), which prohibits the incurring of obligations in excess of or advance of available appropriations.

DOD, in light of our conclusions here, should make adjustments, where feasible, to those appropriation accounts to which construction activities during Ahuas Tara II were charged; where adjustments are not feasible, DOD should report such obligations as being in violation of the Antideficiency Act.

B. Radar facilities

The Defense Department has established two radar installations in Honduras, each originally deployed as part of joint combined exercises, but used extensively (both during and after exercises) for general support to both U.S. and Honduran military [classified material deleted] activities. All costs pertaining to these two radar systems have been paid from O&M funds.

In August 1982, in response to a Honduran government request for U.S. assistance, the Secretary of Defense directed the Joint Chiefs of Staff to assess Honduran radar requirements. In October of the same year, a JCS staff study concluded that [classified material deleted].

The TPS-43 radar system was initially installed at La Mesa Air Base, in western Honduras, during the Ahuas Tara I exercise in February 1983. After that exercise, the system was placed in storage (in Honduras) until May 1983, at which time it was installed in a facility at Cerro la Mole, in southern central Honduras. The system, manned by 65 U.S. Air Force personnel, provides tracking data to a Honduras Air Force Operations Center at Tegucigalpa. The site at Cerro la Mole was prepared by the Honduran military with some assistance from U.S. troops. American units also installed trailers for living quarters.

A second radar system, a Marine Corps AN-TPS-63/65, was installed during August 1983 on Tiger Island, in the Bay of Fonseca. The Bay of Fonseca is located between El Salvador, Honduras, and Nicaragua, and has been cited as a major arms route between Nicaragua and Salvadoran insurgents. The installation, which supplements the one at Cerro la Mole, was manned and secured by about 100 U.S. Marines. Site preparation including construction of a small (C-7 capable) dirt airstrip, well-digging, and earthwork construction was performed by U.S. military personnel as part of the Ahuas Tara II exercise. Flight tracking data from Tiger Island were relayed to U.S. personnel at the Honduran Air Force Operations Center at Tegucigalpa. The Tiger Island installation finally closed down in May 1984. [Classified material deleted.]

There are two principal cost components relating to the two radar facilities in question: installation costs and operational costs. Installation costs for both radar systems were relatively minimal, generally because extensive facilities are not necessary for such installations, and because some construction services (particularly at Cerro la Mole and including clearing, roadbuilding, installation of power lines) were provided by the Honduran government (although with some U.S. assistance). Nonetheless, as with other facilities constructed or installed in Honduras either as part of joint exercises or for other purposes, construction costs incurred by DOD cannot be regarded as mere operational expenses unless the facilities involved are clearly of a temporary nature. See discussion supra, p. 13.

As with base camp construction in Honduras (including airstrips) it is not apparent to us that radar installations, when established by DOD, were "minor structures clearly of a temporary character" as that phrase is used in 42 Comp. Gen. 21 (1962). The Tiger Island facility, although in actuality only operational for eight months, had no specific removal date when originally deployed; it was used to provide tracking data well after completion of Ahuas Tara II. The Cerro la Mole facility, although deployed for only a two-year period (thus falling within the "temporary" facility category defined in DOD regulations) is certainly capable, if deployment is extended, of being used for a much longer period of time. Additionally, in our view neither of these facilities is a "minor" improvement comparable to those considered in our previous decisions. It is therefore our opinion that installation costs should either have been funded as military construction or security assistance.[8] At the same time, however, it is unlikely that installation and site preparation costs at either facility exceeded $200,000, and it is probable that DOD could properly have financed installation costs with O&M funds as minor military construction under 10 U.S.C. § 2805(c). On this basis, we would not object to DOD's use of O&M funds for radar site preparation and installation expenses, although DOD should verify that conditions of 10 U.S.C. § 2805(c) have been met.

The second cost component associated with radar installations in Honduras relates to operational costs. These types of expenses make up the bulk of costs associated with the two radar installations. Because such costs clearly fall within the scope of O&M appropriations, use of such funds by DOD was proper.

One additional issue that has been raised, particularly in connection with radar installations, is the use of exercise personnel and funding for non-exercise projects. "Exercise" personnel were used for support of radar facilities in Honduras, including installation and operation of the TPS-43 during Ahuas Tara I, installation/operation of the TPS-63/65 at Tiger Island during and after Ahuas Tara II, and other general support (transportation, medical assistance) as needed at each facility. Through this assistance, "exercise" O&M funds were used to support radar facilities, even though such facilities were primarily used for non-exercise requirements.

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[7] DOD does not, however, have the option of charging project costs up to $200,000 to O&M under 10 U.S.C. § 2805(c) and charging costs in excess of $200,000 to security assistance funds, as it must elect between financing a project as security assistance or as military construction. See 59 Comp. Gen. 518 (1980).

[8] Like other facilities, [classified material deleted]. Because of this dual benefit, we would not object to DOD's choice of either funding method.

No separate appropriation is made for "exercise" expenses; rather, such expenses are paid from lump-sum O&M appropriations made to each military department or defense agency. See footnote 2 supra, p. 2. Consequently, once the availability of O&M appropriations has been established for a particular purpose or activity, it is not legally significant (from a funding standpoint) whether the activity is performed by exercise personnel or by other DOD units. Thus, it is our view that, so long as O&M funding for radar facilities was authorized (both for operational expenses, and for installation expenses under 10 U.S.C. § 2805(c)), the use of exercise personnel and "exercise" O&M funding was permissible.

C. Training activities

Accordingly to DOD's March 8, 1984 comments to us,

"[t]here was no formal training of Honduran troops as part of the exercise, however, the U.S. and Honduran forces participated in integrated exercises which included familiarization and safety orientation at no additional cost to the U.S."

This view differs significantly from our own observations, as described in our audit report GAO/C-NSIAD-84-8, March 6, 1984, and as discussed below.

During October 1983, a GAO field team in Honduras identified 3 types of training being conducted by U.S. forces as a part of the Ahuas Tara II joint combined exercises:

1. U.S. military personnel assigned to the 41st Combat Support Hospital at Comayagua/Palmerola provided three 5-week combat medic training courses for approximately 100 Hondurans. DOD later acknowledged that such classes took place, but stated that they were performed by off-duty U.S. volunteers, provided "humanitarian" medical instruction to Hondurans, and contributed to U.S. readiness by exposing U.S. personnel to "indigenous methods of operation and culture."

2. In Puerto Castilla, members of the 3/319th Field Artillery Battalion provided 3-4 weeks of instruction on 105 mm artillery to two Honduran artillery battalions prior to combined field training exercises. DOD describes the activity as a "22 day combined operations period" for interoperability and safety development, and states that each gun section had a U.S. and a Honduran section chief and integrated crew. Our personnel, however, observed gun crews of 8-12 Hondurans being supervised and instructed by teams of 2-4 U.S. servicemen, half of whom spoke Spanish. We were told that, about the time that these events took place, Honduras took delivery (under the Foreign Military Sales Program) of 105mm artillery, the first guns of this type in Honduras' arsenal. We were informed by personnel of the Military Assistance Group that, without training provided under the exercise, Honduras would had to purchase the services of U.S. military training teams at a cost of from $250,000 to $500,000.

3. U.S. Special Forces personnel in San Lorenzo provided basic and/or advanced classroom and field training to four Honduran battalions, on mortars, fire-direction, and counterinsurgency tactics. This training was similar to that provided by security assistance-funded military training teams at the Regional Military Training Camp in Trujillo. DOD describes these activities as: joint review and practicing of tactics and techniques for interoperability, including some "minor individual remedial preparation" for safety and standardization.

Whenever combined military exercises are conducted, it is natural (and indeed desirable) that there be a transfer of information and skills between the armed forces of the participating countries. In addition, where there is a marked disparity of military sophistication between the two nations' armed forces, it is not surprising that this transfer is principally in one direction, i.e. to the benefit of the less-developed military force. In addition, as emphasized by the Defense Department, some degree of familiarization and safety instruction is necessary before combined-forces activities are undertaken, in order to ensure "interoperability" of the two forces.

At the same time, where familiarization and safety instruction prior to combined exercises rise to a level of formal training comparable to that normally provided by security assistance projects, it is our view that those activities fall within the scope of security assistance, for which comprehensive legislative programs (and specific appropriation categories) have been established by the Congress. Where such extensive "interoperability" training is in fact necessary, combined exercises should not be conducted without the formal training needed to equalize the participating forces.

A view similar to that expressed above was put forth in a Army Judge Advocate General (JAG) staff review of the Ahuas Tara II exercise proposal. The JAG analysis emphasized that [classified material deleted]. In addition, previous guidance in this area was set out in a February 24, 1977 memorandum from the Department of Defense General Counsel. That memorandum stated that [classified material deleted].

Based upon our own observations of formal training provided to Honduras soldiers "in preparation for" exercise participation (and otherwise), the previous DOD guidance was disregarded by the U.S. Southern Command in its execution of Ahuas Tara II. Training provided to Honduran troops during the exercise, although certainly related to exercise activities, was essentially the same as that ordinarily provided through security assistance, and consequently should have been funded as such: security assistance funds are specifically provided by the Congress to be used to train the military forces of friendly foreign governments, including formal or informal instruction provided as part of training exercises. See, e.g., Further Continuing Appropriations Resolution, 1984, Pub. L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983), providing funds for fiscal year 1984 to carry out credit sales and guaranties for procurement of defense services by foreign countries, under sections 23 and 24 of the Arms Export Control Act, 22 U.S.C. § 2263-64; section 47 of that Act (22 U.S.C. § 2794) defines "defense services" to include all types of military training.

The Defense Department, in its March 8, 1984 letter, has put forward several justifications for its training of Honduran soldiers as part of exercise operations, in addition to the contribution to "interoperability." DOD emphasizes that training of Honduran troops contributes to the readiness of U.S. forces, by exercising the U.S. role of "force multiplier," by permitting U.S. troops to improve their professional skills in a bilingual environment, and by exposing U.S. forces to indigenous cultures. As we stated in connection with our examination of construction activities under Ahuas Tara II, however, the mere fact that an activity carried out by DOD has a readiness or operational benefit does not mean that it may automatically be financed with O&M appropriations. We previously acknowledged that facilities constructed during the Honduran exercises contributed significantly to U.S. military readiness in the region, but concluded that they must be financed as military construction or security assistance. See p. 11, supra. The same is true in the case of training of foreign troops. The fact that such training has a concurrent benefit to the readiness of U.S. forces does not remove it from the scope of security assistance.

Regarding the provision of combat medic training to Honduran troops, DOD's March 8, 1984 comments to us imply that there are no funding problems in connection with these activities because they were "humanitarian" services performed by "off-duty" U.S. troops on a voluntary basis. We cannot agree. The activities that we observed constituted combat medical training of foreign troops, activities which we categorize as military training rather than civic or humanitarian assistance. We would also note that active duty military personnel, unless in an approved leave status, are considered as being "on-duty" at all times. See B-203251, December 15, 1981. Although an active-duty member may, when not scheduled to perform official duties, engage in activities that are not inconsistent with his military status, it is our view that the provision of military training to foreign troops constitutes a military function that should properly be considered as part of the official duties of that member, even if performed on a "voluntary" basis. DOD cannot discharge its reponsibility to ensure proper funding of its activities by saying that they are performed by "off-duty volunteers."

We do not dispute the fact that the level of training provided to Honduran forces was generally necessary to prepare them for the exercise events in which they participated. It should, however, have been apparent to DOD at the time the exercises were planned that substantial training would be required for adequate Honduran participation: for example, DOD scheduled combined field artillery exercises using 105mm guns with Honduran soldiers who had never been trained on such weapons. In our opinion, DOD should have carried out exercise activities in rather than treating training as an integral part of the exercise operation.

Based upon the foregoing, it is our opinion that the Department of Defense engaged in the training of foreign military forces during the course of the Ahuas Tara II exercises in Honduras, and should have financed such training as security assistance. To the extent that these activities were financed from O&M appropriations as exercise operational expenses, the Department violated 31 U.S.C. § 1301(a), which requires that funds be applied solely to the purposes for which they were appropriated. It is also possible that such activities were performed in violation of the Antideficiency Act. DOD should make a final determination in this regard based on the availability of alternate funding sources to make the improperly used account whole.

D. Civic and humanitarian assistance

The Defense Department has long carried out a wide variety of humanitarian assistance and civic action programs in Central America, both as a part of, and independent from, combined exercises such as Ahuas Tara II. In some cases, assistance has been provided through written agreements with the Agency for International Development (AID) under authority of the Economy Act, 31 U.S.C. § 1535. In other cases, however, U.S. forces have carried out humanitarian and civic action activities without reimbursement from AID or the host-country.

During Ahuas Tara II, civic action and humanitarian assistance activities took place on an almost-daily basis. According to DOD, personnel of the 41st Combat Support Hospital conducted MEDCAP's (Medical Civil Action Programs) throughout Honduras over the course of the exercises, resulting in the treatment of over 46,000 Honduran civilian medical patients, 7,000 dental patients, 100,000 immunizations, and the treatment, under a veterinary program, of more than 37,000 animals. Medicines utilized for these activities were taken from U.S. government supplies nearing the end of their shelf-life, or were donated (by the Honduran government or charitable organizations). In addition to this comprehensive medical aid, U.S. forces tranported U.S.-donated medical supplies, clothing, and food to various locations in Honduras. In one case, a team of 15-20 Navy Seabees constructed a 20 foot-by-80 foot school-house at the village of Punta Piedra, using AID-supplied materials.

Notwithstanding the broad range and scope of humanitarian and civic action activities recently carried out by DOD in Central America, there appears to be some question within DOD itself as to the authority for such activities. At the time that the Ahuas Tara II exercise was being planned, the Army JAG staff review of the exercise proposal [classified material deleted].

The JAG view also appears to reflect that the DOD's General Counsel. On December 1, 1983, we requested DOD to provide us with an explanation of its authority to conduct humanitarian or civic action programs in Central America. The response, from DOD's General Counsel, was that DOD has no separate statutory authority to carry out such activities, but could do so on a reimbursable basis on behalf of the Department of State or AID "under the authority of the Ecomony Act or other similar authority." In response, however, to our separate request to DOD for a description of reimbursement agreements or arrangements covering any or all of the wide range of Ahuas Tara II exercise civic/humanitarian activities, we were informed by the Assistant Secretary of Defense for International Security Affairs (in DOD's March 8, 1984 comments) that no such agreements existed. Although exercise personnel consulted with AID officials (and occasionally utilized AID-supplied provisions or materials such as for the schoolhouse built at Punta Piedra), costs of carrying out civic/humanitarian activities were, on the whole, borne by DOD, and charged to exercise O&M funds.

The Department of Defense has recently started to reexamining in detail its conduct of civic/humanitarian activities. On January 12, 1984, Secretary Weinberger established a DOD "Task Force on Humanitarian Issues," to explore DOD's current authority in the area, to identify DOD requirements, and to determine if legislative or regulatory changes are necessary. In particular, the task force was to consider "[r]evising USC Title 10 to include 'humanitarian' missions within the definition of military missions * * * [to] enable DOD to use 'exercise' and Operations and Maintenance (O&M) funds for civic action and humanitarian efforts."

The task force was due to report on April 30, 1984, although we have not yet been provided details of its work.

We agree with DOD's General Counsel that the Department's authority to carry out civic/hunanitarian activities is limited in scope. The principal authority, as noted by DOD, is through Economy Act transactions, i.e., under an order place by another Federal agency (such as AID) ordinarily responsible for carrying out such activities. See 31 U.S.C. § 1535. Economy act orders are placed on a reimbursable basis, and, when made, constitute an obligation of the ordering agency (charged to funds appropriated by the Congress to that agency—in this case, for example, AID).

Apart from the authority of the Economy Act, DOD may carry out civic action activities on a limited basis through its security assistance programs. Under section 502 of the Foreign Assistance Act of 1961, defense articles and services may be provided to a foreign country for, among other purposes:

"The purpose of assisting foreign military forces in less developed friendly countries (or the voluntary efforts of personnel of the Armed Forces of the United States in such countries) to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort." 22 U.S.C. § 2302 (1982).

Based upon this authority, DOD may, through the provision of defense articles and services to Honduras under security assistance programs, assist the Honduran government with civic projects and programs. The legislative history of this provision provides that:

"Any civic action activity should be incidental to the performance of the usual duties of a military unit or a byproduct of the presence of such unit in a particular locality. The construction of a schoolhouse might qualify as well as a village access road, a small community sanitation project, or other activities that improve the relationship of the military to the local civilian population. The primary purposes of miltiary assistance should be to meet military requirements. * * * The Committee wants to make clear that civic action programs are to be neither extensive nor expensive." H.R. Rep. No. 321, 89th Cong., 1st Sess. 26-27 (1965). Similar authority is provided under section 4 of the Arms Export Control Act, 22 U.S.C. § 2754 (1982), in connection with Foreign Military Sales.

Based upon DOD's March 8, 1984 comments to us, it does not appear that civic/humanitarian activities under Ahuas Tara II were performed either under authority of the Economy Act or as incidental to DOD's security assistance programs. Instead, DOD has justified such activities on the basis (1) that they were "ancillary" to exercise events, (2) that in some cases, they provided training to participating U.S. units, and (3) that they contributed to U.S. regional readiness by improving relations with friendly foreign nations and by creating a positive image of the U.S. military among the indigenous population.

As was the case with exercise-related construction of facilities and training of Honduran forces, we do not dispute DOD's assertion that civic and humanitarian activities conducted during the course of Ahuas Tara II had distinct operational benefits (i.e. training experience of U.S. medical units) and contributed to U.S. regional readiness. Again, however, the fact that an activity carried out by DOD has a readiness or operational benefit does not mean that it may automatically be financed with O&M appropriations: that factor is but one of three that must be considered in making a determination as to proper funding source. Another source may be required if the activity is otherwise prohibited by law or falls within the scope of another category of appropriations. See p. 3 supra.

In this case, it is our view that civic/humanitarian assistance activities by DOD fall clearly within the scope of other appropriation categories and thus may not be financed with O&M funds. The types of civic and humanitarian assistance provided during the exercises are similar to those ordinarily carried out through health, education, and development programs under the Foreign Assistance Act of 1961, 22 U.S.C. § 2151 et seq., administered by the U.S. International Development Cooperation Agency (of which AID is a part). See Executive Order 12163, September 29, 1977, as amended. Funds for such foreign assistance activities are specifically provided by the Congress in annual appropriations acts. See e.g., Further Continuing Appropriation Resolution, 1984, Pub L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983). Alternatively, as noted above, minor assistance projects may be carried out where incidental to activities performed under authority of section 502 of the Foreign Assistance Act of 1961, 22 U.S.C. § 2302, or section 4 of the Arms Export Control Act, 22 U.S.C. § 2754. In either case, it is our opinion that DOD's operation and maintenance funds may not be used to finance such activities in light of the availability of other appropriations specifically provided therefor.

Based on the above, it is our conclusion that DOD's use of O&M funds to finance civic/humanitarian activities during combined exercises in Honduras, in the absence of an interagency order or agreement under the Economy Act, was an improper use of funds, in violation of 31 U.S.C. § 1301(a). As with DOD's use of O&M funds for training of foreign forces (and military construction in excess of that permitted under 10 U.S.C. § 2805(c)), such activities may also have been performed in violation of the Antideficiency Act. DOD should make a final determination in this regard based upon the availability of alternate funding sources to reimburse the improperly used account.

III. SUMMARY

We have attempted, in the foregoing analysis, to address separately a number of different categories of activities carried out by DOD during the course of the Ahuas Tara II joint combined exercises in Honduras, to determine the propriety of DOD's financing of such activities as incidental operational expenses of these exercises. Although we recognize that most, if not all, of the activities examined in some way contributed to exercise requirements and to regional readiness goals, our analysis has focused upon

> other factors relevant to a determination of funding availability, particularly whether the activities in question fall more properly within the scope of another appropriation category.
>
> Based upon this analysis, we conclude:
>
> Exercise-related construction should not have been charged to O&M appropriations, except under authority of 10 U.S.C. § 2805(c), which permits the use of up to $200,000 of O&M funds for minor military construction projects.
>
> Operational expenses of radar installations in Honduras were properly charged to O&M funds. Site preparation and installation costs, however, should only have been funded with O&M if less than $200,000 per project, pursuant to 10 U.S.C. § 2805(c).
>
> In at least 3 instances, DOD provided training to Honduran armed forces in connection with the Ahuas Tara II exercises. Such training, comparable to that ordinarily provided through security assistance, should have been funded with security assistance appropriations.
>
> Civic action and humanitarian assistance activities carried out by DOD during Ahuas Tara II were improperly charged to O&M funds as operational expenses of the exercises. Such activities should have been carried out under a reimbursable order under the Economy Act, 31 U.S.C. § 1535.

ORDER OF BUSINESS

Mr. WALKER. Mr. Speaker, I ask unanimous consent that I be permitted to take my special order in advance of the one requested by the gentleman from Michigan [Mr. SILJANDER].

The SPEAKER pro tempore. [Mr. MONTGOMERY]. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

ONE PERSON-ONE VOTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, the concept of one person-one vote is a concept that has been etched into the American political psyche. It is something that we as a Nation have become thoroughly involved with and we have come to thoroughly believe in: that each person's vote should be weighted the same as every other person's vote; that no person's vote in this country should be worth more than any other person's vote.

Every 10 years, when we go through the reapportionment process to reapportion the State legislatures, to reapportion the Congress in terms of the seats and the way in which people vote for those seats, we go great lengths to assure that everyone's vote is equal. We split counties, we split cities and towns, and in some cases we even split up neighborhoods to draw precise, exact lines to assure that everyone's vote is the equal to everyone else's vote. We assure that we have precise, proportional representation in our legislative bodies.

The American people have come to believe that each person's vote should be equal. That is believed everywhere in this country except in the U.S. House of Representatives. It is believed in our State legislatures, it is believed in the U.S. Senate, it is believed in the makeup of city and county councils across the country. Even on international scene, the major Western democracies have a one person/one vote practice in the conduct of the legislative bodies of those democracies.

Only here in the House of Representatives is there a difference. Here the American people find the committee system of this Congress stacked in a partisan fashion for power-wielding purposes. In the House of Representatives, the situation is as was described in the famous Baker against Carr case that mandated one man-one vote on the national legislative reapportionment process.

Justice Clark wrote in that famous case:

> The people have been rebuffed at the hands of the Assembly.

So it is the House. The American people elect Representatives of the House in good faith. They expect that since every Representative represents equal numbers of people, that he or she will have an equal voice in the congressional deliberations, but that is not the case in all respects. On the committees, a pattern has developed that gives the majority party extra seats on nearly all the committees, extra seats beyond what their proportional base in the House of Representatives would entitle them to.

The situation is, in my opinion, appalling.

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According to statistics developed by Congressman WILLIAM DANNEMEYER of California:

> In the 96th Congress, we Republicans in the minority in the House were shorted 15 slots on major committees and 58 slots on subcommittees.
>
> In the 97th Congress, running from 1981 through 1982, we were shorted 30 slots on committees and 37 slots on subcommittees.
>
> In this Congress, starting last year, we were shorted 22 slots on major committees.

In other words, the majority party arbitrarily decides that some of the American people deserve more representation than others. What is the penalty of that decision? That penalty is stated best in a court suit filed in this issue after the 1980 election. That Federal Court suit, brought by 14 Members of this House, contended, among other things:

> The ability of the voter to ultimately influence congressional action through the instrumentality of his elected representative depends on a chain of events linking the voter to such final congressional actions. The strength of that connection is directly determined by constitutional standards applied at each link in the chain, including standards of voter and candidate qualification, the apportionment of congressional districts, procedures for tallying ballots, standards for seating duly-elected Representatives and the assignment of committee positions to their elected Representatives. Weakening of any link in this chain of representation would substantially erode the ultimate power of that citizen's vote.

The committees have become a very important link in the chain of proper representation. Freshmen Congressmen are often told that the most important work they will do is in their committees. The prime committee assignments around this body are eagerly sought after, even fought for. The lobbying for committee slots that takes place prior to each new congressional term attests to the preeminence of committee power in the legislative process.

Some Capitol Hill observers even assert the committees are more important than the floor of the House itself. They argue that the floor in the modern House merely exists to ratify the actions of the committees. As perverted an approach to legislative business as that is in my opinion, given what the forefathers envisioned for the people's body, that analysis has some basis in reality in the way we operate this House presently.

Therefore, stacking committees against the minority and thereby disenfranchising millions of Americans is serious business. Those disenfranchised citizens are being denied their opportunity to influence properly the broad scope of national policy.

The final report of the House Select Committee on Committees in the 96th Congress, published on April 1 of 1980, puts it this way:

> Discriminatory committee assignment practices diminish the effective participation of the minority at the primary level of legislative decision making, committees and subcommittees. The ability of the minority to advance viewpoints, incorporate amendments or implement reforms is unquestionably impaired by inequitable apportionment. Furthermore, adherence to improperly aligned ratios disparages the very spirit of representative government.

It would be argued by some that what is happening on the committee ratios is simply what has always gone on in this Congress, but history says otherwise. In 1789 when Congress was first being put together, when this House was first being put together, the House chose the members of committees that consisted of three people or more. In other words, if there was a committee being put together that had more than three members, the House itself made the decision, not on a partisan basis, but on a basis often of ability or of past experience of who should serve on those particular committees.

In 1790, the next year, that was modified some. At that point the House adopted a rule letting the Speaker make committee assignments "unless otherwise specifically directed by the House".

The Speaker retained that power until 1911. In other words, for more than a century, when the abuse of that authority led to a revolt and we had the establishment of a rule directing that all standing committees would be elected by the entire House of Representatives.

For most of the 20th century, the House selected the committee members after informal arrangements had been made by the leadership of the two parties. Generally those agreements came close to providing proportional representation on the committees. In other words, what you had happening was the majority leader and the minority leader and the Speaker would get together. They would decide who would serve on the committees. They would decide the proportional ratios of those committees and that would be then ratified by the whole House of Representatives.

In most cases, because it was an informal arrangement at the beginning of each Congress, when you go back through and look at the historic trends what you find is that the representation was basically proportional.

During the post World War II period, there were Congresses where precise proportional committee ratios did not exist, but the relative insignificance of committee decisions in the entire legislative process made the whole matter somewhat of a nonissue during that period of time, particularly since the two leaderships had worked out the deal beforehand.

In other words, once the minority had signed off through its leadership on the decision, if the number of people on committees was not proportional, then it did not become much of an issue.

There was a big change, though, that came about in 1975. By this time the committees were beginning to play a major role in legislative policy making. This was the period of time of post-Watergate, or post-Vietnam War, when the committee structure in this body has begun to take on particular significance.

The Democrats came to the new Congress flush with their post-Watergate super majority and they decided to seize full control of the committee process.

Surprisingly, if you go back and look at the record, you find out that this power play was labeled as reform, but what happened was that the Democratic Caucus adopted a policy of requiring the committees and the subcommittee ratios to be 2 to 1, plus 1. In other words what they required was that every committee and every subcommittee would have a ratio of two Democrats to every Republican, and then one more Democrat added on for extra measure. This created major league inequities to the point the Republican minority by 1978 was underrepresented in percentage terms on 146 of the 148 committees and subcommittees in the House of Representatives.

The problem has persisted since that time with each new Congress permitting the Democratic Caucus to assign unfair and unbalanced committee assignments to the minority party.

By the advent of the 97th Congress, the inequity of the situation became readily apparent. The Republicans had done reasonably well in the 1980 congressional elections which preceded that Congress by getting 44.1 percent of all the seats in the House, leaving the Democrats with a 55.86 percent majority, but when it came time for allocating the committee slots, the Democrats allocated for themselves 65.71 percent of all the seats on the powerful Ways and Means Committee; in other words, a 10-percent differential; 68.75 percent of the seats on the prestigious Appropriations Committee; in other words, that is about a 13-percent differential, and 60 percent of the seats on the Budget Committee, about a 5-percent differential.

When the 98th Congress was organized in January of 1983, Republicans found themselves shorted 22 committee slots and 37 subcommittee seats.

What does this mean to the American people? It means that when tax policy is decided by the Committee on Ways and Means, that there is no one person-one vote fairness, in that process.

It means when massive deficits are authorized by the spending practices of the Appropriations Committee, there is no one person-one vote protection for the American people in that process.

It means when the Federal budget is decided on in the Budget Committee, that one person, one vote, does not figure in the final tally of that committee.

It means that when the issues of importance, like education, energy and crime, are acted upon by the Education and Labor Committee, the Energy and Commerce Committee, and the Judiciary Committee, that the people cannot prevail because one person-one vote is not permitted.

There are other legislative bodies that practice a committee assignment policy similar to that employed by the U.S. House of Representatives. Congressman BILL DANNEMEYER has identified those places as the Iron Curtain countries of Albania, Bulgaria, Poland, and the U.S.S.R. Only where dictatorships rule and mock legislatures affirm their rule, do we find a committee ratio situation similar to that in the people's body of this Congress.

□ 1650

If we as a Nation believe so thoroughly in the principle of one person-one vote that we are willing to go to tremendous lengths to affirm it in nearly every facet of our national political life, how can we permit the scandalous undermining of that principle in the House of Representatives? Clearly we cannot if the American people are to be properly represented in their Congress.

I yield back the balance of my time.

FOIA HEARING POSTPONEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oklahoma [Mr. ENGLISH] is recognized for 5 minutes.

● Mr. ENGLISH. Mr. Speaker, the Subcommittee on Government Information, Justice, and Agriculture is currently holding hearings on S. 774, the Freedom of Information Reform Act. Three days of hearings have already been held, and more than two dozen witnesses have been heard. A fourth and final day had been scheduled for Wednesday, June 27, 1984. The Department of Justice and the Federal Bureau of Investigation were invited to testify at the June 27 hearing.

Both the Department and the FBI have refused to send a witness to this hearing. Instead, we have been asked to postpone the hearing until after the Fourth of July recess.

I am both surprised and disheartened by the Justice Department's request that the hearing be postponed. I said in April that the subcommittee would attempt to complete all hearings on S. 774 before the July recess. With the June 27 hearing, that commitment would have been fulfilled.

The hearings already held have demonstrated that S. 774 is an extremely controversial bill and that there is considerable opposition to it. Nevertheless, I had hoped to concentrate on some of the less controversial provisions and take up a bill early in September. The completion of the hearings in June would have left all of July and August for a review of the hearing record and for further work on the legislation. The need to reschedule the last day of FOIA hearings will cause a substantial disruption in our plans.

It is no secret that I have been less enthusiastic than some about the prospect of amending the FOIA. Nevertheless, when the Senate finally passed S. 774 after 3 years of effort, I promptly agreed to consider the bill. When the hearings are complete, I am prepared to consider limited FOIA reform legislation during the few days that remain in the 98th Congress.

At this crucial time in the legislative process, the Justice Department is suddenly unable to find a responsible official who is willing or able to explain or defend its position on FOIA legislation. I do not understand why. The bill before the subcommittee is not a new piece of legislation. It is essentially the same bill that was considered in the Senate Judiciary Committee during the 97th Congress.

I am offering this lengthy explanation because I want the recored to show clearly the reason for the postponement of the hearing. I believe that the Government Information Subcommittee has approached S. 774 in a very responsible fashion, and I am sorry that we will have to waste valuable time while we wait for the Justice Department.

I hope to announce a new date in the next 2 weeks.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Erlenborn (at the request of Mr. Michel), for today and the balance of the week, on account of attending the I.L.O. conference as a congressional adviser.

Mr. Sensenbrenner (at the request of Mr. Michel), for today and the balance of the week, on account of recovery from surgery.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Bartlett) to revise and extend their remarks and include extraneous material:)

Mr. Walker, for 60 minutes, today.

(The following Members (at the request of Mr. Penny) to revise and extend their remarks and include extraneous material:)

Mr. Annunzio, for 5 minutes, today.

Mr. AuCoin, for 5 minutes, today.

Mr. English, for 5 minutes, today.

Mr. Alexander, for 60 minutes, today.

Mr. Gonzalez, for 60 minutes, today.

Mr. Gaydos, for 60 minutes, on June 26.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Alexander, and to include extraneous material, notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $4,123.

Mr. Hubbard, during debate on the bill, H.R. 5655, on the Suspension Calendar today.

(The following Members (at the request of Mr. Bartlett) and to include extraneous matter:)

Mr. Hunter.

Mr. Roth.

Mr. Shumway.

Mr. Miller of Ohio in three instances.

Mr. Broomfield.

Mr. Petri.

Mr. Gradison.

(The following Members (at the request of Mr. Penny) and to include extraneous matter:)

Mr. Anderson in 10 instances.

Mr. Gonzalez in 10 instances.

Mr. Brown of California in 10 instances.

Mr. Annunzio in six instances.

Mr. Jones of Tennessee in 10 instances.

Mr. Boner of Tennessee in five instances.

Mr. Bates.

Mr. Lipinski.

Ms. Mikulski in two instances.

Mr. Stark.

Mr. Hamilton.

Mr. Markey in two instances.

Mr. Won Pat.

Mr. Traxler.

Mr. Downey of New York.

Mr. Lehman of Florida.

Mr. Fauntroy.

Mr. Matsui in two instances.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 296. An act for the relief of Ramzi Sallomy and Marie Sallomy; the Committee on the Judiciary.

S. 516. An act for the relief of Barbara Crisp, Sean Anthony Crisp, and Andrea Leech; the Committee on the Judiciary.

S. 796. An act for the relief of Bassam S. Belmany; the Committee on the Judiciary.

S. 1140. An act for the relief of Patrick P. W. Tso, Ph.D.; to the Committee on the Judiciary.

S. 1414. An act for the relief of Rebecca Lynn Higgins; to the Committee on the Judiciary.

S. 2729. An act for the relief of Jean Wilhelm Willrich; to the Committee on the Judiciary.

ADJOURNMENT

Mr. WALKER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 52 minutes p.m.) the House adjourned until tomorrow, Tuesday, June 26, 1984, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

3619. Under clause 2 of rule XXIV, a letter from the Clerk of the House of Representatives, transmitting the annual compilation of personal financial disclosure statements filed by Members of the House of Representatives and legislative personnel for the period covering January 1, 1983, to December 31, 1983, pursuant to 2 U.S.C. 703(a), (H. Doc. No. 98-235); was referred to the Committee on Standards of Official Conduct and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*Pursuant to an order of the House on June 22, 1984, the following report was filed on June 23, 1984.*]

Mr. ROSTENKOWSKI: Committee of conference. Conference report on H.R. 4170 (Rept. No. 98-861). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mrs. BOXER (for herself and Mr. Levine of California):

H.R. 5922. A bill to limit the employment by Government contractors of certain former Government personnel; to the Committee on Government Operations.

By Mr. DUNCAN:

H.R. 5923. A bill to amend title 11 of the United States Code to provide that in cases under chapter 11 certain transfers by State banks to satisfy debts arising from deposits shall not be voidable; to the Committee on the Judiciary.

By Mr. LONG of Louisiana:

H.R. 5924. A bill to amend title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property; to the Committee on the Judiciary.

By Mr. DIXON (for himself, Mr. Ackerman, Mr. Akaka, Mr. Albosta, Mr. Alexander, Mr. Anderson, Mr. Andrews of North Carolina, Mr. Andrews of Texas, Mr. Applegate, Mr. AuCoin, Mr. Badham, Mr. Barnes, Mr. Bates, Mr. Bedell, Mr. Beilenson, Mr. Bereuter, Mr. Bevill, Mr. Biaggi, Mrs. Boggs, Mr. Boner of Tennessee, Mr. Bonker, Mr. Bonior of Michigan, Mr. Borski, Mrs. Boxer, Mr. Breaux, Mr. Britt, Mr. Broomfield, Mr. Brown of California, Mrs. Burton of California, Mr. Carney, Mr. Carper, Mr. Chappie, Mr. Cheney, Mr. Clay, Mr. Clinger, Mr. Coats, Mr. Coelho, Mrs. Collins, Mr. Conte, Mr. Conyers, Mr. Corrada, Mr. Coughlin, Mr. Coyne, Mr. Crockett, Mr. Dannemeyer, Mr. Daschle, Mr. de la Garza, Mr. Dellums, Mr. de Lugo, Mr. Derrick, Mr. Dicks, Mr. Donnelly, Mr. Dorgan, Mr. Downey of New York, Mr. Dwyer of New Jersey, Mr. Dymally, Mr. Edgar, Mr. Edwards of California, Mr. Edwards of Oklahoma, Mr. Evans of Illinois Mr. Fascell, Mr. Fauntroy, Mr. Fazio, Ms. Ferraro, Mr. Fish, Mr. Flippo, Mr. Foglietta, Mr. Foley, Mr. Ford of Michigan, Mr. Ford of Tennessee, Mr. Fowler, Mr. Frank, Mr. Frost, Mr. Fuqua, Mr. Gejdenson, Mr. Gilman, Mr. Gingrich, Mr. Gore, Mr. Gramm, Mr. Green, Mr. Gray, Mr. Guarini, Mrs. Hall of Indiana, Mr. Hall of Ohio, Mr. Hamilton, Mr. Harkin, Mr. Hawkins, Mr. Hayes, Mr. Heftel of Hawaii, Mr. Hightower, Mr. Horton, Mr. Hughes, Mr. Hunter, Mr. Hyde, Mr. Jeffords, Ms. Kaptur, Mr. Kildee, Kostmayer, Mr. Lagomarsino, Mr. Lantos, Mr. Leach of Iowa, Mr. Lehman of Florida, Mr. Leland, Mr. Levin of Michigan, Mr. Levine of California, Mr. Lewis of California, Mr. Livingston, Mr. Long of Maryland, Mr. Long of Louisiana, Mr. Lowery of California, Mr. Lowry of Washington, Mr. Lundine, Mr. Lungren, Mr. McCain, Mr. McCloskey, Mr. McCurdy, Mr. McDade, Mr. McHugh, Mr. McNulty, Mr. Madigan, Mr. Markey, Mrs. Martin of Illinois, Mr. Martinez, Mr. Matsui, Mr. Mavroules, Mr. Mazzoli, Ms. Mikulski, Mr. Miller of California, Mr. Mineta, Mr. Mitchell, Mr. Moakley, Mr. Molinari, Mr. Moody, Mr. Moorhead, Mr. Morrison of Connecticut, Mr. Murphy, Mr. Murtha, Mr. Natcher, Mr. Neal, Mr. Nelson of Florida, Mr. Nichols, Ms. Oakar, Mr. Oberstar, Mr. Obey, Mr. O'Brien, Mr. Ortiz, Mr. Ottinger, Mr. Owens, Mr. Panetta, Mr. Pashayan, Mr. Patterson, Mr. Pepper, Mr. Perkins, Mr. Pickle, Mr. Porter, Mr. Pritchard, Mr. Pursell, Mr. Rangel, Mr. Ratchford, Mr. Regula, Mr. Reid, Mr. Richardson, Mr. Rinaldo, Mr. Ritter, Mr. Rodino, Mr. Rose, Mr. Roth, Mr. Rowland, Mr. Sabo, Mr. Savage, Mr. Scheuer, Mrs. Schneider, Mrs. Schroeder, Mr. Schumer, Mr. Shumway, Mr. Simon, Mr. Smith of New Jersey, Mr. Smith of Florida, Mrs. Smith of Nebraska, Ms. Snowe, Mr. Solarz, Mr. Spratt, Mr. Stark, Mr. Stokes, Mr. Stratton, Mr. Sunia, Mr. Synar, Mr. Tallon, Mr. Tauzin, Mr. Thomas of Georgia, Mr. Thomas of California, Mr. Torricelli, Mr. Towns, Mr. Traxler, Mr. Udall, Mr. Vento, Mr. Walgren, Mr. Watkins, Mr. Waxman, Mr. Weiss, Mr. Wheat, Mr. Whitten, Mr. Wilson, Mr. Winn, Mr. Wirth, Mr. Wolpe, Mr. Won Pat, Mr. Wortley, Mr. Wyden, Mr. Yates, Mr. Yatron, and Mr. Young of Alaska):

H.J. Res. 604. Joint resolution to designate July 9, 1984, as "African Refugees Relief Day"; to the Committee on Post Office and Civil Service.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1676: Mr. Taylor.

H.R. 2437: Mr. Richardson.

H.R. 2996: Mr. Green, Mr. Sikorski, Mr. Mack, Mr. Lantos, Mr. LaFalce, Mr. Ridge, Mr. Florio, Mr. Boucher, Mr. Tauke, Mr. Kogovsek, Mrs. Kennelly, Mr. Kostmayer, Mr. Kleczka, Mr. Carr, Mr. Young of Missouri, Mr. Livingston, and Mr. Fazio.

H.R. 3005: Mr. Torricelli.

H.R. 4459: Mr. Dymally, Mr. Ratchford, and Mr. Hunter.

H.R. 4642: Mr. Packard and Mr. Gore.

H.R. 4805: Mr. Seiberling, Mr. Morrison of Connecticut, Mr. Gray, and Ms. Ferraro.

H.R. 5232: Mr. Mrazek, Mr. Markey, Mr. Seiberling, Mr. Panetta, Mr. Weiss, Mr. Savage, Mr. Murphy, and Mr. Swift.

H.R. 5377: Mr. Erdreich, Mr. Torricelli, Mr. Dwyer of New Jersey, Mr. Lewis of California, Mr. Jones of Oklahoma, Mr. Howard, Mr. Coughlin, and Mr. Ratchford.

H.R. 5438: Mr. Perkins.

H.R. 5457: Mr. Spratt.

H.R. 5581: Mr. Dwyer of New Jersey, Mr. Lundine, Mr. Fascell, and Mr. Jeffords.

H.R. 5745: Mr. Williams of Montana.

H.R. 5784: Mr. Daub, Mr. Waxman, Mr. Hunter, Mr. Berman, Mr. Neal, Mr. Martinez, Mr. Reid, Mr. Eckart, Mr. Bartlett, Mr. Edgar, Mr. Weiss, Mr. Bryant, Mr. Gilman, Mr. Corcoran, Mr. Darden, and Mr. Kemp.

H.R. 5804: Mr. Markey.

H.R. 5838: Mr. Stark, Mr. Foglietta, Mr. McNulty, Mr. Towns, Mr. Lowry of Washington, and Mr. Levin of Michigan.

H.R. 5845: Mr. Bateman, Mr. Carney, Mr. Chandler, Mr. Clarke, Mr. Coughlin, Mr. Daschle, Mr. DeWine, Mr. Erdreich, Ms. Ferraro, Mr. Fuqua, Mr. Glickman, Mr. Hightower, Mr. Ireland, Mr. Kolter, Mr. Levin of Michigan, Mr. McHugh, Mr. Madigan, Mrs. Martin of Illinois, Mr. Parris, Mr. Pursell, Mr. Rinaldo, Mr. Sabo, Mr. Shumway, Mr. Sikorski, Mr. Smith of Iowa, Mr. Spratt, Mr. Synar, Mr. Taylor, Mr. Weiss, Mr. Wolpe, Mr. Wortley, and Mr. Young of Alaska.

H.R. 5846: Mr. Hightower, Mrs. Schroeder, Mr. Volkmer, Mr. Kolter, Mr. Mollohan, Mr. Mrazek, Mr. Sikorski, and Mr. Miller of Ohio.

H.J. Res. 453: Mr. Addabbo, Mr. Akaka, Mr. Albosta, Mr. Alexander, Mr. Anderson, Mr. Andrews of Texas, Mr. Anthony, Mr. Applegate, Mr. AuCoin, Mr. Badham, Mr. Barnes, Mr. Bateman, Mr. Bates, Mr. Berman, Mr. Bevill, Mr. Biaggi, Mr. Bliley, Mr. Boner of Tennessee, Mr. Boucher, Mrs. Boxer, Mr. Britt, Mr. Brown of California, Mr. Brooks, Mr. Bryant, Mr. Chandler, Mr. Clay, Mrs. Collins, Mr. Conte, Mr. Crockett, Mr. Dixon, Mr. Dwyer of New Jersey, Mr. Edwards of California, Mr. Erdreich, Mr. Fauntroy, Mr. Fazio, Mr. Fish, Mr. Foglietta, Mr. Ford of Tennessee, Mr. Frenzel, Mr. Frost, Mr. Fuqua, Mr. Guarini, Mrs. Hall of Indiana, Mr. Hawkins, Mr. Harrison, Mr. Hefner, Mr. Heftel of Hawaii, Mr. Hightower, Mr. Horton, Mr. Hoyer, Mr. Hughes, Mr. Hutto, Mr. Jacobs, Mr. Kasich, Mr. Kemp, Mr. Kolter, Mr. LaFalce, Mr. Lagomarsino, Mr. Lehman of California, Mr. Leland, Mr. Lewis of Florida, Mr. Lujan, Mr. Luken, Mr. Lundine, Mr. McGrath, Mr. McKernan, Mr. McNulty, Mr. Martinez, Mr. Matsui, Mr. Mineta, Mr. Mitchell, Mr. Neal, Ms. Oakar, Mr. Owens, Mr. Patterson, Mr. Rahall, Mr. Rangel, Mr. Ratchford, Mr. Richardson, Mr. Roe, Mr. Rowland, Mr. Sikorski, Mr. Simon, Mr. Smith of Florida, Mr. Solarz, Mr. Staggers, Mr. Stokes, Mr. Stangeland, Mr. Sunia, Mr. Torricelli, Mr. Valentine, Mr. Vento, Mr. Walgren, Mr. Waxman, Mr. Weber, Mr. Wheat, Mr. Wilson, Mr. Wolf, Mr. Wyden, Mr. Young of Missouri, Mr. Zschau, Mr. Gekas, Mr. Wortley, Mr. Won Pat, Mr. Sabo, Mr. Hayes, and Mr. Lungren.

H.J. Res. 485: Mr. AuCoin, Mr. Beilenson, Mr. Bereuter, Mr. Biaggi, Mr. Bliley, Mr. Coats, Mr. Corrada, Mr. Coyne, Mr. Philip M. Crane, Mr. Darden, Mr. Davis, Mr. Dickinson, Mr. Donnelly, Mr. Durbin, Mr. Dwyer of New Jersey, Mr. Dyson, Mr. Fauntroy, Mr. Hance, Mr. Gilman, Mr. Franklin, Mr. Fowler, Mr. Hopkins, Mrs. Johnson, Mr. Lent, Mr. Long of Louisiana, Mr. Luken, Mr. McDade, Mr. McEwen, Mr. McGrath, Mr. Mavroules, Mr. Mica, Mr. Mineta, Mr. Minish, Mr. Molinari, Mr. Montgomery, Mr. Morrison of Washington, Mr. Natcher, Mr. Porter, Mr. Quillen, Mr. Roemer, Mrs. Roukema, Mr. Russo, Mr. Sisisky, Mr. Denny Smith, Mr. Stark, Mr. Stokes, Mr. Stratton, Mr. Sundquist, Mr. Tauzin, Mr. Thomas of California, Mr. Torres, Mr. Whitehurst, Mr. Wise, Mr. Wortley, Mr. Wyden, Mr. Lehman of Florida, Ms. Mikulski, Mr. Kleczka, Mrs. Collins, Mr. Sam B. Hall, Jr., Mr. Rahall, Mr. Corcoran, Mr. Sawyer, Mrs. Schneider, Mr. Dixon, Mr. Lungren, Mr. Levine of California, Mr. Whittaker, Mr. Burton of Indiana, Mr. Moore, Mr. Kramer, Mr. Britt, Mr. Bateman, Mr. Morrison of Washington, Mr. Rose, Mrs. Hall of Indiana, Mr. Erdreich, Mr. Edwards of Alabama, Mr. Stangeland, Mr. Hoyer, Mr. Williams of Ohio, Mr. Murphy, Mr. Edwards of California, Mr. Parris, Mr. Barnes, Mr. Feighan, Ms. Kaptur, Mr. Moakley, Mr. Chappie, Mr. Simon, and Mr. Berman.

H.J. Res. 505: Mr. Annunzio, Mr. Bennett, Mr. Boehlert, Mr. Boland, Mr. Broomfield, Mr. Dowdy of Mississippi, Mr. Erdreich, Mr. Ford of Michigan, Mr. Hatcher, Mr. Hayes, Mr. Jeffords, Mr. Jenkins, Mr. Kogovsek, Mr. Lewis of Florida, Mr. McHugh, Mr. Olin, Mr. Pritchard, Mr. Roberts, Mr. Tauzin, and Mr. Lehman of California.

H.J. Res. 543: Mr. Sunia, Mr. Goodling, Mr. Whitley, and Mr. Corcoran.

H.J. Res. 555: Mr. Gekas, Mrs. Holt, Mr. Alexander, Mr. Corcoran, Mr. Hutto, Mr. Crockett, Mr. Rowland, Mr. Jeffords, Mrs. Boxer, Mr. Bates, Mr. Ritter, Mr. Towns, Mr. Frenzel, Mr. Traxler, Mr. Roybal, Mr. McHugh, Mr. Myers, and Mr. Dyson.

H.J. Res. 556: Mr. Gejdenson, Mr. Lujan, Mr. Packard, Mr. Foglietta, Mr. Aspin, Mr. Breaux, Mr. Ireland, Mr. Gibbons, Mr. Stark, Mr. Carr, Mr. Markey, Mr. Dwyer of New Jersey, Mr. Levine of California, Mr. Sikorski, Mr. Pashayan, Mr. Hatcher, Mr. Molinari, Mr. Applegate, Mr. Cheney, Mr. Derrick, Mr. Walgren, Mr. Daniel, Mr. Kostmayer, Mr. Borski, Mr. Studds, Mr. Dicks, Mr. Porter, Mr. Patterson, Mr. Nowak, Mr. Biaggi, Mr. Akaka, Mr. Hansen of Idaho, Mr. Hiler, Mr. Torricelli, Mr. Gephardt, Mr. Moakley, Mr. Addabbo, Mr. McDade, Mr. Craig, Mr. Corcoran, Mr. Volkmer, Mr. Pritchard, Mr. Jeffords, Mr. Williams of Ohio, Mr. Simon, Mr. Skeen, Mr. Florio, Mr. Ford of Michigan, Mr. Badham, Mr. Chappie, Mr. Moody, Mr. Smith of Iowa, Mr. Savage, Mr. Olin, Mr. McKernan, Mr. Kleczka, Mr. MacKay, Mr. Brown of California, Mr. O'Brien, Mr. Ortiz, Mr. Wolpe, Mr. Traxler, Mr. Bliley, Mr. Marriott, Mr. Murphy, Mr. Rowland, Mr. Fish, Mr. Price, Mr. Jenkins, Mr. DeWine, Mr. Dellums, Mr. Shannon, Mr. Skelton, Mr. Neal, Mr. Gunderson, Mr. Hertel of Michigan, Mr. Lehman of California, Mrs. Schneider, Mr. Lent, Mr. Bosco, Mr. Fazio, Mr. Bonior of Michigan, Mr. Ritter, Mr. Valentine, Mr. Ottinger, Mr. Courter, Mr. Morrison of Washington, Mr. Hall of Ohio, Mr. Kasich, Mr. McNulty, Mr. Torres, Mr. Bereuter, Mr. Harkin, Mr. Hartnett, Mr. Carper, Mr. Montgomery, Mr. Rinaldo, Mr. Martin of New York, Mr. Daub, Mr. Clinger, and Mr. McCloskey.

H.J. Res. 570: Mr. Ackerman, Mr. Addabbo, Mr. Akaka, Mr. Applegate, Mr. Barnard, Mr. Bates, Mr. Bedell, Mr. Berman, Mr. Bilirakas, Mr. Bonior of Michigan, Mrs. Boxer, Mr. Carney, Mr. Coats, Mr. Coelho, Mr. Corrada, Mr. Coyne, Mr. Daschle, Mr. Daub, Mr. de la Garza, Mr. de Lugo, Mr. DeWine, Mr. Dwyer of New Jersey, Mr. Edgar, Mr. Emerson, Mr. Fauntroy, Mr. Fazio, Mr. Frank, Mr. Frenzel, Mr. Frost, Mr. Gramm, Mr. Gunderson, Mr. Hawkins, Mr. Hayes, Mr. Hertel of Michigan, Mr. Hillis, Mrs. Holt, Mr. Horton, Mr. Howard, Mr. Hoyer, Mr. Hutto, Mr. Jeffords, Mrs. Kennelly, Mr. Kogovsek, Mr. Kolter, Mr. Kramer, Mr. Leland, Mr. Levin of Michigan, Mr. Levine of California, Mrs. Lloyd, Mr. Lowery of California, Mr. Luken, Mr. Lungren, Mr. McCollum, Mr. MacKay, Mr. Madigan, Mr. Markey, Mr. Martinez, Mr. Mineta, Mr. Mollohan, Mr. Montgomery, Mr. Morrison of Connecticut, Mr. Murphy, Mr. Neal, Ms. Oakar, Mr. Owens, Mr. Rahall, Mr. Rangel, Mr. Reid, Mr. Rinaldo, Mr. Robinson, Mr. Roe, Mr. Sawyer, Mr. Simon, Mr. Sisisky, Mr. Stark, Mr. Stenholm, Mr. Thomas of California, Mr. Torricelli, Mr. Towns, Mr. Vento, Mr. Waxman, Mr. Williams of Ohio, Mr. Wolf, Mr. Wortley, Mr. Wyden, Mr. Young of Florida, and Mr. Evans of Illinois.

H.J. Res. 572: Mr. Taylor, Mr. Vander Jagt, Mr. Wylie, Mr. Young of Florida, Mr. Aspin, Mr. Conable, Mr. Clinger, and Mr. Traxler.

H.J. Res. 592: Mr. Bates, Mr. Eckart, Mr. Edgar, Mr. Fazio, Mr. Kogovsek, Mr. Levine of California, Mr. Lowry of Washington, Mr. Reid, and Mr. Seiberling.

H. Con. Res. 302: Mr. Tauke, Mr. Dixon, Mr. Won Pat, Mr. Ackerman, and Mr. Rowland.

H. Con. Res. 312: Mr. Wortley and Mrs. Johnson.

H. Con. Res. 315: Mr. Carney and Mr. Gekas.

H. Con. Res. 317: Mr. Daub, Mr. Waxman, Mr. Hunter, Mr. Berman, Mr. Neal, Mr. Martinez, Mr. Reid, Mr. Eckart, Mr. Bartlett, Mr. Edgar, Mr. Weiss, Mr. Bryant, Mr. Gilman, Mr. Corcoran, Mr. Darden, and Mr. Kemp.

H. Con. Res. 322: Mr. Wolpe, Mr. Goodling, Mr. O'Brien, Mr. Young of Florida, Mr. McCurdy, Mr. Boner of Tennessee, Mr. Weaver, Mr. Addabbo, Mr. Rinaldo, Mr. Britt, Mr. Frank, Mr. Downey of New York, Mr. Leland, and Mr. Young of Alaska.

H. Res. 518: Mr. Frenzel.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3282

By Mr. LEVITAS:

Amendments to the amendment in the nature of a substitute.

—After section 13 of the bill, insert the following:

GRANTEE CERTIFICATION OF TREATMENT PROCESS

Sec. 14. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following: "The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.".

Redesignate succeeding sections accordingly.

In subsection (1) of section 205 of the Federal Water Pollution Control Act, as proposed to be added by subsection (f) of section 16 of the amendment, insert before the closing quotation marks the following:

such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.

At the end of the bill add the following new section:

TURNKEY CONTRACTS

Sec. 58. Section 203 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f)(1) After completion of an approved facility plan for a treatment works that has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act; and

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) Sections 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

"(4)(A) Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project. If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

H.R. 5899

By Mr. PARRIS:

—Strike the following: page 3, line 20 through page 4, line 7; and page 21, line 21 through page 22, line 7 (sections 119 and 120), and renumber subsequent lines, sections and pages accordingly.

—(In section 114) in line 21 of page 20, insert the following after the word "Appropriations" and before the word "and": ", the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs".

SENATE—*Monday, June 25, 1984*

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Trust in the Lord with all your heart, and do not rely on your own insight. In all your ways acknowledge Him, and He will make straight your paths.—Proverbs 3:5,6 (RSV).

God of truth, grant that this promise from the wisdom book of the Old Testament will be meaningful to the Senators this week. After one of the most stressful weeks this year, they have 5 days to accomplish a great deal before recess. Make the truth of this proverb real to each Senator. Help these powerful people to realize there is a resource which transcends the finest of which the human mind is capable. Gracious God, help the Senators to believe that after they have done their best thinking, to trust and acknowledge Thee is the way of wisest leadership. In the name of Him who trusted His Heavenly Father implicitly. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

Mr. BAKER. I thank the Chair.

A STRESSFUL WEEK

Mr. BAKER. Mr. President, the Chaplain pointed out that we had a stressful week last week. Indeed, we did. We were in session, as I recall, past midnight or close to midnight every night last week and all night it seemed like when we finished, although we got home, I guess, about 4 o'clock in the morning on Thursday. But we did do a lot of work.

I wish to commend those who were responsible for it, principally Senators TOWER and NUNN, for their good work in managing the defense authorization bill. But there is one thing for which I hold them accountable. With all that hard work, I got a bad cold and they are responsible for it or are herewith charged with official responsibility. If I am in a mean, grouchy mood today, it is their fault. I thought I would get that on the record early today so that everybody would fully understand.

SENATE SCHEDULE

Mr. BAKER. Mr. President, today we are going to take up, if the Senate will agree, the so-called Public Law 480 conference report. There are a number of items in disagreement, most notably the Nicaragua/Boland amendment, which is item No. 14, I believe. And there are seven others in addition to that. But it is my hope and expectation that we can complete action on the conference report and all eight items in disagreement during the day today.

I would not think we would have a late session today. I hope that we can be out by about 6 o'clock. But it is essential that we finish that conference report today because the week is going to pile up on us.

In addition to the conference report, Mr. President, this week we need to do the drunk driving bill, which the leadership on this side would like to take up tomorrow. We need to do the math-science bill, which is the unfinished business and on which negotiations are still underway. I am hopeful that they will succeed and we might even do that bill today if those negotiations do succeed.

There is one appropriation bill here, the State-Justice appropriations bill, which is available to us. And, as Members know, at this point in the session appropriation bills must take priority. So I hope we can get that done this week.

But the big items, Mr. President, are the deficit reduction conference report and the debt limit. This does not mean that what I have just described is the entire schedule, but I hope that the House will send us the deficit reduction conference report on Wednesday and early enough in the day on Wednesday so that we could still take it up on Wednesday and finish it Wednesday night.

I wish to announce now that the Senate may be in session Wednesday night late in order to accomplish that purpose, and may be in late tonight or tomorrow night, but I do not anticipate that. But there is a good chance that we would have to be in late on Wednesday night in order to finish the conference report.

That would leave us, then, with the debt limit on Thursday. The adjournment resolution for the Fourth of July break will, I believe, recite Thursday, Friday, or Saturday adjournment. It would be my hope that we would finish all our work by Thursday evening. But if we cannot, Senators should clearly understand that we will stay Friday and/or Saturday, as necessary, in order to complete the debt limit, the deficit reduction package, the Public Law 480 conference report, drunk driving, and the math-science bill, together with such appropriation bills as may be available and appropriate to deal with.

I attempted to contact the Speaker this morning about the deficit reduction package, and he was unavailable at the time of my call. However, I have sent word that I hope that the House could deal with that matter soon enough for us to have it by afternoon on Wednesday.

Mr. President, that is a lot to say for this week especially when I have just said that I hope we can finish all of that in 4 days instead of 5 or 6. But I find it is better to put Senators on notice than it is to delay these announcements.

ORDER EXTENDING TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, the order today provides that the time for the transaction of routine morning business will be of 30 minutes duration. I would like to change that, if the minority leader does not object. I think for a variety of reasons it is not likely that we can get to the Public Law 480 conference report until about 1:15 or 1:30 p.m. So I would like to ask unanimous consent now that the time for transaction of routine morning business be extended until the hour of 1:15 under the same terms and conditions.

The PRESIDING OFFICER (Mr. HECHT). Without objection, it is so ordered.

Mr. BAKER. I thank the Chair and I thank the minority leader. Mr. President, I believe that is all I can announce at this time. I would like to reserve 1 minute of my time so that after the minority leader has spoken I may admit a messenger.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

THE DIVISION BETWEEN CIVILIAN AND MILITARY AUTHORITY

Mr. BYRD. Mr. President, it was reported in the June 23, 1984, edition of the Washington Post that the Deputy Chief of Naval Operations, Vice Adm. James Lyons, delivered a broadside attack on the War Powers Resolution

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

and its impact on this Nation's foreign policy and military prowess.

Admiral Lyons stated, according to the report, that the War Powers Resolution, which provides Congress explicit authority to halt combat operations in the absence of a declaration of war, is insidious and an impediment which needs to be removed.

The theme struck by Admiral Lyons parallels closely the remarks delivered March 30, 1984, by the Chief of Naval Operations, Adm. James Watkins. Admiral Watkins stated publicly at that time that the Nation—

> Must shirk off the Vietnam syndrome of humiliation and defeat, which hounds our capability to implement positive change. I believe a good way to start is for Congress to carefully review the War Powers Resolution of 1973.

The public repetition of attacks by our uniformed leaders on the law of the land is inappropriate to their role as military leaders. Their job is to implement the policies of the civilian leadership of the Nation, not to challenge the wisdom of those policies. My question to our military leaders is this—have you made your forces ready to fight the adversary when the situation arises, and when you are directed to by civilian authority? My question is not—what do you think of the law of the land, and would you like to debate it?

If our admirals wish to debate national law and policy, they should divest themselves of their military duties and authority and run for office as politicians. Perhaps one of them would like to come to West Virginia and establish a residence or an inhabitancy there so that they could run against me. I will be up for reelection 4 years from now. That is what they ought to do. If they do not like the Constitution and if they do not like the laws of the land, then they should divest themselves of their military duties, get out on the political hustings, and then we would welcome their debate.

Many Senators have voiced their deep concern over the attitude of this administration toward the War Powers Resolution and toward what is clearly the constitutional role of the Congress in declaring war—including the authorization to commit American Armed Forces into situations of hostilities or imminent involvement in hostilities. It is disturbing that the administration has constantly attacked the Congress with the spurious contention that congressional debate over exercises in military power is not the proper domain of the people's representatives. It is outrageous that the uniformed leaders of one of our armed services should take the podium to voice such constitutional and political arguments. They are walking on very, very thin ice. It is singularly inappropriate for our active duty military leaders to publicly espouse these sentiments. Our military leaders should spend their time making our forces ready to fight when they are needed, rather than taking the podium to challenge the constitutional role of the Congress.

Mr. President, I yield the floor.

ORDER TO PROCEED TO URGENT SUPPLEMENTAL APPROPRIATIONS, AGRICULTURE, 1984

Mr. BAKER. I inquire of the minority leader if he is in a position to agree to me obtaining an order of unanimous consent to lay down the conference report at 1:15 p.m. at the close of morning business.

Mr. BYRD. Mr. President, if there were an objection on this side to the unanimous-consent request which the majority leader will make, the majority leader could move, as he well knows. I say this for the record so that my colleagues on this side of the aisle will realize that I am giving nothing away by giving consent to go the conference report. And I have no objection.

Mr. President, those on our side of the aisle have been very desirous of moving to this matter of summer jobs for youth, child nutrition, WIC, as soon as possible.

I feel that those on this side of the aisle not only do not have an objection, but we welcome the majority leader's effort to move quickly into consideration of this matter.

SENATE SCHEDULE

Mr. BAKER. Mr. President, I thank the minority leader. In view of that, I ask unanimous consent that at the hour of 1:15 p.m. today the Senate temporarily lay aside the unfinished business, which is the math-science bill, and proceed to the consideration of the House Joint Resolution 492, the so-called Public Law 480 conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. I thank the Chair.

Mr. President, at 1:15 p.m., the transaction of routine morning business will expire, and the Senate under the order just entered will turn to the consideration of the Public Law 480 conference report, House Joint Resolution 492.

At the conclusion of that, Mr. President, the Senate will resume consideration of the unfinished business, which is the math-science bill.

There is a possibility, however, that the leadership on this side may ask unanimous consent to once more set aside that measure temporarily, if it is thought desirable, in order to reach other matters that have been cleared on both sides.

Mr. BYRD. Mr. President, would the distinguished majority leader consider changing the time from 1:15 to 1:30?

Mr. BAKER. Yes, Mr. President. I make that request.

Mr. BYRD. I thank the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, under the amendment just offered, I assume morning business will now automatically extend until 1:30 p.m. Would the Chair concur in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, I thank the minority leader.

Mr. President, I thank the minority leader for his cooperation today on these matters. I urge Senators to review the agenda that I have set out today for this week, and consider that, if we can finish this business by Saturday, we will be lucky; by Friday, we will be fortunate; and, by Thursday night, we will be exhilarating in the extreme.

Mr. President, I yield the floor.

RECOGNITION OF MR. DeCONCINI

Mr. DeCONCINI addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized for not to exceed 15 minutes.

ISRAEL

Mr. DeCONCINI. Mr. President, many words have been spoken in the wake of the withdrawal of U.S. troops from Lebanon. In my judgment, most commentaries have missed the mark. They do serve to emphasize, however, that we are far from finding the Rosetta stone which can decode the swirl of events in Lebanon and in the Middle East.

It is also true that we are changed by our experience in Lebanon. We have begun to see the Middle East differently. I am concerned as I consider how our relationships with Israel and the Arab nations will develop in the wake of our bitter experience in Lebanon.

In the present confusion of our own national emotions toward Lebanon, there is an inclination to tar Israel with the same brush that is being used on those U.S. policymakers who have become identified with our failed Lebanon policies. Somehow Israel is responsible for our failure. There were those who have traversed from a period of almost romantic embrace of everything about Israel and its people to a state of disdain or, in extreme cases, outright hostility.

Obviously, neither extreme is close to the truth. I have, over the years, been provoked by policymakers, editorial writers and columnists with strong anti-Israel sentiments. Such instances in recent days have caused me to carefully examine my own attitudes and positions regarding the American-Israeli relationship. My question to myself, to my colleagues and to my friends has been: What is the fundamental basis of the U.S. relationship with Israel—what is the bottom line?

To a significant degree I have come to some resolution. It is clear to me, for instance, that we have gone greatly astray in recent years in our policies in the Middle East and in our relationship with Israel. I can best explain by historically tracing those events which have brought together the American people and the people of Israel. In doing so, I will try to point out where we have so badly shortchanged our interest in the Middle East.

To understand the full breadth of our attachment to Israel, one has to begin with that horrible period which has come to be known as the Holocaust. The memory of my generation lives with the full horror of discovery that Hitler had set out to do not less than exterminate an entire people—the Jewish people. Those first revelations of the death camps and the grotesque photographs that filtered into various publications after World War II still have the quality of a nightmare which will not end.

It has taken decades to attempt to understand and to cope with the magnitude of the horror of the Holocaust. I do not understand it. Is there a Member of this body who can rise to offer an explanation? While we Americans were still discovering the events of the Holocaust, another story of the Jewish people were being told in the press as warfare began to spread throughout Palestine. Those events seemed at the time to have a quality much like the maddening anarchy of recent events in Lebanon. It was impossible to keep all the different groups and locations straight. Then, suddenly, the situation in Palestine took on clear features.

What remained of the Jewish nation had engaged in a final act of defiance. The odds seemed impossible. Fifty million Arabs and their combined armies had surrounded mere thousands of Jews. These events were further complicated by the fact that the newly formed State of Israel faced an arms embargo by our country. Nonetheless, as the American people saw what was happening, they were stirred by the struggle of the Jewish people for their homeland. To this day, 35 years later, the drama of that time is a source of inspiration to me and many Americans.

Those early struggles of the people of Israel and their Government suggested they were strikingly like us. They quickly brought to mind our own national heritage of 18th century American freedom fighters, arrayed against what was then the mightiest power in the world. During the years following her independence, the State of Israel mirrored the same growing pains as our own young democracy. It had to cope with expanding internal political factions and the economic burdens of thousands of new immigrants, not to mention the constant harassment of surrounding states who would not accept her right to exist.

Recently, the lively politics of Israel resembled America in another way. Popular demonstrations by Israelis against their Government's policy in Lebanon were reminiscent of the difficult and passionate days of street demonstrations by Americans against our Government's policies in Vietnam and the upheaval over Watergate.

We were able to understand the force of the political shock that rocked Israel when its highest leaders were called to public account for their behavior in the wake of the Lebanese Christian massacres at Chatilla and Sabra. The Israeli people demanded and received from their Government the Kahan report, a full disclosure of the facts surrounding the refugee camp massacres.

These comparisons are not enough. It is not just that the people of Israel share democratic values with us, but that no obstacle has been so great that they have failed to meet the challenge. They have demonstrated tenacity, innovation and bravery. The surprise attack of the Yom Kippur war was turned into a startling rout of Egypt and Syria. When the PLO kidnapped Israelis and took them to Idi Amin's Entebbe, the Israelis proved their courage and set an example for people everywhere that terrorism must be opposed. On the day of that rescue every free person and every free nation experienced a sense of special belonging—one to the other.

We have watched 4 million people constantly contend with a phalanx of 20 Arab States whose policies toward Israel can only be measured in their degree of hostility. Despite the terrorists repeated attacks on Israel, on her diplomats throughout the world, on her children, the Israelis have refused to capitulate. How many times in recent years, as America suffered one military and diplomatic setback after another, has each of us yearned for the opportunity to stand so resolutely and so effectively for what we believe?

For many of us, these ties to Israel are deep and cherished; to others, they may be less important than other realities which are closer to our national interests. First, however, we must fully comprehend that Israel is a living, breathing democracy in a world which has seen the disappearance of so many of the democratic governments which existed following World War II. The Israelis strenuously practice their democratic responsibilities, so much so that during periods of intense political activity, the U.S. press has taken an almost patronizing tone when reporting the lively debate between Israeli political parties and also among its citizens and its Government.

It also concerns me that some reporting in our editorial pages, from our syndicated columnists, news reporters, and the TV media fails to adequately weigh the danger which faces the Israeli democracy. How frequently is it noted in such reportage that the Israeli democracy sits in the middle of a dense pack of authoritarian governments? How graphically is it ever explained that Israel is surrounded by states which have neither the crassest understanding nor the merest sympathy for the process of popular sovereignty. There is nothing that could be farther from the imagination of most Arab leaders than the notion that people should have a say in their government.

In so many instances, opinionmakers have failed to delineate between the Israeli democracy and the murky tribal politics that govern the rest of the Middle East. Somehow, terrorist groups, Arab brotherhoods, and feuding royal factions are more interesting to Sunday feature writers than the reality of a government of the people. We in effect are fed through some of the media with a set of values that place antidemocratic governments in the Middle East at the same plateau of respect and consideration given our democratic ally, Israel.

In more recent years, it has become a habit of U.S. policymakers to demand that Israel make concessions to authoritarian Arab countries who are dedicated to her destruction. The years of the Reagan administration have amounted to a continuous "good cop, bad cop" strategy in dealing with Israel. It is as if any friendly gesture we make toward that country is only for the purpose of making an equally unfriendly move later. The result surely has been to maximize suspicion of U.S. motives by the Israeli Government and to encourage Arab rejectionists to believe that in time our Government will not support Israel.

President Reagan recently began another of these cycles by announcing a new era of strategic cooperation with Israel. How can anyone assume that the Reagan gesture will be other than a replay of his administration's September 1981 memorandum of understanding with Israel detailing agreement on strategic matters. No sooner had that agreement been signed than it was canceled by our Government in reaction to Israel's announcement of its intention to retain control of the

Golan Heights. Our only consistency in policy in the Middle East has been our inconsistency.

Over a period of almost 2 years, from June 1981 to May 1983, this eratic behavior on the part of our Government was repeated with respect to the sale of F-16's to Israel. Agreements were negotiated and then withdrawn on two occasions; first, in response to the Israeli bombing of the Iraqi nuclear reactor and then when the Israeli military moved into Lebanon in June 1982.

Clearly, such fair weather friendship has given the appearance to the Arab world that the United States is able to modify, if not dictate, Israel's behavior. This big brother approach on a world scale is the same category of dereliction that has served as a scapegoat for Ronald Reagan's rhetoric for years when his subject was our own Federal Government. U.S. Federal Government assertiveness in the cause of improving civil rights or addressing poverty is a clear violation of the Reagan code. Pushing around a close ally that has never waivered in its support of us in the U.N. or in any other forum carries no such onus.

Lebanon provides an excellent example of two points I have been making. Somewhere in the Reagan administration, the idea was initiated and accepted that the United States would be a far more acceptable force in Beirut than the advancing Israeli Army. Obviously, the PLO and every other Arab faction or government was willing to do anything it could to keep Israel out of Beirut. It did not occur to our policymakers that in the absence of the stabilizing presence of the Israeli Army, an uncontrollable urban war would take place. By failing to allow Israel to follow through and fully eliminate the PLO and Syrian presence in Lebanon, our Government turned what would have been an American victory over Russian-backed forces into an American defeat. Had the United States permitted, Israel would have been able to remove the Syrians from a controlling position in Lebanon, thus giving the Gemayel government a genuine opportunity to reestablish Lebanese sovereignty.

Before and during these events, Ambassador Philip Habib was shuttling back and forth in the Middle East seeking some form of effective participation of the Arab moderates. As we know now and as we should have known, these states were both unable and unwilling to force Syria to live up to withdrawal negotiations. Ambassador Habib stated clearly to me during my February 1983 visits in the Middle East that he had assurances from Syria that it would withdraw if we prevailed on Israel to do the same. Egyptian President Mubarek and Jordan's King Hussein gave me the same answers. In my opinion, this single misreading by our State Department is responsible for the reemergence of Syria as the dominant force in the area.

What initially was a U.S. policy to force Israeli troop withdrawal by introducing our own forces ended on a pathetic note. After the loss of our Marines and of U.S. public resolve, we asked the Israelis to stand close by Beirut, which meant that they would continue taking casualties. The message was then clear that only the Israelis could influence a Syrian withdrawal. The obvious question is why our policymakers in the State Department, the Pentagon, and the President insisted on refuting this fact during the summer of 1982. The reality that finally prevailed was that the moderate Arabs will yield to strength. This is the very quality in U.S. policy we so constantly betrayed.

Whenever we have demonstrated consistency and strength in our support of Israel, the Arab response has not been catastrophic. Clear evidence of this contention can be seen when the United States supported Israel in 1973.

In response to the surprise Yom Kippur attack by Egypt and Syria on October 6, 1973, the Nixon administration finally chose to act with resolve. U.S. military units in Europe and the United States were stripped of their equipment to provide a massive infusion of military hardware and material.

For the first time in its relationship with Israel, the United States took on the role as the primary supplier of arms to Israel. Prior to that point, Israel had to seek and receive help from a variety of Western countries.

The reinforced Israelis undertook a surprise counterattack across the Suez Canal, trapping much of the Egyptian Army. In the north, all the Golan Heights were captured from Syria.

The extraordinary support provided by the United States not only helped Israel dramatically reverse the tide of the Yom Kippur war, it changed the tide of events in the Middle East.

Even in that circumstance, when Israel's survival was uncertain, there was a brief period of indecision and hesitation. Should we help them or should we not? Thankfully for our own security interests, we finally assisted Israel. Had we not, the result would have been a Soviet victory. A peace between Israel and Egypt would not have occurred and we would not have had Camp David as a basis to begin the discussions between the Arabs and Israel.

In the case of Lebanon, similar moments of delay were far more damaging. It will take many years to know the full impact of our tragic stutter-step performance. It is now evident that the United States has single-handedly resurrected Syria from the status of a defeated nation that was outmanned and outweaponed to the role of bullyboy it has always sought. The Reagan administration policy turned a Middle East victory for the United States in Lebanon into a debacle from which we will suffer for years to come.

If, Mr. President, there is anything positive that can be salvaged from our relationship with Israel in connection with the Lebanon crisis, it must be a fundamental lesson in the facts of Middle Eastern power politics. They are:

One, we need no longer play the dilettante in making needless distinctions between moderate and less moderate Arab States. Not long ago, our good and moderate friend, King Hussein, said in unambiguous terms that we must give him the armaments he wants while permitting any license he chooses in his behavior toward Israel. The alternative he specifies is not that he will in any way be tempted to modify his nation's policy toward Israel. He came into our living rooms on Sunday morning TV to say that Jordan will simply seek help from the Soviet Union if the United States does not see fit to deliver arms and economic aid under his terms.

The Saudis, who frequently insist that we should control Israeli behavior, have completely avoided our requests that they use their financial support of other Arab States and the PLO as a means to seek peaceful resolution of the Israeli question.

Two, even our sagest diplomats do not understand the realities of Middle East politics as keenly as do the Israelis. The proof of this contention is simple. The life of their nation depends on the quality of that understanding and, remarkably, Israel has survived under enormously adverse circumstances. Consequently, Israel's advice should be sought in every instance of United States-Middle East policy consideration. We have never profited from those instances when U.S. policymakers felt that an "arms length" stance with Israel would balance our Middle East interests.

Three, we have usually erred in providing less than a full measure of moral, political, economic and military support for Israel. Now that our failed Lebanese policy has set the scene for yet another Arab attempt at military intimidation of Israel, with the assistance of the Russians, we have obligated ourselves to offer full support to our ally.

Four, U.S. military security in the Middle East, the eastern Mediterranean, and the southern flank of NATO is dependent on a strong Israel. We must face that fact and make it a tenet of our defense policy.

The policy statements I have outlined will finally set the record straight and will create an atmosphere for peace. The Arab world will understand our commitments to Israel, our ally, to democracy, and to those Arab leaders, like Anwar Sadat, who have the courage to become leaders for peace. We welcome any of those Arab leaders to come forth as Mr. Sadat did.

Mr. President, there is little that is novel in what I have said. I do hope, however, that there is the solidity of logic—and old logic which we once embraced and more recently set aside. It is a prerogative of our freedoms in the United States that we constantly seek to revise old truths. At times, the need to disprove the past seems almost a responsibility of political sophistication. In the case of Israel, that process has proved very destructive. Acting on the basis of our most recent enlightenment and sophistication on the nature of Middle East politics, we have done great harm to ourselves and to Israel.

If there is honesty in the assessment of these events, the result must lead to a restoration of the former spirit of our country's relationship with Israel. Not only will such an outcome properly bolster the future of a democratic Israel, it will inevitably lead to a fuller, more effective relationship with the Arab states.

It is in our national interests that we have a consistent Middle East policy as outlined heretofore.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I am glad I was on the floor during the speech by my good friend from Arizona. It had quality; it also had quantity. While I was not able to hear all of his speech—and I am not sure I agree with all of it—I certainly agree wholeheartedly in the tribute he has paid to a democratic Israel, and particularly to the emphasis the Senator from Arizona has put on the fact that it is not easy for Israel to be a democracy. It is surrounded by authoritarian countries, threatened by countries far bigger than she is with far more resources that have sworn death to Israel. Israel is in a very, very vulnerable position and has been able to stand by that democracy under the most cruel kind of burden.

I understand that 50 percent of its gross national product goes to defense. We are concerned about 6½ percent in this country. We know it is a burden. But Israel, I think, has shown the way for democracy under the toughest kinds of circumstances, and I think particularly we should be aware that this country, small as it is, represents the most important military force in the Middle East. Thank heaven Israel is on our side. It has proven that again and again and again in many ways.

Mr. DECONCINI. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield to the Senator.

Mr. DECONCINI. I thank the Senator from Wisconsin for allowing me to infringe on his time. I did not understand he had the next standing order. And I also thank him for his kind remarks.

Mr. PROXMIRE. I thank my good friend.

TOP SCIENTISTS CALL FOR DEEP CUTS IN NUCLEAR WEAPONS

Mr. PROXMIRE. Mr. President, on May 1, Dr. Frank Press, the president of the National Academy of Science, the Nation's top honorary society of scientists and engineers, said that the time is ripe for a U.S. President to push for "deep cuts in nuclear weapons." The academy represents the most widely recognized and respected scientists in this country. These men and women have a special knowledge of the terrible consequences of the present arms race. They fully understand what absolute devastation nuclear weapons can wreak. They not only foresee the human tragedy of a nuclear war, they also understand the long run effect on the lives of all mankind flowing from the environmental devastation that would ensue.

Mr. President, does the academy speak as a group of pacifists or unilateral disarmers? No way. They understand the threat represented by the Soviet Union. As scientists they value their freedom to pursue truth wherever it leads as dearly as any Americans. They fully understand that a world dominated by the Soviet Union would mean the end of that freedom. Do they understand the importance of negotiating with the Soviet Union from strength, specifically military strength? Yes, indeed. The president of the National Academy of Science, Frank Press, served as the Presidential science adviser in the Carter administration. He has a realistic appreciation of the limitations and the dangers involved in arms control. He understands that military strength is an absolutely critical component of an effective foreign policy.

These, the Nation's top scientists, speak from a position of special responsibility. Who first unlocked the secret of nuclear energy? American scientists. Who first developed nuclear weapons and presented the Nation with the final instrument the atomic bomb—that both won and finished World War II? American scientists. Now as scientists they understand better than most Americans that the nuclear capability of the two superpowers is no longer simply another weapon—bigger and more devastating—not just another weapon with which great power can win a worldwide war.

They know that today's nuclear arsenals, once they begin to fire, will literally end civilization on this Earth, and very possibly end the life of mankind. They understand that a nuclear war would constitute the most serious environmental disaster the world has suffered in more than 50 million years, with a nuclear winter that could make the world unlivable and certainly would destroy many of the remnants of those who survived the devastation from the nuclear weapons themselves.

What Dr. Press emphasizes in his statement is that the constant additions, refinements, and modernizations to the world's nuclear arsenals, the billions and billions of dollars of expenditure by the superpowers and increasingly more nations on more efficient nuclear destruction, can only increase both the likelihood of a nuclear war and the certainty that this country which we love could not survive it.

Mr. President, who favors deep cuts in nuclear arms? Consider, we have had pleas to end the nuclear arms race from the great religious leaders of our country. How about military experts? Some of the most valiant and widely respected military leaders of this Nation have called on the Congress and the President to end the arms race and work for a negotiated mutual, verifiable, and comprehensive agreement to stop the testing, manufacture, or deployment of nuclear weapons. Have the seasoned and tested foreign affairs experts supported nuclear weapons reductions?

Mr. President, some of this Nation's top experts in foreign policy have called for prompt negotiations to stop the arms race. How about the people of this country? Where do they stand? The citizens of this country have voted in a series of statewide referendums by smashing margins to stop the arms race. Virtually every professional and respected public opinion poll indicates that Americans by an overwhelming 3-to-1 margin favor a nuclear freeze. These polls report there has been no diminution in public support for such negotiations. And now we have the Nation's most prestigious scientific body, the National Academy of Sciences, calling for deep cuts in nuclear weapons.

Mr. President, this Nation faces the most serious Federal deficits in our history. For the first time in this Senator's 27 years in the Senate, I see a Congress which recognizes that it must slow down these appalling Federal Government spending increases. We are beginning in a halting way to do that. Where should we make these reductions? Mr. President, the one most insistent demand I hear from my constituents, and I am sure the same sentiment dominates every section of our country—and I know the Presiding Officer hears from his constituents in Nevada, and the distinguished Senator from Florida his constituents in Florida—is to cut our immense spending on nuclear weapons. Unless we make these cuts, in the next 6 years we will spend some $450 billion on nuclear weapons. And what will that colossal $450 billion of spending buy us? Will it buy us national security? Mr. President, who are we trying to kid? It will buy us not just a deeper deficit and a more cruelly burdensome national debt, it will buy us a more dangerous, a far more dangerous world.

Dr. Press and the National Academy of Science are exactly right. The time is, indeed, ripe for deep cuts in nuclear weapons, and it is time we get on with it.

Mr. President, I ask unanimous consent that an article in the May 2, Washington Post, by Cristine Russell, headlined: "Science Academy President Urges Deep Cuts in Nuclear Weapons," be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 2, 1984]

SCIENCE ACADEMY PRESIDENT URGES DEEP CUTS IN NUCLEAR WEAPONS

(By Cristine Russell)

The time is ripe for a U.S. president to push for "deep cuts in nuclear weapons" to reduce the dangers of nuclear war, the president of the National Academy of Sciences, the nation's top honorary society of scientists and engineers, said yesterday.

Dr. Frank Press, presidential science adviser in the Carter administration, said that he believes there is an unprecedented readiness among members of the public as well as scientists for "some concrete steps" in weapons reductions.

"As scientists with special knowledge of the nature and effects of nuclear weapons, we are distraught at the current state of world affairs and its dreadful implications" Press said in a speech yesterday at the annual meeting of the 121-year-old academy, which has 1,400 members. The academy also holds a special congressional charter to advise the federal government.

The geophysicist said that he and a delegation of top academy members would go to Moscow in early June in an attempt to improve relations between Soviet and U.S. scientists.

In February, 1980, following the Soviet exile of Andrei Sakharov, the academy put a moratorium on many longstanding joint symposiums with the Soviet Academy of Sciences and two years ago the formal agreement ran out. Exchanges between individual scientists have continued at a reduced level.

Now, even though human rights concerns continue, the American academy is ready to "begin discussions to see what are the possibilities of a new agreement," Press said. "In these troubled times it is better that scientists keep talking, raising issues of concern, as well as exploring areas of fruitful cooperation."

In an afternoon session with reporters, he refused to spell out the details of what he will propose to his Soviet counterparts, but did say that he would not attempt to exact a "political price" in exchange for resuming joint projects. At this point, he said, "there is a great deal of ignorance about what's going on."

While Soviet exchanges had stalled in recent years, those with Chinese scientists have expanded greatly. The academy has a new program with China "emphasizing applied science and technology," said Press.

He also sounded a continuing complaint that "a concern for national security" in the Reagan administration and among some in Congress "has led to proposals to restrict open communications between scientists in a few forefront fields of university research—proposals that could result in a decrease in both our scientific productivity and, ironically, in our national security."

Press and other members attending the national meeting said that the strongest concern seems to be arms control issues. About 200 scientists—nearly half of those attending the meeting—spent last weekend at a "tutorial" on arms control, and "deep and continuing concern," Press said, has also emerged at regional meetings of the academy.

The issue will be discussed with a Soviet delegation coming here next week. The academy is preparing its own report, to be released next August, analyzing the potential environmental effects of a nuclear war, and its Institute of Medicine is planning an international symposium on the medical aspects of nuclear war for early next year.

"It is the subject of greatest concern," said Herbert Friedman, a physicist attending the meeting. "We must try to find ways to step back from the brink."

The academy elected 60 new members yesterday, including Mortimer Mishkin of the laboratory of neuropsychology at the National Institute of Mental Health.

KHOMEINI'S CRUELTY IN IRAN

Mr. PROXMIRE. Mr. President, 3 years ago this week, Iran underwent an historic turning point. The Ayatollah Khomeini answered with bullets the peaceful protests of half a million people demonstrating in Tehran against the Ayatollah's policy of suppression. They demanded restitution of their democratic rights, upon which the regime in Iran had encroached.

The demonstrators had assembled in less than 3 hours, only to be met, upon the Khomeini government's orders, by armed guards.

They opened fire on the crowd.

Many peaceful objectors were killed instantly.

An even greater number of Iranian citizens who were arrested were also executed within 24 hours.

Mr. President, 3 years later, we remember this tragic slaughter of innocent people. We remember these abuses of human rights.

June 20 was, therefore, declared "the Day of Martyrs and Political Prisoners in Iran."

But what has been done?

Since the bloodbath of June 20, 1981, the nightmare of Khomeini has continued.

During the last 3 years, over 40,000 have been murdered and another 120,000 incarcerated.

Mass executions have been stepped up. A few weeks ago, more than 300 prisoners faced the firing squads in Evin Prison in Tehran.

The barbaric tortures have been intensified, with new techniques and equipment being employed in the jails to break the prisoners' resistance.

New prisons have been built and existing jails have been expanded.

In the face of the grave violations of human rights by the Khomeini regime, the Iranian resistance under the leadership of the People's Mojahedin Organization of Iran has grown. Lying at the focus of the nationwide resistance, the Mojahedin founded the National Council of Resistance and invited all nationalist, popular, and progressive Iranian forces to join it. The council is now composed of more than 15 popular political parties, groups, and personalities of Iran.

The fight for human rights and independence in Iran is a fight of and for the Iranian people. Tyranny is eventually defeated by those who are on the side of justice. That is where the National Council of Resistance stands.

As you know, Mr. President, the line between massive violation of human rights and genocide is a perilously thin one. It is crucially important that the United States strengthen its hand in protesting such wanton inhumanity to man.

So on this occasion of the third anniversary of the Khomeini massacre, I remind the Senate that the Genocide Convention, the oldest treaty before the Senate, remains still unratified. This document is an international criminal treaty designed to punish those guilty of the destruction in whole or in part, of a national, ethnical, racial, or religious group.

In light of the recent crimes that have taken place under the Khomeini government, I urge the Senate to ratify the Genocide Treaty without further delay.

Mr. President, I yield to my good friend from Florida the remainder of my time if he wishes it.

Mr. CHILES. I thank my distinguished colleague from Wisconsin.

The PRESIDING OFFICER. The Senator from Florida is recognized.

CONFERENCE ON FIRST CONCURRENT BUDGET RESOLUTION

Mr. CHILES. Mr. President, we are about ready to resume the budget conference, and it should not take long to finish. All indications are that the decisions have been made, at least those decisions that could be made, and I am afraid we did not make enough of them.

The conferees on the Budget Reduction Act worked long and hard, sometimes nonstop, to hammer out agreements among the differing committees of both Houses. But on the first concurrent budget resolution, the conferees have not achieved much. In fact, we have not met much. You will find we will end up raising some revenues but not enough to reverse the increase in the Federal deficits. We will restrain the growth of medicare, our fastest growing entitlement program, but we were not able to put it under control to the extent necessary to safeguard its future.

We have not cut back discretionary spending at all.

And, when it comes to military spending, we will have done nothing but raise the ante.

The Senate Republicans refused to conference on the budget resolution and strike a compromise. After weeks of refusing to confer on the budget resolution, the Republicans have agreed to meet tomorrow. But they have still given no indication that they are willing to compromise on the numbers.

I am certain we could have done better. We did not because the budget process was ignored, and the executive leadership that could have helped turn the corner on so many close votes, was absent. All in all, we have done little for the economy, and, I am afraid we have damaged the budget process.

What does this conference report on Deficit Reduction Act say about spending restraint?

First, the point of order caps are gone; that is good, because they were an unenforceable sham. Second, we have different sense of the House and sense of the Senate language—each says they will enforce their own spending limits. What does that add up to?

It adds up to letting the House spend almost $6 billion a year more in domestic programs than the Senate wants; $17 billion over 3 years.

It lets the Senate spend $13 billion more on defense then the House wants, or $74 billion over 3 years. Since the conference agreements on various appropriations bills could come to the higher of either House, we are allowing up to $13 billion more spending than shown by either House in 1985, and $74 billion over 3 years.

I find that scant comfort for deficit reduction.

I note a certain irony that just last week, when I was introduced to give a speech, my host noted that this was the 10th anniversary of the Budget Act, and wondered if it had done any good in light of the huge deficits we face.

I was hard pressed to defend the situation. The act has been a success in holding off massive new entitlement programs, and it has kept us from having each of three committees spend money to solve the same problem. Also, we have limited domestic appropriations, so that they are taking a smaller share of the budget and the economy each year. But the act has not convinced us to put prudent limits on the growth of military spending, and it has not kept us from cutting taxes 25 percent below the amount we are spending. The result is that our national debt and the interest payment on it are growing faster than our economy.

We are in a state of voluntary insolvency.

We need to do more, and we need to do it now.

This year, the Members want to do more, more on the tax side, more on the spending side, than the leadership is willing to accept.

They have the President make calls to keep Members from voting for more ambitious deficit reduction plans.

They bring in the Vice President to break tie votes to keep military spending as high as they can get.

It is a disservice to the Nation and a disservice to the institution of the Senate to refuse to let the Budget Committees compromise and bring forth a budget resolution that will give us a firm restraint on spending. Failing to reach a compromise will only encourage the membership to be irresponsible and spend more.

I know that is true because I hear it from my colleagues on the occasions that Senator Domenici and I go to the floor to fight off new spending. My colleagues say, "Why should we be responsible when we have no budget resolution in place to give us a guideline? Why should we restrain ourselves on domestic spending, when the Senate Republicans insist on a 13 percent, $35 billion increase over last year's appropriation for the military?"

Every other committee has met and compromised on major issues for deficit reduction. We have had compromises on hundreds of tax provisions; we have crossed a major hurdle in medicare and medicaid spending; we have compromised on Federal pay and retirement, on veterans' benefits, and small business loans. Why cannot the Budget Committees come together and compromise on defense?

Make no mistake, Mr. President, that military spending is the only issue hanging up the conference. The House Democrats say they are willing to compromise, but the Senate Republicans will not.

What is the number they are holding out for? A total $299 billion, compared to last year's $264 billion. Is that restraint?

What growth rate do they want for 1985? Real growth of 7 percent beyond the rate of inflation, according to CBO. Last year's budget resolution set a guideline of 5 percent a year for real growth. Actual appropriations came in at a growth rate of 3.5 percent. So how can we call 7 percent a cut in defense? It is not; it is an addition.

The only courage I see from the Republican leadership this year is the courage to call a massive military increase of $35 billion a cut. That does take a lot of nerve.

Mr. President, I am speaking strong words out of frustration. Many of us on both sides of the aisle have worked hard for 10 years to build the budget process. We have taken difficult stands against popular spending programs. We have borne the wrath of colleagues with pet programs to push. What we have built is an effective process that has left the Congress achieve what it wants to do. If the Congress wants to restrain military spending and increase domestic, it can set those priorities in a budget resolution and carry them out. In the last few years, those priorities have been reversed, and the budget process has been used to cut domestic programs tremendously, while allowing the military to grow rapidly.

Now the Members want to set a reasonable balance of restraint on both military and domestic spending. They want to reduce the deficit.

The Budget Act is under attack for record deficits. People want to know what good is a Budget Act if the deficits remain so high. Well, Mr. President, it could very well be the same question asked some years down the road if, after enacting a constitutional amendment to balance the budget, we continue to run huge deficits.

The problem is not in the procedures we have, but rather in the leadership we lack. All the procedures in the world will not do us any good if we will not use them. The Budget Act this year was sidestepped, and the economy will pay the price while the budget process gets the blame.

Mr. President, during the last century, a member of the British Parliament wrote a book called "Tom Brown's School Days." There was a short passage in there that pretty well describes the problem we had in this year's budget.

It says:

> He never wants anything but what's right and fair; only when you come to settle what's right and fair, it's everything he wants and nothing that you want. And that's his idea of a compromise.

The "he" in this instance is the President of the United States. Whatever compromises are involved in the conference report are essentially those made last March when the Republican leadership agreed among themselves just how far they were willing to go. They had obtained the votes to win in the Senate. I am not sure, however, that they have a policy to keep the economy from becoming a loser.

So now all of Washington is about ready to take a summer vacation. We are all ready to lock the doors and windows, pull down the shades, and cancel the newspapers. It is too bad we are leaving for a trip when we should have been moving instead. Because no matter how hard we play Walter Mitty and convince ourselves we have done well, the question is not what we have done, but where we are. And we are still sitting on top of a volcano of debt, deficits, and rising interest rates.

And we will be back.

Mr. President, I am happy to yield the time I have remaining to the distinguished Senator from Maine.

Mr. COHEN. I thank the Senator for yielding.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, not to extend beyond 1:30 p.m.

The Senator from Maine is recognized.

CANADIANS LEAVE NO TERN UNSTONED

Mr. COHEN. Mr. President, a soft-spoken 68-year-old Jonesport sea captain, a group of rare Arctic terns, and a granite speck 12 miles off the coast of Maine: These are unlikely participants in an international squall which attracted the attention of the national media and the U.S. Department of State. The story is an interesting example of the kinds of matters that cross my desk and, I assume, the desks of my colleagues.

The territorial tug-of-war concerns Machias Seal Island, a 15-acre island favored by Atlantic puffins and Arctic terns for nesting. For 44 years, Capt. Barna Norton of Jonesport has been ferrying birdwatchers and photographers to the tiny island, a practice which is his avocation as well as his vocation.

For all of those years, there has been a sort of uneasy truce between the United States and Canada, both of which claim ownership of this tiny island. Each country cites a variety of treaties and boundary agreements to bolster its case, but there has been no final resolution of the problem over the years.

By and large, this situation has not affected people like Captain Norton, who make their living at the island. He thinks that the Maine and New Brunswick lobstermen who fish around the island can work out their infrequent feuds, but that the real problems come from the Governments of each country. Captain Norton says of the Canadian citizens who operate the island's lighthouse, "The keepers have been my best friends—I get along just great with them, taking them milk and mail when I can."

But from time to time over the years, Canadian Government officials have accused Captain Norton of disrupting the natural habitat of the birds on the island by his daily birdwatching excursions. I have met Captain Norton on my first walk through the State of Maine back in 1972, and making such a suggestion about a man who is a naturalist and is passionately devoted to the care of the island, in my judgment, is patently ridiculous.

This on-again-off-again tension between our two Governments was definitely on again last week. A Royal Canadian Mounted Police helicopter swooped onto the island, scaring the birds and killing a large number of them. Ironically, the purpose of the expedition was to protect the birds from outside intruders like Captain Norton. After the helicopter landed, destroying a number of these rare birds, which thrive on the island during the spring and summer months, the RCMP left several officers to patrol the island.

First, it struck me as a rather poor imitation of Margaret Thatcher's resolve to save the Falkland Islands, but more importantly this really is a bit of absurd gunboat diplomacy on the part of the Canadian Government.

Apparently the Canadian Government is determined to leave no tern unstoned.

The reaction among many, including Captain Norton and myself, was one of incredulity. For the Canadians to launch this effort in an attempt to protect this island from a gentleman who has made the island his life for more than 44 years seems more than absurd. Coming as it did less than 1 week after the newly selected Canadian Liberal Party Leader John Turner pledged a new era of good relations with the United States, the incident seemed inexplicable at best. A wonderful way to open up a new era of diplomacy and good will is to invade this tiny island with the mounted police and slaughtering the birds they were sent to save.

I contacted the Secretary of State and asked him for an immediate review of this matter, and his office has agreed to look into it. There are possible options for a U.S. response, including sending a formal diplomatic note of protest or initiating formal discussions with Candain wildlife officials to attempt a relaxation of tensions. But ultimately the step that has to be achieved is to resolve the lingering problem once and for all as to who owns the island.

The State Department will no doubt unleash a platoon of bureaucrats to study the international ramifications of all of these steps, and the process of diplomacy will grind along. But this is more than an abstract problem between governments. It is a matter of considerable concern to a slightly stooped gentleman with a downeast drawl who, with his dog, Matey, sets off each day to explain the natural beauty of nesting birds to a new group of visitors, hoping that the great powers of government and diplomacy will allow him 1 more day to love the sea.

Mr. President, I yield back the remainder of my time.

AMERICAN HOME ECONOMICS ASSOCIATION

Mr. ANDREWS. Mr. President, every profession has a spokesperson, an advocate organization of professionals. For Home Economics that organization is the American Home Economics Association. It has been a force for families—for their health and well-being—advocating quality of life for 75 years and more. Today I cite the American Home Economics Association for this service and dedication and to recognize the 75th anniversary that this organization will commemorate today at its annual meeting and exposition in Anaheim, CA.

The role for such nonprofit organizations in the future? An outstanding and visionary member of this association of home economists gives this challenging prognosis for the next two decades: a position "squarely in the leadership center," she says, and I am heartened to agree:

> It is the Association's challenge to build coalitions, to contribute to national and state economic and social policy, to retrain members to function in an information society, to implement federalism by sharpening the roles of national, state and local organizations, to educate leaders to be politically savvy and financially intelligent, to strengthen the power of networks of volunteer leaders, and to make technology work for us without losing our humanity.

Since the turn of the century when the home economics profession was formalized and this association founded, home economists have had the knowledge and skill, the organization and will to address the needs of the family relation to its environment. As this environment changed bringing changes in family resources, family functions, and cultural climates, new knowledge through applied research has been channeled through home economists working in teaching, industry, extension education, dietetics, human services for adults and children, and communications in all facets of the corporate and public sector and with an expertise that we and scores of others have valued and to which today we pay special note.

With me, I ask you to note with pride the accomplishments of home economists in all these areas: Consumer education, nutrition, human development, gerontology, textile science, family economics, housing, management, art and design, from the day when children working in factories at the age of 8 needed the protection of a powerful voice, to the present when a program banked on home economics expertise, such as the Expanded Food and Nutrition Education Program which reaches 2 million people, 58 percent of whom are in cities and 60 percent of whom are minorities.

Home economists have made a difference in our lives—from the very first crusaders, captained by that dynamic woman, Ellen Swallow Richards, a true pioneer. She was the prime mover in the establishment of the American Home Economics Association, who sought to thrust the study of the home in all its multiplicity of concerns into the mainstream of educational thought by applying the principles of science to the work of the household and family. She sought to expand women's education so as to bring about the full development of their talents—for their own, and society's benefit. Since that day, home economists the world over through their professional work and volunteer efforts, have contributed mightily to the world's social, economic, and technical advances. The results of their efforts help us all. Consider these contributions:

Our children: Home economists were researchers whose work led to early childhood, child development, child care programs and centers, including Project Head Start as well as the renowned Merrill-Palmer Institute and other schools for the training of professionals and for the observation of the growth and development of children.

Our daily bread: We all eat better because of such work as that of William Atwater who defined the basic unit of analysis of the energy needs of individuals in diet. And Louise Stanley, the first director of USDA's former Bureau of Home Economics, who first defined the necessary elements of diet. And later researchers who helped develop the Recommended Daily Allowances [RDA's], convenience foods (including those used in the first space flights!); who developed the theory for and taught efficient management of institutional food service; and who pioneered in food preservation techniques.

Our education: Home economists were influencial in the growth and development of the Cooperative Extension Service, and the U.S. Land Grant University System; in the implementation of Federal and State legislation affecting the education of children and adults in elementary, secondary, vocational, and continuing education programs, and in the development of the school lunch and other feeding programs.

Our ease and comfort: Home economists not only made food preparation easier by pioneering in the development and implementation of standardized food measurements and cooking and measuring utensils, their work contributed to the development of standardization in household equipment and home furnishings.

Our clothing: Home economists conducted the major research leading to the development of standard sizing in manufactured clothing.

Our time and money: Home economists pioneered in research of time use by American families, and in cost of living indicators later used in the Consumer Price Index.

Our social responsibility: Home economists were pioneers in helping Third World families by giving technical and educational assistance in areas of sanitation, income generation, and food preservation.

The challenges of a post-industrial society are many. Technology can be a tool to enrich family life, but we need home economists there providing the balance, teaching the management so essential in coping with the demands of work, society, and family. We need the focus home economics brings: the kind of philosophy and programs that emphasize development, prevention, education, and health wellness, as opposed to crisis intervention, therapy, and remediation.

"How can a 75-year-old profession that has helped families in so many ways fail to receive the public recognition and respect it so justly deserves?" My answer to this question posed by the association's national president is to keep on without giving up, and to let us know more—more about the home economics teachers cited for "excellence in teaching," the researchers honored for charting new courses in nutrition, experimental foods, consumer education, manmade textiles, child development and family relations, and the members cited for affecting public opinion about issues of concern to families.

American Home Economics Association, grown from 830 members in 1909 to 35,000 now, I salute your "proud past" and harken to "your promising future." Congratulations!

CRIMINAL PENALTY FOR ROBBERY OF A CONTROLLED SUBSTANCE

Mr. HATCH. Mr. President, on May 31, 1984, President Reagan signed S. 422, the Controlled Substance Registrant Protection Act of 1984 (Public Law 98-305). As a cosponsor of this bill, I would like to take this opportunity to commend the President, my colleagues, and the National Association of Retail Druggists for their efforts toward passage of this very important piece of legislation.

Passage of this pharmacy crime bill is very timely. Since 1973, robberies of retail pharmacies to obtain controlled substances have increased 160 percent. One in five of these robberies results in death or injury to the pharmacist. Nearly 3,000 people have died or were injured since 1973 as a result of pharmacy robberies.

In my own State of Utah, I know that pharmacy crime has been a problem. Many pharmacies in Utah are small and many are located in predominantly rural areas. These pharmacies maintain long hours and a large inventory of controlled drugs making them especially vulnerable to crime.

Prior to enactment of the pharmacy crime bill, this dramatic rise in violence could be attributed in part to an inconsistency in the law. It is a Federal offense to obtain a controlled drug by fraud. It is a Federal offense to obtain a controlled drug by misrepresentation, forgery, or subterfuge. Yet it was not a Federal offense to acquire these drugs by violent methods.

This legislation expands the availability of Federal prosecution in a variety of instances involving the theft of controlled substances. By increasing fines and the length of prison terms for individuals convicted of "pharmacy robberies," this legislation provides an important new deterrent to this particular crime.

I am pleased to report that with passage of this legislation, pharmacists will no longer have to practice their profession in constant fear of robbery, injury, and even death. It is my hope that the 30,000 retail pharmacists and their customers who have been victims of thousands of injuries and robberies because they dispense federally controlled drugs will be able to sleep better at night.

Mr. President, I ask for unanimous consent to print in the RECORD a copy of the National Association of Retail Druggists' letter to President Reagan expressing their appreciation for the attention the Congress and the President have given this very important issue.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF
RETAIL DRUGGISTS,
Alexandria, VA, June 1, 1984.

THE PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: On behalf of the Officers, Executive Committee, and members of The National Association of Retail Druggists, we would like to thank you for signing S. 422, the Pharmacy Crime Bill. Our 30,000 retail pharmacists and their customers have been the victims of thousands of injuries and robberies because they dispense federally controlled drugs.

Your administration is the first and only administration to support this effort since we brought this issue to the attention of the Congress years ago. We worked closely with your officials in the Department of Justice and with the Senator Roger Jepsen, who led bipartisan coalition in the Senate to obtain passage of this priority pharmacy legislation. We are praticularly pleased that Senator Jepsen was able to assure that the use of weapons in such crimes would be the basis for federal prosecution of pharmacy robberies and burglaries to obtain controlled substances.

The final passage of S. 422 ends a 15-year effort by NARD to correct inequities in the 1970 Controlled Substances Act, which left the nation's pharmacists—and particularly independent retail pharmacists—vulnerable to violent acts perpetrated by gunmen on store owners, their employees and customers.

NARD deeply appreciates the generous support of its friends in Congress and your administration who have addressed this vital grievance confronting our members and others who have, for too long, practiced the honorable profession of pharmacy providing vital health care services in the shadow of potential violence while experiencing an increasing epidemic of actual violence. The final legislation contains significant federal jurisdiction over violent pharmacy crime.

Sincerely,

William E. Woods,
Executive Vice President.

NATIONAL DEBATE OPINIONNAIRE NETWORK

Mr. GORTON. Mr. President, I want to call my colleagues' attention to an especially interesting project which has been started in my home State, but which I hope soon will be implemented nationwide. The project is the National Debate Opinionnaire Network, sponsored by the Overlake and Bellevue Rotary Clubs of Bellevue, WA. The project is an effort to promote the participation of high school students in national issues by building upon the annual National High School Debate effort, sponsored by the National Forensic League. The National Debate Opinionnaire Network is the result of efforts by the Forum Foundation, a nonprofit corporation in Washington State dedicated to strengthening the democratic process in the United States.

The goal of the effort is to help high school students "* * * become aware of the responsibilities of citizenship by encouraging them to understand others' opinions and voice their own agreement or disagreement in a rational, respectful way * * *." Toward this goal, the NDON compiles annually the responses of high school debaters to a set of questions relating to that year's National High School Debate topic. It then disseminates this information for use by the debaters, as well as by high school social studies classes generally.

This is the first mechanism for providing to high school debaters a sense of how the Nation's students ultimately think about the debate topic. In other words, it extends the valuable rhetorical debate exercise by making the debaters into voters on the substantive questions involved, and encouraging all students—debaters and nondebaters alike—to consider these results, and formulate their own conclusions in a considered fashion. The effort has been endorsed by the National Forensic League.

This effort represents the best in citizenship involvement and initiative, and I am proud that it has originated in Washington State.

EXPLANATION OF VOTE ON NATO AMENDMENT

Mr. BOSCHWITZ. Mr. President, I wish to offer a brief explanation of my vote on the Nunn amendment. My initial inclination was to support the effort of the Senator from Georgia in his attempt to wring greater defense contributions from our NATO allies. I was, however, prevailed upon to be patient a bit longer, to allow our Government's private urgings and the improving European economy to have their hoped-for effect. I gave a reluctant ear to these earnest appeals and voted to refrain from laying a specific ultimatum before our European friends.

But I wish to make clear that my patience, never my greatest virtue, is being sorely tested by the pattern of neglect which our allies have exhibited toward their own defense. I was forced as a child to flee that continent because of similar neglect by the Western democracies during the 1930's, so I suppose that I find it particularly galling to see this same problem arising a brief 50 years later. But I think that Americans of many backgrounds agree with this Senator that the United States can no longer be asked to bear a disproportionate share of NATO's conventional defense.

With 43 percent of NATO's gross domestic product, the United States contributes over 62 percent of NATO's total defense spending. We count less than one-third of NATO's population among our citizenry, yet we provide the alliance with over 42 percent of its active defense manpower. This situation cannot continue unchanged.

In fairness to our allies, I should point out that they have made substantial improvements in both these areas. Between 1971 and 1982 their contribution to NATO defense spending rose by over 25 percent, while ours actually declined slightly. Similarly, the contribution to active defense manpower for most of our allies increased during that decade while ours declined by over 16 percent. I recognize then that our allies have been making some progress in this area. Nevertheless, the fact remains that our allies have been either unable or unwilling to meet the goals we have set in our joint councils. Their defense budgets have not kept pace with their professed commitments.

I will be watching European defense budgeting with critical interest in the near future, Mr. President. I expect to see the first fruits of our diplomatic overtures and the European economic recovery in short order. I recognize that the Europeans, to an even greater degree than the United States, have suffered severe economic reverses in recent years and have also lagged behind us in economic recovery. I recognize also that many of our European allies face peculiar political problems with respect to defense and I have no desire to place undue pressure on those friendly governments. But we cannot be expected to wait much longer.

At what point will these allies be in a stronger political position? If the will to upgrade their own defense doesn't materialize soon in Europe, we will have to draw certain inevitable conclusions. Some Members of this body have already begun to draw those conclusions. Those conclusions lead, as the Senator from Georgia has described with his usual perspicacity, to the conclusions his amendment embodies.

I have, as I have said, been dissuaded from reaching that conclusion just yet. But I am not far from reaching it, Mr. President. And I hope that our friends in NATO will heed the distant thunder heard here today.

We hope for cordial relations with our allies, but they must surely be sympathetic to the necessity we feel in this country to have our contributions to European defense matched by an equal will among Europeans to defend themselves. I look expectantly to see a stronger evidence of that will in upcoming European defense budgets.

BANKRUPTCY ACT AMENDMENTS OF 1984

Mr. STEVENS. Mr. President, I move that the Chair appoint conferees for the conference on H.R. 5174, the Bankruptcy Act Amendments of 1984.

The motion was agreed to, and the Chair appointed Senators Heflin, Kennedy, DeConcini, and Metzenbaum conferees on the part of the Senate.

PARKINSON'S DISEASE

Mr. BRADLEY. Mr. President, Parkinson's disease affects the lives of millions of Americans, robbing them of the ability to carry out normal activities. Presently, we do not know what causes this debilitating disease, nor do we have a cure for it. We do know that Parkinson's disease results from a deficiency of the chemical dopamine in the area of the brain that controls movement. Treatment consists of restoring the normal level of dopamine in the cholinergic system through the use of drugs. Many patients respond well to this treatment; however, about 10 percent experience no improvement. Furthermore, prolonged treatment in some patients eventually leads to a diminished response to the medication. Clearly, more effective treatments need to be developed.

Only through further research and public awareness can we overcome this crippling disease. Research is being conducted at such places as the Parkinson's Disease Foundation at Columbia University. Equally important, however, is the effort of support groups such as the one sponsored by the Township of Parsippany, Office on Aging. As one of three such organizations in New Jersey, the Parsippany group works to bring members of the medical profession, health care agencies, and interested individuals together in an effort to rally public support to help eliminate this disease.

Without the involvement of community organizations, such as the Parkinson's Disease Group in Parsippany, in combating destructive diseases, we will find ourselves at a serious disadvantage in the battle against this dreaded illness. The dedication and concern demonstrated by the members of these groups is worthy of our recognition.

NEW JERSEY'S SMALL BUSINESSMAN OF THE YEAR

Mr. BRADLEY. Mr. President, the "Small Businessman of the Year" award from the Small Business Administration represents the culmination of years of hard work and dedication by an individual. This award also salutes those who have made the American Dream a reality. Mr. Joseph Starita, founder and chairman of the board of Star-Glo Industries Inc. and this year's "New Jersey Small Businessman of the Year," is a fine example of a businessman who has achieved success through our system of free enterprise.

After serving in World War II, Mr. Starita returned to his hometown of Jersey City and began a job at the Linde Division of Union Carbide. Involved in the design and production of plastic parts for factory machines, Mr. Starita worked feverishly to keep up with the demands of post-war industrialization. In order to help his employer meet those demands, he borrowed money from the company to purchase an old press which he set up in his kitchen. He worked nights with his wife to turn out additional parts.

After a year, Mr. Starita decided to go into business for himself. With a little imagination, daring, and insight, Joseph Starita formed Star-Glo, Inc., in a garage. Almost 30 years later, Star-Glo has grown into a multi-million-dollar corporation specializing in precision custom rubber and plastic molding, rubber to metal bonding, and the machining of metal parts for a variety of applications. The company has been responsible for devlopments in packaging, including an innovative patented process for Teflon [TM] bonding. Over the years, Mr. Starita has helped his company grow and prosper.

In addition to his impressive business career, Mr. Starita has continually demonstrated a sense of community awareness and responsibility, participating in a variety of civic and philanthropic activities. His community has bestowed many honors upon him.

I commend Mr. Joseph Starita for his demonstration of ingenuity, ambition, and spirit during his last 30 years as a New Jersey businessman.

SUGAR QUOTAS

Mr. BRADLEY. Mr. President, for the last several years, American policymakers have quite correctly been extremely concerned about the political stability of the nations in Central America and the Caribbean. We have believed that one of the keys to political stability in that region is economic stability, and we have enacted programs aimed at providing economic aid and incentives for investment in these nations in order to hasten the pace of their economic development.

Unfortunately, we have not yet achieved our objectives of providing economic and political stability in Latin America. As news stories inform us each day, unrest is prevalent throughout the region. Recently we have seen growing tension in the Dominican Republic. This tension provides still another alarm signal from this troubled region of the world.

Given this extremely sensitive political situation and all the effort that has gone into aiding our Latin neighbors, it is ironic, Mr. President, that we have insisted on maintaining programs which are adding to the burdens of these nations. I am speaking specifically of the Sugar Program.

In order to keep American sugar prices high, we have established very restrictive quotas on imported sugar. Because of the quotas, sugar imports have dropped from 5,025,000 tons in 1981 to 3,080,000 tons in 1983. Consequently, the earnings of exporting nations from sugar imports to the United States dropped from $2.1 billion in 1981 to $1 billion in 1983. For Latin American nations, earnings have dropped from $1.4 billion to $0.7 billion from 1981 to 1983.

This loss of earnings from sugar exports has created tremendous economic problems for Latin American countries and is undermining our attempts to provide assistance. Ironically, as the loss of sugar exports to the United States has limited Latin nations' ability to gain foreign exchange, it has also reduced their ability to buy U.S. goods, particularly agricultural products.

A recent article in Farm Futures analyzed this issue quite well, and I recommend that article to my colleagues for their serious consideration. Specifically, Farm Futures notes that improvement in net U.S. farm income depends primarily on increasing farm exports. Increasing U.S. farm exports, in turn, depends on selling more to the world's developing nations. However, developing nations can't offer to buy U.S. farm products unless they can earn more from exporting more of their own goods.

As the article points out, our Sugar Program restricts the ability of developing countries to export their products. As a result our farmers suffer, as do our foreign policy interests.

Further, Mr. President, American consumers pay a tremendous price to support sugar producers under the Sugar Program. Today, the world market price for sugar is approximately 6 cents per pound. In the United States, sugar is selling for over 22 cents per pound. When one considers that Americans pay about $300 million more per year for sweeteners and sweetened products, when the price of sugar increases only 1 cent, it is clear that the Sugar Program is one of the most costly farm programs on the books. I must also note that the program benefits only 14,000 sugar producers and many of them are large multinational corporations.

Mr. President the Sugar Program makes absolutely no sense at all. It injures Latin American nations, when we should be helping them. It represents hypocritical trade policy. It rips off consumers, and it is doing serious damage to our farmers.

I hope my colleagues will take this opportunity to consider once again the costs of U.S. sugar policy and join me in resolving to effect major reforms in the Sugar Program. I also hope that they will carefully consider the information contained in the FarmFutures article, which I ask to have printed in the RECORD.

The article follows:

[From FarmFutures, February 1984]

EXPORTS: THAT SINKING FEELING

Reagan administration and industry forecasters agree in ruling out any near-term recovery for U.S. farm exports. That's a far cry.

From the message USDA and past administrations had given farmers in the 1970s, when exports were tagged as the answer to all our farm income problems.

One indicator of how export prospects have deteriorated is that U.S. agricultural exports as a share of cash marketings climbed to 24% for the 1980 to 1982 period, up from 8% for the 1951 to 1955 period. For fiscal year 1983, that share dropped back to 22%, reversing a steady upward trend set over the past 30 years. The USDA projects that export volume for fiscal 1984 will be 15% below 1980, marking the fourth straight year of decline.

In this month's articles examining where exports are headed, *FarmFutures* taps a string of experts arguing that the only road to recovery is for the U.S. to accept some short-term pain as the cost of achieving long-term recovery.

Even putting exports back on the fast track by the end of this century depends on making some major course corrections now, they say.

The formula for getting the U.S. farm economy back on its feet may be alarmingly simple.

The good news is that as the world's leading trader, the United States itself is in an ideal position to turn defeat into victory. The bad news is that the U.S. may squander its opportunity to lead a turnaround. Instead, it may surrender to domestic political pressures which threaten to raise America's protectionist walls even higher.

Drawing on thick stacks of statistic-packed computer printouts, key trade experts conclude that:

Improvement in net U.S. farm income depends primarily on increasing farm exports.

Increasing U.S. farm exports depends primarily on selling more to the world's developing nations, the only remaining markets with potential for substantial growth.

Developing countries can't afford to buy U.S. farm products unless they can earn more from exporting more of their own goods.

Increasing the developing world's export earnings depends primarily on economic recovery in the industrial world and a reversal of the industrial world's tendency to choke off international trade through new protectionist trade measures.

The U.S. must reduce its budget deficit in order to spur recovery in third-world economies.

The bottom line is that U.S. farmers, faced with a sharp decline in export earnings and prospects, are wasting their efforts in blaming bad times on European Community export subsidies, on Japanese beef, citrus and wood import restrictions, or on bumper harvests in Australia and Argentina. Instead, trade experts say, the farmer and his elected representatives should concentrate on helping the U.S. economy to recover and on dismantling this country's spreading web of protectionist trade measures.

Consider the case made by the International Monetary Fund's managing director Jacques de Larosiere and others. They argue that heavily indebted developing nations are not economic basket-cases headed inevitably toward a collapse which might topple their western creditors as well. Instead, de Larosiere insists, third-world debt is "manageable" if richer nations respond to the problem by rewarding nations, such as Mexico, which are instituting sensible austerity measures. He has argued strongly against the move by major banks to demand higher interest payments and steep up-front fees as their price for rescheduling Third World debts. Joined by other trade experts and economists, de Larosiere has called on richer nations to accept the short-term pain of allowing imports from the Third World to increase while exports to the Third World decrease. This bite-the-bullet approach will benefit all parties over the longer term, he argues.

The IMF's latest outlook cuts through the confusion which breeds misdirected blame. The report estimates that "an additional increase of 1% in aggregate real GNP of the industrial countries leads to an increase in the level of export earnings of non-oil developing countries . . . by proportions ranging . . . from 2½ to 4%." The IMF report concludes: "For the whole group of non-oil developing countries, the increase in earnings would amount to $11 billion."

Curbing the U.S. budget deficit—which drives up interest rates—would also have a substantial positive effect on Third World economies, according to the IMF. "A reduction of one percentage point in market interest rates would, after a year or so, reduce the flow of interest payments of non-oil developing countries by roughly $4 billion," IMF's outlook report stated.

Clearly that extra $11 billion from increased export earnings and $4 billion saved in interest payments on Third World debts would not translate dollar-for-dollar into buying $15 billion more in U.S. farm exports.

But history has shown that any economic improvement in the developing world does lead directly toward more U.S. foodgrain and feedgrain purchases used to upgrade diets. And whenever extra money becomes available in developing nations, it has a rapidly multiplying effect. The standard sequence is for new capital investment boosting both industrial and agricultural productivity. This in turn boosts per capita incomes and living standards and results in pent-up demand for more and better food being unleased by the country's ability to pay for the goods it wants and needs.

In Brazil, an example of major market potential, exports must increase in order for that nation to recover from its acute balance of payments difficulties. Such news may be difficult for U.S. soybean producers and other competitors to swallow.

On a smaller scale is the example of the Dominican Republic, which must export sugar to earn dollars. This country could be importing more U.S. farm products. But the only way it can import more U.S. wheat is to sell more of its sugar to the U.S. So in this case, increasing agricultural exports depends directly on dismantling U.S. trade barriers erected to protect the domestic sugar industry, according to Clifford Lewis, World Bank economist.

Lewis finds it particularly ironic that in the case of U.S. restrictions on sugar, dairy and tobacco imports, the agricultural sector itself is taking actions which restrict agricultural export opportunities. This is in addition to U.S. import restrictions affecting such items as textiles, steel, automobiles and footwear. Such restrictions are more understandable, but also even more costly to U.S. export prospects, he said. In his view the U.S. currently operates some of the world's most protectionist policies. His message to congressmen considering new layers of protectionist legislation is: "If you are going to protect U.S. steel, sugar, textiles, autos, think of the impact this will have."

Lewis added that helping developing nations improve their ability to afford U.S. products is important because the industrialized nations basically represent a saturated market. Others may look on the Soviet Union and China as major markets of the future. Lewis, however, warned that even if Soviet and Chinese demand were to improve substantially, these would be poor markets to depend on. Soviet and Chinese demand "will be very much related to government decisions, not to economic factors," he said, such that these markets will remain completely unpredictable.

According to Arthur Mackie, economist with USDA's Economic Research Service, farm export sector recovery depends on recognizing that it is the middle and low income developing countries that offer the only potential for increased U.S. export sales.

The challenge, Mackie said, is to convince American soybean farmers, for instance, of the logic that "improving Brazilian soybean production improves the Brazilian economy, with the result that Brazil will be able to import more wheat and corn from the U.S."

Burleigh Leonard is one man charged with finding ways to convince soybean farmers and other special interest groups that they need to consider America's national economic interests. As a deputy assistant director in the White House's office of policy development, Leonard deals directly with the full range of farm policy issues.

As a direct consequence of the Reagan administration's effort to shift farm policy in a free-market direction, Leonard said, the administration places major emphasis on exports. This emphasis he added, has naturally increased due to the prospect of 1983's $70 billion trade deficit climbing to $100 billion for 1984.

"Without the surplus generated by our agricultural exports," he said, "we would be in far worse shape."

Leonard rejected the charge that the administration has neglected agriculture by putting a $4-billion ceiling on export credits this year.

"The commercial credit guarantee program has always been a commercial program, not one designed to use for a balance of payments problems," he said. Redirecting the program to pump in more buying power into debt-ridden countries could backfire, he insisted. He fears this could lead to a string of defaults and result in demands by Congress to cut back or even eliminate the program entirely.

Leonard acknowledged that the administration could find good economic and political reasons for boosting export credit spending substantially and sweetening the '84 commodity programs. But Leonard said that another year of expensive acreage reduction programs and export credits would be "very hard to sell to the public" at a time when "we are confronted with a need to address the larger budget question" by cutting rather than increasing the bulging federal deficit.

Leonard also acknowledged that the administration has found itself locked into administering policies it doesn't really support, such as restrictions on sugar imports. The sugar quota system, he said, "is administratively difficult to implement, and it is contrary to our free trade policy."

But the price support program is the law, he said, and so "we opt for implementing it in such a way that we don't add to the budget deficit."

Leonard and other administration officials hold little hope of any improvement in export prospects over the near term. Their hope instead lies in a major overhaul of farm policy following the elections, leading to an '85 Farm Bill designed to boost export volume and value. While Leonard stressed that no administration decisions have been made about the new four-year farm bill, he did speculate that the top priority for farm programs should be maintaining open trade so that we can exercise our comparative advantage as an agricultural producer.

For Leonard, as for World Bank, IMF and USDA officials, the United States must recognize that reducing its own trade barriers now rather than raising protectionist barriers higher is ultimately in its own economic interests.

World Bank: For Long-Term Loans

Just blocks from the White House is the world's largest public lender. World Bank headquarters houses an international team of economists and analysts tracking loans worth some $45 billion.

The profit-making World Bank was created in the aftermath of World War II to help rebuild Europe. Today its loans go primarily to developing nations in Asia, Africa, and Latin America, with special low-interest loans vailable for the poorest of the poor.

Owned by the governments of 139 countries, the bank has always been headed by an American. Current president is former Bank America Corp. boss A.W. Clausen, who took over from Robert McNamara in July, 1981. Clausen came in with a promise to drum up more private investment to twin with World Bank loans and a commitment to lessen tensions between third-world borrowers and wealthy nations, whose contributions pay for the bank.

World Bank loans cover agriculture, transportation, water, health, energy, population and education projects.

International Monetary Fund: For Short-Term Aid

The IMF, with 146 member governments, provides short-term financing to ease its balance-of-payment problems. The IMF makes headlines particularly because its experts are the ones who draft "economic adjustment" programs for debtor countries. The borrowers find it hard to swallow the programs politically, even while their creditors complain that even more austerity is needed.

In an operation described as "much like a global credit union," the IMF offers three- to five-year loans. These generally have been tied to requirements that the debtor country impose tight restrictions on imports while making all-out efforts to boost exports in order to generate the foreign exchange required for debt servicing.

NUCLEAR PROLIFERATION IN IRAN, IRAQ, AND LIBYA

Mr. **CRANSTON**. Mr. President, earlier today I addressed the Jonathan Institute Conference on International Terrorism. My remarks focused on the danger that unchecked nuclear proliferation presents to Western interests. The use of nuclear weapons in a regional dispute poses the ultimate terrorist threat. I ask unanimous consent that the full text of my remarks be printed in the Record.

There being no objection, the text was ordered to be printed in the Record, as follows:

Address of Senator Alan Cranston to the Jonathan Institute Conference on International Terrorism, Washington, DC

The magnitude of the threat terrorism poses to the people and nations of the free world is immeasurable.

I want to speak with you about the responsibilities of the democratic nations to check terrorism and to prevent terrorists from gaining access to weapons of mass destruction.

Nowhere in the world is war raging with fewer restraints and more frequent resort to terrorist tactics than in the Middle East and South Asia.

We are witnessing a continuing death struggle in the Persian Gulf between Iran and Iraq. Without regard to traditional rules of war, they are using every possible weapon against each other in what began as a minor territorial dispute.

We are seeing an interminable conflict in Lebanon, where the forces of terrorists and extremist factions have yet to be vanquished.

And we are witnessing vicious civil strife across religious divides in India, and elsewhere in the region.

In conflicts in this region, international treaties have been no bar to the use of chemical weapons, to the seizure of diplomatic personnel, to attacks on nuclear installations, to assaults on religious sites, to deployment of brigades of children as human "mine sweepers", and to repeated attacks on commercial shipping.

It takes little imagination to comprehend the dangers posed to U.S. national security interests—and to the interests of our friends and allies in the region—if nuclear weapons were to play a role in these unrestrained wars.

Does anyone doubt that if the Shah of Iran had succeeded in developing a sophisticated nuclear program in Iran that the Ayatollah Khomeini would have used a nuclear weapon against Iraq?

By the same token, does anyone now doubt that if Iraq had been permitted to make swift progress towards a nuclear weapons capability that Saddam Hussein would have used a nuclear bomb against Iran?

Or that either of them might have subsequently resorted to a nuclear strike in a "jihad"—a "holy war"—against Israel?

Those most concerned about the spread of terrorism and the use of weapons of mass destruction by terrorist states should be deadly serious about the need for a sound and successful nuclear non-proliferation policy.

But the fact is that western democracies and industrialized nations have done grave injury to our security interests by spreading weapons-usable nuclear technology about the world. Like Lenin's capitalists—who would sell the rope for their own lynching—we have permitted the export of nuclear materials, plants and technology that may someday be used in a lethal assault against us.

Nowhere is this clearer than in the Middle East and South Asia, where several fundamentalist Islamic states have made great efforts to get "the bomb".

Last week I revealed substantial new information demonstrating that Pakistan has acquired all the capability necessary to produce their own nuclear weapons.

I based this conclusion on four new facts:

(1) Pakistan has operated and expanded its clandestine uranium enrichment facility at Kahuta;

(2) Pakistan has operated its clandestine plutonium reprocessing facility at PINSTECH;

(3) Pakistan has expanded its nuclear weapons design team at Wah and has stepped up imports of nuclear warhead components;

(4) Pakistan's KANUPP reactor has been subject to continuing chronic failures in its safeguard system, making plutonium diversion highly feasible.

Pakistan also has the ability, should it so choose, to export the nuclear-trained technicians, the highly advanced nuclear technology and designs—and perhaps even nuclear weapons—to fundamentalist colleagues in other Islamic nations. This export capability and the extent of Pakistan's nuclear weapons capability have far more profound implications than were presented by the Iraqi nuclear program before the Osirak reactor was bombed in 1981.

Pakistan is a nation ruled by a fundamentalist Islamic dictator, General Zia. Under Zia's leadership, the Islamic Conference in 1981—and again since then—has renewed it's call for "holy war" against America's only stable, democratic ally in the Middle East, Israel.

This is obviously of grave concern to Israelis, to Americans and to all those who seek to prevent nuclear conflict.

But there is another story here, and there are more details I would like to discuss today.

This is the story of the continuing reckless transfer of nuclear know-how from western nations to countries which may not share our reservations about using weapons of mass destruction.

How did Pakistan get nuclear weapons capability?

They picked up key components in the offices of Saint Gobain Technique Nouvelles in Paris, at VAT and CORA in Switzerland, at the firm of Keybold Heraeus in West Germany, of Emerson Electric in the U.K., and in the offices of hundreds of firms in the west who were so eager to consummate a sale that they were indifferent to Pakistan's clear intentions.

In fact, the west has repeatedly sold sensitive nuclear technology to countries which routinely employ terrorism as an instrument of state policy.

Let's look at Iraq. How did they come so close to their own nuclear weapons capability in 1981? They bought plutonium producing reactors in Paris; they bought hot cells from Paris and Brussels; they brought in the best Italian technicians; and they bought weapons-grade enriched uranium from the French.

And how did Iraq put togetehr the chemical weapons used with devastating effectiveness against the Ayatollah's young volunteers? My information is that Iraq bought several of the components from unwitting U.S. firms. And there are persistent reports that the key ingredients for manufacturing this gas came from a firm that should have—and did—know better, I.G. Farben of West Germany. To this day, Iraq has a chemical weapons stockpile and latent production capability. They also still have sensitive hot cells for reprocessing plutonium and a core load of some 14 kilograms of highly enriched uranium. They have a large stockpile of some 200 tons of raw uranium. They are still trying to get the case to replace the Osirak reactor. The shell of the destroyed reactor is today surrounded by an ominous array of anti-aircraft systems, balloons to frustrate low flying aircraft, and sixty foot high earth berms that look rather like a Great Wall of Baghdad. Clearly they hope to reinvigorate a sophisticated nuclear development effort.

And what about the nuclear program in Iran, which the Shah once hoped would bring more than two dozen enormous power reactors on line in his lifetime? Abandoned in 1979 by the Ayatollah as too reliant on the technology of the "Satanic" west, this program is now undergoing a revival. The Iranian Atomic Energy Commission is back in business and senior Iranian officials have reportedly pursued nuclear cooperation possibilities both in Europe and Pakistan. Recent press reports about the Ayatollah attaining nuclear weapons capability within the next two years, are in my judgment, ir-responsibly exaggerated. It is true that 35 West German technicians are back in Iran studying the feasibility of completing two 1350 megawatt reactors at Bushehr. But it would take nearly five years to finish these reactors and generate some plutonium through their operation.

There are two ominous developments in the Ayatollah's nuclear program, however:

First, Tehran has sent agents throughout Europe to press exiled nuclear scientists and engineers to return to Iran. Lucrative offers and personal threats have reportedly been made in an effort to reassemble a cadre of nuclear specialists to work on a new, unmistakably Islamic, nuclear development effort.

Second, representatives of the Ayatollah's government have reportedly approached firms in Switzerland and Belgium to express an interest in plutonium reprocessing technology. Their technology could not be used by Iran for anything other than nuclear weapons inasmuch as they have no "peaceful" nuclear energy generating program whatsoever. It takes some fifty operating reactors before such reprocessing becomes even arguably cost-effective.

And then there is Colonel Quadaffi of Libya, who continues his ham-handed efforts to beg, borrow or steal a nuclear weapons capability. He has pressed the Soviets for an optimum plutonium producing reactor. He has offered Pakistan cash and uranium in the hope of benefitting from Islamabad's weapons efforts. He has tried to buy nuclear weapons from China. And he is building at least the intellectual resources in Libya to help make one of his own. Libya's Tajura Nuclear Research Center offers use of highly advanced fusion technology. Libya has an experimental research reactor which runs on highly enriched (weapons-grade) uranium. They have several extra core loads in-country, though not enough HEU sufficient for fabricating a nuclear warhead.

Much has been made of the extent to which the Pakistani nuclear program has been supported and advanced as promising an "Islamic bomb." It is fair to ask: Is it in the Pakistans' eye—or in the eyes of nervous Americans or Israelis or Hindus—that this nuclear program is so viewed?

We should be reluctant to brand forces poorly understood in the west. But concerns about the use of a Pakistani nuclear bomb in a "holy war" seem justified by the words of the program's architects. At some point, one has to take seriously the statement of Pakistan's leaders.

Let me quote from General Zia: "China, India, the USSR and Israel possess the atomic arms. No Muslim country has any. If Pakistan had such a weapon, it would reinforce the power of the Muslim world."

Or as Prime Minister Bhutto wrote in his memoirs: "We know that Israel and South Africa have full nuclear capability. The Christian, Jewish and Hindu civilization have this capability. The Communist powers also possess it. Only the Islamic civilization was without it, but that position was about to change" (with the event of Bhutto's nuclear program).

Most to the point are recent statements by Dr. A. Q. Khan, the "father" of the Pakistan bomb who recently declared:

"All the Western countries including Israel are not only Pakistan's enemies but also enemies of Islam. If some other Muslim country had accomplished the same thing (as Pakistan's breakthrough on uranium enrichment), the same venomous and false propaganda would have been conducted against it as well. The examples of Iraq and Libya are before you. Even though these countries are not capable of manufacturing an atomic bomb for a long time yet, western media sources are conducting a violent propaganda campaign against them. All this is part of the crusade which the Christians and Jews initiated against the Muslims 1000 years ago. They are afraid that if Pakistan makes obvious progress in this field that the whole Islamic world will stand to benefit."

Khan went on to charge: "the 'Islamic bomb' is a figment of the Zionist mind and this has been used full force by the anti-Islamic Western countries." He insisted that the only reason he was convicted by a Dutch court of stealing sensitive nuclear design information for Pakistan's nuclear effort was that "all these charges and court cases were imposed at the insistence of Zionists and Western anti-Islam elements."

General Zia could use this program as a magnet for training scientists from several nations to whom he is in debt including Saudi Arabia and Libya, or with whom he needs to curry favor, like Iran. Despite Zia's radical program of Islamization in Pakistan—which includes judicial sentences of public flogging, stoning and amputation—General Zia has reason to fear the Ayatollah Khomeini's forces, as well as those forces in Pakistan who believe Zia has not gone far enough to advance fundamentalist causes.

Will men like Khan help other fundamentalist scientists in Iran, Libya or the P.L.O.?

Will they export plans, designs, hardware, technology, or weapons-usable materials with or without General Zia's approval?

Will they train scientists who will help still more extremist nations or terrorist groups?

Will they make nuclear threats in subsequent regional wars?

And how responsible will General Zia's successor be with nuclear weapons—a successor who is likely to come from among the more extreme fundamentalists?

The answers to these questions could have grave ramifications for American interests. They could affect the very survival of Israel. It would only take three nuclear weapons in the hands of terrorists or a terrorist state to decimate Israel.

The United States has a compelling interest in combatting nuclear proliferation and preventing nuclear terrorism. A nuclear war launched regionally could swiftly engulf the superpowers and destroy us all in the ultimate holocaust.

There is much the democratic nations of the world should be doing.

We should be clamping down once and for all on the sale of sensitive technology and dual use hardware to unstable nations.

We should be halting aid to countries like Pakistan who are bent on developing nuclear weapons. American taxpayer dollars should not be subsidizing Pakistani nuclear weapons. And we should not be selling them F-16's—the world's most capable penetrating fighter-bomber.

We should be checking the growth of arsenals of radical states so eager to acquire the most sophisticated military technology.

And we should set our own houses in order. Here, in the U.S., this means we should live up to our obligations under the Non-proliferation Treaty to negotiate a halt to the superpower nuclear arms race.

For years, nuclear proliferation has been a life-or-death threat that many of us have talked about and warned about but none of us are doing enough to stop.

Now its happened again. Now still another nation, Pakistan, has joined the nuclear club.

This is an issue which warrants the highest attention of the leaders of the industrialised democracies.

It should have been on the agenda at the recent summit of NATO leaders.

To deal with this ultimate terrorist threat, I believe nuclear proliferation warrants a summit of its own.

Thus I call upon my government and those of our allies to join together on this issue and to think anew—and act—on the means to avert this most serious threat to our survival.

NUCLEAR PROLIFERATION AND U.S. NATIONAL SECURITY INTERESTS

Mr. CRANSTON. Mr. President, last week I addressed the Senate on the development of a nuclear weapons capability by Pakistan and the role of the People's Republic of China in this program. Unfortunately, a number of sections from this speech were not printed in full. I am therefore submitting for the RECORD today the full text of my remarks as prepared for delivery last week.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

NUCLEAR PROLIFERATION AND U.S. NATIONAL SECURITY INTERESTS

Nowhere in the world is war raging with fewer restraints and more serious threats to U.S. national security interests than in the Middle East and South Asia.

We are witnessing a continuing death struggle in the Persian Gulf between the two neighboring states of Iran and Iraq. Without regard to traditional rules of war, they are using every possible weapon against each other in what began as a minor territorial dispute.

We are seeing an interminable conflict in Lebanon, where the forces of terrorists and extremist factions have yet to be vanquished.

And we are witnessing vicious civil strife across religious divides in India, and elsewhere in the region.

In conflicts in this region, international treaties have been no bar to the use of chemical weapons, to the seizure of diplomatic personnel, to several attacks on nuclear installations, to assaults on religious sites, to the deployment of brigades of children as human "mine sweepers", and to numerous attacks on neutral commercial shipping.

It takes little imagination to consider the dangers posed to U.S. national security interests—and to the interests of our friends and allies in the region—if nuclear weapons were to play a role in these unrestrained wars. If nuclear weapons were in the hands of many of these combatants, there is every reason to believe that they would be used. Superpowers allied with one or another nation might be drawn directly into a regional conflict after the nuclear threshold was crossed. This is perhaps the most likely way that a general nuclear war could begin.

COURSE OF PAST U.S. POLICY

United States policymakers have long recognized the special danger of nuclear proliferation in this region.

Under the Ford Administration, concerted efforts were made to avert a nuclear arms race on the subcontinent. Under the Carter Administration, strong pressures were brought against India to reject a dedicated military nuclear program; strong sanctions were place on any U.S. assistance to Pakistan so long as it had a vigorous program to develop nuclear weapons; and significant progress was made with nuclear supplier nations to agree on export restraints.

A few related efforts continued under the Reagan Administration. For example, the Reagan Administration has had some success in discouraging other nuclear supplier nations from giving any legitimacy to the Pakistani "peaceful" nuclear energy program that is so clearly dedicated to producing nuclear weapons. Under U.S. pressure, no western reactor vendors have responded to Pakistani solicitation of bids for their first large nuclear energy generating reactor.

Nevertheless, the Reagan Administration has not demonstrated a firm commitment to combatting nuclear proliferation. Asked about the danger of proliferation in Pakistan and elsewhere, Ronald Reagan stated on January 31, 1980 in Jacksonville, Florida that "I just don't think it's any or our business" if they build nuclear weapons. Subsequently, his Administration brought little pressure to bear against such efforts. In fact, the administration has in effect subsidized the Pakistani nuclear weapons effort. Pakistani leader General Zia has received more than half of a $3.2 billion U.S. military and economic assistance program. Outside of our Camp David Treaty obligations, this is currently the largest direct U.S. assistance program anywhere in the world. The Reagan Administration stated that this money has been provided to give Pakistan a sense of security by enabling it to build-up its conventional military forces. The Administration hoped Pakistani leaders would then honor their pledges not to pursue a nuclear weapons program. But Pakistan has relentlessly pursued the nuclear path nonetheless.

On April 27, 1981, the eve of Congressional decision to give an unprecedented country-specific nonproliferation waiver for aid to Pakistan, I addressed the Senate. I warned that Congress was being kept in the dark about two facts generally known to experts and analysts: India and Pakistan were preparing nuclear tests sites and Pakistan was nearing completion of a pilot-scale reprocessing plant capable of extracting significant amounts of plutonium that would be usable for nuclear weapons. The Reagan Administration subsequently acknowledged these facts but went ahead with the Pakistan aid program.

Congress has since been given repeated assurances by Administration officials that this $3.2 billion aid program—along with the sale of 40 F-16 aircraft—has been serving the U.S. interest in checking Pakistan's nuclear weapons drive. Undersecretary of State James Buckley told the Senate Government Affairs Committee on June 24, 1981, "I was assured by the (Pakistani) ministers and by the President (Zia) himself that it was not the intention of the Pakistan Government to develop nuclear weapons." Then on September 16, 1981, Undersecretary Buckley declared "I fully accept the statement of President Zia that Pakistan has no intention of manufacturing nuclear warheads or acquiring nuclear weapons". And Reagan Administration officials publicly accepted General Zia's pledge of December 9, 1982 before the Foreign Policy Association in New York City when he said:

"I would like to state once again, and with all the emphasis at my command, that our ongoing nuclear program has an exclusively peaceful dimension and that Pakistan has neither the means nor indeed any desire to manufacture a nuclear device."

Such blanket assurances were in no way contradicted by subsequent Reagan Administration statements, including the statement of Secretary Shultz, made last July 4 in Islamabad, when he declared at a news conference:

"The United States Government is not opposing the development of nuclear power for peaceful uses in Pakistan. It was notable to me that President Zia went out of his way to assure me that that, and only that, was the objective of the government of Pakistan."

More recently, in seeking to convince the Senate Foreign Relations Committee not to adopt nuclear nonproliferation restrictions on continued aid to Pakistan Undersecretary of State for Security Assistance, William Schneider, assured the Committee on March 28, 1984:

"The President personally has been engaged in dealing with the follow-up with respect to our nuclear nonproliferation objectives with Pakistan and has had conversations directly with President Zia on this subject. I believe that the matter is being effectively attended to by those means, and hence the goals of (stopping countries from acquiring nuclear weapons) are focused on by that objective."

When pressed by Committee members on these statements, in an April 3, 1984 markup, Undersecretary Schneider reassured senators. "We have made substantial strides with respect to Pakistan's nuclear program", he asserted.

New information on Pakistani nuclear weapons effort

Great strides have not been made in the U.S. effort to stop the Pakistani nuclear weapons program.

I am today releasing substantial new evidence that Pakistan has acquired all the capability necessary to produce their own nuclear weapons.

I base this conclusion on four new facts; (1) Pakistan has operated and expanded its clandestine uranium enrichment facility at Kahuta; (2) Pakistan has operated its clandestine plutonium reprocessing facility at PINSTECH: (3) Pakistan has expanded its nuclear weapons design team at Wah and has stepped up imports of nuclear warhead components; and (4) Pakistan's KANUPP reactor has been subject to continuing chronic failures in its safeguard system, making plutonium diversion highly feasible.

This evidence has come to me on a nonclassified basis from a variety of government sources. I have confirmed it to my satisfaction with U.S. officials. None of this information has been volunteered to me in classified briefings by the Adminsitration. Inasmuch as this information does not pertain to any alleged U.S. covert operations, but is required for informed U.S. policymaking, I feel a responsibility to reveal it to Congress.

I have no evidence that Pakistan has actual nuclear bombs in hand, or that Pakistan has already produced a specific amount of weapons grade material. The Pakistanis may have done so—and simply decided to wait until 1986, after delivery of all the $3.2 billion in U.S. aid and the 40 F-16's, before they conduct a nuclear explosive test on their own soil. Many well-informed observers believe that Pakistan will not test until 1986. Others believe Pakistan may not need to test because of weapons design information and test data they can get from the People's Republic of China. As with India and Israel, we may never be able to say exactly when it was that Pakistan crossed the threshold to achieve a nuclear weapons capability, or exactly how many bombs they might have in hand at a given time. The point is that they now have what they need to produce their own nuclear weapons. Henceforth, United States security policies must be premised on the fact that Pakistan now has the designs, the hardware, the plants and the personnel capable of producing several nuclear weapons per year. According to my information, this capability will grow to where Pakistan could produce at least a dozen nuclear weapons during the next three of five years if their facilities function smoothly.

Pakistan also has the ability, should it so choose, to export the nuclear-trained technicians, the highly advanced nuclear technology and designs—and perhaps even nuclear weapons—to supportive colleagues in other nations. This export capability and the extent of Pakistan's nuclear weapons capability have far more profound implications than were presented by the Iraqi nuclear program before the Osirak reactor was bombed in 1981.

To assess the new information on the Pakistani program, it is useful to see how they now stand on the basis of five key criteria. These are as follows:

1. Intellectual Resources: Do they have the cadre of trained nuclear scientists, engineers and technicians and an industrial base?

2. Money: Do they have the financial resources necessary for the development of an extensive nuclear arsenal?

3. Production Capacity: Do they have the technology, hardware and operational plants for producing their own weapons-usable material using either (a) uranium enriched by elaborate technology or (b) unsafeguarded nuclear fuel, reactors and advanced spent fuel reprocessing technology for separating plutonium?

4. Design Team: Do they have a nuclear weapons design team capable of producing high confidence weapons and weapons tests for military use?

5. Delivery Capability: Do they have a high-confidence capability for delivering nuclear weapons?

There is substantial evidence that Pakistan has developed all of these capabilities including both uranium enrichment and plutonium recovery. Based on new information I have received, here is how the Pakistani nuclear program stands on the basis of these five key criteria:

1. Intellectual Resources: Pakistan has an extensive cadre of nuclear scientists, technicians, metallurgy experts and engineers. Pakistan has tenaciously accumulated all necessary components for their nuclear bomb building program. For a time, they bought parts on the open market from firms in the U.S., the U.K., France, Switzerland, Italy, Belgium, Sweden and West Germany. Subsequently, elaborate third-country drops have been devised for smuggling and transhipment of needed components from the

west. Highly classified designs and critical subcontractor lists were stolen from the URENCO enrichment plant in Holland. Parts recently intercepted by a belated U.S.-initiated export control effort were subsequently stolen from a customs warehouse in Europe. Exports of key inverter equipment for uranium enrichment were halted first by the British and more recently, by the Canadians.

But components needed for this part of the process are now being handtooled in a specially designed shop constructed at the site of the clandestine Kahuta enrichment facility. The majority of materials smuggled from the west continue to move through Turkey, principally from West German and French companies. But Pakistan already has a significant quantity of all components necessary for a small-scale nuclear weapons program; they are now just expanding their capabilities.

2. Money: Though a single "quick and dirty" nuclear bomb could be produced quite cheaply, Pakistan has spent hundreds of millions of dollars to develop an extensive nuclear capability since Pakistan's Zulfikar Ali Bhutto first promised that "we will eat grass or leaves . . . but we will get one of our own". The Libyans provided some early cash assistance. More recently the Saudis have taken over as significant financial contributors to Pakistan's nuclear effort. And since 1981, Pakistan has enjoyed the subsidy of the $3.2 billion aid program from the U.S.

3. Production Capacity: (a) Uranium Enrichment—Pakistan imported substantial quantities of uranium from Libya before developing its own uranium mining capability. With the assistance of West German companies, it now has its own uranium fuel fabrication facilities. Following designs which were stolen in Holland, the Pakistanis built a large centrifuge uranium enrichment plant at Kahuta, near Islamabad. By 1983, they had completed nearly 1000 units—enough to produce at least 15 kgs. of weapons-grade highly enriched uranium (HEU) a year. The Kahuta plant is estimated to have a current capacity of 2,000 to 3,000 swu (separative work units). This is enough capacity to produce 45 kgs. of HEU, of which 16 kilograms is deemed more than sufficient for fabricating one nuclear warhead. Pakistan has had numerous difficulties fully mastering the intricate centrifuge technology. These difficulties will doubtless continue. But those who are all too ready to be reassured that after ten years of relentless effort, Pakistan is still not able to build and operate a centrifuge enrichment facility, are mistaken. Pakistan is now enriching uranium and expanding its enrichment capacity. Both General Zia and the director of the Pakistani enrichment effort, A.Q. Khan, have acknowledged reports of successful production at Kahuta. In a February 9, 1984 interview with the Pakistani journal NAWA-I-WAQT, Khan was asked: "Can Pakistan make an atomic bomb?" He answered:

"You have me cornered. I do not know whether to say yes or no. Either way, I get caught. First of all, I must say that our atomic program is peaceful . . . The question is now one of our abilities. We have made major strides in this difficult field and we have a team of patriotic scientists and extremely brilliant engineers and local experts in the fields of metallurgy, electronics, mechanical engineers, etc. which is not found elsewhere. In brief, Pakistan has a proficient and patriotic team capable of performing the most difficult tasks. Forty years ago no one was familiar with the secrets of the atom bomb and education was not so widespread, but American scientists did the job. Today, 40 years later, we have ended their monopoly in this most difficult field of the enrichment of uranium in only 10 years. This job is undoubtedly not beyond our reach. India achieved this 10 years ago, although other countries definitely assisted it. We have the capacity to complete such a task. This is a political decision in which my colleagues and I have no concern except for the sake of the country's safety and security. Our honorable president has to make such a momentous decision and we were entrusted with this duty. We, my friends and I, will stake our lives but we will not disappoint the country and the nation, by the grace of God. In short, I wish to say that if India could accomplish such a feat 10 years ago, we are not so abnormal or mentally retarded that we cannot do this, and God willing, we will do it better as we have proved in the field of uranium enrichment."

Clandestine Pakistani purchases of the technology and hardware almost identical to that used in the Kahuta plant have been accelerated over the past twelve months and are being sent both to Kahuta and to a new underground site in Multan. The latter is nearby a large electric power source necessary for extensive uranium enrichment. The Pakistanis already have a significant stockpile of aluminum centrifuges—ideal for production of weapons-grade material, but of less utility for energy production. And they have stockpiles of baffle connectors to deal with centrifuge vibration, high vacuum valves, and gassification and solidification units. General Zia has permitted Khan to emerge as a national hero in recent Pakistan press interviews. And purchases for Kahuta expansion have accelerated. It is unlikely that either of these developments would have taken place if the Kahuta R&D project had not succeeded in producing weapons-usable uranium. Estimates are that these purchases are suitable for construction of a larger HEU plant with a 6,000 to 8,000 swu annual capacity or 90 to 120 kgs. of HEU (5 to 7 bombs' worth) a year. A recently declassified report, submitted this spring to the Director of the U.S. Defense Nuclear Agency, by the collaborative efforts of more than 90 government and academic experts, estimates Pakistan's maximum production potential as six bombs' worth of highly enriched uranium each year for the latter half of this decade. This estimate would give Pakistan an accrued total of thirty uranium bombs by 1990. (Pakistan's nuclear weapons production rate could be significantly higher if substantial amounts of spent fuel are diverted from Pakistan's KANUPP reactor for plutonium extraction in their PINSTECH facility. If the KANUPP reactor was operated smoothly year round, it could produce enough plutonium for as much as 10 weapons per year, though I believe substantial hurdles remain in the Pakistani reprocessing program which bar extraction of more than a fraction of this total for several years yet.)

(b) Pursuing both avenues to nuclear weapons, Pakistan has also pressed development of a reprocessing capability. 95% of the French plans for a reprocessing plant at Chasma were delivered before the French cancelled the contract on nonproliferation grounds. The Pakistanis are proceeding with work on a Chasma plant, completing civil engineering and building construction at the Chasma site and continuing purchases of needed components in Europe. With a steady supply of plutonium-bearing spent nuclear fuel, Chasma could separate plutonium sufficient for its own substantial nuclear arsenal. Clandestine technology purchases for Chasma have gone forward for more than nine years. But the Pakistanis have lacked a steady source of unsafeguarded spent reactor fuel. Their only power reactor, the Canadian-supplied KANUPP reactor, produces plutonium. But this spent fuel is supposed to be accounted for under the only operative Pakistani agreement with the International Atomic Energy Agency (IAEA). In 1981, IAEA officials expressed worries that possible diversions of plutonium bearing fuel from KANUPP may have taken place due to the combination of inadequate safeguards and the ominous development by Pakistan of a capability for fabricating their own uranium fuel not subject to IAEA accounting safeguards. In 1982, Pakistan ran cold tests on an indigenous pilot reprocessing facility, built along Chasma designs, called PINSTECH. Since these cold tests, well-informed observers believe that this facility has "gone hot" and has been in operation with radioactive material. This facility has a production capacity of about 15 kgs. of weapons-usable plutonium per year, or enough for at least one nuclear weapon. Some observers believe that the Pakistanis diverted spent fuel from the KANUPP reactor by mixing their own, unaccounted-for uranium fuel into the reactor and by-passing the faulty IAEA accounting system. These safeguards were, by the admission of the IAEA staff, easily defeatable between the fall of 1980 and the spring of 1983 because of faulty cameras and inadequate accounting procedures—as well as the development of the indigenous Pakistani fuel fabrication capability. Reassurances were subsequently given by IAEA and Reagan Administration officials that these serious deficiencies had been taken care of. But new information indicates that continued chronic failures of monitoring cameras and other suspicious "irregularities" at KANUPP have made routine diversions of Pakistani-produced fuel from KANUPP to a weapons program highly feasible to this day.

4. Design: The Pakistanis have been engaged in advanced nuclear warhead design work since at least 1980, having received design assistance from the People's Republic of China beginning in the late 1970's. Pakistan prepared a nuclear weapons test site in the Baluchistan mountains about 40 miles from the Afghan border in early 1981. These preparations were completed with the installation of extensive cable sensors and construction of a nearby test monitoring facility. This effort may have been a bluff, pressed by Zia in a cat-and-mouse game with the Indians, who were simultaneously digging large holes at their Pokohran test site amidst high security. Or it might have been a genuine preparaton with an actual, in-country nuclear test deferred until after Pakistan got all of its 40 F-16's and the U.S. $3.2 billion in 1986. But the mountain tunnel is still there and the prospective test site remains intact. A nuclear weapons design team ("the Wah group") was assembled and has operated alongside key components of the Pakistani armaments industry at Wah. It includes experts in high explosives, metallurgy and fast electronics. After the 1981 test site preparations, assertions were made by Administration advocates of the Pakistani aid program that this Pakistani weapons design team

had dispersed. That is not true. To the contrary, there is new evidence that this nuclear weapons design team has been expanded and has accelerated its efforts. Pakistan has stepped up clandestine imports of high speed electronics equipment and precision spherical cutting machinery for the nuclear weapons design group at Wah. These are essential components for fabricating nuclear warheads. They have no place whatsoever in a 'peaceful' nuclear energy program.

5. Delivery Capability: Pakistan has already received 12 F-16's from the United States. The F-16 is currently the world's most capable penetrating fighter-bomber. Pakistan is slated to receive another 28 in the next several years for a total of 40.

Each of the foregoing Pakistani efforts are essential building blocks for a nuclear arsenal production line. None are appropriate to any civil nuclear energy program that could possibly be developed by Pakistan in the next twenty years. The Pakistanis have only one small power reactor—which runs on natural uranium, not enriched fuel. They have no breeder reactor program, so have no 'legitimate' excuse for crash efforts to separate plutonium. Showy public efforts solicitating bids for Pakistan's first large power reactor to be built at Chasma received no takers.

The Pakistanis have been pursuing nuclear weapons relentlessly for ten years. They have now succeeded in attaining an indigenous capability to produce them.

Implications for U.S. security

This Pakistani nuclear weapons program has grave implications for U.S. national security interests. We stand on the brink of a full-fledged nuclear arms race amongst turbulent third world powers in the globe's most unstable regions.

1. The Pakistani nuclear weapons program increases the danger of the nuclear threshold being breached by a nuclear conflict in the third world—an initially 'regional' nuclear war between Pakistan and India that could bring in their respective patrons, the U.S.S.R. on one side, and the U.S. or the P.R.C. on the other.

2. It increases the likelihood of India's embarking on a dedicated nuclear military program. India is likely to respond to an overt Pakistani nuclear capability by building a large nuclear arsenal and possibly developing thermonuclear weapons.

3. It increases the danger that extremist forces may employ nuclear threats in a "holy war" against India, Israel, or some other nation.

4. It weakens America in the Third World; extensive U.S. financial support for a right-wing military dictator has undermined nonproliferation efforts and helped subsidize a Pakistani bomb.

5. It raises the prospect of a preemptive strike against Pakistan's nuclear facilities. Responsible sources have reported that serious consideration has been given to a strike against Pakistani nuclear facilities, which are heavily guarded (including deployments of French Crotale anti-aircraft missiles at Kahuta). Many Indians perceive this to be the only alternative to a major nuclear weapons program of their own.

6. Finally, it is extremely destabilizing. Along with other potential nuclear forces in the region, it could threaten the very survival of several countries. Quoting the study conducted for the Defense Nuclear Agency: "the small physical size or concentration of population in small areas and the importance of capital cities for national identity means that a minimal Small Nuclear Force (SNF) could threaten national survival, a fact that would make SNF appearance immensely destabilizing. Oil and other physical assets could also be destroyed more thoroughly and quickly by SNFs than by conventional forces."

Much has been made of the extent to which the Pakistani nuclear program has been supported and advanced as promising an "Islamic bomb." It is fair to ask whether it is in the Pakistanis' eye—or in the eyes of nervous Americans or Israelis or Hindus—that this nuclear program is so viewed.

One should be reluctant to brand people and characterize forces poorly understood in the west. But concerns about the use of the military potential of Pakistan's nuclear bomb in a "holy war" seem justified by the words of the program's architects. At some point, one has to take seriously the statements of Pakistan's leaders. Let me quote from General Zia: "China, India, the USSR and Israel possess the atomic arms. No Muslim country has any. If Pakistan had such a weapon, it would reinforce the power of the Muslim world." Or as Prime Minister Bhutto wrote in his memoirs: "We know that Israel and South Africa have full nuclear capability. The Christian, Jewish and Hindu civilization have this capability. The Communist powers also possess it. Only the Islamic civilization was without it, but that position was about to change" (with the advent of Bhutto's nuclear program).

Most to the point are recent statements by Dr. A.Q. Khan, whom the Pakistani journal NAWA-I-WAQT on March 16 of this year called "the world renowned and legendary-in-his-lifetime Dr. Khan."

In his startlingly frank interview with NAWA-I-WAQT published on February 10 of this year, the "father" of the Pakistani bomb stated:

"All the Western countries including Israel are not only Pakistan's enemies but also enemies of Islam. If some other Muslim country had accomplished the same thing (as Pakistan's breakthrough on uranium enrichment), the same venomous and false propaganda would have been conducted against it as well. The examples of Iraq and Libya are before you. Even though these countries are not capable of manufacturing an atomic bomb for a long time yet, western media sources are conducting a violent propaganda campaign against them. All this is part of the crusades which the Christians and Jews initiated against the Muslims 1000 years ago. They are afraid that if Pakistan makes obvious progress in this field that the whole Islamic world will stand to benefit."

Khan went on to charge that "the 'Islamic bomb' is a figment of the Zionist mind and this has been used full force by the anti-Islamic Western counties." He insisted that the only reason he was convicted of stealing sensitive nuclear design information by a Dutch court was that "all these charges and court cases were imposed at the insistence of Zionists and Western anti-Islam elements."

It is of concern to the United States that General Zia could use this program in coming months to assert leadership in the Moslem world and use his facilities in Pakistan as a magnet for training scientists from the several nations to which he is in debt (such as Saudi Arabia and Libya), or with whom he otherwise needs to curry favor, like his neighbor Iran. Despite Zia's radical program of Islamization in Pakistan—which includes judicial sentences of public flogging, stoning and amputation—General Zia is still pressed in Pakistan by extreme fundamentalist forces. General Zia has reason to fear the Ayatollah Khomeini's forces, as well as those forces in Pakistan who believe Zia has not gone far enough to advance fundamentalist causes. Will men like Khan help other fundamentalist scientists in Iran, Libya or the P.L.O.? Will they export plans, designs, hardware, technology, or weapons-usable materials with or without General Zia's approval? Will they train scientists who will help still more extremist nations or terrorist groups? Will they make nuclear threats in subsequent regional wars? And how responsible will General Zia's successor be with nuclear weapons—a successor who is likely to come from among the more extreme fundamentalists? The answers could have grave ramifications for American interests in the Middle East and South Asia.

Intelligence withheld or ignored

Before I make several policy recommendations, I want to say a word about informed policy-making. There is a systematic Reagan Administration pattern of ignoring—or withholding—the bad news on nonproliferation.

The new evidence on Pakistan leads one to question whether there has been a serious intelligence failure or a deliberate misrepresentation of the facts by the Reagan Administration.

Similarly, the Administration has repeatedly dodged Congressional inquiries on the appropriateness of the pending nuclear agreement with China in light of China's assistance to Pakistan's nuclear weapons program. Did the President know of this assistance when he hastily concluded the U.S.-P.R.C. nuclear agreement? If he did, why has he withheld official confirmation of these facts to Congress? If he did not, why was he operating in ignorance when the April, 1984, agreement was concluded in Beijing? Whichever is the case, the result of this sloggy diplomacy may seriously set back both U.S.-China relations and nonproliferation efforts. Already, the U.S.-China nuclear agreement, once hailed as the major diplomatic breakthrough of this Administration has been sidetracked and withheld from Congress.

Mr. President, Administration officials are now confirming to the press what they have refused to confirm to Congress—that is the fact that China has played an important role in Pakistan's development of a nuclear weapons capability. The Administration has refused repeated and specific requests from many of us in Congress for more information on this key issue. They have begrudgingly come up for a few one-on-one briefings of some Hill leaders—and then still insisted in these closed meetings that they can't talk about China because it is too sensitive.

It is now clear that this break-through is a disaster. This "China card" may turn out to be a joker. The Administration is backing away. They had an agreement with inadequate verification procedures which did not protect American security interests. And they initialed a document that may be in violation of provisions of U.S. law governing the re-export of U.S.-supplied sensitive nuclear materials. An Administration obsessed with verification has failed to provide for adequate verification of a major nuclear accord with a communist power.

I understand that, as usual, the White House is trying to blame this all on Congress, saying the China agreement is dead for now because of Congressional opposition. That is nonsense. I know of no one who has yet taken a position of opposition to this agreement. But we do want to see an official copy of the still-secret text and be reassured that U.S. security and nonproliferation interests are protected. And we want more information about China's assistance to Pakistan for the record.

What type of help has China given for Pakistan's clandestine uranium enrichment facility at Kahuta? What type of nuclear weapons design information has China provided to Pakistan? What of the persistent unconfirmed reports that China tested a weapon for Pakistan in the spring of 1983 and has provided Pakistan with test data? Has Pakistan imported plutonium-bearing spent fuel from China to reprocess in their PINSTECH facility? There are many questions that this Administration needs to provide answers to before Congress can make a better-informed judgment on the wisdom of nuclear trade with the PRC. I will have more to say on this subject in the days ahead.

I have carefully monitored developments in the Pakistani nuclear program since well before the beginnings of the U.S. aid program in 1981. Close Congressional scrutiny of this program has been acutely needed under the Reagan Administration. It has become clear that certain Reagan Administration State Department officials have a vested interest in obscuring, withholding or downright misrepresenting the facts about Pakistan's program. I have repeatedly expressed my objection to this practice; it contravenes the statutory obligation of the Executive Branch to keep Congress "fully and currently informed" on nuclear proliferation developments relevant to national security policymaking.

Reagan Administration officials have not been forthcoming about repeated I.A.E.A. safeguards deficiencies in Pakistan. They belittled Iraq's growing nuclear capabilities. They kept silent on the P.R.C.'s assistance to Pakistan's nuclear weapons program. And Administration officials have withheld new information on Pakistan's continuing nuclear weapons production effort.

I have thus found it necessary to share with my colleagues information I have received independently, information which has been generally known among informed observers, but which has not been officially conveyed to Congress. This has been a consequence of the unwise and unacceptable politicization of intelligence on these issues undertaken by the Reagan administration—and of their failure to give us timely and complete classified briefings.

New policy initiatives

The United States has an overriding national security interest in checking the growth of Pakistan's nuclear weapons capability and averting a move by Pakistan, India and other regional powers to the announced deployment of nuclear weapons. We must take every practical initiative to discourage the continuing Pakistani nuclear weapons drive and to avert any possible use of nuclear weapons by Pakistan, or any other nation. It is essential for Congress and the Reagan Administration to put nuclear nonproliferation again at the very top of our list of priorities. We must do more with our allies; we must push harder on the I.A.E.A.; we must press harder on Pakistan. And we must get serious about curbing the bloated U.S. and Soviet aresenals—which make those of emerging nuclear weapons states pale in comparison.

The American people must no longer subsidise Pakistan's nuclear weapons development. Therefore, when the Senate takes up the foreign aid bill in the days ahead, I will move to bar all further military assistance to Pakistan until all of that nation's nuclear facilities are placed under international inspection and until President Reagan can certify that the U.S. has absolutely reliable assurances that Pakistan has halted its nuclear weapons drive. American tax dollars should not be subsidizing nuclear weapons development by a right-wing military dictator. The alleged justification for this $300 million a year military assistance program—to make General Zia feel militarily secure so he wouldn't pursue nuclear weapons—ceased to exist long ago. To continue this expenditure is like paying ransom money after the kidnap victim has been found dead.

Providing General Zia the best penetrating fighter-bomber for delivering nuclear weapons is simply not in our national security interest. Therefore, I will move at the appropriate time to bar any further transfer of U.S.-built F-16's to Pakistan until all of that nation's nuclear facilities are placed under international inspection and until President Reagan can certify that the U.S. has absolutely reliable assurances that Pakistan has halted its nuclear weapons drive.

I call upon the Reagan Administration to work with Congress to make these sanctions meaningful so that they might further U.S. policy interests.

I call upon the Reagan Administration also to reinvigorate its efforts to work with NATO allies and nuclear exporters to stop once and for all the flow of any more dual-use items that are being used in Pakistan's nuclear weapons program. Despite bipartisan efforts under the Ford and Carter Administrations, these sales continue. The Reagan Administration has an obligation to defend our security interests by pressing other nations to halt these exports.

I call upon the Reagan Administration to address more effectively our obligation under Article VI of the NPT "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date." The Administration's refusal to pursue a Comprehensive Nuclear Test Ban (CTB) has been a major setback to nonproliferation efforts and is inconsistent with our Article VI obligations. The failure to achieve any progress on a START, INF, or ASAT treaty has also weakened the entire nuclear nonproliferation effort.

And I call upon the Reagan Administration to address the grave threat nuclear proliferation poses to the security of our people. For nearly four years, Reagan Administration policymakers have failed to give this issue the seriousness it deserves. Reagan Administration officials have failed to press the issue with allies in Europe and to discuss it at annual summit meetings with them. Reagan Administration officials have failed to heed the warnings of allies most threatened by proliferation developments. Reagan Administration officials have failed to keep the Congress fully and currently informed on proliferation developments relevant to national policymaking. Reagan Administration officials have shunted aside evidence of serious threats to our interests. And Reagan Administration officials have refused to accept the failure of lavish U.S. assistance to stop Pakistan's acquisition of nuclear weapons capability.

Every step the Reagan Administration can now take to reduce the dangers of nuclear proliferation will warrant Congressional support. The time for getting on with this essential task has long passed.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Gorton). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. BAKER. Mr. President, there are no more takers for morning business, I am told. We cannot get on the conference report until about 1:30 p.m.

I ask unanimous consent that the Senate now stand in recess until the hour of 1:30 p.m. today.

There being no objection, the Senate, at 12:24 p.m., recessed until 1:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. Rudman].

URGENT SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1984—CONFERENCE REPORT

Mr. HATFIELD. Mr. President, under the previous order, I submit a report of the committee of conference on House Joint Resolution 492 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill joint resolution (H.J. Res. 492) making an urgent supplemental appropriation for the fiscal year ending September 30, 1984, for the Department of Agriculture, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record of May 17, 1984.)

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, at long last, we have before us the conference agreement on House Joint Resolution 492. This measure was originated by the House in February and was to provide an urgently needed supplemental appropriation for emergency food relief in Africa. We received the joint resolution on March 7. Despite my request that the measure be held at the desk and passed expeditiously, it was referred to committee and amended. It was further amended during the 9 days that the measure was debated on the Senate floor. Finally on May 17, the committee of conference reported an agreement on most of the amendments of the Senate. That report was passed by the House on May 24. Senate action has been awaited since.

The delays experienced in the consideration of this measure have made immediate action all the more critical. The original purpose of House Joint Resolution 492 was to appropriate $150 million for food aid to African nations suffering from a devastating drought. Although $90 million of this amount was provided in a measure enacted earlier this year, the balance of $60 million in this joint resolution is still urgently needed to more adequately address the widespread hunger and starvation confronting these countries.

In addition to these funds, the Senate added several supplemental items which must be enacted now to prevent disruptions or terminations of important domestic programs. Among these items are $300 million for the Women, Infants and Children [WIC] Food Program and $545 million for the Child Nutrition Programs. The Government is already out of funds for several meal service activities, including the school lunch, school breakfast, and child care programs. Furthermore, unless we enact appropriations for the WIC program by July 1, States will be forced to curtail or terminate this program.

The conference agreement also includes an appropriation of $100 million for the Summer Youth Employment Program. Because of a change in the allocation process and a reduction in overall funding, many urban areas are confronted with drastic cuts in the summer jobs program at a time when youth unemployment levels are the highest in history. The additional funding contained in this measure will restore most of these reductions, but these funds must be made available now if they are to be used this summer.

Among the other items included in the conference agreement are $62 million for additional assistance to El Salvador, $7 million for displaced persons of that nation, funding to maintain the Civil Aeronautics Board, and $25 million to acquire aircraft for drug interdiction.

Mr. President, the measure before us contains a number of very important and urgently needed appropriations. It reflects a generally good compromise on the 33 separate amendments of the Senate, some of which were very difficult to resolve. I urge the adoption of the conference report.

Mr. President, at this time, let me yield to the ranking member of the committee, Senator STENNIS, for any opening remarks the Senator may wish to offer. Then we will proceed with the amendments in disagreement, and particularly the ones which I think are noncontroversial.

Mr. STENNIS. Mr. President, may we have order in the Chamber? I have not been able to hear the distinguished chairman.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the Senator for yielding to me. I will just announce that I am ready for us to proceed. Because of the noise in the Chamber, I was unable to hear all that the Senator covered in his remarks. In a general way, I know the substance of his remarks, and I believe I am in full accord with what he said. We can proceed now under his leadership.

Mr. HATFIELD. Mr. President, I thank the Senator from Mississippi.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I thank my friend from Oregon and the majority leader for the assurance they have given regarding amendment No. 14 relative to aid to the Contras in Nicaragua.

The fact that they indicated they intended to move to recede to the House position assumes quick passage with broad support of this urgent supplemental.

It makes sense in terms of foreign policy and in terms of the many needed items in this bill, such as summer youth employment, rural housing insurance, food relief for Africa, and child nutrition in this country.

Mr. GARN. Mr. President, the primary focus of interest in House Joint Resolution 492 has been the El Salvador aid amendments. The underlying bill however, is a supplemental agriculture appropriation for fiscal year 1984. It is the agricultural part of the bill I would like to address at this time.

House Joint Resolution 492 now contains language changing the very low income targetting provision for homeownership loans passed by Congress last November. The housing bill required that 40 percent of subsidized homeownership loans be made to very low-income families.

Farmers Home chose to administer that requirement in a way that severely restricted program use. Senator COCHRAN had a provision in the Senate passed version of House Joint Resolution 492 to free up the funds by converting 40 percent of loans to a set aside of 40 percent of funds for very low income home buyers. This action would have released the remainder of funds for immediate use.

Unfortunately the Conference report contains the House provision reducing the set aside for vey low income families to 30 percent of funds for fiscal year 1984. I also hear that the fiscal year 1985 appropriations bill contains this reduction. While I am willing to accept this provision for this year as a transition, I strongly oppose any change to the targetting for fiscal year 1985.

The Banking Committee is preparing legislation along the lines of Senator COCHRAN's original amendment that will prevent Farmers Home from applying its restrictions in fiscal year 1985. This bill will reaffirm the commitment to targeting 40 percent of loan funds to very poor families. The House has already passed the Rural Housing Assistance Act of 1984 which has a different approach to the problem but it, too, reaffirms 40 percent targeting for very poor families.

A topic of confusion has been the definition of very low income families and what income limits to apply. After years of confusion, the November housing bill required Farmers Home to use definitions consistent with the other housing subsidy programs. The interesting result has been to raise the income limits for a family of four over the old Farmers Home limits in 2,696 counties, that is 87 percent of all counties.

The HUD income limits are adjusted on a regular basis using the latest census data. The latest limits were published on May 16, 1984. These county-by-county income ceilings are adjusted upward for very poor counties in order to prevent these areas from being cut out of all housing subsidy programs. Likewise, HUD lowers the effect on Farmers Home of tilting program use to the poorer, more rural areas.

I want to emphasize at this point that the set aside of 40 percent of funds for very low-income families is realistic and achievable. A GAO analysis of 1983 Farmers Home Loans shows that 28 percent of loans were to very poor families according to the new consistent definition. This was achieved without any special program focus.

An unfortunate fact is that the average home built under this program is more expensive than the modest basic home that is affordable even with a 1-percent interest loan. The Banking

Committee is working with Farmers Home to promote lower cost housing so that more poor families can be served. There were specific provisions in the November housing bill to encourage lower cost housing. Unfortunately, these provisions have not yet been implemented by Farmers Home.

Indeed, the most notable action taken by FMHA this year has been to request authority to transfer funds out of housing into another program. Senator HUMPHREY and I have written to Mr. Shuman asking him to reaffirm the commitment of Farmers Home to improving housing in rural areas by withdrawing the request.

I am confident that my colleagues support our efforts to make the Farmers Home Loan Program more effective for very poor families. I want to express my opposition to any reductions of the targeting requirement in fiscal year 1985.

HOUSING ISSUE

Mr. COCHRAN. Mr. President, as you may recall, during original Senate consideration of House Joint Resolution 492, I offered an amendment dealing with the Farmers Home Administration section 502 housing program. The purpose of my amendment was to provide a mechanism by which Farmers Home could obligate funds for low-income housing applicants without waiting until enough very low income applications had been approved to meet the 40-percent requirement as provided for in the rural housing amendments approved last November.

The effect of this 40-percent requirement, and the States' inability to meet this requirement, has been a reduced level of obligation of the housing funds appropriated for this fiscal year. This amendment would allow those funds to be obligated at the full level of the appropriation.

My amendment divided the housing money into two pots—60 percent for low income loans and 40 percent for very low income. This correlates to the authorizing legislation which called for 40 percent of the housing loans to go to very low income borrowers. As of March 31, only 28 percent of the housing funds had been obligated for very low income loans. For this reason, the conferees agreed to provide 30 percent of the funds for very low income and 70 percent for low income. Another reason for using 30 percent rather than 40 percent is that the authorization called for 40 percent nationally, but not less than 30 percent in each State to go to very low income borrowers. Farmers Home regulations do not allow any State to drop below 40 percent. For many States, the 40-percent rate is not feasible.

This provision applies only to the remainder of fiscal year 1984. I understand that the authorizing committee is in the process of drafting technical legislation to deal with this problem in future years. I am hopeful that this legislation will be considered expeditiously.

Mr. HUDDLESTON. Mr. President, I am very pleased that with the $21 million included in this bill we will now be able to proceed with implementation of critically needed nonstructural components of the section 202 flood prevention program.

I further understand that these funds will provide for a balanced implementation of flood plain measures throughout the program area and, in particular, with regard to the portion of these funds to be used in Kentucky, they would be distributed between the Big Sandy and Upper Cumberland Basins. Is this your understanding?

Mr. HATFIELD. Yes; that is correct.

Mr. COCHRAN. Mr. President, the conference report now before the Senate contains several items falling under the jurisdiction of the Agriculture, Rural Development, and Related Agencies Subcommittee. The joint explanatory statement describes the conference agreement on these items; therefore, only a brief description is necessary at this point.

Mr. President, several programs for which funds are provided in this bill have reached a critical point. Funds for some accounts have been completely depleted, while another program is expected to run out of money next month.

The supplemental appropriation for child nutrition programs will provide necessary additional funding for the school lunch, school breakfast, summer food care, and child care food programs. As of June 15, 1984, there were no funds available to reimburse the States for the cost of any of these programs.

Funds for the Women, Infants, and Children [WIC] Program are due to expire in mid-July. Unless we act before the recess, many States will completely shut down the program rather than absorb the cost and wait reimbursement. This will cause the 3 million participants, who are already at nutritional risk, to go without the nutritional foods they need and can obtain through this program.

These are the most critical items in this bill, although the other items which the conferees agreed to are also urgent in nature: Expansion of Commodity Credit Corporation guaranteed export loans; release of Farmers Home Administration housing funds for low-income borrowers; and the original single item in this bill, the additional Public Law 480 Emergency Aid for Africa.

The critical situation which exists in these programs makes it essential that we take action before the recess. I urge expedient action on this conference agreement.

A more detailed account of those items dealing with the agriculture, rural development, and related agencies appropriations bill follows:

The conferees agreed to include $60 million for title II of Public Law 480 for Emergency Food Assistance to Africa. Earlier this year, $90 million was appropriated in House Joint Resolution 493 (Public Law 98-248). The joint explanatory statement contains language which earmarks $5 million of available Public Law 480 title II funds for the Philippines and which provides that section 416 surplus agricultural commodities should be made available to help feed the Guatemalan refugees in Mexico on an expedited basis.

The House conferees accepted the Senate amendments which provide an additional $545,544,000 for the child nutrition programs and an additional $300 million for the feeding program for women, infants, and children [WIC].

The conference agreement also provides that 70 percent of the rural housing funds made available in fiscal year 1984 shall be made available for low-income borrowers and 30 percent for very low-income borrowers. Last November, the Congress passed legislation which required the Farmers Home Administration [FmHA] to provide 40 percent to persons or families with very low income and 60 percent to those with low incomes. In implementing the law, however, Farmers Home refused to distribute the low income until the 40-percent ratio was met. This should allow all States ample opportunity to process loans and obligate funds at their normal levels.

A final item in the conference agreement provides that the Commodity Credit Corporation [CCC] shall guarantee not less than $5 billion in short-term credit loans for the purposes of expanding sales of U.S. agricultural commodities.

Mr. President, two other items under the subcommittee's jurisdiction—authority for the Federal Crop Insurance Corporation to borrow $50 million from the Secretary of the Treasury and $175 million for titles I and III of Public Law 480—were deferred until the general supplemental appropriations bill.

Mr. President, I support this conference agreement.

URGENT SUPPLEMENTAL FOR AGRICULTURE

Mr. DOLE. Mr. President, I rise in support of this conference report on the urgent supplemental for agriculture, because it contains much needed funding for various child nutrition programs, as well as Public Law 480, the Food for Peace Program.

CHILD NUTRITION FUNDS

As chairman of the Subcommittee on Nutrition, the Senator from Kansas is very concerned about the current funding situation for the Special Supplemental Food Program for

Women, Infants, and Children, usually referred to as WIC. As it now stands, this program is only funded through July 10, and the Congress is scheduled to go into the July recess at the end of next week. An additional $300 million is needed to provide funding through the end of this fiscal year, in order to maintain the current caseload of 2.96 million women, infants, and children.

In addition, this supplemental contains $545 million for other child nutrition programs, including the School Lunch and Breakfast Programs. This money is necessary to cover the annual shortfall.

PUBLIC LAW 480 FUNDS

At times, this urgent supplemental has been called the Public Law 480 supplemental, because it contains the balance of the total $150 million in funds for the Food for Peace Program; $90 million has already been provided to relieve the crisis hunger situation in Africa, which has occurred as a result of the severe drought conditions there. This urgent supplemental contains the remaining $60 million in the President's request. World hunger remains a pressing concern for the wealthy food-producing nations who try to respond to the best of their ability in emergency situations, like what we have now in Africa. With the passage of this additional funding, the United States will be able to provide the entire $150 million that we committed for relief of this hunger emergency.

URGENT NEED FOR WIC FUNDING

Mr. President, because we are getting closer to the wire for WIC Program funding, the situation is most urgent. This program deals with low-income pregnant women, infants, and children, who are certified to be at nutritional risk. If the funds are not put out there for the States, the States will be forced to cut back their caseloads, and nobody in Congress wants this to happen.

WIC'S GREAT TRACK RECORD

Perhaps more than any other Federal nutrition program, WIC has a strong performance record, as well as strong bipartisan support in both Houses of Congress. WIC has earned this high regard, because it is free from the fraud, waste, and abuse that continues to mar the image of the Food Stamp Program, for example.

WIC is a true nutrition program whose benefits are tailored to meet the special nutrition needs of the recipients it serves. Evaluation studies indicate the WIC Program has been cost effective in both health and dollar terms. A major study at the Harvard School of Public Health found that each $1 spent in the prenatal component of WIC saves $3 in hospitalization costs due to the reduced number of low birthweight infants requiring expensive neonatal care.

Members on both sides of the aisle are well aware of the tremendous track record this program has maintained. It speaks very highly of WIC, that, at a time when other Federal nutrition programs were undergoing significant budget reductions, the WIC Program was allowed to expand. The number of WIC Program participants has grown from 2.1 million in 1981 to about 3 million in 1983. Back in 1981, the Federal Government invested about $800 million in WIC, and we are now spending about $1.4 billion on this very worthwhile program.

CONCLUDING REMARKS

Mr. President, I would like to thank the distinguished chairman and ranking minority members of the Appropriations Committee and Agriculture Appropriations Subcommittee for being sensitive to the urgent funding situation facing the WIC Program, and doing everything possible to provide the necessary funding before the Congress adjourns for the July recess. I would also like to commend the majority leader for his expeditious handling of the situation.

For a while, the funding status for WIC was beginning to remind me of the process we used to go through with Food Stamp Program supplementals. It is the hope of the Senator from Kansas that this additional WIC funding will be in place by the time it is needed on July 10.

Mr. HATFIELD. Mr. President, I have a conference report at the desk on House Joint Resolution 492. I urge adoption of the conference report. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the conference report. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from South Dakota [Mr. ABDNOR], the Senator from Mississippi [Mr. COCHRAN], the Senator from Florida [Mrs. HAWKINS], the Senator from Pennsylvania [Mr. HEINZ], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Iowa [Mr. JEPSEN], the Senator from Nevada [Mr. LAXALT], the Senator from Illinois [Mr. PERCY], the Senator from South Dakota [Mr. PRESSLER], the Senator from Alaska [Mr. STEVENS], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ] would vote "yea."

Mr. CRANSTON. I announce that the Senator from Missouri [Mr. EAGLETON], the Senator from Colorado [Mr. HART], the Senator from Alabama [Mr. HEFLIN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Vermont [Mr. LEAHY], the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. PRYOR], and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "yea."

The PRESIDING OFFICER (Mr. KASTEN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 79, nays 2, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—79

Andrews
Armstrong
Baker
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
East
Evans
Exon
Ford
Garn
Glenn
Goldwater
Gorton
Grassley
Hatch
Hatfield
Hecht
Helms
Hollings
Huddleston
Inouye
Johnston
Kassebaum
Kasten
Lautenberg
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Quayle
Randolph
Riegle
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stafford
Stennis
Symms
Thurmond
Tower
Trible
Wallop
Warner
Wilson
Zorinsky

NAYS—2

Baucus
Proxmire

NOT VOTING—19

Abdnor
Cochran
Eagleton
Hart
Hawkins
Heflin
Heinz
Humphrey
Jepsen
Kennedy
Laxalt
Leahy
Pell
Percy
Pressler
Pryor
Stevens
Tsongas
Weicker

So the conference report was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Mr. HATFIELD. Mr. President, I should like to explain the parliamentary situation we are in at the moment.

We have now adopted a conference report on the urgent supplemental. We have eight amendments in disagreement with the House that we will have to take up one by one. I believe that only one of them represents a controversy that has to do with Nicaragua.

At an appropriate time, I plan to move, as the manager of the bill, to rescind the Senate position on that issue, which would excise the whole Nicaraguan issue from the bill.

The only other controversy I know of is not a controversy, but an amendment that will be offered by the Senator from Montana relating to language in the bill dealing with commodity support aid which he wishes to change. There will be reluctance on the part of the managers of the bill to accept the change, primarily on the basis that we want to put this bill through as expeditiously as possible; and we have had so much delay in it already that there are many things in this bill that are now reaching a critical stage—the WIC Program, the Child Nutrition Program, the Summer Youth Program, and many others.

If we can hold this bill to the outline I have just given, it can be on the President's desk in very short order. That does not in any way address the merits of the case the Senator from Montana will offer in his amendment. It merely explains the procedure we are hoping to follow.

After we dispose of the amendment that will be offered by the Senator from Montana, it may then be possible to set this whole bill aside temporarily for the consideration of the State-Justice-Commerce appropriations bill and then come back and finish this bill at a later hour this afternoon.

I am told by the leadership that we plan on finishing both of these bills today, and I think we can do it rather expeditiously.

I merely wanted to outline that situation in the Senate now.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HATFIELD. I yield to the Senator from Montana.

Mr. MELCHER. I thank the chairman for yielding.

Mr. HATFIELD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Oregon.

Mr. HATFIELD. I have yielded to the Senator from Montana, I believe, for a question. I am happy to yield the floor.

Mr. MELCHER. No.

I just want the chairman to respond if he would. I thank him for yielding.

The procedure on the conference report on the urgent supplemental will be one, since it is a House bill, to return it to the House, and under their procedures they will vote then on concurrence with the actions taken by the Senate. Is that correct?

Mr. HATFIELD. No. If the Senate is able to keep this clean, in effect, of changes, then it will be sort of a pro forma action taken under the precedent of 1944.

If the Senate then changes this bill, that is, if we add new language, then it has to be reconsidered by the House of Representatives. It opens then the bill up for all kinds of other actions the House of Representatives may see fit to take.

Mr. MELCHER. Mr. President, if the chairman will yield for a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MELCHER. Does the Chair explain the parliamentary procedures of the House of Representatives?

The PRESIDING OFFICER. No.

Mr. MELCHER. Then, if the chairman will yield further, I might state as a former House Member and one who has just recently checked on the general procedures in the House of Representatives, when this bill is returned to the House of Representatives without Nicaraguan aid or other actions we might take here, the usual procedure of the House will be to concur in the bill and probably take a voice vote.

Mr. HATFIELD. Let me explain it this way then: When I move to recede from the original Senate amendment dealing with Nicaragua, that totally excises the issue from the whole consideration. So, consequently, there is no new matter in issue.

If we vote to amend one of these matters and incorporate that as a Senate action and send that back to the House of Representatives, then that is a point of issue that has to be determined by the House of Representatives as to whether to incorporate it in the joint resolution.

Now they may decide to formalize the approval of the Senate excising the Nicaraguan issue. That is still within their prerogative. But they are required to deal with an amendment to the substance of an amendment in disagreement which I believe the Senator from Montana is going to attempt to do. That clearly requires further substantive House action on the action of the Senate.

That is my understanding, I say to the Senator from Montana. I am not an expert on House procedure, but I am told that that is the procedure the House of Representatives will have to follow.

I am also further informed that the chairman of the House Appropriations Committee, the Congressman from Mississippi [Mr. WHITTEN], in all probability will oppose the change offered by the Senator from Montana if it is incorporated in an amendment in disagreement. Therefore, that almost assures House action from both the parliamentary procedure angle and from the policy question as well.

Mr. BUMPERS. Mr. President, will the Senator yield for another question?

Mr. HATFIELD. I am happy to yield.

Mr. BUMPERS. How many amendments are there in disagreement on this bill?

Mr. HATFIELD. There are eight.

Mr. BUMPERS. Let me see if I can say just for my own edification and have the Senator either agree or disagree with it. We can either recede on all eight points, in which case the bill is then passed, is that correct?

Mr. HATFIELD. The Senator is correct, concurrence with the House amendments will clear the measure for White House action.

Mr. BUMPERS. We can also amend any one of the eight amendments in disagreement, is that correct?

Mr. HATFIELD. The Senator is correct.

Mr. BUMPERS. In which case it has to go back to the House of Representatives and the whole thing is opened up again; is that correct?

Mr. HATFIELD. The Senator is correct.

Mr. BUMPERS. Is the bill amendable in any other way except on the amendment in disagreement?

Mr. HATFIELD. No.

Earlier on I suggested we take out the Nicaraguan one for separate consideration and one other for the amendable vehicle and adopt the others en bloc. There was some question raised at that point whether that would receive a unanimous-consent agreement.

So I was seeking to protect the rights of Senators who wanted to amend this in some way or another.

But the situation is as the Senator from Arkansas has stated it. If we made one change in this particular substantive issue on any one of these amendments it goes back to the House of Representatives for reconsideration.

Now, again, I emphasize if we remove any issue such as the Nicaraguan one on the motion that I will make at that time to recede from the Senate original amendment, which then excises the entire issue from the measure. There is no issue at hand because the House action was also to delete funds, as the Senator knows.

Mr. BUMPERS. Does the Senator from Montana propose suggesting an amendment to the Nicaraguan aid?

Mr. HATFIELD. No. The Senator from Montana is proposing to amend amendment No. 5, which is the first one, and the Chair lays before the Senate these amendments in the order in which they appear in the bill unless by unanimous consent others are superseded.

No. 5 provides up to $90 million of Commodity Credit Corporation agricultural commodities may be sold for African food relief. That is the first amendment.

Otherwise, if we approved that amendment as the House has agreed to it, that removes that as an issue. If, however, it is amended by the Senator from Montana, then it forces the whole issue to go back to the House of Representatives.

Mr. BUMPERS. I thank the Senator.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 5

Mr. HATFIELD. Mr. President, I ask the Chair to lay before the Senate the amendment which will be the vehicle for the Senator from Montana to amend.

The PRESIDING OFFICER. The clerk will state the first amendment in disagreement.

The assistant legislative clerk read as follows:

> *Resolved*, That the House recede from its disagreeement to the amendment of the Senate numbered 5 to the aforesaid resolution, and concur therein with an amendment as follows:
>
> Strike out the matter stricken by said amendment, and insert: through March 31, 1985; and in addition not to exceed $90,000,000, shall be available through September 30, 1985, from Commodity Credit Corporation inventory for sale on a competitive bid basis or barter to the African countries requiring emergency food assistance, or any country for use in assisting in emergency food assistance to Africa. In the event Commodity Credit Corporation stocks are not available, the Corporation may purchase commodities to meet emergency requirements.

Mr. MELCHER. Mr. President, what I am going to propose is a correction of what I assume were good faith mistakes in understanding what the Senate had included in this bill when it acted on it several weeks ago. We passed here a sense-of-Congress resolution, and I will state it:

> It is the sense of Congress that in cooperation with the Government of Mexico, the newly-enacted authority under section 416 of the Agricultural Act dealing with U.S. surplus wheat and dairy products shall be used on an expedited basis to make these commodities available to help feed the Guatemalan refugees in Mexico.

Mr. President, that is the sum and substance of the sense-of-Congress amendment that was adopted. But, when it got into conference, the House of Representatives believing that they were accomplishing the same purposes adopted language in this conference report.

And I will read that in its entirety. It is very short.

> Amendment No. 36: Deletes Senate language expressing the sense of the Congress that in cooperation with the Government of Mexico surplus wheat and dairy products shall be used on an expedited basis to make commodities available to help feed Guatemalan refugees in Mexico. The conferees have agreed that such assistance should be provided to Guatemalan refugees and will expect that surplus agricultural commodities will be made available for such humanitarian efforts.

Mr. President, I do not have any problem with the general tone of the report language except it left out the key parts of the sense of Congress amendment dealing with this matter. Those key parts are this: Section 416 of the Agricultural Act is mentioned in the sense of the Congress amendment but not in the report language and section 416 of the Agricultural Act deals with dairy products and, since we amended this last March and April, also wheat. So it deals specifically with those two commodities and only with those two commodities. And this is important and significant in that those are the commodities that we have in abundant surplus, and, therefore, are available at all times.

Second, the report language dropped the phrase "expedited basic," and that was in there very specifically to encourage and to require both the Department of Agriculture and the Department of State, through the Agency for International Development, to finalize the regulations dealing with section 416. Without those regulations we find it very cumbersome for another country or for a private voluntary organization to apply for these commodities and get their application approved.

Now, these are significant problems and they are problems that have been dealt with by Congress in cooperation with the administration because the amendments that we adopted for section 416 were the same amendments that the administration approves of. So we are working in concert, trying to clear up the redtape that gets involved with food aid. We are at the point right now where the regulations need to be finalized and the language of my amendment is a method of just demonstrating Congress' intent that this be done so rapidly.

Now there is a third reason why the language that was adopted by the Senate is imperative, and that is this: It has been over 20 years since there has been any application from the Government of Mexico for food aid under title II of Public Law 480—Food for Peace from the United States. They have not applied for title II food aid of Public Law 480 during this past generation and indeed it has been their policy to believe that it was sort of a charity. Section 416, however, is not viewed that way by the Mexican Government and we have been working with them in adopting amendments to section 416 to get an acceptable method for them to accept food aid.

Now, the reason we want to get this food aid to the refugees is, first of all, humanitarian. There is no money involved in this, since 416 is surplus commodities that we have in our stocks under the Credit Commodity Corporation.

What we seek to do is to correct what are honest errors made in the conference in eliminating the specifics of the simple sense of the Congress amendment that is involved here.

The policy that we would like to emphasize is that the United States uses food to help the hungry and to help those in most need of it.

Now, the Guatemalan Indian refugees are, in general, Mayans. They have fled their homeland and they are seeking safety and refuge in Mexico. The reason they have left Guatemala is harassment and brutality, sometimes actual killing by the Guatemalan army against mostly Mayan Indians. They live for the most part in rural areas; sometimes their homes are burned, destroyed; sometimes entire villages are leveled and destroyed.

I cannot understand this harassment and brutality and killing against the Indian population in Guatemala. But the result of it has been that the Indians have sought to leave Guatemala. They are not rebels nor insurgents against the Government of Guatemala, but the brutality and the killing has forced them to leave their land, to leave their homes, to leave their villages and seek asylum and safety in Mexico.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. MELCHER. Yes; I am delighted to yield.

Mr. JOHNSTON. As one supporter of this amendment, I think all of us supported it when it was earlier in the Senate, I ask these questions as a supporter. First of all, this is only a sense-of-the Senate amendment, is it not?

Mr. MELCHER. That is correct.

Mr. JOHNSTON. Second, this amendment was first passed by the Senate and was in conference but was rejected by the House conferees, and the Senate conferees therefore went along with this. So this has been disposed of in conference already, is that not correct?

Mr. MELCHER. Yes; it was relegated to the two or three sentences that I read in the committee on conference report.

Mr. JOHNSTON. The chairman of the House Appropriations Committee, Mr. WHITTEN, continues to oppose this sense-of-the-Senate resolution, does he not?

Mr. MELCHER. Chairman WHITTEN has previously expressed to me the feeling that the sense-of-the-Congress resolution was adequately taken care of in the few lines in the report. He said he had no prejudice against it, but I think the chairman of the Senate Appropriations Committee has said that he has a feeling that Chairman WHITTEN is opposed to it and now I believe the Senator from Louisiana has expressed that feeling; is that correct?

Mr. JOHNSTON. Well, really it is a question on my part. I have heard that he continues to be opposed to it, again, maybe not on the merits, but procedurally. And that being so, I wonder if we could not find another vehicle. This is an urgent supplemental. The WIC Program, the feeding programs, the summer jobs programs, are all awaiting this. We could have this out and actually on the President's desk by this afternoon. If we will agree to recede and concur in all of these House amendments, we could have this on the way to the White House this afternoon.

That is the only concern I have. There are times, I submit to the Senator, when holding up the machinery of a bill like this is worth holding up because the issue is sufficiently deep and there is enough passion in it. But I would say a sense-of-the-Senate resolution, would the Senator not agree, particularly when the language is already included—the conference has already said that the conferees have agreed that such assistance should be provided to Guatemalan refugees and will expect the surplus agricultural commodities will be made available for such humanitarian efforts, and that is in the conference report. It seems to me the issue is covered, would the Senator not agree with that?

Mr. MELCHER. I would like to agree with that. But I will repeat what I earlier said. What has been dropped in the conference report has been the reference to section 416, which is vital, and the expedited procedure, which is also vital.

Let me explain.

Mr. JOHNSTON. It is only a sense of the Senate, though.

Mr. MELCHER. It is a sense of the Congress.

Mr. JOHNSTON. I mean a technical reference to something in only a sense of the Congress resolution should not be that vital, should it?

Mr. MELCHER. Yes. I believe it is very vital for two reasons: One is that we want to be sure that we get some cooperation out of the Department of Agriculture and the Department of State to make sure that the new regulations they are promulgating are gotten out quickly. That is No. 1. Second, it is very significant in that the Government of Mexico has felt adverse to accepting any food aid under title II of Public Law 480. They have expressed for the past 6 months an interest in accepting food provided by the United States through section 416. We are dealing with their sensitivities and their feelings. We are not just dealing with the United States saying, "Well, here it is. You can have it." In conjunction with the feelings of Mexico we are trying to emphasize section 416. But, Mr. President, the chairman and the ranking member of the committee seem to feel that this hinges on the attitude of the chairman of the House Appropriations Committee on what the Senate does. Perhaps I should update myself directly with what that chairman of the House Agriculture Committee feels. If you care to go to the other amendment, or put in a quorum call, I will do it expeditiously.

Mr. JOHNSTON. Mr. President, I thank the Senator. I think that is an excellent suggestion. His amendment could be attached to any of these amendments. With the consent of the majority leader, we could lay this amendment No. 5 aside, and move onto the next item.

Mr. DIXON. Mr. President, with all due respect to my distinguished friend who is managing the bill on this side, may I say that we do have critical time problems with respect to this whole bill. I have conferred with the majority leader and others in respect to this. It is our hope that by late this afternoon we can dispose of this conference report, all the technical items of disagreement, and then do the necessary things with amendment No. 14.

What is my friend from Louisiana suggesting we might do?

Mr. JOHNSTON. We have a whole list of amendments in disagreement. The first amendment in disagreement is amendment No. 5. I am suggesting that we defer amendment No. 5 temporarily and move to the next amendment in disagreement, No. 8, while the Senator from Montana determines whether the distinguished chairman of the Appropriations Committee of the House continues to oppose this. If he does, then the Senator from Montana will reassess whether to bring up the amendment. In any event, it will not slow down the process, but will speed the process along by moving to the next amendment in disagreement.

Mr. DIXON. May I say to my friend that I would not feel comfortable with that for this reason. The fact that the chairman of the Appropriations Committee alone would have no difficulty with what my friend from Montana wants to do will be no reassurance to this Member. There are 435 Members over there. We have a bill essentially in agreement—when we ultimately dispose of amendment No. 14—that can be disposed of hopefully late this day on the House side, and sent to the President's desk. This matter has been pending since March 4. Were I to tell my colleague and friend from Louisiana the history of this, how they were not going to conference in the first instance on this question in the House before this Senator went over there and met individually with all the Members in his own delegation, the Speaker four times, and everybody else—I would urge my friend from Louisiana to understand my concern—there is nothing that will assure at least this Member that things are safe on the House side with respect to this.

Mr. JOHNSTON. If the Senator will yield, I am not suggesting that we make acceptance or rejection of Senator MELCHER's amendment dependent upon what the chairman of the House Appropriations Committee says. All I am suggesting is that since we have to deal with a set of eight amendments before we complete work on this bill, why do we not lay aside this first amendment to which the Senator from Montana's amendment would be attached and go ahead, dispose of that which we can quickly dispose of and save the time from the quorum call? Otherwise, the Senator is suggesting that he would have to put in a quorum call while he calls the chairman of the House Appropriations Committee. That is all I am suggesting. I am not suggesting that we agree to his amendment depending on what the House Appropriations chairman says. I am just going to save time.

Mr. DIXON. I hesitate to be difficult about this and would not like to object to anything that accommodates my friends and colleagues, particularly a warm friend like my colleague from Montana. But we are going to have to deal with this sometime today. The fact remains, unless I interpret my colleague on the other side—granted that only he can address it correctly—it is my understanding that the manager, the majority leader, and at least myself on this side will object to this amendment at the appropriate time no matter what the chairman of the Appropriations Committee in the House says. So how do we gain anything?

Mr. MELCHER. Mr. President, do I still have the floor?

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. JOHNSTON. Mr. President, I think we are talking past one another. If the Senator objects, we have not lost a great deal. So I yield the floor.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, let me say one thing that is only tangentially related to this particular controversy. I had hoped earlier today to be able to take up the State-Justice appropriations bill temporarily with the hope that we might finish it before the afternoon was out, and finish this conference report as well. That now seems unlikely. So we will be on this conference report until we finish, whatever time that is today.

Mr. President, as far as this particular amendment is concerned, and as far as this Senator is concerned, I have no objection to laying it aside temporarily and going to the second amendment provided we can do one other thing; that is, to provide that the majority leader after first consulting with the minority leader can lay aside the then pending amendment, and then return to the first amendment in disagreement. If the manager on the other side has no objection to that, and if the Senator from Illinois does not, I will now propound that request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAKER. I thank the Chair. I thank all Senators.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 8

Mr. BAKER. Mr. President, I ask that the Chair now report the second amendment.

The PRESIDING OFFICER. The clerk will report the second amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 8 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

Farmers Home Administration

RURAL HOUSING INSURANCE FUND

Notwithstanding section 502(d) of the Housing Act of 1949, from amounts previously made available from the Rural Housing Insurance Fund, in Public Law 98-151, for fiscal year 1984, $1,610,000,000 shall be made available for low-income borrowers and $690,000,000 shall be made available for very low-income borrowers: *Provided*, That up to $230,000,000 may be transferred from low income amounts to very low income amounts if the Secretary certifies that qualified applicants are available.

Mr. BAKER. Mr. President, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 10

The PRESIDING OFFICER. The clerk will state the amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 10 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

UNITED STATES INFORMATION AGENCY EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For an additional amount for "Educational and Cultural Exchange Programs", $850,000 for reimbursement for activities carried out during the 1984 International Games for the Disabled.

CIVIL AERONAUTICS BOARD

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", $2,000,000, for the period August 1, 1984 through September 30, 1984; Provided, That any unobligated amounts already appropriated under Public Law 98-78 shall remain available until September 30, 1984.

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY CORPS OF ENGINEERS—CIVIL

Notwithstanding current administrative procedures, the Secretary of the Army, acting through the Chief of Engineers, is directed to implement immediately non-structural flood control measures such as relocation sites, flood proofing and flood plain acquisition and evacuation as described in the General Plan for Section 202 Program Implementation prepared by the Ohio River Division in April 1982 and as authorized by Section 202 of Public Law 96-367: Provided, That there is hereby appropriated $21,000,000 to remain available until expended for the purposes of this paragraph.

Mr. BAKER. Mr. President, once again, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I ask unanimous consent that the next amendment, which is amendment No. 14, dealing with Nicaragua, be temporarily laid aside under the same terms and conditions; that is to say, that at any time at the request of the majority leader, after first consulting with the minority leader, the Senate would return to the consideration of amendment No. 5 in disagreement to be followed by amendment No. 14 in disagreement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 16

The PRESIDING OFFICER. The clerk will state the amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 16 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

DEPARTMENT OF LABOR

Employment and Training Administration

Training and Employment Services

For an additional amount for "Training and employment services", $100,000,000; for the summer youth employment and training program: Provided, That the amount appropriated hereunder shall be allocated to States so that each service delivery area composed (in whole or in part) of a geographic area served by a prime sponsor under the Comprehensive Employment and Training Act receives, as nearly as possible, an amount equal to at least 90 per centum of the amount received for the comparable geographic area for the summer youth program under such Act for the summer of 1983.

Mr. DIXON. Mr. President, I wonder if my friend, the majority leader, would indulge me, and permit me to move concurrence in connection with amendment No. 16, which is the $100 million for summer youth employment programs.

Mr. BAKER. Yes, Mr. President. I appreciate the support of the Senator from Illinois. I am happy to have the support of both Senators from Illinois, who have indeed been most active in seeing that this matter is brought to the attention of the Congress, and reaches the President's desk.

Mr. President, to say only semifacetiously, I cannot recall in recent time when I have had two Senators from the same State who have been more determined to see that this measure comes to the attention of the Senate. I congratulate both of them for it. I am happy now to yield to the Senator from Illinois.

Mr. DIXON. Mr. President, I do make the motion to concur. May I say on behalf of my senior colleague, Senator Percy, and myself that both of us appreciate from the bottom of our hearts the very kind support the majority leader has offered us at every juncture of this procedure which has taken so many weeks. Senator Percy will be here later in the day to speak in favor of this proposition, as the majority leader knows.

On behalf of both of us, I express to the majority leader, the minority leader, the Speaker of the House, and everyone involved our profound gratitude for their efforts.

Mr. BAKER. I thank the Senator from Illinois. It is really a delight to see two Senators from the same State working as closely as Senator Percy and his colleague have been working. If Senator Dixon is prepared to make that motion at this time, that will be fine.

Mr. DIXON. Mr. President, I do make that motion.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois.

The motion was agreed to.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 20

The PRESIDING OFFICER. The Clerk will state the next amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of Senate numbered 20 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

Department of the Treasury

UNITED STATES CUSTOMS SERVICE

Operation and Maintenance, Air Interdiction Program

For an additional amount for the acquisition (purchase of up to eight) of high-performance, interceptor/tracker aircraft and other related equipment for drug interdiction purposes, $25,000,000, to remain available until expended: *Provided*, That such aircraft be purchased through an open, competitive procurement.

Salaries and Expenses

Notwithstanding any other provision of law, the Customs district headquartered at

Bridgeport, Connecticut, shall be maintained as a Customs district until October 1, 1984, covering the same territory as covered by such district on January 1, 1984.

Mr. BAKER. Mr. President, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 27

The PRESIDING OFFICER. The clerk will report the next amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 27 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

COMMODITY CREDIT CORPORATION EXPORT CREDIT GUARANTEES

SEC. 106. (a) The Secretary of Agriculture shall utilize the authorities provided in the Charter of the Commodity Credit Corporation to expand the export of United States agricultural commodities through competitive sales, including shipping costs and credit terms, and donations as authorized by law. In carrying out the authorities and responsibilities imposed by the Charter, the Secretary shall assist in the financing of export sales of United States agricultural products, either through direct or guaranteed loans. The Secretary shall use the Commodity Credit Corporation, a revolving fund capitalized at $25,000,000,000, to make available under the export credit program carried out by the Corporation short-term credit to finance export sales of United States agricultural commodities, and shall also use such other authorities as necessary to regain the rightful share of world markets for United States Agricultural commodities.

(b) For the fiscal year ending September 30, 1985, the Secretary of Agriculture shall make available under the Export Credit Guarantee Program (GSM-102) carried out by the Commodity Credit Corporation credit guarantees for not less than $5,000,000,000 in short-term credit extended to finance export sales of United States agricultural commodities.

(c) The Secretary shall ensure that any guarantee authority made available, in the fiscal years ending September 30, 1984, and September 30, 1985, for credit guarantees under the Export Credit Guarantee Program (GSM-102) carried out by the Commodity Credit Corporation in excess of—

(1) the $4,000,000,000 of guarantee authority available for fiscal year ending September 30, 1984, and

(2) the level of guarantee authority contained in the President's budget for the fiscal year ending September 30, 1985.

is used to further assist in the development, maintenance, and expansion of international markets, for United States agricultural commodities and products, including natural fiber textiles and yarns. Priority in the allocation of such guarantee authority shall be given to credit guarantees that facilitate the financing of (i) export sales to countries that have demonstrated the greatest repayment capability under the export credit programs carried out by the Commodity Credit Corporation or (ii) export sales of commodities for which no blended credit (under which a combination of export credit guarantees under the GSM-102 program and direct export credits under the GSM-5 program is provided) will be made available.

Mr. BAKER. Mr. President, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 34

The PRESIDING OFFICER. The clerk will report the next amendment in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 34 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 113. (a) Notwithstanding any other provision of law, organizations reporting to the Assistant Secretary of Interior for Fish and Wildlife and Parks shall enter into contracts which result in releasing or transferring any Federal employees or liquidating any equipment or materials as a result of complying with the Office of Management and Budget Circular A-76 for the 62 activities scheduled for review by the National Park Service by March 30, 1984, and the 94 activities scheduled for review by the United States Fish and Wildlife Service by September 30, 1984, only after the following conditions have been met:

(1) the study supporting each contract required by the Office of Management and Budget Circular A-76 is completed, including the bidding process and review of bids;

(2) the organizations have had 30 days to review the bid results and to transmit recommendations to the appropriate House and Senate Committees as to which activities should be contracted; and

(3) 30 days have elapsed since the transmittal required by paragraph (2).

(b) All recommendations to be submitted shall be submitted by October 30, 1984.

(c) The organizations shall not solicit bids related to other Circular A-76 reviews before January 30, 1985.

Mr. BAKER. Mr. President, once again I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee.

The motion was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order, with one motion, to reconsider each of the motions which have been agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I make that motion.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBER 5

Mr. BAKER. Mr. President, the question recurring before the Senate is amendment in disagreement No. 5, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, earlier I was discussing the previously adopted sense of the Congress resolution on food aid assistance for the Guatemalan refugees in Mexico. The gesture of the Government of Mexico in accepting these refugees is truly a remarkable form of humanitarian relief. The long-standing policy of Mexico is to accept all refugees who are seeking asylum in Mexico. There are an unknown number of Guatemalan refugees in Mexico at this time. However, estimates range as high as 300,000 Guatemalan refugees spread throughout Mexico. The Mexican Government in a very formal humanitarian move provided camps for 65,000 Guatemalan refugees. The ages of the refugees range from infancy to the very elderly. Many families have fled their Guatemalan homes, that is, left all they possessed, to walk miles, some as far as 200 miles, seeking asylum in Mexico. The camps are located in the State of Chiapas in Mexico, but because there has been harassment by the Guatemalan Army crossing the border, sometimes trying to take some of the refugees back into the country and otherwise marauding the refugee camps, the Government of Mexico is moving the camps further inland in the state of Chiapas and also in other neighboring states.

I must relate to the Senate that the United Nations High Commission on Refugees is assisting the Government of Mexico in running these refugee camps. From the viewpoint of the Guatemalan refugees, it is sort of—well, it is a dead end when they get into a refugee camp in Mexico. They are afraid to return to Guatemala. There is no work for the able-bodied in most of the camps. However, a few of the camps do provide some work and a small amount of income for those workers, but that is very limited and is very meager. The food that is available through the United Nations

High Commission on Refugees is rather limited also, and the part that the Mexican Government has to perform in distributing that food is not a small matter. The refugee camps themselves are a strain on Mexico. It is my intention in offering the original amendment to provide surplus wheat and dairy products from section 416 of the Agriculture Act from the United States for assistance in food aid for these refugees.

Let me explain that section 416 of the Agriculture Act, which we just amended this past spring, provides for monetarization of a portion of the surplus commodities from the United States. What that means is that a portion of the commodities can be sold on local markets commercially and the funds derived from selling a portion of the commodity can then be used for any processing or packaging or distribution costs of the rest of the commodity for the food aid in that particular country. With wheat products being unknown to the Mayan culture, let me stress that the monetarization of a portion of the commodities is extremely important because wheat, of course, when ground into flour would have to be baked in a different manner than is familiar to the Mayan refugees.

All of these things sound like little items, Mr. President, but for the hungry refugees, with their families under particular stress, it is of a lifesaving nature. The fact that Mexico has provided this series of havens in these refugee camps for the refugees fleeing Guatemala is very commendatory.

The part we would play in this proposal would be to augment their purposes.

I spoke to President Miguel de la Madrid Hurtado when he was in the United States on his recent visit. I also have spoken to Secretary of Foreign Affairs Bernardo Sepulveda Amor and Secretary of Commerce Hector Hernandez, as well as one of the bishops in Chiapas, Bishop Rias.

I hope we can see our way clear to emphasize this meeting, this need for the refugees, in this cooperative effort with Mexico and the United Nations High Commission on Refugees, as our part in the overall assistance.

Mr. HATFIELD. Mr. President, I thank the Senator from Montana for his cooperation in helping to expedite the supplemental we have before us. I assure him that I will be happy to assist in any way possible with his proposal as he seeks to raise the matter again when we get to the appropriations bill on State-Justice-Commerce.

Mr. MELCHER. Mr. President, the chairman has graciously explained to me on several occasions his sympathy for and his support of this proposal. But, due to the circumstances in trying to adjust this bill to meet the easiest flow in the House, he would prefer that we not amend any of these amendments.

I have spoken to the chairman and to the majority leader about the possibility of attaching something of this nature to the next appropriations bill, which I understand is State-Justice-Commerce.

Mr. HATFIELD. That is correct. It may be taken up later today.

Mr. MELCHER. I will be happy to do that. Therefore, Mr. President, I will not offer my amendment.

Mr. HATFIELD. I thank the Senator from Montana.

Mr. President, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The motion was agreed to.

AMENDMENT IN DISAGREEMENT TO SENATE AMENDMENT NUMBERED 14

The PRESIDING OFFICER. The clerk will report the next amendment in disagreement.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 14 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "No funds are appropriated herein for the Central Intelligence Agency in fiscal year 1984 for purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.".

Mr. HATFIELD. Mr. President, this is the amendment dealing with the subject of Nicaragua, aid to Nicaragua. I now move that the Senate recede from its amendment numbered 14.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

Mr. HATFIELD. Mr. President, if the Senator will withhold, I was about ready to explain the motion. I think there are Members who wish to speak on this issue. I should like to have the Chair not rule on this point, on the adoption of this motion, until I have had an opportunity to explain it.

The PRESIDING OFFICER. Without objection, the action is vitiated.

Mr. HATFIELD. Mr. President, this is a motion to have the Senate recede from its original amendment, and that original amendment added $21 million for the CIA for covert assistance to Nicaraguan rebels, when we first considered the House-passed measure last March. Although the House subsequently concurred in our amendment with a further amendment, this motion will have the effect of deleting the entire issue from this measure, so there will be no funds, and neither will there be any language, with respect to Nicaragua.

Mr. President, I make this motion in order, in effect, to strike from this bill all matters dealing with Nicaragua—money, language, otherwise.

I only speak briefly to the effect that, even though, in the consideration of this bill, I did oppose Nicaraguan aid, both in committee and on the floor, I feel that it is vital and important, with the action of the House—and what I hope will be the concurrence in my motion—that we not have in this bill any matter that relates whatsoever to Nicaragua.

I think it is important to delete it in this way, as it is to deal with the issue we see before us today in terms of what the House has sent us. It is important because, in effect, it totally eradicates, obliterates, eliminates everything relating to Nicaragua. This not only suits my own personal view, but I think, also, that it probably is the best way to handle this measure, considering the House action and considering the Senate action and the need for immediate enactment of other items in the joint resolution.

Mr. President, I note that the chairman of the Senate Foreign Relations committee has arrived on the floor, and I will yield the floor, but I hope we can dispose of this matter in this way, and expeditiously. We have the State-Justice-Commerce appropriations measure to dispose of today, and I think this is the smoothest way to execute the subject at hand.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, I thank the Senator from Oregon, my warm friend, the chairman of the Appropriations Committee and the manager of this bill, for this motion to recede on amendment No. 14 to House Joint Resolution 492. As he knows, I was prepared to offer a similar motion. I see my friend and colleague, the senior Senator from Illinois, the distinguished chairman of the Foreign Relations Committee, on the floor as well; and he has been prepared right along to support my position on this question.

This amendment, for $21 million in covert assistance to Nicaragua, is the only item in serious disagreement in this conference report.

The resolution, making urgent supplemental appropriations for a number of vital programs, was originally passed in the House on March 6, and included only one item—Public Law 480 "Food for Peace" funds for 18 African nations which have suffered the most severe drought in decades. The Senate added amendments to this bill, including my own amendment for $100 million for the Summer Youth Employment Program, in which I was joined by my colleague from Illinois, Senator PERCY, and Senators KENNEdy, Heinz, Metzenbaum, Boschwitz, Moynihan, D'Amato, Levin, Riegle, Sarbanes, Eagleton, Sasser, Huddleston, Lautenberg, and Glenn. After a very long process, the House and Senate conferees met and agreed on items which were of an urgent nature. The House acted on the conference report and on the amendments in disagreement on May 24. Most of the items in disagreement are only in technical disagreement, and we have disposed of all those, except for amendment No. 14.

I have worked with the majority leader, and I am grateful for his concern, and his efforts to accommodate this Senator in the vote we are about to take today. I have visited with the Speaker of the House, and attempted to mediate between the two Houses to reach a compromise on covert aid to Nicaragua which would be acceptable to the three major players in this scenario—the Senate, the House and the President. I regret to say that there is no such figure, at least not on this vehicle. I am absolutely convinced of that.

This Senator has supported covert assistance in the past on this very measure, and more recently, on the defense authorization bill. This Senator would support a reasonable figure for assistance again, on a bill which is less time sensitive. But, Mr. President, this is not the right boat to Nicaragua.

There are other boats to accommodate covert assistance, but this particular boat has been too long delayed in feeding the hungry people of the nations of Africa, feeding the undernourished women, and putting teenagers of our Nation's cities to work this summer.

The vote we are about to cast is not on the merits of covert aid to Nicaragua, but rather, on the merits of the truly necessary funds which were urgently needed in April and are critically necessary today.

In all, there are 22 items upon which there is total agreement, or only technical disagreement, in the conference report. Is it reasonable for 1 item to hold 22 others hostage? According to a recent article in the Washington Post, "The Nicaraguan democratic force has enough money and equipment stockpiled to continue fighting through October * * * and Nicaraguan democratic force leaders here are declaring that their forces inside Nicaragua are expanding rather than cutting back." Indalecio Rodriguez of the rebel group's four-man civilian command stated: "The military situation has never been better."

This point was reiterated today, Mr. President. In this morning's edition of the Washington Post, Joanne Omang writes, and I quote:

> Spokesmen insist, and most officials in the region agree, that the Contras now have enough materiel and funding to continue operating without further appropriations from the U.S. Congress at least until next October . . .

So, to those who say this motion kills the covert aid program, I offer to you the words of the Contras themselves: they have enough materiel and funding to continue their operations through this fiscal year, at the very least.

That does not sound to me like the same kind of urgent need reflected by 3,076,414 women, infants, and children who depend on the WIC Program to meet their daily nutritional requirements. These current funds will run out July 10. There is $300 million for continuing the WIC Program in this resolution.

In addition, there is an urgent need to put 100,000 youth in this country to work this summer. School is out in some of our States and will soon be out in all of our States. These are not middle-class kids looking for a way to fill their time. They are kids from poor families, and these jobs contribute up to 20 percent to their family incomes. The additional $100 million in supplemental funds will be of little use if we do not act today.

This resolution is not just a piece of legislation for the cities. It contains funds for rural housing insurance—$1.610 billion for low-income borrowers, and $690 million for very low-income borrowers.

Likewise, there is an item of $25 million for the revolving fund of the commodity credit corporation to finance exports of U.S. agricultural products and $5 million in short term credit to finance exports of our agricultural goods. I don't have to remind anyone here of the huge and escalating trade deficit we face. We can grow sufficient quantities of food to feed the world, and this program helps our farmers market their products around the globe. Instead of exporting jobs, we need to export our crops.

This is a measure that will fight crime. There is $25 million in this resolution to purchase up to eight interceptor aircraft and other drug interdiction equipment to keep illicit and illegal drugs from coming into this country.

I am gratified that over the past several days editorials have appeared in the Washington Post and the Los Angeles Times urging us to act, and to do so quickly.

I take this opportunity to thank the many organizations which have been so supportive of my efforts to see this through to a positive conclusion. They represent a very broad constituency. They include the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the YMCA and YWCA, the National Alliance of Business, the AFL-CIO, the U.S. Catholic Conference, the Council of the Great City Schools, 70001, Inc., the National Child Labor Committee, Campfire, Inc., the National Urban League, United Neighborhood Centers, and a host of others too numerous to mention.

The time has come, Mr. President, for logic and reason to prevail. In order to release funds for important programs which are in jeopardy right now as a result of inaction on this resolution, amendment 14, which deals with covert assistance, must be deleted from House Joint Resolution 492. There is a proper place for the content of that amendment in a legislative vehicle passed by Congress, but it has become painfully clear that this legislation is not that vehicle. As I mentioned before, House Joint Resolution 492 is not the right boat to Nicaragua.

It is a matter of getting our priorities straight. It is a matter of hungry children, ill-nourished mothers, unemployed teenagers, and starving Africans. These priorities are more important in the big picture than insisting on this covert assistance on this resolution. Covert assistance can, more appropriately, be considered on another piece of legislation of a less timely nature.

I therefore, ask every Member of the Senate to rise above party and consider the greater good putting young people to work this summer, continuing nutrition programs which are literally a matter of life and death to people in our country and African nations, and addressing the other issues of vital importance to all of our States in this resolution.

I ask my colleagues to support the motion of my friend from Oregon in which I join, to recede from amendment number 14.

Mr. President, I am delighted to yield to my friend and colleague, my senior colleague from Illinois, who has said so long ago that he intended to support this matter and to rise above party, the distinguished chairman of the Foreign Relations Committee, who is prepared to support me in connection with this question.

SUMMER JOBS

Mr. PERCY. Mr. President, first I thank my distinguished colleague, Senator Dixon, for his support for this concept since the outset when we first talked about it last spring. Also, I thank the leadership of, particularly Senator Hatfield, working with Senator Baker in finding a way how we could separate this program, which is an absolutely urgent program, from aid to Central America. The Nicaraguan aid is not only highly controversial at this stage but also if we kept it in the same bill we would doom summer jobs in this country for our own youth. School is now out and these young people are looking for work. It would have been the height of folly for us to look for a program to help other people, which is highly controversial, and bury both programs because we had not been able to separate them. I support fully the amendment of Senator HATFIELD to separate these two and support the judgment of the majority leader in taking that up as a separate issue on a separate vehicle at an appropriate time.

We can take up the question of $21 million of aid for Nicaragua on another occasion but certainly not today, not this week when we are pressing to get out. To do so would have been to walk out on young people.

I wish to talk a little about summer jobs. I think we all tend to be somewhat personal when we think of these things.

A summer job I know in my own situation began very early in life. I was running errands for my mother and for some of her friends with my wagon on Saturdays, earning a dime for every time I would go shop with a little shopping list for women. It gave me a sense of pride. I could earn 50 cents on a Saturday, and it meant a lot to me.

Suddenly when I was pulling my wagon one day a car pulled up alongside me and a fellow beckoned me over from the car and said, "Young man, young man"—I was 5 years old—"how would you like to earn a dollar," and he held a dollar out in front of me.

Well, that looked awfully big to me, and I said, "Yes, sir," and he said, "Just sell this pile of magazines," and it was a pile of Saturday Evening Posts that were 5 cents apiece. And I went out and sold them that day.

The next week when he stopped by I said, "Give me twice as many," And everytime I went out on Thursday afternoon the Saturday Evening Posts came out I doubled my sales week after week and finally won in a couple years the scholarship to Evanston YMCA, which was a great prize.

I think I had the championship for selling more Country Gentleman in a city, in an urban area, than any other salesboy in the country. I sold a couple of them. It was in my father's bank where he was cashier, and I learned what clout really meant. But I know I felt really filled with pride. It gave me a sense of confidence that stood me in good stead, and I cannot think, since 5 years of age, when I was without a job.

During the depression when my father lost his job and ultimately had to go through a tragic bankruptcy problem, that money I brought home that I learned to earn and I really then had to earn it, really gave me a sense of participation, of contributing, a sense of importance.

I know the same story holds true for many others, including the story I heard the President tell just a couple weeks ago when we introduced the Youth Employment Opportunity Act of 1984 at a session at the White House. He told about how he picked up a pick and shovel at age 14 and what it did to him as a young person to have a real job at that age.

A vote today to separate the Nicaraguan aid from this supplemental is a vote for restoring 100,000 jobs slated to be cut in summer jobs programs across the country, approximately 13,000 of these in Chicago. Actually, this is not an increase in the program at all. It will simply restore the program to last year's level. But Chicago would be cut 47 percent; as Senator DIXON and I have pointed out many times, a harsh cutback. And that would mean we would have a much smaller program this year, in a year when in some areas, the west side and the south side of Chicago, unemployment among minority youth runs as high as 75 percent. And this summer, with 13,000 fewer jobs, we could have utter dispair.

The latest available unemployment figures for 16- to 19-year-olds in Chicago speak for themselves. No less than 40 percent of all teenagers are unemployed. It is estimated that between 150,000 and 250,000 teenagers will seek work and many will be unable to find employment this coming summer in Chicago and in many other cities across the country.

The proposed 47-percent cut in Chicago's summer job funding, the largest cut of any major city in the country, is simply unconscionable. And Senator DIXON and I were simply determined that we would have to do something about that, and now, at long last, we actually can, due to the motion that is before us now by Senator HATFIELD, the chairman of the Appropriations Committee.

This is why I was an original cosponsor with Senator DIXON of the amendment last spring which restored $100 million to the Summer Jobs Program. There is no reason for this important program to be gutted over the Nicaraguan issue.

I have spent a great deal of time talking to young people in my State, especially in Chicago, East St. Louis, other such cities, such as Peoria, Rockford, Kankakee, and Danville, to just see what is the outlook, and the outlook has been rough this year.

I have seen what idleness does to young people in summer months when they cannot get work. As one high school principal warned, "Cuts in the Summer Jobs Program are going to make for many frustrations and a long, hot summer."

"People who are unemployed are more likely to get into all sorts of crime, particularly teenagers," said one of the program's organizers.

I am afraid that these youngsters and those who work day to day with them will simply not understand how their program was cut in half because we could not agree whether to send money to Central America.

Mr. President, I am one of the first to support efforts to reduce spending in order that we can reduce the deficit. However, we cannot expect one city, or one program, for that matter, to withstand a nearly 50-percent cut. This is not equitable.

I urge the Senate to adopt this motion, not as an indication of our support or opposition to Central American aid, but to show our compassion for thousands of young people in this country who are depending on us this summer.

I want to thank the distinguished majority leader, the distinguished chairman of the Appropriations Committee, and their ranking members and opposite numbers on the minority side for their tremendous assistance in finding a resolution to this problem.

I would just like to close by indicating that government jobs are not the answer. Government jobs do not provide enough jobs, and obviously too many of those jobs are dead-end jobs. I still do feel as I felt 5 or 6 years ago when I met with labor leaders and presented the problem to them and said, "if you don't like a reduced minimum wage as an incentive for training for sometimes the first single job for a teenager will have in the summer time, then come forward with a better program."

To this day, they have never come foreward with a better program. Despite the fact that in the last 17 months we have hired back 5.4 million people and put them to work in the economic recovery program that has been underway, there will still be extensive youth unemployment in this country this particular summer even with the money that we will be authorizing today and appropriating today.

But I do hope we will take a long look at some way—and I think the Youth Opportunity Employment Act of 1984 does provide that opportunity. I provides safeguards that no young people will ever be reduced in salary, no young people will ever replace an older person who has a job, but they will be offered an opportunity. And the estimates range that about 400,000 youth could be hired and trained in the private sector, put to work, given jobs, many of which will be brandnew jobs created at $2.50 an hour, $100 a week for a 40-hour week, and that is not an unattractive salary for a young person.

That is the long-term goal. We do not expect to be able to put that through in time for this summer, but let us keep it in mind. We have to find a way for young people to get that start in life that was given some of us early in life, and solve this problem in a more permanent sense than we are today. But I am deeply grateful for the measures that are being made that will provide incentives to tens of thousands of young people this summer that would not have that incentive, not have that opportunity, the opportunity for self-assurance and to gain confidence in themselves, unless we take action today.

Mr. GORTON. Mr. President, when the Senate first considered this measure several months ago, I supported the appropriation of an additional $21 million to aid the so-called Contras, who are opposing the Sandinista government of Nicaragua. Today, I will vote to delete those funds from this measure, and my reason for doing so is quite simple.

The Senate approved the $21 million supplemental request on the clear understanding that it was necessary in order to keep some pressure on the Sandinista government and encourage it to stop its campagin to destablilize its neighbors. That has been our understanding each time we have provided assistance to the opponents of the Sandinista regime. That was the assurance of the President.

Shortly after we approved the $21 million supplemental appropriation, however, it was revealed that some of the funds we had approved earlier had been used for actions which went far beyond the limited objectives to which the Senate had agreed and to which the administration had assured us it followed. This revelation suggested that we had moved away from a policy of occupying the attention of the Sandinista's massive military and intelligence operations and dangerously closer to a policy of trying to overthrow their regime. The latter is not a legitimate policy for the United States.

U.S. involvement in the mining of Nicaraguan harbors was revealed just after we completed work on the supplemental appropriation. The mining certainly harassed Nicaragua, but it did not command the attention of that nation's military to any significant degree. In fact, it posed a greater threat to the ships of neutral nations, including some of our closest allies, than it did to the Nicaraguans whose actions we are trying to influence. The Senate quickly and overwhelmingly voted to condemn CIA involvement in that activity

Of greater concern, in my view, were the published statements of administration officials that the harbor mining was part of a "holding action" undertaken until some unspecified future date, at which time we would "really turn up the heat on the Sandinistas." Mr. President, that simply is not the arrangement to which the Senate agreed. Those accounts indicated very clearly that by the time we approved the $21 million request we had moved beyond the narrow limits which the Senate intended and which the administration consistently assured us it was observing. It is inappropriate to support an appropriation requested for one purpose but to be used, in part at least, for another.

I want to reiterate my belief that it is appropriate for us to assist the nations of Central America which have asked our help in their efforts to escape their beleagured and oppressive past and to move into an era of reform and democracy. The burdens carried by these nations are great enough; they do not need the added threat of destabilizing activities sponsored by Nicaragua. The Sandinistas support for the guerrillas in El Salvador, their avowed support for "revolution without frontiers," and their establishment of a military force which dominates the region gives their neighbors ample reason for concern.

We must recognize, however, that our objective is a limited one. There are aspects of the Sandinista government which I find objectionable, but the removal of that government by force is not a proper policy of the United States. We can appropriately encourage democracy and human rights in Nicaragua by offering aid conditioned on progress toward those goals, but the normal internal policies of that nation do not warrant our military intervention.

We may be asked in the future to consider requests for aid to the Contras, and I will consider them as they are presented. I expect to support them only, however, if a clear and convincing case in made that the funds we provide will be used to prevent Nicaragua from intervening in the efforts of its neighbors to evolve and strengthen peaceful, democratic societies.

● Mr. GLENN. Mr. President, I rise today to voice my strong support for the motion of the Senator from Oregon on the issue of supplemental fiscal year 1984 aid for the rebels seeking to overthrow the Government of Nicaragua. Doing so will free urgently needed funding for summer youth employment, WIC and child nutrition programs. As you know, Mr. President, I do not support giving money to the so-called Contras in Nicaragua. But that is not the issue before us. The issue is whether the Congress ought to turn its back on unemployed teenagers, pregnant mothers, and newborn infants. The issue is whether we ought to hold these innocent victims hostage to the approval of the Nicaraguan Rebel Aid Program. That is the question before us, Mr. President, and I say the answer is "No."

In my own State of Ohio, what is at stake is almost $6 million in additional funding for summer jobs for disadvantaged youth. And when youth unemployment is over 19 percent and black teenage unemployment is almost 45 percent, I say we cannot afford to play politics with the lives of our young people. If we do, the results will be devastating. Cleveland, OH, for example, faces a reduction in funds of 42 percent. This tremendous loss of funds will not only mean that thousands of young people will be unable to find productive ways to spend their summer, but that they will be competing with unemployed adults for the few permanent jobs that are available.

But jobless teenagers are not the only Ohioans who will feel the pain if we continue along our present course. Ohio also has the Nation's fourth highest number of WIC participants—and their futures too are hanging in the balance. In fact, facilities providing special supplemental food to almost 166,000 high risk pregnant women and children will be forced to shut down early this summer if the supplemental funding is not approved quickly. And how devastating would this be? Well, let me tell you about just a few of the long-range repercussions.

A study conducted at the Harvard School of Public Health found that WIC caused a marked reduction in the incidence of low-birth-weight infants. As you may know, Mr. President, low birth weight is the eighth leading cause of death among children in the United States. It is also associated with such disabilities as blindness, deafness, and mental retardation. And I'm sure I don't have to remind you that the costs of these afflictions can be staggering. Indeed, the Harvard study found that WIC expenditures are incredibly cost-effective and that each $1 spent in the prenatal component of WIC actually averts $3 in postnatal hospital costs.

What all this means, Mr. President, is that the costs of doing nothing are high; unacceptably high—in human, social, and economic terms. Many young people who cannot find employment this summer will turn to crime, antisocial activities, and "hustling" in the underground economy. And the evidence of WIC's role in reducing infant mortality suggests that the WIC participants who will be denied services will suffer two-thirds more neonatal deaths than they otherwise would.

Mr. President, we have the means to prevent these tragedies from occurring. All we need now is the will—and I believe the Senate has a moral obligation to resolve this issue and to do it now. Further delay is unwarranted, unnecessary, and irresponsible. The Congress can take up the issue of Contra aid when we consider the fiscal year 1985 intelligence authorization bill. After all, there are only 3 months remaining in the current fiscal year. How can the Reagan administration possibly justify depriving our Nation's unemployed youth and risking the lives of mothers and children for the sake of 3 additional months of Contra funding? We must say "No" to this unnecessary linkage, and we can do so by giving overwhelming support to the motion of the Senator from Oregon.●

● Mr. HEINZ. Mr. President, we have before us a motion concerning amendment 14, which provides $21 million in covert assistance to Nicaragua. The effect of the motion, should it pass, is to remove the covert aid from the bill we are considering. In my judgment, the question of covert aid to the Contras in Nicaragua has no place in the bill before us, which deals with human needs mainly here at home in the United States. I support the motion and urge my colleagues to do likewise. I do not consider my vote to be one on the substance of the covert aid issue, but on the question of whether we are going to act and act promptly on the urgent supplemental. I am convinced that keeping covert aid in this legislation would make it impossible for us to pass the other badly needed programs in this bill.

The urgent supplemental for the Department of Agriculture that we are considering includes amendments which would provide funding for women, infants, and children [WIC]; child nutrition programs; the Summer Youth Employment Program; and emergency food assistance for Africa. In my home State of Pennsylvania alone, 144,323 disadvantaged pregnant women, depend upon WIC for supplemental food, nutritional training, and health counseling. On July 10, the funds for this program will run out, and unless we pass this bill almost 3 million people who are nutritionally at risk will lose this modest but badly needed help.

Also included in this legislation is $300 million for the Summer Youth Employment Program and $545 million for our Child Nutrition Programs. These are preventative programs the need for and merit of which is and has been clear to us for many years, especially since the relatively small investment we make now will save us far more money later. If we don't provide nutritional training for pregnant and nursing mothers, if we don't furnish one inexpensive but hot, well-balanced meal a day for under privileged children, and if we don't make available summer jobs for disadvantaged inner-city youth, then we leave the door open for having to provide them health and financial assistance for the rest of their lives. But by funding these programs now, we can teach young mothers proper nutrition for their children, so that the children will grow up healthy and strong. We can and should provide well-balanced meals at schools and day-care centers, so that these young people are better able to learn. And we can and should provide summer jobs to youth, so that they will be more likely to remain in school.

Mr. President, we should not hold these urgent human needs of our own people hostage to the President's desire to aid the Contras in Nicaragua, and I urge my colleagues to join me in supporting this motion.●

Several Senators addressed the Chair.

Mr. EAST. Mr. President, I would like to speak very strenuously in opposition to this motion to delete the aid of $21 million to the Contras in Nicaragua.

First of all, it has not been made clear to me by the manager of the bill or the distinguished chairman of the Foreign Relations Committee or Senator DIXON or anyone, period, as to where this matter would be appropriately reasserted and we could be guaranteed that this aid will be forthcoming promptly.

Mr. HATFIELD. Will the Senator yield?

Mr. EAST. Before I speak against the motion, I would be happy to yield to the manager of the bill for purposes of inquiry as to what the plan of action would be, because I feel, as a substantive matter, it is the most important item that we have to deal with. It is more important than the underlying legislation. I will argue that strictly on humanitarian grounds, let alone the need that this be promptly dealt with.

So I yield for purposes of answering that question to the distinguished manager of the bill, the Senator from Oregon.

Mr. HATFIELD. I would say to the Senator, in response to his inquiry, that I would like to delineate between my own personal view—and that is that I am absolutely opposed to any military aid whatsoever to Nicaragua, and sought to block it in the Appropriations committee, sought to block it on the floor, sought to block it in the conference, and I will continue to do that—but I would not want the Senator from North Carolina to construe that with what the action is here today and what this motion represents.

I have now the responsibility to carry the situation from a parliamentary point of view. First of all, the Senate position did prevail by adding $21 million for covert aid to Nicaragua. That Senate position prevailed by a note of this body.

We went to a conference with the House on this supplemental and the House refused to accept it. And what the House did was to, in effect, delete the $21 million; in turn, they substituted the language of Congressman BOLAND, and that was that no money in this bill be used for covert aid to Nicaragua. Well, that was redundant, because by deleting the money, there obviously was no money in the bill for aid to Nicaragua.

My motion today is for the Senate to recede from its original amendment. By receding from the original amendment, we excise the whole issue from the bill relating to Nicaragua. There is no money here today. In other words, when you vote for my motion, you are not voting to eliminate $21 million for Nicaragua. It has already been eliminated by the House action.

Mr. EAST. By whom?

Mr. HATFIELD. By the House action. So this is one of those amendments in disagreement with the House. We are, therefore, voting on the House amendment as amending the Senate amendment. So, consequently, what we are called upon here today is conform to the measure which we received back from the House, which already eliminated the $21 million by that amendment in disagreement that went back to the House floor, and was voted on by a House action.

The Senator asked when will we take up this matter? Again, we will have another appropriation vehicle; that is, the supplemental that is now on track in the House, or urgent supplemental, or spring supplemental, or whatever you want to call it. I think part of this determination will be made by the White House. The White House will have to decide when it wants to ask for money for covert action again. The White House is realistic at this point. They know they are not going to get it from this Congress. That is very clear, I think. But they are going to have to determine if they want to come up here, and put their request in again. If they do, then we will consider it on whatever vehicle is appropriate. I say whatever vehicle is appropriate. We have the spring supplemental. That is one such bill. The Senate Foreign Relations Committee—and the chairman can answer for that committee—would of course have to take some action if they wanted to take it from an authorizing point of view on whatever vehicle they want to use.

I can assure the Senator that I think that at this point the ball is in the White House court; that the White House wants to pursue this and put its head in a buzz saw, again that is up to the White House. I am not going to support it any more next time they come up here and ask for it than I did this time. But I do think we have this urgent supplemental to get through, because out of the $1.4 billion we are talking about $21 million.

We are talking about aid to women and infants in their care program that is coming to an end. We are talking about child nutrition that is coming to an end. We are talking about African relief. The famine is upon them. We are talking about summer jobs, children, and youngsters who are out of school. If the Senator from North Carolina wants to block those programs because of the fact that we have already deleted the $21 million, that is the Senator's privilege. But let me also assure the Senator that we are talking about $1.4 billion in needed programs to alleviate human suffering in America, and elsewhere in the world; $21 million is not in contest at this point. The $21 million is gone.

It is up to the White House when they want to come up and ask for it again. We are now on a motion that I made to delete or in effect to recede from the Senate amendment which has to do with the original amendment which takes down the House language, and takes down, obviously, the $21 million again because that is already gone. We are just reaffirming what we have done in conference.

Mr. EAST. I appreciate the very articulate explanation the manager has given me. But it seems to me what is being said is that the House refuses to go along with it, and that the Senate ought to accept this House decision. Indeed, we would be wrong headed, foolish, callous, and indifferent to human suffering in this country not to do so. I as one Senator am vigorously opposed to that.

I do not know what the intentions of the White House are. I am not privy to it. I am a Member of the U.S. Senate. I voted for this $21 million in aid. Congressman BOLAND is against it, and apparently the House is against it. But I am still saying they are wrong. They are dead wrong. They are dead wrong on the humanitarian implications of it.

They are dead wrong on it being a symbol of the most fundamental issue facing this country, and this Congress at this time; namely, whether we allow Central America to fall under Communist domination and control.

The Ambassador to the United Nations, Jean Kirkpatrick, has pointed out that the aid currently going into Nicaragua from Havana and Moscow is being used to go across the border into El Salvador for the purposes of killing, murdering the people of El Salvador, destroying the infrastructure economically and socially of that country, and bringing on great humanitarian suffering.

What saith the opponents about that? They have no monopoly on humanitarian instincts here. I think the curious thing is that people like Eden Pastora who oppose the dictatorship of Samoza—and now we all—admit the revolution there by the Sandinistas has been betrayed for trying to fight to reclaim that lost revolution of democratic values. And the administration has said its concerns are even more modest; namely, to interdict the supplies going from Moscow, Eastern Europe, and Havana into Managua and across the line to kill, murder, destroy the infrastructure of that country, and to bring on enormous personal suffering.

I am weary of hearing that those who support the underlying legislation are the great humanitarians and that for some reason or other those of us who insist—and I am one who does insist—that this aid remain, or I be given some assurance or guarantee that it will remain. Of course, the House is opposed to it. They have got a majority over there led by the Speaker who wants to do nothing for Central America. It is a policy of isolationism. It is a policy of simply allowing the area to fall under Communist control and domination. I think it is one of the great moral scandals of our time to sit idly by and watch those small revolutions that attempt to establish democratic values and democratic institutions be crushed.

When the President-elect of El Salvador, Jose Napoleon Duarte was here, who was trained at Notre Dame, trained under Father Hesburgh, one of the great democrats of our time, he said we need the aid in El Salvador. He said we need the Contra aid to prevent the interdiction of supplies coming in, trying to destroy, and abort our democracy.

Wherein lies the humanitarian instinct to deny that fine man the right to defend his country, that fledgling democracy? As he put it when he spoke to the Senate, if you have an army on one side that is armed and an army on the other side that is not armed, you will get a military solution. And you are going to get it. And it is going to be the Marxist, Leninist, totalitarian system that will control Central America. What is so humanitarian about that?

Nicaragua has fallen, and El Salvador is going to fall in time if we do not stop this aid. One way to interdict that aid is to give aid and comfort to the Contras. And we are deleting it rather casually, saying, oh, you must think of the humanitarian concerns that we have for those here at home.

Well, of course. But you are just now voting to give humanitarian aid to Africa and elsewhere in the world. What is so unhumanitarian about trying to protect the people of El Salvador from the bloody violence and murder, as Jeane Kirkpatrick has put it, that is being forced upon them?

I refuse to yield to the argument that some way or other the humanitarians are all on that side of the table and we on this side are the heavies.

We are repeating the error of the thirties. We thought we could avoid war, bloodshed, by allowing the dictators to have one more piece of territory.

In the 1930's, when Hitler went into the Sudentenland, we said, "Let them have it."

Neville Chamberlain came back and said to the British Parliament, "We shall have peace in our time because we have placated the dictators."

They did not get peace in their time.

Winston Churchill rose on the back seat of the British Parliament and said:

> You will not have peace in our time. You will have the worst war you have known in our time because you cannot placate the dictatorship.

Then came the invasion of Austria and ultimately of Poland in 1939 and France in 1940. The Italian Fascist government went into Ethiopia and the Chinese went into Manchuria. Eventually, the very thing we hoped to avoid by appeasement, and isolationism, and indifference brought about the worst war we have known in our history. The bombing of Pearl Harbor in 1941 awakened us.

Recently, we celebrated June 6 the landing at Normandy in which we paid a heavy price in blood to try to reclaim that which we neglected and ignored during the 1930's.

I say, deja vu the 1980's.

Southeast Asia now falls under Communist control and the Soviet Union expands its influence. It has the American base at Cam Ranh Bay. It sends Vietnamese forces into Cambodia and threatens Thailand and Singapore. It has Cuban troops in Africa, in Mozambique, in Angola, and Ethiopia. It backed Syria and the PLO against Israel in the Middle East and threatens the whole peace of that area.

It follows the Marxist-Leninist to a "T." As Alexandr Solzhenitsyn said:

> I do not think the West has read the Communist Manifesto, in which they make it clear, Marx, Lenin, and Mao, that you will take the soft underdeveloped parts of the world and eventually the urban industrial democracies will fall like ripe fruit.

And that is occurring in our time. It has occurred in Southeast Asia, it is occurring in Africa, it is occurring in the Middle East and it is occurring now in Central America. And we lie impotent and indifferent. Here I am told on the floor of the U.S. Senate that it would not be a humanitarian thing to obstruct this bill by insisting upon this amendment.

(Mr. CHAFEE assumed the Chair.)

Mr. PERCY. Will the distinguished Senator yield for a question?

Mr. EAST. I say it is imperative that this aid be maintained.

I will yield for a moment for the purpose of a question from the distinguished chairman of the Senate Foreign Relations Committee.

Mr. PERCY. I would like to ask a question of the distinguished Senator from North Carolina, if we moved ahead with the bill before us, about what he has mentioned is $21 million of aid for one country. In the bill we now have before us we have a total of

$1.123 billion. It includes $61.75 million for military assistance for countries that need help, that need it urgently to protect their freedom, their liberty, their independence, and their position in the free world.

It includes $7 million for refugees, one-half of a million dollars for juror protection in Central America and El Salvador. It includes $60 million in Public Law 480 funds for Africa, certainly a humanitarian need, $445 million for child nutrition programs in this country which are desperately needed, and $300 million for women, infants, and children programs in this country, plus $100 million for summer youth employment.

It does delete $21 million in covert aid to Nicaragua, but it also deletes $175 million in other Public Law 480 funding, $5 million in food assistance to the Philippines and $70 million for the Corporation for Public Broadcasting, which I think is one of the best investments that we can possibly make for the education of American adults as well as youths, in the finest programs that appear day in and day out 7 days a week on public broadcasting. But we have cut that program.

This program has been put forward as a compromise between the House and the Senate. It does not mean that we are not going to give consideration to other assistance for Central America. After all, as the Senator well knows, the majority leader has now committed himself to the chairman of the Foreign Relations Committee that in that session of the Senate between the two conventions, July and August, we will take up as the first priority item the entire military assistance and foreign assistance bill. It will embrace in one program alone over a 5-year authorization, the first time we have ever had such an authorization, $5 billion in military and economic assistance for Central America alone, as recommended by the bipartisan commission, the Kissinger commission, on Central America. It will contain military and economic assistance for our allies and friends all over the world for the fiscal year 1985.

I will consider taking up on a foreign military and economic assistance bill items that any Senator wishes to consider, including the issue before us today.

It is perfectly apparent that if we did not move forward with dispatch on this particular bill we would be frustrating humanitarian programs in Central America, around the world, in Africa, and particularly in the United States of America.

It is for that reason that I urge that we move right ahead and adopt this conference report with the motion made by the chairman of the Appropriations Committee, and then at an appropriate time, and certainly the next time we are back in session, the foreign military and economic assistance bill will be the pending business of the Senate. That is the time to talk about helping our friends abroad.

The House has decided this vehicle is not the vehicle to do it on. They have taken it out. If we do not accept the motion now put forward, everything will be frustrated and we will simply pile up problems, and one problem, summer jobs, will be gone by the board. Those young people just will simply not have the opportunity that we must provide. We will be steeply cutting that particular program, which has been one of the better programs we have had through the years. We are deeply cutting it.

As I say, in our city of Chicago, it represents a 47-percent cut in that program from prior years, 13,000 jobs. We are urging our distinguished colleague to think in terms of just one job. What does one job mean to one child who might otherwise roam the streets, get into trouble, turn to drugs, turn to crime to make the money for drugs? We are not talking about one. We are talking about 100,000 jobs nationwide. Everyone who worked with this program, and Senator DIXON and I have worked with it for years, knows it is the salvation of our own young people. We are walking out on them this summer if we do not act and act promptly on the pending measure. I thank my distinguished colleague.

I leave the question with him, Is it not better for us to move ahead with this bill now and then take up aid to Central America, Nicaragua, whatever it may be, at the appropriate time which has been promised for us in the July-August time period between conventions?

Mr. EAST. Mr. President, let me just inquire—still, of course, maintaining my right to the floor here—let me inquire of the distinguished chairman of the Committee on Foreign Relations: Can I expect him to support this aid on some appropriate vehicle? Would he personally support it?

Mr. PERCY. Mr. President, I have not taken a particular position on that. It has been reported out of the Senate Foreign Relations Committee. It will be available on the floor. We could not reach agreement; we could not pass our amendment on Central America out of the committee because we did split on a 9-to-9 vote, with the distinguished senior Senator from North Carolina voting with the minority on that particular issue for different reasons than they did. So we simply could not report the bill out. But we will bring the Central America bill up as an amendment. Obviously, any one can add that amendment on the floor and debate it.

Mr. EAST. I appreciate the thoughts of the distinguished chairman, Mr. President. If I might not personalize too much, I realize he could not guarantee what the Foreign Relations Committee might do. Would he personally support such an amendment?

Mr. PERCY. I have a briefing set up this week by the Central Intelligence Agency to update me on the effectiveness of this program. I am not in any way committing myself at this time, though in the past, I have supported the program. But I am not committing myself at this time. I have specifically asked, earlier today, that I be given a briefing. It has been established, because there are new facts that have been brought out recently, as the distinguished Senator well knows.

Mr. EAST. Mr. President, I thank the distinguished chairman of the Committee on Foreign Relations for his analysis and contribution. I am a great admirer of him, not only personally but because of the qualified expert leadership that he continually gives in the area of foreign policy. But I am going to put it bluntly, Mr. President: I am unmoved. I am unmoved. I think what we are seeing here is clearly not an intentional sleight of hand, but a rather skillful way of deep sixing this particular provision.

We will be told, well, after the various recesses, there will be various opportunities to take it up again. I do not find that terribly comforting.

I am not opposed to humanitarian assistance to the youth of the city of Chicago. I simply come back again and say if humanitarianism is the argument, do you not have any humanitarian instincts concerning the continued murder in El Salvador of the people there and of the great misery inflicted upon the country, as Jeane Kirkpatrick has pointed out, by the deliberate destruction of the economic and social fabric of that country?

Why is my humanitarian interest in that on a lower scale than your humanitarian interest in the youth of the city of Chicago?

Mr. DIXON. Will my friend yield at that point?

Mr. EAST. If the Senator will just allow me to finish the point, Mr. President.

In the Senator's case, I have no objection to that. I wish I could help them, and I wish to help them. But the notion that jobs for them are infinitely more significant and more compassionate and humanitarian on its face than this vague thing of $21 million to aid those valiant people in Central America trying to fight off the imposition of a Marxist-Leninist totalitarian dictatorship imposed by Havana and Moscow—when will the U.S. Senate and the American people wake up to what is occurring? Will it take another Pearl Harbor?

If El Salvador falls, it will then be Guatemala, it will then be Honduras, it will then be Belize; the pressure will then mount on Mexico. We have seen in the past, where Communists took control, at least 10 percent of the population would flee. Between the Rio Grande and the Panama Canal, there are at least 100 million people. You can expect at least 10 million, because they do not then have to go out in boats, to come across the Rio Grande. And they are going to do it. They are going to vote with their feet.

Listen: Look in the world today; wherever people can vote with their feet, they leave these brutal Communist systems.

I remember in Southeast Asia, and it still goes on, these poor people getting in boats and going out and drifting in the South China Sea, waiting for someone to come along and pick them up. How bad must it be?

Does the Senate realize that we have to put up fences and have strict new immigration laws to keep people out; the Communists have to put up walls and barbed wire and machine guns to keep them in.

I am saying this to the Senator: If we do not give these people the aid—moral and logistic—to defend their own countries so they do not have to come here, they are going to have to come here. And the world is finite geographically, and eventually, we shall be like—like what? People just fleeing into this country trying to escape the torment.

Is it not clear in historical perspective that the great threats to the democratic systems of the West in the 20th century, 40 years ago, were fascism, nazism, the totalitarianism of the right? And if it had not been for the likes of Winston Churchill, we would live under the swastika today, and it would have meant Dachaus and Auschwitzes and Buchenwalds—the great horror of that period. And if we allow the other great threat of totalitarianism in our time, the Marxist-Leninists, Maoists, the Stalinists, to prevail, the fruit is the same: the Gulags, the death camps.

Is that the legacy you wish to leave to your children and your grandchildren? Is that the great humanitarian instinct that motivates the U.S. Senate and the U.S. House of Representatives?

The Speaker of the House not long ago went to China and he criticized the administration for allowing the defection of the Chinese girl who played tennis. Then later, when he was questioned about it, he said, "Well, I don't know much about foreign policy anyway." And how accurate that statement was. It is the Speaker of the House and a handful of people in the House who do not want to do anything to give aid and comfort to our friends in this world who seek to resist the imposition of the Marxist-Leninist solution.

Mr. KENNEDY. I wonder if the Senator will yield.

Mr. EAST. If I am the only voice in the U.S. Senate this afternoon to speak out against it, I shall feel the entire career that I have spent in the U.S. Senate, whether it turns out to be one term or two, or maybe even less than that, whatever the Good Lord wills, will be worth it to make a part of the CONGRESSIONAL RECORD my vigorous protest.

Every moral bit of fiber in my system tells me it is wrong, wrong, wrong for this country, the alleged leader of the free world, not to help those people. You say, "Well, it is a small amount, $21 million." Well, then, why not leave it in? "It isn't big," you say; "it is small change."

Mr. DIXON. May I answer that?

Mr. EAST. When the Communists took over in Nicaragua and the Sandinistas took over, I was not in the Senate at that time but you voted like this to give them $75 million.

Mr. KENNEDY. I wonder if the Senator would yield.

Mr. EAST. I have the floor and I shall not yield for the moment but I will in a moment.

You voted to give $75 million to the Marxist Government of the Sandinistas, and the rationale was this would make them more amenable to democratic ideals and democratic insitutions. It did not. You were foiled and conned. They slipped even further under the Soviet and the Cuban orbit. And now all we are asking for is $21 million, less than a third that amount, to interdict the supplies going in there from Havana and Moscow to take over all of Central America. My heart weeps for those people there and the hearts of the American people ought to weep for them, to. It is a scandal. It is the great moral scandal of our time. We fiddle while Rome burns. We are excused by two facts: One, we do not know what we fiddle; and, two, we do not know that Rome burns.

The world continues to fall under the domination of the Soviet Union and her surrogates, exactly as the Communist Manifesto of Marx and Lenin, as expounded upon by Mao Tse-tung, predicted. And you are sitting here idly allowing it to happen and pleading, "Oh, Senator, please be humanitarian and allow us to get our aid for the city of Chicago." It is isolationism. It is the old heady brew of the twenties and thirties and it is going to bring great anguish to this country. I have heard no reason here this afternoon, and until I hear a clear and convincing argument that I am wrong in what I am asking for, and until I get clear, ironclad assurance that this aid will have the leadership support that it needs in the Senate to get it back in there promptly and the acquiescence of the House, I will not, I repeat, I will not accept that position. I will want to ask for the yeas and nays on it. And if I am defeated, I will go home tonight and sleep with a clear conscience that I did my best because if I acquiesce— and we all in a great spirit of unity acquiesce—I would not blame them. The media, the national media will say, and why should they not, "It ain't a big thing. The Senate quickly and easily acquiesced." And this question will never come up again and we shall continue to see the fall of these countries in Central America. It is the great foreign policy issue of our time.

You know, we are always told in the analysis of American foreign policy that it is never the right time or place to make the effort. We were told Vietnam is not the place. That is far away. We were told that Africa, well, that is not really the place either, Agoia, Mozambique or Ethopia. We were told the Middle East is far away and we cannot do everything with the limits of power, and so forth and so on.

Have you ever noticed that it is only the Soviet Union that has national interests? We never do. We never have spheres of influence. And now we see right in our own front yard, or back yard, whatever you wish to call it, our own Central America slowly being Sovietized. You are going to see the whole Caribbean area and the Caribbean Sea become an area principally of Soviet, through her surrogate Cuba, dominance. The balance of power geopolitically is tipping against us.

Now, Alexandr Solzhenitsyn said that he felt psychologically the West had sealed its doom when it gave up in Indochina. And we lost that war here in the Congress of the United States when the aid was withdrawn. I was not here. That is where that war was lost. And Solzhenitsyn said psychologically, America lost the will to resist. I hope he is wrong, but he may be right. But I will say this: If we will not defend Central America, not only will he be proven right on the psychological point but geopolitically the balance of power is tipping against us and at some point will be irretrievable. We will have no alternative as the leader of the free world but to acquiesce in Soviet demands. They gain on us in terms of their military potential strategic. They gain on us in terms of their conventional capacity to wage war. The Chairman of the Joint Chiefs of Staff, John Vessey, has said in testimony before the Senate Armed Services Committee, of which I am a member, if the current trends are allowed to continue, they will eclipse the United States in terms of their military capability in every category, strategic and conventionally.

What is my point? We are following the follies of the 1930's—disarm ourselves, ignore the threat, pull into the concept of fortress America, "take care of our own and let the world go its own way." It is the fatigue of leadership and yet here this afternoon it is pawned off in grandiose terms as, "Senator, where is your humanitarian heart?" Mr. President, I have the humanitarian heart and precisely what I want to avoid is seeing more Gulags in the world, just as in the 1930's I would have wanted to have headed off Dachaus, the Auschwitz, and the Buchenwalds. What is the answer to all of this? Am I wrong? Wherein lies my faulty analysis? Is the comparison ill founded?

Mr. MELCHER. Would the Senator yield for an elaboration on that point and a question?

Mr. EAST. Well, I am listening carefully and I shall yield for a comment or question from the distinguished Senator from Montana, but I will say this: I am placing the burden on my colleagues to convince their humble fellow servant and colleague here that what I have said this afternoon is wrong——

Mr. MELCHER. Mr. President, will the——

Mr. EAST [continuing]. Ill founded, ill considered, wrongheaded, and that we ought to drop this whole question and move on quickly to other matters; it is a pretty day, and on to recess, and we will take it up at some other appropriate time. I have been here long enough to know what all these code words mean. They mean it is over—no aid.

Mr. MELCHER. Mr. President, will the Senator yield for a question?

Mr. EAST. I have the floor, and I will yield in a moment.

It means, ultimately, no aid.

I cannot go home for the recess at the end of this week and live with a conscience that acquiesced in that.

I should like the Senate to go on record with a rollcall vote indicating that that is what it wants; and if that is what it wants, it will be, and that is the way democratic government works. But I will not put the stamp of approval upon it.

If we lose, we lose. I have lost before in here, and I will lose again.

Mother Theresa was once asked by a young reporter if she did not become discouraged with her work in India, working with the poor, and the indigent, and the dying, and there seemed to be no end to it, and she constantly was losing. Do you know what her reply was? "God called me to not success but faithfulness."

That is the spirit in which I approach this. If I lose, I lose. But at least I will have been faithful to something I feel is deeply necessary; namely, the willingness of this country, as the leader of the free world, to wake up and to respond and not to yield to the fatigue of leadership that now plagues the U.S. Senate, and it plagues the House of Representatives.

I say to Mr. O'NEILL—and I admire the Speaker—that he is wrong on this one. I say that Representative BOLAND is wrong on this one. I say that the U.S. House of Representatives is wrong on this one. If a majority of the U.S. Senate cares to go along with them, I say they are wrong. I respect their right to do it. Let them do it. But there will be, I am confident, a strong vote of those who agree. It is immoral. It is not humanitarian.

What is going to occur is the continued Soviet-Cuban penetration of Central America, the subverting of our own best interests in this hemisphere, and jeopardizing the peace and the security and the freedom not only of our generation but also our children and our grandchildren. I refuse to have any part of it.

I yield to the Senator from Montana for a question.

Mr. MELCHER. I thank the Senator from North Carolina.

Mr. President, I have been listening with great interest to the Senator's discussion of this matter. Would not the Senator agree with me that since no armaments are made in any amount in Nicaragua or El Salvador, the best place to stop the arms flow from Cuba and from Russia into Nicaragua or El Salvador would be before the armaments reached Nicaragua?

Mr. EAST. Do I correctly understand that the Senator from Montana is saying that he would support covert operations to go into Cuba to stop the flow out of Havana?

Mr. MELCHER. No. I do not want the Senator to misunderstand me. I do not advocate this covert action.

I am questioning whether the Senator agrees with me that it would be better to stop the arms flow into Nicaragua or El Salvador from Cuba or Russia before they get to Nicaragua.

Mr. EAST. How would the Senator propose to do that? I would be delighted to support an operation to overthrow the government of Fidel Castro. I would happily do that. But I suspect, will all due respect to the Senator from Montana, and I do not want to misrepresent him—he will correct me if I am wrong, and I will happily stand corrected—but he will probably be the first to rise and say what a scandalous thing it is for us to be giving covert aid to Cuban refugees in this country to overthrow the government of Fidel Castro. I would support it. Would the Senator from Montana? He is offering it as an alternative.

Mr. MELCHER. I would not want the Senator from North Carolina to misunderstand me. I am not talking about covert aid to anybody for the overthrow of Cuba. I am merely asking the question, whether the Senator would agree with me that it would be better to stop the armaments from coming from Cuba or from Russia into Nicaragua or El Salvador.

Mr. EAST. What I would like to do——

Mr. MELCHER. I would assume that we would have some basic agreement on that. Forget about covert aid. I am talking about doing something specific. We say to Cuba and Russia: "There is a Monroe Doctrine. There is a Treaty of Rio. We do believe that the Contadora Group is correct in saying that armaments should not come from Cuba or Russia or countries outside of the hemisphere into Nicaragua or El Salvador."

Would the Senator agree?

Mr. EAST. But as President Duarte has pointed out, simply saying it will not stop it. You must back it up with military muscle.

Mr. MELCHER. Let us start by saying whether or not the Senator from North Carolina can agree with me. That would be two of us.

Mr. EAST. But I do not think that the Senator from Montana—is it covert aid that troubles him? Well, I am willing to engage in open invasion, if that is what he wants, but he would be appalled even more at that.

Mr. MELCHER. I do not want the Senator from North Carolina to misunderstand me. I am not talking about covert aid. I am not talking about invasion. I am talking about what is stated in the Monroe Doctrine, what is stated in the Treaty of Rio; and what the Contadora Group seems to be saying, as I interpret it, is that they do not want the arms flow from Cuba or Russia or other countries into Nicaragua or El Salvador. I do not want those arms going into Nicaragua. I want to state it firmly. If the Senator from North Carolina and I agree on that, there are at least two in the Senate who have stated that.

Mr. EAST. Mr. President, reserving my right to the floor, the problem you faced with the army of Hitler is the same problem you face with the armies and the surrogates throughout the world of Moscow and Havana. They are unimpressed with words. They are unimpressed with our mere oral assertions of "Remember, gents, the Monroe Doctrine." The one thing they do respect is power and the effective use of it. Now they are using armed force in Central America.

How does the Senator from Montana—and in asking the question, I reserve the right to protect the floor for myself—propose, in the real world, to stop that penetration? Simply saying that the Monroe Doctrine is alive and well—well, the Monroe Doctrine is alive and well only to the extent that the United States has the will to back it up morally and logistically.

But what we are doing here is in fact not allowing the Monore Doctrine to be enforced.

Mr. MELCHER. I respond to the Senator from North Carolina that I think it is a pertinent question he posed. I respond to him by saying that in the action that the United States took in Grenada, it was not an invasion of Cuba. It was a military operation on the basis of a request; however, people want to argue about whether it was a legitimate request from the people in Grenada and the surrounding islands to prevent any further arms buildup in Grenada.

The action was incisive, and it was decisive. It was not an invasion of Cuba, but it was a clear warning to Cuba that there would be no further military buildup in Grenada and a clear warning to Russia that there would be no further stockpiling of armaments in Grenada.

We have not had such a statement since then, either relayed through the State Department to Cuba or to Russia or from the President or from Congress, saying that it is intolerable for either Cuba to export armaments into Central America for the purposes of war, or for Russia to do it either directly or indirectly through Cuba to Central America.

I just state that as a matter of fact, and it has not anything to do with covert operations. It is simply a declaration and an exercise of policy, and this straightforward approach simply has not been debated here in this Senate to any extent.

I question the Senator from North Carolina, and I thank him for yielding to me and answering me to the extent that he has, on whether or not he agrees that the proper step is to prevent the arms flow from Cuba and from Russia into Nicaragua or El Salvador.

Mr. EAST. I do, and I say the only practical way to do that at the moment is to give this very small modest amount of symbolic aid for the use to carry on the Contra activities which will interdict the supplies going into Nicaragua that again I repeat, I hope not ad nauseam, that are again being infiltrated into El Salvador for the purposes of carrying on murder and killing, in the destruction of the infrastructure of that country.

That is what President Duarte has pointed out so carefully and artfully. Here is a true democrat with a little "d," and he not only needs the aid of his country but he supports this $21 million. He says, "We cannot survive without it."

I understand what the Senator is saying, but I do not think he is responsive to my point. Grenada simply proves my point that——

Mr. MELCHER. Mr. President, will the Senator yield for another question which I think demonstrates his point?

Mr. EAST. Let me finish on the point the Senator made, and then I will be happy to yield.

In the case of Grenada, and incidentally, I remember the day this occurred, we had Senators pouring out on the opposition side, and I suspect with great integrity and patriotism, and they were saying what a terrible thing this was. Yet we rescued 1,000 persons and for the first time since 1945 we reclaimed from the Communists a piece of territory. It was a time of rejoicing. But I remember on the opposition side, and I still hear from the opponents, "Oh, what a terrible thing the President did."

This is an infinitely more modest thing, conceded by the proponents of it. It is only $21 million, but it is an important $21 million. The timing is important and the symbolism is indispensable because if we this afternoon in the Senate simply quietly acquiesce, again I repeat, the national media will have no choice but to say the Senate has gone along with the House of Representatives, and the administration is alone and the President is alone.

I think President Reagan is right on this one, and I think the American people agree with him on this one. I think the beltway mentality is the one that is out of step. And I just cannot in good conscience sit here and let this one go down the drain without using the forum I have here as a U.S. Senator to say it is morally wrong, it is morally wrong and geopolitically it is disastrous.

I will tell the Senate what. If Central America falls under Communist domination and control, the opposition will quickly point to the White House and say, "Their policies failed. That is why it happened."

They said the same thing about the fall of Vietnam, but the Senator knows why Vietnam fell. It was because the U.S. Congress would not vote the funds to carry on the struggle, and I will tell the Senator Central America is going to go to Communists not because of the failure of leadership in the White House but because of the lack of vision, nerve, or will or something or other in the U.S. Congress.

It clearly is the majority opinion in the House of Representatives. So be it. I think they are dead wrong. And it may turn out to be the majority opinion in this body, and if so, so be it, but I say they are dead wrong.

But I have reached the point personally that I cannot in good conscience sit here and acquiesce in it. I do not know of any issue that has come before this body in the short time that I have been here that I feel more strongly about because of the symbolism it represents; namely, the will of this country to finally say enough is enough, we are going to draw the line, and we are drawing it in Central America.

Where else will we draw it? The Rio Grande? The Mississippi? Is there no intention ever to stop this?

Mr. MELCHER. Mr. President, I think the Senator from North Carolina has correctly pointed out——

Mr. EAST. I am not yielding the floor. I want it clear to the Chair that I have the floor and I maintain the floor. I will yield for a question from the Senator from Montana.

Mr. MELCHER. I thank the Senator from North Carolina. He has been generous in yielding and I appreciate that.

Mr. President, I believe the Senator from North Carolina has correctly pointed out a matter on which we have no disagreement, he and I, and perhaps many others, perhaps most others, in the Senate, that the Government in Nicaragua is Marxist, that it has ties with Cuba and through Cuba to Russia.

I do not defend that government, and I think their actions at times have been reprehensible.

But the Senator from North Carolina has brought up a very pertinent point, and that is that he believes that the arms flow is through Nicaragua to El Salvador and a lot of armaments are flowing from Nicaragua to El Salvador. I am not sure that we have surveillance to clearly state that that is indeed the case. But if it were, I would suggest that we step up our surveillance to determine when and how arms are coming to Central America and also strengthen our efforts to block them before the armaments reach Nicaragua.

But I do want to make one comment to the Senator, and that is this: It is not clear at all that the actions that the CIA has taken and is taking are contributing to any particualr good because it was Eden Pastora before his injury, one of the leaders of the Contras on the Costa Rica border, who has stated publicly on several occasions that he would not deal with the CIA and with the aid that is being distributed to Contras in Nicaragua.

That is the opinion of one leader of the Contras group, that they do not want the CIA involved.

So I am not at all sure that we can draw the same conclusion that the Senator from North Carolina has drawn that the actions of the CIA have been meaningful and constructive.

I thank the Senator for yielding.

Mr. EAST. Mr. President, in responding to the Senator from Montana, for whom I have great respect, he has—and if I misstate his position, please correct me—throughout recent weeks when this issue has come up in one form or another personally opposed this aid. It seems to me, he is slightly, though not intentionally so, of course, somewhat disingenuous with me when he says that, "Well, Senator, the real problem is Cuba and the Soviet Union and we ought to stop it there."

Yet at the same time, I cannot get the Senator, I presume, to support a covert action against Cuba. He does not even want to support this modest amount of covert action in Nicaragua. What he is suggesting, it seems to me, is that the real source of the problem is Moscow and Havana and that is where we ought to try to stint the supply. I agree.

That was true in Vietnam. We should have mined the Port of Haiphong to prevent the supplies from coming in from the Soviet Union. But we did not. We tried to interdict the supply lines. And then there was a hue and cry in the Congress and elsewhere that we could not even interdict the supply lines flowing down through the Ho Chi Minh Trail. So inevitably we lost. The way it was conceived and executed militarily, strategically, and tactically, as any person with a reasonable amount of military training would know, it was a blueprint for military defeat, which finally we were defeated and driven out and it is now under Soviet and Communist control. And Cam Ranh Bay, a former American naval base, is now a Soviet base being used to expand Soviet power into the South Pacific and to give aid and supplies to the Vietnamese Communists as they move into Cambodia and continue to threaten all of Southeast Asia.

Now I would have been willing at that time to mine the Port of Haiphong. But you could not even get people in this Congress to go along with interdicting the supply lines. To me this is déjà vu. You see, at that time we were told, of course, it is not in our national self-interest as to what occurs in that remote little area called Indochina.

Now I submit, Central America clearly is in the Caribbean and you are beginning to threaten the security, the legitimate national security, of the United States. And what we are talking about now is, how do we prevent that continued flow of supplies from Havana and Moscow, this time not into Haiphong, but into Managua?

I would say the other day we went through this when it turned out there was a very modest covert mining of the ports down there, a great hue and cry; it was a terrible thing we were doing. I did not think it was. I thought it was very appropriate.

If we had fought World War II on the terms we are fighting the current protracted struggle we would have lost it. And we are losing this one. I think we need to recognize that and the American people need to understand it. If they think that is in the best interest of this country and their freedom and security of this country, their children and their grandchildren, it is a democratic Republic and they have every right to do it, but that is what they are doing.

But I am simply asking, if I might draw the historical parallel, that we at least interdict the supplies with a modest $21 million, just as I would want to interdict the supplies going down the Ho Chi Minh trail.

But the Senator is saying, "Well, Senator, that is such a modest thing. Why don't we do something in Cuba or Moscow?"

Well, what would the Senator propose we do? He would not even support this modest effort. Do I understand the Senator to be saying he would support some sort of—if he is troubled with covert action—some sort of invasion from Guantanamo? I think he would be appalled at the thought of that.

I am simply looking for some sort of rational explanation as to at what point the Members of the U.S. Congress are willing to wake up to the military threat we face in this country. And I do not sense that it is there. There is no sense of urgency. There is no vision. There is no comprehension. It is the old isolationism, fortress America thinking of the 1930's and it was disastrous. It caused ultimately the death of hundreds of millions of people and our own sons gave of their blood more heavily than they have ever done before.

I fear we are repeating that cycle. I am willing to listen to rational argument to the contrary, but we are repeating that cycle.

I know people will say, "Well, it is late, Senator, how much longer will this go on?" Well, it might go on another 15, 20 minutes, maybe a half hour, I do not know. But I do know this——

Mr. MELCHER. Long enough for me to respond.

Mr. EAST. I do know this: That if the United States refuses to give now the Congress this modest symbol of aid to Central America, the message will be clear, unequivocal to Havana and Moscow and our friends and allies throughout the world that there no longer is the will in this country to even defend its allies and its own interests in its own hemisphere. And that I think is catastrophic—one, morally; and, two, in the pure tough world of geopolitics.

As the junior Senator from North Carolina, I want the record to show for posterity that I opposed it with every bit of moral, intellectual, and physical vigor that I could muster—I thought it was wrong; dead wrong—and I could not go home for the summer recess without having expended every ounce of energy that I can to dramatize that point.

I greatly regret I must indulge the time of my friends in the Senate. But this is not a casual point. I think it is the most momentous foreign policy issue of our time, whether we have the vision and the will and the understanding to finally say enough is enough, we draw the line, we stand firm, and we are going to begin to turn the tide of Marxism-Leninism back as we did in Grenada and we are going to do it in Central America and we are going to stand forward with pride and vigor.

That is what the President is giving us—vigorous leadership, hope, and confidence. I sense here in the Senate the leadership of fatigue, and fatigue of world leadership. It is a shame. It is wrong. It is scandalous. And I am not suggesting my colleagues are scandalous. I think their lack of understanding of it is wrongheaded, and I do not know any other way to dramatize the point. And I am looking for Senators to provide me with satisfactory answers as to where my analysis is wrong. This is a great deliberative body. This apparently is now the time and place to deliberate it. But I could not sit out there in the marble room, or in lobby, and let it slip through.

Mr. MELCHER. Mr. President, I would like to respond to clarify my position, so there is no doubt, either in the Senator's mind or in the record on it. First of all, Mr. President, I do not compare Central America with Vietnam. I do not happen to be one who wishes to draw parallels between the two. Second, I do not back the covert aid because I do not think it has been successful, nor do I think it will be successful through the CIA's handling of it. I believe this should tell us to at least question ourselves, and to investigate carefully further covert aid. Edan Pastora, one of the leaders of the Contras in Nicaragua, states publicly that he will not deal with the CIA on their type of covert action. Third, I think it should be clearly stated that as I interpret the Contadora group's recommendation of Colombia, Panama, Venezuela, and Mexico, they do recommend stopping arms from coming from Cuba, from Russia, or anywhere else out of this hemisphere into Central American countries. I think it should tell us—at least I have concluded—that it is proper for us to instigate surveillance of those arms movements before they reach Nicaragua or anywhere else, and serve warning on both Cuba and Russia, or any other arms merchants that are selling armaments in there, that we intend to stop that flow. I do not believe that this is being debated here in the Senate. I think that is much more direct, easily understood, and more likely to be successful than the covert aid suggested of $21 million for Nicaragua, or as the Senator from North Carolina has stated, some type of covert aid of Cuba itself to overthrow Castro. I think we can accomplish more by acting directly, by saying what we are doing, why we are doing it, do it with the Contadora groups, and every other country of this hemisphere. I do not think the Contadora group, those four, are the limit of the countries in this hemisphere that would agree with what I am stating now. I think all other countries in Central America would agree, with the possible exception of Nicaragua, which obviously does receive arms from Cuba and, from Russia through Cuba, and therefore would not agree.

I thank the Senator from North Carolina for his graciousness.

The PRESIDING OFFICER. The Senator from North Carolina still has the floor.

Mr. EAST. If the Senator from North Carolina still has the floor, I would be happy to yield the floor to the distinguished majority leader.

Mr. BAKER. Mr. President, I thank the Senator. What I want to do is make a brief statement. I would be perfectly happy to ask unanimous consent that I might do that without the Senator losing his right to the floor.

Mr. EAST. I would happily, without losing my right to the floor, yield to the unanimous-consent request to the distinguished majority leader or any other Senator——

Mr. KENNEDY. Reserving the right to object, I do not intend to object. I would like to inquire of my eloquent colleague from the State of North Carolina about how long he intended to continue to speak on this issue, and whether I would have an opportunity to speak to it this evening?

Mr. EAST. As the Senator from Massachusetts has probably seen, I feel very strongly on this issue, and I have received to this point no reassurance from anyone, anywhere, anytime, or anyplace that this issue will be brought up in a timely way, will enjoy the support that it needs to pass this body, and to carry the message loud and clear back to the House of Representatives. I am unimpressed with the Speaker's position. I am unimpressed with Mr. BOLAND's position. I am unimpressed with the House position. You might say well, they are equally unimpressed.

Mr. KENNEDY. Mr. President, I will withhold.

Mr. EAST. That is where the line is to be drawn. I see no reason why I should acquiesce in what they have done here. I think they have done a very wrongheaded thing. I do not know of any other way to alert the American people, to alert my colleagues to the error of their ways, and what I think is the error of their ways, than to engage in what I think is honest, intelligent, civil, forthright, and candid discussion of what I think is the greatest single issue facing this country at this time.

I have not made up my mind. I am not one who likes to unduly obstruct the flow of business in this body. I am weary of spirit, and weary of body. The spirit is willing, but the flesh is weak after last week. I think for all of us not only is the flesh weak, but the spirit is getting weak. But my spirit is strong on this one, and the flesh is holding up fairly well. I would like some sort of assurance from my colleagues that we are not just playing Judas, washing our hands of this, and doing it in the name of, oh, well, it will be taken up later; and, oh, well, do not forget the unemployed children of the city of Chicago, and appealing to some sort of humanitarian instinct. I submit nothing is more humanitarian than that we prevent the Marxist-Leninist juggernaut from imposing its brutal and bloody system upon the people of El Salvador and Central America. Where is the humanitarian, moral superiority, postion, and posture that acquiesces in that? I would like to know. If I could get some satisfactory answer, I would cease and desist; or, if I could get some assurance that this issue would be taken up promptly in an orderly way with strong leadership in this body to restore it, to insist that the House restore it, and to back the President.

Mr. EVANS. Is there objection to the unanimous consent?

Mr. EAST. I do not find yet that kind of assurance nor that kind of response. So I wish to continue the debate and the deliberations, not unduly to hold up, but sometimes the only forum you have left in the U.S. Senate is simply to try to convey what you feel is exceedingly urgent I said a moment ago. And I will be happy, reserving my right not to lose the floor, to yield to the majority leader to make what explanations and other comments he wishes to make at this stage in the day.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The majority leader.

Mr. BAKER. Mr. President, a unanimous consent has been granted, I believe, that when I conclude, the Senator from North Carolina will not have relinquished his right to the floor. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. I do not know quite where to begin, Mr. President, because, you see, I have a dilemma as well because I, too, support, as does the Senator from North Carolina, the Nicaraguan program. Indeed, I helped lead the charge here in the Senate when only last week we won by a very comfortable majority on this issue. Mr. President, if the Senator from North Carolina requires assurance that the leadership in the Senate will attempt to restore this money for this purpose, I herewith give him that assurance.

If the Senator from North Carolina is asking for me to specify the bill on which that is done, I cannot yet do that. I hope the Senator from North Carolina will understand the requirement for that reservation.

He should also know that I will consult with the administration, with the State Department, and with others on that matter, as we progress.

I want the Senator to know that this Senator, this part of the leadership, intends to pursue this matter, even notwithstanding that the motion may prevail on amendment No. 14, as indeed I hope it will.

As to the administration, I never speak for the administration without making sure I understand what I am saying. I believe I am absolutely correct in what I am about to say now.

I am assured by the Secretary of State and by the White House that they accept this as a necessary move at this time to further promote and improve the possibility of continuing the Nicaraguan program. I have reconfirmed that by telephone to the Department of State at the Secretary's level and to the White House itself. I make that representation on my own authority. They accept this course of action, to remove by this motion amendment No. 14 from this conference report.

Mr. STENNIS. Will the Senator yield?

Mr. BAKER. May I finish for a moment? I apologize to my friend from Mississippi, but I would like to finish.

Mr. President, I do not know how many bills there are to which this matter might be affixed in one form or another, either authorization or appropriations bills. But there is no shortage. I will consult with the Parliamentarian and we will try to identify them. I would guess offhand that there may be a dozen opportunities to do this.

Mr. President, in the final analysis, notwithstanding the brilliance and the diversity of this system of ours, with the magnificence of 535 of us in the Congress, finally somebody has to run the show, finally somebody has to make the decision on what is best to try to accomplish a purpose.

It is my representation, based on the communications I have just recited, that that purpose, the Nicaraguan program, is best supported by not trying to do it on this conference report, not trying to join issues on this amendment but, indeed, saving our fire for another time.

I would say in all candor to the Senator from North Carolina, this was not my idea. This idea evolved. It evolved after many consultations by me, by the Senator from Wisconsin, by others who are directly involved in this matter, with no doubt a dozen Members, including the chairman of the Foreign Relations Committee and others, on how best to proceed.

Mr. President, I guess what it boils down to is you do not fight every battle on every bill. It is my recommendation, Mr. President, based on the information I have now imparted to the Senate, that we get on with the business of the motion before the Senate, which is a motion to recede from the Senate amendment to which the House added an amendment. It should be absolutely clear to everyone that, if that motion passes, I fully expect the Chair will rule that the Boland amendment also falls since it is an amendment to the Senate amendment. I believe there is precedent to that effect. The House may or may not have to take any further action on that score.

In 1944, I am told, they did concur in the action of the Senate. In 1913, they did not. So I do not know what the House will do, although I assume they will take some action in this respect.

My final entreaty, Mr. President, is this: Keep your powder dry. Fight this fight and we have a chance to win it, as we did last week. Let us not fight it here, or I think you will lose. Let us go along with the view that the best thing to do here is to support this motion.

I commit to the Senator from North Carolina, and anybody else who is listening, that I will help try and restore the money for the Nicaraguan program in which I believe.

Mr. President, I would hope we could do this by voice vote. I would hope we can get on with the business at hand and dispose of amendment 14 and send this conference report back to the House of Representatives.

Mr. GOLDWATER. Will the Senator yield?

Mr. BAKER. Mr. President, I ask unanimous consent that I may yield first to the Senator from Mississippi and then to the Senator from Arizona without the Senator from North Carolina losing his right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, I think my remarks ought to come with the leader's remarks. I believe the Senator from Tennessee has rendered a service to the Senate. The question has been asked many times here on the floor if the administration's position is this or that or who has said so. We have never been directly assured. Now we are assured that the administration is in favor of dropping this amendment.

Mr. BAKER. I want to make sure I said the words I received; I want to be absolutely sure. The administration did not say they wanted us to do this. What the administration did say is they agreed it was the best thing to do and they accept this course of action.

Mr. STENNIS. That is very good.

Just last week, I supported this and I am going to vote now to lay the amendment aside. I judge it will come up again.

Mr. BAKER. I yield now to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I think the majority leader is making a point that should be well taken and paid attention to by my friend from North Carolina.

In the conference between the House and the Senate on the armed services bill, we have just today spent the whole afternoon on a subject closely related to what the debate today is over. The Senate did not pass any restrictive language relative to moneys to be used for sending troops, et cetera, et cetera, into that general area.

The House did, and we are now almost at an impasse where if the Senator's amendment fails, it could weaken our hand in the negotiations between the House and the Senate. Even if the amendment succeeds, it is not of sufficient strength to give us the strength that we would need to override the fact that the Senate says nothing about it.

I just mention that. I am not imploring my friend from North Carolina to do anything. I do think the majority leader's points are well-taken, that there will come a time a little later when the amendment could be offered and meet with great success where today I think the gamble might result in something that the Senate would not like.

Mr. BAKER. Mr. President, I thank the Senator from North Carolina for yielding, and I now yield the floor.

Mr. EAST. I thank the majority leader.

I would like to approach it as expeditiously as possible in this way: First, I would like to inquire of the majority leader on a question or two. That will be very brief. Then I would like to put a unanimous-consent request, without losing my right to the floor, to ask for a quorum call so that I might consult on a private basis with the majority leader. I would like to submit that unanimous-consent request in a moment.

Before doing that, I have two quick questions. I wonder if the majority leader would answer. I do not want to put him on the spot. Perhaps he does not know the answer. I deeply respect him and know of his great respectability and candor. There is no man in the U.S. Senate I admire more than the majority leader.

Rarely does one speak for all of his colleagues, but I think I can speak for the other 99: There is no man I admire in the U.S. Senate more than the distinguished Senator from Tennessee.

First, I wish to say, with all due respect to the administration, I think they have been a bit remiss here in that I wish that their thoughts had been communicated directly to me. I have not heard from them, but respecting the great integrity of the majority leader, it seems to me that he is affirming to me here that this is in fact the wish of the President of the United States, via the Secretary of State, that this is neither the time nor the place to fight this particular fight. Though I know they are with me, as is the majority leader, they have not spoken with me—I would like the record to show that. I am not faulting them; I am stating the fact: I have heard neither from the President nor from the Secretary of State nor from anyone in the administration, period, that this is the way in which they would like to proceed. But I do so greatly respect the integrity of the majority leader that what he is saying is they have in fact, from President Reagan and from Secretary of State Shultz, communicated to him, one, that they would prefer to proceed in this way.

Mr. BAKER. Mr. President, once again, I do not want to evade the Senator's question, which is phrased a little differently than I stated in my assertion a moment ago. I would like to make sure that I do not say more than I am authorized to say. I believe the Senator is correct in his statement, but let me repeat for the record exactly what was given to me.

The first is the Secretary's office confirmed to me that the Secretary understands and agrees with this course of action.

The second is that a principal counsel of the President, at my request, consulted with the President—rather, that request was made, and I assume that is what he did—and came back and, by telephone call received a few moments ago, said that the President accepts this course of action and—well, accepts this course of action.

Mr. President, may I say that I suppose there are shadings of difference between supporting and accepting, but I think that is inconsequential here, because the fact of the matter is it must be taken in the context that the matter is pending and that I asked for a statement from the President on his position. It is clear that the President would prefer not to have to do this, but it is also clear that he accepts this as a necessary course of action.

Mr. EAST. So the junior Senator from North Carolina—to wit, myself—would be fully justified in believing that this is the wish of President Ronald Reagan and his Secretary of State, that this is not the time nor the place to carry on this particular battle—because I wish to support them. I support the President and I think he has been right all along in insisting on this. But as I understand the distinguished majority leader, I am being advised that the President and the Secretary of State would prefer, as a matter of strategy and tactics, that the battle not be fought here at this time at this place; but that we will, we can be assured that it will be raised again.

And I presume—which leads to my second point—that it will be raised at such a time and in such a way that we will not jeopardize the people in the Government of El Salvador; that, in fact, ways can be found to give what aid is necessary not only to El Salvador but to those forces trying to interdict; that the administration, I presume, has at its disposal other ways that will allow us to accomplish the same end pending that time when we can then bring up this question of aid for the Contras.

To put it another way, the President's and the Secretary of State's position to the contrary notwithstanding, I am a little bit troubled—I do not wish to sound self-righteous or overly moralistic—at leaving stranded our good friends like Eden Pastora and those who are carrying on. Would we go home comfortably to our summer recesses here and the Democrats have their convention and so forth—I presume what they are saying is they will not be left in the lurch and we can be assured that that is the case. We are not leaving them in the lurch—I guess that is what I am asking the majority leader.

In short, two points: One, the President and the Secretary of State do not wish to fight this battle here and now at this time; second, the matter can be handled until such time as we can take it up on a more appropriate vehicle at a more appropriate time and place.

I am troubled with leaving these valiant people down there in the lurch, symbolically and in terms of the arms support that we could give them.

Mr. BAKER. Mr. President, the first question is clearly answered in the affirmative. I think it is a correct interpretation of the language that I was authorized to use here. I think it is the only logical inference that flows from what I said.

On the second one, I simply do not know how to answer. I am not that familiar with the situation and I cannot give the Senator a good answer. I assume and I hope that that can be done, but I cannot represent that I know it can be done, because I do not know that.

Mr. EAST. I appreciate the majority leader's position. I suppose what he is saying to me, and it is not clear to me—I suppose it is the only thing he could say since he is not the President of the United States—is that it might be reasonable to assume that implicit in their response is that they feel they can carry on in some responsible way consistent with their own policies to ensure that the Government of El Salvador will survive in the interim. If that is what the leader is saying, it would seem to me implicit in their desire that we not fight this battle at this time in this place. Obviously, the distinguished Senator cannot say, yes, I can guarantee that they have other avenues or ways to accomplish the same end.

I appreciate that perhaps I place an undue burden there on the majority leader, that he simply would not be in a position to make that kind of statement, guaranteeing what the President would or would not do or what his options might be. I think that is what the distinguished Senator is saying.

Mr. BAKER. Yes, Mr. President.

Mr. EAST. What I would like to do and I deeply appreciate the time and patience that the majority leader has shown. He invariably, I think we all recognize, makes a joke of being a rank amateur in dealing with some of us in the U.S. Senate.

I would like to make this unanimous-consent request that, reserving my right to the floor, I may ask for a quorum call for the purpose of consulting with the majority leader briefly and, at the end of that period of consultation, we would, of course, lift the quorum call and proceed in a way that I think would grow out of the discussion that I might have with the majority leader.

Mr. President, I do submit the unanimous-consent request that, reserving the right to maintain the floor, I ask for the quorum call.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Reserving the right to object, Mr. President, would the Senator let me suggest an alternative to that?

Mr. EAST. Yes, Mr. President.

Mr. BAKER. The Senator from Massachusetts, I think, wishes to speak. I know he has been on the floor for a certain amount of time. He is holding up five fingers, which is the best offer I have had all day.

Would the Senator from North Carolina be willing to yield the floor so the Senator from Massachusetts may speak for 5 minutes, after which the Senator from North Carolina would be recognized? Would the Senator be willing to amend his request to accommodate that?

Mr. EAST. I would be willing to include in my unanimous-consent request at this point that the Senator from Massachusetts may be given 5 minutes in which, as I understand it, he wishes to speak, then to have the quorum call for consultation, because I always greatly enjoy hearing the distinguished Senator from Massachusetts.

I would not want to be involved in off-the-floor discussions while the Senator was speaking. I would want to hear what he had to say lest I might have a brief response to it. So, without losing my right to the floor, I would first then like to make a unanimous-consent request that I yield the floor for 5 minutes to the distinguished Senator from Massachusetts for the purpose of making what comment he wishes, and the floor would then come back to me, I would then make a unanimous-consent request for a quorum call, at the end of which I again would resume my right to the floor that during that interim, which should be brief, I would have the opportunity to consult privately with the majority leader. In short, all I am saying is I would like to be present during the substantive debate. Certainly the distinguished Senator from Massachusetts is a vital component of this debate, and I would enjoy hearing his thoughts on the matter.

The PRESIDING OFFICER. Is there objection?

Mr. EAST. So I make a unanimous-consent request that the distinguished senior Senator from Massachusetts, reserving my right to the floor, would proceed to speak for a period of 5 minutes on this issue.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. I thank the majority leader for his intercession.

Mr. President, my views on the issue of U.S. assistance for the "secret war" in Nicaragua are well known to the Members of this body. I think it is just plain wrong. It is wrong morally, it is wrong legally, and it is wrong practically. It is inconsistent with our own principles and values as Americans, it is inconsistent with our solemn obligations under international law, and it just does not work. I think that our assistance to the Contras should be halted—not just for fiscal year 1984 but for all time.

For these reasons, whenever and wherever this administration seeks to authorize or appropriate funds to support this "secret war," I will work to defeat it.

It is particularly unconscionable, however, that funding for this war in Nicaragua should be tied to programs—such as child nutrition, Public Law 480 emergency assistance for drought stricken Africa, and summer jobs—for those who are in need in the United States and abroad. I think it is a disgrace that this administration would tell the Members of the U.S. Senate that, in order to provide jobs for unemployed teenagers in our Nation's cities, the Senate must also vote to provide weapons for the Contras in Nicaragua. I think it is a disgrace that the administration would tell the Members of the Senate that, in order to provide needed food and medical care to women, infants, and children, the Senate must also vote to send guns and bullets to the Contras in Nicaragua.

I note the statements that have in the last half hour been made about the change of policy by the administration, and that is certainly welcome. But the fact is the administration has been hard pressed to justify its previous position. I welcome the change in their announced position as stated by the majority leader.

Let us deal with the secret war on its merits. Let us not hold summer jobs of American teenagers hostage to the needs of the Contras in Nicaragua. Let us not hold assistance to the needy in the WIC Program hostage to assist to the Contras in Nicaragua. Whatever our views may be on the secret war, it is imperative that the critically needed funds contained in this legislation go forward immediately.

For that reason, I urge my colleagues to support the motion to recede from the Senate's position on funding for the covert war in Nicaragua.

It is essential that we act quickly to provide the much-needed funds this bill contains not only for summer jobs, but also for the WIC, and Child Nutrition Programs. All of these programs are aimed at helping the most needy in our society—unemployed teenagers, pregnant women, and hungry children.

Of particular importance is the $100 million this bill contains for summer jobs. No more serious domestic problem faces this Nation than the record levels of unemployment among our young people, especially those minority youth living in our cities. Unemployment among black teenagers is at 44 percent, 26 percent Hispanic youth are out of work. The problem is even more serious if we consider those who are so discouraged they've stopped looking for a job. While one in every two white teens is working, just one in three Hispanic youth is employed and tragically only one in every five black teenagers has a job.

I am not here to argue today for a comprehensive solution to this problem, though I believe that's what is needed and I would ask my colleagues to consider supporting the bill that Congressman GUS HAWKINS and I have introduced.

I am here asking you to support this additional money to put 100,000 unemployed teens to work this summer. The need is indeed urgent. Changes made in the formula under the Job Training Partnership Act, combined with a $100 million reduction in funds has resulted in a significant loss of funds and summer jobs for several cities around the country—Gary, IN, will be cut 44 percent, Newark could lose 59 percent of its funding from last year, Phoenix stands to lose 32 percent. Cities in my own State of Massachusetts, will lose 12 percent in funding, and the list goes on.

The proposal we are considering will not make every community whole, but it will restore a significant number of the jobs that would otherwise be lost.

Schools are out; summer is here, these 100,000 jobs are needed now. The young people of this Nation should not be held hostage to the covert war in Nicaragua. I urge my colleagues to avoid further delay and vote today to put our unemployed young people to work.

This may be one of the truly historic votes in the U.S. Senate.

The Senate has the chance now to join the House of Representatives in voting to end President Reagan's secret war against Nicaragua.

We may have other votes on this issue later this year. But I suspect that when we look back at the end of this Congress, we may well be able to say, this was the day the tide was turned—this was the beginning of the end of Senate support for the secret war, and the beginning of a genuine search for peace in Central America in voting to end President Reagan's secret war against Nicaragua.

I think we are making progress in our effort to end the secret war in Nicaragua.

For the first time in our continuing confrontations on the war, the Reagan administration has blinked.

I hope the Senate will strike these funds from the bill, and I hope we will continue to vote against the war on every occasion that we have in the future.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EAST. Mr. President, I would like to again make a unanimous-consent request, without losing my right to the floor, to suggest the absence of a quorum, at which time we shall in due course suspend it and that I will pick up then the right to the floor and we can proceed accordingly. That is the unanimous-consent request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. EAST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EAST. Mr. President, I shall speak for about 1 or 2 minutes at the outside and then allow my position here to rest.

I have had an opportunity of speaking with many parties to this, including the White House. I have found in my conversations there is no lessening in the commitment of the administration to the same goal that I seek, nor do I think is there any lessening of the commitment of the majority of the Members of the Senate to the position as I have stated it because previous rollcall votes on the issue have clearly indicated that this body and the administration share my goal.

I do dissent from the view expressed not long ago in his 5-minute remarks by the very able Senator from Massachusetts that this would indicate a vote for this measure without the $21 million as a turning point in this debate of very significant proportions.

I think that would be an incorrect interpretation to place upon it. I think what should be understood by the American people and the American media is that this is no lessening of commitment on the part of the administration or the majority sentiments of this Senate as repeatedly expressed that there is a desire to give that aid and comfort and support that is necessary to prevail in Central America, that we have finally reached a point in the legislative process where we must move on and we will accept the measure without this aid, because there is much merit, of course, in the pending underlying bill, and I am very emphatic that I feel that the Senator from Massachusetts is in error and would himself be evincing some hostility to the underlying legislation by suggesting that by proceeding without the $21 million this would represent a turning point in the whole policy of this country toward Central America.

I think rather it would have to be interpreted in an infinitely more narrow context; namely, as a change in legislative, stategic, and tactical maneuvering as to the appropriate time and place to reassert the deep commitment of this administration and the majority of this Senate to the need to do those things that are necessary militarily and economically to prevent Central America from falling under Communist control and Communist domination. And to put any other interpretation upon it would be incorrect, unwarranted, and contrary to repeated statements by the administration and by majority votes here in the U.S. Senate.

Because this is the point that, Mr. President, I have anguished over for some time, that by acquiescing to the House of Representatives on this matter, we some way or other indicate that we concur on the merit of their position. Clearly, the administration has assured me they have not lessened in their vigor and I have not seen any colleague here arise to indicate any lessening of their vigor in terms of repeatedly shown majority for the position that this aid is essential. This aid is essential. The aid to, one, El Salvador and, two, the aid to the Contras is essential. It is modest and it is essential that this aid be made available to prevent, again, the Soviet Union and Cuba from imposing a military solution in Central America.

I think the Senator is aware that the great vast majority, portion, substance, of our aid to Central America is of an economic variety to help them build a viable economy and a viable democracy, and the motivations are humanitarian and positive and good and becoming of a great and free and benevolent country and people.

The amount we are talking about for military assistance is only a small fraction of that but, I repeat, as President-elect Duarte said when he was told and asked here and inquired of before the Senate whether the solution would not have to be political rather than military, he said, "Gentlemen, it is a very complex question. It is partly economic, it is partly social, it is partly political, and it is partly military."

Again, I repeat, but I think it is worth repeating, he said, "If you have an army on one side that is armed and an army on the other side that is not armed, you will have a military solution." And the military solution is the one imposed by the Soviet Union and Cuba.

And, as Mr Duarte said—he is a great democrat with a little "d"; probably would be a great Democrat with a big "D" if he sat here in the U.S. Senate, trained at Notre Dame, his mentor was Father Husburgh; I do not think you could ask for finer credentials in terms of the democratic ideals—he said that what he did not want to occur in his country is to have military solutions imposed by the authoritarian right or the totalitarian left. And he could not do that without, one, aid for his own army and, two, he could not do it without aid being given to the Contra forces attempting to interdict the supply lines that were coming out of Managua via Havana and Moscow.

That is what he was saying, that you ought not to be allowed to shoot yourself into political power. I find that an eminently reasonable and responsible position.

I ask again and again of my colleagues, as the leader of the Free World, can we not support that honorable man in that eminently honorable position? I think the position I take is very responsible and I think it not only enjoys the support of this President and this administration but the majority of the Members of the U.S. Senate in a bipartisan way as has been shown in repeated votes on the floor of the U.S. Senate.

Mr. President, I appreciate the indulgence of the Chair and I appreciate the indulgence of my colleagues this afternoon and I yield the floor.

(Mrs. KASSEBAUM assumed the chair.)

Mr. HATFIELD. Madam President, I thank the Senator from North Carolina. I know that he feels strongly about this issue and expressed himself today in very eloquent terms. Even though we disagree on the matter, I think the issue has had a good debate and good discussion and the record has been made.

Therefore, at this time, I move to table Senate amendment numbered 14.

Mr. KENNEDY. Madam President, this is an important vote.

It does represent a lessening of the administration's commitment to the war.

And I say, "Amen."

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon [Mr. HATFIELD] to table Senate amendment No. 14. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STENNIS. I announce that the Senator from S. Dakota [Mr. ABDNOR] and the Senator from Colorado [Mr. ARMSTRONG] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Missouri [Mr. EAGLETON], the Senator from Colorado [Mr. HART], the Senator from Alabama [Mr. HEFLIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Michigan [Mr. LEVIN], the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. PRYOR], the Senator from Maryland [Mr. SARBANES], and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan [Mr. LEVIN] and the Senator from Rhode Island [Mr. PELL] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 88, nays 1, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—88

Andrews
Baker
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
East
Evans
Exon
Ford
Garn
Glenn
Goldwater
Gorton
Grassley
Hatch
Hatfield
Hecht
Heinz
Helms
Hollings
Huddleston
Humphrey
Inouye
Jepsen
Kassebaum
Kasten
Kennedy
Lautenberg
Laxalt
Leahy
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Percy
Pressler
Proxmire
Quayle
Randolph
Riegle
Roth
Rudman
Sasser
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Tower
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—1

Hawkins

NOT VOTING—11

Abdnor
Armstrong
Eagleton
Hart
Heflin
Johnston
Levin
Pell
Pryor
Sarbanes
Tsongas

So the motion to lay on the table Senate amendment No. 14 was agreed to.

Mr. BAKER. Madam President, I move to reconsider the vote by which the motion was agreed to.

Mr. DIXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Madam President, am I correct now that the vote just taken, which disposes of the last remaining amendment in disagreement, is the final action required by the Senate on this measure?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BAKER. I thank the Chair.

Mr. PRESSLER. Madam President, I was absent from the vote on the conference report on House Joint Resolution 492. Had I been present I would have voted "aye." On April 5, 1984, I voted in favor of Senate passage of this legislation.

DRUNK DRIVING AMENDMENT

Mr. HUMPHREY. Madam President, in the past few days, I have received numerous letters and phone calls in support of the Humphrey-Simpson-Symms drunk driving amendment. Today, I submit for the RECORD two noteworthy letters.

The first letter, written on behalf of the National Conference of State Legislatures (NCSL), indicates what I perceive is the essence of this issue: The development of a serious and consistent approach to drunk driving. Miles "Cap" Ferry, president of both the Utah Senate and the NCSL, points out several weaknesses of the punishment approach embodied in the Lautenberg bill, S. 2719, as amended. In addition, Senator Ferry echoes the practical value and significance of a comprehensive approach to drunk driving, a prime feature of our alternative.

The second letter, from Mr. Kenneth Eaton, Legislative Committee Chairman of the National Association of State Alcohol and Drug Abuse Directors, strongly endorses the Humphrey-Simpson-Symms "positive" amendment. Mr. Eaton notes also the inadequacy of the penalty-based approach, that is the Lautenberg amendment. We must not enact legislation that is small in scope and fails to address the larger societal problem of drunk driving.

I am encouraged that these two groups in particular have endorsed our amendment. It is my hope also that my colleagues will review these comments, two of the many letters I have received in support of the positive and comprehensive direction of the Humphrey-Simpson-Symms amendment.

Madam President, I ask unanimous consent the two letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JUNE 22, 1984.

DEAR SENATOR: I am writing on behalf of the National Conference of State Legislatures to express our support for incentives that encourage states to raise their minimum drinking age to twenty-one years. The incentives approach suggested by Senators Humprey, Symms, and Simpson deals in a positive and comprehensive way with the problem of young people who drink and drive.

The incentives approach is far better than the approach of imposing penalties on states that fail to raise their drinking age. Penalizing states by reducing their highway funds is not in keeping with the spirit of our federal system. Furthermore, reducing highway funds may preclude road repairs necessary for highway safety.

NCSL, therefore, urges you to oppose federal legislation requiring states to raise the drinking age of 21 or lose federal highway funds. NCSL believes that the serious problem of drunk driving should be addressed in a comprehensive manner through actions of state legislatures. A comprehensive approach to this problem will do more to further safe driving, and reduce fatalities than efforts to make highway funds contingent on raising the drinking age.

Again, NCSL urges your support for the Humprey, Symms, and Simpson proposal. We believe the approach will save lives while respecting our federal system.

Sincerely,

MILES "CAP" FERRY,
President of the Utah Senate,
President, NCSL.

JUNE 25, 1984.

Senator GORDON J. HUMPHREY,
U.S. Senate,
Washington, DC.

DEAR SENATOR HUMPHREY: We are aware of your plans to offer an amendment if and when a national drinking age proposal comes before the Senate. We strongly endorse your approach which provides appropriate fiscal incentives for those States which adopt a twenty-one year drinking age and which initiate other actions designed to reduce the injuries, deaths and other costs associated with drunk driving. This broad incentive approach is far more preferable to and will be much more effective than a simplistic and single focused negative approach which penalizes States which need assistance.

We hope that other Senators will join with you in providing positive leadership on this complex national problem.

Sincerely,

KENNETH EATON,
Legislative Committee Chairman.

ROUTINE MORNING BUSINESS

(During the day morning business was transacted and statements were submitted as follows:)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, a withdrawal, and a treaty, which were referred to the appropriate committees.

(The nominations, withdrawal, and treaty received today are printed at the end of the Senate proceedings.)

MEASURE PLACED ON THE CALENDAR

The following bill, which has been ordered held at the desk for not to exceed 10 calendar days on June 22, 1984, was placed on the calendar:

H.R. 5504. An act to apportion funds for construction of the National System of Interstate and Defense Highways for fiscal years 1985 and 1986, to revise authorizations for mass transportation, to expand and improve the relocation assistance program, and for other purposes.

The Committee on the Judiciary was discharged from the further consideration of the following bill; which was placed on the calendar:

S. 1400. A bill to enhance the detection of motor vehicle theft and to improve the prosecution of motor vehicle theft by requiring the Secretary of Transportation to issue standards relating to the identification of vehicle parts and components, by increasing criminal penalties applicable to trafficking in stolen vehicles and parts, by curtailing the exportation of stolen motor vehicles and off-highway mobile equipment, and by establishing penalties applicable to the dismantling of vehicles for the purpose of trafficking in stolen parts, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3433. A communication from the Deputy Secretary of Agriculture transmitting a draft of proposed legislation to require payment of fees for use of the National Forests; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3434. A communication from the Acting Assistant Secretary of the Army for Installations and Logistics transmitting, pursuant to law, a report on the recent discovery and emergency disposal of a suspected chemical agent munition at Aberdeen Proving Ground, Maryland; to the Committee on Armed Services.

EC-3435. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report on the certification of Panama Canal Commission estimated revenues for fiscal year 1985; to the Committee on Armed Services.

EC-3436. A communication from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements, other than treaties, entered into by the United States within the 60 days previous to June 18, 1984; to the Committee on Foreign Relations.

EC-3437. A communication from the Secretary of the Interior transmitting, pursuant to law, actions taken during calendar year 1983 under the Alaska Native Claims Settlement Act; to the Committee on Energy and Natural Resouces.

EC-3438. A communication from the Acting Commissioner of the Bureau of Reclamation, transmitting, pursuant to law, a report on a proposed alteration of Heart Butte Dam, Pick-Sloan Missouri Basin Program, North Dakota; to the Committee on Energy and Natural Resources.

EC-3439. A communication from the Acting Commissioner, Bureau of Reclamation, transmitting, pursuant to law, a report on a proposed alteration of Fruitgrowers Dam, Colorado; to the Committee on Energy and Natural Resources.

EC-3440. A communication from the Secretary of Energy transmitting, pursuant to law, the ninth report on the implementation of alternative fuels production; to the Committee on Energy and Natural Resources.

EC-3441. A communication from the Acting Administrator of the General Services Administration transmitting, pursuant to law, the prospectuses for alterations in Federal Buildings; to the Committee on Environment and Public Works.

EC-3442. A communication from the Deputy Chief for Natural Resource Projects, Soil Conservation Service transmitting, pursuant to law, a report on the Turkey Creek Watershed Plan, Oklahoma; to the Committee on Environment and Public Works.

EC-3443. A communication from the Director of the Office of Private Secton Liaison, Office of the U.S. Trade Representative transmitting, pursuant to law, the report of the Industry Policy Advisory Committee entitled, "A National Strategy To Increase the Competitiveness of American Enterprise in International Trade"; to the Committee on Finance.

EC-3444. A communication from the President of the United States transmitting, pursuant to law, notice of his designation of a Chairman of the U.S. International Trade Commission; to the Committee on Finance.

EC-3445. A communication from the Assistant Secretary of State for Legislative and Intergovernmental Affairs transmitting, pursuant to law, a report on the feasibility study of a Caribbean Trade Institute in Harlem, N.Y.; to the Committee on Finance.

EC-3446. A communication from the Chairman of the Board of Governors of the U.S. Postal Service transmitting, pursuant to law, the first semiannual report on certain investigative activities of the U.S. Postal Service; to the Committee on Governmental Affairs.

EC-3447. A communication from the general manager of the Norfolk Naval Shipyard Cooperative Association transmitting, pursuant to law, the annual report on the Norfolk Naval Shipyard Pension Plan for calendar year 1983; to the Committee on Governmental Affairs.

EC-3448. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report entitled "A Plan for Diagnosis and Prevention of Illness Related to Nuclear Resource Development on Indian Land"; to the Select Committee on Indian Affairs.

EC-3449. A communication from the Assistant Attorney General (Office of Legislative and Intergovernmental Affairs), transmitting a draft of proposed legislation to provide for comprehensive reforms in compensation of attorneys pursuant to Federal statute in civil, criminal, and administrative proceedings in which the United States is a party and in civil proceedings involving State and local governments; to the Committee on the Judiciary.

EC-3450. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on the prevention activities of the Alcohol, Drug Abuse, and Mental Health Administration; to the Committee on Labor and Human Resources.

EC-3451. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on the status of Health personnel in the United States; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, with amendments:

S.J. Res. 235: Joint resolution to authorize the Law Enforcement Officers Memorial Fund, Inc., to establish a National Law Enforcement Heroes Memorial (Rept. No. 98-528).

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute and an amendment to the title:

S. 1816: A bill to amend the Textile Fiber Products Indentification Act, the Tariff Act of 1930, and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products (Rept. No. 98-529).

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

S. 2562: A bill to amend the John F. Kennedy Center Act and for other purposes (with additional views) (Rept. No. 98-530).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. TOWER, from the Committee on Armed Services:

Mr. TOWER. Mr. President, from the Committee on Armed Services, I report favorably the following nominations: Lt. Gen. David E. Grange, Jr., U.S. Army (age 59), to be placed on the retired list Maj. Gen. Bernard P. Randolph, U.S. Air Force, to be lieutenant general, Lt. Gen. John T. Chain, Jr., U.S. Air Force, to be reassigned in the grade of lieutenant general, Maj. Gen. David L. Nichols, U.S. Air Force, to be lieutenant general, Rear Adm. Robert E. Kirksey, U.S. Navy, to be vice admiral, Rear Adm. William F. McCauley, U.S. Navy, to be vice admiral, Vice Adm. Joseph Metcalf, III, U.S. Navy, to be reassigned, Rear Adm. Henry C. Mustin, U.S. Navy, to be vice admiral, Lt. Gen Joseph T. Palastra, Jr., U.S. Army, to be reassigned, Maj. Gen. William H. Schneider, U.S. Army, to be lieutenant general, Col. John L. Fugh, U.S. Army, to be brigadier general, Lt. Gen. James W. Stansberry, U.S. Air Force (age 56), to be placed on the retired list, Maj. Gen. Melvin F. Chubb, Jr., U.S. Air Force, to be lieutenant general, Lt. Gen. George D. Miller, U.S. Air Force (age 54), to be placed on the retired list, Lt. Gen. William J. Campbell, U.S. Air Force, to be reassigned in the grade of lieutenant general, Vice. Adm. Gordon R. Nagler, U.S. Navy (age 58), to be placed on the retired list, Gen. Billy M. Minter, U.S. Air Force (age 58), to be placed on the retired list, Lt. Gen. Charles L. Donnelly, Jr., U.S. Air Force, to be general, Maj. Gen. Charles J. Cunningham, Jr., U.S. Air Force, to be lieutenant general, Lt. Gen. Joseph K. Bratton, U.S. Army (age 58), to be placed on the retired list, Maj. Gen. James M. Rockwell, U.S. Army, to be lieutenant general, Gen. James V. Hartinger, U.S. Air Force (age 59), to be placed on the retired list, Lt. Gen. Robert T. Herres, U.S. Air Force, to be general,1 Maj. Gen. Duane H. Cassidy, U.S. Air Force, to be lieutenant general, Lt. Gen. Charles G. Cleveland, U.S. Air Force, (age 56) to be placed on the retired list, Lt. Gen. Kenneth L. Peek, Jr., U.S. Air Force, to be reassigned, Maj. Gen. Thomas C. Richards, U.S. Air Force, to be lieutenant general, Maj. Gen. Edward L. Tixier, U.S. Air Force, to be lieutenant general, in the Air Force Reserve there are 20 appointments to the grade of major general and below (list begins with Alfred B. Cole), and in the Army National Guard there are 2 appointments as Reserve Commissioned Officers to the grade of brigadier general (list begins with Nathaniel G. Troutt). I ask that these names be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, in addition, in the Air National Guard there are 31 promotions into the Air Force Reserve to the grade of lieutenant colonel (list begins with Gary R. Baarson), in the Navy there are 715 permanent promotions to the grade of commander (list begins with Robert James Abbott), in the Naval Reserve there are 15 permanent appointments to the grade of captain and below (list begins with Timothy R. Bergfield), in the Marine Corps Reserve there are 102 permanent appointments to the grade of colonel (list begins with Charles L. Bacon), in the Marine Corps and Marine Corps Reserve there are 462 permanent appointments to the grade of major (list begins with Charles R. Abney), in the Navy there are 406 promotions to the permanent grade of commander (list begins with Michael L. Adams), in the Army there are 805 permanent promotions to the grade of colonel and (list begins with Claude W. Abate), in the Marine Corps there are 12 appointments to the grade of captain and below (list begins with Dennis H. Mohle). Since these names have already appeared in the Congressional Record and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the Record of May 22, May 24, and June 4, 1984 at the end of the Senate proceedings.)

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HOLLINGS (for himself, Mr. Kennedy, Mr. Jepsen, Mr. Dole, Mr. Tsongas, Mr. Matsunaga, Mr. DeConcini, Mr. Abdnor, Mr. Nunn, Mr. Symms, Mr. Goldwater, Mr. Cochran, Mr. Lugar, Mr. Eagleton, Mr. Weicker, Mr. Hart, Mr. Proxmire, Mr. Percy. Mr. Burdick, Mr. Sarbanes, Mr. Cranston, Mr. Dodd, Mr. Chafee, Mr. Thurmond, Mr. Johnston, Mr. Levin, Mr. Stennis, Mr. Hatch, Mr. Gorton, Mr. Lautenberg, Mr. Dixon, Mr. Boschwitz, Mr. Mitchell, Mr. Huddleston, and Mr. Riegle):

S. Res. 414. Resolution to congratulate and commend the USA Philharmonic Society; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 27

At the request of Mr. Moynihan, the names of the Senator from Rhode Island [Mr. Chafee], and the Senator from Maine [Mr. Mitchell] were added as cosponsors of S. 27, a bill to provide for the conservation, rehabilitation, and improvement of natural and cultural resources located on public or Indian lands, and for other purposes.

S. 462

At the request of Mr. GRASSLEY, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 462, a bill to amend section 1951 of title 18 of the United States Code, and for other purposes.

S. 875

At the request of Mr. MATHIAS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 875, a bill to amend title 18 of the United States Code to strengthen the laws against the counterfeiting of trademarks, and for other purposes.

S. 2380

At the request of Mr. HEINZ, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 2380, a bill to reduce unfair practices and provide for orderly trade in certain carbon, alloy, and stainless steel mill products, to reduce unemployment, and for other purposes.

S. 2470

At the request of Mr. DENTON, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 2470, a bill to provide for the national security by allowing access to certain Federal criminal history records.

S. 2618

At the request of Mr. DANFORTH, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2618, a bill to amend the Trade Act of 1974 to promote expansion of international trade in telecommunications products, and for other purposes.

S. 2673

At the request of Mr. D'AMATO, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2673, a bill to make permanent the prohibition of credit card surcharges.

S. 2719

At the request of Mr. LAUTENBERG, the name of the Senator from Florida [Mrs. HAWKINS] was added as a cosponsor of S. 2719, a bill to amend title 23, United States Code, to direct the Secretary of Transportation to withhold a percentage of the apportionment of certain Federal-aid highway funds to be made to any State which does not establish a minimum drinking age of 21 years.

S. 2743

At the request of Mr. GRASSLEY, the names of the Senator from Iowa [Mr. JEPSEN] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of S. 2743, a bill to designate a portion of 16th Street Northwest, Washington, DC on which the Embassy of the Union of Soviet Socialist Republics is located, as "Andrei Sakharov Avenue."

S. 2766

At the request of Mr. THURMOND, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 2766, a bill to amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor-piercing ammunition.

SENATE JOINT RESOLUTION 253

At the request of Mr. PRESSLER, the names of the Senator from New Jersey [Mr. BRADLEY] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Joint Resolution 253, a joint resolution to authorize and request the President to designate September 16, 1984, as "Ethnic American Day."

SENATE JOINT RESOLUTION 267

At the request of Mr. CHILES, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Missouri [Mr. EAGLETON], the Senator from Alabama [Mr. HEFLIN], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Michigan [Mr. RIEGLE], and the Senator from Tennessee [Mr. SASSER] were added as cosponsors of Senate Joint Resolution 267, a joint resolution to designate the week of September 23, 1984, through September 29, 1984, as "National Drug Abuse Education and Prevention Week."

SENATE JOINT RESOLUTION 293

At the request of Mr. WILSON, the names of the Senator from Washington [Mr. EVANS], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Georgia [Mr. NUNN], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Joint Resolution 293, a joint resolution to designate July 17, 1984, as "Spanish American War Veterans Day."

SENATE JOINT RESOLUTION 317

At the request of Mr. DECONCINI, the names of the Senator from Ohio [Mr. METZENBAUM], the Senator from Rhode Island [Mr. PELL], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Indiana [Mr. LUGAR], the Senator from Maine [Mr. MITCHELL], the Senator from Nebraska [Mr. EXON], the Senator from South Dakota [Mr. PRESSLER], the Senator from New Mexico [Mr. DOMENICI], the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. NICKLES], the Senator from Kansas [Mr. DOLE], the Senator from Washington [Mr. GORTON], the Senator from Oklahoma [Mr. BOREN], the Senator from Indiana [Mr. QUAYLE], the Senator from California [Mr. WILSON], the Senator from Arkansas [Mr. BUMPERS], and the Senator from South Carolina [Mr. THURMOND], were added as cosponsors of Senate Joint Resolution 317, a joint resolution to designate August 1, 1984, as "Helsinki Human Rights Day".

SENATE CONCURRENT RESOLUTION 101

At the request of Mr. D'AMATO, the names of the Senator from Idaho [Mr. MCCLURE], and the Senator from Colorado [Mr. HART], were added as cosponsors of Senate Concurrent Resolution 101, a concurrent resolution to commemorate the Ukrainian famine of 1933.

SENATE CONCURRENT RESOLUTION 118

At the request of Mr. GRASSLEY, the names of the Senator from Ohio [Mr. METZENBAUM], and the Senator from Iowa [Mr. JEPSEN], were added as cosponsors of Senate Concurrent Resolution 118, a concurrent resolution expressing the sense of Congress that the portion of the street in the District of Columbia on which is located the Embassy of the Union of Soviet Socialist Republics, and the portion of any street in any other city in the United States on which is located a consular office or mission of the Union of Soviet Socialist Republics, should be named Andrei Sakharov Avenue.

SENATE CONCURRENT RESOLUTION 120

At the request of Mr. CHAFEE, his name was added as a cosponsor of Senate Concurrent Resolution 120, a concurrent resolution expressing the sense of the Congress that the legislatures of the States should develop and enact legislation designed to provide child victims of sexual assault with protection and assistance during administrative and judicial proceedings.

At the request of Mrs. HAWKINS, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Indiana [Mr. LUGAR], the Senator from Connecticut [Mr. DODD], the Senator from Indiana [Mr. QUAYLE], the Senator from Kansas [Mr. DOLE], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Concurrent Resolution 120, supra.

SENATE CONCURRENT RESOLUTION 121

At the request of Mr. BOSCHWITZ, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of Senate Concurrent Resolution 121, a concurrent resolution expressing the sense of the Congress regarding the nondelivery in the Soviet Union of certain mail from the United States, and for other purposes.

SENATE RESOLUTION 412

At the request of Mr. HOLLINGS, the names of the Senator from Alabama [Mr. HEFLIN] and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of Senate Resolution 412, a resolution to congratulate and commend the U.S.A Philharmonic Society.

AMENDMENT NO. 3266

At the request of Mr. NUNN, the names of the Senator from Nebraska

[Mr. Exon], and the Senator from Illinois [Mr. Dixon] were added as cosponsors of Amendment No. 3266 proposed to S. 2723, an original bill to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1985, to authorize certain construction at military installations for such fiscal year, to authorize appropriations for the Department of Energy for national security programs for such fiscal year, and for other purposes.

SENATE RESOLUTION 414—TO CONGRATULATE THE USA PHILHARMONIC SOCIETY

Mr. HOLLINGS (for himself, Mr. Kennedy, Mr. Jepsen, Mr. Dole, Mr. Tsongas, Mr. Matsunaga, Mr. DeConcini, Mr. Abdnor, Mr. Nunn, Mr. Symms, Mr. Goldwater, Mr. Cochran, Mr. Lugar, Mr. Eagleton, Mr. Weicker, Mr. Hart, Mr. Proxmire, Mr. Percy, Mr. Burdick, Mr. Sarbanes, Mr. Cranston, Mr. Dodd, Mr. Chafee, Mr. Thurmond, Mr. Johnston, Mr. Levin, Mr. Stennis, Mr. Hatch, Mr. Gorton, Mr. Lautenberg, Mr. Dixon, Mr. Boschwitz, Mr. Mitchell, Mr. Huddleston, and Mr. Riegle) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 414

Whereas the USA Philharmonic Society is a nonprofit corporation, organized under the laws of the District of Columbia, promoting the performance of music and dedicated to educational activities;

Whereas the goal of the USA Philharmonic Society is to inaugurate an orchestra unique in the United States and unique in the lives of the American people thereby providing an enduring cultural landmark for the Nation;

Whereas the first activity of the USA Philharmonic Society is the formation and maintenance of the USA Philharmonic, the only professional orchestra designed to assemble the best musicians between 18 and 28 years of age in the United States, and to belong to the entire Nation, based in the Nation's capital, which will, through its tours, generate international understanding of the musical talent that lives in our nation's youth;

Whereas opportunities for orchestral employment are limited since relatively few openings occur each year in major orchestras, thereby many talented music graduates are unable to begin their careers, the USA Philharmonic bridges this gap between formal training and the start of an orchestral career by providing professional experience and by assisting its members with placement in major United States orchestras;

Whereas other countries are draining United States talent by offering immediate employment to young musicians, USA Philharmonic offers a superior alternative for our young musicians trying to launch their careers, and provides a unique opportunity for them to participate in an international exchange of musical cultures as well;

Whereas more than forty years have passed since the musical genius of our Nation's youth has been shared with other nations, when through the leadership of Maestro Leopold Stokowski in 1940 and 1941, the "All-American Youth Orchestra" inspired nations in South America with its tours, USA Philharmonic will bring together musicians and musiclovers of other countries, not for political, but for artistic and spiritual interchange;

Whereas musicians for USA Philharmonic will be determined by two auditions in each of six regions, thereby offering participation to youth of all States, and coordinated by the Audition Committee with music associations, universities, colleges and independent schools of music to insure the broadest representation and the most outstanding talent;

Whereas USA Philharmonic on tour will present the classical repertoire and recent compositions from the United States and the host country, and, by alternating tours abroad with domestic tours, USA Philharmonic will showcase the musical genius of our Nation's youth, display the high standard of our Nation's musical invention, and play the first performance in the United States of prominent new music from other nations, including those of South America in 1984; and

Whereas the growth of the USA Philharmonic Society to date is due to the dedication of its many volunteers who have generously contributed their time and energy, and that the USA Philharmonic Society enjoys the support of a distinguished and very able Board of Directors: Mr. Michael L. Ainslie, Mr. Roger Alexander, Mr. Jahangir Amuzegar, Mr. Rick Barwick, Dr. John Bitter, Mr. Patrick J. Daly, Ms. Nancy Hyman, Mr. Paul Hume, Mr. Karl Jaeger, Mr. Afshin Khalatbary, Mr. Viktor von Lillienfeld, Mr. J. Walter Lund, Mr. Garrick Ohlsson, Professor Efrain Paesky, Mr. Richard Salmon, Mr. John Philip Sousa III, and Miss Elizabeth Taylor: Now, therefore, be it

Resolved, That the United States Senate congratulates and commends the USA Philharmonic Society for its dedicated work on behalf of the Nation's young musicians, and its commitment to furthering better understanding among peoples of all nations through the universal language of music.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to the president of the USA Philharmonic Society, Washington, District of Columbia.

● Mr. HOLLINGS. Mr. President, I am joined today by Senators Kennedy, Jepsen, Dole, Tsongas, Matsunaga, DeConcini, Abdnor, Nunn, Symms, Goldwater, Cochran, Lugar, Eagleton, Weicker, Hart, Proxmire, Percy, Burdick, Sarbanes, Cranston, Dodd, Chafee, Thurmond, Johnston, Levin, Stennis, Hatch, Gorton, Lautenberg, Dixon, Boschwitz, Mitchell, Huddleston, and Riegle in submitting a resolution to congratulate and commend the USA Philharmonic Society, Inc., for its dedicated work on behalf of the Nation's young musicians, and its commitment to furthering better understanding among peoples of all nations through the universal language of music.

The USA Philharmonic Society is a nonprofit corporation organized and incorporated under the laws of the District of Columbia which promotes the performance of music and which is dedicated to educational activities. The first activity of the USA Philharmonic Society is the formation and maintenance of a symphony orchestra—USA Philharmonic.

The USA Philharmonic, Mr. President, is the only professional orchestra designed to assemble the best musicians between 18 and 28 years of age in the United States. USA Philharmonic belongs to the entire Nation, is based in the Nation's Capital, and through its tours will generate worldwide understanding of the musical talent that lives in our Nation's youth.

One primary reason for creating this orchestra, Mr. President, is that it will provide young musicians with employment opportunities. Openings for orchestras are limited and only a relative few occur each year, Mr. President. As a result, many talented music graduates are unable to begin their careers with an orchestra. USA Philharmonic bridges this gap between formal training and the start of an orchestral career by providing professional experience and by assisting its members with placement in major U.S. orchestras. The experience working with leading conductors and soloists, combined with actual concert performances, is of tremendous importance to new careers. In this way we nurture and encourage the young talent of America.

Other countries are draining U.S. talent by offering immediate employment to young musicians. USA Philharmonic offers a superior alternative for young musicians trying to launch their careers, and provides a unique opportunity to participate in an international exchange of musical cultures.

More than 40 years have passed since the musical genius of our Nation's youth has been shared with other nations. Through the leadership of Leopold Stockowski in 1940 and 1941, the All-American Youth Orchestra inspired nations in South America with its tours. USA Philharmonic will bring together musicians and music lovers of other countries for purposes, not of political, but of artistic and spiritual interchange.

Musicians for USA Philharmonic will be determined by two auditions in each of six regions—Eastern, Southern, South Central, North Central, Northwestern, and Western. The audition committee will coordinate with music associations, universities, colleges, and independent schools of music to arrange the first audition. The second audition will determine the finalists. And, to maintain the highest standard, Mr. President, members of the previous year's orchestra must reaudition each year with new applicants.

USA Philharmonic on tour will present the classical repertoire and recent compositions from the United States and the host country. In 1984, USA Philharmonic will tour four countries in South America and in 1985 will tour the United States and Canada. By alerting tours abroad with domestic tours, USA Philharmonic will showcase the musical genius of our Nation's youth, display the high standard of our Nation's musical invention, and play the first performance in the United States of prominent new music from other countries.

Mr. President, the growth of the USA philharmonic to date is due to the dedication of its many volunteers who have generously contributed their time and energy. The USA Philharmonic Society presently enjoys the support on its board of directors of: Mr. Michael Ainslie, Mr. Robert Alexander, Mr. Jahangir Amuzegar, Mr. Rick Barwick, Dr. John Bitter, Mr. Patrick J. Daly, Ms. Nancy Hyman, Mr. Paul Hume, Mr. Karl Jaeger, Mr. Afshin Khalatbary, Mr. Viktor von Lillienfeld, Mr. J. Walter Lund, Mr. Garrick Ohlsson, Prof. Efrain Paesky, Mr. Richard Salmon, Mr. John Philip Sousa III, and Miss Elizabeth Taylor.

Mr. President, I ask unanimous consent that a letter from Mr. Afshin Khalatbary, president of the society, be printed in the Record at the conclusion of my remarks. Mr. Khalatbary emphasizes, out as a comparison, that a similar orchestra, the European Community Youth Orchestra, is supported by 10 member nations of the European Community. This is the only cultural project so supported by these nations.

Mr. President, it is my hope that many of my colleagues will join with me and the distinguished cosponsors of this resolution and see to it that it gets quick attention and speedy approval. Not only will young musicians in our Nation have increased opportunities to pursue their artisitic endeavors, but the entire Nation will benefit from the outpouring of this talent and the good will associated with their performances both here and abroad.

There being no objection, the letter was ordered to be printed in the Record, as follows:

USA Philharmonic,
Washington, DC, May 15, 1984.

Hon. Ernest F. Hollings,
U.S. Senate, Washington, DC.

Dear Senator Hollings: My friend and colleague Rick Barwick suggested that I might seek your guidance and sponsorship for a bill granting a Congressional Charter to the USA Philharmonic Society. The Society is forming a professional symphony orchestra derived from the best of this nation's youth. The fact that no such orchestra yet exists is of valid concern.

It is necessary that I draw a comparison between the musical youth of Europe and the musical youth of the United States of America.

An extremely gifted young musician from Europe, who dreams of being in an orchestra of similarly gifted peers, aspires to being in the "European Community Youth Orchestra" (ECYO). The ECYO is the only cultural project in the European Community which is supported by all the member countries. The ECYO is powerfully endorsed by Heads of State, Chief Executives, Banking Houses and Corporations. The Heads of State and Chief Executives are:

BELGIUM

His Royal Highness King Baudouin, M. Wilfred Martens, Prime Minister.

DENMARK

Her Majesty Queen Margrethe II, H. Poul Schlüter, Prime Minister.

FRANCE

President Francois Mitterand, M. Pierre Mauroy, Prime Minister.

GERMANY

Professor Dr. Karl Carstens, President, Dr. Helmut Kohl, Chancellor.

GREECE

President Constantine Karamanlis, Andreas Papandreou, Prime Minister.

IRELAND

Dr. Patrick J. Hillary, President, Dr. Garret FitzGerald, Prime Minister.

ITALY

President Sandro Pertini, S. Amintore, Faffani, Prime Minister.

LUXEMBOURG

H.R.H. The Grand Duke Jean, M. Pierre Werner, President.

THE NETHERLANDS

Her Majesty Queen Beatrix, H.R.F.M. Lubeers, Prime Minister.

GREAT BRITAIN

Her Majesty Queen Elizabeth II, Mrs. Margaret Thatcher, Prime Minister.

No orchestra of this calibre exists in the United States that can attract international focus and recognition of the collective representation of the best of this nation's musical youth. The irony should also be noted that the ECYO is receiving substantial backing from internationally recognized corporations such as The Coca-Cola Company and International Business Machines.

The USA Philharmonic Society looks to those in this country who have long been arbiters of this country's history, both cultural and political, and hopes to win their confidence and endorsement. The example of the ECYO is not called up idly as a quid pro quo comparison, nor is it the intention of the Society to replicate a carbon-copy of the ECYO in this country. Our intention is to provide an orchestra to which the best of this nation's youth can aspire, and be proud of, to an international and professional standard that can stand a comparison. In short, a standard that can be proudly flown anywhere in the world.

I hope our aims might merit your sponsorship for the Charter as proposed. It would indeed be an honor if this Charter of the United States Congress were the cornerstone of our foundation.

Yours sincerely,

A.R. Khalatbary,
President,
USA Philharmonic Society.●

AMENDMENTS SUBMITTED

TEXTILE FABRICS IDENTIFICATION ACT AMENDMENTS

GORTON AMENDMENT NO. 3333

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill (S. 1816) to amend the Textile Fiber Identification Act, the Tariff Act of 1930, and the Wool Products Labeling Act of 1939 to improve the labeling of textile products and wool products; as follows:

At page 5, immediately following section 9, insert the following:

"TITLE II

SHORT TITLE

Sec. 201. This title may be cited as the "Comprehensive Smoking Education Act".

FINDINGS AND PURPOSE

Sec. 202. (a) The Surgeon General has found that—

(1) cigarette smoking is the largest preventable cause of illness and premature death in the United States and is associated with the unnecessary deaths of over three hundred thousand Americans annually;

(2) cigarette smoking in the United States is a major cause of cancer of the lung, larynx, oral cavity, and esophagus and is a contributory factor in cancer of the urinary bladder, kidney, and pancreas;

(3) cigarette smoking is a major cause of chronic bronchitis and emphysema in the United States;

(4) cardiovascular disease accounts for nearly one-half of the deaths in the United States and it is estimated that one-third of the deaths attributed to cardiovascular disease are associated with smoking;

(5) pregnant women who smoke have an elevated risk of miscarriages, stillbirths, and premature births, and giving birth to infants with low birth weight;

(6) quitting or never starting cigarette smoking will reduce an individual's risk of illness or premature death; and

(7) Federal, State and private initiatives should be encouraged to convey to the American people information on any adverse health effects of smoking.

(b) It is the purpose of this title to provide a new strategy for making Americans more aware of any adverse health effects of smoking, to assure the timely and widespread dissemination of research findings, and to enable individuals to make informed decisions about smoking.

SMOKING RESEARCH, EDUCATION, AND INFORMATION

Sec. 203. (a) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish and carry out a program to inform the public of any dangers to human health presented by cigarette smoking. In carrying out such program, the Secretary shall—

(1) conduct and support research on the effect of cigarette smoking on human health and develop materials for informing the public of such effect;

(2) coordinate all research and educational programs and other activities within the Department of Health and Human Services (hereinafter in this section referred to as

the "Department") which relate to the effect of cigarette smoking on human health and coordinate, through the Interagency Committee on Smoking and Health (established under subsection (b)), such activities with similar activities of other Federal agencies and of private agencies;

(3) establish and maintain a liaison with appropriate private entities, other Federal agencies, and State and local public agencies respecting activities relating to the effect of cigarette smoking on human health;

(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking on human health, and develop standards, criteria, and methodologies for improved information programs related to smoking and health;

(5) compile and make available information on State and local laws relating to the sale, distribution, use, and consumption of cigarettes; and

(6) undertake any other additional information and research activities which the Secretary determines necessary and appropriate to carry out this section.

(b)(1) To carry out the activities described in paragraphs (2) and (3) of subsection (a) there is established an Interagency Committee on Smoking and Health. The Committee shall be composed of—

(A) members appointed by the Secretary from appropriate institutes and agencies of the Department, which may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Child Health and Human Development, the National Institute on Drug Abuse, the Health Resources and Services Administration, and the Centers for Disease Control;

(B) at least one member appointed from the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be made by the head of the entity from which the member is appointed; and

(C) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of smoking.

The Secretary shall designate the chairman of the Committee.

(2) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the manner provided by section 5702 and 5703 of title 5 of the United States Code.

(3) The Secretary shall make available to the Committee such staff, information, and other assistance as it may require to carry out its activities effectively.

(c) The Secretary shall transmit a report to Congress not later than January 1, 1985, and biennially thereafter which shall contain—

(1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and the extent of public knowledge of such consequences.

(2) a description of the Secretary's and Committee's activities under subsection (a),

(3) information regarding the activities of the private sector taken in response to the effects of smoking on health, and

(4) such recommendations as the Secretary may consider appropriate.

LABELS FOR CIGARETTES AND CIGARETTE ADVERTISING

SEC. 204. (a) Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows.

"LABELING

"SEC. 4. (a)(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the packages of which fails to bear, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL'S WARNING: Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

"(2) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised (other than through the use of outdoor billboards) within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.

SURGEON GENERAL'S WARNING: Pregnant Women Who Smoke Risk Fetal Injury and Premature Birth.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

"(3) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States through the use of outdoor billboards any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, and Emphysema.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Health Risks.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

SURGEON GENERAL'S WARNING: Pregnant Women Who Smoke Risk Fetal Injury and Premature Birth.

"(b)(1) Each label statement required by paragraph (1) of subsection (a) shall be located in the place label statements were placed on cigarette packages as of the date of the enactment of this subsection. The phrase 'Surgeon General's Warning' shall appear in capital letters and the size of all other letters in the label shall be the same as the size of such letters as of such date of enactment. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package.

"(2) The format of each label statement required by paragraph (2) of subsection (a) shall be the format required under this section for label statements in cigarette advertising as of the date of the enactment of this subsection, except that the phrase 'Surgeon General's Warning' shall appear in capital letters, the area of the rectangle enclosing the label shall be 50 percent larger in size with a corresponding increase in the size of the type in the label, the width of the rule forming the border around the label shall be twice that in effect on such date, and the label may be placed at a distance from the outer edge of the advertisement which is one-half the distance permitted on such date. Each label statement shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material in the advertisement.

"(3) The format and type style of each label statement required by paragraph (3) of subsection (a) shall be the format and type style required in outdoor billboard advertising as of the date of the enactment of this subsection. Each such label statement shall be printed in capital letters of the height of the tallest letter in a label statement on outdoor advertising of the same dimension on such date of enactment. Each such label statement shall be enclosed by a black border which is located within the perimeter of the format required in outdoor billboard advertising of the same dimension on such date of enactment and the width of which is twice the width of the vertical element of any letter in the label statement within the border.

"(c) The label statements specified in paragraphs (1), (2), and (3) of subsection (a) shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarette manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approval by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1), (2), and (3) will be displayed by the manufacturer or importer at the same time.".

(b) The amendment made by subsection (a) shall take effect upon the expiration of a one-year period beginning on the date of the enactment of this Act.

CIGARETTE INGREDIENTS

SEC. 205. (a) The Federal Cigarette Labeling and Advertising Act is amended by redesignating sections 7 through 12 as sections 6 through 13, respectively, and by inserting after section 6 the following new section:

CIGARETTE INGREDIENTS

"SEC. 207. (a) Each person who manufacures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

"(b)(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a), respecting—

"(A) a summary of research activities and proposed, research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research:

"(B) information pertaining to any such ingredient which in the judgment of the Secretary poses a health risk to cigarette smokers; and

"(C) any other information which the Secretary determines to be in the public interest.

"(2)(A) Any information provided to the Secretary under subsection (a) shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5. United States Code and section 1905 of title 18, United States Code and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

"(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

"(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a). Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

"(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

"(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.".

(b) Section 7 of the Federal Cigarette Labeling and Advertising Act added by subsection (a) shall take effect upon the expiration of the one-year period beginning on the date of the enactment of this Act.

MISCELLANEOUS AMENDMENTS

Sec. 207. (a) Paragraph (1) of section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331) is amended to read as follows:

"(1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes.".

(b) Section 3 of such Act (14 U.S.C. 1332) is amended by adding at the end the following:

"(3) The term 'Secretary' means the Secretary of Health and Human Services.".

(c) Section 8 of such Act (15 U.S.C. 1336) (as so redesignated) is amended to read as follows:

"FEDERAL TRADE COMMISSION

"Sec. 208. Nothing in this Act (other than the requirements of section 4(b)) shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.".

(d) Section 9 of such Act (15 U.S.C. 1337) (as so redesignated) is amended—

(1) by striking out "of Health, Education, and Welfare" in subsection (a),

(2) by redesignating clauses (A) and (B) in such subsection as clauses (1) and (2), respectively,

(3) by striking out clause (A) in subsection (b) and by redesignating clauses (B) and (C) as clauses (1) and (2), respectively.

At page 1, between the enacting clause and Sec. 2, insert "Title I", and renumber sections 2 through 9 accordingly.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Tuesday, June 26, 1984, at 10 a.m., in SR-301, Russell Building, to consider pending legislative and administrative business.

The following items on the committee's legislative agenda are scheduled for markup: Senate Resolution 365, authorizing expenditures by the Select Committee on Indian Affairs; Senate Resolution 369, to authorize and direct the Secretary of the Senate to design and make available to Members an official Senate flag; and Senate Concurrent Resolution 122, to provide for a Joint Congressional Committee on Inaugural Ceremonies.

Under administrative business, the committee will consider proposed contracts with the vendors selected to provide computer systems for Senators' offices. Committee staff will also present draft regulations on the allocation and installation of the computer equipment in senatorial offices.

For further information regarding this business meeting, please contact Carole Blessington of the Rules Committee staff on 224-0278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, June 25, at 2 p.m., to hold a hearing on the following nominations:

Alberto Martinez Piedra, to be Ambassador to the Republic of Guatemala;

Clint Arlen Lauderdale, to be Ambassador to the Cooperative Republic of Guinea.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

ADDITIONAL STATEMENTS

FEDERATION OF AMERICAN SCIENTISTS REPLY TO HERITAGE FOUNDATION

● **Mr. GOLDWATER.** Mr. President, on June 12 I placed in the RECORD an article from the National Security Record published by the Heritage Foundation which discussed what was believed to be the legislative agenda of the Federation of American Scientists. The FAS has delivered a letter to me in which the group replies to the claim made by the Heritage Foundation. The FAS denies having written a basic document which appears to have been relied on by the Heritage Foundation in preparing its report.

In the interest of fairness, Mr. President, I now insert in the RECORD the complete text of the letter by the FAS.

FEDERATION OF AMERICAN SCIENTISTS,
Washington, DC, June 20, 1984.

Senator BARRY GOLDWATER,
U.S. Senate,
Washington, DC.

DEAR SENATOR GOLDWATER: A recent article published by The Heritage Foundation, which you inserted in the Congressional Record, purported to be based on a copy of our "Agenda for 1984".

Since no such document exists, we have been investigating how this smear came about and wondered whether, in fairness to our organization, you might insert our conclusions in the Congressional Record.

The one-page typed document from which Heritage Foundation drew the so-called "Association's Agenda for 1984" is not on our letterhead, does not have our name typed on it, was not prepared by us and is certainly not our "Association Agenda for 1984". If the Heritage Foundation journalist preparing his report for its "National Security Record" had asked us, we certainly would have told him so.

Indeed, this one-page unnamed and undated document is not an "Agenda" at all but a list of options and is so entitled: "Legislative Options". It appears to have been passed out by some other organization, not by us, as a list of catch all possibilities for amendments to the defense budget for discussion at a group meeting.

But the Heritage Foundation journalist did more than attribute, without checking, a document to us. And he did more than elevate it from "Legislative Options" to "A Copy of the Association's Agenda for 1984". He actually doctored the document so that it would confirm to the change from a list of options to an agenda. (Thus where it gives two options for the B-1 bomber, one of which was to "Limit number of B-1s to 100", he simply deleted this option and left "Kill program". He similarly massaged options concerning the MX missile so that they could not be read as alternatives.)

As if this were not enough, he then editorialized: "The lobbying program goes on with pages of details; members of Congress to contact, bills to support or oppose, programs of working groups and liaison with pro-peace groups". To support this, all the Heritage Foundation has sent over to us are two FAS documents totaling 9 pages: one on Space Weapons and one on Ballistic Missile

Defense. With editorial skills and attitudes like this, the Heritage Foundation "National Security Reporter" doesn't really need reporters or telephones, they can make it up out of whole cloth.

For the rest, this article was more of a smear than an invention but one point should be mentioned.

Our organization, and our members, know from personal experience how useful it can be to have a dialogue with the Soviet Academy of Sciences on issues like the ballistic missile defense. Indeed, the Soviet Union was persuaded to sign the ABM Treaty of 1972 only after a decade of such discussions. And it was the Soviet scientists who infected the Soviet bureaucracy with a logic that was developed first in the U.S.

Thus our interest in continuing this dialogue is part and parcel of our interest in maintaining this Treaty a matter on which both Superpowers and almost all scientists have been agreed now for the last dozen years.

The Heritage Foundation's reporter is eager to characterize this is as invidious a way as possible so he describes a proposed press conference as an effort to "show U.S. and Soviet scientists joining together in opposition to the Administration's defense program". We would describe it as an effort to show that the scientists of both sides do want to maintain the ABM Treaty—and we have no doubt but that virtually all of them do.

In any case, Senator Goldwater, we wanted to be sure that you and your colleagues knew that our "Agenda" if we had one would cover many other topics and handle them in many other ways. Since the article you submitted was based on a document that does not exist, we hoped that you might place this letter in the CONGRESSIONAL RECORD to balance the Senate's record.

Sincerely,

JEREMY J. STONE.●

RETIREMENT OF CLAYTON FRITCHEY

● Mr. MOYNIHAN. Mr. President, last week, Clayton Fritchey, whose thoughts and writings have graced our Nation's newspapers for a half century, wrote his final column and retired from daily journalism.

Surely, 50 years hard labor in this field entitles anyone to retirement. Still, his departure is an occasion of sadness to his readers and to the newspapers he so ably served.

I have known Clayton Fritchey for considerably more than half the half century to which his writing has added so much. I have not always agreed with him, and assuredly he has not always agreed with me, but I attest to his unfailing intelligence and generosity.

Happily, for his many readers, he now embarks upon his memoirs. We await them eagerly.

Mr. President, without objection, I ask that Mr. Fritchey's final column, which appeared in the June 18, 1984 edition of Newsday, be printed in the RECORD.

The column follows:

FAREWELL PROPHECY: MONDALE'S CHANCES ARE WORTH A BET

The big surprise of the presidential campaign is on the horizon. All during the months of the primary contests, former Vice President Walter Mondale has been portrayed in the media as passive and lackluster, without fire or the capacity to arouse the voters.

It is true that he has pulled his punches. Even when critical of his principal rival, Sen. Gary Hart, it was evident that Mondale had no real stomach for attacking a fellow Democrat, especially one who had been a longtime friend and had a similar record on many issues.

At the beginning of the year, it appeared that Mondale would have little trouble winning the nomination, thus enabling him to use the primaries as a warmup for an aggressive all-out campaign against President Reagan in the fall. This strategy, however, had to be largely abandoned when, unexpectedly, Hart became a serious contender.

In the course of this battle, Mondale had little choice but to defend himself against Hart's attacks, and do some negative counterpunching of his own. But it was obvious he didn't relish it. The politician he was primed and eager to attack was Reagan, not another Democrat.

The upshot is that the public has not seen the kind of campaigner who will emerge after Mondale wins the Democratic nomination and launches the toughest challenge Reagan has ever faced. The well-seasoned former vice president will not be a patsy like Carter, either in debate or on the hustings. Moreover, during the recent primaries, Mondale has already had thrown at him everything that Reagan can throw.

But after a free ride to the Republican nomination, will Reagan be prepared to the exhaustive, relentless assault that is soon coming his way? In the past, Reagan has always been on the offensive politically, notably when he campaigned against Gerald Ford for the GOP nomination in 1976, and against Jimmy Carter and "Washington" in 1980. This time, Reagan himself is "Washington," and Mondale will not let him forget it.

Also, if Reagan tries to run against Carter again, it could well boomerang, for Mondale is only too eager to compare Reagan's dismal foreign policy record with Carter's historic achievements, including the Camp David accords for the Mideast, the normalizing of relations with China and the SALT II treaty with the Soviets. Carter was a bust as a politican, but history is going to be kinder to him than the voters were in 1980.

There is much talk about the primary clashes making party unity impossible at the coming Democratic convention. Actually, the Mondale-Hart duels were namby-pamby affairs compared to the Eisenhower-Taft knockdown fight at the 1952 GOP convention, or Lyndon Johnson's personal attack on John F. Kennedy and his family at the 1960 Democratic convention, or George Bush's attack on Reagan's "voodoo economics" during the 1980 fight for the nomination. In all three cases, the nominees went on to victory.

In Mondale, the Democrats have for the first time in years a mainstream candidate who is acceptable to all factions of the party, even if he doesn't arouse enthusiasm in all quarters. Rep. James J. Florio (D-N.J.) put it this way: "We know that he is a proven commodity."

I would like to make a prophecy: In 1948 I bet Harry Truman would beat Tom Dewey. I think it's a good bet that Mondale will beat Reagan, even though the Las Vegas odds are now 4-1 against Mondale—they were 10-1 against Truman.●

SUPPORT FOR AN INDEPENDENT NATIONAL ARCHIVES

● Mr. SASSER. Mr. President, I wish to state my strong support for S. 905, the bill to create an independent National Archives and Records Service. I have cosponsored this legislation in two Congresses—the 97th and 98th. I commend the Senate for its action in passing this measure on June 21, 1984.

This bill now has 51 cosponsors—more than half the Senate. And the President has indicated that he favors its passage. The legislation was favorably reported by the Committee on Governmental Affairs, on which I serve, on April 3, 1984.

Currently, the Archives is part of the General Services Administration. Historians and archivists have long had reservations about the wisdom of placing the custodian of the Nation's history under the administration of an agency with a very different mission. The General Services Administration is charged with watching the bottom line as it performs important housekeeping functions for the Federal Government. Unfortunately, the work of archivists and records managers is intangible and does not lend itself to productivity measures or principles of profit and loss. It is no wonder that the National Archives has suffered from a low priority status at GSA and from its lack of independence.

Resources—particularly budget resources—for the Archives have been severely restricted over the years. Many feel that this is because of the Archives' organizational placement within GSA. If the Archives were independent, it would be in a better position to compete for a fair share of the Federal budget.

I quote the words of the famous historian, Barbara W. Tuchman, in her testimony before the Governmental Affairs Committee on this bill:

> One gets the impression, judging from budget cuts reducing personnel, that GSA thinks the Archives are crates of papers to be stored in the cellar. The National Archives should rather be accorded the same dignity as a university and the same independent status as the Library of Congress and the Smithsonian, and the Archivist Director should be on a par with the Librarian of Congress and the Secretary of the Smithsonian. Supervision could be exercised by a Board of Regents on the model of the Smithsonian Board which includes, as you know, several of your colleagues and members of the lower House and the Chief Justice of the Supreme Court as chairman and a variety of distinguished laymen. Surely the National Archives deserves as much.

This year, 1984, is the 50th anniversary of the creation of the National Archives. It is very appropriate in this golden anniversary year that we pass S. 905 to give the National Archives the independent status that it deserves.

Among the many organizations of archivists and historians supporting S. 905 is the American Association for State and Local History. The headquarters for this organization happens to be in Nashville, TN. With unanimous consent, I ask that a recent letter from Gerald George, the director of the group, be printed in the RECORD.

The letter follows:

AMERICAN ASSOCIATION FOR
STATE AND LOCAL HISTORY,
Nashville, TN, June 15, 1984.

Hon. JIM SASSER,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SASSER: I write concerning S. 905, the bill to separate the National Archives and Records Service from the General Services Administration. My understanding is that you are among the 47 bipartisan sponsors of the bill, for which we are grateful. I also understand that Senator Hatfield is in possession of a letter from Joseph Wright, deputy director of the Office of Management and Budget, expressing the Administration's support for enactment of S. 905. Yet S. 905, even though reported in April, has not come to the Senate floor. Can you tell me why not? And can you help to get it moved to the floor before the end of this session of the Congress.

Our members are engaged in teaching and research in history, in historic site preservation and interpretation, and in the care and conservation of archival and museum collections. One way or another we are all devoted to the protection and use of the historic resources of this country, and the holdings of the National Archives are among the most important collections of historic resources that we have. Therefore we understand the need for the National Archives to be free of control of the GSA administrators whose area of expertise is not historic-resources management; to be free of political pressures that come with being under GSA; and to be free of the frustrations of trying to take responsibility for priceless national records and documents without power within NARS to control its own budget, program priorities, or appointments of personnel.

The protection of America's documentary heritage is an on-going responsibility that cannot be treated simply as any other government program. The national archivist must have the independence to meet that on-going responsibility in accordance with the highest standards of professional understanding and service, which has not been possible within the confines of the General Services Administration.

The bill is very important to our 7,500-member association, with national headquarters in Nashville. The National Archives cares for the documentary treasures that are so important for the study and understanding of our heritage. Thanks for your support and please let me know what additional steps to help you can take.

Sincerely,

GERALD GEORGE,
Director.●

THE BERRY SUCCESS STORY

● Mr. SASSER. Mr. President, the recent grand opening of the Berry Wholesale Drug Co.'s new warehouse in Nashville is an event that deserves the attention of my colleagues.

It marked another successful turn in the development of this 26-year-old firm and it shows that the entrepreneurial spirit is strong and prospering and wholesomely evident in the person of the firm's founder and president, Allen D. Berry, Jr.

The Berry success story was outlined in a recent Nashville Banner article, and I ask that the text of the article be printed in the RECORD at the conclusion of my remarks.

This success story is all the more remarkable, for it comes at a time when the American small businessman, the American entrepreneur, is still struggling with the aftereffects of the most severe recession since the Great Depression.

In 1983 there were 31,334 business failures in America, the most failures in a half century. Dun & Bradstreet reported last month that the rate of business failures was exceeding the record rate of 1983. To put it in other terms, this represents roughly 120 business failures every business day. And the overwhelming number of these businesses, the data show, are small businesses.

It is against this backdrop that the Berry Wholesale Drug Co. not only survived; it prospered and expanded. I want to take this occasion to applaud the firm and to commend its success story to my colleagues.

The article follows:

EXCITEMENT IN A DOUBLE DOSE AT BERRY

(By Mary Hance)

There was a double dose of excitement this week at Berry Wholesale Drug Co. as they celebrated 26 years in business and the grand opening of their $2.5 million facility on Old Hickory Boulevard.

"We are very excited," said Allen D. Berry Jr., president and founder of the drug wholesaling concern. "The new facility is much more efficient—six times more efficient in terms of picking orders."

The Berry Company was founded in 1958 by Berry and other Nashville officials of the McKesson and Robbins Co. who wanted their own wholesale drug company here. Now the company serves almost 700 stores in the Mid-state area.

Berry was located at 128 Second Avenue North for a quarter of a century until late February when all operations moved to the new facility.

"This is one of the most sophisticated up-to-date drug wholesaler operations in the country," said Berry, proudly looking over the expansive new warehouse where more than 20,000 different over-the-counter and prescription items are stored.

A network of conveyors and automated systems increase efficiency and enable Berry employees to pull orders for stores across Middle Tennessee, Northern Alabama and Southern Kentucky much more quickly and efficiently than ever before, Berry said.

"We had outgrown the old facility," Berry said, adding that building a warehouse and office complex from scratch meant he could incorporate the latest and most effective warehousing systems into his plant very easily.

The building, which provides almost twice the space of the Second Avenue location, is located on six acres near Interchange City on Old Hickory Boulevard off Interstate 24-East. Walter Knestrick Contractor Inc. was the builder.

"There is room for expansion," said Berry, who observed that the drug wholesaling business is remarkably the same as it was 26 years ago when he and his partners opened.

Security has always been tight, the same number of drugs and over-the-counter items exist now as did then (although not the same ones), and the key to the business was—and is—the customers, he said.

"The biggest change I can see is the manufacturers distribution policies have changed," he said.

"It used to be in the high 30 percent came through the wholesaler. Now it's about 60 percent. The rest is direct distribution.

"I guess we (the wholesaler) have become a more efficient way of getting the drugs out," he said.

Another change, he said, is that drugs have become more sophisticated and have more specific applications.

The company, which is a corporation with 15 stockholders, has about 90 employees. Berry said revenues have increased 20 fold since his first years in business and the volume has increased from about five to 10 turns merchandise annually.

"What we try to do is operate more efficiently all the time—to get things to work better," Berry said. "And I enjoy working with the people—our people and the customers."●

TRIBUTE TO MERIDITH WILLSON

● Mr. GRASSLEY. Mr. President, on June 15, Iowa lost one of its greatest native sons, Meridith Willson. Mason City, IA's music man died and will be laid to rest in the hometown and State that he chronicled so movingly in lyric and song.

I would like to read one of the many moving tributes that have been made in the week since his passing. This article is from the Mason City Globe Gazette, June 16, 1984:

WILLSON—AWFULLY PROUD OF MASON CITY

It was Willson with two Ls. It was Mason City, not Mason. And it was Iowa, not Ioway or I-OH-wa.

Meridith Willson didn't worry much about how you spelled his name, although that second L came to worry a lot of writers and copy editors as his fame spread.

But the sound of how one referred to his hometown of Mason City or his home state of Iowa did bother the author-composer.

"We were awfully proud of being from Mason City," he once wrote. "We were always very quick to correct anybody from out of town who said 'Mason.' With a very superior and belittling tone we'd say: 'Mason City.' "

And he was awfully proud of Iowa. To spread its correct pronunciation, Willson wrote a song called "Iowa, It's a Beautiful Land." The song had enough merit to be introduced by Rudy Vallee in the days when Vallee was THE popular male singer. And Vallee managed to sing the telling line as "Ioway, it's a beautiful name when you say it like we say it back home . . ." just like we don't say it back home.

Years later, Willson tried again by writing a number called "Iowuh!" for the "Music Man" show. Done in Indian war-chant fashion, there was no way to mispronounce it. "Iowuh!" survived through the nine years' work on the show and most of the 38 rewrites two weeks before opening night, it was one of the final things cut.

Willson, who had played his flute under the baton of Arturo Toscanini and admired the maestro's keen musical ear, once said of Toscanini: "The man could hear grass grow."

That is an Iowa-style description from an Iowan who was himself quite a listener—a listener to more things than how to say "Iowa."

"Sounds seem to stay in my memory longer than anything else," he wrote in his book "And There I Stood with My Piccolo." He remembered the homey Iowa sounds of burnt toast being scraped and screen doors slamming. Summer to him was the sound of coleslaw being chopped in a wooden bowl; fall was the sound of coal going down a basement chute; winter was the scrape of "Mr. Sale shoveling his walk next door."

"Next door" was next door to what is now 314 S. Pennsylvania, Willson's boyhood home. It then was Superior Street and, Willson argued, Superior sounds superior to Pennsylvania.

The sounds of Iowa, of Iowa talk, of funny Iowa family names, of an Iowa male quartet and an Iowa band all went into "The Music Man."

"I didn't have to make up anything," Willson said. "All I had to do was remember."

But Iowa wasn't just a matter of nostalgia. Willson was in the state often, and his boosterism wasn't a self-serving gimmick based only on memory. He wrote a composition called "The Band" for the University of Iowa. He wrote fight songs for the university and Mason City High School.

He contributed for a Christian education wing at the First United Congregational Church of Christ where his mother taught Sunday school. He was active in the drive to build the North Iowa Community Auditorium.

He was proud of his hometown's musicians. He once had Mason City vocal and instrumental groups join him in launching a national Christmas Seals campaign in Des Moines.

He knew and was proud of the instructors who were creating new generations of Iowa musicians. He praised longtime band teacher John Kopecky of Clear Lake. He attended the funeral of "March King" Karl King at Fort Dodge.

Iowa responded. The University of Iowa, the former Parsons College at Fairfield and Wartburg College at Waverly were among the institutions that awarded honorary degrees to Willson. In 1958, he received the Distinguished Iowan Award.

In Mason City he had friends all over town, and he kept in touch. About half of his high school graduating class remained here, he noted. A special friend who had shared youthful adventures with Willson was J.A. "Art" Swanson, who died in 1977. Willson told more than once, only partly kidding, of his regret that he never played a duet with Swanson. Swanson played tuba, and there was no music then written for a flute-tuba duet.

Another special friend was the late W. Earl Hall, longtime Globe-Gazette editor. Hall wasn't a native but he followed Willson's career as newsman and friend for many, many years. Hall also was a member of the Rusty Hinges, the quartet that inspired the School Board Quartet in "The Music Man."

If Willson never forgot Mason City, neither did Mason City forget its roving musical ambassador. The biggest honor this community can give is to have a person lead the Band Festival parade—especially if that person is a music man. Willson led some big ones.

The first "big" festival honoring Willson was in 1958, just after "The Music Man" became a smash hit on Broadway. Then came a bigger one, in 1962 when the show's film version had its press premiere "right here in River City," complete with movie stars and floodlights. There was a local "Music Man" production when Willson led the 1968 parade and historical emphasis when he took part in the 1976 bicentennial festival. But even before "The Music Man" was created, Willson had crowned a few Band Festival queens here, including one in the city's centennial year of 1953.

For all his "bragging" about Mason City, Willson never claimed his hometown was perfect. Once when a Pacific Stars and Stripes interviewer was trying to find out what was so great about Mason City, Willson was pinned down to listing the town's biggest events as the John Dillinger bank holdup in 1934 and the "Music Man" premiere of 1963.

So, the interviewer summarized, Mason City is distinguished by a fictitious musical con man, a famous real-life musician and a bank robbery—right?

Willson replied: "I am astonished that a journalist of your intelligence, your astuteness, your observation, your perception and knowledge would fail to grasp another salient fact about Mason City. It is exactly halfway between Minneapolis and Des Moines . . ."

Often Willson didn't go that far in trying to "explain" the virtues of Mason City to those who couldn't figure them out for themselves. He once told of a time he was invited to conduct the Minnesota Symphony Orchestra at Minneapolis:

"With baton uplifted, I remember telling the audience how proud I was to be a neighbor to Minneapolis, 'just as, I'm sure, you are proud to be neighbors to Mason City.' Then, before my remarks had a chance to sink in, I dropped the baton for the first note."

Many people have credited "The Music Man" success to a nostalgic yearning for some kind of golden age now gone. If there ever was a city and a state like the one in the show, it's said, there isn't any more. Willson didn't think that.

"The only change I can see in Mason City that really matters," he said, "is that she is still proving her beliefs."

That statement may look self-contradictory, but it sounds right. Meredith Willson knew that the sound of things says a lot. The sound of the word Iowa, for instance.●

SPONSORS AND COSPONSORS

● Mr. GOLDWATER. Mr. President, last Thursday, when I walked on the floor, I thought we were still in the midst of the considerations on the Department of Defense authorization bill because, practically every Senator who had been on the floor during those long, hard days was there.

I got interested in the fact that they were there to introduce amendments, so, I asked the Library of Congress to compile for me a list of the Senators and the number of amendments, the number of sponsorships, and so forth, that they had engaged into during this session so far.

Surprisingly, they had this list right up to the minute on a computer and, within 15 minutes, I had my answer. So, thinking that my colleagues might be interested in seeing the number of amendments that each of us introduced, I ask that this compilation be placed in the Record.

Mr. President, when you see after a name, spon, that means sponsor of a bill, and, then, aspon means sponsor of an amendment, cosp means cosponsor of a bill, and acosp, means cosponsor of an amendment.

The compilation follows:

Senator Abdnor (spon=20; aspon=18; cosp=218; acosp=32).

Senator Andrews (spon=35; aspon=8; cosp=253; acosp=33).

Senator Armstrong (spon=30; aspon=23; cosp=100; acosp=25).

Senator Baker (spon=96; aspon=9; cosp=86; acosp=9).

Senator Baucus (spon=23; aspon=30; cosp=240; acosp=64).

Senator Bentsen (spon=66; aspon=7; cosp=225; acosp=55).

Senator Biden (spon=10; aspon=5; cosp=140; acosp=43).

Senator Bingaman (spon=7; aspon=2; cosp=178; acosp=76).

Senator Boren (spon=21; aspon=13; cosp=239; acosp=68).

Senator Boschwitz (spon=49; aspon=26; cosp=296; acosp=60).

Senator Bradley (spon=16; aspon=24; cosp=245; acosp=51).

Senator Bumpers (spon=19; aspon=25; cosp=264; acosp=59).

Senator Burdick (spon=11; aspon=1; cosp=336; acosp=43).

Senator Byrd (spon=49; aspon=26; cosp=172; acosp=44).

Senator Chaffee (spon=35; aspon=31; cosp=183; acosp=25).

Senator Chiles (spon=29; aspon=10; cosp=222; acosp=37).

Senator Cochran (spon=24; aspon=12; cosp=277; acosp=31).

Senator Cohen (spon=23; aspon=23; cosp=220; acosp=37).

Senator Cranston (spon=63; aspon=17; cosp=328; acosp=92).

Senator D'Amato (spon=67; aspon=12; cosp=268; acosp=60).

Senator Danforth (spon=39; aspon=17; cosp=141; acosp=22).

Senator Deconcini (spon=44; aspon=24; cosp=303; acosp=64).

Senator Denton (spon=25; aspon=12; cosp=199; acosp=31).

Senator Dixon (spon=21; aspon=17; cosp=321; acosp=53).

Senator Dodd (spon=27; aspon=5; cosp=204; acosp=37).

Senator Dole (spon=71; aspon=661; cosp=223; acosp=35).

Senator Domenici (spon=40; aspon=20; cosp=218; acosp=37).

Senator Durenberger (spon=71; aspon=13; cosp=291; acosp=55).

Senator Eagleton (spon=19; aspon=4; cosp=167; acosp=40).

Senator East (spon=10; aspon=24; cosp=173; acosp=26).

Senator Evans (spon=2; aspon=3; cosp=39; acosp=11).

Senator Exon (spon=18; aspon=10; cosp=196; acosp=73).

Senator Ford (spon=12; aspon=6; cosp=200; acosp=56).

Senator Garn (spon=58; aspon=16; cosp=168; acosp=20).

Senator Glenn (spon=17; aspon=4; cosp=249; acosp=63).

Senator Goldwater (spon=42; aspon=8; cosp=173; accsp=21).

Senator Gorton (spon=46; aspon=20; cosp=175; acosp=23).

Senator Grassley (spon=53; aspon=15; cosp=230; acosp=36).

Senator Hart (spon=29; aspon=528; cosp=173; acosp=43).

Senator Hatch (spon=95; aspon=31; cosp=241; acosp=26).

Senator Hatfield (spon=32; aspon=48; cosp=151; acosp=37).

Senator Hawkins (spon=41; aspon=17; cosp=298; acosp=40).

Senator Hecht (spon=2; aspon=2; cosp=110; acosp=10).

Senator Heflin (spon=46; aspon=8; cosp=281; acosp=45).

Senator Heinz (spon=88; aspon=41; cosp=306; acosp=53).

Senator Helms (spon=70; aspon=66; cosp=229; acosp=41).

Senator Hollings (spon=25; aspon=10; cosp=398; acosp=63).

Senator Huddleston (spon=29; aspon=16; cosp=302; acosp=68).

Senator Humphrey (spon=31; aspon=31; cosp=155; acosp=35).

Senator Inouye (spon=123; aspon=7; cosp=343; acosp=41).

Senator Jackson (spon=8; aspon=10; cosp=77; acosp=15).

Senator Jepsen (spon=35; aspon=21; cosp=272; acosp=59).

Senator Johnston (spon=15; aspon=12; cosp=206; acosp=37).

Senator Kassebaum (spon=14; aspon=11; cosp=150; acosp=21).

Senator Kasten (spon=20; aspon=33; cosp=169; acosp=25).

Senator Kennedy (spon=40; aspon=61; cosp=293; acosp=67).

Senator Lautenberg (spon=15; aspon=4; cosp=192; acosp=48).

Senator Laxalt (spon=19; aspon=9; cosp=182; acosp=13).

Senator Leahy (spon=9; aspon=8; cosp=207; acosp=54).

Senator Levin (spon=66; aspon=34; cosp=298; acosp=93).

Senator Long (spon=8; aspon=12; cosp=90; acosp=22).

Senator Lugar (spon=9; aspon=8; cosp=247; acosp=19).

Senator Mathias (spon=114; aspon=23; cosp=135; acosp=36).

Senator Matsunaga (spon=40; aspon=8; cosp=315; acosp=53).

Senator Mattingly (spon=19; aspon=24; cosp=170; acosp=42).

Senator McClure (spon=72; aspon=29; cosp=143; acosp=24).

Senator Melcher (spon=31; aspon=28; cosp=288; acosp=87).

Senator Metzenbaum (spon=31; aspon=488; cosp=183; acosp=52).

Senator Mitchell (spon=30; aspon=12; cosp=182; acosp=51).

Senator Moynihan (spon=102; aspon=28; cosp=347; acosp=92).

Senator Murkowski (spon=16; aspon=13; cosp=156; acosp=27).

Senator Nickles (spon=21; aspon=9; cosp=195; acosp=42).

Senator Nunn (spon=24; aspon=17; cosp=261; acosp=47).

Senator Packwood (spon=53; aspon=8; cosp=101; acosp=10).

Senator Pell (spon=31; aspon=12; cosp=330; acosp=69).

Senator Percy (spon=87; aspon=42; cosp=271; acosp=57).

Senator Pressler (spon=38; aspon=41; cosp=202; acosp=66).

Senator Proxmire (spon=25; aspon=16; cosp=164; acosp=38).

Senator Pryor (spon=25; aspon=24; cosp=264; acosp=69).

Senator Quayle (spon=33; aspon=20; cosp=168; acosp=18).

Senator Randolph (spon=13; aspon=3: cosp=341; acosp=134).

Senator Riegle (spon=32; aspon=6; cosp=340; acosp=77).

Senator Roth (spon=30; aspon=3; cosp=117; acosp=23).

Senator Rudman (spon=6; aspon=7; cosp=82; acosp=28).

Senator Sarbanes (spon=10; aspon=2; cosp=336; acosp=55).

Senator Sasser (spon=34; aspon=4; cosp=231; acosp=78).

Senator Simpson (spon=36; aspon=8; cosp=117; acosp=14).

Senator Specter (spon=80; aspon=35; cosp=197; acosp=31).

Senator Stafford (spon=43; aspon=15; cosp=191; acosp=55).

Senator Stennis (spon=15; aspon=2; cosp=166; acosp=24).

Senator Stevens (spon=43; aspon=57; cosp=205; acosp=25).

Senator Symms (spon=28; aspon=20; cosp=245; acosp=35).

Senator Thurmond (spon=104; aspon=39; cosp=338; acosp=42).

Senator Tower (spon=30; aspon=56; cosp=117; acosp=19).

Senator Trible (spon=23; aspon=6; cosp=133; acosp=19).

Senator Tsongas (spon=36; aspon=7; cosp=302; acosp=47).

Senator Wallop (spon=23; aspon=10; cosp=102; acosp=10).

Senator Warner (spon=22; aspon=20; cosp=150; acosp=44).

Senator Weicker (spon=27; aspon=20; cosp=117; acosp=22).

Senator Wilson (spon=22; aspon=20; cosp=194; acosp=29).

Senator Zorinsky (spon=10; aspon=17; cosp=224; acosp=42).●

CENTRAL AMERICA

● Mr. COCHRAN. Mr. President, Mr. Mel Blake, a native of Lexington, MS, who now serves as the State Department's senior adviser on implementation of the recommendations of the National Bipartisan Commission on Central America, recently wrote an article which appeared in the Clarion-Ledger in Jackson, MS. Mr. Blake's article emphasizes the need for a bipartisan basis for our aid program for Central America.

I submit for the Record that article from the June 14, Clarion-Ledger in order that my colleagues may have the benefit of the thoughts of Mr. Blake who has served in the U.S. Foreign Service since 1951.

WE MUST HELP CENTRAL AMERICA

(By Mel Blake)

Nearly 500 years ago Saint Thomas a Kempis wrote of how mankind would yearn to participate if religious services were held at only one place in the world. Mankind similarly longs for fundamental freedoms such as the right to choose their leaders. I saw the fulfillment of that desire on May 6, as Salvadorans thronged to vote in their country's presidential runoff elections.

Even though the Salvadoran insurgents attempted to disrupt the elections and threatened reprisals against voters, the people took to the streets and highways in migrations reminiscent of the Biblical census as they exercised their democratic responsibility to vote. The magnitude of the popular effort (some 75 percent of the electorate turned out) and the people's fervor were dramatically illustrated in the town of Atiguizaya, some 50 miles from the capital.

In random fashion, we had spoken to voters at other polling places throughout the morning. As we approached the polls in this dusty village, we saw a young peasant standing in line, a beautiful girl of some three years before him and his wife at his side. Drawing near we realized that his wife was nursing an infant. The young farmer told us the family had walked two hours to reach the polling place. They had been in line for an hour and would be there another hour. Ahead was a two-hour walk home in the noonday tropical heat. In reply to our astonishment at the family's tremendous effort to vote, the husband answered simply that it was "for our country and for peace."

Two days later it rained on Maryland's primary day. The newspapers reported an even lighter-than-usual voter turnout.

Jose Napoleon Duarte, the winner of the runoff elections, was installed on June 1 as El Salvador's first democratically elected civilian president in 50 years. El Salvador thus joins Costa Rica and Honduras as examples of democracy in action. In fact, after the May 6 elections, my old friend Jose (Pepe) Figures, three times president of Costa Rica and the founder of that country's present democratic institutions, told me that the tenacity of the Salvadoran people in their quest for peace and democracy entitled them to be ranked alongside Costa Rica as a democratic model for the world.

The demand for peace and civic and human rights echoes throughout Central America: Nicaragua marches to a different drummer. How should we react to the desires of these near neighbors as they try to overcome centuries of social injustice and economic deprivation even while they fight off extremists attempting violently to exploit the peoples' misery for ideological gain? If the United States could assist Germany and Japan in their recovery from the ravages of World War II, can we not help nations so close to us, with whom we have never had a quarrel and, indeed, nations that have been our strongest admirers and supporters?

Just as the postwar European Recovery Plan rested on a bipartisan basis, so should our aid to Central America. In July 1983, President Reagan appointed a commission of distinguished citizens, representing both major political parties and labor, management and academe, to study the overall situation in Central America and to make recommendations on a long-range, comprehensive policy. After extensive deliberations, the commission submitted a report containing a range of recommendations in the political, economic and security fields, which met the policy tests set for it.

President Reagan sent proposed legislation to the Congress on February 17 to obtain authority to implement the commission's recommendations. The emphasis is on economic and development assistance and social reform, shielded to the extent necessary by security assistance. In the commission's words, the United States should transform "the crisis in Central America into an opportunity: to seize the impetus it provides, and to use this to help our neighbors not only to secure their freedom from aggression and violence, but also to set in place the policies, processes and institutions to make them both prosperous and free."

On May 10, the House of Representatives approved legislation to permit the administration to implement the recommendations of the National Bipartisan Commission. It is hoped that the Senate will act promptly. The needs of Central America are too urgent, the crisis too pressing, to admit delay. Given the proximity of Central America to the United States, it is in our enlightened self-interest that the proposed legislation be enacted this congressional session; to follow any other course would be perilous to our interests at well as to those of Central America.●

COSPONSORSHIP OF S. 2470—RELATING TO INSIDER SAFEGUARDS RULE

● **Mr. D'AMATO.** Mr. President, I rise today to cosponsor legislation offered by my distinguished colleague from Alabama, Senator **Denton**. This legislation, S. 2470, is designed to remedy a problem that arose when the Nuclear Regulatory Commission issued for consideration a new rule known as the "Insider Safeguards Rule." Under the provisions of this rule, a new section 73.56 would be added to title 10 Code of Federal Regulations. This section would require licensees of nuclear powerplants to conduct background investigations on all personnel who require unescorted access to the protected and vital areas of nuclear powerplants.

The goal of providing background for the employer to consider when hiring personnel at a nuclear powerplant is one I believe will enjoy wide, bipartisan support. The effectiveness of this regulation, however, is severely undermined because the criminal histories of said personnel are not available to the licensee. Consequently, Senator **Denton** introduced S. 2470 to remedy that deficiency.

I support his legislation because I believe that such information is vital to the protection of the public health and safety. This is a timely piece of legislation I would urge all of my colleagues to support.●

ORDERS FOR TUESDAY

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. BAKER. Madam President, I ask unanimous consent that, when the Senate completes its business today, it stand in recess until the hour of 10 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATORS PROXMIRE AND BUMPERS AND FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Madam President, I ask unanimous consent that tomorrow, after the recognition of the two leaders under the standing order, special orders be entered in favor of two Senators for not to exceed 15 minutes each; to wit, Senators **Proxmire** and **Bumpers**; to be followed by a period for the transaction of routine morning business until 11 a.m., in which Senators may speak for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BAKER. Madam President, it is the intention of the leaderhip on this side to ask the Senate tomorrow to turn to the consideration of the drunk driving bill, the State-Justice appropriations bill, if possible, perhaps the math-science bill, and other matters as they may be cleared on both sides. The two principal items that will be addressed by the Senate tomorrow, as I now anticipate it, will be the child restraint bill, which carries the drunk driving amendment, and the State-Justice appropriations bill.

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. BAKER. Madam President, I have nothing else to ask the Senate to address. I am willing to provide a time for the transaction of routine morning business if a Senator has the need to speak.

I see none seeking recognition. Therefore, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 10 a.m. tomorrow.

The motion was agreed to and, at 6:34 p.m., the Senate recessed until tomorrow, Tuesday, June 26, 1984, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 25, 1984:

DEPARTMENT OF STATE

Robert J. Ryan, Jr., of the District of Columbia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Mali.

EXECUTIVE OFFICE OF THE PRESIDENT

Jorge L. Mas, of Florida, to be a member of the Advisory Board for Radio Broadcasting to Cuba for a term of 2 years. (New position—Public Law 98-111 of October 4, 1983).

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

Judith D. Moss, of Ohio, to be a member of the National Advisory Council on Women's Educational Programs for a term expiring May 8, 1987, reappointment.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Margaret Phelan, of Kansas, to be a member of the National Commission on Libraries and Information Science for a term expiring July 1, 1988, vice Philip A. Sprague, term expired.

IN THE AIR FORCE

The following Air National Guard of the United States officers for promotion in the Reserve of the Air Force under the provisions of section 593(a) of title 10 of the United States Code, as amended:

LINE OF THE AIR FORCE

To be lieutenant colonel

Maj. William M. Berg, 556-54-8748
Maj. William E. Bonnell, 294-36-6991
Maj. Paul J. Boyack, 529-48-0966
Maj. John S. Chanda, 407-62-5012
Maj. Roy C. Chase, 417-50-4637
Maj. Donald L. Durbin, 313-36-2110
Maj. Thaddeus D. Evans, 245-72-2126
Maj. Richard C. Gould, 049-32-3875
Maj. James E. Holmes, 445-32-4478
Maj. Dennis M. Hyatt, 054-32-4357
Maj. John P. Kelly, 024-30-6521
Maj. Lee W. Kirkwood, 427-94-3773
Maj. Larry D. Pace, 428-84-9296
Maj. Russell Padula, 049-34-5218
Maj. Christopher Pantos, 308-42-7095
Maj. James C. Perkinson, 412-64-4378
Maj. Julius V. Przygocki, 368-36-3583
Maj. Robert P. Smart, 156-34-7805
Maj. Derle M. Snyder, 186-34-0767

LEGAL

Maj. Lyman L. Frick, Jr., 497-44-0641

MEDICAL SERVICE CORPS

Maj. Hedley W. D. Greene, 537-42-1344

IN THE AIR FORCE

The following distinguished graduates, U.S. Air Force Reserve Officer Training Corps, for appointment as second lieutenants in the Regular Air Force, under the provisions of section 531, Title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force.

Adams, Bryan C., 421-90-4262
Adams, Mark L., 585-16-3552
Agena, Keith K., 575-84-2920
Alickson, Dennis C., 468-64-7840
Alvord, Kirk W., 449-84-4818
Andrews, Allen R., 498-76-8012
Aristov, Andrey, 548-55-6219
Avery, Eleanor E., 243-29-5261
Babin, Brian J., 438-21-0054
Bachman, Thomas T., 572-37-7962
Backes, Gary J., 475-86-9108
Baczkowski, Leonard J., 171-38-3971
Bagnani, Valentino, 246-19-4635
Bailey, Brian L., 265-45-9371
Bailey, Donald P., 489-80-1528
Baker, Robert E., Jr., 401-74-5349
Bassler, Susan L., 123-62-7597
Bayless, Benjamin M., 411-25-0047
Beatovich, Gary, 539-74-4409
Beatty, Steven J., 416-92-1444
Belt, Cary D., 402-94-0713
Belt, David L., 276-58-3763

Berger, Beth Anne, 467-82-0494
Beyer, Mark A., 47[illegible]-83-0994
Biernesser, Stephen A., 180-58-5727
Blaine, Russell J., 021-46-7239
Blunt, Joseph W., 541-92-4064
Blyler, Stephanie A., 555-33-3486
Booker, Daniel R., 386-72-4881
Bowen, Kelvin C., 245-19-5977
Boyko, David R., 553-86-3808
Bradley, Harold W., III, 559-25-4980
Braman, Michael T., 028-36-0709
Bray, Robert E., 522-11-1134
Brocking, Timothy D., 358-64-7975
Brown, Ernie L., Jr., 450-27-8183
Brown, Jeff L., 504-86-5842
Brown, Lawrence E., 206-58-4398
Broyles, Brian E., 525-21-4812
Brosena, David J., 202-58-4695
Burchard, Jeanette L., 543-92-5994
Burns, Anthony P., 217-88-5653
Burns, Brian P., 003-56-2006
Burns, Mark E., 132-58-4442
Bury, Susan M., 477-86-7911
Buschor, Daniel C., 298-70-0593
Bushnell, James F., 523-21-3842
Butler, Dennis W., 488-76-3790
Butler, Lawrence W., 031-54-3243
Butts, Amy M., 495-68-4573
Byrne, Michael T., 286-60-5891
Carlin, Bernard T., Jr., 012-54-1819
Cartwright, Brian T., 229-11-0086
Case, Brian H., 279-42-2002
Cash, Clay H., 424-62-4267
Cashman, Douglas J., 264-59-0289
Cantanzaro, Wayne, 111-54-2644
Chevess, David A., 567-41-7132
Chilcott, Roger W., Jr., 219-66-6642
Childs, Troy B., 522-19-6917
Choi, Yanghee M., 555-47-6461
Christensen, Allan R., Jr., 351-64-9764
Cintron, Roberto, 583-84-5998
Cleland, Cheryl L., 172-46-1569
Cloud, Melvin E., 252-13-7026
Clynch, Christa A., 494-76-4423
Coe, Lori A., 228-21-9549
Cook, Henry G., 431-35-0964
Cox, David W., 013-48-2996
Culkin, Rodger T., 230-08-2118
Cunningham, Robert E., Jr., 256-96-5480
Czuba, Karen M., 212-84-5436
Dale, David S., Jr., 510-64-9497
Danielson, Dewayne F., 527-47-6809
Dansl, Susan M., 158-56-2427
Darko, Katherine H., 055-54-1653
Davis, Shugato S., 073-62-8294
Dearth, Anthony M., 510-66-5654
Declairmont, Ralph T., 458-29-1199
Desautel, Stephen C., 003-48-8909
Didomenico, Steve G., 535-80-0280
Digeorge, David A., 436-90-7783
Disler, Edith A., 291-48-7783
Dittmer, Dale R., 247-35-3126
Dotson, Treva, 281-74-5870
Draper, Mark A., 227-15-7349
Duffy, Francis D., 544-68-3430
Dunn, Lorraine M., 011-60-6605
Dutton, Dennis R., 227-84-6735
Edman, Thomas F., 269-70-1324
Ellis, David E., 049-40-1790
Ellis, Mark W., 451-19-5605
Emmack, Nicholas C., 483-76-8736
Farrell, Deborah A., 392-56-3217
Fell, Steven E., 342-46-7364
Finnila, Mark A., 475-82-0541
Fischer, William F., Jr., 159-54-5154
Fiske, Brian D., III, 020-18-3010
Forbes, Lance A., 308-78-3466
Fyfe, John M., 13[illegible]-64-5[illegible]94
Gabriel, Dale S., 511-70-4866
Gaines, Therese S., 428-02-0601
Garcia, Efren V. M., 561-45-6639
Gardner, John D., 510-62-2610
Gardow, David G., 317-66-2236
Garstka, Michael T., 572-43-1372

Gast, Cynthia B., 379-68-4898
Gelinas, Keith R., 029-52-8226
Gemmell, Thomas L., 366-84-4607
Gerber, David K., 285-62-1763
Gerfen, Kevin A., 446-58-5140
Gibson, Brock E., 227-68-0454
Gifford, Robert T., 521-08-7715
Gleason, Garrett L., 473-66-3241
Goodwin, Mark D., 296-72-7001
Gordon, Peter J., 001-46-225
Graves, Michael J., 470-82-0356
Grechniw, Mark, 107-60-5766
Green, Justin L., 585-17-9673
Grier, James B., Jr., 213-68-5895
Grimmig, Carol A., 263-33-0788
Guthrie, Brian C., 267-47-1020
Gydesen, Paul W., 474-88-1133
Hamilton, Marion K., 289-66-2077
Hand, Mark C., 255-19-1466
Haney, Kim R., 156-58-6447
Hansen, Craig A., 510-66-3668
Hansen, Eldon J., 528-74-7403
Haralson, David G., 535-84-3205
Hardiman, Scott C., 572-47-9955
Harpe, Randall S., 418-78-6235
Harrington, Milton D., 479-64-5968
Hawkins, Kevin C., 530-58-5289
Hayes, Timothy W., 524-78-3696
Heasley, Joseph F., 509-64-6244
Hertberg, Robert B., 453-31-8278
Hill, Joseph M., 468-84-9556
Hofstad, Chris E., 481-88-1621
Hogg, Lindsey W., 459-27-6632
Holbrook, Jeffrey P., 575-72-7344
Holmes, Bryan D., 011-52-5091
Hren, Michael M., 193-58-7736
Hughes, Harry M., 214-84-1568
Inman, Christopher S., 226-86-8451
Johnson, Patrick W., 266-71-0451
Johnston, Dale A., 329-46-3181
Jolliffe, James A., 506-90-9944
Jones, Bradley K., 201-58-5993
Joseph, Barry S., 032-56-6472
Karczewski, David C., 377-68-5211
Kastenholz, Charles V., 391-66-5387
Kelley, James A., 516-88-9015
Kennard, Katherine, 297-50-3480
Kibbe, Douglas S., 487-80-2636
Kimbrell, James R., 417-04-0925
Klatt, John P., 341-50-6255
Kloppel, Kirk, 577-84-7528
Koehler, Scott P., 282-66-5971
Koger, John J., 273-72-3506
Kolmer, Thomas C., 230-90-0454
Korn, Patricia J., 353-38-4755
Krause, Christina S., 457-45-4113
Krieghfleming, Dru H., 553-74-5053
Kunzweiler, Timothy P., 491-66-2615
Labernik, Laura E., 573-13-8099
Labrosse, Michelle A., 049-40-0080
Larkin, Charlene Marie, 509-76-9010
Larson, Andrew R., 503-72-8190
Lavelle, William A., 547-68-0165
Lento, Eileen M., 032-40-1876
Levinson, Scott W., 395-68-0721
Lihani, Robert F., 159-38-0895
Lindahl, Valerie A., 183-54-4523
Listak, Charles M., 350-60-9086
Lobermeier, Jeffery J., 351-58-1050
Lyon, Nancy B., 532-50-6515
Magee, Gregory J., 209-48-3342
Mallory, Dean P., 425-31-2838
Marek, Michael S., 368-78-3010
Martin, Jeffrey B., 386-74-4768
Martz, Susan L., 042-48-8717
Masih, Das Clement, 101-48-2647
Matthews, Mary K., 168-54-7427
Matthews, Van E., 492-60-8782
McCallee, Daniel H., 384-74-8654
McCray, David H., 564-45-7189
McGraw, Bryan K., 493-76-0346
McMahon, Michael I., 251-37-1148
McPherson, Steven H., 489-52-0477
Messinger, Brus D., 174-48-9330

Meyer, Joseph A., 295-44-0680
Miller, Keesey R., 452-06-2003
Miller, Richard R., 520-82-2083
Mitchell, Jack E., 527-70-6426
Mitchell, Michael J., 571-51-5468
Mitchell, William E., 225-98-0545
Monahan, Thomas, 562-29-2119
Monsen, Kathleen P., 094-52-3194
Montecalvo, Anthony J., 270-74-7407
Morgan, John N., 567-70-2130
Moring, John L., III, 213-90-5188
Mosteller, Randy D., 203-58-9683
Mullen, Daniel V., 321-66-8593
Murray, Letitia D., 267-39-1398
Murray, William R., Jr., 217-84-0286
Myers, Marcus S., 252-76-5107
Naselius, Karen A., 327-46-4693
Nobbs, Sandra S., 247-33-3927
Nowack, Mark L., 220-54-5946
Nuti, Joseph C., 576-86-7364
Obrien, Michael G., 300-58-1772
Orino, John R., 462-86-6935
Orr, David L., 416-64-7050
Ostroski, Michael J., 137-64-4748
Otto, Stacy L., 144-52-9106
Pannell, Dennis B., 256-06-3580
Park, Michael B., 435-23-7314
Park, Michael R., 410-04-3100
Parker, Terry D., 267-11-3294
Patterson, Karen M., 516-88-2766
Pauchey, Jean J., 266-96-8058
Penning, Michael R., 573-29-0528
Peschel, Mary C., 300-46-6546
Peters, Mary L., 558-55-7523
Piatt, Kevin P., 347-60-5024
Plante, Randall S., 089-54-7383
Pollard, John K., 397-54-1864
Pool, Michele J., 221-44-2726
Prestgard, Greg A., 575-76-3219
Propst, William M., 235-02-9176
Przygocki, James V., 412-25-7489
Pyle, Gregory L., 243-90-5566
Quinn, Michael H., 198-58-2213
Rasmussen, David S., 505-84-5662
Rausch, John T., 392-80-0317
Ray, Emily W., 416-82-0489
Raymond, John W., 228-06-7256
Reece, James L., Jr., 458-94-7451
Reed, James D., 527-33-8017
Reeves, Nancy P., 216-70-9556
Reynolds, Gary S., 571-31-1706
Rice, Darren L., 349-58-9796
Richard, Robert S., 262-63-4468
Rizzuto, Patrick J., Jr., 153-54-7819
Robinson, John A., Jr., 433-84-8927
Roblyer, Dwight A., 454-35-4179
Roman, Robert R., 151-54-8960
Rompola, Randolph R., 201-58-2476
Roth, Lissa M., 570-84-6783
Rothermich, Mary K., 493-80-2158
Roush, John M., 230-98-2148
Ruff, Michael C., 368-74-7117
Rumney, Randell C., 457-39-1710
Sanders, Steve A., 546-35-8682
Sandifer, Robin T., 435-76-0096
Sandige, David J., 544-90-0389
Sargent, William J., 537-62-7420
Sasdelli, Edward M., 157-62-5454
Sawyer, Mary P., 490-70-5579
Scanlon, James J., III, 139-64-8239
Schalle, Robert, 459-45-4455
Schanck, Michael D., 001-60-0941
Schibly, James A., 508-30-0472
Schooff, Richard M., 522-13-0034
Schumacher, Charles A., 505-62-9520
Scorsone, John J., 438-68-3185
Scott, Michael B., 219-82-7967
Shinners, William D., 391-78-8053
Sieg, Carl N., 289-52-0327
Slocum, John D., 563-31-3827
Smick, Jeffrey P., 394-58-1309
Smith, Philip A., 544-78-7970
Snadecki, Eric A., 047-68-5719
Snapp, Gary T., 245-21-8890

Snow, Stanley U., 567-11-4426
Solmonson, Steven M., 551-27-3059
Steele, John B., 122-50-4426
Stewart, Cynthia A., 260-02-4593
Stocking, Timothy A., 504-84-7191
Story, Steven L., 261-83-3334
Stratton, Marc F., 153-62-2507
Stubblefield, Mark E., 415-29-6662
Swanson, David A., 020-48-9867
Taber, Phillip P., 413-11-0450
Tarrant, Patricia L., 217-64-9493
Taylor, Gregory S., 030-54-3606
Thomas, James V., 002-40-6942
Tibbitts, Brandt K., 552-31-2800
Trask, Thomas J., 071-56-6283
Troutman, Daniel Mark, 206-42-7574
Tucker, Elizabeth A., 220-90-1698
Turner, Joseph L., 466-35-3618
Uchida, Ted T., 539-68-3628
Villa, Paul J., Jr., 124-60-1241
Wabrowetz, Steven, 472-78-9118
Walle, Mark J., 435-31-4572
Walsh, Deborah A., 086-60-2570
Warnick, Mark M., 535-54-0981
Wasserman, Richard A., 465-27-5176
Watson, Thomas E., 412-02-7036
Weiher, Timothy L., 345-66-9818
Welch, Gary L., 469-60-5062
Wesley, David C., 266-88-7672
Whalen, Paul V., 403-92-3076
Whiting, Leslie A., 102-58-1579
Whitney, Russell G., 248-19-5395
Wiggins, George W., Jr., 264-69-8915
Wilcox, Richard S., 307-72-4543
Wilkins, Mark A., 434-92-2090
Williams, Robert, 253-15-1569
Winham, Charles H., Jr., 265-56-0859
Wolfe, Jon G., 258-13-7162
Woltz, George R., Jr., 229-74-3190
Wolver, Gary A., 224-86-1969
Woods, Darrell W., 405-90-4715
Young, Scott J., 480-90-8389
Zalud, Kerry M., 309-76-6300
Zastrow, Roderick C., 504-56-4457
Zins, Richard P., 555-31-1680
Zlotnicki, Kristina M., 535-46-6801

In the Army

The following-named officers for appointment under automatic integration in the Regular Army of the United States, in their promotion grades, under the provisions of sections 531, 532 and 533, title 10, United States Code:

To be lieutenant colonel

Spence, Avery C., 210-30-0290

To be major

Albro, Scott T., 512-54-2406
Brown, Stephen D., 558-82-5915
Bowman, Rodney H., Jr., 460-74-3179
Kichen, Lee F., 014-36-2120
Martin, Lavelle, 431-78-1060
Munson, Charles A., 205-36-2633
Nance, Richard A., 462-80-2290

The following-named cadet, graduating class of 1984, U.S. Military Academy, for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of sections 531 and 4353, title 10, United States Code:

Burgess, Rene G., 004-70-2540

The following-named distinguished honor graduates of officer candidate school for appointment in the Regular Army of the United States, in the grade of second lieutenant, under the provisions of sections 531, 532, and 533, title 10, United States Code:

Rogers, Jack B., 543-70-3570
Zehnder, Daniel J., 543-78-1784

In the Navy

Air Force Cadet Kimberly F. Walker to be permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 531.

The following-named Naval Reserve Officers Training Corps Program candidates to be appointed permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Becker, Walter D.
Beyer, Douglas C.
Bjerg, Paul W.
Burke, Gregg A.
Carpenter, Bradley A.
Eidson, Brian E.
Green, Vincent R.
Haas, Russell E.
Hall, William H.
Hansen, Robert C.
Harris Christopher N.
Hileman, Robecca E.
Maletz, Stanley D.
Morgan, Tony F.
Ptiney, Michael P.
Roberson, Jamie P.
Scroggs, Steven D.
Sims, Johnny D.
Williams, Joseph P.
Winter, Daniel H.

Michael J. Sircy, Navy enlisted candidate, to be appointed permanent ensign in the Medical Service Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531.

The following-named Naval Reserve officers to be appointed permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Ikeda, John T.
Stevens, Maurice

Jon K. Garman, ex-Naval Reserve officer, to be appointed permanent commander in the Medical Corps of the U.S. Naval Reserve, pursuant to title 10, United States Code, section 593.

The following-named U.S. Navy officers to be appointed permanent commander in the Medical Corps of the U.S. Naval Reserve, pursuant to title 10, United States Code, section 593:

Hedges, John C.
Schneider, Gerald L.
Weber, Daniel J.

In the Navy

The following-named lieutenants of the line of the Navy for promotion to the permanent grade of lieutenant commander, pursuant to title 10, United States Code, section 624, subject to qualifications therefor as provided by law:

UNRESTRICTED LINE OFFICER

Achorn, Ted Glen
Adamo, William Richard
Adams, Jan Marie
Agor, Michael Patrocinio
Aker, Winfred Gary
Alberg, Chris Leonard
Aldrich, David Andrew
Alexander, James Harvey, Jr.
Alft, Robert Anthony
Alger, Daniel Francis
Allen, Craig L.
Allen, William Howard
Anderson, James R.
Anderson, Thomas Robert
Anderson, William Bruce
Andres, Eric Robert
Anthony, Mark H.
Applegate, David James
Arms, David H.
Armstrong, Floyd Douglas
Armstrong, Peter A.
Arumae, Eric Nmn
Asher, Gerald David
Assel, Michael D.
August, Randal J.
Ayala, Richard Joseph
Azzarello, Jon Joseph
Baird, Portia A.
Baker, Clinton Bernard
Baker, Keith Dean
Baker, Michael Allen
Balaconis, Roy Joseph
Baldy, Mary Bernadette
Ball, John E.
Ballard, Michael Alfred
Ballard, Vivian Heacox
Barbee, Melvin Norman, Jr.
Barngrover, Lyle L.
Barrett, David Bruce
Barrett, John Harry, III
Barstow, John Thomas
Bashore, Timothy C.
Bauer, David Alan
Bauer, Thomas George
Baumgartner, Edward Martin
Baumstark, Robert P.
Bealer, David Ellis
Beaton, Scott Allan
Bedsole, James Wendell
Beeks, Kenneth D.
Benedict, Tod D.
Benfield, Paul K.
Benn, Anthony J.
Benson, Mark Marvin
Bird, Douglas Lacy
Blair, Kenneth Marion
Blair, Lindell Gene
Blankenship, John Doyle
Blaser, Stephen J.
Blevins, Kenneth William
Blitz, Victor Edward, Jr.
Blume, Frederick Louis
Boeckman, Dale Anthony
Boger, Jeffrey R.
Booker, Gordon William Jr.
Borden, David S.
Bouchard, Joseph Frederick
Boulden, John Searles, III
Bowen, Edward Charles
Bowes, John Leonard, Jr.
Boyce, Gary Linden
Bradfieldsmith, Wendy Lee
Bradley, Cecil Douglas
Braynon, Oscar James
Brennan, Thomas J.
Brenny, Michael Kenneth
Bridgeman, John Benjamin
Bringle, Donald Godwin
Britt, John Allan
Brown, Charles Granville
Brown, George Gilbert, Jr.
Brown, Gordon Russell
Brown, John Martin
Brown, Peter Gibson
Brownell, John Michael
Brownley, Trenholm L., Jr.
Bruce, Robert Laverne, Jr.
Bruder, Mark A.
Brueck, David Lloyd
Brunner, Brian Lee
Bryant, Ermond Richard, Jr.
Bryant, Russell E.
Bulke, Kim Smith
Bullock, Dennis E.
Burchard, Steven Neil
Burke, Caryl Scott
Burke, Jeffrey D.
Burkholder, Earl F.
Burns, Douglas E.
Burns, William S.
Burrell, Roger Evon
Bush, Charles Thomas
Busse, George K.
Butler, Hoyt Carl
Butler, James George
Butt, Robert Alan
Byus, Fred
Cackowski, Jean Marie
Cahill, John Henry, III
Cain, Patrick Maurice
Calahorrano, Jose
Campagna, Michael S.
Campbell, Cromwell Bowen, II
Campbell, Debra Susanne
Campbell, Thomas John
Capalbo, Joseph J.

Capron, Nicholas Joseph
Carey, John Edward
Carlson, David Leo
Carlton, James Guy, Jr.
Carnes, Charles Burton
Carnot, Russell S.
Carper, Ricky Lowell
Carrizales, J. Javier
Carte, Constance Joanne
Carter, Harold T.
Carter, Steven Michael
Case, Paul Harrison
Casey, William E.
Cashbaugh, David M.
Cass, James L.
Cech, James Vincent
Celano, Joseph
Cepak, Timothy James
Cernohorsky, Richard Lee
Chapman, Robert S.
Charis, Thomas S.
Chase, Richard E.
Cheatham, Kevin M.
Chenault, Alanson Trigg, IV
Chenoweth, Emory Leigh
Childers, Clarence Ester, Jr.
Chinberg, Charles Allison
Chlebanowski, Joseph Stan, Jr.
Chukes, Frank, Jr.
Clark, Alfred Wayne
Clark, Billy Lynn
Clark, Randall
Clark, Robert L.
Clausen, Jan Marie
Clausen, William A.
Cleveland, Charles Rivers
Clifford, Nolan D.
Cochran, Donnie L.
Coggan, David Eliot
Colby, James Stephen
Collins, Steven Patrick
Colville, John Edward
Combest, Philip J.
Compton, Byron P.
Concannon, Timothy J.
Coniglogue, Cheri Lynn
Conklin, Donald Denton
Connelly, Robert Jeffrey
Conner, Thomas Lee
Conniff, Frederick R.
Converse, Vincent W.
Cook, Philip Remington, III
Cooper, Don Gordon
Corini, Gene J.
Cornell, Peter Alan
Correll, Steve A.
Corsi, Joseph Albert, Jr.
Cotton, Lawrence S., Jr.
Coumes, Thomas Michael
Coverick, John Martin
Cowen, Sherry Timothy, III
Coyle, Duane
Craig, Janet Elaine
Crandall, Woodruff Mentz
Crawford, Thomas A.
Cragge, Michael John
Crime, Steven E.
Crochet, John Michael
Cryer, John P., III
Cuninghame, Craig T.
Cunningham, David Thomas
Cuppett, Bruce Jeffrey
Curry, Kenneth William
Curry, Philip E., Jr.
Curry, Thomas W.
Curtis, Derwood Clayborne
Dahlmeier, Michael Curtis
Daspit, Peter Randall
Davenport, Paul Arthur
Davis, Kirk Everett
Davis, Larry H.
Davis, Thomas Wayne
Davison, Jimmy Levorgia
Dase, William Rock
Deal, Wiley Robert, Jr.
Dean, Ralph Jeffrey
Deford, David Foster
Degeus, Dennis Charles
Deml, Robert John
Denman, Keith Jay
Deppe, Paul Richard
Dewey, Edward Clayton, II
Dial, Michael Scott
Divis, Conrad Bruce
Dixon, Jeffrey Ellis
Dlugos, Stephen Michael
Doernhoefer, Mark A.
Dolenti, John E.
Dollard, Thomas S.
Donadio, Giuseppe
Donovan, Daniel Lafayette, II
Dooley, Thomas G.
Doong, Lawrence Kwong Cho
Dorsey, Gordon O.
Dowell, Thomas Alexander
Drennan, Frank Miller
Duke, Douglas B.
Dullea, James Peter
Duplessis, Donald Leslie
Durant, Robert Shannon
Dvorsky, Michael L.
Earl, Christopher Robert
Earle, Margaret Randolph
Easter, David Paul
Easton, Roger C., Jr.
Edmonds, Michael D.
Edwards, Michael Vernon
Elison, Michael James
Elliott, Robert Wendell
Elrod, Suzanne Marie
Emerson, Mark T.
Emmett, Thomas W.
Engler, James Howard
Erickson, Todd A.
Etheridge, Michael Stephen
Etter, Randy Lane
Evancoe, Paul Ralph
Ewell, Stephen Allen
Fair, Welch C., Jr.
Farley, Danny G.
Felte, Calvin Jon
Fennell, David W.
Filler, Robert J.
Fischer, David L.
Fitzpatrick, Walter Francis
Flacco, Nicholas Louis
Fleischman, David Roswell
Flentje, Michael
Ford, Alfred Daniel
Ford, Neil Spencer
Forshay, Bruce E.
Foster, George Terrance
Francis, Curtis John
Frasier, Don Alan, Jr.
Frech, Robert Walter
Fredrick, Theodore David
Freeman, Gary Michael
Fritch, Kevin William
Fritz, Edward
Froehlich, Carl Terry
Fuhrman, Robert Eugene
Gallagher, Richard Keith
Gallagher, Robert H.
Garcia, Marcial Edward
Gardner, Eric S.
Gardner, Thomas Allen, Jr.
Garvey, James Edward
Garwood, Bruce Wilson
Gehring, Thomas Stephan
Gelenter, David Alan
Gershon, Robert Michael
Giancatarino, Patrick Joseph
Gibson, James William
Gillingham, David Robert
Ginader, Kenneth L.
Glenn, Thomas Eugene
Glenney, William
Gliniak, Richard Marian
Godlewski, John Stephen
Goodson, Scott Willard
Gordon, Graham H.
Gorman, John P.
Gorrell, Walter Harrison, Jr.
Gorsuch, Thomas E.
Graham, Allen Wynne, Jr.
Graham, James M.
Grant, John Lawton
Grant, Peter McPherson, III
Graves, Scott Friedrich
Gray, David Reynolds, III
Gray, Steven Andrew
Grazel, Christopher Porte
Green, James Eugene, Jr.
Green, Johnny Wayne
Grella, William Albert
Grey, Elmer Kenneth, Jr.
Gritte, Brian Roland
Grom, Rudolph J.
Gross, Debra Anne
Groves, Allen Woodrow
Gull, Carl Ramond, II
Gustafson, Walter Alfred
Guthe, Douglas B.
Gygax, Gene
Hack, Joseph, III
Haertling, Robert Allan
Hagen, Gary David
Haines, David Marshall
Halloran, John J.
Halsall, Archibald C.
Hambrick, Michael James
Hambrock, Paul Eugene
Hammerer, John J., Jr.
Hansen, Allen Carsten
Hansen, Bertel Joseph, Jr.
Hanson, Craig I.
Hanson, Mark W.
Hardee, Robert C.
Hargrove, George T.
Harmatuk, Peter James, Jr.
Harmon, James Loren
Harmon, Randall Gene
Harper, Scott J.
Harrell, Gary Douglas
Harris, David Jay
Harris, Peter Webster
Harrison, David C.
Hart, James Martin
Hart, Jefferson Lawrence
Hart, Julian L.
Hartwell, Daniel Newman
Hasson, Michael
Hatch, Duane B.
Hathon, Gerald Michael
Hauge, Pamela Lyle
Hauge, Samuel Alexander
Hawkins, David A.
Hawn, William O.
Hegeman, John G.
Hegland, David Kenneth
Heise, Otto Erich
Henderson, Steven J.
Henderson, William D.
Hensel, Gerald Robert
Hentz, Gary Theodore
Herb, Michael Curtis
Herbert, Edward William, III
Hertsgaard, Barry C.
Hibbs, David A.
Hicks, Alan B.
Hinck, Peter Joseph
Hindersinn, Kenneth R.
Hinman, Michael H.
Hinrichs, Stuart
Hirsh, Deborah Duggin
Hissom, Steven Dean
Hitchcock, Eric Augustus
Hitchcock, Jeffrey W.
Hixenbaugh, Paul Noel
Hoffman, John Scott
Holbrook, Roy Lee, III
Holland, Robert D.

Hollie, William James
Hollinger, Frederick R.
Holloway, Richard Thomas
Holm, Chris Lansing
Holmes, Gary L.
Holmes, Lawrence G.
Holt, Richard Jamand, Jr.
Holsworth, John George
Honaker, Warren C.
Honey, Robert Mark
Horne, Fred Bowen
Huber, Craig Michael
Huchowski, John Albert
Hudson, Richard F.
Huete, Michael C.
Huffman, James Merritt
Hughes, Ronald Douglas
Humphrey, John Douglas
Hunnicutt, Thomas Gerald
Hunt, Richard Wayne
Hunter, Kenneth William
Hutson, David Virgil
Hutton, James Francis, Jr.
Immel, Dale Robert
Ingebrigtsen, Nils M.
Ingram, John Thomas Andrew
Jackson, Jennetta W.
Jacobs, Carl Leon
Jacobs, James William
Jacobs, Patrick Alan
Janiec, Christopher Alan
Jeffords, Terry Alan
Jelinek, Michael Lester
Jenkins, Martin Edward, II
Jennings, Carlton Rex
Jewett, Carlton Boyd
Joachim, Christopher Mark
Joganic, Joann NMN.
Johnson, David Lefevre
Johnson, Edward G., Jr.
Johnson, Frederick G.
Johnson, Michael A.
Johnson, Samuel D.
Johnston, William Scott
Jolicoeur, John R.
Jones, Donald R., Jr.
Jones, Kenneth W., Jr.
Jones, Lawrence M.
Jones, Michael Albert
Jones, Patrick Walker
Jones, Steven E.
Jorczak, Rick Eugene
Julias, Joseph W.
Jump, Donald Henry
Kacsmarski, Joe M.
Kalb, Karl Harpel
Kanuck, Ann Fincher
Kardos, Andre
Katana, Thomas Edward
Kaufman, David L.
Kauphusman, Jerome L.
Kasules, Stephen Charles
Keilty, John P.
Keim, James Richard
Kelley, John W.
Kelly, Douglas Michael
Kendall, Herbert Jasper, III
Kendall, Walter Anthony
Kennedy, David Michael
Kenny, Robert Louis
Ketchum, Timothy Genter
Kilbourn, Edward
King, Mark Gregory
King, Robert Lawrence
Kirtley, John Delee, Jr.
Kitchin, Doyle Ray
Kleefisch, Joseph Gerard
Klinger, Karl Ernst
Klugh, David Carl
Knapper, Robert Anthony
Knight, James Wilford, Jr.
Knight, William Lewis, Jr.
Knise, Donald J.
Knock, Melvin R.
Knox, Fred Davy, Jr.
Koenig, Daniel John
Kohler, John Theodore
Kolakowski, Ronald G.
Kolbeck, John Benedict
Koogle, Grayson Leroy
Kopang, Chris Warren
Koprowski, John R.
Kranyak, Dennis Andrew
Krause, Peter J.
Kreutner, Steve Martin
Kriewaldt, Edward J.
Kroshl, William Mark
Kuehn, John Leighton
Kuhse, Bruce E.
Lai, Janice
Lambert, Alexander Doane
Lane, John Howard, III
Lang, Leslie June Peterson
Langford, Calvin Paul
Lanier, Patrick R.
Lanier, Richard Columbus, Jr.
Large, Cyrus Randy
Larson, Keith W.
Larson, William C.
Larson, William Jed
Lastinger, Roc Aaron
Laughlin, John M.
Lavender, Stanley Chandle, Jr.
Lawson, Altman Lee
Lee, Mary Patricia
Leighton, Timothy Davis
Leininger, Robert Bradford
Lenahan, Timothy James
Lenhart, David Steven
Lewis, Dewey T., Jr.
Lincoln, Horatio Alonzo
Lindberg, Peter Leonard
Little, Thomas R.
Lobdell, John Dewitt
Lockbaum, George J.
Locks, John Taylor
Lofquist, Eric A.
Logan, John Wesley
Logsdon, David L.
Lombardi, George Justin
Lombart, Kenneth
Lorenzo, Thomas Norman, Jr.
Lowery, Donald Ray
Loye, John Francis, III
Luallin, Lloyd E.
Luginbuhl, Michael Wayne
Luigart, Craig Blaine
Lustig, Scott Eliot
Lyon, David C.
MacDougall, Robert Burne
Mack, Michael Leroy
MacKowski, James A.
Macris, John James
Maddox, Agnes Virginia
Magill, Marvin Dale
Mahoney, John G.
Malagonfajar, Manuel Ambrosi
Males, Charles George, Jr.
Manko, Dennis
Manzi, Alfred Anthony
Mark, Joseph Francis
Marquez, Edward James
Marsh, Ernest Francis, Jr.
Marshall, David E.
Marshall, Joseph Benjamin, Jr.
Martin, Clifton Carl, Jr.
Martin, John Campbell
Martz, Ronald Byron
Mason, Richard P.
Mathews, Richard Thorne
Matselevich, William Walter
May, Zachary Phillip
McBride, William Patrick
McCabe, Walter Scott
McCafferty, Douglas Lee
McCallum, James Jerome
McCarthy, Robert Morton
McCarty, Scott Edwards
McCluskey, William Robert
McCormick, Mark Dodge
McCray, Andre Tyron
McCully, Timothy Vickers
McDonald, Daniel Wright
McDonald, Danny Oneil
McDonald, Douglas D.
McElroy, Elliott Andrew
McFee, Richard A.
McGraw, Michael J.
McHugh, Richard A.
McKernan, John Francis
McKinney, Gary Ralph
McKinnon, Lee Oatice, Jr.
McNally, Mark Thomas
McNamara, Kevin P.
McWilliams, Kenneth Lynn
Melick, Donald R.
Mentas, Michael Wayne
Mercado, Hilario Norman, Jr.
Mestrez, Robert Edward
Mette, Dennis W.
Miano, William Delbert
Michael, Gilbert Stewart
Michael, Gina Marie
Middlebrook, Curtis Edward
Miller, Edward M.
Miller, Peter Georg
Miller, Ronald J.
Milliman, Daniel L.
Mills, Gary Bond
Mishkel, Lloyd Stanley
Mittleider, Michael Robert
Moore, Daryce Lianne
Moore, Georgie
Moore, John S.
Moore, Wade Corydon
Moormann, Eric Ronald
Moran, Wayne Alan
Moro, John Joseph
Morris, Carl A.
Morris, Robert W.
Morrison, Comer Carlton
Morrow, John J.
Morton, Eric Ernst
Mosig, Joanne Marie Fletcher
Moss, Lee Owen
Mott, Rex Myron
Moxie, David
Mueller, William Henry, Jr.
Muhlenberg, Barry V.K.
Mulliner, Jeffrey Lawrence
Murphy, Larry James
Naeger, Henri William, Jr.
Nakaguma, Spencer Tomatsu
Nash, John A.
Nash, Ray C.
Naville, Timothy Joseph
Neboshynsky, Walter
Neidlinger, Eric Christian
Nelms, Dovard Wayne
Nelson, Kenneth J.
Nelson, Robert Wayne, Jr.
Nerheim, Steven William
Nesselrode, Mark Cullen
Nevitt, Patrick Oliver
Newberry, Garry Dean
Nicely, Kip Wilson
Nichelson, Gerald Leonard
Nichols, Samuel H.
Nimitz, Stephen Clark
Nimmich, Drury C., Jr.
Nisley, Rodger Eric
Noble, Richard Riley
Noell, John
Noffke, Mark Louis
Nolan, Clifford John
Norgart, Timothy S.
Norton, Richard James
Novacek, Forrest Ernest
Nuss, Terry D.
O'Brien, Robert
O'Brien, Steven Michael
O'Connell, John Michael

O'Connor, Stanley Robert
Ogden, James Ellis
O'Hanlon, Richard
Olberding, David Lee
Olenick, Michael A.
Oliver, Dennis Lee
Olson, Lawrence William
Orihuela, William Ralph
O'Rourke, Shawn T.
Ortis, Richard Paul
Ortloff, Frederick Pitney
Outten, Milton Arthur
Owens, Michael John
Pabst, Richard A.
Pagan, John Richard
Palmer, James A. T.
Palmer, Richard A.
Parafiorito, Ted Michael
Parcher, Donald Scott
Parker, Carlton Dennis
Parker, Gary Bruce
Parker, John Stephen
Parker, Linda Faye Warren
Parker, Thomas Anthony
Parks, Kenneth P.
Parr, James Earl
Parsons, Stanton Vanderhoef
Paskulovich, Robert Steven
Patchin, Alan E.
Paterson, David Edwin
Patterson, James Roderick TA.
Patterson, Torkel Lloyd
Payne, William Holland
Pearson, Perth Franklin, Jr.
Pearson, Steven Craig
Peebles, Gerald Carlton
Pereira, James Frank
Perkins, Jay D.
Perry, Marcia Lynn
Peterman, Robert Clayton
Peters, Wayne Douglas
Peterson, Harley Howard
Pitts, Andrew J.
Piebani, Daniel J.
Piehal, John V.
Pokorny, William A., Jr.
Pollard, Thomas Glenn
Pollard, William Jeffery
Poole, James Lesley Jr.
Poole, Joseph William
Poole, Russell John
Poulos, Dennis Duane
Price, Thomas McClintock
Prins, Orville NMN
Pugh, Kenneth Scott
Purdy, Thomas Edward
Putt, Raymond Paul, Jr.
Queen, Gregory A.
Quilici, Leo Joseph, II
Quinn, Patrick John
Quitter, James Timothy
Rader, Charles Leroy
Raithel, Albert Lawrence
Raley, Frederick Vajghn
Rammel, Patrict Fletcher
Randall, William D.
Rathbun, Patricia Maria
Rauch, Henry Terence
Reddix, Mason C.
Redmond, Billy Glenn, Jr.
Reilly, Thomas John
Renaud, David George
Richards, Thomas R., Jr.
Richey, Truman Ancle, Jr.
Rifkin, David Evan
Rignall, Richard Antony
Rinicker, Tommy Lee
Rivers, Timothy Clifford
Roberts, Robert Lee, Jr.
Roberts, Stephen John
Robertson, Carl Dean
Robertson, O. Zeller, III
Roe, James Robert
Roelant, James Gregory

Roemmich, Gary L.
Roesener, Stephen Joseph
Roeske, Ernest, J.
Roeske, Tomi Elliott
Rogers, David Andrew
Rohman, Michael Christopher
Rose, Stephen Wayne
Rosemond, Julian Brown, Jr.
Rosenberg, Lee Harold
Ross, John Leroy, Jr.
Roth, Glynn Edward
Rudin, William Eugene
Rusinko, Jeffrey D.
Rutkoff, David NMN
Ryder, Christopher M.
Saenz, Ernesto Gonzalez
Salazar, Antonio Marcos
Salazar, Gary Mathias Franci
Sander, Jeffrey R.
Sanford, James A.
Sarao, John Francis
Saunders, Frank Wendell, Jr.
Sayers, Clay S., II
Saylor, Bev Lee
Scanlon, William M.
Schaefer, John A.
Scheffler, John W.
Schenck, Lyndle Wade
Scheuermann, Michael Francis
Schildhouse, Rex Allen
Schluckebier, Daniel Carl
Schmidt, Albert William
Schnabel, Albert Olen, Jr.
Schneider, Jeffrey Allan
Schuller, Ronald Carl
Schumacher, John David
Schwans, John J.
Scoppa, Christopher J.
Scott, Craig Charles
Scott, Gary Don
Scout, John B.
Sears, Richard Francis
Seedorf, Roger William
Seelenbinder, Mark A.
Seifert, Alfred Ralph
Seifert, Michael Lewis
Selby, Brenda Fay
Sevald, Andrew G.
Shaffer, Roderick Orrin
Shattuck, Christopher T.
Shelor, James Lester
Shepard, Kim R.
Sherry, Thomas Edward
Shimabukuro, Norman K.
Simmons, Carlton Anthony, Jr.
Simpkins, William E.
Simpson, Carl Thomas
Simpson, William Jack, Jr.
Sinclair, Randolph K.
Singleton, Gary Wayne
Singleton, Steven O'Neal
Skoog, Paul Odin
Slaton, Don Eugene
Smith, David E.
Smith, George Joseph, Jr.
Smith, James Chapin
Smith, Marlin Bari
Smith, Thomas John
Smolski, Stefan Lani
Smoot, Byron Gordon
Snow, Richard Louis
Snowdon, Jay Synder
Snyder, Jonathan William
Snyder, Robert Edward
Soto, Ralph M
Southworth, Richard E.
Spagna, William Steven, Jr.
Speight, Steven Lee
Spinnato, Joseph Charles, III
Spraitzar, Gerald
Sprowls, Timothy Jay
Stack, Larry James
Standridge, George Robert
Starnes, Charles R.

Starnes, George Keith
Steadley, Joel Franklin
Steinhauer, Ralph
Stemp, Roger
Sten, Gregory David
Stephenson, Neal Bevan
Stetson, William S., Jr.
Stevenson, Richard Thomas
Stewart, John P.
Stewart, Thomas Newton
Stewart, William Brantly
Stinson, Ralf Hale, II
Stivers, John Victor
Stoessel, Timothy Francis
Strange, Joe C.
Strickland, Richard Frede, Jr.
Striewe, Joshph Gary
Stroyneck, Kevin Roy
Struble, Daniel H.
Struth, Robert G. Jr.
Stuart, Alfred E.
Stuller, James Clayton
Stutsman, Bruce Edward
Sullivan, Stephen M.
Swaney, Mark Joseph
Sweede, David Eugene
Sweet, William Jeffrey
Swift, Harvey Gerald
Swirmicky, Mark E.
Symonds, James A.
Tandy, Jon Sitton
Tastsides, Robert George
Tate, Robert Perry
Taunton, Colleen Ann Oconnor
Taylor, David W.
Taylor, Ernest Norman, Jr.
Taylor, John Fleming, III
Tellefson, James Chester
Tenaglia, Joseph Anthony
Terrell, Arthur Robert
Testa, Ronald Paul
Teuscher, James Howard
Tharp, Mark Eugene
Thieman, David H.
Thomas, John R.
Thomas, Kevin James
Thomas, Richard Laurel
Thompson, James Hamilton
Thompson, Jimmy NMN
Thompson, John Scott
Thomson, Robert Gemmel, III
Thornton, Karen Irene
Tibbetts, David K.
Tjepkema, Russell Peter
Topp, Allan R.
Tosso, Emile Euchre, III
Towne, Raymond Patrick
Tracy, Patrick Alan
Traynor, Lawrence Gilworth J.
Treon, William J.
Truelove, Michael Ray
Trump, Donald Erdell
Tryon, Jodi Elizabeth
Trzeciak, Robert J.
Tully, Brian Edwin
Tuozzolo, Charles
Turcotte, Stephen Allan
Turpen, Charles Ralph
Tuttell, Robert J.
Tye, Charles Richard
Tyler, Hansford D., III
Tyson, Glenn R.
Uhle, Robert Stephen
Uhron, Mark Alan
Ulbricht, Randall J.
Vandam, Gerald Edward
Vanourney, Kenneth Leonard
Vasquez, Alberto E., Jr.
Vaughn, Charles Michael
Vaught, John Wesley
Vasquez, Maurice Valdivieso
Venlet, David J.
Vermillion, George M.
Villemez, Raymond Joseph

Virden, John Dwight
Virgallito, Larry Dominio
Wade, Clifford L. J.
Wakefield, Charles Douglas
Waldrip, Randall Wayne
Wallace, Myron Antonio
Wallis, Lars Allen
Walls, Keith Allan
Walstrom, Terry L.
Walters, Charles Elwyn
Ward, Michael Nicolie
Wargo, Linda Ellen
Warner, Charles J.
Watkins, Donald Paul, Jr.
Watkins, Jon Jay
Watkins, Thomas Vance, III
Watson, Curtis Lee
Watson, Kenneth Thomas
Watson, Wilbert John
Weast, David Howard
Weaver, Frank Hill
Weaver, Keith Thomas, II
Weber, Ewald W.
Weeks, Robert Lawrence, Jr.
Weisert, Roy Edward
Weiss, Robert Francis, Jr.
Welch, David Milton
Wells, Walter C.
Wendel, Lennart, Jr.
Wendt, Michael P.
Wentzel, Philip Edward, Jr.
Weppler, Jeffrey F.
Wetherbee, James Donald
Weyrick, Richard
Whalen, Harold R.
Wheeler, Russell Phillip, Jr.
Whitby, Peter Kevin
Whitman, Charles E.
Wice, Michael David
Wick, Harvey Carl
Wickliff, Phillip Max
Wierenga, Michael Andrew
Wieringa, Jeffrey A.
Wiley, Stephen Nelson
Williams, Dale Jay
Williams, Danny Ben
Williams Warren Wright
Williamson, Charles F., III
Willis, John Robert
Willson, Thomas David
Willy, James Michael
Wilson, Edmond George
Wilson, James Owen
Winkler, Robert J.
Winship, Charles Harris, IIII
Wirt, David L.
Wisniewski, Mark E.
Wolfe, Robert Roswell
Wolters, William Alan
Wood, George Leslie, III
Woodfin, William Cutler
Wooldridge, Edmond Tyler
Wright, Lohn Francis
Wrobleski, John Joseph, Jr.
Yarger, Frederick Daniel
Yoos, Paul Edward
York, Guillermo Augusto
Young, Patti A.
Youngborg, Eric D.
Zacharsuk, Joseph, Jr.
Zawiska, Jack Lee
Zelibor, Thomas E.
Zobel, William C.
Zumstein, Edward Howard

ENGINEERING DUTY OFFICER

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Berkman, Richard Lewis
Booth, Richard L.
Bosworth, Michael Lane
Boykin, Jerry Wayne
Brunson, Steven James
Bry, William Arthur
Bryant, Gregory Russell
Bush, Charles Arthur
Cava, George Leonard
Chrjapin, Victor
Closs, Joseph Vincent
Daughety, Steven Floyd
Davenport, Frederick, Jr.
Dew, Dwight David
Drucker, Carl J.
Edwards, John A.
Ellison, Stephen Kennet
Fitzgerald, James Edward, III
Forkel, Frank Kenneth
Gain, Timothy James
Galik, Daniel
Gariano, Patrick, Jr.
Geary, John Welch
Hale, Patrick Charles
Hampey, John M.
Heffron, John Sutherland
Heidgerken, Ricky A.
Heilstedt, Martin Ralph
Hepburn, Richard Daniel
Herbert, Larry E.
Hernandez, Bonifacio G., Jr.
Hettema, Charles Dean
Hilder, David S.
Hunn, James M.
Jamision, Richard L.
Jenkins, James Logan
Jones, Jerry William
Jurey, Steven Neal
Kershner, Paul Author
Kleinholz, Adam Francis
Knaebel, Michael Lee
Koreisha, Nicholas A.
Lively, Kenneth Allan
Lyman, Kathleen Marie
Malaret, Hiram Anthony
Mason, Bradley J.
McGowen, Thomas Leon
McNair, Tommy H.
Mills, Max Edward
Milster, Percy F.
Neily, David C.
Nelson, Eric E.
Newman, Lawrence Gregory
Ohare, Mark Stephen
Oliphant, Lee Lewis
Oster, Stephen Bruce
Paquette, Joseph Louis
Pellin, August F., III
Petroka, Robert P.
Proctor, Walter Noel
Reid, William Roy
Ricketts, Steven Donald
Ruesch, Rehe Edward
Shultheis, Charles Frederick
Speer, Bradford Arthur
Steele, Robert Douglas, Jr.
Stoeberl, Paul Henry
Stowell, Thomas Leo
Terrell, James Manson
Thompson, Robert Michael
Tramel, William P., Jr.
Turner, Edward Richard
Wales, Carl Alzen
Wright, Frank Xavier
Zivich, David Mark

AERONAUTICAL ENGINEERING DUTY OFFICER (AERONAUTICAL ENGINEERING) (151X)

Hart, Robert Howard
Kuper, Daniel Thomas
Milton, Dale Alan
Shelley, Kenneth Lawrence

AVIATION MAINTENANCE DUTY OFFICER (AVIATION MAINTENANCE) (152X)

Barrett, Richard Oliver
Bent, Rex Alan
Boone, James Delbert, Jr.
Bradbury, William Ralph
Bush, Hershell Douglas
Carr, William Frederic, Jr.
Clarke Stephen Paul
Crosby, William Richard
Faust, David Phillip
Fletcher, Owen Robert, Jr.
Gallagher, Maurice John
Gorman F. Sean
Gottschalk, Lawrence Edward
Hanson, Steven Louis
Heinicke, Robert Scott
House, Kenneth Stephen
Hurlburt, Timothy Lawrence
Kanewske, Robert Holden
Klimas, Richard James
Ladd, Richard Sherman
Laszcz, Peter James
Ledeboer, Galen J.
Martin, James Hildrith
Maxwell, Michael D.
Moore, Michael Lee
Paul, Stuart L.
Rice, Ray Howard, III
Ritter, Kevin K.
Romero, Michael N.
Shutt, Donald Joseph
Smith, Frank Jackson
Stanley, Rolland Virgil
Stolle, Robert Carl
Stone, Maurice Clyde
Tsioutsias, Drake Dorian
Walker, George Daniel
Wiener, Gregory Paul

SPECIAL DUTY OFFICER (CRYPTOLOGY) (161X)

Benson, Jay Haydon
Caffey, Troy Ray
Carmichael, David Lee
Couvillion, Albert Leo
Fuller, Jeffrey D.
Hawkins, Darrell Blaine
Isosaari, Robert Matthew
Ketterer, Barry Linn
Kurzanski, Edward Joseph
Linthicum, Richard C.
Loo, Alexis Sandria
Mansfield, Gregory Frederick
McCaffrey, Thomas M.
McCarty, Larry J.
Metcalf, Mark Leslie
Mitchell, Gregory D.
Morris, David Victor
Oakes, Dale Roger
Pumphrey, Thomas Franklin
Shimp, David Keith
Sneed, Charles Leon
Stafford, David Spencer
Tucker, William R.
Wojdyla, Ronald Joseph
Yungk, George Lee

SPECIAL DUTY OFFICER (INTELLIGENCE) (163X)

Ambroselli, Anthony A.
Anderson, Michael Lee
Armstrong, Diane Lee
Betz, Charles Havard
Blythe, James Taylor
Bortmes, Leroy Thomas
Bourgeois, Karl Francis
Cobery, Charles William
Cunningham, Brian Frederick
Davis, Ricky A.
Dennis, Timothy J.
Driver, Robert Kevin
Duke, Paul S.
Dundas, Janice Marie
Elders, Garron Lee
Fowler, Douglas E.
Grice, Gary Getson
Hamm, Bernard Anthony, Jr.
Harmon, William Cary
Hedlund, John William
Henley, Van Allen
Hoey, James Meredith, III
Ingham, Bruce
Knight, Samuel Bruce
Kubat, Michael Jan
Machak, Thomas Michael
Mader, John Frederick

Marineau, Charles Robert, Jr.
McIntyre, Thomas John
McKee, James Henry, III
Meadows, Lee
Miller, Jeffrey David
Muir, Daniel James
Noll, Michael A.
Peranich, Robert Joseph
Ramsay, Steven A.
Rogers, John Wiley
Rowe, Robert Brian
Sadler, Stephen Roy
Santos, Stephen Francis, Jr.
Sllrie, Kevin Paul
Stefansky, Stanley Gene
Stoll, Gerald Adam
Surratt, Margaret Anne
Thomas, Joseph Garfield
Williams, Columbus, Jr.

SPECIAL DUTY OFFICER (PUBLIC AFFAIRS) (165X)

Arterburn, George Keith, Jr.
Carman, John William
Dooley, Alan Jay
Goforth, Hunter Bradford
Tull, John Thomas, Jr.
Vandyke, Mark Arden

SPECIAL DUTY OFFICER (GEOPHYSICS) (180X)

Akerman, Russell Stewart
Allen, Robert Lloyd, Jr.
Blanchard, Joe Lane, II
Bosse, Thomas Edward
Curtis, Jan
Donovan, Barry Matthew
Ebersole, Kenneth Allen
Garner, Janice Permelia
Garrett, Robert P.
Hervey, Susanne Plott
Howard, Stephen John
Markham, David Gregory
McPherson, Terry Russell
Meanor, Denis H.
Oloughlin, Michael C.
Rutsch, Arno Helmut
Schultz, Mark Evans
Selsor, Harry Dewayne
Summers, Steven J.
Swaykos, Joseph Walter
Tielking, Terrance Allan

LIMITED DUTY OFFICER (LINE) (61XX/62XX/63XX/64XX/655X)

Anderson, Kenneth S.
Asbury, Virgil Wayne
Barclay, Bruce M.
Bishop Emory Lamar
Boyce, Richard Austin
Briggs, Terry George
Britton, Scott George
Bruce, Jay David
Cayse, James Frank
Chambers, Keith Van
Clark, Michael Arthur
Clausen, Paul Kenneth, Jr.
Combs, Samuel Charles
Couch, William S.
Cox, Robert Edward
Datson, Dick
Delaney, Charles Joseph
Dickerson, Larry G.
Dillingham, John Morgan
Dooling, Franklin J.
Driver, Perry Davis
Ducom, Eugene Morgan
Dunn, James P., Jr.
Elliot, James A.
Ellis, James Paul
Feldhaus, Frederic Francis
Flowers, Donald Henry
Gentry, Ronald E.
Gerhart, William Charles
Greer, Bernard
Gross, Gary D.
Harris, William James
Heacock, Jerry David
Holbrook, Larry Edward
Hudgen, Earther L.
Hunt, David Lamar
Hunt, John H., Jr.
Hutchins, George Ralph
Jens, Jeffrey Paul
Jones, Kenneth Wayne
Jordan, Austin T.
Junker, Dwayne Neal
Kruse, Lance Merit
Lashbrook, James Edward
Lucero, Daniel Raul
Lund, Rodney Gene
Malone, Lawrence P.
Maples, Gene D.
Mariani, Stephen R.
McClimon, Donald Eugene
McDaniel, Eldon L., Jr.
Meadows, John Randolph
Moore, Robert C.
Morin, James Robert
Murphy, Curtis Owen
Overton, Robert Wallace, Jr.
Phillips, Frankie L.
Powell, Bobby Keith
Proctor, James Roger
Pugh, Ray E.
Putnam, Bruce Colin, Jr.
Ratliff, Ruben Mitchel
Reeves, Richard Dale
Roberts, Richard H.
Robinson, Gerald Lloyd
Rossi, Michael A.
Schmidt, Stanley Littleton
Scott, Michael Randolph
Setterlund, Charles Edgar
Sisemore, Marion R.
Slade, George Walker
Smith, Donald Jeffrey
Snyder, Robert G.
Spillers, Jerry W.
Squier, David Wayne
Sterling, Garl Vance, Jr.
Stoneking, Robert Herman
Tanner, Richard F.
Temple, James Mack, Jr.
Thorson, Robert C.
Touchon, Andrew
Turner, Lee Oliver
Turner, Phillip Arnold
Waltemyer, Clyde Leverne, Jr.
Waterfield, James Leon
Welsh, Kenneth Henry
Wendell, Bertrum W., Jr.
White, William R.
Whiting, Daniel E.
Wicham, Larry R.
Williams, Leversia
Wilson, David Kent
Wright, Wardell Conklin Sr.
Wroolie, Brad Lee
Yoshida, William Romain

WITHDRAWAL

Executive nomination withdrawn from the Senate, June 25, 1984:

U.S. INFORMATION AGENCY

Leslie Lenkowsky, of New York, to be Deputy Director of the U.S. Information Agency, vice Gilbert A. Robinson, resigned, to which position he was appointed during the last recess of the Senate, which was sent to the Senate on January 24, 1984.

EXTENSIONS OF REMARKS

BISHOPS NAMED TO BALTIMORE DIOCESE

HON. CHARLES McC. MATHIAS, JR.

OF MARYLAND

IN THE SENATE OF THE UNITED STATES

Monday, June 25, 1984

● Mr. MATHIAS. Mr. President, last month Pope John Paul II appointed two new auxiliary bishops to the Archdiocese of Baltimore. At the same time, Archbishop Borders announced that Bishop T. Austin Murphy is retiring.

Baltimoreans were sorry to learn of the retirement of Bishop Murphy, although they welcomed the news that he will continue to be active with parishes. But they were deeply gratified by the elevation of a native son, Msgr. William C. Newman, and by the naming of the first black priest, Father John H. Ricard, created a bishop in the Baltimore Archdiocese.

To give my colleagues some idea of the dimensions and accomplishments of these three remarkable churchmen and of Baltimore's good fortune, I ask that an article, entitled "Bishop Named," from the Baltimore Catholic Review of June 1, be printed in the RECORD.

The article follows:

BISHOPS NAMED: FR. RICARD BECOMES FIRST BLACK BISHOP; MSGR. NEWMAN WAS SCHOOLS HEAD

(By Robert L. Johnston)

"The partnership of Murphy, Ricard and Newman will, I trust, be an effective team for Archbishop Borders and a rich resource of service to the priests, deacons, religious and laity of the Church of Baltimore."

That's how one of Baltimore's new bishops-designate responded to an announcement Tuesday by Archbishop Borders that Pope John Paul II had appointed two new auxiliary bishops to the archdiocese and that Bishop T. Austin Murphy, the Eastern Vicar, is retiring.

Msgr. William C. Newman, 56, and Fr. John H. Ricard, 44, will join Bishop P. Francis Murphy, the Western Vicar, as the team of active auxiliaries and will serve as Eastern Vicar and Urban Vicar respectively. The episcopal ordination of the two prelates will be July 2.

Monsignor Newman, who was named titular bishop of Numluli is currently serving as rector of the Cathedral of Mary Our Queen. He is a former Superintendent of Education for the archdiocese and was pastor of SS. Philip and James Parish before taking the cathedral post.

The other bishop-designate, Father Ricard, was named titular bishop of Rucuma. He is presently pastor of Our Lady of Perpetual Help in Washington, D.C. A native of Baton Rouge, La., he is a practicing psychotherapist and is presently a doctoral candidate at The Catholic University of America.

In his statement announcing the appointments and the retirement of Bishop T. Austin Murphy, Archbishop Borders pointed to the long interim between the appointment of Bishop J. Francis Stafford to the Memphis diocese and the naming of the new auxiliaries.

But, he said, "we are all particularly happy with the choices of the Holy See for our archdiocese."

He extolled the episcopal accomplishments and service of the retiring Bishop Murphy, noting that his pastoral leadership in Baltimore "has been considerable," particularly during his time as pastor of St. Rose of Lima Parish.

Archbishop Borders also cited the bishop's successful administration of the archdiocese during the years Cardinal Shehan was an active participant in the Second Vatican Council.

"To be the only bishop in so large and complex an archdiocese with many public engagements, especially confirmations, was an extraordinary burden, and he carried it off with characteristic wit, discernment and good humor," he said.

Calling Bishop Murphy a "man of deep commitment to obedient service to the Church," the archbishop said "his knowledge of the archdiocese, his wide experience, his common sense, and his personal charisms have all been important ingredients" in the administration of the archdiocese over the years.

He added that in spite of retirement Bishop Murphy will continue his apostolic work with parishes in the sacramental ministry, especially in bestowing the sacrament of Confirmation.

"His presence and his warmth have always been deeply appreciated," the archbishop said: "They will continue to be so in years to come."

Bishop P. Francis Murphy joined Archbishop Borders in applauding the "great news" of the appointment of two new Baltimore auxiliaries. "It has been a long and difficult period of waiting for all of us. I admire the archbishop's tireless efforts during the complex process of selection of these new bishops."

Terming the appointments a "significant moment in the history of the archdiocese," Bishop Murphy praised Bishop-designate Newman as a man "of deep faith and prayer" who has been a "very effective pastor and creator of community."

Observing that one of the rich blessings of the ministry of the archdiocese has been the presence of religious priests and brothers, Bishop Murphy expressed "real delight" in the appoint of Bishop-designate Ricard who, he said, "brings a solid and successful experience of pastor in three parishes" of Washington.

He pointed out that Father Ricard is the first black priest to be named a bishop in the Baltimore archdiocese and saw the appointment as the culmination of many years of effort and painful struggle begun by the "courageous and visionary pastoral letter on racial justice issued by Cardinal Shehan in 1963."

Commenting on the retirement of Bishop T. Austin Murphy, the younger Bishop Murphy offered his "profound appreciation and gratitude for his personal ministry and his invaluable contribution to the Church of Baltimore.

"His faithfulness to his vocation, his deep sense of obedience to serve the Church often at great personal sacrifice, and his extraordinary love for the people, religious, and priests of this archdiocese have been hallmarks of his ministry to us," he added.

Bishop-Designate Newman, born in Baltimore on Aug. 16, 1928, the son of William Clifford and Mabel Evans Newman, attended Blessed Sacrament School and Calvert Hall College before entering studies for the priesthood.

He attended St. Mary's (Paca Street) and the Theological College, Washington, and was ordained to the priesthood on May 29, 1954, by Archbishop Francis P. Keough. He served at St. Augustine, Elkridge, and St. Joseph, Taneytown, briefly before taking his first permanent assignment at St. Elizabeth Parish in Baltimore.

In 1955, Father Newman was named Secretary and Notary of the Archdiocesan Tribunal, and in 1962 become principal of St. Paul Latin High School. He was appointed archdiocesan Superintendent of Education in 1967 and was instrumental in reorganizing the department, becoming its first secretary.

He was named pastor of SS. Philip and James Parish in 1975 but continued to serve as Superintendent of Education. In 1981 he was appointed rector of the Cathedral of Mary Our Queen.

The new bishop's father died in 1969. His mother, 86, resides at Stella Maris Hospice. The bishop-designate has six sisters: Sr. Mary Pierre Newman, SSND, pastoral associate at St. Ursula's, Baltimore; Catherine Franck of Baltimore; Jane Ruth of Ellicott City; Doris Piasecki of Levittown, Pa.; Evelyn Browne of Stockton, Calif.; and Bernadette Uhl of Baltimore. A seventh sister, Sr. Mary Dolora, SSND, died in 1979.

Bishop-designate Ricard, born Feb. 29, 1940, in Baton Rouge, La., is the seventh of eight children of Maceo and Albanie St. Amant Ricard.

He attended St. Francis Xavier elementary and high schools in Baton Rouge, entered the Josephite Minor Seminary after high school, and studied at Epiphany College, Newburgh, N.Y., and St. Joseph Seminary, Washington, graduating in 1962.

Father Ricard was ordained by Bishop Robert E. Tracy in 1968. He then received a master's from Tulane University, New Orleans, in 1971 and studied at the Washington School of Psychiatry from 1979 to 1981. He is presently a doctoral candidate at The Catholic University of America.

A practicing psychotherapist and psychoanalyst, his concentration is clinical depression and characteriological disorders in stress and work settings. The title of his doctoral dissertion is "Clinical Depression in Women."

As a priest, Father Ricard has been assigned as associate pastor to St. Peter Claver Parish, New Orleans; as pastor at

Holy Redeemer and Holy Comforter Parishes, Washington; and finally as pastor of Our Lady of Perpetual Help Parish, Washington.

Father Ricard has been a part-time associate professor at The Catholic University of America's National Catholic School of Social Service (1973-79) and at Tulane (1971-72). He belongs to the National Association for the Advancement of Science; the National Association for the Advancement of Colored People; and the National Urban League.

The new bishop's father died in 1977. His mother, now 82, lives in Baton Rouge; as do his three sisters and three brothers. One sister died in 1980.●

A TRIBUTE TO NEWSPAPERMAN JOE COOLEY

HON. GERALD B. H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. SOLOMON. Mr. Speaker, I would like to take this opportunity to pay tribute to Mr. Joseph Cooley, editor of the Times-Record of Troy, NY, who is retiring July 1 after 44 years of faithful service to his readers.

Today, Joe would be called a journalist—and an outstanding one at that. He succeeded in keeping his readership both informed and engaged, serving his country by promoting an enlightened electorate, while adhering to the strictest standards of journalistic ethics.

Somehow, though, I feel that Joe would prefer to refer to himself with wistful pride by that distinguished label of old, "the newspaperman."

Joe Cooley joined the Troy Record on May 23, 1940, and he has served there continuously since then, except for a stint during World War II with the combat engineers in Europe.

Like many other newspapermen of his generation, Joe Cooley learned about news, and about human nature, not from textbooks, but in the streets and in the corridors of city hall. Joe covered the city of Troy for 12 years, following the police and fire departments, the courts, and the city and county governments.

Then, in a move that some would say could only further his insight into political life, Joe was named sports editor in 1957. Many still remember with fondness his column, called "Cooley's Corner."

Like many a good reporter, Joe was soon tapped to become an editor. In 1960, Joe Cooley was named associate editor of the editorial page. A decade later, he was named news editor. Still later, he became managing editor, and then, finally, on July 1, 1973, he was named editor of the Times-Record.

That was 11 years ago. Yet to those who have known and loved him, his impact and influence are still as fresh as this morning's headlines. Joe will receive many accolades in the days ahead. This has been just a humble attempt to salute him from someone who has been covered by Joe Cooley, and covered fairly, honestly, and unbiasedly. That's always been Joe's style.

I think the Record's associate publisher, William Rush, summed it up best when he said:

> Over the years, Troy has produced its share of outstanding newspaper people. Joe Cooley ranks with the best of them.●

IN TRIBUTE TO JOSEPH COOLEY, NEWSPAPERMAN

HON. SAMUEL S. STRATTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. STRATTON. Mr. Speaker, in an era sure to be remembered for revolutionary changes in the printing industry, sophisticated electronic gadgetry, and satellite communications, there are many fine journalists. But quite frankly, there are few like Joe Cooley, 44-year veteran of the Troy Times-Record, in my congressional district, who are so aptly deserving of the affectionate mantle "newspaperman."

Mr. Speaker, on the occasion of Joe Cooley's retirement July 1, I take this opportunity to reflect with my colleagues on this top-notch newspaperman's career—a career that began in a generation where printer's ink was thought to flow in one's veins and type was set with molten lead, and went on to embrace the vast changes in technology over the years that allow him to issue a daily news product envied by his peers for its accuracy, timeliness, and upbeat, clean look.

Joe Cooley has made it his life's work to chronicle the daily occurrences of the residents of Troy and its environs. From covering the police beat, city hall, the courts, county government, and sports to news, managing, and executive editorships, Joe Cooley never broke a personal code of truth, fairness, and accuracy.

He is a newspaperman revered by his industry and respected by his readers. As he moves on to new horizons and other challenges, I join with his many loyal friends and faithful admirers in wishing him success and great fortune.

His accomplishments are many, and his product testimony to a truly outstanding newspaperman.●

HON. FRANK McCLOSKEY'S REMARKS TO THE CONFERENCE OF MAYORS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. HAMILTON. Mr. Speaker, I would like to draw my colleagues' attention to the remarks of Congressman FRANK McCLOSKEY of my State before the 52d annual gathering of the U.S. Conference of Mayors on June 18.

Congressman McCLOSKEY served for three terms as mayor of Bloomington, IN, and during that time he was acclaimed for the growth and progress he brought to the city. He now devotes his energy to the Armed Services Committee, and his observations on defense policy will be of interest to his fellow members:

SPEECH OF HON. FRANK McCLOSKEY

It is an honor to be here in my home city with a group of people I feel more at home with than any in the world.

Having spent 11 years as a mayor, I can still recall those heady days of power when I could get a chuck-hole filled, an underpass built, or a police chief hired.

Now I'm one of 435 people on the House floor, sticking my card in the electronic voting machine and occasionally wondering what it's all about.

I love my work, particularly on the Armed Services Committee. But I can well understand why former Congressmen such as U.S. conference leaders Dick Fulton and Don Fraser have such zest for their mayoral service.

There's really no office or experience like it.

And I really think that one of the defects in the decisionmaking capabilities of the Congress is the relative lack of Members who have served previously as mayors.

Our good Speaker Tip O'Neill has bemoaned the fact that most new members arriving these days, whatever their capabilities, never have previously served in elective public office.

And while we still get a number of capable State Legislators arriving in Washington—the number of former mayors in the House is small. My best count is 26.

I think we'd make better decisions in such areas as economic development, infrastructure needs, revenue sharing, industrial development bonding, and even the defense budget—if more of you folks decided to serve in Washington.

We need your leadership and commonsense. And particularly in the defense area, we need your mayoral knack for saying no. Although the House Armed Services Committee is evolving somewhat from its perceived stereotype of being an automatic "yes" for the Pentagon, there still is a long way to go to put balance into the process.

Future plans for continued exorbitant defense increases, combined with deficits approaching $200 billion, and an inability of this administration to decide between competing.

Weapons systems, imperils us with permanent and devastating economic damage and all that that entails. For as even the promilitary House Armed Services Committee states in its 1985 defense authorization report, the Pentagon acts as if there were no economic constraints on military systems.

How we proceed in the future in this area is very important. For whether you agree with it or not—there has been a Reagan revolution—a major reordering in our national priorities. And this revolution may only be beginning. As has been noted by my colleague Les Aspin:

"In 1979 the defense of the United States absorbed less than $118 billion, roughly five percent of the gross national product. By 1987, the Reagan administration proposes to spend almost $400 billion, 7.7 percent of GNP. This buildup, which began toward the end of the Carter administration, is the largest in peacetime history, and the increase in the percentage of GNP directed to defense surpasses even the Vietnam increase of 1965-1968."

To understand moderating the defense budget can help address the deficit crisis is to recognize that defense outlays now account for about 30 percent of all Federal spending and are rising far faster than other spending. As such, the defense budget is contributing more to an increase in that component of the budget which must be dedicated to paying the interest on the national debt. That figure for fiscal year 1985 is expected to be $165 billion. After the interest earned from Government investments is subtracted the net interest paid to finance the public debt will be $116 billion. By reducing defense spending requests, we can contribute to cutting the amount of debt servicing required by the Federal Government.

Consider these additional budget facts:

1. About three-quarters of the Federal budget is considered virtually "uncontrollable" and most difficult to reduce significantly: these include the popular "entitlement" programs.

2. About two-thirds of the controllable portion of the budget is devoted to defense spending. As indicated, there is no indication that this spending will do anything other than increase in real terms in the foreseeable future:

3. Less than 10 percent of the Federal budget is presently available for programs of importance to state and local governments:

4. But, as the "uncontrollable" part of the budget and military spending continues to increase, this ten percent of the budget will have to bear much of the burden for reducing the deficit.

As a former mayor, I do not have to tell you what such a shrinking share of Federal assistance to State and local governments means at a time when tax legislation moving through the Congress will curtail such important programs as industrial development bonds.

In fiscal year 1980, aid to State and local governments, according to your statistics, amounted to 10 percent of the Federal budget.

In fiscal year 1985, we see that percentage falling to 6 percent, while defense spending rises to roughly 30 percent. In the meantime, the net interest on the national debt rises to 13 percent, more than double the portion of the budget devoted to general revenue sharing, community development block grants, urban development action grants, mass transit operating assistance, handicapped and vocational education, and the legal services corporation.

Some defense experts such as Senator Sam Nunn of Georgia, have questioned whether the armed services have improved to a point commensurate with recent increases in economic allocation.

As Nunn said this month, ". . . the jury is still out on the question of whether or not DOD has obtained improvements in military capability commensurate with the large funding increases in the last three years."

And the defense trade press recently is replete with questions about the readiness capabilities of our Armed Forces.

Army flying hours, per crew, per month, have fallen from an average of 18.8 in 1980 to 16.4 in 1984. Navy flying hours dropped an average of 30 minutes per crew each month over the last four years. Marine Corps training days per battalion currently total 100.5 compared to the 1981 level of 105.2. Some aircraft still experience low readiness rates. That translates into tax dollars lost. A $35 million airplane that can fly only half the time really has cost the taxpayers $70 million.

As if current levels of defense spending are not enough cause for concern about future domestic priorities, there is a dollar-gulping monster arriving on the scene that if substantially deployed will make our almost $300 billion annual defense commitment look like the frugal days of yesteryear.

This is the strategic defense initiative—the so-called "Star Wars" technology that President Reagan announced as designed to make us invulnerable to nuclear attack. It did not take long for the administration to drop that dubious claim.

It is far more likely that substantial deployment of this technology will make us invulnerable to any hopes for a balanced budget or justice for our cities.

I serve on the Research and Development Subcommittee of Armed Services dealing with this program.

Skeptics in regard to this program include such eminent and distinguished scientists Hans Bethe of Cornell and Dick Garwin of MIT.

The foremost enthusiast for this program is the famed Dr. Edward Teller.

Skeptics and opponents agree big bucks are involved.

Dr. Bethe has testified in a classified R&D briefing I arranged for the committee that the transportation costs of deploying one chemical laser system could be $70 billion. This does not include research and development costs for manufacture or energy.

These experts, pro and con, who agree that some research should regularly continue, part company, when questioned on the possibilities of near nuclearly invulnerable systems. Dr. Teller and his associates at the Livermore labs think such possibilities are good. Drs. Bethe and Garwin do not.

I hope the administration's enthusiasm for this program does not lead to sacking the 1972 ABM Treaty with the Soviets. If this occurs, I doubt our cities will be safer, and our economy will be imperiled.

The cost of such a deployed system to intercept perhaps 60 percent of incoming warheads probably would be in the hundreds of billions of dollars. As Drs. Garwin, Bethe and the Congressional Office of Technology Assessment have noted, initial interception of missiles in the boost or earliest phases would have to be done in a very short period of time—very likely in well under a minute.

Such realities caused the administration to drop its talk of an SDI shield invulnerable to nuclear attack.

As Dr. Richard DeLauer, the Under Secretary of Defense for R&D has said, the SDI initiative is equivalent in scope and complexity to eight Manhattan Projects.

I would note with some humility that we should be skeptical about attaining this in a world where helicopters did not work in Iran.

When we went to the Moon, as complex as that was, the Soviets were not deploying their best minds and ample resources, to complicate the task further for us.

I, for one, think we should try to negotiate out of this tragic nuclear and economic rat race. As that apostle of unilateral disarmament Barry Goldwater has said, the SDI . . . "could be the biggest project the country has ever been asked to fund. We are facing a threat far more destructive than anything the Soviets might throw at us . . . the deficit."

With this in mind, I was active in trimming some $400 million from the SDI request of $1.7 billion.

I also got the committee to call for a full-scale detailed status report on the SDI within 90 days. Confusion and lack of information abounds as to this program.

As it now stands, a "Star Wars" program costing one trillion dollars could effectively eliminate aid to cities as we know it and not provide the security its more zealous proponents advocate.

I fully sympathize with the army general who told me he could care less about the MX and the SDI. "We need trucks that work and fuel to run them so that my 19 year olds don't die."

Obviously, this general is concerned for readiness in the best sense of the word. But the percentage of money going for procurement of new systems and research and development continues to increase, while the percentage going for operations and maintenance does not. The former has risen to 45 percent while operations and maintenance consumes 25 percent.

The concerns of Senator Gary Hart of the Armed Services Committee for "smart" weapons that work rather than development of overly complicated new systems is very well placed. We simply can't develop all the hardware the pentagon would like. In the meantime, we should be concerned with whether our supplies are in place and our personnel are trained.

The need to choose between competing weapons systems is very obvious in such matters as the MX versus the development of stealth bomber technology.

Both Houses of Congress are increasingly skeptical about the budget—busting dangerous and destabilizing MX.

1985 fiscal procurement for this "turkey" was narrowly defeated by the House in recent weeks. And it took Vice-President Bush to bail it out after a tie vote in the Senate.

Why we are doing this when an Under Secretary of Defense told me the weapon was essentially useless militarily boggles my mind. His reasoning was the weapon should place a strain on the Russian economic-industrial system.

Given the fact there has been no nuclear freeze adopted, it would have been better to choose only the development of the much less destabilizing small mobile missile.

Similarly the B-1B bomber, is a lesson in the politics of arms deployment. It is quite interesting that significant B-1B contracts exist in about 335 congressional districts.

An amendment of mine to restrain multiyear procurement of this weapon until it was substantially tested lost despite private admissions from its adherents that such designation was not appropriate under present law or regulation.

The larger question remained unanswered. That involves the pressure to add another 100 runs of this $300 million per unit weapon will be politically overwhelming while the new super classified stealth bomber technology comes on line by the early or mid 1990s.

It is interesting to note that while the Armed Services Committee made the largest reduction ever in a President's request—from a 21 percent increase to some 9 percent—this was done without eliminating one major weapons system. The MX "fencing" came later on the House floor.

The overall committee reduction came with moderate trim from hundreds of accounts.

Still exorbitantly high continuing deficits, an influx of some militarily more moderate Members. Exertion of leadership by some senior Members bodes ill for implementation of the full scope of the administration's late 1980s defense budgets.

After the Vietnam war, the Armed Service Committee established substantial technical staff.

This group of 25 or so experts in various areas cannot possibly consistently contain advances of an administration and a Pentagon with access to thousands of experts in every area.

To critics who say the Congress cannot "micro-manage" the DOD, the clear constitutional responsibility to "raise and support armies . . . to provide and maintain a navy . . . to make rules for the Government and regulation of the land and naval forces . . ." shall stand.

Also, there are the numerous instances of Pentagon mismanagement ranging from cost overruns through spare parts overcharges and duplicative systems.

As one staff member has pointed out, some years ago the research and development budget contained no less than 42 discreet imaging infrared projects in the 8 to 14 micron range.

And many Pentagon buffs know, NIH doesn't stand for national institutes of health, it stands for "not invented here"—the tendency of a service to reject any improvement unless it is their product.

Correction of these problems, including and especially the spectre of economic and nuclear disasters—will take executive and congressional leadership.

If we are to make the kinds of tough decisions necessary to effectively deal with moderating defense budgets, it means doing more than finding a few billion dollars worth of reform here or there. Such reforms are essential to the overall efforts to achieve savings and reduce the deficits. They cannot in and of themselves, however, control an ever-growing appetite for defense spending. They cannot change an attitude which produces defense budget requests as if funding were unlimited.

A fundamental redirection in our procurement strategy must be undertaken. Such a redirection need not entail anything less than a steady real growth of defense spending, as long as that spending strategy refuses to continue to back losers.

To accomplish this goal will require basic national decisions to cancel many dubious and duplicative weapons systems.

To coordinate efforts most effectively, Congress should consider approval of five year defense plans as well as annual authorization and appropriations budgets. Approaching the process of defense policy in this manner might require more homework for legislators. At the same time it might produce a better and more stable defense plan for the country.

These are matters that affect every municipal administrator in the United States. The impact of DOD spending on interest rates, and civilian industries, and Federal aid for municipal budgets is obvious.

I commend mayors and the conference for previous work in this area.

I offer the idea that there's more for you to do—if we're going to have anything left.●

TURKEY STONEWALLS CYPRUS TALKS

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. BROOMFIELD. Mr. Speaker, I am deeply concerned about the lack of progress in solving the problems on the island of Cyprus. I want to call your attention to the Cypriot House of Representatives' concern about recent developments in the city of Famagusta. I can't believe that the Turkish Cypriots are actually trying to colonize the city. We must do all that we can to stop this illegal activity and bring about a rapid and equitable solution to the problems on that island.

As many of my colleagues well remember, Turkey invaded Cyprus in 1974 and occupied part of the island. Thousands of innocent Cypriots were killed in the bloodbath that followed. Many are missing. Over 200,000 refugees have been forced from their homes and villages. Turkey has occupied over 40 percent of the island with over 35,000 combat troops. Ankara then decided to bring in over 40,000 Anatolian settlers and gave them large areas of northern Cyprus. Many native Cypriots have been forced from their villages even though 78 percent of the population of Cyprus has always been Greek Cypriot.

Since 1974, the United Nations Special Representative has sought a political solution to the problems of Cyprus. Progress has been essentially nil thanks to the intransigence of the Turkish-Cypriots. Our Government recognizes the Government of the Republic of Cyprus as the only legitimate government on that island. We have called for the withdrawl of all foreign forces from Cyprus and have supported a unified Cyprus under one government. We have also undertaken extensive diplomatic efforts with the Turkish Government to persuade them to support our position on this issue.

The unilateral declaration of independence earlier this year and Turkey's decision to exchange ambassadors with northern Cyprus only serve to heighten tensions between the key NATO allies.

The latest action by the Turkish Cypriots and their Turkish backers is both unfortunate and dangerous. Their action involves the outright colonization of the city which has been a ghost town since 1974. In May 1979, Greek Cypriot leader, Mr. Kyprianou, and Turkish Cypriot leader, Mr. Denktash, concluded a high-level agreement concerning Famagusta. The same issue was addressed in the United Nations Security Council in 1984. Just a few months ago, Denktash himself made proposals about the status of Famagusta. The basic agreement called for the transfer of the city of Famagusta—formerly a Greek-Cypriot city—to United Nations administration for the eventual resettlement of its Greek Cypriot inhabitants. This appeared to be a step in the right direction.

The recent Turkish-Cypriot colonization effort in that city is a step backward. Turkish occupation troops are making this illegal activity possible along with the nodding consent of Ankara. The Department of State has verified that Turkish Cypriots are, in fact, permitting settlement by some of their people in a formerly closed sector of the city of Famagusta. The area involved is in a portion of the city which has remained uninhabited since the Turkish military intervention of 1974. The Department also said that the settlement by Turkish Cypriots "established a precedent which we believe will prove unhelpful to the search for a fair and final settlement to the Cyprus question."

Is there any wonder that the House of Representatives of the Republic of Cyprus unanimously adopted a resolution calling upon the Turkish Government and all concerned to do all that they could to stop the colonization of Famagusta? The Cypriot House pointed out that this colonization effort is damaging the possibility of a future settlement of the problems there.

I agree with the Cypriot House of Representative's efforts to call this new and unfortunate chapter in the history of Cyprus to the attention of the U.N. Security Council, the Secretary General of the United Nations, the Turkish Government, and the Turkish Cypriot leadership. We must all work together to put an end to the illegal colonization of Famagusta. The city must be transferred to the United Nations for resettlement by its legitimate inhabitants if there is ever going to be peace on that island.

I call upon the Turkish Cypriots to reject these arbitrary unilateral actions which are so destructive to the spirit of negotiating.

Let's be serious about the peace process, and resolve these problems at the bargaining table and not through the barrel of a gun. In the meantime, the Turkish Cypriots should get out of Famagusta.●

A CALL FOR MORE DOLLARS AND DISCIPLINE

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. MARKEY. Mr. Speaker, last week, the Energy and Commerce passed a bill to expand and reauthorize the Superfund program. This legislation, drafted by my distinguished colleagues on the committee, Messrs. DINGELL and FLORIO, is a model of legislative compromise and a commitment to environmental goals. This body should be proud of the leadership taken by these Members to construct a policy on hazardous wastes that will move this country toward swift cleanup of dangerous sites.

My friend and colleague JIM FLORIO, the father of Superfund, recently wrote a fine piece for the New York Times on the need for an expanded Superfund program. I commend the article to my colleagues:

A CALL FOR MORE DOLLARS AND DISCIPLINE

(By James J. Florio)

In 1980, Congress created a major new Federal program known as the Superfund to clean up the thousands of abandoned hazardous waste sites which daily seep toxic chemicals into our soil, our air and our drinking water. The sad performance of those administering the program for the first three years of its existence is only too familiar.

Today, only six sites have been permanently contained and the environmental damage caused by these dangerous health hazards continues virtually unabated. It is now time to fulfill the commitment we made to clean up these sites, and to do that we must provide more funding and improve the basic superfund program.

Three House committees are busily at work on reauthorization legislation. The Speaker has announced that the House will vote on the bill in August.

The time is running short because Superfund has become a political issue and opponents of the legislation are engaged in an all-out effort to stall until after the elections. These opponents include William Ruckelshaus, administrator of the Environmental Protection Agency. Mr. Ruckelshaus has accused the Democratic Presidential candidates of "dump stumping" and argues that reauthorizing programs like Superfund in an election year in irresponsible.

That, at least, is what Mr. Ruckelshaus claims when he is fulfilling his political role of fending off public scrutiny of the Administration's negligible environmental record. In his most important but often contradictory role as the expert Federal official responsible for implementing the Superfund program, Mr. Ruckelshaus admits that we will need a minimum of $8 billion to $16 billion to finish cleanups at 2,200 of the country's worst sites, and even this ambitious effort could leave 20,000 sites unaddressed.

The House bill provides $9 billion for a second five-year installment of the program, or about $1.8 billion a year—a moderate figure even by Mr. Ruckelshaus's standards. But the Administration promises us only to "study" the problem further and get back to us next year.

This past February, Harvard University scientists published a study documenting a direct link between drinking wells poisoned by hazardous wastes and an outbreak of fatal childhood leukemia in Woburn, Mass. Each year that goes by compounds not only the scope of the environmental and human health problem, but also the cleanup.

Cleanup delays involve more than just a question of money. E.P.A. needs specific direction concerning the pace of cleanup and the standards that should be applied to its cleanup activities. The current law gives the agency a tremendous amount of discretion over both of these crucial areas. This legal free rein became a mockery in the first years of Superfund, when the progam was intentionally subverted, but even now the agency is mired in bureaucratic indecision about how to go forward. Without clear legislative direction, the program may never be propelled into an effective, cohesive effort.

A second gap in the program is its absence of any relief for people injured by exposure to hazardous waste, such as residents of the Woburn community. Superfund now contains an elaborate mechanism for compensating damage to natural resources (e.g., trees, brooks and wildlife) but ignores any relief for the human health damage caused by such pollution. Reauthorization legislation must contain provisions for giving waste-site communities the right to petition for health effects studies and create a Federal cause of action for so-called "toxic tort" cases.

The administration and its industry allies fear reauthorization of the program this year because the election makes it difficult for them to oppose publicly such a necessary program. They would much prefer to wait until next year, when they hope they will be able to dismantle Superfund, and most likely other environmental programs as well. A recent internal Office of Management and Budget memorandum to the Cabinet council on economic affairs detailed a plan for "dismantling" the major environmental laws and "replacing" them with laws emphasizing "economic incentives" rather than "mandatory Federal standards."

We should deal with Superfund this year, election or not. E.P.A. needs as much time as possible to plan and prepare for an all-out effort to rid our environment of these hazardous waste sites. To wait would only delay even longer the cleanup that all have a right to expect.

While some might prefer to wait until after the election and avoid the public scrutiny our democratic system provides, it is time to act. There is no harm in letting the voting public know where you stand on a clean environment in an election year.●

CULTURAL PROPERTY REPOSE ACT OF 1984

HON. GILLIS W. LONG

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. LONG of Louisiana. Mr. Speaker, I am today introducing a substitute version of the Cultural Property Repose Act of 1984, a bill that I first introduced in the House last year as H.R. 1798. Through a Federal statute of limitations, the act creates a regime of repose against civil claims by foreign governments for cultural property that is legitimately held in the United States. The modifications in this substitute bill meet concerns that have surfaced with the original text.

Foreign governments are attempting by civil suit and threats of civil suit to claim works of art that have been held in the United States for many years by museums and collectors who acquired them in good faith. An example is the recent suit by the Romanian Government against the Kimbell Art Museum in Fort Worth, TX, claiming a painting by El Greco. Another example is the Government of Peru, which is actively claiming title to all pre-Colombian artifacts from that region by virtue of a 1929 "patrimony" law, no matter how long the artifacts have resided in the United States. Such litigation in this country by foreign sovereigns is now encouraged by anomalous State statutes of limitation that oftentimes look to the date of a foreign government's demand for the cultural property to start the limitation period running, rather than to the date of the original export from the country of origin, the date of import into the United States, or other relevant date. Thus, foreign nations are proceeding on the theory that they may sue in the United States for the possession of objects that left their country in the distant past, even when their own laws would bar a reciprocal suit by the U.S. Government to recover property held within their borders.

My bill complements action taken by the 97th Congress when it implemented, in Public Law 97-446, the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Under Public Law 97-446, foreign governments and the U.S. Government may agree on the formal designation of significant items and categories of cultural property, which designation then imposes U.S. import restrictions designed to curtail the illicit international trade in such art. For items imported in violation of those restrictions after its enactment, Public Law 97-446 provides for seizure and return of the objects, subject to a sliding scale of repose periods, ranging from 5 years to 20 years, depending upon the likelihood under various circumstances that interested parties could determine an item's whereabouts through proper investigation. Public Law 97-446 does not apply, however, to items exported from a country of origin before the date of mutual designation, nor to undesignated items regardless of the time of export, nor to any other form of action than a suit by the United States to enforce the import restrictions.

It is to cover most of this omitted ground that I introduced the Cultural

Property Repose Act of 1983, and now propose this substitute. The bill covers all forms of cultural property as defined in the Unesco Convention, regardless of designation; it applies to all items that are presently located here; and it applies to all civil litigation. The bill further complements Public Law 97-446 by carrying forward that law's twin purposes of discouraging illegal trade in cultural property while affording proper protection for rights long established to items that are held here legitimately. Mr. Speaker, I insert a section-by-section analysis in the Record:

Section-by-Section Analysis

The bill would add a new section 1641 to Title 28 of the United States Code: "Repose for certain items of archeological and ethnological material and cultural property."

Section 2 establishes a uniform statute of limitations applicable in all suits brought in courts in the United States by foreign sovereigns claiming ownership of an item of cultural property, preempting any contrary State Law.

Subsection (a)(1) applies to cultural property that was imported into the United States five years or more prior to the date of enactment and bars suits by foreign sovereigns, their assignees and successors in interest to recover damages or possession of such property. Subsections (a)(2)-(a)(4) establish a sliding scale of repose periods that will apply after date of enactment to items imported into the United States before or after the date of enactment, depending upon the nature of the holding in the United States.

Subsection (a)(2) applies to museums or institutions and allows repose after two years for items of cultural property held by such institutions if, for that period, the museum or institution has exhibited the item or has made knowledge of it available through publications, cataloging or otherwise.

Subsection (a)(3) applies to any holder of cultural property and establishes repose where for three out of five years the item is publicly exhibited or publication is otherwise made that the item of cultural property is being held here.

Subsection (a)(4) applies to any holder of cultural property and allows repose after ten years unless a foreign state can establish that the holder acquired the property with actual knowledge that it had been removed from the possession of the country of origin in violation of the law of that country.

Subsection (b) of the new section 1641 of Title 28 applies only to items to which the restrictions of Public Law 97-446 apply by virtue of designation or emergency Presidential action, and for them establishes an exception the general rules of subsection (a). For those designated items, the bill allows repose from civil suits by foreign nations on precisely the same conditions and after the same periods as prescribed in Public Law 97-446 for violations of that law's import restrictions.

Subsection (c)(1) defines the items of cultural property covered by the bill to have the same meaning as under the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

Subsection (c)(2) defines "foreign state" consistently with the rest of Title 28 of the United States Code.

Subsection 3 establishes the effective date and makes the provisions of the bill applicable to any proceeding that is pending or initiated after enactment.●

OMNIBUS WATER PROJECTS

HON. THOMAS E. PETRI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. PETRI. Mr. Speaker, as many of my colleagues are aware, I will be offering an amendment to the omnibus water projects bill, H.R. 3678, when that bill comes to the House floor later this week. So that there are no questions as to the administration's attitude toward this amendment, I would like to insert in the Record a letter on the subject to me from Dave Stockman. It seems quite clear in this case that, as Mr. Stockman suggests in his letter, trying to distribute "something for everyone" will really mean "nothing for anyone."

Executive Office of the President, Office of Management and Budget,
Washington, DC, June 20, 1984.

Hon. Thomas Petri,
U.S. House of Representatives,
Washington, DC.

Dear Tim: I appreciate the opportunity to comment on the proposed amendments you plan to offer when H.R. 3678 comes to the House floor.

This Administration has devoted considerable effort over the past three years to establishing a new framework for a renewal of our nation's commitment to water resource development. We want to break the logjam, but we also want to correct the failures of past policy that have caused projects to bog down in delay and that have led to the use of Federal tax dollars to build projects with little or no national benefit.

As reported, H.R. 3678 moves in the opposite direction. Its proponents appear to have closed their eyes to the fiscal realities that have led Congress and this Administration to come together in support of the major deficit reduction "downpayment" package that is now in conference.

By attempting to perpetuate the traditional approach to water development projects, H.R. 3678 in its present form will extend the stalemate that has blocked new projects for several years. Its proponents may believe that by promising something for everyone, they can attract a majority. But with an annual deficit approaching $200 billion, "something for everyone" will really mean "nothing for anyone" if we cannot put water development on a sounder fiscal basis through additional cost-sharing and user fees.

We have examined the package of amendments that you plan to offer and would commend them to your colleagues as a major step forward. If the House bill can be modified as you are proposing, the likelihood of a conference being able to produce a bill that I could recommend to the President for signature will be much greater. As the Administration has noted on several prior occasions, in its present form H.R. 3678 is a prime example of the type of big-spending, budget-busting bill that undermines confidence in our nation's ability to control spending and reduce the deficit. I would unhesitatingly recommend that it be vetoed if enacted without change.

I should note for the record that we would like to see even more improvement to H.R. 3678 than you are proposing and will be working with your colleagues and with members of the Senate toward that end.

With all best wishes,

Sincerely,

David A. Stockman,
Director.●

OPERATION YOUTH

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. GRADISON. Mr. Speaker, I would like to take this opportunity to recognize an outstanding program—Operation Youth—which took place recently in my district. Operation Youth is a weeklong conference during which interested young men and women learn about our system of government.

This year's conference, the 34th edition, was held June 16-22 at Xavier University in Cincinnati, and over 89 selected Ohio high school students participated in the program. The agenda included speeches by leaders in government, education, and law on topics such as "Scientific Innovation and World Peace,' "Freedom and Economics," and "Plato on Justice and Human Freedom." Forums were then set up for the students to discuss these topics and other current issues. In addition, the students formed political parties and elected officials to a mock municipal government. I am extremely proud to recognize those who were elected to office as well as those who participated in all other aspects of this valuable program.

They are as follows:

Mayor: Kathy Turner of Our Lady Of Angels High School; vice mayor: Tim Massa of Elder High School; city manager: Cindy Pierce of Western Hills High School; clerk of council: Mike Davis of Hughes High School; and city council members: Julie Carovillano of Loveland-Hurst High School, Jennifer Cordova of Astabula St. John High School, Mike Hughes of Moeller High School, Walter Johnson of Purcell-Marian High School, Roger Jones of Newport Central Catholic High School, Jeff Recker of Moeller High School, Kathy Stegbauer of McNicholas High School.

Also participating in the conference were:

Coleen Allen, Christopher Aluotto, Angela Ammon, Rae Ann Barger, Michael Bihn, Jerry Blais, Melissa Bond, Sherry Borcher, Greg Broscheid, Kevin Burkart, Cathleen Burke, Lisa Kaye Burns, Tony Cafazo, Laura Czulewicz, and Anne Dillehay.

Deborah Dinerman, Amy Elekes, Joan Engelbrink, Amy Engelhardt, Robert Fortman, Larry Foster, Terri Fry, Leslie Garbig, Kristina Givens, Kelly Graff, Kim Grote, and Tammy Hannah.

Ervin Harrison, Jenny Hartman, Jennifer Haworth, Juoie Herman, David Herrman, Mike Hoffman, Peter Horne, Darlene Hoying, Edward Hubble, Jeff Hughes, Richard Jones, Thomas Kahle, Tim Keller, and Christina Kelley.

Kevin Kersh, Laura Kim, Kris Kirby, David Klenk, Josh Knights, Rodney Kreinbrink, Alvin P. Kressler III, Joseph Krumm, Jeff Lagaly, Kathy Ann LaRoche, Vicki Leroy, Cheryl Lubeck, Jeff Miller, and David Manning.

Linda Morin, Bill Naber, Bill Neyer, Lisa Niehaus, Ann Niemeyer, Nate Niemi, Michael Ollier, Kevin O'Reilly, Anthony Padgett, Laura Parker, Sue Pisula, Teresa Pitson, Chris Poorman, Laura Procopio, and Jeff Recker.

Mary Beth Rieder, Eric Robinson, Deborah Rouse, Susan Runge, Nancy Lee Rutherford, Anthony Scheidt, Daniel Sharpshair, Jerald Smith, Todd Smith, Michele Spaeth, Jeffrey Staab, Christine Steele, and John Stofa.

Lesa Vandewalle, William Wathen, Jody Waugh, Michelle Wermes, Leonard Williams, Shelly Wimmers, Sonya Yenser, Janot Zimmerman, and Sam Lind.

I would especially like to honor William E. Smith, director of Operation Youth, and professor of accounting and finance at Xavier University. His dedication in insuring the success of the program has been unsurpassed. His efforts, as well as those of his staff, enabled over 89 young citizens to gain new insight into the workings of democracy. The staff included:

Mr. Kevin M. Bien, program director; Mr. Michael A. York, chief of staff; Mr. William Maly, staff adviser; Rev. Leo Eennish, chaplain of Xavier University; senior staff members: Ann Bailey, David Dearworth, Brenda Green, Marsha Telles, and Michael Vorbroker; and junior staff members: Eric Bender, Denise Heckman, Theresa Helbling, Timothy Kelly, Beth Kruthaupt, Shannon Lane, Mark Telles, and Tony Kovalik.

Mr. Speaker, I am happy to pay tribute to this outstanding and worthwhile program.●

A TRIBUTE TO JOHNNY HYZNY

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. LIPINSKI. Mr. Speaker, it is with great pride that I call attention to a dedicated citizen from Illinois' Fifth Congressional District, which I am privileged to represent, and he is Johnny Hyzny. Johnny is a lifelong resident of the Southwest Side of Chicago and he has consistently lived by the belief you should take an active part in civic and community affairs.

Johnny Hyzny has always extended his personal help and the use of his facilities to the many organizations of his community. He serves on several committees which are dedicated to making the neighborhood a better place to live. Johnny is the recipient of numerous awards and commendations for his efforts in behalf of his charitable and other worthy projects.

I join with the residents of the Fifth Congressional District in paying tribute to Johnny Hyzny for his work in our behalf, and I would like to introduce into today's CONGRESSIONAL RECORD a newspaper article honoring Johnny Hyzny upon his receipt of the Ray McDonald Community Achievement Award.

The article follows:

[From the Midway Sentinel, March 1984]

SENTINEL HONORS HYZNY

The Midway Sentinel proudly salutes Johnny Hyzny, a man dedicated to our community as this month's recipient of the Ray McDonald Community Achievement Award.

Johnny Hyzny has lived on the Southwest side of Chicago all his life and is a graduate of local schools. Johnny has been married to Lorraine (Vavra) for 33 years and has five children and one grandson. He and his wife have operated the Personality Lodge for many years.

It has always been John's belief that you should take an active part in civic and community affeirs. Thus when Johnny and Lorraine bought a home in the 23rd Ward, that's just what they did. Johnny became a member of the Midway Kiwanis, the Greater Economic Development Committee, the Lech Walesa Triangle Committee, the Vittum Park Civic League and many others.

Johnny has always extended his personal help and the use of his facilities to the many organizations in the 23rd Ward. In fact, in 1970 two neighborhood women, Mary Grossman and Ida Otto, asked John if they could hold a meeting at Personality Lodge to form a new community organization, Johnny readily agreed and so the Vittum Park Civic League was born.

In 1980 Johnny ran for state representative of the 25th legislative district. Although unsuccessful in his bid for election, John to this day has remained active in 23rd Ward community affairs. He is on numerous committees which are dedicated to making the 23rd Ward a better place to live.

Currently, Johnny is chairman of the "Have a Heart for Keith" Committee. This committee was formed to help raise funds to help defray the cost of a heart transplant needed by Keith Stanislawski, a 12 year old Chicago Lawn boy suffering from cardiac myopathy, a virus that causes deterioration of the heart muscles. The committee is composed of members of the Midway Kiwanis Club, the Garfield Ridge Chamber of Commerce, the 3rd District Veterans of Foreign Wars, the Lech Walesa Triangle Committee, the Rhine Post V.F.W., the Polka Disc Jockey Association of Chicago, the Des Plaines Valley V.F.W., the 5th District Congressman, William O. Lipinski, and the United Polka Association. Under the guidance of Johnny as chairman, the committee has held several fundraising events for the fund which now exeeds $60,000.

He is also the recipient of numerous awards and commendations for his efforts in behalf of his charitable and other worthy projects. Among those are the national "Mr. Personality Award" of 1963, Des Plaines Valley 1971 Man of the Year, the 3rd District Veterans of Foreign Wars Man of the Year in 1975, Lithuanian Alliance of America 1975 Man of the Year, Polish American Police Association Award of 1977, the "Mr. Polka Personality Award of 1979," and a recent inductee to the Polish Hall of Fame.●

CAN ONE VOTE MAKE A DIFFERENCE?

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. SHUMWAY. Mr. Speaker, I am pleased to share with my colleagues a prize-winning essay entitled "Can One Vote Make a Difference?" This patriotic and responsible commentary on the need to exercise one's right to vote was written by Debbie Dunn, a high school senior in Newcastle, CA. Debbie's fine essay was selected as the winner of the South Placer Republican Women's recent contest, and I commend it to my colleagues' attention:

CAN ONE VOTE MAKE A DIFFERENCE?

My vote will make a difference. Our country was founded on a belief in a government of the people, by the people, and for the people. Thomas Jefferson said, "That government is the strongest in which every man feels himself a part." By making my voice heard at the polls, I involve myself in the democratic process, making myself a part of the government, not a disinterested bystander. Also, when I make it known to my friends or family that I will be voting, it is likely that my decision will cause them to consider taking a trip to the polls to vote.

My vote is given even greater value, however, when potential or qualified voters don't even show up to counter my vote! In my opinion, when a person chooses not to fill out a ballot, he is forfeiting his right to participate in government. According to statistics in the October 1980 issue of Reader's Digest, the people who most need representation, the poor, the uneducated, and the minorities, are the same people who constitute the majority of no-shows on election day. Sometimes it seems as though one vote could not possibly make even the slightest difference, as in the presidential elections of 1980. The television networks' early announcements and President Carter's concession speech a little over two hours before the polls were even closed discouraged the votes of many Westerners. Carlyle Reed, former publisher of The Sacramento Union, suggests simultaneous national voting would eliminate such problems in the future, perhaps even changing the outcome of national elections.

In addition, there have been several occasions when a handful of votes have made a tremendous difference. For example, in 1978, "The Democratic and Republican candidates running for state representative from Adams County in Pennsylvania wound up with 8551 votes each. Until the tie was broken by 14 votes in a recount, control of the entire Pennsylvania House of Representatives hung in the balance, since each party had won 101 seats, not counting the deadlocked district."[1] What if a new law or choice of candidates is hanging in the balance? My vote suddenly becomes incredibly valuable. I can't afford to just sit by; my vote, my opinion, makes a difference, whether its importance lies in the breaking of a tie or just one more rock in a landslide. One vote can influence others and possibly decide a close race between candidates. In either case, I am preventing a government of the few, by the few, for the few and keeping government in the hands of the people, where it belongs.●

IMMIGRATION: A LONG WAYS TO GO

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. STARK. Mr. Speaker, in the wake of House consideration of the immigration bill I would like to place in the RECORD the Los Angeles Times editorial of June 21, 1984. The House has passed one of the most difficult pieces of legislation brought before us in the past decade. While it is far from perfect, it does represent the establishment of a national immigration policy. I feel the Los Angeles Times editorial draws attention to several of the gray areas of the bills passed by the House and Senate, and should be read by Members of both bodies.

IMMIGRATION: MAKING SENSE

Wednesday's narrow victory in the House of Representatives for major immigration reform is not the final step in creating a more humane and modern immigration system for this country.

The Simpson-Mazzoli bill—named for the chairmen of the immigration committees in Congress, Sen. Alan K. Simpson (R-Wyo.), and Rep. Romano L. Mazzoli (D-Ky.)—is not perfect. A legion of critics, ranging from organized labor to agribusiness and from minority groups to law-and-order conservatives, are vociferous on that point. But the bill is a balanced piece of legislation that can help the federal government get control of an outdated, widely abused immigration system.

The House version of the bill must now be reconciled with a similar measure overwhelmingly approved by the Senate last May. There is still the danger of serious disputes among the conferees on some key provisions of the bill, and if negotiations over the differences are long they could drag on until Congress adjourns. That could prevent the bill from being signed into law by President Reagan, who has already indicated his support.

Both versions use the same basic approach to stemming illegal immigration—establishing a series of fines and other penalties for employers who hire undocumented workers in the hope that this will dry up the jobs that lure immigrants here. Unfortunately, neither version is specific enough on how these penalties can be imposed in a nondiscriminatory fashion. Some employers may err on the side of caution to avoid the penalties, and stop hiring anyone who looks or sounds "foreign," including Latino and Asian citizens. The House voted to delete a provision requiring the President to study the feasibility of a worker-identification system for all U.S. workers that could help obviate this potential problem. The Senate version would require that the President create a worker-eligibility system within three years. That provision should be retained by the conference committee, and the Reagan Administration should focus on the Social Security card as the basis for a worker-eligibility system. If that card, which all U.S. workers must have anyway, were made secure and counterfeit-proof, all workers could then be required to produce it before being hired for a job.

Another key difference between the two bills is their legalization program for illegal immigrants now living in this country. The House version of the bill includes an amnesty date of January, 1982. Any illegal immigrant who could prove that he had been in the country since then would be eligible to begin legalizing his status. That is more generous than the Senate version, which features a complicated, two-tiered amnesty system—legalization for immigrants here before 1977, but only temporary-resident status for those here since 1980. The House version is preferable because it is simpler and would bring more people out of hiding than the Senate proposal would. Aside from humanitarian considerations, there is a soundly practical argument for this amnesty. There is no way in which the government could ever track down and deport all people now living illegally in this country. Even if mass deportations were possible, most Americans would find such draconian measures abhorrent.

The House version of the legislation also includes a guest-worker program for farmers who claim that they cannot find enough American workers who are willing to harvest their crops. We are dubious about their arguments, and worry that a guest-worker system could degenerate into another bracero program, marred by worker abuse and other problems. If the conferees retain the guest-worker provision, they should also put a time limit on the program.

Finally, the Administration must now renew its efforts to reorganize and modernize the U.S. Immigration and Naturalization Service and the other agencies charged with patrolling this country's borders, with an eye toward creating a single border-management agency and a separate bureau of immigration. Simpson-Mazzoli includes more money for the immigration service but that is not enough. Too much evidence has accumulated over the last decade of that agency's inefficient and occasionally corrupt practices. It would be a travesty to leave it untouched, administering a streamlined new law in the same old way.●

STEPHEN BARTOSZ, EAGLE SCOUT

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Ms. MIKULSKI. Mr. Speaker, I appreciate this opportunity to commend one of my constituents, Stephen Bartosz, who resides in Catonsville, MD. Stephen recently received the Eagle Award, the highest award obtainable in Scouting.

The accomplishment of becoming an Eagle Scout is not a simple one. The candidate must fulfill requirements for skill awards as well as merit badges. Stephen had previously earned all 12 skill awards, 34 badges, and is a member of the Order of the Arrow. The Eagle Award is also a symbol of the intelligence, the courteousness, the trustworthiness, and the loyalty to our Nation of the Scout. To possess all of these qualifications is indeed an outstanding accomplishment and one to be very proud of.

I am honored to have Stephen as a constituent. I hope his accomplishments stand out as a role model to all young Americans. I extend my congratulations to Stephen and wish him continued success in the future.●

THE GI BILL

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, June 22, 1984

● Mr. DOWNEY of New York. Mr. Speaker, 40 years ago, this Nation made a commitment to its veterans to assist them in their education and training after they left the service. The GI bill surely stands as a symbol of all that is great about the United States. It is a clear expression of our gratitude to the millions of men and women who serve in our Armed Forces and defend the Nation.

It is also one of the best investments that this Nation has made. In the past 40 years, over 18 million veterans have received approximately $55 billion in benefits under the GI bill. I think that this is a remarkable figure. There can be no doubt that the GI bill marks a milestone in the way in which we reward those who defend us. We now recognize that we as citizens have a covenant with those who defend us—a covenant that does not end when the individual takes off his or her uniform.

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[1] "Where Have All The Voters Gone?" *Reader's Digest*, October 1980, Volume 117, No. 702, Pleasantville, New York.

Mr. Speaker, I would like to commend all those members who have served so diligently on the Veterans' Affairs Committee of this House over the years. They have done yeoman service in adopting the GI bill to changing conditions. And I would also like to commend all the veterans' organizations who have so well represented the interests of their members.●

MICHAEL AND MARC SCHACHTER HONORED

HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. HUNTER. Mr. Speaker, I rise today to call attention to two of my constituents for their outstanding contributions to their community and country. Michael Andrew Schachter and Marc Adam Schachter of Romona, CA, both 16 years old, will defend their titles at the 1984 nationals modeling competition of the International Plastic Modelers Society [IPMS] in Atlanta on July 14, 1984.

Last year, each of the twin sons of Eva and Harold Schachter garnered a first place award in different aircraft categories in the junior division competition—17 years of age or under—at the IPMS 1983 national competition in Phoenix. Marc and Michael took six place awards out of a possible seven they could have won. Besides the two first place finishes, they earned three second place awards—in two of these instances, losing out to the competing brother—and one third place award. They swept the "Out-Of-The-Box" category and three of their remaining four entries won honorable mention.

Marc and Michael began their interest in aviation and model construction when they were just 4 years old, and have developed, by trial and error over the years, the skills and craftsmanship which have helped to earn them the recognition they have achieved. It has been not only an investment in time, but in research and the acquisition of knowledge about the models they construct, as authenticity and attention to detail are as important as accuracy and precision in construction.

They have distinguished themselves in competition to the extent that they most often compete against adults rather than their peers. On occasion, they have been asked to team up as judges for competitions rather than participate as contestants.

They began entering into modeling competitions less than 3 years ago, first with local competitions, then regional contests and invitationals and culminating last year with their enormously successful first try at the "Nationals."

Mike and Marc competed in the San Diego Aerospace Museum's inaugural modeling contest and show in October of 1981, and captured awards for all of their entries. Their domination of the 1982 contest led them to retire from further competition in that event and last year served as judges at the invitation of the museum.

In June 1982, they were invited to be the special guest of Eastern Airlines by its chairman of the board and chief executive officer, former astronaut and Apollo 8 commander, Frank Borman. They presented Mr. Borman with a scale model of Capt. Eddie Rickenbacker's Spad XIII. America's World War I ace and commercial aviation pioneer became the driving force in the development of Eastern as one of the Nation's major air carriers.

In September 1983, I appointed them to serve on my Citizens Advisory Council on Defense—Strategic and Planning Policy, the youngest citizens to be so chosen.

In the past years, the brothers have involved themselves in local community fund raising events for the National Asthmatic Center in Denver and other service club projects. They have also participated as volunteers in local nonpartisan election campaigns.

Marc and Michael are honor students at La Jolla Country Day School in La Jolla, CA, and will begin their junior year this September. Both Mike and Marc share the goal of qualifying as U.S. Navy pilots after completing college.

Mr. Speaker, these young citizens are adherents to the belief that a strong national defense and an educated population are essential to our national security and the preservation and maintenance of peace throughout the world and I salute their accomplishments.●

FAMILY RESPONSIBILITY FOR NURSING HOME RESIDENTS: FEDERAL POLICY REMAINS IN QUESTION

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. BIAGGI. Mr. Speaker, last February 1983, the Department of Health and Human Services issued a revision to the State Medicaid Manual that allowed States to adopt laws that would require family members to bear some of the costs for their relatives in nursing homes. That transmittal evoked a great deal of concern on the part of many, including myself, that we were opening the door to placing financial responsibilities on families that did not have adequate resources of their own.

In response to the HHS transmittal, I introduced legislation, House Concurrent Resolution 134, that was intended to send a clear signal to the authors of that transmittal that this policy was in violation not only of Federal medicaid law and statute—but also went well beyond the intent of Congress. In hearings conducted by my Subcommittee on Human Services of the House Select Committee on Aging last May, we were advised by the Health Care Financing Administration, that drafted the revision, that they proceeded with this proposal at the request of a number of States that sought to reduce their growing medicaid budgets.

Mr. Speaker, Medicaid now pays for over $7.3 billion of the national nursing home budget, which represents 43 percent of all program outlays. However, in testimony before the committee, we learned that by its own estimates, savings under this family responsibility rule were expected to be minimal at best—the cost of administering such a program would cost $75 million, with the net savings of $25 million. According to its own 1979 report, HCFA found that expanded assets tests for family members of institutionalized adults would not yield significant sources of funds. Finally, testimony before our committee by a number of health policy experts underscored this point—making families pay would not save significant Medicaid dollars.

Despite these overwhelming facts that this policy is ill-conceived and unwise, HCFA has failed to reverse itself on this matter and to date, has not withdrawn the February 1983 transmittal.

For the benefit of my colleagues, it should also be noted that a number of States have sought to enact or implement family responsibility laws with little success. According to the National Senior Citizens Law Center, which has been monitoring State activity since the introduction of the 1983 transmittal, no State has sought to pass any laws to require family responsibility despite the claim by HCFA that a number of States had petitioned the Department for clarification of policy in this area.

Conversely, a number of States that have sought to enact laws have had their attempts blocked. For example, Idaho, which enacted a law in January 1982, in an attempt to control the State's Medicaid budget—half of which was devoted to nursing home payments. The experience of Idaho proves what I have stated from the outset when HCFA attempted to encourage State laws to assist with payments—such a law will not work. In Tennessee, which enacted a family responsibility law in 1982, the State attorney general has concluded that the law is invalid based upon the fact that does not apply generally to the entire population and is in conflict with the

HCFA transmittal. I contend that the HCFA transmittal is unclear to the extent that it will only further confuse States that are attempting to address this issue.

A number of other States have considered—or will consider family responsibility legislation. These include Colorado, Indiana, Hawaii, Kentucky, and Massachusetts. Utah is considering similar efforts. Three States have laws on the books—Indiana, Idaho, and Virginia—but are choosing at this point not to enforce them and one State, Maine, has moved to repeal its law.

I believe that based upon evidence that I have reviewed on this matter, including internal documents from HCFA indicate that confusion still reigns on this issue so that even the administration is seeking to clarify its own policy on the recommendation of the Department's general counsel. However, the Department has not moved forward on this issue and as a result, States are still attempting to adopt—with varying degrees of success—laws which will require family members to pay.

When one considers the fact that the average age of a nursing home resident is 83—that means that more than likely, their children are at or nearing retirement age themselves. This translates into the fact that their own resources will be limited as they will have fixed incomes for the rest of their lives.

Mr. Speaker, in order to end this confusion and more importantly—to put an end to these various attempts by States to impose unworkable family responsibility requirements upon relatives of nursing home residents, I call upon the Congress to adopt my bill, House Concurrent Resolution 134, that will direct HCFA to withdraw this transmittal to the Medicaid manual and end this continued ill-conceived policy. It has never been the responsibility of Federal Government to impose cost saving proposals upon States that would have a disproportionate impact upon elderly nursing home residents. The current policy will only establish various levels of care for poor elderly based upon ability to pay. As such, it should be withdrawn.●

TRIBUTE TO SCOTT VAN ORNUM

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. TRAXLER. Mr. Speaker, it is with great honor that I pay tribute today to an exceptionally talented young man from my congressional district who was named 1 of the 20 Presidential Scholars in the Arts, our Nation's highest award for young artists. Scott Van Ornum of Saginaw, MI, was selected as a Presidential Scholar for his tremendous accomplishments as an organist.

Scott began playing the organ when only 9 years old. Now at age 17, he has captured numerous awards on the local and State level. He has demonstrated his talent at organ concerts across the United States and Europe, thrilling audiences with organ renditions of Bach, Brahms, and Handel. Most recently, Scott put on an outstanding performance at the Kennedy Center as part of a program for the Presidential Scholars in the Arts.

I want to take this opportunity to recognize the creative feats of Scott and other young artists. Too often we forget the amazing contributions made by our poets, musicians, painters, and dancers. I believe the following quotation from John F. Kennedy, during a 1963 address at Amherst College, points out the importance of art in our society:

> When power corrupts, poetry cleanses, for art establishes the basic human truths which must serve as the touchstone of our judgement.

With that, I would like to extend heartfelt congratulations to Scott and his parents Frederick and Barbara Ziehl of Saginaw. I also would like to wish Scott continued success as he pursues his musical career next fall at the Eastman School of Music in Rochester, NY.●

A TRIBUTE TO FE CHRISTINE UNPINGCO

HON. ANTONIO BORJA WON PAT

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. WON PAT. Mr. Speaker, I would like to recognize an outstanding student, Fe Christine Unpingco, this year's Presidential Scholar, representing the Territory of Guam. This achievement brings honor both to our island and to her parents, Guam Senator Antonio and Emily Unpingco.

Miss Unpingco was salutatorian of the 1984 graduating class from the Agat/Santa Rita Senior High School, where she was also student body president, a member of the National Honor Society, varsity cheerleader, and first alternate for a 4-year Army ROTC scholarship. Having served as religious instructor, hospital volunteer, and student representative on the principal's advisory committee and school suspension board, and having participated in numerous government-sponsored seminars and conferences, we aptly demonstrated qualities of leadership and dedication to public service that earned her the local Outstanding Youth and Service Awards.

With her exemplary achievements, service commitment, and positive attitude, Miss Unpingco serves as a wonderful role model for other students following after her. I believe I speak for the people of Guam when I say that we witness the bestowal of this honor upon her with great pride. We have high expectations for her in the future. I personally hope that after she completes her studies at the University of Oregon, she will return to the territory of Guam, which needs the services of talented, empathic, educated individuals such as Fe Christine.●

THE CIVIL RIGHTS ACT OF 1984, H.R. 5490

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Ms. MIKULSKI. Mr. Speaker, the civil rights bill of 1984 is neither a ground-breaking piece of legislation, nor a revolutionary idea in civil rights. This bill merely returns to our Nation's women, minorities, disabled, and elderly, the legal rights and remedies they had prior to the U.S. Supreme Court's decision in Grove City College against Bell.

H.R. 5490 would overrule the Supreme Court decision in Grove City, which substantially narrows the reach of title IX of the Education Amendments of 1972, the Federal law prohibiting sex discrimination in education. The Court held that title IX's bar on sex discrimination applies only to the specific program or activity within an institution which receives Federal financial assistance, not the entire institution.

The Grove City decision threatens more than educational equity for women. Current laws outlawing discrimination based on race, handicap, and age are also in jeopardy of being narrowly applied. Title XI of the Civil Rights Act of 1964, the Age Discrimination Act, and section 504 of the Rehabilitation Act of 1973 are written with program or activity language similar to that of title IX.

That is why this legislation is so necessary, to simply restore the original scope of all these laws. So that entire institutions would be barred from discriminating when any of its parts receives Federal funds.

Discrimination has no place in our society. The time is now for the Civil Rights Act of 1984.●

TITLE IV, PART B FUNDING: A MATTER OF LIFE, ABUSE, OR DEATH

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. STARK. Mr. Speaker, the utterly inadequate funding for title IV, part B, Child Welfare Services, has meant the difference between life, abuse, and death for too many children in this country. This was the major conclusion of recent hearings held in California and Connecticut conducted by the Public Assistance and Unemployment Compensation Subcommittee.

In 1980, the Congress passed Public Law 96-272, the Adoption Assistance and Child Welfare Act, to reform our foster care and child welfare system. Title IV, parts B and E appropriations provide the funding for the implementation of this act. The IV, part B funds are used to provide a variety of services to children and families in crisis situations including: preventive services to keep children out of foster care, permanency planning to ensure a permanent stable home for every child, reunification services to ensure that the child is returned home within a reasonable amount of time, or adoption placement when reunification is not practical or feasible.

Witnesses at both hearings were generally pleased with Public Law 96-272. However, every witness, which included county welfare directors, social workers, foster home directors, and advocacy groups, lamented the gross underfunding of the law. When Public Law 96-272 was enacted, it was assumed that implementing the reforms mandated would require title IV, part B funding of about $266 million a year and this amount was authorized. But title IV, part B funding has never been higher than $165 million, which is identical with the administration's request for fiscal year 1985.

Our hearings dramatically demonstrated that $165 million is totally inadequate in 1984 and this amount in 1985 will be even less effective in dealing with the needs of children in crisis. This is due to a combination of factors: An overwhelming increase in child abuse nationally, particularly child sexual abuse—in Alameda County the number of reported cases went from 123 in 1973 to 4,848 in 1983; the high cost of implementing and maintaining reforms and services mandated by Public Law 96-272; and the previous budget cuts which have reduced services and the number of protective service workers to handle the rising caseloads.

To use the words of Helene Weber, regional director of the National Association of Social Workers, "We can no longer provide what are called child welfare services. We do an emergency in 2 hours. We put band-aids on whatever is happening."

Mr. Speaker, we cannot afford to use a band-aid approach. Without preventive services children are literally dying at the hands of parental mistreatment. For example, in Santa Clara County 6 children under 5 died from parental abuse and another 36 died from accidental death which may have been due to mistreatment or neglect.

Without preventive services our juvenile and prison systems are swelling. In our prison population, 70 to 80 percent of the sexual offenders have been childhood victims of sexual abuse or trauma. In California, 33 percent of children at the California Youth Authority have been in foster care, while 69 percent of the inmates in the prison system were foster children.

Because we are not effectively preventing crisis situations, more children are coming into foster care with more problems requiring more services. These are very damaged kids. One study found that 69 percent had some significant problem, 21 percent emotional or mental problems, 17 percent described as behavioral problems, 16 percent physically handicapped or suffering physical disorders, learning disabilities, alcohol, or drug problems.

In short, if we contribute our time, effort and money now, it will cost us much less in the future. We must invest in our children. They are our future.

Mr. Speaker, in light of the desperate situation thousands of children face, I would ask my colleagues on the Appropriations Committee to look favorably on increasing title IV, Part B funding by $100 million. Band-Aids just won't work. The legacy of this approach has left a trail of death and permanent scarring of our most precious resource, our children.●

IN CELEBRATION OF THE 70TH BIRTHDAY OF ROSE LYNNE

HON. JIM BATES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. BATES. Mr. Speaker, June 22, 1984, marks the 70th birthday of one of San Diego's most hard-working public servants, Rose Lynne, formerly known as Rose Lynne Switzer. As director of the National Association of Ombudspersons, Advocates, and Inspectors General, Rose Lynne testified before the Senate Agriculture Committee in 1981.

On the occasion of her 70th birthday today, she has asked me to cite this testimony in the CONGRESSIONAL RECORD as a tribute to her lifelong commitment to ombudsmanship and synergistic methods of achieving efficiency in government. I recommend to my colleagues Rose Lynne's testimony, which appeared on pages 62 through 66 in the report of the Senate Agriculture Committee on January 6, 1981. There is a lesson for all of us in Rose Lynne's fiesty statement.●

HERITAGE FESTIVAL

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. ROTH. Mr. Speaker, the summer of 1984 will mark the 350th anniversary of the landing of Jean Nicolet at what is now Green Bay, WI. He had been commissioned by Samuel de Champlain, the Governor of New France, to seek a Northwest passage to the Orient and thus became the first European to explore this part of the Great Lakes.

Little did Nicolet realize that his arrival in 1634 actually signaled the opening of the American heartland, a starting point for the penetration of the Mississippi Valley and eventually the Far West. The story of the subsequent exploration and development of this vast territory is an important part of our national history.

The Brown County Historical Society is sponsoring the Heritage Festival, a celebration of discovery from June 29 to July 8, 1984. This festival will make visible to the community, the State and the Nation the unique contributions made by Green Bay and northeastern Wisconsin since 1634. Thousands of visitors will attend this exciting celebration and it will be an appropriate occasion to reflect on the contributions made by all the ethnic groups which have populated the area. A major goal of the festival is to collect and establish a written and photographic history of the ethnic groups in northeastern Wisconsin.

Nicolet blazed a trail that was followed by many different groups who emigrated to the area. Initially they had to struggle, but eventually they thrived and prospered. For the citizens of northeastern Wisconsin the commemoration of Nicolet's landing has provided an opportunity to look back upon their proud historical and ethnic heritage.●

A TRIBUTE TO THE AFRICAN METHODIST EPISCOPAL CHURCH

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. FAUNTROY. Mr. Speaker, at a time when there is growing concern about educational opportunity, economic development and family and social responsibility in the black community, it gives me great pleasure to bring to your attention the work of an institution, which for almost 200 years, has been a backbone of the black community. The African Methodist Episcopal Church is today America's single largest black institution.

The African Methodist Episcopal Church [AME] was founded at a time when black worshippers were restricted to segregated churches and pews. Richard Allen, unable to worship freely in the Methodist Church, started the African Methodist Episcopal Church, while still adhering to the principles of John Wesley. Historian Howard D. Gregg has said that Richard Allen's action "was as much a hallmark in black religious freedom as was the Boston Tea Party a hallmark in the eventual freedom of the colonies from the domination of England in the American Revolution."

Now numbering over 3 million members, the church has been a pioneer in black educational activities in the United States and in Africa. The church presently maintains five 4-year colleges, one junior college, two theological seminaries and two Job Corps centers in the United States. Wilberforce University, America's first black college, was founded in 1856 by the AME Church.

Educational opportunities, as well as social and economic development will be the prime topics discussed by the 20,000 to 30,000 participants at the AME Church 1984 General Conference, July 8-15.

On this occasion, I want to take this opportunity to applaud the AME Church as it continues its tradition of service to the black community.●

PAGE SCHOOL PROGRAM

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. WHITEHURST. Mr. Speaker, on Thursday evening, June 14, the "End of the Year" ceremony marked the completion of the first year of the new U.S. House of Representatives Page School; 61 pages have completed the second term, and since September 6, 1983, 85 students from 28 States and the District of Columbia have been enrolled in the school. Nearly 95 percent of the students took a full four-class load, while an additional dozen took additional work through their home schools.

As chairman of the Education Task Force, I am delighted to take this opportunity to offer my congratulations to these students whose hard work and dedication have made the first year of the school so successful. We already have a school to be proud of, and I know that in the years to come we will have an even finer educational facility.

A number of the pages merit special recognition. The school, residence hall, and work supervisors selected one boy and one girl as outstanding citizens in the page program. The criteria for selection included those elements of hard work, cooperative spirit, loyalty, positive attitude, and effort in all phases of the program. The two pages so honored are Mary Calhoun and Christopher Tully.

The most improved student award went to Kenneth Godawa for his progress during the 1983-84 school year.

All three received plaques during the June 14 ceremony, which had generously been provided by the Exchange of Capitol Hill.

A number of students have received certificates of achievement from the page school for having earned a perfect 4.0 grade point average for one or both of the school terms. Those students are:

First term: Georgie Boge, Jeff Coombs, Deb Dubin, Nate Geisert, Scott Kaden, Andy LeCates, Amil Petrin, and Andy Schmerl.

Second term: Sharon Bauer, Julia Causbie, Doug Derryberry, Nate Geisert, Scott Griesser, Andy LeCates, Bernard Mania, Roger Martin, Molly McCarthy, Amil Petrin, Stefan Scholl, Lee Anna Sellers, and Jennifer Spreitzer.

Special mention is also due the officers of the student activity council, who have provided outstanding leadership to their fellow pages: President, Georgie Boge; Vice President, Mark Lehman; Secretary, Jennifer Berdahl; Treasurer, Nathan Geisert; Members at Large: George Berridge; Jennifer Lovett; and Jeffrey Turner.

Finally, because becoming a page in the House of Representatives is in itself a major acheivement, I am pleased to share with my colleagues the entire House Page Roster for 1983-84.

HOUSE PAGE ROSTER—1983-84

GIRLS

Glenda Austin, Tanya Bailey, Brandi Baldwin, Sharon Bauer, Jennifer Berdahl, Maureen Blum, Georgie Boge, Nicole Boxer, Mary Calhoun, Tina Cascio, Julia Causbie, Kimberly Davis, Deborah Dubin, Yvonne Dye, Amy Fultz, Samantha Goodman, Kimberly Hadden, Valeria Hoffmen, Lisa Indorf, Laurel Ingham, Sheryl Jones, Jennifer Lovett, Lisa Malvaso, Molly McCarthy, Michelle Morris, Lisa Myers, Lynn Nachwalter, Tham Nguyen, Lisa Pierotti, Michelle Pino, Lee Anna Sellers, Kathleen Sevilla, Natalie Shafer, Ann-Marie Spence, Jennifer Spreitzer, Lucinda Stewert, Linda Thomas, Margaret Welch, Lisa Williams, Myra Wilson, Martha Wood

BOYS

Filiberto Almendarez, Edward Alexander, Donald Asmonga, George Berridge, Will Brooks, Jr., Jeffrey Coombs, William Conner, Thomas Cox, Peter Crean, Douglas Derryberry, Jimmy Duncan, Michael Gagnon, Nathan Geisert, David Geiss, Kenneth Godawa, Christopher Gorelik, Scott Griesser, Robert Hyneman, Sean Jones, Scott Kaden, Andrew LeCates, Mark Lehman, Robert Levine, Bernard Mania, Roger Martin, Brian Montgomery, Benjamin Newman, Robert Olmetti, David O'Neil, Michael Parish, Wayne Parton, Amil Petrin, Andrew Potts, Johnny Robinson, Brian Ronholm, Andrew Schmerl, Stefan Scholl, David Schroeder, Eugene Taylor, Steven Treistman, Sean Tucker, Bruce Tulgan, Christopher Tully, Jeffrey Turner, Luis Zervigon.

Mr. Speaker, permit me to close by expressing my gratitude to all of my colleagues who have offered support and encouragement for the work of the Education Task Force. I think that all of us can take considerable pride in what has been accomplished in just 1 year. Much of the success of our school, of course, must be credited to our outstanding principal, Dr. Robert F. Knautz, who has provided the leadership and maintained the high educational standards so necessary to the development of our school.

I know all of my fellow House Members join me in wishing these fine young people Godspeed and every success in the coming years.●

TWO DADE SCHOOLS MAKE U.S. HONOR ROLL

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. LEHMAN of Florida. Mr. Speaker, as a former teacher and chairman of the Dade County School Board, I know from firsthand experience the importance of strong leadership in our schools and its role in improving the quality of education for our children.

It was for this reason that it was no surprise to me that two North Dade schools located in our congressional district—American Senior High School and Highland Oaks Junior High School, were cited as exemplary schools nationwide by the U.S. Department of Education. Both schools were opened within the past 8 years. However, under the strong leadership of American High principal Fred Bertani and Highland Oaks principal Mildred Augenstein, both schools have established successful track records and traditions of achievement that merit national honors.

An article recently appeared in the Miami Herald which provides some additional details on the programs these schools have set up and the difficulties they have faced in their efforts to achieve excellence, and I wanted to share this article with my colleagues.

I think the principals, teachers, staff, and students in these schools are to be congratulated for their dedication, hard work, and achievement. They have shown that miracles do happen and have set an example not only for our community, but for schools all across the Nation. We look forward to even greater achievements from these two schools in the future.

The article follows:

Two Dade Schools Make U.S. Honor Roll

(By Mark Silva)

It's a tale of two schools, one that was presumed doomed for disaster before it even opened, the other born to succeed.

But both now have one thing in common—the leadership of two dynamic educators—that has catapulted them to national fame.

American Senior High School, which overcame a reputation for racial strife, and Highland Oaks Junior High School, distinguished by stellar student achievement, were among 202 secondary schools cited as "exemplary" Thursday by U.S. Education Secretary Terrel Bell.

The two Dade County schools are the only schools in South Florida, and among nine schools in the state, to achieve the national honor.

It's a particularly sweet victory for American, "The Home of the Patriots," whose name was once synonymous with campus brawls.

"It's based on where you were three years ago and where we are today," said American High Principal Fred Bertani, in an interview earlier this year as the school was nominated for the national award. "In essence, I want to win. I want to go to Washington and stand on the steps of the White House and tell President Reagan there are two kinds of kids: Patriots and those who want to be."

Both schools, relatively new, were opened to relieve the overcrowding of schools in the burgeoning neighborhoods of North Dade.

American High, which opened in Northwest Dade in 1976, drew its students from Hialeah-Miami Lakes High and Miami Carol City High, where overcrowding had resulted in double-sessions for students.

Highland Oaks, which opened in 1978, drew students from upscale sections of Northeast Dade. Its opening relieved John F. Kennedy Junior High School, which also had been forced to double up its school days.

American's Bertani and Highland Oaks Principal Mildred Augenstein are credited with a forceful brand of leadership that, in one case, has helped a troubled school arise from failure, and, in the other case, placed a school among the top-achieving schools in the nation.

"In the case of both schools, the one thing they have in common is very, very strong leadership in the role of the principal," said James Fleming, assistant superintendent for administrative operations.

"One of the key factors at Highland Oaks is the principal's professional background. Mildred for years was director of staff development for the school system. What she has done is, she has very carefully staffed the school with top quality instructional people.

"Fred is simply a strong leader, who has a tremendous amount of energy and has applied it," Fleming said. "We've said for years, the most important variable in the success of a school is the principal."

American, at 18350 NW 67th Ave., sends only 20 per cent of its graduates to college and is still a relatively low-achieving school. Its achievement test scores rank below the national norm. Yet American has been a leader in requirements for a high school diploma, setting standards two years ago that surpassed the state's requirements.

Students at Highland Oaks, at 2375 NE 203rd St., rank high on the nationwide Stanford, Achievement Test, well above the national norm. The school sends dozens of its students each year to a program for the "gifted" at the north campus of Miami-Dade Community College.

American, rocked by racial violence after its opening, had known nothing but controversy. More than 500 parents and students, most of them from Miami Lakes, had protested the coming of the new school and vowed to refuse to send their children north to the new facility.

The school opened with a racial mix, equal numbers of blacks, Hispanics and non-Latin whites from far-flung neighborhoods of North Dade. The first principal, Glenda Harris, lost her job in 1978 because of the violence that marked the school's first two years. Campus brawls were common; the school recorded almost as many assaults as school days.

Still, almost all students at American are bused there. But the school has overcome the strife that disrupted its opening years.

"It was chaos," said one teacher at American, crediting Bertani and Assistant Principal Carol Licko with the turnaround. "Between you and me, Bertani and Licko are the reason this school is where it is."●

RONALD J. VINCENT DAY

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 1984

● Mr. DELLUMS. Mr. Speaker, I want to take this opportunity to share with my colleagues the remarkable history of Mr. Ronald J. Vincent. Mr. Vincent's accomplishments are being celebrated on July 10, 1984, that day having been declared Ronald Vincent Day by the mayor and city council of the city of Oakland, CA.

Mr. Vincent currently chairs the Oakland Symphony Orchestra Association, which during his tenure has increased its operating budget by nearly 85 percent and its contribution base by an even more impressive 120 percent. Those who know Mr. Vincent speak of him as a human dynamo, a man who never accepts "no" as an answer. His hard work on behalf of the symphony has enhanced its reputation worldwide.

Mr. Vincent's civic-minded contribution of time and energy is all the more impressive in light of the fact that he is the owner/operator of Vincent Electric of Oakland.

I am pleased to join with the mayor and city council of Oakland in honoring Ronald Vincent's significant contributions to our community.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, June 26, 1984, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 27

9:00 a.m.
Environment and Public Works
Environmental Pollution Subcommittee
To hold hearings on amendment No. 2807, proposed Wildlife and the Parks Act of 1984, to S. 978, to provide financial assistance to States for wetlands conservation.
SD-406

9:30 a.m.
Banking, Housing, and Urban Affairs
Business meeting, to mark up S. 2181, to authorize and define the scope of powers for depository institutions and their holding companies and to revise certain Federal bank regulations.
SD-538

10:00 a.m.
Appropriations
District of Columbia Subcommittee
Business meeting, to mark up proposed legislation appropriating funds for fiscal year 1985 for the District of Columbia government.
SD-138

Commerce, Science, and Transportation
Merchant Marine Subcommittee
To hold hearings on S. Con. Res. 55, to express the sense of the Congress in opposition to further expansion of cargo preference requirements.
SR-253

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Finance
International Trade Subcommittee
To hold hearings on the state of the U.S. automobile industry, focusing on the competitiveness of the industry, effects of the Japanese auto export re-

straints, and the future of international trade in autos.

SD-215

Foreign Relations
International Economic Policy Subcommittee
To hold hearings protectionism in international trade, focusing on the automotive industry.

SD-419

Governmental Affairs
Energy, Nuclear Proliferation and Government Processes Subcommittee
To hold hearings on nuclear nonproliferation.

SD-342

Judiciary
Administrative Practice and Procedure Subcommittee
To resume oversight hearings on congressional access to reliable agency information.

SD-226

Labor and Human Resources
Business meeting, to consider S. 2568, the Civil Rights Act of 1984, and the nomination of Rosemary M. Collyer, of Colorado, to be General Counsel of the National Labor Relations Board.

SD-430

Veterans' Affairs
To hold hearings on measures to provide for certain veteran compensation programs, including S. 2736, S. 2737, S. 2267, S. 2268, S. 2451, S. 2759, and S. 2760.

SR-418

Joint Economic
To hold hearings on the minimum wage.

340 Cannon Building

2:00 p.m.
Conferees
On H.R. 5753, appropriating funds for fiscal year 1985 for the legislative branch of the Federal Government.

S-128, Capitol

JUNE 28

9:00 a.m.
Energy and Natural Resources
Public Lands and Reserved Water Subcommittee
To hold hearings on S. 2692 and H.R. 2982, bills to exempt certain water conveyance systems from right-of-way fees and conditions under the Federal Land Policy and Management Act of 1976, H.R. 2889, to authorize funds for fiscal years 1984 through 1987 for the National Museum for the Building Arts for operating expenses during its renovation, and to change the name of the museum to the National Building Museum, and H.R. 2838, to provide assistance to certain groups and organizations volunteering to plant tree seedlings on public lands.

SD-366

Labor and Human Resources
To hold hearings on S. 2748, to revise the procedures for new drug applications and to provide for the extension of patents for certain regulated products, and the proposed Drug Export Amendments of 1984.

SD-430

9:30 a.m.
Banking, Housing, and Urban Affairs
Business meeting, to consider the nomination of Martha R. Seger, of Michigan, to be a member of the Board of Governors of the Federal Reserve System.

SD-538

Foreign Relations
To hold joint hearings with the Committee on Governmental Affairs' Subcommittee on Energy, Nuclear Proliferation, and Government Processes on Senate Resolution 368 and Senate Resolution 283, measures calling for a ban on chemical weapons.

SD-419

Governmental Affairs
Energy, Nuclear Proliferation, and Government Processes Subcommittee
To hold joint hearings with the Committee on Foreign Relations on Senate Resolution 368 and Senate Resolution 283, measures calling for a ban on chemical weapons.

SD-419

10:00 a.m.
Commerce, Science, and Transportation
Merchant Marine Subcommittee
To hold oversight hearings on the implementation of the differential subsidy program of the Maritime Administration, Department of Transportation.

SD-138

Environment and Public Works
To resume hearings on proposals to extend and amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund).

SD-406

Finance
To hold hearings on the trade deficit.

SD-215

Judiciary
Business meeting, to consider pending calendar business.

SD-226

Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To hold hearings on S. 2561, authorizing funds for fiscal year 1985 to facilitate the transfer of computerised training programs of the Federal Government to the private sector and to State and local governments for use in manpower training programs.

SD-562

JULY 6

9:30 a.m.
Joint Economic
To hold hearings on the employment/unemployment situation in June.

SD-106

JULY 10

9:30 a.m.
Labor and Human Resources
To hold hearings on the practice of defensive medicine by the medical profession in an effort to avoid malpractice suits and its effects on the quality of medical care.

SD-430

JULY 25

10:00 a.m.
Governmental Affairs
Intergovernmental Relations Subcommittee
To hold joint oversight hearings with the House Committee on Government Operations' Subcommittee on Intergovernmental Relations and Human Resources to review the activities of the Advisory Commission on Intergovernmental Relations.

2154 Rayburn Building

JULY 26

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To hold hearings to discuss whether tax law should encourage employers to provide certain fringe benefits.

SD-215

JULY 27

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To continue hearings to discuss whether tax law should encourage employers to provide certain fringe benefits.

SD-215

JULY 30

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To resume hearings to discuss whether tax law should encourage employers to provide certain fringe benefits.

SD-215

AUGUST 6

10:00 a.m.
Commerce, Science, and Transportation
Ocean Policy Study Subcommittee
To hold oversight hearings on contracting out certain functions of the National Oceanic and Atmospheric Administration, Department of Commerce.

SR-253

SEPTEMBER 18

9:30 a.m.
Labor and Human Resources
Labor Subcommittee
To resume oversight hearings to examine the scope and impact of certain occupational diseases.

SD-430

11:00 a.m.
Veterans' Affairs
To hold hearings to review the legislative priorities of the American Legion.

SR-325

CANCELLATIONS

JUNE 27

9:00 a.m.
Labor and Human Resources
Handicapped Subcommittee
To hold hearings to review recommendations to improve services for the mentally retarded.

SR-428A

9:30 a.m.
Judiciary
Constitution Subcommittee
To hold oversight hearings on the implementation of the Voting Rights Act.

SD-226

Special on Aging
To hold hearings on the scope of medical malpractice, and to examine options to medicare.

SD-628